

THE CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION:

the travaux préparatoires and
selected documents

EDITED BY

Niall COGHLAN and Marc STEIERT



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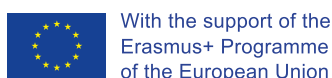
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As ever, this work could not have existed without the help, encouragement and time of many generous people.

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Abstract

Twenty years after its proclamation and eleven years after it gained legal force, this collection brings together for the first time the complete *travaux préparatoires* of the Charter of Fundamental Rights of the European Union. The core collection consists of the roughly 5,000 pages of *travaux préparatoires* from the Convention that drafted the Charter between 1999 and 2000. In addition, it includes some of the key documents forming the roots of the Charter (such as the 1989 European Parliament Declaration) and those showing how its text and primary law framing evolved between 2003 and 2014 (notably in the 2002-3 Future of Europe Convention and 2004 and 2007 Intergovernmental Conferences which amended the Charter and gave it legal effect). Further, it includes an analytical introduction and full Convention chronology to assist the reader in navigating the material. This compilation will prove a valuable source for scholars and practitioners alike, and ultimately aims to spark a fresh wave of interest in the drafting of the EU's core rights text.

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Foreword

Eleanor Sharpston,
Former Advocate General
of the Court of Justice of the European Union

Initially, busy lawyers perhaps did not take that much notice of the Charter of Fundamental Rights. When it first emerged as a ‘solemn proclamation’ of the European Parliament, the Council and the Commission on 7 December 2000, it was published in the ‘C’ series of the Official Journal¹ as befitted a non-binding communication. As its fourth recital made clear, it was promulgated because it was felt ‘necessary to strengthen the protection of fundamental rights in the light of changes in society, social progress and scientific and technological developments by *making those rights more visible* in a Charter’ (my emphasis). The Charter made its parentage clear: it was a modern compilation of ‘rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the Treaty on European Union, the Community Treaties, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Community and by the Council of Europe and the case-law of the Court of Justice of the European Communities and of the European Court of Human Rights’ (fifth recital). There must assuredly have been many practitioners who said to themselves, ‘OK, very fine, very nice – it’s just a codified compilation of stuff that was there before: nothing to get excited about’.

But then the Treaty of Lisbon changed the Charter’s legal status, elevating it from ‘soft law’ to primary law – that is, law of the same status as the EU Treaties themselves. Since that change became effective in 2009, the Charter has transformed the way we think about EU law. It has given us an up-to-date yardstick of fundamental rights that is internal to the EU legal order. It requires the EU legislature to ensure that new legislation is ‘Charter compliant’. It also necessarily affects the Court’s analysis of the cases before it. When deciding between the various possible interpretations of an ambiguous text that are being urged upon it, the Court will naturally bear in mind relevant provisions of the Charter and do its best to ensure that the interpretation that it endorses in its judgment is in line with the guarantees that the Charter contains.

Until now, however, we have been remarkably short on background material to enable us to understand how the Charter came into being, the choices that were made (in terms both of selection and of actual drafting) and the discussions and thinking behind the EU’s flagship text protecting fundamental rights. True, the Praesidium of the Convention – at its own instigation and prior to the actual adoption of the Charter – prepared ‘explanations’ for each article of the Charter. As it was careful to explain, however, ‘These explanations have been prepared at the instigation of the Praesidium. They have no legal value and are intended simply to clarify the provisions of the Charter’.²

¹ OJ 2000 C 364, p.1.

² Published by the Praesidium as document CHARTE 4473/00 CONVENT 49 of 11 October 2000 and available at https://www.europarl.europa.eu/charter/convent49_en.htm. The European Parliament gives its own ‘spin’ to the value of the Explanations, saying that ‘They are intended simply to clarify the provisions of the

We all refer to those Explanatory Notes as if they were Holy Writ. It has to be said that sometimes they do not take us very much further in our understanding of the Charter article that we are trying to interpret and apply. Thus, for example, the original explanatory note for Article 21 (Non-discrimination) sets out the text of the article (two paragraphs) and then merely observes, ‘Paragraph 1 draws on Article 13 of the EC Treaty, Article 14 of the ECHR and Article 11 of the Convention on Human Rights and Biomedicine as regards genetic heritage. Insofar as this corresponds to Article 14 of the ECHR, it applies in compliance with it. Paragraph 2 corresponds to Article 12 of the EC Treaty and must be applied in compliance with the Treaty.’ The 2007 version of the explanations³ contains a lengthy additional paragraph that was obviously designed to reassure those worried about competence-creep, but that is not very illuminating if what you are after is greater understanding of the intention and purpose of the article itself. I remember dutifully studying both that Charter article and its accompanying explanatory note (as well as the equivalent material on Articles 11(1) (freedom of expression) and Article 15(1) (right to engage in work), which had also been invoked) whilst working on my Opinion in Case C-507/18 *Associazione Avvocatura per i diritti LGBTI*.⁴ Having read them carefully three times, I pushed both texts to one side and went on trying to analyse the actual problem with which the Court was confronted. I was certainly *aiming* at recommending to the Court an interpretation of Articles 3(1)(a), 8(1) and 9(2) of Directive 2000/78/EC⁵ that was in line with the requirements of the Charter; and I hope that I did indeed do so. But I do not pretend that my understanding of those Charter provisions was buttressed by the kind of intensive study of the Charter’s ‘travaux préparatoires’ that I would instinctively apply when scrutinising some other piece of EU legislation. And yet the Charter is EU primary law.

That is why the present publication – over and above its obvious value to any researcher interested in the historical development of EU law – is so welcome. It is a meticulous and thorough compilation of material that you would otherwise spend weeks searching for (and most of us, most of the time, do not alas manage to find the time that would be required to do such searches). It will therefore be a valuable resource for anyone who wishes to make sure that a ‘Charter argument’ is solidly grounded. It may help us with the vexed question of what are ‘rights’ and what are ‘principles’.⁶ It will assuredly enable us all to have a better grasp of what the Charter was, and was not, intended by its progenitors to do for fundamental rights protection within the European Union.

To my regret, I am now no longer doing the job in which I would have been referring to this work on an almost daily basis; but I am tolerably certain that I shall nevertheless find myself consulting it gratefully on many a future occasion.

Eleanor Sharpston

Advocate General, Court of Justice of the EU (2006-2020)

Grand Duchy of Luxembourg, November 2020

Charter, indicating the sources and scope of each of the rights set out therein. They have no legal value and are published ... for information only’. The complete text of the Charter was then set out in CHARTE 4487/00 CONVENT 50 (whose final version was CHARTE 4487/2/00 REV2).

³ Published in OJ 2007 C 303, p.17.

⁴ Opinion of 31 October 2019, ECLI:EU:C:2019:922; judgment of 23 April 2020, ECLI:EU:C:2020:289.

⁵ Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p.16).

⁶ See, for example, Tobias Lock, ‘Rights and Principles in the EU Charter of Fundamental Rights’, *Common Market Law Review* 56: 1201–1226, 2019.

Foreword

Professor Renaud Dehousse,
President of the EUI

Universities are not merely the crucible in which knowledge is developed and taught. They also contribute in multiple ways to the life of the society in which they are embedded, by contributing ideas to the public debate, fostering dialogue on disputed issues or providing expert advice to policy-makers. Today, all these tasks are considered to be a significant contribution to the mission of public universities, which must somehow ‘pay back’ the funding from which they benefit. This is, *a fortiori*, true for an institution such as the European University Institute (‘EUI’, ‘the Institute’), created by its member countries with the broad mission of developing ‘the cultural and scientific heritage of Europe’ and of conducting research ‘on the major issues confronting contemporary European society’. Member countries’ interest in the institution would likely fade if they could not identify its contribution to the process broadly defined as ‘the construction of Europe’ in the Florence Convention of 1972, by which the Institute was created.

The protection of human rights was bound to feature prominently in the Institute’s activities. This was after all one of the first areas in which the necessity was felt to tame the excesses of state sovereignty to prevent the repetition of past horrors, leading to the conclusion of the European Convention on Human Rights only a few years after the end of World War II. As readers will be aware, this first achievement was followed by a series of ‘small steps’, as defined by their chief architect Jean Monnet. This in turn gave rise to a question: what was to be the place of human rights in the policies developed first by the European Communities, and then by the EU? Without entering into the details of the controversy, let it be said that the answer to the question was far from obvious, whether because of the very existence of the Human Rights Convention or because the European Union’s competence to deal with human rights was contested.

Moreover, human rights are a quintessentially normative field, in which the positions one defends on law and policy issues are often imbued with value considerations. Analysis is rarely confined to what the law is supposed to say, and rapidly leans towards what it *should* say, which calls for a confrontation between various disciplines in the social sciences and the humanities. No wonder then that it became a matter of sustained attention at the Institute.

Activities in this area were often conducted in partnership with the European institutions. Since the 1970s, the European Parliament has been a strong supporter of a human rights policy, which in 1989 would lead to the adoption of its own Declaration of fundamental rights and freedoms. In 1978, at the Parliament’s request, the Institute hosted a large conference bringing together representatives of the European institutions and of the national parliaments, opened by the first EUI President Max Kohnstamm. The declared aim of the exercise – ‘to encourage discussion and action at Community and national levels’ on the idea of a charter of rights for European Community citizens

– illustrates effectively the frequent advocacy that is present in the field of human rights. In the following two decades, the European Commission funded two major research programmes, the aim of which was to take stock of accomplishments, identify problems and review options. The EUI’s Academy of European Law was the anchor for both projects, which brought together the best experts in the field under the leadership of a ‘dream team’ composed of three of its successive directors: Antonio Cassese, Joseph Weiler and Philip Alston. The European Union’s human rights policy also featured prominently in the EUI’s works on the ‘constitutionalisation’ of the European Treaties under the direction of Giuliano Amato. All this came on top of a steady flow of publications by various members of the Law Department and contributed to an intellectual and political environment that ultimately facilitated the adoption of the Charter of Fundamental Rights of the European Union.

Given this record, it is a great pleasure for the Institute to participate in the celebration of the Charter’s twentieth anniversary. Making publicly available its *travaux préparatoires* will ease the work of scholars and practitioners, for whom these documents are essential. I am particularly grateful to Marc Steiert and Niall Coghlan, PhD researchers in the Law Department, for having bravely undertaken the task of putting together this impressive collection of documents. Their hard work will contribute to consolidating the Institute’s record as an important knowledge hub in the field of fundamental rights. In publishing this collection, the EUI also intends to fulfil its commitment to open science, in which every kind of research data is made publicly available to the widest possible audience. Together with the focus on issues of notable relevance to the European society, this is one way for us to firmly justify our role as *the* European university.

Renaud Dehousse

President of the European University Institute

Florence, November 2020

Analytical Introduction

This introduction consists of two parts. **Part I** gives an overview of the collection: the existing literature on the Charter’s drafting, the collection’s purpose and the possibility of future updates. **Part II** enters into the process of drafting the Charter. It provides an overview of the Charter Convention itself and a guide to the content of and editorial choices made in the collection. Together with the chronology in the following section, these aim to give the reader a way into this large collection.

For the busy practitioner, the overview of the Convention (in **Part II**) and the chronology of drafts (p.49) will likely provide the quickest way to begin tracing the development of a particular provision.

PART I: Overview

Introduction

A rich literature on the EU’s legal history is at last burgeoning.¹ One particularly promising bud seeks to historicise the development of fundamental rights in the EU.² This bud confronts a difficult environment: in this age of human and constitutional rights, few fields are as vulnerable to the temptations of teleology. Yet the language of fundamental rights is an historical object, taking root and flourishing in particular contexts and based on the actions of individuals and institutions.³ It is moreover a language with myriad dialects: the specific fundamental rights provided by EU law are, at least in part,

¹ Rasmussen, ‘The Legal History of the European Union: Building a European Constitution’ in *Oxford Research Encyclopedia, Politics* (July 2019); more broadly Patel, ‘Widening and deepening? Recent advances in European Integration History’ (2019) 63 *Neue Polit. Lit.* 327

² For recent steps towards historicised understandings, see de Búrca, ‘The Road Not Taken: The European Union As A Global Human Rights Actor’ (2011) 105(4) *American Journal of International Law* 649; Davies, ‘*Internationale Handelsgesellschaft* and the Miscalculation at the Inception of the ECJ’s Human Rights Jurisprudence’ in Nicola and Davies (eds), *EU Law Stories* (CUP 2017), p.163; and Phelan, ‘The Role of the German and Italian Constitutional Courts in the Rise of EU Human Rights Jurisprudence: A Response to Delledonne & Fabbrini’ TRiSS Working Paper Series, TRiSS-WPS-02-2020.

³ Tierney, *The Idea of Natural Rights: Studies on Natural Rights, Natural Law, and Church Law, 1150-1625* (Michigan William B. Eerdmans, 2001), p.6 (referring to human rights and their predecessor, natural rights). Whilst fundamental and human rights are strictly distinct, the two are intimately linked (Peers *et al.*, *The EU Charter of Fundamental Rights: A Commentary* (Hart 2014), §§60.01-60.09) and the terms are often conflated in EU law (e.g. *Ibid.*, pp.vii-viii). For our purposes, fundamental rights can be treated as the institutionalisation of human rights (Monereo Atienza and Monereo Pérez (eds), *La Europa de los Derechos: Estudio Sistemático de la Carta de los Derechos Fundamentales de la Unión Europea* (Editorial Comares 2012), pp.xv and xvii).

the result of historical processes, contingencies and choices.⁴ Carefully cultivated, this bud promises to demystify these developments, in turn permitting a sharper, more clear-eyed understanding of the history, nature and role of EU fundamental rights.

A crucial chapter in that history was the proposal, drafting and elevation to primary-law status of the Charter of Fundamental Rights of the European Union (‘the Charter’, ‘CFR’). While the Charter professes simply to make existing rights ‘more visible’, it has sparked a transformation – still in its early days – in the role and status of fundamental rights within the Union.⁵ The Charter was, moreover, not drafted in the dark corridors of diplomatic negotiation (like most human rights treaties) or in a long-passed revolutionary moment (like the American and French bills of rights): it was drafted in a public Convention between 1999 and 2000 (‘the Charter Convention’), with all documents published online, extensive public discussion by the participants, and an open exchange with several dozen NGOs. 46 of the 62 Members were national or EU Parliamentarians. One political scientist judged it ‘the best attempt yet to provide for an open and deliberative exchange’.⁶

Yet, where the drafting of other rights instruments has been studied extensively by both lawyers and (increasingly) historians⁷, the same is not true of the Charter. The detailed analyses of the Convention that do exist tend to focus on its overall mechanism and dynamics from a political science or constitutional perspective.⁸ This perhaps partly arises from the context: the Convention’s innovative composition and working methods were widely acclaimed and replicated in the 2002-2003 Future of Europe Convention that drafted the Constitutional Treaty. In this ‘Convention moment’⁹, then, the Charter Convention’s process garnered more attention for its own sake – and for its potential constitutional significance¹⁰ – than for what it revealed about the resulting, at that point

⁴ Koskeniemi, ‘Rights, History, Critique’, and Moyn, ‘Human Rights in Heaven’ in Etinson, *Human Rights: Moral or Political* (Oxford, OUP 2018). Even proponents of the ‘orthodox’ view of human rights – which see them as moral rights possessed by all humans in virtue of their humanity, to be determined primarily by moral reasoning – accept (and indeed argue) that the particular rights provided in individual legal regimes are the result of contingent historical processes. This is precisely how they are able to criticise legal human rights which do not align with (their articulation of) moral human rights. See e.g. Tasioulas, ‘Saving Human Rights from Human Rights Law’ (2019) 52 *V and J Transnat’l L* 1167, 1172-3.

⁵ See the Preambles to the Charter and Protocol 30 to the Treaties; see also Cologne Conclusions, p.19. For two assessments of the Charter’s impact, see Frantziou, ‘The Binding Charter Ten Years on: More than a “Mere Entreaty”?’ (2019) 38 *Yearbook of European Law* 73 and de Vries, ‘The Charter of Fundamental Rights and the EU’s “creeping” competences: does the Charter have a centrifugal effect for fundamental rights in the EU?’ in Douglas-Scott and Hatzis (eds), *Research Handbook on EU Law and Human Rights* (Edward Elgar Publishing, 2017).

⁶ Schönlaue, ‘New Values for Europe? Deliberation, Compromise, and Coercion in Drafting the Preamble to the EU Charter of Fundamental Rights’ in Eriksen *et al.*, *The Chartering of Europe: The European Charter of Fundamental Rights and its Constitutional Implications* (Nomos Verlagsgesellschaft 2003), p.132. Cf. Lüsberg ‘Does the EU Charter of Fundamental Rights threaten the supremacy of Community Law?’ (2001) 38 *CMLRev* 1171, p.1182.

⁷ E.g. Morsink, *The Universal Declaration of Human Rights: Origins, Drafting and Intent* (University of Pennsylvania Press 1999); Simpson, *Human Rights and the End of Empire: Britain and the Genesis of the European Convention* (OUP 2004).

⁸ See particularly Schönlaue, *Drafting the EU Charter: rights, legitimacy and process* (Palgrave 2005); de Búrca, ‘The drafting of the European Union Charter of Fundamental Rights’ [2001] *ELRev* 126; and Deloche-Gaudez, ‘The Convention on a Charter of Fundamental Rights: A Method for the Future?’ (Notre Europe Research and Policy Paper 15, November 2001. More recently, Bellamy, *From Maastricht to Brexit* (Rowman 2019), chapter 6.

⁹ Castiglione *et al.*, *Constitutional Politics in the European Union: The Convention Moment and its Aftermath* (Palgrave 2007).

¹⁰ Maduro, ‘The Double Life of the Charter of Fundamental Rights’ in Eriksen *et al.* (fn6) and Eeckhout, ‘The EU Charter of Fundamental Rights and the Federal Question’ (2002) 39 *CMLRev* 945.

non-binding, document. Indeed, the one period of the Charter's history for which a detailed drafting history exists is precisely that of the Constitutional Treaty.¹¹ The small number of relevant papers published since add little on the Charter as a drafted document.¹² What we are left with, then, are fragmented individual drafting histories of particular parts of the Charter, typically as part of a broader analysis: these notably exist on the preamble¹³, the Charter Explanations¹⁴, article 51¹⁵ and article 53.¹⁶ A possible exception to this rule is the commentary provided by Meyer and Hölscheidt, which includes relatively detailed drafting histories of the Charter's articles.¹⁷ This is, however, only available to German-speakers. It is, moreover, an isolated example rather than one element of a flourishing legal and historical debate.

This lack is unfortunate for three reasons. First, the drafting history is relevant to the interpretation of the Charter as a matter of law.¹⁸ It is remarkable, in this respect, how infrequently the Court or its Advocates General refer to the Charter's *travaux préparatoires*.¹⁹

Second, as set out above, the Charter is an historical as much as a legal document. A proper understanding of the historical and drafting processes that led to it existing at all, and to existing with the particular rights it contains, is not only important to understanding the nature and role of EU fundamental rights; it also casts light on the evolution of human rights more broadly, the operation of the 'Convention' system for drafting EU constitutional documents²⁰, and the development of EU law as a whole.

Finally, the Charter establishes rights for the 450 million persons who live in the EU. This includes potentially controversial and unclear rights, including prohibitions on cloning, eugenics and commercialisation of the body; the right to dignity; expansive

¹¹ Ladenburger, 'Fundamental Rights and Citizenship of the Union' in Amato, Bribosia and de Witte, *Genesis and destiny of the European Convention* (Bruylant 2007). Dr Clemens Ladenburger was himself part of the secretariat assisting the Praesidium during the 1999-2000 and 2002-2003 Conventions, in the latter case as one of two 'drafters' assisting Working Group II ('Incorporation of the Charter/Accession to the ECHR').

¹² E.g. Wicks, "Declaratory of existing rights" – the United Kingdom's role in drafting a European Bill of Rights, Mark II' [2001] Public Law 527; Anderson and Murphy, 'The Charter of Fundamental Rights: History and Prospects in Post-Lisbon Europe' EUI Working Papers, Law 2011/08; and Conte, *A Europe of Rights: History of the EU Charter* (Publications Office of the European Union 2012).

¹³ Schönlaue in Castiglione *et al.* (fn9).

¹⁴ Ziller's magnificent 'Le fabuleux destin des *Explications relatives à la Charte des droits fondamentaux* de l'Union européenne' in *Mélanges en l'Honneur de Jean-Paul Jacqué* (Daloz 2010); and Jacqué, 'The Explanations Relating to the Charter of Fundamental Rights of the European Union' in Peers (fn3).

¹⁵ De Búrca (fn8), p.136f

¹⁶ Liisberg, (fn6), §2.

¹⁷ Meyer and Hölscheidt, *Charta der Grundrechte der Europäischen Union – Kommentar* (Nomos 2019).

¹⁸ Lenaerts and Gutiérrez-Fons, 'To say what the law of the EU is: methods of interpretation and the European Court of Justice' EUI Working Paper AEL.2013/9, pp.19-24 and 47. See e.g. C-583/11 P *Inuit* ECLI:EU:C:2013:625, para 59. Cf e.g. the Opinion of Advocate General Bobek in C-129/19 BV ECLI:EU:2020:375, paras 117-124.

¹⁹ Advocate General Saugmandsgaard Øe is the only Advocate General who has referred to the content of the Convention debates to date (Opinion in C-235/17 *European Commission v Hungary* ECLI:EU:C:2018:971). Whilst Advocate General Tizzano did refer to another CHARTE document in 2001, this was to the Charter Explanations which had not been published separately: Opinion in C-173/99 BECTU ECLI:EU:C:2001:81. Neither the Court of Justice nor the General Court has yet referred to a CHARTE document.

²⁰ Back in the spotlight at the time of writing, given the proposals for a Conference on the Future of Europe.

and at times clashing economic and social rights²¹; and the protection of intellectual property. It also includes a variety of provisions that weaken or dilute its protection, including the rights/principles distinction (art.52(5)), strict limitation to the scope of EU law (art.51) and the weak wording of some rights (e.g. art.26). Understanding the process through which the Charter came to exist in its present form illuminates both the strengths and limitations of that form.

This compilation's purpose

There are likely to be several causes for the limited attention attracted by the Charter's drafting. Two are identified above: the recency of the rise of EU legal history generally and the context of the Charter Convention. The Charter's youth, meaning that relevant EU and national archival material remains closed, is no doubt also important.

This compilation seeks to address a fourth cause: the difficulty in accessing the Charter's *travaux préparatoires*. It is true that the majority of these are available online, notably through the Council of the European Union's Document Register. Moreover, since 2015 a complete list of the official Charter *travaux préparatoires* document series (CHARTE) exists.²² But this document list alone comes to 28 pages, making accessing and collating the individual documents – never mind making sense of a document's place in the overall scheme of the Convention – an arduous task. Nor does this official document series exhaust the actual *travaux préparatoires* of the Charter.

The present collection, published on the 20th anniversary of the Charter's proclamation (7 December 2000) and just over eleven years since it gained legal force (1 December 2009), seeks to fill this gap. In particular, it:

- Collates the entire CHARTE document series in **Chapter III**. With duplicates removed, this comes to approximately 4,800 pages of documents which make up the bulk of the *travaux préparatoires*;
- Adds a selection of other relevant documents, including:
 - The 2000, 2004 and (in force) 2007 versions of the Charter, including where relevant the Charter Explanations and primary law provisions (**Chapter I**);
 - Key documents relating to EU fundamental rights prior to the Charter Convention, including those providing the context to the Convention (**Chapter II**);
 - Non-CHARTE documents from the Charter Convention, such as over 400 pages of amendments deposited over summer in respect of the near-final 28 July 2000 draft; the mandate, agendas and work plans; and documents of the European Parliament delegation (included in **Chapter III**);

²¹ Compare the conflict between the freedom to conduct a business and workers' rights in C-201/15 *AGET Iraklis*, ECLI:EU:C:2016:972. In fact, some delegates predicted this conflict between that freedom and the right to work (and its derivative rights) during the 2000 Convention: see Bernsdorff and Borowsky, *Die Charta der Grundrechte der Europäischen Union Handreichungen und Sitzungsprotokolle* (Nomos 2002).

²² See Council Note 6933/15 dated 11 March 2015, from the General Secretariat of the Council to the Working Party on Information: 'Publication of preparatory documents related to the EU Charter of Fundamental Rights'.

- *Travaux préparatoires* relating to the amendment of the Charter and the evolution of primary law provisions giving it legal effect in the 2002-2003 Convention, 2003-2004 Inter-Governmental Conference and 2005-2007 Council and Inter-Governmental Conferences and beyond (**Chapter IV**).
- Seeks to give the reader a way into these documents through this analytical introduction and through chronologies with document references for the entire Charter Convention.

Our hope is to spark a fresh wave of scholarship on the Charter’s drafting history and the history of fundamental rights in the EU more generally, as well as providing practitioners with an accessible and searchable source when seeking to determine the interpretation or purpose of a particular provision.

Future updates

This is the first edition of this collection. Our priority had been to publish a working collection of primary documents to help scholars and practitioners to work on the Charter’s drafting process. We may seek to publish a second edition which includes (i) further official documents or references to other sources and (ii) analytical chapters tracing the drafting of the Charter and of individual provisions. In this way, we aim to centralise information about the Charter’s drafting process in order further to help future scholars and practitioners.²³ Please do contact us if you have any suggestions, if you spot any errors, omissions or inconsistencies, or if you would be interested in contributing to a second edition.²⁴

PART II: Guide to the Charter Convention and this collection

The Charter Convention: overview

Our intention here is to provide a brief sketch of certain aspects of the Convention’s operation to help the reader navigate the documents. We first summarise some features of the Convention arising from its mandate, including in particular the Convention’s composition and structure. We then provide a schematic set of three phases into which its operation can be divided and highlight some of the dynamics in play. This leads into the final section: the guide to this collection.

Composition and structure

A useful starting point is the mandate of the Charter Convention, set out in the Conclusions of the European Council in Cologne (3-4 June 1999) ‘*qui en a posé le principe et tracé les grandes lignes*’ and Tampere (15-16 October 1999), ‘*qui a précisé la procédure de son*

²³ See also the Fundamental Rights Agency’s centralised ‘Charterpedia’ of information, including case-law, academic and Parliamentary references to the Charter: <https://fra.europa.eu/en/eu-charter> <accessed 12 November 2020>. See also the further resources listed here: https://fra.europa.eu/sites/default/files/fra_uploads/fra_charter_publications_material_and_tools.pdf <accessed 12 November 2020>.

²⁴ By email: niall.coghlan@eui.eu, marc.steiert@eui.eu.

élaboration'.²⁵ This documents (and some of their own *travaux préparatoires*) are included in **Chapter III.1**. Here, we note three points.

First, the Convention²⁶ consisted of 62 members (and their alternates) divided into four 'components': 15 representatives of Heads of State or Governments of Member States; 1 representative of the Commission President; 16 MEPs; and 30 national Parliament members. Each could be replaced by an alternate.²⁷ Additionally, two Court of Justice of the European Communities representatives and two Council of Europe representatives (one from the European Court of Human Rights) were observers.²⁸ The Convention was to take into account the views of (amongst others) candidate states and NGOs. In addition to the vast quantity of contributions received (see **Chapter III.4**, a day of NGO hearings took place on 27 April, an open doors day on 6 June, and the candidate countries were heard on 19 June.

Legitimacy and visibility were, according to the Cologne Conclusions, core aims of this Charter. This may be part of the reason for the seniority of some of the Convention's members, such as Roman Herzog for the German executive (former President of the German Constitutional Court and of the Federal Republic), Alvaro Rodríguez Bereijo for the Spanish one (former President of the Spanish Constitutional Court) and Antonio Vitorino for the Commission President (Commissioner for Justice and Home Affairs). This very fact gave it the authority, and perhaps pressure, to go beyond a simple codification of existing rights.²⁹

Second, the mandate provided for a 'drafting committee' to be created. This would consist of a Chairperson, elected by the body; three Vice-Chairmen, each representing a component³⁰; and the Commission representative. In the event, Roman Herzog was elected Chairman by acclamation at the first meeting.³¹ The Vice-Chairman for the Representatives of the Heads of State and Government would rotate with the Council Presidency: Paavo Nikula (for Finland, late 1999), Pedro Bacelar de Vasconcelos (Portugal, early 2000) and Guy Braibant (France, late 2000). Importantly, however, Guy Braibant

²⁵ The quotations are from Braibant, *La Charte des droits fondamentaux de l'Union européenne Témoignages et commentaires de Guy Braibant* (Seuil 2001), p.19. That chapter (pp.19-33) provides a useful introduction to the Convention's operation.

²⁶ The mandate called it a 'Body'. On the '*petit coup d'État*' of the Body's vote to change its own name, see Braibant, *ibid.*, pp.19-20.

²⁷ For a colourful description on the origin and status of the alternates, see Méndez de Vigo, *El rompecabezas. Así redactamos las Constitución Europea* (Biblioteca Nueva 2005), pp.60-61, 70.

²⁸ The various lists of Members throughout are in Chapter III.5.b. See further the pre-Charter jostling over membership (e.g. the European Parliament Resolution on the establishment of the Charter of Fundamental Rights of 16 September 1999, included in Chapter II.1, and the mandate's requirements to receive views or hold hearings with various groups or bodies, including candidate states.

²⁹ See similarly de Búrca (fn8), pp.131-133. One member acerbically commented that '[a]ny law student' could copy the ECHR, such that new rights were the Charter's main added value: Meyer and Engels *The Charter of Fundamental Rights of the European Union and the Work of the Convention: A Collection of Documents* (2nd edn) (Bundestag 2002), p.382. See also Haenel, 'L'élaboration d'une Charte des droits fondamentaux' *Les Rapports du Sénat* no 395, 7 June 2000, pp.10f.

³⁰ Note that the Council Presidency had originally suggested all fifteen Head of State or Government representatives being in the Committee: Presidency Report, Council document 10539/99 (in Chapter III.1); Schönlaui in Eriksen *et al.* (fn6), pp.64-5; Deloche-Gaudez, 'The Convention on a Charter of Fundamental Rights: A Method for the Future?', *Notre Europe, Research and Policy Paper No.15, November 2001*, pp.8-9

³¹ CHARTE 4105/00.

negotiated his inclusion throughout 2000 in exchange for Bacelar de Vasconcelos having the same right.³² The European Parliament delegation elected Iñigo Méndez de Vigo, an important member of the constitutionalising group of the Committee on Institutional Affairs³³ as its Vice-Chairman; the National Parliamentarians elected Finland's Gunnar Jansson. Together with Commissioner Vitorino, this group formed the drafting committee – later called the 'Bureau' and ultimately the 'Praesidium'.³⁴

This Praesidium, whose influence is described below, was not monolithic. One point of note is that whilst Herzog was crucial in assuring the Praesidium's legitimacy and played an important role toward the beginning of the Convention, his involvement faded towards the end for personal reasons³⁵ even if he continued to intervene at certain points.³⁶

The Council Secretariat was, under the mandate, to provide 'secretariat services' to the Convention in 'close contacts' with the secretariats of the European Parliament, Commission and, to the extent necessary, national Parliaments. In practice, Jean-Paul Jacqué, Director of the Council Legal Service from 1992 to 2008, headed a small network of civil servants from each of those administrations.

Third, the Body was required to meet in 'Brussels, alternately in the Council and the European Parliament buildings'. In practice, the vast majority of meetings took place in the European Parliament.³⁷ The cover picture of this collection gives a sense of the meetings, with the Praesidium occupying the elevated bank facing the others Convention members sat in the hemicycle.³⁸ According to the Tampere conclusions these meetings, like the documents submitted to the body, would '[i]n principle' be public.

Schematic division of the Convention into phases, and dynamics

The Convention met eighteen times between 17 December 1999 and 2 October 2000. It can be roughly divided into three phases:

- 17 December 1999 – 4 May 2000: **Preparatory phase.** The Praesidium issued initial lists of rights from late January, developing into draft articles in February and March (civil and political rights) and March and April (citizen and economic

³² Deloche-Gaudez (fn30), p.13. See also Méndez de Vigo (fn27), p.70, claiming that he (Méndez de Vigo) negotiated rights for the alternates in exchange for agreeing to this.

³³ Vauchez, *Brokering Europe: Euro-Lawyers and the Making of a Transnational Polity* (CUP 2015), pp.215-6.

³⁴ The Praesidium members were also assisted by between two and five others, Braibant being assisted by Jacqueline Duthéil de la Rochère (his alternative), Thierry-Xavier Girardot and Françoise Klein: Braibant (fn25), p.24.

³⁵ Deloche-Gaudez states he 'virtually ceased to attend' from June 2000: (fn42) p.11. Such minutes as we have reflect this – and see notably CHARTE 4957/00.

³⁶ Deloche-Gaudez (fn30) notes he helped mediate the great debate as to 'religious heritage' in the preamble in September (p.11). Compare Schönlaue (fn8) p.105 and Méndez de Vigo (fn27), pp.101-102.

³⁷ Compare Deloche-Gaudez (fn30), p.20, claiming that all of the meetings took place at the Parliament. In fact, 3 out of the 18 meetings of the Convention took place in the Council's premises, according to the agendas included in Chapter III.5.a of this compilation.

³⁸ For twenty further photographs, see https://multimedia.europarl.europa.eu/en/search?tg=%22EU+Charter+of+Fundamental+Rights%22&f=19991217&t=20001002&sn=true&st=EPV_EDITED_VIDEOS-EPV_PHOTO-EPV_AUDIO-WS_VIDEO&cut=EPV_REPLAY-EPV_VIDEO_FOOTAGE&col=EPV_PHOTO&at=1 <accessed 12 November 2020>.

and social rights). Few written comments were submitted by members until late March and early April. The Praesidium consolidated its own power through procedural rules (including on representation and the right to speak) in March. The Convention accelerated drafting at the request of the European Council, despite opposition from many of its members. Debate at the meetings was relatively expansive, focussed particularly on the risk of divergence from the ECHR and other horizontal questions.

- 5 May – 31 July 2000: **Formal drafting phase.** The Praesidium presented formal drafts of all articles on 5 (civil and political) and 16 (economic, social and horizontal) May. A formal amendment procedure operated, with around 1,200 pages of amendments collected on 25 May and 16 June respectively. On 15 June, the Praesidium circulated the EGE's report on the 8 March draft of rights.³⁹ The Praesidium analysed the amendments and proposed certain adjustments on 4 and 23 June respectively. These were debated at several Convention meetings, culminating in the Praesidium issuing a complete draft Charter and Explanations on 28 and 31 July respectively.⁴⁰ The Explanations were. In this phase, meeting record-keeping started to fade; from June, Herzog's involvement declined due to personal reasons.
- 1 August – 2 October 2000: **Finalising phase.** Written amendments were deposited over the summer. Final adjustments were discussed at the 11-12 and 25 September meetings, mostly in the Convention's four separate 'components'. The Praesidium decided that consensus has been reached and that the draft should be submitted to the European Council. There was little overt dissent at the 26 September final substantive meeting, despite a considerable (unsuccessful) push for a reference to the European Social Charter in the Charter's horizontal provisions. The Explanations were occasionally used to incorporate compromises; in general, however, their content was not discussed and Convention members deprecated their importance.⁴¹ The draft Charter was approved by the European Council at Biarritz (13-14 October). The Praesidium's record-keeping collapsed: there is no CHARTE record of any amendments deposited over summer⁴² or of any meeting, save verbatim minutes from the 26 September and 2 October ones.

The dynamics at play in the Convention are still only partly-understood, particularly in relation to the core battles over constitutional points and economic and social rights. Existing studies suggest disproportionate influence of executive representatives, particularly those from large Member States, not least because of the Praesidium's

³⁹ The 'EGE' is the European Group on Ethics in Science and New Technologies. The Opinion was requested on 3 February 2000 by Commission President Prodi. See CHARTE 4370/00.

⁴⁰ See Méndez de Vigo (fn27), pp.98-9 stating this draft received an 'avalanche of criticism' publicly.

⁴¹ On the use for compromises, see Jacqué in Peers (fn3), §§62.15-62.16. On resistance to the Explanations having any significance, see Bernsdorff and Borowsky (fn21), pp354-400; CHARTE 4958/00, pp.28, 47, and 49. See also Meyer and Engels (fn29), pp.478-9.

⁴² However, these amendments are collected in an unpublished document included in this collection: see Document multilingue: OBSERVATIONS RECUES RELATIVES AU DOCUMENT CHARTE 4422/00 CONVENT 45 (un-numbered, dated 7 September 2000).

refusal to adopt a voting system⁴³; an increasing move to diplomatic-style horse-trading by the end of the Convention⁴⁴; the greater coordination of MEPs as compared with national Parliamentarians⁴⁵; and the limited but not entirely absent effect of NGO pressure.⁴⁶

One point has been repeatedly highlighted by the existing literature: the degree to which the Praesidium, and to some extent the Secretariat, wielded significant power and influence as to both procedure and substance.⁴⁷ This partly arose from the Tampere mandate, which gave the Chairperson the power to propose (though not determine) the work plan, required the drafting committee to draft the first version of the Charter and determined the Charter should be transmitted to the European Council once the Chairperson, in cooperation with the Vice-Chairpersons, deemed that ‘all the parties’ could subscribe to it. One might observe, for instance, that the first Praesidium draft drew heavily on the European Parliament’s 1989 Declaration on Fundamental Rights – a Declaration drafted in part by Professor Jean-Paul Jacqué, later head of the Convention’s Secretariat.⁴⁸

Beyond this, however, the Praesidium appears to have acted decisively in consolidating its power. It established a monopoly on drafting proposals, restricted speaking time and repeatedly postponed consideration of members’ specific proposed amendments.⁴⁹ It controlled information flows. It declined to permit votes on particular articles, drafts or amendments, instead judging itself whether particular rights should be incorporated into its drafts and when consensus was reached. Further, no objective criteria were offered as to when a proposal for amendment should lead to an adjustment of the draft.⁵⁰ As Deloche-Gaudez notes, the Praesidium and the Secretariat ‘became two strategic centres where decisions to keep or discard the various draft articles were taken’.⁵¹

⁴³ Deloche-Gaudez (fn30), p.28; Schönlau (fn8), p.150; see also Voggenhuber cited in Schönlau in Eriksen *et al.* (fn6), p.127, and Loncle ‘Vers une Charte des droits fondamentaux de l’Union européenne’ Les Documents d’Information de l’Assemblée Nationale 16/2000; Loncle, ‘La Charte des droits fondamentaux de l’Union européenne’, Les Documents d’Information de l’Assemblée Nationale 59/2000. See further Méndez de Vigo (fn27), p.91 claiming he established an informal dinner group consisting of certain Praesidium members and key Head of State and Government Representatives; and cf. p.103 stating that the Praesidium blocked a last-minute British attempt to force final changes.

⁴⁴ Schönlau in Eriksen *et al.* (fn6), pp.112f.

⁴⁵ Schönlau (fn8), pp.115f and Deloche-Gaudez (fn30), pp.20-1; House of Lords Select Committee on European Union, Eighth Report of Session 1999-2000 (16 May 2000), §35. National Parliamentarians did hold pre-meetings and seek to co-ordinate themselves: e.g. Meyer and Engels (fn29), pp.327-8.

⁴⁶ Schönlau (fn8), pp.153-4; De Schutter, ‘Civil Society in the Constitution for Europe’ in Castiglione *et al.* (fn9), esp. p.147; and Braibant’s revealing remarks in CHARTE 4959/00, p.15. Cf. Deloche-Gaudez (fn30), p.30 and Méndez de Vigo (fn27), pp.107-8.

⁴⁷ Deloche-Gaudez (fn30), pp.13, 29 (Praesidium and Secretariat); De Búrca (fn8), p.134 (Secretariat, focussing on the role of JP Jacqué); Maduro in Eriksen *et al.* (fn6), pp.205f (Praesidium and Secretariat) Schönlau (fn8), p.111 and (2007), pp.97ff (on Praesidium, especially Chair); Liisberg (fn6), p.1182; De Schutter in Castiglione *et al.* (fn9), p.147 (Secretariat); Bellamy (fn8), pp.150f (Praesidium). Braibant, himself a member of the Praesidium, admits to an ‘inequality’ between Praesidium and other members and suggests a future Convention should remedy this: Braibant (fn25), pp.24-5.

⁴⁸ PE 127.111/fin p.3; CHARTE 4111/00 and 4112/00.

⁴⁹ CHARTE 4134/00, 4154/00 and 4212/00, point 3. See also, at the 26 September 2000 meeting, CHARTE 4958/00 per Jansson (p.7) and strong criticism by Martin (pp.26-7) and O’Kennedy (pp.42-3).

⁵⁰ See Bernsdorff and Borowsky (fn21), pp.280-309. Their minutes of 28-30 June 2000 meeting records the concerns of certain delegates as to the Praesidium not disclosing its criteria for assessing proposed amendments.

⁵¹ Deloche-Gaudez (fn30), p.29.

Come September, it interpreted its obligation to find consensus between ‘the parties’ as requiring each of the four ‘components’ to agree, rather than all 62 members.⁵²

These dynamics are important not merely for understanding the Charter itself, but also for understanding the value of these *travaux préparatoires* in reaching such an understanding. For instance, Liisberg argued that the apparent openness of the Convention as compared to traditional Treaty-making was illusory: it ‘may also enhance and disguise the power of the draftsmen who lurk behind the piles of drafts and amendments, and may thus paradoxically produce less, rather than more, accountability and transparency.’⁵³ Viewed from that perspective, the present collection provides limited direct evidence of the inner workings of a crucial locus of decision-making, the Praesidium.

Nevertheless, we hope and trust that it provides enough direct evidence of the Convention’s workings, as well as indirect evidence of the Praesidium’s own workings, to enable light to be cast on the processes at work. Further, Liisberg’s view is not universally shared: we noted above Schönlaui’s claim that the Charter was a uniquely open and deliberative exchange (text to fn6), and Deloche-Gaudez cautioned that the Praesidium’s power ‘should not be exaggerated’, notably given that the later Convention drafts ‘naturally took into account the positions expressed within the Convention and the presidium’.⁵⁴ This collection should help scholars critically to assess these competing claims. It will moreover provide a foundation for further primary research – notably through the chronology provided below – that might unpick the Presidency itself and the role of other unsung actors, particularly national governments.

For practitioners, tracing the evolution of a particular right or structural feature (e.g. the rights/principles distinction, or the limitation clause) through the major Praesidium-issued drafts, amendment rounds and meeting discussions will illuminate the intention and thought behind them – or indeed, just as usefully, the *absence* of such intention or thought, implying that the Convention deliberately left the point open for the Court to decide. Our impression is that this ‘incomplete contracting’ is particularly evident in the overall ‘shapelessness’ of the Charter, a difficulty that continues to trouble the case-law today.⁵⁵

In this way, this collection can enable scholars and practitioners to elucidate further the legal, historical and political processes that drove the evolution of the Charter.

⁵² Schönlaui in Eriksen *et al* (fn6), p.126. See, tellingly, Jacqué in Peers (fn3) §62.16.

⁵³ Liisberg (fn6), p.1182.

⁵⁴ Deloche-Gaudez (fn30), p.29.

⁵⁵ In particular, the Charter has a single general limitation clause; a proposal to list the absolute rights was dropped (CHARTRE 4235/00); it provides little guidance on the boundary of the ‘essence’ of any right; nor, famously, does it provide guidance on the rights/principles distinction, perhaps unsurprisingly given that this distinction appeared faintly if at all in the 2000 Charter.

Guide to this compilation

The core collection: the Charter travaux préparatoires (Chapter III)

The heart of this collection is the Council's CHARTE series of documents, comprising approximately 5,300 pages of documents from the Charter Convention including meeting records, drafts, proposed amendments, contributions from Convention Members and contributions from others, primarily NGOs. We have supplemented this with a number of other documents detailed below. The following editorial points are pertinent:

- **Arrangement.** Council Note 6933/15, partly following the CHARTE documents' internal sub-classification⁵⁶, divides the documents into Outcomes (that is, meeting minutes of, both, the Convention's plenary and its Praesidium), Drafts (including compiled amendments) and Contributions (including Convention members and NGOs' amendments and contributions). In practice there is some fluidity between these categories, in particular, as regards the amendments submitted by the Convention's members. We have opted for the following arrangement:
 - 1. The Charter Convention's mandate
 - 2. Meeting records
 - 3. Drafts, and members' amendments and contributions
 - 4. NGOs and others' amendments and contributions
 - 5. Miscellaneous documents: member lists, agendas and work plans, and European Parliament delegation documents

In doing this, we are not taking a position on the degree of influence of NGO and others on the Convention. We rather seek to separate the 'internal' written debate from the 'external' one. This avoids Convention members' amendments and proposals being split between two categories, as in the Council Note's classification (where they appear in both Drafts and Contributions). This division has still led to some arbitrary choices: for instance, where a contribution is *drafted* by an external body but *submitted* by a member, we have classified it as internal.⁵⁷

- **Document order:**
 - CHARTE documents are ordered by their document number. This occasionally leads to documents being out of date order.⁵⁸ However, we judged that following the official numbering was better than seeking to reconstruct the date on which documents were in fact circulated. This is particularly so given that (i) we generally include the English version of documents, as explained below, which often post-date the original (typically)

⁵⁶ The CHARTE series was sub-divided into BODY or CONVENT (the latter being used from 1-2 February, when the 'Body' re-named itself 'Convention': see CHARTE 4134/00) on the one hand, and CONTRIB on the other.

⁵⁷ E.g. CHARTE 4150/00.

⁵⁸ E.g. CHARTE 4182/00 (cf. CHARTE 4183/00 – 4188/00).

French version⁵⁹, and (ii) non-CHARTÉ primary sources suggest that the documents' official dates do not necessarily correspond to the date they were in fact circulated.⁶⁰

- Non-CHARTÉ documents are generally ordered by date.⁶¹ Where there is a mixture of CHARTÉ and non-CHARTÉ documents, we have included the non-CHARTÉ document at the appropriate place based on the dates of the CHARTÉ documents.
- Where multiple versions of a document exist (e.g. a correction (COR), addendum (ADD) or revision (REV) was issued), we typically include the initial (INIT) version followed by those documents. See further the point below concerning duplicates.
- **Languages.** We have preferred the English version of documents where one is available given that this is the most widely-spoken (second) language in Europe, even though many documents were originally drafted in French. Where no English version is available, we have included the French version. For some documents (primarily NGO submissions) neither a French nor an English version is available, in which case we have included the original (German, Spanish and Italian). Finally, a few documents include a mixture of languages, including verbatim minutes from meetings.⁶²
- **Duplicates.** First, we have excluded the majority of documents CHARTÉ 4358/00 and 4359/00, which were originally 550 pages long in total. These were prepared for the hearing of NGOs on 27 April 2000 and included a collection of the submissions of the presenting NGOs (all of which are CHARTÉ documents and so included elsewhere in the collection). We have included only the opening pages of these documents (which list the NGOs, the time they were to speak, and the document reference of their submission). Second, some documents are identical or nearly identical to others: for instance, some ADD versions simply include a further translation, and some REV versions simply include formatting or very minor changes. Where we are confident that they are identical or that there is a very minor change, we have excluded the duplicate and where relevant included a footnote highlighting the difference (in form of an additional page that precedes the document).⁶³ In cases of doubt, we have included the duplicate.

⁵⁹ Note that the *official* translated version of a document at times has a different date than its *original*. Where this is so, the document will have the original's date, with the date of the translation appearing in brackets: see, for instance, CHARTÉ 4135/00. Occasionally, the translation was circulated as an ADD rather than an INIT version (see below), in which case it only includes the translation's date. Where we have included an ADD translation but not the INIT original version, we add a footnote which states the date of the original.

⁶⁰ E.g. CHARTÉ 4112/00 was dated 26 January 2000 but, according to Meyer's contemporary account, only circulated on the day of the meeting on 1 February (Meyer and Engels, (fn29), p.325). Similarly, CHARTÉ 4332/00 is dated 25 May 2000 (English translation 31 May 2000), but according to Meyer only circulated on the eve of the 5 June 2000 Meeting (Meyer (fn29), p.386). See further Bernsdorff and Borowsky (fn21).

⁶¹ Occasionally, logic or flow required a different approach. For instance, where we include verbatim minutes from the 2002-2003 Convention, we have included these after the relevant summary report (e.g. CONV 378/02 and the minutes that follow).

⁶² E.g. CHARTÉ 4218/00.

⁶³ See also fn59 above re dates of translated documents.

Gaps in the record

Whilst the majority of the official Charter *travaux* can be found in the CHARTE series, that series is neither exhaustive nor even. This is particularly so for meetings of the Praesidium and the broader Convention from May onwards (see the chronology included in the next section). Official verbatim minutes exist for only three meetings⁶⁴, and after the detailed minutes from the initial 17 December 1999 meeting⁶⁵, minutes become increasingly Delphic or simply non-existent. There is no official record of many of the crucial Praesidium meetings, nor for instance of the crunch 11-12 September 2000 meeting where final compromises were struck in the four components. Nor does the CHARTE record include, for instance, the last amendments deposited over summer to the July drafts of the Charter and Explanations.⁶⁶

Where possible, we have complemented these documents with other official records. For instance:

- We have included Council documents which reveal the evolution and final versions of the mandates (Cologne and Tampere) that governed the Convention;
- We have included various other Council documents which were part of the Convention's *travaux* (such as proposals⁶⁷, member lists⁶⁸ and agendas and work plans⁶⁹) or which cast light on the same (such as reports by the Council Presidency⁷⁰ and press releases on the Convention⁷¹).
- We have also included the summer amendments⁷² and the documents published by the European Parliament delegation.⁷³

However, gaps remain even in this augmented collection. We recommend the following sources as starting points for further research:

- **Meeting records:**
 - Recordings of the 17 December 1999 and 1-2 February 2000 meetings exist in the European Parliamentary archives. Other recordings or records of the meetings may exist elsewhere: in particular, the meetings appear to have been broadcast by some TV channels. Further research to locate these would be valuable.

⁶⁴ CHARTE 4218/00, 4958/00 and 4959/00.

⁶⁵ CHARTE 4105/00.

⁶⁶ CHARTE 4422/00 and 4423/00.

⁶⁷ E.g. SN 3340/00.

⁶⁸ Generally Chapter III.5.a.

⁶⁹ Generally Chapter III.5.b.

⁷⁰ E.g. SN 1524/00.

⁷¹ Generally Chapter III.5.d.

⁷² Document multilingue (fn42).

⁷³ Generally Chapter III.5.c.

- Meyer and Engels' 2002 collection⁷⁴ includes Professor Meyer's own reports (as a Convention Member) to the Bundestag. Unlike the CHARTE collection, they are systematic (in the sense of including a relatively even level of detail about each meeting) and include many interesting or colourful insights, particularly into Professor Meyer's own perceptions.
 - Bernsdorff and Borowsky's *Die Charta der Grundrechte der Europäischen Union – Handreichungen und Sitzungsprotokolle*.⁷⁵ This includes systematic minutes from all Convention meetings, as well as all meetings of the national parliamentary delegation. This is a useful resource that appears relatively impartial, although German interventions appear to be portrayed more exhaustively than others'. The collection is only available in German.
- **Other sources:**
 - *Agence Europe's Bulletin Quotidien Europe* included frequent reports on the Convention meetings and developments.⁷⁶ Other press reports from 1999-2000 may contain further insights.
 - A number of Convention members spoke or wrote publicly about the Convention at the time.⁷⁷
 - A number of national and European parliamentary reports were published at the time, typically drafted by or incorporating evidence from Convention members.⁷⁸
 - Existing secondary literature, including by authors who attended or even assisted a member at the Convention, provides numerous insights.⁷⁹
 - Many members of the Convention and its Secretariat (and indeed of NGOs and other organisations who sought to influence the Convention) are still alive, so oral history may prove fruitful.

⁷⁴ See fn29 above. The original German version is Deutscher Bundestag, *Die Charta der Grundrechte der Europäischen Union Berichte und Dokumentation mit einer Einleitung von Jürgen Meyer und Markus Engels* (VS Verlag für Sozialwissenschaften 2001).

⁷⁵ See Bernsdorff and Borowsky (fn21).

⁷⁶ Agence Europe, *Bulletin Quotidien Europe*, available at <https://agenceurope.eu/fr/bulletin/recent/page/1> (accessed 2 November 2020). These are also available in the Historical Archives of the EU: <https://archives.cui.eu/en/fonds/434291?item=AGE-68> <accessed 2 December 2020>.

⁷⁷ E.g. La Documentation française, *Vers une Charte des droits fondamentaux de l'Union européenne* (Regards sur l'actualité no. 264, August 2000), Feus (ed), *The EU Charter of Fundamental Rights: Text and Commentaries* (Federal Trust Series 2000) (containing several chapters from members); Vitorino, 'La Charte des droits fondamentaux de l'Union européenne' (2001) 1 *Revue du droit de l'Union européenne* 27; Goldsmith, 'A Charter of Rights, Freedoms and Principles' (2001) 38 *CMLRev* 1201; Kaufmann (Hrsg.): *Grundrechtecharta der Europäischen Union: Mitglieder und Beobachter des Konvents berichten* (Europa Union Verlag 2001); Braibant (fn25); and Méndez de Vigo (fn27). Meyer and Engels (fn29) also includes Meyer and Engels' (the latter attended the Convention on behalf of a Bundestag Secretariat, though not as a Member) description of the drafting process and resulting Charter.

⁷⁸ To highlight only a few: at the national level, see the two reports by Loncle in (fn44); Haenel (fn29); and HL *Eighth* Report (fn45). At the European level, see e.g. Duff and Voggehuber, *Document de travail sur l'élaboration d'une charte des droits fondamentaux de l'Union européenne* PE 232.397, 7 December 1999, and various Parliamentary Assembly reports (e.g. CHARTE 4499/00).

⁷⁹ Particularly the work by Schönlaue (above, fn8) and Deloche-Gaudez (fn30).

Selected other documents: the final versions of the Charter (Chapter I), key pre-Convention documents (Chapter II) and key post-Convention documents (Chapter IV)

Finally, the Charter's drafting cannot be understood solely through the records of the Charter Convention. The Convention's existence and the choices made by its Members were influenced by the historical roots of rights protection within the EU and earlier proposed EU catalogues of rights. Indeed, the debate on a catalogue of fundamental rights on the EU-level had been waxing and waning at regular intervals for over 30 years before 1999. Moreover, the conversion of the Charter from a soft law into a binding instrument of EU law involved adjustments to the text of the Charter (particularly its 'horizontal' provisions (arts 51-54)), amendments to and elevation of its Explanations, and careful drafting of various related primary law provisions on the Charter's status, EU values and rights, and accession to the European Convention on Human Rights (ECHR). To take one striking example, the rights/principles distinction is a faint echo in the 2000 version of the Charter; by 2004, it was amplified into a structural feature.

Given this, we have sought to select and include the essential documents which cast light on the roots and post-2000 evolution of the Charter. In particular:

- In **Chapter I** we have included the **final versions** of the Charter (in 2000, 2004 and 2007) and, where relevant, its Explanations and pertinent primary law provisions.
- In **Chapter II** we have included **pre-Convention documents**. We have tried to trace the origins of the idea of an EU fundamental rights catalogue and the different possibilities for such a catalogue proposed in the lead-up to the Convention. By primary source and literature research, we have identified *four* major groups of documents:
 - *1. The First Path – Institutional Resolutions, Calls and Drafts in relation to a Charter of Rights*: This section traces the idea of a catalogue of fundamental rights on a political level by focusing on European Parliament resolutions in relation to such a catalogue, reports on the protection of fundamental rights in Europe commissioned or supported by the Commission and,⁸⁰ finally, the role of the German Council Presidency in 1999 in ultimately establishing a Convention.
 - *2. The Second Path – Accession to the European Convention on Human Rights*: Accession to the ECHR has been repeatedly proposed as complementary, or even an alternative, to a fundamental rights catalogue. It was the second possible pathway whose construction is traced until its premature end (until its post-Charter Convention revival) with the Court of Justice's *Opinion 2/94*.⁸¹

⁸⁰ The following reports in the 1990s were particularly important: Comité des Sages, *For a Europe of Civic and Social Rights ('Pintasilgo Report')* (European Commission 1996); a research project at the European University Institute which led to European University Institute, *Leading by example: a human rights agenda for the European Union for the year 2000* (European University Institute 1998) and Alston (ed), *The EU and Human Rights* (OUP 1999); and Expert Group on Fundamental Rights, *Affirming fundamental rights in the European Union: Time to act* (European Commission 1999).

⁸¹ *Opinion 2/94 Adhésion de la Communauté à la CEDH*, ECLI:EU:C:1996:140.

- 3. *The Judicial Origins of the Charter of Fundamental Rights*: This section includes the foundational decisions of the Court of Justice concerning protection of fundamental rights in the EU legal order as they, for a long time, replaced a catalogue. Whilst several foundational national judgments could also be included⁸², we include only the *Solange I* judgment of the Bundesverfassungsgericht as the first judgment to propose a catalogue of fundamental rights for the (then) Community.
- 4. *Fundamental Rights in the Treaties, from the Single European Act to Amsterdam (1986 – 1997)*: Since the Single European Act (and its preamble), the protection of fundamental rights in the EU treaties has been progressively strengthened. This process is traced until the Amsterdam Treaty immediately preceding the Charter through selected and relevant excerpts of the Treaties.
- In addition, we have included in an annex to this Chapter an indicative index of other relevant pre-Charter documents.⁸³
- In respect of **post-Convention documents**, we have included relevant documents from the drafting of the Constitutional Treaty (in particular the 2002-2003 Convention and the 2004 Inter-Governmental Conferences that followed⁸⁴) and the Lisbon Treaty.⁸⁵ We have also included three documents relating to the withdrawn proposal for a Czech protocol.⁸⁶ In this respect:
 - The majority of changes and additions were made during the Constitutional Treaty drafting. We have included all of the documents of Working Group II of the 2002-2003 Convention (the Working Group charged with the Charter and with Accession) and other relevant documents from the Convention (including, in particular, verbatim minutes from the Plenary sessions focused on Working Group II's report and on what became arts. 2 and 6 TEU). This section is structured similarly to **Chapter III** (Mandate, Meeting records, Drafts, etc.)
 - In selecting documents, we have included adjustments to the Charter's text and its Explanations; the drafting of what became art.6 TEU, including as to ECHR accession; the drafting of the various protocols and Declarations

⁸² See notably Phelan (fn2).

⁸³ This index generally includes final versions of such documents only. Naturally, many of these final documents will in turn have their own *travaux préparatoires* which would reveal still further depth. Take, for instance, the 1984 Draft Treaty establishing the European Union (Spinelli Report). Its initial report proposed including a list of fundamental rights to give the Union 'its public image' (Document 1-575/83/B, p.8; see also PE 81.387, p.6), and its working documents included initial drafts of such a list (PE 80.746 and PE 80.746/rev). Yet this proposal was only included in the report's explanatory statement; the main text, resulting 1983 Resolution and subsequent preliminary draft of the Treaty included no reference to such a list (Document 1-575/83/A, p.7; 1983 OJ C277/95; PE 87.000, p.8). The final report took a third way, requiring that the Union amend the Treaty with a 'declaration on fundamental rights' within five years (Document 1-1200/83/A, p.10, and similarly the adopted Resolution, pp.301-2 below, art.4(3)). The rapporteur for this part of the Report, Karel De Gucht, was later the general rapporteur for and a key author of the 1989 Declaration (see p.702 below). We are particularly grateful to the Historical Archives of the European Parliament for providing these documents exceptionally expeditiously.

⁸⁴ Chapter IV.1. On this process, see generally Deloche-Gaudez, "La Convention européenne sur l'avenir de l'Europe: Ruptures et continuités" in Amato *et al* (fn11). On the IGC that followed, see McDonagh, "The Intergovernmental Conference: How the Deal was Done" in the same volume.

⁸⁵ Chapter IV.2.

⁸⁶ Chapter IV.2.c.

that tweak or clarify the Charter's effect or nature of accession (what are now Declarations 1, 2, 53, 61 and 6, and Protocols 8, 30 and 38)⁸⁷; and the drafting of art.2 TEU, which includes text concerning the rights of minorities that had been deliberately excluded from the Charter.⁸⁸

- We have not purported to be exhaustive. In particular we have not included other references to fundamental rights (e.g. what are now art.67(1) TFEU, Declaration 25 or Protocol 24); the drafting of what is now art.218(6)(a) (ii) TFEU (requiring European Parliamentary consent for accession to the ECHR); the extended debate about widening the CJEU's jurisdiction or standing requirements, including by giving it a stand-alone '*amparo*' power to review fundamental rights violations⁸⁹; or other documents related to these subjects but not to the drafting of the CFR or primary law themselves (such as subsequent case-law⁹⁰ or the EU-ECHR negotiation documents⁹¹).
- For a number of these selected documents, we have only included the relevant extracts. This was the case where the document was long (over approximately 10 pages) and only part of it was relevant. This is marked in the Table of Contents by '[Extracts]'.

We hope that this introduction, along with the Convention chronology that follows below, help the reader to begin the great task that lays before us all: excavating the Charter's *travaux préparatoires*.

Niall Coghlan

Marc Steiert

Florence, December 2020

⁸⁷ See Chapter I.3.

⁸⁸ We are very grateful to Dr Clemens Ladenburger for drawing our attention to this point and to the relevance of Protocol 38 (on the concerns of the Irish people).

⁸⁹ See for instance the following documents from the 2002-2003 Convention: Cercle 1, WD 01 p.4; WD 3; CONV 189/02; CONV 572/03; CONV 619/03; CONV 636/03; CONV 734/02, p.20; CONV 748/03, p.9. These are available online: <<http://european-convention.europa.eu>> accessed 30 October 2020.

⁹⁰ Including the continuation of the 'Judicial origins' described above in respect of pre-Charter Convention documents, namely the continued protection of fundamental rights as general principles of EU law. See art. 6(3) TEU and Peers *et al.* (fn3), §55.89.

⁹¹ See e.g. Council Note 12349/19, and see also 12837/19, p.11.

Convention Chronology

A quick guide to the Chronology of the Convention

The following chronology provides the reader with an overview on the Convention as a process that led to the adoption of the Charter of Fundamental Rights of the European Union. It seeks to chronologically distinguish the various steps in the drafting process and, most importantly, to link the debates in the Convention to the different proposals for the included rights and, eventually, the final Charter. It thus puts the documents contained in this collection into their context. The chronology further helps trace the decision-making on the content of the Charter as a process that emerged through the Convention's plenary itself, but also through the meetings of the various delegations.

To help the reader gain a quick grasp of the essential documents, three shorter chronologies are also provided focused exclusively on the drafts, Convention and Praesidium meetings. They follow the same format as the main chronology, outlined here below.

To ease the reading of the chronology, the following will provide a short guide:

- **Praesidium meeting (Brackets: other events):**
 - This column provides an overview of the dates of the meetings of the Praesidium. Many drafts evolved after these meetings as the Praesidium decided upon the drafts. If the date is in (brackets), it indicates another important event on the Charter's drafting, such as for instance the European Parliament's Resolution on the Charter of 16 March 2000.
 - Further, Praesidium meetings are emphasised by an **orange background** of the relevant row.
- **Full Convention meeting ('Convention'):**
 - This column indicates the dates of the meetings of the Convention. The column indicates whether the Convention was to meet as 'plenary' or as 'Working Group (WG)'. Slight procedural differences among these working arrangements exist (e.g. on the right to speak of alternates), however, the Convention always met with all (available) delegates present.
 - Further, Convention meetings are emphasised by a **blue background** of the row.

- **Representatives of the Heads of State and Government ('HOSG') – Meeting:**
 - This column provides the dates of the meetings of the representatives of the Heads of State and Government.
- **Representatives of the National Parliaments ('NP') – Meeting:**
 - This column provides the dates of the meetings of the representatives of national Parliaments.
- **Representatives of the European Parliament ('EP') – Meeting:**
 - This column provides the dates of the meetings of the representatives of the European Parliament.
- **Draft or amendments ('Draft'):**
 - This column indicates the dates on which a specific draft or the collected amendments by the delegates were published. The relevant document is to be found under 'Document Reference'.
 - Further, drafts are emphasised by a **pink background** of the row.
- **Document Reference ('Reference') (CHARTE unless specified):**
 - This column refers either to the minutes of a Praesidium/delegation/Convention meeting or to drafts and amendments.
- **Agenda:**
 - This column refers to the document setting out the agenda for a given meeting.
- **Substance/Comments ('Comments'):**
 - First, this column indicates the form of meeting referred to in the given row. More importantly, it provides substantive comments on the discussions and the various drafts that should help the reader to situate the state of the drafting process in its (time) context.

1. Full Chronology of the Charter Convention

Praesidium meeting (Brackets: other events)	Full Convention meeting ('Convention')	Representatives of the Heads of State and Government ('HOSG') - Meeting	Representatives of the National Parliaments ('NP') - Meeting	Representatives of the European Parliament ('EP') - Meeting	Draft or amendments ('Draft')	Document Reference ('Reference') (CHARTE unless specified)	Agenda	Substance/ Comments ('Comments')
				24 November (1999)		PE 168.636	DE/OJ/001	1st EP Group Meeting. Election of the Delegation's chair.
				14 December (1999)		PE 168.656	PE 168.628	2nd EP Group Meeting. Discussion on the working methods of the Convention.
			17 December (1999)			No record		1st NP Group Meeting. Election of the Delegation's chair, discussion on the Convention's working methods and its name. ¹
	17 December (1999) – (Plenary)					4105/00		1st Convention Meeting. Election of the chairman Roman Herzog, Discussion on working methods and name of the Convention.
				8 January		PE 288.132		3rd EP Group Meeting. Chairman report on the meeting of the drafting committee on 17 January
17 January						4107/00		1st Praesidium Meeting. Renamed 'Praesidium'. Rules, 'Convention' name discussed, Timetable.
					20 January	4111/00		Note on Horizontal questions by the Secretariat.
				26 January		PE 288.134	PE 288.131	4th EP Group Meeting. Exchange of views about Convention meeting on 1 and 2 February.

¹ Norbert Bernsdorff and Martin Borowsky, *Die Charta der Grundrechte der Europäischen Union Handreichungen und Sitzungsprotokolle* (Nomos, Baden-Baden 2002), pp.107-124.

Praesidium - (Other)	Convention	HOSG	NP	EP	Draft	Reference	Agenda	Comments
					26 January	4112/00		First list of rights.
					27 January	4112/2/00 REV 2		Same list grouped. ²
1 February						No record		2nd Praesidium Meeting. No record. ³
			1 February			No record		2nd NP Group Meeting. Discussion on working methods of the Convention. ⁴
	1-2 February (Plenary)					4134/00	SN 1169/00	2nd Convention Meeting. Approves Praesidium's 17 January proposals on working methods. Important debate on the nature of the rights proposed in the draft list. Additional rights proposed. Lord Goldsmith proposes Charter structure in 2 parts. ⁵
				15 February		PE 288.590	PE 288.130	5th EP Group Meeting.
					15 February	4123/1/00 REV 1		Draft articles 1-9 (civil and political rights) and horizontal clauses.
					24 February	4137/00		Draft articles 10-19 (civil and political rights).
		24 February				No record	SN 1538/00	1st HOSG Group Meeting. No record.
			24 February			No record	SN 1538/00	3rd NP Group Meeting. Discussion on CHARTE 4123/1/00 REV 1. ⁶
24 February						No record	SN 1538/00	3rd Praesidium Meeting. No record.

² It seems these initial lists were only circulated at the 1-2 February meeting itself: Jürgen Meyer and Markus Engels, *The Charter of Fundamental Rights of the European Union and the Work of the Convention: A Collection of Documents* (2nd edn) (Bundestag 2002), p.325.

³ Bernsdorff and Borowsky (fn1), p.125.

⁴ Ibid.

⁵ Ibid., pp.124-133.

⁶ Ibid., p.134.

Praesidium - (Other)	Convention	HOSG	NP	EP	Draft	Reference	Agenda	Comments
	24-25 February (Working Group – ‘WG’) ⁷					4147/00	SN 1538/00	3rd Convention Meeting. Focus on 15 February draft CHARTE 4123/1/00 REV 1. Focus on relation to ECHR and structure. ⁸
					28 February	4140/00		Comparative table for articles 8-19 and ECHR, requested by WG.
					28 February	4141/00		Herzog proposes wording for articles 1-9 and structure in six chapters.
2 March						4148/00		4th Praesidium Meeting. ⁹ Hearing certain NGO representatives and setting working methods.
	2-3 March (WG) ¹⁰					4154/00	SN 1745/00	4th Convention Meeting. Approves Praesidium’s working methods. Working on 15, 24 & 28 Feb drafts.
7 March						4210/00		5th Praesidium Meeting. In Paris with French Minister of European Affairs. Not all Praesidium members present.
					8 March	4149/00		New drafts articles 1-12 (now 1-16).
				14 March		PE 288.595		6th EP Group Meeting. Report of Praesidium meeting in Paris, call to provide Charter already one month earlier than foreseen for Biarritz European Council (EUCO), Announcement of 27 April NGO hearing by Convention.
16 March						4199/00		EP Resolution on Charter’s content.
					17 March	4156/00		Deadline for amendments to 8 March draft. Proposals will not be voted.

⁷ The only difference between working groups and plenaries was that alternatives had the right to speak at the former even where their corresponding full member was present: see CHARTE 4134/00.

⁸ Bernsdorff and Borowsky (fn1), pp.134-148.

⁹ This is its title. There is no record of any second Praesidium meeting.

¹⁰ Meyer and Engels (fn2) record this as having occurred on 2-3 March: p.335.

Praesidium - (Other)	Convention	HOSG	NP	EP	Draft	Reference	Agenda	Comments
			20 March			No record	SN 1949/00	4th NP Group Meeting. Comparison of the national standpoints of the various Parliaments on the future Charter. ¹¹
		20 March				No record	SN 1949/00	2nd HOSG Group Meeting. No record.
20 March						4211/00	SN 1949/00	6th Praesidium Meeting. Méndez de Vigo chairing. Reviewing civil and political rights, including 8 March draft.
					20 March	4170/00		Draft citizens' rights.
	20-21 March (Plenary)					4218/00 (<i>verbatim note</i>)	SN 1949/00	5th Convention Meeting. Méndez de Vigo and Jansson chairing. Reviewing articles 1-15 of 8 March draft. Initial strong resistance to procedure.
27 March						4209/00	SN 2057/00	7th Praesidium Meeting. Agreement on economic and social rights.
					27 March	4192/00		Draft economic and social rights part I.
	27-28 March (WG)					4208/00	SN 2057/00	6th Convention Meeting. Méndez de Vigo Chairing. ¹² 24 Feb, 20 Mar drafts analysed. Protest about EUCO-demanded acceleration to work (draft for June EUCO meeting).
					29 March	4193/00		Draft economic and social rights part II.
		April 2000				No record		3rd HOSG Meeting. No record. Held in Lisbon. ¹³
	3-4 April (WG)					4304/00	SN 2195/00	7th Convention meeting. 8 articles of 27 and 29 March drafts reviewed. Controversy on the Charter's bindingness.

¹¹ Bernsdorff and Borowsky (fn1), p.163.

¹² See CHARTE 4209/00.

¹³ Guy Braibant, *La Charte des droits fondamentaux de l'Union Européenne – Témoignage et commentaires de Guy Braibant*, (Paris : Editions du Seuil, 2001), p.26. Braibant remarks that « les représentants des exécutifs ont tenu en **avril à Lisbonne** et en **juillet à Paris** deux réunions importantes qui ont permis de dissiper des malentendus, de mesurer les divergences et d'essayer de les réduire, enfin de préparer les compromis nécessaires pour aboutir à un texte commun. » (emphasis added).

Praesidium - (Other)	Convention	HOSG	NP	EP	Draft	Reference	Agenda	Comments
				11 April		PE 290.393	PE 288.597	7th EP Group Meeting. The delegation's chair Méndez de Vigo outlines work programme.
17 April						4305/00		8th Praesidium Meeting. Observers of the Council of Europe spoke. Economic, social and horizontal drafts reviewed.
					17 April	4227/00		Draft economic and social rights part III.
					18 April	4235/00		Horizontal clauses.
	27 April					4358/00, 4359/00	SN 2536/00	Hearing with 66 NGOs. ¹⁴
	28 April (WG)					4306/00	SN 2536/00	8th Convention Meeting. Reviewed social rights (articles 9-12 of 27 March and 29 March and 17 April drafts).
3-4 May						4307/00	SN 2595/00	9th Praesidium Meeting. Revised civil, political and citizens' rights.
	3-4 May (WG)					No record ¹⁵	SN 2595/00	9th Convention Meeting. Timetable set. 18 April draft reviewed. Discussion on horizontal clauses. ¹⁶
					5 May	4284/00		Full draft civil and political rights (articles 1-30).
11 May						No record	SN 2665/00	10th Praesidium Meeting. No record.
	11-12 May (WG)					No record	SN 2665/00	10th Convention Meeting. Reviewing 5 May and 16 May drafts. ¹⁷ Open debate on additional rights, preamble and structure. ¹⁸
					16 May	4316/00		Full economic and social rights and horizontal clauses (articles 31-50).

¹⁴ Meyer stated that 67 attended. He also stated that '[w]ell under half of the members of the Convention were present. Hardly any comments were made.' Meyer and Engels (fn2), p.364.

¹⁵ For Meyer's report, see Meyer and Engels (fn2), pp.367ff.

¹⁶ Bernsdorff and Borowsky (fn1), pp.229-240

¹⁷ Planned: CHARTE 4208/00 p.2. For Meyer's report, see Meyer and Engels (fn2), pp.375ff. It states that CONVENT 4284/00 and 4316/00 were under discussion despite the latter being dated 16 May.

¹⁸ Bernsdorff and Borowsky (fn1), pp.241-250.

Praesidium - (Other)	Convention	HOSG	NP	EP	Draft	Reference	Agenda	Comments
				17 May		PE 290.397	PE 290.395	8th EP Group Meeting.
22 May						No record		11th Praesidium Meeting. No record.
	22-23 May (WG – cancelled)					SN 2225/00		Cancelled Convention meeting. Initially, the Praesidium planned a general debate on the Charter.
					23 May	SN 2785/00		Deadline for amendments to 5 May draft (CHARTÉ 4384/00). Period for amendments from 12 to 23 May.
25 May						No record	SN 2785/00	12th Praesidium Meeting. Drafting Committee.
					25 May	4332/00 (and ADD 1, ADD 2, ADD 3)		All amendments to articles 1-30.
31 May						No record	SN 2785/00	13th Praesidium Meeting. No record.
					4 June	4333/00		Praesidium ‘compromise amendments’ to articles 1-30.
					5 June		SN 2785/00	Deadline for amendments to 16 May draft on economic and social rights and horizontal clauses (CHARTÉ 4316/00), Period for amendments from 19 May to 5 June.
			5 June			No record	SN 3021/00	5th NP Group Meeting. Praesidium report on ‘second reading’ of civil/political rights, Discussion on Jürgen Meyer’s proposal of a 3-pillar model for economic and social rights ¹⁹
	5-6 June (Plenary)					No record	SN 3021/00	11th Convention Meeting. ²⁰ ‘Second reading’ of 25 May amends and 4 June proposal. Debate on nature of social rights, distinction of rights and principles. Protest over amendments being sent last-minute; indicative votes. Méndez de Vigo chairing 6 June.

¹⁹ Bernsdorff and Borowsky (fn1), p.250f.

²⁰ Planned: CHARTÉ 4208/00 p.3. Meyer’s report is at pp.381-388 of Meyer and Engels (fn2).

Praesidium - (Other)	Convention	HOSG	NP	EP	Draft	Reference	Agenda	Comments
	6 June					No record	SN 2785/00	Convention open doors day. ²¹
				8 June		PE 290.399	PE 290.396	9th EP Group Meeting. Proposals on procedure by EP Group to Praesidium.
					16 June	4360/00		Further document grouping 25 May amendments and explaining 4 June proposals.
					16 June	4372/00		All amendments to articles 31-50 (on CHARTE 4316/00).
19 June						No record	SN 2785/00	14th Praesidium Meeting. No record.
	19 June					Attendees listed in 4374/00.		Hearing of candidate countries. ²² Herzog resigns on death of wife. ²³
	19-20 June					No record	SN 3160/00	12th Convention Meeting. 'Second reading' resumes. ²⁴ New calendar with additional July meetings. ²⁵
(19-20 June)								Santa Maria da Feira EUCO. ²⁶
					23 June	4373/00		Praesidium 'compromise amendments' for articles 31-40 (including horizontal clauses).
28 June (9-12:30)						No record	SN 3295/00	15th Praesidium Meeting. No record.
	28-30 June (WG)					No record	SN 3294/00	13th Convention Meeting. Herzog decides to keep presidency. 'Second reading' of articles 1-30 resumes. ²⁷ Debate on horizontal clauses based on SN 3340/00. ²⁸

²¹ Referred in CHARTE 4323/00 p.5.

²² Meyer and Engels (fn2), pp.389ff

²³ Justus Schönlaue, *Drafting the EU Charter: rights, legitimacy and process* (Palgrave 2005), p.112; Meyer and Engels (fn2), p.389.

²⁴ Meyer and Engels (fn2), pp.394ff.

²⁵ Bernsdorff and Borowsky (fn1), pp.262-279.

²⁶ CHARTE 4441/00 p.4 (NGO submission) suggests that President Chirac and Prime Minister Kok said the Charter should include economic, social, environmental and bioethical rights.

²⁷ Meyer and Engels (fn2), pp.403ff.

²⁸ Bernsdorff and Borowsky (fn1), pp.280-309.

Praesidium - (Other)	Convention	HOSG	NP	EP	Draft	Reference	Agenda	Comments
28 June (19-24:00)						No record	SN 3295/00	15th Praesidium Meeting continued.
					29 June	SN 3340/00		Praesidium proposal on horizontal clauses.
		July 2000				No record		4th HOSG Meeting. No record. Held in Paris. ²⁹
					3 July	4383/00		Summarising all filed amends to articles 31-50 and proposing amends.
					4 July	4399/00		Praesidium 'compromise amendments' for articles 41-44 (including horizontal)
				4 July		PE 290.402	PE 290.401	10th EP Group Meeting. Discussion on work programme.
10 July						No record	SN 3295/00	16th Praesidium Meeting No record.
	10-11 July (WG)					No record	SN 3501/00	14th Convention Meeting. Reviewing articles 31-50 on basis of 3 July proposal. ³⁰ Meeting was not planned until 20 June 2000.
					13 July	4412/00		Praesidium proposed structure.
					14 July	4400/00		Praesidium draft preamble.
17 July						No record	SN 3295/00	17th Praesidium Meeting. No record.
	17-19 July (WG)					No record	SN 3502/00	15th Convention Meeting. Discussion of 3 July proposal. ³¹ The 19 July was added as an additional meeting day on 20 June 2000. The representatives affiliated to the EPP call in a joint paper for the inclusion of further economic rights, such as business freedom. ³²

²⁹ Braibant (fn13), p.26.

³⁰ Meyer and Engels (fn2), pp.426ff.

³¹ Meyer and Engels (fn2), pp.439ff. It states the compromise was dated 3 July, but this appears to be a mistake.

³² Bernsdorff and Borowsky (fn1), pp.329-353.

Praesidium - (Other)	Convention	HOSG	NP	EP	Draft	Reference	Agenda	Comments
			17 July (after WG)			No record	SN 3502/00	6th NP Group Meeting. Praesidium report on working methods for last phase of Convention and for adoption of final draft.
19 July						No record		17th Praesidium Meeting (continued). ³³
					28 July	4422/00		Complete draft. Comments by 1 September.
					31 July	4423/00		Complete draft explanations.
<i>Summer break</i>								
				31 August		No record	PE 294.229	11th EP Group Meeting. No record.
					31 August			Deadline for last round of 'comments' on 28 July draft (CHARTE 4422/00).
				6 September		No record	PE 294.236	12th EP Group Meeting. No record.
					7 September	Observations recues relatives au Document CHARTE 4422/00 CONVENT 45		Amendments deposited by Convention delegates until 31 August - Not published and only distributed on 11/09. ³⁴
11 September						No record		18th Praesidium Meeting. Review last round of comments/amendments. ³⁵
	11-12 September (Plenary)					No record	SN 3995/00	16th Convention Meeting. Seemingly met as 'components' only (reported here below). Discussion of full 28 July draft. ³⁶

³³ Ibid., p.346.

³⁴ Bernsdorff and Borowsky (fn1), p.356.

³⁵ Ibid., p.347.

³⁶ CHARTE 4470/00 (INIT version) refers to the meetings and resulting amendments. Meyer and Engels (fn2), pp.461ff.

Praesidium - (Other)	Convention	HOSG	NP	EP	Draft	Reference	Agenda	Comments
		11-12 September				No record	SN 3995/00	5th HOSG Meeting. Discussion on Preamble and econ/soc rights. ³⁷
			11-12 September			No record	SN 3995/00	7th NP Group Meeting. Discussion of the entire draft with a focus on Article 15 and the ‘missing’ right to work. ³⁸
				11-12 September		No record	SN 3995/00	13th EP Group Meeting. Discussion on Preamble, right to strike and children rights. ³⁹
					14 September	4470/00		Draft final text.
					20 September	4471/00		Revised draft explanations. Essentially final version, some legal references changed.
20 September						No record		19th Praesidium Meeting. Full Charter discussed. ⁴⁰
(20 September)						SN 4291/00		Letter President Herzog to delegates. Final working methods and transmission to EUCO.
				21 September		No record	PE 295.792	14th EP Group Meeting. No record.
					(21 September)	See below		Lawyer-linguist review of CHARTE 4470/00 (Final draft - Review for linguistic questions and ‘gender neutrality’).
	25 September					No record	SN 4236/1/00 REV 1	17th Convention Meeting. 25 th : Compromises reached in four ‘components’ (reported here below). ⁴¹
		25-26 September				No record	SN 4236/1/00 REV 1	6th HOSG Meeting. No record.

³⁷ Bernsdorff and Borowsky (fn1), p.354-376.

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ Ieke van den Burg in Sylvia-Yvone Kaufmann (Eds.), *Grundrechtecharta der Europäischen Union – Mitglieder und Beobachter des Konvents berichten* (Bonn: Europa Union Verlag, 2001), p.45.

⁴¹ Schönlaue in Eriksen *et al*, *The Chartering of Europe: The European Charter of Fundamental Rights and its Constitutional Implications* (Nomos Verlagsgesellschaft 2003), p.126.

Praesidium - (Other)	Convention	HOSG	NP	EP	Draft	Reference	Agenda	Comments
			25-26 September			No record	SN 4236/1/00 REV 1	8th NP Group Meeting. Discussion on status of explanations, a ‘missing’ reference to the European Social Charter (ESC) in Article 52; EPP submits its 8 essential points directly to final Praesidium meeting (include business freedom, reference to “geistig-religiös” in German preamble,...). ⁴²
				25-26 September		No record	SN 4236/1/00 REV 1	15th EP Group Meeting. No record.
25 September (evening)						No record		20th Praesidium Meeting (without Herzog). Praesidium deems the Charter acceptable to all delegations and decides to transmit it to the European Council. ⁴³
					25 September	4470/1/00 REV 1 ADD 1		Final text after lawyer-linguist review and 25 September meeting.
	26 September (9:00-12:30)					No record	SN 4236/1/00 REV 1	17th Convention Meeting. Continued. No record.
		26 September (9:00-12:30)				No record	SN 4236/1/00 REV 1	6th HOSG Meeting. Continued. No record.
			26 September (9:00-12:30)			No record	SN 4236/1/00 REV 1	8th NP Group Meeting. Continued. No record.
				26 September (9:00-12:30)		No record	SN 4236/1/00 REV 1	15th EP Group Meeting. Continued. No record.

⁴² Bernsdorff and Borowsky (fn1), pp.377-400.

⁴³ Ibid., pp.377-400.

Praesidium - (Other)	Convention	HOSG	NP	EP	Draft	Reference	Agenda	Comments
	26 September (Plenary - Afternoon)					26 th : 4958/00 (<i>verbatim</i>)	SN 4236/1/00 REV 1	17th Convention Meeting. Continued. Jansson presiding. Final points on overall draft. ⁴⁴ Many delegates voice their wish to include a reference to the ESC in Article 52. ⁴⁵
	2 October (Plenary)					4959/00		18th Convention Meeting. Final Plenary meeting. Closure ceremony.
	9-10 October (Cancelled)						SN 1524/00	Planned until 20 June.
(13-14 October)						4955/00		Biarritz EUCO. Braibant speech on drafting. Text accepted as final.
	18-19 October (Cancelled)						SN 1524/00	Planned until 20 June.
(14 November)						C5-0570/2000		EP Resolution approving.
(7 December)						[2000] OJ C364/01		Solemn proclamation of CFR.

⁴⁴ CHARTE 4958/00. We prefer this to Meyer/Engels (fn2), pp.470ff according to which Braibant presided. Meyer's report further omits the 25 September meeting.

⁴⁵ Bernsdorff and Borowsky (fn1), pp.377-400.

2. Chronology of the Meetings of the Charter Convention

Full Convention meeting	Representatives of the Heads of State and Government - Meeting	Representatives of the National Parliaments - Meeting	Representatives of the European Parliament - Meeting	Document Reference (CHARTE unless specified)	Agenda	Substance/Comments
17 December (1999) – (Plenary)				4105/00		1st Convention Meeting. Election of the chairman Roman Herzog, Discussion on working methods and the name of the Convention.
1-2 February (Plenary)				4134/00	SN 1169/00	2nd Convention Meeting. Approves Praesidium’s 17 January proposals on working methods. Important debate on the nature of the rights proposed in the draft list. Additional rights proposed. Lord Goldsmith proposes Charter structure in 2 parts. ¹
24-25 February (Working Group – ‘WG’) ²				4147/00	SN 1538/00	3rd Convention Meeting. Focus on 15 February draft CHARTE 4123/1/00 REV 1. Focus on relation to ECHR and structure. ³
2-3 March (WG) ⁴				4154/00	SN 1745/00	4th Convention Meeting. Approves Praesidium’s working methods. Working on 15, 24 & 28 February drafts.
20-21 March (Plenary)				4218/00 (<i>verbatim note</i>)	SN 1949/00	5th Convention Meeting. Méndez de Vigo and Jansson chairing. Reviewing articles 1-15 of 8 March draft. Initial strong resistance to procedure.
27-28 March (WG)				4208/00	SN 2057/00	6th Convention Meeting. Méndez de Vigo Chairing. ⁵ 24 February, 20 March drafts analysed. Protest about EUCCO-demanded acceleration to work (draft for June meeting of the European Council/EUCCO).

¹ Norbert Bernsdorff and Martin Borowsky, *Die Charta der Grundrechte der Europäischen Union Handreichungen und Sitzungsprotokolle* (Nomos, Baden-Baden 2002), pp.124-133.

² The only difference between working groups and plenaries was that alternatives had the right to speak at the former even where their corresponding full member was present: see CHARTE 4134/00.

³ Bernsdorff/Borowsky (fn1), pp.134-148.

⁴ Jürgen Meyer and Markus Engels, *The Charter of Fundamental Rights of the European Union and the Work of the Convention: A Collection of Documents* (2nd edn) (Bundestag 2002) records this as having occurred on 2-3 March: p.335.

⁵ See CHARTE 4209/00.

Full Convention meeting	Representatives of the Heads of State and Government - Meeting	Representatives of the National Parliaments - Meeting	Representatives of the European Parliament - Meeting	Document Reference (CHARTE unless specified)	Agenda	Substance/Comments
3-4 April (WG)				4304/00	SN 2195/00	7th Convention Meeting. 8 articles of 27 and 29 March drafts reviewed. Controversy on the Charter's bindingness.
28 April (WG)				4306/00	SN 2536/00	8th Convention Meeting. Reviewed social rights (articles 9-12 of 27 March and 29 March and 17 April drafts).
3-4 May (WG)				No record ⁶	SN 2595/00	9th Convention Meeting. Timetable set. 18 April draft reviewed. Discussion on horizontal clauses. ⁷
11-12 May (WG)				No record	SN 2665/00	10th Convention Meeting. Reviewing 5 May and 16 May drafts. ⁸ Open debate on additional rights, preamble and structure. ⁹
5-6 June (Plenary)				No record	SN 3021/00	11th Convention Meeting. ¹⁰ 'Second reading' of 25 May amends and 4 June proposal. Debate on nature of social rights, distinction of rights and principles. Protest over amendments being sent last-minute; indicative votes. De Vigo chairing 6 June.
19-20 June				No record	SN 3160/00	12th Convention Meeting. 'Second reading' resumes. ¹¹ New calendar with additional July meetings. ¹²
28-30 June (WG)				No record	SN 3294/00	13th Convention Meeting. Herzog decides to keep presidency. 'Second reading' of articles 1-30 resumes. ¹³ Debate on horizontal clauses based on SN 3340/00. ¹⁴

⁶ For Meyer's report, see Meyer and Engels (fn4), pp.367ff.

⁷ Bernsdorff and Borowsky (fn1), pp.229-240.

⁸ Planned: CHARTE 4208/00 p.2. For Meyer's report, see Meyer and Engels (fn4), pp.375ff. It states that CONVENT 4284/00 and 4316/00 were under discussion despite the latter being dated 16 May.

⁹ Bernsdorff and Borowsky (fn1), pp.241-250.

¹⁰ Planned: CHARTE 4208/00 p.3. Meyer's report is at pp.381-388 of Meyer and Engels (fn4).

¹¹ Meyer and Engels (fn4), pp.394ff.

¹² Bernsdorff and Borowsky (fn1), pp.262-279.

¹³ Meyer and Engels (fn4), pp.403ff.

¹⁴ Bernsdorff and Borowsky (fn1), pp.280-309.

Full Convention meeting	Representatives of the Heads of State and Government - Meeting	Representatives of the National Parliaments - Meeting	Representatives of the European Parliament - Meeting	Document Reference (CHARTE unless specified)	Agenda	Substance/Comments
10-11 July (WG)				No record	SN 3501/00	14th Convention Meeting. Reviewing articles 31-50 on basis of 3 July proposal. ¹⁵ Meeting was not planned until 20 June 2000.
17-19 July (WG)				No record	SN 3502/00	15th Convention Meeting. Discussion of 3 July proposal. ¹⁶ The 19 July was added as an additional meeting day on 20 June 2000. The representatives affiliated to the EPP call in a joint paper for the inclusion of further economic rights, such as business freedom. ¹⁷
11-12 September (Plenary)				No record	SN 3995/00	16th Convention Meeting. Seemingly met as ‘components’ only (reported here below). Discussion of full 28 July draft. ¹⁸
	11-12 September			No record	SN 3995/00	5th HOSG Meeting. Discussion on Preamble and econ/soc rights. ¹⁹
		11-12 September		No record	SN 3995/00	7th NP Group Meeting. Discussion of the entire draft with a focus on Article 15 and the ‘missing’ right to work. ²⁰
			11-12 September	No record	SN 3995/00	13th EP Group Meeting. Discussion on Preamble, right to strike and children rights. ²¹
	25-26 September			No record	SN 4236/1/00 REV 1	6th HOSG Meeting. No record.
		25-26 September		No record	SN 4236/1/00 REV 1	8th NP Group Meeting. Discussion on status of explanations, a ‘missing’ reference to the European Social Charter (ESC) in Article 52; EPP submits its 8 essential points directly to final Praesidium meeting (include business freedom, reference to “geistig-religiös” in German preamble,[...]). ²²

¹⁵ Meyer and Engels (fn4), pp.426ff.

¹⁶ Meyer and Engels (fn4), pp.439ff. It states the compromise was dated 3 July but this appears to be a mistake.

¹⁷ Bernsdorff and Borowsky (fn1), pp.329-353.

¹⁸ CHARTE 4470/00 (INIT version) refers to the meetings and resulting amendments. Meyer/Engels (fn4), pp.461ff.

¹⁹ Bernsdorff and Borowsky (fn1), pp.354-376.

²⁰ Ibid.

²¹ Ibid.

²² Bernsdorff and Borowsky (fn1), pp.377-400.

Full Convention meeting	Representatives of the Heads of State and Government - Meeting	Representatives of the National Parliaments - Meeting	Representatives of the European Parliament - Meeting	Document Reference (CHARTE unless specified)	Agenda	Substance/Comments
			25-26 September	No record	SN 4236/1/00 REV 1	15th EP Group Meeting. No record.
25-26 September (Plenary)				25 th : No record 26 th : 4958/00 (<i>verbatim</i>)	SN 4236/1/00 REV 1	25 th : Compromises reached in four ‘components’ (reported here above). ²³ 17th Convention Meeting. Jansson presiding. Final points on overall draft. ²⁴ Many delegates voice their wish to include a reference to the ESC in Article 52. ²⁵
2 October (Plenary)				4959/00		18th Convention Meeting. Final Plenary meeting. Closure ceremony.

²³ Schönlaui in Eriksen *et al*, *The Chartering of Europe: The European Charter of Fundamental Rights and its Constitutional Implications* (Nomos Verlagsgesellschaft 2003), p.126.

²⁴ CHARTE 4958/00. We prefer this to Meyer/Engels (fn4), pp.470ff according to which Braibant presided. Meyer’s report further omits the 25 September meeting.

²⁵ Bernsdorff and Borowsky (fn1), pp.377-400.

3. Chronology of the Meetings of the Praesidium of the Charter Convention

Praesidium meeting	Document Reference (CHARTE unless specified)	Agenda	Substance/Comments
17 January	4107/00		1st Praesidium meeting. Renamed 'Praesidium'. Rules, 'Convention' name discussed, Timetable.
1 February	No record		2nd Praesidium Meeting. No record. ¹
24 February	No record	SN 1538/00	3rd Praesidium Meeting. No record.
2 March	4148/00		4th Praesidium meeting. ² Hearing certain NGO representatives and setting working methods.
7 March	4210/00		5th Praesidium meeting. In Paris with French Minister of European Affairs. Not all Praesidium members present.
20 March	4211/00	SN 1949/00	6th Praesidium meeting. Méndez de Vigo chairing. Reviewing civil and political rights, including 8 March draft.
27 March	4209/00	SN 2057/00	7th Praesidium meeting. Agreement on economic and social rights.
17 April	4305/00		8th Praesidium meeting. Observers of the Council of Europe spoke. Economic and social and horizontal drafts reviewed.
3-4 May	4307/00	SN 2595/00	9th Praesidium meeting. Revised civil, political and citizens' rights.
11 May	No record	SN 2665/00	10th Praesidium Meeting. No record.
22 May	No record		11th Praesidium Meeting. No record.
25 May	No record	SN 2785/00	12th Praesidium Meeting. Drafting Committee.
31 May	No record	SN 2785/00	13th Praesidium Meeting. No record.
19 June	No record	SN 2785/00	14th Praesidium Meeting. No record.
28 June (9-12:30)	No record	SN 3295/00	15th Praesidium Meeting. No record.
28 June (19-24:00)	No record	SN 3295/00	15th Praesidium Meeting. Continued. No record.
10 July	No record	SN 3295/00	16th Praesidium Meeting. No record.
17 July	No record	SN 3295/00	17th Praesidium Meeting. No record.

¹ Norbert Bernsdorff and Martin Borowsky, *Die Charta der Grundrechte der Europäischen Union Handreichungen und Sitzungsprotokolle* (Nomos, Baden-Baden 2002), p.125.

² This is its title. There is no record of any second Praesidium meeting.

Praesidium meeting	Document Reference (CHARTE unless specified)	Agenda	Substance/Comments
19 July	No record		17th Praesidium Meeting. Continued. No record. ³
11 September	No record		18th Praesidium Meeting. Review last round of comments/amendments. ⁴
20 September	No record		19th Praesidium Meeting. Full Charter discussed. ⁵
25 September (evening)	No record		20th Praesidium Meeting (without Herzog). Praesidium deems the Charter to be acceptable for all delegations and decides to transmit it to the European Council. ⁶

³ Bernsdorff and Borowsky (fn1), p.346.

⁴ Ibid., p.347.

⁵ Ieke van den Burg in Sylvia-Yvone Kaufmann (Eds.), *Grundrechtecharta der Europäischen Union – Mitglieder und Beobachter des Konvents berichten* (Bonn: Europa Union Verlag, 2001), p.45.

⁶ Bernsdorff and Borowsky (fn1), pp.377-400.

4. Chronology of Drafts of the Charter of Fundamental Rights

Draft or amendments	Document Reference (CHARTÉ unless specified)	Agenda	Substance/ Comments
26 January	4112/00		First list of rights.
27 January	4112/2/00 REV 2		Same list grouped. ¹
15 February	4123/1/00 REV 1		Draft articles 1-9 (civil and political rights) and horizontal clauses.
24 February	4137/00		Draft articles 10-19 (civil and political rights).
28 February	4140/00		Comparative table for articles 8-19 and ECHR.
28 February	4141/00		Herzog proposes wording for articles 1-9 and structure in six chapters.
8 March	4149/00		New draft articles 1-12 (now 1-16).
17 March	4156/00		Deadline for amendments to 8 March draft. Proposals will not be voted.
20 March	4170/00		Draft citizens' rights.
27 March	4192/00		Draft economic and social rights part I.
29 March	4193/00		Draft economic and social rights part II.
17 April	4227/00		Draft economic and social rights part III.
18 April	4235/00		Horizontal clauses.
5 May	4284/00		Full draft civil and political rights (articles 1-30).
16 May	4316/00		Full economic and social rights and horizontal clauses (articles 31-50).
23 May	SN 2785/00		Deadline for amendments to 05 May draft (CHARTÉ 4384/00). Period for amendments from 12 to 23 May.
25 May	4332/00 (and ADD 1, ADD 2, ADD 3)		All amendments to articles 1-30.
4 June	4333/00		Praesidium 'compromise amendments' to articles 1-30.
5 June		SN 2785/00	Deadline for amendments to 16 May draft on economic and social rights and horizontal clauses (CHARTÉ 4316/00), Period for amendments from 19 May to 5 June.
16 June	4360/00		Further document grouping 25 May amendments and explaining 4 June proposals.

¹ It seems these initial lists were only circulated at the 1-2 February meeting itself: Meyer and Engels, *The Charter of Fundamental Rights of the European Union and the Work of the Convention: A Collection of Documents* (2nd edn) (Bundestag 2002), p.325.

Draft or amendments	Document Reference (CHARTE unless specified)	Agenda	Substance/ Comments
16 June	4372/00		All amendments to articles 31-50 (on CHARTE 4316/00).
23 June	4373/00		Praesidium 'compromise amendments' for articles 31-40 (including horizontal clauses)
29 June	SN 3340/00		Praesidium proposal on horizontal clauses.
3 July	4383/00		Summarising all filed amendments to articles 31-50 and proposing amendments.
4 July	4399/00		Praesidium 'compromise amendments' for articles 41-44 (including horizontal clauses)
13 July	4412/00		Praesidium proposed structure.
14 July	4400/00		Praesidium draft preamble.
28 July	4422/00		Complete draft. Comments by 1 September.
31 July	4423/00		Complete draft explanations.
31 August			Deadline for last round of 'comments' on 28 July draft (CHARTE 4422/00).
7 September	Observations reçues relatives au Document CHARTE 4422/00 CONVENT 45		Amendments deposited by Convention delegates until 31 August - Not published and only distributed on 11/09. ²
14 September	4470/00		Draft final text.
20 September	4471/00		Revised draft explanations. Essentially final version, some legal references changed.
21 September	See below		Lawyer-linguist review of CHARTE 4470/00 (Final draft - Review for linguistic questions and 'gender neutrality').
25 September	4470/1/00 REV 1 ADD 1		Final text after lawyer-linguist review and 25 September meeting.
	[2000] OJ C364/01		Solemn proclamation of CFR.

² Norbert Bernsdorff and Martin Borowsky, *Die Charta der Grundrechte der Europäischen Union Handreichungen und Sitzungsprotokolle* (Nomos, Baden-Baden 2002), p.356.

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2000 OJ C364/01	Charter of Fundamental Rights of the European Union	07/12/2000 (Proclaimed)	EN	85

2. <i>The Second Version: the 2004 Charter of Fundamental Rights and Explanations, and Extracts from the Constitutional Treaty</i>	108
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2004 OJ C310/01	Arts I-2 and I-9 of the Constitutional Treaty	16/12/2004	EN	109
2004 OJ C310/41	Part II of the Constitutional Treaty: The Charter of Fundamental Rights of the Union	16/12/2004	EN	112
2004 OJ C310/378	Protocol 32 to the Constitutional Treaty: Accession to the ECHR	16/12/2004	EN	126
2004 OJ C310/420	Declarations 2 and 12 of the Constitutional Treaty: On Art. I-9 and on the Explanations	16/12/2004	EN	127

3. The Version in Force: the 2007 Charter of Fundamental Rights and Explanations, and Extracts from the Treaties (Lisbon consolidated version)

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Document Reference	Title	Date	Language	Page
2007 OJ C303/01	Charter of Fundamental Rights of the European Union	01/12/2009 (Entry into force)	EN	165
2007 OJ C303/17	Explanations Relating to the Charter of Fundamental Rights	14/12/2007	EN	181
2008 OJ C115/13	Arts 2 and 6 of the Treaty on European Union (Lisbon version)	01/12/2009 (Entry into force)	EN	200
2008 OJ C115/273	Protocols 8, 30 to the Treaties (Lisbon version): Accession to the ECHR, and the Application of the Charter to Poland and the United Kingdom	01/12/2009 (Entry into force)	EN	203
2008 OJ C115/337	Declarations 1, 2, 53, 61 and 62 to the Treaties (Lisbon version): On the Charter, on Art.6(2) TEU, by the Czech Republic on the Charter, and by Poland on the Charter and on Protocol 30	01/12/2009 (Entry into force)	EN	206
2013 OJ C60/131	Protocol 38 to the Treaties (Lisbon version): On the concerns of the Irish people on the Treaty of Lisbon	01/12/2014 (Entry into force)	EN	210

II. Key Pre-Charter Convention Documents

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1. The First Path – Institutional Resolutions, Calls and Drafts in relation to a Charter of Rights

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1973 OJ C26/7	Resolution on the Protection of the Fundamental Rights of Member States' Citizens when Community Law is Drafted (JozEAU-Marigné Report)	04/04/1973	EN	221
1975 OJ C179/28	Resolution on European Union	10/07/1975	EN	224
COM (76) 37	The protection of fundamental rights as Community law is created and developed. Report of the Commission submitted to the European Parliament and the Council	04/02/1976	EN	228
Annex to COM (76) 37	The problems of drawing up a catalogue of fundamental rights for the European Communities. A study requested by the Commission - Report annexed to COM (76) 37	04/02/1976	EN	244
1977 OJ C103/1	Joint Declaration by the European Parliament, the Council and the Commission Concerning the Protection of Fundamental Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms	05/04/1977	EN	295
1984 OJ C77/33	Draft Treaty Establishing the European Union (Spinelli Report)	14/02/1984	EN	297
1989 OJ C120/51	Resolution adopting the “Declaration of Fundamental Rights and Freedoms”	12/04/1989	EN	328
ISBN 92-826-0975-5	Community Charter of the Fundamental Social Rights of Workers (adopted by 11 Members)	09/12/1989	EN	336
1991 OJ C183/473	Resolution on Union Citizenship	14/06/1991	EN	361
1994 OJ C61/155	Resolution on the Constitution of the European Union	10/02/1994	EN	366

Document Reference	Title	Date	Language	Page
ISBN 92-827-7697-2	For a Europe of civic and social rights: Report by the Comité des Sages	01/02/1996	EN	383
1997 OJ C371/99	Resolution on the Amsterdam Treaty	19/11/1997	EN	451
None	Koalitionsvereinbarung zwischen der Sozialdemokratischen Partei Deutschlands und Bündnis 90/Die GRÜNEN	20/10/1998	DE	458
P4_CRE(1999)01-12(1)	Speech by the President of the Council of the European Union Joschka Fischer, Federal Minister for Foreign Affairs on the Priorities of the German Council Presidency	12/01/1999	EN	473
ISBN 92-828-6605-X	Affirming fundamental rights in the European Union: time to act (Simitis Report)	01/02/1999	EN	480
2000 OJ C54/93	Resolution on the Establishment of the Charter of Fundamental Rights	16/09/1999	EN	516

2. The Second Path – Accession to the European Convention on Human Rights

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1979 OJ C127/70	Resolution on the accession of the European Community to the European Convention on Human Rights	27/04/1979	EN	519
COM (79) 210	Memorandum on the accession of the European Communities to the Convention for the Protection of Human Rights and Fundamental Freedoms	02/05/1979	EN	522
1982 OJ C304/253	Resolution embodying the opinion of the European Parliament on the memorandum on accession to the European convention on human rights and fundamental freedoms	29/10/1982	EN	546
SEC (90) 2087	Commission Communication on Community accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms and some of its Protocols	19/11/1990	EN	549
Opinion 2/94	Opinion 2/94 - Accession of the Community to the ECHR	28/03/1996	EN	561

3. The Judicial Origins of the Charter of Fundamental Rights

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ECLI:EU:C:1969:57	Judgment of 12 November 1969, C-29/69, Erich Stauder v City of Ulm-Sozialamt	12/11/1969	EN	571
ECLI:EU:C:1970:114	Judgment of 17 December 1970, C-11/70, Internationale Handelsgesellschaft mbH v Einfuhr- und Vorratsstelle für Getreide und Futtermittel	17/12/1970	EN	580
ECLI:EU:C:1974:51	Judgment of 14 May 1974, C-4/73, J. Nold, Kohlen- und Baustoffgroßhandlung v Commission of the European Communities	14/05/1974	EN	595
BVerfGE 37, 271-305	BVerfG, Beschluss vom 29. Mai 1974 (“Solange I”) – 2 BvL 52/71 –, BVerfGE 37, 271-305	29/05/1974	DE	614
ECLI:EU:C:1975:137	Judgment of 28 October 1975, C-36/75, Roland Rutili v Ministre de l’intérieur	28/10/1975	EN	636
ECLI:EU:C:1979:290	Judgment of 13 December 1979, C-44/79, Liselotte Hauer v Land Rheinland-Pfalz	13/12/1979	EN	655

4. Fundamental Rights in the Treaties, from the Single European Act to Amsterdam (1986 – 1997)

679

1987 OJ L169/1	Single European Act	01/07/1987 (Entry into force)	EN	680
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1992 OJ C191/1	Treaty on European Union - Maastricht Treaty	01/11/1993 (Entry into force)	EN	684
1997 OJ C340/1	Treaty of Amsterdam Amending the Treaty on European Union, the Treaties Establishing the European Communities and Certain Related Acts	01/05/1999 (Entry into force)	EN	692

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CHARTE 4952/00	Contribution de M. Jean-Luc Dehaene, représentant personnel du gouvernement belge	05/10/2000	FR	3840
CHARTE 4953/00	Contribution by Mrs. Van der Burg (Member of the European Parliament) (dated 20/09/00)	17/10/2000	EN	3846

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CHARTE 4960/00	Letter sent by President Herzog to President Chirac upon completion of the Convention's proceedings (dated 05/10/00)	26/10/2000	EN	3855
CHARTE 4961/00	Comments of the Council of Europe observers on the draft Charter (dated 09/11/00)	13/11/2000	EN	3857
13534/00	Note from the Council Presidency: Charter – Solemn proclamation, Nice, 7 December 2000	17/11/2000	EN	3861
13891/00	Compte rendu sommaire de la 1898ème réunion du Coreper tenue à Bruxelles les 29 novembre et 1er décembre [Extraits]	21/02/2001	FR	3862
14101/00	Note from Coreper to the European Council: Charter – Solemn proclamation, Nice, 7 December 2000	30/11/2000	EN	3864

4. NGOs and Others' Amendments and Contributions

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CHARTE 4101/00	Rapport de position établi par la Fédération Internationale des Ligues des Droits de l'Homme (FIDH)	06/01/2000	FR	3866
CHARTE 4104/00	Draft European Citizen's Charter submitted by the Permanent Forum of Civil Society	07/01/2000	EN	3889
CHARTE 4106/00	Report submitted by the Parliamentary Assembly of the Council of Europe (dated 14/01/00)	18/01/2000	EN	3900
CHARTE 4108/00	Open letter submitted by the European Parliament Intergroup (Fourth World European Committee) (dated 12/01/00)	20/01/2000	EN	3916
CHARTE 4109/00	Contribution submitted by Bench House (Fair Trials Abroad Trust)	20/01/2000	EN	3918
CHARTE 4110/00	Report "Property rights within European law" submitted by the European Landowners' Organisation – ELO	21/01/2000	EN	3932
CHARTE 4113/00	Draft Opinion of the Committee of the Regions (dated 25/11/99)	27/01/2000	EN	3943
CHARTE 4114/00	Opinion from the Political Affairs Committee of the Parliamentary Assembly of the Council of Europe (dated 17/01/00)	28/01/2000	EN	3953
CHARTE 4115/00	Texts adopted by the Parliamentary Assembly of the Council of Europe on 25 January 2000: Recommendation 1439(2000), Resolution 1210(2000) and Directive no 561(2000)	28/01/2000	EN	3960
CHARTE 4116/00	Opinion from the Social and Family Affairs Committee of the Parliamentary Assembly of the Council of Europe (dated 24/01/00)	28/01/2000	EN	3966
CHARTE 4119/00	Resolution of the Synod of the Protestant Church in Germany (EKD), Leipzig, 11/11/99	03/02/2000	EN	3973
CHARTE 4120/00 ADD 1	Declaration of the Association of Women of Southern Europe (AFEM) (dated 29/01/00)	28/02/2000	EN	3976
CHARTE 4124/00	Resolution of the European Trade Union Conference (ETUC), 16-17/09/99	08/02/2000	EN	3979
CHARTE 4126/00	Erklärung von Halle zur Europäischen Grundrechtscharta, vom 2.12.99, vorgelegt vom Rat der Gemeinden und Regionen Europas - Deutsche Sektion	09/02/2000	DE	3984
CHARTE 4127/00	Submission on the Recognition of the Rights of the Child in the Charter by the European Children's Network (Euronet) (dated January 2000)	09/02/2000	EN	3988
CHARTE 4128/00 ADD 1	Contribution of the Secretariat of the Commission of the Bishops' Conferences of the European Community (COMECE) (dated 8/02/00)	07/03/2000	EN	4005

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CHARTE 4129/00 ADD 1	Common statement by the International Federation of Human Rights (FIDH) (dated 14/02/00)	07/06/2000	EN	4016
CHARTE 4130/00	Contribution de la Fédération Européenne des Retraités et Personnes Agées (FERPA) (datée le 11/02/00)	16/02/2000	FR	4022
CHARTE 4132/00	Letter submitted by the European Women's Lobby (dated 14/02/00)	18/02/2000	EN	4027
CHARTE 4133/00	Working document on Fundamental Social Rights in Europe produced by the European Parliament's Directorate General for Research (dated completed November 1999)	21/02/2000	EN	4031
CHARTE 4143/00	Contribution submitted by the European Bureau for Lesser Used Languages (EBLUL) (dated 25/02/00)	29/02/2000	EN	4075
CHARTE 4144/00	Diskussions-Vorschlag der EU-Vertretung der Bundesarbeitsgemeinschaft der Freien Wohlfahrtspflege (BAGFW) (datiert 16.02.00)	29/02/2000	DE	4078
CHARTE 4153/00	Opinion of the Committee of the Regions adopted on 16/02/00	08/03/2000	EN	4081
CHARTE 4155/00	Contribution intitulée "Convention européen de protection contre la violence et le harcèlement raciste" soumise par M. Joël Zylberberg	14/03/2000	FR	4091
CHARTE 4157/00	Contribution of the Association of Women of Southern Europe (AFEM)	13/03/2000	EN	4165
CHARTE 4157/00 ADD 1	Contribution de l'Association des Femmes de l'Europe Méridionale (AFEM)	17/03/2000	FR	4174
CHARTE 4159/00	Beitrag der Konrad-Adenauer-Stiftung zur EU-Grundrechtscharta	14/03/2000	DE	4185
CHARTE 4161/00	Contribution du Conseil Central des Communautés Philosophiques non Confessionnelles de Belgique (CCL-CVR) (07/03/00)	14/03/2000	FR	4193
CHARTE 4162/00	Contribution from the Federation of Catholic Family Associations in Europe	15/03/2000	EN	4199
CHARTE 4163/00	Memorandum submitted by the Dutch Standing Committee of Experts on International Immigration, Refugee and Criminal Law as evidence to an inquiry of the UK House of Lords (dated 22/02/00)	15/03/2000	EN	4204
CHARTE 4164/00	Vorschläge der Initiative "Netzwerk Dreigliederung"	16/03/2000	DE	4216
CHARTE 4165/00	Contribution submitted by the Europeans Landowner's Organisation (ELO) (dated 15/03/00)	16/03/2000	EN	4230
CHARTE 4166/00	Contribution submitted by the European Bureau for Lesser Used Languages (EBLUL) (dated 25/02/00)	16/03/2000	EN	4237
CHARTE 4167/00	Contribution submitted by European Round Table of Charitable Social Welfare Associations (ETWelfare) (dated 03/02/00)	16/03/2000	EN	4239
CHARTE 4168/00	Contribution du Groupement Européen des Fédérations intervenant dans l'immobilier (GEFI)	16/03/2000	FR	4242
CHARTE 4169/00	Contribution submitted by the European Children's Network (Euronet) (dated 27/02/00)	17/03/2000	EN	4260
CHARTE 4171/00	Contribution submitted by European Liaison Committee on Services of General Interest (CELSIG) (dated 02/03/00)	20/03/2000	EN	4259
CHARTE 4172/00	Déclaration de l'Association des Femmes de l'Europe Méridionale (AFEM) – Strasbourg, 17 mars 2000	22/03/2000	FR	4263
CHARTE 4173/00	Contribution submitted by Amnesty International on the right of asylum and the protection of refugees (dated 20/02/00)	22/03/2000	EN	4265

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CHARTE 4174/00	Open letter submitted by the European Federation of National Organisations Working with the Homeless (FEANTSA) (dated 21/02/00)	22/03/2000	EN	4269
CHARTE 4175/00	Beitrag des Zentralverband der Deutschen Haus-, Wohnungs- und Grundeigentümer e.V. (“Hans und Grund Deutschland”) (datiert 08.03.00)	22/03/2000	DE	4273
CHARTE 4190/00	Contribution submitted by three European owners’ organisations: the European Association of Real-estate Owners (GEFI), the European Confederation of Forest owners (CEPF) and the European Landowners’ Organisation (ELO) (dated 21/03/00)	27/03/2000	EN	4278
CHARTE 4194/1/00 REV 1	Contribution submitted by the Platform of European Social NGOs and the European Trade Union Confederation (ETUC)	28/04/2000	EN	4284
CHARTE 4197/00	Declaration of the European Health Forum Gastein 1999 (EHFG) submitted by the International Forum Gastein (dated 06-09/10/99)	31/03/2000	EN	4298
CHARTE 4198/00	Contribution submitted by European Justice and Peace Commissions, International Federation of Leagues for Human Rights (FIDH), European Migrant’s Forum, International Catholic Migration Commission (ICMC), KAIROS Europe, Pax Cristi International, Representantatives of Communities of African Origin, and Quaker Council for European Affairs (QCEA) (dated 14/02/00)	04/04/2000	EN	4312
CHARTE 4213/00	Contribution de la Confédération Européenne des Syndicats Indépendants (CESI)	07/04/2000	FR	4317
CHARTE 4215/00	Contribution submitted by the European Forum for Freedom in Education (EFFE) with a view to the hearing on 27/04/00	10/04/2000	EN	4322
CHARTE 4216/00	Beitrag von Herrn Thomas Clement zu den Bürgerrechten	07/04/2000	DE	4330
CHARTE 4217/00	Contribución de D. Isaac Ibáñez García sobre el Derecho de Petición (de fecha el 31/03/00)	10/04/2000	ES	4346
CHARTE 4219/00	Recommendation and report by the Council of Europe on Protection of human rights and dignity of the terminally ill and dying (Recommendation 1418(1999) and Doc.8421 of 21 May 1999), submitted by Mr. Reinhard Rack, member of the German Bundestag (dated May and June 1999)	07/04/2000	EN	4352
CHARTE 4220/00	Contribution du Conseil des communes et régions d’Europe (CCRE), en vue de l’audition du 27/04/00 (datée le 22/03/00 et 11/10/99)	11/04/2000	FR	4372
CHARTE 4223/00	Vorläufige Stellungnahme der “European Co-operation in Anthroposophical Curative Education and Social Therapy” (ECCE) (datiert 07.04.00)	12/04/2000	DE	4387
CHARTE 4224/00	Stellungnahme des Forum Menschenrechte zur Grundrechtscharta	12/04/2000	DE	4391
CHARTE 4226/00	Submission of the Confederation of British Industry (CBI)	12/04/2000	EN	4396
CHARTE 4228/00	Contribution submitted by the Initiative “Netzwerk Dreigliederung” ahead of the public hearing on 27/04/00	18/04/2000	EN	4402
CHARTE 4229/00	Contribution submitted by the Association of German Public Service Broadcasting Corporations (ARD) and German Television (ZDF)	18/04/2000	EN	4406
CHARTE 4230/00	Beitrag des Diakonischen Werks der Evangelischen Kirche in Deutschland	18/04/2000	DE	4412
CHARTE 4231/00	Contribution submitted by the Association of Women of Southern Europe (AFEM) with a view to the hearing on 27/04/00	18/04/2000	EN	4419

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CHARTE 4232/00 ADD 1	Contribution by the International Federation of Human Rights (FIDH) with a view to the hearing on 27/04/00	07/06/2000	EN	4425
CHARTE 4233/00	Contribution submitted by the Conference of European Churches with a view to the hearing on 27/04/00	18/04/2020	EN	4433
CHARTE 4234/00	Contribution submitted by the General Council of the Bar of England and Wales – Written evidence to an inquiry of the UK House of Lords (dated 09/02/00)	02/05/2000	EN	4438
CHARTE 4236/00	Contribution submitted by the Union of Industrial and Employers’ Confederations of Europe (UNICE) with a view to the hearing on 27/04/00 (dated 27/03/00)	18/04/2000	EN	4455
CHARTE 4237/00	Statement submitted by the European Bureau for Lesser Used Languages (EBLUL) with a view to the hearing on 27/04/00	18/04/2020	EN	4458
CHARTE 4239/00	Contribution submitted by the European Union of Christian Democratic Workers (EUCDW) with a view to the hearing on 27/04/00 (dated 12/04/00)	19/04/2000	EN	4462
CHARTE 4240/00	Contribution submitted by the European Children’s Network (EURONET) with a view to the hearing on 27/04/00 (dated 12/04/00)	19/04/2000	EN	4466
CHARTE 4241/00	Contribution du Carrefour pour une Europe civique et sociale (CAFECS) en vue de l’audition publique du 27/04/00 (datée le 07/10/99)	25/04/2000	FR	4484
CHARTE 4242/00	Contribution submitted by the European Housing Forum (EHF) with a view to the hearing on 27/04/00 (dated 14/04/00)	19/04/2000	EN	4539
CHARTE 4243/00	Contribution du Collectif pour la Charte des droits fondamentaux (CCDF) en vue de l’audition publique du 27/04/00	19/04/2000	FR	4548
CHARTE 4244/00	Contribution du Conseil Central des Communautés Philosophiques non-Confessionnelles (CCL) en vue de l’audition publique du 27/04/00	19/04/2000	FR	4559
CHARTE 4245/00	Contribution de “Terre Des Hommes France” en vue de l’audition publique du 27/04/00	19/04/2000	FR	4567
CHARTE 4246/00	Contribution submitted by the European Region of the International Lesbian and Gay Association (ILGA-Europe) with a view to the hearing on 27/04/00 (dated 15/04/00)	19/04/2000	EN	4571
CHARTE 4247/00	Contribution submitted by the European Women’s Lobby European Women’s Lobby with a view to the hearing on 27/04/00 (dated 10/04/00)	19/04/2000	FR	4581
CHARTE 4248/00	Contribution de Eurocities, soumise par M. Delebecque, vice-Président de la Communauté Urbaine de Lille, en vue de l’audition publique du 27/04/00	19/04/2000	FR	4584
CHARTE 4249/00	Beitrag von der Evangelischen Akademie Thüringen zu Forderungen der Frauentagung (datiert 02.04.00)	19/04/2000	DE	4588
CHARTE 4250/00	Contribution submitted by the European Blind Union with a view to the hearing on 27/04/00 (dated 19/04/00)	20/04/2000	EN	4591
CHARTE 4251/00	Contribution de l’Office catholique d’information et d’initiative pour l’Europe (OCIPE) en vue de l’audition publique du 27/04/00	26/04/2000	FR	4595
CHARTE 4252/00	Contribution de “World Conference on Religion & Peace” (WCRP) en vue de l’audition publique du 27/04/00 (datée le 25/04/00)	26/04/2000	FR	4597
CHARTE 4253/00	Stellungnahme des Europäischen Forums für Freiheit im Bildungswesen (EFFE) (datiert 25.04.00)	02/05/2000	DE	4600

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CHARTE 4254/00	Prise de position du “Diakonisches Werk der Evangelischen Kirche Deutschlands” à l’occasion de l’audition du 27/04/00	02/05/2000	FR	4604
CHARTE 4255/00	Stellungnahme der Europäischen Union Christlich-Demokratischer Arbeitnehmer (EUCDA) (datiert 15.04.00)	28/04/2000	DE	4607
CHARTE 4256/00	Contribution de la Plate-forme des ONG européennes du secteur social, soumise par M. Olivier Gerhard lors de l’audition publique du 27/04/00	28/04/2000	FR	4612
CHARTE 4257/00	Contribution submitted by the Eversheds Business Lawyers in Europe	28/04/2000	EN	4615
CHARTE 4258/00	Contribution submitted by the Union of European Federalists (UEF) on the occasion of the hearing on 27/04/00	02/05/2000	EN	4627
CHARTE 4259/00	Statement given by the European Newspaper Publishers’ Association (ENPA) at the hearing on 27/04/00	02/05/2000	EN	4630
CHARTE 4260/00	Contribution du Fédération Humaniste Européenne à l’occasion de l’audition du 27/04/00	02/05/2000	FR	4633
CHARTE 4262/00	Contribution submitted by the Young European Federalists (JEF) on the occasion of the hearing on 27/04/00	02/05/2000	EN	4639
CHARTE 4263/00	Contribution submitted by the Federation of Catholic Family Associations in Europe on the occasion of the hearing on 27/04/00 (dated 27/03/00)	04/05/2000	EN	4643
CHARTE 4264/00	Contribution de la Conférence du Régions Périphériques maritimes d’Europe (CRPM) faite à l’occasion de l’audition du 27 avril	04/05/2000	FR	4647
CHARTE 4265/00	Contribution on CHARTE 4112/2/00 REV 2 concerning Fundamental Social Rights by Mr. Klaus Lörcher (dated March 2000)	04/05/2000	EN	4650
CHARTE 4266/00	Contribution submitted by the Society for Threatened Peoples International on the occasion of the hearing on 27/04/00 (dated April 2000)	22/05/2000	EN	4679
CHARTE 4268/00	Intervention du Mouvement international ATD Quart Monde à l’occasion de l’audition publique du 27/04/00	05/05/2000	FR	4683
CHARTE 4273/00	Position paper of the Irish Business Bureau (IBB) and Employers Confederation (IBEC) following the hearing of 27/04/00 (dated April 2000)	08/05/2000	EN	4689
CHARTE 4274/00	Exposé de la Fédération des Associations Familiales Catholiques en Europe à l’occasion de l’audition du 27/04/00 (datée le 25/04/00)	08/05/2000	FR	4695
CHARTE 4275/00	Beitrag des deutschen Städte- und Gemeindebundes (datiert 17.04.00)	08/05/2000	DE	4699
CHARTE 4276/00	Intervention de l’OCEIPE à l’occasion de l’audition du 27/04/00	08/05/2000	FR	4704
CHARTE 4277/00	Contribution du Centre Européen des Entreprises à Participation Publique et des Entreprises d’Intérêt Économique Général (CEEP) (datée le 05/05/00)	12/05/2000	FR	4707
CHARTE 4278/00	Intervention by the Franciscans (Commission for Justice, Peace and Integration of Creation) given at the hearing on 27/04/00	08/05/2000	EN	4710
CHARTE 4279/00	Letter submitted by the Marangopoulos Foundation for Human Rights to the Convention	08/05/2000	EN	4714
CHARTE 4281/00	Observations sur CHARTE 4149/00, 4137/00, 4170/00, 4192/00, 4193/00, 4227/00 et 4235/00, élaborés par le gouvernement, le ministère des affaires étrangères et le ministère de la justice de l’Allemagne (datées le 26/04/00)	05/05/2000	FR	4716
CHARTE 4282/00	Presentation by the General Council of the Bar of England and Wales at the hearing on 27/04/00	02/05/2000	EN	4724

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CHARTE 4283/00	Statement by the Food First Information and Action Network (FIAN- International) for Forum Menschenrechte given at the hearing on 27/04/00	08/05/2000	EN	4728
CHARTE 4286/00	Common Statement of the Platform of European Social NGOs and the European Trade Union Confederation (ETUC) given at the public hearing on 27/04/00	12/05/2000	EN	4736
CHARTE 4287/00	Intervention du Comité européen de coordination de l'habitat social (CECODHAS) faite à l'occasion de l'audition du 27/04/00	08/05/2000	FR	4741
CHARTE 4288/00	Briefe der Jungen Europäischen Föderalisten (JEF) an Herrn Bundespräsident a.d. Roman Herzog	08/05/2000	DE	4745
CHARTE 4289/00	Stellungnahme der Kommission Europa des Deutschen Juristinnenbundes (datiert 05.05.00)	10/05/2000	DE	4751
CHARTE 4290/00	Position and the statement by Amnesty International given at the hearing on 27/04/00 (dated April 2000 and 27/04/00)	10/05/2000	EN	4760
CHARTE 4291/00	Presentation by the European Landowner's Organisation (ELO) given at the hearing on 27.04.00	10/05/2000	EN	4779
CHARTE 4292/00	Open letter to the Convention and the intervention by the Federation of National Organisations Working with the Homeless (FEANTSA) at the hearing on 27/04/00 (dated 08/05/00 and 27/04/00)	23/05/2000	EN	4783
CHARTE 4293/00	Position paper from Eurolink Age on occasion of the public hearing on 27/04/00	16/05/2000	EN	4790
CHARTE 4294/00	Presentation by "European citizens and their associations" (ECAS), given at the public hearing on 27/04/00 (dated 27/04/00)	12/05/2000	EN	4799
CHARTE 4296/00	Intervention by the European Council of Steiner Waldorf Schools given at the hearing on 27/04/00	16/05/2000	EN	4804
CHARTE 4298/00	Contribution submitted by the Confederation of British Industry (CBI)	25/05/2000	EN	4808
CHARTE 4300/00	Stellungnahme der Evangelischen Kirche in Deutschland (EKD), im Hinblick auf die Anhörung am 27. April 2000	23/05/2000	DE	4814
CHARTE 4301/00	Contribution by the International Institute for Right of Nationality and Regionality	17/05/2000	EN	4820
CHARTE 4302/00	Contribution avec amendements sur les propositions du Présidium soumises par Lobby Européen des Femmes (LEF) (datée le 09/05/00)	25/05/2000	FR	4874
CHARTE 4311/00	Beiträge des Kolpingwerkes Europa (datiert 12.05.00)	30/05/2000	EN	4882
CHARTE 4312/00	Eingabe der Vereinigung zur Förderung des Petitionsrechts in der Demokratie e.V. (datiert 13.05.00)	25/05/2000	DE	4888
CHARTE 4313/00	Press release of the 106th session of the Committee of Ministers (10-11 May 2000) submitted by the Council of Europe (dated 11/05/00)	24/05/2000	EN	4892
CHARTE 4314/00	Contribution submitted by the Association of Women of Southern Europe (AFEM)	24/05/2000	FR	4894
CHARTE 4315/00	Letter and statement submitted by the United Nations Committee on Economic, Social and Cultural rights (dated 27/04/00)	24/05/2000	EN	4902
CHARTE 4317/00	Position paper submitted by the Engineering Employer's Federation (EEF)	24/05/2000	EN	4906
CHARTE 4318/00	Beitrag des Deutschen Städte- und Gemeindebundes zum Recht auf Selbstverwaltung (datiert 13.02.00)	24/05/2000	DE	4911
CHARTE 4319/00	Contribution submitted by the Danish Organisation of organisations of Disabled People (DSI) (dated 16/05/00)	24/05/2000	EN	4915
CHARTE 4320/00	Contribution avec la position de la COFACE	24/05/2000	FR	4919

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CHARTE 4321/00	Contribution submitted by the European Broadcasting Union (EBU) (dated 11/05/20)	25/05/2000	EN	4922
CHARTE 4323/00	Contribution submitted by the Church and Society Commission of the Conference of European Churches with a letter to Mr. Roman Herzog and a report from the Plenary Meeting of the Commission (Moscow on 5-9 May 2000) (dated 18/05/2000)	24/05/2000	EN	4927
CHARTE 4324/00	Common Statement of NGOs on “The Quality Test” of the Charter	06/05/2000	EN	4931
CHARTE 4325/00	Contribution soumise par les syndicats français (datée le 25/04/00)	26/05/2000	FR	4936
CHARTE 4325/00 COR 1	Contribution soumise par les syndicats français	14/06/2000	FR	4950
CHARTE 4326/00	Contribution of the “Aktionsgemeinschaft Dienst für den Frieden e.V” (AGDF) (dated 05/05/00)	26/05/2000	EN	4951
CHARTE 4327/00	Contribution des syndicats français avec propositions d’amendements aux dernières rédactions établies par le Présidium (datée le 22/05/00)	26/05/2000	FR	4953
CHARTE 4328/00	Intervention by Mr. James Wilson, Bass Hotels & Resorts (Bass PLC), presented at the hearing on 27/04/00	26/05/2000	EN	4957
CHARTE 4329/00	Contribution submitted by the European Council on Refugees and Exiles (ECRE) on the right to asylum	30/05/2000	EN	4960
CHARTE 4331/00	Comments submitted by Amnesty International - EU Association, to the proposed draft articles 1-30, civil and political rights	30/05/2000	EN	4964
CHARTE 4334/00	Contribution de “European Forum for the Arts and Heritage (EFAH)”	30/05/2000	FR	4969
CHARTE 4334/1/00 REV 1	Revised Contribution de “European Forum for the Arts and Heritage (EFAH)”	30/06/2000	FR	4972
CHARTE 4335/00	Contribution de la Force Ouvrière avec observations sur le projet de Charte des droits fondamentaux de l’Union européenne (datée le 22/05/00)	05/05/2000	FR	4975
CHARTE 4336/00	Contribución de la Confederación de Asociaciones de Vecinos, Consumidores y Usuarios de Espana (CAVE) (de fecha 05/06/00)	31/05/2000	ES	5012
CHARTE 4337/00	Contribution avec proposition d’amendement pour l’article sur le droit d’asile (plusieurs ONGs) (datée le 22/05/00)	31/05/2000	FR	5017
CHARTE 4338/00	Contribution de la Confédération Française des Travailleurs Chrétiens (syndicat CFTC)	06/05/2000	FR	5020
CHARTE 4339/00	Contribution submitted by the High Commissioner for Refugees of the United Nations with a letter and comments on the Right of Asylum (dated 19/05/00)	31/05/2000	EN	5023
CHARTE 4340/00	Contribution submitted by the International Rehabilitation Council for Torture Victims (IRCT)	06/05/2000	EN	5027
CHARTE 4341/00	Contribution de la Conférence des Notariats de l’Union Européenne (CNUE) (datée le 19/05/00)	05/06/2000	FR	5030
CHARTE 4342/00	Beitrag von Herrn. Prof. Dr. Martin Stock, Universität Bielefeld, Fakultät für Rechtswissenschaft, zur Medienfreiheit	06/05/2000	DE	5033
CHARTE 4343/00	Contribution submitted by the European Children’s Network (Euronet)	06/05/2000	EN	5039
CHARTE 4345/00	Beitrag von des Paritätischen Wohlfahrtsverbands - Gesamtverband	06/07/2000	DE	5042
CHARTE 4346/00	Beitrag des Bundesverbandes Deutscher Zeitungsverleger e.V. zur Pressefreiheit (datiert 31.05.00)	07/06/2000	DE	5048

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CHARTE 4348/00	Contribution submitted by the working group on EU-citizenship, fundamental rights and cultural diversity of the federalist group at the European institutions (UEF-EU)	04/07/2000	EN	5114
CHARTE 4349/00	Intervention du Forum des Migrants de l'Union européenne à l'occasion de l'audition du 27/04/00	08/06/2000	FR	5124
CHARTE 4350/00	Revised contribution submitted by the Engineering Employer's Federation (EEF)	08/06/2000	EN	5129
CHARTE 4351/00	Stellungnahme von Herrn Karl Hermann Haack, Mitglied des deutschen Bundestags (datiert 01.06.00)	08/06/2000	DE	5132
CHARTE 4353/00	Contribution by the High Commissioner for refugees of the United Nations regarding the right of asylum	08/06/2000	EN	5136
CHARTE 4354/00	Contribution de la Fédération Internationale de l'ACAT - Action Chrétienne pour l'Abolition de la Torture (FI. ACAT) (datée le 06/06/00)	13/06/2000	FR	5139
CHARTE 4355/00	Contribution submitted by three trade union organisations (LO, TCO and SACO) in Sweden (dated 20/03/00)	13/06/2000	EN	5141
CHARTE 4356/00	Contribution de la Sociedad General de Autores y Editores (SGAE) de España (de fecha 01/06/00)	13/06/2000	ES	5148
CHARTE 4357/00	Contribution by the International FoodFirst Information and Action Network (FIAN) (dated 02/06/00)	13/06/2000	EN	5152
CHARTE 4358/00	Transmission: Textes relatifs à l'audition de la société civile du 27 avril 2000 [Extract]	14/06/2000	MULTI	5159
CHARTE 4361/00	Letter and campaign paper submitted by "Cooperativa Pangea", Rome	13/06/2000	EN	5166
CHARTE 4362/00	Contribution de l'Institut pour la Démocratie, Paris	13/06/2000	FR	5169
CHARTE 4363/00	Stellungnahme des Deutschen Gewerkschaftsbundes (datiert 05.06.00)	13/06/2000	DE	5172
CHARTE 4364/00	Contribution submitted by the European Centre of the International Council of Women (ECICW)	14/06/2000	EN	5180
CHARTE 4365/00	Contribution submitted by the Church of Scientology regarding freedom of religion and belief in the European Charter of Fundamental Rights	14/06/2000	EN	5199
CHARTE 4366/00	Contribution and the intervention by Eurochambres given at the hearing on 27/04/00	13/06/2000	EN	5214
CHARTE 4368/00	Contribution by Dr. Bernhard Wegener on environmental protection (dated 09/06/00)	15/06/2000	EN	5221
CHARTE 4369/00	Contribution submitted by CAF ECS and intervention given at the hearing on 27/04/00	15/06/2000	EN	5224
CHARTE 4370/00	Report submitted by the European Group on Ethics in Science and New Technologies (GEE) (dated 23/05/00)	15/06/2000	EN	5228
CHARTE 4374/00	Statement by H.E. Mr. A. Piebalgs, Ambassador of Latvia given at the hearing of the candidate countries on 19 June 2000	21/06/2000	EN	5260
CHARTE 4375/00	Statement by Mr. Mitja Drobnič, State Secretary at the Ministry of Foreign Affairs of the Republic of Slovenia given at the hearing of the candidate countries on 19 June 2000	21/06/2000	EN	5266
CHARTE 4376/00	Statement by Mrs. Antoinette Primatarova, Ambassador, Head of the Bulgarian Mission to the European Communities given at the hearing of the candidate countries on 19 June 2000	21/06/2000	EN	5272
CHARTE 4377/00	Statement by Mr. Eugen Dijmarescu, Secretary of State, Head of the Department for European Affairs within the Ministry of Foreign Affairs of Romania given at the hearing of the candidate countries on 19 June 2000	21/06/2000	EN	5279
CHARTE 4378/00	Letter from the Deutschen Mennonitischen Friedenskomitee (DMFK) - Mennonite Peace Committee on Conscientious Objection to Military Service	22/06/2000	EN	5287

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CHARTE 4379/00	Stellungnahme des DGB (Deutscher Gewerkschaftsbund), die er am 5. Juni beschlossen hat (datiert 05.06.00)	22/06/2000	DE	5289
CHARTE 4380/00	Contribution submitted by the Law Society of England and Wales	22/06/2000	EN	5294
CHARTE 4381/00	Contribution submitted by the Danish Centre for Human Rights	22/06/2000	EN	5301
CHARTE 4382/00	Contribution de Initiativ Liewensufank, de International Baby Food Action Network et de World Alliance for Breastfeeding	22/06/2000	FR	5305
CHARTE 4384/00	Prise de Position par le Bureau de l'association Maison de l'Europe du Land Brandenburg (datée le 17/06/00)	26/06/2000	FR	5308
CHARTE 4386/00	Vorschlag zu Artikel 15, vorgelegt vom Initiativkreis für den öffentlichen Rundfunk Köln (datiert 16.06.00)	26/06/2000	DE	5311
CHARTE 4387/00	Contribution submitted by the Platform of European Social NGOs (dated 21/06/00)	26/06/2000	EN	5314
CHARTE 4388/00	Contribution on Sustainable Design and Construction (dated 11/06/00)	27/06/2000	EN	5317
CHARTE 4389/00	Statement by the Permanent Secretary of the Ministry of Foreign Affairs of the Republic of Cyprus given at the hearing of the candidate countries on 19 June 2000	27/06/2000	EN	5332
CHARTE 4390/00	Intervention de M. Nihat AKYOL, Ambassadeur, Délégué permanent de la Mission de Turquie à l'occasion de l'audition des pays candidats du 19 juin 2000	27/06/2000	FR	5339
CHARTE 4391/00	Contribution della Consulta par la Giustizia Europea dei Diritti dell'Uomo (presso il Consiglio dell'Ordine degli Avvocati di Roma) (datata 15/06/00)	27/06/2000	IT	5345
CHARTE 4394/00	Beitrag betreffend den Schutz der Privatsphäre, vorgelegt von Herrn Gerhard Schmid, Mitglied des Europäischen Parlaments (datiert 22.02.00)	30/06/2000	DE	5348
CHARTE 4395/00	Statement by the Slovak Republic given at the hearing of the candidate countries on 19 June 2000	30/06/2000	EN	5351
CHARTE 4396/00	Intervention de M. Jerzy Kranz, Sous-secrétaire d'Etat au ministère des Affaires Etrangères de la République de Pologne à l'occasion de l'audition des pays candidats du 19 juin 2000	03/07/2000	FR	5356
CHARTE 4398/00	Statement of the Executive Committee of the Leuenberg Church Fellowship (LCF) (dated 18/06/2000)	03/07/2000	EN	5363
CHARTE 4403/00	Contribution submitted by the European Study Group (dated 30/06/00)	05/07/2000	EN	5365
CHARTE 4404/00	Contribution submitted by "Groupement Européen des Sociétés d'Auteurs et Compositeurs" (GESAC) (dated 13/06/00)	05/07/2000	EN	5375
CHARTE 4407/00	Stellungnahme vorgelegt von der Armutskonferenz (Österreichisches Netzwerk gegen Armut und Soziale Ausgrenzung) (datiert 03.07.00)	10/07/2000	DE	5378
CHARTE 4409/00	Propuestas de la Sociedad General de Autores y Editores	10/07/2000	ES	5381
CHARTE 4410/00	Contribution submitted by the Liaison Committee of the Non-Governmental Organisations (NGOs) (dated 27/06/00)	11/07/2000	EN	5384
CHARTE 4415/00	Stellungnahme, vorgelegt von IG Medien, zu Artikel 15 (datiert 30.06.00)	13/07/2000	DE	5386
CHARTE 4416/00	Letter submitted by the "Comité des Organisations Professionnelles Agricoles de l'Union Européenne (COPA)" (dated 07/07/00)	13/07/2000	EN	5389
CHARTE 4418/00	Contribution from the boards of the Swedish Association of Local Authorities and the Federation of Swedish County Councils (dated 19/05/00)	18/07/2000	EN	5392

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CHARTE 4419/00	Contribución de D. Isaac Ibáñez García (de fecha 30/06/00)	17/07/2000	ES	5395
CHARTE 4420/00	Contribution du Comité des Régions ainsi qu'une lettre au Président Herzog et la résolution 140/2000 REV 1 (Résolution datée le 06/07/00)	19/07/2000	FR	5426
CHARTE 4424/00	Contribution des organisations suivantes: ATD-Quart Monde, Confédération des Organisations Familiales de l'Union Européenne (COFACE), European Forum for Child Welfare (EFCW), Union nationale interfederale des Ouvres et organismes prives sanitaires et sociaux (UNIOPSS) (datée le 22/06/00)	17/07/2000	FR	5437
CHARTE 4425/1/00 REV 1	Contribution from the Fondation Marangopoulos submitted by Mrs. Alice Yotopoulos-Marangopoulos, President of the Greek Commission on Human Rights	01/09/2000	EN	5440
CHARTE 4426/00	Contribution de Mme Juliette Lelieur, concernant l'article 11 (datée le 04/07/00)	17/07/2000	FR	5445
CHARTE 4431/00	Contribution submitted by the European Women's Lobby	31/08/2000	EN	5450
CHARTE 4432/00	Stellungnahme der Arbeitsgemeinschaft Freier Schulen (AGFS) (datiert 14.07.00)	31/08/2000	DE	5455
CHARTE 4433/00	Beitrag, vorgelegt von der Arbeitsgemeinschaft der öffentlich-rechtlichen Rundfunkanstalten der Bundesrepublik Deutschland (datiert 17.07.00)	31/08/2000	DE	5459
CHARTE 4434/00	Contribution submitted by the Workin Group of the Platform of European Social NGOs (dated 31/05/00)	31/08/2000	EN	5462
CHARTE 4435/00	Beitrag vorgelegt von den Jungen Europäischen Föderalisten (datiert 09.07.00)	31/08/2000	DE	5467
CHARTE 4436/00	Contribution submitted by the International Federation of Human Rights (FIDH) (dated 04/08/00)	31/08/2000	EN	5473
CHARTE 4437/00	Contribution submitted by the European Newspaper Publishers' Association (ENPA)	31/08/2000	EN	5480
CHARTE 4438/00	Contribution de l'Union Internationale de la Propriété Immobiliere (UIPI) (datée le 25/07/00)	01/09/2000	FR	5483
CHARTE 4439/00	Contribution by the European Women's Lobby (EWL), with a press release regarding women excluded from the EU Charter of Fundamental Rights (dated 03/08/00)	01/09/2000	EN	5487
CHARTE 4440/00	Stellungnahme vorgelegt von der Kommission Europa des Deutschen Juristinnenbundes (DJB) (datiert 15.08.00)	01/09/2000	DE	5490
CHARTE 4441/00	Beiträge von der österreichischen Gewerkschaft Bau-Holz	01/09/2000	DE	5496
CHARTE 4442/00	Contribution submitted by the European Children's Network (Euronet)	01/09/2000	EN	5509
CHARTE 4443/00	Contribution du Secrétariat Général d'Action Extérieure du Gouvernement Basque (datée le 27/07/00)	04/09/2000	FR	5513
CHARTE 4444/00	Contribution de l'Association pour le Développement de l'Économie et du Droit de l'Environnement (ADEDE) (datée le 15/08/00)	04/09/2000	FR	5516
CHARTE 4445/00	Contribution submitted by the Association of Finnish Local and Regional Authorities (dated 07/06/00)	04/09/2000	EN	5519
CHARTE 4446/00	Contribution submitted by Amnesty International (dated 22/08/00)	04/09/2000	EN	5523
CHARTE 4447/00	Contribution du Syndicat Libre du Danemark et Mouvement Populaire pour les Syndicats Libres (datée le 17/08/00)	05/09/2000	FR	5528
CHARTE 4448/00	Contribution submitted by the UK Engineering Employers' Federation	04/09/2000	EN	5537
CHARTE 4449/00	Contribution submitted by the European Centre of the International Council of Women (ECICW) (dated 24/08/00)	04/09/2000	EN	5544

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CHARTE 4450/00	Contribution submitted by the European Landowner's Organisation (ELO)	04/09/2000	EN	5553
CHARTE 4451/00	Contribution submitted by the Advisory Council on International Affairs (AIV) (dated 15/05/00)	04/09/2000	EN	5556
CHARTE 4452/00	Statement by Mr Karl Hermann Haack, member of the German Bundestag, regarding CHARTE 4422/00	04/09/2000	EN	5582
CHARTE 4453/00	Contribution submitted by the Union of Professional Engineers in Finland (dated 01/09/00)	05/09/2000	EN	5585
CHARTE 4454/00	Beitrag des Europabüros der deutschen kommunalen Selbstverwaltung	05/09/2000	DE	5589
CHARTE 4455/00	Alternativvorschlag von der IG Eurovision zur Präambel	08/09/2000	DE	5593
CHARTE 4456/00	Beitrag des Deutschen Paritätischen Wohlfahrtsverbandes Gesamtverband (datiert 31.08.00)	07/09/2000	DE	5595
CHARTE 4457/00	Stellungnahme des Österreichischen Gewerkschaftsbundes, zur Grundrechtscharta (datiert 30.08.00)	07/09/2000	DE	5598
CHARTE 4458/00	Contribution submitted by the Permanent Forum of Civil Society (dated 30/08/00)	07/09/2000	EN	5604
CHARTE 4459/00	Contribution de "Stichting Living Together in a New Europe" (datée le 30/08/00)	13/09/2000	FR	5608
CHARTE 4460/00	Contribution submitted by the European Trade Union Confederation and the Platform of European Social NGOs	08/09/2000	EN	5611
CHARTE 4460/00 ADD 1	Contribution de la Confédération européenne des Syndicats et de la Plate-forme des ONGs	18/09/2000	FR	5618
CHARTE 4461/00	Contribution submitted by the European Women's Lobby (EWL)	08/09/2000	EN	5623
CHARTE 4462/00	Stellungnahme der Österreichischen Bundeskammer für Arbeiter und Angestellte (BAK)	08/09/2000	DE	5630
CHARTE 4463/00	Stellungnahme des Deutschen Gewerkschaftsbundes (DGB) (datiert 29.08.00)	08/09/2000	DE	5635
CHARTE 4464/00	Contribution submitted by the Country Landowner's Association of England and Wales	13/09/2000	EN	5642
CHARTE 4465/00	Report submitted by the Committee on Legal Affairs and Human Rights Council (dated 11/09/00)	14/09/2000	EN	5646
CHARTE 4466/00	Drei Beiträge von Herrn Horst Prem, Vizepräsident des Dachverbandes Freier Weltanschauungsgemeinschaften	13/09/2000	DE	5659
CHARTE 4467/00	Contribution de "Lega Italiana Dei Diritti Dell'Animale" (LIDA)	13/09/2000	IT	5664
CHARTE 4468/00	Contribution submitted by the World Union of Catholic Women's Organisations (WUCWO) (dated 05/09/2000)	18/09/2000	EN	5671
CHARTE 4469/00	Statement by the Republic of Hungary given at the audition of the candidate countries on 19 June 2000	13/09/2000	EN	5674
CHARTE 4472/00	Contribution submitted by the Association of Women of Southern Europe (AFEM)	18/09/2000	EN	5679
CHARTE 4474/00	Contribution submitted by the European Round Table of Charitable Social Welfare Associations (ETWelfare)	18/09/2000	EN	5685
CHARTE 4476/00	Stellungnahme der Wirtschaftskammer Österreich zu Dokument CHARTE 4422/00 CONVENT 45 (datiert 15.09.00)	19/09/2000	DE	5688
CHARTE 4478/00	Contribution submitted by the Minority Rights Group International (MRG) (dated 30/08/00)	21/09/2000	EN	5693
CHARTE 4480/00	Contribution submitted by the Young European Federalists (JEF)	25/09/2000	EN	5697
CHARTE 4481/1/00 REV 1	Projet de Résolution sur la Charte de la Commission Parlementaire des Affaires Européennes du Parlement Portugais (daté le 07/09/00)	29/09/2000	FR	5701

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CHARTE 4482/00	Contribution du Congrès des Pouvoirs Locaux et Régionaux de l'Europe (CPLRE) (datée le 15/09/00)	25/09/2000	FR	5705
CHARTE 4483/00	Contribution submitted by the Social, Health and Family Affairs Committee of the Council of Europe (dated 20/09/00)	26/09/2000	EN	5708
CHARTE 4484/00	Contribution submitted by the "Universität der Bundeswehr" (dated 20/09/00)	26/09/2000	EN	5712
CHARTE 4485/00	Contribution submitted by the European Union of House Builders and Developers (UEPC)	26/09/2000	EN	5716
CHARTE 4486/00	Contribution submitted by the Association of Women of Southern Europe (AFEM)	27/09/2000	EN	5718
CHARTE 4488/00	Opinion of the Economic and Social Committee, "Towards an EU Charter of Fundamental Rights"	19/09/2000	EN	5722
CHARTE 4489/00	Contribution submitted by the Federation of German Industries (BDI) and the Confederation of German Employers' Associations	29/09/2000	EN	5733
CHARTE 4490/00	Contribution submitted by the Church and Society Commission of the Conference of European Churches (dated 25/09/00)	29/09/2000	EN	5741
CHARTE 4491/00	Beitrag der Evangelischen Kirche A.B. in Österreich (datiert 12.02.00)	29/09/2000	DE	5745
CHARTE 4492/00	Contribution de la Plate-forme des ONG européennes du secteur social (datée le 23/09/00)	29/09/2000	FR	5748
CHARTE 4493/00	Contribution du Carrefour pour une Europe civique et sociale (CAFECS)	29/09/2000	FR	5751
CHARTE 4494/00	Beitrag von Herrn Dr. Marten Brauer (datiert 25.09.00)	03/10/2000	DE	5753
CHARTE 4495/00	Contribution submitted by the Quaker Council for European Affairs (dated 23/09/00)	03/10/2000	EN	5756
CHARTE 4496/00	Motions submitted by the Non-Governmental Organisations (NGOs) enjoying consultative status with the Council of Europe	04/10/2000	EN	5759
CHARTE 4497/00	Observations submitted of the British Medical Association (BMA)	10/03/2000	EN	5762
CHARTE 4498/00	Position du Carrefour pour une Europe civique et sociale (CAFECS): "Un point de départ" (datée le 29/09/00)	04/10/2000	FR	5766
CHARTE 4499/00	Report submitted by the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe (dated 27/09/00)	04/10/2000	EN	5770
CHARTE 4500/00	Texts adopted by the Parliamentary Assembly of the Council of Europe the 29 September 2000	04/10/2000	EN	5782
CHARTE 4951/00	European Parliament Resolution on the European Union Charter of Fundamental Rights	04/10/2000	EN	5789
CHARTE 4954/00	Contribution submitted by the European Council on Environmental Law (adopted 22/09/00, transmitted to Convention 26/09/00)	17/10/2000	EN	5791
CHARTE 4956/00	Commission Communication COM(2000) 644 final "On the Legal Nature of the Charter of Fundamental Rights of the European Union" (dated 11/10/00)	18/10/2000	EN	5794

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None	Liste des nominations avec addresses – État au 15 décembre 1999	15/12/1999	FR	5804
None	Liste des nominations avec addresses – État au 3 janvier 2000	03/01/2000	FR	5810
None	Liste des nominations – État au 9 février 2000	09/02/2000	FR	5816
None	Liste des nominations – État au 16 février 2000	16/02/2000	FR	5819
None	Liste des nominations – État au 9 mars 2000	09/03/2000	FR	5822
CHARTE 4158/00	Note d'information: Projet de Charte des droits fondamentaux de l'Union européenne - Liste des nominations des membres de la Convention	15/03/2000	MULTI	5825
None	Liste des nominations – État au 23 mars 2000	23/03/2000	FR	6007
None	Liste des nominations – État au 24 mars 2000	24/03/2000	FR	6010
None	Liste des nominations – État au 5 avril 2000	05/04/2000	FR	6013
None	Liste des nominations – État au 19 avril 2000	19/04/2000	FR	6016
None	Liste des nominations – État au 29 mai 2000	29/05/2000	FR	6019
None	Liste des nominations – État au 7 juin 2000	07/06/2000	FR	6022

b. Agendas and Timetables of the Charter Convention 6025

None	Programmation des travaux	01/02/2000	EN	6026
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SN 2225/00	Work programme for the Convention Update	24/02/2000	EN	6030
SN 2785/00	Timetable and work programme for the Convention Updated on 12 May 2000	15/05/2000	EN	6032
SN 3295/00	Timetable and work programme for the Convention Updated as at 20 June 2000	21/06/2000	EN	6034
SN 5133/1/99/ REV 1	Draft Work Programme	13/12/1999	EN	6035
SN 1169/00	Agenda for the meeting of the Body on 1 February 2000	18/01/2000	EN	6037
SN 1538/00	Agenda for the meeting on 24-25 February 2000	09/02/2000	EN	6038
SN 1745/00	Agenda for the meeting of the Convention on 02-03/03/00	22/02/2000	EN	6040
SN 1949/00	Agenda for the meeting of the Convention on 20-21/03/00	09/03/2000	EN	6041
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SN 2595/00	Agenda for the meeting of the Convention on 03-04/05/00	26/04/2000	EN	6047
SN 2665/00	Agenda for the meeting of the Convention on 11-12/05/00	04/05/2000	EN	6048
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SN 3294/00	Agenda for the meeting of the Convention on 28-30/06/00	21/06/2000	EN	6054
SN 3501/00	Agenda for the meeting of the Convention on 10-11/07/00	04/07/2000	EN	6055
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SN 3995/00	Agenda for the meeting of the Convention on 11-13/09/00	31/08/2000	EN	6059
SN 4236/1/00 REV 1	Agenda for the meeting of the Convention on 25-26/09/00	18/09/2000	EN	6061
SN 4291/00	Letter from President Herzog to the Members of the Convention	20/09/2000	EN	6063
SN 4376/00	Agenda for the meeting of the Convention on 02/10/00	27/09/2000	EN	6065

c. European Parliament Delegation Documents relating to the Charter Convention

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DE/OJ/001	EP Delegates meeting agenda – 24 November 1999	22/11/1999	EN/FR	6067
PE 168.636	EP Delegates meeting minutes – 24 November 1999	03/12/1999	EN	6068
PE 232.397	Duff et Voggenhuber: Document de travail sur l'élaboration d'une charte des droits fondamentaux de l'Union européenne	07/12/1999	FR	6069
PE 168.628	EP Delegates meeting agenda – 14 December 1999	30/11/1999	EN/FR	6076
PE 168.656	EP Delegates meeting minutes – 14 December 1999	14/12/1999	EN	6077
PE 288.132	EP Delegates meeting minutes – 8 January 2000	18/01/1999	EN	6082
PE 288.131	EP Delegates meeting agenda – 26 January 2000	19/01/2000	EN	6087
PE 288.134	EP Delegates meeting minutes – 26 January 2000	31/01/2000	EN	6088
PE 288.130	EP Delegates meeting agenda – 15 February 2000	03/02/2000	EN	6092
PE 288.590	EP Delegates meeting minutes – 15 February 2000	02/03/2000	EN	6093
PE 232.648	Committee on Constitutional Affairs: Report on the drafting of a European Union Charter of Fundamental Rights	03/03/2000	EN	6097
PE 288.595	EP Delegates meeting minutes – 14 March 2000	14/03/2000	EN	6148
PE 288.596	EP Delegates: Résumé Succinct des débats – 14 mars 2000	14/03/2000	FR	6150
PE 288.597	EP Delegates meeting Orde du Jour – 11 avril 2000	27/03/2000	FR	6151

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PE 290.393	EP Delegates meeting minutes – 11 April 2000	11/04/2000	EN	6152
PE 290.394	EP Delegates: Résumé Succinct des débats – 11 avril 2000	02/05/2000	FR	6155
PE 290.395	EP Delegates meeting agenda – 16 May 2000	02/05/2000	EN	6156
PE 290.397	EP Delegates meeting minutes – 17 May 2000	17/05/2000	EN	6157
PE 290.396	EP Delegates meeting agenda – 8 June 2000	26/05/2000	EN	6160
PE 290.399	EP Delegates meeting minutes – 8 June 2000	08/06/2000	EN	6161
PE 290.400	EP Delegates: Summary of discussions – 8 June 2000	21/06/2000	EN	6164
PE 290.401	EP Delegates meeting agenda – 4 July 2000	27/06/2000	EN	6166
PE 290.402	EP Delegates meeting minutes – 4 July 2000	04/07/2000	EN	6167
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[2001] OJ C223/74	EP Decision of 14 November 2000 approving the draft Charter of Fundamental Rights of the European Union [Extract]	14/11/2000	EN	6192

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8059/00	Fifth informal working-party meeting of the Convention: 27-28 April 2000	02/05/2000	EN	6202
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11561/00	Sixth plenary meeting of the Convention: 25-26 September 2000	27/09/2000	EN	6214
11824/00	Seventh plenary meeting of the Convention: 2 October 2000	02/10/2000	EN	6215
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IV. Key Post-Charter Convention Documents **6217**

1. Selected travaux préparatoires from the 2002-2003 Convention on the Future of Europe and 2003-2004 Inter-Governmental Conference ('IGC') 6218

a. The Mandate of the Convention on the Future of Europe 6219

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CONV 14/02	Report on plenary of 21-22 March 2002	25/03/2002	EN	6243
CONV 40/02	Report on plenary of 15-16 April 2002	25/04/2002	EN	6254
None	Summary of Conclusions: Meeting of the Praesidium – Brussels, 25 April 2002	06/05/2002	EN	6266
None; annex: SN 2252/02	Summary of Conclusions: Meeting of the Praesidium – Brussels, 8 May 2002	08/05/2002	EN/FR	6269
CONV 52/02	Praesidium Note: Working Groups	17/05/2002	EN	6274
CONV 72/02	Note from Vitorino: Mandate of the Working Group on the Charter	31/05/2002	EN	6278
CONV 77/1/02 REV 1	Praesidium Note: Composition of the Working Groups	14/06/2002	EN	6283
CONV 124/02	Secretariat Note: Working Groups	19/06/2002	EN	6290
CONV 121/02, WG II 2	Agenda for meeting of the Working Group on Incorporation of the Charter/Accession to the ECHR on Tuesday 25 June 2002	19/06/2002	EN	6294
CONV 164/02, WG II 4	Summary of meeting on 25 June 2002	28/06/2002	EN	6295
CONV 172/02, WG II 5	Agenda for meeting of the Working Group on Incorporation of the Charter/Accession to the ECHR	03/07/2002	EN	6298
None	Summary of Conclusions: Meeting of the Praesidium – Brussels, 10 July 2002	12/07/2002	EN	6299
CONV 196/02, WG II 6	Provisional Agenda for the Meeting of the Working Group on Incorporation of the Charter/Accession to the ECHR on Tuesday 23 July 2002	15/07/2002	EN	6302
CONV 203/02, WG II 7	Summary of the meeting held on 12 July 2002 chaired by Commissioner António Vitorino	18/07/2002	EN	6304
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WG II WD 13	Interventions of Schoo, Piris and Petite at 23/07/02 meeting	05/09/2002	EN	6318

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CONV 244/02, WG II 9	Agenda for the meeting of the Working Group on Incorporation of the Charter/Accession to the ECHR on Tuesday 17 September 2002	09/09/2002	EN	6369
None	Summary of Conclusions: Meeting of the Praesidium – 11 September 2002	13/09/2002	EN	6370
CONV 163/02, WG II 3	Secretariat Note: Timetable of meetings	18/09/2002	EN	6373
WG II WD 19	Hearing of Judge Skouris on 17/09/02	27/09/2002	EN	6374
CONV 295/02, WG II 10	Summary of the meeting held on 17/09/02 chaired by Commissioner António Vitorino	26/09/2002	EN	6383
CONV 306/02, WG II 11	Agenda for the meeting of Working Group II on 4 October 2002 14h30 - 18h30	30/09/2002	EN	6393
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CONV 348/02, WG II 13	Agenda for the meeting of Working Group II on 21 October 2002 9h30 to 13h00	16/10/2002	EN	6395
CONV 350/02, WG II 14	Summary of the meeting held on Friday 4 October 2002 chaired by Commissioner António Vitorino	17/10/2002	EN	6396
CONV 351/02, WG II 15	Summary of the meeting on Monday 7 October 2002 chaired by Commissioner António Vitorino	17/10/2002	EN	6399
CONV 360/02, WG II 17	Summary of the meeting of Working Group II held on 21 October 2002	23/10/2002	EN	6402
CONV 378/02	Summary report of the plenary session – Brussels, 28 and 29 October 2002	31/10/2002	EN	6403
None	Verbatim minutes from the session on 28 October 2002: The Charter of Fundamental Rights [Extract]	28/10/2002	MULTI	6423
None	Verbatim minutes from the session on 29 October 2002: The Charter of Fundamental Rights	29/10/2002	MULTI	6431
CONV 601/03	Summary report on the plenary session – Brussels, 27 and 28 February 2003 [Extract]	11/03/2003	EN	6466
None	Verbatim minutes from the session on 27 February 2003: Debate on Draft Articles 1-3; Debate on Draft Articles 5-7	27/02/2003	MULTI	6469
CONV 674/03	Summary report of the additional plenary session on amendments relating to articles 1 to 7 of the Draft Constitution, Brussels, 26 March 2003	08/04/2003	EN	6512
None	Summary of Proceedings: Meeting of the Praesidium – Brussels, 21-23 May 2003	26/05/2003	EN	6526
CONV 783/03	Summary report on the plenary session – Brussels, 30 and 31 May 2003 [Extracts]	16/06/2003	EN	6529
CONV 814/03	Summary report of the Plenary Session – Brussels, 11 and 13 June 2003	19/06/2003	EN	6533

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6540

CONV 116/02, WG II 1	Secretariat Note: Modalities and consequences of incorporation into the Treaties of the Charter of Fundamental Rights and accession of the Community/Union to the ECHR	18/06/2002	EN	6541
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Document Reference	Title	Date	Language	Page
WG II WD 1	Contribution from Mr. Bobby McDonagh on incorporation and accession	24/06/2002	EN	6567
CONV 157/02	Note submitted by Jacques Santer: Contribution from the Secretary General of the Council of Europe	25/06/2002	EN	6570
WG II WD 2	Contribution from Ms. Elena Paciotti (MEP)	28/06/2002	EN	6579
WG II WD 3	Paper by Mr. António Vitorino on the relationship between the Charter and the Union's competencies	05/07/2002	EN	6581
WG II WD 4	Working document by Baroness Scotland on the "missing" horizontal article in the Charter of Rights	09/07/2002	EN	6585
WG II WD 5	Working document by Mr. Vytenis Povilas Andriukaitis on the Legal status of the Charter	09/07/2002	EN	6591
WG II WD 6	Working document by Ms. Elena Paciotti on answers to questions in chapter II of CONV 116/02	12/07/2002	EN	6594
WG II WD 7	Working document by Mr. Vytenis Povilas Andriukaitis on answers to some questions raised at the first meeting of the WG	12/07/2002	EN	6634
WG II WD 8	Working Document from Mr António Vitorino circulating a Council of Europe study on technical and legal issues of accession	12/07/2002	EN	6639
CONV 193/02	Note from Mr van Linden: Parliamentary Assembly Resolution 1290 (2002)	17/07/2002	EN	6676
WG II WD 9	Working Document from Mr. António Vitorino on possible drafting adjustments to arts 51(2) and 52(2) and on "replication"	18/07/2002	EN	6694
WG II WD 10	Working Document by Mr. Alexander Arabadjiev on "replication"	22/07/2002	EN	6699
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WG II WD 12	Working document by Réne van der Linden on the Charter/ECHR relationship	25/07/2002	EN	6703
WG II WD 14	Note by Neil MacCormick on clarifying horizontal articles	04/09/2002	EN	6705
WG II WD 15	Proposals by Mr. Ingvar Svensson and Mrs. Lena Hjelm-Wallén on accession	12/09/2002	EN	6707
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WG II WD 17	Working Document by Professor Jürgen Meyer on enforceability of Charter and judicial remedies	16/09/2002	EN	6721
WG II WD 18	Working Document by Mr Esko Helle, supported by Messers Andriukaitis and MacCormick, on accession to the ECHR	16/09/2002	EN	6724
WG II WD 20	Working Document by M. Ben Fayot circulating a note by Sir Francis Jacobs, Advocate General, on effective judicial remedies	27/09/2002	FR/EN	6728
WG II WD 21	Working Document from Mr. António Vitorino on effective judicial remedies and access of individuals to the ECJ	01/10/2002	EN	6738
WG II WD 22	Working Document de Mme Elena Paciotti qui contient un projet de Constitution de l'Union basé sur les résolutions du Parlement européen	03/10/2002	FR	6745
WG II WD 23	Compromise proposals from António Vitorino on drafting adjustments in the horizontal articles	04/10/2002	EN	6801
WG II WD 24	Comments by Mr. Vytenis Povilas Andriukaitis on horizontal articles	09/10/2002	EN	6806
WG II WD 25	Draft final report	14/10/2002	EN	6808
WG II WD 26 REV 1	Document de travail 26: commentaires au projet de rapport final du groupe (WD 025)	18/10/2002	MULTI	6826

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CONV 354/02, WG II 16	Final report of Working Group II	22/10/2002	EN	6870
None	Note summarising report	29/10/2002	EN	6887
CONV 368/02	Contribution from Mr Iñigo Méndez de Vigo, Mr Klaus Hänsch and Mr Andrew Duff: European Parliament Resolution on the impact of the Charter and its future status	25/10/2002	EN	6888
CONV 369/02	First draft Constitutional Treaty [Extract]	28/10/2002	EN	6896
CONV 495/03	Contribution from Mr Erwin Teufel: Freiburg Draft of the European Constitutional Treaty [Extracts]	20/01/2003	EN	6906
CONV 528/02	Praesidium Note: Draft of Articles 1 to 16 of the Constitutional Treaty [Extracts]	06/02/2003	EN	6914
CONV 567/03	Contribution from Mr David Heathcoat-Amory: “The EU Convention, the Council of Europe and the Future of Europe”	19/02/2003	EN	6921
CONV 574/1/03 REV 1	Analysis of Reactions to draft Articles 1 to 16 of the Constitutional Treaty [Extracts: arts 2 and 5]	26/02/2003	EN	6926
CONV 607/03	Letter from several members seeking incorporation of the Charter in the Constitutional Treaty	11/03/2003	EN	6944
CONV 659/03	Letter from several members on incorporation of the Charter in the Constitutional Treaty	14/04/2003	EN	6947
CONV 703/03	Contribution by Mr Giuliano Amato, Vice President of the Convention, attaching a paper by the European University Institute [Extracts]	28/04/2003	EN	6950
CONV 736/03	Letter from Mr Peter Hain concerning the Charter	13/05/2003	EN	6989
CONV 726/03	Draft text of Part II with comments	26/05/2003	EN	6991
CONV 724/03	Draft Constitution, Volume I – Revised text of Part One	26/05/2003	EN	7011
WG II WD 27	Consultation on the updated and consolidated version of the Explanations	03/06/2003	EN	7020
CONV 779/03	Reactions to the draft Articles of the revised text of Part One (Volume I) – Analysis [Extract]	04/06/2003	EN	7081
None	All amendments to art.I-2	04/06/2003	MULTI	7084
None	All amendments to art.I-5	04/06/2003	MULTI	7186
WG II WD 28	Reactions of Working Group members to WD II 27 (consolidated and updated Explanations on the Charter)	12/06/2003	MULTI	7272
CONV 797/1/03 REV 1	Text of Part I and Part II of the Constitution [Extracts]	12/06/2003	EN	7288
CONV 811/03	Praesidium Note: Revised texts [Extracts]	12/06/2003	EN	7307
CONV 828/03	Updated Explanations relating to the Charter of Fundamental Rights	09/07/2003	EN	7310
CONV 850/03	Draft Treaty Establishing a Constitution for Europe	18/07/2003	EN	7362
CONV 828/1/03 REV 1	Updated Explanations relating to the Charter of Fundamental Rights	18/07/2003	EN	7383

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CONV 112/02	Digest of contributions to the forum ahead of the plenary session on civil society 24-25 June 2002	17/06/2002	EN	7436
CONV 112/02 ADD 1	Addendum: List of Contributions to the Forum		EN	7445

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CONV 120/02	Secretariat Note: Reports from the meetings of the eight civil society contact groups, 10-18 June 2002	20/06/2002	EN	7451
CONV 167/02	24-25 June 2002 Plenary: minutes	04/07/2002	EN	7473
None	Verbatim minutes from the session on 24 June 2002	24/06/2002	MULTI	7490
None	Verbatim minutes from the session on 25 June 2002	25/06/2002	MULTI	7537

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12656/03	Secretariat Note attaching the European Parliament's Resolution on the draft Treaty establishing a Convention [sic] for Europe and on the convening of the IGC	26/09/2003	EN	7575
CIG 4/03	Secretariat comments on the draft Treaty establishing a Constitution for Europe – Basic document [Extracts]	06/10/2003	EN	7585
CIG 5/03	Presidency Note: Indicative Timetable	06/10/2003	EN	7645
CIG 37/03	Presidency Note: Non-institutional issues raised by Delegations [Extracts]	24/10/2003	EN	7647
CIG 43/03	Presidency Note: new list of issues to be dealt with by the Legal Experts group (new mandate)	04/11/2003	EN	7651
CIG 50/03	Draft Treaty establishing a Constitution for Europe (following editorial and legal adjustments by the Working Party of IGC Legal Experts) [Extracts]	04/11/2003	EN	7656
CIG 51/03	Presentation of the outcome of proceedings of the Working Party of IGC Legal Experts – CIG 50/03	25/11/2003	EN	7682
CIG 52/1/03 REV 1	Presidency Note: Naples Ministerial Conclave: Presidency proposal	25/11/2003	EN	7689
CIG 52/03 ADD 1	Presidency Note: Naples Ministerial Conclave: Presidency proposal texts	25/11/2003	EN	7702
CIG 60/03	Presidency Note: Presidency proposal for the IGC of 12-13 December 2003	09/12/2003	EN	7706
CIG 60/03 ADD 1	Presidency Note: Presidency proposal for the IGC of 12-13 December 2003: ADDENDUM 1 [Extracts]	09/12/2003	EN	7709
CIG 60/03 ADD 2	Presidency Note: Presidency proposal for the IGC of 12-13 December 2003: ADDENDUM 2	11/12/2003	EN	7713
CIG 64/04	European Parliament Resolution on the progress report on the IGC, adopted at the 3-4 December 2003 session	14/01/2004	EN	7717
CIG 73/04	Presidency working document for the meeting of Focal Points on 4 May 2004 in Dublin [Extracts]	29/04/2004	EN	7720
CIG 75/04	Presidency Note: Discussion at Ministerial Meeting, 17/18 May 2004 [Extracts]	13/05/2004	EN	7726
CIG 76/04	Presidency Note: Presidency proposals following the meeting of “focal points” on 4 May 2004 [Extracts]	13/05/2004	EN	7730
CIG 79/04	Presidency Note: Revised version of CIG 76/04 following the Ministerial meeting on 24 May 2004 [Extracts]	10/06/2004	EN	7734
CIG 80/04	Presidency Note: Ministerial meeting, Luxembourg, 14 June 2004 [Extracts]	12/06/2004	EN	7738
CIG 81/04	Presidency Note: Overall compromise texts for the meeting at Brussels, 17/18 June 2004 [Extracts]	16/06/2004	EN	7742
CIG 82/04	Presidency Note: Meeting of Heads of State or Government, Brussels, 17/18 June 2004 [Extracts]	16/06/2004	EN	7746
CIG 83/04	Presidency Note: Proposed amendments to CIG 81/04 following discussions on Thursday 17 June 2004 [Extracts]	18/06/2004	EN	7749
CIG 84/04	Presidency Note: Proposed amendments to CIG 81/04 following discussions on Thursday 17 and Friday 18 June 2004 [Extracts]	18/06/2004	EN	7751
CIG 85/04	Presidency Note: outcome of the Intergovernmental Conference [Extracts]	18/06/2004	EN	7753

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Document Reference	Title	Date	Language	Page
SN 177/05	Declaration by the Heads of State or Government of the Member States of the European Union on the Ratification of the Treaty Establishing a Constitution for Europe (European Council, 16 and 17 June 2005)	18/06/2005	EN	7757
10633/01/06 REV 1	Presidency Conclusions – Brussels European Council, 15/16 June 2006 [Extract]	17/07/2006	EN	7759
None	Berlin Declaration – Declaration on the occasion of the 50th anniversary of the signature of the Treaties of Rome	25/03/2007	EN	7764
10659/07	Presidency Report – Pursuing the treaty reform process	14/06/2007	EN	7766
11177/1/07 REV 1	Presidency Conclusions – Brussels European Council, 21/22 June 2007 [Extracts]	20/07/2007	EN	7772
CIG 2/07	Draft Treaty Amending the Treaty on European Union and the Treaty Establishing the European Community [Extracts]	23/07/2007	EN	7783
CIG 3/07	Note from the Presidency of the IGC: Draft Declarations	23/07/2007	EN	7787
CIG 2/1/07 REV 1	Draft Treaty Amending the Treaty on European Union and the Treaty Establishing the European Community [Extracts]	05/10/2007	EN	7833

b. The Irish Protocol, 2009-2012 7837

17271/1/08 REV 1	Presidency Conclusions – Brussels European Council, 11/12 December 2008 [Extracts]	13/02/2009	EN	7838
11225/2/09 REV 2	Presidency Conclusions – Brussels European Council, 18/19 June 2009 [Extracts]	10/07/2009	EN	7844
2013/106/EU	European Council Decision of 11 May 2012 on the examination by a conference of the representatives of the governments of the Member States on the Irish Government's proposed amendment to the Treaties in the form of a protocol on the concerns of the Irish people on the Treaty of Lisbon	11/05/2012 (Entered into force)	EN	7854

c. The Withdrawn Proposal for a Czech Protocol 7856

EUCO 132/13	Council Recommendation for a European Council Decision in respect of the Czech Republic's proposed amendment to the Treaties in the form of a protocol on the application of the Charter to the Czech Republic	18/06/2013	EN	7857
8383/14	Letter from M. Povejsil to T. Sotirosopulos: Discontinuation of the procedure for an amendment to the Treaties	31/03/2014	EN	7868
8385/14	Withdrawal of the Recommendation for a European Council Decision in respect of the Czech Republic's proposed amendment to the Treaties in the form of a protocol on the application of the Charter to the Czech Republic	08/04/2014	EN	7870

Annex: Sources of the Collected Documents 7873

I. The Final Versions of the Charter of Fundamental Rights

I.1. The First Version: the 2000 Charter of Fundamental Rights

Editors' note to 2000 OJ C364/01,
**Charter of Fundamental Rights
of the European Union:**

The Charter Explanations were not published alongside the Charter itself in 2000. CHARTE 4473/00 was the final version of the Explanations produced by the Secretariat and Praesidium in 2000.

CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

(2000/C 364/01)

PROCLAMACIÓN SOLEMNE

HØJTIDELIG PROKLAMATION

FEIERLICHE PROKLAMATION

ΠΑΝΗΓΥΡΙΚΗ ΔΙΑΚΗΡΥΞΗ

SOLEMN PROCLAMATION

PROCLAMATION SOLENNELLE

FORÓGRA SOLLÚNTA

PROCLAMAZIONE SOLENNE

PLECHTIGE AFKONDIGING

PROCLAMAÇÃO SOLENE

JUHLALLINEN JULISTUS

HÖGTIDLIG PROKLAMATION

18.12.2000

EN

Official Journal of the European Communities

C 364/5

El Parlamento Europeo, el Consejo y la Comisión proclaman solemnemente en tanto que Carta de los Derechos Fundamentales de la Unión Europea el texto que figura a continuación.

Europa-Parlamentet, Rådet og Kommissionen proklamerer højtideligt den tekst, der følger nedenfor, som Den Europæiske Unions charter om grundlæggende rettigheder.

Das Europäische Parlament, der Rat und die Kommission proklamieren feierlich den nachstehenden Text als Charta der Grundrechte der Europäischen Union.

Το Ευρωπαϊκό Κοινοβούλιο, το Συμβούλιο και η Επιτροπή διακηρύσσουν πανηγυρικά, ως Χάρτη Θεμελιωδών Δικαιωμάτων της Ευρωπαϊκής Ένωσης, το κείμενο που ακολουθεί.

The European Parliament, the Council and the Commission solemnly proclaim the text below as the Charter of fundamental rights of the European Union.

Le Parlement européen, le Conseil et la Commission proclament solennellement en tant que Charte des droits fondamentaux de l'Union européenne le texte repris ci-après.

Forógraíonn Parlaimint na hEorpa, an Chomhairle agus an Coimisiún go sollúnta an téacs thíos mar an Chairt um Chearta Bunúsacha den Aontas Eorpach.

Il Parlamento europeo, il Consiglio e la Commissione proclamano solennemente quale Carta dei diritti fondamentali dell'Unione europea il testo riportato in appresso.

Het Europees Parlement, de Raad en de Commissie kondigen plechtig als Handvest van de grondrechten van de Europese Unie de hierna opgenomen tekst af.

O Parlamento Europeu, o Conselho e a Comissão proclamam solenemente, enquanto Carta dos Direitos Fundamentais da União Europeia, o texto a seguir transcrito.

Euroopan parlamentti, neuvosto ja komissio juhllallisesti julistavat jäljempänä esitetyn tekstin Euroopan unionin perusoikeuskirjaksi.

Europaparlamentet, rådet och kommissionen tillkännager högtidligt denna text såsom stadga om de grundläggande rättigheterna i Europeiska unionen.

Hecho en Niza, el siete de diciembre del año dos mil.

Udfærdiget i Nice den syvende december to tusind.

Geschehen zu Nizza am siebten Dezember zweitausend.

Έγινε στη Νίκαια, στις επτά Δεκεμβρίου δύο χιλιάδες.

Done at Nice on the seventh day of December in the year two thousand.

Fait à Nice, le sept décembre deux mille.

Arna dhéanamh i Nice, an seachtú lá de Nollaig sa bhliain dhá mhíle.

Fatto a Nizza, addì sette dicembre duemila.

Gedaan te Nice, de zevende december tweeduizend.

Feito em Nice, em sete de Dezembro de dois mil.

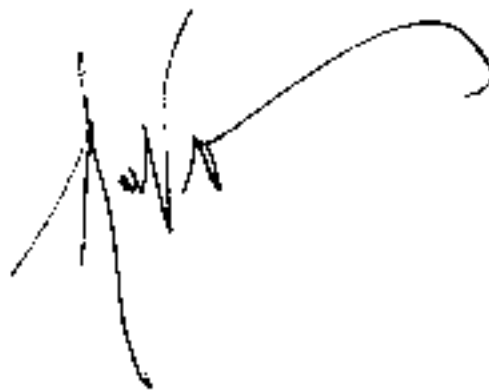
Tehty Nizzassa seitsemäntenä päivänä joulukuuta vuonna kaksituhatta.

Som skedde i Nice den sjunde december tjugohundra.

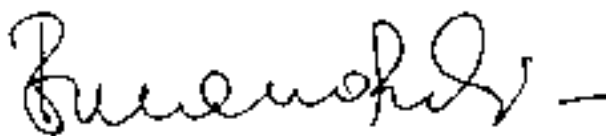
Por el Parlamento Europeo
 For Europa-Parlamentet
 Für das Europäische Parlament
 Για το Ευρωπαϊκό Κοινοβούλιο
 For the European Parliament
 Pour le Parlement européen
 Thar ceann Pharlaimint na hEorpa
 Per il Parlamento europeo
 Voor het Europees Parlement
 Pelo Parlamento Europeu
 Euroopan parlamentin puolesta
 För Europaparlamentet



Por el Consejo de la Unión Europea
 For Rådet for Den Europæiske Union
 Für den Rat der Europäischen Union
 Για το Συμβούλιο της Ευρωπαϊκής Ένωσης
 For the Council of the European Union
 Pour le Conseil de l'Union européenne
 Thar ceann Chomhairle an Aontais Eorpaigh
 Per il Consiglio dell'Unione europea
 Voor de Raad van de Europese Unie
 Pelo Conselho da União Europeia
 Euroopan unionin neuvoston puolesta
 För Europeiska unionens råd



Por la Comisión Europea
 For Europa-kommissionen
 Für die Europäische Kommission
 Για την Ευρωπαϊκή Επιτροπή
 For the European Commission
 Pour la Commission européenne
 Thar ceann an Choimisiúin Eorpaigh
 Per la Commissione europea
 Voor de Europese Commissie
 Pela Comissão Europeia
 Euroopan komission puolesta
 För Europeiska kommissionen



PREAMBLE

The peoples of Europe, in creating an ever closer union among them, are resolved to share a peaceful future based on common values.

Conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law. It places the individual at the heart of its activities, by establishing the citizenship of the Union and by creating an area of freedom, security and justice.

The Union contributes to the preservation and to the development of these common values while respecting the diversity of the cultures and traditions of the peoples of Europe as well as the national identities of the Member States and the organisation of their public authorities at national, regional and local levels; it seeks to promote balanced and sustainable development and ensures free movement of persons, goods, services and capital, and the freedom of establishment.

To this end, it is necessary to strengthen the protection of fundamental rights in the light of changes in society, social progress and scientific and technological developments by making those rights more visible in a Charter.

This Charter reaffirms, with due regard for the powers and tasks of the Community and the Union and the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the Treaty on European Union, the Community Treaties, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Community and by the Council of Europe and the case-law of the Court of Justice of the European Communities and of the European Court of Human Rights.

Enjoyment of these rights entails responsibilities and duties with regard to other persons, to the human community and to future generations.

The Union therefore recognises the rights, freedoms and principles set out hereafter.

CHAPTER I

DIGNITY*Article 1***Human dignity**

Human dignity is inviolable. It must be respected and protected.

*Article 2***Right to life**

1. Everyone has the right to life.
2. No one shall be condemned to the death penalty, or executed.

*Article 3***Right to the integrity of the person**

1. Everyone has the right to respect for his or her physical and mental integrity.
2. In the fields of medicine and biology, the following must be respected in particular:
 - the free and informed consent of the person concerned, according to the procedures laid down by law,
 - the prohibition of eugenic practices, in particular those aiming at the selection of persons,
 - the prohibition on making the human body and its parts as such a source of financial gain,
 - the prohibition of the reproductive cloning of human beings.

*Article 4***Prohibition of torture and inhuman or degrading treatment or punishment**

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

*Article 5***Prohibition of slavery and forced labour**

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. Trafficking in human beings is prohibited.

CHAPTER II

FREEDOMS*Article 6***Right to liberty and security**

Everyone has the right to liberty and security of person.

*Article 7***Respect for private and family life**

Everyone has the right to respect for his or her private and family life, home and communications.

*Article 8***Protection of personal data**

1. Everyone has the right to the protection of personal data concerning him or her.
2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.
3. Compliance with these rules shall be subject to control by an independent authority.

*Article 9***Right to marry and right to found a family**

The right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights.

*Article 10***Freedom of thought, conscience and religion**

1. Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.
2. The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right.

*Article 11***Freedom of expression and information**

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.
2. The freedom and pluralism of the media shall be respected.

*Article 12***Freedom of assembly and of association**

1. Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests.
2. Political parties at Union level contribute to expressing the political will of the citizens of the Union.

*Article 13***Freedom of the arts and sciences**

The arts and scientific research shall be free of constraint. Academic freedom shall be respected.

*Article 14***Right to education**

1. Everyone has the right to education and to have access to vocational and continuing training.
2. This right includes the possibility to receive free compulsory education.
3. The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right.

*Article 15***Freedom to choose an occupation and right to engage in work**

1. Everyone has the right to engage in work and to pursue a freely chosen or accepted occupation.
2. Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State.

3. Nationals of third countries who are authorised to work in the territories of the Member States are entitled to working conditions equivalent to those of citizens of the Union.

Article 16

Freedom to conduct a business

The freedom to conduct a business in accordance with Community law and national laws and practices is recognised.

Article 17

Right to property

1. Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law in so far as is necessary for the general interest.

2. Intellectual property shall be protected.

Article 18

Right to asylum

The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty establishing the European Community.

Article 19

Protection in the event of removal, expulsion or extradition

1. Collective expulsions are prohibited.

2. No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.

CHAPTER III

EQUALITY

*Article 20***Equality before the law**

Everyone is equal before the law.

*Article 21***Non-discrimination**

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.
2. Within the scope of application of the Treaty establishing the European Community and of the Treaty on European Union, and without prejudice to the special provisions of those Treaties, any discrimination on grounds of nationality shall be prohibited.

*Article 22***Cultural, religious and linguistic diversity**

The Union shall respect cultural, religious and linguistic diversity.

*Article 23***Equality between men and women**

Equality between men and women must be ensured in all areas, including employment, work and pay.

The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.

*Article 24***The rights of the child**

1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.
2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.

3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.

Article 25

The rights of the elderly

The Union recognises and respects the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life.

Article 26

Integration of persons with disabilities

The Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.

CHAPTER IV

SOLIDARITY*Article 27***Workers' right to information and consultation within the undertaking**

Workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions provided for by Community law and national laws and practices.

*Article 28***Right of collective bargaining and action**

Workers and employers, or their respective organisations, have, in accordance with Community law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action.

*Article 29***Right of access to placement services**

Everyone has the right of access to a free placement service.

*Article 30***Protection in the event of unjustified dismissal**

Every worker has the right to protection against unjustified dismissal, in accordance with Community law and national laws and practices.

*Article 31***Fair and just working conditions**

1. Every worker has the right to working conditions which respect his or her health, safety and dignity.
2. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

*Article 32***Prohibition of child labour and protection of young people at work**

The employment of children is prohibited. The minimum age of admission to employment may not be lower than the minimum school-leaving age, without prejudice to such rules as may be more favourable to young people and except for limited derogations.

Young people admitted to work must have working conditions appropriate to their age and be protected against economic exploitation and any work likely to harm their safety, health or physical, mental, moral or social development or to interfere with their education.

*Article 33***Family and professional life**

1. The family shall enjoy legal, economic and social protection.
2. To reconcile family and professional life, everyone shall have the right to protection from dismissal for a reason connected with maternity and the right to paid maternity leave and to parental leave following the birth or adoption of a child.

*Article 34***Social security and social assistance**

1. The Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by Community law and national laws and practices.
2. Everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with Community law and national laws and practices.
3. In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Community law and national laws and practices.

*Article 35***Health care**

Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities.

*Article 36***Access to services of general economic interest**

The Union recognises and respects access to services of general economic interest as provided for in national laws and practices, in accordance with the Treaty establishing the European Community, in order to promote the social and territorial cohesion of the Union.

*Article 37***Environmental protection**

A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.

*Article 38***Consumer protection**

Union policies shall ensure a high level of consumer protection.

CHAPTER V
CITIZENS' RIGHTS

Article 39

Right to vote and to stand as a candidate at elections to the European Parliament

1. Every citizen of the Union has the right to vote and to stand as a candidate at elections to the European Parliament in the Member State in which he or she resides, under the same conditions as nationals of that State.
2. Members of the European Parliament shall be elected by direct universal suffrage in a free and secret ballot.

Article 40

Right to vote and to stand as a candidate at municipal elections

Every citizen of the Union has the right to vote and to stand as a candidate at municipal elections in the Member State in which he or she resides under the same conditions as nationals of that State.

Article 41

Right to good administration

1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union.
2. This right includes:
 - the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;
 - the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;
 - the obligation of the administration to give reasons for its decisions.
3. Every person has the right to have the Community make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.
4. Every person may write to the institutions of the Union in one of the languages of the Treaties and must have an answer in the same language.

*Article 42***Right of access to documents**

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to European Parliament, Council and Commission documents.

*Article 43***Ombudsman**

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to refer to the Ombudsman of the Union cases of maladministration in the activities of the Community institutions or bodies, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role.

*Article 44***Right to petition**

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to petition the European Parliament.

*Article 45***Freedom of movement and of residence**

1. Every citizen of the Union has the right to move and reside freely within the territory of the Member States.
2. Freedom of movement and residence may be granted, in accordance with the Treaty establishing the European Community, to nationals of third countries legally resident in the territory of a Member State.

*Article 46***Diplomatic and consular protection**

Every citizen of the Union shall, in the territory of a third country in which the Member State of which he or she is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that Member State.

CHAPTER VI

JUSTICE

*Article 47***Right to an effective remedy and to a fair trial**

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.

*Article 48***Presumption of innocence and right of defence**

1. Everyone who has been charged shall be presumed innocent until proved guilty according to law.
2. Respect for the rights of the defence of anyone who has been charged shall be guaranteed.

*Article 49***Principles of legality and proportionality of criminal offences and penalties**

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national law or international law at the time when it was committed. Nor shall a heavier penalty be imposed than that which was applicable at the time the criminal offence was committed. If, subsequent to the commission of a criminal offence, the law provides for a lighter penalty, that penalty shall be applicable.

2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles recognised by the community of nations.

3. The severity of penalties must not be disproportionate to the criminal offence.

*Article 50***Right not to be tried or punished twice in criminal proceedings for the same criminal offence**

No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law.

CHAPTER VII

GENERAL PROVISIONS*Article 51***Scope**

1. The provisions of this Charter are addressed to the institutions and bodies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers.
2. This Charter does not establish any new power or task for the Community or the Union, or modify powers and tasks defined by the Treaties.

*Article 52***Scope of guaranteed rights**

1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.
2. Rights recognised by this Charter which are based on the Community Treaties or the Treaty on European Union shall be exercised under the conditions and within the limits defined by those Treaties.
3. In so far as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.

*Article 53***Level of protection**

Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by Union law and international law and by international agreements to which the Union, the Community or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' constitutions.

*Article 54***Prohibition of abuse of rights**

Nothing in this Charter shall be interpreted as implying any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms recognised in this Charter or at their limitation to a greater extent than is provided for herein.

***I.2. The Second Version:
the 2004 Charter of
Fundamental Rights and
Explanations, and Extracts
from the Constitutional Treaty***

TREATY ESTABLISHING A CONSTITUTION FOR EUROPE

PART I

TITLE I

DEFINITION AND OBJECTIVES OF THE UNION

Article I-1

Establishment of the Union

1. Reflecting the will of the citizens and States of Europe to build a common future, this Constitution establishes the European Union, on which the Member States confer competences to attain objectives they have in common. The Union shall coordinate the policies by which the Member States aim to achieve these objectives, and shall exercise on a Community basis the competences they confer on it.
2. The Union shall be open to all European States which respect its values and are committed to promoting them together.

Article I-2

The Union's values

The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.

Article I-3

The Union's objectives

1. The Union's aim is to promote peace, its values and the well-being of its peoples.
2. The Union shall offer its citizens an area of freedom, security and justice without internal frontiers, and an internal market where competition is free and undistorted.
3. The Union shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance.

It shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child.

It shall promote economic, social and territorial cohesion, and solidarity among Member States.

*Article I-7***Legal personality**

The Union shall have legal personality.

*Article I-8***The symbols of the Union**

The flag of the Union shall be a circle of twelve golden stars on a blue background.

The anthem of the Union shall be based on the 'Ode to Joy' from the Ninth Symphony by Ludwig van Beethoven.

The motto of the Union shall be: 'United in diversity'.

The currency of the Union shall be the euro.

Europe day shall be celebrated on 9 May throughout the Union.

TITLE II

FUNDAMENTAL RIGHTS AND CITIZENSHIP OF THE UNION*Article I-9***Fundamental rights**

1. The Union shall recognise the rights, freedoms and principles set out in the Charter of Fundamental Rights which constitutes Part II.
2. The Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union's competences as defined in the Constitution.
3. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.

*Article I-10***Citizenship of the Union**

1. Every national of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to national citizenship and shall not replace it.

PART II

THE CHARTER OF FUNDAMENTAL RIGHTS OF THE UNION

PREAMBLE

The peoples of Europe, in creating an ever closer union among them, are resolved to share a peaceful future based on common values.

Conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law. It places the individual at the heart of its activities, by establishing the citizenship of the Union and by creating an area of freedom, security and justice.

The Union contributes to the preservation and to the development of these common values while respecting the diversity of the cultures and traditions of the peoples of Europe as well as the national identities of the Member States and the organisation of their public authorities at national, regional and local levels; it seeks to promote balanced and sustainable development and ensures free movement of persons, services, goods and capital, and the freedom of establishment.

To this end, it is necessary to strengthen the protection of fundamental rights in the light of changes in society, social progress and scientific and technological developments by making those rights more visible in a Charter.

This Charter reaffirms, with due regard for the powers and tasks of the Union and the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Union and by the Council of Europe and the case-law of the Court of Justice of the European Union and of the European Court of Human Rights. In this context the Charter will be interpreted by the courts of the Union and the Member States with due regard to the explanations prepared under the authority of the Praesidium of the Convention which drafted the Charter and updated under the responsibility of the Praesidium of the European Convention.

Enjoyment of these rights entails responsibilities and duties with regard to other persons, to the human community and to future generations.

The Union therefore recognises the rights, freedoms and principles set out hereafter.

TITLE I

DIGNITY

*Article II-61***Human dignity**

Human dignity is inviolable. It must be respected and protected.

*Article II-62***Right to life**

1. Everyone has the right to life.
2. No one shall be condemned to the death penalty, or executed.

*Article II-63***Right to the integrity of the person**

1. Everyone has the right to respect for his or her physical and mental integrity.
2. In the fields of medicine and biology, the following must be respected in particular:
 - (a) the free and informed consent of the person concerned, according to the procedures laid down by law;
 - (b) the prohibition of eugenic practices, in particular those aiming at the selection of persons;
 - (c) the prohibition on making the human body and its parts as such a source of financial gain;
 - (d) the prohibition of the reproductive cloning of human beings.

*Article II-64***Prohibition of torture and inhuman or degrading treatment or punishment**

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

*Article II-65***Prohibition of slavery and forced labour**

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. Trafficking in human beings is prohibited.

TITLE II

FREEDOMS

*Article II-66***Right to liberty and security**

Everyone has the right to liberty and security of person.

*Article II-67***Respect for private and family life**

Everyone has the right to respect for his or her private and family life, home and communications.

*Article II-68***Protection of personal data**

1. Everyone has the right to the protection of personal data concerning him or her.
2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.
3. Compliance with these rules shall be subject to control by an independent authority.

*Article II-69***Right to marry and right to found a family**

The right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights.

*Article II-70***Freedom of thought, conscience and religion**

1. Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.
2. The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right.

*Article II-71***Freedom of expression and information**

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.
2. The freedom and pluralism of the media shall be respected.

*Article II-72***Freedom of assembly and of association**

1. Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests.
2. Political parties at Union level contribute to expressing the political will of the citizens of the Union.

*Article II-73***Freedom of the arts and sciences**

The arts and scientific research shall be free of constraint. Academic freedom shall be respected.

*Article II-74***Right to education**

1. Everyone has the right to education and to have access to vocational and continuing training.
2. This right includes the possibility to receive free compulsory education.
3. The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the

national laws governing the exercise of such freedom and right.

Article II-75

Freedom to choose an occupation and right to engage in work

1. Everyone has the right to engage in work and to pursue a freely chosen or accepted occupation.
2. Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State.
3. Nationals of third countries who are authorised to work in the territories of the Member States are entitled to working conditions equivalent to those of citizens of the Union.

Article II-76

Freedom to conduct a business

The freedom to conduct a business in accordance with Union law and national laws and practices is recognised.

Article II-77

Right to property

1. Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law insofar as is necessary for the general interest.
2. Intellectual property shall be protected.

Article II-78

Right to asylum

The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Constitution.

Article II-79

Protection in the event of removal, expulsion or extradition

1. Collective expulsions are prohibited.
2. No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.

TITLE III**EQUALITY***Article II-80***Equality before the law**

Everyone is equal before the law.

*Article II-81***Non-discrimination**

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.
2. Within the scope of application of the Constitution and without prejudice to any of its specific provisions, any discrimination on grounds of nationality shall be prohibited.

*Article II-82***Cultural, religious and linguistic diversity**

The Union shall respect cultural, religious and linguistic diversity.

*Article II-83***Equality between women and men**

Equality between women and men must be ensured in all areas, including employment, work and pay.

The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.

*Article II-84***The rights of the child**

1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.
2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.

3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.

Article II-85

The rights of the elderly

The Union recognises and respects the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life.

Article II-86

Integration of persons with disabilities

The Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.

TITLE IV

SOLIDARITY

Article II-87

Workers' right to information and consultation within the undertaking

Workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions provided for by Union law and national laws and practices.

Article II-88

Right of collective bargaining and action

Workers and employers, or their respective organisations, have, in accordance with Union law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action.

Article II-89

Right of access to placement services

Everyone has the right of access to a free placement service.

*Article II-90***Protection in the event of unjustified dismissal**

Every worker has the right to protection against unjustified dismissal, in accordance with Union law and national laws and practices.

*Article II-91***Fair and just working conditions**

1. Every worker has the right to working conditions which respect his or her health, safety and dignity.
2. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

*Article II-92***Prohibition of child labour and protection of young people at work**

The employment of children is prohibited. The minimum age of admission to employment may not be lower than the minimum school-leaving age, without prejudice to such rules as may be more favourable to young people and except for limited derogations.

Young people admitted to work must have working conditions appropriate to their age and be protected against economic exploitation and any work likely to harm their safety, health or physical, mental, moral or social development or to interfere with their education.

*Article II-93***Family and professional life**

1. The family shall enjoy legal, economic and social protection.
2. To reconcile family and professional life, everyone shall have the right to protection from dismissal for a reason connected with maternity and the right to paid maternity leave and to parental leave following the birth or adoption of a child.

*Article II-94***Social security and social assistance**

1. The Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by Union law and national laws and practices.

2. Everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with Union law and national laws and practices.

3. In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Union law and national laws and practices.

Article II-95

Health care

Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities.

Article II-96

Access to services of general economic interest

The Union recognises and respects access to services of general economic interest as provided for in national laws and practices, in accordance with the Constitution, in order to promote the social and territorial cohesion of the Union.

Article II-97

Environmental protection

A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.

Article II-98

Consumer protection

Union policies shall ensure a high level of consumer protection.

TITLE V

CITIZENS' RIGHTS

*Article II-99***Right to vote and to stand as a candidate at elections to the European Parliament**

1. Every citizen of the Union has the right to vote and to stand as a candidate at elections to the European Parliament in the Member State in which he or she resides, under the same conditions as nationals of that State.
2. Members of the European Parliament shall be elected by direct universal suffrage in a free and secret ballot.

*Article II-100***Right to vote and to stand as a candidate at municipal elections**

Every citizen of the Union has the right to vote and to stand as a candidate at municipal elections in the Member State in which he or she resides under the same conditions as nationals of that State.

*Article II-101***Right to good administration**

1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union.
2. This right includes:
 - (a) the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;
 - (b) the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;
 - (c) the obligation of the administration to give reasons for its decisions.
3. Every person has the right to have the Union make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.
4. Every person may write to the institutions of the Union in one of the languages of the Constitution and must have an answer in the same language.

*Article II-102***Right of access to documents**

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of the institutions, bodies, offices and agencies of the Union, whatever their medium.

*Article II-103***European Ombudsman**

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to refer to the European Ombudsman cases of maladministration in the activities of the institutions, bodies, offices or agencies of the Union, with the exception of the Court of Justice of the European Union acting in its judicial role.

*Article II-104***Right to petition**

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to petition the European Parliament.

*Article II-105***Freedom of movement and of residence**

1. Every citizen of the Union has the right to move and reside freely within the territory of the Member States.
2. Freedom of movement and residence may be granted, in accordance with the Constitution, to nationals of third countries legally resident in the territory of a Member State.

*Article II-106***Diplomatic and consular protection**

Every citizen of the Union shall, in the territory of a third country in which the Member State of which he or she is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that Member State.

TITLE VI

JUSTICE

*Article II-107***Right to an effective remedy and to a fair trial**

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

Legal aid shall be made available to those who lack sufficient resources insofar as such aid is necessary to ensure effective access to justice.

*Article II-108***Presumption of innocence and right of defence**

1. Everyone who has been charged shall be presumed innocent until proved guilty according to law.
2. Respect for the rights of the defence of anyone who has been charged shall be guaranteed.

*Article II-109***Principles of legality and proportionality of criminal offences and penalties**

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national law or international law at the time when it was committed. Nor shall a heavier penalty be imposed than that which was applicable at the time the criminal offence was committed. If, subsequent to the commission of a criminal offence, the law provides for a lighter penalty, that penalty shall be applicable.
2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles recognised by the community of nations.
3. The severity of penalties must not be disproportionate to the criminal offence.

*Article II-110***Right not to be tried or punished twice in criminal proceedings for the same criminal offence**

No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law.

TITLE VII

**GENERAL PROVISIONS GOVERNING THE INTERPRETATION
AND APPLICATION OF THE CHARTER***Article II-111***Field of application**

1. The provisions of this Charter are addressed to the institutions, bodies, offices and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers and respecting the limits of the powers of the Union as conferred on it in the other Parts of the Constitution.
2. This Charter does not extend the field of application of Union law beyond the powers of the Union or establish any new power or task for the Union, or modify powers and tasks defined in the other Parts of the Constitution.

*Article II-112***Scope and interpretation of rights and principles**

1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.
2. Rights recognised by this Charter for which provision is made in other Parts of the Constitution shall be exercised under the conditions and within the limits defined by these relevant Parts.
3. Insofar as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.
4. Insofar as this Charter recognises fundamental rights as they result from the constitutional traditions common to the Member States, those rights shall be interpreted in harmony with those traditions.
5. The provisions of this Charter which contain principles may be implemented by legislative and executive acts taken by institutions, bodies, offices and agencies of the Union, and by acts of Member States when they are implementing Union law, in the exercise of their respective powers. They shall be judicially cognisable only in the interpretation of such acts and in the ruling on their legality.

6. Full account shall be taken of national laws and practices as specified in this Charter.
7. The explanations drawn up as a way of providing guidance in the interpretation of the Charter of Fundamental Rights shall be given due regard by the courts of the Union and of the Member States.

Article II-113

Level of protection

Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by Union law and international law and by international agreements to which the Union or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' constitutions.

Article II-114

Prohibition of abuse of rights

Nothing in this Charter shall be interpreted as implying any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms recognised in this Charter or at their limitation to a greater extent than is provided for herein.

32. PROTOCOL RELATING TO ARTICLE I-9(2) OF THE CONSTITUTION ON THE ACCESSION OF THE UNION TO THE EUROPEAN CONVENTION ON THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

THE HIGH CONTRACTING PARTIES

HAVE AGREED on the following provisions, which shall be annexed to the Treaty establishing a Constitution for Europe:

Article 1

The agreement relating to the accession of the Union to the European Convention on the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as the 'European Convention') provided for in Article I-9(2) of the Constitution shall make provision for preserving the specific characteristics of the Union and Union law, in particular with regard to:

- (a) the specific arrangements for the Union's possible participation in the control bodies of the European Convention;
- (b) the mechanisms necessary to ensure that proceedings by non-Member States and individual applications are correctly addressed to Member States and/or the Union as appropriate.

Article 2

The agreement referred to in Article 1 shall ensure that accession of the Union shall not affect the competences of the Union or the powers of its institutions. It shall ensure that nothing therein affects the situation of Member States in relation to the European Convention, in particular in relation to the Protocols thereto, measures taken by Member States derogating from the European Convention in accordance with Article 15 thereof and reservations to the European Convention made by Member States in accordance with Article 57 thereof.

Article 3

Nothing in the agreement referred to in Article 1 shall affect Article III-375(2) of the Constitution.

A. DECLARATIONS CONCERNING PROVISIONS OF THE CONSTITUTION

1. Declaration on Article I-6

The Conference notes that Article I-6 reflects existing case-law of the Court of Justice of the European Communities and of the Court of First Instance.

2. Declaration on Article I-9(2)

The Conference agrees that the Union's accession to the European Convention on the Protection of Human Rights and Fundamental Freedoms should be arranged in such a way as to preserve the specific features of Union law. In this connection, the Conference notes the existence of a regular dialogue between the Court of Justice of the European Union and the European Court of Human Rights; such dialogue could be reinforced when the Union accedes to that Convention.

3. Declaration on Articles I-22, I-27 and I-28

In choosing the persons called upon to hold the offices of President of the European Council, President of the Commission and Union Minister for Foreign Affairs, due account is to be taken of the need to respect the geographical and demographic diversity of the Union and its Member States.

4. Declaration on Article I-24(7) concerning the European Council decision on the exercise of the Presidency of the Council

The Conference declares that the Council should begin preparing the European decision establishing the measures for applying the European decision of the European Council on the exercise of the Presidency of the Council as soon as the Treaty establishing a Constitution for Europe is signed and should give its political approval within six months. A draft European decision of the European Council, which will be adopted on the date of entry into force of the said Treaty, is set out below:

DRAFT EUROPEAN DECISION OF THE EUROPEAN COUNCIL ON THE EXERCISE OF THE PRESIDENCY OF THE COUNCIL

Article 1

1. The Presidency of the Council, with the exception of the Foreign Affairs configuration, shall be held by pre-established groups of three Member States for a period of 18 months. The groups shall be made up on a basis of equal rotation among the Member States, taking into account their diversity and geographical balance within the Union.

2. Each member of the group shall in turn chair for a six-month period all configurations of the Council, with the exception of the Foreign Affairs configuration. The other members of the group shall assist the Chair in all its responsibilities on the basis of a common programme. Members of the team may decide alternative arrangements among themselves.

12. Declaration concerning the explanations relating to the Charter of Fundamental Rights

The Conference takes note of the explanations relating to the Charter of Fundamental Rights prepared under the authority of the Praesidium of the Convention which drafted the Charter and updated under the responsibility of the Praesidium of the European Convention, as set out below.

EXPLANATIONS RELATING TO THE CHARTER OF FUNDAMENTAL RIGHTS

These explanations were originally prepared under the authority of the Praesidium of the Convention which drafted the Charter of Fundamental Rights of the European Union. They have been updated under the responsibility of the Praesidium of the European Convention, in the light of the drafting adjustments made to the text of the Charter by that Convention (notably to Articles 51 and 52 ⁽¹⁾) and of further developments of Union law. Although they do not as such have the status of law, they are a valuable tool of interpretation intended to clarify the provisions of the Charter.

PREAMBLE

The peoples of Europe, in creating an ever closer union among them, are resolved to share a peaceful future based on common values.

Conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law. It places the individual at the heart of its activities, by establishing the citizenship of the Union and by creating an area of freedom, security and justice.

The Union contributes to the preservation and to the development of these common values while respecting the diversity of the cultures and traditions of the peoples of Europe as well as the national identities of the Member States and the organisation of their public authorities at national, regional and local levels; it seeks to promote balanced and sustainable development and ensures free movement of persons, services, goods and capital, and the freedom of establishment.

To this end, it is necessary to strengthen the protection of fundamental rights in the light of changes in society, social progress and scientific and technological developments by making those rights more visible in a Charter.

This Charter reaffirms, with due regard for the powers and tasks of the Union and the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Union and by the Council of Europe and the case-law of the Court of Justice of the European Union and of the European Court of Human Rights. In this context the Charter will be interpreted by the courts of the Union and the Member States with due regard to the explanations prepared under the authority of the Praesidium of the Convention which drafted the Charter and updated under the responsibility of

⁽¹⁾ Articles II-111 and II-112 of the Constitution.

the Praesidium of the European Convention.

Enjoyment of these rights entails responsibilities and duties with regard to other persons, to the human community and to future generations.

The Union therefore recognises the rights, freedoms and principles set out hereafter.

TITLE I

DIGNITY

Article 1 ⁽¹⁾

Human dignity

Human dignity is inviolable. It must be respected and protected.

Explanation

The dignity of the human person is not only a fundamental right in itself but constitutes the real basis of fundamental rights. The 1948 Universal Declaration of Human Rights enshrined human dignity in its preamble: 'Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.' In its judgment of 9 October 2001 in case C-377/98 *Netherlands v European Parliament and Council* [2001] ECR 7079, at grounds 70 to 77, the Court of Justice confirmed that a fundamental right to human dignity is part of Union law.

It results that none of the rights laid down in this Charter may be used to harm the dignity of another person, and that the dignity of the human person is part of the substance of the rights laid down in this Charter. It must therefore be respected, even where a right is restricted.

Article 2 ⁽²⁾

Right to life

1. Everyone has the right to life.
2. No one shall be condemned to the death penalty, or executed.

Explanation

1. Paragraph 1 of this Article is based on the first sentence of Article 2(1) of the ECHR, which reads as follows:

'1. Everyone's right to life shall be protected by law...'

⁽¹⁾ Article II-61 of the Constitution.

⁽²⁾ Article II-62 of the Constitution.

2. The second sentence of the provision, which referred to the death penalty, was superseded by the entry into force of Article 1 of Protocol No 6 to the ECHR, which reads as follows:

‘The death penalty shall be abolished. No-one shall be condemned to such penalty or executed.’

Article 2(2) of the Charter ⁽¹⁾ is based on that provision.

3. The provisions of Article 2 of the Charter ⁽²⁾ correspond to those of the above Articles of the ECHR and its Protocol. They have the same meaning and the same scope, in accordance with Article 52(3) of the Charter ⁽³⁾. Therefore, the ‘negative’ definitions appearing in the ECHR must be regarded as also forming part of the Charter:

- (a) Article 2(2) of the ECHR:

‘Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

- (a) in defence of any person from unlawful violence;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) in action lawfully taken for the purpose of quelling a riot or insurrection.’

- (b) Article 2 of Protocol 6 to the ECHR:

‘A State may make provision in its law for the death penalty in respect of acts committed in time of war or of imminent threat of war; such penalty shall be applied only in the instances laid down in the law and in accordance with its provisions...’

Article 3 ⁽⁴⁾

Right to the integrity of the person

1. Everyone has the right to respect for his or her physical and mental integrity.
2. In the fields of medicine and biology, the following must be respected in particular:
 - (a) the free and informed consent of the person concerned, according to the procedures laid down by law;
 - (b) the prohibition of eugenic practices, in particular those aiming at the selection of persons;

⁽¹⁾ Article II-62(2) of the Constitution.

⁽²⁾ Article II-62 of the Constitution.

⁽³⁾ Article II-112(3) of the Constitution.

⁽⁴⁾ Article II-63 of the Constitution.

- (c) the prohibition on making the human body and its parts as such a source of financial gain;
- (d) the prohibition of the reproductive cloning of human beings.

Explanation

1. In its judgment of 9 October 2001 in case C-377/98 *Netherlands v European Parliament and Council* [2001] ECR 7079, at grounds 70, 78 to 80, the Court of Justice confirmed that a fundamental right to human integrity is part of Union law and encompasses, in the context of medicine and biology, the free and informed consent of the donor and recipient.
2. The principles of Article 3 of the Charter⁽¹⁾ are already included in the Convention on Human Rights and Biomedicine, adopted by the Council of Europe (ETS 164 and additional protocol ETS 168). The Charter does not set out to depart from those principles, and therefore prohibits only reproductive cloning. It neither authorises nor prohibits other forms of cloning. Thus it does not in any way prevent the legislature from prohibiting other forms of cloning.
3. The reference to eugenic practices, in particular those aiming at the selection of persons, relates to possible situations in which selection programmes are organised and implemented, involving campaigns for sterilisation, forced pregnancy, compulsory ethnic marriage among others, all acts deemed to be international crimes in the Statute of the International Criminal Court adopted in Rome on 17 July 1998 (see its Article 7(1)(g)).

Article 4 ⁽²⁾

Prohibition of torture and inhuman or degrading treatment or punishment

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Explanation

The right in Article 4 ⁽²⁾ is the right guaranteed by Article 3 of the ECHR, which has the same wording: 'No one shall be subjected to torture or to inhuman or degrading treatment or punishment'. By virtue of Article 52(3) of the Charter ⁽³⁾, it therefore has the same meaning and the same scope as the ECHR Article.

Article 5 ⁽⁴⁾

Prohibition of slavery and forced labour

1. No one shall be held in slavery or servitude.

⁽¹⁾ Article II-63 of the Constitution.

⁽²⁾ Article II-64 of the Constitution.

⁽³⁾ Article II-112(3) of the Constitution.

⁽⁴⁾ Article II-65 of the Constitution.

2. No one shall be required to perform forced or compulsory labour.
3. Trafficking in human beings is prohibited.

Explanation

1. The right in Article 5(1) and (2) ⁽¹⁾ corresponds to Article 4(1) and (2) of the ECHR, which has the same wording. It therefore has the same meaning and scope as the ECHR Article, by virtue of Article 52(3) of the Charter ⁽²⁾. Consequently:

- no limitation may legitimately affect the right provided for in paragraph 1;
- in paragraph 2, ‘forced or compulsory labour’ must be understood in the light of the ‘negative’ definitions contained in Article 4(3) of the ECHR:

‘For the purpose of this article the term “forced or compulsory labour” shall not include:

- (a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;
- (b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;
- (c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;
- (d) any work or service which forms part of normal civic obligations.’

2. Paragraph 3 stems directly from human dignity and takes account of recent developments in organised crime, such as the organisation of lucrative illegal immigration or sexual exploitation networks. The Annex to the Europol Convention contains the following definition which refers to trafficking for the purpose of sexual exploitation: ‘traffic in human beings: means subjection of a person to the real and illegal sway of other persons by using violence or menaces or by abuse of authority or intrigue with a view to the exploitation of prostitution, forms of sexual exploitation and assault of minors or trade in abandoned children’. Chapter VI of the Convention implementing the Schengen Agreement, which has been integrated into the Union’s *acquis*, in which the United Kingdom and Ireland participate, contains the following wording in Article 27(1) which refers to illegal immigration networks: ‘The Contracting Parties undertake to impose appropriate penalties on any person who, for financial gain, assists or tries to assist an alien to enter or reside within the territory of one of the Contracting Parties in breach of that Contracting Party’s laws on the entry and residence of aliens.’ On 19 July 2002, the Council adopted a framework decision on combating trafficking in human beings (OJ L 203/1) whose Article 1 defines in detail the offences concerning trafficking in human beings for the purposes of labour exploitation or sexual exploitation, which the Member States must make punishable by virtue of that framework decision.

⁽¹⁾ Article II-65 of the Constitution.

⁽²⁾ Article II-112(3) of the Constitution.

TITLE II

FREEDOMS

Article 6 ⁽¹⁾**Right to liberty and security**

Everyone has the right to liberty and security of person.

Explanation

The rights in Article 6 ⁽¹⁾ are the rights guaranteed by Article 5 of the ECHR, and in accordance with Article 52(3) of the Charter ⁽²⁾, they have the same meaning and scope. Consequently, the limitations which may legitimately be imposed on them may not exceed those permitted by the ECHR, in the wording of Article 5:

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
 - (a) the lawful detention of a person after conviction by a competent court;
 - (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
 - (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
 - (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
 - (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
 - (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.
2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.
3. Everyone arrested or detained in accordance with the provisions of paragraph 1(c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

⁽¹⁾ Article II-66 of the Constitution.

⁽²⁾ Article II-112(3) of the Constitution.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.
5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.'

The rights enshrined in Article 6 ⁽¹⁾ must be respected particularly when the European Parliament and the Council adopt laws and framework laws in the area of judicial cooperation in criminal matters, on the basis of Articles III-270, III-271 and III-273 of the Constitution, notably to define common minimum provisions as regards the categorisation of offences and punishments and certain aspects of procedural law.

Article 7 ⁽²⁾

Respect for private and family life

Everyone has the right to respect for his or her private and family life, home and communications.

Explanation

The rights guaranteed in Article 7 ⁽²⁾ correspond to those guaranteed by Article 8 of the ECHR. To take account of developments in technology the word 'correspondence' has been replaced by 'communications'.

In accordance with Article 52(3) ⁽³⁾, the meaning and scope of this right are the same as those of the corresponding article of the ECHR. Consequently, the limitations which may legitimately be imposed on this right are the same as those allowed by Article 8 of the ECHR:

- '1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.'

⁽¹⁾ Article II-66 of the Constitution.

⁽²⁾ Article II-67 of the Constitution.

⁽³⁾ Article II-112(3) of the Constitution.

Article 8 ⁽¹⁾**Protection of personal data**

1. Everyone has the right to the protection of personal data concerning him or her.
2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.
3. Compliance with these rules shall be subject to control by an independent authority.

Explanation

This Article has been based on Article 286 of the Treaty establishing the European Community and Directive 95/46/EC of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995) as well as on Article 8 of the ECHR and on the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data, which has been ratified by all the Member States. Article 286 of the EC Treaty is now replaced by Article I-51 of the Constitution. Reference is also made to Regulation (EC) No 45/2001 of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001). The abovementioned Directive and Regulation contain conditions and limitations for the exercise of the right to the protection of personal data.

Article 9 ⁽²⁾**Right to marry and right to found a family**

The right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights.

Explanation

This Article is based on Article 12 of the ECHR, which reads as follows: 'Men and women of marriageable age have the right to marry and to found a family according to the national laws governing the exercising of this right.' The wording of the Article has been modernised to cover cases in which national legislation recognises arrangements other than marriage for founding a family. This Article neither prohibits nor imposes the granting of the status of marriage to unions between people of the same sex. This right is thus similar to that afforded by the ECHR, but its scope may be wider when national legislation so provides.

⁽¹⁾ Article II-68 of the Constitution.

⁽²⁾ Article II-69 of the Constitution.

Article 10 ⁽¹⁾**Freedom of thought, conscience and religion**

1. Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.
2. The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right.

Explanation

The right guaranteed in paragraph 1 corresponds to the right guaranteed in Article 9 of the ECHR and, in accordance with Article 52(3) of the Charter ⁽²⁾, has the same meaning and scope. Limitations must therefore respect Article 9(2) of the Convention, which reads as follows: 'Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.'

The right guaranteed in paragraph 2 corresponds to national constitutional traditions and to the development of national legislation on this issue.

Article 11 ⁽³⁾**Freedom of expression and information**

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.
2. The freedom and pluralism of the media shall be respected.

Explanation

1. Article 11 ⁽³⁾ corresponds to Article 10 of the European Convention on Human Rights, which reads as follows:

'1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.'

⁽¹⁾ Article II-70 of the Constitution.

⁽²⁾ Article II-112(3) of the Constitution.

⁽³⁾ Article II-71 of the Constitution.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.'

Pursuant to Article 52(3) of the Charter ⁽¹⁾, the meaning and scope of this right are the same as those guaranteed by the ECHR. The limitations which may be imposed on it may therefore not exceed those provided for in Article 10(2) of the Convention, without prejudice to any restrictions which competition law of the Union may impose on Member States' right to introduce the licensing arrangements referred to in the third sentence of Article 10(1) of the ECHR.

2. Paragraph 2 of this Article spells out the consequences of paragraph 1 regarding freedom of the media. It is based in particular on Court of Justice case-law regarding television, particularly in case C-288/89 (judgment of 25 July 1991, Stichting Collectieve Antennevoorziening Gouda and others [1991] ECR I-4007), and on the Protocol on the system of public broadcasting in the Member States annexed to the EC Treaty and now to the Constitution, and on Council Directive 89/552/EC (particularly its seventeenth recital).

Article 12 ⁽²⁾

Freedom of assembly and of association

1. Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests.
2. Political parties at Union level contribute to expressing the political will of the citizens of the Union.

Explanation

1. Paragraph 1 of this Article corresponds to Article 11 of the ECHR, which reads as follows:
 - '1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
 2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.'

⁽¹⁾ Article II-112(3) of the Constitution.

⁽²⁾ Article II-72 of the Constitution.

The meaning of the provisions of paragraph 1 is the same as that of the ECHR, but their scope is wider since they apply at all levels including European level. In accordance with Article 52(3) of the Charter ⁽¹⁾, limitations on that right may not exceed those considered legitimate by virtue of Article 11(2) of the ECHR.

2. This right is also based on Article 11 of the Community Charter of the Fundamental Social Rights of Workers.

3. Paragraph 2 of this Article corresponds to Article I-46(4) of the Constitution.

Article 13 ⁽²⁾

Freedom of the arts and sciences

The arts and scientific research shall be free of constraint. Academic freedom shall be respected.

Explanation

This right is deduced primarily from the right to freedom of thought and expression. It is to be exercised having regard to Article 1 ⁽³⁾ and may be subject to the limitations authorised by Article 10 of the ECHR.

Article 14 ⁽⁴⁾

Right to education

1. Everyone has the right to education and to have access to vocational and continuing training.

2. This right includes the possibility to receive free compulsory education.

3. The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right.

Explanation

1. This Article is based on the common constitutional traditions of Member States and on Article 2 of the Protocol to the ECHR, which reads as follows:

'No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.'

⁽¹⁾ Article II-112(3) of the Constitution.

⁽²⁾ Article II-73 of the Constitution.

⁽³⁾ Article II-61 of the Constitution.

⁽⁴⁾ Article II-74 of the Constitution.

It was considered useful to extend this article to access to vocational and continuing training (see point 15 of the Community Charter of the Fundamental Social Rights of Workers and Article 10 of the Social Charter) and to add the principle of free compulsory education. As it is worded, the latter principle merely implies that as regards compulsory education, each child has the possibility of attending an establishment which offers free education. It does not require all establishments which provide education or vocational and continuing training, in particular private ones, to be free of charge. Nor does it exclude certain specific forms of education having to be paid for, if the State takes measures to grant financial compensation. Insofar as the Charter applies to the Union, this means that in its training policies the Union must respect free compulsory education, but this does not, of course, create new powers. Regarding the right of parents, it must be interpreted in conjunction with the provisions of Article 24 ⁽¹⁾.

2. Freedom to found public or private educational establishments is guaranteed as one of the aspects of freedom to conduct a business but it is limited by respect for democratic principles and is exercised in accordance with the arrangements defined by national legislation.

Article 15 ⁽²⁾

Freedom to choose an occupation and right to engage in work

1. Everyone has the right to engage in work and to pursue a freely chosen or accepted occupation.
2. Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State.
3. Nationals of third countries who are authorised to work in the territories of the Member States are entitled to working conditions equivalent to those of citizens of the Union.

Explanation

Freedom to choose an occupation, as enshrined in Article 15(1) ⁽²⁾, is recognised in Court of Justice case-law (see *inter alia* judgment of 14 May 1974, Case 4/73 Nold [1974] ECR 491, paragraphs 12 to 14 of the grounds; judgment of 13 December 1979, Case 44/79 Hauer [1979] ECR 3727; judgment of 8 October 1986, Case 234/85 Keller [1986] ECR 2897, paragraph 8 of the grounds).

This paragraph also draws upon Article 1(2) of the European Social Charter, which was signed on 18 October 1961 and has been ratified by all the Member States, and on point 4 of the Community Charter of the Fundamental Social Rights of Workers of 9 December 1989. The expression 'working conditions' is to be understood in the sense of Article III-213 of the Constitution.

Paragraph 2 deals with the three freedoms guaranteed by Articles I-4 and III-133, III-137 and III-144 of the Constitution, namely freedom of movement for workers, freedom of establishment and freedom to provide services.

Paragraph 3 has been based on TEC Article 137(3), fourth indent, now replaced by Article III-210(1)(g) of the Constitution, and on Article 19(4) of the European Social Charter signed on 18 October 1961 and ratified by all the

⁽¹⁾ Article II-84 of the Constitution.

⁽²⁾ Article II-75 of the Constitution.

Member States. Article 52(2) of the Charter ⁽¹⁾ is therefore applicable. The question of recruitment of seamen having the nationality of third States for the crews of vessels flying the flag of a Member State of the Union is governed by Union law and national legislation and practice.

Article 16 ⁽²⁾

Freedom to conduct a business

The freedom to conduct a business in accordance with Union law and national laws and practices is recognised.

Explanation

This Article is based on Court of Justice case-law which has recognised freedom to exercise an economic or commercial activity (see judgments of 14 May 1974, Case 4/73 Nold [1974] ECR 491, paragraph 14 of the grounds, and of 27 September 1979, Case 230-78 SPA Eridiana and others [1979] ECR 2749, paragraphs 20 and 31 of the grounds) and freedom of contract (see *inter alia* Sukkerfabriken Nykøbing judgment, Case 151/78 [1979] ECR 1, paragraph 19 of the grounds, and judgment of 5 October 1999, C-240/97 Spain v Commission, [1999] ECR I-6571, paragraph 99 of the grounds) and Article I-3(2) of the Constitution, which recognises free competition. Of course, this right is to be exercised with respect for Union law and national legislation. It may be subject to the limitations provided for in Article 52(1) of the Charter ⁽³⁾.

Article 17 ⁽⁴⁾

Right to property

1. Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law insofar as is necessary for the general interest.
2. Intellectual property shall be protected.

Explanation

This Article is based on Article 1 of the Protocol to the ECHR:

‘Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.’

⁽¹⁾ Article II-112(2) of the Constitution.

⁽²⁾ Article II-76 of the Constitution.

⁽³⁾ Article II-112(1) of the Constitution.

⁽⁴⁾ Article II-77 of the Constitution.

This is a fundamental right common to all national constitutions. It has been recognised on numerous occasions by the case-law of the Court of Justice, initially in the Hauer judgment (13 December 1979, ECR [1979] 3727). The wording has been updated but, in accordance with Article 52(3) ⁽¹⁾, the meaning and scope of the right are the same as those of the right guaranteed by the ECHR and the limitations may not exceed those provided for there.

Protection of intellectual property, one aspect of the right of property, is explicitly mentioned in paragraph 2 because of its growing importance and Community secondary legislation. Intellectual property covers not only literary and artistic property but also inter alia patent and trademark rights and associated rights. The guarantees laid down in paragraph 1 shall apply as appropriate to intellectual property.

Article 18 ⁽²⁾

Right to asylum

The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Constitution.

Explanation

The text of the Article has been based on TEC Article 63, now replaced by Article III-266 of the Constitution, which requires the Union to respect the Geneva Convention on refugees. Reference should be made to the Protocols relating to the United Kingdom and Ireland annexed to the [Treaty of Amsterdam] Constitution and to Denmark to determine the extent to which those Member States implement Union law in this area and the extent to which this Article is applicable to them. This Article is in line with the Protocol on Asylum annexed to the Constitution.

Article 19 ⁽³⁾

Protection in the event of removal, expulsion or extradition

1. Collective expulsions are prohibited.
2. No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.

Explanation

Paragraph 1 of this Article has the same meaning and scope as Article 4 of Protocol 4 to the ECHR concerning collective expulsion. Its purpose is to guarantee that every decision is based on a specific examination and that no single measure can be taken to expel all persons having the nationality of a particular State (see also Article 13 of the Covenant on Civil and Political Rights).

Paragraph 2 incorporates the relevant case-law from the European Court of Human Rights regarding Article 3 of the ECHR (see *Ahmed v Austria*, judgment of 17 December 1996, [1996] ECR VI-2206 and *Soering*, judgment of 7 July 1989).

⁽¹⁾ Article II-112(3) of the Constitution.

⁽²⁾ Article II-78 of the Constitution.

⁽³⁾ Article II-79 of the Constitution.

TITLE III

EQUALITY

Article 20 ⁽¹⁾**Equality before the law**

Everyone is equal before the law.

Explanation

This Article corresponds to a general principle of law which is included in all European constitutions and has also been recognised by the Court of Justice as a basic principle of Community law (judgment of 13 November 1984, Case 283/83 *Racke* [1984] ECR 3791, judgment of 17 April 1997, Case 15/95 *EARL* [1997] ECR I-1961, and judgment of 13 April 2000, Case 292/97 *Karlsson* [2000] ECR 2737).

Article 21 ⁽²⁾**Non-discrimination**

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.
2. Within the scope of application of the Constitution and without prejudice to any of its specific provisions, any discrimination on grounds of nationality shall be prohibited.

Explanation

Paragraph 1 draws on Article 13 of the EC Treaty, now replaced by Article III-124 of the Constitution, Article 14 of the ECHR and Article 11 of the Convention on Human Rights and Biomedicine as regards genetic heritage. Insofar as this corresponds to Article 14 of the ECHR, it applies in compliance with it.

There is no contradiction or incompatibility between paragraph 1 and Article III-124 of the Constitution which has a different scope and purpose: Article III-124 confers power on the Union to adopt legislative acts, including harmonisation of the Member States' laws and regulations, to combat certain forms of discrimination, listed exhaustively in that Article. Such legislation may cover action of Member State authorities (as well as relations between private individuals) in any area within the limits of the Union's powers. In contrast, the provision in paragraph 1 does not create any power to enact anti-discrimination laws in these areas of Member State or private action, nor does it lay down a sweeping ban of discrimination in such wide-ranging areas. Instead, it only addresses discriminations by the institutions and bodies of the Union themselves, when exercising powers conferred under other articles of Parts I and III

⁽¹⁾ Article II-80 of the Constitution.

⁽²⁾ Article II-81 of the Constitution.

of the Constitution, and by Member States only when they are implementing Union law. Paragraph 1 therefore does not alter the extent of powers granted under Article III-124 nor the interpretation given to that Article.

Paragraph 2 corresponds to Article I-4(2) of the Constitution and must be applied in compliance with that Article.

Article 22 ⁽¹⁾

Cultural, religious and linguistic diversity

The Union shall respect cultural, religious and linguistic diversity.

Explanation

This Article has been based on Article 6 of the Treaty on European Union and on Article 151(1) and (4) of the EC Treaty, now replaced by Article III-280(1) and (4) of the Constitution, concerning culture. Respect for cultural and linguistic diversity is now also laid down in Article I-3(3) of the Constitution. The Article is also inspired by Declaration No 11 to the Final Act of the Amsterdam Treaty on the status of churches and non-confessional organisations, now taken over in Article I-52 of the Constitution.

Article 23 ⁽²⁾

Equality between women and men

Equality between women and men must be ensured in all areas, including employment, work and pay.

The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.

Explanation

The first paragraph has been based on Articles 2 and 3(2) of the EC Treaty, now replaced by Articles I-3 and III-116 of the Constitution which impose the objective of promoting equality between men and women on the Union, and on Article 141(1) of the EC Treaty, now replaced by Article III-214(1) of the Constitution. It draws on Article 20 of the revised European Social Charter of 3 May 1996 and on point 16 of the Community Charter on the rights of workers.

It is also based on Article 141(3) of the EC Treaty, now replaced by Article III-214(3) of the Constitution, and Article 2 (4) of Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.

The second paragraph takes over in shorter form Article III-214(4) of the Constitution which provides that the principle of equal treatment does not prevent the maintenance or adoption of measures providing for specific advantages in order to make it easier for the under-represented sex to pursue a vocational activity or to prevent or compensate for

⁽¹⁾ Article II-82 of the Constitution.

⁽²⁾ Article II-83 of the Constitution.

disadvantages in professional careers. In accordance with Article 52(2) ⁽¹⁾, the present paragraph does not amend Article III-214(4).

Article 24 ⁽²⁾

The rights of the child

1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.
2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.
3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.

Explanation

This Article is based on the New York Convention on the Rights of the Child signed on 20 November 1989 and ratified by all the Member States, particularly Articles 3, 9, 12 and 13 thereof.

Paragraph 3 takes account of the fact that, as part of the establishment of an area of freedom, security and justice, Union legislation on civil matters having cross-border implications, for which Article III-269 of the Constitution confers power, may include notably visiting rights ensuring that children can maintain on a regular basis a personal and direct contact with both his or her parents.

Article 25 ⁽³⁾

The rights of the elderly

The Union recognises and respects the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life.

Explanation

This Article draws on Article 23 of the revised European Social Charter and Articles 24 and 25 of the Community Charter of the Fundamental Social Rights of Workers. Of course, participation in social and cultural life also covers participation in political life.

⁽¹⁾ Article II-112(2) of the Constitution.

⁽²⁾ Article II-84 of the Constitution.

⁽³⁾ Article II-85 of the Constitution.

Article 26 ⁽¹⁾**Integration of persons with disabilities**

The Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.

Explanation

The principle set out in this Article is based on Article 15 of the European Social Charter and also draws on point 26 of the Community Charter of the Fundamental Social Rights of Workers.

TITLE IV

SOLIDARITY*Article 27* ⁽²⁾**Workers' right to information and consultation within the undertaking**

Workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions provided for by Union law and national laws and practices.

Explanation

This Article appears in the revised European Social Charter (Article 21) and in the Community Charter on the rights of workers (points 17 and 18). It applies under the conditions laid down by Union law and by national laws. The reference to appropriate levels refers to the levels laid down by Union law or by national laws and practices, which might include the European level when Union legislation so provides. There is a considerable Union *acquis* in this field: Articles III-211 and III-212 of the Constitution, and Directives 2002/14/EC (general framework for informing and consulting employees in the European Community), 98/59/EC (collective redundancies), 2001/23/EC (transfers of undertakings) and 94/45/EC (European works councils).

Article 28 ⁽³⁾**Right of collective bargaining and action**

Workers and employers, or their respective organisations, have, in accordance with Union law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action.

⁽¹⁾ Article II-86 of the Constitution.

⁽²⁾ Article II-87 of the Constitution.

⁽³⁾ Article II-88 of the Constitution.

Explanation

This Article is based on Article 6 of the European Social Charter and on the Community Charter of the Fundamental Social Rights of Workers (points 12 to 14). The right of collective action was recognised by the European Court of Human Rights as one of the elements of trade union rights laid down by Article 11 of the ECHR. As regards the appropriate levels at which collective negotiation might take place, see the explanation given for the above Article. The modalities and limits for the exercise of collective action, including strike action, come under national laws and practices, including the question of whether it may be carried out in parallel in several Member States.

Article 29 ⁽¹⁾**Right of access to placement services**

Everyone has the right of access to a free placement service.

Explanation

This Article is based on Article 1(3) of the European Social Charter and point 13 of the Community Charter of the Fundamental Social Rights of Workers.

Article 30 ⁽²⁾**Protection in the event of unjustified dismissal**

Every worker has the right to protection against unjustified dismissal, in accordance with Union law and national laws and practices.

Explanation

This Article draws on Article 24 of the revised Social Charter. See also Directive 2001/23/EC on the safeguarding of employees' rights in the event of transfers of undertakings, and Directive 80/987/EEC on the protection of employees in the event of the insolvency of their employer, as amended by Directive 2002/74/EC.

Article 31 ⁽³⁾**Fair and just working conditions**

1. Every worker has the right to working conditions which respect his or her health, safety and dignity.
2. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

⁽¹⁾ Article II-89 of the Constitution.

⁽²⁾ Article II-90 of the Constitution.

⁽³⁾ Article II-91 of the Constitution.

Explanation

1. Paragraph 1 of this Article is based on Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work. It also draws on Article 3 of the Social Charter and point 19 of the Community Charter on the rights of workers, and, as regards dignity at work, on Article 26 of the revised Social Charter. The expression 'working conditions' must be understood in the sense of Article III-213 of the Constitution.

2. Paragraph 2 is based on Directive 93/104/EC concerning certain aspects of the organisation of working time, Article 2 of the European Social Charter and point 8 of the Community Charter on the rights of workers.

Article 32 ⁽¹⁾

Prohibition of child labour and protection of young people at work

The employment of children is prohibited. The minimum age of admission to employment may not be lower than the minimum school-leaving age, without prejudice to such rules as may be more favourable to young people and except for limited derogations.

Young people admitted to work must have working conditions appropriate to their age and be protected against economic exploitation and any work likely to harm their safety, health or physical, mental, moral or social development or to interfere with their education.

Explanation

This Article is based on Directive 94/33/EC on the protection of young people at work, Article 7 of the European Social Charter and points 20 to 23 of the Community Charter of the Fundamental Social Rights of Workers.

Article 33 ⁽²⁾

Family and professional life

1. The family shall enjoy legal, economic and social protection.
2. To reconcile family and professional life, everyone shall have the right to protection from dismissal for a reason connected with maternity and the right to paid maternity leave and to parental leave following the birth or adoption of a child.

Explanation

Article 33(1) ⁽²⁾ is based on Article 16 of the European Social Charter.

⁽¹⁾ Article II-92 of the Constitution.

⁽²⁾ Article II-93 of the Constitution.

The second paragraph draws on Council Directive 92/85/EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding and Directive 96/34/EC on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC. It is also based on Article 8 (protection of maternity) of the European Social Charter and draws on Article 27 (right of workers with family responsibilities to equal opportunities and equal treatment) of the revised Social Charter. 'Maternity' covers the period from conception to weaning.

Article 34 ⁽¹⁾

Social security and social assistance

1. The Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by Union law and national laws and practices.
2. Everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with Union law and national laws and practices.
3. In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Union law and national laws and practices.

Explanation

The principle set out in Article 34(1) ⁽¹⁾ is based on Articles 137 and 140 of the EC Treaty, now replaced by Articles III-210 and III-213 and on Article 12 of the European Social Charter and point 10 of the Community Charter on the rights of workers. The Union must respect it when exercising the powers conferred on it by Articles III-210 and III-213 of the Constitution. The reference to social services relates to cases in which such services have been introduced to provide certain advantages but does not imply that such services must be created where they do not exist. 'Maternity' must be understood in the same sense as in the preceding Article.

Paragraph 2 is based on Articles 12(4) and 13(4) of the European Social Charter and point 2 of the Community Charter of the Fundamental Social Rights of Workers and reflects the rules arising from Regulation No 1408/71 and Regulation No 1612/68.

Paragraph 3 draws on Article 13 of the European Social Charter and Articles 30 and 31 of the revised Social Charter and point 10 of the Community Charter. The Union must respect it in the context of policies based on Article III-210 of the Constitution.

⁽¹⁾ Article II-94 of the Constitution.

Article 35 ⁽¹⁾**Health care**

Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities.

Explanation

The principles set out in this Article are based on Article 152 of the EC Treaty, now replaced by Article III-278 of the Constitution, and on Articles 11 and 13 of the European Social Charter. The second sentence of the Article takes over Article III-278(1).

Article 36 ⁽²⁾**Access to services of general economic interest**

The Union recognises and respects access to services of general economic interest as provided for in national laws and practices, in accordance with the Constitution, in order to promote the social and territorial cohesion of the Union.

Explanation

This Article is fully in line with Article III-122 of the Constitution and does not create any new right. It merely sets out the principle of respect by the Union for the access to services of general economic interest as provided for by national provisions, when those provisions are compatible with Union law.

Article 37 ⁽³⁾**Environmental protection**

A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.

Explanation

The principles set out in this Article have been based on Articles 2, 6 and 174 of the EC Treaty, which have now been replaced by Articles I-3(3), III-119 and III-233 of the Constitution.

It also draws on the provisions of some national constitutions.

⁽¹⁾ Article II-95 of the Constitution.

⁽²⁾ Article II-96 of the Constitution.

⁽³⁾ Article II-97 of the Constitution.

Article 38 ⁽¹⁾**Consumer protection**

Union policies shall ensure a high level of consumer protection.

Explanation

The principles set out in this Article have been based on Article 153 of the EC Treaty, now replaced by Article III-235 of the Constitution.

TITLE V

CITIZENS' RIGHTS

Article 39 ⁽²⁾**Right to vote and to stand as a candidate at elections to the European Parliament**

1. Every citizen of the Union has the right to vote and to stand as a candidate at elections to the European Parliament in the Member State in which he or she resides, under the same conditions as nationals of that State.
2. Members of the European Parliament shall be elected by direct universal suffrage in a free and secret ballot.

Explanation

Article 39 ⁽²⁾ applies under the conditions laid down in Parts I and III of the Constitution, in accordance with Article 52 ⁽²⁾ of the Charter ⁽³⁾. Article 39(1) ⁽²⁾ corresponds to the right guaranteed in Article I-10(2) of the Constitution (see also the legal base in Article III-126 for the adoption of detailed arrangements for the exercise of that right) and Article 39 ⁽²⁾ ⁽²⁾ corresponds to Article I-20(2) of the Constitution. Article 39(2) ⁽²⁾ takes over the basic principles of the electoral system in a democratic State.

Article 40 ⁽⁴⁾**Right to vote and to stand as a candidate at municipal elections**

Every citizen of the Union has the right to vote and to stand as a candidate at municipal elections in the Member State in which he or she resides under the same conditions as nationals of that State.

⁽¹⁾ Article II-98 of the Constitution.

⁽²⁾ Article II-99 of the Constitution.

⁽³⁾ Article II-112(2) of the Constitution.

⁽⁴⁾ Article II-100 of the Constitution.

Explanation

This Article corresponds to the right guaranteed by Article I-10(2) of the Constitution (see also the legal base in Article III-126 for the adoption of detailed arrangements for the exercise of that right). In accordance with Article 52(2) of the Charter ⁽¹⁾, it applies under the conditions set out in these Articles of Parts I and III of the Constitution.

Article 41 ⁽²⁾

Right to good administration

1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union.
2. This right includes:
 - (a) the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;
 - (b) the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;
 - (c) the obligation of the administration to give reasons for its decisions.
3. Every person has the right to have the Union make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.
4. Every person may write to the institutions of the Union in one of the languages of the Constitution and must have an answer in the same language.

Explanation

Article 41 ⁽²⁾ is based on the existence of the Union as subject to the rule of law whose characteristics were developed in the case-law which enshrined, *inter alia*, good administration as a general principle of law (see, *inter alia*, Court of Justice judgment of 31 March 1992 in Case C-255/90 P, *Burban* [1992] ECR I-2253, and Court of First Instance judgments of 18 September 1995 in Case T-167/94 *Nölle* [1995] ECR II-2589, and 9 July 1999 in Case T-231/97 *New Europe Consulting and others* [1999] ECR II-2403). The wording for that right in the first two paragraphs results from the case-law (Court of Justice judgment of 15 October 1987 in Case 222/86 *Heylens* [1987] ECR 4097, paragraph 15 of the grounds, judgment of 18 October 1989 in Case 374/87 *Orkem* [1989] ECR 3283, judgment of 21 November 1991 in Case C-269/90 *TU München* [1991] ECR I-5469, and Court of First Instance judgments of 6 December 1994 in Case T-450/93 *Lisrestal* [1994] ECR II-1177, 18 September 1995 in Case T-167/94 *Nölle* [1995] ECR II-258) and the wording regarding the obligation to give reasons comes from Article 253 of the EC Treaty, now replaced by Article I-38(2) of the Constitution (see also the legal base in Article III-398 of the Constitution for the adoption of legislation in the interest of an open, efficient and independent European administration).

⁽¹⁾ Article II-112(2) of the Constitution.

⁽²⁾ Article II-101 of the Constitution.

Paragraph 3 reproduces the right now guaranteed by Article III-431 of the Constitution. Paragraph 4 reproduces the right now guaranteed by Articles I-10(2)(d) and III-129 of the Constitution. In accordance with Article 52(2) of the Charter ⁽¹⁾, those rights are to be applied under the conditions and within the limits defined by Part III of the Constitution.

The right to an effective remedy, which is an important aspect of this question, is guaranteed in Article 47 of this Charter ⁽²⁾.

Article 42 ⁽³⁾

Right of access to documents

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of the institutions, bodies, offices and agencies of the Union, whatever their medium.

Explanation

The right guaranteed in this Article has been taken over from Article 255 of the EC Treaty, on the basis of which Regulation 1049/2001 has subsequently been adopted. The European Convention has extended this right to documents of institutions, bodies and agencies generally, regardless of their form, see Article I-50(3) of the Constitution. In accordance with Article 52(2) of the Charter ⁽¹⁾, the right of access to documents is exercised under the conditions and within the limits for which provision is made in Articles I-50(3) and III-399.

Article 43 ⁽⁴⁾

European Ombudsman

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to refer to the European Ombudsman cases of maladministration in the activities of the institutions, bodies, offices or agencies of the Union, with the exception of the Court of Justice of the European Union acting in its judicial role.

Explanation

The right guaranteed in this Article is the right guaranteed by Articles I-10 and III-335 of the Constitution. In accordance with Article 52(2) of the Charter ⁽¹⁾, it applies under the conditions defined in these two Articles.

⁽¹⁾ Article II-112(2) of the Constitution.

⁽²⁾ Article II-107 of the Constitution.

⁽³⁾ Article II-102 of the Constitution.

⁽⁴⁾ Article II-103 of the Constitution.

Article 44 ⁽¹⁾**Right to petition**

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to petition the European Parliament.

Explanation

The right guaranteed in this Article is the right guaranteed by Articles I-10 and III-334 of the Constitution. In accordance with Article 52(2) of the Charter ⁽²⁾, it applies under the conditions defined in these two Articles.

Article 45 ⁽³⁾**Freedom of movement and of residence**

1. Every citizen of the Union has the right to move and reside freely within the territory of the Member States.
2. Freedom of movement and residence may be granted, in accordance with the Constitution, to nationals of third countries legally resident in the territory of a Member State.

Explanation

The right guaranteed by paragraph 1 is the right guaranteed by Article I-10(2)(a) of the Constitution (cf. also the legal base in Article III-125; and the judgement of the Court of Justice of 17 September 2002, C-413/99 Baumbast, [2002] ECR 709). In accordance with Article 52(2) of the Charter ⁽²⁾, it applies under the conditions and within the limits defined for which provision is made in Part III of the Constitution.

Paragraph 2 refers to the power granted to the Union by Articles III-265 to III-267 of the Constitution. Consequently, the granting of this right depends on the institutions exercising that power.

Article 46 ⁽⁴⁾**Diplomatic and consular protection**

Every citizen of the Union shall, in the territory of a third country in which the Member State of which he or she is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that Member State.

⁽¹⁾ Article II-104 of the Constitution.

⁽²⁾ Article II-112(2) of the Constitution.

⁽³⁾ Article II-105 of the Constitution.

⁽⁴⁾ Article II-106 of the Constitution.

Explanation

The right guaranteed by this Article is the right guaranteed by Article I-10 of the Constitution; cf. also the legal base in Article III-127. In accordance with Article 52(2) of the Charter ⁽¹⁾, it applies under the conditions defined in these Articles.

TITLE VI

JUSTICE

Article 47 ⁽²⁾**Right to an effective remedy and to a fair trial**

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

Legal aid shall be made available to those who lack sufficient resources insofar as such aid is necessary to ensure effective access to justice.

Explanation

The first paragraph is based on Article 13 of the ECHR:

‘Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.’

However, in Union law the protection is more extensive since it guarantees the right to an effective remedy before a court. The Court of Justice enshrined that right in its judgment of 15 May 1986 as a general principle of Union law (Case 222/84 Johnston [1986] ECR 1651; see also judgment of 15 October 1987, Case 222/86 Heylens [1987] ECR 4097 and judgment of 3 December 1992, Case C-97/91 Borelli [1992] ECR I-6313). According to the Court, that general principle of Union law also applies to the Member States when they are implementing Union law. The inclusion of this precedent in the Charter has not been intended to change the system of judicial review laid down by the Treaties, and particularly the rules relating to admissibility for direct actions before the Court of Justice of the European Union. The European Convention has considered the Union’s system of judicial review including the rules on admissibility, and confirmed them while amending them as to certain aspects, as reflected in Articles III-353 to III-381 of the Constitution, and in particular in Article III-365(4). Article 47 ⁽²⁾ applies to the institutions of the Union and of Member States when they are implementing Union law and does so for all rights guaranteed by Union law.

⁽¹⁾ Article II-112(2) of the Constitution.

⁽²⁾ Article II-107 of the Constitution.

The second paragraph corresponds to Article 6(1) of the ECHR which reads as follows:

'In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.'

In Union law, the right to a fair hearing is not confined to disputes relating to civil law rights and obligations. That is one of the consequences of the fact that the Union is a community based on the rule of law as stated by the Court in Case 294/83, 'Les Verts' v European Parliament (judgment of 23 April 1986, [1988] ECR 1339). Nevertheless, in all respects other than their scope, the guarantees afforded by the ECHR apply in a similar way to the Union.

With regard to the third paragraph, it should be noted that in accordance with the case-law of the European Court of Human Rights, provision should be made for legal aid where the absence of such aid would make it impossible to ensure an effective remedy (ECHR Judgment of 9 October 1979, Airey, Series A, Volume 32, 11). There is also a system of legal assistance for cases before the Court of Justice of the European Union.

Article 48⁽¹⁾

Presumption of innocence and right of defence

1. Everyone who has been charged shall be presumed innocent until proved guilty according to law.
2. Respect for the rights of the defence of anyone who has been charged shall be guaranteed.

Explanation

Article 48⁽¹⁾ is the same as Article 6(2) and (3) of the ECHR, which reads as follows:

- '2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
3. Everyone charged with a criminal offence has the following minimum rights:
 - (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
 - (b) to have adequate time and facilities for the preparation of his defence;

⁽¹⁾ Article II-108 of the Constitution.

- (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
- (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
- (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.'

In accordance with Article 52(3) ⁽¹⁾, this right has the same meaning and scope as the right guaranteed by the ECHR.

Article 49 ⁽²⁾

Principles of legality and proportionality of criminal offences and penalties

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national law or international law at the time when it was committed. Nor shall a heavier penalty be imposed than that which was applicable at the time the criminal offence was committed. If, subsequent to the commission of a criminal offence, the law provides for a lighter penalty, that penalty shall be applicable.
2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles recognised by the community of nations.
3. The severity of penalties must not be disproportionate to the criminal offence.

Explanation

This Article follows the traditional rule of the non-retroactivity of laws and criminal sanctions. There has been added the rule of the retroactivity of a more lenient penal law, which exists in a number of Member States and which features in Article 15 of the Covenant on Civil and Political Rights.

Article 7 of the ECHR is worded as follows:

- '1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.
2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.'

⁽¹⁾ Article II-112(3) of the Constitution.

⁽²⁾ Article II-109 of the Constitution.

In paragraph 2, the reference to ‘civilised’ nations has been deleted; this does not change the meaning of this paragraph, which refers to crimes against humanity in particular. In accordance with Article 52(3) ⁽¹⁾, the right guaranteed here therefore has the same meaning and scope as the right guaranteed by the ECHR.

Paragraph 3 states the general principle of proportionality between penalties and criminal offences which is enshrined in the common constitutional traditions of the Member States and in the case-law of the Court of Justice of the Communities.

Article 50 ⁽²⁾

Right not to be tried or punished twice in criminal proceedings for the same criminal offence

No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law.

Explanation

Article 4 of Protocol No 7 to the ECHR reads as follows:

1. No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State.
2. The provisions of the preceding paragraph shall not prevent the reopening of the case in accordance with the law and the penal procedure of the State concerned, if there is evidence of new or newly discovered facts, or if there has been a fundamental defect in the previous proceedings, which could affect the outcome of the case.
3. No derogation from this Article shall be made under Article 15 of the Convention.’

The ‘non bis in idem’ rule applies in Union law (see, among the many precedents, the judgment of 5 May 1966, Cases 18/65 and 35/65, *Gutmann v Commission* [1966] ECR 103 and a recent case, the decision of the Court of First Instance of 20 April 1999, *Joined Cases T-305/94 and others, Limburgse Vinyl Maatschappij NV v. Commission* [1999] ECR II-931). The rule prohibiting cumulation refers to cumulation of two penalties of the same kind, that is to say criminal law penalties.

In accordance with Article 50 ⁽²⁾, the ‘non bis in idem’ rule applies not only within the jurisdiction of one State but also between the jurisdictions of several Member States. That corresponds to the *acquis* in Union law; see Articles 54 to 58 of the Schengen Convention and the judgment of the Court of Justice of 11 February 2003, *C-187/01 Gözütok* (not yet published), Article 7 of the Convention on the Protection of the European Communities’ Financial Interests and Article 10 of the Convention on the fight against corruption. The very limited exceptions in those Conventions permitting the Member States to derogate from the ‘non bis in idem’ rule are covered by the horizontal clause in Article 52(1) of the Charter ⁽³⁾ concerning limitations. As regards the situations referred to by Article 4 of Protocol No 7, namely the application of the principle within the same Member State, the guaranteed right has the same meaning and the same scope as the corresponding right in the ECHR.

⁽¹⁾ Article II-112(3) of the Constitution.

⁽²⁾ Article II-110 of the Constitution.

⁽³⁾ Article II-112(1) of the Constitution.

TITLE VII

GENERAL PROVISIONS GOVERNING THE INTERPRETATION AND APPLICATION OF THE CHARTER

Article 51 ⁽¹⁾**Field of application**

1. The provisions of this Charter are addressed to the institutions, bodies, offices and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers and respecting the limits of the powers of the Union as conferred on it in the other Parts of the Constitution.
2. This Charter does not extend the field of application of Union law beyond the powers of the Union or establish any new power or task for the Union, or modify powers and tasks defined in the other Parts of the Constitution.

Explanation

The aim of Article 51 ⁽¹⁾ is to determine the scope of the Charter. It seeks to establish clearly that the Charter applies primarily to the institutions and bodies of the Union, in compliance with the principle of subsidiarity. This provision was drafted in keeping with Article 6(2) of the Treaty on European Union, which required the Union to respect fundamental rights, and with the mandate issued by Cologne European Council. The term 'institutions' is enshrined in Part I of the Constitution. The expression 'bodies, offices and agencies' is commonly used in the Constitution to refer to all the authorities set up by the Constitution or by secondary legislation (see, e.g., Articles I-50 or I-51 of the Constitution).

As regards the Member States, it follows unambiguously from the case-law of the Court of Justice that the requirement to respect fundamental rights defined in a Union context is only binding on the Member States when they act in the scope of Union law (judgment of 13 July 1989, Case 5/88 Wachauf [1989] ECR 2609; judgment of 18 June 1991, ERT [1991] ECR I-2925; judgment of 18 December 1997 (C-309/96 Annibaldi [1997] ECR I-7493). The Court of Justice confirmed this case-law in the following terms: 'In addition, it should be remembered that the requirements flowing from the protection of fundamental rights in the Community legal order are also binding on Member States when they implement Community rules ...' (judgment of 13 April 2000, Case C-292/97, [2000] ECR 2737, paragraph 37 of the grounds). Of course this rule, as enshrined in this Charter, applies to the central authorities as well as to regional or local bodies, and to public organisations, when they are implementing Union law.

Paragraph 2, together with the second sentence of paragraph 1, confirms that the Charter may not have the effect of extending the competences and tasks which the other Parts of the Constitution confer on the Union. Explicit mention is made here of the logical consequences of the principle of subsidiarity and of the fact that the Union only has those powers which have been conferred upon it. The fundamental rights as guaranteed in the Union do not have any effect other than in the context of the powers determined by Parts I and III of the Constitution. Consequently, an obligation, pursuant to the second sentence of paragraph 1, for the Union's institutions to promote principles laid down in the Charter, may arise only within the limits of these same powers.

⁽¹⁾ Article II-111 of the Constitution.

Paragraph 2 also confirms that the Charter may not have the effect of extending the field of application of Union law beyond the powers of the Union as established in the other Parts of the Constitution. The Court of Justice has already established this rule with respect to the fundamental rights recognised as part of Union law (judgment of 17 February 1998, C-249/96 Grant, 1998 ECR I-621, paragraph 45 of the grounds). In accordance with this rule, it goes without saying that the incorporation of the Charter into the Constitution cannot be understood as extending by itself the range of Member State action considered to be 'implementation of Union law' (within the meaning of paragraph 1 and the above-mentioned case-law).

Article 52⁽¹⁾

Scope and interpretation of rights and principles

1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.
2. Rights recognised by this Charter for which provision is made in other Parts of the Constitution shall be exercised under the conditions and within the limits defined by these relevant Parts.
3. Insofar as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.
4. Insofar as this Charter recognises fundamental rights as they result from the constitutional traditions common to the Member States, those rights shall be interpreted in harmony with those traditions.
5. The provisions of this Charter which contain principles may be implemented by legislative and executive acts taken by institutions, bodies, offices and agencies of the Union, and by acts of Member States when they are implementing Union law, in the exercise of their respective powers. They shall be judicially cognisable only in the interpretation of such acts and in the ruling on their legality.
6. Full account shall be taken of national laws and practices as specified in this Charter.
7. The explanations drawn up as a way of providing guidance in the interpretation of the Charter of Fundamental Rights shall be given due regard by the courts of the Union and of the Member States.

(¹) Article II-112 of the Constitution.

Explanation

The purpose of Article 52 ⁽¹⁾ is to set the scope of the rights and principles of the Charter, and to lay down rules for their interpretation. Paragraph 1 deals with the arrangements for the limitation of rights. The wording is based on the case-law of the Court of Justice: ‘... it is well established in the case-law of the Court that restrictions may be imposed on the exercise of fundamental rights, in particular in the context of a common organisation of the market, provided that those restrictions in fact correspond to objectives of general interest pursued by the Community and do not constitute, with regard to the aim pursued, disproportionate and unreasonable interference undermining the very substance of those rights’ (judgment of 13 April 2000, Case C-292/97, paragraph 45 of the grounds). The reference to general interests recognised by the Union covers both the objectives mentioned in Article I-2 of the Constitution and other interests protected by specific provisions of the Constitution such as Articles I-5(1), III-133(3), III-154 and III-436.

Paragraph 2 refers to rights which were already expressly guaranteed in the Treaty establishing the European Community and have been recognised in the Charter, and which are now found in other Parts of the Constitution (notably the rights derived from Union citizenship). It clarifies that such rights remain subject to the conditions and limits applicable to the Union law on which they are based, and for which provision is now made in Parts I and III of the Constitution. The Charter does not alter the system of rights conferred by the EC Treaty and now taken over by Parts I and III of the Constitution.

Paragraph 3 is intended to ensure the necessary consistency between the Charter and the ECHR by establishing the rule that, insofar as the rights in the present Charter also correspond to rights guaranteed by the ECHR, the meaning and scope of those rights, including authorised limitations, are the same as those laid down by the ECHR. This means in particular that the legislator, in laying down limitations to those rights, must comply with the same standards as are fixed by the detailed limitation arrangements laid down in the ECHR, which are thus made applicable for the rights covered by this paragraph, without thereby adversely affecting the autonomy of Union law and of that of the Court of Justice of the European Union.

The reference to the ECHR covers both the Convention and the Protocols to it. The meaning and the scope of the guaranteed rights are determined not only by the text of those instruments, but also by the case-law of the European Court of Human Rights and by the Court of Justice of the European Union. The last sentence of the paragraph is designed to allow the Union to guarantee more extensive protection. In any event, the level of protection afforded by the Charter may never be lower than that guaranteed by the ECHR.

The Charter does not affect the possibilities of Member States to avail themselves of Article 15 ECHR, allowing derogations from ECHR rights in the event of war or of other public dangers threatening the life of the nation, when they take action in the areas of national defence in the event of war and of the maintenance of law and order, in accordance with their responsibilities recognised in Articles I-5 (1), III-131, III-262 of the Constitution.

The list of rights which may at the present stage, without precluding developments in the law, legislation and the Treaties, be regarded as corresponding to rights in the ECHR within the meaning of the present paragraph is given hereafter. It does not include rights additional to those in the ECHR.

1. Articles of the Charter where both the meaning and the scope are the same as the corresponding Articles of the ECHR:

— Article 2 ⁽²⁾ corresponds to Article 2 of the ECHR

⁽¹⁾ Article II-112 of the Constitution.

⁽²⁾ Article II-62 of the Constitution.

- Article 4 ⁽¹⁾ corresponds to Article 3 of the ECHR
 - Article 5(1) and (2) ⁽²⁾ correspond to Article 4 of the ECHR
 - Article 6 ⁽³⁾ corresponds to Article 5 of the ECHR
 - Article 7 ⁽⁴⁾ corresponds to Article 8 of the ECHR
 - Article 10(1) ⁽⁵⁾ corresponds to Article 9 of the ECHR
 - Article 11 ⁽⁶⁾ corresponds to Article 10 of the ECHR without prejudice to any restrictions which Union law may impose on Member States' right to introduce the licensing arrangements referred to in the third sentence of Article 10(1) of the ECHR
 - Article 17 ⁽⁷⁾ corresponds to Article 1 of the Protocol to the ECHR
 - Article 19(1) ⁽⁸⁾ corresponds to Article 4 of Protocol No 4
 - Article 19(2) ⁽⁸⁾ corresponds to Article 3 of the ECHR as interpreted by the European Court of Human Rights
 - Article 48 ⁽⁹⁾ corresponds to Article 6(2) and(3) of the ECHR
 - Article 49(1) (with the exception of the last sentence) and (2) ⁽¹⁰⁾ correspond to Article 7 of the ECHR
2. Articles where the meaning is the same as the corresponding Articles of the ECHR, but where the scope is wider:
- Article 9 ⁽¹¹⁾ covers the same field as Article 12 of the ECHR, but its scope may be extended to other forms of marriage if these are established by national legislation

⁽¹⁾ Article II-64 of the Constitution.

⁽²⁾ Article II-65 of the Constitution.

⁽³⁾ Article II-66 of the Constitution.

⁽⁴⁾ Article II-67 of the Constitution.

⁽⁵⁾ Article II-70 of the Constitution.

⁽⁶⁾ Article II-71 of the Constitution.

⁽⁷⁾ Article II-77 of the Constitution.

⁽⁸⁾ Article II-79 of the Constitution.

⁽⁹⁾ Article II-108 of the Constitution.

⁽¹⁰⁾ Article II-109 of the Constitution.

⁽¹¹⁾ Article II-69 of the Constitution.

- Article 12(1) ⁽¹⁾ corresponds to Article 11 of the ECHR, but its scope is extended to European Union level
- Article 14(1) ⁽²⁾ corresponds to Article 2 of the Protocol to the ECHR, but its scope is extended to cover access to vocational and continuing training
- Article 14(3) ⁽²⁾ corresponds to Article 2 of the Protocol to the ECHR as regards the rights of parents
- Article 47(2) and (3) ⁽³⁾ correspond to Article 6(1) of the ECHR, but the limitation to the determination of civil rights and obligations or criminal charges does not apply as regards Union law and its implementation
- Article 50 ⁽⁴⁾ corresponds to Article 4 of Protocol No 7 to the ECHR, but its scope is extended to European Union level between the Courts of the Member States.
- Finally, citizens of the European Union may not be considered as aliens in the scope of the application of Union law, because of the prohibition of any discrimination on grounds of nationality. The limitations provided for by Article 16 of the ECHR as regards the rights of aliens therefore do not apply to them in this context.

The rule of interpretation contained in paragraph 4 has been based on the wording of Article 6(2) of the Treaty on European Union (cf. now the wording of Article I-9(3) of the Constitution) and takes due account of the approach to common constitutional traditions followed by the Court of Justice (e.g., judgment of 13 December 1979, Case 44/79 Hauer [1979] ECR 3727; judgment of 18 May 1982, Case 155/79, AM&S, [1982] ECR 1575). Under that rule, rather than following a rigid approach of ‘a lowest common denominator’, the Charter rights concerned should be interpreted in a way offering a high standard of protection which is adequate for the law of the Union and in harmony with the common constitutional traditions.

Paragraph 5 clarifies the distinction between ‘rights’ and ‘principles’ set out in the Charter. According to that distinction, subjective rights shall be respected, whereas principles shall be observed (Article 51 (1)) ⁽⁵⁾. Principles may be implemented through legislative or executive acts (adopted by the Union in accordance with its powers, and by the Member States only when they implement Union law); accordingly, they become significant for the Courts only when such acts are interpreted or reviewed. They do not however give rise to direct claims for positive action by the Union’s institutions or Member States authorities. This is consistent both with case-law of the Court of Justice (Cf. notably case-law on the ‘precautionary principle’ in Article 174 (2) TEC (replaced by Article III-233 of the Constitution): judgment of the CFI of 11 September 2002, T-13/99, Pfizer vs. Council, with numerous references to earlier case-law; and a series of judgments on Article 33 (ex 39) on the principles of agricultural law, e.g. judgment of the Court of Justice C-265/85, Van den Berg, 1987 ECR 1155: scrutiny of the principle of market stabilisation and of reasonable expectations) and with the approach of the Member States’ constitutional systems to

⁽¹⁾ Article II-72 of the Constitution.

⁽²⁾ Article II-74 of the Constitution.

⁽³⁾ Article II-107 of the Constitution.

⁽⁴⁾ Article II-110 of the Constitution.

⁽⁵⁾ Article II-111 of the Constitution.

'principles' particularly in the field of social law. For illustration, examples for principles recognised in the Charter include e.g. Articles 25, 26 and 37 ⁽¹⁾. In some cases, an Article of the Charter may contain both elements of a right and of a principle, e.g. Articles 23, 33 and 34 ⁽²⁾.

Paragraph 6 refers to the various Articles in the Charter which, in the spirit of subsidiarity, make reference to national laws and practices.

Article 53 ⁽³⁾

Level of protection

Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by Union law and international law and by international agreements to which the Union or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' constitutions.

Explanation

This provision is intended to maintain the level of protection currently afforded within their respective scope by Union law, national law and international law. Owing to its importance, mention is made of the ECHR.

Article 54 ⁽⁴⁾

Prohibition of abuse of rights

Nothing in this Charter shall be interpreted as implying any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms recognised in this Charter or at their limitation to a greater extent than is provided for herein.

Explanation

This Article corresponds to Article 17 of the ECHR:

'Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.'

⁽¹⁾ Articles II-85, II-86 and II-97 of the Constitution.

⁽²⁾ Articles II-83, II-93 and II-94 of the Constitution.

⁽³⁾ Article II-113 of the Constitution.

⁽⁴⁾ Article II-114 of the Constitution.

***I.3. The Version in Force:
the 2007 Charter of
Fundamental Rights and
Explanations, and Extracts
from the Treaties (Lisbon
consolidated version)***

IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS AND BODIES

EUROPEAN PARLIAMENT

COUNCIL

COMMISSION

CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

(2007/C 303/01)

The European Parliament, the Council and the Commission solemnly proclaim the following text as the Charter of Fundamental Rights of the European Union.

CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Preamble

The peoples of Europe, in creating an ever closer union among them, are resolved to share a peaceful future based on common values.

Conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law. It places the individual at the heart of its activities, by establishing the citizenship of the Union and by creating an area of freedom, security and justice.

The Union contributes to the preservation and to the development of these common values while respecting the diversity of the cultures and traditions of the peoples of Europe as well as the national identities of the Member States and the organisation of their public authorities at national, regional and local levels; it seeks to promote balanced and sustainable development and ensures free movement of persons, services, goods and capital, and the freedom of establishment.

To this end, it is necessary to strengthen the protection of fundamental rights in the light of changes in society, social progress and scientific and technological developments by making those rights more visible in a Charter.

This Charter reaffirms, with due regard for the powers and tasks of the Union and for the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Union and by the Council of Europe and the case-law of the Court of Justice of the European Union and of the European Court of Human Rights. In this context the Charter will be interpreted by the courts of the Union and the Member States with due regard to the explanations prepared under the authority of the Praesidium of the Convention which drafted the Charter and updated under the responsibility of the Praesidium of the European Convention.

Enjoyment of these rights entails responsibilities and duties with regard to other persons, to the human community and to future generations.

The Union therefore recognises the rights, freedoms and principles set out hereafter.

TITLE I

DIGNITY

*Article 1***Human dignity**

Human dignity is inviolable. It must be respected and protected.

*Article 2***Right to life**

1. Everyone has the right to life.
2. No one shall be condemned to the death penalty, or executed.

*Article 3***Right to the integrity of the person**

1. Everyone has the right to respect for his or her physical and mental integrity.
2. In the fields of medicine and biology, the following must be respected in particular:
 - (a) the free and informed consent of the person concerned, according to the procedures laid down by law;
 - (b) the prohibition of eugenic practices, in particular those aiming at the selection of persons;
 - (c) the prohibition on making the human body and its parts as such a source of financial gain;
 - (d) the prohibition of the reproductive cloning of human beings.

*Article 4***Prohibition of torture and inhuman or degrading treatment or punishment**

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

*Article 5***Prohibition of slavery and forced labour**

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. Trafficking in human beings is prohibited.

TITLE II

FREEDOMS

*Article 6***Right to liberty and security**

Everyone has the right to liberty and security of person.

*Article 7***Respect for private and family life**

Everyone has the right to respect for his or her private and family life, home and communications.

*Article 8***Protection of personal data**

1. Everyone has the right to the protection of personal data concerning him or her.
2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.
3. Compliance with these rules shall be subject to control by an independent authority.

*Article 9***Right to marry and right to found a family**

The right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights.

*Article 10***Freedom of thought, conscience and religion**

1. Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.
2. The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right.

*Article 11***Freedom of expression and information**

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.
2. The freedom and pluralism of the media shall be respected.

*Article 12***Freedom of assembly and of association**

1. Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests.
2. Political parties at Union level contribute to expressing the political will of the citizens of the Union.

*Article 13***Freedom of the arts and sciences**

The arts and scientific research shall be free of constraint. Academic freedom shall be respected.

*Article 14***Right to education**

1. Everyone has the right to education and to have access to vocational and continuing training.
2. This right includes the possibility to receive free compulsory education.
3. The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right.

*Article 15***Freedom to choose an occupation and right to engage in work**

1. Everyone has the right to engage in work and to pursue a freely chosen or accepted occupation.
2. Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State.
3. Nationals of third countries who are authorised to work in the territories of the Member States are entitled to working conditions equivalent to those of citizens of the Union.

*Article 16***Freedom to conduct a business**

The freedom to conduct a business in accordance with Union law and national laws and practices is recognised.

*Article 17***Right to property**

1. Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law in so far as is necessary for the general interest.

2. Intellectual property shall be protected.

*Article 18***Right to asylum**

The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty on European Union and the Treaty on the Functioning of the European Union (hereinafter referred to as ‘the Treaties’).

*Article 19***Protection in the event of removal, expulsion or extradition**

1. Collective expulsions are prohibited.

2. No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.

TITLE III

EQUALITY

*Article 20***Equality before the law**

Everyone is equal before the law.

*Article 21***Non-discrimination**

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.
2. Within the scope of application of the Treaties and without prejudice to any of their specific provisions, any discrimination on grounds of nationality shall be prohibited.

*Article 22***Cultural, religious and linguistic diversity**

The Union shall respect cultural, religious and linguistic diversity.

*Article 23***Equality between women and men**

Equality between women and men must be ensured in all areas, including employment, work and pay.

The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.

*Article 24***The rights of the child**

1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.
2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.
3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.

*Article 25***The rights of the elderly**

The Union recognises and respects the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life.

*Article 26***Integration of persons with disabilities**

The Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.

TITLE IV

SOLIDARITY*Article 27***Workers' right to information and consultation within the undertaking**

Workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions provided for by Union law and national laws and practices.

*Article 28***Right of collective bargaining and action**

Workers and employers, or their respective organisations, have, in accordance with Union law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action.

*Article 29***Right of access to placement services**

Everyone has the right of access to a free placement service.

*Article 30***Protection in the event of unjustified dismissal**

Every worker has the right to protection against unjustified dismissal, in accordance with Union law and national laws and practices.

*Article 31***Fair and just working conditions**

1. Every worker has the right to working conditions which respect his or her health, safety and dignity.
2. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

*Article 32***Prohibition of child labour and protection of young people at work**

The employment of children is prohibited. The minimum age of admission to employment may not be lower than the minimum school-leaving age, without prejudice to such rules as may be more favourable to young people and except for limited derogations.

Young people admitted to work must have working conditions appropriate to their age and be protected against economic exploitation and any work likely to harm their safety, health or physical, mental, moral or social development or to interfere with their education.

*Article 33***Family and professional life**

1. The family shall enjoy legal, economic and social protection.
2. To reconcile family and professional life, everyone shall have the right to protection from dismissal for a reason connected with maternity and the right to paid maternity leave and to parental leave following the birth or adoption of a child.

*Article 34***Social security and social assistance**

1. The Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by Union law and national laws and practices.
2. Everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with Union law and national laws and practices.
3. In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Union law and national laws and practices.

*Article 35***Health care**

Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all the Union's policies and activities.

*Article 36***Access to services of general economic interest**

The Union recognises and respects access to services of general economic interest as provided for in national laws and practices, in accordance with the Treaties, in order to promote the social and territorial cohesion of the Union.

*Article 37***Environmental protection**

A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.

*Article 38***Consumer protection**

Union policies shall ensure a high level of consumer protection.

TITLE V

CITIZENS' RIGHTS

*Article 39***Right to vote and to stand as a candidate at elections to the European Parliament**

1. Every citizen of the Union has the right to vote and to stand as a candidate at elections to the European Parliament in the Member State in which he or she resides, under the same conditions as nationals of that State.
2. Members of the European Parliament shall be elected by direct universal suffrage in a free and secret ballot.

*Article 40***Right to vote and to stand as a candidate at municipal elections**

Every citizen of the Union has the right to vote and to stand as a candidate at municipal elections in the Member State in which he or she resides under the same conditions as nationals of that State.

*Article 41***Right to good administration**

1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union.

2. This right includes:
- (a) the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;
 - (b) the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;
 - (c) the obligation of the administration to give reasons for its decisions.
3. Every person has the right to have the Union make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.
4. Every person may write to the institutions of the Union in one of the languages of the Treaties and must have an answer in the same language.

Article 42

Right of access to documents

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of the institutions, bodies, offices and agencies of the Union, whatever their medium.

Article 43

European Ombudsman

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to refer to the European Ombudsman cases of maladministration in the activities of the institutions, bodies, offices or agencies of the Union, with the exception of the Court of Justice of the European Union acting in its judicial role.

Article 44

Right to petition

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to petition the European Parliament.

Article 45

Freedom of movement and of residence

1. Every citizen of the Union has the right to move and reside freely within the territory of the Member States.
2. Freedom of movement and residence may be granted, in accordance with the Treaties, to nationals of third countries legally resident in the territory of a Member State.

*Article 46***Diplomatic and consular protection**

Every citizen of the Union shall, in the territory of a third country in which the Member State of which he or she is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that Member State.

TITLE VI

JUSTICE

*Article 47***Right to an effective remedy and to a fair trial**

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.

*Article 48***Presumption of innocence and right of defence**

1. Everyone who has been charged shall be presumed innocent until proved guilty according to law.
2. Respect for the rights of the defence of anyone who has been charged shall be guaranteed.

*Article 49***Principles of legality and proportionality of criminal offences and penalties**

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national law or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed. If, subsequent to the commission of a criminal offence, the law provides for a lighter penalty, that penalty shall be applicable.
2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles recognised by the community of nations.
3. The severity of penalties must not be disproportionate to the criminal offence.

*Article 50***Right not to be tried or punished twice in criminal proceedings for the same criminal offence**

No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law.

TITLE VII

GENERAL PROVISIONS GOVERNING THE INTERPRETATION AND APPLICATION OF THE CHARTER*Article 51***Field of application**

1. The provisions of this Charter are addressed to the institutions, bodies, offices and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers and respecting the limits of the powers of the Union as conferred on it in the Treaties.
2. The Charter does not extend the field of application of Union law beyond the powers of the Union or establish any new power or task for the Union, or modify powers and tasks as defined in the Treaties.

*Article 52***Scope and interpretation of rights and principles**

1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.
2. Rights recognised by this Charter for which provision is made in the Treaties shall be exercised under the conditions and within the limits defined by those Treaties.
3. In so far as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.
4. In so far as this Charter recognises fundamental rights as they result from the constitutional traditions common to the Member States, those rights shall be interpreted in harmony with those traditions.

5. The provisions of this Charter which contain principles may be implemented by legislative and executive acts taken by institutions, bodies, offices and agencies of the Union, and by acts of Member States when they are implementing Union law, in the exercise of their respective powers. They shall be judicially cognisable only in the interpretation of such acts and in the ruling on their legality.
6. Full account shall be taken of national laws and practices as specified in this Charter.
7. The explanations drawn up as a way of providing guidance in the interpretation of this Charter shall be given due regard by the courts of the Union and of the Member States.

Article 53

Level of protection

Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by Union law and international law and by international agreements to which the Union or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' constitutions.

Article 54

Prohibition of abuse of rights

Nothing in this Charter shall be interpreted as implying any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms recognised in this Charter or at their limitation to a greater extent than is provided for herein.



The above text adapts the wording of the Charter proclaimed on 7 December 2000, and will replace it as from the date of entry into force of the Treaty of Lisbon.

Съставено в Страсбург на дванадесети декември две хиляди и седма година.

Hecho en Estrasburgo, el doce de diciembre de dos mil siete.

Ve Štrasburku dne dvanáctého prosince dva tisíce sedm.

Udfærdiget i Strasbourg den tolvte december to tusind og syv.

Geschehen zu Strassburg am zwölften Dezember zweitausendsieben.

Kahe tuhanda seitsmenda aasta detsembrikuu kaheteistkümnendal päeval Strasbourgis.

Έγινε στο Στρασβούργο, στις δώδεκα Δεκεμβρίου δύο χιλιάδες επτά.

Done at Strasbourg on the twelfth day of December in the year two thousand and seven.

Fait à Strasbourg, le douze décembre deux mille sept.

Arna dhéanamh in Strasbourg an dara lá déag de Nollaig sa bhliain dhá mhíle a seacht.

Fatto a Strasburgo, addì dodici dicembre duemilasette.

Strasbūrā, divtūkstoš septītā gada divpadsmitajā decembrī.

Priimta du tūkstančiai septintųjų metų gruodžio dvyliktą dieną Strasbūre.

Kelt Strasbourgban, a kétezer-hetedik év december tizenkettedik napján.

Magħmul fi Strasburgu, fit-tnax-il jum ta' Diċembru tas-sena elfejn u sebgha.

Gedaan te Straatsburg, de twaalfde december tweeduizend zeven.

Sporządzono w Strasburgu dnia dwunastego grudnia roku dwa tysiące siódmego.

Feito em Estrasburgo, em doze de Dezembro de dois mil e sete.

Întocmit la Strasbourg, la doisprezece decembrie două mii șapte.

V Štrasburgu dňa dvanásteho decembra dvetisícšedem.

V Strasbourgü, dne dvanajstega decembra leta dva tisoč sedem.

Tehty Strasbourgissa kahdentenatoista päivänä joulukuuta vuonna kaksituhattaseitsemän.

Som skedde i Strasbourg den tolfte december tjugohundrasju.

<p>За Европейския парламент Por el Parlamento Europeo Za Evropský parlament For Europa-Parlamentet Im Namen des Europäischen Parlaments Euroopa Parlamendi nimel Για το Ευρωπαϊκό Κοινοβούλιο For the European Parliament Pour le Parlement européen Thar ceann Pharlaimint na hEorpa Per il Parlamento europeo Eiroparlamenta vārdā Europos Parlamento vardu Az Európai Parlament részéről Ghall-Parlament Ewropew Voor het Europees Parlement W imieniu Parlamentu Europejskiego Pelo Parlamento Europeu Pentru Parlamentul European za Európsky parlament za Evropski parlament Euroopan parlamentin puolesta På Europaparlamentets vägnar</p>	<p>За Съвета на Европейския съюз Por el Consejo de la Unión Europea Za Radu Evropské unie For Rådet for Den Europæiske Union Für den Rat der Europäischen Union Euroopa Liidu Nõukogu nimel Για το Συμβούλιο της Ευρωπαϊκής Ένωσης For the Council of the European Union Pour le Conseil de l'Union européenne Thar ceann Chomhairle an Aontais Eorpaigh Per il Consiglio dell'Unione europea Eiropas Savienības Padomes vārdā Europos Sąjungos Tarybos vardu Az Európai Unió Tanácsa részéről Ghall-Kunsill ta' l-Unjoni Ewropea Voor de Raad van de Europese Unie W imieniu Rady Unii Europejskiej Pelo Conselho da União Europeia Pentru Consiliul Uniunii Europene za Radu Európskej únie za Svet Evropske unije Euroopan unionin neuvoston puolesta För Europeiska unionens råd</p>	<p>За Комисията на Европейските общности Por la Comisión de las Comunidades Europeas Za Komisi Evropských společenství For Kommission for De Europæiske Fællesskaber Für die Kommission der Europäischen Gemeinschaften Euroopa Ühenduste Komisjoni nimel Για την Επιτροπή των Ευρωπαϊκών Κοινοτήτων For the Commission of the European Communities Pour la Commission des communautés européennes Thar ceann Choimisiún na gComhphobal Eorpach Per la Commissione delle Comunità europee Eiropas Kopienu Komisijas vārdā Europos Bendrijų Komisijos vardu Az Európai Közösségek Bizottsága részéről Ghall-Kummissjoni tal-Komunitajiet Ewropej Voor de Commissie van de Europese Gemeenschappen W imieniu Komisji Wspólnot Europejskich Pela Comissão das Comunidades Europeias Pentru Comisia Comunităților Europene Za Komisiu Európskych spoločenstiev Za Komisijo Evropskih skupnosti Euroopan yhteisöjen komission puolesta På Europeiska gemenskapernas kommissions vägnar</p>
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EXPLANATIONS (*) RELATING TO THE CHARTER OF FUNDAMENTAL RIGHTS

(2007/C 303/02)

These explanations were originally prepared under the authority of the Praesidium of the Convention which drafted the Charter of Fundamental Rights of the European Union. They have been updated under the responsibility of the Praesidium of the European Convention, in the light of the drafting adjustments made to the text of the Charter by that Convention (notably to Articles 51 and 52) and of further developments of Union law. Although they do not as such have the status of law, they are a valuable tool of interpretation intended to clarify the provisions of the Charter.

TITLE I — DIGNITY

Explanation on Article 1 — Human dignity

The dignity of the human person is not only a fundamental right in itself but constitutes the real basis of fundamental rights. The 1948 Universal Declaration of Human Rights enshrined human dignity in its preamble: 'Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.' In its judgment of 9 October 2001 in Case C-377/98 *Netherlands v European Parliament and Council* [2001] ECR I-7079, at grounds 70 — 77, the Court of Justice confirmed that a fundamental right to human dignity is part of Union law.

It results that none of the rights laid down in this Charter may be used to harm the dignity of another person, and that the dignity of the human person is part of the substance of the rights laid down in this Charter. It must therefore be respected, even where a right is restricted.

Explanation on Article 2 — Right to life

1. Paragraph 1 of this Article is based on the first sentence of Article 2(1) of the ECHR, which reads as follows:

'1. Everyone's right to life shall be protected by law ...'.

2. The second sentence of the provision, which referred to the death penalty, was superseded by the entry into force of Article 1 of Protocol No 6 to the ECHR, which reads as follows:

'The death penalty shall be abolished. No-one shall be condemned to such penalty or executed.'

Article 2(2) of the Charter is based on that provision.

3. The provisions of Article 2 of the Charter correspond to those of the above Articles of the ECHR and its Protocol. They have the same meaning and the same scope, in accordance with Article 52(3) of the Charter. Therefore, the 'negative' definitions appearing in the ECHR must be regarded as also forming part of the Charter:

(a) Article 2(2) of the ECHR:

'Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

(a) in defence of any person from unlawful violence;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(*) Editor's note: References to article numbers in the Treaties have been updated and some minor technical errors have been corrected.

(c) in action lawfully taken for the purpose of quelling a riot or insurrection.’

(b) Article 2 of Protocol No 6 to the ECHR:

‘A State may make provision in its law for the death penalty in respect of acts committed in time of war or of imminent threat of war; such penalty shall be applied only in the instances laid down in the law and in accordance with its provisions...’.

Explanation on Article 3 — Right to the integrity of the person

1. In its judgment of 9 October 2001 in Case C-377/98 *Netherlands v European Parliament and Council* [2001] ECR-I 7079, at grounds 70, 78 to 80, the Court of Justice confirmed that a fundamental right to human integrity is part of Union law and encompasses, in the context of medicine and biology, the free and informed consent of the donor and recipient.
2. The principles of Article 3 of the Charter are already included in the Convention on Human Rights and Biomedicine, adopted by the Council of Europe (ETS 164 and additional protocol ETS 168). The Charter does not set out to depart from those principles, and therefore prohibits only reproductive cloning. It neither authorises nor prohibits other forms of cloning. Thus it does not in any way prevent the legislature from prohibiting other forms of cloning.
3. The reference to eugenic practices, in particular those aiming at the selection of persons, relates to possible situations in which selection programmes are organised and implemented, involving campaigns for sterilisation, forced pregnancy, compulsory ethnic marriage among others, all acts deemed to be international crimes in the Statute of the International Criminal Court adopted in Rome on 17 July 1998 (see its Article 7(1)(g)).

Explanation on Article 4 — Prohibition of torture and inhuman or degrading treatment or punishment

The right in Article 4 is the right guaranteed by Article 3 of the ECHR, which has the same wording: ‘No one shall be subjected to torture or to inhuman or degrading treatment or punishment’. By virtue of Article 52(3) of the Charter, it therefore has the same meaning and the same scope as the ECHR Article.

Explanation on Article 5 — Prohibition of slavery and forced labour

1. The right in Article 5(1) and (2) corresponds to Article 4(1) and (2) of the ECHR, which has the same wording. It therefore has the same meaning and scope as the ECHR Article, by virtue of Article 52(3) of the Charter. Consequently:
 - no limitation may legitimately affect the right provided for in paragraph 1,
 - in paragraph 2, ‘forced or compulsory labour’ must be understood in the light of the ‘negative’ definitions contained in Article 4(3) of the ECHR:

‘For the purpose of this article the term “forced or compulsory labour” shall not include:

- (a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;
- (b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;

- (c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;
 - (d) any work or service which forms part of normal civic obligations.’.
2. Paragraph 3 stems directly from human dignity and takes account of recent developments in organised crime, such as the organisation of lucrative illegal immigration or sexual exploitation networks. The Annex to the Europol Convention contains the following definition which refers to trafficking for the purpose of sexual exploitation: ‘traffic in human beings: means subjection of a person to the real and illegal sway of other persons by using violence or menaces or by abuse of authority or intrigue with a view to the exploitation of prostitution, forms of sexual exploitation and assault of minors or trade in abandoned children’. Chapter VI of the Convention implementing the Schengen Agreement, which has been integrated into the Union’s *acquis*, in which the United Kingdom and Ireland participate, contains the following wording in Article 27(1) which refers to illegal immigration networks: ‘The Contracting Parties undertake to impose appropriate penalties on any person who, for financial gain, assists or tries to assist an alien to enter or reside within the territory of one of the Contracting Parties in breach of that Contracting Party’s laws on the entry and residence of aliens.’ On 19 July 2002, the Council adopted a framework decision on combating trafficking in human beings (OJ L 203, 1.8.2002, p. 1) whose Article 1 defines in detail the offences concerning trafficking in human beings for the purposes of labour exploitation or sexual exploitation, which the Member States must make punishable by virtue of that framework decision.

TITLE II — FREEDOMS

Explanation on Article 6 — Right to liberty and security

The rights in Article 6 are the rights guaranteed by Article 5 of the ECHR, and in accordance with Article 52(3) of the Charter, they have the same meaning and scope. Consequently, the limitations which may legitimately be imposed on them may not exceed those permitted by the ECHR, in the wording of Article 5:

- ‘1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
- (a) the lawful detention of a person after conviction by a competent court;
 - (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
 - (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
 - (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
 - (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
 - (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.
3. Everyone arrested or detained in accordance with the provisions of paragraph 1.c of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.
4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.
5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.'

The rights enshrined in Article 6 must be respected particularly when the European Parliament and the Council adopt legislative acts in the area of judicial cooperation in criminal matters, on the basis of Articles 82, 83 and 85 of the Treaty on the Functioning of the European Union, notably to define common minimum provisions as regards the categorisation of offences and punishments and certain aspects of procedural law.

Explanation on Article 7 — Respect for private and family life

The rights guaranteed in Article 7 correspond to those guaranteed by Article 8 of the ECHR. To take account of developments in technology the word 'correspondence' has been replaced by 'communications'.

In accordance with Article 52(3), the meaning and scope of this right are the same as those of the corresponding article of the ECHR. Consequently, the limitations which may legitimately be imposed on this right are the same as those allowed by Article 8 of the ECHR:

- '1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.'

Explanation on Article 8 — Protection of personal data

This Article has been based on Article 286 of the Treaty establishing the European Community and Directive 95/46/EC of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31) as well as on Article 8 of the ECHR and on the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data, which has been ratified by all the Member States. Article 286 of the EC Treaty is now replaced by Article 16 of the Treaty on the Functioning of the European Union and Article 39 of the Treaty on European Union. Reference is also made to Regulation (EC) No 45/2001 of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1). The above-mentioned Directive and Regulation contain conditions and limitations for the exercise of the right to the protection of personal data.

Explanation on Article 9 — Right to marry and right to found a family

This Article is based on Article 12 of the ECHR, which reads as follows: ‘Men and women of marriageable age have the right to marry and to found a family according to the national laws governing the exercising of this right.’ The wording of the Article has been modernised to cover cases in which national legislation recognises arrangements other than marriage for founding a family. This Article neither prohibits nor imposes the granting of the status of marriage to unions between people of the same sex. This right is thus similar to that afforded by the ECHR, but its scope may be wider when national legislation so provides.

Explanation on Article 10 — Freedom of thought, conscience and religion

The right guaranteed in paragraph 1 corresponds to the right guaranteed in Article 9 of the ECHR and, in accordance with Article 52(3) of the Charter, has the same meaning and scope. Limitations must therefore respect Article 9(2) of the Convention, which reads as follows: ‘Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.’

The right guaranteed in paragraph 2 corresponds to national constitutional traditions and to the development of national legislation on this issue.

Explanation on Article 11 — Freedom of expression and information

1. Article 11 corresponds to Article 10 of the European Convention on Human Rights, which reads as follows:

- ‘1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.’

Pursuant to Article 52(3) of the Charter, the meaning and scope of this right are the same as those guaranteed by the ECHR. The limitations which may be imposed on it may therefore not exceed those provided for in Article 10(2) of the Convention, without prejudice to any restrictions which the competition law of the Union may impose on Member States’ right to introduce the licensing arrangements referred to in the third sentence of Article 10(1) of the ECHR.

2. Paragraph 2 of this Article spells out the consequences of paragraph 1 regarding freedom of the media. It is based in particular on Court of Justice case-law regarding television, particularly in Case C-288/89 (judgment of 25 July 1991, *Stichting Collectieve Antennevoorziening Gouda and others* [1991] ECR I-4007), and on the Protocol on the system of public broadcasting in the Member States annexed to the EC Treaty and now to the Treaties, and on Council Directive 89/552/EC (particularly its seventeenth recital).

Explanation on Article 12 — Freedom of assembly and of association

1. Paragraph 1 of this Article corresponds to Article 11 of the ECHR, which reads as follows:

- ‘1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.’

The meaning of the provisions of paragraph 1 of this Article 12 is the same as that of the ECHR, but their scope is wider since they apply at all levels including European level. In accordance with Article 52(3) of the Charter, limitations on that right may not exceed those considered legitimate by virtue of Article 11(2) of the ECHR.

2. This right is also based on Article 11 of the Community Charter of the Fundamental Social Rights of Workers.
3. Paragraph 2 of this Article corresponds to Article 10(4) of the Treaty on European Union.

Explanation on Article 13 — Freedom of the arts and sciences

This right is deduced primarily from the right to freedom of thought and expression. It is to be exercised having regard to Article 1 and may be subject to the limitations authorised by Article 10 of the ECHR.

Explanation on Article 14 — Right to education

1. This Article is based on the common constitutional traditions of Member States and on Article 2 of the Protocol to the ECHR, which reads as follows:

‘No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.’

It was considered useful to extend this Article to access to vocational and continuing training (see point 15 of the Community Charter of the Fundamental Social Rights of Workers and Article 10 of the Social Charter) and to add the principle of free compulsory education. As it is worded, the latter principle merely implies that as regards compulsory education, each child has the possibility of attending an establishment which offers free education. It does not require all establishments which provide education or vocational and continuing training, in particular private ones, to be free of charge. Nor does it exclude certain specific forms of education having to be paid for, if the State takes measures to grant financial compensation. In so far as the Charter applies to the Union, this means that in its training policies the Union must respect free compulsory education, but this does not, of course, create new powers. Regarding the right of parents, it must be interpreted in conjunction with the provisions of Article 24.

2. Freedom to found public or private educational establishments is guaranteed as one of the aspects of freedom to conduct a business but it is limited by respect for democratic principles and is exercised in accordance with the arrangements defined by national legislation.

Explanation on Article 15 — Freedom to choose an occupation and right to engage in work

Freedom to choose an occupation, as enshrined in Article 15(1), is recognised in Court of Justice case-law (see *inter alia* judgment of 14 May 1974, Case 4/73 *Nold* [1974] ECR 491, paragraphs 12 to 14 of the grounds; judgment of 13 December 1979, Case 44/79 *Hauer* [1979] ECR 3727; judgment of 8 October 1986, Case 234/85 *Keller* [1986] ECR 2897, paragraph 8 of the grounds).

This paragraph also draws upon Article 1(2) of the European Social Charter, which was signed on 18 October 1961 and has been ratified by all the Member States, and on point 4 of the Community Charter of the Fundamental Social Rights of Workers of 9 December 1989. The expression ‘working conditions’ is to be understood in the sense of Article 156 of the Treaty on the Functioning of the European Union.

Paragraph 2 deals with the three freedoms guaranteed by Articles 26, 45, 49 and 56 of the Treaty on the Functioning of the European Union, namely freedom of movement for workers, freedom of establishment and freedom to provide services.

Paragraph 3 has been based on Article 153(1)(g) of the Treaty on the Functioning of the European Union, and on Article 19(4) of the European Social Charter signed on 18 October 1961 and ratified by all the Member States. Article 52(2) of the Charter is therefore applicable. The question of recruitment of seamen having the nationality of third States for the crews of vessels flying the flag of a Member State of the Union is governed by Union law and national legislation and practice.

Explanation on Article 16 — Freedom to conduct a business

This Article is based on Court of Justice case-law which has recognised freedom to exercise an economic or commercial activity (see judgments of 14 May 1974, Case 4/73 *Nold* [1974] ECR 491, paragraph 14 of the grounds, and of 27 September 1979, Case 230-78 *SpA Eridiana and others* [1979] ECR 2749, paragraphs 20 and 31 of the grounds) and freedom of contract (see *inter alia* *Sukkerfabriken Nykøbing* judgment, Case 151/78 [1979] ECR 1, paragraph 19 of the grounds, and judgment of 5 October 1999, C-240/97 *Spain v Commission* [1999] ECR I-6571, paragraph 99 of the grounds) and Article 119(1) and (3) of the Treaty on the Functioning of the European Union, which recognises free competition. Of course, this right is to be exercised with respect for Union law and national legislation. It may be subject to the limitations provided for in Article 52(1) of the Charter.

Explanation on Article 17 — Right to property

This Article is based on Article 1 of the Protocol to the ECHR:

‘Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.’

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.’

This is a fundamental right common to all national constitutions. It has been recognised on numerous occasions by the case-law of the Court of Justice, initially in the *Hauer* judgment (13 December 1979, [1979] ECR 3727). The wording has been updated but, in accordance with Article 52(3), the meaning and scope of the right are the same as those of the right guaranteed by the ECHR and the limitations may not exceed those provided for there.

Protection of intellectual property, one aspect of the right of property, is explicitly mentioned in paragraph 2 because of its growing importance and Community secondary legislation. Intellectual property covers not only literary and artistic property but also *inter alia* patent and trademark rights and associated rights. The guarantees laid down in paragraph 1 shall apply as appropriate to intellectual property.

Explanation on Article 18 — Right to asylum

The text of the Article has been based on TEC Article 63, now replaced by Article 78 of the Treaty on the Functioning of the European Union, which requires the Union to respect the Geneva Convention on refugees. Reference should be made to the Protocols relating to the United Kingdom and Ireland, annexed to the Treaties, and to Denmark, to determine the extent to which those Member States implement Union law in this area and the extent to which this Article is applicable to them. This Article is in line with the Protocol on Asylum annexed to the Treaties.

Explanation on Article 19 — Protection in the event of removal, expulsion or extradition

Paragraph 1 of this Article has the same meaning and scope as Article 4 of Protocol No 4 to the ECHR concerning collective expulsion. Its purpose is to guarantee that every decision is based on a specific examination and that no single measure can be taken to expel all persons having the nationality of a particular State (see also Article 13 of the Covenant on Civil and Political Rights).

Paragraph 2 incorporates the relevant case-law from the European Court of Human Rights regarding Article 3 of the ECHR (see *Ahmed v. Austria*, judgment of 17 December 1996, 1996-VI, p. 2206, and *Soering*, judgment of 7 July 1989).

TITLE III — EQUALITY

Explanation on Article 20 — Equality before the law

This Article corresponds to a general principle of law which is included in all European constitutions and has also been recognised by the Court of Justice as a basic principle of Community law (judgment of 13 November 1984, Case 283/83 *Racke* [1984] ECR 3791, judgment of 17 April 1997, Case C-15/95 *EARL* [1997] ECR I-1961, and judgment of 13 April 2000, Case C-292/97 *Karlsson* [2000] ECR 2737).

Explanation on Article 21 — Non-discrimination

Paragraph 1 draws on Article 13 of the EC Treaty, now replaced by Article 19 of the Treaty on the Functioning of the European Union, Article 14 of the ECHR and Article 11 of the Convention on Human Rights and Biomedicine as regards genetic heritage. In so far as this corresponds to Article 14 of the ECHR, it applies in compliance with it.

There is no contradiction or incompatibility between paragraph 1 and Article 19 of the Treaty on the Functioning of the European Union which has a different scope and purpose: Article 19 confers power on the Union to adopt legislative acts, including harmonisation of the Member States' laws and regulations, to combat certain forms of discrimination, listed exhaustively in that Article. Such legislation may cover action of Member State authorities (as well as relations between private individuals) in any area within the limits of the Union's powers. In contrast, the provision in Article 21(1) does not create any power to enact anti-discrimination laws in these areas of Member State or private action, nor does it lay down a sweeping ban of discrimination in such wide-ranging areas. Instead, it only addresses discriminations by the institutions and bodies of the Union themselves, when exercising powers conferred under the Treaties, and by Member States only when they are implementing Union law. Paragraph 1 therefore does not alter the extent of powers granted under Article 19 nor the interpretation given to that Article.

Paragraph 2 corresponds to the first paragraph of Article 18 of the Treaty on the Functioning of the European Union and must be applied in compliance with that Article.

Explanation on Article 22 — Cultural, religious and linguistic diversity

This Article has been based on Article 6 of the Treaty on European Union and on Article 151(1) and (4) of the EC Treaty, now replaced by Article 167(1) and (4) of the Treaty on the Functioning of the European Union, concerning culture. Respect for cultural and linguistic diversity is now also laid down in Article 3(3) of the Treaty on European Union. The Article is also inspired by Declaration No 11 to the Final Act of the Amsterdam Treaty on the status of churches and non-confessional organisations, now taken over in Article 17 of the Treaty on the Functioning of the European Union.

Explanation on Article 23 — Equality between women and men

The first paragraph has been based on Articles 2 and 3(2) of the EC Treaty, now replaced by Article 3 of the Treaty on European Union and Article 8 of the Treaty on the Functioning of the European Union which impose the objective of promoting equality between men and women on the Union, and on Article 157(1) of the Treaty on the Functioning of the European Union. It draws on Article 20 of the revised European Social Charter of 3 May 1996 and on point 16 of the Community Charter on the rights of workers.

It is also based on Article 157(3) of the Treaty on the Functioning of the European Union and Article 2(4) of Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.

The second paragraph takes over in shorter form Article 157(4) of the Treaty on the Functioning of the European Union which provides that the principle of equal treatment does not prevent the maintenance or adoption of measures providing for specific advantages in order to make it easier for the under-represented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers. In accordance with Article 52(2), the present paragraph does not amend Article 157(4).

Explanation on Article 24 — The rights of the child

This Article is based on the New York Convention on the Rights of the Child signed on 20 November 1989 and ratified by all the Member States, particularly Articles 3, 9, 12 and 13 thereof.

Paragraph 3 takes account of the fact that, as part of the establishment of an area of freedom, security and justice, the legislation of the Union on civil matters having cross-border implications, for which Article 81 of the Treaty on the Functioning of the European Union confers power, may include notably visiting rights ensuring that children can maintain on a regular basis a personal and direct contact with both of their parents.

Explanation on Article 25 — The rights of the elderly

This Article draws on Article 23 of the revised European Social Charter and Articles 24 and 25 of the Community Charter of the Fundamental Social Rights of Workers. Of course, participation in social and cultural life also covers participation in political life.

Explanation on Article 26 — Integration of persons with disabilities

The principle set out in this Article is based on Article 15 of the European Social Charter and also draws on point 26 of the Community Charter of the Fundamental Social Rights of Workers.

TITLE IV — SOLIDARITY

Explanation on Article 27 — Workers' right to information and consultation within the undertaking

This Article appears in the revised European Social Charter (Article 21) and in the Community Charter on the rights of workers (points 17 and 18). It applies under the conditions laid down by Union law and by national laws. The reference to appropriate levels refers to the levels laid down by Union law or by national laws and practices, which might include the European level when Union legislation so provides. There is a considerable Union *acquis* in this field: Articles 154 and 155 of the Treaty on the Functioning of the European Union, and Directives 2002/14/EC (general framework for informing and consulting employees in the European Community), 98/59/EC (collective redundancies), 2001/23/EC (transfers of undertakings) and 94/45/EC (European works councils).

Explanation on Article 28 — Right of collective bargaining and action

This Article is based on Article 6 of the European Social Charter and on the Community Charter of the Fundamental Social Rights of Workers (points 12 to 14). The right of collective action was recognised by the European Court of Human Rights as one of the elements of trade union rights laid down by Article 11 of the ECHR. As regards the appropriate levels at which collective negotiation might take place, see the explanation given for the above Article. The modalities and limits for the exercise of collective action, including strike action, come under national laws and practices, including the question of whether it may be carried out in parallel in several Member States.

Explanation on Article 29 — Right of access to placement services

This Article is based on Article 1(3) of the European Social Charter and point 13 of the Community Charter of the Fundamental Social Rights of Workers.

Explanation on Article 30 — Protection in the event of unjustified dismissal

This Article draws on Article 24 of the revised Social Charter. See also Directive 2001/23/EC on the safeguarding of employees' rights in the event of transfers of undertakings, and Directive 80/987/EEC on the protection of employees in the event of the insolvency of their employer, as amended by Directive 2002/74/EC.

Explanation on Article 31 — Fair and just working conditions

1. Paragraph 1 of this Article is based on Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work. It also draws on Article 3 of the Social Charter and point 19 of the Community Charter on the rights of workers, and, as regards dignity at work, on Article 26 of the revised Social Charter. The expression 'working conditions' is to be understood in the sense of Article 156 of the Treaty on the Functioning of the European Union.
2. Paragraph 2 is based on Directive 93/104/EC concerning certain aspects of the organisation of working time, Article 2 of the European Social Charter and point 8 of the Community Charter on the rights of workers.

Explanation on Article 32 — Prohibition of child labour and protection of young people at work

This Article is based on Directive 94/33/EC on the protection of young people at work, Article 7 of the European Social Charter and points 20 to 23 of the Community Charter of the Fundamental Social Rights of Workers.

Explanation on Article 33 — Family and professional life

Article 33(1) is based on Article 16 of the European Social Charter.

Paragraph 2 draws on Council Directive 92/85/EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding and Directive 96/34/EC on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC. It is also based on Article 8 (protection of maternity) of the European Social Charter and draws on Article 27 (right of workers with family responsibilities to equal opportunities and equal treatment) of the revised Social Charter. ‘Maternity’ covers the period from conception to weaning.

Explanation on Article 34 — Social security and social assistance

The principle set out in Article 34(1) is based on Articles 153 and 156 of the Treaty on the Functioning of the European Union, Article 12 of the European Social Charter and point 10 of the Community Charter on the rights of workers. The Union must respect it when exercising the powers conferred on it by Articles 153 and 156 of the Treaty on the Functioning of the European Union. The reference to social services relates to cases in which such services have been introduced to provide certain advantages but does not imply that such services must be created where they do not exist. ‘Maternity’ must be understood in the same sense as in the preceding Article.

Paragraph 2 is based on Articles 12(4) and 13(4) of the European Social Charter and point 2 of the Community Charter of the Fundamental Social Rights of Workers and reflects the rules arising from Regulation (EEC) No 1408/71 and Regulation (EEC) No 1612/68.

Paragraph 3 draws on Article 13 of the European Social Charter and Articles 30 and 31 of the revised Social Charter and point 10 of the Community Charter. The Union must respect it in the context of policies based on Article 153 of the Treaty on the Functioning of the European Union.

Explanation on Article 35 — Health care

The principles set out in this Article are based on Article 152 of the EC Treaty, now replaced by Article 168 of the Treaty on the Functioning of the European Union, and on Articles 11 and 13 of the European Social Charter. The second sentence of the Article takes over Article 168(1).

Explanation on Article 36 — Access to services of general economic interest

This Article is fully in line with Article 14 of the Treaty on the Functioning of the European Union and does not create any new right. It merely sets out the principle of respect by the Union for the access to services of general economic interest as provided for by national provisions, when those provisions are compatible with Union law.

Explanation on Article 37 — Environmental protection

The principles set out in this Article have been based on Articles 2, 6 and 174 of the EC Treaty, which have now been replaced by Article 3(3) of the Treaty on European Union and Articles 11 and 191 of the Treaty on the Functioning of the European Union.

It also draws on the provisions of some national constitutions.

Explanation on Article 38 — Consumer protection

The principles set out in this Article have been based on Article 169 of the Treaty on the Functioning of the European Union.

TITLE V — CITIZENS' RIGHTS

Explanation on Article 39 — Right to vote and to stand as a candidate at elections to the European Parliament

Article 39 applies under the conditions laid down in the Treaties, in accordance with Article 52(2) of the Charter. Article 39(1) corresponds to the right guaranteed in Article 20(2) of the Treaty on the Functioning of the European Union (cf. also the legal base in Article 22 of the Treaty on the Functioning of the European Union for the adoption of detailed arrangements for the exercise of that right) and Article 39(2) corresponds to Article 14(3) of the Treaty on European Union. Article 39(2) takes over the basic principles of the electoral system in a democratic State.

Explanation on Article 40 — Right to vote and to stand as a candidate at municipal elections

This Article corresponds to the right guaranteed by Article 20(2) of the Treaty on the Functioning of the European Union (cf. also the legal base in Article 22 of the Treaty on the Functioning of the European Union for the adoption of detailed arrangements for the exercise of that right). In accordance with Article 52(2) of the Charter, it applies under the conditions defined in these Articles in the Treaties.

Explanation on Article 41 — Right to good administration

Article 41 is based on the existence of the Union as subject to the rule of law whose characteristics were developed in the case-law which enshrined *inter alia* good administration as a general principle of law (see *inter alia* Court of Justice judgment of 31 March 1992 in Case C-255/90 P *Burban* [1992] ECR I-2253, and Court of First Instance judgments of 18 September 1995 in Case T-167/94 *Nölle* [1995] ECR II-2589, and 9 July 1999 in Case T-231/97 *New Europe Consulting and others* [1999] ECR II-2403). The wording for that right in the first two paragraphs results from the case-law (Court of Justice judgment of 15 October 1987 in Case 222/86 *Heylens* [1987] ECR 4097, paragraph 15 of the grounds, judgment of 18 October 1989 in Case 374/87 *Orkem* [1989] ECR 3283, judgment of 21 November 1991 in Case C-269/90 *TU München* [1991] ECR I-5469, and Court of First Instance judgments of 6 December 1994 in Case T-450/93 *Lisrestal* [1994] ECR II-1177, 18 September 1995 in Case T-167/94 *Nölle* [1995] ECR II-2589) and the wording regarding the obligation to give reasons comes from Article 296 of the Treaty on the Functioning of the European Union (cf. also the legal base in Article 298 of the Treaty on the Functioning of the European Union for the adoption of legislation in the interest of an open, efficient and independent European administration).

Paragraph 3 reproduces the right now guaranteed by Article 340 of the Treaty on the Functioning of the European Union. Paragraph 4 reproduces the right now guaranteed by Article 20(2)(d) and Article 25 of the Treaty on the Functioning of the European Union. In accordance with Article 52(2) of the Charter, those rights are to be applied under the conditions and within the limits defined by the Treaties.

The right to an effective remedy, which is an important aspect of this question, is guaranteed in Article 47 of this Charter.

Explanation on Article 42 — Right of access to documents

The right guaranteed in this Article has been taken over from Article 255 of the EC Treaty, on the basis of which Regulation (EC) No 1049/2001 has subsequently been adopted. The European Convention has extended this right to documents of institutions, bodies and agencies generally, regardless of their form (see Article 15(3) of the Treaty on the Functioning of the European Union). In accordance with Article 52(2) of the Charter, the right of access to documents is exercised under the conditions and within the limits for which provision is made in Article 15(3) of the Treaty on the Functioning of the European Union.

Explanation on Article 43 — European Ombudsman

The right guaranteed in this Article is the right guaranteed by Articles 20 and 228 of the Treaty on the Functioning of the European Union. In accordance with Article 52(2) of the Charter, it applies under the conditions defined in these two Articles.

Explanation on Article 44 — Right to petition

The right guaranteed in this Article is the right guaranteed by Articles 20 and 227 of the Treaty on the Functioning of the European Union. In accordance with Article 52(2) of the Charter, it applies under the conditions defined in these two Articles.

Explanation on Article 45 — Freedom of movement and of residence

The right guaranteed by paragraph 1 is the right guaranteed by Article 20(2)(a) of the Treaty on the Functioning of the European Union (cf. also the legal base in Article 21; and the judgment of the Court of Justice of 17 September 2002, Case C-413/99 *Baumbast* [2002] ECR I-7091). In accordance with Article 52(2) of the Charter, those rights are to be applied under the conditions and within the limits defined by the Treaties.

Paragraph 2 refers to the power granted to the Union by Articles 77, 78 and 79 of the Treaty on the Functioning of the European Union. Consequently, the granting of this right depends on the institutions exercising that power.

Explanation on Article 46 — Diplomatic and consular protection

The right guaranteed in this Article is the right guaranteed by Article 20 of the Treaty on the Functioning of the European Union (cf. also the legal base in Article 23). In accordance with Article 52(2) of the Charter, it applies under the conditions defined in these two Articles.

TITLE VI — JUSTICE

Explanation on Article 47 — Right to an effective remedy and to a fair trial

The first paragraph is based on Article 13 of the ECHR:

‘Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.’

However, in Union law the protection is more extensive since it guarantees the right to an effective remedy before a court. The Court of Justice enshrined that right in its judgment of 15 May 1986 as a general principle of Union law (Case 222/84 *Johnston* [1986] ECR 1651; see also judgment of 15 October 1987, Case 222/86 *Heylens* [1987] ECR 4097 and judgment of 3 December 1992, Case C-97/91 *Borelli* [1992] ECR I-6313). According to the Court, that general principle of Union law also applies to the Member States when they are implementing Union law. The inclusion of this precedent in the Charter has not been intended to change the system of judicial review laid down by the Treaties, and particularly the rules relating to admissibility for direct actions before the Court of Justice of the European Union. The European Convention has considered the Union’s system of judicial review including the rules on admissibility, and confirmed them while amending them as to certain aspects, as reflected in Articles 251 to 281 of the Treaty on the Functioning of the European Union, and in particular in the fourth paragraph of Article 263. Article 47 applies to the institutions of the Union and of Member States when they are implementing Union law and does so for all rights guaranteed by Union law.

The second paragraph corresponds to Article 6(1) of the ECHR which reads as follows:

'In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.'

In Union law, the right to a fair hearing is not confined to disputes relating to civil law rights and obligations. That is one of the consequences of the fact that the Union is a community based on the rule of law as stated by the Court in Case 294/83, *'Les Verts' v European Parliament* (judgment of 23 April 1986, [1986] ECR 1339). Nevertheless, in all respects other than their scope, the guarantees afforded by the ECHR apply in a similar way to the Union.

With regard to the third paragraph, it should be noted that in accordance with the case-law of the European Court of Human Rights, provision should be made for legal aid where the absence of such aid would make it impossible to ensure an effective remedy (ECHR judgment of 9 October 1979, *Airey*, Series A, Volume 32, p. 11). There is also a system of legal assistance for cases before the Court of Justice of the European Union.

Explanation on Article 48 — Presumption of innocence and right of defence

Article 48 is the same as Article 6(2) and (3) of the ECHR, which reads as follows:

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
3. Everyone charged with a criminal offence has the following minimum rights:
 - (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
 - (b) to have adequate time and facilities for the preparation of his defence;
 - (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
 - (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
 - (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.'

In accordance with Article 52(3), this right has the same meaning and scope as the right guaranteed by the ECHR.

Explanation on Article 49 — Principles of legality and proportionality of criminal offences and penalties

This Article follows the traditional rule of the non-retroactivity of laws and criminal sanctions. There has been added the rule of the retroactivity of a more lenient penal law, which exists in a number of Member States and which features in Article 15 of the Covenant on Civil and Political Rights.

Article 7 of the ECHR is worded as follows:

- ‘1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.
2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.’

In paragraph 2, the reference to ‘civilised’ nations has been deleted; this does not change the meaning of this paragraph, which refers to crimes against humanity in particular. In accordance with Article 52(3), the right guaranteed here therefore has the same meaning and scope as the right guaranteed by the ECHR.

Paragraph 3 states the general principle of proportionality between penalties and criminal offences which is enshrined in the common constitutional traditions of the Member States and in the case-law of the Court of Justice of the Communities.

Explanation on Article 50 — Right not to be tried or punished twice in criminal proceedings for the same criminal offence

Article 4 of Protocol No 7 to the ECHR reads as follows:

- ‘1. No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State.
2. The provisions of the preceding paragraph shall not prevent the reopening of the case in accordance with the law and the penal procedure of the State concerned, if there is evidence of new or newly discovered facts, or if there has been a fundamental defect in the previous proceedings, which could affect the outcome of the case.
3. No derogation from this Article shall be made under Article 15 of the Convention.’

The ‘*non bis in idem*’ rule applies in Union law (see, among the many precedents, the judgment of 5 May 1966, Joined Cases 18/65 and 35/65 *Gutmann v Commission* [1966] ECR 149 and a recent case, the decision of the Court of First Instance of 20 April 1999, Joined Cases T-305/94 and others *Limburgse Vinyl Maatschappij NV v Commission* [1999] ECR II-931). The rule prohibiting cumulation refers to cumulation of two penalties of the same kind, that is to say criminal-law penalties.

In accordance with Article 50, the ‘*non bis in idem*’ rule applies not only within the jurisdiction of one State but also between the jurisdictions of several Member States. That corresponds to the *acquis* in Union law; see Articles 54 to 58 of the Schengen Convention and the judgment of the Court of Justice of 11 February 2003, C-187/01 *Gözütok* [2003] ECR I-1345, Article 7 of the Convention on the Protection of the European Communities’ Financial Interests and Article 10 of the Convention on the fight against corruption. The very limited exceptions in those Conventions permitting the Member States to derogate from the ‘*non bis in idem*’ rule are covered by the horizontal clause in Article 52(1) of the Charter concerning limitations. As regards the situations referred to by Article 4 of Protocol No 7, namely the application of the principle within the same Member State, the guaranteed right has the same meaning and the same scope as the corresponding right in the ECHR.

TITLE VII — GENERAL PROVISIONS GOVERNING THE INTERPRETATION AND APPLICATION OF THE CHARTER

Explanation on Article 51 — Field of application

The aim of Article 51 is to determine the scope of the Charter. It seeks to establish clearly that the Charter applies primarily to the institutions and bodies of the Union, in compliance with the principle of subsidiarity. This provision was drafted in keeping with Article 6(2) of the Treaty on European Union, which required the Union to respect fundamental rights, and with the mandate issued by the Cologne European Council. The term ‘institutions’ is enshrined in the Treaties. The expression ‘bodies, offices and agencies’ is commonly used in the Treaties to refer to all the authorities set up by the Treaties or by secondary legislation (see, e.g., Articles 15 or 16 of the Treaty on the Functioning of the European Union).

As regards the Member States, it follows unambiguously from the case-law of the Court of Justice that the requirement to respect fundamental rights defined in the context of the Union is only binding on the Member States when they act in the scope of Union law (judgment of 13 July 1989, Case 5/88 *Wachauf* [1989] ECR 2609; judgment of 18 June 1991, Case C-260/89 *ERT* [1991] ECR I-2925; judgment of 18 December 1997, Case C-309/96 *Annibaldi* [1997] ECR I-7493). The Court of Justice confirmed this case-law in the following terms: ‘In addition, it should be remembered that the requirements flowing from the protection of fundamental rights in the Community legal order are also binding on Member States when they implement Community rules ...’ (judgment of 13 April 2000, Case C-292/97 [2000] ECR I-2737, paragraph 37 of the grounds). Of course this rule, as enshrined in this Charter, applies to the central authorities as well as to regional or local bodies, and to public organisations, when they are implementing Union law.

Paragraph 2, together with the second sentence of paragraph 1, confirms that the Charter may not have the effect of extending the competences and tasks which the Treaties confer on the Union. Explicit mention is made here of the logical consequences of the principle of subsidiarity and of the fact that the Union only has those powers which have been conferred upon it. The fundamental rights as guaranteed in the Union do not have any effect other than in the context of the powers determined by the Treaties. Consequently, an obligation, pursuant to the second sentence of paragraph 1, for the Union’s institutions to promote principles laid down in the Charter may arise only within the limits of these same powers.

Paragraph 2 also confirms that the Charter may not have the effect of extending the field of application of Union law beyond the powers of the Union as established in the Treaties. The Court of Justice has already established this rule with respect to the fundamental rights recognised as part of Union law (judgment of 17 February 1998, C-249/96 *Grant* [1998] ECR I-621, paragraph 45 of the grounds). In accordance with this rule, it goes without saying that the reference to the Charter in Article 6 of the Treaty on European Union cannot be understood as extending by itself the range of Member State action considered to be ‘implementation of Union law’ (within the meaning of paragraph 1 and the above-mentioned case-law).

Explanation on Article 52 — Scope and interpretation of rights and principles

The purpose of Article 52 is to set the scope of the rights and principles of the Charter, and to lay down rules for their interpretation. Paragraph 1 deals with the arrangements for the limitation of rights. The wording is based on the case-law of the Court of Justice: ‘... it is well established in the case-law of the Court that restrictions may be imposed on the exercise of fundamental rights, in particular in the context of a common organisation of the market, provided that those restrictions in fact correspond to objectives of general interest pursued by the Community and do not constitute, with regard to the aim pursued, disproportionate and unreasonable interference undermining the very substance of those rights’ (judgment of 13 April 2000, Case C-292/97, paragraph 45 of the grounds). The reference to general interests recognised by the Union covers both the objectives mentioned in Article 3 of the Treaty on European Union and other interests protected by specific provisions of the Treaties such as Article 4(1) of the Treaty on European Union and Articles 35(3), 36 and 346 of the Treaty on the Functioning of the European Union.

Paragraph 2 refers to rights which were already expressly guaranteed in the Treaty establishing the European Community and have been recognised in the Charter, and which are now found in the Treaties (notably the rights derived from Union citizenship). It clarifies that such rights remain subject to the conditions and limits applicable to the Union law on which they are based, and for which provision is made in the Treaties. The Charter does not alter the system of rights conferred by the EC Treaty and taken over by the Treaties.

Paragraph 3 is intended to ensure the necessary consistency between the Charter and the ECHR by establishing the rule that, in so far as the rights in the present Charter also correspond to rights guaranteed by the ECHR, the meaning and scope of those rights, including authorised limitations, are the same as those laid down by the ECHR. This means in particular that the legislator, in laying down limitations to those rights, must comply with the same standards as are fixed by the detailed limitation arrangements laid down in the ECHR, which are thus made applicable for the rights covered by this paragraph, without thereby adversely affecting the autonomy of Union law and of that of the Court of Justice of the European Union.

The reference to the ECHR covers both the Convention and the Protocols to it. The meaning and the scope of the guaranteed rights are determined not only by the text of those instruments, but also by the case-law of the European Court of Human Rights and by the Court of Justice of the European Union. The last sentence of the paragraph is designed to allow the Union to guarantee more extensive protection. In any event, the level of protection afforded by the Charter may never be lower than that guaranteed by the ECHR.

The Charter does not affect the possibilities of Member States to avail themselves of Article 15 ECHR, allowing derogations from ECHR rights in the event of war or of other public dangers threatening the life of the nation, when they take action in the areas of national defence in the event of war and of the maintenance of law and order, in accordance with their responsibilities recognised in Article 4(1) of the Treaty on European Union and in Articles 72 and 347 of the Treaty on the Functioning of the European Union.

The list of rights which may at the present stage, without precluding developments in the law, legislation and the Treaties, be regarded as corresponding to rights in the ECHR within the meaning of the present paragraph is given hereafter. It does not include rights additional to those in the ECHR.

1. Articles of the Charter where both the meaning and the scope are the same as the corresponding Articles of the ECHR:
 - Article 2 corresponds to Article 2 of the ECHR,
 - Article 4 corresponds to Article 3 of the ECHR,
 - Article 5(1) and (2) corresponds to Article 4 of the ECHR,
 - Article 6 corresponds to Article 5 of the ECHR,
 - Article 7 corresponds to Article 8 of the ECHR,
 - Article 10(1) corresponds to Article 9 of the ECHR,
 - Article 11 corresponds to Article 10 of the ECHR without prejudice to any restrictions which Union law may impose on Member States' right to introduce the licensing arrangements referred to in the third sentence of Article 10(1) of the ECHR,

- Article 17 corresponds to Article 1 of the Protocol to the ECHR,
 - Article 19(1) corresponds to Article 4 of Protocol No 4,
 - Article 19(2) corresponds to Article 3 of the ECHR as interpreted by the European Court of Human Rights,
 - Article 48 corresponds to Article 6(2) and(3) of the ECHR,
 - Article 49(1) (with the exception of the last sentence) and (2) correspond to Article 7 of the ECHR.
2. Articles where the meaning is the same as the corresponding Articles of the ECHR, but where the scope is wider:
- Article 9 covers the same field as Article 12 of the ECHR, but its scope may be extended to other forms of marriage if these are established by national legislation,
 - Article 12(1) corresponds to Article 11 of the ECHR, but its scope is extended to European Union level,
 - Article 14(1) corresponds to Article 2 of the Protocol to the ECHR, but its scope is extended to cover access to vocational and continuing training,
 - Article 14(3) corresponds to Article 2 of the Protocol to the ECHR as regards the rights of parents,
 - Article 47(2) and (3) corresponds to Article 6(1) of the ECHR, but the limitation to the determination of civil rights and obligations or criminal charges does not apply as regards Union law and its implementation,
 - Article 50 corresponds to Article 4 of Protocol No 7 to the ECHR, but its scope is extended to European Union level between the Courts of the Member States,
 - Finally, citizens of the European Union may not be considered as aliens in the scope of the application of Union law, because of the prohibition of any discrimination on grounds of nationality. The limitations provided for by Article 16 of the ECHR as regards the rights of aliens therefore do not apply to them in this context.

The rule of interpretation contained in paragraph 4 has been based on the wording of Article 6(3) of the Treaty on European Union and takes due account of the approach to common constitutional traditions followed by the Court of Justice (e.g., judgment of 13 December 1979, Case 44/79 *Hauer* [1979] ECR 3727; judgment of 18 May 1982, Case 155/79 *AM&S* [1982] ECR 1575). Under that rule, rather than following a rigid approach of ‘a lowest common denominator’, the Charter rights concerned should be interpreted in a way offering a high standard of protection which is adequate for the law of the Union and in harmony with the common constitutional traditions.

Paragraph 5 clarifies the distinction between ‘rights’ and ‘principles’ set out in the Charter. According to that distinction, subjective rights shall be respected, whereas principles shall be observed (Article 51(1)). Principles may be implemented through legislative or executive acts (adopted by the Union in accordance with its powers, and by the Member States only when they implement Union law); accordingly, they become significant for the Courts only when such acts are interpreted or reviewed. They do not however give rise to direct claims for positive action by the Union’s institutions or Member States authorities. This is consistent both with case-law of the Court of Justice (cf. notably case-law on the ‘precautionary principle’ in Article 191(2) of the Treaty on the Functioning of the European Union: judgment of the CFI of 11 September 2002, Case T-13/99 *Pfizer v Council*, with numerous references to earlier case-law; and a series of judgments on Article 33 (ex-39) on the principles of agricultural law, e.g. judgment of the Court of Justice in Case 265/85 *Van den Berg* [1987] ECR 1155: scrutiny of the principle of market stabilisation and of reasonable expectations) and with the approach of the Member States’ constitutional systems to ‘principles’, particularly in the field of social law. For illustration, examples for principles, recognised in the Charter include e.g. Articles 25, 26 and 37. In some cases, an Article of the Charter may contain both elements of a right and of a principle, e.g. Articles 23, 33 and 34.

Paragraph 6 refers to the various Articles in the Charter which, in the spirit of subsidiarity, make reference to national laws and practices.

Explanation on Article 53 — Level of protection

This provision is intended to maintain the level of protection currently afforded within their respective scope by Union law, national law and international law. Owing to its importance, mention is made of the ECHR.

Explanation on Article 54 — Prohibition of abuse of rights

This Article corresponds to Article 17 of the ECHR:

‘Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.’

**CONSOLIDATED VERSION
OF
THE TREATY ON EUROPEAN UNION**

Article 2

The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.

Article 3

(ex Article 2 TEU)

1. The Union's aim is to promote peace, its values and the well-being of its peoples.
2. The Union shall offer its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime.
3. The Union shall establish an internal market. It shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance.

It shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child.

It shall promote economic, social and territorial cohesion, and solidarity among Member States.

It shall respect its rich cultural and linguistic diversity, and shall ensure that Europe's cultural heritage is safeguarded and enhanced.

4. The Union shall establish an economic and monetary union whose currency is the euro.
5. In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter.
6. The Union shall pursue its objectives by appropriate means commensurate with the competences which are conferred upon it in the Treaties.

Article 6
(ex Article 6 TEU)

1. The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties.

The provisions of the Charter shall not extend in any way the competences of the Union as defined in the Treaties.

The rights, freedoms and principles in the Charter shall be interpreted in accordance with the general provisions in Title VII of the Charter governing its interpretation and application and with due regard to the explanations referred to in the Charter, that set out the sources of those provisions.

2. The Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union's competences as defined in the Treaties.

3. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.

Article 7
(ex Article 7 TEU)

1. On a reasoned proposal by one third of the Member States, by the European Parliament or by the European Commission, the Council, acting by a majority of four fifths of its members after obtaining the consent of the European Parliament, may determine that there is a clear risk of a serious breach by a Member State of the values referred to in Article 2. Before making such a determination, the Council shall hear the Member State in question and may address recommendations to it, acting in accordance with the same procedure.

The Council shall regularly verify that the grounds on which such a determination was made continue to apply.

2. The European Council, acting by unanimity on a proposal by one third of the Member States or by the Commission and after obtaining the consent of the European Parliament, may determine the existence of a serious and persistent breach by a Member State of the values referred to in Article 2, after inviting the Member State in question to submit its observations.

3. Where a determination under paragraph 2 has been made, the Council, acting by a qualified majority, may decide to suspend certain of the rights deriving from the application of the Treaties to the Member State in question, including the voting rights of the representative of the government of that Member State in the Council. In doing so, the Council shall take into account the possible consequences of such a suspension on the rights and obligations of natural and legal persons.

PROTOCOL (No 8)
**RELATING TO ARTICLE 6(2) OF THE TREATY ON
EUROPEAN UNION ON THE ACCESSION OF THE
UNION TO THE EUROPEAN CONVENTION ON THE
PROTECTION OF HUMAN RIGHTS AND
FUNDAMENTAL FREEDOMS**

THE HIGH CONTRACTING PARTIES,

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union:

Article 1

The agreement relating to the accession of the Union to the European Convention on the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as the 'European Convention') provided for in Article 6(2) of the Treaty on European Union shall make provision for preserving the specific characteristics of the Union and Union law, in particular with regard to:

- (a) the specific arrangements for the Union's possible participation in the control bodies of the European Convention;
- (b) the mechanisms necessary to ensure that proceedings by non-Member States and individual applications are correctly addressed to Member States and/or the Union as appropriate.

Article 2

The agreement referred to in Article 1 shall ensure that accession of the Union shall not affect the competences of the Union or the powers of its institutions. It shall ensure that nothing therein affects the situation of Member States in relation to the European Convention, in particular in relation to the Protocols thereto, measures taken by Member States derogating from the European Convention in accordance with Article 15 thereof and reservations to the European Convention made by Member States in accordance with Article 57 thereof.

Article 3

Nothing in the agreement referred to in Article 1 shall affect Article 344 of the Treaty on the Functioning of the European Union.

PROTOCOL (No 30)
**ON THE APPLICATION OF THE CHARTER OF
FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION
TO POLAND AND TO THE UNITED KINGDOM**

THE HIGH CONTRACTING PARTIES,

WHEREAS in Article 6 of the Treaty on European Union, the Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union,

WHEREAS the Charter is to be applied in strict accordance with the provisions of the aforementioned Article 6 and Title VII of the Charter itself,

WHEREAS the aforementioned Article 6 requires the Charter to be applied and interpreted by the courts of Poland and of the United Kingdom strictly in accordance with the explanations referred to in that Article,

WHEREAS the Charter contains both rights and principles,

WHEREAS the Charter contains both provisions which are civil and political in character and those which are economic and social in character,

WHEREAS the Charter reaffirms the rights, freedoms and principles recognised in the Union and makes those rights more visible, but does not create new rights or principles,

RECALLING the obligations devolving upon Poland and the United Kingdom under the Treaty on European Union, the Treaty on the Functioning of the European Union, and Union law generally,

NOTING the wish of Poland and the United Kingdom to clarify certain aspects of the application of the Charter,

DESIROUS therefore of clarifying the application of the Charter in relation to the laws and administrative action of Poland and of the United Kingdom and of its justiciability within Poland and within the United Kingdom,

REAFFIRMING that references in this Protocol to the operation of specific provisions of the Charter are strictly without prejudice to the operation of other provisions of the Charter,

REAFFIRMING that this Protocol is without prejudice to the application of the Charter to other Member States,

REAFFIRMING that this Protocol is without prejudice to other obligations devolving upon Poland and the United Kingdom under the Treaty on European Union, the Treaty on the Functioning of the European Union, and Union law generally,

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union:

Article 1

1. The Charter does not extend the ability of the Court of Justice of the European Union, or any court or tribunal of Poland or of the United Kingdom, to find that the laws, regulations or administrative provisions, practices or action of Poland or of the United Kingdom are inconsistent with the fundamental rights, freedoms and principles that it reaffirms.

2. In particular, and for the avoidance of doubt, nothing in Title IV of the Charter creates justiciable rights applicable to Poland or the United Kingdom except in so far as Poland or the United Kingdom has provided for such rights in its national law.

Article 2

To the extent that a provision of the Charter refers to national laws and practices, it shall only apply to Poland or the United Kingdom to the extent that the rights or principles that it contains are recognised in the law or practices of Poland or of the United Kingdom.

A. DECLARATIONS CONCERNING PROVISIONS OF THE TREATIES

1. Declaration concerning the Charter of Fundamental Rights of the European Union

The Charter of Fundamental Rights of the European Union, which has legally binding force, confirms the fundamental rights guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States.

The Charter does not extend the field of application of Union law beyond the powers of the Union or establish any new power or task for the Union, or modify powers and tasks as defined by the Treaties.

2. Declaration on Article 6(2) of the Treaty on European Union

The Conference agrees that the Union's accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms should be arranged in such a way as to preserve the specific features of Union law. In this connection, the Conference notes the existence of a regular dialogue between the Court of Justice of the European Union and the European Court of Human Rights; such dialogue could be reinforced when the Union accedes to that Convention.

3. Declaration on Article 8 of the Treaty on European Union

The Union will take into account the particular situation of small-sized countries which maintain specific relations of proximity with it.

4. Declaration on the composition of the European Parliament

The additional seat in the European Parliament will be attributed to Italy.

5. Declaration on the political agreement by the European Council concerning the draft Decision on the composition of the European Parliament

The European Council will give its political agreement on the revised draft Decision on the composition of the European Parliament for the legislative period 2009-2014, based on the proposal from the European Parliament.

C. DECLARATIONS BY MEMBER STATES

51. Declaration by the Kingdom of Belgium on national Parliaments

Belgium wishes to make clear that, in accordance with its constitutional law, not only the Chamber of Representatives and Senate of the Federal Parliament but also the parliamentary assemblies of the Communities and the Regions act, in terms of the competences exercised by the Union, as components of the national parliamentary system or chambers of the national Parliament.

52. Declaration by the Kingdom of Belgium, the Republic of Bulgaria, the Federal Republic of Germany, the Hellenic Republic, the Kingdom of Spain, the Italian Republic, the Republic of Cyprus, the Republic of Lithuania, the Grand-Duchy of Luxembourg, the Republic of Hungary, the Republic of Malta, the Republic of Austria, the Portuguese Republic, Romania, the Republic of Slovenia and the Slovak Republic on the symbols of the European Union

Belgium, Bulgaria, Germany, Greece, Spain, Italy, Cyprus, Lithuania, Luxemburg, Hungary, Malta, Austria, Portugal, Romania, Slovenia and the Slovak Republic declare that the flag with a circle of twelve golden stars on a blue background, the anthem based on the 'Ode to Joy' from the Ninth Symphony by Ludwig van Beethoven, the motto 'United in diversity', the euro as the currency of the European Union and Europe Day on 9 May will for them continue as symbols to express the sense of community of the people in the European Union and their allegiance to it.

53. Declaration by the Czech Republic on the Charter of Fundamental Rights of the European Union

1. The Czech Republic recalls that the provisions of the Charter of Fundamental Rights of the European Union are addressed to the institutions and bodies of the European Union with due regard for the principle of subsidiarity and division of competences between the European Union and its Member States, as reaffirmed in Declaration (No 18) in relation to the delimitation of competences. The Czech Republic stresses that its provisions are addressed to the Member States only when they are implementing Union law, and not when they are adopting and implementing national law independently from Union law.

2. The Czech Republic also emphasises that the Charter does not extend the field of application of Union law and does not establish any new power for the Union. It does not diminish the field of application of national law and does not restrain any current powers of the national authorities in this field.

3. The Czech Republic stresses that, in so far as the Charter recognises fundamental rights and principles as they result from constitutional traditions common to the Member States, those rights and principles are to be interpreted in harmony with those traditions.

4. The Czech Republic further stresses that nothing in the Charter may be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective field of application, by Union law and by international agreements to which the Union or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' Constitutions.

54. Declaration by the Federal Republic of Germany, Ireland, the Republic of Hungary, the Republic of Austria and the Kingdom of Sweden

Germany, Ireland, Hungary, Austria and Sweden note that the core provisions of the Treaty establishing the European Atomic Energy Community have not been substantially amended since its entry into force and need to be brought up to date. They therefore support the idea of a Conference of the Representatives of the Governments of the Member States, which should be convened as soon as possible.

55. Declaration by the Kingdom of Spain and the United Kingdom of Great Britain and Northern Ireland

The Treaties apply to Gibraltar as a European territory for whose external relations a Member State is responsible. This shall not imply changes in the respective positions of the Member States concerned.

56. Declaration by Ireland on Article 3 of the Protocol on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice

Ireland affirms its commitment to the Union as an area of freedom, security and justice respecting fundamental rights and the different legal systems and traditions of the Member States within which citizens are provided with a high level of safety.

Accordingly, Ireland declares its firm intention to exercise its right under Article 3 of the Protocol on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice to take part in the adoption of measures pursuant to Title V of Part Three of the Treaty on the Functioning of the European Union to the maximum extent it deems possible.

Ireland will, in particular, participate to the maximum possible extent in measures in the field of police cooperation.

60. Declaration by the Kingdom of the Netherlands on Article 355 of the Treaty on the Functioning of the European Union

The Kingdom of the Netherlands declares that an initiative for a decision, as referred to in Article 355(6) aimed at amending the status of the Netherlands Antilles and/or Aruba with regard to the Union, will be submitted only on the basis of a decision taken in conformity with the Charter for the Kingdom of the Netherlands.

61. Declaration by the Republic of Poland on the Charter of Fundamental Rights of the European Union

The Charter does not affect in any way the right of Member States to legislate in the sphere of public morality, family law, as well as the protection of human dignity and respect for human physical and moral integrity.

62. Declaration by the Republic of Poland concerning the Protocol on the application of the Charter of Fundamental Rights of the European Union in relation to Poland and the United Kingdom

Poland declares that, having regard to the tradition of social movement of 'Solidarity' and its significant contribution to the struggle for social and labour rights, it fully respects social and labour rights, as established by European Union law, and in particular those reaffirmed in Title IV of the Charter of Fundamental Rights of the European Union.

63. Declaration by the United Kingdom of Great Britain and Northern Ireland on the definition of the term 'nationals'

In respect of the Treaties and the Treaty establishing the European Atomic Energy Community, and in any of the acts deriving from those Treaties or continued in force by those Treaties, the United Kingdom reiterates the Declaration it made on 31 December 1982 on the definition of the term 'nationals' with the exception that the reference to 'British Dependent Territories Citizens' shall be read as meaning 'British overseas territories citizens'.

64. Declaration by the United Kingdom of Great Britain and Northern Ireland on the franchise for elections to the European Parliament

The United Kingdom notes that Article 14 of the Treaty on European Union and other provisions of the Treaties are not intended to change the basis for the franchise for elections to the European Parliament.

PROTOCOL
on the concerns of the Irish people on the Treaty of Lisbon

THE KINGDOM OF BELGIUM,

THE REPUBLIC OF BULGARIA,

THE CZECH REPUBLIC,

THE KINGDOM OF DENMARK,

THE FEDERAL REPUBLIC OF GERMANY,

THE REPUBLIC OF ESTONIA,

IRELAND,

THE HELLENIC REPUBLIC,

THE KINGDOM OF SPAIN,

THE FRENCH REPUBLIC,

THE ITALIAN REPUBLIC,

THE REPUBLIC OF CYPRUS,

THE REPUBLIC OF LATVIA,

THE REPUBLIC OF LITHUANIA,

THE GRAND DUCHY OF LUXEMBOURG,

HUNGARY,

MALTA,

THE KINGDOM OF THE NETHERLANDS,

THE REPUBLIC OF AUSTRIA,

THE REPUBLIC OF POLAND,

THE PORTUGUESE REPUBLIC,

ROMANIA,

THE REPUBLIC OF SLOVENIA,

THE SLOVAK REPUBLIC,

THE REPUBLIC OF FINLAND,

THE KINGDOM OF SWEDEN,

THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND,

hereinafter referred to as 'THE HIGH CONTRACTING PARTIES',

RECALLING the Decision of the Heads of State or Government of the 27 Member States of the European Union, meeting within the European Council, on 18-19 June 2009, on the concerns of the Irish people on the Treaty of Lisbon;

RECALLING the declaration of the Heads of State or Government, meeting within the European Council, on 18-19 June 2009, that they would, at the time of the conclusion of the next Accession Treaty, set out the provisions of that Decision in a Protocol to be attached, in accordance with their respective constitutional requirements, to the Treaty on European Union and the Treaty on the Functioning of the European Union;

NOTING the signature by the High Contracting Parties of the Treaty between the High Contracting Parties and the Republic of Croatia concerning the accession of the Republic of Croatia to the European Union;

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union:

TITLE I

RIGHT TO LIFE, FAMILY AND EDUCATION

Article 1

Nothing in the Treaty of Lisbon attributing legal status to the Charter of Fundamental Rights of the European Union, or in the provisions of that Treaty in the area of Freedom, Security and Justice affects in any way the scope and applicability of the protection of the right to life in Article 40.3.1, 40.3.2 and 40.3.3, the protection of the family in Article 41 and the protection of the rights in respect of education in Articles 42 and 44.2.4 and 44.2.5 provided by the Constitution of Ireland.

It will be for Member States - including Ireland, acting in a spirit of solidarity and without prejudice to its traditional policy of military neutrality - to determine the nature of aid or assistance to be provided to a Member State which is the object of a terrorist attack or the victim of armed aggression on its territory.

Any decision to move to a common defence will require a unanimous decision of the European Council. It would be a matter for the Member States, including Ireland, to decide, in accordance with the provisions of the Treaty of Lisbon and with their respective constitutional requirements, whether or not to adopt a common defence.

TITLE II

TAXATION

Article 2

Nothing in the Treaty of Lisbon makes any change of any kind, for any Member State, to the extent or operation of the competence of the European Union in relation to taxation.

Nothing in this Title affects or prejudices the position or policy of any other Member State on security and defence.

It is also a matter for each Member State to decide, in accordance with the provisions of the Treaty of Lisbon and any domestic legal requirements, whether to participate in permanent structured cooperation or the European Defence Agency.

TITLE III

SECURITY AND DEFENCE

Article 3

The Union's action on the international scene is guided by the principles of democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law.

The Treaty of Lisbon does not provide for the creation of a European army or for conscription to any military formation.

It does not affect the right of Ireland or any other Member State to determine the nature and volume of its defence and security expenditure and the nature of its defence capabilities.

It will be a matter for Ireland or any other Member State, to decide, in accordance with any domestic legal requirements, whether or not to participate in any military operation.

The Union's common security and defence policy is an integral part of the common foreign and security policy and provides the Union with an operational capacity to undertake missions outside the Union for peace-keeping, conflict prevention and strengthening international security in accordance with the principles of the United Nations Charter.

It does not prejudice the security and defence policy of each Member State, including Ireland, or the obligations of any Member State.

The Treaty of Lisbon does not affect or prejudice Ireland's traditional policy of military neutrality.

TITLE IV

FINAL PROVISIONS

Article 4

This Protocol shall remain open for signature by the High Contracting Parties until 30 June 2012.

This Protocol shall be ratified by the High Contracting Parties, and by the Republic of Croatia in the event that this Protocol has not entered into force by the date of accession of the Republic of Croatia to the European Union, in accordance

with their respective constitutional requirements. The instruments of ratification shall be deposited with the Government of the Italian Republic.

This Protocol shall enter into force if possible on 30 June 2013, provided that all the instruments of ratification have been deposited, or, failing that, on the first day of the month following the deposit of the instrument of ratification by the last Member State to take this step.

Article 5

This Protocol, drawn up in a single original in the Bulgarian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Irish, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish languages, each text being equally auth-

entic, shall be deposited in the archives of the Government of the Italian Republic, which shall transmit a certified copy to each of the governments of the other Member States.

Once the Republic of Croatia has become bound by this Protocol pursuant to Article 2 of the Act concerning the conditions of accession of the Republic of Croatia, the Croatian text of this Protocol, which shall be equally authentic to the texts referred to in the first paragraph, shall also be deposited in the archives of the Government of the Italian Republic, which shall transmit a certified copy to each of the governments of the other Member States.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries have signed this Protocol.

Съставено в Брюксел на тринадесети юни две хиляди и дванадесета година.
Hecho en Bruselas, el trece de junio de dos mil doce.
V Bruselu dne třináctého června dva tisíce dvanáct.
Udfærdiget i Bruxelles den trettende juni to tusind og tolv.
Geschehen zu Brüssel am dreizehnten Juni zweitausendzwoölf.
Kahe tuhande kaheteistkümnenda aasta juunikuu kolmeteistkümnendal päeval Brüsselis.
Έγινε στις Βρυξέλλες, στις δέκα τρεις Ιουνίου δύο χιλιάδες δώδεκα.
Done at Brussels on the thirteenth day of June in the year two thousand and twelve.
Fait à Bruxelles, le treize juin deux mille douze.
Arna dhéanamh sa Bhruiséil, an tríú lá déag de Mheitheamh an bhliain dhá mhíle agus a dó dhéag.
Fatto a Bruxelles, addì tredici giugno duemiladodici.
Briselē, divi tūkstoši divpadsmitā gada trīspadsmitajā jūnijā.
Priimta du tūkstančiai dvyliktų metų birželio tryliktą dieną Briuselyje.
Kelt Brüsszelben, a kétezer-tizenkettedik év június havának tizenharmadik napján.
Magħmul fi Brussell, fit-tlethax-il jum ta' Ġunju tas-sena elfejn u tnax.
Gedaan te Brussel, de dertiende juni tweeduizend twaalf.
Sporządzono w Brukseli dnia trzynastego czerwca roku dwa tysiące dwunastego.
Feito em Bruxelas, em treze de junho de dois mil e doze.
Íntocmit la Bruxelles la treisprezece iunie două mii doisprezece.
V Bruseli dňa trinásteho júna dvetisícdvánásť.
V Bruslju, dne trinajstega junija leta dva tisoč dvanajst.
Tehty Brysselissä kolmantentoista päivänä kesäkuuta vuonna kaksituhattakaksitoista.
Som skedde i Bryssel den trettende juni tjugohundratolv.

2.3.2013

EN

Official Journal of the European Union

L 60/135

Voor het Koninkrijk België
 Pour le Royaume de Belgique
 Für das Königreich Belgien



Deze handtekening verbindt eveneens de Vlaamse Gemeenschap, de Franse Gemeenschap, de Duitstalige Gemeenschap, het Vlaamse Gewest, het Waalse Gewest en het Brussels Hoofdstedelijk Gewest.

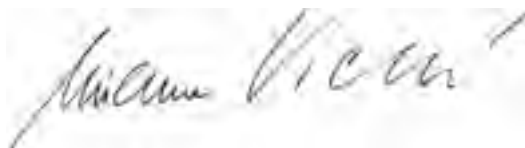
Cette signature engage également la Communauté française, la Communauté flamande, la Communauté germanophone, la Région wallonne, la Région flamande et la Région de Bruxelles-Capitale.

Diese Unterschrift bindet zugleich die Deutschsprachige Gemeinschaft, die Flämische Gemeinschaft, die Französische Gemeinschaft, die Wallonische Region, die Flämische Region und die Region Brüssel-Hauptstadt.

За Република България



Za Českou republiku



For Kongeriget Danmark



Für die Bundesrepublik Deutschland

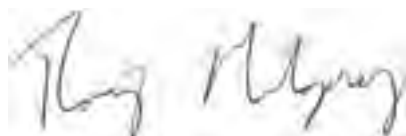


Eesti Vabariigi nimel



Thar cheann Na hÉireann

For Ireland



Για την Ελληνική Δημοκρατία



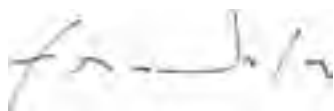
Por el Reino de España



Pour la République française



Per la Repubblica italiana



Για την Κυπριακή Δημοκρατία



2.3.2013

EN

Official Journal of the European Union

L 60/137

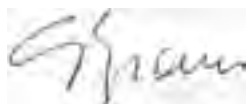
Latvijas Republikas vārdā –



Lietuvos Respublikos vardu



Pour le Grand-Duché de Luxembourg




Magyarország részéről



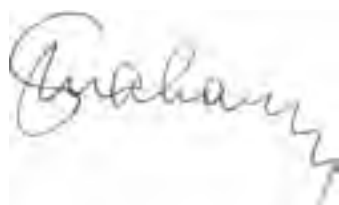
Għal Malta



Voor het Koninkrijk der Nederlanden



Für die Republik Österreich



W imieniu Rzeczypospolitej Polskiej



Pela República Portuguesa




Pentru România



Za Republiko Slovenijo



Za Slovenskú republiku



Suomen tasavallan puolesta

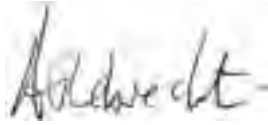
För Republiken Finland



För Konungariket Sverige



For the United Kingdom of Great Britain and Northern Ireland



A. Adcock

II. Key Pre-Charter Convention Documents

II.1. The First Path – Institutional Resolutions, Calls and Drafts in relation to a Charter of Rights

1973 OJ C26/7
Resolution on the Protection
of the Fundamental Rights of
Member States' Citizens when
Community Law is Drafted
(Jozeau-Marigné Report)

11. Points to the difficulties that this programme will encounter when the time comes to move from statements of principle to practical action, and in particular the weak legal bases provided by the Treaties if recourse is not had to Article 235, the absence of a genuine political will, dissension within the Council and the differences of opinion regarding the division of responsibilities between Member States, the two sides of industry and the Community institutions;
12. Urges the Commission and the Council to do their utmost to solve these difficulties;
13. Urges the Commission to take all the measures necessary to implement Articles 119 of the Treaty, which establishes the principle that men and women should receive equal pay for equal work, and in its new programme to give the same opportunities and consideration to women as to men;
14. Requests its President to forward this resolution and the report of its committee to the Council and Commission of the European Communities.

. . . .

Modification of agenda

At the request of Mr Jozeau-Marigne and with the agreement of Mr Pêtre, it was decided that Parliament should deal with the former's report on the basic rights of Member States' citizens before discussing Mr Pêtre's report on agreement concluded within the framework of international organizations.

Basic rights of Member States' citizens

Mr Léon Jozeau-Marigne introduced his report drawn up on behalf of the Legal Affairs Committee on the motion for a resolution tabled by Mr Lautenschlager on behalf of the Socialist Group (Doc. 103/71) concerning the protection of the fundamental rights of Member States' citizens when Community law is drafted (Doc. 297/72).

The following spoke: Mr Lautenschlager, on behalf of the Socialist Group, and Mr Scarascia Mugnozza, *Vice-President of the Commission of the European Communities*.

The following resolution was agreed to:

RESOLUTION

concerning the protection of the fundamental rights of Member States' citizens when Community law is drafted

The European Parliament,

- having regard to the motion for a resolution tabled by Mr Lautenschlager on behalf of the Socialist Group (Doc. 103/71);
- having regard to the report of the Legal Affairs Committee (Doc. 297/72);

1. Invites the Commission of the European Communities when drafting regulations, directives and decisions, to prevent conflicts from arising with national constitutional law and to examine in particular how the fundamental rights of Member States' citizens may be safeguarded;

2. Invites the Commission, furthermore, to submit to it a report as to how it intends, in the creation and development of European law, to prevent any infringement of the basic rights embodied in the constitutions of Member States, the principles of which represent the philosophical, political and juridical basis common to the Community's Member States;
3. Stresses the need to make the European Court more widely accessible to the individual citizen;
4. Instructs its President to forward this resolution and the report of its Committee to the Council and Commission of the European Communities.

— — — — —

Second Commission report on agreement concluded within the framework of international organizations

Mr René Pêtre introduced his report drawn up on behalf of the Committee on Social Affairs and Public Health on the second report of the Commission of the European Communities to the Council on the possibilities and difficulties facing Member States regarding the ratification of a first list of agreements concluded within the framework of other international organizations (Doc. 289/72).

The following spoke: Miss Lulling, Mr Walkhoff, Mr Hillery, *Member of the Commission of the European Communities*, and Mr Pêtre, *rapporteur*

The following resolution was agreed to:

RESOLUTION

on the second report of the Commission of the European Communities to the Council on the possibilities and difficulties facing Member States regarding the ratification of a first list of agreements concluded within the framework of other international organizations

The European Parliament,

- having regard to the report of the Commission of the European Communities to the Council (SEC (72) 2147 final),
- having regard to the provisions of Articles 117 and 118 of the EEC Treaty,
- having regard to the report of the Committee on Social Affairs and Health Protection (Doc. 289/72),

1. Draws attention to its resolutions of 14 May 1963 ⁽¹⁾ concerning the European Social Charter of the Council of Europe, and of 2 July 1968 ⁽²⁾ on the possibilities and difficulties facing Member States regarding the ratification of a first list of agreements concluded within the framework of other international organizations;
2. Is delighted that the Commission has continued to pay close attention to the problem of ratification of ILO and Council of Europe agreements;
3. Welcomes the fact that, following Parliament's resolution and the Commission's proposal, certain Member States proceeded to ratify some of the specified agreements;
4. Regrets, however, that by 1 January 1973, only one of the nine Member States of the Community, Italy, had ratified all the ILO agreements in question and the European Social Charter;

⁽¹⁾ OJ No 84, 4. 6. 1963, p. 1577/63.

⁽²⁾ OJ No C 72, 19. 7. 1968.

1975 OJ C179/28

Resolution on European Union

RESOLUTION
on European Union

The European Parliament,

- recalling the hope repeatedly expressed since the Bonn summit conference in July 1961 and the concrete indications concerning the transformation of the Communities established by the Treaties of Paris and Rome into a single and real economic, social and political Community,
- desirous of seeing practical effect given to all the undertakings solemnly entered into by the Heads of State or Government of the Member States on 1 and 2 December 1969 at The Hague, 19 to 21 October 1972 in Paris, 14 to 15 December 1973 in Copenhagen and 9 to 10 December 1974 in Paris,
- emphasizing its essential role and its responsibilities as an institution representing the peoples joined together in the Community in the efforts to transform all the relations of the Member States into a European Union,
- recalling in particular its resolutions of 5 July 1972, 14 November 1972 and 14 October 1974,
- firmly convinced that the progressive achievement of the Union must be based on the active and conscious participation of the peoples, whose interests it must reflect, and that the European Parliament will, therefore, have to take at all times, with the assistance of the national Parliaments, all initiatives likely to foster and ensure such participation,
- in answer to the desire expressed by the Heads of State or Government for the Community institutions to contribute to the work on European Union and, in particular, to the drawing up of a summary report by Mr Leo Tindemans,

Declares that:

1. The European Union must be conceived as a pluralist and democratic Community whose priority aims are as follows:

- to ensure strict respect for liberty and human dignity,
- to promote social justice and solidarity between the Member States and the citizens of the Community, through the establishment of an economic order ensuring full employment and the equitable distribution of incomes and wealth;
- to oppose resolutely any cause of conflict or tension, in order to contribute towards the maintenance of peace and freedom,
- to take part in efforts to reduce tension and settle disputes by peaceful means throughout the world and, in Europe, to develop cooperation and security between States;

2. The European Union must be brought about progressively by means of more rational and efficient forms of relations between Member States, taking existing Community achievements as its point of departure through the introduction of a single organization undertaking duties which the Member States can no longer effectively carry out alone, thus avoiding wastage of effort or actions contrary to the cohesion of the Union;

3. The Union must be based on an institutional structure which will ensure its coherence:

- on a body, within which participation by the Member States in the decision-making process of the Union will be guaranteed,
- on a Parliament having budgetary powers and powers of control, which would participate on at least an equal footing in the legislative process, as is its right as the representative of the peoples of the Union,
- on a single decision-making centre which will be in the nature of a real European government, independent of the national Governments and responsible to the Parliament of the Union,

- on the European Court of Justice,
- on an Economic and Social Council, as a consultative body,
- on a European Court of Auditors.

4. The dynamic character of the present Community must be preserved in full, the powers and responsibilities of the Union must be progressively widened, respecting the essential interests of Member States, in particular:

- (a) foreign policy, for which the existing coordination procedures must be further strengthened. New procedures must be developed to enable the Community to speak with a single voice in international politics;
- (b) security policy;
- (c) social and regional policy;
- (d) educational policy;
- (e) economic and monetary policy;
- (f) a Community budgetary policy;
- (g) policy on energy and supplies of raw materials;
- (h) a scientific and technical research policy.

The Union, based on the collective exercise of common responsibilities, must remain open to new tasks.

5. The Union can only be achieved through a process of continuous political development, which must make full use of all the provisions and possibilities of the present treaties and the other procedures which link the Member States, in order to bring about quickly and effectively the degree of solidarity necessary to transform the present Community into an organization whose decisions are binding on all parties.

6. Achievement of the Union therefore necessitates immediate action to ensure real progress in the various Community policies and in the institutional structure, which must take place in parallel.

The European Parliament therefore asks

7. That an immediate start be made on the procedures necessary to allow the election of its Members by direct universal suffrage not later than in 1978, the date indicated by the Heads of Government of the Member States, thus giving proof of the political resolve to advance towards the construction of Europe with the active participation of the peoples;

8. That in the course of 1976 the Commission of the European Communities should submit an overall programme of priority action which will enable the main aims of the Community policies on which the future European Union is based to be achieved before the end of the present decade;

9. That this programme should be submitted to the urgent consideration of Parliament and the Council for such amendment or modification as may be jointly agreed between the two institutions and then for approval and implementation by the Council;

10. That the links which exist between Economic and Monetary Union and European Union, making desirable a parallel development in the two fields, should be recognized, without, however, allowing the lack of progress in one field to be used as a pretext for taking no action in the other;

11. That adjustments to the institutional structure necessary to adapt it to its task in the European Union should now be made, in particular,

- (a) that, in accordance with the Treaties, the Council should abandon the principle of unanimity and meet in public in its legislative capacity;
- (b) that the role of the Commission should be extended to include the primary responsibility for all multilateral relations between Member States; this decision would enable these relations to be simplified and coordinated, while putting an end to the distinction between Community procedures and inter-governmental procedures;

- (c) that the Community decision-making process should be organized in accordance with the following procedure:
- the Commission, where appropriate on a proposal from Parliament, draws up a draft proposal;
 - this draft is submitted to the Council and Parliament at the same time;
 - the Council proceeds to give consideration to the proposal only after having received the text of Parliament and in the light of that text;
 - until the Council has adopted its conclusions with regard to the proposal the Commission retains the right to amend it in accordance with the provisions of the second paragraph of Article 149 of the EEC Treaty;
 - if the Council feels it has to make changes in the text of the proposal as approved or amended by Parliament, a conciliation procedure must be set up within time limits to be specified, before the Council takes its decision, and the procedure will continue until Council and Parliament have reached agreement;
- (d) that all the European Parliament's powers should be substantially reinforced by 1980 and that, above all, in the transfer of new powers to the Communities the European Parliament should be given corresponding powers of legislation and control, since this is the only way to ensure that decisions of the European Communities are democratically legitimate;
- (e) that Parliament, in accordance with the wish solemnly affirmed by the Heads of Government of the Member States, should participate fully in the work concerning political cooperation and in all the procedures for coordination and consultation between the Member States;
- (f) that Parliament should participate in the appointment of the Members of the Commission of the Communities to emphasize their democratic legitimacy.

The European Parliament,

- emphasizes that these adjustments — provided for in paragraph 8 *et seq.* — do not involve formal modifications to the existing treaties but are necessary if there is a desire to make real progress towards European Union and give proof of the existence of a political resolve capable of affirming and strengthening the solidarity between the peoples of the Community and between their Governments;

12. Hopes that, with a view to giving the peoples of the Community a sense of common destiny, a 'Charter of the rights of the peoples of the European Community' will be drawn up and that practical measures capable of contributing to the development of a European Community consciousness, which have been requested for some time, will be adopted;

13. Appeals to the national Parliaments to associate themselves with the efforts towards the progressive achievement of European Union capable of responding to the legitimate hopes of the peoples and in particular of youth;

14. Expects the Governments of the Member States, the national Parliaments, the Council and the Commission of the European Communities to act on this resolution and undertake the necessary practical steps to achieve European Union within the time limits laid down;

15. Instructs its President to forward this resolution to Mr Tindemans, to the national Parliaments, to the Governments of the Member States, the Council and Commission of the European Communities.

Observation by the Danish delegation: Communiqué issued at the end of the Conference of Heads of State or Government of the European Communities, 9 and 10 December 1974 — statement by the Danish delegation: 'The Danish delegation is unable at this stage to commit itself to introducing elections by universal suffrage in 1978'.

COM (76) 37
The protection of fundamental rights as Community law is created and developed. Report of the Commission submitted to the European Parliament and the Council

Bulletin
of the European Communities

Supplement 5/76

Cover title: The protection of fundamental rights in the
European Community

Pages 1-17

COM(76) 37
4 February 1976

The protection of fundamental rights as Community law is created and developed

(Report of the Commission of 4 February 1976
submitted to the European Parliament and the Council)

Commission of the
EUROPEAN COMMUNITIES

Abbreviations

OJ	Official Journal of the European Communities
Bull. EC	Bulletin of the European Communities
CJEC	Court of Justice of the European Communities
ECR	European Court Reports

The protection of fundamental rights, as Community law is created and developed

(Report of the Commission of 4 February 1976 submitted
to the European Parliament and the Council)

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Introduction and scope of the subject matter

*Grounds **

1. In its Resolution of 4 April 1973,¹ based on the report of the Legal Affairs Committee,² the European Parliament invited the Commission

‘to submit to [the Parliament] a report as to how it intends, in the creation and development of European law, to prevent any infringement of the basic rights embodied in the constitutions of Member States, the principles of which represent the philosophical, political and juridical basis common to the Community’s Member States.’

2. The presentation of this report has been delayed for several reasons. On the one hand, both the Court of Justice as well as several national courts have, in the meantime, decided a number of cases involving the problem of fundamental rights.³ On the other, it is only now that some interim stocktaking on the subject is emerging in academic circles.⁴ Finally the Commission itself, in its report on the European Union, has given its views on the protection of fundamental rights in the construction of this Union.⁵

Limited scope of the Commission’s responsibility

3. In this report, which in no way claims to be exhaustive, the Commission will first of all naturally consider its own position. It will, however, also make some general comments which apply to both the other Community institutions and the Member States as these bear an equal, if not greater, share of the responsibility and authority for the protection of fundamental rights.

4. In so far as Community law is not affected, the Member States alone are responsible for the protection of fundamental rights within the framework of their national legal systems. As it has repeatedly stated in reply to Parliamentary questions,⁶ the Commission is, to this extent, not competent to intervene or pass judgment. Where, however, bodies in the Member States apply Community law, they

are bound to act in accordance with the guarantees of fundamental rights which apply under Community law.

There is, therefore, no scope for examining Community law provisions using as a yardstick the fundamental rights guaranteed under the national constitutions because Community law can be applied in the Member States only on a uniform basis and must necessarily be judged according to the same standards. Furthermore, where Member States adopt national measures to implement Community law, national fundamental rights as such are ruled out as a control standard, at all events in so far as mandatory provisions of Community law, including those of Directives, are involved.

5. The Commission exercises the right conferred upon it by the Treaties to make proposals and for this purpose takes part in the deliberations of the Parliament and the Council. In addition, it has to exercise the powers of decision conferred on it by the Treaties or the Council. Finally, the Commission is responsible for supervising the application of Community law and therefore also plays a watchdog role in respect of fundamental rights.

In all its activities the Commission must prevent and, if necessary, oppose possible infringements of fundamental rights.

* The intermediate headings do not form part of the Report of the Commission.

¹ OJ C 26 of 30.4.1973.

² Doc. 297/72 (EP 30.941/fin.) by Mr Jozeau-Marigné, rapporteur.

³ Points 9 and 10 below.

⁴ See the results of the special session of the Legal Affairs Committee of the Parliamentary Assembly of the Council of Europe of 12.6.1975 in Strasbourg on the protection of fundamental rights within the framework of the European Communities, the results of the 7th International Congress of the International Federation of European Law (FIDE) of 2 to 4.10.1975 in Brussels and the 4th International Colloquium on the European Human Rights Convention of 5 to 8.11.1975 in Rome.

⁵ Supplement 5/75 — Bull. EC, points 82 to 85.

⁶ Cf. e.g., Written Question No 1/75 by Mr Amendola and Mr. Ansart, OJ C 170 of 28.7.1975; Written Question No 282/75 by Mr Bordu, OJ C 242 of 22.10.1975.

Survey

6. The following text indicates:

- (i) how the standard of fundamental rights has developed in the Community legal order; in other words according to which yardstick the Community institutions should base their actions (Points 7 to 12);
- (ii) the conclusions the Commission has drawn from this in pursuing its activities and the extent to which it has attempted to contribute towards further developing the protection of fundamental rights (Points 13 to 20);
- (iii) the conclusions to be drawn by the Commission with regard to future developments (Points 21 to 38).

The standard of fundamental rights in the Community

Fundamental rights as an essential part of the Community legal order

7. There are provisions in the Treaties themselves whose aim, or at least effect, is to guarantee and improve the position of the individual in the Community: e.g., Articles 7, 48, 52, 57, 117, 119 EEC. It is on the basis of some of these articles that the Court of Justice has been able to give important judgments as regards the protection of fundamental rights.

At the same time, it must not be forgotten that the creation of the Common Market has had the effect of extending beyond national frontiers the area over which the freedoms of the citizen, especially in the economic sector, may be exercised.

8. Turning to fundamental rights, strictly speaking, the Community institutions have, since the beginning of the Community, been faced with the question of their existence and with a precise definition of their scope under the Community legal order. Today, fundamental rights—however they may be defined¹—undeniably constitute an essential part of the Community legal order.

The individual citizen should not be without protection in the face of official power. He must have certain inviolable rights. This is one of the fundamental elements in the identity and cohesion of the Community.

In its report on European Union² the Commission has already stated that it sees democracy as one of the basic conditions for coexistence and integration of the Member States within the Community. An essential part of any democracy is protection of and respect for human rights and fundamental freedoms which alone enable the individual citizen freely to develop his personality. There can be no democracy without recognition and protection of human rights and guaranteed freedom of the citizen. This is equally true of the Community.

Even if the basic principles are clear it has nevertheless been difficult to secure agreement on the scope and effect of the various fundamental rights.

The case law of the Court of Justice

9. The Court of Justice of the European Communities was faced with the question of fundamental rights for the first time in 1959. Its case law is sufficiently well known and may be summarized as follows:

- (i) In two judgments in 1959 and 1960³ the Court of Justice initially held that it was not competent to examine the legality of acts of the Community institutions according to the yardstick of national fundamental rights.
- (ii) The subsequent cases of *Stauder* (1969) and *Internationale Handelsgesellschaft* (1970)⁴ reveal a new attitude in the jurisprudence of the Court when it held that ‘respect for fundamental rights forms an integral part of the general principles of law of which (it) ensures respect’.

¹ Point 9.

² Supplement 5/75 — Bull. EC.

³ CJEC 4.2.1959 — *Stork v High Authority*, 1/58, [1958-59] ECR 43; CJEC 15.7.1960 — *Ruhrkohlenverkaufsgesellschaften v High Authority*, 36-38, 40/59, [1960] ECR 857.

⁴ CJEC 12.11.1969, 29/69, [1969] ECR 419; CJEC 17.12.1970, 11/70, [1970] ECR 1125. For a translation in English, see respectively [1970] CMLR 112 and [1972] CMLR 255.

(iii) In 1974, in the *Nold* case¹ the Court of Justice went one step further. It seem to have moved towards a sort of optimum standard of fundamental rights by holding that ‘in safeguarding these rights, the Court is bound to draw inspiration from the constitutional traditions common to the Member States, and it cannot, therefore, uphold measures which are incompatible with fundamental rights recognized and protected by the Constitutions of those States’. In addition, the Court of Justice draws from international treaties on the protection of human rights in which the Member States have collaborated or of which they are signatories guidelines for determining general legal principles which apply in the Community legal order.

The abovementioned decisions concern the right to human dignity and freedom in general (*Stauder*) and the principles of the freedom to develop and deal with property from an economic standpoint (*internationale Handelsgesellschaft*). The *Nold* case concerned rights of ownership in the economic sense and freedom to choose and practise a profession or trade.

The Court of Justice has, however, recognized that fundamental rights are not to be considered as absolute. As in all legal systems, there are no fundamental rights which are not subject to limitations, the extent of which depends on the nature of the right involved.

In this way the Court of Justice has already held in the *Internationale Handelsgesellschaft* case that ‘the protection of (fundamental) rights, while inspired by the constitutional principles common to the Member States, must be ensured within the framework of the Community’s structure and objectives’. In the *Nold* case, the Court decided that even if the fundamental rights at issue in the case were protected, nevertheless these were to be considered ‘in the light of the social function of the property and activities protected thereunder’ so that it is legitimate ‘that these rights should if necessary be subject to certain limits justified by the overall objectives pursued by the Community, on condition that the substance of these rights is left untouched’.

Furthermore, other judgments of the Court have recognized a number of important general principles of law as essential elements of the principle of the rule of law in order to secure an effective protection of fundamental rights. These include the principle

of proportionality,² the requirement of legal certainty and the protection of confidence thereby,³ observance of the principle of the right to be heard and to defend one’s rights in legal proceedings,⁴ the prohibition of conviction of a single offence twice,⁵ the general obligation to give reasons⁶ and the principle of non-discrimination.⁷

Furthermore the Court of Justice has not only paid attention to the substantive standard as regards the protection of the citizen against public authority: it has also considered the problem of the access of the individual to the Community court.

On the one hand, by developing a more and more favourable jurisprudence on the subject of the direct effect of Community provisions, it has considerably widened access to the national courts and thereby broadened the scope of application of Article 177 EEC. On the other hand, the cases decided by it since 1971 involving Article 215 EEC⁸ enable the individual citizen to go before the Court of Justice even where the damages alleged arise out of Community legal acts which cannot be directly attacked.

In this way access to the Court as laid down in Articles 173 and 175 EEC has been substantially extended.

Role of the courts of the Member States

10. It is well known that the effectiveness of the protection of fundamental rights is based not so

¹ CJEC 14.5.1974 — *Nold v Commission*, 4/73, [1974] ECR 491; CJEC 28.10.1975 — *Rutili v The French Minister for the Interior*, 36/75, [1975] ECR 1219.

² CJEC 12.6.1958 — *Compagnie des Hauts Fourneaux de Chasse v High Authority*, 15/57, [1958] ECR 155.

³ CJEC 4.7.1973 — *Westzucker v Einfuhr- und Vorratsstelle für Zucker*, 1/73, [1973] ECR 723.

⁴ CJEC 22.3.1961 — *Société Nouvelle des Usines de Pontlieue v High Authority*, 42 and 49/59, [1961] ECR 101.

⁵ CJEC 14.12.1972 — *Boehringer Mannheim GmbH v Commission*, 7/72, [1972] ECR 1281.

⁶ CJEC 15.3.1967 — *SA Cimenteries CBR, Cementbedrijven NV et al. v Commission*, 8-11/66, [1967] ECR 75; CJEC 28.10.1975 — *Rutili v the French Minister for the Interior* 36/75, [1975] ECR 1219.

⁷ CJEC 24.10.1973 — *Merkur-Aussenhandels-GmbH v Commission*, 43/72, [1973] ECR 1055.

⁸ CJEC 2.12.1971 — *Zuckerfabrik Schöppenstedt v Council*, 5/71, [1971] ECR 1975.

much on written legal guarantees as on judicial protection in individual cases. Accordingly it is necessary to underline the important role which the courts of the Member States have played towards clarifying the fundamental rights standard which is to apply in the Community, above all by referring questions for preliminary ruling to the Court of Justice.

In this connection, the courts of the Member States may be faced with a conflict in cases relating to Community law if the national standard of fundamental rights that they are required to protect were to go beyond that recognized under Community law. Competition to obtain the best protection of fundamental rights may have some positive effects for the citizen. However, he is also affected if Community law is not applied everywhere on a uniform basis.

Recently, the supreme courts of the Member States have adopted various positions with regard to this undoubtedly more theoretical than real conflict.

The Italian Constitutional Court described such a conflict as 'aberrant' and extremely improbable.¹ Whilst refusing to examine secondary Community legislation according to the fundamental rights in the Italian Constitution it nevertheless reserved the right, in an extreme case, to question, in respect of Italy, the law of the Treaty itself if the effect of this were to permit substantial infringement of fundamental rights.

In its decision of 19 May 1974,² it is true that the German Federal Constitutional Court was unable to establish any substantive conflict between secondary Community legislation and national fundamental rights. However, it justified the right it claimed to examine secondary Community law by basing itself on the fundamental rights embodied in the German Basic Law³ and by stating that in its opinion the fundamental rights standard achieved in the Community was inadequate. In its view this was because there was no written catalogue of fundamental rights enacted by a democratically elected Parliament.

Public opinion

11. At first, a prime concern of the public was that the citizen in the Community would be subjected to

a new authority bound neither by national fundamental rights nor by a catalogue of fundamental rights at Community level.⁴ Meanwhile the more recent decisions of the Court of Justice in favour of fundamental rights have silenced the original criticisms to a considerable extent. The frequently asserted danger of massive infringements of fundamental rights by the Community institutions has at no time materialized. This must be attributed, first, to the mechanisms adopted by the Community institutions to prevent any conflict between Community legal acts and fundamental rights recognized in the Community legal order and, secondly, to the limited competence of the Community: the powers of intervention written into the Treaties can by the very nature of things come into conflict only with a relatively limited number of fundamental rights. The debate about the deficiency of Community law as far as the protection of fundamental rights is concerned has therefore proved to be, to a considerable extent, theoretical even though the Community institutions' awareness of fundamental rights may thereby have been considerably increased.

Although there are still sporadic assertions that fundamental rights are inadequately protected in the Community, the views of those concerned are usually based on the universal application of their own national systems of fundamental rights. The opinion of most, however, is that the approach indicated by the Court of Justice provides sufficient guarantee that the fundamental rights of the Community's citizens are recognized and effectively protected.⁵

¹ Judgment of 18/27.12.1973 — Frontini 183/73; *Giustizia civile* 1974 III, 410; *Journal des tribunaux*, 1974, 412.

² *Internationale Handelsgesellschaft*, BVerfGE 37, 271.

³ Cf. a corresponding theoretical reservation BVerfGE 22, 293, 298, Decision of 18.10.1976.

⁴ Cf. e.g., the debates in the German Bundestag on the ECSC Treaty (Parliamentary reports of the German Bundestag, 1st term, 183rd session of 10.1.1952) and on the EEC Treaty (Parliamentary reports of the German Bundestag, 2nd term, 208th session of 9.5.1957 and 224th session of 5.7.1957). Here, anxiety with regard to a lack of democracy in the Community was expressed with particular intensity. Similar fears were expressed in the Parliaments of the new Member States during the debates on accession to the Community.

⁵ See the many critical observations on the decision of the Federal Constitutional Court of 29.5.1974.

Summary

12. Summarizing the above it can be said that the legal protection of fundamental rights at the Community level is guaranteed by the procedures laid down in the Treaties. As to the substantive standard of fundamental rights, this is based, first, on the fundamental rights and similar guarantees laid down in the Treaties and, secondly, on the general principles of law to be determined according to the criteria set out in the Nold judgment.

The position taken by the Commission on the question of fundamental rights to date

13. The Commission has certainly influenced the development of fundamental rights as described above. It has also adopted in its own sphere a number of preventative measures to meet the requirements necessary to protect fundamental rights.

Development of the freedoms laid down in the Treaties

14. The creation of the Common Market has extended the freedom of Community citizens. As framework Treaties, the Community Treaties call for permanent and continuous enactment of legislation, for example, in the field of freedom of movement and freedom of establishment. The Commission plays a decisive role in this law-making process. The respect and protection of fundamental rights is therefore a permanent task for it. In the field of agricultural policy in particular, where decisions that have a direct effect on the individual citizen have to be taken almost daily, the Commission has constantly to consider how it can safeguard him against discrimination, interference with duly acquired rights and excessive encroachments.

The instrument at the disposal of the Commission, the Treaty infringement procedure, can in certain cases serve to counter breaches of Community law through national measures which adversely affect

the citizen. This does not mean that only direct infringements of the fundamental rights of citizens are involved.¹ Disturbances in the free movement of goods, for example, by the levying of unauthorized taxes or the granting of aids which are incompatible with the Treaty, can also limit the citizen's freedom to engage in the trade or profession of his choice.

Contribution to the case law of the Court of Justice

15. The Commission also plays a role in almost all proceedings before the Court of Justice. By this means it is able through its written opinions to contribute towards resolving the question at issue, even when it is not itself one of the parties. In particular, it has always made use of the possibility of presenting its observations in Article 177 EEC procedures. In this way it has contributed in the working out of a jurisprudence which has become increasingly more favourable in the sphere of fundamental rights and as regards the economic liberties and down by the Treaties.

Attitude towards Parliament and public opinion

16. In cooperation with the European Parliament the Commission has had many opportunities to express its views on the protection of the fundamental rights of citizens. In various statements to the Parliament^{1 2 3} and in reply to many written and oral questions,⁴ the Commission has stated that 'every contravention of human rights and every violation of democracy no matter where it may be, is adhorrent'.⁴ In this way it intervenes with all the means at its disposal in favour of the respect of fundamental rights in the Community legal order.

¹ CJEC 4.4.1974 — Commission v French Republic, 167/73, [1974] ECR 359.

² Cf. e.g. statement by Sir Christopher Soames on 14.3.1973 in reply to questions by Mrs Caretoni Romagnoli and Mr Cifarelli, OJ Annex 160.

³ Statement by Mr. Scarascia Mugnozza on 30.4.1973, re protection of fundamental rights of citizens of Member States OJ Annex 161.

⁴ See the following more recent examples: Written Question No 213/75 by Mr Giraud and Mr Schmidt, OJ C 242 of 22.10.1975; Written Question No 285/75 by Mr Seefeld, OJ C 264 of 18.11.1975; Oral Question No H-40/75 of 14.5.1975 by Mr Bordu, EP Debates of May 1973.

This agreement between the views of the Commission and those of the European Parliament was recently shown in the assessment of the effect that the abovementioned decision of the German Federal Constitutional Court of 19 May 1974 may have on the Community legal order and in particular on the protection of fundamental rights. The Commission shares the conclusions drawn by the Legal Committee of the European Parliament in its draft Resolution contained in the report of Mr Rivierez.¹

17. In addition, one aspect which is also of importance in developing the freedom of the citizen should not be overlooked, namely informing him of his rights. Only when the citizen himself is convinced that the freedoms which are given him by the Treaties will be extended in the course of European integration and that he can count on effective protection of his rights will integration be successful. The Commission is endeavouring to inform the public of those measures which affect the citizen directly.

As part of its public relations work the Commission has promoted scientific examination of the question of fundamental rights through organizational and financial assistance. It is precisely because the Court of Justice refers to 'the fundamental rights embodied in the constitutions of the Member States' as the expression of general principles of law that surveys comparing laws and constitutions are essential.

The Commission summarized its views and aims in respect of the protection of fundamental rights and put them forward for public discussion in its report on European Union of June 1975.

Organizational provisions

18. A system of preventative legal checks which extends to safeguarding fundamental rights exists within the internal decision-making procedure of the Commission. Right from the initial stages of working out a legal act of the Commission the various interested services are on their guard to avoid a conflict between the measure in question and the fundamental rights of the individual.

In addition the Commission has created a special organ, the Legal Service—as has the Council—to examine the legality of drafts of legal acts which are

submitted to it. Pursuant to a decision of the Commission of 1958 it was laid down that 'all documents intended for the Commission, either with a view to their forming the subject of a proposal to the Council or for the adoption of one of the measures laid down in Article 189, are first to be referred to the Legal Service.'² The Opinion of the Legal Service is to be forwarded to the Commission at the same time as the documents in question.

Because of the cohesive way in which it works, the flexibility of its organization and the means at its disposal, this Service, whose members come from the various legal circles of the Member States, is in a position to clarify any fundamental rights question which may arise with regard to general legal principles or the constitutional traditions of one or more Member State.

In this way, the Commission considers that it has been able up to now to come up with solutions which conform to fundamental rights.

19. Proposals from the Commission for the enactment of a legal instrument affecting the citizen, and the Commission's own instruments, are, of course, preceded by preparatory work. Here there is always adequate opportunity to examine fundamental rights questions. The views of, and meetings with, experts from the Member States, consultations within the framework of the various committees, and contacts with associations representing, *inter alia*, the interests of persons affected by such instruments enable additional checks to be carried out.

Cooperation of Community institutions

20. As regards Community acts, in respect of which the Commission has only the right to make a proposal, responsibility to respect fundamental rights is also in the hands of both the Council, which decides, and the European Parliament, to the extent it is consulted.

In this case the Parliament is able to raise any question concerned with fundamental rights by asking

¹ Doc. No 390/75 (EP 41.913/fin.).

² Decision of 1.10.1958 Doc. COM (58) Minutes 31.

the Commission to reconsider its proposals and to modify them pursuant to Article 149(2) of the EEC Treaty. The Commission, which has undertaken to look at its proposals again in the light of the opinion of the Parliament is naturally ready to modify them every time that the parliamentary debates bring to light an incompatibility of these proposals with the fundamental rights of the citizen.

The Council is then able at the final stage, with the Commission and all sorts of experts from the Member States participating in the work, to make sure that problems bound up with fundamental rights receive a satisfactory solution.

Programmes and objectives

Tasks for the future

21. The Commission is convinced that the conclusions set out above¹ and the preventive measures it has adopted should be sufficient to avoid infringements of the fundamental rights of citizens. Protecting fundamental rights is not, however, a static task. The potential for extending the freedom of citizens within the Community is by no means exhausted. The increasing mass of Community law affecting the individual citizen calls for constant and increased attention. As regards its future activities the Commission has set itself the following tasks:

- (i) extending knowledge of the sources and bases of fundamental rights to be safeguarded by the Community;
- (ii) pursuing short-term projects concerning the improvement of the position of the citizen in the Community; and
- (iii) developing general objectives.

Increasing the knowledge of the theoretical bases

22. If, in the field of fundamental rights, one goes back to national constitutional traditions, the most immediate task from the comparative law standpoint is to acquire detailed knowledge of these traditions. The Commission will support and promote

efforts undertaken in this direction. Until very recently there were no detailed comparative surveys of the constitutional traditions of all Member States. The comprehensive preparatory work for the seventh FIDE Congress and a study requested by the Commission on the problems faced by the Community in drawing up a catalogue of fundamental rights² now make it possible to gain an insight into the various systems which have been set up in the Member States to protect the fundamental rights of citizens. Alongside many points in common there are at times profound differences.

23. The abovementioned study comes essentially to the conclusion that the method used at present by the Court of Justice to protect fundamental rights, that is to derive general legal rules from the constitutional traditions of the Member States, ensures adequate protection of fundamental rights. It considers this method to be suitable for the institutional safeguarding of fundamental rights given the present Community structure. On the other hand, a catalogue of fundamental rights embodied in a treaty is hardly likely to improve the protection of fundamental rights in the present state of integration. The study refers in particular to the possibility of using international conventions and legal rules, even where they are not binding in all Member States, to derive general principles of law.

Also according to the study, should there be a structural transformation of the Communities into a European Union or into a subject of international law, analogous to a federal State, it would be 'difficult to imagine that a new European constitution could, contrary to all contemporary trends and demands, dispense with an express and detailed guarantee of fundamental rights'.

Individual programmes

24. Apart from attempts to find solutions to basic problems, the Commission is also pursuing, in the creation and further development of European law, various individual projects (some pursuing objec-

¹ Points 13 to 20.

² Drawn up by Professor R. Bernhardt, Director of the Max-Planck Institute for Foreign Public Law and International Law, Heidelberg, together with several colleagues. See Annex.

tives already laid down in the Treaties, others being steps on the path towards European Union) which should bring appreciable improvements in the position of the individual citizen within the Community.

25. In connection with extending the freedom of individual citizens laid down in the Treaties the Commission has, for example, recently submitted to the Council an action programme designed to reinforce the social situation of migrant workers.¹

At the beginning of 1975 the Council, on a proposal of the Commission, adopted a directive putting into concrete form the principle of equal pay for men and women contained in Article 119 of the EEC Treaty.²

Finally, on 18 December 1975, the Council has given effect, to a large extent, to a proposed directive which the Commission submitted to it on 12 February 1975³ designed to achieve equality of treatment for men and women as regards access to employment, vocational training, promotion and working conditions.⁴

26. Furthermore, on the road towards European Union, the Commission is participating in the progressive creation of a European citizenship. It has submitted two concrete proposals drawn up on the invitation of the Heads of State or Government at the Paris Summit meeting in December 1974⁵:

- (i) on the establishment of a Passport Union, which proposes progressive harmonization of legislation affecting aliens and the abolition of passport controls within the Community;
- (ii) on the granting of special rights in each Member State to nationals of other Member States on the principle of treating such persons in the same way as nationals of the host Member State. The special political rights are, in particular, to include the right to vote, to stand for election and to hold public office at the local and possibly regional level.⁶

Survey of general objectives

27. The general objectives of the Commission as regards the development of fundamental rights in the Community are determined above all by three problem areas:

- (i) due regard for the European Human Rights Convention in the Community;
- (ii) the guarantee of a standard of fundamental rights which is as comprehensive as possible;
- (iii) the manner in which the institutions are to safeguard this guarantee.

Meaning of the Human Rights Convention

28. In the *Nold* case the Court of Justice rules that 'similarly, international treaties for the protection of human rights, on which the Member States have collaborated or of which they are signatories, can supply guidelines which should be followed within the framework of Community law'.⁷ The Commission is of the opinion that this approach is particularly relevant with regard to the Human Rights Convention. The Human Rights Convention sets out, as far as the 'classic' fundamental rights are concerned, that is, certain of the fundamental rights to be protected in the Community, a catalogue of principles of law recognized as binding in all the Member States. It therefore also has binding effect on the activities of the Community institutions.

The Commission does not consider it necessary for the Community as such to become a party to the Convention. The fundamental rights laid down as norms in the Convention are recognized as generally binding in the context of Community law without further constitutive act.

Necessity for a comprehensive standard of fundamental rights

29. The second problem area concerns the guarantee of a standard of fundamental rights which is as comprehensive as possible. It is true that many

¹ Supplement 3/76 — Bull. EC.

² Directive 75/117/EEC, OJ L 45 of 19.2.1975.

³ OJ C 124 of 4.6.1975.

⁴ Directive 76/207/EEC, OJ L 39 of 14.2.1976.

⁵ Cf. points 10 and 11 of the final communiqué, Bull. EC 12-1974, point 1104.

⁶ Supplement 7/75 — Bull. EC.

⁷ In the *Rutili* case the Court has for the first time expressly referred to certain articles in the Convention. CJEC 28.10.1975 — *Rutili v The French Minister of the Interior*. 36/75 [1975] ECR 1219.

basic rights can be involved only in exceptional cases in view of the powers conferred upon the Community institutions.¹

Fundamental rights are, however, regulatory principles of a pluralistic society and should be taken into account as such by the Community institutions even if it is unlikely that they may, in a specific case, be infringed.

30. On the other hand, a dual tendency of Community law makes the protection of civil and political rights as well as economic and social rights appear more necessary than before:

- (i) the tendency to adopt increasingly detailed and specific rules which, by virtue of this fact, affect the individual more directly, and this not only in the field of economic activity;
- (ii) the extension of the powers of the Community institutions as part of the dynamic development towards European European Union.

Extension of the area of protection of fundamental rights

31. These tendencies increase the need for the protection of fundamental rights which the Commission will meet in two ways.

Firstly, it will, in its legislative actions and in exercising its right of initiative *vis-à-vis* the Council, pay particular attention to the development of economic and social fundamental rights. It considers this field of fundamental rights to be of particular significance since the activities of the Community institutions are mainly in the economic sector. The Commission is aware that these types of fundamental rights need in particular to be put into concrete form and complemented by being given effect on the Community as well as the Member State level. It can only confirm its intention increasingly to encourage developments in the direction indicated.

Secondly, in interpreting the decisions of the Court of Justice, the Commission proceeds from the basis that the substantive content of the fundamental rights recognized under Community law must be defined in accordance with the national standard that affords the maximum protection to the individual whilst taking into account the general interest, in order to achieve an optimum standard of protec-

tion of fundamental rights in the Community. In considering the legal positions of the individual and of the Community the Commission will, on every occasion, align its activities on the optimum standard in question and not on the lowest common denominator of the standards of fundamental rights achieved in the Member States. A high standard of fundamental rights at Community level will constitute an element in the Community legal order that will encourage integration.

Safeguarding of fundamental rights by the institutions

32. The last problem area, mentioned under paragraph 27, concerns the question of the best method of safeguarding of fundamental rights from the technical point of view. As already indicated, expert opinions expressed recently on this question in legal academic circles have been overwhelmingly to the effect that protection of fundamental rights by the judicial authority is preferable to an attempt to codify the rights to be protected. The Commission, although being in favour of a Community catalogue in its report on European Union, considers that in the present state of integration the reasons put forward in favour of a judicial solution are conclusive.

Advantage and disadvantages of a catalogue of fundamental rights

33. A written Community catalogue of fundamental rights would have many advantages: such a catalogue would improve legal certainty and would lend solid support to the law-making by the judiciary. In addition it would emphasize the importance of fundamental rights and remove any remaining doubts about their relevance in Community law. Finally it would enable the exercise of economic and social rights, most of which require legislative measures to make them effective, to be more completely assured.

34. The advantages of codifying fundamental rights can, however, hardly be realized in the short term. If the legal systems of the Member States do indeed have many fundamental points in common,

¹ Cf. the views of Mr Jozeau-Marigné in his report referred to above, Doc. No 297/72 (EP 30.941/fin.).

certain differences nevertheless remain. The fundamental rights, and bound up with them the freedom of action of the State *vis-à-vis* its citizens, are based on the structural principles of the individual constitutions. It might be difficult for certain Member States to accept a codification of fundamental rights, binding in its entirety, especially if this differed considerably from their own constitutional traditions. The establishment of a catalogue of fundamental rights would require, in the present state of the Community, an intergovernmental negotiation and would have to receive the unanimous agreement of the Member States. Defining the fundamental rights to be included in the Community catalogue could therefore result in compromises and deletions. There would be a real danger that the result of such efforts would be a minimum consensus on the matters to be included.

35. Any catalogue of fundamental rights must, moreover, provide for the possibility of limitations and involve making an inevitable choice between the protection of individual rights and the necessity of safeguarding the common good. In the present political and institutional structure of the Community an undertaking of this kind could only be realized on the basis of concepts which often differ among the Member States. There could be a risk of working out formulas which would be too general to have any value or of different reservations by different Member States. Legal security, which is the objective of a catalogue, would therefore not really be achieved.

36. In every case in which a problem is raised as regards fundamental rights the Court of Justice can, at the present time, be guided by the optimum level of these rights. A catalogue would not greatly improve the material position of the citizen in the Community if, being drawn up under the conditions mentioned above, it ended up on a lower level.

37. On the other hand the position would be completely different on the totality of relations between the Member States being transformed into a European Union. Both the powers and the means of action of the Union, even if, although attributed, they were not immediately fully exercisable, would apply over a much larger area and would reveal a much more political quality than those of the present Communities.

Undertaking the action involved will affect individual citizens even more in their daily lives. Just as it is difficult to imagine that the constitutional law of democratic States would not have provisions covering the protection of fundamental rights, so it would be difficult for the European Union to avoid this. Furthermore, in the construction of the European Union there will certainly be political pressure to emphasize fundamental rights: this will facilitate the work preparatory to the establishment of a Community catalogue.

Moreover it is clear that a predominant role would fall on a European Parliament elected by direct universal suffrage in the establishment of this catalogue: this would conform to the traditions of all the Member States.

Proposal for a common declaration

38. For the time being the Commission feels that the idea already put forward to confirm, by a solemn common declaration of the three political institutions of the Community, respect for fundamental rights in the Community, merits serious consideration. Such a declaration could underline the importance of the Human Rights Convention and the indispensable nature of the protection of these rights by the Court of Justice. In this way a reply would be given to certain objections directed against the present system, objections which, based on the principle of the separation of powers, take exception to its exclusively judge-made character.

However, such a declaration would have to be adopted without giving rise to long discussions on its contents. If there is not immediate agreement between the institutions involved on the declaration such an attempt would be of no use and even dangerous. It might create doubts—not justified—as to the credibility of the Community institutions in the field of fundamental rights.

Conclusions

39. In view of developments so far, the Commission is of the opinion that the present standard of protection of fundamental rights, as this can be

taken from the more recent decisions of the Court of Justice, is satisfactory.

Furthermore, it considers that the protective machinery at present available within the institutional structure of the Communities is sufficient to prevent and counter infringements of fundamental rights through Community acts and, following the implementation of these acts, at the national level. However, it feels that while the European Union is being set up access by the individual to the Community Court should be improved.

The Commission considers that it has a constant duty, in the further development of the common market, to safeguard and extend the freedom of the individual citizen. It will accordingly pursue its efforts in this area.

As already stated in the report on European Union, express embodiment of fundamental rights in a future European constitution remains desirable, if not essential.

As regards the present and the near future, however, the Commission shares the opinion of the Parliament that in the light of the present structure of the Community, the most complete protection of fundamental rights is ensured by the Court of Justice which guarantees a maximum level of protection. Nevertheless the Commission considers it desirable to stress by a declaration to this end the importance of fundamental rights in the Community.

**Annex to COM (76) 37
The problems of drawing up a
catalogue of fundamental rights
for the European Communities.
A study requested
by the Commission -
Report annexed to COM (76) 37**

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The problems of drawing up a catalogue
of fundamental rights
for the European Communities

(A study requested by the Commission
and drawn up by Professor R. Bernhardt,
Director of the Max-Planck-Institute for Foreign Public Law
and International Law, Heidelberg)

Commission of the
EUROPEAN COMMUNITIES

ANNEX

The problems of drawing up a catalogue of fundamental rights for the European Communities

A study requested by the Commission and drawn up by Professor Rudolf Bernhardt, Director of the Max-Planck-Institute for Foreign Public Law and International Law, Heidelberg

The contributions relating to the individual legal systems of the Member States have been produced by colleagues from the Max-Planck-Institute for Foreign Public Law and International Law, namely by Dr K. Oellers-Frahm for Italy, by Mr A. Berg for Denmark, Dr M. Bohe for Ireland and the United Kingdom, Dr K. Hailbronner for France, Mr H. Krück for Luxembourg and the Netherlands and Professor H. van Mangoldt for Belgium.

The Commission of the European Communities, represented by the Director-General of the Legal Service, has asked me to submit a study on the problems of a catalogue of fundamental rights for the European Communities. The task of the study has been defined as follows:

‘The study commissioned should show, on the basis of existing knowledge of comparative law and codification in the field of international law, the problems posed by the elaboration of a catalogue of fundamental rights for the European Communities.

It should start with a short survey of the protection of fundamental rights within the different Member States and the present protection of fundamental rights under Community law. More detailed research on some specific fundamental rights having special relevance to Community law (for instance, the protection of legitimate confidence placed in a legal position already established, in relation to economic matters, or the freedom of trade or occupation) should then illustrate by way of comparative techniques the level of protection of fundamental rights in the nine Member States.

Finally, it will have to be considered whether it is desirable, given the current degree of integration, to elaborate such a catalogue, and, if so, what procedure in terms of legal methodology is appropriate.’

Due to the lack of time available, it has not been possible to carry out an examination to compare the law in all countries to the same degree. Not only in details, but also in examples were differences unavoidable. In other respects *individual* shortcomings and occasional mistakes are unavoidable in the course of an attempt to deal with a large number of different legal systems and to understand their basic problems. The study was terminated in the autumn of 1975.

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Abbreviations

AB	Administratieve en rechterlijke beslissingen
AJDA	Actualité juridique, Droit administratif
AöR	Archiv des öffentlichen Rechts
Bull. EC	Bulletin of the European Communities
BVerfG	Bundesverfassungsgericht
BVerfGE	Entscheidungen des Bundesverfassungsgerichts
CC	Conseil constitutionnel
CE	Conseil d'État
CJEC	Court of Justice of the European Communities
D	Recueil Dalloz
DÖV	Die Öffentliche Verwaltung
D.Sir	Dalloz Sirey
DVBl.	Deutsches Verwaltungsblatt
ECHR	European Convention on Human Rights
ECR	European Court Reports
EuGRZ	Europäische Grundrechte-Zeitschrift
Gem.St.	Gemeentestem
ILTR	Irish Law Times Reports
IR	Irish Reports
J	Jurisprudence
JCP	Juris classeur périodique (Semaine juridique)
JORF	Journal officiel de la République française
JöR NF	Jahrbuch des öffentlichen Rechts, Neue Folge
JZ	Juristenzeitung
NJ	Nederlandse jurisprudentie
OJ	Official Journal of the European Communities
Pas. Lux.	Pasicrisie luxembourgeoise
RDP	Revue du Droit Public et de la Science Politique
Rec.	Recueil
RSV	Rechtspraak sociale verzekering
Sir.	Sirey
v.	versus
WLR	Weekly Law Reports
ZaöRV	Zeitschrift für ausländisches öffentliches Recht und Völkerrecht

I — Introduction

1. The problem

The European Communities exercise sovereign authority through their institutions. Making regulations, directing, intervening, they are arrayed against the individual, and set limits to his potential for development and achievement, especially in the economic field. Although it is the objective of the Communities and of the Treaties on which they are founded to extend the scope for the economic activity of 'citizens of the Common Market' ('Marktbürger')¹ beyond the frontiers of the individual Member States, and thereby to create a greater freedom, none the less this freedom requires in many respects to be regulated and subjected to limitations. In many important fields and questions this is no longer—or no longer solely—effected by the state and its organs, but by virtue of Community authority (Gemeinschaftsgewalt). There is no need here to consider how the European Communities may be classified within traditional categories, that is: whether they are to be viewed more as members of the family of international organizations, or as supranational organizations *sui generis*, or even as having, to some extent, the configuration of a State itself; what however cannot be ignored or disputed is that powers to regulate and to intervene, hitherto exercised by the States alone, are now asserted by Community organs.

The limiting of State authority (Staatsgewalt) by the fundamental rights (Grundrechte) and human rights of the individual is one of the most outstanding achievements of the modern constitutional State. The extent, form and means of protection of these fundamental rights vary from State to State and reflect the influences of history and different traditions; we shall revert to this below. However, in the States with which we are concerned the fact that there is this fundamental constraint upon State authority is not in question. At national as well as international level, efforts are continually being made to make good deficiencies in the protection of human rights. Such deficiencies are currently being picked up and discussed with particular emphasis in the field of Community law. The Community Treaties contain no catalogue of fundamental rights (Grundrechtskatalog), but only certain disparate and incomplete reference points for fundamental rights and the corresponding constraints on Community authority. This creates dangers both for the individual and for the Community itself: the protection of the individual seems insufficiently secured; in so far as it is—and that is the case to a not inconsiderable extent—considered to be inalienable, there is the danger that measures taken at the national level in the interest of fundamental rights could run contrary to, and take effect against, Community authority. Protection of the individual could therefore operate in a manner inimical to integration.

To resolve this difficulty various means and measures are proposed. Ranging from embodying a formal and detailed catalogue of fundamental rights in Community law, to dispensing with any provisions in express terms—combined with confidence in a Community Court exercising its jurisdiction in a manner both constitutional and sympathetic to the Community—there are a variety of ideas and possible solutions. Only in relation to the general aim does there seem to be at least a broad consensus. The individual requires protection against Community authority, and this protection must be found within Community law, since recourse to purely national guarantees and procedural machinery must jeopardize the existence and further development of the Community.

The present study is intended as a contribution to the discussion from the point of view of legal science. The question is how, in terms of law, the aim, namely, to guarantee and develop the protection of fundamental rights by Community law, can best be achieved. In finding the answer, a comparative study of the various national catalogues of fundamental rights, and provisions of law relating thereto, will be as valuable a contribution as a glance at general international developments and tendencies. It is for those having the power and the responsibility of political decision to draw the conclusions, both from previous experience and from the political requirements of the present time. In this study our purpose is simply to survey and assess from the point of view of legal science, which itself cannot in the nature of things be immune from personal assessment and political evaluation.

At any given moment, fundamental rights have to be seen in the context of the legal and constitutional systems in which they subsist or are to be inserted. This affects the present study in the following way: the problem of the protection of fundamental rights will have to be considered in the context of the European Community as it now exists, and as it continues to develop on the basis already created. We are concerned with the subsistence or insertion of fundamental rights in the existing structure of the Community, which can of course be developed and modified, but which can be assumed for the foreseeable future to be likely to remain in essence the same. If a European federal State or a European Union were to come into being, with a fundamentally different 'constitutional' basis, the protection of fundamental rights would also have to be viewed differently and thought out afresh.² It is hard to imagine that a new European 'constitution' could, contrary to the trends and demands of the times, dispense with an explicit and detailed guarantee of fundamental rights; but this is not our problem. We are solely concerned with the protection of fundamental rights within the current legal system of the European Communities which, although capable of development, will retain its basic structure.

¹ Expression of *Ipsen*; cf. his *Europäisches Gemeinschaftsrecht*, 1972, p. 187 and *passim*.

² Cf. the comments in the Report of the Commission on European Union of 25.6.1975, Supplement 5/75 — Bull. EC, point 82 *et seq.*

2. Evolution of fundamental rights

Any consideration of the protection of fundamental rights within the European Communities cannot disregard the question of how far the classical fundamental rights, and the inherited concepts of such rights, are in process of change and evolution.¹ The discussion of fundamental rights within individual States as well as on the international level has recently undergone a change of emphasis; and no end to this search for new or modified approaches and solutions can yet be discerned.

The classical fundamental and human rights were and are intended to protect the individual from undue interference by State authority in his personal and individual development. Belief and conscience, property, personal freedom, freedom of opinion and assembly should be safeguarded against State intervention and statutory regulation. This was, and still is, the basic premise, and even nowadays remains an especially important concern of fundamental rights. This view of fundamental rights is closely related to a social order in which private initiative and individual freedom are accorded considerable scope, with a high degree of tolerance for the differing circumstances of actual cases.

'Social fundamental rights' have little place in the classical catalogue of fundamental rights. It is true that the French catalogue of fundamental rights of 1793 did mention public welfare and stressed the duty of society to protect citizens in need of help, and since then the right to work or to receive social protection from the State has found its way into the catalogue of fundamental rights in many constitutions; but the legal systems prevailing in States of the Western constitutional type have only made constitutional provision for social fundamental rights in a sporadic and eclectic fashion. On the other hand, social security has, outside the catalogue of fundamental rights, found its way in many instances into the national or international legal system. Modern legislation relating to the protection given to employees and social security are, like other services provided by the State for socially disadvantaged persons, characteristics of modern legal development. At the international level, numerous agreements of the International Labour Organization, the European Social Charter of 1961 and the International Convention of the United Nations of 1966 on Economic, Social and Cultural Rights make provision for significant social guarantee. Some countries are discussing the adoption of social fundamental rights into their constitution.² This development is probably still incomplete. It will have to be borne in mind in any consideration of the protection of fundamental rights within the European Communities.

The same applies in the case of a further tendency in the current discussion on fundamental rights. There are indications and evidence to suggest that the discussion of fundamental rights is linked more strongly than before to overall democratic demands. Partly by stressing the principle of equality and the demand for citizens to enjoy equality in the real, and not merely in the legal sense, and partly by invoking the general principles of democracy

there is a demand for more active participation and involvement (Teilhabe und Teilnahme) on the part of the citizen in establishing what interests of the community are to be.³ From various quarters the democratization of the administration, the economy and other social areas is sought after, and set out as a requirement. It is hard to judge how far this tendency will prove both lasting and justified; we do not intend to express any view on this aspect.

In any discussion on the protection of fundamental rights within the European Communities a decision has to be reached as to whether the classical protective fundamental rights alone should be codified and strengthened or whether social and democratic fundamental rights—the word 'democratic' being used in the broad sense—should also be included within the strengthened protection. Contemporary social and intellectual trends speak in favour of such inclusion, but there are strong reasons to the contrary. Social and democratic fundamental rights and rights of participation are not only less capable of being formulated in a clear and unequivocal manner than protective rights, but they are also less susceptible to direct application and enforcement by the courts. The discussion on fundamental rights within the European Communities has hitherto been conducted from the point of view of the requirements of the rule of law (unter rechtsstaatlichen Gesichtspunkten); predominantly, the search has been, and is, for rights on the part of the individual which can be protected by the courts. If the protective rights against undue encroachment by State authority are supplemented by rights in relation to the performance of statutory duties by the State (Leistungsansprüche) and to democratic participation, the discussion will acquire new dimensions both in theory and in practice: the actual conferring and guaranteeing of fundamental rights by the legislature, the executive and the judiciary must clearly differ in relation to protective rights from what it would be in relation to social fundamental rights and democratic rights of participation. This is merely mentioned in passing. In my opinion, there is however a dilemma to consider here: the insertion of social and democratic basic rights into a catalogue of fundamental rights accords with a contemporary trend, but if it is to be followed, the price will probably be a surrender of some degree of judicial protection.

¹ Cf. among many others *Friesenhahn*, *Der Wandel des Grundrechtsverständnisses*, Sitzungsberichte des 50. Deutschen Juristentages 1974, G 1 *et seq.*; and *Saladin*, *Grundrechte im Wandel*, 1970, each with further references.

² Cf. e.g. for Switzerland *Jörg P. Müller*, *Soziale Grundrechte in der Verfassung?* Schweiz. Juristenverein, Referate und Mitteilungen, 107 (1973) No 4; and *Benz*, *Die Kodifikation der Sozialrechte*, Zürcher Beiträge zur Rechtswissenschaft, 419 (1973) each with further references.

³ Cf. discussions in Germany e.g. *Martens-Häberle*, *Grundrechte im Leistungsstaat*, Veröffentlichungen der Vereinigung der Deutschen Staatsrechtslehrer 30 (1972).

3. Comparative law and creation of law in the field of fundamental rights

Any consideration of the guaranteeing of fundamental rights at a European level must obviously and unavoidably have regard to the fundamental rights already entrenched in the legal systems of the Member States. In view of the fact that the catalogue of fundamental rights and guarantees in respect thereof of the Member States of the European Communities differ so appreciably, one of the most difficult questions is the extent to which national legal concepts and provisions should be incorporated into 'European' law. Between two unacceptable extremes—incorporating the catalogue of fundamental rights of only one Member State into Community law, and aggregating all national guarantees in respect of fundamental rights with the consequence that Community authority would be closely hemmed in by a diversity of constraints—there lies a large number of possible structures, between which those bearing political responsibility will have to make their choice. This choice can, to a certain extent, be made easier by comparative legal survey.

Comparative public law is not only a relatively young discipline but also gives rise to special difficulties and problems.¹ First, studies on comparative law are more productive according to the extent to which the legal systems compared are in accord on questions of principle, or approximate to each other thereon; on the other hand, comparisons between constitutional systems which are unlike, such as a constitutional system exemplifying the rule of law and separation of powers and the constitution of a people's democracy, are particularly difficult. This difficulty may be disregarded below, since in the case of the Member States of the European Community we do find agreement as to basic questions on the organization of the State, despite all the differences on particular aspects.

A mere comparison of the texts of the constitutions and of the ordinary statutes (*einfache Gesetze*) giving expression to fundamental rights under the national laws in question may be interesting and valuable from a philological or semantic point of view, but for exploration in the field of comparative law such mere textual comparison is inadequate and unproductive. The subsistence, significance and scope of provisions of law can only be accurately perceived if the actual exercise of authority by the State, not least through the courts, is explored. In comparing legal systems it is not normally appropriate to consider first one particular system and its structure, and then to compare the provisions obtaining in other systems by reference to it. Rather, comparisons of law will normally proceed on a practical basis (*zweckmässig*), from the matter of fact in question, from the issues of actual fact to be resolved, and will then inquire as to what legal solutions and provisions for dealing with these issues are available under the various national systems. Not infrequently it will be apparent that different legal systems pursue, and achieve, the same objec-

tive in quite different ways. Herein lies one of the particular difficulties of comparative legal studies, and in this field of fundamental rights it is aggravated by the fact that the problems relating to fundamental rights are at the same time eminently 'political' problems, because they are highly relevant to the structure of State and society.

These difficulties require further clarification, and we shall revert to specific aspects in due course. As is well known, most, though not all, countries of the European Community have a written constitution. In so far as written constitutions exist, some contain no provisions, or scarcely any, relating to fundamental rights; others contain detailed catalogues of fundamental rights which present notable differences of detail. There are furthermore important differences between the powers vested in the courts to review alleged violations of these rights (*Kontrollbefugnisse*). Many constitutions provide for the courts of the legislature (by means of a constitutional court or by the ordinary courts in the broader sense), while other constitutions such as the (unwritten) British one regard the legislature as omnipotent. Such important structural differences may well prove largely irrelevant for the purpose of practical questions of fundamental rights and for considering the policy of the law on the establishment of a European catalogue of fundamental rights. It may well be that some fundamental right, e.g. the freedom of conscience, or the protection of property, is more effectively and extensively secured within a constitutional system having only minimal guarantees for fundamental rights and deficient provision for judicial review, than in a State with an elaborate catalogue of fundamental rights and jurisdiction to review on the part of constitutional courts; in one State certain rights may as a rule be respected by reason of tradition and the prevailing social order without any formal constitutional guarantees, whereas in another State having a catalogue of fundamental rights statutory reservations (*Regelungsvorbehalt*) attaching to the rights secured in the constitution may deprive the fundamental rights in question of a large measure of their efficacy. The structural differences between the constitutional systems can in other contexts become extremely important, that is, where we are concerned with readiness to accept basic changes: a national legislature which is constitutionally omnipotent but which in practice respects certain fundamental rights may be less willing to surrender its virtually absolute powers of regulation than a legislature whose acts are subject to review by a constitutional court. These overlapping questions and considerations must be identified and borne in mind in any search for European guarantees of fundamental rights conducted on the basis of an exploration of comparative law.

In this context we must take into account yet another fundamental difficulty, which is hitherto largely without historical

¹ Cf. e.g. the remarks on 'Vergleichung im öffentlichen Recht' by *Kaiser, Sirebei, Bernhardt and Zemanek*, *ZaöRV*, 24 (1964), p. 39; *et seq.* and the colloquia on comparative law of the Max-Planck-Institut on 'Verfassungsgerichtsbarkeit in der Gegenwart', 'Haftung des Staates für rechtswidriges Verhalten seiner Organe' and 'Gerichtsschutz gegen die Exekutive', *Beiträge zum ausländischen öffentlichen Recht und Völkerrecht*, 36 (1962), 44 (1967) and 52 (1969) with introductions by Mosler.

parallel. Fundamental rights, and catalogues thereof, have hitherto always been intended to set limits to the sovereign and inherently boundless authority of the State. In principle, all fields of personal activity and life in society are potentially vulnerable to intrusion by State authority. The comprehensive powers for interference on the part of the State are countered by the individual's entitlement to protection (Individualpositionen) of his fundamental rights (such at least is the traditional constitutional concept of the Western democracies, as opposed to the meaning given to fundamental rights in the people's democracies). The usual content of any catalogue of fundamental rights now becomes entirely clear: protection is afforded above all in those areas of individual activity wherein the dignity and freedom of the individual is particularly affected and protection from the omnipotent State is seen as a matter of particular urgency. The catalogues of fundamental rights which have been evolved on the level of international law during these last three decades, and which have in part become legally binding, have also pursued in essence the same objectives as the systems of fundamental rights under national law: they are intended to protect the individual against interference and undue intrusion by the State, and principally in the particularly important field of the individual's choice as to how he leads his life in relation to freedom of the person, of belief, of conscience, of home, etc.—as witness the freedoms contained in the European Convention of Human Rights ('the ECHR').

Within the ambit of the European Communities, the initial question is different. At present, and for the foreseeable future, Community authority can only to a limited extent be compared to national authority. Freedom of belief and conscience, protection from unjust arrest and prosecution, postal secrecy, freedom of the press and of artistic endeavour and many other freedoms are scarcely, if at all, affected by Community authority. This statement is not free from qualification, and occasional interference by Community authority with certain of these rights can by no means be ruled out; but this will be demonstrated at a later stage. Nevertheless it is not in doubt that the traditional fundamental rights appear to be jeopardized only to a slight degree by the authority wielded by the European Communities. This concerns perhaps chiefly the freedom to carry on a trade or occupation, the protection of property, the right to equal treatment, and also those guarantees for the protection of the individual which can be described as essential features of the constitutional State or of 'due process of law'. We shall revert to this. It does, however, given the current structure and current powers of the Community, seem doubtful whether the question of fundamental rights should be gone into in its entirety and to its traditional extent, or whether it is not preferable to restrict discussion to those fundamental rights which are more likely to be jeopardized and violated by the Community.

This would have the following consequences for any relevant comparison of law. First, it must be considered which individual rights and possible fields for individual activity seem to be most endangered by the Community organs (and by national organs acting pursuant to Community law). These dangers will have to be set against the appropriate fundamental rights of the national

legal systems, and it must then be considered whether, and, if so, to what extent, common rules of national legal systems should be incorporated into Community law, or whether an independent catalogue of European guarantees of fundamental rights could be evolved, perhaps loosely founded on existing national models, or whether we should, for the time being at least, refrain from seeking to embody Community fundamental rights in legal rules at all.

4. The conduct and limits of this study

The following study is chiefly concerned with making a survey and arriving at conclusions as to the extent to which fundamental rights are currently guaranteed and embodied in national legal systems, and in the legal system of the Community. This can be no more than a cursory portrayal, since a complete discussion of fundamental rights and related problems in nine Member States and in Community law is manifestly impossible. We shall start by examining and describing in a general way the entrenchment (Verankerung) of fundamental rights in the legal systems of the nine Member States; in doing this, it will scarcely be possible to discuss current trends in the direction of a fresh interpretation of fundamental rights, and the emphasis will be on the traditional view of fundamental rights and their protection by the courts up to the present time. This will be followed by conclusions as to how far fundamental rights are recognized within the present legal system of the Community. These findings will include a discussion of the question how far Member States of the Community have obligations under international treaty, in particular the ECHR, to respect fundamental rights, and how far these obligations have effect in relation to the Community and its organs. The contrast between the protection of fundamental rights within the Member States on the one hand and safeguarding them within the legal system of the Community on the other hand, may indicate to what extent, if any, protection of fundamental rights in the Community is deficient.

In a further section we shall discuss, by way of example, one particular fundamental right—the right to freedom of economic activity (Gewerbefreiheit)—and a constitutional duty having the characteristics of a fundamental right—the duty to respect an individual's vested rights and interests (Gebot zur Respektierung erworbener Rechte und Interessen des einzelnen). These two fundamental rights, if they are in fact fundamental rights, have been selected since they can be of particular significance for the European Community, and are at the same time suitable for demonstrating the possibilities and limitations of regulating such matters at European level on the basis of a comparison of national legal concepts. In this context also, it will not be possible to follow all the ramifications of national legal systems and to do complete justice to all problems arising. To evolve a complete set of findings in full detail, omitting nothing and free from any inaccuracy, would require considerably wider and more time-consuming preparatory work, and consultation with experts from the various Community countries. It should however be possi-

ble, on the basis of this conspectus, to identify the possibilities and limitations of introducing a European catalogue of fundamental rights on the basis of studies in comparative law.

This paper will conclude with an attempt to summarize and assess, accompanied by some reflections on questions of legal policy.

II — The general position in relation to fundamental rights in the legal systems of the Community and its Member States

1. Fundamental rights in the legal systems of the nine Member States : A survey

As has already been said, an exploration in comparative law should not in principle be restricted to a comparison of individual provisions and their wording, but should rather consider how rules are entrenched in the legal systems in question, their most important characteristics, and the efficacy of the written rules. This applies especially in relation to the comparative survey of fundamental rights in the Member States of the European Communities. We shall seek to outline below the extent to which, if at all, fundamental rights are entrenched in the legal systems of the Member States, whether and if so, to what extent, they are at the mercy of the legislative body having power to enact constitutional amendments or ordinary statutes, and to what extent the national courts review and guarantee respect for fundamental rights.

Belgium

The Belgian Constitution of 1831 contains in its Title II a series of fundamental rights. With the exception of the particular prohibition of discrimination incorporated into the Constitution in 1970, these fundamental rights are still valid in the form given to them by those enacting the Constitution in 1831. They bear the stamp of the liberal thought of that period. They are therefore almost exclusively rights of freedom, intended to protect the human being as such, and they hardly consider him at all in his relations with society. We therefore find the guarantee of individual freedom (Article 7) combined with safeguards in the event of prosecution and arrest, and also the prohibition of certain forms of punishment (Articles 12, 13); then there is the inviolability of the home (Article 10); equality before the law (Article 6); inviolability of property (Article 11); and constitutional provision for cases of expropriation 'pour cause d'utilité publique'; free use of languages (Article 23). Of no small importance, moreover, is the protection of the various aspects of freedom of opinion, which according to the Belgian Constitution embraces the protection of religion (Articles 14, 15), the freedom of assembly (Article 19), and the freedom of association (Article 20), and, moreover, extends to the freedom of education (Article 17), press freedom (Articles 18, 19), postal secrecy (Article 22), and the right of petitioning (Article 21). These fundamental rights are in part subject to a general reservation that they may be amended by law. This

applies especially to the guarantee of individual freedom, the inviolability of the home, the freedom of education and the freedom of assembly. But even in respect of those fundamental rights not subject to such reservation, limitation by enactment of Parliament is thought to be permissible, as for instance regarding postal secrecy.¹

From this and from the fact that no clear limitations can be established on the restriction of fundamental rights by the legislature, one might infer that the idea in the minds of those enacting the fundamental rights of the Belgian Constitution, and which continues to make itself felt, is that the protection of the individual must primarily be secured against the executive, since it is most directly concerned with the individual and would be most likely to be in a position to infringe individual rights in the interests of effective administration. For this reason, the maintenance of liberties was entrusted primarily to the legislature and the courts.²

Although fundamental rights are binding on all State authority and therefore in principle on the legislature as well, according to constitutional practice hitherto the legislature nevertheless has the power, in enacting statutes having constitutional implications, to interpret and apply, free from any kind of constraint or review, the fundamental rights thereby affected and therein to be answerable only to itself.

Nor does the Belgian Constitution contain any limitations as to constitutional amendments in relation to fundamental rights. Any constitutional amendment is however subject to a rather complicated procedure. Pursuant to Article 131 of the Constitution, any constitutional amendment requires first of all a declaration by the legislature showing cause that the constitutional provision should be amended. After such declaration both chambers are dissolved by law. It is only the newly elected chambers which then have the power to amend the Constitution, together with the King and by a qualified majority. In this way it is ensured that by means of the fresh elections the electorate is indirectly able to assert its views on the proposed constitutional amendment.

Outside the Constitution, guarantees of fundamental rights are found principally in the ECHR which came into force in Belgium as part of the law of the land by virtue of the Law of 13 May 1955. According to recent developments in Belgian case law, and especially after the judgment of the Cour de Cassation of 27 May 1971,³ the courts may review the compatibility of a statute resolved by Parliament with international law embodied in treaties having directly applicable legal effect in Belgium, and can, if they find such statute incompatible with such a provision of international law, set it aside. In derogation therefore from the principle that the courts have no jurisdiction to review statutes as to their compatibility with the Constitution, the individual is, in this regard, placed in a position where he can bring before the Belgian courts breaches of fundamental rights arising by virtue of ordinary statutes, at least in so far as there is a breach of the ECHR or even of the EEC Treaty.⁴

Fundamental rights are only partly subject to the protection of the courts. For the review by the courts of the constitutionality of statutes, the provision to be relied on, pursuant to the decided cases and the prevailing opinion of learned writers, has hitherto without exception been Article 107 of the Constitution, which reads: 'Les cours et tribunaux n'appliqueront les arrêtés et règlements généraux, provinciaux et locaux, qu'autant qu'ils seront conformes aux lois'. From this provision the negative inference has hitherto always been drawn, particularly by the Cour de Cassation, that it is no part of the courts' jurisdiction to review the constitutionality of statutes.⁵ According to the statute relating to the Conseil d'État of 23 December 1946, all that is possible is a preliminary review by the Section de législation of the Conseil d'État in proceedings for an opinion (*Gutachtenverfahren*). This review is mandatory only where legislative proposals are introduced by the executive, and then only in cases which are not matters of urgency—and the executive determines what is urgent. Moreover, this preliminary review does not derogate from the power of the legislature to interpret and apply the Constitution in sovereign manner. Certainly the principle of immunity from review applies only to the statute itself and not to subordinate instruments nor to royal decrees, which can of course only be applied if they are compatible with the law, even the highest kind of law (the Constitution). A judgment of the Cour de Cassation of 3 May 1974 and in particular the opinion of Procureur général Ganshof van der Meersch in that case, have now given rise to doubt as to whether the courts are still disposed to maintain the principle whereby statutes are immune from review.⁶ A bill accepted by the Senate on 26 June 1975 and now transmitted to the House of Representatives is an attempt to counter this. The provision accepted by the Senate reads: 'Les cours et tribunaux ne sont pas juge de la constitutionnalité des lois et des décrets'.⁷ The outcome of the parliamentary process remains to be seen.

Legal protection against undue intrusion by the executive in the field of constitutionally guaranteed fundamental rights is not restricted to that arising merely incidentally from an application of Article 107 of the Constitution, when the courts refuse to give effect to an unconstitutional provision of a subordinate instrument; in so far as the claim for legal protection is not directly aimed against the Crown, the courts and the Conseil d'État will also always grant judicial protection directly where the party affected can show that his fundamental rights have been breached by the executive.⁸

¹ Cf. *Wigny*, *Droit constitutionnel*, 1952, p. 320 *et seq.*; *id.* *Cours de droit constitutionnel*, 1973, p. 154.

² Cf. e.g. *Wigny*, *Cours de droit constitutionnel*, p. 138.

³ *Journal des tribunaux* 1971, pp. 471 to 474; also extracts in *ZaöRV* 32 (1972), p. 529 *et seq.* with notes by *Bleckmann*, *op. cit.*, p. 516 *et seq.*

⁴ See also *Wigny*, *Cours de droit constitutionnel*, p. 140.

⁵ See *Wigny*, *Droit constitutionnel*, p. 195, with further references to decided cases. See also the report of *de Stexhe*, *Sénat*, 1974-1975, Doc. 602, No 2, p. 2 *et seq.*

⁶ Cf. *Journal des tribunaux* 1974, p. 564; and the report of *de Stexhe*, *Sénat*, 1974-1975, Doc. 602 No 2, p. 4 *et seq.*

⁷ Cf. *Sénat*, 1974-1975, Doc. 602, Nos 1 and 2; *Chambre*, 1975, Doc. 637.

⁸ Cf. the detailed report of *Velu*, *Gerichtsschutz gegen die Exekutive*, Vol. 1, 1969, *Beiträge zum ausländischen öffentlichen Recht und Völkerrecht* 52 (1969), p. 60 *et seq.*

Denmark¹

The Danish Constitution of 5 June 1953 contains a fairly large number of fundamental rights, which can be subdivided into three main groups: protective rights; rights of political freedom; and rights against the State to require performance of public obligations (*Forderungsrechte*). Both the administration and the legislature are bound to observe these fundamental rights or rights of freedom. If a citizen considers his fundamental rights to have been breached by the executive or the legislature, he can bring proceedings in the courts in respect thereof.

In Chapter VII of the Constitution, Articles 67, 68, 70 guarantee freedom of religion; every citizen thus on the one hand has the right freely to practise his religion (Article 67) and on the other hand he may not be forced to perform specific religious observances (Article 68). Finally, his religious convictions or his origin may not set him at any disadvantage (Article 70).

Chapter VIII of the Constitution grants a number of fundamental rights, defines their actual content, and identifies in part the possible limitations thereto. Article 71(1) protects personal freedom, though not as a general freedom for personal activity, but only as opposed to deprivation of freedom.² The further paragraphs of the Article set out the circumstances under which—on the basis of statute or of court order—personal freedom may be restricted, and what legal protection is available. Article 72 guarantees the inviolability of the home, and the secrecy of the postal and telephone services. These may be curtailed by statute or by court order. According to Article 73 the right of property is inviolable. Under certain conditions—statutory authority, demands of public interest, guarantee of compensation—expropriation may take place; it can be challenged in the courts, as can the quantum of any compensation. Article 74 enjoins the legislature to abrogate any discriminatory statutes relating to the taking-up of a trade or occupation and not justified in terms of public interest. Article 75 contains in paragraph (1) a general right to work, and in paragraph (2) a right to social assistance from the State. Article 76 relates to compulsory education and the right to education. Article 77 guarantees freedom of expression and prohibits the reintroduction of censorship or similar measures. The freedom of association is entrenched in Article 78; in addition, it states in what circumstances association may be prohibited, and the preconditions therefor. According to Article 79 citizens have the right without prior notification to assemble without arms. The police nevertheless retain a right of supervision over public assemblies; they may even disperse open-air assemblies. Article 80 contains rules of conduct for the armed forces in case of civil commotion. Article 81 obliges all men capable of bearing arms to contribute to the defence of the country. Article 82 contains the right of social councils to administrative autonomy. Article 83 guarantees, so far as the legislative process is concerned, equality of treatment, irrespective of title or rank, whether inherited or not. Article 84 prohibits the introduction of feudalism and entails. Article 85 finally provides for a possible restriction of personal freedom such as of the rights of association and assembly, in the case of members of the armed forces.

This conspectus shows that the Danish Constitution contains an impressive catalogue of fundamental rights, including social fundamental rights (the right to work, the right to social assistance, to education).

In principle, these fundamental rights are available both for Danish nationals and for foreigners. It is only occasionally that foreigners are explicitly denied the protection of fundamental rights (for instance Article 71(1X2)).

The Danish legal system lacks amongst other things a codified general requirement of equality of treatment or a prohibition on discrimination. Although some parts of the Constitution (Articles 70, 71(1), 83) do contain a prohibition against treating an individual by reference to specific personal circumstances on his part, it is doubtful whether any general principle can be deduced from these provisions. Some commentators leave the whole question open;³ others affirm the duty of the administration to observe a general principle of equality of treatment.⁴

According to Article 88 of the Constitution every constitutional provision, and therefore every fundamental right, can be changed or abrogated, and new provisions can likewise be incorporated into the Constitution. There is no inviolate core in the Danish Constitution, either as a whole or in individual provisions thereof.⁵ Nevertheless Article 88 sets out rather a ponderous procedure for constitutional amendment. Any proposed amendment must first of all be accepted by Parliament. A new Parliament must then be elected, and it must likewise approve the proposal. Finally a referendum is held, in which a majority of all persons voting and at least 40 % of the electorate must approve the constitutional amendment.

Although Denmark ratified the European Convention on Human Rights in 1953, the provisions thereof have not yet become the law of the land.

In principle, fundamental rights in Denmark are reinforced by judicial protection. There is one single jurisdiction which is competent in actions under both private and public law, and also in actions for constitutional review of statutory rules.

Any person who has a legitimate interest in a statute or who is likely to be affected to his detriment can challenge a statute in the courts on the ground that it is in breach of one of the aforesaid fundamental rights. This independent power of review of statutory rules, which is entrenched neither in the Constitution nor in any other statute, has been recognized generally since a judgment of the Supreme Court in 1921. The introduction of such a right to review was founded on the one hand on the considera-

¹ The description of the legal situation is based substantially on *Andersen, Dansk Forvaltningsret*, 5th ed. 1966; it is not possible to deal with more recent trends in the interpretation of fundamental rights.

² *Sørensen, Statsforfatningsret*, 1969, p. 321.

³ *Sørensen, op. cit.*, p. 318.

⁴ *Andersen, Dansk Forvaltningsret, op. cit.*, p. 426 *et seq.*

⁵ *Andersen, Dansk Statsforfatningsret*, 1954, p. 439.

tion of legal theory that higher-ranking constitutional law must prevail over lower-ranking ordinary statutes, and on the other hand on the desire to protect the citizen from decisions of the legislature which were contrary to law.¹ Procedure and judgment in an action for review of a statutory provision follow the rules applicable generally. There is however controversy as to whether the right of judicial review of statutory provisions deriving from the common law has the status of constitutional law,² or whether it can be abrogated by an ordinary statute.³ In practice, there has not been any case in which a court has declared a statutory provision to be unconstitutional. This is particularly connected with the fact that the legislature is allowed by the courts extensive scope for the exercise of political discretion.⁴ Only in a case of undoubted violation of the Constitution may the provision in question be declared unconstitutional. Also, the principle of interpretation in conformity with the Constitution applies.⁵

In addition to the independent power to review statutory provisions, it is recognized that the courts also have the right to exercise such review in cases where constitutionality is not the substantive issue (Inzidentkontrolle). What is not entirely free from doubt is whether the court in this respect is also entitled to proceed to such review of its own motion; in any event this does not happen as a matter of practice.⁶

In respect both of the independent power to review statutory provisions and of the power to exercise such review in cases where constitutionality is not the substantive issue, any judgment rendered will only have effect in the future and between the parties involved. However, the administration and the courts generally follow judicial precedent, and it may be assumed that they will thereafter refrain from applying any provision declared unconstitutional.

A fundamental right expressed in the constitution in the form of a right to require the performance of some public obligation (Forderungsrecht), e.g. a right to work or to social assistance, cannot be asserted in the courts solely on the basis of the constitutional provision. The relevant constitutional provisions (Articles 74, 75, 76) are of importance merely as a programme—as evidenced by the history of the development of the Constitution.⁷

If an international treaty entered into by the State interferes with the rights of the individual, a similar action may be brought against the statute concerning its relation to the treaty.

Regulations promulgated by the administration may also be reviewed, both independently and in cases where constitutionality is not the substantive issue, as to their compatibility with statute or Constitution.

According to Article 63 of the Danish Constitution, the courts have the right to determine all questions as to the extent of the powers of administrative authorities. While in principle any executive action, e.g. even an act of the Government (Regierungssakt), can be reviewed as to its legality, the legislature can exclude the right to bring an action in the courts by adding to the statute a provision whereby the terms of that statute are to be conclusive. The power of the courts to review is likewise removed if the administration was given scope for the exercise of discretion in

making its decision. Despite more recent trends—the courts do to a certain extent review administrative acts notwithstanding clauses declaring them conclusive or conferring discretion—this is still basically the position today. An action can be brought not only against provisions of general application, e.g. regulations, but also against individual administrative acts. If a citizen seeks specific action by the administration, and the administration refuses, or fails to do anything, he may bring proceedings in respect of such omission. In certain circumstances, the citizen is bound to respect a particular preliminary procedure; and this is normally done without the need for any statutory requirement to that effect, since this can usually bring about a satisfactory outcome more expeditiously and cheaply than recourse to the courts.

The Danish administrative authorities are bound by the principle of administration in accordance with the law,⁸ that is, that their acts must be based on law, which in turn cannot be contrary to the Constitution. It also holds good that individual administrative acts may not be contrary to the Constitution.

Danish administrative law contains some possibilities of extra-judicial legal protection. The citizen has in some cases the opportunity, or, in other cases, the obligation to challenge administrative acts and subordinate instruments which infringe his rights by referring the matter in the first place to the administrative authority immediately superior. The decision of the administration is then reviewed both as to its legality and as to its appropriateness in relation to the purpose it is intended to achieve (Zweckmässigkeit) and if necessary another decision is substituted therefor. If there is provision for appeal, the person affected may subsequently turn to the courts. For certain matters there are 'appellate committees', which review, to a certain extent independently of the other parts of the administration, the measures taken by the authority in question; the decisions of such committees may as a rule be challenged in court.⁹

In addition to those forms of appeal and appellate committees, the 'Ombudsman' is by far the most important of all the forms of extra-judicial protection of rights. The institution of the Ombudsman, who is appointed by Parliament and is completely independent, has its legal basis in Article 55 of the Constitution and in the statute of 1 December 1961. The creation of such an institution was intended on the one hand to give the citizen a quicker and cheaper form of legal protection against the administration, and on the other hand to render subject to review such

¹ *Castberg*, Verfassungsgerichtsbarkeit in Norwegen und Dänemark, Beiträge zum ausländischen öffentlichen Recht und Völkerrecht, 36 (1962), p. 420.

² Thus the predominant view: e.g. *Andersen*, Dansk Statsforfatningsret, p. 460; *Sørensen*, op. cit., p. 302.

³ Thus *Ross*, Dansk Statsforfatningsret, 2nd ed. 1966, p. 195 *et seq.*, with further references.

⁴ *Ross*, op. cit., p. 194.

⁵ *Sørensen*, op. cit., p. 298.

⁶ Cf. *Bent Christensen*, Der gerichtliche Rechtsschutz des einzelnen gegenüber der vollziehenden Gewalt in Dänemark, Beiträge zum ausländischen öffentlichen Recht und Völkerrecht 5 (1) (1969), p. 122.

⁷ *Castberg*, op. cit., p. 432; *Sørensen*, op. cit., p. 319; *Ross*, op. cit., p. 758.

⁸ *Krarrup and Mathiasen*, Forvaltningsret, 1967, p. 118 *et seq.*

⁹ *Sørensen*, op. cit., p. 289; *Christensen*, op. cit., p. 124.

administrative action as would not normally be capable of challenge in court. Of his own motion, or on the application of an individual in that behalf, the Ombudsman investigates any administrative act—simple administrative measures, administrative action, or even activities having no legal significance whatsoever—as to its legality and reasonableness. There are doubts as to whether the institution of the Ombudsman—which was initially intended as an experiment—may be abolished by ordinary statute, or only by constitutional amendment.¹ Since the decisions of the Ombudsman are not legally binding—he may refer the matter for investigation and legal proceedings to the authorities competent to take such action in the case in question, but cannot alter or annul the decision—the administrative authority concerned is free to decide whether it will look afresh at what it has done, and thereafter adopt a different attitude in the actual case in question. It should however be said that the administration as a rule follows the recommendations of the Ombudsman.²

Federal Republic of Germany

The Basic Law for the Federal Republic of Germany of 23 May 1949 has shaped the protection of the individual's fundamental rights in a manner which is without parallel in former German constitutions or in comparable foreign constitutional systems. This is not so as regards the guaranteed rights themselves, but rather as regards the way in which they are protected. The predominant guarantees are in respect of the traditional rights of the individual against undue intrusion: by State authority. Among the most significant of the guaranteed fundamental rights are: the protection of the dignity of the individual human being (Article 1), the right of free personal development (Article 2), the principle of equality (Article 3), freedom of religion and conscience (Article 4), freedom of opinion and of the press, as well as freedom of artistic and scientific endeavour (Article 5), freedom of assembly (Article 8), freedom of association (Article 9), secrecy in relation to letters, mails and telephone communications (Article 10), freedom of movement (Article 11), freedom of choice of trade or profession (Article 12), and the guarantee of property (Article 14). In addition there are provisions as to the civil (*staatsbürgerlich*) equality of all German nationals (Article 33), the constitutional entrenchment of the principle of liability on the part of the State for breaches of administrative duties (Article 34), provisions on the principles relating to electoral law (Article 38), and on the protection of the individual during civil or criminal proceedings (abolition of the death penalty, Article 102; the right to be heard; no punishment without legal justification; *autrefois convict*, Article 103; and guarantees in relation to deprivation of freedom, Article 104).

Many of the fundamental rights are available to any person, regardless of nationality, others only to 'Germans'.

The Constitution contains a complicated system providing for possible derogations from these fundamental rights. Many fundamental rights are guaranteed without reservation (which does not however completely exclude any requisite delimitation and more specific elaboration by the courts and by learned writers),

while other fundamental rights have been subjected by the Constitution itself to a reservation permitting more detailed statutory provision; under no circumstances may the 'essential content' ('*Wesensgehalt*') of a fundamental right be altered (Article 19(2)).

Social fundamental rights are largely absent from the Basic Law. In this context we cannot go into greater detail in relation to certain recent tendencies, in some areas of learned writing, and also in decided cases, to declare social rights and democratic rights of participation (*Teilhaberechte*) to be parts of the Constitution pursuant to the general principle of the social State and the constitutional requirement of democracy (in some cases in conjunction with the principle of equality), and to interpret them afresh accordingly.

Apart from the guaranteed fundamental rights contained in the Basic Law there are a number of other provisions for the protection of the individual. Thus, some of the constitutions of the *Länder* of the Federation contain detailed catalogues of fundamental rights which subsist concurrently with the Basic Law (Article 142). The ECHR with its Additional Protocols has the force of law in the Federal Republic, ranking according to the prevailing view, on a par with an ordinary statute. In numerous other statutes, the social protection of the individual in particular is more specifically established, and judicial protection will as a rule be available to reinforce such social protection.

So far as the text of the Constitution is concerned (Articles 1(3), 20(3)) it is beyond doubt and undisputed that the legislature also is bound by the Basic Law. While, as has been mentioned above, the legislature has the power within certain limits to evolve more specific elaborations of fundamental rights or derogations therefrom, none the less there is no single fundamental right which is at the mercy of the legislature, and ultimately it is always for the courts to draw the line between those derogations from fundamental rights which are lawful and those which are not.

The manner in which the judicial protection of rights has been shaped by the Basic Law is the really outstanding and perhaps unique feature of West German constitutional law. From the outset, the Constitution itself provides that there are rights of action in the courts against any breach by public authority of the rights of the individual (Article 19(4)). Thus, independently of any enabling provision in the ordinary statute in question, every act of the executive constituting an interference in the sphere of the individual can be challenged in court. The courts have the right and the duty to review the manner in which public authority has observed the Constitution, including the fundamental rights. It follows that in judicial practice, especially that of the administrative courts, the fundamental rights and certain further constitutional maxims play an unusually important role. Individual fundamental rights, including the principle of equality, and 'unwritten' constitutional principles such as the requirements of the rule of law, the principle of proportionality, etc., frequently govern the manner in which the courts conduct their re-

¹ As to the latter: *Ross*, op. cit., p. 774.

² On this point in detail: *Ross*, op. cit., p. 771 *et seq.*; *Christensen*, op. cit., p. 125, and bibliography, p. 126.

view. Whenever the courts hold these rights and principles to have been breached they correct the executive act in question.

They do so on their own authority and alone are answerable therefor; they are only subject to restrictions in so far as they deny the constitutionality of a formal statute.

In principle, the compatibility of statutes with the Constitution, and thereby also with the fundamental rights guaranteed by the Constitution, can come before the Bundesverfassungsgericht in three separate ways. First, other organs of State and a one-third minority of the members of the Bundestag may demand a review of the constitutionality of a statute by the constitutional court (Article 93(1) (2)).

Secondly, any court of the Federal Republic can submit to the constitutional court for review any provision of law which it would have to apply but which it considers to be unconstitutional (Article 100(1)). Finally, any citizen can apply directly to the constitutional court by way of objection on constitutional grounds (normally after the exhaustion of other legal remedies) (Article 93(1) (4)(a)) in cases of alleged breaches of fundamental rights by any public authority including the legislature.

This system for guaranteeing fundamental rights and legal protection, which clearly bears the marks of previous experience of the inhumanity of a totalitarian regime, demonstrates the importance of fundamental rights within the West German legal system, and, at the same time, the problems for European Community law thereby arising. By virtue of their jurisdiction outlined above, the courts of the Federal Republic, led by the Bundesverfassungsgericht, have evolved a body of case law relating to all the important fundamental rights and fundamental constitutional principles, which imposes constraints on all other parts of State authority and which must be respected by them. In this way judgments on, for instance, the freedom of trade or occupation, the right of property, the principle of equality or the requirements of the rule of law, have led to extremely subtle distinctions and differentiations, intended to protect the sphere of the individual, without at the same time disregarding unduly the necessary interests of the community as a whole. The central importance of the fundamental rights within the West German constitutional system creates at the same time familiar problems for the European Communities. While the Basic Law enjoins (especially in Article 24) international cooperation and integration as well as comprehensive protection of fundamental rights, it does not deal in any explicit way with the possible tensions thereby created. This probably accounts for the fact that the problem of protection of fundamental rights within the framework of the European Communities is being, and will continue to be, canvassed in the Federal Republic with particular intensity, and that the legal view which found its authoritative expression in the judgment of the Bundesverfassungsgericht of 29 May 1974¹ and according to which national fundamental rights are to prevail, for the time being at least, over acts of the Community, is generally recognized as unsatisfactory.²

It must also be mentioned that a corpus of constitutional provisions embodying a core of human rights remains unalterable

even by means of the procedure for constitutional amendment (Article 79 (3)); the difficult question of where the line is to be drawn between constitutional amendments which are lawful and those which are not, cannot be gone into here.

France

The Constitution of the Fifth Republic of 4 October 1958, like the Constitutions of 1875 and 1946³ has no fixed catalogue of fundamental rights.⁴ As far as human rights are concerned, the Preamble refers instead to the Declaration of 1789 as well as to the Preamble of the Constitution of 1946: 'Le peuple français proclame solennellement son attachement aux droits de l'homme et aux principes de la souveraineté nationale tels qu'ils ont été définis par la Déclaration de 1789, confirmée et complétée par le préambule de la Constitution de 1946'.

Beyond this, the text of the Constitution of 1958 mentions only a few of the classical fundamental rights, such as the equality of all citizens before the law without regard to origin, race or religion (Article 2 (1)), the freedom of belief (Article 2 (1)), the freedom of the person from arbitrary arrest and the right to judicial control of any deprivation of personal liberty (Article 66).

For the protection of fundamental rights the reference to the Preamble of 1946 is of special importance. This Preamble refers in turn to the human rights of the Declaration of 1789 and the 'principes fondamentaux reconnus par les lois de la république'. In addition the Constitution of 1946 acknowledges the 'principes politiques, économiques et sociaux particulièrement nécessaires à notre temps'. We can therefore distinguish the following

¹ BVerfGE 37, p. 271 *et seq.*

² There are already a large number of comments on this judgment, from the point of view of Community law as well as from that of German constitutional law; cf. *inter alia*, Feige, Bundesverfassungsgericht — Grundrechte — Europa, JZ 1975, p. 476 *et seq.*; Hallstein, Europapolitik durch Rechtsprechung, Wirtschaftsordnung und Staatsverfassung, Festschrift für Franz Böhm zum 80. Geburtstag, 1975, p. 205 *et seq.*; Hilf, Klein, Bleckmann, Sekundäres Gemeinschaftsrecht und deutsche Grundrechte, Zum Beschluß des Bundesverfassungsgerichts vom 29. Mai 1974, ZaöRV 35 (1975), p. 51 *et seq.*; Ipsen, BVerfG versus EuGH *re* 'Grundrechte', Europarecht, 10 (1975), p. 1 *et seq.*; Pestalozza, Sekundäres Gemeinschaftsrecht und nationale Grundrechte, DVBl. 1974, p. 716 *et seq.*; Scheuner, Der Grundrechtsschutz in der Europäischen Gemeinschaft und in der Verfassungsrechtsprechung, AöR 100 (1975), p. 30 *et seq.*; Zuleeg, Das Bundesverfassungsgericht als Hüter der Grundrechte gegenüber der Gemeinschaftsgewalt, DÖV 1975, p. 44 *et seq.*

³ The draft Constitution of 1946, which set out in detail the traditional fundamental rights and social rights, was rejected by the French people in a referendum. A partial reason for this, as well as the excessive power conferred on the National Assembly, was the fear of a whittling down of the classic fundamental liberties of the Declaration of 1789 by legal implementing rules and 'interventionist' and 'socialist' conceptions of fundamental rights. On this, cf. Burdeau, Droit constitutionnel et institutions politiques, 1959, p. 330; Vedel, Cour de droit constitutionnel, 1950-51, p. 570 *et seq.*; Prêlot, Institutions politiques et droit constitutionnel, 1961, p. 510 *et seq.*; Laferrière, Manuel de droit constitutionnel, 1947, pp. 904, 910 *et seq.*

⁴ Cf. on the fundamental position of basic rights within the French legal system esp. Rivero, Les libertés publiques, Vol. 1, Les droits de l'homme, 1973; Burdeau, Les libertés publiques, 4th ed. 1972; Collard, Libertés publiques, 4th ed. 1972; Stahl, Die Sicherung der Grundfreiheiten im öffentlichen Recht der Fünften Französischen Republik, Veröffentlichungen des Instituts für Internationales Recht an der Universität Köln 61 (1970); Duverger-Sfex, Die staatsbürgerlichen Freiheitsrechte in Frankreich und in der Union Française, in: Beitermann-Nipperdey-Scheuner, Die Grundrechte, 1967, Vol. 1, Part 2, p. 543 *et seq.*

groups of constitutionally entrenched fundamental rights ('libertés publiques'):

(i) the classical freedoms contained in the Declaration of 1789 such as the freedom of the person, the principle of equality, of private property, and freedom of opinion and of the press;

(ii) the political, economic and social principles of 1946. The courts and legal writers are predominantly of the view that the reference in the Preamble of 1958 embraces these rights as well, although, strictly speaking, this does not amount to an extension of the 'droits de l'homme' listed in the Declaration of 1789.¹ Amongst these additional rights are the right to strike, to work, and to industrial participation, the principle of social security for all, as well as the guarantee of equal educational opportunity;

(iii) the 'principes fondamentaux reconnus par les lois de la république'. By virtue of the reference to these principles, the fundamental freedoms provided for by ordinary statute during the Third Republic are raised to the constitutional level.² Some of the fundamental rights which are the most important in practice come within the 'principes fondamentaux', as, for instance, the freedom of assembly (liberté de réunion—protected by statute of 30 June 1881), the freedom of commerce and industry (liberté de commerce et de l'industrie—statute of 21 March 1819).

It was for a long time disputed whether the Preamble had the status of a directly applicable legal rule or represented a mere guideline for construction.³ The prevailing view, both in the decided cases and in learned writing, was that the Preamble, as part of the Constitution resolved upon by the French nation, had the same legal status as the text of the Constitution itself, in so far as directly binding provisions could be deduced therefrom. This was affirmed as regards the rights to freedom, but denied as regards the social rights laid down in the Preamble to the Constitution of 1946 which require the performance of a positive act on the part of the State.⁴ The question of the legal status of the Preamble can today essentially be regarded as resolved, since the Conseil Constitutionnel in its judgment of 16 July 1971 declared unconstitutional a bill for the reform of the French law relating to association, in reliance on the Preamble.⁵

The 'libertés publiques' constitutionally entrenched in the Preamble cannot be assimilated to the individual fundamental rights of the German Basic Law, for instance. The constitutional securing of a precisely defined corpus of individual rights against the State is a concept alien to French legal thought.⁶ The traditional rights of the citizen are defined in ordinary statutes and are, in the French view, thereby secured. The respect for the achievement of the French revolution renders it scarcely conceivable that a statute could be in breach of human rights. The possibility of a contradiction between the acknowledgement of fundamental rights in the Preamble and an ordinary statute has only been discussed since the said judgement of the Conseil Constitutionnel.⁷ This understanding of the role of the legislature explains moreover why the attempt to set fundamental rights out in detail in the draft 1946 Constitution was rejected by the French nation in a referendum.

The French courts have furthermore never conceived of the 'libertés publiques' as subjective public rights in the sense of the

German doctrine. The established rights are to be understood rather as a guarantee of a general principle. This view is manifest externally in that the Conseil d'État does not as a rule speak of rights, but rather speaks for example of the 'principe de la liberté de réunion'.⁸ This makes possible a more flexible approach by the courts in relation to fundamental freedoms.

According to Article 89 of the Constitution, Parliament, or on the recommendation of the Prime Minister, the President of the Republic may initiate the procedure for constitutional amendment. The proposed amendment requires the approval of the National Assembly and the Senate, and must be endorsed by referendum. A referendum may be dispensed with only if the President of the Republic decides to submit the amendment to the entire Parliament. In this case the amendment is accepted, if three-fifths of the votes cast are in favour of it. Only the principle of the republican form of government is excluded from constitutional amendment.

Since the decision of the Conseil d'État in *Aramu*⁹ fundamental freedoms may, even if not covered by the twofold reference in the Preamble to the Constitution, none the less subsist as general principles of law inherent in the French legal system. Such fundamental freedoms will apply 'même en l'absence de textes' if they are in conformity with French legal tradition.¹⁰ We are therefore concerned in essence with judge-made law. It covers, in addition to certain fundamental freedoms, such as the freedom of movement, the inviolability of the home, freedom of education and the right to be heard, also administrative principles, such as recourse to the administrative courts, the prohibition on retrospective administrative decisions, and many other principles of proper administration (impartiality of investigating commissions, legal force of administrative decisions).¹¹ The distinction between the general legal principles and the constitutionally entrenched principles is made more difficult by the fact that the Conseil d'État increasingly considers the fundamental freedoms as general principles 'résultant notamment du préambule de la Constitution'. The constitutional entrenchment is therefore only one of the possible sources of general legal principles.¹²

¹ *Stahl*, op. cit., p. 23 with further references; for a different opinion *Vedel*, Cours de droit constitutionnel et des institutions politiques, 1961, p. 790.

² *Rivero*, Les 'principes fondamentaux reconnus par les lois de la République': une nouvelle catégorie constitutionnelle? D. Sir. 1972, Chron. 265.

³ *Pelloux*, Quelques réflexions sur le préambule de la Constitution française de 1958, Hommage d'une génération de juristes au Président Basdevant, 1960, p. 389 et seq.; *Morange*, Valeur juridique des principes contenus dans les déclarations des droits, RDP 1945, p. 229 et seq.; *Georgel*, Aspects du Préambule de la Constitution du 4 octobre 1958, RDP 1960, p. 85 et seq.

⁴ *Georgel*, op. cit., p. 91; *Rivero-Vedel*, Les principes économiques et sociaux de la Constitution: Le préambule, Collection Droit Social 31 (1947), p. 20; *Stahl*, op. cit., p. 32 et seq.

⁵ JÖRF 1971, p. 7114; see *Ress*, Der Conseil Constitutionnel und der Schutz der Grundfreiheiten in Frankreich, JÖRNF 23 (1974), p. 123 et seq.

⁶ See *Stahl*, op. cit., p. 53 et seq.

⁷ *Ress*, op. cit., p. 125; *Rivero*, note to CC of 16.7.1971, AJDA, p. 537 et seq.

⁸ References from judgments of the CE in *Stahl*, op. cit., p. 57 et seq.

⁹ CE of 26.10.1945, *Aramu*, D. 1946, J., p. 158 with notes by *Morange*.

¹⁰ *Morange*, Les principes généraux du droit sous la Ve République, RDP 1960, p. 1188 et seq.; *Letourneur*, Les 'principes généraux du droit' dans la jurisprudence du Conseil d'Etat, Études et Documents (pub. by CE) 1951, p. 19 et seq.; *Krech*, Die Theorie der allgemeinen Rechtsgrundsätze im französischen öffentlichen Recht, Studien zum internationalen Wirtschaftsrecht und Atomenergierecht 49 (1973), p. 11 et seq.

¹¹ Review in *Krech*, op. cit., p. 179 et seq.

¹² Cf. CE of 26.6.1959, Syndicat général des ingénieurs-conseils, Rec. p. 394.

There is considerable controversy amongst learned writers as to the status of such of those general principles as are not embraced within the reference in the Preamble. From the decisions of the Conseil d'État the prevailing inference is that all general legal principles enjoy constitutional status.¹ There will be no need to answer this question so long as it is only executive acts which are being reviewed as to their compatibility with the 'liberté publiques'. The Conseil Constitutionnel has hitherto had no occasion to decide on the question whether these general legal principles are also binding on the legislature.

It has already been said that by virtue of the reference in the Preamble the fundamental human rights provided for in the statutes of the Third Republic are constitutionally safeguarded. The legislature is thus prohibited from proceeding to amend the law in such a way as to contravene the 'principes fondamentaux' therein contained. A question therefore arises as to whether this will lead to what can be termed the petrification of the content of these statutes, that is, which part of a statute partakes of the fundamental substance of the principle.² It would furthermore seem possible as a result of the decisions of the Conseil Constitutionnel since the judgment of 16 July 1971, to draw, to some extent, the conclusion that not only are the freedoms entrenched in the statutes of the Third Republic to be numbered amongst the 'principes fondamentaux', but also further basic freedoms which have been enacted in subsequent ordinary statutes.³

The reference to the 'principes fondamentaux' and the legal decisions in relation to the general legal principles greatly complicate the answer to the question whether any given right against the State on the part of a citizen is protected by ordinary statute only or by the Constitution itself. As in practice this problem has only recently become of importance, as a consequence of the recent decisions of the Conseil Constitutionnel, the discussion on this point is still very much in its early stages. The necessity to identify those fundamental rights which are protected by the Constitution against encroachment by the legislature could alter the entire scheme of things existing hitherto. It is now for the courts to give shape to the vague concept of 'principes fondamentaux', in order to evolve a secured corpus of fundamental freedoms.

France has in the meantime ratified the European Convention on Human Rights (ECHR), and four of the five Additional Protocols, by a decree of 3 May 1974.⁴ The Second Additional Protocol was not ratified: it confers on the European Court of Human Rights the power to render opinions on legal questions relating to the construction of the Convention, upon the application of the Committee of Ministers. Moreover, France has only accepted the right of appeal on the part of the State, and not on the part of individuals under Article 25. As with any other international treaty gazetted in France in the appropriate manner, the ECHR applies directly as part of the French legal system. Under Article 55 of the Constitution properly ratified or approved treaties or conventions shall prevail, as from the date of their gazetting, over the statutes of the country, subject to the proviso that the treaty or convention in question is also applied by the other party thereto. The true meaning of precedence in this way is a

matter of controversy in learned writing and in decided cases.⁵ The Conseil Constitutionnel, in its decision of 15 January 1975 in relation to the termination of pregnancy, made clear that, as far as the ECHR is concerned, the incompatibility of a statute with the treaty in question cannot be assimilated to unconstitutionality.⁶ For this reason the Conseil Constitutionnel declined to incorporate the ECHR into the constitutional criteria for review for the purposes of the procedure under Article 61.

French legal tradition, moulded by Jean-Jacques Rousseau's doctrine of laws as the expression of the 'volonté générale', cannot conceive of the judicial review of legislative acts by reference to fundamental rights guaranteed by the Constitution.⁷ It is only by establishing fundamental rights in statutory form that, in the French view, the acknowledgement of fundamental freedoms of the Declaration of 1789 and Preamble of 1946 can be secured. Accordingly, protection of freedoms against the executive is the focus of the protection of fundamental rights. Article 61 of the Constitution nevertheless confers upon the Conseil Constitutionnel a right to review statutes as to constitutionality. Statutes are subject to such review when they have been passed by Parliament but not yet gazetted. There is thus no constitutional review of statutes after their publication. The decisions of the Conseil Constitutionnel have legal force. A provision which has been declared unconstitutional may not be published or applied. The decisions of the Conseil Constitutionnel are binding upon public authority, and all authorities or courts (Article 62 (2)). This procedure has only become of practical importance since the Conseil Constitutionnel in its judgment of 16 July 1971 has declared the Preamble to be among the criteria for review.⁸ In this case a Government bill was for the first time declared unconstitutional for breach of the fundamental freedoms guaranteed by the Preamble. Additional importance was acquired by this decision by the constitutional amendment of 29 October 1974.⁹

¹ Vedel, *Droit administratif*, 4th Ed. 1964, p. 252 *et seq.*; Auby-Drago, *Traité de contentieux administratif*, Vol. 3, 1962, p. 23; Batailler, *Le Conseil d'État, juge constitutionnel*, 1966, p. 132 *et seq.*

² See *Ress*, *op. cit.*, p. 156 *et seq.*

³ Cf. *Rivero*, Les 'principes fondamentaux reconnus par les lois de la République', une nouvelle catégorie constitutionnelle? *D. Sir.* 1972, Chron. 265.

⁴ JORF of 4.5.1974, p. 4750; see also *Madiot*, Du Conseil Constitutionnel à la Convention européenne: vers un renforcement des libertés publiques? *D. Sir.* 1975, Chron. I p. 3 *et seq.*

⁵ See *Ress*, Der Rang völkerrechtlicher Verträge nach französischem Verfassungsrecht, Überlegungen zur Entscheidung des Conseil Constitutionnel vom 15. Januar 1975 über den Rang der Europäischen Konvention zum Schutz der Menschenrechte und Grundfreiheiten nach Art. 55 der französischen Verfassung, *ZaöRV* 35 (1975), p. 445 *et seq.*

⁶ JORF of 16.1.1975, 671; JCP 1975 II, 18030 note *Bay*; AJDA 1975 II, 134 note *Rivero*; *EuGRZ* 1975, p. 54 *et seq.*

⁷ See in detail *Stahl*, *op. cit.*, p. 72 *et seq.* In general on the judicial protection of fundamental rights: *Dran*, Le contrôle juridictionnel et la garantie des libertés publiques, 1968; *Rivero*, Le système français de protection des droits de l'homme, Les droits de l'homme, *Revue de Droit International et Comparé* I (1968), p. 70 *et seq.*; *Franck*, Les fonctions juridictionnelles du Conseil Constitutionnel et du Conseil d'État dans l'ordre constitutionnel, 1974; *Goose*, Die Normenkontrolle durch den französischen Conseil Constitutionnel, *Schriften zum Öffentlichen Recht*, 212 (1973).

⁸ Cf. for the most recent decisions of the CC: *Hamon*, Contrôle de constitutionnalité et protection des droits individuels: A propos de trois décisions récentes du Conseil Constitutionnel, *D. Sir.* 1974, Chron. 83; *Favoreu-Philip*, La jurisprudence du Conseil Constitutionnel, *RDP* 1975, p. 165 *et seq.*; see also *Favoreu-Philip*, Les grandes décisions du Conseil Constitutionnel, 1975.

⁹ Loi constitutionnelle No 74-904 of 29.10.1974, JORF of 30.10.1974; see *Franck*, Le nouveau régime des saisines du Conseil Constitutionnel, *JCP* 1975 I, p. 2678; *Philip*, L'élargissement de la saisine du Conseil Constitutionnel, *AJDA* 1975, p. 15 *et seq.*

Whereas hitherto the jurisdiction of the Conseil Constitutionnel could only be invoked by the President of the Republic, the Prime Minister, or the Presidents of both Chambers, the right is now conferred upon 60 deputies for the time being of the National Assembly or the Senate to invoke the jurisdiction of the Conseil Constitutionnel by seeking a review of the constitutionality of a statute which has not yet been published. The extension of this right to apply to the Conseil Constitutionnel is of great importance, since now a parliamentary minority may also use the procedure under Article 61 as a political instrument against the Government. It has already been so used on three occasions, and on one of these occasions the Conseil Constitutionnel rendered its decision (on the question of termination of pregnancy, decision of 15 January 1975).¹

Recent decisions of the Conseil Constitutionnel have provoked lively discussion in France as to whether parliamentary sovereignty was being replaced by government by the courts.² The problem of judicial review of legislative action is posed all the more acutely since the twofold reference in the Preamble to the Constitution of 1958 rarely permits of any precise and unequivocal definition of the substance and extent of protected fundamental rights.

Furthermore, recently decided cases have imposed on the legislature substantive limitations within the field of fundamental rights when enacting provisions in relation to matters reserved to it under Article 34.³ Article 34 states: 'La loi fixe les règles concernant: — les droits civiques et les garanties fondamentales accordées aux citoyens pour l'exercice des libertés publiques...'. The development in France could lead to a weakening of the traditional aversion to any catalogue of fundamental rights. The development of a jurisdiction to review on the part of a constitutional court, which would be effective and at the same time acceptable to Parliament, would only be possible in the long term if the court can proceed on the basis of sufficiently concrete criteria for review.

The French administrative courts determine the legality of any act of an administrative authority.⁴ They review the compatibility of executive measures with the law. The Conseil d'État reviews indirectly administrative decisions as to their compatibility with the Constitution, in so far as constitutional provisions are embodied or given concrete form in ordinary statutes. Moreover, since the judgment of the Conseil d'État of 28 June 1918,⁵ the constraint has been removed whereby the Conseil d'État could neither apply nor interpret the Constitution. In this way, the Conseil d'État secured the means of taking into account, when construing statutes, the constitutional guarantees relating to the protection of fundamental rights in cases of undue encroachment by the executive. This will however not be possible where the wording of the statute is unequivocal. In such case, the statute in question must be applied, in spite of its being unconstitutional, and any administrative act founded thereon will be binding.⁶

The Conseil d'État however applies the Constitution as the direct criterion in cases of government regulations which are issued independently of any statute (gesetzesunabhängige Verord-

nungen). By Article 37 of the Constitution of 1958 the government is empowered to issue regulations independently of any statute, in so far as the matter is not reserved to the legislature under Article 34 of the Constitution. On 7 July 1950⁷ in Dehaene the Conseil d'État had regard for the first time to the Preamble and deduced therefrom that, pursuant to paragraph 7 of the Preamble of 1946, the right to strike was recognized in law even for civil servants. In the following period, the principle of equality in the Preamble was used several times in the review of provisions governing the civil service (dienstrechtliche Vorschriften). In its judgment in Société d'Eky of 12 February 1960⁸ the Conseil d'État conclusively settled that the Declaration of 1789 imposes, as directly applicable constitutional law, constraints on the authority of the Government to issue regulations. Nevertheless, the review of government regulations and administrative acts on the basis of the Preamble has not acquired any great importance within the case-law of the Conseil d'État. In fact, the application of the Preamble will in most cases be unnecessary since the fundamental freedoms are normally regarded as 'principes généraux du droit applicables même en l'absence des textes', quite independently of the fact that they may be statutorily or constitutionally secured. It is true that the Conseil d'État in its more recent judgments refers to the connection between the 'principes généraux' and the Preamble to the Constitution. The Preamble however plays only a supporting role. What is decisive is the creation of law by the administrative courts, which has brought into being an extensive catalogue of freedoms.⁹ The general principles of law bind the 'autorité réglementaire', which means that they assert themselves directly in relation to regulations issued independently of statutes, and in relation to administrative acts. The bounds of this doctrine are reached where the administrative decision can be founded on a statutory provision. The unconstitutionality of the administrative act will in this case not lead to its being set aside. The fact that the act is in accordance with the statute will prevail. But since even within the field of administration independent of statutory provision the administration usually enjoys a broad measure of discretion, there are numerous cases in which the Conseil d'État

¹ JORF of 16.1.1975, p. 671; see *Rees*, *Der Rang völkerrechtlicher Verträge nach französischem Verfassungsrecht. Überlegungen zur Entscheidung des Conseil Constitutionnel vom 15. Januar 1975 über den Rang der Europäischen Konvention zum Schutze der Menschenrechte und Grundfreiheiten nach Artikel 55 der französischen Verfassung*, ZaöRV 35 (1975), p. 445 *et seq.*; *Ruzié*, *La Constitution française et le droit international (à propos de la décision du Conseil Constitutionnel du 15 janvier 1975)*, Clunet 1975, p. 249 *et seq.*

² Cf. *Rivero*, *Les 'principes fondamentaux reconnus par les lois de la République': une nouvelle catégorie constitutionnelle?* D. Sir. 1972, Chron. 265; *Hamon*, loc. cit.; further references in *Rees*, *Der Conseil Constitutionnel und der Schutz der Grundfreiheiten in Frankreich*, JöRNF 23 (1974), p. 123 *et seq.*

³ Cf. the decision of the CC of 28.11.1973, JORF of 6.12.1973, p. 12949; see also *de Soto*, *La décision du Conseil Constitutionnel en date du 28 novembre 1973*, RDP 1974, p. 889; *Rivero*, *Peines de prison et pouvoir réglementaire*, AJDA 1974, p. 229.

⁴ See *Fromont*, *La protection juridictionnelle du particulier contre le pouvoir exécutif en France. Gerichtsschutz gegen die Exekutive. Beiträge zum ausländischen öffentlichen Recht und Völkerrecht* 52(1) (1970), p. 221 *et seq.*; *Stahl*, *Die Sicherung der Grundfreiheiten im öffentlichen Recht der Fünften Französischen Republik, Veröffentlichungen des Instituts für Internationales Recht an der Universität Köln* 61 (1970), p. 133 *et seq.*

⁵ *Heyriès*, Sir. 1922, 3, 49 note *Hauriou*.

⁶ *Stahl*, op. cit., p. 59 *et seq.*

⁷ *Dehaene*, RDP 1950, p. 691 *et seq.*

⁸ *Société d'Eky*, D. 1960, J., p. 263, note *Huillier*; JCP 1960, II, No 11629 bis with note by *Vedel*.

⁹ *Stahl*, op. cit., p. 72 *et seq.*

has reviewed administrative action directly as to its compatibility with the freedoms recognized as 'principes généraux'.

General statements as to the circumstances in which fundamental rights may be curtailed by the administration are more difficult to make than for example is the case with the judgments of the German courts. The fundamental considerations which have influenced the decision in the specific case are generally not disclosed. Learned writers in France appear to consider the setting-off of opposing interests according to the principle of proportionality as constituting something of a guideline in the case-law of the Conseil d'État.¹ The interest of the State in exercising its authority to intervene is weighed against the value of the freedom thereby affected and the extent of the damage inflicted. The severity of the intervention must bear some reasonable relation to the interest of the State which is thereby to be secured. No intervention may therefore affect the substance of the freedom in question. This covers 'absolute, general' prohibitions (e.g. the prohibition upon persons suffering from tuberculosis from entering areas of tourism).² Moreover, any interference with freedoms must be based on a careful weighing-up of the actual circumstances of the case. In this weighing-up an important consideration is the value of the freedom in question. The extension of powers of control will thus depend on the value of the freedom opposing such extension. The Conseil d'État in this respect is guided by the intentions of the legislature. The possible limitations will vary depending on whether the legislature has employed a greater or lesser degree of care in order to guarantee the various fundamental rights. Particularly stressed is the value of the 'liberté fondamentale', which chiefly comprises the rights attaching to the individual's personal sphere, such as the freedom of the person, the inviolability of the home, and property. In addition, the 'principes fondamentaux reconnus par les lois de la république' usually carry particular weight. These include, *inter alia*, the freedoms of the press, of assembly, of association, and of religion. It is true that no systematic approach in relation to the content of, and the limitations upon, the 'liberté fondamentale' has been evolved. Whether the protection of freedom or the interests of the State should prevail is decided by the Conseil d'État by weighing-up in each individual case the basic freedoms against the 'intérêts de l'ordre et de la sécurité'.

No formal appellate procedure within the administration is known to French law. There is the 'recours à gracieux', whereby a citizen may address himself to the authority which has taken the administrative action in question, or has declined to take such action when requested. In addition there is the possibility of the 'recours hiérarchique' whereby an appeal is made to superior authority. Both these forms of appeal are referred to as 'recours administratif', as opposed to 'recours contentieux', that is, actions brought in the courts.³ These are not appeals having particular requirements as to form or to time-limits. The authority to which they are addressed is under no duty to take any decision thereon. The absence of any formal procedure for legal protection by the administration is to be explained in terms of the history of the development of the French administrative jurisdiction. This jurisdiction has evolved from the system for legal protection operated by the administration itself. Until 1953 it was for the Prefectoral Councils to determine complaints wherein adminis-

trative action was challenged, and against their decisions an appeal lay to the Conseil d'État. In the reforms of 1953 these Prefectoral Councils were replaced by 'tribunaux administratifs' which thenceforth had jurisdiction at first instance in all administrative disputes. Procedurally, the principles applying in the administrative courts are very much akin to those of the Conseil d'État. The prerequisite for any action is first of all that there be a decision of the administrative authority in question, dismissing an objection raised by a citizen. Against the decision containing such dismissal appeal can be made to the administrative court within two months. Silence on the part of the authority in question will, after four months, be construed as a refusal. The administrative courts deal with a wide variety of actions, each of which has its own peculiarities.⁴ The most important form of action is the 'recours pour excès de pouvoir'. In this action the setting aside of administrative acts violating statutory law can be sought. For the citizen seeking redress there is also the 'recours de pleine juridiction', which is a species of action in the administrative courts for the fulfilment of an obligation. It is concerned with subjective rights against the administration arising under statute or contract. According to French legal opinion, the administration can only be adjudged liable for the payment of money, but not to perform an administrative act. For all practical purposes this action can therefore be regarded as an action for damages.

Ireland

The Irish Constitution of 1937 contains a comprehensive inventory of fundamental rights. In the section on fundamental rights (Article 40 *et seq.*) there are guaranteed, in particular, general equality, the 'personal rights of the citizen' (a general freedom), the right to personal freedom, the inviolability of the home, freedom of opinion, freedom of assembly, freedom of association and combination, family rights, parental rights, private property, freedom of religion and conscience. There are moreover fundamental rights in relation to criminal procedure (Article 38) and a prohibition on giving retrospective effect to criminal statutes (Article 15 (5)), as well as the guarantee of judicial independence (Article 35 (2)). Any constitutional amendment is subject to a referendum (Article 46 (2)). Constitutional amendments are therefore extremely difficult.⁵ The Constitution also contains certain social fundamental rights. In the provisions on 'fundamental rights' the right to free primary education should above all be mentioned (Article 42 (4)). Reference should further be made to Article 41 (2)⁶:

¹ For this point and the following, see *Burdeau*, *Les libertés publiques*, p. 43 *et seq.*; *Colliard*, *Libertés publiques*, 1972, p. 158 *et seq.*; *Vedel*, *Droit administratif*, 5th ed. 1973, p. 794 *et seq.*

² References in *Burdeau*, *op. cit.*, p. 48.

³ *De Laubadère*, *Traité de droit administratif*, 6th ed. 1973, p. 257 *et seq.*; *Lücking*, *Die Grundlagen der französischen Verwaltungsgerichtsbarkeit*, 1955, p. 56 *et seq.*

⁴ Cf. *Debbasch*, *Droit administratif*, 2nd ed. 1971, p. 435 *et seq.*; *de Laubadère*, *op. cit.*, p. 478 *et seq.*; *Bourjol*, *Droit administratif*, Vol. 2, *Le contrôle de l'action administrative*, 1973, p. 163 *et seq.*

⁵ *Kelly*, *Fundamental rights and the Irish Law and Constitution*, 2nd ed. 1967, p. 9 *et seq.*

⁶ *Kelly*, *op. cit.*, p. 305 *et seq.*

'The State shall... endeavour to ensure that mothers shall not be obliged by economic necessity to engage in labour to the neglect of their duties in the home'.

The Constitution also contains principles in relation to social policy ('directive principles of social policy') the observance of which cannot, unlike that of the fundamental rights, be reviewed by the courts (Article 45).

A whole series of fundamental rights, which are not contained in the Irish Constitution, are guaranteed elsewhere in the legal system, such as the right to be heard, the right to an early trial.¹ The ECHR is not however part of the domestic law.²

The fundamental rights of the Irish Constitution bind the administration and the legislature.³ Various forms of judicial protection are available to ensure that they do so.

Article 26 of the Irish Constitution provides initially for a preliminary procedure for obtaining an opinion in relation to the constitutionality of any statute. The President may, before signing any statute, submit it to the Supreme Court for an opinion as to its constitutionality.

Apart from statutes which have already been the subject of a pronouncement by the Supreme Court pursuant to the abovementioned procedure, the High Court and the Supreme Court can also pronounce on the constitutionality of statutes in cases where constitutionality is not the substantive issue (Article 34 (3)(2)).⁴ Moreover, in a judgment in 1970, the Irish Supreme Court has recognized the possibility of an objection on constitutional grounds to statutes in so far as the objectors are directly affected by the statutory provision in question.⁵

Though no general right to legal protection against illegal acts of public authority is formulated explicitly in the Constitution, the courts have deduced such a right from Article 34 (3)(1), and Article 40 (3).⁶ There exists therefore comprehensive judicial protection against illegal executive action.⁷ It should be noted, however, that under Article 37 of the Constitution 'limited functions and powers of a judicial nature' may be conferred on persons or bodies other than judges or courts. Even when this has been done by statute, the ordinary courts have still exercised a control over the constitutionality of the procedure.⁸

Italy

The Italian Constitution of 1947 contains a very comprehensive catalogue of fundamental rights, consisting of the general principles prefacing the Constitution and the entire Part I thereof; there are in all 54 articles, which are subdivided as follows: Title I: civil liberties; Title II: socio-ethical relations; Title III: economic relations; Title IV: political relations. Provision for derogation by statute is reserved in the case of numerous fundamental rights.

The major part of the Constitution can be amended by the procedure for constitutional amendment. Only the principle of the republican form of government is expressly excluded from such amendment, pursuant to Article 139. However, according to the

prevailing view, in addition to the republican form of government, Article 2 of the Constitution contains a further limitation on constitutional amendment. Since Article 2 speaks of inviolable human rights, any setting aside of these rights is not lawful; what alone is lawful is to amend and adjust them to new situations, without affecting their essence.⁹ None the less an amendment to the Constitution can only be achieved by a cumbersome procedure prescribed under Article 138 of the Constitution: any law to amend the Constitution must be accepted by both chambers in two separate readings at an interval of at least three months, and with an absolute majority. It is subjected to a referendum, if one-fifth of the members of one chamber or 500 000 voters or five regional councils so demand. A law which has been subjected to a referendum will not be published if it is not approved by a majority of the valid votes cast. A referendum will not however take place if the law has been approved during the second division by each chamber by a two-thirds majority of the members.¹⁰

A further guarantee of fundamental rights has been achieved by the ratification by Italy of the ECHR and the Additional Protocol of 20 March 1952, by statute No 848 of 4 August 1955.¹¹ The ECHR is Italian domestic law with the status of an ordinary statute.

The observance of the Constitution is ensured primarily by the Corte Costituzionale. The tasks of the Court are set out in Article 134 of the Constitution. The protection of fundamental rights is not secured by the direct appeal by way of objection on the grounds of constitutionality, as in Germany, but only incidentally, or by a procedure 'in via principale' whereby the State may request a review of the constitutionality of the legislation of a Region, or a Region may apply to the Corte Costituzionale for a review of the constitutionality of a national statute or the legislation of another Region.

The procedure whereby constitutionality is reviewed when it is not the substantive issue in the dispute in question is set out in greater detail by Article 1 of the Constitutional Act No 1 (legge costituzionale) of 9 February 1948 and Articles 23-30 of ordinary

¹ *Kelly*, op. cit., p. 305 *et seq.*

² *Süsterhenn*, La protection internationale des droits de l'homme dans le cadre européen, 1961, pp. 303 *et seq.*, 308, with further references.

³ *Boldt*, Grundrechte und Normenkontrolle im Verfassungsrecht der Republik Irland, JOR, 19 (1970), p. 229 *et seq.*

⁴ See *Boldt*, op. cit., p. 244 *et seq.*

⁵ *East Donegal Cooperative v Attorney-General*, 1970, IR 335, esp. at p. 338 *et seq.*; cf. also *Boldt*, op. cit., p. 247.

⁶ *Kelly*, op. cit., p. 291 *et seq.*; *Kelly*, Judicial Protection of the Individual against the Executive in the Republic of Ireland, *Gerichtsschutz gegen die Executive*, Vol. 1, 1969, pp. 426 *et seq.*, 435; cf. also *Barrington*, Private Property under the Irish Constitution, *The Irish Jurist* 8 (1973), p. 16 *et seq.*; *Kelly*, Judicial Review of Administrative Action: New Irish Trends, *The Irish Jurist* 6 (1971), p. 40 *et seq.*

⁷ The opinion of *Boldt*, op. cit., p. 242, that the control of the executive by the courts is rarely effective, cannot be accepted. The references cited by *Boldt* rather indicate the contrary.

⁸ *Foley v Irish Land Commission and Attorney-General*, *Irish Law Times* 86 (1952), p. 55 *et seq.*, (1952) IR 118. Cf. however *Fisher v Irish Land Commission* (1968) IR 3, and the criticism of this decision in *Barrington*, loc. cit. See also on these problems *Grogan*, Administrative Tribunals, in King (ed.), *Public Administration in Ireland*, Vol. 3 (1954), who, however, relies for his restrictive interpretation of the jurisdiction of the ordinary courts on decisions given before the Constitution of 1937, which thus have only a limited value as precedents on question of constitutional law.

⁹ Cf. *Moratti*, *Istituzioni di diritto pubblico*, 8th ed. 1969, p. 1126.

¹⁰ On the problem of constitutional amendment *Moratti*, op. cit., p. 1105, *et seq.*

¹¹ References to learned authors in *Moratti*, op. cit., p. 1128.

statute No 87 of 11 March 1953. Some details of importance for the protection of rights deserve special mention. Article 23 of the ordinary statute of 1953 provides that constitutionality may be reviewed incidentally in any 'giudizio dinanzi and un'autorità giurisdizionale'. These words have always been broadly interpreted by the Corte Costituzionale,¹ thus bringing within their ambit not only the ordinary courts as 'giurisdizione volontaria' but also the various 'giurisdizioni speciali' (e.g. Commissari per la liquidazione degli usi civici, Commissione dei ricorsi in materia di brevetti, etc.). There is uncertainty as to arbitration tribunals and the Giunta per le elezioni nell'ambito delle Camere parlamentari. The Corte costituzionale has confirmed (Ordinanza 22/1960 and 57/1961) that it may in the course of proceedings, e.g. in conflitti di attribuzioni or in sede penale, itself raise the question of constitutionality, and refer it to itself. According to a judgment of the Corte costituzionale, no such right of referral is granted to the investigating judge in civil proceedings (sentenza 109/1962); and while the public prosecutor in criminal cases may raise the question of constitutionality, he has no power to refer the papers to the Corte Costituzionale (sentenza 40/1963). In sentenza 53/1968 the Corte Costituzionale recognizes the power to refer on the part of the giudice di sorveglianza in cases relating to the application of security measures, and with sentenza 72/1968 in cases relating to the execution of sentence.

There are special time-limits prescribed for the course of the proceedings, with the effect that they are completed relatively quickly.² What merits mention is that the proceedings before the Corte Costituzionale are independent of the proceedings in the course of which the referral has occurred. If the latter for any reason come to an end, the proceedings before the Corte Costituzionale will continue; moreover, the proceedings in the Corte Costituzionale are removed from the control of the parties thereto.

A judgment of the Corte Costituzionale has the following effect: any provision declared unconstitutional will cease to apply as from the day following the publication of the judgment. The question whether unconstitutionality has an *ex tunc* or *ex nunc* effect is thus avoided and a practical solution is what is contemplated (cf. Article 30 (2) of the Act of 1953). The dismissal of a referral will only be effective for the particular case in question, or for the actual proceedings between the parties in provision. The dismissal does not exclude a referral in a different case, even on the same grounds and by the same parties.

The legal protection for the citizen alleging undue encroachment by the executive is based on Articles 24 (1) and 113 of the Constitution. According to these provisions every person may, for the protection of his own rights or legitimate interests, seek the assistance of the courts. For the protection of rights and legitimate interests against acts of the public administration there is always the right to sue in the ordinary and in the administrative courts. This protection may not be excluded or restricted in favour of special forms of appeal or in respect of particular kinds of acts. The law defines which courts may set aside acts of the

public administration in the cases prescribed by statute and with the effects so prescribed. Title IV of the Constitution, which relates to courts (Article 101 *et seq.*), contains further important provision on the judicial protection of the rights of the individual. No exceptions are permitted from the absolute jurisdiction of the courts.³

Luxembourg

The Luxembourg Constitution of 1868 with its significant subsequent amendments contains in its Chapter II ('Des Luxembourgais et de leurs droits') a catalogue of fundamental rights. For the best part, these fundamental rights subsist in their original form, bearing the stamp of a bourgeois-liberal concept of the State. Only by the constitutional amendment of 12 May 1948 were some social fundamental rights brought into the catalogue, such as the right to work, but also the protection of freedom of economic activity.

Following a proclamatory basic statement in Article 11 (3) ('L'État garantit les droits naturels de la personne humaine et de la famille'), the Luxembourg catalogue of fundamental rights provides, *inter alia*, for the following fundamental rights: equality before the law (Article 11 (2)), general freedom of the person (Article 12 (1)), inviolability of the home (Article 15), guarantee of property (Article 16), freedom of opinion (Article 24 (1)), freedom of the press (also Article 24 (1)), postal secrecy (Article 28), right of petition (Article 27), freedom of religion (Article 19), freedom of assembly (Article 25), freedom of association (Article 26), the right to public primary education (Article 23) the right to work and to social security (Article 11 (4)), the guarantee of trade union rights (Article 11 (5)), freedom to carry on an independent trade or profession (Article 11 (6)), the right to trial by the lawful judge (Article 12). Some of these fundamental rights are subject to a reservation permitting statutory restriction, and others, such as the freedom of economic activity, can only be given shape by statute. But even where the legislature is entrusted with the task of giving shape to certain rights, the Constitution has in some cases attached a further reservation permitting statutory restriction.

According to prevailing legal opinion, fundamental rights take precedence over ordinary statutes by virtue of their embodiment in the Constitution. This precedence derives from Article 113 ('Aucune disposition de la Constitution peut être suspendue').⁴ Although the Constitution entrusts the courts with the review

¹ Biscaretti di Ruffa, *Diritto costituzionale*, 10th ed. 1974, p. 567.

² Biscaretti di Ruffa, *op. cit.*, p. 568 *et seq.*

³ Bachelet, *La protection juridictionnelle du particulier contre le pouvoir exécutif en Italie, Gerichtsschutz gegen die Exekutive*, 1972, p. 469 *et seq.*; Mortati, *op. cit.*, p. 1125 *et seq.*; Landi-Potenza, *Manuale di diritto amministrativo*, 4th ed. 1971, p. 57 *et seq.*, esp. pp. 585, 659, *et seq.*

⁴ Cf. *re constitutional precedence Bonn*. Le contrôle de la constitutionnalité des lois, *Pas. Lux.*, 1973, p. 5 *et seq.*; Majerus, *L'État luxembourgeois*, 2nd ed. 1959, p. 42 *et seq.*; Pescatore, *Introduction à la science du droit*, 1960, No 92.

of the constitutionality of subordinate instruments,¹ it does not contain any provision for the review of the constitutionality of statutes. The courts have accordingly declined to review ordinary statutes.² This can be explained by the liberal concept of the Constitution of the previous century which considered the legislature to be the most appropriate guarantor of the protection of civil rights and freedoms. Further support was derived from the principle of the separation of powers.³ However, this is not a necessary inference from the Constitution.⁴ The aforementioned principle is however also applied by the courts to grand-ducal regulations issued in lieu of statutes.⁵ Whether the courts can continue with this line of authority seems doubtful, given the influence of the Belgian courts, and in particular of a more recent judgment of the Belgian Cour de Cassation.⁶ But the legislature in enacting ordinary statutes has followed the view of the courts, and has in section 237 of the Penal Code made it a punishable offence for a judge to fail to give effect to a statute.⁷ These decisions of the courts have recently been criticized by learned authors, especially in comparison with the review of statutes on the basis of international treaties.⁸

The provisions on fundamental rights are, like all constitutional provisions, liable to constitutional amendment. The procedure for constitutional amendment has several stages. First, the legislature must satisfy itself of the necessity for a constitutional amendment, by reference to the provisions to be amended (Article 114). Thereafter, the Chamber is dissolved by operation of law. Only a re-elected Chamber may resolve to amend the constitution and in so doing it is bound by the decision of its predecessor as regards the subject-matter. With not less than three-quarters of its members present, the Chamber votes on the amendment by a two-thirds majority of all votes cast. The legislature is not bound as to the actual contents of the amendment. There is no limit to possible constitutional amendments. Only during a regency are constitutional amendments without exception inadmissible under Article 115.

Apart from the Constitution the ECHR is of importance. Previously the courts had, just as in relation to the constitutional guarantees, declined to review national law by reference to international treaties.⁹ They have nevertheless developed a presumption of interpretation that until the contrary is proved the legislature is not to be taken to have intended to put itself in breach of an international obligation; and therefore the law of Luxembourg should as far as possible be interpreted in accordance with treaty provisions.¹⁰ Since 1950 a change is discernible in the approach of the courts. Provisions of international treaties which are 'directly applicable' are now given precedence over national statutes, irrespective of the date of their coming into force;¹¹ the international treaty is a source of law of higher status.¹² The courts of Luxembourg have nevertheless declined to accord such precedence in relation to the application of the ECHR, on the footing that it is not directly applicable under national law but that it merely provides for obligations on the part of the States.¹³ The approach of the courts of Luxembourg therefore contrasts with that of the other Benelux States, which give the ECHR direct applicability and precedence over national law.

There is no judicial control directed to compliance with the Constitution in Luxembourg.¹⁴ The ordinary law (Article 237 of the Penal Code) denies the courts any powers in relation to review of legislation. The power of the Conseil d'État to advance constitutional objections under the legislative procedure (pursuant to Article 76) cannot be considered as a judicial procedure. No binding force attaches to the opinion of the Conseil d'État. The Conseil d'État can only withhold its assent to dispensing with a second reading of a statute in the Chamber. Since this could only take place, at the earliest, three months after the first reading, the Conseil d'État is in a position to exercise a temporary veto; it has no further means of blocking the statute in question (Article 59 of the Constitution).

For the legal protection of citizens alleging undue encroachment on the part of the executive, proceedings may be brought either in the ordinary courts or in the administrative courts, depending on the matter in issue.¹⁵ Before the Conseil d'État, Comité Contentieux, two kinds of proceedings are possible: the 'contentieux de pleine juridiction' as proceedings at second instance against decisions of the administrative courts, or as appellate proceedings, but only in so far as provided by statute. In addition, the Conseil d'État has jurisdiction in the 'contentieux d'annulation', as a court of cassation, having power to determine all objections to administrative decisions where there are no other means of legal protection

¹ Article 95: 'Les cours et tribunaux n'appliquent les arrêtés et règlements généraux et locaux qu'autant qu'ils sont conformes aux lois'. The Conseil d'État considers this provision directly applicable to itself, though it is neither a 'cour' nor 'tribunal'. Cf. *Loesch*, *Le Conseil d'État du Grand-Duché de Luxembourg*, Livre Jubilaire, 1956, pp. 507, 515.

² Cour de Cassation, judgment of 14.8.1877, Pas. Lux. I, p. 370; judgment of 24.4.1879, Pas. Lux. I p. 534; Conseil d'État, Comité du Contentieux, judgment of 3.1.1883, Pas. Lux. II p. 174; Cour de Cassation, judgment of 21.11.1919, Pas. Lux. XI, p. 72; judgment of 26.5.1920, Pas. Lux. XI, p. 72.

³ ... ils [les tribunaux] n'ont pas reçu la mission de contrôler les dispositions législatives et de les écarter pour cause d'inconstitutionnalité ... S'il en était autrement il y pourraient anéantir les actes du corps législatif... le juge doit se rappeler sans cesse que sa mission se borne à juger suivant la loi, et non à juger la loi' (Cour de Cassation, judgment of 14.8.1877, Pas. Lux. I, p. 370).

⁴ Cf. *Bonn*, op. cit., p. 18.

⁵ Cour de Cassation, judgment of 29.7.1948, Pas. Lux. XIV, p. 422; judgment of 13.5.1954, Pas. Lux. XVI, p. 99; Cour d'Appel, judgment of 25.1.1958, Pas. Lux. XVII, p. 248.

⁶ *Journal des Tribunaux* 1974 p. 564, Cf. re the influence of Belgian cases, *Bonn*, op. cit., p. 12; see also latest developments in Belgium, above II 1.

⁷ 'Seront punis ... les juges ... qui se seront immiscés dans l'exercice du pouvoir législatif, soit par des règlements contenant des dispositions législatives soit en arrêtant ou suspendant l'exécution d'une ou plusieurs lois, soit en délibérant sur le point de savoir, si ces lois seront exécutées ...'

⁸ Cf. *Bonn*, loc. cit.

⁹ Cour Supérieure de Justice, judgment of 21.11.1919, Pas. Lux. XI, p. 74.

¹⁰ Cour Supérieure de Justice, judgment of 13.6.1890, Pas. Lux. II, p. 621. Cf. on this question *Pescatore*, Conclusion et effet des Traités internationaux selon le droit constitutionnel, les usages et la jurisprudence du Grand-Duché de Luxembourg, 1964.

¹¹ Cour Supérieure de Justice, judgment of 8.6.1950, Pas. Lux. XV, p. 41; more detailed judgment of 14.7.1954 Pas. Lux. XVI, p. 150; judgment of 21.7.1951, Pas. Lux. XV, p. 235.

¹² Cour Supérieure de Justice, judgment of 14.7.1954, loc. cit.; doubtful as to the reasoning, but in agreement with the outcome: *Pescatore*, op. cit., p. 106, *et seq.*

¹³ Tribunal Correctionnel Luxembourg, judgment of 24.10.1960; unpublished, mentioned (with dissenting comment) by *Bonn*, op. cit., p. 16, and *Pescatore*, Pas. Lux. XVIII, pp. 97, 107.

¹⁴ Cf. *Welter*, La protection du particulier contre le pouvoir exécutif au Luxembourg, *Gerichtsschutz gegen die Exekutive*, 1969, Vol. 2, pp. 679, *et seq.*

¹⁵ *Welter*, loc. cit.

available.¹ What is exceptional is that no judicial protection is available against 'actes de Gouvernement'.²

The Netherlands

The 'Statuut voor het Koninkrijk der Nederlanden', regulating the legal relationship between the European dominions, the former colonies, and the now autonomous dominion of the Netherlands Antilles contains in Articles 43 to 45 general provisions relating to fundamental rights. By virtue thereof, each dominion is bound to give effect to fundamental human rights and liberties. Amendments to the provisions on fundamental rights in the Constitution of the European Netherlands or in the local legislation of the Antilles require the assent of the Imperial Government.³

The Constitution of the European Netherlands, the Grondwet (GW), of 1815 (with numerous amendments) contains a number of fundamental rights without, however, establishing a uniform and consistent catalogue of fundamental rights. Essentially the GW contains the classical fundamental rights. It is however thought there also exist further unwritten social fundamental rights, such as the right to be cared for by the State and the right to provision for ill-health and old age.⁴ At present, the GW contains the following fundamental rights: the right to equal protection of person and property for all who are within the imperial dominions (which is the equivalent of the principle of equality of treatment, Article 4); equal opportunity for all Dutch citizens to enter the government service (Article 5); the prohibition of censorship and freedom of the press (Article 7); right of petition (Article 8); freedom of association and assembly (Article 9); expropriation only for the benefit of the public, and only subject to prior compensation, or compensation guaranteed prior to expropriation (Article 165); the right to trial by the lawful judge (Article 170); protection from arbitrary arrest (Article 171); protection of the home (Article 172); postal secrecy (Article 173); freedom of religious observance and the liberties relating to religious communities (Articles 181 to 187); freedom of education (Article 208(2)). It is worth observing that the right of property is not protected generally but only against certain forms of interference.⁵ No fundamental right to choose one's own trade or occupation can be deduced from the Constitution. As part of the current moves to amend the Constitution of the Netherlands, it is intended to preface the GW with a catalogue of classical fundamental rights (as Chapter I). In Chapter IV some social fundamental rights are to be incorporated in the Constitution, including a right to work, which would also cover work on one's own account, the promotion of public welfare and the safeguarding of the nation's health, etc.⁶

The fundamental rights currently guaranteed in the Netherlands are considered as general principles requiring more specific elaboration by the legislature.⁷ There are no real restric-

tions on the legislature enacting ordinary statutes; in elaborating further statutory provisions including provisions restricting fundamental rights, they may go a considerable way without infringement of the letter of the Constitution.⁸ The extent of most fundamental rights therefore depends on this further elaboration, which is reserved to the legislature alone. The real protection of fundamental rights lies in the fact that any restrictions must be based on a formal statute.⁹ It is consonant with this understanding of fundamental rights that they are not considered to be law having any higher status. They may be amended at will, like other provisions of the GW, by any legislature effecting constitutional amendments. Any form of constraint on such a legislature is alien to Dutch law.¹⁰ There are no restrictions as to subject-matter in relation to constitutional amendments. A complicated procedure is however provided for in the case of constitutional amendment. First, Article 210 of the GW requires a statement as to the necessity for constitutional amendment, in the form of a statute providing for amending provisions. Thereupon both Chambers are dissolved (Article 211 of the GW). The new Chambers then resolve upon the constitutional amendment, which requires in both Chambers a two-thirds majority of the votes cast. Since constitutional amendments relating to fundamental human rights and liberties are, pursuant to Article 45(a) of the Statute of the Kingdom of the Netherlands, 'empire matters', the provisions relating to imperial legislation must also be applied (Articles 15 to 20 of that Statute). The extent of the participation of the other dominions in the amendment of the provisions relating to fundamental rights in the GW is however a disputed question.¹¹

Of the extra-constitutional guarantees of fundamental rights the ECHR is of particular importance. The constitutional amendment of 1953 has provided, under Article 65 of the GW, for the direct application of international treaty law; pursuant to Article 66 of the GW the Dutch courts must dis-

¹ *Re administrative jurisdiction Bonn*, Le contentieux administratif en droit luxembourgeois, 1966; *Welter*, loc. cit.; *Majerus*, op. cit., p. 155 *et seq.*

² *Welter*, op. cit., p. 686.

³ This consists of the Government of the European Netherlands, supplemented by a Minister from the Government of the Netherlands Antilles.

⁴ *Belinfante*, *Beginnelsen van Nederlands Staatsrecht*, 1964, p. 162 *et seq.*

⁵ *Belinfante*, op. cit., p. 178.

⁶ Draft Constitution by the State Commission (Cals-Donner-Commission): Tweede rapport, Eindrapport van de Staatscommissie van advies inzake de Grondwet en de Kieswet, 1969, p. 25 *et seq.*; 1971, p. 212 *et seq.*

⁷ *Belinfante*, op. cit., p. 162.

⁸ *Kranenburg*, *Het Nederlands Staatsrecht*, 1958, p. 501; *Van der Pot-Donner*, *Handboek van het Nederlandse Staatsrecht*, 9th ed. 1972, p. 462.

⁹ *Oud*, *Het Constitutioneel Recht van het Koninkrijk der Nederlanden*, Vol. 2, 2nd ed. 1970, p. 698.

¹⁰ *Oud*, loc. cit.

¹¹ Thus *Kranenburg*, *De Nieuwe Structuur van ons Koninkrijk*, 1955, p. 56; *Van Helsdingen*, *Het Statuut voor het Koninkrijk der Nederlanden*, 1957, Note to Article 45, p. 497, *et seq.*; *Oud*, *Het Constitutioneel Recht van het Koninkrijk der Nederlanden*, Vol. 1, 2nd ed. 1967, p. 57; *Van der Pot-Donner*, op. cit., p. 635 (somewhat hesitantly, wishing to emphasize the particular circumstances of individual cases).

regard any Dutch law to the contrary.¹ Directly applicable international treaty law therefore has acquired precedence over national law, including constitutional law. In contrast to the Luxembourg courts, which regard the ECHR merely as an obligation undertaken by the States without any direct applicability in national law, the Dutch Hoge Raad has acknowledged that the ECHR is so applicable.² Accordingly, the Dutch courts must review provisions of national law by reference to the ECHR.³ This duty to review is of heightened importance, since review of ordinary statutes by reference to the Constitution is prohibited under Article 131 of the GW.⁴ In order to overcome this inconsistency in the jurisdiction to review, the State Commission for Constitutional Reform has proposed the adoption into the Constitution of a jurisdiction to review by reference to the classical fundamental rights. Other constitutional provisions, including those relating to social fundamental rights, should not be available as a yardstick for such review.⁵ At present, the introduction of this jurisdiction to review seems unlikely, since the Government is not considering the incorporation of such a provision into its draft constitutional amendment.⁶ There has not yet been any parliamentary initiative in this matter.

In the Netherlands the courts do not have the power to review the constitutionality of legislation. The procedure before the Raad van State to obtain an opinion, which must be observed in any legislative process pursuant to Article 64 of the GW, cannot be regarded as judicial review. This procedure is merely an internal matter within the government; it is of no consequence if the opinion is disregarded.⁷ The opinions are also not published. The vesting of any jurisdiction in the courts to enforce compliance with the Constitution seems unlikely. The Government has, during the discussion on a constitutional amendment, declared its opposition to any such jurisdiction in the courts,⁸ as proposed by the State Commission.⁹

In the Netherlands there are a large number of forms of legal protection against excessive encroachment by the executive. That hitherto encountered most frequently is a quasi-judicial protection available within the administration itself, for instance, under the 'Wet Beroep administratieve Beschikkingen' which grants legal protection against measures taken by State authorities. The jurisdiction of the civil courts is also of some importance, as they may issue orders against administrative authorities in interlocutory proceedings, and these courts also give a wide interpretation to the concept of civil law.¹⁰

In the spring of 1975 the Estates General passed a statute relating to general administrative jurisdiction, although the date of its coming into force is not yet settled. Originally it was to have been 1 January 1976. This statute 'Wet administratieve rechtspraak overheidsbeschikkingen'¹¹ provides in principle for a general administrative jurisdiction in relation to acts of all administrative authorities, including those of the provinces and the districts. For this purpose a judicial section with judicial functions and guarantees is to be established within the Raad van State. Articles 5 and 6 of the statute pro-

vide for the setting-up a negative list of matters to be excluded from the administrative jurisdiction. Some parts of this negative list will remain in force for only a limited period; but there is at any rate the possibility of amendments or extension. The area of application of this general statute on administrative jurisdiction will furthermore be restricted for the time being because the jurisdiction it confers is only available in a subsidiary way. In so far as other means of protection of rights exist, including those existing purely within the administration, the jurisdiction of the administrative court (Raad van State, afdeling rechtspraak) will be excluded. The ambit of the statute can be broadened in two ways: by a curtailing of the 'negative list' of Articles 5 and 6 and by setting aside the provisions relating to special legal protection, since this would bring into force the subsidiary effect of the general statute on administrative jurisdiction.

United Kingdom

As is well known, the United Kingdom has no written constitution, that is, no constitution in the formal sense. Accordingly there can be no question of fundamental rights being entrenched by means of any formal constitutional instrument. On the other hand, there is of course a constitution in the practical sense as the sum of all the rules which govern the conduct of the highest organs of State and the fundamental relationship between the individual and the State. It is in this context that fundamental rights, or fundamental liberties, or civil rights and freedoms, can be spoken of in the United Kingdom.

The guarantee of fundamental rights in the British Constitution amounts in the final analysis to freedom generally, subject to general reservations permitting statutory restrictions. What is guaranteed—this is one of the most important aspects of the 'rule of law'—is the freedom of each individual to do, and not to do, whatever he wishes, so long as what he does is not contrary to the rights of third parties or the

¹ Article 65: 'Bepalingen van overeenkomsten, welke naar inhoud een ieder kunnen verbinden, hebben deze verbindende kracht nadat zij zijn bekend gemaakt'. Article 66: 'Binnen het Koninkrijk geldende wettelijke voorschriften vinden geen toepassing wanneer deze toepassing niet verenigbaar zou zijn met een ieder verbindende bepalingen van overeenkomsten, die hetzij voor, hetzij na de totstandkoming der voorschriften zijn aangegaan'.

² Hoge Raad, judgment of 13.3.1960, NJ 1960, No 436.

³ Hoge Raad, judgment of 24.2.1960, NJ 1960, No 483; judgment of 18.4.1961, NJ 1961, No 273; judgment of 19.1.1962, NJ 1962, No 107; judgment of 25.6.1963, NJ 1964, No 239.

⁴ Article 131(2): 'De wetten zijn onschendbaar'.

⁵ Tweede rapport van de Staatscommissie van advies inzake de Grondwet en de Kieswet, 1969, p. 34 *et seq.* (Cals-Donner-Commission).

⁶ Nota inzake het Grondwetherzieningsbeleid, 2. Kamer, Zitting 1973-1974, Kamerstuk No 12 944 No 2, p. 12.

⁷ Cf. *Oud*, op. cit., Vol. 1, p. 455 *et seq.*; *Van der Pot-Donner*, op. cit., p. 286 *et seq.*

⁸ Staatscommissie, op. cit., 1969, p. 34, *re* the classical fundamental rights.

⁹ Nota inzake het Grondwetherzieningsbeleid, op. cit., p. 12.

¹⁰ *Re* this still valid legal position cf.: *Langemeijer*. Der gerichtliche Rechtsschutz des Einzelnen gegenüber der vollziehenden Gewalt in den Niederlanden, in *Rechtsschutz gegen die Exekutive*, 1969, p. 793 *et seq.*

¹¹ For the text of the statute: *Eerste Kamer der Staten-Generaal*, Zitting 1974-1975, Kamerstuk No 47.

law. From this starting point, certain fundamental rights have, in legislation, case law and learned writing, been shaped in particular ways, such as the right of personal freedom, the freedom of speech, the freedom of assembly, and the freedom of property.¹ In recent years there have however been occasional demands for a formal constitution to be made for the United Kingdom, which could in certain circumstances even include a catalogue of fundamental rights. It cannot however be said that demand for this in the United Kingdom is so widespread that such a project would have any prospect of success in the near future.²

In view of what has been said above, the guaranteeing and the circumscribing of the rights of individuals are primarily the task of the legislature and also of the courts. There is however no comprehensive catalogue of fundamental rights prescribed by legislation, in the manner, for instance, of the Canadian Bill of Rights. Also the ECHR is not binding under the domestic law of the United Kingdom. It can nevertheless be said that, taken as a whole, the English legal system is fashioned in such a way that the rights contained for instance in the United Nations Treaty on Civil and Political Rights or in the ECHR, are generally speaking, secured within the territory of the United Kingdom. However, any rights so secured are entirely at the mercy of the legislature. The only guarantee that the legislature will not unduly restrict these rights lies in the mechanisms of political control which characterize British constitutional life, and in the libertarian traditions of Britain.³

Since fundamental rights are entirely at the mercy of the legislature, there can be no question of any judicial review of statutes for their compatibility with these fundamental rights. In dealing with legislation, the courts can of course effect certain marginal emendations (Randkorrekturen) for the protection of fundamental rights. For this purpose judicial practice has evolved a number of presumptions.⁴ Thus, statutes are construed so that, for instance, the levying of taxes requires clear and explicit words. Criminal statutes are strictly construed. In the absence of clear and unequivocal provisions to the contrary, the legislature is not taken to have intended to oust the jurisdiction of the courts, or to give statutes retrospective effect. Similarly, the Court of Appeal has recently held that the ECHR must be taken into account in interpreting statutes: There is a presumption that the legislature did not intend to infringe the ECHR, and statutes are to be interpreted in such a way that they are compatible with that Convention.⁵ The legislature is thus obliged to enact in clear and unequivocal terms any intervention in the sphere of the individual, but is not prevented from intervening in this way by any constitutional constraint.

Against this legal background, what in other legal systems might be considered under the heading of 'protection against infringement of fundamental rights by the executive' amounts in the United Kingdom to a control of the legality of executive action. To this extent, legal protection in the United Kingdom is comprehensive. But the legislature in turn is free to exclude the protection of the courts. This has occurred in

a number of cases,⁶ though it is usual for quasi-judicial review bodies to be created for the legal protection of the individual. The ordinary courts have (although not invariably) interpreted such ousters of jurisdiction restrictively, and have thus preserved a certain power of review.⁷ Some statutes, moreover, provide for limited rights of appeal to the ordinary courts.⁸ Moreover, the executive has no immunity from judicial proceedings, with the exception of actions against the sovereign in person.⁹

Recently there have been reports of various suggestions and proposals for the enactment of a 'Bill of Rights' for the United Kingdom (or even for Northern Ireland alone) without the introduction of a formal constitution.¹⁰ It remains to be seen how far such projects will succeed and lead to clear results, and this cannot be judged by an outsider. What merits comment is that the proposals clearly are intended to limit only partially the sovereignty of Parliament, in that the legislature, if it wishes to derogate from the Bill of Rights, will have to make this clear in the statute in question. Such a provision comes very close to the abovementioned presumption evolved by the courts, that, in a case of doubt, the legislature is not to be taken to have intended to infringe particular rights of the individual.

All in all, the position of fundamental rights in the United Kingdom presents unique features which in some degree are alien to continental constitutional thought. With the Magna Carta of 1215 and in the constitutional struggles of the 17th century England produced statements of fundamental importance for the development of fundamental rights. Even today, it cannot be said that the protection of fundamental rights in the United Kingdom does in fact lag behind that in continental European States. However, the formal position is that fundamental rights are at the mercy of the legislature to a far greater extent than in most other Members States of the European Community.

¹ Cf. *Street*, Freedom, the Individual and the Law, 1963, p. 9 *et seq.*; *Daintith*, The Protection of Human Rights in the United Kingdom, Human Rights 1 (1968), p. 275 *et seq.*; *Mitchell*, Constitutional Law 2nd ed. 1968, p. 323 *et seq.*; *Wade-Phillips-Bradley*, Constitutional Law, 7th ed. 1965, p. 488 *et seq.*; *Padfield* British Constitutional Law Made Simple, 1972, p. 222 *et seq.*; *Crombach*, Civil Liberties in England, DVBl. 1973, p. 561 *et seq.*; *Dicke*, Englisches Verfassungsverständnis und die Schwierigkeiten einer Verfassungskodifikation, DÖV 1971, p. 409 *et seq.*; *Raschauer*, Die Gesetzeskontrolle im britischen Recht, Der Staat 13 (1974), p. 245 *et seq.*

² Cf. *Dicke*, loc. cit.; *de Smith*, Constitutional and Administrative Law, 2nd ed. 1973, p. 27 *et seq.*

³ Cf. *de Smith*, op. cit., p. 92 *et seq.*

⁴ Cf. *Daintith*, op. cit., p. 299 *et seq.*; *de Smith*, Statutory Restriction of Judicial Review, Modern Law Review, 18 (1955), p. 575 *et seq.*

⁵ *Reg v Home Secretary, ex parte Bhajan Singh*, (1975) 3 WRL 231 (Lord Denning).

⁶ Cf. *de Smith*, Statutory Restriction of Judicial Review, Modern Law Review 18 (1955), p. 577 *et seq.*

⁷ *De Smith*, op. cit.; *Bentil*, Disregarding the Finality of a Determination by Statutory Authorities and the Order of Certiorari, Public Law 1973, p. 80 *et seq.*; *Marshall-Yardley*, Constitutional Jurisdiction in the United Kingdom, ZaöRV 22 (1962), pp. 542 *et seq.*, 554 *et seq.*; *Lord Salmon*, The Law and Individual Liberty (The Thirty-Fourth Haldane Memorial Lecture Delivered at Birkbeck College, London, 3rd December 1970), p. 5 *et seq.*

⁸ *Bradley*, Judicial Protection of the Individual against the Executive in Great Britain, Gerichtsschutz gegen die Exekutive, Vol. 1 (1968), p. 345.

⁹ See in detail *Bradley*, op. cit., p. 327 *et seq.*

¹⁰ Cf. e.g. Council of Europe, Newsletter on legislative activities, No 19, June 1975, and *The Times* of 18.3.1975. See also *Lord Salmon*, op. cit., p. 9.

Assessment

This cursory survey of the protection of fundamental rights within the Member States of the European Communities permits certain initial inferences to be drawn, and findings made. By way of simplification it can be said that many common features of principle contrast with deep-rooted differences in the manner in which these fundamental rights have been elaborated amongst the Member States.

The thinking on fundamental rights in all Member States has been largely shaped by the historical development of fundamental rights and by an understanding of them as rights protecting the individual against undue encroachment by the State, and notably by the executive. In the unwritten law of the British constitution, the experience of centuries of British constitutional struggles has a continuing effect in the field of fundamental rights. The present-day guarantee of fundamental rights in French constitutional law is formally linked with the French Revolution, by the references in the current Constitution to the Constitution of 1946 and the Declaration of human and Civil Rights of 1789. The constitutional provisions of other European States, such as the Belgian Constitution, also date back to a considerable extent to the first half of the last century. Constitutional re-formulations of fundamental rights, as in the Federal Republic of Germany, in Italy and Luxembourg, as a rule contain, in so far as protected fundamental rights are concerned, no fundamental changes in relation to the past. Overall, it could be said that in terms of constitutional history and of the history of thought the protection of fundamental rights within the Member States of the European Community manifests similar concepts and basic structures. They continue to have effect with undiminished vigour, and are at the same time reinforced by the international declarations and conventions relating to human rights. It is also worth mentioning that various currents of thought and movements can be discerned at national level, which tend further to develop the protection of fundamental rights. In the United Kingdom a formal Bill of Rights is being discussed. In France there are some signs that, contrary to traditional views, the activity of the legislature itself may be subject to some control as to its compatibility with fundamental rights, although only to a limited extent.

In the States under consideration, the protection of fundamental rights has been judicially secured to varying degrees. All the States of the European Community seem to be at one on the principle of judicial control as to the legality of executive action. While some States favour the principle of enumeration, that is the proposition that administrative acts can only be challenged in court in the cases provided for by law, other States make possible the judicial review of all executive action by means of a general provision. The need for judicial control of the executive, taken with the requirement of legality in all administrative action, is undisputed in principle and a common element in legal thinking in the States of the European Community.

The same cannot be said in relation to control over the legislature as regards respect for fundamental rights. The theoretically comprehensive and absolute power to review legislation vested in the Bundesverfassungsgericht of the Federal Republic of Germany is in contrast to the approach in other States, where the courts are always bound by the law and have no right to test its constitutionality. This view is axiomatic under British constitutional law, and it also prevails to some extent in France and the Benelux States, even though certain moves to restrict this principle can be detected. Italy, on the other hand, possesses in its Corte Costituzionale a tribunal of final instance which also controls in effective manner what the parliament does.

Closer consideration and assessment of the substance of guarantees in relation to fundamental rights and catalogues thereof reveal considerable differences between the States, and thereby disclose appreciable difficulties. In the United Kingdom, apart from the ECHR, there is no catalogue of fundamental rights whatsoever; guarantees of particular rights must be drawn from various instruments, from numerous statutes and recognized principles of law. In France, alongside rudimentary constitutional provisions, the Declaration of Fundamental Human and Civil Rights, the fundamental laws and the general principles of law evolved mainly by the Conseil d'État must be considered for the purposes of any survey. The other European States herein considered have more or less comprehensive catalogues of fundamental rights in their constitutions. The task of a complete survey of the fundamental rights in all these catalogues and of those of such rights which are only guaranteed by express provision in the constitution of certain of the States is no doubt an attractive one but cannot be undertaken here. Two guarantees are to be studied below, by way of example. More detailed consideration could be shown that certain rights which have a particular bearing on the personal responsibility and dignity of the human being—as for instance the freedom from arbitrary arrest, the freedom of belief and conscience, postal secrecy—are as a rule guaranteed. The more the rights of the individual are likely to conflict with the interests of the community, without any unequivocal provision for the former to prevail, the greater the discretion to elaborate entrusted to the legislature, whether on the basis of express reservation provided for in the catalogue of fundamental rights or under a general power of the legislature to draw the line in a manner exempt from judicial control between the personal sphere of the individual and the interests of the community. This is for instance true of the protection of property, where no legal system can dispense with some provision for expropriation, and the freedom of trade or occupation, which cannot have the same purport for every occupation, and which is closely linked to the economy in the State in question.

2. Protection of human rights in international law, in particular in the ECHR

For our purposes the ECHR is of particular significance in two ways; first, since the accession thereto of France in 1974, all Member States of the European Communities have been bound by the ECHR, so that its content reflects the common 'minimum standard' which the States with which we are concerned have undertaken to respect. To this extent the ECHR permits of definite conclusions as to what all Member States are unquestionably willing to grant by way of protection for fundamental rights. Secondly, there is the question whether, and, if so, to what extent, the European Community is bound directly by the ECHR.

No more than is the case with most of the national catalogues of fundamental rights can the guarantees of the ECHR be regarded as a system complete in itself and comprehending all the important rights of the individual organized convincingly and coherently. The position is rather that any catalogue of fundamental rights is as a rule, as in this case, simply a consolidation of various rights which historical experience and common belief have caused to be considered as particularly deserving of protection, and which are secured by means of differing formulations, limitations and reservations. Thus, in the ECHR are found predominantly the classical protective rights against particularly grave encroachments by State authority. The ECHR catalogue begins with the right to life in Article 2, followed by the prohibition on torture, slavery and forced labour, and the right to freedom from unjustified arrest and incarceration. These deal primarily with protection from the totalitarian and arbitrary measures of a police State; much the same is true of the rights protected by Article 6 of the ECHR in respect of legal proceedings, and of Article 7 (*nulla poena sine lege*). Then there is the guarantee of the right to respect for the privacy of the individual, including postal secrecy (Article 8), freedom of thought, conscience, and religion (Article 9), the right to free expression of opinion (Article 10), freedom of assembly and association (Article 11), the right to marry and found a family (Article 12). Article 14 contains prohibitions on discrimination. The First Additional Protocol has added to these rights of the Convention the protection of property, a right to education, and the guarantee of free and secret elections. The Fourth Additional Protocol guarantees, *inter alia*, the freedom of establishment and the freedom of movement. Most guarantees of fundamental rights in the ECHR and the additional Protocols are accompanied by possible and more narrowly circumscribed derogations therefrom; in this regard the respective paragraph (2) of Articles 8 to 10 of the ECHR are of special importance.

At this stage it is appropriate to make some remarks on the substantive importance of the ECHR guarantees for the European Communities. Some of the fundamental rights of the ECHR clearly predicate the existence of governmental machine having all-embracing and potentially boundless pow-

er, and would therefore have little bearing on the law of the European Communities, given their legal and actual limitations. The right to life, the prohibition of torture and slavery, the rights of the defendant or the accused in criminal proceedings, are, at the current stage of development, matters for the State alone, and not the Community. Most of the other rights of the ECHR could only come into conflict with Community measures in exceptional and borderline cases, as for instance the freedom of conscience and the freedom of opinion; the fact that in this respect conflicts cannot be entirely ruled out will be gone into below; but here one can scarcely speak of far-reaching threats to the individual from acts of Community authority. For the Community the following rights of the ECHR are more likely to be of importance: the right to form trade unions (Article 11), the protection of property (Article 1 of the First Additional Protocol), and the freedom of movement and freedom of establishment (Fourth Additional Protocol). On these points the protection of fundamental rights by the ECHR can acquire relevance in relation to the acts of Community organs in circumstances and situations likely to occur more frequently.

We shall consider below to what extent Community law and the judgments of the Court of Justice of the European Communities impose upon the Community institutions the obligation of compliance with the ECHR. For the time being we shall continue with this conspectus of the position of human rights in international law.

The proposition that State authority is in principle subject to no constraint under international law in relation to its domestic acts and its exercise of power in relation to its own nationals is now a thing of the past, and not only by reason of the ECHR. The protection of the individual against pressures and undue encroachment on the part of the State has found expression in a large number of provisions of international law.

It is not entirely free from doubt to what extent international customary law and the fundamental principles of the international legal system protect fundamental rights and the human rights of the individual. It does however seem to be increasingly accepted that unwritten international law guarantees a modicum of human rights and places upon States an obligation to respect them. The Declaration of Human Rights of the United Nations of 1948, even though lacking any binding character, is, at least to some extent and in conjunction with a large number of other international instruments, evidence that the exercise of State authority is subject to constraints of international law for the benefit of the individual. In any case this can be deduced from the United Nations Charter.

Although the Conventions on Human Rights of the United Nations of 1966 are not yet in force, it is probable that they will come into force in the near future.¹ A number of other

¹ The International Agreement on Economic, Social and Cultural Rights came into force on 3 January 1976; the International Agreement on Civil and Political Rights came into force on 23 March 1976. [Editor's Note]

worldwide conventions, such as the UN Convention on the prohibition of racial discrimination, has become binding in certain of the Member States of the European Communities as international treaty law. Then there are the Agreements of the International Labour Organization, the European Social Charter and other bilateral and multilateral agreements which cannot be individually listed and evaluated here. It should however be borne in mind that, apart from the ECHR, a considerable number of obligations arising under international law bind States to respect fundamental rights and place upon them a duty to uphold the rights of the individual.

3. Recognition of fundamental rights in the Treaties of the Communities and by the Court of Justice of the European Communities

The Treaties relating to the European Communities contain no catalogue of fundamental rights. It would however be wrong to infer that the Treaties ascribe no importance to fundamental rights and the rights of the individual, or even take no cognisance of them. The text of the Treaty certainly affords considerable scope for the rights of the individual and objective rules relating to his protection, notably, having regard to the chief objects of the Treaties, in relation to economic endeavour. Thus, the prohibition on discrimination between citizens of the Common Market for reasons of nationality forms part of the basis principles of the Treaties; it is emphasized as a principle in Article 7 of the EEC Treaty and thereafter explicitly in Articles 40, 45, 79 or 95 thereof; the provisions of Articles 85 *et seq.* on competition are concerned, *inter alia*, with prohibitions on discrimination and thus bear upon certain aspects of the principle of equality. The Treaty provisions on freedom of movement for workers (Article 48 *et seq.*) and the freedom of establishment (Article 52 *et seq.*) or even on the free provision of services within the Community (Article 59 *et seq.*) are closely related to the freedom to practise a trade or occupation and thereby to a fundamental right embodied in many national constitutions. The part of the EEC Treaty which relates to social policy (Article 117 *et seq.*) contains provisions on social aims, which can be considered together with the problem of social rights; Article 119 enjoins equal pay for men and women and thus deals with an aspect of the principle of equality which is extremely important in practice and which moreover touches upon the problem of the relevance of fundamental rights in relations between individuals (*Drittwirkung*). In this context it is neither possible nor necessary to consider the abovementioned provisions in greater detail. The fact is that the Treaties do contain scope and rules for fundamental rights of economic relevance, and in my opinion it is an important task for legal science and for practitioners to consolidate all the

rights and entitlements of the individual which are guaranteed explicitly or implicitly by the Treaties, and to examine in greater detail their ambit as well as the existing deficiencies. Apart from the provisions already mentioned, regard would need to be had to Article 220, which provides for negotiations to secure for Community citizens equality of treatment in further areas, but also to Article 222, whereby the Treaty shall in no way prejudice the rules in Member States governing the system of property ownership.

On the question of how far fundamental rights are already protected under the law of the European Communities, the judgments of the Court of Justice of the Communities naturally play a prominent part. The Court has the obligation to ensure that in the interpretation and application of the Treaty, the law is observed (Article 164); in so doing, it reviews, *inter alia*, the legality of the acts of the Council and the Commission (Article 173). Accordingly it is primarily from the judgments of the Court that we can establish how far fundamental rights and the protection of the rights and interests of the individual are currently available under Community law. The Court has on several occasions during recent years explicitly dealt with this question and the judgments in question have rightly attracted great attention. It should however not be overlooked that general legal principles play a major role in the practice of the Court even where fundamental rights are not specifically relied upon, and these general legal principles are seen, on closer examination, to contain much that corresponds or approximates to fundamental rights under national law.

In the meantime there are a number of publications in the field of legal science which deal with the importance of general legal principles in the law of the European Communities, and which find ample material in the judgments of the Court at Luxembourg. To name but a few from German learned writing: Feige has dealt in a monograph¹ with the principle of equality in EEC law. Lecheler has made a special study of general legal principles in the judgments of the European Court,² dealing, *inter alia*, with the principle of the legality of administrative action, with its implications for the revocability of administrative acts which are illegal but which have conferred a benefit, in the judgments of the Court of Justice, and has made full use of the impressive dicta on the principles of legal certainty, of good faith, the prohibition of discrimination and the duty to grant a fair hearing. Finally, Gottfried Zieger has also thoroughly analysed the judgments of the Court of Justice in relation to general legal principles.³ He considers the case-law under the following headings:

‘The principle of equality
in legislation relating to pricing
prohibition of special charges

¹ Feige, *Der Gleichheitssatz im Recht der EWG*, 1973.

² Lecheler, *Der Europäische Gerichtshof und die allgemeinen Rechtsgrundsätze*, 1971.

³ Zieger, *Die Rechtsprechung des Europäischen Gerichtshofs, eine Untersuchung der Allgemeinen Rechtsgrundsätze*, JöRNF 22, p. 299 *et seq.*

equality in the levying of public imposts
 equality in the European law governing officials
 The right to a hearing
Ne bis in idem
 Economic freedom
 The principle of proportionality
 Other fundamental rights
 Other principles based on the rule of law
 Principle of legal certainty
 Principle of administrative legality.'

This is not the place to discuss in detail the various components of this list. What is important is simply that it gives a picture of the general legal principles which play a part in the judgments of the Court of the European Communities, without encountering fundamental objections and difficulties. According to these judgments, which in this respect are unchallenged, the law of the European Communities which the Court of Justice has to apply includes not only the provisions expressly contained in the Treaty but also the unwritten principles widely acknowledged in systems based on the rule of law. In evolving general principles of law the Court has followed the example of national courts. The case-law of the French Conseil d'État mentioned above has, over the course of its long development, fashioned the most important principles to be observed by an administration which is subject to statutes and the law. In a similar way, although in a different context and in relation to a Community authority holding considerably lesser powers than a State, the European Court of Justice has developed appropriate legal principles; it can be assumed that the experience of the individual judges, derived from their own legal systems, has played an important part in this. The proximity of these decided cases to the problem of fundamental rights is brought out by another comparison. The Bundesverfassungsgericht of the Federal Republic of Germany, relying loosely on a small number of references in the text of the Constitution, has developed a whole series of constitutional requirements—such as the requirement of legal certainty, the principles of the protection of legitimate expectation (*Vertrauensschutz*) and of proportionality—and has brought them within the protection of the constitutional court under the procedure for objections on grounds of constitutionality. The relevant judgments of the Court of the European Communities do not refer expressly, or only do so very occasionally, to the requirement, imposed by the rule of law, of upholding the rights of the individual or fundamental rights; but in fact these are limitations laid upon Community authority primarily in the interests of the citizens of the Common Market.

Amongst the decided cases of the Court of the European Communities, there are four principal judgments which contain important fundamental statements as to the protection and the position of fundamental rights within the Community.¹ They have attracted a corresponding measure of attention. We must once again indicate their most salient features.

In *Stauder v Sozialamt der Stadt Ulm*² the Court, in a preliminary

ruling under Article 177 of the EEC Treaty, had to make its decision upon a relatively simple set of facts. They were that a person in receipt of war victim welfare benefits thought it wrong that, in order to receive butter at a reduced price as provided under Community law, he was obliged to state his name to third parties. The German administrative court to which appeal was made itself had doubts as to the legality of the provision in question. The very short judgment of the Court of Justice appears to acknowledge fundamental rights as part of the general principles of Community law, but holds that in that particular case, on a certain construction of the provision in question, no illegality was disclosed. The essential part of the judgment reads:

'The provision at issue contains nothing capable of prejudicing the fundamental human rights enshrined in the general principles of Community Law and protected by the Court'.

This was the earliest indication that fundamental rights are entrenched in Community law by means of the general principles of law. It must also be mentioned that in *Stauder* various fundamental rights and legal principles were canvassed as having possibly been infringed, namely the requirement of respect for human dignity as well as the principle of equality and the requirement to observe the principle of proportionality between the gravity of the interference in question and the needs of the Community. The Court did not elaborate on these points.

In a further fundamental judgment of 17 December 1970 in *Internationale Handelsgesellschaft v Einfuhr und Vorratsstelle*³ the European Court of Justice, again in a preliminary ruling under Article 177 of the EEC Treaty, made some statements of principle on the position of fundamental rights in Community law. The case concerned a Community regulation which provided for the forfeiture of deposits where export licences were not used, and which the exporter thereby affected, and the national court considered to be contrary to fundamental rights. The Court of Justice of the Communities stated:

'Recourse to legal rules or concepts of national law to judge the validity of instruments promulgated by Community institutions would have the effect of harming the unity and efficacy of Community law. The validity of such instruments can only be judged in the light of Community law. In fact, the law born from the Treaty, the issue of an autonomous source, could not, by its very nature, have the courts opposing to it rules of national law of any nature whatever without losing its Community character and without the legal basis of the Community itself being put in question. Therefore the validity of a Community instrument or its effect within a Member State cannot be affected by allegations that it strikes at either the fundamental rights as formulated in

¹ See especially the report of *Pescatore* for the Seventh Congress of the International Federation for European Law, Brussels, 2 to 4n October 1975.

² [1969] ECR 419 *et seq.*

³ [1970] ECR 1125 *et seq.* (but English text of quotation from the judgment taken from (1972) CMLR 283, the official English version not yet being published).

that State's constitution or the principles of a national constitutional structure.

An examination should, however, be made as to whether some analogous guarantee, inherent in Community law, has not been infringed. For respect for fundamental rights has an integral part in the general principles of law of which the Court of Justice ensures respect. The protection of such rights, while inspired by the constitutional principles common to the Member States must be ensured within the framework of the Community's structure and objectives. We should therefore examine in the light of the doubts expressed by the Administrative Court whether the deposit system did infringe fundamental rights respect for which must be ensured in the Community legal order.'

The Court of Justice finally decided that there had been no violation by the provision in question. What is of interest here, apart from the basic position taken by the Court of Justice as quoted above, are the fundamental rights alleged to have been infringed. These were primarily the principle of proportionality, then the right of the individual freely to carry on economic activity, and finally the fundamental rights of property and respect therefor. Even if we concur with the Court that on the facts of this particular case, these rights were not infringed, we must nevertheless appreciate that these rights by their very nature are particularly apt to be affected by Community authority.

The next judgment of the Court of Justice of particular importance, namely that of 14 May 1974, in *Nold v Commission*,¹ concerned the legality of regulations which precluded the applicant because of his modest turnover from receiving deliveries as a wholesale coal merchant. The Court once again laid down principles relating to the protection of basic rights.

'As the Court has already stated, fundamental rights form an integral part of the general principles of law, the observance of which it ensures. In safeguarding these rights, the Court is bound to draw inspiration from constitutional traditions common to the Member States, and it cannot therefore uphold measures which are incompatible with fundamental rights recognized and protected by the Constitutions of those States. Similarly, international treaties for the protection of human rights on which the Member States have collaborated or of which they are signatories, can supply guidelines which should be followed within the framework of Community law. The submissions of the applicant must be examined in the light of these principles.

If rights of ownership are protected by the constitutional laws of all the Member States and if similar guarantees are given in respect of the right freely to choose and practise their trade or profession, the rights thereby guaranteed, far from constituting unfettered prerogatives, must be viewed in the light of the social function of the property and activities protected thereunder. For this reason, rights of this nature are protected by law subject always to limitations laid down in accordance

with the public interest. Within the Community legal order it likewise seems legitimate that these rights should, if necessary, be subject to certain limits justified by the overall objectives pursued by the Community, on condition that the substance of these rights is left untouched. As regards the guarantees accorded to a particular undertaking, they can in no respect be extended to protect mere commercial interests or opportunities, the uncertainties of which are part of the very essence of economic activity. The disadvantages claimed by the applicant are in fact the result of economic change and not of the contested Decision.'

The regulations under challenge were finally upheld in this case also. However, it is important in this context that the Court once again, and more strongly, emphasized the fact that the Community organs are in principle bound to respect fundamental rights; these are a component part of Community law, the substance of which can be deduced from the guarantees relating to fundamental rights available in the Member States, and also—and this is novel—from the ECHR. What was in question here were, again, the protection of property, the prohibition of discrimination, the right freely to practise a trade or occupation and to carry on economic activity, and the principle of proportionality.

Meanwhile, a new decision of the Court dated 28 October 1975—Case 36/75, *Roland Rutili v The Minister for the Interior*²—has developed the previous case-law and evaluated and restricted the limitations on the freedom of movement for workers guaranteed by Article 48 of the EEC Treaty in the light of the European Convention on Human Rights.

4. General legal principles and the fundamental rights common to all Member States as necessary components of the law of the European Communities

As already pointed out, the basic Treaties of the European Communities do contain certain reference points for the protection of the rights and interests of the individual, but no catalogue of fundamental rights. The Court of Justice has in its judgments, despite this absence of explicit rules in the text of the Treaties, gradually developed and accepted a considerable number of general legal principles; and has, in the judgments cited above, expressed its attitude in a fundamental way on the significance of fundamental rights in Community law. Its position can be summarized thus: although in no case can national law, including fundamental rights arising under national constitutional law, claim priority over Community

¹ [1974] ECR 491, 507.

² [1975] ECR 1219.

law as an independent legal order, none the less as general legal principles the fundamental rights generally recognized in the Member States do form part of Community law, and, according to the Nold judgment in 1974, in establishing such rights the ECHR must also be considered. If despite these statements of the Court of Justice, the present state of affairs is regarded in various quarters as unsatisfactory, this may be attributable to more than one reason. For one thing, there is the apprehension, expressed by the constitutional court of the Federal Republic of Germany, that fundamental rights underlying national constitutional law are unprotected under Community law. Moreover, there is a danger that, given the increasing activity of the Community and its organs and the inadequate provision for fundamental rights in the Treaties, important interests of the individual will remain without protection. This in turn is bound up with doubts as to whether the Court of Justice has the jurisdiction and the capacity to develop its own appropriate form of protection of fundamental rights. These questions must be considered briefly at this stage.

There can be no doubt that from the point of view of Community law, there can be no question of national fundamental rights having validity and applicability. Even less would it be possible merely to add together the corpus of fundamental rights of the nine Member States and to have the entire scheme of provisions thus assembled made binding on the Community and its organs. Such an approach must contend with the fact that virtually all the catalogues of fundamental rights contain unique features and are subject to limitations formulated in different ways by reason of national and historical phenomena, and that these cannot be transferred *in toto* and cumulatively into Community law, if the Community is not thereby to become paralysed. The independent character of Community law precludes any direct recourse to national fundamental rights.

Furthermore, every international and supranational legal system (just like any national legal system) will require its written law to be supplemented by general legal principles and legal concepts shared by the Member States. In international law this necessity has found expression in Article 38(1)(c) of the Statute of the International Court of Justice. I have, in another context, already pointed out that international administrative courts, particularly the administrative courts of the United Nations and the International Labour Organization, have of necessity evolved and applied appropriate general legal principles.¹ The judgments of the international administrative courts contain ample support for the view that the general legal principles of national legal systems must be observed in the elaboration and application of the internal law of the organization in question. General principles of national administrative procedure and of judicial control of State acts are correctly considered by the courts as also being necessary parts of the international legal system. The requirement of 'due process of law', the duty to grant a hearing, the maxim *audi et alteram partem*, the inherent constraints upon administrative discretion and the judicial review thereof, the principle of pro-

portionality, and further basic legal principles are also applicable to the internal law of international organizations; and the administrative courts rightly assume it to be their duty to ensure that these principles are respected.²

If the matter is looked at in this way, it is not only not unusual but is perfectly natural that the Court of Justice of the European Communities also derives general legal principles, including the underlying guarantees of fundamental rights, from the legal systems of the Member States, and applies them, and that all Community organs are bound to respect these legal principles.

In order to serve any practical purpose this fundamental statement needs more specific elaboration, and in this considerable difficulties will have to be overcome. Whenever there is the possibility that any fundamental rights have been affected, careful scrutiny is requisite to establish how far a fundamental right is directly recognized within the treaty law of the Communities, to what extent and in what form it is to be encountered in the legal systems of the Member States, and how far it is possible to speak of any fundamental significance of the right in question and its implications. Such investigation, however, can hardly be avoided if a correct idea of legal concepts in the Member States is to be conveyed. In this context the ECHR ought also to be considered, since it contains a minimum of rights recognized by all Member States. At the same time, we agree with the judgment of the Court of Justice in Nold, in that the mention of the ECHR is only a supplementary one, since the contents of the ECHR are not identical with the legal principles recognized by Member States of the EEC.

Finally, we shall briefly discuss the question of the direct applicability of the ECHR to Community organs. The Court of Justice of the European Communities in its judgment of 12 December 1972 *re* International Fruit Company³ has, as is known, declared that the Community is bound directly by the provisions of GATT; and it has been discussed on various occasions whether and to what extent the view of the Court of Justice as expressed in that judgment can be applied to the ECHR. In my opinion, there are strong arguments against the ECHR having direct effect against Community organs. The ECHR contemplates only States as parties thereto, and the organizational structure (Commission, Court of Justice and Committee of Ministers) provided for therein is designed for States as parties to the Convention. Even under the law of the EEC itself (cf. particularly Article 234 of the EEC Treaty) there is no requirement that the Community need be assumed to be bound directly by the Convention. The appropriate solution, and that conforming to international law, can be achieved by other means. The ECHR, as treaty law recognized as binding upon them by all Member States of the EEC, contains

¹ Cf. Bernhardt (-Mehsler), Qualifikation und Anwendungsbereich des internen Rechts internationaler Organisationen, Heft 12 der Berichte der Deutschen Gesellschaft für Völkerrecht, 1973, pp. 7 *et seq.*, 29 *et seq.*

² *Ibid.*, with further references.

³ [1972] ECR 1219 *et seq.*

underlying legal concepts common to them all, relating to the necessary protection of the individual; and by virtue of this the prerequisites for the existence of general legal principles under EEC law are met. This does not, however, preclude the possibility that more extensive fundamental rights are present in the law of the nine Member States, which are to be considered as general legal principles of these States, and in such case the protection of fundamental rights under Community law goes beyond that of the ECHR. There are further reasons in favour of the proposition that the ECHR is relevant to the EEC only in an indirect manner; for instance, only in this way will the individuality in actual and in organizational terms of both legal orders be preserved. We cannot go into this more deeply here, and a few observations will suffice. As already mentioned, the human rights guaranteed by the ECHR, by reason of their substantive nature, primarily affect the signatory States. An infringement by the Community organs of most of the fundamental rights of the individual as contained in the ECHR is improbable or impossible. In so far as the rights under the ECHR can have relevance in Community law, the Court of Justice of the European Communities can cite them as principles common to the Member States, and in this connection it can and should take into account the decisions and the practice of the ECHR organs. If the Community were, however, to be bound directly, this would be incompatible with the organizational provisions of the ECHR, and provoke conflicts of jurisdiction. On the other hand, any divergencies between the judgments of the Court of Justice of the European Communities on the one hand and the decisions of the ECHR organs on the other would then become less important.

Considerations similar to those in relation to the ECHR will obtain in relation to other rules and agreements of international law. Treaties to which Member States of the EEC are parties, for instance the agreements of the International Labour Organization, or—after its coming into force—the Human Rights Charter of the United Nations, have to be taken into account when considering whether individual fundamental rights are part of general legal principles. Here, it is not always necessary that all the EEC Member States should be bound by the individual conventions. In so far as national law accords with the convention in question without the State in question being bound thereby, then there can be deduced from the combination of treaty and national law a general principle which will have to be respected in Community law. A certain flexibility is inevitable here, and is in any case appropriate, since in any individual case it will have to be established from a large number of relevant aspects how far a rule can be regarded as a general legal principle.

In such an assessment of written Community law, of the principles of the national law of the Member States, and of the binding provisions of international law, it seems likely that all the fundamental rights which are deemed inalienable will be considered as part of Community law to be respected and applied by the Community organs. It is hard to believe that any grave deficiencies continue to subsist in the protec-

tion of fundamental right. In any event, contrary to the view of the German Bundesverfassungsgericht, any lack of protection of fundamental rights within Community law is not apparent, or is, to say the least, unlikely, in the light of our understanding of the current position.

III — Comparative legal study of certain fundamental rights

Preliminary

We shall now explore in greater depth the question whether an assessment from the point of view of comparative law of national provisions on fundamental rights can furnish assistance or advice for evolving 'European' fundamental rights, and we shall proceed by considering individual fundamental rights. For this purpose we can discuss only two fundamental rights, or, as the case may be, legally protected rights of the individual. It would be wrong to select such rights on the basis of ease of comparison between States, and it seems more appropriate to select fundamental rights which would be likely to play a greater role in the context of the European Communities. Some of the classical fundamental rights, such as protection from arbitrary arrest or even the freedom of religion, are more readily comparable, but largely unimportant in the EEC context. Those fundamental rights which are of special importance for the European Communities are on the other hand harder to identify and compare; but an attempt to review them must be made.

The freedom to exercise one's trade or occupation is of prime importance in a Community whose object is economic integration transcending national frontiers. In what follows we shall therefore explore a major aspect of the general freedom to exercise a trade or occupation, namely the freedom of economic activity (*Gewerbefreiheit*), and the manner in which it is regulated by law within the Member States of the EEC. This right is, however, inseparably linked to the whole economic system of the State in question; and this creates additional difficulties in a comparative survey. Once again it must be stressed that the time at our disposal permits only of a very cursory glance at the relevant legal provisions of the nine Member States of the EEC, and no doubt experts from the relevant countries could suggest improvements in many respects.

In addition to the fundamental rights expressly formulated and reasonably clearly defined, general precepts or legal principles play an important part in most legal systems. This has already been demonstrated more than once in the course of this study, notably in connection with the discussion of the development of fundamental rights in France, as well as in the reference to the judgments of the Bundesverfassungsgericht on the requirements of the rule of law, and finally in the survey of the legal principles which have been evolved in the judgments of the Court of Justice of the European Communities for the purposes of these Communities. It seems appropriate to bring into the following survey a legal principle which can be of special importance for the position and protection of the individual and which has on various occasions

had a part to play in the judgments of the Court of Justice at Luxembourg. It is the problem of how far public authority may interfere with the rights of the individual which are already established. This question is extremely important, and just as hard to answer unequivocally. On this subject too, it should be said that in what follows allowance will need to be made for shortcomings and deficiencies.

1. Freedom of economic activity

In the wide variety of possible activities by way of trade or occupation, freedom of economic activity occupies an important position. By this right we mean the freedom to pursue on one's own account the business of manufacturing, supplying services, or of buying and selling with the object of participating in economic life and achieving profits. The essential features of the relevant legal rules of the Member States of the European Communities can be described as follows.

Belgium

Freedom to carry on economic activity as part of the freedom to practise a trade or occupation is not expressly provided for in the Belgian Constitution. Earlier writers sometimes sought to deduce it from Article 7 of the Constitution ('La liberté individuelle est garantie').¹ This view has now been abandoned. Prevailing opinion sees in Article 7 a guarantee merely of the 'liberté d'aller et venir', corresponding to the English *habeas corpus*.² This restrictive interpretation of Article 7 of the Constitution is confirmed by the various attempts to amend the Constitution as regards fundamental economic rights. As late as 1954 Parliament saw no necessity for a constitutional amendment to this end. Within the relevant Committee of the Chamber it had been pointed out that the then current text of the Constitution contained no guarantee of freedom of economic activity, but that had been no bar to appropriate legislative development. To incorporate economic fundamental rights into the Constitution was deemed to be superfluous³ and ineffectual, since provision for such economic fundamental rights would still have to leave to the legislature extensive powers of regulation.⁴ Although a Declaration of 1968 acknowledged the necessity of amending the Constitution 'par l'insertion de dispositions relative aux droits économiques et sociaux', no such constitutional amendment

¹ References in *Dor and Braas, Les nouvelles, corpus iuris belgici*, Vol. 2, 1935, paragraph 143; further *Perin, Cours de Droit Public*, Vol. 3, 1967, pp. 59, 73.

² References in *Buchmann and Buttgenbach, Revue de droit international et de droit comparé*, 27 (1950), p. 154; *De Visscher, Annales de droit et des sciences politiques*, 12 (1952), pp. 310 *et seq.* 315; *Wigny, Droit constitutionnel*, p. 389 *et seq.*; *id.*, *Cours de Droit Constitutionnel*, p. 177; *Vlaeminck, Le Droit constitutionnel belge*, 5th ed. 1966, p. 70.

³ Cf. the *de Schryver Committee Report, Chambre 1952-1953, Doc. 693*, p. 33.

⁴ Chiefly *De Visscher, Annales de droit et des sciences politiques*, 12 (1952), p. 315 *et seq.*

has so far been effected because of heavy pressure of other business on the legislature in its constitution-amending capacity.¹

In the absence of such a constitutional basis, the courts found the right to freedom of economic activity upon Article 7 of the French Decree of 2 March 1791 and Article 2 of the Law of 21 March 1819.² Article 7 of the Decree of 2 March 1791 reads, 'Il sera libre a toute personne de faire tel négoce ou d'exercer telle profession, art ou métier qu'elle trouvera bon; mais elle sera tenue de se conformer aux règlements de police qui pourront être fait'.

Règlements de police in the implementation of this provision are therefore capable of restricting freedom of economic activity, but could not abolish it completely, as they would thereby go beyond mere implementation. This could, however, be achieved by statute, as the legislature is not subject to any restriction if it wishes to disregard some other ordinary statute (here that of 1791). Belgian learned writing contains no comprehensive portrayal of the current exceptions from the right to freedom of economic activity. None the less a brief glance at Belgian ordinary statute law makes it clear that there are, for instance, State monopolies, as in the field of broadcasting and telephone communications (Law of 14 May 1930). The Constitution furthermore contains no restrictions as to the establishment of State economic enterprises, so that here also, as a pure matter of fact, freedom of economic activity could be undermined.³ Finally, entry to certain occupations is in many cases regulated, whether to ensure professional qualification (as for instance with doctors and pharmacists), or to preserve economic balance (as with trade and crafts), or to protect third parties (as with banks, insurance undertakings).⁴ The lengths to which statutory regulation can go here is perhaps shown by a law of 22 April 1948,⁵ which prescribed a set-off of profits and losses amongst the different coalmining enterprises and provided at the same time that any coalmine which was closing down would continue to be worked by the State on its own account.

Judicial protection to ensure the legality of administrative action within the field of freedom of economic activity is guaranteed in principle. We can refer to what is said above. There is, in addition, legal protection available within the administration: first the informal application for legal redress in the shape of the submission of grievances (Gegenvorstellung) or appeals to higher authority (Dienstaufsichtsbeschwerde); then there are the formal appeals also to be brought within the administration. These are individually prescribed by statute. An appeal to the courts, in particular to the Conseil d'État, is possible only in cases where the prescribed formal appeals within the administration have been made without success.⁶

Denmark

Denmark has no fundamental right to freedom of economic activity entrenched in the Constitution. Neither from the con-

stitutional duty upon the legislature to abrogate any discriminatory statute governing occupations (Article 74), nor from the right to work entrenched in Article 75 (1), can such a fundamental right be inferred. Only indirectly is a person exercising economic activity protected by Article 73 of the Basic Law (right of property). Thus the withdrawal from such a person of his trade licence can amount in certain circumstances to an interference with his rights of property.

Each individual has a right to obtain a trade licence, if he fulfills all criteria prescribed in the statute relating to trading. If he is refused such a licence in spite of his fulfilling all the criteria, he may sue in court for the issue thereof. This will not be the case, if—as is provided in specific cases—the authorities in question have been given a measure of discretion in the issue of a licence.

There are in principle no general restrictions on commencing and carrying on economic activity. The specific criteria for the issue of a trade licence are set out in the Trade Law of 8 June 1966. There are particular areas (private Bereiche) which are almost completely under State control and supervision.⁷ The State also participates to a modest degree in economic life directly; chiefly, however, in the field of public services, such as railway and local transport undertakings, and postal and telegraph services. The organizations in question are either directly incorporated into the administration or the undertakings are carried on as joint stock companies under private law in which the State holds a majority of the shares and to which it has granted the appropriate concessions. Finally there are various statutes relating to unfair competition and monopolies which curtail to some extent the autonomy of the private sector. Actual nationalizations have not yet taken place.

Federal Republic of Germany

The Basic Law of the Federal Republic of Germany contains, in the part dealing with fundamental rights, various provisions which are of importance for the individual's economic activity. Thus the freedom for personal development guaranteed in Article 2 extends, according to prevailing learned opinion, also to certain areas of economic activity, *inter alia*, to freedom of contract. Article 9 protects the formation of economic associations. Article 14 contains a guarantee of property; Article 15 allows, under certain circumstances, nationalization (Überfüh-

¹ On the so far unsuccessful attempt to amend the Constitution as regards fundamental economic rights, see especially—with further references in each case—*de Stexhe*, La révision de la constitution belge, 1968-1971, 1972, p. 349 *et seq.*; *Wigny*, La troisième révision de la constitution, 1972, p. 406 *et seq.*

² Cour de Cassation, 18 June 1906, *Pasicrisie belge* 1906, I, 311; cf. *Wigny*, *Cours de Droit Constitutionnel*, p. 177; *Vlaeminck*, *op. cit.*, p. 70.

³ See *Buchmann*, *Buttgenbach*, *Revue de droit international et de droit comparé*, 27 (1950), p. 160 *et seq.*

⁴ Cf. *Wigny*, *Cours de Droit Constitutionnel*, p. 177; *id.*, *Droit Constitutionnel*, p. 389 *et seq.*; *Buchmann* and *Buttgenbach*, *op. cit.*, p. 161 *et seq.*

⁵ *Pasimonie* 1 1948, Collection complète des lois, Arrêtés et règlements généraux.

⁶ Cf. the report of *Velu*, *loc. cit.* and *Mast*, *Précis de droit administratif belge*, 1966, p. 306 *et seq.*

⁷ Cf. *Andersen*, *Dansk Forvaltningsret*, 5th ed. 1966, p. 79.

rungen in Gemeineigentum). Of cardinal importance for our purposes is Article 12(1) of the Basic Law:

‘Alle Deutschen haben das Recht, Beruf, Arbeitsplatz und Ausbildungsstätte frei zu wählen. Die Berufsausübung kann durch Gesetz oder aufgrund eines Gesetzes geregelt werden.’

This constitutional provision has led to copious case-law from the Bundesverfassungsgericht. Of particular importance was and still is a judgment of 11 June 1958,¹ in which the constitutional court described in greater detail the extent to which freedom of trade or occupation could lawfully be regulated by statute. Since then, the Bundesverfassungsgericht has continued to follow the views evolved in this judgment, while at the same time it has in a large number of further judgments defined more closely where the line is to be drawn between lawful and unlawful interference with the freedom to choose one's trade or occupation.² The ‘philosophy’ of the constitutional court can be described as follows: interference with the freedom of trade or occupation is lawful for the purpose of safeguarding important public interests, but only by a process of weighing up the public interests at stake against the individual's freedom of personal development. Here, the court has evolved a ‘graduated levels approach’ (‘Stufentheorie’), which distinguishes between three main levels where interference is permissible under conditions which become increasingly stringent from one level to the next. The first level relates to the *exercise* of occupations, that is, to the specific circumstances under which any activity, which is lawful in principle and open to any person, may be regulated by statute. Here we have the provisions relating to industrial safety, working conditions, requirements of hygiene or measure for the protection of the environment. In the case of such provisions the individual may therefore carry on a specific activity, but must, so far as the practical aspects are concerned, comply with certain requirements. Here the legislature is given a considerable measure of discretion. The second level relates to what are termed the subjective qualifying conditions (sogenannte subjektive Zulassungsbedingungen). These are conditions which the individual must personally satisfy in order to take up and practice a trade or occupation. Examples of this are passing the requisite examinations for the practice of medicine or pharmacy and the personal requirements imposed on a driver or a hotel-keeper. At the level of the subjective qualifying conditions interference is only permissible in so far as important public interests are at stake and in need of protection. The third level relates to what are termed the objective qualifying conditions. Here, decisions as to whether any person may embark on any particular activity are made by reference to objective criteria which the individual cannot influence. For example, only a limited number of persons are permitted to become chimney-sweeps, taxi-drivers or surveyors. Such interventions restrict the individual's right to free development in a particularly serious way and in the judgments of the Bundesverfassungsgericht they are only permitted in terms of constitutional law for the purposes of safeguarding pre-eminent community interests.

The constitutional court has applied these principles to numerous occupations in a manner which has attracted not only approval but also considerable opposition. We cannot here go into detail; and the exceptions in the case of certain professions linked in a particular way to the State (such as notaries) cannot be considered here. The State organs must however take into consideration a large number of points of view and criteria when regulating professional activity, and in the final analysis the Bundesverfassungsgericht will determine in binding manner the intervention which the legislature may undertake. It follows from what is said above that each individual case is subject to judicial control.

These comments on the law of the Federal Republic must suffice. The constitutional formulations of the Basic Law are particularly apt to demonstrate the possibilities and the limitations of incorporating the right to freedom of trade or occupation in a catalogue of fundamental rights. The fundamental right itself can be relatively easily and clearly defined. Given that economic life can take so many different shapes and that society makes a variety of demands, the freedom of trade or occupation can hardly be constitutionally guaranteed without allowing to the legislature by means of explicit or implicit reservations a measure of discretion in the elaboration by statute of these rights—going as far as the power to prohibit individual activities or to set up State monopolies and to nationalize parts of the economy. The conditions for lawful intervention can hardly be particularized in the catalogue of fundamental rights, and certain generalized provisions would be unavoidable. It seems all the more important therefore that some judicial authority should have the power to review the acts of the legislature, and of the executive, and, if necessary, to correct them, if the fundamental right is not to be left entirely at the mercy of the legislature.

France

Although the Preamble to the Constitution of 1946 does not list the right to free economic activity among the ‘principes sociaux’, the judgments of the Conseil d'État proceed on the footing that the ‘liberté de commerce et de l'industrie’ and the ‘liberté de l'activité professionnelle’ are fundamental principles.³ The Council d'État relies on the one hand on the constitutional assurance in the Constitution of 1848 and on the other hand on a decree of 1791 on freedom of economic activity: ‘Il sera libre à toute personne de faire tel négoce ou

¹ BVerfGE 7, 377.

² Cf. BVerfGE 39, 210 (225 *et seq.*).

³ Cf. Schmid, Die Handels- und Gewerbefreiheit in der französischen Rechtsprechung, Diss. Tübingen 1965; Burdeau, *Libertés publiques*, p. 425 *et seq.*; Morange, Réflexions sur la protection accordée par le juge administratif à la liberté du commerce et de l'industrie, D. 1956, Chron. 117 *et seq.*; Mallen, *La liberté du commerce et de l'industrie, en droit français*, in: *La liberté du commerce et de l'industrie en droit public suisse et comparé*, 1954, p. 199 *et seq.*; Stahl, Die Sicherung der Grundfreiheiten im öffentlichen Recht der Fünften Französischen Republik, Veröffentlichungen des Instituts für International Recht an der Universität Köln 61 (1970) p. 268 *et seq.*

d'exercer telle profession, art ou métier qu'elle trouvera bon, mais elle sera tenue de se conformer aux règlements de police qui pourront être faits'.¹ The freedom of economic activity is nevertheless subject to extensive restriction. In the case of many undertakings there is no longer any freedom of economic activity, and they are carried on exclusively by State monopolies (for instance, PTT, tobacco, matches, gunpowder). Against the establishment of monopolies by the legislature no appeal will lie on the principle of the right to freedom of economic activity. The power of the legislature to establish such monopolies for police or fiscal reasons has never been doubted by French learned writers.² The Preamble to the Constitution of 1946 does only envisage nationalization for 'services publics nationaux'; these are predominantly banks, insurance undertakings, motor car manufacturers and the industries concerned with raw materials. Some of these nationalized public undertakings compete with the private sector (for instance Gaz et Electricité de France, Radiotélévision, Renault), and others have the character of a monopoly.

If however industrial or commercial activities are carried on by a public undertaking, only the legislature can confer monopoly status upon such activities.³ A *de facto* monopoly can come into being where the State acquires interests in private commercial undertakings and assists them by special measures. Moreover, where the private sector competes with public undertakings in the 'domaine public' the executive has the power to promulgate rules for the carrying-on of these activities, in order to secure optimal use of the 'service public'. This can go so far as to withhold any requisite permit from competing private undertakings, if competition could harm the public undertaking.⁴ Also, the right to freedom of economic activity does not in practice impose any constraints on the setting-up of public undertakings in competition with the private sector. Originally, this was only permissible if 'special circumstances, such as the ensuring of appropriate supply' justified such measures.⁵ To an increasing extent, however, the Conseil d'État has deemed it sufficient if any public purpose could be achieved by a public undertaking.⁶ The right to freedom of economic activity could only place constraints upon public authority to the extent that it acted exclusively for gain.

Pursuant to Article 37 of the Constitution of 1958, the executive is directly authorized to issue directives for the purpose of regulating the economy. In its judgment the Conseil d'État has however set certain limits to this law-making power of the executive in that it has numbered the 'liberté de commerce et de l'industrie' amongst the fundamental guarantees under Article 34 of the Constitution, which can only be regulated by Parliament.⁷ In this way it has for instance, declared illegal the issue of a permit to a film company subject to the condition that a State official held the right to take part in all meetings and to suspend the implementation of all decisions of company organs.⁸ Although a statute of 1946 empowered the authorities to make the grant of licences subject to conditions, the Conseil d'État nevertheless held that conditions of this kind could only be imposed on the basis of

explicit statutory provision. Accordingly, any fundamental intervention in this sphere of free economic activity will amount to regulating a fundamental principle within the meaning of Article 34; examples of such intervention are the introduction of marketing organizations for certain products; price restrictions, quota arrangements. This has been established explicitly in the judgment of the Conseil d'État of 28.5.1965 in relation to the quantitative limitation of petroleum imports.⁹ The executive will therefore retain the power to make provision, within the framework of the law, for the more detailed implementation of measures for the purpose of regulating the economy.

It is still an open question how far the 'liberté de commerce' sets limits to the power of the legislature to enact provisions for regulating the economy. In view of the necessity, widely recognized in France, of extending state intervention in the economy, the hypothesis is scarcely conceivable in which the Conseil Constitutionnel could declare unconstitutional a statute for regulating the economy.

The taking-up of a trade or profession, and the practice thereof, and economic activity, generally, are subject to the reservation of 'ordre public'.¹⁰ There are thus numerous restrictions based on statutes and regulations and designed to ensure the oversight of the way in which businesses are conducted, as for instance the Law of 19 December 1917 on the setting-up of undertakings which are dangerous, dirty, and cause disturbance. Restrictions can be made for moral, sanitary, economic or even general reasons relating to public safety. They range from the absolute prohibition on the carrying-on of certain kinds of trade (for instance no person may carry on the business of banking if he has a previous conviction for an offence relating to money) to the requirement for certain licences or particular evidence of competence to be given and finally to detailed rules for particular trades (pharmacists).

The courts distinguish between the freedom to exercise a trade or occupation ('liberté de l'activité professionnelle')¹¹ and the freedom to be admitted to a trade or occupation ('principes du libre accès à l'exercice par les citoyens de toute activité professionnelle').¹² In regulating the freedom to be admitted to a trade or occupation the executive is subject to appreciably more stringent constraints than in regulating the

¹ Dalloz, Code administratif, 1951, p. 771.

² Cf. Schmid, *op. cit.*, p. 14, Burdeau, *op. cit.*, 37, p. 437 *et seq.*

³ CE of 16.11.1956, Société des grandes huileries Perusson, RDP 1957, p. 351.

⁴ CE of 16.11.1956, Société Desaveine, Rec. p. 440.

⁵ Stahl, *op. cit.*, p. 271; Burdeau *op. cit.*, p. 437.

⁶ Loschak, Les problèmes juridiques posés par la concurrence des services publics et des activités privés AJDA 1971, p. 261 *et seq.*; Burdeau, *op. cit.*, p. 440; Stahl, *op. cit.*, p. 273; Colliard, Libertés publiques, p. 718 *et seq.*

⁷ CE of 28.10.1960, de Laboulaye, Rec. p. 570, further references in Stahl, p. 275 *et seq.*

⁸ CE of 29.7.1953, Société générale des travaux cinématographiques, Rec. p. 430.

⁹ CE of 28.5.1965, Société Mobil Oil française, Rec. p. 310.

¹⁰ Cf. for police restrictions in detail: Burdeau, *op. cit.*, p. 425; Morange, *op. cit.*, p. 117 *et seq.*; *seq.*; Colliard, Libertés publiques; Waline, Traité élémentaire de droit administratif, 9th ed. 1963.

¹¹ CE of 28.10.1960, de Laboulaye, Rec. p. 570.

¹² CE of 29.6.1963, Syndicat du personnel soignant de la Guadeloupe, RDP 1963, p. 1210; in general Stahl, *op. cit.*, p. 268 *et seq.*

manner in which a trade or occupation is carried on. Thus, the Conseil d'État has stated in several judgments that the administration may not prohibit the exercise of a trade or occupation or make it subject to conditions or to administrative licences having no statutory basis.¹ In regulating the exercise of a trade or occupation, the administration may however have full regard to 'ordre public'. It is therefore lawful to stipulate the opening hours for pharmacies for reasons of public health, to prohibit certain activities in slaughterhouses for the prevention of disease, or to place dairies under a duty to supply milk to large families at the preferential State price.²

It has been widely assumed from these judgments that the change in economic and social thought allows extensive restrictions to be imposed on the exercise of a trade or occupation. There can be therefore not only the traditional restrictions in the sense of supervision for the avoidance of dangers but also restrictions on grounds of social justice. The overall impression from French learned writing is that the 'liberté de commerce et de l'industrie' is a freedom which is controlled and guided to a considerable extent.³ It is epitomized by *Roche* as follows: 'Pur produit du libéralisme, la liberté du commerce et de l'industrie sans être abandonnée comme principe général de notre droit n'a cessé de dépérir en même temps que l'État étendait son contrôle sur l'économie'.⁴

Ireland

The Irish Constitution contains no provision explicitly guaranteeing the freedom of trade and occupation. The freedom of property guaranteed under Article 43(1)(2), which comprises 'the general right to transfer, bequeath and inherit property', may have some relevance to freedom of economic activity, but the question cannot be considered to have been elucidated by the courts.⁵ Freedom of trade and occupation could perhaps be protected as a 'personal right of the citizen' within the meaning of Article 40(3)(1).⁶ This also has still to be elucidated by the courts. Two cases dealing with the exercise of a profession are only concerned with the power of professional bodies to exclude members, and thereby to make it impossible for them to practice their profession. In the case of barristers a statutory provision ousting the jurisdiction of the ordinary courts has been held unconstitutional, though only by reference to the fundamental rights of justice (Justizgrundrechte) in the Constitution.⁷ In another case, the question whether Article 40(3) contained 'a right to earn a living' was expressly left open since in the case in question there was in any case no infringement of such right.⁸ If it be assumed that there is a guarantee of freedom of economic activity in Article 40(3) of the Irish Constitution, there is no doubt that statutory restrictions are possible to a considerable extent. What 'personal rights' are protected against interference by the legislature and the extent to which powers are available to restrict such rights cannot be regarded as settled, having regard

to the judgment of the Supreme Court in *Ryan v Attorney-General*, which was considered to be *avant-garde* by Irish learned authors.⁹ In this case, the Court allowed little discretion to the legislature to pass a statute which could affect the bodily integrity of the individual. On the other hand, in reviewing by reference to the guarantee of property (Article 43) legislation for the purpose of regulating the economy, the Court has in some decisions accorded the legislature considerable freedom. The Court's decisions are not, however, entirely consistent on this subject.¹⁰ All in all, we can speak of a constitutional guarantee in Ireland of freedom of economic activity, but one in relation to which the statutory powers to regulate have not been clarified. There are in fact numerous statutes regulating the freedom to take up a trade or profession.¹¹

In Ireland there also exist several State monopolies which preclude any activity on the part of the private individual, such as the production, distribution and sale of electricity.¹² In other areas, the State carries on economic activity but does not exclude parallel private sector activity. In large areas there is competition between public and private sectors, though it would be wrong to speak of any appreciable restriction of freedom of economic activity because of the existence of the State-run economic undertakings.¹³

In accordance with what has been said above on legal protection generally, any restriction on commercial activity which cannot be justified by statutory provision can be challenged in court. In many cases, particular statutes also make express provision for appeals within the administration and also to the courts.¹⁴

Italy

Trade or occupational freedom is not expressly mentioned in the Italian catalogue of fundamental rights, but can be deduced indirectly from numerous provisions of the Constitution, particularly from the text of Article 4(2):

¹ CE of 22.6.1951, *Daudignac*, Rec. p. 362; CE of 26.2.1960, *Ville de Rouen*, Rec. p. 154; CE of 15.10.1965, *Alcaraz*, Rec. p. 516.

² Examples and references in *Stahl*, op. cit. p. 270; *Burdeau*, op. cit., p. 429.

³ Cf. for instance, *Burdeau*, op. cit., p. 437; *Morange*, loc. cit., Chron. p. 117.

⁴ *Roche*, *Libertés Publiques*, 3rd. ed. 1974, p. 85.

⁵ Cf. *Kelly*, *Fundamental Rights and the Irish Law and Constitution*, 2 ed. 1967, p. 54 *et seq.*; *Barrington*, *Private Property under the Irish Constitution*, *The Irish Jurist* 8 (1973), p. 1 *et seq.*; *Temple Lang*, *The Common Market and Common Law* (1966), pp. 359-264.

⁶ *Boldt*, *Die Grundrechte in der Verfassung Irlands vom 29.12.1937*, Diss. Bonn 1968, p. 116.

⁷ *Boldt*, op. cit., p. 114 *et seq.*

⁸ *McDonald v. Bord na gCon*, 100 ILTR89 (1966), Supreme Court.

⁹ 1965, IR 294, Cf. *Kelly*, *Fundamental Rights and the Irish Law and Constitution*, 2 ed. 1967, p. 36 *et seq.*; also *Temple Lang*, *Private Law: Aspects of the Irish Constitution*, *The Irish Jurist* 6 (1971), p. 237, 252.

¹⁰ For a detailed account see *Barrington*, *Private Property under the Irish Constitution*, *The Irish Jurist* 8 (1973), p. 3 *et seq.*

¹¹ See references in *Boldt*, op. cit., p. 114.

¹² *Hegarty*, *The Control of Government and Business*, in *King* (ed.), *Public Administration in Ireland*, Vol. 3 (1954), p. 191.

¹³ Cf. on such competition *FitzGerald*, *State sponsored Bodies*, 2nd ed. 1963, p. 30 *et seq.*

¹⁴ Cf. from more recent legislation s. 5 of the Employment Agency Act 1971, No 27, and s. 10 & 11 of the Pawnbroker's Act 1964, No 31.

‘Ogni cittadino ha il dovere di svolgere, secondo le proprie possibilità e la propria scelta, un’attività o una funzione che concorra al progresso materiale e spirituale della società’.¹

Along with Article 4, Articles 41 (freedom of economic enterprise) and 33 (freedom of artistic and scientific endeavour, and the establishment of schools) must be considered.

The right to freedom of economic activity as a part of the freedom of trade or occupation is also not expressly guaranteed by the Italian Constitution, but Article 41(1) does provide for the freedom of private enterprise, a provision which embraces the right to freedom of economic activity.² This paragraph 1 may however be misconstrued, if it is not taken with the two following paragraphs of that Article, and with Articles 42 and 43 of the Constitution. The combination of these provisions allows a very considerable limitation to be placed on the freedom of private enterprise, which cannot be set forth here in greater detail.³ As examples of the very extensive economic activities of the State which create limitations on free enterprise we refer only to some of the industries which are operated in a semi-public way: ENI (petrol), ENEL (electricity), IRI (banks, radio, television, Alitalia, motorways, etc.).

Article 43 seems to be of special significance in relation to freedom of economic activity:

‘43. A fini di utilità generale la legge può riservare originariamente o trasferire, mediante espropriazione e salvo indennizzo, allo Stato, ed enti pubblici o a comunità di lavoratori o di utenti determinate imprese o categorie di imprese, che si riferiscano a servizi pubblici essenziali o a fonti di energia o a situazioni di monopolio ed abbiano carattere di preminente interesse generale.’

As has been shown above, there is comprehensive judicial protection against unconstitutional statutes and unlawful administrative measures, which will accordingly also be available in cases of infringements of freedom of economic activity. But as the legislature has given a considerable measure of discretion to regulate this freedom, the constitutional protection of the individual is as a result correspondingly slight.

Luxembourg

By a constitutional amendment of 21 May 1948, there was incorporated into the Constitution, *inter alia*, a guarantee of economic activity (*gewerbliche Tätigkeit*) as Article 11(6). This took place as a result of recommendations by the Conseil d’État, which expressed doubts as to whether the right to work, the incorporation of which had alone been envisaged prior thereto, would be apt to cover independent activity. The new provision reads:

‘La loi garantit la liberté du commerce et de l’industrie, l’exercice de la profession libérale et du travail agricole sauf restrictions à établir par le pouvoir législatif’.

Despite the twofold reservation this constitutional provision is of some importance. The legislature is entrusted with the task itself of defining the freedom of economic activity and of providing for the limits thereto and for possible derogations therefrom.⁴ State intervention in the economy is thus precluded in so far as the executive can no longer itself define the substance of the freedom of economic activity. Existing statutes will however remain in force until new legislation has been passed, in accordance with Article 11(6) of the Constitution.⁵ Directives having the force of statute, which were issued before the constitutional amendment, also may continue to limit freedom of economic activity.⁶

Since the Constitution guarantees the right to freedom of economic activity without elaborating on what its substance is, those enacting ordinary statutes enjoy considerable discretion to define and restrict such right. They are however prevented from abolishing it altogether.⁷ On the other hand, the courts themselves further limit any limitations on a fundamental right by means of the principle that restrictive provisions must be narrowly construed.⁸ The statutes elaborating and restricting freedom of economic activity can empower the administration to issue implementing regulations. These must however be within the ambit of the limitations which are possible by statute. Administrative regulations cannot be founded directly upon the power in the Constitution to impose limitations.⁹

Certain areas may be excluded from the freedom of economic activity. This follows from Article 11(6) of the Constitution. The learned authors in Luxembourg have not yet discussed how far such exclusion may go.

The Netherlands

There is no constitutional guarantee of trade or occupational freedom in the Netherlands. Nor do writers on constitutional law assume the existence of any unwritten constitutional principle to that effect.¹⁰ The State Commission for Constitutional Reform (Cals-Donner-Commission) has incorporated in its draft constitution a right to free choice of occupation:

¹ Cf. on Article 4 Corte Costituzionale, sentenga. 45/1965

² Cf. Corte Costituzionale, sentenga 16 December 1958 No 78 on the concept of the *iniziativa economica*.

³ Cf. in this respect *Mortari*, op. cit., p. 1013 *et seq.*; *Biscaretti di Ruffia*, op. cit., p. 721 *et seq.*; both with extensive references to other authors; and also *Lavagna*, *La Costituzione italiana, commentata con le decisioni della Corte Costituzionale*, Article 41, paragraph D (p. 555 *et seq.*).

⁴ Thus *Majerus*, op. cit., p. 82.

⁵ Thus, with reference to Article 120 of the Constitution, Conseil d’État, judgment of 29.5.1965, Pas. Lux. XIX, p. 528.

⁶ Cour supérieure de justice, judgment of 26.10.1955, Pas. Lux. XVI, p. 397.

⁷ Cf. the judgments on the right to strike defined by similar legal method (Article 11 (5) of the Constitution) Cour de Cassation, judgment of 24.7.1952, Pas. Lux. XV, p. 355; judgment of 15.12.1959, Pas. Lux. XVIII, p. 90.

⁸ Conseil d’État, Comité du contentieux, judgment of 2.7.1958, Pas. Lux. XVII, p. 319.

⁹ Conseil d’État, Comité du contentieux, judgment of 12.7.1957, Pas. Lux. XVII, p. 158.

¹⁰ Cf. the works cited above by *Belinfante*, *Kranenburg*, *Oud*, *Van der Pot-Donner*, and *Stellinga*, *Grondtrekken van het Nederlands Staatsrecht* 1953.

'Article 80(3): Het recht van iedere Nederlander op vrije keuze van arbeid wordt erkend, behoudens de beperkingen bij of krachtens de wet gesteld'.

In the view of the Commission, this provision covers work either as an employee or on one's own account. This article contains an extensive reservation, which lacks substantive definition: the right is recognized subject to reservations to be effected by statute or powers derived thereunder. Accordingly, choice of occupation will no longer be subject to restrictions based on general powers. It will however remain possible for, say, a local authority to regulate, by virtue of its powers of administrative autonomy, the actual carrying-on of trades or occupations.¹ The delegation of the power to impose restrictions is considered to be lawful also for the future.² It is worth noting that this proposed provision for fundamental rights is placed amongst the social fundamental rights, with the consequence that even according to the draft of the State Commission, judicial review of ordinary statutes by reference to this constitutional provision will not be permitted.

Until the new constitutional provision is promulgated, the regulating of the freedom of economic activity in the Netherlands is completely in the hands of those enacting ordinary statutes. We cannot set forth in detail here the extent to which in this way interference occurs in practice. What is certain however is that in the current state of the law most areas of economic activity are open to the individual, but greater and increasing interference cannot be ruled out.

United Kingdom

Freedom of economic activity is guaranteed under the British constitutional system as part of the freedom of conduct generally, as described above. The right to do whatever is not prohibited also applies to the economic activity of the individual. It is true however that freedom of economic activity is not one of those fundamental rights which have acquired particular features in constitutional practice. Thus only occasionally in learned writing is there mention of 'economic liberty'.³ Street in his fundamental study of fundamental rights in the United Kingdom⁴ deals with these questions under the heading of 'freedom to work'.

The fact that freedom of economic activity is guaranteed as part of the freedom of conduct generally does of course not imply that any person may take up and carry on any trade, since the legislature now increasingly regulates economic activity. The extent to which this should and may occur is, having regard to the legal situation as described, not a question of constitutional law but a political question. The two major parties have held and continue to hold different views on it.⁵ There is however a long tradition of regulating trade for reasons of public order. Thus, a licence is required for the taking-up of many occupations.⁶ The right to authorize the taking-up of a trade or profession may also be transferred to professional or trade bodies.

Where there are no statutory rules relating to the issue of licences the general right to freedom of economic activity can develop to the fullest extent. An example of this is the appearance of what are referred to as radio-cabs in British cities, in addition to the duly licensed taxis. A licence is only necessary for a driver who plies for hire on the streets, but not for one who is summoned by radio. Thus the radio-cabs have become established as a flourishing trade.

In the United Kingdom, major parts of the economy have been nationalized, especially after the Second World War.⁷ This nationalization extends in particular to the coal and steel industry, the supply of electricity and gas, and to major parts of the transport industry. Coal, electricity and gas are public sector monopolies and accordingly no trade can be carried on in these areas. In the transport industry, the area available to the private sector has been altered by statute on several occasions, and has been a subject of political controversy.⁸

Judicial protection is in principle available if the administration interferes without lawful cause with freedom of economic activity. Various statutes provide for particular appellate procedures. Even where such a procedure is not explicitly provided for, the courts can still review the administrative act in question. This will always be the case unless judicial control has been expressly excluded. From time to time however, there is criticism that in this regard legal protection is deficient in certain respects.⁹

In view of the fact that it is not possible to speak of a constitutionally secured freedom of economic activity in the United Kingdom and that everything depends on numerous and varied provisions, both statutory and extra-statutory, this short survey is sufficient for our purposes.

Assessment

Freedom of economic activity of the individual has, as the preceding conspectus shows, been expressly regulated under the Constitutions of the Federal Republic of Germany and of Luxembourg. Rudimentary or at least obscure points of reference for the protection of freedom of economic activity are

¹ This is deduced from Article 168 of the Gemeentewet: 'Aan hem (= de Raad) behoort het maken van de verordeningen, die in het belang der openbare orde, zedelijkheid en gezondheid worden vereischt...'

² Staatscommissie, Eindrapport, op. cit., p. 220 *et seq.*

³ Mitchell, op. cit., p. 343 *et seq.*

⁴ Cf. Street, Freedom, the Individual and the Law, 1963, p. 9 *et seq.*

⁵ Cf. on the one side Uiley, *The Principles of State Intervention. A Conservative View, Public Law, 1957, p. 203*, and on the other side Shore, *The Principles of State Intervention, A Socialist View, idem, p. 218*. On the problem of statutes conferring on the executive a discretion in questions of management of the economy, cf. Ganz, *The Control of Industry by Administrative Process, Public Law 1967, p. 93 et seq.*

⁶ Cf. the survey in Williams, *Control by Licensing, Current Legal Problems 20 (1967), p. 81 et seq.*; Street, op. cit., p. 238 *et seq.*

⁷ Cf. the survey in Tivey, *Nationalization in British Industry, 1966, especially p. 38 et seq.*; Kelf-Cohen, *British Nationalization 1945-1973, 1973, especially p. 19 et seq.*

⁸ Cf. Tivey, op. cit., p. 46 *et seq.*

⁹ Cf. Williams, op. cit., p. 102 *et seq.*

to be found in the Constitutions of France, Ireland and Italy. No relevant constitutional provisions appear in the Constitutions of Belgium, Denmark, the United Kingdom and the Netherlands; but for the Netherlands there is at least a proposal for the enlargement of the Constitution. In the case of all countries of the European Communities it is thus established that within the framework of an economic system oriented towards a market economy important areas of commercial venture and activity are privately owned and open to entry by the individual. It is also beyond doubt that the extent of State intervention and regulation varies from State to State, but that no State refrains from intervening in many different ways in the economic process and in the freedom of economic and commercial activity.

The right to choose freely and exercise a trade or occupation, especially in the commercial field, can be considered a common feature of the legal systems of the Member States of the European Communities. The EEC Treaty also proceeds on the assumption, *inter alia*, in its provisions relating to freedom of movement and establishment, that the individual is free to choose and determine his occupation largely on his own responsibility. Any comprehensive regulation of commercial or professional life would moreover be incompatible with any legal system based on liberties, and would go to the heart of the principle of personal development. For these reasons, any catalogue of fundamental rights for the European Community could hardly dispense with the fundamental right of freedom to carry on a trade or occupation (whether as an employee or on one's own account). Formulating such a right should not present any fundamental difficulty; existing fundamental rights at the national level, the rules contained in ordinary statutes, and the views arrived at by the courts, such as the French Conseil d'État, could be of assistance.

It is at the same time inevitable that the national legislature as well as Community authority will, to the extent of their competence in that behalf, intervene in the freedom of trade or occupation for regulatory purposes. This is happening continuously, as a glance at the national official gazettes and the Official Journal of the European Communities will show. These interventions occur at different levels and with varying degrees of intensity. In many States, State monopolies and nationalizations remove important areas from the ambit of the individual's right to choose freely an economic activity. In all States, there are certain occupations and activities which are reserved to persons in the service of the State. Many activities may only be taken up by government authority or permission. In the exercise of most trades or occupations various aspects of the public interest must be kept in mind.

The many forms of State intervention in the freedom of trade or occupation are governed by different motives and aims. Sometimes the intervention is prompted—as is the case with nationalization—by general ideas of a just and democratic economic system. On other occasions the factors governing the extent and purport of the restrictions placed on the free-

dom of trade or occupation are public safety and order, the protection of particular occupational groups, the protection of the immediate environment and of the environment generally. These are different concerns which can take various forms, but whose basic justification or reasonableness can hardly be disputed, and they cannot, in my view, be set out in any catalogue of fundamental rights as limitations on the freedom of trade or occupation in a manner which is comprehensive and at the same time sufficiently precise. There is therefore hardly any alternative to making any incorporation of a fundamental right relating to freedom of trade or occupation within a European catalogue subject to a reservation which would permit Member States and Community organs alike to make rules, to the extent of their competence at any given time, as to the limitation on the freedom of trade or occupation requisite for the life of the Community.

2. Protection of the legal right to rely on an established legal position

As mentioned above, it is sensible, in this discussion of certain fundamental rights taken by way of example, to select also an unwritten right or a legal principle serving to protect the individual. As is shown by the judgments for instance of the French Conseil d'État or the German Bundesverfassungsgericht or even the Court of Justice of the European Communities, it is by no means the clearly defined traditional fundamental rights which always play the most important part within the daily work of the administration and the courts; in practice it is rather the expression of general principles, such as legal certainty and constitutionality of administrative action that can be more important to the individual than for instance the freedom of belief and conscience. The importance of general constitutional principles will increase as sovereign authority intervenes more and more at national and supranational level for the purpose of regulating the economic process.

One of the most important questions in any constitutional system is that of the legality of State interference with rights of the individual which are already established. Part of the question has been clearly answered in the field of criminal law: most States accord protection as a fundamental right to the maxim *nullum crimen, nulla poena sine lege*; it even appears in the ECHR (Article 7). Here we are not concerned with this prohibition on retrospective criminal liability, but other problems are of importance for European Community law. For one thing, it is of great importance to know how far the legislature (including the law-making authority at European level) may impose on citizens liability of a retrospective nature; this is of special importance in fiscal legislation. Equally important is the question of the extent to which the rights of the individual once acquired or established may be set aside *ab initio* or in the future, whether by the legislature or by the executive; in relation to concessions, licences, etc. this may be

of cardinal importance for the economic existence of the individual. This question of the protection of the legal right to rely on the continuance of the legal position, and of established rights of the individual, will be explored below by means of comparative legal studies. This problem also is too complex to be treated here without over-simplification and certainly also incidental inaccuracy. However, a brief review should convey the possibilities and the limitations of what could be secured by an explicit fundamental right.

Belgium

There appears to be no prohibition in Belgium on alterations to the legal status quo to the detriment of the individual. The restrictions of Article 11 of the Constitution ('Nul ne peut être privé de sa propriété que pour cause d'utilité publique, dans les cas et de la manière établis par la loi, et moyennant une juste et préalable indemnité') are not capable of generalization. The right of property itself is subject to restrictive regulation in accordance with the concept of the individual's commitment to society (*Sozialbindung*): and as to the right to compensation under constitutional law, the protection it affords seems only to extend to immovable property, since those who enacted the Constitution clearly took *propriété* to mean only *propriété immobilière*.¹ There are, however, ordinary laws which provide for compensation for deprivation of moveable property.² Moreover, the Conseil d'État may recommend that compensation be paid for damage suffered by reason of lawful acts on the part of the State. At any rate we can find no general prohibition or substantive restriction on the power of the State to interfere with the rights of the individual.

There seems to be no bar to the retrospective application of statutes. Even in the case of retrospective fiscal legislation, its constitutionality is not questioned. At worst, it is considered bad politics.³

As to the power of the administration to revoke, or to modify to the detriment of the individual, licences lawfully issued, there is little in relevant Belgian learned writing to permit of precise conclusions. It seems however to be recognized that the administration may modify or revoke concessions on the basis of a statutory provision, if they relate to the 'gestion privée de service public', that is, the discharging of a task of the administration by private persons. This covers, for instance, the operation of railway or bus services.⁴ Moreover, it would appear that the withdrawal or modification of licences is lawful, at least on the basis of statutory provision, in cases where in principle there is freedom of economic activity. But this question is not the subject of any coherent exposé in Belgian learned writing, with the result that it is difficult to make unequivocal statements thereon.

Denmark

A general prohibition on the alteration of the legal position to the detriment of the individual exists neither as part of the Constitution nor in other statutes. Only in individual statutes are there provisions prescribing to any extent whether and in what circumstances an administrative act can, or must, be revoked and when not. Similarly, it is only in certain statutes that provision is made as to the extent to which an administrative act may be accompanied by a power of revocation.⁵ For the rest, the general principles established by writers and by the courts will apply. In this respect the following distinctions are to be drawn: Constitutive administrative acts (*konstitutive Verwaltungsakte*) governed by statute may be altered or revoked only to the benefit of the citizen. The reservation of a power of revocation is unlawful in the absence of any enabling statutory provision. Constitutive administrative acts which are in the discretion of the administrative authority may, if they impose a liability on the individual, be revoked at will; but they may also be altered to his detriment if the statute provides for the imposition of liabilities which exceed those imposed by the act in question. Discretionary administrative acts which benefit the individual may be revoked, unless, exceptionally, the reliance placed by the citizen on the continuance of the *status quo* must prevail. When acting within scope of any discretion conferred upon it, the administration may reserve a power of revocation. Declaratory (*feststellende*) administrative acts may only be altered to the benefit of the person concerned. The revocation of an administrative act cannot be justified by an error of fact—this is a risk which the administration must bear—nor by an error of law, if the administration mistakenly considered itself to be under an obligation, or by changes in the law brought about by the passing of a new statute. If however a substantial change in the external circumstances has occurred, or if the public interest so requires, revocation is possible, provided regard is had to the interests of the individual.

In the case of what are termed police licences, whereby a statutory fetter placed on the general freedom of conduct is removed in the individual case in question, the interests of the individual and the public interest in security and order oppose each other. If there is a threat to public security and order, the licence can as a rule be revoked or modified. But in cases where the legal position has changed appreciably, where there have been errors of fact or of law on the part of the administration, and where new statutes have been passed, the public

¹ Cf. *Dor and Brass, Les nouvelles*, Vol. 2, p. 83 *et seq.*; *Wigny, Cours de droit constitutionnel*, p. 186; *id. Droit constitutionnel*, p. 288; *Cour de Cassation*, 6 April 1960, *Revue critique de jurisprudence belge*, 14 (1960), p. 257-308 with note by *Dabin*.

² Cf. *Mast, Précis de droit administratif belge*, 1966, p. 144.

³ Cf. *Wigny, Droit constitutionnel*, pp. 127, 833 *et seq.*, 835 *et seq.*

⁴ Cf. *Buttgenbach, Manuel de droit administratif*, 1954, pp. 191, 201 *et seq.*

⁵ Cf. the list in *Andersen, Dansk Forvaltningsret*, 5th ed. 1966, pp. 494, 498.

interest will as a rule prevail, and then a licence granted unconditionally may be withdrawn. This principle will however apply only to a limited extent if the citizen concerned has already incurred particular expense in connection with the licence, e.g. as with construction and trading licences.¹

With the exception of Article 3 of the Penal Code, which states that any provision increasing penalties shall not have retrospective force, the Danish legal system contains no general prohibition on the retrospective application of statutes. Where the legislature deems it necessary, it may give statutes such retrospective effect. There is however a presumption that a statute is only to have effect for the future.² Regulations and administrative provisions can, as a rule, only have retrospective effect if the statute in question makes provision for this.³

Federal Republic of Germany

The comprehensive judicial protection of the individual against State interference in the Federal Republic of Germany has led to a large number of decisions on the question whether and to what extent legislature and administration may interfere with rights of the individual which are already established, and may modify the legal position, and also to a process of ever-increasing differentiation, which makes it difficult to draw the line correctly between those interferences which are lawful and those which are not. In this regard the text of the Constitution provides no help for the organs of State and for legal science; and it has been left to the courts, in particular the Bundesverfassungsgericht, to deduce the appropriate rules from the constitutional principle of the rule of law. At the level of ordinary statutes, there are a variety of different rules for the various areas, such as for the revocation of licences under the law relating to trade, for the withdrawal of approval in the case of a doctor or a pharmacist, etc. The courts have furthermore evolved general unwritten principles of administrative action in accordance with the rule of law which must also be observed. The most important distinctions in the current law of the Federal Republic of Germany will be described below.

The retrospective amendment of statutes to the detriment of the individual is, according to the judgments of the Bundesverfassungsgericht, fundamentally incompatible with the principle of the rule of law in the Constitution, and is therefore unlawful. This seemingly simple principle presents many difficulties in practice. Thus one speaks of a true and a false retrospective effect, and distinguishes between the respective categories; and in relation to amendments of statutes the matter does not always depend on the date upon which the statute is published, but a limited measure of retrospective effect is permitted in cases where the individual must have been able to foresee his position being adversely affected and could make arrangements accordingly. A recent decision⁴ summarizes the relevant principles as follows:

'Onerous statutes which interfere with transactions already completed in the past, and thus have a true retrospective effect, are generally contrary to the Constitution since they offend against the requirements of legal certainty and protection of legitimate expectation which form part of the principle of the rule of law.⁵ A statute is said to have false retrospectivity when it does not affect past transactions and legal relationships, but affects not merely future ones, but also, for the future, those not yet completed, thereby devaluing after the event the legal position as a whole.⁶ Such statutes are in principle permissible. The concept of protection of legitimate expectation may, however, in this case set limits, depending on the facts of the particular situation, to the power of the legislator.⁶

The citizen cannot invoke the protection of legitimate expectation as an expression of the principle of the rule of law if his expectation of the continuance of a legal situation cannot fairly claim to be respected by the legislator. The relevant considerations here are, on the one hand, the extent to which his legitimate expectations have been disappointed, and, on the other hand, the importance of the public good which the legislator is seeking to secure. They must be balanced against each other.⁷

In German constitutional law, seen as a whole, there is thus in principle a prohibition on giving retrospective effect to statutes which impose a liability, but this prohibition is somewhat mitigated by the consideration afforded to the protection of legitimate expectation and to overriding community interests. The principle of the rule of law is not opposed to statutory amendment *pro futuro*; but other constitutional provisions and principles, particularly the protection of property, can prevent statutory interference with the established rights of the individual.

Even more complicated is the legal position in relation to the power of the administration to interfere with the established rights of the individual, or to disappoint his expectations when they are well founded in law. Here, various overlapping legal considerations have a part to play: the lawfulness or otherwise of the existing situation, the protection of the legitimate expectations of the individual, and the weight of the community interests at stake. In the case of rights acquired contrary to law, the following distinctions are drawn: benefits contrary to law which are acquired by fraud, or by the fault of the individual in question, may be revoked retrospectively; payments made or services rendered by the State contrary to law without any fault can however only be withheld for the

¹ Cf. on all the above the comprehensive comments in *Andersen*, op. cit., p. 485 *et seq.*

² *Andersen*, op. cit., p. 27.

³ *Ross*, op. cit., p. 499.

⁴ BVerfGE 39, 128 (143 *et seq.*, 145 *et seq.*); cf. also BVerfGE 39, 156 (166 *s*) and, among earlier cases, e.g. BVerfGE 30, 272 (285 *et seq.*).

⁵ BVerfGE 30, 392 (401); consistent case law.

⁶ BVerfGE 30, 392 (402); consistent case law.

⁷ BVerfGE 14, 288 (301); 22, 241 (249); 24, 220 (230); 25, 142 (154); 25, 269 (291); 31, 222 (228 *et seq.*).

future, and no recovery claimed in respect of the past; finally, in exceptional cases the administration must, in accordance with decided cases, even allow a situation contrary to law to continue, if in the case in question the protection of legitimate expectation so requires. These rules have chiefly been evolved in relation to the payment of pensions. When the administration has acted lawfully, the power to revoke concessions, licences etc. is not without limitation, but such revocation is usually lawful where preponderant interests of the community so require, and the legal provisions in question so permit. The pre-conditions and the consequences of revocation of benefits or licences by the authorities will vary as to the area of human activity affected. It is easily perceived that for the protection of the community, a driving licence for a motor vehicle may be withdrawn from a person whose health is such that he is no longer fit to drive, the approval may be withdrawn from a doctor who is a danger to the public, and a pharmacist's licence may be revoked if he is addicted to drugs. An important provision is contained in Article 51 (1) of the Trade Act (*Gewerbeordnung*):

‘Wegen überwiegenden Nachteile und Gefahren für das Gemeinwohl kann die fernere Benützung einer jeden gewerblichen Anlage durch die zuständige Behörde zu jede Zeit untersagt werden. Doch muß dem Besitzer alsdann für den erneuerlichen Schaden Ersatz geleistet werden.’

The first sentence of this provision can perhaps be regarded as a general principle of law, even though the principle of the rule of law has caused it to be formulated explicitly in a statute. In a case of serious conflict between the interests of the community and rights hitherto enjoyed by an individual, the latter must bow to the former, although compensation is to be granted if necessary.

It should be clear that neither the principle of the rule of law whereby the rights of the individual are to be respected by public authority, nor the exceptions therefrom for the benefit of the community can be precisely formulated in any succinct fundamental rights provision; but general clauses are a possibility. According to the law of the Federal Republic of Germany the courts, and not only the *Bundesverfassungsgericht* but particularly the administrative courts, have the duty to be vigilant to ensure both respect for the constraints of constitutional law by the legislature and compliance by the administration with the unwritten and written norms and principles of the rule of law. This duty is discharged effectively, with the result that a body of case-law based on fine distinctions is becoming increasingly difficult to relate back to uniform principles.

France

As to the prohibition on the retrospective effect of the acts of sovereign authority:¹ in the judgments of the Council d'État it has been repeatedly stated that no administrative act may have retrospective effect prior to the date of its publica-

tion or gazetting.² The reason for this prohibition on retrospective effect lies in the principle of legal certainty. The citizen may not have imposed upon him any liability of which he could not have known at the time when he entered upon the activity in question. This prohibition, however does not apply where a statute contains an express provision to the contrary.³ The problem of retrospective effect must be distinguished from the application of an administrative measure to a situation which in legal terms had come into being prior to the adoption of that measure.⁴

As to the retrospective effect of statutes: under Article 2 of the ‘Code Civil’, there is a statutory prohibition on retrospective effect: ‘La loi ne dispose que pour l’avenir; elle n’a point d’effet rétroactif’. However, from this specific prohibition on retrospective effect for the purposes of the Code Civil, no general prohibition on retrospective amendment of statutes to the detriment of the individual may be deduced. The problem itself so far as we can see has not been more widely discussed in learned writing. This is due to the fact that until recently statutes could only under very restrictive conditions be reviewed as to their compatibility with the Constitution. From the principles relating to the retrospective effect of administrative acts it can however be inferred that there exists no statutory prohibition on retrospective effect. The Conseil d’État has allowed exceptions from the prohibition on retrospective effect of acts of sovereign authority, whenever the law expressly empowered the administration in that behalf.⁵ It may be inferred from this that a statute itself could be amended retrospectively to the detriment of the individual. A prohibition on retrospective effect for statutes would not in any case be in keeping with French legal tradition.

As to revocation of licences:⁶ French law proceeds from the principle that the administration can in the public interest always adapt its position to accord with new situations.⁷ Thus, regulatory administrative acts (‘actes réglementaires’) may always be revoked. The persons affected have no protection in respect of any reliance they have placed on the continuance of a regulatory provision. An individual act may however only be revoked at will by the administration, if it has not created a right (nicht rechtserzeugend). Acts not creating a right in this sense are deemed to include authorizations (‘autorisations’) and revocable measures (‘actes précaires et révoquables’).⁸ There is for instance no right to the continuance of a permit for the carrying-on of an activity within the ‘domaine public’. Furthermore, any act the object of which is of a provisional nature may be revoked. Even an act creating a

¹ *Debbasch*, op. cit., p. 332 et seq.; *de Laubadère*, *Traité de Droit Administratif*, 6th ed. 1973, Vol. 1, p. 300 et seq.; *Dupeyroux*, *La règle de la non-rétroactivité des actes administratifs*, 1954; *Letourneur*, *Le principe de la non-rétroactivité des actes administratifs*, *Études et documents* 1955, p. 37 et seq.

² CE of 25.6.1948, *Société l’Aurore*, D. 1948, p. 437, Note *Waline*.

³ CE of 14.11.1962, *Dupré de Pomarède*, Rec. 871.

⁴ Cf. *Debbasch*, op. cit., p. 333 with references from decided cases.

⁵ CE of 14.11.1962 *Dupré de Pomarède*, Rec. 871.

⁶ Cf. *de Laubadère*, op. cit., p. 322 et seq.; *Debbasch*, op. cit., p. 333 et seq.

⁷ CE of 25.5.1954, *Syndicat national de la meunerie à seigle*, D.1955, p. 49; CE of 27.1.1961, *Vaumier*, Rec. p. 6.

⁸ *Debbasch*, op. cit., p. 334.

right may be revoked if the law so provides. Similarly, revocation is possible if important changes have occurred in the factual or legal setting which militate against the continuance of the act.

The retrospective revocation of an act which has created a right is impossible. This is not so in respect of an act which has created no right. The revocation of an act contrary to law is possible, if it has not resulted in the creation of a right. In such case, revocation may be effected within the time prescribed for objection, or in the course of administrative court proceedings. The principle will apply that wherever a court may quash an act, the administration must likewise be entitled to do so.

Ireland

On the protection of rights which are already established under Irish law, no more detailed statement can be derived from Irish learned writing or case-law. It can probably be assumed however that the Irish legal system, in so far as it has not been amended by statutes passed after independence, continues to follow the principles of English law, admittedly with the important additional feature that a series of rights, which in the United Kingdom merely form part of the constitutional tradition and are at the mercy of the legislature, are constitutionally secured in Ireland. A general prohibition on the alteration of the legal position to the detriment of the individual, or individual particular prohibitions of this kind, cannot really be deduced from the Irish Constitution. Even the prohibition on statutes with retrospective effect exists, as has been said, only in relation to criminal law. As to the possibility of the revocation of lawfully issued licences, what is said in relation to the United Kingdom holds good here.

Italy

The question as to the lawfulness of alterations of the legal position to the detriment of the individual, as well as of the revocation or modification of lawfully issued licences to the detriment of the individual, as well as of the revocation of modification of lawfully issued licences to the detriment of the individual, arises in a special way in the Italian legal system, in that the character of the right concerned has a major part to play. The Italian legal system differentiates between four kinds of rights or legally protected interests, which attract differing measures of protection. The most strongly protected are the 'diritti soggettivi (privati e pubblici)' that is, subjective rights; they are defined as interests accorded by law to the individual exclusively, and thus enjoying direct protection.¹ These subjective legal rights cannot be affected or amended by the State.

The second group of rights and legally protected interests comprises the 'diritti affievoliti' or 'diritti esposti ad affievolimento',² that is, rights from which derogations have been or

can be made. These are subjective rights which could come into conflict with the interests of public administration. As long as this conflict does not arise, these rights have the same protection as subjective rights. If however such conflict does arise, the interests of the individual are subordinated to the public interest.³ This correlation of the right of the individual and the public interest can arise from the moment the right comes into being or only subsequently; in the first case the rights are called 'diritti affievoliti', and in the second 'diritti esposti ad affievolimento'. An example of typical 'diritti affievoliti' are the rights arising under concessions; and an example of the 'diritti esposti ad affievolimento' is the right of property, the 'affievolimento' of which may, in an extreme case, be expropriation. All fundamental rights to which a reservation attaches can generally be taken as examples of 'diritti esposti ad affievolimento'. The protection of the 'diritti affievoliti' is equivalent to that of the 'interessi legittimi', the third kind of right now to be described in detail.

The 'interesse legittimo' is an interest of the individual which is closely bound up with the public interest.⁴ If the public interest is a preponderant one the right of the individual must be subordinated thereto. This means that the administration may always revoke or modify at will any alteration in an individual's right where it is a 'diritto affievolito' or an 'interesse legittimo', if this is in the public interest.⁵ The fourth group of rights is what are called the 'interessi semplici'⁶ which are not recognized by law. The protection of these interests is normally effected by the administrative authorities but rarely by the administrative courts.⁷

The position is therefore that the rights of individuals may not be altered, if such rights are subjective rights, but that all other forms of rights may be altered at any time, if there is an over-riding public interest. Whether any right is a subjective right will be determined by the court whose jurisdiction is invoked; moreover, this can as a rule be elicited from the provision of law regulating the right in question. Thus, for instance, all fundamental rights to which a reservation attaches are to be regarded as 'diritti esposti ad affievolimento'; whether in any given case the limitation of the right is justified is for the courts to decide. In the case of concessions, approvals, etc. any alteration in the rights granted to the individual is always lawful, if the public interest demands it. If the public interest, for instance, requires the revocation of a concession, this is not, according to Italian legal thought, an instance of the revocation of an unimpeachable administrative act to the detriment of the individual, but is rather the revocation of an administrative act which was originally unimpeachable but which has become defective by reason of

¹ Zanolini, *Corso di diritto amministrativo*, I, p. 187.

² Sandulli, *Manuale di diritto amministrativo*, p. 74 *et seq.*

³ Zanolini, *op. cit.*, p. 189.

⁴ Landi/Potenza, *op. cit.*, p. 149, Consiglio di Stato, 24.11.1962 No 13 and 8.1.1966 No 1 in *Il Consiglio di Stato* 1962, I, p. 1734 and 1966, I, p. 1.

⁵ Cf. Consiglio di Stato, IV, 30.3.1966 No 182, in *Il Consiglio di Stato* 1966, I, p. 478.

⁶ Zanolini, *op. cit.*, p. 192.

⁷ Landi/Potenza, *op. cit.*, p. 153.

the subsequent disappearance of the proper relationship between the act and the requirements of good administration. The legal basis for any such revocation is the principle that the action of the public administration must at all times accord to the greatest possible extent with the public interest.

The question whether statutes may be retrospectively amended to the detriment of the individual is dealt with in Article 11 of the Disposizioni sulla legge generale (also called *preleggi*), which states that the provisions of statutes may only affect the future and may not have any retrospective effect. (La legge non dispone che per l'avvenire: essa non ha effetto retroattivo). Plainly however this rule does not apply in an absolute way.¹ An amendment may however only be effected by a statute, that is, a source of law of equal status, whereby repeal will take place either implicitly, by virtue of the *lex posterior* rule, or expressly under the provisions of the new statute. A legislative amendment is also possible by means of a referendum (Article 75 of the Constitution, Article 27 of the Law of 25 May 1970, No 352). Criminal statutes are completely excluded from any retrospective effect (Article 25(2) of the Constitution) and this must be extended by way of analogy to disciplinary measures.²

It is difficult to answer the question as to the possible effect of a statute, if the law hitherto in force has led to the creation of what is termed a 'diritto quesito' (acquired right) which in principle should not be affected by the new provision. No such *diritto quesito* will arise if the previous law had only conferred on the individual in question an expectation, or a legitimate interest. There is no answer of general validity to the question when a *diritto quesito* arises; opinion is divided and each case will require particular scrutiny.³ All we can really say is that only criminal statutes and disciplinary provisions are subject to a strict prohibition of retrospective effect; in all other cases such effect must as a rule be affirmed where there is a preponderant public interest; however, where there are rights lawfully acquired (*diritti quesiti*), the individual case must be examined. There are however moves to extend the absolute prohibition on retrospective effect to fiscal legislation,⁴ although the constitutional court has repeatedly declared retrospective fiscal legislation to be constitutional.⁵

Luxembourg

The law of Luxembourg does not contain any evident prohibition on altering the legal position to the detriment of the individual. Whether Article 16 of the Constitution⁶ belies this appears doubtful, since hitherto the judgments of the courts in relation to Article 16 have dealt essentially with expropriation of immovable property and compensation therefor.⁷ Here we must refer to the legal position in Belgium, which frequently influences the Luxembourg legal system.

Similarly there is no express prohibition on the retrospective effect of statutes. Such effect has from time to time been denied by the courts in cases of individual statutes on the foot-

ing that such effect was not therein contemplated, but not for reasons of principle.⁸ From this we can deduce that apart from criminal law the legal system of Luxembourg contains no general prohibition on such retrospective effect.

In terms of constitutional law it is also lawful to revoke or modify duly issued licences to the detriment of the individual. The courts do however require express statutory authority on the part of the administration. According to the decided cases, the administration is not entitled to revoke a licence at will; this may only be done in the cases contemplated by statute, and on the basis of circumstances which have arisen after the licence has been issued.⁹

The Netherlands

Save in the more recent decided cases referred to below, there is in the Netherlands no prohibition on alterations of the legal position to the detriment of the individual. Retrospective amendment or retrospective enactment of statutes is precluded by Article 4 of the Law containing General Provisions in relation to Legislation;¹⁰ but that Article is a provision having no more than the force of an ordinary statute, and is not formulated as a general constitutional principle.¹¹ The said provision is not directed to the legislature but to the courts, who have thereby placed at their disposal the presumption of construction that statutes are not enacted with retrospective effect unless there is specific provision.¹² Statutes having retrospective effect, though infrequent in the Netherlands, are none the less not unlawful.¹³ In the context of law reform, however, the adoption into the Constitution of the principle of the prohibition on retrospective effect is being urged.¹⁴

The extent to which the administration is free to revoke licences depends on the extent to which it was under a duty

¹ Cf. Consiglio di Stato IV, 30.4.1955, No 297 and VI, 11.7.1956, No 508 in II Consiglio di Stato, 1955, I, p. 440 and 1956, I, p. 1002.

² *Zanobini*, op. cit., p. 108.

³ Cf. *Romano*, Corso di diritto amministrativo, p. 72 *et seq.*; *Cammeo*, Corso di diritto amministrativo ristampa 1960, p. 252 *et seq.*; *Landi Potenza*, op. cit., pp. 23 *et seq.*, 25; *Mortati*, op. cit., p. 345 with references to other works.

⁴ Cf. the references in *Mortati*, op. cit., p. 346, Note 3.

⁵ Cf. Corte Costituzionale, 9.3.1959, No 9, 16.6.1964, No 46, and many other decided cases.

⁶ 'Nul ne peut être privé de sa propriété que pour cause d'utilité publique dans le cas et de la manière établis par la loi et moyennant une juste et préalable indemnité'.

⁷ Cf. Cour de Cassation, judgment of 4.6.1953, Pas. Lux. XV, p. 493 on the substance of ownership. In connection with expropriation: judgment of 26.11.1915, Pas. Lux. IX, p. 487; Tribunal de Luxembourg, judgment of 15.6.1908; Pas. Lux. VIII, p. 14; judgment of 13.7.1955, Pas. Lux. XVI, p. 455; judgment of 28.10.1953, Pas. Lux. XVI, p. 29; judgment of 6.1.1960, Pas. Lux. XVIII, p. 175. In respect of the guarantee of ownership: *Majerus*, op. cit., p. 62 *et seq.*

⁸ Cour supérieure de justice, judgment of 9.7.1959, Pas. Lux. XVIII, p. 5; Conseil supérieur des assurances sociales, judgment of 12.2.1953, Pas. Lux. XV, p. 467; Conseil arbitral des assurances sociales, decision of 30.6.1959, Pas. Lux. XVIII, p. 46.

⁹ Conseil d'État. Comité du contentieux, judgment of 30.4.1952, Pas. Lux. XV, p. 441.

¹⁰ Wet van 15 mei 1829, houdende algemeene bepalingen der wetgeving van het Koninkrijk (AB).

¹¹ *Oud*, op. cit., Vol. II, p. 171.

¹² *Duk*, Terugwerkende Kracht, Geschriften van de Vereniging voor Administratief Recht, 54 (1965) pp. 5 *et seq.*, 51.

¹³ Cf. the list in *Oud*, op. cit., p. 174.

¹⁴ Thus *Jeukens*, Terugwerkende Kracht, Geschriften, loc. cit., pp. 53 *et seq.*, 94.

to grant such licences. A revocation may not be founded on reasons which would not justify a refusal of the licence. A licence the granting of which is not regulated by statute may be revoked, if the public interest requires such revocation and is not disproportionate to the interests of the person benefiting by the licence.¹ Modifications of a licence are subject to restrictions in so far as they represent a substantial alteration in the licence originally issued.²

Certain statutes themselves contain provisions relating to the revocation of licences, such as the Law relating to the Carriage of Persons, the Cinema Law, the Law relating to Places of Refreshment and Closing Hours.³ In these cases the fact that the issue of a licence is provided for by statute means that the administration is similarly bound as to revocation. On the other hand a licence the issue of which is in the discretion of the administration may be revoked at will. Originally the courts accepted such revocation at will.⁴ More recent judgments however reveal a change. In these judgments there have been developed general principles of administrative law which run contrary to revocation at will. This revocation now requires the presence of real grounds,⁵ or the principle of legal certainty and of protection of legitimate expectation is invoked.⁶ In social security matters the importance of the rights lawfully acquired by the insured ('verkrigen rechten') has been held to preclude revocation at will.⁷

For the rest, the opinion seems to be gaining ground that in cases of revocation of licences there has to be a weighing-up of the respective public and private interests.⁸ This may sometimes mean that while the revocation is lawful the person affected must be compensated.⁹

United Kingdom

Under the constitution of the United Kingdom there can be no general prohibition flowing directly from the constitution on the alteration of the legal *status quo* to the detriment of the individual. None the less there is a kind of constitutional tradition whereby rights lawfully acquired are to be respected. This is shown in the basic inclination of the legislature not to expropriate without compensation, and in the inclination of the courts not to construe statutes in such a way as to allow expropriation without compensation.¹⁰

Nor can there be any rigorous prohibition on retrospective statutes under the British constitutional system. British constitutional tradition is however reluctant to give statutes retrospective effect. In particular the reluctance to enact retrospective criminal statutes is a well-established part of this tradition. The question of the lawfulness of retrospective statutes has recently played a part in the controversy surrounding the *Burmah Oil* case. The House of Lords had in this case found in favour of an award of compensation for loss of certain facilities in Rangoon as a result of hostilities. The British Government thereupon introduced a bill in the House of Commons which prohibited the payment of such compensation and which had retrospective force, that is, it disentitled the

plaintiffs in *Burmah Oil* from the compensation already awarded to them. During the debates on the bill in the House of Lords grave reservations were voiced against the bill on account of the prohibition on retrospective legislation. The House of Lords finally passed the bill, but it was clear that this was only because of the particular circumstances of the case, because ultimately the victims of the hostilities in Burma would have been placed in a considerably better position than those in the United Kingdom, who had no entitlement to compensation. The prohibition on retrospective legislation as a constitutional principle was heavily emphasized throughout the debate.¹¹

Decisions made by the administration within the ambit of its powers are in principle binding on the administration.¹² On the other hand, the administration cannot bind itself by an act which is *ultra vires*. Accordingly, such an act may always be revoked. A difficult question is whether acts which at the time they were promulgated were *intra vires* can be revoked by reason of changes in the factual and legal setting. Learned authors assume this to be so.¹³ These general principles are however only applicable in so far as there are no specific statutory rules.

Assessment

The preceding conspectus has demonstrated some basic underlying features but leaves a bewildering variety of individual questions. Apart from the prohibition on retrospective criminal statutes, only in the case of the Federal Republic of Germany can we speak of a prohibition on retrospective legislation that is reasonably clear and firm and also subject to judicial review. In all other Member States of the European Community the legislature is considered to have the power to enact formal statutes having retrospective effect even to the detriment of the individual. It is true that in various legal sys-

¹ Rapport van de commissie inzake algemeene bepalingen van administratief recht, 4th ed., p. 108.

² Rapport, op. cit., p. 109.

³ Rapport, op. cit., p. 102.

⁴ Centrale Raad van Beroep, judgment of 30.9.1924, AB 1924, No 4, 380; 20.12.1957, Gem. St. 1957, 5469; judgment of 30.5.1961, RSV 1961, No 135; Hoge Raad, judgment of 19.10.1936, NJ 1937, No 154; Gerechtshof Amsterdam, judgment of 30.6.1961, NJ 1962, No 486.

⁵ Centrale Raad van Beroep, judgment of 22.12.1955, AB 1956, No 402 *et seq.*

⁶ Centrale Raad van Beroep, judgment of 13.1.1959, AB 1959, 222; judgment of 12.12.1969, AB 1971, No 130; Gerechtshof te 's Gravenhage, order of 23.6.1971, NJ 1971, No 308. In this case the President of the Court in interlocutory proceedings ordered the Government to continue to pay subsidies.

⁷ Centrale Raad van Beroep, judgment of 7.11.1963, AB 1965, No 180; judgment of 23.1.1964, AB 1965, No 594.

⁸ Rapport, op. cit., p. 107.

⁹ Koninklijk Besluit of 19.12.1969, AB 1970, No 318; Koninklijk Besluit 8.4.1970, AB 1970, No 577.

¹⁰ Cf. *Daintith*, op. cit., p. 300, and the example in *Wade*, op. cit., p. 180 *et seq.*; cf. further *Street/Wortley*, *State and Private Property in English Law*, Staat und Privateigentum, 1960, p. 131.

¹¹ *Daintith*, op. cit., p. 292; *Goodhart*, *The Burmah Oil Case and the War Damage Act of 1965*, *Law Quarterly Review* 82 (1966), p. 97 *et seq.*

¹² Cf. *Fazal*, *Reliability of Official Acts and Advice*, *Public Law*, 1972, p. 43 *et seq.*; *Ganz*, *Estoppel and res judicata in Administrative Law*, *Public Law* 1965, p. 237 *et seq.*

¹³ *Ganz*, op. cit., p. 253 *et seq.*

tems there are presumptions as to the substance of such statutes, namely that in cases of doubt they are not to be given retrospective effect, and that other doubts have been expressed against the retrospective divesting of rights (compare for instance the doubts expressed in the British House of Lords), and that to some extent there is a demand, as in Italy, that retrospective fiscal legislation be prohibited. Such presumptions, doubts and demands can be seen as evidence for the fact that the giving of retrospective effect to statutes which impose a liability is constitutionally doubtful or repugnant; however, in most countries it is, in the final analysis, left to the legislature to decide whether for reasons of public interest there should be any retrospective effect.

Even less than a general prohibition on retrospective effect is it possible to demonstrate and justify any prohibition on the withdrawal even by statute of rights of the individual which have already been granted, and of vested individual which have already been granted, and of vested individual rights. On the contrary, the legislature is in principle, and subject always to specific provisions such as those protecting property, not precluded in terms of constitutional law from interfering with rights lawfully vested, and in this the question as to whether compensation shall be granted is very much left to the sovereign decision of parliament.

As regards the interference with vested or subsisting rights of individuals by administrative measures, we find in the various legal systems discussed a bewildering variety of statutory provisions, of general legal principles developed by the courts and by learned authors, and of particular aspects of detail. As a general principle it may well be accepted that the rights and interests of the individual must as a rule give way to preponderant community interests, that is, that the administration (usually on the basis of statutory provision), may interfere with rights, revoke or modify licences, if this is urgently required for reasons of public interest, in which case liability to pay compensation is probably more the exception than the rule. The prerequisites for, and the extent of, any interference with the rights of individual differ according to the sphere of activity in question and the interests at stake and cannot be regulated uniformly.

The fact that public authority is enjoined to respect the reliance placed by the individual on the existing legal position and on the continuance of vested rights can, on the whole, probably be seen as a general legal principle within the law of the Member States as well as in the law of the European Community; but it can scarcely be regarded as a constitutionally secured fundamental right. The adoption into a European catalogue of fundamental rights of any provision in this regard would certainly encounter considerable difficulties and require reservations expressed in general terms. This comparative legal study has shown that national law cannot provide any convincingly formulated precedents.

IV — Summary and outlook

1. Protection of fundamental rights under existing Community law

The Treaties relating to the European Communities contain individual provisions and reference points for the protection of the rights of the individual, but they contain no concluded catalogue of fundamental rights, nor do the various rules of Community law scattered throughout the Treaties together amount to a complete protection of all fundamental rights which might be infringed by Community authority.

The absence of written provisions relating to fundamental rights on the part of the Community does not, however, mean that the Community and its organs are not bound by fundamental rights. The position is rather that Community law, like the law of other international organizations and the written law of the individual States, requires to be supplemented by unwritten legal principles, which include, predominantly, fundamental rights and human rights. These legal principles, which supplement written Community law and are of equal status with primary Community law, can by means of comparative legal studies be identified out of the law of the Member States and from the rules of international law, including the ECHR, by which these States are bound. In its judgments the Court of Justice of the European Communities has with increasing precision acknowledged that Community law bears the imprint of fundamental rights which belong to the legal principles common to all Member States and which are embedded in their understanding of law; with this we would agree. The progressive development and deployment of general principles within the field of fundamental rights is part of the legitimate duties of the judicial arm, and of the jurisdiction of the Court of justice, as defined in the Community Treaties, to maintain Community law. In the nature of things it is only gradually and by the surmounting of uncertainties that judicial acknowledgment and implementation of unwritten legal principles can lead to a secured canonical corpus of protected fundamental rights.

In spite of the uncertainties and deficiencies in the safeguarding in practice of fundamental rights under Community law, it cannot be assumed that without the incorporation into written Community law of a formal catalogue of fundamental rights, the essential rights of the individual will remain unprotected. Written Community law, the common legal principles of the Member States and the rules of international law relating to the protection of fundamental rights, seen as a whole, do provide, so far as can be foreseen, an adequate and reasonable measure of protection of fundamental rights against the action of Community organs.

2. Basic questions in relation to a catalogue of fundamental rights in the European Communities

Despite the fact that the lack of written provisions of Community law within the field of fundamental rights can be made good by evolving general principles of law—which in my opinion would be adequate—a written catalogue of fundamental rights in the European Communities would undoubtedly have many advantages. Such a catalogue would increase the certainty of law, reduce the difficulties of law-making judicial labour, and lend weight to the democratic entrenching of fundamental rights in Community law. Such a catalogue of fundamental rights could only become legally binding by means of a formal supplement to the Community Treaties, in the form of an international treaty to be ratified according to the law of the Member States.

If it is desired, by means of a comparison of the guarantees of fundamental rights in the nine Member States, to determine their common elements and to draw up on this basis a catalogue of fundamental rights under Community law, there are in principle two ways of doing this. It would be possible to concentrate on examining what fundamental rights, irrespective of all questions of their detailed implementation, really are in principle recognized in the various States; an attempt could then be made, having regard to the requirement of the Community legal order, to find appropriate independent formulations of 'European fundamental rights'. Alternatively, the comparative method might attempt to examine, in respect of each fundamental right individually, how far it is, both in law and in fact, protected in the States concerned. On this basis an attempt could then be made to draft a catalogue of fundamental rights embracing the whole Community. Any investigation of this kind would require extremely extensive and time-consuming preparatory work, and its value from the point of view of development of the law might well be doubted.

The fundamental rights to be incorporated into such an inventory cannot easily be defined. The priority would be to secure those fundamental rights which could be particularly vulnerable to attack by Community authority. Of the classical fundamental rights, few seem greatly to be threatened by Community organs. Protection is primarily needed for those fundamental rights which secure the individual's freedom of economic development; in addition to the principle of equality, there is for instance the protection of property, the freedom of trade or occupation and the freedom of movement; moreover requirements of the rule of law such as that of legal certainty, or the principles of proportionality and of protection of legitimate expectation, need to be safeguarded, although it is extremely difficult to frame these principles in the form of clear-cut fundamental rights.

The fact that some fundamental rights are particularly apt to be infringed by Community authority and are therefore to be

protected as a matter of priority, should not, however, obscure the fact that numerous other fundamental rights can, if only in exceptional cases, acquire significance under Community law; any catalogue of fundamental rights purporting to be comprehensive would therefore require to be more widely drawn.

Even certain rights of the individual which *a priori* seem safe from interference by the Community may in particular cases require protection. For instance, the criminal law principle of *ne bis in idem* may be of significance in connection with the imposition of sanctions in cartel law or in the law relating to the discipline of those in the service of the Community. Press freedom may be affected by measures taken for economic purposes. The freedom of conscience, of opinion, and of scientific and artistic endeavour may require protection, at least for a limited class of persons, namely those in the service of the Community. Any consideration of the establishment of a catalogue of fundamental rights for the European Communities must therefore deal with the question whether only the most important and the most threatened of the fundamental rights are to be expressly guaranteed, or whether all fundamental rights which could possibly be breached by Community authority should be included. In the latter case, a comprehensive catalogue would have to be drawn up, whereas in the case of a catalogue restricted merely to a few fundamental rights there would be a need to avoid giving the impression that all fundamental rights not expressly mentioned were left unprotected, even if the general principles of law of the Member States require their protection.

A further question requiring an answer is whether and, if so, to what extent, social and democratic fundamental rights should be included in a catalogue of fundamental rights. What is the position of the right to work or the right of participation in the realizing of Community interests? In view of the widespread demand for extension of the powers of the European Parliament, the question of the establishment under the Treaty of a right of petition for the individual must be considered. Recently there has been discussion of the question whether the nationals of a Member State should be entitled to vote in elections at local level in other States of the Community. Should a provision to this effect be included in any European catalogue of fundamental rights? In answering this question, regard would need to be had to whether the national law of individual Member States at present grants voting rights to foreigners, or whether in this respect constitutional amendment would be necessary. Finally it must be considered whether the system of legal protection of the EEC Treaty is in need of amendment intended to bring about increased protection of the individual's fundamental rights.

Comparative legal studies may certainly be of help in evolving a catalogue of fundamental rights, but such help appears to be of limited value. The fundamental rights discussed above, incompletely and by way of example, show that while the legal systems of the Member States have much in common at the level of principle, there do however remain considerable differences in detail. It is, above all, impossible to dispense

with more detailed examination and definition of lawful restrictions on fundamental rights. There will, in the majority of cases, be no alternative to providing for possible restrictions, since conflicts between individual interests and demands of the community are unavoidable and in many cases have to be resolved in favour of the general good. In view of the heterogeneity of the activities that require to be regulated, definitions of fundamental rights can rarely be drawn clearly and conclusively; accordingly, provisions in general terms will be essential. This in turn will involve the risk that the fundamental rights will be left turning in the void.

3. Outlook for future legal development

It is the duty of those having political authority to weigh up the reasons in favour of a formal catalogue of fundamental rights in the law of the European Communities against the difficulties and disadvantages of such a catalogue, and to arrive at their decision on the basis of such an appraisal. In concluding this study, it only remains to set out some points which will have to be taken into account in that appraisal.

I do not believe that the protection of the individual's fundamental rights can be appreciably improved by a catalogue of fundamental rights as part of the law of the Community, in relation to the protection currently available. As has been shown, the general legal principles of the Member States and of international law are capable of making good any absence of express provisions in the Treaties of the Communities. The Court of Justice of the European Communities has recognized and has assumed this duty. It can be expected the Court of Justice will follow the path it has already taken and will set to right breaches of fundamental rights by other Community organs. It is hardly conceivable that rights of the individual which are important and deserving of protection will remain unprotected because of the lack of a catalogue of fundamental rights, since the general legal principles of the Member States will probably contain all those guarantees which are also inalienably part of Community law. If the protection of fundamental rights is entrusted to the Court of Justice by way of general legal principles, Community law can progressively be developed by judgments rendered in accordance with practical needs.

A catalogue of fundamental rights in the European Community would on the other hand strongly emphasize the importance attaching to fundamental rights, and dispel any lingering doubts as to their relevance to Community law. It would moreover, be possible to go beyond the present position, as determined by general legal principles, and to extend the protection of fundamental rights by a political decision. When evolving a catalogue of fundamental rights it should however be kept in mind that recourse to general legal principles should not be excluded, since even the most elaborate list

cannot contemplate all possible threats to the individual's rights, and make provision for them.

This illustrates, moreover, that a European catalogue of fundamental rights may involve not only advantages, but also dangers and even a retreat from the legal position already attained. After the recent decisions of the Court of Justice of the European Communities¹ it is scarcely conceivable that situations involving fundamental rights, which would in one of the Member States be regarded as substantial and inviolable, are unprotected in Community law. In these decisions, regard is had to the state of the law in all nine Member States so as to arrive at the maximum guarantees for fundamental rights. If a European catalogue were to lay behind this—and in view of the difficulties of drawing up a comprehensive catalogue, this is certainly not unlikely—the protection of fundamental rights might in the end be weakened rather than strengthened by codification.

If any binding catalogue of fundamental rights is to be evolved, this would in any event require extensive preparatory work and discussion at Community level as well as in the Member States. If the catalogue is to be founded on a broad basis of comparative law, considerable difficulties will have to be overcome and detailed examination will be necessary. Initially the question to be asked would presumably be: which fundamental rights appear necessary or important, in view of the structure and the tasks of the Community? With this, one would also have to consider whether the catalogue should be restricted to protective rights, or should also contain social fundamental rights and rights of democratic participation. This should be followed by detailed studies—perhaps on the basis of a questionnaire—on the way in which these fundamental rights are guaranteed under the current law of the different States and to what extent they are subject to reservation. From the comparative material thereby assembled it would then be necessary to distil the various common features and differences. In any event, the outcome must be a matter for political decision. It seems to me doubtful whether comparative legal studies going beyond mere review of principles into more detailed scrutiny could facilitate any such decision to any degree, since no catalogue of fundamental rights can, in the final analysis, do without reservations couched in general terms.

In my opinion a different means of strengthening fundamental rights in Community law should be considered. The gradual development of fundamental rights by the Court of Justice alone without any formal basis in Community legislation, as opposed to a formal and binding catalogue of fundamental rights, is open to criticism chiefly on the grounds that the judicial authority lacks any direct democratic mandate (Legitimation) and that it ought to be entrusted with an independent law-making function only within certain limits. This argument could be countered by the other Community or-

¹ See above II, 3.

gans—Parliament, Council, Commission—acknowledging by express declaration the validity of fundamental rights in the European Communities and their protection by the Court of Justice, without any formal treaty in this respect. It could in this way, even without formal binding force, be emphasized that the protection of fundamental rights is, in the view of all Community organs, secured under Community law at present, and that such protection is to be developed by the Court of Justice on the basis of general legal principles. Such a declaration would, in my opinion, not change the existing legal position, but could none the less help to deal with existing legal uncertainties and dispel misgivings.

1977 OJ C103/1
Joint Declaration
by the European Parliament,
the Council and the Commission
Concerning the Protection of
Fundamental Rights and the
European Convention for the
Protection of Human Rights
and Fundamental Freedoms

27. 4. 77

Official Journal of the European Communities

No C 103/1

I

(Information)

EUROPEAN PARLIAMENT

COUNCIL

COMMISSION

JOINT DECLARATION

by the European Parliament, the Council and the Commission

THE EUROPEAN PARLIAMENT, THE COUNCIL AND THE COMMISSION,

Whereas the Treaties establishing the European Communities are based on the principle of respect for the law;

Whereas, as the Court of Justice has recognized, that law comprises, over and above the rules embodied in the treaties and secondary Community legislation, the general principles of law and in particular the fundamental rights, principles and rights on which the constitutional law of the Member States is based;

Whereas, in particular, all the Member States are Contracting Parties to the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950,

HAVE ADOPTED THE FOLLOWING DECLARATION:

1. The European Parliament, the Council and the Commission stress the prime importance they attach to the protection of fundamental rights, as derived in particular from the constitutions of the Member States and the European Convention for the Protection of Human Rights and Fundamental Freedoms.
2. In the exercise of their powers and in pursuance of the aims of the European Communities they respect and will continue to respect these rights.

Done at Luxembourg on the fifth day of April in the year one thousand nine hundred and seventy-seven.

*For the
European Parliament*

E. COLOMBO

*For the
Council*

D. OWEN

*For the
Commission*

R. JENKINS

1984 OJ C77/33
Draft Treaty Establishing
the European Union
(Spinelli Report)

19. 3. 84

Official Journal of the European Communities

No C 77/33

Tuesday, 14 February 1984

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NB: The titles of the Articles in this draft Treaty have indicative value only.

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PREAMBLE

- With a view to continuing and reviving the democratic unification of Europe, of which the European Communities, the European Monetary System and European Political Cooperation represent the first achievements, and convinced that it is increasingly important for Europe to assert its identity;
 - Welcoming the positive results achieved so far, but aware of the need to redefine the objectives of European integration, and to confer on more efficient and more democratic institutions the means of attaining them;
 - Basing their actions on their commitment to the principles of pluralist democracy, respect for human rights and the rule of law;
 - Reaffirming their desire to contribute to the construction of an international society based on cooperation between peoples and between States, the peaceful settlement of disputes, security and the strengthening of international organizations;
 - Resolved to strengthen and preserve peace and liberty by an ever closer union, and calling on the other peoples of Europe who share their ideal to join in their efforts;
 - Determined to increase solidarity between the peoples of Europe, while respecting their historical identity, their dignity and their freedom within the framework of freely accepted common institutions;
 - Convinced of the need to enable local and regional authorities to participate by appropriate methods in the unification of Europe;
 - Desirous of attaining their common objectives progressively, accepting the requisite transitional periods and submitting all further development for the approval of their peoples and States;
- Intending to entrust common institutions, in accordance with the principle of subsidiarity, only with those powers required to complete successfully the tasks they may carry out more satisfactorily than the States acting independently;
- The High Contracting Parties, Member States of the European Communities, have decided to create the European Union.

PART ONE — THE UNION

*Article 1***Creation of the Union**

By this Treaty, the High Contracting Parties establish among themselves the European Union.

*Article 2***Accession of new Members**

Any democratic European State may apply to become a Member of the Union. The procedures for accession, together with any adjustments which accession entails, shall be the subject of a treaty between the Union and the applicant State. That treaty shall be concluded in accordance with the procedure laid down in Article 65 of this Treaty.

An accession treaty which entails revision of this Treaty may not be concluded until the revision procedure laid down in Article 84 of this Treaty has been completed.

*Article 3***Citizenship of the Union**

The citizens of the Member States shall *ipso facto* be citizens of the Union. Citizenship of the Union shall be dependent upon citizenship of a Member State; may not

be independently acquired or forfeited. Citizens of the Union shall take part in the political life of the Union in the forms laid down by this Treaty, enjoy the rights granted to them by the legal system of the Union and be subject to its laws.

*Article 4***Fundamental rights**

1. The Union shall protect the dignity of the individual and grant every person coming within its jurisdiction the fundamental rights and freedoms derived in particular from the common principles of the Constitutions of the Member States and from the European Convention for the Protection of Human Rights and Fundamental Freedoms.

2. The Union undertakes to maintain and develop, within the limits of its competences, the economic social and cultural rights derived from the Constitutions of the Member States and from the European Social Charter.

3. Within a period of five years, the Union shall take a decision on its accession to the international instruments referred to above and to the United Nations Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights. Within the same

Tuesday, 14 February 1984

period, the Union shall adopt its own declaration on fundamental rights in accordance with the procedure for revision laid down in Article 84 of this Treaty.

4. In the event of serious and persistent violation of democratic principles or fundamental rights by a Member State, penalties may be imposed in accordance with the provisions of Article 44 of this Treaty.

Article 5

Territory of the Union

The territory of the Union shall consist of all the territories of the Member States as specified by the Treaty establishing the European Economic Community and by the treaties of accession, account being taken of obligations arising out of international law.

Article 6

Legal personality of the Union

The Union shall have legal personality. In each of the Member States, the Union shall enjoy the most extensive legal capacity accorded to legal persons under national legislation. It may, in particular, acquire or dispose of movable and immovable property and may be a party to legal proceedings. In international relations, the Union shall enjoy the legal capacity it requires to perform its functions and attain its objectives.

Article 7

The Community patrimony

1. The Union shall take over the Community patrimony.
2. The provisions of the Treaties establishing the European Communities and of the Conventions and

Protocols relating thereto which concern their objectives and scope and which are not explicitly or implicitly amended by this Treaty, shall constitute part of the law of the Union. They may only be amended in accordance with the procedure for revision laid down in Article 84 of this Treaty.

3. The other provisions of the Treaties, Conventions and Protocols referred to above shall also constitute part of the law of the Union, in so far as they are not incompatible with this Treaty. They may only be amended by the procedure for organic law laid down in Article 48 of this Treaty.

4. The acts of the European Communities, together with the measures adopted within the context of the European Monetary System and European Political Cooperation, shall continue to be effective, in so far as they are not incompatible with this Treaty, until such time as they have been replaced by acts or measures adopted by the institutions of the Union in accordance with their respective competences.

5. The Union shall respect all the commitments of the European Communities, in particular the agreements or conventions concluded with one or more non-member States or with an international organization.

Article 8

Institutions of the Union

The fulfilment of the tasks conferred on the Union shall be the responsibility of its institutions and its organs. The institutions of the Union shall be:

- the European Parliament,
- the Council of the Union,
- the Commission,
- the Court of Justice,
- the European Council.

PART TWO — THE OBJECTIVES, METHODS OF ACTION AND COMPETENCES OF THE UNION

Article 9

Objectives

The objectives of the Union shall be:

- the attainment of a humane and harmonious development of society based principally on endeavours to attain full employment, the progressive elimination of the existing imbalances between its regions, protection and improvement in the quality of the environment, scientific progress and the cultural development of its peoples,
- the economic development of its peoples with a free internal market and stable currency, equilibrium in external trade and constant economic growth, without discrimination between nationals or undertakings of the Member States by strengthening the capacity of the States, their citizens and their undertakings to act together to adjust their organization and activities to economic changes,
- the promotion in international relations of security, peace, cooperation, détente, disarmament and the

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free movement of persons and ideas, together with the improvement of international commercial and monetary relations,...

- the harmonious and equitable development of all the peoples of the world to enable them to escape from under-development and hunger and exercise their full political, economic and social rights.

Article 10

Methods of action

1. To attain these objectives, the Union shall act either by common action or by cooperation between the Member States; the fields within which each method applies shall be determined by this Treaty.
2. Common action means all normative, administrative, financial and judicial acts, internal or international, and the programmes and recommendations, issued by the Union itself, originating in its institutions and addressed to those institutions, or to States, or to individuals.
3. Cooperation means all the commitments which the Member States undertake within the European Council.

The measures resulting from cooperation shall be implemented by the Member States or by the institutions of the Union in accordance with the procedures laid down by the European Council.

Article 11

Transfer from cooperation to common action

1. In the instances laid down in Articles 54 (1) and 68 (2) of this Treaty, a matter subject to the method of cooperation between Member States may become the subject of common action. On a proposal from the Commission, or the Council of the Union, or the Parliament, or one or more Member States, the European Council may decide, after consulting the Commission and with the agreement of the Parliament,

to bring those matters within the exclusive or concurrent competence of the Union.

2. In the fields subject to common action, common action may not be replaced by cooperation.

Article 12

Competences

1. Where this Treaty confers exclusive competence on the Union, the institutions of the Union shall have sole power to act; national authorities may only legislate to the extent laid down by the law of the Union. Until the Union has legislated, national legislation shall remain in force.
2. Where this Treaty confers concurrent competence on the Union, the Member States shall continue to act so long as the Union has not legislated. The Union shall only act to carry out those tasks which may be undertaken more effectively in common than by the Member States acting separately, in particular those whose execution requires action by the Union because their dimension or effects extend beyond national frontiers. A law which initiates or extends common action in a field where action has not been taken hitherto by the Union or by the Communities must be adopted in accordance with the procedure for organic laws.

Article 13

Implementation of the law of the Union

The Union and the Member States shall cooperate in good faith in the implementation of the law of the Union. Member States shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this Treaty or resulting from action taken by the institutions of the Union. They shall facilitate the achievement of the Union's tasks. They shall abstain from any measure which could jeopardize the attainment of the objectives of the Union.

PART THREE — INSTITUTIONAL PROVISIONS

TITLE I — THE INSTITUTIONS OF THE UNION

Article 14

The European Parliament

The European Parliament shall be elected by direct universal suffrage in a free and secret vote by the

citizens of the Union. The term of each Parliament shall be five years.

An organic law shall lay down a uniform electoral procedure; until such a law comes into force, the procedure applicable shall be that for the election of the Parliament of the European Communities.

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*Article 15***Members of the Parliament**

The members of the Parliament shall act and vote in an individual and personal capacity. They may not be bound by any instructions nor receive a binding mandate.

*Article 16***Functions of the Parliament**

The Parliament shall:

- participate, in accordance with this Treaty, in the legislative and budgetary procedures and in the conclusion of international agreements,
- enable the Commission to take office by approving its political programme,
- exercise political supervision over the Commission,
- have the power to adopt by a qualified majority a motion of censure requiring the members of the Commission to resign as a body,
- have the power to conduct inquiries and receive petitions addressed to it by citizens of the Union,
- exercise the other powers attributed to it by this Treaty.

*Article 17***Majorities in the Parliament**

1. The Parliament shall vote by a simple majority; i.e. a majority of votes cast, abstentions not counted.
2. Where expressly specified by this Treaty, the Parliament shall vote:
 - (a) either by an absolute majority, i.e. a majority of its members;
 - (b) or by a qualified majority, i.e. a majority of its members and of two-thirds of votes cast, abstentions not counted. On the second reading of the budget, the qualified majority required shall be a majority of the members of Parliament and three-fifths of votes cast, abstentions not counted.

*Article 18***Power to conduct inquiries and right of petition**

The procedures for the exercise of the power of the Parliament to conduct inquiries and of the right of citizens to address petitions to the Parliament shall be laid down by organic laws.

*Article 19***Rules of Procedure of the Parliament**

The Parliament shall adopt its Rules of Procedure by an absolute majority.

*Article 20***The Council of the Union**

The Council of the Union shall consist of representations of the Member States appointed by their respective Governments; each representation shall be led by a Minister who is permanently and specifically responsible for Union affairs.

*Article 21***Functions of the Council of the Union**

The Council shall:

- participate, in accordance with this Treaty, in the legislative and budgetary procedures and in the conclusion of international agreements,
- exercise the powers attributed to it in the field of international relations, and answer written and oral questions tabled by members of the Parliament in this field,
- exercise the other powers attributed to it by this Treaty.

*Article 22***Weighting of votes in the Council of the Union**

The votes of the representations shall be weighted in accordance with the provisions of Article 148 (2) of the Treaty establishing the European Economic Community.

In the event of the accession of new Member States, the weighting of their votes shall be laid down in the treaty of accession.

*Article 23***Majorities in the Council of the Union**

1. The Council shall vote by a simple majority, i.e. a majority of the weighted votes cast, abstentions not counted.
2. Where expressly specified by this Treaty, the Council shall vote:
 - (a) either by an absolute majority, i.e. by a majority of the weighted votes cast, abstentions not counted, comprising at least half of the representations;

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(b) or by a qualified majority, i.e. by a majority of two-thirds of the weighted votes cast, abstentions not counted, comprising a majority of the representations. On the second reading of the budget, the qualified majority required shall be a majority of three-fifths of the weighted votes cast, abstentions not counted, comprising a majority of the representations;

(c) or by unanimity of representations, abstentions not counted.

3. During a transitional period of 10 years, where a representation invokes a vital national interest which is jeopardized by the decision to be taken and recognized as such by the Commission, the vote shall be postponed so that the matter may be re-examined. The grounds for requesting a postponement shall be published.

Article 24

Rules of Procedure of the Council of the Union

The Council shall adopt its Rules of Procedure by an absolute majority. These rules shall lay down that meetings in which the Council is acting as a legislative or budgetary authority shall be open to the public.

Article 25

The Commission

The Commission shall take office within a period of six months following the election of the Parliament.

At the beginning of each parliamentary term, the European Council shall designate the President of the Commission. The President shall constitute the Commission after consulting the European Council.

The Commission shall submit its programme to the Parliament. It shall take office after its investiture by the Parliament. It shall remain in office until the investiture of a new Commission.

Article 26

Membership of the Commission

The structure and operation of the Commission and the Statute of its members shall be determined by an organic law. Until such a law comes into force, the rules governing the structure and operation of the Commission of the European Communities and the Statute of its members shall apply to the Commission of the Union.

Article 27

Rules of Procedure of the Commission

The Commission shall adopt its Rules of Procedure.

Article 28

Functions of the Commission

The Commission shall:

- define the guidelines for action by the Union in the programme which it submits to the Parliament for its approval,
- introduce the measures required to initiate that action,
- have the right to propose draft laws and participate in the legislative procedure,
- issue the regulations needed to implement the laws and take the requisite implementing decisions,
- submit the draft budget,
- implement the budget,
- represent the Union in external relations in the instances laid down by this Treaty,
- ensure that this Treaty and the laws of the Union are applied,
- exercise the other powers attributed to it by this Treaty.

Article 29

Responsibility of the Commission to the Parliament

1. The Commission shall be responsible to the Parliament.
2. It shall answer written and oral questions tabled by members of the Parliament.
3. The members of the Commission shall resign as a body in the event of Parliament's adopting a motion of censure by a qualified majority. The vote on a motion of censure shall be by public ballot and not be held until at least three days after the motion has been tabled.
4. On the adoption of a motion of censure, a new Commission shall be constituted in accordance with the procedure laid down in Article 25 of this Treaty. Pending the investiture of the new Commission, the Commission which has been censured shall be responsible for day-to-day business.

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*Article 30***The Court of Justice**

1. The Court of Justice shall ensure that in the interpretation and application of this Treaty, and of any act adopted pursuant thereto, the law is observed.

2. Half the members of the Court shall be appointed by the Parliament and half by the Council of the Union. Where there is an odd number of members, the Parliament shall appoint one more than the Council.

3. The organization of the Court, the number and Statute of its members and the duration of their term of office shall be governed by an organic law which shall also lay down the procedure and majorities required for their appointment. Until such a law comes into force, the relevant provisions laid down in the Community Treaties and their implementing measures shall apply to the Court of Justice of the Union.

4. The Court shall adopt its Rules of Procedure.

*Article 31***The European Council**

The European Council shall consist of the Heads of State or Government of the Member States of the Union and the President of the Commission who shall participate in the work of the European Council except for the debate on the designation of his successor and the drafting of communications and recommendations to the Commission.

*Article 32***Functions of the European Council**

1. The European Council shall:

- formulate recommendations and undertake commitments in the field of cooperation,
- take decisions in the cases laid down by this Treaty and in accordance with the provisions of Article 11 thereof on the extension of the competences of the Union, ...
- designate the President of the Commission,
- address communications of the other institutions of the Union,
- periodically inform the Parliament of the activities of the Union in the fields in which it is competent to act,

answer written and oral questions tabled by members of the Parliament,

- exercise the other powers attributed to it by this Treaty.

2. The European Council shall determine its own decision-making procedures.

*Article 33***Organs of the Union**

1. The Union shall have the following organs:

The Court of Auditors,

- The Economic and Social Committee,
- The European Investment Bank,
- The European Monetary Fund.

Organic laws shall lay down the rules governing the competences and powers of these organs, their organization and their membership.

2. Half the members of the Court of Auditors shall be appointed by the Parliament and half by the Council of the Union.

3. The Economic and Social Committee shall be an organ which advises the Commission, the Parliament, the Council of the Union and the European Council; it may address to them opinions drawn up on its own initiative. The Committee shall be consulted on every proposal which has a determining influence on the drawing up and implementation of economic policy and policy for society. The Committee shall adopt its Rules of Procedure. The membership of the Committee shall ensure adequate representation of the various categories of economic and social activity.

4. The European Monetary Fund shall have the autonomy required to guarantee monetary stability.

5. Each of the organs referred to above shall be governed by the provisions applicable to the corresponding Community organs at the moment when this Treaty enters into force.

The Union may create other organs necessary for its operation by means of an organic law.

TITLE II — ACTS OF THE UNION*Article 34***Definition of laws**

1. Laws shall lay down the rules governing common action. As far as possible, they shall restrict themselves

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to determining the fundamental principles governing common action and entrust the responsible authorities in the Union or the Member States with setting out in detail the procedures for their implementation.

2. The organization and operation of the institutions and other matters expressly provided for in this Treaty shall be governed by organic laws adopted in accordance with the specific procedures laid down in Article 38 of this Treaty.

3. Budgetary laws shall be adopted pursuant to the provisions of Article 76 of this Treaty.

Article 35

Differentiated application of laws

A law may subject to time limits, or link to transitional measures which may vary according to the addressee, the implementation of its provisions where uniform application thereof would encounter specific difficulties caused by the particular situation of some of its addressees. However, such time limits and measures must be designed to facilitate the subsequent application of all the provisions of the law to all its addressees.

Article 36

Legislative authority

The Parliament and the Council of the Union shall jointly exercise legislative authority with the active participation of the Commission.

Article 37

Right to propose draft laws and amendments thereto

1. The Commission shall have the right to propose draft laws. It may withdraw a draft law it has submitted at any time until the Parliament or the Council of the Union have expressly adopted it on first-reading.

2. On a reasoned request from the Parliament or the Council, the Commission shall submit a draft law conforming to such request. If the Commission declines to do so, the Parliament or the Council may, in accordance with procedures laid down in their rules of procedure, introduce a draft law conforming to their original request. The Commission must express its opinion on the draft.

3. Under the conditions laid down in Article 38 of this Treaty:

- the Commission may put forward amendments to any draft law. Such amendments must be put to the vote as a matter of priority,
- members of the Parliament and national representations within the Council may similarly put forward amendments during the debates within their respective institutions.

Article 38

Voting procedure for draft laws

1. All draft laws shall be submitted to the Parliament. Within a period of six months, it may approve the draft with or without amendment. In the case of draft organic laws, the Parliament may amend them by an absolute majority; their approval shall require a qualified majority.

Where the majority required for approval of the draft is not secured, the Commission shall have the right to amend it and to submit it to the Parliament again.

2. The draft law approved by the Parliament, with or without amendment, shall be forwarded to the Council of the Union. Within a period of one month following approval by the Parliament, the Commission may deliver an opinion which shall also be forwarded to the Council.

3. The Council shall take a decision within a period of six months. Where it approves the draft by an absolute majority without amending it, or where it rejects it unanimously, the legislative procedure is terminated.

Where the Commission has expressly delivered an unfavourable opinion on the draft, or in the case of a draft organic law, the Council shall by a qualified majority approve the draft without amending it or reject it, in which cases the legislative procedure is terminated.

Where the draft has been put to the vote but has not secured the majorities referred to above, or where the draft has been amended by a simple majority or, in the case of organic laws, by an absolute majority, the conciliation procedure laid down in paragraph 4 below shall be opened.

4. In the cases provided for in the final subparagraph of paragraph 3 above, the Conciliation Committee shall be convened. The Committee shall consist of a delegation from the Council of the Union and a delegation from the Parliament. The Commission shall participate in the work of the Committee.

Where, within a period of three months, the Committee reaches agreement on a joint text, that text shall be

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submitted for approval to the Parliament and the Council; they shall take a decision by an absolute majority or, in the case of organic laws, by a qualified majority within a period of three months. No amendments shall be admissible.

Where, within the period referred to above, the Committee fails to reach agreement, the text forwarded by the Council shall be submitted for approval to the Parliament which shall, within a period of three months, take a decision by an absolute majority or, in the case of organic laws, by a qualified majority. Only amendments tabled by the Commission shall be admissible. Within a period of three months, the Council may reject by a qualified majority the text adopted by the Parliament. No amendments shall then be admissible.

5. Without prejudice to Article 23 (3) of this Treaty, where the Parliament or the Council fails to submit the draft to a vote within the time limits laid down, the draft shall be deemed to have been adopted by the institution which has not taken a decision. However, a law may not be regarded as having been adopted unless it has been expressly approved either by the Parliament or by the Council.

6. Where a particular situation so requires, the Parliament and the Council may, by common accord, extend the time limits laid down in this Article.

Article 39

Publication of laws

Without prejudice to Article 76 (4) of this Treaty, the President of the arm of the legislative authority which has taken the last express decision shall establish that the legislative procedure has been completed and shall cause laws to be published without delay in the *Official Journal of the Union*.

Article 40

Power to issue regulations

The Commission shall determine the regulations and decisions required for the implementation of laws in accordance with the procedures laid down by those laws. Regulations shall be published in the *Official Journal of the Union*; decisions shall be notified to the addressees. The Parliament and the Council of the Union shall be immediately informed thereof.

Article 41

Hearing of persons affected

Before adopting any measure, the institutions of the Union shall, wherever possible and useful, hear the

persons thereby affected. Laws of the Union shall lay down the procedures for such hearings.

Article 42

The law of the Union

The law of the Union shall be directly applicable in the Member States. It shall take precedence over national law. Without prejudice to the powers conferred on the Commission, the implementation of the law shall be the responsibility of the authorities of the Member States. An organic law shall lay down the procedures in accordance with which the Commission shall ensure the implementation of the law. National courts shall apply the law of the Union.

Article 43

Judicial review

The Community rules governing judicial review shall apply to the Union. They shall be supplemented by an organic law on the basis of the following principles:

- extension of the right of action of individuals against acts of the Union adversely affecting them,
- equal right of appeal and equal treatment for all the institutions before the Court of Justice,
- jurisdiction of the Court for the protection of fundamental rights *vis-à-vis* the Union,
- jurisdiction of the Court to annul an act of the Union within the context of an application for a preliminary ruling or of a plea of illegality,
- creation of a right of appeal to the Court against the decisions of national courts of last instance where reference to the Court for a preliminary ruling is refused or where a preliminary ruling of the Court has been disregarded,
- jurisdiction of the Court to impose sanctions on a Member State failing to fulfil its obligations under the law of the Union,
- compulsory jurisdiction of the Court to rule on any dispute between Member States in connection with the objectives of the Union.

Article 44

Sanctions

In the case provided for in Article 4 (4) of this Treaty, and in every other case of serious and persistent violation by a Member State of the provisions of this

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Treaty, established by the Court of Justice at the request of the Parliament or the Commission, the European Council may, after hearing the Member State concerned and with the approval of the Parliament, take measures:

- suspending the rights deriving from the application of part or the whole of the Treaty provisions to the

State in question and its nationals, without prejudice to the rights acquired by the latter,

- which may go as far as suspending participation by the State in question in the European Council, the Council of the Union and any other organ in which that State is represented as such.

The State in question shall not participate in the vote on the sanctions.

PART FOUR — THE POLICIES OF THE UNION

Article 45

General provisions

1. Starting from the Community patrimony, the Union shall continue the actions already undertaken and undertake new actions in compliance with this Treaty, and in particular with Article 9 thereof.
2. The structural and conjunctural policies of the Union shall be drawn up and implemented so as to promote, together with balanced expansion throughout the Union, the progressive elimination of the existing imbalances between its various areas and regions.

Article 46

Homogeneous judicial area

In addition to the fields subject to common action, the coordination of national law with a view to constituting a homogeneous judicial area shall be carried out in accordance with the method of cooperation. This shall be done in particular:

- to take measures designed to reinforce the feeling of individual citizens that they are citizens of the Union,
- to fight international forms of crime, including terrorism.

The Commission and the Parliament may submit appropriate recommendations to the European Council...

2. This liberalization process shall take place on the basis of detailed and binding programmes and timetables laid down by the legislative authority in accordance with the procedures for adopting laws. The Commission shall adopt the implementing procedures for those programmes.

3. Through those programmes, the Union must attain:

- within a period of two years following the entry into force of this Treaty, the free movement of persons and goods; this implies in particular the abolition of personal checks at internal frontiers,
- within a period of five years following the entry into force of this Treaty, the free movement of services, including banking and all forms of insurance,
- within a period of 10 years following the entry into force of this Treaty, the free movement of capital.

Article 48

Competition

The Union shall have exclusive competence to complete and develop competition policy at the level of the Union, bearing in mind:

- the need to establish a system for the authorization of concentrations of undertakings based on the criteria laid down by Article 66 of the Treaty establishing the European Coal and Steel Community,
- the need to restructure and strengthen the industry of the Union in the light of the profound

TITLE I — ECONOMIC POLICY

Article 47

Internal market and freedom of movement

1. The Union shall have exclusive competence to complete, safeguard and develop the free movement of persons, services, goods and capital within its territory; it shall have exclusive competence for trade between Member States.

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disturbances which may be caused by international competition,

- the need to prohibit any form of discrimination between private and public undertakings.

Article 49

Approximation of the laws relating to undertakings and taxation

The Union shall take measures designed to approximate the laws, regulations and administrative provisions relating to undertakings, and in particular to companies, in so far as such provisions have a direct effect on a common action of the Union. A law shall lay down a Statute for European Undertakings.

In so far as necessary for economic integration within the Union, a law shall effect the approximation of the laws relating to taxation.

Article 50

Conjunctural policy

1. The Union shall have concurrent competence in respect of conjunctural policy, with a particular view to facilitating the coordination of economic policies within the Union.

2. The Commission shall define the guidelines and objectives to which the action of the Member States shall be subject on the basis of the principles and within the limits laid down by laws.

3. Laws shall lay down the conditions under which the Commission shall ensure that the measures taken by the Member States conform with the objectives it has defined. Laws shall authorize the Commission to make the monetary, budgetary or financial aid of the Union conditional on compliance with the measures taken under paragraph 2 above.

4. Laws shall lay down the conditions under which the Commission, in conjunction with the Member States, shall utilize the budgetary or financial mechanisms of the Union for conjunctural ends.

Article 51

Credit policy.

The Union shall exercise concurrent competence as regards European monetary and credit policies, with the particular objective of coordinating the use of capital

market resources by the creation of a European Capital Market Committee and the establishment of a European Bank Supervisory Authority.

Article 52

European Monetary System

1. All the Member States shall participate in the European Monetary System, subject to the principle set out in Article 35 of this Treaty.

2. The Union shall have concurrent competence for the progressive achievement of full monetary union.

3. An organic law shall lay down rules governing:

- the Statute and the operation of the European Monetary Fund in accordance with Article 33 of this Treaty,
- the conditions for the effective transfer to the European Monetary Fund of part of the reserves of the Member States,
- the conditions for the progressive conversion of the ECU into a reserve currency and a means of payment, and its wider use,
- the procedures and the stages for attaining monetary union,
- the duties and obligations of the central banks in the determination of their objectives regarding money supply.

4. During the five years following the entry into force of this Treaty, by derogation from Articles 36, 38 and 39 thereof, the European Council may suspend the entry into force of the organic laws referred to above within a period of one month following their adoption and refer them back to the Parliament and the Council of the Union for fresh consideration.

Article 53

Sectoral policies

In order to meet the particular needs for the organization, development or coordination of specific sectors of economic activity, the Union shall have concurrent competence with the Member States to pursue sectoral policies at the level of the Union. In the fields referred to below, such policies shall, by the establishment of reliable framework conditions, in particular pursue the aim of facilitating the decisions which undertakings subject to competition must take concerning investment and innovation.

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The sectors concerned are in particular:

- agriculture and fisheries,
- transport,
- telecommunications,
- research and development,
- industry,
- energy.

(a) In the fields of agriculture and fisheries, the Union shall pursue a policy designed to attain the objectives laid down in Article 39 of the Treaty establishing the European Economic Community.

(b) In the field of transport, the Union shall pursue a policy designed to contribute to the economic integration of the Member States. It shall, in particular, undertake common actions to put an end to all forms of discrimination, harmonize the basic terms of competition between the various modes of transport, eliminate obstacles to trans-frontier traffic and develop the capacity of transport routes so as to create a transport network commensurate with European needs.

(c) In the field of telecommunications, the Union shall take common action to establish a telecommunications network with common standards and harmonize tariffs. It shall exercise competence in particular with regard to the high technology sectors, research and development activities and public procurement policy.

(d) In the field of research and development, the Union may draw up common strategies with a view to coordinating and guiding national activities and encouraging cooperation between the Member States and between research institutes. It may provide financial support for joint research, may take responsibility for some of the risks involved and may undertake research in its own establishments.

(e) In the field of industry, the Union may draw up development strategies with a view to guiding and coordinating the policies of the Member States in those industrial branches which are of particular significance to the economic and political security of the Union. The Commission shall be responsible for taking the requisite implementing measures. It shall submit to the Parliament and the Council of the

Union a periodic report on industrial policy problems.

(f) In the field of energy, action by the Union shall be designed to ensure security of supplies, stability on the market of the Union and, to the extent that prices are regulated, a harmonized pricing policy compatible with fair competitive practices. It shall also be designed to encourage the development of alternative and renewable energy sources, to introduce common technical standards for efficiency, safety, the protection of the environment and of the population, and to encourage the exploitation of European sources of energy.

Article 54

Other forms of cooperation

1. Where Member States have taken the initiative to establish industrial cooperation structures outside the scope of this Treaty, the European Council may, if the common interest justifies it, decide to convert those forms of cooperation into a common action of the Union.

2. In specific sectors subject to common action, laws may establish specialized European agencies and define those forms of supervision applicable thereto.

TITLE II — POLICY FOR SOCIETY

Article 55

General provisions

The Union shall have concurrent competence in the field of social and health, consumer protection, regional, environmental, education and research, cultural and information policies.

Article 56

Social and health policy

The Union may take action in the field of social and health policy, in particular in matters relating to:

- employment, and in particular the establishment of general comparable conditions for the maintenance and creation of jobs,
- the law on labour and working conditions,
- equality between men and women,
- vocational training and further training,

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- social security and welfare,
- protection against occupational accidents and diseases,
- work hygiene,
- trade union rights and collective negotiations between employers and employees, in particular with a view to the conclusion of Union-wide collective agreements,
- forms of worker participation in decisions affecting their working life and the organization of undertakings,
- the determination of the extent to which citizens of non-member States may benefit from equal treatment,
- the approximation of the rules governing research into and the manufacture, active properties and marketing of pharmaceutical products,
- the prevention of addiction,
- the coordination of mutual aid in the event of epidemics or disasters.

*Article 57***Consumer policy**

The Union may lay down rules designed to protect the health and safety of consumers and their economic interests, particularly in the event of damage. The Union may encourage action to promote consumer education, information and consultation.

*Article 58***Regional policy**

The regional policy of the Union shall aim at reducing regional disparities and, in particular, the under-development of the least-favoured regions, by injecting new life into those regions so as to ensure their subsequent development and by helping to create the conditions likely to put an end to the excessive concentration of migration towards particular industrial centres. The regional policy of the Union shall, in addition, encourage trans-frontier regional cooperation.

The regional policy of the Union, whilst supplementing the regional policy of the Member States, shall pursue specific Union objectives.

The regional policy of the Union shall comprise:

- the development of a European framework for the regional planning policies pursued by the competent authorities in each Member State,
- the promotion of investment and infrastructure projects which bring national programmes into the framework of an overall concept,
- the implementation of integrated programmes of the Union on behalf of certain regions, drawn up in collaboration with the representatives of the people concerned, and, where possible, the direct allocation of the requisite funds to the regions concerned.

*Article 59***Environmental policy**

In the field of the environment, the Union shall aim at preventing or, taking account as far as possible of the 'polluter pays' principle, at redressing any damage which is beyond the capabilities of the individual Member State or which requires a collective solution. It shall encourage a policy of the rational utilization of natural resources, of exploiting renewable raw materials and of recycling waste which takes account of environmental protection requirements.

The Union shall take measures designed to provide for animal protection.

*Article 60***Education and research policy**

In order to create a context which will help inculcate in the public an awareness of the Union's own identity and to ensure a minimum standard of training creating the opportunity for free choice of career, job or training establishment anywhere in the Union, the Union shall take measures concerning:

- the definition of objectives for common or comparable training programmes,
- the Union-wide validity and equivalence of diplomas and school, study and training periods,
- the promotion of scientific research.

*Article 61***Cultural policy**

1. The Union may take measures to:
 - promote cultural and linguistic understanding between the citizens of the Union,

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- publicize the cultural life of the Union both at home and abroad,
- establish youth exchange programmes.

2. The European University Institute and the European Foundation shall become establishments of the Union.

3. Laws shall lay down rules governing the approximation of the law of copyright and the free movement of cultural works.

Article 62

Information policy

The Union shall encourage the exchange of information and access to information for its citizens. To this end, it shall eliminate obstacles to the free movement of information, whilst ensuring the broadest possible competition and diversity of types of organization in this field. It shall encourage cooperation between radio and television companies for the purpose of producing Union-wide programmes.

TITLE III — INTERNATIONAL RELATIONS OF THE UNION

Article 63

Principles and methods of action

1. The Union shall direct its efforts in international relations towards the achievement of peace through the peaceful settlement of conflicts and towards security, the deterrence of aggression, détente, the mutual balanced and verifiable reduction of military forces and armaments, respect for human rights, the raising of living standards in the third world, the expansion and improvement of international economic and monetary relations in general and trade in particular and the strengthening of international organization.

2. In the international sphere, the Union shall endeavour to attain the objectives set out in Article 9 of this Treaty. It shall act either by common action or by cooperation.

Article 64

Common action

1. In its international relations, the Union shall act by common action in the fields referred to in this Treaty where it has exclusive or concurrent competence.

2. In the field of commercial policy, the Union shall have exclusive competence.

3. The Union shall pursue a development aid policy. During a transitional period of 10 years, this policy as a whole shall progressively become the subject of common action by the Union. In so far as the Member States continue to pursue independent programmes, the Union shall define the framework within which it will ensure the coordination of such programmes with its own policy, whilst observing current international commitments.

4. Where certain external policies fall within the exclusive competence of the European Communities pursuant to the Treaties establishing them, but where that competence has not been fully exercised, a law shall lay down the procedures required for it to be fully exercised within a period which may not exceed five years.

Article 65

Conduct of common action

1. In the exercise of its competences, the Union shall be represented by the Commission in its relations with non-member states and international organizations. In particular, the Commission shall negotiate international agreements on behalf of the Union. It shall be responsible for liaison with all international organizations and shall cooperate with the Council of Europe, in particular in the cultural sector.

2. The Council of the Union may issue the Commission with guidelines for the conduct of international actions; it must issue such guidelines, after approving them by an absolute majority, where the Commission is involved in drafting acts and negotiating agreements which will create international obligations for the Union.

3. The Parliament shall be informed, in good time and in accordance with appropriate procedures, of every action of the institutions competent in the field of international policy.

4. The Parliament and the Council of the Union, both acting by an absolute majority; shall approve international agreements and instruct the President of the Commission to deposit the instruments of ratification.

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*Article 66***Cooperation**

The Union shall conduct its international relations by the method of cooperation where Article 64 of this Treaty is not applicable and where they involve:

- matters directly concerning the interests of several Member States of the Union, or
- fields in which the Member States acting individually cannot act as efficiently as the Union, or
- fields where a policy of the Union appears necessary to supplement the foreign policies pursued on the responsibility of the Member States, or
- matters relating to the political and economic aspects of security.

*Article 67***Conduct of cooperation**

In the fields referred to in Article 66 of this Treaty:

1. The European Council shall be responsible for cooperation. The Council of the Union shall be responsible for its conduct. The Commission may propose policies and actions which shall be implemented, at the request of the European Council or the Council of the Union, either by the Commission or by the Member States.
2. The Union shall ensure that the international policy guidelines of the Member States are consistent.
3. The Union shall coordinate the positions of the Member States during the negotiation of international agreements and within the framework of international organizations.
4. In an emergency, where immediate action is necessary, a Member State particularly concerned may act individually after informing the European Council and the Commission.
5. The European Council may call on its President, on the President of the Council of the Union or on the Commission to act as the spokesman of the Union.

*Article 68***Extension of the field of cooperation and transfer from cooperation to common action**

1. The European Council may extend the field of cooperation, in particular as regards armaments, sales of arms to non-member States, defence policy and disarmament.

2. Under the conditions laid down in Article 11 of this Treaty, the European Council may decide to transfer a particular field of cooperation to common action in external policy. In that event, the provisions laid down in Article 23 (3) of this Treaty shall apply without any time limit. Bearing in mind the principle laid down in Article 35 of this Treaty, the Council of the Union, acting unanimously, may exceptionally authorize one or more Member States to derogate from some of the measures taken within the context of common action.

3. By way of derogation from Article 11 (2) of this Treaty, the European Council may decide to restore the fields transferred to common action in accordance with paragraph 2 above either to cooperation or to the competence of the Member States.

4. Under the conditions laid down in paragraph 2 above, the European Council may decide to transfer a specific problem to common action for the period required for its solution. In that event, paragraph 3 above shall not apply.

*Article 69***Right of representation abroad**

1. The Commission may, with the approval of the Council of the Union, establish representations in non-member States and international organizations.

2. Such representations shall be responsible for representing the Union in all matters subject to common action. They may also, in collaboration with the diplomatic agent of the Member State holding the presidency of the European Council, coordinate the diplomatic activity of the Member States in the fields subject to cooperation.

3. In non-member States and international organizations where there is no representation of the Union, it shall be represented by the diplomatic agent of the Member State currently holding the presidency of the European Council or else by the diplomatic agent of another Member State.

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PART FIVE — THE FINANCES OF THE UNION

*Article 70***General provisions**

1. The Union shall have its own finances, administered by its institutions, on the basis of the budget adopted by the budgetary authority which shall consist of the European Parliament and the Council of the Union.

2. The revenue of the Union shall be utilized to guarantee the implementation of common actions undertaken by the Union. Any implementation by the Union of a new action assumes that the allocation to the Union of the financial means required shall be subject to the procedure laid down in Article 71 (2) of this Treaty.

*Article 71***Revenue**

1. When this Treaty enters into force, the revenue of the Union shall be of the same kind as that of the European Communities. However, the Union shall receive a fixed percentage of the basis for assessing value added tax established by the budget within the framework of the programme set out in Article 74 of this Treaty.

2. The Union may, by an organic law, amend the nature or the basis of assessment of existing sources of revenue or create new ones. It may by a law authorize the Commission to issue loans, without prejudice to Article 75 (2) of this Treaty.

3. In principle, the authorities of the Member States shall collect the revenue of the Union. Such revenue shall be paid to the Union as soon as it has been collected. A law shall lay down the implementing procedures for this paragraph and may set up the Union's own revenue-collecting authorities.

*Article 72***Expenditure**

1. The expenditure of the Union shall be determined annually on the basis of an assessment of the cost of each common action within the framework of the financial programme set out in Article 74 of this Treaty.

2. At least once a year, the Commission shall submit a report to the budgetary authority on the effectiveness of the actions undertaken, account being taken of their cost.

3. All expenditure by the Union shall be subject to the same budgetary procedure.

*Article 73***Financial equalization**

A system of financial equalization shall be introduced in order to alleviate excessive economic imbalances between the regions. An organic law shall lay down the procedures for the application of this system.

*Article 74***Financial programmes**

1. At the beginning of each parliamentary term, the Commission, after receiving its investiture, shall submit to the European Parliament and the Council of the Union a report on the division between the Union and the Member States of the responsibilities for implementing common actions and the financial burdens resulting therefrom.

2. On a proposal from the Commission, a multiannual financial programme, adopted according to the procedure for adopting laws, shall lay down the projected development in the revenue and expenditure of the Union. These forecasts shall be revised annually and used as the basis for the preparation of the budget.

*Article 75***Budget**

1. The budget shall lay down and authorize all the revenue and expenditure of the Union in respect of each calendar year. The adopted budget must be in balance. Supplementary and amending budgets shall be adopted under the same conditions as the general budget. The revenue of the Union shall not be earmarked for specific purposes.

2. The budget shall lay down the maximum amounts for borrowing and lending during the financial year. Save in exceptional cases expressly laid down in the budget, borrowed funds may only be used to finance investment.

3. Appropriations shall be entered in specific chapters grouping expenditure according to its nature or destination and subdivided in compliance with the provisions of the Financial Regulation. The expenditure of the institutions other than the Commission shall be

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the subject of separate sections of the budget; they shall be drawn up and managed by those institutions and may only include operating expenditure.

4. The Financial Regulation of the Union shall be established by an organic law.

Article 76

Budgetary procedure

1. The Commission shall prepare the draft budget and forward it to the budgetary authority.

2. Within the time limits laid down by the Financial Regulation:

(a) on first reading, the Council of the Union may approve amendments by a simple majority. The draft budget, with or without amendment, shall be forwarded to the Parliament;

(b) on first reading, the Parliament may amend by an absolute majority the amendments of the Council and approve other amendments by a simple majority;

(c) if, within a period of 15 days, the Commission opposes the amendments approved by the Council or by the Parliament on first reading, the relevant arm of the budgetary authority must take a fresh decision by a qualified majority on second reading;

(d) if the budget has not been amended, or if the amendments adopted by the Parliament and the Council are identical, and if the Commission has not exercised its right to oppose the amendments, the budget shall be deemed to have been finally adopted;

(e) on second reading, the Council may amend by a qualified majority the amendments approved by the Parliament. It may by a qualified majority refer the whole draft budget as amended by the Parliament back to the Commission and request it to submit a new draft; where not so referred back, the draft budget shall at all events be forwarded to the Parliament;

(f) on second reading, the Parliament may reject amendments adopted by the Council only by a qualified majority. It shall adopt the budget by an absolute majority.

3. Where one of the arms of the budgetary authority has not taken a decision within the time limit laid down by the Financial Regulation, it shall be deemed to have adopted the draft referred to it.

4. When the procedure laid down in this Article has been completed, the President of the Parliament shall declare that the budget stands adopted and shall cause it to be published without delay in the *Official Journal of the Union*.

Article 77

Provisional twelfths

Where the budget has not been adopted by the beginning of the financial year, expenditure may be effected on a monthly basis, under the conditions laid down in the Financial Regulation, up to a maximum of one-twelfth of the appropriations entered in the budget of the preceding financial year, account being taken of any supplementary and amending budgets.

At the end of the sixth month following the beginning of the financial year, the Commission may only effect expenditure to enable the Union to comply with existing obligations.

Article 78

Implementation of the budget

The budget shall be implemented by the Commission on its own responsibility under the conditions laid down by the Financial Regulation.

Article 79

Audit of the accounts

The Court of Auditors shall verify the implementation of the budget. It shall fulfil its task independently and, to this end, enjoy powers of investigation with regard to the institutions and organs of the Union and to the national authorities concerned.

Article 80

Revenue and expenditure account

At the end of the financial year, the Commission shall submit to the budgetary authority, in the form laid down by the Financial Regulation, the revenue and expenditure account which shall set out all the operations of the financial year and be accompanied by the report of the Court of Auditors.

Article 81

Discharge

The Parliament shall decide to grant, postpone or refuse a discharge; the decision on the discharge may be accompanied by observations which the Commission shall be obliged to take into account.

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PART SIX — GENERAL AND FINAL PROVISIONS

Article 82

Entry into force

This Treaty shall be open for ratification by all the Member States of the European Communities.

Once this Treaty has been ratified by a majority of the Member States of the Communities whose population represents two-thirds of the total population of the Communities, the Governments of the Member States which have ratified shall meet at once to decide by common accord on the procedures by and the date on which this Treaty shall enter into force and on relations with the Member States which have not yet ratified.

Article 83

Deposit of the instruments of ratification

The instruments of ratification shall be deposited with the Government of the first State to have completed the ratification procedure.

Article 84

Revision of the Treaty

One representation within the Council of the Union, or one-third of the members of Parliament, or the Commission may submit to the legislative authority a reasoned draft law amending one or more provisions of this Treaty. The draft shall be submitted for approval to the two arms of the legislative authority which shall act in accordance with the procedure applicable to organic laws.

The draft, thus approved, shall be submitted for ratification by the Member States and shall enter into force when they have all ratified it.

Article 85

The seat

The European Council shall determine the seat of the institutions. Should the European Council not have taken a decision on the seat within two years of the entry into force of this Treaty, the legislative authority shall take a final decision in accordance with the procedure applicable to organic laws.

Article 86

Reservations

The provisions of this Treaty may not be subject to any reservations. This Article does not preclude the Member States from maintaining, in relation to the Union, the declarations they have made with regard to the Treaties and conventions which form part of the Community patrimony.

Article 87

Duration

This Treaty is concluded for an unlimited period.

— *Motion for a resolution*

Preamble: adopted.

Before recital A

— amendment 24/rev. by Mr Moreau, Mr Radoux, Mr Seeler and Mr van Miert: adopted.

Recital A

— amendment 136 by Mr Spinelli, on behalf of the Committee on Institutional Affairs: adopted,

— amendment 42: fell.

(amendment 102/rev.: withdrawn).

Recital B

— amendment 103/rev. by Mr Prag and others: adopted.

Recital B: adopted as amended.

Recital C: adopted.

(amendment 104/rev. by the same; linguistic.)

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Paragraphs 1, 2 and 3:

- compromise amendment 139 by Mr Glinne, on behalf of the Socialist Group, Mr Barbi, on behalf of the EPP Group, Mr Prout, on behalf of the ED Group, Mr Bangemann, on behalf of the Liberal and Democratic Group, Mr Fanti and Mr Ferri:

The following spoke: Mr Ferri, *Chairman of the Committee on Institutional Affairs*, who proposed a modification to paragraph 1 ('... its President assisted by a delegation from the Committee on Institutional Affairs'), and Mr Glinne, who did not accept this proposal.

The President undertook to submit the proposal to the enlarged Bureau.

Roll-call vote requested by the Liberal and Democratic Group:

Members voting: 291 ⁽¹⁾,

For: 239.

Against: 24.

Abstentions: 28.

Amendment 139 was thus adopted.

(All other amendments thus fell.)

⁽¹⁾ See Annex.

In view of the late hour, the President proposed that explanations of vote should be limited to one minute for members speaking on their own behalf and two minutes for members speaking on behalf of their group.

Explanations of vote:

The following spoke: Mr Barbi, on behalf of the EPP Group, Mr Nord, on behalf of the Liberal and Democratic Group, Mr Hord, on a point of procedure, Sir Fred Catherwood, Mr Glinne, Mr Prag, Mr Di Bartolomei, Mr Pannella, who spoke also on behalf of Mrs Bonino, Mr Kirk, Mr Adamou, Mrs Castle, Mrs Lizin, Mr Megahy, Mr De Pasquale, on behalf of the Italian Members of the Communist and Allies Group, Mrs Gredal, on behalf of the Danish Members of the Socialist Group, Mr Balfe, Mr Luster, Mr Israël, Mrs Nielsen, who spoke also on behalf of Mr Nielsen, Mr Maher, Mr Enright, Mr Pfennig, on the drafting change to Article 56, Mr Moreland and the coordinating rapporteur.

Roll-call vote on the motion for a resolution as a whole requested by the Socialist Group.

Members voting: 303 ⁽¹⁾.

For: 237.

Against: 32.

Abstentions: 34.

Parliament thus adopted the following resolution:

RESOLUTION

on the draft Treaty establishing the European Union

The European Parliament,

- having regard to its decision of 9 July 1981 setting up a Committee on Institutional Affairs ⁽¹⁾,
 - having regard to its resolution of 6 July 1982 concerning the reform of the Treaties and the achievement of European Union ⁽²⁾,
 - having regard to its resolution of 14 September 1983 concerning the substance of the preliminary draft Treaty establishing the European Union ⁽³⁾,
 - having regard to the report of the Committee on Institutional Affairs (Doc. 1-1200/83);
- A. persuaded that, having regard to the present difficulties, there is an urgent and vital need for a revival of European integration: such a revival should include a further

⁽¹⁾ OJ No. C 234, 14. 9. 1981, p. 48.

⁽²⁾ OJ No C 238, 13. 9. 1982, p. 25.

⁽³⁾ OJ No C 277, 17. 10. 1983, p. 95.

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development of existing policies, the introduction of new policies and the establishment of a new institutional balance;

- B. recalling that European Union has been designated as an objective by the Member States in the Treaties establishing the European Communities, at the Conference of the Heads of State or Government of 20 October 1972 and in the Solemn Declaration of 19 June 1983, as well as by the institutions of the Communities themselves,
- C. conscious of its historic duty as the first Assembly directly elected by the citizens of Europe, to put forward a proposal for Union,
- D. noting that the preliminary draft Treaty establishing the European Union submitted by the Committee on Institutional Affairs, which is based on the experience of 30 years of Community activities and on the manifest need to progress beyond the current degree of unity, is compatible with the guidelines it adopted in its resolution of 14 September 1983,
1. Approves the preliminary draft, which hereby becomes the draft Treaty establishing the European Union, and instructs its President to submit it to the Parliaments and Governments of the Member States;
 2. Calls on the European Parliament which will be elected on 17 June 1984 to arrange all appropriate contacts and meetings with the national parliaments and to take any other useful initiatives to enable it to take account of the opinions and comments of the national parliaments;
 3. Hopes that the Treaty establishing the European Union will ultimately be approved by all the Member States in accordance with their respective constitutional procedures.

11. Agenda for next sitting

The President announced the following agenda for the sitting on Wednesday, 15 February 1984.

9 a.m. to 1 p.m. and 3 p.m. to 7 p.m.:

- Decisions on urgency,
- 17th general report on the activities of the Communities for 1983 and programme of work for 1984 (followed by a debate) ⁽¹⁾,
- Joint debate on an oral question by the EPD Group to the Commission on the inadequacy of the agricultural appropriations allocated to the EAGGF in the 1984 budget and an oral question on behalf of the Committee on Budgets to the Commission on Parliament's proposals for corrections to the 1984 budget.

⁽¹⁾ Oral Questions Docs 1-1080/83, 1-952/83, 1-954/83, 1-960/83 and 1-1316/83 would be included in the debate.

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3 p.m. to 4.30 p.m.:

- Topical and urgent debate (objections),
- .. Question Time (Questions to the Commission),

4.30 p.m.:

- Action taken on the opinions of Parliament by the Commission.

(The sitting closed at 9 p.m.)

H.J. OPITZ
Secretary-General

Pieter DANKERT
President

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ATTENDANCE REGISTER

Sitting of 14 February 1984

ABENS, ADAM, ADAMOU, ADONNINO, VAN AERSSSEN, AIGNER, ALBER, VON ALEMANN, ALEXIADIS, ALFONSI, ALMIRANTE, ANSQUER, ANTONIOZZI, ARFE, ARNDT, BADUEL GLORIOSO, BAILLOT, BALFE, BANGEMANN, BARBAGLI, BARBARELLA, BARBI, BATTERSBY, BAUDIS, BEAZLEY, BERKHOUWER, BERNARD, BETHELL, BETTIZA, BEUMER, BEYER DE RYKE, VON BISMARCK, BLANEY, BLUMENFELD, BOCKLET, BØGH, BOMBARD, BONACCINI, BONDE, BONINO, BOOT, BORD, BOSERUP, BOURNIAS, BROK, BROOKES, BUCHAN, BUTTAFUOCO, CABORN, CAILLAVET, CALVEZ, CARDIA, CARETTONI ROMAGNOLI, CARIGLIA, CAROSSINO, CASSANMAGNAGO CERRETTI, CASTLE, CATHERWOOD, CECOVINI, CERAVOLO, CHAMBEIRON, CHANTERIE, CHARZAT, CINCIARI RODANO, CINGARI, CLINTON, CLWYD, COHEN, COLLESELLI, COLLINS, COLLOMB, COSENTINO, COSTANZO, COTTRELL, DE COURCY LING, COUSTE, CRONIN, CROUX, CURRY, DALSSASS, DALZIEL, DAMETTE, DAMSEAU, D'ANGELOSANTE, DANKERT, DAVERN, DE GUCHT, DELATTE, DEL DUCA, DELEAU, DELOROZOY, DENIS, DE PASQUALE, DESCHAMPS, DESOUCHES, DE VALERA, DIANA, DI BARTOLOMEI, DIDO, DILIGENT, DONNEZ, DOURO, DUPORT, DURY, EISMA, ELLES, ENRIGHT, EPHREMIDIS, ERCINI, ESTGEN, EYRAUD, FAJARDIE, FANTI, FAURE, FERGUSSON, FERNANDEZ, DE FERRANTI, FERRY, FICH, FILIPPI, FISCHBACH, FOCKE, FORSTER, FORTH, FRANZ, FRIEDRICH B., FRIEDRICH I., FRISCHMANN, FUCHS K., FUILLET, GABERT, GAIOTTI DE BIASE, GALLAGHER, GALLAND, GALLUZZI, GATTO, GAUTHIER R., GAUTIER F., GAWRONSKI, GENDEBIEN, GEROKOSTOPOULOS, GERONIMI, GEURTSSEN, GHERGO, GIAVAZZI, GIUMMARRA, DE GOEDE, GOERENS, GONTIKAS, GOPPEL, GOUTHIER, GREDAL, GRIFFITHS, HAAGERUP, HABSBERG, HAHN, HALLIGAN, HÄNSCH, HAMMERICH, HARMAR-NICHOLLS, HARRIS, VON HASSEL, HEINEMANN, HELMS, HERKLOTZ, HERMAN, VAN DEN HEUVEL, HOFF, HOOPER, HOPPER, HORD, HOWELL, HUME, HUTTON, IPPOLITO, ISRAEL, JACKSON C., JACKSON R., JAKOBSEN, JAQUET, JONKER, KALLIAS, KALOYANNIS, KASPEREIT, KATZER, KAZAZIS, KEATING, KELLETT-BOWMAN ED., KELLETT-BOWMAN EL., KEY, KIRK, KLEPSCH, KLINKENBORG, KROUWEL-VLAM, KYRKOS, LAGAKOS, LALOR, LALUMIERE, LANGE, LANGES, LECANUET, LEGA, LEMMER, LENTZ-CORNETTE, LENZ, LEONARDI, LIGIOS, LINKOHR, LIZIN, LOMAS, LOO, LOUWES, LÜCKER, LUSTER, LYNGE, MACARIO, MCCARTIN, MACCIOCCI, MAFFRE-BAUGE, MAHER, MAIJ-WEGGEN, MAJONICA, MALANGRE, DE LA MALENE, MARCHESIN, MARCK, MARKOPOULOS, MARSHALL, MART, MARTIN S., MEGAHY, MERTENS, MIHR, VAN MINNEN, MODIANO, MOORHOUSE, MOPREAU J., MOREAU L., MORELAND, MÜLLER-HERMANN, NEBOUT, NEWTON DUNN, NIELSEN J.B., NIELSEN T., NIKOLAOU C., NIKOLAOU K., NORD, NORDMANN, NORMANTON, NOTENBOOM, NYBORG, O'HAGAN, ORLANDI, D'ORMESSON, OUZOUNIDIS, PAISLEY, PAJETTA, PAPAESTRATIOU, PAPANTONIOU, PAPAPIETRO, PATTERSON, PAUWLEYN, PEDINI, PELIKAN, PENDERS, PERY, PESMAZOGLOU, PETERS, PETERSEN, PETRONIO, PFENNIG, PFLIMLIN, PHLIX, PICCOLI, PININFARINA, PINTAT, PLASKOVITIS, PÖTTERING, PONIATOWSKI, PRAG, PRICE, PROTOPAPADAKIS, PROUT, PROVAN, PRUVOT, PULETTI, PURVIS, QUIN, RABBETHGE, RADOUX, RHYS WILLIAMS, RIEGER, RINSCHKE, RIPA DI MEANA, RIVIEREZ, ROBERTS, ROGERS, ROMUALDI, ROSSI, RUMOR, RYAN, SABLE, SABY, SÄLZER, SALISCH, SCHIELER, SCHINZEL, SCHLEICHER, SCHMIDT, SCHNITKER, SCHÖN KARL, SCHÖN KONRAD, SCHWENCKE, SCOTT-HOPKINS, SCRIVENER, SEAL, SEEFELD, SEELER, SEGRE, SEIBEL-EMMERLING, SEITLINGER, SELIGMAN, SHERLOCK, SIEGLERSCHMIDT, SIMMONDS, SIMONNET, SIMPSON, SKOVMAND, SPAAK, SPENCER, SPICER, SPINELLI, SQUARCIALUPI, STELLA, STREHLER, SUTRA, TAYLOR J.D., TAYLOR J.M., THAREAU, THEOBALD-PAOLI, TOLMAN, TRAVAGLINI, TREACY, TUCKMAN, TURNER, TYRELL, VANDEMEULEBROUCKE, VANDEWIELE, VAN HEMELDONCK, VANKERKHOVEN, VAN MIERT, VANNECK, VAN ROMPUY, VAYSSADE, VEIL, VERGEER, VERGES, VERNIMMEN, VERONESI, VERROKEN, VETTER, VGENOPOULOS, VIE, VIEHOFF, VITALE, VON DER VRING, WAGNER, WALTER, WALZ, WARNER, WAWRZIK, WEBER, WEDEKIND, WELSH, WETTIG, WIECZOREK-ZEUL, VON WOGAU, WOLTJER, WURTZ, ZAGARI, ZARGES, ZECCHINO.

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ANNEX

Result of roll-call votes

- (+) = Yes
 (—) = No
 (O) = Abstention

*Preliminary draft Treaty (Doc. 1-1200/83)**Amendment 38*

(+)

BALFE, HUTTON, KIRK, LALUMIERE.

(—)

ADDONINO, ALBER, ALBERS, ALMIRANTE, ANTONIOZZI, ARFE, ARNDT, BADUEL GLORIOSO, BANGEMANN, BARBAGLI, BARBARELLA, BARBI, BARTOLOMEI, BATTERSBY, BAUDIS, BEAZLEY, BEUMER, BISMARCK VON, BLUMENFELD, BOCKLET, BOMBARD, BONACCINI, BONINO, BOOT, BOURNIAS; BUTTAFUOCO, CAILLAVET, CALVEZ, CARDIA, CARETTONI ROMAGNOLI, CARIGLIA, CAROSSINO, CASSANMAGNAGO CERRETTI, CECOVINI, CHANTERIE, CINCIARI RODANO, CINGARI, CLINTON, COHEN, COLLESELLI, COLLOMB, COSENTINO, COSTANZO, CROUX, D'ANGELOSANTE, DALSASS, DE GUCHT, DE PASQUALE, DEL DUCA, DELATTE, DELOROZOY, DESCHAMPS, DIANA, DIDO, DUPORT, EISMA, ERCINI, ESTGEN, FAJARDIE, FANTI, FAURE E., FERRI, FICH, FORSTER, FRANZ, FUCHS K., GABERT, GAIOTTI DE BIASE, GALLAGHER, GALLUZZI, GATTO, GAWRONSKI, GENDEBIEN, GEROKOSTOPOULOS, GERONIMI, GHERGO, GIUMMARRA, GLINNE, GOERENS, GONTIKAS, GOPPEL, GOUTHIER, GREDAL, HAAGERUP, HABSBURG, HAHN, HARMAR-NICHOLLS, HERKLOTZ, HERMAN, HEUVEL VAN DEN, HOOPER, HOPPER, IPPOLITO, ISRAEL, JACKSON C., JAKOBSEN, KATZER, KAZAZIS, KEATING, KLEPSCH, KLINKENBORG, KROUWEL-VLAM, LANGES, LECANUET, LEGA, LEMMER, LENTZ-CORNETTE, LENZ, LEONARDI, LIGIOS, LIZIN, LOO, LOUWES, LÜCKER, LUSTER, MACARIO, MAHER, MAJONICA, MALANGRE, MARCHESIN, MARCK, MARSHALL, MARTIN S., MCCARTIN, MERTENS, MIHR, MODIANO, MOORHOUSE, MOREAU J., MOREAU L., MORELAND, NEWTON DUNN, NIELSEN J., NIELSEN T., NORD, NOTENBOOM, ORLANDI, D'ORMESSON, OUZOUNIDIS, PAISLEY, PANNELLA, PAPAESTRATIOU, PAPAPIETRO, PAUWELYN, PEDINI, PELIKAN, PENDERS, PERY, PETERS, PETERSEN, PETRONIO, PHLIX, PICCOLI, PININFARINA, PINTAT, PONIATOWSKI, PRAG, PROTOPAPADAKIS, PROVAN, PRUVOT, PULETTI, PURVIS, RABBETHGE, RADOUX, RHYS WILLIAMS, RINSCHÉ, RIPA DI MEANA, RUMOR, RYAN, SABLE, SABY, SCHMID, SCHNITKER, SCHÖN KARL, SCRIVENER, SEEFELD, SEGRE, SEIBEL-EMMERLING, SEITLINGER, SELIGMAN, SHERLOCK, SIMONNET, SPAAK, SPINELLI, SQUARCIALUPI, STELLA, STREHLER, SUTRA, THAREAU, THEOBALD, TOLMAN, TRAVAGLINI, TREACY, TUCKMAN, VANDEMEULEBROUCKE, VANDEWIELE, VANKERKHOVEN, VANNECK, VEIL, VERGEER, VERNIMMEN, VERONESI, VERROKEN, VGENOPOULOS, VIEHOFF, VITALE, VRING VON DER, WALZ, WAWRZIK, WELSH, WETTIG, WOGAU VON, ZAGARI, ZECCHINO.

(O)

BOSERUP, CASTLE, FUILLET, GRIFFITHS, LAGAKOS, NIKOLAOU C., PLASKOVITIS, QUIN.

Amendment 29

(+)

ADONNINO, AERSSSEN VAN, AIGNER, ALBER, ANTONIOZZI, BARBAGLI, BARBI, BARTOLOMEI, BAUDIS, BEAZLEY, BEUMER, BISMARCK VON, BLUMENFELD, BOCKLET, BOOT, BOURNIAS, BROK, CARIGLIA, CHANTERIE, CLINTON, COLLESELLI, COLLOMB, COSENTINO, COSTANZO, CROUX, DALSASS, DEL DUCA, DIANA, DILIGENT, ERCINI, ESTGEN, FISCHBACH, FRANZ, FRIEDRICH I., FRÜH, FUCHS K., GALLAGHER, GEROKOSTOPOULOS, GERONIMI, GHERGO, GIAVAZZI, GIUMMARRA, GONTIKAS, GOPPEL, HABSBURG, HAHN, HASSEL VON, HELMS, HERMAN, ISRAEL, JAKOBSEN, KALLIAS, KALOYANNIS, KATZER, KAZAZIS, KLEPSCH, LANGES, LECANUET, LEGA, LEMMER, LENTZ-CORNETTE, LENZ, LIGIOS, LÜCKER, LUSTER, MACARIO, MAIJ-WEGGEN, MAJONICA, MALANGRE, MARCK, MCCARTIN, MERTENS, MODIANO, MOREAU L., MÜLLER-HERMANN, NIELSEN J., NOTENBOOM, ORLANDI, D'ORMESSON, PAPAESTRATIOU, PEDINI, PENDERS, PFENNIG, PFLIMLIN, PHLIX, PICCOLI, PÜTTERING, PROTOPAPADAKIS,

No C 77/58

Official Journal of the European Communities

19. 3. 84

Tuesday, 14 February 1984

RABBETHGE, RINSCHÉ, RUMOR, RYAN, SÄLZER, SCHLEICHER, SCHNITKER, SCHÖN KONRAD, SEITLINGER, SIMONNET, STELLA, TOLMAN, TRAVAGLINI, TUCKMAN, TURNER, VANDEWIELE, VANKERKHOVEN, VERGEER, VERROKEN, WALZ, WAWRZIK, WOGAU VON, ZARGES.

(—)

ALBERS, ALEMANN VON, ALMIRANTE, ARFE, ARNDT, BADUEL GLORIOSO, BANGEMANN, BARBARELLA, BOMBARD, BONACCINI, BONINO, BOSERUP, CABORN, CAILLAVET, CALVEZ, CARDIA, CARETONI ROMAGNOLI, CAROSSINO, CATHERWOOD, CECOVINI, CERAVOLO, CHARZAT, CINCIARI RODANO, CINGARI, COHEN, COLLINS, CURRY, D'ANGELOSANTE, DALZIEL, DE FERRANTI, DE GUCHT, DE PASQUALE, DELATTE, DELOROZOY, DIDO, DOURO, DUPORT, EISMA, ENRIGHT, FAJARDIE, FANTI, FAURE E., FERGUSSON, FERRI, FICH, FOCKE, FORSTER, FUILLET, GABERT, GALLAND, GALLUZZI, GATTO, GAUTIER, GAWRONSKI, GENDEBIEN, GEURTSSEN, GLINNE, GOERENS, GOUTHIER, GREDAL, HAAGERUP, HÄNSCH, HARMAR-NICHOLLS, HEINEMANN, HERKLOTZ, HEUVEL VAN DEN, HOFF, HOOPER, HOPPER, HUME, HUTTON, IPPOLITO, JACKSON C., JAQUET, KEATING, KELLETT-BOWMAN ED., KEY, KIRK, KLINKENBORG, KROUWEL-VLAM, LAGAKOS, LALUMIERE, LANGE, LEONARDI, LINKOHR, LIZIN, LOO, LOUWES, MAHER, MARCHESIN, MARKOPOULOS, MARSHALL, MARTIN S., MIHR, MINNEN VAN, MOORHOUSE, MOREAU J., MORELAND, NEWTON DUNN, NIKOLAOU K., NORD, NORDMANN, OUZOUNIDIS, PAJETTA, PANNELLA, PAPANTONIOU, PAPAPIETRO, PAUWELYN, PELIKAN, PESMAZOGLOU, PETERS, PETERSEN, PETRONIO, PININFARINA, PINTAT, PLASKOVITIS, PONIATOWSKI, PRAG, PRICE, PROVAN, PRUVOT, PULETTI, PURVIS, RADOUX, RHYS WILLIAMS, RIPA DI MEANA, ROMUALDI, ROSSI, SABLE, SABY, SCHMID, SCHÖN KARL, SCOTT-HOPKINS, SCRIVENER, SEEFELD, SEELER, SEGRE, SEIBEL-EMMERLING, SELIGMAN, SHERLOCK, SIEGLERSCHMIDT, SIMPSON, SPAAK, SPENCER, SPINELLI, SQUARCIALUPI, SUTRA, THAREAU, THEOBALD, TREACY, VAN HEMELDONCK, VAN MIERT, VANNECK, VAYSSADE, VEIL, VERNIMMEN, VERONESI, VETTER, VGENOPOULOS, VIEHOFF, VITALE, VRING VON DER, WAGNER, WALTER, WEBER, WELSH, WETTIG, WIECZOREK-ZEUL, ZAGARI.

(O)

ADAM, BALFE, BATTERSBY, CASTLE, DESCHAMPS, GAIOTTI DE BIASE, GRIFFITHS, HORD, MEGAHY, PERY, QUIN, VANDEMEULEBROUCKE, ZECCHINO.

Amendment 72/rev.

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AERSSSEN VAN, ALBER, BALFE, BEUMER, BISMARCK VON, BOOT, BROK, CHARZAT, COSENTINO, DALSSASS, DEL DUCA, EISMA, FRÜH, FUCHS K., GOEDE DE, GOPPEL, HÄNSCH, HASSEL VON, HELMS, HERMAN, JAQUET, KATZER, KLEPSCH, LEMMER, LENTZ-CORNETTE, LENZ, LUSTER, MAJONICA, MALANGRE, MERTENS, MÜLLER-HERMANN, NEWTON DUNN, NOTENBOOM, PENDERS, PFENNIG, PHLIX, PÖTTERING, RABBETHGE, SÄLZER, SCHLEICHER, SIMONNET, STELLA, VAN HEMELDONCK, VAN MIERT, VANDEMEULEBROUCKE, VANDEWIELE, WARNER, WELSH, ZARGES.

(—)

ABENS, ADONNINO, ALBERS, ALEMANN VON, ALMIRANTE, ANTONIOZZI, ARFE, ARNDT, BADUEL GLORIOSO, BANGEMANN, BARBAGLI, BARBARELLA, BARBI, BARTOLOMEI, BÄTTERSBY, BAUDIS, BEAZLEY, BERKHOUWER, BERNARD, BETTIZA, BLUMENFELD, BOCKLET, BONACCINI, BOURNIAS, BROOKES, BUTTAFUOCO, CAILLAVET, CALVEZ, CARDIA, CARETONI ROMAGNOLI, CARIGLIA, CAROSSINO, CASSANMAGNAGO CERRETTI, CATHERWOOD, CECOVINI, CERAVOLO, CHANTERIE, CINCIARI RODANO, CINGARI, COHEN, COLLESELLI, COLLINS, COLLOMB, COSTANZO, CROUX, CURRY, D'ANGELOSANTE, DALZIEL, DE GUCHT, DE PASQUALE, DELATTE, DELOROZOY, DESCHAMPS, DIANA, DIDO, DILIGENT, DUPORT, ELLES, ERCINI, ESTGEN, FANTI, FAURE E., FERGUSSON, FERRI, FISCHBACH, FOCKE, FORSTER, FUILLET, GABERT, GAIOTTI DE BIASE, GALLAND, GALLUZZI, GATTO, GAUTIER, GAWRONSKI, GEROKOSTOPOULOS, GHERGO, GIAVAZZI, GIUMMARRA, GLINNE, GOERENS, GONTIKAS, GOUTHIER, HAAGERUP, HABSBERG, HAHN, HALLIGAN, HARMAR-NICHOLLS, HEINEMANN, HERKLOTZ, HEUVEL VAN DEN, HOFF, HOOPER, HORD, HOWELL, HUME, HUTTON, IPPOLITO, ISRAEL, JONKER, KALLIAS, KALOYANNIS, KAZAZIS, KEATING, KELLETT-BOWMAN ED., KEY, KROUWEL-VLAM, KYRKOS, LALUMIERE, LANGE, LANGES, LECANUET, LEGA, LEONARDI, LIGIOS, LINKOHR, LIZIN, LOO, LÜCKER, MACARIO, MACCIOCCHI, MAHER, MAIJ-WEGGEN, MARCHESIN, MARCK, MARSHALL, MARTIN S., MCCARTIN, MIHR, MINNEN VAN, MODIANO, MOORHOUSE, MOREAU J., MOREAU L., MORELAND, NORD, NORDMANN, ORLANDI, D'ORMESSON, PAJETTA, PAPAESTRATIOU, PAPANTONIOU, PATTERSON, PAUWELYN, PEDINI, PELIKAN, PETERS, PETRONIO, PFLIMLIN,

Tuesday, 14 February 1984

PICCOLI, PININFARINA, PINTAT, PONIATOWSKI, PRAG, PRICE, PROTOPAPADAKIS, PROVAN, PRUVOT, PULETTI, PURVIS, QUIN, RADOUX, RHYS WILLIAMS, RINSCHÉ, RIPA DI MEANA, ROMUALDI, ROSSI, RUMOR, RYAN, SABLE, SABY, SCHINZEL, SCHMID, SCHNITKER, SCHÖN KARL, SCHÖN KONRAD, SCHWENCKE, SCOTT-HOPKINS, SEEFELD, SEELER, SEGRE, SEIBEL-EMMERLING, SEITLINGER, SELIGMAN, SIEGLERSCHMIDT, SIMPSON, SPENCER, SPINELLI, SQUARCIALUPI, STREHLER, SUTRA, THAREAU, THEOBALD, TOLMAN, TRAVAGLINI, TREACY, TUCKMAN, TURNER, VAN ROMPUY, VANKERKHOVEN, VANNECK, VAYSSADE, VEIL, VERGEER, VERONESI, VERROKEN, VETTER, VIEHÖFF, VITALE, VRING VON DER, WAGNER, WALTER, WALZ, WAWRZIK, WEBER, WETTIG, WIECZOREK-ZEUL, WOGAU VON, ZAGARI, ZECCHINO.

(O)

ADAM, AIGNER, BØGH, BOMBARD, BONINO, BOSERUP, CLINTON, COURCY LING DE, EYRAUD, FAJARDIE, FICH, FRIEDRICH I., GREDAL, GRIFFITHS, KLINKENBORG, NIELSEN J., PANNELLA, PERY, PETERSEN, PLASKOVITIS, VERNIMMEN.

Amendment 128

(+)

ADONNINO, AERSSSEN VAN, AIGNER, ALBER, ALEMANN VON, ALMIRANTE, ANTONIOZZI, ARFE', BADUEL GLORIOSO, BANGEMANN, BARBAGLI, BARBARELLA, BARBI, BARTOLOMEI, BAUDIS, BERKHOUWER, BETTIZA, BEUMER, BISMARCK VON, BLUMENFELD, BOCKLET, BONACCINI, BOOT, BOURNIAS, BROK, BROOKES, CALVEZ, CARDIA, CARETTONI ROMAGNOLI, CARIGLIA, CAROSSINO, CASSANMAGNAGO CERRETTI, CATHERWOOD, CECOVINI, CERAVOLO, CHANTERIE, CINCIARI RODANO, CINGARI, CLINTON, COLLESELLI, COLLOMB, COSENTINO, COSTANZO, COURCY LING DE, CROUX, D'ANGELOSANTE, DALSASS, DE GUCHT, DE PASQUALE, DEL DUCA, DELATTE, DELOROZOY, DESCHAMPS, DIANA, DIDO, DILIGENT, EISMA, ERCINI, ESTGEN, FANTI, FAURE E., FERGUSSON, FERRI, FRANZ, FRIEDRICH I., FRÜH, FUCHS K., GAIOTTI DE BIASE, GALLAND, GALLUZZI, GATTO, GAWRONSKI, GENDEBIEN, GEURTSSEN, GHERGO, GIAVAZZI, GIUMMARRA, GOEDE DE, GOERENS, GONTIKAS, GOPPEL, GOUTHIER, HABSBURG, HAHN, HASSEL VON, HELMS, HERMAN, IPPOLITO, JAKOBSEN, JONKER, KALOYANNIS, KATZER, KAZAZIS, KLEPSCH, LANGES, LECANUET, LEGA, LEMMER, LENTZ-CORNETTE, LENZ, LEONARDI, LIGIOS, LOUWES, LUCKER, LUSTER, MACARIO, MACCIOCCHI, MAJ-WEGGEN, MAJONICA, MALANGRE, MARCK, MARTIN S., MC CARTIN, MERTENS, MODIANO, MOREAU L., MÜLLER-HERMANN, NEWTON DUNN, NORD, - NORDMANN, NOTENBOOM, ORLANDI, D'ORMESSON, PANNELLA, PAPAEFSTRATIOU, PAPAPIETRO, PAUWELYN, PEDINI, PELIKAN, PENDERS, PESMAZOGLOU, PETERS, PETRONIO, PFENNIG, PFLIMLIN, PHLIX, PICCOLI, PININFARINA, PINTAT, PONIATOWSKI, PÖTTERING, PROTOPAPADAKIS, PRUVOT, PULETTI, RABBETHGE, RADOUX, RINSCHÉ, RIPA DI MEANA, ROMUALDI, ROSSI, RUMOR, RYAN, SABLE, SÄLZER, SCHLEICHER, SCHNITKER, SCHÖN KONRAD, SCHWENCKE, SCRIVENER, SEELER, SEGRE, SEITLINGER, SIMONNET, SPAAK, SPINELLI, SQUARCIALUPI, STELLA, STREHLER, TOLMAN, TRAVAGLINI, VAN MIERT, VAN ROMPUY, VANDEWIELE, VANKERKHOVEN, VANNECK, VEIL, VERGEER, VERONESI, VITALE, WALZ, WAWRZIK, WOGAU VON, ZAGARI, ZARGES, ZECCHINO.

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ADAM, ALBERS, ARNDT, BEAZLEY, BERNARD, CAILLAVET, CASTLE, COHEN, CURRY, DALZIEL, DE FERRANTI, DESOUCHES, DUFORT, EYRAUD, FAJARDIE, FICH, FOCKE, FUILLET, GABERT, GALLAGHER, GLINNE, GREDAL, GRIFFITHS, HAAGERUP, HÄNSCH, HALLIGAN, HARMARNICHOLLS, HEINEMANN, HERKLOTZ, HEUVEL VAN DEN, HOFF, HOOPER, HORD, HUME, HUTTON, ISRAEL, JACKSON C., JAQUET, KALLIAS, KEATING, KELLETT-BOWMAN ED., KLINKENBORG, KROUWEL-VLAM, KYRKOS, LAGAKOS, LALUMIERE, LANGE, LINKOHR, LIZIN, LOO, LYNGE, MARCHESIN, MARKOPOULOS, MARSHALL, MIHR, MINNEN VAN, MOORHOUSE, MOREAU J., MORELAND, NIELSEN T., NIKOLAOU C., NIKOLAOU K., OUZOUNIDIS, PAJETTA, PAPANTONIOU, PERY, PETERSEN, PLASKOVITIS, PRAG, PRICE, PURVIS, QUIN, RHYS WILLIAMS, SCHINZEL, SCHMID, SCHÖN KARL, SEEFELD, SEIBEL-EMMERLING, SELIGMAN, SIEGLERSCHMIDT, SIMPSON, SPENCER, THAREAU, TREACY, TUCKMAN, TURNER, VAN HEMELDONCK, VANDEMEULEBROUCKE, VAYSSADE, VERNIMMEN, VETTER, VIEHOFF, VRING VON DER, WAGNER, WALTER, WARNER, WELSH, WETTIG.

(O)

BALFE, BØGH, BOSEROP, GEROKOSTOPOULOS, HAMMERICH, KIRK, MAHER, NIELSEN J., PATTERSON, PROVAN, SABY, SCOTT-HOPKINS, WIECZOREK-ZEUL, WOLTJER.

No C 77/60

Official Journal of the European Communities

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Tuesday, 14 February 1984

*Preliminary draft Treaty**Final vote*

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ADONNINO, AERSSSEN VAN, ALBER, ALBERS, ALEMANN VON, ALMIRANTE, ANTONIOZZI, ARFE, ARNDT, BADUEL GLORIOSO, BANGEMANN, BARBAGLI, BARBARELLA, BARBI, BARTOLOMEI, BATTERSBY, BAUDIS, BEAZLEY, BETTIZA, BEUMER, BISMARCK VON, BLUMENFELD, BOCKETT, BONACCINI, BONINO, BOOT, BOURNIAS, BROK, BUTTAFUOCO, CAILLAVET, CALVEZ, CARDIA, CARETTONI ROMAGNOLI, CARIGLIA, CAROSSINO, CASSANMAGNAGO CERRETTI, CECOVINI, CERAVOLO, CHANTERIE, CINCIARI RODANO, CINGARI, CLINTON, COHEN, COLLESELLI, COLLOMB, COSENTINO, COSTANZO, COURCY LING DE, CROUX, CURRY, D'ANGELOSANTE, DALSSASS, DE GUCHT, DE PASQUALE, DEL DUCA, DELATTE, DELOROZOY, DESCHAMPS, DIANA, DILIGENT, EISMA, ERCINI, ESTGEN, FANTI, FAURE E., FERRI, FORSTER, FRANZ, FRIEDRICH I., FRÜH, FUCHS K., GABERT, GAIOTTI DE BIASE, GALLAGHER, GALLAND, GALLUZZI, GATTO, GAWRONSKI, GENDEBIEN, GEROKOSTOPOULOS, GERONIMI, GEURTSSEN, GHERGO, GIACCAZZI, GIUMMARRA, GLINNE, GOEDE DE, GOERENS, GONTIKAS, GOPPEL, GOUTHIER, HAAGERUP, HABSBERG, HAHN, HALLIGAN, HASSEL VON, HEINEMANN, HELMS, HERKLOTZ, HERMAN, HEUVEL VAN DEN, HOFF, HOWELL, IPPOLITO, ISRAEL, JACKSON C., JAKOBSEN, JONKER, KALLIAS, KALOYANNIS, KATZER, KAZAZIS, KELLET-BOWMAN ED., KLEPSCH, KLINKENBORG, KROUWEL-VLAM, LANGE, LANGES, LECANUET, LEGA, LEMMER, LENTZ-CORNETTE, LENZ, LEONARDI, LIGIOS, LINKOHR, LIZIN, LOUWES, LÜCKER, LUSTER, MACARIO, MACCIOCCHI, MAHER, MAIJ-WEGGEN, MAJONICA, MALANGRE, MARCK, MARTIN S., MERTENS, MC CARTIN, MODIANO, MIHR, MOORHOUSE, MOREAU L., MORELAND, NEWTON DUNN, NORD, NORDMANN, NOTENBOOM, ORLANDI, D'ORMESSON, PAJETTA, PANNELLA, PAPAESTRATIQU, PAPAPIETRO, PATTERSON, PEDINI, PELIKAN, PENDERS, PESMAZOGLOU, PETERS, PETRONIO, PFENNIG, PFLIMLIN, PHLIX, PICCOLI, PININFARINA, PINTAT, PONIATOWSKI, PÖTTERING, PRAG, PROTOPAPADAKIS, PROVAN, PRUVOT, PULETTI, PURVIS, RABBETHGE, RADOUX, RHYS WILLIAMS, RINSCHKE, RIPA DI MEANA, ROMUALDI, ROSSI, RUMOR, RYAN, SABLE, SÄLZER, SCHINZEL, SCHLEICHER, SCHNITKER, SCHÖN KARL, SCHÖN KONRAD, SCOTT-HOPKINS, SCRIVENER, SEEFELD, SEELER, SEGRE, SEIBEL-EMMERLING, SEITLINGER, SELIGMAN, SIMONNET, SIMPSON, SPAAK, SPENCER, SPINELLI, SQAURCIALUPI, STELLA, STREHLER, TOLMAN, TRAVAGLINI, TUCKMAN, VAN HEMELDONCK, VAN MIERT, VAN ROMPUY, VANDEMEULEBROUCKE, VANDEWIELE, VANKERKHOVEN, VANNECK, VEIL, VERGEER, VERNIMMEN, VERONESI, VERROKEN, VETTER, VIEHOFF, VITALE, VRING VON DER, WAGNER, WALZ, WAWRZIK, WETTIG, WIECZOREK-ZEUL, WOGAU VON, WOLTJER, ZAGARI, ZARGES, ZECCHINO.

(—)

ADAMO, BAILLOT, BALFE, BØGH, BONDE, BOSERUP, CABORN, CASTLE, CHAMBEIRON, DAMETTE, DE FERRANTI, DENIS, ELLES, EPHREMIDIS, FICH, FRISCHMANN, GREDAL, GRIFFITHS, HAMMERICH, HARMAR-NICHOLLS, HUTTON, KEATING, LYNGE, MARSHALL, PETERSEN, PROUT, QUIN, ROGERS, SKOVMAND, TREACY, WURTZ.

(O)

ADAM, BERNARD, CATHERWOOD, CHARZAT, DESOUCHES, DUPORT, ENRIGHT, EYRAUD, FAJARDIE, FERGUSSON, FOCKE, FUILLET, HÄNSCH, HORD, HUME, JAQUET, KIRK, KYRKOS, LALUMIERE, LOO, MARCHESIN, MARKOPOULOS, MINNEN VAN, MOREAU J., NIELSEN J., NIELSEN T., NIKOLAOU C., NIKOLAOU K., OUZOUNIDIS, PAPANTONIOU, PERY, PLASKOVITIS, PRICE, SABA, SIEGLERSCHMIDT, SUTRA, THAREAU, THEOBALD, VAYSSADE, VGENOPOULOS, WALTER, WEBER, WELSH.

*Motion for a resolution (Doc. 1-1200/83)**Amendment 139*

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ABENS, ADONNINO, AERSSSEN VAN, AIGNER, ALBER, ALBERS, ALEMANN VON, ALMIRANTE, ANTONIOZZI, ARFE, ARNDT, BADUEL GLORIOSO, BANGEMANN, BARBAGLI, BARBARELLA, BARBI, BARTOLOMEI, BAUDIS, BEAZLEY, BETTIZA, BEUMER, BISMARCK VON, BLUMENFELD, BOCKETT, BONACCINI, BOOT, BOURNIAS, BROK, BROOKES, BUTTAFUOCO, CAILLAVET, CALVEZ, CARDIA, CARETTONI ROMAGNOLI, CARIGLIA, CAROSSINO, CASSANMAGNAGO CERRETTI, CECOVINI, CERAVOLO, CHANTERIE, CINCIARI RODANO, CINGARI, CLINTON, COHEN, COLLESELLI, COLLOMB, COSENTINO, COSTANZO, COURCY LING DE, CROUX, CURRY, D'ANGELOSANTE, DALSSASS, DE GUCHT, DE PASQUALE, DEL DUCA, DELATTE, DELOROZOY,

Tuesday, 14 February 1984

DESCHAMPS, DIANA, DIDO, EISMA, ERCINI, ESTGEN, FANTI, FAURE E., FERGUSSON, FERRI, FISCHBACH, FOCKE, FORSTER, FRANZ, FRIEDRICH I., FRÜH, FUCHS K., GABERT, GAIOTTI DE BIASE, GALLAND, GALLUZZI, GATTO, GAWRONSKI, GENDEBIEN, GEROKOSTOPOULOS, GEURTSSEN, GHERGO, GIAVAZZI, GIUMMARRA, GLINNE, GOEDE DE, GOERENS, GOPPEL, GOUTHIER, HAAGERUP, HABSBURG, HÄNSCH, HAHN, HALLIGAN, HASSEL VON, HEINEMANN, HELMS, HERKLOTZ, HERMAN, HEUVEL VAN DEN, HOFF, IPPOLITO, ISRAEL, JACKSON C., JAKOBSEN, JONKER, KALLIAS, KALOYANNIS, KATZER, KAZAZIS, KELLET-BOWMAN ED., KLEPSCH, KLINKENBORG, KROUWEL-VLAM, LANGE, LANGES, LECANUET, LEGA, LEMMER, LENTZ-CORNETTE, LENZ, LEONARDI, LIGIOS, LINKOHR, LIZIN, LOUWES, LÜCKER, LUSTER, MACARIO, MACCIOCCHI, MAHER, MAIJ-WEGGEN, MAJONICA, MARCK, MARTIN S., MCCARTIN, MIHR, MOORHOUSE, MOREAU J., MOREAU L., MORELAND, NEWTON DUNN, NORD, NORDMANN, ORLANDI, D'ORMESSON, PAJETTA, PAPAEFSTRATIOU, PAPAPIETRO, PEDINI, PELIKAN, PENDERS, PESMAZOGLOU, PETERS, PETRONIO, PFENNIG, PFLIMLIN, PHLIX, PICCOLI, PININFARINA, PINTAT, PONIATOWSKI, PÖTTERING, PRAG, PRICE, PROTOPAPADAKIS, PROUT, PROVAN, PRUVOT, PULETTI, PURVIS, RABBETHGE, RADOUX, RHYS WILLIAMS, RIPA DI MEANA, ROMUALDI, ROSSI, RUMOR, RYAN, SABLE, SÄLZER, SCHINZEL, SCHLEICHER, SCHNITKER, SCHÖN KARL, SCHÖN KONRAD, SCHWENCKE, SCRIVENER, SEEFELD, SEELER, SEGRE, SEIBEL-EMMERLING, SEITLINGER, SELIGMAN, SIEGLERSCHMIDT, SIMONNET, SIMPSON, SPAAK, SPENCER, SPINELLI, SQUARCIALUPI, STELLA, SUTRA, TOLMAN, TRAVAGLINI, TUCKMAN, TURNER, VAN HEMELDONCK, VAN MIERT, VAN ROMPUY, VANDEWIELE, VANDEMEULEBROUCKE, VANKERKHOVEN, VANNECK, VEIL, VERGEER, VERNIMMEN, VERONESI, VERROKEN, VETTER, VIEHOFF, VITALE, VRING VON DER, WAGNER, WALTER, WALZ, WARNER, WAWRZIK, WEBER, WELSH, WETTIG, WIECZOREK-ZEUL, WOGAU VON, WOLTJER, ZAGARI, ZARGES, ZECCHINO.

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BALFE, BØGH, BONDE, BONINO, BOSERUP, BUCHAN, CABORN, CASTLE, FICH, GONTIKAS, GREDAL, GRIFFITHS, HAMMERICH, HORD, HOWELL, HUTTON, KEATING, KEY, LYNGE, MARSHALL, PETERSEN, ROGERS, SKOVMAND, TREACY.

(O)

ADAM, BERNARD, CHARZAT, DESOUCHES, DUPORT, ENRIGHT, EYRAUD, FAJARDIE, FUILLET, JAQUET, KIRK, LALUMIERE, LOO, MARCHESIN, MINNEN VAN, NIELSEN J., NIKOLAOU C., NIKOLAOU K., OUZOUNIDIS, PAPANTONIOU, PATTERSON, PLASKOVITIS, SABY, SCOTT-HOPKINS, THAREAU, THEOBALD, VAYSSADE, VGENOPOULOS.

*Motion for a resolution**Final vote*

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ABENS, ADONNINO, AERSSSEN VAN, AIGNER, ALBER, ALBERS, ALEMANN VON, ANTONIOZZI, ARFE, ARNDT, BADUEL GLORIOSO, BANGEMANN, BARBAGLI, BARBARELLA, BARBI, BARTOLOMEI, BAUDIS, BEAZLEY, BERKHOUWER, BETTIZA, BEUMER, BISMARCK VON, BLUMENFELD, BOCKLET, BONACCINI, BONINO, BOOT, BOURNIAS, BROK, BUTTAFUOCO, CALVEZ, CARDIA, CARETTONI ROMAGNOLI, CARIGLIA, CAROSSINO, CASSANMAGNAGO CERRETTI, CECOVINI, CERAVOLO, CHANTERIE, CINCIARI RODANO, CINGARI, CLINTON, COHEN, COLLESELLI, COLLOMB, COSENTINO, COSTANZO, COURCY LING DE, CROUX, D'ANGELOSANTE, DALSASS, DE GUCHT, DE PASQUALE, DEL DUCA, DELATTE, DELOROZOY, DESCHAMPS, DIANA, DIDO, DILIGENT, EISMA, ERCINI, ESTGEN, FANTI, FAURE E., FERRI, FISCHBACH, FOCKE, FORSTER, FRANZ, FRIEDRICH I., FRÜH, FUCHS K., GAIOTTI DE BIASE, GALLAGHER, GALLAND, GALLUZZI, GATTO, GAWRONSKI, GENDEBIEN, GEROKOSTOPOULOS, GEURTSSEN, GHERGO, GIAVAZZI, GIUMMARRA, GLINNE, GOERENS, GONTIKAS, GOPPEL, GOUTHIER, HAAGERUP, HABSBURG, HÄNSCH, HAHN, HALLIGAN, HASSEL VON, HEINEMANN, HELMS, HERKLOTZ, HERMAN, HEUVEL VAN DEN, HOFF, HOOPER, HOWELL, HUTTON, IPPOLITO, ISRAEL, JACKSON C., JAKOBSEN, JONKER, KALLIAS, KALOYANNIS, KAZAZIS, KELLET-BOWMAN ED., KLEPSCH, KLINKENBORG, KROUWEL-VLAM, LANGE, LANGES, LECANUET, LEGA, LEMMER, LENTZ-CORNETTE, LENZ, LEONARDI, LIGIOS, LINKOHR, LIZIN, LOUWES, LÜCKER, LUSTER, MACARIO, MACCIOCCHI, MAHER, MAIJ-WEGGEN, MAJONICA, MALANGRE, MARCK, MARTIN S., MCCARTIN, MERTENS, MIHR, MODIANO, MOREAU L., MORELAND, MULLER-HERMANN, NEWTON DUNN, NORD, NORDMANN, NOTENBOOM, ORLANDI, D'ORMESSON, PAJETTA, PANNELLA, PAPAEFSTRATIOU, PAPAPIETRO, PATTERSON, PEDINI, PELIKAN, PENDERS, PESMAZOGLOU, PETERS, PETRONIO, PFENNIG, PFLIMLIN, PHLIX, PICCOLI, PININFARINA, PINTAT, PONIATOWSKI, PÖTTERING, PRAG, PROTOPAPADAKIS, PROVAN, PRUVOT, PULETTI, PURVIS, RABBETHGE, RADOUX, RHYS WILLIAMS, RIPA DI MEANA, ROMUALDI, ROSSI, RUMOR, RYAN, SABLE, SÄLZER, SCHINZEL, SCHLEICHER, SCHMID,

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19. 3. 84...

Tuesday, 14 February 1984

SCHNITKER, SCHÖN KARL, SCHÖN KONRAD, SCHWENCKE, SCOTT-HOPKINS, SCRIVENER, SEEFELD, SEELER, SEGRE, SEIBEL-EMMERLING, SEITLINGER, SELIGMAN, SIEGLERSCHMIDT, SIMONNET, SPAAK, SPINELLI, SQUARCIALUPI, STELLA, STREHLER, TOLMAN, TRAVAGLINI, TUCKMAN, TURNER, VAN HEMELDONCK, VAN MIERT, VAN ROMPUY, VANDEMEULEBROUCKE, VANDEWIELE, VANKERKHOVEN, VEIL, VERGEER, VERNIMMEN, VERONESI, VERROKEN, VETTER, VITALE, VRING VON DER, WALTER, WALZ, WAWRZIK, WETTIG, WIECZOREK-ZEUL, WOGAU VON, WOLTJER, ZAGARI, ZARGES, ZECCHINO.

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ADAMOU, BAILLOT, BALFE, BØGH, BONDE, BOSERUP, BUCHAN, CABORN, CASTLE, CHAMBEIRON, CLWYD, DENIS, EPHREMIDIS, FICH, FRISCHMANN, GREDAL, GRIFFITHS, HAMMERICH, HORD, KEATING, LYNGE, MARSHALL, MEGAHY, PAISLEY, PETERSEN, PROUT, QUIN, SKOVMAND, TREACY, VERGES, WARNER, WURTZ.

(O)

ADAM, BERNARD, CHARZAT, COLLINS, DESOUCHES, DUPORT, ENRIGHT, EYRAUD, FAJARDIE, JAQUET, KIRK, KYRKOS, LAGAKOS, LALUMIERE, LOO, MARCHESIN, MARKOPOULOS, MINNEN VAN, MOREAU J., NIELSEN J., NIELSEN T., NIKOLAOU C., NIKOLAOU K., OUZOUNIDIS, PAPANTONIOU, PERY, PLASKOVITIS, PRICE, SABY, SUTRA, THAREAU, THEOBALD, VGENOPOULOS, WELSH.

**1989 OJ C120/51
Resolution adopting the
"Declaration of Fundamental
Rights and Freedoms"**

16. 5. 89

Official Journal of the European Communities

No C 120/51

Wednesday, 12 April 1989

PART II

Texts adopted by the European Parliament

1. Declaration of fundamental rights

— Doc. A2-3/89

RESOLUTION

adopting the Declaration of fundamental rights and freedoms

The European Parliament,

- having regard to the motion for a resolution tabled by Mr Luster and Mr Pfennig to supplement the draft Treaty establishing the European Union (Doc. 2-363/84),
 - having regard to the Treaties establishing the European Communities,
 - having regard to its draft Treaty establishing the European Union adopted on 14 February 1984, in particular Articles 4 (3) and 7 (1),
 - having regard to its resolution of 29 October 1982 on the Memorandum from the Commission on the accession of the European Community to the Convention for the Protection of Human Rights and Fundamental Freedoms (2),
 - having regard to the Joint Declaration on Fundamental Rights (3),
 - having regard to the preamble to the Single Act,
 - having regard to the shared general principles of the law of the Member States,
 - having regard to the case law of the Court of Justice of the European Communities,
 - having regard to the Universal Declaration of Human Rights,
 - having regard to the United Nations Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights,
 - having regard to the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols,
 - having regard to the European Social Charter and its Protocol,
 - having regard to the report of the Committee on Institutional Affairs and the opinion of the Committee on Social Affairs and Employment (Doc. A2-3/89),
- A. whereas, as pointed out in the preamble to the Single Act, it is essential to promote democracy on the basis of fundamental rights,
- B. whereas respect for fundamental rights is indispensable for the legitimacy of the Community,
- C. whereas it is up to the European Parliament to contribute to the development of a model of society which is based on respect for fundamental rights and freedoms and tolerance.

(1) OJ No C 77, 19.3.1984, p. 33.

(2) OJ No C 304, 22.11.1982, p. 253.

(3) OJ No C 103, 27.4.1977, p. 1.

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- D. whereas the identity of the Community makes it essential to give expression to the shared values of the citizens of Europe,
- E. whereas there can be no European citizenship unless every citizen enjoys equal protection of his rights and freedoms in the field of application of Community law ⁽¹⁾,
- F. whereas it is determined to sustain its efforts to promote the achievement of European Union,
- G. whereas it is determined to achieve a basic Community instrument with a binding legal character guaranteeing fundamental rights,
- H. whereas in the meantime, pending ratification of such an instrument, Parliament restates the legal principles already accepted by the Community,
- I. whereas completion of the single market scheduled for 1993 lends greater urgency to the need to adopt a Declaration of rights and freedoms guaranteed in and by Community law,
- J. whereas it is the responsibility of the European Parliament directly elected by the citizens of Europe to draw up such a Declaration,

1. Hereby adopts the following Declaration and invites the other Community institutions and the Member States to associate themselves normally with this Declaration;

2. Instructs its President to forward this resolution and the Declaration to the other Community institutions and the Governments of the Member States.

(1) See Article 3 of the draft Treaty establishing the European Union.

DECLARATION OF FUNDAMENTAL RIGHTS AND FREEDOMS

PREAMBLE

IN THE NAME OF THE PEOPLES OF EUROPE

Whereas with a view to continuing and reviving the democratic unification of Europe, having regard to the creation of an internal area without frontiers and mindful of the particular responsibility of the European Parliament with regard to the well-being of men and women, it is essential that Europe reaffirm the existence of a common legal tradition based on respect for human dignity and fundamental rights,

Whereas measures incompatible with fundamental rights are inadmissible and recalling that these rights derive from the Treaties establishing the European Communities, the constitutional traditions common to the Member States, the European Convention for the Protection of Human Rights and Fundamental Freedoms and the institutional instruments in force and have been developed in the case law of the Court of Justice of the European Communities,

The European Parliament, lending expression to these rights, hereby adopts the following Declaration, calls on all citizens actively to uphold it and present it to the Parliament which is to be elected in June 1989.

GENERAL PROVISIONS**Article 1***(Dignity)*

Human dignity shall be inviolable.

Article 2*(Right to life)*

Everyone shall have the right to life, liberty and security of person.

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Article 3*(Equality before the law)*

1. In the field of application of Community law, everyone shall be equal before the law.
2. Any discrimination on grounds such as race, colour, sex, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status shall be prohibited.
3. Any discrimination between European citizens on the grounds of nationality shall be prohibited.
4. Equality must be secured between men and women before the law, particularly in the areas of work, education, the family, social welfare and training.

Article 4*(Freedom of thought)*

Everyone shall have the right to freedom of thought, conscience and religion.

Article 5*(Freedom of opinion and information)*

1. Everyone have the right to freedom of expression. This right shall include freedom of opinion and the freedom to receive and impart information and ideas, particularly philosophical, political and religious.
2. Art, science and research shall be free of constraint. Academic freedom shall be respected.

Article 6*(Privacy)*

1. Everyone shall have the right to respect and protection for their identity.
2. Respect for privacy and family life, reputation, the home and private correspondence shall be guaranteed.

Article 7*(Protection of family)*

The family shall enjoy legal, economic and social protection.

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Article 8

(Freedom of movement)

1. Community citizens shall have the right to move freely and choose their residence within Community territory. They may pursue the occupation of their choice within that territory.
2. Community citizens shall be free to leave and return to Community territory.
3. The above rights shall not be subject to any restrictions except those that are in conformity with the Treaties establishing the European Communities.

Article 9

(Right of ownership)

The right of ownership shall be guaranteed. No one shall be deprived of their possessions except where deemed necessary in the public interest and in the cases and subject to the conditions provided for by law and subject to fair compensation.

Article 10

(Freedom of assembly)

Everyone shall have the right to take part in peaceful meetings and demonstrations.

Article 11

(Freedom of association)

1. Everyone shall have the right to freedom of association including the right to form and join political parties and trade unions.
2. No one shall in their private life be required to disclose their membership of any association which is not illegal.

Article 12

(Freedom to choose an occupation)

1. Everyone shall have the right to choose freely an occupation and a place of work and to pursue freely that occupation.
2. Everyone shall have the right to appropriate vocational training in accordance with their abilities and fitting them for work.
3. No one shall be arbitrarily deprived of their work and no one shall be forced to take up specific work.

Article 13

(Working conditions)

1. Everyone shall have the right to just working conditions.
2. The necessary measures shall be taken with a view to guaranteeing health and safety in the workplace and a level of remuneration which makes it possible to lead a decent life.

Article 14

(Collective social rights)

1. The right of negotiation between employers and employees shall be guaranteed.
2. The right to take collective action, including the right to strike, shall be guaranteed subject to obligations that might arise from existing laws and collective agreements.

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3. Workers shall have the right to be informed regularly of the economic and financial situation of their undertaking and to be consulted on decisions likely to affect their interests.

Article 15

(Social welfare)

1. Everyone shall have the right to benefit from all measures enabling them to enjoy the best possible state of health.
2. Workers, self-employed persons and their dependants shall have the right to social security or an equivalent system.
3. Anyone lacking sufficient resources shall have the right to social and medical assistance.
4. Those who, through no fault of their own, are unable to house themselves adequately, shall have the right to assistance in this respect from the appropriate public authorities.

Article 16

(Right to education)

Everyone shall have the right to education and vocational training appropriate to their abilities.

There shall be freedom in education.

Parents shall have the right to make provision for such education in accordance with their religious and philosophical convictions.

Article 17

(Principle of democracy)

1. All public authority emanates from the people and must be exercised in accordance with the principles of the rule of law.
2. Every public authority must be directly elected or answerable to a directly elected parliament.
3. European citizens shall have the right to take part in the election of Members of the European Parliament by free, direct and secret universal suffrage.
4. European citizens shall have an equal right to vote and stand for election.
5. The above rights shall not be subject to restrictions except where such restrictions are in conformity with the Treaties establishing the European Communities.

Article 18

(Right of access to information)

Everyone shall be guaranteed the right of access and the right to corrections to administrative documents and data concerning them.

Article 19

(Access to the courts)

1. Anyone whose rights and freedoms have been infringed shall have the right to bring an action in a court or tribunal specified by law.
2. Everyone shall be entitled to have their case heard fairly, publicly and within a reasonable time limit by an independent and impartial court or tribunal established by law.
3. Access to justice shall be effective and shall involve the provision of legal aid to those who lack sufficient resources otherwise to afford legal representation.

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Article 20

(Non bis in idem)

No one shall be tried or convicted for offences for which they have already been acquitted or convicted.

Article 21

(Non-retroactivity)

No liability shall be incurred for any act or omission to which no liability applied under the law at the time when it was committed.

Article 22

(Death penalty)

The death penalty shall be abolished.

Article 23

(Right of petition)

Everyone shall have the right to address written requests or complaints to the European Parliament.

The detailed provisions governing the exercise of this right shall be laid down by the European Parliament.

Article 24

(Environment and consumer protection)

1. The following shall form an integral part of Community policy:
 - the preservation, protection and improvement of the quality of the environment,
 - the protection of consumers and users against the risks of damage to their health and safety and against unfair commercial transactions.
2. The Community institutions shall be required to adopt all the measures necessary for the attainment of these objectives.

FINAL PROVISIONS

Article 25

(Field of application)

1. This Declaration shall afford protection for every citizen in the field of application of Community law.
2. Where certain rights are set aside for Community citizens, it may be decided to extend all or part of the benefit of these rights to other persons.
3. A Community citizen within the meaning of this Declaration shall be any person possessing the nationality of one of the Member States.

Article 26

(Limits)

The rights and freedoms set out in this Declaration may be restricted within reasonable limits necessary in a democratic society only by a law which must at all events respect the substance of such rights and freedoms.

Article 27*(Degree of protection)*

No provision in this Declaration shall be interpreted as restricting the protection afforded by Community law, the law of the Member States, international law and international conventions and accord on fundamental rights and freedoms or as standing in the way of its development.

Article 28*(Abuse of rights)*

No provision in this Declaration shall be interpreted as implying any right to engage in any activity or perform any act aimed at restricting or destroying the rights and freedoms set out therein.

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Community Charter
of the Fundamental Social
Rights of Workers
(adopted by 11 Members)



COMMISSION
OF THE EUROPEAN COMMUNITIES

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Fundamental Social Rights
of Workers**

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This Charter is the product of an undertaking I made to the European Trade Union Confederation at its meeting in Stockholm in May 1988. Nearly 18 months later, at a meeting of the European Council in Strasbourg on 8/9 December 1989, the Heads of State or Government of 11 Member States of the European Community adopted the 'Community Charter of the Fundamental Rights of Workers'.

Based on earlier texts such as the Social Charter of the Council of Europe and the Conventions of the International Labour Office, this Charter will form a keystone of the social dimension in the construction of Europe in the spirit of the Treaty of Rome supplemented by the Single European Act.

It is a solemn declaration and lays down the broad principles underlying our European model of labour law and, more generally, the place of work in our societies. It incorporates a foundation of social rights which are guaranteed and implemented, in some cases at the level of the Member States or at Community level depending on the field of competence. But it cannot be put into practice without the active participation of the two sides of industry.

The Charter is an instrument embodying European aspirations, a reflexion of our common identity, and contains a message for all those who inside and outside the Community are looking to the progress of Europe to give them reason for hope.

Jacques DELORS

In 1972, the Heads of State or Government of the European Community, meeting in Paris, agreed to affirm the social dimension of the construction of Europe. Two years later this took the form of the social action programme, presented by the Commission and adopted by the Council. Since its foundation, the Community has not been inactive in this area; the first regulations on freedom of movement for workers date from 1968, and by 1963 the Commission had already established the general principles for vocational training. However, on the eve of the first enlargement, it seemed necessary to emphasize that Europe signified more than a single common market and the elimination of customs barriers.

Fifteen years have passed and during this time great strides have been made. Adoption of the Single European Act confirmed this dimension, especially stressing the need to reinforce economic and social cohesion in the Community which was supported by the reform of the structural Funds in 1988.

All the same, efforts towards completing the internal market in 1992 have highlighted the importance of this social dimension. It is not simply a question of ensuring freedom of movement for persons, together with goods, services and capital. It also covers all that contributes to improving the well-being of Community citizens and in the first place workers. The construction of a dynamic and strong Europe depends on the recognition of a foundation of social rights. A political signal given at the highest level was crucial. Vigorous action was needed as urged by the European Parliament and the Economic and Social Committee.

The Community Charter of the Fundamental Social Rights of Workers, adopted in Strasbourg a few weeks ago by 11 Heads of

State or Government has a long history. On the basis of one text — a preliminary draft, which after consultation with the two sides of industry became a draft — proposed by the Commission in September 1989, the Council on Social Affairs first, followed by the European Council, took note of this dossier with the results that we have seen. The Charter as such represents a first step, but a first step which was essential.

Vasso PAPANDREOU

Community Charter of the Fundamental Social Rights of Workers

THE HEADS OF STATE OR GOVERNMENT OF THE MEMBER STATES OF THE EUROPEAN COMMUNITY MEETING AT STRASBOURG ON 9 DECEMBER 1989¹

Whereas, under the terms of Article 117 of the EEC Treaty, the Member States have agreed on the need to promote improved living and working conditions for workers so as to make possible their harmonization while the improvement is being maintained;

Whereas following on from the conclusions of the European Councils of Hanover and Rhodes the European Council of Madrid considered that, in the context of the establishment of the single European market, the same importance must be attached to the social aspects as to the economic aspects and whereas, therefore, they must be developed in a balanced manner;

Having regard to the Resolutions of the European Parliament of 15 March 1989, 14 September 1989 and 22 November 1989, and to the Opinion of the Economic and Social Committee of 22 February 1989;

Whereas the completion of the internal market is the most effective means of creating employment and ensuring maximum well-being in the Community; whereas employment development and creation must be given first priority in the completion of the internal market; whereas it is for the Community to take up the challenges of the future with regard to economic competitiveness, taking into account, in particular, regional imbalances;

¹ Text adopted by the Heads of State or Government of 11 Member States.

Whereas the social consensus contributes to the strengthening of the competitiveness of undertakings, of the economy as a whole and to the creation of employment; whereas in this respect it is an essential condition for ensuring sustained economic development;

Whereas the completion of the internal market must favour the approximation of improvements in living and working conditions, as well as economic and social cohesion within the European Community while avoiding distortions of competition;

Whereas the completion of the internal market must offer improvements in the social field for workers of the European Community, especially in terms of freedom of movement, living and working conditions, health and safety at work, social protection, education and training;

Whereas, in order to ensure equal treatment, it is important to combat every form of discrimination, including discrimination on grounds of sex, colour, race, opinions and beliefs, and whereas, in a spirit of solidarity, it is important to combat social exclusion;

Whereas it is for Member States to guarantee that workers from non-member countries and members of their families who are legally resident in a Member State of the European Community are able to enjoy, as regards their living and working conditions, treatment comparable to that enjoyed by workers who are nationals of the Member State concerned;

Whereas inspiration should be drawn from the Conventions of the International Labour Organization and from the European Social Charter of the Council of Europe;

Whereas the Treaty, as amended by the Single European Act, contains provisions laying down the powers of the Community relating *inter alia* to the freedom of movement of workers (Articles 7, 48 to 51), the right of establishment (Articles 52 to 58), the social

field under the conditions laid down in Articles 117 to 122 — in particular as regards the improvement of health and safety in the working environment (Article 118a), the development of the dialogue between management and labour at European level (Article 118b), equal pay for men and women for equal work (Article 119) — the general principles for implementing a common vocational training policy (Article 128), economic and social cohesion (Article 130a to 130e) and, more generally, the approximation of legislation (Articles 100, 100a and 235); whereas the implementation of the Charter must not entail an extension of the Community's powers as defined by the Treaties;

Whereas the aim of the present Charter is on the one hand to consolidate the progress made in the social field, through action by the Member States, the two sides of industry and the Community;

Whereas its aim is on the other hand to declare solemnly that the implementation of the Single European Act must take full account of the social dimension of the Community and that it is necessary in this context to ensure at appropriate levels the development of the social rights of workers of the European Community, especially employed workers and self-employed persons;

Whereas, in accordance with the conclusions of the Madrid European Council, the respective roles of Community rules, national legislation and collective agreements must be clearly established;

Whereas, by virtue of the principle of subsidiarity, responsibility for the initiatives to be taken with regard to the implementation of these social rights lies with the Member States or their constituent parts and, within the limits of its powers, with the European Community; whereas such implementation may take the form of laws, collective agreements or existing practices at the various appropriate levels and whereas it requires in many spheres the active involvement of the two sides of industry;

Whereas the solemn proclamation of fundamental social rights at European Community level may not, when implemented, provide grounds for any retrogression compared with the situation currently existing in each Member State,

HAVE ADOPTED THE FOLLOWING DECLARATION CONSTITUTING THE 'COMMUNITY CHARTER OF THE FUNDAMENTAL SOCIAL RIGHTS OF WORKERS':

Title I

Fundamental social rights of workers

Freedom of movement

1. Every worker of the European Community shall have the right to freedom of movement throughout the territory of the Community, subject to restrictions justified on grounds of public order, public safety or public health.

2. The right to freedom of movement shall enable any worker to engage in any occupation or profession in the Community in accordance with the principles of equal treatment as regards access to employment, working conditions and social protection in the host country.

3. The right of freedom of movement shall also imply:

- (i) harmonization of conditions of residence in all Member States, particularly those concerning family reunification;
- (ii) elimination of obstacles arising from the non-recognition of diplomas or equivalent occupational qualifications;
- (iii) improvement of the living and working conditions of frontier workers.

Employment and remuneration

4. Every individual shall be free to choose and engage in an occupation according to the regulations governing each occupation.

5. All employment shall be fairly remunerated.

To this end, in accordance with arrangements applying in each country :

- (i) workers shall be assured of an equitable wage, i.e. a wage sufficient to enable them to have a decent standard of living;
- (ii) workers subject to terms of employment other than an open-ended full-time contract shall benefit from an equitable reference wage;
- (iii) wages may be withheld, seized or transferred only in accordance with national law; such provisions should entail measures enabling the worker concerned to continue to enjoy the necessary means of subsistence for him or herself and his or her family.

6. Every individual must be able to have access to public placement services free of charge.

Improvement of living and working conditions

7. The completion of the internal market must lead to an improvement in the living and working conditions of workers in the European Community. This process must result from an approximation of these conditions while the improvement is being maintained, as regards in particular the duration and organization of working time and forms of employment other than open-ended contracts, such as fixed-term contracts, part-time working, temporary work and seasonal work.

The improvement must cover, where necessary, the development of certain aspects of employment regulations such as procedures for collective redundancies and those regarding bankruptcies.

8. Every worker of the European Community shall have a right to a weekly rest period and to annual paid leave, the duration of which

must be progressively harmonized in accordance with national practices.

9. The conditions of employment of every worker of the European Community shall be stipulated in laws, a collective agreement or a contract of employment, according to arrangements applying in each country.

Social protection

According to the arrangements applying in each country:

10. Every worker of the European Community shall have a right to adequate social protection and shall, whatever his status and whatever the size of the undertaking in which he is employed, enjoy an adequate level of social security benefits.

Persons who have been unable either to enter or re-enter the labour market and have no means of subsistence must be able to receive sufficient resources and social assistance in keeping with their particular situation.

Freedom of association and collective bargaining

11. Employers and workers of the European Community shall have the right of association in order to constitute professional organizations or trade unions of their choice for the defence of their economic and social interests.

Every employer and every worker shall have the freedom to join or not to join such organizations without any personal or occupational damage being thereby suffered by him.

12. Employers or employers' organizations, on the one hand, and workers' organizations, on the other, shall have the right to

negotiate and conclude collective agreements under the conditions laid down by national legislation and practice.

The dialogue between the two sides of industry at European level which must be developed, may, if the parties deem it desirable, result in contractual relations in particular at inter-occupational and sectoral level.

13. The right to resort to collective action in the event of a conflict of interests shall include the right to strike, subject to the obligations arising under national regulations and collective agreements.

In order to facilitate the settlement of industrial disputes the establishment and utilization at the appropriate levels of conciliation, mediation and arbitration procedures should be encouraged in accordance with national practice.

14. The internal legal order of the Member States shall determine under which conditions and to what extent the rights provided for in Articles 11 to 13 apply to the armed forces, the police and the civil service.

Vocational training

15. Every worker of the European Community must be able to have access to vocational training and to benefit therefrom throughout his working life. In the conditions governing access to such training there may be no discrimination on grounds of nationality.

The competent public authorities, undertakings or the two sides of industry, each within their own sphere of competence, should set up continuing and permanent training systems enabling every person to undergo retraining more especially through leave for training purposes, to improve his skills or to acquire new skills, particularly in the light of technical developments.

Equal treatment for men and women

16. Equal treatment for men and women must be assured. Equal opportunities for men and women must be developed.

To this end, action should be intensified to ensure the implementation of the principle of equality between men and women as regards in particular access to employment, remuneration, working conditions, social protection, education, vocational training and career development.

Measures should also be developed enabling men and women to reconcile their occupational and family obligations.

Information, consultation and participation for workers

17. Information, consultation and participation for workers must be developed along appropriate lines, taking account of the practices in force in the various Member States.

This shall apply especially in companies or groups of companies having establishments or companies in two or more Member States of the European Community.

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

- (i) when technological changes which, from the point of view of working conditions and work organization, have major implications for the work-force, are introduced into undertakings;
- (ii) in connection with restructuring operations in undertakings or in cases of mergers having an impact on the employment of workers;
- (iii) in cases of collective redundancy procedures;

- (iv) when transfrontier workers in particular are affected by employment policies pursued by the undertaking where they are employed.

Health protection and safety at the workplace

19. Every worker must enjoy satisfactory health and safety conditions in his working environment. Appropriate measures must be taken in order to achieve further harmonization of conditions in this area while maintaining the improvements made.

These measures shall take account, in particular, of the need for the training, information, consultation and balanced participation of workers as regards the risks incurred and the steps taken to eliminate or reduce them.

The provisions regarding implementation of the internal market shall help to ensure such protection.

Protection of children and adolescents

20. Without prejudice to such rules as may be more favourable to young people, in particular those ensuring their preparation for work through vocational training, and subject to derogations limited to certain light work, the minimum employment age must not be lower than the minimum school-leaving age and, in any case, not lower than 15 years.

21. Young people who are in gainful employment must receive equitable remuneration in accordance with national practice.

22. Appropriate measures must be taken to adjust labour regulations applicable to young workers so that their specific development and vocational training and access to employment needs are met.

The duration of work must, in particular, be limited — without it being possible to circumvent this limitation through recourse to overtime — and night work prohibited in the case of workers of under 18 years of age, save in the case of certain jobs laid down in national legislation or regulations.

23. Following the end of compulsory education, young people must be entitled to receive initial vocational training of a sufficient duration to enable them to adapt to the requirements of their future working life; for young workers, such training should take place during working hours.

Elderly persons

According to the arrangements applying in each country:

24. Every worker of the European Community must, at the time of retirement, be able to enjoy resources affording him or her a decent standard of living.

25. Any person who has reached retirement age but who is not entitled to a pension or who does not have other means of subsistence, must be entitled to sufficient resources and to medical and social assistance specifically suited to his needs.

Disabled persons

26. All disabled persons, whatever the origin and nature of their disablement, must be entitled to additional concrete measures aimed at improving their social and professional integration.

These measures must concern, in particular, according to the capacities of the beneficiaries, vocational training, ergonomics, accessibility, mobility, means of transport and housing.

Title II

Implementation of the Charter

27. It is more particularly the responsibility of the Member States, in accordance with national practices, notably through legislative measures or collective agreements, to guarantee the fundamental social rights in this Charter and to implement the social measures indispensable to the smooth operation of the internal market as part of a strategy of economic and social cohesion.

28. The European Council invites the Commission to submit as soon as possible initiatives which fall within its powers, as provided for in the Treaties, with a view to the adoption of legal instruments for the effective implementation, as and when the internal market is completed, of those rights which come within the Community's area of competence.

29. The Commission shall establish each year, during the last three months, a report on the application of the Charter by the Member States and by the European Community.

30. The report of the Commission shall be forwarded to the European Council, the European Parliament and the Economic and Social Committee.

European Communities — Commission

Community Charter of the Fundamental Social Rights of Workers

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1991 OJ C183/473

Resolution on Union Citizenship

15. 7. 91

Official Journal of the European Communities

No C 183/473

Friday, 14 June 1991

— A3-0159/91

LEGISLATIVE RESOLUTION

embodying the opinion of the European Parliament on the Commission proposal for a Council decision on the association of the overseas countries and territories with the European Economic Community

The European Parliament,

- having regard to the Commission proposal to the Council (COM(90) 0387 ⁽¹⁾ and COM(91) 0141 ⁽²⁾),
 - having been consulted by the Council (C3-0104/91 and C3-0224/91),
 - having regard to the report of the Committee on Development and Cooperation and the opinion of the Committee of Budgets (A3-0159/91),
1. Approves the Commission proposal in accordance with the vote thereon;
 2. Calls on the Council to notify Parliament should it intend to depart from the text approved by Parliament;
 3. Asks to be consulted again should the Council intend to make substantial modifications to the Commission proposal;
 4. Instructs its President to forward this opinion to the Council and Commission.

⁽¹⁾ OJ No C 95, 11.4.1991, p. 1.
⁽²⁾ OJ No C 126, 16.5.1991, p. 5.

18. Union citizenship

— A3-0139/91

RESOLUTION
on Union citizenship

The European Parliament,

- having regard to its resolution of 22 November 1990 on Parliament's strategy for European Union ⁽¹⁾,
- having regard to its resolution of 12 December 1990 on the constitutional basis of European Union ⁽²⁾,
- having regard to its resolution of 12 April 1989 adopting the Declaration of fundamental rights and freedoms ⁽³⁾,
- having regard to its numerous resolutions on the matter, in particular the resolution of 16 November 1977 on special rights to be granted to citizens of the European Community ⁽⁴⁾ and that on the memorandum on adhesion to the European convention on human rights and fundamental freedoms of 29 October 1982 ⁽⁵⁾,

⁽¹⁾ OJ No C 324, 24.12.1990, p. 219.
⁽²⁾ OJ No C 19, 28.1.1991, p. 65.
⁽³⁾ OJ No C 120, 16.5.1989, p. 51.
⁽⁴⁾ OJ No C 299, 12.12.1977, p. 26.
⁽⁵⁾ OJ No C 304, 22.11.1982, p. 253.

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- having regard to the proposals put forward by the Member States and the Commission in connection with the Intergovernmental Conference on European Union, and the general report tabled by the Presidency of the Conference on Political Union,
 - having regard to the motion for a resolution on Community citizenship (B3-1680/90),
 - having regard to the interim report of the Committee on Institutional Affairs and the opinion of the Committee on Legal Affairs and Citizens' Rights (A3-0139/91),
- A. having regard to the urgent need for Parliament to spell out and lay down the proposals it will make to the Intergovernmental Conference on Political Union on the question of citizenship and to the need to probe more deeply into this essential aspect of European integration,
- B. having regard to the close link that exists between a new form of citizenship and the developing European Union and to the fact that the two must advance and be expanded in parallel,
- C. whereas further progress in European integration can be brought about only on democratic bases and whereas it is therefore essential to alter the balance of power between the institutions and their relationship with the citizens of the Union to facilitate their effective participation in decision-making on matters concerning them,
- D. whereas citizenship, and the bond inherent therein, must necessarily be subject to criteria for acquiring and forfeiting it and whereas those criteria may, for the time being, be made to tally with the conditions under which the nationality of the different Member States may be acquired or is forfeited,
- E. whereas Community citizenship is at all events to be regarded as additional to nationality of a Member State and whereas the rights and obligations attaching to it will apply in addition to the rights and obligations existing at national level,
- F. whereas, however, Community citizenship must be defined as a concept in itself and in such a way as to constitute a genuine form of status, deriving from full recognition and protection of the human rights and fundamental freedoms of all persons, as defined in the European Convention on Human Rights, both as individuals and in social units, in particular the family,
- G. whereas the concept or status of citizen implies the following essential conditions:
- government must derive its legitimacy from a mandate given by citizens, and, in particular, laws must stem from institutions democratically elected by citizens,
 - the human rights and fundamental freedoms of all persons must be respected and guaranteed, *inter alia* in the courts; social, economic, political and cultural rights must be recognized and properly protected,
 - the banning of all discrimination on grounds of race, creed, political and trade union views, sex, nationality or any other personal situation,
 - citizens must, in their own right, enjoy specific rights — including political rights — *vis-à-vis* the institutions of the Community and each of the Member States; those rights must enjoy full protection of the courts in the Member States and, by extension, at Community level,
 - *vis-à-vis* third countries, citizens must be accorded full protection by the Community as a whole and each of the Member States as well as by the state of which they are nationals,
 - with a view to protecting these rights *vis-à-vis* the Community institutions and each of the Member States and in relations with third countries, all citizens must have the option of lodging a complaint with a European institution,

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- H. whereas in a multiracial society, as the Community is becoming to an increasing extent, resident aliens must be accorded not only fundamental rights and freedoms, but also the rights required in order to carry on an economic, occupational, or social activity under the terms of the applicable provisions and the civil and political rights and guarantees essential to enable the human personality to find fullest expression,
- I. whereas Union citizenship may be based on the sense of solidarity with and belonging to a Community in which the different cultures of the peoples therein are brought together, fostered and safeguarded and the common values and interests shared by European citizens are recognized,
- J. whereas while the proposals from the Spanish Government and the Commission highlight major aspects of union citizenship and are essential for European integration, they do not provide an adequate basis for establishing the status of full citizenship,
- K. whereas the articles relating to citizenship contained in the general draft submitted by the Presidency of the Conference on Political Union do not in fact institute Union citizenship but simply set out a number of special rights of a partial nature, the effective exercise of which is subject to unanimous intergovernmental agreement or, in the case of the right of petition, interinstitutional agreement,
- L. whereas, despite decades of well-established Community case law and the European Parliament's particular interest in this area culminating in the Declaration of April 1989, the general draft forwarded by the Presidency of the Conference on Political Union completely ignores these developments in respect of human rights and fundamental freedoms and simply refers to the European Convention and national legislation,
- M. taking the view that refusal to establish Union citizenship demonstrates a political refusal to make its citizens and respect for their rights the central concern of the Union and, on the contrary, a determination to maintain and further develop an intergovernmental system with a heavy bureaucratic bias,
1. Considers it essential that a list of human rights and fundamental freedoms, based on that adopted by Parliament on 12 April 1989 ⁽¹⁾, be enshrined in the Treaties, applied to all persons and suitably protected by law; to this end, undertakes to draw up this list, in due cooperation with the parliaments of the Member States, to be submitted for final approval by the parliaments;
 2. Calls for Union citizenship to be established and enshrined in the Treaties in a separate title;
 3. Calls for nationals of the Member States to be considered Union citizens in every respect and for the Treaties to make citizens directly responsible for exercising their basic rights of citizenship;
 4. Considers that the Union, in pursuing its own objectives, should set itself the fundamental aim of facilitating the exercise and development of citizen's rights and fulfilment of their duties, in parallel with progress toward the achievement of European Union;
 5. Points out once again the need for social rights to be fully recognized and respected on the basis of a substantial widening of the proposals contained in the Social Charter, and protected in accordance with the relevant international agreements, especially the declaration by the Council of Europe; stresses in particular the right of citizens to equal opportunities and full development of their potential within their habitual surroundings; stresses the importance of equality between men and women;
 6. Stresses that attainment of this objective requires Community initiatives in the form of active policies defined and implemented in collaboration with the Member States;

⁽¹⁾ OJ No C 120, 16.5.1989, p. 51.

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7. Calls for citizens to be given complete freedom to take part in the political life of Member States and the Union, by joining associations, political parties, or trade unions, or in any other way compatible with respect for fundamental rights and freedoms;
8. Calls for every citizen to be granted the right to vote and stand for election in European elections in the Member State where he lives or, if he so prefers, in his country of origin, subject to conditions to be laid down in a uniform electoral law;
9. Renews its request that, subject to the appropriate conditions, citizens living in a state other than their country of origin should be granted the right to vote in local elections, as should all resident aliens;
10. Requests that no law may be imposed on citizens by the Community institutions without the consent of the appropriate elected representatives;
11. Calls for the free and unlimited right of movement and residence in the territory of the Union for all citizens, and all persons residing legally in the Community, and for the last vestiges of discrimination, in particular on grounds of nationality, to be outlawed;
12. Calls for all activities having a bearing on the freedom of citizens and persons in general, in particular those related to internal security, and entering and leaving Community territory, to be made subject to the proper degree of parliamentary control; calls in particular for the police and judicial cooperation agreements concluded to provide a counterpart to free movement, including the right of residence, to be made part of Community law and for the provisions concerned, as well as their implementation, to be governed by acts of parliament, subject to parliamentary control and suitably protected by law;
13. Calls for citizens to be guaranteed fair, transparent and efficient administration;
14. Calls for citizens to be guaranteed diplomatic protection, where appropriate, not only by their country of origin but also by the other Member States of the Union;
15. Calls for resident aliens to be granted the rights required in order to carry on a lawful economic occupational or social activity, and for any form of discrimination to be prohibited and subject to sanctions once they have been given permission to exercise such activities;
16. Calls for the concept of 'persons residing legally in the Community' to be clearly defined;
17. Calls in addition for resident aliens and citizens to be given recognition of the rights, freedoms and guarantees essential to enable the human personality to find fullest expression, as an individual or within a social, in particular, family unit;
18. Stresses the need for the rules laid down by the Community and its Member States on freedom of movement for persons to take special account of the extreme poverty affecting several million Community citizens (the 'Fourth World') and preventing them from exercising their social and political rights including freedom of movement and establishment.
19. Calls on its appropriate committee to probe more deeply into the specific questions of acquiring and forfeiting citizenship, electoral rights, and the rights and obligations of residents other than citizens;
20. Instructs its President to forward this resolution to the Council, the Commission, the Intergovernmental Conferences, and the governments and parliaments of the Member States.

1994 OJ C61/155

Resolution on the Constitution

of the European Union

PART II

Texts adopted by the European Parliament

1. Constitution of European Union

A3-0064/94

Resolution on the Constitution of the European Union

The European Parliament,

- having regard to its Declaration of fundamental rights and freedoms of 12 April 1989 ⁽¹⁾,
 - having regard to the result of the referendum held in Italy, on the occasion of the 1989 European elections, on the powers of the European Parliament,
 - having regard to its resolution of 11 July 1990 on the European Parliament's guidelines for a draft constitution for the European Union ⁽²⁾,
 - having regard to the Final Declaration of the Conference of Parliaments of the European Community of 30 November 1990 ⁽³⁾,
 - having regard to its resolution of 12 December 1990 on the constitutional basis of European Union ⁽⁴⁾,
 - having regard to its resolution of 20 January 1993 on the structure and strategy for the European Union with regard to its enlargement and the creation of a Europe-wide order ⁽⁵⁾,
 - having regard to the motion for a resolution by Mr Luster and others on the drafting of a European constitution (B3-0015/89),
 - having regard to Rule 148 of its Rules of Procedure,
 - having regard to the report by the Committee on Institutional Affairs and the opinions of the Committee on Foreign Affairs and Security and the Committee on Budgets (A3-0031/94),
 - having regard to the second report by the Committee on Institutional Affairs (A3-0064/94),
- A. having regard to the need which has been restated on several occasions during Parliament's current term of office to provide the European Union with a democratic constitution to enable the process of European integration to continue in accordance with the needs of European citizens,
- B. whereas the Treaty on European Union does not fully meet the requirements of the European Union with regard to democracy and efficacy,
- C. whereas the Constitution must be readily accessible and comprehensible to the citizens of the Union,
- D. whereas the abovementioned report by the Committee on Institutional Affairs makes an important contribution to the debate on democracy and transparency in the European Institutions which will be opened both within the European Parliament and within the national parliaments and public opinion,

⁽¹⁾ OJ C 120, 16.5.1989, p. 52.⁽²⁾ OJ C 231, 17.9.1990, p. 91.⁽³⁾ EP Bulletin 4/S-90.⁽⁴⁾ OJ C 19, 28.1.1991, p. 65.⁽⁵⁾ OJ C 42, 15.2.1993, p. 124.

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1. Notes with satisfaction the work of the Committee on Institutional Affairs which has resulted in a draft Constitution for the European Union, annexed to this resolution, and calls on the European Parliament to be elected in June 1994 to continue that work with a view to deepening the debate on the European Constitution, taking into account the contributions from the national parliaments and members of the public in the Member States and the applicant countries;
2. Proposes that a European convention bringing together the Members of the European Parliament and the parliaments of the Member States of the Union should be held prior to the Intergovernmental Conference scheduled for 1996 in order to adopt, on the basis of a draft Constitution to be submitted by the European Parliament, guidelines for the Constitution of the European Union, and to assign to the European Parliament the task of preparing a final draft;
3. Calls on the heads of state and government of the Member States to appoint a group of eminent persons who are independent but enjoy their confidence, along the lines of the Spaak/Dooge Committee and in the spirit of the proposal made by the Greek Presidency, with the task of considering this draft constitution, discussing it with Parliament and proposing it to the Intergovernmental Conference;
4. Proposes to the Commission and Council that the Intergovernmental Conference scheduled for 1996 be preceded by an interinstitutional conference on the same subject;
5. Calls on the parliaments of the Member States to inform it of their views concerning the system to be used for the preparation and adoption of the final text of the Constitution;
6. Instructs its President to forward this resolution and the draft Constitution annexed thereto to the Council, the Commission, the governments and parliaments of the Member States and the applicant countries with which the Union has commenced official accession negotiations, and to distribute the draft Constitution as widely as possible.

ANNEX

DRAFT CONSTITUTION OF THE EUROPEAN UNION

Preamble

On behalf of the peoples of Europe,

- whereas an ever closer union between the peoples of Europe and the emergence of a European political identity are in line with the continuity of the process of integration initiated in the first Community treaties and with the prospect of development towards a federal-style Union,
- stressing that membership of the European Union is based on values shared by its peoples, in particular freedom, equality, solidarity, human dignity, democracy, respect for human rights and the rule of law,
- wishing to strengthen solidarity among these peoples whilst respecting their diversity, history, culture, languages and institutional and political structures,
- aware of the need to ensure that decisions concerning them are taken at a level as close as possible to the citizens themselves, with powers being delegated to higher levels only for proven reasons of the common good,
- whereas the European Union has as its aims economic development, social progress, the strengthening of cohesion, the active participation of regional and local authorities, together with respect for the environment and the cultural heritage,
- desiring to guarantee citizens and all who reside in the European Union better living conditions and an active role in economic and social development,

- declaring that the European Union must make an effective contribution to the security of its peoples, the inviolability of its external frontiers, the maintenance of international peace, the sustainable and equitable economic development of all peoples of the world and appropriate protection of the world's environment,
- confirming that the European Union is open to those European states wishing to take part in it which share the same values, pursue the same objectives and accept the same *acquis communautaire*,
- accepting the idea that some Member States may be able to progress faster and farther towards integration than others, provided that this process remains open at all times to each of the Member States who wish to participate and that the objectives which they pursue remain compatible with the European Union,

the Member States and the European Parliament have adopted this Constitution of the European Union in order to

- define its objectives,
increase the efficacy, transparency and democratic vocation of its institutions,
- simplify and clarify its decision-making procedures,
- guarantee in law human rights and fundamental freedoms.

Title I: Principles

Article 1: The European Union

1. The European Union (hereinafter called 'the Union') consists of the Member States and their citizens, from whom all its powers emanate.
2. The Union shall respect the historical, cultural and linguistic heritage of the Member States and their constitutional structure. It shall exercise its powers and competences in accordance with the principles of subsidiarity and proportionality.
3. The Union has legal personality.
4. The Union shall be provided with the means necessary to assume its responsibilities and achieve its objectives and shall move towards closer and more cohesive integration on the basis of the *acquis communautaire*.
5. The Member States cooperate amongst themselves and with the Institutions of the Union in order to achieve the Union's objectives. The Institutions of the Union shall carry out the tasks conferred on them by the Constitution.
6. The law of the Union takes precedence over the law of the Member States.

Article 2: Objectives of the Union

Within the framework of its competences, the main objectives of the Union shall be as follows:

- to promote throughout Europe peace, respect for democracy, economic and social progress, full employment and respect for the environment;
- to develop a legal and economic area without internal frontiers governed by the principle of a social market economy;
- to assist Member States and their citizens in adapting to internal and external changes in the economic, political and social fields;
- to foster the cultural and spiritual fulfilment of its peoples, whilst respecting their differences,
- to reaffirm its identity at international level through joint action to promote peace, security and the emergence of a free and peaceful world order based on justice, the rule of law, respect for the environment and economic and social progress.

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Article 3: Citizenship of the Union

Every person holding the nationality of a Member State shall thereby be a citizen of the Union.

Article 4: Citizens' electoral rights

Every citizen of the Union residing in a Member State of which he is not a national may vote and may stand as candidate at municipal and European elections in his place of residence under the same conditions as nationals of that Member State. The precise scope of these rights may be defined by an organic law.

The electoral rights of citizens may be extended by a constitutional law.

Article 5: Citizens' political activities

Every citizen shall have the right to engage in political activity throughout the territory of the Union.

Every citizen shall have the right to hold public office in the Union.

Every citizen of the Union shall be entitled, when outside its territory, to diplomatic and consular protection by the Union or, failing that, by the Member State represented in the foreign country where he is.

Article 6: Freedom of movement for citizens

Every citizen shall have the freedom to move, reside and stay freely on the territory of the Member States, where he may pursue the occupation of his choice on the same conditions as nationals, subject to the restrictions applying to employment in the public administration which involves the exercise of official authority.

The Union shall help to ensure equality of opportunity, in particular by endeavouring to remove obstacles to the effective entitlement and exercise of the rights conferred on citizens.

Every citizen shall be entitled to leave the Union and to return to it.

The citizens of the Union, and citizens of third countries and stateless persons residing in the Union, shall have the right, in the event of improper administration, to appeal to the Ombudsman appointed by the European Parliament or to submit a petition to the European Parliament.

Article 7: Human rights guaranteed by the Union

In areas where Union law applies, the Union and the Member States shall ensure respect for the rights set out in Title VIII. The Union shall respect fundamental rights as guaranteed by the European Convention on the Protection of Human Rights and Fundamental Freedoms, by the other applicable international instruments and as they derive from the constitutional principles shared by the Member States.

Title II: Competences of the Union

Article 8: Attribution of competences

1. The Union shall have the competences laid down by this Constitution and by the Community Treaties. It shall take over the *acquis communautaire*.
2. The Union and the Member States work together on a basis of solidarity to fulfil common tasks and objectives. They shall refrain from any measures liable to jeopardize achievement of the objectives of the Constitution.
3. The provisions of the Treaties concerning their objectives and fields of application which are not modified by this Constitution form part of the law of the Union. They may only be amended by the procedure for constitutional revision.
4. The other provisions of the Treaties shall also form part of the law of the Union in so far as they are not incompatible with the Constitution. They may only be amended by the procedure for organic laws.

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5. Acts of the European Communities and measures taken in the context of cooperation between the Member States shall continue to be effective as long as they are not incompatible with this Constitution and as long as they have not been replaced by acts or measures adopted by the Institutions of the Union in accordance with their respective competences.

6. The Union shall respect the commitments of the European Communities and in particular the agreements and conventions concluded with one or more third countries or any international organization.

Article 9: Attainment of objectives

Should action by the Union be necessary to attain one of its objectives without the Constitution or the Treaties providing the executive powers required for this purpose, such powers shall be conferred by an organic law.

Article 10: Principles of subsidiarity and proportionality

The exercise of the powers of the Union and their extension in accordance with Article 9 shall be subject to the principles of subsidiarity and proportionality.

The principle of subsidiarity means that the Union shall only take action if, and in so far as, the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Union.

In accordance with the principle of proportionality, any action taken by the Union shall not go beyond what is necessary to achieve the objectives of this Constitution.

Article 11: Cooperation between Member States

The Union shall aim to strengthen the existing forms of cooperation between Member States with a view to applying Community procedures and mechanisms to them.

With that aim in view, the Union shall act by adopting common positions and taking joint action consistent with the general guidelines laid down by the European Council and the European Parliament.

Article 12: Furtherance of action by Member States

The Union may recommend, encourage or stimulate action by Member States in areas which are inherent in or linked to the objectives pursued by the Union, without any compulsion being attached to such action.

The Union may also encourage, in these same areas, coordinated action by the Member States to which it may contribute appropriate support.

Title III: Institutional framework

Article 13: Institutions

1. The institutions of the Union are:

- the European Parliament,
- the European Council,
- the Council,
- the Commission,
- the Court of Justice.

2. The following shall carry out specific tasks provided for by the Constitution:

- the Committee of the Regions,
- the European Central Bank,
- the Court of Auditors,
- the Economic and Social Committee.

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3. Without prejudice to the provisions of the Treaties, other bodies and other agencies with legal personality and responsible for specific tasks may be established by an organic law, which shall define their statutes and, in particular, the detailed arrangements for their supervision.

Article 14: European Parliament — composition

The European Parliament consists of the representatives of the citizens of the Union, elected by direct universal suffrage and by secret ballot for a five-year period in accordance with a uniform electoral procedure.

The number of seats, the principles governing their distribution and the electoral procedure shall be established by a constitutional law.

Article 15: European Parliament — powers

The European Parliament shall:

- take part with the European Council in the definition of the general political guidelines of the Union;
- jointly with the Council, make laws, adopt the budget and give its approval to the international treaties of the Union;
- elect the President of the Commission and pass a vote of confidence in the Commission;
- exercise political supervision over the activities of the Union and may set up committees of inquiry;
- exercise the appointing powers conferred on it by the Constitution and the Community Treaties;
- exercise the other powers provided for by the Constitution and by the Community Treaties.

Article 16: European Council

The European Council consists of the heads of state or government of the Member States and the President of the Commission.

The European Council shall impart to the Union the impetus necessary for its development and shall define, with the participation of the European Parliament, the general political guidelines of the Union.

Article 17: Council — composition

The Council consists of a minister from each Member State competent to deal with the affairs of the Union. The minister shall chair a delegation appointed in accordance with national constitutional rules. Each delegation shall have a single vote.

Article 18: Council — powers

The Council shall:

- jointly with the European Parliament, make laws, adopt the budget and give its approval to the international treaties of the Union;
- coordinate the policies of the Member States where the Constitution so provides;
- exercise the appointing powers conferred on it by the Constitution and by the Community Treaties;
- exercise the other powers provided for by the Constitution and by the Treaties.

Article 19: Presidency of the Council

The President of the Council shall be elected by a non-weighted majority of five-sixths of the Member States for a period of one year. The term of office shall be renewable and may not exceed three years.

Article 20: Voting in the Council

For their adoption, Council decisions shall require the votes of a majority of the Member States representing a majority of the population.

A simple majority shall comprise the majority of the Member States representing the majority of the population.

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A qualified majority shall comprise two thirds of the Member States representing two thirds of the population.

A double qualified majority shall be deemed not to have been obtained where a decision is opposed by at least one quarter of the Member States representing at least one eighth of the population of the Union or by one eighth of the Member States representing at least one quarter of the population of the Union.

Article 21: Commission — composition and independence

1. The composition of the Commission shall be determined by an organic law.
2. Members of the Commission shall, in the general interest of the Union, be completely independent in the performance of their duties. In the performance of these duties, they shall neither seek nor take instructions from any government or from any other body. They shall refrain from any action incompatible with their duties. Each Member State undertakes to respect this principle and not to seek to influence the members of the Commission in the performance of their tasks.

Article 22: Commission — appointment — motion of censure

1. The Commission shall be appointed, in accordance with the procedure referred to in paragraph 2, for a period of five years.
2. At the start of each electoral period, the President of the Commission shall be elected, on a proposal from the European Council, by the European Parliament, acting by a majority of its component members.

The members of the Commission shall be selected by the President in accord with the Council acting by a qualified majority. The Commission thus constituted shall take office following a vote of confidence by the European Parliament.

3. The European Parliament may, acting by a majority of its component members, pass a motion of censure after having given notice of at least three working days; adoption of this motion shall result in the collective resignation of the members of the Commission, who shall carry out daily business until they are replaced.

Article 23: President of the Commission

The President of the Commission shall allocate its competences among the members of the Commission.

He coordinates the work of the Commission and has a casting vote in the event of a tied vote.

The President may terminate the mandate of a member of the Commission at the request of the European Parliament or the Council.

Article 24: Commission — powers

The Commission shall:

- monitor compliance with the Constitution and the acts of the Union;
- be part of the legislative authority and have the power to initiate legislation;
- implement the budget and laws of the Union and adopt implementing Regulations, in conformity with the provisions of the Constitution;
- negotiate and conclude the international treaties of the Union;
- exercise the other powers provided for by the Constitution and by the Community Treaties.

Article 25: Court of Justice

The duties of the Court of Justice are set out in Articles 36 to 39.

The Court of Justice consists of Judges and Advocates-General.

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The latter, chosen from persons whose independence is beyond doubt and who possess the qualifications required for appointment to the highest judicial office in their respective countries, or who are jurisconsults of recognized competence, shall be appointed by the European Parliament, acting by a majority of its component members, and by the Council for a non-renewable period of nine years. The arrangements for their appointment shall be laid down by an organic law.

Article 26: President of the Court of Justice

The Judges shall elect the President of the Court of Justice from among their number for a term of three years. He may be re-elected.

Article 27: Organization and statute of the Court

1. An organic law, proposed by the Court of Justice, shall establish its rules of procedure, the number of its members, their statute, the constitution of chambers of the Court, and the cases in which the Court shall be required to sit in plenary session.
2. The Court of Justice shall enjoy financial and administrative autonomy within the framework of the budget of the Union.

Article 28: Other courts

One or more other courts may, on a proposal from the Court of Justice, be set up by an organic law, to be responsible for hearing certain classes of action, subject to a right of appeal to the Court of Justice limited, where appropriate, to points of law only.

Their duties, composition and rules of procedure shall be laid down in accordance with the principles set out in Articles 25, 26 and 27.

Article 29: Committee of the Regions

The Committee of the Regions shall be composed of elected representatives belonging to the regional or local authorities recognized by the Member States.

It shall be consulted in advance on all legislative initiatives concerning certain matters, of which a list shall be established by an organic law.

Article 30: European Central Bank

The European Central Bank shall issue the currency of the Union, ensure its stability and exercise the powers provided for by the Constitution.

It shall enjoy the independence necessary for the performance of its tasks. The Court of Justice shall ensure that this independence is respected.

Title IV: Functions of the Union

Chapter 1 — Principles

Article 31: Acts of the Union

1. The institutions of the Union shall make, in accordance with the Constitution:
 - constitutional laws, which amend or are incorporated into the Constitution; the European Parliament acting by a majority of two thirds of its component members and the Council by a double qualified majority ⁽¹⁾;
 - organic laws, which regulate in particular the composition, tasks or activities of the institutions and organs of the Union; the European Parliament acting by a majority of its component members and the Council by a qualified majority ⁽²⁾;
 - ordinary laws; the European Parliament acting by an absolute majority of votes cast, and the Council by a simple majority ⁽³⁾.

⁽¹⁾ Acting unanimously, for a five-year transition period.

⁽²⁾ Acting by a double qualified majority, for a five-year transition period.

⁽³⁾ Acting by a qualified majority, for a five-year transition period.

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2. In accordance with the laws and the Constitution, the institutions of the Union shall adopt:
- implementing Regulations;
 - individual decisions.

3. Laws and Regulations shall be binding in their entirety throughout the territory of the Union.

Decisions shall be binding on their addressees.

4. Laws may take the form of framework laws when they are confined to a definition of the general principles of the matter, impose an obligation on the Member States and the other authorities to produce a specific result and make the national and Union authorities responsible for their implementation. A law may contain provisions applicable in the event of failure by Member States to act on the implementation of framework laws.

Chapter 2 — Legislative function

Article 32: Legislative initiative

The laws of the Union shall be made by the European Parliament and by the Council.

The legislative initiative in respect of ordinary and organic laws shall lie with the Commission, except where the Constitution confers it on the Court of Justice.

Should the Commission fail to act, the European Parliament and the Council may by common accord submit a proposal for a law.

The legislative initiative in respect of constitutional laws shall lie with the European Parliament, the Commission, the Council or a Member State.

Article 33: Delegation of legislative power

By an organic law specifying the contents, aim, extent and duration of the authorization, the Commission may be made responsible for adopting acts which may derogate from or modify existing ordinary laws.

Chapter 3 — Executive function

Article 34: Implementation of legislation

The Member States shall implement the laws of the Union.

Without prejudice to the preceding paragraph, the Commission shall have regulatory power with a view to the implementation of the laws of the Union and may, in the cases stipulated in the Treaties or the relevant organic law, take individual measures with a view to the application of Union law. The Council may be made responsible by law for regulatory power in specific areas.

Article 35: Supervision of national implementation measures

The Commission shall supervise the implementation of the laws of the Union by the Member States. Detailed arrangements for this shall be established in an organic law.

Chapter 4 — Jurisdictional function

Article 36: Jurisdictional function

The Court of Justice and the other Community and national courts, acting in the framework of their respective terms of reference, shall ensure respect for the law in the interpretation and application of this Constitution and all the acts of the Union. Consistency of interpretation of Union law shall be ensured, in particular, by the exercise of the competence to give preliminary rulings.

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Article 37: Powers of the Court of Justice

The powers of the Court of Justice as defined in this Constitution and in the Community Treaties may only be modified by a constitutional law.

Article 38: Violation of human rights

The Court of Justice shall be competent to rule on any action brought by an individual seeking to establish that the Union has violated a human right guaranteed by the Constitution.

A constitutional law shall determine the conditions under which such actions may be brought and the penalties which the Court of Justice may impose.

Article 39: Respecting the distribution of competences

The Council, the Commission, the European Parliament or a Member State may, after its final adoption and before its entry into force, bring an action for the annulment of an act which exceeds the limits of Union competence. Detailed arrangements concerning such action shall be established in a constitutional law.

Chapter 5 — Finances

Article 40: Resources and budget

1. A law shall determine the nature and maximum amount of the Union's financial resources. This law shall require for its adoption the votes of a majority of the component members of the European Parliament and of two-thirds of those voting, and a double qualified majority in the Council ⁽¹⁾.

2. All the annual revenue and expenditure of the Union shall be entered in the budget. The budget shall be adopted each year in accordance with the legislative procedure.

3. Any proposal for new expenditure shall be accompanied by a proposal for the corresponding revenue.

4. The Union shall be subject to the same budgetary discipline as that imposed on the Member States by virtue of the law of the Union.

Chapter 6 — Coordination of Member States' policies

Article 41: Principle

In those areas subject to coordination or cooperation between the Member States, the Council shall exercise the powers conferred on it.

The Commission and the European Parliament shall participate in the Council's action.

Title V — External relations

Article 42: Common foreign and security policy

1. The European Council shall define the general principles and guidelines of the common foreign and security policy, including common defence policy and common defence.

2. The Council shall decide the common positions and joint actions of the Union, on a proposal from the Commission or in response to a request from a Member State. Except in the most urgent cases, it shall consult the European Parliament on the basis of appropriate arrangements. It shall in all cases keep the European Parliament informed and report to it on its actions.

The Council shall take its decisions acting unanimously except in cases where, on a proposal from the Commission, it decides by a double qualified majority. After a period of five years, the Council shall decide by a qualified majority and solely on a proposal from the Commission.

⁽¹⁾ Acting unanimously, for a 10-year transition period.

Article 43: Representation of the Union

The Union shall be represented internationally by the President of the Council or the President of the Commission, depending on the subject concerned. The Commission shall be responsible for the diplomatic representation of the Union, which it shall exercise in the forms agreed with the Council. In countries where the Union is not represented, the Commission and the Council may agree that the Union should be represented by the Member State best suited to this task.

Article 44: Treaties

1. The Union shall be empowered to conclude treaties.
2. The treaties negotiated by the Commission shall be submitted for approval to the European Parliament, which shall act by a majority of its component members, and the Council, which shall act by a qualified majority. The Commission shall then express the Union's consent.
3. The conditions under which approval can be given by a simplified internal procedure shall be established in an organic law.
4. The treaties thus concluded shall be binding on the institutions of the Union and on the Member States.
5. The European Parliament, the Commission, the Council or a Member State may request the opinion of the Court of Justice on the compatibility of a treaty with this Constitution. Any treaty in respect of which the Court of Justice delivers an adverse opinion may only be approved, where appropriate, by a constitutional law.
6. If an international treaty is to be concluded which involves amendment of the Constitution, the amendments shall first be adopted by a constitutional law.
7. The denunciation of treaties shall be carried out in accordance with the procedures laid down for their conclusion.

Title VI: Accession to the Union*Article 45: Accession of new members*

Any European State whose institutions and system of government are founded on democratic principles and the principle of the rule of law, which respects fundamental rights, minority rights and international law and undertakes to adopt the *acquis communautaire* may apply to become a member of the Union.

The detailed arrangements for accession shall be the subject of a treaty between the Union and the applicant State. This treaty must be approved by a constitutional law.

Title VII: Final provisions*Article 46: Final provisions*

Member States which so desire may adopt among themselves provisions enabling them to advance further and more quickly towards European integration, provided that this process remains open at all times to any Member State wishing to join it and that the provisions adopted remain compatible with the objectives of the Union and the principles of its Constitution.

In particular, with regard to matters coming under Titles V and VI of the Treaty on European Union, they may adopt other provisions which are binding only on themselves.

Members of the European Parliament, the Council and the Commission from the other Member States shall abstain during discussions and votes on decisions adopted under these provisions.

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Article 47: Entry into force

The Constitution shall be considered adopted and shall come into force when it has been ratified by a majority of Member States representing four-fifths of the total population. Member States which have not been able to deposit the instruments of ratification within the time limit established shall be obliged to choose between leaving the Union and remaining within the Union on the new basis.

Should one of these States decide to leave the Union, specific agreements shall be concluded, designed to grant it preferential status in its relations with the Union.

Title VIII: Human rights guaranteed by the Union

1. Right to life

Everyone has the right to life, respect for his physical integrity, freedom and security of person. No-one may be sentenced to death, or subjected to torture or to inhuman or degrading treatment or punishment.

2. Dignity

Human dignity is inviolable: it shall include the individual's fundamental right to adequate resources and services for himself and his family.

3. Equality before the law

- (a) Everyone is equal before the law.
- (b) Any discrimination on grounds such as race, colour, sex, language, religion, political or other opinion, national or social origin, membership of a national minority, property, birth or other status shall be prohibited.
- (c) Equality must be secured between men and women.

4. Freedom of thought

Freedom of thought, conscience and religion are guaranteed.

The right of conscientious objectors to refuse military service shall be guaranteed; the exercise of this right shall not give rise to any discrimination.

5. Freedom of opinion and information

- (a) Everyone has the right to freedom of expression. This right shall include freedom of opinion and the freedom to receive and impart information and ideas.
- (b) Art, science and research shall be free of constraint.

6. Privacy

- (a) Everyone has the right to respect and protection for his or her identity.
- (b) Respect for privacy and family life, reputation, the home and private communications shall be guaranteed.
- (c) Surveillance by public authorities of individuals and organizations may only take place if duly authorized by a competent judicial authority.

7. Protection of the family

Everyone has the right to start a family.

The family shall enjoy legal, economic and social protection. The rights of fathers, mothers and children shall also be protected.

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8. Freedom of assembly

Everyone has the right to organize and take part in peaceful meetings and demonstrations.

9. Freedom of association

Everyone has the right to freedom of association.

10. Right of ownership

The right of ownership is guaranteed.

No-one may be deprived of his or her possessions except where deemed necessary in the public interest, in the cases and subject to the conditions provided for by law and subject to fair compensation previously determined.

11. Freedom to choose an occupation and working conditions

(a) The Union recognizes the right to work; the Union and the Member States shall take the measures needed to make that right effective.

(b) Everyone has the right freely to choose an occupation and a place of work and freely to pursue that occupation.

(c) No-one may be arbitrarily deprived of his or her work or be forced to take up specific work.

12. Collective social rights

(a) Workers are guaranteed the right to organize collectively in defence of their rights, including that of establishing trade unions.

(b) The right of negotiation between employers and employees and the right to conclude collective agreements are guaranteed at Union level.

(c) The right to take collective action and the right to strike are guaranteed.

(d) Workers have the right to be informed regularly of the economic and financial situation of their undertaking and to be consulted on decisions likely to affect their interests.

13. Social protection

(a) Everyone has the right to benefit from measures for the good of their health.

(b) Anyone lacking sufficient resources has the right to social and medical assistance.

(c) Workers, self-employed persons and their dependants have the right to social security or an equivalent system.

(d) Those who, through no fault of their own, are unable to house themselves with dignity shall have the right to assistance in this respect from the appropriate public authorities.

14. Right to education

(a) Everyone has the right to education and vocational training appropriate to their abilities.

(b) There shall be freedom in education.

(c) Parents have the right to make provision for such education in accordance with their religious and philosophical convictions, whilst respecting the right of the child to its own development.

15. Right of access to information

Everyone has the right of access to and the right to have corrections made to administrative documents and other data concerning them.

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16. Political parties

Citizens have the right to form political parties. Such parties must be inspired by the democratic principles common to the Member States.

17. Access to the courts

- (a) Everyone has the right to bring an action before a court or tribunal specified by law.
- (b) Everyone is entitled to have his or her case heard fairly, publicly and within a reasonable time limit by an independent and impartial court or tribunal established beforehand by law.
- (c) Access to justice must be effective. Legal aid is provided for those who lack sufficient resources otherwise to afford legal representation.

18. Non bis in idem

No-one may be tried or convicted for offences of which he has already been acquitted or convicted.

19. Non-retroactivity

No liability may be incurred for any act or omission to which no liability applied under the law applicable at the time when it was committed.

20. Right to petition

Everyone has the right to address written requests or complaints to the public authorities, who shall be required to reply.

21. Right to respect for the environment

Everyone has the right to the protection and preservation of his natural environment.

22. Limits

No derogation from the requirement to respect the rights and freedoms guaranteed by this Constitution shall be granted, save under the terms of a law consistent with their substance, within reasonable limits vital to the safeguard of a democratic society.

23. Degree of protection

No provision in this Constitution may be interpreted as restricting the protection afforded by the law of the Union, the law of the Member States and international law.

24. Abuse of rights

No provision in this Constitution may be interpreted as implying any right to engage in any activity or perform any act aimed at restricting or destroying the rights and freedoms set out therein.

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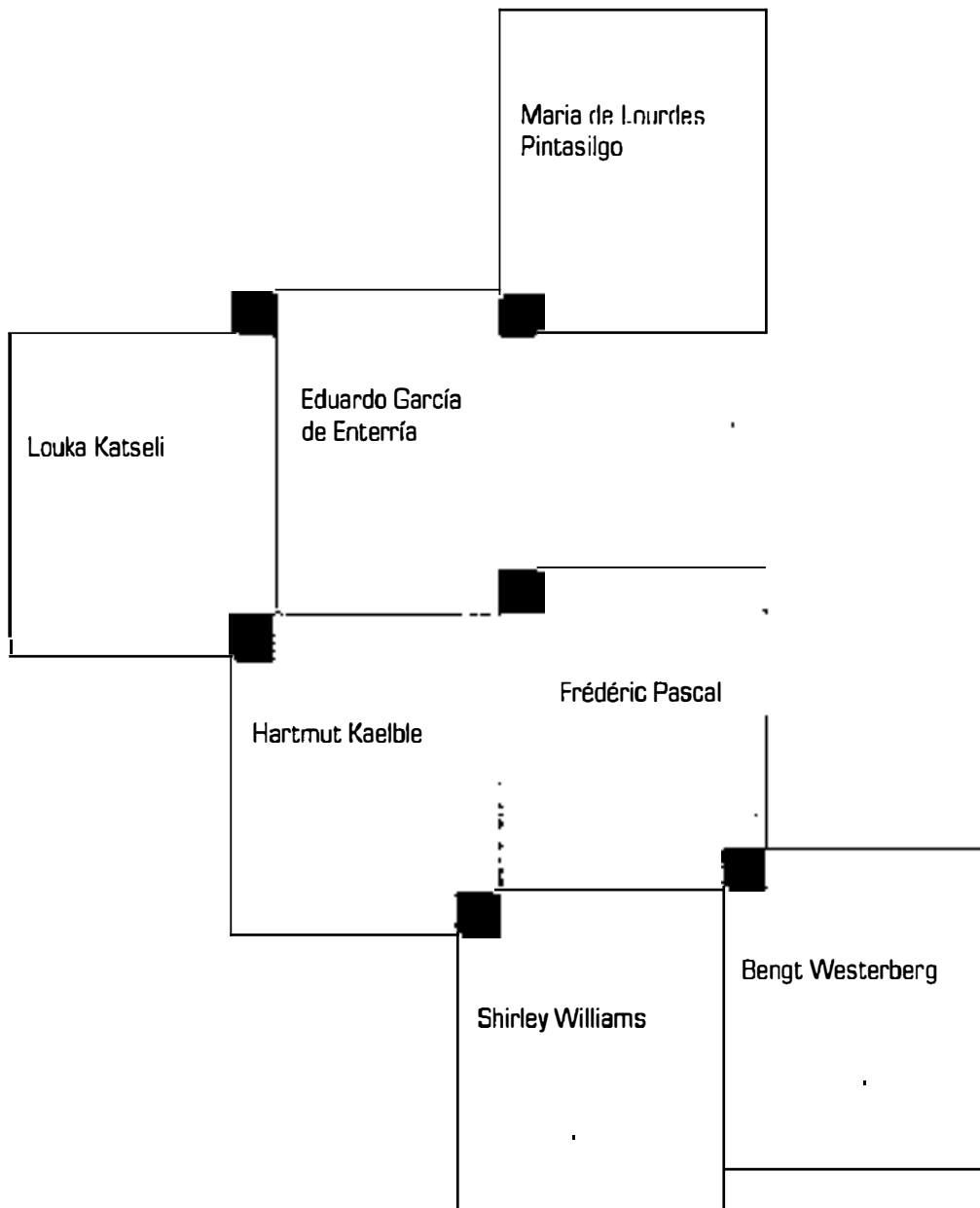
For a Europe of civic and social rights



Report by the Comité des Sages



EUROPEAN
COMMISSION



For a Europe of civic and social rights

Report by the Comité des Sages chaired by Maria de Lourdes Pintasilgo

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FOREWORD ■

Europe is a social entity. One of the things each of the Member States introduces into the European integration process is a sense of responsibility for the needs of its citizens. Historically, each country has found different ways of exercising this responsibility, but the end result is that in all the Member States, social rights are, to differing degrees, respected, defended and nurtured. Europe, then, already has a social dimension.

The Committee feels that the moment has come to consolidate past achievements in the social field and to set about realizing the aspirations and needs of the people of Europe. While there can be no doubt that the welfare state is under attack and in a state of crisis, the underlying principles still hold true. What we have to do now is find ways of recasting the mould. The welfare state is, after all, a reflection of the way we care for one another and the way we value human resources. It is very much the inspiration behind 'competitiveness with a human face'.

Although the 'European social model' is a living reality, it is also by pooling experience gained from the various national systems that we can find new avenues of approach. In other words, reflecting on social rights and how they can be put into practice in today's world occupies an important place in the building of the European Union.

The drive to institute the single market, culminating in economic and monetary union, was and is an objective which can mobilize and reorganize the main economic players in the Member States. In the same way, a clear signal of intent to work towards European social union will give us an objective capable of taking the building of Europe a stage further.

There is an urgent need for progress — both internally and externally. Internally, because there is a need to secure the livelihoods of the people of Europe at a time when work is becoming a scarce commodity and demographic trends are giving cause for concern. Externally, because the economic position of the European Union in the world market and the effective provision of development aid are both dependent primarily on our ability to postulate new 'models' to enable individual countries to find their own paths towards a society characterized by economic progress and social justice.

In the early part of the industrial era, the social question was primarily one of capital versus labour. Times have changed, though, with a radical shift in the constituent parts of the production process and the emergence of social rights covering practically every aspect of individuals' living conditions. Civic rights and social rights are becoming interdependent. In the European tradition, they are inseparable. 'Freedom and the conditions of freedom' are the mirror image of 'democracy and development'.

Citizenship is a prime element in the equation. In talking about social rights, we are touching on the full range of rights under the 'citizenship' umbrella. Extending the concept of citizenship within a European Union framework gives each country the opportunity to carry its own concept of citizenship a stage further.

With the development of social rights in the Member States forcing the European Union to take a decisive step in the construction of Europe, the Union's responsibility can only find expression within the framework of the Member States' powers. More so than elsewhere, social rights are coupled with the sheer variety within the European Union, and the result is that Member States' responsibilities emerge all the stronger.

The concept of citizenship has gradually been taking shape throughout the Union's history. One important legal stage is enshrined in the Maastricht Treaty, but the Union is already active in its respect for, and promotion of, the social aspect of citizenship. The European Parliament and the Commission have both been active, the former through its proposals on fundamental rights (1989 and 1996), the latter through its various social policy dossiers, and especially through the Social Charter, which was the Commission's brainchild.

These social rights, which are tending to mingle with civic rights and to inform on the concept of citizenship, can have only one logical consequence as far as the Committee is concerned: a 'bill of rights' must be made a major objective for the future of the European Union.

The Committee is therefore proposing that initially, i.e. in conjunction with the forthcoming IGC, the Treaty should incorporate certain fundamental social and civic rights and should reflect the Union's determination to formulate a bill of rights to guide us at the dawn of the 21st century. Once these proposals have been built into the Treaty, the Committee recommends that attention should turn to a second stage which it regards as being of capital importance for the future of the Union. That will be the time to look at the finer points of the embryonic bill of rights with an immediate and direct impact on people, galvanizing not just individuals but all manner of social and economic groups throughout the Member States.

As far as the Committee is concerned, then, the challenge now facing us is not just to make changes to particular articles in the Treaties, but to scale up the approach and engage in a thorough overhaul of the European Union. This — no more nor less — is what the age demands of us, to make the people of Europe aware of the fact that they are now citizens of the European Union.

Chairing this Committee has been for me an enriching experience and a practical demonstration of European citizenship. Within a very short space of time — the Committee held its first meeting in October 1995 and met for the last time in February

1996 — the members of the Committee have offered their views as citizens of Europe, not in spite of their national interests but precisely because of them and on the strength of them. Their interest in the task at hand, the skills they have made available to the Committee, and their contributions during and between the Committee's working sessions show what can be done if one really has Europe at heart.

All this would not have been possible, though, without the exceptional qualities of the rapporteur — not just his talent and interdisciplinary know-how, but also his devotion to the cause and his willingness to lend an intelligent ear to any suggestion.

The DG V Secretariat team has given able and efficient support throughout to the Committee.

To all these people, I would offer my thanks and say what a pleasure it has been to work with people of such high calibre.

Maria de Lourdes Pintasilgo

PROPOSALS FROM THE COMITÉ DES SAGES ■

- I. Take a detailed look at our concepts of work, activity and employment in Europe to ensure that the policies we pursue enable people to take their rightful place in society.
- II. Decide in what way our welfare state should be restructured to make it a more effective force for competitiveness and social cohesion and to realize each individual's full potential.
- III. Facilitate practical policies to enable men and women to reconcile their family responsibilities and professional activities.
- IV. Nurture the emergence of a new generation of civic and social rights, reflecting technological change, enhanced awareness of the environment and demographic change.
- V. Strengthen the sense of citizenship and democracy in the Union by treating civic and social rights as indivisible.
- VI. Decide how and where the Union should intervene in the social sphere, having regard to the principles of subsidiarity and proportionality.
- VII. Initiate Stage 1, at the forthcoming Intergovernmental Conference, by enshrining in the Treaties a basic set of fundamental civic and social rights (in the form of a bill of rights), laying down which rights should have immediate force of law and which ones will be dealt with in more detail at a second stage (see proposal No XIII). All these rights would be available to the citizens of the European Union, while some of them might also be available to citizens of non-member countries, provided the conditions are right.
- VIII. Include among the rights mentioned in proposal No VII a ban on any form of discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, membership of a national minority, wealth, birth, disability or any other situation.
- IX. By way of exception, postulate the principle that each Member State must set in place, subject to its own conditions, a minimum income for persons who cannot find paid work and have no other source of income.
- X. Consolidate all existing texts in a single Treaty, with continuously numbered articles.

- XI. Provide a sounder legal basis for the Court of Justice by extending to the international agreements signed by the Member States the legal references to which the Court refers under Article F, and removing the restrictions imposed under Article L.
- XII. Rather than acceding to the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, introduce special arrangements for legal remedy in respect of fundamental rights in the form of a Union-specific appeal court made up of non-permanent judges from the Member States' constitutional or supreme courts.
- XIII. Make provision for an article in the new Treaty to set in motion a wide-ranging, democratic process of compiling, at Union level, a full list of civic and social rights and duties. Initiated by the European Parliament on a proposal from the Commission, this process, which must closely involve the national parliaments and which would require input both from the traditional social partners and from non-governmental organizations, should culminate in a new IGC within five years' time.
- XIV. Consolidate all provisions concerning social policies, and especially the Protocol on social policy, under a single title in the Treaty.
- XV. Apply qualified majority voting in the social field, with the exception of a few sensitive policy sectors (e.g. social protection and participation).
- XVI. Give express recognition in the Treaty to the partnership role of the new collective players in society, in particular the NGOs.
- XVII. Set in place a statute for associations under European law.
- XVIII. Extend Structural Fund eligibility to measures designed to promote fundamental social rights.
- XIX. Postulate the principle that all European policies must be subject to a social cohesion impact study.
- XX. Include in the Treaty a chapter on employment to underpin coordinating action by the Union subject to the principles of subsidiarity and proportionality.
- XXI. Make express provision for the Union to adopt a coordinating and experimental role in terms of combating social exclusion.

- XXII. Extend the Community domain to include immigration and asylum policy and policy on entry, movement and residence for the citizens of non-member countries.
- XXIII. Extend the Community domain to combat drug abuse and trade in illegal drugs.
- XXIV. Set out the concept of public utility services in that such basic services often condition the way certain social rights can be exercised.
- XXV. Initiate a programme of work in the field of European social policy and bring out the cost of not having a social Europe.
- XXVI. Create uniform statistics series relating to the whole of the European Union.

SUMMARY ■

In its second social action programme (adopted in April 1995), the Commission undertook to set up a Comité des Sages to examine what might become of the Community Charter of the Fundamental Social Rights of Workers in connection with the review of the European Union Treaties.

To enable it to fulfil its task properly, the Committee wanted to extend the scope of its remit because it felt that Europe was in greater danger than it realized and that the 'social deficit' was fraught with menace. Europe, the Committee felt, cannot be built on unemployment and social exclusion, nor on an inadequate sense of citizenship. Europe will be a Europe for all, or it will be nothing at all.

I. Social issues now lie at the heart of the challenges facing the European venture

1. *The European Union needs to proclaim its identity more clearly.*

If it wishes to become an original political entity, it must have a clear statement of the citizenship it is offering its members. Inclusion of civic and social rights in the Treaties would help to nurture that citizenship and prevent Europe being perceived as a bureaucracy assembled by the technocratic elite far removed from daily concerns. It would be useful to affirm that the object of the Union is to enable every citizen to realize his/her potential in conjunction with his/her fellows, bearing in mind the necessary solidarity with future generations.

2. *We will never meet the challenge of employment unless we radically change our policies — which have to be more pro-active and more effective — and our views on what constitutes work and activity.*

If Europe is to refuse to countenance any exacerbation of inequalities and social marginalization and any generalization of passive assistance for 'excluded' individuals, it will have to make a considerable effort to innovate, organize and mobilize in order to build a form of development which embraces everyone. It will have to develop a pro-active approach to citizenship, where each individual accepts his/her obligations to others. We shall have to recast our public policies to a substantial degree; they must prevent rather than remedy, stimulate rather than assist.

On a more general front, it is our very notion of work which will have to change and broaden. The model of full-time work, already altered — albeit reluctantly — by unemployment and atypical work will evolve: periods of paid activity will alternate or be combined with training periods or free time devoted to other activities; there should be

continuity between the different stages with as few breaks as possible. Paid employment will no longer be the overriding, legitimate social activity; other different forms of activity, more often than not unpaid, will take on growing social importance and the community at large will come to recognize their social role and support their development. Links and ties will develop between all these forms of activity and work and they could represent a marked advancement for the good of the community if they are properly managed with effective back-up policies and do not entail instability for the persons concerned. There is still a need for an instrument combining economic security with a means of enabling individuals to take responsibility for their personal development, whereby the social flexibility which benefits the individual would act as the counterbalance to economic flexibility.

3. A renewed, original social model could become the key to European economic competitiveness.

In the global economy to which we belong, competitiveness is a fixed imperative. But competitiveness cannot be improved by dismantling the welfare state or by reducing minimum social standards. What we do have to do is change and overhaul our social system: reducing non-wage labour costs; developing social rights, such as training, to foster high value-added forms of production; rejuvenating European social dialogue and turning it into a source of competitiveness; coming up with a coordinated response to population ageing, with basic pension schemes and policies to make it possible for both men and women to reconcile family responsibilities and occupational obligations; tackling the various forms of social exclusion by way of more individualized innovative policies, in close conjunction with the non-governmental organizations; and by paying heed to environmental matters.

4. The challenges of enlargement and globalization concern social matters too.

Successful integration into the Union of the countries of Central and Eastern Europe depends not only on the appeal of our economic model, which is indisputable, but also on our social model; yet it is tending to deteriorate. A core of clear social standards should be required of these countries as soon as they become full members; which means that the core has first of all to be defined by the Union.

Globalization entails social aspects which will be coming increasingly under the spotlight, more especially the progress globalization of the labour market. Another question concerns the pace at which social standards applied in the industrialized countries should be taken on board. The Union might thus feel the need for a stronger external social policy. It would, in all events, be unable to defend the principle of universal rights unless it produces its own definition of such rights.

II. The current structure of civic and social rights and social policies in Europe is extremely complex

1. *The Member States have differing constitutional systems, but all are signatory to a number of conventions and agreements, more particularly the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, which features a notable procedure for effectively guaranteeing such rights.*

As regards the Treaties of the European Union, it is not possible as yet to speak of a genuine structure of social and civil rights, but rather of *ad hoc*, piecemeal measures to accompany economic integration and allow minimum social policies to be pursued: Articles 117-122 of the Treaty of Rome, as supplemented by the Single Act of 1986; the Community Charter of the Fundamental Social Rights of Workers, which was adopted in 1989 by 11 of the then 12 Member States; the new provisions of the Maastricht Treaty, more especially the Protocol on social policy, which was adopted by 14 of the 15 Member States. Generally speaking, social rights are defined outside the Treaty and mainly apply to workers only. The Treaties contain no list of fundamental social rights to which the Court of Justice could refer in order to review Community acts. The provisions need to be made more readable, simpler, more consistent and more effective.

2. *However, in a policy sector which is in a permanent state of flux, there are numerous problems which have to be overcome.*

Do social rights and civil, civic and even political rights form part of a whole — which is what the Committee believes — or are they to be considered separately? This first distinction to a large extent overlaps another: on the one hand, rights which limit the risk of encroachment by the State on the freedom or dignity of the individual and are mainly set out in statutory provisions; on the other, rights to specified benefits and services and which involve costs and require financial resources to be made available.

But from whom can these rights be demanded, who ensures that they can be exercised and who provides the necessary means when society confers them on individuals? The question arises in most cases, but is particularly acute in the case of positive social rights (e.g. the right to housing and employment). In such cases, the assertion of rights is inseparable from the social policies which give them effect. But it would be wrong to think that respect for rights is purely a matter for society as a whole and public policy. The practical implementation of rights also depends on interpersonal relations and a sense of individual responsibility for others: there are no rights without duties, nor democracy without civic commitment.

Finally, the list of fundamental rights is not unchangeable: first of all, because a fuller understanding of the individual is emerging; secondly, because technological progress

is creating threats to individuals. After the first generation of civil and political rights, followed by that of social rights, the possibility of further progress is emerging and has to be discussed in depth.

3. *It is essential to state clearly what should be done by the Union and what should be done by the Member States, in the field of fundamental rights as in others.*

The division of responsibilities between the Member States and the Union is a much more sensitive subject in the social field than in economic matters, and no clear solution has yet been found. It is generally recognized that in social affairs the principles of subsidiarity and proportionality must apply in full and play an essential part. Each country must retain its specific features.

So whether or not we are capable of developing a social union will depend on our ability to define areas or functions in which the Union must develop a role, either because the Member States are unable to act effectively or because action by the Union is more effective than that of the Member States and offers additional benefits. The steps to be taken are thus:

- to conduct and coordinate forward-looking discussions;
- to specify a minimum core of fundamental rights applicable to the Union and the Member States when acting in accordance with Community law;
- to recognize the social implications of the rights of citizens within the single market to move and reside freely within the territory of the Member States;
- to help correct imbalances as they arise;
- to assist with the solution of difficult problems which, while falling within the Member States' remit, require common approaches;
- to help to approximate laws and regulations in the event of excessive disparities and prescribe minimum standards if appropriate.

III. Specify immediately a minimum core of fundamental rights as a first stage

The immediate steps to be taken at the IGC are as follows.

1. *Consolidate in a single Treaty the provisions which are currently dispersed throughout the 15 treaties, with the articles continuously numbered.*

2. *Create a sounder legal basis for the work of the Court of Justice of the European Communities to ensure that fundamental rights are applied in practice.*

The frame of reference used by the ECJ to determine the general principles of Community law would be extended, on the one hand, to the Community Charter of the Fundamental Social Rights of Workers, which would thus be incorporated indirectly into the Treaties, and on the other, to the main international agreements signed by the Member States. They could thus be used to vet all legal acts on the part of the Union. Accordingly, the restrictions which Article L of the Maastricht Treaty imposes on Article F would have to be removed.

One of the advantages of this improvement would be to ensure more effective implementation of the Council of Europe's Human Rights Convention and could thus offer a solution to the many, hitherto underestimated (e.g. poor social rights content, need for any revision of Convention to be ratified in advance by 38 countries) problems which accession to this Convention would raise. To ensure that the Luxembourg Court is not the final arbiter on matters to do with fundamental rights, a Union-specific court of appeal could be created, comprising non-permanent judges from the Member States' constitutional or supreme courts.

3. *Integrate immediately into the Treaty an initial list of fundamental rights.*

This list would relate only to the Community sphere, i.e. to the acts of the Union and acts by the Member States in pursuance of Community law. It does not imply any change in the respective areas of competence of the Union and the Member States and does not affect relations in law between the Member States and their nationals.

Eight rights would be recognized and would have full and immediate effect: equality before the law; ban on any form of discrimination; equality between men and women; freedom of movement within the Union; right to choose one's occupation or profession and educational system throughout the territory of the Union; right of association and right to defend one's rights; right of collective bargaining and action.

Rights in the form of objectives to be achieved: (right to education, to work, to social security, to protection for the family, etc.) these form an integral part of the European social model; they would be set out, but any discussion on content and minimum standards would be deferred to the second phase.

Given the scale of unemployment in the Community and the need to combat poverty and social exclusion, the Committee is proposing a minimum clause in one case only: the principle should be enshrined in the Treaty, i.e. at European Union level, that each Member State must set in place a minimum income for persons who, despite their

efforts, are unable to find paid employment and have no other source of income, the level of such income being decided by each Member State.

IV. Set in motion a participatory process to formulate a modern list of civic and social rights and duties

Strengthening the Treaty to include fundamental rights is not something that can be achieved in one go. There is, at the moment, no full list of possible rights, especially if we set out to be bold and innovative: this will require an enormous interdisciplinary effort at a high level of technical detail. The point is not to grant rights from on high, but rather to adopt the kind of democratic process which is a logical consequence of active citizenship. What we have here is a unique opportunity to give free rein to European democratic action.

It is why a collective venture should be provided for in the revised Treaty, with the consultation process being launched by the European Parliament on the basis of a proposal from the European Commission and under the auspices of an *ad hoc* committee. The process would bring in the traditional social partners, but would also embrace non-governmental organizations, with an exhaustive list of such organizations being drawn up in each country as a function of the types of rights being discussed. The European Parliament would be regularly informed and consulted on the progress of the process, and the national parliaments too would be closely associated.

After four to five years, once this consultative process had been completed, the governments would draw the necessary conclusions in the form of an amendment to the existing Treaty within the context of a new IGC, the convening of which should be decided on as of now.

V. Integrate social policies into the Union's normal operations

Many fundamental rights clearly depend on specific social policies being pursued. There would be no point in incorporating fundamental rights into the Treaties without doing the same for the social policies which enable these rights to be given effect.

Since this is not central to the Committee's remit, we wish to put forward just a few proposals.

1. *General provisions*

- Group all the provisions concerning social policies under a single title in the Treaty.
- When a Union social policy is necessary in terms of subsidiarity and proportionality, apply qualified majority voting, except in a number of sensitive areas (e.g. social security, social protection and participation).
- Make express partnership provision in the Treaty for non-profit-making organizations and foundations — especially charitable institutions — active in combating exclusion and poverty and which can speak for the unemployed and the excluded.
- Make use of the Structural Funds to promote fundamental rights.
- Develop social and human sciences expertise in the field of European social policy.
- Examine systematically the impact of the various European policies on social cohesion and the risks of exclusion.

2. *Specific provisions*

- Give greater prominence in the Treaty to employment and set up an Employment Committee which would correspond to the Monetary Committee and would periodically hold joint meetings with it.
- Enable the Union to engage in coordination and experimental work in the field of combating exclusion.
- Include in the usual institutional domain (to facilitate decision-making) immigration and asylum policy and policy *vis-à-vis* people from third countries.
- Adopt a similar solution for all matters pertaining to the effects of drugs on individuals, encompassing treatment, prevention and trafficking aspects.
- Elucidate the concept of public utility services.

Report by the Comité des Sages
For a Europe of civic and social rights

INTRODUCTION ■

In its second social action programme, which it adopted last April, the Commission undertook to set up a Comité des Sages to review, in particular, the action that might be taken on the Community Charter of the Fundamental Social Rights of Workers in the context of the revision of the European Union treaties as provided for in the Maastricht Treaty. Should the Charter be adapted and revised, included in the Treaties, merged with the Social Protocol? Should the Social Protocol be incorporated into the Treaty itself? All these questions have now come to the top of the agenda.

And they inevitably raise an even more fundamental question: what part do and should social matters and social rights, in the broad sense, play in building the Europe of tomorrow? Only by answering that question will we be able to deal with the many detailed issues.

With the Commission's agreement, and to enable it to fulfil its task properly, the Committee sought to extend the scope of its deliberations. This was because it felt that Europe was in greater danger than it realized, with its social deficit lowering like a storm cloud overhead. Europe cannot be built on unemployment and social exclusion, nor on a shortfall in citizenship. Europe will be a Europe for everyone, for all its citizens, or it will be nothing. It will not tackle the challenges now facing it — competitiveness, the demographic situation, enlargement and globalization — if it does not strengthen its social dimension and demonstrate its ability to ensure that fundamental social rights are respected and applied. The first part of this report will be devoted to putting over this point of view.

At the same time, however, the Committee recognized the difficulties and complexities of its task. It was aware that this strengthening of the social dimension was not just a question of will, but also of understanding the obstacles and accepting the *de facto* situation. There are numerous hurdles to overcome on the road to a genuine social Europe: first, social issues are primarily the responsibility of the Member States and the principles of subsidiarity and proportionality must be adhered to in full. Then, the way that work and the employment situation have changed has made it more difficult, yet at the same time more necessary, to introduce public measures; the approach to such a crucial issue needs detailed reconsideration. Social rights evolve, they need redefining all the time, as do the terms and conditions governing their application. Lastly, and above all, sticking to the social *status quo* and hanging on to attainments is a frequent and comprehensible reaction, but it is counter-productive in many cases. Like the economy, the social institutions have to adapt constantly. To be true to its quest, the European social model has to be original, innovatory. The second part of the report will summarize the provisions which have given shape to social Europe as it now stands (for it would be unfair not to acknowledge it) and then describe a few of the factors involved in the problem as applied to social rights.

However, this return to equilibrium will not be achieved in one go; it will take time and discussion. In the third part of the report, the Committee will outline the progress it believes can and must be made in the legal field here and now, that is at the Intergovernmental Conference (IGC): incorporating into the Treaty a basic set of fundamental rights, and giving a sounder legal basis to the Court of Justice to ensure that citizens' fundamental rights become a practical reality.

At the same time, it will suggest making a collective and democratic commitment to determine within a few years, and following consultation of the people themselves, a more precise and more comprehensive declaration of the rights and obligations of citizens within the Union.

The last part will be devoted to the inevitable ties between the rights — or at least some of them — and the social policies providing for their implementation. If social rights are to form part of the daily lives of the Union's citizens, the corresponding social policies must themselves be incorporated fully into the Union's policies; they must not be a special or marginal or separate component. A few paragraphs (with no claim to being exhaustive) will be devoted to that interlinking.

PART I ■

SOCIAL ISSUES NOW LIE AT THE HEART OF THE CHALLENGES FACING THE EUROPEAN VENTURE

For 50 years now, the European Community has been built up by pooling efforts within a common market; it has gradually harmonized the rules applicable to the market and in many areas, has established common policies. This process, designed to meet clear political ends, has made a notable contribution to reconciliation between peoples and countries and to economic and social development. Attainment of monetary union will mark the completion of that work and at the same time a watershed.

For, in the meantime, the world has changed beyond all recognition: the communist countries have turned to the market economy and want to join the Union, causing formidable institutional problems; the economy is now global and capital markets too, so Member States' production systems are faced with ever-fiercer competition; in most countries social cohesion is breaking down, sometimes with serious consequences, ushering in a climate of pessimism and uncertainty.

In short, the compromise that Europe concluded with the Member States — the market and a modicum of social policies — has been a success, but it is no longer enough. Because of its success, Europe is now facing new and numerous challenges. And they are not only institutional, economic and monetary challenges; they are also (far more so than is generally thought) social and civic challenges. *The civic and social side of the building of Europe cannot remain its poor relation for it would increasingly become a source of weakness, whereas it should and can become a source of progress, a goal to be attained.* There are four underlying reasons why, and they are worthy of further explanation.

1. The European Union needs to proclaim its identity, an integral part of citizenship

Civic and social rights originated in Europe. All individuals are entitled to the same dignity and equal rights to participate in the political scene. This is our heritage and forms the basis of our concept of citizenship. If the European Union is to become, in time, an original political entity, it must have a clear definition of the citizenship it is offering its members.

Citizenship of the Union as defined at present by Articles 8 to 16 of the Treaty is lacking in substance, being limited to the right to move freely, to vote and stand as a candidate in elections to the European Parliament and municipal elections, to petition the

European Parliament, to apply to the ombudsman and to diplomatic and consular protection. It is somehow incidental, restricted to specific times and situations. It does not create any great feeling of participation or attachment to the Union, whereas, given the current circumstances, that is what is needed.

Inclusion of civic and social rights in the Treaties would help to nurture that citizenship and prevent Europe from being perceived as a bureaucracy assembled by technocratic elites far removed from daily concerns. That objective could not be attained, however, by incorporating into the Treaty a few vague principles without any real significance. On the contrary, it calls for a plain, clear, comprehensible expression of fundamental social and civic rights at EU level, with practical application being ensured by the Court of Justice. Such rights should also be refined, supplemented and broadened through a process of dialogue at both European and Member State level, taking all the time needed, not only on the basis of proposals from specialists.

There are even grounds for wondering whether we should not go further along that avenue and look at the very rationale underlying the European Union we are building today. In the 1950s, the common market in coal and steel was presented as an economic necessity, but also and above all as a means of moving towards reconciliation, peace and political union. But nowadays the means and ends have been reversed. Economic progress,¹ which is really only a means to an end, has become an end in itself — at a time when it is harder-fought yet does not benefit one and all. The Committee thinks it useful to affirm that the object of the Union is to enable every citizen to realize his/her potential in conjunction with his/her fellows, bearing in mind the necessary solidarity with future generations, and that legal rights and economic and social progress must be subordinate to that aim. Proclaiming at European level the primacy of solidarity, which is essentially what democracy is all about, could give more substance and form to the European political scheme.

2. We will never meet the challenge of employment unless we radically alter our policies and our views on work and activity

With unemployment rising, particularly long-term structural unemployment, post-industrial societies in general, and in Europe in particular, are faced with a formidable problem of social integration and justice. Post-industrial societies are finding it extremely difficult to achieve a fair distribution of employment and income: in the United States, the sound performance in terms of jobs has been accompanied by widening pay and income differentials, declining minimum social standards and greater inequality. In most of the countries of Europe, neither poverty nor inequality

¹ Article B of the Maastricht Treaty states that the Union shall set itself the objective of promoting 'economic and social progress which is balanced and sustainable'.

has increased so rapidly, but unemployment has not fallen and is still too high. Technological change, the growing importance of the tertiary sector and changes in the nature of work would appear to be giving a structural edge to these problems.

To take an example from the service sector, we are currently witnessing two quite different developments from the point of view of employment: increased income is creating a market for new services, but at the same time the slowing pace of productivity in an increasingly tertiary economy is making it more difficult to boost income, which may in turn have a negative effect on the demand for services. If the latter phenomenon proves stronger than the former, it will be difficult to increase the number of hours worked, and this will mean we shall have to find a different way of distributing time spent on remunerated work.

At the same time, the very nature of work has changed radically. Relationships play a greater role, as does the individual, while involvement, initiative and adaptability are constant and essential inputs. That is why access to employment has become more difficult, for greater demands are made in terms of vocational and social skills. The development of what is commonly called the information society can only accelerate those tendencies. So paid employment, which used to be a factor for integration, has become more selective, and society no longer automatically finds a place for everyone in economic and social life. Individualistic tendencies are reinforcing these phenomena, yet now more than ever there is a need for dedication and concern for the community.

This situation puts Europe and the societies which make it up at considerable risk. Unemployment makes people feel excluded from full participation in society. Paid employment is a way of participating in social life, recognizing the usefulness and dignity of the individual and opening the door to social intercourse. It gives people financial independence while making them full members of society. Unemployment threatens the welfare state itself, both by imposing a greater burden of public expenditure and by reducing the potential tax base from which resources can be redistributed. A high level of employment providing for full utilization of the available capacity is therefore indispensable if we are to apply effective social policies and enable everyone to benefit from the growing collective wealth. In more general terms, unemployment is just as much an economic problem as a social problem, for it exacerbates public spending deficits and prevents us from using existing resources to the full. In all these contexts, therefore, unemployment amounts to a collective failure which necessarily has a negative effect on the building of Europe.

But this situation is not preordained.

Firstly, the appropriate economic and social policies, as advocated in particular in the White Paper on growth, competitiveness and employment, have a major and decisive

role to play. But that presumes that they must be far more pro-active than at present and never lose sight of the goal of high employment.

In particular, price and currency stability are necessary objectives, as laid down in Article 105 of the Maastricht Treaty.¹ Although employment is surely the overriding aim in Europe today, we need to return to growth, by boosting investment and trade. To that end, budgetary, fiscal and monetary policies must ensure that interest rates remain low enough so that the productive forces can be exploited to the full. That, indeed, should be the outcome of monetary union.

At the same time, pro-active labour and employment policies should ensure that job vacancies are filled, that workers' skills are constantly improved and that the structural rigidities in the European labour market, which are not an essential component of our social model, are eliminated. Similarly, control of public expenditure and deficit consolidation must be accompanied by changes in statutory charges, in particular, charges on labour, so as to promote employment, particularly employment of the less skilled.

However desirable it may be to have better economic and social policies to help boost growth and increase its employment content, it is hardly likely that we will return to the full employment of the 1960s. People entering the labour market with no experience (particularly young people), and those with little or no education and training will still run a great risk of social exclusion, as will those without the necessary interpersonal skills, the disabled and older people. We must not forget that social ties have slackened, both among families and in the neighbourhood; the natural social shock absorbers no longer play the part they did in the past. The same is true of other traditional benchmarks. As a result, social exclusion may hit harder than in the past, despite the fact that society is richer. In other words, the dividends from growth are spread less widely than before, with the result that many people are not only seeing no improvement in their living conditions, but are in fact having to cope with falling standards.

All of which calls for fresh approaches. If Europe is to refuse to countenance any exacerbation of inequalities and social marginalization and the continuation and extension of passive assistance for 'excluded' individuals, it will have to make a considerable effort to innovate, organize and mobilize in order to build a form of development which embraces everyone.

¹ 'Without prejudice to the objective of price stability, the ESCB shall support the general economic policies in the Community with a view to contributing to the achievement of the objective of the Community as laid down in Article 2.' The objectives set out in Article 2 include 'a high level of employment and of social protection'.

That effort could take the following forms:

- in terms of **values**: promote and develop a pro-active, participative approach to citizenship, where every individual accepts that he/she has obligations towards others and also feels a personal duty to take the initiative. Deliberations on social rights may be useful in this connection (see below, Part III 3 B);
- recast our **public policies** to a substantial degree: they must prevent rather than remedy, stimulate rather than assist. That is particularly true of training, for its impact on employment and exclusion will become stronger than ever, but also of assistance for employment and the unemployed; such assistance must be as pro-active as possible;
- introduce and strengthen **systems** which, in return for the necessary adjustments expected of those in paid employment or those seeking a job, provide a measure of economic certainty in regard to employment, work and income.

On a more general front, however, **it is our very notion of work which will have to change and broaden**. As regards gainful activity, self-employment and work in small units will probably take over increasingly from paid employment. The model of full-time work, already altered — albeit reluctantly — by unemployment and atypical work will evolve: periods of paid activity will alternate or be combined with training periods or free time devoted to other activities; there should be continuity between the different stages with as few breaks as possible. Above all, paid employment will no longer be the overriding, legitimate social activity; other forms of activity, more often than not unpaid, will take on growing social importance. The community at large will come to recognize their social role and support their development. Links and ties will develop between all these forms of activity and work; they could represent a marked advancement for the good of the community if there are proper back-up policies and if they do not entail economic insecurity for the persons concerned. In the same way that social protection has developed hand in hand with industrialization and the rise of the consumer society, **we still need to devise a scheme for economic security and individual management of personal development, with the social flexibility benefiting the individual offsetting the economic flexibility now needed to help the productive system operate properly**. The social protection and employment regulatory systems will have to cope with such patterns of activity, but they are not at present in a position to do so.

Population trends will follow in the same direction and could be turned to good account. Increased life expectancy offers the opportunity of **using the potential of retired people for voluntary activities for the collective good**. Similarly, better management by men and women of the time they spend in paid employment — not resulting from unstable forms of work, but from proper recognition of the social usefulness of deciding how to spend one's time — makes it easier to reconcile work and family

responsibilities, giving more scope for child-rearing and boosting the birthrate, as has happened in the Nordic countries.

All in all, we will surely have to gradually revise our overall approach to work and employment.

This will of course happen empirically in each individual Member State, on the basis of national traditions and cultures. But the European Union cannot remain aloof to this endeavour: the methods and results concern it directly. It will have to facilitate exchanges of experiences, encourage innovation, coordinate motives, draw lessons for itself. In more general terms, what is at stake here is the creation of an original social model combining competitiveness and social cohesion. Some further explanation is required.

3. A revamped, original social model could become the key to European economic competitiveness

The issue of work and employment is naturally closely bound up with that of competitiveness. In the global economy to which we belong, competitiveness is a fixed imperative.

But competitiveness can be achieved in different ways and, according to circumstances, is connected in different ways with social rights and social protection systems.

The European social model, a key component of the European identity, ran into trouble in the 1970s. Europe is no longer what it was for a century, a pioneer in the field of social policy.

With rising unemployment and the slowdown in growth resulting from the two oil shocks of 1973 and 1979, the national budgets have seen their tax revenue decline while demand for social benefits has increased. Funding the welfare state has become a problem, if only on account of the numbers of jobless in Europe, twice or three times more than in the early 1970s.

There are also worrying signs that Europe could be losing its competitive edge, notably in the field of high technologies, as pointed out in the Ciampi report, 'Enhancing European competitiveness'. Productivity in Europe has grown more slowly than in the United States and Japan, not to mention the newly industrializing Asian countries. Investment in industry is well below that of Japan (see Annex, Ciampi report, graphs).

In particular, the persistently high level of unemployment, now above 10% in most Member States, bears witness to the lack of competitiveness and to structural rigidi-

ties; as a result, many people are living off unemployment benefit when they would prefer to work. In addition, regular waves of cost-cutting job-shedding inevitably fuel the unemployment figures.

The Committee does not believe that Europe can improve its competitiveness by dismantling the welfare state or by reducing minimum social standards. High quality education and training are absolutely indispensable in a modern, technologically advanced economy. An efficient, universal, primary health-care system prevents far greater health-care expenditure at a later stage, provides better protection for the sick and disabled, and improves the general health of the community. It is better to try and integrate everyone into society by way of policies designed to create jobs and, where necessary, boost low incomes by means of family benefits, ensuring a decent minimum income for each individual, rather than allowing the development of marginalized groups marked by chronic unemployment and poverty, a source of delinquency and drug abuse.

How then, in these circumstances, can we overcome the hazards of declining competitiveness and growing poverty and social exclusion? By acknowledging that we have to change. Change firstly by investing more in our infrastructures, by abolishing the remaining barriers in the single market and by simplifying Community rules and regulations and at the same time applying them to greater effect. But we also have to change by renewing our social system.

Let us consider our current arrangements for the funding of social protection. Most funding for social services and unemployment benefit now comes from work. In many countries, social charges and contributions account for between 50 and 80% of the wage bill and as a result the cost of labour per unit produced in Europe is higher than that of our competitors. Accordingly, labour-intensive industries and services become less competitive, while our companies are encouraged to replace labour by increasingly automated machinery or invest in low-wage countries. Labour will henceforth have to stop bearing such a major proportion of the burden imposed by the social benefits paid to increasing numbers of our citizens; other formulas will have to be used, for example different tax bases: capital, financial transactions, added value, taxes on rare resources or pollutants (e.g. carbon dioxide) — this latter could have significant positive knock-on effects for the environment.

A similar situation obtains by virtue of the rigidities in the Member States' social protection arrangements. Most of the rules and regulations were drawn up in post-war industrial societies when most workers belonged to trade unions and were employed full time. Retirement and pensionable ages were based on much lower life expectancies than those of today. A reformed social protection system must be more flexible, reflecting a more fragmented industrial economy, subject to rapid change, where many people work for short periods and also part-time, moving from one activity to another.

In this changing environment, the European Union and the Member States must move on four fronts:

- Invest more resources in social rights and social protection machinery to improve competitiveness and high added value production

This applies in particular to the right to basic education and lifelong learning: it should be possible to exercise the right in all countries of the Union, not only in one's country of origin; similarly, a genuine right to seek and take up employment in all the Member States of the Union, encouraging mobility to exploit the advantages of the large labour market.

Countries where the social partners have managed to build up a sound network of industrial relations are achieving greater consensus in managing adaptation with a smaller risk of social exclusion; accordingly, a revamped European social dialogue could improve competitiveness, particularly as the single currency implies Union-level social dialogue. Lastly, we know that the right to health care is available more efficiently and cheaply to all those who need it through mandatory collective schemes in which contributions are income-related and not risk-related as in private schemes, provided, however, that such schemes are managed properly.

- Coping with demographic change

Demographic change is characterized by a falling or stagnating birth rate, increased life expectancy and more elderly people as a percentage of the population (including dependent older people). This will increasingly affect both competitiveness and social cohesion in the Member States over the next 20 years. Given the extent of these problems, a coordinated response from the Member States of the Union is required in a number of areas: adjusting basic pension schemes (to prevent distortions of competition), applying family policies which make it equally possible for men and women to reconcile family life and professional responsibilities, and probably adoption of coordinated policies on immigration both for reasons of consistency and because it is a possible response (which still has to be discussed) to the demographic problem.

The whole shape of the European Union, its influence in the world, and its economic role will of course have changed in 15 or 20 years depending on what responses are found to the question of 'solidarity between generations'. We have not yet fully realized what risks could arise from the population trends (shortage of manpower, lower living standards for the working population, loss of dynamism, unchecked immigration) nor the potential gains to be made from a dynamic population balance (faster economic growth, enhanced social life, higher birth rate, managed recourse to immigration with joint development partnerships, better living standards in general, etc.).

- Tackle the question of social exclusion, one of the greatest problems of post-industrial society

What is meant by exclusion is the fact that certain people at certain times do not take part in economic and social intercourse, nor in the building of a common society, so their 'social citizenship' is curtailed. By the same token, young people find it difficult to gain a foothold in the world of work because the jobs are simply not available. Long-term unemployment is the most visible form of social exclusion; it has given a new dimension to the phenomenon of extreme poverty in industrial societies.

But that form of exclusion, which often leads to others (greater difficulty in obtaining access to health care, homelessness, breakdown of family structures, etc.) is not the only one; elderly people, above all, dependent elderly people and the disabled, are exposed to such risks. The same is true of people living in declining rural areas or run-down urban areas.

Such situations are, of course, neither inevitable nor irreversible. Their specific features have to be recognized first of all. Secondly, they require the practical implementation of innovatory policies tailored more closely to the individual and coordinated effectively with the non-governmental organizations which play a key part in the fight against social marginalization: in particular, the back-up role of voluntary workers must be recognized and respected. Lastly, it is imperative that society unites responsibly to prevent such situations from developing, for, here as elsewhere, prevention is better than cure.

- Respond to environmental concerns

Links will have to be established between the socio-productive system and the way we respond to the numerous environmental challenges. Suffice it to say that introduction by the Union of environmental standards ahead of future international standards could help to make business more competitive. Levying taxes on scarce resources and all forms of pollution could raise resources for social protection systems and thus reduce the taxes and charges on labour (labour being a factor which is in plentiful supply, but which is overtaxed and underused). In short, as was shown in the White Paper on growth, competitiveness and employment, links must be established between competitiveness, social protection and environmental standards.

4. The challenges of enlargement and globalization concern social matters too

- The challenge of enlargement of the Union, more particularly to the countries of Central and Eastern Europe, is not merely an institutional and economic challenge, as is often thought — it is also a social challenge. The former communist countries boast a very limited fundamental rights culture, but a strong egalitarian

tarian culture; this is feeling the pinch as they plunge into the market economy, with a rapid rise in inequalities and declining social standards. This tension is a source of political instability; we are already seeing its initial effects and they could spread throughout the Union.

Successful integration into the Union of the countries of Central and Eastern Europe depends not only on the attraction of our economic model, which is indisputable, but also on our social model; yet it is precisely this social model which is tending to deteriorate. A core of clear social standards should be required of these countries as soon as they become full members. This core therefore has to be defined by the Union for itself and these standards have to enjoy sufficient credibility to act as replacement values for the community, while transitional periods must be envisaged to reflect the resources available with a view for bringing the standards up to the required level.

- Globalization is viewed most frequently from the financial, economic and business angles. But it also entails social aspects which are coming increasingly under the spotlight: the progressive globalization of the labour market (which is increasingly jeopardizing the less-skilled workers in our countries) and competition based on socioeconomic models. The emergence of the European Union as an original political entity with a single currency will enable it to fulfil more easily than at present its role as a regulator worldwide, to encourage greater compliance with the rules and better coordination of economic and financial policies. But another necessary question concerns the pace at which social standards in the industrialized countries should be taken on board by the industrializing countries. The Union might thus feel the need for a stronger external social policy along the same lines as the instruments it adopted for its external commercial policy. Thus, trade agreements with third countries might be made conditional upon their adherence to minimum social standards and their accession to international conventions (notably the ILO conventions) which ban child labour, while the Member States of the Union should take vigorous action against their own nationals who knowingly take advantage of infringements of the rules. The Union certainly cannot champion the principle of universal rights and advocate, say, general ratification of the ILO basic conventions unless it draws up its own definition of those rights.

All in all, the deepening of the European Union's social dimension is not just an end in itself, pursued as a matter of course by people who happen to be interested in social questions; it is increasingly becoming an essential component of the success of the overall political venture which is the European Union.

PART II ■

THE CURRENT STRUCTURE OF CIVIC AND SOCIAL RIGHTS AND SOCIAL POLICIES IN EUROPE IS EXTREMELY COMPLEX

In this challenging situation, the way civic and social rights are organized and the way they interface with social policies is extremely complex. The issues underlying the way these rights are expressed and applied are — naturally — evolving. Account must be taken of these difficulties if proposals are to be realistic and enduring.

1. The current situation as regards fundamental social rights

Several levels may be distinguished.

Firstly, the Member States of the Union have differing constitutional arrangements in this respect. Many include in their constitutions a text describing the fundamental rights. However, this does not apply to all countries (e.g. the United Kingdom).

The more recent constitutions place greater stress on social and economic rights than do the older constitutions based on traditional fundamental rights. In addition, the legal effect of these texts varies from country to country depending on the material content of the rights and the control procedures (e.g. judicial, administrative or constitutional).

In addition, the Member States of the Union have all acceded to a number of international agreements and the like¹ which contain a list of fundamental rights, the legal impact of which varies from case to case from simple declarations to more binding texts. Even in the case of the more binding texts, the legal effects may vary in that incorporation into national law may be automatic (single-tier systems) or dependent on national incorporating legislation (two-tier systems). Generally speaking social rights tend to fall into the first category. In any case, it would be illogical for the Member States of the Union to fail to find common ground, even if the rights have to be of a

¹ To take the United Nations as an example: the Universal Declaration of Human Rights (1948), the International Agreement on Economic, Social and Cultural Rights (1966), the International Agreement on Civil and Political Rights (1966), the International Convention on the Elimination of all Forms of Racial Discrimination (1965) and the International Convention on the Elimination of Discrimination against Women (1979); as regards the International Labour Organization: Convention No 29 on Forced or Compulsory Labour (1930), Convention No 87 on Freedom of Association and Protection of the Right to Organize (1938), Convention No 98 on the Application of the Principles of the Right of Organization and Collective Bargaining (1949), Convention No 100 on Equal Pay for Men and Women for Work of Equal Value (1951) and Convention No 105 on the Abolition of Forced Labour (1957).

more binding nature, given that they have already acceded individually to so many international agreements.

This is particularly true since the States of the Council of Europe (which includes all the Member States of the Union) set out a corpus of civil rights and a remarkable procedure for effective safeguards, to be used after all means of redress available within the countries have been exhausted, in the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms. In 1961, this Convention was backed up by a European Social Charter, which is essentially concerned with the right to work and protection of the family, but is not subject to the Strasbourg Court's jurisdiction.

As regards the Treaties of the European Union, what we have at present is not a genuine framework of social and civil rights, but rather a set of *ad hoc*, piecemeal measures to accompany economic integration and allow minimum social policies to be pursued. Several stages may be distinguished.

- The Treaty of Rome allows the Council, acting by a qualified majority, to issue directives or make regulations to ensure freedom of movement for workers (Article 49). Acting unanimously, it may take coordinating social security measures for the benefit of migrant workers. Part Three of the Treaty (Policy of the Community) contains six articles, 117 to 122, under the title concerned with social policy, as well as the provisions covering the European Social Fund. Article 117 sets out the aim of promoting 'improved working conditions and an improved standard of living for workers, so as to make possible their harmonization while the improvement is being maintained'. Article 118 entrusts the Commission with the task of promoting close cooperation between Member States in the fields of employment, labour law, vocational training and social security. Article 119 lays down the principle of equality between men and women (strictly in the context of pay).
- The 1986 Single European Act added certain provisions to this structure. Article 100a allows the Council, acting by a qualified majority (and no longer unanimously) to adopt measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishing and functioning of the internal market. (However, this applies neither to fiscal matters nor to the rights and interests of wage earners.) Article 118a allows the Council, acting by a qualified majority, to adopt minimum requirements concerning the safety and health of workers. Article 118b lays down the principle of social dialogue and relations based on agreement at European level.
- In 1989, 11 of the 12 Member States adopted the Community Charter of the Fundamental Social Rights of Workers. As has been well demonstrated in the

report by Miguel Rodríguez-Piñero and José Luis Monereo on 'The Community Charter of the Fundamental Social Rights of Workers in the context of the revision of the Treaty on European Union', this Charter is not incorporated into the Treaties, has no direct legal effects and is not enforced by the Court of Justice. As its title indicates, it mainly covers the rights of workers, while the social rights of other groups of people (e.g. young people, the unemployed and pensioners) are paid little, if any, heed. Never the less, it is an important step forward in the recognition by the Community of the importance of work-related social issues for its own activities. Even though it has not in practice been followed up as had been hoped by negotiation between the social partners, it provided a basis for the European Commission's social action programmes and was then taken over by the Social Protocol to the Maastricht Treaty, so that it may after all be regarded as a pre-constitutional stage prior to the incorporation of social rights into the Treaty on European Union.

- The Maastricht Treaty makes provision for new elements in various fields.
 - The Union sets itself the objective of promoting economic and social progress which is balanced and sustainable, 'in particular ... through the strengthening of economic and social cohesion'. Citizenship of the Union is established (Articles 8 to 8e) and the European Convention for the Protection of Human Rights and Fundamental Freedoms is referred to (Article F).
 - The Treaty of Rome is amplified or made more specific. This is apparent in title III on social policy (Article 126 provides that the Community shall contribute to the development of quality education by encouraging cooperation between Member States) and in the insertion of title IX — Culture — and title X — Public health (Article 129: 'The Community shall contribute towards ensuring a high level of human health protection by encouraging cooperation between the Member States and, if necessary, lending support to their action').
 - A Social Protocol was adopted by 14 out of the 15 States and annexed to the Treaty. It comprises six articles. Article 1 sets out the objectives to be pursued by the Community and the Member States (employment, living and working conditions, social protection, dialogue between management and labour, combating of exclusion) and stipulates that measures shall be implemented which take account of 'the diverse forms of national practices' and 'the need to maintain the competitiveness of the Community economy'. Article 2 stipulates that the Community shall 'support and complement the activities of the Member States' in five fields (workers' health and safety, working conditions, information and consultation of workers, equality between men and women with regard to labour market opportunities, integration of per-

sons excluded from the labour market). The Council, acting by a qualified majority (Article 189c) may issue directives enacting minimum requirements; however, the unanimity requirement continues to apply in the fields of social protection, dismissals, representation and defence of workers' interests, conditions of employment of third country nationals and employment promotion. Articles 3 and 4 provide for the development of social dialogue within the Community and the possibility for agreements at Community level between the social partners. Article 6 restates the principle of equal pay for male and female workers for equal work, going beyond the terms of Article 119 (which are reproduced in the Protocol) by providing that Member States may discriminate positively in favour of women.

- Finally, the very important role of the Structural Funds — and particularly the Social Fund — in ensuring Community cohesion should be emphasized, as should the impetus given to them in recent years in the interests of financial solidarity between countries and regions.

This brief review shows how complex the existing situation is. The following points emerge.

- The Community has a corpus of social policies which is substantial despite its weaknesses.
- The social objectives underlying social policy are none the less expressed in fairly vague terms and are largely subsidiary to economic objectives.
- Social rights are defined outside the Treaty and mainly apply to workers only. The Treaties contain no list of fundamental social rights to which the Court of Justice could refer in order to review Community acts. The Court itself has the task of constructing the general principles of Community law on the basis of both the Human Rights Convention (which is not concerned to any great extent with social rights) and on the constitutional traditions common to the Member States (Article F).
- The most important provisions relate to social policies, which can be adopted by a qualified majority of 15 States in only a very small number of cases (freedom of movement, health and safety matters) and of 14 States in a somewhat wider range of fields, each of which is, however, narrowly circumscribed. Broadly speaking, unanimity is required, whether of 15 or 14 States.

This obviously no longer matches the needs and current situation of the Union. It provides no answer to the many problems which will arise from enlargement to take in

countries which have as yet no substantial experience of social action within a market economy. The provisions need to be made more readable, simpler, more consistent and more effective, but this presupposes an accurate appraisal of what difficulties will have to be overcome.

2. Fundamental rights are in a permanent state of evolution

For fundamental social rights to be better asserted and implemented, it is first necessary to seek answers to a number of questions. The following list has no pretensions to being exhaustive.

What relationship should be established between social rights and civil, civic and even political rights? Do they form part of a whole or are they to be considered separately? In other words, is it sufficient to incorporate a set of social rights in the Treaties without also incorporating a really comprehensive set of rights? Juridical practice does not provide a clear answer to this question and hesitates between the two approaches. Thus the United Nations, having affirmed (at the fifth session of the General Assembly) that civil liberties and economic, social and cultural rights are interdependent, ended up in 1966 with two separate agreements: one on economic, social and cultural rights and the other on civil and political rights. A similar distinction is to be found at the Council of Europe. Such separate consideration of two types of right is very closely connected with the Cold War. On the other hand, the constitutions of the States generally use, if at all, a single list. Europe will have to choose between the two philosophies. **It would gain by taking an overall view, encompassing political, civic and social rights.** These are interdependent and inseparable, and there is no dividing line between them as far as the individual's practical situation is concerned. They are not additive, but mutually interdependent. The Committee therefore advocates a declaration featuring both civic and social rights.

This first distinction between civil and social rights overlaps to a large extent with another:

- On the one hand, rights which seek to limit the risk of encroachment by the State on the freedom or dignity of the individual and are mainly set out in statutory provisions. These do not involve very considerable expenditure and are thus independent of the level of development attained (equality before the law, the right not to be subjected to discrimination, equality for men and women, freedom of speech, movement, assembly, association, collective action, etc.). They are usually the formal expression of civil and political rights.
- On the other hand, rights to specified benefits and services, which involve costs and require the provision of financial resources. These rights (to education and continuing training, health care, work and fair conditions of work and pay, a mini-

mum income in the event of unemployment, a retirement pension, etc.) often express an intention or objective (e.g. the right to work) and are often less directly applicable than the former category of rights. Provision has to be made for a succession of stages as a function of what is economically feasible, provided a minimum standard has been ensured, if only to avoid distortions (whereas civil and political rights are, in principle, not subject to compromise). Most social rights — though not all, for example, the right of association — fall into the second category.

However, we should not exaggerate the difference between these two categories of rights: formal political and civil rights also require resources to be committed if they are to be implemented in practice; freedom is restricted if the conditions applying to freedom are not met, and social rights also need to be backed up by legal provisions.

But from whom can these rights be demanded, who ensures that they can be exercised and who provides the necessary means when society confers them on individuals?

The question arises in most cases, but is particularly acute in the case of 'programmatic' social rights (the right to housing, employment, etc.). In such cases, the assertion of rights is inseparable from the social policies which give them effect. But the extent to which social policies are constrained by the existence of rights or to which they remain discretionary is difficult to determine or to have subjected to judicial review.

It would also be wrong to think that respect for rights is purely a matter for society as a whole and public policy. The practical implementation of rights also depends on interpersonal relations and a sense of individual responsibility for others: there are no rights without duties, nor democracy without civic commitment. The many problems of social exclusion today highlight this need and more generally the need for substantial commitment by the community at large to supporting, buttressing and building on social policies. It is thus not sufficient to confer rights by statute: citizens must regard them as necessary and feel a duty to play their part. The way in which rights are formulated is therefore important: a participatory approach will ensure that society is more fully permeated by the shared values which the rights express.

Practical application of rights and duties is not merely a matter between the State and the individuals who make up society. Collective players are also required to bring out these rights and responsibilities, explain and defend them and give them practical effect by way of social experiment and innovation which can subsequently be extended or placed on a general footing. The trade unions play an essential, and recognized, role in the area of industrial relations, but this role is becoming more difficult even as it becomes more necessary in a post-industrial society where increasing flexibility and

the increasing importance of service activities are accompanied by less stable labour relations. Non-governmental associations and organizations seem likely to play an increasing role in society, especially as regards the rights of the unemployed and the elderly. How they can be recognized as partners in this slow, self-transforming progress of society towards the recognition and implementation of new rights, especially those intended to prevent or end exclusion, is thus an important aspect of the fundamental rights question.¹

The list of fundamental rights is not unchangeable but may evolve for various reasons: first of all because a fuller understanding of the individual is emerging and the rights and duties which allow him/her to play a full part in a living society are gradually being defined in a sounder and more complete manner; secondly, because technological progress, and development in itself, give rise both to threats to individuals and to possibilities for action, which have to be regulated because of their possible impact on individuals.

After the first generation of civil and political rights, followed by social rights, the possibility of further progress is emerging and needs to be discussed in depth. How can we establish the right to a high-quality environment or set out the rights of future generations? Is it possible to envisage a right to choice in working hours? If so, on what terms? And should we see this as one of the ways of redefining the right to work? Does the concept of a right of 'insertion' (meaning integration into society) have any meaning? Should it be seen as one of the attributes of a newly defined concept of citizenship? Should a special right of expression be accorded to the unemployed and the excluded, and — more generally — should people living in poverty be given opportunities to make their views known on questions which concern them?

The new technologies are creating many problems in terms of fundamental rights: thus the information society may threaten individual privacy or the moral wellbeing of children, while the field of bioethics spawns a whole range of major problems. All these subjects are interrelated, as yet insufficiently explored and thus subject to continuous evolution. They justify a broadly conceived public debate, as proposed below.

3. It is essential to state clearly what should be done by the Union and what should be done by the Member States, in the area of fundamental rights as in others

The division of responsibilities between the Member States and the Union is a much more sensitive subject in the social field than in economic matters, and no clear solution has yet been found. One reason is that there are diverging views within the Union

¹ Declaration 23 annexed to the Treaty on European Union emphasizes the importance of cooperation between the Community and charitable associations and foundations as institutions responsible for social welfare establishments and services.

on the proper place of social policies, but also, it is difficult to work out simple criteria to determine who does what in this area.

It is generally recognized that in social affairs the principles of subsidiarity and proportionality must apply in full and play an essential part. Each country must retain its specific features, and levels of pay and benefits must take account of economic trends, which are not and will not always be parallel: wage and social benefit levels, the arrangements for financing the welfare services and regulation of labour matters will thus remain prerogatives of the Member States.

That being so, whether or not we are capable of developing a social union will depend on our ability to define areas or functions in which the Union must develop a role, either because the Member States are unable to act effectively or because action by the Union is more effective than that of the Member States and offers additional benefits.

The steps to be taken are thus as follows.

Firstly, the Union's social objectives and the underlying fundamental rights or principles must be clearly defined and the institutions provided with the appropriate instruments for the tasks they have to perform. These conditions are at present satisfied neither with regard to objectives (insufficient weight is given, for example, to employment and equal opportunities) nor with regard to fundamental rights (see the discussion below of the Community Charter of workers' social rights).

Secondly, the following balance should be struck in allocating responsibilities between the Union and the Member States: the leading role in social matters should belong to the Member States, the local authorities and their deliberative bodies and to society in general, the Union being competent only when it is the only party able to act or when it can act more effectively than the Member States. However, where the Union is recognized to have responsibility in the social field, it should have at its disposal instruments and procedures which are as effective as for economic and monetary integration (in particular, qualified majority voting should apply). The level of Community action must also be proportionate to the aim pursued, the principle of subsidiarity being complemented by the principle of proportionality, so that greater stress can again be placed on coordinating or stimulating activities as opposed to legislative action, on which too much attention has been focused.

Thirdly, given that the Union is necessarily an open-ended venture of a new kind, it is not possible to list the respective responsibilities of the Union and the Member States in the social field. At this stage, all that can be done is to specify a number of areas in which action by the Union offers clear advantages.

- Conducting and coordinating forward-looking discussion on social problems in the Union, dissemination of information and experience, stimulation of thinking and action by the Member States, encouragement for cooperation among the States, alerting of public opinion to social problems of current interest.
- Specifying a minimum core of fundamental rights applicable to the Union and the Member States when acting in accordance with Community law, and facilitating the promotion and implementation of these rights.
- Recognizing the social implications of the rights of citizens within the single market to move and reside freely within the territory of Member States (Article 8a). This applies not only to workers but also to the jobless actively seeking work, to students, to the elderly, to tourists, to the disabled and to persons wishing to marry someone of another nationality.
- Helping to correct imbalances arising from economic integration or from the conduct of Union policies. This is the whole point of the Structural Funds, whose scope could be broadened to embrace civic and social rights. It would be particularly important for any new Member States during the transitional period.
- Helping to solve difficult problems which, although falling within the sphere of the Member States, require common approaches (employment, immigration, control of drug abuse) or offer scope for economies of scale (action to combat cancer or AIDS).
- Helping to approximate Member States' laws and regulations in the event of excessive disparities which might distort competition and, where appropriate, setting out minimum standards where this would seem necessary in the light of the European social model and of social progress.

PART III ■

IMMEDIATE SPECIFICATION, AS A FIRST STAGE, OF A MINIMUM CORE OF FUNDAMENTAL RIGHTS

Strengthening the Treaty to include fundamental rights is a major undertaking which cannot be accomplished at a stroke.

The first point to note is that there is already a consensus with respect to certain rights in that the Member States are signatories to international treaties which relate specifically to those rights. The Committee feels that the rights on which there is already reasonably broad agreement should be incorporated into the Treaty at the next IGC.

As regards the other rights, this will require a period of discussion and deliberation, particularly as regards rights and obligations which have been made necessary by changes in technology, the economy, scientific knowledge and social developments. In the fourth part of the report, the Committee calls for a major initiative in the form of a discussion and deliberation process relating to the rights and obligations of citizens of the Union. This is a process which should be conducted in conjunction with the Commission, the Council and the European Parliament over a period of four or five years, the aim being to draw up, for a future IGC, a complete and up-to-date list of such rights and obligations. This consultation process should take in not just the traditional social partners, but also the non-governmental organizations, which represent people who do not have, or who have ceased to hold, an employed position (e.g. the self-employed, retired people and the unemployed) and who make up an increasing proportion of the population.

There are several reasons for taking more time. Firstly, the governments will be pre-occupied by reform of the institutions and will not be able to give as much time to fundamental rights as they deserve. Secondly, no list of potential rights is currently available, especially if it is proposed to adopt a bold and innovatory approach: a great deal of interdisciplinary work of a technical legal nature will be necessary.

Finally, it is important not to repeat the error made in the Maastricht Treaty by handing down rights from on high; rights should rather be evolved in a democratic process based on the principle of active citizenship. This would indeed be a unique opportunity to give the European democratic polity a practical task to achieve and to create a sense of European citizenship by providing it with scope for expression. It would be a pity not to seize this chance. The process by which rights evolve is almost as important as their content: rights which are jointly worked out, by a democratic process over an adequate period of time, will be more readily respected than those formulated

by experts. For all these reasons, it is proposed that the Community Charter of the Fundamental Social Rights of Workers should not be revised at the IGC, but rather that this task should form part of the process of consultation to be launched by the new Treaties.

Given that the economic and monetary construction of Europe has proceeded step by step, it would be natural for the same to apply to social Europe, even if a faster rate of progress is desirable to make up lost ground and redress the balance. The two-step approach proposed should make it possible to achieve this within a reasonable time.

1. Consolidating the text of the Treaties

The immediate steps to be taken at the IGC are as follows:

- The first priority is to consolidate in a single Treaty the provisions which are currently dispersed throughout the 15 Treaties, with the articles continuously numbered.
- Simplicity and readability are basic conditions for the effective exercise of rights. Consolidation should ultimately have the effect of giving the Union legal personality, which is currently possessed only by the European Community.

2. Creating a more solid basis for action by the Court of Justice

There should be a sounder legal basis for the work of the Court of Justice of the European Communities (ECJ) in ensuring that fundamental rights are applied in practice.

Without calling into question the present balance between the institutions, two changes could be made quickly and would allow existing rights to be exercised more effectively:

- Extend the scope of Article F and extend the frame of reference used by the ECJ to determine the general principles of Community law: on the one hand, to the Community Charter of the Fundamental Social Rights of Workers, which would thus be incorporated indirectly into the Treaties; on the other to the main international agreements signed by the Member States. The Luxembourg Court would thus have a fuller basis, particularly as regards social matters, for its jurisprudence, which would apply not only to Union citizens but also to residents.
- Article F of the Treaty could be freed from the restrictions of Article L. Article F provides that the Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the consti-

tutional traditions common to the Member States, as general principles of Community law. However, Article L does not explicitly empower the Court of Justice to apply Article F to all Union action and thereby excludes such a role.

Extending the fundamental rights under the European Convention to cover all action taken by the Union would mean that, wherever the Union and the Member States were acting within the framework of Community law,¹ they would be obliged to comply with, and ensure compliance with, the following fundamental rights: the right to life; ban on torture; ban on slavery and forced labour; right to liberty and security of persons; right to a fair trial; right to the presumption of innocence; no conviction for something which is not a criminal offence; right to respect for one's private and family life; freedom of thought, conscience and religion; freedom of expression; freedom of peaceful assembly and of association with others; right to form and to join trade unions; right to marry; protection of property; right to education; right to free elections; ban on imprisonment for debt; freedom of movement and residence; ban on the expulsion of nationals; ban on the collective expulsion of foreigners; general principle of abolition of capital punishment; right of appeal; right to compensation for judicial error; right not to be judged or sentenced twice for the same misdemeanour; equal civil rights and responsibilities for spouses.

One of the advantages of such an improvement is that it would ensure more effective implementation of the Council of Europe's Human Rights Convention and could thus offer a solution to the many, hitherto underestimated, problems which accession to this Convention would raise.

European Community accession to the 1950 European Human Rights Convention has certainly been advocated by the European Parliament and the Parliamentary Assembly of the Council of Europe, on the grounds that it would allow the arrangements for review of the acts of the Member States to be extended to the acts of the Union and that it would provide a more consistent standard of freedom throughout the European area. On closer examination, however, accession might have more disadvantages than advantages.

This Convention is essentially concerned with civil rights, social rights being formulated in the 1961 European Social Charter, which is fuller than the 1989 Community Charter but is not covered by the safeguard mechanisms laid down by the Convention (the European Human Rights Commission and the Strasbourg court). In terms of fundamental social rights, accession would offer very limited benefits and would certainly not make it unnecessary for the Union to set out its own view.

¹ The respective remits of the Union and the Member States are not affected by this proposal to extend the scope of Article F; the proposal concerns only measures which fall within the Community framework.

There are also other major disadvantages in respect of civil rights themselves. Accession by the Union, which is not a State, would require revision of the Convention, since it can be signed only by members of the Council of Europe, which are States. It would thus be necessary to secure the consent of the 38 present members of the Council, which have not all ratified the Convention or accepted legally binding provisions. This would inevitably take time, even if consensus could be reached on allowing the acts of the Community to be covered by Article 6.¹

It is true that accession to the Convention would have the merit of adding an external judicial watchdog function in respect of the judgments of the Court of Justice on matters concerning fundamental rights. But an appropriate solution to this problem could be found by establishing a special form of legal remedy for the protection of social rights: appeal to a Union-specific court of appeal made up of non-permanent judges from the Member States' constitutional or supreme courts. This would make it possible to give clearer content to Article F, which requires the Luxembourg Court to have regard to the constitutional traditions common to the Member States, and would facilitate coordination between the Court of Justice and the Member States' supreme legal entities — the kind of coordination which a number of recent judgments handed down by national constitutional courts would seem to be jeopardizing.

3. Integrating into the treaties an initial list of civic and social rights

An initial statement of fundamental rights must be incorporated straight away into the Treaties.

While it seems neither possible nor desirable, for the reasons mentioned above, to draw up a full list of fundamental social rights at present, it is essential to set out an initial list without delay.

Initiation of a wide-ranging debate on giving greater depth and focus to the civic and social rights underpinning the Union must not be used as an excuse for not establishing at once an initial list of those fundamental social rights on which agreement is possible. These are mainly rights which are recognized *de facto* but which would be more effective if enshrined in law; they would thus be an aid to finding solutions to difficult situations, would be more akin to citizens' expectations and would inform the policies formulated — or likely to be formulated — by the Union. It should also be borne in mind that several judgments of the Court of Justice recognize that the Community has a constitutional order, even if it is dispersed throughout some 15 Treaties and other acts of similar standing. This justifies the immediate inclusion by the IGC of a bill of rights in the Treaty.

¹ This article relates to the rights of the defence, civil rights and obligations and criminal charges.

The rights in question would relate only to the Community sphere, i.e. to the acts of the Union and acts by the Member States in pursuance of Community law. There should be no doubt on this point: the recognition of a right at Union level does not imply any change in the respective areas of competence of the Union and the Member States, certainly not in legislative terms, and does not affect relations in law between the Member States and their nationals. Let it be clearly understood that no attempt is being made to impose a standard model within the Union; the point is purely and simply to bring the natural diversity of social systems in the Member States within certain common principles, allied, where appropriate, with certain minimum standards, to ensure that this complex matter is governed by at least a certain degree of unity of design and inspiration.

The following list does not include political rights, which need to be strengthened, but which do not fall within the Committee's remit, but mainly social rights, together with certain civil rights which cannot be separated from them. The Committee considers that all the rights recognized by the IGC should be set out in a single text.

The list is based on two classifications: the concrete effects of affirmed rights, which may be more or less immediate, and the objectives, which have to be stated. As a result, we have two types of rights, each of them embracing three types of objective.

A. Fundamental rights which are protected by law

These fundamental rights have the common characteristic of having full and immediate effect and could thus be applied by the Court of Justice in Luxembourg even where there are no specific legislative provisions. Simply asserting them therefore, generates a right, the violation of which is punishable.

For this reason, it may be useful to provide for a safeguard clause pointing out that these rights and liberties may only be subject to restriction, within such limits as are reasonable and necessary in a democratic society, by a legal act which respects and retains their essential content.

These rights may be classified according to two objectives:

First objective: To ensure compliance with fundamental human rights

These are recognized principles which are essential to economic, social and political life and which have to be asserted as such.

- (i) Within the scope of Community law, everyone is equal before the law.
- (ii) There may be no discrimination on the basis of race, colour, sex, language, religion, political or any other opinion, national or social origin, membership of a national minority, wealth, birth, handicap or any other situation.

By the same token, there may be no discrimination between European citizens on the basis of nationality.

- (iii) There must be equality between men and women before the law, more particularly in respect of work, education, family life, social protection and training. Positive action may be taken to further equal rights, equal opportunities and equal duties between men and women.

Second objective: To facilitate economic and social integration in the European Union

The basic point here is to lay down clearly the principle of the right to move freely within the Union and to make that right effective, i.e. to draw all the necessary conclusions, or at least enable them to be drawn, which is not always the case.

- (iv) Principle of freedom of movement. The point here is to reaffirm that the citizens of the Community have the right to move freely within Community territory and to choose freely their place of residence. They are free to leave Community territory and to return to it. These rights may be restricted only where such restrictions are in conformity with the Treaties establishing the European Communities.
- (v) Right to choose one's occupation or profession and to carry on a professional activity throughout the territory of the Union. This means that any remaining barriers would be denied a legal basis.
- (vi) Right to choose an educational system throughout the territory of the Union. This right is not currently recognized, but it is the logical consequence of the right to free movement and the right to choose one's educational system as laid down in the European Convention of Human Rights. It is why the Committee has decided to stress this right, given the importance it attaches to education.

At the same time, rights which can have the effect of balancing or correcting the effects of the market should be recognized explicitly at Community level, namely:

- (vii) At European level, citizens (and in particular employers and workers) have the right to join together to defend and promote the rights, interests and causes which concern them either directly or indirectly.
- (viii) The right of collective bargaining for the social partners is guaranteed. The right to take collective action, including the right to strike, is guaranteed subject to any obligations which might arise from current laws and collective agreements.

These rights would be available to the citizens of the Union, and also to citizens of non-member countries subject to rights (v) and (vi).

B. Rights in the form of objectives to be achieved

These rights are of a different kind. They do not lend themselves to immediate application or appeal, as they constitute objectives or basic principles and cannot be set in place in the absence of legislative or financial provisions. Their aim is to provide justification for intervention by the authorities and to give guidance for the courts. Generally speaking, it is up to the Member States to ensure that these rights are put into effect, but these powers are sometimes shared with the Union in certain areas. These rights form an integral part of the European social model and the Union may not remain oblivious to the way they are applied. At the very least, the EU can help to achieve compliance by encouraging cooperation between the Member States, by promoting the necessary information and experience, by coordinating national policies, and by providing back-up where necessary. Community directives have already been adopted in such fields as working conditions, health and safety at work, information and consultation of workers, etc. Prescribing minimum clauses at Union level would be deferred to the second phase, with the exception of the minimum pay proposal set out below. These rights are concerned with a third objective: enhancing social cohesion within the Union.

Third objective: Strengthening social cohesion in the Union

- (ix) Right to lifelong education and training.
- (x) Right to work, or barring that, right to a minimum level of income.
- (xi) Right to equitable working conditions and to protection from arbitrary dismissal.
- (xii) Right to health and safety at work.
- (xiii) Workers' right to be informed regularly of the economic and financial situation of their firm and to be consulted on any decisions which might affect their interests, and to participate in taking decisions which concern them.
- (xiv) Right of disabled people to measures designed to facilitate their occupational and social integration.
- (xv) Right to health care.
- (xvi) Right to housing.
- (xvii) Right to social security and social protection, including the right to a minimum level of income.
- (xviii) Right to protection for the family.

Most of these rights have already been recognized in various international treaties and agreements on fundamental rights which have been signed by all the Member States of the Union. These treaties and agreements would form part of the Community law domain under the new version of Article F of the Treaty on European Union which this report is proposing (see above).

Given the scale of unemployment in the Community, the need to make a clear statement of the specific nature of the European social model and the need to combat poverty and social exclusion, the Committee is proposing a minimum clause in one case only.

The Committee feels that there is one principle which should be laid down immediately in the Treaty, i.e. at European Union level, and that is that each Member State must set in place a minimum income for persons who, despite their efforts, are unable to find paid employment and have no other source of income. The actual amount would of course depend on the particular stage of development reached in each Member State; the eligibility conditions (e.g. actively searching for work, making an effort in terms of training, etc.) would be dealt with by the individual Member States.

PART IV ■

THE NEED FOR A PARTICIPATORY PROCESS TO FORMULATE A MODERN LIST OF CIVIC AND SOCIAL RIGHTS AND DUTIES

The Committee considers that institutions or experts can no longer hold a monopoly of discussion on subjects such as fundamental rights, which affect the individual's day-to-day life. Europe's citizens should have as large a say as possible in questions which concern them. Moreover, citizenship is not merely a collection of rights: it is also a way of living, of recognizing one's obligations to others, of participating in society through a multiplicity of relationships with its members. A simple list of rights does not properly reflect this dimension of citizenship, whereas a sufficiently lengthy process of collective formulation of rights would make it possible to give expression to citizenship and to arrive at a more balanced view of rights and duties. Moreover, society has become more complex: democratic consultation must give due weight to the traditional social partners but cannot be restricted to them alone. It must also encompass new players, and in particular non-governmental organizations, and this will inevitably take time.

These various aspects should be taken into account in whatever procedure is adopted.

It would first of all be desirable for this process to be provided for in the revised Treaty itself, by means of a special article stipulating that an intergovernmental conference will be held in five years' time to draw conclusions from the work.

It should allow a free, open debate, so that political bodies do not have to adopt a position too early, before all relevant information has been collected and all the issues identified. In the last resort, it is of course the political bodies which will have to take a decision, but a clear distinction should be made between the preparatory and discussion phase and the more political phase of weighing up the arguments and taking a decision.

The consultation process should thus be launched by the European Parliament on the basis of a proposal from the Commission. The members of the *ad hoc* Steering Committee for the exercise should be proposed by the Council, Commission and Parliament, after consultation with the Economic and Social Committee, and be formally appointed by Parliament. The committee members should represent a wide spectrum of political, economic and social expertise and should also be geographically representative; there should be equal representation for men and women.

The Commission would provide the secretariat and financial and technical assistance. The committee would work closely with the European social policy forum. The debate

would extend over a number of years in the various countries and at Union level. It would involve the usual social partners but also non-governmental organizations, a full list of which should be drawn up in each country for the various types of right concerned. The European Parliament would be regularly informed and consulted on the progress of the process, and the national parliaments would be closely associated in the work.

Once this consultative process had been completed, the governments would draw the necessary conclusions in the form of an amendment to the existing Treaty. This amendment could be put to a referendum throughout the Union in order to ensure greater acceptance of the proposed concept of citizenship. Legal provision should therefore be made now for this eventuality.

PART V ■

INTEGRATION OF SOCIAL POLICIES INTO THE UNION'S NORMAL OPERATION

Many fundamental rights clearly depend on specific social policies being pursued. There would be no point in incorporating fundamental rights into the Treaties without doing the same for the social policies which enable these rights to be given effect.

Since this is not central to the Committee's remit, it is proposed to make only a few remarks, which obviously cannot deal fully with the subject, but which are important for the respect of fundamental social rights.

1. General provisions

- The desirability of having a single text for reasons of clarity and readability should logically imply grouping all the provisions concerning social policies under a single title in the Treaty. In this context, the Social Protocol should be reincorporated into the common framework with any necessary amendments and removal of certain obsolete or redundant clauses.
- When a Union social policy is necessary respecting the principles of subsidiarity and proportionality, qualified majority voting should apply, except in a number of sensitive areas (social security, social protection, participation).
- It is necessary for non-profit-making organizations and foundations, and more generally the collective representatives of the community at large, to be involved in social policy decision-taking. This should be provided for in the Treaty.

Particular consideration should be given to the charitable institutions which combat exclusion and poverty and which can speak for the unemployed and the excluded. Social fragmentation makes it very difficult for these groups to put their point of view across, or even to be noticed, although this is very necessary, simply to ensure that they are taken into account in economic and social affairs. Imaginative solutions are needed in this area. There is room for more consultation and for making use of the network of labour and employment agencies operating on the labour market to assist job-seekers.

Recognition of specific statutes for European associations could help in developing partnership arrangements.

- Greater use could be made of the Structural Funds, and more particularly the Social Fund, to promote fundamental rights, and especially to combat exclusion and promote equality of opportunity. The non-governmental organizations should be associated at Member State level with the management of these funds.
- Social and human sciences expertise in the field of European social policy must be developed, for example, by means of an interdisciplinary work programme for Europe's universities. The fact is that much less expertise is available in these fields than in economic or legal matters. A wide-ranging debate on the costs of failure to establish a social Europe could be a means of raising awareness, provoking reactions and mobilizing the necessary support. In this connection, it would be very useful — and have symbolic value — to produce consistent statistical series for the various countries and for the Union as a whole.
- The principle should be enunciated that the impact of the various European policies on social cohesion and the risks of exclusion should be systematically assessed (as is required by directive for any large projects which are liable to have an environmental impact).

2. Specific provisions

- Employment must be given greater prominence in the Treaty, subject of course to the principles of subsidiarity and proportionality. The following might be realistic proposals in this connection:
 - Strengthen the wording of Articles 2 and 3 of the Treaty to place greater emphasis on employment in line with the Madrid European Council's conclusions.
 - Give clearer justification for coordination and stimulation measures on the employment front.
 - Include a chapter on employment in the title of the Treaty dealing with social policy. This would consolidate the provisions which already exist and would set up an Employment Committee to correspond to the Monetary Committee; it would periodically hold joint meetings with the Monetary Committee. The Employment Committee would have several aims: to ensure that employment was more fully taken into account in implementing economic and monetary policy and to allow better coordination of the Member States' action, but also to organize a debate at European and national level, as mentioned in Part I, on what work means today, as a basis for formulating the rights concerned.

- Clauses should be included to enable the Union to engage in coordination and experimental work in the field of combating exclusion, with particular regard for long-term unemployment, housing, and the elderly or handicapped persons.
- The Committee considers that immigration and asylum policy, and policy *vis-à-vis* people from third countries, should be governed by the 'first pillar' and not the 'third pillar' Community arrangements (i.e. cooperation in the field of justice and internal affairs). Such policies would thus be removed from the intergovernmental domain and be placed instead in the usual institutional domain for decision-making purposes.
- The same applies to all matters pertaining to the abuse of drugs, encompassing treatment, prevention and trafficking aspects.
- The Committee considers that the concept of public utility services might warrant clarification, given that such basic services (e.g. water, electricity and public transport) very often have a major impact on the effective implementation of social rights.

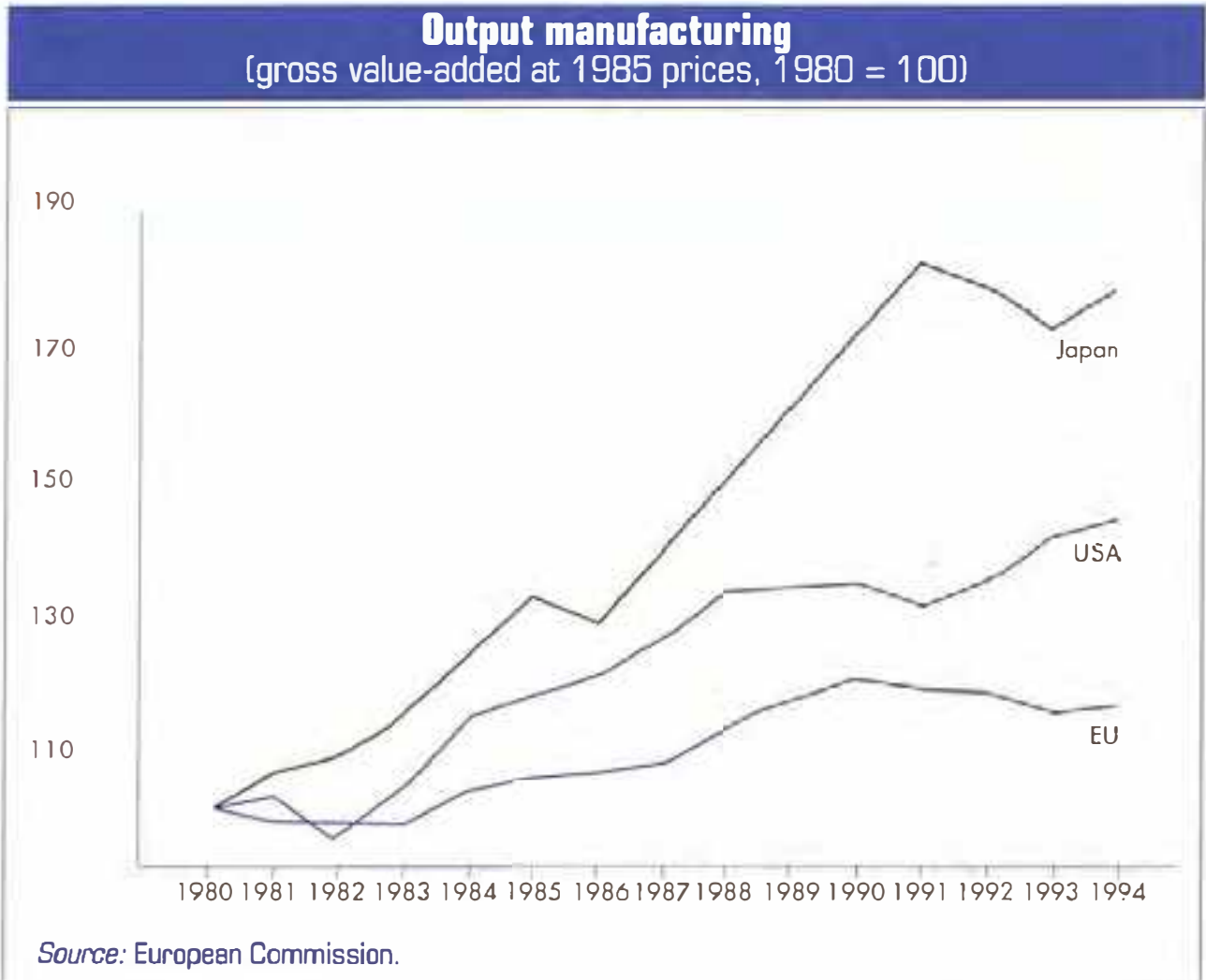
CONCLUSION ■

The European Union once again stands at the crossroads. It will only be able to take up the present challenge if it is prepared to give appropriate status to the social dimension. This is not something that can happen at a stroke, but neither are there any grounds for taking the easy option and continuing past practice. Europe has to innovate in terms of social policy, just as it has done in other policy sectors. The only way we shall build an attractive social model is by being prepared to make ongoing changes, reflecting the enhanced need for a competitive edge to cope with the increasing globalization of social developments — both demographic and sociological — and the basic human needs which acquire their main expression in the form of rights and duties.

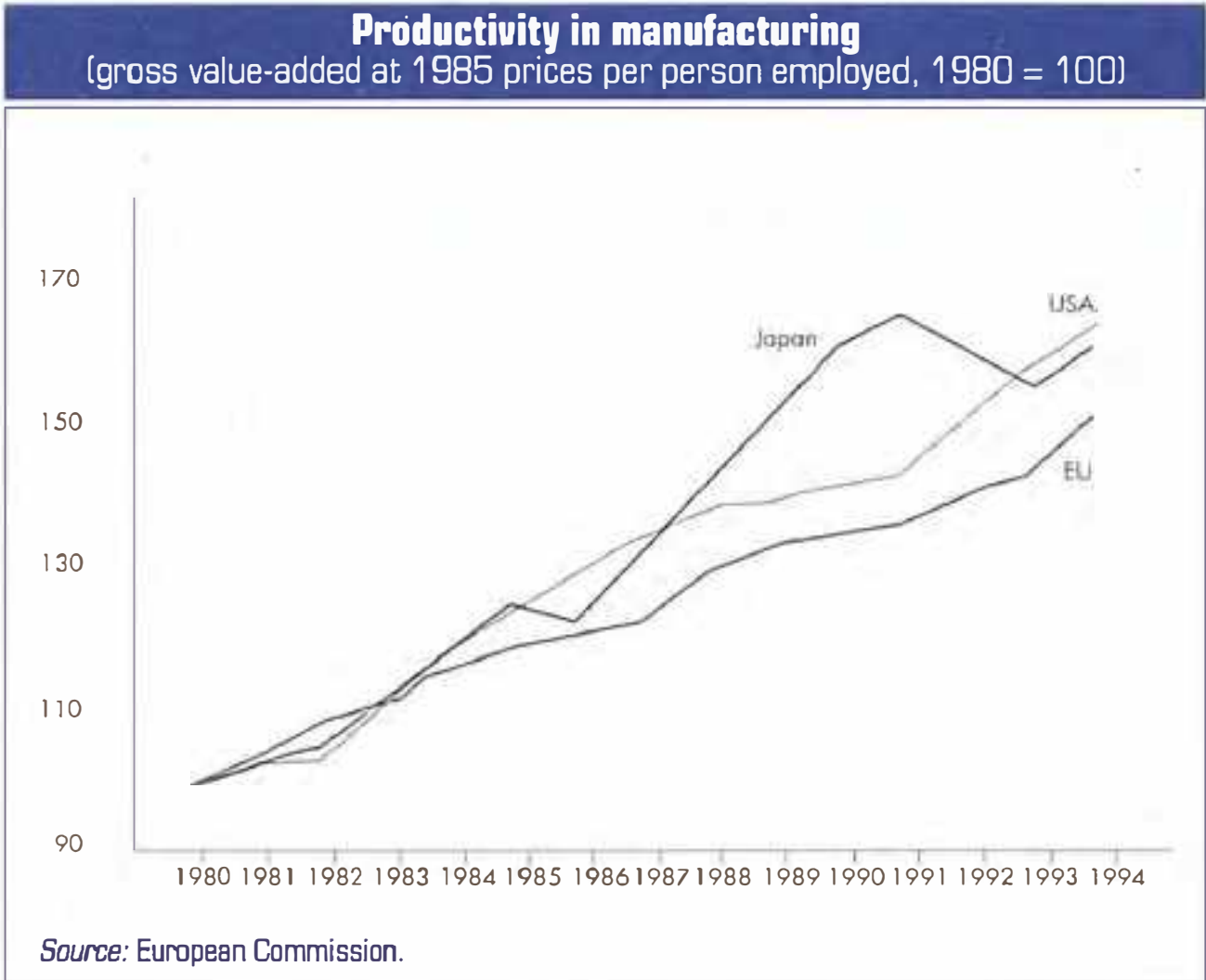
It is within this frame of reference that the Comité des Sages has formulated its proposals. We have tried to be both realistic and bold, both methodical and imaginative. We hope that our message will be taken on board by those whose task it is today to build the European Union of tomorrow.

ANNEX ■

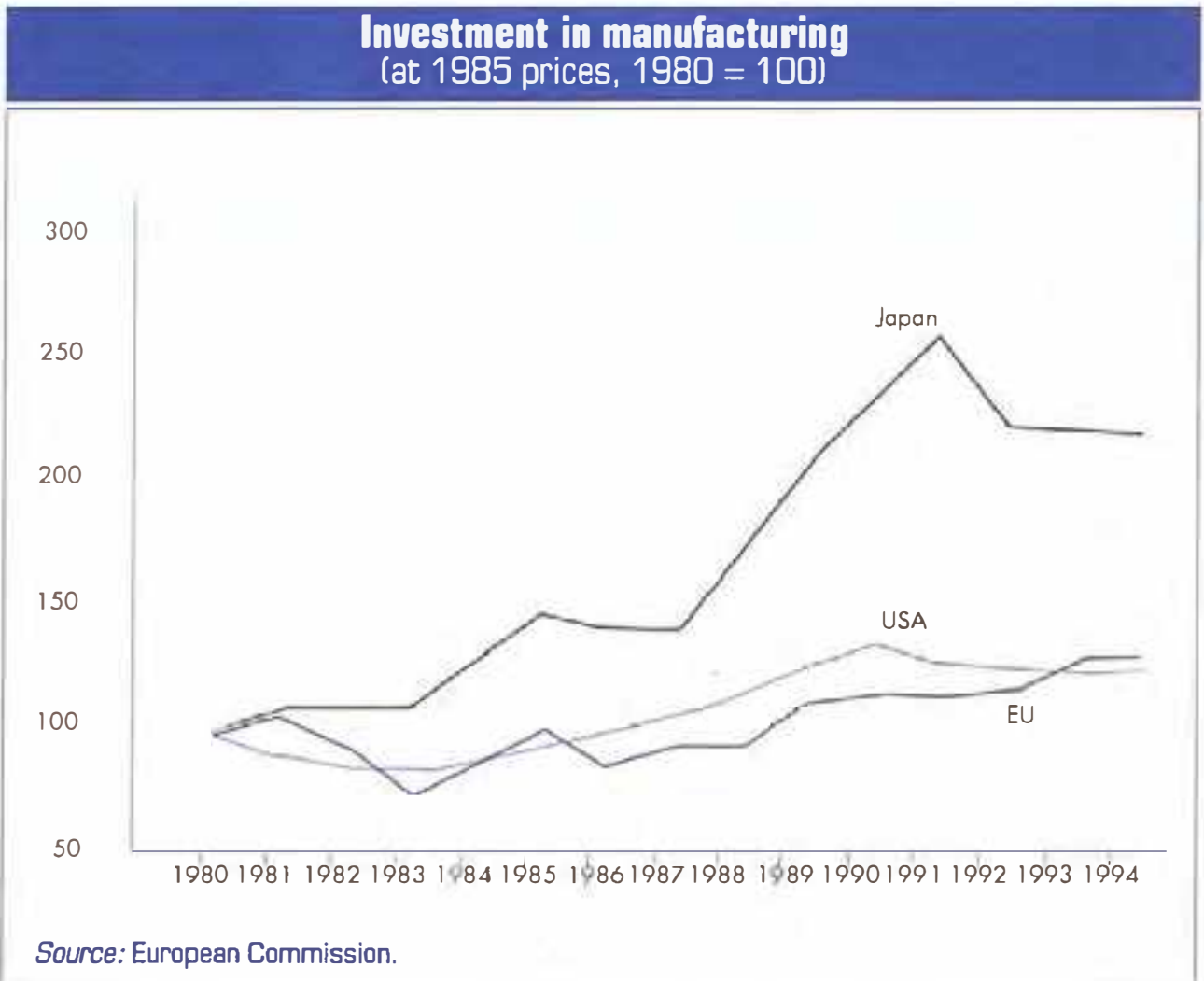
GRAPH 1



GRAPH 2



GRAPH 3



European Commission

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1997 OJ C371/99 Resolution on the Amsterdam Treaty

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Wednesday 19 November 1997

81. Must, therefore, insist that for the next Structural Fund programming period and indeed during the present period of implementation of current cohesion policies, efforts are intensified to promote women's participation in the labour market through educational measures, including training for higher-skilled jobs and managerial positions;

82. Recalls that more efforts should be made in support infrastructure (child-care, transport, work organization, etc.) in such a way that the lack of structures does not force women into part-time work instead of allowing women the possibility to take up part-time work of their own volition; reorganization of work should equally offer opportunities for men to take advantage of less traditional working time;

83. Points out that Community policies on agriculture and rural development are very important for women in rural areas and that it could be very important to look at the implications of Community policy for cohesion, especially its influences on women's activities in rural areas;

*
* *

84. Instructs its President to forward this resolution to the Council, the Commission, the Committee of the Regions and the Economic and Social Committee.

20. Amsterdam Treaty

A4-0347/97

Resolution on the Amsterdam Treaty (CONF 4007/97 – C4-0538/97)

The European Parliament,

- having regard to the Amsterdam Treaty signed on 2 October 1997 and the Protocol on the institutions with the prospect of enlargement of the European Union (CONF 4007/97 – C4-0538/97),
- having regard to its resolutions of 17 May 1995 ⁽¹⁾, 13 March 1996 ⁽²⁾, 16 January 1997 ⁽³⁾, 13 March 1997 ⁽⁴⁾ and 11 June 1997 ⁽⁵⁾ on the Intergovernmental Conference and of 26 June 1997 on the Amsterdam European Council ⁽⁶⁾,
- having regard to its resolutions of 14 February 1984 on the draft Treaty establishing the European Union ⁽⁷⁾ and of 7 April 1992 on the results of the Intergovernmental Conferences ⁽⁸⁾,
- having regard to the opinions of the non-governmental organizations which responded to the invitation from the Committee on Institutional Affairs and took part in the joint session of 7 October 1997,
- having regard to the report of the Committee on Institutional Affairs and the opinions of the Committee on Foreign Affairs, Security and Defence Policy, Committee on Agriculture and Rural Development, Committee on Budgets, Committee on Economic and Monetary Affairs and Industrial Policy, Committee on Research, Technological Development and Energy, Committee on External Economic Relations, Committee on Legal Affairs and Citizens' Rights, Committee on Employment

⁽¹⁾ OJ C 151, 19.6.1995, p. 56.

⁽²⁾ OJ C 96, 1.4.1996, p. 77.

⁽³⁾ OJ C 33, 3.2.1997, p. 66.

⁽⁴⁾ OJ C 115, 14.4.1997, p. 165.

⁽⁵⁾ OJ C 200, 30.6.1997, p. 70.

⁽⁶⁾ OJ C 222, 21.7.1997, p. 17.

⁽⁷⁾ OJ C 77, 19.3.1984, p. 53.

⁽⁸⁾ OJ C 125, 18.5.1992, p. 81.

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and Social Affairs, Committee on Regional Policy, Committee on the Environment, Public Health and Consumer Protection, Committee on Culture, Youth, Education and the Media, Committee on Development and Cooperation, Committee on Civil Liberties and Internal Affairs, Committee on Budgetary Control, Committee on Fisheries, Committee on the Rules of Procedure, the Verification of Credentials and Immunities, Committee on Women's Rights and the Committee on Petitions (A4-0347/97),

- A. whereas the peoples and the parliaments of the Member States and the bodies of the Union expect an opinion from the European Parliament on the Amsterdam Treaty,
- B. whereas in view of the dual legitimization of the European Union as a union of the states and a union of the peoples of Europe, the task of the European Parliament must be to give voice, in complete independence, to the will of the peoples of the Union for integration,
- C. whereas the recent Intergovernmental Conference has shown the limits of the method of diplomatic negotiation; whereas Parliament must claim a much greater role in respect of future treaty amendments, in view of the constructive role it played in the revision of the treaties and because of its function as the legitimate representative of European citizens,
- D. whereas the future will demand a clearer Union identity to pursue the international interests of the EU,
- E. whereas the additional political powers conferred on the Union by the Amsterdam Treaty are too limited to be a valid accompaniment to monetary union; whereas, consequently, there is a need to focus as quickly as possible on the institutional *modus operandi* of monetary union, in particular democratic accountability,
- F. whereas the following six criteria in particular should be used to evaluate the new Treaty:
 - (a) any new step towards integration must enhance the democratic quality of the Union and must itself enjoy democratic legitimization,
 - (b) the dual nature of the Union as a union of the peoples and a union of states requires any step towards integration to strengthen the identity of the Union and to increase its ability to take action, while also respecting and protecting the identity of the Member States, the core features of the constitutional cultures of the individual states, and retaining the equal status of the Member States and the cultural diversity of their peoples,
 - (c) the yardstick of any step towards integration is whether, and to what extent, it presents and develops the Union not only as a common market but also as a system of values, and what improvements it facilitates in the quality of life of its citizens, their job prospects and the quality of society, in particular the exercise in practice of European citizenship,
 - (d) any new step towards integration must involve progress, a constructive move beyond the present *acquis*,
 - (e) the present move towards integration will have to be measured against the requests and expectations expressed by the European Parliament before and during the Intergovernmental Conference,
 - (f) the new move towards integration must be measured against the yardstick of whether it creates the institutional basis for forthcoming enlargements,
- G. whereas further improvements in the interest of Union citizens are possible only if the criticism arising from application of the abovementioned criteria is translated, by all the political and social forces in the Union acting in a spirit of solidarity, into a constructive struggle with tangible pointers for the immediate future,
- H. conscious that the values of peace, democracy, freedom, human rights, the rule of law, social justice, solidarity and cohesion underpinning the European Union can never be deemed to have been achieved but must always be fought for anew,

Wednesday 19 November 1997

Overall evaluation

1. Recommends that the Member States ratify the Amsterdam Treaty;
2. Considers that the Amsterdam Treaty marks a further step on the unfinished path towards the construction of a European political union; considers that it represents some not inconsiderable advances for certain institutions but leaves other issues unresolved;
3. Regrets the absence from the Amsterdam Treaty of the institutional reforms needed for the effective and democratic functioning of an enlarged Union and affirms that these reforms should be completed before enlargement and as soon as possible so as not to delay the accessions;
4. Calls on the European Council to affirm that no accession will enter into force before the completion of the institutional reforms necessary for the proper functioning of an enlarged Union, to begin its work in this connection on the basis of this resolution, and to engage, in this context, in a political dialogue with Parliament on this subject;

Principles

5. Stresses that on the one hand the Amsterdam Treaty essentially gives precedence to the Community method, and on the other hand it reduces to an acceptable level the risks of differentiated integration (which is unavoidable in some areas) through precise criteria and its exceptional nature; emphasizes, however, that more courageous and more consistent steps in the transition to the Community method would have been appropriate;
6. Regards the confirmation in the Amsterdam Treaty of the objectives of the Union and the principles of the Community as a sign of the requisite will for integration on the part of the people and the states; regrets, however, the absence of a preamble such as those used in previous treaties to express clearly a common political will amongst the contracting parties which should be directed towards belonging to a Community which is more than the sum of its parts and more than a mere interest group whose members have no other aim than striking a balance between what they put in and the advantages they derive from it;
7. Stresses that the new opportunities afforded by the Amsterdam Treaty will only lead to tangible results if a sufficient political will, lacking at present, is generated for common action in all areas of the Treaties, and a new relationship of mutual trust develops between the Member States themselves and between them and the Community institutions;

Bases of Union policies

8. Notes, with reference to the details set out in the session document A4-0347/97⁽¹⁾, that the Amsterdam Treaty has, in part, significantly improved the Union's instruments for shaping policy in the interests of its citizens, in the area of Community policies, such as employment and social policy, environmental and health policies and internal security; there is a need for further improvements; calls in particular on
 - the Council to take speedy decisions to ensure that the general rules of the Community method will be applied, as soon as possible, to the communitarized area of freedom, security and justice and to enable further development on Community lines of the Schengen *acquis*; calls on the governments of Denmark, Ireland and the United Kingdom to take part from the earliest stages in the Community measures in this field;
 - the Commission, the Council and the Member States to show the political will to use the new opportunities resolutely in the interests of all European citizens and, in particular, to use the new Community political instruments to achieve clear and lasting improvements in the employment situation throughout the Union;
 - its committees to examine, prior to entry into force of the Amsterdam Treaty, what initiatives can be used, in those areas for which they are responsible, to use the new opportunities as effectively as possible;

⁽¹⁾ See the Explanatory Statement in the report on which this resolution is based.

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9. Considers that although the Amsterdam Treaty contains a number of institutional, budgetary and practical improvements in the area of the Common Foreign and Security Policy, it clearly fails to satisfy expectations, and not merely in respect of the decision-making mechanisms; stresses, in particular, that

- the prospect of developing a common defence policy, in particular solidarity between the Member States in the face of threats to, and violations of, external frontiers, must be strengthened; welcomes the inclusion of the so-called Petersberg Tasks into the Treaty as an important step in the direction of a common European security policy equipped with operational capabilities provided by the Western European Union (WEU);
- all the members of the new troika, including the Commission, must cooperate closely, in a spirit of trust and as equal partners, in order to achieve the goals of greater visibility, efficiency and coherence;
- the policy planning and early warning unit must adopt a common Union perspective in the course of its work;
- in the area of external economic relations the Community must become competent for all questions considered in the context of the World Trade Organization; until the Treaty is amended, the Commission should point out to the Member States, promptly and clearly, the risks for the Community stemming from the fragmentation of responsibilities in future negotiations, and should propose to the Council that it take a speedy decision on the requisite transfer of responsibilities; this transfer of responsibilities should not, however, weaken democratic control over the actions of the executive in external economic relations;

10. Recognizes that there has been some progress in those areas of justice and home affairs remaining subject to intergovernmental cooperation, and calls on the Council and/or the Member States

- to take decisions as soon as possible on more effective common approaches towards fighting organized and international crime;
- to establish working relations with Parliament that will allow consultations to run smoothly in this field;
- to improve the legal protection of Union citizens and, in particular, to deliver the requisite declarations so that appeals can be made to the European Court of Justice under the preliminary ruling procedure;
- to prevent loopholes in legal protection arising in the national implementation of Council acts;

Institutional matters

11. Acknowledges that the Amsterdam Treaty confirms, and in some areas further develops, the European Union as a system of values of a free, democratic, social Community based on the rule of law and solidarity and on shared fundamental freedoms and civil rights;

12. Welcomes the extension of the codecision procedure to numerous new areas and the right to approve the appointment of the Commission president; calls in addition, however, for

- any amendment of the constituent Treaties to be subject to Parliament's assent, and a new method to be introduced for preparing and adopting Treaty amendments;
- the codecision procedure to be extended to the remaining areas of legislation (in particular in the new Title IV (former IIIa) of the EC Treaty, in agricultural, fisheries, fiscal and competition policy, structural policies, tourism and water resources, the approximation of laws pursuant to Article 94 (former Article 100) EC and legislative acts under the third pillar); regrets the fact that, in four areas of particular importance for European citizenship (Article 18(2) (former 8a), Article 42 (former 51), Article 47 (former 57) and Article 151 (former 128) EC), the codecision procedure exists alongside unanimous voting in the Council, which in practice constitutes a significant reduction in the democratic legitimacy of this procedure;
- the Commission, pursuant to the declaration on comitology, to submit in June 1998 a proposal to amend the Council decision of 13 July 1987 on the understanding that the European Parliament must be involved in drafting and finalizing the definitive text, which must receive Parliament's agreement;
- the Union and the Communities to be merged into a single legal personality;

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- significant international agreements to be subject to Parliament's assent;
- an equal, functional and democratic relationship to be established between the two arms of the budgetary authority in respect of budgetary matters, including the European Development Fund, and for the system of own resources to be reformed and made subject to Parliament's assent; calls further for substance to be given to the principles of subsidiarity, proportionality and solidarity when operational policies or measures are financed at Community level;
- the democratic accountability of the future European Central Bank to be defined;
- a specific charter of fundamental rights of the Union to be drawn up;
- any 'suspension of certain rights of a Member State' (Article 7 (former F.1.) TEU) on the grounds of a serious and persistent breach by a Member State of general principles mentioned in Article 6 (former F) to be subject to control by the Court of Justice and under no circumstances affect Union citizens' rights;
- in the area of social policy, Parliament to be kept informed of negotiations between management and labour, and where agreements between the latter are implemented by a Council decision they should also be subject to Parliament's assent;
- progress in the field of equality between men and women at all levels to be implemented resolutely, and evolved further, and active promotion of women's interests to be pursued until full equality of opportunities is achieved;
- in view of the Amsterdam Treaty's new emphasis on the role of culture, qualified majority voting to be extended to this sphere; recalls the need to respect and promote the diversity of the Union's cultures;
- the mechanisms for solidarity and economic, social and territorial cohesion to be perfected with a view to an enlarged Europe;
- the treaty provisions for the further development of European political parties to be improved;
- the Euratom Treaty to be revised as a matter of urgency, in particular with a view to making up the democratic deficit in its functioning,

regrets that the Amsterdam Treaty has determined the seat of the European Parliament without the latter's involvement;

13. Recognizes that there has been progress in the area of transparency and publicity as a result of a simplification, and reduction in the number, of decision-making procedures, through rules in the Treaty on access to documents and through a simplification of the text of the Treaty; stresses, however, that the principle of public access requires the completion of these efforts with

- implementing measures to ensure that the public really have efficient access to information;
- documents which are comprehensible to Union citizens and which show who bears political responsibility;
- consolidation and simplification of the founding Treaties;

14. Regrets that the Amsterdam Treaty has failed adequately to improve the efficiency of decision-making procedures by extending qualified majority voting;

15. Stresses that in the Protocol on the institutions the Amsterdam Treaty recognizes the need for further institutional reforms before enlargement of the Union to more than 20 members; in this context unreservedly approves of the joint declaration by Belgium, France and Italy advocating such reforms as the precondition for any enlargement;

16. Calls therefore for the following steps to be taken before any enlargement:

- adjustments to be made to the weighting of votes in the Council and to the number of Commission members, with the Member States retaining equal status with each other; qualified majority voting to become the general rule in the Council;
- the requirement of unanimity to be restricted to decisions of a constitutional nature (amendments to the Treaty, accessions, decisions on own resources, electoral procedure, application of Article 308 (former 235) EC);
- all other reforms required for enlargement to be adopted;

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17. Calls on the Member States to ensure that the possibility provided for in the Amsterdam Treaty in the context of foreign policy and of 'closer cooperation' — of preventing a decision by a majority vote on the grounds of important national interests — be used as a brake only in dire emergencies;

Future strategy

18. Considers that the Amsterdam Treaty marks the end of an historical era when the work of European unification could be undertaken, stage by stage, using the methods of classic diplomacy;

19. Is convinced, instead, that politics should become the driving force behind shaping the new European Union and that the European Parliament and the parliaments of the Member States should play a full role in this respect;

20. Calls on the Commission to submit to Parliament, in good time before the European Council of December 1998, a report with proposals for a comprehensive reform of the Treaties, which is particularly needed in institutional terms and in connection with enlargement; requests that this report, in accordance with the new protocol on the role of the national parliaments in the European Union, be forwarded to the parliaments of the Member States; intends in due course as part of this process to define its own position in the light of these proposals in order to launch a dialogue between the Commission and the European Parliament; requests that, even before Article 48 (former N) is amended, Parliament should be fully involved in the next Intergovernmental Conference and that a common binding arrangement (e.g. modelled on interinstitutional agreements) will be achieved to the effect that the Treaty may enter into force only with Parliament's approval;

21. Awaits with interest the views of the parliaments of the Member States on this report; declares its intention to increase, on a systematic basis, its contacts with the parliaments of the Member States in order to conduct a political dialogue and to discuss jointly the future shape of the European Union;

22. Calls on the Commission to then take over the position of the European Parliament and to submit formal proposals for a revision of the treaties pursuant to Article 48 (former N) of the EU Treaty; calls for the European Parliament to be associated on an equal footing in the follow-up;

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* * *

23. Instructs its President to forward this resolution to the Commission, the Council and the parliaments and governments of the Member States and to ensure that, together with the session document on which it is based, it is made available to the public in Europe.

Koalitionsvereinbarung zwischen der Sozialdemokratischen Partei Deutschlands und Bündnis 90/Die GRÜNEN

**Aufbruch und Erneuerung -
Deutschlands Weg ins 21. Jahrhundert**

**Koalitionsvereinbarung
zwischen der
Sozialdemokratischen Partei Deutschlands
und
Bündnis 90/Die GRÜNEN**

Bonn, 20. Oktober 1998

Präambel

Die Bundesrepublik Deutschland steht vor großen Herausforderungen. Tiefgreifende ökonomische, ökologische und soziale Veränderungen verlangen nach einer entschlossenen Reformpolitik. Die Sozialdemokratische Partei Deutschlands und Bündnis 90/Die GRÜNEN werden eine Politik gestalten, die den neuen Herausforderungen gerecht wird. Die von den Koalitionsparteien für die kommenden vier Jahre vereinbarte Regierungspolitik steht für wirtschaftliche Stabilität, soziale Gerechtigkeit, ökologische Modernisierung, außenpolitische Verlässlichkeit, innere Sicherheit und Stärkung der Bürgerrechte und die Gleichberechtigung von Frauen.

Die Handlungsbedingungen nationaler Politik haben sich in den vergangenen Jahren grundlegend gewandelt und werden sich in Zukunft weiter verändern. Zunehmende Verflechtung der Weltwirtschaft und die Internationalisierung der Finanzmärkte, die fortschreitende Integration Europas und die globalen Herausforderungen einer nachhaltigen Entwicklung, wie sie in der Agenda 21 beschrieben sind, bilden den Handlungsrahmen auch für die deutsche Politik. Die aktuellen weltwirtschaftlichen Krisentendenzen sind ein weiterer Beleg für die Notwendigkeit einer Politik, die auf verstärkte internationale Zusammenarbeit setzt. Durch die von den Koalitionsparteien vereinbarte Regierungspolitik sollen die Chancen der Globalisierung für nachhaltiges Wachstum, Innovation und neue zukunftsfähige Arbeitsplätze genutzt werden.

Der Abbau der Arbeitslosigkeit ist das oberste Ziel der neuen Bundesregierung. Hierin liegt der Schlüssel zur Lösung der wirtschaftlichen, finanziellen und sozialen Probleme in der Bundesrepublik Deutschland. Zur Bekämpfung der Arbeitslosigkeit wird die neue Bundesregierung alle gesellschaftlichen Kräfte mobilisieren und in einem Bündnis für Arbeit und Ausbildung konkrete Maßnahmen vereinbaren.

Mit der großen Steuerreform sorgen wir für mehr Gerechtigkeit sowie für eine Stärkung der Binnenkonjunktur und der Investitionskraft; mit der ökologischen Steuerreform senken wir die Lohnnebenkosten und belohnen umweltfreundliches Verhalten. Diese Reformen sind ein Beitrag für den ökologisch-sozialen Strukturwandel.

Durch gezielte Förderung von Handwerk, kleinen und mittleren Unternehmen und durch Erleichterung von Existenzgründungen schaffen die Koalitionsparteien die Voraussetzungen für nachhaltiges Wachstum und zukunftsfähige Arbeitsplätze.

Das von der Sozialdemokratischen Partei Deutschlands und Bündnis 90/Die GRÜNEN vereinbarte Regierungsprogramm orientiert sich an folgenden gemeinsamen Zielen:

- Wirtschaftskraft durch nachhaltiges Wachstum und Innovation stärken und zukunftsfähige Arbeitsplätze schaffen,
- ökologische Modernisierung als Chance für Arbeit und Umwelt nutzen,
- die finanzielle Handlungsfähigkeit des Staates durch Sanierung der öffentlichen Finanzen zurückgewinnen,
- eine zukunftsorientierte Bildung und Ausbildung für alle Jugendlichen sichern und Chancengleichheit herstellen,
- den Sozialstaat sichern und erneuern und die solidarische Gesellschaft stärken,
- den Generationenvertrag erneuern und auf eine neue Grundlage stellen,
- die natürlichen Lebensgrundlagen auch für die nachfolgenden Generationen sichern und bewahren, eine kinder- und familienfreundliche Gesellschaft schaffen,
- Sicherheit für alle gewährleisten,

- Bürgerrechte und soziale Demokratie stärken und eine Kultur der Toleranz in einer solidarisches Gesellschaft neu begründen,
- die Gleichstellung von Frauen in Arbeit und Gesellschaft entscheidend voranbringen,
- die Innere Einheit Deutschlands vollenden, indem die Angleichung der Arbeits- und Lebensverhältnisse weiter vorangebracht wird,
- den Staat modernisieren, indem wir die Verwaltung bürgernäher gestalten und überflüssige Bürokratie abbauen,
- die friedliche und partnerschaftliche Zusammenarbeit mit unseren Nachbarn weiterentwickeln, die Erweiterung und Vertiefung der Europäischen Union voranbringen, die Solidarität mit den Ländern des Südens stärken und weltweit eine nachhaltige Entwicklung fördern,
- die Zusammenarbeit mit den Kirchen sowie anderen gesellschaftlichen Gruppen und Verbänden fördern.

Wir finden extrem schwierige finanzielle, wirtschaftliche und soziale Rahmenbedingungen vor. Die Sozialdemokratische Partei Deutschlands und Bündnis 90/Die GRÜNEN haben mit dieser Koalitionsvereinbarung die Grundlage für eine stabile, berechenbare und verlässliche Regierungspolitik in den nächsten vier Jahren geschaffen.

XI. Europäische Einigung, internationale Partnerschaft, Sicherheit und Frieden

1. Ziele und Werte

Deutsche Außenpolitik ist Friedenspolitik.

Die neue Bundesregierung wird die Grundlinien bisheriger deutscher Außenpolitik weiterentwickeln: die friedliche und partnerschaftliche Zusammenarbeit mit den Nachbarn, die Pflege der transatlantischen Partnerschaft, die Vertiefung und Erweiterung der Europäischen Union, die gesamteuropäische Zusammenarbeit in der OSZE, die besondere Verantwortung für Demokratie und Stabilität in Mittel-, Ost- und Südosteuropa und die Förderung nachhaltiger Entwicklung in allen Ländern des Südens. Grundlagen sind dabei die Beachtung des Völkerrechts und das Eintreten für Menschenrechte, Dialogbereitschaft, Gewaltverzicht und Vertrauensbildung. Die neue Bundesregierung begreift die internationale Zusammenarbeit als Politik der globalen Zukunftssicherung.

Die neue Bundesregierung wird den notwendigen Wandel der internationalen Beziehungen mit eigenen Vorschlägen und Impulsen mitgestalten. Angesichts der neuen ökonomischen, technologischen, sozialen und ökologischen Herausforderungen wird sie ihre Außen- und Sicherheitspolitik als Beitrag zur globalen Zukunftssicherung entwickeln. Sie wird sich mit aller Kraft um die Entwicklung und Anwendung von wirksamen Strategien und Instrumenten der Krisenprävention und der friedlichen Konfliktregelung bemühen. Sie wird sich dabei von der Verpflichtung zur weiteren Zivilisierung und Verrechtlichung der internationalen Beziehungen, zur Rüstungsbegrenzung und Abrüstung, zu einem ökonomischen, ökologischen und sozial gerechten Interessenausgleich der Weltregionen und zur weltweiten Einhaltung der Menschenrechte leiten lassen.

2. Europäische Einigung

Die Einbindung Deutschlands in die Europäische Union ist von zentraler Bedeutung für die deutsche Politik. Die neue Bundesregierung wird den europäischen Integrationsprozeß deshalb mit neuen Initiativen vorantreiben und die deutsche Ratspräsidentschaft im 1. Halbjahr 1999 nutzen, um der Vertiefung und Erweiterung der Europäischen Union neue Impulse zu verleihen. Besonderes Augenmerk wird sie darauf legen, Reforminitiativen auf nationaler und europäischer Ebene miteinander zu verknüpfen. Nur durch die Weiterentwicklung zu einer Politischen Union sowie einer Sozial- und Umweltunion wird es gelingen, den Menschen Europa wieder näher zu bringen und die Europäische Union bürgernah zu gestalten.

Die neue Bundesregierung wird die Bekämpfung der Arbeitslosigkeit in den Mittelpunkt der europäischen Politik stellen. Ihr Ziel ist ein europäischer Beschäftigungspakt. In die beschäftigungspolitischen Leitlinien sollen verbindliche und nachprüfbar Ziele, vor allem zum Abbau der Jugend- und Langzeitarbeitslosigkeit sowie zur Überwindung der Diskriminierung von Frauen auf dem Arbeitsmarkt, aufgenommen werden. Um zukunftsfähige Arbeitsplätze zu schaffen, muß die Europäische Union eine Politik der ökologischen Modernisierung verfolgen, ihre Anstrengungen bei Forschung und bei der Entwicklung neuer Technologien verstärken und eine moderne Infrastruktur durch transeuropäische Netze aufbauen.

Die neue Bundesregierung will die gemeinsame europäische Währung zum Erfolg führen. Deshalb wird sie die europäische Koordinierung der Wirtschafts-, Finanz- und Sozialpolitik aktiv vorantreiben. Gemeinsame und verbindliche Regelungen gegen Steuer-, Sozial- und Umweltdumping sind dazu unverzichtbar, insbesondere zur effektiven Mindestbesteuerung von Unternehmen und zur Beseitigung von Steueroasen.

Die neue Bundesregierung wird in der europäischen Umweltpolitik eine Vorreiterrolle übernehmen. Schon während der deutschen Ratspräsidentschaft wird sie ihre Bemühungen intensivieren, dem Prinzip der Nachhaltigkeit im Binnenmarkt durch Initiativen zur Stärkung des grenzübergreifenden Umweltschutzes und des Integrationsprinzips Geltung zu verschaffen. Beim neuen Welthandelsabkommen müssen allgemeine sozial- und umweltpolitische Standards wie auch Regelungen zum Schutz des geistigen Eigentums festgeschrieben werden.

Die neue Bundesregierung wird auch auf europäischer Ebene für eine aktive Gleichstellungspolitik stehen. Sie wird auf geschlechtsspezifische Auswirkungen ihrer Politik und die Absicherung positiver Fördermaßnahmen achten.

Die neue Bundesregierung wird sich für mehr Demokratie in der Europäischen Union und die Stärkung des Europäischen Parlaments einsetzen. Sie wird dafür eintreten, daß die Entscheidungsprozesse in der Europäischen Union verständlicher und durchschaubarer werden. Das Transparenzgebot des Amsterdamer Vertrages muß konsequent umgesetzt werden. Sie wird der Überreglementierung und Bürokratisierung entgegenwirken. Bei der Ausübung ihrer Kompetenzen muß die Europäische Union das Subsidiaritätsprinzip wahren.

Die neue Bundesregierung wird die Initiative ergreifen, um den europäischen Verträgen eine Grundrechtscharta voranzustellen. In den Prozeß der Diskussion und Ausarbeitung will die neue Bundesregierung das Europäische Parlament, die nationalen Parlamente und möglichst viele gesellschaftliche Gruppen einbeziehen. Sie wird anregen, den Jugendaustausch, insbesondere den europäischen Freiwilligendienst, in Europa stärker zu fördern.

Die historische Chance der Erweiterung der Europäischen Union nach Mittel- und Osteuropa muß entschlossen genutzt werden. Die neue Bundesregierung wird die Europäische Union aktiv dabei unterstützen, durch eine wirksame Heranführungsstrategie und solidarische Hilfen zur ökonomischen und demokratischen Stabilisierung der mittel- und osteuropäischen Länder beizutragen. Die Europäische Union muß durch interne Reformen zügig erweiterungsfähig werden. Dazu gehört insbesondere der Abschluß der institutionellen Reformen im Vorfeld der Erweiterung. Um beitriffsbedingte wirtschaftliche oder soziale Brüche zu vermeiden, sind angemessene Übergangsfristen, z.B. bei der Arbeitnehmerfreizügigkeit, erforderlich.

Eine Hauptaufgabe der deutschen Ratspräsidentschaft wird die Verabschiedung der Agenda 2000 sein. Die neue Bundesregierung wird daher ihre Kräfte auf eine fristgerechte Beschlußfassung unter Wahrung des Gesamtzusammenhangs konzentrieren.

Die neue Bundesregierung tritt für eine grundlegende Reform der Gemeinsamen Agrarpolitik ein. Die europäische Landwirtschaft muß wettbewerbsfähiger und umweltverträglicher werden. Dazu müssen die öffentlichen Mittel stärker auf ökologische und beschäftigungspolitische Kriterien und so effizient wie möglich auf diese Ziele ausgerichtet werden. Dabei ist darauf zu achten, daß die Ausgaben der Europäischen Union für die Gemeinsame Agrarpolitik im Zeitablauf zurückgeführt werden. Bei den anstehenden WTO-Verhandlungen müssen in der internationalen Agrarpolitik ökologische und soziale Mindeststandards durchgesetzt werden. Soweit dies nicht erreicht wird, sind die Wettbewerbsnachteile der europäischen Landwirtschaft auszugleichen.

Um alternative Beschäftigungsmöglichkeiten in den ländlichen Räumen zu schaffen und die Landwirtschaft ökologisch zu reformieren, wird die neue Bundesregierung eine integrierte regional- und strukturpolitische Anpassungsstrategie erarbeiten. Insbesondere strukturschwache ländliche Regionen müssen dazu integrierte regionale Entwicklungskonzepte erarbeiten. Die neue Bundesregierung ist bereit, besonders betroffene Regionen im Rahmen von Modellprojekten bei der Problembewältigung zu unterstützen.

Die neue Bundesregierung unterstützt die Konzentration der Förderung im Rahmen der europäischen Strukturfonds auf die strukturschwächsten und förderbedürftigsten Regionen. Die Förderung muß vereinfacht, dezentralisiert und stärker an ökologischen Kriterien ausgerichtet sowie beschäftigungswirksamer ausgestaltet werden. Bei der Planung und Durchführung vor Ort müssen die relevanten regionalen Akteure stärker einbezogen werden. Die räumlichen und sachlichen Schwerpunkte der Förderung müssen auch künftig von den dafür politisch verantwortlichen Ländern gesetzt werden können. Die Beihilfenkontrolle der Europäischen Union muß Bund und Ländern mehr Spielraum in der Regionalpolitik geben.

Die neue Bundesregierung wird sich für eine zügige Umsetzung der innen- und rechtspolitischen Vorhaben im Vertrag von Amsterdam einsetzen. Sie wird für eine weitestgehende Integration des Schengen-Bestandes in das europäische Gemeinschaftsrecht eintreten. Die polizeiliche und justizielle Zusammenarbeit soll auf der Grundlage rechtsstaatlicher Grundsätze und in Bindung an völkerrechtliche Prinzipien intensiviert werden.

Die neue Bundesregierung setzt sich dafür ein, daß die Europäische Kommission die in Protokollen zum Vertrag von Amsterdam festgelegten Zusagen zum öffentlich-rechtlichen Rundfunk und zu öffentlich-rechtlichen Kreditinstituten entsprechend den Verhandlungsabsprachen einhält, d.h. den geltenden Rechtsstatus beihilferechtlich nicht beanstandet.

Deutschland wird auch künftig einen angemessenen Beitrag zur Finanzierung der Europäischen Union und damit zu einem solidarischen Lastenausgleich leisten. Für den Finanzplanungszeitraum von 2000 bis 2006 muß die bisher geltende Obergrenze für den EU-Haushalt in Höhe von 1,27 % des BSP unter Einschluß der Kosten der Osterweiterung beibehalten und möglichst unterschritten werden. Die anstehende Neuregelung der EU-Finzen muß insbesondere durch Reformen auf der Ausgabenseite zu mehr Beitragsgerechtigkeit unter den Mitgliedstaaten führen. Sofern dieses Ziel durch andere Instrumente nicht ebenso gut erreicht werden kann, sollten ab dem Jahr 2000 auf der Basis einer Regelung der Europäischen Union die direkten Einkommensbeihilfen der Gemeinsamen Agrarpolitik durch die Mitgliedstaaten kofinanziert werden, damit die Nettobelastung Deutschlands vermindert werden kann. Die neue Bundesregierung wird in diesem Fall den nationalen Kofinanzierungsanteil für die gemeinsame Agrarpolitik aus Bundesmitteln bereitstellen.

3. Europäische Außen- und Sicherheitspolitik

Die im Amsterdamer Vertrag geschaffenen Instrumente und Mechanismen der GASP wird die neue Bundesregierung nutzen, um die Europäische Union auf dem Feld der internationalen Politik handlungsfähig zu machen und die gemeinsame Vertretung europäischer Interessen voranzutreiben. Die neue Bundesregierung wird sich bemühen, die GASP im Sinne von mehr Vergemeinschaftung der Außen- und Sicherheitspolitik weiter zu entwickeln. Sie wird sich deshalb für Mehrheitsentscheidungen, mehr außenpolitische Zuständigkeiten und die Verstärkung der Europäischen Sicherheits- und Verteidigungsidentität einsetzen.

Die neue Bundesregierung wird sich bemühen, die WEU auf der Basis des Amsterdamer Vertrages weiterzuentwickeln.

Die GASP soll in ihrer weiteren Entwicklung verstärkt dazu genutzt werden, die Fähigkeit der EU zur zivilen Konfliktprävention und friedlichen Konfliktregelung zu steigern. Die neue Bundesregierung wird darauf hinwirken, daß die EU ihrer Verantwortung vor allem gegenüber den Ländern des Südens besser gerecht wird und durch gemeinsames Auftreten zur Stärkung von OSZE und VN beiträgt.

4. NATO / Atlantische Partnerschaft

Die neue Bundesregierung betrachtet das Atlantische Bündnis als unverzichtbares Instrument für die Stabilität und Sicherheit Europas sowie für den Aufbau einer dauerhaften europäischen Friedensordnung. Die durch die Allianz gewährleistete Mitwirkung der Vereinigten Staaten von Amerika und ihre Präsenz in Europa bleiben Voraussetzungen für Sicherheit auf dem Kontinent.

Die Partnerschaft mit Rußland, die im NATO-Rußland-Rat institutionell verankert ist, soll im Interesse der europäischen Sicherheit weiterentwickelt und gestärkt werden. Die Zusammenarbeit mit der Ukraine und den übrigen Teilnehmern der Partnerschaft für den Frieden soll ausgebaut werden. Die Tür des Bündnisses bleibt gegenüber weiteren Demokratien offen.

Die neue Bundesregierung verfolgt das Ziel einer stabilen gesamteuropäischen Friedensordnung. Sie fördert deshalb enge Zusammenarbeit, wirksame Koordinierung und sinnvolle Arbeitsteilung zwischen der NATO und den anderen Institutionen, die für die europäische Sicherheit verantwortlich sind. Die neue Bundesregierung wird im Rahmen der anstehenden NATO-Reform darauf hinwirken, die Aufgaben der NATO jenseits der Bündnisverteidigung an die Normen und Standards von VN und OSZE zu binden.

Die USA sind der wichtigste außereuropäische Partner Deutschlands. Die enge und freundschaftliche Beziehung zu den USA beruht auf gemeinsamen Werten und gemeinsamen Interessen. Sie bleibt eine unverzichtbare Konstante der deutschen Außenpolitik. Pflege und Ausbau der deutsch-amerikanischen und der europäisch-amerikanischen Beziehungen sind Voraussetzungen für eine Politik, mit der die neuen globalen Herausforderungen friedlich bewältigt werden können.

5. OSZE

Die OSZE ist die einzige gesamteuropäische Sicherheitsorganisation. Das macht sie unersetzlich. Die neue Bundesregierung wird deshalb Initiativen ergreifen, um die rechtliche Basis der OSZE zu stärken und die obligatorische friedliche Streitschlichtung im OSZE-Raum durchzusetzen. Instrumente und Kompetenzen sind durch bessere personelle und finanzielle Ausstattung zu stärken und ihre Handlungsfähigkeit auf dem Feld der Krisenprävention und Konfliktregelung zu verbessern.

Im Rahmen der Friedenskonsolidierung soll zur Schaffung einer stabilen Ordnung das Instrument nicht-militärische internationale Polizeieinsätze entwickelt und genutzt werden. Eine besondere Bedeutung kommt der Zusammenarbeit mit Nichtregierungsorganisationen zu. Die neue Bundesregierung setzt sich für den Aufbau einer Infrastruktur zur Krisenprävention und zivilen Konfliktbearbeitung ein. Hierzu gehört neben der finanziellen Förderung der Friedens- und Konfliktforschung und der Vernetzung bestehender Initiativen, die Verbesserung der juristischen, finanziellen und organisatorischen Voraussetzungen für die Ausbildung und den Einsatz von Friedensfachkräften und -diensten (z. B. ziviler Friedensdienst). Die neue Bundesregierung wird für die Aufgaben im Bereich von Peacekeeping und Peacebuilding Ausbildungsmöglichkeiten schaffen.

6. Abrüstung und Rüstungskontrolle

Die kontrollierte Abrüstung von atomaren, chemischen und biologischen Massenvernichtungswaffen bleibt eine der wichtigsten Aufgaben globaler Friedenssicherung. Die neue Bundesregierung hält an dem Ziel der vollständigen Abschaffung aller Massenvernichtungswaffen fest und wird sich in Zusammenarbeit mit den Partnern und Verbündeten Deutschlands an Initiativen zur Umsetzung dieses Ziels beteiligen. In bestimmten Situationen kann ein einsei-

tiger Abrüstungsschritt verantwortbar sein und eine sinnvolle Abrüstungsdynamik in Gang setzen. Eine wesentliche Aufgabe sieht die neue Bundesregierung in der präventiven Rüstungskontrolle.

Sie ergreift Initiativen, um im Rahmen der KSE-Verhandlungen die Rüstungsobergrenzen deutlich unter das heutige Niveau zu senken. Sie macht ihren Einfluß geltend, um den internationalen Regimes zur Nichtverbreitung von Massenvernichtungswaffen Geltung zu verschaffen, besonders grausame Waffen wie Landminen weltweit zu verbieten und die weitere Reduktion strategischer Atomwaffen zu befördern. Zur Umsetzung der Verpflichtungen zur atomaren Abrüstung aus dem Atomwaffensperrvertrag wird sich die neue Bundesregierung für die Absenkung des Alarmstatus der Atomwaffen, sowie für den Verzicht auf den Ersteinsatz von Atomwaffen einsetzen.

Die neue Bundesregierung unterstützt Bemühungen zur Schaffung atomwaffenfreier Zonen. Sie wird eine Initiative zur Kontrolle und Begrenzung von Kleinwaffen ergreifen.

7. Vereinte Nationen

Die Vereinten Nationen sind die wichtigste Ebene zur Lösung globaler Probleme. Deshalb sieht es die neue Bundesregierung als besondere Aufgabe an, sie politisch und finanziell zu stärken, sie zu reformieren und zu einer handlungsfähigen Instanz für die Lösung internationaler Probleme auszubauen. In diesem Sinne ergreift sie Initiativen, um die Kompetenz und Mittelausstattung der Vereinten Nationen zu verbessern. Die neue Bundesregierung wird dafür sorgen, daß Frauen gleichberechtigt in internationalen Organisationen und Gremien vertreten sind.

Ein zunehmend wichtiger Bereich der Tätigkeit der Vereinten Nationen sind Missionen mit dem Ziel, den Frieden zu sichern. Den Vereinten Nationen werden eigenständige Einheiten für friedenserhaltende Maßnahmen (peacekeeping) als "stand by forces" angeboten.

Die Beteiligung deutscher Streitkräfte an Maßnahmen zur Wahrung des Weltfriedens und der internationalen Sicherheit ist an die Beachtung des Völkerrechts und des deutschen Verfassungsrechts gebunden. Die neue Bundesregierung wird sich aktiv dafür einsetzen, das Gewaltmonopol der Vereinten Nationen zu bewahren und die Rolle des Generalsekretärs der Vereinten Nationen zu stärken.

Deutschland wird die Möglichkeit nutzen, ständiges Mitglied des Sicherheitsrates der Vereinten Nationen zu werden, wenn die Reform des Sicherheitsrates unter dem Gesichtspunkt größerer regionaler Ausgewogenheit abgeschlossen ist und bis dahin der grundsätzlich bevorzugte europäische Sitz im Sicherheitsrat nicht erreicht werden kann.

Die neue Bundesregierung setzt sich dafür ein, daß das Instrumentarium zur Durchsetzung von Wirtschaftssanktionen ausgebaut und durch einen Sanktionshilfefonds untermauert wird.

8. Menschenrechtspolitik

Achtung und Verwirklichung der in der Allgemeinen Erklärung der Menschenrechte proklamierten und in den Menschenrechtsverträgen festgeschriebenen Menschenrechte sind Leitlinien für die gesamte internationale Politik der Bundesregierung. Die neue Bundesregierung wird sich auch hier mit Nachdruck um international abgestimmte Strategien zur Bekämpfung von Menschenrechtsverletzungen und ihrer Ursachen sowie ihrer Prävention bemühen. Sie wird die bestehenden nationalen Instrumente des Menschenrechtsschutzes verbessern und um wirkungsvolle internationale Instrumente bemüht sein. Sie unterstützt die Einrichtung eines unabhängigen Menschenrechtsinstitutes in Deutschland.

9. Bundeswehr/Rüstungsexporte

Die Bundeswehr dient der Stabilität und dem Frieden in Europa. Als fest in das atlantische Bündnis integrierte Armee ist sie im Sinne von Risikovorsorge weiterhin zur Landes- und Bündnisverteidigung zu befähigen.

Eine vom Bundesminister der Verteidigung für die neue Bundesregierung zu berufende Wehrstrukturkommission wird auf der Grundlage einer aktualisierten Bedrohungsanalyse und eines erweiterten Sicherheitsbegriffs Auftrag, Umfang, Wehrform, Ausbildung und Ausrüstung der Streitkräfte überprüfen und Optionen einer zukünftigen Bundeswehrstruktur bis zur Mitte der Legislaturperiode vorlegen. Vor Abschluß der Arbeit der Wehrstrukturkommission werden unbeschadet des allgemeinen Haushaltsvorbehalts keine Sach- und Haushaltsentscheidungen getroffen, die die zu untersuchenden Bereiche wesentlich verändern oder neue Fakten schaffen.

Die neue Bundesregierung wird dem Bundessicherheitsrat seine ursprünglich vorgesehene Rolle als Organ der Koordinierung der deutschen Sicherheitspolitik zurückgeben und hierfür die notwendigen Voraussetzungen schaffen.

Die neue Bundesregierung wird die bestehenden Programme der militärischen Ausstattungshilfe überprüfen und grundsätzlich keine neuen Verträge in diesem Bereich abschließen. Statt dessen wird sie verstärkt Maßnahmen der Demokratisierungshilfe fördern und dafür zusätzliche Mittel bereitstellen.

Die Koalition unterstützt aktiv die Bemühungen um den Zusammenschluß der europäischen Luft- und Raumfahrtindustrie. Die transnationale europäische Rüstungsindustrie wird für ihre Exporttätigkeit einem verpflichtenden europäischen Verhaltenskodex unterworfen. Die neue Bundesregierung wirkt darauf hin, daß ein Transparenzgebot und der Menschenrechtsstatus möglicher Empfängerländer dabei als Kriterien enthalten sein sollen.

Der nationale deutsche Rüstungsexport außerhalb der NATO und der EU wird restriktiv gehandhabt. Bei Rüstungsexportentscheidungen wird der Menschenrechtsstatus möglicher Empfängerländer als zusätzliches Entscheidungskriterium eingeführt.

Die neue Bundesregierung wird jährlich dem Deutschen Bundestag einen Rüstungsexportbericht vorlegen. Rüstungskonversion wird auch als bundespolitische Aufgabe und Element regionaler Strukturpolitik begriffen.

10. Gute Nachbarschaft und historische Verantwortung

Die neue Bundesregierung wird sich intensiv um die Pflege der Beziehungen zu allen Nachbarn Deutschland bemühen. Sie wird der deutsch-französischen Freundschaft neue Impulse geben und die enge Zusammenarbeit mit Frankreich auf eine breite, die Gesellschaften durchdringende Grundlage stellen. Sie wird besonders um mehr kulturellen Austausch bemüht sein.

Gegenüber Polen besteht eine besondere historische Verantwortung, der die neue Bundesregierung mit dem Angebot einer immer engeren Partnerschaft zwischen Polen und Deutschland gerecht werden wird. Sie wird die Zusammenarbeit zwischen Deutschland, Frankreich und Polen im Rahmen des Weimarer Dreiecks verstärken.

Die neue Bundesregierung wird zügig daran arbeiten, auf der Grundlage der Deutsch-Tschechischen Erklärung noch bestehende Probleme im Verhältnis zwischen Deutschland und der Tschechischen Republik abzubauen.

Israel gegenüber bleibt Deutschland in einer besonderen Verpflichtung. Die neue Bundesregierung wird daher nach Kräften daran mitwirken, die Sicherheit Israels zu bewahren und die Konflikte in der Region friedlich zu lösen.

Die neue Bundesregierung wird die guten Beziehungen zu Rußland und der Ukraine weiterentwickeln und auf eine breite Grundlage stellen. Es ist ihr Ziel, die Stabilität in diesem Raum durch Unterstützung demokratischer, rechtsstaatlicher, sozialer und marktwirtschaftlicher Reformen zu sichern.

11. Entwicklungspolitik

Entwicklungspolitik ist heute globale Strukturpolitik, deren Ziel es ist, die wirtschaftlichen, sozialen, ökologischen und politischen Verhältnisse in Entwicklungsländern zu verbessern. Sie orientiert sich u.a. an dem Leitbild einer globalen nachhaltigen Entwicklung.

Die neue Bundesregierung wird die Entwicklungspolitik entlang diesen Leitzielen reformieren, weiterentwickeln und effizienter gestalten und die entwicklungspolitische Kohärenz mit anderen Ressorts sicherstellen. Die derzeitige Zersplitterung entwicklungspolitischer Aufgaben der alten Bundesregierung in unterschiedliche Ressorts wird aufgehoben und im Bundesministerium für wirtschaftliche Zusammenarbeit und Entwicklung (BMZ) konzentriert. Das BMZ wird im Sinne der Förderung internationaler Strukturpolitik zukünftig die Federführung in Fragen der EU-Entwicklungspolitik erhalten. Das BMZ wird Mitglied im Bundessicherheitsrat.

Um dem international vereinbarten 0,7 % Ziel näher zu kommen, wird die Koalition den Abwärtstrend des Entwicklungshaushaltes umkehren und vor allem die Verpflichtungsermächtigungen kontinuierlich maßvoll erhöhen. Die neue Bundesregierung wird eine Reform der Außenwirtschaftsförderung, insbesondere der Gewährung von Exportbürgschaften (Hermes) nach ökologischen, sozialen und entwicklungsverträglichen Gesichtspunkten in die Wege leiten. Internationale Entschuldungsinitiativen für die ärmsten und höchstverschuldeten Länder werden unterstützt.

Um das Bewußtsein für internationale Zusammenhänge zu stärken, legt die neue Bundesregierung ein besonderes Gewicht auf die entwicklungspolitische Arbeit von Nichtregierungsorganisationen und wird deren Arbeit verstärkt fördern.

Die neue Bundesregierung wird die Zusammenarbeit im Rahmen des Lomé-Abkommens fortsetzen und sich für einen erfolgreichen Abschluß der Folgeverhandlungen einsetzen. Sie wird ihre Aufgaben in der europäischen Entwicklungspolitik wirkungsvoller wahrnehmen und besser koordinieren.

Die neue Bundesregierung setzt sich für die Neuausrichtung der Strukturanpassungspolitik von IWF und Weltbank nach Kriterien der Entwicklungsverträglichkeit und ökologischen Nachhaltigkeit ein. Internationale Wirtschaftsregime, wie die WTO oder das geplante Multilaterale Investitionsabkommen (MAI), müssen nach ökologischen und sozialen Kriterien neu gestaltet werden. Die Möglichkeit nationaler Gesetzgeber, ökologische und soziale Standards bei Investitionen und Handel einzuführen, muß beibehalten werden.

Wir treten für eine Reform und Stärkung der Entwicklungsprogramme der Vereinten Nationen sowie für leistungsfähige internationale Finanzierungsorganisationen ein und werden hier mehr Verantwortung übernehmen. Die im BMZ verankerten zentralen Finanzierungsinstitutionen und Eckpfeiler der multilateralen Entwicklungspolitik, nämlich Weltbank, Internationale Entwicklungsorganisation (IDA) und die Regionalbanken, finanzieren langfristige Entwicklungsprogramme und Projekte. Das BMZ wird die Effizienz der multilateralen Finanzierungsmaßnahmen durch entwicklungs- und sozialverträgliche Strukturanpassungsprogramme und durch eine bessere Verzahnung mit den bilateralen Programmen erhöhen.

Frauen sind wichtige Trägerinnen des Entwicklungsprozesses. Wir werden daher die wirtschaftliche Unabhängigkeit und insbesondere die Grundbildung und Ausbildung sowie die primäre Gesundheitsversorgung von Mädchen und Frauen verstärkt fördern.

Die neue Bundesregierung wird die staatliche Entwicklungszusammenarbeit straffen und die Zusammenlegung verschiedener Durchführungsorganisationen prüfen. Sie wird Erfolgskontrollverfahren bei Projekten der EZ verbessern.

12. Dialog der Kulturen

Gemeinsames weltweites Handeln erfordert Verständigung über kulturelle Unterschiede hinweg. Die neue Bundesregierung wird sich für einen offenen interkulturellen Dialog auf breiter Grundlage einsetzen mit dem Ziel, Feindbilder zurückzudrängen. Sie wird die Möglichkeiten der auswärtigen Kulturpolitik, des Auslandsrundfunks und der wirtschaftlichen und wissenschaftlichen Beziehungen zur Förderung des interkulturellen Dialogs einsetzen.

XII. Kooperation der Parteien

1. Allgemeines

Diese Koalitionsvereinbarung gilt für die Dauer der 14. Wahlperiode. Die Koalitionspartner verpflichten sich, diese Vereinbarung in Regierungshandeln umzusetzen. Beide Partner tragen für die gesamte Politik der Koalition gemeinsam Verantwortung.

Die Koalitionspartner werden ihre Arbeit in Parlament und Regierung laufend und umfassend miteinander abstimmen und zu Verfahrens-, Sach- und Personalfragen Konsens herstellen.

Die Koalitionspartner bilden einen Koalitionsausschuß. Er berät Angelegenheiten von grundsätzlicher Bedeutung, die zwischen den Koalitionspartnern abgestimmt werden müssen, und führt in Konfliktfällen Konsens herbei. Ihm gehören 8 Mitglieder je Koalitionspartner an. Er tritt auf Wunsch eines Koalitionspartners zusammen.

2. Arbeit im Bundestag

Im Bundestag und in allen von ihm beschickten Gremien stimmen die Koalitionsfraktionen einheitlich ab. Das gilt auch für Fragen, die nicht Gegenstand der vereinbarten Politik sind. Wechselnde Mehrheiten sind ausgeschlossen.

Über das Verfahren und die Arbeit im Parlament wird Einvernehmen zwischen den Koalitionsfraktionen hergestellt. Anträge, Gesetzesinitiativen und Anfragen auf Fraktionsebene werden gemeinsam oder, im Ausnahmefall, im gegenseitigen Einvernehmen eingebracht. Die Koalitionsfraktionen werden darüber eine Vereinbarung treffen.

3. Arbeit im Kabinett

Im Kabinett wird in Fragen, die für einen Koalitionspartner von grundsätzlicher Bedeutung sind, keine Seite überstimmt. Ein abgestimmtes Verhalten in Gremien der EU wird sichergestellt.

In allen Ausschüssen des Kabinetts und in allen vom Kabinett beschickten Gremien sind beide Koalitionspartner vertreten, sofern es die Anzahl der Vertreter des Bundes zuläßt. Die Besetzung von Kommissionen, Beiräten usw. beim Kabinett erfolgt im gegenseitigen Einvernehmen, wobei dem Stärkeverhältnis der Partner Rechnung getragen wird.

4. Zuschnitt des Kabinetts

Dem Bundeskanzler obliegt die Organisationsgewalt. Größere Änderungen des Ressortzuschnitts innerhalb der Wahlperiode werden zwischen den Koalitionspartnern einvernehmlich geregelt.

5. Personelle Vereinbarungen

Die Koalitionspartner vereinbaren, Gerhard Schröder (SPD) zum Bundeskanzler zu wählen.

Das Amt des Vizekanzlers wird durch Joschka Fischer (Bündnis 90/Die GRÜNEN) ausgeübt.

Die SPD stellt die Leitung folgender Ministerien:

Bundesministerium des Innern
Bundesministerium der Justiz
Bundesministerium der Finanzen
Bundesministerium für Wirtschaft
Bundesministerium für Ernährung, Landwirtschaft und Forsten
Bundesministerium für Arbeit und Sozialordnung
Bundesministerium der Verteidigung
Bundesministerium für Familie, Senioren, Frauen und Jugend
Bundesministerium für Raumordnung, Bauwesen, Städtebau und Verkehr
Bundesministerium für Bildung, Wissenschaft, Forschung und Technologie
Bundesministerium für wirtschaftliche Zusammenarbeit und Entwicklung

Das Bündnis 90/Die GRÜNEN stellt die Leitung folgender Ministerien:

Auswärtiges Amt
Bundesministerium für Umwelt, Naturschutz und Reaktorsicherheit
Bundesministerium für Gesundheit

Das Vorschlagsrecht für beamtete und Parlamentarische Staatssekretäre sowie Staatsminister liegt bei den jeweiligen Bundesministern. Die SPD hat das Vorschlagsrecht für einen Staatsminister im Auswärtigen Amt, Bündnis 90 /Die GRÜNEN für den Parlamentarischen Staatssekretär im Bundesministerium für wirtschaftliche Zusammenarbeit und Entwicklung.

Das Vorschlagsrecht für die 1999 vakant werdende deutsche Position in der EU-Kommission liegt bei Bündnis 90/Die GRÜNEN.

Die Koalitionspartner werden mit einem gemeinsamen Personalvorschlag in die Bundespräsidentenwahl 1999 gehen. Das Vorschlagsrecht liegt bei der SPD.

Bonn, den 20. Oktober 1998

**Für die
sche Partei Bündnis 90/Die GRÜNEN
Deutschlands**

Für Sozialdemokrati-

Gerhard Schröder

Joschka Fischer

Oskar Lafontaine

Jürgen Trittin

Christine Bergmann

Gunda Röstel

Heidemarie Wieczorek-Zeul

Kerstin Müller

**P4_CRE(1999)01-12(1)
Speech by the President of
the Council of the European
Union Joschka Fischer, Federal
Minister for Foreign Affairs on
the Priorities of the German
Council Presidency**

Speech by the President of the Council of the European Union Joschka Fischer, Federal Minister for Foreign Affairs, in the European Parliament in Strasbourg on 12 January 1999

Translation of advance text

Mr President,
Members of the European Parliament,

On 1 January 1999 with the introduction of the euro, the common currency by eleven member states, Europe has taken a historic, or perhaps even a revolutionary step which will lend a new dimension to the project of European integration. For the first time in the history of the European integration process, that all but miraculous answer of the people of Europe to centuries of a precarious balance of power on this continent and of violent hegemony and terrible wars, an important part of national sovereignty, to wit monetary sovereignty, was passed over to a European institution. This action creates in fact a new political quality. Currency, Security and Constitution, those are the three essential areas of sovereignty of modern nation states, and the introduction of the euro constitutes the first move towards their communitarization. The real significance of this step for Europe and international politics will probably only be understood at a later date.

The introduction of a common currency is not primarily an economic, but rather a sovereign and thus eminently political act. With the communitarization of its money, Europe has also opted for an autonomous path in the future and, in close collaboration with our transatlantic partners, for an autonomous role in tomorrow's world. However, the EU resembles only partly a political subject and therefore the contrast between the communitarization of currencies and the still lacking political and democratic structures of the community will create tension the momentum of which will undermine the current status quo in the not too distant future. I agree with those who pointed out at the time of the euro launch that the common currency was a great opportunity but also just as great a risk for the EU, depending on the member states' attitude to the process of further political communitarization. They expected the opportunities to be predominant if the momentum from the introduction of the euro was used for further substantial communitarization measures leading to complete political union. The introduction would, however, turn out to be a huge risk if in the logic of this bold step on the part of the EU, other bold steps to complete integration - including the fastest possible enlargement of the EU to include Central and Eastern Europe - did not follow.

Political wisdom, but also the national interests of all member states, demand that we do not let this alternative happen. Rather, we must energetically and jointly use the opportunities afforded by the successful introduction of the euro. We must therefore strengthen the EU's ability for political action and gear its internal structures to the new tasks. Political union, including new member states, must be our lodestar from now on; it is the logical follow-on from Economic and Monetary Union.

The main task of the German Presidency is to prepare the Union's structures and procedures to turn it from a western European Union into a Union for the whole of Europe capable of global action. There are four focal points for the next six months:

Firstly, we want to bring the Agenda 2000 negotiations to a successful conclusion by 24/25 March. That is not a random date. If we do not reach agreement by then, the Union will call its ability to reform, central to the enlargement process, very much into question.

There are no two ways about it. The negotiations will be very difficult. A solution will only be found through comprehensive balancing out of interests. The German Presidency will ensure that a balanced solution is found at the European Council at the end of March, not one that is at the expense of the weakest EU partners.

Even if there is still considerable distance between our positions on key questions, I am optimistic that we can agree. During my exploratory trip before Christmas, I felt all partner countries were ready to play a constructive role in the negotiations and strive for agreement by March. Everyone knows that we will only be successful if we consider Agenda 2000 as a single package and if everyone makes compromises. There must be no winners or losers. All that will require a difficult balancing act on the part of the Presidency. To succeed we are counting also on the support and understanding of the European Parliament, with which we intend to cooperate closely.

Now we must set about the questions of substance as quickly as possible. In the field of structural policy, I consider it essential to concentrate first and foremost on the regions with the weakest structures which are most in need of support. Aid must become simpler, less centralized, more environmentally friendly and create more jobs.

The future viability and legitimacy of the EU depend on fair burden-sharing. Let me say quite clearly at this point: As the strongest EU member state economically speaking, Germany will continue to bear its responsibility and remain the greatest net contributor. But imbalances have crept into the burden-sharing process which must be evened out. This concern, which Germany shares with other member states, has been recognized as legitimate by the Commission and in the meantime also by many partners.

The enlargement, as well as the next round of WTO talks, necessitate root and branch reform of the Common Agricultural Policy and a reduction in agricultural spending. If we want to admit countries in Central and Eastern Europe which are still mainly agriculture-based, we cannot carry on with European agricultural policy as it stands. European agriculture must be made more competitive and environmentally sustainable; at the same time farmers' interests must be protected.

Secondly we want to make clear progress on an effective employment policy. The fight against unemployment is the greatest worry of people in Europe. They expect, quite rightly, not just national governments to take action against unemployment, but also efforts to be made at European level. Therefore, we want to conclude a European Employment Pact at the Cologne European Council. The pact should be the expression of an active labour market policy, which focuses more on prevention: on reducing youth and long-term unemployment and discrimination against women on the job market.

Thirdly, we want and have to make progress on the enlargement of the EU as quickly as possible. After the end of the Cold War, Europe cannot be restricted to Western Europe, rather the very idea of European integration aims at the whole of Europe. Furthermore, the geo-political reality leaves no real alternative. If this is true, then the events of 1989/90 have already decided the "if" question of Eastern enlargement, only the "how" and "when" must be identified and decided upon.

The southern enlargement of the EU was a great economic but also political and democratic success. Economic prosperity and democratic stability were the fruits of southern enlargement for the countries which joined at that time, and the EU must repeat this success with eastern enlargement. Prosperity, peace and stability can only be guaranteed for the whole of Europe in the long-term through the accession of the Central and Eastern European partners. And only with the opening up towards the East can the EU claim to speak as a cultural area and community of values for the whole of Europe. In Germany, we have not forgotten the invaluable contribution of the people of Central and Eastern Europe in ending the division of Germany and Europe.

To allow a zone of instability to emerge beyond the current EU border would be, given our experience in the Balkans, irresponsible politically. In addition, it would be a breach of promise to the new democracies with fatal consequences for Europe. Thus every wilful delay, let alone preclusion of EU enlargement, amounts to a politically and economically dangerous and expensive detour, at the end of which enlargement would come all the same, brought about by the realities and risks.

For all these reasons there is no alternative to the enlargement of the EU to include the next candidates.

We need strategic vision for the enlargement process, but also a great deal of pragmatism. We must bring the enlargement negotiations to a successful and workable conclusion as quickly as possible. Hence we ought to forget about purely academic debates about deadlines now. If we now concentrate on making EU structures ready for enlargement - and the successful conclusion of Agenda 2000 is essential for this - that does not mean postponing enlargement. The exact opposite is true. Our ability to enlarge must go hand in hand with other countries' ability to accede. The sooner the EU tackles the necessary reforms and the more intensively the applicant states continue their internal reforms, the quicker and smoother the progress of the enlargement process.

Hence, Germany remains a strong advocate of early eastern enlargement of the European Union. We want to push ahead with the accession negotiations. The candidate countries which have still to enter negotiations must be given a fair chance to catch up with the others. The fast lane must stay open. It is still too early to fix a date for accession. But if we can see light at the end of the negotiating tunnel, probably towards the end of 1999 or in 2000, following the envisaged progress of negotiations and the successful conclusion of Agenda 2000 in March, it may become meaningful or even inevitable to set a definite date to bring the negotiations to an early conclusion.

Fourthly, we want to increase the EU's ability to act in the foreign policy domain. Only a Union with an effective foreign policy can safeguard peace in Europe and bring its increasing weight to bear on the world stage. Even the large member states of the EU will be less and less able to assert their interests and protect peace in the ever more globalized world. In the multipolar world of the 21st century, the EU must therefore become an autonomous player capable of political action. We must prepare ourselves for this task by creating a Common Foreign and Security Policy worthy of the name in good time.

When the Amsterdam Treaty enters into force, by June 1 at the latest according to the current progress of the ratification process, we want to ensure that it will be applied in all areas immediately. In the field of the Common Foreign and Security Policy, the Treaty contains a package of new instruments which will increase the Union's ability to act in foreign policy matters. The nomination of the CFSP High Representative will hopefully bring significant progress. But this will only be the case if it is a man or woman with political weight who can get things done. During our Presidency, also the policy planning and early warning unit is to be set up and the new "Common Strategy" instrument introduced and with it majority decisions in the CFSP. We want to apply this new instrument first to the EU's neighbouring regions and adopt the first common strategy on Russia at the Cologne European Council. The creation of a prosperous civil society in Russia in the long term is crucial to the stability of the whole of Europe. At the present time, what we need is as much joint action as possible and maximum use of the new instruments. It is important to identify fields of common European interest better. This is also necessary to heighten the public's awareness of European consensus in foreign and security policy issues.

In the next six months we have to turn political vision into tangible progress. But we must not narrow our view to operational day to day affairs. Europe has always drawn its strength from a constructive mixture of vision and its implementation. Particularly in the next six months, it will be important to keep an eye on the wider picture.

The next target area after the conclusion of Agenda 2000 will be the EU's institutional reform. This reform is urgent with a view to enlargement to avoid institutional collapse. If the European Union is to maintain its ability to act with 21 or more members, appropriate reforms must be carried out. The key question here is the Union's readiness to accept majority decisions in as many areas as possible. The new Federal Government advocates limiting the need for unanimity in the EU in the longer term to questions of fundamental importance such as treaty amendments.

At the Vienna European Council, it was agreed that the Cologne European Council should decide on how to deal with the institutional questions not resolved in Amsterdam. I would imagine that we will give the green light to a new intergovernmental conference which could meet around the year 2001.

In the long-term we have to face the question of the aims and methods of further integration. We have followed the "Monnet method" in the European Union for more than 40 years: a step-by-step approach towards integration with no blueprint of the ultimate goal. This method was extremely successful. The goals of "no more wars" and economic redevelopment which were formulated in the 50s have been achieved. War within the European Union is now impossible from both political and military standpoints. This is the greatest achievement of the European integration process on our "continent of wars" and we should never forget this.

Economic and monetary integration is largely completed with the introduction of the euro. Only a few areas are still lacking, such as closer harmonization of tax policies as advocated by Germany. So why do we want to carry on with integration? I see two central reasons for doing so:

Firstly, because in the age of globalization no European nation state, not even the larger ones, will be able to act on their own. Europeans can only meet the challenges of globalization when we are united; and secondly, because exporting stability to neighbouring regions is not just a historic and moral responsibility for Europe but it also lies in our own best interests. Preventive crisis management is always better, cheaper and above all more humane than acute crisis management.

The greatest shortfalls within the EU are to be found today in the fields of political integration and democracy. How can we make headway in these areas? I believe that after Maastricht and Amsterdam, the call for a European constitution will be louder than before. Such a debate will give new impetus to political integration.

For me, it is initially more a question of substance and aims than an analysis of the legal basis. The idea of a common European future, the "finality" of Europe, is hazy at present. A debate on the state of affairs in Europe could provide both direction and clarity in this area. Important questions about the future remain unanswered. What notion can rally people in favour of Europe? What balance of power should there be between Europe, nations and regions? Where do we need more or perhaps less Europe? Where are Europe's external borders? How can we further the development of a European public and strengthen the democratic legitimacy of the EU? People are right to look for answers to these questions which none of us can avoid.

If we want to turn the European Union into a strong and assertive political subject, then we need to strengthen it in four key policy areas:

1. Europe needs more democracy. The decision-making processes in the Union need to be more transparent and comprehensible for the people. The citizens need to understand at long last who is deciding what in Brussels and with what authority.

The Amsterdam Treaty has bestowed new and important rights and powers upon the European Parliament. This can only be an interim step, however. The greater the Union's ability to act, the greater the democratic legitimacy of its actions must be. The rights of the European Parliament must therefore be further extended, and that should also be a focus of the next intergovernmental conference. Wider legitimacy means that the European Parliament enjoys equal co-decision rights in all areas where the Council currently adopts legislation with majority voting. Greater involvement of the European Parliament in the election of the Commission than is prescribed in the Amsterdam Treaty is also conceivable. Increased collaboration with national parliaments, as already laid down in the Amsterdam Treaty, should also be considered.

In order to increase the citizen's rights, Germany is proposing the long-term

development of a European Charter of Basic Rights. We want to take the initiative here during our Presidency. For us, it is a question of consolidating the legitimacy and identity of the EU. The European Parliament which has already provided the groundwork with its 1994 draft should be involved in the drawing up of a Charter of Basic Rights, as well as national parliaments and as many social groups as possible.

2. The Common Foreign and Security Policy must be geared to the European values of peace and human rights and be capable of efficient crisis management. In the age of globalization, human rights have political and economic importance, above and beyond the humanitarian aspect, as demonstrated by the Asian crisis. Emerging markets can acquire investment security only by embracing ecological sustainability and human rights, not by suppressing them. The development of free markets can only last if it is embedded in a wide culture of freedom based on human rights, the separation of powers, the rule of law, democratic parties, independent unions, a free press and a critical public. During our Presidency, we will work towards strengthening the EU's human rights profile. The new EU human rights report aims to increase transparency and at the same time to provide impetus for action in the community and the member states.

The key to efficient preventive and operational conflict resolution lies in greater use of majority decisions and presenting a united front to the outside world - in the G8, the international financial institutions and the United Nations. Amsterdam can only be one step along the way towards an enlarged Union if that Union is to be capable of taking action in the foreign policy domain.

3. We need a European Security and Defence Identity to complete the Common Foreign and Security Policy. In recent times, a problematic trend to unilateralism and a turn away from multilateralism has been noticeable in international affairs. This tendency has already led to very negative consequences at United Nations level and must be cause for concern. Also global peace-keeping needs to be legitimized by multilateral organizations. But this also necessitates political subjects who are willing and in a position to use their influence to shape the inter-national political system as an order of peace through multilateral action based on international law and in conjunction with other partners. This is another central challenge for the Europe of the future. Collective defence will remain NATO's remit. But the EU must also develop its own capabilities for military crisis management whenever the EU/WEU see a need for action and the North American partners do not wish to be involved. This issue has received fresh impetus following Tony Blair's initiative in Pörschach and the Franco-British meeting in St. Malo.

After the single market and Economic and Monetary Union, the creation of a European Security and Defence Identity ESDI could be of great importance for the further deepening of the EU. In our double Presidency of the EU and the WEU, we will make every effort to harness the new momentum. By the time of the Cologne European Council, we want to draw up a report on possible further developments of the ESDI.

4. In the field of justice and home affairs, the Amsterdam Treaty aims to create an area of freedom, security and justice. We want to attain this goal step by step. The special meeting of the European Council in Tampere in October ought to take stock of the situation and establish further guidelines. During our Presidency we also want to discuss asylum policy burden-sharing as well as the humane handling of refugee flows.

A more effective fight against international organized crime is crucial for Europe's ability to act and its acceptance amongst the people. We need to step up cross-border cooperation between police forces and increase Europol's operational capabilities. The issues just mentioned, however, point out the urgent need for the entry into force of a European Charter of Basic Rights.

During my Presidential trip before Christmas, I met my Spanish colleague in the conference centre in Madrid in which the Peace Implementation Conference for Bosnia was also being held. While we, the Spanish and German Foreign Ministers and delegations prepared important EU decisions about the Europe of the 21st century, the

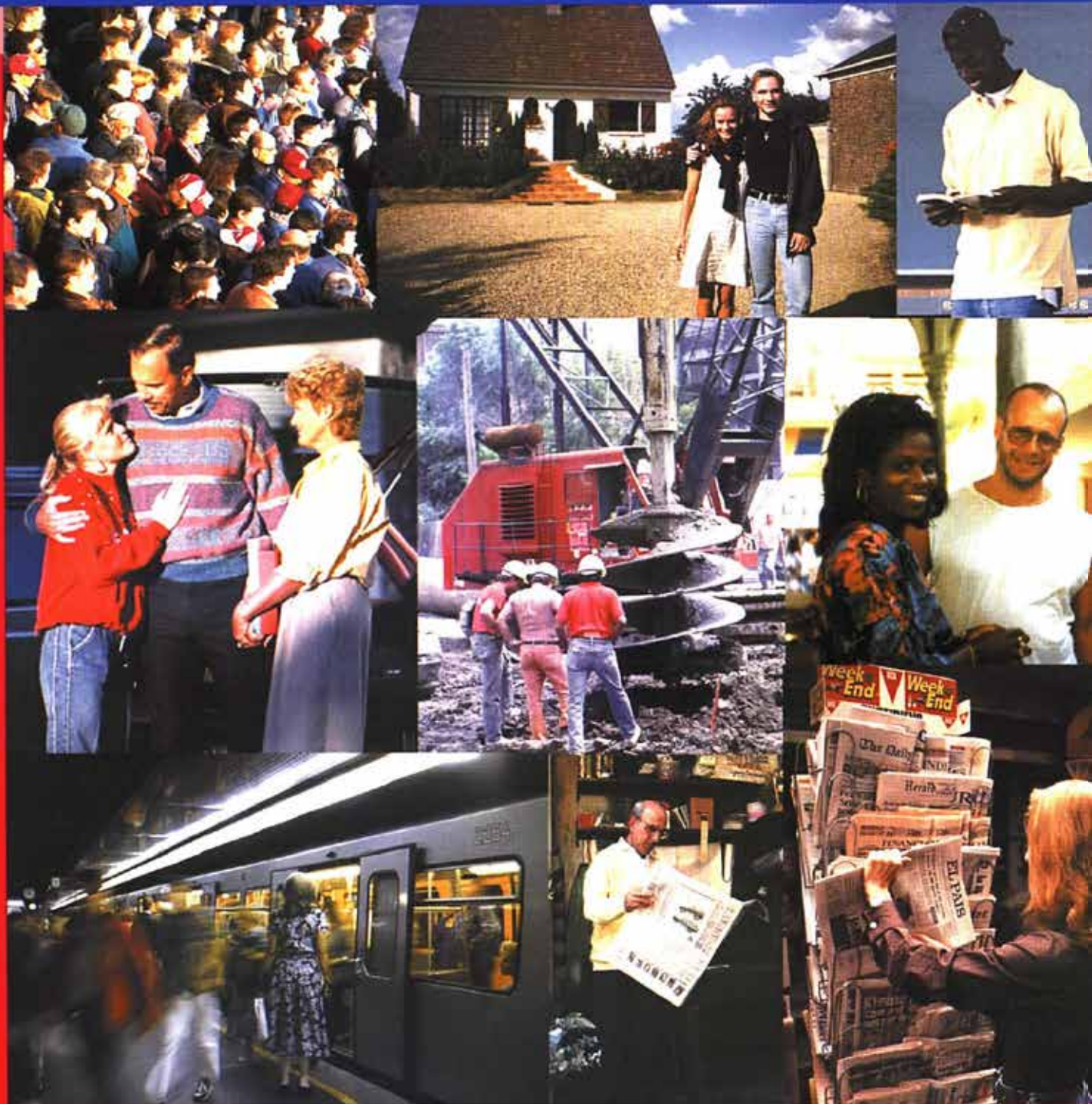
Europe of integration, the conference had to focus on solutions to the Europe of the past, the Europe of nationalism and war. The historical disunity of Europe was glaringly obvious in Madrid on that day, but at the same time the historical challenge which lies before us was also made clear. Both alternatives make up the current reality of Europe, but we, the Europe of integration, must not give the Europe of the past any chance for the future because that would be a disaster for our continent. Only the Europe of integration is viable and only this Europe will peacefully put to rest the discord on our continent and be able to make the EU into a political subject able to help shape the future of a dramatically changing world. Several generations have worked on making the European house, the EU, a political success. Our generation has the challenge of completing this Europe of integration.-

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Affirming fundamental rights
in the European Union:
time to act (Simitis Report)

Affirming fundamental rights in the European Union

Report of the Expert Group on Fundamental Rights

Fundamental rights & anti-discrimination



Employment & social affairs



European Commission

Affirming fundamental rights in the European Union

Time to act

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Fundamental rights and anti-discrimination

European Commission

Directorate-General for Employment, Industrial Relations
and Social Affairs

Unit V/D.2

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A great deal of additional information on the European Union is available on the Internet. It can be accessed through the Europa server (<http://europa.eu.int>).

Cataloguing data can be found at the end of this publication.

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Foreword

In its social action programme 1998-2000, the Commission has announced its intention of carrying forward the debate on the question of fundamental rights in the European Union.

This debate was launched by the report of the 'Comité des Sages' presented at the first Social Policy Forum in March 1996. In 1997 a follow-up process took place to advance the debate on the conclusions of this report and promote civil dialogue on fundamental rights. One theme which emerged strongly from this was the possible establishment of the fundamental social rights as a constitutional element of the European Union.

The Commission believes that it is worth having this question studied in greater detail. Therefore, DG V established an independent expert group on fundamental rights to consider this area further. The group was composed of eight academic experts in the field, chaired by Professor S. Simitis.

The group was asked to review the status of fundamental social rights in the treaties, in particular in the new Treaty of Amsterdam, possible lacunae and related legal and constitutional matters. Special consideration should also be given to the possible inclusion of a Bill of Rights in the next revision of the Treaties. The expert group's report has put forward 10 recommendations to achieve an explicit recognition of fundamental rights in the European Union.

I should like to thank the members of the expert group for their excellent work which will contribute to broadening the debate on this issue within the European Union in the coming months.

Odile Quintin
Acting Deputy Director-General
DG V

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Executive summary

The arguments demonstrating the need for a reformulation of fundamental rights have been exhaustively discussed. What is now needed is not new deliberation but a clear decision.

A comprehensive approach to the guarantee of fundamental rights is urgently required. Fundamental rights must be visible. Therefore, an express guarantee should be included in the Treaties.

While judicial protection is undoubtedly a crucial element in the effective safeguarding of fundamental rights, it is by no means its only prerequisite. It is vital to establish rights which are genuinely justiciable, and which entail more than a passive obligation of non-violation.

The recognition of fundamental rights should be based, in particular, on the European Convention on Human Rights (ECHR), which has become, through the case law of its organs, a common European Bill of Rights.

The rights of ECHR, including those in its Protocols, should be incorporated in their entirety into Union/Community law. At the same time, clauses detailing and complementing the ECHR must be added.

As imperative as an explicit recognition of fundamental rights is, attention must also be paid to furthering the protection of rights through policies and related organisational changes.

The guarantee of rights must be seen as an open process, based on dialogue within civil society, and capable of responding to new challenges. This process should include both civil and social rights.

The text enumerating the rights should be inserted into a special part or a particular title of the Treaties. The place chosen should clearly illustrate the paramount importance of fundamental rights.

I. Remit

In March 1996 a 'Comité des Sages' appointed by the European Commission presented its report on the need to recognise a series of fundamental civil and social rights, and incorporate them into the Amsterdam Treaty. The Comité suggested that the European Union should first include in the Treaty a minimum core of rights and at a later stage set in motion a consultation process which would update and complete the list of civil, political and social rights and duties. The Comité complemented these more general objectives by 26 specific recommendations. They stressed the need to strengthen the sense of citizenship and democracy in the European Union by treating civil and social rights as indivisible, as well as the importance of formulating rights that reflect technological change, the growing awareness of the environment, and the demographic developments.

The Comité's proposals were intensively discussed in the course of 1997 in numerous meetings organised in particular by non-governmental organisations (NGOs) dealing with human rights and social problems in the various Member States. The result was a clear approval of the Comité's position, especially with regard to the incorporation of social and civil rights in the Treaties.

More recently, the European University Institute presented, together with a report on its 'Project on the European Union and human rights', a 'human rights agenda for the European Union for the year 2000'. Both documents re-emphasise the urgency of explicit recognition of fundamental rights by the European Union. However, neither stops at general consideration of the significance of such a decision. They also insist on the need to place all further efforts in an institutional and administrative framework which would secure the persistent promotion of fundamental rights and their consistent integration into the ongoing activities and policies of the European Union.

Despite the appeal of the Comité de Sages and the wide support it was given, the Amsterdam Treaty, notwithstanding its intention to consolidate and advance the unification process, does not contain a basic set of fundamental civil and social rights in the form of a Bill of Rights. Nor does it fulfil the expectations articulated in the report of the Comité des Sages, by clearly detailing and expanding the recognition of fundamental rights.

The quest for explicit recognition of fundamental rights is therefore still of immediate importance. In fact, the very adoption of the Amsterdam Treaty has made the need even more apparent. The enlargement of the European Union's tasks demonstrates that recognition of fundamental rights is not a long-term policy but a short-term necessity.

This is especially illustrated by the increasing relevance of issues such as a judicial cooperation in criminal matters, police cooperation for the purposes of preventing and combating serious international crimes, or a common policy with regard to immigration and nationals of third countries. In addition, concerns

raised by the structural changes of the labour market and the ensuing reflection on common activities have drawn fresh attention to the acute need for fundamental social rights. Finally, the globalisation of the economy, and in particular its consequences for the external relations of the European Union, has accentuated the significance of efforts to protect fundamental rights, already exemplified by the clauses inserted in numerous agreements concluded between the Community and third countries. It has further underlined the need to clarify and specify within the European Union the rights upon which such actions are based.

It is against this background that the Commission decided to entrust a new Group of Experts to analyse and assess the opportunities and constraints of an explicit recognition of fundamental rights. The Commission pointed to a series of questions that in its view merited particular consideration: evaluation of the provisions concerning fundamental rights included in the Amsterdam Treaty; the implications of the indivisibility principle; the possible content of new rights mirroring the challenges of an information society; the justiciability of fundamental rights; the relation to the protection of fundamental rights provided by the Council of Europe; and the role of fundamental rights in the development of the European Union.

The Group of Experts debated these questions in six meetings held since March 1998 and presented its report in February 1999. In the course of these meetings, the Group discussed issues concerning the recognition of fundamental rights with representatives of the Platform of European Social NGOs and of the European social partners.

The report deals first with the Amsterdam Treaty and its consequences. It then addresses the factors and conditions that ought to be considered by any future attempt to promote the explicit recognition of fundamental rights. Finally, the report makes a series of recommendations for achieving an express recognition, and for the improvement of fundamental rights protection.

II. The Amsterdam Treaty

The Amsterdam Treaty may not have led to an explicit recognition of particular fundamental rights. It nevertheless marked a decisive step on the way to an ever clearer recognition of the principle of fundamental rights protection by the European Union. The Treaty affirms the European Union's commitment to human rights and fundamental freedoms (Art. 6 (1)) and explicitly confirms the Union's attachment to fundamental social rights (Preamble, fourth recital). It does this, however, by maintaining the previously adopted system of references. Thus, the Treaty stresses the respect of the fundamental rights guaranteed by the 1950 European Convention on Human Rights (ECHR) and as determined by the common constitutional traditions of the Member States and hence by the general principles of Community law (Art. 6 (2)). Similarly, both the Preamble and Art. 136 of the EC Treaty refer to the fundamental social rights by pointing to the 1961 European Social Charter (Council of Europe) and the 1989 Community Charter.

Rather than listing fundamental rights, the Amsterdam Treaty establishes procedures intended to secure their protection. Art. 13 of the EC Treaty, for instance, empowers the Council to take appropriate action to combat discrimination, after consultation of the European Parliament. The possible grounds of intervention are explicitly indicated in Art. 13 and range from discrimination concerning sex, racial or ethnic origin to discrimination regarding religion, belief, disability, age or sexual orientation. The Community is therefore given the opportunity to develop policies and proposals intended to prevent these discriminations. Moreover, provisions such as Art. 3 (2) and 141 (4) of the EC Treaty lay the grounds for measures designed to achieve an effective equality of men and women including positive action.

In a far more general way but still along the same lines, Art. 136 of the EC Treaty qualifies the fundamental social rights, as determined by the European Social Charter and the Community Charter, as guidelines for activities of both the Community and the Member States. These are intended to promote employment, improve living and working conditions in order to make possible their harmonisation while the improvement is being maintained, ensure proper social protection, secure a dialogue between management and labour and develop human resources in a way permitting to obtain a lasting high employment and to eliminate social exclusion.

Finally, Art. 7 provides that the Council may, in the event of a serious and persistent breach of the principles mentioned in Art. 6 (1), suspend a Member State from its Treaty rights.

The Amsterdam Treaty has also led to changes in the jurisdiction of the European Court of Justice (ECJ) that in turn affect the protection of fundamental rights. Thus, according to Art. 46 of the EU Treaty it is now within the Court's powers to ensure that Art. 6 (2) is observed by the institutions of the European Union. However, the Court's jurisdiction is in principle restricted to Community law. As

a result, with the exceptions of Articles 35 and 40 of the EU Treaty, the Court's jurisdiction does not cover actions regarding the second and third pillars.

Another equally relevant but no less limited expansion of the Court's jurisdiction occurs in connection with 'common actions' of the Member States as specified in Title VI of the EU Treaty. The activities referred to concern the prevention, detection and investigation of crime as well as extradition and are intended to achieve, in the interest of the citizens, 'a high level of safety within an area of freedom, security and justice' (Art. 29). According to Art. 46 lit. b of the EU Treaty the Court has jurisdiction in these cases as long as the conditions of Art. 35 are fulfilled. The Court can, therefore, at the request of national courts or tribunals, give preliminary rulings on the validity or the interpretation of Council instruments adopted in the context of Art. 29, provided the Member State concerned has declared that it accepts such jurisdiction. The Court can also review the legality of Council decisions and rule on any dispute between Member States concerning the interpretation or application of acts adopted under Art. 34 (2).

III. Deficits and inconsistencies

As important as the changes brought about by the Amsterdam Treaty are, none of them offers a lasting and satisfactory answer to the issues addressed, both in the report of the Comité des Sages, and the ensuing discussion.

1. There is increasing uneasiness and confusion due to the differences and contradictions in the perception and application of the European Union's commitment to the fundamental rights across the three pillars.

The Amsterdam Treaty and especially the modifications of the EC Treaty undoubtedly have far-reaching effects in the first pillar through the impact of Community law. The second (common foreign and security policy) and third (justice and home affairs) pillars are, however, based on traditional intergovernmental relations. Thus, the manifest effort of the Community law to develop and implement the protection of fundamental rights corresponds to equally manifest attempts to limit their influence in the second and third pillars.

A characteristic example is the reaction to the quest for improvement of the protection of personal data in the various pillars. While Parliament, Council and Commission, in connection with the adoption of the 1995 data protection directive, unanimously pointed to the direct link between data protection and fundamental rights, the Member States followed a restrictive policy in the two other pillars. The very principles and measures that had been accepted in the case of the directive in order to respect fundamental rights were thus questioned and to a large extent abandoned in agreements such as the Europol Treaty.

If the European Union's commitment to the fundamental rights, as expressed in the Amsterdam Treaty, is to be taken seriously, both the Member States and the European Union's institutions must act under the same premises in all three pillars. In other words, fundamental rights should remain the primary and decisive criteria of the compatibility of the activities of all institutions and bodies with the European Union's guiding principles.

2. The actual system of references is confusing and counter-productive. While, for instance, the ECHR is cited twice in the EU Treaty, there is not a single mention in the EC Treaty. In contrast, both the European Social Charter and the Community Charter are quoted in each of these documents. But their explicit mention in the Preamble of the EU Treaty is not followed by an equally outspoken reference in Art. 6 where only the ECHR is cited. The opposite is the case in Art. 136 of the EC Treaty. It cites the European Social Charter and the Community Charter but not the ECHR, despite the impact of fundamental rights, such as freedom of association, respect for private and family life, or freedom of expression, on employment relationships.

Moreover, the general references suggest that fundamental rights are put on the same level irrespective of the document they are defined in. But the main sources

of fundamental social rights, the European Social Charter and the Community Charter, are in fact only seen as a basis of Community policies. The result is, inevitably, the impression of a selective approach to fundamental rights implying an equally selective significance. Some of the rights are guaranteed the highest possible degree of protection, in part due to their justiciable character. Others, however, such as social rights, risk being relegated to the status of mere aspirations of both the European Union institutions and its Member States.

Although Art. 136 expressly and emphatically refers to the European Social Charter and to the Community Charter, one article later (Art. 137 (6)) the EC Treaty explicitly excludes the right of association, as well as the right to strike and the right to impose lock-outs, from the duty to support and complete the efforts of the Member States designed to implement the social policy aims defined in Art. 136.

In other words, the European Union is prevented from acting on its own to protect better those rights that traditionally belong to the core of social rights, and that over and over again have been affirmed by both national laws and international treaties. The seemingly general inclusion of social rights into the principles governing the policies and activities of the European Union is in fact only partial.

Finally, the restriction of the references to a few international documents raises questions as to the exact status of other Conventions, in particular those of the International Labour Organisation (ILO). While their importance in abstract terms may be undisputed, as long as they are not mentioned, both their role and their impact remain uncertain. This is all the more so given that the ECJ seems to distinguish between the ECHR and other Conventions. Whereas the first 'forms part' of Community law, the latter operate merely as guidelines for the interpretation and application of Community law.

In sum, the references may at first suggest a clear commitment to a set of specific rules. In reality, they neither delimit the applicable rules in a sufficiently precise way, nor do they secure an equal respect for all fundamental rights.

3. Fundamental rights are dealt with in a way that complicates and even imperils the role of the ECJ. The Court has not only stressed the importance of the ECHR but also repeatedly confirmed that the Convention is an essential element of Community law. The least that under these circumstances could have been expected at Amsterdam was therefore an amendment of the EC Treaty affirming the Court's position and simultaneously substituting the Court's abstract system of references by provisions permitting better discernment and delimitation of the rules that have to be considered in order to make certain the respect of fundamental rights.

Furthermore, the Court's role in the second and third pillars has not been sufficiently clarified. It could be argued that the predominantly intergovernmental character of the rules governing these two pillars implies that they do not directly impact on EU citizens. But as the example of Europol demonstrates, regulations adopted in the frame of both pillars do indeed profoundly impinge on the fundamental rights of individuals. To disregard the interplay of national and

supranational jurisdiction and, in particular, to deny the ECJ jurisdiction, not only hinders efficient protection in fields in which the ECJ must secure the respect of fundamental rights, as, for instance, in the case of the rules determining the use of personal data; it also counteracts the development of a common constitutional order of an 'ever closer union' of European peoples. Hence, if the European Union, in the interest of both its citizens and other persons within its jurisdiction, wants to ensure consistent application of the principles guiding its activities, the jurisdiction of the Court has to be defined in a way which guarantees rather than undermines this consistency.

IV. Recommendations

The role of the Amsterdam Treaty should certainly not be underestimated. It reiterates the commitment of the European Union to fundamental rights and invigorates the obligation to develop and implement policies securing protection of these rights. However, deficiencies and inconsistencies such as those just described cannot be ignored. On the contrary, their existence should intensify efforts to achieve explicit and unequivocal recognition of fundamental rights.

1. A comprehensive approach

Future reflections on fundamental rights should focus on their double function. Fundamental rights delineate the foundations of a society based on the elements mentioned in both the Preamble and Art. 6 (2) of the EU Treaty and, at the same time, guarantee the individuals' self-determination and chances of participation. The degree to which the European Union will be able to contribute to the establishment of a society corresponding to its aspirations depends essentially on the ability of its citizens to realise and exercise their fundamental rights. Therefore, the obligation to respect and implement fundamental rights, as already mentioned, cannot be split up. It is not only a primary duty of the European Union, but also a common responsibility of the Member States together with the Union, to make certain that fundamental rights are safeguarded irrespective of which matter or pillar is at stake.

In short, while the objectives pursued by the European Union may vary, the protection of fundamental rights must nevertheless be guaranteed. The European Union should therefore move to correct the present situation.

2. Range of application

Furthermore, the extension of the European Union's activities, as sanctioned by the Amsterdam Treaty, draws attention to the range of application of fundamental rights. Rights which were obviously connected with traditional EC issues, such as equality of sexes or the free movement of workers, were often perceived as rights of the EC citizens and therefore were addressed as an essential element of an EC citizenship. But, as the case of third country nationals illustrates, such a restriction is inconsistent with the universality of at least a substantial number of fundamental rights. Similarly, asylum-seekers cannot be exempted from the European Union's duty to respect fundamental rights.

The urgency of a clear reaction is underscored by the decisions of both the ECJ and the European Court of Human Rights. In this context, it can be noted that in 1997 the Commission proposed to extend some provisions of Regulation (EEC) 1408/71 on social security for migrant workers to nationals of third countries. Any further reflection on fundamental rights must address their scope of application as far as non-citizens of the EU are concerned.

The issue of ‘range of application’ also implicates the European Union’s external relations. A union that claims to be bound and guided in its internal policies by the duty to respect fundamental rights must, if its credibility is not to be challenged, consider those same rights as a leading principle in its external relations. This is a matter in which action has, of course, already taken place. Thus, for example, Art. 177 (2) of the EC Treaty explicitly states that Community policies in the area of development cooperation must contribute to respect of human rights. Also, a human rights clause is now a common element of agreements concluded between the Community and third countries.

3. Visibility

Fundamental rights can only fulfil their function if citizens are aware of their existence and conscious of the ability to enforce them. It is, consequently, crucial to express and present fundamental rights in a way that permits the individual to know and access them: fundamental rights must be visible.

Their current lack of visibility not only violates the principle of transparency, it also discredits the effort to create a ‘Europe of citizens’. Clearly ascertainable fundamental rights stimulate the readiness to accept the European Union and to identify with its growing intensification and expanding remit.

It could be argued that most fundamental rights can be found in national constitutions and international treaties, and that an explicit enumeration of these rights by the European Union would therefore add very little. This, however, does not justify a system of citations that conceals the fundamental rights and makes them thus incomprehensible to the individuals. Where rights are concerned, ways and means must be found to make them as visible as possible. This involves spelling rights out at the risk of repetition, rather than merely referring to them in general terms as contained in other documents.

4. Justiciability

Clear statements determining the fundamental rights are, however, not sufficient. In order for rights to have any real impact, those seeking to assert them within the European Union have to know who is exactly covered and whether the right is justiciable. Efficient safeguard of fundamental rights as a rule presupposes judicial protection. It is, however, important to note that justiciability can have different meanings in different contexts, as the example of ‘social rights’ demonstrates. Social rights can involve straightforward justiciable rights, as the case of non-discrimination illustrates, both in general and specifically with regard to the equality of sexes. Or, they can involve ‘rights’ that are in fact ‘fundamental policy purposes’, as, for instance, the demand for a life-long education, vocational guidance and training or the quest for health and safety in the working environment.

Both justiciable rights and fundamental policy purposes require the European Union, as well as national legislators, to provide the necessary framework for their implementation. This is certainly obvious where the EC Treaty, as in Art. 136 and 137 (1), expressly names policy objectives such as the information and

consultation of the workers, the improvement of the working environment to protect workers' health and safety, or the integration of persons excluded from the labour market. In each of these cases the significance of particular measures has, over and over again, been demonstrated by the adoption of relevant directives which transform abstract policy ends into concrete duties of legislators.

The same applies to the areas of discrimination referred to in Art. 13 of the EC Treaty. Once again the Treaty empowers the Community to seek and adopt rules to combat discrimination. Concrete measures, legislative or otherwise are now required to implement Article 13.

While judicial protection is undoubtedly a crucial element in safeguarding fundamental rights, it is by no means its only prerequisite. Legal remedies have to be complemented by legislative or administrative activities intended to implement and secure individual rights. As, for example, experience in the field of sex discrimination shows, equality of men and women can be achieved only by specific policies eliminating, in particular, the conditions of structural discrimination. Judicial protection and corrective action must be seen as part of one regulatory system which integrates both approaches. To dissociate them is to reduce the individual's chance of exercising his or her rights.

It is therefore vital to establish genuine justiciable rights that entail more than a passive obligation of non-violation. Therefore, both the justiciability and the obligation to ensure specific rights by supporting their application through a series of regulatory actions should be underscored. The best way of achieving this is probably to choose a wording that places a duty on the European Union to guarantee a given right.

5. Competence of the European Union and its Member States

As helpful as a rule affirming the obligation to guarantee fundamental rights is, it also exemplifies the limits of the European Union's efforts to recognise and safeguard these rights. It cannot be disputed that the European Union is perfectly competent to secure fundamental rights within the limits of its jurisdiction. To the extent that the European Union addresses matters covered by Community law it may hence use its regulatory powers to affirm and implement fundamental rights. In both the equality and the data protection field the Community linked its regulatory framework to the need to ensure the respect of fundamental rights.

Restricting the European Union's competence as regards fundamental rights contrasts with the paramount relevance of these rights. To combine their recognition with a proviso expressly restricting their application impairs the credibility of the commitment to fundamental rights. The readiness to respect and implement them risks remaining unconvincing as long as an equal degree of acceptance in fields not subject to Community law – either in the European Union's or the Member States' area – is not secured.

However, convincing as such an aspiration may appear, it should also be clear that a consistent protection of fundamental rights can be achieved only through a long and surely cumbersome process marked by the parallel existence of regu-

latory systems at the Union and the Member States level. The emphasis must therefore primarily lie in careful and persistent coordination with the help of common standards such as those developed in the context of the ECHR.

6. Role of the European Court of Justice – Relationship to the European Court of Human Rights

The quest for provisions explicitly defining fundamental rights must not obscure the role of the ECJ. It was the Court which first integrated the ECHR into Community law and it is also the Court which, regardless of the means chosen to articulate and affirm fundamental rights, will exert paramount influence on their future interpretation and application.

A text enabling individuals to ascertain their rights is imperative for affirming fundamental rights in the European Union. However, the living law will ultimately be determined by the decisions of the ECJ. The actual fragmented and partially unclear rules delineating its jurisdiction are deemed to prevent the ECJ from fully fulfilling its functions. Any attempt, however, to extend its competence must take into account the Court's relationship to the European Court of Human Rights.

In addressing this question, the context in which the ECJ renders its decisions should not be overlooked. It is outlined by the EU and the EC Treaties. The ECJ has against this background strengthened the protection of fundamental rights step by step. A coherent and efficient protection can be best achieved with full knowledge of the expectations and demands expressed in the Treaties.

Moreover, as the European Union undergoes far-reaching structural changes that underscore the significance of its commitment to fundamental rights, the more the need to secure protection consistent with the European Union's principles and aspirations will become evident. The growing impact of the second and third pillar and the example of Europol demonstrate how crucial the role of the ECJ is.

Therefore, the clearly independent jurisdictions of the ECJ and the ECHR should be maintained. As in the past, it must be up to the ECJ to carefully consider and integrate the decisions of the European Court of Human Rights into the law of the European Union, a practice which will assume increased importance after fundamental rights have been recognised in a more explicit and detailed way by the European Union.

There may, of course, be other ways to safeguard a coherent application of the principles developed by both Courts, and to ensure consistency in the development of fundamental rights at European level. One of the possible options is a system of references by which the ECJ could, similarly to the mechanism under Art. 234 of the EC Treaty, refer questions of interpretation to the European Court of Human Rights. A final appeal to the European Court of Human Rights could also be considered. Further discussion of either of these approaches would, at least for the moment, be inappropriate, not only in view of the considerable changes of the existing procedural structures which they would require, on the part of both the European Union and the Council of Europe, but primarily be-

cause of the particular context which determines the judicial resolution of conflicts concerning fundamental rights within the European Union. Informal cooperation between the ECJ and the ECHR jurisdictions, which has existed for many years, should, nevertheless, be continued and strengthened.

7. Organisational measures

As significant as the role of the ECJ is, efficient implementation of fundamental rights also depends on the establishment of other mechanisms designed to ensure the coherence of the European Union's fundamental rights policies and to control their application. The Amsterdam Treaty has already taken a first step in this direction. According to Art. 286 (2) of the EC Treaty, the processing of personal data by the various institutions and bodies of the European Union must be supervised by an independent control agency. The European Union has, in a field that directly implicates fundamental rights, acknowledged the need to install procedures which will enable the impact of rules securing these rights to be monitored and to detect and correct possible deficiencies in a timely fashion.

Art. 286 of the EC Treaty also demonstrates the fact that the European Union's commitment to fundamental rights does not concern any one institution or body. It impacts on all its activities. Mechanisms securing an internal coordination of fundamental rights' policies must therefore be provided for.

Experience shows, however, that the development of both credible and efficient fundamental rights policies depends to a decisive extent on continuous dialogue with those whose rights are to be guaranteed. Traditional interlocutors such as the social partners together with non-governmental organisations can, particularly in the area of fundamental rights, offer critical advice and also help to locate and identify areas of conflict.

For precisely the same reason, such a dialogue should not be confined to preliminary reflections only, but continued and intensified once fundamental rights have been expressly recognised and specific policies worked out. In other words, internal coordination must be complemented by procedures intended to establish a regular exchange of views and experiences with the social partners and non-governmental organisations.

8. Indivisibility

Any attempt to explicitly recognise fundamental rights must include both civil and social rights. To ignore their interdependence questions the protection of both. It is in this sense that their indivisibility has over and over again been affirmed. Their separation in part has historical reasons. It reflects the late 'discovery' of social rights, as compared to civil and political rights. The more the attention concentrated on specific aspects of social rights, the more they were perceived as a different type of right, that had to be treated differently.

As important as it was, especially in the early years of discussions on social rights, to understand and stress their special character, the separation from civil and political rights led increasingly to a binary classification of fundamental rights and legitimated long-standing attempts to grant social rights a distinct and clearly inferior status. The history of the European Communities offers many examples of the efforts to regard social rights as a group of rights with less relevance than traditional civil and political rights. The quest for 'indivisibility' counters all attempts to maintain the separation and to deny social rights the rank conceded to civil and political rights.

It should nevertheless be clear that 'indivisibility' does not imply a simple juxtaposition of social and civil rights. Equality of sexes or non-discrimination on grounds of age may have acquired a particular significance in the case of labour relationships. But both originated from the general equality principle and must, if their meaning and range are to be correctly appreciated, be seen and discussed against the background of the reflections and aspirations that guided the application of the equality principle. Similarly, the relevance of rules restricting the use of employee data and guaranteeing employees' privacy may be obvious, but they can be accurately formulated only in connection with an explicit recognition of individuals' right to determine the processing of their data. In short, there is, in the words of the European Court of Human Rights, no 'water-tight division' between civil and social rights.

'Indivisibility' therefore demands, first and foremost, a meticulous review of civil rights in order to address and incorporate matters traditionally dealt with in a closed category of social rights. Where adaptation and completion of civil rights is not possible, formulation of new rights will be needed, as is particularly the case with collective rights, such as the right to resort to collective actions.

Irrespective, however, of whether the recognition of social rights is effected by reinterpreting traditional civil rights, or by enlarging the list of fundamental rights, the inclusion of social rights does not fully cover fundamental social policies. All such policies must therefore, as in the past, be separately addressed as essential elements of the European Union's general policy goals.

9. The explicit recognition of fundamental rights: an open process

A comprehensive and thorough review of fundamental rights, so as to secure their best possible integration into the law of the European Union and take into account their function in a modern society would seem to be the most appropriate reaction to the foregoing considerations. The risk, however, of formulating a new and genuine Community-specific set of fundamental rights is considerable. Such an attempt would in fact reopen and prolong a debate that has already lasted far too long.

Both the arguments for a reformulation, and the possible content of the rights to be recognised, have by now been exhaustively discussed. Moreover, the far-reaching changes of the European Union, the expansion of its activities and not the least its growing international role in a globalised society, as stressed at the

beginning of this report, speak strongly against further adjournment of an explicit recognition of fundamental rights.

What, more than ever, is needed, is not new deliberation but a clear decision. Instead of concentrating all efforts on the formulation of a new Bill of Rights, the recognition of rights should build in particular on the ECHR, which has become, through the case law of its organs, a common European Bill of Rights.

This should, however, not be understood as an incitement to pick and choose only those rights that seem especially relevant to the European Union's own history and tasks. On the contrary, the acceptance of the ECHR must be guided by the fact that the European Union is in a process of structural modifications, as particularly illustrated by the increasing importance of the second and third pillar. Rights which, therefore, may at first appear to be perfectly alien to the European Union, may become increasingly significant, as more attention focuses on new aspects of the European Union, such as judicial and police cooperation in criminal matters.

The rights provided in Articles 2 to 13 of the ECHR should hence be incorporated in their entirety into Community law, together with the relevant rights in the Protocols to the ECHR. These are:

- the right to life;
- the prohibition of torture, inhuman or degrading treatment or punishment;
- the prohibition of slavery, servitude and forced or compulsory labour;
- the right to liberty and security;
- the right to a fair and public hearing by an independent and impartial tribunal;
- the right not to be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed;
- the right to respect for private and family life;
- the right to freedom of thought, conscience and religion;
- the right to freedom of expression;
- the right to freedom of peaceful assembly and to freedom of association;
- the right to marry and to found a family;
- the right to have an effective remedy in case of a violation of any of these rights and freedoms;
- the right to property;
- the right to vote; and
- the right to free movement.

Secondly, clauses detailing and complementing the ECHR must be added as it appears necessary. Among the most obvious examples are:

- the right to equality of opportunity and treatment, without any distinction such as race, colour, ethnic, national or social origin, culture or language, religion, conscience, belief, political opinion, sex, marital status, family responsibilities, sexual orientation, age or disability;
- the freedom of choice of occupation;
- the right to determine the use of personal data;
- the right to family reunion;
- the right to bargain collectively, and to resort to collective action in the event of a conflict of interests; and
- the right to information, consultation and participation, in respect of decisions affecting the interests of workers.

In some cases, this latter list extends rights already included in the ECHR or in the Protocols to the ECHR, for example non-discrimination and freedom of association. In other cases it enshrines rights long accepted as fundamental social rights.

In defining fundamental rights, other international human rights treaties should also be taken into consideration. Particular attention should also, in view of the social rights, be given to the conventions of the ILO, especially those on the freedom of association (Nos 87 and 98) and on the discrimination in employment relationships (No 111) as well as to the tripartite ILO Declaration on fundamental principles and rights at work adopted in June 1998.

The specification of fundamental rights is, however, only an intermediary act. It reflects the status quo but at the same time paves the way for further completion: the inclusion of rights addressing in particular, protection of the environment and the effects of a rapidly developing biotechnology on the individual's personal integrity and self-determination. Here the European Union should use the procedure followed in the case of the information and communication technology field, where broad discussion of the characteristics and consequences of the 'information society' took place in a special forum established by the Commission. This raised awareness for the need for rules safeguarding fundamental rights, and promoted a readiness to adopt required measures. Similarly, an equally intensive debate on the relevance and the repercussions of biotechnology should be initiated in order to discern and formulate the appropriate additions to the list of fundamental rights.

In sum, the recognition of fundamental rights must be understood as a process that in its first phase should lead to the enumeration of a set of rights incorporating and expanding the ECHR, but which, in particular against the background of the decisions of the ECJ and the European Court of Human Rights, should ultimately result in a reformulation of fundamental rights adapted to the experiences

V. Annex – Composition of the Expert Group

- **President: Spiros Simitis**
Professor of Civil and Labour Law, University of Frankfurt; Director of the Research Centre for Data Protection, University of Frankfurt
- **Christine Bell**
Director of the Centre for International and Comparative Human Rights Law, Queen's University of Belfast
- **Lammy Betten**
Professor of European Law; Director of the Centre for European Legal Studies, University of Exeter
- **Jochen A. Frowein**
Professor of Public Law, University of Heidelberg; Director of the Max-Planck-Institute for Comparative Public Law and International Law; former Vice-President of the European Commission of Human Rights
- **Pirkko K. Koskinen**
Former Professor of Labour Law, University of Lapland; Deputy Ombudsman from 1988 to 1995
- **Lorenzo Martin Retortillo**
Professor of Public Law; former Director of the Institute of Human Rights, Complutense University of Madrid
- **Alessandro Pizzorusso**
Professor of Constitutional Law, University of Pisa
- **Jean Rossetto**
Professor of Public Law; Director of GERCIE (Groupe d'études et de recherches sur la coopération internationale et européenne), Institute of European Law, University of Tours

European Commission

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Report of the Expert Group on Fundamental Rights**

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2000 OJ C54/93 Resolution on the Establishment of the Charter of Fundamental Rights

Thursday 16 September 1999

10. Area of freedom, security and justice**(a) B5-0110/1999****Resolution on the establishment of the Charter of Fundamental Rights***The European Parliament,*

- having regard to the conclusions of the Cologne European Council,
 - having regard to its proposals contained in its resolutions on the Constitution of the European Union in particular, and in its other resolutions of a general nature on institutional matters adopted in the course of its 1994-1999 term of office⁽¹⁾,
1. Welcomes the decision taken at the Cologne European Council to proceed with drawing up a draft European Union Charter of Fundamental Rights in good time for the December 2000 European Council;
 2. Considers that the commitment to establishing that Charter represents one of its constitutional priorities and entails the joint responsibilities of the two Institutions on which the Union's legitimacy is founded, viz: the Council (as regards the Member States) and the European Parliament (as regards the peoples of Europe);
 3. Draws attention to the need for an open and innovative approach to shaping the Charter, the nature of the rights to be featured in it, and the part it will play and the status it will command in the constitutional development of the Union;
 4. Calls, as regards the membership of the drafting authority and the organisation of its work;
 - for the number of the Members of the European Parliament to be equal to the number of the representatives of Member-State Heads of State and Government, in order to confer an equally high public profile on each side and to provide for adequate representation of the different political tendencies and sensitivities represented in the European Parliament;
 - for the essential role and contribution of national parliaments to be ensured by the most effective means possible, to be determined in the light of appropriate consultations with speakers of national parliaments;
 - for the powers of the President and the Bureau to be determined by the drafting authority;
 - for the latter to be empowered to decide on the option of convening a drafting committee and working parties;
 - for appropriate steps to be taken to ensure transparency of activities; for contributions from NGOs and the general public also to be ensured, and for public hearings to be held;
 - for the authority's secretariat to be the responsibility of the participating bodies;
 5. Instructs its President to forward this resolution to the Commission, the Council, the other Community Institutions and the governments and parliaments of the Member States.

⁽¹⁾ OJ C 120, 16.5.1989, p. 51; OJ C 324, 24.12.1990, p. 219 ; OJ C 61, 28.2.1994, p. 155.

(b) B5-0116/1999**Resolution on the extraordinary European Council meeting on the area of freedom, security and justice (Tampere, 15-16 October 1999)***The European Parliament,*

- having regard to the EU and EC Treaties, and in particular the provisions regarding the development of the Union as an area of freedom, security and justice (AFSJ),
- having regard to its previous resolutions on this subject⁽¹⁾,

⁽¹⁾ OJ C 219, 30.7.1999, pp. 5 and 6; OJ C 175, 21.6.1999, p. 4.

II.2. The Second Path – Accession to the European Convention on Human Rights

1979 OJ C127/70
Resolution on the accession
of the European Community
to the European Convention
on Human Rights

21. 5. 79

Official Journal of the European Communities

No C 127/69

MINUTES OF PROCEEDINGS OF THE SITTING OF FRIDAY, 27 APRIL 1979

IN THE CHAIR: MR MEINTZ

Vice-President

The sitting was opened at 9 a.m.

Approval of minutes

The minutes of the previous day's sitting were approved.

Procedure without report

Since no member had asked leave to speak and no amendments had been tabled to them, the President declared approved under the procedure without report laid down in Rule 27A of the Rules of Procedure the following Commission proposals, which had been announced at the sitting of Monday, 23 April 1979:

- proposal from the Commission of the European Communities to the Council for a Directive supplementing the Annex to Directive 76/769/EEC on the approximation of the laws, regulations and administrative provisions of the Member States relating to restrictions on the marketing and use of certain dangerous substances and preparations (Doc. 16/79);
- proposal from the Commission of the European Communities to the Council for a Regulation opening, allocating and providing for the

administration of Community tariff quotas for certain wines having a registered designation of origin, falling within subheading ex 22.05 C of the Common Customs Tariff and originating in Algeria (1979 to 1980) — (Doc. 41/79);

- proposal from the Commission of the European Communities to the Council for a Directive amending for the second time the Annex to Directive 76/769/EEC on the approximation of the laws, regulations and administrative provisions of the Member States relating to restrictions on the marketing and use of certain dangerous substances and preparations (Doc. 49/79).

Accession by the Community to the European Convention on Human Rights (vote)

Parliament then voted on the motion for a resolution contained in the report by Mr Scelba (Doc. 80/79); the preamble and paragraph 1 were adopted.

On paragraph 2, Mr Scott-Hopkins had tabled amendment No 1 seeking to replace this paragraph by a new text.

Mr Santer, deputizing for the rapporteur, spoke.

Amendment No 1 was adopted.

Paragraphs 3 to 5 were adopted.

Parliament adopted the following resolution:

RESOLUTION

on the accession of the European Community to the European Convention on Human Rights

The European Parliament,

- having regard to its resolution of 13 April 1978 on the legal policy of the European Community ⁽¹⁾,
- having regard to the progress achieved at the round table convened by it from 26 to 28 October 1978 in Florence,
- having regard to the need, in the run-up to the elections to the European Parliament by direct universal suffrage, to make clear to the Community citizen that his rights in the Community must be strengthened and in what way this is to be done,

⁽¹⁾ OJ No C 108, 8. 5. 1978, p. 42.

- having regard to the resolution it adopted on 16 November 1977 in which it called for the Convention in question to be implemented under Community law ⁽¹⁾,
 - having regard to the motion for a resolution tabled by Mr Bayerl, Mr Calewaert, Mr Pisani, Mr Dondelinger, Mr Albertini, Mr Sieglerschmidt, Mr Holst and Lord Ardwick on behalf of the Socialist Group and Mr Bangemann on behalf of the Liberal and Democratic Group on the accession of the European Community to the European Convention on Human Rights (Doc. 509/78),
 - having regard to the report of the Political Affairs Committee (Doc. 80/79), and the opinion of the Legal Affairs Committee,
1. Is in favour of the accession of the European Community to the European Convention on Human Rights;
 2. Envisages the establishment of a Committee of Experts with a view to drafting a European Charter of Civil Rights;
 3. Calls on the Council and Commission, in close cooperation with the European Parliament:
 - (a) to make immediate preparations for the accession of the European Community to the European Convention on Human Rights,
 - (b) to enshrine the citizen's right of petition in the Community Treaties, and
 - (c) to guarantee in the Treaties the individual's right of direct appeal to the Court of Justice of the European Community;
 4. Instructs its appropriate committees to submit a report on this matter as soon as possible;
 5. Requests its President to forward this resolution to the Council and Commission.

(1) OJ No C 299, 12. 12. 1977, p. 26.

Expulsion from Malta of Mr von Hassel (vote)

Parliament then voted on the motion for a resolution contained in the Johnston report (Doc. 584/78); the first indent of the preamble was adopted.

On the second indent of the preamble, Mr Radoux, Mr Seefeld and Mr Cunningham had tabled on behalf of the Socialist Group amendment No 1 seeking to modify this indent.

Amendment No 1 was adopted.

Parliament adopted the second indent thus amended and then the third indent of the preamble.

On paragraph 1, Mr Radoux, Mr Seefeld and Mr Cunningham had tabled on behalf of the Socialist Group amendment No 2 seeking to replace this paragraph by four new paragraphs.

Amendment No 2 was adopted.

On paragraph 2, Mr Radoux, Mr Seefeld and Mr Cunningham had tabled on behalf of the Socialist Group amendment No 3 seeking to amend this paragraph.

Amendment No 3 was adopted.

Parliament adopted paragraph 2 thus modified and then paragraph 3.

Since the result of the show of hands was doubtful, Parliament took a fresh vote by sitting and standing and rejected the motion for a resolution.

Decision introducing a Community system of information on accidents (vote)

Parliament adopted the resolution contained in the Cassanmagnago Ceretti report (Doc. 40/79):

COM (79) 210
Memorandum on the accession
of the European Communities
to the Convention for
the Protection of Human Rights
and Fundamental Freedoms

Bulletin

OF THE EUROPEAN
COMMUNITIES



Supplement 2/79

Accession of the Communities to the European Convention on Human Rights

Commission Memorandum

Commission
of the European Communities

Bulletin
of the European Communities

Supplement 2/79

Memorandum on the accession
of the European Communities
to the Convention
for the Protection of Human Rights
and Fundamental Freedoms

(adopted by the Commission on 4 April 1979)

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Introduction

The European Community has an increasing number of direct legal relations with individuals. Its activities no longer only concern a certain number of economic categories — such as farmers or professional importers and exporters — but also each individual citizen. It is, therefore, not surprising to see today a demand expressed for the powers which belong to the Community to be counterbalanced by their formal subjection to clear and well-defined fundamental rights.

The Commission believes that the best way of replying to the need to reinforce the protection of fundamental rights at Community level, at the present stage, consists in the Community formally adhering to the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 (hereafter referred to as ‘the European Convention on Human Rights’ or ‘ECHR’). The Commission in proposing this, does not disregard the fact that, in the longer term, the Community should endeavour to complete the Treaties by a catalogue of fundamental rights specially adapted to the exercise of its powers. It does not, however, appear possible to achieve this objective in the short term because of the differences of opinion which exist between the Member States on the definition of economic and social rights. In order to reinforce the legal protection of the citizens of the Community immediately and in the most efficient manner possible, one should rely, in the first place, on the fundamental rights inscribed in the ECHR. In other words, the Community should adhere as soon as possible to this Convention and to the protection mechanisms which it contains. The elaboration of a catalogue for the Community itself would in no way be held up. Accession to the ECHR would constitute on the contrary a first step in the direction of that objective.

The memorandum reaches the conclusion that the accession of the European Community to the ECHR seems desirable for a whole series of reasons. None of the difficulties which have appeared in this context seems insurmountable. Given the dimension of the action to be undertaken and its complexity, the Commission considers it necessary, before setting in motion the appropriate institutional mechanisms, to encourage as profound a discussion as possible with all interested bodies on the basis of this memorandum.

Part One

General remarks

The protection of human rights and the Member States

1. For more than two centuries the history of Europe has been characterized by constant efforts to improve the protection of fundamental rights. Founded on the human and civil rights declarations of the eighteenth century, all European constitutions today contain an established body of inviolable fundamental rights and freedoms. This is particularly true of the Member States of the European Communities. In contrast to the constitutions of some East European countries, the constitutional orders of all Member States not only recognize essentially the same body of fundamental freedoms, but also provide for the judicial enforcement of such rights in the event of violations. All Member States, aware of their common heritage of ideas and political traditions, have, moreover, become parties to international conventions on human rights; in particular, they have without exception become parties to the European Convention on Human Rights.

The question of the protection of human rights has become increasingly topical in the last few years. High-level national and European Courts have delivered important judgments on the safeguarding of these rights. In France, the Cour de Cassation recently recognized, in a fundamental judgment, the validity in national law of the European Convention on Human Rights.¹ In the United Kingdom, a Bill of Rights is envisaged and in Belgium and the Netherlands also consideration is being given to improving the protection of fundamental rights against violations by the legislature. At the Helsinki Conference, the protection of human rights was the most important demand made by the Western States; the final act of that conference has awakened expectations in the Eastern bloc countries with regard to the granting of greater freedom.

2. As far as the European Communities in particular are concerned, their Member States

already declared when concluding the Treaty establishing the European Economic Community that the ultimate aim of the pooling of their economic resources was to preserve peace and liberty. The guarantee of a body of fundamental rights and the existence of a democratic pluralist regime are among the essential features of the declaration of the Nine on 'European Identity' adopted in Copenhagen in 1973 and according to which 'they are determined to defend the principles of representative democracy, the rule of law, social justice — the ultimate goal of economic progress — and respect for human rights. All of these constitute fundamental elements of European Identity'. Both elements also played a central role in determining the attitude of the Community towards European countries wishing to become members. The Heads of State or Government solemnly declared at the European Council meeting of 8 April 1978 'that respect for and maintenance of representative democracy and human rights in each Member State are essential elements of membership of the European Communities'.²

The protection of human rights and the Community

3. The Treaties of Paris and Rome are designed primarily as instruments of economic integration, and probably for this reason, but perhaps also on account of the restricted powers accorded to the Community institutions, do not include for the Community its own catalogue of fundamental rights. Nevertheless, the Court of Justice had to deal at a relatively early stage with complaints in which it was maintained that a particular Community act violated a fundamental right guaranteed by the constitution of a Member State. In its desire for uniform application of Community law, the Court of Justice contented itself in the initial stages of its case law by declaring in regard to such complaints that it was not one of its tasks to ensure that national rules of a Member State were observed, even where such rules were of a

¹ Cour de Cassation, Judgment of 5 December 1978 in criminal proceedings against Chérif Baroum.

² Bull. EC 3-1978, Preliminary Chapter.

constitutional nature.¹ Only from the end of the 1960s could an evolution be discerned in the decisions of the Court. In two judgments of principle, in 1969 and 1970, it ruled that respect for fundamental rights formed an integral part of the general principles of law, the observance of which the Court had to ensure. The protection of these rights, while inspired by the constitutional traditions common to the Member States, had nevertheless to be ensured within the framework of the Community's structure and objectives.²

In subsequent decisions the Court of Justice has specified the criteria according to which it intends to ensure the protection of fundamental rights at Community level, declaring that 'it could not accept measures incompatible with fundamental rights recognized and protected by the constitutions' of Member States.

4. The Court of Justice also stated that 'similarly, international treaties for the protection of human rights, on which the Member States have collaborated or of which they are signatories, can supply guidelines which should be followed within the framework of Community law'.³

This case law of the Court, through which a whole series of fundamental rights and general principles of law have been subsequently recognized as essential elements of the Community legal order,⁴ has been highly praised throughout the Community. The political institutions of the Community supported it in their Joint Declaration on fundamental rights of 5 April 1977⁵ and have repeatedly stressed the prime importance they attach to the method adopted by the Court for developing a means of protection of fundamental rights which is specifically adapted to the requirements of the Community.

5. Nonetheless, however satisfactory and worthy of approval the method developed by the Court may be, it cannot rectify at least one of the shortcomings affecting the legal order of the Communities through the lack of a written catalogue of fundamental rights: the impossibility of knowing in advance which are the liberties which may not be infringed by the Community institutions under any circumstances. The European citizen has a legitimate interest in having

his rights *vis-à-vis* the Community laid down in advance. He must be able to assess the prospects of any possible legal dispute from the outset and therefore have at his disposal clearly defined criteria. The fact that judgments which operate only *ex post facto* cannot fully satisfy this requirement of legal certainty is inevitable in the nature of things and in no way implies criticism of the Court's approach.

The decision by the German Federal Constitutional Court, in its judgment of 29 May 1974,⁶ that, so long as there existed no Community catalogue of fundamental rights corresponding to the German Constitution, it was entitled to decide upon the validity of legal acts of the Community — even where these had previously been declared lawful by the Court of Justice — in the light of the fundamental rights laid down in the German Constitution, is certainly incompatible with the principle of exclusive power of review by the Court of Justice and of the unity of Community law, but also demonstrates that at least some of the highest courts in the Member States consider it necessary to bind the Community to a written text.

The Italian Constitutional Court did not go quite so far in its Judgment No 183/1973⁷ but did none the less suggest a similar concern.

The European Parliament and a majority of writers on the subject have, like the Commission, criticized the decision of the German Federal Constitutional Court. Nevertheless, there has recently been increasing support for the idea of a written

¹ CJEC 4. 2. 1959 (Case 1/58 Stork v High Authority [1959] ECR 17); CJEC 17. 5. 1960 (Cases 36-38 and 40/59 Ruhrkohlenverkaufsgesellschaften v High Authority [1960] ECR 423).

² CJEC 12. 11. 1969 (Case 29/69 Stauder v City of Ulm [1969] ECR 419); CJEC 17. 12. 1970 (Case 11/70 Internationale Handelsgesellschaft [1970] ECR 1125).

³ CJEC 14. 5. 1974 (Case 4/73 Nold v Commission [1974] ECR 491); CJEC 28. 10. 1975 (Case 36/75 Rutili v French Minister of the Interior [1975] ECR 1219).

⁴ Commission report of 4 February 1976 on the protection of fundamental rights in the European Community — Supplement 5/76 — Bull. EC.

⁵ OJ C 103 of 27. 3. 1977.

⁶ BVerfGE 37, 271.

⁷ Judgment of 27 December 1973 — Case 183/73 — Frontini and associates, *Giurisprudenza Costituzionale*, 1973, 2406; *Foro Italiano*, 1974, I, 315; *Giurisprudenza Italiana*, 1974, I, 1, 865.

catalogue of fundamental rights for the Community.

The advantages of such a catalogue are not contested by the Commission, but it is clear that the process of drawing it up will be a long and exacting task. If it were undertaken too hastily, there is the fear that it would bring to light differences between the Member States particularly with regard to economic and social rights, and that agreement would be possible only on the basis of the lowest common denominator.¹ This would represent a retrograde step compared with the level guaranteed by the Court of Justice of the European Communities.

6. As a way out of these difficulties, the suggestion of accession to the ECHR has been put forward from various sides, and in particular on the occasion of a symposium organized by the European Parliament in October 1978 in Florence.²

In its Report of 4 February 1976 to the European Parliament, the Commission declared that in its view the Community was already obliged to observe the human rights embodied in the ECHR on the basis of the decisions of the Court, but it did not consider it necessary for the Community formally to accede to this Convention.³ Closer consideration has recently revealed more clearly to the Commission the disadvantages which arise from the lack of a written catalogue both for the image of the Community in general and for the protection of the rights of the European citizen. As a result, the Commission has reconsidered its position. It has considered the legal and technical problems which would be posed by the accession of the Community to the ECHR and it has come to the conclusion that there are no obstacles to such a step that cannot be overcome.

7. After a thorough examination of all the arguments, the Commission now recommends the formal accession of the Community to the ECHR. The decisive factor in its view is that the ECHR and the protection of fundamental rights ensured by the Court of Justice of the European Communities essentially have the same aim, namely the protection of a heritage of fundamental and human rights considered inalienable by those

European States organized on a democratic basis. The protection of this Western European heritage should ultimately be uniform and accordingly assigned, as regards the Community also, to those bodies set up specifically for this purpose.

The Commission is aware that the accession of the European Communities to the ECHR will give rise to not inconsiderable difficulties on account of the Communities' particular structure. Before it submits appropriate proposals to the Council, therefore, it has considered it expedient to launch a discussion on the results of its examination by means of this memorandum in accordance with the announcement made by its President to the European Parliament on 16 November 1978.

8. It should be clearly stated from the outset that accession of the European Communities to the ECHR does not form an obstacle to the preparation of a special Community catalogue, nor does it prevent in any way the Court of Justice of the European Communities from further developing its exemplary case law on the protection of fundamental rights, which has always been welcomed by the Commission. As Article 60 thereof clearly shows, the ECHR is only a minimum code and thus in no way prevents its contracting parties from developing a more extensive protection of fundamental rights. The Court of Justice will therefore remain free not only to apply the method which it has developed for the Community with a view to defining economic and social fundamental rights, which are barely touched upon in the ECHR, but also where specific needs dictate, to go beyond the rights contained in the ECHR.

It should also be pointed out that accession to the ECHR does not imply any extension of the powers of the Community with regard to the protection of fundamental rights, and that it is in no way the intention of this memorandum to advocate the extension of the powers of the Community

¹ It should be pointed out in this connection that the first attempts to incorporate economic and social rights in the European Convention on Human Rights were not a striking success.

² See Resolution of the European Parliament of 27. 4. 1979; OJ C 127 of 21. 5. 1979.

³ Supplement 5/76 — Bull. EC, point 28.

vis-à-vis the Member States to cover fundamental rights which are not within the scope of the Community.

The European Convention on Human Rights and its mode of operation

9. Drawn up within the Council of Europe, the European Convention on Human Rights was signed on 4 November 1950 and came into force on 3 September 1953. Five protocols were adopted later.

The ECHR has been signed by all members of the Council of Europe, that is to say all nine Member States of the Community, plus Austria, Cyprus, Greece, Iceland, Malta, Norway, Portugal, Sweden, Switzerland and Turkey and recently Spain and Liechtenstein also. With the exception of Spain and Liechtenstein, all these States have also ratified the Convention.¹

The European Convention on Human Rights represents a collective guarantee at a European level of a number of principles set out in the Universal Declaration of Human Rights, supported by international judicial machinery making decisions which must be respected by contracting States. This collective and international guarantee is not a substitute for national guarantees of fundamental rights, but is supplementary to them. Proceedings under the Convention involve three bodies: the European Commission of Human Rights, the European Court of Human Rights and the Committee of Ministers of the Council of Europe.

- The European Commission of Human Rights has mainly a mission of inquiry and conciliation. If no friendly settlement has been reached on the basis of respect for human rights, the Commission formulates a legal opinion. The Commission consists of a number of members equal to the number of contracting parties. These members are elected by the Committee of Ministers by absolute majority from a list of names drawn up by the Bureau of the Consultative Assembly of the Council of Europe; the election is based on proposals made by each group of representatives in the Consultative Assembly. The members, who are

elected for a period of six years, sit in the Commission in their individual capacity, which ensures genuine independence. The Commission may deal both with applications submitted by a contracting party (Article 24) and with complaints made by a person, non-governmental organization or group of individuals (Article 25); the latter provision applies, however, only in so far as the State complained of has expressly recognized the right of individuals to submit applications.²

The Commission decides first on the admissibility of applications. If an application is declared admissible and no friendly settlement can be achieved between the parties, the Commission draws up a report which includes in particular its opinion as to whether there is a breach of the ECHR. The case may then be referred to the Court within three months, although only the State making the application or the State complained of, the State of whom the person concerned is a national or the Commission of Human Rights itself are empowered to do this. If the case is not referred to the Court, the Committee of Ministers has to take a decision.

- The European Court of Human Rights is competent to take a judicial decision which is binding on the parties to the action on whether in a given case the Convention has or has not been violated by a contracting State. The Court consists of a number of independent judges equal to that of the Members of the Council of Europe. They are elected by the Consultative Assembly from a list of candidates submitted by the Member States; each Member State may nominate three candidates, of whom two at least must be its own nationals. The judges are elected for a period of nine years.

The Court is competent only if its jurisdiction has been recognized by the contracting parties concerned (Article 46).³ The Commission or one of the contracting parties may refer a case to the

¹ It should be noted however that France has not signed the additional Protocol No 2 and that Italy and the United Kingdom have not yet ratified Protocol No 4.

² France, Cyprus, Greece, Malta and Turkey have not so far permitted individual applications.

³ With the exception of Malta and Turkey all members of the Council of Europe have accepted the compulsory jurisdiction of the Court. Spain and Liechtenstein have not yet adopted a position on this point.

Court, but not an individual applicant (Articles 44 and 48). It decides on the case in question by means of a judgment which is final and may award compensation to the injured party.

- If the case has not been referred to the Court within three months of the submission of the Commission's Report, the Committee of Ministers decides by a two-thirds majority whether there has been a violation of the ECHR; at the same time it prescribes a period during which the State concerned must take the necessary measures. If that State does not take satisfactory measures, the Committee of Ministers has to decide 'what effect shall be given' to its original decision. The ECHR contains no provisions on how this should be done; it mentions as a form of sanction only publication of the Commission's report (Article 32 (3)). Many observers consider these quasi-judicial powers to be extremely unsatisfactory on account of the political nature of the Committee of Ministers.

The relationship of the Community to the Convention on Human Rights on the basis of the present legal position

10. Since 1974, all the Member States of the Community have been contracting parties to the ECHR, which has led the Court of Justice of the European Communities to derive guidelines for the constitutional traditions common to the Member States from the fundamental rights embodied in the ECHR; in other words to use the ECHR indirectly as an indicator of the standard existing at Community level in the field of fundamental rights. Although the Court has hitherto avoided speaking of the Community being directly bound by the catalogue in the ECHR, there are good reasons for considering this already to be the case. On the one hand the ECHR represents a minimum standard of the 'general principles of law' protected by the Court of Justice. On the other, it is arguable that the Community, in so far as powers have been assigned to it by the Member States, is already bound, on the basis of the principle of substitution, by the substantive provisions of the Convention on Human Rights by reason of the original obligation of the Member States.

11. Since the Community is not a contracting party to the ECHR, it seems impossible for it to be made the direct object of an application by a State or individual. Nevertheless, the possibility that certain legal acts of the Community could be made the subject of proceedings before the Commission of Human Rights or the Court of Human Rights cannot be dismissed *a priori*. Applicants might be above all non-member countries, which have no access to the Court of Justice of the European Communities and natural or legal persons who have lost their case in proceedings before the latter. This last possibility materialized recently; an employees' association sought to incriminate all the Member States together concerning a decision of the Council refusing it the right to be represented in the Consultative Committee set up by the ECSC Treaty. Admittedly this application was dismissed by the Commission of Human Rights on 10 July 1978 as inadmissible, but only on grounds relating to the particular circumstances of that case. At this stage the possibility cannot be excluded that the European Commission of Human Rights or the Court in Strasbourg will one day take a different view of the question of the collective responsibility of the Member States, having regard in particular to the consequences which the transfer of powers of the Member States to the Community implies.

12. The danger that Community acts will be made subject to control by the Strasbourg authorities without the Community having appropriate means to defend itself is evident particularly in those cases in which the Member States incorporate into national law obligations under Community law without having any discretionary powers of their own. A human rights complaint would be directed in such cases against a specific Member State and as such would therefore be perfectly admissible. The object of the complaint would then be, however, disregarding the possibility of any additional provisions not specifically required under Community law, the Community rule behind the national act. The situation with such implementing acts is particularly unsatisfactory inasmuch as the Member State would certainly be unable to rely on the defence that it was merely fulfilling an obligation under Community law, while the Community, the party ultimately responsible,

would, for its part, have no opportunity to reply to the complaints against it.

13. Thus, the Community runs the risk under the present legal position that its legal acts could be controlled by the Strasbourg authorities as to their compatibility with the ECHR, without having appropriate means to defend the Community position, while the Member States could possibly be prevented from applying those acts.

Part Two

Pros and cons

Arguments in favour of accession

The arguments in favour of the Community becoming a party to the ECHR may be summarized as follows:

Improving the image of Europe as an area of freedom and democracy

14. Accession to the ECHR would make a substantial contribution to the strengthening of democratic beliefs and freedom both within and beyond the free world. Even more than the Joint Declaration by the three political institutions¹ of 5 April 1977 on the protection of fundamental rights,² it would make clear to the whole world that the Community does not merely make political declarations of intent but is determined to improve in real terms the protection of human rights by binding itself to a written catalogue of fundamental freedoms.

The accession of the Community to the ECHR is completely in line with the declaration made by the European Council on democracy on 8 April 1978; in this declaration it was solemnly stated 'that respect for and maintenance of representative democracy and human rights in each Member State are essential elements of membership of the European Communities'. If respect for human rights is for a State an essential condition of membership of the Community, then it is only logical to bind the Communities themselves to respect such rights.

The accession of the Community to the ECHR would give increased significance to the Copenhagen declaration and would allow the Community to ensure the respect of the legal, political and moral values to which it is attached.

¹ Parliament, Council and Commission.

² OJ C 103 of 27. 4. 1977.

Strengthening the protection of fundamental rights in the Community

15. Accession of the Community to the ECHR would clarify the position of its legal acts in relation to the ECHR and give them a satisfactory status; for it is more logical to enable a complaint for violation of fundamental rights to be made directly against such acts under the conditions laid down in the ECHR rather than merely by means of an attack upon the relevant implementing measures taken by the Member States; this would then make possible genuine adversary proceedings in which the Community itself could participate. The accession of the Community to the ECHR would moreover restore the legal position in which the nationals of Member States found themselves before the transfer of certain powers to the Community.

Accession would at least partly satisfy the demand, voiced for some time, that a written catalogue of fundamental rights, binding on the Community, should be established. It is true that the rights contained in the Convention and in the additional Protocols do not cover all the fundamental rights which might possibly be pertinent to the activities of the Community. The majority of these rights are nevertheless important for the Community also. These rights will be guaranteed by a written legal act providing clear criteria known beforehand by individuals and the institutions.

Strengthening of institutions

16. Accession of the Community to an international mechanism of legal control would underline its own personality.

Accession to the Convention would enable the Community, when confronted with criticism concerning the gaps which exist as regards fundamental rights, to point not only to the very progressive case law of the Court of Justice, but also to its formal commitments within the ECHR. The Community would show its willingness to meet all objections calling into question the compatibility of its acts with fundamental rights.

Finally, accession would reduce the risk of national courts using the absence of a written catalogue of

fundamental rights formally binding upon the Community as justification for reviewing acts of the Council or the Commission by reference to their national constitutions, and possibly declaring them inapplicable in the light of those constitutions, thus violating the principle of the uniformity of Community law.

Arguments against accession

Need for own catalogue of rights

17. It has been contended that the fundamental rights contained in the ECHR are not relevant for the Community and that, accordingly, the idea of accession can serve only as an alibi for failure to tackle the real problem: the preparation and adoption of a catalogue specially adapted to the requirements of the Community.

The catalogue in the ECHR is by no means irrelevant to the Community's needs¹ but at the same time it cannot be said to be adapted to the requirements of the Community on all points. On this matter, however, it has already been pointed out in the introduction that the chances of agreeing, within a reasonable period of time, on a catalogue specifically designed for the Community, in particular as regards economic and social rights, remain slight. The Community should therefore adhere to the Convention with the intention of working actively to enlarge and reinforce the human rights enshrined therein.

As has already been pointed out above, the accession of the Community to the ECHR in no way precludes the eventual preparation of a specific Community catalogue going beyond what is required by the Convention.

The Community and the rights set out in the Convention

18. It is correct that the ECHR is concerned more with the traditional freedoms than with the economic and social rights which are more

¹ Point 18.

relevant to the Community. Nevertheless, the traditional freedoms are also important for the Community and, furthermore, the Convention and its additional protocols do contain a number of economic and social rights. In terms of potential significance, the most important probably are the right to respect for private and family life, home and correspondence (Article 8). These rights could be of significance not only in connection with rules on competition and prices, but also in relation to provisions which restrict unreasonably the right of migrant workers and members of their family to live together. As regards freedom of religion and association, there are already pertinent examples in the case law of the Court¹ and not much imagination is needed to see that problems could also arise with regard to the general freedom to hold opinions and to receive and impart information and ideas (Article 10). Article 10 could play a role in connection with both competition law and rules on the movement of goods; moreover, it has a not inconsiderable bearing on the relationship of the Community and its employees.

The procedural guarantees provided for in Article 6 could be relevant to the procedures by which the Community imposes sanctions. Moreover, just as it has already been faced with the *ne bis in idem*² problem, the Community could equally one day find itself confronted with the *nulla poena sine lege* rule embodied in Article 7 of the ECHR.

The right to form any type of peaceful association or trade union (Article 11) is without doubt an economic fundamental right of considerable significance. The first Additional Protocol concerns the protection of property and the right to education; the latter has become of concern to the Community in Cases 9/74³ and 68/74⁴ in connection with the equal treatment of the children of migrant workers. Finally, there are embodied in the fourth Additional Protocol rights concerning the free movement of persons which are of particular significance for the activities of the Community.

The often heard claim that the ECHR is only of marginal interest for the activities of the Community therefore appears, all things considered, to be incorrect. Moreover, in the

future, it cannot be excluded that initiatives may be taken to strengthen the position of the European citizen in the field of economic and social rights.

Problems involved in fulfilling the obligations arising from the Convention

19. It has also been maintained that, from the point of view both of the substance of the rights it contains and of the procedures it provides for, the ECHR is clearly intended for participation by sovereign States and that certain of the obligations which it imposes could not be fulfilled by the Community in its present form.

20. It is true that both in the way that it is drafted and in its origins, the ECHR is intended for participation only by sovereign States. Provisions such as Articles 10, 11, 17, 28, 30, 31 or 64, which use the term 'State' (which, however, is used in the Convention merely as a synonym for the term 'High Contracting Party') cannot be applied directly to international organizations. From a legal and political point of view, however, the Commission considers that this is no more of an obstacle than the terms 'national security' or 'economic well-being of the country', which are used in Articles 8 to 11 as a criterion for the limitation of certain freedoms by the legislature. The need to restrict certain fundamental rights on grounds of a superior common interest applies in principle to the Community just as it does to the contracting States. Therefore it should be sufficient to lay down in an accession protocol (still to be negotiated) that the Convention, when it uses terms relating specifically to States, also applies *mutatis mutandis* to the European Communities.

21. One must take into account the objection that the Community is not a sovereign State and

¹ CJEC 27. 10. 1976 (Case 130/75 Prais v Council [1976] ECR 1589); CJEC 28. 10. 1975 (Case 36/75 Rutli v French Minister for the Interior [1975] ECR 1219).

² CJEC 14. 2. 1972 (Case 7/79 Boehringer v Commission [1972] ECR 1281).

³ CJEC 3. 7. 1974 (Case 9/74 Casagrande v Landeshauptstadt München [1974] ECR 773).

⁴ CJEC 29. 1. 1975 (Case 68/74 Alaimo v Préfet du Rhône [1975] ECR 109).

for this reason could not fully exercise the procedural rights embodied in the ECHR. In view of the necessarily limited powers of the Community in comparison with those of States, it must indeed be asked whether it is right for the Community to seek full and equal membership in all respects. In the Commission's view, accession must serve to extend the range of legal remedies available in the event of violations of fundamental rights by the Community. In other words, any person who, under the ECHR, has a right to bring proceedings before one of the organs of the Convention should also be entitled, under the conditions laid down in the Convention, to have legal acts of the Community examined as to their compatibility with the fundamental rights embodied therein.

As regards the active right to refer cases in accordance with Articles 24 and 48 b, c, d, of the ECHR, however, one must ask whether the Community should acquire these rights. One should at least admit that the Community should be able to exercise such rights in those cases concerning violations of fundamental rights by a State which is not a member of the Community and where the violation has a specific connection with the powers transferred to the Community. Where it is a question of violations of fundamental rights by its Member States which are specifically related to Community law, the Community in any event possesses adequate means of action, under the Treaties' infringement procedures.

Another question is whether the Community should also refrain from participating in the work of the organs of the Convention where the matter in question is of a non-Community nature.¹

22. It has also been claimed that the Community in its present constitutional form could not execute various obligations arising from the ECHR, for example, the effective remedy requirements of Article 13 and the holding of elections at reasonable intervals with a view to the choice of the legislature (Article 3 of the first Additional Protocol).

● It is true that the Treaties provide for no direct remedies against legal acts which are addressed to an unspecified number of persons. Nevertheless,

Article 13 of the ECHR has never previously been interpreted as meaning that in the event of a violation of one of the rights embodied in the ECHR a judicial remedy must exist against every act, including legislative acts. The wording of Article 13 requires an effective remedy before a national authority. As the Court of Human Rights decided in the *Golder*² and *Klass*³ cases, among others, it need not necessarily be a judicial authority.

The possibility of an effective remedy is sufficient, particularly, in the form of the possibility of presenting counter arguments either to the same authority or to a supervisory one. One must, of course, rely on the totality of the remedies available.

If in this connection one takes into consideration the indirect remedies available to any citizen affected by a legislative act of the Community, such as the examination of such acts by means of proceedings under Articles 177 and 184 of the EEC Treaty and by way of the claim for compensation under Article 178 and the second paragraph of Article 215 of the EEC Treaty, no obstacles to accession should arise from Article 13 of the ECHR. It should moreover be pointed out that the legal orders of a considerable number of States which have signed the ECHR do not provide for direct remedies against legislative acts. Nevertheless, none of those States has considered it necessary to enter a reservation in relation to Article 13.

● As regards Article 3 of the first Additional Protocol, according to which the contracting parties are obliged 'to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature', one may question whether this provision is satisfied by the Community. In this respect, it must be pointed out that the text of Article 3 does not require the election of the legislative body by direct universal suffrage.

¹ Point 33.

² Judgment of 21. 2. 1975, Yearbook of the European Convention on Human Rights 1975, p. 291 *et seq.*

³ Judgment of 6. 9. 1978.

Moreover, apart from the special nature of the legislative process in the Community, there is no doubt that the choice of the Members of the Council of the Communities reflects the results of free elections ensuring the free expression of the opinions of the citizens of the Member States. In any case, if there are doubts, it would be possible to enter a reservation in this respect, on signing the accession protocol or at the moment of depositing the instrument of ratification, to the effect that the accession of the Community to the ECHR does not affect its present institutional structure. Such reservations are possible under Article 64 of the ECHR and have been made with regard to various provisions of the Convention by almost all signatory States.

- Finally, reference should be made to the problems which, in this context, might arise for the Community from Article 14 of the ECHR. Under this provision the enjoyment of the rights and freedoms set forth in the Convention must be 'secured without discrimination', in particular discrimination on grounds of national origin. In order to avoid possible objections against the preferential treatment which is accorded to nationals of the Member States and which is inherent to the nature of the Community, a clarification would probably be necessary in respect of Article 14 of the ECHR.

Risk of disrupting the jurisdictional system

23. It is sometimes argued that it would be unacceptable for the decisions of the Court of Justice of the Communities to be subject to review by some other international body. Moreover, legal procedures, which are already lengthy as a result of the combination of national and Community remedies, would be made subject to further delay.

24. On closer examination, there is nothing unusual in the idea that the decisions of an 'international court' should be subject to review by other international bodies. The Community is after all the smaller entity in relation to the Council of Europe. Its legal system may in this respect be considered an internal legal system. It is therefore only logical that decisions of the Court of Justice of the European Communities should be treated in

the framework of the ECHR as decisions of a national court.

25. The fact that access to additional remedies lengthens the proceedings is only natural and should be accepted as a lesser evil in view of the resulting improvement in the protection of fundamental rights. There is no reason to fear a delay in the execution of Community decisions, since neither the lodging of applications with the Commission of Human Rights nor the bringing of cases before the Court of Human Rights has suspensory effect.

Individual right of petition and reservations

26. It has been contended that accession to the ECHR would lead to a real improvement of the legal protection of the citizen only if the Community was also to allow individual right of petition against all its legal acts; it is at present not certain that such a decision will be taken. The Community ought, moreover, to state whether it intends to take refuge behind the reservations its Member States have made regarding this or that provision and if need be add new ones, or whether it is prepared to accept the Convention as it stands.

27. If accession is to bring about a substantial improvement in the protection of fundamental rights, it would be desirable, if not entirely indispensable, for the Community to recognize not only the competence of the Court of Human Rights but also to allow the individual right of petition provided for in Article 25 of the ECHR. Without the possibility of the individual right of petition accession to the ECHR would primarily benefit those States which are not members of the Community. Applications introduced by a Member State against the Community under Article 24 of the ECHR are hardly conceivable. One should, moreover, exclude them as Articles 87 ECSC, 219 EEC, and 193 EAEC forbid the Member States to settle disputes concerning the application and interpretation of Community law in a different manner from that laid down in the Treaties.

Accession to the Human Rights Convention should signify, as far as possible, that the individual right

of petition in Article 25 ECHR be allowed. The Commission recommends this approach for both political and legal reasons. It is of the opinion, however, that for a transitional period accession might be envisaged without this possibility, should the agreement of all Member States to the allowing of individual petitions not be immediately forthcoming. Even if the Community could not immediately accept the individual right of petition, accession would remain an important step forward from the political point of view, especially if it were declared on that occasion that the Community plans to recognize the individual right of petition eventually. For the citizen seeking justice, there would be an advantage in this at least in that the ECHR would then no longer have to be regarded only as an indicator as to the general legal principles of the Member States, but as a legal instrument formally binding on the Community. This would doubtless encourage the courts of Member States to refer to the Court of Justice of the European Communities more frequently than before questions concerning the compatibility of certain Community acts with the ECHR.

It should also be pointed out that the negotiations over accession and the subsequent ratification procedures will, in any case, take a considerable amount of time. The possibility cannot be ruled out that during this period the Member States might reach agreement on the question of the right of individual petition.

28. Because of the various reservations which the Member States have made regarding individual provisions, upon signature or when depositing the instrument of ratification, the obligations imposed on them by the ECHR are not uniform. This might result in certain Member States not needing to comply with the ECHR when fulfilling an obligation under Community law, while others do. Depending on the type and extent of the Community's reservations, the situation might even arise where the citizen concerned cannot plead the incompatibility with the Convention of a national implementing measure, but can successfully attack the Community act underlying the measure.

29. In the Commission's opinion, such divergences ought not to encourage the

Community to enter reservations which go beyond the extent which is absolutely necessary having regard to its internal structure. If the Community confines itself to making the few reservations justified by its specific nature, there would be no fear of a conflict between the reservations made by the Member States and the position of the former. In the example given, the reservation expressed by the Member State would, on the one hand, be fully respected, while on the other hand the citizen would be given an opportunity to attack the Community act directly on the grounds that it conflicts with his fundamental rights. The Commission therefore advocates that the Community's reservations in the event of accession be limited to matters specific to the Community.

Part Three

Institutional and technical aspects

Participation by the Community in the organs of the Convention

30. The preceding considerations have shown that adoption of the fundamental rights contained in the Convention — apart from certain clarifying statements as regards Article 14 of the ECHR and Article 3 of the first Additional Protocol — pose no problems for the Community. Difficulties do arise, however, over the question of how the Community would actually participate in the work of the organs of the ECHR. Even these difficulties nevertheless appear upon closer inspection to be surmountable.

The Commission of Human Rights and the Court of Human Rights

31. Unlike the Committee of Ministers, members of the Commission and the Court of Human Rights do not represent the contracting parties and are not instructed by their Governments; the members of the Commission and the judges act only in their individual capacity.

Those States which are parties to the ECHR but not members of the Community therefore have no need to fear that, in cases concerning the Community, those members of the Commission or judges who are nationals of the Member States of the Community will unite in favour of the 'Community' argument by forming a blocking minority or even the majority.¹ For the same reason, they would not be able to make accusations of 'over-representation' if a member of the Commission and a judge were added in the name of the Community as such.

There are therefore two possible solutions which may be envisaged for the Commission and the Court of Human Rights.

32. The first solution would leave untouched the present composition of the Commission and the Court in Strasbourg. It can be argued in favour of

this arrangement that the addition of a member of the Commission and a judge in the name of the Community is not indispensable because of the independent status of the members of the Commission and the Court. In cases brought before the Court, the judge sitting *ex officio* in the name of the Community could, for example, be the national of the Member State currently chairing the Council of the Communities.

One may ask, however, whether such a solution would not be in contradiction with the affirmation of the international personality of the Community. Does not the international legal capacity of the Community, in fact, require that, when the interests and, *a fortiori*, the responsibilities of the Community are being dealt with in the organs of the ECHR, an additional commissioner and judge be appointed in the name of the Community?

One can observe, in fact, that although the judges of the Court of Human Rights sit in their individual capacity and not as representatives of their States, a national judge, that is to say a judge of the country concerned, must sit as a member of the Chamber.

It would therefore seem unacceptable to opt for a solution whereby the Community as such is not represented within the Commission and the Court. It must be remembered that the members of the organs in Strasbourg are not necessarily familiar with the Community legal system.

33. The only acceptable solution is therefore the second one, whereby a commissioner and a judge, both appointed in the name of the Community, would respectively be part of the Commission and the Court of Human Rights. Their presence would underline the autonomy of the Community. It would be justified on the same grounds as the presence of a national from each country party to the ECHR. It is essential that every legal system be represented within the two organs.

As the members of the Commission and the Court of Human Rights act in a purely personal capacity,

¹ The Nine figure today among the nineteen States which have ratified the Convention; on the completion of the present negotiations on the enlargement of the Community as well as the ratification procedures to the ECHR in progress, the relation would be twelve to twenty-one.

the participation of the personalities, appointed to the two organs in the name of the Community, in the work of those organs should in principle extend to all cases before them. It would, of course, also be possible to restrict such participation to proceedings relating to complaints directed at the Community. This would be tantamount, however, to creating two categories of members of the Commission and the Court of Human Rights, which would, no doubt, not only pose personnel and administrative problems but might also jeopardize the continuity of the case-law. At all events, the participation of the 'representatives' of the Community must be ensured in the case of applications directed at measures taken by Member States to implement binding Community rules.

The appointment of these personalities would require a derogation from Articles 20 and 38 of the Convention, which lay down that no two members of the Commission or the Court of Human Rights may be nationals of the same State.

The Committee of Ministers

34. Although its functions are quasi-judicial, the Committee of Ministers is a political body whose members are bound by instructions from their respective Governments. In view of this dependence and the allegiance owed by the Member States to the Community, it is hardly conceivable that the Community and the Member States would hold divergent viewpoints within the Committee of Ministers, not only when the lawfulness of an act of the Council is at issue, but also in respect of all acts of the Community.

For this reason, those contracting parties to the ECHR which are not members of the Community might therefore see the Member States of the Community blocking decisions calling into question Community acts. Since, under Article 32 of the ECHR, the Committee of Ministers adopts decisions by a two-thirds majority, there is already a blocking minority with seven votes on the basis of the present number of States members of the Council of Europe.

These difficulties could be overcome if the Member States of the Community and the Community itself

had only one representative on the Committee of the Ministers during proceedings relating to Community matters (e.g. the current President of the Council), i.e. if the Member States were legally obliged to withdraw from proceedings of this sort. This solution would, however, reduce to an abnormal extent the participation of the Member States. It would also set a dangerous precedent for the exercise of mixed powers within other international organizations.

In these circumstances, it would seem appropriate to exclude totally the Committee of Ministers from proceedings relating to Community matters. This solution may appear radical at first sight, but it would in no way prejudice the objective pursued by means of accession.

It should be remembered, also, that the proceedings before the Committee of Ministers were conceived for the case of a Member State which has not recognized the jurisdiction of the Strasbourg Court. The problem of the representation of the Community within the Committee of Ministers loses all practical importance the moment the Community recognizes the compulsory jurisdiction of the Court of Human Rights. Such recognition will, in the view of the Commission, be a matter of course. It would even welcome it if the Commission of Human Rights, in every case where it declares admissible an application against a Community act, always referred the case to the Court on the basis of Article 48(a) of the ECHR.

The Convention on Human Rights and the Council of Europe

35. The ECHR is in the formal sense not a legal act of the Council of Europe. It was, of course, drafted within the Council of Europe, and it is also true that the Convention makes use of some of the organs of the Council. From the legal point of view, however, it is an independent mechanism. It ought therefore to be possible to agree to a derogation from Article 66 of the ECHR, which provides that the Convention is open only to members of the Council of Europe.

There is no need for the Community to become a member of the Council of Europe itself. The cooperation between both organizations is satisfactory and it is becoming increasingly close. The Community has already acceded to several conventions of the Council of Europe with a content relevant to the Community. Experience has shown that the members of the Council of Europe are as a rule prepared to facilitate Community participation in such conventions, even if this calls for certain changes to existing conventions.

Election procedures

The Commission of Human Rights

36. Pursuant to Article 21 of the ECHR, the members of the Commission of Human Rights are elected by the Committee of Ministers by an absolute majority of votes. Unlike the exercise by the Committee of its judicial functions which may pose problems, there are no objections of principle to allowing the Committee of Ministers to elect the 'representative' of the Community.¹ To prevent the Member States of the Community from systematically overruling the other contracting parties during such elections (which could happen especially after the forthcoming enlargement of the Community), it would appear advisable to provide for unanimous agreement on the appointment to the Commission of Human Rights of the member in the name of the Community; in fact the elections of members of the Commission of Human Rights already follow that practice.

As regards the preparation of the list of candidates provided for in Article 21 of the ECHR, it should be considered whether this should be left to the Consultative Assembly of the Council of Europe or whether a formula should be sought which, while maintaining by and large the existing procedures, guarantees an appropriate degree of participation by the European Parliament in the nomination of the 'Community candidates'.

The Court of Human Rights

37. Pursuant to Article 39 of the ECHR, the members of the Court are elected by the

Consultative Assembly by a majority of the votes cast from a list of persons nominated by the members of the Council of Europe. This procedure could be followed without any particular difficulty for the appointment of a Community judge. A derogation would nevertheless have to be made from Article 39, so that the Community, as soon as it becomes a Contracting Party to the Convention, could propose its candidates without being a member of the Council of Europe.

Preparation of the list of candidates for the position of Community judge is an internal Community matter. There would therefore be no need to include a special provision in the protocol of accession.

The defence of the Community's viewpoint

38. This, too, is an internal matter which the Community institutions must settle among themselves. In the Commission's view, the Community institutions should be guided by Article 211 of the EEC Treaty.

Special problems

39. Of the numerous problems to which accession by the Community to the ECHR gives rise, three deserve special mention: the status of the ECHR within the Community legal order, the effects of accession on the operation of the ECHR within the legal orders of the Member States, and the question of how to proceed in cases in which national courts have failed to fulfil their obligations to make a reference to the Court of Justice of the European Communities.

40. Under Article 228(2) of the EEC Treaty, accession by the Community to the ECHR would mean that the obligations contained in the ECHR would be directly binding on the Community institutions. Only the Court of Justice can in the last analysis rule on the status of the ECHR within the Community's legal order. It is clear from the

¹ Point 33.

previous case-law of the Court of Justice¹ that one must start from the principle that the ECHR is higher-ranking within the Community than secondary Community legislation.

41. Since the effects of the ECHR in national law are at present still very varied (they range from the completely insignificant to a position of primacy over national law and even, in the case of Austria to the position of a constitutional norm), one must ask whether the formal incorporation of the ECHR into Community law would involve changes as regards its effect within the national law of the Member States. In the Commission's opinion, this would not be the case. Accession by the Community to the ECHR can have implications only for Community law as such. Additional obligations would arise only with regard to the freedom of action of the Community institutions and their legislative and administrative functions. The position of Member States while exercising their own powers would, therefore not be affected by accession, despite the primacy of Community law over national law.

42. Under Article 26 of the ECHR, the Commission of Human Rights may deal with applications concerning an infringement of the ECHR only after all domestic remedies have been exhausted. Since the means of defence against unlawful Community acts often consist of a combination of national and Community judicial remedies, the question should be cleared up of how to proceed in cases in which national courts of last instance have failed to fulfil their obligation to refer the matter to the Court of Justice under the third paragraph of Article 177 of the EEC Treaty. The party concerned cannot himself compel the court to make such a reference. Consequently, Article 26 of the ECHR could not be used against him personally. The essence and purpose of Article 26 is, however, to prevent a matter from being brought before the Strasbourg authorities which has not yet been exhaustively investigated by the competent national courts. In other words, steps must be taken to ensure that the Court of Justice in Luxembourg is able to perform fully the supervisory functions vested in it by the Treaties.

Since it can hardly be envisaged that the Strasbourg organs would themselves refer

questions to the Court of Justice, it would appear appropriate to introduce a procedure whereby the Community is obliged, in cases where the compatibility of a Community act with the ECHR is in question, to ask the Court of Justice for an opinion before it submits its own conclusions and to transmit this opinion together with its observations to the Strasbourg organs. This procedure should be employed both in the case of clear failure by national courts of last instance to comply with the third paragraph of Article 177 of the EEC Treaty and in the case of applications by non-member countries, which, for their part, when they are in doubt as to the conformity of a Community act with fundamental rights do not have the opportunity to make a reference to the Court of Justice.

Technical aspects of accession

43. As already indicated above,² accession by the Community to the Convention necessitates derogation from Article 66 of the ECHR. This derogation could be included in the accession protocol, i.e. be agreed at the same time as the other amendments which will be necessary as a result of accession (e.g. to Articles 20, 38 and 39).

44. The legal basis for accession could be provided by Article 235 of the EEC Treaty, Article 203 of the Euratom Treaty and Article 95 of the ECSC Treaty, which enable appropriate provisions to be adopted if an action appears necessary to achieve one of the objectives of the Community. It is the objectives of the Community as a whole that the proposed action is intended to achieve; the activities undertaken by the Community institutions under the Treaties could only with difficulty be brought to a successful conclusion — given the demands made by public opinion, certain supreme courts and leading authorities — without effective protection of fundamental rights at Community level, in conformity with the constitutional principles of all the Member States of the Community. Such action is moreover in line

¹ CJEC 12. 12. 1972 (Cases 21-24/72 International Fruit Company v Produktschap voor Groenten [1972] 1219).

² Point 35.

with the last part of the Preamble to the EEC Treaty and with the solemn declarations of 5 April 1977 and 8 April 1978.

45. The negotiations with the contracting States to the European Convention should take place on the basis of directives laid down by the Council of Ministers on a proposal from the Commission. The European Parliament would naturally be consulted after the conclusion of the negotiations. In view of the matter's importance, however, it would be advisable also to consult Parliament at the start of negotiations, since it has shown a particular interest in this question all along.

46. As already indicated, the negotiations concerning accession by the Community to the Convention will certainly take several years. The necessary amendments to the Convention will at all events become effective only after they have been approved by the current Members of the Convention in accordance with their national constitutional rules. This means that accession by the Community to the ECHR will be possible only if all the signatory States, including the Member States of the Community, agree to it.

European Communities — Commission

**Accession of the Communities to the European Convention on Human Rights —
Commission Memorandum**

Supplement 2/79 of Bulletin of the EC

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The Commission has adopted a Memorandum on the possible accession of the European Communities to the European Convention on the Protection of Human Rights and Fundamental Freedoms in the hope that it will provoke wide discussion with all the parties concerned. The Memorandum has been forwarded to the other institutions, and to the Economic and Social Committee and the ECSC Consultative Committee.

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1982 OJ C304/253
**Resolution embodying
the opinion of the European
Parliament on the memorandum
on adhesion to the European
convention on human rights
and fundamental freedoms**

22. 11. 82

Official Journal of the European Communities

No C 304/253

Friday, 29 October 1982

Paragraph 2:

— amendment No 2 by Mr Forth: rejected.

Paragraph 2 was adopted.

Paragraph 3:

— amendment No 3 by Mr Forth: rejected.

Paragraph 3 was adopted.

Paragraph 4:

— amendment No 4 by Mr Forth: rejected.

Paragraph 4 was adopted.

Paragraph 5:

— amendment No 5 by Mr Forth:

The President declared this amendment rejected.

Mr Forth requested an electronic check.

The result was confirmed.

Paragraph 5 was adopted.

Paragraphs 6 and 7: adopted.

After paragraph 7:

— amendment No 1 by Mr Sieglerschmidt, on behalf of the Socialist Group:

Mr Sieglerschmidt asked that the words: 'and are already covered by legislation in most Member States of the Council of Europe' be deleted from the amendment.

Parliament therefore took a split vote on the amendment.

First part: adopted.

Second part: rejected.

Paragraphs 8 and 9: adopted.

Explanations of vote :

The following spoke: Mr Plaskovitis, Mr Ferri, on behalf of the Socialist Group, Mrs Pery, Mr Haagerup, the latter on a point of procedure.

Parliament adopted the following resolution:

RESOLUTION

embodying the opinion of the European Parliament on the memorandum from the Commission of the European Communities on the accession of the European Communities to the Convention for the Protection of Human Rights and Fundamental Freedoms

The European Parliament,

- having been consulted by the Commission (Doc. 160/79),
- having regard to its resolution of 4 April 1973 on the protection of the fundamental rights of Member States' citizens when Community law is drafted ⁽¹⁾,
- having regard to its resolution of 12 October 1976 on the protection of fundamental rights ⁽²⁾,
- having regard to its resolution of 27 April 1979 on the accession of the European Community to the European Convention on Human Rights ⁽³⁾,
- having regard to the Declaration on the European identity made by the Heads of State or of Government of the Community Member States in Copenhagen in December 1973,
- having regard to the Joint Declaration by Parliament, the Council and the Commission of 5 April 1977 on respect for fundamental rights ⁽⁴⁾,
- having regard to the Declaration on democracy made by the European Council in Copenhagen in April 1978,
- having regard to the report of the Legal Affairs Committee and the opinion of the Political Affairs Committee (Doc. 1-547/82),

1. Reaffirms its determination to strengthen and increase the protection of the rights of the individual in the formulation and development of Community law;
2. Stresses that the accession of the Community to the European Convention on Human Rights will demonstrate to the outside world and to public opinion in the Community

⁽¹⁾ OJ No C 26, 30. 4. 1973, p. 7; Jozeau-Marigné report Doc. 197/72.

⁽²⁾ OJ No C 259, 4. 11. 1976, p. 11; Jozeau-Marigné report Doc. 321/76.

⁽³⁾ OJ No C 127, 21. 5. 1979, p. 69; Scelby report Doc. 80/79.

⁽⁴⁾ OJ No C 103, 27. 4. 1977.

No C 304/254

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22. 11. 82

Friday, 29 October 1982

Member States the determination of the Community institutions increasingly to reinforce the role of the Community as a Community founded on the rule of law;

3. Expresses the conviction that accession will consolidate the principles of parliamentary democracy and will strengthen the protection of fundamental rights in the Community;

4. Considers it essential, in connection with the accession of the Community to the European Convention on Human Rights, that all Member States should allow individual actions to be brought before the Commission of Human Rights;

5. Considers Article 235 of the EEC Treaty to be the appropriate legal basis for accession;

6. Realizes that accession will involve considerable constitutional, political, legal and technical difficulties, but expresses its confidence that the Commission will strive to overcome these difficulties in practice;

7. Requests the Commission to submit at the earliest opportunity to the Council a formal proposal on the accession of the Community to the European Convention on Human Rights, after duly consulting the Court of Justice of the Community and in the light of developments in the situation, and to give a formal undertaking to consult the European Parliament again before opening negotiations on accession;

8. Requests the bodies of the Council of Europe, on the occasion of the accession of the European Community to the European Convention for the Protection of Human Rights and Fundamental Freedoms, to include specifically in the area covered by protection under the Convention the legally enforceable rights which are listed in parts I and II of the social charter;

9. Further requests the Commission to ask to take part in the current discussions within the Council of Europe on the incorporation into the Convention of other fundamental social, economic and cultural rights;

10. Instructs its President to forward this resolution to the Council and Commission of the European Communities, the Council of Europe and, for information, to the Court of Justice of the Community and the Parliaments of the Member States.

— *Motion for a resolution (Doc. 1-483/82/rev.):*

Preamble and recitals A and B: adopted.

Recital C:

— amendment No 1 by Mrs Viehoff: rejected by electronic vote after the rapporteur had spoken.

Recital C was adopted.

Recital D and paragraphs 1 and 2: adopted.

Paragraph 3:

— amendment No 2 by Mrs Viehoff: rejected by electronic vote after Mrs Viehoff and the rapporteur had spoken,

— amendment No 3 by Mr Bord: adopted.

Paragraph 3 was adopted as amended.

Paragraph 4: adopted.

Explanations of vote:

The following spoke: Mr Simmonds, Mr Prag, Mrs Duport, Mr Plaskovitis, on behalf of the Greek members of the Socialist Group, and Mr Eisma.

Mr Israël, rapporteur, spoke.

The EPP Group had requested a roll-call vote on the motion for a resolution as a whole:

Result of vote:

Members voting: 91 ⁽¹⁾.

For: 79.

Against: 5.

Abstentions: 7.

Parliament thus adopted the following resolution:

⁽¹⁾ See Annex.

SEC (90) 2087
Commission Communication
on Community accession
to the European Convention
for the Protection of Human
Rights and Fundamental
Freedoms and some of
its Protocols

COMMISSION OF THE EUROPEAN COMMUNITIES

SEC(90) 2087 final

Brussels, 19 November 1990

Commission Communication on
Community accession to the European Convention for the
Protection of Human Rights and Fundamental Freedoms
and some of its Protocols

Commission Communication on
Community accession to the European Convention for the
Protection of Human Rights and Fundamental Freedoms
and some of its Protocols

1. There is a conspicuous gap in the Community legal system. All legal acts of the Community Member States are subject to review by the Commission of Human Rights and the Court of Human Rights, which were set up by the European Convention on Human Rights (ECHR) of 1950, to ensure that human rights are respected. The Community, however, while proclaiming its commitment to respecting democratic values and human rights, is not subject to this control mechanism and the acts promulgated by its institutions enjoy a sort of "immunity" from the Convention.

This gap can be filled by having the Community accede to the ECHR. Accession in no way precludes the conferring of any additional fundamental rights which may be considered appropriate in connection with plans for European citizenship.

Although it is drawing up its own catalogue of rights and obligations of European citizens, which will refer to the ECHR but will have a broader scope, the Community will have to have its acts reviewed by the Strasbourg Commission and Court.

The idea of accession to the ECHR is a response to a long-felt need to ensure full respect for human rights in the interpretation and application of Community law.

On 4 April 1979 the Commission sent the Council a memorandum designed to stimulate in-depth discussion with all the authorities concerned on the question of accession to the ECHR. The Economic and Social Committee endorsed the memorandum in 1980; Parliament delivered a favourable opinion in 1982 and confirmed this opinion in 1989 and again in 1990.

At a meeting on 21 and 22 April 1986 the Council discussed whether the Community should accede to the ECHR as proposed by the Commission in its memorandum of April 1979, supplemented by a working document of 9 April 1986. At the end of the exchange of views the Presidency agreed to reflect on what action should be taken on this dossier in the light of the various arguments put forward.

2. The Commission argued in favour of subjecting the legal acts of the institutions to the review mechanisms set up by the 1950 Convention (Commission of Human Rights and Court of Human Rights). The Community would thus be subject to the same review mechanisms as all its Member States, so that respect for fundamental rights would be guaranteed in its acts in the same way as in the acts of its Member States. This seems all the more desirable in that the Community legal system, which has primacy over national law and has direct effect, constitutes a separate legal system from that of national law.

- 2 -

In this context acknowledgement of the priority role of the ECHR in protecting fundamental rights should be seen as a key factor in providing this protection with due regard for the principle of subsidiarity.

The time has come to make a formal request for Community accession to the ECHR, given the new developments over the last four years both at political level and in the more technical aspects.

3. Recent political developments have given human rights such a high profile that it is becoming increasingly difficult to separate the issue from Community activities:

- (a) The third paragraph of the preamble to the Single Act says that the Community Member States are "determined to work together to promote democracy on the basis of the fundamental rights recognized in the constitutions and laws of the Member States, in the Convention for the Protection of Human Rights and Fundamental Freedoms and the European Social Charter, notably freedom, equality and social justice".¹

These undertakings are given shape in Community acts concerning freedom of movement for persons and protection of the environment and consumers.

Moreover, there are references to respect for human rights and fundamental rights not only in the preambles to agreements with third countries but also, more recently, in the substantive part of the agreements themselves.

- (b) The development of Community activities with a view to achieving the objectives of the Single Market makes it increasingly necessary for Community activities to be subject to the review mechanisms of the Convention in the same way as the Member States' activities.

Thus, no matter how closely the Luxembourg Court monitors human rights, it is not the same as scrutiny by the Strasbourg Court, which is outside the Community legal system and to which the constitutional courts and the supreme courts of the Member States are subject.

The fact that the Community has not acceded to the Convention raises a special problem when a Member State enforces a Community legal act. As has already been pointed out, the Community is responsible for the contested act and is not subject to the review mechanism of the Strasbourg Convention.

The legal arguments in favour of accession and the replies to the criticisms made against it can be summed up as follows:

¹ The Court of Justice referred to this paragraph in the preamble to the judgment delivered in Case 249/86 Commission v Federal Republic of Germany: Judgment of 18 May 1989.

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- (1) The legal acts of the Institutions could be made subject to the review mechanisms set up by the 1950 Convention, which would enable the Strasbourg Court to review judgments of the Luxembourg Court for compliance with the Convention in the same way as it does judgments of the constitutional courts and supreme courts of the Member States.
- (2) Accession would afford citizens better protection of their fundamental rights against Community measures, particularly when these measures are implemented by national authorities, without unduly extending the time involved, since an application, which does not have suspensory effect, would be lodged at the initiative of an individual and in his own interest.
- (3) Accession would concern only the areas covered by Community law. It would affect the legal systems of the Member States only as regards this scope and would therefore not mean giving the Community general powers in the area of human rights.
- (4) Community accession to the ECHR is a complementary rather than an alternative measure to the production of a catalogue of fundamental rights specific to the Community, in connection with the current work on European citizenship.

These arguments and the objections which have been raised to accession are expanded in Annex II.

- (c) Moreover, the ECHR and the rights and values which the contracting parties to this Convention undertake to protect and promote become a common reference, both for the countries of Western Europe and for those of Eastern and Central Europe. Hungary's accession to the Council of Europe and the requests for accession by Poland, Yugoslavia and Czechoslovakia, prior to accession to the Convention itself, are proof of this.

At a time when public opinion is becoming increasingly aware of the human rights issue, as can clearly be seen at the level of the CSCE, it is hard to imagine the Community sitting on the sidelines, particularly as the Community will be taking an active part in the development of the CSCE, which must include the development of pluralist democracy, the rule of law, human rights, better protection of minorities, and human contacts.

The Dublin European Council on 28 April 1990 asked the Community and its Member States to assume a leading role in all proceedings and discussions within the CSCE process and in efforts to establish new political structures or new agreements based on the principles of the Helsinki Final Act.

- 4 -

(d) In this connection it is important for the Community as such to demonstrate in a solemn and tangible way for the citizens of Europe its attachment to the principles contained in the Convention.

4. Accession to the Convention and its procedures should be the subject of an additional Protocol to be negotiated with the competent organs of the Council of Europe.

In view of the autonomy of the Community legal system in relation to national legal systems, it is important for the Community to have the same rights and obligations within the organs of the Convention as the Member States of the Council of Europe.

For this, the Community must ask to be represented within the Community of Human Rights and the Court of Human Rights on the same terms as the Member States. Ad hoc solutions could be sought for Community participation in the interventions of the Committee of Ministers of the Council of Europe.

The solutions to be envisaged are set out in point 6 of Annex II.

5. The Commission considers that on the basis of the arguments set out above and given all the legitimate interests at stake and the lack of major legal obstacles, the Community should accede to the ECHR.

The Member States, as members of the Council of Europe, should lend their full support in that body to the Community during the accession negotiations.

In view of the political nature of the matter, it should be discussed at the appropriate level and with the necessary priority.

6. The Commission accordingly requests that the Council:

(I) approve the request for the Community's accession to the ECHR:

(II) authorize the Commission to negotiate the details of this accession in accordance with the directives set out in Annex I, the aim being to make the necessary adjustments to the Convention to make possible this accession (notably to provide for Community representation in the Commission of Human Rights and the Court of Human Rights).

Annexes

ANNEX INegotiating directives

1. The purpose of the negotiations is to draw up an additional Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, enabling the Community to become a party to the Convention and some of its Protocols.
2. In order to ensure that the Community participates fully in the organs of the Convention, the Community will have to be represented as such in the Commission of Human Rights and the Court of Human Rights. An ad hoc solution will have to be envisaged for its representation in the Committee of Ministers.
3. The negotiating directives will be defined, where necessary, by the usual procedures.

ANNEX IICommunity accession to the European Convention
for the Protection of Human Rights and Fundamental Freedoms (ECHR)

1. In its Memorandum of 1979 (Bulletin Supplement 2/79) the Commission argued in favour of having the legal acts of the Institutions made subject to the review mechanisms set up by the 1950 Convention (Commission of Human Rights and Court of Human Rights). The Community would thus be subject to the same review mechanism as all its Member States.

At the present time, the powers of the Commission of Human Rights and the Court of Human Rights affect only the Member States of the Council of Europe. They are free to accept the powers of the European Commission of Human Rights for individual claims and to agree to be bound by the judgments of the European Court of Human Rights. (All the Community Member States have done so.) Community acts are not covered by this mechanism.¹

The Community is not formally bound by the 1950 Convention. Under the Community legal system, the Convention is applied indirectly only as a source of inspiration to the Court of Justice of the European Communities when drawing up the general principles of law on which Community law is founded.² Neither the Commission of Human Rights nor the Court of Human Rights can exercise any control over Community activities, unless the Community accepts the review mechanism set up by the 1950 Convention.

2. It has been claimed that because there exists a large volume of case law of the Court of Justice of the European Communities on fundamental rights, the Community does not need to accede to the ECHR. Although this case law plays a very important part in protecting human rights in the Community, it can provide criteria for the protection of human rights only as and when relevant cases are brought before the Court of Justice of the European Communities. Moreover, it does not comply with the objective of the 1950 Convention, which is to subject the acts of the Member States of the Council of Europe to review outside their own legal systems.

1 Decision of the European Commission of Human Rights of 10 July 1978; CFDT v Community No 8030/77 DR 13, 231.

2 Case 4/73 Nold v Commission [1974] ECR 491, 508.

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Thus, no matter how much attention the Luxembourg Court pays to respect for human rights, it is not the same as external scrutiny by the Strasbourg Court, to which even the constitutional courts and supreme courts of the Member States are subject. It has also been objected that Community accession to the Convention would mean that it would take longer for the individual concerned to obtain redress, since the application to the Strasbourg authorities would be in addition to the Community procedure. The application does not, however, have suspensory effect. It is lodged only in the interests of the individual, and on his own initiative.

3. From another point of view, it has been argued that consequent on accession the Community would have powers in the field of human rights and could monitor all the activities of the Member States in this respect. On the contrary, accession would affect only the Community's field of competence, where the Member States are already subject to scrutiny by the Court of Justice of the European Communities. Accession to the 1950 Convention would not mean any new obligations for them, but would afford their citizens better protection against any Community measures which might infringe fundamental rights.
4. It has also been contended that if the Community acceded to the Convention, the resulting transposition of the ECHR into Community law would give the Convention direct effect in the legal systems of the Member States, whereas a number of Member States, although submitting themselves to the review mechanisms of the Convention, have not in fact transposed it into domestic law.

However, in so far as the Court of Justice of the European Communities refers to the Convention as a source of the general principles of law on which the Community legal system is founded, some of the standards of protection conferred by the Convention have already been established by the Court as general principles of Community law. These standards therefore rank as Community law in the law of the Member States in the areas in which Community law is applicable. Community accession to the Convention would not change this situation in any way.

In any case, Community accession to the 1950 Convention would affect the legal systems of the Member States only as regards the scope of a Community legal act; it would have no bearing on the effects of the Convention in areas outside this scope. Developments in Community law and the corresponding case law of the Court of Justice of the European Communities have led to a much clearer definition of the dividing line.³

³ Joined Cases 60 and 61/84 Cinéthèque v Féd. nat. des cinémas [1985] ECR 2605, 2627; Case 12/86 Demirel v Stadt Schwäb. Gmünd [1987] ECR 3747, 3754.

- 3 -

5. The fact that the Community has not acceded to the Convention raises a special problem when a Member State implements a Community legal Instrument:

(I) the Community, which is responsible for the contested act, is not subject to the review mechanism of the Strasbourg Convention;

(II) If the Member State, which is subject to the review mechanism, has been involved only to implement faithfully the strict obligations imposed on it by Community law, its action is outside the jurisdiction of the European Commission of Human Rights and the European Court of Human Rights.⁴

There is, therefore, a gap and an inconsistency in the protection of the rights of citizens and economic operators with respect to an Instrument of Community law.

Similarly, Member States are not released from their responsibility, in respect of the guarantees offered by the Convention, for the powers transferred to the Community, as the Commission of Human Rights has confirmed.⁵ It would therefore be normal for the Member States to remove a possible source of conflict by allowing direct action against the Community for acts emanating from the Community.

6. It has also been claimed that some of the provisions of the 1950 Convention are suitable for application only by States and not by an organization such as the Community.

As already pointed out in the 1979 Memorandum, the additional protocol to the Convention to be negotiated with the competent authorities of the Council of Europe should include the necessary adjustments to the provisions of the Convention to allow the Community to accede to the Convention and to submit to the review mechanism set up by the Convention. The full participation of the Community in the organs which ensure that the Convention is respected should also be organized.

This participation raises a number of problems, particularly as regards the Committee of Ministers. These problems have already been discussed in the 1979 Memorandum. It would seem that they can be solved more easily today than in 1979 in view of the consolidation of the Community legal system and the bigger role played by the Community in international relations.

4 Decision of the European Commission of Human Rights of 8 February 1990 in C.M. and Co. v the Federal Republic of Germany Case No 13258/87. Enforcement of a fine imposed under Article 85 of the EEC Treaty

5. See abovementioned Decision.

- 4 -

As in the case of a State which is party to the Convention, it would seem quite appropriate to request that a Judge of the Court and a member of the Commission of Human Rights be appointed to represent the Community in accordance with the normal procedures of the Convention (Articles 39 and 21), to bring to the deliberations of these two organs their knowledge of Community law and their awareness of the requirements inherent in the Community legal system. An exception will have to be allowed to the rules in the 1950 Convention stipulating that the two organs cannot include more than one national per Member State (Articles 38 and 20 of the Convention). This should be acceptable in view of the fact that the Community legal system is independent of the systems in each of the Member States against which a complaint may be lodged before the Strasbourg bodies.

At the moment the situation is more difficult as regards Community participation in the Committee of Ministers. This political organ of the Council of Europe plays a dual role in the control procedures regarding human rights. It takes decisions in cases accepted by the Commission of Human Rights which are not referred to the Court (Article 32 of the Convention) and it supervises execution of the Court's judgments (Article 54 of the Convention).

The involvement of the Committee under Article 32 of the Convention does not seem to be necessary for the aims pursued by the accession of the Community to the Convention, since a higher degree of protection is offered by a judgment of the Court, and provision can be made for all the cases accepted by the Commission concerning the Community to be brought before the Court in accordance with Article 48.

On the other hand, the Committee should be able to play its role in supervising execution of judgments of the Court of Human Rights concerning the Community. Solutions ensuring full participation by the Community can, however, be envisaged when the enforcement of judgments is discussed.

There are therefore sufficient grounds for considering that satisfactory solutions could be negotiated as regards all the organs responsible for ensuring that the 1950 Convention is observed.

7. In its 1979 Memorandum the Commission suggested using Article 235 of the EEC Treaty, Article 203 of the Euratom Treaty and Article 95 of the ECSC Treaty as the legal basis for accession to the 1950 Convention, on the grounds that fundamental rights must be respected in all Community activities. Accession to the Convention is one way of achieving this horizontal objective for Community activities by introducing effective external control through the mechanism of the Strasbourg Convention.

It is not a case of giving the Community new powers, but of ensuring that fundamental rights are observed in the measures taken by the Community within the framework of its powers.

- 5 -

The preamble to the EEC Treaty and the preamble to the Single Act, in so far as it concerns Community action, offer the possibility of interpreting and specifying the objectives of the Community as the European Court of Justice has in fact done in its judgments.⁶ The Court has, for instance, already given practical effect to the part of the preamble to the Single Act relating to fundamental rights.⁷ The choice of Article 235 of the EEC Treaty, Article 203 of the Euratom Treaty and Article 95 of the ECSC Treaty as the legal basis for the act of accession to the Convention therefore seems fully justified.

8. The accession of the Community to the ECHR does not exclude the option of a catalogue of fundamental rights specific to the Community.⁸

All that is involved is the application of review mechanisms to acts of the Community institutions to ensure that the human rights guarantees contained in the Strasbourg Convention, which are generally considered perfectible standards, are observed.

The Commission has argued that the two approaches are complementary. Parliament also acknowledged this in the preamble to its declaration of fundamental rights and freedoms of 12 April 1989, where it referred to its favourable opinion on the suggestion for accession made by the Commission in its 1979 Memorandum.

6 Case 43/75 Defrenne v Sabena, [1976] ECR 455, 473.

7 Case 249/88 Commission v Federal Republic of Germany: Judgment of 18 May 1989.

8 A People's Europe, Communication from the Commission to Parliament. COM(88) 331 final of 24 June 1988.

Opinion 2/94 Opinion 2/94 - Accession of the Community to the ECHR

OPINION PURSUANT TO ARTICLE 228 OF THE EC TREATY

Opinion of the Court

Admissibility of the request for an Opinion

- 1 Ireland and the United Kingdom, as well as the Danish and Swedish Governments, submit that the request for an Opinion is inadmissible or is, at any rate, premature. They argue that there is no agreement framed in sufficiently precise terms to enable the Court to examine the compatibility of accession with the Treaty. In the opinion of those Governments an agreement cannot be said to be envisaged at a stage where the Council has as yet not even adopted a decision in principle to open negotiations on the agreement.
- 2 Article 228(6) of the Treaty provides that the Council, the Commission or a Member State may obtain the opinion of the Court of Justice as to whether an agreement envisaged is compatible with the provisions of the Treaty.
- 3 As the Court has stated, most recently in paragraph 16 of Opinion 3/94 of 13 December 1995 (not yet published in the ECR), the purpose of that provision is to forestall complications which would result from legal disputes concerning the compatibility with the Treaty of international agreements binding upon the Community.
- 4 The Court also stated in that Opinion (at paragraph 17) that a possible decision of the Court to the effect that such an agreement is, by reason either of its content or of the procedure adopted for its conclusion, incompatible with the provisions of the Treaty could not fail to provoke, not only in a Community context but also in that of international relations, serious difficulties and might give rise to adverse consequences for all interested parties, including third countries.

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- 5 In order to avoid such complications, the Treaty has established the special procedure of a prior reference to the Court of Justice for the purpose of ascertaining, before the conclusion of the agreement, whether the latter is compatible with the Treaty.
- 6 That procedure is a special procedure of collaboration between the Court of Justice on the one hand and the other Community institutions and the Member States on the other whereby, at a stage prior to conclusion of an agreement which is capable of giving rise to a dispute concerning the legality of a Community act which concludes, implements or applies it, the Court is called upon to ensure, in accordance with Article 164 of the Treaty, that in the interpretation and application of the Treaty the law is observed.
- 7 As regards the existence of a draft agreement, there can be no doubt that, in this particular case, no negotiations had been commenced nor had the precise terms of the agreement for accession of the Community to the Convention been determined when the request for an Opinion was lodged. Nor will they be so when the Opinion is delivered.
- 8 In order to assess the extent to which the lack of firm information regarding the terms of the agreement affects the admissibility of the request, the purposes of the request must be distinguished.
- 9 As is clear from the observations submitted by the Governments of the Member States and by the Community institutions, accession by the Community to the Convention presents two main problems: (i) the competence of the Community to conclude such an agreement and (ii) its compatibility with the provisions of the Treaty, in particular those relating to the jurisdiction of the Court.
- 10 As regards the question of competence, in paragraph 35 of Opinion 1/78 of 4 October 1979 ([1979] ECR 2871) the Court held that, where a question of competence has to be decided, it is in the interests of the Community institutions and

OPINION PURSUANT TO ARTICLE 228 OF THE EC TREATY

of the States concerned, including non-member countries, to have that question clarified from the outset of negotiations and even before the main points of the agreement are negotiated.

- 11 The only condition which the Court referred to in that Opinion is that the purpose of the envisaged agreement be known before negotiations are commenced.
- 12 There can be no doubt that, as far as this request for an Opinion is concerned, the purpose of the envisaged agreement is known. Irrespective of the mechanism by which the Community might accede to the Convention, the general purpose and subject-matter of the Convention and the institutional significance of such accession for the Community are perfectly well known.
- 13 The admissibility of the request for an Opinion cannot be challenged on the ground that the Council has not yet adopted a decision to open negotiations and that no agreement is therefore envisaged within the meaning of Article 228(6) of the Treaty.
- 14 While it is true that no such decision has yet been taken, accession by the Community to the Convention has been the subject of various Commission studies and proposals and was on the Council's agenda at the time when the request for an Opinion was lodged. The fact that the Council has set the Article 228(6) procedure in motion presupposes that it envisaged the possibility of negotiating and concluding such an agreement. The request for an Opinion thus appears to be prompted by the Council's legitimate concern to know the exact extent of its powers before taking any decision on the opening of negotiations.
- 15 Furthermore, in so far as the request for an Opinion concerns the question of Community competence, its import is sufficiently clear and a formal Council decision to open negotiations was not indispensable in order further to define its purpose.

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- 16 Finally, if the Article 228(6) procedure is to be effective it must be possible for the question of competence to be referred to the Court not only as soon as negotiations are commenced (Opinion 1/78, paragraph 35) but also before negotiations have formally begun.
- 17 In those circumstances, the question of Community competence to proceed to accession having been raised as a preliminary issue within the Council, it is in the interests of the Community, the Member States and other States party to the Convention to have that question settled before negotiations begin.
- 18 It follows that the request for an Opinion is admissible in so far as it concerns the competence of the Community to conclude an agreement of the kind envisaged.
- 19 However, the same is not true as regards the question of the compatibility of the agreement with the Treaty.
- 20 In order fully to answer the question whether accession by the Community to the Convention would be compatible with the rules of the Treaty, in particular with Articles 164 and 219 relating to the jurisdiction of the Court, the Court must have sufficient information regarding the arrangements by which the Community envisages submitting to the present and future judicial control machinery established by the Convention.
- 21 As it is, the Court has been given no detailed information as to the solutions that are envisaged to give effect in practice to such submission of the Community to the jurisdiction of an international court.
- 22 It follows that the Court is not in a position to give its opinion on the compatibility of Community accession to the Convention with the rules of the Treaty.

OPINION PURSUANT TO ARTICLE 228 OF THE EC TREATY

Competence of the Community to accede to the Convention

- 23 It follows from Article 3b of the Treaty, which states that the Community is to act within the limits of the powers conferred upon it by the Treaty and of the objectives assigned to it therein, that it has only those powers which have been conferred upon it.
- 24 That principle of conferred powers must be respected in both the internal action and the international action of the Community.
- 25 The Community acts ordinarily on the basis of specific powers which, as the Court has held, are not necessarily the express consequence of specific provisions of the Treaty but may also be implied from them.
- 26 Thus, in the field of international relations, at issue in this request for an Opinion, it is settled case-law that the competence of the Community to enter into international commitments may not only flow from express provisions of the Treaty but also be implied from those provisions. The Court has held, in particular, that, whenever Community law has created for the institutions of the Community powers within its internal system for the purpose of attaining a specific objective, the Community is empowered to enter into the international commitments necessary for attainment of that objective even in the absence of an express provision to that effect (see Opinion 2/91 of 19 March 1993 [1993] ECR I-1061, paragraph 7).
- 27 No Treaty provision confers on the Community institutions any general power to enact rules on human rights or to conclude international conventions in this field.

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- 28 In the absence of express or implied powers for this purpose, it is necessary to consider whether Article 235 of the Treaty may constitute a legal basis for accession.
- 29 Article 235 is designed to fill the gap where no specific provisions of the Treaty confer on the Community institutions express or implied powers to act, if such powers appear none the less to be necessary to enable the Community to carry out its functions with a view to attaining one of the objectives laid down by the Treaty.
- 30 That provision, being an integral part of an institutional system based on the principle of conferred powers, cannot serve as a basis for widening the scope of Community powers beyond the general framework created by the provisions of the Treaty as a whole and, in particular, by those that define the tasks and the activities of the Community. On any view, Article 235 cannot be used as a basis for the adoption of provisions whose effect would, in substance, be to amend the Treaty without following the procedure which it provides for that purpose.
- 31 It is in the light of those considerations that the question whether accession by the Community to the Convention may be based on Article 235 must be examined.
- 32 It should first be noted that the importance of respect for human rights has been emphasized in various declarations of the Member States and of the Community institutions (cited in point III.5 of the first part of this Opinion). Reference is also made to respect for human rights in the preamble to the Single European Act and in the preamble to, and in Article F(2), the fifth indent of Article J.1(2) and Article K.2(1) of, the Treaty on European Union. Article F provides that the Union is to respect fundamental rights, as guaranteed, in particular, by the Convention.

OPINION PURSUANT TO ARTICLE 228 OF THE EC TREATY

Article 130u(2) of the EU Treaty provides that Community policy in the area of development cooperation is to contribute to the objective of respecting human rights and fundamental freedoms.

- 33 Furthermore, it is well settled that fundamental rights form an integral part of the general principles of law whose observance the Court ensures. For that purpose, the Court draws inspiration from the constitutional traditions common to the Member States and from the guidelines supplied by international treaties for the protection of human rights on which the Member States have collaborated or of which they are signatories. In that regard, the Court has stated that the Convention has special significance (see, in particular, the judgment in Case C-260/89 *ERT* [1991] ECR I-2925, paragraph 41).
- 34 Respect for human rights is therefore a condition of the lawfulness of Community acts. Accession to the Convention would, however, entail a substantial change in the present Community system for the protection of human rights in that it would entail the entry of the Community into a distinct international institutional system as well as integration of all the provisions of the Convention into the Community legal order.
- 35 Such a modification of the system for the protection of human rights in the Community, with equally fundamental institutional implications for the Community and for the Member States, would be of constitutional significance and would therefore be such as to go beyond the scope of Article 235. It could be brought about only by way of Treaty amendment.
- 36 It must therefore be held that, as Community law now stands, the Community has no competence to accede to the Convention.

OPINION 2/94 OF 28. 3. 1996

In conclusion,

THE COURT

composed of: G. C. Rodríguez Iglesias, President, C. N. Kakouris, D. A. O. Edward, J.-P. Puissechet and G. Hirsch, Presidents of Chambers, G. F. Mancini, F. A. Schockweiler (Rapporteur), J. C. Moitinho de Almeida, P. J. G. Kapteyn, C. Gulmann, J. L. Murray, P. Jann, H. Ragnemalm, L. Sevón and M. Wathelet, Judges,

after hearing the views of First Advocate General Tesauro and Advocates General Lenz, Jacobs, La Pergola, Cosmas, Léger, Elmer, Fennelly and Ruiz-Jarabo Colomer,

gives the following opinion:

As Community law now stands, the Community has no competence to accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Rodríguez Iglesias	Kakouris	Edward	Puissechet
Hirsch	Mancini	Schockweiler	Moitinho de Almeida
Kapteyn	Gulmann	Murray	Jann
Ragnemalm	Sevón	Wathelet	

Luxembourg, 28 March 1996.

R. Grass

G. C. Rodríguez Iglesias

Registrar

President

I - 1790

II.3. The Judicial Origins of the Charter of Fundamental Rights

ECLI:EU:C:1969:57
Judgment of 12 November 1969,
C-29/69, Erich Stauder v City
of Ulm-Sozialamt

JUDGMENT OF THE COURT
12 NOVEMBER 1969¹

Erich Stauder
v City of Ulm, Sozialamt²
(Reference for a preliminary ruling by the Verwaltungsgericht
Stuttgart)
Case 29/69

S u m m a r y

1. *Measures adopted by an institution — Decision addressed to all Member States — Interpretation — Criteria — Consideration of different language versions of the measure in question*
(EEC Treaty, Article 189)
 2. *Community law — General principles — Fundamental human rights included — Respect for these ensured by the Court*
1. When a single decision is addressed to all the Member States the necessity for uniform application and accordingly for uniform interpretation makes it impossible to consider one version of the text in isolation but requires that it be interpreted on the basis of both the real intention of its author and the aim he seeks to achieve, and in the light in particular of the versions in all four languages.
 2. The provision at issue contains nothing capable of prejudicing the fundamental human rights enshrined in the general principles of Community law and protected by the Court.

In Case 29/69

Reference to the Court under Article 177 of the EEC Treaty by the Verwaltungsgericht Stuttgart for a preliminary ruling in the action pending before that court between

ERICH STAUDER, 15 Marienweg, 79 Ulm,

and

CITY OF ULM, SOZIALAMT (Social Welfare Office),

on the following question:

‘Can the fact that the Decision of the Commission of the European Communities of 12 February 1969 (69/71/EEC) makes the sale of butter at a

¹ — Language of the Case: German.

² — CMLR.

JUDGMENT OF 12. 11. 1969 — CASE 29/69

reduced price to beneficiaries under certain welfare schemes dependent on revealing the name of the beneficiary to the sellers be considered compatible with the general principles of Community law in force?,'

THE COURT

composed of: R. Lecourt, President, R. Monaco and P. Pescatore, Presidents of Chambers, A. M. Donner, W. Strauß, A. Trabucchi and J. Mertens de Wilmars (Rapporteur), Judges,

Advocate-General: K. Roemer
Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

I — Facts and procedure

The decision by the Commission of 12 February 1969 on measures to allow certain categories of consumers to buy butter at a reduced price (Official Journal 1969 L 52/9) authorizes Member States to make butter available at a reduced price to certain categories of consumers who are beneficiaries under a social welfare scheme and whose income does not enable them to buy butter at normal prices.

Article 4 of this decision provides in the German version that:

'Die Mitgliedstaaten treffen alle erforderlichen Maßnahmen damit . . . die Begünstigten der in Artikel 1 vorgesehenen Maßnahmen Butter nur gegen einen auf ihren Namen ausgestellten Gutschein erhalten können.' ('Member States shall take all measures necessary to ensure that . . . those entitled to benefit from the measures laid down in Article 1 may only receive butter in exchange for a coupon issued in their names.')

The French version states that the butter may only be obtained in exchange for a '*bon individualisé*', the Dutch version states that it may only be obtained in exchange for an '*op naam gestelde bon*', and the Italian version, lastly, says that it may only be obtained in exchange for a '*buono individualizzato*'.

The Federal Republic of Germany made use of this authorization and issued cards in accordance with the '*Richtlinien für die Abgabe verbilligter Butter an Empfänger bestimmter sozialen Hilfen*' ('Directives regarding the issue of cheap butter to persons in receipt of certain welfare benefits') of 11 March 1969 (Bundesanzeiger No 52 of 15 March 1969, p. 3). The cards consisted of detachable coupons with a stub which had, in order to be valid, to bear the name and address of the beneficiary.

According to Chapter V of the above directives, the retailer may only accept when selling the butter at a reduced price coupons which are still attached to the stub, on which must appear, among other things, the name of the beneficiary.

STAUDER v ULM

The plaintiff in the main action is entitled to buy butter at reduced prices because he is a beneficiary of the welfare scheme for those disabled in the war. However, he considers it illegal to make the appearance of the *name* of the beneficiary on the stub mentioned above a condition for buying the butter.

On those grounds:

1. He lodged by letter of 22 April 1969 a constitutional complaint with the Bundesverfassungsgericht (Federal Constitutional Court) on the grounds of infringement of, *inter alia*, Articles 1 and 3 of the Grundgesetz (Basic Law) of the Federal Republic of Germany;
2. He brought an action by letter of 22 May 1969 in the Verwaltungsgericht Stuttgart (Stuttgart Administrative Court) against the City of Ulm in which he sought an interim order for the removal of this requirement.

On 18 June the Verwaltungsgericht Stuttgart made the order for reference containing the question now before the Court. On 9 August 1969, that is, after the order making the reference had been lodged, there appeared in the Official Journal of the European Communities a Decision of the Commission of 29 July 1969 (69/244/EEC, Official Journal L 200, p. 29), Article 2 of which provides as follows:

1. In the German version of Article 4, second indent, of the said Decision (of 12 February 1969) the words "auf ihren Namen ausgestellt" shall with effect from 17 February 1969 be replaced by the word "individualisierten";
2. In the Dutch version of Article 4, second indent, of the said Decision the words "op naam gestelde" shall with effect from 17 February 1969 be replaced by the word "geïndividualiseerde".

According to the order making the reference a strict interpretation of the

wording of Article 4 of the Decision of 12 February 1969 makes it impossible to avoid revealing the name of the beneficiary to retailers, who do not normally have a role to play in the provision of social welfare to the underprivileged. The Verwaltungsgericht doubts whether such a condition accords with the law, and considers it in any case contrary to the German concept of social welfare and to the German system of protection of fundamental rights which must, at least in part, be guaranteed equally by the Community institutions as part of the protection afforded by the provisions of a Community law which has a superior status.

The order making the reference was lodged at the Court Registry on 26 June 1969.

Written observations were lodged by the Commission of the European Communities under Article 20 of the Protocol on the Statute of the Court of Justice.

The Commission of the European Communities made its oral observations at the hearing on 14 October 1969.

The Advocate-General delivered his opinion at the hearing on 29 October 1969.

II — Observations submitted to the Court under Article 20 of the Statute

Only the Commission presented observations, and these may be summarized as follows:

A — Admissibility

The Commission considers that the question of interpretation referred by the Verwaltungsgericht comprises a question concerning the validity of the Decision of 12 February 1969. Both the text of the question put, which mentions the issue of compatibility with Community law, and the reasons given for making

JUDGMENT OF 12. 11. 1969 — CASE 29/69

the reference, which are concerned with the lawfulness and validity of the obligation to state the name, point to this.

The question concerning the compatibility with the general principles of Community law only indicates the reason why the provision concerning the indication of name might be void.

The Commission considers that although it is badly formulated, the admissibility of the question is not in doubt.

B — The validity of Article 4 of the Decision of 12 February 1969

Principally, the Commission contests the claim that the decision in question makes the sale of butter at a reduced price conditional on revealing to retailers the name of the beneficiary. It claims that although such an indication is carried in the wording of the German and Dutch texts, unlike the French and Italian texts which only mention the requirement that coupons shall refer to the person concerned, the provision in the second paragraph of Article 4 can have only one meaning in all four official versions and this is proved by the fact that the decision constitutes, in substance, a uniform measure and by its purpose and origins.

The version to be preferred is the French version if the origin of the decision is borne in mind. In fact the Management Committee expressly decided at its meeting of 29 January 1969 to modify, in the draft decision drawn up by the Commission, the clause to the effect that beneficiaries could only obtain butter in exchange for a coupon referring to the person concerned, '*détaché d'une carte portant l'identité de l'acheteur*' ('detached from a card indicating the buyer's identity'). Those last words were removed from the draft approved by the Management Committee. When the final versions of the texts were drawn up the rectification of Article 4 in the Dutch and German versions was overlooked. However, if the Commission had wished

to depart from the text approved by the Management Committee it should, in accordance with Article 30(3) of EEC Regulation No 804/68, have notified the Council and this it did not do.

In any event, in order to avoid all doubt the Commission has expressly amended the German and Dutch versions of Article 4, second indent, by Article 2 of its Decision of 29 July 1969 with effect from 17 February 1969 (Official Journal 1969 L 200/29).

The Commission concludes that the Decision of 12 February 1969 did not at any time make the authorization to purchase butter at a reduced price dependent on presentation of a coupon mentioning the beneficiary by name. Since the objection of the Stuttgart Court was directed solely against the obligation to state the name, its question is deprived of substance.

Secondarily, should the Court judge it necessary to reply to the question whether the requirement that a coupon be presented stating the name of the beneficiary is contrary to Community law, the Commission makes the following observations:

1. The question put to the Court concerns the compatibility of the contested measure with the general principles of *Community law* in force.

That is in fact the only law with which it could be concerned because Community institutions are subject only to that law and the Court of Justice can only examine regulations adopted by those institutions in the light of that law.

The protection guaranteed by fundamental rights is, as regards Community law, assured by various provisions in the Treaty, such as Articles 7 and 40(3); this is written law supplemented in its turn by unwritten Community law, derived from the general principles of law in force in Member States.

2. As regards the *written* law, the only relevant provision can be the prohibition of any kind of discrimination expressed as a general principle in Article 7 and

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more specifically in the second subparagraph of Article 40(3) of the EEC Treaty, according to which a common organization of agricultural markets shall exclude any discrimination between producers or consumers within the Community.

But there is no question of discrimination in the present case because, although the persons entitled to purchase butter at a reduced price are not treated in the same manner as those who buy butter at the normal price, the circumstances of these two categories of persons are objectively distinguishable (cf. judgment of 17 July 1963, *Government of the Italian Republic v Commission of the EEC*, Case 13/63 [1963] E.C.R. 165).

Moreover, Article 40(3) is not applicable during the transitional period.

As far as Article 7 of the EEC Treaty is concerned it has no effect where the more specific prohibition of Article 40 applies; furthermore, it cannot apply in the absence of discrimination, and in any case this means in the absence of discrimination based on grounds of nationality.

3. As regards unwritten Community law, the Commission observes that the substantive constitutionality of the obligation to reveal identity can only be placed in doubt, under German constitutional law, by the principle that the means must be proportionate to the end. This results from the principle of the State founded on the rule of law.

The Court of Justice has repeatedly applied this principle in its judgments to certain aspects of the acts of Community institutions without however, holding that it applies to all the activities of the Communities or in particular to the legislative measures of the Council and of the Commission.

However that may be, this rule has not been violated in this case.

In fact the principal aim of selling butter at a reduced price is to reduce the stocks of butter by selling to customers whose income is not normally

sufficient to enable them to purchase butter at the normal price.

It is therefore in no way a public welfare measure and it was necessary to prevent the butter from being purchased by persons with higher incomes or its benefit from being converted by beneficiaries by using it to produce other goods; in both cases the economic aim of the measure—to increase consumption—would not have been achieved.

The best method—which is impracticable because of the cost—would have been for the authorities in Member States to sell the butter themselves. As that was impossible, the butter had to be sold through the trade. In order to make it possible to check that supplies were being properly used at the time of sale, it was considered necessary to mark each coupon (for instance by numbering) so as to make it possible to discover to whom the butter had been delivered.

It is easier to identify the beneficiary if his name is on the coupon. The removal of anonymity from the coupon also constitutes a psychological deterrent against abuse. The means used was therefore proportionate to the ends pursued.

Furthermore, there is no question of there having been a breach of the principle of proportionality because the Decision of 12 February 1969 does not necessarily entail any legal disadvantage for the person concerned. The reduced price is a concession which the beneficiary can refuse to take up. There is therefore no real *encroachment* on his rights in the classical sense of the word.

Lastly, regard for the principle of proportionality need not entail substitution of a judicial assessment for the discretion allowed to the institution having the power to issue the contested measure. One can only consider that the principle has been violated if the means decided upon as suitable for achievement of the end in view can in no way be justified,

JUDGMENT OF 12. 11. 1969 — CASE 29/69

whatever the objective criteria used in assessing it, and that is not so in the present case.

Accordingly the Commission proposes in the first place a reply in the following terms:

—Examination of the question referred to the Court by the Verwaltungsgericht Stuttgart has revealed no

ground for holding that the Decision of the Commission of 12 February 1969 is void to the extent to which it makes 'purchase of butter at a reduced price dependent on the presentation of a coupon referring to the person concerned.'

Alternatively, it proposes that the question should be answered in the negative.

Grounds of judgment

- ¹ By an order of 18 June 1969 received by the Court Registry on 26 June 1969 the Verwaltungsgericht Stuttgart has referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty the question whether the requirement in Article 4 of Decision No 69/71 EEC of the Commission of the European Communities that the sale of butter at reduced prices to beneficiaries under certain social welfare schemes shall be subject to the condition that the name of beneficiaries shall be divulged to retailers can be considered compatible with the general principles of Community law in force.
- ² The abovementioned decision is addressed to all the Member States and authorizes them, with a view to stimulating the sale of surplus quantities of butter on the Common Market, to make butter available at a lower price than normal to certain categories of consumers who are in receipt of certain social assistance. This authorization is subject to certain conditions designed, *inter alia*, to ensure that the product, when marketed in this way, is not prevented from reaching its proper destination. To that end Article 4 of Decision No 69/71 stipulates in two of its versions, one being the German version, that the States must take all necessary measures to ensure that beneficiaries can only purchase the product in question on presentation of a 'coupon indicating their names', whilst in the other versions, however, it is only stated that a 'coupon referring to the person concerned' must be shown, thus making it possible to employ other methods of checking in addition to naming the beneficiary. It is therefore necessary in the first place to ascertain exactly what methods the provision at issue prescribes.
- ³ When a single decision is addressed to all the Member States the necessity for uniform application and accordingly for uniform interpretation makes it impossible to consider one version of the text in isolation but requires that it be interpreted on the basis of both the real intention of its author and the aim he seeks to achieve, in the light in particular of the versions in all four languages.

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- 4 In a case like the present one, the most liberal interpretation must prevail, provided that it is sufficient to achieve the objectives pursued by the decision in question. It cannot, moreover, be accepted that the authors of the decision intended to impose stricter obligations in some Member States than in others.
- 5 This interpretation is, moreover, confirmed by the Commission's declaration that an amendment designed to remove the requirement that a name shall appear on the coupon was proposed by the Management Committee to which the draft of Decision No 69/71 was submitted for its opinion. The last recital of the preamble to this decision shows that the Commission intended to adopt the proposed amendment.
- 6 It follows that the provision in question must be interpreted as not requiring—although it does not prohibit—the identification of beneficiaries by name. The Commission was thus able to publish on 29 July 1969 an amending decision to this effect. Each of the Member States is accordingly now able to choose from a number of methods by which the coupons may refer to the person concerned.
- 7 Interpreted in this way the provision at issue contains nothing capable of prejudicing the fundamental human rights enshrined in the general principles of Community law and protected by the Court.

C o s t s

- 8 The costs incurred by the Commission of the European Communities, which has submitted its observations to the Court, are not recoverable, and as these proceedings are, in so far as the parties to the main action are concerned, a step in the action pending before the Verwaltungsgericht Stuttgart the decision on costs is a matter for that court.

On those grounds,

Upon reading the pleadings;

Upon hearing the report of the Judge-Rapporteur;

Upon hearing the observations of the Commission of the European Communities;

Upon hearing the opinion of the Advocate-General;

Having regard to the Treaty establishing the European Economic Community, especially Articles 7, 40 and 177;

Having regard to Regulation (EEC) No 804/68 of the Council of 27 June 1968;

Having regard to the Decisions of the Commission of the European Communities Nos 69/71 of 12 February 1969 and 69/244 of 29 July 1969;

OPINION OF MR ROEMER — CASE 29/69

Having regard to the Protocol on the Statute of the Court of Justice of the European Economic Community, especially Article 20;
 Having regard to the Rules of Procedure of the Court of Justice of the European Communities,

THE COURT

in answer to the question referred to it by the Verwaltungsgericht Stuttgart by order of that court of 18 June 1969 hereby rules:

1. The second indent of Article 4 of Decision No 69/71/(EEC) of 12 February 1969, as rectified by Decision No 69/244/(EEC), is to be interpreted as only requiring the identification of those benefiting from the measures for which it provides; it does not, however, require or prohibit their identification by name so as to enable checks to be made;
2. Examination of the question referred to the Court by the Verwaltungsgericht Stuttgart reveals nothing capable of affecting the validity of the said Decision.

Lecourt	Monaco	Pescatore	
Donner	Trabucchi	Strauß	Mertens de Wilmars

Delivered in open court in Luxembourg on 12 November 1969.

A. Van Houtte
 Registrar

R. Lecourt
 President

OPINION OF MR ADVOCATE-GENERAL ROEMER
 DELIVERED ON 29 OCTOBER 1969¹

*Mr President,
 Members of the Court,*

The excess butter production in the Community and the failure until now to produce effective measures to prevent increases in production has made it ever more imperative to attempt to reduce

the butter surplus with the aid of measures designed to increase consumption.

This was the intention behind the Decision of the Commission of 12 February 1969 (Official Journal L 52 69) taken in pursuance of Articles 28 and 35 of Regulation No 804/68 of the Council

¹ — Translated from the German.

ECLI:EU:C:1970:114
Judgment of 17 December
1970, C-11/70, Internationale
Handelsgesellschaft mbH v
Einfuhr- und Vorratsstelle
für Getreide und Futtermittel

JUDGMENT OF 17. 12. 1970 — CASE 11/70

an integral part of the general principles of law protected by the Court of Justice. The protection of such rights, whilst inspired by the constitutional traditions common to the Member States, must be ensured within the framework of the structure and objectives of the Community.

(Judgment of 12 November 1969, Case 29/69, Rec. 1969, p. 425)

3. The requirement by the agricultural regulations of the Community of import and export licences involving for the licensees an undertaking to effect the proposed transactions under the guarantee of a deposit constitutes a method which is both necessary and appropriate, for the purposes of Articles 40 (3) and 43 of the EEC Treaty, to enable the competent authorities to determine in the most effective manner their interventions on the market in cereals. The system of deposits violates no fundamental right.

4. The concept of *force majeure* adopted by the agricultural regulations is not limited to absolute impossibility but must be understood in the sense of unusual circumstances, outside the control of the importer or exporter, the consequences of which, in spite of the exercise of all due care, could not have been avoided except at the cost of excessive sacrifice.

(Judgment of 11 July 1968, Case 4/68, Rec. 1968, p. 563)

5. By limiting the cancellation of the undertaking to export and the release of the deposit to cases of *force majeure* the Community legislature adopted a provision which, without imposing an undue burden on importers or exporters, is appropriate for ensuring the normal functioning of the organization of the market in cereals, in the general interest as defined in Article 39 of the Treaty.

In Case 11/70

Reference to the Court under Article 177 of the EEC Treaty by the Verwaltungsgericht (Administrative Court) Frankfurt-am-Main, for a preliminary ruling in the case pending before that court between

INTERNATIONALE HANDELSGESELLSCHAFT MBH, the registered office of which is at Frankfurt-am-Main,

and

EINFUHR- UND VORRATSSTELLE FÜR GETREIDE UND FUTTERMITTEL, Frankfurt-am-Main,

on the validity of the third subparagraph of Article 12 (1) of Regulation No 120/67/EEC of the Council of 13 June 1967 on the common organization of the market in cereals and Article 9 of Regulation No 473/67/EEC of the Commission of 21 August 1967 on import and export licences for cereals and processed cereal products, rice, broken rice and processed rice products,

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THE COURT

composed of: R. Lecourt, President, A. M. Donner and A. Trabucchi, Presidents of Chambers, R. Monaco, J. Mertens de Wilmars, P. Pescatore (Rapporteur) and H. Kutscher, Judges.

Advocate-General: A. Dutheillet de Lamothe

Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

I — Facts and procedure

On 7 August 1967 Internationale Handelsgesellschaft mbH, an import-export undertaking based at Frankfurt-am-Main, obtained an export licence in respect of 20 000 metric tons of maize meal, the validity of which expired on 31 December 1967.

In accordance with the third subparagraph of Article 12 (1) of Regulation No 120/67/EEC of the Council of 13 June 1967 on the common organization of the market in cereals (OJ Special Edition 1967, p. 33) the issue of the licence was conditional on the lodging of a deposit, amounting to 0.5 units of account per metric ton, guaranteeing that exportation would be effected during the period of validity of the licence. As exportation was only partially effected (11 486.764 metric tons) during the period of validity of the said licence, the Einfuhr- und Vorratsstelle für Getreide und Futtermittel declared DM 17 026.47 of the deposit to be forfeited, in accordance with Regulation No 473/67/EEC of the Commission of 21 August 1967 on import and export licences for cereals and processed cereal products, rice, broken rice and processed rice products (OJ 1967, No 204, p. 16).

On the Einfuhr- und Vorratsstelle's failure to come to a decision on the objections of Internationale Handelsgesellschaft mbH, that undertaking on 18 November 1969 brought an action before the Verwaltungsgericht (Administrative Court) Frankfurt-am-Main.

By order of 18 March 1970, received at the Court Registry on 26 March, the Verwaltungsgericht Frankfurt-am-Main, asked the Court under Article 177 of the EEC Treaty for a preliminary ruling on the following questions:

1. Are the obligation to export, laid down in the third subparagraph of Article 12 (1) of Regulation No 120/67/EEC of the Council of 13 June 1967, the lodging of a deposit, upon which such obligation is made conditional, and forfeiture of the deposit, where exportation is not effected during the period of validity of the export licence, legal?
2. In the event of the Court's confirming the legal validity of the said provision, is Article 9 of Regulation No 473/67/EEC of the Commission of 21 August 1967, adopted in implementation of Regulation No 120/67, legal in that it excludes forfeiture of the deposit only in cases of *force majeure*?

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In its order the *Verwaltungsgericht* emphasized the following considerations in particular:

As the court has refused, by reason of established case-law, to accept the legality of the provisions cited, it appears to it essential to put an end to the resultant legal uncertainty.

Although Community regulations are not German national laws, but legal rules pertaining to the Community, they must respect the elementary, fundamental rights guaranteed by the German Constitution and the essential structural principles of national law. In the event of contradiction with those principles, the primacy of supranational law conflicts with the principles of the German Basic Law.

The system of deposits instituted by Regulation No 120/67 is contrary to the principles of freedom of action and disposition, of economic liberty and of proportionality stemming in particular from Articles 2 (1) and 14 of the German Basic Law. More particularly, the adverse effects of the system of deposits on the interests of trade appear disproportionate to the objective sought by the regulation, which is to ensure for the competent authorities as precise and comprehensive a view as possible of market trends. The same result could in fact be obtained by less radical means.

Even if the Court of Justice were to confirm the validity of the system of deposits, the court of reference still has doubts as to the validity of Article 9 of Regulation No 473/67, by reason of the fact that forfeiture of the deposit is excluded only in cases of *force majeure* and not in other cases in which exportation has not been effected without nevertheless any fault being attributable to the persons concerned.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC written observations were submitted on 15 June 1970 by the Government of the Kingdom of The Netherlands, the defendant in the main action and the Commission of the European Communities, on 17 June by the plaintiff in the main action and on 18 June by the Government of the Federal Republic of Germany.

After hearing the report of the Judge-

Rapporteur and the views of the Advocate-General, the Court decided to open the oral procedure without any preparatory inquiry. The plaintiff in the main action and the Commission submitted their oral observations at the hearing on 11 November 1970. The Advocate-General delivered his opinion at the hearing on 2 December 1970.

For the procedure before the Court Fritz Modest, Advocate, of Hamburg, appeared for the plaintiff in the main action, Albrecht Stockburger, Advocate, of Frankfurt-am-Main, for the defendant in the main action, W. Riphagen, Legal Adviser to the Ministry for Foreign Affairs, for the Government of the Kingdom of The Netherlands, Rudolf Morawitz, Ministerialrat to the Ministry for Economic Affairs, for the Government of the Federal Republic of Germany and Claus-Dieter Ehlermann, the Commission's Legal Adviser, for the Commission of the European Communities.

II — Observations submitted to the Court

The written and oral observations submitted to the Court may be summarized as follows: *Internationale Handelsgesellschaft mbH*, the plaintiff in the main action, after pointing out the factual reasons for which it did not during the period of its validity fully utilize the export licence granted to it, disputes the validity of the system of deposits as instituted by the third subparagraph of Article 12 (1) of Regulation No 120/67 and Article 9 of Regulation No 473/67, for the following reasons:

(a) Forfeiture of the deposit, which is the consequence of failure to carry out the obligation to import or export, in reality constitutes a fine or a penalty. The provisions of the Treaty concerning the organization of the agricultural markets contain no provision enabling the Council or the Commission to impose sanctions of a penal nature.

(b) The system of deposits, as it is instituted by the provisions criticized, is contrary to the principle of proportionality which

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forms part of the general principles of law, recognition of which is essential in the framework of any structure based on respect for the law. As these principles are recognized by all the Member States, the principle of proportionality forms an integral part of the EEC Treaty.

The plaintiff in the main action points out more particularly in this connexion that the agricultural regulations of the Community, in particular Regulation No 120/67, are limited in principle to the formation of market policy by means of prices. The regulation of prices has an automatic sluice-gate effect on quantitative movements in the Community market and avoids any disturbance to it. Consequently, the point of prime importance in the assessment of the market and market trends is the observance and checking first, of the prices on the internal market and, secondly, of the situation on the world market. On the other hand, a quantitative check, such as arises from the system of import and export licences, the implementation of which must be guaranteed by means of a deposit, is only of secondary importance.

It appears therefore that the system of deposits is ineffectual in attaining the objective sought by the regulation and is therefore contrary to the scheme of the regulation.

Moreover, it is also ineffectual in view of the fact that it can neither guarantee that the obligation to import or export is actually carried out, nor enable the competent authorities in good time to have a sure view of the state of the market, much less future market trends.

This is all the more true as the Commission's departments are not technically in a position to exploit the information provided by the system criticized.

Lastly, the amount of the deposit, particularly in cases of advance fixing of levies or refunds, is excessive when compared to trade profit margins.

It follows from these findings that a substantial charge is imposed without any necessity on importers and exporters. Any measure constituting a charge, whether or not it is in itself tolerable, infringes the principle between the charge and the result which it may or must endeavour to achieve,

when that objective cannot be attained by the method employed or when, in order to attain it, there are other methods which may be more conveniently applied.

(c) The plaintiff in the main action casts doubt on the validity of Article 9 of Regulation No 473/67, which allows importers and exporters to be relieved of their obligations and of forfeiture of the deposit in cases of *force majeure*, for the following reasons:

- the system of Article 9 infringes the principle of proportionality in that it refuses, otherwise than in cases of *force majeure*, to take into consideration situations in which the authorization to import or export has not been utilized for justifiable commercial reasons;
- the provision in dispute does not take into account the peculiarities of the inward processing trade, a system to which the goods concerned in the main action are subject;
- the whole of Regulation No 473/67, including Article 9 thereof, was adopted, by virtue of Article 26 of Regulation No 120/67, according to the 'Management Committee' procedure; the application of that procedure is incompatible with the institutional structure laid down by the EEC Treaty.

The *Einfuhr- und Vorratsstelle für Getreide und Futtermittel*, the defendant in the main action, first of all observes that the Court of Justice of the Communities cannot assess the validity of measures taken by Community institutions with regard to the rules of national law, even constitutional law, or to the fundamental rights enshrined therein. However, the fundamental right to free expression and free choice in commercial decisions, enounced by the Basic Law of the Federal Republic, constitutes an element of that common fund of fundamental values which form part of Community law; as to the principle of proportionality, it is recognized by several provisions of the EEC Treaty, in particular Article 40, and the Court of Justice has already had recourse to it in assessing various measures adopted by Community institutions.

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But both in Community law and in national law there is violation of the principle of proportionality only where no objectively defensible consideration can justify recourse to a specific method intended to attain a given objective. In this instance, therefore, it is merely a question of establishing whether or not the economic assessment on which the legislature of the EEC based the regulations in dispute is vitiated by obvious errors.

(a) With regard to the first question submitted to the Court, the defendant in the main action considers that the significance and objective of the system of licences and deposits is to enable the agencies entrusted with the organization of the market to have a permanent, sure and comprehensive view of future imports and exports and to put them in a position to check market activities. Such a permanent check is indispensable, not to establish statistics, but to enable the powers with regard to market guidance to be exercised to the correct degree, to facilitate intervention without delay in case of crisis and to enable any precautionary measures to be taken. The available information must continuously provide a *prospective*, comprehensive view of the market.

However, the informatory value of licences can only be trusted when they are actually made use of, when, in other words, there is an obligation to import or export, sanctioned by a penalty which consists precisely in the forfeiture of the deposit. This system alone is equally capable of preventing with sufficient certainty speculations which, when made in the context of import and export licences and of levies and refunds, have a decisive effect on the informatory value of the unused licences. The absence of such a system would in all probability lead to an unlimited number of import and export licences being renounced and it would no longer be possible effectively to keep watch over the market.

The system of deposits is perfectly capable of fulfilling the function accorded it: the penalty constituted by the risk of forfeiture of the deposit in the event of non-utilization of the licence is sufficient guarantee that the intended transaction is effected and the

competent authorities are informed in good time of the utilization or otherwise of the licence.

It is impossible to substitute for the system of deposits other methods imposing lesser charges on the persons concerned. Neither the system whereby exporters report exports actually effected nor that consisting in the obligation to report non-exportation is capable of providing the Commission and the competent national administration with the necessary comprehensive view over the market and to prevent speculation. The result of both procedures, taking into account the long period of validity of the licences, is that it is impossible at any given moment to determine, even approximately, the actual quantities which are expected to be imported or exported. Moreover, the duration of the validity of the licences cannot be reduced, as they have been fixed by reference to periods usual in the commercial world.

The amount of the deposit does not impose an excessive burden on the exporter; it is in particular very much less than the normal profit margin for this type of transaction. In the case of export licences with the refund fixed in advance, it was obviously necessary to fix the amount of the deposit at a higher figure, as the deposit must forestall the risk of more serious speculation on the fixed rate of refund, which could lead to the non-utilization of the licence.

(b) With regard to the second question, the defendant in the main action denies that the principle of proportionality is violated by the fact that Article 9 of Regulation No 473/67 excludes the obligation to utilize the licence within the prescribed period only in circumstances which may be considered to amount to *force majeure*.

The cases of *force majeure* provided for by this provision are not exhaustively listed, since the competent agencies are enabled to countenance circumstances other than those expressly referred to therein. The list of additional circumstances to be considered as cases of *force majeure*, as drawn up and intimated by the Federal Republic of Germany, is so complete that it takes into account all serious cases capable of justifying the non-application of forfeiture of

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the deposit. The Court of Justice itself, in its judgment of 11 July 1968 in Case 4/68, has to a remarkable extent taken into account the interests of importers and exporters, by defining the meaning of the expression '*force majeure*' by reference to general criteria and leaving the application of that concept to the administration and the courts.

(c) In conclusion, the defendant in the main action is of the opinion that if the scope of the system of deposits is considered in its true light it cannot seriously be maintained that the provisions referred to the Court violate the principle of proportionality or that of freedom of trade.

The *Government of the Federal Republic of Germany* is of the opinion that in order to reply to the questions put it is unnecessary to examine whether there may be deduced from the EEC Treaty an unwritten reservation in favour of the constitutions of the Member States and, more particularly, of fundamental rights recognized by those constitutions or whether the Community Treaties provide individual rights analogous or equivalent to the fundamental rights generally recognized in the Member States or stipulated by the European Convention on Human Rights.

The Court of Justice has in fact accepted on various occasions that the principle of proportionality is equally valid in the context of the Community. This principle is not put in issue by the provisions in dispute. The functioning of all the mechanisms instituted by Regulation No 120/67 is only ensured by a prospective comprehensive view of the market. The issue of licences by itself cannot guarantee it. Certain information on imports and exports can only be obtained if the transactions to which the licences relate are actually effected. Such is the object of the lodging and possible forfeiture of the deposit; they also avoid speculation.

The *Government of the Kingdom of The Netherlands* considers that the obligation to effect within a certain period the import or export transactions to which the licences relate, the lodging of a deposit to this end and the forfeiture of that deposit when the obligation is not fulfilled are in accordance

with the objective sought by Regulation No 120/67 and cannot be considered to be illegal.

The objective of these measures is to enable a common policy for the market in cereals to be established; this presupposes a correct view of the state of the market in that sector and a valid prospective study of market trends. These conditions are not satisfied if certain data relating to expected imports and exports remain uncertain.

The obligation to export and the lodging of a deposit have other than purely statistical functions; they form an integral part of the system established by the common organizations of the agricultural markets. Export refunds vary in accordance with the estimated size of stocks, assessed on the basis of predicted exports; the spreading of those stocks over the whole marketing year is one of the objectives of the policy of the markets; the determination of the number of exports and the quantities intended for other uses, for denaturing for example, are particularly important in a surplus situation. A notice of non-exportation or non-importation cannot be substituted for the system in force. Such notification is incompatible with the necessity to fix in advance the amount of the imports and exports which will be effected during given periods. Moreover, the policy of the markets would find itself paralysed by it, as it would be several months behind events. Finally, such a solution would promote speculation.

The *Commission of the European Communities* makes the preliminary observation that the Community institutions are bound by Community law alone and that in their regard the protection conferred by the fundamental rights of national constitutions flows only from Community law, written or unwritten. Further, even according to German constitutional law, the system of deposits is only capable of infringing the provisions concerning free development of the person, freedom of action and economic freedom if, at the same time, it runs counter to the principle of proportionality.

This principle is in no way put in issue by the system in dispute, as that system is indispensable to the proper functioning of

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the common organization of the market in cereals.

(a) The common organization of the market in cereals involves essentially the regulation of prices, the object of which is to stabilize the price of cereals in the Community at a level higher than that on the world markets. Such regulation protects the internal market from falls in prices provoked either by over-production by the Community or by imports from third countries. It can only function if the regulatory mechanisms are used in a rational manner; it is therefore essential that data be available indicating not only the imports and exports already effected but also enabling a valid assessment of *future* market trends to be made. This *prospective* comprehensive view of the market is essential not only for the possible application of protective measures in the face of a threat of serious disturbances to the market but also for the fixing of export refunds and denaturing premiums.

The system of deposits is a necessary instrument for such a prospective comprehensive view of the market.

Such a view requires sure data on future imports and exports; the licence only provides such information if it can be expected with sufficient certainty that the issue of the licence will actually lead to importation or exportation. This is only the case if non-utilization of the licence involves some disadvantage for the licensee; such is the object of the deposit which is forfeited in cases where the licence is not used. The obligation to import or export involves no disadvantage for the licensee other than forfeiture of the deposit; thus it in no way has a particularly adverse effect on the rights of the individual.

In the absence of a deposit, the licence is not capable of providing sure data as to future imports or exports. In fact, there are several reasons for a trader to apply for more licences than he needs.

It is not possible to obtain a valid comprehensive view of the market by obliging the licensee to report non-utilization of his licence and by penalizing any failure to fulfil that obligation by the imposition of a fine; in fact, in order to acquire a prospec-

tive comprehensive view of the market it is necessary that at the time when the licence is issued there should be sufficient certainty that the quantity mentioned in the licence will be imported or exported during the period of its validity. Notice of non-utilization would merely lead to piecemeal correction of the initially false image of the future state of the market.

A reduction in the duration of the validity of licences is not an adequate solution: it runs counter to the objectives of the common organization of the market in cereals and is incompatible with the principle that trade must be taxed as lightly as possible. The cases in which the licences remain unused are the exception and do not prevent the system of deposits from attaining its objective.

The complaint that the system of deposits transforms the economy of the market into a planned or directed economy is not justified. The common organization of the market in cereals cannot dispense with all intervention on the market; it is characterized, however, by the concern to make such intervention conform as much as possible to the rules of the market and to allow the widest scope for competition.

To sum up, the Commission considers that with regard to the first question posed by the Verwaltungsgericht Frankfurt it should be held that the functioning of the common organization of the market in cereals requires a prospective comprehensive view of the market and therefore demands sufficiently certain knowledge of future imports and exports; only a licence subject to the risk of forfeiture of the deposit is capable of giving such knowledge. The system complained of not only conforms to the objective sought but is necessary to its attainment; thus it does not run counter to the principle of proportionality of the method to the objective sought.

(b) With regard to the second question, the Commission repeats that the system of deposits must ensure that utilization of the licence remains the general rule and its non-utilization the exception; this is only possible if, where the licence is not used, the deposit is forfeited as a general rule and the release of the deposit is limited to exceptional cases.

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Limitation by Article 9 of Regulation No 473/67 of the release of the deposit to cases of *force majeure* runs counter neither to the principle of proportionality nor to the theory of the rule of law.

In fact, it follows from the case-law of the Court that the existence of a case of *force majeure* must be recognized when the application of strictly objective criteria indicates that the failure to effect importation or exportation is not due to negligence and that, in such examination, the principle of proportionality must be respected; furthermore, the fact that a trader has to bear an excessive loss may constitute a case

of *force majeure* capable of releasing him from the obligation to effect the intended transaction.

In conclusion on the second question, the Commission maintains that, in order to attain its objective, the system of deposits must include a strict definition of the conditions which, if satisfied, justify the release of the deposit. Such is the concept of *force majeure*. Limitation to cases of *force majeure*, in the interpretation given to this concept by the Court, runs counter neither to the principle of proportionality nor to any other legal principle.

Grounds of judgment

- 1 By order of 18 March 1970 received at the Court on 26 March 1970, the Verwaltungsgericht Frankfurt-am-Main, pursuant to Article 177 of the EEC Treaty, has referred to the Court of Justice two questions on the validity of the system of export licences and of the deposit attaching to them—hereinafter referred to as ‘the system of deposits’—provided for by Regulation No 120/67/EEC of the Council of 13 June 1967 on the common organization of the market in cereals (OJ Special Edition 1967, p. 33) and Regulation No 473/67/EEC of the Commission of 21 August 1967 on import and export licences (OJ 1967, No 204, p. 16).
- 2 It appears from the grounds of the order referring the matter that the Verwaltungsgericht has until now refused to accept the validity of the provisions in question and that for this reason it considers it to be essential to put an end to the existing legal uncertainty. According to the evaluation of the Verwaltungsgericht, the system of deposits is contrary to certain structural principles of national constitutional law which must be protected within the framework of Community law, with the result that the primacy of supranational law must yield before the principles of the German Basic Law. More particularly, the system of deposits runs counter to the principles of freedom of action and of disposition, of economic liberty and of proportionality arising in particular from Articles 2 (1) and 14 of the Basic Law. The obligation to import or export resulting from the issue of the licences, together with the deposit attaching thereto, constitutes an excessive intervention in the freedom of disposition in trade, as the objective of the regulations could have been attained by methods of intervention having less serious consequences.

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The protection of fundamental rights in the Community legal system

- 3 Recourse to the legal rules or concepts of national law in order to judge the validity of measures adopted by the institutions of the Community would have an adverse effect on the uniformity and efficacy of Community law. The validity of such measures can only be judged in the light of Community law. In fact, the law stemming from the Treaty, an independent source of law, cannot because of its very nature be overridden by rules of national law, however framed, without being deprived of its character as Community law and without the legal basis of the Community itself being called in question. Therefore the validity of a Community measure or its effect within a Member State cannot be affected by allegations that it runs counter to either fundamental rights as formulated by the constitution of that State or the principles of a national constitutional structure.
- 4 However, an examination should be made as to whether or not any analogous guarantee inherent in Community law has been disregarded. In fact, respect for fundamental rights forms an integral part of the general principles of law protected by the Court of Justice. The protection of such rights, whilst inspired by the constitutional traditions common to the Member States, must be ensured within the framework of the structure and objectives of the Community. It must therefore be ascertained, in the light of the doubts expressed by the Verwaltungsgericht, whether the system of deposits has infringed rights of a fundamental nature, respect for which must be ensured in the Community legal system.

The first question (legality of the system of deposits)

- 5 By the first question the Verwaltungsgericht asks whether the undertaking to export based on the third subparagraph of Article 12 (1) of Regulation No 120/67, the lodging of a deposit which accompanies that undertaking and forfeiture of the deposit should exportation not occur during the period of validity of the export licence comply with the law.
- 6 According to the terms of the thirteenth recital of the preamble to Regulation No 120/67, 'the competent authorities must be in a position constantly to follow trade movements in order to assess market trends and to apply the measures ... as necessary' and 'to that end, provision should be made for the issue of import and export licences accompanied by the lodging of a deposit guaranteeing that the transactions for which such licenses are requested are effected'. It follows from these considerations and from the general scheme of the regulation that the system of deposits is intended to guarantee that the imports and exports for which the

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licences are requested are actually effected in order to ensure both for the Community and for the Member States precise knowledge of the intended transactions.

- 7 This knowledge, together with other available information on the state of the market, is essential to enable the competent authorities to make judicious use of the instruments of intervention, both ordinary and exceptional, which are at their disposal for guaranteeing the functioning of the system of prices instituted by the regulation, such as purchasing, storing and distributing, fixing denaturing premiums and export refunds, applying protective measures and choosing measures intended to avoid deflections of trade. This is all the more imperative in that the implementation of the common agricultural policy involves heavy financial responsibilities for the Community and the Member States.
- 8 It is necessary, therefore, for the competent authorities to have available not only statistical information on the state of the market but also precise forecasts on future imports and exports. Since the Member States are obliged by Article 12 of Regulation No 120/67 to issue import and export licences to any applicant, a forecast would lose all significance if the licences did not involve the recipients in an undertaking to act on them. And the undertaking would be ineffectual if observance of it were not ensured by appropriate means.
- 9 The choice for that purpose by the Community legislature of the deposit cannot be criticized in view of the fact that that machinery is adapted to the voluntary nature of requests for licences and that it has the dual advantage over other possible systems of simplicity and efficacy.
- 10 A system of mere declaration of exports effected and of unused licences, as proposed by the plaintiff in the main action, would, by reason of its retrospective nature and lack of any guarantee of application, be incapable of providing the competent authorities with sure data on trends in the movement of goods.
- 11 Likewise, a system of fines imposed *a posteriori* would involve considerable administrative and legal complications at the stage of decision and of execution, aggravated by the fact that the traders concerned may be beyond the reach of the intervention agencies by reason of their residence in another Member State, since Article 12 of the regulation imposes on Member States the obligation to issue the licences to any applicant 'irrespective of the place of his establishment in the Community.'
- 12 It therefore appears that the requirement of import and export licences involving for the licensees an undertaking to effect the proposed transactions under the

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guarantee of a deposit constitutes a method which is both necessary and appropriate to enable the competent authorities to determine in the most effective manner their interventions on the market in cereals.

- 13 The principle of the system of deposits cannot therefore be disputed.
- 14 However, examination should be made as to whether or not certain detailed rules of the system of deposits might be contested in the light of the principles enounced by the Verwaltungsgericht, especially in view of the allegation of the plaintiff in the main action that the burden of the deposit is excessive for trade, to the extent of violating fundamental rights.
- 15 In order to assess the real burden of the deposit on trade, account should be taken not so much of the amount of the deposit which is repayable—namely 0.5 unit of account per 1 000 kg—as of the costs and charges involved in lodging it. In assessing this burden, account cannot be taken of forfeiture of the deposit itself, since traders are adequately protected by the provisions of the regulation relating to circumstances recognized as constituting *force majeure*.
- 16 The costs involved in the deposit do not constitute an amount disproportionate to the total value of the goods in question and of the other trading costs. It appears therefore that the burdens resulting from the system of deposits are not excessive and are the normal consequence of a system of organization of the markets conceived to meet the requirements of the general interest, defined in Article 39 of the Treaty, which aims at ensuring a fair standard of living for the agricultural community while ensuring that supplies reach consumers at reasonable prices.
- 17 The plaintiff in the main action also points out that forfeiture of the deposit in the event of the undertaking to import or export not being fulfilled really constitutes a fine or a penalty which the Treaty has not authorized the Council and the Commission to institute.
- 18 This argument is based on a false analysis of the system of deposits which cannot be equated with a penal sanction, since it is merely the guarantee that an undertaking voluntarily assumed will be carried out.
- 19 Finally, the arguments relied upon by the plaintiff in the main action based first on the fact that the departments of the Commission are not technically in a position to exploit the information supplied by the system criticized, so that it is devoid of all practical usefulness, and secondly on the fact that the goods with which the dispute

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is concerned are subject to the system of inward processing are irrelevant. These arguments cannot put in issue the actual principle of the system of deposits.

- 20 It follows from all these considerations that the fact that the system of licences involving an undertaking, by those who apply for them, to import or export, guaranteed by a deposit, does not violate any right of a fundamental nature. The machinery of deposits constitutes an appropriate method, for the purposes of Article 40 (3) of the Treaty, for carrying out the common organization of the agricultural markets and also conforms to the requirements of Article 43.

The second question (concept of 'force majeure')

- 21 By the second question the Verwaltungsgericht asks whether, in the event of the Court's confirming the validity of the disputed provision of Regulation No 120/67, Article 9 of Regulation No 473/67 of the Commission, adopted in implementation of the first regulation, is in conformity with the law, in that it only excludes forfeiture of the deposit in cases of *force majeure*.
- 22 It appears from the grounds of the order referring the matter that the court considers excessive and contrary to the abovementioned principles the provision in Article 1 [sic] of Regulation No 473/67, the effect of which is to limit the cancellation of the obligation to import or export and release of the deposit only to 'circumstances which may be considered to be a case of *force majeure*'. In the light of its experience, the Verwaltungsgericht considers that provision to be too narrow, leaving exporters open to forfeiture of the deposit in circumstances in which exportation would not have taken place for reasons which were justifiable but not assimilable to a case of *force majeure* in the strict meaning of the term. For its part, the plaintiff in the main action considers this provision to be too severe because it limits the release of the deposit to cases of *force majeure* without taking into account the arrangements of importers or exporters which are justified by considerations of a commercial nature.
- 23 The concept of *force majeure* adopted by the agricultural regulations takes into account the particular nature of the relationships in public law between traders and the national administration, as well as the objectives of those regulations. It follows from those objectives as well as from the positive provisions of the regulations in question that the concept of *force majeure* is not limited to absolute impossibility but must be understood in the sense of unusual circumstances, outside the control of the importer or exporter, the consequences of which, in spite of the

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exercise of all due care, could not have been avoided except at the cost of excessive sacrifice. This concept implies a sufficient flexibility regarding not only the nature of the occurrence relied upon but also the care which the exporter should have exercised in order to meet it and the extent of the sacrifices which he should have accepted to that end.

- 24 The cases of forfeiture cited by the court as imposing an unjustified and excessive burden on the exporter appear to concern situations in which exportation has not taken place either through the fault of the exporter himself or as a result of an error on his part or for purely commercial considerations. The criticisms made against Article 9 of Regulation No 473/67 lead therefore in reality to the substitution of considerations based solely on the interest and behaviour of certain traders for a system laid down in the public interest of the Community. The system established, under the principles of Regulation No 120/67, by implementing Regulation No 473/67 is intended to release traders from their undertaking only in cases in which the import or export transaction was not able to be carried out during the period of validity of the licence as a result of the occurrences referred to by the said provisions. Beyond such occurrences, for which they cannot be held responsible, importers and exporters are obliged to comply with the provisions of the agricultural regulations and may not substitute for them considerations based upon their own interests.
- 25 It therefore appears that by limiting the cancellation of the undertaking to export and the release of the deposit to cases of *force majeure* the Community legislature adopted a provision which, without imposing an undue burden on importers or exporters, is appropriate for ensuring the normal functioning of the organization of the market in cereals, in the general interest as defined in Article 39 of the Treaty. It follows that no argument against the validity of the system of deposits can be based on the provisions limiting release of the deposit to cases of *force majeure*.

Costs

- 26 The costs incurred by the Government of the Kingdom of The Netherlands, the Government of the Federal Republic of Germany and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable.
- 27 As these proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the action pending before the Verwaltungsgericht Frankfurt-am-Main, the decision as to costs is a matter for that court.

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On those grounds,

Upon reading the pleadings;

Upon hearing the report of the Judge-Rapporteur;

Upon hearing the oral observations of the plaintiff in the main action and the Commission of the European Communities;

Upon hearing the opinion of the Advocate-General;

Having regard to the Treaty establishing the European Economic Community, especially Articles 2, 39, 40, 43 and 177;

Having regard to Regulation No 120/67/EEC of the Council of 13 June 1967 and Regulation No 473/67/EEC of the Commission of 21 August 1967;

Having regard to the Protocol on the Statute of the Court of Justice of the European Community, especially Article 20;

Having regard to the Rules of Procedure of the Court of Justice of the European Communities,

THE COURT

in answer to the questions referred to it by the Verwaltungsgericht Frankfurt-am-Main, by order of that court of 18 March 1970, hereby rules:

Examination of the questions put reveals no factor capable of affecting the validity of:

- (1) the third subparagraph of Article 12 (1) of Regulation No 120/67/EEC of the Council of 13 June 1967 making the issue of import and export licences conditional on the lodging of a deposit guaranteeing performance of the undertaking to import or export during the period of validity of the licence;**
- (2) Article 9 of Regulation No 473/67/EEC of the Commission of 21 August 1967, the effect of which is to limit the cancellation of the undertaking to import or export and the release of the deposit only to circumstances which may be considered to be a case of 'force majeure'.**

Lecourt

Donner

Trabucchi

Monaco

Mertens de Wilmars

Pescatore

Kutscher

Delivered in open court in Luxembourg on 17 December 1970.

A. Van Houtte

R. Lecourt

Registrar

President

ECLI:EU:C:1974:51
Judgment of 14 May 1974,
C-4/73, J. Nold, Kohlen- und
Baustoffgroßhandlung v
Commission of the
European Communities

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to restrictions laid down in accordance with the public interest. Within the Community legal order it likewise seems legitimate that these rights should, if necessary, be subject to certain limits justified by the overall objectives pursued by the Community, on condition that the

substance of these rights is left untouched. The above guarantees can in no respect be extended to protect mere commercial interests or opportunities, the uncertainties of which are part of the very essence of economic activity.

In Case 4/73

J. NOLD, KOHLEN- UND BAUSTOFFGROSSHANDLUNG, a limited partnership governed by German law, having its registered office in Darmstadt, represented by Manfred Lütkehaus, advocate of the Essen Bar, with an address for service in Luxembourg at the chambers of André Elvinger, 84 Grand-Rue

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, Dieter Oldekop, acting as agent, with an address for service in Luxembourg at the offices of its Legal Adviser, Pierre Lamoureux, 4 boulevard Royal

defendant,

supported by

RUHRKOHLE AKTIENGESELLSCHAFT, a limited company having its registered office in Essen

and

RUHRKOHLE VERKAUFS-GESELLSCHAFT MBH, a private limited company having its registered office in Essen, represented by Otfried Lieberknecht, advocate of the Düsseldorf Bar, with an address for service in Luxembourg at the chambers of Alex Bonn, 22, côte d'Eich,

interveners

Application for annulment of the Decision of the Commission of 21 December 1972, authorizing new terms of business of Ruhrkohle AG,

THE COURT

composed of: R. Lecourt, President, A. M. Donner and M. Sørensen, Presidents of Chambers, P. Pescatore (Rapporteur), H. Kutscher, C. Ó Dálaigh and A. J. Mackenzie Stuart, Judges,

Advocate-General: A. Trabucchi

Registrar: A. Van Houtte

gives the following

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JUDGMENT

Facts

The facts and the arguments developed by the parties in the course of the written procedure may be summarized as follows:

I — The facts

In pursuance of paragraph (2) of Article 12 of the Convention on the Transitional Provisions annexed to the ECSC Treaty and of Article 3 of the Decision of the High Authority No 37/53 of 11 July 1953 on the date of implementation of the prohibitions relating to agreements laid down by Article 65 of the Treaty (OJ, p. 153), the High Authority informed the mining companies of the Ruhr Basin, in May 1954, that it could not authorize the continued existence of the 'Gemeinschaftsorganisation Ruhrkohle GmbH' (GEORG), the central organization for the coal, set up before the establishment of the common market in coal.

On 15 February 1956, by Decisions Nos 5/56 (OJ, p. 29), 6/56 (OJ, p. 43) and 7/56 (OJ, p. 56), the High Authority authorized, subject to certain conditions, the joint sale of fuels by the mining companies of the Ruhr Basin associated to form the three selling agencies 'Geitling', 'Präsident' and 'Mausegatt'.

The trading rules authorized on that occasion by the High Authority fixed, in particular, the conditions required for acquisition of the status of direct wholesaler, with the right to direct purchase from a selling agency. For direct purchase from an agency, the dealer had to meet not only the conditions ordinarily required of a wholesaler (creditworthiness, establishment within a sales area, storage capacity, knowledge of the market and the products, extensive custom, wide range of categories and sorts for sale),

but also to have sold, during the preceding coal industry year,

- (a) within the common market, at least 75 000 metric tons of fuels originating from Community coal-fields,
- (b) of which at least 40 000 metric tons were to have been sold in the sales area where he wished to acquire the right to operate as a dealer,
- (c) of which at least 12 500 metric tons were to have been bought from the selling agency concerned.

By way of derogation from these conditions, the right of direct purchase from selling agencies was also granted, for a transitional period originally limited to 31 March 1957 and extended to 1 July 1957 by Decisions of the High Authority Nos 10/57 (OJ, p. 159), 11/57 (OJ, p. 160) and 12/57 (OJ, p. 161), of 1 April 1957, to wholesalers who, even though failing to satisfy the quantitative criteria imposed, had been supplied as direct wholesalers during the preceding coal industry year or who could establish that they fulfilled the conditions required during that year for supply as direct wholesalers (sale of 6 000 metric tons per annum of Ruhr coal).

An action for annulment of Decision No 5/56, brought by the selling agency 'Geitling', was dismissed by the Court in its Judgment of 20 March 1957 (Case 2/56, Rec. 1957, p. 11).

By Decisions Nos 16/57 (OJ, p. 319), 17/57 (OJ, p. 330) and 18/57 (OJ, p. 341) of 26 July 1957 the High Authority supplemented and amended Decisions Nos 5/56, 6/56 and 7/56 of 15 February 1956 authorizing the joint sale of fuels by the mining companies of the Ruhr Basin.

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As regards qualification as a coal wholesaler with the right of direct purchase, the respective quantitative minima were reduced from 75 000 to 60 000 metric tons, from 40 000 to 30 000 metric tons and from 12 500 to 9 000 metric tons.

The Decisions of the High Authority Nos 16/57, 17/57 and 18/57 did not maintain the derogations provided for the benefit of 'former' wholesalers. Accordingly, in September 1957, the three selling agencies for Ruhr coal informed the Nold company that they could no longer supply it as a direct wholesaler as from 1 October 1957.

In an action brought by Nold the Court, in its Judgment of 20 March 1959 (Case 18/57, Rec. 1959, p. 89), annulled, by reason of insufficient grounds, the provisions of Decisions Nos 16, 17 and 18/57 relating to the conditions for qualification as a direct wholesaler.

By Decision No 17/59 of 18 February 1959 extending the authorizations relating to the marketing organizations of the Ruhr Basin (OJ, p. 279) and Decision No 36/59 of 17 June 1959 rescinding and supplementing part of Decision No 17/59 concerning the trading rules for the Ruhr coal selling agencies (OJ, p. 736), the High Authority, abolished in respect of the conditions for qualification as direct coal dealer, the criterion of sales of 60 000 metric tons of Community coal within the common market and reduced respectively from 30 000 to 20 000 metric tons per annum the criterion of sales of Community coal within a particular sales area and from 9 000 to 6 000 metric tons the criterion of sales within that same area of coal from a specific selling agency.

The essential provisions of Decision No 36/59 were annulled in an action brought by the three selling agencies, by the mining companies of the Ruhr Basin and by Firma Nold, by Judgment of the Court of 15 July 1960 (Joined Cases 36, 37, 38 and 40/59, Rec. 1960, p. 857).

By Decision No 16/60 of 22 June 1960 on the refusal to authorize a joint marketing organization of mining companies of the Ruhr Basin (OJ, p. 1014), the High Authority opposed the substitution for the system of sale by three independent agencies, of a single sales organization embracing almost all the mining companies of the Ruhr Basin.

An action brought against this Decision by the selling agencies was dismissed by Judgment of the Court of 18 May 1962 (Case 13/60, Rec. 1962, p. 165).

On 8 February 1961, by Decision No 3/61 amending Decision No 17/59 (amended by Decision No 36/59) as regards trading rules for the coal selling agencies of the Ruhr (OJ, p. 413), the High Authority authorized the Ruhr coal selling agencies to render direct supplies to coal wholesalers subject to a single quantitative criterion, namely the sale, within the common market, during the preceding coal industry year, of at least 6 000 metric tons of fuels originating from the selling agency supplying the accredited dealer.

By Decisions Nos 5/63 (OJ, p. 1173) and 6/63 (OJ, p. 1191) of 20 March 1963, the High Authority authorized the joint selling of fuels by the mining companies of the Ruhr Basin organized into the two selling agencies 'Geitling' and 'Präsident', while maintaining in force, with regard to the trading rules, the conditions for admitting coal wholesalers to the right of direct supply.

The principal grounds of the action brought against these Decisions by the Government of the Kingdom of the Netherlands were dismissed by the Court in its Judgment of 15 July 1964 (Case 66/63, Rec. 1964, p. 1049).

By Decision of 27 November 1969 authorizing the merger of the mining companies of the Ruhr Basin by the transfer of colliery assets to the company Ruhrkohle AG, the Commission of the European Communities, applying Article 66 (2) of the ECSC Treaty, authorized the merger of the mining companies of

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the Ruhr Basin into a single company, Ruhrkohle AG, and obliged the latter to submit for its authorization any amendment to its terms of business.

Also on 27 November 1969, the Commission took two Decisions (OJ, L 304, pp. 11 and 12) revoking, as from 31 December 1969, its Decisions Nos 5/63 and 6/63.

The Commission, by a Decision of 21 December 1972 authorizing new terms of business of Ruhrkohle AG (OJ 1973, L 120, p. 14), authorized trading rules which, by comparison with those in force included, in particular, the following changes:

- (a) the entitlement of a wholesaler to buy direct is now subject, not to his having sold not less than 6 000 metric tons of Ruhr coal in the preceding coal year, but to the conclusion of a two-year contract to purchase not less than 6 000 metric tons a year from Ruhrkohle AG for the supply of domestic and small consumers;
- (b) before a dealer is entitled to supply industrial consumers he must first be admitted to supply domestic and small consumers;
- (c) the qualification required of admitted direct buying dealers for the supply of large industrial concerns is not, as heretofore, a minimal annual consumption of 30 000 metric tons of solid fuels of any provenance, but the taking of that tonnage of Ruhr products; dealers may sell to consumers beyond this limit only if they render special services.

However, provisionally, in the first year following the entry into force of the new terms of business, Ruhrkohle AG had to allow wholesalers contracting for the stipulated minimum amount of 6 000 metric tons a year of products for domestic and small consumers to take up to 15 % less than that amount.

On 10 January 1973, Ruhrkohle-Verkauf GmbH, the marketing agency for Ruhrkohle AG, sent to direct coal wholesalers and in particular to the Nold undertaking, the text of the new trading rules authorized by the Commission's Decision of 21 December 1972 and applicable as from 1 January 1973, and informed them that as from that date commercial transactions between them would be carried out on that basis.

II — Procedure

On 31 January 1973 the Nold undertaking brought an action for the annulment of the Commission's Decision of 21 December 1972. The action was directed against both the European Economic Community, represented by Ruhrkohle-Verkauf GmbH.

An application to suspend the operation of the Commission's Decision of 21 December 1972, brought by the Nold undertaking on 13 February 1973, was removed from the Register of the Court by Order of the President of 14 March 1973 at the request of the applicant. This Order reserved the costs.

In its reply, the applicant informed the Court that it was withdrawing its action in respect of Ruhrkohle AG and Ruhrkohle-Verkauf GmbH. By Order of 21 June 1973 the Court decided to remove the case from the Register in so far as it concerned these two companies and ordered the applicant to bear the costs incurred by the said companies in the main action and in the interim procedure.

The written procedure in the dispute between the Nold undertaking and the Commission alone followed the normal course.

By application made on 29 October 1973 Ruhrkohle AG and Ruhrkohle-Verkauf GmbH asked to be allowed to intervene in the main action in support of the conclusions of the Commission. Having heard the opinion of the Advocate-

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General, the Court, by Order of 21 November 1973, allowed this application and reserved the costs.

On 28 December 1973, the interveners stated in writing the grounds for their conclusions. The applicant gave its reply to these conclusions on 16 January and 8 February and the defendant did likewise on 8 February 1974.

Having heard the report of the Judge-Rapporteur and the opinion of the Advocate-General the Court decided to open the oral procedure without any preparatory inquiry.

III — Submissions and arguments of the parties

A — As to admissibility

The *intervenors* plead the inadmissibility of the action on the grounds of lack of any legal interest.

In their opinion, the applicant can be considered as justifying a legally protected interest only if its action could have the effect of obliging the interveners to continue to supply it directly. That is clearly not the case.

The terms of business authorized by the Decision in dispute replace the rules in force up till then; in the case of annulment, therefore, the interveners can sell only in accordance with the rules previously in force. The latter rules made the direct supplying of coal wholesalers subject to the condition of annual sales, within the common market, of at least 6 000 metric tons of fuels, a condition which, on its own admission, the applicant is very far from satisfying. Thus, it has in any case no right to direct supply.

In respect of 1973, the applicant can derive no rights from the fact that it continued to obtain direct supplies in 1972 when already during the preceding year it had not satisfied the quantitative criteria laid down with regard to this

matter. That the applicant obtained direct supplies in 1972 is explained by the fact that the interveners, because of doubts as to whether the terms of business in force up till then related to the coal marketing year or the year for civil purposes, waited, for the benefit of the undertakings concerned, for the situation to become clearer during the following year before applying the terms of business relating to direct supply. The applicant, although it continued to obtain direct supplies, had, in 1972, sold only 700 metric tons. In these circumstances, direct supply could not have been envisaged for the future even if the terms of business in force up to that time had continued to apply.

The *applicant* refutes the contention that the action is inadmissible on the grounds of lack of any legally protected interest.

During the interim procedure the applicant obtained the assurance that it would continue to be supplied as a direct wholesaler until this case was settled; it has therefore never ceased to be supplied on that basis. Consequently, it is of little importance to determine whether, accepting, for the sake of argument, the validity of the old terms of business, it had a right which it could assert in this connexion.

In its opinion, under the former terms of business of Ruhrkohle AG, no dealer automatically lost its status of wholesaler by reason of the fact that it did not sell an annual minimum of 6 000 metric tons. It is of little importance to determine whether the mining companies had the right to withhold supplies to the applicant as a direct wholesaler since, in any case, they did not make use of any such possible right.

B — As to the substance

1. Violation of the principle of non-discrimination

The *applicant* points out that, as from 1 January 1973, it can no longer, in

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accordance with the new terms of business of Ruhrkohle AG, be considered as a direct wholesaler in the coal trade. It is therefore a victim of serious discrimination.

(a) The terms of business of Ruhrkohle AG make deliveries on wholesale-market terms subject to a clause obliging the dealer to acquire at least 6 000 metric tons per annum of fuels for the domestic and small consumer sector; during the last two years the applicant has been unable to reach the minimum quota henceforth required.

However, it cannot be reproached for this. In fact, fundamental changes have been apparent in the energy sector over the past few years: coal sales have dropped continuously and it is therefore natural that not only the mining industries but also the wholesale and retail trade should suffer the consequences. But, in the last analysis, the responsibility for the fact that the applicant can no longer sell even 6 000 metric tons per annum lies with Ruhrkohle AG and Ruhrkohle-Verkauf GmbH or the former coal distribution companies of the Ruhr. In fact, Ruhrkohle AG concludes direct contracts for annual deliveries of more than 30 000 metric tons. This is the reason why, because it has suffered discrimination, the applicant has been unable to supply an important and long-standing customer, the undertaking Adam Opel AG of Rüsselheim, with the quantities which it desired. Ruhrkohle AG is also in direct competition with the applicant and other wholesalers through its subsidiaries. In addition, Ruhrkohle AG and Ruhrkohle-Verkauf GmbH offer fuels for sale at prices very much lower than the list prices, and companies controlled by Ruhrkohle AG supply national purchasers, within the Federal Republic of Germany, with 'Belgian coke' at a free-at-frontier price of around 90 DM per metric ton; this product is also sold directly to domestic and small consumers at prices which obviate all competition.

(b) In the case of the applicant, the loss of the status of wholesaler and of the means of obtaining direct supplies involves lasting consequences especially if there should be a change in the demand for coal. In this connexion account should be taken of the fact that the drop in sales of coal to domestic consumers over the last few years is largely due to fairly exceptional climatic conditions and, moreover, that the sales situation could change dramatically if there were difficulties — of a political nature — in the supply of petroleum or natural gas. If it accepts the new terms of business the applicant will probably never again have the opportunity to buy greater quantities, for, as a retailer, it will not in any case be able to offer conditions similar to those of wholesalers and undertakings which obtain direct supplies or those of the subsidiaries of Ruhrkohle AG and Ruhrkohle-Verkauf GmbH. That is the reason why in the second heading of its conclusions the applicant asks that, at the very least, it should be exempt from the new terms of business.

(c) The applicant cannot be obliged to enter into an association with other wholesalers who may be in a similar position and to combine its purchases with theirs. It does not see any reason to limit its independence in order to protect itself from the discriminatory consequences of the terms of business of Ruhrkohle AG.

Moreover, there is no evidence in these terms of business that Ruhrkohle AG is obliged to aggregate the turnovers of dealers who decide to combine, nor do they contain any definition of the concept of 'combination'.

The *defendant* points out that there can be discrimination only if dealers in a similar position to that of the applicant are treated differently in respect of admission to direct purchase; that is not the case, as the criteria adopted are equally valid for all dealers in the Community, including subsidiaries of Ruhrkohle AG. The fact that the

JUDGMENT OF 14. 5. 1974 — CASE 4/73

applicant must compete with dealers associated with Ruhrkohle AG does not therefore constitute discrimination against it.

(a) The complaint that Ruhrkohle AG and Ruhrkohle-Verkauf GmbH are responsible for the fact that the applicant is no longer in a position, by reason of alleged discrimination on the part of those two companies, to purchase 6 000 metric tons of coal per annum is not based on concrete data; in any case, the objection does not in the defendant's opinion, cast doubt on the validity of the new terms of business of Ruhrkohle AG or their authorization by the Commission.

However that may be, it is not true that subsidiaries of Ruhrkohle AG and Ruhrkohle-Verkauf GmbH or dealers associated with the shareholders of Ruhrkohle AG have offered coal for sale at prices below list prices. There is no denying that before the implementation of the new terms of business Ruhrkohle AG granted a special contractual discount ('Vertragsrabatt') to dealers who undertook by contract to buy a specific quantity of coal; but there was mention of this discount in the price list of Ruhrkohle-Verkauf GmbH and it was granted to all dealers, without distinction, for purchases of similar amounts.

The prices of imported fuels, fixed by the producers, range in practice from 95 to 110 DM; but imports of fuels from other Member States are independent of the influence of Ruhrkohle AG, with the result that the latter's marketing companies are in competition with other wholesalers. As imports from other Member States can have a considerable effect on sales of Ruhr coal it is natural that the marketing companies of Ruhrkohle AG should participate in this trade in order to compensate their losses. As for direct transactions between Ruhrkohle-Verkauf GmbH and customers in industry whose consumption exceeds 30 000 metric tons per annum, it should be recalled that these purchasers

have had, since the end of 1963, the choice between supply through a dealer or direct from the selling agencies. The exclusion of dealers from transactions with the railways and certain other industrial consumers applies to all dealers without distinction and is, moreover, objectively justified by the particular circumstances with regard to these categories of consumer. The new provision in the terms of business, according to which deliveries by wholesalers to industrial consumers who purchase annually more than 30 000 metric tons of Ruhr coal are subject to the rendering of certain special services, also applies in an identical manner to all wholesalers qualifying for direct purchase.

The drop in the volume of sales by the applicant to a mere 700 metric tons in 1972 is not the result of discrimination but is due to a general reduction in coal consumption and, above all, to the way in which the applicant conducts its business.

(b) In this connexion, it should be remembered that the applicant can retain its right to direct purchase by combining its purchases with those of other wholesalers in a similar position. This possibility is made clear by the fact that the new terms of business merely require the conclusion of a two-year contract to take 6 000 metric tons a year for the domestic and small consumer sector, but do not oblige one dealer alone to sell this quantity. The details of cooperation are left to the discretion of dealers. The slight blow to their independence to which they may have to consent, appears, considering the present state of the coal market, to constitute an insignificant evil.

(c) The second heading of the conclusions, directed at an annulment — in favour of the applicant alone — of part of the contested Decision, is incompatible with the necessarily general nature of the latter. The criteria laid down by the new terms of business must

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apply, in a like manner, to all Community dealers. In any case, the applicant does not put forward any factor capable of justifying his contention that the treatment he receives should differ from that received by all other wholesalers.

2. *Lack of substantial improvement in the distribution of fuels*

The *applicant* considers that the new terms of business, far from contributing to a substantial improvement in the distribution of fuels, render such distribution more difficult.

(a) In the applicant's opinion, the effect of the new terms of business is to favour the concentration of this distribution into the hands of a small number of major dealers. On the Commission's own admission, the new trading rules, which make a dealer's qualification for direct wholesaler status dependent no longer upon the sale of a minimum 6 000 metric tons of Ruhr coal within the common market but upon the conclusion of a two-year contract for the supply of a fixed quantity of at least 6 000 metric tons per annum to domestic and small consumers, have the effect of withdrawing the entitlement of a certain number of dealers to buy direct from Ruhrkohle AG. Although in its opinion 'it is clearly reasonable that Ruhrkohle AG should wish to take account of the major decline in coal sales in its distribution arrangements and to adjust its terms of business to the altered state of affairs in such a way as to do business direct only with dealers operating on a sufficient scale' the Commission, in its contested Decision, does not put forward any grounds in support of this alleged justification.

(b) In fact, Ruhrkohle AG enjoys a real monopoly position, as sales of Ruhr coal are henceforth organized on the basis of Ruhrkohle-Verkauf GmbH alone.

(c) Nor is it possible to claim an improvement in the distribution of fuels

on the basis of the fact that a wholesaler's industrial transactions must henceforth be dependent upon his obtaining dealer status in the domestic and small consumer sector, so as to concentrate his activity on this latter market.

(d) Therefore, there is no real evidence contained in the Commission's Decision of 21 December 1972 modifying the conditions for obtaining direct wholesaler status to show that it is likely substantially to improve the distribution of fuels.

The *defendant* makes the point that this submission disregards the legal basis in accordance with which the Decision in dispute must be judged. In fact, the criterion of substantial improvement in distribution is only valid where, applying Article 65 (2) of the ECSC Treaty, authorization is granted to joint-selling agreements concluded between several undertakings. The Decision of 21 December 1972 derives from the Commission's Decision of 27 November 1969 authorizing, on the basis of Article 66 (2), the merger of the mining companies of the Ruhr Basin by transfer of their colliery assets to Ruhrkohle AG. Its legal basis is the obligation under Article 2 of the Decision of 27 November 1969, to submit to the Commission for its authorization any new trading rules. For the purposes of appraisal of the contested Decision one must therefore consider not the criteria laid down in Article 65 (2) of the ECSC Treaty but the purpose of the obligation imposed by Article 2 of the Decision of 27 November 1969. That purpose is to prevent, in consideration of Ruhrkohle AG's strong position on the market, undue restriction of competition among dealers or the growth of discrimination between wholesalers and consumers in respect of the right of access to the products of Ruhrkohle AG.

(a) In the Commission's opinion, the new terms of business of Ruhrkohle AG, authorized by the disputed Decision, are

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completely compatible with this purpose, bearing in mind in particular the current state of the market in coal.

Since 1959, this market has been characterized, particularly in the Ruhr, by an almost continuous fall in coal sales, especially in the domestic sector. This recession is essentially due to the increasing restructuring of the energy market and, especially, to the substitution for coal of other types of energy, in particular of domestic fuel oil. Ruhrkohle AG is obliged to attempt to limit, at least in some degree, the heavy financial losses which it has suffered by reason of inadequate profitability, by modifying its marketing organization since in practice the structure of production costs prevents the application of an effective stimulus to sales through price reductions.

The principal feature of the new terms of business, namely the conclusion of a two-year contract for the purchase of at least 6 000 metric tons per annum of coal produced by Ruhrkohle AG for resale to domestic and small consumers, this being the condition for entitlement to direct purchase and sale to industrial consumers, is bound up with two factors which play an important rôle in the sale of coal: on the one hand, the structure of sales through dealers and, on the other hand, the efficiency of and interest for dealers having the right of access to direct supplies.

The activity of dealers in the domestic and small consumer sector is particularly effective for the sale of coal, as the producers exercise only a relatively limited influence on sales in this sector; on the other hand, the possibilities for dealers are restricted as regards sales to industry.

Subjecting the right to qualify as a direct wholesaler to the sale of a minimum quantity to domestic and small consumers is thus intended to encourage dealers to concentrate their efforts on this category of customer, on whom their marketing influence is greatest. The requirement of a two-year contract can

lead to a degree of stabilization of the level of coal sales and it can help Ruhrkohle AG to plan its production. Moreover, the two-year contract gives those wholesalers whose sales the preceding year did not quite reach the stipulated level the possibility, through increased effort, of obtaining their entitlement to direct purchase; the transitional period of one year, in conjunction with the tolerance of 15 % below the stipulated minimum, is intended to give them the opportunity of attaining this objective.

The new quantitative criterion tends to restrict the right of direct purchase to dealers who really strive to sell the products of Ruhrkohle AG. Dealers whose sales fall on or below the tonnage qualification will be tempted, in order to ensure the full use of their labour force and the potential of their undertaking, to sell other fuels instead, in particular fuel oil, or to carry out other commercial operations. The obligation to sell a minimum quantity of 6 000 metric tons of coal per annum to domestic and small consumers, which is also the condition for the right to supply industrial consumers, should induce dealers to make the necessary commercial effort to sell Ruhr coal, so as effectively to combat the fall in sales.

(b) When the Commission took the contested Decision, it was conscious of the fact that the adoption of the new terms of business by Ruhrkohle AG would have the effect, in Germany, of excluding from direct supply about sixty 'independent' wholesalers who do not hold, directly or indirectly, any shares in Ruhrkohle AG. However, one must take account of the fact that, among the latter, there were already about thirty who no longer satisfied the criteria laid down by the terms of business previously in force; this is the position of the applicant company, which in 1971 and 1972 sold only 3 100 and 700 metric tons of coal respectively. The decrease in the number of direct wholesalers is not however, in itself, a development which

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must be resisted. It is at least in part a natural consequence of the constant and rapid fall in sales leading, of necessity, to changes in the structure of the coal trade. The Commission did not consider that the fact that these changes will tend to reduce the number of direct wholesalers constitutes a ground for opposing the adoption of the new terms of business of Ruhrkohle AG, which are an effective means of combatting the decline in sales of coal. Moreover, these terms of business do not jeopardize the existence of effective competition in the coal trade: the number of wholesalers who will retain the right of direct purchase is sufficient to ensure, in the present circumstances, the maintenance of effective competition.

(c) There is no question of Ruhrkohle AG holding a monopoly. On the contrary, it has to face very strong competition, in particular from other sources of energy, and this applies especially in the domestic and small consumer sector, as well as in that of industrial consumption.

3. Failure to respect certain conditions of the authorization

The *applicant* maintains, in respect of the three sales areas provided by the contested Decision apart from the Federal Republic of Germany, that Ruhrkohle AG supplies coke for export at a price of 80 DM per metric ton whereas its price in Germany, according to list prices, is around 140 DM.

The *defendant* refutes this assertion. Moreover, a distinction must be made between exports to third countries and exports to other Member States of the Community. The latter — the only exports which can possibly be relevant in this case — are carried out under two-year contracts which are also concluded on the basis of list prices. In any case, even if the applicant's assertions were correct, they do not affect the validity of the contested Decision. Such practices can only induce

the Commission to impose the penalties laid down in Article 64 of the ECSC Treaty.

4. Violation of fundamental rights

The *applicant* raises the objection that the terms of business of Ruhrkohle AG and their application violate certain fundamental rights enshrined by the national Constitutions and 'received' into Community law. This is the case in respect of the right of property ownership, the protection of which is ensured in particular by Article 14 of the 'Grundgesetz' of the Federal Republic of Germany and the Constitution of the Land of Hesse. The applicant's exclusion from the coal trade is equivalent to expropriation, because it deprives it of 'actual possession'. The following rights are also at issue in this case: the right to free development of the personality, the right to freedom of economic action and the principle of proportionality.

The *defendant* points out that it is not for the Court of Justice to interpret and apply rules of domestic law of a Member State, even those appertaining to the Constitution. Moreover, the ECSC Treaty contains no general principle of law, written or unwritten, guaranteeing the maintenance of acquired positions.

IV — Conclusions of the parties

The *applicant*, having amended its first conclusions, claims that the Court should

- (a) declare that the Decision of the Commission of the European Communities of 21 December 1972 ('Handelsregelung Ruhr') on changes in the distribution network of Ruhrkohle AG within the Common Market, applicable as from 1 January 1973, is void;
- (b) as a subsidiary matter: declare that the said Decision of the Commission is void and inapplicable insofar as it relates to the applicant;

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- (c) order the defendant to bear the costs of the dispute, including the costs incurred or to be incurred by the applicant and declare the judgment provisionally enforceable in respect of the costs.

The *Commission* contends that the Court should

- (a) dismiss the whole action as unfounded;
 (b) order the applicant to bear the costs of the action.

The *interveners* contend that the Court should

- (a) dismiss the action as inadmissible;
 (b) in any case, order the applicant to bear part of the costs.

The oral observations of the parties and their replies to certain questions put by the Court were heard on 14 March 1974. During the above hearing the parties put forward new facts and arguments which may be summarized as follows:

The *applicant* points out that since its establishment more than a century ago it has never been able to sell 6 000 metric tons of fuels per annum to domestic and small consumers. On the other hand, it has supplied far greater quantities to industry. If this has not been the case during the last few years the reason is Ruhrkohle AG's refusal to supply it. That is why it was unable, in 1970, to meet an important order from Rheinstahl AG.

Furthermore, the fundamental changes which have recently occurred in the energy sector, in particular as regards competition between coal and petroleum, raise doubts as to whether the disputed trading rules are justified. In contrast to what the Commission permitted when it authorized the merger of the mining companies of the Ruhr Basin by the transfer of colliery assets to Ruhrkohle AG, the latter is now in a position to determine prices, to control or restrict production or distribution or to hinder effective competition in a substantial part of the market.

It could be accepted that in this case the provisions of Article 65 of the ECSC Treaty are applicable by analogy. Under this provision a joint-selling agreement can only be authorized by the Commission if it makes for a substantial improvement in the distribution of particular products. This condition, which applies to an agreement between several undertakings, applies *a fortiori* to the case where terms of business are established by a single undertaking formed by the merger of several others and whose position in the market is particularly strong.

The contested Decision violates several fundamental rights recognized by the Constitution of the Federal Republic of Germany, in particular, the right of free development of the personality, the free choice and pursuit of employment and the guarantee of property ownership, proclaimed by Article 14. These rights are also recognized by the Constitutions of other Member States of the Community, by international Conventions and by the ECSC Treaty itself, in particular at Articles 4, 65 and 66. The Decision of the Commission directly and illegally interferes with the exercise of these rights.

The *defendant* maintains that the instances of refusal to supply and the discrimination which the applicant claims to have suffered through the action of Ruhrkohle AG have no relevance to the question — the only matter at issue in this case — of the legality of the contested Decision. The same applies to the consequences, as yet unforeseeable, of the recent energy crisis. Subsequent events cannot cast doubt upon the legality of a Community act.

As for the question of fundamental rights, the protection of property ownership constitutes without any doubt one of the guarantees recognized by Community law which, in this connexion, is based on the constitutional traditions of Member States and on acts of public international law, such as the Convention for the Protection of

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Human Rights and Fundamental Freedoms. As the concept of effective protection of the right of property ownership varies from one Member State to another, its practical application must take account of that national norm which affords the greatest protection; that is the reason why German constitutional law must in particular be taken into account. In this connexion, it should be stated, first, that the right of a wholesaler to qualify for direct supplies is not a right covered by the guarantee of property ownership, and secondly, that in any case the Community has not interfered with any such right.

The protection of the proprietary rights of commercial and industrial undertakings extend to those elements which as a whole make up the economic value of the undertaking or represent a legal interest; but it does not cover all the factual circumstances or existing rules favourable to the undertaking or, in particular, the interests, opportunities for gain, hopes or expectations of profit of that undertaking.

Moreover, the Commission does not directly intervene in relation to any

possible proprietary right: the terms of business of which the applicant complains have not lost their character of acts of private law by reason of the fact that the Commission has authorized them.

The *interveners* point out that, far from holding a monopoly position, they must be satisfied with a 50 % to 60 % share of the market in fuels for domestic and small consumers. In this market, despite the recent energy crisis, few changes are foreseeable in the coming years.

The new terms of business authorized by the contested Decision are justified by the consideration that Ruhrkohle AG, in order to reduce its losses as much as possible, has a major interest in ensuring the continued sale of fuels and for this purpose it must have partners who have the necessary storage capacity and who in fact perform the wholesaler's marketing functions by concluding long-term contracts for specific quantities of fuels.

The Advocate-General delivered his opinion on 28 March 1974.

Law

- 1 By application lodged on 31 January 1973, the undertaking J. Nold, a limited partnership carrying on a wholesale coal and construction materials' business in Darmstadt, requested — in the final version of its conclusions — that the Court should annul the Commission's Decision of 21 December 1972 authorizing new terms of business of Ruhrkohle AG (OJ 1973, L 120, p. 14) and, as a subsidiary matter, that it should declare that Decision null and inapplicable insofar as it relates to the applicant.

The applicant objects essentially to the fact that the Decision authorized the Ruhr coal selling agency to render direct supplies of coal subject to the conclusion of fixed two-year contracts stipulating the purchase of at least 6000 metric tons per annum for the domestic and small-consumer sector, a quantity which greatly exceeds its annual sales in this sector, and that the Decision thereby withdrew its status of direct wholesaler.

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As to admissibility

- 2 The Commission has not contested the admissibility of the application.

On the other hand, Ruhrkohle AG and Ruhrkohle-Verkauf GmbH, the interveners, have contended that the action is inadmissible on the ground that the applicant lacks a legal interest.

They consider in fact that if the applicant wins its case and obtains the annulment of the Decision of 21 December 1972, the Court's judgment would have the effect of reviving the trading rules in force before those which constitute the subject-matter of the Decision in issue.

The applicant does not satisfy the requirements of the previous rules, so that it would, whatever the outcome of the action, lose its status of direct wholesaler.

- 3 This plea cannot be accepted.

In fact, if the contested Decision is annulled on the grounds of the objections raised, the Commission would, in all likelihood, have to replace the authorized trading rules by new provisions more in keeping with the applicant's position.

Accordingly, it cannot be denied that the latter has an interest in seeking the annulment of the Decision in issue.

On the substance

- 4 The applicant has not specified, with regard to the grounds for annulment set out in Article 33 of the ECSC Treaty, those upon which it is basing its action against the contested Decision.
- 5 In any case, an appreciable part of its argument must be dismissed directly, to the extent that the objections raised therein do not relate to the

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provisions of the disputed Decision of the Commission but to the applicant's relationship with the interveners.

- 6 To the extent that the objections do concern the Commission's Decision, the applicant's written and oral arguments invoke in substance the grounds of infringement of an essential procedural requirement and infringement of the Treaty or of any rule of law relating to its application.

These grounds are adduced, more particularly, as regards the new conditions laid down for the right to direct supplies from the collieries, from the lack of reasoning of the contested Decision, from discrimination against the applicant, and from alleged breaches of its fundamental rights.

1. As to the objections of lack of reasoning and discrimination

- 7 By a Decision of 27 November 1969 the Commission authorized, on the basis of Article 66 (1) and (2) of the ECSC Treaty, the merger of most of the mining companies of the Ruhr into a single company, Ruhrkohle AG.

Under Article 2 (1) of this Decision the new company was obliged to submit to the Commission for authorization any change in its terms of business.

An application to this effect was submitted by Ruhrkohle AG to the Commission on 30 June 1972.

The Commission's authorization was granted by the Decision of 21 December 1972, which is the object of the dispute.

The rules approved by that Decision laid down new conditions stipulating the minimum quantities that dealers must undertake to purchase in order to acquire entitlement to direct supply from the producer.

In particular, direct deliveries are subject to the condition that a dealer shall conclude a two-year contract to take not less than 6000 metric tons per annum for the domestic and small consumer sector.

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- 8 It is objected that the Commission allowed Ruhrkohle AG arbitrarily to fix this requirement so that, having regard to the quantity and nature of its annual sales, the applicant has lost its entitlement to direct supplies and is relegated to the position of having to deal through an intermediary, with all the commercial disadvantages which this involves.

Firstly, the applicant considers it to be discriminatory that, unlike other undertakings, it should lose its entitlement to direct supplies from the producer and should thereby be in a more unfavourable position than other dealers who continue to enjoy this advantage.

Secondly, it invokes Article 65 (2) which in a similar case to that envisaged under Article 66 authorizes joint-selling agreements only if such arrangements will make for 'a substantial improvement in the production or distribution' of the products concerned.

- 9 In the reasoning given in its Decision the Commission emphasized that it was aware that the introduction of the new terms of business would mean that a number of dealers would lose their entitlement to buy direct from the producer, due to their inability to undertake the obligations specified above.

It justifies this measure by the need for Ruhrkohle AG, in view of the major decline in coal sales, to rationalize its marketing system in such a way as to limit direct business association to dealers operating on a sufficient scale.

The requirement that dealers contract for an annual minimum quantity is in fact intended to ensure that the collieries can market their products on a regular basis and in quantities suited to their production capacity.

- 10 It emerges from the explanations given by the Commission and the interveners that the imposition of the criteria indicated above can be justified on the grounds not only of the technical conditions appertaining to coal mining but also of the particular economic difficulties created by the recession in coal production.

It therefore appears that these criteria, established by an administrative act of general application, cannot be considered discriminatory and, for the purposes of law, were sufficiently well-reasoned in the Decision of 21 December 1972.

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As regards the application of these criteria, it is not alleged that the applicant is treated differently from other undertakings which, having failed to meet the requirements laid down under the new rules, have likewise lost the advantage of their entitlement to purchase direct from the producer.

- 11 These submissions must therefore be dismissed.

2. *As to the objection based on an alleged violation of fundamental rights*

- 12 The applicant asserts finally that certain of its fundamental rights have been violated, in that the restrictions introduced by the new trading rules authorized by the Commission have the effect, by depriving it of direct supplies, of jeopardizing both the profitability of the undertaking and the free development of its business activity, to the point of endangering its very existence.

In this way, the Decision is said to violate, in respect of the applicant, a right akin to a proprietary right, as well as its right to the free pursuit of business activity, as protected by the Grundgesetz of the Federal Republic of Germany and by the Constitutions of other Member States and various international treaties, including in particular the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 and the Protocol to that Convention of 20 March 1952.

- 13 As the Court has already stated, fundamental rights form an integral part of the general principles of law, the observance of which it ensures.

In safeguarding these rights, the Court is bound to draw inspiration from constitutional traditions common to the Member States, and it cannot therefore uphold measures which are incompatible with fundamental rights recognized and protected by the Constitutions of those States.

Similarly, international treaties for the protection of human rights on which the Member States have collaborated or of which they are signatories, can supply guidelines which should be followed within the framework of Community law.

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The submissions of the applicant must be examined in the light of these principles.

- 14 If rights of ownership are protected by the constitutional laws of all the Member States and if similar guarantees are given in respect of their right freely to choose and practice their trade or profession, the rights thereby guaranteed, far from constituting unfettered prerogatives, must be viewed in the light of the social function of the property and activities protected thereunder.

For this reason, rights of this nature are protected by law subject always to limitations laid down in accordance with the public interest.

Within the Community legal order it likewise seems legitimate that these rights should, if necessary, be subject to certain limits justified by the overall objectives pursued by the Community, on condition that the substance of these rights is left untouched.

As regards the guarantees accorded to a particular undertaking, they can in no respect be extended to protect mere commercial interests or opportunities, the uncertainties of which are part of the very essence of economic activity.

- 15 The disadvantages claimed by the applicant are in fact the result of economic change and not of the contested Decision.

It was for the applicant, confronted by the economic changes brought about by the recession in coal production, to acknowledge the situation and itself carry out the necessary adaptations.

- 16 This submission must be dismissed for all the reasons outlined above.
- 17 The action must accordingly be dismissed.

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Costs

- 18 Under Article 69 (2) of the Rules of Procedure the unsuccessful party shall be ordered to pay the costs.

The applicant has failed in its pleas.

The Order of the President of 14 March 1973 and the Order of the Court of 21 November 1973 reserved the costs relating to the application to suspend the operation of the contested Decision and the application to intervene.

By the Order of 21 June 1973 the Court ordered the applicant to bear the costs incurred, at that date, by the companies Ruhrkohle AG and Ruhrkohle-Verkauf GmbH in the main action and in the interim procedure.

On those grounds

THE COURT

hereby:

1. Dismisses the action as unfounded;
2. Orders the applicant to bear the costs of the action including the costs reserved by the Orders of 13 February and 21 November 1973 and those awarded by the Order of 21 June 1973.

Lecourt	Donner	Sørensen
Pescatore	Kutscher	Ó Dálaigh
		Mackenzie Stuart

Delivered in open court in Luxembourg on 14 May 1974.

A. Van Houtte
Registrar

R Lecourt
President

BVerfGE 37, 271-305
BVerfG, Beschluss vom 29. Mai
1974 ("Solange I") – 2 BvL
52/71 –, BVerfGE 37, 271-305

BVerfGE 37, 271 - Solange I**Bundesverfassungsgericht****Beschluß****29. Mai 1974**

Solange der Integrationsprozeß der Gemeinschaft nicht so weit fortgeschritten ist, daß das Gemeinschaftsrecht auch einen von einem Parlament beschlossenen und in Geltung stehenden formulierten Katalog von Grundrechten enthält, der dem Grundrechtskatalog des Grundgesetzes adäquat ist, ist nach Einholung der in Art. 177 EWGV geforderten Entscheidung des Europäischen Gerichtshofes die Vorlage eines Gerichts der Bundesrepublik Deutschland an das Bundesverfassungsgericht im Normenkontrollverfahren zulässig und geboten, wenn das Gericht die für es entscheidungserhebliche Vorschrift des Gemeinschaftsrechts in der vom Europäischen Gerichtshof gegebenen Auslegung für unanwendbar hält, weil und soweit sie mit einem der Grundrechte des Grundgesetzes kollidiert.

Beschluß

des Zweiten Senats vom 29. Mai 1974

– BvL 52/71 –

in dem Verfahren zur Prüfung der Verfassungsmäßigkeit a) der in Art. 12 Abs. 1 Unterabsatz 3 Verordnung Nr. 120/67/EWG des Rates vom 13. Juni 1967 begründeten Verpflichtung zur Ausfuhr, der daran anknüpfenden Gestellung einer Kautions und deren Verfall bei Nichtdurchführung der Ausfuhr im Gültigkeitszeitraum, b) des Artikels 9 der zur Verordnung Nr. 120/67/EWG ergangenen Verordnung Nr. 473/67/EWG der Kommission vom 21. August 1967 - Aussetzungs- und Vorlagebeschluß des Verwaltungsgerichts Frankfurt/Main vom 24. November 1971 (II/2-E228/69)-.

Entscheidungsformel:

Der Anwendung des Artikels 12 Absatz 1 Unterabsatz 3 der Verordnung Nr. 120/67/EWG des Rates vom 13. Juni 1967 und des Artikels 9 der Verordnung Nr. 473/67/EWG der Kommission vom 21. August 1967 in der Auslegung, die sich durch den Europäischen Gerichtshof erhalten haben, durch Behörden und Gerichte der Bundesrepublik Deutschland steht ein Grundrecht des Grundgesetzes nicht entgegen.

Gründe:**A.**

Vor dem Verwaltungsgericht Frankfurt/Main klagt ein deutsches Import- und Exportunternehmen auf Aufhebung eines Bescheides der Einfuhr- und Vorratsstelle

für Getreide- und Futtermittel, in dem eine Kautio n in Höhe von 17 026,47 DM für verfallen erklärt worden ist, nachdem die Firma eine ihr erteilte Ausfuhrlizenz über 20 000 Tonnen Maisgrieß nur teilweise ausgenutzt hatte.

1. Der Bescheid ist auf Art. 12 Abs. 1 Unterabsatz 3 der Verordnung Nr. 120/67/EWG des Rates der Europäischen Wirtschaftsgemeinschaft vom 13. Juni 1967 (Amtsbl. der Europäischen Gemeinschaften S. 2269) und auf Art. 9 der Verordnung Nr. 473/67/EWG der Kommission der Europäischen Wirtschaftsgemeinschaft vom 21. August 1967 (Amtsbl. der Europäischen Gemeinschaften Nr. 204, S. 16) gestützt:

Art. 12 Abs. 1 VO Nr. 120/67/EWG lautet:

"(1) Für alle Einfuhren der in Artikel 1 genannten Erzeugnisse in die Gemeinschaft sowie für alle Ausfuhren dieser Erzeugnisse aus der Gemeinschaft ist die Vorlage einer Einfuhr- bzw. Ausfuhrlizenz erforderlich, die von den Mitgliedstaaten jedem Antragsteller unabhängig vom Ort seiner Niederlassung in der Gemeinschaft erteilt wird. ...

Die Erteilung dieser Lizenzen hängt von der Stellung einer Kautio n ab, die die Erfüllung der Verpflichtung sichern soll, die Einfuhr oder Ausfuhr während der Gültigkeitsdauer der Lizenz durchzuführen; die Kautio n verfällt ganz oder teilweise, wenn die Ein- bzw. Ausfuhr innerhalb dieser Frist nicht oder nur teilweise erfolgt ist."

Art. 8 Abs. 2 der Verordnung Nr. 473/67/EWG lautet:

"(2) Wenn die Verpflichtung zur Einfuhr oder Ausfuhr während der Gültigkeitsdauer der Lizenz nicht erfüllt worden ist, verfällt vorbehaltlich von Art. 9 die Kautio n ..."

Art. 9 der Verordnung Nr. 473/67/EWG lautet:

"(1) Wird die Einfuhr oder Ausfuhr innerhalb der Gültigkeitsdauer der Lizenz durch einen als höhere Gewalt anzusehenden Umstand verhindert, und wenn die Berücksichtigung dieser Umstände beantragt wird:

a) so ist in den in Absatz (2) Buchstaben a) bis d) genannten Fällen die Verpflichtung zur Einfuhr oder Ausfuhr erloschen, und die Kautio n verfällt nicht. ...

b) so wird in den in Absatz (2) Buchstaben e) bis h) genannten Fällen die Gültigkeitsdauer der Lizenz um die Frist verlängert, die die zuständige Stelle infolge dieses Umstands als notwendig erachtet.

Auf Antrag kann die zuständige Stelle jedoch bestimmen, daß die Verpflichtung zur Einfuhr oder Ausfuhr erlischt und die Kautio n nicht verfällt. ...

(2) Folgende Umstände sind als höhere Gewalt im Sinne des Absatzes

(1) anzusehen, und zwar in dem Maße, als sie der Grund für die Nichterfüllung der Verpflichtung des Ein- oder Ausführers sind:

a) Krieg und Unruhen;

b) staatliche Einfuhr- oder Ausfuhrverbote;

c) Behinderung der Schifffahrt durch hoheitliche Maßnahmen;

d) Schiffsuntergang;

e) Havarie des Schiffes oder der Ware;

f) Streik;

g) *Unterbrechung der Schifffahrt wegen Eisgangs oder wegen Niedrigwassers;*

h) *Maschinenschaden.*

Nicht als höhere Gewalt im Sinne des Absatzes (1) ist die Anwendung der "extension clause" anzusehen.

(3) Erkennen die zuständigen Stellen andere Umstände als die in Absatz (2) genannten als höhere Gewalt im Sinne des Absatzes (1) an, so teilen sie diese unverzüglich der Kommission mit. Dabei ist anzugeben, ob Absatz (1) Buchstabe a) oder Buchstabe b) angewandt wird.

(4) ...

(5) Der Importeur oder Exporteur weist die als höhere Gewalt angesehenen Umstände durch amtliche Unterlagen nach."

2. Das Verwaltungsgericht hat zunächst eine Vorabentscheidung des Gerichtshofs der Europäischen Gemeinschaften gemäß Art. 177 des Vertrags zur Gründung der Europäischen Wirtschaftsgemeinschaft (im folgenden kurz: Vertrag) eingeholt, ob die zitierten Vorschriften der genannten Verordnungen nach dem Recht der Europäischen Wirtschaftsgemeinschaft rechters sind. Im Urteil dieses Gerichtshofs vom 17. Dezember 1970 - Rechtssache 11/70 - wird die Rechtmäßigkeit der umstrittenen Verordnungen bestätigt (ebenso im Urteil vom 10. März 1971 - Rechtssache 38/70 -).

Dazu wird ausgeführt: Innerstaatliche Rechtsvorschriften könnten wegen der Eigenständigkeit des Gemeinschaftsrechts diesem nicht vorgehen. Die in ihrer Gültigkeit angezweifelten Vorschriften des Gemeinschaftsrechts seien ein notwendiges und angemessenes Mittel, um den Behörden die unentbehrliche Intervention auf dem Getreidemarkt zu ermöglichen. Die Kautionsregelung trage der Tatsache Rechnung, daß die Lizenzanträge aus freier Entscheidung des Unternehmens gestellt würden, und daß sie gegenüber anderen denkbaren Systemen den doppelten Vorzug der Einfachheit und Wirksamkeit habe. Gegenüber einer im öffentlichen Interesse der Gemeinschaft eingeführten Regelung müsse das ausschließlich auf das Interesse bestimmter Unternehmer abgestellte Verhalten zurücktreten. Der Kautionsverfall sei weder eine Geldbuße noch eine Strafe, sondern eine Sicherung für die Erfüllung einer freiwillig übernommenen Verpflichtung. Die Ausnahmeregelung für den Fall höherer Gewalt sei eine Bestimmung, die geeignet sei, das normale Funktionieren der Getreidemarktordnung zu gewährleisten, ohne die Importeure und Exporteure über Gebühr zu belasten. Der Begriff der höheren Gewalt sei elastisch, da er sich nicht auf die Fälle der absoluten Unmöglichkeit beschränke, sondern auch Fälle einer ungewöhnlichen, vom Willen des Lizenzinhabers unabhängigen Lage umfasse, deren Folgen trotz aller aufgewandten Sorgfalt nur um den Preis unverhältnismäßiger Opfer vermieden werden könnten.

3. Das Verwaltungsgericht hat dann mit Beschluß vom 24. November 1971 sein Verfahren ausgesetzt und gemäß Art. 100 Abs. 1 GG die Entscheidung des Bundesverfassungsgerichts begehrt, ob die nach dem Europäischen Gemeinschaftsrecht bestehende Ausfuhrverpflichtung und die damit verbundene Pflicht zur Kautionshinterlegung mit dem Grundgesetz vereinbar sei, und ob bei Bejahung dieser Frage die Regelung, daß nur bei höherer Gewalt die Kautions freizugeben sei, mit dem Grundgesetz vereinbar sei.

Es ist der Auffassung, die von ihm angegriffenen Vorschriften des Gemeinschaftsrechts seien auch in der Auslegung des Europäischen Gerichtshofs mit dem Grundgesetz unvereinbar. Sei der Auffassung des Europäischen Gerichtshofs zu folgen, müsse die Klage abgewiesen werden, weil ein Fall höherer Gewalt nicht vorliege; sei die Auffassung des vorlegenden Gerichts zutreffend, müsse die Klage Erfolg haben. Die Entscheidung des Bundesverfassungsgerichts sei also entscheidungserheblich.

Das Europäische Gemeinschaftsrecht könne auf seine Vereinbarkeit mit dem Grundgesetz überprüft werden; ihm gebühre nicht der Vorrang vor allem innerstaatlichen Recht. Zuständig für die Kontrolle sei das Bundesverfassungsgericht. Zwar handle es sich bei den von Organen der Gemeinschaft erlassenen Verordnungen um Normen einer autonomen Rechtsordnung, auf die Art. 100 Abs. 1 GG seinem Wortlaut nach nicht anwendbar sei. Die Zuständigkeit des Bundesverfassungsgerichts ergebe sich jedoch zum einen aus der unmittelbaren innerstaatlichen Wirkung der Verordnungen gemäß Art. 189 Abs. 2 des Vertrags und zum anderen aus der Erwägung, daß es eine nationale Instanz für die Normenkontrolle geben müsse, wenn man die Überprüfung des Gemeinschaftsrechts an den Strukturprinzipien des nationalen Verfassungsrechts für zulässig halte. Die Entscheidung des Europäischen Gerichtshofs stehe einer Prüfung der in Frage stehenden Bestimmungen durch das Bundesverfassungsgericht nicht entgegen; der vom Europäischen Gerichtshof angewandte Grundsatz der Verhältnismäßigkeit sei nicht in allen Punkten mit dem für das deutsche Verfassungsrecht entwickelten Grundsatz identisch.

Die in Frage stehende Kautionsregelung taste die wirtschaftliche Freiheit der Exporteure in ihrem Wesensgehalt an. Hier werde ein Mittel der Marktlenkung zur statistischen Erfassung der Marktlage eingesetzt. Das angestrebte Ziel könne auch mit weniger einschneidenden Mitteln erreicht werden.

Verfassungswidrig sei außerdem, daß die Kautionsregelung selbst dann verfalle, wenn den Exporteur an der Nichtausnutzung der Lizenz kein Verschulden treffe.

4. Der Bundesminister der Justiz, der sich für die Bundesregierung geäußert hat, hält die Vorlage für unzulässig, weil Art. 100 Abs. 1 GG auf Verordnungen der Europäischen Wirtschaftsgemeinschaft weder unmittelbar noch analog anwendbar sei.

Ergänzend hat der Bundesminister der Justiz folgende Erwägungen vorgetragen: Die Unzulässigkeit der Normenkontrolle nach Art. 100 Abs. 1 GG bedeute nicht, daß jedes Gericht der Bundesrepublik Deutschland über die Unanwendbarkeit von Bestimmungen des Gemeinschaftsrechts, die es für mit dem Grundgesetz unvereinbar halte, selbst entscheiden dürfe. Vielmehr müsse das Gericht in einem solchen Fall gemäß Art. 100 Abs. 1 GG dem Bundesverfassungsgericht die Frage vorlegen, ob Art. 1 des Vertragsgesetzes zum EWG-Vertrag in Verbindung mit den Kompetenznormen des Vertrags mit dem Inhalt, mit dem die Gemeinschaftsorgane durch die in Frage stehende Verordnung von ihnen Gebrauch gemacht hätten, mit dem Grundgesetz vereinbar seien. Das Verwaltungsgericht hätte dem Bundesverfassungsgericht somit die Frage der Verfassungsmäßigkeit des Vertragsgesetzes zum EWG-Vertrag in Verbindung mit den bei Erlass der Verordnungen Nr. 120/67/EWG und Nr. 473/67/EWG in Anspruch genommenen Kompetenznormen des Vertrags vorlegen können und müssen. Gegen eine

Umdeutung des Vorlagebeschlusses in diesem Sinne bestünden jedoch erhebliche Bedenken, weil das Verwaltungsgericht erkennbar das Zustimmungsgesetz für verfassungsmäßig halte und bewußt nicht das Vertragsgesetz, sondern die Bestimmungen des Gemeinschaftsrechts selbst zur Prüfung vorgelegt habe.

5. Der VII. Senat des Bundesverwaltungsgerichts hat mitgeteilt, daß er in seiner bisherigen Rechtsprechung zu der Verfassungsmäßigkeit der in Rede stehenden Vorschriften noch nicht Stellung genommen habe. In einem Fall, der die gleichlautenden Bestimmungen der Verordnung Nr. 19/1962 betroffen habe, sei das Gericht stillschweigend von der Rechtmäßigkeit dieser Vorschrift ausgegangen.

6. Die Klägerin des Ausgangsverfahrens hatte Gelegenheit zur Äußerung.

B. – I.

Die Vorlage ist zulässig.

1. Für diese Entscheidung ist vorgreiflich die nähere, wenn auch noch nicht abschließende Bestimmung des Verhältnisses von Verfassungsrecht der Bundesrepublik Deutschland und Europäischem Gemeinschaftsrecht, das auf der Grundlage des Vertrags zur Gründung der Europäischen Wirtschaftsgemeinschaft entstanden ist (im folgenden kurz: Gemeinschaftsrecht). Der vorliegende Fall zwingt nur zur Klärung des Verhältnisses zwischen den Grundrechtsgarantien des Grundgesetzes und den Vorschriften des sekundären Gemeinschaftsrechts der Europäischen Wirtschaftsgemeinschaft, deren Vollzug in der Hand von Verwaltungsbehörden der Bundesrepublik Deutschland liegt. Denn dafür, daß Vorschriften des Vertrags zur Gründung der Europäischen Wirtschaftsgemeinschaft, also primäres Gemeinschaftsrecht, mit Bestimmungen des Grundgesetzes der Bundesrepublik Deutschland kollidieren könnten, gibt es im Augenblick keinen Anhalt. Ebenso kann offenbleiben, ob für das Verhältnis des Rechts des Grundgesetzes außerhalb seines Grundrechtskatalogs zum Gemeinschaftsrecht dasselbe gilt, was nach den folgenden Darlegungen für das Verhältnis zwischen den Grundrechtsgarantien des Grundgesetzes und dem sekundären Gemeinschaftsrecht gilt.

2. Der Senat hält - insoweit in Übereinstimmung mit der Rechtsprechung des Europäischen Gerichtshofs - an seiner Rechtsprechung fest, daß das Gemeinschaftsrecht weder Bestandteil der nationalen Rechtsordnung noch Völkerrecht ist, sondern eine eigenständige Rechtsordnung bildet, die aus einer autonomen Rechtsquelle fließt (BVerfGE 22, 293 [296]; 31, 145 [173 f.]); denn die Gemeinschaft ist kein Staat, insbesondere kein Bundesstaat, sondern "eine im Prozeß fortschreitender Integration stehende Gemeinschaft eigener Art", eine "zwischenstaatliche Einrichtung" im Sinne des Art. 24 Abs. 1 GG.

Daraus folgt, daß grundsätzlich die beiden Rechtskreise unabhängig voneinander und nebeneinander in Geltung stehen und daß insbesondere die zuständigen Gemeinschaftsorgane einschließlich des Europäischen Gerichtshofs über die Verbindlichkeit, Auslegung und Beachtung des Gemeinschaftsrechts und die zuständigen nationalen Organe über die Verbindlichkeit, Auslegung und Beachtung des Verfassungsrechts der Bundesrepublik Deutschland zu befinden haben. Weder kann der Europäische Gerichtshof verbindlich entscheiden, ob eine Regel des

Gemeinschaftsrechts mit dem Grundgesetz vereinbar ist, noch das Bundesverfassungsgericht, ob und mit welchem Inhalt eine Regel des sekundären Gemeinschaftsrechts mit dem primären Gemeinschaftsrecht vereinbar ist. Das führt zu keinerlei Schwierigkeiten, solange beide Rechtsordnungen inhaltlich nicht miteinander in Konflikt geraten. Deshalb erwächst aus dem besonderen Verhältnis, das zwischen der Gemeinschaft und ihren Mitgliedern durch die Gründung der Gemeinschaft entstanden ist, für die zuständigen Organe, insbesondere für die beiden zur Rechtskontrolle berufenen Gerichte - den Europäischen Gerichtshof und das Bundesverfassungsgericht - zunächst die Pflicht, sich um die Konkordanz beider Rechtsordnungen in ihrer Rechtsprechung zu bemühen. Nur soweit das nicht gelingt, kann überhaupt der Konflikt entstehen, der zwingt, die Konsequenzen aus dem dargelegten grundsätzlichen Verhältnis zwischen den beiden Rechtskreisen zu ziehen.

Für diesen Fall genügt es nicht, einfach vom "Vorrang" des Gemeinschaftsrechts gegenüber dem nationalen Verfassungsrecht zu sprechen, um das Ergebnis zu rechtfertigen, daß sich Gemeinschaftsrecht stets gegen das nationale Verfassungsrecht durchsetzen müsse, weil andernfalls die Gemeinschaft in Frage gestellt würde. So wenig das Völkerrecht durch Art. 25 GG in Frage gestellt wird, wenn er bestimmt, daß die allgemeinen Vorschriften des Völkerrechts nur dem einfachen Bundesrecht vorgehen, und so wenig eine andere (fremde) Rechtsordnung in Frage gestellt wird, wenn sie durch den *ordre public* der Bundesrepublik Deutschland verdrängt wird, so wenig wird das Gemeinschaftsrecht in Frage gestellt, wenn ausnahmsweise das Gemeinschaftsrecht sich gegenüber zwingendem Verfassungsrecht nicht durchsetzen läßt. Die Bindung der Bundesrepublik Deutschland (und aller Mitgliedstaaten) durch den Vertrag ist nach Sinn und Geist der Verträge nicht einseitig, sondern bindet auch die durch sie geschaffene Gemeinschaft, das ihre zu tun, um den hier unterstellten Konflikt zu lösen, also nach einer Regelung zu suchen, die sich mit einem zwingenden Gebot des Verfassungsrechts der Bundesrepublik Deutschland verträgt. Die Berufung auf einen solchen Konflikt ist also nicht schon eine Vertragsverletzung, sondern setzt den Vertragsmechanismus innerhalb der europäischen Organe in Gang, der den Konflikt politisch löst.

3. Art. 24 GG spricht von der Übertragung von Hoheitsrechten auf zwischenstaatliche Einrichtungen. Das kann nicht wörtlich genommen werden. Art. 24 GG muß wie jede Verfassungsbestimmung ähnlich grundsätzlicher Art im Kontext der Gesamtverfassung verstanden und ausgelegt werden. Das heißt, er eröffnet nicht den Weg, die Grundstruktur der Verfassung, auf der ihre Identität beruht, ohne Verfassungsänderung, nämlich durch die Gesetzgebung der zwischenstaatlichen Einrichtung zu ändern. Gewiß können die zuständigen Gemeinschaftsorgane Recht setzen, das die deutschen zuständigen Verfassungsorgane nach dem Recht des Grundgesetzes nicht setzen könnten und das gleichwohl unmittelbar in der Bundesrepublik Deutschland gilt und anzuwenden ist. Aber Art. 24 GG begrenzt diese Möglichkeit, indem an ihm eine Änderung des Vertrags scheitert, die die Identität der geltenden Verfassung der Bundesrepublik Deutschland durch Einbruch in die sie konstituierenden Strukturen aufheben würde. Und dasselbe würde für Regelungen des sekundären Gemeinschaftsrechts gelten, die aufgrund einer entsprechenden Interpretation des geltenden Vertrags getroffen und in derselben Weise die dem Grundgesetz wesentlichen Strukturen berühren würden. Art. 24 GG ermächtigt nicht eigentlich zur Übertragung von Hoheitsrechten, sondern öffnet die nationale Rechtsordnung (in der angegebenen Begrenzung) derart, daß der

ausschließliche Herrschaftsanspruch der Bundesrepublik Deutschland im Geltungsbereich des Grundgesetzes zurückgenommen und der unmittelbaren Geltung und Anwendbarkeit eines Rechts aus anderer Quelle innerhalb des staatlichen Herrschaftsbereichs Raum gelassen wird.

4. Ein unaufgebbares, zur Verfassungsstruktur des Grundgesetzes gehörendes Essentiale der geltenden Verfassung der Bundesrepublik Deutschland ist der Grundrechtsteil des Grundgesetzes. Ihn zu relativieren, gestattet Art. 24 GG nicht vorbehaltlos. Dabei ist der gegenwärtige Stand der Integration der Gemeinschaft von entscheidender Bedeutung. Sie entbehrt noch eines unmittelbar demokratisch legitimierten, aus allgemeinen Wahlen hervorgegangenen Parlaments, das Gesetzgebungsbefugnisse besitzt und dem die zur Gesetzgebung zuständigen Gemeinschaftsorgane politisch voll verantwortlich sind; sie entbehrt insbesondere noch eines kodifizierten Grundrechtskatalogs, dessen Inhalt ebenso zuverlässig und für die Zukunft unzweideutig feststeht wie der des Grundgesetzes und deshalb einen Vergleich und eine Entscheidung gestattet, ob derzeit der in der Gemeinschaft allgemein verbindliche Grundrechtsstandard des Gemeinschaftsrechts auf die Dauer dem Grundrechtsstandard des Grundgesetzes, unbeschadet möglicher Modifikationen, derart adäquat ist, daß die angegebene Grenze, die Art. 24 GG zieht, nicht überschritten wird. Solange diese Rechtsgewißheit, die allein durch die anerkanntermaßen bisher grundrechtsfreundliche Rechtsprechung des Europäischen Gerichtshofs nicht gewährleistet ist, im Zuge der weiteren Integration der Gemeinschaft nicht erreicht ist, gilt der aus Art. 24 GG hergeleitete Vorbehalt. Es handelt sich also um eine rechtliche Schwierigkeit, die ausschließlich aus dem noch in Fluß befindlichen fortschreitenden Integrationsprozeß der Gemeinschaft entsteht und mit der gegenwärtigen Phase des Übergangs beendet sein wird.

Vorläufig entsteht also in dem unterstellten Fall einer Kollision von Gemeinschaftsrecht mit einem Teil des nationalen Verfassungsrechts, näherhin der grundgesetzlichen Grundrechtsgarantien, die Frage, welches Recht vorgeht, das andere also verdrängt. In diesem Normenkonflikt setzt sich die Grundrechtsgarantie des Grundgesetzes durch, solange nicht entsprechend dem Vertragsmechanismus die zuständigen Organe der Gemeinschaft den Normenkonflikt behoben haben.

5. Aus dem dargelegten Verhältnis von Grundgesetz und Gemeinschaftsrecht folgt für die Zuständigkeiten des Europäischen Gerichtshofs und des Bundesverfassungsgerichts:

a) Der Europäische Gerichtshof ist, entsprechend den Kompetenzregeln des Vertrags, zuständig, über die Rechtsgültigkeit der Normen des Gemeinschaftsrechts (einschließlich der nach seiner Auffassung existierenden ungeschriebenen Normen des Gemeinschaftsrechts) und ihre Auslegung zu entscheiden. Inzidentfragen aus dem nationalen Recht der Bundesrepublik Deutschland (oder eines anderen Mitgliedstaates) entscheidet er jedenfalls nicht mit Verbindlichkeit für diesen Staat. Ausführungen in der Begründung seiner Entscheidungen, daß ein bestimmter Inhalt einer Gemeinschaftsnorm inhaltlich übereinstimme oder vereinbar sei mit einer Verfassungsvorschrift des nationalen Rechts - hier: mit einer Grundrechtsgarantie des Grundgesetzes -, stellen unverbindliche obiter dicta dar.

Im Rahmen dieser Kompetenz stellt der Gerichtshof mit Verbindlichkeit für alle Mitgliedstaaten den Inhalt des Gemeinschaftsrechts fest. Dementsprechend haben die Gerichte der Bundesrepublik Deutschland unter den Voraussetzungen des Art.

177 des Vertrags die Entscheidung des Europäischen Gerichtshofs einzuholen, bevor sie die Frage der Vereinbarkeit der für sie entscheidungserheblichen Norm des Gemeinschaftsrechts mit Grundrechtsgarantien des Grundgesetzes aufwerfen.

b) Das Bundesverfassungsgericht entscheidet, wie sich aus den vorangegangenen Darlegungen ergibt, niemals über die Gültigkeit oder Ungültigkeit einer Vorschrift des Gemeinschaftsrechts. Es kann höchstens zu dem Ergebnis kommen, daß eine solche Vorschrift von den Behörden oder Gerichten der Bundesrepublik Deutschland nicht angewandt werden darf, soweit sie mit einer Grundrechtsvorschrift des Grundgesetzes kollidiert. Inzidentfragen aus dem Gemeinschaftsrecht kann es (ebenso wie umgekehrt der Europäische Gerichtshof) selbst entscheiden, sofern nicht die Voraussetzungen des auch für das Bundesverfassungsgericht verbindlichen Art. 177 des Vertrags vorliegen oder schon eine nach dem Gemeinschaftsrecht das Bundesverfassungsgericht bindende Entscheidung des Europäischen Gerichtshofs eingreift.

6. Grundrechte können mehrfach rechtlich garantiert sein und dementsprechend mehrfachen gerichtlichen Schutz genießen. Der Europäische Gerichtshof hält sich, wie seine Judikatur ausweist, auch für zuständig, die Grundrechte nach Maßgabe des Gemeinschaftsrechts durch seine Rechtsprechung zu schützen. Die im Grundgesetz garantierten Grundrechte zu schützen, ist dagegen allein das Bundesverfassungsgericht im Rahmen der ihm im Grundgesetz eingeräumten Kompetenzen berufen. Diese verfassungsrechtliche Aufgabe kann ihm kein anderes Gericht abnehmen. Soweit also danach Bürger der Bundesrepublik Deutschland einen Anspruch auf gerichtlichen Schutz ihrer im Grundgesetz garantierten Grundrechte haben, kann ihr Status keine Beeinträchtigung erleiden nur deshalb, weil sie durch Rechtsakte von Behörden oder Gerichten der Bundesrepublik Deutschland unmittelbar betroffen werden, die sich auf Gemeinschaftsrecht stützen. Andernfalls entstünde gerade für die elementarsten Statusrechte des Bürgers eine empfindliche Lücke des gerichtlichen Schutzes. Im übrigen gilt für die Verfassung einer Gemeinschaft von Staaten mit einer freiheitlich-demokratischen Verfassung im Zweifel grundsätzlich nichts anderes wie für einen freiheitlichdemokratisch verfaßten Bundesstaat: Es schadet der Gemeinschaft und ihrer freiheitlichen (und demokratischen) Verfassung nicht, wenn und soweit ihre Mitglieder in ihrer Verfassung die Freiheitsrechte ihrer Bürger stärker verbürgen als die Gemeinschaft es tut.

7. Im einzelnen bemißt sich der Gerichtsschutz durch das Bundesverfassungsgericht ausschließlich nach dem Verfassungsrecht der Bundesrepublik Deutschland und der näheren Regelung im Bundesverfassungsgerichtsgesetz:

a) Im Normenkontrollverfahren auf Vorlage eines Gerichts geht es immer um die Überprüfung einer gesetzlichen Vorschrift. Da das Gemeinschaftsrecht die im nationalen Recht herkömmliche Unterscheidung zwischen Vorschriften eines förmlichen Gesetzes und Vorschriften einer auf ein förmliches Gesetz gestützten Verordnung nicht kennt, ist jede Form einer Verordnung der Gemeinschaft im Sinne der Verfahrensvorschriften für das Bundesverfassungsgericht eine gesetzliche Vorschrift.

b) Eine erste Schranke ergibt sich für die Zuständigkeit des Bundesverfassungsgerichts daraus, daß es nur Akte der deutschen Staatsgewalt, also Entscheidungen der Gerichte, Verwaltungsakte der Behörden und Maßnahmen

der Verfassungsorgane der Bundesrepublik Deutschland zum Gegenstand seiner Kontrolle machen kann. Deshalb hält das Bundesverfassungsgericht die Verfassungsbeschwerde eines Bürgers der Bundesrepublik Deutschland unmittelbar gegen eine Verordnung der Gemeinschaft für unzulässig (BVerfGE 22, 293 [297]).

c) Vollzieht eine Verwaltungsbehörde der Bundesrepublik Deutschland oder handhabt ein Gericht der Bundesrepublik Deutschland eine Verordnung der Gemeinschaft, so liegt darin Ausübung deutscher Staatsgewalt; und dabei sind Verwaltungsbehörde und Gerichte auch an das Verfassungsrecht der Bundesrepublik Deutschland gebunden. Was den Grundrechtsschutz anlangt, vollzieht er sich nach dem Verfahrensrecht des Bundesverfassungsgerichts, wenn man von der Verfassungsbeschwerde absieht, die erst nach Erschöpfung des Rechtswegs zulässig ist - die Ausnahme des § 90 Abs. 2 BVerfGG kommt bei der Anfechtung eines auf eine Vorschrift des Gemeinschaftsrechts gestützten Verwaltungsakts kaum je in Betracht -, im Wege der Gerichtsvorlage im sog. Normenkontrollverfahren vor dem Bundesverfassungsgericht. Dieses Verfahren bedarf im Hinblick auf die dargelegten Besonderheiten des Verhältnisses von nationalem Verfassungsrecht und Gemeinschaftsrecht einiger Modifikationen, wie sie das Bundesverfassungsgericht auch sonst in der Vergangenheit in seiner Rechtsprechung für notwendig gehalten hat. So hat es beispielsweise im Rahmen einer Normenkontrolle die bestehende Rechtslage im Hinblick auf einen Verfassungsauftrag als nicht mit dem Grundgesetz vereinbar festgestellt und eine Frist zur Behebung des Mangels gesetzt; so hat es sich mit der Feststellung der Unvereinbarkeit einer Regelung mit dem Gleichheitssatz begnügt, ohne die Regelung für nichtig zu erklären; so hat es eine von den Besatzungsmächten in Kraft gesetzte Regelung als mit dem Grundgesetz in Widerspruch stehend erklärt und die Bundesregierung verpflichtet, darauf hinzuwirken, daß sie durch den deutschen Gesetzgeber mit dem Grundgesetz in Einklang gebracht werden kann; so hat es die vorbeugende Normenkontrolle gegenüber Vertragsgesetzen entwickelt. Im Zuge dieser Rechtsprechung liegt es, wenn sich das Bundesverfassungsgericht in Fällen der hier in Rede stehenden Art darauf beschränkt, die Unanwendbarkeit einer Vorschrift des Gemeinschaftsrechts durch die Verwaltungsbehörden oder Gerichte der Bundesrepublik Deutschland festzustellen, soweit sie mit einer Grundrechtsgarantie des Grundgesetzes kollidiert.

Die Konzentrierung dieser Entscheidung beim Bundesverfassungsgericht ist nicht nur verfassungsrechtlich aus demselben Grund geboten, der zum sog. Verwerfungsmonopol des Gerichts geführt hat, sondern liegt auch im Interesse der Gemeinschaft und ihres Rechts. Nach dem Grundgedanken des Art. 100 Abs. 1 GG ist es Aufgabe des Bundesverfassungsgerichts zu verhüten, daß jedes deutsche Gericht sich über den Willen des Gesetzgebers hinwegsetzt, indem es die von ihm beschlossenen Gesetze nicht anwendet, weil sie nach Auffassung des Gerichts gegen das Grundgesetz verstoßen (BVerfGE 1, 184 [197]; 2, 124 [129]). Das innerstaatliche Gesetzesrecht erhält damit einen Geltungsschutz gegenüber Gerichten, die ihm aus verfassungsrechtlichen Gründen die Gültigkeit versagen möchten. Ähnlich verhält es sich mit der Regelung des Art. 100 Abs. 2 GG, nach der bei Zweifeln, ob eine allgemeine Regel der Völkerrechts Rechte und Pflichten für den Einzelnen erzeugt, das Bundesverfassungsgericht angerufen werden muß. Deshalb erfordert es der Grundgedanke des Art. 100 GG, die Geltung des Gemeinschaftsrechts in der Bundesrepublik Deutschland in gleicher Weise wie das nationale Recht vor Beeinträchtigung zu schützen.

Das Ergebnis ist: Solange der Integrationsprozeß der Gemeinschaft nicht so weit fortgeschritten ist, daß das Gemeinschaftsrecht auch einen von einem Parlament beschlossenen und in Geltung stehenden formulierten Katalog von Grundrechten enthält, der dem Grundrechtskatalog des Grundgesetzes adäquat ist, ist nach Einholung der in Art. 177 des Vertrags geforderten Entscheidung des Europäischen Gerichtshofs die Vorlage eines Gerichts der Bundesrepublik Deutschland an das Bundesverfassungsgericht im Normenkontrollverfahren zulässig und geboten, wenn das Gericht die für es entscheidungserhebliche Vorschrift des Gemeinschaftsrechts in der vom Europäischen Gerichtshof gegebenen Auslegung für unanwendbar hält, weil und soweit sie mit einem der Grundrechte des Grundgesetzes kollidiert.

II.

Die Fortbildung des Verfahrensrechts des Bundesverfassungsgerichts kann ohne Anrufung des Plenums getroffen werden, weil sie nicht in Widerspruch zu einer Entscheidung des Ersten Senats dieses Gerichts steht:

Der Erste Senat hat bisher entschieden, daß eine Maßnahme eines fremden Staats nicht der Kontrolle des Bundesverfassungsgerichts unterliegt, und daß auch eine Maßnahme, die auf ein Militärregierungsrecht gestützt und von einer deutschen Behörde "auf Anordnung der Militärregierung" ergangen ist, keine Maßnahme der deutschen öffentlichen Gewalt ist und deshalb ebenfalls der Rechtsprechung des Bundesverfassungsgerichts entzogen ist (BVerfGE 1, 10). Aus dem gleichen Grund hat er die Verfassungsbeschwerde, die sich mittelbar oder unmittelbar gegen Entscheidungen eines obersten Rückerstattungsgerichts wendet, für unzulässig gehalten (BVerfGE 6, 15; 22, 91) und eine Verfassungsbeschwerde gegen eine rein innerkirchliche Maßnahme als unzulässig verworfen (BVerfGE 18, 385). Er hat außerdem entschieden, daß das Bundesverfassungsgericht nicht zuständig ist, deutsches Recht (nämlich ein Durchführungsgesetz zum Kontrollratsgesetz) auf seine Vereinbarkeit mit dem Besatzungsrecht zu überprüfen (BVerfGE 3, 368). In diesem Zusammenhang heißt es wörtlich: "Das Grundgesetz und das Gesetz über das Bundesverfassungsgericht enthalten keine verfassungsgerichtliche Generalklausel für die Zuständigkeit des Bundesverfassungsgerichts. ... Für die Prüfung deutschen Rechts auf seine Vereinbarkeit mit Besatzungsrecht ist dem Bundesverfassungsgericht keine besondere Zuständigkeit zugewiesen. Das Bundesverfassungsrecht und das im Rahmen des Grundgesetzes geltende Bundesrecht sind für das Bundesverfassungsgericht einziger Prüfungsmaßstab. Seine Zuständigkeit kann nicht aus rechtspolitischen Erwägungen über die positive Zuständigkeitsregelung hinaus erweitert werden" (BVerfGE 3, 368 [376 f.]). In einem Normenkontrollverfahren, das eine Bestimmung der 42. Durchführungsverordnung zum Umstellungsgesetz betraf, hat der Erste Senat weiter entschieden, daß die angegriffene Bestimmung Besatzungsrecht sei und Besatzungsrecht auf seine Vereinbarkeit mit dem Grundgesetz nicht geprüft werden könne (BVerfGE 4, 45). Dieser Entscheidung folgen aber aus der Zeit nach Inkrafttreten des Pariser Vertragswerks die Entscheidungen, in denen Besatzungsrecht auf seine Vereinbarkeit mit dem Grundgesetz überprüft und den zuständigen Verfassungsorganen der Bundesrepublik Deutschland aufgegeben wird, nach entsprechender Konsultation der Drei Mächte den Inhalt des Gesetzes mit dem Grundgesetz in Übereinstimmung zu bringen (BVerfGE 15, 337 und Entscheidung vom 14. November 1973 - 1 BvR 719/69 - betreffend Ehegesetz [BVerfGE 36, 146]). In der Entscheidung vom 18. Oktober 1967 (BVerfGE 22, 293) wird schließlich, wie schon bemerkt, eine Verfassungsbeschwerde unmittelbar gegen Verordnungen des

Rates oder der Kommission der Europäischen Wirtschaftsgemeinschaft als unzulässig verworfen, weil sie sich nicht gegen einen Akt der deutschen, an das Grundgesetz gebundenen öffentlichen Gewalt richtet. In diesem Zusammenhang wird ausgeführt: Die Zulässigkeit könne nicht begründet werden mit der Erwägung, es bestehe ein dringendes Bedürfnis für einen verfassungsgerichtlichen Rechtsschutz, weil die im Gemeinschaftsrecht gebotenen Möglichkeiten nicht ausreichen, um einen hinlänglichen Schutz der Grundrechte der Angehörigen von Mitgliedstaaten zu gewährleisten. Die Zuständigkeit des Bundesverfassungsgerichts könne auch durch ein noch so dringendes rechtspolitisches Bedürfnis nicht erweitert werden. Danach folgt der Satz: "Nicht entschieden ist damit, ob und in welchem Umfang das Bundesverfassungsgericht im Rahmen eines zulässigerweise bei ihm anhängig gemachten Verfahrens Gemeinschaftsrecht an den Grundrechtsnormen des Grundgesetzes messen kann ..." Das hänge u. a. davon ab, "ob und in welchem Maße die Bundesrepublik Deutschland bei der Übertragung von Hoheitsrechten nach Art. 24 Abs. 1 GG die Gemeinschaftsorgane von solcher Bindung (an Grundrechte) freistellen konnte".

Mit keiner der genannten Entscheidungen des Ersten Senats und ihrer tragenden Begründung stellt sich die unter I, 1 bis 7 gegebene Begründung der vorliegenden Entscheidung in Widerspruch. Sie knüpft vielmehr an die Begründung der Entscheidung des Ersten Senats vom 30. Juli 1952 (BVerfGE 1, 396) an, die das Verfahrensrecht der Normenkontrolle fortgebildet hat, indem sie die vorbeugende Normenkontrolle für Vertragsgesetze entwickelt und dabei auf die Notwendigkeit abgehoben hat, für diese Fälle das Verfahren entsprechend der Eigenart der Vertragsgesetze zu *modifizieren* (BVerfGE 1, 396 [410]) und an die weiteren Entscheidungen dieses Senats, in denen Besatzungsrecht auf seine Übereinstimmung mit dem Grundgesetz geprüft und dem Gesetzgeber aufgegeben wurde, durch entsprechende Verhandlungen mit den Drei Mächten die Voraussetzungen zu schaffen, das verfassungswidrige besatzungsrechtliche Gesetz inhaltlich mit dem Grundgesetz in Übereinstimmung zu bringen. Die vorliegende Entscheidung führt außerdem die eigene Rechtsprechung des Zweiten Senats weiter, die sich bisher über das Verhältnis von Gemeinschaftsrecht und einfachem Recht der Bundesrepublik Deutschland ausläßt (BVerfGE 29, 198; 31, 145).

III.

Die angegriffene Regelung des Gemeinschaftsrechts in der vom Europäischen Gerichtshof gegebenen Auslegung kollidiert nicht mit einer Grundrechtsgarantie des Grundgesetzes, weder mit Art. 12 noch mit Art. 2 Abs. 1 GG.

1. Vorweg ist zu bemerken, daß der im System der Lizenzierung mit Kautionsgestellung für Ausfuhr und Einfuhr gewisser Erzeugnisse und Waren vorgesehene Verfall der Kautions nicht als ein durch staatliche Anordnung auferlegtes Übel für vorwerfbares rechtswidriges Verhalten ähnlich einer Strafe oder eines Bußgeldes gewertet werden kann. In diesem System ist vielmehr eine der Privatrechtsordnung bekannte Rechtsfigur eingebaut, die dem Charakter von Risikogeschäften Rechnung trägt (z.B. Termingeschäfte, Abzahlungsgeschäfte, Geschäfte über wiederkehrende Lieferung von Waren usw.). Solchen Geschäften ist die Gestellung einer Kautions und der Verfall einer Kautions unter den vertraglich vereinbarten Bedingungen nicht fremd. Auch bei der Ausfuhr und Einfuhr von Gütern, die der Regelung der angegriffenen Vorschriften unterfallen, weiß der interessierte Kaufmann, welches Risiko er eingeht, und hat die Freiheit der Entscheidung, ob er

den Vertrag unter den - hier nicht vereinbarten, aber gesetzlich festgelegten - Bedingungen eingehen will oder nicht. Alle Bedenken, die aus dem Vergleich mit einer strafrechtlichen oder strafrechtsähnlichen Sanktion hergeleitet werden, gehen deshalb von vornherein fehl (ebenso BVerfGE 9, 137 [144]).

2. Das in den angegriffenen Vorschriften enthaltene System ist im gegenwärtigen Stadium der Entwicklung der Europäischen Gemeinschaft, in dem der wirtschaftliche Verkehr ohne Planung und wirksame Kontrolle nicht funktionieren kann, nicht nur angemessen, sondern (noch) unentbehrlich und durch ein anderes, ähnlich wirksames und einfaches, andererseits marktkonformes System nicht zu ersetzen.

3. Was das Grundrecht der Berufsfreiheit (Art. 12 GG) anlangt, so sind die im Urteil vom 11. Juni 1958 (BVerfGE 7, 377 [397 ff.]) entwickelten Grundsätze auch hier maßgebend. Die Regelung der Lizenzierung von Ausfuhr- und Einfuhrgeschäften mit Kautionsgestellung und Kautionsverfall berührt die Berufsausübung, deren Beschränkung der Gesetzgeber vorsehen kann. Dabei ist er allerdings nicht frei. Hier hat er eine "reine Ausübungsregelung" getroffen, "die auf die Freiheit der Berufswahl nicht zurückwirkt, vielmehr nur bestimmt, in welcher Art und Weise die Berufsangehörigen ihre Berufstätigkeit im einzelnen zu gestalten haben. Hier können in weitem Maße Gesichtspunkte der Zweckmäßigkeit zur Geltung kommen; nach ihnen ist zu bemessen, welche Auflagen den Berufsangehörigen gemacht werden müssen, um Nachteile und Gefahren für die Allgemeinheit abzuwehren ... Der Grundrechtsschutz beschränkt sich insoweit auf die Abwehr in sich verfassungswidriger, weil übermäßig belastender und nicht zumutbarer gesetzlicher Auflagen; von diesen Ausnahmen abgesehen, trifft die hier in Frage stehende Beeinträchtigung der Berufsfreiheit den Grundrechtsträger nicht allzu empfindlich, da er bereits im Beruf steht und die Befugnis, ihn auszuüben, nicht berührt wird" (BVerfGE 7, 377 [405 f.]).

Bei Anlegung dieses Maßstabs kollidiert die angegriffene Regelung nicht mit Art. 12 GG. Denn für sie sprechen, wie schon der Europäische Gerichtshof in seiner Entscheidung dargelegt hat, wohlerwogene Gründe, um empfindliche Nachteile für die Europäische Wirtschaftsgemeinschaft abzuwehren. Eine "in sich verfassungswidrige, weil übermäßig belastende und nicht zumutbare" Auflage steht hier ebensowenig in Rede wie in dem insoweit vergleichbaren Fall, der mit der sog. Reugeld-Entscheidung vom 3. Februar 1959 (BVerfGE 9, 137) entschieden wurde; in jener Entscheidung hat das Gericht nicht einmal erwogen, daß Art. 12 GG verletzt sein könnte (BVerfGE 9, 137 [146]).

4. Soweit in den Formeln "übermäßig belastend" und "nicht zumutbar" die Berücksichtigung des Grundsatzes der Verhältnismäßigkeit gefordert wird, ist bei der Regelung über die Voraussetzungen eines Verfalls der Kautions zu beachten: Es entspricht dem Zweck einer Kautions, daß sie verfällt, wenn die im Vertrag oder im Gesetz festgelegten Verpflichtungen, gleichgültig ob schuldhaft oder nicht schuldhaft, nicht erfüllt werden. Daß sie nicht verfällt, muß demnach eine Ausnahme bleiben, die nicht alle Fälle umfaßt, in denen der Gesteller der Kautions schuldlos, also mit der gehörigen Sorgfalt eines Kaufmanns gehandelt hat. Die angegriffene Regelung faßt die Ausnahme unter dem Rechtsbegriff der höheren Gewalt, und der Europäische Gerichtshof hat diesen Begriff dahin verbindlich ausgelegt, daß darunter neben den in der Regelung ausdrücklich genannten Fällen nicht nur alle Fälle absoluter Unmöglichkeit der Ein- oder Ausfuhr, sondern auch Fälle einzubeziehen sind, in denen die Ein- oder Ausfuhr nicht erfolgte wegen vom Willen des Im- oder

Exporteurs unabhängiger Umstände, deren Folgen trotz aller aufwendbaren Sorgfalt nur um den Preis unverhältnismäßiger Opfer vermeidbar gewesen wären. Das umschreibt, zumal der Europäische Gerichtshof hinzufügt, die Begriffselemente "Sorgfalt, die er hätte aufwenden müssen" und "Schwere des Opfers, das er ... hätte auf sich nehmen müssen" seien elastisch, den im deutschen Recht geläufigen, im Verfassungsgrundsatz der Verhältnismäßigkeit mitenthaltene Rechtsgedanken, daß der Verpflichtete in Fällen dieser Art bei einer "überobligationsmäßigen Belastung" von seiner Verpflichtung frei werden kann.

5. Der Anwendung der angegriffenen Regelung durch die deutschen Behörden und Gerichte im vorliegenden Fall steht demnach Art. 12 GG nicht entgegen. Neben dem Art. 12 GG kommt nach der ständigen Rechtsprechung des Bundesverfassungsgerichts als weiterer selbständiger Prüfungsmaßstab Art. 2 Abs. 1 GG im vorliegenden Fall nicht in Betracht (BVerfGE 9, 63 [73]; 9, 73 [77]; 9, 338 [343]; 10, 185 [199]; 21, 227 [234]; 23, 50 [55 f.]).

IV.

Diese Entscheidung ist zu B.I und II mit fünf zu drei Stimmen, zu B.III einstimmig ergangen.

Dr. Seuffert, Dr. v. Schlabrendorff, Dr. Rupp, Dr. Geiger, Hirsch, Dr. Rinck, Dr. Rottmann, Wand

Abweichende Meinung der Richter Dr. Rupp, Hirsch und Wand zum Beschluß des Zweiten Senats vom 29. Mai 1974 - BvL 52/71 -

Wir halten die Vorlage für unzulässig und können daher dem Beschluß zu B.I und II nicht zustimmen.

I.

Rechtsvorschriften, die von Organen der Europäischen Gemeinschaften aufgrund der ihnen übertragenen Kompetenzen erlassen worden sind (sekundäres Gemeinschaftsrecht), können nicht auf ihre Vereinbarkeit mit den Grundrechtsnormen des Grundgesetzes geprüft werden.

1. Die Verfassung der Bundesrepublik Deutschland sieht in Art. 24 Abs. 1 GG vor, daß der Bund durch Gesetz Hoheitsrechte auf zwischenstaatliche Einrichtungen übertragen kann. Von dieser Befugnis hat er durch Ratifizierung des EWG-Vertrags Gebrauch gemacht (vgl. Art. 1 des Gesetzes vom 27. Juli 1957 - BGBl. II S. 753 -). Damit ist auf einem begrenzten Sektor (Art. 2, 3 EWGV) eine eigenständige Rechtsordnung entstanden, die über eigene Organe, einen eigenen Normenbestand und ein eigenes Rechtsschutzsystem verfügt. Gemeinschaftsorgane sind mit Rechtsetzungsbefugnissen ausgestattet. Die von ihnen erlassenen Rechtsvorschriften, die weder der nationalen Rechtsordnung noch dem Völkerrecht angehören, bilden - zusammen mit den Bestimmungen des Vertrags und ungeschriebenen Rechtsgrundsätzen - den Normenbestand der Gemeinschaft. Der Gerichtshof der Europäischen Gemeinschaften sichert die Wahrung des Rechts bei der Auslegung und Anwendung des Vertrags. Diese Gemeinschaftsrechtsordnung ist autonom und unabhängig vom nationalen Rechtskreis.

2. Beide Rechtskreise kennen - jeweils für ihren Bereich - Grundrechtsnormen und ein zu ihrer Durchsetzung geeignetes Rechtsschutzsystem.

a) Grundrechte werden nicht nur vom Grundgesetz innerhalb der nationalen Rechtsordnung der Bundesrepublik Deutschland verbürgt, sondern auch von der Rechtsordnung der Europäischen Gemeinschaften gewährleistet.

Der EWG-Vertrag enthält neben vereinzelten Bestimmungen mit grundrechtsähnlichem Gehalt (z.B. Art. 7 Abs. 1 und 119) in Art. 215 Abs. 2 eine Bezugnahme auf die allgemeinen Rechtsgrundsätze, die den Rechtsordnungen der Mitgliedstaaten gemeinsam sind. Vor allem sind in der Rechtsprechung des Europäischen Gerichtshofes die wesentlichen Bestandteile des Rechtsstaatsprinzips und die Grundrechte auf Gemeinschaftsebene garantiert. Der Grundsatz der Verhältnismäßigkeit ist vom Europäischen Gerichtshof schon seit Beginn seiner Rechtsprechung als Maßstab für die Rechtmäßigkeit des Handelns der Gemeinschaftsorgane anerkannt worden (siehe u. a. Sammlung der Rechtsprechung des Gerichtshofes - Slg. - 1955/56, 297 [311]; 1958, 159 [196 f.]; 1962, 653 [686]; 1970, 1125 [1137]; 1973, 1091 [1112]). In der vom Verwaltungsgericht Frankfurt im Ausgangsverfahren eingeholten Vorabentscheidung hat der Gerichtshof nicht nur geprüft, ob die in den jetzt dem Bundesverfassungsgericht zur Prüfung vorliegenden EWG-Verordnungen vorgeschriebene Kautionsstellung ein "notwendiges und angemessenes Mittel" zur Erreichung des angestrebten Zieles ist, sondern auch erörtert, ob der Handel durch die Kautionsstellung übermäßig belastet wird (Slg. 1970, 1125 [1137]).

Das Gebot der Gesetzmäßigkeit der Verwaltung findet in der Rechtsprechung des Gerichtshofes ebenfalls seinen Ausdruck (vgl. Slg. 1958, 9 [41 f.]).

Das Erfordernis der Rechtssicherheit und des Vertrauensschutzes ist vom Gerichtshof wiederholt anerkannt worden (vgl. u. a. Slg. 1961, 239 [259]; 1962, 653 [686]; 1964, 1213 [1233 f.]; 1967, 591 [611]; 1973, 575 [584] und 723 [729]). Die Achtung des Grundsatzes des rechtlichen Gehörs (vgl. Slg. 1961, 108 [169]) und des Verbots der Doppelbestrafung (Slg. 1966, 153 [178]; 1969, 1 [15]; 1972, 1281 [1290]) ist durch die Rechtsprechung des Gerichtshofes gewährleistet.

Während dem Diskriminierungsverbot in der Rechtsprechung des Gerichtshofes von Anfang an große Bedeutung zukam (vgl. u. a. Slg. 1958, 233 [257]; 1961, 345 [364]; 1962, 653 [692]; 1971, 823 [838]; 1973, 1055 [1073 f.]; Urteil vom 30. Januar 1974 - Rs 148/73 - S. 14 f. des hektographierten Textes), ist der Schutz der Freiheitsrechte erst in den letzten Jahren klarer zum Ausdruck gekommen. Inzwischen liegt aber auch hierzu genügend Rechtsprechung vor, um die Feststellung zu gestatten, daß die Grundrechte auf Gemeinschaftsebene ausreichend geschützt sind. Der Gerichtshof hat wiederholt betont, daß die Beachtung der Grundrechte zu den allgemeinen Rechtsgrundsätzen gehört, deren Wahrung er zu sichern hat (Slg. 1969, 419 [425]; 1970 1125 [1135]; Urteil vom 14. Mai 1974 - RS 4/73 - S. 29 f. des hektographierten Textes). Maßstab hierfür sind in erster Linie die gemeinsamen Verfassungsüberlieferungen der Mitgliedstaaten. Das bedeutet, wie der Gerichtshof in seinem Urteil vom 14. Mai 1974 ausführt, daß keine Maßnahme als rechtmäßig anerkannt werden kann, die mit den von den Verfassungen der Mitgliedstaaten anerkannten und geschützten Grundrechten unvereinbar ist. In der gleichen Entscheidung hat der Gerichtshof darüber hinaus klargestellt, daß Beschränkungen der Grundrechte zur Verwirklichung der dem allgemeinen Wohle dienenden Ziele der

Europäischen Gemeinschaften ihre Grenze dort finden, wo die Grundrechte in ihrem Wesen angetastet würden (a.a.O. S. 30). Trotz des Fehlens eines Grundrechtskatalogs ist somit der Schutz der im Grundgesetz gewährleisteten Grundrechte auch in der Rechtsordnung der Europäischen Gemeinschaften - wenn auch teilweise in modifizierter Form - durch die Rechtsprechung des Europäischen Gerichtshofes gewährleistet. Es kommt hinzu, daß nach der Ratifikation der Europäischen Menschenrechtskonvention und des Zusatzprotokolls vom 20. März 1952 durch Frankreich nunmehr alle Mitgliedstaaten der Gemeinschaften auch Vertragspartner der Konvention sind. Deshalb ist damit zu rechnen, daß der Gerichtshof auch die in der Konvention und im Zusatzprotokoll enthaltenen Bestimmungen zum Schutze der Menschenrechte und Grundfreiheiten zur Konkretisierung der "allgemeinen Rechtsgrundsätze, die den Rechtsordnungen der Mitgliedstaaten gemeinsam sind", heranziehen wird, wie in der Entscheidung vom 14. Mai 1974 bereits angedeutet ist.

b) Die Rechtsordnung der Europäischen Gemeinschaften verfügt auch über ein zur Durchsetzung dieser Grundrechte geeignetes Rechtsschutzsystem.

Der Einzelne kann den Europäischen Gerichtshof gegen Handlungen der Gemeinschaftsorgane zwar nur anrufen, wenn er von einer solchen Handlung unmittelbar und individuell betroffen ist (Art. 173 Abs. 2 EWGV). Soweit Rechtsvorschriften der Gemeinschaften oder an die Mitgliedstaaten gerichtete Entscheidungen der Ausführung durch staatliche Organe der Bundesrepublik Deutschland bedürfen, steht dem Einzelnen aber der gegen den innerstaatlichen Akt gegebene Rechtsweg offen. In diesem Verfahren haben die deutschen Gerichte auch zu prüfen, ob die Vorschriften des Gemeinschaftsrechts, auf die sich die angegriffene Maßnahme stützt, mit höherrangigen Normen der Gemeinschaftsrechtsordnung vereinbar sind. Zu diesen höherrangigen Normen gehören auch die vom Europäischen Gerichtshof anerkannten Grundrechte und rechtsstaatlichen Grundsätze. Ergeben sich Zweifel, ob die anzuwendende Vorschrift mit den Grundrechten oder dem Rechtsstaatsprinzip in Einklang steht, so hat das deutsche Gericht die Möglichkeit und - soweit es in letzter Instanz entscheidet - auch die Pflicht, diese Frage gemäß Art. 177 EWGV dem Europäischen Gerichtshof zur Vorabentscheidung vorzulegen.

3. Normen beider Rechtsordnungen, sowohl des Gemeinschaftsrechts als auch des nationalen Rechts, entfalten im Bereich der Bundesrepublik Deutschland unmittelbare Rechtswirkungen. Die von Gemeinschaftsorganen erlassenen Rechtsvorschriften sind für die deutschen Behörden und Gerichte ebenso verbindlich wie die Normen des innerstaatlichen Rechts. Damit stellt sich die Frage, welches Recht maßgebend ist, wenn Vorschriften des Gemeinschaftsrechts von Bestimmungen des nationalen Rechts inhaltlich abweichen.

Diese Frage ist für das Verhältnis des europäischen Gemeinschaftsrechts zum nationalen Recht der Bundesrepublik Deutschland durch Art. 24 Abs. 1 GG in Verbindung mit dem Zustimmungsgesetz zum EWG-Vertrag entschieden. Art. 24 Abs. 1 GG besagt bei sachgerechter Auslegung nicht nur, daß die Übertragung von Hoheitsrechten auf zwischenstaatliche Einrichtungen überhaupt zulässig ist, sondern auch, daß die Hoheitsakte der zwischenstaatlichen Einrichtungen von der Bundesrepublik Deutschland anzuerkennen sind (BVerfGE 31, 145 [174]). Das schließt es von vornherein aus, sie nationaler Kontrolle zu unterwerfen. Denn darauf hat die Bundesrepublik Deutschland durch den Beitritt zur EWG, ihre Zustimmung

zur Errichtung von Gemeinschaftsorganen und ihre Mitwirkung an der Begründung autonomer Hoheitsgewalt gerade verzichtet. Zu den anzuerkennenden, keiner nationalen Kontrolle unterliegenden Hoheitsakten gehört auch die Rechtsetzung der europäischen Gemeinschaftsorgane. Die von ihnen erlassenen Rechtsvorschriften können daher in ihrer Geltung und Anwendbarkeit nicht davon abhängig sein, ob sie den Maßstäben des innerstaatlichen Rechts entsprechen. Gemeinschaftsrecht geht inhaltlich abweichenden Bestimmungen des nationalen Rechts vor. Dies gilt nicht nur im Verhältnis zu innerstaatlichen Normen des einfachen Rechts, sondern auch gegenüber Grundrechtsnormen der nationalen Verfassung.

Die Mehrheit des Senats hält dem entgegen, Art. 24 Abs. 1 GG eröffne nicht den Weg, "die Grundstruktur der Verfassung, auf der ihre Identität beruht" und zu der besonders ihr Grundrechtsteil rechnet, durch die Gesetzgebung zwischenstaatlicher Einrichtungen zu ändern. Dieser Einwand geht jedoch fehl. Richtig ist zwar, daß der Vorrang des Gemeinschaftsrechts gegenüber Vorschriften des innerstaatlichen Rechts nur insoweit gelten kann, als das Grundgesetz die Übertragung von Hoheitsgewalt auf Gemeinschaftsorgane gestattet. Darüber hinaus trifft es zu, daß Art. 24 Abs. 1 GG die Übertragung von Hoheitsrechten auf zwischenstaatliche Einrichtungen nicht schrankenlos zuläßt. Wie alle Verfassungsvorschriften ist diese Bestimmung so auszulegen, daß sie mit den elementaren Grundsätzen des Grundgesetzes und seiner Wertordnung in Einklang steht (vgl. BVerfGE 30, 1 [19]). Dabei ist einerseits das Bekenntnis zu einem vereinten Europa in der Präambel des Grundgesetzes, andererseits die besondere Sorge um die Wahrung einer freiheitlichen und demokratischen Ordnung, wie sie in zahlreichen Verfassungsvorschriften ihren Ausdruck gefunden hat, zu berücksichtigen. Die Auslegung des Art. 24 Abs. 1 GG aus dem Gesamtzusammenhang der Verfassung ergibt, daß der Verzicht auf die Ausübung von Hoheitsgewalt in bestimmten Bereichen und die Duldung der Ausübung von Hoheitsgewalt durch Organe einer überstaatlichen Gemeinschaft dann - und nur dann - zulässig ist, wenn die öffentliche Gewalt der überstaatlichen Gemeinschaft nach ihrer Rechtsordnung den gleichen Bindungen unterliegt, wie sie sich für den Bereich des innerstaatlichen Rechts aus den fundamentalen und unabdingbaren Prinzipien des Grundgesetzes ergeben; dazu gehört insbesondere der Schutz des Kernbestandes der Grundrechte.

Diese Voraussetzung ist bei der Europäischen Wirtschaftsgemeinschaft erfüllt. Der innerhalb der Gemeinschaft gewährleistete Grundrechtsschutz unterscheidet sich seinem Wesen und seiner Struktur nach nicht von dem Grundrechtssystem der nationalen Verfassung. In beiden Rechtsordnungen wird der Kernbestand der Grundrechte anerkannt und geschützt. Die Grundrechte, die innerhalb des Rechtskreises der Europäischen Gemeinschaften gelten, sind denen, die das Grundgesetz garantiert, wesensgleich; ihre Grundlage bilden die gemeinsamen Verfassungsüberlieferungen der Mitgliedstaaten - ihre Anerkennung beruht auf den gleichen Wert- und Ordnungsvorstellungen. Das reicht aus. Kein Mitgliedstaat kann verlangen, daß die Grundrechte auf Gemeinschaftsebene gerade in der Gestalt gewährleistet werden, wie sie die nationale Verfassung kennt. Art. 24 Abs. 1 GG läßt es zu, Hoheitsrechte in eine Gemeinschaft einzubringen, die zwar die national verbürgten Grundrechte nicht für sich gelten läßt, innerhalb ihrer Rechtsordnung aber einen Grundrechtsschutz garantiert, der in seinen Grundzügen dem Standard des Grundgesetzes entspricht. Daraus folgt, daß Vorschriften des Gemeinschaftsrechts nur an die Grundrechtsnormen gebunden sind, die auf Gemeinschaftsebene gelten, nicht aber zusätzlich noch den Grundrechtsnormen der nationalen Verfassung genügen müssen.

Die "Grundstruktur der Verfassung, auf der ihre Identität beruht", steht dabei nicht auf dem Spiel. Die Frage, ob Art. 24 Abs. 1 GG eine Übertragung von Hoheitsrechten gestattet, die Gemeinschaftsorganen die Möglichkeit gibt, überhaupt frei von Grundrechtsbindungen innerstaatlich verbindliches Recht zu setzen, stellt sich heute nicht mehr. Darum ist es im Ansatz verfehlt, wenn die Mehrheit des Senats glaubt, einen "Einbruch" in die das Grundgesetz konstituierenden Strukturen, insbesondere seinen Grundrechtsteil, abwehren zu müssen, indem sie Gemeinschaftsrecht an die Grundrechtsnormen der nationalen Verfassung bindet. Dies läßt sich auch nicht mit dem Hinweis begründen, die Europäischen Gemeinschaften besäßen noch keinen kodifizierten Grundrechtskatalog. Die Art und Weise der Grundrechtsverbürgung ist in diesem Zusammenhang ohne Belang, die Behauptung, nur eine Kodifikation biete ausreichende Rechtsgewißheit, nicht stichhaltig. Weshalb - wie die Mehrheit des Senats meint - für das Verhältnis zwischen Gemeinschaftsrecht und Grundgesetz "der gegenwärtige Stand der Integration der Gemeinschaft" bedeutsam sein soll, leuchtet nicht ein. Das Argument, die Grundrechte der Verfassung müßten sich gegenüber sekundärem Gemeinschaftsrecht auch deswegen durchsetzen, weil die Gemeinschaft noch eines unmittelbar legitimierten Parlamentes entbehre, ist in sich nicht schlüssig. Grundrechtsschutz und demokratisches Prinzip sind innerhalb eines freiheitlich und demokratisch verfaßten Gemeinwesens nicht austauschbar; sie ergänzen sich. Die Verwirklichung des demokratischen Prinzips in der EWG könnte zwar den Gesetzgeber und die Exekutive zu einer stärkeren Beachtung der Grundrechte veranlassen; dadurch würde sich aber gerichtlicher Grundrechtsschutz nicht erübrigen.

Die von der Mehrheit des Senats vertretene Rechtsauffassung führt überdies zu unannehmbaren Ergebnissen. Wäre die Anwendbarkeit sekundären Gemeinschaftsrechts davon abhängig, daß es den Grundrechtsnormen einer nationalen Verfassung genügt, so könnte - da die Mitgliedstaaten Grundrechte in unterschiedlichem Ausmaß gewährleisten - der Fall eintreten, daß Rechtsvorschriften der Gemeinschaften in einigen Mitgliedstaaten anwendbar sind, dagegen in anderen nicht. Damit käme es gerade auf dem Gebiet des Gemeinschaftsrechts zur Rechtszersplitterung. Diese Möglichkeit eröffnen, heißt ein Stück europäischer Rechtseinheit preisgeben, den Bestand der Gemeinschaft gefährden und den Grundgedanken der europäischen Einigung verleugnen.

Die Mehrheit des Senats setzt sich mit ihrer Rechtsansicht auch in Widerspruch zur ständigen Rechtsprechung des Europäischen Gerichtshofs. Der Gerichtshof hat aus Wortlaut und Geist des EWG-Vertrags geschlossen, daß dem aus einer autonomen Rechtsquelle fließenden Gemeinschaftsrecht keine wie immer gearteten innerstaatlichen Rechtsvorschriften der Mitgliedstaaten - auch nicht Bestimmungen des nationalen Verfassungsrechts - vorgehen können (Slg. 1964, 1251 [1270]; 1970, 1125 [1135]). Die gleiche Auffassung hat das Europäische Parlament wiederholt zum Ausdruck gebracht (Amtsblatt der Europäischen Gemeinschaften - Amtsbl. - 1965/2923 in Verbindung mit dem Bericht Dehousse, Dokument 43/65; Bericht des Rechtsausschusses vom 28. Februar 1973, Dokument 297/72). Darüber hinaus hat der Italienische Verfassungsgerichtshof in seinem Urteil vom 18. Dezember 1973 (Nr. 183/73) klargestellt, daß Verordnungen des Gemeinschaftsrechts einer Kontrolle auf ihre Vereinbarkeit mit italienischem Verfassungsrecht nicht unterliegen.

Das Bundesverfassungsgericht besitzt keine Kompetenz, Vorschriften des Gemeinschaftsrechts am Maßstab des Grundgesetzes, insbesondere seines Grundrechtsteiles, zu prüfen, um danach die Frage ihrer Gültigkeit zu beantworten.

Die Mehrheit des Senats räumt zwar ein, daß das Bundesverfassungsgericht über die Gültigkeit oder Ungültigkeit einer Norm des Gemeinschaftsrechts nicht zu entscheiden habe, nimmt jedoch diese Feststellung im Ergebnis wieder zurück, indem sie hinzusetzt, das Bundesverfassungsgericht könne eine solche Norm im Bereich der Bundesrepublik Deutschland für unanwendbar erklären. Diese Unterscheidung zwischen Ungültigkeit und Unanwendbarkeit einer Norm erschöpft sich aber im Gebrauch verschiedener Worte. Ein sachlicher Unterschied liegt ihr nicht zugrunde. Erklärt ein Gericht eine Rechtsnorm wegen Verstoßes gegen höherrangiges Recht für generell unanwendbar, so spricht es damit der Sache nach aus, daß die Norm nicht gilt, also ungültig ist. Diese Befugnis steht dem Bundesverfassungsgericht gegenüber den Rechtsvorschriften der Gemeinschaftsorgane nicht zu. Daß die Mehrheit des Senats sie gleichwohl in Anspruch nimmt, ist ein unzulässiger Eingriff in die dem Europäischen Gerichtshof vorbehaltene Kompetenz, deren Anerkennung Art. 24 Abs. 1 GG gebietet; dieser Eingriff schafft für die Bundesrepublik Deutschland einen Sonderstatus und setzt sie dem berechtigten Vorwurf einer Verletzung des EWG-Vertrags und der Gefährdung der Gemeinschaftsrechtsordnung aus.

II.

Die Frage, ob ein deutsches Gericht, das in einem bei ihm anhängigen Verfahren Vorschriften des sekundären Gemeinschaftsrechts anzuwenden hat, diese gemäß Art. 100 Abs. 1 GG dem Bundesverfassungsgericht zur verfassungsrechtlichen Prüfung vorlegen kann, stellt sich nicht, wenn man der zu I dargelegten Rechtsauffassung über das Verhältnis zwischen Gemeinschaftsrecht und nationalem Verfassungsrecht folgt. Den Ausführungen zu B I 7 und II des Beschlusses kann aber auch aus anderen rechtlichen Gründen nicht gefolgt werden. Selbst wenn man davon ausgeht, daß deutsche Gerichte befugt sind, Vorschriften des sekundären Gemeinschaftsrechts wegen Unvereinbarkeit mit den Grundrechtsgarantien oder anderen wesentlichen Prinzipien des Grundgesetzes die Anwendung zu versagen, ist die Vorlage des Verwaltungsgerichts Frankfurt dennoch unzulässig. Wegen der grundsätzlichen Bedeutung dieser Frage muß ungeachtet der zu I vertretenen Rechtsauffassung auch hierauf noch eingegangen werden.

1. Art. 100 Abs. 1 GG ist auf Vorschriften des sekundären Gemeinschaftsrechts nicht anwendbar. Schon dem Wortlaut dieser Bestimmung wie auch dem Zusammenhang zwischen Art. 100 Abs. 1 und Art. 93 Abs. 1 Nr. 2 GG ist zu entnehmen, daß unter einem "Gesetz" nur Vorschriften des Bundes- und des Landesrechts zu verstehen sind. Von dieser Auslegung ist das Bundesverfassungsgericht auch bisher ausgegangen (vgl. BVerfGE 1, 184 [197]; 4, 45 [48 f.]). Dieses Auslegungsergebnis folgt zudem aus Wesen und Zielrichtung des Normenkontrollverfahrens. Normenkontrolle bedeutet ihrem Kern nach Prüfung, ob eine Norm gültig ist. Das Verwerfungsmonopol des Bundesverfassungsgerichts nach Art. 100 Abs. 1 GG stellt eine Kontrolle des Gerichts gegenüber dem Gesetzgeber dar, nicht aber eine Kontrolle des Bundesverfassungsgerichts über die anderen Gerichte (vgl. BVerfGE 7, 1 [15]). Die Ausübung dieser Kontrolle über den Gesetzgeber setzt voraus, daß es sich bei der Rechtsetzung um Akte eines deutschen Rechtsetzungsorgans handelt. Wie auch in dem Beschluß des Senats anerkannt wird, können Maßnahmen einer nicht deutschen öffentlichen Gewalt vom Bundesverfassungsgericht nicht überprüft werden (vgl. BVerfGE 1, 10 [11]; 6, 15 [18]; 6, 290 [295]; 22, 91 [92]; 22, 293 [295]). Gleichzeitig bestätigt der Senat die bisherige Rechtsprechung des Bundesverfassungsgerichts, daß die Vorschriften des sekundären

Gemeinschaftsrechts als Normen einer eigenständigen Rechtsordnung, die aus einer autonomen Rechtsquelle fließen (vgl. BVerfGE 22, 293 [296]; 29, 198 [210]; 31, 145 [173 f.]), nicht Akte der deutschen staatlichen Gewalt sind (vgl. BVerfGE 22, 293 [297]). Somit kann Art. 100 Abs. 1 GG auf Vorschriften des Gemeinschaftsrechts keine Anwendung finden (so auch die ganz überwiegende Meinung im Schrifttum, siehe unter anderem: Maunz in Maunz-Dürig-Herzog, Grundgesetz, Rdnr. 11 zu Art. 100; Stern in Bonner Kommentar [Zweitbearbeitung], Rdnr. 78 zu Art. 100; Leibholz/Rupprecht, Bundesverfassungsgerichtsgesetz, Rdnr. 11 zu § 80; Sigloch in Maunz/Sigloch/Schmidt-Bleibtreu/Klein, Bundesverfassungsgerichtsgesetz, Rdnr. 55 zu § 80).

Die Tatsache, daß die Anwendung der von den Gemeinschaftsorganen erlassenen Verordnungen durch Behörden und Gerichte der Bundesrepublik Deutschland Ausübung deutscher öffentlicher Gewalt darstellt, kann diese Verordnungen selbst nicht zu einem geeigneten Prüfungsgegenstand im Verfahren nach Art. 100 Abs. 1 GG machen. Durch die Anwendung im Einzelfall werden diese Vorschriften nicht Bestandteil der deutschen Rechtsordnung. Akte der deutschen öffentlichen Gewalt, die vom Bundesverfassungsgericht gegebenenfalls überprüft werden können, sind nur die Verwaltungsakte und gerichtlichen Entscheidungen selbst. Diese aber können nicht im Wege der konkreten Normenkontrolle, sondern nur in dem in Art. 93 Abs. 1 Nr. 4 a GG, § 90 BVerfGG vorgesehenen Verfassungsbeschwerdeverfahren zur verfassungsrechtlichen Prüfung gestellt werden. Die Anwendbarkeit von Art. 100 Abs. 1 GG auf Vorschriften des sekundären Gemeinschaftsrechts kann schließlich auch nicht aus dem in der Rechtsprechung des Bundesverfassungsgerichts wiederholt hervorgehobenen Grundgedanken des Verwerfungsmonopols - den Gesetzgeber vor der Nichtbeachtung seiner Gesetze zu schützen - hergeleitet werden. Abgesehen davon, daß dieser Grundgedanke allein die Zuständigkeit des Bundesverfassungsgerichts nicht begründen kann, wenn ein "Gesetz" im Sinne von Art. 100 Abs. 1 GG nicht vorliegt, sondern nur der genaueren Bestimmung des Gesetzesbegriffes dient, trifft dieser Grundgedanke hier auch nicht zu; denn er setzt den an das Grundgesetz gebundenen Gesetzgeber voraus. Das Verwerfungsmonopol des Bundesverfassungsgerichts soll verhüten, daß sich jedes einzelne Gericht über den Willen des unter der Geltung der Verfassung tätig gewordenen Gesetzgebers hinwegsetzen und seinem Gesetz die Anerkennung versagen kann (BVerfGE 10, 124 [127]). Der "Gesetzgeber" der Europäischen Gemeinschaften wird aber nicht unter der Geltung des Grundgesetzes tätig.

Ebensowenig kann aus Art. 100 Abs. 2 GG auf die Zulässigkeit der konkreten Normenkontrolle in Fällen wie dem vorliegenden geschlossen werden; denn Art. 100 Abs. 2 GG betrifft nicht die Kontrolle gegenüber dem Gesetzgeber. Das hier geregelte Verfahren dient der Normenverifikation, nicht der Normenkontrolle; es ersetzt im Ergebnis das Gesetzgebungsverfahren (BVerfGE 23, 288 [318]).

2. Wenn der Senat die Zulässigkeit der Vorlage im wesentlichen mit der Erwägung bejaht, daß zwar nicht die zur Prüfung gestellten EWG-Vorschriften selbst, wohl aber die Anwendung dieser Vorschriften durch die deutschen Gerichte der Bindung an das Grundgesetz und der Überprüfbarkeit durch das Bundesverfassungsgericht unterliegen, so wird - auch wenn dies nicht klar zum Ausdruck kommt - Art. 100 Abs. 1 GG nicht mehr unmittelbar, sondern analog angewandt, denn eine solche Rechtsfolge wird vom möglichen Wortsinn der Bestimmung unter Berücksichtigung des mit ihr verfolgten Ziels nicht mehr getragen. Eine analoge Anwendung kann hier aber schon deshalb nicht in Betracht kommen, weil gerade die wesentlichen

Voraussetzungen für ein Normenkontrollverfahren nicht gegeben sind. Zudem steht einer analogen Anwendung entgegen, daß die Zuständigkeit des Bundesverfassungsgerichts im Grundgesetz und in dem Gesetz über das Bundesverfassungsgericht im einzelnen abschließend geregelt ist. Eine Ausdehnung der Kompetenzen über den gesetzlich gezogenen Rahmen hinaus in analoger Anwendung der Zuständigkeitsbestimmung ist unzulässig (BVerfGE 2, 341 [346]). Die Aufgabe des Bundesverfassungsgerichts, Hüter der Verfassung zu sein, kann auch bei Vorliegen eines noch so dringenden rechtspolitischen Bedürfnisses nicht zu einer Erweiterung der Zuständigkeit führen (vgl. BVerfGE 1, 396 [408 f.]; 3, 368 [376 f.]; 13, 54 [96]; 22, 293 [298]).

Die Erwägung, daß das Bundesverfassungsgericht in weitem Umfang zur freien Gestaltung seines Verfahrens befugt ist, kann eine Ausdehnung der Zuständigkeit ebenfalls nicht rechtfertigen. Die Fortbildung des Verfahrensrechts darf nur im Rahmen eines zugelassenen Verfahrens erfolgen, nicht aber die Zuständigkeit über das Gesetz hinaus gegenständlich erweitern (vgl. BVerfGE 1, 396 [408]).

3. Wird aber trotz der dargelegten Bedenken die Zulässigkeit einer analogen Anwendung von Art. 100 Abs. 1 GG bejaht, so hätte zuvor zumindest nach § 16 Abs. 1 BVerfGG eine Entscheidung des Plenums herbeigeführt werden müssen; denn der Senat weicht in mehrfacher Hinsicht von Rechtsauffassungen ab, die in den tragenden Gründen von Entscheidungen des Ersten Senats enthalten sind.

a) Wie im Beschluß selbst erwähnt ist, hat der Erste Senat eine Vorlage, mit der Vorschriften des Besatzungsrechts nach Art. 100 Abs. 1 GG zur Prüfung gestellt wurden, mit der Begründung für unzulässig erklärt, daß Besatzungsrecht vom Bundesverfassungsgericht nicht auf seine Vereinbarkeit mit dem Grundgesetz geprüft werden könne (BVerfGE 4, 45 [48 f.]). Zur näheren Begründung wird auf eine frühere Entscheidung des Ersten Senats verwiesen, in der festgestellt wurde, daß Besatzungsrecht nicht als Bundesrecht angesehen werden kann (BVerfGE 3, 368 [374 f.]).

Diese den Beschluß tragende Rechtsauffassung ist nicht in späteren Entscheidungen aufgegeben worden. Die vom Senat zitierten Entscheidungen über die Vereinbarkeit von Bestimmungen des Besatzungsrechts mit dem Grundgesetz (BVerfGE 15, 337; 36, 146) ergingen nicht auf Vorlagen im Verfahren der konkreten Normenkontrolle, sondern in Verfassungsbeschwerdeverfahren. Über die Zulässigkeit einer unmittelbaren Prüfung von Bestimmungen des Besatzungsrechts zur Prüfung stellenden Vorlage nach Art. 100 Abs. 1 GG hatte der Erste Senat in diesen Verfahren daher nicht zu befinden. In beiden Entscheidungen wird aber die Rechtsprechung bestätigt, daß dem Bundesverfassungsgericht hinsichtlich der Bestimmungen des Besatzungsrechts eine Verwerfungskompetenz nicht zusteht (BVerfGE 15, 337 [346]; 36, 146 [171]). In dem Beschluß vom 14. November 1973 erklärt der Erste Senat, das Bundesverfassungsgericht könne Kontrollratsrecht auch nicht förmlich für mit dem Grundgesetz unvereinbar erklären (BVerfGE 36, 146 [161]).

Hierzu steht nicht in Widerspruch, daß der Erste Senat die in Frage stehenden Bestimmungen des Besatzungsrechts materiell auf ihre Vereinbarkeit mit dem Grundgesetz geprüft hat. Damit wurde nicht das Besatzungsrecht selbst zum Prüfungsgegenstand gemacht. Vielmehr ergab sich die Zulässigkeit dieses Vorgehens aus der Befugnis des Bundesverfassungsgerichts zu prüfen, ob dem an

das Grundgesetz gebundenen Gesetzgeber ein verfassungswidriges Unterlassen vorzuwerfen ist, weil er besatzungsrechtliche Vorschriften, die mit dem Grundgesetz nicht vereinbar sind, nicht in angemessener Frist nach Inkrafttreten des Überleitungsvertrags aufgehoben oder geändert hat, um eine dem Grundgesetz entsprechende Rechtsordnung zu schaffen (vgl. BVerfGE 15, 337 [349 f.]; 36, 146 [171]).

b) Der vorstehende Beschluß weicht außerdem von der Entscheidung des Ersten Senats vom 17. Juni 1953 ab, in der ausdrücklich festgestellt wurde, daß eine Ausdehnung der Kompetenzen des Bundesverfassungsgerichts über den gesetzlich gezogenen Rahmen hinaus in analoger Anwendung der Zuständigkeitsbestimmungen unzulässig ist (BVerfGE 2, 341 [346]). Diese Rechtsauffassung hat der Erste Senat in späteren Entscheidungen nicht aufgegeben. Vielmehr wird in dem Beschluß, der eine Verfassungsbeschwerde gegen Bestimmungen in Verordnungen des Rates und der Kommission der Europäischen Wirtschaftsgemeinschaften für unzulässig erklärte, erneut festgestellt, daß die Zuständigkeit des Bundesverfassungsgerichts im Grundgesetz und im Gesetz über das Bundesverfassungsgericht abschließend geregelt ist (BVerfGE 22, 293 [298]).

Dr. Rupp, Hirsch, Wand

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de l'intérieur

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2. The concept of public policy must, in the Community context, and where, in particular, it is used as a justification for derogating from the fundamental principles of equality of treatment and freedom of movement for workers, be interpreted strictly, so that its scope cannot be determined unilaterally by each Member State without being subject to control by the institutions of the Community.
 3. Restrictions cannot be imposed on the right of a national of any Member State to enter the territory of another Member State, to stay there and to move within it unless his presence or conduct constitutes a genuine and sufficiently serious threat to public policy.
 4. An appraisal as to whether measures designed to safeguard public policy are justified must have regard to all rules of Community law the object of which is, on the one hand, to limit the discretionary power of Member States in this respect and, on the other, to ensure that the rights of persons subject thereunder to restrictive measures are protected.
- These limitations and safeguards arise, in particular, from the duty imposed on Member States to base the measures adopted exclusively on the personal conduct of the individuals concerned, to refrain from adopting any measures in this respect which serve ends unrelated to the requirements of public policy or which adversely affect the exercise of trade union rights and, finally, unless this is contrary to the interests of the security of the State involved, immediately to inform any person against whom a restrictive measure has been adopted of the grounds on which the decision taken is based to enable him to make effective use of legal remedies.
5. Measures restricting the right of residence which are limited to part only of the national territory may not be imposed by a Member State on nationals of other Member States who are subject to the provisions of the Treaty except in the cases and circumstances in which such measures may be applied to nationals of the State concerned.

In Case 36/75

Reference to the Court under Article 177 of the EEC Treaty by the Tribunal administratif, Paris, for a preliminary ruling in the action pending before that court between

ROLAND RUTILI, residing at Gennevilliers,

and

THE MINISTER FOR THE INTERIOR

on the interpretation of Article 48 of the EEC Treaty

1220

RUTILI v MINISTER FOR THE INTERIOR

THE COURT

composed of: R. Lecourt, President, H. Kutscher, President of Chamber, A. M. Donner, J. Mertens de Wilmars, P. Pescatore, M. Sørensen and A. J. Mackenzie Stuart, Judges,

Advocate-General: H. Mayras
Registrar: A. Van Houtte

gives the following:

JUDGMENT

Facts

The facts of the case, the procedure and the observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and written procedure

Mr Roland Rutili, of Italian nationality, was born on 27 April 1940 in Loudun (Vienne), and has been resident in France since his birth; he is married to a Frenchwoman and was, until 1968, the holder of a privileged resident's permit and domiciled at Audun-le-Tiche (in the department of Meurthe-et-Moselle), where he worked and engaged in trade union activities.

On 12 August 1968, the Ministry for the Interior made a deportation order against him.

On 10 September 1968 an order was issued requiring him to reside in the department of Puy-de-Dôme.

By orders of 19 November 1968 the Minister for the Interior revoked the deportation and residence orders

affecting Mr Rutili and, on the same date, informed the Prefect of the Moselle of his decision to prohibit Mr Rutili from residing in the departments of Moselle, Meurthe-et-Moselle, Meuse and Vosges.

On 17 January 1970 Mr Rutili applied for the grant of a residence permit for a national of a Member State of the EEC.

On 9 July 1970 he appealed to the Tribunal administratif, Paris, against the implied decision refusing him this document.

On 23 October 1970, the Prefect of Police, acting on instructions given by the Minister for the Interior on 17 July, granted Mr Rutili a residence permit for a national of a Member State of the EEC, which was valid until 22 October 1975 but subject to a prohibition on residence in the departments of Moselle, Meurthe-et-Moselle, Meuse and Vosges.

On 16 December 1970, Mr Rutili brought proceedings before the Tribunal administratif, Paris, for annulment of the decision limiting the territorial validity of his residence permit.

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During the proceedings before the Tribunal administratif, it became apparent that Mr Rutili's presence in the departments of Lorraine was considered by the Minister for the Interior to be 'likely to disturb public policy' and that there were complaints against him in respect of certain activities, the truth of which is, however, contested, which are alleged to consist, in essence, in political actions during the parliamentary elections in March 1967 and the events of May and June 1968 and in his participation in a demonstration during the celebrations on 14 July 1968 at Audun-le-Tiche.

By judgment of 16 December 1974, the Tribunal administratif, Paris, decided to stay proceedings under Article 177 of the EEC Treaty until the Court of Justice had given a preliminary ruling on the following questions:

1. Does the expression, 'subject to limitations justified on grounds of public policy', employed in Article 48 of the Treaty establishing the EEC concern merely the legislative decisions which each Member State of the EEC has decided to take in order to limit within its territory the freedom of movement and residence for nationals of other Member States or does it also concern individual decisions taken in application of such legislative decisions?
2. What is the precise meaning to be attributed to the word 'justified'?

The decision of the Tribunal administratif, Paris was entered at the Court Registry on 9 April 1975.

Written observations under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC were submitted on 16 June 1975 by the Commission of the European Communities, on 20 June by the Government of the French Republic and on 26 June by the Government of the Italian Republic.

After hearing the report of the Judge-Rapporteur and the views of the

Advocate-General, the Court decided to open the oral procedure without any preparatory inquiry.

On 2 September 1975, the Government of the French Republic supplied to the Court at the request of the latter certain details of the substantive and procedural conditions in which a prohibition on residence in part of the national territory may be issued against a French national.

II — Written observations submitted to the Court

A — *The first question*

The *Government of the French Republic* takes the view that this question is answered by Council Directive No 64/221 of 25 February 1964 on the coordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health (OJ, English Special Edition 1963-1964, p. 117), which lays down the conditions on which measures based on those grounds may be taken against individuals; in particular, Article 3 (1) thereof provides as follows: 'Measures taken on grounds of public policy or of public security shall be based exclusively on the personal conduct of the individual concerned.' This is the directive expressly referred to in the third recital of the preamble to Council Directive No 68/360 of 15 October 1968 on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families (OJ, English Special Edition 1968 (II) p. 485), cited in the decision of the Tribunal Administratif, Paris.

The *Government of the Italian Republic* considers it desirable that regulations of a general and abstract nature adopted in the Member States of the EEC should specify the grounds of public policy which, on the basis of uniform criteria

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throughout the Community, are capable of limiting the rights arising under Article 48 of the EEC Treaty; this would substantially reduce the discretionary character of an individual decision taken by the administration which applies abstract regulations to a particular case. In the present state of Community law, however, limitations on the right of freedom of movement may arise from individual administrative measures but appraisal of the grounds of public policy must, in each particular case, be made in the light of the Community regulations which have been promulgated for the very purpose of restricting this discretionary power in view of the objectives embodied in Article 48.

On the question whether an individual administrative measure may decide to prohibit residence in certain regions of a State only, it must be stated that although Article 6 (1) (a) of Directive No 68/360 provides that the residence permit of a national of a Member State of the EEC must be valid throughout the territory of the State which issued it, Article 10 of the same directive allows Member States to derogate from its provisions on grounds of public policy, public security or public health. It would, therefore, appear that a decision prohibiting residence in certain parts of the national territory may be justified on grounds of public policy.

However, it follows from the judgment of the Court of Justice of 26 February 1975 in Case 67/74 (*Bonsignore v Stadt Köln* [1975] ECR 297; reference for a preliminary ruling by the Verwaltungsgericht Köln) that derogations from the rules concerning the free movement of persons constitute exceptions which must be strictly construed; personal conduct capable of justifying such departures must, accordingly, be of a particularly serious nature. In these circumstances, the view may be taken that Community law does not permit grading of the seriousness of conduct penalized by administrative measures and

that it is doubtful whether the immediate measure of a prohibition on residence in certain regions only of the national territory may be applied. Moreover, the fact that the measure imposed is not one of deportation but a partial prohibition on residence may enable the conclusion to be drawn that the conduct which gave rise to the penalty is not of the particularly serious nature required by Community regulations.

The *Commission of the European Communities* takes the view that an answer in the affirmative, though accompanied by certain details, should be given to the question whether the reservation made concerning public policy in Article 48 (3) of the EEC Treaty also covers individual decisions implementing legislative decisions taken by a Member State in order to restrict the freedom of movement and residence on its territory of the nationals of Member States.

(a) The wide discretion traditionally enjoyed by the immigration authorities is limited by Directive No 64/221, the object of which is to restrict the actions of national authorities by means both of provisions covering matters of substance (Articles 2, 3 and 4) and by procedural provisions (Articles 5 to 9). Some provisions of Community law concerning the reservation on public policy, in particular Article 48 of the Treaty and Article 3 (1) of Directive No 64/221, are directly applicable in the legal systems of the Member States. Thus, the discretionary powers of the national administrative authorities are circumscribed not only within the limits fixed by the rules of national law, supplemented as necessary by the incorporation into domestic law of the rules which appear in the directive, but also within the limits fixed by the directly applicable provisions of the Community directive.

(b) These limits are of decisive concern precisely when individual decisions are

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taken, as the directive requires each case to be examined individually.

(c) The expression, 'subject to limitations justified on grounds of public policy', used in Article 48 (3) of the EEC Treaty is, therefore, primarily concerned with individual decisions taken against foreigners who are nationals of a Member State of the EEC.

B — The second question

The *Government of the French Republic* takes the view that the precise meaning to be given to the word 'justified' in the expression 'subject to limitations justified on grounds of public policy' in Article 48 of the EEC Treaty follows from the judgment of the Court of 4 December 1974 in Case 41/74 (*van Duyn v Home Office*; a reference for a preliminary ruling from the Chancery Division of the High Court of Justice, [1974] ECR 1337). In its judgment, the Court ruled, *inter alia*, that

'... the concept of public policy in the context of the Community and where, in particular, it is used as a justification for derogating from the fundamental principle of freedom of movement for workers, must be interpreted strictly, so that its scope cannot be determined unilaterally by each Member State without being subject to control by the institutions of the Community. Nevertheless, the particular circumstances justifying recourse to the concept of public policy may vary from one country to another and from one period to another, and it is therefore necessary in this matter to allow the competent national authorities an area of discretion within the limits imposed by the Treaty';

and that

'It follows that a Member State, for reasons of public policy, can, where it deems necessary, refuse a national of another Member State the benefit of the

principle of freedom of movement for workers in a case where such a national proposes to take up a particular offer of employment even though the Member State does not place a similar restriction upon its own nationals.'

The *Government of the Italian Republic* considers that, particularly in view of Article 6 of Directive No 64/221, the term 'justified' in the first place means that there must be an exhaustive explanation of the reasons for measures which, on grounds of public policy, limit the rights secured by Article 48 of the Treaty, and that this seems manifestly not to have been done in the case of the decision contested in the main action.

Nor is it possible to tell from the statement of reasons for that decision whether, in this particular case, the principle laid down in Article 3 (1) of Directive No 64/21 was observed, and in particular whether the contested measure is concerned only with threats to public policy and public security on the part of the person who is the subject thereof, or whether it was adopted for the unlawful purpose of deterring other foreigners.

Furthermore, limitations on the freedom of movement cannot be regarded as justified under Community law if they are imposed without guaranteeing the rights of appeal for those concerned under the terms laid down by Articles 8 and 9 of Directive No 64/221.

Finally, the limitations imposed upon workers' freedom of movement on grounds of public policy and countenanced, exceptionally, under Article 48 (3) of the Treaty, may be regarded as justified if they fulfil the substantive and formal requirements prescribed by Directive No 64/221 which, in accordance with the case-law of the Court, must be interpreted restrictively.

According to the *Commission of the European Communities*, an appraisal of

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the precise meaning to be given to the word 'justified' may be based on three viewpoints:

(a) The measure must first of all be justified in the sense that the decision by which it is adopted against the person concerned must be reasoned.

As the measure may only be based on adequate grounds and refer exclusively to the personal conduct of the individual concerned, these grounds must be explained to him, especially to enable him to make use of the legal remedies which, under Articles 8 and 9 of Directive No 64/221, the Member States must make available to him. Under Article 6 of the Directive: 'The person concerned shall be informed of the grounds of public policy, public security or public health upon which the decision taken in his case is based, unless this is contrary to the interests of the security of the State involved.' In the present case, it is for the Court dealing with the substance of the case to assess whether the grounds are, in this sense, really 'justified'.

(b) With regard to the meaning of the concept of public policy which is capable of justifying measures taken against a foreigner, in view in particular of Directive No 64/221, the case-law of the Court and the viewpoint of the French Minister for the Interior, the following considerations must be borne in mind:

— The right to enter the territory of Member States and to reside there is an indispensable element of the free movement of persons, which is itself one of the underlying principles of the Community. The exercise of this right of entry and of residence, enshrined in Article 48 of the EEC Treaty, is subject to no reservations except those provided for by way of limitation in paragraph (3) of the article, which refer to public policy, public security or public health; since it is an exception, it must be restrictively interpreted.

— The concept of public policy must, therefore, be resorted to only in particularly serious cases.

— In the Member States of the Community, fundamental human rights, the 'public freedoms', are established and recognized by the State. National statutory law lays down the basic rules for each of these freedoms and prescribes their limits both to enable them to be exercised simultaneously and to protect society. These limitations form a basic criterion for determining at what point an activity may be regarded as constituting 'a danger to society'. Thus, an activity which consists of the legitimate exercise of a freedom enjoyed by the public and recognized as such by national law can scarcely be considered to affect adversely the public policy of a State because the person responsible for it is a foreigner.

— In fields involving the exercise by the public of its freedoms, an appraisal whether a foreigner has acted contrary to public policy must be made by reference not only to the national rules of a host State which recognizes its own citizens as being entitled to those freedoms, but also of the relevant international obligations into which the State has entered.

— The exercise of trade union rights by a foreigner, under the same conditions as a national, cannot be regarded as in itself constituting an offence against public policy. The exercise of trade union rights was recognized by Article 8 of Regulation No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (OJ, English Special Edition 1968 (II) p. 475) and embodied in several international documents. Such recognition enables foreigners, without discrimination based on national descent or origin, to make full use of collective bargaining rights including, in particular, the right to take collective action in case of dispute, and the right to strike. The exercise of trade union rights is subject

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to certain limitations laid down by the law and which, in a democratic society, are necessary to ensure respect for the rights and liberties of others and to safeguard public order, national security, public health and morals. In this connexion, it must be borne in mind that the concept of political neutrality, which applies particularly to foreigners, must be handled with care in the context of a Community which is trying to integrate the migrant worker more and more closely into the host country and which likes to emphasize its political aims. The host state can no doubt impose restrictions on the political activity of foreigners; at the same time, political neutrality must on no account be used to prevent the normal exercise of legitimate economic and social rights which are enshrined in Community law.

(c) On the question whether the measure adopted is justified in the present case, the following comments may be made:

— Directive No 64/221 expressly refers to refusal of entry into a territory and expulsion from a territory as special measures which may be taken against a national of a Member State; on the other hand, it contains no provision that prohibitions on residence in part of the territory may be justified on grounds of public policy.

— One might, at first, be tempted to conclude that, as the administrative authorities are justified in adopting a deportation measure against a foreigner, they may *a fortiori* adopt a less drastic measure, and that it would be to encourage them in every case to opt for deportation if they were prohibited from adopting a less radical measure.

— Nevertheless, the right to move freely within a State and to choose to reside there is a basic human right; thus, Article 6 (1) (a) of Directive No 68/360 provides that a residence permit, which is a straightforward entitlement to residence

embodying, in administrative terms, the right of residence recognized by the directive, must, in principle, be valid throughout the territory of the State which issued it. It is open to question whether the French authorities were entitled to limit the scope of that Community provision by providing, in the Decree of 5 January 1970, that 'a residence permit for a national of a Member State of the EEC shall be valid throughout French territory save in the case of an individual decision taken by the Minister for the Interior on grounds of public policy.'

— An order as to place of residence may nevertheless be made against a foreigner in certain circumstances where special restrictions on foreigners appear to be in fact justifiable on grounds of public policy. But it must be possible, in each individual case, to justify the application to a foreigner of the general rule laid down in the Decree of 5 January 1970. In the present case, however, the measure contested in the main action appears to be discriminatory or unfounded.

— Finally, refusal of a residence permit may have very serious consequences for the person concerned and also for his family.

(d) In conclusion, in order to be 'justified' within the meaning of Article 48 (3) of the EEC Treaty, a measure affecting an individual must:

— in accordance with the provisions of Articles 8 and 9 of Directive No 64/221, state the grounds on which it is based;

— be based on particularly serious grounds, especially when the activity for which the national of a Member State is criticized is the result of exercising a freedom expressly recognized by the State in which he resides or a fundamental right enshrined in an international document; the exercise of trade union freedom cannot constitute an offence against public order or public

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security within the meaning of Article 48 (3) if it takes a form which is considered lawful in the case of nationals;

— in view of the restriction on freedom of movement which it involves and the consequences which it entails for the person concerned and members of his family, in each particular case be calculated to meet the specific threat to public order posed by the person concerned.

III — Oral procedure

Mr Rutili, the plaintiff in the main action, represented by Marcel Manville, Advocate of the Paris Bar, and the Commission of the European

Communities, represented by its Legal Adviser, Jean-Claude Séché, submitted their oral observations at the hearing on 1 October 1975.

During the hearing, the *plaintiff in the main action* claimed that the decision limiting the territorial validity of his residence permit is, both from the standpoint of French law and of Community law, wholly without legal justification; from the standpoint of Community law, more particularly, it is an infringement of the fundamental right of freedom of movement and of the principle of non-discrimination.

The Advocate-General delivered his opinion on 14 October 1975.

Law

- 1 By a decision of 16 December 1974, received at the Court Registry on 9 April 1975, the Tribunal administratif, Paris, has referred to the Court two questions under Article 177 of the EEC Treaty concerning the interpretation of the reservation made in respect of public policy in Article 48 of the EEC Treaty in the light of the measures taken for implementation of that article, especially Regulation No 1612/68 of the Council of 15 October 1968 and Council Directive No 68/360 of the same date, on freedom of movement for workers (OJ English Special Edition 1968 (II) pp. 475 and 485).
- 2 These questions were raised in the course of proceedings brought by an Italian national residing in the French Republic against a decision to grant him a residence permit for a national of a Member State of the EEC subject to a prohibition on residence in certain French departments.
- 3 The file of the Tribunal administratif and the oral procedure before the Court have established that the plaintiff in the main action was, in 1968, the subject first of all of a deportation order and then of an order directing him to reside in a particular department.

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- 4 On 23 October 1970 this measure was replaced by a prohibition on residence in four departments including the department in which the person concerned was habitually resident and where his family continues to reside.
- 5 It is also clear from the file on the case and from information supplied to the Court that the reasons for the measures taken against the plaintiff in the main action were disclosed to him in general terms during the proceedings brought before the Tribunal administratif on a date subsequent to the commencement of the action, namely, 16 December 1970.
- 6 From information given to the Tribunal administratif by the Ministry for the Interior, which, however, is contested by the plaintiff in the main action, it transpires that his political and trade union activities during 1967 and 1968 are the subject of complaint and that his presence in the departments covered by the decision is for this reason regarded as 'likely to disturb public policy'.
- 7 In order to resolve the questions of Community law raised during the proceedings concerning the principles of freedom of movement and equality of treatment for workers of the Member States, the Tribunal administratif referred two questions to the Court for the purpose of ascertaining the precise meaning of the reservation regarding public policy contained in Article 48 of the Treaty.

First question

- 8 The first question asks whether the expression 'subject to limitations justified on grounds of public policy' in Article 48 of the Treaty concerns only the legislative decisions which each Member State has decided to take in order to limit within its territory the freedom of movement and residence for nationals of other Member States or whether it also concerns individual decisions taken in application of such legislative provisions.
- 9 Under Article 48 (1), freedom of movement for workers is to be secured within the Community.
- 10 Under Article 48 (2), such freedom of movement is to entail the abolition of any discrimination based on nationality as regards employment, remuneration and other conditions of work and employment.

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- 11 Under Article 48 (3), it is to entail the right for workers to move freely within the territory of Member States, to stay there for the purpose of employment and to remain there when employment has ceased.
- 12 Subject to any special provisions in the Treaty, Article 7 thereof contains a general prohibition, within the field of application of the Treaty, on any discrimination on grounds of nationality.
- 13 Nevertheless, under Article 48 (3), freedom of movement for workers, in particular their freedom to move within the territory of Member States, may be restricted by limitations justified on grounds of public policy, public security or public health.
- 14 Various implementing measures have been taken for the purpose of putting the above-mentioned provisions into effect, in particular Regulation No 1612/68 and Council Directive No 68/360 on freedom of movement for workers.
- 15 The reservation concerning public policy was laid down in Council Directive No 64/221 of 25 February 1964 on the coordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health (OJ, English Special Edition 1963-1964, p. 117).
- 16 The effect of all these provisions, without exception, is to impose duties on Member States and it is, accordingly, for the courts to give the rules of Community law which may be pleaded before them precedence over the provisions of national law if legislative measures adopted by a Member State in order to limit within its territory freedom of movement or residence for nationals of other Member States prove to be incompatible with any of those duties.
- 17 Inasmuch as the object of the provisions of the Treaty and of secondary legislation is to regulate the situation of individuals and to ensure their protection, it is also for the national courts to examine whether individual decisions are compatible with the relevant provisions of Community law.

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- 18 This applies not only to the rules prohibiting discrimination and those concerning freedom of movement enshrined in Articles 7 and 48 of the Treaty and in Regulation No 1612/68, but also to the provisions of Directive No 64/221, which are intended both to define the scope of the reservation concerning public policy and to ensure certain minimal procedural safeguards for persons who are the subject of measures restricting their freedom of movement or their right of residence.
- 19 This conclusion is based in equal measure on due respect for the rights of the nationals of Member States, which are directly conferred by the Treaty and by Regulation No 1612/68, and the express provision in Article 3 of Directive No 64/221 which requires that measures taken on grounds of public policy or of public security 'shall be based exclusively on the personal conduct of the individual concerned'.
- 20 It is all the more necessary to adopt this view of the matter inasmuch as national legislation concerned with the protection of public policy and security usually reserves to the national authorities discretionary powers which might well escape all judicial review if the courts were unable to extend their consideration to individual decisions taken pursuant to the reservation contained in Article 48 (3) of the Treaty.
- 21 The reply to the question referred to the Court must therefore be that the expression 'subject to limitations justified on grounds of public policy' in Article 48 concerns not only the legislative provisions which each Member State has adopted to limit within its territory freedom of movement and residence for nationals of other Member States but concerns also individual decisions taken in application of such legislative provisions.

Second question

- 22 The second question asks what is the precise meaning to be attributed to the word 'justified' in the phrase 'subject to limitations justified on grounds of public policy' in Article 48 (3) of the Treaty.
- 23 In that provision, the words 'limitations justified' mean that only limitations which fulfil the requirements of the law, including those contained in

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Community law, are permissible with regard, in particular, to the right of nationals of Member States to freedom of movement and residence.

- 24 In this context, regard must be had both to the rules of substantive law and to the formal or procedural rules subject to which Member States exercise the powers reserved under Article 48 (3) in respect of public policy and public security.
- 25 In addition, consideration must be given to the particular issues raised in relation to Community law by the nature of the measure complained of before the Tribunal Administratif in that it consists in a prohibition on residence limited to part of the national territory.

Justification of measures adopted on grounds of public policy from the point of view of substantive law

- 26 By virtue of the reservation contained in Article 48 (3), Member States continue to be, in principle, free to determine the requirements of public policy in the light of their national needs.
- 27 Nevertheless, the concept of public policy must, in the Community context and where, in particular, it is used as a justification for derogating from the fundamental principles of equality of treatment and freedom of movement for workers, be interpreted strictly, so that its scope cannot be determined unilaterally by each Member State without being subject to control by the institutions of the Community.
- 28 Accordingly, restrictions cannot be imposed on the right of a national of any Member State to enter the territory of another Member State, to stay there and to move within it unless his presence or conduct constitutes a genuine and sufficiently serious threat to public policy.
- 29 In this connexion Article 3 of Directive No 64/221 imposes on Member States the duty to base their decision on the individual circumstances of any person under the protection of Community law and not on general considerations.

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30 Moreover, Article 2 of the same directive provides that grounds of public policy shall not be put to improper use by being 'invoked to service economic ends'.

31 Nor, under Article 8 of Regulation No 1612/68, which ensures equality of treatment as regards membership of trade unions and the exercise of rights attaching thereto, may the reservation relating to public policy be invoked on grounds arising from the exercise of those rights.

32 Taken as a whole, these limitations placed on the powers of Member States in respect of control of aliens are a specific manifestation of the more general principle, enshrined in Articles 8, 9, 10 and 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 and ratified by all the Member States, and in Article 2 of Protocol No 4 of the same Convention, signed in Strasbourg on 16 September 1963, which provide, in identical terms, that no restrictions in the interests of national security or public safety shall be placed on the rights secured by the above-quoted articles other than such as are necessary for the protection of those interests 'in a democratic society.'

Measures adopted on grounds of public policy: justification from the procedural point of view

33 According to the third recital of the preamble to Directive No 64/221, one of the aims which it pursues is that 'in each Member State, nationals of other Member States should have adequate legal remedies available to them in respect of the decisions of the administration' in respect of measures based on the protection of public policy.

34 Under Article 8 of the same directive, the person concerned shall, in respect of any decision affecting him, have 'the same legal remedies... as are available to nationals of the State concerned in respect of acts of the administration.'

35 In default of this, the person concerned must, under Article 9, at the very least be able to exercise his right of defence before a competent authority

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which must not be the same as that which adopted the measure restricting his freedom.

36 Furthermore, Article 6 of the directive provides that the person concerned shall be informed of the grounds upon which the decision taken in his case is based, unless this is contrary to the interests of the security of the State.

37 It is clear from these provisions that any person enjoying the protection of the provisions quoted must be entitled to a double safeguard comprising notification to him of the grounds on which any restrictive measure has been adopted in his case and the availability of a right of appeal.

38 It is appropriate to state also that all steps must be taken by the Member States to ensure that this double safeguard is in fact available to anyone against whom a restrictive measure has been adopted.

39 In particular, this requirement means that the State concerned must, when notifying an individual of a restrictive measure adopted in his case, give him a precise and comprehensive statement of the grounds for the decision, to enable him to take effective steps to prepare his defence.

The justification for, in particular, a prohibition on residence in part of the national territory

40 The questions put by the Tribunal administratif were raised in connexion with a measure prohibiting residence in a limited part of the national territory.

41 In reply to a question from the Court, the Government of the French Republic stated that such measures may be taken in the case of its own nationals either, in the case of certain criminal convictions, as an additional penalty, or following the declaration of a state of emergency.

42 The provisions enabling certain areas of the national territory to be prohibited to foreign nationals are, however, based on legislative instruments specifically concerning them.

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- 43 In this connexion, the Government of the French Republic draws attention to Article 4 of Council Directive No 64/220 of 25 February 1964 on the abolition of restrictions on movement and residence within the Community for nationals of Member States with regard to establishment and the provision of services (OJ, English Special Edition 1963-1964, p. 115) which reads: 'Subject to any measures taken in particular cases on grounds of public policy or public security, the right of residence shall be effective throughout the territory of the Member State concerned.'
- 44 It is clear that this provision is peculiar to the directive concerned and is exclusively applicable in respect of establishment and the provision of services and it has not been re-enacted in the directives on freedom of movement for workers, in particular Directive No 68/360, which is still in force, or, again, in Council Directive No 73/148 of 21 May 1973 concerning establishment and the provision of services (OJ L 172, p. 14), which has meanwhile replaced Directive No 64/220.
- 45 In the Commission's view, expressed during the oral proceedings, the absence of this provision in the directives at present applicable to employed persons or to establishment and the provision of services, does not, however, mean that Member States have absolutely no power to impose, in respect of foreigners who are nationals of other Member States, prohibitions on residence limited to part of the territory.
- 46 Right of entry into the territory of Member States and the right to stay there and to move freely within it is defined in the Treaty by reference to the whole territory of these States and not by reference to its internal subdivisions.
- 47 The reservation contained in Article 48 (3) concerning the protection of public policy has the same scope as the rights the exercise of which may, under that paragraph, be subject to limitations.
- 48 It follows that prohibitions on residence under the reservation inserted to this effect in Article 48 (3) may be imposed only in respect of the whole of the national territory.

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- 49 On the other hand, in the case of partial prohibitions on residence, limited to certain areas of the territory, persons covered by Community law must, under Article 7 of the Treaty and within the field of application of that provision, be treated on a footing of equality with the nationals of the Member State concerned.
- 50 It follows that a Member State cannot, in the case of a national of another Member State covered by the provisions of the Treaty, impose prohibitions on residence which are territorially limited except in circumstances where such prohibitions may be imposed on its own nationals.
- 51 The answer to the second question must, therefore, be that an appraisal as to whether measures designed to safeguard public policy are justified must have regard to all rules of Community law the object of which is, on the one hand, to limit the discretionary power of Member States in this respect and, on the other, to ensure that the rights of persons subject thereunder to restrictive measures are protected.
- 52 These limitations and safeguards arise, in particular, from the duty imposed on Member States to base the measures adopted exclusively on the personal conduct of the individuals concerned, to refrain from adopting any measures in this respect which serve ends unrelated to the requirements of public policy or which adversely affect the exercise of trade union rights and, finally, unless this is contrary to the interests of the security of the State involved, immediately to inform any person against whom a restrictive measure has been adopted of the grounds on which the decision taken is based to enable him to make effective use of legal remedies.
- 53 In particular, measures restricting the right of residence which are limited to part only of the national territory may not be imposed by a Member State on nationals of other Member States who are subject to the provisions of the Treaty except in the cases and circumstances in which such measures may be applied to nationals of the State concerned.

Costs

- 54 The costs incurred by the Government of the French Republic, the Government of the Italian Republic and the Commission of the European

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Communities, which have submitted observations to the Court, are not recoverable.

55 As these proceedings are, in so far as the parties to the main action are concerned, a step in the action pending before the Tribunal administratif, Paris, the decision on costs is a matter for that court.

On those grounds,

THE COURT

in answer to the questions referred to it by the Tribunal administratif, Paris, by judgment of 16 December 1974, hereby rules:

1. The expression 'subject to limitations justified on grounds of public policy', in Article 48 concerns not only the legislative provisions adopted by each Member State to limit within its territory freedom of movement and residence for nationals of other Member States but concerns also individual decisions taken in application of such legislative provisions.
2. An appraisal as to whether measures designed to safeguard public policy are justified must have regard to all rules of Community law the object of which is, on the one hand, to limit the discretionary power of Member States in this respect and, on the other, to ensure that the rights of persons subject thereunder to restrictive measures are protected.

These limitations and safeguards arise, in particular, from the duty imposed on Member States to base the measures adopted exclusively on the personal conduct of the individuals concerned; to refrain from adopting any measures in this respect which serve ends unrelated to the requirements of public policy or which adversely affect the exercise of trade union rights and, finally, unless this is contrary to the interests of the security of the State involved, immediately to inform any person against whom a restrictive measure has been adopted of the grounds on which the decision taken is based to enable him to make effective use of legal remedies.

In particular, measures restricting the right of residence which are limited to part only of the national territory may not be imposed by a Member State on nationals of other Member

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States who are subject to the provisions of the Treaty except in the cases and circumstances in which such measures may be applied to nationals of the State concerned.

Lecourt Kutscher Donner Mertens de Wilmars
 Pescatore Sørensen Mackenzie Stuart

Delivered in open court in Luxembourg on 28 October 1975.

A. Van Houtte

Registrar

R. Lecourt

President

**OPINION OF MR ADVOCATE-GENERAL MAYRAS
 DELIVERED ON 14 OCTOBER 1975 ¹**

*Mr President,
 Members of the Court,*

Introduction

The present case takes its place in the line of precedents introduced by the two recent judgments of this Court of 4 December 1974 in *Van Duyn* (Case 41/74 [1974] ECR 1337) and of 26 February 1975 in *Bonsignore* (Case 67/74 [1975] ECR 297).

It affords the Court an opportunity to define more clearly the outlines of the concept of public policy contained in Article 48 (3) of the Treaty establishing the European Economic Community.

The Tribunal administratif, Paris, has referred two questions for a preliminary

ruling and in considering them the Court will need to give an interpretation of this exception to the principle of freedom of movement for workers within the Community.

The first question asks whether the expression 'subject to limitations justified on grounds of public policy' concern only the legislative decisions which each Member State has decided to take in order to limit, on its territory, freedom of movement and of residence for nationals of other Member States.

The second, more fundamental, question is concerned with the actual significance of the concept of public policy; the French court is in fact asking what precise meaning is to be attributed to the word 'justified'.

¹ — Translated from the French.

ECLI:EU:C:1979:290
Judgment of 13 December 1979,
C-44/79, Liselotte Hauer v Land
Rheinland-Pfalz

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that an act of an institution of the Community imposes restrictions on the new planting of vines cannot be challenged in principle as being incompatible with due observance of the right to property. However, it is necessary that those restrictions should in fact correspond to objectives of general interest pursued by the Community and that, with regard to the aim pursued, they should not constitute a disproportionate and intolerable interference with the rights of the owner, such as to impinge upon the very substance of the right to property.

6. The prohibition on the new planting of vines laid down for a limited period by Regulation No 1162/76 is justified by the objectives of general interest pursued by the Community, consisting in the immediate reduction of production surpluses and in the preparation, in the longer term, of a restructuring of the European wine

industry. It does not therefore infringe the substance of the right to property.

7. In the same way as the right to property, the right of freedom to pursue trade or professional activities, far from constituting an unfettered prerogative, must be viewed in the light of the social function of the activities protected thereunder.

In particular, this being a case of the prohibition, by an act of an institution of the Communities, on the new planting of vines, it is appropriate to note that such a measure in no way affects access to the occupation of wine growing or the free pursuit of that occupation on land previously devoted to wine-growing. Since this case concerns new plantings, any restriction on the free pursuit of the occupation of wine-growing is an adjunct to the restriction placed upon the exercise of the right to property.

In Case 44/79

REFERENCE to the Court under Article 177 of the EEC Treaty by the Verwaltungsgericht [Administrative Court] Neustadt an der Weinstraße for a preliminary ruling in the action pending before that court between

LISELOTTE HAUER, residing at Bad Dürkheim

and

LAND RHEINLAND-PFALZ

on the interpretation of Article 2 of Council Regulation (EEC) No 1162/76 of 17 May 1976 on measures designed to adjust wine-growing potential to market requirements, as amended by Council Regulation (EEC) No 2776/78 of 23 November 1978, with regard to Article 1 of the Gesetz über Maßnahmen auf dem Gebiete der Weinwirtschaft (Weinwirtschaftsgesetz),

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THE COURT

composed of: H. Kutscher, President, A. O'Keefe and A. Touffait (Presidents of Chambers), J. Mertens de Wilmars, P. Pescatore, Lord Mackenzie Stuart, G. Bosco, T. Koopmans and O. Due, Judges,

Advocate General: F. Capotorti
Registrar: A. Van Houtte

gives the following

JUDGMENT**Facts and Issues**

The facts of the case, the course of the procedure and the observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

[Administrative Court] Neustadt an der Weinstraße ending in a settlement on 22 May 1975 whereby the Land Rheinland-Pfalz [Rhineland-Palatinate] undertook to authorize the new planting of vines on several parts of the plots in question.

On 6 June 1975 Mrs Hauer in turn applied for authorization to undertake the new planting of vines on the land which she owns.

I — Facts and written procedure

Liselotte Hauer is the owner of a plot of land forming part of the administrative district of Bad Dürkheim.

The Land Rheinland-Pfalz refused to grant her that authorization on 2 January 1976 on the ground that her land was unsuitable for wine-growing, within the meaning of Article 1 (2) of the Weinwirtschaftsgesetz.

The suitability for wine-growing, within the meaning of Article 1 of the Gesetz über Maßnahmen auf dem Gebiete der Weinwirtschaft (Weinwirtschaftsgesetz) [German law on measures relating to the wine industry], of the plots adjacent to Mrs Hauer's was the subject of several actions before the Verwaltungsgericht

Mrs Hauer lodged an objection against that decision on 22 January 1976.

That objection was overruled by the Land Rheinland-Pfalz by a decision of 21 October 1976 on the grounds that the

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land was unsuitable for wine-growing under the terms of the Weinwirtschaftsgesetz and that Council Regulation (EEC) No 1162/76 of 17 May 1976 on measures designed to adjust wine-growing potential to market requirements (Official Journal L 135, p. 32) had in the meantime prohibited all new planting of vine varieties classified as wine grape varieties for the administrative unit concerned.

Mrs Hauer appealed against that decision on 25 November 1976 to the Verwaltungsgericht Neustadt an der Weinstraße.

In the course of the proceedings the Land Rheinland-Pfalz stated that it was willing to grant the authorization requested after the expiry of the prohibition on new planting imposed by Regulation No 1162/76 for the period from 1 December 1976 to 30 November 1978. [That period was subsequently extended, first to 30 November 1979 by Council Regulation (EEC) No 2776/78 of 23 November 1978, amending for the second time Regulation No 1162/76 (Official Journal L 333, p. 1), and by Council Regulation No 348/79 of 5 February 1979, on measures designed to adjust wine-growing potential to market requirements (Official Journal L 54, p. 81), then to 31 December 1979 by Council Regulation No 2595/79 of 22 November 1979, amending Regulation No 348/79 (Official Journal L 297, p. 5)]. For her part Mrs Hauer argued that Regulation No 1162/76 was not applicable to a request for authorization submitted well before its entry into force and that the Land Rheinland-Pfalz should have granted the authorization before the regulation came into force. Mrs Hauer also pleaded the possible incompatibility of the Community regulation with certain provisions, in particular Articles 12 and 14, of the Basic Law of the Federal Republic of Germany.

The Verwaltungsgericht Neustadt an der Weinstraße, by an order of its second chamber of 14 December 1978, stayed proceedings pursuant to Article 177 of the EEC Treaty until the Court of Justice has given a preliminary ruling on the following questions:

(1) Is Council Regulation (EEC) No 1162/76 of 17 May 1976 as amended by Council Regulation (EEC) No 2776/78 of 23 November 1978 to be interpreted as meaning that Article 2 (1) thereof also applies to those applications for authorization of new planting of vineyards which had already been made before the said regulation entered into force?

and if the answer to question 1 is in the affirmative

(2) Is Article 2 (1) of the said regulation to be interpreted as meaning that the prohibition laid down therein on the granting of authorizations for new planting — disregarding the exceptions specified in Article 2 (2) of the regulation — is of *inclusive* application, that is to say, is in particular unaffected by the question of the unsuitability of the land as provided in Article 1 (2) and Article 2 of the German Law on measures applicable in the wine industry (Weinwirtschaftsgesetz [Law relating to the wine industry])?

The order of the Verwaltungsgericht Neustadt an der Weinstraße was received at the Court Registry on 20 March 1979.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC written observations were submitted on 23 March 1979 by the Commission of the European Communities, represented by the Director-General of the Legal Department, Claus-Dieter Ehlermann,

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acting as Agent, assisted by Professor Jochen A. Frowein of the University of Bielefeld, on 30 May 1979 by the Council of the European Communities, represented by Bernard Schloh, an Adviser in its Legal Department, and Arthur Brautigam, an Administrator in that department, acting as Agents, and on 11 June 1979 by the Government of the Federal Republic of Germany, represented by Martin Seidel, Departmental Adviser in the Federal Ministry for Economic Affairs, acting as Agent, assisted by Hans Hinrich Boie, Senior Governmental Adviser in the same Ministry.

Having heard the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry.

II — Written observations submitted to the Court

The *Government of the Federal Republic of Germany* considers that the two questions referred to the Court require answers in the affirmative.

(a) *The first question*

Article 2 (1) of Regulation No 1162/76 imposes a general prohibition on all new planting of certain types of vines; it is clear from the second subparagraph thereof that it covers cases in which the authorization for new planting, although not yet granted, has already been applied for. That conclusion follows from the clear terms of the prohibition which does not provide for any derogation in a case where authorization proceedings are pending.

A limitation of the general prohibition on new planting in cases where authorization proceedings were pending would have required — especially in the field of agricultural law — a specific and express provision.

Article 4 of the regulation contains transitional provisions; but they applied only to cases in which rights had already been acquired through the granting of authorizations, and not to the stage of an application preceding the authorization. Moreover, Article 4 results in a restriction of such acquired rights because it suspends the exercise thereof for the duration of the prohibition. That demonstrates the Community legislature's wish to make the prohibition on planting as general in nature as possible.

That is the only interpretation of Article 2 (1) which seems to accord with the aims of Regulation No 1162/76.

The preamble to the regulation states that the measures introduced thereby are intended to put an end to the considerable imbalance in the table wine market and to put a brake on production. In order to attain those objectives the Community legislature had to make the prohibition on planting as general and effective as possible. So the beginning of the period whence the prohibition on granting authorizations was applicable was linked to the issue of the authorization, not to the application for it.

That interpretation of Article 2 (1) of Regulation No 1162/76 is in accordance with superior rules of Community law, in particular the principles of legal certainty and the protection of legitimate expectations. The protection of an acquired legal position can be pleaded

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only in cases where the alteration thereof constitutes an “encroachment upon an established position”; that cannot be the case when an individual has requested, but not yet obtained, from the administration some form of benefit.

That interpretation is in accordance with an appraisal of the legal situation with regard to national constitutional law which is also taken into consideration by the Court of Justice. According to national constitutional law the legislature is in principle empowered to enact new law applicable as from a particular date; an infringement of constitutional principles, in this case the guarantee of property rights, embracing the principle of the protection of legitimate expectations, can be held to exist only if there are no clear, relevant reasons justifying the date chosen, which is obviously not so in this case. But the citizen cannot rely absolutely on the continuation without change of a given legal situation; in view of the important objectives, from the point of view of the general interest, of a satisfactory organization of the wine market, the mere opening of a procedure on an application for authorization cannot strengthen the owner’s position to the point of rendering mandatory, as regards constitutional law, a derogation from the temporary prohibition on planting.

The first question should be answered as follows:

Regulation No 1162/76, as amended by Regulation No 2776/78, must be interpreted as meaning that Article 2 (1) thereof also applies to those applications for authorization of new planting of vineyards, which had already been made before the said regulation came into force.

(b) The second question

The prohibition on planting imposed by Article 2 (1) of Regulation No 1162/76 is general in scope: it applies, irrespective of the quality of the land, also to land suitable for wine-growing.

That interpretation alone accords with the wording of the provision in question, which does not contain any reservation, and with the purpose of the regulation. Moreover, no restrictive interpretation is imposed by a superior rule of law; even on a general interpretation the provision in question is in accordance with, in particular, the fundamental rights recognized by Community law.

Article 2 (1) of Regulation No 1162/76 is compatible, in particular, with the right to property, which is a fundamental right guaranteed by the constitutions of all the Member States and which also ranks as a constitutional rule in Community law.

By denying the owner of a piece of land the possibility of using it for wine-growing the prohibition on planting admittedly constitutes a restriction on the owner’s powers; however, it does not constitute an unacceptable infringement of a fundamental right. The scope of that right should be measured in relation to its social function; the substance and enjoyment of property rights are subject to restrictions which must be accepted by each owner on the basis of the superior general interest and the general good.

The measure in question does not adversely affect the “substance” of the right to property: it does not restrict the owner’s power to make use of his land except in one of the numerous imaginable ways and is of limited duration.

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The prohibition on planting decreed by Article 2 (1) of Regulation No 1162/76 is required by the superior general interest. It was decided upon in order to avoid a situation of severe crisis within the common market in agricultural products; so it is, in accordance with the case-law of the Court, “justified by the objectives of general interest pursued by the Community”. The last few years have seen considerable surpluses of table wine; the principal cause of the increase in production has been the growth of the cultivated area due to the planting of new vines on the plains. The surplus supply has led to a fall in prices and serious disturbances on the market; that development has threatened not only the objectives of the agricultural policy entailed in the common organization of the market in wine (stabilization of markets, guaranteed existence and income for producers), but also other objectives of general interest contained in the EEC Treaty (free movement of goods, political and social harmony within the Community). The protection of those objectives justified a restriction on the powers of owners.

Such a radical measure was essential for the attainment of those objectives; the development noted could not be tackled by methods less coercive upon the individual. The reduction in wine production has been sought by direct restrictions on production (prohibition on planting, reconversion premiums), measures pertaining to the organization of the market (preventive distillation, extension of private storage of grape must) and measures to improve quality; the prohibition on planting is only one element in a system of co-ordinated measures, closely linked as regards their effectiveness.

The restriction on planting in question did not constitute an excessive burden

for the producers concerned: it was applicable for a limited period and was taken in the interest of the commercial operators themselves.

Article 2 (1) of Regulation No 1162/76 is, moreover, compatible with the fundamental right freely to pursue an economic activity, which is recognized in Community law as having two aspects: the freedom to undertake a professional or trade activity and the freedom to pursue that activity without hindrance.

To the extent to which it affects the second aspect, the prohibition on planting in question does not constitute an unacceptable interference with the fundamental right freely to pursue economic activity; the latter is not an absolute individual right, excluding any restriction; it must be seen in a social context. The rules under challenge do not go beyond what is necessary and constitute, in accordance with the case-law of the Court, a necessary and appropriate method of attaining legitimate objectives. The reasons justifying restrictions on the guarantee of property rights apply equally to the limitations which they imply as regards the freedom to pursue an economic activity.

The principle of proportionality was respected: the fundamental right was only limited as regards the freedom to carry on a professional or trade activity and there was no interference with the free choice of a profession or trade.

A restriction on planting such as that prescribed by Article 2 (1) of Regulation No 1162/76 is also acceptable under national constitutional law; in particular, it is compatible with the fundamental

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right to property guaranteed by Article 14 of the Grundgesetz [Basic Law] of the Federal Republic.

The second sentence of Article 14 (1) provides that the substance of the right to property and its limitations shall be fixed by laws; such legislative provisions must be justified by the general interest and must respect the principle of proportionality. The restriction on the powers of the owner must be appropriate and necessary for the attainment of the objective concerned and must not constitute an excessive burden.

The provisions challenged in the main action comply with those criteria.

Their objective shows that they were justified on grounds of the superior general interest; they were inevitable and constituted an appropriate method. Nor do they appear disproportionate; in this regard it is important to take account of the fact that Article 2 (2) (b) of the regulation exempts from the prohibition new planting carried out under development plans which attract investment aid.

The temporary prohibition on planting is also compatible with the fundamental right freely to choose a profession or trade guaranteed by Article 12 of the Grundgesetz.

The second sentence of Article 12 (1) enables the legislature to adopt rules governing the free pursuit of a profession or trade. That power to adopt rules is subject to the principle of proportionality. For the purpose of determining objectives of economic policy and the appropriate measures for the attainment thereof, the Grundgesetz allows the legislature a degree of latitude in its appraisal of the situation and in its choice of action; its intervention must be justified on appropriate and reasonable grounds and founded on regard for the

common good. Those methods must respect, within the context of a general appraisal, the limits of what may be required. The prohibition of new plantings is, admittedly, close to the highest degree of restriction conceivable under Article 12 of Grundgesetz; however, it does not exclude all possibility of entering the trade and it is not imposed for an indefinite period. A general appraisal of the question must take account of the fact that the legislature's freedom of action in order to overcome a serious crisis includes the possibility of adopting temporary, *ad hoc* solutions so as to gain time in order to work out long-term structural solutions. Thus rules prohibiting planting for a limited period and accompanied by the preparation of a comprehensive programme of action are, at all events, legitimate.

The second question should be answered as follows:

The prohibition on the granting of authorizations for new planting laid down in Article 2 (1) of Regulation No 1162/76 as amended by Regulation No 2776/78 is of inclusive application — subject to the exemptions referred to in Article 2 (2) of the regulation — irrespective of the question of the quality of the land.

The *Council*, after clarifying the implications of the main action in domestic constitutional law and recalling the background to Regulation No 1162/76, submits observations which may be summarized as follows:

(a) *The first question*

Regulation No 1162/76 applies also to applications for authorization submitted before its entry into force. That conclusion follows clearly from the first sentence of Article 2 (1) thereof, which

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prohibits any new planting during the period from 1 December 1976 to 30 November 1978; moreover, the second sentence provides that Member States shall no longer grant authorizations for new planting as from the date of the regulation's entry into force, namely 27 May 1976. Finally, Article 4 extends by two years the period of validity of rights to plant or re-plant existing under national laws on the date of the regulation's entry into force.

The prohibition contained in the first sentence of Article 2 (1), which therefore also applies to individual rights to plant acquired before the regulation's entry into force, applies *a fortiori* to cases in which an authorization had not yet been granted by the competent national authorities, although an application had been submitted before the regulation's entry into force.

(b) The second question

This question should also be answered in the affirmative.

The purpose of Regulation No 1162/76 is to restrict production of table wines by preventing an increase in wine-growing potential; to limit the prohibition on new planting to land considered unsuitable for wine-growing would seriously impair its effectiveness.

That interpretation is confirmed by the first sentence of Article 2 (1) which lays down a general prohibition on all new planting of vine varieties classified as wine grape varieties, regardless of the suitability of the land for wine-growing; that conclusion is supported by the exhaustive list of exemptions from the principle of total prohibition contained in Article 2 (2).

(c) The validity of Regulation No 1162/76

Since the Verwaltungsgericht has clearly suggested in its order making the reference that Regulation No 1162/76, as interpreted by the Council, might be inapplicable in the German courts as being incompatible with the fundamental rights guaranteed by the German constitution, it is necessary also to express an opinion on the validity of the regulation.

From the point of view of Community law the position is clear: the regulation must be applied by the national authorities, including the courts of each Member State, as long as the Court of Justice has not declared it invalid (under Article 177) or annulled it (under Article 174).

Having regard to the case-law of the Bundesverfassungsgericht [Federal Constitutional Court], it is necessary, when considering the guarantee of fundamental rights, to recall that in the Community legal order it is permissible, according to the case-law of the Court of Justice, to apply, as regards the right of property and the right freely to undertake business, work and other professional or trade activities, certain limitations justified by the objectives of general interest pursued by the Community, provided that the substance of those rights is not impaired. Thus the right of property and the right to undertake business are in principle guaranteed in the Community legal order; but the exercise of those rights may be subjected to limitations, in accordance with the general interest, in order to permit the attainment of the objectives of the Community, provided that the rights in question are not stripped of their substance.

In the present case the temporary restriction imposed by Regulation No 1162/76 on the freedom to pursue the trade of wine-grower and on the right of

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property is, taking into account its purpose, very limited in nature; the very substance of those rights is not, in the present case, impaired.

Articles 12 and 14 of the German Grundgesetz also accept the principle that those rights are subject to restrictions justified by the public interest. In that regard it should also be noted that the Community rules do not impair the substance of fundamental rights.

It is also necessary to take account of the fact that the measure in question is a protective measure, adopted because of a sudden and serious imbalance in the market and intended to avoid the formation of structural surpluses while awaiting permanent structural measures.

(d) The questions submitted to the Court call for the following answers:

- The prohibition contained in Article 2 (1) of Regulation No 1162/76 applies also to applications for authorization submitted to the national authorities before the date on which the regulation entered into force, on which those authorities had not at that time taken a final decision.
- That prohibition applies to all land, regardless of its degree of suitability for wine-growing.
- Regulation No 1162/76, the validity of which cannot be challenged from the point of view of fundamental rights, must be applied by the national authorities, including the courts of each Member State, as long as it has not been declared invalid by the Court of Justice.

The Commission's observations on the questions of interpretation and validity raised in the main action may be summarized as follows:

(a) The first question

It follows clearly from its terms and its aims that Regulation No 1162/76 must be applied to administrative procedures which have already been commenced.

Article 6 provided for the regulation's entry into force on the third day following its publication in the Official Journal of the Communities; it does not contain any provision whereby applications submitted before that date should be treated differently from the manner prescribed in Article 2. Article 4 contains a provision expressly suspending acquired rights without referring to administrative procedures already commenced; it follows that those procedures are subject to the prohibition on granting new authorizations contained in Article 2 of the regulation.

The purpose of the regulation, as explained in the preamble thereto, was to put an end to a severe crisis which had led to an imbalance in the wine market; given that premise, only a prohibition having general effect, without regard to rights already acquired or administrative procedures already commenced, would have made sense.

That interpretation is strengthened by the fact that the prohibition on new plantings is a measure of limited duration; such temporary measures generally modify market conditions and are intended to have as wide an effect as possible for the duration of their validity.

Therefore Article 2 (1) of Regulation No 1162/76 — since re-enacted, in the amended version of Regulation No 2776/78, by Regulation No 348/79 —

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was applicable to applications for new planting of vines submitted before the regulation's entry into force.

(b) The second question

It is clear from the wording of Regulation No 1162/76, in the amended version of Regulation No 348/79, that it is applicable irrespective of the conditions in which a right to plant is acquired by virtue of national provisions on wine-growing; that conclusion follows from Article 4 which suspends the exercise of rights acquired under national legislation. Furthermore, the independence of Community law requires that it should not make reference to rules of national law except by express provision to that effect.

(c) The validity of the prohibition on new planting during a fixed period.

— There is no general principle of law requiring that the applicant, in an administrative procedure already commenced, be protected against a worsening of his legal position. In the absence of any derogation, amending laws govern future aspects of situations arising under the former law; that principle is equally valid in relation to administrative procedures already commenced.

— The plaintiff in the main action did not, at the time when Regulation No 1162/76 came into force, possess a right, acquired under the German law on wine-growing, to plant vines; therefore she cannot claim protection of a duly-acquired right.

— The case-law both of the Court of Justice and of the Bundesverfassungsgericht shows that there does not exist any general principle of the protection of legitimate expectation, whereby every person is entitled to rely on the maintenance of a legal situation which is favourable to him and whereby he is assured of the protection of that expectation.

— Admittedly, rules prohibiting the planting of vines restrict the exercise of property rights over the land in question. But it is permissible that the Community legal order should subject rights, such as the right of property, to certain restrictions justified by the objectives of general interest pursued by the Community, as long as the substance of those rights is not impaired. Restrictions on agricultural production in the general interest form part of the measures, recognized in the Member States of the Community, whereby the right of property is restricted in the public interest. In Community law, such a restriction is accepted by the EEC Treaty: Article 39 (1) (c) describes the stabilization of markets as an objective of the common agricultural policy; Article 43 (2) enables the Council to make regulations for that purpose which, according to Article 40 (3), may include all necessary measures. Those measures include the prohibition for a fixed period on new planting, as provided for in Article 17 (5) of Regulation (EEC) No 816/70 of the Council of 28 April 1970 laying down additional provisions for the common organization of the market in wine (Official Journal, English Special Edition 1970 (I), p. 234), on which Regulation No 1162/76 is expressly based. Moreover, a temporary prohibition of new planting is a necessary measure and is in accordance with the principle of proportionality, as is shown by the development of the wine market in the course of recent years. Nor

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does it affect land-owners to an intolerable degree. Consequently it must be considered a legitimate restriction of the right of property.

— As far as German constitutional law is concerned, it should be noted that the Bundesverfassungsgericht held in its judgment of 14 February 1967 that restrictions on new planting introduced by the Weinwirtschaftsgesetz constitute legitimate rules in relation to the substance and limits of the right of property under Article 14 (1) of the Grundgesetz. According to the Bundesverfassungsgericht the restriction on the powers of the owner must be appropriate and necessary for the attainment of the objective pursued and must not be abusively coercive and thereby intolerable. The basic difference between the restrictions on new planting laid down in German law and those of Regulation No 1162/76 consists in the fact that, under the Weinwirtschaftsgesetz, authorization for new planting can be refused only if the land is, according to objective criteria, unsuitable for wine-growing. The rule against imposing an excessive burden, which emerges from the case-law of the Bundesverfassungsgericht and which may be relied upon against the Community rules, must be seen in relation to the objective expressly stated by the legislature. Unlike the Weinwirtschaftsgesetz, the Community rules are intended broadly to prevent the new planting of vines for a fixed period. Having regard to that objective, the rule against imposing an excessive burden is not disregarded if a prohibition on new planting may on the whole be considered necessary to maintain a balance on the wine market. A temporary restriction on planting vines on land previously not used for wine-growing must, according to the criteria laid down by the Bundesverfassungsgericht, be accepted as a

legitimate limitation of property rights, if it is dictated by superior economic interests. Restrictions on the right to exploit the soil are not in German law regarded as similar in nature to expropriation; a prohibition, for a period of three years, on new planting of vines on land not previously used for growing vines does not constitute an infringement of the fundamental right of property.

— The fundamental right freely to pursue a profession or trade is also subject to restrictions: reasonable grounds, involving the general interest, may justify restrictive rules. The grounds relied on in the context of the protection of property rights must lead to the conclusion that rules restricting the right freely to pursue a profession or trade are lawful. The Bundesverfassungsgericht must also recognize that, under Article 12 of the Grundgesetz, a restriction on new planting, applying solely to the extension to new land of the pursuit of wine-growing practised hitherto, may be justified by reasonable considerations involving the general interest.

(d) The questions submitted to the Court should be answered as follows:

- Regulation No 1162/76, in the current version thereof contained in Regulation No 348/79, must be interpreted as meaning that Article 2 (1) thereof also applies to applications submitted before its entry into force.
- The validity of the prohibition on new planting is not affected by national provisions.

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— The case has disclosed no factor of such a kind as to affect the validity of the prohibition on new planting laid down by Article 2 of Regulation No 1162/76 and Article 2 of Regulation No 348/79.

III — Oral procedure

Mrs Liselotte Hauer, represented by Herbert Drews, Advocate at the Zweibrücken Bar, the Land Rheinland-Pfalz, represented by Josef Koy, Ministerialrat at the Ministry of Agriculture and Wine Production, the Government of the Federal Republic of Germany, represented by Martin Seidel, the Council of the European Communities, represented by Bernhard Schloh and Arthur Brautigam, and the Commission of the European Communities, represented by Professor Jochen A. Frowein, Claus-Dieter Ehlermann and the expert, Alfred Reichardt, Principal Administrator in the Directorate General for Agriculture, presented oral argument and/or replied to questions put by the Court at the Sitting on 11 October 1979.

At the sitting *Mrs Hauer* laid special emphasis on the fact that in the main action, after overruling — illegally — the objection against the refusal to authorize new plantings, the Land Rheinland-Pfalz had, in the course of the proceedings, stated its willingness to grant the authorization requested, but had been prevented from doing so by Regulation No 1162/76. Further, it was necessary to distinguish between a prohibition on the granting of authorizations and a prohibition on new plantings; only the latter had an effect on the market. By prohibiting Member States from granting authorization for new plantings, Regulation No 1162/76 infringes the principle of proportionality as well as Articles 12 and 14 of the Grundgesetz of the Federal Republic. Finally, by providing for the possibility of further extending the period of validity of the prohibition, the regulation did not in fact lay down a temporary rule.

The *Advocate General* delivered his opinion at the sitting on 8 November 1979.

Decision

- By an order of 14 December 1978, received at the Court on 20 March 1979, the Verwaltungsgericht Neustadt an der Weinstraße submitted two questions to the Court for a preliminary ruling, pursuant to Article 177 of the EEC Treaty, on the interpretation of Council Regulation (EEC) No 1162/76 of 17 May 1976 on measures designed to adjust wine-growing potential to market requirements (Official Journal L 135, p. 32), amended by Council Regulation (EEC) No 2776/78 of 23 November 1978 (Official Journal L 333, p. 1).

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- 2 The file on the case shows that on 6 June 1975 the plaintiff in the main action applied to the competent administrative authority of the Land Rheinland-Pfalz for authorization to plant vines on a plot of land which she owns in the region of Bad Dürkheim. That authorization was refused initially owing to the fact that under the provisions of the German legislation applicable to that sphere, namely the Law relating to the wine industry (Weinwirtschaftsgesetz) of 10 March 1977, the plot of land in question was not considered suitable for wine-growing. On 22 January 1976 the person concerned lodged an objection against that decision. While proceedings relating to that objection were pending before the competent administrative authority, Regulation No 1162/76 of 17 May 1976 was adopted, Article 2 of which imposes a prohibition for a period of three years on all new planting of vines. On 21 October of that year the administrative authority overruled the objection, stating two grounds: on the one hand, the unsuitability of the land and, on the other hand, the prohibition on planting as a result of the Community regulation referred to.
- 3 The person concerned appealed to the Verwaltungsgericht. As a result of experts' reports on the grapes grown in the same area and taking into account a settlement reached with various other owners of plots of land adjacent to that of the applicant, the administrative authority accepted that the plaintiff's land may be considered suitable for wine-growing in accordance with the minimum requirements laid down by national legislation. Consequently, the authority stated its willingness to grant the authorization as from the end of the prohibition on new planting imposed by the Community rules. Thus it appears that the dispute between the parties is henceforth solely concerned with questions of Community law.
- 4 For her part, the plaintiff in the main action considers that the authorization applied for should be granted to her on the ground that the provisions of Regulation No 1162/76 are not applicable in the case of an application introduced long before the entry into force of that regulation. Even supposing that the regulation is applicable in the case of applications submitted before its entry into force, its provisions may in the applicant's submission still not be relied upon against her because they are contrary to her right to property and to her right freely to pursue a trade or profession rights which are guaranteed by Articles 12 and 14 of the Grundgesetz of the Federal Republic of Germany.
- 5 In order to resolve that dispute, the Verwaltungsgericht drafted two questions worded as follows:

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1. Is Council Regulation (EEC) No 1162/76 of 17 May 1976 as amended by Council Regulation (EEC) No 2776/78 of 23 November 1978 to be interpreted as meaning that Article 2 (1) thereof also applies to those applications for authorization of new planting of vineyards which had already been made before the said regulation entered into force?
and if the answer to Question 1 is in the affirmative
2. Is Article 2 (1) of the said regulation to be interpreted as meaning that the prohibition laid down therein on the granting of authorizations for new planting — disregarding the exceptions specified in Articles 2 (2) of the regulation — is of *inclusive* application, that is to say, is in particular unaffected by the question of the unsuitability of the land as provided in Article 1 (2) and Article 2 of the German Law on measures applicable in the wine industry (Weinwirtschaftsgesetz [Law relating to the wine industry])?

The first question (application of Regulation No 1162/76 in time)

- 6 In this regard, the plaintiff in the main action claims that her application, submitted to the competent administrative authority on 6 June 1975, should in the normal course of events have led to a decision in her favour before the entry into force of the Community regulation if the administrative procedure had taken its usual course and if the administration had recognized without delay the fact that her plot of land is suitable for wine-growing in accordance with the requirements of national law. It is, she argues, necessary to take account of that situation in deciding the time from which the Community regulation is applicable, the more so as the production of the vineyard in question would not have had any appreciable influence on market conditions, in view of the time which elapses between the planting of a vineyard and its first production.
- 7 The arguments advanced by the plaintiff in the main action cannot be upheld. Indeed the second subparagraph of Article 2 (1) of Regulation No 1162/76 expressly provides that Member States shall no longer grant authorizations for new planting “as from the date on which this Regulation enters into force”. By referring to the act of granting authorization, that provision rules out the possibility of taking into consideration the time at which an application was submitted. It indicates the intention to give immediate effect to the regulation, to such an extent that even the exercise of

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rights to plant or re-plant acquired prior to the entry into force of the regulation is suspended during the period of the prohibition as a result of Article 4 of the same regulation.

- 8 As is stated in the sixth recital of the preamble, with regard to the last-mentioned provision, the prohibition on new plantings is required by an “undeniable public interest”, making it necessary to put a brake on the overproduction of wine in the Community, to re-establish the balance of the market and to prevent the formation of structural surpluses. Thus it appears that the object of Regulation No 1162/76 is the immediate prevention of any extension in the area covered by vineyards. Therefore no exception may be made in favour of an application submitted before its entry into force.
- 9 It is therefore necessary to reply to the first question that Council Regulation No 1162/76 of 17 May 1976, amended by Regulation No 2776/78 of 23 November 1978, must be interpreted as meaning that Article 2 (1) thereof also applies to applications for authorization of new planting of vines made before the entry into force of the first regulation.

The second question (the substantive scope of Regulation No 1162/76)

- 10 In its second question the Verwaltungsgericht asks the Court to rule whether the prohibition on granting authorizations for new planting laid down by Article 2 (1) of Regulation No 1162/76 is of inclusive application, that is to say whether it also includes land recognized as suitable for wine-growing in accordance with the criteria applied by national legislation.
- 11 In this regard, the text of the regulation is explicit in so far as Article 2 prohibits “all new planting” without making any distinction according to the quality of the land concerned. It is clear from both the text and the stated objectives of Regulation No 1162/76 that the prohibition must apply to new plantings irrespective of the nature of the land and of the classification thereof under national legislation. In fact, the object of the regulation, as is clear in particular from the second recital of the preamble thereto, is to bring

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to an end the surplus in European wine production and to re-establish the balance of the market both in the short and in the long term. Only Article 2 (2) of the regulation provides for some exceptions to the general nature of the prohibition laid down by paragraph (1) of the same article, but it is common ground that none of those exceptions applies in this case,

- 12 Therefore the reply to the second question must be that Article 2 (1) of Regulation No 1162/76 must be interpreted as meaning that the prohibition laid down therein on the granting of authorizations for new planting — disregarding the exceptions specified in Article 2 (2) of the regulation — is of inclusive application, that is to say, is in particular unaffected by the question of the suitability or otherwise of a plot of land for wine-growing, as determined by the provisions of a national law.

The protection of fundamental rights in the Community legal order

- 13 In its order making the reference, the Verwaltungsgericht states that if Regulation No 1162/76 must be interpreted as meaning that it lays down a prohibition of general application, so as to include even land appropriate for wine growing, that provision might have to be considered inapplicable in the Federal Republic of Germany owing to doubts existing with regard to its compatibility with the fundamental rights guaranteed by Articles 14 and 12 of the Grundgesetz concerning, respectively, the right to property and the right freely to pursue trade and professional activities.
- 14 As the Court declared in its judgment of 17 December 1970, *Internationale Handelsgesellschaft* [1970] ECR 1125, the question of a possible infringement of fundamental rights by a measure of the Community institutions can only be judged in the light of Community law itself. The introduction of special criteria for assessment stemming from the legislation or constitutional law of a particular Member State would, by damaging the substantive unity and efficacy of Community law, lead inevitably to the destruction of the unity of the Common Market and the jeopardizing of the cohesion of the Community.
- 15 The Court also emphasized in the judgment cited, and later in the judgment of 14 May 1974, *Nold* [1974] ECR 491, that fundamental rights form an

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integral part of the general principles of the law, the observance of which it ensures; that in safeguarding those rights, the Court is bound to draw inspiration from constitutional traditions common to the Member States, so that measures which are incompatible with the fundamental rights recognized by the constitutions of those States are unacceptable in the Community; and that, similarly, international treaties for the protection of human rights on which the Member States have collaborated or of which they are signatories, can supply guidelines which should be followed within the framework of Community law. That conception was later recognized by the joint declaration of the European Parliament, the Council and the Commission of 5 April 1977, which, after recalling the case-law of the Court, refers on the one hand to the rights guaranteed by the constitutions of the Member States and on the other hand to the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 (Official Journal C 103, 1977, p. 1).

- 16 In these circumstances, the doubts evinced by the Verwaltungsgericht as to the compatibility of the provisions of Regulation No 1162/76 with the rules concerning the protection of fundamental rights must be understood as questioning the validity of the regulation in the light of Community law. In this regard, it is necessary to distinguish between, on the one hand, a possible infringement of the right to property and, on the other hand, a possible limitation upon the freedom to pursue a trade or profession.

The question of the right to property

- 17 The right to property is guaranteed in the Community legal order in accordance with the ideas common to the constitutions of the Member States, which are also reflected in the first Protocol to the European Convention for the Protection of Human Rights.

- 18 Article 1 of that Protocol provides as follows:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

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The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

19 Having declared that persons are entitled to the peaceful enjoyment of their property, that provision envisages two ways in which the rights of a property owner may be impaired, according as the impairment is intended to deprive the owner of his right or to restrict the exercise thereof. In this case it is incontestable that the prohibition on new planting cannot be considered to be an act depriving the owner of his property, since he remains free to dispose of it or to put it to other uses which are not prohibited. On the other hand, there is no doubt that that prohibition restricts the use of the property. In this regard, the second paragraph of Article 1 of the Protocol provides an important indication in so far as it recognizes the right of a State “to enforce such laws as it deems necessary to control the use of property in accordance with the general interest”. Thus the Protocol accepts in principle the legality of restrictions upon the use of property, whilst at the same time limiting those restrictions to the extent to which they are deemed “necessary” by a State for the protection of the “general interest”. However, that provision does not, enable a sufficiently precise answer to be given to the question submitted by the Verwaltungsgericht.

20 Therefore, in order to be able to answer that question, it is necessary to consider also the indications provided by the constitutional rules and practices of the nine Member States. One of the first points to emerge in this regard is that those rules and practices permit the legislature to control the use of private property in accordance with the general interest. Thus some constitutions refer to the obligations arising out of the ownership of property (German Grundgesetz, Article 14 (2), first sentence), to its social function (Italian constitution, Article 42 (2)), to the subordination of its use to the requirements of the common good (German Grundgesetz, Article 14 (2), second sentence, and the Irish constitution, Article 43.2.2°), or of social justice (Irish constitution, Article 43.2.1°). In all the Member States, numerous legislative measures have given concrete expression to that social function of the right to property. Thus in all the Member States there is legislation on agriculture and forestry, the water supply, the protection of the

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environment and town and country planning, which imposes restrictions, sometimes appreciable, on the use of real property.

- 21 More particularly, all the wine-producing countries of the Community have restrictive legislation, albeit of differing severity, concerning the planting of vines, the selection of varieties and the methods of cultivation. In none of the countries concerned are those provisions considered to be incompatible in principle with the regard due to the right to property.
- 22 Thus it may be stated, taking into account the constitutional precepts common to the Member States and consistent legislative practices, in widely varying spheres, that the fact that Regulation No 1162/76 imposed restrictions on the new planting of vines cannot be challenged in principle. It is a type of restriction which is known and accepted as lawful, in identical or similar forms, in the constitutional structure of all the Member States.
- 23 However, that finding does not deal completely with the problem raised by the Verwaltungsgericht. Even if it is not possible to dispute in principle the Community's ability to restrict the exercise of the right to property in the context of a common organization of the market and for the purposes of a structural policy, it is still necessary to examine whether the restrictions introduced by the provisions in dispute in fact correspond to objectives of general interest pursued by the Community or whether, with regard to the aim pursued, they constitute a disproportionate and intolerable interference with the rights of the owner, impinging upon the very substance of the right to property. Such in fact is the plea submitted by the plaintiff in the main action, who considers that only the pursuit of a qualitative policy would permit the legislature to restrict the use of wine-growing property, with the result that she possesses an unassailable right from the moment that it is recognized that her land is suitable for wine growing. It is therefore necessary to identify the aim pursued by the disputed regulation and to determine whether there exists a reasonable relationship between the measures provided for by the regulation and the aim pursued by the Community in this case.

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- 24 The provisions of Regulation No 1162/76 must be considered in the context of the common organization of the market in wine which is closely linked to the structural policy envisaged by the Community in the area in question. The aims of that policy are stated in Regulation (EEC) No 816/70 of 28 April 1970 laying down additional provisions for the common organization of the market in wine (Official Journal, English Special Edition 1970 (1), p. 234), which provides the basis for the disputed regulation, and in Regulation No 337/79 of 5 February 1979 on the common organization of the market in wine (Official Journal L 54, p. 1), which codifies all the provisions governing the common organization of the market. Title III of that regulation, laying down “rules concerning production and for controlling planting”, now forms the legal framework in that sphere. Another factor which makes it possible to perceive the Community policy pursued in that field is the Council Resolution of 21 April 1975 concerning new guidelines to balance the market in table wines (Official Journal C 90, p. 1).
- 25 Taken as a whole, those measures show that the policy initiated and partially implemented by the Community consists of a common organization of the market in conjunction with a structural improvement in the wine-producing sector. Within the framework of the guidelines laid down by Article 39 of the EEC Treaty that action seeks to achieve a double objective, namely, on the one hand, to establish a lasting balance on the wine market at a price level which is profitable for producers and fair to consumers and, secondly, to obtain an improvement in the quality of wines marketed. In order to attain that double objective of quantitative balance and qualitative improvement, the Community rules relating to the market in wine provide for an extensive range of measures which apply both at the production stage and at the marketing stage for wine.
- 26 In this regard, it is necessary to refer in particular to the provisions of Article 17 of Regulation No 816/70, re-enacted in an extended form by Article 31 of Regulation No 337/79, which provide for the establishment by the Member States of forecasts of planting and production, co-ordinated within the framework of a compulsory Community plan. For the purpose of implementing that plan measures may be adopted concerning the planting, re-planting, grubbing-up or cessation of cultivation of vineyards.

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- 27 It is in this context that Regulation No 1162/76 was adopted. It is apparent from the preamble to that regulation and from the economic circumstances in which it was adopted, a feature of which was the formation as from the 1974 harvest of permanent production surpluses, that that regulation fulfils a double function: on the one hand, it must enable an immediate brake to be put on the continued increase in the surpluses; on the other hand, it must win for the Community institutions the time necessary for the implementation of a structural policy designed to encourage high-quality production, whilst respecting the individual characteristics and needs of the different wine-producing regions of the Community, through the selection of land for grape growing and the selection of grape varieties, and through the regulation of production methods.
- 28 It was in order to fulfil that twofold purpose that the Council introduced by Regulation No 1162/76 a general prohibition on new plantings, without making any distinction, apart from certain narrowly defined exceptions, according to the quality of the land. It should be noted that, as regards its sweeping scope, the measure introduced by the Council is of a temporary nature. It is designed to deal immediately with a conjunctural situation characterized by surpluses, whilst at the same time preparing permanent structural measures.
- 29 Seen in this light, the measure criticized does not entail any undue limitation upon the exercise of the right to property. Indeed, the cultivation of new vineyards in a situation of continuous over-production would not have any effect, from the economic point of view, apart from increasing the volume of the surpluses; further, such an extension at that stage would entail the risk of making more difficult the implementation of a structural policy at the Community level in the event of such a policy resting on the application of criteria more stringent than the current provisions of national legislation concerning the selection of land accepted for wine-growing.
- 30 Therefore it is necessary to conclude that the restriction imposed upon the use of property by the prohibition on the new planting of vines introduced for a limited period by Regulation No 1162/76 is justified by the objectives of general interest pursued by the Community and does not infringe the substance of the right to property in the form in which it is recognized and protected in the Community legal order.

JUDGMENT OF 13. 12. 1979 — CASE 44/79

The question of the freedom to pursue trade or professional activities

- 31 The applicant in the main action also submits that the prohibition on new plantings imposed by Regulation No 1162/76 infringes her fundamental rights in so far as its effect is to restrict her freedom to pursue her occupation as a wine-grower.
- 32 As the Court has already stated in its judgment of 14 May 1974, *Nold*, referred to above, although it is true that guarantees are given by the constitutional law of several Member States in respect of the freedom to pursue trade or professional activities, the right thereby guaranteed, far from constituting an unfettered prerogative, must likewise be viewed in the light of the social function of the activities protected thereunder. In this case, it must be observed that the disputed Community measure does not in any way affect access to the occupation of wine-growing, or the freedom to pursue that occupation on land at present devoted to wine-growing. To the extent to which the prohibition on new plantings affects the free pursuit of the occupation of wine-growing, that limitation is no more than the consequence of the restriction upon the exercise of the right to property, so that the two restrictions merge. Thus the restriction upon the free pursuit of the occupation of wine-growing, assuming that it exists, is justified by the same reasons which justify the restriction placed upon the use of property.
- 33 Thus it is apparent from the foregoing that consideration of Regulation No 1162/76, in the light of the doubts expressed by the Verwaltungsgericht, has disclosed no factor of such a kind as to affect the validity of that regulation on account of its being contrary to the requirements flowing from the protection of fundamental rights in the Community.

Costs

The costs incurred by the Government of the Federal Republic of Germany, by the Council and by the Commission of the European Communities, which have submitted observations to the Court, are not recoverable.

As these proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the action pending before the Verwaltungsgericht Neustadt an der Weinstraße, the decision on costs is a matter for that court.

HAUER v LAND RHEINLAND-PFALZ

On those grounds,

THE COURT,

in answer to the questions submitted to it by the Verwaltungsgericht Neustadt an der Weinstraße by order of 14 December 1978, hereby rules:

1. Council Regulation (EEC) No 1162/76 of 17 May 1976 on measures designed to adjust wine-growing potential to market requirements, as amended by Council Regulation (EEC) No 2776/78 of 23 November 1978, amending for the second time Regulation No 1162/76, must be interpreted as meaning that Article 2 (1) thereof also applies to applications for authorization of new planting of vines submitted before the entry into force of that regulation.
2. Article 2 (1) of Regulation No 1162/76 must be interpreted as meaning that the prohibition laid down therein on the granting of authorizations for new planting — disregarding the exceptions specified in Article 2 (2) of the regulation — is of inclusive application, that is to say, is in particular unaffected by the question of the suitability or otherwise of a plot of land for wine-growing, as determined by the provisions of a national law.

Kutscher	O'Keeffe	Touffait	Mertens de Wilmars	Pescatore
Mackenzie Stuart		Bosco	Koopmans	Due

Delivered in open court in Luxembourg on 13 December 1979.

A. Van Houtte
Registrar

H. Kutscher
President

3751

II.4. Fundamental Rights in the Treaties, from the Single European Act to Amsterdam (1986 – 1997)

1987 OJ L169/1 Single European Act

29. 6. 87

Official Journal of the European Communities

No L 169/1

SINGLE EUROPEAN ACT

HIS MAJESTY THE KING OF THE BELGIANS,
HER MAJESTY THE QUEEN OF DENMARK,
THE PRESIDENT OF THE FEDERAL REPUBLIC OF GERMANY,
THE PRESIDENT OF THE HELLENIC REPUBLIC,
HIS MAJESTY THE KING OF SPAIN,
THE PRESIDENT OF THE FRENCH REPUBLIC,
THE PRESIDENT OF IRELAND,
THE PRESIDENT OF THE ITALIAN REPUBLIC,
HIS ROYAL HIGHNESS THE GRAND DUKE OF LUXEMBOURG,
HER MAJESTY THE QUEEN OF THE NETHERLANDS,
THE PRESIDENT OF THE PORTUGUESE REPUBLIC,
HER MAJESTY THE QUEEN OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND,

MOVED by the will to continue the work undertaken on the basis of the Treaties establishing the European Communities and to transform relations as a whole among their States into a European Union, in accordance with the Solemn Declaration of Stuttgart of 19 June 1983,

RESOLVED to implement this European Union on the basis, firstly, of the Communities operating in accordance with their own rules and, secondly, of European Cooperation among the Signatory States in the sphere of foreign policy and to invest this union with the necessary means of action,

DETERMINED to work together to promote democracy on the basis of the fundamental rights recognized in the constitutions and laws of the Member States, in the Convention for the Protection of Human Rights and Fundamental Freedoms and the European Social Charter, notably freedom, equality and social justice,

CONVINCED that the European idea, the results achieved in the fields of economic integration and political cooperation, and the need for new developments correspond to the wishes of the democratic peoples of Europe, for whom the European Parliament, elected by universal suffrage, is an indispensable means of expression,

AWARE of the responsibility incumbent upon Europe to aim at speaking ever increasingly with one voice and to act with consistency and solidarity in order more effectively to protect its common interests and independence, in particular to display the principles of democracy and compliance with the law and with human rights to which they are attached, so that together they may make their own contribution to the preservation of international peace and security in accordance with the undertaking entered into by them within the framework of the United Nations Charter,

DETERMINED to improve the economic and social situation by extending common policies and pursuing new objectives, and to ensure a smoother functioning of the Communities by enabling the Institutions to exercise their powers under conditions most in keeping with Community interests,

WHEREAS at their Conference in Paris from 19 to 21 October 1972 the Heads of State or of Government approved the objective of the progressive realization of Economic and Monetary Union,

HAVING REGARD to the Annex to the conclusions of the Presidency of the European Council in Bremen on 6 and 7 July 1978 and the resolution of the European Council in Brussels on 5 December 1978 on the introduction of the European Monetary System (EMS) and related questions, and noting that in accordance

29. 6. 87

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No L 169/3

with that Resolution, the Community and the Central Banks of the Member States have taken a number of measures intended to implement monetary cooperation,

HAVE DECIDED to adopt this Act and to this end have designated as their plenipotentiaries:

HIS MAJESTY THE KING OF THE BELGIANS:

Mr Leo TINDEMANS,
Minister for External Relations

HER MAJESTY THE QUEEN OF DENMARK:

Mr Uffe ELLEMANN-JENSEN,
Minister for Foreign Affairs

THE PRESIDENT OF THE FEDERAL REPUBLIC OF GERMANY:

Mr Hans-Dietrich GENSCHER,
Federal Minister of Foreign Affairs

THE PRESIDENT OF THE HELLENIC REPUBLIC:

Mr Karolos PAPOULIAS,
Minister for Foreign Affairs

HIS MAJESTY THE KING OF SPAIN:

Mr Francisco FERNANDEZ ORDONEZ,
Minister for Foreign Affairs

THE PRESIDENT OF THE FRENCH REPUBLIC:

Mr Roland DUMAS,
Minister for External Relations

THE PRESIDENT OF IRELAND:

Mr Peter BARRY, T.D.,
Minister for Foreign Affairs

THE PRESIDENT OF THE ITALIAN REPUBLIC:

Mr Giulio ANDREOTTI,
Minister for Foreign Affairs

HIS ROYAL HIGHNESS THE GRAND DUKE OF LUXEMBOURG:

Mr Robert GOEBBELS,
State Secretary, Ministry for Foreign Affairs

HER MAJESTY THE QUEEN OF THE NETHERLANDS:

Mr Hans van den BROEK,
Minister for Foreign Affairs

THE PRESIDENT OF THE PORTUGUESE REPUBLIC:

Mr Pedro PIRES DE MIRANDA,
Minister for Foreign Affairs

HER MAJESTY THE QUEEN OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND:

Mrs Lynda CHALKER,
Minister of State for Foreign and Commonwealth Affairs

WHO, having exchanged their full powers, found in good and due form:

1992 OJ C191/1 Treaty on European Union - Maastricht Treaty

TREATY ON EUROPEAN UNION

(92/C 191/01)

HIS MAJESTY THE KING OF THE BELGIANS,

HER MAJESTY THE QUEEN OF DENMARK,

THE PRESIDENT OF THE FEDERAL REPUBLIC OF GERMANY,

THE PRESIDENT OF THE HELLENIC REPUBLIC,

HIS MAJESTY THE KING OF SPAIN,

THE PRESIDENT OF THE FRENCH REPUBLIC,

THE PRESIDENT OF IRELAND,

THE PRESIDENT OF THE ITALIAN REPUBLIC,

HIS ROYAL HIGHNESS THE GRAND DUKE OF LUXEMBOURG,

HER MAJESTY THE QUEEN OF THE NETHERLANDS,

THE PRESIDENT OF THE PORTUGUESE REPUBLIC,

HER MAJESTY THE QUEEN OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND,

RESOLVED to mark a new stage in the process of European integration undertaken with the establishment of the European Communities,

RECALLING the historic importance of the ending of the division of the European continent and the need to create firm bases for the construction of the future Europe,

CONFIRMING their attachment to the principles of liberty, democracy and respect for human rights and fundamental freedoms and of the rule of law,

DESIRING to deepen the solidarity between their peoples while respecting their history, their culture and their traditions,

DESIRING to enhance further the democratic and efficient functioning of the institutions so as to enable them better to carry out, within a single institutional framework, the tasks entrusted to them,

RESOLVED to achieve the strengthening and the convergence of their economies and to establish an economic and monetary union including, in accordance with the provisions of this Treaty, a single and stable currency,

DETERMINED to promote economic and social progress for their peoples, within the context of the accomplishment of the internal market and of reinforced cohesion and environmental protection, and to implement policies ensuring that advances in economic integration are accompanied by parallel progress in other fields,

RESOLVED to establish a citizenship common to nationals of their countries,

RESOLVED to implement a common foreign and security policy including the eventual framing of a common defence policy, which might in time lead to a common defence, thereby reinforcing the European identity and its independence in order to promote peace, security and progress in Europe and in the world,

REAFFIRMING their objective to facilitate the free movement of persons, while ensuring the safety and security of their peoples, by including provisions on justice and home affairs in this Treaty,

RESOLVED to continue the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as closely as possible to the citizen in accordance with the principle of subsidiarity,

IN VIEW of further steps to be taken in order to advance European integration,

HAVE DECIDED to establish a European Union and to this end have designated as their plenipotentiaries:

HIS MAJESTY THE KING OF THE BELGIANS:

Mark EYSKENS,
Minister for Foreign Affairs;

Philippe MAYSTADT,
Minister for Finance;

HER MAJESTY THE QUEEN OF DENMARK:

Uffe ELLEMANN-JENSEN,
Minister for Foreign Affairs;

Anders FOGH RASMUSSEN,
Minister for Economic Affairs;

THE PRESIDENT OF THE FEDERAL REPUBLIC OF GERMANY:

Hans-Dietrich GENSCHER,
Federal Minister for Foreign Affairs;

Theodor WAIGEL,
Federal Minister for Finance;

THE PRESIDENT OF THE HELLENIC REPUBLIC:

Antonios SAMARAS,
Minister for Foreign Affairs;

Efthymios CHRISTODOULOU,
Minister for Economic Affairs;

HIS MAJESTY THE KING OF SPAIN:

Francisco FERNÁNDEZ ORDÓÑEZ,
Minister for Foreign Affairs;

Carlos SOLCHAGA CATALÁN,
Minister for Economic Affairs and Finance;

THE PRESIDENT OF THE FRENCH REPUBLIC:

Roland DUMAS,
Minister for Foreign Affairs;

Pierre BEREGOVOY,
Minister for Economic and Financial Affairs and the Budget;

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THE PRESIDENT OF IRELAND:

Gerard COLLINS,
Minister for Foreign Affairs;

Bertie AHERN,
Minister for Finance;

THE PRESIDENT OF THE ITALIAN REPUBLIC:

Gianni DE MICHELIS,
Minister for Foreign Affairs;

Guido CARLI,
Minister for the Treasury;

HIS ROYAL HIGHNESS THE GRAND DUKE OF LUXEMBOURG:

Jacques F. POOS,
Deputy Prime Minister,
Minister for Foreign Affairs;

Jean-Claude JUNCKER,
Minister for Finance;

HER MAJESTY THE QUEEN OF THE NETHERLANDS:

Hans van den BROEK,
Minister for Foreign Affairs;

Willem KOK,
Minister for Finance;

THE PRESIDENT OF THE PORTUGUESE REPUBLIC:

João de Deus PINHEIRO,
Minister for Foreign Affairs;

Jorge BRAGA de MACEDO,
Minister for Finance;

HER MAJESTY THE QUEEN OF THE UNITED KINGDOM OF GREAT BRITAIN AND
NORTHERN IRELAND:

The Rt. Hon. Douglas HURD,
Secretary of State for Foreign and Commonwealth Affairs;

The Hon. Francis MAUDE,
Financial Secretary to the Treasury;

WHO, having exchanged their full powers, found in good and due form, have agreed as follows:

TITLE I

COMMON PROVISIONS

Article A

By this Treaty, the High Contracting Parties establish among themselves a European Union, hereinafter called 'the Union'.

This Treaty marks a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as closely as possible to the citizen.

The Union shall be founded on the European Communities, supplemented by the policies and forms of cooperation established by this Treaty. Its task shall be to organize, in a manner demonstrating consistency and solidarity, relations between the Member States and between their peoples.

Article B

The Union shall set itself the following objectives:

- to promote economic and social progress which is balanced and sustainable, in particular through the creation of an area without internal frontiers, through the strengthening of economic and social cohesion and through the establishment of economic and monetary union, ultimately including a single currency in accordance with the provisions of this Treaty;
- to assert its identity on the international scene, in particular through the implementation of a common foreign and security policy including the eventual framing of a common defence policy, which might in time lead to a common defence;
- to strengthen the protection of the rights and interests of the nationals of its Member States through the introduction of a citizenship of the Union;
- to develop close cooperation on justice and home affairs;
- to maintain in full the 'acquis communautaire' and build on it with a view to considering, through the procedure referred to in Article N(2), to what extent the policies and forms of cooperation introduced by this Treaty may need to be revised with the aim of ensuring the effectiveness of the mechanisms and the institutions of the Community.

The objectives of the Union shall be achieved as provided in this Treaty and in accordance with the conditions and the timetable set out therein while respecting the principle of subsidiarity as defined in Article 3b of the Treaty establishing the European Community.

Article C

The Union shall be served by a single institutional framework which shall ensure the consistency and the continuity of the activities carried out in order to attain its objectives while respecting and building upon the 'acquis communautaire'.

The Union shall in particular ensure the consistency of its external activities as a whole in the context of its external relations, security, economic and development policies. The Council and the Commission shall be responsible for ensuring such consistency. They shall ensure the implementation of these policies, each in accordance with its respective powers.

Article D

The European Council shall provide the Union with the necessary impetus for its development and shall define the general political guidelines thereof.

The European Council shall bring together the Heads of State or of Government of the Member States and the President of the Commission. They shall be assisted by the Ministers for Foreign Affairs of the Member States and by a Member of the Commission. The European Council shall meet at least twice a year, under the chairmanship of the Head of State or of Government of the Member State which holds the Presidency of the Council.

The European Council shall submit to the European Parliament a report after each of its meetings and a yearly written report on the progress achieved by the Union.

Article E

The European Parliament, the Council, the Commission and the Court of Justice shall exercise their powers under the conditions and for the purposes provided for, on the one hand, by the provisions of the Treaties establishing the European Communities and of the subsequent Treaties and Acts modifying and supplementing them and, on the other hand, by the other provisions of this Treaty.

Article F

1. The Union shall respect the national identities of its Member States, whose systems of government are founded on the principles of democracy.

2. The Union shall respect fundamental rights, as guaranteed by the European Convention for the

Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law.

3. The Union shall provide itself with the means necessary to attain its objectives and carry through its policies.

TITLE II

PROVISIONS AMENDING THE TREATY ESTABLISHING THE EUROPEAN ECONOMIC COMMUNITY WITH A VIEW TO ESTABLISHING THE EUROPEAN COMMUNITY

Article G

The Treaty establishing the European Economic Community shall be amended in accordance with the provisions of this Article, in order to establish a European Community.

A. Throughout the Treaty:

1) The term 'European Economic Community' shall be replaced by the term 'European Community'.

B. In Part One 'Principles':

2) Article 2 shall be replaced by the following:

'Article 2

The Community shall have as its task, by establishing a common market and an economic and monetary union and by implementing the common policies or activities referred to in Articles 3 and 3a, to promote throughout the Community a harmonious and balanced development of economic activities, sustainable and non-inflationary growth respecting the environment, a high degree of convergence of economic performance, a high level of employment and of social protection, the raising of the standard of living and quality of life, and economic and social cohesion and solidarity among Member States.'

3) Article 3 shall be replaced by the following:

'Article 3

For the purposes set out in Article 2, the activities of the Community shall include, as provided in this Treaty and in accordance with the timetable set out therein:

(a) the elimination, as between Member States, of customs duties and quantitative restrictions on the import and export of goods, and of all other measures having equivalent effect;

(b) a common commercial policy;

(c) an internal market characterized by the abolition, as between Member States, of obstacles to the free movement of goods, persons, services and capital;

(d) measures concerning the entry and movement of persons in the internal market as provided for in Article 100c;

(e) a common policy in the sphere of agriculture and fisheries;

(f) a common policy in the sphere of transport;

(g) a system ensuring that competition in the internal market is not distorted;

(h) the approximation of the laws of Member States to the extent required for the functioning of the common market;

(i) a policy in the social sphere comprising a European Social Fund;

(j) the strengthening of economic and social cohesion;

(k) a policy in the sphere of the environment;

(l) the strengthening of the competitiveness of Community industry;

(m) the promotion of research and technological development;

28) Articles 204 and 205 shall be repealed.

and obligations, common action and special procedures.

29) Article 206 shall be replaced by the following:

These agreements shall be concluded by the Council, acting unanimously after consulting the European Parliament.

Article 206

The Community may conclude with one or more States or international organizations agreements establishing an association involving reciprocal rights

Where such agreements call for amendments to this Treaty, these amendments shall first be adopted in accordance with the procedure laid down in Article N of the Treaty on European Union.'

TITLE V

PROVISIONS ON A COMMON FOREIGN AND SECURITY POLICY

Article J

A common foreign and security policy is hereby established which shall be governed by the following provisions.

4. The Member States shall support the Union's external and security policy actively and unreservedly in a spirit of loyalty and mutual solidarity. They shall refrain from any action which is contrary to the interests of the Union or likely to impair its effectiveness as a cohesive force in international relations. The Council shall ensure that these principles are complied with.

Article J.1

1. The Union and its Member States shall define and implement a common foreign and security policy, governed by the provisions of this Title and covering all areas of foreign and security policy.

Article J.2

1. Member States shall inform and consult one another within the Council on any matter of foreign and security policy of general interest in order to ensure that their combined influence is exerted as effectively as possible by means of concerted and convergent action.

2. The objectives of the common foreign and security policy shall be:

2. Whenever it deems it necessary, the Council shall define a common position.

— to safeguard the common values, fundamental interests and independence of the Union;

Member States shall ensure that their national policies conform to the common positions.

— to strengthen the security of the Union and its Member States in all ways;

— to preserve peace and strengthen international security, in accordance with the principles of the United Nations Charter as well as the principles of the Helsinki Final Act and the objectives of the Paris Charter;

3. Member States shall coordinate their action in international organizations and at international conferences. They shall uphold the common positions in such fora.

— to promote international cooperation;

In international organizations and at international conferences where not all the Member States participate, those which do take part shall uphold the common positions.

— to develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms.

Article J.3

3. The Union shall pursue these objectives:

The procedure for adopting joint action in matters covered by the foreign and security policy shall be the following:

— by establishing systematic cooperation between Member States in the conduct of policy, in accordance with Article J.2;

1. The Council shall decide, on the basis of general guidelines from the European Council, that a matter should be the subject of joint action.

— by gradually implementing, in accordance with Article J.3, joint action in the areas in which the Member States have important interests in common.

TITLE VI

PROVISIONS ON COOPERATION IN THE FIELDS OF JUSTICE AND HOME AFFAIRS

Article K

Cooperation in the fields of justice and home affairs shall be governed by the following provisions.

Article K.1

For the purposes of achieving the objectives of the Union, in particular the free movement of persons, and without prejudice to the powers of the European Community, Member States shall regard the following areas as matters of common interest:

1. asylum policy;
2. rules governing the crossing by persons of the external borders of the Member States and the exercise of controls thereon;
3. immigration policy and policy regarding nationals of third countries:
 - (a) conditions of entry and movement by nationals of third countries on the territory of Member States;
 - (b) conditions of residence by nationals of third countries on the territory of Member States, including family reunion and access to employment;
 - (c) combatting unauthorized immigration, residence and work by nationals of third countries on the territory of Member States;
4. combatting drug addiction in so far as this is not covered by 7 to 9;
5. combatting fraud on an international scale in so far as this is not covered by 7 to 9;
6. judicial cooperation in civil matters;
7. judicial cooperation in criminal matters;
8. customs cooperation;
9. police cooperation for the purposes of preventing and combatting terrorism, unlawful drug trafficking and other serious forms of international crime, including if necessary certain aspects of customs cooperation, in connection with the organization of a Union-wide

system for exchanging information within a European Police Office (Europol).

Article K.2

1. The matters referred to in Article K.1 shall be dealt with in compliance with the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 and the Convention relating to the Status of Refugees of 28 July 1951 and having regard to the protection afforded by Member States to persons persecuted on political grounds.

2. This Title shall not affect the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security.

Article K.3

1. In the areas referred to in Article K.1, Member States shall inform and consult one another within the Council with a view to coordinating their action. To that end, they shall establish collaboration between the relevant departments of their administrations.

2. The Council may:

- on the initiative of any Member State or of the Commission, in the areas referred to in Article K.1(1) to (6);
- on the initiative of any Member State, in the areas referred to in Article K.1(7) to (9):
 - (a) adopt joint positions and promote, using the appropriate form and procedures, any cooperation contributing to the pursuit of the objectives of the Union;
 - (b) adopt joint action in so far as the objectives of the Union can be attained better by joint action than by the Member States acting individually on account of the scale or effects of the action envisaged; it may decide that measures implementing joint action are to be adopted by a qualified majority;
 - (c) without prejudice to Article 220 of the Treaty establishing the European Community, draw up conventions which it shall recommend to the Member States for adoption in accordance with their respective constitutional requirements.

1997 OJ C340/1
Treaty of Amsterdam Amending
the Treaty on European Union,
the Treaties Establishing
the European Communities
and Certain Related Acts

TREATY OF AMSTERDAM
AMENDING THE TREATY
ON EUROPEAN UNION,
THE TREATIES ESTABLISHING
THE EUROPEAN COMMUNITIES
AND CERTAIN RELATED ACTS

(97/C 340/01)

10. 11. 97

[FN]

Official Journal of the European Communities

C 340/3

HIS MAJESTY THE KING OF THE BELGIANS,

HER MAJESTY THE QUEEN OF DENMARK,

THE PRESIDENT OF THE FEDERAL REPUBLIC OF GERMANY,

THE PRESIDENT OF THE HELLENIC REPUBLIC,

HIS MAJESTY THE KING OF SPAIN,

THE PRESIDENT OF THE FRENCH REPUBLIC,

THE COMMISSION AUTHORISED BY ARTICLE 14 OF THE CONSTITUTION OF IRELAND TO EXERCISE AND PERFORM THE POWERS AND FUNCTIONS OF THE PRESIDENT OF IRELAND,

THE PRESIDENT OF THE ITALIAN REPUBLIC,

HIS ROYAL HIGHNESS THE GRAND DUKE OF LUXEMBOURG,

HER MAJESTY THE QUEEN OF THE NETHERLANDS,

THE FEDERAL PRESIDENT OF THE REPUBLIC OF AUSTRIA,

THE PRESIDENT OF THE PORTUGUESE REPUBLIC,

THE PRESIDENT OF THE REPUBLIC OF FINLAND,

HIS MAJESTY THE KING OF SWEDEN,

HER MAJESTY THE QUEEN OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND,

HAVE RESOLVED to amend the Treaty on European Union, the Treaties establishing the European Communities and certain related acts,

and to this end have designated as their Plenipotentiaries:

HIS MAJESTY THE KING OF THE BELGIANS:

Mr. Erik DERYCKE,
Minister for Foreign Affairs;

HER MAJESTY THE QUEEN OF DENMARK:

Mr. Niels Helveg PETERSEN,
Minister for Foreign Affairs;

THE PRESIDENT OF THE FEDERAL REPUBLIC OF GERMANY:

Dr. Klaus KINKEL,
Federal Minister for Foreign Affairs
and Deputy Federal Chancellor;

THE PRESIDENT OF THE HELLENIC REPUBLIC:

Mr. Theodoros PANGALOS,
Minister for Foreign Affairs;

HIS MAJESTY THE KING OF SPAIN:

Mr. Juan Abel MATUTES,
Minister for Foreign Affairs;

THE PRESIDENT OF THE FRENCH REPUBLIC:

Mr. Hubert VÉDRINE,
Minister for Foreign Affairs;

THE COMMISSION AUTHORISED BY ARTICLE 14 OF THE CONSTITUTION OF IRELAND TO EXERCISE AND PERFORM THE POWERS AND FUNCTIONS OF THE PRESIDENT OF IRELAND:

Mr. Raphael P. BURKE,
Minister for Foreign Affairs;

THE PRESIDENT OF THE ITALIAN REPUBLIC:

Mr. Lamberto DINI,
Minister for Foreign Affairs;

HIS ROYAL HIGHNESS THE GRAND DUKE OF LUXEMBOURG:

Mr. Jacques F. POOS,
Deputy Prime Minister,
Minister for Foreign Affairs, Foreign Trade and Cooperation;

HER MAJESTY THE QUEEN OF THE NETHERLANDS:

Mr. Hans VAN MIERLO,
Deputy Prime Minister
and Minister for Foreign Affairs;

THE FEDERAL PRESIDENT OF THE REPUBLIC OF AUSTRIA:

Mr. Wolfgang SCHÜSSEL,
Federal Minister for Foreign Affairs
and Vice Chancellor;

THE PRESIDENT OF THE PORTUGUESE REPUBLIC:

Mr. Jaime GAMA,
Minister for Foreign Affairs;

THE PRESIDENT OF THE REPUBLIC OF FINLAND:

Ms. Tarja HALONEN,
Minister for Foreign Affairs;

HIS MAJESTY THE KING OF SWEDEN:

Ms. Lena HJELM-WALLÉN,
Minister for Foreign Affairs;

HER MAJESTY THE QUEEN OF THE UNITED KINGDOM OF GREAT BRITAIN AND
NORTHERN IRELAND:

Mr. Douglas HENDERSON,
Minister of State,
Foreign and Commonwealth Office;

WHO, having exchanged their full powers found in good and due form,

HAVE AGREED AS FOLLOWS:

PART ONE
SUBSTANTIVE AMENDMENTS

Article 1

The Treaty on European Union shall be amended in accordance with the provisions of this Article.

1. After the third recital the following recital shall be inserted:

‘CONFIRMING their attachment to fundamental social rights as defined in the European Social Charter signed at Turin on 18 October 1961 and in the 1989 Community Charter of the Fundamental Social Rights of Workers,’

2. The existing seventh recital shall be replaced by the following:

‘DETERMINED to promote economic and social progress for their peoples, taking into account the principle of sustainable development and within the context of the accomplishment of the internal market and of reinforced cohesion and environmental protection, and to implement policies ensuring that advances in economic integration are accompanied by parallel progress in other fields,’

3. The existing ninth and tenth recitals shall be replaced by the following:

‘RESOLVED to implement a common foreign and security policy including the progressive framing of a common defence policy, which might lead to a common defence in accordance with the provisions of Article J.7, thereby reinforcing the European identity and its independence in order to promote peace, security and progress in Europe and in the world,

RESOLVED to facilitate the free movement of persons, while ensuring the safety and security of their peoples, by establishing an area of freedom, security and justice, in accordance with the provisions of this Treaty,’

4. In Article A the second paragraph shall be replaced by the following:

‘This Treaty marks a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as openly as possible and as closely as possible to the citizen.’

5. Article B shall be replaced by the following:

‘Article B

The Union shall set itself the following objectives:

- to promote economic and social progress and a high level of employment and to achieve balanced and sustainable development, in particular through the creation of an area without internal frontiers, through the strengthening of economic and social cohesion and through the establishment of economic and monetary union, ultimately including a single currency in accordance with the provisions of this Treaty;

- to assert its identity on the international scene, in particular through the implementation of a common foreign and security policy including the progressive framing of a common defence policy, which might lead to a common defence, in accordance with the provisions of Article J.7;
- to strengthen the protection of the rights and interests of the nationals of its Member States through the introduction of a citizenship of the Union;
- to maintain and develop the Union as an area of freedom, security and justice, in which the free movement of persons is assured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime;
- to maintain in full the *acquis communautaire* and build on it with a view to considering to what extent the policies and forms of cooperation introduced by this Treaty may need to be revised with the aim of ensuring the effectiveness of the mechanisms and the institutions of the Community.

The objectives of the Union shall be achieved as provided in this Treaty and in accordance with the conditions and the timetable set out therein while respecting the principle of subsidiarity as defined in Article 3b of the Treaty establishing the European Community.'

6. In Article C, the second paragraph shall be replaced by the following:

'The Union shall in particular ensure the consistency of its external activities as a whole in the context of its external relations, security, economic and development policies. The Council and the Commission shall be responsible for ensuring such consistency and shall cooperate to this end. They shall ensure the implementation of these policies, each in accordance with its respective powers.'

7. Article E shall be replaced by the following:

'Article E

The European Parliament, the Council, the Commission, the Court of Justice and the Court of Auditors shall exercise their powers under the conditions and for the purposes provided for, on the one hand, by the provisions of the Treaties establishing the European Communities and of the subsequent Treaties and Acts modifying and supplementing them and, on the other hand, by the other provisions of this Treaty.'

8. Article F shall be amended as follows:

- (a) paragraph 1 shall be replaced by the following:

'1. The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States.';

- (b) the existing paragraph 3 shall become paragraph 4 and a new paragraph 3 shall be inserted as follows:

'3. The Union shall respect the national identities of its Member States.'

9. The following Article shall be inserted at the end of Title I:

‘Article F.1

1. The Council, meeting in the composition of the Heads of State or Government and acting by unanimity on a proposal by one third of the Member States or by the Commission and after obtaining the assent of the European Parliament, may determine the existence of a serious and persistent breach by a Member State of principles mentioned in Article F(1), after inviting the government of the Member State in question to submit its observations.

2. Where such a determination has been made, the Council, acting by a qualified majority, may decide to suspend certain of the rights deriving from the application of this Treaty to the Member State in question, including the voting rights of the representative of the government of that Member State in the Council. In doing so, the Council shall take into account the possible consequences of such a suspension on the rights and obligations of natural and legal persons.

The obligations of the Member State in question under this Treaty shall in any case continue to be binding on that State.

3. The Council, acting by a qualified majority, may decide subsequently to vary or revoke measures taken under paragraph 2 in response to changes in the situation which led to their being imposed.

4. For the purposes of this Article, the Council shall act without taking into account the vote of the representative of the government of the Member State in question. Abstentions by members present in person or represented shall not prevent the adoption of decisions referred to in paragraph 1. A qualified majority shall be defined as the same proportion of the weighted votes of the members of the Council concerned as laid down in Article 148(2) of the Treaty establishing the European Community.

This paragraph shall also apply in the event of voting rights being suspended pursuant to paragraph 2.

5. For the purposes of this Article, the European Parliament shall act by a two thirds majority of the votes cast, representing a majority of its members.’

10. Title V shall be replaced by the following:

‘Title V

PROVISIONS ON A COMMON FOREIGN AND SECURITY POLICY

Article J.1

1. The Union shall define and implement a common foreign and security policy covering all areas of foreign and security policy, the objectives of which shall be:

— to safeguard the common values, fundamental interests, independence and integrity of the Union in conformity with the principles of the United Nations Charter;

- to strengthen the security of the Union in all ways;
- to preserve peace and strengthen international security, in accordance with the principles of the United Nations Charter, as well as the principles of the Helsinki Final Act and the objectives of the Paris Charter, including those on external borders;
- to promote international cooperation;
- to develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms.

2. The Member States shall support the Union's external and security policy actively and unreservedly in a spirit of loyalty and mutual solidarity.

The Member States shall work together to enhance and develop their mutual political solidarity. They shall refrain from any action which is contrary to the interests of the Union or likely to impair its effectiveness as a cohesive force in international relations.

The Council shall ensure that these principles are complied with.

Article J.2

The Union shall pursue the objectives set out in Article J.1 by:

- defining the principles of and general guidelines for the common foreign and security policy;
- deciding on common strategies;
 - adopting joint actions;
- adopting common positions;
- strengthening systematic cooperation between Member States in the conduct of policy.

Article J.3

1. The European Council shall define the principles of and general guidelines for the common foreign and security policy, including for matters with defence implications.

2. The European Council shall decide on common strategies to be implemented by the Union in areas where the Member States have important interests in common.

Common strategies shall set out their objectives, duration and the means to be made available by the Union and the Member States.

3. The Council shall take the decisions necessary for defining and implementing the common foreign and security policy on the basis of the general guidelines defined by the European Council.

II.5. Annex: Indicative Index of Additional Pre-Charter Documents

1. *The First Path – Institutional Resolutions, Calls and Drafts in relation to a Charter of Rights*

Reference	Title	Date	Body
1965 OJ 187/2923	Résolution relative à la primauté du droit communautaire sur le droit des Etats membres	22/10/1965	European Parliament
1967 OJ 67/2054	Résolution relative à l'application du droit communautaire par les Etats membres	10/05/1967	European Parliament
1967 OJ 67/2055	Résolution sur la protection juridique des personnes privées dans les Communautés européennes	10/05/1967	European Parliament
1973 OJ C23/7	Resolution on the Protection of the Fundamental Rights of Member States' Citizens when Community Law is Drafted (Jozeau-Marigné Report)	04/04/1973	European Parliament
1975 OJ C179/28	Resolution on European Union	10/07/1975	European Parliament
COM (76) 37	The protection of fundamental rights as Community law is created and developed. Report of the Commission submitted to the European Parliament and the Council	04/02/1976	European Commission
Annex to COM (76) 37	The problems of drawing up a catalogue of fundamental rights for the European Communities. A study requested by the Commission - Report annexed to COM (76) 37	04/02/1976	Prof. R. Bernhardt
1976 OJ C159/13	Resolution on the Primacy of Community Law and the Protection of Fundamental Rights	15/07/1976	European Parliament
1976 OJ C259/17	Resolution on the Report of the Commission of the European Communities on the Protection of Fundamental Rights	12/10/1976	European Parliament
COM (76) 374 final	(Draft) Common Declaration by the European Parliament, the Council and the Commission concerning the respect of Human Rights	27/10/1976	European Commission
1977 OJ C103/1	Joint Declaration by the European Parliament, the Council and the Commission Concerning the Protection of Fundamental Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms	05/04/1977	European Parliament, European Commission, Council of the European Community
1977 OJ C299/26	Resolution on the Granting of Special Rights to be Citizens of the European Community in Implementation of the Decision of the Paris Summit of December 1974 (Point 11 of the Final Communiqué)	16/11/1977	European Parliament
ISBN 92-823-0011-0 (French)	Proceedings of the Round Table on Special Rights and a Charter of the Rights of the Citizens of the European Community and Related Documents (Florence, 26-28 October 1978)	1979	European Parliament
1984 OJ C77/33	Draft Treaty Establishing the European Union (Spinelli Report)	14/02/1984	European Parliament

The European Parliament's Declaration on Fundamental Rights and Freedoms (12/04/1989)

SP(87) 2789	European Parliament Committee on Institutional Affairs Summary Record of the meeting on 1 and 2 December 1987	04/12/1987	European Parliament
SP(88) 2866	European Parliament Institutional Affairs Committee Summary Record	25/11/1988	European Parliament
A2-3/89/Part A	Motion for a Resolution - White Paper (De Gucht Report) drawn up on behalf of the Committee on Institutional Affairs on the Declaration of Fundamental Rights and Freedoms	20/03/1989	European Parliament
A2-3/89/Part B	(Report) - Report (De Gucht Report) drawn up on behalf of the Committee on Institutional Affairs on the Declaration of Fundamental Rights and Freedoms	20/03/1989	European Parliament
1989 OJ C120/51	Resolution adopting the "Declaration of Fundamental Rights and Freedoms"	12/04/1989	European Parliament

The Community Charter of Fundamental Social Rights of Workers (09/12/1989)

Reference	Title	Date	Body
SN 4443/1/88	Conclusions of the Presidency of the European Council held in Rhodes on 2 and 3 December 1988	03/12/1988	European Council
1989 OJ C96	Resolution on the social dimension of the internal market	15/03/1989	European Parliament
SN 254/2/89	Presidency Conclusions of the European Council held in Madrid on 26 and 27 June 1989	27/06/1989	European Council
1989 OJ C256/130	Resolution on the achievement of economic and social cohesion	14/09/1989	European Parliament
COM (89) 471	Draft Community Charter of Fundamental Social Rights of Workers	02/10/1989	European Commission
1989 OJ C323/44	Resolution on the Community Charter of Fundamental Social Rights	22/11/1989	European Parliament
ISBN 92-826-0975-5	Community Charter of the Fundamental Social Rights of Workers (adopted by 11 Members)	09/12/1989	Heads of State and Government of the Member States (adopted by 11 Member States)
1990 OJ C231/91	Resolution on the European Parliament's Guidelines for a Draft Constitution for the European Union	11/07/1990	European Parliament
1990 OJ C231/97	Resolution on the Intergovernmental Conference in the Context of Parliament's Strategy for European Union	11/07/1990	European Parliament
1990 OJ C324/219	Resolution on the Intergovernmental Conferences in the Context of the European Parliament's Strategy for European Union	22/11/1990	European Parliament
1991 OJ C19/65	Resolution on the Constitutional Basis of European Union	12/12/1990	European Parliament
1991 OJ C183/473	Resolution on Union Citizenship	14/06/1991	European Parliament
1991 OJ C240/45	Resolution on Human Rights	09/07/1991	European Parliament
1993 OJ C115/178	Resolution on Respect for Human Rights in the European Community (Annual Report of the European Parliament)	11/03/1993	European Parliament
1994 OJ C61/155	Resolution on the Constitution of the European Union	10/02/1994	European Parliament
1995 OJ C151/56	Resolution on the Functioning of the Treaty on European Union with a view to the 1996 Intergovernmental Conference - Implementation and development of the Union, based on the report by D. Martin and J.L.Bourlanges	17/05/1995	European Parliament
ISBN 92-827-7697-2	For a Europe of civic and social rights: Report by the Comité des Sages	February 1996	Comité des Sages
1997 OJ C371/99	Resolution on the Amsterdam Treaty	19/11/1997	European Parliament
None	Koalitionsvereinbarung zwischen der Sozialdemokratischen Partei Deutschlands und Bündnis 90/Die GRÜNEN	20/10/1998	Sozialdemokratische Partei Deutschlands and Bündnis 90/Die GRÜNEN
P4_CRE(1999)01-12(1)	Speech by the President of the Council of the European Union Joschka Fischer, Federal Minister for Foreign Affairs on the Priorities of the German Council Presidency	12/01/1999	Bundesaußenminister Joschka Fischer (DEU)
ISBN 92-828-6605-X	Affirming fundamental rights in the European Union: time to act (Simitis Report)	February 1999	Expert Group on Fundamental Rights

Reference	Title	Date	Body
2000 OJ C54/93	Resolution on the Establishment of the Charter of Fundamental Rights	16/09/1999	European Parliament
PE 168.629	Working Paper - Fundamental Social Rights	November 1999	European Parliament
PE 168.338/AE	Working Paper - What Form of Constitution for the European Union?	December 1999	European Parliament

2. The Second Path – Accession to the European Convention on Human Rights

COM (76) 37	The protection of fundamental rights as Community law is created and developed. Report of the Commission submitted to the European Parliament and the Council	04/02/1976	European Commission
Annex to COM (76) 37	The problems of drawing up a catalogue of fundamental rights for the European Communities. A study requested by the Commission - Report annexed to COM (76) 37	04/02/1976	Prof. R. Bernhardt
P-40/79	Community accession to the European Convention on Human Rights. Information Memo P-40/79	April 1979	European Commission
1979 OJ C127/70	Resolution on the accession of the European Community to the European Convention on Human Rights	27/04/1979	European Parliament
COM (79) 210	Memorandum on the accession of the European Communities to the Convention for the Protection of Human Rights and Fundamental Freedoms	02/05/1979	European Commission
Resolution 745(1981)	Resolution 745 (1981) on Accession of the European Communities to the European Convention on Human Rights	29/01/1981	Parliamentary Assembly of the Council of Europe
1982 OJ C304/253	Resolution embodying the opinion of the European Parliament on the memorandum on adhesion to the European convention on human rights and fundamental freedoms	29/10/1982	European Parliament
SEC (90) 2087	Commission Communication on Community accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms and some of its Protocols	19/11/1990	European Commission
1991 OJ C240/45	Resolution on Human Rights	09/07/1991	European Parliament
1993 OJ C115/178	Resolution on Respect for Human Rights in the European Community (Annual Report of the European Parliament)	11/03/1993	European Parliament
SEC (93) 1679	Accession of the Community to the European Convention on Human Rights and the Community legal order	26/10/1993	European Commission
1994 OJ C 44/32	Resolution on Community accession to the European Convention on Human Rights	18/01/1994	European Parliament
None	Request for an opinion on the accession by the Community to the European Convention for the Protection of Human Rights and Fundamental Freedoms	26/04/1994	Council of the European Union
Resolution 1068 (1995)	Resolution 1068 (1995) on Accession of the European Community to the European Convention on Human Rights	27/09/1995	Parliamentary Assembly of the Council of Europe
Opinion 2/94	Opinion 2/94 - Adhesion of the Community to the ECHR	28/03/1996	Court of Justice of the European Communities
1996 OJ C320/36	Resolution on respect for Human Rights in the European Union in 1994	28/10/1996	European Parliament
1997 OJ C132/31	Resolution on Respect for Human Rights in the European Union (1995)	08/04/1997	European Parliament
Recommendation 1365 (1998)	Recommendation 1365 (1998) on Relations with the European Union (follow-up to the European Union's Amsterdam Summit)	21/04/1998	Parliamentary Assembly of the Council of Europe

3. *The Judicial Origins of the Charter of Fundamental Rights*

Reference	Title	Date	Body
ECLI:EU:C:1959:4	Judgment of 4 February 1959, C-1/58, Friedrich Stork & Cie v High Authority of the European Coal and Steel Community	04/02/1959	Court of Justice of the European Communities
ECLI:EU:C:1960:5	Judgment of 12 February 1960, C-16 - 18/59, Geitling v High Authority	12/02/1960	Court of Justice of the European Communities
ECLI:EU:C:1965:13	Judgment of 1 April 1965, C-40/64, Marcello Sgarlata and others v Commission of the EEC	01/04/1965	Court of Justice of the European Communities
San Michele	Sentenza del 16 Dicembre 1965 n.98, Acciaierie San Michele	16/12/1965	Corte Costituzionale (ITA)
BVerfGE 22, 293-299, EWG-Verordnungen	BVerfG, Beschluss vom 18. Oktober 1967 (“EWG-Verordnungen”) – 1 BvR 248/63 –, BVerfGE 22,293-299	18/10/1967	Bundesverfassungsgericht (DEU)
ECLI:EU:C:1969:57	C-29/69, Stauder, Erich Stauder v City of Ulm-Sozialamt	12/11/1969	Court of Justice of the European Communities
ECLI:EU:C:1970:114	C-11/70, Internationale Handelsgesellschaft, C-11/70, Internationale Handelsgesellschaft mbH v Einfuhr- und Vorratsstelle für Getreide und Futtermittel	17/12/1970	Court of Justice of the European Communities
ECLI:EU:C:1974:51	C-4/73, Nold, C-4/73, J. Nold, Kohlen- und Baustoffgroßhandlung v Commission of the European Communities	14/05/1973	Court of Justice of the European Communities
Frontini	Sentenza del 27 Dicembre 1973. n.183, Frontini	27/12/1973	Corte Costituzionale (ITA)
BVerfGE 37, 271-305, Solange I	Solange I (“Solange I”) – 2 BvL 52/71 –, BVerfGE 37, 271-305	29/05/1974	Bundesverfassungsgericht (DEU)
ECLI:EU:C:1975:137	C-36/75, Rutili, C-36/75, Roland Rutili v Ministère de l’intérieur	28/10/1975	Court of Justice of the European Communities
ECLI:EU:C:1979:290	C-44/79, Hauer, Liselotte Hauer v Land Rheinland-Pfalz	13/12/1979	Court of Justice of the European Communities
ECLI:EU:C:1985:329	Judgment of 11 July 1985, Joined Cases C-60 and 61/84, Cinéthèque, ECLI:EU:C:1985:329	11/07/1985	Court of Justice of the European Communities
ECLI:EU:C:1987:400	Judgment of 30 September 1986, C-12/86, Demirel, ECLI:EU:C:1987:400	30/09/1986	Court of Justice of the European Communities
BVerfGE 73, 339-388, Solange II	BVerfG, Beschluss vom 22. Oktober 1986 (“Solange II”) – 2 BvR 197/83 –, BVerfGE 73, 339-388	22/10/1986	Bundesverfassungsgericht (DEU)
ECLI:EU:C:1989:321	Judgment of 13 July 1989, C-5/88, Wachauf, ECLI:EU:C:1989:321	13/07/1989	Court of Justice of the European Communities
ECLI:EU:C:1991:254	Judgment of 18 June 1991, C-260/89, ERT, ECLI:EU:C:1991:254	18/06/1991	Court of Justice of the European Communities
BVerfGE 89, 155-213	BVerfG, Urteil vom 12. Oktober 1993 (“Maastricht”) – 2 BvR 2134/92 –, BVerfGE 89, 155-213	12/10/1993	Bundesverfassungsgericht (DEU)

4. Fundamental Rights in the Treaties, from the Single European Act to Amsterdam (1986 – 1997)

Reference	Title	Date	Body
1987 OJ L169/1	Single European Act	01/01/1987 (Entry into force)	
1992 OJ C191/1	Treaty on European Union - Maastricht Treaty	01/11/1993 (Entry into force)	
1997 OJ C340/1	Treaty of Amsterdam Amending the Treaty on European Union, the Treaties Establishing the European Communities and Certain Related Acts	01/05/1999 (Entry into force)	

Human Rights in EC Law and Political Declarations

Bulletin of the European Communities, No.10, 1972	Declaration of the European Summit held in Paris on 19-21 October 1972	21/10/1972	European Council
None	Declaration on European Identity adopted at the Copenhagen European Summit of 14 and 15 December 1973	15/12/1973	European Council
None	Conclusions of the Presidency of the European Council held in Copenhagen on 7-8 April 1978, Annex D - Declaration on Democracy	20/04/1978	European Council
1986 OJ C158/1	Joint Declaration against racism and xenophobia	11/06/1986	European Parliament, European Commission, Council of the European Community
None	Declaration on Human Rights - Meeting of Foreign Ministers held in Brussels on 21 July 1986	21/07/1986	Council of the European Communities
None	Declaration on the international role of the Community	23/12/1988	European Council
1990 OJ C157/1	Resolution of the Council and the Representatives of the Governments of the Member States, meeting within the Council of 29 May 1990 on the fight against racism and xenophobia	29/05/1990	Council of the European Communities
SN 60/1/90	Conclusions of the Presidency of the European Council held in Dublin on 25-26 June 1990, Annex 3 - Declaration on anti-semitism, racism and xenophobia	26/06/1990	European Council
SN 151/3/91	Conclusions of the Presidency of the European Council held in Luxembourg on 28-29 June 1991, Annex 5 - Declaration on Human Rights	29/06/1991	European Council
None	Resolution of the Council and of the representatives of the governments of the Member States meeting within the Council on human rights, democracy and development	28/11/1991	Council of the European Communities
SN 271/1/91	Conclusions of the European Council held in Maastricht on 9-10 December 1991, Annex 3 - Declaration on racism and xenophobia	10/12/1991	European Council
None	Conclusions of the European Council held in Vienna on 11 and 12 December 1998 – II – Human Rights	12/12/1998	European Council

III. The Charter Convention

travaux préparatoires

III.1. The Charter Convention's Mandate

(11.05)

SN 2960/99

OR.d

Draft**Charter of Fundamental Rights of the European Union**

Respect for fundamental rights is a founding principle of the European Union and an indispensable prerequisite for its legitimacy.

The obligation of the Union to respect fundamental rights has been confirmed and defined by the jurisprudence of the European Court of Justice.

It is necessary at the present stage of the Union's development to establish a Charter of fundamental rights in order visibly to enshrine the overriding importance of fundamental rights and their impact on the Union's citizens. The Charter should guide the Union in the fulfilment of its tasks and make it easier for the Union's citizens to assert their fundamental rights in court.

The European Council believes that this Charter should in particular comprise the rights of freedom and equality as well as basic procedural rights guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms deriving from the constitutional traditions common to the Member States as general principles of Community law.

The Charter should also include the fundamental rights that pertain only to the Union's citizens.

In drawing up such a Charter account should furthermore be taken of economic and social rights as contained in the European Social Charter and the Community Charter of the Fundamental Social Rights of Workers, insofar as they do not merely establish objectives for action by the Union.

No restriction of such fundamental rights is admissible unless prescribed by law and consistent with the principle of proportionality and the substance of the rights in question.

In the view of the European Council, such a Charter of Fundamental Rights of the European Union and any ancillary provisions required to enforce these rights should be drafted by a convention composed of members of the European Parliament and the legislative bodies of Member States, government delegates and a Representative of the European Commission.

Representatives of the European Court of Justice, of the Committee of the Regions and of the Economic and Social Committee should participate in an advisory capacity. Representatives of social groups and experts should be invited to give their views. Secretariat services should be provided by the General Secretariat of the Council.

This body should present a draft document in advance of the Paris 2000 European Council. The European Council will propose to the European Parliament and the Commission that, together with the Council, they should solemnly proclaim on the basis of the draft document a European Charter of Fundamental Rights. It will then have to be considered how the Charter should be integrated into the Treaties.

The European Council invites the European Parliament and the national Parliaments to participate in this historic task and mandates the General Affairs Council to take the necessary steps prior to the Tampere European Council.

**UNION EUROPEENNE
LE CONSEIL**

Bruxelles, le 28 juillet 1999

8344/99

LIMITE

CRS/CRP 23

COMPTE RENDU SOMMAIRE
de la 1833ème réunion du
COMITE DES REPRESENTANTS PERMANENTS
tenue à Bruxelles, les 19, 20 et 21 mai 1999

1. Approbation de l'ordre du jour provisoire et des points "I"

docs 7851/99 OJ/CRP 20 (1ère partie)
7888/99 OJ/CRP 20 (2ème partie)

L'ordre du jour provisoire susvisé est approuvé moyennant :

- le **retrait** des points suivants :

= (Coreper 2ème partie, pt OJ 26)

- * Draft Council Resolution concerning a handbook for international police cooperation and measures to prevent and control violence and disturbances in connection with football matches
docs 7830/99 ENFOPOL 33
6197/2/99 ENFOPOL 13 REV 2

= (Coreper 2ème partie, pt OJ 29)

- * Relations with Armenia
 - Conclusion of the Partnership and Cooperation Agreement
doc 8338/99 NIS 43

= (Coreper 2ème partie, pt OJ 30)

- * Relations with Azerbaijan
 - Conclusion of the Partnership and Cooperation Agreement
doc 8339/99 NIS 44

= (Coreper 2ème partie, pt OJ 31)

- * Relations with Georgia
 - Conclusion of the Partnership and Cooperation Agreement
doc 8337/99 NIS 42

= (Coreper 2ème partie, pt OJ 32)

- * Council's Rules of Procedure
docs 8049/99 JUR 166
8153/99 JUR 173

- **l'ajout** des points mentionnés ci-dessous :

= (Coreper 2ème partie, pt "I")

25. Flights ban with FRY : Draft Regulation
doc 8428/99 PESC 152 COWEB 50

= (Coreper 2ème partie, pt "II")

42. EU Charter of Fundamental Rights

42. **EU Charter of Fundamental Rights**

The Committee held an exchange of views on the Presidency initiative for an EU charter of Fundamental Rights as set out in the Presidency non-paper SN 2960/99 with a view to preparing deliberations in the Council (General Affairs) of 31 May 1999. The Presidency concluded that it will take due account of the views expressed in preparing the Council's discussion on this topic.

43. **Eurodac implementing rules**

- **Commission proposal for a Regulation**
- **Implementing rules**
doc. 8140/99 EURODAC 5

The Committee

- noted that the Commission should be in a position to present its proposal for a Regulation on Eurodac which was due to be adopted by the Commission on 26 May 1999
- agreed to submit the text of the draft implementing rules to the Council as an "A" item in accordance with the terms set out in 8140/99.

44. **Kosovo: Temporary protection for displaced persons**

The Committee took note of the compromise text drawn up by the Presidency and agreed to invite the JHA Counsellors to examine that text and to report back to the Committee at its next session.

45. **Draft Joint Position on negotiations relating to the Draft Convention on Cyber Crime held in the Council of Europe**

doc. 7325/2/99 CRIMORG 40 REV 2

La contribution concernant ce point fera l'objet d'un Addendum à ce document.

46. **Draft Convention on mutual assistance in criminal matters between the Member States of the European Union**

doc. 8222/99 JUSTPEN 33

La contribution concernant ce point fera l'objet d'un Addendum à ce document.



**CONSEIL DE
L'UNION EUROPEENNE**

Bruxelles, le 30 juillet 1999

8735/99

LIMITE

CRS/CRP 24

COMPTE RENDU SOMMAIRE

**de la 1834^e réunion du
COMITE des REPRESENTANTS PERMANENTS
tenue à Bruxelles, les 26 et 28 mai 1999**

Coreper 2ème partie

41. KOSOVO : Protection temporaire des personnes déplacées

La contribution concernant ce point fera l'objet d' un Adendum à ce document.

42. Préparation de la session du Conseil "Justice et affaires intérieures" des 27 et 28 mai 1999

The Committee discusses no other point of the agenda than the point which is dealt with under item 35 of this Committee's agenda

43. Comitologie

The Committee examined for the second time the compromise proposal on the reform of the regulatory procedure (Article 5) presented by the Presidency (document 8227/99). Two delegations expressed their difficulties with the compromise proposal.

The Presidency concluded that the General Affairs Council would examine the draft Comitology Decision at its meeting of 31 May.

44. UE – Charte des droits fondamentaux

The Committee held a short further exchange of views on the Presidency initiative for an EU CHARTER OF Fundamental Rights with a view of preparing deliberations in the Council (General Affairs) of 31 May. The Presidency concluded that it will take due account of the views expressed in preparing Council discussion on this topic.

Presidency Conclusions - Cologne 3 and 4 June 1999

PRESIDENCY CONCLUSIONS

COLOGNE EUROPEAN COUNCIL

3 AND 4 JUNE 1999

Presidency Conclusions - Cologne 3 and 4 June 1999

I. INTRODUCTION

1. The European Council met in Cologne on 3 and 4 June 1999 to consider major issues for the future following the entry into force of the Amsterdam Treaty.
2. The European Council involved the President designate of the Commission, Mr Romano Prodi, in its proceedings in order to discuss with him basic questions concerning European Union policy over the next few years. It welcomed Mr Prodi's presentation outlining the future Commission's work and reform programme. In that context, the European Council confirms that it would like to see the appointment procedure for the new Commission continued swiftly and completed as soon as possible after the European Parliament elections.
3. At the start of the proceedings an exchange of views was also conducted with the President of the European Parliament, Mr José María Gil-Robles, on the main topics for discussion.

II. STAFFING DECISIONS

4. The European Council took several major staffing decisions. Pursuant to the Amsterdam Treaty, it designated Mr Javier Solana Madariaga for the new post of Secretary-General of the Council and High Representative for the Common Foreign and Security Policy. It designated Mr Pierre de Boissieu as Deputy Secretary-General.

Presidency Conclusions - Cologne 3 and 4 June 1999

Area of freedom, security and justice

43. The European Council calls attention to the action plan for the creation of an area of freedom, security and justice, which it approved in Vienna, and calls upon the institutions to press ahead swiftly with the action plan's implementation. It welcomes the fact that the European Parliament has approved a Resolution on the Vienna action plan and gave due consideration to this subject at a conference with Members of Parliament from the Member States on 22 and 23 March 1999. The results of the conference will be taken into consideration when the European Council establishes the political guidelines for future European justice and home affairs policy at its extraordinary meeting in Tampere on 15 and 16 October 1999.

EU Charter of Fundamental Rights

44. The European Council takes the view that, at the present stage of development of the European Union, the fundamental rights applicable at Union level should be consolidated in a Charter and thereby made more evident.
45. To this end it has adopted the Decision appended as Annex IV. The incoming Presidency is asked to establish the conditions for the implementation of this Decision by the time of the extraordinary meeting of the European Council in Tampere on 15 and 16 October 1999.

Human rights

46. The European Council takes note of the Presidency's interim report on human rights. It suggests that the question of the advisability of setting up a Union agency for human rights and democracy should be considered.

ANNEX IV**EUROPEAN COUNCIL DECISION ON THE DRAWING UP OF A CHARTER OF
FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**

Protection of fundamental rights is a founding principle of the Union and an indispensable prerequisite for her legitimacy. The obligation of the Union to respect fundamental rights has been confirmed and defined by the jurisprudence of the European Court of Justice. There appears to be a need, at the present stage of the Union's development, to establish a Charter of fundamental rights in order to make their overriding importance and relevance more visible to the Union's citizens.

The European Council believes that this Charter should contain the fundamental rights and freedoms as well as basic procedural rights guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and derived from the constitutional traditions common to the Member States, as general principles of Community law. The Charter should also include the fundamental rights that pertain only to the Union's citizens. In drawing up such a Charter account should furthermore be taken of economic and social rights as contained in the European Social Charter and the Community Charter of the Fundamental Social Rights of Workers (Article 136 TEC), insofar as they do not merely establish objectives for action by the Union.

In the view of the European Council, a draft of such a Charter of Fundamental Rights of the European Union should be elaborated by a body composed of representatives of the Heads of State and Government and of the President of the Commission as well as of members of the European Parliament and national parliaments. Representatives of the European Court of Justice should participate as observers. Representatives of the Economic and Social Committee, the Committee of the Regions and social groups as well as experts should be invited to give their views. Secretariat services should be provided by the General Secretariat of the Council.

This body should present a draft document in advance of the European Council in December 2000. The European Council will propose to the European Parliament and the Commission that, together with the Council, they should solemnly proclaim on the basis of the draft document a European Charter of Fundamental Rights. It will then have to be considered whether and, if so, how the Charter should be integrated into the treaties. The European Council mandates the General Affairs Council to take the necessary steps prior to the Tampere European Council.



**EUROPEAN UNION
THE COUNCIL**

Brussels, 30 July 1999

10539/99

LIMITE

CAB 12

REPORT

from : The Presidency

to : Permanent Representatives Committee

Subject : Composition, method of work and practical arrangements for the Body to elaborate a draft EU Charter of Fundamental rights

1. In order for the General Affairs Council to take the necessary steps prior to the Tampere European Council in October to implement the Cologne European Council decision on the creation of the Body the *ad hoc* Working Group mandated by COREPER has examined a Presidency options paper dealing with the composition, method of work and practical arrangements for that Body.
2. This *ad hoc* Group held two meetings in July at which good progress was achieved on various questions it addressed concerning the composition, method of work and practical arrangements for the Body. The attached paper reflects the outcome of the Group's work.
3. The Presidency considers that it will be essential to ensure in advance of the Tampere European Council that agreement exists on the composition and procedure of the Body among all its component parts. The Presidency will undertake the necessary contacts with the European Parliament. Each delegation has been invited to establish its own informal contacts with its Parliaments. Initial contacts will take place before COREPER on 8 September.

4. COREPER is invited to consider the following outstanding issues in order to finalise the attached text:

(a) **Composition of the Body (point A. (i) of the attachment)**

Agreement has been noted on the participation of fifteen representatives of Heads of State or Government and one representative of the President of the Commission. While some delegations noted that a link existed between the number of members to be fixed respectively for the European Parliament and national Parliaments, the overwhelming majority of delegations considered that there was no justification for parity of numbers. Since a number of Member States indicated that a minimum of two members of national Parliaments would be required in order to satisfy domestic constitutional requirements, a general orientation emerged in the Group in favour of accepting a figure of 30 for members of national Parliaments, provided a maximum of 7 or 8 members were designated by the European Parliament, allowing the latter the possibility to designate one member from each of the political groups if it so wishes.

The Presidency indicated that it would undertake initial informal contacts with the European Parliament on this basis prior to the COREPER meeting on 8 September and would report to delegations as soon as possible on the outcome of these consultations.

As far as national Parliaments are concerned, each delegation is invited to establish its own informal contacts with its national Parliament in advance of the COREPER meeting on 8 September.

COREPER is invited to confirm the general orientation emerged on the composition of the Body.

(b) **Chair (point A. (ii) of the attachment)**

While consensus appeared to exist on the fact that each of the three component parts of the Body (the representatives of the Heads of State or Government, a member of the European Parliament and a member of a national Parliament) should be represented on a "bureau" consisting of the Chairperson and Vice-Chairpersons, opinion is still divided on how the Body's chair should be selected.

A large majority of delegations supported Option 1, with the Body being chaired by the representative of the Presidency of the Council, given the clear link which existed between the Body and the European Council and the responsibility of the Presidency to lead the work to a successful conclusion.

Some delegations and the Commission preferred a permanent Chairperson to be designated for the duration of the Body's work, in order to ensure efficiency and continuity of proceedings. If Option 2 were to be followed, the question of how to designate the Chair would need to be considered (i.e. a permanent Chair selected from among the representatives of Heads of State or Government or elected by the Body from among its members).

COREPER is invited to consider this question.

(c) **Observers (point A. (iii) of the attachment)**

Agreement exists on inviting two representatives of the Court of Justice of the European Communities as observers. An overwhelming majority of delegations are also in favour of inviting the Council of Europe / European Court of Human Rights as an observer given its particular experience in the field of fundamental rights. The view was expressed, however, that the European Court of Human Rights should participate as an observer, with the Council of Europe being invited to give its views as an interested body.

COREPER is invited to:

- indicate whether observer status should be extended to the Council of Europe as such or be limited to the European Court of Human Rights;
- and confirm that the Tampere European Council should be invited to endorse this approach.

(d) **Drafting of the Charter (point B. (iii) of the attachment)**

All delegations recognise the need for the Chair to take a lead in the process of drafting the Charter. The Presidency has endeavoured in its proposal under point B. (iii) to emphasise the lead the Chair will take in this process, assisted by a Drafting Committee, and to indicate that account will be taken of drafting proposals submitted by any Member of the Body.

The main open issues for COREPER are:

- whether, in the process of drafting the Charter, there should be any Drafting Committee to assist the Chair;

- and, if so, whether it is sufficient for the Chair to be assisted by a small group composed of the "bureau" of Vice-Chairpersons, plus the representative of the President of the Commission, or whether, in order to take due account of the different legal and constitutional traditions in the Member States, all representatives of Heads of State or Government should be involved in this process, as a number of delegations have called for;
- or whether any decision to constitute a Drafting Committee should be left to the Body itself to decide, as some delegations have indicated.

In addition, certain Member States have expressed a wish to see representatives of all Heads of State or Government also involved in any *ad hoc* working groups which the Body may decide to set up.

(e) **Adoption of the Draft Charter by the Body (point B. (iv) of the attachment)**

There are three stages in the procedure for the proclamation of the Charter set out in the Cologne European Council conclusions, namely the establishment of the Draft Charter by the Body, the subsequent endorsement of the Charter by the European Council (via the normal channels), and the final joint solemn proclamation of the Charter by the European Parliament, the Commission and the Council. The attachment only deals with the first of these three stages.

A broad orientation exists in favour of the Chair leading discussions in the Body to a result which the Chair deems as meeting consensus within the Body. Some delegations have expressed doubts about this approach, and consider that further clarification is required on the procedure to be followed if any one member of the Body insists on amendments being made to the draft. It was also suggested that it should be left up to the Body to determine how the Charter should be adopted.

COREPER is invited to indicate whether the suggested approach is acceptable.

(f) **Venue for the Body (point C. (i) of the attachment)**

COREPER is invited to consider this point in the light of the Presidency's initial contacts with the European Parliament. In the event of meetings taking place alternately in the Council and European Parliament buildings, the cost of interpreting should be borne by the institution hosting the meeting.

(g) **Travel expenses for representatives of the Heads of State or Government**

This question is under examination by the General Secretariat of the Council.

ANNEX**COMPOSITION, METHOD OF WORK AND PRACTICAL ARRANGEMENTS
FOR THE BODY TO ELABORATE
A DRAFT EU CHARTER OF FUNDAMENTAL RIGHTS****A. COMPOSITION OF THE BODY****(i) Members****(a) Heads of State or Government of Member States**

Fifteen representatives of the Heads of State or Government of Member States.

(b) Commission

One representative of the President of the European Commission.

(c) European Parliament

Seven or eight members of the European Parliament to be designated by itself.

(d) National Parliaments

Thirty members of national Parliaments (two from each national Parliament) to be designated by national Parliaments themselves.

Members of the European Parliament and national Parliaments may be replaced by alternates in the event of being unable to attend meetings of the Body.

(ii) Chair**Option 1**

The Body shall be presided by the representative of the Presidency of the Council.

The representative of the incoming Presidency of the Council, a member of the European Parliament and a member of a national Parliament shall act as Vice-Chairpersons of the Body.

Option 2**Alternative A**

The Body shall be presided by a permanent Chairperson who shall be selected from among the representatives of the Heads of State or Government by the European Council.

The representative of the incoming Presidency of the Council, a member of the European Parliament as well as a member of a national Parliament shall act as Vice-Chairpersons of the Body.

Alternative B

The Body shall be presided by a permanent Chairperson who shall be elected from among its members by the Body itself.

If the Chairperson is elected from among the representatives of the Heads of State or Government, the representative of the incoming Presidency of the Council, a member of the European Parliament and a member of a national Parliament shall act as Vice-Chairpersons of the Body.

If the Chairperson is elected from among the members of the European Parliament, the representative of the Presidency of the Council and the representative of the incoming Presidency of the Council as well as a member of a national Parliament shall act as Vice-Chairpersons of the Body.

If the Chairperson is elected from among the members of the national Parliaments, the representative of the Presidency of the Council, the representative of the incoming Presidency of the Council and a member of the European Parliament shall act as Vice-Chairpersons of the Body.

(iii) Observers

Two representatives of the Court of Justice of the European Communities to be designated by the Court.

Two representatives of the Council of Europe, including one from the European Court of Human Rights.

(iv) Bodies of the European Union to be invited to give their views

The Economic and Social Committee

The Committee of the Regions

The Ombudsman

(v) Exchange of views with the applicant States

An appropriate exchange of views should be held by the Body with the applicant States.

(vi) Other bodies, social groups or experts to be invited to give their views

Other bodies, social groups and experts may be invited by the Body to give their views.

(vii) Secretariat

The General Secretariat of the Council shall provide the Body with secretariat services.

B. WORKING METHODS OF THE BODY**(i) Preparation**

The Chair of the Body shall propose a work plan for the Body and perform other appropriate preparatory work.

(ii) Transparency of the proceedings

In principle, hearings held by the Body and documents submitted in such hearings should be made public. More detailed rules on transparency should be established by the Body itself.

(iii) Drafting of the Charter

On the basis of the work plan agreed on by the Body, its Chair, assisted by the Secretariat and taking account of drafting proposals submitted by any member of the Body, shall elaborate a preliminary Draft Charter or parts of it.

Option 1

In this task, the Chair shall also be assisted by a Drafting Committee composed of the Vice-Chairpersons and the representative of the President of the Commission [as well as the representatives of Heads of State or Government]. This preliminary draft, or parts of it, shall be presented to the Body. The Chair may convene this Committee as necessary between the sessions of the Body.

Option 2

The Body shall decide on whether to constitute a Drafting Committee and on its composition.

The Body may establish *ad hoc* working groups to deal with different aspects of the Charter.

(iv) Adoption of the Draft Charter by the Body

A final Draft Charter is established when the Chair deems that there is consensus within the Body.

C. **PRACTICAL ARRANGEMENTS**

(i) **Venue**

The Body shall hold its meetings in Brussels:

Option 1

In the Council building

Option 2

Alternately in the Council and the European Parliament buildings

(ii) **Language regime**

A complete language regime shall be applicable for sessions of the Body.

(iii) **Cost of interpreting**

The question of who should pay for interpreting services is linked to the outcome of the examination under (iv) below and to the venue selected for the Body.

(iv) **Travel expenses for members of the Body**

All of the participants shall bear their own travel expenses. The question of whether representatives of the Heads of State or Government should be reimbursed by the Council requires further examination.

The question of who should pay for travel expenses of those invited to attend sessions of the Body will require further examination.



**CONSEIL DE
L'UNION EUROPEENNE**

**Bruxelles, le 15 octobre 1999
(OR. f/en)**

10871/99

LIMITE

CRS/CRP 34

COMPTE RENDU SOMMAIRE

de la : 1843ème réunion du COMITE DES REPRESENTANTS PERMANENTS
tenue à Bruxelles le 8 septembre 1999

10. Etat des procédures écrites

Le Comité prend acte des documents établis par le Secrétariat Général du Conseil en date du 22 juillet 1999 (doc. 10188/99 EPE 29 PE 64) et du 7 septembre 1999 (doc. 10674/99 EPE 30 PE 67)

11. Problème du bruit des avions : perspectives à court et long termes

Le Comité prend note de l'état des contacts de la Commission avec l'administration américaine ainsi que des commentaires formulés à ce sujet par les diverses délégations. Il reviendra sur ce dossier lors de sa réunion du 22 septembre.

(Coreper 2ème partie)**II****33. Charte des droits fondamentaux: procédure**

doc. 10539/99 CAB 12

The Committee had a discussion on the composition , method of work and practical arrangements for the Body to elaborate a chart EU Charter of Fundamental Rights, on the basis of doc. 10539/99 CAB 12. The Chairman concluded that the Presidency would come back to the Committee with a revised document later, so that agreement could be reached by the October General Affairs Council, shortly before the Tampere European Council.

34. TVA : Taux réduit pour les services à forte intensité de main-d'oeuvre– **Liste de services**

doc. 10288/99 FISC 173

Le Comité procède à un nouvel échange de vues à ce propos sur la base d'un compromis de la Présidence tel qu'exposé au document 10288/99 FISC 173.

A l'issue de ce débat, le Comité

- convient de compléter le compromis de la Présidence par une déclaration à inscrire au procès-verbal du Conseil aux termes de laquelle on entend par "cas exceptionnel" (que peut conduire à une autorisation d'un Etat membre d'appliquer le taux réduit TVA à trois catégories de services mentionnés à l'Annexe K de la 6ème Directive TVA), notamment le cas où l'impact économique des deux catégories de services déjà choisis est peu important ;



**EUROPEAN UNION
THE COUNCIL**

Brussels, 23 September 1999

11243/99

LIMITE

CAB 14

NOTE

from : The Presidency
to : Permanent Representatives Committee

Subject : *Composition, method of work and practical arrangements for the Body to elaborate a draft EU Charter of Fundamental Rights*

In the light of discussions in Coreper on 8 September, the Presidency submits a revised proposal concerning the composition, method of work and practical arrangements for the Body to elaborate a draft Charter of Fundamental Rights.

ANNEX**COMPOSITION, METHOD OF WORK AND PRACTICAL ARRANGEMENTS
FOR THE BODY TO ELABORATE
A DRAFT EU CHARTER OF FUNDAMENTAL RIGHTS****A. COMPOSITION OF THE BODY****(i) Members****(a) Heads of State or Government of Member States**

Fifteen representatives of the Heads of State or Government of Member States.

(b) Commission

One representative of the President of the European Commission.

(c) European Parliament

[Between 12 and 15] members of the European Parliament to be designated by itself.

(d) National Parliaments

Thirty members of national Parliaments (two from each national Parliament) to be designated by national Parliaments themselves.

Members of the Body may be replaced by alternates in the event of being unable to attend meetings of the Body.

(ii) Presidency of the Body

The representative of the President of the European Council shall be the Chairperson of the Body.

A member of the European Parliament, a member of a national Parliament and the representative of the incoming President of the European Council, shall act as Vice-Chairpersons of the Body. The member of the European Parliament acting as Vice-Chairperson shall be elected by the members of the European Parliament serving on the Body. The member of a national Parliament acting as Vice-Chairperson shall be elected by the members of national Parliaments serving on the Body.

The Chairperson and the Vice-Chairpersons shall jointly constitute the Presidency of the Body for the purpose of the following provisions.

(iii) Observers

Two representatives of the Court of Justice of the European Communities to be designated by the Court.

Two representatives of the Council of Europe, including one from the European Court of Human Rights.

(iv) Bodies of the European Union to be invited to give their views

The Economic and Social Committee

The Committee of the Regions

The Ombudsman

(v) Exchange of views with the applicant States

An appropriate exchange of views should be held by the Body or by the Presidency with the applicant States.

(vi) Other bodies, social groups or experts to be invited to give their views

Other bodies, social groups and experts may be invited by the Body to give their views.

(vii) Secretariat

The General Secretariat of the Council shall provide the Body with secretariat services. To ensure proper coordination, close contacts will be established with the General Secretariat of the European Parliament and, to the extent necessary, with the secretariats of the national parliaments.

B. WORKING METHODS OF THE BODY

(i) Preparation

The Presidency of the Body shall propose a work plan for the Body and perform other appropriate preparatory work.

(ii) Transparency of the proceedings

In principle, hearings held by the Body and documents submitted at such hearings should be public.

(iii) Drafting of the Charter

On the basis of the work plan agreed by the Body, the Presidency, assisted by the Secretariat and taking account of drafting proposals submitted by any member of the Body, shall elaborate a preliminary Draft Charter.

In this task, the Presidency of the Body shall be assisted by the representative of the President of the Commission.

The Body may establish *ad hoc* working groups to deal with different aspects of the Charter.

(iv) Adoption of the Draft Charter by the Body

When the Presidency of the Body deems that the text of the draft Charter elaborated by the Body [*can be subscribed to by all parties*] [*meets with general agreement within the Body*], it shall be forwarded to the European Council through the normal preparatory procedure.

(v) Solemn proclamation of a European Charter of Fundamental Rights

The European Council will propose to the European Parliament and the Commission that, together with the Council, they should solemnly proclaim on the basis of the draft a European Charter of Fundamental Rights.

C. PRACTICAL ARRANGEMENTS

The Body shall hold its meetings in Brussels, alternately in the Council and the European Parliament buildings.

A complete language regime shall be applicable for sessions of the Body.

Participants shall bear their own travel expenses. The question of whether representatives of the Heads of State or Government should be reimbursed by the Council requires further examination¹.

The question of who should pay for travel expenses of those invited to attend sessions of the Body will require further examination.

¹ The question of who should pay for interpreting services is linked to this examination.



**CONSEIL DE
L'UNION EUROPEENNE**

Bruxelles, le 5 novembre 1999

11865/99

LIMITE

CRS/CRP 37

COMPTE RENDU SOMMAIRE

**Objet : 1846ème réunion du COMITE DES REPRESENTANTS PERMANENTS
tenue à Bruxelles le 29 septembre et le 1er octobre 1999**

12. Proposition modifiée de directive du Parlement européen et du Conseil relative au droit de suite au profit de l'auteur d'une oeuvre d'art originale

docs 8834/99 PI 30 CULTURE 37 CODEC 304

8851/99 PI 31 CULTURE 38 CODEC 306

Le Comité :

- procède à un échange de vues sur la base d'éléments présentés par la Présidence ;
- prend acte de l'intention de la Présidence :
 - = d'inscrire ce point à l'ordre du jour de la session du Conseil (Marché intérieur) du 28 octobre 1999 ;
 - = dans ce contexte, d'en reprendre l'examen au niveau du Comité à sa réunion du 13 ou du 15 octobre 1999.

13. Etat des procédures écrites

Le Comité prend acte du document établi par le Secrétariat Général du Conseil en date du 30 septembre 1999 (cf. document 11248/99 EPE 33 PE 71).

(Coreper, 2ème partie)

II**30. Charte des droits fondamentaux**

doc. 11243/99 CAB 14

The Committee discussed the composition, method of work and practical arrangements of the Body to elaborate a draft Charter of Fundamental Rights.

The Chairman concluded that, while a broad consensus had been reached on most questions, the major outstanding issue related to the Presidency of the Body would be submitted to Ministers at the General Affairs Council on 11 October, where overall agreement should be achieved.



**THE COUNCIL OF
THE EUROPEAN UNION**

Brussels, 5 October 1999

11475/99

LIMITE

CAB 15

REPORT

from : The Presidency

to : Council

Subject : *Composition, method of work and practical arrangements for the Body to elaborate a draft EU Charter of Fundamental Rights*

1. The Cologne European Council decided that a Charter of Fundamental Rights of the European Union should be drawn up and that a draft of such a Charter should be elaborated by a Body composed of representatives of the Heads of State or Government and of the President of the European Commission as well as of members of the European Parliament and national parliaments. It mandated the Council to take the necessary steps, prior to the Tampere European Council, for that Body to begin its work, i.e. to decide on its composition, method of work and practical arrangements.
2. COREPER discussed this subject on 8 and on 29 September. The Presidency informed the European Parliament Committee on Constitutional Affairs on 2 September, and the European Parliament adopted a resolution on the matter on 16 September. COREPER's work has shown that a broad consensus exists in favour of the attached compromise proposal submitted by the Presidency.

3. One major issue needs be resolved by Ministers. This relates to the Chairperson of the Body, for which two options have been put forward:
 - the option which is set out in the Annex (point A (ii)) and supported by a clear majority of delegations is for a rotating Chair of the Body exercised by the representative of the respective President of the European Council;
 - a second option, supported by a few delegations, would involve a permanent chair being designated either by the European Council or by the Body itself.
4. The Council is invited to reach agreement on the text enclosed and to forward it to the Tampere European Council.
5. The question of reimbursing the costs of interpreting and travel of the different participants still has to be examined in due course by COREPER.

ANNEX**COMPOSITION, METHOD OF WORK AND PRACTICAL ARRANGEMENTS
FOR THE BODY TO ELABORATE
A DRAFT EU CHARTER OF FUNDAMENTAL RIGHTS****A. COMPOSITION OF THE BODY****(i) Members****(a) Heads of State or Government of Member States**

Fifteen representatives of the Heads of State or Government of Member States.

(b) Commission

One representative of the President of the European Commission.

(c) European Parliament

Sixteen members of the European Parliament to be designated by itself.

(d) National Parliaments

Thirty members of national Parliaments (two from each national Parliament) to be designated by national Parliaments themselves.

Members of the Body may be replaced by alternates in the event of being unable to attend meetings of the Body.

(ii) Chairperson and Vice-Chairpersons of the Body

The Chairperson of the Body shall be the representative of the President of the European Council. A member of the European Parliament, a member of a national Parliament and the representative of the incoming President of the European Council, shall act as Vice-Chairpersons of the Body.

The member of the European Parliament acting as Vice-Chairperson shall be elected by the members of the European Parliament serving on the Body. The member of a national Parliament acting as Vice-Chairperson shall be elected by the members of national Parliaments serving on the Body.

(iii) Observers

Two representatives of the Court of Justice of the European Communities to be designated by the Court.

Two representatives of the Council of Europe, including one from the European Court of Human Rights.

(iv) Bodies of the European Union to be invited to give their views

The Economic and Social Committee

The Committee of the Regions

The Ombudsman

(v) Exchange of views with the applicant States

An appropriate exchange of views should be held by the Body or by the Chairperson with the applicant States.

(vi) Other bodies, social groups or experts to be invited to give their views

Other bodies, social groups and experts may be invited by the Body to give their views.

(vii) Secretariat

The General Secretariat of the Council shall provide the Body with secretariat services. To ensure proper coordination, close contacts will be established with the General Secretariat of the European Parliament, with the Commission and, to the extent necessary, with the secretariats of the national Parliaments.

B. WORKING METHODS OF THE BODY

(i) Preparation

The Chairperson of the Body shall, in close concertation with the Vice-Chairpersons, propose a work plan for the Body and perform other appropriate preparatory work.

(ii) Transparency of the proceedings

In principle, hearings held by the Body and documents submitted at such hearings should be public.

(iii) Working groups

The Body may establish *ad hoc* working groups, which shall be open to all members of the Body.

(iv) Drafting

On the basis of the work plan agreed by the Body, a Drafting Committee composed of the Chairperson, the Vice-Chairpersons and the representative of the Commission and assisted by the General Secretariat of the Council, shall elaborate a preliminary Draft Charter, taking account of drafting proposals submitted by any member of the Body.

Each of the three Vice-Chairpersons shall regularly consult with the respective component part of the Body from which he or she emanates.

(v) Elaboration of the Draft Charter by the Body

When the Chairperson, in close concertation with the Vice-Chairpersons, deems that the text of the draft Charter elaborated by the Body can eventually be subscribed to by all the parties, it shall be forwarded to the European Council through the normal preparatory procedure.

C. PRACTICAL ARRANGEMENTS

The Body shall hold its meetings in Brussels, alternately in the Council and the European Parliament buildings.

A complete language regime shall be applicable for sessions of the Body.



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 7 December 1999

11745/99

LIMITE

PV/CONS 55

DRAFT MINUTES

Subject: **2206th** Council meeting (**General Affairs**), held in Luxembourg,
11 October 1999

4. **Preparation of the European Council (Tampere, 15/16 October 1999)**

doc. 11617/1/99 JAI 82 PESC 343 AG 36 REV 1

+ COR 1(en)

The President informed the Council about the almost completed tour of capitals undertaken by the President of the European Council. Regarding the issue of enhanced and more coherent external action of the Union in the field of Justice and Home Affairs, the Council endorsed the contents of doc. 11617/1/99 + COR 1 (en).

5. **Charter of Fundamental Rights**

doc. 11475/99 CAB 15

After a short discussion on whether there should be a rotating or permanent Chair for the Body intended to elaborate a draft EU Charter of Fundamental Rights, the President concluded that the Council was able to agree on the composition, method of work and practical arrangements for the Body as set out in doc. 11475/99 CAB 15.

6. **ESDP military and non-military crisis management: preparation in view of the European Council in Helsinki**

The Council took note of the Presidency's oral report on the state of play concerning the preparation of its report to the Helsinki European Council on security and defence policy, both on the military and non-military aspects of crisis management. The Presidency stressed its intention to put forward a substantial report.

PRESIDENCY CONCLUSIONS

TAMPERE EUROPEAN COUNCIL

15 AND 16 OCTOBER 1999

The European Council held a special meeting on 15 and 16 October 1999 in Tampere on the creation of an area of freedom, security and justice in the European Union. At the start of proceedings an exchange of views was conducted with the President of the European Parliament, Mrs Nicole Fontaine, on the main topics of discussion.

The European Council is determined to develop the Union as an area of freedom, security and justice by making full use of the possibilities offered by the Treaty of Amsterdam. The European Council sends a strong political message to reaffirm the importance of this objective and has agreed on a number of policy orientations and priorities which will speedily make this area a reality.

The European Council will place and maintain this objective at the very top of the political agenda. It will keep under constant review progress made towards implementing the necessary measures and meeting the deadlines set by the Treaty of Amsterdam, the Vienna Action Plan and the present conclusions. The Commission is invited to make a proposal for an appropriate scoreboard to that end. The European Council underlines the importance of ensuring the necessary transparency and of keeping the European Parliament regularly informed. It will hold a full debate assessing progress at its December meeting in 2001.

In close connection with the area of freedom, security and justice, the European Council has agreed on the composition, method of work and practical arrangements (attached in the annex) for the body entrusted with drawing up a draft Charter of fundamental rights of the European Union. It invites all parties involved to ensure that work on the Charter can begin rapidly.

The European Council expresses its gratitude for the work of the outgoing Secretary-General of the Council, Mr. Jürgen Trumpf, and in particular for his contribution to the development of the Union following the entry into force of the Treaty of Amsterdam.

Given that one of the focal points of the Union's work in the years ahead will be to strengthen the common foreign and security policy, including developing a European security and defence policy, the European Council expects the new Secretary-General of the Council and High Representative for the CFSP, Mr. Javier Solana, to make a key contribution to this objective. Mr. Solana will be able to rely on the full backing of the European Council in exercising his powers according to Article 18(3) of the Treaty so he can do full justice to his tasks. His responsibilities will include co-operating with the Presidency to ensure that deliberations and action in foreign and security policy matters are efficiently conducted with the aim of fostering continuity and consistency of policy on the basis of the common interests of the Union.

TOWARDS A UNION OF FREEDOM, SECURITY AND JUSTICE:

THE TAMPERE MILESTONES

1. From its very beginning European integration has been firmly rooted in a shared commitment to freedom based on human rights, democratic institutions and the rule of law. These common values have proved necessary for securing peace and developing prosperity in the European Union. They will also serve as a cornerstone for the enlarging Union.
2. The European Union has already put in place for its citizens the major ingredients of a shared area of prosperity and peace: a single market, economic and monetary union, and the capacity to take on global political and economic challenges. The challenge of the Amsterdam Treaty is now to ensure that freedom, which includes the right to move freely throughout the Union, can be enjoyed in conditions of security and justice accessible to all. It is a project which responds to the frequently expressed concerns of citizens and has a direct bearing on their daily lives.
3. This freedom should not, however, be regarded as the exclusive preserve of the Union's own citizens. Its very existence acts as a draw to many others world-wide who cannot enjoy the freedom Union citizens take for granted. It would be in contradiction with Europe's traditions to deny such freedom to those whose circumstances lead them justifiably to seek access to our territory. This in turn requires the Union to develop common policies on asylum and immigration, while taking into account the need for a consistent control of external borders to stop illegal immigration and to combat those who organise it and commit related international crimes. These common policies must be based on principles which are both clear to our own citizens and also offer guarantees to those who seek protection in or access to the European Union.
4. The aim is an open and secure European Union, fully committed to the obligations of the Geneva Refugee Convention and other relevant human rights instruments, and able to respond to humanitarian needs on the basis of solidarity. A common approach must also be developed to ensure the integration into our societies of those third country nationals who are lawfully resident in the Union.

5. The enjoyment of freedom requires a genuine area of justice, where people can approach courts and authorities in any Member State as easily as in their own. Criminals must find no ways of exploiting differences in the judicial systems of Member States. Judgements and decisions should be respected and enforced throughout the Union, while safeguarding the basic legal certainty of people and economic operators. Better compatibility and more convergence between the legal systems of Member States must be achieved.
6. People have the right to expect the Union to address the threat to their freedom and legal rights posed by serious crime. To counter these threats a common effort is needed to prevent and fight crime and criminal organisations throughout the Union. The joint mobilisation of police and judicial resources is needed to guarantee that there is no hiding place for criminals or the proceeds of crime within the Union.
7. The area of freedom, security and justice should be based on the principles of transparency and democratic control. We must develop an open dialogue with civil society on the aims and principles of this area in order to strengthen citizens' acceptance and support. In order to maintain confidence in authorities, common standards on the integrity of authorities should be developed.
8. The European Council considers it essential that in these areas the Union should also develop a capacity to act and be regarded as a significant partner on the international scene. This requires close co-operation with partner countries and international organisations, in particular the Council of Europe, OSCE, OECD and the United Nations.
9. The European Council invites the Council and the Commission, in close co-operation with the European Parliament, to promote the full and immediate implementation of the Treaty of Amsterdam on the basis of the Vienna Action Plan and of the following political guidelines and concrete objectives agreed here in Tampere.

A. A COMMON EU ASYLUM AND MIGRATION POLICY

10. The separate but closely related issues of asylum and migration call for the development of a common EU policy to include the following elements.

I. Partnership with countries of origin

11. The European Union needs a comprehensive approach to migration addressing political, human rights and development issues in countries and regions of origin and transit. This requires combating poverty, improving living conditions and job opportunities, preventing conflicts and consolidating democratic states and ensuring respect for human rights, in particular rights of minorities, women and children. To that end, the Union as well as Member States are invited to contribute, within their respective competence under the Treaties, to a greater coherence of internal and external policies of the Union. Partnership with third countries concerned will also be a key element for the success of such a policy, with a view to promoting co-development.

12. In this context, the European Council welcomes the report of the High Level Working Group on Asylum and Migration set up by the Council, and agrees on the continuation of its mandate and on the drawing up of further Action Plans. It considers as a useful contribution the first action plans drawn up by that Working Group, and approved by the Council, and invites the Council and the Commission to report back on their implementation to the European Council in December 2000.

II. A Common European Asylum System

13. The European Council reaffirms the importance the Union and Member States attach to absolute respect of the right to seek asylum. It has agreed to work towards establishing a Common European Asylum System, based on the full and inclusive application of the Geneva Convention, thus ensuring that nobody is sent back to persecution, i.e. maintaining the principle of non-refoulement.

14. This System should include, in the short term, a clear and workable determination of the State responsible for the examination of an asylum application, common standards for a fair and efficient asylum procedure, common minimum conditions of reception of asylum seekers, and the approximation of rules on the recognition and content of the refugee status. It should also be completed with measures on subsidiary forms of protection offering an appropriate status to any person in need of such protection. To that end, the Council is urged to adopt, on the basis of Commission proposals, the necessary decisions according to the timetable set in the Treaty of Amsterdam and the Vienna Action Plan. The European Council stresses the importance of consulting UNHCR and other international organisations.

15. In the longer term, Community rules should lead to a common asylum procedure and a uniform status for those who are granted asylum valid throughout the Union. The Commission is asked to prepare within one year a communication on this matter.

16. The European Council urges the Council to step up its efforts to reach agreement on the issue of temporary protection for displaced persons on the basis of solidarity between Member States. The European Council believes that consideration should be given to making some form of financial reserve available in situations of mass influx of refugees for temporary protection. The Commission is invited to explore the possibilities for this.

17. The European Council urges the Council to finalise promptly its work on the system for the identification of asylum seekers (Eurodac).

III. Fair treatment of third country nationals

18. The European Union must ensure fair treatment of third country nationals who reside legally on the territory of its Member States. A more vigorous integration policy should aim at granting them rights and obligations comparable to those of EU citizens. It should also enhance non-discrimination in economic, social and cultural life and develop measures against racism and xenophobia.

19. Building on the Commission Communication on an Action Plan against Racism, the European Council calls for the fight against racism and xenophobia to be stepped up. The Member States will draw on best practices and experiences. Co-operation with the European Monitoring Centre on Racism and Xenophobia and the Council of Europe will be further strengthened. Moreover, the Commission is invited to come forward as soon as possible with proposals implementing Article 13 of the EC Treaty on the fight against racism and xenophobia. To fight against discrimination more generally the Member States are encouraged to draw up national programmes.

20. The European Council acknowledges the need for approximation of national legislations on the conditions for admission and residence of third country nationals, based on a shared assessment of the economic and demographic developments within the Union, as well as the situation in the countries of origin. It requests to this end rapid decisions by the Council, on the basis of proposals by the Commission. These decisions should take into account not only the reception capacity of each Member State, but also their historical and cultural links with the countries of origin.

21. The legal status of third country nationals should be approximated to that of Member States' nationals. A person, who has resided legally in a Member State for a period of time to be determined and who holds a long-term residence permit, should be granted in that Member State a set of uniform rights which are as near as possible to those enjoyed by EU citizens; e.g. the right to reside, receive education, and work as an employee or self-employed person, as well as the principle of non-discrimination vis-à-vis the citizens of the State of residence. The European Council endorses the objective that long-term legally resident third country nationals be offered the opportunity to obtain the nationality of the Member State in which they are resident.

IV. Management of migration flows

22. The European Council stresses the need for more efficient management of migration flows at all their stages. It calls for the development, in close co-operation with countries of origin and transit, of information campaigns on the actual possibilities for legal immigration, and for the prevention of all forms of trafficking in human beings. A common active policy on visas and false documents should be further developed, including closer co-operation between EU consulates in third countries and, where necessary, the establishment of common EU visa issuing offices.

23. The European Council is determined to tackle at its source illegal immigration, especially by combating those who engage in trafficking in human beings and economic exploitation of migrants. It urges the adoption of legislation foreseeing severe sanctions against this serious crime. The Council is invited to adopt by the end of 2000, on the basis of a proposal by the Commission, legislation to this end. Member States, together with Europol, should direct their efforts to detecting and dismantling the criminal networks involved. The rights of the victims of such activities shall be secured with special emphasis on the problems of women and children.

24. The European Council calls for closer co-operation and mutual technical assistance between the Member States' border control services, such as exchange programmes and technology transfer, especially on maritime borders, and for the rapid inclusion of the applicant States in this co-operation. In this context, the Council welcomes the memorandum of understanding between Italy and Greece to enhance co-operation between the two countries in the Adriatic and Ionian seas in combating organised crime, smuggling and trafficking of persons.

25. As a consequence of the integration of the Schengen acquis into the Union, the candidate countries must accept in full that acquis and further measures building upon it. The European Council stresses the importance of the effective control of the Union's future external borders by specialised trained professionals.

26. The European Council calls for assistance to countries of origin and transit to be developed in order to promote voluntary return as well as to help the authorities of those countries to strengthen their ability to combat effectively trafficking in human beings and to cope with their readmission obligations towards the Union and the Member States.

27. The Amsterdam Treaty conferred powers on the Community in the field of readmission. The European Council invites the Council to conclude readmission agreements or to include standard clauses in other agreements between the European Community and relevant third countries or groups of countries. Consideration should also be given to rules on internal readmission.

B. A GENUINE EUROPEAN AREA OF JUSTICE

28. In a genuine European Area of Justice individuals and businesses should not be prevented or discouraged from exercising their rights by the incompatibility or complexity of legal and administrative systems in the Member States.

V. Better access to justice in Europe

29. In order to facilitate access to justice the European Council invites the Commission, in co-operation with other relevant fora, such as the Council of Europe, to launch an information campaign and to publish appropriate "user guides" on judicial co-operation within the Union and on the legal systems of the Member States. It also calls for the establishment of an easily accessible information system to be maintained and up-dated by a network of competent national authorities.

30. The European Council invites the Council, on the basis of proposals by the Commission, to establish minimum standards ensuring an adequate level of legal aid in cross-border cases throughout the Union as well as special common procedural rules for simplified and accelerated cross-border litigation on small consumer and commercial claims, as well as maintenance claims, and on uncontested claims. Alternative, extra-judicial procedures should also be created by Member States.

31. Common minimum standards should be set for multilingual forms or documents to be used in cross-border court cases throughout the Union. Such documents or forms should then be accepted mutually as valid documents in all legal proceedings in the Union.

32. Having regard to the Commission's communication, minimum standards should be drawn up on the protection of the victims of crime, in particular on crime victims' access to justice and on their rights to compensation for damages, including legal costs. In addition, national programmes should be set up to finance measures, public and non-governmental, for assistance to and protection of victims.

VI. Mutual recognition of judicial decisions

33. Enhanced mutual recognition of judicial decisions and judgements and the necessary approximation of legislation would facilitate co-operation between authorities and the judicial protection of individual rights. The European Council therefore endorses the principle of mutual recognition which, in its view, should become the cornerstone of judicial co-operation in both civil and criminal matters within the Union. The principle should apply both to judgements and to other decisions of judicial authorities.

34. In civil matters the European Council calls upon the Commission to make a proposal for further reduction of the intermediate measures which are still required to enable the recognition and enforcement of a decision or judgement in the requested State. As a first step these intermediate procedures should be abolished for titles in respect of small consumer or commercial claims and for certain judgements in the field of family litigation (e.g. on maintenance claims and visiting rights). Such decisions would be automatically recognised throughout the Union without any intermediate proceedings or grounds for refusal of enforcement. This could be accompanied by the setting of minimum standards on specific aspects of civil procedural law.

35. With respect to criminal matters, the European Council urges Member States to speedily ratify the 1995 and 1996 EU Conventions on extradition. It considers that the formal extradition procedure should be abolished among the Member States as far as persons are concerned who are fleeing from justice after having been finally sentenced, and replaced by a simple transfer of such persons, in compliance with Article 6 TEU. Consideration should also be given to fast track extradition procedures, without prejudice to the principle of fair trial. The European Council invites the Commission to make proposals on this matter in the light of the Schengen Implementing Agreement.

36. The principle of mutual recognition should also apply to pre-trial orders, in particular to those which would enable competent authorities quickly to secure evidence and to seize assets which are easily movable; evidence lawfully gathered by one Member State's authorities should be admissible before the courts of other Member States, taking into account the standards that apply there.

37. The European Council asks the Council and the Commission to adopt, by December 2000, a programme of measures to implement the principle of mutual recognition. In this programme, work should also be launched on a European Enforcement Order and on those aspects of procedural law on which common minimum standards are considered necessary in order to facilitate the application of the principle of mutual recognition, respecting the fundamental legal principles of Member States.

VII. Greater convergence in civil law

38. The European Council invites the Council and the Commission to prepare new procedural legislation in cross-border cases, in particular on those elements which are instrumental to smooth judicial co-operation and to enhanced access to law, e.g. provisional measures, taking of evidence, orders for money payment and time limits.

39. As regards substantive law, an overall study is requested on the need to approximate Member States' legislation in civil matters in order to eliminate obstacles to the good functioning of civil proceedings. The Council should report back by 2001.

C. A UNIONWIDE FIGHT AGAINST CRIME

40. The European Council is deeply committed to reinforcing the fight against serious organised and transnational crime. The high level of safety in the area of freedom, security and justice presupposes an efficient and comprehensive approach in the fight against all forms of crime. A balanced development of unionwide measures against crime should be achieved while protecting the freedom and legal rights of individuals and economic operators.

VIII. Preventing crime at the level of the Union

41. The European Council calls for the integration of crime prevention aspects into actions against crime as well as for the further development of national crime prevention programmes. Common priorities should be developed and identified in crime prevention in the external and internal policy of the Union and be taken into account when preparing new legislation.

42. The exchange of best practices should be developed, the network of competent national authorities for crime prevention and co-operation between national crime prevention organisations should be strengthened and the possibility of a Community funded programme should be explored for these purposes. The first priorities for this co-operation could be juvenile, urban and drug-related crime.

IX. Stepping up co-operation against crime

43. Maximum benefit should be derived from co-operation between Member States' authorities when investigating cross-border crime in any Member State. The European Council calls for joint investigative teams as foreseen in the Treaty to be set up without delay, as a first step, to combat trafficking in drugs and human beings as well as terrorism. The rules to be set up in this respect should allow representatives of Europol to participate, as appropriate, in such teams in a support capacity.

44. The European Council calls for the establishment of a European Police Chiefs operational Task Force to exchange, in co-operation with Europol, experience, best practices and information on current trends in cross-border crime and contribute to the planning of operative actions.

45. Europol has a key role in supporting unionwide crime prevention, analyses and investigation. The European Council calls on the Council to provide Europol with the necessary support and resources. In the near future its role should be strengthened by means of receiving operational data from Member States and authorising it to ask Member States to initiate, conduct or coordinate investigations or to create joint investigative teams in certain areas of crime, while respecting systems of judicial control in Member States.

46. To reinforce the fight against serious organised crime, the European Council has agreed that a unit (EUROJUST) should be set up composed of national prosecutors, magistrates, or police officers of equivalent competence, detached from each Member State according to its legal system. EUROJUST should have the task of facilitating the proper coordination of national prosecuting authorities and of supporting criminal investigations in organised crime cases, notably based on Europol's analysis, as well as of co-operating closely with the European Judicial Network, in particular in order to simplify the execution of letters rogatory. The European Council requests the Council to adopt the necessary legal instrument by the end of 2001.

47. A European Police College for the training of senior law enforcement officials should be established. It should start as a network of existing national training institutes. It should also be open to the authorities of candidate countries.

48. Without prejudice to the broader areas envisaged in the Treaty of Amsterdam and in the Vienna Action Plan, the European Council considers that, with regard to national criminal law, efforts to agree on common definitions, incriminations and sanctions should be focused in the first instance on a limited number of sectors of particular relevance, such as financial crime (money laundering, corruption, Euro counterfeiting), drugs trafficking, trafficking in human beings, particularly exploitation of women, sexual exploitation of children, high tech crime and environmental crime.

49. Serious economic crime increasingly has tax and duty aspects. The European Council therefore calls upon Member States to provide full mutual legal assistance in the investigation and prosecution of serious economic crime.

50. The European Council underlines the importance of addressing the drugs problem in a comprehensive manner. It calls on the Council to adopt the 2000-2004 European Strategy against Drugs before the European Council meeting in Helsinki.

X. Special action against money laundering

51. Money laundering is at the very heart of organised crime. It should be rooted out wherever it occurs. The European Council is determined to ensure that concrete steps are taken to trace, freeze, seize and confiscate the proceeds of crime.

52. Member States are urged to implement fully the provisions of the Money Laundering Directive, the 1990 Strasbourg Convention and the Financial Action Task Force recommendations also in all their dependent territories.

53. The European Council calls for the Council and the European Parliament to adopt as soon as possible the draft revised directive on money laundering recently proposed by the Commission.

54. With due regard to data protection, the transparency of financial transactions and ownership of corporate entities should be improved and the exchange of information between the existing financial intelligence units (FIU) regarding suspicious transactions expedited. Regardless of secrecy provisions applicable to banking and other commercial activity, judicial authorities as well as FIUs must be entitled, subject to judicial control, to receive information when such information is necessary to investigate money laundering. The European Council calls on the Council to adopt the necessary provisions to this end.

55. The European Council calls for the approximation of criminal law and procedures on money laundering (e.g. tracing, freezing and

confiscating funds). The scope of criminal activities which constitute predicate offences for money laundering should be uniform and sufficiently broad in all Member States.

56. The European Council invites the Council to extend the competence of Europol to money laundering in general, regardless of the type of offence from which the laundered proceeds originate.

57. Common standards should be developed in order to prevent the use of corporations and entities registered outside the jurisdiction of the Union in the hiding of criminal proceeds and in money laundering. The Union and Member States should make arrangements with third country offshore-centres to ensure efficient and transparent co-operation in mutual legal assistance following the recommendations made in this area by the Financial Action Task Force.

58. The Commission is invited to draw up a report identifying provisions in national banking, financial and corporate legislation which obstruct international co-operation. The Council is invited to draw necessary conclusions on the basis of this report.

D. STRONGER EXTERNAL ACTION

59. The European Council underlines that all competences and instruments at the disposal of the Union, and in particular, in external relations must be used in an integrated and consistent way to build the area of freedom, security and justice. Justice and Home Affairs concerns must be integrated in the definition and implementation of other Union policies and activities.

60. Full use must be made of the new possibilities offered by the Treaty of Amsterdam for external action and in particular of Common Strategies as well as Community agreements and agreements based on Article 38 TEU.

61. Clear priorities, policy objectives and measures for the Union's external action in Justice and Home Affairs should be defined. Specific recommendations should be drawn up by the Council in close co-operation with the Commission on policy objectives and measures for the Union's external action in Justice and Home Affairs, including questions of working structure, prior to the European Council in June 2000.

62. The European Council expresses its support for regional co-operation against organised crime involving the Member States and third countries bordering on the Union. In this context it notes with satisfaction the concrete and practical results obtained by the surrounding countries in the Baltic Sea region. The European Council attaches particular importance to regional co-operation and development in the Balkan region. The European Union welcomes and intends to participate in a European Conference on Development and Security in the Adriatic and Ionian area, to be organised by the Italian Government in Italy in the first half of the year 2000. This initiative will provide valuable support in the context of the South Eastern Europe Stability Pact.

ANNEX

COMPOSITION METHOD OF WORK AND PRACTICAL ARRANGEMENTS

FOR THE BODY TO ELABORATE

A DRAFT EU CHARTER OF FUNDAMENTAL RIGHTS,

AS SET OUT IN THE COLOGNE CONCLUSIONS

A. COMPOSITION OF THE BODY

(i) Members

(a) Heads of State or Government of Member States

Fifteen representatives of the Heads of State or Government of Member States.

(b) Commission

One representative of the President of the European Commission.

(c) European Parliament

Sixteen members of the European Parliament to be designated by itself.

(d) National Parliaments

Thirty members of national Parliaments (two from each national Parliament) to be designated by national Parliaments themselves.

Members of the Body may be replaced by alternates in the event of being unable to attend meetings of the Body.

(ii) Chairperson and Vice-Chairpersons of the Body

The Chairperson of the Body shall be elected by the Body. A member of the European Parliament, a member of a national Parliament, and the representative of the President of the European Council if not elected to the Chair, shall act as Vice-Chairpersons of the Body.

The member of the European Parliament acting as Vice-Chairperson shall be elected by the members of the European Parliament serving on the Body. The member of a national Parliament acting as Vice-Chairperson shall be elected by the members of national Parliaments serving on the Body.

(iii) Observers

Two representatives of the Court of Justice of the European Communities to be designated by the Court.

Two representatives of the Council of Europe, including one from the European Court of Human Rights.

(iv) Bodies of the European Union to be invited to give their views

The Economic and Social Committee

The Committee of the Regions

The Ombudsman

(v) Exchange of views with the applicant States

An appropriate exchange of views should be held by the Body or by the Chairperson with the applicant States.

(vi) Other bodies, social groups or experts to be invited to give their views

Other bodies, social groups and experts may be invited by the Body to give their views.

(vii) Secretariat

The General Secretariat of the Council shall provide the Body with secretariat services. To ensure proper coordination, close contacts will be established with the General Secretariat of the European Parliament, with the Commission and, to the extent necessary, with the secretariats of the national Parliaments.

B. WORKING METHODS OF THE BODY

(i) Preparation

The Chairperson of the Body shall, in close concertation with the Vice-Chairpersons, propose a work plan for the Body and perform other appropriate preparatory work.

(ii) Transparency of the proceedings

In principle, hearings held by the Body and documents submitted at such hearings should be public.

(iii) Working groups

The Body may establish *ad hoc* working groups, which shall be open to all members of the Body.

(iv) Drafting

On the basis of the work plan agreed by the Body, a Drafting Committee composed of the Chairperson, the Vice-Chairpersons and the representative of the Commission and assisted by the General Secretariat of the Council, shall elaborate a preliminary Draft Charter, taking account of drafting proposals submitted by any member of the Body.

Each of the three Vice-Chairpersons shall regularly consult with the respective component part of the Body from which he or she emanates.

(v) Elaboration of the Draft Charter by the Body

When the Chairperson, in close concertation with the Vice-Chairpersons, deems that the text of the draft Charter elaborated by the Body can eventually be subscribed to by all the parties, it shall be forwarded to the European Council through the normal preparatory procedure.

C. PRACTICAL ARRANGEMENTS

The Body shall hold its meetings in Brussels, alternately in the Council and the European Parliament buildings.

A complete language regime shall be applicable for sessions of the Body.

III.2. Meeting Records

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 13 January 2000 (25.01)
(OR. f,d,es,p,s)**CHARTE 4105/00****BODY 1****RECORD**

Subject : Record of the first meeting of the Body to draw up a draft Charter of Fundamental Rights of the European Union
(held in Brussels, 17 December 1999)

- (1) The body entrusted by the Cologne European Council, on 3 and 4 June 1999, with drawing up a draft Charter of fundamental rights of the European Union held its first meeting in Brussels on 17 December 1999.

It met in accordance with the rules on the composition, method of work and practical arrangements set out in annex to the Presidency conclusions following the Tampere European Council on 15 and 16 October 1999.

- (2) Mr NIKULA, representing the President of the European Council, opened the meeting and spoke about the mandate given by the Cologne European Council and the rules of procedure established by the Tampere European Council. He then drew particular attention to three aspects of the mandate given to the Body, namely:

- the Body was not an Intergovernmental Conference within the meaning of the TEU,
- the purpose of its work was not to alter the responsibilities of the Union,
- the objective was to draw up a draft list of fundamental rights as they applied to the activities of the Union and not to prepare a text applicable to the Member States when exercising their own powers.

(3) The first act of the Body was to elect its Chairman. **Mr Roman Herzog** was elected, by acclamation, to be Chairman throughout the proceedings.

Each of the three main groups of members introduced its own elected Vice-Chairman. These were:

- for the group of representatives of the Heads of State or Government of the Member States, the representative of the rotating Presidency of the Council of the Union, namely:
 - for Finland, Mr Paavo NIKULA,
 - for Portugal, Mr Pedro BACELAR DE VASCONCELOS
 - and for France, Mr Guy BRAIBANT.
- for the group of representatives of the European Parliament, Mr Inigo MENDES DE VIGO
- for the group of representatives of the national parliaments, Mr Gunnar JANSSON.

- (4) After these appointments, each of the following delivered a speech before the Body:
- Mr Roman HERZOG, newly elected Chairman of the Body,
 - Mr Inigo MENDES DE VIGO, Vice-Chairman of the Body,
 - Mr Gunnar JANSSON, Vice-Chairman of the Body,
 - Mr VITORINO, European Commissioner,
 - Mr Vassilios SKOURIS, representative of the Court of Justice (observer),
 - Mr Marc FISCHBACH, representative of the Council of Europe, ECHR (observer).

The full text of these speeches is given in the annexes to this record.

- (5) The last item on the agenda was the work programme, its presentation and its adoption by the Body.

This item gave rise to a debate primarily on the following issues:

- (a) the name of the body

There had been discontent about the current name, so some members, starting with Mr Roman HERZOG himself in his inaugural speech, had called for further reflection and possibly a change of name. Thus, in particular, Ms Johanna MAIJ WEGGEN and Mr Martin SCHULZ argued for the term "convent" or "convention" .

- (b) method of work

Three areas of concern emerged from the debate.

- Firstly, Mr José BARROS MOURA, supported by Mr Andrea MANZELLA and Mr Gabriel CISNEROS, thought it essential that the working methods should clearly reflect the political nature of the representation chosen by the European Council for this body, given the predominant place reserved in it for parliamentary representation. This could be achieved by the appointment of rapporteurs for the various subjects on the basis of their political affiliation.
- Secondly, Mr José BARROS MOURA, drawing conclusions from the fact that the Vice-Chairman from the group of national Parliaments had been elected for the entire proceedings of the Body, argued that the nature of the mandate conferred on the representatives of the national parliaments meant that their right to speak could not be satisfied by the statement of summary positions by the Vice-Chairman. Mr BARROS MOURA therefore asked for an assurance that he would be entitled to speak at any stage in the proceedings, regardless of the positions expressed by his group.
- Thirdly, Mr Gabriel CISNEROS emphasised that, without in any way wanting to bring issues into the debate which were clearly outside the remit of the Body, it would be wise for both the working parties and the plenary group to work on the assumption that the draft Charter under preparation would ultimately be legally binding and have full legal effect, and that it would constitute a bill of rights genuinely amenable to the courts. This position, in particular, echoed Mr José BARROS MOURA's question as to the purpose of the exercise and the correlation between working method and the desired result.

(c) the working parties

Three questions arose concerning the working parties, namely:

- the number: not everybody agreed on the proposal that there should be three.
- the titles: the division into political and civil rights (1), economic and social rights (2) and citizens' rights (3) was given a lukewarm reception, in particular by Mr Andrew DUFF, who would have preferred this proposal, which he found thus far unconvincing, to have been more methodical to ensure greater consistency between the work of the rapporteurs. On the same subject, Mr Andrea MANZELLA considered this triple structure acceptable provided only one was tackled at a time; thus, the working party on citizens' rights should commence work only once the other two working parties had finished, as this last working party constituted more than just a category of rights in that it was also a repository for some of the rights listed in the other two categories. At the end of the discussion Mr Roman HERZOG emphasised the need for work on the five central themes (liberty, equality, economic and social rights, procedure and the rights of citizens of the Union) to be shared between the three working parties envisaged.
- attendance at working parties: Mr Gabriel CISNEROS and Mr RODRIGUEZ-BEREJO placed great emphasis on this point. The main thrust of their argument was that none of the rights in question could be neatly compartmentalised into any one category. Therefore, as the demarcation between these rights was obviously blurred any member of a working party should be able to take part in the proceedings of any working party, whenever the subject matter for which he was responsible so required. Furthermore, as the way in which these rights would be formulated was bound to have repercussions on the constitutions of the Member States, it was essential to ensure that any knowledge or expertise relating to individual national law could be made available to the working parties at any time.

(d) independence of the Body

The majority of speakers were in favour of the Body's being autonomous, as this was a crucial aspect of its mandate.

(e) language arrangements

Mr Gabriel CISNEROS was in favour of full language cover both at plenary meetings and in the working parties.

(f) meeting dates

Apart from the issue of setting dates as soon as possible for meetings of the Body and the working parties, the question of which days of the week would be the most appropriate was raised, bearing in mind, as was pointed out by Mr François LONCLE, the commitments of the members, and especially those of the national parliamentarians who had to be with their peers on Tuesdays and Wednesdays, either for their regular appointments or in order to report back on the progress made in the Body.

(g) secretariat for the Body

Mr Martin SCHULZ asked for the secretariat to be provided jointly by the Secretariats of the Council, the Parliament and the Commission.

- (6) **In conclusion**, the Chairman, Mr Roman HERZOG, stated that a range of issues with which all the members were already familiar had been raised during the discussion, and that they were all interesting ideas which merited further attention, including the name of the Body, its independence, its working methods, membership of the working parties and the language arrangements.

As far as meeting dates were concerned the Chairman announced that a meeting of the Bureau was scheduled for 17 January 2000, at which all of these issues would be broached with a view to presenting detailed proposals at the next meeting of the Body.

The next meeting of the Body itself was due to be held **1 and 2 February 2000**. A record would be drawn up after every meeting.

ANNEX I**Speech by Mr Roman HERZOG**

Ladies and Gentlemen, colleagues, companions in destiny! First allow me to thank you for electing me as Chairman of this body, the exact name of which still has to be discussed. It is for me a great honour even to be allowed to be a member of this body which is to deal with the highest values that Europe has to dispense and to safeguard, and on which Europe itself is built. It is an even greater pleasure for me to chair this body, and it is a strange coincidence that 42 years ago I wrote my doctoral thesis on precisely this subject, namely the European Human Rights Convention, when its ink was scarcely dry, and now towards the end of my political and legal career I find myself once again in a position of responsibility where I can further the cause of fundamental rights and human rights at European level. We all share the same basic conviction, or else we would not have agreed to join the body, that it is time to give a clear signal to the outside world that the European Union must not be any less bounden to its citizens than are the Member States under their own constitutional laws. We know how much has already been done over the years to turn the concept of fundamental and human rights into reality within the European Union. Just think of the excellent work done by the European Court of Justice in Luxembourg in this context, which will time and again constitute the foundation for us to build on. Then there is the extensive case-law of the European Court of Human Rights in Strasbourg, which will also inspire and enlighten us. With all due respect for both of these Courts, I feel it is now time to set down on paper everything that you and we individually have had cause to reflect on and put into practice in our respective political spheres in the area of human rights in the European Union. But let me make it clear from the outset that we should also leave it at that. I attach little importance to setting large-scale objectives, over and above drafting a list of human rights, and proclaiming them from the rooftops.

We are not talking about a European constitution here, and the issue is not whether in setting itself fundamental rights the European Union stands to gain in terms of statehood, which, incidentally, I don't believe it would. We are not talking about the emergence of a federal state, supervision by the Constitutional Court, or anything like that. Those are all issues which will have to be clarified and decided on in their own time. Our job is, faithfully, carefully and accurately, to put together a list of fundamental rights which will enable us together, all the members, all the citizens of the European Union including those due to join us in the next few years, to bring about a more "people-centred" approach in the European Union respectful of the dignity of man. There are two points which Mr NIKULA has already addressed that I would like to underscore straight away. We are going to draft a text that will not be immediately binding as European law or Community law. Despite this, we should constantly keep the objective in mind that the Charter which we are drafting must one day, in the not too distant future, become legally binding. This calls for a little discipline on our part, as I feel we should not draft a list which will need to be curtailed or revised when the time comes to make it binding. We should therefore proceed as if we had to submit a legally binding list, and we should not forget that our mandate is in principle to draft a list addressed to the bodies of the European Union, by which they will be bound. This being so, it must not only be our duty but also in our joint interest to take account of national traditions, national legal traditions, national decision-making structures, not to mention the dignity of the national parliaments, as after all it will be a list of fundamental rights addressed to the bodies of the European Union. If we keep all this in our minds, it should be possible to work efficiently, hopefully without too many problems, and complete our work in time. I would very much like us not only to meet the deadline set by the European Council, and I assume we will, but also that we will be able to look back and say that we have worked together conscientiously, even in the final stages of the discussions, thoroughly and pragmatically.

Now you know my wishes, and thank you once again for the trust you have placed in me.
(Applause) Ladies and Gentlemen, I was not waiting for applause, but had to look for my agenda, and now I see that we have come to item 5: Speech by the Vice-President of the European Parliament.

ANNEX II**Speech by Mr Inigo MENDEZ DE VIGO**

Thank you, Chairman. On behalf of the delegation comprising 16 full members and 16 alternates designated by the European Parliament to form part of this Body it is an honour for me to be the first person to congratulate you on your election as Chairman. I would like to assure you that the applause which greeted Mr NIKULA's proposal (whom I would like to thank for having conducted today's discussions so well) is much more than a mere formality. It is a token of our esteem for your career in politics, culminating in the presidency of the Federal Republic of Germany, our acknowledgement of your great abilities as an expert in law, and above all our appreciation for your European-mindedness. In congratulating you, Chairman, I am sure that I speak on behalf of everybody here today. All of the parliamentary groups in our chamber are represented in the delegation from the European Parliament, and the delegation comprises two Vice-Presidents of the Parliament and the rapporteurs or rapporteurs from four parliamentary committees which are responsible for determining the position of the Parliament in the matter before us. The list of representatives of Heads of State and of the national Parliaments is also very encouraging; there are some very important names from political, legal and academic circles, and I would also like to say how pleased I am to see six former colleagues from the European Parliament whose worth is well renowned. The Commission, the guardian of the Treaties, will be represented by Commissioner VITORINO, whose career, despite his youth, is also exceptional. And lastly, I would also like to thank the Court of Justice of the European Union, a prime mover in the defence of fundamental rights in the Community area, for being here today, along with the Council of Europe, whose hard work over the last half century via the Rome Convention needs no comment as it is well-known and admired by all. In short, Chairman, we have some excellent oarsmen to steer the mandate bestowed upon us. This mandate has arrived at a particularly symbolic moment, at the start of a new millennium, but also at a particularly important political juncture. Just a few days ago the Helsinki European Council gave a new endorsement to enlargement of the European Union to the Central and Eastern European Countries, the "Kidnapped West", to use the happy phrase of

Milan KUNDERA, where there was a conspicuous lack of respect for or observance of fundamental rights. I therefore believe it is a wise move to couple enlargement to the Charter of Fundamental Rights. The European Union is facing some tough challenges in the near future. We are on the verge of institutional reform in the Union, we are about to bring the euro into circulation to replace national currencies, the European system of security and defence is taking shape and in Tampere decisive steps were taken towards making Justice and Home Affairs Community matters. The mandate we have been given to draw up a Charter of Fundamental Rights of the European Union meshes well with these challenges. Furthermore, the task we have been given is the best illustration of the fact that the European Union is not just a purely economic undertaking, within Ortega y Gasset's meaning of the term, but on the contrary, that it reflects an overall view of political life in which fundamental rights are the identifying feature of the civilisation of Europe's political culture at the close of this millennium. Thirdly, we are faced with the need for renewal; fundamental rights are not static or something which can be recorded in a snapshot, but on the contrary they need to be rethought and reformulated as society progresses and moves on. But in addition to this, the task at hand can have a highly positive impact on people. The other day a good friend of mine was telling me how appealing tasks such as the one we have been given were hard to come by as, he said, it was an opportunity to do something useful and meaningful for the good of citizens, and I would have to agree with him. The European Parliament members, whom I represent in accordance with the Cologne and Tampere conclusions, will be helping to define these fundamental rights of the European Union. Equally, we will be defending the binding nature of these rights on institutions and governments. In so doing we will achieve something that has been one of the European Parliament's constant ambitions ever since the Spinelli Project. I would like to make it quite clear that for us a mere declaration is not enough, and this being the case we would like to work as you yourself said, Chairman, "bearing in mind" the second hypothesis sketched out in Tampere. The Charter of Fundamental Rights must be binding and must be incorporated into the Treaty. To the extent that the Treaties constitute the Constitutional Charter of the European Union, as reaffirmed by the case-law of the Court of Justice, the Charter of Fundamental Rights should be a part of it. I personally believe that the fact that our work will finish at the same time as the Intergovernmental Conference offers a good opportunity for us to meet this objective. We MEPs will focus particular

attention on the relationship between the Charter and other national and international mechanisms for safeguarding fundamental rights. Let me be quite clear that our aim must be to provide added value for our citizens and somehow avoid creating confusion or duplication of court systems. In carrying out this task, Chairman, this Body must be free to organise its work and discussions with a view to reaching the consensus we need to be able to submit our work exclusively to the European Council, the European Parliament and, I hope, for ratification by the national parliaments. So, we have an exciting task ahead of us. Fifty years ago, yes, nearly fifty years ago, in his historic declaration of 9 May, Robert SCHUMAN spoke of how to make progress in the construction of Europe, namely through *de facto* solidarity. At today's inaugural meeting, Chairman, I pray for *de facto* solidarity, so that to the internal market or the euro we will soon be able to add the Charter of Fundamental Rights of the European Union. Thank you for your attention.

ANNEX III**Speech by Mr Gunnar JANSSON**

Thank you Mr Chairman. Ladies and Gentlemen, colleagues! I would also like to begin by congratulating our Chairman on his unanimous election. The task is a demanding one, but I find it difficult to imagine anyone more qualified for it than Roman HERZOG. Thank you! I would also, as a parliamentarian from Finland, holder of the outgoing EU Presidency, like to thank our ad hoc Chairman Paavo NIKULA, the Finnish Attorney-General, for the work he has done; it is a good starting-point for the future. Today, this morning, a meeting was held involving 27 members of national Parliaments of the EU Member States. As we know, the Tampere conclusions stipulate that this Organ, if I may call it that in Swedish, should have 30 members from the national Parliaments. Twenty-seven were able to come here to Brussels today, and I must say that that is a significant achievement. We come from 15 countries, know one another fleetingly – if at all – and even so we have been able, in a constructive and open atmosphere, to discuss how we are trying to approach this task, and how we from the national Parliaments hope to contribute to a good end result in the short time we have available. My own impressions can only be strengthened by the fact that my colleagues have chosen me as a Vice-Chairman of this Body, and therefore also as a sort of leader for those of us from the national Parliaments. I repeat: we are ready for open constructive cooperation, we will achieve this, we have many different views, we shall see how our colleagues in the European Parliament manage, of course we shall take account of the wishes of political groups, and of national wishes expressed both in our own countries and by countries in our political groups. I must also say that we shall of course abide by the Tampere conclusions and carry out our work in an open and businesslike manner. Mr Chairman, colleagues, I would just like to finish by saying that ten years ago the Berlin Wall fell. In that same year my country, Finland, became a member of the Council of Europe, whose task is above all to do what we are doing here. If anyone had told us ten years ago that we would be sitting here today, we would have found it hard to believe. Now we are here. That in itself is a significant achievement. The EU is to be enlarged. We must do as the Wise Men said in their report last year; we must have no dividing lines in Europe. It is our task to achieve this. And I think that in a body such as this we have every chance of success.

Great challenges lie before us, as my colleague from the European Parliament has already said: we are not a part of the Intergovernmental Conference, but of course we are going to work in close cooperation with its activities. And we shall watch other developments in the EU carefully. Finally, Mr Chairman, we represent our national parliaments, and consequently our European citizens in our Member States. The EU now has 15 members, and following the decision taken in Helsinki a week ago, we know that the Union is going to grow. At the same time, human rights and fundamental freedoms will be protected and improved. Thank you!

ANNEX IV**Speech by Mr António VITORINO**

Thank you Mr Chairman, and on behalf of the Commission and as the Commission's sole representative, I wish to join in the congratulations upon your election and give greetings to all members of this body. It is a great honour for me to represent the Commission on the body set up to elaborate a draft Charter of Fundamental Rights of the European Union. First, because this is the drafting of a text undoubtedly intended to mark a new stage in the construction of Europe which will contribute to the essential political and moral legitimacy of the European Union in the eyes of Europe's citizens. Second, because the actual formula devised by the Heads of State and Government for this drafting body's composition is completely new and innovatory. Indeed, never before was a Community act drafted by a gathering of this composition: Community and national sides, as well as their legislative and executive bodies, are together for the first time .

The Commission can only welcome this innovatory configuration where representatives who have been democratically elected by the citizens both nationally and at Union level form a majority. This body's composition is certainly no coincidence, but the political will of the Heads of State and Government as voiced in Cologne and restated in Tampere. I am convinced that this wise combination of the Community and national sides and, above all, the parliamentary predominance will help bolster the draft Charter's legitimacy in the eyes of a public which is often critical of the complex decision-making machinery at European level. The Commission welcomes the transparency that is to mark this body's work. In elaborating an act of such practical and symbolic relevance there would be no room for secrecy and confidentiality: the broadcasting of debates and, above all, the availability of all working documents on this body's own Internet website are praiseworthy examples that should be followed on other occasions. The work ahead of us – there is no point in denying it – is motivating but complex, not to say cyclopean. How to put together an

ambitious text of great political import that both yields genuine added value over the extensive legislation already existing in this area and is suitable for future inclusion in the Treaties? Obviously, as made clear in Cologne, the final decision on whether the Charter must be integrated into the Treaties and how this should be done is a matter for the Heads of States or Government alone. This body must, therefore, come up with a text which the Commission believes should meet the necessary format and content requirements for integration into the Treaties. For the Commission, the aim should be to provide the Union with a Charter of Fundamental Rights founded on judiciary control. I believe that this body should begin by addressing some core points for which it has to find answers. I would highlight two preliminary issues to be resolved, namely the type of rights to be included and the relationship between the future Union Charter and the Council of Europe's European Convention on Human Rights. Regarding the type of rights to be included in the Charter, thoughts should first focus on the brief adopted by the Cologne European Council. There it is stated that the Charter should contain the fundamental rights and freedoms as well as basic procedural rights guaranteed by the European Convention on Human Rights and derived from the constitutional traditions common to the Member States, as general principles of Community law. The Heads of State or Government further want the Charter to include the rights reserved for the Union's citizens and account taken of economic and social rights as contained in the European Social Charter and the Community Charter of the Fundamental Social Rights of Workers. Restating the point I have made about not losing sight of the ultimate aim, namely the Charter's integration into the Treaties, I believe that this body should concentrate on those fundamental rights deriving directly from the European Union's very existence. Whatever the Charter's nature, it will neither repeal nor render void any of the numerous national or international instruments concerning fundamental rights. Its ambition should be to explain clearly the fundamental rights already deriving from the Treaties and the whole Community law system including, obviously, the rich and innovatory case-law of the Court of Justice of the European Communities built up over the last few decades.

In line with the wishes of the Heads of State or Government, if we follow this approach the Charter will contain civil and political rights, social rights and also rights deriving from European citizenship. However, these will be included only if – and insofar as – they are rights conferred or protected by the Union. Thus, the Union Charter of Fundamental Rights will not seek to replace national constitutions or instruments of international law, but confine itself to supplementing them from the viewpoint of the Union's legal system. To me, that approach has the merit of enabling us to combine political ambition with the necessary dose of pragmatism. The second issue, which has, in fact, already caused much ink to be spilt and is now back in the limelight with the elaboration of the Charter, concerns the possibility of the Union acceding to the European Convention on Human Rights. Actually, that issue can be rephrased as two separate questions: who needs a European Charter of Fundamental Rights when there already exists a Convention with its own protection arrangements and, whether the Charter is adopted or not, should the Union not accede to the European Convention on Human Rights? Today the Commission's replies to these questions are the same as in 1979 or in 1990: the idea of the Union's accession to the Convention has always been backed by it together, in fact, with the European Parliament, which has come out in favour of accession in various resolutions. The idea was dropped following a Court of Justice ruling that the Commission had no competence regarding that accession. The issue has now arisen afresh, however, and we cannot avoid giving it some attention in our discussions. In the Commission's opinion the adoption of a Charter of Fundamental Rights will not block, or render redundant, accession to the Convention, nor will that accession block, or render redundant, the adoption of a Charter of Fundamental Rights by the Union. We clearly cannot prevent this issue surfacing during our discussions, but I feel no conclusive answer has to be found for it in this body – providing we agree with the Commission's analysis regarding the compatibility of possible accession to the Convention and adoption of a fundamental rights catalogue specific to the Union. Revision of the Treaties and their adaptation to the forthcoming enlargement are taking place simultaneously. Any treaty change to permit accession to the Convention will need to be discussed in the context of the Intergovernmental Conference. But, since the two issues are separate, the Conference's discussions and decisions need not interfere with this body's work. In conclusion, I should like to say a few things about procedural matters. Without repeating what I have said about the aim of

the work to be done by this body I would stress that, if we are to bring our mission to a successful conclusion we must first of all – as the Presidency has rightly suggested – opt for a traditional approach to this body's functioning based on global consensus. That method will require both a greater input from the Presidency and some discipline from us all, but I am sure it will be the most productive one. By choosing a working method based on consensus, approaching problems pragmatically and concentrating on areas and rights connected in some way with the European Union, we shall be able to bring our mission to a successful conclusion and place before the Heads of State and Government an ambitious text of high added value but based on reality and compatible with the ultimate aim of inclusion in the Treaty. One thing we may be sure of is that much is being expected of our work in many different sectors of European society. At our level we must do everything to avoid disappointing those expectations; as Chancellor SCHRÖDER said recently, the Charter of Fundamental Rights of the Union provides precious guidance for giving Europe an institutional framework. With this in mind I wish all of you, all of us, good luck. Thank you!

ANNEX V**Speech by Mr Vassilios SKOURIS**

Thank you, Chairman. Allow me too to congratulate you most sincerely on behalf of the Court of Justice on your election as Chairman of this important body. I will continue in French because it is the working language of the Court of Justice of the European Communities. Chairman, Ladies and Gentlemen, it is with great interest that the Court of Justice of the European Communities is present today and is able to be represented by its observers at this conference for the drawing up of a charter of fundamental rights, which is an ambitious initiative. The Court would like to assure you that it appreciates the significance of this initiative which reflects the growing importance of protecting fundamental rights in the European Union. The idea of effective protection of fundamental rights has always been a matter of major concern to the Court since, when it emerged in the early 1970's that Community law and decision-making activities could impinge upon the fundamental rights of citizens, the Court managed to uphold this idea by finding a legal basis for the protection of human rights outside the texts of primary or secondary law. Thus, initially the Court had recourse to constitutional traditions that were common to the Member States, not as a formal or dogmatic source for fundamental rights but as a source of inspiration, and thereafter it combined this solution with that of fundamental rights recognised by the constitutions and also by referring to international instruments concerning the protection of human rights which the Member States had opted for or acceded to, in particular the European Convention on Human Rights. In a judgement of 13 December 1979 the Court also referred to the joint declaration of the Assembly of the Council and of the Commission of 5 April 1977 which, after recalling the jurisprudence of the Court of Justice, refers both to the rights guaranteed by the constitutions of the Member States and to the European Convention on Human Rights. In recent judgements the Court also refers to case-law of the European Court of Human Rights, indicating that account is taken of all aspects of fundamental rights.

It should be borne in mind, for instance, that the Court has sanctioned the right of ownership, the right to the protection of privacy and human dignity, the right of the defence to have access to relevant information, professional secrecy in relations between a lawyer and his client, the principle of "nullo crimen sine lege" and the right to a fair trial. In this context the Court has noted that its established case-law has been reaffirmed by the Community constitutional legislator firstly in the preamble to the Single Act, thereafter in Article F(2) of the Treaty on European Union, subsequently amended to become Article 6(2) of the Treaty on European Union currently in force. It is therefore against this backdrop that, as it had previously highlighted in its report of May 1995 on certain aspects of the application of the Treaty on European Union, in the event of an institutional act of the Communities infringing fundamental rights, it is already within the jurisdiction of the Court to verify observance of fundamental rights. It verifies not only acts of the legislative and executive powers of the Communities but also regulations of the Member States where the latter act within the scope of Community law. Thus, once the Charter of Fundamental Rights has been drawn up the Court of Justice of the European Communities will not be taking on a new role in monitoring observance of these rights, as it has always affirmed that fundamental rights are an integral part of the law which the Court is there to enforce. Thank you for your attention.

ANNEX VI

**The Council of Europe's contribution
to a European Union Charter
of Fundamental Rights
by
Mr Marc FISCHBACH
Judge at the European Court of Human Rights
and
Mr Hans Christian KRÜGER
Deputy Secretary-General

(Brussels, 17 December 1999)**

Ladies and Gentlemen,

It is a great honour and privilege for me to present to you this contribution of the Council of Europe. And I would like to add how pleased we are to have been invited to participate as observers in the proceedings of this distinguished forum.

The text of my address was prepared jointly by the Deputy Secretary General and myself. It therefore constitutes the position of the Council of Europe.

We welcome the decision to reinforce human rights protection within the European Union through a charter of fundamental rights. This is fully in line with developments in the Community institutions which, through the case-law of the Court of Justice of the European Communities and the successive amendments to the Treaties referring to the European Convention on Human Rights, have attached increasing importance to respect for fundamental rights in the Community legal system. As that system evolves towards ever greater integration, it is only logical that the Community authorities should wish to provide themselves with a catalogue of fundamental rights.

I can assure you that we will give you our full support and any necessary assistance to ensure that this process leads to genuine progress in the protection of fundamental rights throughout Europe.

In this brief statement I should like to deal with three aspects: first, the Council of Europe's achievements in the field of fundamental rights protection; secondly, the criteria to be taken into account in the drafting of a charter of fundamental rights; and, finally, the prospects for the protection of fundamental rights in Europe.

1. THE COUNCIL OF EUROPE'S ACHIEVEMENTS IN THE FIELD OF FUNDAMENTAL RIGHTS PROTECTION

Next year marks the fiftieth anniversary of the European Convention on Human Rights. During those fifty years, its Contracting Parties – including all Member States of the European Union – have created a unique and efficient system for the protection of fundamental rights.

When the Convention for the Protection of Human rights and Fundamental Freedoms was signed in 1950, its authors' avowed intention was to provide Europe with a system offering a collective safeguard against violations of the fundamental rights and dignity of individuals.

In ratifying the Convention, the Member States agreed not only to adapt their domestic law and practices to the rights enshrined therein but also to submit to international judicial supervision. Thanks to the Convention, everyone in Europe is entitled to refer alleged violations of the Convention to the Court in Strasbourg, which has set up what has come to be regarded as the most effective type of international machinery for the protection of human rights. The Court's existence has proved to be an important safeguard for Europe's citizens by virtue of the number of its judgments as well as the range of subjects covered and, above all, the many cases in which Governments have amended their legislation or practice in compliance with the court's findings. Being an institution outside domestic legal systems, the Strasbourg Court plays the role of an objective party, and this lends additional credibility to national systems for the protection of fundamental rights.

Improvements in the protection provided by judicial procedures, closer scrutiny of pre-trial detention and human rights violations by the police and armed forces, effective guarantees of a fair trial, enhanced protection from interference with the freedom of the press, recognition of the rights of illegitimate children, homosexuals and other minority groups – these are just some of the tangible results of the Court's activity.

In this connection, it should be stressed that the Convention, far from being static, is a living instrument that is constantly adapted to economic, political and social changes in our society.

Furthermore, some improvements in the Court's procedure have been made and new rights added by several protocols to the convention. Protocol No 11 recently amended the Convention to make it more effective and enable a larger caseload to be handled. It entered into force on 1 November 1998 and made the European Court of Human Rights a permanent institution. Next year, Protocol No 12 to the Convention, placing a general ban on discrimination, is expected to be adopted.

The European Convention has thus been transformed into a bill of rights for the entire continent or, in the words of the court, "a constitutional instrument of European public order". With 41 contracting States, its scope now extends from the Atlantic to the Pacific, covering an area inhabited by some 800 million people. This is an outstanding achievement of the process of European integration. Not only does it exemplify the political will clearly expressed by all Member States to create a Europe without dividing lines; it also encapsulates the universality of human rights, an idea which reflects the European conception of the value of each individual and which the same Europe steadfastly advocates in the international arena, especially in the United Nations, vis-à-vis countries that have a different approach to human rights.

In addition to the European Convention on Human Rights, the Council of Europe has drawn up several other legally binding instruments, including the European Social Charter.

2. CRITERIA FOR DRAWING UP A CHARTER OF FUNDAMENTAL RIGHTS FOR THE EUROPEAN UNION

Let me now turn to the question of the criteria that should be taken into account in the drawing up of a Charter of Fundamental Rights for the European Union.

As far as we know, the legal form of the future Charter of Fundamental Rights has not yet been determined. The choice of form will have a direct bearing on the wording of the rights and freedoms to be included in the charter. Whatever wording is adopted, it should be borne in mind that fundamental rights are by definition rights vested in each individual. This implies that criteria relating to an individual's origin or geographical, financial or cultural circumstances should be left out of consideration.

As far as civil and political rights are concerned, the Charter should build on the European Convention on Human Rights. The rights and freedoms contained in the Convention and its additional protocols are worded in such a way that they could be incorporated lock, stock and barrel into Community law. They constitute a body of rules which have been tested, developed and applied by the European Court and Commission over a period of more than forty years and to which the Court of Justice of the European Communities refers with increasing frequency.

As to whether the charter should include social and economic rights, we would first of all point out that, as the European Court of Human Rights itself has stated, there can be "no watertight division" between the various categories of rights. It is therefore desirable, in the interests of human rights protection, that the Charter be more than a catalogue of traditional civil and political rights. Progress within the European Union in this area would be a driving force for improvement of the European protection of human rights in general.

3. PROSPECTS FOR THE PROTECTION OF FUNDAMENTAL RIGHTS IN A NEW EUROPE

So far, the international protection of fundamental rights in Europe has been mainly developed by the European Court of Human Rights, whose case-law has fortunately been followed by the Court of Justice of the European Communities.

While the Luxembourg Court is mainly concerned with the freedoms connected with the objectives of the Treaties, the Strasbourg Court remains the sole international authority where individuals can directly challenge judicial decisions, administrative acts, statutes and even constitutional provisions. The European Union's Member States are also subject to its jurisdiction with regard to the implementation of Community law under domestic law.

However positive the results to date may be, there remains a risk of discrepancies arising between the two European Courts' bodies of case-law. This could prove highly detrimental to the legal certainty to which all European citizens are entitled.

The drafting of a charter of fundamental rights for the European Union provides a unique opportunity to construct a coherent system of human rights protection in Europe. Rather than search for new procedures, it would be preferable to devise an efficient system on the basis of the existing elements that have already proved their worth. Experience shows that a proliferation of codes with competing enforcement mechanisms tends to impair the effectiveness of all existing procedures. Furthermore, if the Charter were to be intended to set up an alternative European system for protecting fundamental rights, that might create a new divide in Europe – between the Member States of the European Union and the other European countries. Moreover, such an approach would lend weight to the idea that the substance of fundamental rights can be adjusted according to, for example, the economic situation of the countries expected to uphold them.

Accession to the European Convention on Human Rights remains a very effective manner of ensuring the necessary consistency between the convention and Community law. It would strengthen the protection of Europe's citizens.

Accession would obviate the risk of divergent interpretations being adopted in Strasbourg and Luxembourg. Of course, this is not the only way to integrate Community law and the Convention so as to form a coherent and efficient system. We could undoubtedly think of other options that would merit detailed consideration.

I am fully aware that accession to the Convention and all similar options would presuppose amendments both to the founding treaties and to the European Convention on Human Rights. But the same equally applies to any charter of fundamental rights that is more than a solemn declaration of principles. This opportunity should be seized to create a coherent and effective system of fundamental rights protection throughout our continent, which needs strong mechanisms for safeguarding fundamental rights both inside the European Union and beyond its frontiers.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 18 January 2000 (24.01)**CHARTE 4107/00****BODY 2****Record**

Subject : First meeting of the Praesidium, Brussels, 17 January 2000
– Outcome of proceedings

1. At the abovementioned meeting, the Praesidium, under the chairmanship of Mr Roman Herzog, discussed how the Body's proceedings should be organised and conducted in preparation for the forthcoming plenary meeting on 1 and 2 February 2000.

Members are invited to study the proposals set out below as they stood following the Praesidium's discussions.

These proposals will be discussed at the meeting on 1 and 2 February 2000 to allow work to start rapidly.

2. **Name of the body responsible for preparing the draft Charter**

The Praesidium suggested that the plenary endorse the name «**CONVENTION**» .

This suggestion was the result of the wish of a large number to find a name which was more in keeping with the importance and nature of the mandate entrusted to this body.

3. **Participation of alternates in plenary meetings**

The Praesidium suggested that alternates be allowed to be present in the meeting room at meetings of the plenary, whatever form it might take (see point 5 below concerning working groups).

However, alternates would not have the right to intervene during the debate, unless the full member was unable to attend.

This provision reflects the desire to ensure that the discussions are open to as wide an audience as possible, without compromising their effectiveness.

4. **Timetable of work – formal plenary meetings**

The Praesidium proposed that plenary meetings of members be held on the following dates:

- second meeting : 1 and 2 February 2000,
- third meeting : 20 and 21 March 2000
- fourth meeting : 5 and 6 June 2000,
- fifth meeting : 11 and 12 September 2000,
- sixth meeting : 30 and 31 October 2000.

The date for the sixth meeting in fact meets the need to ensure that the work is completed on time, i.e.:

- firstly, retaining the possibility of a further meeting before mid-November, while allowing the General Affairs Council time to work, in accordance with the usual procedure for the preparation of European Councils as indicated by the Tampere European Council;
- secondly, the work must be completed within a timescale enabling interaction, if necessary, with the proceedings of the Intergovernmental Conference on the revision of the Treaties which would be taking place in parallel and the proceedings of which should also be completed in time for the European Council meeting in the second half of 2000.

5. **Organisation of working parties**

The Praesidium suggested to members that all of the work to be carried out be entrusted to the plenary, which presupposes fixing a second timetable of meetings and a highly structured work programme. In this connection, the plenary would meet as a working party with each member being free to take part in these meetings depending on centres of interest and/or own specific competence. There would also be full language coverage for all meetings, whether normal plenary meetings or meetings of the body as working groups.

This suggestion, which in practice means that no provision would be made for working parties in the strict sense was intended to allay various concerns expressed by members at the first meeting on 17 December 1999 or during bilateral contacts with the Presidency, in particular:

- the fact that no definitive distinction can be made between the main types of rights identified for the classification of fundamental rights;
- the fact, following on from the above, that the same right could be discussed from different aspects in different working parties simultaneously, which would lead to coordination problems;

- the need to ensure that working parties were open to as many as possible could lead to the formation of working parties as large as the plenary, without obviating the obligation to hold a further debate in plenary.

6. **The hearings**

The Praesidium suggested to members:

- that the hearing of applicant countries be conducted in as solemn a manner as possible and at the most appropriate point in the proceedings. Members should consider two options:
 - a hearing before the plenary;
 - a hearing before the Praesidium which would report to the plenary.
- for civil society, to proceed in two stages, i.e.:
 - to recommend that hearings be organised at national level of all bodies, NGOs, associations or competent authorities at national level, to gather information and to inform the plenary in summary form;
 - to organise, at a date to be agreed, a hearing before the plenary of all the federations operating in this sector at European level, and of all other bodies whatever their territorial coverage, provided it would appear to be useful to the plenary to hear them.

7. **Other business**

The Praesidium has also finalised the draft agenda for the second meeting scheduled for 1 and 2 February. It will be sent to members at the same time as this document and will include the hearing on 2 February 2000 of the Economic and Social Committee, the Committee of the Regions and the Ombudsman.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

**Brussels, 21 February 2000 (25.02)
(OR. fr)****CHARTE 4134/00****CONVENT 6****RECORD**

Subject: Record of the second meeting of the Convention to draw up a draft Charter of Fundamental Rights of the European Union (held in Brussels, 1 and 2 February 2000)

1. The body entrusted by the Cologne European Council with drawing up a draft Charter of Fundamental Rights of the European Union held its second meeting on 1 and 2 February 2000 in Brussels; the meeting was held at the European Parliament, in accordance with the rule on alternating venues decided on by the Tampere European Council (point C in the Annex to the Presidency conclusions).
2. The agenda set out in SN 1169/00 was adopted.
3. The question of the name of the body (item 2 on the agenda) was settled, with the approval by a large majority of the term "Convention".

4. A vote was held on the question of the participation of alternate members in meetings (item 3 on the agenda), which decided (by 33 votes in favour, 16 against and 3 abstentions) that:
 - alternate members would always have access to the meeting room,
 - alternate members would not have the right to vote at any stage, unless they were replacing a full member,
 - when the Convention met in plenary session, alternate members would not have the right to speak,
 - when the Convention met as a working group, alternate members would have the right to speak, even if the full member was also present.
5. The timetable set out in the Annex to this record was approved (item 4 on the agenda), for plenary sessions and meetings as a working group.
6. The central question with regard to working methods and the functioning of the Convention (item 5 on the agenda) related to organisation into working groups. Given the difficulties which would arise if work were divided into different categories of rights, the coordination which would be required and the discussions which would result, and given the problem of ensuring the greatest possible openness of proceedings to all members of the Convention, it was decided that the Convention in its entirety should meet either in plenary session or as a working group, according to a timetable (see above) which would make it possible to identify the form in which each meeting was being held.
7. Another point relating to the working methods of the Convention was addressed at this juncture, concerning the proposed list of fundamental rights which would serve as a basis for discussion. Many participants made comments on this list, which is set out in CHARTE 4112/2/00 REV 2 BODY 4, with regard both to its presentation and its content.

During discussions, it emerged that some rights would have to be added such as a general obligation better described as a right to equality, the rights of the child, the rights of churches, the rights of minorities (particularly ethnic minorities), the right to housing, and also rights connected with communications and biotechnology. The question of the right to a healthy environment, and whether this was a right or an obligation, echoed a question posed by one speaker as to whether the list of rights should not be supplemented by a list of duties. Two other important questions were asked at this juncture, on the distinction between individual and collective rights, and on respect for subsidiarity in the drafting of rights, particularly in connection with the need to guarantee that infranational political and territorial competence was respected.

8. At the beginning of the meeting on 2 February the Convention heard presentations by Ms Anne-Marie SIGMUND for the Economic and Social Committee, Mr Jozef CHABERT for the Committee of the Regions, and by the European Ombudsman Mr SODERMANN. Following these presentations, there was a brief debate with members of the Convention. Replying to a request by Ms SIGMUND, on behalf of the Economic and Social Committee, for observer status, the Chairman of the Convention Mr Roman HERZOG replied that the bodies whose views were to be heard would be able to participate in proceedings as far as possible. Also, returning to a matter raised during the debate, he underlined that he was concerned to ensure the representativeness of speakers on behalf of plenary assemblies comprising the bodies from which they came.
9. The general discussion on horizontal questions, as indicated above, became intermingled with that on the list of rights. Based on a meeting document, CHARTE 4111/00 BODY 3, this discussion allowed members of the Convention to address a series of questions contingent on the drawing up of the draft Charter. During the discussion, participants were able to express their points of view and to enlarge upon problem areas which had already been sketched out

during the first plenary meeting held on 17 December 1999. Of all the matters addressed in that document, some were of particular interest to members of the Convention, namely the nature of the text to be drawn up – political declaration or legal text – the scope and enforceability of the draft Charter, holders of guaranteed rights, and the relationship with existing international instruments for the protection of human rights and fundamental rights. Without it being possible to draw any conclusions at this stage, the idea of presenting the charter in two parts was widely discussed, although the danger of dissipating efforts by producing two documents of a different value and/or nature was also underlined. A more clearly procedural question was raised, concerning the rules for deciding when discussion on any particular right could be regarded as closed, along with the idea of a minimum quorum for discussions to be usefully opened. The Chairman Mr Roman HERZOG recognised the importance of the point relating to the approval of the draft by the Convention, and believed that this should be considered while bearing in mind the method of work laid down by the European Council; as for a quorum, he promised to look into the matter.

10. In conclusion, the Chairman noted that the general discussion had allowed everyone to state their positions in more depth, and that this form of discussion should be maintained throughout the further proceedings, as no conclusion was possible at this stage. He thanked all the participants and noted that the Convention would meet as a working group on 24 February 2000 to begin examination of a first set of rights.



**CONSEIL DE
L'UNION EUROPEENNE**

Bruxelles, le 1er mars 2000

6036/00

LIMITE

CRS/CRP 5

COMPTE RENDU SOMMAIRE

**Objet : 1862ème réunion du COMITE DES REPRESENTANTS PERMANENTS
tenue à Bruxelles le 9 février 2000**

Coreper, 2ème partie**II****39. Ordre du jour provisoire de la session du Conseil (ECOFIN) du 28 février 2000**

Le Comité marque son accord sur l'ordre du jour provisoire de la session du Conseil visée en objet.

40. Préparation du Conseil Affaires Générales des 14/15 février 2000:**- Préparation du Conseil européen extraordinaire de Lisbonne (23-24 mars 2000)**

Le Président rappelle les objectifs poursuivis et les principales mesures concrètes qui doivent permettre de les atteindre, tels qu'ils apparaissent dans la note de base de la Présidence portugaise.

Il insiste sur le rôle de coordination que le Conseil Affaires générales doit jouer dans la préparation du Conseil européen extraordinaire.

- Renforcement de la Politique Européenne de Sécurité et Défense

docs 5779/00 PESC 35 COPOL 1 COSEC 5
5780/00 PESC 36 COPOL 2 COSEC 6
5781/00 PESC 37 COPOL 3 COSEC 7

Le Comité examine les trois projets de décisions prévoyant la création des organes et structures intérimaires et convient de soumettre au Conseil les questions restées en suspens, à savoir l'opportunité d'insérer une déclaration au procès-verbal rappelant la possibilité de déroger à la règle de la présidence exercée à tour de rôle, et le lien fonctionnel approprié entre les experts militaires et l'organe militaire durant la période intérimaire. Les résultats des travaux sur ce point figurent dans le document 6101/00. Le Conseil est appelé à décider sur ces questions et à adopter les trois décisions.

- Charte des Droits Fondamentaux

Le Comité prend note des informations fournies par la Présidence et relatives à la progression des travaux au sein de la Convention chargée d'élaborer un projet de charte des droits fondamentaux de l'Union européenne. Ces informations figurent au document SN 1524/00.

Suite à la demande d'une délégation, le Comité marque son accord sur la suggestion de la Présidence qui s'engage à l'informer, en la matière, sur une base régulière.



**COUNCIL OF
THE EUROPEAN UNION**

**Brussels, 7 February 2000 (11.02)
(OR. f)**

SN 1524/00

PRESIDENCY NOTE

of : 8 February 2000
to : Coreper (Part 2) on 9 February 2000
Subject : Charter of Fundamental Rights of the European Union
Progress report

1. The body responsible for drawing up a draft Charter of Fundamental Rights of the European Union began its work in December 1999, in accordance with the conclusions of the Cologne European Council (3 and 4 June 1999) and with the rules laid down by the Tampere European Council (15 and 16 October 1999) relating to its composition, method of work and certain practical arrangements. As decided at its second plenary meeting on 1 and 2 February 2000, this body now calls itself the Convention. This name will be used in the remainder of this note.
2. The Convention has already held two plenary meetings, on 17 December 1999 and 1 and 2 February 2000. At its first meeting, the members elected Mr Roman Herzog by acclamation as Chairman of the Convention for the entire duration of its work. They also confirmed the election of Mr Inigo Mendes de Vigo and Mr Gunnar Jansson as the Vice-Chairmen respectively of the group of representatives of the European Parliament and of the group of representatives of the national parliaments. The Vice-Chairmanship to be held by one of the representatives of the Heads of State or Government will be held successively by Mr Pedro Bacelar de Vasconcellos and by Mr Guy Braibant.

3. At its meeting on 1 and 2 February 2000, the members of the Convention completed the organisation of their work. Besides the name-changes, they agreed on the following matters:
- organisation into a working group, by establishing that the Convention itself would operate as a working group. This decision stemmed from an awareness of the difficulties which dividing the fundamental rights to be examined into different categories would have caused, relating to the division itself and to the coordination of work if it were to be split between various working groups. Furthermore, the need to ensure the greatest possible transparency of the proceedings, in accordance with the wishes of the European Council, led the Chairman of the Convention to present this solution as the only one possible;
 - the role of alternates, who could have access to the meeting room without the right to speak when the Convention met in plenary session, unless the member himself was unable to attend, and with the right to speak when the Convention met as a working group. In both cases, alternates would have the right to vote only if the full members were unable to attend;
 - the timetable of plenary meetings: 20 and 21 March 2000, 5 and 6 June 2000, 11 and 12 September 2000 and 18 and 19 October 2000;
 - the timetable of meetings as a working group ranged from 24 February 2000 to 26 September 2000, with the possibility of an additional meeting on 9 and 10 October 2000.
4. The question of hearings was examined, and in the case of the bodies which must be heard by the Convention according to the conclusions of the Cologne European Council, a first hearing of the Economic and Social Committee, the Committee of the Regions and the European Ombudsman marked the beginning of the Convention's work on 2 February. These contributions, which were followed by a debate, highlighted the usefulness of maintaining permanent contact with them on the substance of discussions to come. It was therefore agreed that they could be allowed to attend all future meetings of the Convention as observers.

5. A number of options are under discussion as to how to consult civil society and the applicant countries.
6. The Convention began discussing the "horizontal aspects" involved in drawing up such a draft Charter from the point of view of substance, as early as 17 December 1999. With the help of a document setting out such issues (CHARTE 4111/00 BODY 3) and a draft list of fundamental rights (CHARTE 4112/00 REV 2 BODY 4), fruitful discussions continued at the second meeting of the Convention on 1 and 2 February 2000. The Chairman did not think it useful to reach conclusions on a point which would form a constant background to the discussions and to the drafting of the Charter in the months to come. However, Mr Roman Herzog drew attention to some interesting initiatives and procedural suggestions in the discussions, which might expand the range of possible ways of submitting the outcome of the discussions to the European Council when the time came. Within this framework, the question of what form the draft Charter should take – a political declaration or a legal text – the scope of the charter (the Institutions of the Union and not the activities of the Member States outside the scope of Community law), holders of guaranteed rights, relationship with relevant international instruments, the question of the limitation of guaranteed rights, and judicial control are all issues which have to be resolved in accordance with detailed arrangements peculiar to each of them.

7. The next meeting of the Convention is scheduled for 24 February 2000 as a working party. An initial set of preliminary-draft Articles concerning civil and political rights, together with preliminary-draft general clauses (scope, limitation of rights and level of protection), is being drawn up in preparation for an initial discussion at the aforementioned meeting. The setting up of a Praesidium consisting of the Chairman, the three Vice-Chairmen, the future French Vice-Chairman of the Group of Representatives of the Heads of State or Government, the representative of the European Commission, the secretariat of the Convention – for which the General Secretariat of the Council is responsible – and the task forces of the various Institutions represented at the Convention has enabled talks to take place prior to the meetings, which have proved very useful for bringing together the various components of the Convention in the best possible way. Chairman Herzog's choice of a pragmatic approach to problems has already proved an effective one and has enabled the Convention so far to keep to the timetable it has set itself.

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**Brussels, 1 March 2000 (10.03)
(OR. fr)****CHARTE 4147/00****CONVENT 11****RECORD**

Subject : Record of the first Working Group meeting of the Convention to draw up a draft Charter of Fundamental Rights of the European Union
(held in Brussels, 24 and 25 February 2000)

1. The first Working Group meeting of the Convention was held in Brussels on 24 and 25 February 2000 under the chairmanship of Mr Roman HERZOG.
2. At the request of the Deputy Chairman, Mr Mendes de Vigo, a minute's silence was observed at the start of the meeting in memory of the victims of the recent assassinations in Spain.
3. The sessions on both Thursday and Friday were devoted to an examination of the draft articles in CHARTE 4123/1/00 REV 1 CONVENT 5. That document deals with civil and political rights.

The document consisted of two parts:

- Part I describes the rights which featured at the head of the list submitted to the Convention at its previous meeting (see CHARTE 4112/2/00 REV 2 BODY 4),
- Part II related to horizontal aspects.

Each right was the subject of a commentary, which indicated sources and highlighted certain editorial questions.

4. Two questions of a procedural nature were dealt with in turn during the discussion:

- the question of voting: Mr Roman HERZOG said that he did not intend to hold a numerical vote since it was unrealistic to expect unanimity within the Convention. He therefore thought it necessary to work on the basis of a consensus,
- the question of the method to be used in drawing up the draft texts submitted to the Convention. Following a wide-ranging discussion which formed the basis for all remarks, Mr Roman HERZOG decided that the Convention would in future take as its starting point the text of the European Convention for the Protection of Human Rights in the case of those rights covered by the latter. Where necessary, the Convention's work would involve adding to or updating that text. Anyone wishing to amend the text of the European Convention would have to submit a specific form of words.

5. As for the organisation of work, the Chairman said that a hearing of the Forum for Civil Society would be arranged for the next meeting of the Praesidium, to be held in Brussels on 2 March 2000.

6. Regarding the substance, the discussion as a whole highlighted three categories of problem:

- (a) the first, relating to the type of result desired, prompted the great majority of members of the Convention to opt for texts that were short and readable (i). However, this category also covered the question of presenting the draft Charter in two parts, one listing the rights and the other containing a detailed commentary on what each of those rights involved, both with regard to its material scope and taking account of case law and national constitutional practices (ii). This further question again gave rise to the diversions which had already emerged at the Convention's second plenary session. The main and most cogent argument for those in favour of this approach was, apart from the usefulness of being able to clarify the rights listed in the first part, the fact that, without producing a text that was difficult for a non-specialist public to read, it would make it possible, to take full account of all derogations, exemptions and restrictions relating to each individual right. On the other hand, the key argument used by those against such an approach was that only the first part would in practice have any chance of eventually being incorporated into the Treaties, although it was the second part that would contain the most important material.
- (b) the second category, which members of the Convention felt related to the need to make their work readable, prompted them to argue in favour of a complete structure comprising all the rights to be examined so that they could not only assess the actual wording of the drafts proposed but also, where necessary, determine the position of any particular fundamental right within the overall structure and, in any case, ensure from the outset that there was no omission or repetition.
- (c) the third category, which is to some extent a result of the above, relates to the presentation of the documents set out submitted to the Convention. Most of the members wanted documents to be set out in columns to show clearly on the one hand the provisions contained in the Convention for the Protection of Human Rights and on the other what might be added or replaced for the purposes of the present exercise.

7. On the substance of the draft texts submitted to the Working Group meeting of the Convention, discussion was limited to the draft texts of the first three Articles as given in the document referred to in point 3 above, namely:
- Article 1 Dignity of the human person,
 - Article 2 Right to life,
 - Article 3 Liberty and security.
8. The discussion prompted requests of two kinds:
- concerning the content of these Articles, in particular:
 - ® in Article 1 that a reference to the prohibition on slavery and servitude be reinserted together with a reference to the dignity "of the individual",
 - ® in Article 2:
 - the arrangement of aspects of integrity was questioned by some (requests that "genetic" be deleted),
 - the question of account being taken of bioethics was raised,
 - paragraph 3 should be reworded to read "No-one shall be condemned to death or executed".
 - ® in Article 3:
 - the question of whether or not to retain "security" in this Article was raised by some, while others thought it necessary to maintain it, perhaps with the whole Article being expressed more concisely. ("Everyone has the right to liberty and security of person; no-one shall be deprived of his liberty save in the cases and the manner prescribed by law"),
 - disagreement also emerged on the type of situation actually covered by the use in this Article of the words "arrested or detained" or indeed "offence",
 - the link between this Article and the question of the right of asylum was raised.

- concerning the arrangement of the Articles. This was a question raised not only in general terms (see point 6(b) above) but also with reference to Article 1 on human dignity, which was considered to be not merely one fundamental right among others but rather the bedrock of all fundamental rights and therefore something which should head the whole draft Charter.

9. Following these two days of discussion, Chairman Roman HERZOG agreed to:

- submit a draft overall structure of the fundamental rights to be examined with a view to their inclusion in the draft Charter,
- reserve a special place for certain rights such as human dignity in subsequent drafts,
- draw up a separate catalogue of procedural rights (current draft Articles 4 to 7 of the meeting document) on the understanding that such rights would not require lengthy discussion as they already existed,
- examine the question of presenting fundamental rights in two parts in consultation with some members of the Convention who have already looked at this privately in detail.

10. Finally, it was agreed to hold the next Working Group meeting of the Convention on 2 and 3 March 2000 to continue the work begun.

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**Brussels, 2 March 2000 (10.03)
(OR. fr)****CHARTE 4148/00****CONVENT 12****REPORT**

Subject : Third meeting of the Praesidium, Brussels, 2 March 2000
- Outcome of proceedings

1. At this meeting, chaired by Mr Roman HERZOG, the Praesidium:
 - heard four NGOs, and
 - decided on working methods for future meetings.

2. *The hearings.* The Praesidium jointly heard the following:
 - Permanent Forum for Civil Society, represented by Mr Pier Virgilio DASTOLI and Mr Raymond Van Ermen,
 - European Trade Union Confederation, represented by Mr CARLSUND,
 - Platform of European Social NGOs, represented by Mr Gianpiero ALHADEFF and Mr Olivier GERARD,
 - NGOs – Fundamental rights coordination, represented by Ms Isabel MOHEDANO.

Besides their speeches, these bodies, which operate as networks, presented texts which will appear on the Convention intranet/internet site.

Taking as a starting point for the Convention's proceedings those rights which already exist in international instruments and developments in the Union in recent years, be it EMU, the internal market or the incorporation of part of the Third Pillar within the Community, these organisations advocated putting in place a clear legal order complying with the subsidiarity principle.

Particular emphasis was placed on four main aspects:

- it was important for the section on civil and political rights to have a reference to civil dialogue;
- the draft charter should be addressed not only to citizens as defined by the Treaty but also to other categories of people such as legal residents, persons present in Union territory who had been admitted for less than three months or who were only on holiday, as well as people illegally present;
- the whole issue of social rights. This, speakers thought, was where the Convention had room to do something new: the proceedings underway were a real chance to make progress towards recognition of those rights, including the right of access to them, whence the need to work in particular on the basis of the revised Social Charter – even if not yet ratified by all Member States – rather than the old Social Charter, if they did not want to produce a draft which would very soon be out of date. A forward-looking approach when drawing up the Charter would allow them to enshrine trade-union rights and incorporate such rights as the right to a minimum wage, the right to housing and the right to protection from social exclusion;

- it was important that social rights be properly presented, distinguishing between rights directly amenable to the courts and projected rights, which might be described as "politically binding Union objectives".

The hearing was also an occasion for a reminder of the public events which, at the initiative of the NGOs represented, would adorn the year until the Nice European Council. The NGOs' part in the process of closing the gap between the Union and its citizens led speakers at this Convention meeting to suggest a three-phase contribution to its work:

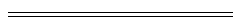
- the NGO hearings, rather than being merely a forum for declarations, ought to be an opportunity for them to put forward amendments to the drafting proposals under discussion;
- the Council of Europe plenary and NGOs should be invited at a subsequent hearing to give indicative votes on the outcome of the work of the Convention;
- those results should be officially approved in a referendum held in both the Member States and the countries applying for accession, that being the logical step towards a pan-European construct, based on respect for indivisible fundamental rights.

3. After this presentation, the Chairman summarised the opinion of the Praesidium members. He was glad to have had an open exchange with these NGOs and a chance to ascertain that their goals were by and large identical. He had noted the suggestions made by the representatives of the NGOs invited to the hearing and reminded the meeting, in this connection, of the prime but outward-looking role of the members of the Convention in drawing up the draft Charter of fundamental rights.
4. Procedural aspects: On the basis of the conclusions drawn by Mr Roman HERZOG when closing the first meeting of the Convention as a working party on 24 and 25 February 2000, the Praesidium agreed on the following points:

- In the light of the Tampere European Council conclusions, only the Drafting Committee can provide the Convention with the basis for its work. Articles 1 to 19 will therefore be discussed on the basis of the drafts proposed in CONVENT 5 and CONVENT 8.
- CONVENT 10, presented by Mr Roman HERZOG after the 24/25 February 2000 meeting, is both a statement of the provisions as they stand in the ECHR and a suggested overall structure for the draft Charter. This suggestion will have to be reconsidered later, when more progress has been made on drafting the articles.
- CONVENT 9 is set out in columns to show the ECHR text next to the Praesidium proposals. It is in response to a specific request by members of the Convention at its meeting as a working party on 24 and 25 February 2000.
- Speaking time in discussions has to be managed better. The Praesidium decided that:
 - no-one could speak for more than 3 minutes;
 - no-one could speak on a set of articles but only on the articles proposed for discussion by the Praesidium;
 - members could speak only once per article.

These rules of procedure, which will be referred to the Convention/working party for approval at the beginning of its meeting, must be applied as rigorously as is compatible with everybody's right to speak and with the aim of getting the best result.

- The Praesidium will present members with a version revised in the light of the discussions in the Convention/working party. They will be asked to make written amendments by a deadline to be announced by the Chairman at the meeting.
- All written contributions will in any case still be circulated as agreed and the Praesidium will take due account of them in its proceedings.
- Thought will continue on horizontal questions, in particular on possibly presenting the draft Charter in two parts, and the issue will be addressed again at the Praesidium's next meeting in Paris on 7 March 2000.



DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

**Brussels, 3 March 2000 (09.03)
(OR. fr)****CHARTE 4154/00****CONVENT 14****RECORD**

Subject : Record of the second meeting as a working party of the Convention to draw up a draft Charter of Fundamental Rights of the European Union (held in Brussels, 2 and 3 March 2000)

1. The second meeting of the Convention as a working party was held in Brussels on Thursday 2 and Friday 3 March 2000 under the chairmanship of Mr Roman HERZOG. The agenda included the examination of proposals for Articles 4 to 19 on the basis of CHARTE 4123/1/00 REV 1 CONVENT 5, CHARTE 4137/00 CONVENT 8, and CHARTE 4140/00 CONVENT 9.
2. At the beginning of the meeting the Chairman submitted, for the approval of the members of the Convention, the proposed procedure as defined by the Praesidium at its third meeting (see paragraph 4 of CHARTE 4148/00 CONVENT 12).
The Convention, meeting as a working party, endorsed the proposal, which would apply with effect from this meeting.

3. Progress was made on examining the proposals for Articles 4 to 12 inclusive. In the course of the discussion, proposals for amendments were made for each of those articles and would be incorporated into a revised version of the meeting documents by the Secretariat of the Convention. The revised text would be submitted to the Praesidium at its meeting on 7 March 2000 in Paris. After that meeting a revised document, bearing the reference CHARTE 4149/00 CONVENT 13, would be sent to the members of the Convention so that they could examine it and submit written amendments by a deadline to be set by the Chairman.

Those documents would then be presented for a second reading.

4. Winding up the meeting, the Chairman thanked the members of the Convention and invited them to reconvene for the plenary session on 20 and 21 March 2000 in Brussels.

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**Brussels, 29 March 2000 (04.04)
(OR. fr)****CHARTE 4208/00****CONVENT 20****RECORD**

Subject : Record of the third meeting, in working group formation, of the Convention to draw up a draft Charter of Fundamental Rights of the European Union
Brussels, 27 and 28 March 2000

1. The third meeting of the Convention, in working group formation, was held on Monday 27 April and Tuesday 28 April 2000 in Brussels under the chairmanship of Mr Roman HERZOG, and on the afternoon of 28 April under that of Mr MENDES de VIGO. The agenda included the examination of draft Articles 13 to 19 on civil and political rights set out in CHARTE 4137/00 CONVENT 8 and the examination of Articles A to J on the rights of the citizen set out in CHARTE 4170/00 CONVENT 17. As progress had to be made in order to keep to the timetable, the Chairman convened the Convention for all day on the Tuesday.
2. During the meeting, members were able to review all the texts which had been submitted to them.

3. At the end of the meeting it became clear that the provisional work programme had to be revised, in order firstly to be able to meet the Portuguese Presidency's request to have as complete a preparatory document as possible available for the European Council in June 2000, so that the Heads of State or Government could be apprised of the Convention's work; and secondly to meet the request of the forthcoming French Presidency that the draft Charter of Fundamental Rights of the European Union should be available for the informal European Council to be held in Biarritz in mid-October 2000.

4. Mr JACQUÉ, head of the Convention Secretariat, supplied the following information:
 - on 3 and 4 April 2000 the Convention would examine a first set of draft articles relating to social and economic rights, as they emerged from discussions at the Praesidium meeting on 27 March 2000. These drafts should be available in all the working languages of the Convention on 30 March or on the morning of 31 March;

 - on 27 and 28 April 2000, proceedings would be divided into two: on 27 April the Convention would hear those NGOs dealing with human rights which had asked to be heard, and on 28 April it would resume examination of the draft articles on social and economic rights;

 - an additional meeting had been inserted in the original timetable for 3 and 4 May 2000, in order to complete the examination of the draft articles on economic and social rights; the aim was to have a complete list of the texts of preliminary draft articles ready for the Convention when it met on 11 and 12 May 2000;

- on 22 and 23 May 2000, the Convention should be able to hold a second reading of all the preliminary drafts;
 - on 5 and 6 June 2000, the Convention meeting in plenary should then be able to give provisional approval to these first results, it being understood that very important elements of the final draft would still be lacking, particularly the general clauses and the solutions to a number of horizontal questions.
5. Mr MENDES de VIGO said that this timetable, which for the moment was focused primarily on presenting concrete progress to the Heads of State or Government meeting within the European Council on 19 and 20 June 2000, had to be seen as part of a dynamic whole including the work to be done in the rest of the year, when the Convention would go on to address questions relating to the structure around which the articles of the draft Charter should be ordered; to whether it should be presented in one or two parts; to the content of the general clauses; and to the solutions to be found for certain horizontal problems. However, members of the Convention expressed some concern about accelerating proceedings, and about the appearance of further intermediate meetings while the draft was being prepared. Some feared that they would be unable to commit those they represented on a partial text from which substantial elements, vital for deciding the acceptability of the preliminary draft articles, were lacking. Discussion on this point showed that, subject to appropriate presentation of the preliminary draft articles, for example the drafting of an accompanying note restoring the global framework of the exercise, this timetable and these deadlines could be adhered to.
6. The Chairman closed the meeting, asking the Convention to reconvene on 3 and 4 April 2000 to begin examination of the draft articles on economic and social rights.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

**Brussels, 29 March 2000 (05.04)
(OR. fr)****CHARTE 4209/00****CONVENT 21****REPORT**

Subject : Sixth meeting of the Praesidium, Brussels, 27 March 2000
– Outcome of proceedings

1. At this meeting, chaired by Mr Roman HERZOG, the Praesidium:
 - prepared the meeting on 27 and 28 March 2000,
 - prepared the documents on economic and social rights,
 - held an exchange of views on the state of play.

2. By way of introduction, Mr Roman HERZOG thanked Mr MENDES de VIGO and Mr JANSSON for chairing the last meeting of the Convention in his absence. He also announced that his work schedule would not allow him to attend the Convention's proceedings in the afternoon of 28 March 2000. Mr MENDES de VIGO would therefore be chairing that meeting on his behalf.

3. It was also announced that Mr VRANITZKY would be resigning from his position as Personal Representative of the Austrian Chancellor, and that he would be replaced by Mr Heinrich NEISSER, the current representative of the national parliament at the Convention. Mr NEISSER would be replaced by Mr Caspar EINEM as the national parliament's representative.
4. With respect to the examination of texts on economic and social rights which had been prepared by the Secretariat of the Convention and would be submitted to the Convention as preliminary draft articles, the discussion was extremely positive, and resulted in excellent formulations for presenting the problems to the Convention. The discussion did not touch on the articles from the Commission, which, for reasons of time, had not been subject to the written consultation procedure of the Praesidium members, prior to their meeting. However, it was decided that those texts would be submitted to the Convention at its meeting as a working party on 3 and 4 April 2000, but in an appropriate form.
5. The Chairman requested that the preliminary draft articles be finalised as soon as possible so that they could be forwarded to the Convention members in the Convention's working languages. The Secretariat of the Convention said that the current multilingual version of the preliminary draft articles would be submitted for translation as soon as possible, but that a version in all languages would not be ready before Thursday 30 or Friday 31 March 2000, given the length and sensitivity of the documents.

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**Brussels, 31 March 2000 (04.04)
(OR. fr)****CHARTE 4210/00****CONVENT 22****REPORT**

Subject : Fourth meeting of the Praesidium, Paris, 7 March 2000
- Outcome of proceedings

1. For its fourth meeting, chaired by Mr Roman HERZOG, the Praesidium had taken up the invitation from Mr BRAIBANT, the personal representative of the President of the French Republic, to hold the meeting in Paris. The Praesidium had been invited to a working lunch by the French Minister for European Affairs, Mr MOSCOVICI.
2. During this meeting the Praesidium studied and revised the wording of the preliminary draft Articles 1 to 12 on civil and political rights in the light of the Convention meeting. Following that exercise the twelve Articles became fifteen.
3. 17 March 2000 was set as the deadline for tabling amendments to these texts.

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**Brussels, 31 March 2000 (04.04)
(OR. fr)****CHARTE 4211/00****CONVENT 23****REPORT**

Subject : Fifth meeting of the Praesidium, Brussels, 20 March 2000
– Outcome of proceedings

1. The Praesidium, chaired by Mr MENDES de VIGO, started its meeting by reviewing the progress made by the Convention. Attention was drawn to the new political deadlines which had been introduced into the original timetable since the beginning of February 2000. Primarily, these deadlines concerned the request from the current Presidency of the European Union to provide a complete provisional initial version of the draft Charter in time for the European Council in June 2000. Secondly, they concerned a request from the incoming French Presidency of the Union to provide a definitive draft Charter of Fundamental Rights of the European Union in time for the Biarritz European Council on 12 and 13 October 2000, which meant that Convention would have to have finished its work by the end of September 2000, at the latest.

Mr MENDES de VIGO also gave a brief report on the working lunch to which the Praesidium had been invited by the French Minister for European Affairs, Mr MOSCOVICI, on 7 March 2000 during its fourth meeting, held in Paris.

2. Thereafter, the Praesidium

- took stock of the sixteen Articles on civil and political rights which had already been studied, including the Articles which were in the same category which still had to be studied in CHARTE 4137/00 CONVENT 8;
- briefly discussed the main horizontal issues;
- reviewed the presentation of the draft articles on citizens' rights;
- agreed on the organisation of the proceedings of the Convention meeting, starting the same afternoon and continuing on the morning of 21 March 2000.

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**Brussels, 31 March 2000 (04.04)
(OR. fr)****CHARTE 4212/00****CONVENT 24****RECORD**

Subject : Record of the third plenary meeting of the Convention to draw up a draft Charter of Fundamental Rights of the European Union
(held in Brussels on 20 and 21 March 2000)

1. The third plenary meeting of the Convention to draw up a draft Charter of Fundamental Rights of the European Union was held at the Council of the European Union in Brussels on 20 and 21 March 2000.
2. During the plenary meeting, chaired by Mr MENDES de VIGO, the Convention examined draft Articles 1 to 16 relating to civil and political rights as finalised by the Praesidium at its meeting on 7 March 2000 and submitted to members in CHARTE 4149/00 CONVENT 13.
3. As the deadline for tabling proposals for amendments had passed on 17 March 2000 in accordance with the amendment procedure described in CHARTE 4156/00 CONVENT 15, members received a document at the beginning of the meeting listing all the proposals for amendments received before that date. CHARTE 4156/00 CONVENT 15 stated that there

was no intention of examining or voting on these proposals on 20 and 21 March 2000, but that they would serve the Praesidium, meeting as a drafting committee, as a basis when drawing up the definitive version of the draft Charter which would subsequently be submitted to the Convention.

4. During this meeting, the Convention:

- heard a report by Mr MENDES de VIGO on the new time-frame, and on the discussions at the working dinner in Paris on 7 March 2000 involving the French Minister for European Affairs and the members of the Praesidium, at the invitation of the Minister;
- completed examination of the 16 draft Articles set out in CHARTE 4149/00 CONVENT 13.

5. At the end of the meeting, the Chairman stated that:

- the Chairman Mr Roman HERZOG was still working on his proposed final structure for the forthcoming draft Charter, which explained why members had not yet received anything;
- the members of the Convention would receive proposals for Articles on the rights of citizens electronically, and in all the working languages of the Convention, on 22 March 2000;
- the meeting on 28 March 2000 would, unusually, continue into the afternoon, to give time to complete the examination of the proposed texts for the six Articles on civil and political rights set out in CHARTE 4137/00 CONVENT 8 which had not yet been examined;

- that the meeting on 27 April 2000 would be devoted to hearing NGOs involved with human rights issues.
6. The Convention agreed to meet again as a working party on 27 and 28 March 2000 at the European Parliament's headquarters in Brussels.

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE**fundamental.rights@consilium.eu.int**

**Bruxelles, le 6 avril 2000
(Version multilingue)****CHARTE 4218/00****CONVENT 25****COMMUNIQUE SPECIAL**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne
 - Verbatim de la troisième réunion des 20 et 21 mars 2000

Conformément à ce qui avait été annoncé à la suite de la troisième réunion formelle de la Convention chargée d'élaborer un projet de charte des droits fondamentaux de l'Union européenne (Bruxelles, lundi 20 et mardi 21 mars 2000), compte tenu du fait que la publicité des débats n'avait malheureusement pas pu être assurée, le public trouvera ci-après une transcription des débats de ladite réunion. Cette transcription, réalisée à titre exceptionnel, reprend les interventions des membres soit en langue originale soit en français. Les interventions sont reprises dans leur intégralité et dans la forme exacte dans lesquelles elles ont été prononcées.

Le Secrétariat de la Convention espère ainsi répondre aux attentes de tous ceux qui auraient souhaité assister à cette réunion.

20/03/2000 14:18:45 **PRESIDENT** er

Bien, queridos colegas, buenas tardes a todos. Lo primero que tengo que anunciarles es lo evidente, que el Profesor HERZOG, el Presidente HERZOG no estará aquí con nosotros hoy y me temo que no tendrán ustedes más remedio que cargar conmigo como Presidente de esta sesión y con el Vicepresidente JANSSON también en funciones de presidencia. Lo lamento mucho pero, como decimos en España, eso es lo que hay. Bien, en nombre de la Presidencia quería darles cuenta a ustedes de varias cosas. En primer lugar, la presidencia se reunió la semana pasada en París. Ultimamos el documento Convención 13 que ha sido distribuido a todos ustedes. Ese documento ha tenido en cuenta, en la medida de nuestro entender, las observaciones, los comentarios de las intervenciones que se han producido en la Convención en sesiones anteriores y constituye el documento que presenta la Presidencia sobre una parte de los derechos civiles y políticos. La segunda consideración que quería hacerles es una de calendario; en esa semana de reunión en París la Presidencia vio al Ministro francés de Asuntos Europeos, el Sr. MOSCOVICI, con quien hablamos del contenido de la Carta, del objetivo político de trabajar como si la Carta fuera a incluirse en los Tratados y el Ministro Sr. MOSCOVICI nos sugirió la conveniencia de que el Consejo Europeo extraordinario, que se celebrará en Biarritz los días 13 y 14 de octubre, examinase ya la Carta, 13 y 14 de octubre si queremos que la Carta pueda ser trasladada a la Conferencia Intergubernamental y por tanto a la Cumbre de Niza. Si el 13 y el 14 de octubre la Carta, nuestro proyecto de Carta, debe estar sobre la mesa de los Jefes de Estado y de Gobierno eso significa que tenemos que acabar a mediados de septiembre, lo que implica, insisto, si queremos cumplir el objetivo político que nos hemos propuesto en actuar con rapidez, en acelerar de alguna manera nuestros trabajos. Nuestros trabajos, lo recuerdo, tenían como punto de partida el ultimar un texto de la Carta, del contenido de la Carta para los días 5 y 6 de junio, de manera que el Consejo Europeo de Feria de mediados de junio pudiera ya tener una idea de cuales eran los trabajos de esta Conferencia. Por tanto hoy me propongo con su ayuda, con su inestimable ayuda, intentar acelerar nuestros trabajos y el texto sobre el que vamos a trabajar, insisto es el "Convención 13". Al texto Convención 13 que cubre los primeros 16 artículos, dedicados a derechos civiles y políticos, se han presentado observaciones por escrito que tienen ustedes en este documento, observaciones provenientes de 14 colegas que han querido hacer sus observaciones por escrito. Yo me propongo hoy hacer un rápido repaso de cada uno de los artículos y pedir que aquéllos que quieran hacerlo intervengan, por supuesto aquéllos que no estén de acuerdo con el proyecto que se ha presentado, si están de acuerdo doy por hecho que lo están, simplemente aquéllos que, cuando hablemos de un artículo, crean que hay que introducir alguna

modificación, alguna adición o hay que cambiar alguna cosa. En tanto los restantes miembros de la Presidencia como yo mismo, insisto, queremos acabar con los derechos civiles y políticos, con estos 16 que están en el documento 13 como los restantes 4 que no hemos visto todavía el documento 8, queremos acabar entre hoy y mañana y por tanto me permitirán ustedes que sea muy estricto con el tiempo de palabra, que cada intervención no podrá exceder de 2 minutos y tendré que ser estricto de verdad porque si no no conseguiremos terminar nuestros trabajos. En todo caso quiero decirle a ustedes una cosa, y es que después de la reunión de hoy la Presidencia hará una nueva propuesta de redacción de estos artículos a la vista de las modificaciones introducidas y habrá en su momento un plazo para presentar enmiendas formales, es decir que creo que la participación de todos y los derechos de todos los participantes estarán plenamente asegurados. Por último, no quiero tratar hoy cuestiones horizontales, creo que las cuestiones horizontales, como hemos quedado, como hemos acordado se tratarán aquí, lo que quiero es ir a ver si conseguimos concluir con el contenido de estos derechos civiles y políticos que, insisto, están en el documento "Convención 13". Por último, una última idea, el Parlamento Europeo aprobó la semana pasada una Resolución sobre la Carta de los derechos fundamentales basada en el Informe de los colegas St. Davids y HOWELLS que forman parte de esta Convención y que está siendo traducida a todas las lenguas y que será distribuida posteriormente para que todos ustedes tengan conocimiento de cuál es la posición del Parlamento. Bien, sin más dilación documento 13 de la Convención, artículo 1, "Dignidad de la persona humana" ¿Hay alguien que quiera tomar la palabra?

20/03/2000 14:25:12 **PRESIDENT**

Cuestión de orden previa, Sr. PATIJN.

20/03/2000 14:25:17 **M. PATIJN (Le Parlement néerlandais)** jv

Wat ik probeer tot mij door te laten dringen, wat u zegt over uw contacten met het voorzitterschap, met name het Franse voorzitterschap, en wat u heeft gezegd over de druk die op ons werk zet. Ik begrijp in feite dan anders dan ik tot nu toe had aangenomen de conventie haar werkzaamheden in september echt moet afronden, omdat dat in een bijzondere Raad van het Franse voorzitterschap aan de orde moet komen. Maar ik heb u ook horen zeggen dat in feite de tekst plusminus al bij de Europese Raad in juni op tafel moet liggen zodat de Raad de Europese Raad daar een indruk van krijgt. Dat betekent dus dat wij plusminus nog acht weken hebben om een min of meer afgeronde tekst op tafel te leggen, inclusief nog de sociale en

andere grondrechten die ook nog moeten komen. Mijn vraag aan u is van doet u straks nog mededelingen over de werkwijze van deze groep en wanneer we de echte meer fundamentele debatten gaan hebben over de meer politieke vraagstukken waar we natuurlijk ook nog een oordeel over moeten hebben behalve de teksten.

20/03/2000 14:26:34 **PRESIDENT** er

Sí, le contesto inmediatamente, Sr. PATIJN, ha entendido usted muy bien, la decisión de acabar nuestros trabajos el 5 y el 6 de junio no es nueva, la tomamos al segundo día de reunirse esta Convención. Lo que queremos acabar el 5 y el 6 de junio es el contenido de la Carta, no las cuestiones horizontales, no las cuestiones políticas, como por ejemplo la posible adhesión a la Convención o no de Derechos Humanos que está fuera. Lo que queremos es, el 5 y 6 de junio tener un texto para que los Jefes de Estado y de Gobierno sepan cuál es el contenido de nuestros trabajos, por así decirlo por utilizar una expresión coloquial que sea un "amuse-gueule", que sepan dónde estamos, esa es nuestra idea, al objeto de conseguir el objetivo político que pretendemos, trabajar como si la Carta fuera a ser insertada en los Tratados, por eso nos pareció desde las primeras reuniones que era muy importante que los Jefes de Estado y de Gobierno supieran qué es lo que estábamos haciendo y no se encontrasen con ello en el mes de octubre, pero insisto, esa es una decisión que tomamos en la segunda reunión de la Convención. Sr. FRIEDRICH ¿una cuestión de orden?

20/03/2000 14:27:53 **PRESIDENT** er

Artículo 1, primero la Sra. BERÈS, luego el Sr. FRIEDRICH.

20/03/2000 14:27:48 **M. FRIEDRICH (Le Parlement européen)**

Nein, zum Artikel 1.

20/03/2000 14:27:58 **Mme BERÈS (Le Parlement européen)** ib

Merci Monsieur le Président. J'imagine que vous nous appelez également à commenter les commentaires, puisqu'ils sont sur la table du document dont nous sommes saisis. Dans le commentaire sur l'article 1, il est mentionné un éventuel paragraphe 2 dont le statut n'est pas encore très clair. J'imagine que cela fait partie des questions horizontales de savoir si c'est un article 2, un préambule ou un article distinct. En toute hypothèse, il me semble que la référence à la deuxième partie de ce que serait ce paragraphe 2, l'idée que cette charte ne crée aucune compétence ou tâche nouvelle pour l'Union et n'étende pas les compétences et tâches de celle-ci est une partie qui pourrait faire difficulté. En toute hypothèse, j'imagine que nous devrions avoir une rédaction plus souple, du style elle ne crée pas automatiquement de compétences ou de tâches nouvelles pour l'Union et dans le même esprit, il me semble que s'il devait exister un paragraphe 2, un préambule ou un article distinct, de la même manière, nous

devrions traiter la question de l'articulation entre cette charte et l'article 6 du traité de l'Union, car sinon à chacun des commentaires nous trouvons la référence à cet article 6. Il me semblerait plus judicieux de le voir traité dans un article transversal et dans lequel nous reprendrions le fait que cette charte s'applique dans le cadre de l'engagement pris au titre de l'article 6 à l'égard de la Convention européenne des droits de l'homme, je tenais à le préciser au début de nos travaux.

20/03/2000 14:29:20 **PRESIDENT** er

Tiene usted toda la razón, Sra. BERÈS, este artículo, esta parte del comentario estaba aquí desde el principio porque queríamos establecer cuál era el ámbito de aplicación de la Carta pero en efecto no estará aquí al final y es una cuestión horizontal, como usted ha dicho muy bien, no vamos a tratar aquí en este momento. Por lo tanto, Sr. FRIEDRICH.

20/03/2000 14:29:42 **M. FRIEDRICH (Le Parlement européen)** pa

leider feststellen, daß die von mir rechtzeitig am Freitag per E-Mail eingereichten Änderungsanträge nicht vom Dienst hier verteilten Papier sind, also ich bitte dies festzustellen. Meine Änderungsanträge sind rechtzeitig weggeschickt worden. Zweitens: ich beziehe mich auf etwas ähnliches wie Frau Perres. Ich würde gerne, was im Artikel 1 in der Begründung steht, nämlich die Bindungswirkung der Charta, die beginnt mit dem Satz: "Die Bestimmungen dieser Charta richten sich an die Organe", daß wir dies als Extraartikel, nämlich Artikel 2 formulieren, also herausnehmen aus der Begründung, sondern klar als nächsten Artikel nehmen, die Wortwahl und der Text selber, den könnte ich so akzeptieren, wie er hier steht. Also mein Antrag ist, dies aus dem Text der Begründung herauszunehmen und als eigenen Artikel 2 zu formulieren.

20/03/2000 14:30:43 **PRESIDENT** er

Bien, así estaba previsto hacerlo, Sr. FRIEDRICH, como he dicho anteriormente, no va a estar ahí, estará en otro lado. ¿Más intervenciones? Sí, Sr. BEREIJO.

20/03/2000 14:30:56 **M. RODRIGUEZ-BEREIJO (Le Parlement espagnol)** er

Gracias, Sr. Presidente. Únicamente para advertir a la Convención que la representación del Presidente del Gobierno de España en mi persona ha presentado una propuesta de observaciones al texto bastante extensas que se han distribuido o están distribuyéndose en esta tarde en lengua española y mañana estará a disposición de todos los miembros de la Convención en lengua francesa. Mi propósito es intervenir lo menos posible puesto que en ese amplio texto de alrededor de 15 páginas hay observaciones puntuales tanto al artículo 1 y a la exposición de motivos que se incluye en cada precepto como propuestas alternativas de redacción. En ese sentido quiero contribuir al propósito del Presidente de entorpecer lo menos

posible la celeridad de nuestra reunión pero no quiero dejar de llamarles la atención de que algunas observaciones que allí se hacen quiero manifestar que lo que está escrito es lo que yo ahora, en aras de la celeridad de nuestro trabajo, manifestaría de palabra y por lo tanto rogaría a la Presidencia y a los miembros de la Convención que tengan en cuenta estas observaciones que están hechas por escrito. Gracias.

20/03/2000 14:32:39 **PRESIDENT** er

Gracias a usted, Sr. RODRIGUEZ-BEREIJO, y gracias por ayudar a esta Presidencia. Querría que las observaciones, por favor, se hicieran al texto, no a la exposición de motivos porque no acabaríamos nunca. Me acabo de operar de la vista pero no veo al Sr. HAYES, tendré que consultar a mi oculista porque me he operado de los ojos pero no acabo de verle. Sr. HAYES, por favor, tiene usted la palabra.

20/03/2000 14:33:09 **M. HAYES (Le Parlement irlandais)** ac

Mr Chairman excuse me but I do not have a microphone being merely the alternative, I take the floor on a point of order. I understood that our discussions were going to be based on document CONVENT 13, but it seems to me the remarks of at least two of the speakers who have spoken since we started about an Article 1 do not relate to Article 1 as in Convent 13, maybe I am wrong about that, but that is the impression I have, I just want to be clear what exactly document we are working on, thank you Mr Chairman.

20/03/2000 14:33:46 **PRESIDENT** er

Gracias, Sr. HAYES. Efectivamente I just said to the Convention that we would like to discuss on the articles not on the comments about the articles, so Article 1 any comments?
Yes Lord GOLDSMITH

20/03/2000 14:34:06 **Lord GOLDSMITH (Le Parlement britannique)** ac

Mr Chairman I very much applaud your desire to get through this work I think we also have to recognise the document that we are dealing with is a very serious and important document affecting the citizens of Europe and the Member States of Europe and the other institutions. Now I produced as you will know, although every few people will have had a chance to look at it, it being presented in the composite form, at 2.00 this afternoon, it detailed a list of proposed amendments to each of the articles, and I very much hope to be able to take members to those as we go through them. But there is a preliminary point, and I want to make it absolutely clear what my position is, I have consistently stated in this body, that it is essential when we are dealing with the rights which are covered by the European Convention on Human Rights, that we do not deviate from those rights, and my legal technique for achieving that was to produce a document which provided a short clear statement of the right,

but which defined it in another part of the document by reference to the existing rights under the European Convention of Human Rights and the jurisprudence of the Strasbourg Court. Now I regard this as most important and I understand from observations that I have heard in the informal meetings that other colleagues do as well, now if we are going to proceed on a basis which does tie the short statement clearly to the European Convention of Human Rights and its jurisprudence, then I am content with having a short statement in one part of the document, if we are not going to do that then I make it plain that I do not accept, and will be unable to recommend the text in a short form, because it misses out limitations, it misses out important qualifications, it misses out a lot of the jurisprudence of the court, and we will leave to a two-tier system a parallel system of human rights in Europe, which will damage our citizens and not help them. Now that's a preliminary and important observation and it will have to be resolved at some stage, and although I very much welcome the work of the presidium to move towards that approach in Convent 13, it does not, in my view, go far enough, it doesn't produce that clear link and therefore whilst, I have always said I am open to other ways of dealing with it, I don't believe that simply having a statement of reasons, which doesn't form part of the document, or relying on Article 6 of the Treaty is enough, and with all the wish, Mr Chairman, to assist you, in producing a text, and dealing with the words today, I have to make that preliminary observation today that any text which doesn't achieve that clear link to the ECHR is one that I will be unable to recommend and to accept.

20/03/2000 14:37:43 **Lord GOLDSMITH (Le Parlement britannique)** ptm

I'm sorry I haven't finished but if that was me being turned off, Mr Chairman, as opposed to a power failure then I'm afraid I'm just going to have to continue for a moment. If that was an exercise of Chairman's ...

20/03/2000 14:37:55 **PRESIDENT** ptm

That's right, you understood it very well indeed!

20/03/2000 14:37:59 **Lord GOLDSMITH (Le Parlement britannique)** ptm

I'm sorry but I still have not drawn attention to the words for Article 1 which I propose which are in my document and which people can see and which I would put forward as a more noble statement of the objectives that we are trying to reach and ...

20/03/2000 14:38:29 **M. SCHULTZ (Le Parlement européen)** pa

Angesichts der Äußerung des Kollegen Lord GOLDSMITH doch noch einmal eine Nachfrage, weil ich glaube, daß diese Nachfrage vielleicht auch zur Klärung des Vorgehens beitragen kann: Wenn ich das recht in Erinnerung habe, hat vom ersten Tag an der Konvent keine Einwände dagegen erhoben, daß wir dieses Redaktionskomitee benennen, das aus den

bekannten Personen besteht und das die Aufgabe haben sollte, bestimmte Vorschläge zu unterbreiten. Nun ist das, was der Kollege Lord GOLDSMITH gesagt hat, eine Meinungsäußerung zu dem vorgelegten Text, die wir zur Kenntnis zu nehmen haben. Ich zum Beispiel vertrete eine völlig andere Auffassung. Ich bin der Meinung, daß die Kürze und Präzision, in der gearbeitet worden ist, nicht in allen Punkten zu 100 % zufriedenstellend ist, aber den richtigen Weg weist. Und ich bin deshalb der Auffassung, daß wir zunächst einmal in diesem Stadium die einzelnen Meinungsäußerungen auch zu den vorgelegten Änderungsanträgen zur Kenntnis nehmen, aber mehr zum jetzigen Zeitpunkt auch nicht, sondern im Text erst einmal, soweit er jetzt im Entwurf vorliegt, voranschreiten, und die Bewertungen, ob zu kurz, zu lang, zu wenig, zu viel, zunächst einmal am Ende der Aussprache über den jetzt vorgelegten Entwurf vornehmen können. Ich meine, wenn wir anfangen, zu jedem einzelnen Artikel die abweichende Meinung eines jeden einzelnen Konventsmitgliedes, das wäre ja notwendig, denn wenn Lord GOLDSMITH, meine Änderungsanträge oder meine Vorstellungen müssen ja zunächst einmal zur Grundlage gemacht werden, gilt das für alle anderen Konventsmitglieder auch. Wenn wir diese Debatte wieder eröffnen würden, weiß ich nicht, wie wir zu Ende kommen wollen.

20/03/2000 14:40:05 **PRESIDENT** er

Sí. Vamos a ver, quiero dejar este tema bien claro desde el principio, queridos colegas. Nosotros hoy tenemos una tarea complicada que llevar a cabo y yo no quiero abrir o reabrir discusiones sobre estructura, sobre la que hemos tomado una decisión, y tampoco sobre cuestiones horizontales. Lo que la Presidencia quiere es llegar al acuerdo más amplio posible sobre el contenido de los derechos, el resto de las preocupaciones que tenemos todos y que compartimos todos las resolveremos más adelante, por lo tanto, si cada vez que hablamos de un artículo empezamos a plantearnos cuestiones teológicas, no llegaremos a ningún lado, insisto, creo que hay un trabajo hecho por la Presidencia donde se recogen muchas de las inquietudes mostradas por los miembros de la Convención, hay unas observaciones que van a ser tomadas en cuenta de los miembros de la observación, habrá un plazo formal de presentación de enmiendas, yo lo que pido es que ahora, esta tarde, hablemos de los artículos en concreto, y no hagamos otro tipo de consideraciones, porque si no nuestro trabajo será absolutamente inútil, no seguiremos adelante y no conseguiremos el objetivo político que nos hemos trazado, por tanto, yo sólo daré la palabra para hablar sobre los artículos y si no, sintiéndolo mucho, la quitaré. ¿Quién me la ha pedido? tengo varias. Sr. TARSCHYS me ha pedido la palabra, sobre el artículo 1.

20/03/2000 14:41:29 **M. TARSCHYS (Le Parlement suédois)** aem

Herr ordförande! Jag gör denna kommentar under artikel 1, därför att det är en principståndpunkt som gäller alla andra artiklar också. Vi har erbjudits att skicka in skriftliga kommentarer. Vår bedömning är att det är svårt, för vår del, att komma med slutliga förslag innan vi har sett helheten av hela dokumentet. Så snart hela dokumentet föreligger kommer vi att sända in våra förslag till ändringar.

20/03/2000 14:42:04 **PRESIDENT** er

Sr. TARSCHYS, mire, si empezamos a hacer debates generales no llegaremos nunca. Dígame usted en qué está usted de acuerdo o que modificación quiere. Artículo 1, texto del artículo 1, no consideraciones generales, por favor, porque no seguiremos adelante.

20/03/2000 14:42:24 **M. TARSCHYS (Le Parlement suédois)** aem

Herr ordförande! Vad jag säger är att det förhållandet att jag nu inte begär ordet på punkt 1, skall inte tolkas som ett instämmande i den lydelse som föreligger, utan vi förbehåller oss rätten att återkomma med förslag när vi har sett hela utkastet.

20/03/2000 14:42:48 **PRESIDENT** er

Muy bien, es una buenísima idea. Sobre el artículo 1, Sr. OLSEN.

20/03/2000 14:42:55 **M. OLSEN(Le Parlement danois)**

Jeg tror, at de fleste af os synes, at man har gjort fra præsidiets side et godt arbejde med konvent 13, og som hr. BRAIBANT sagde sidste gang, vi har to publika, vi henvender os til, nemlig den almindelige borger og juristerne, og derfor skulle artiklerne være korte og fyndige, og til gengæld skulle man præcisering af retsgrundlaget forklare, hvad der lå i det korte og fyndige. Vi er faktisk meget enige i formulering af det korte og fyndige i paragraf 1 og i andre artikler men den omstændighed, at begrundelsen er formuleret som et motiv og ikke som en præcisering af retsgrundlaget, den gør os utrygge, og derfor synes vi, at både i artikel 1 og i andre artikler er det vigtigt, at vi har den forbindelse til retsgrundlaget, for ellers kommer vi i samme situation som Lord GOLDSMITH, at så kan vi ikke anbefale vores regeringer at gå ind for charteret, og jeg synes, vi skulle have et resultat, og jeg synes man i præsidiets har gjort et godt fremskridt mod et resultat og den måde, man har bygget konvent 13 op på, men jeg synes, at vi må, når vi diskuterer de enkelte artikler, så må vi også kunne vende til det der her kaldes begrundelsen, og som jeg hellere vil have skulle hedde en præcisering af retsgrundlaget for den korte og fyndige erklæring af rettighederne, fordi jeg tror, vi har chancer for at tage os frem til et resultat, men lige for øjeblikket taler vi os fra hinanden.

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPEENNE**fundamental.rights@consilium.eu.int**

Bruxelles, le 2 mai 2000**CHARTE 4272/00****CONTRIB 145****NOTE DE TRANSMISSION**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne

Veillez trouver ci-après des propositions de dispositions horizontales soumises par MM. Fischbach et Krüger, observateurs du Conseil de l'Europe. ¹

¹ Ce texte a été soumis en langue française uniquement.

20/03/2000 14:48:01 **PRESIDENT** psm

Sr. GRIFFITH. Sí, las conclusiones de Colonia dejan bien claro que quién hace propuestas sobre la organización de los trabajos es la Presidencia. Nosotros hemos propuesto a esta Convención, hace ya algún tiempo, un método de trabajo y en estos momentos apartarnos de él, yo creo que no es positivo para esta Convención. Hemos dado un plazo para hacer observaciones, yo sigo preguntando qué referencias, o qué cambios quieren hacer usted al artículo 1: Dignidad de la persona humana, y aún no ha habido ni una sola intervención que haga referencia al contenido de ese artículo. Sí, Sr. RODOTA, y luego Sr. BEREIJO.

20/03/2000 14:48:41 **M. RODOTA (Le Parlement italien)** va

Presidente io sono d'accordo in linea generale con la formulazione dell'articolo 1 e sono d'accordo con il metodo di lavoro che lei ha proposto che lascia spazio poi alla presentazione eventuale di specifici emendamenti agli articoli così come saranno formulati dopo questa prima parte del lavoro. Sono invece contrario e poiché è stata chiesta un'opinione, lo dico subito, all'emendamento proposto dal Lord GOLDSMITH, per le ragioni di merito che lei ha già indicato rimetteremo in discussione il modo di lavorare della convenzione e per il merito perché darebbe ,l'approvazione di questo emendamento , ci obbligherebbe una discussione generale, Presidente, perché c'è il riferimento alla convenzione , c'è la rinnovata proposta della divisione in parte a e parte b , due ipotesi alle quali noi siamo radicalmente contrari. Credo che sia opportuno una discussione molto aperta, io ho ascoltato con attenzione Lord GOLDSMITH non trovo che questa discussione possa avere uno svolgimento positivo se i rappresentanti in questa sede in apertura della discussione condizionano la loro adesione al risultato di questo lavoro all'accettazione di un punto di vista, quale che esso sia. Noi dobbiamo avere un confronto il più possibile aperto, sui singoli articoli, le questioni trasversali, le questioni di base giuridica, le modalità di rilievo della convenzione, che non è l'unico riferimento del nostro mandato. Il nostro mandato mette sullo stesso piano diverse fonti, non c'è una priorità assoluta attribuita alla convenzione; quindi credo che dal punto di vista di merito aderisco alla sua indicazione di lavoro e credo che questo sia un punto essenziale per procedere, altrimenti riapriamo la discussione e su questo punto facciamo chiarezza.

20/03/2000 14:51:01 **PRESIDENT** psm

Muchas gracias, Sr. RODOTA. Sr. RODRIGUEZ-BEREIJO.

20/03/2000 14:51:05 **M. RODRIGUEZ-BEREIJO (Le Parlement espagnol)** fm

Si, yo estoy esencialmente de acuerdo con el ...

20/03/2000 14:51:19 **PRESIDENT** psm

Me dicen que no hay traducción, ¿hay traducción en español? No hay traducción, ¿en qué idiomas? Nos abandonan los interpretes. A ver, vamos a intentarlo otra vez, Sr. BEREIJO.

20/03/2000 14:51:44 **M. RODRIGUEZ-BEREIJO (Le Parlement espagnol)** psm

Sí, gracias Sr. Presidente. Sí, para decir que yo estoy esencialmente de acuerdo con la propuesta, únicamente una precisión de redacción. Este artículo primero, en realidad no es propiamente un derecho accionable o justificable de manera separada, ante un Tribunal de Justicia, como el fundamento de todos los derechos que son inherentes, inviolables y consustanciales a la persona. Por eso propondría manteniendo y respetando la esencia del precepto que se propone por la Presidencia, redactarlo de una manera algo distinta, y decir "la dignidad de la persona y los derechos inviolables que le son inherentes, reconocidos en esta Carta, son o constituyen el fundamento del orden jurídico, político y social de la Unión Europea". Es un artículo que no es tanto un derecho subjetivo accionable como el frontispicio que abre todos los derechos que luego van a venir a continuación uno por uno en la Carta. Nada más, gracias. Bueno, quiero precisar Sr. que la propuesta en el texto escrito que se ha distribuido a todos los miembros y eso me evita también insistir demasiado.

20/03/2000 14:53:32 **PRESIDENT**

Está claro, Señor RODRIGUEZ-BEREIJO. Señor TRIAS SAGNIER.

20/03/2000 14:53:37 **M. TRIAS SAGNIER (Le Parlement espagnol)** clg

Buenas tardes, Señor Presidente. Yo he presentado dieciséis enmiendas a...

20/03/2000 14:53:44 **PRESIDENT** clg

al artículo 1, Señor TRIAS SAGNIER, por favor, y por tres minutos.

20/03/2000 14:53:51 **M. TRIAS SAGNIER (Le Parlement espagnol)** clg

A todo el articulado y concretamente no he presentado por escrito ninguna enmienda al artículo 1, pero quiero presentar una in voce sumándome a la propuesta que acabo de leer, de Lord GOLDSMITH, en sus aspectos 1 y 2. Creo que la propuesta de Lord GOLDSMITH está muy bien redactada, entre otras cosas porque recoge, creo yo, la Declaración de Virginia, y yo, ya que en esa enmienda se hace referencia a quién va dirigida esta Carta, sí que la introduzco, mi enmienda número 2, a esta enmienda número 1. Es decir, que yo creo que los artículos 1 a 16 -no los que van a venir luego, que son derechos económicos y sociales- son de aplicación universal para todas aquellas personas que viven en territorios pertenecientes a la Unión Europea.

20/03/2000 14:54:55 **PRESIDENT** clg

Señor TRIAS SAGNIER, esto no es el artículo 1; está usted hablando del ámbito de aplicación de la Carta. Señor MEYER, tiene usted la palabra.

20/03/2000 14:55:04 **PRESIDENT** clg

Señor TRIAS SAGNIER, ya le he escuchado. Señor MEYER.

20/03/2000 14:55:11 **M. TRIAS SAGNIER (Le Parlement espagnol)** clg

Señor Presidente, quiero formular una protesta

20/03/2000 14:55:13 **PRESIDENT** clg

Señor TRIAS SAGNIER, no tiene usted la palabra. Ya le hemos escuchado. Ha (..?) usted a enmiendas de otros colegas. Le he dicho que teníamos tres minutos y que había que dedicar esos minutos al artículo correspondiente. Señor MEYER.

20/03/2000 14:55:29 **M. MEYER (Le Parlement allemand)** pa/dm

Herr Vorsitzender, ich folge ihrem Vorschlag, äußere mich zu dem Text von Artikel 1: Erstens, der vorgeschlagene Satz ist aus meiner Sicht überzeugend, er bedarf auch keiner Ergänzung unter Hinweis auf weitere Grundrechte, denn die Würde des Menschen ist nach meinem Verständnis das Muttergrundrecht, aus dem sich alle anderen ableiten, und es würde eine Verwässerung bedeuten, wenn man diesen einen Satz noch verändern oder ergänzen würde. Zweitens, im Vorschlag der Präsidentschaft, auf der ersten Seite findet sich nun nicht nur ein Kommentar, sondern ein Hinweis auf einen möglichen Absatz 2. Und dazu möchte ich mich in der Geschäftsordnung bleibend, äußern. Inhaltlich finde ich den Satz über die Adressaten der Grundrechtscharta, nämlich Organe, Einrichtungen der Union einerseits, Mitgliedstaaten bei Anwendung des Gemeinschaftsrechts andererseits, voll überzeugend. Und ich finde auch sehr wichtig, dieses zum Ausdruck zu bringen, denn viele Länder haben die Befürchtung, daß durch die Charta die EU-Organen in ihre Mitgliedstaaten hinein regieren wollen, genau das Gegenteil ist der Fall. Wir wollen durch die Charta erreichen, daß die Organe der EU besser kontrolliert werden als bisher, und darum genau geht es. Und jetzt äußere ich mich, nachdem ich in der Sache zugestimmt habe, drittens: zum Standort. Ich finde, daß ein Absatz 2, wie hier im Vorschlag der Präsidentschaft in Erwägung gezogen, zu Artikel 1 nicht der richtige Standort ist, denn diese Erwägung, wer Adressat der Charta ist, hat nicht nur mit der Würde des Menschen zu tun, sondern ist eine Grundüberlegung der gesamten Charta. Ich finde auch nicht überzeugend, es in die Präambel zu setzen, weil damit die Bindungswirkung abgeschwächt würde. Deshalb kommt meines Erachtens nur in Frage, entweder, das ist ja auch hier angekündigt, einen gesonderten Artikel vorzusehen, das halte ich für diskutabel, ebenso wie der Kollege FRIEDRICH vorhin, ich bin aber auch der

Meinung, man könnte an den zu verfassenden Artikel über den Rechtsweg/Garantie des Rechtsweges denken, das würde bedeuten, daß man klar zum Ausdruck bringt, gegen Verletzungen dieser Charta durch die EU-Organen oder durch die Mitgliedstaaten bei Anwendung des Gemeinschaftsrechts wird der Rechtsweg eröffnet. Das macht deutlich, daß es eben auch Konsequenzen hat, wer Adressat ist und daß wir hier nicht etwas verfassen, was von vornherein unverbindlich ist, was wir verfassen, ist zunächst unverbindlich, aber es muß so formuliert sein, daß es dann auch durch den Machtspruch des Rates eine verbindliche, mit Einklagbarkeit versehene Charta ist und ich finde, daß ist einen eigenen Artikel wert. In der Sache stimme ich aber mit dem, was im Kommentar steht, voll und ganz zu.

20/03/2000 14:58:30 **PRESIDENT** clg

Muchas gracias, Señor NEISSER. Eso es lo que estaba en el ánimo de la Presidencia y lo que dijimos antes. Señor NEISSER, el artículo 1.

20/03/2000 14:58:48 **M. NEISSER (Le Parlement autrichien)** dm

Ich stimme in weiten Teilen mit dem Herrn MEYER überein und plädiere vor allem auch dafür, diesen Satz "die Würde des Menschen wird in jedem Fall geachtet und geschützt" so stehen zu lassen. Das soll ein Signal an den Bürger sein und wir haben soviel von der Visibilität gesprochen. Ich würde diesen Eingangssatz nicht durch notwendige, vielleicht juristische Formulierungen - in einem gewissen Sinne, verzeihen Sie diese Feststellung, undeutlich machen. Daher, der Satz soll als Signal am Anfang der Charta so stehen, wie Sie ihn vorgeschlagen haben.

20/03/2000 14:59:22 **PRESIDENT** clg

Muy bien. ¿Alguna intervención más? Pasamos al artículo 2. ¿Quién quiere pedir la palabra para hablar sobre el artículo 2? Señor BEREIJO.

20/03/2000 14:59:35 **M. RODRIGUEZ-BEREIJO (Le Parlement espagnol)** clg

Muy brevemente, Señor Presidente. Solamente dos observaciones. En el punto 1 se dice: "toda persona". Propongo que se diga en lugar de eso, de "toda persona", que se diga "todos", con la finalidad de evitar el conflicto de la determinación jurídica, que es o puede ser distinta en los diferentes Estados, del concepto jurídico de persona. Y en el punto 2, propongo que se añada: "salvo lo que puedan disponer las leyes penales militares para tiempo de guerra". Y lo digo por una razón: en el artículo 15 de la Constitución Española se prevé la posible aplicación de la pena de muerte en casos de guerra según lo que pueda disponer en cada caso el legislador. Desde luego, el legislador, en este momento, ha dispuesto por ley orgánica la supresión de la pena de muerte incluso en ese tiempo, pero la formulación del principio absoluto de interdicción de la pena de muerte entraría en contradicción con el texto de la

Constitución Española y podría motivar la necesidad de una reforma. Esto es una preocupación que compartimos todos, lo de que la redacción de la Carta no puede implicar ni nuevas competencias, ni ampliar las existentes, ni ampliar nuevos derechos que no estén en las fuentes ya especificadas en el mandato de Colonia ni en las tradiciones constitucionales comunes, de tal forma que obligue a una reforma constitucional.

20/03/2000 15:01:35 **PRESIDENT** clg

La referencia que usted ha hecho verá usted que está en la exposición de motivos. Señor PATIJN.

20/03/2000 15:01:40 **M. RODRIGUEZ-BEREIJO (Le Parlement espagnol)** fm

Bueno, un momento, sólo brevísimamente, Sr. Presidente: La referencia que se hace en la exposición de motivos al artículo 6 del Tratado de la Unión Europea de Amsterdam no estoy seguro que sea correcta. Lo expreso y lo razono motivadamente

20/03/2000 15:02:00 **PRESIDENT** fm

No me lo exprese ahora, Sr. BEREIJO, porque sino entramos en una discusión de otra naturaleza, pero lo haremos. Sr. PATIJN.

20/03/2000 15:02:08 **M. PATIJN (Le Parlement néerlandais)** ptm

Apologies because I am still so busy in thumbing through Finnish, Greek and German texts regarding Article 1. I'm still at Article 1 so I'm in your hands about how to proceed now.

20/03/2000 15:02:26 **PRESIDENT** clg

Señor PATIJN, diga lo que quiera sobre el artículo 1.

20/03/2000 15:02:34 **M. PATIJN (Le Parlement néerlandais)** ptm

Well, I want to put on the record that I speak English because I'm addressing Lord GOLDSMITH as well. I have a strong preference for the wording of Lord GOLDSMITH for the first Article - for the first part of Article 1 but I have a specific question for him regarding the second paragraph. The second paragraph of Lord GOLDSMITH is different from let's say the paragraph which is retaken in the clarification of the President's report so the effect that Lord GOLDSMITH's text deletes the duties of the Member States to apply this charter when applying Community law. Is this a deliberate deletion? Because this is an element which puzzles me whether we are talking about a different system - a different line of thought which I can understand from a British thinking about the sovereignty of British courts but I want a clarification before I second him in his text for one hundred per cent I would like to have that clarification.

20/03/2000 15:03:42 **PRESIDENT** clg

Gracias, Señor PATIJN. Volvemos al artículo 2. Una primera palabra sobre el artículo 2. El Señor LALLEMAND.

20/03/2000 15:03:56 **PRESIDENT** clg

Esto no es una convención en la que hablemos unos entre otros. Usted plantea una cuestión horizontal. Yo quiero hablar del artículo, en este momento del artículo 2. Señor LALLEMAND.

20/03/2000 15:04:14 **M. LALLEMAND (Le Parlement belge)** ib

Je pourrais accepter le texte tel qu'il est proposé, mais je dois tout de même signaler que, bien entendu, il faut qu'il n'y ait pas d'ambiguïté sur une telle acceptation. Parce que la notion de personne est une notion ambiguë et elle peut être entendue de différentes manières. Il est évident par exemple que pour beaucoup d'entre nous, un être humain d'un embryon de 15 jours n'est pas nécessairement une personne. Et que dès lors la notion de personne se définit de façon unanime comme étant l'être humain mis au monde. Lorsque cet être humain n'est pas mis au monde, il est clair que la notion de personne ne s'applique pas de la même manière. Je n'ai pas besoin de rappeler qu'une série de législations par exemple ont permis une dépénalisation partielle des interruptions volontaires de grossesse. Dès lors, je crois donc qu'il est important que cela soit sous entendu, que la notion de personne n'est donc pas une notion univoque et qu'en tout état de cause, pour un bon nombre des participants ici, cette notion doit être comprise comme étant fondamentalement, comme visant fondamentalement les êtres humains mis au monde. Je dis cela pour éviter donc des ambiguïtés ou des équivoques qui pourraient évidemment générer des débats difficiles. Voilà Monsieur le Président.

20/03/2000 15:05:50 **M. DUFF (Le Parlement européen)** -fc

Thank you President. I would like to draw everyone's attention to my proposal in the interests of plain speech which you see on page 72 at the end of the package that has been circulated this afternoon. And as I am speaking if I could also request attention to my statement upon the explanatory memoranda where I think that we do need respectfully quickly to clarify the nature, file and structure of the explanatory memoranda before we are able to proceed much further with the drafting of the schedule clauses and insofar as I have said that in pages 70 to 71 I agree with Lord GOLDSMITH and the others that have spoken up on this point this afternoon.

20/03/2000 15:08:09 **Mme BERÈS (Le Parlement européen)** ib

Merci Monsieur le Président. Je voudrais soutenir la proposition de M. LALLEMAND en attirant l'attention de notre comité de rédaction sur les éventuelles difficultés d'interprétation.

C'est une difficulté que nous retrouverons tout au long du texte, mais qui a son importance. Le texte français mentionne la notion de personne, alors que le texte anglais dit "everyone". Je crois qu'il faut s'en tenir au terme "personne" pour les raisons qu'a développées M. LALLEMAND et en ce sens, j'aurai du mal à soutenir ce qu'à dit M. RODRIGUEZ-BEREIJO avec l'idée d'avoir une synthèse autour du terme "tous". Il me semble qu'il serait plus source d'ambiguïté que d'éclaircissement.

20/03/2000 15:08:48 **PRESIDENT** fm

Gracias, Sr. BERÈS. La Presidencia ha tratado hoy la cuestión de las traducciones, y nos proponemos enviar el texto definitivo a un comité de expertos jurídico-lingüístico para que la traducción sea la misma a todas las lenguas efectivamente. Sr. Costers Ales

20/03/2000 15:09:13 **M. KORTHALS ALTES (Le Parlement néerlandais)** jv

Mijnheer de voorzitter, ik zou mij graag willen aansluiten bij wat onze vertegenwoordiger van de Spaanse regering de heer Barejo heeft opgemerkt, dat het misschien toch wel zeer wenselijk is om aan het tweede lid van artikel 2 toe te voegen dat daarop een uitzondering mogelijk is in oorlogstijd. Ik ben me ervan bewust dat dat in de toelichting ter sprake is gebracht en ik ben me er ook van bewust dat we over de toelichting niet mogen spreken, ik zal dat ook niet doen, maar ik vind wel dat we ervoor moeten waken dat wij in de artikelen niet te ver gaan met afwijkingen van het EVRM die dan in de toelichting pas weer zichtbaar worden gemaakt. Ik denk dat wij met teksten moeten komen waaruit direct al blijkt dat als er een vergaand voorbehoud is, dat dat voorbehoud dan ook uit de tekst moet blijken en niet pas uit de toelichting. Dus wat dat betreft steun ik de heer Barejo.

20/03/2000 15:10:34 **M. MEYER (Le Parlement allemand)** dm

Herr Vorsitzender, ich möchte zunächst die Bemerkung von Pervenche BERÈS unterstreichen, daß man bei dem Streit um Begriffe immer auch die verschiedenen Übersetzungen im Auge behalten sollte. Das ist offenbar auch im Sinne der Präsidentschaft. Wenn wir über den Begriff "Personen" streiten, können wir schlecht ausblenden, daß es im englischen Text "everyone" heißt. Wenn durch Übersetzungen Probleme entstehen, finde ich, sollten wir flexibel reagieren und dieses nicht zu einem Grundsatzstreit etwa über den Begriff "Personen" werden lassen. Eine zweite Bemerkung richtet sich gegen Ergänzungen dieses sehr knappen - und wir wollen ja knapp und klar sein - Absatzes 1. Es ist sicher richtig, daß der Satz "im Kriege" nicht so uneingeschränkt stehen bleiben kann, aber bitteschön, das gilt für fast alle Grundrechte und deshalb in ich der Auffassung, die ja auch Herr Herzog 'mal zum Ausdruck gebracht, erstens, wir müssen erst einmal die Grundrechte kennen, ehe wir über Ausnahmen sprechen und zweitens sollte man in Erwägung ziehen, die Ausnahmen nicht an

jedem einzelnen Artikel anzubringen, sondern in einer generellen Klausel anzubringen. Zu dem Problem "Recht auf Leben im Kriege" will ich noch anmerken, das man das so einfach, wie vorhin vorgeschlagen, hier überhaupt nicht unterbringen kann, denn man müßte dann auch gleich das Recht auf Kriegs- oder Wehrdienstverweigerung behandeln. Dies gehört dann weniger in diesem Zusammenhang sondern in den Artikel 14, wo es um Gewissensfreiheit geht. Also, wenn man dieses Problem berücksichtigen wollte, dann bitte nicht hier, sondern eher in Artikel 14. Dem folgt ein Vorschlag, den ich dem Präsidium schriftlich unterbreitet habe und über den wahrscheinlich dann morgen zu Artikel 14 noch gesprochen werden kann.

20/03/2000 15:12:27 **M. MEYER (Le Parlement allemand)** dm

Ich hoffe das noch heute, Herr MEYER (Lachen). Senor PAPADIMITRIOU.

20/03/2000 15:12:35 **M. PAPADIMITRIOU (Le Parlement grec)** pa

Κύριε Πρόεδρε, νομίζω ότι η παράγραφος 2 πρέπει να μείνει λιτά διατυπωμένη και να μείνουμε πιστοί στον κανόνα. Εξαιρέσεις στο πλαίσιο της Ευρωπαϊκής Ένωσης τώρα αλλά και στο άμεσο μέλλον φαίνεται να μην είναι αναγκαίες. Μπορεί στο σύστημα ενός εθνικού συντάγματος εξαιρέσεις να είναι αναγκαίες, μπορεί στην Ευρωπαϊκή Σύμβαση να θεωρούνται αναγκαίες, αλλά δεν νομίζω ότι τίθεται πρόβλημα ανάλογο στην Ευρωπαϊκή Ένωση. Δεν νομίζω ότι υπάρχει αντικείμενο το οποίο θα δικαιολογούσε τη θέσπιση εξαιρέσεων. Γι'αυτό προτείνω να μείνουμε στη λιτή διατύπωση όπως διατυπώνεται στο κείμενο. Ευχαριστώ.

20/03/2000 15:13:21 **M. SCHULTZ (Le Parlement européen)** wk

Der Rat hat, das wird ebenfalls in den Erläuterungen zu Artikel 2 ausgeführt, die weltweite und uneingeschränkte Abschaffung der Todesstrafe als ein Ziel der Europäischen Union definiert in seiner Erklärung zur Todesstrafe im Jahre 1998. Alle Regierungen und alle Regierungschefs haben dieser Erklärung zugestimmt. Das gebe ich auch dem Vertreter Spaniens zu bedenken. Darüber hinaus teile ich die Auffassung aller meiner Vorredner zu Absatz 2 des Artikels 2.

20/03/2000 15:13:55 **M. FRIEDRICH (Le Parlement européen)** wk

Wir haben uns doch bereits mehrfach auf folgende zwei Grundsätze geeinigt, der eine war: je kürzer desto besser, weil dann auch Raum für Gerichte und Parlamente anschließend entsteht und so nah wie möglich an der Menschenrechtskonvention. Wenn ich dies als Meßlatte nehme, dann kann ich die Formulierung, wie sie vorgeschlagen sind, voll akzeptieren. Was die Todesstrafe betrifft, könne man ja sagen, kein Land hat sie im Augenblick, und die Europäische Union denkt auch nicht daran, für ihre Bediensteten die Todesstrafe einzuführen, wobei vielleicht dies noch einmal zum Nachdenken Anlaß sein könnte, aber ich will ernsthaft weiterführen und sagen, auch wenn es nirgends praktiziert wird, gehört es zur Streitkraft nach

außen, gehört es zur Botschaft der Europäischen Union, daß ein solches bekenntnishafte Darstellen unserer Meinung zur Todesstrafe hier dazu gehört. Deswegen schlage ich vor, den Text so zu belassen.

20/03/2000 15:15:00 **Lord GOLDSMITH (Le Parlement britannique)** fc

Mr Chairman, I have three questions to those who have drafted this and I think that they will help us understand what our task is. The first question is: is this Article intended to depart from the obligations and the rights under the European Convention on Human Rights which includes specific limits, circumstances in which the right to self-defence and other things of that sort may be relied upon which includes a specific exemption for the death penalty in time of war? So the first question is: are we intending to stick exactly to the European Convention on Human Rights. The second question is are we intending to keep to the jurisprudence of the European Court of Human Rights in Strasbourg which has dealt with many of the questions which have been raised here: abortion, matters of that sort. The third is, if we are intending not to depart, if we are intending to be the same as the European Convention on Human Rights and we are intending to follow the jurisprudence of the European Court of Human Rights which I believe is essential to our task. The third question is: what is the legal technique by which we are going to achieve that? And Mr Chairman you have suggested on several occasions that we are not here to debate the explanatory note. I think I must make it very clear the whole point is whether or not there will be something in this document which ties this to the rights. So those are the three questions. My proposal, and I invite attention to pages 22 and 25 of the document handed out are that Article 1(3) says that the short statement of rights are defined in the second part of the document. Article 2: I have a slight change to the first Article which reflects more closely the language of the European Convention on Human Rights. I have no change to the second. But it is all dependent upon acceptance of page 25. The general provision that the part defines the nature, full extent and application of the fundamental rights and in the next paragraph that it refers to the jurisprudence of the Strasbourg organs and if I take the example of this particular case; Article 2, Right to Life, the rights in Article 2 are the rights guaranteed by Article 2 and certain provisions of Protocol 6 to the ECHR. So my answer to this question is yes, we intend to be the same, yes, we intend the jurisprudence to apply. My legal technique for achieving that is in this way. And I would ask the Procedium? very kindly if they would indicate whether the first two questions they also intend to keep to the ECHR they intend to follow the jurisprudence of the Strasbourg Court and, if so, how they intend the legal technique to achieve that.

20/03/2000 15:18:25 **PRESIDENT** clg

Señor GOLDSMITH, usted ha estado presente en todas las reuniones que ha habido hasta ahora de la Convención, y ha quedado bien claro, bien claro desde el principio, que habrá una cláusula horizontal en la cual en ningún caso los derechos reconocidos en la Carta tendrán una protección inferior a la que da el Convenio Europeo de Derechos Fundamentales. Es evidente. No queremos hacer otra cosa distinta. Otra cosa es que queramos recopiar los artículos de la Convención. A las dos primeras respuestas le diré que sí, a la segunda le diré que no, que si se tratase de recopiar los artículos de la Convención para eso creo que no, como decimos en mi país, para ese viaje no hacen falta alforjas. Queremos poner al día los artículos de la Convención, pero evidentemente, cuando en la exposición de motivos hacemos referencia a la Convención de Derechos Humanos, evidentemente, Señor GOLDSMITH, es porque esa Convención está plenamente vigente y plenamente en nuestro horizonte jurídico y político, es evidente. Pero si fuéramos a recopiar los artículos de la Convención, creo que nuestro trabajo no tendría el más mínimo sentido. Queremos hacer una Carta corta, precisa, política, percutante, para que los ciudadanos sepan cuáles son sus derechos, pero jurídicamente, insisto, Señor GOLDSMITH, no voy a entrar en una discusión con usted, porque sería una discusión teológica; insisto en que habrá una cláusula horizontal al final en que la protección que asegura la Convención de Roma estará absolutamente garantizada. No vamos a crear ni standards distintos ni standards menores, pero eso, Señor GOLDSMITH, lo hemos hablado ya en las cuatro o cinco reuniones que hemos tenido. Señor FISHBACH.

20/03/2000 15:19:59 **M. FISHBACH (Conseil de l'Europe)** ib

Merci Monsieur le Président. Permettez-moi tout simplement et très brièvement de vous renvoyer à la contribution que M. KRUGER et moi-même ont eu la possibilité, l'opportunité de présenter à la convention. Je voudrais le dire en deux mots. Nos objections essentielles se rapportent ou se réfèrent à l'exposé des motifs, en l'occurrence au renvoi qui est fait à l'article 6 du traité sur l'Union européenne et sur la question de savoir quelle sera la nature exacte de cet exposé des motifs. Je voudrais tout simplement, Monsieur le Président, sans entrer dans les détails, je voudrais tout simplement dire que nos propositions ne servent à rien d'autre, n'ont d'autre finalité que d'aider la convention à atteindre les objectifs qu'elle s'est fixés elle-même, c'est-à-dire de présenter un produit final qui soit transposable dans un instrument juridiquement contraignant. Merci.

20/03/2000 15:20:57 **PRESIDENT** clg

Gracias juez FISHBACH, puedo asegurarle que todos aquí tenemos exactamente el mismo objetivo. ¿Alguna intervención más? ¿ Herr MEYER ha intervenido ya sobre este artículo?

20/03/2000 15:21:07 **M. MEYER (Le Parlement allemand)** wk

Ja, ich möchte eine kurze Bemerkung zu der Frage von Lord GOLDSMITH machen, weil ich meine, daß man sich auch inhaltlich damit auseinandersetzen und zeigen kann, daß diese Frage gerade zu Absatz 2 von Artikel 2, wie er sie formuliert hat, zu eng ist. Denn es geht ja nicht nur darum und das ist unser Auftrag, den Bestand der Europäischen Menschenrechtskonvention zu bewahren und die dazu ergangene Rechtsprechung des Europäischen Gerichtshofes, sondern ganz entscheidend ist, daß der Europäische Gerichtshof in seinen Judikaten immer abstellt, auch auf den von den Mitgliedstaaten der Europäischen Union erreichten Grundrechtsstandards, und dieser Grundrechtsstandard, und darum können wir uns nicht darauf beschränken, in die MRK zu gucken oder auf das eine oder andere Judikat des Europäischen Gerichtshofes. Dieser Grundrechtsstandard sagt gemeinsam, daß niemand zur Todesstrafe verurteilt oder hingerichtet werden darf. Und genau das ist der Vorschlag des Präsidiums, und darum finde ich ihn überzeugend.

20/03/2000 15:22:13 **PRESIDENT**

Gracias. Señor O'KENNEDY.

20/03/2000 15:22:18 **M. HAYES (Le Parlement irlandais)** fc

Mr Chairman, I am not in fact Mr O'KENNEDY, I am the alternate Irish representative with the authority to speak in his absence and I have moved because I didn't have a microphone where I was. Mr Chairman, first of all I would have to say that I endorse what Lord GOLDSMITH has said a few minutes ago about this and that we need to pursue this matter further, if not quite at this moment and it seems to me in making a comment that while Article X of the horizontal Articles, and you will excuse me for mentioning it, does prevent us from reducing the rights in the European Convention. It does not prevent us from departing from those rights in other ways which could be quite confusing. The second point I want to make is related to that and is directly related to the text. It has been suggested that in the first paragraph of this text the word "everyone" should be changed or should be defined in such a way as it would refer only to the born person. Now, I would suggest, Mr Chairman, that the word "everyone" is used, if not in exactly the same sentence, in the same sense in the European Convention of Human Rights which we have all accepted and as has been pointed out there is a jurisprudence of the Strasbourg Court about this and I, while it has been said that if this is not changed it will create a problem, if there is an attempt to change this and change the meaning for it there will certainly be a problem. Thank you Mr Chairman.

20/03/2000 15:23:59 **M. BRAIBANT (Le Parlement français)** ib

Monsieur le Président, je voudrais répondre à Lord GOLDSMITH pour lui dire que, dans ce domaine, je suis entièrement d'accord avec lui et je voudrais qu'il n'y ait pas de malentendu. Premièrement, nous reprenons la convention européenne, toute la convention européenne, rien que la convention européenne, sur un texte comme celui-ci. Donc y compris la jurisprudence. Et nous n'ajoutons rien, nous ne retirons rien. Et son intervention me fait penser que la clause de sauvegarder que nous avons envisagée n'est peut-être pas suffisante, parce que c'est une clause plancher. Nous disions, nous proposons de dire aucune disposition de la charte ne pourra aboutir à une protection inférieure à celle de la convention. Mais ni à une protection supérieure. Avec la peine de mort, nous sommes dans le problème de la protection supérieure. La convention admet la peine de mort en temps de guerre. Nous n'entendons pas non plus revenir là-dessus. Et donc, il faudra avoir une clause très générale qui montre que nous nous référons à la convention. Alors je pense qu'il y a un problème de fond. Est-ce que oui ou non nous reprenons la convention, la réponse est oui. Une deuxième de forme ou de technique juridique : comment nous la reprenons et cela reste à régler. C'est pour moi une des questions importantes mais je pense que cela fait partie des dispositions horizontales et qu'il faudra trouver en nous y mettant tous, Lord GOLDSMITH et nous-mêmes, trouver la bonne formule de renvoi à la Convention européenne des droits de l'homme qui soit un renvoi intégral.

20/03/2000 15:25:45 **M. MANZELLA (Le Parlement italien)** va

Sì, grazie Presidente, io sono in linea generale d'accordo la formulazione di questo articolo anche se la trovo eccessivamente succinta e mi propongo di fare qualche emendamento. Qualche emendamento che prenda anche, assuma qualcosa, qualcuno degli elementi che adesso fanno parte di quella che è la esposizione dei motivi. Io credo che, appunto, come diceva un momento fa il Sig BRAIBANT, noi dobbiamo avere un punto di equilibrio nella brevità del testo; un punto di equilibrio che non sacrifichi quello che è la sostanza giuridica ormai che certi enunciati hanno raggiunto e che naturalmente, non possa tener conto di eccezioni in peggio di costituzioni particolari; ecco in questo noi dobbiamo riferirci ad una protezione superiore. Tutto questo naturalmente non significa che, tutto questo significa che tutto deve essere compreso nel testo ed in una sola formulazione giuridica, noi non possiamo dare ad un altro testo un valore giuridico che sia proprio quello della formulazione giuridica, della formulazione normativa, perché se no romperemmo il mandato di Colonia, che ci dice che noi dobbiamo aver presente non solo la convenzione dei diritti dell'uomo, ma anche la convenzione sociale, la convenzione dei lavoratori, anche i principi comuni del diritto costituzionale dei paesi. Romperemmo l'unità del testo giuridico, che è uno dei portati (..?)

della civiltà moderna cioè norma e glossa è una distinzione che è stata superata in altri secoli, e infine romperemmo il principio della certezza del diritto. Ecco l'idea di una carta per gli avvocati e di una carta per i cittadini è bene che rimanga in questo recinto qui dietro perché se lo pubblicasse i giornali europei, domani, che noi vogliamo fare una carte per gli avvocati, ed una carta per i cittadini, questo sarebbe un motivo di grande comicità, di grande ilarità, perché avrebbe sarebbe l'affermazione di un diritto aristocratico, di un diritto per gli inclusi e di un diritto per gli esclusi e io credo che farci ridere dietro dall'intera Europa non è nelle nostre intenzioni. Grazie.

20/03/2000 15:28:40 **M. BERTHU (Le Parlement européen)** ib

Merci Monsieur le Président. Je suis d'accord avec le premier point de l'article 2 et je pense qu'il ne faut surtout chercher à préciser sauf à entrer dans des polémiques qui seraient sans fin. Mais je voudrais intervenir surtout sur le point 2. Nul ne peut être condamné à la peine de mort ni exécuté. Je crois que cet alinéa est soit contraire à la subsidiarité, soit absurde. Si on estime qu'il s'applique aux États membres, il est contraire à la subsidiarité. Nous connaissons tous de grands États fédéraux qui laissent la question de la peine de mort au niveau des États membres. Et pourtant l'Union européenne n'est pas un État fédéral, donc a fortiori, elle devrait, elle a encore plus de raisons de laisser cette question au niveau des États membres. Et si à l'inverse, on dit que cet alinéa s'applique aux institutions de l'Union européenne, alors il est absurde, M. FRIEDRICH l'a dit de manière humoristique tout à l'heure, mais je pourrais aussi le dire autrement. Personne n'a jamais envisagé que la peine de mort puisse être appliquée aux gens qui violeraient des règlements de la Commission. Donc c'est une hypothèse tout à fait hors normes à laquelle personne n'a pensé. Donc pour moi cet article 2 doit être supprimé et je voudrais... Cet alinéa 2 doit être supprimé et je voudrais ajouter aussi que, bien entendu, nous sommes tous d'accord pour reprendre les principes de la Convention européenne des droits de l'homme, mais en tant que les institutions de l'Union européenne sont concernées. Il ne s'agit pas de reprendre tout y compris ce qui concerne les compétences des États membres, sinon notre exercice reviendrait à un gigantesque transfert de compétences des États membres vers l'Union européenne.

20/03/2000 15:30:28 **PRESIDENT** clg

Gracias Señor BERTHU. Vamos a pasar al artículo 3. ¿Quién quiere intervenir en el artículo 3, Derecho al respeto a la integridad? Señor BEREIJO, qué rapidísimo en levantar el brazo.

[LA VERSION FRANÇAISE COMMENCE ICI]

20/03/2000 15:30:45 **M. RODRIGUEZ-BEREIJO (Le Parlement espagnol)** clg

Oui, désolé, je voulais pas donner l'impression que j'abuse de la parole, non ce n'était pas mon intention. Très brièvement, au paragraphe 1, c'est une petite chose mais ça n'empêche que c'est assez significatif. En ce qui concerne l'intégrité physique et mentale, moi je disais psychique alors on pourrait peut-être aussi dire morale, intégrité morale plutôt que intégrité mentale ou psychique parce que le terme moral est je crois plus compréhensible par tous. Le seul doute que j'aurais quant à ce précept de la santé mentale et physique, c'est peut-être l'alinéa 2 tel que je l'interprète. Si je ne me trompe pas la source de cet article c'est la bioéthique et la Convention sur les droits qui n'a pas encore été ratifiée par tous les Etats membres de l'Union mais il faut savoir que cette Convention de la bioéthique est un paquet normatif dont on a sorti certaines mentions qui sont ici reprises au paragraphe 2. Certaines illustrations, alors je ne sais pas si on peut vraiment agir ainsi de manière aussi imprécise. Je dirais en plus que , on dit dans le point 2 que dans le cadre de la médecine et de la biologie les principes suivants doivent notamment être respectés mais on ne dit pas pour autant que ce sont des droits, on parle de principes alors j'ai des doutes dans la formulation d'un droit est-ce qu'on peut vraiment limiter à la pratique génique, au consentement éclairé à l'interdiction de faire du commerce sur le corps humain ou du clonage. Est ce que tout ce la ce sont vraiment des principes et alors à ce moment-là quelle est la connotation que l'on donne à principe dans une charte où on parle de droits.

20/03/2000 15:33:18 **M. VITORINO (La Commission)**

Merci Monsieur le Président, très brièvement seulement pour souligner que dans mon avis le libellé du paragraphe 2 est un peu restrictif dans le sens que nous préférierions que soit faite une correction à la rédaction et qui pourrait commencer par l'expression en particulier, dans le cadre de la médecine et de la biologie les principes suivants devraient être appliqués parce que ces principes-là peuvent être des applications outre le développement de la médecine et de la biologie et de l'autre côté, il peut y avoir aussi d'autres considérations relevantes pour apporter à l'interprétation de la protection de la protection de l'intégrité physique et mentale ou morale vis-à-vis le développement de la médecine et de la biologie. Surtout je crois qu'ici pour répondre la question de M. BEREIJO, ce qu'on s'occupe c'est de dire quelles sont les projections du principe et du droit à l'intégrité physique et mentale sur l'évolution de la recherche et la recherche appliquée dans le domaine de la médecine et de la biologie.

20/03/2000 15:34:42 **M. RODOTA (Le Parlement italien)**

Monsieur le Président, Pour ce qui est du point 1, je suis pour le libellé actuel qui reflète par ailleurs la définition actuelle en matière d'intégrité physique et mentale de l'OMS et là on

parle de l'intégrité physique et psychique qui renvoie à l'unité de la personne. Pour ce qui est du point 2, j'ai fait quelques remarques par écrit et je voudrais dire que cela me semble important de reprendre le principe du consensus, c'est un élément fondamental des droits de la personne. Rien ne peut être fait sans le consentement de la personne. Aucune intervention concernant l'intégrité physique et mentale de la personne peut être fait sans le consentement de la personne. Je pense que cela reflète bien ce qui figure déjà dans la constitution et ce qui figure dans les jurisprudences des tribunaux nationaux et de la Cour européenne.

Troisièmement, je pense que c'est un principe autonome y compris pour ce qui est du caractère non commercial du corps humain. Indépendamment de toute référence à la médecine et à la biologie parce que je vous le rappelle, il y a aux Etats-Unis une série d'utilisation ou d'activités qui concernent les personnes et leur intégrité physique et psychique qui sont fait en dehors du contexte médical et biologique par des sociétés commerciales qui offrent des services, notamment en matière génétique aux personnes. Donc, si on dit que le corps humain ne peut jamais faire l'objet de commerce, je pense que nous serons confrontés au problème de la prostitution mais là on pourrait trouver une solution sur cette question. Alors pour ce qui est des deux autres exemples, je pense que ainsi il y a un risque d'une grande ambiguïté. Si nous parlons d'interdiction génétique, eh bien nous sommes confrontés au problème de la thérapie génétique et pour ce qui est du clonage, là il y a un Protocole à la Convention euro-méditerranéenne. Je pense qu'il y a lieu de spécifier ces deux points parce que sinon nous risquons une grande ambiguïté notamment pour ce qui est du clonage des cellule.

20/032000 15:38:16 **PRESIDENT**

Merci aussi de votre contribution écrite qui est tout à fait intéressante. Merci.

20/03/2000 15:38:28 **M. RACK (Le Parlement européen)**

Pas de problème pour l'alinéa 1, j'y souscris pleinement. Mais pour ce qui est de l'alinéa 2, j'ai plus de points d'interrogation. Ca a déjà été abordé mais je voudrais encore le répéter. Il s'agit du "notamment". Je trouve que dans une explication de ce type, sachant que des questions d'ordre médical ou biologique peuvent être posées et aller au-delà, je me demande si c'est tout à fait opportun. Sur la base de cet article bon est-ce qu'il y a aussi la pornographie infantile qui pourrait être traitée dans l'intégrité physique des enfants il y a aussi l'agression. Alors est-ce qu'on pourra aussi dans les numérations envisager ce point ? Bon, autre chose. Ces exemples qui ont été choisis je dis qu'ils n'étaient pas tous opportuns mais dans l'ordre qui a été choisi non plus. Je pense que le consentement est clair et du patience c'est pas du tout la même chose que les interdictions les trois autres interdictions qui ont été citées. Alors je crois

que le respect du consentement avec (...?) doit être mis soit devant les autres soit en dernier point mais pas au milieu.

20/03/2000 15:40:11 **M. FAYOT (Le Parlement luxembourgeois)**

Oui, merci monsieur le président. Quant à cet article 3, le paragraphe 1 est tout à fait acceptable. Le paragraphe 2 me semble une façon intéressante d'apporter du nouveau dans cette farte. Je suis tout à fait d'accord avec les quatre tirets parce qu'ils reproduisent l'essentiel des préoccupations de l'opinion publique face à certaines pratiques la médecine et la biologie. Voilà pourquoi moi je pense qu'il est intéressant de s'en tenir ici à la médecine et à la biologie et donc de cibler l'article sur cet aspect. Je suis d'accord avec un certain nombre d'intervenants en ce qui concerne plus particulièrement le terme dans le troisième tiret "interdiction de faire du corps humain et de ses produits une source de profit". Je pense que le terme de "produit" est ici peut induire une erreur et je pense qu'il faudrait faire attention à la traduction. Il me semble que dans le texte anglais figure "parts" c'est à dire qu'il faudrait mettre aussi "parties" parce que nous entendons qu'il ne s'agit pas simplement du sang il s'agit aussi d'organes qu'on peut par exemple utiliser comme source de profit. Mais cela étant moi je pense que ces quatre tirets sont intéressants reproduisent l'essentiel de nos préoccupations et qu'il faudrait donc les laisser dans cet article.

20/03/2000 15:41:54 **M. FRIEDRICH (Le Parlement européen)**

Je peux renvoyer au principe c'est toujours court et précis. Alors dans cet esprit je crois qu'il faut essayer de faire en sorte que l'on complète la première phrase de manière à pouvoir supprimer la deuxième. Toute personne a droit au respect de son intégrité physique, mentale, morale et génétique. Ca peut en ... de se passer pratiquement de tout ce qui figure dans l'article 2. Parce que là encore c'est les droits de protection dont on parle. J'avais dit, je le rappelle, que toute personne a ce droit vis-à-vis de l'état et de ses institutions. Mais l'interdiction du clonage reste en suspend. Parce qu'il pourrait qu'on soit dans une situation où une personne souhaite cloner et ne souhaite pas se voir protégée, qu'elle pense elle-même au clonage. Donc, cette petite phrase pourrait être ajoutée dans le tiret quatre on laisserait l'interdiction du clonage des êtres humains à part. Donc, je répète. Ma suggestion serait à l'article 3 de ne garder que la phrase 1 génétique et mentale. Donc intégrité physique, génétique, mentale et morale et on laisserait dans l'alinéa seulement l'interdiction du clonage.

20/03/2000 15:43:50 **M. LALLEMAND (Le Parlement belge)**

Deux remarques sur l'article 3. D'abord, je crois qu'il y a une affirmation essentielle qui est faite à l'alinéa 2 à savoir l'interdit de commercialiser le corps humain ou les parties du corps, je m'accorde tout à fait avec cette conception. Je crois qu'il faut souligner que le mot produit

qui figure en français dans le troisième tiret, le mot produit est plus large que le mot parties, je sais qu'en anglais ou en allemand, le mot qui est employé, utilisé n'est pas produit mais partie. Il est évident qu'il faut savoir si dans le texte on veut atteindre par exemple la commercialisation d'embryons qui ne sont plus vraiment une partie du corps humain, mais plutôt un produit du corps humain. Donc il y a une question intéressante qui devrait être soulevée quant à la portée des textes dans les différentes langues. Deuxième remarque : je suis quant à moi réservé, comme certains l'ont dit sur le terme notamment qui permet des extensions imprécisées d'interdit, mais je crois qu'en tout état de cause si on peut s'accorder sur les quatre interdits qui sont indiqués, en tout cas les trois interdits qui sont indiqués dans l'article, il faut bien sûr les concevoir comme des sortes d'exception à une règle ou à un droit de connaître ou d'expérimenter. Il ne faut pas perdre de vue que ce droit et cette règle d'expérimentation sont importants ou essentiels dans une société moderne. Je crois donc qu'il ne faudrait pas qu'il y ait une ambiguïté considérée que les seules formulations de l'article 3 ne visent en réalité que des principes et non pas des exceptions.

20/03/2000 15:45:50 **Mme BRAX (Le Parlement finlandais)**

Je crois que la Task force est parvenue à régler les questions de manière non conflictuelle. Dans les précédentes versions ce n'était pas clair et les exemples n'étaient pas appropriés. Je crois que dans la convention 16 c'est un bon texte, c'est un bon exemple de la convention européenne des droits de l'homme qui a 50 ans. Les exemples sont bons. Quand elle a été rédigée on n'avait pas encore idée des problèmes génétiques. Les réunions internationales et les accords internationaux ont pris position sur ces questions depuis plusieurs décennies et ont pris position sur les droits de l'individu. Ici les droits de l'individu sont bien repris dans le deuxième paragraphe. Monsieur le président, je ne crois pas qu'on puisse s'en tenir à d'anciennes formules partout.

20/03/2000 15:47:28 **Lord GOLDSMITH (Le Parlement britannique)**

Merci M. le président. J'ai deux préoccupations au sujet de cet article. En premier lieu, cela porte sur le libellé, les termes et ensuite sur les compétences de l'Union. Il y a quelques difficultés et quelques ambiguïtés qui ont déjà été évoquées par d'autres intervenants entre autres en ce qui concerne le libellé. Un exemple les références à l'interdiction de pratiques eugénistes. Ce n'est pas nécessaire pour définir le terme sur un plan juridique. Le premier article, tout personne a droit au respect de son intégrité physique et mentale pourrait être plus vaste que ce que l'on recherche. Cela pourrait par exemple couvrir, cela pourrait aboutir à la criminalisation de l'avortement, cela ne pourrait pas être admissible pour certains Etats. Alors la question se pose de savoir comment les Institutions européennes sont affectées par ces

principes et en deuxièmement quel devrait être le contenu de ces droits. Comme cela a été dit, une convention sur les droits de l'homme et la biomédecine, c'est reconnu par le Conseil de l'Europe, il y a la nécessité d'évoluer avec cette convention. C'est quelque chose qui a été négocié pendant un certain nombre d'années par exemple. Le deuxième tiret de l'article 2 dans ce projet parle de respect du consentement éclairé du patient, alors que la convention du Conseil de l'Europe contient des dispositions détaillées importantes sur la façon dont on traite du consentement avec les personnes qui sont mentalement handicapées ou qui ne sont pas en mesure de donner leur consentement. Je pense qu'il est nécessaire de travailler encore en profondeur sur cet article pour avoir un contenu détaillé pour reprendre, refléter les compétences de l'Union et je propose qu'à ce stade l'article soit éliminé et que l'on y revienne ultérieure. Et ceci est repris à la page 16 du document. J'ai proposé une suggestion alternative dans un esprit de coopération et j'aimerais attirer votre attention là dessus M. le Président, si vous me le permettez. Le texte en gras reprend ma proposition, on rajouterait les termes en application de la convention biomédicale et si on précise que l'on parle de bioéthique et non pas de quelque chose d'autre. Et deuxièmement dans une autre partie identifier les exemples là, mais les lier en particulier aux conditions et à la définition qui sont énoncées dans la convention biomédicale et si les pays vont ratifier cette convention en l'état ce serait une erreur que d'avoir convenu d'une formulation différente dans la charte, surtout vis-à-vis d'une convention qui sous l'égide du Conseil de l'Europe. Donc je pense que ceci devrait encore faire l'objet de réflexions et je pense qu'il faut l'annuler pour l'instant et je reviendrai ultérieurement avec d'autres propositions.

20/03/2000 15:51:15 **M. BRAIBANT (Le Parlement français)**

Merci M. le président. J'ai été à la fois satisfait et ennuyé par le débat qui vient de s'ouvrir. Satisfait parce que beaucoup ont admis la pertinence du texte que nous proposons et en particulier j'ai été intéressé par les observations du Professeur Rodo... qui est un grand spécialiste de la question. Ennuyé par la dernière intervention de Lord GOLDSMITH parce qu'il remet en cause le principe même de cet article. Alors je voudrais dire d'abord que sur les observations de forme ou de détail qui ont été formulées, je suis entièrement d'accord. Je serais d'accord pour supprimer le mot "notamment" au début de l'alinéa 2, d'accord pour introduire la notion de clonage reproductif, nous avons pensé nous en tenir là avec le clonage des êtres humains, mais c'est bien le clonage reproductif et non pas les autres formes de clonage qui au contraire sont intéressantes pour le progrès médical et scientifique et d'accord aussi pour inverser l'ordre des alinéas qui sont en cet article. Je serais moins d'accord pour l'écarter. La question de savoir s'il doit être ici ou ailleurs dans la charte c'est un autre

problème mais voilà un des points sur lesquels nous sommes attendus. Il est clair que depuis 50 ans, il y a eu dans ce domaine des extraordinaires développements. Que c'est un des points sur lesquels on ne peut pas vous dire "restez à la Convention européenne des droits de l'homme parce que la Convention européenne des droits de l'homme est dans ce domaine complètement dépassée". Et il serait dommage que nous ne disions rien. Encore une fois à l'article 2 ou à l'article 15 ou à l'article 25 c'est un autre problème. Mais je crois vraiment qu'il faut que nous ayons un article sur ce point et ce que nous avons tenté, et je constate qu'il y a un certain consensus autour de cette solution, c'est de dégager les trois ou quatre principes fondamentaux qui peuvent s'appliquer dans ce domaine et dont on peut dire dès maintenant que ce sont des principes européens pour être simple. Alors je souhaiterais que cet article soit maintenu.

20/03/2000 15:53:33 **Mme BERÈS (Le Parlement européen)**

Après l'intervention de M. BRAIBANT je ne suis pas sûre que j'ai besoin d'être très longue. Trois observations, la première pour soutenir la proposition qu'a faite le commissaire VITORINO pour inverser dans le paragraphe 2 et commencer par en particulier dans le cadre de la médecine et de la biologie, réinsister sur la question du terme produit, selon les versions nous avons "produit" ou "partie". c'est une conception assez différente de ce que nous entendons interdire et nous devons de ce point de vue là nous prononcer et ne pas le laisser au hasard des juristes-linguistes.

0/03/2000 15:54:07 **PRESIDENT**

Si oui nous allons suivre votre conseil.

20/03/2000 15:54:16 **M. MOMBAUR (Le Parlement européen)**

Merci M. le Président. J'aimerais juste dire que je suis d'accord avec le libellé ici même si l'ordre comme cela a été dit pourrait être amélioré. Mais je ne pense pas qu'il soit suffisant de faire référence à la convention. Je suis reconnaissant à Lord GOLDSMITH pour ce qui est des compétences de l'Union européenne. L'Union a longuement parlé de la protection accordée au citoyen et pour nous en tenir à cette protection accrue, j'aimerais mettre en garde la convention. Les européens sont très attentifs à ces questions. Notre niveau de protection est plus important et c'est mieux ...[beaucoup manque ici]... refléter avec ce libellé qu'avec une simple référence à la convention. En cas de doute le niveau de protection le plus élevé est celui qui prévaut.

20/03/2000 15:55:32 **Sir GRIFFITH (Le Parlement britannique)**

M. le président, très brièvement. En tout je suis d'accord avec le principe qui consiste à dire quelque chose sur la nécessité de respecter l'intégrité physique et mentale des individus en

application de la convention biomédecine. Mais j'aimerais savoir si on va, si on entre plus dans les détails, quels sont les Etats membres qui ont déjà signé la convention sur les droits de l'homme et la biomédecine ? Est-ce qu'elles ont été ratifiées, sont entrées en vigueur, ou ces Etats ont demandé des dérogations pour certaines parties de cette convention ? On me dit que personne ne l'a signée. Si aucun Etat membre ne l'a signée et bien on va perdre notre temps. Si chaque membre de l'Union européenne a déjà décidé de ne pas poursuivre avec cette question.

20/03/2000 15:56:33 **PRESIDENT**

Merci SIR GRIFFITH. Nous terminons ici la liste des intervenants pour ce qui est de l'article 3. Passons maintenant à l'article 4. Interdiction de la torture et des traitements inhumains.

Monsieur NIKULA, mon ami

20/03/2000 15:56:54 **M. NIKULA (Le Parlement finlandais)**

Merci M. le Président. Je suis d'accord avec M. JANSSON et Mme BRAX. J'ai soumis une note écrite que vous trouverez à la page 58, l'article 4 est le premier article que nous abordons. Pour ce qui est de la jurisprudence en matière de torture, nous avons des suggestions de même nature quant à la déportation de personnes vers des pays où ils peuvent être soumis à la torture ou à exécution. Ceci, ce débat signifie que la présidence en nous présentant ce nouveau libellé a pris en compte les différentes contributions et propositions, et nous pouvons donc marquer notre accord au titre d'un consensus. Les personnes peuvent s'interroger sur ce que fait l'Union européenne quant il s'agit de tortures parce qu'il n'y a pas de tel paragraphe. Donc il faut avoir un catalogue. C'est définitivement à cet endroit qu'il faut l'inclure.

20/03/2000 15:58:22 **PRESIDENT**

Merci M. NIKULA, nous veillerons à prendre en compte votre proposition.

20/03/2000 15:58:30 **M. RACK (Le Parlement européen)**

Merci M. le Président. Très brièvement. Une remarque sur la version linguistique allemande. Il nous faut des précisions, même si beaucoup de personnes au sein du presidium parlent un très bon allemand, le texte n'est pas proprement allemand et il n'est pas conforme à la convention européenne des droits de l'homme, alors que les versions anglaise et française sont correctes.

20/03/2000 15:58:57 **PRESIDENT**

Oui merci Monsieur nous prenons bonne note de vos remarques.

20/03/2000 15:59:08 **Mme CEDERSCHIÖLD (Le Parlement suédois)**

Merci M. le Président. J'ai demandé la parole mais nous en étions toujours à l'article 3 et nous avons poursuivi. Mais si vous me permettez je peux continuer. Je suis d'accord avec les personnes qui critiquent le terme principe ici. et je propose d'avoir le terme "protection" à la

place. Je suis d'accord avec ce qu'a dit M. FRIEDRICH, s'il était possible de concentrer cela ne veut pas dire que l'on veuille soustraire quelque chose dans le contenu, mais il est possible à travers le libellé de concentrer l'article 3. Et je pense que ce serait plus avantageux.

J'exprime ma reconnaissance vis-à-vis de Lord GOLDSMITH sur son commentaire nous invitant à réfléchir encore sur cet article 3.

20/03/2000 16:00:01 **PRESIDENT**

Oui Mme nous réfléchissons, nous réfléchissons. Article 4 : Y a-t-il d'autres interventions.

20/03/2000 16:00:09 **Lord GOLDSMITH (Le Parlement britannique)**

Un commentaire bref. Les termes protègent moins que ceux de la convention européenne des droits de l'homme : "traitement inhumain et dégradant", ça devrait être "traitement inhumain ou dégradant", c'est important et ça devrait aussi inclure à la fin les termes de la convention européenne "ou punition" "or punishment", c'est une interdiction des traitements inhumains ou dégradants, ce qui était un des éléments les plus importants dans cet article. Ces modifications figurent à la page 17 de votre document dans ma proposition d'amendements, M. le président.

20/03/2000 16:00:56 **PRESIDENT**

Merci Lord GOLDSMITH. D'autres demandes de parole ?

20/03/2000 16:01:08 **Mme PACIOTTI (Le Parlement européen)**

Simplement pour dire que je suis tout à fait d'accord avec la proposition qui a été faite par M. NIKULA sur l'élargissement du texte que personne ne peut être soumis à la torture ni à des traitements inhumains et dégradants, ni expulsé vers un pays où il risque d'encourir la peine de mort, la torture ou autre traitement inhumain.

20/03/2000 16:01:45 **PRESIDENT**

Mme PACIOTTI, je vois qu'une alliance se forge, un axe Nord-méditerranée. Y a-t-il d'autres interventions ? Article 5, pardon. Pardonnez-moi. M. BEREIJO.

20/03/2000 16:02:02 **M. RODRIGUEZ-BEREIJO (Le Parlement espagnol)**

C'est au sujet de la proposition de M. NIKULA, soutenue par Mme PACIOTTI, que je partage. Je pense qu'il faut être très prudent sur le libellé juridique parce que, d'une certaine façon, cette proposition pourrait servir pour empêcher l'extradition ou l'expulsion vers un pays où la peine de mort ou l'interdiction de la peine de mort et de la torture n'est pas garantie constitutionnellement mais où elle ne se pratique pas. En fait, ce que je veux dire, c'est qu'il y

a des questions qui sont extrêmement complexes, difficiles et qui parfois sont exploitées par des groupements terroristes et cela est reflété dans le droit constitutionnel et dans les lois intérieures de chacun des États où ce droit est garanti. Donc, il ne suffit pas simplement de dire que cela peut arriver de facto. D'accord donc, avec les réserves que j'ai formulées.

20/03/2000 16:03:48 **PRESIDENT**

Oui, merci Monsieur, nous avons très bien compris votre message. Article 5. Qui souhaite prendre la parole sur l'article 5 "Interdiction de l'esclavage et du travail forcé" ?

20/03/2000 16:04:02 **M. TRIAS SAGNIER (Le Parlement espagnol)**

M. le président, je propose un amendement consistant en un ajout au point 5.2. qui serait rédigé de façon suivante : "personne ne pourra être contraint à réaliser un travail forcé obligatoire à l'exception des circonstances qui découleraient d'obligation de citoyenneté ou de défense" et je justifie cet amendement par l'exposé des motifs, l'article 5, qui a été remis par le présidium. En dernier lieu, M. le président, je fais appel à vous afin qu'on m'explique avec précision l'amendement que l'on souhaitait apporter à l'article 1 de la charte des droits fondamentaux, qui serait rédigé comme point n° 2 et qui dirait très exactement que tous les droits inclus dans les articles 1 à 16 de cette charte sont d'application universelle pour toutes les personnes qui vivent sur des territoires appartenant à l'Union européenne, et je justifie cet amendement, j'explique qu'il serait absurde d'inaugurer un type de citoyenneté qui serait plus proche de l'empire romain où seul jouissaient des droits ceux qui obtenaient le statut de citoyen. L'extension des droits fondamentaux à tous les citoyens qui vivent en territoire de l'Union européenne semble être la seule forme de combattre l'inculturation et la ghettoïsation. Ca se trouve aux pages 30 à 33 du document qui a été distribué. Merci M. le président.

20/03/2000 16:06:01 **PRESIDENT**

Merci M. TRIAS SAGNIER. Nous en revenons à l'article 5. Qui souhaite prendre la parole sur le contenu de l'article 5 ? J'ai une liste ici.

20/03/2000 16:06:19 **M. KORTHALS ALTES (Le Parlement néerlandais)**

M. le président. Sur cet article, je voudrais vous proposer que l'exception qui figure actuellement à l'exposé des motifs, soit de façon explicite, soit de façon résumée, soit reprise dans les articles parce que je pense que c'est erroné de formuler de façon concise un droit et puis, dans l'exposé des motifs, de reprendre toute une série d'éléments. Donc, je pense que ce serait sensé de clarifier les choses sur ces dérogations qui sont parfois pratique courante, donc il faut les nommer aussi dans les articles.

20/03/2000 16:07:23 **M. MOMBAUR (Le Parlement européen)**

Merci. J'aimerais juste vous demander s'il ne faudrait pas modifier l'ordre à cause du terme général. [il y a beaucoup qui manque ici] En deuxième lieu, mon intervenant précédent n'est pas d'accord avec moi. Ca découle des dispositions horizontales. Il est dit ici que le salaire fondamental doit être maintenu. Je pense qu'il faudrait maintenir la disposition.

20/03/2000 16:08:12 **M. MELOGRANI (Le Parlement italien)**

Je voudrais dire que, pour cet article, nous sommes face à une question qui risque de se poser aussi dans le cadre d'autres articles. Nous voulons une charte avec un texte très simple, très concis, très bref mais, ensuite, il y a toutes les exceptions et, comme on l'a dit, le service militaire, calamités naturelles ou autre. Alors, à ce point (...?) parce que clause générale de dérogation mais cette clause sera nécessairement générique. Et puis, il y a d'autres choses qui ont été dites, notamment par M. MOMBAUR il y a une dizaine de minutes. Il a dit : "Ensuite, nous ferons référence à la convention des droits de l'homme, là où celle-ci traite le citoyen de façon plus favorable" et dans ce cas, le traitement le plus favorable se trouve dans le texte proposé par le présidium parce qu'on ne parle pas du service militaire. Si bien sûr nous partons du principe qu'il vaut mieux ne pas le faire, le service militaire et, là, nous devrions trouver une solution plus claire et peut-être dire clairement ce que nous voulons dire, quitte à ajouter quelques clauses à un texte au départ concis. Merci.

20/03/2000 16:10:11 **PRESIDENT**

Merci pour cet exemple qui effectivement nous fait réfléchir. Je ne vois pas d'autre demande de parole. Ah si, Lord GOLDSMITH et M. BEREIJO.

20/03/2000 16:10:22 **Lord GOLDSMITH (Le Parlement britannique)**

Oui, une autre façon d'y parvenir, c'est une fois de plus de dire clairement ce que l'on entend par cet article et c'est la même chose que dans l'article correspondant de la convention européenne des droits de l'homme qui aborde ces éléments et là, on peut avoir une affirmation claire et courte en disant quelque part dans le texte que c'est la même chose que l'article de la CEDH parce que le travail obligatoire ou forcé n'inclut pas la situation militaire. Nos objectifs sont les mêmes. [Une phrase manque ici]

20/03/2000 16:11:06 **PRESIDENT**

Oui, sans aucun doute, Lord GOLDSMITH. M. RODRIGUEZ-BEREIJO.

20/03/2000 16:11:14 **M. RODRIGUEZ-BEREIJO (Le Parlement espagnol)**

M. le président Merci, M. le président. Très brièvement, je proposerais dans cet alinéa qui fait partie de la proposition de M. MELOGRANI, notre collègue, pourrait régler le problème du lien entre la charte et la convention. Les prestations personnelles n'auront pas le caractère de

prestations personnelles (oh, pardon, sorry pour l'orateur). Ce caractère de prestations obligatoires ou forcées, les prestations personnelles qui sont établies par la loi ou qui peuvent être exigées aux citoyens pour des raisons civiques dans les cas d'urgence de calamités publiques, le service militaire ou le service civil équivalent, cela reprendrait en essence les restrictions de la convention et cela fait référence à des cas de prestations de travail forcé obligatoire qui existent dans les législations des États membres.

20/03/2000 16:12:39 **PRESIDENT**

Merci. Article 6 "Droit à la liberté et à la sécurité". Demande de parole pour l'article 6 ? Il faut que l'armada espagnole se reconstitue.

20/03/2000 16:13:04 **M. RODRIGUEZ-BEREIJO (Le Parlement espagnol)**

Oui, très brièvement, M. le président, je proposerais ceci. A la place d'une phrase, nous pourrions introduire une autre phrase pour une raison technico-juridique, disons. On dit "sauf dans les cas spécifiques et conformément ..., toute personne a droit à la liberté et à la sécurité. Nul ne peut être privé de sa liberté sauf dans les cas spécifiques et selon les formes prévues par la loi.". C'est une modification de nature technique.

20/03/2000 16:13:43 **M. FRIEDRICH (Le Parlement européen)**

Oui, sur l'article 6, je suggérerais de parler seulement de droit à la liberté parce que si je regarde l'exposé des motifs, on n'y parle que de droit à la liberté et ce n'est qu'à l'article 5.1. de la convention européenne des droits de l'homme que c'est mentionné et la sécurité est mentionnée uniquement dans une phrase. Je crois que cela suffit si nous parlons du droit à la liberté. "Personne ne devrait être privé de sa liberté", c'est une phrase qui suffit. [Encore une phrase ici]

20/03/2000 16:14:44 **M. TRIAS SAGNIER (Le Parlement espagnol)**

M. le président, je propose d'apporter deux modifications à l'article 6. L'une qui va dans le sens de ce qui a été exprimé par le représentant de l'Espagne, qui consiste à ajouter "selon les formes prévues par les lois de l'État membre". Et on pourrait rajouter à l'article 6 un deuxième point qui dirait ceci : "Toute victime d'un délit violent qui affecte sa personne a droit à une réparation". C'est peut-être un amendement un peu osé, je comprendrais que les gouvernements pourraient éventuellement ne pas être d'accord parce qu'il y a le concept de réparation qui est vaste et qui pourrait entraîner des obligations mais, en tant que représentant du parlement, je pense que c'est un amendement que je dois présenter parce que je pense que le concept de sécurité de la personne doit être garanti par l'autorité publique dans tous les cas et une des caractéristiques de l'état de droit est de veiller au bien-être des personnes et de compenser, comme on le fait déjà dans certains États et pour un certain type de délits comme

par exemple les délits dérivés du terrorisme. Et, la dernière ou l'avant-dernière loi approuvée par le parlement espagnol veille à compenser des situations dont ces personnes peuvent souffrir. Quand une personne souffre de violence, on peut considérer que l'autorité publique a le devoir de veiller à la sécurité et à la paix sur son territoire et, donc, cela entraîne une responsabilité et l'État devrait se charger de cette réparation. La tutelle judiciaire ne serait pas effective, au terme anglo-saxon du terme, si l'autorité publique n'assume pas la réparation.

Pages 32 et 33, c'est plus détaillé. Merci M. le président.

20/03/2000 16:17:17 **M. HAENEL (Le Parlement français)**

Merci Monsieur le président, je me demande si nous ne rencontrons pas à nouveau une question de nature linguistique. Est-ce que l'utilisation des termes "sécurité dans un cas de sûreté dans l'autre" est indifférente. Tout à l'heure, la traductrice alors qu'on a le texte en français a traduit "sûreté" en "terme "sécurité". Alors je crois qu'il faudrait savoir si sûreté et sécurité sont des synonymes ou s'il y a une nuance entre les deux. C'est tout. Simplement il fallait qu'on sache de quoi il s'agit.

20/03/2000 16:18:01 **M. KORTHALS ALTES (Le Parlement néerlandais)**

Je voudrais m'associer à l'amendement de M. BEREIJO, parce que je pense qu'il faudrait ajouter dans les cas spécifiques et prévus par la loi. Et je peux aussi m'associer à la dernière remarque sur le mot "sûreté" et là je pense qu'il faudrait un article séparé et on ne peut pas le régler ainsi.

20/03/2000 16:18:42 **PRESIDENT**

M. BRAIBANT qui est un éminent juriste va nous éclairer sur cette question "sûreté ou sécurité" ?

20/03/2000 16:18:53 **M. BRAIBANT (Le Parlement français)**

Je suis juriste, je ne suis pas linguiste, ça je ne peux pas choisir. Pour la France le mot "sûreté" convient très bien, c'est sûr. Ce que je voulais remarquer c'est que je suis d'accord avec notre collègue espagnol, que on ne peut pas dire simplement dans les cas spécifiques, parce que c'est trop vague. Mais on ne peut pas dire non plus dans les cas prévus par la loi. Parce que si la loi est contraire à la convention européenne des droits de l'homme, elle n'est pas valable. Et là je rejoins sans doute Lord GOLDSMITH, il faut trouver un système qui permette de conserver les limites prévues par la convention européenne des droits de l'homme pour définir les cas d'arrestation arbitraires. C'est une question de technique juridique mais il faut bien y penser, parce que dire des conditions prévues par la loi, qui est la loi nationale, et la loi nationale peut être contraire à la convention européenne des droits de l'homme.

20/03/2000 16:19:50 **Mme BERÈS (Le Parlement européen)**

Deux observations : sur le terme "sûreté" ou "sécurité", les deux termes n'ont pas la même signification en France. Je ne sais pas si les autres langues bénéficient de cette richesse. Mais en France le terme "sûreté" et le terme historique avait été employé dans les précédents textes, le terme "sécurité" a une conception beaucoup plus large, c'est un concept me semble-t-il beaucoup plus large et lorsque je regarde la proposition de notre collègue espagnol : d'ajouter un droit de réparation, il se comprend bien au regard de la sécurité, mais garantir ce droit nous emmène extrêmement loin parce que on peut pas parler de sécurité alimentaire, de sécurité en terme de santé, et on va bien au-delà du concept de sûreté qui est un concept plutôt lié me semble-t-il aux forces de police. Deuxième observation : sur la fin de la rédaction et notamment la référence à la loi. Si on tentait ou on impliquait et on adoptait cette rédaction, c'est un problème me semble-t-il qu'on va trouver dans beaucoup d'autres articles que nous allons examiner. La loi ce n'est pas un concept européen, or nous rédigeons une charte de l'Union européenne, donc il faut trouver une périphrase ou se mettre d'accord sur une expression qui nous permette de faire référence aux normes aux voies légales de l'Union, mais la loi c'est un concept que l'Union européenne ne connaît pas, donc je ne pense pas que nous puissions y faire référence.

20/03/2000 16:21:25 **Lord GOLDSMITH (Le Parlement britannique)**

Merci , je suis tout à fait d'accord avec M. BRAIBANT. Je crois que la proposition faite par M. BEREJO pourrait vouloir dire qu'on peut priver quelqu'un d'un droit à cause d'une disposition qui n'est pas prévue par la convention européenne qui elle prévoit six cas spécifiques où il peut y avoir privation de liberté et je suis d'accord avec M. BRAIBANT, il y a une question technique importante, qu'il faut que le langage reflète justement cela et rien d'autre. Alors cette technique c'est important, je préfère le point de vue de M. BRAIBANT à celui de M. BEREJO. Alors deuxièmement le mot "sûreté". J'écoutai avec intérêt les problèmes linguistiques à ce sujet. Le mot apparaît dans la convention européenne et je crois que si on enlève ce mot on réduit la protection pour le citoyen. C'est dans la convention et je pense que c'est lié pour une raison bien précise donc je ne voudrais pas qu'on l'enlève.

20/03/2000 16:22:46 **PRESIDENT**

Mais nous sommes tout à fait d'accord avec vous, Monsieur GOLDSMITH.

20/03/2000 16:22:53 **M. KORTHALS ALTES (Le Parlement néerlandais)**

Je voudrais réagir parce que dès que nous nous écartons du texte de l'exposé des motifs on risque d'interpréter les choses autrement. Si M. Braibant dit ne nous écartons pas de l'exposé, je suis d'accord, mais je voudrais que ce soit valable pour cet article et pour certains autres

aussi. Si par contre, nous disons nous allons avec un article horizontal faire en sorte qu'il ne puisse y avoir de divergences par rapport à l'exposé des motifs, alors ce sera aussi valable pour cet article et là je pense que nous ne pouvons pas ici déterminer que les droits seraient moins garantis par l'exposé des motifs.

20/03/2000 16:23:56 **PRESIDENT**

Nous passons à l'article 7 (présidence)

20/03/2000 16:24:14 **M. MEYER (Le Parlement allemand)**

Une remarque en ce qui concerne le droit à la sûreté à l'article 6 encore : j'aimerais demander au-delà de cette réunion qu'on réfléchisse à la situation de droit. M FRIEDRICH à raison lorsqu'il dit : "la convention prévoit que ce qui suit l'article 5 c'est le droit à la liberté" et que donc ce droit à la sûreté pourrait être supprimé dans la mesure où ce serait couvert, mais c'est en fait la discussion à partir de 1950, maintenant entre-temps dans plusieurs pays de l'Union la discussion a évolué et le droit fondamental à la liberté a par exemple, en République fédérale mais également dans d'autres pays, joué un rôle important dans le débat sur la protection contre la criminalité organisée. On nous a demandé, par exemple, ce qu'il en était des instruments d'écoute qu'on mettait dans les appartements. Au niveau des droits fondamentaux la saisine de profit quand il s'agit de criminalité organisée on a toujours dit que le droit à la liberté et à la sûreté existait aussi au niveau de la victime, mais aussi de celui qui était concerné. Donc je crois que cet aspect doit être pris en compte, depuis qu'on lutte contre la criminalité que c'est devenu quelque chose qui a été communautarisé et qui est devenu un devoir communautaire avec la transposition du troisième pilier. Donc je crois qu'enfin on ne peut pas se contenter de dire que ce constat est vide de sens, je crois qu'il faut réfléchir, aller un peu au-delà, et qu'il s'agit de voir que pour les obstacles aux droits fondamentaux qu'il continue à nous occuper. S'il y a un obstacle à d'autres droits, il faut en tout cas se réserver la possibilité dans la clause générale de dire que de telles limitations des droits fondamentaux à cause de raisons de sécurité, de raisons de sûreté ou de sécurité du fait de criminalité organisée, de la lutte qu'il faut organiser contre elle, etc., et alors on citerait que les moyens doivent être adaptés à l'objectif qui est la lutte contre la criminalité, il faut que ce soit les moyens nécessaires les plus efficaces, et il faut pouvoir aussi pondérer leur importance tant aux droits fondamentaux. C'est un conflit typique ici, avec lequel il nous faudra nous confronter lorsque nous parlerons des limites, je crois qu'il faut simplement dès aujourd'hui

réfléchir un petit peu au-delà à ce concept de droits fondamentaux et de sûreté. Donc je propose de ne pas se décider aujourd'hui pour supprimer ou pas, je crois qu'il faut dire que c'est un point intéressant sur lequel il convient de réfléchir parce que de toute façon il y aura un ... plus tard, une décision qui sera prise.

20/03/2000 16:27:33 **PRESIDENT**

Merci M. MEYER. Nous passons à l'article 5. Droit à un recours en justice

20/03/2000 16:27:46 **M. RODRIGUEZ-BEREIJO (Le Parlement espagnol)**

Je crois qu'il faut inclure deux choses précises d'un point de vue juridique: la première c'est que la protection a des droits et ce sont les droits repris dans cette charte et pas les autres. Deuxièmement il faut tenir compte du fait que l'accès d'un citoyen au tribunal c'est un droit qui a une énorme force expansive et donc je pense qu'il y a lieu de le mentionner de façon expressive dans le texte en disant que les conditions dans lesquelles on peut avoir accès à un tribunal figurant dans les traités parce que il ne s'agit pas non plus d'avoir accès à un tel recours dans n'importe quelles conditions n'importe où, n'importe comment. non, il faut le faire dans le cadre des tribunaux européens ou dans le cadre des tribunaux des Etats membres et qui détermine aussi les conditions dans lesquelles on peut avoir accès à ces tribunaux. Donc je propose que on ajoute un droit à un recours effectivement au tribunal conformément aux droits communautaires et aux droits de chacun des Etats membres.

20/03/2000 16:29:31 **M. MELOGRANI (Le Parlement italien)**

Je voudrais signaler un problème de traduction (...?) parce que je pense qu'il faut en tenir compte : le dernier mot en italien on dit juge, en espagnol : tribunal en allemand c'est "Cour" d'accord .

20/03/2000 16:29:59 **M. FRIEDRICH (Le Parlement européen)**

Il y a deux formules qui existent à l'heure actuelle pour l'article 7 : d'abord 13, on a droit à un recours effectif. Moi j'aurais plutôt l'objection parce que j'ai un autre texte, le corrigendum 1 du convent 13 qui est apparemment aussi un document officiel, une nouvelle proposition, c'est la présidence qui l'a faite, et là à l'article 7 on trouve ... introduction juridique effective... et on dit .. toute personne isolée à le droit à une protection juridique efficace devant le tribunal. La deuxième formule je peux l'accepter mais pas la première.

20/03/2000 16:30:55 **PRESIDENT**

Vous voulez-bien me passer le corrigendum.

20/03/2000 16:31:04 **Lord GOLDSMITH (Le Parlement britannique)**

Cet article touche aux questions horizontales, parce que il s'agit de la mise en oeuvre des dispositions figurant dans l'article et ce qui n'était pas clair c'était que nous avons abordé la question avant d'avoir vu le contenu des articles alors si ceci ne concerne que ce que.....

[FIN DE LA BOBINE]

... les institutions, est-ce qu'il s'agit d'un recours effectif devant la Cour européenne de justice, si c'est le cas, qu'en est-il des droits et restrictions qui existent dans le cadre de l'article 230 et de l'article 232 du traité sur les droits des individus à saisir la Cour européenne, donc c'est trop restrictif. Je pense que c'est une question importante qu'il y a lieu d'examiner et ma principale préoccupation c'est de savoir si nous pouvons vraiment traiter cette question avant d'avoir abordé les questions horizontales qui pour des raisons que je comprends vous avez voulu éviter aujourd'hui. Alors, il y a deux autres remarques sur le texte actuel. Premièrement, ce n'est pas une reproduction de l'article 13 de la Convention européenne, cela est expliqué à l'exposé des motifs mais il y a une différence considérable, l'article 13 prévoit un recours pour ceux dont les droits et les libertés sont reconnus dans la Convention. Or, cet article-ci est beaucoup large et semble couvrir tous les droits et toutes les libertés. Ce n'est peut-être pas voulu, mais c'est une distinction importante et je voudrais savoir pourquoi le qualifier en deuxième différence et cela a été abordé par l'exposé des motifs, c'est la Convention sur les droits de l'homme permet qu'un recours effectif soit fait devant une instance nationale et pas uniquement une Cour. C'est très important et cela doit être un recours effectif, cela doit être indépendant et approprié mais dans le cas de certains droits, ce serait possible que quelqu'un d'autre que une cour fournisse un recours effectif et je ne voudrais pas enlever cette possibilité si nous parlons de recours effectif devant une instance nationale. Si c'est devant la Cour européenne, d'accord, mais c'est différent. Et donc je reviens à la question des articles et des questions horizontales, c'est pourquoi pour l'instant, je vous propose de laisser de côté cet article jusqu'à ce que nous ayons abordé les questions horizontales.

20/03/2000 16:34:07 **M. BRAIBANT (Le Parlement français)**

On ne peut rien cacher à Lord GOLDSMITH. Je voudrais dire qu'ayant participé en réunion de bureau à la rédaction de cet article, il y a effectivement une explication à la différence avec l'article correspondant de la Convention européenne des droits de l'homme. Personnellement, je suis choqué par l'article "convention européenne" parce qu'il comporte un a contrario. Il dit: "toutes les violations des droits et libertés prévus par cette convention, pourront donner lieu à un recours". Cela veut dire à contrario que les violations des droits et libertés non prévus par cette convention ne donnent pas droit à un recours. Et alors nous étions obligés de traduire,

évidemment, de modifier le texte parce que là nous disions: "toute violation des droits et libertés prévus par cette charte" et on ne pouvait pas dire "par la présente convention". Mais dans les deux cas personnellement, je pense que c'est une restriction excessive et que toute violation de droit et de liberté prévu par quoi que ce soit, par une loi nationale, par une convention internationale doit donner lieu à un recours effectif. C'est donc en effet un nouveau droit que nous proclamons, que nous reconnaissons. Parce que je crois qu'il est déjà reconnu dans toutes les constitutions des pays d'Europe ou dans les jurisprudences. Le droit au recours effectif dès lors qu'un droit ou une liberté est violé. Et effectivement, à ce moment-là, ce droit devrait être sans doute déplacé mais il devrait être maintenu comme droit autonome. C'est le droit à un recours dès lors qu'une liberté ou un droit est violé. Qu'il soit prévu par la Charte, qu'il soit prévu par la Convention européenne des droit de l'homme ou par une loi nationale ou par un traité international.

20/03/2000 16:36:00 **M. VITORINO (La Commission)**

Merci Monsieur le président, seulement pour ajouter à ce que M. BRAIBANT vient de dire, je partage tout à fait son raisonnement que dans ce cas, ce qu'on prétend, c'est de maintenir dans la Charte le degré de protection qui est déjà à ce moment assuré par la jurisprudence de la Cour du Luxembourg en ce qui concerne les droits qui sont protégés par le droit communautaire, les droits individuels qui sont protégés par le droit communautaire. La Cour du Luxembourg elle-même dit qu'en ce qui concerne l'application du droit communautaire, il faut garantir toujours l'accès à un juge, l'accès à un tribunal quand il s'agit de la protection des droits subjectifs des citoyens et dans ce cas je trouve que le dire de cette façon c'est nouveau en tant que droit écrit mais c'est la consécration de la jurisprudence de la Cour de Justice européenne et qu'on ne peut pas rester au-dessous du niveau de protection que la Cour elle-même a déjà référé à plusieurs reprises et on pourrait citer l'arrêt du 15 mai 1986 pour illustrer cette interprétation.

20/03/2000 16:37:29 **PRESIDENT**

Merci, d'autres remarques sur l'article...

20/03/2000 16:37:33 **M. HAENEL (Le Parlement français)**

Je partage tout à fait les points de vue qui viennent d'être exprimés par MM. VITORINO et BRAIBANT. Je crois qu'effectivement, il faut aller au-delà des simples droits et libertés qui sont reconnus par la Charte. On explique bien dans le commentaire, dans l'exposé des motifs qu'on a écarté le terme "instance nationale", bon, je suis tout à fait d'accord avec ça. Mais en ce qui concerne le terme "tribunal": les uns disent "c'est un tribunal", les autres "une cour", soit en allemand, soit en anglais, on pourrait dire aussi une juridiction mais est-ce que dans

certains cas et dans certains pays ce ne sera pas une autorité qui ne sera pas ni tribunal ni cour ni juridiction au sens étroit du terme et à ce moment-là est-ce qu'il ne faut pas une fois de plus être très clair y compris dans le commentaire puisque vous dites vous-mêmes, dans le commentaire "le recours ne peut être exercé soit devant le juge communautaire, soit devant le juge national" mais il peut y avoir des cas et dans certains pays, sans doute en France, je n'ai pas des exemples à l'esprit, mais où le recours ne sera pas directement, en tout cas pas en première instance, devant ce qu'on peut appeler "un juge" au sens étroit du terme, donc "juridiction".

20/03/2000 16:39:00 **M. MANZELLA (Le Parlement italien)**

Je suis tout à fait d'accord avec cette explication sur la possibilité d'un recours effectif. Je voudrais simplement faire remarquer que ceci n'a rien à voir avec la question du caractère contraignant du droit. Parce que cela pourrait être un principe politique ou un principe juridique. C'est celle-là la question transversale que nous devrions résoudre plus tard mais celle-ci c'est tout à fait différent. Cela constitue l'un des droits fondamentaux de notre Charte.

20/03/2000 16:39:55 **M. TARSCHYS (Le Parlement suédois)**

J'avais une question à l'adresse de M. BRAIBANT. Je n'ai pas très bien suivi son raisonnement. C'est vrai que ce droit existe dans nos Etats membres mais ne s'agit-il pas d'une charte adressée aux institutions de l'Union européenne et dans ce cas-là, bien sûr, cela ne vise pas les instances nationales en tant qu'organes judiciaires nationaux. Chez nous on fait une distinction entre les cas de juridiction criminelle ou des cas de juridiction civile, donc il ne s'agirait pas d'un seul tribunal qui traiterait toutes les questions mais je pensais, Monsieur le président que nous parlions ici d'une charte visant uniquement les institutions de l'Union.

20/03/2000 16:41:02 **M. MEYER (Le Parlement allemand)**

Je voudrais défendre le texte, dans la mesure où il fait mention des juridictions. C'est vrai que c'est un petit peu différent de la convention et de son article 7 mais je crois en tout cas d'après moi, que la proposition se fait le reflet de la répartition des pouvoirs lorsqu'on a un tribunal il y a en première instance parfois un contrôle administratif et s'il s'agit de droit communautaire, la Commission, l'organe exécutif Parlement ou Conseil, peuvent prendre des décisions qui sont contrôlées par la Cour et si nous voulons renforcer l'appareil, c'est bien l'objectif de notre travail, il s'agit de faire en sorte qu'aux compétences de la Cour correspondent des compétences pour les tribunaux nationaux, s'il s'agit de l'application du droit communautaire dans chacun des Etats nationaux. Et c'est pour cela que je trouve qu'en ce qui concerne l'intérêt de l'état de droit et de la répartition des pouvoirs, la séparation des pouvoirs, on doit maintenir ce texte. Je voudrais simplement dire que dans la Convention on parle de "droit ou

de libertés qui ont été violés" ici on parle de "droits et de libertés", alors je me demande si les violations de libertés doivent faire l'objet d'autres chose que de violation de droits. Bon, c'est vrai qu'on a le droit à la liberté alors je ne sais pas, il conviendrait peut-être de se mettre d'accord si nous voulons une cohérence peut-être, reprendre le texte de la Convention, mettre "ou libertés" parce que sinon cela risque d'être un petit peu.. ça ne fait pas vraiment de sens.

20/03/2000 16:43:17 **PRESIDENT**

S'il n'y a plus d'intervention, article 8 droit A.1 Tribunal impartial.

20/03/2000 16:43:32 **M. JANSSON (Le Parlement finlandais)**

Ce n'est peut-être pas aussi stylé. Les membres du présidium pourraient proposer un amendement. Lors de la réunion du présidium du 17 mars j'ai annoncé le texte de base, l'article 8 dans.. pour l'essentiel il est acceptable mais puisque à l'article 6 de la Convention européenne des droits de l'homme il y a quelques problèmes, j'ai donc une proposition pour un nouvel article 8. C'est l'amendement n° 10 à la page 59, page 69. Il devrait y avoir des dispositions dans le même article et pas seulement pour jugement équitable mais aussi pour une bonne administration. On en a déjà parlé pendant un certain temps. Deuxièmement, pour ce qui est de l'article 7 et ce qu'on en a dit, je crois que serait l'endroit adéquat pour ceci. Pas seulement un jugement équitable devant un tribunal mais aussi sur la façon dont le justiciable est traité dans d'autres instances. C'est la façon dont je l'entend. J'ai une correction à apporter à la version linguistique anglaise. Tout le monde a droit ... Toute personne a droit à ce que sa cause soit entendue équitablement et dans un délais raisonnable et par un tribunal adéquat ou une autre instance et a le droit à une décision judiciaire ou toute autre instance judiciairement indépendante. La deuxième clause.... je reprend... pour ce qui est d'un recours devant un tribunal ou toute autre enceinte indépendante, il est à prévoir une audition publique ainsi que la possibilité de faire valoir sa cause indépendamment et dans un délai raisonnable en fonction de garantie de bonne administration. Donc ça serait en fait dans le paragraphe 2 à la troisième ligne de la version anglaise, troisième ligne donc ... une décision dans un délai raisonnable ainsi que des garanties de bonne administration etc. Je crois que ceci est effectivement important et pour revenir à ce que je disais, je crois que Mme BRAX et NIKULA's avaient également évoqué ce point, donc je crois que ce sont des remarques très constructives pour l'article 4 auquel je me rallie.

20/03/2000 16:48:00 **M. HAENEL (Le Parlement français)**

Nous sommes tous d'accord pour dire que les droits et libertés qui sont défendus dans le cas d'un recours effectif, et bien, ce recours ne peut être effectif que si pour les personnes qui ne disposent pas de ressources suffisantes une aide soit prévue. Alors là encore on a un problème

d'interprétation. Il y a le texte français qui dit "une aide juridique", alors qu'en fait il s'agit d'une "aide judiciaire ou juridictionnelle" puisque dans l'exposé des motifs, vous dites vous-même "il convient de prévoir une aide judiciaire" alors que quand on regarde bien dans le texte anglais et allemand, il semble qu'il n'y ait pas d'équivoque sur le sens du terme "aide juridique". Il s'agit bien dans le texte allemand et anglais de dire "une aide pour pouvoir avoir accès à la justice" alors qu'en français on a l'aide juridique qui est tout à fait différente de l'aide judiciaire ou juridictionnelle. Là encore, Monsieur le président, je me permets d'intervenir là-dessus pour qu'ensuite il n'y ait pas d'équivoque possible.

20/03/2000 16:49:28 **M. RACK (Le Parlement européen)**

Merci. Très brièvement sur deux points. D'abord en ce qui concerne le concept déjà plusieurs fois discuté de ce que serait le tribunal. Nous en avons vu ce qu'il en était de la convention avec les expériences que nous avons faites les structures administratives et les structures juridictionnelles dans les Etats membres sont parfois très différentes et c'est pour cela que la convention des droits de l'homme a impliqué des modifications des structures administratives des Etats membres plus que cela n'a été prévu au départ. Je crois qu'il y a ici un problème semblable et que il faut être très prudent sur ce point. Quand on parle de tribunal il faut qu'il soit très clair que ce qu'on entend est bien compatible et comparable dans les structures traditionnelles. Il faut par exemple dire que dans la séparation des pouvoirs il y a plusieurs autorités compétentes qui peuvent être impliquées. Et je crois que cela dès le début de la procédure, surtout au début de la procédure. Ensuite, il semble que parfois l'article 8 n'est pas au bon endroit parce que juste avant et juste après on a les articles qui essentiellement parlent de procédures pénales et de garanties pénales alors qu'ici à l'article 8, c'est une cause d'accès au droit donc je pense que cela serait mieux à sa place deux ou trois articles plus loin en ce qui concerne par exemple ce qui dit, mais je crois qu'il faut d'abord terminer ce qui relève du droit pénal, tout ce qui est atteinte aux libertés et ensuite parler de ces garanties générales.

20/03/2000 16:51:41 **M. FAYOT (Le Parlement luxembourgeois)**

Oui, merci M. le président, en ce qui concerne cet article, je pense qu'il est composé de deux parties assez inégales. La première partie : la première phrase est tirée de la convention des droits de l'homme et ne donne pas lieu à observations. Je trouve que c'est un texte parfait. La deuxième partie est relativement nouvelle et je pense que la formulation pourrait être améliorée. J'ai introduit un amendement pour rendre ce texte plus lisible puisque tel qu'il est il me semble assez compliqué. J'ai une remarque particulière en ce qui concerne le terme d'octroyer. Evidemment, je laisse aux francophones natifs le soin de juger de ce verbe mais j'ai l'impression que le terme octroyer signifie accorder, imposer de force alors qu'il faudrait à

mon sens dire qu'une aide juridique est accordée et non pas octroyée. Enfin, c'est une remarque sur la traduction et je pense que le reste de cette phrase pourrait être rendu plus lisible en la tournant autrement, j'ai proposé "une aide juridique gratuite est accordée à ceux qui ne disposent de ressources suffisantes pour leur assurer un accès effectif à la justice".

20/03/2000 16:53:30 **M. FISCHBACH (Conseil de l'Europe)**

Merci M. le président, je voudrais peut-être souligner en tant qu'observateur, que les deux articles, les articles 8 et 9 de la convention n° 13 se réfèrent à l'article 6 de la convention européenne des droits de l'homme. Je dois dire que c'est peut-être l'article qui a connu le plus grand développement jurisprudentiel de tous les articles de la convention des droits de l'homme depuis 59 donc depuis que la Cour interprète et applique les dispositions de la convention. Et puisque c'est un article tellement important protégeant essentiellement les citoyens contre l'arbitraire des autorités nationales, je dois dire qu'il faut bien évidemment se défendre de vouloir en faire deux articles distincts alors qu'on ne peut pas séparer ces articles dans leur contenu. Je m'explique. Il y a l'article 6 de la convention européenne des droits de l'homme qui dans son premier paragraphe énonce évidemment le droit de tout citoyen de recourir devant un juge impartial et le droit de voir son procès évacué dans un délai raisonnable avec d'autres conditions de protection. Les autres paragraphes, tels la présomption d'innocence ou les autres conditions prévues au paragraphe 3 de l'article 6 sont en fait des droits ou une liste de droits qui n'est pas exhaustive, c'est une liste de droits qui est illustrative et qui évidemment pourra être développée ultérieurement par de nouvelles applications jurisprudentielles. Je dirais donc que ce sont des conditions particulières du procès équitable et on ne peut pas séparer les conditions particulières et surtout des conditions qui ne sont pas exhaustives mais qui sont illustratives du principe fondamental qui est le principe de tout citoyen, de son droit à un procès équitable. Voilà pourquoi je pense qu'il serait sensé, qu'il serait raisonnable d'essayer au moins de regrouper ces deux articles. Reste enfin, le problème de l'aide juridique gratuite : et là évidemment il y a une petite difficulté quant à l'insertion de cette aide gratuite puisqu'on la retrouve et dans l'article 8 et dans l'exposé des motifs de l'article 9. Alors que dans l'exposé des motifs de l'article 9, elle se rapporte évidemment uniquement à l'aide gratuite, à l'assistance judiciaire gratuite en matière pénale alors qu'elle est déjà couverte en partie par l'article 8. Il faudra voir ça mais en tout cas cela risque d'être un double emploi qui est difficilement, qu'il est difficile de comprendre à la lecture donc de ces deux articles. Merci M. le président.

20/03/2000 16:56:46 **M. BERTHU (Le Parlement européen)**

Merci M. le président. Je pense que cet article 8 pose un principe très important mais qu'il va beaucoup trop loin dans le détail. Quand je lis par exemple la seconde phrase, sur l'aide judiciaire gratuite, j'ai vraiment l'impression qu'on est en train de définir des modalités d'application et non pas des principes. Et même dans la première phrase quand je vois que l'on parle à la première ligne d'une cause entendue équitablement mais à la deuxième ligne d'un tribunal impartial, il me semble qu'on se répète. Que serait un tribunal impartial qui n'entendrait pas les causes équitablement ? Pour moi, c'est un peu la même chose bien que ce soit dit évidemment dans la convention européenne des droits de l'homme, je crois qu'on pourrait raccourcir et c'est pourquoi, je pense que l'article 7 et l'article 8 ne pourraient faire l'objet en réalité que d'un seul article ramassé sur les principes qui pourrait s'écrire de la manière suivante : "Toute personne dont les droits ou les libertés ont été violés dans le cadre des activités communautaires (puisque nous parlons bien des activités communautaires n'est-ce pas ?) a droit à un recours effectif devant un tribunal indépendant et impartial établi par la loi nationale ou les traités". Je vous signale que nous posons là déjà un principe très important pour la justice communautaire et très, très innovateur. Parler d'aide judiciaire gratuite après avoir posé ce principe-là dans le cadre des activités communautaires aurait des conséquences pour les finances communautaires que je crois il faudrait étudier.

20/03/2000 16:58:43 **M. MOMBAUR (Le Parlement européen)**

À l'article 8 : deux remarques. Un tribunal qui serait créé pour un cas spécifique, d'après la formule ici correspondrait au texte mais pas à la tradition des Etats membres, ça a déjà été dit. Les tribunaux exceptionnels qui se réunissent sur un dossier alors je me demande si on ne pourrait pas ici dire autre chose pour ne pas légitimer cette Cour d'exception. Ensuite, le problème de cette aide juridique gratuite, moi je dois dire je n'ai pas de difficultés mais je crois que le droit de l'Union ne connaît pas ce concept. On parle des actes juridiques en général et on ne parle pas d'autres concepts donc il faudrait harmoniser les concepts ici sachant que si on représente le Parlement on doit dire qu'il ne peut s'agir que d'un acte juridique qui a été visé par les deux enceintes qui sont au niveau du droit communautaire habilitées d'après notre terminologie à prendre un acte de codécision. En tout cas il faut harmoniser par rapport au texte du traité. Merci Monsieur le président,

20/03/2000 17:00:37 **M. TRIAS SAGNIER (Le Parlement espagnol)**

Je propose de bien voir les deux parties de cet article. D'abord la première partie qui est le droit à être entendu dans sa cause, équitablement etc. et puis l'aide juridique gratuite ou judiciaire gratuite. Alors je crois que pour simplifier, il vaudrait mieux supprimer "dans la

mesure où cette aide serait indispensable pour assurer l'effectivité de l'accès à la justice". Pourquoi biffer ? Parce que l'assistance juridique ou judiciaire ne peut pas dépendre de la subjectivité d'un collège d'avocats, d'un bureau, d'un tribunal ou d'une enceinte de l'Etat qui éventuellement devrait financer cette assistance gratuite. Donc, il peut y avoir une propension de ce fait à interpréter de manière assez restrictive. Donc, à mon avis et vu la jurisprudence espagnole de la Cour constitutionnelle qui a repris la terminologie anglo-saxonne "right of effective representation", c'est pas seulement le droit à la défense dans le sens formel mais dans le sens matériel également avec tout ce que ça implique, assistance gratuite etc. donc je crois qu'il vaut mieux utiliser une formule impérative, une assistance juridique gratuite sera octroyée à ceux qui n'auront pas les ressources suffisantes. Point. Maintenant en ce qui concerne la première partie, l'article. Je crois que la lecture de M. JANSSON est probablement la meilleure. On propose en effet quelque chose qui correspond tout à fait à ce que nous voulons.

20/03/2000 17:02:40 **M. MELOGRANI (Le Parlement italien)**

Je voulais simplement faire une observation très brève. La Cour de Strasbourg pense qu'il y a au niveau administratif des éléments qui peuvent être controversés en ce qui concerne par exemple des dossiers de haut niveau qui ne seraient pas couverts par le droit civil et la convention des droits de l'homme. Est-ce que certaines sanctions mineures pour lesquelles le tribunal ou la Cour de Strasbourg ne se sent pas apte à faire une sentence pénale. Mais en ce qui concerne l'article 8, la troisième ligne : ce qu'on y dit est un petit peu trop général et il faudrait peut-être envisager d'aller au-delà du mandat qui nous a été donné par Cologne sur ce point. Merci Monsieur le président,

20/03/2000 17:03:52 **M. FRIEDRICH (Le Parlement européen)**

Encore un point en ce qui concerne l'aide juridique gratuite : il faudrait savoir si on ne pourrait pas indiquer que dans l'Union qui pourrait s'élargir d'ici quelques années, des problèmes linguistiques peuvent se poser. Donc, quand on parle d'aide judiciaire gratuite il faut aussi un appui linguistique, ce qui n'a jamais été dit expressis verbis. Il se peut qu'un plaignant puisse soumettre dans sa langue son dossier même s'il est en fait appelé à un tribunal d'un autre pays. Je crois que ce serait très important d'apporter aussi cette assistance linguistique.

20/03/2000 17:04:48 **M. PAPADIMITRIOU (Le Parlement grec)**

Merci. Je crois que ce deuxième paragraphe devrait être repris à l'article 7. Il est clair que sur le plan de l'assistance juridique, il s'agit de quelque chose qui permet à un recours d'être efficace et de ce fait je crois que sa place serait dans le recours effectif de l'article 7 mais est-

ce que nous devons toujours choisir entre deux libellés ? Parfois, il me semble en effet, qu'on exagère un petit peu. Très bien. L'assistance juridique fait partie du droit à un recours effectif. Alors même si on ne mentionne pas cela dans le texte, si on interprète cela paraît quand même comme faisant partie tout de même à un recours effectif car si quelqu'un remarque qu'un citoyen a besoin de cette aide gratuite, cette aide lui sera accordée. Donc par cet exemple, on voit bien qu'elle est le lien entre notre charte et la convention européenne des droits de l'homme. Si nous pensons que cette référence à l'article 6 donne lieu à des éléments qui relèvent plus de la convention de Rome, la question qu'il faut se poser c'est dans notre libellé devons-nous être analytiques chaque fois ou peut-on laisser les commentaires généraux en fin de texte dans une clause générale qui sera considérée comme un élément qu'on pourra prendre en compte en même temps que la charte. Voyez qu'il y a peut-être des aspects plus fonctionnels à prendre en compte dans ce cas-ci comme dans d'autres. Que voulons-nous ? Voulons-nous une charte intégrant tout et expliquant tout et à ce moment-là, il faut faire très attention aux liens hiérarchiques qui existent entre la charte et la convention européenne des droits de l'homme.

20/03/2000 17:07:26 **M. MÉNDEZ DE VIGO(?) (Le Parlement européen)**

Merci le président. J'ai écouté avec grande attention les interventions portant sur les articles 7 et 8 et je pense que ces contributions améliorent effectivement le libellé et l'articulation entre ces deux articles tout en recherchant à s'intégrer. Pour résumer ce qui a été dit, il me semble important et d'aborder des éléments essentiels. Les articles 7 et 8 sont de nature horizontale et portent sur la séparation des pouvoirs à la lumière de l'expérience de la société civile, c'est à dire la consécration d'un pouvoir judiciaire indépendant et ceci continue d'être le critère pour l'évaluation de la qualité des démocraties. À cet égard et tenant compte le fait que nous travaillons pour l'avenir et pour une Europe qui va accueillir des cultures avec une tradition démocratique plus ou moins intense, plus ou moins récente, il me semble essentiel que dans ces deux articles il y ait une possibilité de recours avec une entité indépendante qui doit être clairement énoncée. Et pour répondre à cette préoccupation, je pense qu'il serait adéquat de reformuler les articles 7 et 8 et à l'article 8 nous maintiendrions le deuxième paragraphe qui porte sur la question de l'assistance ou aide judiciaire. Je suis effectivement d'accord comme quoi ce libellé ne devrait pas laisser cours à des interprétations restrictives et je suis d'accord avec la séparation stricte des paragraphes 1 et 2 à l'article 8. La question de l'aide judiciaire

me semble plus proche de la garantie de l'effectivité du droit de recours et elle ne doit pas apparaître édulcorée ou diluée par la garantie d'un tribunal ou d'une Cour indépendante équitable et publique et dans des délais raisonnables, problème qui touche toutes nos démocraties. Merci.

20/03/2000 17:10:40 **M. LONCLE (Le Parlement français)**

Monsieur le président, je voudrais simplement insister pour que l'on change au moins dans la traduction française la terminologie, c'est-à-dire remplacer le mot "tribunal" par "juridiction", le mot "aide juridique" par "judiciaire" car cela a tout de même un sens plus large que les mots cités dans la traduction actuelle. Par ailleurs, je partage le point de vue de Monsieur Friedrich sur le fait que la langue peut avoir une importance dans l'aide que l'on doit à un citoyen ayant à faire à la justice. Je vous remercie.

20/03/2000 17:11:40 **M. RODRIGUEZ-BEREIJO (Le Parlement espagnol)**

Merci Monsieur le président. Je voudrais soutenir Monsieur FISCHBACH quand il proposait de reprendre dans un seul article le 7 et le 8 qu'il faudrait fusionner en deux alinéas d'un même article pour répondre à un mandat que nous avons du Conseil de Cologne en ce qui concerne les droits de la procédure. Il faut que nous les reprenions et c'est la première fois ici qu'on évoque tous les droits liés à la procédure judiciaire qui sont en fait les garanties d'un Etat de droit par rapport à ses citoyens pour pouvoir contrôler les actes qui sont faits par les autorités publiques. Alors on pourrait prévoir deux ou trois alinéas selon que l'on veuille séparer ou exclure l'assistance judiciaire gratuite par rapport aux autres possibilités prévues par la loi. Mais l'important c'est de bien comprendre qu'au niveau de la visibilité pour les citoyens des droits de la procédure, c'est très important en ce qui concerne l'effectivité des recours prévus par la charte. Dernière précision : dans le texte de l'article 8, on emploie un juge établi ou constitué par la loi mais attention il y a peut-être un problème de traduction. Un tribunal préétabli ou prédéterminé par la loi. Pourquoi. La garantie d'un tribunal indépendant qu'est-ce que cela veut dire ? Cela veut dire que ce n'est pas la loi qui peut déterminer la partialité, c'est en fait l'antériorité de l'un par rapport à l'autre. L'interdiction par exemple de tribunaux ad hoc ou exceptionnels peut garantir le fait qu'ils soient ... etc. Donc en espagnol "constituito pre" cela ne suffit pas "préétablis" par la loi. Interdiction d'une cour qui serait une cour exceptionnelle créée pour des motivations ad hoc.

20/03/2000 17:14:27 **M. NIKULA (Chancelier de la Justice)**

Je crois qu'ici il est très important de bien comprendre que dans le concept qui était établi ici et qui existe dans plusieurs Etats au niveau du droit communautaire mais au niveau des réglementations nationales, il y a là quelque chose qui est très important et qui méritera en

tout cas toute notre attention quand on voudra utiliser dans la pratique ce concept. Au niveau national, ce sont souvent non pas les règlements, les arrêtés pris par les gouvernements mais les lois parlementaires. En tout cas je voudrais remercier l'auteur de cette proposition qui vise à ajouter à l'article une disposition qui nous paraît être très importante pour les institutions communautaires dans la mesure où elles sont directement concernées. Ce principe pour les institutions, peut paraître un peu étrange et un peu nouveau indépendamment de ce qui existe à la cour je dois dire que il faudra réfléchir de toute manière parce que cela fait partie des traditions qui existent au niveau judiciaire finlandais et qu'il est très important de l'indiquer ou d'en tenir compte dans le contexte communautaire. Cela a été dit par ailleurs dans d'autres articles quand on a parlé des problèmes de bonne administration, bonne gouvernance. Merci;

20/03/2000 17:16:22 **Lord GOLDSMITH (Le Parlement britannique)**

L'article 8 et je voudrais aussi en même temps dire quelque chose à propos de l'article 9 suivent l'article 6 de la convention européenne des droits de l'homme. C'est probablement les articles les plus importants de la convention. A moins que les citoyens aient le droit à un jugement équitable ils n'ont aucun droit. Monsieur PAPADIMITRIOU a posé une question importante sur la façon dont nous parvenons à cette clarté quand à la signification de l'article. Je proposerais cette référence à l'article 6. J'ai proposé plusieurs amendements et je vous inviterais à prendre le document à la page 63 et vous y trouverez ma proposition de libellé pour cet article. En premier lieu on fond les articles 8 et 9 en un seul article. Je comprends la raison pour laquelle on les avait séparés mais je pense qu'il faut suivre les conseils sages et éclairés de M. FISCHBACH comme quoi ces articles sont trop intimement liés pour les séparer donc je suivrais son conseil consistant à les fondre en un seul et unique article. En deuxième lieu inclure les termes "toute charge criminelle" et la raison est que la jurisprudence de la convention européenne reconnaît qu'il y a des procédures. Est-ce qu'il doit y avoir audition publique pour tous les questions administratives ? De manière large il a été accepté qu'il y a des droits qui ne nécessitent pas que tous ces droits de la défense soient respectés et j'aimerais réintroduire ceci dans le libellé en suivant le terme utilisé dans la CEDH. Dernier point, je proposerais d'éliminer les termes "aide judiciaire". En tant qu'avocat, je pense que effectivement il devrait y avoir une aide judiciaire pour toutes les personnes qui n'en n'ont pas les moyens. Et si je parvenais effectivement, en quittant cette salle, à ce que ce droit soit garanti, je serais le héros de la profession en rentrant chez moi. Mais en droit pénal et en droit civil, les limites ne sont pas les mêmes et dans la CEDH il y a une mention particulière des cas de droit pénal. Quand l'intérêt de la justice le requiert, dans le droit civil, ce n'est pas les mêmes nécessités c'est expliqué dans l'exposé des motifs. En fonction de ce que dira la cour à

Strasbourg en matière de jurisprudence. On dit ici que l'aide judiciaire est parmi les droits les plus fondamentaux de la défense, hors il y a des droits qui se passent avant qu'on explique les choses clairement au justiciable, etc. Donc, je propose d'avoir une déclaration, brève, à l'article 6 disant qu'il y a des droits qui doivent être garantis et défendus et troisième amendement que je proposerais : je voudrais aussi faire un autre commentaire pour revenir sur ce qu'a dit M. HANSEN. Pour l'instant je ne comprends pas très bien le concept de bonne gouvernance. Monsieur HANSEN a déjà posé cette question auparavant et j'aimerais comprendre mieux le contenu de sa proposition avant que je puisse commenter les amendement que j'ai vus pour la première fois aujourd'hui. Je suis désolé, vous me pardonnerez si j'ai des réserves pour l'instant. Merci, Lord GOLDSMITH.

20/03/2000 17:21:10 **M. BRAIBANT (Le Parlement français)**

Merci, Monsieur le président. Nous avons beaucoup de questions ici et je crois qu'il faut essayer de les sérier. Elles concernent les articles 7, 8 et 9. Et nous devons je pense les examiner ensemble. Elles ont d'ailleurs été examinées ensemble par plusieurs prédécesseurs. Je prends d'abord la question qui n'est peut-être pas principale mais qui est peut-être la plus simple, c'est celle de l'aide juridique gratuite. Personnellement, je voudrais qu'on enlève le mot "gratuite" parce que le principe d'une aide est d'être gratuite. Si l'aide n'est pas gratuite, c'est un phénomène de corruption. On a entendu parlé d'aide de la Communauté européenne qui n'était pas gratuite. Une aide est en principe gratuite. Ce n'est pas la peine de le préciser. En revanche, ce qui est important c'est de trouver les termes justes. Pour la France c'est le terme "aide juridictionnelle". C'est le plus large. Ce qu'a dit je crois déjà un intervenant précédant. Je serais assez d'accord avec celui qui a dit que cet article, cette disposition sur l'aide juridictionnelle devrait être rapprochée de l'article sur le recours effectif. Car c'est effectivement un élément du recours effectif. Et il ne faut pas prendre l'aide juridictionnelle comme le fait semble-t-il la convention européenne des droits de l'homme uniquement comme un élément des droits de la défense. C'est un élément de l'accès à la justice. Il n'y a pas de recours effectif s'il n'y a pas, pour ceux qui en ont besoin, des dispositions qui leur permettent d'y accéder. Je ne verrais d'ailleurs pas d'objection à ce qu'on en fasse un droit social. Mais il vaut peut-être mieux le garder ici. Alors voilà pour l'aide juridictionnelle. Je suis d'accord également avec la formule de Monsieur Ben FAYOT qui me paraît plus simple et plus claire que celle qui est employée ici sur la définition de l'aide. Le deuxième problème c'est la question du tribunal qui est traitée là et qui doit être séparée à mon avis de l'article (?) comme c'est le cas actuellement. L'article 6 actuel de la convention européenne des droits de l'homme, l'article 8 que nous proposons, savent, 8 c'est le droit à un tribunal impartial. La présomption

d'innocence (pardon) et les droits de la défense c'est tout autre chose. La présomption d'innocence ce n'est pas seulement un principe de procédure pénale. C'est un principe général de notre civilisation. Et nous constatons en France, qu'actuellement, c'est un des principes les plus bafoués, les plus attaqués. Et pas par les tribunaux seulement, ou pas par la police seulement, mais par la presse. C'est dans la presse qu'il y a des atteintes à la présomption d'innocence. C'est aussi dans les commissariats de police quand on fait passer une information à la presse disant que Monsieur Untel a été convoqué au commissariat. Et nous avons vu des cas en France où des carrières politiques ont été brisées par des phénomènes de ce genre sans que l'affaire aille devant les tribunaux. Donc c'est un principe général qui devrait être même antérieur dans la charte à mon avis, mais en tout cas peu importe, mais en tout cas séparé du droit à un tribunal impartial. Et les droits de la défense c'est également autre chose. Cela naturellement cela se passe surtout devant les tribunaux mais les droits de la défense se passent aussi devant l'administration, devant toutes les autorités, devant toutes les institutions. Et je crois que c'est bien d'en faire un principe général. Si bien qu'au lieu de proposer de joindre l'article 9 à l'article 8, je proposerais de couper l'article 9 en deux. Parce que de toute façon le titre "droits de la défense" ne convient pas. Il ne convient pas pour la présomption d'innocence cela n'est pas un problème de droits de la défense ; c'est un problème de principe. Quand on n'est pas condamné on ne doit pas accusé ou soupçonné ; et par conséquent, j'aurais proposé deux articles : un article 9 peut importe l'ordre, mais un article présomption d'innocence et un article droits de la défense.

20/03/2000 17:25:22 **Mme PACIOTTI (Le Parlement européen)**

Je pense qu'en gros Monsieur BRAIBANT a déjà dit ce que je voulais dire. Alors, très rapidement, puisqu'il s'agissait de questions linguistiques. Article 7 on parle de "juge" ; article 8 de "tribunal". Je pense que juge en italien convient mieux. Il est plus général et je suis d'accord avec M. BEREIJO. La pré-constitution légale du juge. Il s'agit d'une interdiction du juge spécial et dans ce cas on évite d'avoir un juge qui tranche que sur ce cas là. L'article 7, article 8 on parle d'un tribunal impartial. A l'article 9 c'est différent ; cela c'est la question pénale et là je suis tout à fait d'accord avec M. BRAIBANT. Donc le 7 et le 8 peuvent être fusionnés parce qu'en fait il s'agit du même principe. Droit un procès impartial, droit d'une juridiction qui décide en temps opportun et qui a assisté et là le terme en italien est correct, donc assistance juridique gratuite si la personne n'a pas les moyens. Et là je voudrais rassurer Monsieur Melograni qu'il a le droit que son affaire soit examinée officiellement publiquement mais par contre s'il y a d'autres instances administratives, il n'y a pas lieu de saisir cette juridiction là.

20/03/2000 17:27:51 **M. VITORINO (La COMMISSION)**

Merci Monsieur le président. En ce qui concerne la structure des articles, je crois qu'on peut faire la fusion des deux articles ou les traiter séparés. Le seul point que je voudrais souligner dans mon opinion, dans le sens qui a été aussi dit par M. BRAIBANT, c'est que je préférerais la division entre le numéro qui s'occupe de la présomption de l'innocence, d'un côté, et, de l'autre côté, les droits de défense des accusés. Je crois que ce sont des questions tout à fait séparées et avec des champs d'application et des portées tout à fait séparés. En plus, je dirais même qu'en ce qui concerne la présomption d'innocence, je crois qu'on aurait des avantages ici à copier la convention européenne des droits de l'homme et à suivre de très près la rédaction qui est recueillie par l'article 6.2. de la convention européenne des droits de l'homme. Sur la question de l'aide judiciaire de l'assistance judiciaire, je crois que dans ce domaine la Commission a déjà fait une étude détaillée des conditions d'aide judiciaire dans les États membres et a même fait distribuer une communication là-dessus parce que le Conseil européen de Tampere a demandé d'adopter des mesures qui puissent garantir l'accès à la justice et aux tribunaux dans des conditions d'égalité de chances entre les citoyens de tous les États membres, n'importe où ils doivent accéder à la justice et aux tribunaux. Je dirais qu'il n'y a pas de divergences très profondes dans le cadre juridique des États membres en ce qui concerne la reconnaissance du principe et la consécration d'un tel droit laisse à chaque État membre la définition des conditions d'accès à la justice, les conditions de l'aide judiciaire et, en plus, il y a même un mandat des chefs d'État et de gouvernement dans le sens qu'il faudra rapprocher les législations nationales en matière d'aide judiciaire dans toutes les questions transfrontalières, dans toutes les questions qui ont une dimension transnationale. Et c'est pourquoi, je trouve que par exemple les questions, ce n'est pas seulement une question financière, c'est aussi une question linguistique, de garantir des conditions d'appui et de traduction et d'interprétation linguistique aux accusés quand ils sont accusés dans un État différent de l'État dont ils sont ressortissants. En plus, la jurisprudence de la Cour de Justice européenne reconnaît déjà cette aide judiciaire dans les cas qui sont soulevés devant la Cour de Justice européenne. Finalement, une réflexion sur une question tout à fait horizontale qui a été soulevée à maintes reprises, c'est quelle est l'interprétation de l'expression "la loi". Je crois, M. le président, que, pour ne pas entrer dans des discussions horizontales, on devrait accepter de travailler provisoirement avec cette expression consacrée "la loi" ayant en ligne de compte que, à un moment venu, il sera nécessaire de clarifier quelle est la portée de cette expression parce que ça dépend beaucoup aussi des destinataires de la charte et du champ d'application de la charte. Dans mon avis et pour moi, en ce qui concerne la notion de loi, elle concerne les

instruments de droit de l'Union, ça veut dire les traités, ça veut dire les règlements et les directives, ça veut dire les mesures prises en vertu du titre 6 du traité de l'Union européenne - je crois que surtout les conventions qui sont prévues au titre 6 - mais elle ne prévoit pas les mesures d'exécution du droit communautaire, ça veut dire les mesures d'exécution ne peuvent pas être comprises dans le concept de loi aux fins de la charte des droits fondamentaux et je trouve que cet exercice est un exercice qui doit être fait plus en avant dans notre débat pour déterminer, dans une perspective horizontale, quel est le champ d'application de la charte elle-même.

20/03/2000 17:32:56 **PRESIDENT**

Après cette intervention de M. VITORINO, la liste des intervenants est close quant à cet article. Nous passons à l'article suivant "Droits de la défense", article 9.

20/03/2000 17:33:12 **M. PAPADIMITRIOU (Le parlement grec)**

Monsieur, sur cet article ou le précédent ? [MANQUE QUELQUE CHOSE ICI] Si ça porte sur l'article 9, il faut faire une distinction claire, comme l'a dit M. BRAIBANT, entre les droits, le droit de la défense qui est celui qui doit être placé en première position et ensuite la présomption d'innocence mais permettez-moi de faire des commentaires sur ce qu'à dit M. le commissaire précédemment. Il ne nous faut pas oublier que notre système juridique est indépendant donc toute référence que nous faisons doit être faite au traité. C'est la bonne façon de faire ces références mais nous avons aussi de nombreux textes juridiques qui découlent des traités et il nous faudra voir ce qui se passera quand l'Union aura la possibilité d'émettre des directives pour réglementer de telles questions. Les lois auxquelles nous faisons référence doivent être pas seulement les traités mais aussi tous les textes juridiques de l'Union, Monsieur le commissaire avait tout à fait raison à cet égard. Il nous faut toujours nous souvenir, nous rappeler des constitutions des différents États membres et il faut voir ce qui va se passer à l'avenir. Vous le savez, quelquefois, nous mentionnons les lois et nous savons exactement de quoi nous parlons au niveau de l'Union. Ce sont les traités, les dispositions statutaires. Nous tentons ici de réaliser quelque chose de difficile. Parfois, la route est longue mais c'est la seule façon, c'est la loi de l'Union européenne, nous avons les traités, les dispositions statutaires et aussi différents textes dans le cadre des traités. Je crois qu'il y a énormément de problèmes au niveau de l'Union. Ce dont nous discutons ne fait que le souligner.

20/03/2000 17:35:49 **M. OLSEN (Le Parlement danois)**

Je crois qu'il y a une nécessité d'interdire le "self incrimination" à l'article 9. La Cour européenne de Justice, dans sa jurisprudence, est très claire sur cette question. C'est aussi

indiqué à l'article 14 de la convention des Nations unies sur les droits civils et politiques. Il est dit là que personne ne peut être forcé à fournir des preuves contre soi ou admettre qu'il est coupable. Je crois que cette disposition est très importante pour protéger tant les citoyens que les entreprises en matière de droits de la concurrence quand la Commission européenne dispose de pouvoirs élargis pour demander de l'information auprès des citoyens et aussi auprès des entreprises concernant des cas de violation de la loi de la concurrence européenne.

20/03/2000 17:37:11 **M. NEISSER (Le parlement autrichien)**

Merci. Je crois que ce que dit M. VITORINO est tout à fait correct. Quand il y a loi, ça recouvre plusieurs types de normes dans l'ordre législatif national et communautaire. Alors, ce que je voudrais proposer, c'est de modifier le texte et ne pas parler ... bon, quand on parle de l'indépendance de la juridiction, "recht..." en allemand peut être compris par rapport au système concret sur lequel la procédure judiciaire et le tribunal en question reposent. Ça peut être donc, au niveau de l'Union, le droit communautaire mais, sur le plan constitutionnel, ça peut être une Cour, une juridiction de l'ordre juridique ou judiciaire national. Je crois que c'est très important d'éviter ce problème. "Loi", il faut éviter de comprendre trop de choses et de couvrir trop de choses là dessous.

20/032000 17:38:29 **M. MANZELLA (Le Parlement italien)**

M. le président, je voudrais m'associer à ceux qui ont demandé qu'à l'article 9 les droits de la défense soient séparés de la présomption d'innocence et soient repris dans l'article précédent, à savoir le 8, sur le mécanisme judiciaire. Je profite de l'occasion pour dire que je suis tout à fait favorable à l'autonomie, à la séparation de ces trois droits, tel que formulé par la présidence : articles 7, 8 et 9. Il s'agit, c'est vrai, dans tous les cas, des questions de procédure qui ont des éléments personnels mais je pense que ce qui est important, c'est de voir quels sont les intérêts politiques que l'on vise à protéger. Article 7 "Droit à un recours effectif" : cela concerne l'intégrité des droits des citoyens et d'une personne. Article 8, l'intérêt ou le droit que l'on veut protéger, c'est un mécanisme judiciaire et l'État doit faire en sorte qu'il y ait une égalité dans l'accès à un tribunal. Article 9, ce que l'on protège, c'est la dignité de la personne humaine et à l'article 9, la présomption d'innocence est un mécanisme qui sanctionne ce que nous disions à l'article précédent : dignité humaine. Puis, ce que ce droit révèle, le besoin de protéger la dignité humaine.

20/03/2000 17:41:03 **M. TRIAS SAGNIER (Le Parlement espagnol)**

Merci Monsieur le président. Très brièvement. L'amendement de nature grammaticale, dans la version espagnole, n'est pas droit "en la defença", c'est droit "de la défense". Et un amendement consistant en un ajout, je pense qu'il faudrait rajouter que les justiciables ont

droit au respect des droits de la défense en garantissant le principe d'égalité des moyens pour toutes les parties au procès. Je pense que le principe d'égalité des moyens est un droit de même nature que ce que j'ai mentionné auparavant. Merci.

20/03/2000 17:41:59 **M. PATIJN (Le Parlement néerlandais)**

Merci Monsieur le président. Je voulais faire une remarque sur le lien ou les liens entre les articles 7 à 11. Il s'agit de procédures pénales, d'accès aux tribunaux, etc. et j'ai l'impression que si cette charte doit réglementer les institutions de l'Union, j'ai l'impression qu'aucun organe, aucune institution a compétence au niveau pénal. Donc, ce qui me surprend, c'est la passivité avec laquelle nous essayons de modeler la convention ou la prochaine charte des droits fondamentaux parce que il s'agit quand même d'une question qui établit un lien direct entre la convention et les États membres, donc je pense qu'il ne faut pas essayer de réinventer la roue parce qu'il y a déjà certaines choses qui figurent déjà dans la convention européenne sur les droits de l'homme. Alors, laissons les choses comme ça. J'ai une remarque sur l'article 7 qui, je pense, est un peu plus large que les autres. Il s'agit d'un droit violé par une institution et, là, je pense qu'il s'agit bien d'institution ou d'organe de l'Union et donc on formule un droit de recours et donc, là, je pense qu'il faut se fonder sur ce qui figure déjà dans la convention européenne sur les droits de l'homme. Donc, je pense que pour ces articles-là, il faut essayer de s'en tenir un maximum à ce qui figure déjà dans la convention, article 7, des droits plus spécifiques pour ce qui est de l'intervention des institutions de l'Union.

20/03/2000 17:44:40 **M. HAENEL (Le Parlement français)**

Merci Monsieur le président. Je suis tout à fait d'accord, comme certains l'ont souligné, que le chapeau - on appellera ça comme on veut - ou l'intitulé de l'article 9 ne convient plus puisqu'on dit "droits de la défense" alors qu'il s'agit de deux droits de nature différente, le droit à la présomption d'innocence et le droit au respect des droits de la défense. Donc, soit on change le chapeau, l'intitulé et on en trouve un autre et on met deux alinéas, ou alors on scinde l'article 9 en deux. Alors, à ce moment-là, la rédaction deviendrait "tout accusé" mais "accusé", c'est un terme qui, à mon avis, ne convient pas car une fois de plus, en français, l'accusé, c'est celui qui comparait devant une cour d'assise et celui qui comparait devant un tribunal correctionnel c'est le prévenu. Alors je préférerais qu'on reprenne la rédaction de la convention européenne des droits de l'homme qui dit "toute personne accusée d'une infraction est présumée". La traduction anglaise est beaucoup plus conforme "toutes personnes contre lesquelles il existe des charges", hein, je crois que c'est ça. Bien, voilà ma première observation. Ma seconde observation, il faut bien qu'on se mette d'accord à ce moment-là si on fait un autre article ou un autre alinéa, ça reviendrait à la rédaction suivante "toute

personne a droit au respect des droits de la défense". Alors, il faut bien se mettre d'accord sur la portée d'une nouvelle rédaction. Est-ce que, si on prend cette rédaction-là, - alors, j'ai pas très bien compris la portée que lui donnait M. BRAIBANT - ce texte s'appliquerait seulement au procès pénal ou à tout procès ? C'est la question qui se pose.

20/03/2000 17:46:33 **M. KORTHALS ALTES (Le Parlement néerlandais)**

... plaider ce qui vient d'être dit par M. PATIJN notamment, je voudrais dire que moi aussi j'ai l'impression que l'article 8 concerne non seulement le droit pénal mais aussi le droit civil et les procédures administratives et je pense qu'il est important de savoir si le but c'est que l'article 9 soit ... (?) aie une présomption générale d'innocence en dehors du cadre pénal parce que si on reprend cela la question est de savoir s'il faut le mettre à cet endroit-ci ou alors plutôt dans le texte dans les droits individuels. En soi c'est une discussion intéressante de savoir si la présomption d'innocence ne devrait pas avoir une signification plus large que le pénal.

20/03/2000 17:47:43 **M. DUFF (Le Parlement européen)**

Merci M. le président, pour revenir à ce que M. PATIJN a dit sur ces articles, je suis assez d'accord avec lui. Quant à l'accent sur l'Union européenne dans ces articles, ce n'est pas du tout clair et cela nécessite une meilleure description et une analyse plus détaillée dans l'exposé des motifs. C'est la raison pour laquelle je pense qu'il faut avoir une approche plus structurée dans la rédaction de l'exposé des motifs. Je pense que c'est nécessaire dans tous les cas. Je pense qu'il est aussi important pour nous de prendre en compte les compétences toujours croissantes de l'Union européenne en matière pénale et juridictionnelle. C'est partiellement envisagé dans la sphère de sécurité et de justice et l'intégration de l'acquis Schengen lors de la signature du traité. C'est aussi postulé quand on parle la création d'Europol, l'Agence de coordination des forces de polices européennes sous l'égide de l'Union européenne. Quelque chose qui pourrait se développer à l'avenir et pourrait devenir quelque chose de comparable au Bureau fédéral d'investigation dans les années à venir (FBI). Mais ce qui est important aussi à l'heure actuelle c'est de voir que cela constitue un progrès pour ce qui est du mouvement des personnes. C'est un progrès. Il est important que la Charte de l'Union européenne soit pleinement préparée pour cette extension et l'élargissement imprévisible. Merci.

20/03/2000 17:51:36 **PRESIDENT**

Bien avec ceci l'article 9 est terminé et je crois qu'il nous reste 10 minutes encore. Nous commençons à traiter l'article 10.

20/03/2000 17:51:55 **M. RODRIGUEZ-BEREIJO (Le Parlement espagnol)**

Les observations sur cet article tout comme les autres articles visant à protéger le citoyen dans le cadre des procédures pénales ne sont pas des réserves de fond. Mais la proposition de

rédaction me pose certains problèmes que j'essaierai d'expliquer brièvement même si cela figure avec plus de détails dans le texte écrit. Tout d'abord, il est nécessaire de préciser que ce dont il s'agit ici ce sont des condamnations pénales. Nul ne peut être condamné pour une action qui ... et le droit, la référence au droit de l'Union me pose un problème parce que comme vous le savez l'Union n'a pas de compétence pour qualifier les délits et les peines. Et puis ce que je n'arrive pas très bien à comprendre c'est le numéro 2, l'alinéa 2 de cet article quand on parle des principes généraux de droit reconnus par les nations démocratiques. Cela me semble une expression dont l'objectif est bien sûr louable et avec laquelle je suis d'accord mais si nous sommes en train de rédiger un texte comme s'il était juridique, je pense qu'il faut être très précis surtout quand il s'agit d'une question liée au droit pénal. Je crois que ces principes généraux ne sont jamais que des principes de légalité pénale liés à l'état de droit. Donc, je proposerais que l'entête de l'article 10 "pas de peine sans loi" et bien si nous voulons respecter l'expression latine "pas de crime pas de peine" et que je voudrais que l'on supprime la référence au droit de l'Union quant au droit international, la référence devrait être plus précise et la référence aux principes généraux de droit reconnus par les nations démocratiques, je pense que ce n'est pas nécessaire si nous proclamons le principe de légalité pénale et si nous le formulons de façon précise. Et pour ce qui est des infractions ou actes et qui sont considérés comme des délits punissables pénalement, je le dis parce que j'ai une réserve beaucoup plus importante à l'article 11 et qui parle du "nebis in idem" donc j'insiste et c'est d'ailleurs ce que fait la convention européenne sur les droits de l'homme.

20/03/2000 17:55:45 **Lord GOLDSMITH (Le Parlement britannique)**

Premier point. Je suis d'accord avec M. BEREIJO et la référence au droit de l'Union à ce stade mérite d'être clarifiée. Il s'agit d'un article qui devrait être lié aux offenses pénales et je ne pense pas qu'il y ait de crimes pénaux dans le cadre du droit de l'Union. C'est uniquement dans le cadre du droit national mais j'aimerais qu'on me précise la chose. Deuxième point. Il y a un changement qui est expliqué dans l'exposé des motifs qui concerne le mot démocratique : civilisé remplacé par démocratique. Le deuxième paragraphe de l'article 10 est très important parce qu'il s'agit de crimes de guerre, crimes contre l'humanité qui sont très importants et c'est une exception au principe de "pas de peine sans loi" mais je m'inquiète un peu de modifier ce concept de nations démocratiques. Il s'agit de lois des nations démocratiques dans le monde et nous risquons de nous limiter si nous incluons ce concept occidental de démocratie donc je ne suis pas sûr que ce changement soit nécessaire. Et enfin, sur la dernière phrase du paragraphe premier l'exposé des motifs dit certains Etats membres acceptent cette position. Je ne suis pas sûr que ce soit le cas pour tous les Etats membres. Je remets en question donc

l'insertion de cet ajout et je me demande si tous les Etats membres adoptent cette approche, si ce n'est pas le cas, je pense qu'il faut être prudent et ne pas nécessairement la reprendre. Ce sont des petits points mais qui sont quand même importants pour cet article. Et enfin, je pense que si nous voulons une déclaration brève concise, il est possible de le faire pour autant que l'on inclue ces mots quelque part ailleurs dans le document et si vous examinez l'amendement que j'ai proposé, vous constaterez c'est exactement cela. Cela permet justement d'avoir une petite déclaration dans une partie du document mais cela reprendrait ce que je viens de dire.

20/03/2000 17:58:31 **PRESIDENT**

J'ai encore trois orateurs, SVP soyez brefs.

20/03/2000 17:58:39 **M. TRIAS SAGNIER (Le Parlement espagnol)**

Merci. Très rapidement, je suis d'accord avec ce qu'a dit M. RODRIGUEZ-BEREIJO et Lord GOLDSMITH. Je pense que on pourrait résoudre la question en ajoutant "applicable au droit international" comme je l'avais proposé. Il y a des infractions administratives qui impliquent la limitation de certains droits et là je pense aussi qu'ils doivent pouvoir bénéficier de la loi la plus favorable. Par contre, je supprimerais volontiers le paragraphe 2 parce que soit nous parlons directement d'un tribunal pénal international mais parler du droit des nations démocratiques c'est beaucoup mieux que les nations civilisées mais le Pérou, par exemple, est une nation civilisée sans être démocratique. Alors les principes reconnus par les nations démocratiques, c'est un désastre. Parce que les Etats-Unis c'est une nation démocratique mais on applique quand même la peine de mort, peine de mort interdite par cette charte et en République fédérale d'Allemagne le parti communiste est interdit qui fait partie de la coalition au pouvoir en France. Donc, personnellement, je pense quand même que c'est un vœu pieux mais un peut malheureux si nous souhaitons que cette charte soit applicable.

20/03/2000 18:00:40 **M. KORTHALS ALTES (Le Parlement néerlandais)**

Je voudrais souligner une chose. Je pense qu'il est important de reprendre ces droits dans la charte parce que même si l'Union européenne n'a pas directement des législations ou des procédures de répression en cas d'application ou de transposition dans le droit national, elle a des dispositions pénales sont introduites. Je parle notamment du blanchiment d'argent et aussi des problèmes liés à l'évasion fiscale. Donc, je pense quand même qu'il est important de reprendre de telles dispositions dans la charte et que ces principes de droit y sont liés. Je vous rappelle la discussion que nous avons eue sous la présidence de M. HERZOG qui a renvoyé ou qui a parlé des crimes de guerre et qui a parlé à cet égard de nations civilisées. Et là, je pense qu'il vaut nous en tenir et ne pas parler de nations démocratiques parce que là nous, ce n'est pas un statut reconnu par le droit des peuples. Et puis pour répondre à M. GOLDSMITH

dans mon pays, aux Pays-Bas quand après une sanction, il y a une sanction plus légère qui est reprise dans la loi on reprend aussi la sanction la plus légère et mais en général la législation va dans le sens inverse donc on décide d'une sanction plus lourde.

20/03/2000 18:02:55 **M. SCHULZ (Le Parlement européen)**

Président chers collègues. Moi c'est moins la question de savoir comment les communistes et les socialistes ont fait leur accord de pouvoir en France que la coopération entre la police et la justice qui m'intéresse et je dois dire que le débat m'interpelle. Nous discutons depuis un certain temps et c'est également l'interprétation que je fais de Cologne et de Tampere, des effets éventuels de la charte sur le deuxième et le troisième piliers et je dois dire qu'il en résulte qu'il y a du côté de l'Union une volonté d'harmonisation du droit pénal pour pouvoir effectivement faire face à la criminalité organisée et il faut bien comprendre dans la charte des droits fondamentaux, il faut dire quelque chose sur le droit pénal sinon on reste en dehors de la dynamique politique.

20/03/2000 18:03:51 **M. VITORINO (La COMMISSION)**

Je pense que cet article 10 est tout à fait pertinent parce que il y a des dispositions qui proviennent du traité ou qui sont adoptées par le Conseil et concernent la définition des sanctions pénales dans le cadre communautaire. Je pense notamment à l'article 280 sur la protection des intérêts financiers de l'Union qui pourrait donner naissance à un cadre décisionnel pour des sanctions et puis aussi des sanctions liées à l'article 31 e) qui dit que des Etats membres vont progressivement adopter des mesures établissant des règles minimum ayant des objectifs pénaux et ces actes ont été identifiés par le Conseil lui-même à Tampere, demander des décisions cadres c'est à dire des définitions communes, accriminations (?) communes et aussi sanctions communes sur une série de crimes, traite des êtres humains, crimes visant les enfants, trafic de drogues, terrorisme et cybercrimes et il est clair que si nous avons une monnaie commune il faudra très rapidement adopter une décision cadre sur la lutte contre la contrefaçon de l'euro et je ne vois pas d'autres solutions de lutter contre la contrefaçon de l'euro à moins que nous n'ayons des définitions communes, des sanctions communes, des accriminations (?) communes et cela requiert que au sein de l'Union nous ayons des orientations claires pour adopter ces sanctions pénales, ces dispositifs pénaux pour les crimes nationaux et transfrontaliers. Donc, il est essentiel que ce soit étayé par un article comme l'article 10.

20/03/2000 18:06:26 **PRESIDENT**

Merci voilà qui conclut nos travaux de cet après-midi. Je vous remercie de votre patience. Je donne la parole à M. JANSEN qui a encore une petite annonce importante à vous faire.

20/03/2000 18:06:38 **M. JANSEN (Le Parlement finlandais)**

Président. Trois choses. Je voudrais remercier M. MÉNDEZ DE VIGO pour le travail effectué cet après-midi. Je voudrais remercier les interprètes et trois : Lord GOLDSMITH et d'autres m'ont demandé ce qu'on entendait par "bonne administration". Je vais vous répondre personnellement ce soir parce que vous êtes tous invités à un cocktail à 18h30 à la représentation finlandaise. Voilà. Pour le reste, je vous vois demain 9 heures.

21/03/2000 09:14:04 **PRESIDENT**

Nous allons poursuivre la séance d'hier, avant tout permettez-moi de souhaiter la bienvenue à un nouveau membre de la Convention, il représente le Parlement danois, c'est M. LARSEN JENSEN qui a remplacé notre ancien collègue M. BOUKSI qui a été nommé Ministre au Danemark. C'est vous dire l'importance que de siéger à cette convention et il y a quelques jours il était encore parmi nous maintenant il est Ministre. Donc tous nous pouvons aspirer aux plus hautes fonctions, les membres de la Convention ont parmi leurs connaissances des Ministres. Bien je lui souhaite donc la bienvenue et le meilleur pour l'avenir. Article 10. Bien j'espère que nous allons pouvoir poursuivre sous la Présidence dynamique de M. JANSSON qui va me remplacer au cours de la matinée, je ne sais plus si c'est M. VASCONCELLOS qui voulait intervenir ce matin sur l'article 10 alors le Vice-Président de la Convention et représentant du Conseil et ensuite M. RODOTA.

21/03/2000 09:15:59 **M. BACELAR de VASCONCELLOS (Le Parlement portugais)**

Merci M. le Président. Bien hier je n'ai pas assisté au début du débat sur l'article 10 et c'est avec un certain délai que je me suis aperçu que les points faisant problème de la proposition de la Présidence portaient sur la mention dans la dernière ligne de l'article 10 des principes généraux de droit communément acceptés par les Nations civilisées, c'était le résultat d'une proposition que j'avais faite qui a été directement intégrée par M. HERZOG lors d'une précédente réunion et je dois à ce titre vous donner une explication rapide. Une bonne partie des arêtes étant déjà limée pour ce qui est de l'interprétation de cet article, je voudrais encore juste insister sur la chose suivante : nous avons souvent une formation professionnelle en droit constitutionnel et donc nous sommes tout à fait à même de comprendre ce qui sous-tend ce principe et comme nous avons conscience du poids historique et de l'impact sur l'évolution du droit international il ne serait pas bon d'avoir dans une déclaration de droits fondamentaux de l'Union européenne au seuil du troisième millénaire une expression encore véhiculant des connotations néo-coloniales comme des comment les principes de droit commun aux nations civilisées comment une telle formule pouvait encore figurer dans un document aussi solennel. C'est la raison pour laquelle nous avons choisi une autre formulation ce ne sera peut-être pas

la formule la plus heureuse, mais je pense que toutes les propositions qui pourraient tendre à protéger ce que l'on cherche à couvrir et qui fait référence à la condamnation pour crimes contre l'humanité ou pour génocide domaine dans lequel il y a un droit international pénal naissant et domaine dans lequel on commence à avoir une juridiction avec des tribunaux internationaux ad hoc et ceci découle de la convention de Rome, toute expression qui place au niveau international de telles juridictions et qui les rendent aptes à juger des crimes contre l'humanité, toute formule de ce type, je disais donc, me semble raisonnable, suffisante et compatible avec l'état de civilisation dans lequel nous nous trouvons et avec les principes démocratiques que nous souhaitons imprimer dans ce document. Monsieur le Président, je vous remercie.

21/03/2000 09:19:21 **M. RODOTA (Le Parlement italien)**

Merci M. le Président. Je voudrais très rapidement revenir sur ce qui vient d'être dit parce que moi aussi je pense que ce numéro deux a une grande importance. Je comprends que par rapport aux modes traditionnels d'examiner la légalité, ceci peut sembler une exception. Toutefois je suis convaincu que dans une déclaration de droit fondamental on ne peut manquer de faire une référence qui est désormais naturelle quand il s'agit de protéger les droits fondamentaux à savoir que les crimes contre l'humanité et les crimes contre la paix constituent un élément qui permet de donner aux autres droits leur importance et je pense que le droit international a beaucoup évolué en la matière et pas uniquement le droit international d'ailleurs parce qu'à côté de l'intervention des organismes internationaux ad hoc ou des organisations internationales comme celles de la Convention de Rome sur la Cour permanente eh bien il y a eu de nombreuses interventions aussi de la part des Etats qui ont fait référence à ces éléments du cadre international. Vous savez tous qu'il y a eu une grande étude, un français qui a parlé de dédoublement fonctionnel et il y a un jeu qui est fait qu'il faut une référence forte au droit international. Alors cet article, on pourrait faire référence aux critères généraux, aux grands principes c'est une question de rédaction, mais c'est quand même un point qui me semble important.

21/03/2000 09:21:46 **M. LEHMANN (Le Parlement danois)**

Merci Monsieur le Président, pour ce qui est de l'article 10 j'aimerais simplement dire que c'est un article assez typique si vous le comparez avec d'autres articles dont nous traitons dans cette partie de la charte quand on tente de donner une description brève et claire des droits fondamentaux que nous voulons protéger et dans l'exposé des motifs nous citons normalement les dispositions pertinentes dans la Convention qui est la Convention pertinente. Ici il s'agit de la Convention européenne des droits de l'homme. Ici nous avons procédé à l'inverse. Nous

avons pris le texte complet de la Convention européenne des droits de l'homme et nous l'insérons dans l'article et ce n'est pas la façon dont nous avons procédé dans les autres articles et je pense que nous devrions peut-être essayer de parvenir à un accord sur une version plus courte peut-être la première phrase du premier paragraphe avec la phrase établissant les principes généraux du droit reconnu par les nations démocratiques ou les Etats ou les nations civilisées dans la deuxième partie. Bien entendu, ??? pose la question de savoir pourquoi nous changeons ce libellé en introduisant les termes "nations démocratiques et droit de l'Union" quand nous traitons de la Convention européenne des droits de l'Homme parce que cette convention contient une interprétation des termes, il y a aussi la jurisprudence bien sûr qui dit que nous devons voir ceci à la lumière des circonstances actuelles, donc il faut interpréter ce libellé à la lumière du temps dans lequel nous vivons et non pas à la lumière du passé quand cette convention a été mise en place. Je crois qu'il y a des améliorations à apporter ici donc je proposerais une version plus courte pour cette partie du document et dans l'exposé des motifs nous pourrions avoir le libellé complet comme c'est le cas normalement avec mention de l'interprétation et de la jurisprudence, interprétation de la Cour. Merci.

21/03/2000 09:24:55 **M. PAPADIMITRIOU (Le Parlement grec)**

Merci Monsieur le Président. Il y a un problème au sujet de l'article 10. Ici on dit qu'il n'y a pas de peine sans loi et pas de rétroactivité. Peut-être devrions-nous étendre ce principe à d'autres lois administratives, une sanction disciplinaire par exemple peut être utilisée de manière rétroactive, peut-être dans l'Union devrions-nous étendre ce principe de pas de peine sans loi à d'autres types de sanctions. Voilà. Merci M le Président.

21/03/2000 09:25:46 **M. GRIFFITHS (Le Parlement britannique)**

Oui, très brièvement M. le Président, pour soutenir ce que M. LEHMANN vient juste de dire, je pense que la question dans le fond est que personne ne devrait être puni en dehors de la loi. La Convention entre dans le détail à ce sujet. Je pense que nous devrions suivre cela en tant que principe de travail, avoir un principe bref et dans l'exposé des motifs avoir quelque chose de plus étoffé et avoir peut-être une deuxième partie comme l'a proposé Lord GOLDSMITH. Merci.

21/03/2000 09:26:28 **Mme CEDERSCHIÖLD (Le Parlement européen)**

J'aimerais soutenir fortement les intervenants qui disent qu'on doit aller plus loin ici et inclure le principe traditionnel de non rétroactivité des lois en tant que telle. Si c'est possible je préférerais avoir un texte plus court mais avec l'extension du principe de rétroactivité à d'autres domaines autres que le droit pénal. Merci Madame.

21/03/2000 09:27:05 **M. MANZELLA (Le Parlement italien)**

Sur le deuxième paragraphe à la fin, je voudrais proposer un libellé différent. Pour ce qui est des nations démocratiques, je proposerais principes généraux de droit reconnus dans la législation démocratique internationale. Pourquoi, parce que je pense que dans cette reconnaissance des principes généraux, je pense que nous devons faire une mention expresse de la nature objective et non subjective donc de cette reconnaissance, autrement dit la reconnaissance doit être donnée par la législation et non pas par les Etats ou les Nations et cela correspond parfaitement à l'évolution que nous constatons dans le droit international qui passe, droit international de conventions entre les Etats à un droit constitutionnel international. Merci Monsieur MONCELA, vous étiez le dernier intervenant, ah non.

21/03/2000 09:28:26 **M. HAENEL (Le Parlement français)**

Merci Monsieur le président, très rapidement moi je crois qu'il faut s'en tenir au principe que nous nous sommes fixés c'est-à-dire d'essayer d'être le plus bref possible. Alors, moi je crois que pour l'article 10, il suffirait de s'en tenir à la première phase du 1. et pour le reste renvoyer à la rédaction plus longue de la Convention européenne des droits de l'homme. Ca me paraîtrait tout à fait suffisant. Je vous remercie.

21/03/2000 09:28:51 **PRESIDENT**

Merci à vous. Nous allons passer à l'article 11 : Droit à ne pas être jugé ou puni deux fois, M. RODRIGUEZ-BEREIJO.

21/03/2000 09:29:05 **M. RODRIGUEZ-BEREIJO (Le Parlement espagnol)**

Merci Monsieur le président. J'aimerais faire quelques remarques au sujet de cet article, la première au sujet du chapeau de cet article "Droit à ne pas être jugé ou puni deux fois". Jugé ou condamné deux fois pour le même fait serait un terme plus approprié, parce qu'une personne peut être jugée ou punie deux fois pour des délits distincts. Donc je pense qu'il faut rajouter les termes "pour le même fait". Je pense qu'il faut aussi renforcer le caractère pénal du champ d'application de cet article 11. Cet article fait écho, reprend l'article 7 de la Convention européenne des droits de l'homme, possibilité d'une double sanction pénale disciplinaire ou administrative pour les mêmes faits. C'est la raison pour laquelle l'Espagne ainsi qu'un autre pays n'a pas ratifié le protocole 7 de la Convention européenne des droits de l'homme parce que dans certains cas il est possible que pour les mêmes faits on ait une sanction pénale et une sanction disciplinaire de type administratif et ici dans cet article, il s'agit des garanties du citoyen lors du processus pénal et de la règle sacrée du droit pénal qui dit que on ne peut pas être condamné deux fois pour les mêmes faits ni être puni deux fois pour les mêmes faits, donc je propose de dire "personne ne peut être accusé ou condamné

pénalement en raison de faits pour lesquels la personne a déjà été acquitté ou condamnée par un jugement définitif conformément à la loi. Je veux insister sur le fait que pour l'Espagne, cet article en l'état aurait, entraînerait des problèmes constitutionnels, parce que dans le droit constitutionnel espagnol on reconnaît la possibilité d'avoir en même temps et pour le même fait une sanction disciplinaire et une sanction pénale. Dans l'exposé des motifs quand on cite la sentence de Gütman de la Cour européenne de justice, Gütman contre la Commission, affaires 1865 et 3565, il s'agit d'un problème distinct parce que dans ce cas là il s'agissait d'une sanction imposée par la Commission à un fonctionnaire communautaire, et il s'agissait de deux sanctions administratives pour le même fait, mais ce n'est pas le même problème qui se pose pour l'Espagne si on ne rajoute pas les termes "pour le même fait", parce qu'on envisage pas la possibilité d'avoir une sanction disciplinaire avec une sanction pénale. Je pense qu'il faut réfléchir à l'opportunité d'une proposition innovatrice pour cette charte, c'est-à-dire établir un article, un nouvel article, où l'on énonce la compétence spécifique au sein des institutions européennes pour ce qui est du droit administratif, régime administratif et des fonctionnaires au sein de des institutions européennes pourrait faire l'objet d'un article distinct. Ici, cet article est essentiellement destiné à couvrir les sanctions de droit pénal. Merci Monsieur.

21/03/2000 09:33:48 **M. TRIAS SAGNIER (Le Parlement espagnol)**

Merci Monsieur le Président. Je crois que la première partie de l'amendement de M. Rodrigues Baerero devrait être complété. Alors conformément à la loi applicable parce qu'il y a des lois qui ont été approuvées mais qui n'ont pas été, ne sont pas encore entrées en vigueur, parce que le décret d'application n'a pas été émis par exemple. Donc, je pense qu'il faut rajouter ce terme "loi applicable". Le président remercie l'orateur.

21/03/2000 09:34:23 **PRESIDENT**

J'espère que ma prononciation était à la hauteur.

21/03/2000 09:34:40 **M. HAYES (Le Parlement irlandais)**

Excellente prononciation, et ce n'est pas facile pour un orateur d'origine latine que de prononcer mon nom. Merci Monsieur le Président. J'ai remarqué qu'à cet article et comme M. LEHMANN a attiré notre attention là dessus, nous avons un texte concis ici et on reprend l'exposé des motifs l'article entier du de la Convention européenne des droits de l'homme mais je ne suis peut être pas aussi satisfait que M. LEHMANN et M. GRIFFITHS et pour cela je dois reprendre les commentaires quand on dit que l'article 2 a été mentionné en référence au traité de l'Union, l'article 6 fait référence à la Convention européenne des droits de l'homme c'est effectif et c'est approprié tant qu'il n'y a pas d'instruments des droits de l'homme de

l'Union, mais nous sommes en train de le préparer et quand ce sera le cas, l'article 53 de la CEDH sera pertinent et cet article 53 dit que "cela n'empêche pas les parties à la Convention d'aller au-delà des droits qui sont énoncés dans la Convention" et j'en reviens à cet article ici parce qu'il va au-delà des droits énoncés et c'est pourquoi je pense qu'il faut maintenir le paragraphe 2 de la Convention européenne pour nous pré, pour laisser la porte ouverte à cette éventualité. Donc, je ne suis pas satisfait que l'on fasse cette référence dans l'exposé des motifs et je pense que ça doit être beaucoup plus, ça doit faire partie du texte de l'article, surtout si c'est un instrument qui est destiné à faire partie des traités. Merci Monsieur.

21/03/2000 09:37:05 **PRESIDENT**

Bien après avoir fait le tour de l'article 10, nous en revenons à l'article 11. M. MELOGRANI.

21/03/2000 09:37:13 **M. MELOGRANI (Le Parlement italien)**

Merci Président, je voudrais dire que actuellement le droit interne national permet à un pays de juger pour un même fait une personne qui a déjà été condamnée dans un autre pays, et c'est le cas par exemple pour le commerce international des stupéfiants ou pour la falsification, la contrefaçon de monnaie. Donc, il me semble opportun de mettre cela dans le texte l'article 11 en disant que personne ne peut être poursuivi ou condamné dans un Etat si il a déjà été poursuivi ou condamné pour le même fait par la même législation dans un même Etat, parce que rien n'empêche qu'on puisse ouvrir une autre procédure dans un autre Etat.

21/03/2000 09:38:27 **M. MOMBAUR (Le Parlement européen)**

Eh bien justement par rapport à ce qui vient d'être dit, ça tombe bien. L'article 11 porte sur le problème de l'utilisation des arrêts et ce qu'on fait des jugements. La Convention elle parle de ce qu'on fait au niveau des jugements et comment on s'en sert au sein d'un Etat, mais il y a aussi la possibilité de voir entre Etat membre ce que l'on fait d'un jugement prononcé. Par rapport à l'accord de Schengen, il y a un décret d'application en quelque sorte une ... d'application qui prévoit que l'utilisation du jugement par les Etats membres peut se faire de la même manière avec des exceptions tout en sachant que les dispositions que nous avons effectivement valent pour les exceptions comme pour le reste du texte, mais on dit simplement que dans les exceptions la possibilité entre Etats membres de convenir de certaines dispositions est prévue, mais il faut que ce ça soit précis parce que je crois que la jurisprudence de toute façon augmentera de plus en plus sur ce point.

21/03/2000 09:39:59 **M. TARSCHYS (Le Parlement suédois)**

Nous avons un petit problème, car on dit que l'article est rédigé de telle manière qu'il ne peut priver d'effet juridique l'article 2 du protocole n° 7. Mais je continue en anglais... L'article 6 du TUE ne renvoie qu'au corps du texte et pas au protocole supplémentaire ou additionnel.

Donc il y a une petite difficulté ici. On ne peut pas couvrir ceci comme le prévoit le texte du bureau.

21/03/2000 09:40:55 **M. MANZELLA (Le Parlement italien)**

... ces deux remarques de technique rédactionnelle. Et d'abord, je pense que cet article 11, il vaudrait mieux le mettre au premier paragraphe de l'article 10 ou alors en tant que paragraphe 2, toujours de l'article 10. Mais pour ce qui est des mécanismes généraux des délits et des peines, alors que je ferai un article séparé pour le deuxième paragraphe de l'article 10 qui, lui, concerne les crimes internationaux. Deuxième proposition, ou plutôt, je voudrais soutenir l'intervention de M. HAYES de tout à l'heure.

21/03/2000 09:41:59 **M. LEHMANN (Le Parlement danois)**

Merci Monsieur le Président. Avant que vous ne poursuiviez et passiez à l'article suivant, j'aimerais faire écho à ce qu'a dit M. l'Ambassadeur HAYES au sujet de ce que j'avais mentionné auparavant. Ce n'est pas très souvent que, il n'arrive pas souvent que je ne sois pas d'accord avec M. HAYES quant à l'interprétation d'un article. Ce que je disais, c'est qu'une partie du raisonnement qui sous-tend ce texte bref est reprise dans la deuxième partie du document, et je pense que la structure ne m'apparaît pas comme un article et un exposé des motifs. Là je vois un tout qui n'est pas divisible, et quand on parle de la Convention européenne des droits de l'homme, parce qu'il y a une jurisprudence et une interprétation de la Cour, je pense qu'il est nécessaire de reprendre le texte et la référence à la jurisprudence de la Cour. Le fait de mentionner simplement l'article 6 n'est pas, l'article 6 du traité de l'Union européenne, n'est pas suffisant. La Convention européenne des droits de l'homme a un statut particulier. Il faut mentionner les deux dans le libellé, avec la jurisprudence. J'espère que M. l'Ambassadeur HAYES pourrait être d'accord avec moi. Merci.

21/03/2000 09:43:45 **Lord GOLDSMITH (Le Parlement britannique)**

Merci Monsieur le Président. En premier, je suis d'accord avec M. BEREIJO. Cet article couvre les procédures pénales, et je pense que cela apparaît clairement d'après le libellé. Et effectivement il a raison quand il propose l'ajout de "pour le même fait". M. LEHMANN et M. l'Ambassadeur HAYES ont parlé de l'importance de l'exception dans l'article 4 du protocole. Je suis tout à fait d'accord avec eux. C'est une exception importante. Nous avons eu le cas d'un jeune homme tué dans notre pays par une attaque raciste et les gens pensaient que c'était dû à l'incompétence de la police et de la justice qui ont acquitté, ont fait que les coupables ont été acquittés. Les coupables ont été acquittés. Et je pense que l'article 4 du protocole 7 devrait être inclus par une référence expresse à la convention et au protocole. Et mon approche juridique serait de l'incorporer au travers de la définition des droits dans la

partie B. Mais je suis aussi d'accord avec M. MELOGRANI quand il fait la distinction importante en disant que personne ne devrait être poursuivi dans des États ou dans le même État, et je pense qu'il faudrait un éclaircissement. Est-ce que cet article vise à être limité aux actes commis dans la Communauté ? Dans ce cas, il y aurait une seule réponse, un même fait ne pourra être poursuivi dans deux pays. Ou bien est-ce que c'est une déclaration qui doit s'appliquer à tous les États membres ? Et pour l'instant nous n'avons pas là les procédures permettant d'avoir des reconnaissances mutuelles des jugements criminels. Et parce qu'il y a un acquittement dans un pays, cela ne veut pas dire qu'un autre pays va s'abstenir de juger cette affaire. Donc, là je pense qu'il nous faut travailler encore plus à fond.

21/03/2000 09:46:21 **M. PATIJN (Le Parlement néerlandais)**

Monsieur le Président, j'ai la même question que Lord GOLDSMITH. Est-ce que le but de cet article est de faire en sorte que la limite de l'article 4 du protocole 7 doit être reprise par cela que c'est un élargissement des dispositions du protocole, est-ce bien là l'objectif ? Et j'ai une question à l'adresse de M. TOBISSON. L'article 6 du Traité d'Amsterdam parle de la convention, et si j'ai bonne mémoire, l'objectif concernait, était aussi que cela couvre les protocoles qui auraient été adoptés après.

21/03/2000 09:47:14 **PRESIDENT**

Merci Monsieur PATIJN, qui connaît très bien le Traité d'Amsterdam puisque vous y avez activement participé. Article 12. Monsieur RODRIGUEZ-BEREIJO, vous êtes toujours le plus rapide.

21/03/2000 09:47:36 **M. RODRIGUEZ-BEREIJO (Le Parlement espagnol)**

Je vais essayer de ne prendre la parole qu'une fois et dire tout ce que j'ai à dire. Je suis d'accord avec l'article 12. Il s'agit plutôt de modifier la structure de ce texte. Tout d'abord, il vaudrait peut-être mieux que, pour ce qui est du respect de la vie privée, il vaudrait mieux parler de la vie privée familiale, et après avoir garanti le secret des communications indépendamment du moyen utilisé et protection des données à caractère personnel. Parce que dans le projet du présidium, il manque l'élargissement du droit au secret des communications, mais aussi au secret des communications, et quel que soit le moyen utilisé pour ces communications. Et ensuite, je crois qu'il faut ajouter un nouveau droit, celui de la protection des données à caractère personnel. Et enfin, je crois que, dans cet article, il est indispensable de faire une référence aux limites de ce droit. C'est pourquoi je propose que l'on ajoute "L'exercice de ces droits ne pourra être limité par la loi et, le cas échéant, avec une autorisation judiciaire préalable". Je dis cela parce que dans l'exposé des motifs, on dit que on ne fait pas référence à la limite du droit. Néanmoins, je me permets de vous rappeler quelque

chose que j'ai déjà dit. J'ai l'impression que cette référence à l'article 6 du Traité d'Amsterdam n'est pas correct, et en plus, cela ne résout pas le problème de l'intégration des restrictions ou des limites dans la charte. Parce que l'article 6 du Traité sur l'Union européenne dit que l'Union respectera les droits fondamentaux tels que garantis par la convention en tant que principes généraux du droit communautaire. Et il est évident que l'application des droits de la convention en tant que principes généraux du droit communautaire, c'est différent de l'application de la convention en tant que telle. Parce que de plus, si ce n'était pas le cas, si l'article 6 du Traité sur l'Union européenne signifiait ce que semble donner entendre l'exposé des motifs, cela signifierait que il n'y aurait plus besoin de faire une charte, parce qu'au travers de l'article 6, la convention serait déjà insérée dans le traité. Ce qui n'est pas le cas. Donc, il me semble que il est nécessaire, même si c'est un travail difficile mais pas impossible sur le plan technique, qu'en définissant les droits il faut aussi définir ses limitations, parce que les droits ont, comme une feuille ou comme une monnaie, un recto et un verso, et à chaque droit sont liés des droits d'une part ou les limites d'autre part.

21/03/2000 09:52:15 **Mme BRAX (Le Parlement finlandais)**

Contribuer hier une proposition conjointe avec M. Nicolas sur une modification de l'article 12 et M. Gunnar a marqué son accord. Alors deux choses : d'une part, nous aimerions changer le libellé pour qu'il soit un peu plus clair. Plutôt que de parler du droit au respect de certaines valeurs, nous parlerions d'un droit à la protection de certaines valeurs. Donc ce serait droit à la protection. Deuxième proposition : la protection de la vie familiale ; je pense que c'est étroitement lié à ce droit-ci. Cela correspond au texte de la convention européenne parce que la protection de la vie familiale a toujours été un élément central dans les conventions sur les droits de l'homme de façon générale. Et j'imaginerai que ce sera toujours le cas à l'avenir. Mais l'institution familiale au cours des dernières décennies a beaucoup évolué. Et nous pensons que nous devrions reconnaître cette évolution, ce changement et respecter le droit du citoyen à choisir différentes formes de famille. C'est leur choix. Et c'est pourquoi nous pensons que le respect de la vie familiale fait partie du respect de la vie privée. Et puis M. Mayer a parlé de la même chose je pense dans le cadre de l'article 13 et il a résolu le problème de façon légèrement différente. En fait, le même problème se pose avec la diversification des familles.

21/03/2000 09:54:39 **PRESIDENT**

Oui, mais pour l'instant nous en restons à l'article 12. Monsieur RODOTA.

21/03/2000 09:54:46 **M. RODOTA (Le Parlement italien)**

J'interprète cet article comme une norme de caractère général qui sera ensuite précisée et dans les autres articles qui parlent de la famille, mais aussi de la protection des données personnelles qui méritent des paragraphes séparés. S'il s'agit d'un article plus général et là je pense qu'il vaut mieux garder respect plutôt que de parler de protection qui peut paraître un peu paternaliste par rapport à un article qui affirme les droits d'une personne en tant que telle. Je suis d'accord avec Mme BRAX quand elle dit qu'il faut respecter le choix des individus en matière de famille mais je pense qu'il est plus approprié de le faire ailleurs. Et puis je voudrais proposer un ajout dans le texte pour le rendre conforme tant aux révolutions constitutionnelles qu'à l'interprétation des cours et à leur parler, non seulement du secret des communications mais ajouter liberté, liberté et secret de la communication parce que c'est quand même la prémisse de base. Merci. Mme KAUFMANN.

21/03/2000 09:56:17 **Mme KAUFMANN (Le Parlement européen)**

Dans l'exposé des motifs on dit que le concept d'honneur serait nouvellement introduit parce qu'il existe dans diverses constitutions nationales. Alors, moi je suis contre le fait de reprendre ce concept car très souvent on s'est rendu compte que lorsqu'on renvoyait à l'honneur il y a aussi une limitation du droit à la libre expression parce que il faut faire attention quand on parle aux droits de l'homme qui sont inattaquables dans l'article 1 et bien on risque avec le concept d'honneur de voir certaines limites intervenir.

21/03/2000 09:57:09 **M. BACELAR de VASCONCELLOS (Le Parlement portugais)**

Merci, Monsieur le président. Je voudrais intervenir sur ces questions où il peut y avoir des divergences, divergences qui sont plus de culture ou d'interprétation que vraiment des divergences de fond. Ici quoiqu'il en soit, je préfère le texte tel qu'il a été rédigé. Mais si vraiment c'est nécessaire, nous pourrions biffer la référence à l'honneur et si on estime que c'est une limite à la liberté d'expression. Et puis on parle aussi du secret des communications. Parce que les libertés on en parle ailleurs, donc je n'ai pas d'autres meilleurs choix à vous proposer. Pour ce qui est du respect de la vie privée là aussi je préfère en fait garder le texte en l'état parce que je pense qu'il y a une différence importante entre l'expression respect et l'expression protection. La protection elle se justifie, elle est nécessaire mais dans un autre cadre. Ici ce dont il s'agit, ce sont les droits fondamentaux élémentaires. Et donc la seule chose que l'on puisse demander à un Etat de droit c'est qu'il respecte ces concepts.

21/03/2000 09:59:07 **Lord GOLDSMITH (Le Parlement britannique)**

Je suis d'accord avec vous. Les remarques qui ont été faites, Mme BRAX, M. NIKULA, à savoir qu'il vaudrait mieux insérer la vie familiale dans cet article, plutôt que dans un article

ultérieur. Je suis d'accord aussi avec les arguments qu'elle a avancés. Je pense que il faut respecter les différentes traditions. La convention européenne l'a fait ; elle a reconnu le respect de la vie familiale y compris pour ces formes moins traditionnelles. Donc je suis tout à fait d'accord avec ce qu'elle a proposé. Toutefois, je ne crois pas pouvoir accepter le libellé qu'elle a proposé pour la protection de la vie privée. Je pense que respect est mieux et c'est plus conforme aussi à la convention. Et puis je suis d'accord avec Mme KAUFMANN à savoir qu'il vaudrait mieux exclure la référence à l'honneur. Chez moi, dans mon pays, on risque de l'interpréter de façon tout à fait différente. On aurait l'impression que cela vise chez les gens d'être l'objet de diffamations, protéger certaines personnes contre la diffamation ce qui n'est pas le but. Je sais bien que c'est un terme qui figure dans certaines constitutions, mais cela risque de poser des problèmes dans mon pays. C'est pourquoi je propose qu'on le biffe. Troisième point, cela concerne les limitations. Je suis d'accord avec M. BEREIJO une limitation est importante. Contrairement aux autres droits, le droit à la vie privée n'est pas absolu et ne devrait pas être absolu. Dans une société libre et démocratique parfois il est approprié de violer la vie privée et la liberté sur les communications l'accepte ou l'admet. Et donc il y a une disposition de la convention européenne qui je pense devrait être répétée ici ; cela figure dans les documents que vous avez à la page 19. Là je reformulerai comme les membres de la convention peuvent le voir les droits fondamentaux donc on enlève l'honneur et on remet la vie familiale. Mais, dans une autre partie du même document, on reprendrait aussi la totalité du texte à l'article 12 et j'expliquerai plus tard pourquoi un article horizontal qui est actuellement proposé ne serait pas une bonne façon de traiter ces limitations. Donc, j'y reviendrai dans le cadre de l'article suivant puisque cela concerne le même point.

21/03/2000 10:02:34 **M. FRIEDRICH (Le Parlement européen)**

On repart sur les principes. Je continue à penser et je suis désolé de le répéter que nous devons essayer de trouver des phrases courtes et aussi proches que possible de la convention, précises également. Alors, on devrait avec Lord GOLDSMITH et le bureau essayé de faire en sorte justement là encore de ne pas chaque fois devoir tout rediscuter. Je crois qu'en effet que les articles 12, 13 et 14 et même le 15 sont très liés et la structure de chacun de ces articles doit faire l'objet d'une analyse mais je mets en garde contre le fait de vouloir tout regrouper. Deuxièmement, l'honneur. Alors, chez moi, dans ma langue, c'est quelque chose d'un petit peu paternaliste qui n'est peut-être plus tout à fait moderne, plus tout à fait actuel. Mais j'aimerais quand même que cela soit repris parce que le supprimer sans le remplacer cela ne me paraît pas être une bonne solution. Alors au lieu de dire son honneur, on pourrait dire réputation personnelle. Car c'est cela finalement que l'on vise. La réputation personnelle doit être

respectée. Nous avons eu un cas de quelqu'un qui a été mis bon, comment dire en liberté surveillée presque, enfin cela n'existe presque plus, mais disons qui a été presque mis en prison et qui a demandé réparation pour sa réputation. Donc je crois qu'il faut plutôt garder l'honneur pas non plus introduire un nouveau niveau de protection, domaine de protection. Parce que quand on regarde cet article par rapport à l'article 14, si on commence à passer de respect à protection, on risque, sans le vouloir, d'ouvrir d'autres portes, d'autres possibilités dont les conséquences ne sont pas toujours prévisibles. Et on risque de se trouver dans un terrain très mouvant et dangereux dans la mesure où on nous accuserait de nous arroger de nouvelles compétences à l'Union. Donc, respect, je demande qu'on maintienne ce concept plutôt que protection ; je voudrais aussi que l'on reprenne les données personnelles et la protection des données personnelles d'une manière ou d'une autre dans ces articles parce que ces nouvelles technologies ouvrent de nouvelles possibilités qu'il faut prendre en compte. Dernier ajout que je souhaiterais, je ne sais pas où : ou 12 ou 13, ou 15 peut-être, mais en tout cas il faut en tout cas ce que je vais vous proposer. Nous savons tous que les nouvelles technologies et Internet tout particulièrement ouvrent certaines possibilités d'abus des enfants que ce soit par la pornographie, d'abus autres, etc.. C'est une menace réelle qui a pris des dimensions importantes. Et je crois qu'il est important que dans ces articles dont nous discutons, nous puissions amener la protection des droits des enfants ou la protection des enfants eux-mêmes face à de telles menaces nouvelles. Bon quand je parle de protection, c'est encore respect. Mais je ne sais pas où il faudra le mettre. Ici ou peut-être dans l'article suivant ; je n'ai pas trouvé de formule adéquate. Mais les temps sont tels que nous sommes obligés de tenir compte de ces nouvelles menaces pour les enfants. Je crois qu'il faut aussi être crédibles. Vous savez que les enfants ne peuvent plus être protégés sur le plan national, non plus, avec Internet il faut que cela soit fait de manière internationale. Donc je lance un appel pour que ce problème nouveau, qui touche les enfants, soit couvert dans un de ces articles. Merci.

21/03/2000 10:07:05 **PRESIDENT**

Et bien je pense que cela pose un problème important parce que nous avons de plus en plus d'orateurs et de moins en moins de temps. Oui., oui, oui, je sais j'ai une longue liste, alors je vous demanderais, s'il vous plaît, d'être concis sinon je vais devoir vous interrompre et je n'aime pas beaucoup le faire.

21/03/2000 10:07:31 **M. NEISSER (Le Parlement autrichien)**

Très brièvement. Le problème de M. KAUFMANN dans l'exposé des motifs on parle d'honneur. Or ce concept au niveau national, je ne sais pas comment il est repris chez lui. Moi, cela m'intéresserait parce que c'est un contexte qui n'est pas seulement à voir dans le

contexte de la vie privée, mais aussi de la vie publique je crois. Donc, un droit fondamental qui fixe la dignité de l'homme devrait être précisé car la jurisprudence de Strasbourg avec l'article 8 de la convention prévoit le respect de l'identité. Mais le respect de l'identité cela implique d'après la jurisprudence, l'honneur. Donc je suis assez critique là dessus. Maintenant je préfère aussi le respect parce que le respect cela renforce plus l'aspect social de la valeur et cela exprime mieux cet aspect sociétal. Merci.

21/03/2000 10:08:42 **Mme CEDERSCHIÖLD (Le Parlement suédois)**

Merci, je vais essayé moi aussi d'être brève et la protection des données je pense que c'est, il faudrait le remettre à l'article 15. Deuxièmement je pense que l'article 12 et l'article 13 devraient être séparés et enfin je pense que nous avons besoin d'une analyse des conséquences de remplacer respect par protection. Personnellement je pense qu'on peut garder les deux peut-être. De toute façon, garder respect. Mais je voudrais aussi savoir quelles seraient les implications si on ajoute "protection".

21/03/2000 10:09:33 **M. PATIJN (Le Parlement néerlandais)**

Merci Président. Très rapidement, les rédacteurs du texte ont essayé d'être brefs mais je pense que le texte de la Convention européenne, il est court et il est meilleur. On n'a pas parlé de la vie familiale ni de la famille. Vous avez ajouté l'honneur, ce n'est pas vraiment la même chose. En fait, cet article vise à protéger la vie privée contre le pouvoir public et moi j'ai l'impression parfois que c'est l'inverse : on essaie de protéger l'ordre public contre l'intervention des citoyens. Pour le reste, il faudrait voir si je pourrais accepter l'élargissement, mais je pense que de toute façon l'ancien texte de la Convention européenne est un bien meilleur texte que celui-ci.

21/03/2000 10:10:42 **M. MOMBAUR (Le Parlement européen)**

Je suis d'accord avec Lord GOLDSMITH. Il a parlé du débat que nous avons déjà eu, à savoir que l'ordre public peut respecter des droits que si les citoyens de l'Union respectent eux leurs propres responsabilités. Il ne faudrait pas l'oublier. Et puis je voudrais souligner, une fois de plus, que il y a une idée fondamentale, l'état de droit, mais il n'y a pas d'état de droit si l'on ne respecte ou si les citoyens ne respectent pas leurs responsabilités. C'est un principe important. Je pense qu'il faudrait le mettre quelque part, peut-être au début.

21/03/2000 10:11:38 **M. KORTHALS ALTES (Le Parlement néerlandais)**

Monsieur le président, moi je préfère que l'on garde "respect" plutôt que de mettre "protection" et la mention de l'"honneur" : je voudrais qu'on la biffe. Je vous signale qu'à l'article 1, nous avons déjà parlé de la valeur humaine : je pense que c'est tout à fait clair. Les rédacteurs ont par ailleurs, dans l'exposé des motifs, parlé du fait que l'honneur avait été

ajouté sur base de ce qui figure dans certaines constitutions mais cela ne figure pas dans la constitution néerlandaise et cela me poserait un problème d'interprétation à l'avenir si on devait garder ce concept. Alors comment faut-il l'interpréter? C'est vrai: nous n'avons pas besoin de citer la vie familiale ici, puisque nous reprenons cela à l'article 13, je pense que c'est une bonne chose et puis M.Bereijo a dit qu'il serait nécessaire de parler des limitations. Je pense que je suis d'accord avec lui et pour que cette référence soit aussi courte que possible, je voudrais vous rappeler ma contribution, page 35. Malheureusement, pendant longtemps cela n'a été disponible qu'en néerlandais, mais depuis hier c'est disponible en anglais. Et là j'ai proposé quelques méthodes de renvoi ou de référence. Je pense que ce serait justement utile pour l'article 12 pour faire référence aux limitations. Ceci pour avoir malgré tout un texte clair et concis.

21/03/2000 10:13:58 **M. HAENEL (Le Parlement français)**

Merci Monsieur le président. Je ne crois pas qu'il soit très cohérent d'ajouter ici le terme "familial" car nous examinons successivement dans la Charte la vie privée (article 12), la vie familiale (article 13), puis ensuite on aura la vie sociale. Alors si on met "familial", alors il faudrait peut-être fondre les articles 12 et 13 ou alors supprimer le 1 du 13 car on a l'impression de se répéter. Ensuite en ce qui concerne le mot "honneur", je crois me souvenir que ce mot a été introduit à la demande de M. BRAIBANT. Il faudrait peut-être qu'il nous explique pourquoi il avait souhaité le mot "honneur". On ne peut pas éliminer ça d'un trait de plume, peut-être faudrait-il envisager à ce moment-là de substituer le terme "réputation".

21/03/2000 10:14:50 **PRESIDENT**

Merci de nous rappeler qu'effectivement, c'est le professeur BRAIBANT qui avait demandé l'inclusion de ce terme.

21/03/2000 10:14:56 **Lord BOWNESS (Le Parlement britannique)**

La question que je souhaiterais poser c'est "pourquoi veut-on un article séparé pour la protection des données, les principes couverts par les projets d'articles et les exceptions prévues pour les autorités publiques ou les pouvoirs publics. En tout cas, il me semble que la plupart des problèmes se posent au niveau des intéressés privés qui utilisent ces données. Et c'est plutôt la législation plutôt qu'une charte qui serait surtout dirigée aux institutions européennes. Donc c'est la législation disais-je qui devrait couvrir cet aspect parce que sinon on risque de rentrer en conflit avec ce qui est couvert à l'article 15.

21/03/2000 10:15:53 **M. TRIAS SAGNIER (Le Parlement espagnol)**

Merci. L'honneur, c'est vrai que cela répond à certaines traditions culturelles qui peuvent être distinctes. Donc on pourrait peut-être trouver une formule et remplacer l'honneur par

l'honorabilité, par exemple. Et là, je partage ce que disaient M. FRIEDRICH et Lord GOLDSMITH dans les propositions qu'ils ont faites. Je crois que de toute manière on devrait ajouter "au secret des communications" bon, quels que soient la possibilité technique qui existe et les moyens techniques...

FIN DE LA BOBINE

...tout en ayant des limitations, ces droits pouvant être violés chaque fois qu'ils ont été omis par une loi.

21/03/2000 10:16:54 M. LEHMANN (Le Parlement danois)

Je voudrais juste dire que il serait certainement utile que de manière aussi moderne et actuelle que possible, on puisse trouver une formulation mais je rappelle quand même que là on revient au libellé de la convention et que nous avons depuis 50 (? 5 ans) une jurisprudence qui s'est développée mais il faut nous en tenir à notre avis au terme de la convention avec une terminologie aussi proche que possible de ce qu'elle a voulu couvrir. Maintenant en ce qui concerne ces problème, je ne sais absolument pas de quoi on veut parler au-delà de ce qui est dit dans le texte, j'ai entendu avec beaucoup d'intérêt certains qui nous disaient que on devrait peut-être modifier certains concepts, mais par quelles modifications ? La famille, l'honneur... c'est un petit peu paternaliste, je ne sais pas moi tout cela, est-ce que l'on peut vraiment envisager de dire "son honneur, son domicile, sa vie privée..." cela paraît un peu curieux quand même. Dans certains cas cela pourrait paraître un peu masculin, je trouve qu'on pourrait en effet envisager quelque chose de beaucoup plus neutre. Donc moi, je n'ai personnellement pas l'impression que nous pouvons céder à la tentation d'être trop moderne par rapport au texte d'origine.

21/03/2000 10:19:09 M. BRAIBANT (Le Parlement français)

Merci Monsieur le Président, sur deux points je voudrais juste intervenir. D'abord l'honneur. Je ne suis pas le premier qui ait prononcé le mot "honneur" dans cette réunion, c'est notre collègue espagnol et j'avais d'ailleurs fait observer que ce n'était pas par hasard. Je ne veux pas me battre jusqu'à la mort, je ne veux pas être Don Quichotte sur la question de l'honneur, mais je pense quand même que c'est une valeur occidentale fondamentale, même si elle a été et surtout si elle a été un peu oubliée, et je voudrais rappeler que notamment dans les régimes totalitaires que nous voulons condamner, les atteintes à l'honneur ont été un des éléments pour déconsidérer les citoyens et pour les éliminer de la société. Alors je pense personnellement, je préférerais qu'on garde le mot "honneur". Ce serait d'ailleurs dommage que l'on puisse dire que l'Europe n'a plus le sens de l'Honneur. C'est un premier point. Le deuxième point concerne la vie familiale, et là aussi je voudrais rappeler un peu l'historique de ce qui s'est

passé. Nous avons décidé et j'y avais contribué, de séparer la vie privée et la vie familiale qui dans la convention européenne des droits de l'homme sont actuellement réunies et de faire cette séparation pour donner plus d'importance à la famille qui désormais fait l'objet d'un article, l'article 13 je crois. La vie familiale était mêlée avec la vie privée et il y avait un autre article uniquement sur le droit au mariage. Nous avons voulu renforcer le caractère de protection de la famille, faire un article sur la famille et pour ne pas faire de répétition donc l'enlever de l'article 12 et le mettre dans un article particulier qui ne concerne pas seulement le respect de la vie familiale et je crois que ça c'est un progrès.

21/03/2000 10:21:03 **M. VOGGENHEUBER (Le Parlement européen)**

Ce qui m'apparaît, c'est que dans la convention sur les droits de l'homme, il y a l'utilisation de deux concepts. A l'article 8, on parle du respect et de la sphère biprivée ou vie privée dans un autre article. Alors "pritate(?), sphère privée" bon c'est très large, c'est très banal et ça peut couvrir tout une série de choses sans en tenir compte d'autres. Qu'entend-on par vie privée ? C'est la vie qui n'est pas couverte par la vie publique, la vie professionnelle, c'est tout le reste de la vie qui n'est ni publique ni professionnelle, mais il y a aussi une sphère privée quand on est dans la vie professionnelle malgré tout, lorsqu'on parle de la protection de données d'informations etc. et du harcèlement sexuel par exemple, c'est aussi la sphère privée qui est couverte par la vie professionnelle, donc je trouve qu'il faut faire la distinction et je trouve dommage que dans les deux cas dans notre texte on a parlé de vie privée plutôt que de parler de sphère privée qui en allemand aurait été meilleur. En ce qui concerne "l'honneur" je serais assez d'accord avec Monsieur NEISSER. La dignité couvre tout cela et si on dit qu'en Europe il n'y a plus d'honneur, je ne sais pas dans quelles époques on a eu, à certaines époques on a plus parlé d'honneur et moins de dignité, je crois que c'est une question de mode et c'est une question d'accent, on peut perdre son honneur mais pas sa dignité, je crois en plus. Dans la première partie du texte, donc "Honneur" cela serait mieux mais quand on parle du secret des communications dans notre texte, cela veut dire la poste, les télex, télécommunications etc., je sais pas si vraiment c'est l'ensemble des communications qui doit être couvert dans la protection du secret d'information qui en fait sont des informations personnelles. Dans le cas de la société d'information et des nouveaux médias, si on réfléchit par exemple à ce qui est couvert par la transmission électronique des informations, tout ce qui est poste, télécommunications etc...tout n'est pas couvert et ce mot là n'est pas convaincant.

21/03/2000 10:23:46 **PRESIDENT**

Merci, M. VOGGENHUBER Nous allons passer à l'article 13 malgré tout. C'est la vie familiale, justement

21/03/2000 10:24:06 **M. SOLÉ TURA (Le Parlement espagnol)**

J'ai une brève observation à faire sur l'article 13, "toute personne à droit au respect et à la protection de sa vie familiale" moi j'ajouterais, les deux. Point 2, il faudrait éliminer "le droit de se marier", ce qui est important c'est qu'une personne ait le droit de fonder une famille, selon les lois quant à l'exercice de ce droit dans les Etats membres, cela peut se faire à travers le mariage ou pas mais cela dépend. J'ajouterais également un point 4 sur la protection des enfants justement. Il était là à la première version et puis on l'a perdu entre-temps.

21/03/2000 10:24:57 **PRESIDENT**

Il y aura un article séparé sur la protection de l'enfance.

21/03/2000 10:25:06 **M. SCHULTZ (Le Parlement européen)**

Président, Monsieur Jurgen MEYER qui est au "Buntestaks matin" (?) a dû vous transmettre par écrit des amendements pour les articles 13, 14 et 15. Il m'a demandé ce matin de vous les présenter, de faire quelques remarques supplémentaires que je voudrais présenter en son nom ici, si vous en êtes d'accord. En ce qui concerne l'alinéa 1 de l'article 13, nous avons, si vous avez suivi les propositions de modifications de notre collègue MEYER, une formule qui est un petit peu différente mais qui correspond à la déclaration générale sur les droits de l'homme de la convention et la constitution ..ALMEINT(?), mais nous avons également préféré des formules qui correspondent au pacte des droits des citoyens et nous avons essayé de reprendre ces termes qui selon nous par rapport à la formule qui est choisie dans votre texte, élargissent un petit peu le droit, bon le droit de se marier par exemple et le droit des parties dans le mariage de définir leur contrat comme ils l'entendent tout particulièrement parce qu'à l'article 13 à l'alinéa 2, il y a de nouvelles formes de coexistences et de cohabitations dans la société qui sont prises en compte, les communautés de vie différentes qui sont, qui vont au-delà du mariage traditionnel et qui ont pour objectif de rester la vie durant. Alors nous proposons donc ici de coller à l'évolution de la société dans les temps modernes et dans une charte moderne comme celle que nous voulons il faut que dans l'Union nous tenions compte des nouvelles formes qui ont remplacé le mariage, et cela vaut pour toutes les formes qui existent dans tous les Etats membres, vous avez vu qu'il y a aussi des tendances à des partenariats homosexuels ou des partenariats de gens de même sexe qu'il faut reconnaître aussi même si on ne fait pas d'évaluation en valeur, on indique simplement qu'on ne peut pas discriminer une forme minoritaire. Sur le plan juridique, il n'y a pas d'évaluation à laquelle on procède et je crois que c'est cela les sens des modifications proposées par notre collègue Meyer dont vous avez le texte dans votre dossier.

21/03/2000 10:27:57 **M. BERTHU (Le Parlement européen)**

Merci Monsieur le Président. Je crois que l'idée qui a présidé à la séparation de la vie privée et de la vie familiale (article 12 et article 13), comme le rappelait M. BRAIBANT à l'instant, est excellente et opère une grande clarification, mais je crois qu'on n'est pas allé jusqu'au bout de cette idée et que dans l'article 13 il reste encore des choses différentes mélangées, par exemple quand on dit que "toute personne a le droit de se marier" il est bien évident que l'on recouvre une réalité très large qui ne se limite pas à la famille traditionnelle. C'est pour ça que je serais partisan de regarder le problème en face et d'aller jusqu'au bout et d'essayer de séparer les deux, c'est-à-dire de renvoyer dans l'article précédent, l'article 12, le droit au respect de la vie de couple et donc dans un sens très large et de dire "toute personne a droit au respect de la vie de couple qu'il peut avoir choisie selon les lois nationales". Et puis, dans l'article 13, en sens inverse, comme on aurait dit carrément les choses dans l'article 12, dire carrément les choses dans l'article 13, c'est-à-dire se référer à la Convention universelle des droits de l'homme, dire que la famille qui élève des enfants, parce que c'est quand même ça le critère, est la cellule fondamentale de la société et a droit à la protection des pouvoirs publics et de la société - il y a une répétition mais elle est dans la convention universelle -, et puis dire au point 2 que l'homme et la femme ont le droit de fonder une famille selon les lois nationales régissant l'exercice de ce droit, et puis pour les enfants soit un point 3 soit un article séparé comme vous l'avez dit tout à l'heure. Mais sur les deux points disons, la vie de couple en général et la vie de famille au sens "élevage" des enfants, je crois qu'il faut regarder les choses en face et donc bien les séparer.

21/03/2000 10:30:11 **M. DUFF (Le Parlement européen)**

Moi aussi je voudrais soutenir ceux qui disent que la référence à la famille conventionnelle doit être complétée par une référence à des formes non conventionnelles de famille ou de partenariat, même s'il est vrai qu'il est implicite que les familles non formelles sont couvertes par l'article 13 mais notre public et nos citoyens ne comprendraient pas qu'il n'y ait pas de référence explicite à ces partenariats. Je sais que ce n'est pas facile à exprimer mais je m'y suis essayé à la page 73, dernière page du gros document qui a été diffusé hier. Merci.

21/03/2000 10:32:18 **M. TRIAS SAGNIER (Le Parlement espagnol)**

Merci M. Président. Moi je trouve que l'on devrait supprimer le droit de se marier de ce texte parce que de toute façon c'est un droit intrinsèque qui existe dans le fait de fonder une famille. Dans ce concept de fonder une famille d'après les lois des États membres, il y a tous types de partenariats qui peuvent être couverts : les nouvelles familles, les homosexuels, la vie en couple et les autres formes d'union. Donc faire référence uniquement à la famille

traditionnelle moi je crois que c'est une imprécision sur le plan de la terminologie, ça n'a aucun sens, alors qu'il est clair que toute personne a le droit de fonder une famille selon les lois des États membres et dans ce droit, je le rappelle, il y a tout type d'union qui est couvert. Merci.

21/03/2000 10:33:21 **Mme BERÈS (Le Parlement européen)**

Moi, je m'associe à ce qui propose de supprimer la référence au droit de se marier parce que en tout cas tel qu'il figure ici il soulève une difficulté. J'ai une préoccupation c'est de ne pas comprendre le texte proposé par le professeur MEYER puisque nous ne l'avons qu'en allemand pour l'instant, donc peut-être aurait-il été utile qu'il soit lu pour que les membres de la convention, à travers l'interprétation, puissent en prendre connaissance et puis je m'interroge sur la question de la distinction entre famille et couple, parce que je crois que si nous rentrons dans ce degré de précision nous introduirons plus de difficultés que nous n'en résoudrons.

21/03/2000 10:34:11 **M. LEHMANN (Le Parlement danois)**

En ce qui concerne l'article 13 paragraphe 1 ce droit à la vie familiale on le met à l'écart, enfin on le ressort par rapport à d'autres aspects de la vie privée dans la convention, on lui donne une vie particulière par rapport à la vie privée. Donc je crois qu'il est très important de faire en sorte que les paragraphes 1 et 2 soient combinés en quelque sorte, à moins qu'on ne répète les limites qui existent à l'article 8 de la convention. L'alinéa 3 fait lui mention d'un problème général. Est-ce qu'on a vraiment besoin d'incorporer des éléments politiques dans notre charte ? Nous avons dit dans la charte au départ que tout le monde a des droits individuels mais il y a aussi des droits de groupe. Mais qu'en serait-il pour les droits de l'homme dans chacune des politiques de l'Union, est-ce qu'on les mentionne ? Je crois qu'on pourra en discuter lorsqu'on reviendra aux questions horizontales. Faudrait-il introduire vraiment des objectifs politiques et ne devrait-on pas à ce moment-là le faire dans le préambule de la charte plutôt qu'ailleurs ?

21/03/2000 10:36:04 **M. MOMBAUR (Le Parlement européen)**

Je crois qu'ici nous sommes arrivés à un point qui est essentiel et central : le fait de savoir si nous permettrons au citoyen de l'Union de se trouver reflété dans notre texte. Là je dois dire que j'ai pas mal de sympathie pour la proposition du collègue MEYER qui permet de résoudre la quadrature du cercle dans la mesure où il n'y a pas dans l'Union de définition de ce qu'est une famille ou un mariage. Alors dans la mesure où il n'y a pas de définition je crois qu'on peut solutionner le problème en exprimant comme il l'a fait un renvoi aux lois nationales. C'est vrai qu'il faut mentionner le concept de famille parce que dans la plupart des ordres

juridiques nationaux c'est un concept qui existe. Pour le concept de mariage, c'est vrai que c'est un peu bizarre que d'ajouter celui de... bon, si on parle de famille je rappelle quelle est la discussion de fond que nous avons et que nous avons eue autour de la convention, c'est vrai qu'il y a des nuances juridiques que l'on peut faire valoir mais si on peut... On nous dit toujours qu'il faut s'en tenir à la convention, on exclurait alors le concept de mariage mais franchement il y a là quelque chose de bizarre dans l'évaluation que l'on fait d'un principe par rapport à l'autre selon ce qu'on vit dans les États membres. Moi je sais qu'hier nous avons discuté avec le collègue MEYER et qu'il serait également d'accord avec un complément à son amendement. J'ai dit en effet que ce serait bien pour la convention qu'on ne parle pas seulement du droit constitutionnel des États membres et de son évolution actuelle et qu'on en tienne compte, mais qu'on voie également ce qui se passe au niveau des pays candidats à l'adhésion dans leurs constitutions. Par exemple, la Pologne définit le mariage comme un lien entre un homme et une femme et je ne vous citerai pas le reste. Le professeur MEYER dit qu'il serait d'accord dans sa proposition pour que l'on puisse spécifier le concept de mariage comme tel à côté de la famille pour pouvoir justement couvrir toute la diversité de la communauté de vie qui peut exister dans nos différents pays. Alors je vous lance un appel essayons de formuler dans ce sens parce que nous revenons toujours là aussi à la protection et au respect dans cette affaire. Le respect c'est autre chose que la protection. La protection c'est un aspect positif de ce que peut faire l'Union. Le respect c'est autre chose. Mais il faut bien comprendre que dans la plupart des articles on ne peut pas faire une liste complète et comme il ne s'agit pas de nouvelles compétences à l'Union - de toute façon ce n'est pas nous qui en décidons, c'est la Conférence intergouvernementale -, donc dans une clause générale je crois qu'il serait plus opportun de faire une mention générale de ce qu'est justement la protection par rapport au respect.

21/03/2000 10:39:18 **PRESIDENT**

J'ai encore dix intervenants et je vais fermer la liste... vous y êtes, vous y êtes. Alors je vais clore cette liste. Je rappelle que vous avez aussi la possibilité de faire valoir d'autres amendements ailleurs, pas seulement aujourd'hui.

21/03/2000 10:39:41 **M. FRIEDRICH (Le Parlement européen)**

Je pense moi aussi que l'article 13 ... bon, il nous convient avec son titre "vie familiale" mais qu'on ne peut pas par ailleurs définir trop de chose et de manière incorrecte. La formule de la convention elle est très claire, très précise : les hommes et les femmes à l'âge adulte ont le droit, d'après l'ordre national et son exercice, de fonder une famille et de contracter un mariage. Alors, à mon avis, et ça serait ce que je proposerais, nous pourrions nous nous

permettre de définir justement ce que c'est qu'un mariage, mais on n'essayerais pas de définir ce qu'est par contre une famille, parce que finalement les évolutions en terme de famille, par rapport à la forme traditionnelle, bon et bien elle s'ajoute, il y a d'autres possibilités qui se sont ajoutées à la forme traditionnelle et toute définition aujourd'hui serait de toute manière restrictive par rapport au développement des États membres. Demain, en plus vous savez qu'il y a des évolutions très différentes, il y a des partenariats qui existent etc... moi je crois qu'il faut en tirer une conséquence logique. On s'en tient à la définition du mariage tel qu'il est défini dans la Convention et nous respectons la famille (protégeons) mais nous ne définissons pas ce que l'Union souhaite comprendre sous "famille", parce que dans deux ans, cinq ou dix ans de toute façon ce ne sera pas la même chose. Comme le voit Lord GOLDSMITH, je crois qu'il est important de toute manière à ce stade de se limiter au texte de la Convention qui est général et qui permet d'être valable aujourd'hui.

21/03/2000 10:41:47 **M. PATIJN (Le Parlement néerlandais)**

Je dois vous signaler que j'ai quelques problèmes avec ce chapitre qui parle de la vie familiale. Pour ce qui est du premier paragraphe qu'on a déjà fait remarquer lors de la discussion ensure l'article 12, c'est en fait un respect de la vie privée et de la vie familiale. Cela a été séparé, je vous propose de les rassembler à nouveau. Deuxième paragraphe, cela concerne la famille traditionnelle, telle que définie par les lois nationales et comme dans beaucoup d'autres pays, aux Pays-Bas, il y a une rapide évolution en la matière et bientôt on autorisera le mariage entre deux personnes de même sexe, ce qui signifie qu'il faudra interpréter ainsi l'article 12 pour rendre cela possible. Mais si une Union européenne parle de vie familiale et que le paragraphe 2 est entouré de deux autres paragraphes, qui ne parlent que de la vie familiale, je crains fort que chez moi personne ne comprendra ce que je suis venu faire ici. Il faudrait éviter cela. Et puis, paragraphe 3, j'imagine que cela provient de l'article 16 de la Charte sociale européenne et qui concerne ou qui reprend des droits économiques et je crains que en fait ce n'est pas à sa place. Je vous propose de revenir sur ce paragraphe 3 quand nous reviendrons sur les questions sociales.

21/03/2000 10:44:07 **M. TARSCHYS (Le Parlement suédois)**

Monsieur le président, il y a un problème que j'ai et que nous n'avons pas encore considéré. Les conflits qui peuvent apparaître entre parents et enfants. C'est bien de protéger la vie familiale et de la respecter, mais nous savons aussi dans nos États membres que parfois les parents utilisent ce principe comme excuse pour traiter leurs enfants comme ils l'entendent. Alors je crois qu'il faut effectivement certes donner sa dignité à la vie familiale mais il faut aussi protéger les droits des enfants de manière adéquate. Donc, il me semble que la formule

actuelle, que nous avons dans le texte de la Convention, convient mieux lorsqu'on parle de la séparation entre la vie privée et la vie familiale, nous sommes d'accords, pour le reste d'accord également avec le texte du M. LEHMANN.

21/03/2000 10:45:23 **Lord GOLDSMITH (Le Parlement britannique)**

Merci, sur la plupart des interventions qui ont été faites "respect de la vie familiale et droit au mariage", je crois que je suis d'accord avec M. FRIEDRICH. Il faut bien faire la distinction entre le respect de la vie familiale que j'aurais couvert moi comme les autres articles que ça l'est fait dans la Convention, tout en reconnaissant ce que reconnaît la jurisprudence de la Cour de Strasbourg, les familles non traditionnelles existent. Il y a des familles monoparentales et d'autres. Le droit au mariage implique certaines obligations et certains droits dans certains Etats membres et c'est autre chose. Donc, quand M. FRIEDRICH ce que je préférerais c'est qu'on sépare ces éléments et qu'on s'en tienne au texte de la Convention pour le mariage. Je voudrais approfondir un élément qui n'a pas été abordé, sauf par M. PATIJN. Le troisième alinéa, la protection de la famille au plan juridique, économique et social est assuré. Moi je voudrais quand même poser une question, ça va très loin, qui va faire cette protection ? C'est la collectivité qui va financer le rapprochement des familles qui se séparent ? Qu'est-ce que ça veut dire "protection au niveau social", est-ce que ça veut dire qu'on va prendre des mesures pour veiller à ce que pères reviennent prendre soin de leur famille, ce sont des domaines très importants et je ne vois pas très bien ce que cela recouvre. Certes l'exposé des motifs nous dit que ça s'appliquera lorsque l'Union adoptera les mesures qui sont dans ses compétences et qui permettront de répondre aux besoins des familles, mais je ne comprend pas, à l'heure actuelle, je crois que cela va bien au-delà et je pense comme M. PATIJN que c'est peut-être quelque chose qu'il faudra revoir dans le contexte des dossiers sociaux. A l'heure actuelle, je ne peux pas soutenir ce point. Mais j'attire aussi votre attention sur la page 19, c'est là où j'ai fait mes amendements, je vous le rappelle et je vous signale que, comme Mme BRAX, j'ai remis ce respect de la vie de famille dans les articles précédents.

21/03/2000 10:47:54 **M. RODOTA (Le Parlement italien)**

Monsieur le Président, beaucoup de choses importantes ont été dites. Moi je crois pour devoir défendre l'article 13 dans sa rédaction actuelle parce que je pense que ce que nous voulons ce que les citoyens européens comprennent cette déclaration et éditent un article qui reproduit ce qui a été écrit il y a 50 ans dans la Convention européenne serait incompréhensible. Les habitudes ont beaucoup changé, mais comme l'a rappelé à juste titre, Lord GOLDSMITH, il y a déjà dans la législation ou les jurisprudences de tous les pays une reconnaissance des organisations de type familiales. Donc, la famille est considérée comme famille avec un seul géniteur et

cette organisation familiale là est aussi considérée comme une famille. Donc, ce n'est plus, si vous voulez, nécessairement un couple. Parce que sinon cela voudrait dire qu'une maman avec un enfant n'aurait pas droit à cette protection. Je pense que quand même la remarque est judicieuse et je suis d'accord avec M. SOLÉ TURA, il y a lieu de biffer le droit de se marier, de fonder une famille. Ce sont aussi des traditions culturelles et cela dépend de l'évolution culturelle. Par ailleurs, je pense qu'il faut maintenir une différence entre l'article 12 et l'article 13. L'article 12 concerne la personne. L'article 13 concerne en fait une forme d'organisation sociale. Et chaque personne pourra se retrouver dans une organisation en fonction de sa culture et de ses traditions propres. Donc, c'est quand même différent du respect de la vie privée qui concerne l'individu en tant que tel. Le point 3. Je comprends les préoccupations qui ont été exprimées par Lord GOLDSMITH mais d'une part, cela pose le problème soulevé par M. PATIJN, il y a lieu de se demander si c'est le lieu approprié pour mettre une règle comme celle-ci, justement parce qu'il s'agit d'être clairs par rapport aux citoyens. Et je pense que c'est le lieu approprié, parce que ce que nous appelons citoyens européens, et bien ce sont ceux qui sont visés par ces droits. Droit de se marier, droit d'obtenir un soutien pour ce type d'organisation sociale par rapport à d'autres. Il s'agit de droits pour ceux qui décideraient de s'insérer au sein d'une organisation familiale.

21/03/2000 10:51:31 **M. BRAX (Le Parlement finlandais)**

Je veux répéter ce que j'ai dit auparavant. Je suis d'accord avec Lord GOLDSMITH, plus ou moins, sur l'article 13. Toutefois, nous avons décidé avec M. Nicholas d'un libellé encore plus synthétique, nous dirions toute personne a le droit de se marier, etc. et nous espérons avec ce libellé plus bref de parvenir à un accord. Parce que dans les différents États membres comme nous avons pu l'entendre, il y a des concepts différents. Et pour les droits sociaux je suis d'accord avec les autres intervenants qui se sont exprimés. C'est important. Mais ça devrait être couvert par les articles sur les droits sociaux, mais il faut encore décider de comment on va l'intégrer. J'aimerais dire aussi que le droit des enfants doit faire l'objet de mentions séparées. Cette proposition a recueilli un soutien assez large à ce stade de rédaction.

21/03/2000 10:53:05 **PRESIDENT**

Oui, Mme BRAX, comme je l'ai dit auparavant, il y aura un article traitant des enfants de manière séparée, comme la convention l'a demandé.

21/03/2000 10:53:22 **M. FAYOT (Le Parlement luxembourgeois)**

M. le Pdt, je pense pour cet article, comme d'aucuns l'ont déjà dit, nous ne pouvons pas biffer le droit de se marier. C'est un droit qui est inscrit dans la convention des droits de l'homme et il a été inscrit dans ces conventions pour protéger l'individu aussi contre un certain arbitraire

de l'État. Donc, moi je pense qu'il faut le laisser. Je me demande cependant si le problème que nous avons ne peut être résolu en scindant cette phrase du paragraphe 2 en deux parties : c'est-à-dire de mettre "toute personne a le droit de se marier." Et de faire ensuite un 3^{ème} paragraphe : "toute personne a le droit de fonder une famille". De cette façon nous séparons, nous éloignons un peu le mariage du droit de fonder une famille. De toute façon nous ajoutons que nous le faisons conformément aux lois relatives de chaque État membre et évidemment il y a une évolution différente selon les États membres en ce qui concerne le droit de fonder une famille. Voilà donc je pense peut-être une solution pour notre problème. En ce qui concerne, je voudrais dire un mot de la proposition de M. MEYER dont on a parlé. M. MEYER dit dans sa proposition pour l'article 13 que les communautés de vie, donc les communautés qui ne sont pas des familles traditionnelles, qui sont destinées à avoir une certaine durée ont le droit à la protection devant toute discrimination. Évidemment, le terme de discrimination est relativement ambigu, puisqu'il peut y avoir une discrimination positive et une discrimination négative. Je pense que M. MEYER ici parle de la discrimination négative, probablement. Mais je pense donc que ce texte de M. MEYER malgré toute la sympathie que j'en ai est assez dangereux et donne lieu à toutes sortes d'interprétations. Moi je pense que si on séparait donc le mariage de la fondation d'une famille, on pourrait peut-être ouvrir la notion de famille de cette façon en la séparant en tout cas dans le texte du droit au mariage. Enfin, pour le troisième point, en ce qui concerne la protection de la famille : il est certain que nous entrons là dans les droits sociaux. nous devons en parler. Ce sera certainement un problème important dans cette enceinte. Mais je pense aussi qu'il est utile et important de mettre cette protection de la famille ici dans cet article 13 en mettant l'ensemble qui concerne la vie familiale à cet endroit. Il est évident aussi qu'en parlant de droits sociaux et économiques nous entrons dans une autre sorte de droits qui ne sont pas simplement des droits individuels mais qui sont aussi des incitations pour les États et pour la Communauté, pour l'Union européenne, d'agir. Mais comme le droit au travail ou d'autres droits sociaux, mais là évidemment c'est une autre discussion. Mais pour moi, je pense qu'il faut le laisser ici dans cet article.

21/03/2000 10:56:37 **PRESIDENT**

Merci. Je vous rappelle que nous avons peu de temps et je vous demanderai donc d'être brefs et de ne pas répéter les mêmes arguments.

1/03/2000 10:56:52 **M. LALLEMAND (Le Parlement belge)**

M. le Pdt, je pense que l'article 13 doit être maintenu pour l'essentiel, mais je crois que s'il faut protéger et faire respecter la vie familiale, il y a un problème qui se pose qui est celui de l'évolution dans je crois la plupart des pays européens des conceptions que l'on se fait des

relations homosexuelles. Plusieurs pays de l'Union ont d'ailleurs voté des lois en cette matière et ont consacré l'existence de couples homosexuels. Les termes de la loi du projet qui figure devant nous suscitent questions, parce que la famille dont on parle, c'est évidemment la famille hétérosexuelle, de manière, oui oui, je sais bien, c'est en tout cas le sens qu'il a dans la convention européenne des droits de l'homme où là il est clairement dit qu'il s'agit de l'union de l'homme et de la femme. Donc, on étend le mot, le concept de famille et donc je m'en réjouis. Personnellement, je suis d'accord avec cette extension du sens du mot famille. Je me posais la question : ne faut-il pas viser plutôt que famille le mot couple tout simplement, de fonder un couple ? Ce qui là est beaucoup plus clair et élimine toutes les ambiguïtés qui sont liées à toutes les traditions, à tous les sens traditionnels que véhicule le concept de famille. Enfin, je laisse ça à votre attention, si l'on s'accorde sur l'idée que le concept est large, je veux bien me rallier au mot, mais je me demande s'il ne serait pas plus simple de se référer à cet endroit là très précis au mot couple. Enfin, je vous signale qu'il y a une erreur en français dans le texte : il faut parler de fonder une famille selon les lois des États membres qui régissent l'exercice de ce droit et non pas selon les lois relatives des États membres à l'exercice de ce droit. C'est une faute linguistique mais je crois qu'il faut la corriger.

21/03/2000 10:59:00 **M. HAYES (Le Parlement irlandais)**

Merci M. le Pdt, je serai bref parce que ce que je voulais dire a déjà été mentionné. On a dit que la famille traditionnelle que nous connaissons depuis de nombreuses années, n'est pas complétée par d'autres unités, disons. Ça a été reconnu par la Cour de Strasbourg, l'application de la convention. Le concept de mariage aussi suscite des opinions variables. Nos gouvernements, nos sociétés ont réagi de manières différentes et différentes dispositions s'appliquent dans ce domaine. La question du mariage ne permet pas que l'on parvienne à un accord sur la définition et il est tout à fait pertinent de dire que l'on ne peut pas aboutir à une définition dans l'Union européenne du concept de mariage et je pense qu'il est essentiel que nous maintenions la formulation qui permette aux États membres de maintenir tant la famille que le concept de mariage. Paragraphe 3 : je suis d'accord avec les préoccupations exprimées dans le sens qu'on n'est pas certains de ce que cela signifie. Merci M. le Pdt.

21/03/2000 11:00:45 **M. AZEVEDO (Le Parlement portugais)**

J'ai cru vous entendre dire monsieur .. J'aimerais juste souligner quelque chose à la suite d'une discussion que nous avons eue lors d'une séance précédente. La source du concept de famille. Cette convention et la charte que nous sommes en train de façonner ne doit pas prendre position de manière préférentielle, ne doit pas privilégier une forme de mariage. Tous les citoyens européens doivent se retrouver dans cette charte. Donc, il ne faut pas de parti pris et

en privilégiant une forme ou une autre. A cet égard, je voulais dire que notre tâche n'est pas d'actualiser, de mettre à jour la convention de Strasbourg, mais selon moi la formulation à partir de l'âge nubile, l'homme et la femme ont le droit de se marier et bien pour moi c'est quelque chose qui est dépassé au vu de l'actualité sociale. J'ai le bénéfice d'intervenir en dernier et donc je ne peux que faire suite, qu'emboîter le pas aux interventions précédentes. Je pense qu'il faudrait avoir une définition plus vaste et plus inoffensive "constituer famille", et je pense qu'il ne faut pas aller au-delà de ce terme. Merci.

21/03/2000 11:02:32 **M. VOGGENHUBER (Le Parlement européen)**

Ce n'est pas par hasard que dans la discussion ça soit cet article qui ait donné lieu à la citation de droit politique, de nouvelles formes sociétales, de nouvelles formes d'union. Je crois que là nous sommes dans le danger d'aller vers une dimension idéologique. Et c'est pour cela qu'il est important selon moi d'essayer de procéder à une explication. Il n'est pas nouveau que nous nous trouvions face à de nouvelles formes d'union personnelle ou de vie en société, mais l'important c'est de voir si on poursuit des visions politiques. Il ne faut pas perdre de vue qu'ici, notre exercice porte sur les droits à la dignité, au respect de la vie privée, qui doivent être couchés dans une charte - ah, hors micro malheureusement -. Les formes dont on parle, elles ont toujours existé, elles n'ont pas été respectées jusqu'alors. Ce ne sont pas forcément des nouvelles formes de vie. C'est ça l'important. Dans une société jusqu'à maintenant on avait des formes de vie et des valeurs qui n'étaient pas pleinement respectées. Pas prises en compte. Alors, c'est ça. Il s'agit de constituer un droit fondamental qui tienne compte de ce qui se passe mais qui n'est pas forcément quelque chose de nouveau. Quand on parle de droit à la protection de la vie privée, c'est des relations, des partenariats, des formes de vie qui existent peut-être depuis des siècles. Mais la protection n'était pas réservée à ces formes là jusqu'à maintenant. Il ne s'agit pas donc de reconnaître de nouvelles formes de liens. Alors, je sais qu'on ne peut pas laisser tomber cet article, parce que justement il y a un droit qui est contesté, qui dans la pratique n'est pas intégré et parce que la dignité et le droit ne sont pas suffisamment assurés dans ces domaines. Mais pour que cette protection et que ce droit soient complets, et pas nouveau, mais pour qu'ils soient complets, je crois qu'il suffirait de reprendre "toute personne a le droit de se marier, de fonder une famille et de constituer une communauté de vie". Ca suffirait à tenir compte de la réalité sociale "constituer une communauté de vie".

21/03/2000 11:05:00 **PRESIDENT**

Merci M. VOGGENHUBER. Nous remercions M. MÉNDEZ DE VIGO qui nous quitte entre-temps et je vais présider la fin de la réunion. Nous allons continuer jusqu'à midi et demi et sur l'article 13 j'ai encore deux noms sur la liste. Je pense qu'ensuite nous pourrions terminer

afin de passer aux autres articles de la convention 13 et après nous entamerons les travaux de la convention 8.

21/03/2000 11:06:01 **M. HAENEL (Le Parlement français)**

Merci M. le président. L'idée émise tout à l'heure par un collègue d'inclure le droit de former un couple hétérosexuel ou homosexuel dans l'article 12 paraît séduisante. Cela éviterait sans doute des mélanges des genres et bien des ambiguïtés qui risquent de soulever des interprétations et donc des polémiques. Mais je crois que la rédaction du 2 de l'article 13 règle la question si le membre de phrase "selon les lois relatives des Etats membres à l'exercice de ce droit" donc ce membre de phrase est bien en facteur commun à droit de fonder une famille et droit de se marier. Je crois que c'est clair : chaque Etat met ce qu'il veut sous le terme mariage et famille et je crois qu'il faut s'en tenir là. Donc, je suis pour la formulation actuelle. Cependant, une question : est-ce que cette rédaction, le droit de se marier, sous-entend le droit de divorcer ?

21/03/2000 11:07:31 **PRESIDENT**

Dieu vous entende !

21/03/2000 11:07:31 **M. VITORINO (La Commission)**

Merci M. le président. Je crois que dans cet article on a eu un débat très intéressant et que la formule qui a été présentée par le bureau a l'avantage d'être une formule ouverte. Ouverte dans le sens incontestable qu'elle va au-delà de la convention européenne des droits de l'homme ce que je crois correspond non seulement à un constat de l'évolution sociale mais il correspond aussi à un principe d'orientation du droit communautaire en vigueur surtout l'article 13 du traité qui consacre le principe de la non-discrimination sur plusieurs éléments parmi lesquels sans doute l'orientation sexuelle. Mais surtout la question c'est la formule ouverte est la seule qui, de mon avis, respecte le principe de la sociabilité et ici il faut respecter absolument le principe de la sociabilité. Il ne s'agit pas de définir une nouvelle centrale de famille ou de mariage et de l'imposer aux Etats membre, il s'agit de consacrer un droit qui laisse la définition des modalités en concret à la loi régissant les relations familiales dans chaque Etat membre. C'est pourquoi la proposition de M. LALLEMAND de la correction de la version française en disant que selon les lois des Etats membres régissant ce droit. Cela me paraît plus évident et c'est la meilleure façon de respecter le principe de la sociabilité. Et pourtant c'est à la loi des Etats membres de définir les implications du droit de mariage, du droit de fonder une famille et de reconnaître dans quelles conditions on peut fonder une famille au-delà du mariage ou quels types de mariage sont reconnus par la loi de chaque Etat membre. C'est une formule ouverte au principe de la sociabilité. De mon avis, il y

a toujours des raisons pour ne pas supprimer le droit de se marier. Parce que le droit de se marier a un contenu autonome en ce qui concerne la modalité de formation d'une famille ou les modalités de vie en commun. Il y a un contenu indépendant subjectif et personnel du droit de se marier surtout en ligne de compte que dans certaines communautés culturelles ou ethniques les mariages inter-ethniques sont défendus, ils ne sont pas permis et il faut rendre clair qu'il s'agit d'un droit fondamental humain qui ne peut pas être limité par des préjugés culturels ou même des mesures législatives discriminatoires. Finalement, en ce qui concerne le n° 3, on pourrait renforcer l'interprétation de ce n° 3 en disant "dans le cadre de ses compétences l'Union veille à la protection de la famille sur le plan juridique, économique et social". Mais je trouve que ça c'est un critère qu'on doit adopter pour toutes les questions semblables en ce qui concerne des objectifs politiques et pourtant il faudrait adopter une solution cohérente et globale pour tous les cas où il s'agit de définition des objectifs et c'est pourquoi je crois que c'est une question horizontale qu'on doit adresser en tant que telle à la fin de notre travail. Merci.

21/03/2000 11:11:24 **PRESIDENT**

Cet article 12 est extrêmement délicat comme cela a été dit. Je pense que le système social dans son ensemble ce sont des concepts difficiles en ce qui concerne l'article 13. Voilà passons maintenant à l'article 14 : liberté de pensée de conscience et de religion. Qui souhaite prendre la parole ? Mme KAUFMANN.

21/03/2000 11:12:38 **Mme KAUFMANN (Le Parlement européen)**

Merci le Président. Dans son contexte, permettez-moi de revenir sur quelque chose que j'avais dit la dernière fois. Moi je crois qu'il faut dans l'Union une nouvelle politique. On parle de la PESC, on parle de la politique de la défense, on parle de force militaire qui pourrait être présente en dehors de l'Europe alors dans ce contexte, je trouve que le droit à l'objection de conscience devrait figurer parce que ça fait justement partie de la politique de l'Union maintenant. Quand on voit l'exposé des motifs on s'aperçoit qu'il s'agit finalement aussi essentiellement de liberté et de religion : très bien mais si le droit à l'objection de conscience n'est pas explicitement nommé moi je ne pourrais pas souscrire à cette rédaction car je crois que c'est un droit qui est un droit réel qui doit être préservé face à la nouvelle politique de l'Union.

21/03/2000 11:14:05 **M. HIRSCH BALLIN (Le Parlement néerlandais)**

Merci Président. L'article 14 est un peu trop limite et je pense, par rapport à la même disposition dans la Convention européenne. Et si on met l'article 14 à côté de l'article 9 de la Convention, ce qui frappe, c'est que la deuxième partie du paragraphe premier de l'article 9 n'a

pas été reprise. Donc si vous voulez c'est une protection qui est inférieure à celle de la Convention européenne et lors de la réunion informelle, je l'ai déjà signalé, je voudrais plaider pour qu'on ne limite pas ce droit. La deuxième partie de ce paragraphe de l'article 9 a une valeur ajoutée réelle à côté de la première partie, première partie qui parle du droit individuel à la liberté de pensée, de conscience et de religion, et la deuxième partie parle des manifestations sociales de cela. Donc le droit d'exercer cette liberté seule ou en public avec d'autres, etc. donc il est important de ne pas biffer cette deuxième partie parce que le terrain de travail de l'Union européenne peut influencer la possibilité d'utiliser ce droit dans des sociétés, des organisations et puis nous sommes partis du principe que nous ne descendrions pas en dessous du niveau de protection de l'article 9 de la Convention, d'où mon plaidoyer pour ne pas raccourcir cet article et pour maintenir la totalité de l'article 9.

21/03/2000 11:16:20 **M. FRIEDRICH (Le Parlement européen)**

Moi aussi je voudrais militer pour que nous procédions à un amendement de ce texte. Sans porter atteinte à la concision que je souhaiterais, je crois que les droits des églises sont à prendre en compte ici également. En Europe, pays de la chrétienté, les libertés des églises doivent pouvoir être garanties, la liberté de religion est de toute façon incontestée et incontestable, cela fait partie même de l'essence de la civilisation. Mais le fait que les églises jouent un rôle particulier dans ce contexte, je crois que cela devrait être exprimé d'une manière ou d'une autre ici.

21/03/2000 11:17:27 **Lord GOLDSMITH (Le Parlement britannique)**

La limitation à ce droit et la façon d'y parvenir. M. KORTHALS ALTES a dit quelque chose de très important : nous ne devons pas promettre plus à nos citoyens que ce que nous pouvons effectivement leur fournir et un certain nombre de choses ne sont pas absolues, par exemple la Convention européenne à l'article 9.2 établit une limite à la liberté de pensée, de conscience et de religion. Mais ce ne devrait être soumis à de telles limitations que ce qui est prévu par la loi. Cette limite, à mon sens, devrait encore s'appliquer ici et je soutiens cela. Le problème repose sur la technique que l'on utilise. Mon explication, qui est contenue à la page 20, est que je rajouterai une phrase à l'article 14 sur lequel je suis tout à fait d'accord, et on dirait "les restrictions ne peuvent être apportées à ce droit..."

FIN DE LA BOBINE

...n'est pas absolu et qu'il est frappé de certaines exception, mais il doit y avoir des limites qui doivent être clairement délimitées. Ensuite, je voudrais établir un lien clair avec la Convention

européenne des droits de l'Homme qui explique ce qu'est ce droit et je propose une façon de faire dans la Convention, le texte du présidium, il n'y a qu'un seul article qui s'applique à l'ensemble et je pense que là il y a un problème certains de ces articles ne devraient pas être frappés de restriction en aucun cas. Le droit à la liberté, l'absence de torture, la protection du droit à la vie ne devraient pas être limités. Donc si on a une limite qui s'applique à tout ça eh bien on vise le principe. Il faudrait exprimer les limitations de manière légèrement différentes, je ne suis pas sûr qu'on ait la même signification donc plutôt que d'avoir un article de la, un seul article de la sorte, je ferais un renvoi explicite à l'article pertinent de la Convention qui parle des limites appropriées. Merci Monsieur le Président.

21/03/2000 11:20:41 **PRESIDENT**

Merci Lord GOLDSMITH. J'ai trois intervenants encore sur ma liste : M. TRIAS SAGNIER, M. DUFF et M. HAYES. M. TRIAS SAGNIER.

21/03/2000 11:20:57 **M. TRIAS SAGNIER (Le Parlement espagnol)**

M. le Président, je voudrais apporter une précision d'abord. M. FRIEDRICH, je pense ... ce sont les individus qui font partie des églises et des territoires qui ont des droits, ce ne sont pas les églises ou les territoires qui ont des droits, bon, ceci dit, j'ai quelques amendements proposés dans les pages 35, 36 et 37 du document et il s'agit d'un problème de cohésion. Il y a une question qui pourrait s'appliquer à tous "droits et liberté de conscience, de religion, liberté des parents de choisir l'éducation des enfants, etc." non pas avec une limite mais avec un cadre que je définirais ainsi l'exercice de ce droit ou de ces droits dans sa manifestation sociale (article 14) doit être soumis aux droits reconnus par cette Charte. Si l'on veut faire que les millions d'individus qui vivent sur le territoire de l'Union mais ne sont pas des citoyens communautaires, ne sont pas considérés comme des personnes constituant un ghetto, il ne faut pas prévoir de système d'éducation qui soit séparé, différent où l'on encouragerait l'inégalité par exemple entre les hommes et les femmes ou certaines punitions qui sont dépassées dans notre tradition culturelle. Je pense qu'il est important que tous ces droits même si cela apparaît évident, doivent dans leur manifestation sociale dépendre des autres reconnus, il ne faudrait pas que on utilise ces droits pour ignorer des évidences comme par exemple l'holocauste. C'est vrai la liberté de pensée, bon, chacun peut penser ce qu'il veut mais il faut que les autorités le reconnaissent et reconnaissent un amendement en ce sens.

21/03/2000 11:23:52 **M. DUFF (Le Parlement européen)**

Merci. Je suis d'accord avec Lord GOLDSMITH sur la clause de limitation mais je ne suis pas d'accord du tout avec M. FRIEDRICH sur une référence particulière à l'église chrétienne.

D'abord il y a une référence au droit collectif qui est bien reprise, il s'agit bien de droit de groupement collectif dans cette clause et puis il n'y a pas de référence au statut de l'église dans le traité de l'Union européenne. Cela ne fait pas non plus d'ailleurs partie des objectifs, les chrétiens n'occupent pas une position particulière donc il est extrêmement important que la Charte reflète la société moderne avec son caractère multiculturel et ses caractéristiques pluriculturelles et donc je pense que en l'occurrence, le libellé est parfaitement acceptable.

Merci

21/03/2000 11:26:15 **M. HAYES (Le Parlement irlandais)**

Merci Président, je serai bref. Je comprends la proposition faite par M. Haspelen, c'est vrai le paragraphe premier ajoute quelque chose, et c'est pourquoi je pense qu'il faudrait l'inclure et dans ce cas, il faudrait aussi inclure le paragraphe 2 ou si on ne l'inclut que là il faut tout au moins reprendre une disposition disant que cette clause ne devrait pas être privée de ses effets et M. GOLDSMITH a fait une proposition, et il y a peut-être d'autres possibilités comme je l'ai dit plus tôt si on se fonde sur l'article 6 du traité de l'Union, même avec une clause générale sur les limitations qui empêche que l'on réduise ce droit, mais qui n'empêche pas que l'on aille plus loin serait à cet égard tout à fait approprié.

21/03/2000 11:27:23 **PRESIDENT**

Merci M. HAYES, je pense que cela termine la liste d'orateurs sur cet article 14. Nous avons parlé du droit de l'église et nous avons même parlé des obligations militaires et des limitations. Le présidium prend note de ce qui a été dit. Oui, oui. Mes secrétaires font diligence mais nous prendrons tout le temps nécessaire. Article 15 : liberté d'expression. Même procédure donc vous avez la parole, M. BEREIJO.

21/03/2000 11:28:35 **M. RODRIGUEZ-BEREIJO (Le Parlement espagnol)**

Très rapidement, je voudrais revenir sur une question qui apparaît à plusieurs reprises dans le texte, il s'agit de la nécessité dans certains cas que en définissant le droit on définisse aussi de façon précise les limites de l'exercice de ce droit et là je réitère ce que j'ai déjà dit tout à l'heure dans certains articles précédents et là je partage d'ailleurs la dernière remarque qui a été faite sur l'article 14 faite par M. GOLDSMITH, à mon avis la référence faite à l'article 6 du traité n'est pas utile. C'est pourquoi nous ne pouvons imaginer un droit de liberté comme la liberté d'expression, d'information, de communication des idées ou des pensées sans préciser de façon soigneuse les limites de ce droit pour pouvoir respecter le droit des autres. Donc, je voudrais proposer que l'on ajoute, donc qu'on dise "toute personne a droit à liberté d'expression" ces droits, donc troisième paragraphe on dirait "ces droits ont leur limite dans le respect des droits reconnus par cette Charte et ceux établis par les lois qui les mettent en

œuvre" nous l'avons vu dans le cadre de l'article sur la vie familiale que le texte ne définit pas la vie familiale mais qu'on renvoie aux législations nationales, donc établit par les lois qui les mettent en œuvre ceux qui découlent de la sécurité ou de l'ordre public et surtout le droit à l'honneur, et je regrette de dire que je suis d'accord avec les idées avancées par M. Brebant, le terme honneur n'est pas un concept étranger au texte de la Convention européenne, mais là on utilise le mot réputation, donc on n'invente pas un concept qui n'existe pas dans la Convention européenne, donc droit à l'honneur, à l'intimité et à la protection de la jeunesse et de l'enfance. Alors, on parle du droit à l'enfance dans le cadre du droit à la liberté d'expression, d'information, ce n'est pas incompatible avec le fait que l'on fasse un article particulier sur le droit des enfants parce que malheureusement certains des excès commis dans nos sociétés modernes fortement dominées par les moyens de communication sociale en matière de libertés et d'expression eh bien touchent la partie la plus faible de notre société à savoir les enfants. Donc, une mention spécifique devrait être faite : la protection particulière des droits des enfants sans préjudice de la possibilité de reprendre ensuite un article particulier sur le droit des enfants en tenant compte des autres conventions internationales.

21/03/2000 11:32:37 **PRESIDENT**

Le Présidium a décidé de consacrer un article séparé aux droits des enfants. Mme PACIOTTI.

21/03/2000 11:32:59 **Mme PACIOTTI (Le Parlement européen)**

Merci Président, je crois que pour ce qui est de cette question des limitations des droits le mérite d'être soigneusement examiné parce que cela touchait l'article 12, 14, 15, mais cela vaut être la peine de le faire tout à la fin, comme on l'a proposé, parce qu'il s'agit de savoir si dans son ensemble la Charte contient un équilibre approprié de façon à ce que un droit soit mis en équilibre ou balancé par un autre et dans ce cas il faut expliquer les limitations éventuelles, ce serait opportun de le faire à la fin, mais certains droits comme ceux figurant aux articles 12, 14, 15 requièrent qu'on explique leurs limites. Mais je voudrais introduire un autre argument dont on avait parlé au sein du groupe de travail. Le problème de liberté d'impression qui reprend tous les médias. On dit que la société est dominée par les moyens de communication, quant il s'agit de liberté d'expression, il y a une différence entre la liberté d'expression de chaque individu qui doit être la plus large possible, et celle des médias qui eux représentent un problème distinct. Alors, il y a d'une part la garantie de la liberté mais d'autre part la conscience d'un pouvoir fort qui requiert certaines garanties parce que justement les médias constituent un pouvoir, ce n'est pas simplement une liberté et donc je vous demanderais d'insérer cette exigence spécifique dans l'article 15 et puis à l'article 10 de la Convention, on parle de la possibilité de soumettre à une autorisation préalable et je vous

renvoie à certains libellés figurant dans certaine constitution espagnole, hongroise, polonaise et qui parlent l'exigence d'assurer le pluralisme de l'information et la prévention des concentrations ou des monopoles dans les médias. Je peux vous proposer un paragraphe qui dise que les entreprises de radiodiffusion ou de télévision peuvent être soumis à une autorisation pour s'assurer le, du pluralisme de l'information et pour empêcher des concentrations, des monopoles. Enfin, je ne voudrais pas m'arrêter à ce stade sur une rédaction précise, je voudrais simplement attirer votre attention sur cet aspect particulier des médias en tant que pouvoir.

21/03/2000 11:36:44 **M. MANZELLA (Le Parlement italien)**

Merci Président, je voudrais expliquer un amendement au nom de M. RODOTA aussi, un amendement qui se trouve à la page 69 de notre document, il s'agit de compléter le premier paragraphe de l'article 15 avec le besoin d'assurer aussi, donc à côté de la liberté d'opinion de recevoir et de communiquer des informations, la liberté de rechercher des informations c'est une exigence que le traité d'Amsterdam aborde dans le cadre notamment de la liberté de transparence et pour le reste, pour ce qui est du problème des limitations, je m'associe à ce qui a été dit par M. BEREIJO et Mme PACIOTTI sur le besoin que au-delà d'une clause générale de limitation des droits eh bien dans cet article spécifique on reprenne aussi une limitation sur les concentrations, les monopoles et une défense du pluralisme de l'information, si il y a un article sur lequel la Convention européenne montre bien qu'elle a 50 ans, c'est justement cet article là parce que il y a de plus en plus de concentration dans les médias et désormais les médias ont atteint un niveau tel que décrit par Georges Orwell dans Big Brother. Donc, on ne peut pas négliger ce besoin d'insérer aussi des limitations aux concentrations de médias parce que cela préoccupe le citoyen européen.

21/03/2000 11:39:28 **Mme KAUFMANN (Le Parlement européen)**

Dans ce contexte, moi aussi je voudrais revenir sur la question des limitations. Pour moi c'est très important je crois qu'effectivement quand on voit quelles sont les idées fondatrices de l'Union, quand on voit également les évolutions de nos Etats et au niveau politique les réflexions qui sont menées et qui sont très importantes, qui nous touchent tous, j'ai une question à poser à mes collègues ici. Je crois qu'il faut d'une manière ou d'une autre explicitement rédiger une limitation ici pour tout ce qui est pensée nationaliste, raciste, antisémite, tout ce qui propagande de ces idéologies qui peut être interdite parce que ça serait un signal politique très important et au niveau de notre communauté des valeurs dans l'Union c'est indispensable quand on regard l'alinéa 2 de l'exposé des motifs, je trouve qu'on ne retrouve pas cette idée. Alors qu'il est indispensable selon moi de dire explicitement que tout

ce qui est propagande raciste, antisémite, etc. nous n'en voulons pas et que la liberté d'expression peut être donc restreinte dans ce sens. Merci.

21/03/2000 11:40:59 **M. TRIAS SAGNIER (Le Parlement espagnol)**

Je crois que pour ce qui est de la limitation des droits il faut faire très attention mais il faut aussi que nous soyons très clairs si l'on veut qu'on nous comprenne. Moi, je ne le rédigerais pas de façon négative mais de façon positive. J'ai fait une proposition de rédaction à la page 35, conformément à une interprétation très particulière donnée par le tribunal espagnol dans un cas bien précis. L'Espagne a eu du mal à obtenir une condamnation formelle contre M. Degrelle de la WAF(?) et le tribunal constitutionnel espagnol a proposé une interprétation, la liberté d'expression doit également être une possibilité pour garantir la plénitude de la dignité de la personne et donc, tout ce qui porte atteinte à la dignité de l'Homme irait à l'encontre des dispositions de cette Charte. Et puis, cela nous éviterait de devoir parler de concentration des médias, parce qu'intrinsèquement elle n'est ni bonne, ni mauvaise, le seul problème c'est que cela risque de porter atteinte à la pluralité des médias. Donc rentrer dans ce type de détail cela ne me semble pas prudent si nous parlons de la protection du pluralisme en matière d'information.

21/03/2000 11:43:30 **M. NEISSER (Le Parlement autrichien)**

La version qui est proposée pour l'article 15 part du principe que tout ce qui est recherche, science et arts fait partie de la liberté d'expression. Cela peut se justifier du fait de la jurisprudence de Strasbourg qui nous dit que la liberté artistique fait partie effectivement de la liberté d'expression. La science par contre c'est moins clair. Ça n'a pas été en tout cas exprimé aussi clairement. Mais il y a un problème particulier donc de délimitation de ces droits, restriction en quelque sorte. Il y a certains ordres constitutionnels nationaux qui disent que l'art, la science et la recherche ont dans leur exercice des limites inhérentes. Alors je ne peux pas toujours comprendre ce qu'on dit dans l'exposé des motifs quand on parle de la Cour de Strasbourg qui pense que la liberté de l'art fait partie de la liberté d'expression etc. ça va encore, la liberté de la science et de la recherche est soumise comme les autres droits au respect des droits de l'Homme conformément à l'article 1 de la Charte. Qu'est-ce que ça veut dire? Ça veut dire que ça renvoie à d'autres limites qui peuvent exercer et quand on revoit le renvoi on s'aperçoit qu'en fait il n'y a aucune limite qui est citée dans l'article.

21/03/2000 11:44:58 **PRESIDENT**

C'est probablement un problème de traduction, dit le président, dans la traduction du texte. Mais pour tout ce qui est éducation et recherche, je crois qu'en fait la dignité humaine doit toujours effectivement être respectée.

21/03/2000 11:45:27 **Lord GOLDSMITH (Le Parlement britannique)**

J'ai été heureux d'entendre que M. BRAIBANT prendrait la parole après moi. J'ai lu ses observations sur le deuxième paragraphe: art, science et recherche qui doivent être libres de toute contrainte et je suis tout à fait d'accord avec lui. Je crois que je serais également tout à fait d'accord une fois qu'il aura parlé tout à l'heure donc je n'en dirai pas plus. Deux mots toutefois quant à la question des restrictions. Certains collègues l'ont évoquée. Je crois qu'ils ont tout à fait raison de souligner que ce droit comme d'autres, doit être délimité parce que sinon on risque de donner un accord à des expressions xénophobes, racistes, antisémites, comme l'a dit Mme KAUFFMANN. Cela pourrait porter préjudice au respect des individus comme d'autres collègues l'ont également dit, dont Mme PACIOTTI. Je crois qu'il y a là un cas où la Convention des droits de l'Homme a justement des limites naturelles qui ne sont pas tout à fait de la même nature que les autres cas. On reconnaît dans la Convention, je lis dans l'article 1 : "la protection de la réputation des droits des autres" et je crois qu'on peut dire que la réputation des autres et le fait d'y porter atteinte doit être une limite. Donc je crois que c'est effectivement quelque chose qu'il faudra traiter, je pense que la manière dont moi je le traiterai serait de mettre une petite déclaration d'un côté mais de l'autre, faire référence à la Convention. J'ai pas mal de sympathie avec les commentaires de Mme PACIOTTI et de M. MANZELLA quant à la concentration de la presse. Mais, j'ai l'impression qu'il n'est pas possible de traiter de cette question dans cet article parce que le problème de la liberté d'expression de la presse ne peut être traité de manière distincte par rapport à la liberté d'un individu d'exprimer ses opinions besoin étant à la presse également. Donc je crois qu'il faut faire très attention face aux méthodes de communication, à l'aspect du pluralisme qui devrait être mis dans un autre article.

21/03/2000 11:48:01 **PRESIDENT**

Merci Lord GOLDSMITH. Professeur BRAIBANT, je suis heureux de vous donner la parole, parce que de toute façon d'avance vous acceptez tout ce qu'il va dire, donc c'est très bien pour moi.

21/03/2000 11:48:19 **M. BRAIBANT (Le Parlement français)**

Je ne vais pas en profiter pour abuser de la complaisance de Lord GOLDSMITH avec son chèque en blanc. Je voudrais intervenir sur trois questions à propos de cet article. D'abord il y a la question des limites des restrictions. Nous l'avons déjà évoquée plusieurs fois et je crois qu'il vaudrait mieux ne pas perdre du temps à l'évoquer sur chaque article. Cela concerne cinq ou six articles, pas plus, à mon avis, et nous avons pensé, nous avons dit, je crois, et même décidé que ça serait renvoyé à la fin de nos travaux. Parce qu'il y a plusieurs techniques. La

première c'est d'introduire dans la Charte elle-même les restrictions qui existent dans la Convention européenne des droits de l'Homme. La deuxième c'est d'introduire ces restrictions dans ce qu'on appelle jusqu'à présent la partie B et la troisième c'est de faire une clause globale de limitation qui s'applique à tous ces articles. Je crois que c'est à la fin que nous pourrons voir mieux comment on peut résoudre le problème mais pas à propos de chacun de ces articles ce qui fait qu'on revient sur des discussions qui ont déjà eu lieu. Une deuxième question, c'est que je suis d'accord moi aussi avec le fait qu'il serait bon d'introduire des dispositions sur le pluralisme comme l'on proposé non collègues italiens, la troisième et je crois que c'est sur ce point que Lord GOLDSMITH a été par avance d'accord avec ce que j'allai dire, parce que je l'ai écrit, c'est que je ne suis toujours pas d'accord avec le deuxième paragraphe : l'art, la science et la recherche sont libres, pour plusieurs raisons. Pour l'art c'est inutile. l'art est une forme d'expression et la liberté de l'art est couverte par la liberté d'expression. Pour la science et la recherche c'est inexact. Nous ne pouvons pas admettre aujourd'hui que dans les progrès actuels de la génétique par exemple, ou des biotechnologies en général, ou des techniques de l'information, la science et la recherche soient libres et ce serait même contraire je pense à nos valeurs. Alors il vaut mieux ne pas le dire et là encore on se retrouvera devant les problèmes de limitation. J'ajoute que là il y a un glissement sémantique assez curieux. Jusqu'à présent nous avons parlé de la liberté des citoyens, de la liberté des personnes et là nous parlons de la liberté de concepts ou de la liberté de catégories abstraites et on dit la recherche est libre. Je ne sais pas très bien ce que ça veut dire. Donc je propose de retire simplement cet alinéa 2 qui a déjà été amputé à ma demande : l'enseignement est libre. Ce qui est également une expression qui n'avait pas beaucoup de sens.

21/03/2000 11:51:08 **PRESIDENT**

La deuxième partie de l'article 15 au bureau, nous avons déjà eu un débat. Comme c'est M. BRAIBANT qui fait partie du bureau nous y reviendrons, c'est un sujet qui nous a interpellé, nous y reviendrons encore.

21/03/2000 11:51:35 **M. DUFF (Le Parlement européen)**

Merci, Je crois qu'on ne pourra pas se mettre d'accord sur cet article complètement, avant d'avoir vu le champ d'application de la Charte parce qu'il y aura des articles sur la liberté d'information et certains articles sur la lutte contre la discrimination raciale qui seront affectés. Les restrictions, les limitations à apporter à cet article pourront être mieux exprimées lorsqu'on rédigera ces autres clauses et j'aurais préféré que, à un endroit ou à un autre, l'article 15 étant à un endroit tout à fait approprié où on prévoit une expression simple,

claire et positive de la liberté de pensée et de liberté d'expression. C'est ce qu'on essaye de cerner par ce libellé et je dois dire à mon collègue espagnol, M. TRIAS SAGNIER, que je suis très intéressé par ce qu'il a à dire mais que je ne pourrai pas adhérer pleinement à son projet de libellé. Dans l'exposé des motifs, il conviendrait peut-être de mieux décrire ce qu'il en est des compétences de l'Union en ce qui concerne la science et la recherche par rapport à l'exercice de rédaction du programme actuel de recherche et de développement de l'Union, je crois que j'appelle l'attention des collègues aux difficultés que nous avons connues et ça permettra aussi de voir d'une autre manière ces dispositions sur la liberté d'expression.

21/03/2000 11:54:50 **M. O'MALLEY (Le Parlement irlandais)**

Merci Président. J'ai suivi le débat avec beaucoup d'intérêt et comme c'est la première fois que je suis ici, j'espère que ce ne sera pas la dernière, je sais qu'il y a beaucoup de juristes spécialistes du droit constitutionnel, qui sont très experts en nuances juridiques et je ne me contenterais de faire une contribution très brève en tant que néophyte, ma seule expérience étant d'avoir été membre du parlement de mon pays. Alors, comme l'ont dit plusieurs orateurs, je suis attaché à l'idée de la protection et la propriété des médias. Je crois que ceux qui travaillent sur ce sujet important connaissent peut-être le dossier. La propriété des médias, lorsqu'elle se concentre sur une personne ou sur un groupe, vu le pouvoir qui est exercé du fait de la concentration de ces pouvoirs, il peut y avoir, au niveau de l'information, des abus et au niveau de la liberté d'expression il est vrai qu'il est correct de ne pas vouloir la restreindre mais, dans ce contexte, il ne pourrait y avoir des infractions. Dans un exercice démocratique les citoyens ont le droit de voter pour des gouvernements que certains de leurs voisins ne souhaiteraient pas eux considérer comme démocratique, c'est le cas de l'Autriche, par exemple. Ces derniers temps, quel est le droit, où est-ce qu'il s'arrête ? Est-ce que les citoyens d'un pays peuvent avoir recours à une autorité plus large ? Toujours pour ce qui est de la concentration de la propriété des médias, une certaine enquête a été faite au Royaume-Uni parmi les femmes qui travaillent et on s'est aperçu qu'il y avait comme fondement à des attitudes antieuropéennes la lecture d'un quotidien qui est notoirement anti européen, un quotidien très largement répandu dans les classes populaires. Alors est-ce qu'on parle de liberté d'expression sans contrainte dans ce cas là et est-ce que quand on parle de recherche dire qu'il n'y a pas de contrainte s'il y a une menace à la vie des citoyen dans la recherche qui est menée, par exemple, dans certains éléments de la recherche en technologie génétique et en biogénétique. Tout ça est protégé, c'est l'article 1 qui le dit.

21/03/2000 11:57:36 **M. GRIFFITHS (Le Parlement britannique)**

Merci Président. Je crois qu'il y a deux éléments qu'il faut dire quant à l'article 15. D'abord on a besoin uniquement de la première phrase tout en ajoutant qu'il doit pouvoir y avoir certaines limites pour tenir compte à l'incitation au racisme, etc.. ça ça pourrait évidemment être dit séparément, mais l'alinéa 2 n'est pas nécessaire à l'article 15, parce que la liberté d'expression couvre ce qui est dit là et de toute manière à l'heure actuelle ça peut ouvrir trop largement la porte à d'autres suggestions. Quant à ce qui est restriction, on parlait du monopole de l'information à l'instant, je crois qu'il y a là des problèmes séparés à voir ailleurs qu'ici.

21/03/2000 11:58:44 **Mme BERÈS (Le Parlement européen)**

Merci M. le Président. C'est qu'en intervenant en dernier on a plus trop de choses à dire. Simplement, je crois qu'on est là sur un article tout à fait essentiel puisque la réaffirmation de la liberté d'expression peut apparaître comme quelque chose de presque évident et pourtant il me semble que la façon dont nous rédigerons cet article emportera des conséquences importantes par rapport au futur déficit que nous avons et par rapport à l'enjeu que nous nous sommes fixés en rédigeant cette charte qui est la défense d'un certain nombre de valeurs à l'intérieur de l'Union. C'est pour cela que je m'associe pleinement à tous ceux qui, s'agissant du premier paragraphe, on insisté pour la référence aux limitation de ce droit de liberté d'expression. Il ne s'agit pas de rétablir la censure à l'intérieur de l'Union mais il s'agit que cette liberté d'expression ne nuise pas aux valeurs de l'Union et ne permette pas, dans des conditions excessives ou inacceptables, une propagande raciste ou xénophobe. Alors, quant aux formes que doit prendre cette limitation, je comprend les trois propositions faites par Guy BRAIBANT et que nous aurons la discussion in fine. Ma préférence va pour une liaison assez directe avec cet article 15 parce que je crois que il doit être lu dans son concept global avec ses limitations. Sur la suppression du deuxième paragraphe, je ne peux que m'associer avec ce qu'a dit M. BRAIBANT et enfin un dernier point sur la question de la liberté de la presse et de l'interdiction des concentrations. Je soutiens pleinement ce qu'a pu dire Mme Elena PACIOTTI et je crois que l'on ne peut pas balayer cela d'un revers de main car, si l'on lit le premier paragraphe, et notamment la motion qui est fait à l'idée que, sans qu'il puisse y avoir d'ingérence d'autorité publique cela interdit toute intervention qui puisse permettre effectivement la liberté d'expression de la presse et l'interdiction des concentrations. Donc, je crois qu'il y a une véritable difficulté, qu'il faudra que le presidium prenne en compte lors de la réécriture de cet article. Merci.

21/03/2000 12:00:46 **PRESIDENT**

Vous étiez effectivement, Madame, le dernier orateur de ma liste, mais j'ai deux noms qui se sont ajoutés entre temps.

21/03/2000 12:01:09 **M. HIRSCH BALLIN (Le Parlement néerlandais)**

Je me demande comment mettre en oeuvre ces dispositions par rapport aux compétences de la Communauté, deux remarques : s'il y a une disposition qui est reprise, cela signifie qu'on met une limite à la réglementation de la science, par exemple, en cas de manipulation génétique. Moi je voudrais m'associer à ceux qui se sont prononcés contre. Deuxièmement, ce qu'on a laissé tomber par rapport à la convention c'est l'expression "... les médias peuvent être soumis à une réglementation", si on pouvait lier cela aux compétences de la Communauté, alors cette suppression serait considéré comme une impossibilité de réglementer le secteur. Mais je pense que ce n'est pas censé d'apporter cette modification par rapport à l'article 10 de la convention européenne parce que justement on risque de mal l'interpréter et je pense qu'il faut l'éviter parce que de toute façon nos objections par rapport aux médias sont connues. Merci, M. le Président.

21/03/2000 12:02:46 **M. BACELAR de VASCONCELLOS (Le Parlement portugais)**

Pour ce qui est de l'article 15, paragraphes premier et second, il me semble qu'ici il s'agit de valeurs fondamentales des libertés que nous voulons protéger sous l'expression symbolique et emblématique prêt à un processus de densification de la liberté individuelle, cela à avoir avec le mode de vie et la culture auxquels nous nous identifions. Les restrictions à la liberté d'expression sont essentiellement celles qui découlent des conflits dans l'application des droits fondamentaux et la protection de la dignité de la personne humaine, l'interdiction du clonage d'êtres humains, certaines questions qui ont été évoquées ici à l'introduction de restrictions ne sont pas nécessaires. Pour ce qui est du premier paragraphe, on admet une référence aux autorités publiques et il faut aussi reconnaître aujourd'hui que, fréquemment, les menaces ne proviennent pas de la sphère publique, on parle seulement de la sphère publique, mais aussi de la sphère privée et je suis donc totalement d'accord avec le fait que les préoccupations ici vont dans le sens d'une garantie ou d'une prévention des organes de médias. Pour ce qui est du deuxième point, l'art, la science et la recherche, on dit que dans la société, que vouloir limiter l'art, la recherche et la science, vouloir limiter cela à des protections de forme d'expression me semble un peu restrictif. Les expressions de la liberté à travers l'art, la science et la recherche ne me semblent pas susceptibles d'être soumises à des restrictions autres que celles qui découleraient d'autres articles ou d'autres libertés protégées ici. Enfin, pour terminer, nous ne conjurons pas les ports (?) en empêchant leur apparition, une phase critique et complexe

d'évolution, une ouverture à ce qui est nouveau et avec l'espoir que ceci puisse apporter un renforcement de la dignité et du respect de la personne humaine, cela implique aussi une préservation scrupuleuse de la liberté d'expression artistique, scientifique et de la recherche. Merci.

21/03/2000 12:06:42 **M. VOGGENHUBER (Le Parlement européen)**

Merci de cette générosité, M. le Président. Je peux encore dire un petit mot effectivement parce que je suis quelque peu préoccupé de voir qu'on demande tant de limitations et qu'on parle de finalement politiquement correct ici. Alors, il y a un principe : les droits fondamentaux ne peuvent pas être limités, c'est un principe qu'on a évoqué. Dans l'article 1, c'est vrai, que si un principe qui est discriminé pour du sexisme ou du racisme à l'égard d'autre, c'est vrai qu'implicitement ce n'est pas, c'est effectivement au niveau de la dignité humaine quelque chose qui est considéré comme un non respect, on ne va pas le dire chaque fois. Maintenant je voudrais revenir sur cet aspect science et recherche. La distinction que nous devons faire, je crois que sur le fond on n'en est pas toujours conscients, c'est la distinction qu'il faut faire entre la science comme recherche de nouvelles connaissances et son application. Quand on parle de technologies nouvelles, ce n'est pas de la science, c'est l'application de la science et cette application n'est pas libre mais il y a de bonnes raisons aujourd'hui comme demain de continuer à essayer de laisser la recherche libre. Les connaissances, personne ne peut m'interdire de faire de la recherche sur de nouvelles connaissances. Personne ne peut m'interdire de dépenser ce que je veux sur des recherches et ça c'est tout à fait différent par exemple par rapport à la liberté d'expression, personne ne peut m'empêcher de dire ce que je pense mais je ne suis pas obligé de partager cette expression. On ne va pas, que ce soit idéaliste ou moral je n'en sais rien, mais personne n'a le droit de me forcer à ne pas vouloir savoir quelque chose ou ne pas connaître quelque chose ou à donner sur le plan scientifique quelque chose que je n'estime pas ne pas être une donnée scientifique. Je crois que c'est très important de bien faire la distinction avec la liberté d'expression, surtout dans la liberté artistique par exemple. Si quelqu'un accuse le pape aujourd'hui on peut dire qu'il y a attaque à la liberté d'expression, mais au niveau de la liberté d'expression artistique et la présentation du pape, si je le met en enfer et bien là cela va au-delà de cette liberté d'expression, c'est la liberté artistique que je trouve extrêmement importante.

21/03/2000 12:09:31 **PRESIDENT**

Bon, je crois que, comme le disait le collègue, nous avons là effectivement épuisé un sujet qui est très vaste. Nous allons continuer et essayer de voir ici que nous pourrions faire quand on parle des problèmes qui ont été évoqués, la majorité d'entre eux, nous voyons que il y a des partisans et des détracteurs de chacun de ces principes. Le droit à l'éducation maintenant.

21/03/2000 12:10:25 **M. NIKULA (Le Parlement finlandais)**

... cet article. C'est peut être commun aux européens, nous voulons éduquer chaque génération mieux que l'éducation à laquelle nous avons eu accès, à travers nos auteurs et la poésie, nous accédons à l'éducation c'est pourquoi nous nous finlandais apporté un amendement dans le sens que tout le monde, chaque individu a droit à l'éducation de base, l'éducation primaire. Les parents disent toujours à leurs enfants, vous allez à l'école parce que c'est bon pour vous, donc le droit à l'école primaire doit être garanti et il doit être gratuit. C'est article dit que les opposants aux droits fondamentaux sont essentiellement dans les ministères des finances parce que c'est un article qui va être très coûteux à mettre en œuvre, mais c'est onéreux pour toutes les sociétés, je crois que pour les institutions de l'Union européenne, c'est une question de subsidiarité et au niveau de l'Union il faut veiller à ce que l'obligation des Etats membres de mettre en œuvre l'éducation primaire soit garantie. Ce droit à une éducation primaire gratuite est due à la double nature des droits, nous garantissons aux citoyens le droit à une éducation gratuite, une éducation primaire gratuite, mais nous imposons aussi une obligation de fournir une éducation. Il y a quelques mois nous nous interrogeons sur les obligations de nos citoyens, c'est ici que la question devient un peu plus pertinente et je voulais souligner que les finlandais dans cet article et l'article 15 ont souligné le fait que dans l'éducation supérieure ou l'éducation universitaire, il ne devrait pas y avoir de frais, ce devrait être gratuit, c'est une tradition qui a à voir avec l'éducation et voilà pourquoi ceci a une nature vraiment spécifique. Merci.

21/03/2000 12:13:34 **M. LEHMANN (Le Parlement danois)**

Merci Monsieur le Président, pas de problème en ce qui concerne l'article 16, le droit à l'éducation paragraphe 1, pas de problème, mais au paragraphe 3, l'alinéa 3 plutôt, on se fonde sur la structure habituelle et classique selon laquelle les Institutions de l'Union qui doivent respecter les droits des parents d'assurer l'éducation à l'enseignement de leurs enfants. Bon nous savons que c'est un droit de citoyen, un droit politique et c'est vrai que les autorités doivent s'abstenir d'influencer d'une manière ou d'une autre le choix des individus, mais en ce qui concerne l'alinéa 2 où l'on parle de la création d'établissements d'enseignement, on dit que c'est libre, là c'est encore quelque chose que j'appellerais un objectif politique et cela ne

correspond pas au droit ou à une atteinte au droit des individus et des personnes, je crois que c'est plutôt quelque chose qui relève du droit des Institutions européennes à contribuer à la création d'établissements de ce type. Alors je crois que ce paragraphe finalement ou cet alinéa, il aurait plus sa place ailleurs dans le document et je renvoie à ce que j'ai dit à l'article 13 lorsque nous avons parlé de la protection de la famille et des aspects juridiques, sociaux et économiques. Je crois que là il y a quelque chose de social qui doit apparaître ailleurs. Mais nous pouvons par ailleurs appuyer (?) l'alinéa 1 et 3 et je renvoie également à ce que disent les Nations Unies sur les droits économiques et sociaux avec des dispositions qui ont été acceptées par tous, l'éducation étant un principe "liberté, obligation etc...", liberté d'enseignement mais obligation scolaire. Donc là nous pensons que cet alinéa 2 n'a pas sa place.

21/03/2000 12:16:09 **Mme BERÈS (Le Parlement européen)**

Merci Monsieur le Président, plusieurs observations sur cet article. Tout d'abord en tout cas dans la version française, une petite contradiction entre le titre qui parle de droit à l'éducation et le premier alinéa qui parle de droit à l'instruction, j'imagine qu'il s'agit peut être d'un problème de traduction mais en tout cas il me semble que les deux termes devraient être harmonisés. Ensuite je ne suis pas certaine que nous ayons besoin dans cet alinéa du terme "notamment", je ne vois pas à quoi il peut ensuite renvoyer. Sur la formulation négative du droit, je comprends bien qu'il reprend la formulation telle qu'elle existe dans l'article 2 du protocole additionnel de la convention européenne des droits de l'homme, mais dans le mesure où nous parlons à la fin de l'alinéa de l'enseignement obligatoire, et je comprends qu'il faut distinguer entre l'enseignement primaire, secondaire et universitaire, mais compte tenu de l'enjeu de l'éducation, je me demande si nous n'avons pas intérêt à le mettre en positif et à indiquer que toute personne a le droit à l'éducation. Sur le deuxième paragraphe moi je serais tout à fait favorable à la suppression de ce deuxième paragraphe parce que je ne sais pas si cela relève de l'organisation de la société ou du droit des individus, mais je suis certaine que la formulation telle qu'elle figure dans le projet est source de beaucoup d'ambiguïté et ouvre la voie à beaucoup de difficultés en clair si nous laissons cet article tel qu'il est, rien n'interdit demain à telle ou telle secte de créer un établissement d'enseignement scolaire et pour ma part, je considérerais que cela serait contraire aux valeurs de l'Union.

21/03/2000 12:18:06 **M. BERTHU (Le Parlement européen)**

Merci Monsieur le Président. Je crois que cet article montre bien, est un de ceux qui montre le mieux les dilemmes politiques devant lesquels nous sommes parce que bien évidemment dans sa rédaction actuelle s'il devenait un article d'un traité européen, il violerait complètement la

subsidiarité et la répartition des compétences entre l'Union et les Etats telles qu'elles existent aujourd'hui, je vous rappelle que l'Union n'a pas de compétence directe en matière d'éducation quand même. Alors je crois que si l'on part de cette idée que dans la rédaction actuelle la subsidiarité est violée, on est quand même obligé de se dire qu'il serait difficile d'imaginer une charte européenne sans qu'on parle quelque part de l'éducation et on est pris entre les deux impératifs, et c'est pour cela qu'à mon avis si on doit parler d'éducation il est préférable qu'on s'en tienne aux grands principes et donc que cette charte ne soit qu'une déclaration politique et non pas des articles d'un traité. Alors dans l'hypothèse où l'on voudrait que ce soit une déclaration politique énonçant des grands principes, je crois qu'il faudrait s'en tenir à deux phrases qui diraient : "Nul ne peut se voir refuser le droit à l'instruction. L'enseignement est libre de même que les choix des parents pour l'éducation de leurs enfants". Voilà une déclaration politique générale. Maintenant, admettons que la majorité de cette enceinte veuille violer la subsidiarité, alors à ce moment là je fais des remarques sur le texte tel que je le vois écrit et j'en ferais trois. Ma première remarque est exactement inverse à celle de Madame BERÈS. Je trouve que le point 2 la création d'établissement d'enseignement est libre, ce point 2 est bon mais incomplet parce qu'il faut aller jusqu'au bout de l'idée et dire que les Etats traitent également les différentes formes d'enseignement. Deuxième remarque, le droit des parents d'assurer l'éducation et l'enseignement de leurs enfants conformément à leurs convictions, on parle des convictions religieuses et philosophiques mais il y a bien d'autres critères de choix dans les établissements d'enseignement, et il y a notamment avant tout quand même ne l'oublions pas, des critères pédagogiques, donc il faudrait quand même parler un peu de pédagogie si on veut être complet et troisièmement je note quand même que Monsieur BRAIBANT faisait une remarque tout à fait justifiée et Madame BERÈS s'y était ralliée, et là je suis tout à fait d'accord, on ne peut pas écrire des choses qui permettraient à des sectes dangereuses d'ouvrir des établissements d'enseignement, donc il faut soit dire à la fin du point 3 que le droit des parents est respecté sous réserve des considérations d'ordre public ou bien alors, renvoyer à l'article transversal final qui dira que pour différents articles de la charte, les considérations d'ordre public permettent et d'autres considérations d'intérêt général, permettent d'apporter des réserves. Donc vous voyez bien le dilemme dans lequel nous sommes, je préférerais pour ma part une déclaration politique énonçant quelque principes très clairs,

FIN DE LA CASSETTE

... très simples et très généraux. Mais si on veut vraiment bouleverser les compétences entre l'Union et les Etats membres alors bouleversons les intelligemment et libéralement.

21/03/2000 12:22:29 **Lord GOLDSMITH**

Merci Monsieur le Président. Je me souviens qu'il y a plusieurs années, je me suis rendu en Afrique du Sud et un jeune avocat nous racontait qu'il avait grandi et vécu à Durban et il a dû aller dans une école à 200 kilomètres de là parce que il était noir et on lui avait nié le droit à l'éducation à l'endroit où il était né et où il avait vécu. C'est un droit politique et civil tout à fait sensible et je veux qu'il soit inclus là mais j'ai quelques remarques à faire sur le texte. En premier, sur le troisième paragraphe, qui dit les choses de manière trop forte. Il est important de respecter le droit des parents d'avoir les enfants éduqués en fonction de leurs convictions personnelles, mais ce n'est pas quelque chose qui peut être toujours garanti pour des raisons telles que ... l'enfant pourrait par exemple présenter un comportement particulier, ne peut pas être scolarisé dans un établissement normal ou pour des raisons financières... et qu'on ne peut pas trouver des écoles avec une approche religieuse ou philosophique d'un certain type partout dans le pays. L'article 2 du protocole CEDH(?) qui reconnaît ce droit reconnaît aussi que c'est une question de respect que de ne pas garantir, et je dois dire que le Royaume-Uni avait émis une réserve au sujet de ce droit particulier à cause justement des problèmes de fonctionnement efficace des écoles par rapport à des coûts financiers, et il nous faut reconnaître ce problème d'une certaine façon. Cela c'est ma première remarque. En deuxième lieu, je partage les interrogations de M. LEHMANN sur le deuxième article, que je ne comprends pas bien pour l'instant, deuxième sous-paragraphe. Les établissements d'éducation ne devront pas rencontrer de contraintes... Je me demande si ça doit être inclus ou pas. Pour l'instant, il me semble que ce ne soit pas le cas. Enfin, dernier commentaire, portant sur la reconnaissance de l'éducation primaire gratuite et obligatoire au premier paragraphe. Je crois que là on traite d'une question délicate. La question de fournir une éducation gratuite est une question sociale. Je ne pense pas que cela soit de la compétence de l'Union et je pense que c'est une erreur que de l'inclure au droit civil et politique. Les droits civil et politique doivent prévoir qu'on ne peut pas renier une telle éducation. Mais je ne suis pas en faveur d'inclure dans cet article les aspects sociaux et financiers quant à l'éducation. L'éducation est fournie et offerte dans mon pays. Donc moi je propose d'inclure cette référence ailleurs dans la charte.

21/03/2000 12:25:50 **PRESIDENT**

Merci, j'ai de bonnes nouvelles pour vous tous, si vous êtes préparés à rester. Nos interprètes peuvent aussi nous accompagner, mais pas au-delà de 13 heures. Cela signifie qu'il nous reste 30 ou 35 minutes. Pensez-vous pouvoir poursuivre jusqu'à 13 heures ou est-ce qu'il y a des personnes qui savent déjà qu'elles doivent nous quitter. Manifestez-vous je vous prie. Bien, voyons voir jusqu'à quel moment nous pouvons rester. Merci pour votre collaboration.

21/03/2000 12:26:31 **M. HIRSCH BALLIN (Le Parlement néerlandais)**

Monsieur le Président, je voudrais m'associer aux remarques du Lord GOLDSMITH.

21/03/2000 12:26:37 **PRESIDENT**

Excusez-moi. Un point d'ordre de la part de M. FRIEDRICH.

21/03/2000 12:26:41 **M. FRIEDRICH (Le Parlement européen)**

Cela aurait pu attendre, mais je voulais simplement qu'on respecte l'horaire qui avait été prévu. On a tous cru que c'était 9 h 00 à 12 h 30. On a prévu d'autres rendez-vous. Bon si c'était 13 h 00 au départ, on serait resté jusqu'à 13 h 00. Je voudrais qu'on s'en tienne au calendrier qui avait été prévu puisqu'on a tous essayé de s'organiser en conséquence.

21/03/2000 12:27:00 **PRESIDENT**

Oui, j'espère que vous êtes dans le vrai.

21/03/2000 12:27:14 **M. HIRSCH BALLIN (Le Parlement néerlandais)**

... cet enseignement. Aux Pays-Bas, l'enseignement réglementé est aussi gratuit, mais à partir du moment où ce n'est plus obligatoire d'aller à l'école, c'est un autre système qui prévaut. Alors, quand on travaille et qu'on est obligé de suivre certains cours, on ne peut être payé et dans la règle actuelle ce ne serait pas possible de le faire. C'est pourquoi je vous propose de ne pas reprendre ce concept et je pense que la remarque de M. GOLDSMITH est pertinente. Je ne vois pas comment on pourrait ici parler de droit fondamental pour ce qui est des compétences de l'Union européenne et donc je m'associe à la remarque que vient de faire M. GOLDSMITH en la matière.

21/03/2000 12:28:27 **M. DUFF (Le Parlement européen)**

Merci Monsieur le Président. Je crois que c'est un domaine extrêmement compliqué. Les différences entre les différents systèmes d'éducation dans les différents États membres sont assez importantes. En deuxième lieu, les compétences de l'Union européenne sont assez restreintes. Le traité dit que l'Union européenne contribue à l'éducation. Il est dit que l'Union européenne renforcera la dimension européenne dans l'éducation. Cela implique une influence sur les cursus fournis par les écoles et établissements. Mais cela restreint aussi la possibilité pour l'Union d'agir dans le domaine de l'éducation vis-à-vis des États membres. Le premier

paragraphe de l'article 16 inclut en particulier le droit à suivre un enseignement obligatoire gratuit. Je crois qu'il est surprenant de trouver cela ici et je serais en faveur d'avoir une justification ou une explication plus étayée que ce que j'ai pu obtenir jusqu'à présent. Je préférerais une affirmation positive de ce droit à l'éducation et je suis tout à fait d'accord avec l'approche finlandaise. Pour ce qui est de la deuxième clause, création d'établissements d'enseignement qui soient libres, la mention quant à la liberté de création d'établissements est une bonne chose. Mais pour ce qui est des contraintes, là aussi, je vois quelques problèmes. Je vous remercie M. GRIFFITHS.

21/03/2000 12:32:20 **M. GRIFFITHS (Le Parlement britannique)**

Merci Monsieur le Président. Bon, j'ai juste une phrase à vous dire. Je pense que nul ne peut se voir refuser le droit à l'instruction. Et bien, il faudrait l'affirmer de manière positive. Beaucoup d'intervenants ont expliqué pourquoi les paragraphes 2 et 3 ne doivent pas nécessairement figurer dans la charte. Et je leur emboîte le pas. Merci.

21/03/2000 12:32:53 **M. TRIAS SAGNIER (Le Parlement espagnol)**

Merci Monsieur le Président. Sans dignité, une personne ne peut être reconnue comme telle et sans éducation, il n'est pas possible d'avoir des droits fondamentaux et ici nous traitons des droits fondamentaux de la personne. Et je pense que l'éducation est aussi essentielle que l'article 1er et à ce titre je suis tout à fait d'accord avec M. NIKULA et avec M. DUFF, représentant du Parlement européen. Je pense que le paragraphe premier doit être rédigé d'une manière complètement différente, de manière positive et obligatoire. Je proposais de dire que toute personne a droit à l'instruction et à l'éducation et cela inclut en particulier le droit de suivre gratuitement l'enseignement obligatoire, en fonction de ce que chaque État membre entend par "enseignement obligatoire". Mme BERÈS avait proposé un amendement au début des articles 14, 15 et 16 et cela résoudrait le problème. Tout ceci serait soumis au droit reconnu dans cette charte. En troisième lieu, je pense qu'il faudrait aussi modifier le paragraphe 3 et éliminer les termes "convictions religieuses et philosophiques" parce qu'il peut y avoir d'autres convictions. Je crois qu'au paragraphe 3 il serait aussi important d'apporter une précision. Le droit des parents n'est pas (..) et je pense qu'il faut inviter le praesidium à formuler un article séparé. Il est évident que les parents doivent assurer l'éducation des enfants, mais ce sont les enfants qui ont le droit de recevoir une éducation conformément aux principes que nous énonçons dans cette charte. On ne peut pas octroyer une éducation en fonction des principes des parents, quels que soient ces principes. Il faut que ce soit conforme aux principes que nous tentons de mettre en place ici dans cette charte. Voici
Merci Monsieur le Président.

21/03/2000 12:35:25 **Lord BOWNESS (Le Parlement britannique)**

Merci Monsieur le Président. Je serai très bref. Je suis totalement d'accord avec les arguments de Lord GOLDSMITH et je ne les répéterai pas. Je ferai simplement une remarque. Les questions traitées au paragraphe 3 soulignent le danger de rester dans le domaine politique. Un autre exemple est que nous pourrions peut-être traiter les problèmes de concurrence dans la presse à l'occasion d'une discussion sur un autre article, et je crois qu'il nous faut nous garder de cette tentation, parce que cela entraînerait de grosses difficultés, des problèmes de violation du principe de subsidiarité. Je vous remercie.

21/03/2000 12:36:08 **PRESIDENT**

Dernier intervenant, M. PATIJN. Il se retire de la liste. Bien merci. Nous en arrivons à la fin des commentaires et contributions à l'article 16. Et nous en sommes même à la fin du document Convention 13. Nous ne poursuivons pas conformément avec ce qu'a dit M. FRIEDRICH. Avant de conclure cette séance, j'ai encore deux informations à vous transmettre. Vous allez recevoir un nouveau document pour les réunions de la prochaine semaine, du lundi et du mardi, sur les droits des citoyens et vous devriez le recevoir par courrier électronique dès que possible. Cela devrait être disponible dans toutes les langues. Oui, dans toutes les langues. Onze langues donc. Deuxièmement, afin de pouvoir respecter notre ordre du jour, vu que nous avons encore six articles de la Convention 8 qui restent et qu'il nous faut traiter, afin de le faire, le Secrétariat vient de décider que nous allons poursuivre lors de notre réunion du mardi 28 mars, c'est-à-dire mardi prochain. Je demanderai donc aux membres de se préparer, de s'organiser de façon qu'après la pause du déjeuner, nous puissions poursuivre notre séance mais de manière informelle cette fois et nous pensons débiter à environ 14 h 15. Donc, nous voilà à la fin de notre réunion. Je vois qu'il y a des protestations. M. DUFF aussi.

[PAS ENREGISTRÉ EN LANGUES ORIGINALES]

21/03/2000 **M. DUFF (Le Parlement européen)**

Ce n'est pas une protestation. C'est une question. Hors micro. La structure de la charte dans sa version complète. On nous avait promis un synopsis émanant du praesidium nous présentant la charte dans sa totalité, avec toutes les propositions dans une forme télégraphique. Ce serait bien que nous puissions recevoir cela le plus tôt possible et, en deuxième lieu, si je puis me permettre, la question du lien entre l'exposé des motifs et les articles avec la structure et le style de l'exposé des motifs. Il faudrait que la convention ait la possibilité de délibérer avant que nous n'avancions trop loin. Donc, mardi prochain constituerait une bonne opportunité

pour traiter de ces questions entre nous.

21/03/2000 **Lord BOWNESS (Le Parlement britannique)**

Merci Monsieur le Président. Une question, très rapidement, sur le calendrier d'origine. La prochaine réunion est prévue pour la semaine prochaine. Il y avait des auditions qui y étaient mentionnées. Ce n'est plus à l'ordre du jour ?

21/03/2000 **PRESIDENT**

Je vais essayer de répondre à deux questions, parce que la troisième est un commentaire. M. HERZOG, notre Président, avait promis effectivement ce synopsis et il y travaille. Je pense qu'il est sur le point d'être terminé et d'être diffusé. Pour ce qui est des auditions. Les auditions des ONG auront lieu le 27 avril, Lord BOWNESS, 27 avril, pour les auditions des ONG. Merci à vous tous. Je remercie aussi le Secrétariat, les secrétaires et le président remercie aimablement les interprètes. La séance est levée.

FIN DE LA REUNION

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

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**Brussels, 12 May 2000 (16.05)
(OR. fr)**

CHARTE 4304/00

CONVENT 30

RECORD

Subject : Record of the fourth meeting, in working group formation, of the Convention to draw up a draft Charter of Fundamental Rights of the European Union (Brussels, 3 and 4 April 2000)

1. The fourth meeting of the Convention, in working group formation, was held on Monday 3 and Tuesday 4 May 2000 in Brussels under the chairmanship of Mr Gunnar JANSSON, alternating with Mr MENDES de VIGO. The agenda included the examination of draft Articles I to XII and XIII to XV on the social rights set out in CHARTE 4192/00 CONVENT 18 and CHARTE 4193/00 CONVENT 19, respectively.
2. The Presidency informed the Convention of the appointment of Mr Bernard BOT, alternate to Mr KORTHALS ALTES.
3. The initial examination of social rights gave rise to a general discussion on the content and scope to be given to this third basket of rights, bearing in mind, in particular, the way in which the European Council in Cologne had incorporated them into the mandate of the Convention. The question arising here concerns the scope to be given to the exclusion of rights which are

not part of the Union's objectives, and also the binding value to be assigned to Articles on social rights. A number of members of the Convention pointed out that this basket might constitute the real added value of the draft Charter being drawn up, in relation to the current situation, while others were concerned about the danger of the powers of each decision-making level being re-adjusted, even indirectly, by the possible inclusion of this basket in the Treaties. During the meeting, these concerns apart, the discussion made it possible to consider eight of the fifteen draft Articles submitted by the Praesidium. Examination of the remaining proposals was deferred until the following meeting of the Convention.

4. In conclusion, the Presidency pointed out that there would be time before the Feira European Council in June 2000 to discuss once more the Articles on social rights and to broach the draft Articles on horizontal matters.
5. The next meeting was set for 27 and 28 April 2000.

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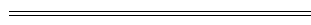
**Brussels, 12 May 2000 (16.05)
(OR. fr)****CHARTE 4305/00****CONVENT 31****REPORT**

Subject : Seventh meeting of the Praesidium, Brussels, 17 April 2000
 – Outcome of proceedings

1. At its seventh meeting, the Praesidium, chaired by Mr Roman HERZOG, started its proceedings by hearing Mr Marc FISCHBACH and Mr Hans Christian KRUGER, representatives of the Council of Europe who are observers at the Convention.
2. In his statement, Mr Marc FISCHBACH laid particular emphasis on the need to obviate any risk of divergent interpretations of the fundamental rights in the two Courts, in Luxembourg and in Strasbourg. He therefore felt that it was necessary to pay particular attention to the drafting of the horizontal articles and to adopt a reference system which went well beyond a literal interpretation of the existing texts; in that respect, he considered it useful, in addition to referring to the case-law of the European Court of Human Rights, to mention the conclusions of the Committee of Independent Experts on the European Social Charter. He also raised the question of whether it would be desirable to insert an article equivalent to Article 17 of the Strasbourg Convention. In general, he stated that he was more concerned about the future

than about the practical arrangements for taking over provisions already in existence, and for him the key question was the future relationship between the two Courts. While confirming that, in his view, the Union's accession to the Strasbourg Convention remained the best solution, he put forward some alternatives, such as mechanisms for prior reciprocal consultation. That question led to a thorough discussion between the representatives of the Council of Europe and the members of the Praesidium.

3. In support of his statement, the speakers handed over a written contribution to the Praesidium containing a drafting suggestion for Article X, "general clause on limitations" and Article Y, "level of protection", including the prohibition of abuse of rights. The chair thanked both speakers and undertook to study their contribution.
4. Following that discussion, the Praesidium resumed its proceedings as drafting committee and reviewed the social articles and the preliminary drafts for the horizontal clauses.



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**Brussels, 12 May 2000 (16.05)
(OR. fr)****CHARTE 4306/00****CONVENT 32****RECORD**

Subject : Record of the fifth meeting as a working party of the Convention to draw up a draft Charter of Fundamental Rights of the European Union
(held in Brussels on 27 and 28 April 2000)

1. At this meeting the Convention, chaired by Mr Roman HERZOG, held a hearing of sixty-six NGOs specialising in the defence and promotion of fundamental rights. Each of those NGOs represented a whole range of national and local organisations. The rights they covered varied, some having a broad scope and others being more specialised, concentrating on a narrower range of rights.
2. The hearing was designed as an opportunity for civil society to have its voice heard by the Convention; each NGO had five minutes in which to make its suggestions or outline its ideas on the drafting of the Charter. On the whole the mood was a very open one and enabled a number of important points to be clarified, particularly with regard to social rights; strong concern was also expressed on the subject of non-discrimination and equality. The great

majority of NGOs provided written submissions in support of their oral statements. As soon as they have been forwarded to the Convention secretariat they will be posted in their original language on the Convention's Internet site.

3. Following the hearing, the Convention resumed work at the point where it had left off at its previous meeting. It completed the first reading of the draft Articles relating to social rights (Articles 9 to 12 of CHARTE 4192/00 CONVENT 18, the three Articles in CHARTE 4193/00 convent 19, and the rights set out in CHARTE 4227/00 CONVENT 26).
4. The Chairman invited the Convention to reconvene on 3 and 4 May 2000.

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Brussels, 12 May 2000 (16.05)
(OR. fr)

CHARTE 4307/00

CONVENT 33

REPORT

Subject : Eighth meeting of the Praesidium, Brussels, 3 and 4 May 2000
– Outcome of proceedings

1. At its eighth meeting the Praesidium, chaired by Mr Roman HERZOG and subsequently by Mr MENDES de VIGO, carried out a re-reading of the draft Articles on the whole range of civil and political rights and citizens' rights.
2. The document emerging from the meeting should be distributed to the members of the Convention in all the languages around 12 May 2000.

PRESIDENCY CONCLUSIONS

SANTA MARIA DA FEIRA EUROPEAN COUNCIL

19 AND 20 JUNE 2000

1. The European Council met in Santa Maria da Feira on 19 and 20 June. At the start of proceedings, the European Council and the President of the European Parliament, Mrs Nicole Fontaine, exchanged views on the main items under discussion.

I. PREPARING THE FUTURE

2. Against the backdrop of renewed public debate about and interest in the future of the European Union, the European Council has taken a number of important steps aimed at addressing the challenges confronting it in the immediate future.

A. Intergovernmental Conference on institutional reform

3. The European Council notes and welcomes the Presidency report on the Intergovernmental Conference. The Presidency's report demonstrates the significant headway which has been achieved by the Conference in considering Treaty changes which will ensure that the Union continues to have properly functioning, efficient and legitimate institutions after enlargement. The European Council considers in particular that the provisions on closer cooperation introduced into the Treaty of Amsterdam should form part of the Conference's future work, while respecting the need for coherence and solidarity in an enlarged Union. The Conference can move forward on a sound footing so that an overall agreement can be reached in December in line with the timetable laid down by the Cologne and Helsinki European Councils.

B. Charter of Fundamental Rights

4. The European Council extended its heartfelt sympathy to Mr Roman Herzog and expressed its appreciation for his invaluable personal contribution to the Convention's work. Mr Ignacio Mendez de Vigo, Vice-Chair of the Convention entrusted with drawing up a draft Charter of fundamental rights of the European Union, briefed the European Council on work in hand.

5. The Convention is urged to continue its work in accordance with the timetable laid down in the mandate from the Cologne European Council so that a draft document is presented in advance of the European Council in October 2000.

C. Common European Security and Defence Policy

6. The European Council reaffirms its commitment to building a Common European Security and Defence Policy capable of reinforcing the Union's external action through the development of a military crisis management capability as well as a civilian one, in full respect of the principles of the United Nations Charter.

7. The European Council welcomes the Presidency report endorsed by the Council on "Strengthening the Common European Security and Defence Policy" and associated documents (*see Annex I*). Satisfactory progress has been made in fulfilment of the Helsinki mandate on both the military and the civilian aspects of crisis management. In this context, the European Council notes the progressive development of the interim Political and Security Committee and the interim military body established at Helsinki.

8.

Improving European military capabilities remains central to the credibility and effectiveness of the Common European Security and Defence Policy. The European Council is determined to meet the Headline Goal targets in 2003 as agreed in Helsinki. In this context, it looks forward to the Capabilities Commitment Conference later this year, where Member States will make initial national commitments, and to the creation of a review mechanism for measuring progress towards the achievement of those targets. The necessary transparency and dialogue between the Union and NATO will be ensured and NATO expertise will be sought on capability goal requirements.

9. Principles and modalities for arrangements have been identified to allow non-EU European NATO members and other EU accession candidates to contribute to EU military crisis management. Principles for consultation with NATO on military issues and modalities for developing EU-NATO relations have also been identified in four areas covering security issues, capability goals, the modalities for EU access to NATO assets, and the definition of permanent consultation arrangements.

10. Contributions are invited from all partner third states to the improvement of European capabilities. The European Council welcomes the offers made by Turkey, Norway, Poland and the Czech Republic, which will expand the range of capabilities available for EU-led operations.

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**Brussels, 17 October 2000 (18.10)
(OR. fr)****CHARTE 4955/00****CONVENT 51****SECRETARIAT NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union
– Informal Council meeting in Biarritz, 13 and 14 October 2000

The informal meeting of Heads of State or Government in Biarritz examined the draft Charter of Fundamental Rights of the European Union on Saturday 14 October 2000. The draft was presented by Mr Braibant, Vice-Chairman. The other two Vice-Chairmen, Mr Mendez de Vigo and Mr Jansson, gave their comments. Opening the discussion, President Chirac emphasised the quality of the draft, stating that the text was epoch-making and expressed the essential values recognisable to the fifteen peoples of the Member States.

At the end of the discussions the President recorded that the text was final and would not be amended. It would be submitted to the European Parliament, the Council and the Commission with a view to a solemn proclamation in Nice. The question of the legal nature of the Charter would be discussed in accordance with the Cologne conclusions.

Tribute was paid to President Roman Herzog, under whose authority the Convention was able to conclude its work successfully.

The Secretariat would like to thank all the members of the Convention for their cooperation and their understanding of the practical difficulties involved in carrying out work of such scope within short time-limits. It asks them to excuse the constraints and uncertainties which the unprecedented nature of the exercise entailed.



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**Brussels, 19 October 2000 (20.10)
(OR. fr)****CHARTE 4957/00****CONVENT 52****LETTER****from the Vice-Chairman to the members of the Convention**

Dear Sir/Madam,

At the informal meeting of Heads of State and of government in Biarritz, the three Vice-Chairmen of the Convention were invited, in the absence of President Herzog, to submit to the Heads of State and of government, the draft Charter of Fundamental Rights of the European Union as resulting from the Convention's deliberations.

We therefore intervened to highlight the main aspects of the draft and of the method followed. President Chirac has asked us to express his appreciation of the work performed by the Convention and to send President Herzog his best wishes for a speedy recovery.

It emerged from the discussions of the Heads of State and of government that the text submitted on behalf of the Convention is final and will be officially proclaimed in Nice. The issue of the legal nature of the Charter will be examined in the manner defined in the conclusions of the Cologne European Council.

Our proceedings have therefore come to an end and on this occasion we would like to thank you for your active involvement. Your participation, your sense of reality and your spirit of compromise have made it possible – despite our different origins and approaches or perhaps because of them – to reach agreement on a text of which we all wish to underline the quality and relevance as an expression of values common to the European peoples.

(Complimentary close).

Guy BRAIBANT

Inigo MENDEZ DE VIGO

Gunnar JANSSON

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE**fundamental.rights@consilium.eu.int**

Bruxelles, le 27 octobre 2000**CHARTE 4958/00****CONVENT 53****NOTE D'INFORMATION DU SECRETARIAT**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne
 – Verbatim de la réunion de la Convention du 26 septembre 2000 ¹

PRESIDENT (Gunnar JANSSON)

Mesdames, Messieurs, chers collègues, bonjour et bienvenue à cette réunion plénière. Pour commencer, je ferai quatre annonces. Premièrement, après nos réunions de groupes hier, le præsidium s'est réuni en l'absence du président HERZOG. Le Convent 47 constitue la base de nos débats aujourd'hui ainsi qu'il a été amendé 4470/00 COR 1. Nous nous efforçons de l'avoir dans toutes les langues. Je crois que c'est déjà le cas. Si tel n'est pas le cas, il sera disponible prochainement dans toutes les langues. Deuxième remarque: le professeur BRAIBANT présentera ces documents dans l'ensemble après que j'aie fait ces annonces. Il présentera ce document tel qu'il a été amendé par le Praesidium. Troisième remarque: à l'issue de cette présentation par le professeur BRAIBANT, vous aurez la parole. Tout le monde pourra s'exprimer. Essayons de nous respecter les uns les autres et de ne pas parler plus de trois minutes si possible, mes chers collègues. Il ne s'agit pas d'une règle, il s'agit d'un principe. Nous avons le droit, bien sûr, conformément à l'article 12, de nous exprimer, mais il faut également se respecter et respecter le temps de parole de trois minutes. À l'issue de quoi, s'il y a suffisamment de temps, nous aurons les suppléants qui s'exprimeront,

¹ Ce verbatim sera diffusé uniquement en langue française.

nous aurons une pause à 12 h 30 puis nous poursuivrons nos travaux à 14 h 00 en nous efforçant d'achever nos travaux vers 17 h 00 pour pouvoir laisser le temps au Praesidium de tirer les conclusions des débats. Quatrième commentaire, j'espère que chacun interviendra de manière à ce que nous, au Praesidium, puissions tirer les conclusions idoines afin d'informer le président pour qu'il puisse interpréter les avis de cette convention et tout cela conformément aux décisions prises à Cologne et à Tampere. Nous savons que c'est la tâche du président de tirer les conclusions de cette convention et, bien sûr, après consultation des vice-présidents. Et nous demandons également votre avis, vos recommandations sur ces textes. Je donne maintenant la parole à M. BRAIBANT. Commençons sur la base du doc. 47 tel qu'amendé.

M. BRABANT

J'ai l'honneur de vous présenter quelques explications sur les derniers amendements à la charte que le présidium a préparé hier soir après les séances des trois composantes de la convention. Nous étions naturellement et malheureusement sans le président HERZOG, mais pour reprendre une expression qu'il avait employée lui-même au début de nos travaux, nous avons fait "comme si" il était là. C'est à dire que nous avons essayé d'interpréter sa position personnelle et nous avons pu le faire plus facilement du fait de la présence de ses collaborateurs les plus proches. Mais naturellement, une fois ce texte examiné aujourd'hui, nous le lui enverrons pour qu'il en fasse l'usage qu'il voudra en faire. Nous avons préparé ces amendements avec à l'esprit deux principes, je dirais, puisqu'on a beaucoup employé ce mot dans cette convention. Le premier c'est de toucher le moins le possible à la charte, d'apporter le moins de modifications possibles et vous pourrez constater que le nombre d'amendements proposés est d'une vingtaine et que certains sont d'ailleurs des amendements de pure forme et la deuxième idée, le deuxième principe, c'est de ne pas porter atteinte à l'équilibre de la charte telle que nous l'avions obtenue et par conséquent de ne pas causer de difficultés ni d'un côté ni de l'autre pour approuver ces amendements. Dernier point, il y aura également mais ce n'est pas distribué aujourd'hui, des compléments aux explications. Et ces compléments permettront de donner des apaisements ou de permettre des adhésions à certains articles qui peuvent provoquer des controverses. Alors, je commence naturellement par le préambule, vous avez tous ce document sous les yeux et la première modification est particulièrement importante puisque vous le savez, elle avait donné lieu à des polémiques ou à des difficultés entre les composantes. Il s'agissait de remplacer le mot, l'expression "s'inspirant de son héritage culturel, humaniste et religieux" par une autre expression qui serait plus neutre parce que le mot religieux a une connotation qui aurait rendu son acceptation impossible par la France du point de vue constitutionnel et pas seulement par la France, je tiens à le dire, ce n'était pas un match

France contre reste de l'Europe, c'était un match de plusieurs pays contre plusieurs autres pays. Il fallait éviter donc des difficultés de ce côté-là et la solution que le présidium a adoptée et qui lui était d'ailleurs proposée par le groupe des parlementaires européens, qui était à l'origine du présent amendement, est la suivante: l'Union européenne, consciente de son patrimoine spirituel et moral, se fonde sur les valeurs indivisibles et universelles etc. Je voudrais donner deux ou trois précisions à ce sujet. D'abord ce texte s'inspire du préambule du traité du Conseil de l'Europe de 1949 dans lequel il y a une phrase analogue avec notamment les deux mots: valeurs spirituelles et morales. Deuxièmement, on a substitué le mot "patrimoine" au mot "héritage" parce que le patrimoine c'est le présent et l'avenir et l'héritage c'est plutôt le passé. Et troisièmement, cette expression ne peut choquer aucun pays, notamment pas la France. Il y a toutefois un petit problème de traduction que je vous signale, le texte allemand devrait comprendre au lieu de actuellement: "geistlich"- "geistlich-religiös" c'est paraît-il la traduction correcte de ce mot en allemand. Naturellement, ce n'est pas de mon ressort, je ne suis pas germanophone et je crois que là c'est un problème linguistique mais en tout cas dans les autres langues je pense qu'il n'y aura aucune difficulté pour traduire directement "spirituel" par des mots équivalents et en français c'est spirituel. Je continue avec le préambule, le deuxième amendement est beaucoup moins important mais significatif quand même, au troisième alinéa nous proposons de mettre au lieu de : l'Union contribue à la préservation" d'ajouter "et au développement" de ces valeurs communes. La préservation ayant un caractère un peu statique , le développement ayant un caractère plus dynamique. Au quatrième alinéa, je crois que c'est une modification de forme, la nouvelle formule c'est: "à cette fin, il est nécessaire, en les rendant plus visibles dans une charte, de renforcer la protection des droits fondamentaux". Le cinquième alinéa comporte un amendement beaucoup plus important et qui procède d'ailleurs d'amendements présentés par plusieurs membres des différentes composantes, c'est d'ajouter aux traditions constitutionnelles, les obligations internationales communes aux Etats membres. C'est une formule allégée, synthétique, mais qui couvre beaucoup de choses. Naturellement, la convention internationale des droits de l'enfant, les conventions de l'organisation internationale du travail, etc. Nous n'avons pas détaillé, mais je rappelle que ces obligations ou ces conventions internationales étaient déjà citées dans l'article 51 ou 52, je ne sais plus parce que la numérotation a un peu changé. Enfin, le septième alinéa comprend également l'ajout d'un mot, nous avons dit "les droits et libertés" et nous disons maintenant, les droits, libertés et principes" pour couvrir toutes les catégories essentielles de la charte. Voilà en ce qui concerne le préambule. Je vais vous faire un exposé global et ensuite vous pourrez discuter sur tel et tel point. Le paragraphe 2 de l'article 11 devient "la liberté des médias et leur pluralisme sont respectés" au lieu de "garantis" je ne crois pas que ça comporte beaucoup de difficultés. A l'article 12 il s'agit de plutôt d'une modification de

forme pour répondre à certaines objections qui nous avaient été faites et fondées notamment sur l'idée que le mot "syndicat" revenait plus souvent que les autres. Personnellement je ne pense pas que cela avait beaucoup de signification mais pour donner satisfaction à ceux qui se plaignaient de cette inflation de vocabulaire, on a mis désormais: dans les domaines politique, syndical et civique, ce qui implique (il s'agit de la liberté d'association) le droit de toute personne de fonder avec d'autres des syndicats et de s'y affilier pour la défense de ses intérêts". La deuxième modification, au paragraphe 2 c'est de préciser les partis politiques au niveau de l'Union, il s'agit uniquement de cela. Au lieu de dire "au niveau européen" parce que le mot "européen" n'a pas de signification juridique et certains d'entre nous ont brandi la menace d'avoir de partis russes dans cette expression. Donc ce n'est pas l'Europe géographique, c'est l'Union européenne. L'article 14 c'est encore la substitution d'un mot à un autre, c'est "sont respectées" il s'agit des libertés annexes au droit à l'instruction au lieu de "sont garanties". A l'article 15 on a voulu préciser le titre et le compléter en disant "libertés professionnelles et droit de travailler". A l'article 16 on a introduit et on va le faire dans d'autres articles, ce que j'ai appelé "le refrain". Le refrain c'est: conformément au droit communautaire et aux législations nationales, et pratiques nationales". Nous l'avons introduit là à propos de la liberté d'entreprise, certains ayant pensé qu'il n'y avait pas de raisons de le limiter aux droits sociaux qui viennent ensuite. A l'article 17, c'est une modification qui est minime et à la fois importante, à la deuxième phrase on dit: l'usage des biens peut être réglementé par la loi, dans la mesure nécessaire.." et nous nous sommes inspirés là plus étroitement de la Convention européenne des droits de l'homme. Et ici nous avons introduit un article qui pour l'instant s'appelle 24bis nouveau, c'est le seul article nouveau que nous avons introduit mais nous avons constaté qu'il était proposé unanimement par les trois composantes et moi-même, je dois dire que personnellement, je regrettais son absence jusqu'à présent. C'est un article sur les personnes âgées. Nous avons des articles sur des enfants, sur les handicapés, permettez-moi, je suis sans doute un des doyens de cette assemblée, de me féliciter personnellement que l'on ait pensé aux personnes âgées qui sont une des parties les plus importantes de la population de l'Europe maintenant et ça donne ceci: l'Union reconnaît et respecte le droit des personnes âgées à mener une vie digne et indépendante et à participer à la vie sociale et culturelle. Les articles 26 et 27 ont été modifiés dans le même sens pour donner satisfaction à des demandes très pressantes, au lieu de dire "à tous les niveaux" nous avons dit dans les deux textes "au niveau approprié". Il y a deux autres modifications. La première c'est qu'à l'article 26, à la demande de la Commission qui est comme on le sait la gardienne des traités et du droit dérivé, nous avons proposé de supprimer sur les questions qui les concernent au sein de l'entreprise car ce n'est pas conforme au droit européen. Les consultations ne sont pas limités aux questions qui les concernent et à l'article 27 nous avons rédigé d'une manière nouvelle la phrase de

manière à bien montrer que les droits qui sont exprimés là ne sont pas couverts par l'expression ancienne qui avait l'air de dire que le droit de grève qui avait fait son introduction comme vous vous en souvenez la dernière fois, était un droit reconnu au niveau européen par la législation européenne. C'est la différence avec la première partie de la phrase, là il y a bien un droit qui est reconnu actuellement au niveau européen, le droit de négocier, de conclure des conventions collectives, en revanche, le droit de recours à des actions collectives, y compris la grève, n'est pas reconnu juridiquement au niveau européen et nous avons voulu ici éviter toute ambiguïté. L'article 29 comprend une addition, c'est le refrain qui avait été demandé, conformément, il s'agit du droit à une protection contre tout licenciement injustifié, conformément au droit communautaire et aux législations et pratiques nationales. A l'article 40 il a été proposé de supprimer une incise qui était selon le principe de neutralité de l'action publique parce qu'on a considéré qu'il était déjà couvert par le mot "impartialement". A l'article 46 il y avait un problème de rédaction car on pouvait penser que les trois alinéas n'étaient pas liés entre eux et que par conséquent les alinéas deux et trois ne s'appliquaient pas aux tribunaux visés à l'alinéa premier. Donc, nous avons voulu exprimer cette idée que, après avoir dit "toute personne dont le droit et libertés garantis par le droit de l'Union ont été violés, a droit à un recours effectif devant un tribunal dans le respect des conditions prévues au présent article". On renvoie donc aux alinéas deux et trois sur le tribunal indépendant et impartial et sur l'aide juridictionnelle. C'était ce que nous avons voulu dire depuis le début mais je crois que la rédaction était maladroite. A l'article 51 paragraphe 1 à la demande de plusieurs composantes nous avons supprimé la possibilité de limitation fondée sur d'autres intérêts légitimes dans une société démocratique. Donc nous ne parlons maintenant que des objectifs d'intérêt général poursuivis par l'Union ou de besoins de protection des droits et libertés d'autrui. L'alinéa 3, celui qui peut-être nous a retenus le plus longtemps dans la totalité de nos débats a fait l'objet d'un amendement qui peut-être ne plaira à personne ou peut-être avec de la chance plaira à tout le monde. Nous avons coupé la phrase. Je rappelle que la phrase se terminait par "... à moins que la présente Charte n'assure une protection plus élevée ou plus étendue". Et comme M. GEIGER nous l'avait fait remarquer hier, on avait essayé avec cette proposition subordonnée de résoudre plusieurs problèmes à la fois et ça n'était pas clair. Et à la fin j'avais dit que je ne comprenais pas le texte, et je ne comprenais pas le débat puisqu'à mon avis le texte revenait au même selon qu'on avait mis cette phrase ou qu'on ne l'avait pas mise. Grammaticalement et logiquement. Alors nous avons voulu être plus clairs, nous avons coupé la phrase, nous avons mis un point après "que leur confère ladite Convention" et ensuite nous avons ajouté "Cette disposition n'empêche pas le droit de l'Union d'accorder une protection plus étendue. Avec cette formule nous avons tenu compte en même temps d'un amendement de M. BEREIJRO qui voulait qu'on parle seulement de protection plus étendue et pas

de protection plus élevée. Mais surtout ce que nous avons voulu c'est bien exprimer cette idée que le droit de l'Union est évolutif et que évidemment à mon avis ça allait sans dire mais peut-être que pour certains ça va mieux en le disant que évidemment on ne pouvait pas interdire aux droits de l'Union d'évoluer. Le dernier amendement est à l'article 52, il a moins de signification. Il s'agit de dire "par le droit de l'Union et le droit international ainsi que par les conventions internationales" pour être plus complets dans les références internationales. Voilà les amendements que nous vous proposons, je crois que la plupart ne posent aucune espèce de difficultés, que un ou deux pourront effectivement donner lieu à discussion et c'est maintenant au Président d'ouvrir cette discussion. Merci.

PRESIDENT

Merci M. BRAIBANT. Voilà à quoi nous avons abouti hier au Présidium. Une information, bien sûr les observateurs peuvent s'exprimer, je ne l'ai pas dit lors de mon exposé introductif. Mes chers collègues maintenant j'ai un certain nombre d'inscrits, une dizaine de personnes inscrites. Je vais les lire : MEYER, PACIOTTI, FRIEDRICH, BARROS MOURA, BONDE, CORNILLET, ..., ..., Et maintenant on en inscrit d'autres. Nous allons commencer avec M. MEYER.

M. MEYER

M. le Président, je pense m'exprimer au nom d'autres délégués si je dis que je remercie le Présidium pour ce nouveau travail qu'il vient de nous présenter et je remercie notre collègue BRABANT pour son excellent exposé. Nous avons maintenant sous les yeux une version de la Charte qui ne nous plaît peut-être pas à tous les niveaux, dans tous ses détails, mais dans l'ensemble nous pouvons nous déclarer fiers de ce résultat qui est le fruit d'un long travail qui pourra peut-être être amélioré à l'un ou l'autre point. Et je pense que les citoyens et les citoyennes pour lesquels nous avons travaillé ici pourront se réjouir que la protection de leur droit des citoyens et de l'homme contre tout éventuel abus soit renforcé. Parce qu'il s'agissait là d'une lacune dans la protection des droits de l'homme, notamment vis-à-vis des abus de l'Union européenne. Cette lacune a été comblée et je pense que cette Charte peut représenter un modèle européen qui signifie clairement que nous ne vivons pas seulement dans une communauté économique mais une communauté de valeurs. J'aimerais maintenant faire trois observations, trois propositions d'amendements, et la troisièmement c'est de loin la plus importante. Tout d'abord l'article 11 paragraphe 2, on parle de la liberté des médias et leur pluralisme que ne sont plus garantis mais respectés maintenant, la justification étant qu'il n'y aurait pas de compétence de l'Union européenne. Pourtant cette compétence on la retrouve dans d'autres articles alors nous estimons que cette Charte ne sert pas un nouveau droit, l'ancienne

formulation nous semblait préférable à celle-ci parce que la liberté des médias est une des clés de voûte de démocratie comme l'avait déjà attesté la Cour constitutionnelle. Ensuite, à l'article 15 il s'agit d'une précision avec l'ajout du droit de travailler, ou plutôt le droit d'avoir un travail plutôt que le droit de travailler et puis il y a un autre article où l'on parle de la liberté d'entreprendre qui ne doit pas être restreinte mais qui doit être respectée en fonction des lois nationales. Deuxième proposition porte sur les articles 26 et 27. Notre collègue BRABANT nous a dit qu'il s'agissait des droits des travailleurs et des travailleuses qui ne sont pas garantis d'une manière générale au niveau de l'Union mais au niveau approprié, c'est l'ajout qui a été apporté ici, ceci me pose un problème, je pense qu'il faut maintenir le niveau européen pour des questions de compétences et notamment des références à l'article 11, ce qui me semble le plus important c'est l'article 2 et l'article 50. On fait référence à la charte sociale et je me souviens des longues discussions que nous avons eues au sein de la Convention et auprès des délégués nationaux et je me souviens qu'il y avait un grand consensus de plus de 2/3 des délégués pour dire que la Charte sociale devait être reprise à l'article 52. Certes on parle de la Charte sociale dans le préambule mais il faut souligner les droits dérivés de la Charte sociale et des documents du Conseil de l'Europe. La Charte sociale n'a pas été ratifiée dans sa forme révisée par tous les Etats membres. Dans le préambule il est dit qu'il faut respecter la Charte sociale dans sa version actuelle. Ensuite la Charte sociale on la retrouve dans les conclusions de Cologne et je pense qu'il ne faudrait pas qu'il y ait une contradiction puisque on retrouve cela dans le préambule et pas à l'article 52. L'article 52 n'est pas très convaincant notamment par rapport à ce qui avait été décidé à Cologne. Je pense qu'on pourrait avoir l'impression en lisant l'article 52 que les droits sociaux sont moins bien protégés. Nous étions d'accord, me semble-t-il pour faire prévaloir les principes de solidarité en Europe et à côté de la Convention européenne des droits de l'homme, l'autre document important sur lequel nous nous fondons c'est la Charte sociale. Alors nous n'avons pas encore procédé à vote et je sais d'ailleurs que ce vote d'ailleurs n'est pas souhaité au sein de notre composante, nous avons décidé de donner un vote indicatif. Je pense que ce serait une bonne chose parce que cela vous permettrait de constater qu'une grande majorité de la Convention souhaite que la Charte sociale apparaisse non seulement dans le préambule mais également dans l'article 52, d'où ma proposition, et j'aimerais que vous relayiez cette requête en faisant un vote à titre indicatif. Merci.

PRESIDENT

Merci Monsieur MEYER.

Ce que nous nous efforçons de faire c'est de trouver un consensus. Que pourront proposer les Vice-présidents à Roman HERZOG. Première remarque, nous n'avons ni le temps ni l'espace pour avoir

des amendements supplémentaires bien sûr chacun peut exprimer son point de vue mais on ne peut intégrer les amendements supplémentaires. Deuxième remarque, j'ai trente personnes inscrites. Je voudrais vous demander de respecter le principe des trois minutes, efforcez-vous de le faire. Faisons de notre mieux. Madame PACIOTTI.

Mme PACIOTTI

Merci Président. J'aimerais remercier sincèrement et chaleureusement la présidence pour l'excellent travail effectué. Je vais vous expliquer quelle est mon évaluation générale de cette Charte. Comme beaucoup d'autres je ne retrouve pas mes souhaits dans cette Charte, les droits sociaux sont une partie importante du modèle de société européenne, du modèle de civilisation européenne, or on les retrouve de manière un peu diluée, en faisant référence aux législations nationales et les droits sociaux ne sont pas suffisamment mis en exergue comme les autres libertés. Pourtant c'est la première fois que dans un instrument international on trouve une liste des droits fondamentaux, droits d'égalité, droits de solidarité et de justice. Alors j'aurais aimé que certaines lacunes fussent comblées non seulement dans le domaine social, je ne trouve pas par exemple le droit à un salaire équitable le droit au revenu minimum, mais dans d'autres secteurs également, je ne retrouve pas le droit de chacun à bénéficier des résultats de la recherche scientifique notamment dans le domaine médical et Dieu sait que nous en avons besoin. Il y a également les imperfections, une de ces imperfections est due à la modification du troisième paragraphe de l'article 51. Il semble que l'on ne soit tourné que vers l'avenir et que l'on ne tienne pas compte de la plus grande protection qu'offre aujourd'hui la Charte par rapport à la Convention. Ceci dit, l'équilibre entre les différents points de vue me semble en fin de compte acceptable. Dans le préambule nous avons éliminé la référence ambiguë à l'héritage religieux et je pense que c'est une bonne chose que l'on ait repris la référence actuelle sans faire référence aux luttes de civilisation qui ont frappé l'Europe. Les droits des personnes âgées sont reconnus, je m'en félicite. Ce compromis me semble donc bon. Alors j'espère que cette conclusion sera partagée par ceux qui n'avaient pas le même point de vue que moi au départ, nous trouverons certainement des défauts là où je trouve des excès ou vice versa, mais j'espère que nous arriverons à un consensus et si c'est le cas nous aurons réalisé notre mandat qui nous avait été confié et nous aurons obtenu cette Charte, ce qui me semble un pas considérable en avant sur la voie de la construction européenne et je vais vous expliquer pourquoi ce pas est indispensable. L'Union européenne aujourd'hui ne se borne plus au marché. Elle est en train de construire un espace de sécurité, de liberté et de justice, et on intervient donc sur les droits et libertés des citoyens et l'Europe doit le faire en respectant leurs droits fondamentaux. L'article 6 du Traité le dit déjà mais il ne dresse pas la liste de ces droits. Cette Charte comble cette lacune.

Lacune qui avait été aggravée par la jurisprudence de la Cour de justice européenne. L'Union européenne demande aux pays candidats de respecter les droits fondamentaux et leur demande donc de dénoncer le non respect de ces droits, c'est à cela que sert cette Charte. La Charte, c'est la carte de visite de l'Union européenne, nous ne sommes pas un peuple unique, nous sommes composés de nations, de traditions, de cultures, de religions différentes et nous serons de plus en plus nombreux et nous devons dire clairement ce qui nous unit en insistant sur, à savoir le respect de l'état de droit des principes de la démocratie sur lesquels nous avons construit une communauté capable de vivre en paix et ce pour la première fois au cours des siècles de notre histoire. Ce qui nous unit c'est le respect des obligations de solidarité et nous essayons de fonder sur ces obligations une société où les citoyens n'auraient plus de besoin, n'auraient plus d'inquiétude. A partir du moment où nous reconnaissons des droits qui ont été reconnus par les chefs d'Etats des gouvernements de l'Union on fait un pas en avant sur la voie de démocratisation de l'Union. L'Union ne se compose pas seulement d'Etats, aujourd'hui les sujets ne sont plus les Etats mais les citoyens de l'Union. Evidemment il faudra compléter cette progression par l'adoption d'un statut contraignant pour cette Charte mais aujourd'hui nous sommes en trait de jeter les bases de ce succès et maintenant que nous avons rempli notre mandat, avant l'échéance, nous pouvons tous revendiquer une partie de ce succès et je pense que maintenant il revient à la présidence de formaliser ce succès et je lui rends hommage.

PRESIDENT

Très bien, j'espère que vous pouvez expliquer qu'en fait, accepter le fait que lorsqu'on sera à dix secondes des trois minutes du temps imparti, j'espère que vous accepterez que je vous fasse une remarque parce que aussi non nous risquons de perdre complètement tout notre après-midi.

M. FRIEDRICH

J'aimerais remercier le praesidium pour l'énorme travail abattu. Le texte que nous avons sous les yeux est un bon résultat, est acceptable et je dois dire que nous ne nous y attendions pas au début. Ce document est tourné vers le 21ème siècle et la Convention pourrait l'accepter me semble-t-il. On a trouvé un équilibre entre les droits fondamentaux classiques et les nouveaux droits. J'aimerais parler de ce vote indicatif. Je sais qu'il y a d'autres questions comme l'article 35 qui, s'il devait y avoir un vote indicatif aboutirait à un vote négatif. Alors je vous recommande de suivre la procédure actuelle, à savoir que la présidence de voir quelle est la tendance, l'orientation générale, et il faudra bien accepter ces résultats. Nous prenons connaissance officiellement de ce qu'a dit Monsieur BRAIBANT à propos de la traduction du mot "spirituel" en allemand. On allemand,

spirituel ne sera pas traduit par "spirituel" mais par "geistlich-religiös", ce que l'on a en anglais "spiritual and moral" devrait se dire en allemand et aussi peut-être en néerlandais "religiös und moralisch", mes collègues me disent "geistlich-religiös" et "moralisch" donc il y a le mot "spirituel" qui doit être traduit de manière à ne soulever aucun abus, aucun excès parce que vous savez qu'on parle aussi de spiritisme. Nous sommes ravis de cette modification linguistique. Ceci dit nous sommes déçus de la formule selon laquelle les droits des médias sont respectés et non pas garantis. Je pense que nous devons éviter au niveau européen de nous lancer dans de grandes législations. Le droit au cartel, le droit des entreprises des médias relève du droit de la concurrence et ce droit doit être appliqué stricto sensu. Je crois que nous devrions reprendre le terme "garanti". Quelques détails notamment sur les recherches d'emploi, la possibilité de recourir à une agence de placement. Ceci dit, d'une manière globale, je serais tout à fait positif.

Monsieur BARROS MOURA

Merci Monsieur le Président, tout d'abord, je souhaite m'associer aux félicitations qui ont été adressées à la Présidence quant à la manière dont les travaux ont été menés et je vous félicite pour le travail réalisé. En effet, j'estime que nous sommes parvenus à achever notre travail avant la date butoir qui nous avait été fixée. Donc, je crois que nous avons appliqué une méthode qui doit constituer un modèle pour ce que nous pourrions appliquer à l'avenir pour ce qui est de la révision des traités. Voilà quelle est ma principale conclusion politique sur le travail réalisé. Deuxième point, ce que nous avons maintenant constitue un excellent compromis pour ce qui est de cette Charte des droits fondamentaux des citoyens de l'Union européenne et bien sûr c'est la première fois que nous établissons un distinguo entre les droits économiques et sociaux et d'autres garanties et je crois que à cet égard nous devons interpréter la Charte comme un principe d'indivisibilité de la liberté solidarité et citoyenneté des citoyens européens et donc il faut offrir plus de protection que ce n'était le cas par le biais des instruments internationaux tels que la Convention européenne des Droits de l'Homme de 1951 et il est bien que la Charte confirme la possibilité d'une protection supérieure à ce qui était stipulé dans les autres instruments et je dirais encore que nous voyons une amélioration de la protection morale et légitime de l'Union européenne qui se voit conférer des compétences qu'elle exercera au niveau politique et indépendamment du fait que je pense que cette Charte permet cependant certaines discriminations vis-à-vis des citoyens de pays tiers qui s'installent dans l'Union européenne et je crois que nous devrions clairement indiquer cela et peut-être essayer de corriger les choses. Alors, j'attire votre attention sur l'article 52 et ensuite l'article 29. Le 52 tout d'abord, il faut ajouter que tous les travailleurs ont un droit à la protection contre le licenciement notamment etc. etc. conformément aux pratiques nationales. Pourquoi parce que il y a

toujours nécessité de protection des droits économiques et à l'article 50, je vous propose de dire lorsque les États membres appliquent le droit communautaire parce que il n'incombe pas aux États membres de décider quelles seront les dérogations au droit communautaire, ce n'est pas leur tâche.

Monsieur KORTHALS ALTES

Merci Monsieur le Président. Je souhaite moi aussi féliciter le præsidium pour la manière dont il a travaillé, résumé la teneur de nos discussions, je me limiterai à un certain nombre d'observations. Tout d'abord sur l'article 14. Ce n'est pas une proposition, il n'y a pas eu de proposition d'amendement mais la traduction en anglais c'est..... de l'anglais et si l'anglais devenait la version qui fait foi on dit "ce droit comporte la faculté de suivre gratuitement l'enseignement obligatoire" alors que, dans le français, on emploie "faculté", dans les versions linguistiques on a utilisé d'autres termes. Je crois qu'il faudrait dire "possibility" au lieu de ce qui y figure et que s'il y lieu de verser un droit, il faut également prévoir une compensation. Mais ce qui est important c'est l'article 51, troisième paragraphe où on propose un amendement, on a supprimé un élément mais là encore peut-être qu'il y a un problème de concordance des traductions. Enfin, il y a des problèmes de formulation mais ce qui est important c'est que cette dernière phrase ne parle plus de la Charte elle-même qui pourrait donner des droits plus vastes et je crois que c'est là que le bât blesse, il y a toujours une ambiguïté et je crois que il faut quand même tenir compte de cela. Merci.

PRESIDENT

Merci. Monsieur BONDE

M. BONDE

Merci. Je crois qu'il s'agit d'un excellent résultat dans l'ensemble et je crois que ce serait parfait s'il s'agissait de l'introduction à une constitution mais ceci va au-delà de la tâche qui était assignée et en même temps limite la compétence des Etats, restreint leur activité parce que nous sommes également liés à des tâches devant également respecter les droits au niveau international, donc il risque d'y avoir un conflit de compétences lorsque il y aura interprétation au niveau national et par rapport également au droit national, surtout par rapport aux arrêts également de la Cour de justice européenne. La Cour de Luxembourg est la cour suprême dans l'Union européenne et il y a également la Cour de Strasbourg et ceci est un fait voilà pourquoi il est difficile de dire quoique ce soit contre ce document qui paraît parfait qui est magnifique, mais il y a une forme de schizophrénie qui est impliquée dans ce document parce que parfois on veut développer l'accès par exemple l'accès aux documents nous avons un magnifique principe qui est inscrit noir sur blanc mais nous

avons également quelque chose dans les traités qui n'a pas de de droit défini dans le traité et il y a 22 organisations qui sont actuellement impliquées dans des procédures de justice face à la Commission pour pouvoir avoir accès à des documents. Ce sont des faits, des réalités qu'il convient de prendre en compte et le droit d'accès aux documents doit être créé dans la réalité ou alors s'agit-il plutôt d'une déclaration d'intention pourrait-on dire. D'autre part, il s'agit également de droits sociaux, droit d'établissement dans l'article 33, sécurité sociale, tout cela est bel et bien de pouvoir accorder la sécurité sociale lorsque l'on change de pays, que l'on traverse la frontière, mais il existe des réalités et chaque modèle de sécurité sociale est fondé sur la fiscalité, des revenus fiscaux, et c'est notre modèle au Danemark donc nous avons le droit d'obtenir ce, d'avoir une couverture sociale, ceci est très beau mais qu'est-ce que cela veut dire. Ça voudrait dire que les Danois ont le droit de transposer leur assurance sociale inexistante dans d'autres pays et ceux qui n'ont pas de droits sociaux qu'en est-il? Et ceux par exemple qui sont couverts par une assurance sociale et qui se rendent au Danemark et bien ça veut dire qu'il y a, qu'il a droit à une protection sociale alors que ce sont les citoyens d'un pays qui financent par le biais de leur fiscalité cette couverture sociale. Donc, peut être que l'on pourrait ajouter un paragraphe que l'on mette aux voix ce paragraphe disant qu'effectivement ces textes lorsqu'il s'agit du financement d'un modèle social particulier qui a des implications sur le, le marché du travail, ne peuvent se référer à ce document qui semble magnifique, et ceci risque d'amener à une explosion mais avant que ça soit adopté. Je propose effectivement que l'on vote sur cet amendement, le 34 sur le document.

PRESIDENT

Merci Monsieur BONDE. M. CORNILLET

M. CORNILLET

Merci M. le Président, tout un mot rapide mais très sincère de félicitations pour le travail réalisé tant par les élus du Présidium que par leurs collaborateurs. Effectivement la journée d'aujourd'hui est peut-être celle qui suivra début octobre pourra être la litanie des frustrations parce que bien naturellement un travail de consensus ça génère des frustrations voir des insatisfactions, mais je pense qu'il faut quitter là ce domaine. Moi, personnellement, je ne manque pas non plus d'insatisfactions, mais cette charte je la voterai, je la voterai parce que je la considère comme très utile politiquement, parce que surtout je n'y trouve rien d'inacceptable eu égard à mes convictions et puis parce que je suis d'un tempérament optimiste, je la trouver perfectible et je ne manquerai pas d'essayer de la rendre meilleure et notamment plaider pour le concept de neutralité qui va largement au-delà de l'équité et de l'impartialité puisque cela recouvre ce que l'administration se doit de ne pas

être partielle mais au-delà de ça de ne véhiculer aucune idéologie, ni aucune conviction dans ses actes mêmes, ça dépasse donc le comportement de l'agent public. Quittons le fond pour la forme si vous le permettez, la forme c'est naturellement l'écriture dont nous parlons, c'est aussi la procédure d'adoption, moi je suis très attaché à une solidité particulière d'adoption au sein du Parlement européen et puis surtout la forme ça va être les commentaires qui vont suivre et là nous sommes tous coauteurs de cette charte mais nous en sommes à partir de tout à l'heure coresponsables de l'image qu'elle va avoir et je n'ai naturellement aucun conseil à donner à aucun collègue, mais pour ma part, je vais m'astreindre à une autocensure, je vous assure et je parle sous le contrôle de mes collègues français, sur le thème de la défaite de la laïcité ou à tout le moins de l'isolement conceptuel français, la disparition des mots "humanisme" et "principe de neutralité" me ferait un certain succès dans la presse française, je résisterai à ce plaisir et comme j'aimerais bien que ma frustration passe parce qu'elle serait partagée par un grand nombre d'entre vous, je voudrais me faire l'avocat du fait que l'image positive de charte va aussi tenir au fait que nous devons quand même en être contents et pas sortir uniquement nos commentaires sur les frustrations ou les insatisfactions que nous avons eues à subir lors de cette rédaction. Merci mes chers collègues.

PRESIDENT

Merci M. CORNILLET. Voilà une déclaration fort claire et dans le temps imparti. Parfait..

M. MANZELLA

M. MANZELLA

Merci Monsieur le président, moi aussi au nom des collègues du Sénat italien je donne mon feu vert à cette charte et à son équilibre général. Je ne vous cacherais pas tout de même que certains des derniers amendements m'ont beaucoup préoccupé, notamment le troisième paragraphe de l'article 51. Qu'est-ce que cela signifie? Ca signifie que dès maintenant, la charte ne permet pas de protection plus étendue des droits, ou est-ce que cela signifie que le droit de l'Union y compris la charte existante fournit déjà une protection plus élargie? Il me semble que le présidium est arrivé à un consensus sur la deuxième interprétation, et cette interprétation est tout à fait conforme au mandat de Cologne. N'oublions pas que Cologne, on nous a dit qu'à travers la visibilité des droits nous pouvions les renforcer. Donc, en soit cette charte contient un principe évolutif et nous ne devons pas faire référence à d'autres mesures juridiques successives. En fait, cet amendement reflète la préoccupation que nous avons toujours exprimée au cours de notre travail à savoir que la charte n'affaiblisse la convention. La nouvelle charte se fonde sur le principe juridique d'une non-contradiction mais dans aucun point, à aucun article il n'y a affaiblissement de la convention

précédente. La charte ne doit pas être une photocopie de la convention européenne de sauvegarde des droits de l'homme. La construction européenne se base sur un principe dynamique, ce principe dynamique se fonde sur l'union étroite des peuples et ce que nous affirmons dans le préambule. En d'autres termes, sur le plan des droits fondamentaux, l'intégration des peuples de l'Union est plus étroite que l'intégration des pays qui siègent au Conseil de l'Europe. Donc, la nouvelle charte, sans affaiblir la convention européenne des droits de l'homme, doit exprimer une protection plus forte expression d'une intégration plus forte entre les peuples de l'Union et elle doit présenter une protection plus élevée parce que n'oublions pas que le Conseil européen, de l'Europe, n'a pas de pouvoirs européens et n'a pas de pouvoirs similaires aux pouvoirs nationaux et c'est pour cette raison que notre charte doit présenter une protection plus élevée. Le point 48 est assez approximatif, on fait une, on essaie de faire une liste, une comparaison entre les listes, des listes de droits qui reprennent des droits qui sont équivalents et d'autres qui ne le sont pas. Dans les droits équivalents, il y a tout le chapitre sur la citoyenneté européenne, notamment le droit à une bonne administration. Pour le Conseil de l'Europe, c'est inconcevable puisque le Conseil de l'Europe n'a pas d'administration. La citoyenneté européenne n'est pas une partie marginale de notre travail au contraire, cela se trouve au cœur de notre travail puisque nous disons dans notre préambule "l'Union met la personne au cœur de son action en instituant la citoyenneté européenne". Je conclus président, cette charte n'est ni une synthèse, ni une photocopie de la convention européenne des droits de l'homme, donc, aucune contradiction, aucun affaiblissement du régime des droits du Conseil de l'Europe, qui reste le cadre le plus large, le cercle le plus large au sein duquel s'insère cette carte, mais cela n'empêche pas non plus les droits fondamentaux d'évoluer. Il serait ridicule de vouloir fixer les droits à la situation de 1950, cette charte absorbe ces droits dans un cadre juridique plus stricte et plus intense. Merci Président.

PRESIDENT

Merci M. MANZELLA. MME CEDERSCHIÖLD.

MME CEDERSCHIÖLD

Merci beaucoup. J'aimerais également remercier le bureau pour cette immense tâche et pour leur excellent travail qu'ils ont réalisé. Je voudrais également bien transmettre nos vœux de prompt rétablissement au Président Herzog. Je crois que globalement il s'agit d'un excellent travail et d'une bonne base pour plus tard être élargi. Nous avons une certitude juridique, nous avons une base correcte, nous avons une très bonne protection de l'individu et une norme très élevée. Quand il s'agit des droits individuels, et des droits de la propriété, je crois que c'est très important surtout pour

ceux qui ont très peu lorsque l'on peut considérer qu'il ne s'agit pas de quelque chose de très important, mais pour ceux qui possède ceci, je crois que c'est parfait. En suédois, je crois il faut et que la traduction suédoise en temps utile traduite en français soit équivalent à la traduction dans le texte anglais. Pour le 24, les textes anglais, français et suédois ne vont pas tout à fait dans le même sens, je crois que le texte anglais est bon et qu'il faut ajuster le texte suédois à ce texte anglais. Pour l'article 40, pour la neutralité, je crois que ceci devrait être maintenu. Effectivement, je crois que la traduction suédoise devrait être revue, je crois que de très nombreux suédois seraient d'accord que ce principe de neutralité soit maintenu en tant que tel dans le texte. Je me suis efforcée ici de trouver l'aspect de neutralité des sexes, neutralité des genres, je crois qu'il y a eu de grandes résistances à cet égard de diverses parties, mais je crois que les textes anglais et français sont neutres d'un point de vue des genres mais le texte suédois, ne l'est pas forcément. Nous avons une tradition de neutralité dans les textes juridiques chez nous et un certain nombre d'entre eux ne le sont pas et nous demandons des amendements à cet égard, nous espérons que le texte suédois soit amené dans le sens des textes anglais et français qui sont neutres du point de vue des genres. Il y a un certain nombre de lacunes qui sont importantes et qui doivent être comblées à cet égard. Je souhaiterais que cette convention soit plus courte et qu'elle se concentre plus sur le contenu des droits fondamentaux strictement, je crois qu'un certain nombre de droits ici ne doivent pas être entendus et compris comme des droits fondamentaux selon moi, mais notre rôle ici n'est pas de réfléchir en termes nationaux, mais de réfléchir en termes européens et dans cet esprit j'exprime mon soutien à cette convention.

PRESIDENT

Merci. Nous intégrons les remarques linguistiques l'égalité des chances bien entendu doit être entièrement appliquée et le secrétariat a promis que les articles qui ne sont pas clairs à cet égard seront améliorés et revus. Merci. M. VOGGENHUBER.

M. VOGGENHUBER

Merci Président, vous comprendrez qu'il est difficile de nous prononcer de manière globale après les modifications qui ont été apportées à cette Charte. J'aimerais tout de même essayer de vous présenter quelques remarques. Je sais parfaitement bien que cette charte représente le premier texte sur les droits des citoyens, les droits fondamentaux en Europe. Alors on voit en filigrane qu'il y a enchevêtrement des droits classiques, des droits nouveaux; et c'est important également de montrer que cette charte devrait être appliquée par les pays candidats et dans ce sens c'est un événement tout à fait historique dans le débat sur les droits fondamentaux. La proposition du présidium est

équilibrée. Des droits économiques sont présentés de manière très claire sans restriction et l'article 16 est même un fait sans précédent puisque l'on parle de la liberté d'entreprise. Alors certains droits sont exprimés différemment qu'il avait été à Cologne comme des droits immédiats, des droits directs. J'aimerais m'associer à ce qu'a dit le professeur Mayer. (Nous voulons dire aux citoyens européens), qui voudrait dire aux citoyens que les droits fondamentaux ne seront pas reconnus au niveau européen. Le présidium ne le fera certainement pas et 80 % des composantes ne le feront pas non plus parce nous avons demandé que ces droits soient ancrés dans la charte et le présidium a négligé la majorité en disant que les représentants gouvernementaux bloquaient cela et la Commission également. Alors je me demande, et je demande au représentant de la Commission et aux représentants des gouvernements s'ils peuvent absolument défendre que le droit à un salaire équitable ne soit pas repris dans cette charte. Moi je ne pourrais pas le dire aux citoyens et je ne pourrais pas défendre cette position. Ce consensus nous ne pourrions pas vous le donner, il ne peut pas y avoir de consensus à l'égard du mandat de Cologne. Je pense que nous avons encore du temps pour améliorer ces erreurs de la charte en nous adaptant à l'opinion de la majorité qui souhaite que ces droits fondamentaux soient reconnus et nous pourrions mentionner la charte sociale à l'article 52, et d'ailleurs c'est ce qu'on a nous demandé à Cologne et nous devons insister sur l'introduction d'un droit à un salaire équitable, nous insistons absolument sur ces droits. Moi je n'entrerai pas dans le débat sur le déséquilibre entre les droits économiques et les autres droits notamment les droits dans le domaine d'environnement. On a affaibli le pluralisme des médias et il y a une chose en tout cas que je ne puis accepter c'est que la charte ne mentionne pas le droit fondamental à un salaire égal. Je ne le tolère pas, je ne l'accepte pas et j'en termine parce que en l'absence de ce droit la charte court le risque de ne pas être un progrès dans le débat européen plutôt une source d'érosion.

PRESIDENT

Merci c'est vrai nous allons nous arrêter et faire une pause à midi et demi. Nous avons encore deux orateurs puis ensuite nous reviendrons à 14h00 pile. (14.00 dit le président) afin de poursuivre nos travaux cet après-midi durant deux heures environ ce qui probablement suffira, nous l'espérons, pour que chacun puisse s'exprimer sur la liste, Mme MAIJ-WEGGEN d'abord puis LALLEMAND.

Mme MAIJ-WEGGEN

Merci Monsieur le Président. Tout d'abord je remercie le présidium du travail très intensif et excellent qu'il a réalisé. Ce ne faut pas un travail très aisé pour arriver aux solutions que vous nous avez soumises. Vous avez excellemment travaillé. C'est un document très important. Nous avons

bien sûr, tout un chacun, nos points de vue, mais je crois il ne serait pas bon de procéder à un vote indicatif. Certains ont dit qu'ils pouvaient appuyer cette idée, mais un vote indicatif risque d'avoir pour effet d'arriver devant les ministres avec une attitude affaiblie. Je ne crois pas que ce soit une bonne idée. Quelques observations. Je suis très heureuse que le concept religion soit traduit par spirituel ou moral et je crois que cela revient pratiquement au même, mais du point de vue terminologique le terme "geestelijke" est bien meilleur que "spiritueel". Deuxièmement pour ce qui est de l'article relatif aux médias, à vrai dire j'eus préféré que le mot "garanti" ne soit pas remplacé par "respecté". Donc là c'est une observation quelque peu critique. Si l'on pouvait modifier cela je le préférerais. Troisièmement, je suis heureuse du nouvel article 24 bis, c'est un complément excellent qui compense une lacune. Quatrièmement, article 19. Là on parle du non renvoi de personnes lors de certaines conditions, je pense aux réfugiés, je ne sais pas si le présidium a pensé que dans ce domaine et par ce moyen on peut protéger certains délinquants même des délinquants politiques, et donc je me demande si cela n'offre pas une protection à des individus que nous ne voudrions pas protéger. Article 41. Le droit d'accès aux documents. Là on part du traité existant mais un règlement va être bientôt adopté sur la publicité des documents et cet accès, ce droit d'accès sera fortement modifié. Je suis un des rapporteurs sur ce dossier. Je me demande s'il ne faudrait pas non seulement parler du traité et l'article 255 mais également la législation européenne qui est fondée dessus et ce en raison du nouveau règlement qui a été adopté. Je crois que ce serait une bonne idée. Voilà mes mises en garde, Monsieur le Président, ce ne sont pas des points de rupture mais plutôt des suggestions d'amélioration et ce qui est important et ce sera ma dernière observation, il est important de clairement indiquer à quel endroit, sur quels éléments ce document constitue une amélioration; Si nous ne pouvons pas clairement indiquer cela aux citoyens européens nous avons raté une occasion de le faire, je crois qu'il faut vraiment indiquer quels sont les endroits où le document constitue un progrès et je vous remercie encore une fois de l'excellent travail réalisé.

PRESIDENT

Merci Mme MAIJ-WEGGEN, je crois que nous avons fait de notre mieux. Et c'est à vous d'en juger. Dernier orateur pour cette matinée, Monsieur LALLEMAND puis ensuite nous ferons une pause.

Monsieur LALLEMAND

Monsieur le Président, je vais essayer de me limiter essentiellement aux ajouts qui ont été proposés vu le manque de temps, mais d'abord dans le préambule. Je me réjouis certainement de la suppression de la partie de la phrase qui avait été retenue mais j'aurais préféré qu'on élimine le

membre de phrase plutôt que de changer la référence comme on le fait. En vérité je crois qu'il faut le dire l'affirmation de la charte est indépendante de l'histoire particulière de l'Union européenne, elle n'implique pas des références à l'histoire, à une culture, à une religion, à une philosophie spécifique qui lui serait propre, car ces références accroissent l'ambiguïté des termes. Quelle est la portée en effet, l'étendue de ces mots, patrimoine, spirituel et moral. Quel est le lien nécessité de ce patrimoine des quinze avec l'affirmation de droits universels. Cela peut susciter débat, des sous-entendus notamment historiques sur le rôle de l'Europe dans l'histoire du monde. En tout cas je puis rappeler qu'aucune déclaration des droits universels à ma connaissance n'a été liée à l'affirmation d'une spécificité nationale ou plurinationale. Deuxième remarque sur l'article 29, on parle du droit du travailleur qui a droit à une protection. On a malheureusement pas reconnu de façon nette le droit au travail plutôt que le droit de travailler. Et je crois que cette insuffisance est importante, qu'elle est grave comme sont assez significatives l'absence de l'affirmation de droits sociaux, pas de droits au logement, pas de droit au regroupement familial et au-delà des droits sociaux il y a aussi les droits politiques, on peut regretter de ne pas trouver une ouverture au vote des non-européens installés depuis longtemps dans certaines communes des pays de l'Union. Je crois que là on ne marque pas une évolution, une évolution qui se caractérise par une affirmation de la citoyenneté au-delà de l'appartenance nationale. Et je crois qu'il serait important d'élargir la citoyenneté au niveau européen, nous le faisons, mais aussi dans certains cas dans certaines conditions, dans toute la mesure du possible, donner à cette notion une dimension universelle. Alors l'article 40, on supprime la référence au principe de neutralité de l'action publique. Sans doute il y a une ambiguïté du terme, je suis bien d'accord. Mais il est clair que le principe de neutralité de l'action publique visait aussi la laïcité de l'État, c'est-à-dire le respect, la séparation de l'ordre public, d'une idéologie, d'une religion, d'un passé particulier. Je crois qu'il est très important de rappeler que dans le passé européen, nous avons eu de longs débats. Puis-je rappeler que le Pape Pie XI avait notamment interdit la liberté d'expression, la liberté d'information, etc. Je crois que tout cela montre combien la référence du principe de neutralité est importante. La neutralité de l'action publique s'est fondée sur le droit à l'objection de conscience, le droit de ne pas adhérer à un ordre établi, qu'il soit public ou qu'il soit privé. Et enfin, pour conclure, je marquerai mon adhésion au projet de charte malgré ses insuffisances importantes, ses insuffisances graves, je crois que le débat devra continuer à ce sujet mais je pense que la charte est une affirmation idéologique et morale importante qui retentira dans des pays qui dégagent des droits fondamentaux d'une histoire dont il faut bien rappeler qu'elle fut oppressante et cynique. Comment ne pas le rappeler ici. Et le consensus qu'il s'est dégagé révèle une communauté profonde de valeurs de la démocratie et elle annonce peut-être un événement fondateur, du moins je l'espère. Elle annonce peut-être le fondement d'un rapprochement

institutionnel entre les différents États et nations de l'Europe et elle annonce donc ce qu'on pourrait appeler une communauté de destins. Je vous remercie de votre attention.

PRESIDENT

Merci M. LALLEMAND. Mes chers collègues, il y a déjà douze personnes qui ne sont exprimées durant cette matinée et il reste encore 24 inscrits pour cet après-midi. Je voudrais tout d'abord corriger ce que j'ai dit: nous ne poursuivrons pas nos travaux à 14 h 00 piles, mais nous poursuivrons à 14 h 30 du fait de raisons techniques.

Après-midi

PRESIDENT (M. MENDEZ DE VIGO)

Chers collègues, nous allons poursuivre la réunion entamée ce matin et conformément à l'ordre du jour que m'a transmis M. JANSSON, et la liste des demandes d'intervention, je vais donner la parole pour trois minutes à M. KIRKHOPE.

M. KIRKHOPE

Monsieur le président, il y a beaucoup de bruit dans la salle. Je vais quand même essayer de respecter mon temps de parole. En commençant par le principe de la déclaration universelle des droits de l'homme de 1748, en passant par la Convention des droits de l'homme du Conseil de l'Europe et le protocole qui a suivi cette convention. Lorsque je suis venu dans cette convention, j'ai immédiatement été plein d'espoir en écoutant M. SÖDERMANN qui nous a dit que pour la première fois les citoyens européens seraient protégés dans leur relation avec les institutions tout puissantes. Un écart faussé qui ne pourrait être comblé que par nous depuis les efforts du Conseil de l'Europe. Nous avons progressé mais je crains que de nombreux de mes collègues, de nombreux États aient des problèmes de fond face à certains articles de la charte. L'emploi, les droits sociaux sont des domaines qui ne sont pas reflétés directement dans la convention sont des domaines qui posent des difficultés véritables pour plusieurs pays et pour plusieurs représentants politiques. Ils ne sont pas dans la convention mais ils sont quand même présents. Il y a la question de l'avenir des compétences de l'Union européenne, question que je vous pose en tant que juriste à propos des conflits entre tribunaux. Des conflits quant à l'interprétation du sens de la charte quant aux différentes interprétations entre la Convention des droits de l'homme et la charte. En tant que juriste, je devrais me féliciter qu'il y ait autant de querelles entre juristes mais la question est de savoir si les droits de l'homme seront véritablement protégés ou si au contraire ils seront moins protégés que par

le passé. Moi, je pense qu'ils seront moins protégés. Au Royaume-Uni nous n'avons pas de constitution écrite, M. le président, à la différence de bon nombre de pays représentés ici. Nos législations remontent à des siècles. Notre conception des droits de l'homme remonte à la Magna Carta, nos procédures ont évolué et nous nous appuyons sur les procédures utilisées aujourd'hui à la Cour des droits de l'homme. Donc nous pensons que cette charte peut avoir des implications sur les procédures utilisées par nos tribunaux et sur la défense des droits de l'homme. Est-ce que cette charte sera une partie du traité, est-ce qu'elle sera une déclaration, est-ce que ce sera véritablement un document avec valeur juridique pouvant faire l'objet d'un recours devant les tribunaux? S'il ne s'agit que d'une déclaration, M. le président, et même s'il ne s'agit que d'une déclaration, les tribunaux britanniques devront quand même se pencher sur les détails de cette charte lorsqu'il s'agira des droits de l'homme et de la personne. Je n'ai pas besoin de passer en revue tous les articles, le droit à la vie, simplement, est différent entre la charte et la convention des droits de l'homme. Il y a également des difficultés, des confusions en matière d'interprétation de certaines notions religieuses. Ce sont des problèmes qui restent en suspens. Je ne voudrais pas être simplement négatif et critique, je vous donne l'opinion des conservateurs britanniques. Notre objectif est de défendre les droits de l'homme mais cela ne nous empêche pas de dénoncer les problèmes qui demeurent et qui doivent malheureusement être résolus M. le président.

M. HIRSCH BALLIN

Merci président. Mon avis définitif sur le texte qui nous a été présenté est positif. Ce qui ne veut pas dire que je n'ai pas quelques réserves sur certains points, cela ne vaut pas dire que ici ou là je voudrais bien que les choses soient un peu différentes mais je crois qu'il est très important vis-à-vis de tous les citoyens de l'Union européenne qu'il y ait quelque chose au niveau européen, que l'on donne un sens au développement constitutionnel. Ce texte définit les libertés que nous jugeons importantes, il montre qu'il ne s'agit pas seulement au sein de l'Union de développer la coopération économique, il s'agit aussi de défendre les droits sociaux et culturels et ce sont là des raisons qui nous incitent à apprécier ce texte également vis-à-vis de nos citoyens. Alors, que pouvons-nous faire aujourd'hui? Aujourd'hui nous pouvons peaufiner, finaliser nos contributions au développement juridique de ce texte mais il faudrait aller plus loin, il faut préparer bien sûr une cérémonie solennelle d'adoption de la charte mais cela ne suffit pas. Cela ne suffit pas pour mieux définir le cadre juridique de l'Union européenne. Je pense qu'il est essentiel du point de vue des parlementaires néerlandais avec lesquels j'ai été en permanence en contact, il est essentiel disais-je que tout soit bien clair sur le plan du statut juridique de la charte et sur le plan de ses relations avec d'autres conventions ou traités existants. À ce niveau-là, nous éprouvons encore quelques

préoccupations et il faudra tout particulièrement définir le rapport avec la Convention européenne des droits de l'homme. Le Parlement néerlandais n'a cessé de défendre comme position que l'Union européenne et la Communauté européenne doivent adhérer à la Convention européenne des droits de l'homme. A mon avis, il s'agit là d'une condition sine qua non pour la poursuite de l'application de la charte. Il faut que la question de la relation avec la convention soit bien réglée. Il est évident qu'il va falloir bien réfléchir à l'ancrage de la charte dans un traité, des traités européens éventuellement révisés et je pense que l'inscription de la charte dans les traités de l'Union ne sera possible que si sa relation avec la Convention européenne des droits de l'homme est bien définie. A ce stade-ci, je crois que sur quelques points il y a encore des améliorations possibles. Je rappelle mon plaidoyer en faveur d'une classification de l'article 51. Je pense qu'il faut faire une référence à un tableau comparant les droits évoqués ici et ceux évoqués dans la Convention européenne. La dernière phrase telle qu'elle est là n'est pas claire. Je voudrais aussi faire référence à l'article 52 qui cite d'autres traités ou conventions très à juste titre d'ailleurs et je pense qu'il faut tout particulièrement faire référence aux conventions qui ont été conclues dans le cadre du Conseil de l'Europe. On pourrait dire peut-être "autres conventions du Conseil de l'Europe qui sont d'application dans les États membres, y compris la Charte sociale européenne". Je crois que cette façon de présenter les choses est très claire, elle fait référence aux différences conventions qui sont importantes par rapport à notre charte comme la convention sur la biomédecine et là j'établis le lien avec l'article 13. Voilà, je me contente de cette intervention, je garde aussi quelques réserves à propos de l'article 35 mais dans l'ensemble vous connaissez ma position. Merci.

M. APOSTOLIDIS

Je pense qu'à la fin de nos travaux, chacun d'entre nous devra s'interroger en se demandant si le texte actuel de la charte permet de répondre au mandat de Cologne et également si nous avons réussi à atteindre l'objectif que nous nous étions fixé au départ. Dans ce contexte, nous devons nous poser trois questions, des questions qui ont sans cesse été abordées déjà d'ailleurs. D'abord, est-ce que ce texte a une valeur ajoutée? Est-ce que via les dispositions concrètes qu'il contient nous avons réussi à mieux définir les droits des citoyens à les définir d'une manière claire et compréhensible et, troisième question, est-ce que ce texte renforce la protection des droits des citoyens européens? Dans un premier temps, je répondrai de façon positive à ces trois questions critiques. En ce qui concerne la valeur ajoutée de cette charte, je dirais qu'elle a un volet, une dimension culturelle, politique et sociale. Elle confère ces trois dimensions à l'Union européenne et c'est très important. C'est un nouveau point de départ pour l'Union. Alors, est-ce que ce texte doit être simplement déclaratoire ou est-ce qu'il doit être juridiquement contraignant ? Est-ce que, sur la base de cette

charte, le citoyen pourra faire défendre ses droits ? C'est une autre question qui se pose et qui soulève un autre aspect très important. Le Parlement européen, les parlements nationaux se sont déjà prononcés sur ce texte et à l'écoute de ce qui a déjà été dit il faut s'interroger. Ce texte est-il contraignant ou est-il uniquement déclaratoire ? Est-ce qu'il est déterminant pour l'exécutif au sein de l'Union européenne ? Est-ce qu'il lie d'une quelconque manière ? La question est essentielle, elle soulève toute la question de la démocratie d'ailleurs. On ne peut pas se demander trop longtemps si ce texte est juridiquement contraignant. Nous avons déjà consacré des heures et des heures à sa préparation et donc maintenant il est temps de savoir si ce texte est contraignant ou pas. Il faut trancher ce nœud-là. Alors ajouter disais-je, d'après moi, le seul texte qui au niveau de l'Union réussit à combiner les droits classiques avec les droits économiques et sociaux devrait être celui-ci. C'est une contribution importante, donc à la "défense" des citoyens européens et des travailleurs et ce texte le sera certainement apprécié à sa juste valeur de ce fait-là. Je voudrais d'ailleurs féliciter le Présidium. D'excellentes suggestions ont été faites par le Présidium qui vraiment a fait considérablement progresser les choses. Je voudrais dire aussi malgré tout que je voudrais formuler une réserve importante qui va dans le sens de celle de Monsieur MEYER. A l'article 52 on ne parle pas du traité de l'Union. C'est quand même assez surprenant et c'est une lacune considérable.

PRESIDENT

Merci beaucoup. C'est M. VITORINO qui a la parole.

M. VITORINO

Merci Monsieur le Président

Je demande la parole pour préciser un point auquel la Commission attache beaucoup d'importance. Je pense à l'article 50 paragraphe 1. Le Présidium a proposé que dans l'article sur la limitation des droits, il faudrait dire "autres intérêts légitimes dans une société démocratique" et cette suggestion a été très critiquée parce que ça pouvait être considéré comme une expression un peu ambiguë, et nous sommes arrivés à la décision que cette expression devait être supprimée pour éviter tout malentendu. Cependant après lecture attentive du texte et étant conscient, sur lesquels plusieurs membres ont attiré notre attention, je crois qu'il faut bien se rendre compte que la première partie de la phrase nécessite une précision, une adaptation conformément à cette suppression. Donc, je pense très sincèrement que dans la première partie de cette phrase où nous disions que l'intérêt général recherché par l'Union comme base des droits fondamentaux, là il doit y avoir une petite modification rédactionnelle et on devrait dire que l'intérêt général reconnu par l'Union, les intérêts généraux reconnus par l'Union sont le fondement pour la limite des droits fondamentaux. Je vais

vous donner un exemple. Comme vous le savez l'ordre public n'est pas un intérêt général poursuivi par l'Union, mais étant donné la Convention des droits, et bien c'est le cas, donc on ne pourrait pas comprendre que on ne reconnaît pas l'ordre public comme un fondement pour les droits fondamentaux C'est pas un objectif d'intérêt général poursuivi par l'Union, mais c'est quand même reconnu clairement. Donc je demande à mes collègues du Présidium de préciser que la suppression de cette phrase que je viens de mentionner nécessite une modification rédactionnelle de la phrase précédente qui devrait se lire "nécessaire" et bon vraiment dans le sens des objectifs reconnus par l'Union. Je crois que c'est nécessaire de préciser ce point à ce stade de nos débats.

PRESIDENT

Merci Monsieur VITORINO pour cette précision, M. TARCHYS

M. TARCHYS

Alors je voudrais me rallier à tous ceux qui ont félicité le présidium pour son travail. Je trouve que les conclusions auxquelles nous sommes parvenus sont excellentes. J'y retrouve certaines de mes suggestions, ce qui me fait très plaisir, il y a encore quelques articles, quelques paragraphes un peu préoccupants que nous devons analyser en particulier là où il y a des différences entre la charte et la législation suédoise. Mais d'une façon générale je pense pouvoir dire que la charte est une bonne charte, qu'elle a énormément de qualités. La charte présente à mon avis trois avantages. D'abord, du point de vue symbolique, elle représente un jalon important pour l'Union européenne qui n'est pas seulement une union économique mais qui est également une union de valeur acceptée par les hommes qui peuplent cette union et un engagement en faveur des droits de l'homme. Nous avons réussi à tenir compte des valeurs qui sous-tendent nos législations quelles que soient les différences que nous avons réussies petit à petit à réduire depuis 50 ans, effort qui avait déjà été accompli par le Conseil de l'Europe pour élaborer sa convention des droits de l'homme dont de nombreux éléments se retrouvent également dans notre Charte. Tout ceci a influencé la justice de nos pays respectifs. D'où l'importance de ce texte. Nous avons discuté du caractère contraignant ou pas de ce texte. Sera-t-il contraignant du point de vue juridique ou sera-t-il une déclaration politique. De toute évidence, il s'agit pour moi d'une déclaration politique même si nous savons très bien que la plupart des droits qui figurent dans cette Charte sont déjà considérés comme des droits contraignants dans beaucoup de nos pays. Donc, la législation de nos pays ne va pas être transformée du jour au lendemain. Au contraire, ce que représente cette Charte, c'est une compréhension plus claire de ce que l'Union européenne ne peut pas faire. C'est une possibilité de se défendre pour les Etats membres et pour les citoyens. Cela c'est une fonction importante de la Charte qu'il ne faut pas

négliger. Dans la présentation de la Charte, il est indispensable de ne pas tout mélanger. Il faut savoir précisément à qui s'adresse cette Charte. Elle s'adresse aux organes de l'Union européenne, elle doit être conçue d'une façon globale pour les relations entre l'Union européenne et ses citoyens dans la mesure où les Etats membres appliquent les dispositions communautaires. Je ne voudrais pas entrer davantage dans les détails mais je voudrais simplement réagir à une des remarques du présidium à propos de l'article 51 là où il est question d'autres intérêts légitimes. Je pense qu'il faut encore y réfléchir. Les droits inscrits dans la Charte d'une façon générale sont des droits qui dépendent également des compétences des Etats membres, il ne s'agit pas simplement de l'Union européenne, il s'agit également de droits garantis par les législations de nos états respectifs. Donc, si l'on supprime cette partie du texte, une idée importante disparaît. Voilà encore une fois mes félicitations, M. le président, félicitations générales à l'adresse du présidium.

Merci.

M. OFNER

Merci M. le président. Je serai bref puisque le présidium nous a déjà exprimé que la porte était presque fermée déjà. Donc, on ne pouvait pratiquement plus rien ajouter au document, à moins qu'il y ait des erreurs de traduction ou des petites modifications d'ordre linguistique. Pour ceux qui s'intéressent à nos travaux, pour les responsables politiques qui ont suivi nos travaux, il est difficile de comprendre que les droits des minorités ne soient pratiquement pas évoqués dans le document. Alors que nous savons qu'au sein de l'Union européenne, il y a des normes très différentes en matière de droits des minorités. Cette Charte a choisi le plus petit dénominateur commun. Il n'y a même pas une petite interdiction de discrimination, ce qui pourrait déjà être une ébauche de protection des minorités, pas de droit des groupes, pas de protection des minorités, sans même penser à des mesures permettant d'encourager les cultures minoritaires. Donc, je pense qu'il s'agit certes d'un sujet d'actualité, qu'il convient de le traiter avec prudence mais même si je m'expose à des reproches, je pense qu'il aurait quand même fallu être plus explicite. C'est un message négatif que nous lançons parce que dans les pays où les minorités ne sont pas considérées comme groupe, dans les pays où l'existence même de certaines minorités est nié, où ces minorités n'ont pas de droits ni en tant que groupes ni en tant que minorités, le fait que l'on ne parle pas du droit des minorités dans la Charte est extrêmement regrettable. Nous avons recherché un texte équilibré mais malheureusement je ne peux pas me rallier à cette opinion.

M. DEHAENE

Merci président,

A mon tour, je voudrais féliciter le présidium pour le résultat équilibré qu'il nous présente aujourd'hui. Mes affirmations seront succinctes. Je me contente de faire référence à un document plus exhaustif que je déposerai sur la table du présidium et je ne vais pas l'exposer ici dans les détails. Je pense que nous en sommes arrivés à une synthèse importante et nous avons bien sûr tenu compte des limitations qui nous ont été imposées par le mandat de Cologne. Je dois dire que sur certains points, nous aurions aimé aller plus loin mais nous avons été limités par les contraintes du mandat qui nous avait été donné. Je pense qu'il est important de constater que nous avons ici un texte dans lequel la distinction traditionnelle entre les droits de base et les droits économiques et sociaux dans lequel donc cette distinction a été balayée. Ce texte est un texte de synthèse entre tous ces droits et je pense que c'est un pas important en avant sur le plan de la définition de tous ces droits. Je voudrais me limiter à trois remarques. D'abord, je partage les préoccupations qui ont été exprimées à plusieurs reprises, c'est-à-dire qu'il faut éviter toute divergence d'interprétation entre la Charte et la Convention européenne des droits de l'homme. Personnellement, j'aurais préféré qu'à l'article 51, point 3, on fasse une référence explicite à la jurisprudence. J'accepte toutefois que l'on fasse référence au préambule, c'est une bonne chose, on le fait dans le point 1 de l'article 51, mais dans le texte du 31 juillet, dans les commentaires relatifs à l'article 51, on faisait référence d'une façon beaucoup plus claire à la jurisprudence de la Cour. Donc, le texte de l'époque était plus clair et je voudrais bien que le texte du 31 juillet qui fait mieux référence à la jurisprudence soit repris dans ce texte-ci. En deuxième lieu, il est très important de constater que cette Charte parle des droits sociaux économiques: on le fait d'une façon encore trop timide à mon goût mais cette timidité est en partie liée aux contraintes du mandat qui nous a été donné dont je vous parlais tout à l'heure. Je crois que nous devrions faire encore un pas en avant pour éviter qu'on ne nous reproche d'avoir été trop timorés à l'article 52, il faudrait faire une référence spécifique à la Charte sociale européenne, je crois que cela permettrait de balayer pas mal de malentendus. Alors troisième remarque, à propos de la portée juridique de ce texte, je crois que ce n'est pas à nous qu'il incombe de définir la portée juridique de ce texte. Nous avons reçu pour tâche, du sommet de Cologne, d'élaborer une Charte, je crois que nous nous sommes bien acquittés de cette tâche. Le sommet de Cologne a dit lui-même qu'après la proclamation de la Charte, il se chargera lui-même de vérifier comment cette Charte pourrait être intégrée dans le traité. Je crois que le sommet de Biarritz n'oubliera pas cette tâche qu'il s'est lui-même attribuée. Je crois que cette Charte n'acquerra toute son importance qu'à partir du moment où elle sera intégrée dans le traité de l'Union mais ce n'est pas à nous qu'il incombe de le

faire, c'est une tâche qui incombe au sommet.

PRESIDENT

Merci M. DEHAENE

Il est exact, c'est au Conseil européen de le faire. Mon prochain orateur est M. Martin, Hans Peter MARTIN.

M. MARTIN

Merci M. le président, moi aussi je vous remercie pour tout le travail que vous avez accompli mais je fais partie moi aussi du petit groupe de ceux qui ne sont pas particulièrement heureux du résultat. Lorsque nous sommes devant nos électeurs, et que nous parlons du modèle européen, nombreux sont ceux qui pensent au modèle social européen alors la Charte comme l'a dit le président PRODI, devrait devenir l'expression de l'âme européenne, c'était un beau discours, certes, mais moi j'ai l'impression que nous avons affaire aujourd'hui à un cœur très froid dans l'article 51 et à d'autres endroits du préambule, nous n'avons pas de référence à la Charte sociale européenne alors je vous demande directement, M. le président, s'il est vrai que dans votre groupe, la majorité des parlementaires étaient pour une référence à la Charte sociale européenne et que vous ensuite au présidium, vous avez refusé cette référence. Cela m'intéresse de le savoir parce que cela m'amène au point suivant, un point de procédure. Il me semble très problématique d'élaborer une Charte comme nous l'avons fait sans règlement, un petit peu à la va-vite, pressés par le temps, d'abord en slalom et puis ensuite à toute vitesse sur une pente très raide. On avait même plus le droit de se réunir en plénière alors que c'était la dernière possibilité pour nous, il ne s'agit même pas d'amendements, on nous a dit: ce n'est même pas la peine de déposer des amendements, cela ne sert plus à rien, c'est trop tard. Alors vis-à-vis des citoyens européens, vis-à-vis des contribuables, je ne trouve pas cela très correct. D'une façon générale, lorsqu'il s'agit des affaires européennes, si nous regardons l'article 11, paragraphe 2, nous n'arrêtons pas de réduire, de rogner les différents droits. Je pense en particulier à la liberté d'expression et d'information. On a d'abord commencé à parler de liberté d'expression, liberté d'information, alors que nous savons très bien que c'est extrêmement important dans les sociétés modernes. Pour les citoyens, il est essentiel de savoir ce que fait l'Union et petit à petit ce texte a été rogné morceau par morceau, ce que je trouve déplorable. Alors, est-ce que les journalistes de l'Union européenne vont rester muets, moi j'espère qu'ils vont réagir et réagir de façon extrême parce que l'Union là est en train de se fermer, de s'entourer d'un rempart au lieu de s'ouvrir vers l'extérieur. Dix secondes encore M. le président. Nous avons en Autriche une constitution en 1848, nous n'avons pas voulu agir de la même façon aujourd'hui car elle ne nous a

pas laissé de bons souvenirs !

PRESIDENT

Merci M. MARTIN.

Il y a eu de fortes critiques en ce qui concerne le 11, 2 en son état. Et ce que nous avons maintenant, c'est un compromis. Je vous remercie. M. HAEANEL

M. HAENEL

Merci, M. le président, je crois mes chers collègues que nous pouvons globalement être satisfaits du travail accompli. Nous sommes arrivés à un bon équilibre entre les préoccupations et les sensibilités diverses. Je souscris donc à ce texte sans réserve. Il était en effet indispensable avant même l'approfondissement, l'élargissement, la réforme institutionnelle de faire le point et de retrouver en quelques sortes les fondations de la construction européenne, de redonner tout son sens à l'Europe afin d'éviter de réduire l'Europe à un grand marché, à un budget ou à des institutions. Avec la Charte, nous définissons en quelques sortes le bien commun européen. Avec le sourire, je vous dirais peut-être pour l'anecdote ou pour la petite histoire, à la dernière minute, nous avons évité de justesse une nouvelle guerre de religion notamment franco-française, OUF, l'arbre n'a pas caché la forêt. Je pense cependant, qu'il sera nécessaire dans la rédaction définitive des compléments aux explications qu'a annoncé ce matin, M. BRAIBANT pour apaiser les uns et les autres mais surtout pour entraîner l'adhésion de tous qu'un commentaire objectif et exhaustif soit fait pour expliquer la suppression du terme religieux pour qu'il n'y ait pas par la suite d'équivoque ou d'ambiguïté d'interprétation. Je vous dis tout de suite que la rédaction retenue me convient tout à fait. Le terme patrimoine substitué à celui d'héritage implique nous seulement le passé, mais on nous l'a dit encore ce matin, mais l'avenir et les mots spirituel et moral ainsi que valeurs sont peut-être même plus forts, ont plus de sens que le mot religieux qui pouvait apparaître réducteur. Je suis aussi bien entendu satisfait que la proposition que j'avais formulée dès le départ sur la nécessité d'introduire dans le préambule la notion de devoirs et de responsabilités ait été retenue. Ma dernière observation concerne l'amendement apporté à l'article 51, alinéa 3, la rédaction antérieure pouvait effrayer ceux d'entre nous qui craignaient que l'entrée en vigueur de la Charte ne provoque un conflit de jurisprudence entre les Cours de Luxembourg et de Strasbourg pour les droits garantis à la fois par la convention et par la Charte. D'un autre côté, il aurait été regrettable, je crois, de figer la jurisprudence fondée sur la Charte en l'alignant purement et simplement sur cette qui découle de la convention. La solution retenue, me semble-t-il ouvre la porte à l'avenir en appelant à une protection plus dynamique de l'Union mais elle n'annonce pas un conflit de jurisprudence du fait

même de la simple entrée en vigueur de la Charte. Je crois que là encore, nous arrivons à un bon équilibre. Au total, mais si je pourrais comme certains collègues nuancer ce texte qui est évolutif et perfectible me paraît répondre aux attentes de nos concitoyens comme à celles du Conseil européen et qu'on le veuille ou non sera à marquer d'une pierre blanche dans la construction européenne.

PRESIDENT

Merci M. HAENEL

Pour aussi vous en être tenu aux trois minutes deux secondes.

Mme KAUFMANN

Mme KAUFMANN

Merci M. le président, à mon avis la Charte des droits fondamentaux est un projet politique très important qui va influencer l'évolution future de l'Union européenne et en particulier ses relations avec les citoyennes et les citoyens. Elle rend les droits des citoyennes et des citoyens plus transparents, leurs droits vis-à-vis des institutions et elle comble une lacune en matière de protection des droits fondamentaux. Donc, je pense que nous seulement nous avons travaillé de façon intense ces derniers mois mais nous avons atteint l'objectif que nous nous étions fixé. Donc, pour nous tous membres de cette convention, une chose est claire, ce texte est un compromis politique extrêmement délicat. Un compromis implique toujours un compromis entre différents intérêts, entre différents textes juridiques, entre différents concepts politiques et sociaux et entre différentes conceptions. A mon avis, il y a un décalage entre les droits sociaux et les autres droits garantis, le droit au travail, le droit au logement, le droit au revenu minimum, le droit à une allocation, à une rémunération équitable, donc dans les clauses horizontales dont le professeur MEYER a parlé dès le début, il aurait fallu faire une référence à la Charte sociale européenne. Je regrette énormément que le droit d'asile ne soit pas considéré comme un droit individuel pour les ressortissants de pays tiers comme ça l'était dans le texte de départ et que l'environnement et la protection des consommateurs ne soient pas traités à fond non plus. Il y a encore deux choses très importantes pour moi. Nous avons reçu le texte de la convention 48 hier avec une explication du texte de la Charte, je pense que ceci ne représente qu'un document du présidium, de la responsabilité du présidium et pas de la convention. C'est la raison pour laquelle, je pense que ce texte, le texte de l'explication n'a aucune valeur juridique. Dans la contribution 328, paragraphe 17, il est dit que ce serait un point d'appui important pour l'interprétation de la Charte. Je ne suis pas d'accord. L'article 2, paragraphe 2, de la Charte m'amène à dire que la convention est formulée ici très clairement, la peine de mort dans l'Union européenne ne doit absolument pas être appliquée et exécutée. Nous devons rechercher le

niveau le plus élevé possible comme c'est prévu par le protocole additionnel de la convention européenne des droits de l'homme. Vous savez que les femmes, membres de la convention ont déposé une motion commune qui a été acceptée par une large majorité de la convention, par le présidium également. Hier lors de la réunion de la notre délégation, j'ai fait remarqué que dans le texte allemand, comme par le passé nous n'avions pas une référence à ce que nous avons demandé. Dans le texte allemand, il n'est question que d'égalité entre les hommes et les femmes alors que nous nous voulions la formulation des articles 2 et 3 du traité de l'Union européenne qui vont beaucoup plus loin que le simple terme d'égalité. Donc, je vous demande de vérifier ce point de rédaction. Le collègue FRIEDRICH en a parlé également tout à l'heure à propos d'une autre remarque linguistique et du terme spirituel, moi j'ai remarqué dans le Duden, dans notre dictionnaire, le dictionnaire qui fait autorité: spirituel en français, c'est traduit par "geistig" en allemand. C'est tout ce qui concerne l'activité de l'esprit, donc avec la meilleure volonté possible, si nous ne voulons pas faire dire à la langue ce qu'elle ne dit pas, il n'est pas possible de concevoir une interprétation religieuse de ce terme.

PRESIDENT

Merci Mme KAUFMANN.

Mme BENAÏ

Merci président. Incontestablement, le texte qui est là représente le meilleur des résultats possibles. Et dans cet esprit, je dirais que ce résultat est positif même si certains auraient voulu aller un tout petit peu plus loin. Quoiqu'il en soit, ce texte n'est évidemment qu'un reflet, un miroir des concepts politiques et sociaux qui règnent actuellement en Europe globalement et pour ma part je voudrais encore une fois féliciter le présidium qui a fait de très gros efforts pour en arriver à partir d'un tel nombre de divergences de vues pour en arriver à trouver une voie médiane, la voie royale, une formulation qui est quand même satisfaisante pour la plupart d'entre nous. Je souhaite et le parlement grec souhaite également que malgré les imperfections, les faiblesses du texte, ce texte acquiert quand même un caractère contraignant de manière à ce qu'il devienne vraiment quelque chose d'important pour l'Union européenne dans ses efforts de protection des libertés individuelles et plus particulièrement des droits sociaux. Bien sûr, je le disais, il y a encore certaines insuffisances que je regrette. Néanmoins, je voudrais dire quelque chose de positif à propos de l'article 52. On y parle de droits de l'Union européenne. Je trouve cela beaucoup plus positif, beaucoup plus constructif comme rédaction que la simple référence à la Charte sociale européenne. Le droit de l'Union européenne, c'est quelque chose qui va beaucoup plus loin. A côté de la Charte sociale, il

couvre d'autres textes, ce droit européen, ce droit de l'Union. Des textes qui ont pour but de garantir la poursuite du développement. Moi je trouve que cette adaptation du texte est tout à fait réussie. Je regrette un peu qu'on ait pas pu progresser à propos de l'article 15, point 3, surtout à propos de ce point que nous avons abordé à plusieurs reprises. A propos des droits des ressortissants des pays tiers qui sont autorisés à travailler sur le territoire des Etats membres. Dans l'explication, je crois que nous devrions mieux expliquer ce que nous avons voulu faire, c'est-à-dire mieux expliqué le sens de notre démarche. Et à l'article 32 point 2 il n'y a pas l'explication dans le sens de ce que j'avais demandé. Il n'y a pas non plus de paragraphe séparé au sein de l'article 32 qui me permettrait de prévoir la protection de la maternité. En l'occurrence il ne s'agit pas seulement des droits sociaux des deux parents, des droits qui sont ancrés. A l'article 32 le congé parental par exemple. Il y a d'autres droits spécifiques liés à la maternité et j'aurais voulu qu'on fasse un point pour en parler. Mais bon cela n'enlève rien à la valeur du texte qui a ici été présenté et je félicite encore une fois chaleureusement le présidium.

PRESIDENT

Merci d'avoir été brève. 15.3

Oui cela pose problème. Au présidium nous avons essayé de l'expliquer dans les explications de la dernière partie. En ce qui concerne les navires marchands je ne sais pas s'il y a des problèmes dans la pratique mais le texte pourrait poser problème. Je partage votre avis. Comme je l'ai dit au présidium, nous sommes des démocrates.

M. MAGNUSSON

Merci Monsieur le Président, je n'ai que quelques remarques de plus. La proposition que nous examinons maintenant. Ce projet de charte pour l'Union européenne est acceptable. C'est un bon projet qui n'appelle de ma part aucune objection. Ces derniers jours, nous avons beaucoup travaillé et en particulier au présidium ce travail a porté ses fruits et nous a permis d'aboutir à un texte de grande qualité. Je voudrais faire une remarque à propos du préambule. Nous avons cinq libertés, maintenant, liberté d'établissement, également et je pense que ce n'était peut-être pas l'intention au départ d'ajouter une cinquième liberté pour les droits syndicaux il aurait été possible d'en parler dans le corps même, dans le dispositif de la Charte. La liberté d'établissement pourrait être supprimée du préambule et à ce moment-là nous pourrions retomber sur les quatre libertés qui fondent l'Union européenne. Nous avons beaucoup travaillé. Le Conseil de l'Europe également. La Convention des Droits de l'Homme a souvent été citée. Nous nous sommes demandé s'il s'agissait d'une déclaration politique, s'il s'agissait d'une déclaration purement et simplement ou s'il s'agissait

d'un texte contraignant. En tant que rapporteur pour le Conseil de l'Europe je peux dire que je me félicite de l'attitude du Parlement européen en particulier suite à la dernière communication de la Commission. La Commission fait une référence très claire aux relations entre la Convention européenne des droits de l'homme et la charte des droits fondamentaux, relations qui doivent encore être précisées. Je me félicite du bon esprit de coopération qui a présidé à nos travaux, même si sur tel ou tel point de détail nous avons entendu parfois des relents de politique politicienne de politique partisane mais qui ne nuisent pas à la qualité de ce texte.

Merci beaucoup.

LORD GOLDSMITH

Au cours de la première, la toute première réunion de la Convention au début de l'année, j'avais exprimé un espoir très fort, espoir d'arriver à mettre au point une charte pour les peuples d'Europe. J'avais dit à l'époque que cette charte devait être une claire déclaration des droits que les Institutions de l'Union devaient respecter. La plupart des Etats membres ont des limites claires à ce que les gouvernements peuvent ou ne peuvent pas faire. Les droits fondamentaux de chacun d'entre nous ne doivent pas être violés ou piétinés par le législateur. Ces restrictions, ces limites devraient s'appliquer également aux Institutions européennes. Et la charte, j'avais dit à l'époque, la charte devrait pourrir le faire. Encourager la culture des droits des responsabilités que peut faire une charte, c'est aussi un objectif clé du gouvernement britannique, et d'ailleurs la semaine prochaine, le jour même où cette convention va se réunir pour la dernière fois la loi sur les droits de l'homme entrera en vigueur au Royaume-Uni. Notre tâche a été de rédiger un document qui rencontrerait ces objectifs, comme d'autres l'ont fait, je reconnais qu'il a fallu qu'il y ait vraiment un désir très fort de compromis pour arriver à cette fin. Mais des compromis de tous côtés qui ont permis à la présidence, au présidium, auquel j'exprime d'ailleurs mes remerciements, qui leur aura permis d'arriver à la rédaction actuelle. Après avoir entendu les explications données aujourd'hui et précédemment sur le texte, je pense qu'il a maintenant atteint l'objectif que nous nous étions fixés. Le texte définitif bien entendu devra être examiné et il est entendu que pour des raisons constitutionnelles et autres il devra être vu par les gouvernements membres, mais je ferai un rapport extrêmement positif au premier ministre qui s'est tenu au courant d'ailleurs des travaux de près, jusqu'à maintenant et j'espère vivement qu'il sera ensuite en mesure de donner l'accord du Royaume-Uni à ce texte.

(Applaudissements)

C'est la première fois que cela m'arrive je dois dire.

Il y a une modification rédactionnelle que je voudrais mentionner en note.

Le 51.3 compte une nouvelle phrase, je crois en anglais il vaudrait mieux dire "à condition, providing" parce que c'est ce qu'on nous a demandé de faire, et je demande au présidium de suivre cette proposition. Je vous remercie.

PRESIDENT

Merci Lord GOLDSMITH. D'être très constructif. Je crois qu'un grand nombre de membres attendaient avec impatience ce que vous nous avez dit. M BERTHU.

M. BERTHU

Je voudrais tout d'abord comme tous mes collègues, féliciter le présidium et le secrétariat pour leur travail, parce que je crois qu'ils sont arrivés à un texte relativement cohérent et assez lisible à partir des demandes d'une assemblée qui est très hétérogène, quelque soit ses immenses qualités par ailleurs. Alors on nous demande aujourd'hui de prendre une position, d'accord ou de désaccord, sur ce texte. Je dirais que c'est très difficile sans savoir ce qu'il va devenir. Il faut distinguer deux hypothèses. Soit ce texte devient contraignant, soit il est non contraignant. S'il devait être non contraignant je crois que je ne pourrais pas y donner mon accord dans la mesure où je pense qu'il mettrait en place une machine à uniformiser les droits nationaux en Europe et où il donnerait dans son uniformisation un pouvoir d'appréciation très grand, disproportionné à la Cour de justice des Communautés. Par conséquent je ne serais pas d'accord pour cette hypothèse là et d'ailleurs je pense sincèrement que la plupart des responsables politiques qui ont demandé la rédaction de la Charte ne seraient pas non plus d'accord pour mettre en place un instrument conduisant vers une Europe très uniformisée. En revanche si ce texte était non contraignant, alors là je crois que mon avis serait plus nuancé. Si c'était une simple déclaration politique. Il comporte de nombreux avantages. Il permet de réaffirmer des valeurs communes qui sont très importantes notamment dans la perspective de l'adhésion des pays de l'Est candidats. Et cela pourrait être un document positif. Néanmoins je réserverais quand même mon avis même dans cette hypothèse, parce que je crois qu'il manque un volet essentiel; On ne peut pas faire une déclaration politique sur les droits fondamentaux des citoyens en Europe sans dire un mot sur les Nations. Alors, bien évidemment dans le préambule il y a le respect de l'identité, le respect de l'organisation des services publics, tout cela est très bien. IL faut effectivement respecter l'identité, mais il y a des choses qui sont aussi très importantes, c'est le respect juridique du droit d'expression des citoyens dans le cadre national et la reconnaissance que ce cadre national est très important en Europe, et la reconnaissance du fait que ce cadre national

influe sur la nature même de l'Europe qui est une association de nations. Voilà pourquoi il me semble que si le texte de la Charte devait être une déclaration politique il lui manquerait encore une partie, à mon avis, sans changer ce qui existe. Enfin quelques remarques particulières sur des amendements, Monsieur le Président, j'en ai fait plusieurs avec des bonheurs divers qui ont été retenues ou pas retenues. J'énumérerai simplement qu'à mon avis sur l'article 44 on ne peut pas mentionner des droits qui ne sont pas encore en vigueur dans l'Union, il faut se maintenir au mandat de Cologne qui demande les droits existants, sur l'article 2 il est difficile de mentionner une compétence qui est purement nationale et sur l'article 3 je crois que cela pose un problème juridique de dire, d'interdire simplement le clonage reproductif des êtres humains et de dire dans les explications que rien n'interdit que le législateur interdise d'autres formes de clonage. Pourquoi, parce que si cette Charte devait être contraignante et seulement dans cette hypothèse là si elle devait être contraignante et bien je ne vois pas comment des personnes ne pourraient pas considérer qu'elles ont un droit à pratiquer le clonage thérapeutique sur la base du texte actuel. Par conséquent, si vraiment on veut laisser le droit aux nations d'interdire ou de ne pas interdire le clonage thérapeutique, et bien à mon avis il faut le dire dans le corps de l'article 3, il faut faire remonter cette phrase de l'explication au niveau du corps de l'article 3.

PRESIDENT

Merci Monsieur BERTU.

L'article 50 paragraphe 2 explique le champ d'application de la Charte. Je ne pense pas qu'on puisse dire que ce soit un problème, c'est une définition de ce qui peut être couvert par la Charte.

M. FAYOT

Oui M. le Président, quand on dit d'un texte qu'il est globalement positif, cela veut dire qu'il comporte beaucoup d'aspects positifs, mais qu'il y a aussi un certain nombre d'ombres au tableau. Pour moi une des ombres principales c'est le fait que les droits sociaux ont été assez dilués, ce qui pourrait être rattrapé si au moins on pouvait avoir une mention de la charte sociale à l'article 52. C'est donc une demande que je formule expressément. Une autre ombre au tableau pour moi c'est la disparition dans l'article 11.2 de la garantie du pluralisme. J'ai entendu à cet égard une argumentation qui ne me convainc pas. En effet, le pluralisme comment est-ce qu'on l'obtient? On l'obtient par la concurrence et la concurrence c'est une question de marché intérieur et cette concurrence ne peut se faire que s'il y a vraiment une limitation de la concentration des médias. Et c'est pour cela d'ailleurs que le commissaire MONTI dans la Commission de Monsieur SANTER avait élaboré une proposition pour le pluralisme et contre la concentration qui a été mis dans les

tiroirs pour un certain nombre de raisons. Je voulais le dire parce que je ne comprends pas que l'on puisse avec l'argumentation que le pluralisme ne soit pas du ressort de l'Union européenne remplacé, garanti pas respecté et j'insiste vraiment sur le fait que la liberté et le pluralisme devraient être garantis, c'est dans la législation même du marché intérieur. En ce qui concerne la querelle sur le préambule, je voudrais encore une fois relever, puisque pas mal de gens ici ont toujours dit qu'il faut se rapprocher dans la mesure du possible de la Convention des droits de l'homme, je voudrais donner encore une fois lecture du texte du préambule de la Convention des droits de l'homme qui comprend une formulation que si on l'avait prise, on aurait épargné pas mal de débats un peu acrimonieux. En effet on dit dans cet alinéa 6 que l'Europe a un patrimoine commun d'idéal et de traditions politiques de respect de la liberté et de prééminence du droit. C'est parfait comme expression et je pense que c'est beaucoup mieux que ce que nous avons mis là. Enfin, dernière remarque M. le président, je suis pour une charte contraignante et justiciable. Je pense que, évidemment c'est une discussion politique qui ne va pas se faire ici dans cette Convention, mais évidemment le Conseil dans cette optique devrait se préoccuper de la façon dont les deux cours à l'avenir dans l'optique d'une charte justiciable devraient se comporter l'une par rapport à l'autre pour éviter évidemment la sécurité juridique et pour étudier d'abord les problèmes qui pourraient naître de l'existence des deux cours. Cela étant, pour moi en tout cas, le travail de cette Convention, ensemble avec le Secrétariat et le Présidium, a été un travail intéressant, parce que pour la première fois, je voudrais le souligner quand même, 46 parlementaires, 15 représentants d'Etats membres, un représentant de la Commission, ont fait ensemble un texte et je pense que c'est modèle pour l'avenir. Merci.

PRESIDENT

Je vous remercie M. FAYOT et excusez-nous de vous avoir fait attendre mais c'est malheureusement une situation à laquelle nous sommes confrontés. Nous essayons d'être aussi équitables que possible. Le prochain orateur, qui ne parlera pas plus de 3 minutes, c'est M. MELOGRANI.

M. MELOGRANI

Merci monsieur le président. La charte est un compromis que j'accepte et comme tous les compromis je l'accepte en étant à moitié satisfaisant et à moitié insatisfait de choses et d'autres. Donc je ne me limiterai que à deux brèves considérations. Une concerne l'article 19. Concerne l'extradition. Au point 2, on dit "nul ne peut être éloigné, expulsé ou extradé vers un Etat où il existe un risque sérieux d'être soumis à la peine de mort, à la torture ou à d'autres peines humaines. Alors

mon observation touche à l'adjectif sérieux. Je me suis demandé longuement si fallait le laisser ou pas et j'ai des doutes. Je suis certain que mon peuple en lisant ça dira, un risque léger d'être soumis à la torture, ça suffit pas. Bon, il est exact qu'il y a toujours dans les prisons une tradition de mauvais traitements que les Français, M. BRAIBANT ont appelé "passage à tabac" mais entre ça et la torture, il y a un pas, donc je propose d'enlever cet adjectif sérieux. Enfin, et pour être bref, je voudrais me référer à l'observation du commissaire VITORINO. Moi aussi je pense que l'article 51.1 dans sa rédaction actuelle n'est pas satisfaisant. Si j'ai bien compris ce qu'il a dit, non seulement pour les raisons qu'il a invoquées, mais aussi parce que ça pourrait permettre à l'Union européenne certains abus, il faudrait limiter avec la nouvelle formule, l'éventualité très éloignée d'abus de la part de l'Union européenne. Merci.

PRESIDENT

Merci MELOGRANI. Le 51.1 tel qu'il a été amendé pose problème. Je partage tout à fait votre point de vue. Mme BRAX.

Mme BRAX

Le texte est acceptable mais il y a toujours un mais, nous avons tous ici certains points qui nous déçoivent un peu et j'en mentionnerai deux. Les droits des minorités par exemple a été totalement oublié dans la Charte. Lorsqu'on pense aux droits de l'homme et bien le point fondamental c'est de s'assurer qu'un traitement égal soit appliqué à tous et là tout particulièrement il faut prêter attention aux droits des minorités, que ce soit des minorités culturelles, ethniques ou autres. Encourager la stabilité de nos sociétés, donc tout le monde devrait pouvoir bénéficier de ces droits dans une société démocratique et là le Conseil de l'Europe récemment a adopté deux textes récemment concernent les minorités et c'est la voie à suivre. Les membres finlandais auraient voulu définir dans la Charte des droits fondamentaux aussi les droits des minorités. Les minorités ne sont mentionnées qu'en passant dans l'article antidiscrimination. Nous aurions souhaité préciser, parler de minorités ethniques, linguistiques et religieuses. C'est la procédure normale dans un grand nombre d'autres documents internationaux. Normalement, il y a des références de ce type dans les autres documents internationaux. Si non, le reste du texte est tout à fait acceptable. Nous en parlerons certainement au présidium mais, j'espère que l'on prendra cette observation en considération. Autre observation, à l'article 27, il y a une nouvelle rédaction se référant au droit des travailleurs et de leur syndicat et leurs droits en cas de conflit d'intérêt, de recourir à des actions collectives. On mentionne même la grève, le droit de grève parce que le droit de grève fait partie du droit d'association et c'est dit clairement à l'article 6 de la charte sociale. Donc, selon le texte que nous avons maintenant, le droit

de grève est pris en considération et cette nouvelle formule ne garantit peut être pas le droit de grève aussi clairement que les conventions collectives. Est-ce-que cela veut dire que les gens ont le droit de grève au niveau des syndicats, parce que sinon le texte devrait être amendé dans ce texte. Merci.

PRESIDENT

Oui, le 27 c'est un compromis, comme la question des minorités jusqu'à maintenant. On y retournera, je ne sais pas qui. Mais, je prévois un avenir en Europe où cela sera nécessaire de le faire.

M.FISCHBACH, observateur du Conseil de l'Europe

Je serai très bref, et d'ailleurs qu'est-ce-que vous voulez que je vous dise après que Lord GOLDSMITH le gardien suprême de la Convention européenne des droits de l'Homme ait donné son accord au texte qui nous a été proposé, je crois que Lord GOLDSMITH a dit des choses qu'il fallait dire, je voudrais tout simplement ajouter que notre souci ayant toujours été celui de veiller à la cohérence et à l'harmonie entre les instruments existants en matière des droits de l'Homme. Evidemment, en premier lieu entre la Charte et la Convention européenne des droits de l'homme, le texte tel qu'il nous est soumis rencontre largement cette préoccupation et le texte nous donne satisfaction du point de vue de la sécurité juridique. Ceci est vrai tant pour l'article 50 alinéa 3 qui a le mérite de dissiper tout malentendu pour ce qui est du sens et de la portée des droits correspondants garantis par la Convention européenne des droits de l'homme, ceci est vrai également pour l'article 52 qui fixe donc le niveau minimum de protection. Ceci dit M. le Président. et sans vouloir me répéter, et sans me tromper sur le mandat de cette convention, il importera le moment venu où l'on envisagera d'intégrer la charte dans le traité de l'Union européenne de songer à des mécanismes complémentaires indispensables et propres à écarter tout dérapage dans l'interaction entre la Charte et la Convention européenne des droits de l'homme. Merci.

Mme AZEVEDO

Merci M. le Président. Je voudrais faire quelques remarques en commençant par féliciter le Présidium et le Secrétariat pour la qualité de leur travail. En effet, ils ont vraiment travaillé en temps record, les délais étant très courts, plus courts que ceux prévus à Cologne. Nous sommes tous conscients du fait que la portée politique et la composition de la Convention nous ont permis vraiment de représenter un modèle, dont il est même question à la conférence intergouvernementale. Après de nombreuses discussions, de nombreux débats, nous avons maintenant le projet complet de charte des droits fondamentaux. Nous avons donc rempli le mandat

de Cologne. Ce projet me semble relativement équilibré. Les droits figurant dans ce projet représentent une solution de compromis politique qui permettra de renforcer la position de l'Union européenne face aux défis que nous devons relever dans un avenir proche donc, c'est une contribution tout à fait positive. Pour les citoyens européens cette charte représente une chance. Une chance pour renforcer le sens de la citoyenneté européenne. Cette charte, comme nous l'avons déjà dit, n'apparaît pas ex nihilo de nombreux droits existent déjà dans d'autres textes. Nous nous sommes souvent posé la question de l'adhésion de l'Union à la Convention européenne des droits de l'homme. Donc, là nous avons encore beaucoup de chemin à parcourir, mais la Charte selon moi est un pas sur la bonne voie. Et, nous devons donc évaluer ce progrès comme un progrès modéré mais un progrès tout à fait remarquable.

PRESIDENT

Merci. M. O'MALLEY est le prochain sur ma liste mais, M. KORTHALS a demandé la parole pour une minute.

M. KORTHALS ALTES

Ce matin, je voulais ajouter un commentaire que M. DEHAENE a fait d'ailleurs. Qu'il faudrait qu'il y ait une référence dans la Charte à l'article 52 aux instruments qu'il a mentionnés. Mais, je voudrais ajouter quelque chose. Nous sommes déçus que, au cours des débats, le paragraphe environnement a été un peu négligé. Et, je voudrais savoir si c'est pas possible de parler non seulement de la politique de l'Union mais des institutions de l'Union. Parce que la protection de l'environnement c'est une question d'application et, ni on ne dit pas clairement comment on applique la politique de l'environnement, le citoyen européen ne va pas y comprendre....en ce qui concerne ce qu'a dit M. FISCHBACH, je peux me rallier absolument à tout ce qu'il a dit, si les chefs de gouvernement décident que il faudrait que la charte soit contraignante et force de loi alors, le texte sur les compétences devra être introduit dans le traité. Merci .

PRESIDENT

Merci pour ces commentaires.

O'MALLEY ou O'KENNEDY- O'MALLEY d'abord, d'accord

M. O'MALLEY

Je croyais devoir parler plus tard. C'est pour cela que j'ai été surpris. Bien. Je dois dire que malgré ce qui me semble être un consensus très fort vis-à-vis de la Charte, que moi j'ai des réserves très

fortes, je regarde cela du point de vue de l'Etat membre qui a une constitution qui traite des droits fondamentaux et une jurisprudence très approfondie dans ce domaine et, les dispositions de l'article 50 me gênent beaucoup, parce qu'il me semble qu'en dernière analyse les droits fondamentaux décidés et appliqués par la Cour suprême irlandaise et comme dans les autres Etats membres par les corps constitutionnels, et bien ce trouveraient peut être dans une situation où l'arbitre en dernier ressort de ces droits fondamentaux, dans l'avenir, ce sera la Cour de Justice à Luxembourg. Alors, s'il y a des doutes quant au champ d'application de la charte, alors ce point sera déterminé par la Cour européenne et pas par la Haute Cour des Etats membres. Je ne suis pas sûr que les citoyens d'un grand nombre de nos Etats membres soient conscients de la signification de cela et que, leurs droits constitutionnels fondamentaux seront exercés en dehors de leur Etat membre. Je crois que l'Union va peut être trop loin dans ce domaine, et que il faut réfléchir aux conséquences de tout cela. Dans toute constitution on fait une distinction entre les droits civiques et politiques d'une part qui doivent toujours être couverts par les tribunaux et les droits économiques et sociaux qui sont dans les démocraties les plus évoluées considérés comme du ressort de la législature et mélanger les deux à mon avis c'est ignorer des politiques très anciennes qui donnent au judiciaire le droit de déterminer dans le contexte judiciaire et que les problèmes économiques découlent de la société. Je crois qu'avec le plus grand respect pour mes collègues ici présents, c'est un problème grave et, en tant qu'homme politique, et vieux membre du Parlement, depuis 30 ans, je ne suis pas sûr du tout que, il soit juste que l'arbitre en dernier ressort de politique économique et sociale incombe au judiciaire plutôt qu'aux élus de la Nation. Je crois que c'est pour cela que nous sommes élus, et ne pense pas qu'il faille transférer ce rôle et je pense que, à long terme, les citoyens européens ne seront pas d'accord, parce qu'ils perdront le contrôle de ces politiques. Si leurs élus, ceux qu'ils choisissent ont perdu eux-mêmes le droit de formuler ces politiques. Je crois que c'est là un domaine dangereux dans lequel s'aventurer et, je crains que le citoyen n'apprécie pas le sens profond de ce que l'on propose ici. Si, cela devient juridiquement applicable, obligatoire, cela sera une des modifications les plus fondamentales jamais accomplie dans l'Union. Je crois qu'il faut se hâter lentement dans ce domaine. Je sais qu'un travail énorme a été fait pour arriver à ce texte et, je ne veux absolument pas diminuer le mérite de ceux qui ont travaillé sans relâche et rapidement pour essayer d'arriver à ce texte mais, c'est pas une question de rédaction, simplement, il y a des questions fondamentales impliquées ici, et c'est pas simplement le Conseil européen qui doit examiner tout ça, je crois qu'un avertissement quand même devrait être lancé pour savoir où on va dans cet exercice, car cela peut avoir des conséquences très importantes et à très long terme. Merci.

M. PATIJN

Merci M. le Président. D'abord, des amendements ont été proposés qui ont été discutés par le Présidium hier. Alors, globalement, je le félicite de son débat et de ses amendements qui pour moi précisent le texte. Pour être complet, je voudrais m'associer à la remarque qui a été faite par M.(?) à propos du 51 point 3 et je m'associe à M.(?) à propos de l'article 52 et de ce qu'il faut lui apporter comme élément complémentaire. C'est probablement la dernière fois que nous nous retrouvons et, je voudrais vous donner mon avis, mon appréciation politique de l'exercice auquel nous nous sommes livré. Je pense essentiellement qu'il s'agit d'un exercice très intéressant qui en a vraiment valu la peine. Quelque chose qui a permis de clarifier où nous en sommes dans le débat politique au sein de l'Union. Et, il y a eu des points marquant dans le débat. D'abord, je constate auprès de mes collègues qu'ils sont très largement favorables à la mise en place d'une charte à peu près dans la forme que nous avons là sur la table. Deuxième constatation, je constate qu'il y a un large consensus à propos de la place de cette charte dans l'ordre institutionnel et juridique de l'Union européenne, donc, nous sommes bien d'accord sur les groupes cibles, sur les instances visées, il ne s'agit pas en l'occurrence de procéder à un nouveau transfert de compétences et il s'agit, avant tout, d'assurer une bonne mise en application du principe de subsidiarité par le biais de cette charte et de son esprit. Alors, je crois, qu'il y a unanimité pour dire que cette charte ne remplace pas la Convention européenne des droits de l'homme et, ne remplace pas non plus le rôle central joué par les institutions de Strasbourg, sur le plan de la protection des droits de l'homme. Si, je vous dis tout cela, ce n'est parce que je m'inquiète à propos du respect des droits de l'homme dans les différentes capitales de l'Union européenne, je m'inquiéterais plutôt du côté de Kief ou Ankara. Je constate que le travail n'est pas encore tout à fait terminé, ce qui ne me surprend pas, parce que le temps qui nous a été imparti pour un exercice aussi délicat a quand même été très court. Je donne quelques exemples. Certains articles, ne sont pas suffisamment mûrs, je citerai l'article 15 "droit au travail" par facilité, nous nous sommes limités aux citoyens de l'Union européenne, nous ne précisons pas suffisamment bien la position des gens dans l'Union, qui n'ont pas nécessairement la nationalité d'un des pays de l'Union mais qui y vivent pourtant depuis peut être deux ou trois générations, nous n'en n'avons pas suffisamment parlé de ce cas là. Deuxième point, que l'on a évoqué à plusieurs reprises, l'article 51 point 1 "clause de limitation". Elle est formulée d'après moi de façon beaucoup trop laxiste et je ne suis pas satisfait non plus de ce qu'à expliqué le commissaire ???? à propos de l'objectif d'intérêt général. Supposons que le Conseil des Ministres des Affaires étrangères, instaure un boycott, un embargo contre le pays X, dans un but d'intérêt général certainement, est-ce-que c'est le genre de chose qui doit être prévue ici et, est-ce-que cela donne le droit de limiter les droits de

l'homme, je ne crois pas, ce n'est pas ce que l'on veut dire, donc, pour moi, l'article tel qu'il existe dans sa forme actuelle n'est pas suffisamment explicite. Point suivant. Je crois qu'il est irresponsable d'offrir le texte tel quel à nos citoyens, plus particulièrement à nos avocats, je crois que ce texte réécrit en fait des sources de droit déjà existantes et donc, le texte n'est pas simple du tout, et doit être expliqué. Le Secrétariat avait préparé quelque chose, qui sur le plan technique était tout à fait raisonnable et pertinent. Je crois que la Convention elle-même, ou le Sommet, ou une autre instance de l'Union européenne doit se charger d'une tâche d'explication. Enfin, je dirai qu'il y a quelques articles qui ne sont pas à leur place. L'article 35, par exemple, "les services d'intérêt général" cela n'a rien avoir avec des droits fondamentaux. Président, en conclusion, quel est le travail qui nous attend encore. Si nous présentons ce texte au Sommet, dans l'espoir de voir transformer cette charte en quelque chose de contraignant, c'est-à-dire qu'il faudra veiller alors à lui donner une forme qui lui donne le même statut que les traités. Si nous voulons cela, il y a encore pas mal de choses à faire. Parce que d'abord, nous devons bien comprendre ce que cela signifie. L'accès de l'individu aux tribunaux européens, comment allons nous régler cela. Comment allons nous régler la répartition des pouvoirs entre les tribunaux et la Cour de Luxembourg. Alors, il y a toute la question de la Convention européenne des droits de l'homme et de cette charte par rapport à cette Convention. En deux mots comme en cent, si nous voulons vraiment transmettre un message valable au sommet, ce message doit être le suivant. Voilà, nous avons ici un projet, nous sommes très avancés sur la bonne voie, mais il y a encore du travail à faire, et enfin, le Sommet doit prendre lui même ses propres responsabilités. S'il pense qu'il y a encore du travail à faire, il doit donner un mandat très clair en précisant qui doit faire le travail et sur quel point. Il n'est pas possible de rester simplement dans le vague, et de tirer quelques conclusions un peu au hasard à Biarritz. Enfin, je voulais remercier très chaleureusement le Présidium et le Secrétariat pour tous les efforts qui ont été faits, pour toute la patience aussi dont ils ont fait preuve dans le cadre des réunions des groupes de travail, des rencontres avec les Parlements internationaux dont je fais partie, etc... et je voudrais aussi que vous transmettiez tout notre respect à M. HERZOG.

M. LEINEN

La charte représente certainement une étape sur la voie d'une identité commune européenne, je pense que le sens, l'importance de tout ce projet sera visible lorsque la Charte sera proclamée solennellement lorsque les citoyens seront informés de tout notre travail. C'est une charte correspondant au modèle de société que nous choisissons en Europe, un modèle pour l'intérieur et que nous voulons montrer à l'extérieur également. Mais, je pense que l'expérience de cette convention est une expérience tout à fait réussie. Au bout de neuf mois, nous avons obtenu un

résultat, alors que la conférence intergouvernementale qui travaille aussi depuis 9 mois pratiquement et qui traite pour la 3ème fois de sujets qu'elle avait commencé à traiter à Maastricht et puis ensuite à Amsterdam, ... on ne sait toujours pas si au mois de décembre, ils seront capables de boucler leurs travaux. Donc, notre méthode, la méthode de la Convention, cette méthode parlementaire a vraiment fait la preuve de son efficacité et elle devrait servir de modèle pour d'autres projets. Je voudrais m'exprimer à propos de trois ou quatre sujets. La question du terme "spirituel" en allemand. Moi aussi j'ai regardé mon dictionnaire et en allemande cela se traduit par "geistig" En allemand, on parle des bases morales et spirituels "Geistig und moralisch". Au départ, quand Helmut KOHL est arrivé au pouvoir son programme s'intitulait "le tournant spirituel et moral" à ne pas confondre avec spiritueux naturellement. Mais, je ne vois pas comment on peut traduire "spirituel" en allemand par "religieux". Il y a naturellement les croyances religieuses et puis il y a des croyances qui ne sont pas religieuses mais je trouve que c'est une façon de limiter le concept de "geistig" de "spirituel". Encore un mot à propos de la liberté des médias. Nous avons parlé de l'affaiblissement que représentait le terme "respecté" plutôt que "garanti". Je pense que là vraiment, nous avons affaire à une véritable dramatisation. Nous avons aujourd'hui la société de l'informatique, du téléphone, de la télévision tout cela sera intégré avec donc des médias radicalement nouveaux, des phénomènes de concentration que nous n'avions jamais connus jusqu'à présent donc, là il aurait peut être été nécessaire d'avoir une prise de position plus claire. A l'article 12, il serait bon de prévoir des syndicats au niveau européen. Cela c'est quelque chose qui devrait être précisé et à propos de l'article 52, je pense que les représentants des gouvernements se sont prononcés en faveur d'une référence à la Charte sociale européenne alors que les parlementaires nationaux et les parlementaires européens ne se sont jamais exprimés contre. La Convention européenne des droits de l'homme et la Charte sociale européenne représentent une norme minimale de protection. Donc puisse nous en sommes à la dernière réunion et que vous aurez votre dernière réunion du présidium ce soir, essayez de tenir compte de cette référence symbolique à la Charte sociale européenne. Nous avons à faire ici à une charte de droit, une charte de droit selon moi n'a de sens que si elle est contraignante, donc la proclamation solennelle ne sera qu'un premier pas et le Sommet de Nice devra prévoir une procédure et un calendrier permettant à cette charte d'être intégrée dans les juridictions des Etats membres. Encore un mot de remerciement au Secrétariat et au présidium pour leur excellent travail.

PRESIDENT

Merci M. LEINEN.

M. GRIFFITHS

Merci monsieur le président. Alors, je crois que la Convention a toutes les raisons d'être satisfaite de la Charte que nous avons sous les yeux, étant donné que le mandat de Cologne pouvait être interprété de différentes façons et que au cours de nos réunions nous avons vu que ça a été examiné sous des angles différents, mais maintenant nous avons une Charte qui maintient l'essentiel de ce que nous voulons pour le citoyen européen et il y a une déclaration claire des droits fondamentaux dans le contexte des compétences de l'Union européenne et fondée sur le droit européen et son application par le biais de directives et de la législation dans les Etats membres et je crois que la Convention et le présidium en rassemblant tous les fils conducteurs sont arrivés à mettre au point une charte où l'essentiel est préservé. J'ai été heureux d'entendre M. FISCHBACH parce que je voulais entendre ce que la Cour européenne avait à dire au sujet de la Charte et je crois que nous sommes maintenant en mesure de, bon on a peut-être tous nos petites hésitations, moi j'aurais voulu que l'on mentionne les minorités et malheureusement ça n'a pas été possible mais quand à la Charte dans son ensemble, je crois que nous pouvons vraiment nous dire que nous avons vraiment fait un pas en avant. Il y a toute série de droits fondamentaux et qui s'accompagnent de responsabilités pour le citoyen et le résident européen qu'ils devront accepter à l'avenir. Bon ce qui se passera dans l'avenir, ce n'est plus de notre ressort, mais nous avons je crois bien accompli le mandat très difficile qu'on nous avez donné à Cologne.

M. O' KENNEDY

Merci monsieur le président. D'abord je dirai que, à mon avis, le présidium accomplit une tâche énorme en nous présentant un texte, avec ses amendements dans les délais et la procédure prévue. Bon, dès la première réunion je m'étais demandé si une convention content plus de 62 ou 63, 64 membres pouvait vraiment travailler valablement pour arriver à sortir une charte du type de celle que nous pouvons accepter aujourd'hui. Je crois que les procédures que nous avons dû suivre de toute évidence ont créé des problèmes, pas simplement en ce qui concerne notre travail, ensemble nous étions nous animés du même esprit, mais vis-à-vis de la situation dans laquelle nous sommes aujourd'hui votre coprésident était un homme extrêmement courtois et ils nous a dit, je ne dis pas que ce n'est pas exact pour vous aussi, je parlais de lui, donc il m'a surpris ce matin quand il a dit que maintenant il n'y avait plus de temps à perdre avec les amendements, qu'on avait dépassé ce stade. Alors à quoi sert, je voudrais le savoir, cette réunion d'aujourd'hui. On nous dit que la prochaine sera la conclusion officielle, alors j'ai de grandes réserves sur la procédure que nous avons dû suivre et je crois que cette charte en souffre, souffre d'un manque de clarté, d'un manque de précision, ça c'était mes observations générales, je passerai aux points de détail aussi. Mon

gouvernement qui m'a mandaté ici, comme d'autres est tout à fait favorable au développement de tous les principes qui sont à la base des droits fondamentaux dans l'Union. Tout à fait, nous avons dans mon pays une histoire qui nous a obligés à fixer en détail dans la constitution ces droits fondamentaux et donc je veux me rallier à tout effort pour renforcer ces droits pour les citoyens que nous avons depuis si longtemps et mes préoccupations concernent ... mes réserves, je les ai exprimées à plusieurs reprises mais je vais les répéter ici. Je les ai exprimées d'abord au président en ce qui concerne ce qui, à notre avis, était un manque de clarté par rapport à la Convention européenne des droits de l'homme. En ce qui concerne l'article 51, je voudrais dire quel est mon avis et celui du gouvernement que je représente. Il faut examiner ça de près pour voir si à ce stade - on n'a pas eu l'occasion, on aurait dû - si à ce stade on peut dissiper l'impression qu'on pourrait avoir un conflit ici avec la Convention européenne des droits de l'homme. Il faut que je dise à mon gouvernement ce qu'il en est et vraiment je ne suis pas sûr que ça ne crée pas un conflit avec la convention à ce stade. Dans ce contexte, en passant, je dirai, toujours en ce qui concerne l'article 51, - c'est un amendement linguistique, là - j'appuie ce que mon collègue britannique a dit au sujet de l'amendement rédactionnel pour changer "forwarding" par "providing" parce que providing est plus efficace. Deuxièmement, à l'article 51, je suis surpris de la proposition du Praesidium d'ouvrir les mots "autres intérêts légitimes" dans une société démocratique parce que c'est une notion qui existe non seulement dans la Convention des droits de l'homme mais aussi dans la constitution des États membres et autres démocraties et j'espère que la Commission ou le Praesidium pourront revoir leur position. En ce qui concerne les dispositions économiques et sociales, là aussi nous avons encore de grands doutes. Bien sûr, je parle des droits économiques et sociaux que j'ai mentionnés ici à plusieurs reprises, qui sont à la base de notre constitution et alors là nous avons des problèmes parce que bien sûr, ces droits-là ne sont pas inférieurs aux autres, mais ils sont différents. Ils ne sont pas applicables de façon judiciaire, sauf dans la mesure où les législations nationales le disent. Je vais conclure, etc je suis conscient du fait que durant des mois j'ai répété que ces dispositions selon les législations nationales devraient apaiser la plupart de mes préoccupations. Ça, ce n'est pas reflété dans le texte de la façon horizontale que nous souhaiterions. Donc je me félicite du travail qui a été accompli, des progrès réalisés mais je dois dire au nom d'un petit pays qui est vraiment engagé dans la protection des droits fondamentaux, nous sommes préoccupés du manque de clarté et du risque de double emploi. Je ferai rapport dans ce sens à mon gouvernement et j'espère que j'aurai une réponse claire au cours de notre dernière réunion. Je vous remercie.

PRESIDENT

Nous partageons tous vos doutes, mais cela pourra peut-être aider votre gouvernement de connaître la lettre très claire qui a été envoyée à votre gouvernement par les représentants européens.

M. CISNEROS

Merci M. le président. Suite à la dernière intervention, je pense pouvoir dire malgré ce que je viens d'entendre que nous avons fait du bon travail et que nous sommes parvenus à un bon texte. Bon, je ne vais pas essayer d'atteindre le niveau d'éloquence de mes collègues qui ont félicité le secrétariat, la présidence, les conseillers techniques pour leur excellent travail, qui nous ont permis de parvenir à un si bon résultat. Je pense que pour une charte des droits fondamentaux, c'est vraiment le meilleur texte que nous puissions obtenir. Je suis d'accord avec certains de mes collègues estimant que c'est le meilleur texte possible. Nous avons rencontré différentes difficultés qui ne découlaient pas seulement du mandat de Cologne mais qui découlaient de l'hétérogénéité de nos positions, de nos différences idéologiques, des différentes situations institutionnelles de certains rédacteurs qui dépendaient de leur gouvernement, d'autres représentant leur peuple aux Parlements nationaux, d'autres représentant leur peuple au Parlement européen, donc nous avons vraiment rassemblé différentes perspectives, pas seulement des perspectives idéologiques mais, j'insiste, sur nos différences institutionnelles également. Ce qui a abouti à un texte dans lequel naturellement chacun d'entre nous pourrait faire une longue liste d'insuffisances, de limites, de frustrations mais au bout du compte, c'est un compromis, c'est le résultat d'une transaction et ça, ce sont les grandeurs et les servitudes de toutes les démocraties. Donc, je pense que ce sur quoi nous avons dû céder permet à d'autres d'accepter le texte et je pense pouvoir dire que le texte dans son ensemble ne présente aucune difficulté du point de vue de l'acquis institutionnel espagnol et je pense pouvoir dire que le congrès des députés espagnol pourra l'accepter sans difficultés. En écoutant M. JANSSON ce matin j'ai cru comprendre que l'heure n'était plus de déposer des amendements. À part sur les textes que nous avons reçus ce matin qui représentent une modification des textes qui nous avaient servi de bases auparavant. Alors je voudrais me rallier à tous ceux qui sont intervenus avant moi pour dire que la modification à l'article 11, paragraphe 2 n'est pas bienvenue. Elle fera l'objet d'une interprétation restrictive en matière de garantie et de protection puisque la garantie était nettement supérieure dans la rédaction précédente. Garantir, ce n'est pas la même chose que respecter. Il ne s'agit pas de flatter les médias, il ne s'agit pas non plus d'avoir peur de leur censure, la liberté d'expression, le droit à l'information n'appartiennent pas aux médias, ce n'est pas leur propriété, c'est la propriété des citoyens. Au jour le jour, dans l'application effective naturellement, ce sont les médias qui administrent ce droit d'information et d'expression. Mais la garantie de la liberté

d'expression et du pluralisme, en évitant trop de concentration, trop d'hégémonie qui aboutiraient à la perte du pluralisme, tout ceci à mon avis trouvait une formulation beaucoup plus heureuse dans le texte précédent. Alors je voudrais demander au praesidium de bien vouloir revenir sur cet article. Et à propos de l'article 51, paragraphe 1, là aussi j'interviens avec peut-être encore davantage de conviction et davantage de véhémence après avoir entendu le Commissaire VITORINO.

Naturellement, nous avons des droits fondamentaux garantis pour les citoyens. Tout ce qui est prévu ici dans cette charte, si nous voulions tout couvrir des concepts politiques indéterminés n'ont pas leur place dans un texte comme celui-ci. On aurait un catalogue sans fin puisque nous avons là affaire à un texte au-delà de la constitution, un texte meta-constitutionnel en quelque sorte. Je pense que cette réflexion était intéressante lorsqu'il est question d'intérêts généraux, nous n'avons pas trouvé une formulation suffisante et je me permettrai encore une fois de vous demander de bien vouloir réfléchir à la possibilité de revenir au texte précédent. Merci Monsieur le président.

M. ROGRIGUEZ BEREIJO

M. le président, puisque nous arrivons à la fin de nos travaux, des travaux longs, difficiles, j'ai examiné en détail le résultat auquel nous aboutissons, nous pouvons tous trouver des motifs d'insatisfaction sur certains points, suite en particulier aux dernières modifications concernant le document 47, convent 47. Moi, j'aurais souhaité une discussion plus rigoureuse du point de vue juridique du contenu de certains droits et des libertés prévus au chapitre 2 avec une référence aux limites intrinsèques aux droits, à savoir qu'il y a des éléments qui ne sont pas couverts, qui ne sont pas compris par un droit, alors que lorsqu'il est question du droit à l'information et à la garantie du pluralisme pour les médias, lorsqu'il est question de la garantie des intérêts légitimes dans une société démocratique, la qualité du législateur en matière de droits fondamentaux est essentielle. Nous n'avons pas énormément de précisions également dans la définition des droits économiques et sociaux selon leur nature en tant que normes juridiques, article 51. L'autonomie de la charte n'est pas suffisamment affirmée à l'article 51, paragraphe 3. La formule de compromis offerte par le praesidium ce matin est acceptable par tous. Du moins c'est ce qui est dit dans l'explication. Il s'agit de l'autonomie juridique de la charte. Le sens juridique des droits de cette charte sont ceux qui sont cités ici. Et pas les droits qui sont cités dans d'autres textes juridiques étrangers au droit communautaire. Je conclurai, Monsieur le président, en disant qu'un point de vue juridique et d'un point de vue politique, cette charte me semble satisfaisante. Je pense pouvoir formuler un jugement positif. Je pense que nous sommes parvenus à un texte de consensus conformément au mandat de Cologne respectant les compétences et les traités sans modifier les constitutions nationales et sans créer des obligations financières nouvelles pour les Etats membres. Je pense que nous avons ainsi

respecté le mandat du Conseil européen. Le point de départ méthodologique cité au mois de décembre dernier par le président Roman Herzog ; je pense d'ailleurs qu'en notre nom à tous vous devez lui transmettre notre affection, notre admiration et notre profond respect. Ce principe méthodologique qu'ancien comme si nous allions établir un texte contraignant du point de vue juridique, nous avons comme si, depuis le départ grâce à ce principe posé par le président Herzog et je pense que cela a été une très bonne chose parce que cela nous a permis de trouver une solution de compromis, équilibrée, réaliste et prudente. Si vous me permettez une comparaison, j'irais jusqu'à dire que ce résultat c'est un petit peu ce qu'on demande à la jeune fille qui va se marier d'offrir quelque chose de neuf, quelque chose d'ancien et quelque chose de bleu. Alors nous avons quelque chose d'ancien, les libertés, les droits politiques classiques, nous avons quelque chose de nouveau : le droit à la bonne gestion des ressources publiques, le droit au respect de la confidentialité des données concernant la vie privée, la bioéthique et nous avons quelque chose de bleu également : l'âme de cette charte des droits. Les droits économiques et sociaux. Un ajout, un apport, une nouveauté par rapport au droit communautaire. La valeur de la charte dépasse toute discussion. Je pense que nous avons eu raison de laisser de côté des préoccupations de principe. Est-ce que c'est simplement une déclaration politique, est-ce que c'est un document contraignant juridiquement. Tout dépendra du Conseil européen de Biarritz et de Nice. Mais ce texte, de toutes les façons, a une valeur juridique indéniable parce qu'il comble une lacune, une lacune dans le droit communautaire. Nous n'avions pas de charte des droits. Le citoyen européen, aujourd'hui, se retrouve au cœur de la construction européenne avec des droits fondamentaux.

PRESIDENT

Merci, pendant neuf mois nous avons eu la possibilité d'écouter le professeur Rodriguez. Aujourd'hui, nous écoutons le poète Rodriguez. C'est parfait. Peter Bowness.

LORD BOWNESS

Merci, Monsieur le président. Je voudrais ajouter mes remerciements au présidium en particulier pour les amendements soumis aujourd'hui parce que ces amendements ont facilité ensuite l'adoption du texte que nous avons sous les yeux. Au début de la convention nous nous sommes beaucoup préoccupés des conflits entre la convention européenne des droits de l'homme et cette charte et des heurts possibles entre les deux. Et j'ai été rassuré parce que nos observateurs nous ont dit aujourd'hui et étant donné qu'on peut jamais être sûr de ce que les juges ou les tribunaux vont faire, on avait donné au maximum. On ne peut pas nous demander d'en faire plus. Et au cours du processus, en particulier en ce qui concerne les droits économiques et sociaux, nous avons pu

arriver à un équilibre et cet équilibre a pu être à temps grâce à la rédaction des articles horizontaux et à la sauvegarde des différents articles nationaux. L'équilibre aussi en ce qui concerne la référence aux entreprises, à la propriété. Comme d'autres, j'ai mes doutes en ce qui concerne certains aspects qui figurent encore. Est-ce que le deuxième paragraphe de l'article 12 devrait figurer ; c'est une déclaration pas un droit. Je ne suis pas en désaccord mais j'ai mes doutes en ce qui concerne le 28, 25 mais enfin je n'insiste pas. Et j'espère que ceux qui veulent un amendement à 52 en incluant une référence à la charte sociale, reconnaîtront qu'il s'agit là d'un texte, d'un équilibre très délicat et je crois que la convention sur les droits de l'homme il faut reconnaître que c'est quelque chose de très spécial qui justifie une mention. Moi, je suis heureux que les observations des Parlements nationaux, des groupes nationaux aient été soumis au bureau et au vu des commentaires faits cet après-midi, et bien nous voyons que les présidents nationaux n'avaient pas reçu de mandat particulier. Bon, j'espère que on ne va pas nous pousser à voter la charte dans son ensemble. Le mandat de Cologne dit clairement que la responsabilité ultime incombe au président en consultation avec le présidium. Un vote aujourd'hui en fait, ne ferait que refléter le point de vue de ceux qui sont ici dans la salle. Nous avons évité cela jusqu'à maintenant nous devons continuer de le faire. Nous aurons une procédure sur la base d'un consensus. Pas simplement un consensus parmi ceux qui se trouvent ici mais entre les différentes positions politiques nationales et c'est ce que ce devrait être. Je pense que cet après-midi a un sens, cela permettra au présidium de comprendre l'appui qu'il y a au texte. Pour moi, je pense que la convention a accompli son mandat et quoiqu'il se passera après, c'est aux chefs de gouvernement et d'État d'en décider. Je pense que mes collègues, mon parti et même dans l'opposition, même si ils ne sont pas tout à fait d'accord, ne pourront que reconnaître qu'il s'agit là d'un équilibre très délicat qui respecte le mandat et qui fait clairement comprendre à tous, y compris aux candidats à l'Union, que l'Union a des valeurs, des objectifs qui vont au-delà de simples valeurs du marché quelles qu'elles puissent être. Merci.

M. RODOTÀ

Monsieur le Président, cette charte aurait pu utiliser une langue plus directe. Faire des déclarations plus explicites qui parlent directement à l'esprit et au cœur des citoyens européens. Sur notre continent nous avons eu deux guerres parmi les plus graves et les plus tragiques de l'humanité. Nous aurions pu attendre de ce continent une contribution plus grande à la recherche de la paix à une époque où les discriminations, où l'intolérance sont de plus en plus grandes. Les actions publiques et privées ne doivent pas faire preuve d'irresponsabilité. Nous devons toujours lutter contre les inégalités. Je crains que nous n'ayons été trop prudents. Nous n'avons pas voulu parler du droit à l'autodétermination. Nous n'avons pas voulu parler du droit de choisir pour chaque femme et

chaque homme. Le droit au travail, le droit à la santé, le droit à l'instruction, le droit à un revenu minimum, le droit au logement. Ne sont-ce pas là des droits évidents. Ce ne sont plus des droits au sens classique aujourd'hui. Ce sont les véritables conditions préalables de la démocratie. J'ai été surpris que nous soyons si timides. Au cours de sa longue histoire, l'Europe n'a jamais souffert parce qu'il y avait un excès de droits. Au contraire. L'Europe a souffert lorsque les droits étaient limités, violés, niés. Cependant, je ne pense pas que nous ayons raté une occasion précieuse. Au contraire. En dépit de ses limites, la charte selon moi représente une étape historique. C'est la première fois que nous avons une déclaration des droits au cours du nouveau millénaire. Grâce à cette déclaration, l'Europe n'est plus simplement une union économique et financière comme elle l'était jusqu'à présent. Elle devient aujourd'hui, le plus large espace de droit transnational. Alors que nous avons l'impression que c'est la logique du marché qui devenait la seule valeur de référence. La charte aujourd'hui réaffirme avec force et avec originalité les valeurs de solidarité et les liens sociaux. La charte essaie de renforcer les pouvoirs individuels et collectifs des citoyens. Elle réaffirme les droits traditionnels en les liant aux droits naissant de nouvelles sensibilités morales de la force des innovations scientifiques et technologiques, des responsabilités vis-à-vis de l'environnement et vis-à-vis des générations futures. La structure de la charte abat la distinction entre différentes sortes de droits. Elle en proclame le caractère indivisible. Ce cadre est donc un cadre riche. Et il serait incompréhensible d'affaiblir la charte, de ne pas respecter le mandat de Cologne en ne faisant pas référence à la charte sociale européenne révisée. Il n'y a pas de référence à une rémunération juste pour les travailleurs. Alors que c'est quand même un droit social fondamental. Dans le mandat de Cologne, c'est uniquement par l'intermédiaire de la charte que l'Union européenne acquiert sa pleine légitimité. C'est véritablement avec cette charte que l'on pourra parler d'acte de naissance de la citoyenneté européenne. Pour que les choses soient claires, il est indispensable que l'article 51 paragraphe 3 comprenne une formulation plus claire. Ou au moins qu'il n'y ait aucune hésitation entre nous. Dès aujourd'hui, la charte représente pour le citoyen européen la garantie de droits qui vont plus loin que ceux contenus dans la convention européenne des droits de l'homme. Cela doit être tout à fait clair. J'ai entendu des réserves au cours des réunions précédentes selon lesquelles les explications n'ont pas de valeur juridique ; cela c'est dit dans le document également. Mais ces explications nous n'en n'avons jamais discuté. Ces explications dans leur rédaction actuelle ne sont pas le reflet de nos discussions. Par conséquent, elles représentent un instrument de travail. Un point c'est tout. D'où ma réserve explicite à propos de ces explications. Maintenant quelle que soit la valeur qui leur sera attribuée, je souhaite que cette charte soit contraignante juridiquement. De toutes les façons, la charte modifiera immédiatement le cadre institutionnel européen. Aucun pas ne sera possible à l'avenir, dorénavant, sans tenir compte de

cette charte et des droits fondamentaux qu'elle proclame. Il n'y a plus seulement les marchés et les relations commerciales aujourd'hui, les réseaux électroniques pour constituer les forces d'intégration ou d'unification du monde. L'Europe peut se lancer dans l'aventure de l'intégration grâce aux droits. Merci à la présidence pour le travail accompli. Et je voudrais dire, comme l'ont dit d'autres collègues, que ce travail n'aurait pas été possible sans la nouveauté institutionnelle représentée par notre convention même. Les rythmes des réformes constitutionnelles sont extrêmement lents. Or, nous, nous avons travaillé en neuf mois et cela je trouve que c'est déjà un miracle. Et j'espère qu'à l'avenir des miracles comme celui-ci se répéteront.

PRESIDENT

Merci Monsieur. J'ai encore quatre noms sur la liste des intervenants. Cinq pardon. Cinq membres titulaires et quatre suppléants. Olsen, ..., Nikula, Einem. Suppléants, Mme Lalumière, Rack, Van den Burg et M. Van Dam. Monsieur Olsen.

M. OLSEN

Ce document se base sur un grand principe, à savoir faire comprendre aux citoyens via cette charte que l'Union européenne est également une communauté des valeurs. Des valeurs qui ne peuvent pas être exprimées en termes d'argent. Première constatation. Une deuxième constatation : l'Union a des droits et des obligations vis-à-vis des citoyens et inversement les citoyens ont aussi des droits vis-à-vis des organes de l'Union. Je pense que le texte actuel arrive à se montrer à la hauteur de ces objectifs. C'est pourquoi, j'aimerais remercier le présidium. Je voudrais toutefois dire une chose encore. Des explications ont été préparées à propos des différents articles. Elles sont très utiles, ces explications. Elles permettent en effet de clarifier que la convention poursuit des objectifs bien précis qu'elle explique dans des commentaires à chacun des articles. On s'est beaucoup interrogé sur la question de savoir si ce texte doit être juridiquement contraignant au même titre que la convention de 48. Je crois qu'il faut commencer par définir quels sont les droits fondamentaux et quel est l'objectif qui a été poursuivi et atteint ici.

M. NEISSER

Merci président. Le sommet de Cologne nous a donné deux tâches à mener à bien. D'abord, faire un inventaire systématique des droits fondamentaux et d'autre part, l'obligation de rendre les droits fondamentaux transparents. Je crois que le document qui a été préparé est un très bon inventaire systématique de la situation. Et il a même une valeur ajoutée. J'aurais aimé un peu de valeur ajoutée mais bon. Néanmoins, est-ce que le document sera visible pour les citoyens ? La question se pose.

C'est le citoyen qui va devoir y répondre. Je crois que la situation varie d'un cas à l'autre, dans ce sens que il y a des parties claires dans le texte, il y en a d'autres qui sont moins claires et nous avons tous, pour tâche d'entreprendre pour le citoyen un traitement de ce texte pour qu'il devienne aussi transparent que possible. Je voudrais remercier, en tout cas, le présidium qui nous a permis d'arriver où nous en sommes. J'aurais encore une remarque concrète à faire qui a trait à l'article 11 point 2 dont on a parlé à plusieurs reprises. Je crois donc la liberté d'expression et d'information. Je crois que la pluralité c'est quelque chose de très important mais elle ne peut pas non plus servir de prétexte pour les Etats qui pourraient s'en servir pour restreindre la liberté des médias. Et c'est pourquoi j'ai adopté une position critique à cet égard. Hier, à la réunion qui a eu lieu, nous avons discuté de la question avec les représentants des gouvernements et Monsieur JACQUÉ a fait remarquer que le concept de la pluralité est déjà inscrit dans un protocole complémentaire au traité d'Amsterdam. Je voudrais que les explications relatives à l'article 11 point 2 soient complétées en faisant référence à ce protocole qui pourrait d'ailleurs être carrément inscrit dans l'explication. Je pose une question au présidium et je m'associe en ce faisant à ce qu'a dit Mme KAUFMANN. C'est l'explication. Quel est leur but exactement. Est-ce qu'elles sont un ajout, un complément d'informations, quel est leur but exactement ? En conclusion, je crois que nous avons fait un premier pas important mais d'autres pas doivent encore être faits. La question par exemple de caractère contraignant de la charte et dans ce contexte il y a la question de l'adhésion à la convention européenne des droits de l'homme. C'est une idée qui est importante pour le gouvernement de mon pays.

M. DUFF

Merci Monsieur le président. Nonobstant les remarques assez surprenantes des représentants irlandais, je crains de plus en plus que, non je pense, je suis convaincue de plus en plus, que nous avons à faire ici un grand succès et cette idée est largement confirmée par les remarques de M. FISCHBACH et par les remarques de Lord GOLDSMITH. Je me félicite tout particulièrement de l'intervention positive qui a été faite par le gouvernement britannique cet après-midi. Quatre de nos amis, plus particulièrement du parti socialiste, présentent une certaine frustration en ce qui concerne les droits sociaux. Je voudrais leur demander d'analyser avec soin le mandat de Cologne. Ce mandat limite, nous a limité dans ce que nous avons essayé de faire. Nos propres sentiments et ce que nous avons extraordinairement bien réussi à trouver un commun dénominateur entre des mouvances politiques fortes opposées, plus particulièrement entre ce qu'on pourrait appeler le germanisme et le blairisme ; trouver un compromis entre les deux, jeter un pont entre ces deux positions contrastées, c'est loin d'être aisé. Nous avons aussi réussi à rapprocher les tendances d'une part laïc et d'autre

part confessionnel. Des mouvances qui sont issues du droit romain, d'une part, et du droit coutumier, d'autre part. Ma conclusion est que nous avons réussi à refléter la société européenne moderne avec toutes ses complexités et nous avons réussi à protéger le citoyen contre tout abus de pouvoir de la part de l'Union européenne. Nous avons largement contribué à la qualité de l'unité européenne. Alors quelques articles spécifiques : d'abord le 51 point 1, je m'associe ici à la Commission. Si nous pensons devoir faire référence à d'autres intérêts légitimes, nous devrions peut-être préciser ces autres intérêts légitimes, ils ne sont pas toujours bien décrits dans les législations. Nous avons voulu créer une charte vivante qui doit pouvoir être améliorée et revue au fur et à mesure de l'intégration européenne. Et au fur et à mesure de l'approfondissement de la citoyenneté européenne. Nous voulons par cette charte intégrer les droits fondamentaux dans l'évolution de l'Union européenne. Notre tâche maintenant consiste à vendre cette charte, à la faire connaître aux citoyens, à leur faire savoir qu'il s'agit là d'un grand projet. Nous souhaitons que l'ambiance à Nice permet à cette charte de finalement trouver sa place dans nos traités.

PRESIDENT

Je crois que nous devons clore à 17H00. Essayons de le faire.

M. NIKULA

Je voudrais tout d'abord me joindre à tous ceux qui ont remercié le présidium, le Secrétariat, les assistants. Je les remercie tous et je voudrais moi aussi envoyer un salut au président Kar.... De nombreuses critiques ont été émises concernant la situation des minorités dans cette charte. Nos articles concernant l'environnement aussi ont fait objet de critiques ainsi qu'en ce qui concerne les médias. Je suis d'accord avec ces critiques et je ne veux pas répéter donc tout ce qui a été dit mais le lien avec la convention européenne des droits de l'homme c'est quelque chose qui a été bien traité dans la charte et surtout en ce qui concerne la liste qui figure dans les explications et j'espère que ces explications seront publiées. Le CONVENT 48 commence par des mots "concernent le fait que les explications n'ont pas de valeur juridique". J'espère que le présidium pourra supprimer cette phrase parce que les explications ont valeur juridique. Elles montrent où ces droits se trouvent, ces droits écrits dans la charte et pour terminer M. le président, maintenant qu'il y a un lien vers la convention, on obstacle ultérieur a été supprimé qui empêchait l'Union d'accéder à cette convention et maintenant mon gouvernement a fait des propositions.

PRESIDENT

Merci. Ce que nous voulions c'est que le présidium examine encore une fois la première page de ce Convent 48. Donc c'est fait.

Le dernier orateur c'est M. EINEM

M. EINEM

Merci M. le Président. Je suis un peu étonné de prendre la parole maintenant, mais enfin j'en suis très content. Alors je voudrais vous dire plusieurs choses. D'abord, nous devons résoudre deux problèmes, nous devons relever deux défis. Premièrement, une base solide pour la protection des droits des citoyens européens. Ca c'est le premier défi. Deuxième défi : parvenir à un équilibre dans cette tentative et je pense que nous sommes parvenus tant à jeter les bases pour la protection des droits qu'à assurer un équilibre. Et je remercie également ceux qui ne partageait pas toujours mon point de vue par ce que nous avons vraiment une bonne discussion. Ce qui n'empêche pas d'avoir quelques réserves. J'aurais souhaité qu'à l'article 52 une référence à la charte sociale européenne dans sa version actuelle soit acceptée. Deuxièmement à l'article 19 je voudrais vraiment instamment vous demander de réviser le texte : à mon avis la question des risques graves, des risques sérieux représentent une limite considérable, il faudrait parler de risques, un point c'est tout sans ajouter de qualificatifs. A propos des droits de minorité, moi aussi j'aurais souhaité quelque chose. La reconnaissance au moins, le droit à parler sa propre langue, au respect de sa propre culture, ça c'est quand même le minimum que nous puissions demander. L'objectif maintenant c'est d'obtenir une décision aussi claire que possible à Nice. Notre objectif doit être tout à fait clair mais ce ne sera que le début d'une procédure qui doit amener au caractère contraignant et à la justiciabilité de ces droits de citoyens européens et des personnes qui résident dans l'Union européenne. Et je conclurai en vous remerciant pour vos efforts.

PRESIDENT

Merci M. EINEM.

Chers collègues, nous en arrivons à la fin de la liste des orateurs est-ce que je peux donner maintenant la parole à Madame LALUMIERE, M. RACK, Madame VAN DEN BURG et M. VAN DAM.

Il nous reste cinq minutes, pourriez-vous les partager ?

Mme LALUMIERE

Je parle d'ailleurs au nom de Madame BERES absente et qui m'avait demandé de la remplacer. Moi aussi évidemment, je constate que le résultat de nos travaux est positif, globalement positif, en tout cas bien meilleur de ce que l'on pouvait craindre après Cologne, car le mandat qui était donné à la convention était très restrictif et constituait des contraintes et beaucoup de critiques qui sont faites à notre travail visent en réalité le mandat et nous avons je crois été au maximum des possibilités sans violer expressément le mandat. Ces résultats en particuliers, ce résultat positif concerne le fait de montrer clairement au monde entier que l'Union européenne ce n'est pas simplement un marché qui s'occupe d'économie mais que sort des gens, le droit des personnes comptent également beaucoup. Evidemment il y a des insuffisances, moi aussi je regrette que la charte sociale révisée n'ait pas été mentionnée expressément dans l'article 52. J'aurais souhaité aussi que l'on parle d'un droit à une rémunération équitable, c'est quand même le minimum de ce que l'on peut demander. Et un certain nombre de points. Je constate aussi qu'il y a des ambiguïté dans ce texte, par exemple à propos de l'articulation de la charte avec le système du Conseil de l'Europe, autour de la Convention européenne des droits de l'homme. Les articles horizontaux que vous avez proposés sont très habiles, ils sont sans doute les meilleurs que l'on pouvait avoir mais on verra dans les années qui viennent, il y a probablement des ambiguïtés et des difficultés qu'il faudra surmonter. Donc au total c'est un texte équilibré. Maintenant quelle doit être notre attitude. Il y a ceux qui voudraient insister sur les insuffisances, au point parfois de dénigrer le texte, parce qu'ils considèrent que ce texte ne va pas assez loin. Je crois que cette position maximaliste et je m'adresse à certains collègues en particulier, cette position maximaliste serait une grave erreur car nous devons au contraire donner toute la crédibilité possible à ce texte qui est le juste contrepoids à l'action jusqu'à présent essentiellement économique de l'Union européenne. Donc au lieu de dénigrer le texte je crois au contraire qu'il faut valoriser ce texte sans dissimuler quelques insuffisances, mais valoriser ce texte. Quant aux collègues qui redoutaient que ce texte conduise l'Union à sortir de son champ de compétence je n'ai plus rien à dire après avoir entendu Lord GOLDSMITH, je pense en réalité nous sommes restés dans des limites extrêmement raisonnables au demeurant ceux qui craignent que ce texte ne conduise l'Union à sortir de son champ de compétence sont aussi les mêmes qui déplorent les dysfonctionnements de cette Union avec une charte garde-fou qu'on peut penser que les dysfonctionnements de l'Union seront moins nombreux et moins graves pour le grand bien des citoyens de l'Union. Aujourd'hui doit-on militer pour que ce texte aie une force juridique. La question déborde le champ de notre convention, pour ma part je serai partisan que l'on continue à souhaiter que les chefs d'État et de gouvernement donnent une force juridique à ce texte ce ne sera

peut-être pas à Nice, ce sera plus tard, je crois que c'est important d'aller dans ce sens, de même en ce qui concerne l'inclusion de ce texte dans le traité et de même en ce qui concerne l'éventuelle adhésion de l'Union européenne à la convention européenne des droits de l'homme, je crois que ce sujet ne doit pas être enterré il reste important pour les années futures. Quelque soit la valeur juridique de ce texte, en tout cas, je crois que politiquement il peut avoir un influence extrêmement bénéfique et ça va beaucoup dépendre de la conviction avec laquelle nous allons la présenter à l'opinion publique, ça va aussi dépendre de la conviction des chefs d'État et de gouvernement face à ce texte. C'est un texte aujourd'hui qui est en fait déclaratoire mais qui est bien rédigé et on peut très bien en pratique lui donner une force réelle mais ça va dépendre de la volonté des uns et des autres et de la manière avec laquelle on va donner la bonne image de ce texte. En fait tout est ouvert et je voudrais en un mot en terminer Monsieur le président, pour dire aussi à quel point la procédure très nouvelle, très originale de cette convention a bien fonctionné grâce au présidium, grâce aussi il faut bien le dire au sérieux, à la sécurité des membres qui ont travaillé vite dans des conditions pas toujours faciles, je remercie aussi ceux qui travaillaient dans la coulisse, je pense au Secrétariat, sans lequel on n'aurait certainement pas pu trouver les formules auxquelles nous sommes arrivés. Cette procédure mérite d'être connue, diffusée et peut-être de servir d'exemple dans les années futures quand on voit d'autres procédures qui aujourd'hui patinent et ne vont pas très bien dans l'Union. Merci.

PRESIDENT

Merci Madame LALUMIERE.

M. RACK

Merci Monsieur le Président. Notre projet est un catalogue qui comprend à peu près cinquante droits, droit des personnes âgées comprises, ce dont je me félicite tout particulièrement. C'est plus qu'un concept minimum même si ce n'est pas parfait. Mais je suis d'accord avec nos collègues, Cognez ? et d'autres qui ont estimé que l'heure n'était pas voulue de faire état de toutes nos frustrations dans une litanie très ennuyeuse dont je ne me plains pas de l'absence d'une réglementation concernant les minorités, mais ce que je demande c'est que ce texte qui fera l'objet d'une proclamation solennelle soit mis en œuvre dans le sens d'une véritable constitution européenne. Cette convention et nos successeurs, devront accomplir un travail qui va au-delà d'une conférence intergouvernementale classique. La collègue KAUFMANN a cité la bible, ce qui m'a surpris, ensuite elle a cité un autre bible Duden. Et la je pense qu'elle a fait une erreur sémantique volontaire ou involontaire. Il ne s'agit pas de ce que dit le "Duden" le dictionnaire allemand de ce

que veut dire le terme spirituel. Regardez dans le Larousse ou dans le Langenscheidt les traductions en allemand du terme spirituel geistig ou religieuses cela apparaît également dans la traduction du terme spirituel. Nous avons beaucoup entendu de remerciements à l'adresse du présidium, et bien je voudrais moi aussi réitérer ces remerciements. Depuis le début le présidium a donné la possibilité aux suppléants de participer pleinement aux travaux de la convention et dans cette mesure là le présidium a vraiment garanti le pluralisme pas seulement respecté mais garanti. Merci.

Mme VAN DEN BURG

Etant donné l'heure qu'il est je mettrais les compliments entre parenthèse et je les réserverais pour lundi prochain où l'on pourra peut-être nous ménager un temps de parole en tant que membre suppléant actif de cette convention. Je me limiterai à deux points qui ne sont pas seulement deux points d'information je voudrais que le présidium fasse quelque chose de concret. Le premier point a été évoqué par plusieurs autres intervenants faisant la référence à la charte sociale. J'ai constaté que les parlementaires nationaux à l'exception d'un ou deux membres, peut-être, le Parlement européen ont évoqué le problème, la Commission ne s'est pas opposée à la référence à la charte sociale dont je dois en conclure que ce n'est qu'au niveau des groupes gouvernementaux qu'il y a eut quelques problèmes. J'ai maintenant entendu plusieurs gouvernements dire très clairement qu'ils sont eux aussi très favorables à cette référence à la charte sociale, donc je crois qu'il faut absolument tenir compte de ces interventions et trouver une solution puisque cela prouve qu'une large majorité en faveur de cette insertion. Ce n'est pas la peine de posséder un vote indicatif pour le constater. Mon deuxième point a trait au changement que vous avez apporté aux articles 26 et 27. Je crois qu'il y a un malentendu à propos de l'article 27 où l'on parle de niveaux appropriés qui ont été modifiés, on est passé de un niveau européen à tous les niveaux, et puis maintenant au niveau approprié, donc on a changé les termes. C'est imparfait, puisque cela se retrouve dans les textes de droits nationaux et de l'Union européenne. Il y a une explication qui a été donnée par M. BRAIBANT je crois qu'il y a eu un gros malentendu à propos de la reconnaissance des droits de grève au niveau européen. On ne peut pas dire que le droit de grève n'est pas reconnu au niveau européen, je suis d'accord pour dire qu'il n'y a pas de législation européenne en la matière mais il y a l'article 137 du chapitre social qui donne à l'Union certaines possibilités d'agir dans le domaine social. Le paragraphe 6 de cet article parle de la possibilité de faire des compositions actives en ce qui concerne les droits de grève, les questions de rémunération etc.. et ne dit en tout cas pas que l'Union européenne ne respecte pas le droit de grève. Je pense qu'il faut étendre le concept de niveau approprié aux droits de négociations collectives et aux droits d'action collectives et je voudrais demander à M. VITORINO, donc gardien du traité, de bien vouloir confirmer mon interprétation de la chose et il faudra probablement

procéder à une adaptation rédactionnelle comme on l'a fait à d'autres endroits d'ailleurs.

PRESIDENT

Merci, le dernier intervenant M. Van DAM.

M. VAN DAM

M. Le président; le texte qui est là contient indubitablement des éléments très importants à droit de la vie, à propos de la médecine, de l'intégration des handicapés, de la protection des personnes âgées que ça mérite d'être protégées. La dignité humaine est en jeu. Il est dommage que dans le préambule on se contente de parler des patrimoines culturel et spirituel. Dans l'Union européenne; les valeurs chrétiennes ne sont quand même pas à la base de la reconnaissance de la dignité humaine, mais malheureusement dans le préambule on n'en parle pas. La dignité de l'être humain dérive du fait que nous sommes des créatures de Dieu et je serais très heureux si en avenir le texte pourrait être complété à l'aide de cette notion. Je suis convaincu que ce texte aurait des conséquences négatives si on ne réfléchissait pas bien à son caractère contraignant. Je pense que les conséquence pourrait être une espèce de scission au sein de l'Union européenne. Etant donné cette argumentation mais il est certain que la convention passe à côté de certains grands dangers ce qui ne rend certainement pas service à l'Union européenne.

PRESIDENT

Merci M. Van DAM, voilà ce qui conclut le débat général.

Il y a quelques questions de procédure à régler.

Le Commissaire VITORINO va répondre, Monsieur BRAIBANT, va conclure et moi j'ai un résumé à faire, donc une déclaration, pas plus de vingt-cinq minutes et j'espère que vous pourrez rester parmi nous.

M. VITORINO

Merci M. le Président, je ne voudrais pas vous faire une réponse dans les détails, je crois que la position de la Commission a été claire sur l'article 27 dans le sens qu'il y a des législations européennes en ce qui concerne le droit des négociations collectives. Il y a des règles communautaires qui s'appliquent, il n'y a pas des règles communautaires qui s'appliquent aux droits de grève au niveau européen et cela ne signifie pas que le droit de grève ne soit pas reconnu, tout au contraire et cela ne signifie pas qu'on ne puisse pas avoir des grèves simultanées dans plusieurs pays européens. Mais ces grèves doivent être décrétées en accord avec des législations nationales et je

crois que c'est cette approche qu'on a essayé de trouver dans l'article 27 pour bien distinguer quel est l'encadrement juridique au niveau communautaire du droit à la négociation collective et quel est l'encadrement juridique différent du droit à la grève, du droit à l'action politique, y compris le poids de la grève, on a essayé d'adresser, dans des positions assez différentes ces deux éléments avec la rédaction qu'on a proposée.

PRESIDENT

Merci M. VITORINO.

Chers collègues, le présidium informera le président HERZOG bien sûr de ce débat, des discussions hier; de l'atmosphère générale de vos contributions, de tout ce qui a été dit. Il l'informerait aussi du contenu de ces débats et c'est la seule façon de lui donner l'occasion de prendre sa décision. Ce n'est pas secret, ici tout est public et je pense que c'est notre devoir selon les décisions de Tampere de le faire pour faciliter la décision du président qui malheureusement n'a pas pu venir. C'est ce que nous ferons ce soir. Alors, pour lundi, chers collègues, nous avons une convention officielle lundi qui commence à 11h00, de 11h00 à midi et demi. Il y aura des discours des vice-présidents et sur la base de ce qu'on a fait le 17 décembre. Il y aura un discours du président quand il nous fera part de sa décision. Son discours sera lu. Ensuite, il y aura l'accord formel de nos conclusions, entre nous à la convention, la photo de famille et pour fêter cela, il sera plus de midi, nous boirons une coupe de champagne offerte par la présidence française, bien sûr. A midi, c'est très important d'avoir du champagne. Cela dit, je vais donner la parole au professeur BRAIBANT.

Question d'un membre de la Convention

Oui, en ce qui concerne lundi, en ce qui concerne l'ordre des travaux, vous dites que à la fin de cette réunion d'une heure et demi, on aura l'adoption formelle, un accord formel, comment je dois interpréter cela ? On va signer un texte ? Comme vous le savez, je suis d'accord avec la plus grande partie du texte mais pas tout. Alors, il faudrait que je sache si le texte doit être soumis au Conseil européen, au président, plutôt qu'à nous.

PRESIDENT

Il n'y aura rien à signer. Nous nous réunirons avec une couverture importante des médias pour clore nos travaux et pour attendre l'accord formel du président HERZOG qui nous fera part de sa décision afin de pouvoir conclure nos travaux. Oui excusez-moi de ne pas avoir été assez précis. Professeur BRAIBANT, je vous donne la parole. Un résumé en deux minutes et quelques secondes ?

M. BRAIBANT

Je vais essayer. M. le président, je peux essayer mais je n'y arriverai pas et je crois qu'il vaut mieux que je respecte les deux minutes plutôt que j'essaie de résumer. Je pense que vous serez tous d'accord avec cette approche. C'est un fait que la séance d'aujourd'hui a été passionnante. Nous avons pu constater un très large accord. Il ne faut pas exagérer ce n'est pas un accord complet sur tous les points. Personne n'est obligé d'être d'accord avec les 50, plus que 50 articles, de la charte. Moi-même, je ne suis pas d'accord avec tous ces articles. Mais le problème était de savoir si nous arriverions à un accord global et souvent le mot "global" a été employé globalement positif. Je dois dire que un des grands moments de cette séance pour moi, était l'intervention de Peter GOLDSMITH, nous avons assez polémique pour que maintenant je lui rende hommage car à certains moments, j'arrivais à du découragement et encore assez récemment. Je peux vous préciser que l'invitation pour le champagne de l'ambassade de France, elle date d'avant-hier et encore j'étais peut-être imprudent parce que je ne pouvais pas inviter s'il n'y avait pas une fête à faire ! Or, je n'ai jamais été sûr, et chaque fois qu'on me demandait: "est-ce que vous allez aboutir ?", je disais : nous en sommes très près, nous n'avons jamais été aussi près mais je ne peux pas vous garantir que nous allons aboutir. Je crois que maintenant on peut penser que nous allons réussir cette opération qui comme on l'a dit est très importante pour l'Europe et très importante aussi pour l'avenir de cette formule nouvelle à laquelle beaucoup d'hommes politiques s'intéressent maintenant qui est la formule de la convention. Il faudra que peut-être la semaine prochaine, nous essayons d'en tirer les leçons, ce que je voudrais dire aussi, c'est que vous nous avez tous, presque tous, gentiment félicités et que les félicitations sont réciproques. Nous n'avons pas tout fait, tout ne revient pas au présidium qui pourtant, je pense, a bien fonctionné mais à la convention également et nous avons eu des aller-retour, que nous appelons en français, politique des navettes qui ont permis à chaque fois d'enrichir le texte. Je ne crois pas que le texte soit sorti appauvri par nos débats. Il a toujours été enrichi, parfois des débats difficiles mais l'obligation de chercher des compromis nous a stimulé et nous a obligés à faire progresser notre pensée. De ce point de vue, je pense que c'est un succès collectif qui ne revient pas à tel ou tel ou à tel ou tel groupe de personnes ou à telle ou telle personne mais qui nous appartient à tous et personnellement je vous remercie tous pour le concours que vous nous avez apporté qui a été vraiment très riche. Après une de nos premières séances difficiles, je suis allé trouver Peter GOLDSMITH et je lui dit: on peut se serrer la main comme des joueurs de tennis après un match, il m'a répondu: j'espère que nous sommes du même côté du filet et je lui ai répondu: je n'en suis pas sûr ! A l'époque, je n'en étais pas sûr, maintenant j'en suis sûr et j'en suis ravi. Et je voudrais terminer sur cette note d'optimisme. Merci.

Je vous remercie et je remercie les interprètes, la séance est levée.

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE**fundamental.rights@consilium.eu.int**

Bruxelles, le 20 octobre 2000**CHARTE 4959/00****CONVENT 54****NOTE D'INFORMATION DU SECRETARIAT**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne

- Verbatim de la séance solennelle de clôture de la Convention du 2 octobre 2000
 - Discours de M. Guy Braibant, vice-président, lors de la session du Conseil informel à Biarritz, le 14 octobre 2000 ¹
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PRESIDENT (M. BRAIBANT):

J'ai le plaisir d'ouvrir cette séance qui je le rappelle est une sorte de cérémonie de clôture de nos travaux. Un certain nombre d'entre nous vont prendre la parole au nom des différentes composantes de la Convention. Mais je donne la parole d'abord au représentant de la Cour de justice des Communautés européennes, M Alber ² qui va parler de sa place.

M. ALBERT

Monsieur le Président, Mesdames et Messieurs, en l'espace de moins d'un an notre Convention est parvenue à rédiger un projet admirable de Charte des droits fondamentaux. Nous devons remercier et féliciter la Convention pour ce travail. La Cour de justice des Communautés européennes n'a été

¹ Le verbatim ainsi que le discours de M. Braibant à Biarritz seront diffusés uniquement en langue française.

² Vous trouverez en annexe la version allemande du discours de M. Alber, telle qu'elle nous a été transmise par la Cour de justice.

qu'un observateur, donc pas membre à part entière et dès lors les félicitations que j'adresse, ne s'adressent pas à nous-mêmes, il s'agit bien plutôt de félicitations dûment motivées vues de l'extérieur. Je souhaiterais remercier en particulier le Présidium et le Comité de rédaction qui a effectué un travail d'excellente facture, tant sur le plan sémantique que sur le plan de la compétence juridique. Je crois que le Présidium mériterait pour cette performance une médaille d'or et je souhaite également adresser mes plus chaleureux remerciements à notre Président, le Professeur HERZOG, qui aujourd'hui pour des raisons de santé ne peut malheureusement pas être présent parmi nous, et dont l'expérience constitutionnelle qui s'étend sur plusieurs décennies a été je crois très enrichissante pour notre Convention et je lui souhaite, d'ici, de ma place, un prompt rétablissement même si dans la Charte nous n'avons pas enchâssé de droit à la bonne santé. La Convention est parvenue à réussir son exercice d'équilibrisme sur le fil du rasoir entre d'une part les souhaits et d'autre part de ce qui était faisable. Tout ce que l'opinion publique eut souhaité n'était pas forcément faisable étant donné les limites des compétences communautaires. Toute une série d'autres choses en dépit des souhaits des citoyens, les amendements l'ont montré, toute une série d'autres choses n'ont pas été possible. La Convention des droits de l'homme des Nations Unies compte 52 ans, la Convention européenne 50 ans, et le citoyen a estimé que le moment était venu d'enfin tenir compte des évolutions du progrès technique, scientifique, d'élaborer une Charte qui soit le reflet de l'état de l'art et je puis comprendre ce souhait. Mais je crois que le moment serait tout aussi venu pour que les législateurs nationaux adaptent leur ordre constitutionnel respectif à cette situation. Ce que le Conseil européen va décider lors du Sommet de Nice sera décisif. Je pars du principe qu'on va conférer à la Charte, et c'est indispensable, un caractère contraignant, car après tout c'est le Conseil lui-même qui a pris cette initiative lors du Sommet de Cologne. En vérité lorsque le Conseil européen lance une idée pro-européenne, il faudrait parfois se montrer quelque peu méfiant, je crois que s'applique ici ce que Talleyrand avait déjà dit à l'époque lorsqu'on lui communiquait la mort d'un autre diplomate particulièrement honoré, il s'est interrogé "mais qu'est ce qu'il a bien pu vouloir faire en mourant ainsi, quelles étaient ses intentions" et on serait en droit de s'interroger sur les intentions du Conseil européen en nous confiant la rédaction de cette Charte. J'espère que ce n'était pas une manœuvre de diversion pour détourner l'attention des problèmes institutionnels, j'espère que, dans l'intérêt de l'Europe et des citoyens, le Conseil européen lui confèrera un caractère contraignant, car si la Charte venait à recevoir un seul effet déclaratoire, le travail de la Convention eut été inutile voir contreproductif. Certaines dispositions des Traités de Rome devront être complétées, adaptées, je cite pour exemple l'article 6 dans lequel il est stipulé "que les droits fondamentaux doivent être respectés tels qu'ils sont ancrés dans la Convention des droits de l'homme et tels qu'ils ressortent des traditions des États membres", il va évidemment

falloir tenir compte ici de la Charte que nous allons adopter, l'associer étroitement aux Traités de Rome, particulièrement si cette Charte doit recevoir un caractère contraignant, mais en dehors de la structure des traités, si elle reste un document indépendant. La Cour de justice des Communautés européennes respecte d'ores et déjà les droits de l'homme, donc ce document ne constitue rien de nouveau, il ne fait que souligner et appuyer la jurisprudence actuelle ce qui est juste et bon. Au sein de la Convention; l'un de mes collègues a à l'occasion dit que "la Charte servirait à ce que la Cour de justice fasse respecter les droits de l'homme" je crois que celui qui utilise de tels arguments ignore la jurisprudence de la CJE, car cela fait depuis les années 60 qu'elle respecte ces droits de l'homme et qu'elle leur confère même une importance essentielle puisqu'elle considère qu'il s'agit là d'un principe fondateur. Nous disposons de 2 voies juridiques. La Charte sera contraignante pour les institutions de la Communauté mais également les États membres dans leur transposition du droit communautaire, cela signifie que dans le premier cas la Cour de justice à Luxembourg sera exclusivement compétente, tandis que dans le deuxième cas, s'agissant des États membres transposant le droit européen, ce seront les tribunaux nationaux qui seront compétents pour trancher à la suite de quoi on pourra ester devant la Cour européenne des droits de l'homme à Strasbourg. C'était déjà le cas dans la situation actuelle, mais ce qui s'imposera à l'avenir ce sera une coopération encore bien plus étroite entre ces deux cours. Il a été dit que la Cour européenne de justice aurait dans certains de ces arrêts pris ses distances par rapport à la Cour européenne des droits de l'homme à Strasbourg, et c'est vrai qu'il y a une poignée d'arrêts dans lesquels des divergences peuvent être débusquées. Toutefois, il faut rappeler ici que les arrêts de la CJE à Luxembourg ont souvent été prononcés concomitamment ou avant les arrêts de la Cour européenne des droits de l'homme, notre Président M. IGLESIAS a rappelé à maintes reprises que, évidemment, la CJE tiendrait compte de la jurisprudence de la Cour européenne des droits de l'homme et que donc les divergences qui pourraient se produire n'étaient que des divergences de façade et non pas de principe. Nous venons donc en vérité d'élaborer une Charte pour l'Union qui prouve que la Communauté est bien plus qu'une communauté économique, c'est une communauté de droit et une communauté de valeurs. Cette double combinaison fait de l'Union européenne une communauté de droit non pas au sens formel mais également au sens matériel, une communauté de droits au pluriel. Les droits fondamentaux des citoyens constituent les pierres angulaires de la démocratie et sans ces clés de voûte, sans ces piliers, l'Union européenne n'aurait aucune stabilité intérieure. Partant la Charte des droits fondamentaux constitue un jalon capital sur la voie de l'intégration européenne future et pour le citoyen en sa qualité de citoyen européen. Une fois de plus j'adresse mes plus chaleureuses remerciements et mes meilleurs vœux de succès pour l'avenir. Je crois que l'histoire prouvera que cette Charte va constituer un grand pas pour l'Union européenne.

PRESIDENT

Merci de nous avoir apporté ce soutien venant d'une des plus hautes juridictions de l'Europe, il est particulièrement précieux. Je donne la parole maintenant au Commissaire VITORINO qui a beaucoup travaillé avec nous, qui est vraiment l'un des auteurs de la Charte et qui va s'exprimer au nom de la Commission.

M. VITORINO

C'est certainement avec émotion et fierté d'avoir participé à l'élaboration du projet de Charte, que je prends la parole aujourd'hui devant la Convention.

Mais, au-delà des sentiments personnels, ma tâche, pour importante qu'elle soit, est assez aisée et agréable : elle consiste, Monsieur le Président, à vous apporter le soutien sans réserve de la Commission européenne sur le projet de Charte pour lequel vous vous apprêtez à constater le consensus, selon les règles posées par le Conseil européen de Cologne.

Dans une Communication adoptée le 13 septembre, rendue publique et adressée à la Convention, le Collège a marqué son accord de principe sur l'avant-projet tel qu'il était alors formalisé dans le document CONVENT 45, tout en suggérant quelques formulations plus explicites en ce qui concerne certains droits sociaux et la protection de l'environnement en particulier. Ces suggestions ont été prises en compte dans le projet définitif et je ne peux donc que vous redire l'accord de la Commission sur le projet.

Avant d'explicitier brièvement la position de la Commission, je voudrais aussi souligner ma satisfaction concernant le fonctionnement de la Convention, nouvel instrument inconnu jusque là. Nul doute que cette expérience pourra nourrir les réflexions des constitutionnalistes et sera susceptible de recevoir d'autres applications. Mais, il est clair, en tout cas, que - ainsi que je le pronostiquais au début de nos travaux en décembre dernier - le judicieux mélange entre les sources de légitimité nationale et européenne et les représentations des exécutifs nationaux et européen, a certainement été une garantie du succès de nos travaux.

La Commission se félicite d'avoir pu activement participer à cette entreprise en tant que composante à part entière, tant au sein de la Convention qu'au niveau du Présidium, aux côtés du Parlement européen, des représentants des gouvernements et des Parlements nationaux. Comme dans le roman d'Alexandre Dumas, l'histoire retiendra, je l'espère, que les trois mousquetaires étaient quatre !

Mais, si escarmouches il y eut entre les composantes et les membres de la Convention au cours des travaux, les blessures furent légères et les épées ont pu être baissées avec honneur et fierté. Ces escarmouches se sont sans doute soldées par des compromis qui pourront nous être reprochés par les lecteurs et utilisateurs futurs de la Charte, mais aussi et surtout par un texte final marqué par l'exigence et la rigueur intellectuelles. Elles ont permis des synthèses difficiles à établir entre les différentes composantes politiques de la convention et entre les différentes traditions juridiques européennes.

Je voudrais ainsi rendre hommage à l'engagement et à la ténacité de tous les membres de la Convention, titulaires ou suppléants, pour leurs contributions aux travaux de la Convention et pour la bonne disposition dont ils ont fait preuve à mon égard en tant que représentant de la Commission. Mais j'aimerais tout particulièrement remercier notre Président Roman HERZOG, à qui je souhaite un prompt rétablissement, ainsi que les Vice-Présidents.

La Commission salue tout d'abord la forme du texte et ceci à deux égards bien différents :

- comme voulu au départ, le texte est concis et percutant ; c'était bien la condition de sa lisibilité par les citoyens et citoyennes de l'Union qui en sont les vrais destinataires ;
- comme voulu au départ aussi le texte est rédigé « comme si » il devait être intégré dans les traités, sauvegardant ainsi le choix que le Conseil européen devra faire, le moment venu, entre une Charte déclaration politique solennelle ou une Charte intégrée dans les traités.

Cette doctrine du « comme si », mise en avant par le Président HERZOG et que j'avais également soutenue dès le mois de décembre, a certes alourdi nos travaux, puisque, sans cette doctrine, les clauses horizontales, les plus importantes et les plus difficiles du projet, eussent été superflues. Mais c'est une garantie du succès futur de la Charte, puisqu'elles ont permis de préciser ce qu'est la

Charte, à savoir l'instrument du contrôle du respect des droits fondamentaux par les institutions et les Etats membres quand ils appliquent le droit de l'Union. Ces clauses ont aussi permis de préciser ce que la Charte ne peut pas être, à savoir un véhicule de transfert de nouvelles compétences à l'Union ou un moyen déguisé d'adhésion à la convention européenne ou encore celui d'abaisser le niveau de protection d'ores et déjà existant dans l'Union.

Mais, c'est bien entendu au contenu même de la Charte que la Commission apporte en premier lieu son complet soutien.

Au-delà des regrets ou frustrations que chacun peut encore avoir sur le libellé de tel ou tel droit, de sa présence ou de son absence dans le projet, je n'hésite pas à répondre positivement à la question de savoir si le mandat de Cologne a été rempli.

Oui, nous avons rempli le mandat qui nous avait été imparti. Mandat consistant – par une sorte de maïeutique socratienne des droits fondamentaux – à rendre visibles les droits déjà existants et consistant donc à travailler à droit constant. Peut-être y a-t-il eu là un certain malentendu avec certains représentants de la société civile, volontiers portés à la critique du projet, en raison même de l'importance et de la légitimité des intérêts que ces associations et syndicats ont à défendre. Ces intérêts dicteront l'évolution future des droits fondamentaux.

Travailler à droit constant ne signifie pas que la Charte soit dépourvue d'une réelle valeur ajoutée. Tout au contraire ! Plusieurs points peuvent être énumérés, sans vouloir être exhaustif :

- je rangerai volontiers parmi ces points, la rédaction neutre du texte qui va bien au-delà du seul aspect formel. Contrairement à « la déclaration des droits de l'homme et du citoyen » qui, en son temps, avait dû faire l'objet d'une traduction féminine par une citoyenne avisée de l'époque, la Charte s'adresse directement aux deux sexes. Il était temps en effet d'éliminer des textes juridiques, la prééminence d'un sexe sur l'autre. Parions que ce sera le langage du prochain siècle !

- il était temps aussi qu'un texte fondateur, comme la Charte, rassemble – au nom de l'indivisibilité des droits – les droits civils, politiques, économiques et sociaux. C'est une innovation – qui a déjà été largement soulignée – mais qui met bien en évidence notre modèle social européen contemporain. Je n'ignore pas que certains, dans cette salle et parmi la société civile, restent insatisfaits quant aux droits sociaux énumérés dans le catalogue de la Charte. Mais celle-ci doit être

vue comme un instrument dynamique, susceptible d'évolution : le droit de l'Union pourra et devra continuer à progresser.

- la Charte est par ailleurs bien contemporaine lorsqu'elle exprime des droits, qui, sans être véritablement nouveaux comme la protection des données personnelles ou les droits liés à la bioéthique, visent à répondre aux préoccupations liées au développement actuel et futur des technologies de l'information ou du génie génétique.

- la Charte répond bien aussi aux fortes et légitimes demandes actuelles de transparence et d'impartialité dans le fonctionnement de l'administration communautaire en exprimant des droits qui pour certains sont certes simplement repris des traités, mais qui, pour d'autres, étaient enfouis dans l'abondante jurisprudence de la Cour de justice des Communautés européennes.

- Enfin, la Charte a un champ d'application respectueux du principe de la subsidiarité et, de ce point de vue, elle ne remplace pas les Constitutions nationales pour ce qui est du respect des droits fondamentaux au niveau national.

Bref, la valeur ajoutée du projet de Charte est bien réelle. C'est là le gage de son succès pour le futur, au-delà même de la valeur qui lui sera finalement octroyée.

Valeur juridique contraignante ou valeur de déclaration politique solennelle, là aussi les escarmouches semblent se préparer pour un avenir relativement proche, en dehors cette fois de l'enceinte de la Convention. Ma propre évaluation me porte au contraire à envisager la question avec une grande sérénité !

Sans grand risque, on peut faire le pari que la Charte déploiera en tout cas des effets y compris sur le plan juridique. Il est clair que les institutions de l'Union appelées à la proclamer solennellement, pourront difficilement ignorer dans le futur un texte préparé à la demande du Conseil européen par toutes les sources de légitimité nationale et européenne réunies au sein de la même enceinte. Il est vraisemblable qu'à son tour la Cour de justice s'en inspirera dans son contrôle du législateur, comme elle le fait déjà avec d'autres textes concernant les droits fondamentaux.

Il est de bon ton d'ailleurs de relever que, dans le passé, les déclarations de droits dans les pays européens ne sont longtemps restés que de simples proclamations, sans que personne ne s'inquiète de les revêtir d'un quelconque costume juridique contraignant.

Dans le contexte européen actuel, ma conviction personnelle me porte cependant à aller plus loin. Mon pronostic est que la vocation de la Charte, par son contenu, par sa formulation rigoureuse et par sa valeur politique, est d'être intégrée dans les traités. Il s'agit surtout de répondre aux questions du « comment » et du « quand » qui débordent largement les compétences de notre Convention.

Nous devons tout faire de notre part pour mettre le citoyen au centre de la construction européenne – ce qui me semble la condition sine qua non pour l'espace de liberté, de sécurité et de justice dont je suis particulièrement responsable au sein de la Commission – il faudra tirer toutes les conséquences qui s'imposent et exprimer clairement le catalogue des droits fondamentaux au sein du droit primaire de l'Union.

Bien entendu, une éventuelle intégration de la Charte dans les traités, se traduirait par une sécurité juridique accrue par rapport au droit positif actuel, caractérisé à l'article 6 du TUE par la plus profonde obscurité – à l'avantage bien entendu des juristes professionnels -, obscurité qui domine là où la clarté serait au contraire nécessaire. Je veux bien admettre que le renvoi fait au paragraphe 2 de cet article est encore clair s'agissant de la convention européenne des droits de l'homme, mais qui peut extraire ce que recouvre précisément le renvoi aux traditions constitutionnelles communes ?

Ayant cité la Convention européenne, je voudrais revenir, avant de conclure, sur un des motifs de satisfaction de la Commission, à savoir l'assurance d'une homogénéité satisfaisante entre la Convention européenne de protection des droits de l'homme et de sauvegarde des libertés fondamentales, riche de cinquante ans d'expériences, et la Charte. Cette homogénéité est nécessaire pour éviter que ne se développent en Europe deux corps législatifs tout à fait distincts en matière de droits de l'homme, perspective qui serait en effet la négation même de l'universalité des droits que proclament les deux textes.

Ceci n'empêche évidemment pas – pour utiliser la formule désormais reprise sous l'article 52 paragraphe 3, dernière phrase – que le droit de l'Union – et en premier lieu la Charte elle-même

dont elle fera partie- puisse aller au-delà dans la protection, comme la Convention l'autorise d'ailleurs pour ses parties contractantes. Chacun sait bien que le droit au mariage et le droit de fonder une famille tels que formulés dans la Charte sont plus étendus que le droit correspondant de la Convention. Il en est de même pour l'interdiction de discrimination et le droit à un recours effectif. Il s'agit d'une reconnaissance essentielle du principe de l'autonomie du droit communautaire et de la Charte elle-même.

La Commission reste, cependant, très favorable, comme elle le fut dans le passé, à mettre en place les moyens nécessaires à la convergence des jurisprudences européennes. La voie la plus efficace reste bien sûr l'adhésion de l'union à la Convention. A cet égard, on peut se réjouir de certaines évolutions récentes que l'on a pu noter dans le cadre de la CIG, pour ce qui concerne la position de quelques Etats membres du moins.

Les travaux de la Convention ont en tout cas bien montré, à mon avis, que, contrairement à l'interrogation que l'on pouvait encore se poser au départ de nos travaux, Charte et adhésion ne s'excluent pas, mais peuvent au contraire se faire parallèlement, à l'image de l'approche retenue par les Etats membres qui, à la fois, se sont dotés de leur propre catalogue de droits fondamentaux dans leur constitution et ont adhéré à la Convention européenne.

Pour conclure, je voudrais faire mienne une idée qui a déjà été clairement émise dans cette enceinte la semaine dernière : la bonne réception de la Charte dans l'opinion publique et au sein des instances politiques dépendra en grande mesure de la bonne image que chacun de nous, les membres de la Convention voudront bien lui donner. Pour ma part, et étant pour une fois biblique, je peux vous assurer que je m'emploierai autant que je le pourrai dans cette mission de prêcher la bonne parole.

PRESIDENT

Merci M. le Commissaire, vous nous avez beaucoup aidé pendant tous ces travaux par votre sens politique, par votre compétence juridique et aussi je dois dire par votre sens de l'humour. Vous venez encore de nous donner quelques exemples. Je donne la parole maintenant à M. MENDEZ DE VIGO, mon voisin, qui est le Vice-Président pour les représentants du Parlement européen.

M. MENDEZ DE VIGO

Merci M. le Président. Il y a neuf mois, au Conseil, nous nous sommes rencontrés pour la première fois et à ce moment-là, il faut bien le reconnaître, nous avions tous de sérieux doutes quant au résultat définitif de nos travaux. Nous avions des doutes parce que nous étions face à quelque chose d'inédit. Nous étions face à un exercice politique certes mais avec des conséquences juridiques très claires. C'est-à-dire que dans un même exercice on allait réunir deux logiques différentes, la logique intergouvernementale et la logique parlementaire. Et c'était la première fois qu'allaient participer à un exercice conjoint les gouvernements, le Parlement européen et les parlements nationaux avec une très large représentation. Par conséquent, M. le Président, on ne pouvait imaginer quel allait être le résultat de nos travaux. Et si ce résultat est satisfaisant c'est sans aucun doute grâce l'autorité du Président HERZOG à qui je rends hommage ici aujourd'hui. Il n'est pas parmi nous aujourd'hui pour des raisons de santé, vous le savez tous. Le Président HERZOG a imposé son empreinte dès le début aux travaux en indiquant que nous allions travailler comme si la charte devait être incluse dans les traités. Il fallait donc avoir à l'esprit à chaque instant quelles étaient les conséquences juridiques de nos travaux. Si cette charte devait figurer dans le traité, il fallait en peser toutes les conséquences juridiques. M. HERZOG a également insisté sur l'article 51.2, c'est-à-dire sur le champs d'application de la charte. On dit que la charte actuelle ne crée aucune nouvelle compétence pour l'Union européenne. C'est un article qui est apparu dès le début de nos travaux. Je crois que c'est un des seuls articles qui n'a pas été modifié. Autre élément mentionné par le Président HERZOG avec son sens de l'humour caractéristique, il ne faut rien promettre dans la charte qui ne serait pas tenu par la suite. Et je crois que sur ce troisième élément, nous nous en sommes tenus à cette ligne de conduite. La charte que nous avons rédigée n'est pas un document minimaliste comme certains peuvent le penser. Ce n'est pas non plus un document des "rois mages" comme on dit, c'est-à-dire un document dans lequel on demande tout et n'importe quoi. Il s'agit en fait d'un engagement, notre charte est quelque chose d'autonome, c'est un document juridique et, c'est très important, c'est un document qui n'interfère pas dans les systèmes nationaux des différents États membres, il n'y a pas d'interférence dans les constitution des États membres. J'espère que par ce travail on connaîtra mieux les droits fondamentaux de l'Union européenne et j'espère que, par là même, ces droits seront mieux respectés aussi bien auprès des institutions européennes à qui s'adresse cette charte mais également auprès des citoyens qui auront quelque chose de bien clair à l'esprit. Nous n'avons pas seulement considéré les droits existants, nous sommes allés au-delà pour démontrer que l'Europe n'est pas seulement un marché. L'Europe, comme cela a été dit ici, est une communauté de droits, et

de valeurs également. Dans l'article premier, justement, on fait référence à la dignité humaine, et on proclame l'inviolabilité de la dignité humaine. Je crois que c'est une preuve de ce que je viens de vous dire. C'est une charte également progressiste sur bon nombre d'éléments. Je pense en particulier à l'égalité. Dans ce chapitre l'égalité existe des potentiels inexploités en particulier l'égalité hommes-femmes, la protection des personnes âgées, etc. Nous avons également élaboré des droits nouveaux qui sont le fruit de tous ces éléments juridiques. Dans le chapitre solidarité nous avons repris une série de droits économiques et sociaux. Ils représentent le cadre fondamental du modèle social européen. Nous avons réalisé cet exercice dans la rigueur comme l'avait suggéré M. HERZOG et bien évidemment en tenant à l'esprit la subsidiarité c'est-à-dire d'avancer des choses que l'on pourrait tenir. Voilà neuf mois sont passés. Ce matin en relisant la charte je me souviens que M. JANSSON nous avait dit qu'à un moment ou à un autre, au moment de l'élaboration de la constitution finlandaise, les parlementaires finlandais avaient dit: faisons en sorte que aucun article de notre constitution n'ait plus de trois paragraphes. Je crois que nous nous avons respecté cette rigueur. Nous avons parfois certes quatre paragraphes mais nous nous en sommes généralement tenus à ces trois paragraphes, nous avons donc cette rigueur finlandaise dans notre charte. Le 52.3 maintenant est particulièrement important, il y a cette clause d'évolution, c'est-à-dire qu'on ne considère plus cette charte comme quelque chose de statique, de rigide mais comme quelque chose qui évoluera. M. le Président, permettez-moi de revenir très brièvement sur la méthode. J'ai mentionné tout à l'heure quelle était la logique de notre exercice. D'ailleurs c'est la première fois qu'on utilise cette méthode dans l'Union européenne et cela a fonctionné, à la surprise de bon nombre de personnes. Cette convention a démontré que nous européens sommes en mesure de nous entendre. Nous sommes en mesure de répondre à la légitimité des deux institutions européennes, le Conseil et le Parlement mais également à la légitimité des différents États membres par le biais des parlements nationaux. Nous sommes arrivés à une entente et à un texte qui satisfait tout le monde. Ceci démontre que quand les hommes politiques agissent, ils sont en mesure de s'entendre. Pour tous ces motifs la délégation du Parlement européen, au sein duquel je voudrais insister sur le rôle des titulaires mais également des remplaçants, a agi pendant les neuf mois, a fait des propositions, des contre-propositions etc. Et c'est seulement après avoir combattu jusqu'au bout que nous avons décidé que ce texte pouvait faire l'objet d'un accord de notre délégation. Ceux qui étaient contre son consensus d'ailleurs ont participé activement à l'élaboration de ce texte également. Donc M. le Président, pour la délégation du Parlement européen ça a été une expérience très positive. La charte est de bonne facture, nous sommes d'accord avec le commissaire Vitorino pour propager la bonne parole, nous avons accompli notre tâche. Il y a neuf mois nous ne savions pas quel allait être le résultat de ces travaux, maintenant au Parlement européen nous savons qu'il s'agit d'une bonne

charte. Au Conseil de Feira, le Premier ministre GUTERRES, après les interventions des différents premiers ministres a dit quelque chose que j'ai répété à maintes reprises. Il a dit: dites à la convention que pour le moment il faut se concentrer sur le contenu de la charte, pour ce qui est de la valeur juridique on en parlera par la suite. Ce que nous a dit GUTERRES en fait c'est: faites en sorte que la charte soit bonne, parce que si elle est bonne elle pourra servir. Notre délégation et moi-même nous sommes intimement convaincus qu'il s'agit d'une bonne charte. Et comme il s'agit d'une bonne charte nous espérons que les effets se feront sentir au bénéfice des citoyens européens.

Merci.

PRESIDENT

Merci beaucoup. Donc à partir de maintenant et de tout à l'heure nous serons tous des pèlerins de la charte et la dernière fois que je vous ai appelé au téléphone, vous étiez en voiture pour aller à St-Jacques de Compostelle. Je donne la parole maintenant à M. JANSSON qui est le Vice-Président pour les représentants des parlements nationaux.

M. JANSSON

Merci M. le Président, très chers collègues, membres de la convention. Je remercie tout d'abord M. MENDEZ DE VIGO des paroles aimables qu'il a eues à mon rencontre et je puis confirmer l'influence que lui et ses troupes du Parlement européen ont eue, une influence considérable. Évidemment nous avons travaillé en troïka conformément au souhait de notre Président, M. HERZOG. Très chers collègues, en tant qu'europpéen convaincu, je m'exprimerai en trois langues et je commencerai par le suédois, ensuite j'enchaînerai par le finnois et je terminerai en anglais. Je le ferai lentement car je sais qu'il se pourrait bien que nous rencontrions quelques petites difficultés de traduction en cours de route. Mesdames et Messieurs, l'organe a reçu un nom, il a été baptisé convention. La convention a travaillé pendant neuf mois et l'enfant devait naître après un terme normal de neuf mois. M. MENDEZ DE VIGO a parlé de douze mois, c'est peut-être exagéré pour une gestation. Aujourd'hui 2 octobre, notre enfant est enfin né. Nous ignorons encore s'il s'agit là d'une fille ou d'un fils. Notre enfant, cette charte, espérons-le, recevra sa personnalité le 13 octobre à Biarritz ou bien au plus tard lors du sommet de Nice. Ce que nous savons par contre d'ores et déjà c'est que les enfants, les garçons, les filles, les hommes et les femmes devront être traités de manière égale dans toutes les circonstances aux termes de l'article 23 de la charte. La diversité culturelle aux termes de l'article 22 me pousse à présent à passer au finnois.

Mesdames et Messieurs, chers membres de la convention, cela a été un grand honneur pour moi de vous représenter personnellement en tant que représentant parlementaire national dans ces travaux. J'ai été un des vôtres. Nous avons travaillé coude à coude pour faire en sorte d'imposer notre empreinte pour le bien de l'Europe. Je vous suis très reconnaissant pour le développement des travaux ici qui s'est fait conformément aux besoins et aux exigences des parlements nationaux c'est-à-dire, pour reprendre par exemple, le droit des enfants. Les parlementaires nationaux acceptent ces 54 articles, nous ferons en sorte que les parlements nationaux de tous les États membres propagent la bonne parole.

Mesdames et Messieurs, nous nous reportons à l'article 22. Je vais exploiter la diversité culturelle linguistique en poursuivant mon discours en anglais. Je voudrais tout d'abord adresser mes félicitations au Royaume-Uni et à son peuple. Aujourd'hui, le 2 octobre 2000, la Convention européenne des Droits de l'Homme entre en vigueur au Royaume-Uni. Voilà donc un jalon qui a été posé par un des membres fondateurs du Conseil de l'Europe. Notre charte compile cinquante années d'histoire des droits de l'homme en Europe. C'est une compilation et une fusion en un document unique qui a été réalisé et qui nous donne aujourd'hui notre charte. La question-clé qui se pose est la suivante : comment combiner l'intégration économique à l'intégration politique? Nous le savons, et M. le commissaire l'a dit dans son discours: l'intégration économique cela signifie la compétitivité dans un marché libre, cela signifie la levée de toutes les entraves et cela signifie que le marché décide de qui pourra opérer. Les autorités qualifiées de monopoles n'agissent plus, il y a contrôle de la population. Y a-t-il compétitivité au sein de mondes politiques? Ça c'est ma deuxième question et j'aurais tendance à y répondre "oui". Oui, la compétitivité existe, il y a concurrence entre l'Union et ses États membres et même entre l'Union et les autorités législatives locales et régionales. C'est la raison pour laquelle l'intégration économique peut être combinée à l'intégration politique mais à cela il y a deux conditions préalables: il faut tout d'abord que l'on établisse un, distinguo clair entre les deux sphères de compétences. On pourrait appeler cela une liste de compétences. Or, tout cela n'est pas du ressort de notre mandat. Chers collègues, nous comprenons fort bien qu'au titre de cette charge, comme M. Mendes de Vigo l'a dit, il ne peut pas y avoir de période transitoire en termes d'application des pouvoirs. L'autre condition préalable est très claire et la suivante: il faut fixer qui peut faire quoi et comment. En d'autres termes, il faut être au clair quant à la façon dont on va appliquer ces compétences. En fait, c'est cette question que vise mon intervention: la charte des droits fondamentaux de l'Union européenne a pour tâche en fait de fixer qui fait quoi et de quelle façon. De mon point de vue, c'est le but principal de ce document. Chers collègues, comme nous l'avons déjà dit, voilà un projet unique qui découle d'un mandat unique allant de pair avec une

composition très particulière. Je voudrais également adresser mes remerciements à tous les participants, à tous nos collègues des parlements nationaux. Croyez-le bien, la tâche n'a guère été aisée mais cela a été un plaisir de travailler avec vous. Nous avons œuvré dans une atmosphère très constructive tout au cours de ces neuf mois de labeur et je souhaite qu'à l'avenir les parlementaires nationaux aient leur rôle à jouer lors des amendements à apporter au traité, amendements qui devraient découler de décisions qui seront prises, nous l'espérons, à Nice. Je suis très profondément reconnaissant également à notre Président, M. HERZOG. Après les événements du mois de juin, nous nous souvenons tous de ce qu'il nous avait demandé au Praesidium. Il nous avait demandé de poursuivre les travaux en tant que troïka, une troïka élargie, une troïka d'humains. Nous nous sommes efforcés de respecter son vœu et nous avons essayé de prendre en compte les messages des parlements nationaux. D'autres jugeront si nous avons vu nos efforts couronnés de succès. Tout ce que je puis vous dire, c'est que nous avons fait de notre mieux. Merci.

M. BRAIBANT: Vice-président, président des représentants des Chefs d'État et de Gouvernement:

Chers collègues et amis, la première parole que j'ai entendue quand je me suis intéressé à la charte, c'était "Nous sommes à un tournant de l'Europe". C'est une phrase un peu banale, souvent répétée, mais je crois qu'actuellement elle est particulièrement vraie. Une évolution double: l'élargissement géographique et l'extension des compétences. Et ce sont deux des raisons fondamentales pour lesquelles, je pense, les dirigeants européens ont voulu que nous rédigiions cette charte pour la présenter aux pays candidats et pour couvrir les nouvelles compétences de l'Europe qui n'est plus seulement un marché économique. La charte est achevée, sa rédaction par la convention est finie, la convention elle-même va disparaître. C'est peut-être le moment pour faire le point et je vous propose de le faire en retenant douze mots clés qui me paraissent expliquer et faciliter la compréhension de la charte, mais d'abord de la convention. La convention, on l'a déjà dit, c'est en elle-même une originalité. C'est une innovation, c'est sans précédent. Et nous avons dû inventer une procédure alors que nous n'avions ni précédent, ni règlement. Quelques mots clés sur la convention: d'abord, je pense que le principal c'est la collégialité. Cette charte, c'est une œuvre collective. Personne ne peut en invoquer la paternité.

Tous ont participé à son élaboration, et à plusieurs niveaux. Au niveau de ce qu'on appelle dans le jargon bruxellois la Task Force, c'est-à-dire un petit groupe de travail qui, autour du Professeur Jacqué, préparait les textes, ensuite au niveau du présidium, les fameux mousquetaires à la Dumas, puisqu'on a lancé aujourd'hui ce nouveau concept, ensuite les composantes, les trois

composantes, parlementaires européens, parlementaires nationaux et représentants personnels des Chefs d'État et de Gouvernement, et enfin la Convention elle-même. Et cette collégialité s'est exercée à tous les niveaux, c'est-à-dire que tous ces niveaux, toute cette structure complexe a travaillé sous la direction d'un chef d'orchestre auquel on a déjà rendu hommage, qui est le Président Roman HERZOG et qui a réussi à combiner le travail de toutes ces composantes. Nous avons ici pour la première fois donc une collaboration de travail - et pas seulement de forme ou de discours - entre des représentants des exécutifs et des représentants des législatifs et entre des représentants nationaux et européens. Deuxième mot-clé de la procédure : la transparence. Nous l'avons mise dans la Charte, il y a plusieurs articles qui se réfèrent à la transparence, mais nous l'avons déjà, pour notre part, appliquée, et je crois que c'est une des premières fois où c'est fait à ce niveau, avec cette intensité. Transparence qui a pris plusieurs formes : publicité, diffusion, envoi de tous les textes au fur et à mesure de leur rédaction sur Internet, diffusion très large, et ce qui a lancé un débat national et européen. Le troisième mot-clé, c'est à mon avis la concertation. Le rôle actif de la société civile dans toute cette opération est à mon avis quelque chose qu'il faut souligner. Je dis parfois "c'est un Seattle pacifique". C'est peut-être un peu exagéré, et puis pour l'instant il est pacifique, espérons qu'il le restera. Mais cette relation que nous avons eue avec la société civile qui a participé par des entretiens avec nous ou avec certains d'entre nous par des colloques, par des contributions, est un élément très important de la fabrication de la Charte. Et parfois ces interventions de la société civile étaient irritantes, parce qu'elle voulait la lune ou quelque chose comme cela, mais souvent elle a été très utile et je peux dire que la Charte, si je prends simplement deux thèmes comme les droits des femmes et les droits sociaux, a été fortement influencée par une intervention active de la société civile et je crois que c'est un exemple qu'il faudra suivre et une leçon qu'il faudra tirer de notre exercice. Le quatrième mot-clé, c'est le consensus. Nous avons fonctionné par consensus, pas par vote. Nous n'avons jamais voté. Nous avons essayé une fois de voter, ça n'a pas été un succès, et on n'a pas recommencé parce qu'il y avait de la confusion sur le sens du vote et l'objet du vote. Mais nous avons eu des débats difficiles, il ne faut pas croire que cette charte telle qu'elle apparaît, qui a l'air assez élégante et assez organisée, s'est faite facilement. Il y a eu dans cette salle et dans d'autres des débats très difficiles, parfois houleux, en tout cas toujours courtois, mais parfois vraiment on se heurtait, c'étaient des batailles. C'était simplement le reflet des diversités que nous soulignons également dans la Charte, diversités culturelles, des cultures juridiques tellement différentes des pays anglo-saxons ou des pays continentaux, diversités politiques et diversités juridiques également. Il y a eu des affrontements sur les droits sociaux, sur certains droits nouveaux, sur les rapports avec la Convention et la Cour européenne des Droits de l'Homme et tous ces problèmes ont été surmontés par un consensus qui - je le signale et je le souligne - n'a été atteint que la semaine

dernière. Et jusque-là, quand on me demandait "Est-ce que la Charte va aboutir ?", j'étais incapable de répondre, je disais d'une façon un peu sottise "Nous sommes de plus en plus près de l'aboutissement, mais nous n'y sommes pas encore et il peut y avoir encore des difficultés de dernière heure". Il y en a eu, d'ailleurs. Cela dit, on peut considérer que cette Charte a été adoptée ou approuvée par la Convention et par ses composantes, je dirais à la quasi-unanimité, avec quelques exceptions incontestablement, mais nous sommes maintenant dans une sorte de quasi-unanimité, c'est-à-dire un vrai consensus. Alors maintenant quelques mots-clés sur la Charte elle-même, sur le résultat de nos travaux. Je crois que le premier mot-clé, et c'est un peu la conséquence, mais c'était aussi la condition du consensus, c'est le mot "équilibre". Nous avons recherché plusieurs équilibres. L'équilibre entre si je puis dire d'un raccourci historique, les droits du 19ème siècle et les droits du 20ème siècle, l'équilibre entre le modèle européen - qui existe - des droits de l'homme et leur caractère universel également des droits de l'homme. L'équilibre entre les droits de la personne et les droits du citoyen. Enfin l'équilibre entre les droits politiques et les droits sociaux et à la fin je pense que nous avons réussi ces équilibres. Nous sommes arrivés à ce qu'on appelle un point d'équilibre tel que si l'on avait continué à travailler et c'est ce qui c'est passé dans la dernière semaine, chaque fois qu'on touchait à un droit il fallait toucher à un autre pour que l'équilibre soit maintenu. Alors maintenant qu'est-ce qu'il y a dans cette Charte et là j'ai six mots-clés, ce sont les six chapitres. Ils sont à mon avis fondamentaux aussi, parce que nous avons cassé la vieille dichotomie entre droit civil et politique, droits économiques et sociaux. Le premier mot s'est la dignité. On aurait pu se contenter de celui-là parce que c'est la matrice de tous les autres droits mais il y a quelques droits particulièrement fondamentaux comme l'interdiction de la peine de mort, comme l'interdiction de la torture, comme le droit à la vie qui sont rassemblés sous ce titre de dignité. Ensuite des libertés, ça c'est un chapitre plus classique qui a été fortement inspiré naturellement par la Convention européenne des droits de l'homme, mais enrichi de plusieurs droits, le droit de travailler, la liberté d'entreprise et le droit d'asile. Egalité, nous avons fait je crois de grands progrès en donnant une définition élargie de la non-discrimination qui est interdite, en parlant pour la première fois de la diversité culturelle, religieuse et politique et enfin en proclamant l'égalité des hommes et des femmes dans tous les domaines. On ne peut pas être plus large. Le quatrième chapitre de la Charte, c'est la solidarité. J'attire votre attention sur ce thème qui n'a pas fait tout de suite l'unanimité parmi nous mais qui me paraît très important comme étant l'avènement d'un concept nouveau, pas tout à fait nouveau mais nouveau par rapport aux déclarations de droit antérieur et qui contient la plupart des droits sociaux, pas tous, il y en a dans d'autres chapitres mais la plupart des droits sociaux sont rassemblés là et c'est là qui est la plus grande valeur ajoutée de la Charte. Ces droits existaient déjà. Nous ne pouvions pas inventer de nouveaux droits, mais ce qui

est nouveau, c'est le rassemblement qui entraîne une plus grande lisibilité et c'est le fait qu'ils rassemblés dans un document unique qui comprend aussi les droits politiques classiques. C'est pour moi ce que j'appellerai une promotion des droits sociaux. Ce ne sont plus des droits de seconde zone. Ce ne sont plus des droits au rabais, si je puis dire. Ce sont des droits qui seront dans le même document et qui auront la même valeur juridique quelle qu'elle soit que les droits politiques classiques. Ce sont des droits comme on dirait en français, à part entière. Ensuite la citoyenneté et la citoyenneté nous nous sommes aperçus qu'elle n'avait pas si je puis dire tellement d'importance que cela, c'est-à-dire qu'elle ne donne pas lieu à de nombreux droits. C'était une des trois corbeilles comme on disait du mandat de Cologne. En réalité les droits réservés aux citoyens de l'Union européenne sont très peu nombreux, ce sont uniquement des droits très politiques, comme le droit de vote ou le droit d'éligibilité. La plupart des autres droits que nous avons rassemblés sous ce terme de citoyenneté sont ouverts à tous les résidents et en particulier je signale qu'on a joint à cela un droit qui lui est vraiment nouveau dans cette formulation, c'est le droit à une bonne administration. Vaste programme. J'étais au début sceptique en appliquant le principe de M. HERZOG "ne promettons que ce que nous pouvons tenir" et la bonne administration, je ne sais pas si elle est pour demain, mais c'est bien d'avoir au moins fixé un objectif qui comporte une série de droits précis. Enfin le dernier chapitre, c'est la justice. C'est là encore inspiré très près de la Convention européenne des droits de l'homme et finalement ce fameux chapitre des clauses horizontales. C'est un terme barbare. Ce n'est pas un terme d'ailleurs juridique et nous ne l'avons pas mis dans la Charte, nous l'avons traduit par dispositions générales, mais elles sont très importantes et elles ont été très difficiles à négocier et à rédiger. Nous avons là quelques principes. Pas d'extension des compétences de l'Union européenne. Limitation des limites que l'on peut apporter à la Charte. Un article d'articulation avec la Convention européenne des droits de l'homme et enfin un dernier principe, pas d'abaissement des protections existantes, soit dans les constitutions nationales, soit dans les traités internationaux. Un dernier mot maintenant sur l'avenir et je distinguerai dans l'avenir, si vous me le permettez, la Charte après la Convention et la Convention après la Charte. La Charte après la Convention, mais cette Convention va se dissoudre aujourd'hui et la Charte va maintenant suivre son cours. Nous allons l'envoyer au Président du Conseil européen, M. Jacques CHIRAC et ces jours-ci, peut-être aujourd'hui même et ça n'est plus maintenant l'affaire de la Convention. Il restera deux questions évidemment. Le caractère contraignant de la Charte, mais ça n'a n'était pas dans notre compétence et l'adhésion à la Convention européenne des droits de l'homme, mais ça n'était pas non plus dans notre compétence. C'est l'affaire des gouvernements et puis la Convention après la Charte, on peut se demander, ce que je veux dire par là, on y a déjà fait allusion, notamment M. Vitorino c'est que c'était une expérience qui aurait pu échouer, qui aurait pu

se terminer lamentablement et c'est une expérience qui a réussi. Je rends hommage à ceux qui ont inventé cette formule et que je ne connais pas. En tout cas je n'en suis pas. Mais c'était une formule vraiment géniale c'est peut-être exagéré mais très intéressante. Cette formule de combinaison Europe-nation et Parlement-gouvernement. Et c'est ce qui nous a permis d'aboutir. Je me dis parfois en souriant si nous avons fait la Charte par une conférence intergouvernementale nous serions avec beaucoup d'optimisme à l'article 3 peut-être. Là nous avons réussi en 9 mois à faire cette charte malgré toutes les difficultés. Et je constate que déjà plusieurs hommes politiques européens et non des moindres ont envisagé cette formule de la charte pour d'autres exercices, pour d'autres chantiers. Alors je voudrais terminer cette intervention en rendant hommage d'abord à la Task force, à l'équipe dirigée par le Pr. Jacqué, qui a fait vraiment le gros du travail au départ, qui a abattu un travail considérable et je me demandais comment ils ont tenu le coup comme on dit, je trouve qu'ils ont une bonne santé. Je la leur souhaite encore pendant longtemps.

Deuxièmement aux interprètes, sans qui évidemment nous n'aurions pas pu nous comprendre, nous entendre, et qui ont dû manier un langage juridique souvent difficile, quand on songe au temps que nous avons passé à discuter de certains mots on s'imagine que la traduction n'était pas facile.

Rendre hommage enfin comme l'ont fait mes collègues au Président HERZOG. Avec une autorité souriante, pleine d'humour mais ferme il a réussi à diriger cette opération encore une fois sans précédent et il a réussi à nous mener à bon port. Il a eu des troubles, des perturbations très graves dans sa vie, et malheureusement il n'est pas parmi nous aujourd'hui, mais je crois que la moindre des choses c'est de lui rendre un hommage très chaleureux, très amical, très fraternel. Je dois dire qu'en ce qui me concerne j'ai été très heureux de travailler avec lui, auprès de lui.

Maintenant un dernier mot pour clore. Nous allons envoyer tout à l'heure je crois aujourd'hui même la Charte au Président de la République française, c'est-à-dire au Président du Conseil européen et c'est M. Mendez de Vigo qui va vous en lire le texte.

M. MENDEZ DE VIGO

Merci M. le Président. Je vais vous lire le texte que le Président HERZOG m'a fait parvenir. Je vais le lire en allemand. C'est une lettre adressée au Président de la République, Président du Conseil européen.

"Monsieur le Président,

Conformément aux conclusions du Conseil européen de Tampere, permettez-moi de vous faire tenir le projet de Charte des droits fondamentaux de l'Union européenne que les membres de la

Convention ont adopté lors de leur réunion du 26 septembre 2000. En conséquence, en concertation étroite avec les Vice-Présidents de la Convention chargés d'élaborer cette Charte, j'ai constaté que le texte avait obtenu l'aval définitif de toutes les parties. Veuillez croire M. le Président l'expression de mes sentiments distingués.

Roman HERZOG, ancien Président fédéral allemand, Président de la Convention."

(applaudissements)

Nous allons entendre l'hymne européen et je vous invite à cette occasion à vous lever. Ensuite nous aurons une photo et nous serons rassemblés là et ensuite un cocktail offert par la présidence française à tous les membres de la Convention.

Nous vous remercions.

FIN DE LA REUNION

CHARTRE DES DROITS FONDAMENTAUX DE L'UNION EUROPENNE

INTERVENTION DU VICE-PRESIDENT GUY BRAIBANT AU CONSEIL EUROPEEN DE BIARRITZ

(14 octobre 2000)

Monsieur le Président,

Mesdames et Messieurs les membres du Conseil européen,

J'ai l'honneur de vous présenter le projet de Charte des droits fondamentaux de l'Union européenne, élaboré par la Convention qui en a été chargée par les réunions du Conseil européen de Cologne et de Tampere.

Je le fais à la place du Président Roman Herzog, qui en est empêché pour des raisons de santé, après avoir présidé la Convention depuis sa première réunion, le 17 décembre dernier. Je tiens à cette occasion à lui rendre au nom de tous les membres de la Convention un hommage très sincère et affectueux pour l'autorité, la compétence et la bienveillance dont il a fait preuve durant cette période, malgré des circonstances douloureuses sur le plan personnel. Le rôle qu'il a joué a été décisif dans l'heureux aboutissement de nos travaux.

Président de la délégation des représentants des Chefs d'État et de gouvernement depuis le 1^{er} juillet, après MM. Nikula et Vasconcellos, je m'adresse à vous également en compagnie et au nom des deux autres vice-présidents, MM. Mendez de Vigo et Jansson, qui représentent respectivement le Parlement européen et les Parlements nationaux. Je remercie enfin le Commissaire Antonio Vitorino pour la contribution très importante qu'il n'a cessé d'apporter à nos travaux.

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Il nous a semblé utile de traiter, en premier lieu, de la procédure suivie, que le Conseil européen avait défini en 1999 et qui a fait la preuve de son efficacité. C'est une procédure inédite et complexe. Elle a mêlé en effet dans un même organisme des représentants du Parlement européen, des Parlements nationaux, des exécutifs nationaux et de la Commission européenne. Elle a ainsi mis en œuvre, si l'on peut dire, une " mixité plurielle ", parlementaire et gouvernementale, nationale et européenne, juridique et politique, avec des personnalités élues et nommées.

Le caractère collégial de la Convention s'est exprimé lui-même à plusieurs niveaux : la Convention elle-même, ses trois composantes et le Présidium. Des échanges constants entre ces différents groupes ont permis de rechercher et finalement d'obtenir un consensus.

Cette collégialité s'est accompagnée d'une transparence et d'une concertation très exceptionnelles : tous les textes élaborés ou reçus par la Convention ont été diffusés et rendus accessibles sur Internet et les séances étaient publiques. La société civile est intervenue activement, à tous les stades de la procédure, par des textes et des auditions. La Convention a reçu près de quatre cent contributions écrites, émanant soit de ses membres soit d'organismes extérieurs tels que des syndicats, des associations, des Eglises, des organisations non gouvernementales représentant tous les courants de pensée et toutes les catégories sociales. On peut affirmer sans exagérer que la Charte a été en grande partie directement inspirée et influencée par ces interventions.

De même, la Convention a entendu les représentants du Conseil de l'Europe et de la Cour de justice des Communautés européennes qui y siégeaient comme observateurs, ainsi que le Comité économique et social, le Comité des régions et le Médiateur. Elle a également reçu des représentants de tous les pays candidats à l'Union européenne, pour les informer sur les travaux d'élaboration de la Charte et recueillir leurs observations, qui ont été dans l'ensemble favorables.

La Charte est ainsi une œuvre collective à laquelle, au-delà de la Convention elle-même et des Parlements et gouvernements qui y étaient représentés, ont été associées des milliers de personnes et institutions.

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Le nombre et la diversité des participants a rendu l'accord final à la fois plus difficile et plus solide. Le consensus n'a été obtenu qu'à la suite de débats animés, parfois tendus, bien que toujours courtois, qui ont porté surtout sur trois problèmes.

Le premier concerne la place et la nature des droits sociaux. Certains voulaient en limiter l'importance ; d'autres souhaitaient au contraire l'étendre afin de refléter dans la Charte le " modèle social européen ". La nature de ces droits a fait également l'objet de discussions et de compromis. Certains sont des droits d'effet direct, immédiatement justiciables, comme la liberté syndicale, d'autres sont des principes qui doivent être mis en œuvre en général par les Etats membres et qui ne peuvent plus ensuite être remis en cause. Nous avons tenté d'atteindre dans ce domaine difficile un point d'équilibre, avec le double souci de ne pas décevoir les attentes des citoyens et de ne pas leur faire de promesses qui ne pourraient être tenues.

Le deuxième sujet de discussion a porté sur l'opportunité d'introduire dans la Charte des droits modernes, résultant de l'évolution des techniques et des idées. En principe, les mandats de Cologne et de Tampere limitaient notre compétence à la codification de droits existants. Nous avons interprété cette notion avec une certaine souplesse. Nous n'avons pas introduit dans la Charte des droits nouveaux à proprement parler, mais certains droits qui figuraient déjà dans des instruments internationaux, sans avoir été inscrits dans des textes généraux relatifs aux droits fondamentaux : tel est le cas des droits liés à la bioéthique, à l'informatique, à l'environnement, à la consommation, à l'administration, ou encore des droits des enfants.

Le troisième thème de nos débats, qui nous a occupé longuement en raison de son importance pratique et de sa difficulté technique, a été l'articulation de la nouvelle Charte avec la Convention européenne des droits de l'homme. Nous sommes parvenus à un compromis qui permet de respecter l'autonomie du droit communautaire sans remettre en cause l'acquis de cette Convention et de la jurisprudence de la Cour de Strasbourg qui l'a interprétée ; nous avons également cherché à éviter les conflits de compétences et les contrariétés de jurisprudences entre cette Cour et celle de Luxembourg. Nous sommes parvenus à un accord qui a recueilli l'approbation des représentants du Conseil de l'Europe à la Convention : les droits inscrits dans la Charte qui correspondent à des droits figurant dans la Convention ont le même sens et la même portée ; il est en outre précisé que le droit de l'Union peut accorder une protection plus étendue, ce qui est déjà le cas dans la Charte elle-même, par exemple en matière de recours juridictionnels ; enfin la Charte ne peut porter atteinte aux droits déjà reconnus dans les textes constitutionnels et internationaux, notamment la Convention européenne des droits de l'homme. Ainsi les relations entre les deux documents sont-elles précisées dans l'intérêt des citoyens, de manière à éviter toute interférence, ambiguïté ou recul.

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Permettez-moi, de vous donner maintenant quelques indications sur des points qui ont rencontré rapidement un accord au sein de la Convention.

D'abord le style.

Nous nous sommes donné comme objectif de rédiger la Charte pour les citoyens, et non pas seulement pour les techniciens du droit, dans un style clair, concis et percutant, à l'image de nos grands ancêtres en matière juridique, les Romains. Nous n'avons peut-être pas toujours réussi, parce que les compromis sont parfois difficiles à résumer en quelques mots. Mais il nous a semblé que nous nous étions approchés de cet objectif et que le texte améliore la visibilité des droits fondamentaux, conformément au mandat que vous nous avez donné.

Ensuite, la structure de la Charte.

Son plan est par lui-même original et c'est peut-être là une de ses innovations les plus spectaculaires. Nous avons voulu abandonner la séparation des droits civils et politiques et des droits économiques, sociaux et culturels, qui date de l'après-guerre, qui s'est exprimée par les deux pactes des Nations Unies et qui se retrouve en Europe avec la distinction de la Convention européenne des droits de l'homme et de la Charte sociale européenne. Nous avons préféré regrouper les droits en six chapitres : dignité ; libertés ; égalité ; solidarité ; citoyenneté ; justice. Ces termes correspondent à des valeurs communes de l'Europe. La Charte apparaît ainsi comme un recueil de valeurs autant que de droits et elle n'en prend que plus d'importance dans la perspective de l'élargissement de l'Union européenne.

C'est dans ces six chapitres et leurs 50 articles que sont énoncés les droits que nous avons retenus.

Le premier, celui qui domine tous les autres et dont tous les autres découlent, c'est la dignité humaine. Il est suivi de droits et de protections aussi essentielles que les droits à la vie, à l'intégrité physique et mentale, et c'est ici que sont insérées les dispositions sur la bioéthique, ainsi que l'interdiction de la traite des êtres humains.

Les libertés comprennent les grandes libertés classiques et le droit de propriété, auxquels nous avons ajouté la protection des données à caractère personnel, le pluralisme des médias, le droit de travailler et la liberté d'entreprise, le droit d'asile.

Les droits sociaux sont répartis entre les chapitres sur l'égalité et la solidarité. Ils comprennent en particulier l'égalité entre hommes et femmes, qui est renforcée et s'applique " dans tous les domaines " ; le principe d'égalité entraîne également la reconnaissance de droits à des catégories faibles ou défavorisées comme les enfants, les personnes âgées, les handicapés. Le principe de solidarité comprend d'une part les droits des travailleurs et d'autre part ceux des personnes qui se trouvent dans une situation de faiblesse ou de besoin qui doit être compensée par l'attribution d'avantages ou de prestations, tels que la sécurité sociale ou l'aide au logement. Cet ensemble n'entraînera

pas par lui-même de dépenses supplémentaires, car les droits et principes qu'il reconnaît existent déjà au niveau des Etats membres ou de l'Union ; mais ils constituent probablement la principale valeur ajoutée de la Charte par leur réunion avec les autres droits, pour la première fois, dans un même texte européen sur les droits fondamentaux.

Les chapitres sur la citoyenneté et la justice, qui s'inspirent étroitement d'une part du traité sur l'Union européenne et d'autre part de la Convention européenne des droits de l'homme, appellent moins de commentaires. Il faut seulement noter la consécration de la notion si importante aujourd'hui de " droit à une bonne administration ", complété par le droit d'accès aux documents, le recours au Médiateur européen et le droit de pétition.

La Charte, contrairement à ce qui avait été envisagé au début des travaux de la Convention, ne comporte pas une deuxième partie composée de commentaires ayant le même statut que la Charte elle-même, afin d'éviter toute confusion. Mais elle sera accompagnée " d'explications ", comprenant surtout des références juridiques et des interprétations qui serviront à l'éclairer et à faciliter son application. Elles ont été établies sous la responsabilité du Présidium.

Les droits reconnus dans la Charte s'inscrivent dans le cadre de principes généraux qui figurent dans les dispositions finales et qui sont essentielles pour en comprendre la portée. Elles ont notamment pour objet la mise en œuvre d'une double règle que la Convention a adoptée dès le début de ses travaux : ne pas se prononcer sur l'introduction de la Charte dans les traités, conformément au mandat de Cologne ; mais, suivant la proposition du Président Herzog, rédiger la Charte " comme si " elle devait être un jour contraignante.

Ces dispositions concernent, comme on l'a vu, les rapports de la Charte avec les autres instruments nationaux et internationaux qui définissent des droits fondamentaux. Elles rappellent que la Charte n'affecte en aucune façon les compétences de l'Union et de la communauté et qu'elle respecte le principe de subsidiarité ; elle s'applique seulement aux institutions et organes de l'Union et aux Etats membres lorsqu'ils mettent en œuvre le droit de l'Union.

Loin d'étendre les pouvoirs de l'Union, la Charte a pour objet de les soumettre plus fortement et plus clairement au respect des droits fondamentaux ; compte tenu de l'extension de ses compétences à des domaines nouveaux tels que la justice, la police ou la diplomatie, ce renforcement au niveau européen de la notion d'Etat de droit, déjà affirmée en principe dans les Traités, est devenu une nécessité.

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Les auteurs de la Charte, que nous représentons ici, ne prétendent naturellement pas qu'elle soit parfaite. Chacun des membres de la Convention a éprouvé des regrets, des remords, des frustrations. C'est la contrepartie de la recherche du consensus par des compromis. Il nous a semblé que le projet de Charte dans son état actuel est acceptable. Mais même si nous avons essayé de la bâtir pour qu'elle dure, elle n'est évidemment pas éternelle ; elle pourra et elle devra évoluer comme tout texte du même genre. Correspondant aux besoins et à l'état de l'Europe de l'an 2000, elle pourra assurer une protection meilleure de ses citoyens et un contrôle plus efficace de ses institutions.

Peut-être sera-t-elle considérée, si elle est proclamée, comme "l'âme de l'Europe".

Rede von Herrn Siegbert Alber
Generalanwalt am
Gerichtshof der Europäischen Gemeinschaften
(in der vom Gerichtshof übermittelten Fassung)

Herr Präsident,
sehr verehrte Damen,
meine Herren,

In weniger als einem Jahr hat der Konvent einen sehr ausgewogenen und überzeugenden Entwurf einer Charta der Grundrechte ausgearbeitet. Angesichts der Kürze der Zeit und der Schwierigkeit der Materie ist dies eine beachtenswerte Leistung, die Dank und Anerkennung verdient. Wenn ich den Konvent - und die Task Force mit dem Sekretariat eingeschlossen - zu Recht lobe, dann ist dies kein Eigenlob, denn der EuGH war im Konvent ja "nur" durch Beobachter vertreten. Das dadurch dennoch gewonnene Insider-Wissen rechtfertigt jedoch dieses Lob in jedem Falle.

Großer Dank gebührt dem Präsidium auch zugleich in seiner Eigenschaft als Redaktionskomitee. Wegen der souveränen Sitzungsleitung und der gelungenen Verbindung von fast raffinierter Semantik mit fundierter Rechtsetzung gebührt ihm eine Goldmedaille.

Besonders möchte ich natürlich dem Präsidenten des Konvents, Herrn Professor Roman Herzog, danken, der heute aus gesundheitlichen Gründen leider nicht anwesend sein kann. Seine langjährige verfassungsrechtliche Erfahrung war für die Arbeiten ein großer Gewinn und Vorteil. Er hat den Inhalt der Charta wesentlich mitgeprägt. Ich möchte ihm von dieser Stelle aus gute Besserung

wünschen, auch wenn wir kein Grundrecht auf Gesundheit und Wohlbefinden sondern nur auf ärztliche Versorgung in die Charta aufgenommen haben.

Die Öffentlichkeit hat die Arbeiten des Konvents mit lebhaftem Interesse verfolgt. Die Fülle der Anregungen und Änderungswünsche aber auch die Vielzahl der Tagungen, Diskussionsrunden und Seminare zu diesem Thema beweisen dies. Es ist verständlich, dass die Bürger einen Grundrechtskatalog begrüßen würden, der allen gesellschaftlichen, ethischen und sozialen Entwicklungen einerseits, wie auch den naturwissenschaftlichen und technischen Errungenschaften andererseits - vor allem im biologischen und medizinischen Bereich - Rechnung tragen würde. Es ist verständlich, dass die Bürger eine Charta gewissermaßen auf dem "neuesten Stand" fordern, da sie sagen, die Europäische Menschenrechtskonvention ist inzwischen 50 Jahre alt und die Menschenrechtserklärung der Vereinten Nationen sogar noch zwei Jahre älter. Doch angesichts der begrenzten Kompetenzen der Union konnte diesen Wünschen nicht voll entsprochen werden. Es wäre nun Sache der Mitgliedstaaten, die Arbeiten des Konvents auszuwerten und den berechtigten Forderungen der Bürger durch die Anpassung und Ergänzung der nationalen Grundrechtskataloge zu entsprechen. All denen, die die Charta für unzureichend halten, sei gesagt: Im Hinblick auf die limitierten Zuständigkeiten auf europäischer Ebene ist dem Konvent die Gratwanderung zwischen Wünschenswertem und Machbarem exzellent gelungen.

Der Konvent schließt heute seine Arbeiten ab. Jetzt ist es am Europäischen Rat, die Charta anzunehmen und für verbindlich zu erklären. Damit kann er zeigen, dass er es mit der Charta ernst meint, denn es war ja der Europäische Rat selbst, der vor eineinhalb Jahren ihre Erstellung anregte und der auf eine schnelle Ausarbeitung drängte. Manche waren darüber erstaunt und meinten, wenn eine pro-europäische Initiative vom Europäischen Rat selbst ausgehe, müsse man misstrauisch werden. Etwa in dem Sinne wie Talleyrand damals sinnierte, als man ihm dem Tod eines ebenfalls trickreichen Diplomaten mitteilte. Er fragte: Was wollte der damit jetzt wieder bezwecken?

Also, was wollte der Europäische Rat mit der Charta bezwecken? Hoffentlich nicht eine bloße Ablenkung von ungelösten institutionellen Problemen, sondern - wie es in der Präambel der Charta heißt - das Sichtbarmachen des Schutzes und der Stärkung der Grundrechte. Dies kann jedoch nur erreicht werden, wenn die Charta verbindlich wird und die Grundrechte einklagbar sein werden. Eine bloß deklaratorische Bedeutung würde die Arbeit des Konvents nicht nur vergeblich machen, sondern sich auch auf die europäische Idee geradezu kontraproduktiv auswirken. Durch die Verbindlicherklärung kann der Europäische Rat also beweisen, dass er es mit der Charta und den Grundrechten ernst meint.

Es wird nun auch weiter darauf ankommen, ob die Charta Teil der Römischen Verträge wird oder ob sie eine eigenständige Rechtsquelle bleibt. Dies ist zwar letztlich nur ein formaler Gesichtspunkt aber doch für die gerichtliche Zuständigkeit wichtig. Im letzteren Fall müsste in die Charta noch eine dem Artikel 46 d des Unionsvertrags vergleichbare Vorschrift aufgenommen werden, die die Zuständigkeit des Gerichtshofes begründet. In jedem Fall müssen auch einige Bestimmungen der Römischen Verträge ergänzt werden. Beispielsweise verweist Artikel 6 Absatz 2 des Unionsvertrages bislang nur auf die Europäische Menschenrechtskonvention und die Grundfreiheiten, wie sie sich als allgemeine Grundsätze des Gemeinschaftsrechts aus den gemeinsamen Verfassungsüberlieferungen der Mitgliedstaaten ergeben. Auch in andere Vertragsartikel ist die Charta aufzunehmen und so mit den Verträgen zu verklammern.

Mitunter ist geäußert worden, die Charta sei auch deshalb notwendig, damit sich der Gerichtshof an sie halte. Wer so argumentiert kennt die Rechtsprechung des Europäischen Gerichtshofes nicht. Schon Ende der 60er Jahre hat dieser die Bedeutung der Grundrechte unterstrichen und ihre Beachtung als ein Grundprinzip der europäischen Rechtsordnung bezeichnet. Letztlich geht sogar die Formulierung des bereits genannten Artikels 6 des Unionsvertrages auf die Rechtsprechung des

EuGH zurück. Ebenso beachtet der Gerichtshof die Urteile des Europäischen Gerichtshofes für Menschenrechte, wie unser Präsident Rodríguez Iglesias wiederholt ausgeführt hat. Es gab in der Tat einige wenige Fälle eines vermeintlichen Dissenses, doch ist dazu zu bemerken, dass die fraglichen Urteile des Europäischen Gerichtshofes jeweils zeitlich vor vergleichbaren Entscheidungen des Europäischen Gerichtshofes für Menschenrechte lagen. Im Grundsätzlichen gibt es also keinen Dissens und keine Divergenzen. Dies ist wichtig, weil die Zusammenarbeit der beiden Gerichtshöfe nach Verabschiedung der Charta eine neue Qualität erhalten wird. Die Charta gilt nach ihrem Artikel 51 einerseits für die Organe der Union und andererseits für die Mitgliedstaaten, allerdings insoweit limitiert auf die Durchführung des Unionsrechts durch die Mitgliedstaaten. Dies eröffnet einen getrennten Rechtsweg: Im ersten Fall ist - ohne Beitritt der Union zur Europäischen Menschenrechtskonvention - ausschließlich der EuGH zuständig; im zweiten Fall kann nach Erschöpfung des nationalen Rechtswegs auch noch der Europäische Gerichtshof für Menschenrechte angerufen werden. Zwar gibt es diesen "gesplitteten" Rechtsweg auch heute schon, er wird jedoch künftig mehr an Bedeutung gewinnen. Doch auch hierzu ist zu sagen, dass die Zusammenarbeit zwischen dem Gerichtshof der Europäischen Gemeinschaften und dem Europäischen Gerichtshof für Menschenrechte eine gute ist. Selbst wenn sich für eine institutionalisierte Kooperation keine Modelle finden lassen, kann auch auf informelle Weise vieles an Übereinstimmung erreicht werden.

Was macht nun den Wert der Charta aus? Es ist der Beweis, dass die Union nicht nur eine Wirtschaftsgemeinschaft, sondern auch und besonders eine Rechtsgemeinschaft ist. Die Charta zeigt Werte auf. So wird aus dieser Rechtsgemeinschaft eine Rechte-Gemeinschaft. Die Grundrechte der Bürger sind die Grundmauern der Demokratie. Ohne diese Grundpfeiler gibt es auch keine innere Stabilität für die Union. Auch wenn die Charta vielleicht gegenüber dem Bisherigen nicht viel neues oder zusätzliches bringt, so macht sie doch erstmals nach außen deutlich, dass es der Mensch ist, der im Mittelpunkt auch der Europäischen Politik steht. Nicht von

ungefähr beginnt die Charta mit der Würde des Menschen, aus der sich viele der weiteren Rechte ableiten. Ähnliches gilt für die Solidarität. Es ist nun zu hoffen, dass die Gewährung dieser Rechte für alle Verpflichteten eine Selbstverständlichkeit ist, so dass der Bürger sie gar nicht erst einklagen muss. Dies würde zudem die Zahl der Prozesse beim EuGH verringern, was für alle ein großer Gewinn wäre. Auch wenn die Charta noch nicht der Schlussstein für das gemeinsame Haus Europa ist, so ist sie doch ein entscheidender Eckstein und ein wichtiger Meilenstein für die europäische Integration. Sie ist ein Beweis dafür, dass die Europäische Gemeinschaft nicht nur eine Friedensgemeinschaft nach außen, sondern auch eine solche nach innen ist.

III.3. Drafts, and Members' Amendments and Contributions

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

**Brussels, 6 January 2000 (13.01)
(OR. f)****CHARTE 4102/00****CONTRIB 2****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find enclosed a discussion draft, submitted by Prof. Jürgen Meyer of the German Bundestag, based on the European Parliament's Declaration of fundamental rights and freedoms of 12 April 1989 ¹.

¹ This text has been submitted in French, German, Italian, English and Spanish.

EUROPEAN CHARTER OF FUNDAMENTAL RIGHTS

Discussion draft, based on the European Parliament's Declaration of fundamental rights and freedoms' of 12 April 1989

PREAMBLE

In recognition of the constitutional traditions common to the Member States, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the other international declarations and treaties providing for the protection of fundamental rights within the Union and the fundamental rights developed in the case law of the Court of Justice of the European Communities and as a further step towards its primary objective of economic integration leading on to the political union of its citizens, the European Union adopts the following European Charter of Fundamental Rights on the basis of its declaration of belief in parliamentary democracy, the rule of law and welfare statism.

Article 1

Human dignity

Human dignity is inviolable.

Article 2

Civil rights and liberties

1. Everyone shall have the right to life, physical integrity and respect for his dignity in death. Human liberty shall be inviolable. Any intrusion upon this guarantee shall be possible only for the duration and under the conditions specified by law.
2. No one shall be subjected to torture or to cruel, degrading or inhuman treatment or punishment.
3. Everyone shall have the right to develop his personality freely provided that he does not infringe the rights of others and does not violate the principles set out in this charter.

Article 4

Freedom of conscience and religion

1. The freedom of conscience, religious belief and worship shall be inviolable.
2. If a citizen of the Union is unable to fulfil his civil obligations because they are inconsistent with his conscience, the state shall, wherever possible, enable him to fulfil equivalent obligations. This shall not apply to taxes and other charges.

Article 5

Freedom of opinion and information

1. Everyone shall have the right to express and disseminate his opinion in words or images or by other means and to receive and impart information.
The freedom of the press and reporting by other means of mass communication shall be guaranteed.
There shall be no censorship.
2. Access to cultural events and facilities shall be guaranteed.
3. These rights may be restricted only by laws intended to protect public safety or order, health, the personality and honour or to prevent crime.
4. Intellectual, artistic and scientific development and teaching shall be free.

Article 6

Data protection

1. Everyone shall have the right to determine for himself the disclosure and use of his personal data and to obtain information on their storage provided that this right does not conflict with the rights of third persons.
2. Restrictions shall be admissible by law only in the dominant general interest.

Article 7

Privacy

1. Everyone shall have the right to respect for and the protection of his identity.
2. Respect for privacy and family life, reputation, the home and private correspondence by mail and telecommunications shall be guaranteed.
3. Restrictions of the inviolability of the home shall be admissible only in cases for which the law provides, especially to avert serious threats to public safety or to solve particularly serious crimes. Interference with correspondence by mail and telecommunications shall be permissible only under the conditions for which the criminal law provides.

Article 8

Marriage and family

1. Marriage and the family shall enjoy particular protection. Single-parent families, large families and families that include one or more disabled persons shall be entitled to special care from the authorities.
2. Other long-term relationships shall have the right to be protected against discrimination.
3. Housework, bringing up children, the care of the needy at home and employment shall be deemed equal.

Article 9

Asylum

Anyone who is persecuted for his political views or is exposed to inhuman or degrading treatment shall have the right of asylum.

Article 10

Right of ownership

The right of ownership and the owner's right to transfer property during his lifetime and following his death shall be guaranteed. Property acquired by criminal act shall not be protected.

No one shall be deprived of his property except where deemed necessary in the public interest and only subject to the conditions provided for by law and in return for fair compensation.

Article 11

Freedom of assembly

Everyone shall have the right to take part in peaceful meetings unarmed.

Article 12

Freedom of association

1. Everyone shall have the right freely to form associations with others.
2. Employees and employers shall have the right freely to form professional associations or trade unions of their choice.
The right of such associations to negotiate and conclude collective agreements shall be guaranteed.

Article 13

Work and working conditions

1. The right to work shall be guaranteed through the Member States' attachment of particular importance to the goal of full employment in their economic policies. They shall take measures to promote employment.
2. Employees shall have the right to safe, healthy and decent working conditions.

Article 14

Right to education

Everyone shall have the right to education.

Article 15

Natural foundations of life

Everyone shall have the right to the protection and care of the natural foundations of life and shall be equally required to preserve them.

Article 16

Right of petition

Everyone shall have the right to address written requests or complaints to the European Parliament. The detailed provisions governing the exercise of this right shall be laid down by the European Parliament.

Article 17

Ne bis in idem

No one shall be tried or convicted for offences for which he has already been acquitted or convicted.

Article 18

Nulla poena sine lege

No one shall be punished for an act or omission which did not constitute a penal offence at the time when it occurred.

Article 19

Freedom of movement

1. All citizens of the Union shall have the right to move and reside freely in the territory of the Member States. All citizens of the Union shall be free to leave and return to the territory of the Member States unhindered.
2. All citizens of third countries shall enjoy these rights to the same extent if they have been lawfully resident in the territory of the Member States for five years.
3. The rights referred to in paragraphs 1 and 2 may be restricted only by provisions which are consistent with the foundations of the Union.

Article 20

Freedom to choose an occupation

1. All citizens of the Union shall have the right to equality of opportunity, freely to choose their occupation and place of work and freely to pursue their occupation.
2. The freedom of choice of a place of training shall be guaranteed.
3. All citizens of third countries shall have the rights referred to in paragraphs 1 and 2 to the same extent if they have been lawfully resident in the territory of the Member States for five years.
4. These rights may be restricted only by a law which serves the public good.

Article 21

Right to housing

The right to adequate housing shall be guaranteed by a policy of the Member States which promotes the creation and maintenance of housing for all citizens of the Union.

Article 22

Social security

1. The right to adequate social protection shall be guaranteed.
2. All citizens of the Union shall have the right to measures that guarantee them the best possible state of health.

Article 23

Right to vote and to stand for election

1. All citizens of the Union aged at least 18 years shall have the right to vote and to stand for election to the European Parliament and to the local parliaments in the area where they live.
2. All citizens of third countries shall have the rights referred to in paragraph 1 to the same extent if they have been lawfully resident in the territory of the Member States for five years.

Article 24

Limits

The rights, freedoms and guarantees set out in this Charter may be restricted by law solely for the purpose of upholding other rights or interests protected by this Charter. Such restriction shall be limited to what is absolutely essential.

The substance of the rights and freedoms shall remain unaffected in any event.

Article 25

Access to the courts

Anyone whose rights and freedoms have been infringed shall have the right to bring an action in a court or tribunal specified by law.

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPEENNE
fundamental.rights@consilium.eu.int

Bruxelles, le 7 janvier 2000

CHARTE 4103/00

CONTRIB 3

NOTE DE TRANSMISSION

Objet : Projet de Charte des droits fondamentaux de l'Union européenne

Veillez trouver ci-après une proposition de Charte Européenne des droits fondamentaux, soumise à l'enceinte instituée par le Conseil de Cologne. Ce texte est soumis par M. Georges Berthu, Député au Parlement européen. ¹

¹ Ce texte n'a été soumis qu'en langue française.

GEORGES BERTHU

GROUPE UNION POUR L'EUROPE DES NATIONS
MEMBRE DE LA DÉLÉGATION CONJOINTE
CHARGÉE DE L'ÉLABORATION DE LA CHARTE DES DROITS FONDAMENTAUX

PROPOSITION

de Charte Européenne des droits fondamentaux
soumise à la délégation conjointe Conseil - Parlements - Commission
instituée par le Conseil de Cologne

Paris, le 17 décembre 1999

Le Conseil de Tampere a prévu, dans ses conclusions concernant les méthodes de travail de "l'enceinte" chargée de l'élaboration de la Charte des droits fondamentaux, qu'un "comité de rédaction" préparerait un avant-projet "en tenant compte des propositions de texte soumises par tout membre de l'enceinte".

En application de cette disposition, Georges Berthu, député européen membre de la délégation du PE à la délégation conjointe ("l'enceinte"), présente ci-après une proposition de charte reflétant la conception d'une Europe fondée sur ses démocraties nationales.

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Résumé de la proposition

Le Conseil de Cologne a décidé, le 4 juin 1999 que "à ce stade du développement de l'Union européenne, il conviendrait de réunir les droits fondamentaux en vigueur au niveau de l'Union dans une charte, de manière à leur donner une plus grande visibilité"¹.

Cette décision, telle qu'elle est couramment interprétée - c'est-à-dire impliquant la rédaction d'un catalogue assez complet de droits des citoyens unifiés au niveau européen - ne peut être appliquée qu'au prix de travaux ardues, et néanmoins largement inutiles, car ces droits sont déjà bien protégés. Surtout, la finalité constitutionnelle à laquelle obéit implicitement à la charte conduirait à déposséder chaque démocratie nationale de la définition autonome des droits de ses citoyens. Ce résultat serait tout à fait contraire à la conception d'une Europe où chaque peuple doit rester maître de son destin.

On trouvera dans le présent document la proposition des éléments principaux d'une autre charte qui, elle, aurait le mérite d'être plus simple et utile. Elle pourrait certes se référer aux droits fondamentaux des citoyens, mais en laissant leur définition au niveau des Constitutions nationales et des conventions internationales pertinentes². Son objet premier serait plutôt de donner une approche commune des valeurs des pays membres, et de définir la philosophie institutionnelle sur laquelle repose l'Union. Cette charte serait ouverte à la signature des membres actuels et des pays de l'Est candidats. Par ces caractères, elle répondrait à deux questions actuelles et urgentes :

- le rôle-pivot des démocraties nationales, et les principes qui doivent sous-tendre la prise de décision dans une Europe élargie,
- l'établissement immédiat d'un lien visible entre tous les pays membres et les pays candidats à l'Union.

Pour résumer, il faut faire un choix entre une charte de haut niveau politique, aidant à traiter vraiment les problèmes actuels de l'Europe, ou bien une charte énumérant dans le détail des droits individuels et sociaux, qui créera autant de problèmes qu'elle en résoudra, et apportera surtout des satisfactions aux théoriciens de l'intégration.

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¹ Point 44 des conclusions - Voir annexe 1.

² Voir annexe 4.

Première partie

Exposé des motifs

I- La décision de Cologne

1- Une procédure anormale

L'idée de rédiger une charte européenne des droits fondamentaux n'est pas nouvelle : le Parlement européen, dans ses résolutions du 12 avril 1989 et du 10 février 1994, avait déjà demandé l'adoption d'une telle déclaration, à insérer dans le cadre d'une "Constitution" européenne. Plus récemment, le Parlement et la Commission avaient lancé plusieurs travaux d'experts sur le sujet¹. Cependant, ces réflexions n'avaient pas dépassé des cercles restreints et, à la veille du Conseil de Cologne, ne semblaient guère d'actualité.

Pourtant, la décision de lancer la préparation d'une charte des droits fondamentaux apparaît dans les conclusions du Conseil de Cologne, brusquement, et en apparence à contretemps :

- au moment même où le Conseil ouvrait ainsi le débat, par le biais de la charte, sur des perspectives constitutionnelles à terme, il déployait de grands efforts, sur un autre front, pour obtenir l'effet inverse : il essayait en effet d'éviter l'élargissement de la future CIG vers un ordre du jour de type constitutionnel ;
- les gouvernements nationaux qui ont ainsi lancé la préparation de la charte n'ont pas procédé préalablement à des consultations minima, et n'ont pas cherché à recueillir un feu vert, au moins sur le principe, de la part des Parlements nationaux, traditionnellement décideurs principaux en matière de droits des citoyens.

Il ressort de ces éléments une double impression : **l'irrégularité de la procédure suivie**, qui n'est pas conforme à la répartition des compétences prévue par les traités ; **l'impréparation profonde du Conseil**, dont on retrouve les conséquences dans les graves imperfections de la décision de Cologne.

¹ Voir notamment le rapport du groupe d'experts publié en février 1999 par la Commission : "*Affirmation des droits fondamentaux dans l'Union européenne*", ou la "*Charte des citoyennes et des citoyens européens*" publiée en décembre 1997 par l'association "Forum permanent de la société civile" avec le soutien de la Commission ; voir aussi, par exemple, le rapport commandé par les services du Parlement européen à l'Institut Universitaire Européen "*Quelle Charte constitutionnelle pour l'Union européenne ?*" (Mai 1999).

2- Une rédaction ambiguë

Sur le fond, la décision de Cologne est entachée de nombreuses ambiguïtés, provenant soit de l'impréparation du texte, soit au contraire d'une volonté de brouiller les cartes.

- *Sur l'étendue des droits* : à première vue, l'étendue des droits visés aurait pu être assez restreinte. Il s'agit en effet des droits "*fondamentaux*" (donc les principes essentiels), déjà "*en vigueur*" (donc en excluant la création de nouveaux droits), "*au niveau de l'Union*" (donc sans les droits nationaux non déjà inclus dans les traités) et enfin pour les "*citoyens de l'Union*" (donc sans traiter la question des ressortissants de pays tiers). Toutefois, les premières discussions ont montré que ces barrières sont fragiles, et que les rédacteurs vont sombrer dans l'inflation des textes. Les nombreuses propositions déjà évoquées montrent que la limite entre le droit "*fondamental*" et le droit "*moins fondamental*" ou "*normal*" est totalement subjective. De même les définitions de droits au niveau européen et au niveau national se recoupent et se chevauchent. Enfin, il est clair qu'une forte pression va s'exercer en faveur de la proclamation de nouveaux droits européens, ne serait-ce que pour contourner, sur tel ou tel point précis, telle ou telle réticence nationale.
- *Sur la méthode de travail* : les Parlements nationaux, en théorie décideurs principaux, comme on l'a vu, se trouvent embrigadés, parmi d'autres, dans la mise en oeuvre d'une décision sur le principe de laquelle ils n'ont jamais eu à se prononcer ; pis encore, ils disparaissent complètement au moment de la proclamation de la Charte.
- *Sur l'objectif même de l'exercice* : le texte de Cologne apparaît extraordinairement discret sur les raisons profondes qui ont motivé le lancement de l'initiative. Il s'agirait seulement, est-il affirmé, d'un exercice formel destiné à donner aux droits concernés "*une plus grande visibilité*". Si tel était le cas, la disproportion serait flagrante entre d'une part l'ampleur du travail à réaliser et des moyens mis en oeuvre, d'autre part la minceur de l'utilité invoquée. En réalité, le "*profil bas*" adopté à Cologne est parfaitement hypocrite. Michel Barnier, lors de l'audition préalable à sa nomination comme membre de la Commission, le 8 septembre suivant, a été plus franc lorsqu'il a déclaré que le processus d'élaboration de la Charte devait "*rejoindre, au bon moment*", le "*processus de constitutionnalisation des traités*"¹.

¹ Compte-rendu, p. 6.

Le véritable objectif de l'exercice s'éclaire alors : poser les fondements d'une Constitution européenne supranationale, banalisant le lien direct entre l'Union et les citoyens des pays membres, par dessus la tête des gouvernements nationaux.

3- Une ambition contreproductive

La Charte serait destinée, selon ses promoteurs, à prendre place en tête d'une première partie du traité, à valeur "constitutionnelle", par opposition à une seconde partie qui aurait simple valeur "législative". Cette idée de séparation du traité en deux parties a d'ailleurs été reprise par le rapport Dehaene, et par la communication de la Commission sur la réforme des institutions¹. Ce processus de "constitutionnalisation" serait alimenté par l'apport spécifique du traité d'Amsterdam, qui avalise la supériorité du droit communautaire sur les droits nationaux, même constitutionnels².

Malheureusement pour ce projet, il n'y a pas d'indice aujourd'hui que les peuples européens seraient demandeurs d'une Constitution européenne supérieure aux Constitutions nationales, et témoignant de l'existence d'un super-Etat, qu'il soit fédéral ou non. Surtout, on peut se demander si une Charte européenne des droits des citoyens ne serait pas inutile, et même contreproductive.

- *Inutile*, parce que le traité reconnaît déjà, de manière très simple, les droits fondamentaux tels qu'ils sont garantis à la fois par la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales et par les traditions constitutionnelles communes aux Etats membres³ ; l'addition dans le traité d'une Charte des droits fondamentaux - si elle était contraignante et contrôlée par la Cour de Justice des Communautés, comme le souhaitent ses promoteurs - pourrait même compliquer terriblement la défense de ces droits en instituant deux ordres de juridictions concurrents, celui de Strasbourg et celui de Luxembourg⁴.

¹ Communication du 10 novembre 1999, p. 6.

² Protocole sur la subsidiarité, article 2.

³ Préambule et article 6 du TUE - Voir annexe 3.

⁴ Pour certains défenseurs des droits de l'homme, la réalité serait pire encore : la charte aurait pour fonction de procurer un "parapluie" au droit communautaire, après qu'un récent arrêt de la Cour européenne des droits de l'homme ait fortement inquiété Bruxelles. La Cour présentait en effet le droit communautaire comme un simple démembrement du droit national, et condamnait le Royaume-Uni pour avoir appliqué une disposition de ce même droit communautaire contraire à la Convention européenne des droits de l'homme (Arrêt du 18 février 1999 - Matthews c. Royaume-Uni - Requête n° 24833/94). Selon cette interprétation, la Charte, contrairement aux intentions affichées, aurait plutôt pour effet de restreindre l'influence de la Cour de Strasbourg, et de son système de défense des droits de l'homme. D'autres soulignent que cet inconvénient, effectivement possible, serait atténué si l'Union se voyait accorder le droit d'adhérer en tant que telle à la Convention européenne des droits de l'homme. C'est douteux. Et en tout cas s'ajouteraient alors d'autres problèmes, liés à la complexité du nouveau système et à la longueur accrue des procédures induite par l'insertion d'un niveau judiciaire supplémentaire.

- *Contreproductive*, parce que la Constitution européenne cristalliserait un catalogue de droits, probablement sur la base d'un plus petit dénominateur commun, ce qui ne serait guère profitable. **En tout cas, ces droits ne pourraient plus être modifiés que par l'ensemble des Etats ou/et des peuples d'Europe, ce qui imposerait désormais une rigidité considérable.** Corollairement, chaque peuple pris séparément perdrait la capacité de définir seul ses propres droits. Un système de concurrence juridique souple, évolutif, soumis aux demandes de chaque démocratie nationale, serait remplacé par un système de définition uniformisée, extrêmement lourd, incapacitant pour les démocraties nationales et très frustrant pour elles.

II- Pour une autre charte

La Charte des droits des citoyens qui vient d'être décrite ne rendrait aucun service à l'Europe. Elle a été imaginée pour répondre à des impératifs idéologiques de construction cohérente d'un super-Etat, mais elle ne répond pas aux problèmes très immédiats de l'Europe d'aujourd'hui.

Ces problèmes peuvent être suggérés en quelques questions : qu'est-ce que l'Europe ? Qu'est-ce qui nous rassemble ? Comment associer sans tarder les pays candidats, en tenant compte de leurs différences ? Comment prendre les décisions dans une Union élargie ? Comment faire progresser un contrôle démocratique, effectif et proche des citoyens ?

Ces questions peuvent au premier regard apparaître comme très différentes. Il n'en est rien.

Tout d'abord, elles ont un point commun "négatif" : elles ne peuvent pas être résolues par le type de charte des droits fondamentaux couramment proposé, qui décrirait par le menu les droits juridiques des citoyens.

Surtout, elles ont un point commun "positif" : on ne peut les résoudre toutes ensemble qu'en utilisant une approche globale, intégrant les aspects politiques, économiques et sociaux, et conduisant à une conclusion résolument innovatrice : les problèmes de gestion d'une Europe élargie ne pourront être résolus que par une plus grande flexibilité, qui implique l'abandon du système monolithique et une nouvelle confiance envers les souverainetés nationales ; de même, le renforcement du contrôle démocratique implique le retour à la primauté des démocraties nationales, qui suscitent auprès des citoyens une adhésion et une participation sans commune mesure avec toute autre formule. **Tout concourt donc à conclure que l'urgence du moment, c'est de placer en tête des traités une charte dont l'objet premier serait de redonner aux nations la première place dans la définition de l'Europe.**

Accessoirement, on signalera que la charte ainsi définie rejoindra à sa manière le processus de la Conférence Intergouvernementale qui va s'ouvrir, et qui devrait être centrée sur la question de la prise de décision dans une Europe élargie. En effet, la prise de décision dans un espace aussi hétérogène ne pourra nullement s'effectuer à la majorité qualifiée, contrairement aux espoirs des fédéralistes : il faudra y ajouter le compromis de Luxembourg et la légitimité de

coopérations différenciées allant jusqu'à la géométrie variable. Dans l'esprit de l'Europe des nations, le processus de la charte et celui de la CIG se rejoignent donc naturellement.

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Le projet qui figure ci-après présente les orientations principales d'une telle charte, fondée sur le respect des démocraties nationales.

- En préambule, il introduit l'idée que la Charte a une portée plus large que l'Union actuelle, puisqu'elle est ouverte à la signature des pays candidats, qui seront concernés immédiatement par la première partie (valeurs) et à terme par la seconde (principes d'organisation de l'Union).
- Dans une première partie, le projet rappelle brièvement les principales valeurs auxquelles les pays d'Europe sont attachés, centrées sur le respect de la personne ; il s'agit, à cet endroit, d'une déclaration politique.
- Dans une seconde partie, le projet développe les principes d'organisation essentiels d'une Europe respectant non seulement les droits de l'homme et du citoyen, mais aussi les droits des démocraties nationales.

Cette partie s'ouvre elle-même sur une introduction qui renvoie, pour ce qui concerne les droits de l'homme, aux systèmes de protection existants, puisque ces derniers ne révèlent pas de failles majeures.

L'essentiel de la seconde partie est ensuite consacré aux principes d'organisation d'une Union qui serait fondée sur la liberté de ses peuples. Ces principes sont eux-mêmes regroupés par thèmes, qu'une rédaction définitive de la Charte pourrait évidemment perfectionner : nature de l'Union (association d'Etats), coopérations différenciées, respect des identités nationales, liberté des préférences, supériorité des Constitutions nationales, compromis de Luxembourg, évolution démocratique du droit communautaire, autonomie d'organisation des services publics, droit d'édicter des normes supérieures à celles de l'Union, maîtrise des frontières, droit de sauvegarde, légitimité principale des Parlements nationaux, support national de la citoyenneté.

Ainsi sont dessinés les traits d'une Europe plus démocratique et ouverte à l'élargissement.

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Ce document représente une première approche, qui sera complétée si nécessaire au fil des travaux de "l'enceinte".

Deuxième partie

Orientations principales pour un projet de Charte

Les Etats d'Europe,

Membres de l'Union européenne, ou participant au processus qui doit mener à leur adhésion,

Ont adopté cette Charte pour affirmer leurs valeurs, ainsi que les principes d'organisation qu'ils entendent établir pour les faire respecter.

NOS VALEURS

Les Etats signataires

- Sont convaincus que les sociétés pacifiques et heureuses reposent sur le respect des droits fondamentaux de la personne, découlant de son caractère sacré ; ils rejettent toute forme de mépris de l'être humain.
- Affirment que cette valeur centrale du respect de la personne implique nécessairement :
 - la protection de la vie et de la dignité de tout être humain ;
 - l'égalité pour tous des droits de liberté, propriété, sécurité, résistance à l'oppression, traditionnellement garantis en Europe par l'association politique, ainsi que le soutien mutuel face aux aléas de l'existence ;
 - le droit de chaque personne de se gouverner elle-même ; de participer pleinement, en tant que citoyen, à la vie de ses communautés, pour mieux défendre sa famille et protéger ses biens, matériels et spirituels ; d'exercer librement ses droits souverains par la démocratie politique et l'économie de marché ;
 - le respect des affections et des solidarités ressenties par chacun, et donc du sentiment d'appartenance fondé sur une culture transmise, une histoire apprise, une langue pratiquée en commun ;
 - le droit imprescriptible de chaque citoyen, d'exercer un contrôle effectif sur ses représentants ; de ne consentir de délégations de pouvoirs que proches,

contrôlables, et toujours révocables ; de ne jamais accorder aux institutions que des compétences subsidiaires et subordonnées.

- Reconnaissent que les citoyens des pays d'Europe expriment leurs solidarités volontaires par des associations ponctuelles, mais aussi par des communautés, notamment familiales ou locales, communes, cantons, lander, comtés, régions, provinces ; que ces solidarités s'expriment de la manière la plus large et la plus solide dans le cercle de valeurs de la nation; que ce cercle est celui où la démocratie s'exerce de la manière la plus complète, et que c'est donc là qu'il faut placer le niveau principal de l'association politique.
- Estiment que le mépris envers les nations a constitué une des grandes causes des guerres qui ont ravagé l'Europe ; qu'au contraire, le respect de la diversité des nations et de leurs peuples sera bénéfique à l'Europe, puisqu'il favorisera la liberté, l'émulation et le pluralisme, sources de la richesse la plus ancienne et la plus constante de la civilisation européenne.
- Sont persuadés que l'ignorance, l'oubli ou le mépris des droits de la personne, comme des familles, des communautés ou des nations, sont les seules causes des malheurs publics et de la corruption des gouvernements ;
- Déclarent dans ces conditions que l'Union européenne est une union de nations qui, tout en se respectant mutuellement, et en respectant l'expression démocratique de chaque peuple, devra poursuivre les objectifs suivants :
 - encourager une défense en commun des peuples d'Europe, afin de protéger ensemble leurs valeurs, leurs droits, leurs langues, leurs modèles de société, leurs territoires et leurs frontières ;
 - contribuer à établir les bases d'un développement durable, par le respect de la vie et la recherche de l'équilibre le plus épanouissant entre l'homme et son milieu naturel;
 - favoriser la prospérité des peuples d'Europe par le libre échange et la concurrence intérieurs, et par la négociation d'accords commerciaux extérieurs permettant un commerce équitable entre zones aux règles différentes.

NOS PRINCIPES D'ORGANISATION

Les Etats signataires

S'engagent à promouvoir les valeurs de la Charte, et à respecter les droits fondamentaux qui en découlent, tels qu'ils sont garantis par les Constitutions nationales, par la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales, et par les autres conventions internationales pertinentes, conclues notamment sous l'égide du Conseil de l'Europe, de l'Organisation des Nations Unies ou de l'Organisation Internationale du

Travail¹ ; ils s'engagent de même à ce que leur organisation commune, l'Union européenne, comme ses cercles de coopération différenciés, respectent ces droits, tels qu'ils résultent des textes précités, en tant que principes supérieurs de leurs activités.

Ils déclarent adopter les principes d'organisation suivants :

Nature de l'Union

1. L'Union européenne est une association libre de nations souveraines : en tant qu'association de nations, elle est contrôlée en premier lieu par les Etats qui lui ont délégué des compétences subsidiaires, et qui sont eux-mêmes placés sous le contrôle démocratique de leurs citoyens; en tant qu'association libre, elle admet le droit de sécession.

Coopérations différenciées

2. L'Union admet des formes de coopérations différenciées, c'est-à-dire n'incluant pas tous les pays membres, dès lors qu'elles sont librement choisies par les peuples concernés.
3. Les différentes coopérations européennes reposent essentiellement sur des prises de décision par consensus ; elles respectent ainsi le droit des peuples de décider les lois qui s'appliquent sur leurs territoires.
4. Les coopérations différenciées peuvent s'ouvrir à des pays extérieurs à l'Union, afin de favoriser sur une base plus large la promotion des valeurs et des intérêts communs.

Respect des identités nationales

5. L'Union respecte les identités nationales de ses membres, et les défend à l'extérieur.

Liberté des préférences

6. L'Union s'attache à faire prévaloir sur la scène internationale le principe général du libre choix, par chaque peuple, de son mode de vie, et la légitimité des coopérations qui établissent une préférence mutuelle librement décidée.

Supériorité des Constitutions nationales

7. L'Union rassemblant des nations souveraines, les Constitutions nationales demeurent sa norme supérieure ; il n'est pas procédé à des transferts de souveraineté - laquelle appartient irrévocablement à chaque peuple - mais seulement à des délégations de compétences qui sont toujours révocables.

¹ Voir annexe 4.

Compromis de Luxembourg

8. Chaque pays membre possède le droit imprescriptible de ne pas s'associer à une décision qu'il estimerait contraire à des intérêts très importants pour lui ; dans ce cas, la décision éventuellement prise ne peut s'appliquer au pays qui l'a refusée ; celui-ci ne peut toutefois empêcher ses partenaires de poursuivre ensemble les buts qu'ils estiment souhaitables, dans la mesure où ils ne lèsent pas ses intérêts vitaux.

Evolution démocratique du droit communautaire

9. Les délégations de compétences ne peuvent être accordées, modifiées, ou retirées que par les peuples concernés, dans les formes prévues par leurs Constitutions respectives. Si un peuple conteste une règle commune par la forme solennelle d'un référendum, cette règle doit être obligatoirement renégociée.
10. Si une décision de justice aboutit à interpréter un des traités dans un sens extensif, cette décision pourra faire l'objet d'un appel, pour ratification, devant les Parlements nationaux, qui pourront à leur tour en référer à leurs peuples.

Services publics

11. Sans préjudice des règles communes, les Etats membres ont le droit de décider librement l'organisation et les limites de leurs services publics.

Normes nationales

12. Sans préjudice des règles communes, les Etats membres ont le droit de décider pour eux des normes d'un niveau supérieur à celles de l'Union dans les domaines de la moralité publique, de l'ordre public, de la sécurité publique, de la protection de la vie et de la santé des personnes et des animaux, de la protection sociale, de la défense de l'environnement, de la sauvegarde de l'identité ou du patrimoine naturel, artistique, historique ou archéologique. Ils ont aussi le droit de se donner les moyens de contrôler le respect de ces règles.

Maîtrise des frontières

13. Les Etats membres conservent la maîtrise de leurs frontières et de leurs territoires. La libre circulation des personnes, des biens, des services ou des capitaux, telle que prévue par les traités, n'implique pas nécessairement l'absence de contrôles nationaux. La libre circulation des personnes n'implique pas non plus le droit d'établissement.

Droit de sauvegarde

14. Dans les domaines mentionnés aux points 11 et 12, les Etats membres peuvent prendre, en cas de nécessité, des mesures de sauvegarde nationales, dont ils informent aussitôt leurs partenaires.

Légitimité principale des Parlements nationaux

15. Conformément à l'article 1, l'échelon démocratique le plus important de l'Union est celui des Parlements nationaux, qui détiennent la légitimité principale. Le Parlement européen joue un rôle complémentaire pour le contrôle des activités européennes, et dans des formations variables selon les coopérations concernées.
16. Les Parlements nationaux interviennent dans les activités de l'Union soit indirectement, par le contrôle des gouvernements siégeant au Conseil, soit directement par une organisation en réseau qui leur permet de prendre des décisions applicables immédiatement dans leurs pays respectifs. Ils détiennent un droit de veto sur les questions de subsidiarité. Un comité formé des représentants parlementaires des pays participants assure le suivi permanent des questions les plus importantes, comme la sécurité ou la monnaie.

Citoyenneté

17. La citoyenneté, comme le droit de vote, reste de compétence nationale. Par "citoyenneté européenne", on désigne l'ensemble des avantages que les Etats membres se consentent réciproquement pour leurs citoyens respectifs. Nul ne peut y accéder s'il ne possède la nationalité d'un Etat membre.

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ANNEXE 1

**Décision d'ouvrir
la rédaction d'une Charte
des droits fondamentaux de l'Union européenne**

Conclusions du Conseil européen
de Cologne
(4 juin 1999)

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Une Charte des droits fondamentaux de l'UE

44. Le Conseil européen estime qu'à ce stade du développement de l'Union européenne il conviendrait de réunir les droits fondamentaux en vigueur au niveau de l'Union dans une charte de manière à leur donner une plus grande visibilité.
45. Il a arrêté à ce sujet la décision jointe à l'annexe IV. La future présidence est invitée à faire en sorte que les conditions préalables à la mise en oeuvre de cette décision soient réalisées d'ici la réunion spéciale du Conseil européen à Tampere les 15 et 16 octobre 1999.

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ANNEXE IV des conclusions de Cologne

Décision du Conseil européen
concernant l'élaboration d'une Charte
des droits fondamentaux de l'Union européenne

Le respect des droits fondamentaux est l'un des principes fondateurs de l'Union européenne et la condition indispensable pour sa légitimité. La Cour de Justice européenne a confirmé et défini dans sa jurisprudence l'obligation de l'Union de respecter les droits fondamentaux. Au stade actuel du développement de l'Union, il est nécessaire d'établir une charte de ces droits afin

d'ancrer leur importance exceptionnelle et leur portée de manière visible pour les citoyens de l'Union.

Le Conseil européen est d'avis que cette charte doit contenir les droits de liberté et d'égalité, ainsi que les droits de procédure tels que garantis par la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales et tels qu'ils résultent des traditions constitutionnelles communes des Etats membres, en tant que principes généraux du droit communautaire. La charte doit en outre contenir les droits fondamentaux réservés aux citoyens de l'Union. Dans l'élaboration de la charte, il faudra par ailleurs prendre en considération des droits économiques et sociaux tels qu'énoncés dans la Charte sociale européenne et dans la Charte communautaire des droits sociaux fondamentaux des travailleurs (article 136 TCE) dans la mesure où ils ne justifient pas uniquement des objectifs pour l'action de l'Union.

Le Conseil européen est d'avis qu'une enceinte composée de représentants des Chefs d'Etat et de Gouvernement et du Président de la Commission européenne ainsi que des membres du Parlement européen et des parlements nationaux devrait élaborer un projet d'une telle charte des droits fondamentaux de l'Union européenne. Des représentants de la Cour de justice devraient y participer à titre d'observateurs. Des représentants du Comité économique et social et du Comité des régions ainsi que des groupes sociaux et des experts devraient être entendus. Le secrétariat devrait être assuré par le Secrétariat général du Conseil.

Cette enceinte doit présenter un projet en temps utile avant le Conseil européen en décembre de l'an 2000. Le Conseil européen proposera au Parlement européen et à la Commission de proclamer solennellement, conjointement avec le Conseil, une charte des droits fondamentaux de l'Union européenne sur la base dudit projet. Ensuite il faudra examiner si et, le cas échéant, la manière dont la charte pourrait être intégrée dans les traités. Le Conseil européen donne mandat au Conseil "Affaires générales" d'engager les mesures nécessaires avant le Conseil européen de Tampere.

ANNEXE 2

**Composition, méthodes de travail
et modalités pratiques de l'enceinte
pour l'élaboration du projet de charte
des droits fondamentaux de l'UE**

Annexe aux conclusions du Conseil européen
de Tampere
(16 octobre 1999)

A. COMPOSITION DE L'ENCEINTE

i) Membres

a) Chefs d'Etat ou de gouvernement des Etats membres

Quinze représentants des chefs d'Etat ou de gouvernement des Etats membres.

b) Commission

Un représentant du président de la Commission européenne

c) Parlement européen

Seize membres du Parlement européen désignés par celui-ci.

d) Parlements nationaux

Trente membres des parlements nationaux (deux par parlement) désignés par ceux-ci.

Les membres de l'enceinte peuvent être remplacés par des suppléants en cas d'empêchement.

ii) Président et vice-présidents de l'enceinte

L'enceinte élit son président. Un membre du Parlement européen, un membre d'un parlement national et le représentant du président du Conseil européen exercent les vice-présidences de l'enceinte, s'ils n'ont pas été élus à la présidence.

Le membre du Parlement européen exerçant la vice-présidence est élu par les membres du Parlement européen faisant partie de l'enceinte. Le membre du parlement national exerçant la vice-présidence est élu par les membres des parlements nationaux faisant partie de l'enceinte.

iii) Observateurs

Deux représentants de la Cour de justice des Communautés européennes désignés par la Cour.

Deux représentants du Conseil de l'Europe, dont un représentant de la Cour européenne des droits de l'homme.

iv) Instances de l'Union européenne devant être entendues

Le Comité économique et social

Le Comité des régions

Le médiateur

v) Echange de vues avec les pays candidats

Il convient d'organiser un échange de vues approprié entre l'enceinte ou son président et les pays candidats.

vi) Autres instances, groupes sociaux ou experts devant être entendus

D'autres instances, groupes sociaux et experts peuvent être entendus par l'enceinte.

vii) Secrétariat

Le Secrétariat général du Conseil assure le secrétariat de l'enceinte. Afin de garantir une bonne coordination, des contacts étroits seront établis avec le Secrétariat général du Parlement européen, avec la Commission, et, dans la mesure nécessaire, avec les secrétariats des parlements nationaux.

B. METHODES DE TRAVAIL DE L'ENCEINTE***i) Travaux préparatoires***

Le président de l'enceinte propose, en étroite concertation avec les vice-présidents, un programme de travail pour l'enceinte et effectue les autres travaux préparatoires nécessaires.

ii) Transparence des délibérations

En principe, les débats de l'enceinte et les documents présentés au cours de ces débats devraient être rendus publics.

iii) Groupes de travail

L'enceinte peut constituer des groupes de travail ad hoc, qui sont ouverts à tous ses membres.

iv) Rédaction

Sur la base du programme de travail établi par l'enceinte, un comité de rédaction, composé du président, des vice-présidents et du représentant de la Commission et assisté par le Secrétariat général du Conseil, élabore un avant-projet de charte en tenant compte des propositions de texte soumises par tout membre de l'enceinte.

Chacun des trois vice-présidents procède régulièrement à des consultations avec les composantes respectives de l'enceinte dont il est issu.

v) Elaboration du projet de charte par l'enceinte

Lorsque le président de l'enceinte, en concertation étroite avec les vice-présidents, estime que le texte du projet de charte élaboré par l'enceinte peut être en définitive adopté par toutes les parties, celui-ci peut être transmis au Conseil européen conformément à la procédure préparatoire habituelle.

C. MODALITES PRATIQUES

L'enceinte se réunit à Bruxelles, alternativement dans les locaux du Conseil et dans ceux du Parlement européen.

Le régime linguistique intégral s'applique aux réunions de l'enceinte.

ANNEXE 3

Les droits fondamentaux dans les traités européens

PREAMBULE TUE

(...)

CONFIRMANT leur attachement aux principes de la liberté, de la démocratie et du respect des droits de l'homme et des libertés fondamentales et de l'état de droit,

CONFIRMANT leur attachement aux droits sociaux fondamentaux tels qu'ils sont définis dans la Charte sociale européenne, signée à Turin le 18 octobre 1961, et dans la Charte communautaire des droits sociaux fondamentaux des travailleurs de 1989,

(...)

ARTICLE 6 TUE

1. L'Union est fondée sur les principes de la liberté, de la démocratie, du respect des droits de l'homme et des libertés fondamentales, ainsi que de l'état de droit, principes qui sont communs aux Etats membres.
 2. L'Union respecte les droits fondamentaux, tels qu'ils sont garantis par la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales, signée à Rome le 4 novembre 1950, et tels qu'ils résultent des traditions constitutionnelles communes aux Etats membres, en tant que principes généraux du droit communautaire.
 3. L'Union respecte l'identité nationale de ses Etats membres.
- (...)

ARTICLE 136 TCE

La Communauté et les Etats membres, conscients des droits sociaux fondamentaux, tels que ceux énoncés dans la Charte sociale européenne signée à Turin le 18 octobre 1961 et dans la Charte communautaire des droits sociaux fondamentaux des travailleurs de 1989, ont pour objectifs la promotion de l'emploi, l'amélioration des conditions de vie et de travail, permettant leur égalisation dans le progrès, une protection sociale adéquate, le dialogue social, le développement des ressources humaines permettant un niveau d'emploi élevé et durable et la lutte contre les exclusions.

A cette fin, la Communauté et les Etats membres mettent en oeuvre des mesures qui tiennent compte de la diversité des pratiques nationales, en particulier dans le domaine des relations conventionnelles, ainsi que de la nécessité de maintenir la compétitivité de l'économie de la Communauté.

Ils estiment qu'une telle évolution résultera tant du fonctionnement du marché commun, qui favorisera l'harmonisation des systèmes sociaux, que des procédures prévues par le présent traité et du rapprochement des dispositions législatives, réglementaires et administratives.

ANNEXE 4

**Liste des traités ONU et Conseil de l'Europe
relatifs à la protection des droits de l'homme**
ratifiés par les Etats membres de l'Union européenne

Traités conclus sous l'égide du Conseil de l'Europe

- Convention de sauvegarde des droits de l'homme et des libertés fondamentales (1950)
- Protocole n° 1 à la CSDH ajoutant de nouveaux droits à ceux déjà protégés par la Convention: propriété droit à l'éducation, droit à des élections libres au scrutin secret... (1952)
- Protocole n° 2 à la CSDH donnant à la Cour européenne de Justice la compétence de donner des avis (1963)
- Protocole n° 3 à la CSDH amendant les articles 29, 30 et 34 de la Convention (1963)
- Protocole n° 4 à la CSDH ajoutant certains droits et libertés à ceux déjà inclus dans la Convention et le protocole n° 1 (1963)¹
- Protocole n° 5 à la CSDH amendant les articles 22 et 40 (1966)
- Protocole n° 6 à la CSDH relatif à l'abolition de la peine de mort (1983)
- Protocole n° 7 à la CSDH étendant la liste des droits protégés, et notamment le droit des étrangers à des garanties procédurales en cas d'expulsion (1984)²
- Protocole n° 8 à la CSDH amendant certaines dispositions de procédure relatives à la commission européenne des droits de l'homme et à la Cour européenne des droits de l'homme (1985)
- Protocole n° 11 à la CSDH relative au contrôle (1994)
- Accord européen relatif aux procédures de la Commission et de la Cour européennes des droits de l'homme (1969)¹

¹ Non signé par la Grèce, signé mais non encore ratifié par l'Espagne et le Royaume-Uni.

² Non signé par la Belgique et le Royaume-Uni, signé mais non ratifié par l'Allemagne, l'Espagne, l'Irlande, les Pays-Bas, le Portugal.

- Accord européen relatif aux procédures de la Cour européenne des droits de l'homme (1996)²
- Convention européenne pour le bannissement de la torture et des punitions ou traitements inhumains ou dégradants (1987)
- Protocole n° 1 à la Convention européenne pour le bannissement de la torture, concernant la possibilité d'adhésion à la Convention de pays non membres du Conseil de l'Europe (1993)
- Protocole n° 2 à la Convention européenne pour le bannissement de la torture, concernant le renouvellement du Comité européen pour le bannissement de la torture et des punitions ou traitements inhumains ou dégradants (1993)³
- Convention cadre pour la protection des minorités nationales (1995)⁴
- Charte européenne sur les langues minoritaires ou régionales (1992)⁵
- Charte sociale européenne (1961)
- Protocole additionnel à la Charte sociale européenne, étendant la protection des droits économiques et sociaux (1988)⁶
- Protocole additionnel à la Charte sociale européenne relatif à un système de plaintes collectives (1995)⁷

¹ Non signé par la Grèce.

² Non signé par l'Espagne ; signé mais non ratifié par la Belgique, l'Allemagne, la Grèce, l'Autriche, le Portugal, le Royaume-Uni.

³ Signé mais non ratifié par le Portugal.

⁴ Non signée par la Belgique et la France ; signée mais non ratifiée par la Grèce, le Luxembourg, les Pays-Bas, le Portugal et la Suède.

⁵ Non signée par la Belgique, la Grèce, l'Irlande, l'Italie, le Portugal, la Suède et le Royaume-Uni ; signée mais non ratifiée par le Danemark, l'Espagne, la France, le Luxembourg et l'Autriche (seuls l'Allemagne, les Pays-Bas et la Finlande ont ratifié cette Charte).

⁶ Non signé par l'Irlande, le Portugal et le Royaume-Uni ; signé mais non ratifié par la Belgique, l'Allemagne, l'Espagne, la France, le Luxembourg, et l'Autriche.

⁷ Non signé par l'Allemagne, l'Espagne, l'Irlande, le Luxembourg, les Pays-Bas, le Royaume-Uni ; signé mais non ratifié par la Belgique, le Danemark et l'Autriche.

- Charte sociale européenne révisée (1996)¹
- Convention européenne sur le statut légal des travailleurs migrants (1977)²
- Convention européenne sur les droits de l'enfant (1996)³
- Convention sur la protection des droits de l'homme et de la dignité de l'être humain en ce qui concerne les applications de la biologie et de la médecine (1997)⁴
- Protocole additionnel à la Convention précédente, relatif à l'interdiction du clonage humain (1998)⁵
- Convention sur la protection des individus à l'égard des traitements automatiques de données personnelles (1981)

Traités conclus sous l'égide de l'organisation des Nations-Unies ou de ses agences spécialisées

- Convention internationale sur les droits économiques, sociaux et culturels (1966)
- Convention internationale sur les droits civils et politiques (1966)
- Protocole facultatif à la Convention internationale sur les droits civils et politiques (1966)⁶
- Second protocole facultatif à la Convention internationale sur les droits civils et politiques, tendant à l'abolition de la peine de mort (1989)⁷

¹ Non signée par l'Allemagne, l'Espagne, l'Irlande, les Pays-Bas ; signée mais non ratifiée par la Belgique, le Danemark, la Grèce, le Luxembourg, l'Autriche, le Portugal, la Finlande, le Royaume-Uni.

² Non signée par le Danemark, l'Irlande, l'Autriche, la Finlande, le Royaume-Uni ; signée mais non ratifiée par la Belgique, l'Allemagne, la Grèce, le Luxembourg.

³ Ratifiée seulement par la Grèce ; signée, mais non ratifiée par l'Espagne, la France, l'Irlande, l'Italie, le Luxembourg, l'Autriche, le Portugal, la Finlande, la Suède.

⁴ Non signée par la Belgique, l'Allemagne, l'Irlande, l'Autriche, le Royaume-Uni ; signée mais non ratifiée par la France, l'Italie, le Luxembourg, les Pays-Bas, le Portugal, la Finlande, la Suède.

⁵ N'a été signé et ratifié que par la Grèce ; signé seulement, pour le moment, par le Danemark, l'Espagne, la France, l'Italie, le Luxembourg, les Pays-Bas, le Portugal, la Finlande et la Suède.

⁶ Non signé par le Royaume-Uni.

⁷ Signé mais non ratifié par le Royaume-Uni, non signé par la France.

- Convention internationale sur l'élimination de toutes les formes de discrimination raciale (1965)¹
- Convention sur la prévention et la sanction du crime de génocide (1948)
- Convention sur l'élimination de toutes formes de discrimination contre les femmes (1979)

¹ Signée mais non ratifiée par l'Irlande.

ANNEXE 5

**Principaux droits fondamentaux
mentionnés par la Convention européenne
de sauvegarde des droits de l'homme et des libertés fondamentales**

Le droit à la vie
L'interdiction de la torture ou des traitements inhumains et dégradants
L'interdiction de l'esclavage et du travail forcé ou obligatoire
Le droit à la liberté et à la sûreté
Le droit à la liberté de pensée, de conscience et de religion
Le droit de se marier et de fonder une famille
Le droit au respect de la vie privée et familiale
Le droit de propriété
Le droit de vote dans le cadre d'élections libres
Le droit à la liberté d'expression
Le droit à la liberté de réunion pacifique et à la liberté d'association
En cas de procès, le droit à une audition équitable et publique par un tribunal indépendant et impartial
La non rétroactivité des lois
Le droit à un recours effectif en cas de violation de l'un des droits ou libertés ci-dessus.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION
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Brussels, 20 January 2000 (25.01)
(OR. f)

CHARTE 4111/00

BODY 3

INFORMATION NOTE

Subject : Draft Charter of Fundamental Rights of the European Union
 – Horizontal questions

In preparation for the general debate on the Charter on 2 February, the Chairman has asked the Secretariat of the Body to set out in brief certain "horizontal" questions which the Body may have to look into. This paper is being sent to Members of the Body for information.

I. Political declaration or legal text

1. The mandate given by the Cologne European Council gave no indication as to what form the draft Charter resulting from the Body's proceedings should take. It simply stated that it would serve as a basis for an interinstitutional declaration and that its possible inclusion in the Treaties would be examined at a later stage.

2. The outcome of the Body's proceedings may be entirely different, depending on how much importance is attached to any one of the draft Charter's aims. It may take the form of a political declaration, in which case further discussions will be vital if the declaration is to be converted into a text capable of being incorporated into the Treaties. It may take the form of a legal text, but if so, special care will be needed to ensure that it is properly worded and in particular that it is consistent with the Treaties, since by definition it must be incorporated into the Treaties without amending them.
3. The choice between the two options is a political one, but it will have a significant bearing on the Body's future proceedings.

II. A Charter of Rights of the European Union

4. The Charter is intended to apply to the Union's institutions and not to activities of Member States which fall outside the scope of EC or EU legislation. This would be consistent with Court of Justice case-law, whereby Member States are bound to respect fundamental rights whenever they act within the scope of the Treaties for the purposes either of implementing Community (or EU) legislation or derogating from it (Judgment of 18 June 1991 in Case C-260/89, *Elliniki Radiophonia Tiléorassi AE*, ECR I-2925, par. 43).
5. The fact remains that the Charter cannot of itself impose obligations on Member States outside the scope of EU legislation in its broadest sense. One of the Charter's provisions should therefore make this clear.
6. The aim of the Charter is to establish a bill of rights, rather than to confer new powers on the Union to legislate in the field of fundamental rights. In its Opinion 2/94 of 28 March 1996 (ECR I-1759), the Court of Justice made a clear distinction between the obligation to respect fundamental rights and the power to legislate with regard to fundamental rights. The Charter must operate solely within the framework of existing powers. Should these be extended as a result of the Treaties being amended, the Charter would naturally apply to the new powers created.

7. The Charter applies to the institutions of the Union, and the Cologne European Council does not refer to the Community alone. The Charter should therefore be drafted in such a way as to apply within the framework not only of the Treaty on European Union but also of the EC Treaties. In other words, the Charter also applies to Titles V (CFSP) and VI (JHA) of the Treaty on European Union.

III. Holders of guaranteed rights

8. This is an extremely complex legal issue. If the terms of the European Convention on Human Rights are adopted, then this Convention applies to any person within the jurisdiction of a Contracting State. *Mutatis mutandis*, the Charter would thus apply to anyone within the jurisdiction of the Union.
9. A solution of this kind raises difficulties, particularly with regard to certain social rights which may not be applied systematically to workers from third countries and the scope of which is also likely to vary in accordance with the agreements concluded between the Union and the third countries. The same holds true, of course, with regard to freedom of movement.
10. Finally, rights linked to Community citizenship, which are political rights, may be granted solely to persons holding the nationality of one of the Member States. No discrimination based on nationality may occur in the enjoyment of such rights.
11. This distinction becomes further complicated with the inclusion of a general clause on non-discrimination which might conflict with the existence of specific rights reserved for EC nationals or persons treated as such.
12. This is a problem which can be solved. The European Court of Human Rights stated in its Chorfi judgment of 7 August 1996 that the preferential treatment granted to EC nationals in the matter of expulsion was dependent on a case being made on objective and reasonable grounds. It is thus possible to justify differing forms of treatment.

13. Under these circumstances, would it not be possible to work on the basis that the Charter should apply to any person falling within the scope of EU legislation, with a proviso covering the specific rights enjoyed by citizens of the Union? An example may be found in Article 25 of the European Parliament declaration which attempted to solve this problem, but which was not entirely successful in doing so.
14. Given the aim of incorporation into the Treaties, this is a significant problem which needs to be handled with great care. It should be noted that, strictly speaking, Article 13 TEC itself contains no general clause on non-discrimination, but does empower the Community to combat discrimination within the sphere of its competence. On the other hand, Article 6 TEU refers back to the European Convention on Human Rights and thus to Article 14 thereof which prohibits discrimination in the enjoyment of rights guaranteed under the said Convention. It should further be noted that an additional Protocol to the European Convention on Human Rights prohibiting discrimination of any kind is currently under negotiation within the Council of Europe.

IV. Relationship with international instruments for the protection of human rights and common constitutional traditions

15. The question of the relationship between the Charter and the European Convention on Human Rights is frequently raised. The drafting of the Charter has no direct impact on the question of the Community's accession to the European Convention on Human Rights. The problem of accession may arise, irrespective of whether the Community has a Charter or not. The Charter constitutes a bill of rights which the Union imposes on itself, just as each State party to the Convention has its own charter of fundamental rights. This does not dispense the Union from observing the Convention. Accession would establish an external check on the way in which the Community observes the Convention. According to the Court of Justice of the Communities, such accession will require a revision of the Treaty.

16. Article 6 TEU requires the Union to respect the Convention. Consequently, the Convention constitutes a minimum standard and the Charter cannot take a step backwards in relation to the Convention as interpreted by the European Court of Human Rights. This point is particularly important since there is always a risk of a private individual referring to the European Court of Human Rights a national measure implementing Community law and of that Community law being declared contrary to the Convention, although the Court of Justice of the Communities would perhaps not have delivered the same judgment (see ECHR, Judgment *Matthews v. United Kingdom* of 18 February 1999 concerning the European elections and Gibraltar).
17. The same consideration applies with regard to common constitutional traditions.
18. Under these circumstances, it would perhaps be useful to consider a clause that would establish that there is nothing in the Charter to restrict the protection offered by the European Convention on Human Rights and the common constitutional traditions and by other instruments which would have to be identified (United Nations Covenant, European Social Charter, etc.).

V. The question of limitation of guaranteed rights

19. Guaranteed rights are not guaranteed without limit. The European Convention authorises the limitations which are prescribed by law and are necessary in a democratic society. Other arrangements exist which preserve the actual core of the guaranteed right. It will probably be necessary to give thought to the limitation formula. For example, Article G (Part V) of the European Social Charter could be taken as a basis.

VI. The different categories of rights

20. The rights to be guaranteed are not of the same kind. There are rights which are clearly amenable to the law. Others require action by the European Union for them to be implemented, and the legislator has broad discretionary powers as regards such action.

21. Contrary to what certain parties claim, this distinction does not conceal any opposition between civil and political rights and social rights. Certain social rights, such as the right of association, may be amenable to the law, whilst others, such as the right to employment, are less so.
22. Consideration must therefore be given to each right to determine whether it is amenable to the law or whether it can be worded in such a way as to make it so. Could not certain rights be defined as political principles for Union action which need to be realised through action by the legislator? That is what was adopted in the Parliament declaration for the right to the environment (Article 24) or working conditions (Article 13).

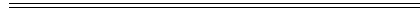
VII. Judicial control

23. If the Charter is inserted into the Treaty, observance thereof will be ensured through the provisions on judicial control contained in the Treaties. The control will be effected by the Court of Justice either by direct referral thereto or via a preliminary ruling by the national judge. The system of control will differ according to the pillars.
24. Is there a contradiction between the right to a judge as set out in the European Convention on Human Rights and the system of the Treaties? The system of appeal provided for by the Treaties is a comprehensive system since, when referral cannot be made direct to the Court, the national courts may be called upon to rule on national acts implementing Community law.
25. Nevertheless, there are cases in which no national implementing act is necessary as the Community legislation simply lays down a prohibition. The only possibility remaining for the private individual is to appeal against the penalty which might be imposed upon him by the national courts in the event of an infringement of the Community legislation. Some thought it was not normal for a private individual to be induced to commit an infringement in order to be able to appeal, since he had no right to appeal directly against the Community act concerned. However, it is not clear whether the Court's case law on this matter has been established and the Court will shortly be required to state its position.

26. In its preparatory report for the last Intergovernmental Conference, the Court mentioned the idea of introducing a special appeal ("Verfassungsbeschwerde"; complaint of unconstitutionality). The Intergovernmental Conference did not adopt this suggestion.

CONCLUSION

27. This note is not exhaustive and simply presents certain horizontal problems without examining them in depth. On the basis of the Body's discussions, they will require a detailed legal examination.



DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

**Brussels, 26 January 2000
(OR. f)****CHARTE 4112/00****BODY 4****PRESIDENCY NOTE**

Subject : Draft list on fundamental rights

This list has been drawn up on the basis of the Community Treaties, International Conventions on Human Rights including the European Convention on Human Rights, texts of national Constitutions and various Community texts including several Declarations by the European Parliament. It merely aims to serve as a basis for discussions at the first working meeting called upon to draw up such a list. Once the forum has decided on that list, work on drafting the various rights may begin.

This list groups together rights granted to individuals, natural and legal persons, which may be invoked by them within the scope of the Union's powers and also rights which can be presented as political objectives of Union action. Sometimes, by way of illustration, the contents of a right have been spelt out.

No distinction has been drawn between civil and political rights on one hand and social and economic rights on the other. The only matters that have specifically been highlighted are the rights of citizens of the Union and horizontal questions. The document does not claim either to constitute a blueprint for the presentation of the Charter and the position of each right on the list should be subject to discussion.

The references that have been entered in brackets only have an explanatory value. They refer to texts of different natures, some having a binding value, and others not. Sometimes, the rights are formulated as such, sometimes there is merely a reference to a Union or Community objective. In addition, references to secondary legislation have been excluded

The forum is called upon to discuss and amend this list, either by cutting back certain rights, or by amplifying the list.

Abbreviations:

EC : Treaty establishing the European Community

ECHR: European Convention on Human Rights

Social Charter: European Social Charter

Community Charter of Social Rights : Community Charter of the Fundamental Social Rights of Workers

EP Decl. 1989 : Declaration of fundamental rights and freedoms adopted by the Parliament on 12 April 1989.

*

* *

LIST OF RIGHTS

1. Right of respect of the dignity of the human person: this right covers in particular, but not exclusively questions of bioethics, prohibition of slavery and forced labour.(Article 4 ECHR, Article 1 EP Decl.1989)
2. Right to life, prohibition of inhuman or degrading treatment, torture, problem of the death penalty.(Article 2 ECHR, Article 2 EP Decl. 1989)
3. Liberty and security: protection in the case of deprivation of liberty, habeas corpus.(Article 5 ECHR, Article 2 EP Decl. 1989)
4. Right to a fair trial: public hearing, impartial tribunal, reasonable time, principle of right to be heard (audi alteram partem) and of equality of arms, presumption of innocence and the rights of the accused in criminal proceedings...(Article 6 ECHR, Article 19 EP Decl. 1989)
5. Access to the courts: right to appear before a judge.(Articles 6 and 13 ECHR, Article 19 EP Decl. 1989)
6. Nullum crimen sine lege et nulla poena sine lege (no crime without law and no punishment without law) and non-retroactive criminal law.(Article 7 ECHR, Article 21 EP Decl. 1989)
7. Non bis in idem(double jeopardy).(Article 4 Protocol No 7 ECHR, Article 20 EP Decl. 1989)
8. Respect for private and family life: right to privacy, home, correspondence, data protection.(Article 8 ECHR, Article 6 EP Decl. 1989)
9. Right to found a family.(Article 12 ECHR, implicitly in Article 6 EP Decl. 1989)
10. Freedom of thought, conscience and religion.(Article 9 ECHR, Article 4 EP Decl. 1989)
11. Freedom of expression : including the freedom to receive and impart information and freedom of the press.(Article 10 ECHR, Article 5 EP Decl. 1989)
12. Right to free elections.(Article 3 Protocol ECHR, Article 17 EP Decl. 1989)
13. Right to education and vocational training.(Article 2 Protocol ECHR, Article 150 EC, Article 10 Social Charter, Point 15 Community Charter of Social Rights, Article 16 EP Decl. 1989)
14. Freedom of association and assembly, including the right to organise.(Article 11 ECHR, Article 15 Social Charter, Point 11 Community Charter of Social Rights, Article 11 EP Decl. 1989)
15. Access to information, transparency.(Article 255 EC, Article 18 EP Decl. 1989)
16. Data protection (Article 286 EC, Article 18 EP Decl. 1989)

17. Freedom of movement and of residence: problem of beneficiary, relationship with citizens' rights.(Article 2 Protocol No. 4 ECHR, Title III of the EC Treaty for workers, Article 8 EP Decl. 1989)
18. Property rights.(Article 1 Protocol ECHR, Article 9 EP Decl. 1989)
19. Conservation of the environment, right to a healthy environment: right or political objective ?(Article 6 EC, Article 24 EP Decl. 1989)
20. Rights of aliens: asylum, prohibition of collective expulsion, procedural guarantees in the case of expulsion.(Article 63 EC, Article 4 Protocol No. 4 and Article 1 Protocol No. 7 ECHR)
21. Right to work: objective of a high level of employment, freedom to choose and engage in an occupation.(Article 127 EC, Article 1 Social Charter, Point 4 Community Charter of Social Rights)
22. Right to safe and healthy working conditions.(Article 140 EC, Article 3 Social Charter, Point 19 Community Charter of Social Rights, Article 13 EP Decl. 1989)
23. Fair remuneration and minimum wage: distinguish between what falls under a right and what constitutes a political objective.(Article 4 Social Charter, Article 4 Community Charter of Social Rights, Article 13 EP Decl. 1989)
24. Right to weekly rest period and paid holidays.(Article 2 Social Charter, Point 8 Community Charter of Social Rights)
25. Pensions.(Article 23 Social Charter, Points 24 and 25 Community Charter of Social Rights)
26. Free access to placement services.(Article 1 Social Charter, Point 6 Community Charter of Social Rights)
27. Vocational guidance and continuing vocational training.(Articles 9 and 10 Social Charter, Point 15 Community Charter of Social Rights)
28. Right of information and consultation of workers.(Article 137 EC,Article 6 Social Charter, Point 17 Community Charter of Social Rights)
29. Right to collective bargaining.(Article 137 EC, Article 6 Social Charter, Point 12 Community Charter of Social Rights, Article 14 EP Decl. 1989)
30. Right to strike.(Article 6 Social Charter, Point 13 Community Charter of Social Rights, Article 14 EP Decl. 1989)
31. Right to health: right or political objective.(Article 152 EC, Article 11 Social Charter, Point 19 Community Charter of Social Rights, Article 15 EP Decl. 1989)
32. Right to social security, right to social and medical assistance.(Article 13 Social Charter, Point 10 Community Charter of Social Rights, Article 15 EP Decl. 1989)
33. Protection of maternity.(Article 8 Social Charter)

34. Protection of children and young persons.(Article 17 Social Charter, Points 20 and following Community Charter of Social Rights)
35. Integration of disabled persons.(Article 15 Social Charter, Point 26 Community Charter of Social Rights)

Rights of citizens of the Union

1. Freedom of movement and residence(Article 18 EC)
2. Right to vote and stand as a candidate at European and municipal elections(Article 19 EC)
3. Diplomatic and consular protection(Article 20 EC)
4. Right to petition the European Parliament(Article 21 EC)
5. Right to apply to the Ombudsman(Article 21 EC)
6. Non-discrimination between citizens of the Union(Article 12 EC)
7. Equality in access to the Community civil service(principle of non-discrimination on the basis of nationality and status)
8. Right to write to the Union in one of the official languages and to have an answer in the same language.(Article 21 EC)

NB. The rights referred to under points 4 and 5 also apply to persons residing in the territory of a Member State.

Horizontal questions

1. Holders of rights guaranteed by the Charter
 2. Non-discrimination : between Community nationals (Article 12 EC), between men and women (Articles 137 and 141 EC), general non-discrimination clause (Article 13 EC and Article 14 ECHR)
 3. Limitation of guaranteed rights (incorporated in various Articles of ECHR and Article 26 EP Decl 1989)
 4. Derogation in cases of exceptional situations (Article 15 ECHR and Protocol on right of asylum EC)
 5. Abuse of rights (Article 17 ECHR, Article 28 EP Decl. 1989)
 6. Relationship with other instruments of protection of fundamental rights (Article 27 EP Decl. 1989)
-

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPEENNE**fundamental.rights@consilium.eu.int**

Bruxelles, le 27 janvier 2000**CHARTE 4112/1/00 REV 1****BODY 4****NOTE DE LA PRESIDENCE**

Objet : Projet de liste des droits fondamentaux

La présente liste a été établie sur la base des traités communautaires, des conventions internationales relatives aux droits de l'homme dont la Convention européenne des droits de l'homme, des textes des constitutions nationales ainsi que divers textes communautaires dont les différentes déclarations du Parlement européen. Elle vise simplement à servir de base aux discussions de la première réunion de travail appelée à établir une telle liste. Une fois que l'enceinte se sera prononcée sur cette liste, le travail de rédaction des différents droits pourra commencer.

Cette liste regroupe des droits accordés aux individus, personnes physiques et morales, que ceux-ci peuvent faire valoir dans le champ des compétences de l'Union et des droits qui peuvent être présentés comme des objectifs politiques de l'action de l'Union. Parfois, à titre d'illustration, le contenu d'un droit a été détaillé.

La distinction entre les droits civils et politiques d'une part et les droits économiques et sociaux d'autre part a été établie uniquement à des fins de clarté. Ont été isolés les droits des citoyens de l'Union et les questions horizontales. Le document ne constitue pas un plan de présentation de la Charte et la place de chaque droit dans la liste devra faire l'objet d'une discussion.

Les références qui ont été indiquées entre parenthèses n'ont qu'une valeur explicative. Elles se rapportent à des textes de nature différente, les uns ayant une valeur contraignante, les autres non. Parfois, les droits sont formulés comme tels, parfois il s'agit simplement d'une référence à un objectif de l'Union ou de la Communauté. De plus, ont été exclues les références au droit dérivé.

L'enceinte est appelée à discuter et à amender cette liste, soit en retranchant certains droits, soit en complétant la liste.

Abréviations:

CE: Traité instituant la Communauté européenne

CEDH: Convention européenne des droits de l'homme

Charte sociale : Charte sociale européenne

Charte communautaire des droits sociaux : Charte communautaire des droits sociaux fondamentaux des travailleurs

Décl. PE 1989 : Déclaration des droits et libertés fondamentaux adoptée par le Parlement européen le 12 avril 1989.

LISTE DES DROITS

Dignité

1. Droit au respect de la dignité de la personne humaine : ce droit couvre notamment, mais pas exclusivement les questions de bioéthique, interdiction de l'esclavage et du travail forcé (article 4 CEDH, article 1 décl. PE 1989).

Droit à la vie

2. Droit à la vie, interdiction des traitements inhumains et dégradants, de la torture, problème de la peine de mort (article 2 CEDH, article 2 décl. PE 1989)

Liberté et sûreté

3. Liberté et sûreté : protection en cas de privation de liberté, habeas corpus (article 5 CEDH, article 2 décl. PE 1989)

Accès à la justice et droits de procédure

4. Droit à un procès équitable : procès public, tribunal impartial, délai raisonnable, principe du contradictoire et égalité des armes, présomption d'innocence et droits de l'accusé en matière pénale...(article 6 CEDH, article 19 décl. PE 1989)
5. Accès à la justice : droit au juge, assistance judiciaire (articles 6 et 13 CEDH, article 19 décl. PE 1989)

Non rétroactivité

6. Nullum crimen sine lege, nulla poena sine lege et non-rétroactivité de la loi pénale (article 7 CEDH, article 21 décl. PE 1989)

Ne bis in idem

7. Ne bis in idem (article 4 protocole n°7 CEDH, article 20 décl. PE 1989)

Vie privée et familiale

8. Respect de la vie privée et familiale ; droit à l'intimité, domicile, correspondance (article 8 CEDH, article 6 décl. PE 1989)
9. Liberté de fonder une famille, protection de la famille (article 12 CEDH, implicitement in article 6 décl. PE 1989)

Liberté de conscience

10. Liberté de pensée, de conscience et de religion, liberté académique (article 9 CEDH, article 4 décl. PE 1989)

Liberté d'expression

11. Liberté d'expression : y compris la liberté de recevoir et de communiquer des informations et la liberté de la presse (article 10 CEDH, article 5 decl. PE 1989)

Principe de démocratie

12. Droit à des élections libres, *principe de démocratie* (article 3 protocole additionnel CEDH, article 17 décl. PE 1989)

Droit à l'éducation

13. Droit à l'instruction et à la formation professionnelle, *liberté de choix du mode d'éducation* (article 2 protocole additionnel CEDH, article 150 TCE, article 10 Charte sociale, Pt 15 charte communautaire des droits sociaux, article 16 décl. PE 1989)

Liberté d'association et de manifestation

14. Liberté d'association et de réunion, y compris la *liberté de manifestation*, la liberté syndicale et la *liberté d'affiliation à un parti politique* (article 11 CEDH, article 15 Charte sociale, pt. 11 Charte communautaire des droits sociaux, article 11 décl. PE 1989)

Droit d'accès aux informations et protection des données

15. Droit d'accès aux informations, transparence (article 255 CE, article 18 décl. PE 1989)
16. Protection des données (article 286 CE, article 18 décl. PE 1989)

Liberté de mouvement

17. Liberté de circulation et de séjour : problème du bénéficiaire, rapport avec les droits du citoyen (article 2 protocole n°4 CEDH, Titre III du traité pour les travailleurs, article 8 décl. PE 1989)

Droit de propriété

18. Droit de propriété (article 1 protocole additionnel CEDH, article 9 décl. PE 1989)

Environnement et protection des consommateurs

19. Préservation de l'environnement, droit à un environnement sain : droit ou objectif politique ? (article 6 CE, article 24 décl. PE 1989), *protection des consommateurs* (article 153 CE, article 24 déc. PE 1989)

Droit des étrangers

20. droit des étrangers: asile, prohibition des expulsions collectives, garanties procédurales en cas d'expulsion (article 63 CE, article 4 protocole n° 4 et article 1 protocole n° 7 CEDH,)

Non-discrimination

21. Clause générale de non-discrimination (article 13 CE, article 14 CEDH)

Droits du citoyen de l'Union

1. Liberté de circulation et de séjour (article 18 CE)
2. Droit de voter et d'être élu aux élections européennes et municipales (article 19 CE)
3. Protection diplomatique et consulaire (article 20 CE)
4. Droit de pétition au Parlement européen (article 21CE)
5. Droit de s'adresser au médiateur(article 21)
6. Non discrimination entre les citoyens de l'Union (article 12 CE)
7. Egalité dans l'accès à la fonction publique communautaire (principe de non discrimination sur la base de la nationalité et statut)
8. Droit de s'adresser à l'Union et d'obtenir une réponse dans l'une des langues officielles (article 21 CE)

NB Les droits visés sous 4 et 5 s'appliquent également aux personnes ayant leur résidence sur le territoire d'un Etat membre

Droits/objectifs économiques et sociaux

Droit au travail et liberté professionnelle

- 1 Droit au travail : objectif d'un niveau d'emploi élevé, libre choix et exercice d'une profession (article 127 CE, article 1 charte sociale, pt 4 charte communautaire des droits sociaux)

Conditions de travail

- 2 Droit à la sécurité et à l'hygiène dans le travail: droit ou objectif politique ? (article 140 CE, article 3 charte sociale, pt 19 charte communautaire des droits sociaux, article 13 décl. PE 1989)
- 3 Rémunération équitable et salaire minimal : distinguer ce qui relève d'un droit et ce qui constitue un objectif politique (article 4 charte sociale, article 4 charte communautaire des droits sociaux, article 13 décl. PE 1989)
- 4 Droit au repos hebdomadaire et aux congés payés: droit ou objectif politique ? (article 2 charte sociale, pt 8 charte communautaire des droits sociaux)
- 5 Pension: droit ou objectif politique ? (article 23 charte sociale, pt 24 et 25 charte communautaire des droits sociaux)
- 6 Accès gratuit aux services de placement: droit ou objectif politique (article 1 charte sociale, pt 6 charte communautaire des droits sociaux)

Formation

- 7 Orientation professionnelle et formation continue: droit ou objectif politique (article 9 et 10 charte sociale, pt 15 charte communautaire des droits sociaux)

Droits sociaux collectifs

- 8 Droit à l'information et à la consultation des travailleurs (article 137 CE, article 6 charte sociale, pt 17 charte communautaire des droits sociaux)
- 9 Droit à la négociation collective article 137 CE, article 6 charte sociale, pt 12 charte communautaire des droits sociaux, article 14 décl. PE 1989)
- 10 Droit de grève (article 6 charte sociale, pt 13 charte communautaire des droits sociaux, article 14 décl. PE 1989)

Protection sociale

- 11 Droit à la santé : droit ou objectif politique (article 152 CE, article 11 charte sociale, pt 19 charte communautaire des droits sociaux, article 15 décl. PE 1989)
- 12 Droit à la sécurité sociale, droit à l'aide sociale et médicale : droit ou objectif politique ? (article 13 charte sociale, pt 10 charte communautaire des droits sociaux, article 15 décl. PE 1989)
- 13 Protection de la maternité (article 8 charte sociale)
- 14 Protection des enfants et des adolescents (article 17 charte sociale, pts 20 et svts charte communautaire des droits sociaux)
- 15 Insertion des handicapés (article 15 charte sociale, pt 26 charte communautaire des droits sociaux)

Questions horizontales

1. Titulaires des droits garantis par la Charte
 2. Non discrimination : entre les ressortissants communautaires (article 12 CE), entre homme et femme (article 137 et 141 CE), clause générale de non discrimination (article 13 CE et article 14 CEDH)
 3. Limitation des droits garantis (incorporée dans différents articles CEDH et article 26 décl. PE 1989)
 4. Dérogation en cas de situation exceptionnelle (article 15 CEDH et protocole droit d'asile CE)
 5. Abus de droit (article 17 CEDH, article 28 décl. PE 1989)
 6. Niveau de protection : Rapport avec les autres instruments de protection des droits fondamentaux (article 27 décl. PE 1989)
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DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

fundamental.rights@consilium.eu.int

**Brussels, 27 January 2000 (31.01)
(OR. f)**

CHARTE 4112/2/00 REV 2

BODY 4

PRESIDENCY NOTE

Subject : Draft list of fundamental rights

This list has been drawn up on the basis of the Community Treaties, international human rights conventions including the European Convention on Human Rights, the texts of national constitutions and various Community texts, including several declarations by the European Parliament. It merely aims to serve as a basis for discussions at the first working meeting called upon to draw up such a list. Once the Body has decided on that list, work on drafting the various rights may begin.

This list groups together rights granted to individuals, natural and legal persons, which may be invoked by them within the scope of the Union's powers, and also rights which can be presented as political objectives of Union action. Sometimes, by way of illustration, the contents of a right have been spelt out.

The distinction between civil and political rights on the one hand and economic and social rights on the other has been drawn purely for the sake of clarity. The only matters that have specifically been highlighted are the rights of citizens of the Union and horizontal questions. The document does not claim to constitute a blueprint for the presentation of the Charter and the position of each right on the list will need to be discussed.

The references in brackets have an explanatory value only. They refer to texts of different natures, some having a binding value, and others not. Sometimes, the rights are formulated as such, sometimes there is merely a reference to a Union or Community objective. In addition, references to secondary legislation have been excluded.

The Body is called upon to discuss and amend this list, either by cutting back certain rights, or by amplifying the list.

Abbreviations:

EC: Treaty establishing the European Community

ECHR: European Convention on Human Rights

Social Charter: European Social Charter

Community Charter of Social Rights: Community Charter of the Fundamental Social Rights of Workers

EP Decl. 1989: Declaration of fundamental rights and freedoms adopted by the European Parliament on 12 April 1989.

LIST OF RIGHTS

Dignity

1. Right to respect for the dignity of the human person: this right covers in particular, but not exclusively, questions of bioethics, prohibition of slavery and forced labour (Article 4 ECHR, Article 1 EP Decl. 1989).

Right to life

2. Right to life, prohibition of inhuman or degrading treatment, torture, problem of the death penalty (Article 2 ECHR, Article 22 EP Decl. 1989).

Liberty and security

3. Liberty and security: protection in the event of deprivation of liberty, habeas corpus (Article 5 ECHR, Article 2 EP Decl. 1989).

Access to justice and procedural rights

4. Right to a fair trial: public hearing, impartial tribunal, reasonable time, principle of right to be heard (*audi alteram partem*) and of equality of arms, presumption of innocence and the rights of the accused in criminal proceedings...(Article 6 ECHR, Article 19 EP Decl. 1989).
5. Access to justice: right to appear before a judge, legal assistance (Articles 6 and 13 ECHR, Article 19 EP Decl. 1989).

Non-retroactivity

6. *Nullum crimen sine lege et nulla poena sine lege* (no crime without law and no punishment without law) and non-retroactive criminal law (Article 7 ECHR, Article 21 EP Decl. 1989).

Non bis in idem

7. *Non bis in idem* (double jeopardy) (Article 4, Protocol No 7 ECHR, Article 20 EP Decl. 1989).

Private and family life

8. Respect for private and family life: right to privacy, home, correspondence (Article 8 ECHR, Article 6 EP Decl. 1989).

Right to found a family

- 9. Freedom to found a family (Article 12 ECHR), protection of the family (Article 7 EP Decl. 1989)**

Freedom of conscience

10. Freedom of thought, conscience and religion, academic freedom (Article 9 ECHR, Article 4 EP Decl. 1989).

Freedom of expression

11. Freedom of expression: including the freedom to receive and impart information and freedom of the press (Article 10 ECHR, Article 5 EP Decl. 1989).

Principle of democracy

12. Right to free elections, principle of democracy (Article 3 Additional Protocol ECHR, Article 17 EP Decl. 1989).

Right to education

13. Right to education and vocational training, freedom of choice of method of education (Article 2 Additional Protocol ECHR, Article 150 EC, Article 10 Social Charter, Point 15 Community Charter of Social Rights, Article 16 EP Decl. 1989).

Freedom of association and demonstration

14. Freedom of association and assembly, including freedom to demonstrate, freedom to form trade unions and freedom to join a political party (Article 11 ECHR, Article 15 Social Charter, Point 11 Community Charter of Social Rights, Article 11 EP Decl. 1989).

Right of access to information and data protection

15. Right of access to information, transparency (Article 255 EC, Article 18 EP Decl. 1989).
16. Data protection (Article 286 EC, Article 18 EP Decl. 1989).

Freedom of movement

17. Freedom of movement and of residence: problem of beneficiary, relationship with citizens' rights (Article 2 Protocol No 4 ECHR, Title III of the Treaty for workers, Article 8 EP Decl. 1989).

Right to property

18. Property rights (Article 1 Additional Protocol ECHR, Article 9 EP Decl. 1989).

Environment and consumer protection

19. Conservation of the environment, right to a healthy environment: right or political objective? (Article 6 EC, Article 24 EP Decl. 1989), consumer protection (Article 153 EC, Article 24 EP Decl. 1989).

Rights of aliens

20. Rights of aliens: asylum, prohibition of collective expulsion, procedural guarantees in the event of expulsion (Article 63 EC, Article 4 Protocol No. 4 and Article 1 Protocol No. 7 ECHR).

Non-discrimination

21. General non-discrimination clause (Article 13 EC, Article 14 ECHR).

Rights of citizens of the Union

1. Freedom of movement and residence (Article 18 EC)
2. Right to vote and stand as a candidate at European and municipal elections (Article 19 EC)
3. Diplomatic and consular protection (Article 20 EC)
4. Right to petition the European Parliament (Article 21 EC)
5. Right to apply to the Ombudsman (Article 21 EC)
6. Non-discrimination between citizens of the Union (Article 12 EC)
7. Equal access to the Community civil service (principle of non-discrimination on the basis of nationality and status)
8. Right to write to the Union in one of the official languages and to have an answer in the same official language (Article 21 EC)

NB. The rights referred to under points 4 and 5 also apply to persons residing in the territory of a Member State.

Economic and social rights/objectives

Right to work and choose an occupation

1. Right to work: objective of a high level of employment, freedom to choose and engage in an occupation (Article 127 EC, Article 1 Social Charter, Point 4 Community Charter of Social Rights).

Working conditions

2. Right to safety and health at work: right or political objective? (Article 140 EC, Article 3 Social Charter, Point 19 Community Charter of Social Rights, Article 13 EP Decl. 1989).
3. Fair remuneration and minimum wage: distinguish between what falls under a right and what constitutes a political objective (Article 4 Social Charter, Article 4 Community Charter of Social Rights, Article 13 EP Decl. 1989).

4. Right to weekly rest period and paid holidays: right or political objective? (Article 2 Social Charter, Point 8 Community Charter of Social Rights).
5. Pensions: right or political objective? (Article 23 Social Charter, Points 24 and 25 Community Charter of Social Rights).
6. Free access to placement services: right or political objective (Article 1 Social Charter, Point 6 Community Charter of Social Rights).

Training

7. Vocational guidance and continuing training: right or political objective (Articles 9 and 10 Social Charter, Point 15 Community Charter of Social Rights).

Collective labour rights

8. Workers' right to information and consultation of workers (Article 137 EC, Article 6 Social Charter, Point 17 Community Charter of Social Rights).
9. Right to collective bargaining (Article 137 EC, Article 6 Social Charter, Point 12 Community Charter of Social Rights, Article 14 EP Decl. 1989).
10. Right to strike (Article 6 Social Charter, Point 13 Community Charter of Social Rights, Article 14 EP Decl. 1989).

Social protection

11. Right to health: right or political objective (Article 152 EC, Article 11 Social Charter, Point 19 Community Charter of Social Rights, Article 15 EP Decl. 1989).
12. Right to social security, right to social and medical assistance: right or political objective? (Article 13 Social Charter, Point 10 Community Charter of Social Rights, Article 15 EP Decl. 1989).
13. Protection of maternity (Article 8 Social Charter).
14. Protection of children and young persons (Article 17 Social Charter, Points 20 et seq. Community Charter of Social Rights).
15. Integration of disabled persons (Article 15 Social Charter, Point 26 Community Charter of Social Rights).

Horizontal questions

1. Holders of rights guaranteed by the Charter
2. Non-discrimination: between Community nationals (Article 12 EC), between men and women (Articles 137 and 141 EC), general non-discrimination clause (Article 13 EC and Article 14 ECHR)
3. Limitation of guaranteed rights (incorporated in various Articles of ECHR and Article 26 EP Decl. 1989)
4. Derogation in exceptional situations (Article 15 ECHR and Protocol on right of asylum EC)
5. Abuse of rights (Article 17 ECHR, Article 28 EP Decl. 1989)
6. Level of protection: Relationship with other instruments for the protection of fundamental rights (Article 27 EP Decl. 1989)

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 28 January 2000**CHARTE 4117/00****CONTRIB 13****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a contribution submitted by Mr. Paavo Nikula, personal representative of Finland.

The Chancellor of Justice of
the Finnish Council of State

CONSIDERATIONS ON THE DRAFTING OF THE EUROPEAN CHARTER OF FUNDAMENTAL RIGHTS

1. It might be most natural to start by making an inventory of the fundamental rights that already *exist at the European level*. Available legal sources are, in the first place, the European Convention for the protection of Human Rights, mentioned in Article 6(2) of the Treaty on European Union, and the practice of applying the Convention. But it is also appropriate to go through the European Social Charter and the Community Charter of the Fundamental Social Rights of Workers (Article 136 TEU), both mentioned in the Cologne Conclusions. Further, the decisions of the EC Court of Justice contain some statements of the Court's position on fundamental rights that are worth noticing. Also the UN human rights conventions (including the Conventions on the Rights of Women and the Rights of the Child) and the ILO conventions ratified or signed by the EU Member States should be examined and taken into account in the work of the Body.

Such a basic inventory is necessary for establishing the prevailing situation. It is also necessary in order that we can, firstly, avoid ending up in a draft Charter of Fundamental Rights that is below the current standard and, secondly, assess our opportunities to further develop the European fundamental rights.

2. From the Finnish point of view, it would also be useful to examine how the possible *accession of the EU to the European Convention for the protection of Human Rights* and perhaps other international human rights instruments could take place in practice. This examination would mainly include technical work to find out what amendments to the Treaties would be needed and what corresponding measures would be necessary in the Council of Europe and possibly other international organisations. In this connection, it would probably be necessary to deal with the division of competence between the Courts in Strasbourg and Luxembourg. — When examining the accession to the European Convention for the Protection of Human Rights and the project on the EU's Charter of Fundamental Rights, Finnish specialists have concluded that these two are not mutually exclusive alternatives.
3. In Article 6(2) of the Treaty on European Union, reference is made to the *constitutional traditions common to the Member States*. In my view it is appropriate to examine this issue, as well, because also the EC Court of Justice has used these traditions as an argument for some of its decisions. The national constitutions of the Member States may also stimulate further development of fundamental rights at the European level. In this respect, I wish to briefly describe the past developments in Finland.

In Finland, fundamental rights were originally (in the Constitution Act of 1919) prescribed as rights of Finnish citizens. During the decades to follow, however, the application practice gradually changed in a universal direction. The fundamental rights of 1919 were mainly classical freedom rights. In the constitutional reform carried out in 1995, these fundamental rights were supplemented with considerably increased and extended economic, social, educational and political rights.

Moreover, the so-called third generation fundamental rights were introduced by including in the Constitution a provision on responsibility for the environment. This provision also represents a new writing technique: "The nature, biodiversity, the environment and the cultural heritage shall be the responsibility of everyone". Protection of work force, which has traditionally been included in the fundamental rights in Finland, is also covered by the new provisions on fundamental rights by prescribing that the public authorities are responsible for promoting employment. At the same time, the right to pursue a business is safeguarded as a fundamental right.

On the one hand, the new Finnish provisions on fundamental rights aim at safeguarding citizens' rights of participation. On the other, they obligate the public authorities to ensure that the fundamental and human rights are implemented. This obligation also contributes to the supervision of fundamental and human rights. The fundamental rights provisions concerning a fair trial and proper public administration have the same contributory effect, but in addition they have a great independent significance as legal rules that strengthen the individual rights and obligations in the application of the law by courts and the decision-making of different administrative authorities.

The new Finnish Constitution, which will enter into force on 1 March 2000, will include the fundamental rights provisions of 1995 unamended.

4. The Finnish example for its part probably shows that, in addition to the classical fundamental rights, it is necessary to examine, inter alia, the rights of linguistic and cultural minorities as well as prohibitions of discrimination, rights of participation and access to information, the principle of publicity etc. In my view, the new Finnish provisions on fundamental rights, for their part, do not only reflect the national constitutional tradition but also a tradition that is common to the Member States. I enclose the Finnish and Swedish language versions and a translation into English of the chapter on fundamental rights ("Basic rights and liberties") of the Finnish Constitution, which will enter into force on 1 March 2000.

The Union's fundamental rights should not be limited so that they concern exclusively EU citizens or economic operators, such as employees, except for particularly well-founded and weighty reasons.

Paavo Nikula
January 2000

The Constitution of Finland

(731/1999)

Chapter 2

Basic rights and liberties

Section 6 - Equality

Everyone is equal before the law.

No one shall, without an acceptable reason, be treated differently from other persons on the ground of sex, age, origin, language, religion, conviction, opinion, health, disability or other reason that concerns his or her person.

Children shall be treated equally and as individuals and they shall be allowed to influence matters pertaining to themselves to a degree corresponding to their level of development.

Equality of the sexes is promoted in societal activity and working life, especially in the determination of pay and the other terms of employment, as provided in more detail by an Act.

Section 7 – The right to life, personal liberty and integrity

Everyone has the right to life, personal liberty, integrity and security.

No one shall be sentenced to death, tortured or otherwise treated in a manner violating human dignity.

The personal integrity of the individual shall not be violated, nor shall anyone be deprived of liberty arbitrarily or without a reason prescribed by an Act. A penalty involving deprivation of liberty may be imposed only by a court of law. The lawfulness of other cases of deprivation of liberty may be submitted for review by a court of law. The rights of individuals deprived of their liberty shall be guaranteed by an Act.

Section 8 – The principle of legality in criminal cases

No one shall be found guilty of a criminal offence or be sentenced to a punishment on the basis of a deed, which has not been determined punishable by an Act at the time of its commission. The penalty imposed for an offence shall not be more severe than that provided by an Act at the time of commission of the offence.

Section 9 - Freedom of movement

Finnish citizens and foreigners legally resident in Finland have the right to freely move within the country and to choose their place of residence.

Everyone has the right to leave the country. Limitations on this right may be provided by an Act, if they are necessary for the purpose of safeguarding legal proceedings or for the enforcement of penalties or for the fulfilment of the duty of national defence.

Finnish citizens shall not be prevented from entering Finland or deported or extradited or transferred from Finland to another country against their will.

The right of foreigners to enter Finland and to remain in the country is regulated by an Act. A foreigner shall not be deported, extradited or returned to another country, if in consequence he or she is in danger of a death sentence, torture or other treatment violating human dignity.

Section 10 – The right to privacy

Everyone's private life, honour and the sanctity of the home are guaranteed. More detailed provisions on the protection of personal data are laid down by an Act.

The secrecy of correspondence, telephony and other confidential communications is inviolable.

Measures encroaching on the sanctity of the home, and which are necessary for the purpose of guaranteeing basic rights and liberties or for the investigation of crime, may be laid down by an Act. In addition, provisions concerning limitations of the secrecy of communications which are necessary in the investigation of crimes that jeopardise the security of the individual or society or the sanctity of the home, at trials and security checks, as well as during the deprivation of liberty may be laid down by an Act.

Section 11 - Freedom of religion and conscience

Everyone has the freedom of religion and conscience.

Freedom of religion and conscience entails the right to profess and practice a religion, the right to express one's convictions and the right to be a member of or decline to be a member of a religious community. No one is under the obligation, against his or her conscience, to participate in the practice of a religion.

Section 12 - Freedom of expression and right of access to information

Everyone has the freedom of expression. Freedom of expression entails the right to express, disseminate and receive information, opinions and other communications without prior prevention by anyone. More detailed provisions on the exercise of the freedom of expression are laid down by an Act. Provisions on restrictions relating to pictorial programmes that are necessary for the protection of children may be laid down by an Act.

Documents and recordings in the possession of the authorities are public, unless their publication has for compelling reasons been specifically restricted by an Act. Everyone has the right of access to public documents and recordings.

Section 13 - Freedom of assembly and freedom of association

Everyone has the right to arrange meetings and demonstrations without a permit, as well as the right to participate in them.

Everyone has the freedom of association. Freedom of association entails the right to form an association without a permit, to be a member or not to be a member of an association and to

participate in the activities of an association. The freedom to form trade unions and to organise in order to look after other interests is likewise guaranteed.

More detailed provisions on the exercise of the freedom of assembly and the freedom of association are laid down by an Act.

Section 14 - Electoral and participatory rights

Every Finnish citizen who has reached eighteen years of age has the right to vote in national elections and referendums. Specific provisions in this Constitution shall govern the eligibility to stand for office in national elections.

Every Finnish citizen and every foreigner permanently resident in Finland, having attained eighteen years of age, has the right to vote in municipal elections and municipal referendums, as provided by an Act. Provisions on the right to otherwise participate in municipal government are laid down by an Act.

The public authorities shall promote the opportunities for the individual to participate in societal activity and to influence the decisions that concern him or her.

Section 15 - Protection of property

The property of everyone is protected.

Provisions on the expropriation of property, for public needs and against full compensation, are laid down by an Act.

Section 16 – Educational rights

Everyone has the right to basic education free of charge. Provisions on the duty to receive education are laid down by an Act.

The public authorities shall, as provided in more detail by an Act, guarantee for everyone equal opportunity to receive other educational services in accordance with their ability and special needs, as well as the opportunity to develop themselves without being prevented by economic hardship.

The freedom of science, the arts and higher education is guaranteed.

Section 17 – Right to one's language and culture

The national languages of Finland are Finnish and Swedish.

The right of everyone to use his or her own language, either Finnish or Swedish, before courts of law and other authorities, and to receive official documents in that language, shall be guaranteed by an Act. The public authorities shall provide for the cultural and societal needs of the Finnish-speaking and Swedish-speaking populations of the country on an equal basis.

The Sami, as an indigenous people, as well as the Roma and other groups, have the right to maintain and develop their own language and culture. Provisions on the right of the Sami to use the Sami language before the authorities are laid down by an Act. The rights of persons using sign

language and of persons in need of interpretation or translation aid owing to disability shall be guaranteed by an Act.

Section 18 – The right to work and the freedom to engage in commercial activity

Everyone has the right, as provided by an Act, to earn his or her livelihood by the employment, occupation or commercial activity of his or her choice. The public authorities shall take responsibility for the protection of the labour force.

The public authorities shall promote employment and work towards guaranteeing for everyone the right to work. Provisions on the right to receive training that promotes employability are laid down by an Act.

No one shall be dismissed from employment without a lawful reason.

Section 19 – The right to social security

Those who cannot obtain the means necessary for a life of dignity have the right to receive indispensable subsistence and care.

Everyone shall be guaranteed by an Act the right to basic subsistence in the event of unemployment, illness, and disability and during old age as well as at the birth of a child or the loss of a provider.

The public authorities shall guarantee for everyone, as provided in more detail by an Act, adequate social, health and medical services and promote the health of the population. Moreover, the public authorities shall support families and others responsible for providing for children so that they have the ability to ensure the wellbeing and personal development of the children.

The public authorities shall promote the right of everyone to housing and the opportunity to arrange their own housing.

Section 20 - Responsibility for the environment

Nature and its biodiversity, the environment and the national heritage are the responsibility of everyone.

The public authorities shall endeavour to guarantee for everyone the right to a healthy environment and for everyone the possibility to influence the decisions that concern their own living environment.

Section 21 – Protection under the law

Everyone has the right to have his or her case dealt with appropriately and without undue delay by a legally competent court of law or other authority, as well as to have a decision pertaining to his or her rights or obligations reviewed by a court of law or other independent organ for the administration of justice.

Provisions concerning the publicity of proceedings, the right to be heard, the right to receive a reasoned decision and the right of appeal, as well as the other guarantees of a fair trial and good governance shall be laid down by an Act.

Section 22 – Protection of basic rights and liberties

The public authorities shall guarantee the observance of basic rights and liberties and human rights.

Section 23 - Basic rights and liberties in situations of emergency

Such provisional exceptions to basic rights and liberties that are compatible with Finland's international obligations concerning human rights and that are deemed necessary in the case of an armed attack against Finland or if there exists an emergency that threatens the nation and which according to an Act is so serious that it can be compared with an armed attack may be provided by an Act.

Editors' note to CHARTE 4118/1/00 REV 1,
**Letter from Mr. Buttiglione to Mr. Mendez de Vigo,
Chairman of the European Parliament delegation
(dated 26/01/00):**

The INIT version is identical to the REV 1 one save for formatting changes and is therefore excluded.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

**TRANSLATION SUPPLIED BY THE
EUROPEAN PARLIAMENT DELEGATION****Brussels, 2 February 2000
(OR. IT)****CHARTE 4118/1/00
REV 1****CONTRIB 14****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a letter sent by Mr. Buttiglione to Mr. Mendez de Vigo, Chairman of the European Parliament delegation. ¹

¹ This text has been submitted in English and Italian language.

Bruxelles, 26 January 2000

Dear Mr. President,

the decision to prepare a charter of man's and citizen's rights marks a fundamental step forward towards the construction of a common european citizenship and sovereignty. It is therefore mandatory that this Charter be included in the Treaty and become the cornerstone of the new european constitutional law. This is the only path leading from the Europe of the States towards a Europe of Citizens and of Nations.

Striving towards this goal I take the liberty of proposing to your attention the following considerations.

1. The Culture of Rights diffused in the cultural context of our democracies has to undergo a critical examination in the writing of our charter.

We run the danger of forgetting through a generic affirmation of rights the hard fact that to each right corresponds a duty.

The Charter of Rights must be therefore at the same time a Charter of Rights and Duties of men and of citizens.

If we don't affirm clearly this truth we shall be exposed to two great risks:

- a. on the one hand we run the risk of writing a charter containing a broad and vague catalogue of rights with a mere rhetorical and declamatory effect but that will not be able to offer precise judgement criteria to the judiciary and a clear orientation to the lawgivers.

- b. on the other hand we run the risk, explicitly or implicitly, of attributing to the state or, even worse, to the European Union the task of enforcing all rights, making of the state the bearer of all corresponding obligations. It is apparent that in order to enforce all rights the state must control all powers, and the emphasis on the rights may easily lead to an abnormal extension of state's powers, to that omnipotence of the state that is today the greatest obstacle to the real empowerment of the liberty rights of the citizens.

Don't forget that modern totalitarianism was, to a certain extent, a consequence of the affirmation of unconditional rights whose enforcement has been entrusted to omnipotent states.

2. The problem I have pointed out is particularly important in the field of social rights or, more precisely, in the field of rights with a positive content.

There are some rights whose content is just the demand of a negative behaviour of the state or of all members of the human community. The right to life, for instance, in a narrower definition, consists in the demand of not being killed; the right to property (in its narrower definition) consists in the demand of not being deprived of one's own property and so on. Liberty rights, in the form in which they are contained in liberal Bills of Rights and Constitutions of the XIX Century, have as a rule a negative content. The right consists in a universal demand, addressed to the generality of men, that they should maintain a negative behaviour in relation to this or that kind of action; it demands that they should not interfere with the exercise of the free action of a given subject. Its form is "Thou shall not".

Social rights, affirmed in the Constitutions and in the Declarations of Rights of the XX Century, are of a different sort. Social rights or, more in general, rights with a positive content, consist in the demand of a positive behaviour that brings about a state of affairs favourable to the subject of that right.

A classical example is the right to work, understood as the right to have a job.

The affirmation of this right runs of course the risk of remaining purely rhetorical if the bearer of the corresponding duty is not clearly identified; if it is not determined who has the duty of creating the corresponding job.

But if we assume, explicitly or implicitly, that the carrier of this obligation is the state, then we must accept that the state has the right and the duty of creating all the needed jobs. To this duty corresponds necessarily the right of the state to command all the resources needed to attain this goal and the consequence is a totalitarian state's control of the economy.

If we consider the whole of social rights (to work, to health care, to education, to pensions and so on) it is apparent that an inadequate formulation of these rights may open a free inroad toward a complete social control or, at least, may be seen as a support to the bureaucratic degeneration of the social state against which we are struggling today both in the European Union and in each particular state.

3. It is important to observe that, really, the distinction we have drawn in not between individual liberty rights an social rights but between rights with a positive and rights with a negative content. Even traditional liberty rights may be interpreted in a broader sense as rights with a positive content. The rights to life, for instance, may be interpreted as a right not only not to

be killed but also as a right to all what maintains, implements and enhances life and, in this interpretation, it would include all social rights. It could even be interpreted as a right not to die, a right to immortality, but in this sense it would trespass the capacity of any political community to guarantee it. The example explains how absurd the talk about rights may easily become, if we don't keep a sober mind.

The socialist tradition of thought has insisted and insists upon a culture of rights and on a culture of social rights.

The liberal tradition has expressed an increasing diffidence towards unconditional social rights, after having been the first to support a culture of rights.

It is possible to find a sound compromise or even a working synthesis of these two traditions? I think that this is possible and that the leading concept of this correct synthesis is already contained in the guidelines of the European Union and it is the principle of subsidiarity that must be reaffirmed in the Charter of Rights and must be used as a criterium to order rights and duties.

The principle of subsidiarity says that a society of a higher order should not interfere with the functioning of a society of a lower order, unless the latter is not able through its own efforts to cope with its own tasks. Each society has a sphere of action and competence entrusted to its responsibility. In this sphere it may not and should not be substituted. It may be supported in case of need and has moreover to be co-ordinated by the higher society so that it may cooperate harmonically for general or higher level purposes.

If we consider the social rights and the rights with a positive content we see that they demand for their enforcement the co-operation of a plurality of societies and subjects of different orders, each one carrying a specific responsibility.

Let us consider for instance the right to work, understood in the light of the principle of subsidiarity. The enforcement of this right demands the fulfilment of corresponding duties falling upon a whole series of different subjects. The first subject is the worker himself, who has to acquire the skills that allow him to find a useful occupation and has to be engaged in looking for it and/or in building it up, participating in business initiatives aimed to create jobs and opportunities for work. There is also a role of the family to help and support the person in her/his education and in the search for a job. There is a fundamental role of the business community, with the support of local communities, and there is a task of the educational system and of public and private agencies that are active in it. There is of course a subsidiary responsibility of the state and of the public authorities that must take care that in a general condition of ordinate economic development there is a reasonable abundance of opportunities

for work, so that all of those who want to work, and stand in need of working, can work.

Dear President, I hope you will excuse me for this long letter. It is perhaps justified because of the importance of the subject, decisive for the structure of the Charter of Rights and for the choices of principle we will be confronted with in the next years. It is appropriate to solicitate on these subjects a broad debate, with the involvement of the cultural, business and labour communities as well as of european society at large.

I take this occasion to express you my best wishes for a fruitful work and to thank you for the authority and style with which you comply with your delicate function.

Yours truly

Rocco Buttiglione

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPEENNE**fundamental.rights@consilium.eu.int**

Bruxelles, le 7 février 2000**CHARTE 4121/00****CONTRIB 17****NOTE DE TRANSMISSION**

Objet : Projet de charte des droits fondamentaux de l'Union européenne

Veillez trouver ci-joint une contribution de M. Guy Braibant, Représentant personnel de la France. ¹

¹ Ce texte a déjà été diffusé lors de la réunion des 1er/2 février 2000. Il existe uniquement en français.

Paris, le 31 janvier 2000

**CHARTRE DES DROITS FONDAMENTAUX
DE L'UNION EUROPEENNE****Contribution aux débats****(Réunions des 1^{er} et 2 février 2000)****N° 7 de l'ordre du jour : Thèmes horizontaux**

Je pense que, pour mener à bien notre tâche qui est importante et difficile, nous ne devons être ni trop ambitieux ni trop modestes.

Pas trop ambitieux

Je propose, en premier lieu, de ne pas nous attarder sur trois questions qui sont certes très importantes, mais que pour des raisons politiques et techniques, nous ne serons sans doute pas en mesure de régler « en temps utile ».

C'est d'abord la question de la Constitution. Certains considèrent que la Charte peut ou doit être le préambule d'une Constitution qui serait, par hypothèse, fédérale. C'est peut-être une vue d'avenir et chacun peut conserver son opinion sur l'opportunité d'une telle solution. Mais ce n'est pas à mon avis une question d'actualité. Nous n'avons pas de mandat pour établir une Constitution, dont le principe même n'a pas encore été décidé. Il n'y a pas de lien nécessaire entre les deux questions, comme le montre entre autres l'exemple de la Convention européenne des droits de l'homme. Il ne faudrait pas renoncer à la Charte sous prétexte qu'elle n'est pas assortie d'une Constitution.

La question des traités est du même ordre. Elle est double. En premier lieu, l'insertion de la Charte dans les traités n'est pas de notre compétence, mais de celle des autorités européennes, comme l'ont rappelé les conclusions de Cologne. Nous pourrions sans doute émettre un vœu à ce sujet. Mais, là encore, ce serait peut-être un facteur d'affaiblissement des chances du projet que de subordonner son approbation à une incorporation dans les traités. En second lieu nous devons également éviter de subordonner l'adoption de la Charte à des modifications des traités sur d'autres points.

Nous en venons ainsi à une troisième question, celle des juridictions. L'Europe dispose actuellement de deux juridictions anciennes et prestigieuses, qui ont fait leurs preuves : la Cour de justice des Communautés européennes et la Cour européenne des droits de l'homme. Il ne serait pas raisonnable de modifier dès maintenant le statut des Cours existantes en portant atteinte à leurs compétences ou à leur composition, en particulier en subordonnant l'une à l'autre.

Nous devons travailler, me semble-t-il, à « organisation juridictionnelle constante ». Il pourra en résulter des inconvénients, en particulier si comme il est probable et comme les conclusions de Cologne d'ailleurs nous y incitent, la Charte se réfère à la Convention européenne des droits de l'homme : les deux Cours pourront être conduites à interpréter le même texte de manière différente. Mais ce risque existe déjà, compte tenu de la rédaction actuelle des traités et de la jurisprudence de la Cour de Luxembourg, et il n'a pas soulevé jusqu'à présent de difficultés majeures ; il faut espérer que les deux juridictions sauront harmoniser spontanément leurs jurisprudences, sans se livrer à une « guerre des juges ». C'est ainsi que pourrait être réglé un problème souvent évoqué dans les débats actuels, celui du caractère contraignant de la Charte. A la différence du précédent, ce point relève, me semble-t-il, de notre compétence. Il ne suffira pas de proclamer ou de reconnaître les droits il faudra trouver les moyens juridiques de les faire valoir, notamment en justice, qui ne nécessitent peut-être pas d'innovations ni de modifications des traités. La question devra être examinée à propos des différents droits. Sur ce point, j'approuve la position exprimée par le Président Herzog lors de notre première séance : « Nous allons élaborer un texte qui n'aura pas immédiatement la force obligatoire attachée à la législation européenne et communautaire. Malgré tout, nous devrions toujours garder à l'esprit l'idée que la charte que nous rédigeons doit acquérir un jour, dans un avenir relativement proche, un caractère contraignant ».

Pas trop modestes non plus

Pour l'essentiel, notre travail devrait consister à établir des listes de droits, en définissant leur champ d'application aux institutions (institutions communautaires seulement, ou également institutions nationales lorsqu'elles appliquent le droit communautaire) et aux personnes (citoyens, résidents, étrangers de passage). Ces droits peuvent être classés en trois catégories comme l'ont fait les conclusions de Cologne, mais en suivant peut-être un ordre différent. Je pense en effet qu'il n'est ni logique ni opportun de placer les droits « réservés aux citoyens de l'Union européenne » entre les deux autres catégories, qui ne doivent pas subir la même limitation ; on peut les placer en tête ou à la fin.

Cette catégorie « des droits de citoyenneté » est sans doute la plus facile à définir dans son contenu comme dans son champ d'application, car elle est inscrite pour l'essentiel, dans le traité de l'Union européenne ; elle comprend notamment les droits de vote, d'éligibilité, de pétition, et avec certaines extensions à d'autres catégories de personnes, le droit de pétition au Parlement, le droit de saisine du Médiateur et la liberté de circulation.

Une deuxième catégorie, qui figure actuellement au premier rang, des conclusions de Cologne, est constituée par « les droits de liberté, d'égalité et de procédure ». A la différence des précédents, ces droits sont universels. Ils sont difficiles à qualifier ; on ne peut plus parler de « droits civils et politiques », comme dans les documents des Nations-Unis, car les droits de citoyenneté sont aussi des droits politiques ; il faudrait peut-être adopter soit l'expression de « droits de la personne », soit celle de « droits et libertés ». Elle comprendrait notamment, ceux qui sont énumérés dans la Convention européenne des droits de l'homme ; mais pas seulement. Il faudrait y ajouter des droits apparus depuis la signature de la Convention, dans des protocoles, dans des conventions antérieures ou dans des directives et des règlements communautaires en matière par exemple, d'informatique et de bioéthique ; le premier cas est typique car il a fait l'objet d'une directive européenne et d'une convention du Conseil de l'Europe ; il ne s'agit donc pas de « droits

nouveaux » ; le second est plus complexe, car il existe des divergences sensibles entre les Etats et une convention européenne, la convention d'Oviedo, certes signée mais non ratifiée ; il serait toutefois possible de trouver une formulation générale et consensuelle, qui sans entrer dans les détails, montrerait que ce secteur important a été pris en compte. Outre les instruments européens déjà existants, il faudrait se référer aux instruments internationaux ratifiés par tous les Etats membres de l'Union.

En ce qui concerne les dispositions qui figurent déjà dans des textes, plusieurs méthodes peuvent être utilisées : soit un simple renvoi, mais le lecteur ne connaîtrait pas ses droits par la seule lecture de la Charte ; soit une réécriture, mais ce système est dangereux parce qu'il risque d'entraîner des discussions inutiles au moment de la rédaction et des divergences d'interprétation dans l'application ; soit enfin une reproduction intégrale ou bien en annexe, ou bien dans le corps de la Charte.

Ces techniques peuvent également être utilisées pour la troisième catégorie de droits, les droits économiques et sociaux. C'est sans doute la plus importante pour nous, parce que c'est celle qui est la moins perfectionnée actuellement et qui provoque le plus d'attentes sociales. Mais c'est aussi la plus difficile. D'abord le texte des conclusions de Cologne dit des et non pas les droits économiques et sociaux, ce qui nous invite à procéder à une sélection. En outre ces mêmes conclusions nous incitent à éviter les droits qui ne sont que des « objectifs » ; mais nous ne devons pas accepter une régression par rapport au droit actuel tel qu'il est écrit, en particulier, dans les Chartes européennes auxquelles renvoient ces conclusions ou dans d'autres conventions internationales comme celles de l'organisation internationale du travail. Nous devons au contraire le renforcer par des formules plus précises et plus contraignantes. Les droits liés à la protection de l'environnement devraient également être inscrits dans cette catégorie.

C'est là certes un vaste programme. Si nous commençons rapidement à le mettre en œuvre, nous pourrions achever sa réalisation dans les brefs délais qui nous sont impartis.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 7 February 2000**CHARTE 4122/00****CONTRIB 18****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter the contribution and the intervention made by Lord Goldsmith, QC at the meeting of 1 and 2 February 2000. ¹

¹ This text has been submitted only in English language.

EU CHARTER OF RIGHTS CONVENTION

NOTE ON STRUCTURE - LORD GOLDSMITH (UK REPRESENTATIVE)

At its meeting on 1-2 February the Charter drafting body will have an initial discussion of the scope and content of the Charter of Rights, following which the Praesidium will be turning its attention to preparing initial drafts. How the Charter is structured will be an important element in its success and it may be helpful if I set out some thoughts on a possible approach.

Purpose of our Work

As the Cologne Conclusions make clear, the challenge is to make existing fundamental rights more visible. The Charter exercise is a real opportunity. Properly constructed and presented, the Charter could deepen and strengthen the culture of rights and responsibilities at all levels across the EU and express our underlying unity of moral purpose. Bringing together into a single document endorsed by Member States and Community institutions, a proclamation of existing rights would have a powerful effect in reinforcing in the minds of administrators, governments, legislators, judges, lawyers and all other citizens the rights they possess and the need to respect them.

The Cologne and Tampere European Council Conclusions set the scope and timescale for this project. At Cologne, Heads of Government created this Body to produce a draft Charter of fundamental rights existing at Union level ‘in order to make their overriding importance and relevance more visible to the Union’s citizens.’ In this way ‘the fundamental rights applicable at Union level’ can be ‘consolidated in a Charter and thereby made more evident’ (Cologne Conclusions, paragraph 44).

This is a clear steer towards a political statement limited to existing rights. The Cologne Conclusions set out the sequence. Only after this Body has done its work will the question be considered of ‘whether and, if so, how the Charter should be integrated into the treaties’. This has important implications for our work. We should be seeking to keep the draft clear and simple for maximum public impact. There is no time to do anything else in the few months we have available.

The drafting body cannot decide on legal status, so we must ensure that we respect and complement the existing European human rights architecture and existing competences, and preserve legal certainty. We should aim to agree from the outset a clear and straightforward structure for the document which will make our work easier and facilitate the subsequent endorsement process.

Proposal

I propose a simple document comprising of two interrelated parts designed to meet these criteria. Part A would contain a succinct and user-friendly statement of rights and responsibilities, while Part B would complement and build on Part A by explaining the nature and scope of those rights and pointing to the appropriate source instrument and how they are justiciable. The two parts would be clearly linked through mutual cross-references though the first could perhaps be made available separately for promotional purposes, but keeping the signpost to Part B. This approach would allow visibility and accessibility through Part A while retaining legal certainty through Part B. Part B would also contain any applicable national derogation.

I attach an annex which sets out how such a document might look, taking as examples rights under four headings identified by Cologne. (The examples and wording used in the annex are for illustrative purposes; the detailed content and wording would, of course, be for the drafting body):

- civil and political rights;
- EU citizens' rights;
- economic and social rights; and
- rights emanating from the constitutional traditions common to all Member States.

[signed]

Lord Goldsmith QC

January 2000

Annex

DRAFT STRUCTURE

PART A

Introduction: an opening paragraph on, for example, Europe's common human rights heritage; the importance of that common heritage to e.g. the fight against xenophobia; identifying fundamental ethical unity of purpose amidst the diversity of races and religions; acting as an international beacon for human rights etc. Explanation of the interdependence of rights and responsibilities (c.f. EC Treaty Article 17(2) and ECHR Article 17) and corresponding need for citizens as well as public authorities to respect the rights of others and reaffirming a commitment to the protection and promotion of fundamental rights throughout the EU.

- A list of rights enjoyed within the EU, with a statement that their legal source is set out in Part B and that they are subject to the conditions set out in Part B and to be enforced in the way set out in Part B. Illustrative examples:

Example 1: Every citizen has the right to liberty and security and cannot be deprived of it except in limited cases and in accordance with the law;

Example 2: Every citizen has the right to vote and stand for election in EP and local elections;

Example 3: Every citizen has the right as an EU national to set up a business anywhere in the EU;

Example 4: Every citizen has the right to keep communications with his lawyers private.

It is for discussion whether there could be included also a statement: "In simple terms this means that ..."

PART B

This section will set out and explain the nature and conditions of the fundamental rights included in Part A.

A short passage stating that an individual in a Member State will enjoy the rights contained in the provisions referred to in Part B in so far as the provisions conferring the rights have been accepted and brought into effect by that Member State and are in accordance with that Member State's national law and practice.

The source instrument for each right will be indicated separately; and guidance will be given on justiciability, and about general provisions of the individual treaties which are essential for understanding their nature and extent.

Civil and Political

Example 1: Right to liberty and security – *This right is guaranteed by European Convention on Human Rights, Article 5 and is enforceable through national courts and by the European Court of Human Rights in Strasbourg. Article 5 provides as follows:*

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
 - (a) the lawful detention of a person after conviction by a competent court;
 - (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
 - (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
 - (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
 - (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound minds, alcoholics or drug addicts or vagrants;

- (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.
2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.
 3. Everyone arrested or detained in accordance with the provisions of paragraph 1(c) of this article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.
 4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.
 5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation.

For discussion: There would be a cross reference to later section of Part B which will need to outline the enforcement mechanisms for each Treaty referred to and capture general provisions of the Treaty referred to which are essential for understanding the nature and extent of the rights. For the ECHR the relevant general provisions would be Articles 15 (the power to derogate in future; 16, 17 (which would benefit from prominent treatment) and 18). They would *not* include Art 13 (right to an effective remedy).

Citizens' rights

- Short indication that citizens of the Union will enjoy the following rights (and will be subject to the duties imposed thereby), in so far as they have been conferred upon them by provisions of the Treaty establishing the European Community or of legislation brought forward under the Treaty, in accordance with those provisions. Followed by::

Example 2: Every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and to stand as a candidate at municipal elections in the Member State in which he resides, under the same conditions as nationals of that State. Without prejudice to Article 190(4) EC Treaty and to the provisions adopted for its implementation, every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and to stand as a candidate in elections to the European Parliament in the Member State in which he resides, under the same conditions as nationals of that State. These rights shall be exercised subject to detailed

arrangements adopted by the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament; these arrangements may provide for derogations where warranted by problems specific to a Member State. (Article 19 (1) and (2), EC Treaty)

Economic and Social

Example 3: EU nationals have the right to pursue economic activities and to set up and manage undertakings in another Member State under the same conditions as those imposed on its own nationals (Article 43 EC Treaty). Within the framework of the EC Treaty, restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State shall be prohibited.

Constitutional traditions of Member States

- Short indication that these rights are common to the constitutional traditions of the Member States and, consistent with the principle of subsidiarity, enforced in accordance with national conditions. Followed by:

Example 4: The right of legal professional privilege enabling client-lawyer communications to be treated in confidence helps ensure confidence in the judicial systems of each Member State. [In the UK, this right and its limitations are recognised in section 10 of the Police and Criminal Act 1984 and other statutes.]

SECOND PLENARY MEETING OF THE CHARTER OF RIGHTS CONVENTION INTERVENTION BY LORD GOLDSMITH

I would like to set out a proposal as to how we should proceed.

It is contained in my written paper. Allow me to summarise and elaborate a little.

I suggest we be guided by 3 fundamental considerations.

The first is that our mandate is to make existing fundamental rights more visible.

That is very clear from the Cologne conclusions. See especially the passages set out in my written paper:

The body was created to produce a draft Charter of fundamental rights “in order to make their overriding importance and relevance more visible to the Union’s citizens”

In this way “the fundamental rights applicable at Union level” can be “consolidated in a Charter and thereby made more evident”

That is a very important and valuable task. It is essential to promote a culture of rights and responsibilities.

It will have powerful effect in reinforcing in the minds of administrators, lawyers, governments, legislators, judges, companies as well as citizens the rights citizens possess and which must be respected.

The problem is not at the moment that there are not such rights. The problem is the need to reinforce the culture of respect. Legislators, companies, individuals may stumble into infringement of fundamental rights because their existence is not recognized enough. We need the alarm bells to sound when a right of this kind is about to be infringed so that the transgressor steps back.

Such a document would also have a very powerful effect in showing our common unity of moral purpose as Europeans. And what Europe brings to the citizen.

To achieve this end the document we produce must be clear and simple for maximum public impact.

It should be capable of being read and understood by everyone. It should be capable even of being pinned to the wall in every government office and company headquarter to remind everyone of the rights which must be respected.

The second consideration is that there are major problems in trying to rewrite existing rights.

Some of these are referred to in the Horizontal Issues paper. Let me simply identify a few.

- We risk a different interpretation of fundamental rights because they are expressed in different terms or interpreted in different terms. This would damage legal certainty. It would damage respect for human rights not reinforce them. We should not attempt to rewrite existing rights.
- We will have great difficulty agreeing a common list of rights to be enforced as a separate document. Member States recognize rights differently. It would be difficult for a Member State, having recognized one of these rights at the national level, perhaps in its constitution, to see it omitted in the EU Charter. And vice versa.
- The ways rights are recognized are also subject to differences. Differences of content – there are derogations or different content of the same basic right. Differences of enforcement which can have a major impact eg on the financial consequences of a particular right. In one State it may not appear to entail significant cost but it does in another.
- There are serious issues of conflict between different courts.

The implications are two. We will not achieve a text of the precision which we can all accept in the time allowed.

Perhaps even more important it will not be a document which would have the impact I have referred to. A detailed legal document of closely defined rights will not be accessible and transparent to all. We will severely limit the vision and the social utility of the Charter.

The third consideration is that we cannot decide if this should have legal status. That is not a decision for us.

Therefore we must work to respect and complement the existing human rights regime and preserve its legal certainty.

MY PROPOSAL therefore is set out in the document: to produce a two part document. Part A identifies the existing rights in clear and simple language for maximum impact. They are anchored in Part B to the existing rights with their legal source and existing enforcement mechanism. Be that ECHR, or ECJ or national courts.

That would allow legal certainty. It would avoid the risk of contrary interpretations. It would enable us to allow for national differences where applicable; because Part B would make it clear that the basic right was subject, in some cases, to national conditions and national legislation.

I strongly suggest that this is a feasible and worthwhile approach. If we do not go down this route we will be missing an opportunity and letting down the citizens of Europe.

[signed]

Lord Goldsmith QC

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[signed]

Lord Goldsmith QC

Editors' note to CHARTE 4123/1/00 REV 1,
Praesidium Note: Draft articles:

The INIT version was cancelled and replaced by REV 1.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

**Brussels, 15 February 2000 (16.02)
(OR. f)****CHARTE 4123/1/00
REV 1****CONVENT 5****NOTE FROM THE PRAESIDIUM**

Subject : Draft Charter of Fundamental Rights of the European Union
– Draft articles

In accordance with the method of work agreed by the Convention, this document proposes draft wording for certain rights. The rights described in Part I of the document are those which featured at the head of the list submitted to the Convention at its last meeting. It should be considered whether these rights should feature in the Charter. If so, the Convention will examine the proposed wording. Each right is the subject of a commentary, which indicates sources and highlights certain editorial questions. The articles set out in Part II of the document relate to horizontal aspects. They give examples of solutions to some of the horizontal problems which might be raised by an examination of Part I.

I. Articles submitted for the Convention to consider

Article 1. Dignity of the human person

- 1. Human dignity shall be inviolable.**
- 2. No one shall be subjected to torture or to inhuman or degrading treatment or punishment.**
- 3. No one shall be required to perform forced or compulsory labour.**

Commentary

Paragraph 1 is inspired by the principles common to the constitutional traditions of Member States and by Article 1 of the 1989 Declaration of the European Parliament.

Paragraph 2 is taken from Article 3 of the European Convention on Human Rights.

*Paragraph 3 is the same as Article 4(2) of the European Convention on Human Rights. It did not seem useful to repeat the definition of forced labour which is contained in paragraph 3 of the Article, as that definition is in any case brought in by Article 6 of the TEU and would lead to over-lengthy wording. That was also the solution used by the European Parliament in 1989. Is it still necessary today to include the prohibition on slavery and servitude ("**No one shall be held in slavery or servitude**") in an explicit fashion as in the European Convention, since this is in any case covered by paragraph 1? Must the ban on forced and compulsory labour be retained here?*

Article 2. Right to life

- 1. Everyone shall have the right to life.**
- 2. Everyone shall have the right to the respect of his physical, psychological and genetic integrity.**
- 3. The death penalty shall be abolished.**

Alternative wording for paragraph 2:

2. **Everyone shall have the right to the respect of his physical, psychological and genetic integrity. In the field of medicine and biology, the following principles must be respected:**
- **An intervention in the health field may only be carried out after the person concerned has given free and informed consent to it.**
 - **Any form of discrimination against a person on grounds of his or her genetic heritage is prohibited.**
 - **Predictive genetic tests may only be carried out for medical purposes or for medical research, subject to appropriate genetic counselling. An intervention to modify the human genome may only be undertaken for preventive, diagnostic or therapeutic purposes and only if its aim is not to introduce modifications in the genome of any descendants.**
 - **Medical research must respect the dignity of the human person and the principle of free and informed consent.**
 - **The human body and its parts shall not, as such, give rise to financial gain.**
 - **The removal of organs from a living donor for transplantation purposes may be carried out solely with the free and informed consent of the donor and for therapeutic benefit where there is no other alternative therapeutic method.**
 - **The cloning of human beings is forbidden.**

Commentary

Paragraph 1 reproduces Article 2 of the European Convention on Human Rights using other wording, namely that of Article 2 of the 1989 Declaration of the European Parliament.

Paragraph 2 deals with bioethical questions. It would be possible to mention other points, in particular consent to medical treatment, a prohibition on cloning etc. – but would not a general text which could always be adapted to technical progress, be better? Alternative 2 illustrates what a list of rights in this area might be. This list is inspired by the Council of Europe Convention on Human Rights and Biomedicine. This Convention is not in force and will be supplemented by protocols as technical progress is made. The disadvantage is that this considerably lengthens the text and that the list will never be complete because of technical developments in the bioethics field.

The wording of paragraph 3 poses a delicate question. On the one hand, all Member States have ratified Protocol No 6 of the European Convention on Human Rights, and as Declaration No 1 adopted by the conference and attached to the Final Act of the Amsterdam Treaty indicates, they do not apply the death penalty. However, currently, the legal systems of the Union cannot of course condemn anyone to the death penalty. The abolition of the death penalty therefore seems rather to be an objective of the Union to be realised through CFSP, but may also have a role to play with regard to cooperation in criminal matters (Title VI of the TEU). The 1998 Declaration of the Council on the death penalty indicates that the Union is working towards the universal abolition of the death penalty. The wording set out in the text is that of Protocol No 6. If one wished to avoid giving the impression that the Union is abolishing a penalty which has already been abolished by all the Member States, one could also simply take over the second sentence of Protocol No 6: "No one shall be condemned to the death penalty, or executed."

Article 3. Liberty and security

- 1. Everyone has the right to liberty and security of person.**
- 2. No one shall be arrested or detained save in the cases prescribed by law.**
- 3. Everyone arrested or detained on reasonable suspicion of having committed an offence shall be brought before a judge and shall be entitled to trial within a reasonable time or be released pending trial.**
- 4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.**
- 5. Everyone who has been the victim of arrest or detention in contravention of the above provisions shall have an enforceable right to compensation.**

Commentary

This text is drawn from Article 5 of the European Convention on Human Rights. Paragraph 1 states the principle. As the Union does not have penal jurisdiction, it cannot be directly responsible for the respect of these rights in the practical implementation of penal activity. On the other hand, in the context of the work accomplished on the basis of Title VI of the TEU, it has the obligation to ensure that measures taken in this context, particularly with regard to the harmonisation of penal legislation, do not infringe those rights. Article 2 of the 1989 Declaration of the European Parliament restricted itself to mentioning the principle of liberty and security, but at that time the TEU did not exist and it was not deemed necessary to develop the principle. This solution is no longer possible today, given the development of the Union's powers.

The question should be carefully examined in conjunction with the Article 1 or preamble proposed as part of the horizontal provisions. It must be clear that the obligation of compliance with fundamental rights devolves upon the Union when it adopts measures within the framework of Title VI, i.e. within the framework of its own tasks, and not upon the Member States within the framework of their national penal systems, which are outside the scope of Community law. The same remark applies also in the cases of Articles 5 and 6.

Article 4. Right to an effective remedy

Everyone whose rights and freedoms are violated shall have the right to bring an action before a court or tribunal specified by law.

Commentary

This article follows Article 13 of the European Convention on Human Rights and Article 19 of the 1989 Declaration of the European Parliament. The Court of Justice enshrined the principle in Community law in its judgment of 15 May 1986 (Case 222/84, Johnston, ECR 1651), National Constitutions.

Article 5. Right to a fair trial

1. **Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.**
2. **Access to justice shall be effective. Legal aid shall be provided to those who lack sufficient resources *[insofar as such aid is indispensable to ensure the effectiveness of access to justice]*.**
3. **Everyone charged with an offence has the following minimum rights:**
 - (a) **to be presumed innocent until proved guilty according to law;**
 - (b) **to be informed promptly, in a language which he understands and in detail, of the accusation against him, and to have adequate time and facilities for the preparation of his defence;**
 - (c) **to defend himself in person or through legal assistance of his own choosing or to be given it free, and to have the free assistance of an interpreter if he cannot speak the language of the proceedings;**
 - (d) **to have access to the dossier; to examine or have examined under the same conditions witnesses on his behalf and witnesses against him.**

Commentary

Paragraphs 1 and 2 concern justice in general and are therefore applicable to the Union's own judicial system. Paragraph 3 concerns criminal procedure and the same form of presentation has been used as in the preceding Article. These rights are taken from Article 6 of the European Convention on Human Rights and Article 19 of the 1989 Declaration of the European Parliament. It should be noted that, in accordance with the case law of the European Court of Human Rights, no State is under any absolute obligation to introduce a system of legal aid for all civil cases. States must only provide legal aid where the lack of such aid would invalidate the guarantee of an effective remedy (ECHR judgment of 9.10.1979, Airey, Series A, Volume 32, 11). Nor are there any principles common to the Member States in this field.

Article 6. No punishment without law

No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence in law at the time when it was committed. No heavier penalty than the one applicable at the time of committing the offence shall be imposed. If, subsequent to the commission of the offence, the law provides for a lighter penalty, that penalty shall be applicable.

Commentary

This article adopts the classic principle of non-retroactivity of laws and penalties in criminal matters. The principle of retroactive application of the lighter penalty, existing in many Member States and to be found in Article 15 of the Covenant on Civil and Political Rights, has been added. See Article 7 of the European Convention on Human Rights and Article 21 of the 1989 European Parliament Declaration.

Article 7. Non bis in idem

No one shall be tried or convicted for offences for which they have already been finally acquitted or convicted.

Commentary

See Article 4 of Protocol No 7 to the European Convention on Human Rights and Article 20 of the 1989 Declaration of the European Parliament.

Article 8. Respect for private and family life

- 1. Everyone shall have the right to respect and protection for their identity.**
- 2. Respect for privacy and family life, reputation, the home and the confidentiality of correspondence, irrespective of the medium, shall be guaranteed.**

Commentary

This article follows Article 8 of the European Convention on Human Rights. The reason for the use of the expression "irrespective of the medium" in paragraph 2 is to make clear the fact that this paragraph applies equally to the Internet. A specific Article will cover data protection, which therefore is not referred to here. See also Article 6 of the 1989 Declaration of the European Parliament.

Article 9. Family life

- 1. Everyone shall have the right to found a family.**
- 2. The Union shall ensure the legal, economic and social protection of the family.**
- 3. The Union shall ensure the protection of children.**

Commentary

The inspiration for this article is Article 12 of the European Convention on Human Rights and Article 7 of the 1989 Declaration of the European Parliament. In paragraph 1, there should perhaps be a restrictive clause, as not everyone can found a family under all circumstances (cf. restrictions as a result of minimum age requirements or prohibition of certain marriages within families), but in this case it is difficult to imagine a solution other than reference to national law as in Article 12. Would not the best solution be to allow the operation of the general limitation clause (cf. Article Y below)? Concerning children, the phrase "in accordance with the United Nations

Convention on the Rights of the Child of 20 November 1989" could be added to paragraph 3. But need reference be made to an instrument external to the Union which may develop independently? The question is not the same for the European Convention on Human Rights, which is specifically mentioned in the Treaty.

II. HORIZONTAL ARTICLES

These articles are not submitted for discussion. They are intended merely to provide an illustration of a possible way of solving certain horizontal problems which are closely linked to matters to be examined when drafting provisions on specific rights.

Preamble or Article 1

The following provisions are applicable to the Institutions and bodies of the European Union within the framework of the powers and tasks assigned to them by the Treaties. They are binding on the Member States only where the latter transpose or apply the law of the Union. The Charter does not introduce new tasks or powers, nor does it extend existing tasks or powers.

Commentary

This general article should either be placed in the preamble or become the first article of the Charter. It is intended to indicate clearly that the Charter's scope is restricted to the European Union and to avoid any application to the Member States when they are acting within their own jurisdiction. It adopts the case law of the Court of Justice as set out in the Cinéthèque case (judgment of 11 July 1985, Joined Cases 60 and 61/84, ECR p. 2618, paragraph 26) and more recently in the Kremzow Case (judgment of 29 May 1997, Case C-299/95, ECR p. I-2629). It

also indicates that, while the Union must guarantee respect for fundamental rights within the framework of its own areas of jurisdiction, the Charter cannot have the effect of extending the powers of the Union, which is the express result of the Court's Opinion of 28 March 1996 on the accession of the Community to the European Convention on Human Rights (point 27 in particular). According to the Court's reasoning, although the Community has the obligation to respect fundamental rights, it does not follow that it thereby acquires competence to act in this field, except where this is expressly provided for in the Treaties. In other words, the obligation to respect fundamental rights is a constraint on the Community's action and not a licence to legislate in this field.

Article X

- 1. Certain rights shall be reserved for citizens of the European Union. *[It may be decided to extend the enjoyment of such rights wholly or partly to other persons.]***

Commentary

This paragraph enshrines the fact that certain rights may be reserved for citizens of the Union. These rights will be identified on a case-by-case basis (using the formula of "all persons" or "the citizens of the Union" to identify those entitled). Concerning the possibility of an extension, the guarantee of this depends less on a reference in the Charter than on the existence of a legal basis in the Treaty. Extension may be effected by unilateral acts of the Union or by international conventions. It needs to be considered whether the possibility of an extension should be mentioned.

Article Y. Limitations

Without prejudice to provisions affording more protection than this Charter, no limitation on respect for the rights and freedoms which it recognises shall be admitted except under a rule of law which is not an implementing rule, does not infringe the essential content of the rights in question and, subject to the principle of proportionality, remains within the limits necessary for the protection of legitimate interests in a democratic society.

Commentary

A model for a possible general limitation clause, suggested as an example if the question of limitations is taken up in relation to a specific right. It does not exclude the existence of specific clauses for particular rights. There is a problem with regard to the nature of the act limiting fundamental rights. The term "rule of law" may be considered too broad, as it includes implementing measures, but "a law" is not appropriate since it has no meaning in Community law at present, unless understood as in the European Convention on Human Rights in the sense of a general and abstract rule without implying the source of the rule. The present formula eliminates the possibility of limiting rights by means of implementing measures. It leaves this option to the legislator alone, acting on the appropriate legal basis.

Article Z. Level of protection

No provision of the this Charter may be interpreted as placing restrictions on the protection afforded, in conformity with Article 6 of the Treaty on European Union, by the European Convention on Human Rights.

Commentary

The purpose of this article, a suggested wording for which is given by way of example, is to ensure that, in conformity with Article 6 of the Treaty on European Union, the level of protection of human rights in the Union cannot be inferior to that afforded by the European Convention on Human Rights, regardless of the wording of the Charter. This article makes it possible to depart from the wording of the Convention without altering the standard of protection afforded to the individual.

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPEENNE**fundamental.rights@consilium.eu.int**

Bruxelles, le 9 février 2000**CHARTE 4125/00****CONTRIB 20****NOTE DE TRANSMISSION**

Objet : Projet de charte des droits fondamentaux de l'Union européenne

Veillez trouver ci-joint le discours prononcé par Mme Anne-Marie SIGMUND (présidente du Groupe III, rapporteur du Comité économique et social) lors de la réunion du 2 février 2000. ¹

¹ Ce texte a été soumis en langues française et allemande.

31 janvier 2000

Monsieur le Président,
Mesdames, Messieurs,

Nous sommes très reconnaissants à l'Enceinte chargée d'élaborer une Charte européenne des droits fondamentaux de nous avoir donné la possibilité de vous présenter aujourd'hui les principales réflexions du Comité économique et social sur un catalogue européen des droits fondamentaux.

Le Comité économique et social a abordé pour la première fois la question de l'élaboration d'une Charte européenne des droits fondamentaux dans le cadre des travaux d'un groupe d'étude sous la présidence allemande du Conseil, lorsqu'une première réflexion a été entamée sur différentes approches possibles. Dans ce contexte, il était déjà largement acquis que cette entreprise revêt un caractère éminemment politique. Il ne s'agit pas seulement de codifier les droits existants aux différents niveaux politiques et de les élever pour ainsi dire au rang constitutionnel du droit des sociétés. Il s'agit aussi de présenter aux citoyens européens un instrument juridique clair et accessible énumérant leurs droits directs, leurs droits fondamentaux et leurs devoirs dans le cadre de l'Union.

Dans le cadre d'une réunion extraordinaire de son Bureau, le Comité s'est ensuite penché sur le contexte politique dans lequel s'inscrit l'élaboration de cette Charte des droits fondamentaux. Il lui a fallu constater que l'Union doit se rendre à l'évidence qu'un fossé s'est creusé, sur le plan émotionnel, entre elle et ses citoyens. "Manque de contacts entre l'Europe et ses citoyens", "déficit démocratique", tels sont les reproches que l'on entend régulièrement formuler à l'encontre de l'Europe. Force nous est de constater que nos concitoyens des différents Etats membres n'ont pas le sentiment de faire partie d'une "Europe des citoyens", pas plus qu'ils ne s'identifient avec une telle Europe. Cela tient sûrement également au fait que la mutation de l'Europe, au départ Communauté économique, en une vaste union politique suite à l'Acte unique et en passant par Maastricht et Amsterdam, n'a pas toujours été très bien comprise par les citoyens européens. Or, le développement d'une telle "identité européenne" serait, dans la perspective de l'élargissement, un outil très important pour donner aux pays candidats une "échelle des valeurs" commune à tous les Etats membres et déterminante pour l'Europe. Pour être efficaces, ces valeurs communes, servant de base à des actions communes, ont toutefois besoin d'un ancrage institutionnel. C'est pourquoi le Comité économique et social préconise l'élaboration d'une Charte des droits fondamentaux, contraignante et faisant partie intégrante des Traités européens.

Un souci fondamental du Comité est de garantir que les citoyens européens, lorsqu'il s'agit de questions qui les concernent aussi directement qu'un catalogue de droits fondamentaux, soient associés de façon optimale au processus décisionnel. Le Comité économique et social, en tant que porte-parole de la société civile organisée d'Europe, qui défend les intérêts des citoyens européens par le biais des organisations qui la représentent, s'engage à faire en sorte que le processus d'élaboration de la Charte des droits fondamentaux repose sur la plus large base possible et offre le plus de possibilités de participation.

C'est aussi pourquoi le Comité n'a pas encore émis d'avis définitif, dans la mesure où il entend également donner la parole, dans le cadre d'auditions qu'il organisera dans les semaines à venir, à celles des organisations de la société civile qui ne sont pas représentées au Comité. Le Comité considère comme essentielle, pour l'élaboration de la Charte, une telle participation de la société civile organisée européenne, inscrite dans la continuité et soutenue par la base.

Permettez-moi dès lors, monsieur le Président, de vous demander instamment d'autoriser le Comité à participer en tant qu'observateur aux réunions de vos groupes de travail et de lui donner la possibilité de vous tenir au courant de l'état d'avancement de ses travaux.

Au cours des auditions précitées, il conviendra de se pencher sur les considérations suivantes :

1. La citoyenneté de l'Union doit se matérialiser pour le citoyen; elle doit être le moteur d'une "identité européenne". *Sous quelle forme le lien entre le catalogue des droits fondamentaux et la citoyenneté européenne sera-t-il le mieux représenté ?*
2. Le citoyen doit accepter son rôle de détenteur de droits et d'obligations. A cette fin, il convient d'établir un catalogue clair et explicite de ces droits et obligations, que les citoyens reconnaîtront en tant que définition de leurs propres valeurs.
3. D'un point de vue juridique également, le développement de la protection des droits fondamentaux depuis Amsterdam a atteint un point tel qu'il est nécessaire de dresser une liste claire des droits fondamentaux européens en vigueur.
4. Les droits civiques et politiques, mais aussi sociaux et économiques constituent un tout indivisible. Ils ne se cumulent pas, mais sont interdépendants.
Les droits fondamentaux peuvent également être différenciés selon d'autres critères, notamment:
 - *droits de l'homme - droits fondamentaux européens - droits civiques européens*
 - *droits ayant force exécutoire concrète - droits programmatiques*
 - *droits individuels - droits collectifs**Quelle approche adopter ?*
5. La charte des droits fondamentaux doit en particulier reposer sur la Convention européenne des droits de l'homme, la Charte sociale européenne et les principes juridiques généraux institutionnalisés par la jurisprudence, et intégrer les droits fondamentaux déjà formulés ou ébauchés dans le traité d'Amsterdam. En outre, elle devrait faire référence à la Déclaration universelle des droits de l'homme et aux conventions de l'ONU relatives aux droits de l'enfant, à l'élimination de toutes les formes de discrimination à l'égard des femmes et au statut des réfugiés.

6. Les droits fondamentaux doivent avoir force exécutoire vis-à-vis des instances européennes. Les droits programmatiques doivent être définis de manière à permettre une action en justice.
7. La charte des droits fondamentaux doit s'inscrire dans le champ d'application du droit communautaire et tenir compte des compétences des Etats membres ainsi que de leur acquis juridique.
8. Le problème de la compétence judiciaire pour les questions relatives aux droits de l'homme doit être examiné.
9. Tout comme la société, les droits fondamentaux sont en constante mutation.
10. Juridiquement et politiquement, un catalogue de droits fondamentaux n'a de sens que s'il est intégré dans le traité et est contraignant.

Immédiatement après ces auditions, le Comité participera à une discussion sur la formulation des différents droits fondamentaux et élaborera ensuite un projet d'avis en la matière.

Le Comité espère vivement avoir la possibilité de vous présenter ce projet d'avis, qui aura déjà fait l'objet d'un débat avec ses membres et des associations invitées.

Merci beaucoup.

Anne-Marie SIGMUND
Présidente du Groupe des Activités diverses

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 17 February 2000**CHARTE 4131/00****CONTRIB 26****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter the speech given by Mr. Jacob Söderman, European Ombudsman, at the meeting of 1/2 February 2000. ¹

¹ The text has been submitted in English, French and German language.

Public Hearing on the draft Charter of Fundamental Rights of the European Union

2 February 2000, 09.00.

European Parliament
Rue Wiertz
B - 1047 Brussels

Preliminary remarks by the European Ombudsman, Jacob Söderman

Mr President!

Members of the Convention!

I would first like to thank you for inviting me to speak at the very beginning of your work of drafting a Charter of Fundamental Rights for the European Union.

The office of European Ombudsman was established by the Treaty of Maastricht with the aim of furthering the citizenship of the Union and enhancing the relations between the Union and its citizens. The Ombudsman's specific task is to make inquiries about possible instances of maladministration in the activities of Community institutions and bodies, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role. It is important to underline that the mandate of the European Ombudsman concerns only the Community institutions and bodies. Community law and policies are implemented mostly by national, regional or municipal administrations of the Member States, but the European Ombudsman cannot supervise their activities.

The definition of maladministration which was proposed by the Ombudsman and accepted is that:

“Maladministration occurs when a public body fails to act in accordance with a rule or principle which is binding upon it.”

This, of course, includes failure to respect human rights.

1 What is the problem?

On the basis of my experiences as European Ombudsman since September 1995, I will try to look at the idea of the Charter from the perspective of the citizen.

The Charter project began in response to a specific problem: the failure of the proposal that the European Community should accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Commission had proposed that the Community should sign the Convention. The Council asked for an Opinion of the Court of

Justice on the proposal. In March 1996, the Court decided that the Community had no competence to accede to the Convention on the basis of the existing EC Treaty.¹ In 1997, the Treaty of Amsterdam committed the Union to respect fundamental rights, as guaranteed by the European Convention and as they result from the constitutional traditions common to the Member States, as general principles of Community law.² However, the Member States did not take the opportunity of the Amsterdam Treaty to provide the Community with competence to accede to the Convention, or to any other international human rights convention.

There are two reasons for citizens to be dissatisfied with the present situation. First, The Treaty refers to fundamental rights, but does not say what they are. To discover what fundamental rights the institutions and bodies of the European Union should respect, the citizen must become an expert in comparative constitutional law as well as in Community law.

The second problem is the gap in protection of rights at the level of the Union. The Member States have all signed the European Convention and there are many other international instruments for the protection of human rights which bind all, or a majority, of the Member States. From the citizen's perspective it is not obvious why these provisions should apply to the activities of national authorities in their fields of competence, but not to the activities of the Union's institutions and bodies within the Union's fields of competence.

2 A pragmatic proposal

I have already proposed, on previous occasions,³ a pragmatic way forward from the present situation.

The proposal is to insert a provision in the EC Treaty to require that the Union's institutions and bodies respect the existing international human rights instruments that all, or a majority, of its Member States have ratified. This would include not only the ECHR, but also other Council of Europe Conventions such as the European Social Charter, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and the Framework Convention for the Protection of National Minorities. It would also include United Nations instruments such as the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the

¹ Opinion 2/94 [1996] ECR I-1759. The Court held that Article 308 (ex Article 235) of the EC Treaty (ECT), which gives the Council the power to take appropriate measures if action of the Community is necessary to attain one of the objectives of the Community, was not a sufficient legal basis, given the "fundamental institutional implications" for the Community and the Member States of accession to the European Convention.

² Article 6 of the Treaty on European Union.

³ In speeches at the conference "A European Union Human Rights Agenda for the year 2000" Vienna, 9 October 1998 and to the European Forum, "Eine Europäische Charta der Grundrechte - Beitrag zur gemeinsamen Identität", Köln, 27 April 1999.

International Covenant on Civil and Political Rights, as well as a number of ILO conventions. A complete list of the relevant instruments could be annexed to the Treaty.

In my view, the main advantage of this proposal is that it could be accepted and implemented quite rapidly. On the other hand, it must be acknowledged that the result would not be perfect, since the citizen would still be obliged to read a number of different texts in order to know his or her fundamental rights. Furthermore, the lack of international supervision would remain.

I therefore very much welcome the initiative to create a Charter of Fundamental Rights. In my view, the starting point for drafting the Charter should be respect for the existing international human rights instruments which are already binding on all, or a majority, of the Union's Member States, as well as their constitutional principles.

In order to be understood by the citizens and to make it possible to apply, the new Charter should be drafted to include clear provisions, binding on the Union's institutions and bodies, both internally and in their relations with third countries and international organisations. If this could be achieved, it would already be an important step forward for the citizen.

If there is sufficient political will within the Union, this could of course become the foundation for a more ambitious approach in the future.

The most encouraging part of your work in drafting the new Charter is the possibility to take into account modern developments in human rights standards and in the relationship between the citizen and the public administration.

3 A fundamental right to an open, accountable and service-minded administration

Foremost amongst these developments is the idea that the citizen has a right that his or her affairs be dealt with properly, fairly and promptly by an open, accountable and service-minded public administration.

Experience shows that an open administration, which is practised in many Member States, allows the citizen to obtain the information needed to call the administration to account for its actions and omissions, and so promotes a high level of public debate and enhances the possibilities of rational consent and participation. Furthermore openness seems to work against corruption, while a closed and confidential handling of public affairs provides opportunities for fraud and other illegal activities.

Alongside openness and accountability, should be placed service-mindedness. Service-mindedness implies that the administration exists to serve citizens, not *vice versa*. In national systems of administration, this principle is expressed in different ways such as citizen-friendliness and the concept of public service.

In the Charter itself, the citizen's right to good administration should be stated at the level of principle. To put the principle into practice, it would be necessary to enact a Regulation on good administrative behaviour and another on access to information and to documents.

To include this right in the Charter could have a broad impact on all existing and future Member States, helping to make the 21st century the "century of good administration".

4 Rights are worth nothing without effective remedies

Mr Chairman!

In the final section of my remarks I would like to emphasise that rights are worth nothing without effective remedies. I stress this point because I have been disturbed by what has happened to the promises which were made to citizens of the Union in the Treaty of Amsterdam. According to the Amsterdam Treaty, the Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law. Furthermore, decisions should be taken "as openly as possible".⁴

Despite these fine words, some Community legislation continues to be decided behind closed doors by the Council of Ministers. I have heard it argued that these meetings should not be open to the public because, on the one hand, the debates lack interest and, on the other hand, because the real negotiations would move to corridors and private meetings. If these arguments were valid, they would equally apply at national level and the national Parliaments should also legislate in closed session. In my view, the arguments are not valid. Citizens in a democracy should be entitled to listen to the debates which accompany the enactment of laws.

The Treaty also promised citizens a constitutional right of access to documents of the European Parliament, Council and Commission. According to Article 255 EC, "*general principles and limits on grounds of public or private interest governing this right of access to documents*" shall be determined before 1 May 2001. Last week, the Commission published its proposal for a Regulation. I am sorry to say that this document seems to consist mainly of a long and obscure list of possible reasons to deny access to documents. This cannot be what was intended when the Treaty of Amsterdam was drafted.

However, it must be remembered that the activity of the Court of Justice and Court of First Instance has consistently promoted respect for Community law including fundamental rights. Insofar as citizens enjoy, at present, any rights of access to documents, this is in large part due to the Courts.⁵

⁴ "Treaty on European Union, Articles 1 and 6.

⁵ I developed this point in my speech on the 10th Anniversary of the Court of First Instance, 19 October 1999.

I do hope that the Charter will be drafted and adopted in a form which enables the citizen to apply to the Community Courts if his or her fundamental rights are infringed by the activities of a Union institution or body. Within his mandate, the European Ombudsman is also ready to supervise respect for fundamental rights, for the benefit of the citizens, as an extra-judicial remedy.

As the experience of the Member States shows, the protection of fundamental rights can be further enhanced and strengthened by the possibility of international supervision. The most developed and effective system of supervision is that of the European Convention on Human Rights. All the Union's Member States have accepted international supervision through the Convention system, which they played an active part in creating and developing over a long period. It therefore seems right that the institutions and bodies of the Union should also accept this supervision, through accession to the Convention.

Mr President!

Members of the Convention!

I wish you every success in your important task of drafting the Charter of Fundamental Rights for the European Union.

Thank you for your attention.

Editors' note to CHARTE 4135/00,
**Observations sur CHARTE 4123/1/00 REV 1
de M. Guy Braibant (Représentant personnel
du Gouvernement de la France):**

See also CHARTE 4221/00.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

**Brussels, 21 February 2000 (22.02)
(OR. fr)****CHARTE 4135/00****CONVENT 7****COVER NOTE**

Subject : Draft EU Charter of Fundamental Rights

Please find attached the comments made by Mr Guy BRAIBANT, the personal representative of France, on the draft set out in CHARTE 4123/1/00 REV 1.

**COMMENTS ON THE DRAFT RIGHTS
SET OUT IN
CHARTE 4123/00**

I. It would be desirable to include among the fundamental individual rights listed at the beginning of the Charter:

- equality in rights or the principle of equality, as embodied in Member States' constitutional traditions and in a number of international instruments; that principle is not to be confused with non-discrimination; it would thus be possible to follow the beginning of the Universal Declaration of Human Rights (UDHR): "human beings are free and equal in dignity and rights";
- the right to recognition as a person before the law, in accordance with Article 6 of the UDHR and Article 16 of the United Nations Covenant on Civil and Political Rights;
- the right of everyone to a nationality (Article 15 of the UDHR).

II. Articles

Article 1

- (a) Dignity is an excellent place to start. The wording used follows the 1989 European Parliament Declaration. In my view, however, it would be preferable to refer to the dignity of the human person and respect for that dignity. I would propose one of the following wordings:

- "the dignity of the human person shall not be infringed";
 - "the dignity of the human person shall be respected under all circumstances";
 - "the right to dignity is inherent in the human person".
- (b) In my view, the right to dignity, which lies behind many articles in the draft, ought to appear on its own in Article 1; otherwise it might appear to amount merely to the right to freedom from torture and forced labour, currently referred to in the same article.
- (c) If it is wished to retain the ban on forced labour, heed should be paid to the negative definition of the term given in the ECHR, which is of considerable practical significance. I can understand its omission here so as not to clutter up the text. However, it should at least be stated in an accompanying report or explanatory memorandum that the Charter's drafters did not mean to dispense with that definition and do refer to it by implication.
- (d) I believe there is a need to add a provision on slavery and servitude, which unfortunately remain of relevance today, even in Europe.

Article 2

- (a) Paragraph 2: It would be better to delete the word "genetic", which does not add anything and is liable to cause confusion.

My preference is for the shorter version. If it is nevertheless wished to add some details regarding bioethics, which would probably be helpful in order to make the Charter more modern, I would propose keeping to three basic principles:

- a ban on "eugenic practices" (Article 16 of the French Civil Code, as a result of a 1994 law);

- a ban on the cloning of human beings;
- an assertion that the human body and its parts may not give rise to financial gain (with the removal, if possible, of the restrictive wording "as such").

The indent on discrimination could be transferred to the general article on non-discrimination.

- (b) Paragraph 3: The death penalty cannot of course "be abolished", since it already has been. I would propose simply taking the alternative wording: "no one shall be condemned to death or executed".

It should be noted that the ECHR Protocol on the matter includes an article on exceptions in time of war. I am not proposing that it be included here, particularly since it makes reference to the Secretary-General of the Council of Europe. However, it should be mentioned in the accompanying report so as not to give the impression that it is no longer applicable.

Article 3

- (a) The wording in paragraph 2, "no one shall be arrested or detained", is narrower than that used in Article 5 of the ECHR, "no one shall be deprived of his liberty"; the latter wording, which also covers arrangements such as residence and reporting orders, is to be preferred.
- (b) Paragraphs 3 to 6 are criminal law provisions, and could well be placed closer to or combined with Article 5(3). This would also give greater prominence to Article 4, which is general in nature and could be placed closer to Article 5(2). In order to avoid repeating the word "effective", the latter provision could be worded as follows: "access to justice shall be facilitated by providing legal aid to ...".

Articles 6 and 7

- (a) I think Latin expressions should be avoided in a document designed to make rights clearer.
- (b) In Article 6 the wording "criminal offence in law" is more restrictive than that in Article 7 of the ECHR "criminal offence under national or international law"; this restrictive wording is at odds with the development of international criminal courts and indictments on the basis of international law.

Article 8

It seems to me that nowadays the concepts of private life and family life are separate. I suggest deleting "family life" from Article 8 and keeping it for Article 9, thus avoiding pointless duplication.

Article 9

1. I think that, as stated in the commentary, reference should be made to local law, as in Article 12 of the ECHR.
2. and 3. These are hardly legislative provisions and what is more they have the disadvantage of appearing to create new powers for the Union. I propose replacing paragraph 2 by a wording that mirrors that of Article 8(2) ("Respect for family life shall be guaranteed") and, as regards children, incorporating one or two essential articles of the United Nations Convention, notably Article 3(1) which refers to the concept of "the best interests of the child" and an article on the protection of child development.

III. Horizontal articles

Although they are not for discussion, I think it preferable to state my views on these provisions now.

1. Preamble or Article 1

This provision is useful but anticipates the inclusion of rights in the Treaty, which is not within the Convention's remit. It would be more at home in an introductory report on the Charter.

2. Article X

This provision is inappropriate and will undoubtedly prompt criticism of the Charter, as being solely for the "rich and privileged" who have the good fortune to be citizens of the European Union. And basically it is inexact, since many rights are universal or are extended to foreigners who are legally resident. The scope of the Charter needs to be specified in the Articles or Chapters.

3. Article Y

I understand the intention of the authors of this text. However, it needs to be more clearly worded, avoiding in particular the concepts of "rules of law" and "implementing rule"; furthermore, a general restriction replacing the particular restrictions of the Convention might give the impression that the Charter provides less protection than the Convention.

4. Article Z

If this Article is considered essential, it would be better to delete the reference to Article 6 TEU, which adds nothing.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

**Brussels, 21 February 2000 (23.02)
(OR. fr)****CHARTE 4136/00****CONTRIB 29****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Attached hereto is a contribution by Mr Fischbach and Mr Krüger, Council of Europe observers.¹

¹ Text supplied in and English.

21.2.2000

CONTRIBUTION BY MR FISCHBACH AND MR KRÜGER,
COUNCIL OF EUROPE OBSERVERS

On 2 February 2000, at the end of the last meeting of the Convention, the delegation of observers from the Council of Europe announced that it would be submitting contributions to the Convention's proceedings in two spheres in particular, namely the identification of rights which might be included in the Charter and the issue of the European Communities' and/or the European Union's accession to the European Convention on Human Rights. An initial contribution on the latter issue is set out below.

Factors vital to the Charter's success

(a) Content of the Charter

Whether the Charter proves a success will depend on a number of factors. The first of these is its content. It would be reasonable for the Charter to include social and economic rights as well as civil and political rights. Human rights are indivisible and cannot be separated into watertight divisions. In any event, the European Union may grant different or additional rights to persons within its jurisdiction. Indeed, Article 53 of the European Convention on Human Rights (ECHR) clearly envisages that Contracting States may, under their own law or under other treaties, increase the level of protection afforded by the ECHR. Progress in this sphere by member States of the Union would provide an impulse for improving the protection of human rights in general in Europe.

(b) Ensuring consistency and legal certainty

If, as is proposed by President Herzog, the Charter is to be legally binding, another vital factor for the Charter's success will be the degree to which it is able to fit in with the other international instruments for the protection of fundamental rights, in particular the ECHR. As a number of participants at the meeting on 1 and 2 February 2000 pointed out, a situation where applicants are faced with a plethora of systems should be avoided because of the attendant risk of inconsistent or even incompatible outcomes; that would undermine legal certainty, an element that is essential to the smooth functioning of any society. Fundamental rights are too important to be implemented inconsistently. Far from reinforcing fundamental rights, any inconsistency will weaken them.

In order to ensure the requisite consonance between the ECHR and the Charter, it will be necessary first of all to ensure that a given right cannot be understood or construed differently, according to whether the instrument being applied is the ECHR or the Charter. That would create different standards and thus run counter to one of the cardinal features of fundamental rights: their universality.

(i) Reference to the ECHR and the case-law of the European Court of Human Rights

One way of achieving that purpose at the outset would be to adhere as closely as possible to the text of the ECHR where the Charter protects the same rights.

The next issue that will arise is the interpretation of those instruments. In that connection, it would be advisable for the Charter to contain a reference not only to the ECHR but also to the case-law of the European Court of Human Rights in order to avoid the emergence of diverging case-law on identical provisions. It will be noted that Articles 19 and 32 of the ECHR vest the power to interpret the ECHR in the European Court of Human Rights.

Such a reference would, however, be insufficient as two gaps would remain.

Firstly, the European Court of Human Rights would not be able to review whether the application of the provisions borrowed from the ECHR by the Charter complied with the ECHR.

Secondly, it would not resolve the problem arising from the fact that the institutions of the European Communities and the European Union are not bound by the ECHR – unlike the member States which, *in lieu* of the Community institutions, are answerable to the European Court of Human Rights for the effects of Community law in their domestic legal orders.

That was the problem which recently arose in the case of *Matthews*, in which on 18 February 1999 the United Kingdom was held responsible by the European Court of Human Rights for the effects in its domestic legal order of a primary Community law, in that case one which deprived the inhabitants of Gibraltar of the right to take part in elections to the European Parliament.

Similarly, on 15 November 1996 the Court held in the *Cantoni* case that the fact that a domestic provision was based almost word for word on a Community Directive did not prevent the provision from being reviewable under the ECHR.

In the future, the European Court of Human Rights may have to consider the responsibility of a State that is required to apply a Community Regulation.

(ii) Accession to the European Convention on Human Rights

In the light of these case-law developments, the only effective and clear solution to these problems would be to provide for the European Communities – and the European Union when allowed to do so under Community law – to accede to the ECHR. Without lessening the Charter's usefulness, accession to the ECHR would have the advantage of ensuring consistency in the protection of fundamental rights in Europe.

Firstly, the Charter would be seen as complementing, not being an alternative, to the ECHR, in keeping with Article 53 of the ECHR. That would underscore the fact that the Charter did not affect the universality of human rights or uniformity of standards in Europe.

Secondly, the European Court of Human Rights would be able to review the interpretation of those provisions of the Charter that were borrowed from the ECHR, thus ensuring perfect consonance between the two instruments in the interests of the clarity and legal certainty to which European citizens aspire.

Lastly, it would enable Community institutions to be a party to proceedings before the European Court of Human Rights that concerned the effects of Community provisions in the legal orders of member States.

From that perspective, accession to the ECHR appears to be a natural and logical complement to the adoption of the Charter. Just as the States have accepted the supervision of the European Court of Human Rights, so also it would be logical for the Union to accept this form of external review. To accept the contrary would ultimately amount to affording Community institutions greater freedom than that afforded to national ones.

Towards a relationship of cooperation between the European Court of Human Rights and the Court of Justice of the European Communities

It must be noted in this connection that on no account will the European Communities' or the European Union's accession to the ECHR mean that a hierarchy is established between the Court of Justice and the European Court of Human Rights, just as no such hierarchy exists between the latter court and any of the national courts.

The European Court of Human Rights has no power to impose penalties on national authorities, to censure them for their acts or to set their acts aside. In other words, it cannot intervene in the legal order of the State concerned and adheres to the principle that it is for the national authorities to interpret domestic law. Its power is restricted to verifying whether the acts of a national authority comply with the ECHR. If they do not, the Court will *find* a violation of the ECHR, but has no power to set aside or modify the relevant act or to prescribe the measures which the State concerned should take to redress the violation. The States are free to decide on which measures to implement in order to comply with the Court's judgment. Thus the subsidiarity principle applicable in Community law also governs relations between the European Court of Human Rights and the national authorities.

The above clearly shows that the relationship between the European Court of Human Rights and the national courts is not a hierarchical one, but one of cooperation in the interests of achieving consistent application of the ECHR throughout Europe.

When applied in the context of the European Communities, this machinery would leave intact the autonomy of Community law and the Court of Justice, the sole issue being compliance with the European Convention of Human Rights, to the exclusion of any issue regarding the interpretation and application of Community law. In that connection, it should be noted that the mere fact that the ECHR and the rights it embodies are applied in the Community legal order or, as now, are referred to by that order through Article 6 § 2 of the European Union Treaty does not alter their nature and content. This is confirmed by the fact that the Court of Justice has consistently and increasingly referred to the case-law of the European Court of Human Rights when interpreting the ECHR, thereby itself highlighting the importance of a consistent and uniform interpretation of the ECHR in Europe.

Terms of accession that will preserve jurisdiction while ensuring complementarity

However, with a view to reinforcing guarantees that the autonomy of Community law will be preserved if the European Communities and/or European Union acceded to the ECHR, machinery adapted to the special features of Community law can be devised. Thus, before deciding a case touching on a provision of the ECHR, the Court of Justice could seek an advisory opinion from the European Court of Human Rights limited to issues concerning the interpretation of the ECHR. It would be for the Court of Justice to extract from that opinion the points necessary for it to decide the case before it.

Articles 47 to 49 of the ECHR already provide for a procedure of advisory opinions. The procedure could be adapted to the present situation and so made more flexible and speedier. Further, the composition of chambers dealing with requests for an opinion could also be adjusted to take into account the special nature of Community law.

Should the Convention so wish, the Council of Europe will without delay submit proposals in greater detail with a view to enabling the Community or the Union to accede to the ECHR along the above lines.

Of course, the Convention has no power to amend the Treaties. However, the Presidency of the European Council of Cologne concluded: “It will then have to be considered whether and, if so, how the Charter should be integrated into the treaties”. Thus, as integration of the Charter necessarily means amending the treaties, the amendments should also be accompanied by all measures necessary to make integration a success. There is therefore nothing to prevent the Convention from recommending, as a natural and logical complement to the adoption of the Charter, that the Communities and/or the Union accede to the ECHR.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

**Brussels, 24 February 2000 (28.02)
(OR. fr)****CHARTE 4137/00****CONVENT 8****NOTE FROM THE PRAESIDIUM**

Subject : Draft Charter of Fundamental Rights of the European Union
– Proposed Articles (Articles 10 to 19)

Below are further articles relating to civil and political rights. The only Article on the initial list which has not been included is the one concerning the principle of democracy. The place and the content of that Article merit particular attention. Proposals will be made later, particularly in the light of the principles common to national constitutions. Likewise, the question of freedom of movement will be considered at a later stage.

Article 10: Freedom of thought, conscience and religion

Everyone shall have the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

Comments

This wording is taken from numerous national constitutions, Article 9 of the European Convention on Human Rights and Article 4 of the 1989 European Parliament Declaration. The Court of Justice of the European Communities endorsed the principle of freedom of religion in the Prais case (Judgment of 27 October 1976, Case 130/75, ECR. p. 1589). Article 9 of the European Convention develops the implications of this freedom (freedom to change religion or belief, to manifest one's religion or beliefs publicly, etc.). Since these are implications and not rights, it might seem preferable simply to make a statement of principle and to stop after the first part of the sentence. Any limitations will stem from the general limitation clause.

Article 11: Freedom of expression

Everyone shall have the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas, regardless of frontiers.

Comments

This Article incorporates the principles of Article 10 of the European Convention on Human Rights and Article 5 of the 1989 European Parliament Declaration. Paragraph 2 is based on several national constitutions and the Parliament Declaration. The Court of Justice has endorsed the

principle of freedom of expression on several occasions, first and foremost in the ERT Judgment (Judgment of 18 June 1991, Case C-260/89, ECR. p. I-5485).

Article 12: Right to education

- 1. Everyone shall have the right to education [and to vocational training] appropriate to their abilities.**
- 2. There shall be free choice of educational [and vocational training] establishment.**
- 3. The right of parents to have their children educated and taught in accordance with their religious and philosophical convictions shall be guaranteed.**
- 4. Art, science, research and teaching shall be free of constraint.**

Comments

This Article is based on common constitutional traditions of the Member States, Article 2 of the Additional Protocol to the European Convention on Human Rights and Article 16 of the 1989 European Parliament Declaration. As regards vocational training, which is not covered by the European Convention on Human Rights, there are doubts as to whether it should be included here or under social rights. The case law of the Court of Justice relates to access to such training for Community nationals and persons treated as such and to the question of Community competence, not to the existence of a right to education. Should reference be made to the obligation to ensure that primary and secondary education is compulsory and free of charge, and also to ensure equal opportunities as regards access to higher education? For paragraph 4 there are other possible wordings which would make clear that the types of freedom at issue are the freedom to found educational establishments and the freedom to decide the content of the education in certain cases. As regards paragraph 2, this freedom cannot be absolute. Could it perhaps be made subject to the obligation to respect fundamental rights?

Article 13: Freedom of assembly and association

Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions.

Comments

This Article is based on national constitutional traditions, Article 11 of the European Convention on Human Rights and Articles 10 and 11 of the 1989 European Parliament Declaration. Should explicit reference be made to the freedom not to join a trade union or an association? Does this freedom derive clearly from the case law of the European Court of Human Rights? The question of freedom to form political parties will be dealt with in connection with the rights of citizens. It has also been suggested that the following could be added: "The freedom to form groupings within a trade or profession and the freedom to organise for the purpose of protecting other interests shall also be guaranteed".

Article 14: Right of access to information

Every citizen of the Union and anyone residing in the Union shall have a right of access to the documents of the institutions of the European Union. This right shall be exercised under the conditions laid down by Article 255 of the Treaty establishing the European Community.

Comments

The wording of this Article is difficult. It follows from Article 255 of the Treaty. That Article specifies the persons who enjoy right of access (citizens, residents and legal persons with their registered office in the Community). The wording is identical for the right of petition and the right to apply to the Ombudsman. Should this right be placed here or in the part relating to citizens only? Furthermore, the right of access is not absolute. It has limitations. Should there be a reference to the Treaty, which sets out those limitations, or can the general limitation clause be regarded as sufficient?

Article 15: Data protection

Every natural person shall have a right to protection for his personal data.

Comments

Under Article 286 of the EC Treaty the Community Directives on data protection are applicable to the institutions and bodies. Those Directives are based on the Council of Europe Convention on the protection of personal data. The wording is therefore based on that Convention. The Convention provides for the possibility of extending those principles to the manual processing of files. It seems preferable to lay down a general rule rather than to include a detailed list of principles which will be subject to change in the light of technical advances. In any case, data protection is an aspect of respect for privacy. See Article 18 of the 1989 European Parliament Declaration. A more comprehensive alternative wording could be considered: "Respect for the rights and freedoms laid down by this Charter, and in particular the right to privacy, shall be guaranteed with regard to the processing, by whatever means, of any information concerning an identified or identifiable natural person. The information must be processed fairly and for specified purposes, and subject to the data subject's consent or to any other legitimate basis specified by law". This wording is closer to the Community texts and covers the protection not only of privacy but of all freedoms. Should control by an independent body be included as well?

Article 16: Right to ownership

Everyone is entitled to the peaceful enjoyment of his possessions. No one may be deprived of his possessions except in the public interest and in the cases and subject to the conditions provided for by law and subject to fair [*and prior*] compensation.

Comments

This Article reflects Article 1 of the Additional Protocol to the European Convention on Human Rights and Article 9 of the 1989 European Parliament Declaration. This is a fundamental principle common to all national constitutions. It has been endorsed many times in the case law of the Court of Justice, and first and foremost in the Hauer judgment (13 December 1979, ECR. p. 3727). It is not certain that the principle of prior compensation is common to all Member States.

Article 17: Right of asylum and expulsion

- 1. Persons who are not nationals of the Union shall have a right of asylum in the European Union [in accordance with the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees] [under the conditions laid down in the Treaties].**
- 2. Collective expulsions of aliens shall be prohibited.**

Comments

This Article is based on Article 4 of Protocol No 4 to the European Convention on Human Rights as regards collective expulsions. The 1989 European Parliament Declaration contained no reference to this, but no Community policy existed at the time. The text of paragraph 1 is based on Article 63 of the EC Treaty which incorporates the Convention on refugees into Community law. The provisions of Article 1 of Protocol No 7 to the European Convention on Human Rights on Procedural safeguards relating to expulsion have not been included as most Member States have not signed or ratified this Protocol. In any case the Geneva Convention contains guarantees to this effect. It has been suggested that reference be made to the right to temporary protection for displaced persons "under the conditions laid down in the Treaties or measures taken in pursuance thereof", but, as substantive law stands at present, does such a right exist?

Article 18: Equality

All persons shall be equal before the law.

Comments

This Article expresses a principle which the Court has deemed to be a fundamental principle of Community law (Judgment of 13 November 1984, Racke, Case 283/83, ECR. p. 3791).

Article 19: Non-discrimination

- 1. Any discrimination based on sex, race, colour or ethnic or social origin, language, religion or belief, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.**
- 2. The Union shall seek to eliminate inequalities and to promote equality between men and women. [The equality of the sexes shall be ensured in particular by the setting of pay and other working conditions in accordance with the Treaty and with the texts implementing it.]**

Comments

As regards paragraph 1, the European Convention on Human Rights limits the application of the principle to guaranteed rights, but here again it is a principle which forms part of the constitutional traditions common to the Member States. The Treaty enshrines the principle of equal treatment only in specific cases (between Community nationals, between men and women at work). But it

seems clear that any form of discrimination would be contrary to the general principles of Community law. The list combines the list in Article 13 of the Community Treaty with the list in Article 14 of the European Convention on Human Rights. It will be seen that discrimination on grounds of nationality has not been prohibited. This is a complex issue because not all discrimination is prohibited if the rights in question are linked to the status of Community national (rights of movement, residence and establishment, for example). It must be left to the courts to assess in accordance with traditional case law whether discrimination is based on objective grounds and whether it is proportionate to the objective pursued. However, either a paragraph on the prohibition of discrimination on grounds of nationality as between citizens of the Union could be inserted here, or this question could be moved to the section on citizens of the Union. Paragraph 2, taken from Article 3(2) of the EC Treaty, authorises positive action.

It has been suggested that this Article should also include a paragraph 3, based on Article 6 of the Finnish constitution, which would deal with children's rights. The paragraph would read:

"4. Children shall be treated as individuals and shall be permitted to influence matters affecting them according to their degree of maturity."

Should this paragraph be inserted here or should it be placed elsewhere together with parents' and families' rights?

=====

PROGETTO DI CARTA DEI DIRITTI FONDAMENTALI DELL'UNIONE EUROPEA**fundamental.rights@consilium.eu.int**

**Bruxelles, 28 febbraio 2000 (21.03)
(OR. fr/it)****CHARTE 4138/00****CONTRIB 30****NOTA DI TRASMISSIONE**

Oggetto: Progetto di Carta dei Diritti fondamentali dell'Unione europea

Si accludono due lettere che l'On. Elena Paciotti, Parlamento europeo, ha indirizzato al Presidium della Convenzione.¹

¹ Queste lettere sono pervenute unicamente in lingua italiana.

Strasburgo, 14 febbraio 2000

Alla Presidenza della Convenzione
Incaricata di redigere il progetto di
Carta dei Diritti fondamentali dell'UE

OGGETTO: il diritto alla protezione dei dati personali

A norma dell'articolo 286 del Trattato che istituisce la Comunità europea – come modificato dal Trattato di Amsterdam – mi sembra che si debba ritenere vigente nell'Unione il diritto fondamentale alla protezione dei dati personali, quello che la giurisprudenza costituzionale tedesca ha definito come "diritto fondamentale all'autodeterminazione informatica" o "habeas data".

Poiché tale diritto non è inserito nell'elenco contenuto nella nota della Presidenza del 27 gennaio 2000, chiedo che venga introdotto fra i diritti da prendere in considerazione nella prossima riunione.

Una formulazione a mio avviso condivisibile di tale diritto è quella contenuta nel progetto predisposto dal prof. Dr. Jürgen Meyer, del Bundestag, distribuito il 6 gennaio 2000, all'art. 6:

" Ognuno ha il diritto di decidere autonomamente sulla divulgazione e l'utilizzo dei propri dati personali e di ottenere informazioni sulla memorizzazione di questi ultimi, nella misura in cui ciò non leda i diritti di terzi.

Limitazioni sono ammissibili per legge soltanto in caso di superiore interesse pubblico."

Con i migliori saluti,

Elena Paciotti

Bruxelles, 23 febbraio 2000

Alla Presidenza della Convenzione
Incaricata di redigere
una Carta dei Diritti fondamentali
dell'Unione europea.

Fundamental.rights@consilium.eu.int

OGGETTO: Progetto di Carta dei diritti fondamentali dell'Unione europea

In relazione al testo dell'Art. 2 proposto con la nota del 15 febbraio scorso, suggerisco una formulazione alternativa del paragrafo 2:

" Ciascuno ha il diritto al rispetto dell'integrità fisica, psichica, genetica.

Nessun intervento sanitario può essere effettuato senza il consenso libero e informato dell'interessato.

Il corpo umano e le sue parti non possono costituire oggetto di profitto.

È proibita ogni forma di discriminazione basata sulle condizioni di salute o sui caratteri genetici di una persona. I test genetici sono ammessi solo per la tutela della salute dell'interessato o per fini di ricerca."

Distinti saluti.

Elena Paciotti

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

**Brussels, 28 February 2000 (29.02)
(OR. fr)****CHARTE 4139/00****CONTRIB 31****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

The text ¹ of the statement by the Council of Europe's Mr Marc Fischbach at the meeting of the Convention on 24 February 2000 is attached.

¹ Submitted in French and English.



COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

22 February 2000

The European Union's Draft Charter of Fundamental Rights

(...)

I have studied with the greatest attention the draft Articles submitted to the Convention for perusal in the document Convent 5 and it seems appropriate at this juncture to make a number of general observations on them, noting that some of the proposed provisions fall well short of the level of protection afforded at present by the European Convention on Human Rights.

One example of this is Article 3, on liberty and security. Its text is directly based on Article 5 of the European Convention. But according to Article 5, it is not sufficient for arrest or detention to comply with domestic law in order to be compatible with the European Convention. They must also be effected for one of the purposes exhaustively listed in Article 5. The case-law includes cases where a deprivation of liberty was held to be in breach of Article 5 not because it did not comply with domestic law but because it was not effected for one of these purposes.

I note, however, that this exhaustive list has not been reproduced in the draft Article 3 which has been submitted to us. That would seriously weaken the present level of protection in that it would be sufficient, for a deprivation of liberty to be compatible with the Charter, for it to comply with domestic law.

Some of the other draft provisions raise the same concerns, particularly those relating to so-called "horizontal questions". I know that at this stage these have not been submitted for discussion and merely serve to provide an illustration of the way in which certain horizontal problems raised by the drafting of the Articles relating to specific rights might be solved. Nevertheless, I wish to make two comments on them which seem to me to be of a fundamental nature.

My first observation concerns the general limitation clause proposed in Article Y. On this point, I would like to point out that the European Convention on Human Rights contains a number of provisions which are either not limited in any way or subject only to limitations whose scope has been narrowly circumscribed by the European Court of Human Rights. That applies in particular to Articles 2 to 7, which concern, among other matters, the dignity of the human being, the right to life, liberty and security, the right to a fair trial and the principle *nullum crimen sine lege*. Here again, accepting that these provisions might be affected by a general limitation clause would amount to reducing the level of protection guaranteed by the European Convention on Human Rights [and thus doing the opposite of what Article Z says, a provision I intend to come back to in a moment].

I further note that Article Y refers to "the protection of legitimate interests in a democratic society", but without listing those interests exhaustively, as the European Convention on Human Rights does. This too would lower the standards of protection currently in force in Europe since any interest at all might one day be held to be "legitimate".

To remedy the problems I have just mentioned, I fear that it will not be sufficient to refer to Article Z of the draft. That brings me to my second remark, concerning the correct interpretation of Article Z, regard being had to the wording defining certain rights.

On the one hand, the wording seems in certain cases to lag behind the level of protection afforded at present by the European Convention on Human Rights. On the other hand, however, Article Z provides that no provision of the Charter may be interpreted as placing restrictions on that protection. If it is true, as a number of members of the Convention have already said, that our main concern should be to ensure the readability and comprehensibility of the Charter, then that situation is one which I find unsatisfactory.

To ask citizens to compare two parallel texts, and in this instance that would mean grasping and understanding all the subtle differences between Articles referring to the same rights – differences of which I could moreover cite further examples – seems to me to go well beyond what one can legitimately expect of an individual subject of law and in any case to run counter to the objective of making the Charter readable and comprehensible.

In conclusion, I can therefore only emphasise the need to depart as little as possible from the text of the European Convention on Human Rights where the rights set forth therein are included in the Charter. On that subject, I would refer you to the contribution made by the Council of Europe observers on 21 February.

That being said, Mr President, if the Convention wishes, the Council of Europe is ready to submit concrete proposals to it very rapidly with a view to ensuring a minimum level of consistency between the Articles of the Charter and the Convention provisions.

Thank you.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

**Brussels, 28 February 2000 (01.03)
(OR. fr)****CHARTE 4140/00****CONVENT 9****NOTE FROM THE SECRETARIAT**

Subject : Draft Charter of Fundamental Rights of the European Union
- Comparative Table

Further to the meeting on 24 and 25 February, please find enclosed a comparative table containing the rights in the wording proposed in Charte 4123/1/00 REV 1 (Articles 8 and 9) and Charte 4137/00 (Articles 10 to 19), laid out beside similar provisions, where such exist, in the European Convention on Human Rights.

European Convention on Human Rights	Praesidium Draft
<p data-bbox="176 332 1047 368">Article 8: Right to respect of private and family life</p> <ol data-bbox="231 406 1047 771" style="list-style-type: none"> <li data-bbox="231 406 1047 479">1. Everyone has the right to respect for his private and family life, his home and his correspondence. <li data-bbox="231 511 1047 771">2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others. 	<p data-bbox="1050 332 1923 368">Article 8: Respect for private and family life</p> <ol data-bbox="1050 406 1923 592" style="list-style-type: none"> <li data-bbox="1050 406 1923 479">1. Everyone shall have the right to respect and protection for their identity. <li data-bbox="1050 479 1923 592">2. Respect for privacy and family life, reputation, the home and the confidentiality of correspondence, irrespective of the medium, shall be guaranteed.
<p data-bbox="176 810 1047 846">Article 12: Right to marry</p> <p data-bbox="176 885 1047 990">Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.</p>	<p data-bbox="1050 810 1923 846">Article 9: Family life</p> <ol data-bbox="1050 885 1923 1031" style="list-style-type: none"> <li data-bbox="1050 885 1923 917">1. Everyone shall have the right to found a family. <li data-bbox="1050 917 1923 990">2. The Union shall ensure the legal, economic and social protection of the family. <li data-bbox="1050 990 1923 1031">3. The Union shall ensure the protection of children.

European Convention on Human Rights	Praesidium Draft
<p data-bbox="178 284 1045 321">Article 9: Freedom of thought, conscience and religion</p> <ol data-bbox="178 354 1045 781" style="list-style-type: none"> <li data-bbox="178 354 1045 537">1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance. <li data-bbox="178 570 1045 781">2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others. 	<p data-bbox="1054 284 1915 321">Article 10: Freedom of thought, conscience and religion</p> <p data-bbox="1054 354 1915 537">Everyone shall have the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.</p>

European Convention on Human Rights	Praesidium Draft
<p data-bbox="176 316 1047 354">Article 10: Freedom of expression</p> <ol data-bbox="176 386 1047 1034" style="list-style-type: none"> <li data-bbox="176 386 1047 609">1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises. <li data-bbox="176 641 1047 1034">2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary. 	<p data-bbox="1050 316 1913 354">Article 11: Freedom of expression</p> <p data-bbox="1050 386 1913 495">Everyone shall have the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas, regardless of frontiers.</p>

European Convention on Human Rights	Praesidium Draft
<p>Article 2: Right to education</p> <p>No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.</p>	<p>Article 12: Right to education</p> <ol style="list-style-type: none"> 1. Everyone shall have the right to education [<i>and to vocational training</i>] appropriate to their abilities. 2. There shall be free choice of educational [<i>and vocational training</i>] establishment. 3. The right of parents to have their children educated and taught in accordance with their religious and philosophical convictions shall be guaranteed. 4. Art, science, research and teaching shall be free of constraint.
<p>Article 11: Freedom of assembly and association</p> <ol style="list-style-type: none"> 1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests. 2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State. 	<p>Article 13: Freedom of assembly and association</p> <p>Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions.</p>

European Convention on Human Rights	Praesidium Draft
	<p>Article 14: Right of access to information</p> <p>Every citizen of the Union and anyone residing in the Union shall have a right of access to the documents of the institutions of the European Union. This right shall be exercised under the conditions laid down by Article 255 of the Treaty establishing the European Community.</p>
	<p>Article 15: Data protection</p> <p>Every natural person shall have a right to protection for his personal data.</p>
<p>Article 1: Protection of ownership</p> <p>Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.</p> <p>The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.</p>	<p>Article 16: Right to ownership</p> <p>Everyone is entitled to the peaceful enjoyment of his possessions. No one may be deprived of his possessions except in the public interest and in the cases and subject to the conditions provided for by law and subject to fair [<i>and prior</i>] compensation.</p>

European Convention on Human Rights	Praesidium Draft
<p>Article 3: Prohibition of expulsion of own nationals</p> <ol style="list-style-type: none"> 1. No one shall be expelled, by means either of an individual or of a collective measure, from the territory of the State of which he is a national. 2. No one shall be deprived of the right to enter the territory of the State of which he is a national. <p>Article 4: Prohibition of collective expulsion of aliens</p> <p>Collective expulsion of aliens is prohibited.</p>	<p>Article 17: Right of asylum and expulsion</p> <ol style="list-style-type: none"> 1. Persons who are not nationals of the Union shall have a right of asylum in the European Union <i>[in accordance with the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees] [under the conditions laid down in the Treaties].</i> 2. Collective expulsions of aliens shall be prohibited.
	<p>Article 18: Equality</p> <p>All persons shall be equal before the law.</p>
<p>Article 14: Prohibition of discrimination</p> <p>The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.</p>	<p>Article 19: Non-discrimination</p> <ol style="list-style-type: none"> 1. Any discrimination based on sex, race, colour or ethnic or social origin, language, religion or belief, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited. 2. The Union shall seek to eliminate inequalities and to promote equality between men and women. <i>[The equality of the sexes shall be ensured in particular by the setting of pay and other working conditions in accordance with the Treaty and with the texts implementing it.]</i>

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

**Brussels, 28 February 2000 (29.02)
(OR. de)****CHARTE 4141/00****CONVENT 10****NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union
– Draft Articles 1-9 (see CHARTE 4123/1/00 REV 1)

Please find attached a new version of the draft Articles in CHARTE 4123/1/00 REV 1 not yet discussed, which was submitted by former Federal President Mr Roman Herzog, Personal Representative of the Federal Republic of Germany and Convention Chairman.

Structure of the Charter

The Charter of Fundamental Rights of the EU to be drawn up by the Convention should comprise the following sections:

1. **Fundamental human rights**
2. **Rights of freedom**
3. **Rights of equality**
4. **Economic and social rights**
5. **Political rights**
6. **Judicial rights**

The Convention will find below proposals for the fundamental rights to be included in each individual section.

Within each section the draft will start with an Article 1 with a view to facilitating work in the coming months. The Articles should then be numbered consecutively in the final text.

6. **Judicial rights**

Article 1

(Right to an effective remedy)

Everyone whose rights and freedoms as set forth in the Charter are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

Commentary:

Verbatim text of Article 13 of the ECHR, except for an introductory change referring to the planned Charter

Article 2**(Right to a fair trial)**

- 1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.**
- 2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.**
- 3. Everyone charged with a criminal offence has the following minimum rights:**
 - (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;**
 - (b) to have adequate time and facilities for the preparation of his defence;**
 - (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;**

- (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
- (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

Commentary:

Verbatim text of Article 6 of the ECHR

Article 3

(Right of appeal in criminal matters)

1. Everyone convicted of a criminal offence by a tribunal shall have the right to have his conviction or sentence reviewed by a higher tribunal. The exercise of this right, including the grounds on which it may be exercised, shall be governed by law.
2. This right may be subject to exceptions in regard to offences of a minor character, as prescribed by law, or in cases in which the person concerned was tried in the first instance by the highest tribunal or was convicted following an appeal against acquittal.

Commentary:

Verbatim text of Article 2 of Protocol N° 7 to the ECHR

Article 4

(No punishment without law)

- 1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.**
- 2. This article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.**

Commentary:

Article 7 of the ECHR, unchanged

Article 5

(Right not to be tried or punished twice)

- 1. No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State.**
- 2. The provisions of the preceding paragraph shall not prevent the reopening of the case in accordance with the law and penal procedure of the State concerned, if there is evidence of new or newly discovered facts, or if there has been a fundamental defect in the previous proceedings, which could affect the outcome of the case.**

Commentary:

*Verbatim text of the 1st and 2nd paragraphs of Article 4 of Protocol N° 7 to the ECHR.
Paragraph 3 may be added if the Convention so wishes.*

Article 6

(Compensation for wrongful conviction)

When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed, or he has been pardoned, on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to the law or the practice of the State concerned, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

Commentary:

Verbatim text of Article 3 of Protocol N° 7 to the ECHR

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE**fundamental.rights@consilium.eu.int**

**Bruxelles, le 28 février 2000 (01.03)
(OR. de)****CHARTE 4141/1/00
REV 1 (fr)****CONVENT 10****NOTE**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne
 - Propositions pour les articles 1 à 9 (document de référence :
 Charte 4123/1/00 REV 1)

Veillez trouver ci-joint une nouvelle version des propositions d'articles figurant dans le document Charte 4123/1/00 REV 1 qui n'ont pas encore été examinées, présentée par M. Roman Herzog, ancien Président de la République fédérale d'Allemagne, représentant personnel pour ce pays et président de la Convention.

Structure de la Charte

La Charte des droits fondamentaux de l'Union européenne qui doit être élaborée par la Convention devrait comporter les sections suivantes :

1^{ère} section Les droits fondamentaux de l'homme

2^{ème} section Libertés

3^{ème} section Droits ayant trait à l'égalité

4^{ème} section Droits économiques et sociaux

5^{ème} section Droits politiques

6^{ème} section Droits dans le domaine de la justice.

Il est proposé à la Convention de reprendre les droits fondamentaux énoncés ci-après pour les différentes sections.

Dans le projet, chaque section débute par un article 1^{er}, ce qui devrait faciliter le travail au cours des mois à venir. Néanmoins, dans le texte définitif, il conviendra de renuméroter les articles de manière à avoir une numérotation continue.

6^{ème} section : Droits dans le domaine de la justice

Article premier

(Droit à un recours effectif)

Toute personne dont les droits et libertés reconnus dans la présente Charte ont été violés, a droit à l'octroi d'un recours effectif devant une instance nationale, alors même que la violation aurait été commise par des personnes agissant dans l'exercice de leurs fonctions officielles.

Commentaire :

Il s'agit de l'article 13 de la CEDH, mais avec une introduction modifiée qui fait référence à la Charte à élaborer.

Article 2**(Droit à un procès équitable)**

- 1. Toute personne a droit à ce que sa cause soit entendue équitablement, publiquement et dans un délai raisonnable, par un tribunal indépendant et impartial, établi par la loi, qui décidera, soit des contestations sur ses droits et obligations de caractère civil, soit du bien-fondé de toute accusation en matière pénale dirigée contre elle. Le jugement doit être rendu publiquement, mais l'accès de la salle d'audience peut être interdit à la presse et au public pendant la totalité ou une partie du procès dans l'intérêt de la moralité, de l'ordre public ou de la sécurité nationale dans une société démocratique, lorsque les intérêts des mineurs ou la protection de la vie privée des parties au procès l'exigent, ou dans la mesure jugée strictement nécessaire par le tribunal, lorsque dans des circonstances spéciales la publicité serait de nature à porter atteinte aux intérêts de la justice.**
- 2. Toute personne accusée d'une infraction est présumée innocente jusqu'à ce que sa culpabilité ait été légalement établie.**
- 3. Tout accusé a droit notamment à :**
 - a) être informé, dans le plus court délai, dans une langue qu'il comprend et d'une manière détaillée, de la nature et de la cause de l'accusation portée contre lui ;**
 - b) disposer du temps et des facilités nécessaires à la préparation de sa défense ;**
 - c) se défendre lui-même ou avoir l'assistance d'un défenseur de son choix et, s'il n'a pas les moyens de rémunérer un défenseur, pouvoir être assisté gratuitement par un avocat d'office, lorsque les intérêts de la justice l'exigent ;**

- d) **interroger ou faire interroger les témoins à charge et obtenir la convocation et l'interrogation des témoins à décharge dans les mêmes conditions que les témoins à charge ;**
- e) **se faire assister gratuitement d'un interprète, s'il ne comprend pas ou ne parle pas la langue employée à l'audience.**

Commentaire :

Il s'agit de la retranscription mot pour mot de l'article 6 de la CEDH.

Article 3

(Droit à un double degré de juridiction en matière pénale)

1. **Toute personne déclarée coupable d'une infraction pénale par un tribunal a le droit de faire examiner par une juridiction supérieure la déclaration de culpabilité ou la condamnation. L'exercice de ce droit, y compris les motifs pour lesquels il peut être exercé, sont régis par la loi.**
2. **Ce droit peut faire l'objet d'exceptions pour des infractions mineures telles qu'elles sont définies par la loi ou lorsque l'intéressé a été jugé en première instance par la plus haute juridiction ou a été déclaré coupable et condamné à la suite d'un recours contre son acquittement.**

Commentaire :

Il s'agit de la retranscription mot pour mot de l'article 2 du protocole n° 7 à la CEDH.

Article 4

(Pas de peine sans loi)

- 1. Nul ne peut être condamné pour une action ou une omission qui, au moment où elle a été commise, ne constituait pas une infraction d'après le droit national ou international. De même il n'est infligé aucune peine plus forte que celle qui était applicable au moment où l'infraction a été commise.**
- 2. Le présent article ne portera pas atteinte au jugement et à la punition d'une personne coupable d'une action ou d'une omission qui, au moment où elle a été commise, était criminelle d'après les principes généraux de droit reconnus par les nations civilisées.**

Commentaire :

Reproduction sans modification de l'article 7 de la CEDH.

Article 5

(Droit à ne pas être jugé ou puni deux fois)

- 1 Nul ne peut être poursuivi ou puni pénalement par les juridictions du même État en raison d'une infraction pour laquelle il a déjà été acquitté ou condamné par un jugement définitif conformément à la loi et à la procédure pénale de cet État.**
- 2 Les dispositions du paragraphe précédent n'empêchent pas la réouverture du procès, conformément à la loi et à la procédure pénale de l'État concerné, si des faits nouveaux ou nouvellement révélés ou un vice fondamental dans la procédure précédente sont de nature à affecter le jugement intervenu.**

Commentaire :

Retranscription mot pour mot de l'article 4, paragraphes 1 et 2, du protocole n° 7 à la CEDH. Le paragraphe 3 devra être ajouté, le cas échéant, si la Convention le souhaite.

Article 6**(Droit d'indemnisation en cas d'erreur judiciaire)**

Lorsqu'une condamnation pénale définitive est ultérieurement annulée, ou lorsque la grâce est accordée, parce qu'un fait nouveau ou nouvellement révélé prouve qu'il s'est produit une erreur judiciaire, la personne qui a subi une peine en raison de cette condamnation est indemnisée, conformément à la loi ou à l'usage en vigueur dans l'État concerné, à moins qu'il ne soit prouvé que la non-révélation en temps utile du fait inconnu lui est imputable en tout ou en partie.

Commentaire :

Retranscription mot pour mot de l'article 3 du protocole n° 7 à la CEDH.

PROGETTO DI CARTA DEI DIRITTI FONDAMENTALI DELL'UNIONE EUROPEA**fundamental.rights@consilium.eu.int**

**Bruxelles, 29 febbraio 2000 (21.03)
(OR. fr/it)****CHARTE 4142/00****CONTRIB 32****NOTA DI TRASMISSIONE**

Oggetto: Progetto di Carta dei Diritti fondamentali dell'Unione europea

Si acclude una lettera che l'On. Elena Paciotti, Parlamento europeo, ha indirizzato al Presidium della Convenzione.¹

¹ Questa lettera è pervenuta unicamente in lingua italiana.

Bruxelles, 28 febbraio 2000

Alla Presidenza della Convenzione
incaricata della redazione
della Carta dei diritti fondamentali

Oggetto: protezione dei dati personali

Facendo seguito alla mia lettera pari oggetto del 14/02/00 e preso atto che nella nota del presidium del 15/02, a commento dell'art. 8 è scritto "un articolo specifico sarà consacrato alla protezione dei dati", propongo qui di seguito due formulazioni alternative a quella già proposta dal prof. Jürgen Meyer, allo scopo di rendere più approfondita e ampia la discussione sul tema:

1. (questa formulazione mi è stata suggerita dal prof. Spyros Simitis: ne trascrivo anche il testo in tedesco)

" (1) Ogni persona ha il diritto di decidere in merito al trattamento dei dati che la riguardano.

(2) Ogni persona ha il diritto di conoscere dal responsabile dell'elaborazione dati se vi siano dati che la riguardino e quali essi siano.

(3) Limitazioni di questo diritto possono essere previste soltanto dalla legge"

"

(1) Jede Person hat das Recht, über die Verarbeitung der sich auf sie beziehenden Daten selbst zu bestimmen.

(2) Jede Person hat das Recht, von dem für die Verarbeitung Verantwortlichen bestätigt zu bekommen, ob und welche Daten, die sich auf sie beziehen, verarbeitet werden.

(3) Einschränkungen dieser Rechte dürfen nur durch Gesetz erfolgen."

2.

" Ciascuno ha diritto di decidere liberamente sulla raccolta, l'utilizzazione e la circolazione dei propri dati personali, di ottenere informazioni sul loro trattamento e di accedere alle informazioni raccolte.

Specifiche limitazioni possono essere previste solo per legge per la tutela di rilevanti interessi pubblici."

Distinti saluti.

Elena Paciotti

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

**Brussels, 8 March 2000 (14.03)
(OR. en,nl)****CHARTE 4145/00****CONTRIB 35****COVER NOTE**

Subject : Draft Charter on Fundamental Rights of the European Union

Please find attached a contribution by Mr Frits KORTHALS ALTES, Personal Representative of the Netherlands Government.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION
(contribution by Frits Korthals Altes, representative of the Netherlands Government in the Convention
for the drawing up of a draft Charter of fundamental rights of the European Union)

I endorse the efforts being made to establish a concise wording for the fundamental rights so that citizens and other residents of the European Union find them comprehensible and easy to read. However, I have two objections to the proposals discussed so far and contained in CONVENT 5 (CHARTE 4123/1/0 REV 1) and CONVENT 8 (CHARTE 4137/00). The same applies to the proposals contained in CONVENT 10 (CHARTE 4141/00). Those objections are as follows:

1. Deviating from the wording of a fundamental right also contained in the ECHR risks producing a difference in interpretation between the ECHR and the EU Charter. There is no objection if such deviation aims to expand that fundamental right: in my opinion, the European Union has every entitlement to expand a fundamental right in such a way as to make protection within the European Union stronger than that guaranteed by the ECHR. On the other hand, the EU Charter must never restrict a fundamental right already guaranteed by the ECHR or word it in more limited terms than the ECHR does.
2. In specific cases, the ECHR authorises States to infringe a fundamental right. It also lays down the generally strict conditions under which such infringements may take place (cf. Article 5 of the ECHR). By not including an article authorising infringement and laying down the conditions under which a fundamental right may be infringed, the EU Charter risks diverging even further from the ECHR.

The same thing will happen when we eventually come to draw up fundamental social rights which are already contained in the revised European Social Charter (ESC) or treaties of the International Labour Organisation (ILO). A similar discrepancy may also arise between fundamental rights yet to be drafted which have already been expressed by bodies of the European Union in a European Parliament declaration or other instrument.

In principle I see two possible means of overcoming these objections:

1. by making explicit reference in each article to ECHR, ESC, ILO or EU documents;
2. by specifying in an introductory ("horizontal") article that only the original articles of the ECHR, ESC, ILO or EU document to which the explanatory notes on the article refer are applicable, and that the sole purpose of the ensuing list of rights is to summarise the rights laid down in the ECHR, ESC, ILO or EU documents without altering their scope. While the rights enshrined in the ECHR, ESC, ILO or EU documents may be expanded, an express indication must be given where this is the case.

I have provided examples of each option below.

My preference would be for option 1, even though I am aware that the informal meetings of the Convention have proceeded on the basis of horizontal provisions pursuant to option 2. My preference is based on the fact that the articles which the Convention has discussed so far appear to accord unlimited rights, whereas those rights may in fact be restricted by the horizontal provisions. If the articles were worded in accordance with option 1, it would be immediately obvious that each article could be subject to restrictions as justified by ECHR, ESC and EU documents or other treaties.

EXAMPLES:

Re 1.

§ 1 Human dignity

Article 1

- 1.1. The right to human dignity shall be inseparably linked to the human person.
- 1.2. The right to human dignity shall be inviolable and must be respected under all circumstances.

Article 2

- 2.1. No one shall be subjected to torture or to inhuman or degrading treatment or punishment.
- 2.2. No one shall be held in slavery or servitude.
- 2.3. No one shall be required to perform forced or compulsory labour, except in the cases provided for in Article 4.3 of the ECHR.

§ 2 Right to life

Article 3

- 3.1. Everyone has the right to life.
- 3.2. Everyone has the right to the respect of his physical and mental integrity.
- 3.3. The death penalty may not be enforced other than in the event of war, subject to due regard for Article 2 of Protocol No 6 to the ECHR.

Article 4

- 4.1. An intervention in the health field may only be carried out after the person concerned has given free and informed consent to it.
- 4.2. The cloning of human beings is forbidden.

§ 3 Liberty and security

Article 5

- 5.1. Everyone has the right to liberty and security of person.
- 5.2. No one shall be deprived of his liberty save in the cases referred to in Article 5.1 of the ECHR and with due regard for Articles 5.2 - 5.5 of the ECHR, Article 1 of Protocol No 4 and Articles 2, 3 and 4 of Protocol No 7 to the ECHR.

§ 4 Right to a fair trial

Article 6

In the determination of his civil and administrative rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

Article 7

- 7.1. Everyone whose rights and freedoms are violated has the right to request an effective remedy from a court or tribunal specified by law.¹
- 7.2. Everyone charged with an offence has the following rights in accordance with Articles 6.2 and 6.3 of the ECHR:
 - (a) to be presumed innocent until proved guilty according to law;

¹ This wording deviates from that of Article 13 of the ECHR to favour residents as Article 13 refers to a "national authority" rather than "a court or tribunal specified by law". There should therefore be no reference to Article 13 of the ECHR.

- (b) to be informed promptly, in a language which he understands and in detail, of the accusation against him, and to have adequate time and facilities for the preparation of his defence;
- (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free, and to have the free assistance of an interpreter if he cannot understand or speak the language of the proceedings;
- (d) to have access to the dossier; to examine witnesses on his behalf and to produce and examine or have examined witnesses against him under the same conditions as witnesses on his behalf.

Article 8

- 8.1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence in law at the time when it was committed. No heavier penalty than the one applicable at the time of committing the offence shall be imposed. If, subsequent to the commission of the offence, the law provides for a lighter penalty, that penalty shall be applicable.
- 8.2. The previous paragraph shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.

Article 9

With due regard for the restrictions and exceptions referred to in Article 4 of Protocol No 7 to the ECHR, no one shall be tried or convicted for offences for which they have already been finally acquitted or convicted.

§ 5 Freedom of the individual

Article 10

- 10.1. Everyone has the right to freedom of thought, conscience, religion and belief; this right shall include freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
- 10.2. The right to freedom of thought, conscience, religion and belief shall be subject only to such limitations as are referred to in Article 9.2 of the ECHR.

Article 11

- 11.1. Everyone has the right to freedom of expression; this right shall include freedom to hold opinions and to receive and impart information and images without interference by public authority and regardless of frontiers.
- 11.2. The right to freedom of expression shall be subject only to such limitations as are referred to in Article 10 of the ECHR.

Article 12

There shall be freedom of art, science and research.

§ 6 Respect for private and family life**Article 13**

- 13.1. Everyone has the right to protection of their identity.
- 13.2. Respect for the privacy, reputation, home and confidentiality of correspondence, irrespective of the medium, shall be guaranteed within the limits set by Article 8.2 of the ECHR.

Article 14

- 14.1. Everyone has the right to marry and to found a family, according to the national laws governing the exercise of this right.
- 14.2. Every minor has the right to protection by the public authorities.
- 14.3. Respect for family life shall be guaranteed within the limits set by Article 8.2 of the ECHR.

Article 15

- 15.1. Every child has the right to compulsory free primary education within the age limits set by national legislation and to secondary education in accordance with his capabilities.
- 15.2. There shall be freedom of choice of educational establishment.
- 15.3. The right of parents or legal guardians to secure for their children an education which conforms to their religious or philosophical beliefs shall be respected.

Etc.

Re b. Introductory (horizontal) article

Insofar as they do not explicitly expand the rights and freedoms guaranteed by the ECHR and the accompanying Protocols, the rights and freedoms listed in Articles 1 to ... shall have the same scope and significance as the corresponding rights guaranteed in Section I (Articles 1 to 18) of the ECHR and in the Protocols to the ECHR, and may, unless expressly stated otherwise, be limited by law in the same way and under the same conditions as those rights. The interpretation of the ECHR and its Protocols provided in the case law of the European Court of Human Rights, established by Article 19 of the ECHR, shall be the basis for applying the rights and freedoms laid down in Articles 1 to

A similar provision referring to the ESC (and ILO Conventions) should precede the enumeration of the social rights.

The Hague, 6 March 2000

Frits KORTHALS ALTES

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DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 6 March 2000**CHARTE 4146/00****CONTRIB 36****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a contribution of Lord GOLDSMITH, Personal Representative of the Government of the United Kingdom.¹

¹ This text has been submitted in English only.

(i) DRAFT CHARTER

(b) PART A

II. Article 1 / Purpose and Object

- (1) The dignity of the person is inviolable. In order to protect it, the European Union declares its adherence to the fundamental rights set out below.
- (2) The following provisions are addressed to the bodies and institutions of the European Union in the exercise of the responsibilities and tasks assigned to them by the Treaties. [*] They establish neither new tasks or competences for the Union nor do they extend its existing tasks or competences.
- (3) The fundamental rights are listed below in Part A. Part B explains the nature, full extent and application of these rights.

Notes:

- *‘Purpose and Object’ is borrowed from the helpful titular formulation in the Convention on Human Rights and Biomedicine and is perhaps a more accurate description than ‘Article 1’.*
- *‘Inviolability’ presents some difficulties in English. Prof. Braibant has suggested an alternative formulation using ‘respected’ which we should consider.*
- *[*]I would suggest that we omit the second sentence of your Article 1(2) which contains a proposition which would require a Treaty amendment for its validity. We can discuss these issues at greater length.*

Article 2**(Right to life)**

- (1) Everyone’s right to life shall be protected by law.
- (2) The death penalty is abolished. No one shall be condemned to such penalty or executed.

Notes:

- *I still think it is better to aim for a shorter Part A leading to a cleaner, more accessible document, with the detail in Part B.*

-
- *Headnote for Articles 3 to 5: We could possibly consider the pros and cons of combining these provisions under a single Article entitled 'Respect for the person.'*

Article 3

(Right to the respect of physical and mental integrity)

Everyone has the right to the respect of his or her physical and mental integrity in the application of biology and medicine.

Article 4

(Prohibition of torture and inhuman treatment)

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Article 5

(Prohibition of forced or compulsory labour)

No one shall be required to perform forced or compulsory labour.

Note:

- *Setting out this right in this way increases visibility without losing legal certainty.*

Article 6

(Liberty and security)

Everyone has the right to liberty and security of person and cannot be deprived of it save in limited specific cases and in accordance with a procedure prescribed by law.

Note:

- *I regard it as important that the right should not be cut down by using any expression which might be interpreted differently from ECHR Article 5, which limits cases where a person might be deprived of liberty to specific limited circumstances. But the two-part approach allows visibility without losing legal certainty. This approach enables a visible statement of a personal right but tied clearly to the protection of the individual in ECHR Article 5.*
-

PART B

This Part explains the nature, full extent and application of the fundamental rights referred to in Part A.

General Provisions

Each reference in this Charter to an Article of the ECHR or its Protocols should be interpreted in accordance with the jurisprudence of the Strasbourg organs.

Note:

- *It will be necessary in the draft to capture the developing jurisprudence of the Strasbourg and to tie the application of the Charter rights to individuals to the obligations of Member States. It may be possible to incorporate some or all of such material in Article 1 or draft a general clause thereby avoiding needless repetition. But it is probably better to return to this question at the end of the process. The text I previously proposed included ‘References to ECHR Articles in this Charter are to be understood having regard to the jurisprudence of the Strasbourg organs. They do not confer a guarantee greater than that under the corresponding ECHR Article(s) subject to any reservation or, where applicable, derogation entered in respect of them’. This will have to be for consideration.*

III. Article 1 / Purpose and Object

1(1): The principle of respect for the inviolable dignity of the human person is the foundation for statements of fundamental rights throughout the European Union. Article 1 has effect in accordance with the constitutional traditions of Member States and is respected by the Union bodies and institutions.

Note:

- *We cannot supply a Part B text for Article 1(2), because there is as yet no certainty about the legal force the Charter may be given at some later stage.*

Article 2

(Right to life)

The rights in Article 2 are the rights guaranteed by Article 2 of and Articles 1, [2], 3 and 4 of Protocol 6 to the ECHR, read with ECHR Articles 17 and 18¹. The full

¹ It will need to be considered later where in the Charter we should set out the text of ancillary provisions of this kind.

ECHR Article 2 is as follows [...] The full text of relevant provisions of ECHR Protocol 6 is as follows [...]

Article 3

(Right to the respect of physical and mental integrity)

The right set out in this Article comprises the following principles:

- (a) the principle of informed consent should be respected;
- (b) the human body and its parts shall not, as such, give rise to financial gain;
- (c) research on human beings shall only be carried out under appropriate conditions for their protection;
- (d) organ removal from living donors shall only be permitted under specified circumstances and with the consent of the person concerned.

The principle in (a) above is covered by the general rule given in Article 5 of the Convention on Human Rights and Biomedicine. It will not be applicable in all circumstances; for example, where a person is not able to give informed consent the relevant rules given in Articles 6, 8, 17 and 20 of the Biomedicine Convention must be applied. Where a person suffers from a serious mental disorder the principles given in articles 7 and 26 of the Biomedicine Convention will be applicable if certain criteria are met.

The principle in (b) above is that laid down in Article 21 of the Biomedicine Convention.

The appropriate protective conditions referred to in (c) above are set out in Articles 16 and 17 of the Biomedicine Convention.

The principle in (d) above is laid down in Article 19 of the Biomedicine Convention, which specifies the permitted circumstances.

References to the Biomedicine Convention articles are to be read subject to the relevant exceptions provided by that Convention and subject to any applicable reservation or derogation.

Note:

I expressed concern about the Praesidium text not reflecting the existing situation, and the need to confine ourselves to existing, justiciable rights. There is another preliminary observation: unlike the ECHR, the Council of Europe’s Convention on Human Rights and Biomedicine permits the Community to accede (although I believe it has not yet done so). The Biomedicine Convention is not an existing active instrument and we will have to consider very carefully what should be included, which rights are common to Member States’ constitutional traditions, and ensure that we reflect the language and exceptions of the Convention on Human Rights and Biomedicine. I have asked for advice on the detailed position in the UK at the moment. But in order to produce a draft for discussion I have very tentatively suggested the short Part A wording and the Part B note above, and may revert with further wording.

Article 4

(Prohibition of torture and inhuman treatment)

Article 4 recites the text of Article 3 of the ECHR, the rights in which are guaranteed by that provision, read with ECHR Articles 17 and 18.

Article 5

(Prohibition of forced or compulsory labour)

The rights in Article 5 are the rights guaranteed by Article 4 of the ECHR, read with ECHR Articles 17 and 18. The full ECHR text of Article 4 is as follows: [...]

Article 6

(Liberty and security)

The rights in Article 6 are the rights guaranteed by Article 5 of the ECHR, read with ECHR Articles 17 and 18. The full text of ECHR Article 5 is as follows: [...]

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

**Brussels, 8 March 2000 (13.03)
(OR. fr)****CHARTE 4149/00****CONVENT 13****NOTE FROM THE PRAESIDIUM**

Subject : Draft Charter of Fundamental Rights of the European Union
- New proposal for Articles 1 to 12 (now 1 to 16)
Reference documents: CHARTE 4123/1/00 REV 1 CONVENT 5 and
CHARTE 4137/00 CONVENT 8

Following the discussions of the Convention, which met as a Working Party, the new wording of Articles 1 to 12 has been drawn up, taking account of the comments made. Each Article is followed by a statement of reasons. Part II contains two horizontal Articles which are not under discussion but feature by way of illustration.

The order of the Articles is provisional. A general presentational outline for the Charter is being drawn up.

I. Draft Articles

Article 1. Dignity of the human person

The dignity of the human person shall be respected and protected in all circumstances.

Statement of reasons

This Article is inspired by the principles common to the constitutional traditions of Member States and by Article 1 of the 1989 Declaration of the European Parliament. The concern was that it should appear as the first Article of the Charter, since dignity of the human person is the very foundation of fundamental rights. The Universal Declaration of Human Rights sets out this principle in its preamble:

"Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world."

Respect for the dignity of the human person constitutes an inherent limitation to all the other rights, which may not be used to infringe that dignity.

It has been suggested that a second paragraph should be added to this Article, defining the scope of the Charter in a horizontal fashion. This paragraph could read as follows:

"The provisions of this Charter shall be applicable to the institutions and organs of the Union in the framework of the powers and tasks conferred on them by the Treaties, and to the Member States when implementing Community law. They shall not establish any competence or new tasks for the Union nor shall they extend the latter's competence and tasks."

Another solution would be to include this provision in the preamble or to make it a separate Article.

Article 2. Right to life

1. **Everyone has the right to life.**
2. **No one shall be condemned to the death penalty, or executed.**

Statement of reasons

Paragraph 1 is taken from Article 2 of the European Convention on Human Rights, which reads as follows:

- "1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.*
- 2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:*
 - (a) in defence of any person from unlawful violence;*
 - (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;*
 - (c) in action lawfully taken for the purpose of quelling a riot or insurrection."*

The exceptions referred to in Article 2(2) of the Convention apply in the context of this Charter in accordance with Article 6 of the Treaty on European Union which refers to the European Convention on Human Rights.

Paragraph 2 is taken from the second sentence of Article 1 of Protocol No 6 to the European Convention on Human Rights. Article 2 of the Protocol is worded as follows:

"A State may make provision in its law for the death penalty in respect of acts committed in time of war or of imminent threat of war; such penalty shall be applied only in the instances laid down in the law and in accordance with its provisions"

Although this provision is not included in the Charter, it applies in the European Union context in accordance with Article 6 of the TEU.

However, it was deemed necessary to include these provisions not only because of their intrinsic importance but also because abolition of the death penalty is now an objective of the Union to be realised through the CFSP and may also have a role to play with regard to cooperation in criminal matters (Title VI TEU). The 1998 declaration of the Council on the death penalty indicates that the Union is working towards the universal abolition of the death penalty.

Article 3. Right to the respect of integrity

- 1. Everyone has the right to the respect of his physical and mental integrity.**
- 2. In the fields of medicine and biology, the following principles in particular must be respected:**
 - **prohibition of eugenic practices**
 - **respect of the informed consent of the patient**
 - **prohibiting the making of the human body and its products a source of financial gain**
 - **prohibition of the cloning of human beings**

Statement of reasons

These principles are set out in the Convention on Human Rights and Biomedicine. They are accompanied by separate provisions on consent, particularly where a person is unable to give his consent, and by restrictions. It is not the aim of this Charter to derogate from those provisions. The list is not exhaustive, allowing for its development to take account of future progress in this area.

Article 4. Prohibition of torture and inhuman treatment

No one shall be subjected to torture or to inhuman and degrading treatment.

Statement of reasons

This Article is taken from Article 3 of the European Convention on Human Rights.

Article 5. Prohibition of slavery and forced labour

- 1. No one shall be held in slavery or servitude.**
- 2. No one shall be required to perform forced or compulsory labour.**

Statement of reasons

This Article is taken from Article 4 of the European Convention on Human Rights. The third paragraph of that Article, which indicates the cases in which labour is not regarded as forced or compulsory, has not been included. Although these definitions have not been included in the Charter, they retain their force in accordance with Article 6 of the TEU. This paragraph reads as follows:

"For the purpose of this Article the term "forced or compulsory labour" shall not include:

- (a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;*
- (b) any service of a military character or, in case of conscientious objections in countries where they are recognised, service exacted instead of compulsory military service;*
- (c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;*
- (d) any work or service which forms part of normal civic obligations."*

Article 6. Right to liberty and security

Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in specific cases and in accordance with a procedure prescribed by law.

Statement of reasons

Article 5 of the European Convention on Human Rights defines the cases in which a person may be deprived of his liberty as follows:

"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

- (a) the lawful detention of a person after conviction by a competent court;*
- (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;*
- (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;*
- (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;*
- (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;*

- (f) *the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.*
2. *Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.*
 3. *Everyone arrested or detained in accordance with the provisions of paragraph 1.c of this article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.*
 4. *Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.*
 5. *Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation."*

The aim of Article 6 of the Charter is not to allow any cases of deprivation of liberty other than those authorised by the European Convention on Human Rights, as is indicated by the reference to specific cases. Insofar as the Charter applies within the Union, these rights should in particular be respected when, in accordance with Title VI of the Treaty on European Union, the Union adopts framework decisions for harmonisation in criminal matters.

Article 7. Right to an effective remedy

Everyone whose rights and freedoms are violated has the right to an effective remedy before a court.

Statement of reasons

This Article reproduces Article 13 of the European Convention on Human Rights:

"Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

The Court of Justice enshrined the principle in Community law in its judgment of 15 May 1986 (Johnston, Case 222/84, ECR I 651). According to the Court, this principle also applies to the Member States when they are implementing Community law. The inclusion of this precedent in the Charter is not intended to change the appeal system laid down by the Treaties, and particularly the rules relating to admissibility. This principle is to be implemented according to the procedures laid down in the Treaties: an action for annulment when the conditions for admissibility have been fulfilled or a preliminary ruling on admissibility when the case is brought before a national judge. The wording of the Article has been adapted to take account of the specific characteristics of the Union. Thus, reference to a national authority has been deleted, since the Charter applies only to institutions and organs of the Union and since, in this framework, an action may be brought either before the Community judge or before the national judge who is the common law judge as regards application of Community law. Accordingly, reference to a national authority has been replaced with reference to a court because the Court precedent refers to judicial protection.

Article 8. Right to a fair trial

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Free legal aid shall be provided to those who lack sufficient resources insofar as such aid is indispensable to ensure the effectiveness of access to justice.

Statement of reasons

This Article follows Article 6(1) of the European Convention on Human Rights, which reads as follows:

"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice."

The limitations have not been included, but they apply in the Charter framework pursuant to Article 6 of the TEU and the general clause on limitations which will appear in the Charter. It should be noted that in accordance with the case law of the European Court of Human Rights, provision should be made for legal aid where the absence of such aid would make it impossible to ensure an effective remedy (ECHR Judgment of 9.10.1979, Airey, Series A, Volume 32, 11). There is also a system of legal assistance for cases before the Court of Justice of the European Communities. That being so, it was deemed important to enshrine this principle in the Charter.

Article 9. Rights of the defence

Everyone who has been charged shall be presumed innocent until proved guilty according to law and has the right to respect of his rights to defence.

Statement of reasons

This Article is taken from Articles 5(2) and 5(3) of the European Convention on Human Rights, which reads as follows:

- "2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.*
- 3. Everyone charged with a criminal offence has the following minimum rights:*
- (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;*
 - (b) to have adequate time and facilities for the preparation of his defence;*
 - (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;*
 - (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;*
 - (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court."*

Given the decision taken in favour of concise drafting, it was not thought necessary to include this Article in full, but in accordance with Article 6 of the TEU these provisions, which clarify the principles set out in the Article of the Charter, are applicable in Community law.

Article 10. No punishment without law

- 1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national law, Union law or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed. If, subsequent to the commission of the offence, the law provides for a lighter penalty, that penalty shall be applicable.**
- 2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by democratic nations.**

Statement of reasons

This Article follows the traditional principle of the non-retroactivity of laws and criminal sanctions. There has been added the principle of the retroactivity of a more lenient penal law which exists in a number of Member States and which features in Article 15 of the Covenant on Civil and Political Rights. Article 7 of the European Convention on Human Rights is worded as follows:

- "1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.*
- 2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations."*

In paragraph 2, the word "civilised" has simply been replaced by the more modern term "democratic"; this does not change in the meaning of this paragraph which refers to crimes against humanity.

Article 11. Right not to be tried or punished twice

No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he has already been finally acquitted or convicted in accordance with the law.

Statement of reasons

Article 4 of Protocol No 7 to the European Convention of Human Rights reads as follows:

- "1. No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State.*
- 2. The provisions of the preceding paragraph shall not prevent the reopening of the case in accordance with the law and the penal procedure of the State concerned, if there is evidence of new or newly discovered facts, or if there has been a fundamental defect in the previous proceedings, which could affect the outcome of the case.*
- 3. No derogation from this Article shall be made under Article 15 of the Convention."*

The wording of this Article is not intended to deprive paragraph 2 of the Article in Protocol No 7 of its legal effect, as that applies in Community law pursuant to Article 6 of the TEU. The "non bis in idem" principle applies in Community law (see an important precedent, the judgment of 5 May 1996, Cases 18/65 and 35/65, Gutmann v Commission [1966] ECR 150 and a recent case, the Court's decision of 20 April 1999, Joined Cases T-305/94 and others, Limburgse Vinyl Maatschappij NV v Commission, not yet published).

Article 12. Respect for private life

Everyone has the right to respect for his privacy, his honour, his home and the confidentiality of his communications.

Statement of reasons

This Article is based on Article 8 of the European Convention on Human Rights, which reads as follows:

- "1. Everyone has the right to respect for his private and family life, his home and his correspondence.*
- 2 There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."*

The term "honour" has been added to the text of the Convention. It is taken from a number of national constitutions. "Communication" has replaced "correspondence" to take account of developments in means of communication. Respect for family life is covered by a separate Article. Paragraph 2 on limitations has not been included but it is applicable under Union law pursuant to Article 6 of the TEU and the clause on limitations in the Charter. A special Article will be given over to data protection. It is therefore not mentioned here.

Article 13. Family life

- 1. Everyone has the right to respect for his family life.**
- 2. Everyone has the right to marry and to found a family, according to the laws of the Member States governing the exercise of this right.**
- 3. Protection of the family on a legal, economic and social level shall be ensured.**

Statement of reasons

The first paragraph of this Article is based on Article 8 of the European Convention on Human Rights and paragraph 2 on Article 12 of that Convention, which reads as follows:

"Men and women of marriageable age have the right to marry and to found a family according to the national laws governing the exercising of this right."

Reference to legislation as regards marital law is consistent with subsidiarity and with the diversity of national situations. Paragraph 3 applies to the Union when it adopts measures within its powers to take account of family protection needs. A specific Article will be given over to the rights of children.

Article 14. Freedom of thought, conscience and religion

Everyone has the right to freedom of thought, conscience and religion.

Statement of reasons

This wording reproduces Article 9 of the European Convention on Human Rights, which reads as follows:

- "1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.*
- 2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."*

The fact that the Charter does not incorporate the limitations set out in paragraph 2 does not deprive those restrictions of their effects under Union law, pursuant both to Article 6 of the TEU and to the general clause on limitations contained in the Charter. The Court of Justice of the European Communities endorsed religious freedom in the Prais Case (Judgment of 27 October 1976, Case 130/75, ECR 1589). Given the decision in favour of concise drafting for the Charter, the implications of religious freedom have not been included, but this is not intended to deprive these provisions of their effect as they are only the implications of the general principle.

Article 15. Freedom of expression

- 1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.**
- 2. Art, science and research shall be free of constraint.**

Statement of reasons

This Article incorporates the principles of Article 10 of the European Convention on Human Rights, which reads as follows:

- "1. *Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.*
2. *The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."*

Paragraph 2 has not been included but it is applicable under Union law pursuant to Article 6 of the TEU and to the general clause on limitations included in the Charter. The Court of Justice has endorsed the principle of freedom of expression on several occasions, first and foremost in the ERT Judgment (Judgment of 18 June 1991, Case C-260/89, ECR I-5485).

The paragraph includes provisions contained in much national legislation. The European Court of Human Rights considers that artistic freedom is part of freedom of expression. The freedom of science and research is subject, as are all the other rights, to the respect of human dignity laid down in Article 1 of the Charter.

Article 16. Right to education

- 1. No person shall be denied the right to education, including in particular the right to receive free compulsory education.**
- 2. The founding of educational establishments shall be free of constraint.**
- 3. The right of parents to have their children educated and taught in accordance with their religious and philosophical convictions shall be guaranteed.**

Statement of reasons

This Article is based on the common constitutional traditions of Member States and on Article 2 of the Additional Protocol to the European Convention on Human Rights, which reads as follows:

"No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions."

It was considered useful to add the principle of free compulsory education. As it is worded, it merely implies that as regards compulsory education, each child has the possibility of attending an establishment which offers free education. It does not require all establishments which provide education, in particular private ones, to be free of charge. Insofar as the Charter applies to the Union, this means that in its training policies the Union must respect free compulsory education, but this does not, of course, create new powers. The principle of academic freedom is not included, but it constitutes both a structural principle of academic organisation and the guarantee of the freedom of expression in this area. The Charter in no way infringes this principle.

II. Horizontal articles

It has been acknowledged that it is essential for the Charter to contain a number of horizontal Articles to resolve the problems of its scope and limitations and relationships with the European Convention on Human Rights. It is proposed that the scope be dealt with in Article 1. As for the other matters, although they have not been the subject of specific discussions, they have been broached on several occasions in the course of the proceedings. The discussions have made it possible to clarify the clauses contained in CHARTE 4123/1/00 REV 1 CONVENT 5. However, these are still tentative texts which are not intended for discussion but which provide material for consideration, and which will be discussed subsequently.

The possible general clause on the scope of the Charter is set out in the statement of reasons for Article 1.

Article X. Limitations

Without prejudice to provisions affording more protection than this Charter or the European Convention on Human Rights, any limitation on respect for the rights and freedoms which it recognises must be provided for by the law. It must not infringe the essential content of the rights and freedoms in question and, subject to the principle of proportionality, remain within the limits necessary for the protection of legitimate interests in a democratic society.

Statement of reasons

This provision, which sets out the principles relating to the limitations on guaranteed rights, has the effect of incorporating all the limitations laid down by the European Convention on Human Rights where those afford more protection than measures which might be taken on the basis of the general clause on limitations. According to the European Convention as interpreted by the European Court of Human Rights, the term "law" must be understood in the material not the formal sense. It can cover sub-legislative, customary or case law standards. The law must be accessible and allow the individual to foresee the consequences of his behaviour (see especially the Hurvig judgment of 24 April 1990, paragraphs 28 et seq.).

Article Y. Level of protection

No provision of this Charter may be interpreted as placing restrictions on the protection afforded by the European Convention on Human Rights.

ENTWURF DER CHARTA DER GRUNDRECHTE DER EUROPÄISCHEN UNION**fundamental.rights@consilium.eu.int**

Brüssel, den 7. März 2000**CHARTE 4150/00****CONTRIB 37****ÜBERMITTLUNGSVERMERK**

Betr.: Entwurf der Charta der Grundrechte der Europäischen Union

Finden Sie bitte nachstehend die Anmerkungen der deutschen Länder zur Aufzeichnung des Präsidiums. (Charte 4123/1/00 REV 1 Convent 5 - Vorschläge für die Artikel 1 bis 9).¹

¹ Dieser Text wurde nur in deutscher Sprache übermittelt.

**FREISTAAT
THÜRINGEN**

Thüringer Staatskanzlei • Postfach 997 • 99021 Erfurt

Minister für Bundes- und
Europaangelegenheiten und
Chef der StaatskanzleiAn den
Vorsitzenden des Konvents
zur Ausarbeitung des Entwurfs
einer EU-Charta der Grundrechte
Herrn Bundespräsidenten a.D.
Prof. Dr. Roman Herzog
Sekretariat des KonventsFax 00322 285 7837
e-mail: Jean-Paul.Jacqué@consilium.eu.int

Geschäftszeichen:	Ihr Zeichen, Ihre Nachricht vom	Telefon	Datum
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**Anmerkungen der deutschen Länder zur Aufzeichnung des Präsidiums
Charte 4123/1/00 REV1 Convent 5**
hier: Vorschläge für die Artikel 1 bis 9

Sehr geehrter Herr Vorsitzender,

zu den durch das Präsidium für die informelle Sitzung des Konvents am 24./25. Februar 2000 vorgelegten Vorschlägen für die Artikel 1 bis 9 eines Entwurfs der Charta der Grundrechte der Europäischen Union haben sich die deutschen Länder im Rahmen ihrer Abstimmungsgespräche ein erstes Meinungsbild verschafft. Ich erlaube mir, Ihnen diese erste Einschätzung zu übermitteln und möchte Sie herzlich bitten, unsere Anregungen im Verlaufe der Diskussion im Konvent zu berücksichtigen.

Ich bitte um Ihr Verständnis, dass auf Grund unverhersehbarer anderweitiger politischer Termine weder ich noch mein Vertreter, Herr Dr. Weber, an der kommenden informellen Sitzung des Konvents teilnehmen können.

Mit freundlichen Grüßen

Jürgen Gnauck
Minister

Thüringer Staatskanzlei
Referat 33

23. Februar 2000

**Erstes Meinungsbild der Länderarbeitsgruppe zur Erarbeitung eines Entwurfs der Charta
der Grundrechte der Europäischen Union
zum Dokument
Charte 4123/1/00 REV 1 CONVENT 5 (Stand 15. Februar 2000)**

Die Arbeitsgruppe der deutschen Länder hat am 22. Februar 2000 das o.g. Dokument einer ersten Prüfung unterzogen und erlaubt sich dazu folgende Anmerkungen:

Generell wurde kritisch angemerkt, dass sich die Artikelabfolge streng an dem Aufbau der EMRK orientiert. Bezüglich der Artikelabfolge wäre jedoch besonderes Augenmerk auf die Wertigkeit der Regelungsinhalte zu legen.

Zu Artikel 1: Die Würde des Menschen

Absatz 1:

Hier wurde im Länderkreis bereits die Frage nach dem persönlichen und sachlichen Anwendungsbereich der Charta aufgeworfen und festgestellt, dass u.U. an dieser Stelle eine entsprechende Aussage getroffen werden müsste.

Absatz 2:

Die Integration dieser Passage in Artikel 2 des Entwurfs erscheint überlegenswert. Ausserdem stellt sich die Frage nach dem Zusammenhang des sog. "kleinen Asylrechts" zur Formulierung "unmenschliche Behandlung".

Absatz 3:

Sollte als eigenständige Norm formuliert werden. Problematisch erscheint die Interpretation des Begriffs "Zwangs- und Pflichtarbeit" unter dem Gesichtspunkt, dass in einigen Ländern das Landesrecht die Verpflichtung zu sog. "Hand- und Spanndiensten" enthält. Auch unter dem Stichwort "Arbeit statt Strafe" erscheint die derzeitige Formulierung des Abs. 3 zu unpräzise.

Zu Artikel 2: Recht auf Leben

Absatz 2-4:

Aus Ländersicht bestehen grundsätzliche Bedenken zu den vorgeschlagenen bioethischen Formulierungen. Dies betrifft insbesondere den Alternativentwurf zu Absatz 2. Insgesamt erscheint der Einstieg in die Problematik zu intensiv und nicht ausgewogen. So wird z.B. die Problematik der Nichteinwilligungsfähigkeit oder die Frage der gewinnbringenden Vertreibung von Blutplasma nicht angeschnitten. Grundsätzlich erscheinen die Ausführungen der Alternativformulierung zu Absatz 2 nicht ausgewogen.

Unabhängig davon stellt sich die Frage, ob die Materie nicht besser sekundärrechtlich zu regeln ist. Die Arbeitsgruppe der Länder spricht sich jedenfalls gegen die Aufnahme der Alternativformulierung in den Entwurf aus.

Absatz 3:

Sollte wie folgt gefasst werden:

”Niemand darf zum Tode verurteilt oder hingerichtet werden.”

Zu Artikel 3: Freiheit und Sicherheit

Absatz 1:

Der Begriff ”Sicherheit” erscheint noch interpretationsbedürftig zu sein. Ist er im Licht des EGV zu sehen oder eröffnet die Formulierung weitergehende Ansprüche gegenüber den Nationalstaaten insbesondere in den Bereichen Justiz und Inneres? Eine Harmonisierung des in den Mitgliedstaaten diesbezüglich geltenden Rechts wird abgelehnt. Für den Bereich der Schutz- und Abwehrrechte wird die Vollständigkeit des Grundrechtskatalogs unterstützt, nicht aber bei derivativen oder originären Leistungsrechten in den genannten Bereichen.

Sollte ”Sicherheit” i.S. eines Willkürverbots gemeint sein, bestehen keine Bedenken.

Absätze 2-5:

Erscheinen insgesamt zu detailliert. Die Länder melden hierzu weiteren Prüfbedarf an.

In Absatz 2 wäre in Anlehnung an die EMRK wohl besser von ”Freiheitsentzug” zu sprechen.

Bezüglich Absatz 3 wird darauf hingewiesen, dass ”hinreichender Verdacht” nicht identisch ist mit dem im deutschen Recht enthaltenen Begriff des ”dringenden Tatverdachts”.

Die ”Haftentlassung während des Verfahrens” ist eine Rechtsfolge und muss daher an dieser Stelle nicht erwähnt werden.

Absatz 5:

Hier stellt sich die Frage, ob dies nicht Regelungsmaterie des Sekundärrechts sein sollte.

Ausserdem wäre der Begriff ”Entschädigung” dem Begriff ”Schadensersatz” vorzuziehen.

Zu Artikel 4: Recht auf ein wirksames Verfahren

Handelt es sich hier um Rechte, die der Charta entspringen oder insgesamt um alle innerhalb der Mitgliedstaaten der EU verbrieften Rechte? Angeregt wird ausserdem, vom einem ”fairen oder gerechten” Verfahren zu sprechen.

Zu Artikel 5: Recht auf ein gerechtes Verfahren

Absatz 1:

Vorgeschlagen wird, die Worte ”in billiger Weise” zu ersetzen durch das Wort ”angemessen”.

Desweiteren stellt sich die Frage, ob nicht ähnlich wie in Art. 6 Abs. 1 Satz 2 EMRK unter den dort genannten Gründen von einer öffentlichen Verhandlung abgesehen werden sollte, da die dort aufgeführten berechtigten Interessen Dritter und Umständen auch die des Angeklagten dem Anspruch auf eine öffentliche Verhandlung entgegenstehen könnten.

Absatz 2:

Hier sollte der Zugang zum Recht "garantiert" werden.

Absatz 3 a)-d):

Erscheint insgesamt zu detailliert. Ausserdem sollte in Ziffer a) besser von einer Unschuldsvermutung ausgegangen werden.

Zu Artikel 6: Nullum crimen sine lege

Interpretationsbedarf besteht hier hinsichtlich des Begriffs "dem Gesetz". Ist hier das inländische bzw. internationale Recht gemeint?

Zu Artikel 7: Ne bis in idem

Ist diese Norm auf den jeweiligen Nationalstaat zu beziehen oder soll sie auf die gesamte EU ausgedehnt werden? Letzteres entspräche nicht der deutschen Sicht, die davon ausgeht, dass sich der Grundsatz "ne bis in idem" nur auf den betroffenen Staat bezieht. Ansonsten würde sich der Grundsatz des Strafklageverbrauchs auf die gesamte EU erstrecken.

Zu Artikel 8: Achtung des Privat- und Familienlebens

Die Bestimmung muss entzerrt werden.

Absatz 1:

Besser wäre anstatt von "Identität" von "Persönlichkeit" zu sprechen oder wird hier auf die genetische Identität angespielt?

Absatz 2:

Sollte als eigenständige Bestimmung aufgenommen werden, wobei der Bereich des Familienlebens eher zu Artikel 9 gehört, während der übrige rechtliche Regelungsgehalt des Absatzes eigenständig bestehen sollte. Vorgeschlagen wird angesichts der dynamischen Entwicklung von Übertragungsmedien von "Mitteilungen" zu sprechen, anstatt auf den Post- und Fernmeldeverkehrs abzustellen. Grundsätzlich wird vorgeschlagen auf die "Unverletzlichkeit" der genannten Schutzbereiche abzustellen und nicht von "Gewährleistung" zu sprechen.

Zu Artikel 9: Familienleben

Von der Aufnahme dieses Artikels in den Chartaentwurf ist abzusehen, da dies sekundärrechtlich zu regeln ist und keine weiteren Kompetenzen der EU eröffnet werden sollen.

Zu den aufgeworfenen Querschnittsfragen haben sich die deutschen Länder grundsätzlich bereits erstmals im Beschluss der Europaminister vom 2./3. Dezember 2000 geäußert, der Beschluss ist in Anlage beigefügt.

24. Europaministerkonferenz der Länder am 2./3. Dezember 1999 in Frankfurt / Main

Beschluß

TOP 5 Charta der Grundrechte der Europäischen Union

Berichterstatter: Niedersachsen, Sachsen

1. Die Europaminister- und senatoren begrüßen die Initiative des Europäischen Rates von Köln im Juni 1999, durch ein zu diesem Zweck einzurichtendes Gremium eine Charta der Grundrechte der Europäischen Union erarbeiten zu lassen. Sie würdigen die unmittelbar nach der Beschlussfassung des Europäischen Rates von der Bundesregierung eingeleitete Beteiligung der Länder an den Vorbereitungsarbeiten. Durch die Teilnahme von Vertretern der Länder im Europäischen Grundrechtsgremium, das am 17.12.1999 seine Arbeit aufnehmen wird, werden auch die Erfahrungen und Auffassungen der Länder in die Grundrechtarbeit auf europäischer Ebene einfließen können.
2. Grundrechte stellen die Personen und deren zu schützenden Lebensbereich, insbesondere politischer, wirtschaftlicher, sozialer und kultureller Art, in den Mittelpunkt. Mit einer Charta der Grundrechte bekennen sich die Mitgliedstaaten und die beteiligten Organe und Institutionen der Europäischen Union dazu, den europäischen Einigungsprozess auch weiterhin zum Wohle und im Interesse der Bürger zu gestalten und jedes Handeln der Europäischen Union an diesem Wertfundament zu messen. Eine in sich geschlossene und verständliche Darstellung der europäischen Grundrechte ist daher ein wichtiger Schritt zu einem wirklichen Europa der Bürger.
3. Grundrechte sind Ausdruck grundlegender gemeinsamer Werte- und Rechtsüberzeugungen innerhalb der Europäischen Union. Eine Grundrechtecharta trägt zur weiteren Identitätsbildung der Europäischen Union bei und vermittelt eine klare Orientierung für Beitrittskandidaten.
4. Grundrechte der Europäischen Union sollen zuerst ihre eigenen Organe und Institutionen binden. Bei der Umsetzung und Durchführung der gemeinschaftsrechtlichen Regelungen haben aber auch die Mitgliedstaaten und ihre Gliederungen die Erfordernisse des Grundrechtsschutzes in der Gemeinschaftsrechtsordnung zu berücksichtigen. Eine Charta der Grundrechte der Europäischen Union ist geeignet, innerhalb ihres Anwendungsbereichs das einheitliche Verständnis der Grundrechte im Gemeinschaftsrecht zu fördern.

5. Die Europaminister und –senatoren der Länder unterstreichen die ungeschmälerte Wirkung und Bedeutung der in den nationalen Verfassungen verbrieften Grundrechte. Eine Charta soll nicht einer Harmonisierung der in den Mitgliedstaaten und in den Ländern und Regionen geltenden Grundrechte dienen. Die Europäische Union muß auch in Zukunft die Bedeutung und Traditionen nationaler und internationaler Verbriefungen von Grundrechten mit ihren Besonderheiten achten und respektieren. Insbesondere die Bindung der Mitgliedstaaten an die Europäische Menschenrechtskonvention und der Rechtsweg zum Europäischen Gerichtshof für Menschenrechte müssen unberührt bleiben
6. Die Europäische Grundrechtecharta wird unmittelbare rechtliche Wirkung erst mit einer späteren förmlichen Einbeziehung in das Vertragswerk nach dem Verfahren des Art. 48 EUV erhalten. Die vorgesehene feierliche Erklärung Ende 2000 ist ein förderlicher Schritt hierzu. Die inhaltlichen Beratungen müssen sich deshalb von Anfang an mit allen rechtlichen Auswirkungen einer Charta der Grundrechte der Europäischen Union befassen. Die Europaminister und –senatoren bekräftigen, dass mit Blick auf die angestrebte Integration der Charta in das Vertragswerk nur solche Inhalte aufgenommen werden dürfen, die später auch bindende Wirkung entfalten können. Aus diesem Grund darf es keine Aufnahme von politischen Handlungszielen in die Charta geben.
7. Eine Charta der Grundrechte verstärkt die rechtstaatliche Bindung und Begrenzung der Ausübung öffentlicher Gewalt in der Europäischen Union. Die Europaminister und –senatoren betonen, dass mit der Ausformulierung einer europäischen Grundrechtecharta das in Art. 5 EU-Vertrag und Art. 5 Abs. 1 EG-Vertrag verankerte Prinzip der begrenzten Einzelermächtigung unangetastet bleiben muß. Die Aufnahme einer Charta der Grundrechte in das Gemeinschaftsrecht darf nicht den bestehenden Anwendungsbereich des Gemeinschaftsrechts erweitern. Bei der Gestaltung und Ausformulierung der einzelnen Rechte ist daher strikt darauf zu achten, dass ihnen nicht neue Handlungsermächtigungen für Organe und Institutionen der Europäischen Union zu entnehmen sind.

Protokollnotiz von Bayern, Brandenburg und Sachsen:

Die Länder Bayern, Brandenburg und Sachsen weisen darauf hin, dass eine präzisere Kompetenzabgrenzung das mit der Grundrechtecharta verbundene Risiko einer Ausdehnung der EU-Zuständigkeiten verringern würde.

8. Die Europaminister und –senatoren verbinden mit der auszuarbeitenden Charta der Grundrechte der Europäischen Union die vorstehenden Eckwerte, die entsprechend dem Arbeitsfortschritt im Grundrechtgremium unter Beteiligung aller betroffenen Fachpolitikbereiche weiterentwickelt und konkretisiert werden sollten. Sie bitten deshalb das Vorsitzland, baldmöglichst den Bundesrat auf der Grundlage dieses Beschlusses zu befassen.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 7 March 2000**CHARTE 4151/00****CONTRIB 38****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a letter sent by Mr. Buttiglione, member of the European Parliament, to Mr. Herzog, President of the Convention. ¹

¹ This text has been submitted in English only.

Bruxelles, 20 February 2000

Dear Mr. President,

One fundamental right of the human person, that we want to see affirmed in our European Charter of Human Rights and Duties, is the right not to be discriminated because of one's nationality, of one's race, of one's sex, of one's religion or philosophical belief and of the colour of one's skin.

Discrimination on this basis is a grave offence against human rights, denies to some men a full participation in the human community and not only hinders the full development of the personality of the person who is the object of discrimination but also impoverishes the whole society in which the person is discriminated depriving it of the creative and constructive contribution of this person.

Discrimination denies the fundamental unity of the human family and the fundamental equality of all men.

There is however in these last years a certain cultural propensity to enlarge the catalogue of the causes of discrimination that should be rejected and considered illegal. There are even some philosophers who consider discrimination to be an evil in itself, reject therefore all kind of discrimination and consider even discrimination to be the only possible evil.

I think that this is going too far.

Even if in the every day use of the word discrimination acquired the meaning of bad or negative discrimination the original meaning of to discriminate, resulting also from its etymology, is to make distinction. In this sense it does not contradict the principle of equality that prescribes that the same situations should be treated in the same way but prescribes also that different situations should be treated in different ways. So to discriminate between situations that are essentially different does not imply any violation of human rights. Where an essential or pertinent difference is present it would be a violation of human rights not to take into account, not to consider it and to treat different situations as if they were equal. So in this case it is only correct to treat a man who is blind in a way that is different from that in which we treat a man who enjoys the full vision of both his eyes. To support the blind with some kind of public support constitutes a positive discrimination that does not violate the rights of the not blind.

In the same way a man and a woman who bind themselves with a vow of marriage, give birth to a certain number of children, provide for their nourishment and education and are taken care of by them in their old age, exercise a positive social function that provides a fundamental pre/condition for the very existence of society.

It is therefore only correct that the legislation should defend the rights of the family, recognise its social function and provide different kinds of encouragement to the foundation of family and of support to existing families.

The refuse of all discriminations, if taken at face value, would imply an absolute moral relativism that considers any form of behaviour to be equal to any other, and we should therefore be obliged to treat in the same way the killer and the victim, the robber and the robbed or the healthy and the sick and so forth. The principle of non discrimination in the larger sense would imply a renunciation to passing not only any value judgement but also any functional judgement and any judgement in general because to judge means exactly the same as to discriminate: to make distinction in order to treat different state of affairs in different and appropriate forms.

For the above mentioned reasons we must be very careful when confronted with proposal to enlarge the traditional catalogue of prohibitions of discriminations. The question we should consider before we decide whether a discrimination is legitimate or not is whether differences between two state of affairs justify the fact that they are not treated in the same way.

There is today an important pressure to add to the traditional catalogue of condemned discrimination the discrimination because of one's sexual preference. I think that on this point we should be very careful. What does "sexual preference" really mean? First of all it means that our sex (masculine or feminine), the fact of being males or females, is not a natural condition but rather the object of a cultural determination or of an individual decision through which we make a decision of being males or females. It cannot however be denied that we have a body that, as a rule and with very few exceptions, is either a male or a female body. If we decide to be a female, but we have a male body, we cannot give to our male body female character, we cannot become pregnant, we cannot bear children. What we can do is to practice a homosexual lifestyle.

This is not the appropriate place to discuss the causes of homosexuality. We are only concerned with the social role and significance of homosexual behaviour. Shall we say that here we have something similar to being a male or a female and that therefore we have a particular right to non discrimination? It is clear that nobody should be discriminated because of what he does and because of his sexual preference within his private sphere, in so far as adult and consenting human being are involved and no violence is exercised and no damage is inflicted.

We have here a general and broad protection of the right to privacy that includes within its borders also the defence of homosexual behaviour within the private sphere. This is what is generally meant with the expression toleration of homosexuality. This implies that no human being should be punished, persecuted, offended or discriminated just for practising homosexuality. If this is the aim we want to pursue, than we need not affirming a particular right to non discrimination on the basis of sexual preference. The defence of the right to sexual preference is contained in the defence of the right to privacy and the right to sexual preference is a specification and determination of the general right to privacy. Another interpretation is however possible of the right to non discrimination on the basis of sexual preference. This interpretation transforms the aforementioned right into right to affirmative action in the public sphere. Affirmative action means that homosexuality as such is a life style that has a right to public expression and is a vested interest that must be considered and protected as such. There is a great difference between the recognition and the respect of the rights of the homosexual individual, that is of the human being who happens to be a homosexual, and the affirmation of the rights of homosexuality as such.

If we recognise the rights of homosexuality as a lifestyle we might be confronted with the demand that children be exposed in their teens, when their sexual identity is being formed, to homosexual influence with a presentation of homosexuality as sexual preference or sexual lifestyle equally legitimate as heterosexuality.

Homosexual couples could demand the same rights as married ones. It seems that this would be unreasonable because heterosexual married couples have a social function, that of procreating new human beings and educating them as citizens, that of creating a bond of vertical solidarity among the generations and a bond of horizontal solidarity among brothers, sisters, siblings and so forth. This is the reason why the family is the fundamental cell of society that deserves to be encouraged and supported by the state, because if the family decays and disappears the very existence of the broader communities like the state might be endangered.

The family is a community that has a right to existence and protection in the public sphere and the same is true for the heterosexual lifestyle upon which procreation and family life is based. There is no reason to recognise the same right to homosexual couples who do not perform the same reproductive and educational function.

It is reasonable that the taxpayer should accept an additional burden to help traditional families because in his old age he will be assisted with the recourses created through the work and the contributions of the sons and daughters born to life in the families. The partners in a homosexual couple may regulate their reciprocal relations through the instruments of the civil law, they have no children that may compel one of the partners to renounce completely or only in part to a professional career causing a justified claim to particular protection. In the case of a homosexual partnership we have two individuals who live together and have a right to non interference but no right to public support.

It is not difficult to imagine other cases in which relevant differences in fact may justify relevant differences in treatment. I shall mention only the difficult problem of the protection of local identities, of specific relations between a culture and a territory that may deserve to be preserved in the framework of a right of local communities to identity and culture.

But on this point I shall take the liberty of sending you perhaps another letter.

With best regards,

yours truly

Rocco Buttiglione

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPEENNE**fundamental.rights@consilium.eu.int**

Bruxelles, le 7 mars 2000**CHARTE 4152/00****CONTRIB 39****NOTE DE TRANSMISSION**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne

Veillez trouver ci-après une contribution de M. José Barros Moura, représentant du Parlement du Portugal. ¹

¹ Ce text a été soumis seulement en langue française.

PRÉFACE

L'État européen est un État social, et cela bien avant que les États ne s'intègrent dans l'Union. Ils ont tous apporté avec eux le sens de la responsabilité de collectivité face aux besoins des citoyens. Quoique, dans l'histoire de chaque pays, des cheminements spécifiques aient conduit à des formes différentes dans l'exercice de cette responsabilité, dans tous les États de l'Union, les droits sociaux sont, à des degrés différents sans doute, respectés, défendus et promus. D'où un espace commun qui a déjà une dimension sociale.

Le comité estime que le moment est venu de rassembler ce qui, dans ce volet social, est déjà codifié et, simultanément, d'entamer le processus vers la codification de ce qui, dans cet espace commun, correspond aux aspirations et aux besoins des Européens. Certes, L'État social est aujourd'hui sous attaque et nettement en crise, mais cela ne veut pas dire qu'il faille renoncer à ses principes. Au contraire, il faut trouver des conditions nouvelles pour le repenser, car il est l'expression du «souci de l'autre», de la valorisation des ressources humaines, et, de ce fait, dynamisateur, en profondeur, de la compétitivité à visage humain.

Si «modèle social européen» il y a, c'est aussi au niveau de la mise en commun des expériences des différents systèmes nationaux que de nouvelles percées pourront être trouvées. C'est dire que la réflexion sur les droits sociaux et leur mise en œuvre dans les conditions du monde d'aujourd'hui doivent avoir la place qui leur revient dans l'édifice de l'Union européenne.

La mise en œuvre du marché unique, s'achevant dans l'Union économique et monétaire, constitue un objectif cible qui a conduit à la mobilisation et à la réorganisation des acteurs économiques des pays de l'Union européenne. De même, le déclenchement ferme d'un processus conduisant à l'union sociale européenne deviendra un objectif capable de faire progresser la construction de l'Union.

L'urgence est là: à la fois interne et externe. Interne parce qu'il s'agit de la sécurité de la vie des Européens qu'il faut assurer face aux questions posées par le phénomène persistant qu'est la rareté du travail ainsi que face aux nouvelles données démographiques. Urgence externe aussi parce que la position économique de l'Union dans le marché mondial ainsi que l'efficacité de notre aide au développement passe avant tout par la possibilité d'offrir de nouveaux «modèles» qui permettent à chaque pays de trouver ses propres voies pour une société à la fois de progrès économique et de justice sociale.

La question sociale, qui, au début de l'industrialisation, s'exprimait surtout dans les rapports capital-travail, s'est enrichie. Y ont contribué, à la fois, le changement radical des composantes de la production et l'émergence de droits sociaux couvrant pratiquement tous les aspects des conditions de vie des personnes. Droits civiques et droits sociaux deviennent interdépendants. Dans la tradition européenne, les droits sociaux et les droits civiques sont inséparables. C'est «la liberté et les conditions de la liberté», c'est le visage en miroir de «démocratie et développement».

La citoyenneté y apparaît en clair. C'est dire que, en posant la question des droits sociaux, nous touchons d'emblée à tout l'ensemble des droits qui s'expriment dans la «citoyenneté». Approfondir cette citoyenneté dans le cadre de l'Union ne pourra être, pour chaque pays, qu'une occasion d'aller plus loin dans sa propre citoyenneté.

Car, si l'évolution des droits sociaux dans les pays de l'Union oblige celle-ci à faire un pas décisif dans sa construction, ce n'est que dans le cadre de ses compétences que sa responsabilité s'exprimera. Plus qu'ailleurs, les droits sociaux épousent le diversifié, le multiple dans l'espace de l'Union: les responsabilités des États membres en sortent renforcées.

À travers l'histoire de l'Union, la citoyenneté a graduellement pris corps. Une étape juridique importante a été consignée dans le traité de Maastricht. Mais l'Union pratique déjà le respect et la promotion de la dimension sociale de la citoyenneté. Le Parlement et la Commission y ont posé des jalons, le premier à travers ses propositions concernant les droits fondamentaux (1989-1996), la deuxième à travers les différents volets de politiques sociales qu'elle stimule ou coordonne, et surtout par la charte sociale, dont l'initiative lui revient.

Ces droits sociaux qui s'enchevêtrent avec les droits civiques et qui explicitent la citoyenneté ne peuvent avoir, aux yeux du comité, qu'une suite: la proposition d'un «bill of rights» doit devenir une cible importante dans l'évolution de l'Union. C'est pourquoi le comité propose, dans une première étape, c'est-à-dire pendant la prochaine conférence intergouvernementale, que soient intégrés des droits fondamentaux sociaux et civiques dans le traité et que soit ainsi rendu explicite l'engagement de l'Union dans la formulation d'un «bill of rights qui puisse nous guider à l'aube du XXI siècle.

Une fois ces propositions incluses dans le traité, le comité recommande que ce travail s'achève au cours d'une seconde étape qu'il considère d'une importance capitale pour le futur de l'Union: il s'agit de parfaire le «bill of rights» encore embryonnaire. Par l'intérêt immédiat et direct qu'un tel processus peut susciter il dynamisera l'engagement des citoyens européens, des groupes sociaux et économiques, bref de la société civile de tous les pays de l'Union.

Ainsi, pour le comité, le défi actuel ne consiste pas uniquement à amender, dans le domaine qui lui revient, telle ou telle disposition des traités. Il s'agit d'un autre souffle, d'une autre ampleur. Il s'agit d'une véritable refondation de l'Union européenne. Relever ce défi est l'exigence du temps présent et la garantie d'un nouvel éveil des Européens à leur appartenance, en tant que citoyens, à l'Union.

Le travail de ce comité a été, pour sa présidente, une occasion enrichissante de vivre une telle appartenance. Dans un délai extrêmement court — le Comité a tenu sa première réunion en octobre 1995 et la dernière en février 1996 —, les membres du comité ont été capables d'exprimer leur conscience de citoyens européens, et cela non pas en dépit de leurs expressions nationales, mais exactement à partir d'elles et de leur richesse propre. L'intérêt qu'ils ont porté à notre tâche, les compétences qu'ils ont mises à la disposition du comité et leur contribution pendant et entre les sessions de travail donnent la mesure de ce que l'on peut faire si l'on tient vraiment à l'Europe.

Mais cela n'aurait pas été possible sans les qualités exceptionnelles — de talent, de savoir interdisciplinaire, de dévouement et d'écoute intelligente à toute suggestion — du rapporteur. L'équipe du secrétariat de la DG V a été un soutien compétent et efficace dans l'accomplissement de la mission du comité.

À tous, je veux témoigner publiquement ma reconnaissance, en avouant le plaisir que j'ai eu à travailler avec de tels collaborateurs.

Maria de Lourdes Pintasilgo

PROPOSITIONS DU COMITÉ DES SAGES ■

- I. Engager une réflexion d'ensemble en Europe sur nos conceptions du travail, de l'activité et de l'emploi afin que nos politiques soient en mesure d'assurer à chacun la place qui lui est due dans la société.
- II. Préciser les modalités d'une rénovation de notre État providence afin qu'il devienne un meilleur atout de compétitivité et de cohésion sociale et favorise la pleine activité de chacun.
- III. Faciliter la mise en œuvre de politiques permettant aussi bien aux hommes qu'aux femmes de concilier les responsabilités familiales et les responsabilités professionnelles.
- IV. Approfondir les conditions d'émergence d'une nouvelle génération de droits civiques et sociaux tenant compte, notamment, des changements technologiques, des progrès des connaissances en matière d'environnement et des changements démographiques.
- V. Renforcer la citoyenneté et la démocratie dans l'Union en traitant de façon indivisible les droits civiques et les droits sociaux.
- VI. Préciser les motifs et les modalités de l'intervention de l'Union en matière sociale, conformément aux principes de subsidiarité et de proportionnalité.
- VII. Franchir lors de la prochaine conférence intergouvernementale, une première étape, en inscrivant dans les traités un socle de droits civiques et sociaux fondamentaux («bill of rights»), en précisant ceux qui bénéficient d'une protection juridictionnelle immédiate et ceux qui ont un caractère plus programmatique et qui seront approfondis dans une deuxième étape (voir proposition n° XIII). Tous ces droits seraient ouverts aux citoyens de l'Union. Certains de ces droits pourraient également bénéficier, dans les conditions appropriées, aux citoyens des pays tiers.

- VIII. Inclure parmi les droits mentionnés dans la proposition n° VII l'interdiction de toute discrimination fondée notamment sur la race, la couleur, le sexe, la langue, la religion, les opinions politiques ou toutes autres opinions, l'origine nationale ou sociale, l'appartenance à une minorité nationale, la fortune, la naissance, le handicap ou toute autre situation.
- IX. Par exception, poser le principe selon lequel chaque État doit mettre en place, dans les conditions fixées par lui, un revenu minimal pour les personnes qui ne parviennent pas à accéder à un emploi rémunéré et qui ne bénéficient pas d'autres sources de revenu.
- X. Regrouper en un seul traité, avec numérotation continue des articles, l'ensemble des textes existants.
- XI. Donner des bases juridiques plus solides à la Cour de justice en étendant aux pactes internationaux signés par les États membres les références juridiques auxquelles la Cour se réfère au titre de l'article F et en levant les restrictions de l'article L.
- XII. Plutôt que d'adhérer à la convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales, du 4 novembre 1950, instaurer un recours spécial pour la protection des droits fondamentaux qui serait attribué à une juridiction d'appel propre à l'Union et composée de juges non permanents provenant des tribunaux constitutionnels ou supérieurs des États membres.
- XIII. Prévoir dans le nouveau traité un article qui engage un processus large et démocratique d'élaboration collective, au niveau de l'Union, d'une liste complète des droits et des devoirs civiques et sociaux. Lancé par le Parlement européen sur proposition de la Commission, ce processus, auquel les parlements nationaux doivent être étroitement associés et auquel participeraient non seulement les partenaires sociaux traditionnels, mais aussi les organisations non gouvernementales, devrait déboucher dans les cinq ans sur une nouvelle conférence intergouvernementale.

- XIV. Regrouper l'ensemble des dispositions concernant les politiques sociales, et notamment le protocole social, dans un titre unique du traité.
- XV. Appliquer la règle de la majorité qualifiée dans le domaine social, à l'exception de quelques domaines sensibles (protection sociale, participation).
- XVI. Reconnaître explicitement, dans le traité, le rôle de partenaire des nouveaux acteurs collectifs qui agissent dans la société civile.
- XVII. Mettre en place un statut d'association de droit européen.
- XVIII. Élargir les conditions d'éligibilité des fonds structurels en leur permettant de mener des actions de promotion des droits sociaux fondamentaux.
- XIX. Poser le principe que toute politique européenne doit faire l'objet d'une étude d'impact en termes de cohésion sociale.
- XX. Inclure dans le traité un chapitre sur l'emploi légitimant une action de coordination de l'Union conforme aux principes de subsidiarité et de proportionnalité.
- XXI. Prévoir explicitement la possibilité pour l'Union de mener des actions de coordination et d'expérimentation dans le domaine de la lutte contre l'exclusion sociale.
- XXII. Faire entrer dans le domaine communautaire les politiques d'immigration et d'asile ainsi que les politiques d'entrée, de circulation et de séjour qui concernent les citoyens de pays tiers.
- XXIII. Faire également entrer dans le domaine communautaire les politiques concernant la drogue.
- XXIV. Préciser le concept de service d'utilité publique dans la mesure où ces services de base conditionnent l'exercice de certains droits sociaux.

- XXV. Lancer un programme de travail dans le domaine de la politique sociale européenne et faire apparaître les coûts de la non-Europe sociale.
- XXVI. Constituer des séries statistiques sociales portant sur l'ensemble de l'Union.

RESUMÉ

Dans son deuxième programme d'action sociale (avril 1995), la Commission a prévu la mise en place d'un comité des Sages destiné, notamment, à examiner les suites susceptibles d'être réservées à la charte communautaire des droits sociaux des travailleurs dans le cadre de la révision des traités de l'Union européenne.

Si, pour répondre pleinement à sa mission, le comité a souhaité élargir le champ de sa réflexion, c'est qu'il a eu le sentiment que l'Europe était, plus qu'elle ne le croit elle-même, en péril et que le déficit social actuellement constaté était, pour elle, lourd de menaces. L'Europe ne se construira pas sur fond de chômage et d'exclusion ni sur un déficit de citoyenneté. L'Europe sera l'Europe de tous, de tous ses citoyens, ou ne sera pas.

I — Les questions sociales sont désormais au cœur des défis
auxquels la construction européenne doit répondre

1. L'Union européenne doit affirmer plus nettement son identité

Si elle entend devenir une entité politique originale, elle ne pourra faire l'économie d'une définition claire de la citoyenneté qu'elle offre à ses participants. L'inclusion dans les traités de droits, tant civiques que sociaux, pourrait permettre de nourrir cette citoyenneté et de diminuer la perception d'une Europe élaborée par des élites technocratiques insuffisamment proches des préoccupations quotidiennes. Il ne serait pas inutile de rappeler que le progrès économique n'est qu'un moyen et que le but de l'Union c'est de permettre à chaque citoyen de réaliser son développement potentiel personnel en liaison avec ses semblables et en tenant compte de la nécessaire solidarité avec les générations futures.

2. *Le défi de l'emploi ne sera pas relevé sans un renouvellement important de nos politiques, qui doivent être plus actives et plus efficaces, mais aussi de nos conceptions du travail et de l'activité.*

Si l'Europe refuse à la fois l'aggravation des inégalités et de la marginalisation sociale et la généralisation des politiques d'assistance passive destinées aux personnes en situation d'exclusion, elle devra faire un effort considérable d'innovation, d'organisation et de mobilisation pour construire un mode de développement où chacun aura sa place. Il faudra développer une conception active de la citoyenneté, où chacun acceptera d'avoir des obligations envers autrui. Il faudra renouveler assez profondément nos politiques publiques, qui doivent prévenir autant que guérir, et inciter à l'effort plutôt qu'assister.

De façon plus générale, c'est notre conception même du travail qui doit changer et s'élargir; le modèle du travail à plein temps, déjà altéré par le chômage et les emplois atypiques, subis plus que voulus, évoluera vers des schémas où des périodes d'activités rémunérées alterneront ou se conjugueront avec des phases de formation ou de temps libre, la continuité entre les phases devant être assurée avec un minimum de ruptures; le travail rémunéré monopolisera moins le champ de l'activité sociale légitime; d'autres types d'activités, le plus souvent non rémunérées, prendront une importance sociale plus grande et verront leur rôle reconnu et soutenu par la collectivité. Entre toutes ces formes d'activité et de travail, des relations se noueront, qui peuvent constituer un grand enrichissement collectif si elles sont convenablement maîtrisées et si elles n'entraînent pas de précarité pour les personnes. Un dispositif de sécurité économique et de maîtrise par chacun de son développement personnel reste à construire, la flexibilité sociale au profit des personnes jouant un rôle de contrepoids vis-à-vis de la flexibilité économique.

3. *La construction d'un modèle social rénové original constitue également un atout pour la compétitivité économique européenne.*

Dans l'économie mondialisée que nous connaissons actuellement, la compétitivité est un impératif catégorique qui ne saurait être éludé. Mais celle-ci n'implique pas le démantèlement du *welfare state* ou la réduction des minimums sociaux. Elle nous oblige, en revanche, à changer et à rénover notre système social: en diminuant le poids des charges sociales qui pèsent sur le travail; en développant les droits sociaux, telle la formation, qui facilitent les productions à forte valeur ajoutée; en faisant d'un dialogue social européen renouvelé un levier de compétitivité; en répondant de façon coordonnée au choc démographique, ce qui doit conduire à adapter les régimes de retraite de base et à mettre en œuvre des politiques permettant, aussi bien aux hommes qu'aux femmes de concilier les responsabilités familiales et les responsabilités professionnelles; en s'attaquant aux différentes formes d'exclusion sociale, grâce à des politiques innovantes, plus personnalisées et s'articulant efficacement avec les organisations non gouvernementales; en prenant en compte les questions d'environnement.

4. *Les défis de l'élargissement et de la mondialisation concernent aussi les questions sociales.*

La réussite de l'intégration dans l'Union des pays d'Europe centrale ou orientale ne repose pas seulement sur l'attrait de notre modèle économique, mais aussi sur celui de notre modèle social; or, celui-ci a tendance à s'altérer. Un noyau de normes sociales claires devrait être posé comme une exigence pour ces pays dès lors qu'ils deviennent membres à part entière. Cela suppose que ce noyau soit défini par l'Union.

La mondialisation présente des aspects sociaux qui vont apparaître de plus en plus clairement (en particulier la mondialisation progressive du marché du travail). La question du rythme de diffusion dans les pays émergents des normes sociales en vigueur dans les pays industrialisés devra être posée. Cela pourrait conduire l'Union à ressentir le besoin d'une politique sociale extérieure plus affirmée. L'Union ne saurait défendre le principe de l'universalisation des droits sans définir pour elle-même les droits auxquels elle se réfère.

II – L'agencement en Europe des droits civiques et sociaux et des politiques sociales est actuellement d'une grande complexité

1. *Les États ont des régimes constitutionnels variables, mais ont tous adhéré à un certain nombre de conventions et de pactes, en particulier la convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales de 1950, qui contient une procédure remarquable de garantie effective des droits.*

En ce qui concerne les traités de l'Union européenne, on ne peut, à ce stade, parler d'une véritable construction de droits sociaux et civils, mais plutôt de dispositions empiriques qui ont été bâties peu à peu pour accompagner l'unification des économies et permettre, à cet effet, la mise en œuvre d'un minimum de politiques sociales: les articles 117 à 122 du traité de Rome, complétés par l'Acte unique de 1986; la charte communautaire des droits sociaux fondamentaux des travailleurs, adoptée en 1989 par onze États sur douze; les nouvelles dispositions du traité de Maastricht, et notamment son protocole social, adopté par quatorze États sur quinze. Dans l'ensemble, les droits sociaux sont définis en dehors du traité, et principalement pour les travailleurs. Il n'y a pas, dans les traités, un catalogue de droits sociaux fondamentaux auxquels la Cour de justice pourrait se référer pour contrôler les actes communautaires. Cet ensemble a besoin d'être rendu à la fois plus lisible, plus simple, plus cohérent et plus efficace.

2. *Cependant, dans un domaine en permanente évolution, de nombreux problèmes doivent être surmontés.*

Les droits sociaux et les droits civils, civiques et mêmes politiques font-ils partie d'un même ensemble — comme le pense le comité — ou doivent-ils être considérés de façon distincte? Cette distinction en recouvre largement une autre: celle qui existe entre, d'une part, des droits qui consistent à limiter les risques d'empiétement de l'État vis-à-vis de l'autonomie des personnes, droits qui s'expriment essentiellement par des dispositions juridiques, et, d'autre part, des droits à un ensemble de prestations déterminées, droits qui ont un coût et qui nécessitent que des ressources financières soient dégagées.

Mais qui sont les débiteurs des droits ainsi affirmés, qui en assure l'exercice? Qui en fournit les moyens lorsque la collectivité les reconnaît aux individus? La question se pose dans la plupart des cas, mais avec une intensité particulière dans le cas des droits sociaux programmatiques (droit au logement, à l'emploi, etc.). Dans ce cas, l'affirmation des droits est indissociable des politiques sociales qui les mettent en œuvre. Mais il serait illusoire de penser que le respect des droits relève uniquement de la collectivité et des politiques publiques. La mise en œuvre concrète des droits repose aussi sur les relations interpersonnelles et sur les obligations que chacun se sent à l'égard d'autrui; il n'y a pas de droits sans devoirs ni de démocratie sans civisme.

Enfin, la liste des droits fondamentaux n'est pas immuable, d'abord, parce que la conception de la personne s'approfondit et, ensuite, parce que l'évolution des techniques suscite des menaces pour les personnes. Après la première génération des droits civils et politiques, puis celles des droits sociaux, on voit apparaître la possibilité de nouvelles avancées qui doivent être discutées, approfondies et précisées.

3. *Il est indispensable de définir clairement ce qui incombe à l'Union et ce qui incombe aux États membres, en matière de droits fondamentaux notamment.*

La répartition des compétences entre les États membres et l'Union, plus délicate dans le domaine social qu'en matière économique, n'a pas jusqu'ici trouvé de solution claire; il est admis par tous que les principes de subsidiarité et de proportionnalité doivent s'exercer pleinement et jouer un rôle essentiel. Chaque pays doit maintenir ses spécificités.

Notre capacité à développer une union sociale dépendra donc de notre aptitude à définir les terrains ou les fonctions que l'Union doit assumer, soit parce que les États membres ne sont pas en situation d'intervenir efficacement, soit parce que l'intervention de l'Union se révèle plus optimale que celle des États et produit davantage d'externalités:

- mener et coordonner des réflexions prospectives;
- définir un socle de droits fondamentaux qui s'imposent à l'Union et aux États lorsqu'ils agissent sous l'emprise du droit communautaire;
- tirer toutes les conséquences des droits pour tous les citoyens de l'Union à circuler et à séjourner librement sur le territoire des États membres;
- aider à la correction des déséquilibres qui apparaissent;
- aider à la solution de problèmes délicats qui, bien que relevant des États, impliquent des approches communes;
- contribuer au rapprochement des réglementations lorsque des disparités exagérées sont constatées et, éventuellement, imposer des minimums.

III — Préciser, dans une première étape, le contenu d'un socle minimal de droits fondamentaux

Les progrès immédiats à réaliser dans le cadre de la conférence intergouvernementale sont les suivants.

1. Regrouper en un seul traité, avec une numérotation continue des articles, les textes actuellement dispersés dans les quinze traités

2. Donner des bases juridiques plus solides à la Cour de justice des Communautés européennes pour faire appliquer les droits fondamentaux

Les références utilisées par la Cour de justice pour déterminer les principes généraux du droit communautaire seraient étendues, d'une part, à la charte communautaire des droits sociaux des travailleurs, qui se trouverait ainsi indirectement incorporée aux traités, et, d'autre part, aux principaux pactes internationaux signés par les États membres. Elles pourraient être utilisées pour contrôler l'ensemble des actes juridiques de l'Union. À cette fin, les restrictions que l'article L du traité sur l'Union européenne oppose à l'article F devraient être levées.

Cette amélioration, en rendant plus réellement effective l'application de la convention des droits de l'homme du Conseil de l'Europe, pourrait constituer une solution aux nombreux problèmes posés par une adhésion de l'Union à cette convention, qui semblent avoir été sous-estimés jusqu'ici (faible contenu en droits sociaux, nécessité au préalable de faire ratifier par 38 États une révision de la convention). Pour que la Cour de Luxembourg ne soit pas juge en dernier ressort en matière de droits fondamentaux, une juridiction d'appel propre à l'Union et composée de juges non permanents provenant des tribunaux constitutionnels ou supérieurs des États membres pourrait être instituée.

3. Inscrire dès à présent dans le traité une première liste de droits fondamentaux

Cette liste porterait uniquement sur le domaine communautaire, c'est-à-dire les actes de l'Union et ceux que les États adoptent sous l'emprise du droit communautaire. Elle n'implique aucun changement dans le domaine des compétences respectives de l'Union et des États et ne modifie pas les rapports juridiques entre les États membres et leurs ressortissants.

Huit droits seraient reconnus et bénéficieraient d'une protection juridictionnelle directe: égalité devant la loi, interdiction de toute discrimination, égalité entre les hommes et les femmes, liberté de mouvement au sein de l'Union, droit de choisir sa profession et son système éducatif sur l'ensemble du territoire de l'Union, droit d'association et de défense des droits, droit de négociation et action collective.

Quant aux droits constituant des objectifs à atteindre (droit à l'éducation, au travail, à la sécurité sociale, à la protection de la famille, etc.), qui constituent des parties intégrantes du modèle européen, ils seraient énumérés, mais la discussion concernant leur contenu et l'éventuelle édicition de minimums serait renvoyée à la deuxième phase ci-après.

L'importance du chômage dans la Communauté, la nécessité de lutter contre la pauvreté et l'exclusion ont conduit le comité à proposer, dans un seul cas, une clause minimale: le principe devrait ainsi être posé dans le traité, c'est-à-dire au niveau de l'Union, que chaque État membre doit mettre en place un revenu minimal pour les personnes qui ne peuvent, malgré leurs efforts, accéder à un emploi rémunéré et qui ne bénéficient pas d'autres sources de revenu, le montant de cette prestation étant fixé au niveau de chaque État membre.

IV—Engager un processus d'élaboration collective d'un catalogue moderne de droits et de devoirs civiques et sociaux

Le renforcement du traité pour y inclure les droits fondamentaux ne peut être réalisé en une fois. Une liste complète des droits à établir n'est pas disponible actuellement, surtout si l'on souhaite être audacieux et innovant: un gros travail interdisciplinaire et de technique juridique s'impose. Il ne faut pas octroyer des droits par le haut; ceux-ci, au contraire, doivent faire l'objet d'une élaboration démocratique selon une logique de citoyenneté active; il y a là, d'ailleurs, une occasion unique de faire fonctionner concrètement l'espace public démocratique européen.

C'est pourquoi un processus d'élaboration collective devrait être prévu par le traité révisé. L'exercice de consultation devrait être lancé par le Parlement européen sur proposition de la Commission européenne et piloté par un comité ad hoc. Il ferait intervenir les partenaires sociaux habituels, mais aussi les organisations non gouvernementales, un inventaire exhaustif de celles-ci étant effectué dans chaque pays, en fonction des types de droits concernés. Le Parlement européen serait régulièrement informé et consulté sur l'évolution de ce processus, auquel les parlements nationaux seraient étroitement associés.

Au bout de quatre à cinq ans, une fois ce processus consultatif achevé, les gouvernements en tireraient les conséquences sous forme d'un amendement au traité existant, dans le cadre d'une nouvelle conférence intergouvernementale dont le principe devrait être retenu dès maintenant.

V—Intégrer les politiques sociales dans la démarche ordinaire de l'Union

Bon nombre de droits fondamentaux reposent explicitement sur la mise en œuvre de politiques sociales déterminées. Il ne servirait à rien d'intégrer les droits fondamentaux dans les traités sans qu'il en soit de même des politiques sociales qui permettent de les appliquer.

Étant donné qu'il ne s'agit pas ici de l'objet central de son mandat, le comité s'est limité à quelques propositions, reprises ci-après.

1. Dispositions générales

- Regrouper l'ensemble des dispositions concernant les politiques sociales dans un titre unique du traité.
- Lorsqu'une politique sociale de l'Union est nécessaire en termes de subsidiarité et de proportionnalité, appliquer la règle de la majorité qualifiée, à l'exception de quelques domaines sensibles (sécurité et protection sociale, participation).
- Reconnaître explicitement comme partenaire, dans le traité, les acteurs collectifs qui agissent dans la société civile, en particulier les institutions de solidarité qui œuvrent contre l'exclusion et la grande pauvreté et qui peuvent représenter les chômeurs et les exclus.

- Utiliser les fonds structurels pour la promotion des droits fondamentaux.
- Développer l'expertise en sciences sociales et humaines dans le domaine de la politique sociale européenne.
- Examiner systématiquement l'impact des diverses politiques européennes menées sur la cohésion sociale et sur les risques d'exclusion.

2. Dispositions particulières

- Revaloriser la place faite à l'emploi dans le traité et instituer un comité de l'emploi pendant du comité monétaire et se réunissant périodiquement avec lui.
- Permettre à l'Union de mener des actions de coordination et d'expérimentation dans le domaine de la lutte contre l'exclusion.
- Faire entrer dans le domaine institutionnel habituel, qui facilite les prises de décision, la politique d'immigration et d'asile ainsi que les politiques concernant les citoyens des pays tiers.
- Adopter une solution identique pour ce qui concerne la lutte contre les effets de la drogue sur les personnes, qu'il s'agisse de traitement, de prévention ou de contrôle du trafic.
- Préciser dans le traité le concept des services d'utilité publique.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

**Brussels, 9 March 2000 (10.03)
(OR. fr)****CHARTE 4156/00****CONVENT 15****NOTE FROM THE PRAESIDIUM**

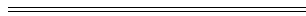
Subject : Draft Charter of Fundamental Rights of the European Union
– Reference document: CHARTE 4149/00 CONVENT 13

You have received the text of Articles 1 to 15 (CHARTE 4149/00) of the draft Charter, drawn up by the Praesidium following the Convention's discussions. That text will be examined at the meeting on 20 and 21 March. To facilitate discussion, members may send proposals for amendments to the Secretariat by 17 March. Obviously any members who have not submitted written proposals may make proposals orally at the meeting.

Those proposals, which will be distributed to the members, are not intended to be examined and put to the vote on 20 March. They will be used by the Praesidium, meeting as a drafting committee, as a basis for the final version of the draft Charter which will subsequently be submitted to the Convention. At that time an official deadline will be set for the submission of amendments and those amendments will be systematically examined by the Convention.

The procedure is thus as follows:

- initial draft articles prepared by the drafting committee following the proceedings of the Convention meeting as a working group;
- written or oral amendment proposals and discussion by the Convention on 20 and 21 March;
- preparation of a new text by the drafting committee on the basis of the discussion;
- submission of written amendments;
- final examination of the amendments and adoption of the draft Charter.



DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

**Brussels, 13 March 2000 (15.03)
(OR. fr)****CHARTE 4160/00****CONTRIB 44****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find attached a contribution by Mr Guy Braibant, representative of the President and the Prime Minister of France.

ADDITIONAL OBSERVATIONS ON THE DRAFT RIGHTS IN CHARTE 4123/00

Article 3

Paragraph 2 should state that "No one shall be arrested or detained save in the cases and in the manner prescribed by law".

Article 4

For consistency's sake, "court or tribunal" ("juge" in the French) should probably be replaced by "tribunal", the term used in Article 5.

Article 5

A right to compensation in the event of judicial error might be stipulated. Article 3 of the Additional Protocol to the ECHR contains such a right, but limits it to cases where there has been a criminal conviction. A case may be made for broadening the right to compensation, given the seriousness of the effects which such errors can have in civil or administrative matters, and the restricted nature of the action which can be taken in the field of judicial responsibility.

Articles 6 and 7

I believe that at this point the Charter should include the principle of the necessity of punishment, and perhaps the principle of its proportionality.

It seems that the principle of the application of the lightest penalty gives rise to difficulties as regards punishments for offences of a financial nature such as embargoes.

The scope of Article 7 should be limited to criminal matters. It cannot in any case be intended to apply to administrative sanctions.

Article 8

In paragraph 1, the term "identity" should be defined or amended, so that it clearly refers to civil status and legal personality and not to cultural identity.

In paragraph 2, I believe that "confidentiality" should be replaced by "respect", which would offer more protection.

The right to one's image could also be recognised in this Article.

Article Y

Apart from the fact that this Article may give the impression that the Charter restricts certain rights, it does not remove the need for the incorporation into some Articles of definitions or restrictions which would make it easier to transform the rights into reality.

Guy BRAIBANT
Representative of the President of the Republic and of the Prime Minister
to the Convention drawing up the Charter of Fundamental
Rights of the European Union

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DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 20 March 2000 (21.03)**CHARTE 4170/00****CONVENT 17****NOTE FROM THE PRAESIDIUM**

Subject : Draft Charter of Fundamental Rights of the European Union
– Proposed Articles on the rights of citizens (Articles A to J)

The rights of citizens

These Articles refer to rights which the Treaty establishing the European Community places generally under the heading of "Rights of citizens". These Articles are presented together, but their final position in the Charter will depend on decisions taken by the Convention on the overall structure of the Charter. Some limited rights are reserved for citizens (the right to vote and freedom of movement) but others also apply to those residing in the territory of the Member States. Others apply to everyone. Where rights are reserved for citizens alone, should there be a general clause to the effect that such rights may be extended to third-country nationals (Article 63(4) provides for the possibility of extension as regards freedom of movement)?

Article A. Principle of democracy

1. **All public authority stems from the people.**
2. **The Union and its institutions are founded on the principles of liberty, democracy, respect for human rights and the rule of law, principles which are common to the Member States.**
3. **The representatives in the European Parliament of the peoples of the States brought together in the Community [the Union] shall be by directly and freely elected universal suffrage and secret ballot.**

Comments

Paragraph 1 states the principle of democracy which was enshrined by the Court of Justice in particular in its judgment of 29 October 1980 on Case 138/79 Roquette Frères v. Council [1980] ECR 3333. Although all public authority stems from the people, it does not follow that every public authority must be elected, but it must be appointed or established by an institution whose origin is democratic.

Paragraph 2 follows Article 6(1) of the TEU: "The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States".

Paragraph 3 follows Article 190(1) of the TEC, which was considered to be preferable to Article 3 of the Additional Protocol to the ECHR: "The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature". This Article takes the form of an international commitment, whereas the Treaty provides for elections in Article 190(1) of the TEC: "The representatives in the European Parliament of the peoples of the States brought together in the Community shall be elected by direct universal suffrage".

Article B. Political parties

Every citizen of the Union has the right to form and to join political parties. Political parties at Union level contribute to forming a European awareness and to expressing the political will of the citizens of the Union.

Comments

Follows the wording on the freedom of association, with the addition of part of Article 191 of the TEC: "Political parties at European level are important as a factor for integration within the Union. They contribute to forming a European awareness and to expressing the political will of the citizens of the Union". As drafted the first sentence implies that this right may be invoked by a citizen of the Union in any Member State.

Article C. Right to participate in elections to the European Parliament

Every citizen of the Union residing in a Member State of which he is not a national has the right to vote and stand as a candidate in elections to the European Parliament in the Member State in which he resides, under the same conditions as nationals of that State. This right is exercised in accordance with the detailed arrangements laid down in the Treaty establishing the European Community.

Comments

This text follows Article 19(2) of the TEC: "2. Without prejudice to Article 190(4) and to the provisions adopted for its implementation, every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and to stand as a candidate in elections to the European Parliament in the Member State in which he resides, under the same conditions as nationals of that State. This right shall be exercised subject to detailed arrangements adopted by the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament; these arrangements may provide for derogations where warranted by problems specific to a Member State". Given that there are certain specific arrangements laid down by the Treaties, a reference to the arrangements laid down by the Treaties would appear to be necessary.

Article D. The right to participate in municipal elections

Every citizen of the Union residing in a Member State of which he is not a national has the right to vote and to stand as a candidate at municipal elections in the Member State in which he resides, under the same conditions as nationals of that State. This right shall be exercised in accordance with the detailed arrangements laid down in the Treaty establishing the European Community.

Comments

This text follows Article 19(1) of the TEC: "Every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and to stand as a candidate at municipal elections in the Member State in which he resides, under the same conditions as nationals of that State. This right shall be exercised subject to detailed arrangements adopted by the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament; these arrangements may provide for derogations where warranted by problems specific to a Member State".

Article E. The right to good administration [relations with the administration]

- 1. Every person residing in a Member State has the right to have his affairs handled properly, impartially, fairly and within a reasonable time by the institutions and bodies of the Union.**
- 2. This right includes:**
 - **the right of every person to be heard before any individual measure which would affect him personally is taken in relation to him;**
 - **the right of every person to have access to his file, if this access is necessary for him to state his arguments, while respecting the legitimate interests of confidentiality and of business secrecy;**
 - **the obligation of the administration to give reasons for its decisions.**
- 3. Every citizen may address the institutions and bodies of the Union in one of the official languages of the Union and must have an answer in that language.**

Comments

The first paragraph is in response to a request made several times during the Convention, particularly by the Ombudsman.

The principles set out in paragraph 2, which only concern individual decisions, basically result from the case law of the Court and, with regard to the obligation to give reasons, from Article 253 of the Treaty: "Regulations, directives and decisions adopted jointly by the European Parliament and the Council, and such acts adopted by the Council or the Commission, shall state the reasons on which they are based and shall refer to any proposals or opinions which were required to be obtained pursuant to this Treaty." The principles for non-contentious administrative procedure are set out in the following judgments in particular: Case 374/87 Orkem [1989] ECR 3283, Case T-450/93 Lisrestal, CFI, [1994] ECR II-1177, Case C-269/90 TU München [1991] ECR I-5469, Case T-167/94 Detlef Nölle [1995] ECR II-2589. The reference to confidentiality refers to the protection of personal data.

Paragraph 3 follows Article 21 of the TEC: "Every citizen of the Union may write to any of the institutions or bodies referred to in this Article or in Article 7 in one of the languages mentioned in Article 314 and have an answer in the same language."

The right of access to documents might be placed in this Article.

Article F. Right of access to documents

NB: Depends on where this right will be situated. A draft Article was proposed in 4137/00 CONVENT 8.

Article G. Access to the Ombudsman

Every citizen of the Union and every person residing in the territory of a Member State has the right to refer to the Ombudsman of the Union cases of maladministration by the institutions and bodies of the Union, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role. This right shall be exercised under the conditions laid down in the Treaty establishing the European Community and the provisions concerning its implementation.

Comments

The Article presents the principles which result from Articles 21 and 195 of the TEC.

Article 21: "Every citizen of the Union may apply to the Ombudsman established in accordance with Article 195".

Article 195: "1. The European Parliament shall appoint an Ombudsman empowered to receive complaints from any citizen of the Union or any natural or legal person residing or having its registered office in a Member State concerning instances of maladministration in the activities of the Community institutions or bodies, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role.

In accordance with his duties, the Ombudsman shall conduct inquiries for which he finds grounds, either on his own initiative or on the basis of complaints submitted to him direct or through a Member of the European Parliament, except where the alleged facts are or have been the subject of legal proceedings. Where the Ombudsman establishes an instance of maladministration, he shall refer the matter to the institution concerned, which shall have a period of three months in which to inform him of its views. The Ombudsman shall then forward a report to the European Parliament and the institution concerned. The person lodging the complaint shall be informed of the outcome of such inquiries.

The Ombudsman shall submit an annual report to the European Parliament on the outcome of his inquiries.

2. The Ombudsman shall be appointed after each election of the European Parliament for the duration of its term of office. The Ombudsman shall be eligible for reappointment.

The Ombudsman may be dismissed by the Court of Justice at the request of the European Parliament if he no longer fulfils the conditions required for the performance of his duties or if he is guilty of serious misconduct.

3. The Ombudsman shall be completely independent in the performance of his duties. In the performance of those duties he shall neither seek nor take instructions from any body.

The Ombudsman may not, during his term of office, engage in any other occupation, whether gainful or not.

4. The European Parliament shall, after seeking an opinion from the Commission and with the approval of the Council acting by a qualified majority, lay down the regulations and general conditions governing the performance of the Ombudsman's duties."

Article H. The right to petition

Every citizen of the Union and every person residing in the territory of a Member State has the right to petition the European Parliament under the conditions laid down in the Treaty establishing the European Community.

Comments

This Article presents the principles resulting from Articles 21 and 194 of the TEC.

Article 21: "Every citizen of the Union shall have the right to petition the European Parliament in accordance with Article 194."

Article 194 of the TEC: "Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have the right to address, individually or in association with other citizens or persons, a petition to the European Parliament on a matter which comes within the Community's fields of activity and which affects him, her or it directly."

Article I. Freedom of movement

Every citizen of the Union has the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the Treaty establishing the European Community.

Comments

This Article follows the principle set out in Article 18 of the TEC.

Article 18 TEC: "1. Every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in this Treaty and by the measures adopted to give it effect.

2. The Council may adopt provisions with a view to facilitating the exercise of the rights referred to in paragraph 1; save as otherwise provided in this Treaty, the Council shall act in accordance with the procedure referred to in Article 251. The Council shall act unanimously throughout this procedure."

Article J. Non-discrimination

Within the scope of application of the Treaty establishing the European Community and without prejudice to any provisions contained therein, any discrimination on grounds of nationality shall be prohibited.

Comments

This right is enshrined in Article 12 of the TEC.

Article 12 TEC: "Within the scope of application of this Treaty, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited.

The Council, acting in accordance with the procedure referred to in Article 251, may adopt rules designed to prohibit such discrimination."

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 28 March 2000**CHARTE 4176/00****CONTRIB 59****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union
- Reference document Charte/4149/00 Convent 13

Please find hereafter a proposal for amendment to article 16, point 1, submitted by Mr. Graham Watson, Member of the European Parliament. ¹

"Basic education shall be available to all citizens as a universal right, free of direct charge and shall be obligatory for minors".

¹ This text has been submitted in English language only.

ENTWURF DER CHARTA DER GRUNDRECHTE DER EUROPÄISCHEN UNION**fundamental.rights@consilium.eu.int**

Brüssel, den 28. März 2000**CHARTE 4177/00****CONTRIB 60****ÜBERMITTLUNGSVERMERK**

Betr.: Entwurf der Charta der Grundrechte der Europäischen Union

Finden Sie bitte nachstehend Änderungsvorschläge zu Dokument Charta 4149/00 Convent 13, vorgelegt von Herrn Jürgen Meyer, Mitglied des deutschen Bundestags. ¹

¹ Dieser Text wurde nur in deutscher Sprache übermittelt.



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Stv. Vorsitzender des Ausschusses für die Angelegenheiten
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16 März

Änderungsvorschlag zu Art. 13

Gemäß dem vorgeschlagenen Verfahren des Präsidiums (siehe Convent 15 vom 9. März 2000) reiche ich als Delegierter des Konvents in meiner Funktion als Vertreter des Deutschen Bundestages folgenden Änderungsvorschlag zu dem vom Präsidium vorgeschlagenen Art. 13 (in der Fassung Convent 13 vom 8. März 2000) ein.

Art. 13 Ehe und Familie

- (1) **Jeder hat das Recht, nach den nationalen Gesetzen und im freien und vollen Einverständnis der künftigen Ehegatten eine Ehe zu schließen und eine Familie zu gründen.**
- (2) **Lebensgemeinschaften, die auf Dauer angelegt sind, haben ein Recht auf Schutz vor Diskriminierung.**
- (3) **Ehe und Familie genießen besonderen Schutz. Alleinerziehende, kinderreiche Familien sowie Familien mit behinderten Angehörigen haben Anspruch auf die besondere Fürsorge durch die öffentliche Gewalt.**

Begründung

Der Schutz der Ehe und des Familienlebens ist ein grundlegendes Grund- und Menschenrecht, welches in der Grundrechtscharta berücksichtigt werden muss.

In Abs. 1 wird zunächst das Recht auf freie Eheschließung und auf Familiengründung gewährleistet. Beide Rechten stellen Abwehrrechte gegen staatliche Eingriffe dar.

Dieses Recht ist in Art. 8 und 12 EMRK, in Art. 16 Allgemeine Erklärung der Menschenrechte, in Art. 23 Abs. 2 und 3 Internationaler Pakt über bürgerliche und politische Rechte (IPbPR), in Art. 6 Abs. 1 (deutsches) Grundgesetz sowie in zahlreichen Verfassungen der Mitgliedstaaten enthalten. Der EuGH hat ausgeführt, dass das Recht auf Eheschließung und der Schutz der Familie bereits jetzt „zu den vom Gemeinschaftsrecht anerkannten Grundrechten gehöre“.¹ Auch der Europäische Gerichtshof für Menschenrechte hat diesen Grundsatz wiederholt bestätigt.²

Die Einschränkung „nach den nationalen Gesetzen“ orientiert sich an der gleichlautenden Bestimmung des Art. 12 EMRK. Hiermit soll vermieden werden, dass der Konvent eine europaweite Definition des Ehebegriffs vornehmen muss.

Die Festlegung auf „im freien und vollen Einverständnis der künftigen Ehegatten“ übernimmt die entsprechende Formulierung aus Art. 23 Abs. 3 IPbPR. Diese Norm ist ebenfalls in der Allgemeinen Erklärung der Menschenrechte enthalten (Art. 16 Abs. 2), womit ihre globale Anerkennung und Würdigung zum Ausdruck kommt.

Abs. 2 berücksichtigt einen soziologischen Wandel in der Gesellschaft, der in einer zeitgemäßen Grundrechtscharta enthalten sein muss. Die Zahl der in Deutschland lebenden nicht-ehelichen Lebensgemeinschaften hat sich zwischen 1978 und 1998 mehr als versechsfacht. Ähnliche Entwicklungen sind in allen europäischen Ländern zu beobachten. Aus diesem Grund berücksichtigen auch konservative Parteien zunehmend diese soziologischen Tatsachen.³ Auch in neuen Verfassungen, beispielsweise in der Verfassung Brandenburgs, ist die Schutzbedürftigkeit von auf Dauer angelegten Lebensgemeinschaften anerkannt (Art. 26 Abs. 2).

¹ Vgl. Wetter, Irmgard: Die Grundrechtscharta des Europäischen Gerichtshofes. Frankfurt a.M. u.a., 1998, S. 168 f, sowie die Verweise auf die Urteile des EuGH in den Fußnoten 660 f.

² Frowein, Jochen Abr./Peukert, Wolfgang: Europäische Menschenrechtskonvention. Straßburg u.a., 1996, S. 421 ff.

³ So z.B. auf dem Kleinen Parteitag der deutschen CDU, vgl. Frankfurter Allgemeine Zeitung

Darüber hinaus berücksichtigen mehr und mehr Mitgliedstaaten der Union auch die Rechte von Homosexuellen, indem sie die Möglichkeit einer eingetragenen Lebenspartnerschaft einräumen, mit dem Ziel, bestehende rechtliche Diskriminierungen zu verhindern. Ohne dass mit Abs. 2 eine Entscheidung zugunsten eines Modells gefällt werden soll, stellt doch das Verbot der Diskriminierung eine Mindestanforderung dar.

Abs. 3 Satz 2 stellt bestimmte Untergruppen von Familien unter den besonderen Schutz der Union. Der Schutz von kinderreichen Familien ist in den Verfassungen Griechenlands (Art. 21 Abs. 2), Italiens (Art. 31) und Polens (Art. 71 Abs. 1) enthalten. Die Verfassung Brandenburgs (Art. 26 Abs. 1) enthält darüber hinaus eine Schutznorm für Alleinerziehende und Familien mit behinderten Angehörigen.

Ebenfalls schützt nach einschlägiger Rechtsprechung des Europäischen Gerichtshofes für Menschenrechte der Art. 8 EMRK Alleinerziehende, die unter den allgemeinen Familienschutz fallen.⁴

Zwar ist innerhalb des Konvents vorgesehen, einen expliziten Artikel zu den Rechten von Kindern zu formulieren; gleichwohl scheint es bereits an dieser Stelle angezeigt, die soziologische Einheit, in der eine Mehrzahl der Kinder lebt, unter besonderen Schutz zu stellen.

⁴ vom 11.12.1999 „Kleiner Parteitag berät über Spenden und Familienpolitik“. Frowein, Jochen Abr./Peukert, Wolfgang: Europäische Menschenrechtskonvention. Straßburg u.a., 1996, S. 424.

Änderungsvorschlag

zu Art. 14

Gemäß dem vorgeschlagenen Verfahren des Präsidiums (siehe Convent 15 vom 9. März 2000) reiche ich als Delegierter des Konvents in meiner Funktion als Vertreter des Deutschen Bundestages folgenden Änderungsvorschlag zu dem vom Präsidium vorgeschlagenen Art. 14_(in der Fassung Convent 13 vom 8. März 2000) ein.

Art. 14 Gedankens-, Gewissens- und Religionsfreiheit

- (1) Jede Person hat das Recht auf Gedankens-, Gewissens- und Religionsfreiheit. Niemand darf zur Teilnahme an einer religiösen oder weltanschaulichen Handlung oder zur Verwendung einer religiösen Eidesformel gezwungen werden.**
- (2) Niemand ist verpflichtet, seine religiösen oder weltanschaulichen Anschauungen zu offenbaren.**
- (3) Kann ein Unionsbürger die von einer öffentlichen Gewalt auferlegten Pflichten nicht erfüllen, weil sie seinem Gewissen widersprechen, kann das Gemeinwesen im Rahmen seiner Möglichkeiten andere, gleichbelastende Pflichten eröffnen. Dies gilt nicht für Steuern und Abgaben.**

Begründung

Der Abs. 1 Satz 1 folgt dem Vorschlag des Präsidiums und dem gleichlautenden Art. 9 Abs. 1 Satz 1 EMRK.

In Satz 2 wird klargestellt, dass die genannten Rechte Freiheiten in dem Sinne darstellen, dass es keine erzwungene Teilnahme an weltanschaulichen, religiösen oder rituellen Handlungen geben darf. Vergleichbare Regelungen finden sich in den Verfassungen Belgiens (Art. 20), Dänemarks (§ 68), Finnlands (§ 9), Luxemburgs (Art. 20), Schwedens (Kapitel 2 § 2) und Deutschlands (Art. 4 Abs. 1 GG). Auch der Europäische Gerichtshof für Menschenrechte hat in Auslegung des Art. 9 Abs. 1 Satz 1 eine „negative Religionsfreiheit“ anerkannt¹ und von einem „Schutz für Atheisten, Agnostiker, Skeptiker und Unbeteiligte“ gesprochen.²

¹ Nachweis siehe in: Frowein, Jochen Abr./Peukert, Wolfgang: Europäische Menschenrechtskonvention. Straßburg u.a., 1996, S. 371.

² Ebenda; S. 368.

Abs. 2 orientiert sich an entsprechenden Regelungen in den Verfassungen Portugals (Art. 41 Abs. 3), Schwedens (Kapitel 2 § 2), Spaniens (Art. 16 Abs. 2), der Slowakei (Art. 41 Abs. 2), Polens (Art. 53 Abs. 7) und Brandenburgs (Art. 13 Abs. 2). Auch der Art. 136 Weimarer Reichsverfassung, der gemäß Art. 140 GG Bestandteil des Grundgesetzes ist, enthält das Recht auf Nichtäußerung seiner religiösen Überzeugungen. Ebenfalls kann ein solches Recht aus Art. 5 Abs. 1 GG abgeleitet werden.³

Abs. 3 konkretisiert die Gewissensfreiheit.

Das Recht auf Kriegsdienstverweigerung, als eine mögliche aber nicht zwingende Form der Gewissensfreiheit, ist in den Verfassungen Deutschlands (Art. 4 Abs. 3 GG) und Portugals (Art. 41 Abs. 6) anerkannt. Zwar wird das Recht auf Kriegsdienstverweigerung in der EMRK nicht explizit gewährleistet (vgl. Art. 4 Abs. 3 b), gleichwohl schreiben Frowein/Peukert in ihrem EMRK-Kommentar zur Glaubens- und Gewissensfreiheit: „Es besteht aber ein Recht darauf, dass der Staat bei Festlegung der Pflichten Rücksicht auf die Religion nimmt.“⁴ Insofern würde die vorgeschlagene Formulierung zur Positivierung dieses Recht führen.

Gleichwohl wird in Abs. 3 durch die einschränkende Formulierung „im Rahmen seiner Möglichkeiten“ und „dies gilt nicht für Steuern und Abgaben“ vermieden, dass es zu einer willkürlichen und ausufernden Geltendmachung von Gewissensnot kommt. Entsprechende Fälle hat der Europäische Gerichtshof für Menschenrechte auch immer wieder zurückgewiesen.⁵

³ Maunz/Düring/Herzog u.a.: Grundgesetz Kommentar. München, 1991, Band 1 (Lieferung 1 – 29), Art. 5 Rdnr. 40.

⁴ Ebenda, S. 378.

⁵ Ebenda, S. 376 ff.

Änderungsvorschlag

zu Art. 15

Gemäß dem vorgeschlagenen Verfahren des Präsidiums (siehe Convent 15 vom 9. März 2000) reiche ich als Delegierter des Konvents in meiner Funktion als Vertreter des Deutschen Bundestages folgenden Änderungsvorschlag zu dem vom Präsidium vorgeschlagenen Art. 15 (in der Fassung Convent 13 vom 8. März 2000) ein.

Art. 15 Freiheit der Meinungsäußerung

- (1) Jede Person hat das Recht auf freie Meinungsäußerung. Dieses Recht schließt die Meinungsfreiheit und die Freiheit ein, Informationen und Ideen ohne behördliche Eingriffe und ohne Rücksicht auf Staatsgrenzen zu empfangen und weiterzugeben.**
- (2) Die Pressefreiheit und die Freiheit der Berichterstattung werden gewährleistet. Die Organe der Union sind im verpflichtet, der Presse Auskünfte zu erteilen.**
- (3) Kunst, Wissenschaft, Forschung und Lehre sind frei.**

Begründung

Abs. 1 übernimmt die vorgeschlagene Formulierung des Präsidiums.

Abs. 2 fügt einen neues, bisher unbeachtetes Recht ein. Hierbei kann es aber keinen Zweifel geben, dass die Pressefreiheit zu den vornehmsten Rechten in einem demokratischen und rechtsstaatlichen Gemeinwesen zählt. Sie ist ein Lebenselement der Demokratie. Aus diesem Grund findet es sich in nahezu allen Verfassungen der Mitgliedstaaten.

Die Auskunftspflicht, die in Satz 2 geregelt ist, ist in der Bundesrepublik Deutschland einfachgesetzlich auf Länderebene gewährleistet. Zwar läßt sich aus Art. 5 Abs. 1 Satz 2 (deutsches) Grundgesetz (GG) keine Informationspflicht des Staates an die Presse ableiten, gleichwohl kommen Maunz/Düring/Herzog in ihrem GG-Kommentar zu dem Ergebnis, dass , sich

eine Regierung oder eine Behördenorganisation, die sich nachweisbar den Vorwurf der Pressefeindlichkeit zugezogen hat, auch unter verfassungsrechtlichen Gesichtspunkten die Frage stellen lassen müssen, ob es sich bei ihrem Verhalten ausschließlich um eine durchaus zulässige Zurückhaltung gegenüber der Presse oder nicht doch um eine allgemeine, dem demokratischen Prinzip zuwiderlaufende Öffentlichkeitsfeindlichkeit handelt.“¹ Diesen Grundsatz zu beachten, empfiehlt sich für die Union ganz besonders, da auf europäischer Ebene erst von einer „entstehenden Öffentlichkeit“ gesprochen werden kann.

Abs. 3 ergänzt den Präsidiumsvorschlag um das Wort „Lehre“. Die Freiheit der Forschung und Lehre ist ein unbestrittenes Menschenrecht, welches sich u.a. in Art. 15 Internationaler Pakt über wirtschaftliche, soziale und kulturelle Rechte findet. Ebenfalls ist die Freiheit der Lehre in nahezu jeder Verfassung der Mitgliedsländer enthalten.

Der gesamte Artikel 5 ist in vielen Verfassungen und Menschenrechtsverträgen mit einer Schrankenklauseel versehen worden. Gemäß der Diskussionslage im Konvent wird eine solche Schranke hier zunächst nicht formuliert, da erst Klarheit über die Rechte herrschen muss, bevor man über Schranken nachdenkt. Schon jetzt kann aber festgestellt werden, dass sich eine allgemeine Schrankenklauseel, die sich an Art. 20 Abs. 2 Internationaler Pakt über bürgerliche und politische Rechte² anlehnen würde, anbietet.

¹ Maunz/Düring/Herzog u.a.: Grundgesetz Kommentar. München, 1991, Band 1 (Lieferung 1 – 29), Art. 5 Rdnr.138.

² Jedes Eintreten für nationalen, rassistischen oder religiösen Haß, durch das zu Diskriminierung, Feindseligkeit oder Gewalt aufgestachelt wird, wird durch Gesetz verboten.“

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 28 March 2000**CHARTE 4178/00****CONTRIB 61****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter observations by Mr Fischbach and Mr. Krüger to the document
Charte 4149/00 Convent 13.¹

¹ This text has been submitted in French and English languages.

16.3.2000

**CONTRIBUTION OF MR FISCHBACH AND MR KRÜGER,
COUNCIL OF EUROPE OBSERVERS**

COMMENTS ON DOCUMENT “CONVENT 13”

Statement of reasons

Document Convent 13 is based on the idea that as a result of Article 6 TEU the European Convention on Human Rights (ECHR) is already, as such, part of European Union law and accordingly of the future Charter. While that view deserves to be maintained, it nonetheless remains to be explicitly confirmed by the Court of Justice of the European Communities. Applying the ECHR “as general principles of Community law” (Article 6 § 2 TEU) must probably be distinguished from applying it *per se*; otherwise the question would arise why the substantive provisions of the ECHR had not already been integrated as such into the Treaties. That applies even more to the ECHR’s Protocols, which have not yet been ratified by all the European Union’s member States; Protocol No. 7, for instance, referred to in Article 11 of document Convent 13, has been ratified by only eight of the fifteen member States.

In the absence of such confirmation by the Court of Justice, and for the avoidance of any misunderstanding detrimental to legal certainty, it would be as well not only to reproduce in the statement of reasons the complete text of the relevant provisions of the ECHR but also to specify in the text of the Charter that the statement of reasons forms an integral part of the Charter.

If care is not taken to ensure that it is made clear through the statement of reasons that the relevant provisions of the ECHR form an integral part of the Charter, there would be at least two types of consequence:

- (a) Certain provisions of the Charter would afford a lower level of protection than the ECHR. That is true, for example, of Article 6 (Convent 13), whose second sentence reads: “No one shall be deprived of his liberty, *save in specific cases* and in accordance with a procedure prescribed by law.” Without the further text in Article 5 ECHR, which *exhaustively* lists these “specific cases”, the Charter would afford a lower level of protection than the ECHR (see, in this connection, Mr Fischbach’s oral remarks of 24 February 2000, document Contrib 31).
- (b) Other provisions would be either unrestricted or – as the case might be – subject to a general limitation clause. In many cases, however, the special restrictions resulting from the ECHR and its case-law can be expected to provide greater protection than the restrictions resulting from a general clause (see, in this connection, Article X in doc. Convent 13 and Mr Fischbach’s remarks referred to above).

It is accepted, however, that none of the Charter's provisions will be able to be interpreted as restricting the protection afforded by the ECHR (Article Y of doc. Convent 13).

The proposal approach would also have the advantage of increasing the Charter's readability and clarity inasmuch as readers would not have to consult another instrument in order to discover the real scope of the Charter's provisions.

Article 4 (Prohibition of torture and inhuman treatment)

This provision, which is meant to reproduce Article 3 ECHR, should read: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

Articles 8 and 9 (Right to a fair trial – defence rights)

According to the settled case-law of the European Court of Human Rights, paragraphs 2 and 3 of Article 6 "represent specific applications of the general principle stated in paragraph 1 of the Article. The presumption of innocence embodied in paragraph 2 and the various rights of which a non-exhaustive list appears in paragraph 3 ('minimum rights', '*notamment*') are constituent elements, amongst others, of the notion of a fair trial in criminal proceedings'."

In document Convent 13 the principle (the right to a fair trial), reproduced in Article 8, is separated from its applications (the presumption of innocence and the rights of the defence), which appear in Article 9. Yet the list of defence rights taken over from Article 6 §§ 2 and 3 ECHR in the statement of reasons for Article 9 (Convent 13) remains illustrative and not exhaustive, as is apparent from the expression "minimum rights". It may therefore be supposed that other judicial applications of the principle will supplement the list in Article 9. For that reason it would be desirable to combine Articles 8 and 9.

A solution would then remain to be found for the current second sentence of Article 8, on free legal aid. In its present version, and in so far as it applies to criminal proceedings, it duplicates Article 6 § 3 (c) ECHR, taken over in the statement of reasons for Article 9 of the Charter. These two provisions should therefore be harmonised, in a single Article. The simplest thing would no doubt be to extend the application of Article 6 § 3 (c) ECHR to cover all proceedings (criminal and other) governed by such a single Article.

Article Y (Level of protection)

It would be desirable to word this Article as follows:

"No provision of this Charter shall be interpreted as restricting the protection afforded by the European Convention on Human Rights *as interpreted by the European Court of Human Rights.*"

Since the entry into force of the ECHR, the European Court of Human Rights has considerably extended its scope and strengthened its requirements. Steps should be taken to ensure that regard is had to that when the Charter is being interpreted.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 28 March 2000**CHARTE 4179/00****CONTRIB 62****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter draft amendments to document Charte 4149/00 Convent 13 by Lord Goldsmith, QC, Personal Representative of the Government of the United Kingdom. ¹

¹ This text has been submitted in English language only.

17 March 2000

M. Jean-Paul Jacqué
Charter Praesidium
Brussels

DRAFT AMENDMENTS TO CONVENT 13

1. Thank you for sending me Convent 13 with the Praesidium's latest draft Articles 1-16. I would like to table the following written amendments.
2. I welcome the Praesidium's work to bring these Articles more in line with the language and approach of the ECHR. I feel that we must go further, however. The explanatory notes as presently drafted provide some guidance as to the Convention's rationale for particular draft Articles. But they cannot be taken as having the same legal force and effect as a clear definition of the right, tying the right to the corresponding existing right, eg under the ECHR. The reference to Article 6 of the TEU does not appear to me adequate to achieve the intended objective. I therefore regard a full and integrated Part B as essential if we are to stay within the remit given by the Cologne Conclusions.
3. In submitting my draft amendments, I have therefore included language for Part B. Please note that the Part A text is offered on the basis that it must be given the solid legal ground I propose for Part B. Without Part B, my Part A proposals do not stand and the full text of the relevant ECHR Articles would have to be substituted. "A language" is in bold and "B language" is in italics. Part B would also need to include the General Provisions tabled in my paper CONTRIB 36 but we can discuss this matter when we come to horizontal articles. Naturally, I reserve my position on these important horizontal matters.
4. For ease of reference, however:
 - i) I have included the appropriate Part B language alongside the corresponding Part A right. I envisage the two would be in different parts of the document;
 - ii) I have also therefore attached at Annex 1 how the document would look. It will be seen that I have proposed titles instead of the 'Part A' shorthand; namely 'Proclamation of Rights' and 'Definition of Rights'.

[Signed]

Lord Goldsmith QC

PROPOSED AMENDMENTS

Article 1/Object and Purpose

Amendments:

- Amend title to **Object and Purpose**
- Delete **The dignity of the human person shall be respected and protected in all circumstances.**
- Substitute:
 - 1) **All human beings are born free and equal in dignity and rights and are entitled to equal protection of the law without any discrimination. In recognition of this, the European Union Institutions respect, within the spheres of their competence, the fundamental rights set out below.**
 - 2) **The following provisions are addressed to the bodies and institutions of the European Union in the exercise of the powers and tasks assigned to them by the Treaties. They neither establish new tasks or competences for the Union nor do they extend its existing tasks or competences.**
 - 3) **The fundamental rights are listed below in Part A. Part B explains the nature, full extent and application of these rights.**

B: 1(1): The principle of respect for the inviolable dignity and equality of the human person is the foundation for statements of fundamental rights throughout the European Union. That principle has effect in accordance with the constitutional traditions of Member States and is respected by the Union bodies and institutions. The principle of non-discrimination is the right in article 14 of the ECHR when read with articles 2-12, articles 1 and 2 of Protocol 1 and article 2 of Protocol 6 and read with articles 16, 17 and 18. The full text of ECHR article 14 is as follows [...]

Notes:

- ‘ Object and Purpose’ follows the Vienna Convention on the Law of Treaties and is perhaps a more accurate description than just ‘Article 1’.
- I have proposed no Part B text for Article 1.2.

Article 2 Right to Life

Amendments:

- Delete in 2.1: **Everyone has the right to Life**
- substitute in 2.1 **Everyone’s right to life shall be protected by law**

No amendment to Article 2.2 (**No one shall be condemned to the death penalty, or executed**)

B: The rights in Article 2 are the rights guaranteed by Article 2 of and Articles 1, [2], 3 and 4 of Protocol 6 to the ECHR, read with ECHR Articles 17 and 18². The full ECHR Article 2 is as follows [...]. The full text of relevant provisions of ECHR Protocol 6 is as follows [...]

Article 3 Right to the respect of physical and mental integrity

Amendment:

- Delete this Article

Note:

- In a spirit of co-operation I previously suggested as an experiment language on the following lines:

Everyone has the right to the respect of his or her physical and mental integrity in the application of biology and medicine

B: The right set out in this Article comprises the following principles:

- (a) the principle of informed consent should be respected;*
- (b) the human body and its parts shall not, as such, give rise to financial gain;*
- (c) research on human beings shall only be carried out under appropriate conditions for their protection;*
- (d) organ removal from living donors shall only be permitted under specified circumstances and with the consent of the person concerned.*

The principle in (a) above is covered by the general rule given in Article 5 of the Convention on Human Rights and Biomedicine. It will not be applicable in all circumstances; for example, where a person is not able to give informed consent the relevant rules given in Articles 6, 8, 17 and 20 of the Biomedicine Convention must be applied. Where a person suffers from a serious mental disorder the principles given in articles 7 and 26 of the Biomedicine Convention will be applicable if certain criteria are met.

The principle in (b) above is that laid down in Article 21 of the Biomedicine Convention.

The appropriate protective conditions referred to in (c) above are set out in Articles 16 and 17 of the Biomedicine Convention.

The principle in (d) above is laid down in Article 19 of the Biomedicine Convention, which specifies the permitted circumstances.

References to the Biomedicine Convention articles are to be read subject to the relevant exceptions provided by that Convention and subject to any applicable reservation or derogation.

Article 4 Prohibition of torture and inhuman treatment

Amendment:

² It will need to be considered later where in the Charter we should set out the text of ancillary provisions of this kind.

- add the words ‘**or punishment**’ at the end so that it reads:

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

B: The right in Article 4 is the right in Article 3 of the ECHR, the rights in which are guaranteed by that provision, read with ECHR Articles 17 and 18.

Article 5 Prohibition of slavery and forced labour

Amendment:

- Delete numbers and punctuation so that the Article reads:

No one shall be held in slavery or servitude or required to perform forced or compulsory labour

B: The right in Article 5 is the right guaranteed by Article 4 of the ECHR, read with ECHR Articles 17 and 18. The full ECHR text of Article 4 is as follows: [...]

Article 6 Liberty and Security

Amendments:

- Delete ‘. No one shall be deprived of his liberty’
- Replace with and cannot be deprived of it
- Add the word ‘limited’ before ‘specific cases’ so that it reads:

Everyone has the right to liberty and security of person and cannot be deprived of it save in limited specific cases and in accordance with a procedure prescribed by law.

B: The rights in Article 6 are the rights guaranteed by Article 5 of the ECHR, read with ECHR Articles 17 and 18. The full text of ECHR Article 5 is as follows: [...]

Article 7 Right to an effective remedy

Amendment:

- Delete this Article

Note:

- I have no proposal to offer regarding remedies at this stage and believe that consideration of this matter must be deferred until we are clear what rights will be included in the Charter and what approach is to be adopted regarding the horizontal issues. I should simply note at this stage that the Praesidium text is narrower than the ECHR Article 13 and inconsistent with it in other respects.

Article 8 Right to a fair trial

Amendments:

- Add after ‘reasonable’: **period of any criminal charge against him or her, or in determining his or her civil rights and obligations.**
- Delete: **time by an independent and impartial tribunal established by law.**
- Add: **Hearings shall be by an independent and impartial tribunal established by the law.**
- Delete second sentence: **Free legal aid shall be provided to those who lack sufficient resources insofar as such aid is indispensable to ensure the effectiveness of access to justice.**
- Add: **If it is a criminal charge, the accused shall be presumed innocent until proved guilty according to law and has certain guaranteed rights to defend himself or herself.**

So that the Article reads:

Everyone is entitled to a fair and public hearing within a reasonable period of any criminal charge against him or her, or in determining his or her civil rights and obligations. Hearings shall be by an independent and impartial tribunal established by the law.

If it is a criminal charge, the accused shall be presumed innocent until proved guilty according to law and has certain guaranteed rights to defend himself or herself.

B: The rights in Article 8 are the rights guaranteed by Article 6 of the ECHR read with Article 17 and 18. The full text is as follows [...]

Article 9 Rights of the defence

Amendment:

- Delete the Article (see revised Article 8 above)

Article 10 No punishment without law

Amendments:

- Delete Article 10 draft text
- Substitute: **No one shall be punished except under the law**

B: The right in article 10 is the right guaranteed by article 7 of the ECHR read with articles 17 and 18. The full text of article 7 is as follows: [...]

Article 11 Right not to be tried or punished twice

Amendments:

- Delete: **again in criminal proceedings for an offence for which he has already been finally acquitted or convicted in accordance with the law.**
- Add: twice for the same criminal offence

so that the Article reads:

No one shall be tried or punished twice for the same criminal offence

B: The right in article 11 is the right guaranteed by article 4 of Protocol 7 to the ECHR read with articles 17 and 18. The full text of article 4 is as follows: [...]

Article 12 Respect for Private Life

Amendments:

- Delete: **privacy, his honour, his home and the confidentiality of his communications**
- Add: or her private and family life, home and correspondence. These rights may be interfered with only in limited, specified circumstances.

so that the Article reads:

Everyone has the right to respect for his or her private and family life, home and correspondence. These rights may be interfered with only in limited, specified circumstances.

B: The right in article 12 is the right guaranteed by article 8 of the ECHR read with articles 17 and 18. The full text of article 8 is as follows: [...]

Article 13 Family life

Amendments:

- Delete 13.1
- Delete 13.2
- Add: **Men and women of marriageable age have the right to marry and found a family according to national law governing the exercise of this right.**
- Delete 13.3

B: The right in article 13 is the right guaranteed by article 12 of the ECHR read with articles 17 and 18. The full text of article 12 is as follows: [...]

Article 14 Freedom of thought, conscience and religion

Amendment:

- Add: **Restrictions can only be placed on this right in limited, specified circumstances.**

So that the Article reads:

Everyone has the right to freedom of thought, conscience and religion. Restrictions can only be placed on this right in limited, specified circumstances.

B: The right in article 14 is the right guaranteed by article 9 of the ECHR read with articles 17 and 18. The full text of article 9 is as follows: [...]

Article 15 Freedom of expression

Amendments:

- Delete: **This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.**
- Delete: **Art, science and research shall be free of constraint.**
- Add: **Restrictions can only be placed on this right in limited, specified circumstances.**

So that the Article reads:

Everyone has the right to freedom of expression. Restrictions can only be placed on this right in limited, specified circumstances.

B: The right in article 15 is the right guaranteed by article 10 of the ECHR read with articles 16, 17 and 18. The full text of article 10 is as follows: [...]

Article 16 Right to Education

Amendments:

- Delete: **, including in particular the right to receive free compulsory education**
- Delete: **The founding of education establishments shall be free of constraint**
- Delete: **The right of parents to have their children educated and taught in accordance with their religious and philosophical convictions shall be guaranteed.**

So that the Article reads:

No one shall be denied the right to education.

B: The right in article 16 is the right guaranteed by article 2 of the First Protocol to the ECHR read with articles 17 and 18 and any reservations on this Protocol. The full text of article 2 is as follows: [...]

No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

Note:

- Education is an area where special care is needed to ensure no extension to Community competence. The UK's reservation on the second sentence to Article 2 of the First Protocol to the ECHR must be fully protected in the Charter.

PROCLAMATION OF RIGHTS

(PART A)

Article 1 Object and Purpose

- 1) All human beings are born free and equal in dignity and rights and are entitled to equal protection of the law without any discrimination. In recognition of this, the European Union Institutions respect, within the spheres of their competence, the fundamental rights set out below.
- 2) The following provisions are addressed to the bodies and institutions of the European Union in the exercise of the powers and tasks assigned to them by the Treaties. They neither establish new tasks or competences for the Union nor do they extend its existing tasks or competences.
- 3) The fundamental rights are listed below in Part A. Part B [Definition of Rights] defines the nature, full extent and application of these rights.

Notes:

- ‘ Object and Purpose’ follows the Vienna Convention on the Law of Treaties and is perhaps a more accurate description than just ‘Article 1’.
- I have proposed no Part B text for Article 1.2.

Article 2 Right to Life

(1) Everyone’s right to life shall be protected by law

(2) No one shall be condemned to the death penalty, or executed

Article 4 Prohibition of torture and inhuman treatment

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Article 5 Prohibition of slavery and forced labour

No one shall be held in slavery or servitude or required to perform forced or compulsory labour

Article 6 Liberty and Security

Everyone has the right to liberty and security of person and cannot be deprived of it save in limited specific cases and in accordance with a procedure prescribed by law.

Article 8 Right to a fair trial

(1) Everyone is entitled to a fair and public hearing within a reasonable period of any criminal charge against him or her, or in determining his or her civil rights and obligations. Hearings shall be by an independent and impartial tribunal established by the law.

(2) If it is a criminal charge, the accused shall be presumed innocent until proved guilty according to law and has certain guaranteed rights to defend himself or herself.

Article 10 No punishment without law

No one shall be punished except under the law

Article 11 Right not to be tried or punished twice

No one shall be tried or punished twice for the same criminal offence

Article 12 Respect for Private Life

Everyone has the right to respect for his or her private and family life, home and correspondence. These rights may be interfered with only in limited, specified circumstances.

Article 13 Family life

Men and women of marriageable age have the right to marry and found a family according to national law governing the exercise of this right.

Article 14 Freedom of thought, conscience and religion

Everyone has the right to freedom of thought, conscience and religion. Restrictions can only be placed on this right in limited, specified circumstances.

Article 15 Freedom of expression

Everyone has the right to freedom of expression. Restrictions can only be placed on this right in limited, specified circumstances.

Article 16 Right to Education

No one shall be denied the right to education.

Note:

- Education is an area where special care is needed to ensure no extension to Community competence. The UK's reservation on the second sentence to Article 2 of the First Protocol to the ECHR must be fully protected in the Charter.

DEFINITION OF RIGHTS

(PART B)

This Part defines the nature, full extent and application of the fundamental rights referred to in [Part A] [the Proclamation of Rights].

General Provisions

Where in this Charter reference is made to an Article of the ECHR or its Protocols, it shall be interpreted in accordance with the jurisprudence of the Strasbourg organs from time to time.

[Reference to reservations/derogations]

Note:

- It may be possible to shorten the Part B texts for ECHR rights using a umbrella Article such as ‘Each Article in this document refers to the rights guaranteed by the corresponding Articles of the ECHR, as specified below, read with Articles 17 and 18 and where applicable 16 of the Convention’.

Article 1 Object and Purpose

1(1): The principle of respect for the inviolable dignity and equality of the human person is the foundation for statements of fundamental rights throughout the European Union. That principle has effect in accordance with the constitutional traditions of Member States and is respected by the Union bodies and institutions. The principle of non-discrimination is the right in article 14 of the ECHR when read with articles 2-12, articles 1 and 2 of Protocol 1 and article 2 of Protocol 6 and read with articles 16, 17 and 18. The full text of ECHR article 14 is as follows [...]

Article 2 Right to Life

The rights in Article 2 are the rights guaranteed by Article 2 of and Articles 1, [2], 3 and 4 of Protocol 6 to the ECHR, read with ECHR Articles 17 and 18³. The full ECHR Article 2 is as follows [...]. The full text of relevant provisions of ECHR Protocol 6 is as follows [...]

Article 4 Prohibition of torture and inhuman treatment

The right in Article 4 is the right in Article 3 of the ECHR, the rights in which are guaranteed by that provision, read with ECHR Articles 17 and 18.

Article 5 Prohibition of slavery and forced labour

The right in Article 5 is the right guaranteed by Article 4 of the ECHR, read with ECHR Articles 17 and 18. The full ECHR text of Article 4 is as follows: [...]

³ It will need to be considered later where in the Charter we should set out the text of ancillary provisions of this kind.

Article 6 Liberty and Security

The rights in Article 6 are the rights guaranteed by Article 5 of the ECHR, read with ECHR Articles 17 and 18. The full text of ECHR Article 5 is as follows: [...]

Article 8 Right to a fair trial

The rights in Article 8 are the rights guaranteed by Article 6 of the ECHR read with Article 17 and 18. The full text is as follows [...]

Article 10 No punishment without law

The right in article 10 is the right guaranteed by article 7 of the ECHR read with articles 17 and 18. The full text of article 7 is as follows: [...]

Article 11 Right not to be tried or punished twice

The right in article 11 is the right guaranteed by article 4 of Protocol 7 to the ECHR read with articles 17 and 18. The full text of article 4 is as follows: [...]

Article 12 Respect for Private life

The right in article 12 is the right guaranteed by article 8 of the ECHR read with articles 17 and 18. The full text of article 8 is as follows: [...]

Article 13 Family life

The right in article 13 is the right guaranteed by article 12 of the ECHR read with articles 17 and 18. The full text of article 12 is as follows: [...]

Article 14 Freedom of thought, conscience and religion

The right in article 14 is the right guaranteed by article 9 of the ECHR read with articles 17 and 18. The full text of article 9 is as follows: [...]

Article 15 Freedom of expression

The right in article 15 is the right guaranteed by article 10 of the ECHR read with articles 16, 17 and 18. The full text of article 10 is as follows: [...]

Article 16 Right to Education

The right in article 16 is the right guaranteed by article 2 of the First Protocol to the ECHR read with articles 17 and 18 and any reservations on this Protocol. The full text of article 2 is as follows: [...]

No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE**fundamental.rights@consilium.eu.int**

Bruxelles, le 7 avril 2000**CHARTE 4180/00****CONTRIB 63****NOTE DE TRANSMISSION**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne

Veillez trouver ci-après des observations de M. Guy Braibant, Représentant Personnel du Gouvernement de la France, sur le document CHARTE 4149/00 CONVENT 13. ¹

¹ Ce texte a été soumis en langue française seulement.

Paris, le 17 mars 2000

**NOUVELLES OBSERVATIONS SUR LES ARTICLES 1 A 16
FAISANT L'OBJET DU DOCUMENT « CHARTE 4149/00 » DU 8 MARS 2000**

Article 6

Il faudrait remplacer « dans des cas spécifiques et selon les voies légales » par « dans les cas et selon les formes prévues par la loi ».

La rédaction de la seconde phrase ne convient pas : elle semble ouvrir un champ à la fois très flou et plus vaste que celui permis par la CEDH pour les cas d'atteinte légale à la liberté.

Le fait de ne pas reprendre les cas précis d'atteintes énumérés à l'article 5 de la CEDH n'est pas gênant dans la mesure où la « clause plancher » prévoit que la Charte ne peut être moins protectrice que la CEDH.

Article 8

Les deux propositions devraient faire l'objet de deux paragraphes distincts.

Dans le second paragraphe, il faudrait supprimer « gratuite ». D'une part, l'aide juridictionnelle peut comporter ou non la gratuité des frais du procès. D'autre part, cette disposition pourrait être interprétée comme remettant en cause les systèmes qui, comme ceux qui existent en France, permettent de refuser l'aide juridictionnelle pour des raisons tenant au caractère sérieux du recours et pas seulement aux ressources de l'intéressé.

Article 9

Le titre proposé pour cet article est trop restrictif.

Par ailleurs, je crois préférable de le scinder en deux paragraphes, le premier consacrant le droit à la présomption d'innocence et le second celui au respect des droits de la défense.

Enfin, le second paragraphe pourrait être ainsi rédigé : « Le respect des droits de la défense en garanti à toutes personnes accusée ».

Article 10

Dans le premier paragraphe, la notion de « droit de l'Union », qui est imprécise et n'ajoute rien, devrait être supprimée.

Article 11

Afin de préciser que ce droit ne s'applique qu'à l'intérieur de la matière pénale et ne prohibe pas le cumul de sanctions disciplinaires et pénales pour un même fait, il convient de compléter cet article de la manière suivante : « ... par un jugement pénal définitif... ».

Article 13

Dans le paragraphe 2, il est préférable de se référer aux « lois nationales relatives à l'exercice de ce droit » plutôt qu'aux « lois des Etats membres », afin de se rapprocher du texte de la CEDH et d'éviter de poser des difficultés concernant les compétences respectives des Etats membre de l'Union.

Le paragraphe 3, tel qu'il est rédigé, aurait sans doute plus sa place parmi les droits économiques et sociaux.

Article 15

Le paragraphe 2 me semble devoir être supprimé. En effet, la liberté de l'art n'est pas contestable mais est couverte par la liberté d'expression. Quant à affirmer que la recherche et la science sont libres, cela me paraît difficile, comme le prouvent assez les débats relatifs au caractère éthique d'avancées récentes.

Au demeurant, cette phrase est en rupture avec tout le reste du texte qui proclame des droits et des libertés en faveur des individus et non d'activités génériques ou de concepts - dont les contours seraient en outre certainement à définir.

Article 16

Je crois qu'il nous faudrait trouver, pour le deuxième paragraphe, une formule permettant d'éviter que les sectes ne créent des établissements d'enseignement.

Guy BRAIBANT

**Représentant du Président de la République et du Premier ministre
à la Convention chargée d'élaborer la Charte des droits fondamentaux de l'Union européenne**

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 28 March 2000**CHARTE 4181/00****CONTRIB 64****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a contribution from Mr. Erling Olsen, Personal Representative of the Government of Denmark on document Charte 4149/00 Convent 13. ¹

¹ This text has been submitted in English language only.

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Comments by Dr. Erling Olsen

17 March 2000

As foreseen in CONVENT 15 I wish to submit some written comments to document CONVENT 13. My comments are based on the following assumptions:

- That the Charter must address itself to relations between EU-citizens (and other persons within the jurisdiction of the Union) and the EU institutions (not the Member States) in order to be understood and appreciated by our citizens, (wording along the lines of TEU Article 6 paragraph 2 and Article 46 (d)).
- That the Charter in its implementation does not raise conflicts with other international procedures for the effective implementation of human rights, in particular the European Convention on Human Rights.
- That the Charter should reflect existing rights.
- That the provisions of the Charter shall be applicable to the institutions and organs of the Union within their existing competences. The Charter shall not extent nor create new competences for the Union.

Based on the above mentioned assumptions I believe that we will serve our citizens best by dividing the document into two interdependent parts. One Part (A) where we set out the fundamental rights and freedoms in a short and clear way making them easily read and understood and a second Part (B) explaining in more detail the exact scope of the Fundamental Rights concerned by preferable quoting the relevant/corresponding Article in for instance the European Convention on Human Rights.

This having been said, I wish at this stage of our proceedings to offer the following specific comments on COVENT 13 as presently drafted:

Re: Article 1

I can support the wording of this Article. As the text is primarily derived from the Universal Declaration of Human Rights the Commentary should start off with the quotation from that Declaration.

Concerning the horizontal issue of the applicability of the Charter as mentioned in the Commentary I find that such a provision concerning the scope of application could be drafted as a separate Article and not only as part of the preamble. The wording should reflect my before-mentioned comments under first and fourth indent. I propose the following wording: “The provisions of this Charter shall apply to the institutions and organs of the Union in the framework of the powers and tasks conferred on them by the Treaties. They shall not establish any competence or new tasks for the Union nor shall they extend the latter’s competence and tasks”.

Re: Article 2

As a general observation I wish to underline that we must be cautious not to differ with the text of the European Convention on Human Rights (ECHR). We can not solve the problem by simply making a reference to TEU article 6 as regards to, for example, the exemptions. In my opinion this is far from sufficient to guarantee the relevant interpretation and limitations laid down in the correspondent Articles in the ECHR. I also believe we have to draw attention to the relevant case-law of the European Court of Human Rights. I suggest that in the statement of reasons (part B) we should for every Article quote the relevant corresponding text from the ECHR and make a reference to the jurisprudence of the European Court of Human Rights. It must be obvious to everyone that the first part (part A) can only be read in conjunction with the second part (part B), which spells out, inter alia, the relevant exceptions to the rule.

Re: Article 3

I support paragraph 1 but I find that paragraph 2 should be deleted. In the Commentary (part B) we could make a reference to the basic principles contained in the Convention on Human Rights and Biomedicine.

Re: Article 5

I refer to my general observation under Article 2.

Re: Article 7

The article describes how the other provisions under the Charter should be enforced. This article seems to me to have a more horizontal character and may therefore be deleted from this part of the Charter.

Re: Article 8

I suggest that the text in the first paragraph be extended in accordance with Article 6 (1) of the ECHR by the wording “In the determination of his civil rights and obligations or of any criminal charge against him...”. This precision is very important to underline.

Re: Article 9

I refer to my observations made under article 2. It should be considered to insert the principle that “everyone has the right not to be compelled to testify against himself or to confess guilt”. This fundamental principle is derived from the case law of the European Court of Human Rights and also to be found in the UN Convention on Civil and Political Rights (Article 14).

Re: Article 10

I prefer to keep the exact wording of Article 7 in the EHCR.

Re: Article 11

I refer to my general observation made under Article 2.

Re: Article 12

I refer to my general observation under Article 2.

Re: Article 13

As regards to Paragraph 1, I refer to my general observation under Article 2.

I suggest, however, that the first and second paragraph are combined and propose the following wording: “Everyone has the right to respect for his family life and the right to marry and to found a family, according to the laws of the Member States governing the exercise of this right”.

Paragraph 3 appears to be merely a policy statement rather than a fundamental right or freedom and should in my opinion be deleted.

Re: Article 14

I refer to my general observation under Article 2.

Re: Article 15

I refer to my general observation under Article 2.

Re: Article 16

Paragraph 2 is not quite clear and the Commentary is silent on this paragraph. Paragraph 2 should be deleted.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 30 March 2000**CHARTE 4182/00****CONTRIB 65****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a contribution by Mr. Prof. Dr. George Papadimitriou, Personnel Representative of the Government of Greece, on document Charte 4149/00 CONVENT 13 and Charte 4170/00 CONVENT 17.¹

¹ This text has been submitted in English language only.

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Comments to the document “Convent 17”

I. Principle of Democracy (Articles A and C)

1. Articles A and C should be integrated in one article due to their close connection. The provision of article C recognizes the right to vote and to stand as a candidate at elections for the European Parliament for citizens of the Union residing in a Member State of which they are not nationals. In this sense, it specifies the right laid down in article A paragraph 3 and it extends its content.

2. Paragraph 2 of article A is identical to article 6 paragraph 1 of the Conventions and is included in Title I. It should remain in its present place in order to retain its wide normative content not only for the field of fundamental rights but also for the structure and the function of the Union. It should be stressed out that article 6 paragraph 1 is the most important new provision in the Conventions for the institutional identity of the Union. For all the aforementioned reasons it should be deleted from article A.

3. Despite the inherent difficulties, the wording of paragraph 1 could probably be altered as follows: “All public authority stems from the peoples of the Union”.

4. Paragraph 3 of article A is already included in article 190 paragraph 1 of the Conventions. Its incorporation in the Charter does not create any problems regarding the systematic and normative approach of the division of the Conventions related to the European Parliament.

5. Article A’s paragraphs are renumbered according to the abovementioned remarks.

II. *The right to participate in municipal elections (Article D)*

1. This article is in its essence identical to article 19 paragraph 1 of the Conventions. Its incorporation in the Charter is a right choice keeping its existing wording and content.

2. Article D is renumbered as article B.

III. *Political Parties (Article B)*

1. Article B should only recognize the right of every person to establish political parties and participate in their function. On the other hand, the wording of the article which is related to the position of the political parties in the Union should remain, in its current form, a part of article 191 of the Conventions.

2. Article B is renumbered as article C.

IV. *The right to good administration (Article E)*

The wording of article E paragraph 2 should be altered as follows:

“This right especially includes”

2. The right of article E paragraph 3 which corresponds to article 21 paragraph 3 of the Conventions should be recognized not only for citizens but for every person.

Article E is renumbered as article D.

V. *Right of access to documents (Article F)*

1. The incorporation of this article appears to be a necessary enrichment of the Charter and therefore it should be included.

2. Article F is renumbered as article E.

VI. Freedom of Movement (Article I)

1. This article is identical to article 18 paragraph 1 of the Conventions. Its incorporation in the Charter is necessary, but in the chapter regarding individual rights.

2. It should be examined, though, whether paragraph 2 of article 18 should remain as it is in the Conventions.

VII. Non-discrimination (Article I)

1. This article corresponds to article 12 paragraph 1 of the Conventions. Its content could be enriched by mentioning at least some of the criteria of article 13 of the Conventions i.e. sex, national origin, religion.

VIII. Problems of legislative technique

The transfer of provisions from the Conventions to the Charter is a process that gives rise to many problems. Relatively, a legislative technique should be developed with great care because this choice is inevitably going to expand.

bouli/com.art.17/24.3.00

**Comments to the document “Convent 13”
(Articles 15 - 16, Section II)**

I. Freedom of expression (Article 15)

1. The wording of the second sentence of article 15 paragraph 1 is altered as follows: “This freedom extends to all means of expression and especially includes...”.

2. Paragraph 2 of article 15 should be detached and form a separate article. On the other hand, the content of research should be further defined in order to avoid extreme expressions of that freedom.

II. Right to education (Article 16)

Paragraph 1 of article 16 should be altered as follows:

“Every person has a right to education, which especially includes the claim for free...”.

2. In paragraph 2 of article 16, it should be elaborated whether it refers to all the levels of education or only to the basic level.

3. In paragraph 3 of article 16, the wording should be altered as follows:

“The right of the parents to ensure the learning and education of their children according to their religious and philosophical beliefs should be exercised in order to serve the child’s best interest”.

4. The Charter should also include provisions for the new forms of education i.e. continuing education.

III. Horizontal articles (Section II)

In article X the possibility should be examined of including the wording of the relevant article of the European Convention on Human Rights.

March 24, 2000

Bouli/Com.Art. 13/24.3.00

PROF. DR. GEORGE PAPADIMITRIOU

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Criteria for the inclusion of a right in the Charter

In drafting the Charter, two simple questions arise : (a) what rights are to be included in the Charter and (b) what the content of those rights should be. The answer to those questions may be prompted by certain criteria which can be used as “working tools”, first, for inclusion of a right in the Charter and, second, for determination of the content of that right. Here the following criteria suggest themselves in particular :

1. Recognition of a right in the case-law of the Court of Justice of the European Communities

The first criterion to suggest itself is recognition of a right in the settled case-law of the Court of Justice of the European Communities. This is indeed the “raw material” which is designed to constitute the system of protection of fundamental rights in the European Union.

2. Rights safeguarded in European and International Conventions

A comparable but clearly separate criterion is, in addition, the safeguarding of a fundamental right in related European and international conventions. Here certain distinctions must be made which will determine the order in which recourse will be made to them. The texts to which express reference is made in the Treaties of Maastricht and Amsterdam, that is to say the European Convention on Human Rights (and its Protocols), the European Social Charter (1961) and the Community Charter of the Fundamental Social Rights of Workers (1989), take precedence. It is worth pointing out that those texts, being expressly referred to in the Treaties, constitute sources of Community Law.

Secondly, recourse may be made to other international texts (regional and universal, general and special) for the protection of rights such as, for instance, the United Nations Covenant on Civil and Political Rights and the United Nations Covenant on Economic, Social and Cultural Rights (1966).

3. *The constitutional traditions of the Member States*

A different version of the same criterion is recourse to the constitutional traditions of the Member States (Article 6(2) of the TEU) for the purpose of ascertaining each time whether and with what content a specific right is safeguarded. In that connection two problems arise in particular: (a) whether a right must be expressly laid down or whether it is sufficient for it to be grounded in the Constitution and (b) whether the laying down or grounding of a right in all Constitutions without exception is required or only in the majority of Constitutions. Clarification is also necessary as to whether an overwhelming or a clear majority is required.

4. *Significance of the right for the Community legal order*

In order for a right to be included in the Charter its significance for the Community legal order must always be substantiated. The value of that criterion can be shown if it is borne in mind that the beneficiaries of the system that is being fashioned are the citizens of the European Union and the system is directed at its institutions, with the aim of protecting the citizen vis-à-vis Community powers rather than vis-à-vis any other powers.

On that point it is worth noting that, as the competences of the European Union are gradually broadened to cover new areas, the protection of the European citizen must correspondingly be broadened with the redefinition of rights or the establishment of new rights. The Charter does not therefore aim to provide a solution once and for all to the problem, since it will be enriched in the future “in waves”, with other rights top, in parallel with the progress of European unification.

5. *The degree of institutional development in the European Union*

The above criteria facilitate the task of identifying the rights which mark the current level of protection of the European citizen vis-à-vis Community power. In cases where the further broadening of fundamental rights is considered to be required, the degree of institutional development in the European Union figures as a criterion, with the inclusion in the Charter of

rights which reinforce the democratic and social character of the Union under the rule of law. This is a criterion whose use would contribute to strengthening the system of protection of fundamental rights and the better fulfillment of its task. That prospect finds support in particular in Article 6(2) of the TEU, in which for the first time democracy and the rule of law are declared to be principles of the European Union.

Is the Charter to be binding or declaratory ?

1. One of the preliminary questions which rightly preoccupied the Convention from the beginning of its work is the nature of the Charter, in other words the question whether the Charter will be binding or merely declaratory. The answer is vital, not only for the determination of the ultimate objective of the Convention but also for the choice of method by which the Charter will be drafted and for the shaping of its provisions.

2. Of crucial significance for the answer to that question is of course the content of the mandate given to the Convention by the Cologne Summit. However also significant - and this has not as yet been emphasized as much as it should be - are the provisions of the constitutional texts of the European Union which refer, directly or indirectly, to the need to protect the European citizen vis-à-vis the powers of the Community institutions. Consequently recourse to the content of the mandate is a necessary but not sufficient condition for determining the nature of the Charter. It is vital to clarify, first, the content of the mandate, which forms part of a very important political decision and, second, the related provisions of the Treaties, which have a normative quality.

3. In the relevant passage of the Conclusions of the Cologne European Council, it is stated “at the present stage of development of the European Union, the fundamental rights applicable at Union level should be consolidated in a Charter and thereby made more evident”. It is not, at first sight, easy to understand from the above formulation whether the leaders of the States and Governments were intending to draft a binding or a declaratory text. However, the fact that the term “rights which apply” was used enables the conclusion to be drawn that they had in mind the drafting of a binding text with provisions binding by definition or with provisions which acquire a binding character due to their normative relevance to binding provisions.

4. The development of Article 5, paragraphs 1 and 2, of the TEU bears out that position. Paragraph 2 states that the Union is to respect fundamental rights, as guaranteed by the European Convention on Human Rights, and as they result from the constitutional traditions common to the Member States. In addition, paragraph 1 elevates the principle of rule of law to a fundamental principle of the Union. Since, therefore, paragraph 2 specifies the progress towards establishing a Union governed by the rule of law and paragraph 1 expressly declares the rule of law to be one of its principles, there is a direct requirement to draft a Charter with binding force which will set out the above principle and give it a specific content. The same applies, *mutatis mutandis*, with the reference in Article 6, paragraph 1, of the TEU to the principle of democracy as a principle of the Union. The Convention should, therefore, from the beginning direct itself on the basis of the above provisions to drawing up a text that will be of a binding character, overcoming any contrary arguments, without, however, exceeding the mandate given by the Cologne Summit.

5. It is also worth noting that in Annex IV of the Cologne Conclusions express reference is made to the prospect of incorporating the Charter in the Treaties and by extent, to the establishment of its binding character. Even though that version stands under the condition of the relevant decision of the member-states, the mere mentioning in the Cologne Conclusions of the possibility of incorporation for the Charter, implies for the Convention an obligation independent of its possibility to be realized. It is about the obligation to draft a Charter in a form capable to correspond to the needs dictated by the possibility in the Cologne Conclusions.

March 24, 2000

ENTWURF DER CHARTA DER GRUNDRECHTE DER EUROPÄISCHEN UNION**fundamental.rights@consilium.eu.int**

Brüssel, den 28. März 2000**CHARTE 4183/00****CONTRIB 66****ÜBERMITTLUNGSVERMERK**

Betr.: Entwurf der Charta der Grundrechte der Europäischen Union

Finden Sie bitte nachstehend Anmerkungen der Arbeitsgruppe der deutschen Länder, vorgelegt von Herrn Jürgen. Gnauck, Vertreter des deutschen Bundestags, zu Dokument Charta 4149/00 Convent 13.¹

¹ Dieser Text wurde nur in deutscher Sprache übermittelt.

Thüringer Staatskanzlei • Postfach 997 • 99021 Erfurt

Minister für Bundes- und
Europaangelegenheiten und
Chef der Staatskanzlei

An den
Vorsitzenden des Konvents
zur Ausarbeitung des Entwurfs
einer Charta der Grundrechte der EU
Herrn Bundespräsidenten a.D.
Prof. Dr. Roman Herzog
Sekretariat des Konvents

Fax: 0032-2-285 7837
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Geschäftszeichen:
33/KI-03145

Ihr Zeichen, Ihre Nachricht vom

Telefon

Datum
17.3.2000

**Anmerkungen der Arbeitsgruppe der deutschen Länder zum Vermerk des Präsidiums
CHARTE 4149/00 CONVENT 13**

Neuer Vorschlag für die Artikel 1 bis 12 (jetzt 1 bis 16)

Sehr geehrter Herr Vorsitzender,

das Präsidium hat für die informelle Sitzung des Konvents am 20./21. März 2000 neue Vorschläge für die Artikel 1 bis 12 (jetzt 1 bis 16) eines Entwurfs der Charta der Grundrechte der Europäischen Union vorgelegt. Die deutschen Länder haben sich im Rahmen ihrer Abstimmungsgespräche ein erstes Meinungsbild verschafft. Ich erlaube mir, Ihnen diese Einschätzung zu übermitteln und möchte Sie herzlich bitten, unsere Anregungen im Verlaufe der Diskussion im Konvent zu berücksichtigen.

Mit freundlichen Grüßen

Jürgen Gnauck
Minister

Thüringer Staatskanzlei

Erfurt, 16. März 2000

**Anmerkungen der Arbeitsgruppe der deutschen Länder zur
Erarbeitung eines Entwurfs der Charta der Grundrechte der
Europäischen Union
zu Dokument**

CHARTE 4149/00 CONVENT 13 neuer Vorschlag für die Artikel 1 bis 12 (jetzt 1 bis 16)

Die Arbeitsgruppe der deutschen Länder hat am 14. März 2000 das o.g. Dokument einer ersten Prüfung unterzogen (eine Stellungnahme zu dem Korrigendum vom 16. März 2000 war nicht mehr möglich) und erlaubt sich dazu folgende Anmerkungen:

Generell wird festgestellt, dass eine endgültige Stellungnahme zu den vorgeschlagenen Artikeln erst erfolgen kann, wenn ein alle Artikel umfassender Entwurf der Charta vorliegt, der - insbesondere anhand der Platzierung der einzelnen Artikel im Chartatext - eine systematische Gesamtanalyse ermöglicht.

Zu Artikel 1. Würde des Menschen

Die Europäische Union ist eine Wertegemeinschaft, in der die Würde des Menschen im Mittelpunkt steht. Darum wird ausdrücklich begrüßt, dass im vorliegenden Entwurf die Würde des Menschen als Fundament der Grundrechte an die Spitze der Grundrechte der Charta gestellt wurde. Allerdings wird in Anlehnung an die Erklärung des Europäischen Parlaments von 1989 und an Artikel 1 Grundgesetz für die Bundesrepublik Deutschland folgende Formulierung bevorzugt:
" *Die Würde des Menschen ist unantastbar.* "

Essentielle Anforderung der Länder an den Regelungsgehalt der Charta ist, dass diese eine Aussage zu ihrem Anwendungsbereich enthält. Eine entsprechende Aussage lediglich in der rechtlich unverbindlichen Präambel der Charta wäre nicht akzeptabel. Ausdrücklich unterstützt wird aus diesem Grund der Vorschlag, dem Artikel 1 einen Absatz 2 hinzuzufügen, in dem der Anwendungsbereich der Charta bereichsübergreifend festgelegt wird. Eine auf diese Weise an exponierter Stelle im Chartatext vorangestellte Generalklausel ist für das Verständnis der nachfolgenden Regelungsinhalte der Charta aus Sicht der Länder unabdingbar.

Zu Artikel 2. Recht auf Leben

Der vorgelegte Formulierungsvorschlag wird ausdrücklich unterstützt.

Zu Artikel 3. Recht auf Unversehrtheit

Zu Absatz 1 wird die vorgelegte Formulierung unterstützt.

Zu Absatz 2 melden die Länder erheblichen Prüfvorbehalt an. Der dort gewählte Wortlaut wird der Komplexität der aufgeworfenen Probleme nicht gerecht.

Es wird vorgeschlagen, einzuhaltende Grundsätze (unter anderem für Medizin und Biologie als potentielle bioethische Problembereiche), etwa unter enger Bezugnahme auf die Würde des Menschen und die körperliche Unversehrtheit besser allgemein und in einem separaten Artikel zu formulieren.

Grundsätzlich wird darauf hingewiesen, dass nicht alle Mitgliedstaaten dem Übereinkommen des Europarates über Menschenrechte und Biomedizin beigetreten sind.

Die unter Absatz 2 (Spiegelstriche 1 bis 3) aufgeführten Grundsätze erscheinen stark interpretationsbedürftig; eine Aufnahme in den Chartatext wird daher abgelehnt.

Wo liegt die Grenze zwischen lauterer und verwerflichen eugenischen Praktiken?

Hat die Nutzung des menschlichen Körpers oder einzelner Teile zur Erzielung von Gewinnen (z.B. im Falle des Blutplasmas) ausschließlich negativen – also verbotswürdigen - Charakter?

Generell sollte geprüft werden, ob nicht bereits Artikel 1 i.V.m. Artikel 3 Absatz 1 ausreichenden Schutz vor Missbrauch für die aufgeworfenen Problembereiche umfasst.

Zu Artikel 4. Verbot der Folter und der unmenschlichen Behandlung

Der Formulierungsvorschlag wird zur Kenntnis genommen.

Zu Artikel 5. Verbot der Sklaverei und der Zwangsarbeit

Der Textvorschlag wird inhaltlich unterstützt; jedoch besteht weiterer Prüfbedarf hinsichtlich der hierzu erforderlichen Schrankenwirkung. Einem Missverständnis dahingehend, dass zwar das Verbot von Zwangs- und Pflichtarbeit, nicht aber dessen Einschränkungen aus der EMRK übernommen werden sollten, muss vorgebeugt werden.

Zu Artikel 6. Recht auf Freiheit und Sicherheit

Der Begriff "Sicherheit" erscheint aus Ländersicht weiterhin nicht akzeptabel. Ist er im Lichte der EMRK zu sehen oder eröffnet die Formulierung weitergehende Ansprüche gegenüber den Mitgliedstaaten und ihren Untergliederungen in den Bereichen Justiz und Inneres? Eine Eröffnung von Leistungsrechten in den genannten Bereichen wird ausdrücklich abgelehnt

Sind mit den in Satz 2 genannten "besonderen Fällen" die in Artikel 5 EMRK festgelegten Fälle gemeint oder soll damit eine Art Verhältnismäßigkeitsgrundsatz in die Norm eingefügt werden? Jedenfalls wird Wert auf das kumulative Vorliegen der Voraussetzungen "in besonderen Fällen" und "auf die gesetzlich vorgeschriebene Weise" gelegt.

Zu Artikel 7. Recht auf wirksame Beschwerde

Es wird vorgeschlagen, die Überschrift umzuformulieren in "Rechtsweggarantie", und den Artikel gegebenenfalls wie folgt zu fassen: "Jeder Person, deren Rechte und Freiheiten durch Maßnahmen der Europäischen Union oder in Anwendung des Gemeinschaftsrechts verletzt worden sind, steht der Rechtsweg offen."

Vor der Verankerung einer Rechtsschutzgarantie müsste geklärt werden, durch welche Gerichte (EuGH, nationale Gerichte) der Rechtsschutz gewährt werden soll.

Zu Artikel 8. Recht auf ein unparteiisches Gericht

Soweit hier die generelle Forderung nach einer öffentlichen Verhandlung enthalten sein sollte, wird dies strikt abgelehnt, da dieser Forderung berechnete Interessen Dritter und unter Umständen auch die des Angeklagten entgegenstehen können. Artikel 6 Absatz 1 EMRK ermöglicht zwar den Ausschluss der Presse und Öffentlichkeit zum Schutz der Prozessparteien. Zeugen wären aber von dieser Regelung nicht umfasst.

Die Aufnahme eines Satzes 2 zur Prozesskostenhilfe wird grundsätzlich skeptisch gesehen. Ist eine solche Regelung notwendig? Reichen die mitgliedstaatlichen Regelungen hierzu nicht aus? Unabhängig davon wird äußerster Wert darauf gelegt, festzustellen, dass der Begriff "unentgeltliche Prozesskostenhilfe" auch Stundungen, Ratenzahlungen, Darlehen u.ä. umfasst. Die Garantie unentgeltlicher Prozesskostenhilfe ohne konditionalen Bezug zur Unerlässlichkeit dieser Hilfe, um den Zugang zum Recht zu gewährleisten, wird strikt abgelehnt.

Zu Artikel 9. Recht der Verteidigung

Der vorgelegte Textentwurf wird unterstützt.

Zu Artikel 10. Keine Strafe ohne Gesetz

Zu Absatz 1 wird die vorgelegte Formulierung unterstützt.

Zu Absatz 2 gibt es derzeit keine Anmerkungen.

Zu Artikel 11. Recht, wegen derselben Sache nicht zweimal vor Gericht gestellt oder bestraft zu werden

Nach Art. 54 des Schengener Durchführungsübereinkommens (SDÜ) und Art. 1 des Abkommens vom 25. Mai 1987 zwischen den Mitgliedstaaten der Europäischen Gemeinschaften über das Verbot der doppelten Strafverfolgung verurteilte Urteile aus den Vertragsstaaten die Strafklage in Deutschland.

Allerdings sehen Artikel 55 SDÜ bzw. Artikel 2 des Abkommens von 1987 eine Reihe von Ausnahmemöglichkeiten vor, die in dem dort geregelten Rahmen abweichende Erklärungen zulassen. Hiervon haben die Mitgliedstaaten, darunter auch die Bundesrepublik Deutschland, Gebrauch gemacht. Es liegt eine entsprechende deutsche Erklärung zu dem Abkommen von 1987 vor.

Das Abkommen ist im Verhältnis Deutschland, Dänemark, Frankreich, Italien, den Niederlanden, Portugal und Österreich bereits anwendbar.

Zu Artikel 12. Achtung des Privatlebens

Die vorgelegte Textfassung suggeriert das Vorliegen eines Leistungsrechtes. Es wird vorgeschlagen, den Artikel durch Aufteilung in verschiedene Artikel zu entzerren. Zunächst sollte das Persönlichkeitsrecht als zentrales Freiheitsrecht formuliert werden. Nach hiesiger Sicht wäre der Begriff der "Ehre" davon erfasst und könnte daher entfallen.

Der Schutz der Wohnung sowie die Wahrung des Brief-, Post- und Fernmeldegeheimnisses sollten getrennt und in unterschiedlichen Artikeln niedergeschrieben werden.

Zu Artikel 13. Familienleben

Die Einfügung eines solchen Artikels wird grundsätzlich für verzichtbar erachtet. Es wird darauf hingewiesen, dass die EU keine familienpolitische und familienrechtliche Zuständigkeit besitzt. Die Formulierung darf keinen Schutzauftrag der EU oder eine durch die EU zu sichernde Institutsgarantie herleiten. Hilfsweise wird folgende Formulierung für Absatz 1 vorgeschlagen: "*Jede Person hat das Recht auf Achtung ihrer Ehe und Familie*".

Die vorliegende Formulierung zu Absatz 2 ist obsolet, da sie lediglich festzustellen vermag, dass die Mitgliedstaaten die Ausübung des Rechts in differenzierter Form regeln.

Die Länder sprechen sich für die Streichung des Absatzes 3 aus, da er in der vorliegenden Formulierung ein umfassendes Leistungsrecht gewähren würde.

Zu Artikel 14. Gedanken-, Gewissens- und Religionsfreiheit

Derzeit gibt es hierzu keine Anmerkungen. Es wird jedoch darauf hingewiesen, dass die vorliegende Formulierung das "weltanschauliche Bekenntnis" außer Acht lässt.

Zu Artikel 15. Freiheit der Meinungsäußerung

Derzeit sind keine Anmerkungen veranlasst.

Artikel 16. Recht auf Bildung

Absatz 1 suggeriert in der vorliegenden Form ein umfassendes Leistungsrecht und sollte daher im Sinne eines Elementarschutzes und unter dem Gesichtspunkt des Gleichheitssatzes formuliert werden:

„Gleicher und gerechter Zugang zu vorhandenen Bildungsstätten wird entsprechend den Fähigkeiten und Möglichkeiten des einzelnen eröffnet.“

Es wäre deutlich zu machen, dass die Mitgliedstaaten gleichen und gerechten Zugang zu Bildungsstätten nur im Rahmen der vorhandenen Kapazitäten gewährleisten müssen. Die Verpflichtung zur Schaffung neuer, darüber hinausgehender Kapazitäten muss ausgeschlossen sein.

Gegen Absatz 2 bestehen erhebliche Bedenken. Er muss gestrichen werden, da er in der vorliegenden Form die Gründung von Lehranstalten jeglicher staatlicher Kontrolle entziehen würde.

Absatz 3 muss prinzipiell aus Artikel 16 ausgegliedert werden.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 28 March 2000**CHARTE 4184/00****CONTRIB 67****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter comments on document Charte 4149/00 Convent 13 submitted by Mr. Gunnar Jansson, Representative of the Finnish Parliament. ¹

¹ This text has been submitted in English and Finnish language.

Mr Gunnar Jansson,
Representative of the Finnish Parliament,
Vice-president of the Representatives
of the National Parliaments

17 March 2000

COMMENTS ON DOCUMENT "CONVENT 13"

Article 8. Right to a fair trial

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Free legal aid shall be provided to those who lack sufficient resources insofar as such aid is indispensable to ensure the effectiveness of access to justice.

Proposed new Article 8:

Everyone has the right to have his case dealt with appropriately and without undue delay by a competent court of law or other authority, as well as to have a decision pertaining to his rights or obligations reviewed by a court of law or other independent organ for the administration of justice.

The consideration of a case by a court of law or other independent organ for the administration of justice shall be public, and the person concerned shall have the right to be heard, the right to receive a reasoned decision and the right to appeal as well as other guarantees of a fair trial and good governance before the court of law or other independent organ for the administration of justice.

Statement of reasons

Paragraph 1 in Article 6 of the European Convention of Human Rights has proved to be difficult to interpret, as it focuses on the consideration of criminal charges and civil litigation relating to the rights and obligations of the individual. However, in its case law the European Court of Human Rights has interpreted the provision as entailing a right to a judicial decision even in respect of cases falling within the sphere of public law, such as withdrawal of an authorisation to engage in business activities or other comparable authorisation, or conflict of interests between a public authority and the individual. Therefore the wording of Article 8, paragraph 1 of the Charter has been extended in scope, in comparison with the European Convention of Human Rights, so as to cover all kinds of cases pertaining to the rights and obligations of the individual as well as the consideration of such cases before competent (administrative) authorities other than courts of law.

Paragraph 1 also provides everyone with the right to appeal against decisions concerning his rights or obligations. This addition makes it possible to restrict the scope of Article 7 of the Charter, in the same way as Article 13 of the European Convention, to exclusively comprise violations of those rights and freedoms which are protected by the Charter.

Paragraph 2 concerns the guarantees of a fair trial and good governance. These include guarantees additional to those falling within the scope of paragraph 1, which are an integral part of the right to a fair trial and good governance. The paragraph enlists as such guarantees the publicity of proceedings, the right to be heard and the right to receive a reasoned decision which traditionally have been considered the most important guarantees of legal protection. Cost-free legal assistance would be part of the guarantees of a fair trial, although it is not explicitly mentioned.

I also agree with the statement of Mr Paavo Nikula and Mrs Tuija Brax about the structure and linguistic form of the Charter of the Fundamental Rights in their proposal.

Gunnar Jansson
Representative of the Finnish Parliament,
Vice-president of the Representatives of the National Parliaments

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 28 March 2000**CHARTE 4185/00****CONTRIB 68****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter comments on document Charte 4149/00 Convent 13 submitted by Mr. Paavo Nikula, Personal Representative of the Finnish Government, and Mrs Tuija Brax, Representative of the Finnish Parliament. ¹

¹ This text has been submitted in English and Finnish language.

Mr Paavo Nikula,
Personal Representative of the Finnish Government
Mrs Tuija Brax, Representative of the Finnish Parliament

17 March 2000

COMMENTS ON DOCUMENT "CONVENT 13"

Structure of the Charter of fundamental rights

In our opinion the scope of application of the Charter, referred to in the statement of reasons for Article 1, is an issue that must be regulated in the first part of the document. Furthermore, the issue is of such significance that it should rather be included in a separate Article than merely be mentioned in the preamble. We also find it important to have a specific entity covering all the horizontal questions. For these reasons we would suggest the following kind of structure:

The Charter of fundamental rights would have a preamble, and Part I would contain extensive provisions on all the horizontal questions.

Example:

Part 1 - Horizontal questions

Article 1 - Scope of the Charter

Article 2 - General derogation clause

Article 3 - Charter and domestic provisions on fundamental rights

Article 4 - Minimum level of protection

Part 2 of the Charter would contain the Articles on individual rights to be protected (in consecutive order starting from Article 1), basically as suggested in Convent 13. Part 3 of the Charter would state reasons for each right (similarly in consecutive order starting from 1), basically as suggested in Convent 13. (As an example for the relationship between Part 2 and Part 3 of the Charter, see the comparable structure in Parts I and II of the Revised European Social Charter.)

Wording

In order to avoid unnecessary problems of interpretation, one should make sure that the internal structures of Articles are consistent and the wording is precise. It is not necessary to refine the wording of the text until after agreement on the substance of the Articles has been reached. However, the following aspects relating to the structure of the Charter should be paid attention to already at this stage:

- The Articles should be written in the form of uncontested rights (as in Article 2, paragraph 1) or prohibitions (as in Article 2, paragraph 2). This kind of a formulation is justified as it cannot be interpreted as extending the competence or tasks of the European Union. In this respect provisions ensuring (Article 13, paragraph 3) or guaranteeing a certain right (Article 16, paragraph 3) allow different interpretations. Similarly the Finnish translation of Article 15, paragraph 2 leaves room for interpretation, although the English wording is less problematic.

- The aim with the formulation of Articles in Convent 13 has been to avoid derogation clauses relating to individual rights. However, there is a specific derogation clause in the last sentence of Article 6. The internal structure of the Articles should be consistent. The Convention must determine the legal meaning it wishes to give for a certain derogation clause, in case such derogation clauses are intended to be used.
- The requirement of consistency in the wording, referred to above, also concerns the requirement that limitations must be prescribed by law. Such a requirement has been included in certain Articles (second sentence in Article 6, and paragraph 2 of Article 13). It must be clearly indicated that this kind of a requirement does not entail an obligation upon the Member States to take legislative measures, for example.

Article 4. Prohibition of torture and inhuman treatment

No one shall be subjected to torture or to inhuman and degrading treatment.

Proposed new Article 4:

No one shall be subjected to torture or to inhuman or degrading treatment, nor expelled to a State where he would be in danger of being subjected to the death penalty, torture or other inhuman treatment.

Statement of reasons

The principle of non-refoulement is an established principle in the case law of the European Court of Human Rights, being an integral element of interpretation of Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. (see e.g. the Soering Case, Eur. Court of H.R., Judgment of July 7, 1989; and especially the Chahal Case, Eur. Court of H.R., Judgment of November 15, 1996).

Article 12. Respect for private life

Everyone has the right to respect for his privacy, his honour, his home and the confidentiality of his communications.

Proposed new Article 12:

Everyone has the right to protection of his private and family life, his honour, his home and the confidentiality of his communications.

Statement of reasons

The substance of Article 12 has been changed so as to make it a clear right. The protection of family life included in Article 8 of the European Convention has been included; see statement of reasons for Article 13.

Article 13. Family life

- 1. Everyone has the right to respect for his family life.**
- 2. Everyone has the right to marry and to found a family, according to the laws of the Member States governing the exercise of this right.**
- 3. Protection of the family on a legal, economic and social level shall be ensured.**

Proposed new Article 13:

Article 13. Right to marriage

Everyone has the right to marry and to found a family according to the national laws governing the exercise of this right.

Statement of reasons

The modernised version of the right to marriage corresponds to Article 12, paragraph 2 of the European Convention of Human Rights. The protection of family life (Convent 13: paragraphs 2 and 3 of Article 13) is included in the proposed new Article 12 in which it is given as a right of the individual. This kind of a formulation and structuring is closer to the wording of the European Convention, as well as its object and purpose.

Article 15. Freedom of expression

- 1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.**
- 2. Art, science and research shall be free of constraint.**

Statement of reasons

See the statement of reasons for Article 16.

Article 16. Right to education

1. No person shall be denied the right to education, including in particular the right to receive free compulsory education.
2. The founding of educational establishments shall be free of constraint.
3. The right of parents to have their children educated and taught in accordance with their religious and philosophical convictions shall be guaranteed.

Proposed new Article 16:

1. **Everyone has the right to education**, including in particular the right to receive free compulsory education.
2. The founding of educational establishments shall be free of constraint.
3. The right of parents to have their children educated and taught in accordance with their religious and philosophical convictions shall be guaranteed.

Statement of reasons

The form of a positive right in paragraph 1 is better and corresponds to the interpretation of the European Convention of Human Rights by the Strasbourg organs.

Paragraph 3 has a link to the separate Article on the rights of the child, and these two should later be dealt with together. The Convention on the Rights of the Child emphasises the principle of the best interests of the child, apart from the rights of the parents.

*The last two sentences in the statement of reasons, concerning academic freedom, should be removed and inserted in the statement of reasons for paragraph 2 of Article 15. Apart from academic freedom, the principle of autonomy of university education should be mentioned. (“The principles of academic freedom and **autonomy of university education**...”).*

We also agree with the statement by Mr Gunnar Jansson about article 8 of the Charter of the Fundamental Rights in his proposal.

Paavo Nikula
Personal Representative of the Finnish Government

Tuija Brax
Representative of the Finnish Parliament

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE**fundamental.rights@consilium.eu.int**

Bruxelles, le 28 mars 2000**CHARTE 4186/00****CONTRIB 69****NOTE DE TRANSMISSION**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne

Veillez trouver ci-après des propositions d'amendements relatives au document
Charte 4149/00 Convent 13, présentées par M. Ben Fayot, Représentant du Parlement
luxembourgeois. ¹

¹ Ce texte a été soumis en langue française seulement.

Monsieur Roman Herzog
Président
de la Convention pour l'élaboration d'une charte des droits fondamentaux de l'UE
Bruxelles

Luxembourg, le 17 mars 2000

Monsieur le Président,

Je vous prie de trouver ci-joint quelques propositions d'amendement concernant les articles 1 à 15 (Charte 4149/00 CONVENT 13).

- **Quant à l'exposé des motifs concernant l'article 1**, je suis d'avis qu'il n'est pas indiqué de le compléter par un paragraphe 2 d'une tout autre nature. Il convient plutôt d'en faire un préambule général pour lequel il suffit d'une phrase: " Les dispositions de la présente charte sont applicables aux institutions et organes de l'Union dans le cadre des compétences et des tâches qui leur sont attribuées par les Traités ainsi qu'aux Etats membres lorsqu'ils mettent en oeuvre le droit communautaire." La dernière phrase est à biffer. Elle ne fait que répéter la première, mais par la négative, et elle crée dès l'abord une impression "négative" quant à la charte.

- **Article 8** : La deuxième phrase peut être modifiée en remplaçant "octroyer" par "accorder" (octroyer, c'est imposer de force). La formulation peut être plus ramassée.

" Une aide juridique gratuite est accordée à ceux qui ne disposent pas de ressources suffisantes pour leur assurer un accès effectif à la justice."

- **Article 9** : Remplacer la 2e partie de la phrase par une nouvelle phrase. L'article se lirait ainsi: " Tout accusé est présumé innocent jusqu'à ce que sa culpabilité ait été légalement établie. Le respect des droits de la défense est garanti."

- **Article 13** : Le paragraphe 2 serait à reformuler de la façon suivante:

" 2. Toute personne a le droit de se marier et de fonder une famille conformément aux lois des Etats membres (relatives à l'exercice de ce droit)."

L'élément de phrase entre parenthèses peut être omis à mon avis.

- **Article 15** : Ne suffit-il pas, dans le 2e paragraphe, de ne citer que l'art et la science, la recherche étant une sous-catégorie des deux?

" 2. L'art et la science sont libres. "

- **Article 16** : Cet article comportant deux points de vue - celui de l'enfant (et/ou de l'adulte) et celui des parents - , le paragraphe 2 qui soulève d'importants problèmes dans certains pays peut être omis.

De nombreux problèmes d'interprétation peuvent surgir à cause de l'imprécision et de la multiplicité des termes employés: éducation, instruction, enseignement. L'éducation concerne une approche plus générale, les termes d'instruction et d'enseignement sont ciblés sur l'acquisition de connaissances et de méthodes.

On pourrait proposer la formulation suivante:

" Art. 16 Droit à l'instruction

1. Nul ne peut se voir refuser le droit à l'instruction qui comporte notamment la faculté de suivre gratuitement l'enseignement obligatoire.

2. Le droit des parents d'assurer l'instruction de leurs enfants conformément à leurs convictions est respecté. "

Ce recentrage est indiqué puisqu'il semble acquis qu'il y aura un article sur les droits des enfants dans lequel on pourra revenir sur le problème plus général de l'éducation.

Veuillez agréer, Monsieur le Président, l'expression de mes sentiments distingués.

Ben Fayot
représentant de la Chambre des Députés
du Grand-Duché de Luxembourg

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE**fundamental.rights@consilium.eu.int**

Bruxelles, le 28 mars 2000**CHARTE 4187/00****CONTRIB 70****NOTE DE TRANSMISSION**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne

Veillez trouver ci-après des observations sur le document Charte 4149/00 Convent 13, présentées par M. Stefano Rodotà, Représentant personnel du Gouvernement de l'Italie. ¹

¹ Ce texte a été soumis en langue française seulement.

Observations sur la proposition de rédaction des articles 1-16 de la Charte des droits fondamentaux de l'Union européenne

art. 3

La référence à certains principes du n° 2 ne peut être limitée uniquement au "domaine de la médecine et de la biologie". En effet, l'intégrité physique et psychique des individus est désormais mise également en danger par des activités d'ordre commercial (comme cela a lieu, par exemple, aux Etats Unis avec les services génétiques fournis directement aux personnes d'organisations d'entreprises). Il faut par conséquent que les principes soient affirmés d'une manière générale, par exemple comme suit:

- Aucune intervention concernant l'intégrité physique et psychique d'un individu ne peut être effectuée sans le consentement libre et informé de l'intéressé.
- Le corps humain et ses parties ne peuvent en aucun cas constituer une source de gain.

L'éventuelle insertion dans la Charte de principes concernant l'eugénétique exige d'être mieux précisés en raison de la nécessité de définir exactement ce que l'on entend justement par "eugénétique", étant donné l'ampleur croissante des possibles interventions génétiques; et de la référence à la clonation qui exige pour le moins une spécification portant sur la "clonation reproductive d'êtres humains".

art. 12

Ajouter "de son propre honneur et de la liberté et du secret de ses communications".

art. 15

Modifier le n° 1 de la manière suivante (voir la Déclaration universelle des droits de l'homme des Nations Unies): "Ce droit comprend la liberté d'opinion et la liberté de chercher, recevoir et diffuser des informations...".

Il est en outre indispensable d'introduire une référence au fait que ce droit est concrètement limité non seulement par de possibles ingérences d'autorités publiques ou contraintes liées aux frontières, mais aussi par des conditionnements économiques découlant surtout des concentrations de la propriété des médias. Il faudrait par conséquent reformuler comme suit la partie finale du n° 1: "sans qu'il y ait possibilité d'ingérences des autorités publiques, de limitations de frontière et de conditionnements découlant des concentrations de la propriété des médias.

Je me suis borné à traiter uniquement les questions les plus importantes. Je suis toute la matinée au numéro 06/6818636

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 28 March 2000**CHARTE 4188/00****CONTRIB 71****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter comments and draft amendments on document Charte 4149/00 Convent 13 submitted by Mr. Andrew Duff, member of the European Parliament. ¹

¹ This text has been submitted only in English language.

Andrew Duff

Mr Roman Herzog
President of the Convention
European Union Charter of Fundamental Rights

17 March 2000

1. Explanatory Statements

I write concerning the nature and style of the explanatory memoranda.

On the presumption that the Charter will have mandatory effect upon European Union institutions and agencies, we need to clarify with some urgency the legal force of the accompanying statements.

As I understand it, the proposal of the Praesidium is that the memoranda will have official status; they will be bound formally within the Charter, although they should not themselves carry legal force. The statements will include a definition of the proposed scope of the Article. Their purpose is to explain to those who need to interpret the Charter the intentions of the drafting Convention, and, in particular, to clarify its relationship with the EU Treaties, the ECHR and other international treaties. They are an aid to making the Charter justiciable.

If this understanding is correct, the Convention will not need to crawl over the wording of the explanatory statements with the same rigour as we are bringing to the drafting of the Articles. But we shall have to consider with some care their form and utility.

At the moment, there is no systematic approach to the drafting of the explanatory statements. May I propose that the Convention adopts explicit guidelines in order to encourage a uniformity of approach and comprehension?

May I also propose that each statement contains three specific paragraphs explaining:

1. How the Article has drawn from the ECHR, and why. Where relevant, the articles and protocols of the ECHR should be reproduced in full.
2. How the Article has drawn from other international treaties, and why; and where these documents may be most easily found by a non-specialist readership.
3. The connection between the Article and the competences of the European Union; how it might effect the operation of the EU.

Of these three elements, it is the last which, in my view, may give rise to the greatest complication.

The European Union enjoys no general catalogue of competences. The Treaties are in what one might call a pre-constitutional order. Much rationalisation and simplification is required before the citizen could know clearly how power is exercised within the Union, the responsibilities of each institution and their inter-relationship. However, it is certainly possible to cite the relevant articles of the Treaty, as well as to describe the general principles of European Community law, the relevant jurisprudence of the European Court of Justice and the current *acquis communautaire* in terms of policy. It is also possible — and may certainly be useful for the citizen — for the specific EU decision-making process to be described in a fairly technical manner in each policy area.

This exercise will be absorbing and challenging. I am in no doubt that it will in part be controversial, especially for those who either do not know or who choose not to accept the present scale and scope of European integration. But it must nevertheless be done and done well if the Charter is to remain focused on the European Union and all its works.

I would recommend that we recruit a number of academic specialists to help us in that task, although, naturally, ultimate responsibility for what goes into the explanatory memoranda rests with the Convention. You will see that the European Parliament, in its resolution of yesterday, has called, among other things, for an academic colloquy.

Please accept my compliments.

ANDREW DUFF M.E.P.

Andrew Duff

Mr Roman Herzog
President of the Convention
European Union Charter of Fundamental Rights

17 March 2000

Proposed Amendments

I have the honour to propose various amendments to the Articles contained in CHARTE 4149/00. Some are stylistic, in the interests of plain speech.

Article 2

1. ...
2. **No one shall be condemned to death or executed.**

Article 3

Right to integrity

1. **Everyone's physical and mental integrity shall be respected.**
2. **In the fields of medicine and biology,**
 - **human beings shall not be cloned**
 - **eugenic practices shall be prohibited**
 - **patients shall have the right to informed consent**
 - **the human body and its products shall not be made a source of financial gain.**

Article 13

1. **Everyone's family life or partnership shall be respected.**
2. ...
3. **The legal, social and economic interests of the family or cohabiting partner shall be protected.**

Note: Non-conventional families are now so common in several member states, and their number on the increase, that a failure to recognise this phenomenon explicitly will cause widespread concern and dismay. It is vital that the Charter reflects contemporary society if it is to resonate within it.

ANDREW DUFF M.E.P.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 24 March 2000**CHARTE 4189/00****CONTRIB 72****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a contribution (motion tabled by the PDS grouping in the German Bundestag) by Mrs Sylvia Kaufmann, Member of the European Parliament. ¹

¹ This text has been submitted in German, English and French languages.

German Bundestag
13/2457
13th electoral term
27.09.95

Printed Paper

**Motion
tabled by the PDS grouping**

Basic rights for persons living in the European Union

The Bundestag is requested to adopt the following motion:

The Federal Government is called upon

1. To take active steps to ensure that the statutory anchoring of the individual and collective basic rights of persons living in the European Union in the Treaty on European Union is placed on the agenda of the 1996 Intergovernmental Conference;
2. To exert its influence towards the 1996 Intergovernmental Conference resulting in the Treaty on European Union being extended to cover basic rights for all persons living in the European Union, enforceable before the European Court of Justice;
3. To work towards amending the Treaty on European Union as regards Union citizenship, with the aim of eliminating the distinction between citizens of the Member States and persons from non-member states to the extent that equal personal, political, social, economic and cultural rights are guaranteed for all persons with permanent residence in the European Union.

These basic rights must correspond to the following provisions:

I. Personal rights

Protection of human dignity

- (1) The dignity of man shall be inviolable. To respect and protect it shall be the duty of all public authority.
- (2) It shall be the duty of every person to recognise the dignity of all other persons. All persons shall acknowledge each other as equals, with all their differences.
- (3) It shall be the right of all persons that their dignity be respected, even at the time of death.

Right to life and safety

- (1) Everyone shall have the right to life, to respect for his physical, mental and spiritual integrity, as well as to personal liberty and safety.
- (2) No one may be sentenced to death, or subjected to torture or to treatment or punishment of an inhuman or degrading nature.
- (3) No one may be subjected to medical, biological or other scientific experiments without their voluntary consent or as a result of exploitation of a situation of personal distress.

Equality

- (1) All persons shall be equal before the law.
- (2) No one may be discriminated against or favoured on grounds of sex, sexual identity, homeland and origin, ethnic affiliation, parentage, nationality and language, as well as religious, ideological or political convictions. Persons with physical, mental or spiritual impairments or with disabilities may not be discriminated against.
- (3) Men and women shall have equal rights. The equal participation of both sexes in all social fields shall be established and safeguarded.
- (4) In the event of existing inequalities, the necessary equilibrium shall be ensured in favour of the disadvantaged.

Free development of personality

- (1) Everyone shall have the right to free development of his personality insofar as he does not violate the rights of others or offend against constitutional order.
- (2) Every woman shall have the right to decide whether to carry a child through to the full term of pregnancy.

Personal liberty

- (1) The liberty of the individual shall be inviolable. It may only be restricted pursuant to a law and taking into account the forms prescribed therein.
- (2) Every person arrested or taken into custody shall be informed, without delay, of the reason for the deprivation of his liberty and the agency which occasioned such deprivation. The next of kin shall be entitled to information concerning the deprivation of liberty. Upon the request of the person arrested or taken into custody, other persons shall also be informed of the arrest or taking into custody, without delay.
- (3) Every person arrested or taken into custody shall, within 24 hours, be brought before the responsible judge, who shall decide on the arrest or taking into custody. Before each judicial decision concerning an order for, or the continuation of, deprivation of liberty, the person involved shall be given the opportunity to call in a legal counsel of his choice.
- (4) No person retained in custody may be subjected to physical or spiritual abuse or harassment.
- (5) No one may be extradited to a country in which the danger exists of him being sentenced to death or tortured.

Freedom of conscience and religion

- (1) Everyone shall have the right to freedom of conscience, religion and thought, as well as freedom of ideological creed.
- (2) The right to conscientious objection shall be guaranteed. Persons who take avail of this right may not be discriminated against.
- (3) Examinations of creed shall be prohibited.
- (4) No one may be compelled to participate in a religious or ideological act, or be prevented from such participation by means of coercion.

Freedom of expression and information

- (1) Everyone shall have the right to freely express his opinion. Freedom of the press and freedom of reporting by means of radio, television and film shall be guaranteed.
- (2) These rights shall include the freedom to obtain information, without hindrance, from generally accessible sources or other legally open sources.
- (3) These rights shall be limited by the statutory provisions for the protection of youth, the preservation of dignity of women and the personal rights of the individual.
- (4) War propaganda shall be prohibited. All advocacy of national and religious hatred, as well as nationalistic, racist, fascist, anti-Semitic and sexist propaganda, shall be prohibited.

Protection of privacy

- (1) Everyone shall have the right to respect and protection of his personal sphere. The confidentiality of non-public communications shall be inviolable.
- (2) Respect of the privacy of posts and telecommunications shall be guaranteed.

Inviolability of the home

- (1) The home shall be inviolable.
- (2) Searches may only be carried out on the order of a judge.

Data protection

- (1) Everyone shall have the right to his personal data and to inspect files pertaining to his person.
- (2) This right shall include the entitlement to consent to the recording, storage, processing, forwarding, correction, or other use of personal data, as well as their contents. Restrictions shall only be permissible by law for persons holding public office.

Freedom of movement

- (1) All persons shall have the right to freedom of movement.
- (2) The right to reside and settle at any desired location may only be restricted by, or pursuant to, a law.

Right of asylum

- (1) Persons persecuted on political, ideological, ethnic or religious grounds, or because of their sex, their sexual identity or a disability, shall have the right of asylum.
- (2) Persons seeking asylum may not be deported or extradited to a country in which the danger exists of their being sentenced to death, tortured, persecuted or subjected to any other kind of repression.
- (3) The right of war refugees and persons in distress to admittance shall be guaranteed.

Protection of minorities

- (1) All persons shall be free to profess their affiliation to a national minority or ethnic group and to style their life accordingly within the framework of constitutional order.
- (2) The entitlement of national, ethnic and religious minorities to protection and promotion of their identity and culture shall be guaranteed.

II. Rights of shaping policy

Right to political participation

- (1) The right of all persons to political participation shall be guaranteed.
- (2) It shall be asserted by means of general, direct, free, equal and secret elections and votes, as well as manifold policy-making and control rights of the individual and social groups.
- (3) Everyone shall have the right to timely and sufficient participation in the decision-making process in the case of public affairs affecting his person.

Freedom of assembly

All persons shall have the right to assemble peaceably without permission.

Freedom of association

- (1) All persons shall have the right to form and join associations. All associations shall have the right to define their internal rules and regulations freely and independently.

- (2) No one may be compelled to join an association.
- (3) The internal rules and regulations of political parties, associations, citizens' groups and initiatives which are devoted to public affairs and which have an influence on the formation of public opinion, must conform to democratic principles. The right to participate in the formation of political will shall be guaranteed.

Right of petition and right to popular initiatives

- (1) Everyone shall have the right to address requests or complaints to the competent agencies and to the parliaments on the national and European level. Everyone shall be entitled to a reply within a reasonable period of time, together with a justification.
- (2) The right to popular initiatives, petitions and referendums in order to enact, amend, repeal or prevent legal acts and political decisions by the European Union shall be guaranteed.

III. Social, economic and cultural rights

Protection of the family and lifestyle

- (1) All persons shall have the right to freely select their type of lifestyle and to establish corresponding cohabitations. All lifestyles shall enjoy equal respect, as well as legal, economic and social protection.
- (2) Special social assistance shall be provided for single parents, cohabitations with numerous children and cohabitations including disabled members.
- (3) Persons who raise children or support and care for persons in need of help within a common household shall be entitled to protection and assistance, as well as social consideration. The compatibility of gainful employment, participation in public life and parenthood shall be promoted.

Children and youths

- (1) Children and youths shall have the right to respect of their dignity as independent personalities. The development of their personalities shall be specially promoted in accordance with their growing skills and needs and they shall be enabled to act independently. They shall enjoy the special protection of society.
- (2) Every child shall be entitled to care and support. The body politic shall promote nursery schools and youth centres, regardless of their sponsorship.
- (3) Children and youths shall be entitled to free upbringing, education and training corresponding to their skills, regardless of their origins and their economic situation.
- (4) Children and youths shall be protected against physical and mental neglect, punishment and maltreatment and sexual abuse. Should the well-being of children and youths be endangered, particularly by the failure of persons having parental powers, the body politic shall be obliged to guarantee the necessary help.
- (5) Child labour shall be prohibited.

Right of ownership

- (1) Property and the right of inheritance shall be guaranteed.
- (2) Property shall impose duties. Its use shall also serve the public weal. It may not impair basic rights and the natural bases of existence.
- (3) Expropriation shall be permitted only in the interests of the public weal. It may only be effected under the provisions pursuant to law and in return for suitable compensation.

Environmental protection

- (1) Everyone shall have the right to protection and preservation of his natural environment. All measures necessary for the preservation, restoration and safeguarding of the natural bases of existence shall be taken.
- (2) Animals shall be protected against avoidable suffering and injury.
- (3) Public and private projects shall be subject to proof of their environmental compatibility pursuant to the provisions of a law.

Right to work and occupational liberty

- (1) Everyone shall have the right to work and labour promotion.
- (2) Everyone shall have the right to choose freely his occupation and place of work and to practise his occupation freely.
- (3) Everyone shall be entitled to humane working conditions which guarantee the protection of his health and safety.
- (4) No one may be arbitrarily denied work, and no one may be forced to perform a specific job.

Freedom of coalition, collective bargaining autonomy, co-determination

- (1) Everyone shall have the right, in order to assert his interests, to form and join trade unions or other associations aimed at shaping working and economic conditions, and to engage freely in their activities.
- (2) Collective bargaining autonomy, the right to strike and other forms of industrial action aimed at safeguarding the interests of the employees shall be guaranteed. Lockouts shall be prohibited.
- (3) Employees shall have the right to regular information concerning the economic and financial situation of their company.
- (4) The right of co-determination of employees in all decisions which may affect their interests shall be guaranteed.

Social protection

- (1) Everyone shall have the right to protection of his health and to health care.
- (2) All persons shall have the right to social security.
- (3) All persons shall have the right to suitable living accommodation.

Right to education

- (1) Everyone shall have the right to education and training. Access to higher education and vocational education shall be free.
- (2) The freedom of life-long learning and the freedom of teaching shall be guaranteed. To this end, the right to progress through all levels of education within the context of equal opportunities for all, including the safeguarding of the material conditions, shall be guaranteed.
- (3) The right of parents to raise their children according to their religious and ideological convictions shall be guaranteed, respecting the right of the child to its own development.

Freedom of art and science

- (1) Art and science shall be free. They shall receive public promotion.
- (2) Free and equal access to art and culture, as well as to research, shall be guaranteed.
- (3) Research entailing special risks shall be subject to public notification. It may be restricted by law if it should be deemed capable of violating human dignity or impairing the natural bases of existence.

Right to sport, leisure time and recreation

Everyone shall have the right to sport, leisure time and recreation.

IV. Procedural rights**Access to the law**

- (1) Everyone shall have the right to complete information concerning his rights.
- (2) Everyone shall have the right to a due process of law before a judge appointed by law. Special tribunals shall be prohibited.
- (3) Everyone shall have the right to his case being heard fairly, equitably, publicly and within a reasonable period of time by an independent and impartial court of law on a legal basis. He shall have the right to judicial hearing.
- (4) Access to the law shall be guaranteed. Legal aid shall be provided for those persons who do not have sufficient means to finance legal assistance.
- (5) Everyone shall have the right to lodge an appeal against a court decision, which shall lead to the complete review of a decision made against him. It shall be prohibited to impose a more severe punishment in the event of an appeal for the benefit of the person affected.
- (6) No one may be discriminated against for asserting his procedural rights.

Rights of sanction

- (1) No one may be held accountable for acts or omissions for which they bore no responsibility at the time of their commission according to valid law.
- (2) No one may be held accountable for acts or omissions which he did not commit culpably. It shall be assumed that everyone is innocent until conclusively proven guilty.
- (3) No one may be prosecuted or convicted anew for an act for which he has already been convicted.

V. General provisions**Validity of basic rights**

- (1) These basic rights shall be binding on legislation, executive powers, the dispensation of justice and, insofar as stipulated, third parties, as directly applicable law.
- (2) The basic rights shall also apply to legal entities to the extent that the nature of the rights permits.

Level of protection

None of these provisions may be interpreted as a restriction of the protection afforded by the laws of the Union, the laws of the Member States and international law.

Abuse of rights

None of these provisions may be interpreted in such a way that any right may arise to perform an activity or act aimed at impairing or abolishing these rights and freedoms.

Legal protection

All persons shall be entitled to lodge a complaint with the European Court of Justice claiming that one of his basic rights as guaranteed herein has been violated by the public authorities.

Right to resist

All persons shall be entitled to the right to resist obvious violations or unlawful elimination of the democratic principles of the European Union by the public authorities.

Bonn, 26 September 1995

Dr. Gregor Gysi and Grouping

Justification

The 1996 Intergovernmental Conference to review and revise the Maastricht Treaty provides the opportunity of finally setting clear political examples aimed at overcoming the crisis in the process of European integration and of doing justice to the global requirements of the present day and the future. However, this presupposes the existence of the political will to eliminate the misorientation and aberrations of the Maastricht Treaty and its deficits, all of which are bemoaned by every political body in Germany.

The aberrations and deficits of the Maastricht Treaty include a lack of attunement to public concerns and a lack of democracy. The slogan "A People's Europe", propagated for many years by the EU Commission, governments and political parties, is still nothing more than hollow words on a piece of paper.

This motion will put basic rights for the European Union up for debate. Enforceable basic and human rights must be guaranteed for all persons with permanent residence in the European Union, not just for the so-called Union citizens, as an integral component of the Treaty on European Union. This primarily involves two aspects:

First of all, the deficits in the protection of basic rights must be eliminated, which arose from the national states surrendering sovereign rights to the European Union. This gave rise to a new, separate bearer of sovereign power. However, the protection of the basic rights of citizens living in the European Union remained limited to national frameworks and, consequently, only applicable to national sovereign rights.

Secondly, the process of European integration needs a new stimulus, which can only be achieved through fundamental democratisation. The people living in the European Union must be given the opportunity of helping to shape their present and future in the social, cultural, economic and political field in their regions, nations and the European Union. Only thus can a peaceful, socially just, democratic and environment-conserving Europe be forged and assume its role as an equal partner in this one world, without nationalism and xenophobia.

ENTWURF DER CHARTA DER GRUNDRECHTE DER EUROPÄISCHEN UNION**fundamental.rights@consilium.eu.int**

Brüssel, den 30. März 2000**CHARTE 4191/00****CONTRIB 74****ÜBERMITTLUNGSVERMERK**

Betr.: Entwurf der Charta der Grundrechte der Europäischen Union

Finden Sie bitte nachstehend Änderungsanträge zu Dokument 4149/00 CONVENT 13, vorgelegt von Herrn Ingo Friedrich, Mitglied des Europaparlaments. ¹

¹ Dieser Text wurde nur in deutscher Sprache übermittelt.

Dr. Ingo Friedrich, MdEP
Vizepräsident des Europäischen Parlaments
Mitglied im EU-Grundrechtskonvent

Änderungsanträge zu Dokument Convent 13
Vorschlag für die Artikel 1-12 (jetzt 1 bis 16).

Änderungsantrag 1:

Artikel 1. Würde des Menschen

"Die Würde des Menschen wird (*unter allen Umständen*) geachtet und geschätzt.

- "*unter allen Umständen*" streichen-

Änderungsantrag 2:

neuen Artikel 2 einfügen (nach Artikel 1)

Artikel 2 (neu) Bindungswirkung der Charta

"Die Bestimmungen dieser Charta richten sich an die Organe und Einrichtungen der Union bei der Wahrnehmung der ihnen durch die Verträge zugewiesenen Zuständigkeiten und Aufgaben sowie an die Mitgliedstaaten bei der Anwendung des Gemeinschaftsrechts Sie begründen weder neue Aufgaben oder Zuständigkeiten der Union noch erweitern sie deren bestehende Aufgaben oder Zuständigkeiten".

Änderungsantrag 3:

Artikel 6

Recht auf Freiheit (*zwei Wörter streichen*)

Jede Person hat das Recht auf Freiheit (*zwei Wörter streichen*). **Die Freiheit darf nur in besonderen Fällen und nur auf die gesetzlich vorgeschriebene Weise entzogen werden.**

- "*„ und Sicherheit*" streichen-

Änderungsantrag 4:**Artikel 12. Achtung des Privatlebens**

Jede Person hat Anspruch auf Achtung Ihres Privatlebens, ihrer Persönlichkeit (1 Wort streichen) Ihrer Wohnung sowie des Brief-, Post- und Fernmeldegeheimnisses.

-"Ehre" streichen: "Persönlichkeit" einfügen

Änderungsantrag 5**Art. 13 Familienleben**

- (1) Jede Person hat das Recht auf Achtung Ihres Familienlebens.
- (2) (neu) Das Recht, eine Ehe einzugehen und eine Familie zu gründen, wird gewährleistet. Die Ausübung dieses Rechts regelt sich nach den Gesetzen der Mitgliedstaaten).
- (3) Der rechtliche, wirtschaftliche und soziale Schutz der Familie wird im Rahmen der Zuständigkeiten der Union gewährleistet.

Der ehemalige Absatz 2 wird ersetzt (s.o.), Einfügung Absatz 3.

Änderungsantrag 6:**Artikel 14. (Gedanken-,) Gewissens- und Religionsfreiheit**

"Jede Person hat das Recht auf (Gedanken-,) Gewissens- und Religionsfreiheit."

"Gedanken-," streichen sowie Artikel 14 umbenennen -

Änderungsantrag 7**Artikel 16 Recht auf Bildung**

- (1) **Niemandem darf das Recht auf Bildung verwehrt werden; dazu gehört insbesondere die Möglichkeit, unentgeltlich am Pflichtschulunterricht teilzunehmen.**
- (2) **(neu) Ein gleichberechtigter Zugang zu staatlichen Ausbildungsmöglichkeiten ist zu gewähren.**

- (3) **Die Gründung von Lehranstalten ist frei.**
- (4) **Das Recht der Eltern, die Erziehung und den Unterricht ihrer Kinder entsprechend ihren eigenen religiösen und weltanschaulichen Überzeugungen sicherzustellen, wird geachtet.**

-Absatz 2 neu einfügen

Dr. Ingo Friedrich, MdEP

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

**Brussels, 27 March 2000 (30.03)
(OR. fr,en)****CHARTE 4192/00****CONVENT 18****NOTE FROM THE PRAESIDIUM**

Subject: Draft Charter of Fundamental Rights of the European Union
– Proposals for social rights

Members of the Convention will find below an initial series of articles on social rights. The list is not exhaustive, and proposals for other articles will follow. The Praesidium is currently studying articles relating to wages and health. You are reminded that the original list of social rights drawn up for discussion by the Convention included the following:

Economic and social rights/objectives*Right to work and choose an occupation*

1. Right to work: objective of a high level of employment, freedom to choose and engage in an occupation (Article 127 EC, Article 1 Social Charter, Point 4 Community Charter of Social Rights).

Working conditions

2. Right to safety and health at work: right or political objective? (Article 140 EC, Article 3 Social Charter, Point 19 Community Charter of Social Rights, Article 13 EP Decl. 1989).
3. Fair remuneration and minimum wage: distinguish between what is a right and what constitutes a political objective (Article 4 Social Charter, Article 4 Community Charter of Social Rights, Article 13 EP Decl. 1989).

4. Right to weekly rest period and paid leave: right or political objective? (Article 2 Social Charter, Point 8 Community Charter of Social Rights).
5. Pensions: right or political objective? (Article 23 Social Charter, Points 24 and 25 Community Charter of Social Rights).
6. Free access to placement services: right or political objective? (Article 1 Social Charter, Point 6 Community Charter of Social Rights).

Training

7. Vocational guidance and continuing training: right or political objective? (Articles 9 and 10 Social Charter, Point 15 Community Charter of Social Rights).

Collective labour rights

8. Workers' right to information and consultation (Article 137 EC, Article 6 Social Charter, Point 17 Community Charter of Social Rights).
9. Right to collective bargaining (Article 137 EC, Article 6 Social Charter, Point 12 Community Charter of Social Rights, Article 14 EP Decl. 1989).
10. Right to strike (Article 6 Social Charter, Point 13 Community Charter of Social Rights, Article 14 EP Decl. 1989).

Social protection

11. Right to health: right or political objective? (Article 152 EC, Article 11 Social Charter, Point 19 Community Charter of Social Rights, Article 15 EP Decl. 1989).
12. Right to social security, right to social and medical assistance: right or political objective? (Article 13 Social Charter, Point 10 Community Charter of Social Rights, Article 15 EP Decl. 1989).
13. Protection of maternity (Article 8 Social Charter).
14. Protection of children and young persons (Article 17 Social Charter, Points 20 et seq. Community Charter of Social Rights).
15. Integration of disabled persons (Article 15 Social Charter, Point 26 Community Charter of Social Rights).

The order of the rights will be reviewed subsequently as for civil and political rights.

Article I. Equality between men and women

Equality between men and women must be ensured with regard to work and employment and social protection.

Comment

See point 16 of the Community Charter: "Equal treatment for men and women must be assured. Equal opportunities for men and women must be developed. To this end, action should be intensified to ensure the implementation of the principle of equality between men and women as regards in particular access to employment, remuneration, working conditions, social protection, education, vocational training and career development ..."

Article II. Right to choose an occupation

Everyone has the right to choose and to engage in his occupation or business, without prejudice to the rules in the Treaty relating to the free movement of persons.

Comment

This right is recognised without any ambiguity in the case law of the Court as a fundamental right (see judgment of principle in Case 4/73 Nold [1974] ECR 491). A reference to the rules in the Treaty on the free movement of persons seems necessary, in order to establish that this right benefits those to whom freedom of movement applies.

Article III. Workers' right to information and consultation

Workers and their representatives have the right to effective information and consultation within the undertaking which employs them, particularly in the context of collective redundancy procedures and decisions relating to conditions of work and to the working environment.

Comment

See Articles 21 and 29 of the revised Social Charter:

"Article 21 – The right to information and consultation

With a view to ensuring the effective exercise of the right of workers to be informed and consulted within the undertaking, the Parties undertake to adopt or encourage measures enabling workers or their representatives, in accordance with national legislation and practice:

a to be informed regularly or at the appropriate time and in a comprehensible way about the economic and financial situation of the undertaking employing them, on the understanding that the disclosure of certain information which could be prejudicial to the undertaking may be refused or subject to confidentiality; and

b to be consulted in good time on proposed decisions which could substantially affect the interests of workers, particularly on those decisions which could have an important impact on the employment situation in the undertaking."

"Article 29 - The right to information and consultation in collective redundancy procedures

With a view to ensuring the effective exercise of the right of workers to be informed and consulted in situations of collective redundancies, the Parties undertake to ensure that employers shall inform and consult workers' representatives, in good time prior to such collective redundancies, on ways and means of avoiding collective redundancies or limiting their occurrence and mitigating their consequences, for example by recourse to accompanying social measures aimed, in particular, at aid for the redeployment or retraining of the workers concerned."

These Articles did not appear in the Social Charter of 1961. They are mentioned in points 17 and 18 of the Community Charter. Article 137 of the TEC gives competence to the Community with regard to the information and consultation of workers.

Article IV. Freedom of association, rights of collective bargaining and collective action

1. Employers and workers have the right to associate freely, including at European Union level, in order to form the professional or trades union organisations of their choice to defend their economic and social interests.

Every employer and every worker has the right to join or not to join these organisations, without this causing him any personal or professional harm.

2. Employers or employers' organisations, on the one hand, and workers' organisations, on the other hand, have the right, under the conditions laid down by national legislation and practice, to negotiate and conclude collective agreements, including at European Union level.

3. Workers and employers have the right in cases of conflicts of interest to take collective action at European Union level should the occasion arise, including the right to strike.

Comment

The right to form and to join trade unions is recognised in Article 11 of the European Convention on Human Rights. The rights of collective bargaining and collective action are recognised by the revised Social Charter (Article 6) and by the Social Charter. It is mentioned in point 12 of the Community Charter. It is recognised in the case law of the European Court of Human Rights as stemming from Article 11 of the Convention (Swedish train drivers union 1976). Finally, Articles 138 and 139 of the TEC deal with social dialogue at a Community level and provide for the conclusion of collective agreements.

Article 6 of the revised Social Charter reads as follows:

"Article 6 - The right to bargain collectively

With a view to ensuring the effective exercise of the right to bargain collectively, the Parties undertake:

- 1 to promote joint consultation between workers and employers;*
- 2 to promote, where necessary and appropriate, machinery for voluntary negotiations between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements;*
- 3 to promote the establishment and use of appropriate machinery for conciliation and voluntary arbitration for the settlement of labour disputes;*

and recognise:

4 *the right of workers and employers to collective action in cases of conflicts of interest, including the right to strike, subject to obligations that might arise out of collective agreements previously entered into.”*

This text was taken from the original version of the Social Charter. The same wording is found in point 13 of the Community Charter. The addition of a reference to national legislation is necessary because, pursuant to Article 137(6) of the TEC, the Community does not have competence with regard to the right to strike in Member States. In this respect, therefore, it must recognise the national legislation in force. However, the Community does have competence with regard to its own employees.

The right to collective action has been recognised by the European Court of Human Rights as one element of the trade union rights recognised by Article 11 of the European Convention on Human Rights (Schmidt and Dahlström, Sweden, 1976).

Article VII. Right to equal remuneration for equal work

Every worker has the right to equal remuneration for work of equal value.

Comment

This right is mentioned in Article 4 of the revised Social Charter:

"Article 4 - The right to a fair remuneration

With a view to ensuring the effective exercise of the right to a fair remuneration, the Parties undertake:

- 1 *to recognise the right of workers to a remuneration such as will give them and their families a decent standard of living;*
- 2 *to recognise the right of workers to an increased rate of remuneration for overtime work, subject to exceptions in particular cases;*
- 3 *to recognise the right of men and women workers to equal pay for work of equal value;*
- 4 *to recognise the right of all workers to a reasonable period of notice for termination of employment;*
- 5 *to permit deductions from wages only under conditions and to the extent prescribed by national laws or regulations or fixed by collective agreements or arbitration awards.*

The exercise of these rights shall be achieved by freely concluded collective agreements, by statutory wage-fixing machinery, or by other means appropriate to national conditions.”

This right appeared in the same form in the Social Charter of 1961. It is mentioned in point 5 of the Community Charter.

Article VI. Right to rest periods and annual leave

Every worker has the right to a weekly rest period and to an annual period of paid leave.

Comment

This right is referred to in Article 2 of the revised Social Charter:

"Article 2 – The right to just conditions of work

With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake:

- 1. to provide for reasonable daily and weekly working hours, the working week to be progressively reduced to the extent that the increase of productivity and other relevant factors permit;*
- 2. to provide for public holidays with pay;*
- 3. to provide for a minimum of four weeks' annual holiday with pay;*
- 4. to eliminate risks in inherently dangerous or unhealthy occupations, and where it has not yet been possible to eliminate or reduce sufficiently these risks, to provide for either a reduction of working hours or additional paid holidays for workers engaged in such occupations;*
- 5. to ensure a weekly rest period which shall, as far as possible, coincide with the days recognised by tradition or custom in the country or region concerned as a day of rest;*
- 6. to ensure that workers are informed in written form, as soon as possible, and in any event not later than two months after the date of commencing their employment, of the essential aspects of the contract or employment relationship;*
- 7. to ensure that workers performing night work benefit from measures which take account of the special nature of the work."*

This Article was already part of the 1961 Social Charter. It is referred to in point 8 of the Community Charter. Article 137 of the EC Treaty establishes Community competence as regards working conditions.

Article VII Safe and healthy working conditions

Every worker has the right to safe and healthy working conditions

Comment

This right is referred to in Article 3 of the revised Social Charter:

"Article 3 – The right to safe and healthy working conditions

With a view to ensuring the effective exercise of the right to safe and healthy working conditions, the Parties undertake, in consultation with employers' and workers' organisations:

1 to formulate, implement and periodically review a coherent national policy on occupational safety, occupational health and the working environment. The primary aim of this policy shall be to improve occupational safety and health and to prevent accidents and injury to health arising out of, linked with or occurring in the course of work, particularly by minimising the causes of hazards inherent in the working environment;

2 to issue safety and health regulations;

3 to provide for the enforcement of such regulations by measures of supervision;

4 to promote the progressive development of occupational health services for all workers with essentially preventive and advisory functions."

This right featured in Article 3 of the 1961 Social Charter and in point 19 of the Community Charter. Article 137 of the EC Treaty gives the Union competence in this area.

It is proposed that the following rights should be added:

Article VIII. Protection of children and young people

The minimum age of admission to employment must not be lower than the minimum school-leaving age and, in any case, not lower than fifteen years.

Young people under eighteen years of age must have working conditions which suit their age and be protected against any work likely to harm their safety, health or physical, mental, moral or social development or to jeopardise their education.

Comment

This text is based on Article 7 of the European Social Charter and on the Community Charter of the Fundamental Social Rights of Workers (points 20 to 23). First of all it reproduces the main thrust of point 20, which provides for a minimum employment age, linked to the end of compulsory schooling, which cannot under any circumstances be less than 15 years. However, the Charter begins as follows: "Without prejudice to such rules as may be more favourable to young people, in particular those ensuring their preparation for work through vocational training, and subject to derogations limited to certain light work, ..."

The second paragraph is based on point 22 of the Charter, which stipulates that labour regulations applicable to young workers must be adjusted to take account of their development and vocational training needs. The wording of the paragraph comes chiefly from Article 1(3) of Directive 94/33/EC on the protection of young people at work.

Article IX. Right to protection in cases of termination of employment

Workers have the right not to have their employment terminated without valid reason and to adequate compensation or other appropriate relief if their employment is terminated without valid reason.

Comment

Article 24 of the revised European Social Charter.

Article X. Right to vocational training and guidance

Everyone must have access, without discrimination, to appropriate vocational training and guidance and to benefit therefrom throughout his working life.

Comment

This Article is inspired, on the one hand, by paragraph 15 of the Community Charter of the Fundamental Social Rights of Workers, which provides that "*every worker of the European Community must be able to have access to vocational training and to benefit therefrom throughout his working life.*" On the other hand, it is also based on Articles 9 and 10 of the European Social Charter, which guarantee the right to vocational guidance and training respectively.

Article 140 of the EC Treaty provides for co-operation and co-ordination between the Member States in matters relating, inter alia, to basic and advanced vocational training. Furthermore, Article 150 is the foundation of the Community's vocational training policy.

Article XI. Right of employed women to protection of maternity

Every employed woman has the right to maternity leave of at least fourteen weeks before and/or after childbirth.

Comment: Article 8 of the revised Social Charter and Directive 92/85/CE of 19 October 1992

Article XII. Right to parental leave

Every worker has the right to parental leave of least 3 months following the birth or adoption of a child.

Comment

Article 27 of the Revised European Social Charter provides for the right to parental leave.

Furthermore, Directive 96/34, which implements the framework agreement of the social partners on this issue, lays down minimum requirements for parental leave of at least three months.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

**Brussels, 29 March 2000
(OR. fr)****CHARTE 4193/00****CONVENT 19****NOTE FROM THE PRAESIDIUM**

Subject : Draft Charter of Fundamental Rights of the European Union
– Proposals for social rights (draft Articles on rights relating to health and social protection)

Article XIII Social security

Every worker and his dependants have [everyone has] the right to social protection, including an adequate level of social security benefits, in accordance with each Member State's own procedures.

Article XIV Right to social assistance

Any person who is without adequate resources [and who is unable to secure such resources by his own efforts or from other sources] must receive appropriate social assistance enabling him to live in dignity.

Article XV Right of access to health care

Everyone must be able to benefit from measures to safeguard their health and, in case of sickness, to have access to health care.

ENTWURF DER CHARTA DER GRUNDRECHTE DER EUROPÄISCHEN UNION**fundamental.rights@consilium.eu.int**

Brüssel, den 29. März 2000**CHARTE 4195/00****CONTRIB 76****ÜBERMITTLUNGSVERMERK**

Betr.: Entwurf der Charta der Grundrechte der Europäischen Union

Finden Sie bitte nachstehend Änderungsvorschläge zu Dokument Charta 4170/00
CONVENT 17 und Charta 4137/00 CONVENT 8, vorgelegt von Herrn. Jürgen Meyer,
Vertreter des deutschen Bundestags.¹

¹ Dieser Text wurde nur in deutscher Sprache übermittelt.



Prof. Dr. Jürgen Meyer, MdB
Stv. Vorsitzender des Ausschusses für die Angelegenheiten
der Europäischen Union des Deutschen Bundestages

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24 März 2000

Änderungsvorschlag zu Art. I

Gemäß dem vorgeschlagenen Verfahren des Präsidiums (siehe Convent 15 vom 9. März 2000) reiche ich als Delegierter des Konvents in meiner Funktion als Vertreter des Deutschen Bundestages folgenden Änderungsvorschlag zu dem vom Präsidium vorgeschlagenen Art. I (in der Fassung Convent 17) ein.

Art. I Freizügigkeit

- (1) **Alle Unionsbürger und –bürgerinnen haben das Recht, sich im Hoheitsgebiet der Mitgliedstaaten frei zu bewegen und aufzuhalten.
Allen Bürgern und Bürgerinnen von Drittstaaten steht dieses Recht in gleichem Umfang zu, wenn sie sich seit fünf Jahren rechtmäßig im Hoheitsgebiet der Mitgliedstaaten aufhalten.**
- (2) **Allen Unionsbürgern und –bürgerinnen steht es frei, das Hoheitsgebiet der Mitgliedstaaten zu verlassen und wieder dorthin zurückzukehren.**

(3) Die Rechte nach Abs. 1 und 2 können durch Bestimmungen eingeschränkt werden, die im Einklang mit den in dieser Charta enthaltenen Grundsätzen stehen.

Begründung:

Abs. 1 Satz 1 übernimmt den Formulierungsvorschlag des Präsidiums unter Herausnahme der Schrankenbestimmung. Letzteres ist im Sinne der – vom Konvent immer wieder geforderten – sprachlichen Klarheit notwendig. Eine Schrankenbestimmung wird deshalb in einem gesonderten Abs. 3 formuliert.

Die Gleichstellung der Bürger von Drittstaaten in Abs. 1 Satz 2 folgt dem Hinweis im Einleitungsvermerk des Präsidiums. Sie wird an dieser Stelle angeführt, damit dieses Recht keine Auswirkungen auf den Abs. 2 – und damit insbesondere auf ein so kaum gewolltes dauerhaftes Recht zur jederzeit erneuten Einreise – hat.

Eine Gleichstellung von Drittstaatlern beim Recht auf Freizügigkeit ist nach Art. 63 Nr. 4 EGV möglich. Eine solche Regelung entspricht u.a. Art. 13 Allgemeine Erklärung der Menschenrechte, Art. 12 Internationaler Pakt über bürgerliche und politische Rechte (IPbpr) und Art. 2 Protokoll Nr. 4 EMRK.

Das in Abs. 2 enthaltene Recht zur Einreise und zum Verlassen des Hoheitsgebietes der Union orientiert sich an entsprechenden Regelungen in Art. 13 Abs. 2 Allgemeine Erklärung der Menschenrechte, Art. 12 Abs. 2 IPbpr und Art. 2 Abs. 2 Protokoll Nr. 4 EMRK.

Eine Schrankenbestimmung, wie sie in Abs. 3 enthalten ist, findet sich in vergleichbaren Artikeln in der EMRK und dem IPbpr. Die dortigen Schrankenbestimmungen unterliegen ihrerseits wieder Schranken, indem diese „in einer demokratischen Gesellschaft durch das öffentliche Interesse“ geboten (Protokoll Nr. 4 Art. 2 Abs. 4 EMRK) bzw. „die Einschränkungen mit den übrigen in diesem Pakt anerkannten Rechte vereinbar“ sein müssen (Art. 12 Abs. 3 IPbpr). Insbesondere bei der EMRK ist das Gebot der Verhältnismäßigkeit zu beachten.¹ Dem folgend wird in Abs. 3 als Schranken-Schranke der „Einklang mit den in dieser Charta enthalten Grundsätzen“ eingeführt. Die in Abs. 3 enthaltene Abweichung zu meinem früher eingebrachten umfassenden Chartaentwurf (Charte 4102/00: Art. 19 Abs. 3 „die im Einklang mit den Grundlagen der Union stehen“) erklärt sich aus der mittlerweile fortgeschrittenen Integration der Union und der mit der Charta entstehenden Möglichkeit, die Schranken-Schranke präziser zu formulieren.

¹ Frowein, Jochen Abr./Peukert, Wolfgang: Europäische Menschenrechtskonvention. Straßburg u.a., 1996, S. 846.

Änderungsvorschlag zu Art. 19

Gemäß dem vorgeschlagenen Verfahren des Präsidiums (siehe Convent 15 vom 9. März 2000) reiche ich als Delegierter des Konvents in meiner Funktion als Vertreter des Deutschen Bundestages folgenden Änderungsvorschlag zu dem vom Präsidium vorgeschlagenen Art. 19_(in der Fassung Convent 8 vom 24. Februar 2000) ein.

Art. 19 Asyl

- (1) Jeder, der politisch verfolgt wird oder unmenschlicher oder erniedrigender Bestrafung oder Behandlung ausgesetzt ist, genießt Asylrecht. Frauenspezifische Asylgründe sind zu berücksichtigen.**
- (2) Niemand darf in einem Staat abgeschoben werden, wenn stichhaltige Gründe für die Annahme bestehen, dass nach der Abschiebung die in Abs. 1 beschriebenen Maßnahmen drohen.**
- (3) Kollektivausweisungen von Ausländern sind nicht zulässig.**

Begründung:

Das Recht auf Asyl findet sich u.a. in Art. 14 Allgemeine Erklärung der Menschenrechte, in den Verfassungen der Bundesrepublik Deutschland (Art. 16 a), Frankreichs (heute noch gültige Präambel der Verfassung von 1946), Italiens (Art. 10), Portugals (Art. 33 Abs. 6), Spaniens (Art. 13 Abs. 4), der Slowakei (Art. 53) und Polens (Art. 56).

Die in Abs. 1 Satz 2 enthaltene Aufnahme von frauenspezifischen Aslygründen lehnt sich an die international zunehmende Erkenntnis an, dass Frauen als soziologische Gruppe oftmals besonderen Verfolgungen ausgesetzt sind.² In diesem Zusammenhang sei hier auf die systematische Vergewaltigung von muslimischen Frauen während der kriegerischen Auseinandersetzungen im Gebiet des ehemaligen Jugoslawiens hingewiesen und die - damit zusammenhängende -

² Mit der Aufnahme der frauenspezifischen Asylgründe präzisiere ich meinen früher eingebrachten Grundrechtsentwurf (Charta 4102/00).

Berücksichtigung von Vergewaltigung als spezifische Kriegsverbrechen seitens der UNO.
Mit der Aufnahme einer solchen Präzisierung der Verfolgung, würde die Union zur Positivierung eines modernen Grundrechts beitragen, wie sie schon jetzt vereinzelt Berücksichtigung findet.³

Das in Abs. 2 verbrieftete Recht auf Schutz vor Abschiebung in bestimmten Fällen findet sich nicht nur in vielen Verfassungen der Mitgliedsländer (Finnland, Frankreich, Griechenland, Italien, Portugal, Spanien), sondern u.a. auch in Art. 3 UN-Folterkonvention und in Art. 33 Abs. 1 Genfer Flüchtlingskonvention.

Der Abs. 3 übernimmt den Formulierungsvorschlag des Präsidiums.

³ Verwaltungsgericht Magdeburg am 20. Juni 1996, Koalitionsvertrag der rot-grünen Bundesregierung vom 20. Oktober 1998.

Editors' note to CHARTE 4196/00,
**Contributo di M. Andrea Manzella (Parlamento
Italiano): Risoluzione della Giunta Per Gli Affari
Delle Comunità europee del Senato Italiano
(datata 15/03/00):**

The Council has no record of a French version of this document existing.

PROGETTO DI CARTA DEI DIRITTI FONDAMENTALI DELL'UNIONE EUROPEA**fundamental.rights@consilium.eu.int**

**Bruxelles, 31 marzo 2000
(OR. FR)****CHARTE 4196/00****CONTRIB 77****NOTA DI TRASMISSIONE**

Oggetto: Progetto di Carta dei diritti fondamentali dell'Unione europea

Si allega la "Risoluzione della Giunta per gli affari delle Comunità europee" presentata dal Sen. Andrea Manzella, rappresentante del Parlamento europeo.¹

¹ Testo pervenuto solo in lingua italiana.

Roma, 16 marzo 2000

Prot. n.

Caro Presidente,

ho il piacere di inviarLe copia della risoluzione sulla Carta dei diritti fondamentali dell'Unione europea approvata lo scorso 15 marzo dalla Giunta per gli affari delle Comunità europee del Senato.

Con i più cordiali saluti

On. Roman HERZOG
Presidente della Convenzione
per la redazione della
Carta dei diritti fondamentali
dell'Unione europea
Bruxelles

SENATO DELLA REPUBBLICA

XIII LEGISLATURA

Doc. XXIV
n. 15

RISOLUZIONE DELLA GIUNTA PER GLI AFFARI DELLE COMUNITÀ EUROPEE

d'iniziativa del senatore BESOSTRI

approvata nella seduta del 15 marzo 2000

ai sensi dell'articolo 50, comma 2, del Regolamento, a conclusione dell'esame svoltosi nelle sedute dell'11 novembre e 16 dicembre 1999 e 9 e 15 marzo 2000 del seguente affare: redazione della Carta dei diritti fondamentali dell'Unione europea

13 - COM - RIS - 00015 - 0
TIPOGRAFIA DEL SENATO (150)

La Giunta per gli affari delle Comunità europee del Senato, in sede di esame dell'affare assegnato ai sensi dell'articolo 50, comma 2, del Regolamento, in merito alla redazione della Carta dei diritti fondamentali dell'Unione europea;

considerando le decisioni del Consiglio europeo di Colonia del 3 e 4 giugno 1999 e di Tampere del 15 e 16 ottobre 1999, in merito all'istituzione di un organismo, che ha assunto la denominazione di Convenzione, incaricato di redigere un progetto di Carta dei diritti fondamentali dell'Unione europea da trasmettere al Consiglio europeo;

visto il progetto di risoluzione sull'elaborazione di una Carta dei diritti fondamentali dell'Unione europea approvato il 1^o marzo 2000 dalla Commissione affari costituzionali del Parlamento europeo;

preso atto dell'auspicio formulato dal Presidente della Repubblica italiana nell'allocuzione di Trieste del 23 febbraio 2000 che la Carta dei diritti fondamentali dei cittadini dell'Unione europea sia approvata entro l'anno dal Consiglio europeo e che costituisca «il primo, fondamentale nucleo della Costituzione europea»;

acquisiti i contributi dei membri e degli osservatori e gli altri documenti presentati alla suddetta Convenzione incaricata della redazione della Carta;

preso atto del Progetto di articolato della Carta dei diritti fondamentali elaborato dal Presidium della suddetta Convenzione;

preso atto delle audizioni svolte l'8, il 15, il 23 e il 29 febbraio 2000 nell'ambito dell'indagine conoscitiva congiunta svolta dalla Giunta per gli affari delle Comunità europee del Senato e dalla XIV Commissione permanente, politiche dell'Unione europea, della Camera dei deputati;

visto il Trattato sull'Unione europea, e in particolare gli articoli 6 e 7, e visto il Trattato sulla Comunità europea e, in particolare, le disposizioni sulla cittadinanza dell'Unione;

considerando che il 14 febbraio 2000 ha avuto inizio la Conferenza intergovernativa sulla revisione dei Trattati in conformità con le decisioni assunte dai Consigli europei di Helsinki e di Colonia;

rilevando il progetto di raccomandazione presentato dalla Delegazione del Senato alla Conferenza degli organismi specializzati negli affari comunitari (COSAC) di Helsinki dell'ottobre del 1999;

evidenziando come debba ritenersi superata la distinzione fra diritti dell'uomo \pm oggetto della Dichiarazione universale del 10 dicembre 1948 e della Convenzione del 4 novembre 1950 \pm e diritti del cittadino, salvo che per alcuni diritti di natura politica, civile e sociale espressamente legati alla nozione di cittadinanza europea;

rilevando pertanto che le dimensioni del fenomeno dell'immigrazione non consentono di considerare la condizione dello straniero come una posizione individuale bensì richiedano un approccio comprensivo nei confronti del tema dei diritti umani;

sottolineando come il tema dei diritti umani sia intrinsecamente connesso alla parità di trattamento e opportunità dell'uomo e della donna;

tenendo conto delle altre convenzioni europee ed internazionali sui diritti umani e, in particolare, della Convenzione sui diritti del fanciullo del 1989, della nuova Carta sociale europea del 1996, della Convenzione sui diritti dell'uomo e la biomedicina del 1997 e della Convenzione sulla protezione dei dati a carattere personale del 1981;

auspicando che l'elaborazione di una Carta dei diritti possa costituire il nucleo di una riorganizzazione dei Trattati che contempra una parte di natura costituzionale sui diritti fondamentali ed il quadro istituzionale ed una parte dedicata alla definizione delle politiche attualmente disciplinate dai Trattati e delle politiche che in futuro gli Stati membri vorranno attribuire all'Unione;

auspicando che su tali temi prenda posizione la prossima COSAC di Lisbona del 29 e 30 maggio 2000, anche su iniziativa della delegazione del Senato;

auspicando che la suddetta Convenzione proceda all'elaborazione di un progetto di Carta coerente con i suddetti orientamenti e presenti il testo finale al Consiglio europeo in tempo utile affinché tale testo possa essere esaminato nell'ambito della Conferenza intergovernativa;

sottolineando la necessità di:

affermare l'indivisibilità dei diritti fondamentali sia nel senso di una loro trasmissibilità tra pilastro e pilastro, sia nel senso dell'uguale trattamento per i diritti civili e politici, da un lato, e dei diritti sociali, dall'altro;

affermare l'inviolabilità dei diritti fondamentali anche per gli stranieri, salvo le naturali differenziazioni per i diritti politici, per evitare che l'Europa presenti un duplice volto, con pratiche di discriminazione al suo interno e pretesa di clausola democratica nelle sue relazioni esterne;

collegare visibilmente i diritti fondamentali al concetto di cittadinanza europea, ora troppo ristretto nel tessuto normativo dei Trattati;

rendere realmente giustiziabili i diritti fondamentali, sia integrando le istanze di giurisdizione europea con le giurisdizioni nazionali, sia integrando, attraverso meccanismi di rinvii e ricorsi, la giurisdizione delle due Corti europee di Lussemburgo e di Strasburgo;

prevedere una clausola evolutiva che consenta un aggiornamento della Carta anche in forza di pronunce della Corte di giustizia delle Comunità europee e del richiamo alle Convenzioni europee in relazione alle mutate esigenze in materia di tutela dei diritti fondamentali che potrebbero manifestarsi in conseguenza di fenomeni quali lo sviluppo delle biotecnologie e delle tecnologie dell'informazione e la scoperta di nuovi fattori di pericolo per la salute umana e l'equilibrio ecologico;

connettere i diritti fondamentali con le politiche fondamentali per non limitare il progetto di Carta a semplice proclamazione o catalogo dei diritti ma per considerare ciascun diritto come l'espressione finale di una politica reale complessiva;

impegna il Governo ad adoperarsi affinché:

- a)* la Conferenza intergovernativa includa nel proprio ordine del giorno la procedura di adozione del progetto di Carta dei diritti fondamentali elaborato dalla suddetta Convenzione;
- b)* il negoziato sulle riforme istituzionali si concluda inserendo le disposizioni della Carta sui diritti fondamentali nel contesto dei Trattati ovvero di un protocollo allegato;
- c)* nell'ambito del negoziato sulle riforme istituzionali siano adottate delle disposizioni volte ad assicurare il carattere vincolante dei diritti fondamentali sanciti dalla Carta, a definire gli strumenti di tutela di tali diritti e ad assicurare misure di raccordo e di coordinamento con gli strumenti di tutela dei diritti umani riconosciuti dalla Convenzione europea sui diritti dell'uomo del 1950 e dalle altre convenzioni stipulate nell'ambito del Consiglio d'Europa, onde evitare la configurazione di una divisione dell'Europa basata su eventuali differenze sostanziali nello status giuridico rispettivamente garantito dall'ordinamento del Consiglio d'Europa e dal diritto dell'Unione europea.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

**Brussels, 5 April 2000 (06.04)
(OR. fr)****CHARTE 4199/00****CONTRIB 80****COVER NOTE**

Subject : Draft EU Charter of Fundamental Rights

Please find below the European Parliament resolution, adopted on 16 March 2000 (Report by Mr Duff and Mr Voggenhuber).¹

¹ The text was submitted in all languages.

EU Charter of Fundamental Rights

A5-0064/2000

European Parliament resolution on the drafting of a European Union Charter of Fundamental Rights (C5-0058/1999 – 1999/2064(COS))

The European Parliament,

- having regard to the decision of the European Council on the drafting of a European Union Charter of Fundamental Rights (C5-0058/1999),
- having regard to its position as representative of the peoples of the European Union,
- considering that the Union should strengthen the protection of the rights and interests of the nationals of its Member States through the introduction of a citizenship of the Union (Article 2 of the EU Treaty),
- having regard to the fact that the Union must respect fundamental rights "as they result from the constitutional traditions common to the Member States, as general principles of Community law" (Article 6 of the EU Treaty),
- having regard to the Preamble of the United Nations Charter and the Universal Declaration on Human Rights adopted by the UN General Assembly in its resolution 217 A (III) on 10 December 1948 in Paris,
- having regard to its numerous initiatives in the matter of fundamental and citizens' rights, in particular to its resolution of 12 April 1989 on the Declaration of Fundamental Rights and Freedoms ¹,
- having regard to its initiatives in the matter of a constitution for the European Union, in particular its resolution of 12 December 1990 on the constitutional basis of European Union ² and its resolution of 10 February 1994 on the Constitution of the European Union ³,
- having regard to the conclusions of the Cologne European Council and the conclusions of the Tampere European Council,
- having regard to its resolution of 16 September 1999 on the drawing up of a Charter of Fundamental Rights ⁴,
- having regard to its resolution of 27 October 1999 on the European Council meeting in Tampere ⁵,
- having regard to the outstanding importance of the forthcoming enlargement of the Union and the Intergovernmental Conference,

¹ OJ C 120, 16.5.1989, p. 51.

² OJ C 19, 28.1.1991, p. 65.

³ OJ C 61, 28.2.1994, p. 155.

⁴ OJ C 54, 25.2.2000, p. 93.

⁵ Texts adopted at that Sitting, point 15.

- having regard to the setting-up on 17 December 1999 in Brussels of the Convention to draft a European Union Charter of Fundamental Rights,
 - having regard to Rule 47(1) of its Rules of Procedure,
 - having regard to the report of the Committee on Constitutional Affairs and the opinions of the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy, the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, the Committee on Legal Affairs and the Internal Market, the Committee on Women's Rights and Equal Opportunities, the Committee on Petitions and the Committee on Employment and Social Affairs (A5-0064/2000),
- A. whereas the Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law (Article 6 of the EU Treaty),
- B. whereas the creation of an ever closer Union among the peoples of Europe (Article 1 of the EU Treaty) and the maintenance and development of the Union as an area of freedom, security and justice (Article 2 of the EU Treaty) are based on general and absolute respect for human dignity, which is unique to each person, yet common to all, and inviolable,
- C. whereas the Union must respect "fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law " (Article 6 of the EU Treaty),
- D. whereas some specific rights are already enshrined in the Treaties,
- E. whereas the fundamental freedoms and rights unavoidably stemming from the recognition of human dignity require genuine, comprehensive legal protection and effective legal guarantees,
- F. whereas the primacy of Union law and significant powers of its institutions, which affect individuals, make it necessary to strengthen the protection of fundamental rights at European Union level,
- G. whereas the increase in the powers of the Union and the European Community, especially in the sensitive field of internal security, together with the limits on parliamentary or judicial controls in that field, make it obvious that there is an urgent need for a European Charter of Fundamental Rights,
- H. whereas as the Union develops an imbalance must not be created between the objective of security and the principles of freedom and law,

- I. whereas fundamental freedoms can be restricted without parliamentary approval, both in the framework of the Union Treaty and of Community law, despite the fact that this is incompatible with the constitutional traditions common to the Member States,
- J. whereas, even in the case of legitimate restrictions of fundamental rights, the inherent nature of such rights may in no case be infringed,
- K. whereas the economic aspect of European integration must henceforth be supplemented by a genuine political, democratic and social union,
- L. whereas fundamental social freedoms ought to be strengthened and developed at European Union level,
- M. whereas the Union's common foreign and security policy, which will in future include defence, must be developed in compliance with fundamental rights,
- N. whereas new conflicts with fundamental freedoms can arise from developments in, for example, biotechnology or information technology, and whereas a consensus on fundamental rights at European level constitutes an important contribution towards finding a global solution to the problem,
- O. whereas there are serious indications of a rise in racism and xenophobia,
- P. whereas it is important that, while respecting the role of every national language, the European Union and its Member States attend to the protection of the diversity of the languages and cultures of Europe, especially regional and minority languages and cultures, and to this end guarantee to the citizens of the Union, through appropriate means of support, that they can maintain and develop their own languages and cultures in the public and private domain,
- Q. whereas the human right to asylum must be maintained according to the provisions of the Geneva Refugee Convention,
- R. whereas a European Union Charter of Fundamental Rights, in the same way as national provisions concerning fundamental rights, should not in any way conflict with the European Convention on Human Rights,
- S. whereas the Union's accession to the European Convention on Human Rights following the necessary amendments to the Treaty on European Union would represent an important step towards the strengthening of the protection of fundamental rights in the Union,
- T. whereas the creation of an ever closer union among the peoples of Europe is inseparably linked with the task of increasing, in addition to fundamental rights, citizens' rights, namely the political, economic and social rights associated with Union citizenship,
- U. whereas a charter of fundamental rights constituting merely a non-binding declaration and, in addition, doing no more than merely listing existing rights, would disappoint citizens' legitimate expectations,

- V. whereas the Charter of Fundamental Rights should be regarded as a basic component of the necessary process of equipping the European Union with a constitution,
1. Welcomes the drafting of a European Union Charter of Fundamental Rights, which will contribute to defining a collective patrimony of values and principles and a shared system of fundamental rights which bind citizens together and underpin the Union's internal policies and its policies involving third countries; welcomes therefore the progress made in this connection since the European Council meeting in Tampere, in particular the establishment of the joint Convention composed of representatives of the Heads of State and Government, the European Parliament, the parliaments of the Member States and the Commission;
 2. Notes that the establishment of a binding European list of fundamental rights will confer a more secure legal and moral basis on the process of European integration, will give concrete form to the common basis that exists at the level of the constitutional state and will provide more transparency and clarity for citizens;
 3. Offers its full support and cooperation in drafting the Charter of Fundamental Rights of the European Union;
 4. Notes that the recognition and shaping of fundamental and citizens' rights is one of the primary tasks of parliaments;
 5. Calls on its delegation to the Convention drafting the charter vigorously to defend the position set out in this resolution;
 6. Intends to vote in plenary on the adoption of the Charter at the appropriate time and deems it advisable to publish in advance its objectives regarding the Charter of Fundamental Rights as set out hereunder;
 7. Points out that its final assent to a Charter of Fundamental Rights depends to a large extent upon whether the charter:
 - (a) has fully binding legal status by being incorporated into the Treaty on European Union;
 - (b) subjects any amendment to the Charter to the same procedure as its original drafting, including the formal right of assent for the European Parliament;
 - (c) contains a clause, requiring the consent of the European Parliament whenever fundamental rights are to be restricted in any circumstances whatsoever;
 - (d) contains a clause stipulating that none of its provisions may be interpreted in a restrictive manner with regard to the protection guaranteed by Article 6(2) of the Treaty on European Union;
 - (e) includes such fundamental rights as the right of association in trade unions and the right to strike;

- (f) recognises that fundamental rights are indivisible by making the charter applicable to all the European Union's institutions and bodies and all its policies, including those contained in the second and third pillars in the context of the powers and functions conferred upon it by the Treaties;
 - (g) is binding upon the Member States when applying or transposing provisions of Community law;
 - (h) is innovative in nature by also giving legal protection to the peoples of the European Union in respect of new threats to fundamental rights, for example from the fields of information technology and biotechnologies, and confirms, as an integral part of fundamental rights, and especially women's rights, the general non-discrimination clause and environmental protection;
8. Resolves to hold a scientific colloquium to advise Parliament and to carry out public hearings of representatives of society in general;
 9. Will strongly support initiatives for a broad societal discussion in the Member States, involving social partners, NGOs and other representatives of civil society;
 10. Calls for recognition of the contribution that can be made by organisations representing civil society to the drafting of the Charter;
 11. Proposes to grant the States applying for accession observer status in the Convention drafting the Charter and to begin a continuous exchange of opinions with them in the context of the European Conference;
 12. Emphasises that the charter should not replace or weaken Member States' provisions concerning fundamental rights;
 13. Supports the agreement reached by the Convention that the charter should be drafted on the presumption that it will have full legal force;
 14. Emphasises the need to incorporate in the charter, in addition to the rights already enshrined in the EU Treaty, the standards applicable to the Union that are set out in the international conventions signed by the Member States within the context of the United Nations, the Council of Europe, the International Labour Organisation and the Organisation for Security and Cooperation in Europe;
 15. Calls upon the IGC to:
 - (a) put the incorporation into the Treaty of the Charter of Fundamental Rights on its agenda and to give it at that conference the position which it deserves in view of its paramount importance for an ever closer union among the peoples of Europe;

- (b) enable the Union to become a party to the ECHR so as to establish close cooperation with the Council of Europe, whilst ensuring that appropriate action is taken to avoid possible conflicts or overlapping between the Court of Justice of the European Communities and the European Court of Human Rights;
 - (c) add a reference to the European Social Charter and to the appropriate ILO and UN conventions to the reference to the European Convention on Human Rights in Article 6 of the Treaty on European Union;
 - (d) give all persons protected under the charter access to the Court of Justice of the European Communities by supplementing existing mechanisms for judicial review;
16. Instructs its President to forward this resolution to the Convention responsible for drafting the European Union Charter of Fundamental Rights, the Intergovernmental Conference, the Council, the parliaments of the Member States, the Commission and the Court of Justice and the European Court of Human Rights.
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PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE**fundamental.rights@consilium.eu.int**

Bruxelles, le 29 mars 2000**CHARTE 4200/00****CONTRIB 81****NOTE DE TRANSMISSION**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne

Veillez trouver ci-joint une contribution de M. Hubert Haenel, représentant du Parlement français.¹

¹ Ce texte a été soumis en langue française seulement.

SÉNAT*Republique Française*

Paris, le 17 mars 2000

Hubert HAENEL**CONTRIBUTION AU PROJET DE
CHARTRE EUROPEENNE DES DROITS FONDAMENTAUX****Proposition d'inclure dans la Charte
une déclaration des responsabilités des citoyens****A - Justification :**

Il paraît nécessaire de compléter l'énoncé des droits fondamentaux par un énoncé des devoirs et responsabilités des citoyens pour deux principales raisons :

1. La Charte va, pour l'essentiel, codifier les droits fondamentaux déjà reconnus. Elle va donc comprendre deux catégories de droits :

– les droits-libertés, qui reviennent principalement à limiter et encadrer les pouvoirs des autorités publiques (même si chaque citoyen dont la liberté est ainsi reconnue a le devoir de respecter celle d'autrui) ;

– les droits-créances, qui créent des obligations pour la société. Or cette deuxième catégorie de droits, qui a tendance à s'étendre (droit au travail, à la santé, à la protection sociale...), implique, plus clairement encore que la première, des devoirs pour les citoyens.

Dans ces conditions, une Charte rédigée uniquement en termes de droits ne délivrerait pas un message approprié aux citoyens et notamment aux jeunes, qui doivent savoir que les droits sont inséparables des responsabilités.

2. La Charte doit tenir compte de la spécificité politique de l'Union européenne. Les diverses déclarations des droits dans les pays européens ont rarement mentionné les responsabilités des citoyens, parce qu'il s'agissait de conquérir des droits sur des régimes autoritaires, ou d'empêcher le retour de régimes autoritaires. L'Union européenne est dans une situation très différente. Elle n'est pas un empire. Elle repose sur une volonté commune de dépasser les affrontements et les haines entre les peuples européens ; elle est fondée sur la recherche d'une union toujours plus étroite entre les peuples, et non pas sur la volonté de limiter l'arbitraire d'un pouvoir préexistant ; elle est donc une construction, un véritable « contrat social » auquel participent des peuples d'une grande diversité, dont l'association doit être sans cesse consolidée et cimentée. Il paraît donc particulièrement justifié, dans le cas de la Charte européenne, d'insister sur la solidarité et la réciprocité, donc sur les devoirs et les responsabilités.

B - Le contenu

Une déclaration des responsabilités des citoyens pourrait retenir les thèmes suivants :

– les devoirs civiques : voter, participer à la vie politique, s'informer, participer équitablement à l'impôt ;

– les devoirs économiques : travailler, participer à la création de richesses (ces devoirs sont une contrepartie nécessaire des droits sociaux) ;

– les devoirs socioculturels : participer à la vie associative et culturelle notamment dans l'optique de la dimension européenne ;

– les devoirs vis-à-vis de l'environnement (devoirs vis-à-vis des générations futures) ;

– les devoirs envers autrui (tolérance, entraide, respect de l'égalité des sexes, responsabilités envers les enfants et les personnes âgées).

Un article final préciserait qu'aucun des devoirs ainsi énoncés ne peut être interprété comme une remise en cause d'un des droits fondamentaux reconnus par la Charte.

ENTWURF DER CHARTA DER GRUNDRECHTE DER EUROPÄISCHEN UNION**fundamental.rights@consilium.eu.int**

Brüssel, den 4. April 2000**CHARTE 4201/00****CONTRIB 82****ÜBERMITTLUNGSVERMERK**

Betr.: Entwurf der Charta der Grundrechte der Europäischen Union

Finden Sie bitte nachstehend Änderungsanträge zu Dokument CHARTE 4170/00
CONVENT 17, vorgelegt von Herrn Ingo Friedrich, Mitglied des Europaparlaments. ¹

¹ Dieser Text wurde nur in deutscher Sprache übermittelt.

Dr. Ingo Friedrich, MdEP
 Vizepräsident des Europäischen Parlaments
 Mitglied im EU-Grundrechtskonvent

Änderungsanträge zu Dokument CONVENT 17
 Vorschläge für die Artikel über die Bürgerrechte (Artikel A bis J)

Änderungsantrag 1:

Artikel A. Grundsatz der Demokratie

1. Alle öffentliche Gewalt geht (zwei Wörter streichen) von den Völkern der in der EU vereinigten Staaten aus.
2. Die Union (drei Wörter streichen) beruht auf den Grundsätzen der Freiheit, der Demokratie, der Achtung der Menschenrechte und der Rechtsstaatlichkeit; diese Grundsätze sind allen Mitgliedstaaten gemeinsam.
3. Die Abgeordneten der Völker der in der Union (ein Wort streichen) zusammengeschlossenen (1 Wort streichen) Staaten im Europäischen Parlament werden in allgemeiner, unmittelbarer, freier, gleicher und geheimer Wahl von den Völkern der in der EU vereinigten Staaten gewählt.

In Absatz 1 "vom Volk" ersetzen durch "von den Völkern der in der EU vereinigten Staaten" .

In Absatz 2 "und ihre Organe" streichen.

In Absatz 3 "Gemeinschaft" ersetzen durch "Union" und "vereinigt" durch "zusammengeschlossenen"; "gleicher" einfügen.

Änderungsantrag 2:

Artikel B. Politische Parteien

Alle Unionsbürger und -bürgerinnen haben das Recht, mit anderen politische Parteien auf der Ebene der EU zu gründen und diesen beizutreten. Die politischen Parteien auf der Ebene der Europäischen Union tragen dazu bei, ein europäisches Bewußtsein herauszubilden und den politischen Willen der Bürger und Bürgerinnen der Union zum Ausdruck zu bringen. Dieses Recht gilt nicht für Parteien, die nach ihren Zielen oder dem Verhalten ihrer Anhänger nicht die Grundsätze der Freiheit, der Demokratie, der Achtung der Menschenrechte und der Rechtsstaatlichkeit achten.

*In Satz 1 "auf der Ebene der EU" einfügen nach "politische Parteien". Neuer Satz angefügt*Änderungsantrag 3:

Artikel C. Recht auf Teilnahme an den Wahlen zum Europäischen Parlament

Alle Unionsbürger und -bürgerinnen mit Wohnsitz in einem Mitgliedstaat, dessen Staatsangehörigkeit sie nicht besitzen, besitzen in dem Mitgliedstaat, in dem sie ihren Wohnsitz haben, das aktive und passive Wahlrecht bei den Wahlen zum Europäischen Parlament, wobei für sie dieselben Bedingungen gelten wie für die Angehörigen des betreffenden Mitgliedstaats, sofern dem nicht besondere Probleme dieses Mitgliedstaates entgegenstehen. Dieses Recht wird nach den im Vertrag zur Gründung der Europäischen Gemeinschaft vorgesehenen Einzelheiten ausgeübt.

In Satz 1 "sofern dem nicht besondere Probleme dieses Mitgliedstaates entgegenstehen" nach "Mitgliedstaats".

Änderungsantrag 4:

Artikel D. Recht auf Teilnahme an den Kommunalwahlen

Alle Unionsbürger und -bürgerinnen mit Wohnsitz in einem Mitgliedstaat, dessen Staatsangehörigkeit sie nicht besitzen, haben in dem Mitgliedstaat, in dem sie ihren Wohnsitz haben, das aktive und passive Wahlrecht bei Kommunalwahlen, wobei für sie die selben Bedingungen gelten wie für die Angehörigen des betreffenden Mitgliedstaates, sofern dem nicht besondere Probleme dieses Mitgliedstaates entgegen stehen. Dieses Recht wird nach den im Vertrag zur Gründung der Europäischen Gemeinschaft vorgesehenen Einzelheiten ausgeübt.

In Satz 1 einfügen: "sofern dem nicht besondere Probleme dieses Mitgliedstaaten entgegen stehen" einfügen nach "Mitgliedstaats".

Änderungsantrag 5:

Artikel E. Recht auf eine ordnungsgemäße Verwaltung [Beziehungen zur Verwaltung]

- 1. Alle Personen mit Wohnsitz in einem Mitgliedstaat haben ein Recht darauf, daß ihre Angelegenheiten von den Organen und Einrichtungen der Union ordnungsgemäß, unparteiisch, gerecht und innerhalb einer angemessenen Frist behandelt werden.**

Absatz 2 a.F. streichen.

- 2. Alle Bürger und Bürgerinnen können sich in einer der Amtssprachen der Union an die Organe und Einrichtungen der Union wenden und müssen eine Antwort in dieser Sprache erhalten.**

Nr. 2 streichen.

In Absatz "zur Wahrung ihrer Rechte" einfügen nach "Argumente"

Änderungsantrag 6:

Artikel F streichen

Änderungsantrag 7:

Artikel H. Petitionsrecht

Alle Unionsbürger und -bürgerinnen sowie alle Personen mit Wohnsitz im Hoheitsgebiet eines Mitgliedstaates besitzen das Petitionsrecht beim Europäischen Parlament in Angelegenheiten, die in die Tätigkeitsbereiche der Union fallen und die ihn oder sie unmittelbar betreffen und den im Vertrag zur Gründung der Europäischen Gemeinschaft festgelegten Bedingungen.

Nach den Worten beim Europäischen Parlament die Worte "in Angelegenheiten, die in die Tätigkeitsbereiche der Union fallen und die ihn oder sie unmittelbar betreffen" einfügen.

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE**fundamental.rights@consilium.eu.int**

Bruxelles, le 5 avril 2000**CHARTE 4202/00****CONTRIB 83****NOTE DE TRANSMISSION**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne

Veillez trouver ci-joint une contribution de M. Alvaro Rodriguez Bereijo, Représentant du
President du gouvernement espagnol relative aux articles 1 a 16 du document CHARTE 4159/00
CONVENT 13. ¹

¹ Ce texte a été soumis en langues française et espagnole.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

**Brussels, 12 April 2000 (18.04)
(OR. en,nl)****CHARTE 4225/00****CONTRIB 100****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a contribution by Mrs Johanna Maij-Weggen, member of the European Parliament, on the document CHARTE 4192/00 CONVENT 18. ¹

¹ This text exists in Dutch and English.

Mrs Maij-Weggen's amendments to the proposed articles on social rights

Article I should read as follows:

Equality between men and women must be ensured with regard to employment, pay, education and vocational training, social protection and taxation.

Article IV should read as follows:

1. Employers and workers have the right to associate freely, to negotiate collective agreements and, in cases of conflicts of interest, to take action and/or strike, even at European level.
2. Every citizen has the right, on an individual basis, to reach agreements concerning his/her employment contract, in compliance with national and European legislation.

Article V should read as follows:

Every worker has the right to fair remuneration.

Article VII should read as follows:

Every worker has the right to safe and healthy working conditions. [no change to English].

Article VIII, second paragraph, should read as follows:

Young people under eighteen years of age must have working conditions which suit their age and be protected against any work likely to harm their health and development.

Une autre solution consisterait dans l'inclusion de cette disposition au préambule ou d'en faire un article à part".

Ces observations importantes posent les problèmes suivants:

L'un d'eux fait référence au cadre des compétences, étant donné que l'on y spécifie l'application de la Charte aux institutions et organismes de l'Union et aux Etats membres lorsqu'ils appliquent le Droit communautaire, sans tenir compte que beaucoup des droits que l'on voudrait inclure dans la Charte, par leur propre nature et contenu, ne seront jamais appliqués, ni par la Communauté et ses Institutions, ni par les Etats membres, en exécution du Droit communautaire. Si l'on maintient le champ d'application prévu à la clause que nous examinons, nous nous trouverions devant le fait que la Charte contient des droits dont l'application est impossible. Pour cela, il serait préférable de les supprimer ou bien d'élargir leur champ d'application, entendu que ces droits s'appliquent aux Etats membres dans le cadre de ses compétences. Les droits mentionnés devront avoir les Etats membres en tant que destinataires exclusifs, étant donné qu'actuellement la Communauté manque de compétences sur eux. C'est le cas, par exemple avec le droit à la vie, la peine de mort, le procès pénal, l'éducation, etc. Ces droits, dans la mesure où ils sont contenus dans la Convention Européenne des Droits Humains (CEDH) et font partie du patrimoine des droits fondamentaux européens, doivent se refléter dans la Charte, mais ils sont uniquement exigibles aux Etats. Puisque la Communauté et ses institutions, spécialement le Tribunal de Justice, manquent de compétences pour leur sauvegarde et control, il faudrait s'en remettre à ce qui est prévu dans la législation interne de chaque Etat, sans préjudice des renvois que les législations internes mentionnées puissent faire à d'autres textes ou instances non communautaires. N'est pas recevable un renvoi spécifique à une autre source qui ne soit pas celle interne de chaque Etat, puisque, dans le cas contraire, l'interprétation du droit communautaire serait attribuée à une instance supranationale différente de la Communauté.

Troisièmement, il est très important de laisser bien clair que la référence à la reconnaissance et à la protection des droits fondamentaux ne peut être interprétée en aucun cas comme l'élargissement, dans ces matières, des compétences non incluses actuellement dans le cadre de la Communauté Européenne d'après le texte de ses Traités. Le contraire supposerait une modification indirecte du Droit Communautaire qui dépasserait le cadre du mandat reçu par la Convention. Cette inquiétude est reflétée dans le projet et l'on propose, comme rédaction alternative, suite aux observations antérieures, ce qui suit:

"Les dispositions de la présente Charte seront applicables à la Communauté et ses institutions et aux Etats membres dans la limite de leurs compétences respectives.

Les dispositions de la Charte n'impliquent aucune attribution de nouvelles compétences en faveur de la Communauté ou ses institutions, ni aucun élargissement des compétences existantes ou des objectifs qui ont été attribués à la Communauté et ses institutions".

Cette double clause, relative au champ d'application de la Charte et à la non-modification du champ de compétence de la Communauté et ses Institutions, devrait se compléter avec une autre clause relative au control juridictionnel des droits reconnus dans la Charte en cohérence avec ce qui a été exposé précédemment. Un contenu possible de cette clause serait différencier trois types de suppositions (ou hypothèses):

* le respect, par la Communauté et ses Institutions, des droits reconnus dans la Charte y qui affecten son champ de compétence, correspondrait au Tribunal de Justice des Communautés Européennes;

* le respect, par les Etats Membres, des droits reconnus dans la Charte lorsqu'ils agissent en exécution du Droit communautaire, correspondrait au Tribunal de Justice des Communautés Européennes et aux organismes juridictionnels internes en tant qu'applicateurs du Droit Communautaire;

* le respect, par les Etats Membres, des droits reconnus par la Charte dans les matières qui sont de sa seule compétence, serait garanti conformément au système de contrôle juridictionnel prévu dans les législations internes de chacun des Etats Membres.

En accord avec la terminologie utilisée par le TCE, on propose de remplacer le terme "missions" par "objectifs".

Article 2. Le Droit à la vie

1. Toute personne a droit à la vie.

2. Personne ne pourra être condamné à la peine de mort, ni exécuté.

Rédaction alternative

Article 2. Le Droit à la vie.

1. Tous ont droit à la vie.

2. Personne ne pourra être condamné à la peine de mort, ni exécuté, sauf ce qui est prévu dans les lois pénales par temps de guerre.

Motivation:

On propose l'expression "tous" au lieu de "toute personne", afin d'éviter le conflit de la détermination juridique, différente dans les différents Etats, du concept de la personne.

En ce qui concerne la peine de mort, le CEDH dans son protocole n° 6 a prévu l'exemption à l'abolition de la peine de mort, son maintien en temps de guerre, et la Convention a été ratifiée dans ces termes. L'Espagne a aboli, depuis la Loi Organique 11/1995, du 27 novembre, la peine de mort y compris dans ce cas et a ratifié sans réserves le second protocole facultatif du Pacte International des Droits Civils et Politiques destiné à abolir la peine de mort (New York 15.12.1989). Cependant, l'article 15 de la Constitution espagnole prévoit la possible application de la peine de mort en cas de guerre, et ce d'après ce que le législateur puisse ordonner, à tout moment, et l'abolition absolue est en contradiction avec le précepte mentionné.

L'exposition des motifs du projet reprend cette circonstance, mais comprend que celle-ci est sauvée par le renvoi que l'article 6 du TUE fait au CEDH. Ainsi, et comme on pourra l'observer plus loin, dans divers articles de la proposition qui a été remise, on a supprimé toute référence à des limites, exceptions ou définitions contenues dans le CEDH (par exemple, l'article 5.2, définitions du travail forcé ou obligatoire; ou l'article 8, limites à la publicité du procès, libertés de pensée, d'expression, etc.), entendu qu'ils sont d'application en vertu de l'article 6 UE.

Nous ne partageons pas cette opinion étant donné que cet article établi, à son alinéa 2° que *"l'Union Européenne respectera les droits fondamentaux, tels qu'ils sont garantis dans la Convention Européenne pour la Protection des Droits Humains y des Libertés Fondamentales, signé à Rome le 4 novembre 1950, et tel que prévu dans les traditions constitutionnelles communes aux Etats Membres, en tant que principes généraux du Droit Communautaire"*. Comme on peut apprécier, ce précepte oblige l'Union à respecter les droits fondamentaux en tant que principes généraux du Droit communautaire, en spécifiant que les droits en question seront ceux établis dans le CEDH et dans les traditions constitutionnelles des Etats Membres. Telle est la situation actuelle, à laquelle on devrait ajouter le contrôle juridictionnel que le Tribunal de Justice effectue pour le respect de cet article, en vertu de l'article 46 UE.

Cependant, par l'adoption d'une Charte des Droits Fondamentaux de l'Union Européenne et, si cela était le cas, l'incorporation aux Traités, il est évident que cet article 6 devra, soit être modifié, soit disparaître. Cela n'a aucun sens de dire que les droits fondamentaux doivent être respectés par l'Union en tant que principes généraux du Droit Communautaire et en accord avec le CEDH et les traditions constitutionnelles des Etats Membres, et en même temps avoir une énumération de droits qui lient les Institutions et les Etats Membres en exécution du Droit communautaire.

D'autre part, s'il s'avérait qu'aucune spécification de limites ou d'exceptions n'était nécessaire, étant donné que, en vertu de l'art 6 UE, c'est le CEDH qui est appliqué, c'est alors l'inutilité de l'exercice effectué qui est mise en évidence. Il n'est donc pas nécessaire de rédiger une Charte, puisque nous disposons de l'art. 6 UE qui fait que le CEDH s'applique à l'Union.

En ce qui concerne la peine de mort, on ne peut omettre, en outre, que cette interdiction est dirigée unique et exclusivement aux Etats, et non aux Institutions Européennes.

Article 3. Le Droit au respect de l'intégrité

1. Toute personne a le droit au respect de son intégrité physique et psychique.

2. Dans le cadre de la médecine et de la biologie, on doit spécialement respecter les principes suivants:

- interdiction des pratiques eugéniques
- respect du consentement libre et informé du patient
- interdiction du fait que le corps humains et ses produits se convertissent en objet de profit (ou lucre)
- interdiction de la clonation d'êtres humains

Observations.

1) On propose de modifier, ne fut-ce que la traduction espagnole de l'alinéa premier de l'article, en remplaçant "psychique" par "morale". En effet, le terme "moral" se rattache plus à la tradition juridique espagnole et, en outre, apporte une dimension plus ample que "psychique" -qui est plutôt un terme scientifique- et qui, plus est, se réfère plus à l'intégrité physique.

2) L'alinéa relatif à la médecine et à la biologie a été extrait, comme expliqué dans l'exposition des motifs, de la "Convention pour la Protection des Droits Humains et la dignité de l'être humain en respect avec les applications de la biologie et de la médecine" élaborée dans le cadre du Conseil Européen et que l'Espagne n'a pas ratifié.

Les mentions réalisées à cet alinéa n'apportent aucune valeur ajoutée à la reconnaissance du droit à la vie et à l'intégrité physique et moral, et son ambiguïté est susceptible de présenter, au contraire, des problèmes d'interprétation. En accord avec le proverbe allemand "dans le détail se trouve le diable", il se peut qu'en concrétisant les interdictions à celles prévues dans cet article, des faits également contraires aux Droits Humains non repris dans l'article proposé puissent y être admis. On peut invoquer le fait que le Droit doit s'adapter à l'évolution technologique, mais cette même raison conseille précisément, lorsque l'on dispose de prévisions qui peuvent parfaitement s'adapter aux changements technologiques, ne pas tomber dans des classifications qui emprisonnent l'évolution propre à laquelle on prétend s'adapter. D'autre part, l'analyse de la Convention à laquelle on fait référence révèle que les préceptes qui y sont contenus doivent se comprendre dans son entièreté, en satisfaisant par exemple les limites et exceptions prévues dans les articles 7, 8, 9 et 26 sur la protection des personnes qui souffrent de troubles mentaux, les situations d'urgence, les désirs exprimés auparavant et les restrictions dans l'exercice des droits.

Article 4. Interdiction de torture et des traitements inhumains.

Personne ne pourra être soumise à la torture ni à des peines ou traitements inhumains ou dégradants.

Aucune observation à formuler.

Article 5. Interdiction de l'esclavage et du travail forcé.

- 1. Personne ne pourra être soumise à l'esclavage ou à la servitude.**
- 2. Personne ne pourra être contrainte de réaliser un travail forcé ou obligatoire.**

Rédaction alternative:

Ajouter à l'alinéa second ce qui suit: **"N'auront pas ce caractère les prestations personnelles qui sont établies par loi et sont exigées aux citoyens pour des raisons civiles, dans les cas d'urgence, de calamité, la prestation du service militaire ou la prestation sociale qui le remplace, ni le travail exigé normalement à une personne privée de liberté."**

Motivation:

En accord avec l'article 4.3, lettres a, b, c et d du CEDH, n'ont pas de caractère forcé les prestations personnelles exigées aux citoyens pour des raisons civiles, dans les cas d'urgence, de calamité, ni la prestation du service militaire ou prestation sociale de remplacement, ni le travail exigé normalement à une personne privée de liberté. Même si dans l'exposition de motifs on affirme que le renvoi du TUE à son article 6 est suffisant pour sauver ces exceptions, on réitère que, sans préjudice aucun du caractère qu'il faudra donner à cette Charte dans l'Ordre Juridique Européen, un précepte de ce genre dirigé aux Etats-Unis doit contenir en soi la définition adéquate du droit qui exclut la considération de travaux forcés de ceux énoncés.

Article 6. Le Droit à la liberté et à la sécurité

Toute personne a le droit à la liberté et à la sécurité. Personne ne peut être privé de sa liberté, sauf dans des cas spécifiques et en accord avec les voies légales.

Rédaction alternative:

Toute personne a le droit à la liberté et à la sécurité. Personne ne peut être privé de sa liberté, sauf dans les cas et dans la forme prévus par la loi.

Motivation:

Il n'existe pas d'inconvénient à accepter la synthèse qui, en relation avec le brouillon précédant et avec le texte du CEDH, se fait du droit à la liberté et à la sécurité, en élargissant en plus son contenu à la "privation de la liberté" qu'elle qu'en soit la cause et non uniquement à la détention ou prison pour des causes pénales (pour maladies psychiques, par exemple). En outre, dans la mesure où le précepte peut uniquement être dirigé aux Etats-Unis, celui-ci est suffisant avec la proclamation du droit.

La proposition qui est réalisée prétend à une plus grande perfection linguistique, à la fois qu'à son accomodation au langage technique juridique: les cas "spécifiques" sont seulement ceux déterminés par la loi, et les "voies légales" sont les formes ou procédures également déterminées par loi.

Article 7. Le Droit au recours effectif

Toute personne dont les droits et libertés ont été violés a le droit au recours effectif devant un tribunal.

Note: Les articles 7 et 8 devraient se scinder en deux alinéas d'un même précepte en tant que manifestation des procédures auxquelles font expressément référence les conclusions du Conseil de l'Europe; ceci peut être utile afin de favoriser une meilleure visibilité de la Charte; c'est en effet le cas à l'article 6 du CEDH.

Rédaction alternative:

Le Droit à la tutelle judiciaire effective.

Toute personne, dont les droits et libertés, reconnus dans cette Charte, ont été violés, a le droit d'accès à la tutelle judiciaire effective en accord avec le Droit Communautaire et avec la loi de chaque Etat.

Motivation:

1. Il faut mentionner expressément que les droits et libertés protégés son ceux reconnus dans la Charte et non d'autres.

2. Afin de moderniser la formulation de ce droit et le doter d'un caractère omnicompréhensif, c'est-à-dire, dans tous les domaines juridictionnels (civils, pénaux, contentieux administratifs, c-à-d les autorités judiciaires qui, dans certains Etats contrôlent l'Administration, et Social), internes et communautaires, il paraît opportun de modifier sa dénomination en utilisant l'expression "droit d'accès à la tutelle judiciaire effective". En outre, en espagnol le mot "recours" s'identifie à la révision par une instance soit administrative ou judiciaires d'un cas auparavant prononcé par une instance inférieure.

3. En tous cas, l'accès à la tutelle judiciaire effective est un droit conféré par la Loi, c'est pourquoi l'on propose une mention expresse à celle-ci pour son développement par les Etats ou aux Traités pour ce qui est des Institutions Européennes. Ce seront donc la Loi et le Droit Communautaire qui, tout en respectant l'accès à la tutelle judiciaire, établiront les ordres juridictionnels et leurs respectives compétences, les procédures afin de rendre effectif ce droit, en y incluant les règles de légitimation active et passive, etc...

Note. L'Espagne n'a pas ratifié le protocole n° 7 concernant la double instance pénale; il ne semble pas que dans ce texte cette réserve soit compromise.

Article 8. Le Droit à un tribunal impartial.

Toute personne a le droit à ce que sa cause soit entendue équitablement et publiquement, dans un délai raisonnable, par un tribunal indépendant et impartial, établi par la loi. Une assistance juridique gratuite sera prestée à ceux qui ne disposent pas de moyens suffisants, si toutefois celle-ci est indispensable afin de garantir l'efficacité de l'accès à la justice.

Aucune observation n'est formulée. La rédaction pourrait s'améliorer, du moins en espagnol, en modifiant les expressions suivantes:

- "autorité judiciaire" (qui comprend les organes juridictionnels unipersonnels et associés, et qui en Espagne sont appelés Tribunaux).
- "prédéterminé para la loi" au lieu de "establi"

Article 9. Les Droits à la défense.

Tout accusé est présumé innocent jusqu'à ce que sa culpabilité ait été légalement déclarée et a droit au respect des droits à la défense.

Note: Les articles 9, 10 et 11 devraient être groupés en un seul, puisqu'ils établissent tous trois des garanties au procès pénal.

Rédaction alternative

Article 9. Les Droits à la défense

Tout accusé est présumé innocent jusqu'à ce que sa culpabilité ait été légalement déclarée et a droit au respect des droits à la défense et à l'égalité des armes.

Observations:

On ne peut passer sous silence que l'Espagne a formulé, en son temps, une réserve en ce qui concerne l'application des articles 5 et 6 du CEDH en relation avec le régime disciplinaire des Forces Armées, actuellement régi par la Loi Organique 8/1998, du 2 décembre, du Régime Disciplinaire des Forces Armées, et la Loi Organique 11/1991 qui établit le régime disciplinaire de la Garde Civile, qui, en accord avec l'article 25.3 CE prévoit l'imposition, par les autorités militaires non judiciaires, de peines privant de la liberté dans ce domaine. La moindre concrétion des préceptes de ce dernier brouillon par rapport au précédent paraît éviter toute collision entre l'ordre interne et ce que l'on y exprime, tant que sa rédaction s'en tient aux termes actuels.

Article 10. Il n'y a pas de peine sans loi.

Personne ne pourra être condamné pour une action ou une omission qui, au moment où elle a été commise, ne constitue pas une infraction prévue par le Droit national, le Droit de l'Union ou le Droit international. De même, aucune peine plus grave que celle d'application au moment où l'infraction a été commise ne pourra être imposée. Si, postérieurement à l'accomplissement de l'infraction, la loi ordonne l'imposition d'une peine plus légère, celle-ci devra être appliquée.

Le présent article n'empêchera pas le jugement ni le châtement d'une personne coupable d'une action ou d'une omission qui, au moment de son accomplissement, constituerait un délit selon les principes généraux des Droits reconnus par les nations démocratiques.

Rédaction alternative:**Article 10. Principe de légalité pénale**

- "Personne ne pourra être condamné **pénalement** pour une action ou une omission qui, au moment où elle a été commise, ne constitue pas **une infraction pénale prévue par la loi**. De même, aucune peine plus grave que celle d'application au moment où l'infraction a été commise ne pourra être imposée. Si, postérieurement à l'accomplissement de l'infraction, la loi ordonne l'imposition d'une peine plus légère, celle-ci devra être appliquée".

- Suppression du second paragraphe.

Motivation:

1) L'inclusion de l'expression "pénale" permet de délimiter le cadre de ce Droit à la légalité. De ce fait, en principe, est exclue son application dans le domaine de ce qui peut être sanctionné administrativement. Cela n'empêcherait pas à ce que dans un précepte à part, on fasse une mention à l'application du principe de légalité dans le domaine des sanctions administratives, avec un renvoi à la "legislation" qui permette la prévision des infractions et des sanctions dans les normes communautaires (Règlements et Directives), la collaboration des règlements émanant de l'Administration dans la description des types des infractions et dans la détermination des sanctions, de même que son grand jeu dans le domaine des relations spéciales de soumission. Il est très difficile que l'article s'applique aux Institutions de la Communauté, tandis que l'utilisation par la Communauté Européenne de la faculté sanctionnatrice et quotidienne.

2) Au contraire, on inclut la mention à l'expression "loi" au lieu de Droit national ou droit international, parce que cet instrument de norme permet de renforcer les garanties des citoyens en réservant à l'expression de la volonté populaire dans les organismes qui comprennent le pouvoir législatif, la compétence pour prévoir des infractions pénales. Il ne paraît pas opportun dans l'état actuel du droit européen de maintenir les renvois vagues au Droit international ou le seconde paragraph relatif aux "principes généraux du Droit", étant donné qu'il existent des instruments juridiques précis nationaux et internationaux sous forme des lois et traités qui garantissent aussi bien la punition de coupable de ce gens de délits que ses droits à la défense. Ce qu'établi précisément aussi bien le droit international que les principes constitutionnels au sujet de ces matières, c'est la réserve stricte à la Loi pour la configuration des délits et des peines.

3. On propose l'élimination de la référence au Droit de l'Union, parce qu'actuellement elle manque absolument de compétences en matière de typification de formes délictueuses.

Article 11. Le droit de ne pas être jugé ou puni deux fois

Personne ne pourra être sous procès ou puni pénalement à cause d'une infraction pour laquelle il a déjà été absous ou condamné par une sentence définitive conformément à la loi.

Rédaction alternative:

Le droit à ne pas être jugé ou **condamné pénalement** deux fois **pour le même fait**.

Personne ne pourra être inculpé ou condamné pénalement en raison des faits pour lesquels il a été déjà absous ou condamné pénalement par sentence ferme.

Motivation:

Le caractère pénal du champ d'application de cet article 7 devrait être renforcé, de ce fait la possibilité de la double sanction pénale et disciplinaire pour le même fait serait sauvée, raison pour laquelle l'Espagne n'a pas ratifié le protocole n° 7 du CEDH. En effet, le problème que suscite ce principe et son extension au domaine disciplinaire en interdisant la double sanction pénale et administrative pour des mêmes faits dans le domaine des nommées "relations spéciales de soumission", qui s'applique, par exemple, aux fonctionnaires, ou aux personnes liées à l'Administration avec une intensité spéciale (par exemple, une peine privative de liberté pour un délit d'assassinat pourrait être imposée par un juge pénal à un agent de l'autorité et, postérieurement, l'expulsion de l'Administration comme conséquence de la sentence pénale par une autorité administrative dans une procédure disciplinaire). D'autre part, dans ce cas la rédaction du brouillon précédent est préférable, puisqu'elle délimite avec plus de précision le champ du ne bis in idem à la double sanction pénale pour les mêmes **faits**, mieux qu'infractions.

Une chose différente serait que l'on admette la suggestion formulée en relation avec la prévision des principes spécifiques dans le domaine de la procédure administrative en général et des sanctions administratives en particulier, imposées par les Etats lorsqu'ils appliquent le Droit Communautaire ou par les Institutions Communautaires, en prévoyant un précepte interdisant, dans le domaine des sanctions administratives, la double sanction pour le même fait.

Les réserves exposées par l'Espagne sont partagées par d'autres Etats de l'Union.

L'affirmation réalisée dans l'exposition des motifs doit se nuancer dans le sens que "le principe non bis in idem" s'applique au Droit Communautaire (entre autres parmi d'autres exemples d'une jurisprudence importante, la sentence du 5 mai 1966, Gutmann contre Commission, affaires 18/65 et 35/65. Rec. 1966 p.150, et, dans une affaire récente la sentence du Tribunal de Justice, du 20 avril 99 les affaires conjointes T-305/94 et autres, Limburgse Vinyl Maatschappij NV contre Commission, non encore publiées). Ce qui est repris, au moins dans la première sentence que l'on a pu consulter, c'est l'interdiction de la double sanction disciplinaire non pénale (Dans ce cas, la sanction était imposée par la Commission à un fonctionnaire communautaire), pour des mêmes faits, question différente à celle posée ici. En tout cas, la proposition insisterait sur la convenance de prévoir des dispositions relatives à l'exercice du droit administratif sanctionneur par les Institutions de la Communauté.

Article 12. Respect de la vie privée.

Toute personne a le droit au respect de sa vie privée, de son honneur, de son domicile et du secret de ses communications.

Rédaction alternative

Intimité personnelle et familiale.

Sont garantis les droits à l'intimité personnelle et familiale, et à l'honneur; de même que les droits à l'inviolabilité du domicile, au secret des communications indépendamment du support utilisé et à la protection des données à caractère personnel. L'exercice de ces droits pourra être limité par Loi et, si cela était le cas, par autorisation judiciaire préalable.

Motivation:

1. Il serait opportun de supprimer la mention à l'identité par rapport au brouillon précédent, qui n'apparaît ni dans le CEDH ni dans le Droit Interne espagnol et son inclusion peut poser de grands problèmes d'interprétation, en commençant par sa propre définition et sa titularité.
2. D'autre part, il paraît plus adéquat de faire référence, en espagnol, au droit à l'honneur au lieu de la réputation (tel que repris dans le nouveau texte), et à l'intimité plutôt qu'à la vie privée et familiale. On propose de conserver ici la mention à la vie familiale, parce qu'on comprend que ce qui est protégé est plutôt l'intimité ou la privacité familiale que l'institution familiale, conclusion à laquelle on arrive en changeant de place cette inclusion à l'article 13.1.
3. D'autre part, il semblerait que ce soit l'endroit opportun pour inclure la protection des données et la limitation de l'usage de l'informatique, étant donné qu'elles ont une relation directe avec l'intimité, plutôt que de leur dédier un précepte propre et surtout séparé de celui-ci.
4. Dans la rédaction alternative, une mention aux limites de ce droit y a été incluse. On réitère ainsi la disconformité, exprimée dans les observations à l'article 2.2 en relation avec l'interprétation de l'article 6 TUE. A ce qu'on y dit, il faut ajouter la conviction du fait que les limites des droits sont une part consubstantielle de leur contenu et leur propre définition. Dans certains cas, comme on verra plus loin

avec la liberté d'expression, la limite s'établit précisément en défense des autres droits, tels que le droit à l'honneur ou à l'intimité. Il faut accepter l'idée, dans ces droits qui s'appliquent également aux relations entre particuliers, que l'expression des limites prive de force expresse le droit, alors que ce qu'il fait est précisément l'inverse, le garantir. Les destinataires des limitations ne sont pas seulement les Etats mais aussi les autres citoyens. Dans ce cas, l'existence des limites à ces droits doit être mentionnée (Cfr article 8 CEDH), même en exigeant son établissement par loi, de même que sa garantie, en exigeant que la limitation se fasse par intervention judiciaire.

Article 13. Vie familiale.

- 1. Toute personne a le droit au respect de sa vie familiale.**
- 2. Toute personne a le droit de se marier et de fonder une famille d'après les lois des Etats membres relatives à l'exercice de ce droit.**
- 3. La protection de la famille sur le plan juridique, économique et social serait garantie.**

Observations:

En concordance avec ce qui a déjà été exprimé antérieurement, étant donné qu'il ne s'agit pas de protéger la famille en tant qu'Institution juridique, sinon son intimité, on propose de ramener son contenu à l'alinéa précédant.

En ce qui concerne l'alinéa second, la nouvelle formulation, avec renvoi à la Loi de chaque Etat pour l'établissement des conditions requises et des limites de ce droit, paraît opportune.

L'alinéa 3, bien qu'ayant changé sa rédaction par rapport à la version précédente, établit un principe de politique sociale qui ne fait pas partie de l'actuelle compétence de l'Union Européenne ni de la Communauté, c'est pourquoi sa formulation risque d'être interprétée dans le sens d'extralimenter le mandat reçu par la Convention, dans les termes exprimés auparavant. On propose sa suppression.

Article 14. Liberté de pensée, de conscience et de religion.

Toute personne a le droit à la liberté de pensée, de conscience et de religion.

Rédaction alternative: Ajout d'un nouvel alinéa:

- 2. Ces droits ne pourront faire l'objet de plus de restrictions que celles qui, prévues par la loi, constituent des mesures nécessaires et proportionnelles pour la protection de l'ordre, la santé ou la morale publiques ou des droits et libertés reconnus dans cette Charte.**

Observations:

Le précepte reproduit littéralement l'alinéa 1 de l'article 9 du CEDH et, comme tel, ne suscite aucune question. Non obstant, les limitations à ce droit, tel que prévue à l'alinéa second, sont omises et,

d'après notre critère, celles-ci doivent figurer littéralement à l'article ou ne fût-ce que de façon abrégée. On pourrait compléter le précepte avec l'inclusion d'une mention relative au fait que "personne ne pourra être obligé à déclarer d'après son idéologie, sa religion ou ses croyances".

Article 15. La liberté d'expression.

1. Toute personne a le droit à la liberté d'expression. Ce droit comprend la liberté d'opinion et la liberté de ne pas recevoir ou de communiquer des informations ou des idées sans qu'il puisse y avoir une ingérence quelconque de la part des autorités publiques et sans considération des frontières.

2. L'art, la science et l'investigation sont libres.

Observations.

La rédaction du précepte reprend partiellement l'article 10 du CEDH. La mention au fait que "l'art, la science et l'investigation sont libres" se trouve maintenant correctement incluse, en ce qui concerne les manifestations des droits à la liberté de pensée, d'expression et d'information.

Dans ce cas-ci, sans doute avec plus de clarté que dans d'autres, on apprécie le besoin de mentionner expressément les limites de ces droits, c'est pourquoi on réitère les observations précédentes à ce sujet. De ce fait, on propose l'ajout d'un alinéa supplémentaire avec le contenu suivant:

3. Ces droits ont leur limite au respect des droits reconnus dans cette Charte, qui sont ceux établis par les lois qui les développent, ceux qui dérivent de la sécurité publique, et, spécialement, le droit à l'honneur, à l'intimité et à la protection de l'enfance et de la jeunesse.

Article 16. Le Droit à l'éducation.

1. Le droit à l'instruction ne peut être refusé à personne, ce qui inclut, en particulier, la possibilité de suivre gratuitement l'enseignement obligatoire.

2. La création de centres d'enseignements est libre.

3. On respectera le droit des parents à assurer l'éducation et l'enseignement de leurs enfants selon leurs convictions religieuses et philosophiques.

Rédaction alternative:

1. Tout le monde a le droit à l'instruction. La gratuité de l'enseignement de base obligatoire sera garantie.

2. On garantira la liberté de création de centres décents tout en respectant les principes démocratiques.

3. On respectera le droit des parents à assurer l'éducation et l'enseignement de leurs enfants, conformément à leurs convictions religieuses et philosophiques.

Motivation:

1. On propose la rédaction positive du premier alinéa avec l'intention de donner une plus grande emphase au caractère subjectif de ces droits.

2. Au sujet de l'alinéa 2, il faut dire que la liberté de création est un principe admis par tous les Etats Membres mais dont l'exercice est soumis au développement légal, où sont établis des conditions qui le limitent (à titre d'exemple on peut citer la régularisation des conditions des centres d'enseignement, en ce qui concerne leur qualité d'enseignement ou l'homologation des titres), outre la limite concernant les autres droits et principes démocratiques.

17 mars 2000.

ENTWURF DER CHARTA DER GRUNDRECHTE DER EUROPÄISCHEN UNION**fundamental.rights@consilium.eu.int**

Brüssel, den 4. April 2000**CHARTE 4203/00****CONTRIB 84****ÜBERMITTLUNGSVERMERK**

Betr.: Entwurf der Charta der Grundrechte der Europäischen Union

Finden Sie bitte nachstehend Anmerkungen der Arbeitsgruppe der deutschen Länder, vorgelegt von Herrn Jürgen Gnauck, Vertreter des deutschen Bundestags, zu Dokument CHARTE 4137/00 CONVENT 8 und CHARTE 4170/00 CONVENT 17.¹

¹ Dieser Text wurde nur in deutscher Sprache übermittelt.



Thüringer Staatskanzlei • Postfach 997 • 99021 Erfurt

Minister für Bundes- und
Europaangelegenheiten und
Chef der Staatskanzlei

An den
Vorsitzenden des Konvents
zur Ausarbeitung des Entwurfs
einer Charta der Grundrechte der EU
Herrn Bundespräsidenten a.D.
Prof. Dr. Roman Herzog
Sekretariat des Konvents

Fax: 0032-2-285 7837
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Geschäftszeichen:	Ihr Zeichen, Ihre Nachricht vom	Telefon	Datum
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Anmerkungen der Arbeitsgruppe der deutschen Länder zu den Vorschlägen des Präsidiums CHARTE 4137/00 CONVENT 8 und CHARTE 4170/00 CONVENT 17

Sehr geehrter Herr Vorsitzender,

das Präsidium hat für die informelle Plenartagung des Konvents am 27./28. März 2000 Vorschläge für die Artikel 10 bis 19 (Dokument CONVENT 8) und für die Bürgerrechte (Dokument CONVENT 17) vorgelegt. Die deutschen Länder haben sich im Rahmen ihrer Abstimmungsgespräche ein erstes Meinungsbild verschafft. Ich erlaube mir, Ihnen diese Einschätzung zu übermitteln und möchte Sie herzlich bitten, unsere Anregungen im Verlaufe der Diskussion im Konvent zu berücksichtigen.

Mit freundlichen Grüßen

Jürgen Gnauck
Minister

Regierungsstraße 73 • 99084 Erfurt • Telefon: (0361) 37 92831 • Telefax: (0361) 37 92832

Thüringer Staatskanzlei

Erfurt, den 27.08.2000

Referat 33/Bo, Fie

**Entwurf der Charta der Grundrechte der Europäischen Union
Anmerkungen der Arbeitsgruppe der deutschen Länder zu den Vorschlägen des Präsidiums
Charte 4170/00 CONVENT 17 und Charte 4137/00 CONVENT 8**

Zum Dokument CONVENT 17:

1. Zur Einleitung

Unter der Rubrik oder dem Oberbegriff "Bürgerrechte" schlägt der Vorspann eine Dreiteilung zwischen Bürgerrechten im eigentlichen Sinne, Einwohnerrechten und Menschenrechten vor. In der verfassungsrechtlichen Terminologie stellt jedoch der Begriff "Bürgerrechte" den Gegenbegriff zu "Menschenrechten" dar. Daher wäre hier wohl der Oberbegriff der "politischen Rechte" zutreffender.

Die in Erwägung gezogene allgemeine Bestimmung, wonach den Unionsbürgern vorbehaltene Rechte auf Staatsangehörige dritter Länder ausgedehnt werden können, lehnen die deutschen Länder ab. Für eine derartige Ausweitung besteht in der Charta kein Bedürfnis. Im Übrigen versteht es sich von selbst, dass eine Ausdehnung jederzeit erfolgen kann.

2. Zu Artikel A. Grundsatz der Demokratie

Absatz 1 spricht allgemein vom "Volk". Ein europäisches Staatsvolk hat sich jedoch nicht gebildet. Bezugspunkt der Charta müssen daher die Völker der Unionsstaaten bleiben, wie es die Absätze 2 und 3 auch zutreffend voraussetzen. Daher wird vorgeschlagen, anstelle der Aussage "vom Volk" die Wörter "von den Völkern der in der Europäischen Union vereinigten (oder: zusammengeschlossenen) Staaten" einzufügen.

Die Vorschrift des Absatzes 2 geht insoweit über den ihr zu Grunde liegenden Artikel 6 Abs. 1 EUV hinaus, als nach dem Wort "Union" die Wörter "und ihre Organe" eingefügt werden. Ist damit etwa eine weitergehende "Demokratisierung" der Organe bezweckt? Auf der anderen Seite übernimmt Absatz 2 die Formulierung des Artikels 6 Abs. 1 EUV nicht vollständig, sondern spart den Grundsatz der Achtung der Grundfreiheiten aus. Eine Begründung hierfür fehlt. Genügt auch insoweit der an erster Stelle genannte Grundsatz der Freiheit?

Insgesamt gesehen sollte der Eindruck vermieden werden, dass es sich bei der Charta um den Kern einer EU-Gesamtverfassung handelt.

Absatz 3 sollte zunächst um den Grundsatz der Gleichheit der Wahl ergänzt werden. So ist sichergestellt, dass jede Stimme bei der Umsetzung der Stimmen in die Zuteilung von Parlamentssitzen mit gleichem Erfolgswert berücksichtigt wird. Die Formulierung würde damit lauten: "Die Abgeordneten der Völker der in der Gemeinschaft (Union) vereinigten Staaten im Europäischen Parlament werden in allgemeiner, unmittelbarer, freier, gleicher und geheimer Wahl gewählt."

Weiter sollte anstelle des Wortes "Gemeinschaft" das Wort "Union" verwendet werden. Nach Art. 49 EUV ist nämlich nur noch ein Beitritt zur und somit eine Mitgliedschaft in der Union möglich. Ausgeschlossen ist ein Beitritt nur zu einer der Europäischen Gemeinschaften oder zur zweiten oder dritten "Säule".

3. Zu Artikel B. Politische Parteien

In Satz 1 sollten nach den Worten "mit anderen politischen Parteien" die Worte "auf der Ebene der Europäischen Union" eingefügt werden. Die Charta kann nämlich aus Kompetenzgründen nicht das Recht gewähren, politische Parteien für Wahlen allein in den Mitgliedstaaten zu gründen.

Darüber hinaus empfiehlt sich eine Straffung des Satzes 1. Die genannte Gründungsfreiheit impliziert die Freiheit des Beitritts zu einer gegründeten politischen Partei und des Verbleibs darin. Daher erscheint es unnötig, das Recht auf Beitritt zu einer politischen Partei ausdrücklich festzuschreiben. Im Übrigen könnte die bisherige Formulierung dazu führen, dass weitere Teilgarantien (etwa die interne Betätigungsfreiheit oder das Recht auf autonome Gestaltung der Organisation der Parteien) als vom Schutz des Artikels B ausgeschlossen betrachtet würden, weil sie - anders als die Beitrittsfreiheit - nicht genannt sind.

Satz 2 hat den Charakter einer allgemeinpolitischen Aussage oder eines bloßen Programmsatzes. Daher erscheint die Aufnahme in eine Grundrechtecharta äußerst fraglich.

Schließlich ist zu erwägen, ob – etwa in einem Absatz 2 – eine Ausnahme für solche Parteien vorzusehen ist, die nach ihren Zielen oder nach dem Verhalten ihrer Anhänger nicht die Grundsätze der Freiheit, der Demokratie, der Achtung der Menschenrechte und der Rechtsstaatlichkeit beachten.

Es sollte ferner sorgfältig geprüft werden, ob politische Parteien aus Artikel B einen Anspruch auf eine allgemeine Parteienfinanzierung durch die Europäische Union herleiten könnten.

4. Zu Artikel C. Recht auf Teilnahme an den Wahlen zum Europäischen Parlament

Die in Artikel C und D aufgeführten Wahlrechte der Unionsbürger für Wahlen zum Europäischen Parlament und zu den Kommunalvertretungen könnten – im Interesse der Straffung – in einem Artikel zusammengeführt werden. Dies entspräche Artikel 19 EGV, der das Wahlrecht bei Wahlen zum Europäischen Parlament und bei Kommunalwahlen ebenfalls zusammenfasst.

Es erscheint sinnvoll, am Ende des Satzes 1 eine Öffnungsklausel vorzusehen, die lauten könnte: "sofern dem nicht besondere Belange dieses Mitgliedstaates entgegen stehen".

Die deutsche Fassung des Satzes 2 könnte noch sprachlich wie folgt verbessert werden: "Dieses Recht besteht nach Maßgabe des Vertrages zur Gründung der Europäischen Gemeinschaft".

5. Zu Artikel D. Recht auf Teilnahme an den Kommunalwahlen

Es wird vorgeschlagen, Artikel D als Absatz 2 des Artikels C auszugestalten. Hier empfiehlt sich im Übrigen die gleiche sprachliche Verbesserung wie in Artikel C ("nach Maßgabe").

Darüber hinaus sollte Satz 2 entsprechend dem bisherigen Artikel 19 Absatz 1 und Absatz 2 EGV dahingehend ergänzt werden, dass Ausnahmeregelungen vorgesehen werden, wenn dies aufgrund besonderer Probleme eines Mitgliedstaates gerechtfertigt ist. Zumindest ist klarzustellen, dass sich durch Artikel D an dem bisherigen Umfang des Wahlrechts, wie es im EGV und in den hierzu ergangenen Rechtsakten festgelegt ist, nichts ändert. Dies ist insbesondere von Bedeutung hinsichtlich der in der Kommunalwahl-Richtlinie 94/80/EG des Rates vom 19. Dezember 1994 (Amtsblatt der Europäischen Gemeinschaft Nr. L 368/38 vom 31.12.1994) enthaltenen Ausnahmeregelung des Artikels 5 Absatz 3. Dort ist bestimmt, dass die Mitgliedstaaten die Ämter des Leiters des Exekutivorgans sowie seiner Vertretung eigenen Staatsangehörigen vorbehalten können.

6. Zu Artikel E. Recht auf eine ordnungsgemäße Verwaltung (Beziehungen zur Verwaltung)

Die Notwendigkeit dieses Artikels insgesamt wird stark bezweifelt. Nach hier vertretener Auffassung ergibt sich das Recht auf eine ordnungsgemäße Verwaltung bereits aus den Verpflichtungen der Union und ihrer Organe aus dem Grundsatz der Rechtsstaatlichkeit (Artikel A). Mit anderen Worten dürfte das in Artikel E verankerte Recht bereits Ausfluss des Rechtsstaatsprinzips sein. Im Übrigen könnte das Recht als Anreiz für verstärkte Rügen missverstanden werden.

Sollte der Artikel in die Charta aufgenommen werden, empfiehlt sich jedenfalls eine Straffung, insbesondere eine Streichung des Absatzes 2. Die dort in den Spiegelstrichen 1 bis 3 normierten Teilgarantien (rechtliches Gehör auch im Verwaltungsverfahren; Recht auf Akteneinsicht im Verwaltungsverfahren; Begründungszwang der Verwaltung) ergeben sich durchweg aus den Anforderungen, die der Grundsatz der Rechtsstaatlichkeit an die Rechtsanwendung durch die Verwaltung stellt. Rechtsstaatliches Entscheiden verlangt schließlich eine Messbarkeit und Vorhersehbarkeit des Verwaltungshandelns. Eine Aufzählung lediglich einiger Beispielfälle würde ggf. dazu führen, dass andere Ausprägungen der Rechtsstaatlichkeit im Bereich der Verwaltung (wie etwa die Forderungen nach rationaler Verwaltungsorganisation oder nach Befangenheits- und Unvereinbarkeitsregeln) als von Artikel E nicht umfasst angesehen werden.

Absatz 1 des Artikels stellt darauf ab, dass Personen ihren Wohnsitz in einem Mitgliedstaat haben. Im Umkehrschluss wäre daraus zu schließen, dass Personen ohne Wohnsitz in einem Mitgliedstaat damit rechnen müssten, dass ihre Angelegenheiten von den Organen und Einrichtungen der Union nicht ordnungsgemäß, d.h. nicht unparteiisch, gerecht und innerhalb einer angemessenen Frist behandelt werden müssen. Dies kann nicht gemeint sein. Auf der anderen Seite ist fraglich, ob man sämtliche in Artikel E niedergelegten Rechte ohne Rücksicht auf die Staatsangehörigkeit gewähren will.

Sollte Absatz 2 beibehalten werden, ist jedenfalls auf Ausnahmeregelungen zu achten. Schließlich kann nach allgemeinen Grundsätzen des Verwaltungsfahrensrechts aus übergeordneten Erwägungen heraus (z. B. Gefahr im Verzug; Sach- und Rechtslage bekannt) auf eine Anhörung und Begründung im Einzelfall verzichtet werden. Ferner sollte das Akteneinsichtsrecht nicht auf die Geltendmachung der Argumente, sondern auf die Wahrnehmung eigener Rechte bezogen werden.

7. Zu Artikel F. Recht auf Zugang zu den Dokumenten

Die Aufnahme eines derartigen Rechts erscheint aus rechtssystematischen Gründen mehr als fraglich. Dieses Recht ist schließlich von seinem Rang und Gehalt her nicht mit klassischen Grundrechten zu vergleichen und käme allenfalls für Verfahrensbeteiligte in Betracht. Artikel F könnte daher ganz entfallen; eine Regelung auf sekundärrechtlicher Ebene ist wohl ausreichend. Allenfalls empfiehlt sich die Aufnahme oder Integration in Artikel E.

8. Zu Artikel G. Befassung des Bürgerbeauftragten

Hier empfiehlt sich einmal eine Grundsatzdiskussion darüber, wie die Einrichtung diverser Beauftragter im staatlichen und staatsnahen Bereich unter dem Gesichtspunkt der Gewaltenteilung zu beurteilen ist. Dann ist zweifelhaft, ob das Recht ohne Rücksicht auf die Staatsangehörigkeit gewährt werden soll. Gerade im Bereich des Ausländer- und Asylrechts könnte eine Flut von Beschwerden eingehen.

9. Zu Artikel H. Petitionsrecht

Hier sollte zunächst entsprechend Artikel 194 EGV deutlich gemacht werden, dass das Petitionsrecht nur im Tätigkeitsbereich der Organe der Europäischen Union gilt. Diese Einschränkung der Behandlungskompetenz könnte dadurch erreicht werden, dass nach der Erwähnung des Europäischen Parlaments folgender Passus eingefügt wird: "in Angelegenheiten, die in die Tätigkeitsbereiche der Union fallen und die sie unmittelbar betreffen,".

Darüber hinaus ist fraglich, ob Personen, die von petitionsfähigen Entscheidungen betroffen sind, sich aber in Drittstaaten befinden, vom Schutzbereich des Artikels H ausgeschlossen sein sollen. Dies gilt etwa für Ausländer, die über die Grenzen des Unionsgebietes hinaus abgeschoben werden.

Schließlich sollte der Konvent das Verhältnis des Artikels H zu Artikel G klären. Die durch das Petitionsrecht eröffnete Möglichkeit, sich zu artikulieren, zu informieren und im Wege der Petition auch mittelbar auf die politische Willensbildung Einfluss zu nehmen, wird bereits durch die Befassung des Bürgerbeauftragten eröffnet.

10. Zu Artikel I. Freizügigkeit

Dem Textvorschlag wird uneingeschränkt zugestimmt. Seinem Regelungsgehalt nach enthält Artikel I allerdings ein Freiheitsrecht. Es stellt sich mithin die Frage, ob es an dieser Stelle systematisch richtig eingeordnet ist. In seiner Bedeutung rangiert es sicherlich vor den Artikeln E, F, G und H. Aus Sicht des Unionsbürgers dürfte Artikel I (und auch Artikel J) einen größeren Stellenwert besitzen als die Rechte auf politische Teilhabe (Artikel C und D) und deren Annexrechte (Artikel B und H). Das in Artikel I geregelte Recht, sich im Hoheitsgebiet eines Mitgliedstaates aufzuhalten, ist schließlich die Grundvoraussetzung der politischen Teilhaberechte, die den Wohnsitz in einem Mitgliedstaat verlangen.

11. Zu Artikel J. Diskriminierungsverbot

Der vorgeschlagenen Fassung wird zugestimmt. Es ist allerdings zu überlegen, ob aus Gründen der besseren Übersicht und Verständlichkeit die Diskriminierungsverbote des Artikels J und des mit Dokument CONVENT 8 vorgeschlagenen Artikels 19 nicht zu einem einheitlichen Diskriminierungsverbot zusammengefasst werden können. Darüber hinaus sollte darauf geachtet werden, dass nicht nur Diskriminierungen, sondern auch Bevorzugungen oder sachlich nicht gerechtfertigte Besserstellungen aus Gründen bestimmter Staatsangehörigkeiten unterbunden werden.

Zum Dokument CONVENT 8

1. Zu Artikel 13. Versammlungs- und Vereinigungsfreiheit

Hier ist zum einen zu erwägen, ob man die Versammlungs- und Vereinigungsfreiheit nicht in gesonderten Bestimmungen aufnehmen sollte. Zum anderen wäre daran zu denken, Versammlungen zu illegalen Zwecken ausdrücklich aus dem Schutzbereich des Grundrechtes auszunehmen.

2. Zu Artikel 14. Recht auf Zugang zu Informationen

Hier gelten die Ausführungen zu dem Vorschlag für Artikel F CONVENT 17.

3. Zu Artikel 15. Datenschutz

Die vorgeschlagene Regelung zum Datenschutz wird gebilligt. Eine darüber hinaus gehende Regelung wird nachdrücklich abgelehnt. Insbesondere erscheint die vorgeschlagene Aufnahme einer Überwachung durch besondere Einrichtungen, etwa durch Kontrollstellen mit Untersuchungs- und wirksamen Einwirkungsbefugnissen, als zu weit gehend. Würde man nämlich die Absicherung der Grundrechte durch eigens eingerichtete, besondere Stellen auch bei den anderen Rechten mit in die Charta aufnehmen (was bei manchen Rechten angesichts ihrer gegenüber dem Datenschutz nicht weniger existenziellen Bedeutung dann zu fordern wäre), würde dies zu einer Überfrachtung der Grundrechtecharta führen. Dies schließt eine Regelung auf sekundärrechtlicher Ebene nicht aus.

Darüber hinaus ist zu beachten, dass aus der Grundrechtecharta keine neuen Handlungskompetenzen für die Union erwachsen dürfen. Im Übrigen erscheint eine über die Vorschriften des Bundesdatenschutzgesetzes bzw. der Datenschutzgesetze der Länder hinaus gehende bzw. daneben bestehende Kontrolle nicht erforderlich.

Die Beschränkung auf natürliche Personen in Art. 15 wirft schließlich die Frage auf, in welcher Weise die Grundrechtecharta das "Persönlichkeitsrecht" der juristischen Personen sowie den Schutz von Betriebsgeheimnissen zu erfassen gedenkt (unter Eigentum, Wirtschaftsfreiheit?).

4. Zu Artikel 16. Eigentumsrecht

Die Vorschrift lässt offen, was konkret unter "Eigentum" zu verstehen ist. Auch stellt sich die Frage, ob nicht eine Aussage zur Sozialbindung des Eigentums aufgenommen werden sollte ("Eigentum verpflichtet"). Das gleiche gilt für das Erbrecht.

5. Zu Artikel 17. Asyl- und Ausweisungsrecht

Gegen diese Regelung bestehen erhebliche Bedenken. Über die Charta darf kein neues EU-Grundrecht auf Asyl begründet werden. Es fällt auch auf, dass Absatz 1 keine Tatbestandsvoraussetzungen formuliert, wie etwa die politische Verfolgung.

Die Ausführungen zu Artikel 63 EGV in dem Kommentar des Entwurfs sind nicht recht verständlich, da diese Bestimmung gerade kein Recht "auf" Asyl gewährt, sondern nur (Verfahrens-)Rechte "im" Asyl. Dies muss klargestellt werden. So begründet auch die Genfer Konvention keinen Anspruch auf Zugang zu einem Asylverfahren, sondern lediglich Rechte im Asyl.

Mit dem Verbot der "Kollektivausweisungen" in Absatz 2 lehnt sich der vorgeschlagene Artikel 17 an die EMRK an. Die EMRK will jedoch lediglich verhindern, dass eine Ausweisung ohne Einzelfallprüfung erfolgt. Um Unsicherheiten bei der Auslegung zu vermeiden, z. B. hinsichtlich der Rückführung von Bürgerkriegsflüchtlingen, sollte Artikel 17 Absatz 2 entsprechend konkret formuliert werden.

6. Zu Artikel 18. Gleichheit

Die vorgeschlagene Regelung begegnet keinen Bedenken.

7. Zu Artikel 19. Nichtdiskriminierung

Bei der vorgeschlagenen Regelung in Absatz 2 ist darauf zu achten, dass daraus keine neuen oder erweiterten Kompetenzen der Europäischen Union hergeleitet werden können. Ggf. empfiehlt es sich, Absatz 2 zu streichen. Im Übrigen ist zu prüfen, ob die Formulierung "Ungleichheiten" das eigentliche Ziel beschreibt, "Ungerechtigkeiten" zu beseitigen.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 4 April 2000**CHARTE 4204/00****CONTRIB 85****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a contribution by Mr. Gunnar Jansson, and Mrs Tuija Brax, Representatives of the Finnish Parliament. ¹

¹ This text has been submitted in English language only.

Mr Gunnar Jansson,
 Representative of the Finnish Parliament,
 Vice-president of the Representatives
 of the National Parliaments

Personal Representative of the Finnish Government
Mrs Tuija Brax, Representative of the Finnish Parliament

PRINCIPLE OF GOOD GOVERNANCE

Mr Gunnar Jansson, Vice-president of the Representatives of the National Parliaments for the Convention, proposed on 17 March 2000 that Article 8 in Convent 13 be amended and extended to cover not only the right to a fair trial but also the right to good governance. First, we would like to note that the former translation into English contained some inaccuracies. The correct proposal by Mr Jansson reads as follows:

Article 8. Right to a fair trial and good governance.

Everyone has the right to have a case pertaining to his or her rights or obligations dealt with appropriately and without undue delay by a competent court of law or other authority, as well as to have a decision in this kind of a case reviewed by a court of law or other independent organ for the administration of justice.

The consideration of a case by a court of law or other independent organ for the administration of justice shall be public, and the right to be heard and to receive a reasoned decision as well as other guarantees of a fair trial and good governance shall be in force before the court of law or other authority.

We should like to support the proposal for following reasons:

European Convention on Human Rights, Article 6 Paragraph 1 contains the basic rules for trial *procedures*. Paragraphs 2 and 3 of this Article supplement the above with regard to criminal processes. The basic rules for governance *procedures* have not been defined in the Convention on Human Rights. This is an essential flaw from today's perspective, as people are more often in contact with administrative bodies than courts of law. For example, the enforcement of EC legislation on a national level is to a large extent the responsibility of administrative bodies.

The limited nature of the European Convention on Human Rights, Article 6 Paragraph 1 is manifest in its scope of application to practice, as the phrase "civil rights and obligations" has been broadly interpreted to cover matters under public law as well. Such continually broadening interpretation provides, in our opinion, in itself sufficient grounds for the mentioning of the principle of good governance in the EU fundamental rights charter in conjunction with the principle of fair trial. Both the principle of good governance and that of fair trial are similar in substance insofar as they are both evolutive in nature and likely to undergo changes in the course of time. In the case of the principle of fair trial, this has become evident in the way its contents are in fact consolidated only with application to practice.

It should be noted that Mr Jansson’s proposal is limited to cover “*civil rights and obligations*” only and its scope does not extend to cover governance at large. The proposal contains firstly a section on the right to have decisions concerning issues falling under this category to be handled in a court of law or other independent organ for the administration of justice. Secondly, the transparency of the process in a court of law and other independent organ for the administration of justice is secured. Thirdly, the proposal includes the following *elements of good governance*:

- (1) the *appropriate* handling of cases
- (2) the handling of cases *without undue delay*
- (3) the *right to be heard* in a case
- (4) the *right to receive a reasoned decision*
- (5) *other guarantees pertaining to good governance*.

It should be clear what is meant by Elements 2–4 in Mr Jansson’s proposal. Element 3 could be further specified to be referring to the right to have access to any document in conjunction with the hearing that may be significant in relation to the ruling of the case (i.e. the publicity principle as regards the parties concerned).

Elements 1 and 5 in Mr Jansson’s proposal are more general in nature and need some further definition. In our opinion *those elements that are not specifically regulated by some other section of the fundamental rights charter* can be left to be clarified in the *explanatory memorandum*. Elements 1 and 5 may in our opinion contain the following meanings:

- the public authority has the obligation to handle a case initiated by an individual pertaining to his or her rights
- the public authority shall handle the case in an objective manner so that all aspects that may be significant to the decision concerning the matter are sufficiently investigated
- the preparation and decision on the case shall only be carried out by competent representatives of the public authority
- the public authority shall treat all parties involved in a case in a friendly and helpful manner
- the individual has the right to appear in a case in person or through, or assisted by, a representative
- the individual has the right to receive legal aid, and without cost, when required
- the individual has the right to receive legal aid in his or her own mother tongue (including sign language), and similarly a public authority shall have any aspect that arises during the hearing of the case interpreted into the mother tongue of the individual if the latter does not have sufficient command of the language used by the authority
- when giving the decision, the public authority must provide the parties concerned with the information on how to appeal on the decision and disseminate the contents of the decision to the individual concerned in an effective manner.

We do, however, feel that whether these points should be included in Element 1 or 5, is entirely a matter of taste.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 4 April 2000**CHARTE 4205/00****CONTRIB 86****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a contribution by Mr. Paavo Nikula, Personnel Representative of the Finnish government and Mr. Gunnar Jansson and Mrs. Tuija Brax, Representatives of the Finnish Parliament.¹

¹ This text has been submitted in English language only.

Mr Paavo Nikula,

Personal Representative of the Finnish Government

Mr Gunnar Jansson,

Representative of the Finnish Parliament,

Vice-president of the Representatives

of the National Parliaments

Mrs Tuija Brax, Representative of the Finnish Parliament

BASIC RIGHTS CONCERNING THE ENVIRONMENT

Basic rights provisions concerning the environment are relatively new, their roots going back to the 1970s. Worth a mention here is the UN Conference on the Human Environment held in Stockholm in 1972, which approved a declaration of the right to environment. New international developments are represented by the 1992 UN Conference on Environment and Development in Rio de Janeiro. It approved among other things the so-called Rio declaration, which is based on the principle of sustainable development. A recent interesting example from the European point of view is the declaration Water Security in the 21st century, made at the Hague minister conference. At this conference representatives of European states were prepared to include a statement to the effect that access to safe and sufficient water and sanitation should also be considered as a basic right. However, no such statement was included in the final declaration, mainly owing to opposition from the developing countries.

The individual's right to environment is not included in universal or regional human rights conventions. However, a way has emerged through the practical application of the European Human Rights Convention to develop rights concerning environmental protection and a healthy environment on the basis of such existing rights as the right to life, the right to the respect of one's private life, the right to health and the right to property, and also with regard to remedies and to the right to information. (See *Theodor Meron, The Implications of the European Convention on the Development of Public International Law*, Contribution of the *ad hoc* Committee of Legal Advisers on Public International Law (CADHI), 19th meeting, Belin 13–14 March 2000).

International developments have also begun to influence national constitutions. The provisions of these with regard to the environment vary in their content. The appendix contains the applicable sections from the constitutions of Portugal, Spain, Germany, the Netherlands, Sweden and Finland as well as Norway.

According to the decisions of Cologne European Council, the European Union charter has to treat basic rights in the way that they are guaranteed in the European Human Rights Convention and as they appear as general principles of European Community Law, deriving from the common constitutional tradition of the member states. The Treaty of Amsterdam included the principle of sustainable development as one of the central aims of Community actions. It was also acknowledged on the European Union level, and provisions concerning the environment in the articles setting out the objectives of the Treaty on the European Union and the Treaties establishing the European Communities were strengthened. The Treaty of Amsterdam also strengthened the Community's obligation to take into account in all its actions the requirements of environmental protection.

With reference to the facts stated above, we feel that the charter should include basic rights to environmental protection and the right to a healthy environment. These items are indeed mentioned in the document Body 4, after the right to property. For instance, article 20 of the Finnish constitution corresponds to our goals. However, it is appropriate for this question to be brought to the Convention for discussion on the basis of the proposal of the Drafting Committee.

APPENDIX

Portugal

Article 66 - Environment and quality of life

1. Everyone has the right to a healthy and ecologically balanced human environment and the duty to defend it.
2. In order to guarantee the right to such an environment, within the context of sustainable development, it is the duty of the State, acting through appropriate bodies and with the involvement and participation of the citizens:
 - a. To prevent and control pollution, and its effects, and harmful forms of erosion;
 - b. To organise and promote national planning with the objectives of establishing proper locations for activities and a balance between economic and social development, while enhancing the landscape;
 - c. To establish and develop nature reserves and parks and recreation areas, and classify and protect the countryside in order to guarantee nature conservation and the preservation of cultural assets of historic or artistic interest;
 - d. To promote the rational use of natural resources, while safeguarding their capacity for renewal and ecological stability, respecting the principle of solidarity between generations;
 - e. To promote, in conjunction with the local authorities, the environmental quality of populated areas and urban life, specifically with regard to architecture and the protection of historical zones;
 - f. To promote the inclusion of environmental objectives in the various sectors of policy;
 - g. To promote environmental education and respect for environmental values;
 - h. To ensure that tax policy achieves compatibility between development and protection of the environment and quality of life.

Spain

Article 45 [Environment]

- (1) Everyone has the right to enjoy an environment suitable for the development of the person as well as the duty to preserve it.
- (2) The public authorities shall concern themselves with the rational use of all natural resources for the purpose of protecting and improving the quality of life and protecting and restoring the environment, supporting themselves on an indispensable collective solidarity.
- (3) For those who violate the provisions of the foregoing paragraph, penal or administrative sanctions, as applicable, shall be established and they shall be obliged to repair the damage caused.

Germany

Article 20a [Protection of Natural Resources]

The state, also in its responsibility for future generations, protects the natural foundations of life in the framework of the constitutional order, by legislation and, according to law and justice, by executive and judiciary.

Netherlands

Article 21 [Environment]

It shall be the concern of the authorities to keep the country habitable and to protect and improve the environment.

Sweden

Article 2 (2)

- (2) The personal, economic and cultural welfare of the individual shall be fundamental aims of public activity. In particular, it shall be incumbent upon the public administration to secure the right to work, housing and education, and to promote social care and social security and a good living environment.

Finland

Article 20 - Responsibility for the environment

Nature and its biodiversity, the environment and the national heritage are the responsibility of everyone. The public authorities shall endeavour to guarantee for everyone the right to a healthy environment and for everyone the possibility to influence the decisions that concern their own living environment.

Norway

Article 110b [Environment]

- (1) Every person has a right to an environment that is conducive to health and to natural surroundings whose productivity and diversity are preserved. Natural resources should be made use of on the basis of comprehensive long-term considerations whereby this right will be safeguarded for future generations as well.
- (2) In order to safeguard their right in accordance with the foregoing paragraph, citizens are entitled to be informed of the state of the natural environment and of the effects of any encroachments on nature that are planned or commenced.
- (3) The State authorities shall issue further provisions for the implementation of these principles.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 6 April 2000**CHARTE 4206/00****CONTRIB 87****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a contribution by Mrs. Charlotte Cederschiöld, member of the European Parliament, on articles 10 and 16. ¹

¹ This text has been submitted in English language only.

CONTRIBUTION TO THE CONVENT: ART. 3 AND 10**- By Charlotte Cederschiöld, Member of the European Parliament**Article 10 – Prohibition against retroactive legislation

3. (new) Retroactive legislation or administrative measures affecting individuals directly and negatively shall be prohibited in areas of civil law.

Motivation:

Concerning the principle of non-retroactivity in legislation this principle should relate to the principle of proportionality ("Verhältnismäßigkeit"), which makes up a protection for individuals against qualified acts of authorities going too far. Clearly the prohibition of non-retroactivity in legislation does not only apply in criminal law, but also in civil law (eg the competition rules about old and new agreements in the Council regulation 17/62). The prohibition against retroactive effects must therefor include all forms of qualified acts by authorities that affect individuals negatively. This relates to the principle of legal certainty for individuals and the protection of justified expectations.

Article 16 – the right to ownership

Everyone is entitled to *own and use her/his possessions and to give it away*. No one may be deprived of her/his possessions *or restricted in their use* except in *essential (wesentlich)* public interest and in *such* cases subject to the conditions provided for by law and subject to *full* compensation *for the loss*.

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE**fundamental.rights@consilium.eu.int**

Bruxelles, le 4 avril 2000**CHARTE 4207/00****CONTRIB 88****NOTE DE TRANSMISSION**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne

Veillez trouver ci-joint une proposition d'amendements au document CHARTE 4170/00
CONVENT 17, présenté par Mme Claude Du Granrut, membre du Comité des Régions. ¹

¹ Ce texte a été soumis en langue française seulement.

Subject: Projet de Charte des Droits Fondamentaux de l'Union Européenne

Convent 17

Article A - Principe de démocratie

PROPOSITION D'AMENDEMENT DU COMITE DES REGIONS

Exposé des motifs

- La reconnaissance du droit des citoyens à participer à la gestion des affaires publiques implique que ce droit soit exercé au niveau local, c'est à dire au niveau où s'expriment leurs attentes dans la vie quotidienne et où peuvent être élaborées les solutions les plus adaptées.
- La démocratie de proximité constitue un fondement essentiel de l'Union Européenne : cf. article 1er du TUE qui rappelle que dans l'Union " les décisions sont prises le plus près possible des citoyens".
- Enfin dans la perspective, leur adhésion à l'Union, les Pays-candidats sont invités à mettre en place des Collectivités locales et régionales élues et dotées de compétences décentralisées.

Propositions

- Ajout
 1. Toute autorité publique émane du peuple. Ce principe démocratique s'applique aux Collectivités infra-étatiques.
- Rédaction modifiée
 1. Le respect du principe démocratique implique que toute autorité publique émane du peuple et que les citoyens disposent d'organes locaux de décision élus.

Claude Du GRANRUT

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE**fundamental.rights@consilium.eu.int**

Bruxelles, le 7 avril 2000**CHARTE 4214/00****CONTRIB 90****NOTE DE TRANSMISSION**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne

Veillez trouver ci-après des observations de M. Guy Braibant, Représentant Personnel du Gouvernement de la France, sur les documents CHARTE 4192/00 CONVENT 18 et CHARTE 4193/00 CONVENT 19. ¹

¹ Ce texte a été soumis en langue française seulement.



le 3 avril 2000

Guy BRAIBANT
Représentant du Président de la République
et du Premier ministre de France

**PROJET DE CHARTE DES DROITS FONDAMENTAUX
DE L'UNION EUROPEENNE**

Droits économiques et sociaux (CONVENT 18 et 19, art. I à XV) : observations et amendements.

Article I - Egalité entre les hommes et les femmes

1. Je propose de distinguer entre le principe général d'égalité des sexes, qui devrait figurer parmi les premiers articles de la Charte, en raison de son importance et son application en matière économique et sociale (emploi, travail, protection sociale).

Le principe général pourrait être ainsi formulé:

"L'égalité entre les hommes et les femmes doit être garantie et appliquée dans tous les domaines"

Pour l'application en matière économique et sociale, la rédaction pourrait être la suivante :

"L'égalité de traitement entre les hommes et les femmes doit être assurée en matière d'emploi, de travail et de protection sociale".

2. La possibilité d'adopter des mesures temporaires de discrimination positive pourrait être prévue dans les commentaires sous la forme suivante :

"Cet article ne fait pas obstacle à la possibilité de mettre en oeuvre, de façon temporaire, de mesures spécifiques pour l'un ou l'autre sexe pour compenser ou éliminer des inégalités de fait".

On pourrait également reproduire la rédaction de l'article 141.4 du traité d'Amsterdam.

Article II - Liberté professionnelle

1. Il ne faut pas paraître limiter cette liberté aux activités "commerciales". Ou bien on supprime ce qualificatif, ou bien on le remplace par "professionnelles", ou bien on supprime purement et simplement "et ses activités commerciales" qui n'ajoute rien et affaiblit la rédaction.

2. La deuxième phrase est inutile et obscure pour le "citoyen non juriste". En français, d'ailleurs, l'expression "sans préjudice" est ambiguë. En tout cas, la rédaction ne révèle pas clairement que, comme le dit le commentaire, "ce droit profite aux titulaires de la libre circulation".

3. Cette liberté n'est jamais absolue, comme le souligne l'arrêt Nold (conditions d'accès, diplômes, discipline professionnelles, règles d'urbanisme et d'environnement, etc.). Il faut soit l'indiquer dans cet article ou dans le commentaire, en reprenant la formule de l'arrêt Nold ("limites justifiées par des objectifs d'intérêt général"), soit y renvoyer dans la clause générale de limitation.

Article III - Droit à l'information et à la consultation des travailleurs

La rédaction met trop l'accent sur les "procédures de licenciement collectif", alors que c'est en amont de ces procédures et souvent pour les éviter que l'information et la consultation sont le plus utiles.

On pourrait reprendre la formule de la charte sociale révisée qui, conformément aux tendances actuelles, prévoit des consultations *"en temps utiles sur les décisions envisagées qui sont susceptibles d'affecter substantiellement les intérêts des travailleurs, notamment sur celles qui auraient des conséquences importantes sur la situation de l'emploi dans l'entreprise, et sur les décisions relatives aux conditions et au milieu de travail"*

Article IV - Droit d'association, de négociation et d'action collective

Il vaut mieux séparer la "liberté syndicale" (alinéa 1) qui figure déjà dans la Convention européenne des droits de l'homme, et les actions syndicales (alinéas 2 et 3) qui ont leur place ici.

Article VII - Sécurité et hygiène dans le travail

La notion d'hygiène est aujourd'hui remplacée par celle, plus large, de santé. La rédaction pourrait être :

"tout travailleur a droit à la protection de sa sécurité et de sa santé dans le travail".

Article VIII - Protection des enfants et des adolescents

Faut-il conserver dans le texte même de la Charte l'indication des âges (15 ans, 18 ans), qui sont évolutifs et qui pourraient figurer dans le commentaire ?

Articles XI : Droit des travailleuses à la protection de la maternité, et XII : Droit au congé parental

Faut-il fixer la durée des congés dans le texte, ou seulement dans le commentaire.

Article XII : Sécurité sociale

La rédaction appelle plusieurs remarques :

- le droit à la sécurité sociale doit être présenté comme un droit de la personne. Les législations de sécurité sociale des quinze Etats membres couvrent l'ensemble des personnes résidant sur leur territoire. Certaines le font à partir de régimes professionnels complétés par des mécanismes sous conditions de résidence (cf. France : régimes d'activité professionnelle et premier étage de la couverture maladie universelle, Allemagne...) d'autres sur la base de régimes ouverts à toute la population résidente (Royaume-Uni, pays nordiques, pour partie des risques couverts, pays de l'Europe du Sud).

Présenter le droit à la sécurité sociale comme un droit des travailleurs et de ses ayants droit, complété par un mécanisme d'assistance sociale :

- constituerait une régression par rapport aux législations de la grande majorité des Etats membres et par rapport au Traité d'Amsterdam ;

- est juridiquement faux, dans la mesure où les dispositifs des Etats membres concernés qui complètent leurs régimes professionnels sont des législations de sécurité sociale et non des dispositifs d'assistance sociale ;

- est politiquement inacceptable : l'inactif ne doit pas apparaître comme un "sous-homme" par rapport au travailleur dans une charte de droits fondamentaux.

Il conviendrait pas conséquent d'affirmer un droit à la sécurité sociale qui repose sur une définition à la fois large et générique comprenant :

- la couverture des soins de santé et de maternité (concept large évitant les références soit aux systèmes d'assurance soit aux systèmes nationaux de santé,
- la compensation des charges familiales,
- le versement de revenus de remplacement particulièrement en cas d'accidents et de maladie professionnelle, d'invalidité et de retraite,
- le versement de revenus de remplacement en cas de perte d'emploi.

Un tel article pourrait dès lors se lire :

Droit à la sécurité sociale :

"dans les conditions définies par les législations internes des Etats membres et coordonnées au niveau communautaire, toute personne doit bénéficier d'une sécurité sociale".

Dans la partie B pourrait être précisé le champ d'application matériel et personnel de cet article.

Article XV : Droit à l'accès aux soins

Le titre est trop restrictif par rapport à la nouvelle rédaction. On pourrait intituler cet article "*droit à la santé*", comme le "droit à l'éducation" et rapprocher les deux articles. En outre, il faudrait dire à la fin de l'article "*aux soins que nécessitent son état*".

Editors' note to CHARTE 4221/00,
**Observations sur CHARTE 4123/00 de M. Guy
Braibant (Représentant personnel du Gouvernement
de la France):**

See also CHARTE 4135/00.

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE**fundamental.rights@consilium.eu.int**

Bruxelles, le 7 avril 2000**CHARTE 4221/00****CONTRIB 90****NOTE DE TRANSMISSION**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne

Veillez trouver ci-après des observations de M. Guy Braibant, Représentant Personnel du Gouvernement de la France, sur le document CHARTE 4123/00 CONVENT 5. ¹

¹ Ce texte a été soumis en langue française seulement.

**OBSERVATIONS SUR LE PROJET DE REDACTION
DE DROITS FAISANT L'OBJET DU DOCUMENT
« CHARTE 4123/00 »**

I/ Il serait souhaitable d'énoncer parmi les droits fondamentaux de la personne énumérés au début de la Charte :

- l'égalité en droits, ou le principe d'égalité qui figurent dans les traditions constitutionnelles des Etats-membres et dans un certain nombre de documents internationaux; ce principe ne se confond pas avec celui de non-discrimination ; on pourrait reprendre ainsi le début de la déclaration universelle des droits de l'homme : « les hommes sont libres et égaux en dignité et en droits » ;
- le droit à la personnalité juridique, reconnu par l'article 6 de la DUDH et par l'article 16 du Pacte des Nations-Unies sur les droits civils et politiques ;
- le droit de tout individu à une nationalité (art. 15 DUDH).

II/ Articles

Article 1^{er}

a) Il est excellent de commencer par la dignité. La formule retenue est celle de la déclaration de 1989 du Parlement européen. Mais il me paraîtrait préférable de parler de la dignité de la personne humaine et de son respect. Je propose l'une des rédactions suivantes :

- « aucune atteinte ne doit être portée à la dignité de la personne humaine » ;
- « la dignité de la personne humaine doit être respectée en toutes circonstances » ;
- « le droit à la dignité est inhérent à la personne humaine ».

b) Il me semble que le droit à la dignité, qui inspire de nombreux articles du projet, mérite d'apparaître seul dans l'art. 1^{er} ; sinon l'on aurait l'impression qu'il se réduit aux interdictions de la torture et du travail forcé, qui figurent actuellement dans le même article.

c) Si l'on souhaite maintenir l'interdiction du travail forcé, il faut être attentif à la définition négative qui en est donnée dans la CEDH et qui a une grande importance pratique. Je comprend qu'on ne le reproduise pas ici, pour ne pas alourdir le texte. Mais il faudrait du moins affirmer dans un rapport de présentation ou un exposé des motifs que les auteurs de la Charte n'ont pas entendu y renoncer et s'y sont implicitement référés.

d) Je pense qu'il convient d'ajouter une disposition sur l'esclavage et la servitude, qui reste malheureusement d'actualité, même en Europe.

Article 2

a) Paragraphe 2 : Il vaudrait mieux supprimer le mot « génétique » qui n'ajoute rien et prête à confusion.

Je préfère la version courte. Si l'on souhaite toutefois donner quelques précisions se rattachant à la bioéthique, ce qui serait sans doute utile pour donner un caractère plus moderne à la Charte, je proposerai de s'en tenir à trois principes fondamentaux :

- l'interdiction des « pratiques eugéniques » (art. 16 du code civil français, issu d'une loi de 1994) ;
- l'interdiction du clonage des êtres humains ;
- l'affirmation que le corps humain et ses parties ne peuvent être sources de profits (en retirant si possible la formule restrictive « en tant que tels »).

L'alinéa sur la discrimination pourrait être reporté dans l'article général sur la non-discrimination.

b) Paragraphe 3 : On ne peut évidemment pas « abolir » la peine de mort, puisqu'elle l'est déjà. Je propose de ne retenir que la formule alternative : « Nul ne peut être condamné à mort, ni exécuté ».

Il faut observer que le protocole de la CEDH sur cette question comprend un article sur les exceptions en temps de guerre. Je ne propose pas de le reprendre ici, d'autant plus qu'il comporte une référence au secrétaire général du Conseil de l'Europe. Mais il faudrait en faire état dans le rapport de présentation pour ne pas donner l'impression qu'il n'est plus applicable.

Article 3

a) La rédaction du paragraphe 2 « nul ne peut être arrêté ou détenu » est plus restrictive que celle de l'article 5 de la CEDH « nul ne peut être privé de sa liberté » ; cette dernière formule qui couvre aussi, par exemple, la résidence surveillée, est préférable.

b) Les paragraphes 3 à 6 sont des dispositions de caractère pénal, qui pourraient être utilement rapprochées de, ou regroupées avec, le paragraphe 3 de l'article 5. Cela permettrait en outre de mieux mettre en valeur l'article 4, qui a un caractère général et qui pourrait être rapproché du paragraphe 2 de l'article 5. Celui-ci pourrait être rédigé ainsi, afin d'éviter la répétition du mot « effectif » : « l'accès à la justice doit être facilité par ».

Articles 6 et 7

a) Je crois qu'il faut éviter les expressions latines dans un document destiné à accroître la lisibilité des droits.

b) A l'article 6, la formule « infraction prévue par la loi » est plus restrictive que celle de l'article 7 de la CEDH « infraction d'après le droit national ou international » ; cette rédaction restrictive est contradictoire avec le développement des juridictions pénales internationales et des incriminations sur la base du droit international.

Article 8

Il me semble qu'aujourd'hui, les concepts de vie privée et de vie familiale sont distincts. Je propose de retirer l'expression de « vie familiale » de l'article 8 et de lui réserver l'article 9, ce qui éviterait une redondance.

Article 9

1. Je crois utile, comme il est indiqué dans le commentaire, de renvoyer au droit local, comme l'article 12 de la CEDH.

2 et 3. Ces dispositions ne sont guère normatives et ont en outre l'inconvénient de paraître créer des compétences nouvelles de l'Union. Je propose de remplacer le 2 par une formule symétrique de l'article 8.2 (« Le respect de la vie familiale est garanti ») et, pour les enfants, de reprendre un ou deux articles essentiels de la Convention des Nations-Unies, notamment l'article 3.1 qui se réfère à la notion « d'intérêt supérieur de l'enfant » et un article sur la protection du développement de l'enfant.

III/ Articles horizontaux

Bien qu'elles ne soient pas en discussion, il me paraît préférable d'indiquer dès maintenant les observations que ces dispositions m'inspirent.

1. Préambule ou article 1^{er}

Cette disposition est utile, mais anticipe sur l'insertion des droits dans le traité, qui n'est pas du ressort de la Convention. Elle trouverait mieux sa place dans un rapport de présentation de la Charte.

2. Article X

Cette disposition est inopportune et ne manquera pas de susciter des critiques contre la Charte réservé aux « riches privilégiés » qui ont la chance d'être citoyens de l'Union européenne. Et pour l'essentiel elle est inexacte car beaucoup de droits sont universels ou étendus aux résidents étrangers en situation régulière. Il faudrait prévoir le champ d'application de la Charte dans les articles ou les chapitres.

3. Article Y

Je comprend l'intention des auteurs de ce texte. Mais il faudrait trouver une rédaction plus claire, qui évite notamment les concepts de « règle de droit » et de « règle d'exécution » ; en outre, une restriction générale se substituant aux restrictions particulières de la Convention pourrait donner l'impression que la Charte est moins protectrice que la Convention.

4. Article Z

Si cet article est considéré comme indispensable, il faudrait mieux supprimer la référence à l'article 6 TUE. qui n'ajoute rien.

Guy BRAIBANT
Représentant du Président de la République et du Premier ministre
à la Convention chargée d'élaborer la Charte des droits
fondamentaux de l'Union européenne

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE**fundamental.rights@consilium.eu.int**

Bruxelles, le 10 avril 2000**CHARTE 4221/00 COR 1****CONTRIB 96****CORRIGENDUM A LA NOTE DE TRANSMISSION**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne

La souscote correcte du document 4221/00 est **CONTRIB 96**.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 12 April 2000**CHARTE 4222/00****CONTRIB 97****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter comments by Mr. George Papadimitriou, Personnel Representative of the Greek government, on documents CHARTE 4192/00 CONVENT 18 and CHARTE 4193/00 CONVENT 19.¹

¹ This text has been submitted in English language only.

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Comments on the proposed Social Rights (Convents 18 - 19)

Article I Equality between men and women

Equality is guaranteed in article 13 of the Treaties along with its protective function in order to avoid and abolish inequalities. Thus it would be preferable to include in Article I a provision to guarantee the equality of opportunities between men and women in the field of employment and work. With this solution we create the conditions for the emancipated function of the equality of opportunities. This solution seems also to be more compatible with the provision of article 3, para. 2 in combination with the provision of article 3 para. 1i, as well as with that of article 141 para. 3 of the Treaties.

A special provision for the equality between men and women in the field of social protection should also be included in order to better bring out and develop its protective function.

Article II Right to choose an occupation

The wording of the article should also include free movement of capital and services because, as it stands, it states the obvious by including only free movement of persons. Thus, it should be further defined. The possibility of abrogating the term “business” should also be examined.

Article III Workers’ right to information and consultation

The wording should be reverted in order to include first the “...decisions relating to conditions of work and to the working environment...” and afterwards the “...context of collective redundancy procedures”.

In order not to widen the normative function of article 138 of the Treaties, the comment accompanying article III should explicitly mention that the provision is interpreted and applied in the light of the wording of the aforementioned article of the Treaties.

Article IV Freedom of association, rights of collective bargaining and collective action

Where the wording of the article mentions “employers and workers” it should be reverted in order to include first the “...workers...” and afterwards the “...employers....”.

In order not to widen the normative function of article 139 of the Treaties, the comment accompanying article IV should explicitly mention that the provision is interpreted and applied in the light of the wording of the aforementioned article of the Treaties.

Article VII Safe and healthy working conditions

The right provided for in this article should be interpreted and applied in the light of the wording of articles 137, para.1, per.1 and 140 per. 5-6 of the Treaties.

Article IX Right to protection in cases of termination of employment

The wording of the article should end at “....in case of dismissal.” because the present wording gives rise to contradictions.

Article X Right to vocational training and guidance

There is a strong need to expressly include a right to access to vocational training in the provision of this article and abrogate the term “..., without discrimination, ...”.

Article XII Right to parental leave

Fostering should be included as a third case for parental leave and the wording should change as follows “... following the birth, the fostering and the adoption...”.

Article XIV Right to social assistance

The wording of the provision should explicitly mention that any person has a right to receive appropriate social assistance. The article should not include the sentence in brackets [and who is other sources].

Article XV

The wording of the provision should explicitly mention that everyone has a right to benefit from measures to safeguard their health and a right to have access to health care.

Inclusion of additional rights in the catalogue of social rights

1. The right of every person to work should be expressly included in the appropriate place in the catalogue.

2. The inclusion of a provision for social assistance for the homeless people should be also examined.

3. An additional provision should be drafted for the protection of, and assistance to disabled people.

Dis.Charta/ComConv18-19.doc/5.4.2000

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

**Brussels, 12 April 2000 (18.04)
(OR. en,nl)****CHARTE 4225/00****CONTRIB 100****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a contribution by Mrs Johanna Maij-Weggen, member of the European Parliament, on the document CHARTE 4192/00 CONVENT 18. ¹

¹ This text exists in Dutch and English.

Mrs Maij-Weggen's amendments to the proposed articles on social rights

Article I should read as follows:

Equality between men and women must be ensured with regard to employment, pay, education and vocational training, social protection and taxation.

Article IV should read as follows:

1. Employers and workers have the right to associate freely, to negotiate collective agreements and, in cases of conflicts of interest, to take action and/or strike, even at European level.
2. Every citizen has the right, on an individual basis, to reach agreements concerning his/her employment contract, in compliance with national and European legislation.

Article V should read as follows:

Every worker has the right to fair remuneration.

Article VII should read as follows:

Every worker has the right to safe and healthy working conditions. [no change to English].

Article VIII, second paragraph, should read as follows:

Young people under eighteen years of age must have working conditions which suit their age and be protected against any work likely to harm their health and development.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

**Brussels, 17 April 2000 (19.04)
(OR. fr)****CHARTE 4227/00****CONVENT 26****NOTE FROM THE PRAESIDIUM**

Subject : Draft Charter of Fundamental Rights of the European Union
– Proposals for social rights III

Article XVI. The right of elderly persons to social protection

- 1. Every worker must, at the time of retirement, be able to enjoy resources affording him or her a decent standard of living.**
- 2. Any person who has reached retirement age but who is not entitled to a pension or who does not have other means of subsistence must be entitled to sufficient resources and to medical and social assistance specifically suited to his/her needs.**

Reasons

Community Charter (points 24 & 25); revised Social Charter, Article 23:

"Article 2 – The right of elderly persons to social protection

With a view to ensuring the effective exercise of the right of elderly persons to social protection, the Parties undertake to adopt or encourage, either directly or in co-operation with public or private organisations, appropriate measures designed in particular:

- *to enable elderly persons to remain full members of society for as long as possible, by means of:*
 - a adequate resources enabling them to lead a decent life and play an active part in public, social and cultural life;*
 - b provision of information about services and facilities available for elderly persons and their opportunities to make use of them;*
- *to enable elderly persons to choose their life-style freely and to lead independent lives in their familiar surroundings for as long as they wish and are able, by means of:*
 - a provision of housing suited to their needs and their state of health or of adequate support for adapting their housing;*
 - b the health care and the services necessitated by their state;*
- *to guarantee elderly persons living in institutions appropriate support, while respecting their privacy, and participation in decisions concerning living conditions in the institution."*

Paragraph 2 of the proposed Article could appear in Article XIV on the right to social assistance.

Article XVII. The right of disabled persons to social and professional integration

All disabled persons, whatever the origin and nature of their disability, are entitled to additional specific measures aimed at improving their social and professional integration.

Reasons

Article 13 of the Treaty establishing the European Community authorises the adoption of positive measures to prevent discrimination on grounds of disability. The fourth indent of Article 137(1) establishes Community competence with a view to integrating persons excluded from the labour market. The aim of the provision is to legitimise positive action. Consideration should be given to whether this text should not appear in the section dealing with equality and non-discrimination.

Point 24 of the Community Social Charter; Article 15 of the European Social Charter:

"Article 15 - The right of physically or mentally disabled persons to vocational training, rehabilitation and social resettlement

With a view to ensuring the effective exercise of the right of the physically or mentally disabled to vocational training, rehabilitation and resettlement, the Contracting Parties undertake:

- 1 to take adequate measures for the provision of training facilities, including, where necessary, specialised institutions, public or private;*
- 2 to take adequate measures for the placing of disabled persons in employment, such as specialised placing services, facilities for sheltered employment and measures to encourage employers to admit disabled persons to employment."*

Article XVIII. The right of migrant workers to equal treatment

Third country workers residing lawfully in the territory of Member States are entitled to a treatment not less favourable than that of European Union workers in respect of working conditions.

Reasons

Community competence in this area is established by the third indent of Article 137(3). The rule laid down here is simply that of non-discrimination in respect of working conditions.

"Article 19 of the Social Charter:

Article 19 – The right of migrant workers and their families to protection and assistance

With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Contracting Party, the Contracting Parties undertake:

- 1. to maintain or to satisfy themselves that there are maintained adequate and free services to assist such workers, particularly in obtaining accurate information, and to take all appropriate steps, so far as national laws and regulations permit, against misleading propaganda relating to emigration and immigration;*
- 2. to adopt appropriate measures within their own jurisdiction to facilitate the departure, journey and reception of such workers and their families, and to provide, within their own jurisdiction, appropriate services for health, medical attention and good hygienic conditions during the journey;*
- 3. to promote cooperation, as appropriate, between social services, public and private, in emigration and immigration countries;*

4. *to secure for such workers lawfully within their territories, insofar as such matters are regulated by law or regulations or are subject to the control of administrative authorities, treatment not less favourable than that of their own nationals in respect of the following matters:*
 - a *remuneration and other employment and working conditions;*
 - b *membership of trade unions and enjoyment of the benefits of collective bargaining;*
 - c *accommodation;*
5. *to secure for such workers lawfully within their territories treatment not less favourable than that of their own nationals with regard to employment taxes, dues or contributions payable in respect of employed persons;*
6. *to facilitate as far as possible the reunion of the family of a foreign worker permitted to establish himself in the territory;*
7. *to secure for such workers lawfully within their territories treatment not less favourable than that of their own nationals in respect of legal proceedings relating to matters referred to in this article;*
8. *to secure that such workers lawfully residing within their territories are not expelled unless they endanger national security or offend against public interest or morality;*
9. *to permit, within legal limits, the transfer of such parts of the earnings and savings of such workers as they may desire;*
10. *to extend the protection and assistance provided for in this article to self-employed migrants insofar as such measures apply."*

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

**Brussels, 18 April 2000 (19.04)
(OR. fr)****CHARTE 4235/00****CONVENT 27****NOTE FROM THE PRAESIDIUM**

Subject : Draft Charter of Fundamental Rights in the European Union
 – Horizontal clauses

As agreed, members of the Convention will find below a number of draft horizontal clauses aimed at resolving such questions as the scope of the Convention, the limits that can be placed on the rights guaranteed and the relationship with other instruments for the protection of fundamental rights.

Article H.1 Scope

- 1. The provisions of this Charter are addressed to the institutions and bodies of the Union within the framework of the powers conferred on them by the Treaties, and also to the Member States exclusively within the framework of implementing Community law.**
- 2. They shall not establish any competence or any new task for the Community or the Union.**

Statement of reasons

The aim of this provision is to determine the scope of the Charter. It seeks to establish clearly that the Charter applies to the institutions of the Union, within the framework of the Union's powers and tasks. In other words, the Charter applies only to matters covered by Community competence and the tasks of the Union. This provision is in keeping with Article 6(2) of the Treaty on European Union, which requires the Union to respect fundamental rights, and with the mandate issued by Cologne European Council. It follows from the case law of the Court of Justice that the requirement to respect fundamental rights is also binding on the Member States when they act in the context of Community law (judgment of 13 July 1989, Wachauf, Case 5/88, ECR p. 2609, in particular paragraph 19).

Article H.2 Limitation of guaranteed rights

- 1. The rights and freedoms recognised in Articles ... of this Charter may not be the subject of any limitation.**
- 2. Any limitation to the rights and freedoms guaranteed by this Charter must be provided for by the legislator. It must respect the essential content of the rights and freedoms in question and, subject to the principle of proportionality, remain within the limits necessary for the protection of legitimate interests in a democratic society. The limitations provided for by the European Convention on Human Rights shall apply to those rights and freedoms contained in this Charter that are also guaranteed by the said Convention.**

Statement of reasons

This provision, which sets out the principles relating to the limitations on guaranteed rights, has the effect of identifying certain rights which may not be limited in any way and of incorporating, by law, all the limitations laid down by the European Convention on Human Rights where these afford more protection than any measures that might be taken on the basis of the general limitation

clause. According to the case law of the Court of Justice of the Communities, fundamental rights may be restricted "provided that the restrictions in fact correspond to objectives of general interest pursued by the Community and that they do not constitute, with regard to the objectives pursued, a disproportionate and intolerable interference which infringes upon the very substance of the rights guaranteed" (judgment of 8 April 1992, Commission v. FRG, Case C-62/90, ECR I-2575, paragraph 23; see also judgment of 12 July 1989, Schraeder, Case 265/87, ECR p. 2237, paragraph 15).

Article H.3

The rights guaranteed by Articles ... shall be exercised under the conditions and within the limits laid down by the Treaty establishing the European Community.

Statement of reasons

This Article has the effect of referring back to the Treaty where the rights in question are defined by the Treaty itself. The same applies to certain rights such as the freedom of movement, the right to participate in European and municipal elections, the right to refer to the Ombudsman, the right to petition, etc.

Article H.4 Level of protection

No provision of this Charter may be interpreted as restricting the scope of the rights guaranteed by Union law, the law of the Member States, international law and international conventions ratified by the Member States, including the European Convention on Human Rights as interpreted by the case law of the European Court of Human Rights.

Statement of reasons

The object of the provision is clear. It is to maintain the level of protection currently afforded by Union law, the law of the Member States and international law. Owing to its importance, mention is made of the European Convention on Human Rights, which constitutes in all cases a minimum standard.

Article H.5 Prohibition of abuse of rights

Nothing in this Charter may be interpreted as implying any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

Statement of reasons

This Article reproduces Article 17 of the European Convention on Human Rights:

"Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention."

Editors' note to CHARTE 4238/00 ADD 1,
**Amendments to CHARTE 4193/00 and 4192/00 of
Mrs Pervenche Berès, Mrs Elena Paciotti and Mrs
Ieke van den Burg (MEPs):**

The INIT FR version of this document was dated 18 April 2000.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 23 May 2000**CHARTE 4238/00 ADD 1****CONTRIB 111****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter the German, English and Spanish translation of the contribution regarding the documents CHARTE 4193/00 CONVENT 19 and CHARTE 4192/00 CONVENT 18, submitted by Mrs. Pervenche Berès, Mrs. Elena Paciotti and Mrs. Ieke van den Burg, members of the European Parliament. ¹

¹ This text exists in French, English, Spanish and German languages.

Mrs Pervenche BERÈS, MEP

Vice-chairman of the European Parliament Delegation to the Convention responsible for drafting the Charter of Fundamental Rights

Mrs Elena PACIOTTI, MEP

Full member of the Convention responsible for drafting the Charter of Fundamental Rights

Mrs Ieke van den BURG, MEP

Substitute member of the Convention responsible for drafting the Charter of Fundamental Rights

Amendments to document CONVENT 19**Proposals for social rights****Amendment 1**

Replace Articles XIII and XV:

Everyone has the right to access to appropriate health care, effective social protection and high-quality social services.

Amendment 2

Add the following article:

Elderly persons

All elderly persons have the right to lead an independent and decent life. They should be able to play an active part in political, social and cultural life. Every worker and his dependants have the right to a pension guaranteeing a decent and independent standard of living.

Comment

See Article 23 of the revised European Social Charter

Article 23 - The right of elderly persons to social protection

With a view to ensuring the effective exercise of the right of elderly persons to social protection, the Parties undertake to adopt or encourage, either directly or in co-operation with public or private organisations, appropriate measures designed in particular:

- *to enable elderly persons to remain full members of society for as long as possible, by means of:*
 - a adequate resources enabling them to lead a decent life and play an active part in public, social and cultural life;*
 - b provision of information about services and facilities available for elderly persons and their opportunities to make use of them;*
- *to enable elderly persons to choose their life-style freely and to lead independent lives in their familiar surroundings for as long as they wish and are able, by means of:*
 - a provision of housing suited to their needs and their state of health or of adequate support for adapting their housing;*
 - b the health care and the services necessitated by their state;*
- *to guarantee elderly persons living in institutions appropriate support, while respecting their privacy, and participation in decisions concerning living conditions in the institution.*

Amendment 3

Replace Article XIV with:

Minimum income

Any person who is without adequate resources, especially if he is unable to gain access to paid employment, has the right to a minimum income enabling him to live in dignity.

Comment

This right has already been recognised in the Council recommendation of 24 June 1992 on common criteria concerning sufficient resources and social assistance in social protection systems (92/441/EEC). The European Parliament has adopted a number of resolutions calling for the establishment of a minimum income in all Member States as a means of combating social exclusion (OJ C 262, 10.10.1988, p. 194).

See also Article 30 of the revised European Social Charter on the right to protection against poverty and social exclusion.

Mrs Pervenche BERÈS, MEP

Vice-chairman of the European Parliament Delegation to the Convention responsible for drafting the Charter of Fundamental Rights

Mrs Elena PACIOTTI, MEP

Full member of the Convention responsible for drafting the Charter of Fundamental Rights

Mrs Ieke van den BURG, MEP

Substitute member of the Convention responsible for drafting the Charter of Fundamental Rights

Amendments to document CONVENT 18**Proposals for social rights**

Add the following rights:

Right to housing

Everyone has the right to decent and appropriate housing.

Comment

See Article 31 of the revised European Social Charter:

Article 31 - The right to housing

With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed:

- 1. to promote access to housing of an adequate standard;*
- 2. to prevent and reduce homelessness with a view to its gradual elimination;*
- 3. to make the price of housing accessible to those without adequate resources.*

This right is also recognised in the Belgian, Greek, Spanish, Italian, Dutch, Portuguese, Finnish and Swedish constitutions.

Right to a healthy environment

Everyone has the right to live in a clean and healthy environment and the duty to protect the quality of the environment for present and future generations.

Comment

This right is recognised in the Belgian, Portuguese, Spanish, German, Italian, Dutch, Swedish, Finnish and Norwegian constitutions. See contribution 86 by Mr Paavo Nikula, Mr Gunnar Jansson and Mrs Tuija Brax.

Right to work

Everyone has the right to gain his living by work which he freely chooses or accepts.

Comment

This article should be supplemented by Article 20 – occupational freedom – in the contribution (CHARTE 4102/00 – CONTRIB 2) by Professor Jürgen Meyer, Bundestag representative in the Convention.

See Article 1 of the revised European Social Charter:

Article 1 - The right to work

With a view to ensuring the effective exercise of the right to work, the Parties undertake:

- 1. to accept as one of their primary aims and responsibilities the achievement and maintenance of as high and stable a level of employment as possible, with a view to the attainment of full employment;*
- 2. to protect effectively the right of the worker to earn his living in an occupation freely entered upon;*
- 3. to establish or maintain free employment services for all workers;*
- 4. to provide or promote appropriate vocational guidance, training and rehabilitation.*

Access to services of general interest

Everyone has the right to high-quality services of general interest in all areas which contribute to the quality of life, sustainable development and, more generally, the protection of fundamental rights. Services of general interest shall be based on the principles of equal access, universality, continuity, democratic scrutiny and transparency.

Comment

This right has already been recognised in Article 16 of the Treaty of Amsterdam: ‘Without prejudice to Articles 73, 86 and 87, and given the place occupied by services of general economic interest in the shared values of the Union as well as their role in promoting social and territorial cohesion, the Community and the Member States, each within their respective powers and within the scope of application of this Treaty, shall take care that such services operate on the basis of principles and conditions which enable them to fulfil their missions.’

This right is also set out in Declaration No 37 on public credit institutions in Germany which is annexed to the final act of the Treaty of Amsterdam.

Integration of disabled persons

All disabled persons, whatever the nature of their disablement, must be entitled to additional concrete measures aimed at improving their social and professional integration. These measures must concern, in particular, according to the capacities of the beneficiaries, vocational training, ergonomics, accessibility, mobility, means of transport and housing.

Comment

This article is identical to Article 26 of the Community Charter of Basic Social Rights. This right is recognised in the constitutions of several Member States, in particular the Greek, Spanish and Portuguese constitutions. Declaration No 22, annexed to the final act of the Treaty of Amsterdam, regarding persons with a disability, calls on the Community institutions to take account of their specific rights.

Work and family responsibilities

Every person with family responsibilities has the right to remain in or apply for employment without being discriminated against and to carry out his family responsibilities without prejudice to his job or career.

Every worker shall be entitled to parental leave.

Comment

Article 27 - The right of workers with family responsibilities to equal opportunities and equal treatment

With a view to ensuring the exercise of the right to equality of opportunity and treatment for men and women workers with family responsibilities and between such workers and other workers, the Parties undertake:

- 1. to take appropriate measures:
 - a) to enable workers with family responsibilities to enter and remain in employment, as well as to re-enter employment after an absence due to those responsibilities, including measures in the field of vocational guidance and training;*
 - b) to take account of their needs in terms of conditions of employment and social security;*
 - c) to develop or promote services, public or private, in particular child daycare services and other childcare arrangements;**
- 2. to provide a possibility for either parent to obtain, during a period after maternity leave, parental leave to take care of a child, the duration and conditions of which should be determined by national legislation, collective agreements or practice;*
- 3. to ensure that family responsibilities shall not, as such, constitute a valid reason for termination of employment.*

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 2 May 2000**CHARTE 4261/00****CONTRIB 134****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter comments on the documents CHARTE 4170/00 CONVENT 17 and CHARTE 4137/00 CONVENT 8, submitted by Mr. Jens-Peter Bonde, member of the European Parliament. ¹

¹ This text has been submitted in English language only.

Comments on CHARTE 4170/00 Convent 17 and CHARTE 4137/00 Convent 8**Rights of the citizens****Article E in Convent 17 paragraph 2 (part 2) regarding the right to good administration**

In Convent 17 the paragraph has the following wording:

- the right of every person to have access to his file, if this access is necessary for him to state his arguments, while respecting the legitimate interests of confidentiality and of business secrecy;

The paragraph should be altered from as follows:

- ”- the right of every person to have access to his file in accordance with the existing rules for access to information.”

Art. F in Convent 17 and article 14 in Convent 8 regarding right of access to documents

Should be altered as follows:

”Every citizen of the Union and anyone residing in the Union shall have the right of access to the documents and the informations of the institutions of the European Union. Everything is open unless there is a decision allowing a derogation from the general principle of openness in public law and administration. Derivations should be followed by a concrete reason which can be appealed to the European Ombudsman. Exceptions from the general rule and implementation of the rules of access to information can be adopted according to Article 255 of the Treaty establishing the European Community.”

Motivation:

The basic rule should be that the individual has access to all files. Exceptions from this rule should be limited and wellfounded. Exceptions should be followed by a concrete reason and it should be possible to complain about a rejection.

Editors' note to CHARTE 4269/00,
**Commentaires sur CHARTE 4192/00 et 4193/00
des Lands allemands soumis par M. Jürgen Gnauck
(Bundsrat) (datés le 08/05/00):**

The dating on the attached document appears erroneous. The original German version is dated 26 September 2013.

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE**fundamental.rights@consilium.eu.int**

**Bruxelles, le 5 mai 2000 (12.05)
(OR. en)****CHARTE 4269/00****CONTRIB 142****NOTE DE TRANSMISSION**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne

Veillez trouver ci-joint les observations des Länder allemands relatives aux propositions du Présidium figurant dans les documents CHARTE 4192/00 CONVENT 18 et CHARTE 4193/00 CONVENT 19, transmises par M. Jürgen Gnauck, membre du Bundesrat. ¹

¹ Ce document n'existe qu'en langues allemande et française.

Jürgen Gnauck
Ministre des affaires fédérales et européennes
Chef de la Chancellerie
Chancellerie du Land de Thuringe
B.P. 997
D-99021 Erfurt

À l'attention de
M. Roman Herzog
Ancien Président de la République fédérale d'Allemagne
Président de la Convention pour
l'élaboration du projet de Charte des
droits fondamentaux de l'Union européenne
Prinzregentenstrasse 89

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Transmission préalable par fax (089-470 27 168)

À l'attention du Secrétariat de la Convention
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Transmission préalable par fax (0032-2-285 78 37)

Par E-mail (fundamental_rights@consilium.eu.int)

Observations du groupe de travail des Länder allemands relatives aux propositions du Présidium figurant dans les documents CHARTE 4192/00 CONVENT 18 et CHARTE 4193/00 CONVENT 19

Monsieur le Président,

Ainsi qu'il ressort de l'ordre du jour de la réunion informelle de la Convention des 27 et 28 avril 2000, la Convention va poursuivre ses travaux sur les premières propositions du Présidium relatives aux articles ayant trait aux droits sociaux. Dans le cadre de leurs réunions de coordination, les Länder allemands ont dégagé un premier avis sur les propositions figurant dans les documents CHARTE 4192/00 CONVENT 18 et CHARTE 4139/00 CONVENT 19. J'ai l'honneur de vous transmettre ci-joint les résultats de cette évaluation et je vous saurais gré de prendre en compte nos observations dans le cadre des travaux de la Convention.

(formule de politesse)

Jürgen Gnauck
Ministre

Chancellerie du Land de Thuringe
Bureau 33/Bo,Ri

Erfurt, le 8 mai 2000

Projet de Charte des droits fondamentaux de l'Union européenne

Observations du groupe de travail des Länder allemands relatives aux propositions du Présidium figurant dans les documents CHARTE 4192/00 CONVENT 18 et CHARTE 4193/00 CONVENT 19

Les Länder allemands adhèrent au principe de l'État social, sur lequel est fondé leur rôle de garants, en Allemagne, d'un niveau de protection sociale élevé. Ils accordent en même temps une grande importance à la dimension sociale de l'Union européenne et défendent l'idée d'un ordre social européen.

Toutefois, l'opportunité d'insérer les droits sociaux proposés dans une Charte des droits fondamentaux de l'Union européenne relève d'un autre débat. Les Länder allemands ont établi à cet égard les critères suivants :

Le projet de Charte des droits fondamentaux doit respecter strictement le mandat du Conseil européen de Cologne, qui prévoit simplement qu'il faudra "prendre en considération" des droits économiques et sociaux et ce uniquement dans la mesure où ils ne justifient pas uniquement des objectifs pour l'action de l'UE. Il s'agit d'établir une liste de "droits" qui rende visible pour les citoyens de l'Union européenne l'attachement de cette dernière aux valeurs juridiques fondamentales auxquelles adhèrent ses États membres. Il ne s'agit pas d'élaborer un programme politique de l'Union. Cela exclut donc la définition d'objectifs politiques.

En outre, la Charte ne peut pas, à elle seule, élargir les compétences de l'Union européenne. Par conséquent, l'insertion de règles détaillées sur des sujets qui ne relèvent pas de la compétence de l'Union réduirait l'impact que l'on souhaite donner à la Charte, l'Union n'étant pas en mesure d'assurer elle-même le respect des droits dans ces domaines.

Il ne faut par ailleurs pas perdre de vue que les droits sociaux peuvent être invoqués en justice. Indépendamment de ce qui précède, une Charte surchargée perdrait de sa valeur. Les acquis sociaux qui distinguent les États européens n'ont pas tous vocation à devenir des droits inaliénables, dont l'existence est indépendante notamment - et précisément - de la capacité économique d'un État. La section traitant des droits sociaux apparaît beaucoup trop chargée. Il en résulte un déséquilibre en défaveur des droits de base énoncés dans les sections précédentes, et la signification véritable des différents droits perd de sa netteté.

Enfin, la Charte devrait être formulée de manière concise, lisible et accessible à tous ; il faut donc se limiter à des règles générales moins détaillées. C'est d'ailleurs l'approche adoptée par la Convention pour les droits de base. Il conviendrait de s'en tenir à cette approche rationnelle également pour les droits sociaux. Il faudrait donc vérifier si des règles de nature simplement législative ne seraient pas suffisantes.

Conformément au mandat du Conseil européen, la Charte doit énoncer des règles contraignantes auxquelles est soumise l'action des institutions de l'Union. Il s'agit donc d'obligations incombant à la puissance publique. Cela exclut par conséquent que les droits fondamentaux comportent des effets directs à l'égard de tiers, c'est-à-dire des obligations imposées également à des citoyens et citoyennes ou à des entreprises. Les Länder s'opposent par principe à une telle extension. Dans cette optique, il serait opportun d'également faire preuve de beaucoup plus de retenue pour certaines dispositions afin de ne pas faire naître chez les citoyens de l'Union, par le biais d'un instrument juridique, des attentes auxquelles il serait impossible de répondre.

Dans ces conditions, les Länder allemands estiment que bon nombre des droits sociaux proposés pourraient disparaître de la Charte. En ne les y faisant pas figurer, on contribuerait d'ailleurs certainement à faciliter l'acceptation de celle-ci.

En espérant que la Convention fera siennes les considérations ci-dessus et prendra la responsabilité de renoncer à formuler des souhaits politiques au profit de dispositions juridiquement viables, les Länder allemands adoptent, sur les propositions soumises par le Présidium en ce qui concerne les droits économiques et sociaux, la position ci-après.

Concernant le document CONVENT 18:

1. Article I. Egalité entre les hommes et les femmes

Vu l'article 19 figurant dans le document CONVENT 8 ("Non-discrimination"), cette garantie supplémentaire semble superflue. Sur le fond, cette disposition ne suscite aucune objection. Il conviendrait toutefois de remplacer le terme "égalité" par "égalité de traitement".

2. Article II. Liberté professionnelle

Les Länder allemands estiment qu'il est indispensable de limiter ce droit fondamental aux citoyennes et citoyens de l'Union, ce qui permettrait aussi de supprimer le dernier membre de phrase, qui prête de toute façon à confusion. Dans la perspective de l'élaboration de dispositions transversales ou horizontales, il faudrait en outre examiner de près si une clause générale de limitation serait suffisante dans ce cas ou s'il ne faut pas prévoir des limitations différenciées.

3. Article III. Droit à l'information et à la consultation des travailleurs

Il faut se demander si une disposition de cette nature a vraiment sa place dans une Charte des droits fondamentaux. Il semble que des règles de droit dérivé suffiraient amplement et que, de surcroît, de telles règles offrirait de surcroît plus de souplesse qu'un droit fondamental et permettraient une évolution dynamique. Cela vaut par exemple pour la fixation de seuils (quelle est, pour une entreprise, la taille minimale à partir de laquelle existe un droit à l'information et à la consultation?).

Il faut en tout état de cause exclure toute contrainte et toute obligation juridiques directes de l'employeur.

Sur le plan rédactionnel, cet article devrait être épuré. Ainsi, le terme "effective" et le membre de phrase commençant par "notamment" sont superflus. En outre, il conviendrait de suivre le texte de l'article 21 de la Charte sociale révisée et de dire "les travailleurs ou leurs représentants".

4. Article IV. Droit d'association, de négociation et d'action collective

Il serait souhaitable de condenser le texte de cet article. Les Länder allemands sont d'avis que les dispositions du paragraphe 1, deuxième phrase, et du paragraphe 2 découlent du droit énoncé au paragraphe 1, première phrase, et peuvent donc être supprimées.

Il conviendrait en outre de supprimer le paragraphe 3 (droit de grève) afin d'éviter de donner une orientation unilatérale au texte. Il faut en tout cas préciser que les conflits d'intérêts visés doivent être liés au travail, ce qui exclut par exemple la "grève politique".

5. Article V. Droit à une rémunération égale pour un travail égal

L'objet principal de cette disposition est déjà couvert par la disposition générale énonçant le principe d'égalité. Par conséquent, les Länder allemands sont favorables à la suppression pure et simple de l'article 5, d'autant que l'article 4 de la Charte sociale révisée, mentionné dans le commentaire, a un contenu différent.

6. Article VI. Droit au repos et au congé annuel

Cette disposition semble à la fois trop détaillée et trop peu ouverte et dynamique pour pouvoir répondre aux besoins futurs. Des dispositions de droit dérivé devraient suffire pour assurer la protection de ce droit. Il conviendrait de supprimer cet article afin de ne pas surcharger la Charte.

7. Article VII. Sécurité et hygiène dans le travail

Sur le fond, cette disposition ne suscite aucune objection. Il faut toutefois se demander, ici aussi, s'il est indispensable d'insérer cette disposition dans la Charte des droits fondamentaux, qui énonce déjà le droit au respect de l'intégrité physique. Cette disposition ne doit en aucun cas avoir d'effet direct envers des tiers.

8. Article VIII. Protection des enfants et des adolescents

Les Länder allemands sont favorables à une protection étendue des enfants et des adolescents, mais estiment qu'il serait souhaitable d'avoir un article moins détaillé. Les limites d'âge fixées de manière rigide, en particulier, suscitent des réserves. Il semblerait plus opportun d'insérer dans la Charte une clause de protection générale des enfants et des adolescents.

9. Article IX. Droit à la protection en cas de licenciement

Compte tenu de la grande complexité de la question, la formulation choisie ne semble pas adéquate. Vu la multiplicité des intérêts qui doivent être pris en compte et mis en balance en cas de licenciement, il conviendrait de renoncer à faire figurer le droit à la protection en cas de licenciement parmi les droits fondamentaux. Les Länder pourraient tout au plus accepter une formulation concise. Dans ce cas, des dérogations devraient être autorisées pour les petites entreprises, les contrats de travail à durée déterminée et les périodes d'essai.

10. Article X. Droit à la formation et à l'orientation professionnelle

L'accès sans discrimination à une formation professionnelle adéquate est déjà couvert par l'interdiction générale de la discrimination et la liberté professionnelle. Il semblerait par conséquent que l'on puisse se passer d'une disposition spécifique. Par ailleurs, l'insertion d'un droit à l'orientation professionnelle aurait pour effet de surcharger la Charte.

Cette disposition ne devrait en aucun cas donner naissance à un droit à participer à des actions de formation ou à bénéficier de certains services.

11. Article XI. Droit des travailleuses à la protection de la maternité

Là aussi il faudrait se demander s'il ne serait pas préférable de renoncer à une disposition particulière. Le droit à un congé de maternité d'au moins quatorze semaines semble trop spécifique et détaillé. Il semblerait plus opportun de regrouper la protection des mères et celle des enfants et adolescents. Les Länder allemands sont favorables à une disposition générale relative à la protection de la maternité analogue à celle figurant à l'article 6, paragraphe 4, de la Loi fondamentale allemande, qui prévoit ce qui suit : "Toute mère jouit du droit à la protection et à l'assistance de la communauté."

12. Article XII. Droit au congé parental

Le texte proposé apparaît ambigu; il est en outre trop détaillé et trop "prescriptif". Il ne semble donc pas opportun de faire figurer ce droit parmi les droits fondamentaux.

Concernant le document CONVENT 19 :

1. Article XIII. Sécurité sociale

Il semble très douteux que cette disposition puisse être invoquée en justice. Il y a en outre lieu d'éviter ici aussi tout effet à l'égard de tiers. Enfin, il semble s'agir d'un objectif purement politique.

Par conséquent, les Länder allemands plaident en faveur d'une suppression de cette disposition.

En tout état de cause, sur le plan rédactionnel, le terme "ayants droits" devrait être remplacé par "créanciers alimentaires". En outre, le membre de phrase "selon les modalités propres à chaque État" n'est pas pertinent : il convient de se référer à la situation de droit propre à chaque Etat.

2. Article XIV. Droit à l'aide sociale

Les Länder allemands ne s'opposent pas à l'insertion d'une disposition de cette nature. Le critère à appliquer pour déterminer l'importance de l'aide sociale devrait être la dignité humaine. Il convient de noter, pour éviter toute équivoque, que le droit à l'aide sociale ne saurait faire obstacle à des mesures mettant fin au séjour de ressortissants de pays tiers.

3. Article XV. Droit à l'accès aux soins de santé

Cette disposition apparaît superflue, car elle découle déjà de l'article relatif à la dignité humaine et à l'aide sociale. Les Länder s'opposent à une garantie institutionnelle de ce droit.

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE**fundamental.rights@consilium.eu.int**

Bruxelles, le 2 mai 2000**CHARTE 4270/00****CONTRIB 143****NOTE DE TRANSMISSION**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne

Veillez trouver les observations de M. Guy Braibant, représentant du gouvernement français, sur les droits économiques et sociaux (documents CHARTE 4192/00 CONVENT 18, CHARTE 4193/00 CONVENT 19 et CHARTE 4227/00 CONVENT 26).¹

¹ Ce texte a été soumis en langue française seulement.

Paris, le 13 avril 2000

COMPLEMENT A MES OBSERVATIONS DU 3 AVRIL SUR LES ARTICLES I A XV

(Droits économiques et sociaux : documents Convent 18, Convent 19 et SN/2432/00)

* ARTICLE III

Le droit à l'information et à la consultation des travailleurs au sein de l'entreprise est, je crois, au nombre des plus fondamentaux parmi les droits de cette troisième corbeille.

Consacré aussi bien par les deux chartes auxquelles nous renvoie notre mandat (articles 17 et 18 de la Charte communautaire de 1989 et articles 21 et 29 de la Charte sociale du Conseil de l'Europe) que par une directive des Communautés européennes (directive 94/45 relative au comité d'entreprise européen), ce droit ne doit pas être limité à l'hypothèse des procédures de licenciement collectif. Il paraît en effet plus moderne et surtout plus conforme aux textes de référence de l'élargir à l'anticipation des situations de crise.

La rédaction de cet article devrait ainsi s'inspirer de celle des dispositions de la Charte sociale révisée et prévoir que : «*Les travailleurs ont le droit d'être informés et consultés en temps utile sur les décisions envisagées qui sont susceptibles d'affecter substantiellement les intérêts des travailleurs, et notamment sur celles qui auraient des conséquences importantes sur la situation de l'emploi dans l'entreprise, ainsi que sur les décisions relatives aux conditions et au milieu de travail*».

* ARTICLE IV

1. La liberté syndicale, posée par le 1er alinéa, devrait faire l'objet d'un article distinct. Il s'agit d'un droit dont le caractère fondamental n'est pas contestable, reconnu explicitement à l'article 11 de la CEDH ainsi que par la Charte communautaire de 1989 (article 11), la Charte sociale révisée (article 5), de nombreuses conventions de l'OIT (n° 87 et 98 en particulier) et la déclaration universelle des droits de l'homme (article 23-4).

2. Au second alinéa, il convient de préciser que le droit de négocier et de conclure des conventions collectives s'exerce dans les conditions prévues par les législations nationales *et communautaires*.

3. Il serait préférable, pour le 3ème alinéa, de revenir à la version de cet article initialement proposée (doc. SN/2158/1/00 REV), qui prévoyait que «*Les travailleurs peuvent recourir à des actions collectives en cas de conflits d'intérêts, y compris le droit de grève, dans le cadre des obligations résultant des législations nationales et communautaires*». La rédaction alternative proposée par le secrétariat paraît en effet inclure un droit de lock-out, ce qui n'est pas satisfaisant.

L'article 13 de la Charte communautaire de 1989 offre une formule ramassée qui me paraît bonne : **«Le droit de recourir en cas de conflits d'intérêts à des actions collectives inclut le droit de grève, sous réserve des obligations résultant des réglementations nationales [et communautaires] et des conventions collectives».**

* ARTICLE VI

L'expression *«période annuelle de congés payés»* risque de prêter à confusion. Il serait préférable de parler de **«congés payés annuels»**.

* ARTICLE VII

Le droit à la sécurité et à la santé - terme désormais utilisé de préférence à celui d'hygiène par la législation communautaire - appartient au socle commun des droits en vigueur dans tous les Etats membres. Il est en effet consacré par la directive 89/391 ainsi que par toute une série de directives spécifiques, et l'article 137 du traité CE donne compétence à l'Union en cette matière.

* ARTICLE IX

La rédaction proposée n'est pas satisfaisante. Elle pose en effet en principe d'application générale un droit négatif. En outre, la formule *«sans motif valable»* n'est pas suffisamment précise : d'une part, elle ne couvre pas les différentes hypothèses prévues en droit du travail pour cette rupture du contrat (motif économique, faute simple, grave ou lourde...); d'autre part, elle est peu protectrice puisqu'elle n'indique pas que le travailleur doit être informé du motif de son licenciement.

Cet article pourrait dès lors être rédigé ainsi : **«Aucun travailleur ne peut faire l'objet d'un licenciement sans avoir été informé de son motif. Ce motif doit pouvoir être soumis à l'appréciation d'un juge, qui peut condamner l'employeur à une réparation appropriée».**

* ARTICLE XI

La protection de la maternité ne saurait être ramenée au droit des femmes enceintes à un congé payé - congé dont la durée pourrait n'être fixée que dans le commentaire de notre Charte.

Conformément à la directive 92/85 et à l'article 8 de la Charte sociale du Conseil de l'Europe, cet article devrait être complété pour prévoir que la protection de la maternité comprend une protection contre le licenciement, contre les travaux pénibles et dangereux, le droit au remplacement à un poste adapté et, le cas échéant, une réglementation d travail de nuit.

Les services de la Commission ont proposé de compléter notre Charte par quatre articles.

* Je suis très favorable à ce que des articles soient consacrés au droit des personnes âgées à une protection sociale et au droit des personnes handicapées à l'intégration professionnelle et à la protection sociale.

* Le droit au logement me paraît tout aussi fondamental. Il est également l'un de ceux qui nourrissent le plus d'attentes chez les citoyens et les différentes ONG.

Or ce droit bénéficie d'ores et déjà d'une reconnaissance internationale certaine. Il est consacré par des textes déjà anciens et largement ratifiés, la déclaration universelle des droits de l'homme (article 25) et le Pacte international sur les droits économiques et sociaux (article 11). Plus récemment, le «*droit à un logement convenable*» a fait l'objet du Plan mondial d'action adopté par l'ONU en juin 1997, grâce notamment à la prise de position commune des Etats membres de l'Union européenne. Ce droit est également inscrit à l'article 31 de la Charte sociale européenne à laquelle le mandat donné par le Conseil européen nous renvoie. Enfin, plusieurs conventions de l'OIT posent le droit au logement pour des catégories spécifiques : les travailleurs (1962), les travailleurs âgés (1980), les réfugiés (1981), les travailleurs immigrés (1990).

Si la rédaction de l'article consacré au droit au logement doit bien entendu respecter le principe de subsidiarité, il me semblerait difficile que notre Charte l'omette.

La rédaction pourrait être la suivante : «*L'Union contribue par ses politiques à la réalisation du droit au logement*», ce qui serait en harmonie avec la formulation de l'article suivant, consacré à l'emploi, qui reprend les termes de l'article 2 du traité CE.

Deux autres droits fondamentaux méritent de figurer dans la Charte.

* **Le droit des représentants des travailleurs à la protection dans l'entreprise**, acquis social fondamental qui se présente incontestablement comme un droit dur dont la sanction peut être assurée. Ce droit est garanti par la Charte communautaire de 1989 (article 28) ainsi que par la convention n°135 de l'OIT.

* **Le droit d'égal accès au service public.**

Guy BRAIBANT

Représentant du Président de la République et du Premier ministre à la Convention chargée d'élaborer la Charte des droits fondamentaux de l'Union européenne

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 4 May 2000**CHARTE 4271/00****CONTRIB 144****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a proposed amendment on the structure of social rights by Mr. Jürgen Meyer, member of the German parliament. ¹

¹ This text has been submitted in German, French and English languages.

Prof. Dr. Jürgen Meyer, MdB

Stv. Vorsitzender des Ausschusses für die Angelegenheiten
der Europäischen Union des Deutschen Bundestages

Prof. Dr. Jürgen Meyer, MdB · Büro Berlin Unter den Linden 50 2122/2124

Proposed amendment
on the structure of social rights

In accordance with the procedure proposed by the Praesidium (see Convent 15 of 9 March 2000), in my capacity as a delegate to the Convention and the representative of the German Bundestag, I submit the following proposed amendment on the structure of the Charter of Fundamental Rights, which pertains to economic and social basic rights.

I. Introduction

Since - as expected - there have been fundamental differences of opinion in the Convention's debate on economic and social basic rights, I submit the following motion for an amendment as a mediation proposal which takes account of the arguments put forward by the proponents of social basic rights and the sceptics alike.

Under this proposal, economic and social basic rights should be incorporated into the Charter of Fundamental Rights on the basis of three pillars:

1. As the first pillar, the principle of solidarity is introduced, either in the Preamble or in a separate Article. In this way, alongside liberty, democracy, respect for human rights and the rule of law, a further principle is added which is common to the Member States.
2. As the second pillar, a list is drawn up of the economic and social rights which are uncontested and which must therefore be incorporated into the Charter.
3. As the third pillar, a horizontal article is proposed, containing the provision that the level of protection afforded by the Charter must not fall below national and international laws, treaties and conventions, and that existing instruments are referred to in the interpretation of rights contained in the Charter.

II. Proposed wording

1. First pillar:

For the Preamble or a separate Article, the following wording is proposed:

The Union and its institutions are founded on the principles of liberty, democracy, solidarity, respect for human rights and the rule of law, principles which are common to the Member States.

2. Second pillar:

Here, the Praesidium has proposed a series of Articles in Convent 18, 19 and 26, which are not contested. I also refer to Articles 8, 13, 14, 15, 20, 21 and 22 of my discussion draft, in which I have suggested appropriate wording for social rights (CHARTE 4102/00).

3. Third pillar:

The following wording is proposed as a horizontal clause:

Art. H 4 Level of protection

- 1. No provision of this Charter may be interpreted as restricting the scope of the protection guaranteed by European and national law and by international conventions and treaties. This applies especially to the European Convention for the Protection of Human Rights and Fundamental Freedoms, as interpreted by the case law of the European Court of Human Rights.**
- 2. In interpreting the fundamental rights contained in this Charter, especially economic and social rights, the international conventions and treaties concluded by Member States of the European Union must be taken into account.**

III Statement of reasons

1. First pillar:

The wording of the Article takes over the Praesidium's proposed phrasing (Article A paragraph 2, Convent 17), adding the term "solidarity".

The principle of solidarity is a constituent element of every - also non-state - community. In Germany, it is implicitly contained in the social state principle laid down in the Basic Law², in France in the historical constitutional link between the terms "solidarité" and "fraternité", in the Spanish Constitution (Article 2), and the Polish Constitution (Preamble). For the EC/EU, the European Court of Justice refers to the "duty of solidarity assumed by the Member States through their accession to the Community" (ECJ Judgment, Case 39/73, Rep. 1973, 101 [102]), and reiterates this in many other judgments and opinions (ECJ Opinion, Rep. 1977, 741 ff, Opinion 1/76; ECJ Judgment, Rep. 1980, 907 ff: Case 136/82; Case 263/82; Case 64/84; Case 250/84; Case 276/80; Case 203/86).

² Jarass, Hans/Pieroth, Bodo: *Grundgesetz für die Bundesrepublik Deutschland. Kommentar*. Munich: Beck, 2000, Art. 20 para 105, p. 503 (5th edition)

2. Second pillar:

As the second pillar, and in accordance with the commitment undertaken by the heads of state and government at the Cologne European Council, the Charter should include Articles derived from the constitutional traditions common to the Member States, as well as the European Social Charter and the Community Charter of the Fundamental Social Rights of Workers. Failure to take account of these rights would violate the Cologne commitment and would not deliver citizens' desired identification with the Charter of Fundamental Rights.

Since the third pillar (see below) proposes that the Charter be interpreted with reference to international standards, these Articles do not need to contain detailed provisions and can be limited to basic norms. This approach has repeatedly been demanded in the Convention's discussions as well.

3. Third pillar:

Paragraph 1 is based on the Praesidium's proposals in Convent 27 (Article H.4).

Criticism has rightly been voiced in the Convention that the provisions on social rights must not be too detailed, as a dynamic element is preferable to a static element when framing minimum standards too. I therefore propose to resolve this problem with a horizontal clause (third pillar).

Over and above the Praesidium's proposal, an Article 2 is therefore added which contains a provision on the interpretation of the rights contained in the Charter. International protection of fundamental and human rights must be seen as a unified regime which has gained in clarity and binding force over the last fifty years. Through the development of the European Convention on Human Rights, Europe has played a leading role in this context, which has greatly influenced the development of other regional human rights conventions (American Convention on Human Rights, Banjul Charter) as well. At the same time, the European states have participated actively in the

development of universal conventions, resulting in standards which are binding on all EU Member States. A reference to these standards in the Charter would reaffirm the interdependence of the regime, as reflected in the decisions of national courts and international proceedings too.

1. A reference to internationally recognized standards enables clear and comprehensible wording to be used without forfeiting the necessary legal clarity.
2. The dynamic element required for the interpretation of all fundamental rights, but demanded primarily for social rights during the Convention's discussions, is also safeguarded through reference to the international regime.
3. With this reference, the European Union demonstrates that it sees itself as part of the international human rights regime. This would ensure a high status for the Charter of Fundamental Rights at international level.
4. This approach is consistent with the principle contained in many Member States' constitutions that interpretation must be in line with international law.

The fact that reference is made to the international conventions recognized and/or concluded by Member States means that there is no "risk" for any state that subsequent interpretations would contravene what has already been recognized at international and perhaps at national level. Thus the interpretation of the Charter of Fundamental Rights also takes account of those restrictions submitted by individual states in the form of reservations, provided that they do not contravene the Vienna Convention on the Law of Treaties.

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPEENNE**fundamental.rights@consilium.eu.int**

Bruxelles, le 2 mai 2000**CHARTE 4272/00****CONTRIB 145****NOTE DE TRANSMISSION**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne

Veillez trouver ci-après des propositions de dispositions horizontales soumises par MM. Fischbach et Krüger, observateurs du Conseil de l'Europe. ¹

¹ Ce texte a été soumis en langue française uniquement.

17.4.2000

**PROPOSITIONS DE DISPOSITIONS HORIZONTALES
SOUMISES PAR MM. FISCHBACH ET KRÜGER,
OBSERVATEURS DU CONSEIL DE L'EUROPE
(Doc. de référence: CHARTE 4149/00 CONVENT 13)**

Article X: clause de limitation générale

[Les droits reconnus aux articles ... ne peuvent faire l'objet d'aucune limitation.] Sous réserve de dispositions plus protectrices [de la présente Charte ou]¹ de la Convention européenne des droits de l'homme, toute limitation au respect des autres droits et libertés reconnus dans la présente Charte doit être:

- prévue par la loi²,
- poursuivre un but légitime³ et
- être nécessaire dans une société démocratique⁴, [dans le respect du principe de proportionnalité et de la substance même du droit ou de la liberté en question.]⁵

Notes

1. Les dispositions de la Charte sont dépourvues de limitations jusqu'à présent.
2. Communautaire et/ou nationale ?
3. Le terme "but légitime" est utilisé par la CEDH et la jurisprudence. En outre, le terme "intérêts" peut inclure aussi des intérêts particuliers ou corporatistes, ce qui est moins le cas du terme "but". Du point de vue de la sécurité juridique et de l'effet protecteur, ces buts ou intérêts gagneraient à être limitativement énumérés, comme dans la CEDH, sauf à estimer qu'une telle énumération n'est pas nécessaire, compte tenu du membre de phrase "Sous réserve de dispositions plus protectrices de la CEDH" et de l'effet de l'article Y. Il reste cependant que l'interprétation conjointe de la Charte et de la CEDH sur ce point pourrait être source d'hésitations et d'incertitudes.
4. Cette formulation semble plus forte et donc plus protectrice que celle utilisée dans le Convent 13. En effet, la Cour de Strasbourg a déduit de la condition de "nécessité" de l'ingérence que celle-ci doit répondre à un "besoin social impérieux". Dans le texte du Convent 13, ce sont les "limites" à la "limitation" qui doivent être nécessaires, pas la limitation elle-même. Il en résulte donc, au moins en théorie, une plus grande marge de manoeuvre pour les Etats.

5. Cette précision n'est pas vraiment nécessaire, car elle résulte de la jurisprudence sur la "nécessité dans une société démocratique". Le terme "substance même" est préférable au terme "contenu essentiel", car utilisé dans la jurisprudence de la Cour de Strasbourg et de la Cour de justice. Il s'agit en effet d'éviter des confusions inutiles sur des termes qui désignent la même réalité.

Article Y: niveau de protection

Aucune des dispositions de la présente Charte ne sera interprétée comme limitant ou portant atteinte à la protection offerte par la Convention de sauvegarde des Droits de l'Homme et des Libertés fondamentales, telle qu'interprétée par la Cour européenne des droits de l'homme, [et la Charte sociale européenne (révisée), telle qu'interprétée par le Comité d'experts indépendants.]

Note

Il convient d'assurer que la Charte ne soit interprétée ni comme se situant en-dessous du niveau de protection de la Convention européenne des droits de l'homme et de la Charte sociale (révisée), ni comme restreignant celui-ci, par voie de conséquence. Le texte soumis est considéré comme couvrant ces deux éventualités.

Interdiction de l'abus de droit

Aucune des dispositions de la présente Charte ne peut être interprétée comme impliquant pour un Etat, [l'Union ou un de ses organes,] un groupement ou un individu, un droit quelconque de se livrer à une activité ou d'accomplir un acte visant à la destruction des droits ou libertés reconnus dans la présente Charte ou à des limitations plus amples de ces droits et libertés que celles prévues à ladite Charte.

Ce libellé est tiré de l'article 17 de la Convention européenne des droits de l'homme.

Préambule

Considérant que la Convention de sauvegarde des Droits de l'Homme et des Libertés fondamentales, la Charte sociale européenne (révisée) et les autres instruments de protection des droits fondamentaux du Conseil de l'Europe servent de base commune à la sauvegarde des droits fondamentaux dans toute l'Europe, et que leur contenu, ainsi que la jurisprudence de la Cour européenne des droits de l'homme et les conclusions du Comité d'experts indépendants sont à prendre en compte lors de l'interprétation de la présente Charte;

Article Y: niveau de protection

Aucune des dispositions de la présente Charte ne sera interprétée comme limitant ou portant atteinte à la protection offerte par la Convention de sauvegarde des Droits de l'Homme et des Libertés fondamentales et la Charte sociale européenne (révisée).

Note

Il convient d'assurer que la Charte ne soit interprétée ni comme se situant en-dessous du niveau de protection de la Convention européenne des droits de l'homme et de la Charte sociale (révisée), ni comme restreignant celui-ci, par voie de conséquence. Le texte soumis est considéré comme couvrant ces deux éventualités.

1.

Interdiction de l'abus de droit

Aucune des dispositions de la présente Charte ne peut être interprétée comme impliquant pour un Etat, [l'Union ou un de ses organes,] un groupement ou un individu, un droit quelconque de se livrer à une activité ou d'accomplir un acte visant à la destruction des droits ou libertés reconnus dans la présente Charte ou à des limitations plus amples de ces droits et libertés que celles prévues à ladite Charte.

Ce libellé est tiré de l'article 17 de la Convention européenne des droits de l'homme.

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE**fundamental.rights@consilium.eu.int**

Bruxelles, le 2 mai 2000**CHARTE 4280/00****CONTRIB 153****NOTE DE TRANSMISSION**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne

Veillez trouver une contribution de M. Guy Braibant, représentant du gouvernement français, sur les droits sociaux. ¹

¹ Ce texte a été soumis en langue française seulement.

Paris, le 2 mai 2000

CONTRIBUTION SUR LES DROITS SOCIAUX

Au moment où la Convention aborde la phase finale de ses travaux, il me paraît utile de présenter quelques observations.

La rédaction des trente premiers articles, correspondant à peu près aux deux premières “ corbeilles ” du mandat de Cologne, n’appelle de ma part, à ce stade, que des remarques de forme.

1/ L’importance des droits économiques et sociaux, dont la Convention n’a pas terminé l’examen, est évidente. Elle est triple :

- Ils se sont développés au cours du dernier demi-siècle, particulièrement en Europe ; ils constituent un élément essentiel du “ modèle social européen ” ;
- Ils correspondent aux attentes de la “ société civile ” et ils concernent la vie quotidienne de la population ;
- Ils forment la principale valeur ajoutée par la Charte aux instruments existants, notamment la Convention européenne de sauvegarde des droits de l’homme et des libertés fondamentales.

Naturellement, tous les droits n’ont pas la même signification. Les uns sont absolus (dignité, vie, égalité des sexes) ; les autres peuvent être limités pour des motifs d’intérêt général, d’ordre public, etc. ; enfin, certains droits économiques et sociaux, décrits parfois comme des “ droits de créance ” ou des “ droits à ” (et non des “ droits de ”) sont subordonnés à des mesures collectives de mise en œuvre. De même que la proclamation d’un “ droit à la santé ” ne signifie pas que chacun a le droit d’être en bonne santé à tout moment, le “ droit au logement ” ne permet pas à chacun d’aller en justice pour exiger l’attribution d’un logement. Il n’en a pas moins une signification juridique d’orientation et d’incitation à prendre des mesures permettant à chacun d’accéder à un logement décent, compte tenu de ses ressources et de sa situation familiale.

C’est ce que le Conseil constitutionnel français appelle un “ objectif de valeur constitutionnelle ” et il a fait précisément application de cette notion au droit au logement, en le déduisant de la sauvegarde de la dignité humaine (décision du 19 janvier 1995) : “ La possibilité pour toute personne de disposer d’un logement décent est un objectif de valeur constitutionnelle ; il incombe tant au législateur qu’au gouvernement de déterminer, conformément à leurs compétences respectives, les modalités de mise en œuvre de cet objectif ”. C’est moins qu’un droit classique mais c’est plus qu’un simple objectif politique. La Convention a donc le droit de le retenir. Le même raisonnement peut s’appliquer à d’autres notions.

Il appartient naturellement à la Convention de décider lesquelles de ces notions ont un caractère “fondamental” et constitutif de notre communauté de valeurs.

2/ Compte tenu des développements précédents, il me semble que la Charte devrait comprendre notamment les droits suivants, qui figuraient presque tous dans la première liste soumise à la Convention au début de ses travaux (body 4) :

- le droit à l’information des travailleurs, notamment en cas de licenciement collectif ;
- le droit de négociation collective ;
- le droit au repos (repos hebdomadaire et congés payés) ;
- le droit de grève ;
- le droit au logement ;
- les droits liés à la protection de l’environnement et à la protection des consommateurs (une première rédaction a été soumise à la Convention, mais elle n’a pas été jugée satisfaisante, notamment pour une raison de forme : la réunion des deux aspects en un seul article) ;
- le droit d’accès aux services économiques d’intérêt général.

Ces droits seront, comme les autres, soumis à la clause générale de limitation qui figurera dans la Charte. En outre, une clause horizontale spécifique pourrait permettre de tenir compte de leur nature particulière en renvoyant au législateur le soin de les mettre en œuvre.

Bien entendu, on pourrait laisser à la jurisprudence le soin de dégager de tels droits à partir des principes communs aux juges européens et de certains droits généraux comme la dignité de la personne humaine. Mais ce serait un processus long et qui ne serait pas conforme aux objectifs de visibilité et de lisibilité des droits fondamentaux qui sont à l’origine de la rédaction de la Charte et figuraient au premier rang du mandat de la Convention.

Guy BRAIBANT

Représentant du Président de la République et du Premier ministre

à la Convention chargée d’élaborer la Charte des droits fondamentaux de l’Union européenne

Editors' note to CHARTE 4284/00,
**Note du Présidium: Proposition pour les articles 1
à 30 (Droits civils et politiques et droits du citoyen (fr)
+ COR 1 (es) + COR 2 (dk) + REV 1 (fr):**

REV1 aligns French version (Art 20-23; Principe de démocratie; Numbering after Article 23) with English version.

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE**fundamental.rights@consilium.eu.int**

Bruxelles, le 5 mai 2000**CHARTE 4284/00****CONVENT 28****NOTE DU PRESIDIUM**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne

- Nouvelle proposition pour les articles 1 à 30 (Droits civils et politiques et droits du citoyen)
-

Les membres de la Convention trouveront ci-après la nouvelle rédaction des articles 1 à 30, établie en tenant compte des modifications proposées et des observations formulées. Chaque article est suivi d'un exposé des motifs. La place des différents articles est provisoire.

Projets d'articles

Article 1. Dignité de la personne humaine

- 1. La dignité de la personne humaine doit être respectée et protégée.**
- 2. Toutes les personnes sont égales en droit.**

Exposé des motifs

Cet article figure comme premier article de la Charte, car la dignité de la personne humaine constitue le fondement même des droits fondamentaux. La déclaration universelle des droits de l'homme établit ce principe dans son préambule:

«considérant que la reconnaissance de la dignité inhérente à tous les membres de la famille humaine et de leurs droits égaux et inaliénables constitue le fondement de la liberté, de la justice et de la paix dans le monde».

Le respect de la dignité de la personne humaine constitue une limite inhérente à tous les autres droits qui ne peuvent être utilisés pour porter atteinte à cette dignité.

Le paragraphe 2 retrace un principe que la Cour a jugé être un principe fondamental communautaire (arrêt du 13.11.1984, Racke, Aff. 283/83, Rec. p. 3791).

Article 2. Droit à la vie

- 1. Toute personne a droit à la vie**
- 2. Nul ne peut être condamné à la peine de mort, ni exécuté.**

Exposé des motifs

Le paragraphe 1 reproduit l'article 2 de la convention européenne des droits de l'homme qui se lit ainsi:

"1. Le droit de toute personne à la vie est protégée par la loi. La mort ne peut être infligée à quiconque intentionnellement, sauf en exécution d'une sentence capitale prononcée par un tribunal au cas où le délit serait puni de cette peine par la loi.

2. La mort n'est pas considérée comme infligée en violation de cet article dans les cas où elle résulterait d'un recours à la force rendu absolument nécessaire :

- a. pour assurer la défense de toute personne contre la violence illégale ;*
- b. pour effectuer une arrestation régulière ou pour empêcher l'évasion d'une personne régulièrement détenue ;*
- c. pour réprimer, conformément à la loi, une émeute ou une insurrection.».*

Les exceptions visées au paragraphe 2 de l'article 2 de la convention s'appliquent dans le cadre de la présente charte conformément à la clause générale au projet d'article H 2 figurant au doc. charte 4235/00 CONVENT 27.

Le paragraphe 2 reproduit la deuxième phrase de l'article 1 du protocole n° 6 à la Convention européenne des droits de l'homme. L'article 2 du protocole est rédigé ainsi :

«Un Etat peut prévoir dans sa législation la peine de mort pour des actes commis en temps de guerre ou de danger imminent de guerre; une telle peine ne sera appliquée que dans les cas prévus par cette législation et conformément à ses dispositions... ».

Le problème des limitations sera résolu par la clause horizontale relative à la convention européenne.

Article 3. Droit au respect de l'intégrité de la personne humaine

- 1. Toute personne a droit au respect de son intégrité physique et mentale.**
- 2. Dans le cadre de la médecine et de la biologie, les principes suivants doivent notamment être respectés :**
 - **interdiction des pratiques eugéniques;**
 - **respect du consentement éclairé du patient;**
 - **interdiction de faire du corps humain et de ses produits une source de profit;**
 - **interdiction du clonage reproductif des êtres humains.**

Exposé des motifs

Ces principes figurent dans la Convention sur les droits de l'homme et la biomédecine. La présente charte ne vise à pas déroger à ces dispositions. L'énumération n'est pas exhaustive, ce qui permet une évolution pour tenir compte des progrès éventuels en la matière.

Article 4. Interdiction de la torture et des traitements inhumains

Nul ne peut être soumis à la torture, ni à des peines ou traitements inhumains ou dégradants. Nul ne peut être expulsé ni extradé vers un Etat où il serait menacé d'être soumis à la peine de mort, à la torture ou à d'autres traitements inhumains.

Exposé des motifs

Cet article reproduit l'article 3 de la Convention européenne des droits de l'homme : Nul ne peut être soumis à la torture ni à des peines ou traitements inhumains ou dégradants. La seconde phrase de cet article incorpore la jurisprudence de la Cour européenne sur l'article 3.

Article 5. Interdiction de l'esclavage et du travail forcé

1. Nul ne peut être tenu en esclavage ni en servitude.
2. Nul ne peut être astreint à accomplir un travail forcé ou obligatoire.

Exposé des motifs

Cet article reprend l'article 4 de la convention européenne des droits de l'homme :

«1 Nul ne peut être tenu en esclavage ni en servitude.

2 Nul ne peut être astreint à accomplir un travail forcé ou obligatoire.

3 N'est pas considéré comme «travail forcé ou obligatoire» au sens du présent article :

a tout travail requis normalement d'une personne soumise à la détention dans les conditions prévues par l'article 5 de la présente Convention, ou durant sa mise en liberté conditionnelle;

b tout service de caractère militaire ou, dans le cas d'objecteurs de conscience dans les pays où l'objection de conscience est reconnue comme légitime, à un autre service à la place du service militaire obligatoire;

c tout service requis dans le cas de crises ou de calamités qui menacent la vie ou le bien-être de la communauté;

d tout travail ou service formant partie des obligations civiques normales. »

Le troisième alinéa de cet article qui indique dans quel cas un travail n'est pas considéré comme forcé ou obligatoire n'a pas été reprise. Cette disposition sera intégrée par la clause horizontale relative à la Convention européenne des droits de l'homme. Il va de soi que ne relèvent notamment pas de la notion de travail forcée les prestations personnelles établies par la loi et qui sont exigées des citoyens pour des raisons civiques ou dans des cas d'urgence ou de calamité, l'accomplissement des obligations militaires ou le service de remplacement, ni le travail exigé normalement d'une personne privée de liberté.

Article 6. Droit à la liberté et à la sûreté

Toute personne a droit à la liberté et à la sûreté. Nul ne peut être privé de sa liberté, sauf dans des cas et selon les formes prévus par la loi.

Exposé des motifs

L'article 5 de la convention européenne des droits de l'homme défini ainsi les cas dans lesquels une personne peut être privée de sa liberté:

"1 Toute personne a droit à la liberté et à la sûreté. Nul ne peut être privé de sa liberté, sauf dans les cas suivants et selon les voies légales :

a s'il est détenu régulièrement après condamnation par un tribunal compétent;

b s'il a fait l'objet d'une arrestation ou d'une détention régulières pour insoumission à une ordonnance rendue, conformément à la loi, par un tribunal ou en vue de garantir l'exécution d'une obligation prescrite par la loi;

c s'il a été arrêté et détenu en vue d'être conduit devant l'autorité judiciaire compétente, lorsqu'il y a des raisons plausibles de soupçonner qu'il a commis une infraction ou qu'il y a des motifs raisonnables de croire à la nécessité de l'empêcher de commettre une infraction ou de s'enfuir après l'accomplissement de celle-ci;

d s'il s'agit de la détention régulière d'un mineur, décidée pour son éducation surveillée ou de sa détention régulière, afin de le traduire devant l'autorité compétente;

e s'il s'agit de la détention régulière d'une personne susceptible de propager une maladie contagieuse, d'un aliéné, d'un alcoolique, d'un toxicomane ou d'un vagabond;

f s'il s'agit de l'arrestation ou de la détention régulières d'une personne pour l'empêcher de pénétrer irrégulièrement dans le territoire, ou contre laquelle une procédure d'expulsion ou d'extradition est en cours.

2 Toute personne arrêtée doit être informée, dans le plus court délai et dans une langue qu'elle comprend, des raisons de son arrestation et de toute accusation portée contre elle.

3 Toute personne arrêtée ou détenue, dans les conditions prévues au paragraphe 1.c du présent article, doit être aussitôt traduite devant un juge ou un autre magistrat habilité par la loi à exercer des fonctions judiciaires et a le droit d'être jugée dans un délai raisonnable, ou libérée pendant la procédure. La mise en liberté peut être subordonnée à une garantie assurant la comparution de l'intéressé à l'audience.

4 Toute personne privée de sa liberté par arrestation ou détention a le droit d'introduire un recours devant un tribunal, afin qu'il statue à bref délai sur la légalité de sa détention et ordonne sa libération si la détention est illégale.

5 Toute personne victime d'une arrestation ou d'une détention dans des conditions contraires aux dispositions de cet article a droit à réparation."

L'article 6 de la charte n'entend permettre aucun autre cas de privation de liberté que ceux qui sont autorisés par la Convention européenne des droits de l'homme, lesquels s'appliquent en vertu du projet d'article H 2 (2) relatif aux limitations des droits garantis, figurant au document CHARTE 4235/00 CONVENT 27. Dans la mesure où la charte s'applique dans le cadre de l'Union, ces droits devront notamment être respectés lorsque, conformément au titre VI du traité sur l'Union européenne, l'Union adopte des décisions-cadres pour l'harmonisation en matière pénale.

Article 7. Droit à un recours effectif

Toute personne dont les droits et libertés ont été violés a droit à un recours effectif devant un tribunal.

Exposé des motifs

Cet article reprend l'article 13 de la convention européenne des droits de l'homme:

"Toute personne dont les droits et libertés reconnus dans la présente Convention ont été violés, a droit à l'octroi d'un recours effectif devant une instance nationale, alors même que la violation aurait été commise par des personnes agissant dans l'exercice de leurs fonctions officielles".

La Cour de justice a consacré le principe en droit communautaire dans son arrêt du 15 mai 1986 (Johnston, aff. 222/84, Rec. p.1651). Selon la Cour, ce principe s'applique également aux Etats membres lorsqu'ils appliquent le droit communautaire. L'inscription de cette jurisprudence dans la charte n'a pas pour objet de modifier le système de recours prévu par les traités et notamment les règles relatives à la recevabilité. Ce principe est mis en œuvre selon les voies procédurales prévues dans les traités : recours en annulation lorsque les conditions de recevabilité sont remplies ou recours préjudiciel en appréciation de recevabilité lorsque la question est posée devant un juge national. La rédaction de l'article a été adaptée pour tenir compte des spécificités de l'Union. Ainsi, on a supprimé la référence à une instance nationale puisque la Charte s'applique qu'aux

institutions et organes de l'Union et que, dans ce cadre, le recours peut être exercé soit devant le juge communautaire, soit devant le juge national qui est le juge de droit commun en matière d'application du droit communautaire. De même, la notion d'instance nationale a été remplacée par celle de tribunal puisque la jurisprudence de la Cour vise la protection juridictionnelle.

Article 8. Droit à un tribunal impartial

- 1. Toute personne a droit à ce que sa cause soit entendue équitablement, publiquement et dans un délai raisonnable, par un tribunal indépendant et impartial, établi par la loi.**
- 2. Une aide juridictionnelle est accordée à ceux qui ne disposent pas de ressources suffisantes dans la mesure où cette aide serait indispensable pour assurer l'effectivité de l'accès à la justice.**

Exposé des motifs

Cet article se fonde sur l'article 5 § 1 de la Convention européenne des droits de l'homme qui se lit ainsi :

«Toute personne a droit à ce que sa cause soit entendue équitablement, publiquement et dans un délai raisonnable, par un tribunal indépendant et impartial, établi par la loi, qui décidera, soit des contestations sur ses droits et obligations de caractère civil, soit du bien-fondé de toute accusation en matière pénale dirigée contre elle. Le jugement doit être rendu publiquement, mais l'accès de la salle d'audience peut être interdit à la presse et au public pendant la totalité ou une partie du procès dans l'intérêt de la moralité, de l'ordre public ou de la sécurité nationale dans une société démocratique, lorsque les intérêts des mineurs ou la protection de la vie privée des parties au procès l'exigent, ou dans la mesure jugée strictement nécessaire par le tribunal, lorsque dans des circonstances spéciales la publicité serait de nature à porter atteinte aux intérêts de la justice.»

En droit communautaire, le droit à un tribunal s'applique à tous les contentieux. Elle est l'une des conséquences du fait que la Communauté est une communauté de droit comme l'a Cour l'a constaté dans l'affaire 194/83, Les Verts contre Parlement européen (arrêt du 23 avril 1986, rec. p.1339), ce qui entraîne comme conséquence un droit à un recours effectif devant un juge (parmi une jurisprudence abondante, Johnston, aff. 222/84, arrêt du 15 mai 1986 rec. p.1682).

Les limitations n'ont pas été reproduites, mais elles s'appliquent dans le cadre de la clause générale de limitation qui devrait figurer dans la charte.

En ce qui concerne le paragraphe 2, il convient de noter que d'après la jurisprudence de la Cour européenne des droits de l'homme, une aide judiciaire doit être accordée lorsque l'absence d'une telle aide rendrait inefficace la garantie d'un recours effectif (Arrêt CEDH du 9.10.1979, Airey, Série A, Volume.32, 11). Il existe également un système d'assistance judiciaire devant la Cour de justice des Communautés européennes. Dans ces conditions, il a été jugé important de consacrer le principe dans la charte.

Article 9. Présomption d'innocence et droits de la défense dans un procès pénal

- 1. Tout accusé est présumé innocent jusqu'à ce que sa culpabilité ait été légalement établie.**
- 2. Le respect des droits de la défense est garanti à tout accusé .**

Exposé des motifs

Cet article se fonde l'article 5 § 2 et 3 de la Convention européenne des droits de l'homme qui se lit ainsi :

"2 Toute personne accusée d'une infraction est présumée innocente jusqu'à ce que sa culpabilité ait été légalement établie.

- 3 Tout accusé a droit notamment à :*

- a être informé, dans le plus court délai, dans une langue qu'il comprend et d'une manière détaillée, de la nature et de la cause de l'accusation portée contre lui;*
- b disposer du temps et des facilités nécessaires à la préparation de sa défense;*
- c se défendre lui-même ou avoir l'assistance d'un défenseur de son choix et, s'il n'a pas les moyens de rémunérer un défenseur, pouvoir être assisté gratuitement par un avocat d'office, lorsque les intérêts de la justice l'exigent;*
- d interroger ou faire interroger les témoins à charge et obtenir la convocation et l'interrogation des témoins à décharge dans les mêmes conditions que les témoins à charge;*
- e se faire assister gratuitement d'un interprète, s'il ne comprend pas ou ne parle pas la langue employée à l'audience."*

Compte tenu du parti pris de brièveté dans la rédaction qui a été retenu, il n'a pas été jugé utile de reproduire cet article dans son intégralité, mais conformément à l'article 6 du traité sur l'Union européenne ces dispositions qui explicitent les principes retenus dans l'article de la charte, s'appliquent dans le droit de l'Union.

Article 10. Pas de peine sans loi

- 1. Nul ne peut être condamné pour une action ou une omission qui, au moment où elle a été commise, ne constituait pas une infraction d'après le droit national ou le droit international. De même, il n'est infligé aucune peine plus forte que celle qui était applicable au moment où l'infraction a été commise. Si, postérieurement à cette infraction, la loi prévoit une peine plus légère, celle-ci doit être appliquée.**
- 2. Le présent article ne porte pas atteinte au jugement et à la punition d'une personne coupable d'une action ou d'une omission qui, au moment où elle a été commise, était criminelle d'après les principes généraux du droit international.**

Exposé des motifs

Cet article reprend le principe classique de la non-rétroactivité des lois et des peines en matière pénale. Il a été ajouté le principe de la rétroactivité de la loi pénale plus douce qui existe dans de nombreux Etats membres et qui figure à l'article 15 du Pacte sur les droits civils et politiques. L'article 7 de la convention européenne des droits de l'homme est rédigé comme suit:

- "1 Nul ne peut être condamné pour une action ou une omission qui, au moment où elle a été commise, ne constituait pas une infraction d'après le droit national ou international. De même il n'est infligé aucune peine plus forte que celle qui était applicable au moment où l'infraction a été commise.*
- 2 Le présent article ne portera pas atteinte au jugement et à la punition d'une personne coupable d'une action ou d'une omission qui, au moment où elle a été commise, était criminelle d'après les principes généraux de droit reconnus par les nations civilisées."*

On a simplement remplacé au paragraphe 2 le terme « civilisées » par le terme plus moderne de principe généraux du droit international ce qui n'implique aucun changement dans le sens de ce paragraphe qui vise notamment les crimes contre l'humanité.

Article 11. Droit à ne pas être jugé ou puni deux fois

Nul ne peut être poursuivi ou puni pénalement en raison d'une infraction pour laquelle il a déjà été acquitté ou condamné par un jugement définitif conformément à la loi.

Exposé des motifs

L'article 4 du protocole n° 7 à la convention européenne des droits de l'homme se lit ainsi:

- "1 Nul ne peut être poursuivi ou puni pénalement par les juridictions du même Etat en raison d'une infraction pour laquelle il a déjà été acquitté ou condamné par un jugement définitif conformément à la loi et à la procédure pénale de cet Etat.
- 2 Les dispositions du paragraphe précédent n'empêchent pas la réouverture du procès, conformément à la loi et à la procédure pénale de l'Etat concerné, si des faits nouveaux ou nouvellement révélés ou un vice fondamental dans la procédure précédente sont de nature à affecter le jugement intervenu.
- 3 Aucune dérogation n'est autorisée au présent article au titre de l'article 15 de la Convention."

Le paragraphe 2 de l'article du protocole n°7 s'appliquera en vertu de la clause horizontale relative à la Convention. Le principe «non bis in idem» s'applique en droit communautaire (voir parmi une importance jurisprudence, arrêt du 5 mai 1966, Gutmann c/Commission, aff. 18/65 et 35/65, Rec 1966, p.150 et pour une affaire récente arrêt du Tribunal du 20 avril 1999, aff. jointes T-305/94 et autres, Limburgse Vinyl Maatschappij NV c/Commission, non encore publié).

Article 12 . Respect de la vie privée

Toute personne a droit au respect de sa vie privée, de son honneur et de sa réputation, de son domicile et du secret de sa correspondance et de ses communications.

Exposé des motifs

Cet article se fonde l'article 8 de la convention européenne des droits de l'homme qui se lit ainsi:

"1 Toute personne a droit au respect de sa vie privée et familiale, de son domicile et de sa correspondance.

2 Il ne peut y avoir ingérence d'une autorité publique dans l'exercice de ce droit que pour autant que cette ingérence est prévue par la loi et qu'elle constitue une mesure qui, dans une société démocratique, est nécessaire à la sécurité nationale, à la sûreté publique, au bien-être économique du pays, à la défense de l'ordre et à la prévention des infractions pénales, à la protection de la santé ou de la morale, ou à la protection des droits et libertés d'autrui."

Par rapport au texte de la convention, la mention de l'honneur a été ajoutée. Elle est reprise de nombreuses constitutions nationales. Le terme de «communication» a été substitué à celui de «correspondance» pour tenir compte de l'évolution des moyens de communication. Le respect de la vie familiale fait l'objet d'un article distinct. Le paragraphe 2 sur les limitations n'ait pas été repris, mais il s'applique dans le cadre du droit de l'Union en vertu de la clause horizontale relative à la Convention.

Article 13. Vie familiale

- 1. Toute personne a droit au respect de sa vie familiale.**
- 2. Toute personne a le droit de se marier et de fonder une famille selon les lois nationales régissant l'exercice de ce droit.**
- 3. La protection de la famille sur le plan juridique, économique et social est assurée.**

Exposé des motifs

Cet article est inspiré dans son premier paragraphe de l'article 8 de la convention européenne des droits de l'homme et dans son paragraphe 2 de l'article 12 de ladite convention qui se lit ainsi:

" A partir de l'âge nubile, l'homme et la femme ont le droit de se marier et de fonder une famille selon les lois nationales régissant l'exercice de ce droit."

Le renvoi à la législation nationale au paragraphe 2 est conforme à la subsidiarité et à la diversité des situations nationales. Le paragraphe 3 impose à l'Union lorsqu'elle adopte des mesures dans le cadre de ses compétences de tenir compte des exigences de protection de la famille. Sa place exacte dans la Charte sera déterminée lorsque la structure d'ensemble sera examinée.

Article 14. Liberté de pensée, de conscience et de religion

Toute personne a droit à la liberté de pensée, de conscience et de religion.

Exposé des motifs

Cette formule reproduit de l'article 9 de la convention européenne des droits de l'homme qui se lit ainsi:

"1 Toute personne a droit à la liberté de pensée, de conscience et de religion ; ce droit implique la liberté de changer de religion ou de conviction, ainsi que la liberté de manifester sa religion ou sa conviction individuellement ou collectivement, en public ou en privé, par le culte, l'enseignement, les pratiques et l'accomplissement des rites.

2 La liberté de manifester sa religion ou ses convictions ne peut faire l'objet d'autres restrictions que celles qui, prévues par la loi, constituent des mesures nécessaires, dans une société démocratique, à la sécurité publique, à la protection de l'ordre, de la santé ou de la morale publiques, ou à la protection des droits et libertés d'autrui."

Le fait que la charte ne reprenne pas les limitations énoncées au paragraphe 2 ne prive celles-ci d'effets dans le cadre du droit de l'Union en vertu de la clause horizontale relative à la Convention. La Cour de justice des Communautés a consacré la liberté religieuse dans l'affaire Prais (Arrêt du 27 octobre 1976, aff. 130/75, Rec. p.1589). Compte tenu du parti pris de brièveté retenu pour la rédaction de la charte, les implications de la liberté religieuse n'ont pas été reproduites, mais cela ne vise pas à priver ses dispositions d'effet puisqu'elles ne sont que des implications du principe général.

Article 15. Liberté d'expression

Toute personne a droit à la liberté d'expression. Ce droit comprend la liberté d'opinion et la liberté de recevoir ou de communiquer des informations ou des idées sans qu'il puisse y avoir d'ingérence d'autorités publiques et sans considération de frontière.

Exposé des motifs

Cet article reprend les principes de l'article 10 de la convention européenne des droits de l'homme qui se lit ainsi:

"1 Toute personne a droit à la liberté d'expression. Ce droit comprend la liberté d'opinion et la liberté de recevoir ou de communiquer des informations ou des idées sans qu'il puisse y avoir ingérence d'autorités publiques et sans considération de frontière. Le présent article n'empêche pas les Etats de soumettre les entreprises de radiodiffusion, de cinéma ou de télévision à un régime d'autorisations.

2 L'exercice de ces libertés comportant des devoirs et des responsabilités peut être soumis à certaines formalités, conditions, restrictions ou sanctions prévues par la loi, qui constituent des mesures nécessaires, dans une société démocratique, à la sécurité nationale, à l'intégrité territoriale ou à la sûreté publique, à la défense de l'ordre et à la prévention du crime, à la protection de la santé ou de la morale, à la protection de la réputation ou des droits d'autrui, pour empêcher la divulgation d'informations confidentielles ou pour garantir l'autorité et l'impartialité du pouvoir judiciaire."

Le paragraphe 2 n'a pas été repris, mais il est applicable dans le droit de l'Union en vertu de la clause horizontale relative à la Convention. La Cour de justice a consacré à plusieurs reprises le principe de la liberté d'expression et, en premier lieu, dans l'arrêt ERT (Arrêt du 18 juin 1991, aff. C-260/89, Rec. p. I-5485).

Article 16 . Droit à l'éducation

- 1. Toute personne a droit à l'éducation ainsi qu'à l'accès à la formation professionnelle et continue. Ce droit comporte la faculté de suivre gratuitement l'enseignement obligatoire.**
- 2. La création d'établissements d'enseignement est libre.**
- 3. Le droit des parents d'assurer l'éducation et l'enseignement de leurs enfants, conformément à leurs convictions religieuses et philosophiques, doit être respecté.**

Exposé des motifs

Cet article est inspiré tant des traditions constitutionnelles communes aux Etats membres que de l'article 2 du protocole additionnel à la convention européenne des droits de l'homme qui se lit ainsi :

"Nul ne peut se voir refuser le droit à l'instruction. L'Etat, dans l'exercice des fonctions qu'il assumera dans le domaine de l'éducation et de l'enseignement, respectera le droit des parents d'assurer cette éducation et cet enseignement conformément à leurs convictions religieuses et philosophiques."

Il a été jugé utile d'ajouter le principe de gratuité de l'enseignement obligatoire. Tel qu'il est formulé, il implique seulement que pour l'enseignement obligatoire, chaque enfant ait la possibilité d'accéder à un établissement qui pratique la gratuité. Il n'impose pas que tous les établissements, notamment privés, qui dispensent cet enseignement soient gratuits. Dans la mesure où la Charte s'applique à l'Union, ceci signifie que dans le cadre de ses politiques de formation, l'Union doit

respecter la gratuité de l'enseignement obligatoire, mais cela ne crée pas bien entendu de nouvelles compétences. Le principe de la liberté académique n'est pas repris, mais il constitue tant un principe structurel de l'organisation universitaire que la garantie de la liberté d'expression dans ce domaine. La charte ne porte en rien atteinte à ce principe.

Article 17. Liberté de réunion et d'association

Toute personne a droit à la liberté de réunion pacifique et à la liberté d'association, y compris le droit de fonder avec d'autres des syndicats ou des partis politiques et de s'y affilier.

Exposé des motifs

Cet article se fonde sur l'article 11 de la Convention européenne des droits de l'homme:

"1 Toute personne a droit à la liberté de réunion pacifique et à la liberté d'association, y compris le droit de fonder avec d'autres des syndicats et de s'affilier à des syndicats pour la défense de ses intérêts.

2 L'exercice de ces droits ne peut faire l'objet d'autres restrictions que celles qui, prévues par la loi, constituent des mesures nécessaires, dans une société démocratique, à la sécurité nationale, à la sûreté publique, à la défense de l'ordre et à la prévention du crime, à la protection de la santé ou de la morale, ou à la protection des droits et libertés d'autrui. Le présent article n'interdit pas que des restrictions légitimes soient imposées à l'exercice de ces droits par les membres des forces armées, de la police ou de l'administration de l'Etat."

La question des limitations sera réglée par la clause horizontale relative à la Convention européenne des droits de l'homme.

Article 18. Droit d'accès aux documents

Tout citoyen de l'Union ou toute personne résidant dans l'Union a un droit d'accès aux documents du Parlement européen, du Conseil et de la Commission.

Exposé des motifs

Cet article reproduit l'article 255 du traité CE dans sa première phrase. Les conditions et limites mentionnées dans la suite de l'article relèvent de la clause horizontale qui règle d'une manière générale la question.

Article 19. Protection des données

Toute personne a le droit de décider elle-même de la divulgation et de l'utilisation de ses données personnelles.

Exposé des motifs

L'article 286 du traité CE rend applicable aux institutions et organes les directives communautaires relatives à la protection des données. Ces directives sont fondées sur la convention du Conseil de l'Europe sur la protection des données personnelles. Il semble préférable d'énoncer une règle générale plutôt que de reprendre une liste détaillée de principes qui seront soumis à évolution en raison du progrès technique. En tout état de cause, la protection des données est un élément du respect de la vie privée.

Article 20. Droit de propriété

Toute personne a le droit de posséder des biens acquis légalement, de les utiliser et d'en disposer. L'usage de ces biens doit contribuer à l'intérêt général. Nul ne peut être privé de sa propriété que pour cause d'utilité publique et dans les cas et conditions prévus par une loi et moyennant l'assurance préalable d'une juste indemnité.

Exposé des motifs

Cet article se fonde sur l'article 1er du protocole additionnel à la convention européenne des droits de l'homme :

"Toute personne physique ou morale a droit au respect de ses biens. Nul ne peut être privé de sa propriété que pour cause d'utilité publique et dans les conditions prévues par la loi et les principes généraux du droit international.

Les dispositions précédentes ne portent pas atteinte au droit que possèdent les Etats de mettre en vigueur les lois qu'ils jugent nécessaires pour réglementer l'usage des biens conformément à l'intérêt général ou pour assurer le paiement des impôts ou d'autres contributions ou des amendes."

Il s'agit d'un principe fondamental commun à toutes les constitutions nationales. Il a été consacré à des maintes reprises par la jurisprudence de la Cour de justice et en premier lieu dans l'arrêt Hauer (13 décembre 1979, Rec. p. 3727). Un certain nombre de membres ont souhaité moderniser la rédaction de la Convention.

Article 21. Droit d'asile et expulsion

1. Les ressortissants des pays tiers qui craignent avec raison d'être persécutés du fait de leur race, de leur religion, de leur appartenance à un certain groupe social ou de leurs opinions politiques ont un droit d'asile dans l'Union européenne conformément aux règles de la Convention de Genève du 28 juillet 1951 et au protocole du 31 janvier 1967 relatifs au statut des réfugiés.
2. Les expulsions collectives d'étrangers sont interdites.

Exposé des motifs

Le paragraphe 2 de cet article est inspiré de l'article 4 du protocole n° 4 à la convention européenne des droits de l'homme en ce qui concerne les expulsions collectives. Il vise à garantir que chaque décision fasse l'objet d'un examen spécifique et que l'on ne puisse décider par une mesure unique d'expulser toutes les personnes présentant des caractéristiques déterminées. Le texte du paragraphe 1 est inspiré de l'article 63 CE qui incorpore en droit communautaire la convention sur les réfugiés. Les dispositions de l'article 1 du protocole n° 7 à la convention européenne des droits de l'homme relatives aux garanties procédurales en cas d'expulsion n'ont pas été reprises, car la plupart des Etats membres n'ont pas signé ou ratifié ce protocole. De toute façon, la convention de Genève contient des garanties en ce domaine.

Article 22. Egalité et non-discrimination

1. Est interdite toute discrimination fondée sur le sexe, la race, la couleur ou l'origine ethnique ou sociale, la langue, la religion ou les convictions, les opinions politiques, l'appartenance à une minorité nationale, la fortune, la naissance, un handicap, l'âge ou l'orientation sexuelle.
2. Dans le domaine d'application du Traité instituant la Communauté européenne et du Traité sur l'Union européenne, toute discrimination fondée sur la nationalité est interdite.
3. L'Union cherche à éliminer les inégalités et à promouvoir l'égalité entre les hommes et les femmes. L'égalité des sexes est notamment assurée dans la fixation des rémunérations et des autres conditions de travail .

Exposé des motifs

Le paragraphe 1 reprend la convention européenne des droits de l'homme. Celle-ci limite l'application du principe aux droits garantis, mais le droit communautaire va plus loin après l'adoption du traité d'Amsterdam. La liste combine la liste de l'article 13 du traité communautaire et la liste de l'article 14 de la Convention européenne des droits de l'homme. Le principe de non-discrimination formulé au paragraphe 2 est consacré à l'article 12 du Traité CE.

Article 12 CE : "Dans le domaine d'application du présent traité, et sans préjudice des dispositions particulières qu'il prévoit, est interdite toute discrimination exercée en raison de la nationalité.

Le Conseil, statuant conformément à la procédure visée à l'article 251, peut prendre toute réglementation en vue de l'interdiction de ces discriminations."

La formule du paragraphe 3 vise à permettre les actions positives qui sont prévues par le traité.

Article 23. Droit des enfants

Les enfants doivent être traités comme des personnes à part entière et doivent pouvoir influencer sur les questions les concernant personnellement dans une mesure correspondant à leur niveau de maturité.

Exposé des motifs

Cet article répond à diverses demandes et s'inspire de la Convention sur les droits de l'enfant.

Principe de démocratie

Article supprimé.

Exposé des motifs

A la suite des travaux de la Convention, il a été décidé que figureront au préambule, les mentions suivantes:

- 1. Toute autorité publique émane du peuple.**
- 2. L'Union et ses institutions se fondent sur les principes de la liberté, de la démocratie, du respect des droits de l'homme ainsi que de l'Etat de droit, principes qui sont communs aux Etats membres.**

Le paragraphe 3 reproduisait l'article 190 § 1 CE qui a été jugé préférable à l'article 3 du protocole additionnel CEDH : "Les Hautes Parties contractantes s'engagent à organiser, à des intervalles raisonnables, des élections libres au scrutin secret, dans les conditions qui assurent la

libre expression de l'opinion du peuple sur le choix du corps législatif." En effet, cet article prend la forme d'un engagement international alors que le traité prévoit déjà l'élection dans l'article 190 § 1 traité CE : "Les représentants, au Parlement européen, des peuples des Etats réunis dans la Communauté sont élus au suffrage universel direct". Ce paragraphe a été déplacé à l'article relatif aux élections européennes.

Article 23. Partis politiques

Tout citoyen a le droit de fonder avec d'autres un parti politique au niveau de l'Union et toute personne a le droit de s'y affilier. Ces partis politiques doivent respecter les droits et libertés garantis par la présente charte.

Exposé des motifs

Le droit de fonder un parti politique est garanti à tout citoyen de l'Union, celui de s'y affilier étant ouvert à toute personne résidant dans un Etat membre. La possibilité de limitations à l'exercice de ces droits découlera de l'article horizontal consacré aux limitations.

Article 24. Droit de vote et d'éligibilité au Parlement européen

- 1. Les membres du Parlement européen sont élus au suffrage universel direct, libre et secret.**
- 2. Tout citoyen de l'Union a le droit de vote et d'éligibilité dans l'Etat membre dans lequel il réside dans les mêmes conditions que les ressortissants de cet Etat.**

Exposé des motifs

Ce texte reprend l'article 19 § 2 CE : "2. Sans préjudice des dispositions de l'article 190, paragraphe 4, et des dispositions prises pour son application, tout citoyen de l'Union résidant dans un État membre dont il n'est pas ressortissant a le droit de vote et d'éligibilité aux élections au Parlement européen dans L'Etat membre où il réside, dans les mêmes conditions que les ressortissants de cet État. Ce droit sera exercé sous réserve des modalités, arrêtées par le Conseil, statuant à l'unanimité sur proposition de la Commission et après consultation du Parlement européen; ces modalités peuvent prévoir des dispositions dérogatoires lorsque des problèmes spécifiques à un État membre le justifient"

Une référence sera faite dans un article horizontal aux conditions prévues par le traité.

Article 25. Droit de vote et d'éligibilité aux élections municipales

Tout citoyen de l'Union a le droit de vote et d'éligibilité aux élections municipales dans l'Etat membre dans lequel il réside dans les mêmes conditions que les ressortissants de cet Etat.

Exposé des motifs

Ce texte reprend l'article 19 § 1 CE: "Tout citoyen de l'Union résidant dans un État membre dont il n'est pas ressortissant a le droit de vote et d'éligibilité aux élections municipales dans l'État membre où il réside, dans les mêmes conditions que les ressortissants de cet État. Ce droit sera exercé sous réserve des modalités arrêtées par le Conseil, statuant à l'unanimité sur proposition de la Commission et après consultation du Parlement européen; ces modalités peuvent prévoir des dispositions dérogatoires lorsque des problèmes spécifiques à un État membre le justifient." Une référence aux conditions prévues par le traité sera reprise dans une clause horizontale.

Article 26. Relations avec l'administration

1. **Toute personne a le droit de voir ses affaires traitées impartialement, équitablement et dans un délai raisonnable par les institutions et organes de l'Union.**
2. **Ce droit comporte notamment:**
 - **le droit de toute personne d'être entendue avant qu'une mesure individuelle qui l'affecterait défavorablement soit prise à son encontre;**
 - **le droit d'accès de toute personne au dossier qui la concerne, dans le respect des intérêts légitimes de la confidentialité et du secret des affaires;**
 - **l'obligation pour l'administration de motiver ses décisions.**
3. **Toute personne peut s'adresser aux institutions de l'Union dans une des langues officielles de l'Union et doit recevoir une réponse dans cette langue.**

Exposé des motifs

Le premier paragraphe répond à une demande exprimée plusieurs fois au cours de la Convention, notamment par le médiateur.

*Les principes repris dans le paragraphe 2 qui ne concernent que les décisions individuelles, résultent pour l'essentiel de la jurisprudence de la Cour et, en ce qui concerne l'obligation de motiver, de l'article 253 du traité : "Les règlements, les directives et les décisions adoptés conjointement par le Parlement européen et le Conseil ainsi que lesdits actes adoptés par le Conseil ou la Commission sont motivés et visent les propositions ou avis obligatoirement recueillis en exécution du présent traité." Les principes de procédure administrative non contentieuse sont rappelés notamment dans les arrêts *Orkem*, aff. 374/87, rec. 1989, 3283, *Lisrestal*, TPI, aff. T-450/93, Rec. 1994., II-1177, *TU München*, C-269/90, rec. 1991, I-5469, *Nölle*, T-167/94, Rec.1995, II-2589. La référence à la confidentialité se réfère à la protection de données personnelles.*

Le paragraphe 3 reprend l'article 21 CE: "Tout citoyen de l'Union peut écrire à toute institution ou organe visé au présent article ou à l'article 7 dans l'une des langues visées à l'article 314 et recevoir une réponse rédigée dans la même langue."

Article 27. Médiateur

Tout citoyen ainsi que toute personne physique ou morale résidant ou ayant son siège statutaire dans un Etat membre a le droit de saisir le médiateur de l'Union des cas de mauvaise administration des institutions et organes de l'Union, à l'exception de la Cour de Justice et du Tribunal de Première instance dans l'exercice de leurs fonctions juridictionnelles.

Exposé des motifs

Cet article présente les principes qui résultent des articles 21 et 195 du traité CE.

Article 21:

"Tout citoyen de l'Union peut s'adresser au médiateur institué conformément aux dispositions de l'article 195."

Article 195 § 1 " Le Parlement européen nomme un médiateur, habilité à recevoir les plaintes émanant de tout citoyen de l'Union ou de toute personne physique ou morale résidant ou ayant son siège statutaire dans un Etat membre et relatives à des cas de mauvaise administration dans l'action des institutions ou organes communautaires, à l'exclusion de la Cour de justice et du Tribunal de première instance dans l'exercice de leurs fonctions juridictionnelles.

Conformément à sa mission, le médiateur procède aux enquêtes qu'il estime justifiées, soit de sa propre initiative, soit sur la base des plaintes qui lui ont été présentées directement ou par l'intermédiaire d'un membre du Parlement européen, sauf si les faits allégués font ou ont fait l'objet d'une procédure juridictionnelle. Dans les cas où le médiateur a constaté un cas de mauvaise administration, il saisit l'institution concernée, qui dispose d'un délai de trois mois pour lui faire tenir son avis. Le médiateur transmet ensuite un rapport au Parlement européen et à l'institution concernée.

La personne dont émane la plainte est informée du résultat de ces enquêtes. Chaque année, le médiateur présente un rapport au Parlement européen sur les résultats de ses enquêtes.

2. Le médiateur est nommé après chaque élection du Parlement européen pour la durée de la législature. Son mandat est renouvelable.

Le médiateur peut être déclaré démissionnaire par la Cour de justice, à la requête du Parlement européen, s'il ne remplit plus les conditions nécessaires à l'exercice de ses fonctions ou s'il a commis une faute grave.

3. Le médiateur exerce ses fonctions en toute indépendance. Dans l'accomplissement de ses devoirs, il ne sollicite ni n'accepte d'instructions d'aucun organisme. Pendant la durée de ses fonctions, le médiateur ne peut exercer aucune autre activité professionnelle, rémunérée ou non.

4. Le Parlement européen fixe le statut et les conditions générales d'exercice des fonctions du médiateur après avis de la Commission et avec l'approbation du Conseil statuant à la majorité qualifiée."

Une référence au traité sera faite dans une clause horizontale.

Article 28. Droit de pétition

Tout citoyen ainsi que toute personne physique ou morale résidant ou ayant son siège statutaire dans un Etat membre a le droit de pétition devant le Parlement européen.

Exposé des motifs

Cet article présente les principes qui résultent des articles 21 et 194 du traité CE

Article 21: "Tout citoyen de l'Union a le droit de pétition devant le Parlement européen conformément aux dispositions de l'article 194."

Article 194 CE: "Tout citoyen de l'Union, ainsi que toute personne physique ou morale résidant ou ayant son siège statutaire dans un Etat membre, a le droit de présenter, à titre individuel ou en association avec d'autres citoyens ou personnes, une pétition au Parlement européen sur un sujet relevant des domaines d'activité de la Communauté et qui le ou la concerne directement."

Article 29. Liberté de circulation

Tout citoyen de l'Union a le droit de circuler et de séjourner librement sur le territoire des Etats membres.

Exposé des motifs

Cet article reprend le principe énoncé à l'article 18 du traité CE.

Article 18 CE:

- "1. Tout citoyen de l'Union a le droit de circuler et de séjourner librement sur le territoire des Etats membres, sous réserve des limitations et conditions prévues par le présent traité et par les dispositions prises pour son application.*
- 2. Le Conseil peut arrêter des dispositions visant à faciliter l'exercice des droits visés au paragraphe 1; sauf si le présent traité en dispose autrement, il statue conformément à la procédure visée à l'article 251. Le Conseil statue à l'unanimité tout au long de cette procédure."*

Une référence au traité sera faite dans une clause horizontale.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

**Brussels, 5 May 2000 (12.05)
(OR. fr)****CHARTE 4284/00****CONVENT 28****PRAESIDIUM NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union
- New proposal for Articles 1 to 30 (Civil and political rights and citizens' rights)

Members of the Convention will find below the new wording of Articles 1 to 30, which has been drawn up in the light of suggested amendments and comments. Each Article is followed by a statement of reasons. The order of the Articles is provisional.

Draft Articles

Article 1. Dignity of the human person

- 1. The dignity of the human person must be respected and protected.**
- 2. Everyone is equal before the law.**

Statement of reasons

This Article appears as the first Article of the Charter since dignity of the human person is the very foundation of fundamental rights. The Universal Declaration of Human Rights sets out this principle in its preamble:

"Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world."

Respect for the dignity of the human person constitutes an inherent limitation to all the other rights, which may not be used to infringe that dignity.

Paragraph 2 sets out a principle which the Court has held to be a fundamental Community principle (judgment of 13 November 1984, Racke, Case 283/83, ECR 3791).

Article 2. Right to life

- 1. Everyone has the right to life.**
- 2. No one shall be condemned to the death penalty, or executed.**

Statement of reasons

Paragraph 1 is taken from Article 2 of the European Convention on Human Rights, which reads as follows:

- "1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.*
- 2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:*
 - (a) in defence of any person from unlawful violence;*
 - (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;*
 - (c) in action lawfully taken for the purpose of quelling a riot or insurrection."*

The exceptions referred to in Article 2(2) of the Convention apply in the context of this Charter in accordance with the general clause in draft Article H2 in CHARTE 4235/00 CONVENT 27.

Paragraph 2 is taken from the second sentence of Article 1 of Protocol No 6 to the European Convention on Human Rights. Article 2 of the Protocol is worded as follows:

"A State may make provision in its law for the death penalty in respect of acts committed in time of war or of imminent threat of war; such penalty shall be applied only in the instances laid down in the law and in accordance with its provisions"

The problem of limitations will be resolved by the horizontal clause relating to the European Convention.

Article 3. Right to respect for the integrity of the human person

- 1. Everyone has the right to respect for his physical and mental integrity.**

- 2. In the fields of medicine and biology, the following principles must be respected in particular:**
 - **prohibition of eugenic practices;**
 - **respect for the informed consent of the patient;**
 - **prohibition of making the human body and its products a source of financial gain;**
 - **prohibition of the reproductive cloning of human beings.**

Statement of reasons

These principles are set out in the Convention on Human Rights and Biomedicine. It is not the aim of this Charter to derogate from those provisions. The list is not exhaustive, allowing for development to take account of future progress in this area.

Article 4. Prohibition of torture and inhuman treatment

**No one shall be subjected to torture or to inhuman or degrading treatment or punishment.
No one may be expelled or extradited to a State where he would be in danger of being subjected to the death penalty, torture or other inhuman treatment.**

Statement of reasons

*This Article is taken from Article 3 of the European Convention on Human Rights:
No one shall be subjected to torture or to inhuman or degrading treatment or punishment. The second sentence of the Article incorporates the European Court's jurisprudence on Article 3.*

Article 5. Prohibition of slavery and forced labour

- 1. No one shall be held in slavery or servitude.**
- 2. No one shall be required to perform forced or compulsory labour.**

Statement of reasons

This Article is taken from Article 4 of the European Convention on Human Rights.

- "1. No one shall be held in slavery or servitude.*
- 2. No one shall be required to perform forced or compulsory labour.*
- 3. For the purpose of this Article the term "forced or compulsory labour" shall not include:*
- (a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;*
 - (b) any service of a military character or, in case of conscientious objections in countries where they are recognised, service exacted instead of compulsory military service;*
 - (c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;*
 - (d) any work or service which forms part of normal civic obligations."*

The third paragraph of that Article, which indicates the cases in which labour is not regarded as forced or compulsory, has not been included. It will be incorporated via the horizontal clause relating to the European Convention on Human Rights. It goes without saying that the concept of forced labour does not cover, inter alia, personal services laid down by law which are exacted of citizens for civic reasons or in case of an emergency or calamity, the fulfilment of military obligations or alternative service, or any work ordinarily exacted of a person deprived of liberty.

Article 6. Right to liberty and security

Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in cases prescribed by law and in accordance with a procedure prescribed by law.

Statement of reasons

Article 5 of the European Convention on Human Rights defines the cases in which a person may be deprived of his liberty as follows:

- "1. *Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:*
- (a) the lawful detention of a person after conviction by a competent court;*
 - (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;*

- (c) *the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;*
- (d) *the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;*
- (e) *the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;*
- (f) *the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.*
2. *Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.*
3. *Everyone arrested or detained in accordance with the provisions of paragraph 1.c of this article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.*
4. *Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.*
5. *Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation."*

The aim of Article 6 of the Charter is not to allow any cases of deprivation of liberty other than those authorised by the European Convention on Human Rights, which apply by virtue of draft Article H2(2) on the limitation of guaranteed rights, set out in CHARTE 4235/00 CONVENT 27. Insofar as the Charter applies within the context of the Union, these rights should in particular be respected when, in accordance with Title VI of the Treaty on European Union, the Union adopts framework decisions for harmonisation in criminal matters.

Article 7. Right to an effective remedy

Everyone whose rights and freedoms are violated has the right to an effective remedy before a court.

Statement of reasons

This Article reproduces Article 13 of the European Convention on Human Rights:

"Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

The Court of Justice enshrined the principle in Community law in its judgment of 15 May 1986 (Johnston, Case 222/84, ECR I 651). According to the Court, this principle also applies to the Member States when they are implementing Community law. The inclusion of this precedent in the Charter is not intended to change the appeal system laid down by the Treaties, and particularly the rules relating to admissibility. This principle is to be implemented according to the procedures laid down in the Treaties: an action for annulment when the conditions for admissibility have been fulfilled or a preliminary ruling on admissibility when the case is brought before a national judge. The wording of the Article has been adapted to take account of the specific characteristics of the Union. Thus, reference to a national authority has been deleted, since the Charter applies only to

institutions and organs of the Union and since, in this framework, an action may be brought either before the Community judge or before the national judge who is the ordinary-law judge as regards application of Community law. Accordingly, reference to a national authority has been replaced with reference to a court because the Court precedent refers to judicial protection.

Article 8. Right to a fair trial

- 1. Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.**
- 2. Legal aid shall be provided to those who lack sufficient resources insofar as such aid is indispensable to ensure effective access to justice.**

Statement of reasons

This Article follows Article 6(1) of the European Convention on Human Rights, which reads as follows:

"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice."

In Community law, the right to a fair hearing applies to all disputes. That is one of the consequences of the fact that the Community is a community based on the rule of law as stated by the Court in Case 294/83, "Les Verts" v. European Parliament (judgment of 23 April 1986, ECR 1339; that means that there is a right to an effective judicial remedy (among the many precedents, Johnston, Case 222/84, judgment of 15 May 1986, ECR 1682).

The limitations have not been included, but they apply in the general clause on limitations which will appear in the Charter.

With regard to paragraph 2, it should be noted that in accordance with the case law of the European Court of Human Rights, provision should be made for legal aid where the absence of such aid would make it impossible to ensure an effective remedy (ECHR Judgment of 9.10.1979, Airey, Series A, Volume 32, 11). There is also a system of legal assistance for cases before the Court of Justice of the European Communities. That being so, it was deemed important to enshrine this principle in the Charter.

Article 9. Presumption of innocence and rights of the defence

- 1. Everyone who has been charged shall be presumed innocent until proved guilty according to law.**
- 2. Everyone who has been charged shall be guaranteed respect for his rights to defence.**

Statement of reasons

This Article is taken from Article 6(2) and (3) of the European Convention on Human Rights, which reads as follows:

- "2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.*
- 3. Everyone charged with a criminal offence has the following minimum rights:*

- (a) *to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;*
- (b) *to have adequate time and facilities for the preparation of his defence;*
- (c) *to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;*
- (d) *to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;*
- (e) *to have the free assistance of an interpreter if he cannot understand or speak the language used in court."*

Given the decision taken in favour of concise drafting, it was not thought necessary to include this Article in full, but in accordance with Article 6 of the TEU these provisions, which clarify the principles set out in the Article of the Charter, are applicable in Community law.

Article 10. No punishment without law

- 1. No one shall be held guilty of any offence on account of any act or omission which did not constitute an offence under national law or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the offence was committed. If, subsequent to the commission of the offence, the law provides for a lighter penalty, that penalty shall be applicable.**
- 2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of international law.**

Statement of reasons

This Article follows the traditional principle of the non-retroactivity of laws and criminal sanctions. There has been added the principle of the retroactivity of a more lenient penal law which exists in a number of Member States and which features in Article 15 of the Covenant on Civil and Political Rights. Article 7 of the European Convention on Human Rights is worded as follows:

- "1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.*
- 2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations."*

In paragraph 2, the reference to "general principles of law recognised by civilised nations" has been replaced by the more modern reference to "general principles of international law"; this does not change the meaning of this paragraph, which refers to crimes against humanity in particular.

Article 11. Right not to be tried or punished twice

No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he has already been finally acquitted or convicted in accordance with the law.

Statement of reasons

Article 4 of Protocol No 7 to the European Convention of Human Rights reads as follows:

- "1. No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State.*
- 2. The provisions of the preceding paragraph shall not prevent the reopening of the case in accordance with the law and the penal procedure of the State concerned, if there is evidence of new or newly discovered facts, or if there has been a fundamental defect in the previous proceedings, which could affect the outcome of the case.*
- 3. No derogation from this Article shall be made under Article 15 of the Convention."*

Paragraph 2 of the Article in Protocol No 7 will be applicable by virtue of the horizontal clause relating to the Convention. The "non bis in idem" principle applies in Community law (see, among the many precedents, the judgment of 5 May 1996, Cases 18/65 and 35/65, Gutmann v Commission [1966] ECR 150 and a recent case, the decision of the Court of First Instance of 20 April 1999, Joined Cases T-305/94 and others, Limburgse Vinyl Maatschappij NV v Commission, not yet published).

Article 12. Respect for private life

Everyone has the right to respect for his privacy, his honour and his reputation, his home and the confidentiality of his correspondence and communications.

Statement of reasons

This Article is based on Article 8 of the European Convention on Human Rights, which reads as follows:

- "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
- 2 There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

The term "honour" has been added to the text of the Convention. It is taken from a number of national constitutions. "Communication" has been added to "correspondence" to take account of developments in means of communication. Respect for family life is covered by a separate Article. Paragraph 2 on limitations has not been included but it is applicable under Union law by virtue of the horizontal clause relating to the Convention.

Article 13. Family life

- 1. Everyone has the right to respect for his family life.**
- 2. Everyone has the right to marry and to found a family, according to the national laws governing the exercise of this right.**
- 3. The family shall enjoy legal, economic and social protection.**

Statement of reasons

The first paragraph of this Article is based on Article 8 of the European Convention on Human Rights and paragraph 2 on Article 12 of that Convention, which reads as follows:

"Men and women of marriageable age have the right to marry and to found a family according to the national laws governing the exercising of this right."

The reference to national law in paragraph 2 is consistent with subsidiarity and with the diversity of national situations. Paragraph 3 applies to the Union when it adopts measures within its powers to take account of family protection needs. Its exact position will be determined when the overall structure of the Charter is considered.

Article 14. Freedom of thought, conscience and religion

Everyone has the right to freedom of thought, conscience and religion.

Statement of reasons

This wording reproduces Article 9 of the European Convention on Human Rights, which reads as follows:

- "1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.*
- 2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."*

The fact that the Charter does not incorporate the limitations set out in paragraph 2 does not deprive those restrictions of their effects under Union law, by virtue of the horizontal clause relating to the Convention. The Court of Justice of the European Communities endorsed religious freedom in the Prais Case (judgment of 27 October 1976, Case 130/75, ECR 1589). Given the decision in favour of concise drafting for the Charter, the implications of religious freedom have not been included, but this is not intended to deprive these provisions of their effect as they are only the implications of the general principle.

Article 15. Freedom of expression

Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.

Statement of reasons

This Article incorporates the principles of Article 10 of the European Convention on Human Rights, which reads as follows:

- "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.*
- 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."*

Paragraph 2 has not been included but it is applicable under Union law by virtue of the horizontal clause relating to the Convention. The Court of Justice has endorsed the principle of freedom of expression on several occasions, first and foremost in the ERT Judgment (judgment of 18 June 1991, Case C-260/89, ECR I-5485).

Article 16. Right to education

- 1. Everyone has the right to education and the right of access to vocational and continuing training. These rights include the right to receive free compulsory education.**
- 2. The founding of educational establishments shall be free of constraint.**
- 3. The right of parents to have their children educated and taught in accordance with their religious and philosophical convictions shall be respected.**

Statement of reasons

This Article is based on the common constitutional traditions of Member States and on Article 2 of the Additional Protocol to the European Convention on Human Rights, which reads as follows:

"No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions."

It was considered useful to add the principle of free compulsory education. As it is worded, it merely implies that as regards compulsory education, each child has the possibility of attending an establishment which offers free education. It does not require all establishments which provide education, in particular private ones, to be free of charge. Insofar as the Charter applies to the

Union, this means that in its training policies the Union must respect free compulsory education, but this does not, of course, create new powers. The principle of academic freedom is not included, but it constitutes both a structural principle of academic organisation and the guarantee of the freedom of expression in this area. The Charter in no way infringes this principle.

Article 17: Freedom of assembly and association

Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions or political parties.

Statement of reasons

This Article is based on Article 11 of the European Convention on Human Rights:

- "1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.*
- 2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."*

The question of restrictions will be covered by the horizontal clause relating to the European Convention on Human Rights.

Article 18. Right of access to documents

Every citizen of the Union or anyone residing in the Union has a right of access to the documents of the European Parliament, of the Council and of the Commission.

Statement of reasons

This Article is taken from the first sentence of Article 255 of the EC Treaty. The conditions and limits described in the remainder of the Article are covered by the horizontal clause which deals with the issue in a general fashion.

Article 19. Data protection

Everyone has the right to determine for himself whether his personal data may be disclosed and how they may be used.

Statement of reasons

Under Article 286 of the EC Treaty the Community Directives on data protection are applicable to the institutions and bodies. Those Directives are based on the Council of Europe Convention on the protection of personal data. It seems preferable to lay down a general rule rather than to include a detailed list of principles which will be subject to change in the light of technical advances. In any case, data protection is an aspect of respect for privacy.

Article 20. Right to property

Every person has the right to own, use and dispose of lawfully acquired possessions. No one may be deprived of his possessions except in the public interest and in the cases and subject to the conditions provided for by law and subject to a prior guarantee of fair compensation.

Statement of reasons

This Article is based on Article 1 of the Additional Protocol to the European Convention on Human Rights:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

This is a fundamental principle common to all national constitutions. It has been recognised on numerous occasions by the case law of the Court of Justice, initially in the Hauer judgment (13 December 1979, ECR 3727). A number of members wished to update the wording of the Convention. The use of possessions must be within the limitations imposed by the general interest.

Article 21. Right to asylum and expulsion

- 1. Nationals of third countries shall have the right to asylum in the European Union in accordance with the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees.**
- 2. Collective expulsion of aliens is prohibited.**

Statement of reasons

Paragraph 2 of this Article is based on Article 4 of Protocol No 4 to the European Convention on Human Rights concerning collective expulsion. Its purpose is to guarantee that every decision is based on a specific examination and that no single measure can be taken to expel all persons with particular characteristics. The text of paragraph 1 is based on Article 63 TEC which incorporates the Convention on Refugees into Community law. The provisions of Article 1 of Protocol No 7 to the ECHR concerning procedural safeguards in the event of expulsion have not been incorporated as most Member States have not signed or ratified that Protocol. In any event the Geneva Convention contains guarantees in that respect.

Article 22. Equality and non-discrimination

- 1. Any discrimination based on sex, race, colour or ethnic or social origin, language, religion or belief, political opinion, association with a national minority, property, birth, disability, age or sexual orientation shall be prohibited.**
- 2. Within the scope of application of the Treaty establishing the European Community and of the Treaty on European Union, any discrimination on grounds of nationality shall be prohibited.**
- 3. The Union shall seek to eliminate inequalities and to promote equality between men and women in particular equality between the sexes shall be ensured when setting pay and other working conditions.**

Statement of reasons

Paragraph 1 is based on the European Convention on Human Rights. The ECHR limits the application of the principle to guaranteed rights, but Community law goes further following the adoption of the Amsterdam Treaty. The list combines that in Article 13 of the Community Treaty with that in Article 14 of the ECHR. The principle of non-discrimination set out in paragraph 2 is enshrined in Article 12 of the EC Treaty.

Article 12 TEC: "Within the scope of application of this Treaty, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited.

The Council, acting in accordance with the procedure referred to in Article 251, may adopt rules designed to prohibit such discrimination."

The wording of paragraph 3 is intended to authorise positive action as provided for in the Treaty.

Article 23. Children's rights

Children must be treated as equal individuals, they must be allowed to influence matters pertaining to their person to a degree corresponding to their maturity

Statement of reasons

This Article is in response to various requests and is based on the Convention on the Rights of the Child.

Principle of democracy

Following the Convention's discussions, it was decided that the following statements would appear in the preamble:

- 1. All public authority stems from the people.**
- 2. The Union and its institutions are founded on the principles of liberty, democracy, respect for human rights and the rule of law, principles which are common to the Member States.**

Paragraph 3 follows Article 190(1) TEC, which was considered preferable to Article 3 of the Additional Protocol to the ECHR: "The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the

opinion of the people in the choice of the legislature." This Article takes the form of an international commitment, whereas the Treaty provides for elections in Article 190(1) TEC: "The representatives in the European Parliament of the peoples of the States brought together in the Community shall be elected by direct universal suffrage". This paragraph has been transferred to the Article relating to European elections.

Article 24. Political parties

Every citizen has the right to form a political party at the level of the Union and everyone has the right to join such a party. These political parties must respect the rights and freedoms guaranteed by this Charter.

Statement of reasons

Every Union citizen is guaranteed the right to found a political party, and the right to join such a party is open to anyone living in a Member State. The possibility of limiting the exercise of these rights will derive from the horizontal article concerning limitations.

Article 25. Right to vote and to stand as a candidate for the European Parliament

- 1. Members of the European Parliament shall be elected by direct universal suffrage by free and secret ballot.**
- 2. Every citizen of the Union has the right to vote and to stand as a candidate in the Member State in which he resides under the same conditions as nationals of that State.**

Statement of reasons

This text follows Article 19(2) of the TEC: "2. Without prejudice to Article 190(4) and to the provisions adopted for its implementation, every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and to stand as a candidate in elections to the European Parliament in the Member State in which he resides, under the same conditions as nationals of that State. This right shall be exercised subject to detailed arrangements adopted by the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament; these arrangements may provide for derogations where warranted by problems specific to a Member State".

A reference to the conditions laid down in the Treaty will be made in a horizontal article.

Article 26. Right to vote and to stand as a candidate in municipal elections

Every citizen of the Union has the right to vote and to stand as a candidate at municipal elections in the Member State in which he resides under the same conditions as nationals of that State.

Statement of reasons

This text follows Article 19(1) of the TEC: "Every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and to stand as a candidate at municipal elections in the Member State in which he resides, under the same conditions as nationals of that State. This right shall be exercised subject to detailed arrangements adopted by the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament; these arrangements may provide for derogations where warranted by problems specific to a Member State".

A reference to the conditions laid down in the Treaty will be made in a horizontal clause.

Article 27. Relations with the administration

1. **Every person has the right to have his affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union.**
2. **This right includes:**
 - **the right of every person to be heard before any individual measure which would affect him adversely is taken in relation to him;**
 - **the right of every person to have access to his file, while respecting the legitimate interests of confidentiality and of business secrecy;**
 - **the obligation of the administration to give reasons for its decisions.**
3. **Every person may address the institutions of the Union in one of the official languages of the Union and must have an answer in that language.**

Statement of reasons

The first paragraph is in response to a request made several times during the Convention, particularly by the Ombudsman.

The principles set out in paragraph 2, which only concern individual decisions, basically result from the case law of the Court and, with regard to the obligation to give reasons, from Article 253 of the Treaty: "Regulations, directives and decisions adopted jointly by the European Parliament and the Council, and such acts adopted by the Council or the Commission, shall state the reasons on which they are based and shall refer to any proposals or opinions which were required to be obtained pursuant to this Treaty." The principles for non-contentious administrative procedure are set out in the following judgments in particular: Case 374/87 Orkem [1989] ECR 3283, Case T-450/93 Lisrestal, CFI, [1994] ECR II-1177, Case C-269/90 TU München [1991] ECR I-5469, Case T-167/94 Detlef Nölle [1995] ECR II-2589. The reference to confidentiality refers to the protection of personal data.

Paragraph 3 follows Article 21 of the TEC: "Every citizen of the Union may write to any of the institutions or bodies referred to in this Article or in Article 7 in one of the languages mentioned in Article 314 and have an answer in the same language."

Article 28. Ombudsman

Every citizen and every natural and legal person residing or having its registered office in a Member State has the right to refer to the Ombudsman of the Union cases of maladministration by the institutions and bodies of the Union, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role.

Statement of reasons

The Article presents the principles which result from Articles 21 and 195 of the TEC.

Article 21:

"Every citizen of the Union may apply to the Ombudsman established in accordance with Article 195".

Article 195: "1. The European Parliament shall appoint an Ombudsman empowered to receive complaints from any citizen of the Union or any natural or legal person residing or having its registered office in a Member State concerning instances of maladministration in the activities of the Community institutions or bodies, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role.

In accordance with his duties, the Ombudsman shall conduct inquiries for which he finds grounds, either on his own initiative or on the basis of complaints submitted to him direct or through a Member of the European Parliament, except where the alleged facts are or have been the subject of legal proceedings. Where the Ombudsman establishes an instance of maladministration, he shall refer the matter to the institution concerned, which shall have a period of three months in which to inform him of its views. The Ombudsman shall then forward a report to the European Parliament and the institution concerned. The person lodging the complaint shall be informed of the outcome of such inquiries.

The Ombudsman shall submit an annual report to the European Parliament on the outcome of his inquiries.

2. The Ombudsman shall be appointed after each election of the European Parliament for the duration of its term of office. The Ombudsman shall be eligible for reappointment.

The Ombudsman may be dismissed by the Court of Justice at the request of the European Parliament if he no longer fulfils the conditions required for the performance of his duties or if he is guilty of serious misconduct.

3. The Ombudsman shall be completely independent in the performance of his duties. In the performance of those duties he shall neither seek nor take instructions from any body.

The Ombudsman may not, during his term of office, engage in any other occupation, whether gainful or not.

4. The European Parliament shall, after seeking an opinion from the Commission and with the approval of the Council acting by a qualified majority, lay down the regulations and general conditions governing the performance of the Ombudsman's duties."

A reference to the Treaty will be made in a horizontal clause.

Article 29. Right to petition

Every citizen and every natural and legal person residing or having its registered office in a Member State has the right to petition the European Parliament.

Statement of reasons

This Article presents the principles resulting from Articles 21 and 194 of the TEC.

Article 21: "Every citizen of the Union shall have the right to petition the European Parliament in accordance with Article 194."

Article 194 of the TEC: "Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have the right to address, individually or in association with other citizens or persons, a petition to the European Parliament on a matter which comes within the Community's fields of activity and which affects him, her or it directly."

Article 30. Freedom of movement

Every citizen of the Union has the right to move and reside freely within the territory of the Member States.

Statement of reasons

This Article follows the principle set out in Article 18 of the TEC.

Article 18 TEC:

- "1. Every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in this Treaty and by the measures adopted to give it effect.*
- 2. The Council may adopt provisions with a view to facilitating the exercise of the rights referred to in paragraph 1; save as otherwise provided in this Treaty, the Council shall act in accordance with the procedure referred to in Article 251. The Council shall act unanimously throughout this procedure."*

A reference to the Treaty will be made in a horizontal clause.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 8 May 2000**CHARTE 4285/00****CONTRIB 157****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter comments and amendments on the document CHARTE 4192/00
CONVENT 18 submitted by Mr. Jens-Peter Bonde, member of the European Parliament. ¹

¹ This text has been submitted in English language only.

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Bruxelles 16 October 2007

Comments and amendments on the proposed Social Rights (Convent 18).

Article III. Workers' right to information and consultation

After "Workers and their representatives" there is a need to add "in accordance with the minimum regulations of the community and national legislation and/or practice".

It is important that it is possible to specify the right to information and consultation through directives, which can be implemented in each Member State in accordance with the national practices of the Member State.

The labour markets are structured differently in the Member States. Therefore when drafting the Charter, it is necessary to take these differences into consideration. It is important that we stress that the rights in the Charter can be implemented, while respecting the different national practices, traditions and features of the labour markets.

It should also be added that the information shall be given 'in appropriate time' in order to make the right more concrete and effective.

Article IV. Freedom of association, rights of collective bargaining and collective action.

I suggest that we strike out Article IV. The article is in complete contrast to Article 137.6 of the TEC. That says that the content of Article 137 of the TEC doesn't include wage issues, the right to organise, the right to strike and the right to lock out. The proposed article goes further than the Treaty allows. Especially one could ask if it is not going way beyond the powers of the EU to include the right not to join an association.

If we choose to maintain this article under part 3 the passage "under the conditions laid down by national legislation and practice" should be added.

Article V. Right to equal remuneration for work of equal value

I suggest that we keep the wording from Article 141 of the TEC and make a reference in part B to this Article.

Article VI. Right to rest periods and annual leave

Article VI should be amended this way:

Every worker has the right to a weekly and a **daily** rest period and to an annual period of paid leave.

Article VIII. Protection of children and young people

After the first sentence, it should be added, "unless there are specific exceptions adopted in accordance with the Treaty".

Directive 94/33 already contains specific exceptions for children doing artistic work and carrying out smaller jobs, as for example delivering newspapers. It is necessary to add that specific exceptions can be allowed if they are adopted in accordance with the Treaty.

The way that the article is formulated now, it is actually establishing new rights. We should limit ourselves to only reinforcing already existing standards. The article is therefore not acceptable as it is formulated now.

Article X

The proposed article should be deleted.

This is not an individual right that we can guarantee the citizens. It is more a political aim than an individual right, and is an issue that should be regulated by the Member States.

Article XII

The proposed wording of the article make it sounds like the parental leave needs to be effectuated when the child is born or adopted. In Directive 96/34 the parents have the freedom to take the parental leave until the child becomes eight years old. If we choose to maintain this right in the charter this should be included.

Following articles should furthermore be included in the Charter:

The principle of subsidiarity in the sphere of fundamental social rights

The EU-institutions and the Member States shall take account of the diverse forms of national practices, in particular in the field of contractual relations, when implementing measures concerning fundamental social rights.

Comment:

”The proposed article stems from Article 136 of the TEC. It reinforces that the principle of subsidiarity also applies in the field of the labour market. The principle of subsidiarity is fundamental, especially in the light of the fundamental differences that exist among the Member States in the field of labour markets and in the regulation thereof. The Charter should respect the different ways the labour markets are constructed in the different Member States. The aim of the Charter is not to eliminate those differences, but to ensure fundamental rights, while respecting the different national traditions. It is therefore important that this article is included in the charter.”

The right to implement fundamental social rights

1. In Member States where the matter of implementing fundamental social rights is normally left to agreements between employers or employers' organisations and workers' organisations, or are normally carried out otherwise than by law, the undertakings of these matters may be given and compliance with them shall be treated as effective if their provisions are applied through such agreements or other means to the great majority of the workers concerned.
2. In Member States where these matters are normally the subject of legislation, the undertakings concerned may likewise be given, and compliance with them shall be regarded as effective if the provisions are applied by law to the great majority of the workers concerned.

Comment:

The right to implement fundamental social rights stems from Article 137.4 of the TEC, Article 33 of the Social Charter, Preamble and Article 27 of the Community Charter of Rights. The proposed articles only reinforce already existing rights.

It is important that the right to implement fundamental social rights by collective agreements is included in the Charter. It is a fundamental feature for those Member States, where the labour market mainly is build upon collective bargaining. It is important that the Charter do not interfere with the system in these Member States. The Charter should not give preference to countries where these matters are normally settled by law. It is therefore important that it is stressed in the Charter that fundamental social rights can be implemented by law or by collective agreements.

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE**fundamental.rights@consilium.eu.int**

Bruxelles, le 8 mai 2000**CHARTE 4295/00****CONTRIB 167****NOTE DE TRANSMISSION**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne

Veillez trouver ci-joint une proposition d'amendements relatifs aux documents CHARTE 4149/00 CONVENT 13, CHARTE 4137/00 CONVENT 8 et CHARTE 4170 CONVENT 17, présentée par M. Jean-Luc DEHAENE, représentant personnel du Gouvernement belge.¹

¹ Ce texte a été soumis en langues française et néerlandaise.

DROITS CIVILS ET POLITIQUES

Propositions d'amendement :

Article 6 (numérotation de CONVENT 13). Droit à la liberté et à la sûreté.

« Toute personne a droit à la liberté et à la sûreté. Nul ne peut être privé de sa liberté, sauf dans les cas prévus par la loi et dans le respect des voies légales ».

A l'article 5 de la CEDH, les cas où il peut être dérogé à cette règle ont été énumérés de manière exhaustive. Il va de soi que dans la Charte, le nombre de cas où il peut être dérogé à ce droit fondamental a également été soumis à certaines restrictions. Le texte ici proposé garantit que la restriction de liberté ne pourra être imposée par n'importe qui. C'est une attribution du législateur. On respecte de la sorte l'esprit de la CEDH ; celle-ci imposait en effet une restriction similaire en matière de procédure (« selon les voies légales »).

Article 7. Doit à un recours effectif

« Toute personne dont les droits et libertés ont été violés a droit à un recours effectif devant un tribunal ».

Article 8. Droit à un tribunal impartial

« Toute personne a droit à ce que sa cause soit entendue équitablement, publiquement et dans un délai raisonnable, par un tribunal indépendant et impartial établi par la loi. Afin d'assurer un accès effectif au droit, une aide juridique gratuite sera octroyée à ceux qui ne disposent pas de ressources suffisantes.

On a voulu, dans le texte proposé, consacrer le principe de l'aide juridique gratuite en faveur des nécessiteux. Afin d'élargir l'accès au droit, la précision que cette aide doit être « indispensable pour assurer l'effectivité de l'accès à la justice » n'a pas été maintenue. L'omission de cette condition supplémentaire se situe dans la ligne de la jurisprudence de la Cour européenne des droits de l'homme (voir exposé des motifs de cet article dans CONVENT 13).

Article 10. Pas de peine sans loi

Paragraphe 2 : « Le présent article ne porte pas atteinte à la poursuite en jugement et à la punition d'une personne coupable d'une action ou d'une omission qui, au moment où elle a été commise, était criminelle d'après les principes généraux du droit.

L'ajout « reconnus par les nations démocratiques » se trouvant dans la version actuelle est pléonastique dans le contexte des principes généraux du droit et introduit en outre une note désuète.

Article 11. « Non bis in idem »

« Nul ne peut être poursuivi ou encourir une peine pénale dans un état membre de l'Union européenne en raison d'une infraction pour laquelle il a déjà été acquitté ou condamné dans un état membre de l'Union européenne par un jugement définitif et conformément à la loi.

La version actuelle implique que les juridictions de tout ature état au monde doivent être reconnues. Aux termes de l'article 4 du protocole n° 7 à la CEDH cette reconnaissance est limitée aux juridictions d'un même état. Le texte ici proposé constitue une position intermédiaire en ce qu'il étend la reconnaissance des décisions judiciaires aux Etats membres de l'Union européenne. Le principe non bis in idem s'applique dès lors dans ce nouvel espace judiciaire.

Article 16. Droit à l'éducation**Suppression du paragraphe deux**

Afin de rapprocher autant que possible le texte de la Charte de celui de l'article 2 du premier protocole additionnel à la CEDH, il y a lieu de supprimer ce deuxième paragraphe.

Article 14 (numérotation de CONVENT 8). Droit d'accès à l'information.

Tout citoyen de l'Union ou toute personne physique ou morale ayant sa résidence ou son siège statutaire dans un état membre de l'Union européenne a un droit d'accès aux documents des institutions de l'Union européenne.

Aux termes de l'article 255 du traité CE, le droit d'accès à l'information est acquis aux personnes physiques et morales. Il semble donc juste de respecter également ce champ d'application dans la Charte. En effet, la version actuelle exclut les personnes morales. Il était inutile d'ajouter la dernière phrase qui figure dans la version actuelle, étant donné qu'il existe une disposition horizontale réglant les relations entre la Charte et les Traités CE et UE (article 11.3).

Article 15. Protection des données.

La rédaction alternative proposée dans le commentaire est celle qu'il y a lieu de retenir. En effet, la formulation de l'autre texte est trop générale et ne fait pas la part des éventuelles exceptions. La rédaction alternative détermine en quoi consiste le droit concerné et offre par conséquent une protection plus efficace pour les données personnelles.

Article 16. Droit de propriété.

Toute personne a droit au respect des biens qu'il a légalement acquis. Nul ne peut être privé de sa propriété, si ce n'est pour des motifs d'utilité publique, dans les cas et conditions prévus par la loi, et moyennant une juste indemnité fixée au préalable.

L'ajout des termes « qu'il a légalement acquis » a pour objet d'éviter qu'une personne n'invoque cette disposition pour assimiler la détention d'un bien (« éventuellement acquis de manière illégale ») avec l'exercice de la propriété légale sur le dit bien. En ce qui concerne l'indemnité à payer en cas d'expropriation, il est indiqué que celle-ci soit fixée d'avance.

Article 17. Droit d'asile

Paragraphe 1 « Toute personne peut bénéficier, dans tout état membre de l'Union européenne, du droit d'asile aux termes de la Convention de Genève du 28 juillet 1951 et du Protocole du 31 janvier 1967 relatifs au statut des réfugiés.

Conformément aux obligations liant les Etats membres en vertu de la Convention de Genève du 28 juillet 1951 et du Protocole du 31 janvier 1967 relatifs au statut des réfugiés, chaque demande d'asile, qu'elle émane d'un citoyen de l'Union européenne ou de personnes qui ne sont pas des citoyens de l'Union européenne, devra être traitée individuellement. C'est là le motif de l'extension ratione personae du droit d'asile ici proposée.

A défaut d'un véritable droit d'asile UE, il est techniquement plus correct de désigner ce droit par l'expression « droit d'asile aux termes du droit des états membres de l'UE ».

Article E (numérotation de CONVENT 17). Droit à une bonne administration.

1. « Toute personne ~~résidant dans un état membre~~ a le droit de voir ses affaires traitées convenablement, impartialement, équitablement et dans un délai raisonnable par les institutions et organes de l'Union.
2. Ce droit comporte :
 - le droit ~~pour toute personne~~ d'être entendue...
 - le droit ~~pour toute personne~~ d'avoir accès...
 - l'obligation pour l'administration...
3. Quiconque a le droit de s'adresser à tout institution ou organe de l'Union dans l'une des langues visées à l'article 314 CE et de recevoir une réponse dans cette langue. »

Le droit à une bonne administration est un droit qui doit être reconnu à toute personne entrant en contact avec les autorités européennes. Il n'y a nullement lieu d'opérer la distinction entre les citoyens de l'Union ou les personnes qui ne sont pas citoyens de l'Union ou entre ceux qui ont leur résidence sur le territoire d'un état membre de l'Union et ceux qui ne l'ont pas.

Article G. Accès au médiateur

« Tout citoyen de l'Union ou toute personne physique ou morale ayant sa résidence ou son siège statutaire dans un Etat membre de l'Union européenne a le droit de...

Le présent texte est plus conforme aux termes de l'article 195, paragraphe 1, CE. Il stipule clairement que les personnes morales ont elles aussi le droit de saisir le médiateur.

Article H. Droit de pétition.

« Tout citoyen de l'Union ou toute personne physique ou morale ayant sa résidence ou son siège statutaire dans un état membre de l'Union européenne a le droit de....

Le présent texte est plus conforme aux termes de l'article 194 CE. Il stipule clairement que les personnes morales bénéficient elles aussi du droit de pétition.

Article I. liberté de mouvement

« Tout citoyen de l'Union a le droit de circuler et de séjourner librement sur le territoire des états membres ».

Etant donné l'existence d'une disposition horizontale réglant la corrélation entre le Charte et le traité UE (article H3), il n'est pas nécessaire de maintenir dans la version actuelle la partie de phrase qui suit « sur le territoire des états membres.... ». Si elle était malgré tout maintenue, il y aurait lieu de la compléter comme suit :

«par le Traité instituant la Communauté européenne et les dispositions ayant pour objet sa mise en oeuvre.

Cet ajout inspiré de l'article 18, paragraphe 1, CE, garantit l'application des directives et des règlements relatifs à la liberté de mouvement et au droit de séjour.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 10 May 2000**CHARTE 4297/00****CONTRIB 169****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find submitted a proposal on including minority rights by Mr. Jens-Peter Bonde, member of the European Parliament. ¹

¹ This text has been submitted in English language only.

European Centre for Minority Issues

Informal Advisory Paper

10 May 2000

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION:
POSSIBILITY OF INCLUSION OF A PROVISION ON NON-DOMINANT GROUPS

Commissioned by: The Office of Jens Peter Bonde, MEP
Member of the Drafting Body

Authors: Kinga Gal, Marc Weller, ECMI

We are asked to advise on a possible provision on non-dominant groups in the Draft Charter of Fundamental Rights of the European Union. This document seeks to explain some of the options for such a provision. Given the very short period of time available for offering this advice, ECMI emphasizes that it would be more than pleased to offer more detailed suggestions as the drafting progresses, and to offer comments on draft provisions which may emerge from the drafting process.

This document contains:

- I. General Issues Relative to Human and Minority Rights
 - A. Fundamental Rights in the European Union
 - B. Who is addressed by the Provision
 - C. Negative Rights and Claim Rights
 - D. Individual, Group, Minority and People's Rights
- II. Substantive Entitlements
- III. Drafting suggestions
 - A. Incorporation by Reference
 - B. A Mini Catalogue
 - C. A Soft Provision of a General Kind
- IV. Documentary Annex
 - A. Declaration on the Rights of the Principles of International Cultural Co-operation
 - B. International Covenant on Civil and Political Rights
 - C. Document of the Copenhagen Meeting of the Conference on the Human Dimension
 - D. European Charter for Regional or Minority Languages
 - E. Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities
 - F. Framework Convention for the Protection of National Minorities

I. General Issues Relative to Human and Minority Rights

When considering drafting suggestions, it may be useful to bear a few conceptional issues in mind. These relate to the relationship between fundamental and human (and minority) rights, the different approaches to the establishment of rights, and the distinction between individual, group, minority and peoples' rights.

A. Fundamental Rights in the European Union

In the Conclusions of the European Council of Cologne of 3/4 June 1999, it was determined that there exists a need, at the present stage of the Union's development, to establish a Charter of fundamental rights in order to make their overriding importance and relevance more visible to the Union's citizens. Given the gradual development of the Communities/Union over the past half-century, from an economic integration organization to a comprehensive political Union, it is not surprising that the issue of human rights is one which is not free from difficulty and controversy. Human rights were gradually introduced into the legal framework of the Communities/Union, mainly through the jurisprudence of the European Court of Justice. It was felt necessary to disguise this fact somewhat by referring to 'fundamental rights' instead of human rights. In practice, these fundamental rights were often developed and interpreted in accordance with the jurisprudence of the European Court of Human Rights attached to the European Convention for the Protection of Human Rights and Fundamental Freedoms which applies among the wider membership of the Council of Europe.

The consonance of human rights and 'fundamental rights' was formally confirmed in Article 6 (formerly Article F) of the Treaty of the European Union. That article provides, *inter alia*, that 'The Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms' Hence, the Drafting Body is requested by the Council to address both substantive and basic procedural rights, drawing upon the European Convention and also constitutional traditions common to the Member States and general principles of Community law, as well as specialized documents, such as the European Social Charter and the Community Charter of the Fundamental Social Rights of Workers.

B. Who is to be Addressed by the Provision

The mandate of the Body in relation to fundamental rights is not specified in great detail in the Cologne decision. One may distinguish a number of different kinds of substantive fundamental rights:

- Fundamental rights addressed to the organs of the Union, restraining them from adopting measures incompatible with these rights. Given the supranational character of the legal system involved here, the organs of the Union would also be precluded from requiring Member States to adopt measures inconsistent with fundamental rights.
- In addition to the organs of the Union, fundamental rights established in the Charter can also apply to the Member States and their relations with individuals within their area of jurisdiction. According to this conception, the Union and the Member states would be considered one legal space, where all public actors must act according to common standards of fundamental rights.
- Finally, fundamental rights may be conceived of in an even wider sense. Under the human rights and constitutional law doctrine of 'Drittwirkung', both Union and Member State organs are not only required to act themselves in accordance with fundamental rights, but they must also ensure throughout the legal space to which the Charter is to apply that other actors comply with these rights.

Depending on the specific fundamental right involved, it is presumed that the Charter will in principle seek to address all three of the above circumstances. The draft provision on non-dominant groups will therefore need to restrain or guide Union action and the public acts of Member states and it will also flavour relations among private actors in the Union's legal space.

C. Negative Rights and Claim Rights

Traditionally, human rights were conceived in the Western liberal tradition as defenses against the excessive or arbitrary application of state powers. These are so-called ‘negative’ rights, which generally relate to civil and political matters and tend to preclude certain action by organs of the Union or States. The mandate of the Drafting Body goes further, however, also including economic and social rights, emphasizing a positive right of action from the State or the Union (so-called claim rights).

D. Individual, Group, Minority and Peoples’ Rights

Another distinction relates to individual, collective and group rights. Individual rights are easy to distinguish, establishing directly the individual as the beneficiary. Some individual rights are restricted to citizens of the states of the Union and this issue may be of special relevance in the context of certain minorities whose citizenship is questioned by their state of residence, or who are not territorially bound into a particular state.

The identification of collective or groups rights is more difficult, as there exists a subtle conceptual difference which is of particular importance in relation to non-dominant groups. Collective rights describe those entitlements which reside in the individual, even if they can only be realized collectively with others. For example, the right to profess and exercise one’s religion in communion with others is held by every individual, but can only be actualized together with others. The same substantive protection or entitlement can also be achieved, however, by way of a group right. In relation to this particular example, a provision might establish a right for religious groups to organize themselves, establish institutions and to run educational establishments. Again, individuals would benefit from the exercise of this right, but the right resides in the group, rather than the individual.

While this distinction may at first sight seem excessively technical, it is of the greatest importance in practice, and constitutes a veritable battleground in terms of the drafting of legislation or international instruments covering non-dominant groups. The recognition of a separate legal identity of groups is highly contested by some governments. These governments may sometimes perceive such a recognition to be the first step in the dilution of central state power and ultimately of state sovereignty.

Groups rights tend to focus on populations united by a particular feature, such as religious affiliation or language. Minority rights may also address religious or language communities. However, in a slightly different sense, minority rights are also often connected with a more multi-faceted ethnic (or national) identity of which religious affiliation or language may only be one element. The recognition of the existence of a particular minority in this sense is, again, a particularly sensitive issue for some states. The proposal for a legal standard which would recognize such an identity at Union level has therefore already proved to be quite controversial.

A number of international instruments nevertheless address minority issues, although in a somewhat more focused way. These instruments will concern themselves with ‘national’ minorities. National minorities are non-dominant groups in one state which have an external ‘ethnic kin state’ (e.g., the Danish minority in Germany, the Albanians in Kosovo, etc). The external dimension generated by the interest of the kin state in the fate of the minority, and the risk of international tension associated with this external dimension, has made it possible to generate standards on national minorities at the bilateral and regional level, including stability pact initiatives. The widening of the Union will import into its legal space the potential political tensions affiliated with this issue, although it remains controversial whether this problem should be addressed at the level of the European Charter. The emphasis on national minorities in several other documents is of course noteworthy, indicating once again the reluctance of governments, also especially in Western Europe, to address non-dominant groups in a wider sense.

Another issue concerns the question of ‘traditional’ minorities. A number of states only recognize minorities which are long-established on their territory. If there is to be a minority provision in the Charter, it is likely that these states will seek confirmation of this view, which is not free from controversy.

Finally a word on peoples' rights, in particular the right to self-determination. That term has many meanings in many different contexts, from the right to democratic governance to the right to secession. Given the technical legal connotations of the right to self-determination in the latter context, the term is best avoided where the Charter is concerned, at least in connection with minority provisions.

E. Soft Law and Hard Law

It is obvious that even the introduction of any kind of provision on minority rights or non-dominant groups is going to be highly controversial. Recent legislative vigour in Europe in relation to such rights might be somewhat deceiving. Some of the relevant documents may give the appearance of treaties, but were expressly established in the form of soft law. The Framework Convention takes the form of a treaty, but its title is chosen quite deliberately, perhaps providing more of a framework for state action, rather than hard, enforceable obligations. Moreover, in most relevant documents, the substantive provisions are often put in quite general terms, giving them an aspirational character.

II. Substantive Entitlements

A brief survey of minority rights instruments or conventions containing provisions relative to non-dominant groups is appended to this document. More detailed provisions can be found in the bilateral treaties, including instruments adopted in the context of the stability pact initiative, and peace agreements adopted or proposed for regions of ethnic crisis (Dayton, Rambouillet). It would be possible to conduct a more detailed exegesis of all of these instruments and to develop a catalogue of rights on such a basis. In such a way, the minority provision in the Charter would resemble a mini minority convention contained in a single article (drafting option B, see section IV. of this document). However, it may not be realistic to seek to import such a detailed provision into the Charter, given the apprehension of some states in this respect, and the focus of the Council on ‘fundamental rights’. It might also be argued that this might not be desirable, inasmuch as minority rights are rapidly developing. Hence, it might be argued that it would be preferable to refer in the Charter to general, guiding principles, instead of seeking to establish a highly specific catalogue of rights.

In terms of substantive obligations, one might bear the following considerations in mind:

- *Non discrimination*: A general provision providing for non-discrimination will undoubtedly be contained in the Charter. Such a provision applies to all individuals, whether members of a minority or not. Special non discrimination provisions applicable for all, for example in relation to the administration of justice (equality before the law) will also feature in the text. One might consider to add a special provision which precludes non-discrimination expressly on certain grounds connected with a minority identity,
- *Right to determine appurtenance*: It is an essential element of minority protection that minorities are self-constitutive. Their existence does not depend on an act of recognition by a state. Individuals must be able freely to choose their appurtenance to a minority group, without pressure from either the state or the group in question. (See, e.g., Article 2, Framework Convention). This view is, however, disputed by several governments.
- *The protection of national minorities forms an integral part of the international protection of human rights, and as such falls within the scope of international co-operation*. As an integral part of the overall protection of human rights minority rights should be covered in full in the European Charter on Fundamental Rights. This principle as quoted at the head of this paragraph is laid down in Article 1 of the Council of Europe Framework Convention for the Protection of National Minorities (1995).
- *The right to the protection and promotion of ethnic, cultural, linguistic and religious identity of national minorities is one of the basic human rights guaranteed in article 27 of the 1966 International Covenant on Civil and Political Rights*. Almost all of the binding or non-binding international documents addressing the protection of minorities refer to their right to identity protection and promotion, such as articles 1 and 2 of the UN Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities (1992); paragraphs 32 and 33 of the OSCE Copenhagen Document (1990), article 5 of the Council of Europe Framework Convention for the Protection of National Minorities (1995) and the spirit enshrined in the preamble of the European Charter for Regional or Minority Languages (1992).
- *The right to enjoy their own culture* is one main element of the protection of the identity of a person belonging to a minority. The right guarantees more than just the protection of a specific identity, it also contribute to its survival and development. The right to enjoy ones own culture may refer to various cultural and educational rights, including the right to access to the media of persons belonging to the respective minority. These kinds of rights are guaranteed in article 27 of the International Covenant on Civil and Political Rights (1966); articles 2 and 4 of the UN Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities (1992); paragraphs 32 and 32.2 of the OSCE Copenhagen Document (1990), articles 5 and 6 of the Council of Europe Framework Convention for the Protection of National Minorities (1995).
- *The right to profess and practice their own religion*, is strongly anchored in international law, including article 27 of the International Covenant on Civil and Political Rights (1966); the UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion

- or Belief (1981); articles 2 and 4 of the UN Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities (1992); paragraph 32.3 of the OSCE Copenhagen Document (1990), articles 5 and 8 of the Council of Europe Framework Convention for the Protection of National Minorities (1995).
- *The right to use their own language, in private and in public.* Linguistic rights constitute one of the most important rights for persons belonging to national, ethnic or linguistic minorities. As language is one of the basic forms of expression of a minority identity, the right to protection and promotion of identity can be realised only if adequate linguistic rights exist and are promoted. A wide range of linguistic rights are enshrined in article 4 of the UN Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities (1992); paragraphs 32 and 34 of the OSCE Copenhagen Document (1990), article 10 of the Council of Europe Framework Convention for the Protection of National Minorities (1995) and in the European Charter for Regional or Minority Languages (1992).
 - *The right to effective participation in cultural, religious, social, economic and public life* seeks to empower minorities to participate fully in civil society. (Article 2 of the UN Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities (1992); paragraph 35 of the OSCE Copenhagen Document (1990), article 15 of the Council of Europe Framework Convention for the Protection of National Minorities (1995). In order to meet the needs and aspirations of persons belonging to national minorities concerning their identity protection and promotion, as well as to manage ethnic, linguistic, religious and cultural diversity, it is necessary to actively involve national minorities in the decisions taking on all levels in the cultural, social, economic and public life of the society.
 - *Local and regional self-governance.* The principle of subsidiarity is one of the basic principles of the European Union, enshrined in the Maastricht Treaty (1992) and Treaty of Amsterdam (1997), as well as in several Council of Europe documents, such as the European Charter of Local Self-Governments (1985) and the European Charter of Regional Self-Governments (1997). According to this principle, only matters that local and regional levels are not capable of addressing effectively should be decided or administered by superior authorities. Therefore, decisions are taken to the closest possible level to the citizens. This would include an emphasis on local self-governance also in areas where minorities constitute a local or regional majority.

III. Drafting suggestions

All three of the suggestions which follow are quite modest, noting the significant opposition that may exist in relation to the inclusion of any specific minority provision. A more ambitious effort would also cover collective rights of minorities.

The first alternative establishes a general provision for the protection and promotion of minority rights, and then seeks to incorporate more detailed provisions from other documents. These documents have been accepted (although at times in soft-law) by most of the Member States of the Union.

The second alternative instead seeks to establish a mini-catalogue of substantive minority rights. In a more ambitious version, that catalogue would advance upon the provisions of the Framework Convention. In its present form, it is in some aspects more restrictive than the Convention. The third alternative is a general, aspirational provision which may have to be considered if it proves impossible to achieve a more substantive article during the negotiations.

In relation to all three alternatives it has been presumed that there will exist a general non-discrimination clause elsewhere in the Charter which will be applicable to minorities, as well as specific guarantees of equal treatment (fair trial, etc.)

Alternative A

Persons belonging to [national] minorities have the right to the protection and promotion of their ethnic, cultural, linguistic and religious identity *inter alia* through effective participation in cultural, religious, social, economic and public life within the Union, as set out in the UN Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities (1992), the OSCE Copenhagen Document (1990), the Council of Europe Framework Convention for the Protection of National Minorities (1995) and the European Charter for Regional or Minority Languages (1992) and other relevant standards.

Alternative B

(1) The protection of [national] minorities forms an integral part of the international protection of human rights, and as such falls within the scope of international co-operation. No policies and measures shall be adopted which adversely affect the effective development of ethnic, religious, cultural and linguistic diversity and effective steps shall be taken to promote the expression and development of such diverse identities.

(2) To belong to a [national] minority is a matter of a person's individual choice and no disadvantage may arise from the exercise of such a choice. [The existence or not of a minority is not dependent on an act of recognition by a government.]

(3) Persons belonging to [national] minorities have the right to the protection and promotion of their ethnic, cultural, linguistic and religious identity. In particular they have the right to enjoy their own culture, to profess and practice their own religion, to use their own language, in private and in public, to arrange for education and have the right to effective participation in cultural, religious, social, economic and public life, including, where appropriate, through their own institutions and media and according to the principles of local self-governance and subsidiarity.

Alternative C

The Union shall encourage a spirit of tolerance and intercultural dialogue and take effective measures to promote mutual respect and understanding and co-operation among all persons, irrespective of those persons' ethnic, cultural, linguistic or religious identity, in particular in the fields of education, culture and the media. Paying due regard to the principle of subsidiarity, local self-governance shall be promoted where appropriate.

IV. Documentary Annex

Note: Excerpts have been quoted from: Gudmundur Alfredsson and Göran Melander. *A Compilation of Minority Rights Standards. A Selection of Texts from International and Regional Human Rights Instruments and other Documents*. Lund: Raoul Wallenberg Institute of Human Rights and Humanitarian Law, 1997. Full text documents have been provided by ECMI.

I. Table of Contents (full text documents in caps)

- A. Declaration on the Rights of the Principles of International Cultural Co-operation
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- E. Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities
- F. FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES

- A. Declaration on the Rights of the Principles of International Cultural Co-operation.** (Extract)
Adopted by the UNESCO General Conference (14th Session), 4 November 1966.

Article 1.

1. Each culture has a dignity and a value which must be respected and preserved.
2. Every people has the right and the duty to develop its culture.
3. In their rich variety and diversity, and in the reciprocal influences they exert on one another, all cultures form part of the common heritage belonging to all mankind.

- B. International Covenant on Civil and Political Rights.** (Extract)
Adopted and opened for signature, ratification and accession by the General Assembly of the United Nations, resolution 2200 (XXI), 16 December 1966. Entered into force: 3 January 1976.

Article 27.

In those States in which ethnic, religious, or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of the group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

C. Document of the Copenhagen Meeting of the Conference on the Human Dimension. (Extract)

Adopted by the Conference on Security and Co-operation in Europe, 29 June 1990.

(30) The participating States recognize that the questions relating to national minorities can only be satisfactorily resolved in a democratic political framework based on the rule of law, with a functioning independent judiciary. This framework guarantees full respect for human rights and fundamental freedoms, equal rights and status for all citizens, the free expression of all their legitimate interests and aspirations, political pluralism, social tolerance and the implementation of legal rules that place effective restraints on the abuse of governmental power.

They also recognize the important role of non-governmental organizations, including political parties, trade unions, human rights organizations and religious groups, in the promotion of tolerance, cultural diversity and the resolution of questions relating to national minorities.

They further reaffirm that respect for the rights of persons belonging to national minorities as part of universally recognized human rights is an essential factor for peace, justice, stability and democracy in the participating States.

(31) Persons belonging to national minorities have the right to exercise fully and effectively their human rights and fundamental freedoms without any discrimination and in full equality before the law.

The participating States will adopt, where necessary, special measures for the purpose of ensuring to persons belonging to national minorities full equality with the other citizens in the exercise and enjoyment of human rights and fundamental freedoms.

(32) To belong to a national minority is a matter of a person's individual choice and no disadvantage may arise from the exercise of such choice.

Persons belonging to national minorities have the right freely to express, preserve and develop their ethnic, cultural, linguistic or religious identity and to maintain and develop their culture in all aspects, free of any attempts at assimilation against their will. In particular, they have the right:

(32.1) to use freely their mother tongue in private as well as in public;

(32.2) to establish and maintain their own educational, cultural and religious institutions, organizations or associations, which can seek voluntary financial and other contributions as well as public assistance, in conformity with national legislation;

(32.3) to profess and practise their religion, including the acquisition, possession and use of religious materials, and to conduct religious educational activities in their mother tongue;

(32.4) to establish and maintain unimpeded contacts across frontiers with citizens of other States with whom they share a common ethnic or national origin, cultural heritage or religious beliefs;

(32.5) to disseminate, have access to and exchange information in their mother tongue;

(32.6) to establish and maintain organizations or associations within their country and to participate in international non-governmental organizations.

Persons belonging to national minorities can exercise and enjoy their rights individually as well as in community with other members of their group. No disadvantage may arise for a person belonging to a national minority on account of the exercise or non-exercise of any such rights.

(33) The participating States will protect the ethnic, cultural, linguistic and religious identity of national minorities on their territory and create conditions for the promotion of that identity. They will take the necessary measures to that effect after due consultations, including contacts with organizations or associations of such minorities, in accordance with the decision-making procedures of each State.

Any such measures will be in conformity with the principles of equality and non-discrimination with respect to the other citizens of the participating State concerned.

(34) The participating States will endeavour to ensure that persons belonging to national minorities, notwithstanding the need to learn the official language or languages of the State concerned, have adequate opportunities for instruction of their mother tongue on in their mother tongue, as well as wherever possible and necessary, for its use before public authorities, in conformity with applicable national legislation.

In the context of the teaching of history and culture in educational establishments, they will also take account of the history and culture of national minorities.

(35) The participating States will respect the right of persons belonging to national minorities to effective participatin in public affairs, including participation in the affairs relating to the protection and promotion of the identity of such minorities.

The participating States note the efforts undertaken to protect and create conditions for the pomotion of the ethnic, cultural, linguistic and religious identity of certain national minorities by establishing, as one of the possible means to achieve these aims, appropriate local or autonomous administrations corresponding to the specific historical and territorial circumstances of such minorities and in accordance with the policies of the State concerned.

(36) The participating States recognize the particular importance of increasing constructive co-operation among themselves on questions relating to national minorities. Such co-operation seeks to promote mutual understanding and confidence, friendly and good-neighbourly relations, international peace, security and justice.

Every participating State will promote a climate of mutual respect, understanding, co-operation and solidarity among all persons living on its territory, without distinction as to ethnic or national origin or religion, and will encourage the solution of problems through dialogue based on the principles of the rule of law.

(37) None of these commitments may be interpreted as implying any right to engage in any activity or perform any action in contravention of the purposes and principles of the Charter of the United Nations, other obligations under international law or the provisions of the Final Act, including the principle of territorial integrity of States.

(38) The participating States, in their efforts to protect and promote the rights of persons belonging to national minorities, will fully respect their undertakings under existing human rights conventions and other relevant international instruments and consider adhering to the relevant conventions, if they have not yet done so, including those providing for a right of complaint by individuals.

(39) The participating States will co-operate closely in the competent international organizations to which they belong, including the United Nations, and, as appropriate, the Council of Europe, bearing in mind their on-going work with respect to questions relating to national minorities.

(40) The participating States clearly and unequivocally condemn totalitarianism, racial and ethnic hatred, anti-semitism, xenophobia and discrimination against anyone as well as persecution on religious and ideological grounds. In this context, they also recognize the particular problems of Roma (gypsies).

They reaffirm their intention to intensify the effort to combat these phenomena in all their forms and therefore will:

(40.1) take effective measures, including the adoption, in conformity with their constitutional systems and international obligations, of such laws as may be necessary, to provide protection against any acts that constitute incitement to violence against persons or groups based on national, racial, ethnic or religious discrimination, hostility or hatred, including anti-semitism;

(40.2) commit themselves to take appropriate measures to protect persons or groups who may be subject to threats or acts of discrimination, hostility or violence as a result of their racial, ethnic, cultural, linguistic or religious identity, and to protect their property;

(40.3) take effective measures, in conformity with their constitutional systems, at the national, regional and local levels to promote understanding and tolerance, particularly in the fields of education, culture and information;

COUNCIL OF EUROPE
European Treaties
ETS No. 148

D. EUROPEAN CHARTER FOR REGIONAL OR MINORITY LANGUAGES

Strasbourg, 5.XI.1992

Preamble

The member States of the Council of Europe signatory hereto,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members, particularly for the purpose of safeguarding and realising the ideals and principles which are their common heritage;

Considering that the protection of the historical regional or minority languages of Europe, some of which are in danger of eventual extinction, contributes to the maintenance and development of Europe's cultural wealth and traditions;

Considering that the right to use a regional or minority language in private and public life is an inalienable right conforming to the principles embodied in the United Nations International Covenant on Civil and Political Rights, and according to the spirit of the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the work carried out within the CSCE and in particular to the Helsinki Final Act of 1975 and the document of the Copenhagen Meeting of 1990;

Stressing the value of interculturalism and multilingualism and considering that the protection and encouragement of regional or minority languages should not be to the detriment of the official languages and the need to learn them;

Realising that the protection and promotion of regional or minority languages in the different countries and regions of Europe represent an important contribution to the building of a Europe based on the principles of democracy and cultural diversity within the framework of national sovereignty and territorial integrity;

Taking into consideration the specific conditions and historical traditions in the different regions of the European States,

Have agreed as follows:

Part I

General provisions

Article 1 - Definitions

For the purposes of this Charter:

a "regional or minority languages" means languages that are:

- i** traditionally used within a given territory of a State by nationals of that State who form a group numerically smaller than the rest of the State's population; and
- ii** different from the official language(s) of that State;

it does not include either dialects of the official language(s) of the State or the languages of migrants;

b "territory in which the regional or minority language is used" means the geographical area in which the said language is the mode of expression of a number of people justifying the adoption of the various protective and promotional measures provided for in this Charter;

c "non-territorial languages" means languages used by nationals of the State which differ from the language or languages used by the rest of the State's population but which, although traditionally used within the territory of the State, cannot be identified with a particular area thereof.

Article 2 - Undertakings

1. Each Party undertakes to apply the provisions of Part II to all the regional or minority languages spoken within its territory and which comply with the definition in Article 1.
2. In respect of each language specified at the time of ratification, acceptance or approval, in accordance with Article 3, each Party undertakes to apply a minimum of thirty-five paragraphs or subparagraphs chosen from among the provisions of Part III of the Charter, including at least three chosen from each of the Articles 8 and 12 and one from each of the Articles 9, 10, 11 and 13.

Article 3 - Practical arrangements

1. Each Contracting State shall specify in its instrument of ratification, acceptance or approval, each regional or minority language, or official language which is less widely used on the whole or part of its territory, to which the paragraphs chosen in accordance with Article 2, paragraph 2, shall apply.
2. Any Party may, at any subsequent time, notify the Secretary General that it accepts the obligations arising out of the provisions of any other paragraph of the Charter not already specified in its instrument of ratification, acceptance or approval, or that it will apply paragraph 1 of the present article to other regional or minority languages, or to other official languages which are less widely used on the whole or part of its territory.
3. The undertakings referred to in the foregoing paragraph shall be deemed to form an integral part of the

ratification, acceptance or approval and will have the same effect as from their date of notification.

Article 4 - Existing regimes of protection

1. Nothing in this Charter shall be construed as limiting or derogating from any of the rights guaranteed by the European Convention on Human Rights.
2. The provisions of this Charter shall not affect any more favourable provisions concerning the status of regional or minority languages, or the legal regime of persons belonging to minorities which may exist in a Party or are provided for by relevant bilateral or multilateral international agreements.

Article 5 - Existing obligations

Nothing in this Charter may be interpreted as implying any right to engage in any activity or perform any action in contravention of the purposes of the Charter of the United Nations or other obligations under international law, including the principle of the sovereignty and territorial integrity of States.

Article 6 - Information

The Parties undertake to see to it that the authorities, organisations and persons concerned are informed of the rights and duties established by this Charter.

Part II

Objectives and principles pursued in accordance with Article 2, paragraph

1

Article 7 - Objectives and principles

1. In respect of regional or minority languages, within the territories in which such languages are used and according to the situation of each language, the Parties shall base their policies, legislation and practice on the following objectives and principles:
 - a** the recognition of the regional or minority languages as an expression of cultural wealth;
 - b** the respect of the geographical area of each regional or minority language in order to ensure that existing or new administrative divisions do not constitute an obstacle to the promotion of the regional or minority language in question;
 - c** the need for resolute action to promote regional or minority languages in order to safeguard them;
 - d** the facilitation and/or encouragement of the use of regional or minority languages, in speech and writing, in public and private life;
 - e** the maintenance and development of links, in the fields covered by this Charter, between groups using a regional or minority language and other groups in the State employing a language used in identical or similar form, as well as the establishment of cultural relations with other groups in the State using different languages;
 - f** the provision of appropriate forms and means for the teaching and study of regional or minority languages at all appropriate stages;
 - g** the provision of facilities enabling non-speakers of a regional or minority language living in the area where it is used to learn it if they so desire;
 - h** the promotion of study and research on regional or minority languages at universities or equivalent institutions;
 - i** the promotion of appropriate types of transnational exchanges, in the fields covered by this Charter, for regional or minority languages used in identical or similar form in two or more States.

2. The Parties undertake to eliminate, if they have not yet done so, any unjustified distinction, exclusion, restriction or preference relating to the use of a regional or minority language and intended to discourage or endanger the maintenance or development of it. The adoption of special measures in favour of regional or minority languages aimed at promoting equality between the users of these languages and the rest of the population or which take due account of their specific conditions is not considered to be an act of discrimination against the users of more widely-used languages.
3. The Parties undertake to promote, by appropriate measures, mutual understanding between all the linguistic groups of the country and in particular the inclusion of respect, understanding and tolerance in relation to regional or minority languages among the objectives of education and training provided within their countries and encouragement of the mass media to pursue the same objective.
4. In determining their policy with regard to regional or minority languages, the Parties shall take into consideration the needs and wishes expressed by the groups which use such languages. They are encouraged to establish bodies, if necessary, for the purpose of advising the authorities on all matters pertaining to regional or minority languages.
5. The Parties undertake to apply, **mutatis mutandis**, the principles listed in paragraphs 1 to 4 above to non-territorial languages. However, as far as these languages are concerned, the nature and scope of the measures to be taken to give effect to this Charter shall be determined in a flexible manner, bearing in mind the needs and wishes, and respecting the traditions and characteristics, of the groups which use the languages concerned.

Part III

Measures to promote the use of regional or minority languages in public life in accordance with the undertakings entered into under Article 2, paragraph

2

Article 8 - Education

1. With regard to education, the Parties undertake, within the territory in which such languages are used, according to the situation of each of these languages, and without prejudice to the teaching of the official language(s) of the State:
 - a
 - i to make available pre-school education in the relevant regional or minority languages; or
 - ii to make available a substantial part of pre-school education in the relevant regional or minority languages; or
 - iii to apply one of the measures provided for under i and ii above at least to those pupils whose families so request and whose number is considered sufficient; or
 - iv if the public authorities have no direct competence in the field of pre-school education, to favour and/or encourage the application of the measures referred to under i to iii above;
 - b
 - i to make available primary education in the relevant regional or minority languages; or
 - ii to make available a substantial part of primary education in the relevant regional or minority languages; or
 - iii to provide, within primary education, for the teaching of the relevant regional or minority languages as an integral part of the curriculum; or
 - iv to apply one of the measures provided for under i to iii above at least to those pupils whose families so request and whose number is considered sufficient;
 - c
 - i to make available secondary education in the relevant regional or minority languages; or
 - ii to make available a substantial part of secondary education in the relevant regional or minority languages; or

iii to provide, within secondary education, for the teaching of the relevant regional or minority languages as an integral part of the curriculum; or
iv to apply one of the measures provided for under i to iii above at least to those pupils who, or where appropriate whose families, so wish in a number considered sufficient;

d

i to make available technical and vocational education in the relevant regional or minority languages; or
ii to make available a substantial part of technical and vocational education in the relevant regional or minority languages; or
iii to provide, within technical and vocational education, for the teaching of the relevant regional or minority languages as an integral part of the curriculum; or
iv to apply one of the measures provided for under i to iii above at least to those pupils who, or where appropriate whose families, so wish in a number considered sufficient;

e

i to make available university and other higher education in regional or minority languages; or
ii to provide facilities for the study of these languages as university and higher education subjects; or
iii if, by reason of the role of the State in relation to higher education institutions, sub-paragraphs i and ii cannot be applied, to encourage and/or allow the provision of university or other forms of higher education in regional or minority languages or of facilities for the study of these languages as university or higher education subjects;

f

i to arrange for the provision of adult and continuing education courses which are taught mainly or wholly in the regional or minority languages; or
ii to offer such languages as subjects of adult and continuing education; or
iii if the public authorities have no direct competence in the field of adult education, to favour and/or encourage the offering of such languages as subjects of adult and continuing education;

g to make arrangements to ensure the teaching of the history and the culture which is reflected by the regional or minority language;

h to provide the basic and further training of the teachers required to implement those of paragraphs a to g accepted by the Party;

i to set up a supervisory body or bodies responsible for monitoring the measures taken and progress achieved in establishing or developing the teaching of regional or minority languages and for drawing up periodic reports of their findings, which will be made public.

2. With regard to education and in respect of territories other than those in which the regional or minority languages are traditionally used, the Parties undertake, if the number of users of a regional or minority language justifies it, to allow, encourage or provide teaching in or of the regional or minority language at all the appropriate stages of education.

Article 9 - Judicial authorities

1. The Parties undertake, in respect of those judicial districts in which the number of residents using the regional or minority languages justifies the measures specified below, according to the situation of each of these languages and on condition that the use of the facilities afforded by the present paragraph is not considered by the judge to hamper the proper administration of justice:

a in criminal proceedings:

i to provide that the courts, at the request of one of the parties, shall conduct the proceedings in the regional or minority languages; and/or

ii to guarantee the accused the right to use his/her regional or minority language; and/or

iii to provide that requests and evidence, whether written or oral, shall not be considered inadmissible solely because they are formulated in a regional or minority language; and/or

iv to produce, on request, documents connected with legal proceedings in the relevant regional or minority language,

if necessary by the use of interpreters and translations involving no extra expense for the persons concerned;

b in civil proceedings:

i to provide that the courts, at the request of one of the parties, shall conduct the proceedings in the regional or minority languages; and/or

ii to allow, whenever a litigant has to appear in person before a court, that he or she may use his or her regional or minority language without thereby incurring additional expense; and/or

iii to allow documents and evidence to be produced in the regional or minority languages, if necessary by the use of interpreters and translations;

c in proceedings before courts concerning administrative matters:

i to provide that the courts, at the request of one of the parties, shall conduct the proceedings in the regional or minority languages; and/or

ii to allow, whenever a litigant has to appear in person before a court, that he or she may use his or her regional or minority language without thereby incurring additional expense; and/or

iii to allow documents and evidence to be produced in the regional or minority languages,

if necessary by the use of interpreters and translations;

d to take steps to ensure that the application of sub-paragraphs i and iii of paragraphs b and c above and any necessary use of interpreters and translations does not involve extra expense for the persons concerned.

2. The Parties undertake:

a not to deny the validity of legal documents drawn up within the State solely because they are drafted in a regional or minority language; or

b not to deny the validity, as between the parties, of legal documents drawn up within the country solely because they are drafted in a regional or minority language, and to provide that they can be invoked against interested third parties who are not users of these languages on condition that the contents of the document are made known to them by the person(s) who invoke(s) it; or

c not to deny the validity, as between the parties, of legal documents drawn up within the country solely because they are drafted in a regional or minority language.

3. The Parties undertake to make available in the regional or minority languages the most important national statutory texts and those relating particularly to users of these languages, unless they are otherwise provided.

Article 10 - Administrative authorities and public services

1. Within the administrative districts of the State in which the number of residents who are users of regional or minority languages justifies the measures specified below and according to the situation of each language, the Parties undertake, as far as this is reasonably possible:

a

i to ensure that the administrative authorities use the regional or minority languages; or

ii to ensure that such of their officers as are in contact with the public use the regional or minority languages in their relations with persons applying to them in these languages; or

iii to ensure that users of regional or minority languages may submit oral or written applications and receive a reply in these languages; or

iv to ensure that users of regional or minority languages may submit oral or written applications in these languages; or

v to ensure that users of regional or minority languages may validly submit a document in these languages;

b to make available widely used administrative texts and forms for the population in the regional or minority languages or in bilingual versions;

c to allow the administrative authorities to draft documents in a regional or minority language.

2. In respect of the local and regional authorities on whose territory the number of residents who are users of regional or minority languages is such as to justify the measures specified below, the Parties undertake to allow and/or encourage:

- a** the use of regional or minority languages within the framework of the regional or local authority;
 - b** the possibility for users of regional or minority languages to submit oral or written applications in these languages;
 - c** the publication by regional authorities of their official documents also in the relevant regional or minority languages;
 - d** the publication by local authorities of their official documents also in the relevant regional or minority languages;
 - e** the use by regional authorities of regional or minority languages in debates in their assemblies, without excluding, however, the use of the official language(s) of the State;
 - f** the use by local authorities of regional or minority languages in debates in their assemblies, without excluding, however, the use of the official language(s) of the State;
 - g** the use or adoption, if necessary in conjunction with the name in the official language(s), of traditional and correct forms of place-names in regional or minority languages.
3. With regard to public services provided by the administrative authorities or other persons acting on their behalf, the Parties undertake, within the territory in which regional or minority languages are used, in accordance with the situation of each language and as far as this is reasonably possible:
- a** to ensure that the regional or minority languages are used in the provision of the service; or
 - b** to allow users of regional or minority languages to submit a request and receive a reply in these languages; or
 - c** to allow users of regional or minority languages to submit a request in these languages.
4. With a view to putting into effect those provisions of paragraphs 1, 2 and 3 accepted by them, the Parties undertake to take one or more of the following measures:
- a** translation or interpretation as may be required;
 - b** recruitment and, where necessary, training of the officials and other public service employees required;
 - c** compliance as far as possible with requests from public service employees having a knowledge of a regional or minority language to be appointed in the territory in which that language is used.
5. The Parties undertake to allow the use or adoption of family names in the regional or minority languages, at the request of those concerned.

Article 11 - Media

1. The Parties undertake, for the users of the regional or minority languages within the territories in which those languages are spoken, according to the situation of each language, to the extent that the public authorities, directly or indirectly, are competent, have power or play a role in this field, and respecting the principle of the independence and autonomy of the media:
- a** to the extent that radio and television carry out a public service mission:
 - i** to ensure the creation of at least one radio station and one television channel in the regional or minority languages; or

- ii to encourage and/or facilitate the creation of at least one radio station and one television channel in the regional or minority languages; or
 - iii to make adequate provision so that broadcasters offer programmes in the regional or minority languages;
 - b
 - i to encourage and/or facilitate the creation of at least one radio station in the regional or minority languages; or
 - ii to encourage and/or facilitate the broadcasting of radio programmes in the regional or minority languages on a regular basis;
 - c
 - i to encourage and/or facilitate the creation of at least one television channel in the regional or minority languages; or
 - ii to encourage and/or facilitate the broadcasting of television programmes in the regional or minority languages on a regular basis;
 - d to encourage and/or facilitate the production and distribution of audio and audiovisual works in the regional or minority languages;
 - e
 - i to encourage and/or facilitate the creation and/or maintenance of at least one newspaper in the regional or minority languages; or
 - ii to encourage and/or facilitate the publication of newspaper articles in the regional or minority languages on a regular basis;
 - f
 - i to cover the additional costs of those media which use regional or minority languages, wherever the law provides for financial assistance in general for the media; or
 - ii to apply existing measures for financial assistance also to audiovisual productions in the regional or minority languages;
 - g to support the training of journalists and other staff for media using regional or minority languages.
- 2. The Parties undertake to guarantee freedom of direct reception of radio and television broadcasts from neighbouring countries in a language used in identical or similar form to a regional or minority language, and not to oppose the retransmission of radio and television broadcasts from neighbouring countries in such a language. They further undertake to ensure that no restrictions will be placed on the freedom of expression and free circulation of information in the written press in a language used in identical or similar form to a regional or minority language. The exercise of the above-mentioned freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.
- 3. The Parties undertake to ensure that the interests of the users of regional or minority languages are represented or taken into account within such bodies as may be established in accordance with the law with responsibility for guaranteeing the freedom and pluralism of the media.

Article 12 - Cultural activities and facilities

1. With regard to cultural activities and facilities - especially libraries, video libraries, cultural centres, museums, archives, academies, theatres and cinemas, as well as literary work and film production, vernacular forms of cultural expression, festivals and the culture industries, including **inter alia** the use of new technologies - the Parties undertake, within the territory in which such languages are used and to the extent that the public authorities are competent, have power or play a role in this field:
 - a to encourage types of expression and initiative specific to regional or minority languages and foster the different means of access to works produced in these languages;
 - b to foster the different means of access in other languages to works produced in regional or minority languages by aiding and developing translation, dubbing, post-synchronisation and subtitling activities;

- c** to foster access in regional or minority languages to works produced in other languages by aiding and developing translation, dubbing, post-synchronisation and subtitling activities;
 - d** to ensure that the bodies responsible for organising or supporting cultural activities of various kinds make appropriate allowance for incorporating the knowledge and use of regional or minority languages and cultures in the undertakings which they initiate or for which they provide backing;
 - e** to promote measures to ensure that the bodies responsible for organising or supporting cultural activities have at their disposal staff who have a full command of the regional or minority language concerned, as well as of the language(s) of the rest of the population;
 - f** to encourage direct participation by representatives of the users of a given regional or minority language in providing facilities and planning cultural activities;
 - g** to encourage and/or facilitate the creation of a body or bodies responsible for collecting, keeping a copy of and presenting or publishing works produced in the regional or minority languages;
 - h** if necessary, to create and/or promote and finance translation and terminological research services, particularly with a view to maintaining and developing appropriate administrative, commercial, economic, social, technical or legal terminology in each regional or minority language.
2. In respect of territories other than those in which the regional or minority languages are traditionally used, the Parties undertake, if the number of users of a regional or minority language justifies it, to allow, encourage and/or provide appropriate cultural activities and facilities in accordance with the preceding paragraph.
 3. The Parties undertake to make appropriate provision, in pursuing their cultural policy abroad, for regional or minority languages and the cultures they reflect.

Article 13 - Economic and social life

1. With regard to economic and social activities, the Parties undertake, within the whole country:
 - a** to eliminate from their legislation any provision prohibiting or limiting without justifiable reasons the use of regional or minority languages in documents relating to economic or social life, particularly contracts of employment, and in technical documents such as instructions for the use of products or installations;
 - b** to prohibit the insertion in internal regulations of companies and private documents of any clauses excluding or restricting the use of regional or minority languages, at least between users of the same language;
 - c** to oppose practices designed to discourage the use of regional or minority languages in connection with economic or social activities;
 - d** to facilitate and/or encourage the use of regional or minority languages by means other than those specified in the above sub-paragraphs.
2. With regard to economic and social activities, the Parties undertake, in so far as the public authorities are competent, within the territory in which the regional or minority languages are used, and as far as this is reasonably possible:
 - a** to include in their financial and banking regulations provisions which allow, by means of procedures compatible with commercial practice, the use of regional or minority languages in drawing up payment orders (cheques, drafts, etc.) or other financial documents, or, where appropriate, to ensure the implementation of such provisions;
 - b** in the economic and social sectors directly under their control (public sector), to organise activities to promote the use of regional or minority languages;
 - c** to ensure that social care facilities such as hospitals, retirement homes and hostels offer the possibility of receiving and treating in their own language persons using a regional or minority language who are in need of care on grounds of ill-health, old age or for other reasons;
 - d** to ensure by appropriate means that safety instructions are also drawn up in regional or minority languages;
 - e** to arrange for information provided by the competent public authorities concerning the rights of consumers to be made available in regional or minority languages.

Article 14 - Transfrontier exchanges

The Parties undertake:

a to apply existing bilateral and multilateral agreements which bind them with the States in which the same language is used in identical or similar form, or if necessary to seek to conclude such agreements, in such a way as to foster contacts between the users of the same language in the States concerned in the fields of culture, education, information, vocational training and permanent education;

b for the benefit of regional or minority languages, to facilitate and/or promote co-operation across borders, in particular between regional or local authorities in whose territory the same language is used in identical or similar form.

Part IV

Application of the Charter

Article 15 - Periodical reports

1. The Parties shall present periodically to the Secretary General of the Council of Europe, in a form to be prescribed by the Committee of Ministers, a report on their policy pursued in accordance with Part II of this Charter and on the measures taken in application of those provisions of Part III which they have accepted. The first report shall be presented within the year following the entry into force of the Charter with respect to the Party concerned, the other reports at three-yearly intervals after the first report.
2. The Parties shall make their reports public.

Article 16 - Examination of the reports

1. The reports presented to the Secretary General of the Council of Europe under Article 15 shall be examined by a committee of experts constituted in accordance with Article 17.
2. Bodies or associations legally established in a Party may draw the attention of the committee of experts to matters relating to the undertakings entered into by that Party under Part III of this Charter. After consulting the Party concerned, the committee of experts may take account of this information in the preparation of the report specified in paragraph 3 below. These bodies or associations can furthermore submit statements concerning the policy pursued by a Party in accordance with Part II.
3. On the basis of the reports specified in paragraph 1 and the information mentioned in paragraph 2, the committee of experts shall prepare a report for the Committee of Ministers. This report shall be accompanied by the comments which the Parties have been requested to make and may be made public by the Committee of Ministers.
4. The report specified in paragraph 3 shall contain in particular the proposals of the committee of experts to the Committee of Ministers for the preparation of such recommendations of the latter body to one or more of the Parties as may be required.
5. The Secretary General of the Council of Europe shall make a two-yearly detailed report to the Parliamentary Assembly on the application of the Charter.

Article 17 - Committee of experts

1. The committee of experts shall be composed of one member per Party, appointed by the Committee of Ministers from a list of individuals of the highest integrity and recognised competence in the matters dealt with in the Charter, who shall be nominated by the Party concerned.
2. Members of the committee shall be appointed for a period of six years and shall be eligible for reappointment. A member who is unable to complete a term of office shall be replaced in accordance with the procedure laid down in paragraph 1, and the replacing member shall complete his predecessor's term of office.
3. The committee of experts shall adopt rules of procedure. Its secretarial services shall be provided by

the Secretary General of the Council of Europe.

Part V

Final provisions

Article 18

This Charter shall be open for signature by the member States of the Council of Europe. It is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

Article 19

1. This Charter shall enter into force on the first day of the month following the expiration of a period of three months after the date on which five member States of the Council of Europe have expressed their consent to be bound by the Charter in accordance with the provisions of Article 18.
2. In respect of any member State which subsequently expresses its consent to be bound by it, the Charter shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of ratification, acceptance or approval.

Article 20

1. After the entry into force of this Charter, the Committee of Ministers of the Council of Europe may invite any State not a member of the Council of Europe to accede to this Charter.
2. In respect of any acceding State, the Charter shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of accession with the Secretary General of the Council of Europe.

Article 21

1. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, make one or more reservations to paragraphs 2 to 5 of Article 7 of this Charter. No other reservation may be made.
2. Any Contracting State which has made a reservation under the preceding paragraph may wholly or partly withdraw it by means of a notification addressed to the Secretary General of the Council of Europe. The withdrawal shall take effect on the date of receipt of such notification by the Secretary General.

Article 22

1. Any Party may at any time denounce this Charter by means of a notification addressed to the Secretary General of the Council of Europe.
2. Such denunciation shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of the notification by the Secretary General.

Article 23

The Secretary General of the Council of Europe shall notify the member States of the Council and any State which has acceded to this Charter of:

- a any signature;
- b the deposit of any instrument of ratification, acceptance, approval or accession;
- c any date of entry into force of this Charter in accordance with Articles 19 and 20;
- d any notification received in application of the provisions of Article 3, paragraph 2;
- e any other act, notification or communication relating to this Charter.

In witness whereof the undersigned, being duly authorised thereto, have signed this Charter.

Done at Strasbourg, this 5th day of November 1992, in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe and to any State invited to accede to this Charter.

E. Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities

Adopted by General Assembly resolution 47/135 of 18 December 1992

The General Assembly,

Reaffirming that one of the basic aims of the United Nations, as proclaimed in the Charter, is to promote and encourage respect for human rights and for fundamental freedoms for all, without distinction as to race, sex, language or religion,

Reaffirming faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small,

Desiring to promote the realization of the principles contained in the Charter, the Universal Declaration of Human Rights, the Convention on the Prevention and Punishment of the Crime of Genocide, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, and the Convention on the Rights of the Child, as well as other relevant international instruments that have been adopted at the universal or regional level and those concluded between individual States Members of the United Nations,

Inspired by the provisions of article 27 of the International Covenant on Civil and Political Rights concerning the rights of persons belonging to ethnic, religious or linguistic minorities,

Considering that the promotion and protection of the rights of persons belonging to national or ethnic, religious and linguistic minorities contribute to the political and social stability of States in which they live,

Emphasizing that the constant promotion and realization of the rights of persons belonging to national or ethnic, religious and linguistic minorities, as an integral part of the development of society as a whole and within a democratic framework based on the rule of law, would contribute to the strengthening of friendship and cooperation among peoples and States,

Considering that the United Nations has an important role to play regarding the protection of minorities,

Bearing in mind the work done so far within the United Nations system, in particular by the Commission on Human Rights, the Subcommission on Prevention of Discrimination and Protection of Minorities and the bodies established pursuant to the International Covenants on Human Rights and other relevant international human rights instruments in promoting and protecting the rights of persons belonging to national or ethnic, religious and linguistic minorities,

Taking into account the important work which is done by intergovernmental and non-governmental organizations in protecting minorities and in promoting and protecting the rights of persons belonging to national or ethnic, religious and linguistic minorities,

Recognizing the need to ensure even more effective implementation of international human rights instruments with regard to the rights of persons belonging to national or ethnic, religious and linguistic minorities,

Proclaims this Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities:

Article 1

1. States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity.
2. States shall adopt appropriate legislative and other measures to achieve those ends.

Article 2

1. Persons belonging to national or ethnic, religious and linguistic minorities (hereinafter referred to as persons belonging to minorities) have the right to enjoy their own culture, to profess and practise their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination.
2. Persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic and public life.
3. Persons belonging to minorities have the right to participate effectively in decisions on the national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live, in a manner not incompatible with national legislation.
4. Persons belonging to minorities have the right to establish and maintain their own associations.
5. Persons belonging to minorities have the right to establish and maintain, without any discrimination, free and peaceful contacts with other members of their group and with persons belonging to other minorities, as well as contacts across frontiers with citizens of other States to whom they are related by national or ethnic, religious or linguistic ties.

Article 3

1. Persons belonging to minorities may exercise their rights, including those set forth in the present Declaration, individually as well as in community with other members of their group, without any discrimination.
2. No disadvantage shall result for any person belonging to a minority as the consequence of the exercise or non-exercise of the rights set forth in the present Declaration.

Article 4

1. States shall take measures where required to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law.

2. States shall take measures to create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs, except where specific practices are in violation of national law and contrary to international standards.

3. States should take appropriate measures so that, wherever possible, persons belonging to minorities may have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue.

4. States should, where appropriate, take measures in the field of education, in order to encourage knowledge of the history, traditions, language and culture of the minorities existing within their territory. Persons belonging to minorities should have adequate opportunities to gain knowledge of the society as a whole.

5. States should consider appropriate measures so that persons belonging to minorities may participate fully in the economic progress and development in their country.

Article 5

1. National policies and programmes shall be planned and implemented with due regard for the legitimate interests of persons belonging to minorities.

2. Programmes of cooperation and assistance among States should be planned and implemented with due regard for the legitimate interests of persons belonging to minorities.

Article 6

States should cooperate on questions relating to persons belonging to minorities, inter alia, exchanging information and experiences, in order to promote mutual understanding and confidence.

Article 7

States should cooperate in order to promote respect for the rights set forth in the present Declaration.

Article 8

1. Nothing in the present Declaration shall prevent the fulfilment of international obligations of States in relation to persons belonging to minorities. In particular, States shall fulfil in good faith the obligations and commitments they have assumed under international treaties and agreements to which they are parties.

2. The exercise of the rights set forth in the present Declaration shall not prejudice the enjoyment by all persons of universally recognized human rights and fundamental freedoms.

3. Measures taken by States to ensure the effective enjoyment of the rights set forth in the present Declaration shall not prima facie be considered contrary to the principle of equality contained in the Universal Declaration of Human Rights.

4. Nothing in the present Declaration may be construed as permitting any activity contrary to the purposes and principles of the United Nations, including sovereign equality, territorial integrity and political independence of States.

Article 9

The specialized agencies and other organizations of the United Nations system shall contribute to the full realization of the rights and principles set forth in the present Declaration, within their respective fields of competence.

COUNCIL OF EUROPE
European Treaties
ETS No. 157

F. FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES

Strasbourg, 1.II.1995

The member States of the Council of Europe and the other States, signatories to the present framework Convention,

Considering that the aim of the Council of Europe is to achieve greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage;

Considering that one of the methods by which that aim is to be pursued is the maintenance and further realisation of human rights and fundamental freedoms;

Wishing to follow-up the Declaration of the Heads of State and Government of the member States of the Council of Europe adopted in Vienna on 9 October 1993;

Being resolved to protect within their respective territories the existence of national minorities;

Considering that the upheavals of European history have shown that the protection of national minorities is essential to stability, democratic security and peace in this continent;

Considering that a pluralist and genuinely democratic society should not only respect the ethnic, cultural, linguistic and religious identity of each person belonging to a national minority, but also create appropriate conditions enabling them to express, preserve and develop this identity;

Considering that the creation of a climate of tolerance and dialogue is necessary to enable cultural diversity to be a source and a factor, not of division, but of enrichment for each society;

Considering that the realisation of a tolerant and prosperous Europe does not depend solely on co-operation between States but also requires transfrontier co-operation between local and regional authorities without prejudice to the constitution and territorial integrity of each State;

Having regard to the Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocols thereto;

Having regard to the commitments concerning the protection of national minorities in United Nations conventions and declarations and in the documents of the Conference on Security and Co-operation in Europe, particularly the Copenhagen Document of 29 June 1990;

Being resolved to define the principles to be respected and the obligations which flow from them, in order to ensure, in the member States and such other States as may become Parties to the present instrument, the effective protection of national minorities and of the rights and freedoms of persons belonging to those minorities, within the rule of law, respecting the territorial integrity and national sovereignty of states;

Being determined to implement the principles set out in this framework Convention through national legislation and appropriate governmental policies,

Have agreed as follows:

Section I

Article 1

The protection of national minorities and of the rights and freedoms of persons belonging to those minorities forms an integral part of the international protection of human rights, and as such falls within the scope of international co-operation.

Article 2

The provisions of this framework Convention shall be applied in good faith, in a spirit of understanding and tolerance and in conformity with the principles of good neighbourliness, friendly relations and co-operation between States.

Article 3

3. Every person belonging to a national minority shall have the right freely to choose to be treated or not to be treated as such and no disadvantage shall result from this choice or from the exercise of the rights which are connected to that choice.
4. Persons belonging to national minorities may exercise the rights and enjoy the freedoms flowing from the principles enshrined in the present framework Convention individually as well as in community with others.

Section II

Article 4

4. The Parties undertake to guarantee to persons belonging to national minorities the right of equality before the law and of equal protection of the law. In this respect, any discrimination based on belonging to a national minority shall be prohibited.
5. The Parties undertake to adopt, where necessary, adequate measures in order to promote, in all areas of economic, social, political and cultural life, full and effective equality between persons belonging to a national minority and those belonging to the majority. In this respect, they shall take due account of the specific conditions of the persons belonging to national minorities.
6. The measures adopted in accordance with paragraph 2 shall not be considered to be an act of discrimination.

Article 5

3. The Parties undertake to promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage.
4. Without prejudice to measures taken in pursuance of their general integration policy, the Parties shall refrain from policies or practices aimed at assimilation of persons belonging to national minorities against their will and shall protect these persons from any action aimed at such assimilation.

Article 6

6. The Parties shall encourage a spirit of tolerance and intercultural dialogue and take effective measures to promote mutual respect and understanding and co-operation among all persons living on their territory, irrespective of those persons' ethnic, cultural, linguistic or religious identity, in particular in

the fields of education, culture and the media.

7. The Parties undertake to take appropriate measures to protect persons who may be subject to threats or acts of discrimination, hostility or violence as a result of their ethnic, cultural, linguistic or religious identity.

Article 7

The Parties shall ensure respect for the right of every person belonging to a national minority to freedom of peaceful assembly, freedom of association, freedom of expression, and freedom of thought, conscience and religion.

Article 8

The Parties undertake to recognise that every person belonging to a national minority has the right to manifest his or her religion or belief and to establish religious institutions, organisations and associations.

Article 9

3. The Parties undertake to recognise that the right to freedom of expression of every person belonging to a national minority includes freedom to hold opinions and to receive and impart information and ideas in the minority language, without interference by public authorities and regardless of frontiers. The Parties shall ensure, within the framework of their legal systems, that persons belonging to a national minority are not discriminated against in their access to the media.
4. Paragraph 1 shall not prevent Parties from requiring the licensing, without discrimination and based on objective criteria, of sound radio and television broadcasting, or cinema enterprises.
5. The Parties shall not hinder the creation and the use of printed media by persons belonging to national minorities. In the legal framework of sound radio and television broadcasting, they shall ensure, as far as possible, and taking into account the provisions of paragraph 1, that persons belonging to national minorities are granted the possibility of creating and using their own media.
6. In the framework of their legal systems, the Parties shall adopt adequate measures in order to facilitate access to the media for persons belonging to national minorities and in order to promote tolerance and permit cultural pluralism.

Article 10

4. The Parties undertake to recognise that every person belonging to a national minority has the right to use freely and without interference his or her minority language, in private and in public, orally and in writing.
5. In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if those persons so request and where such a request corresponds to a real need, the Parties shall endeavour to ensure, as far as possible, the conditions which would make it possible to use the minority language in relations between those persons and the administrative authorities.
6. The Parties undertake to guarantee the right of every person belonging to a national minority to be informed promptly, in a language which he or she understands, of the reasons for his or her arrest, and of the nature and cause of any accusation against him or her, and to defend himself or herself in this language, if necessary with the free assistance of an interpreter.

Article 11

6. The Parties undertake to recognise that every person belonging to a national minority has the right to use his or her surname (patronym) and first names in the minority language and the right to official recognition of them, according to modalities provided for in their legal system.
7. The Parties undertake to recognise that every person belonging to a national minority has the right to display in his or her minority language signs, inscriptions and other information of a private nature visible to the public.
8. In areas traditionally inhabited by substantial numbers of persons belonging to a national minority, the Parties shall endeavour, in the framework of their legal system, including, where appropriate, agreements with other States, and taking into account their specific conditions, to display traditional local names, street names and other topographical indications intended for the public also in the

minority language when there is a sufficient demand for such indications.

Article 12

4. The Parties shall, where appropriate, take measures in the fields of education and research to foster knowledge of the culture, history, language and religion of their national minorities and of the majority.
5. In this context the Parties shall *inter alia* provide adequate opportunities for teacher training and access to textbooks, and facilitate contacts among students and teachers of different communities.
6. The Parties undertake to promote equal opportunities for access to education at all levels for persons belonging to national minorities.

Article 13

4. Within the framework of their education systems, the Parties shall recognise that persons belonging to a national minority have the right to set up and to manage their own private educational and training establishments.
5. The exercise of this right shall not entail any financial obligation for the Parties.

Article 14

3. The Parties undertake to recognise that every person belonging to a national minority has the right to learn his or her minority language.
4. In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if there is sufficient demand, the Parties shall endeavour to ensure, as far as possible and within the framework of their education systems, that persons belonging to those minorities have adequate opportunities for being taught the minority language or for receiving instruction in this language.
5. Paragraph 2 of this article shall be implemented without prejudice to the learning of the official language or the teaching in this language.

Article 15

The Parties shall create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them.

Article 16

The Parties shall refrain from measures which alter the proportions of the population in areas inhabited by persons belonging to national minorities and are aimed at restricting the rights and freedoms flowing from the principles enshrined in the present framework Convention.

Article 17

3. The Parties undertake not to interfere with the right of persons belonging to national minorities to establish and maintain free and peaceful contacts across frontiers with persons lawfully staying in other States, in particular those with whom they share an ethnic, cultural, linguistic or religious identity, or a common cultural heritage.
4. The Parties undertake not to interfere with the right of persons belonging to national minorities to participate in the activities of non-governmental organisations, both at the national and international levels.

Article 18

6. The Parties shall endeavour to conclude, where necessary, bilateral and multilateral agreements with other States, in particular neighbouring States, in order to ensure the protection of persons belonging to the national minorities concerned.
7. Where relevant, the Parties shall take measures to encourage transfrontier co-operation.

Article 19

The Parties undertake to respect and implement the principles enshrined in the present framework Convention making, where necessary, only those limitations, restrictions or derogations which are provided for in international legal instruments, in particular the Convention for the Protection of Human Rights and Fundamental Freedoms, in so far as they are relevant to the rights and freedoms flowing from the said principles.

Section III**Article 20**

In the exercise of the rights and freedoms flowing from the principles enshrined in the present framework Convention, any person belonging to a national minority shall respect the national legislation and the rights of others, in particular those of persons belonging to the majority or to other national minorities.

Article 21

Nothing in the present framework Convention shall be interpreted as implying any right to engage in any activity or perform any act contrary to the fundamental principles of international law and in particular of the sovereign equality, territorial integrity and political independence of States.

Article 22

Nothing in the present framework Convention shall be construed as limiting or derogating from any of the human rights and fundamental freedoms which may be ensured under the laws of any Contracting Party or under any other agreement to which it is a Party.

Article 23

The rights and freedoms flowing from the principles enshrined in the present framework Convention, in so far as they are the subject of a corresponding provision in the Convention for the Protection of Human Rights and Fundamental Freedoms or in the Protocols thereto, shall be understood so as to conform to the latter provisions.

Section IV**Article 24**

4. The Committee of Ministers of the Council of Europe shall monitor the implementation of this framework Convention by the Contracting Parties.
5. The Parties which are not members of the Council of Europe shall participate in the implementation mechanism, according to modalities to be determined.

Article 25

3. Within a period of one year following the entry into force of this framework Convention in respect of a Contracting Party, the latter shall transmit to the Secretary General of the Council of Europe full information on the legislative and other measures taken to give effect to the principles set out in this framework Convention.
4. Thereafter, each Party shall transmit to the Secretary General on a periodical basis and whenever the Committee of Ministers so requests any further information of relevance to the implementation of this framework Convention.
5. The Secretary General shall forward to the Committee of Ministers the information transmitted under the terms of this Article.

Article 26

3. In evaluating the adequacy of the measures taken by the Parties to give effect to the principles set out in this framework Convention the Committee of Ministers shall be assisted by an advisory committee, the members of which shall have recognised expertise in the field of the protection of national minorities.
4. The composition of this advisory committee and its procedure shall be determined by the Committee of Ministers within a period of one year following the entry into force of this framework Convention.

Section V**Article 27**

This framework Convention shall be open for signature by the member States of the Council of Europe. Up until the date when the Convention enters into force, it shall also be open for signature by any other State so invited by the Committee of Ministers. It is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

Article 28

3. This framework Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which twelve member States of the Council of Europe have expressed their consent to be bound by the Convention in accordance with the provisions of Article 27.
4. In respect of any member State which subsequently expresses its consent to be bound by it, the framework Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of ratification, acceptance or approval.

Article 29

3. After the entry into force of this framework Convention and after consulting the Contracting States, the Committee of Ministers of the Council of Europe may invite to accede to the Convention, by a decision taken by the majority provided for in Article 20.d of the Statute of the Council of Europe, any non-member State of the Council of Europe which, invited to sign in accordance with the provisions of Article 27, has not yet done so, and any other non-member State.
4. In respect of any acceding State, the framework Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of accession with the Secretary General of the Council of Europe.

Article 30

1. Any State may at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories for whose international relations it is responsible to which this framework Convention shall apply.
2. Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this framework Convention to any other territory specified in the declaration. In respect of such territory the framework Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.
3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

Article 31

1. Any Party may at any time denounce this framework Convention by means of a notification addressed to the Secretary General of the Council of Europe.
2. Such denunciation shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of the notification by the Secretary General.

Article 32

The Secretary General of the Council of Europe shall notify the member States of the Council, other signatory States and any State which has acceded to this framework Convention, of:

a any signature;

b the deposit of any instrument of ratification, acceptance, approval or accession;

c any date of entry into force of this framework Convention in accordance with Articles 28, 29 and 30;

d any other act, notification or communication relating to this framework Convention.

In witness whereof the undersigned, being duly authorised thereto, have signed this framework Convention.

Done at Strasbourg, this 1st day of February 1995, in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe and to any State invited to sign or accede to this framework Convention.

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE**fundamental.rights@consilium.eu.int**

Bruxelles, le 10 mai 2000**CHARTE 4299/00****CONTRIB 171****NOTE DE TRANSMISSION**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne

Veillez trouver ci-après des propositions d'amendements aux clauses horizontales (document CHARTE 4235/00 CONVENT 27), présentées par M. Jean-Luc DEHAENE, représentant personnel du Gouvernement belge.¹

¹ Ce texte a été soumis en langues française et néerlandaise.

Les dispositions horizontales

Propositions d'amendements :

Article H.2 (numérotation CONVENT 27). Limitation des droits garantis

Paragraphe 2. Toute limitation aux droits et libertés garantis par la présente Charte doit être prévue par le législateur. Elle doit respecter le contenu essentiel desdits droits et libertés et rester, dans le respect du principe de proportionnalité, dans les limites nécessaires à la protection d'intérêts légitimes dans une société démocratique. ~~Les limitations prévues par la Convention européenne des droits de l'homme sont applicables à ceux des droits et libertés contenus dans la présente Charte qui sont également garantis par ladite Convention.~~

Le premier paragraphe de cet article énumère les articles de la Charte qui ne peuvent pas faire l'objet de limitations. Les articles qui ne figurent pas dans ce premier paragraphe peuvent donc par contre faire l'objet de limitations. Pour définir la nature de ces limitations trois options nous sont offertes : (1) reprendre les limitations prévues dans la CEDH, (2) définir pour la Charte des limitations spécifiques inspirées de la CEDH ou encore (3) laisser au législateur le soin de fixer ces limitations. Dans le projet de charte à l'examen, ces trois options ont été combinées : (1) l'article H.2., paragraphe 2, dernier alinéa se réfère aux limitations prévues dans la CEDH, (2) les limitations stipulées dans certains articles sont inspirées de la CEDH (voir notamment les articles 10 (nullum crimen sine lege – Pas de peine sans loi) et 16 (Droit de propriété), (3) l'article H.2, paragraphe 2, premier alinéa offre au législateur la possibilité d'introduire des limitations.

L'amendement proposé, à savoir la suppression du dernier alinéa du paragraphe deux de l'article H.2, a pour objet de rationaliser cet écheciveau de limitations. La raison principale de cet aménagement, c'est que la suppression de cet alinéa, permet de mettre en place au sein de l'Union un niveau de protection des droits fondamentaux supérieur à celui de la CEDH (puisque nous ne reprenons pas automatiquement toutes les limitations aux droits et libertés stipulées dans le texte de la CEDH). Ceci offre au législateur européen la possibilité d'introduire ses propres limitations aux droits fondamentaux. Il va de soi que, dans ce contexte, le législateur ne pourra jamais introduire un niveau de protection de ces droits qui soit inférieur à celui de la CEDH (l'article H.4 en est la garantie). Ainsi, la CEDH restreint la compétence du législateur en matière d'introduction de limitations aux droits fondamentaux en stipulant, par exemple, que les restrictions, prévues par la loi « constituent des mesures nécessaires, dans une société démocratique, à la sécurité publique, à la protection de l'ordre, de la santé ou de la morale publique, ou à la protection des droits et libertés d'autrui » (article 9, §2 CEDH qui traite de la liberté de pensée, de conscience et de religion). Grâce à l'article H.4, les restrictions imposées au législateur par la CEDH constituent en même temps le plafond des limitations que le législateur européen peut appliquer aux droits fondamentaux.

Il existe toutefois un droit qui est à ce point fondamental que toute possibilité de limitation par la loi doit être exclue, à savoir le droit à la vie (Charte, article 2). Cet article fait donc partie des articles visés au paragraphe premier de l'article H.2. La seule manière dont ce droit pourrait malgré tout être limité serait une restriction inscrite dans la Charte elle-même. Etant donné que dans la CEDH ce droit est assorti de certaines restrictions (voir article 2, paragraphe 2, CEDH), il y a lieu, par conséquent, de reprendre ces restrictions dans la Charte.

Article 2 : (le droit à la vie)

Paragraphe 3 : La mort n'est pas considérée comme infligée en violation du présent article dans les cas où elle résulterait d'un recours à la force rendu absolument nécessaire :

- (a) pour assurer la défense de toute personne contre la violence illégale ;
- (b) pour effectuer une arrestation régulière ou pour empêcher l'évasion d'une personne régulièrement détenue ;
- (c) pour réprimer, conformément à la loi, une émeute ou une insurrection.

Article H.3. Relation entre la Charte et les Traités de l'Union européenne.

Les droits garantis par les article (...) s'exercent dans les conditions et les limites définies par le Traité sur l'Union européenne et les Traités instituant les Communautés européennes.

Cet article a pour objet de soumettre les droits et les libertés inscrits dans la Charte qui coïncident avec des droits et des libertés inscrits dans le droit de l'Union aux mêmes conditions et aux mêmes restrictions que ces derniers. L'ajout est justifié par le fait que la portée de certains droits et libertés inscrits dans la Charte sont susceptibles d'avoir des effets sur d'autres dispositions que celles du droit de l'Union (par exemple, le Traité Euratom ou les dispositions relatives à la politique étrangère et de sécurité commune ou dans le cadre de la coopération policière et judiciaire en matière pénale).

Article H.5. Interdiction de l'abus de droit

« Aucune des dispositions de la présente Charte ne peut être interprétée comme impliquant un droit quelconque de se livrer à une activité ou d'accomplir un acte visant à la destruction des droits et libertés reconnus dans la présente Charte ou à des limitations plus amples que celles prévues à ladite Charte.

Cet ajout, inspiré du dernier alinéa de l'article 17 CEDH est nécessaire pour introduire dans le texte une notion de gradation. L'annihilation de certains droits et libertés n'est en effet qu'une variante extrême (et rare) de certaines limitations injustifiées de ces libertés et droits.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

**Brussels, 12 May 2000
(OR. fr)****CHARTE 4303/00****CONVENT 29****NOTE FROM THE PRAESIDIUM**

Subject : Draft Charter of Fundamental Rights of the European Union

On 12 May 2000 you received the document on civil and political rights (CHARTE 4284/00 CONVENT 28; REV 1 for the French version). This document is open to amendment, for which the deadline is **23 May**.

To make it easier to reproduce and translate your amendments, it would be helpful if you would use the attached model, and send them by e-mail to:

Margit.Huy@consilium.eu.int.

Amendments should be to the Articles and not to the statement of reasons, which will be adapted according to the final wording adopted by the Convention.

The sequence in which the Articles are presented is provisional and will have to be adapted later.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article:

Submitted by:

Proposed text:

Reasons:

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 17 May 2000**CHARTE 4308/00****CONTRIB 175****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a draft preamble, submitted by Mr. Stefano RODOTÀ, personal representative of the Italian Government, Mr. Andrea MANZELLA, Member of the Italian Parliament and Mrs. Elena PACIOTTI, Member of the European Parliament. ¹

¹ This text has been submitted in English and Italian languages.

THE EUROPEAN UNION

- considering that the safeguard of fundamental rights is one of its founding principles and the essential premise of its legitimacy;
- taking account of the need to enshrine, in a form which is visible, readable and accessible for all citizens, the fundamental rights informing its nature and actions, in accordance with the common constitutional traditions of its member States, since such rights constitute the general principles of European Community law;
- acknowledging the need to adopt autonomously a Charter of Fundamental Rights in conformity with the development of the Union and its identity and in logical and consistent continuity with the legal and moral framework established by the European Convention for the Protection of Human Rights and the Fundamental Freedoms (Rome, 1950)
- aware that the fundamental rights and liberties of people are an essential prerequisite in order that women and men look at its actions with confidence;
- recalling that Europe witnessed dramatic mishaps and divisions whenever the respect for rights was neglected and the dignity of the human beings was violated;
- aware of the need to combine the rich tradition of the past with the opportunities of the modern times and to create the conditions for stronger common action and the acknowledgement of the several traditions present in Europe;
- recognising that the full respect for human dignity; equality and the rejection of any discrimination; solidarity amongst individuals, generations and peoples; access to and control of the new opportunities made available by the scientific and technological progress; peaceful coexistence and the acceptance of diversity are founding principles and values;
- approving the draft Charter submitted by the Convention composed of the delegates of the Heads of State or Government, members of the European Parliament and the national Parliaments, and the representative of the European Commission;

adopts the following

CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Stefano Rodotà
Andrea Manzella
Elena Paciotti

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 17 May 2000**CHARTE 4309/00****CONTRIB 176****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a contribution by Mr. Frits KORTHALS ALTES, personal representative of the Government of the Netherlands. ¹

¹ This text has been submitted in French, English, Dutch and German languages.

**DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION
(contribution by Frits Korthals Altes, representative of the Netherlands Government in the
Convention for the drawing up of a draft Charter of fundamental rights of the European
Union)**

1. I endorse the effort being made to establish a concise wording for the fundamental rights so that citizens and other residents of the European Union find them comprehensible and easy to read. However, I have two objections to proposals discussed so far.
Deviating from the wording of a fundamental rights also contained in the ECHR risks producing a difference in interpretation between the ECHR and the EU Charter. There is no objection if such deviation aims to expand that fundamental right: in my opinion, the European Union has every entitlement to expand a fundamental right in such a way as to make protection within the European Union stronger than that guaranteed by the ECHR. On the other hand, the EU Charter must never restrict a fundamental right already guaranteed by the ECHR or word it in more limited terms than the ECHR does. However, in none of the discussions of fundamental rights conducted up to now in the framework of the draft Charter has any reference been made to deliberate expansion of the fundamental rights guaranteed under the ECHR.
2. In specific cases, the ECHR authorises States to infringe a fundamental right. It also lays down the generally strict conditions under which such infringements may take place (cf. Article 5 of the ECHR). By not including an article authorising infringement and laying down the conditions under which a fundamental right may be infringed, the EU Charter risks diverging even further from the ECHR.

Discussions of the horizontal articles have already shown how very difficult if not impossible it is to formulate them in such a way that they meet three - in my view, essential - requirements, i.e.

1. That the fundamental right guaranteed in the draft charter embodies no less than the same guarantee as that contained in the ECHR, even if it is formulated differently;
2. That since the regulatory bodies of the EC/EU share the same status as national legislatures, they are authorised to restrict a fundamental right, provided the ECHR authorises national legislatures to introduce such restrictions (cf article H2, paragraph 2 of CONVENT 27, CHARTE 4235/00 of 18 April 2000);
3. That in order to introduce such restrictions, the same conditions apply as those specified in the ECHR.

If these requirements are not met, the future EU Charter will diverge from the ECHR. For European citizens there will be two divergent regimes in the field of fundamental rights; the ECHR in relation to the state of residence, and the Charter of Fundamental Rights of the European Union in relation to the institutions and bodies of the Union and to the state of residence when it applies to community or European Union law.

On a number of occasions, the view has been expressed, by, for instance the president of the group of experts, that simply to copy the relevant articles of the ECHR would make the text too long, making it less appealing to the citizens. I have therefore proposed inserting a reference to the relevant ECHR article. The citizen reading the article will know immediately that there are restrictions. This makes matters clearer. Otherwise, the reader will only discover at the end, in the horizontal articles, that the fundamental rights are not as far-reaching as he may have thought on first reading. Ms May-Weggen has also warned of the risk of the Charter giving with one hand and taking with the other. This is not likely to boost citizens' confidence in it.

I therefore explicitly urge referring article by article to the ECHR (and, where applicable, to the ESC, the relevant ILO treaty or EU document). Only when it is the express intention that the Charter grants new or more generous rights than ECHR, ESC or an ILO treaty, should no reference be made, since this is a new right.

An alternative to this method of reference is the proposal put forward by Lord Goldsmith to mention per article in a Part B (or binding explanatory note) that the right contained in the Charter is the same right as that referred to in article.... of the ECHR. and that the competent authority (to be defined) may introduce the same restrictions as referred to in said article, provided it does so under the same conditions.

EXAMPLES:

Re 1.

§ 1 Human dignity

Article 1

- 1.1. The right to human dignity shall be inseparably linked to the human person.
- 1.2. The right to human dignity shall be inviolable and must be respected under all circumstances.

Article 2

- 2.1. No one shall be subjected to torture or to inhuman or degrading treatment or punishment.
- 2.2. No one shall be held in slavery or servitude.
- 2.3. No one shall be required to perform forced or compulsory labour, except in the cases provided for in Article 4.3 of the ECHR.

§ 2 Right to life**Article 3**

- 3.1. Everyone has the right to life.
- 3.2. Everyone has the right to the respect of his physical and mental integrity.
- 3.3. The death penalty may not be enforced other than in the event of war, subject to due regard for Article 2 of Protocol No 6 to the ECHR.

Article 4

- 4.1 An intervention in the health field may only be carried out after the person concerned has given free and informed consent to it.
- 4.2 Th cloning of human beings is forbidden.

§ 3 Liberty and security**Article 5**

- 5.1. Everyone has the right to liberty and security of person
- 5.2 No one shall be deprived of his liberty save in the cases referred to in Article 5.1 of the ECHR and with due regard for Articles 5.2 – 5.5 of the ECHR, Article 1 of protocol No 4 and Articles 2, 3 and 4 of Protocol No 7 to the ECHR.

§ 4 Right to a fair trial**Article 6**

In the determination of his civil and administrative rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

Article 7

- 7.1 Everyone whose rights and freedoms are violated has the right to request an effective remedy from a court or tribunal specified by law.¹
- 7.2 Everyone charged with an offence has the following rights in accordance with Articles 6.2 and 6.3 of the ECHR:
- (a) to be presumed innocent until proved guilty according to law;
 - (b) to be informed promptly, in a language which he understands and in detail, of the accusation against him, and to have adequate time and facilities for the preparation of his defence;
 - (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free, and to have the free assistance of an interpreter if he cannot understand or speak the language of the proceedings;
 - (d) to have access to the dossier; to examine witnesses on his behalf and to produce and examine or have examined witnesses against him under the same conditions as witnesses on his behalf.

Article 8

- 8.1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence in law at the time when it was committed. No heavier penalty than the one applicable at the time of committing the offence shall be imposed. If, subsequent to the commission of the offence, the law provides for a lighter penalty, that penalty shall be applicable.
- 8.2 The previous paragraph shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.

Article 9

With due regard for restrictions and exceptions referred to in Article 4 of Protocol No 7 to the ECHR, no one shall be tried or convicted for offences for which they have already been finally acquitted or convicted.

¹ This wording deviates from that of Article 13 of the ECHR to favour residents as Article 13 refers to a 'national authority' rather than 'a court or tribunal specified by law'. There should therefore be no reference to Article 13 of the ECHR.

§ 5 Freedom of the individual

Article 10

- 10.1. Everyone has the right to freedom of thought, conscience, religion and belief; this right shall include freedom to change his religion of belief and freedom, either alone or in community with others and in public or private, to manifest his religion of belief, in worship, teaching, practice and observance.
- 10.2 The right to freedom of thought, conscience, religion and belief shall be subject only to such limitations as are referred to in Article 9.2 of the ECHR.

Article 11

- 11.1. Everyone has the right to freedom of expression; this right shall include freedom to hold opinions and to receive and impart information and images without interference by public authority and regardless of frontiers.
- 11.2 The right to freedom of expression shall be subject only to such limitations as are referred to in Article 10 of the ECHR.

Article 12

There shall be freedom of art, science and research.

§ 6 Respect for private and family life

Article 13

- 13.1. Everyone has the right to protection of their identity.
- 13.2. Respect for the privacy, reputation, home and confidentiality of correspondence, irrespective of the medium, shall be guaranteed within the limits set by Article 8.2 of the ECHR.

Article 14

- 14.1 Everyone has the right to marry and to found a family, according to the national laws governing the exercise of the right.
- 14.2 Every minor has the right to protection by the public authorities.
- 14.3 Respect for family life shall be guaranteed within the limits set by Article 8.2 of the ECHR.

Article 15

- 15.1. Every child has the right to compulsory free primary education within the age limits set by national legislation and to secondary education in accordance with his capabilities.
- 15.2 There shall be freedom of choice of educational establishment.
- 15.3 The right of parents or legal guardians to secure for their children an education which conforms to their religious or philosophical beliefs shall be respected.

Etc.

The Hague, 8 May 2000
Frits KORTHALS ALTES

ENTWURF DER CHARTA DER GRUNDRECHTE DER EUROPÄISCHEN UNION**fundamental.rights@consilium.eu.int**

Brüssel, den 17 Mai 2000**CHARTE 4310/00****CONTRIB 177****ÜBERMITTLUNGSVERMERK**

Betr.: Entwurf der Charta der Grundrechte der Europäischen Union

Finden Sie bitte nachstehend Anmerkungen der Arbeitsgruppe der deutschen Länder zu den Vorschlägen des Präsidiums CHARTE 4227/00 CONVENT 26 und CHARTE 4235/00 CONVENT 27 sowie Diskussionsvorschläge der deutschen Länder für die Sitzung des Konvents am 11./12. Mai 2000, vorgelegt von Herrn Jürgen GNAUCK, Mitglied des Bundestages.¹

¹ Dieser Text wurde nur in deutscher Sprache übermittelt.

Thüringer Staatskanzlei • Postfach 997 • 99021 Erfurt

Minister für Bundes- und
Europaangelegenheiten und
Chef der Staatskanzlei

An den
Vorsitzenden des Konvents
zur Ausarbeitung des Entwurfs
einer Charta der Grundrechte der EU
Herrn Bundespräsidenten a.D.
Prof. Dr. Roman Herzog
Prinzregentenstraße 89

81675 München

Vorab per Fax (089-470 27 168)!

An das
Sekretariat des Konvents
Rue de la Loi/Wetstraat 175

B-1048 Brüssel

Vorab per Fax (0032-2-285 78 37)!

Per E-mail (fundamental.rights@consilium.eu.int)!

Geschäftszeichen:	Ihr Zeichen, Ihre Nachricht vom	Telefon	Datum
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Anmerkungen der Arbeitsgruppe der deutschen Länder zu den Vorschlägen des Präsidiums
CHARTE 4227/00 CONVENT 26 und CHARTE 4235/00 CONVENT 27 sowie
Diskussionsvorschläge der deutschen Länder für die Sitzung des Konvents am
11./12. Mai 2000

Sehr geehrter Herr Vorsitzender,

der Konvent hat in seinen Sitzungen am 27./28. April und 2./3. Mai 2000 über die Vorschläge des Präsidiums zu den sozialen Rechten im Dokument CONVENT 26 und zu den horizontalen Bestimmungen im Dokument CONVENT 27 beraten. In der übernächsten Sitzung am 22./23. Mai 2000 wird der Konvent diese Bestimmungen in einem zweiten Durchgang behandeln. Die deutschen Länder haben sich im Rahmen ihrer Abstimmungsgespräche ein erstes Meinungsbild zu den Vorschlägen in den Dokumenten CONVENT 26 und CONVENT 27 verschafft. Ich erlaube mir, Ihnen diese Einschätzung zu übermitteln. Darüber hinaus wird die

Sitzung am 11./12. Mai 2000 dazu dienen, offene Punkte wie die Präambel und den Chartaaufbau anzusprechen und Desiderate einzubringen. Die Arbeitsgruppe der deutschen Länder hat auch hierzu Diskussionsvorschläge erarbeitet, die ich Ihnen hiermit ebenfalls übersende.

Mit freundlichen Grüßen

Jürgen Gnauck
Minister

Thüringer Staatskanzlei
Referat 33/Bo, Fie

Erfurt, den 26.09.2013

**Entwurf einer Charta der Grundrechte der Europäischen Union
Anmerkungen der Arbeitsgruppe der deutschen Länder zu den Vorschlägen des Präsidiums
in den Dokumenten CONVENT 26 vom 17. April 2000 und CONVENT 27 vom 18. April 2000
sowie Diskussionsvorschläge für die Sitzung des Konvents am 11./12. Mai 2000**

A. Zu Dokument CONVENT 26

Artikel XVI. – Das Recht älterer Menschen auf sozialen Schutz

Die deutschen Länder treten für einen Verzicht auf diese Bestimmung ein. Gegen den Regelungsvorschlag bestehen erhebliche Bedenken: Ein konkretes Arbeitnehmergrundrecht auf eine einzelne, bestimmte Form der sozialen Sicherung widerspricht der Funktion von Grundrechten. Die Absicherung älterer Menschen sollte dem Sekundärrecht vorbehalten bleiben, um eine dynamische Entwicklung zu ermöglichen und um eine Überfrachtung der Charta zu verhindern. Weiter ist zu berücksichtigen, dass nicht alle Vertragsparteien der Europäischen Sozialcharta an Artikel 23 dieser Sozialcharta gebunden sind, die dem Artikelvorschlag zu Grunde liegt. Schließlich ergeben sich die Regelungen in Abs. 2 bereits aus den Bestimmungen zur Sozialhilfe (Artikel XIV) bzw. aus den Bestimmungen zur Menschenwürde und sind daher gleichfalls überflüssig. In keinem Fall darf ein derartiges Grundrecht, das weit über die Sicherung des Existenzminimums hinaus ginge, einen einklagbaren Leistungsanspruch gegen den Staat begründen. Selbst aus der als Vorbild dienenden Bestimmung der Sozialcharta ergibt sich ein solcher Leistungsanspruch nicht, da er die Mitgliedstaaten nur verpflichtet, "geeignete Maßnahmen zu ergreifen oder zu fördern". Klarstellend ist anzumerken, dass jedenfalls ein derartiges Recht älterer Menschen auf sozialen Schutz aufenthaltsbeendigende Maßnahmen gegenüber Drittstaatsangehörigen nicht beeinträchtigen darf.

Zu Artikel XVII. – Das Recht Behinderter auf berufliche und soziale Eingliederung

Das hinter dem Formulierungsvorschlag stehende Ziel, für Behinderte gleichwertige Lebens- und Arbeitsbedingungen zu schaffen, wird von den deutschen Ländern grundsätzlich unterstützt und befürwortet. Gleichwohl erscheint die Bestimmung entbehrlich. Das Verbot der Nichtdiskriminierung von Behinderten ist bereits ausdrücklicher Regelungsgegenstand des allgemeinen Gleichbehandlungsgebotes gem. Artikel XIX. Abs. 1 Dokument CONVENT 8. Jedenfalls erscheint die Formulierung "konkrete ergänzende Maßnahmen, die ihre soziale und berufliche Eingliederung fördern", in ihrem Umfang zu unbestimmt. Die Maßnahmen, die die Grundrechtsträger auf Grund dieser Vorschrift möglicherweise fordern könnten, sind in keiner Weise absehbar. Im Übrigen birgt der Vorschlag die Gefahr einer kompetenzerweiternden Wirkung über die in Artikel 137 Abs. 1 vierter Spiegelstrich EGV und Artikel 13 EGV geregelten Kompetenzen hinaus.

Zu Artikel XVIII. – Das Recht der Wanderarbeitnehmer auf Gleichbehandlung

Die deutschen Länder halten es für bedenklich, dass hier, abweichend von den bisherigen Vorschlägen und mit einer irreführenden Überschrift („Wanderarbeitnehmer“), ein eigenes Grundrecht für aufenthaltsberechtigte Drittstaatsangehörige geschaffen werden soll. Weiter ist unklar, wie der Begriff Arbeitsbedingungen auszulegen ist. Sollten darunter auch Sozialschutzbestimmungen zu verstehen sein, so besteht die Gefahr, dass Wanderarbeitnehmer aus Drittstaaten ggf. zusätzliche Leistungsansprüche erwerben würden. Dies würde zu weiteren Kosten für die nationalen Sicherungssysteme führen.

Zwischenergebnis zu den bisher vorgeschlagenen Wirtschafts- und Sozialrechten.

Entsprechend den bisher vorgelegten Anmerkungen stehen die deutschen Länder den vorgeschlagenen sozialen Rechten überwiegend ablehnend gegenüber. Sie könnten allerdings dem Gedanken näher treten, den Grundsatz der Solidarität in der zukünftigen Präambel zu verankern. Damit würde eine zusätzliche Werteentscheidung getroffen, die allen Mitgliedstaaten und den deutschen Ländern gemein ist. Darüber unterstützen die Länder den von Prof. Dr. Roman Herzog angedeuteten Kompromissvorschlag, nur solche soziale Rechte in die Charta aufzunehmen, die eng mit der Würde des Menschen verbunden sind. Um der gesamten Charta zum Erfolg zu verhelfen, ist hier allerdings ein strenger Maßstab anzulegen.

B. Zu Dokument CONVENT 27

Zu Artikel H.1 – Anwendungsbereich

Gem. Artikel H.1 Abs. 1 soll die Charta auf die Mitgliedstaaten ausschließlich bei der Anwendung des Gemeinschaftsrechts Anwendung finden. Es ist mit Blick auf die Bedeutung der Verfassungsgerichte der Mitgliedstaaten eingehend zu prüfen, wie weit die Bindungswirkung bei der „Anwendung des Gemeinschaftsrechts“ („implementing Community law“; „la mise en oeuvre du droit communautaire“) geht. In diesem Zusammenhang stellen sich zahlreiche Fragen, etwa inwieweit die Umsetzung von Richtlinien in das nationale Recht hiervon erfasst ist? Weiter ist die Bindungswirkung insbes. in der „Dritten Säule“ der EU fraglich (etwa bei der Umsetzung und Anwendung von Rahmenbeschlüssen nach Artikel 34 Abs. 2 Buchstabe b) EUV und von Übereinkommen nach Artikel 34 Abs. 2 Buchstabe d) EUV.

In Abs. 2 sollte die Formulierung dahingehend abgeändert werden, dass er lautet: „Gemeinschaft oder (statt : „und für“) die Union“.

Zu Artikel H.2 – Einschränkung der gewährleisteten Rechte

Artikel H.2 Abs. 1 dürfte entbehrlich sein. Schließlich wären hier wohl nur die Menschenwürde und das Verbot der Todesstrafe oder der Folter und Sklaverei aufzunehmen, aus deren Formulierung bereits ihre absolute Geltung hervor geht.

In Artikel H.2 Abs. 2 Satz 1 ist die Rede vom „Gesetzgeber“. Hier ist unbedingt zu klären, wer damit gemeint ist.

Zu Artikel H.3

Das Abstellen auf die „Ausübung“ der Grundrechte erscheint zumindest bei Abwehrrechten als zu eng.

Zu Artikel H.4 – Schutzniveau

Derzeit sind hierzu keine Anmerkungen veranlasst.

Zu Artikel H.5 – Verbot des Missbrauchs der Rechte

Da das Missbrauchsverbot wohl allen Rechtsordnungen bekannt ist, könnte man evtl. auf Artikel H.5 verzichten.

C. Diskussionsvorschläge

Im Hinblick auf die Sitzung des Konventes am 11. und 12. Mai 2000 unterbreiten die deutschen Länder folgende Diskussionsvorschläge:

1. Präambel

Es wird angeregt, dass die Eingangsformel der Präambel die christlichen und humanistischen Grundlagen Europas deutlich macht. Denkbar wäre etwa, an die Einleitung der Verfassung der Republik Polen vom 2. April 1997 anzuknüpfen, die diejenigen anspricht, die an Gott glauben, als auch diejenigen, die diesen Glauben nicht teilen, sondern die universellen Werte aus anderen Quellen ableiten.

Wie bereits erwähnt, wäre ein Hinweis auf den Grundsatz der Solidarität in der Präambel einer Überfrachtung der Charta mit zum großen Teil nicht justiziablen, zu detaillierten und kompetenzerweiternden Sozialrechten vorzuziehen.

Darüber hinaus sollte der Grundsatz der Subsidiarität in der Präambel verankert werden. Damit würde man zugleich der kommunalen und regionalen Identität der einzelnen Bürgerinnen und Bürger gerecht.

2. Aufbau der Charta

Die deutschen Länder halten den vom Präsidium bereits vorgeschlagenen – vorläufigen – Aufbau für zweckmäßig. Danach könnten der Präambel die fundamentalen Rechte des Menschen, die Freiheits- und Gleichheitsrechte, die wirtschaftlichen und sozialen Rechte sowie die politischen und justiziellen Rechte folgen.

Eine Zweiteilung der Charta in einen kurzen und „leserlichen“ Teil für die Bürger und einen erläuternden Teil, der gleichermaßen rechtlich verbindlich wäre, wird von den deutschen Ländern abgelehnt. Insbesondere vertreten die deutschen Länder die Auffassung, dass eine solche Zweiteilung der Charta der gebotenen Transparenz und Verständlichkeit der Grundrechte für den Bürger zuwiderlaufen würde.

3. Desiderate

Nach Auffassung der deutschen Länder wären Fragen der Presse- und Rundfunkfreiheit (unter Beachtung der Zuständigkeit der Mitgliedstaaten, die Aufgaben, die Finanzierung und Organisation des öffentlichen Rundfunks zu regeln) sowie die Möglichkeit der gemeinsamen Religionsausübung noch eingehender zu diskutieren.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

**Brussels, 16 May 2000 (18.05)
(OR. fr)****CHARTE 4316/00****CONVENT 34****PRAESIDIUM NOTE**

Subject: Draft Charter of Fundamental Rights of the European Union

- New proposal for the Articles on economic and social rights and for the horizontal clauses
(reference docs: CHARTE 4192/00 CONVENT 18, CHARTE 4193/00 CONVENT 19, CHARTE 4227/00 CONVENT 26, CHARTE 4235/00 CONVENT 27)

Members of the Convention will find attached the version of the social rights and horizontal clauses which is being submitted for their consideration. The deadline for filing amendments is 5 June. When drafting amendments, it would be helpful if they could be presented using the form which you have been sent (see CHARTE 4303/00 CONVENT 29).

Article 31. Social rights and principles

The institutions and bodies of the Union, the Member States, exclusively within the scope of Community law, and the social partners at Community level, acting within the framework of their respective powers, shall observe the social rights and implement the social principles set out in this Charter.

Statement of reasons

This provision takes account of the particular nature of social rights and highlights the implications of the scope of the Charter in their regard. Social rights are binding on the Community legislature, on national legislation enacted in implementation of Union law, and on the social partners at Community level, who can conclude agreements at Community level pursuant to Article 139 of the TEC. All these bodies must respect those social rights; when laying down rules they may not act counter to them, save where allowed by the general clause on limitations. Given that social rights are constantly evolving, and that they often only acquire tangible form by means of implementing measures, it must be stipulated, when they comprise a right to an actual benefit, that these are principles whose application will, in a certain number of cases, be subject to the adoption of implementing measures. In this case, it is clear that the adoption of such measures will depend on the allocation of responsibilities in the Treaties, with due regard for the principle of subsidiarity. In other words, it is not possible, for example, to adopt rules that would undermine the right to a social benefit or prevent its implementation. However, such rights can only be claimed within the framework of existing Community or national measures.

Article 32. Freedom to choose an occupation

Everyone has the right to choose and to engage in an occupation.

Statement of reasons

This right is recognised without any ambiguity in the case law of the Court as a fundamental right (see judgment of principle in Case 4/73 Noldé [1974] ECR 491). Pursuant to Article 48, this right is exercised under the conditions and subject to the limits laid down by the Treaties, which includes the rules on the pursuit of occupations.

Article 33. Workers' right to information and consultation within the undertaking

Workers and their representatives have the right to information and consultation in good time within the undertaking which employs them.

Statement of reasons

Text based on the revised European Social Charter (Article 21) and the Community Charter (Article 17). There is a considerable Community acquis in this field : Directives 98/59/EC (collective redundancies), 77/187/EC (transfers of undertakings) and 94/45/EC (European works councils).

Article 34. Rights of collective bargaining and action

Employers and workers have the right to negotiate and conclude collective agreements and to take collective action, in cases of conflicts of interest, to defend their economic and social interests, including at European Union level, under the conditions laid down by national legislation and practice.

Statement of reasons

The right to form and to join trade unions is recognised in Article 11 of the European Convention on Human Rights. The rights of collective bargaining and collective action are recognised by the revised Social Charter (Article 6) and by the Social Charter. They are mentioned in point 12 of the Community Charter. The right to collective action is recognised in the case law of the European Court of Human Rights as stemming from Article 11 of the Convention (Swedish train drivers union 1976). Finally, Articles 138 and 139 TEC deal with social dialogue at a Community level and provide for the conclusion of collective agreements. The concept of collective action includes, amongst other things, the right to strike.

Article 35. Right to rest periods and annual leave

Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

Statement of reasons

This Article is based, inter alia, on Directive 93/104/EC and Article 2 of the Social Charter.

Article 36. Safe and healthy working conditions

Every worker has the right to safe and healthy working conditions.

Statement of reasons

This Article is based on Directive 89/391/EC and Article 3 of the Social Charter. See also paragraph 19 of the Community Charter.

Article 37. Protection of young people

The minimum age of admission to employment must not be lower than the minimum school-leaving age without prejudice to such rules as may be more favourable to young people, in particular those ensuring their preparation for work through vocational training and subject to derogations limited to certain light work.

Young people admitted to work must have working conditions which suit their age.

Statement of reasons

This text is based on Article 7 of the European Social Charter and on the Community Charter of the Fundamental Social Rights of Workers (points 20 to 23). First of all it reproduces the main thrust of point 20, which provides for a minimum employment age, linked to the end of compulsory schooling, which cannot under any circumstances be less than 15 years. However, the Charter begins as follows: "Without prejudice to such rules as may be more favourable to young people, in particular those ensuring their preparation for work through vocational training, and subject to derogations limited to certain light work, ..."

The second paragraph is based on point 22 of the Charter, which stipulates that labour regulations applicable to young workers must be adjusted to take account of their development and vocational training needs. The wording of the paragraph comes chiefly from Article 1(3) of Directive 94/33/EC on the protection of young people at work.

Article 38. Right to protection in cases of termination of employment

All workers have a right to protection against unjustified or abusive termination of employment.

Statement of reasons

This Article simply provides for protection against arbitrary termination of employment.

Article 39. Right to reconcile family and professional life

All workers have the right to reconcile their family and professional lives. This right includes in particular the right to maternity leave before and/or after childbirth and the right to parental leave following the birth or adoption of a child.

Statement of reasons

Articles 8 and 27 of the revised Social Charter.

Directive 92/85/EEC of 19 October 1992 concerning the right to maternity leave of at least 14 weeks and Directive 96/34/EC concerning the right to parental leave of at least 3 months.

Article 40. Right of migrant workers to equal treatment

Third-country nationals working lawfully in the territory of the Member States are entitled to treatment not less favourable than that of European Union workers in respect of working conditions.

Statement of reasons

Community competence in this area is established by the fourth indent of Article 137(3). The rule laid down here is simply that of non-discrimination in respect of working conditions.

Article 41. Social security and social assistance

- 1. Provision shall be made in accordance with each Member State's rules for social security benefits providing protection in the event of maternity, illness, dependence or old age and in the event of unemployment.**
- 2. Provision shall be made for social assistance and housing benefit in order to guarantee a decent existence to anyone lacking sufficient resources.**

Statement of reasons

This is a principle implemented according to national legislation, in compliance with Community law.

Article 42. Health protection

Everyone shall have access to medical care and prophylactic measures in accordance with each Member State's rules.

Statement of reasons

This is a principle implemented essentially by national legislation.

Article 43. The disabled

Provision shall be made for social and vocational integration measures for the disabled.

Statement of reasons

Article 13 of the Treaty establishing the European Community authorises the adoption of positive measures to prevent discrimination on grounds of disability. The fourth indent of Article 137(1) establishes Community competence with a view to integrating persons excluded from the labour market.

Article 44. Environmental protection

Union policies shall ensure environmental protection, which involves preserving, protecting and improving the quality of the environment, protecting human health and prudent and rational utilisation of natural resources.

Statement of reasons

Community competence as regards the environment is established by Title XIX of the Treaty. This too is a principle given tangible form by means of implementing measures which define the scope of the right. The wording is similar to Article 174 of the EC Treaty.

Article 45. Consumer protection

Union policies shall ensure a high level of protection as regards the health, safety and interests of consumers.

Statement of reasons

Community competence is established by Title XIV of the Treaty. The Charter enshrines a principle which takes form through Community or national legislation. The wording is similar to Article 153 of the EC Treaty.

Article 46. Scope

- 1. The provisions of this Charter are addressed to the institutions and bodies of the Union within the framework of the powers conferred on them by the Treaties, and to the Member States exclusively within the scope of Union law.**
- 2. This Charter does not establish any competence or any new task for the Community or the Union or modify competences and tasks defined by the Treaties.**

Statement of reasons

The aim of this provision is to determine the scope of the Charter. It seeks to establish clearly that the Charter applies primarily to the institutions and bodies of the Union, within the framework of the Union's powers and tasks. In other words, the Charter applies only to matters covered by Community competence and the tasks of the Union. This provision is in keeping with Article 6(2) of the Treaty on European Union, which requires the Union to respect fundamental rights, and with the mandate issued by Cologne European Council.

The term "institutions" is enshrined in the Treaty, Article 7 of which lists the institutions. The term "body" is commonly used to refer to all the authorities set up by the Treaties or by secondary legislation. It follows unambiguously from the case law of the Court of Justice that the requirement to respect fundamental rights is also binding on the Member States when they act in the context of Community law (judgment of 13 July 1989, Case 5/88 Wachauf [1989] ECR 2609). The Court of Justice recently confirmed this case law in the following terms: "In addition, it should be remembered that the requirements flowing from the protection of fundamental rights in the Community legal order are also binding on Member States when they implement Community rules..." (judgment of 13 April 2000, Case C-292/97, paragraph 37 of the grounds, not yet published). The second paragraph confirms that the Charter does not affect the competences and tasks which the Treaties confer on the Community and the Union.

Article 47. Limitation of guaranteed rights

Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by the competent legislative authority. The actual substance of those rights and freedoms must be respected. Subject to the principle of proportionality, any limitation must remain within the limits necessary for the protection of legitimate interests in a democratic society. Limitations may not exceed those permitted by the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Statement of reasons

The purpose of this provision is to lay down general arrangements for the limitation of rights. The Article provides that the limitations laid down by the European Convention on Human Rights, which constitutes a minimum standard, may not be exceeded in any circumstances. It follows that when the Convention does not permit limitations on certain rights, they may not be limited on the basis of Community law either. As regards the Union's own limitation régime, the wording is based on the case law of the Court of Justice "...it is well established in the case law of the Court that

restrictions may be imposed on the exercise of fundamental rights, in particular in the context of a common organisation of the market, provided that those restrictions in fact correspond to objectives of general interest pursued by the Community and do not constitute, with regard to the aim pursued, disproportionate and unreasonable interference undermining the very substance of those rights" (judgment of 13 April 2000, Case C-292/97, paragraph 45 of the grounds).

Article 48. Conditions and limits defined by the Treaty.

The rights enshrined by the Treaty establishing the European Community shall be exercised under the conditions and within the limits laid down therein.

Statement of reasons

This Article has the effect of referring back to the Treaty where the rights in question are defined by the Treaty itself. The same applies to certain rights such as freedom of movement, the right to participate in European and municipal elections, the right to refer to the Ombudsman, the right to petition, etc.

Article 49. Level of protection

Nothing in this Charter shall be interpreted as restricting or undermining human rights and fundamental freedoms recognised, in their respective fields of application, by the Member States' constitutions, international law and international agreements to which the Union, the Community or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Statement of reasons

The aim of the provision is clear - to maintain the level of protection currently afforded by Union law, national law and international law. Owing to its importance, mention is made of the European Convention on Human Rights, which constitutes a minimum standard in all cases. The reference to the European Convention on Human Rights obviously means the Convention as interpreted by the European Court of Human Rights, whether now or in the future, by virtue of the principle that any interpretation is incorporated into the text interpreted. The same holds for the case law of the Court of Justice of the European Communities with respect to Community law.

Article 50. Prohibition of abuse of rights

Nothing in this Charter may be interpreted as implying any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in this Charter.

Statement of reasons

This Article reproduces Article 17 of the European Convention on Human Rights:

"Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention."

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE**fundamental.rights@consilium.eu.int**

Bruxelles, le 23 mai 2000**CHARTE 4322/00****CONTRIB 188****NOTE DE TRANSMISSION**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne

Veillez trouver une contribution relative aux droits économiques et sociaux, soumise par M. Guy Braibant, Représentant personnel du gouvernement français. ¹

¹ Ce texte a été soumis en langue française seulement.

Paris, le 19 mai 2000

CONTRIBUTION

Au moment où nos travaux entrent dans une phase décisive, je crois utile de souligner l'importance que les droits économiques et sociaux revêtent pour la réussite et l'acceptabilité de la Charte.

1. Les droits économiques et sociaux sont au cœur de la construction européenne : ils doivent donc être l'un des piliers de la Charte.

La Charte a vocation à rassembler dans un seul texte **l'ensemble des droits fondamentaux** communs aux Etats membres afin de manifester l'attachement de l'Union européenne à ces droits. Les droits économiques et sociaux figurent, avec la dignité de la personne humaine, dont ils sont d'ailleurs un prolongement, parmi ces valeurs communes fondamentales. **Ils constituent un élément essentiel et distinctif du " modèle européen "** et nul ne peut contester qu'ils font partie intégrante des traditions constitutionnelles communes aux Etats membres, visées à l'article 6 du Traité sur l'Union européenne.

La reconnaissance juridique et politique du caractère fondamental des droits économiques et sociaux a été le produit de la grande crise des années 1930 et des terribles drames de la seconde guerre mondiale. Ces droits ont constitué un **élément décisif de la reconstruction de nos sociétés démocratiques** au lendemain de la guerre, au moment même où débutait la construction européenne. C'est au cours même du conflit que la publication du célèbre rapport Beveridge par le gouvernement britannique, souligna l'importance de ces droits, notamment par la mise en place d'une protection sociale des citoyens. Toutes les Constitutions postérieures à la seconde guerre mondiale consacrent les droits sociaux parmi les droits fondamentaux qu'elles garantissent. Dans les autres Etats membres, ils font partie de la tradition constitutionnelle. Partout, ils sont mis en œuvre par la loi.

Au niveau communautaire, la dimension sociale a été fortement présente dès l'origine. Ainsi l'article 2 du Traité instituant la Communauté européenne précise-t-il que la Communauté a notamment pour mission " un niveau d'emploi et de protection sociale élevé, l'égalité entre les hommes et les femmes (...) un niveau élevé de protection et d'amélioration de la qualité de l'environnement, le relèvement du niveau et de la qualité de vie, la cohésion économique et sociale et la solidarité entre les Etats membres. " La Charte sociale européenne et la Charte communautaire des droits sociaux fondamentaux des travailleurs, auxquelles l'article 136 du Traité se réfère expressément, précisent et développent les droits économiques et sociaux.

Au plan international enfin, les droits économiques et sociaux ont été consacrés par le pacte des Nations-Unies sur les droits économiques, sociaux et culturels, auquel tous les Etats membres sont parties, et par les conventions de l'Organisation Internationale du Travail. Les pays européens ont toujours joué un rôle décisif dans la consécration internationale reçue par les droits économiques et sociaux.

2. Les droits économiques et sociaux sont des droits fondamentaux même si la mise en œuvre concrète de certains d'entre eux nécessite souvent l'intervention d'un texte intermédiaire.

Le fait de nécessiter des mesures concrètes de mise en œuvre ne retire pas à un droit son statut, comme l'illustrent, d'ailleurs, certains droits classiques (par exemple, le droit à la dignité ou le droit à l'éducation). **S'il ne déploie tous ses effets juridiques que lorsque ces mesures ont été adoptées, il a tout de même certains effets immédiats.** En premier lieu, un tel droit peut être opposé à une action qui irait directement à son encontre. Ainsi, par exemple, le droit à l'environnement pourrait être opposé directement à une directive qui autoriserait les décharges en plein air de manière très libérale. En deuxième lieu, un tel droit peut être utilisé par le juge lorsqu'il doit combiner plusieurs droits fondamentaux entre eux. De même que la liberté d'expression doit être combinée avec le respect de la dignité de la personne humaine ou avec le droit au respect de la vie privée, le droit à la protection de la santé doit pouvoir être combiné avec d'autres droits fondamentaux tels que le droit de propriété. Enfin, lorsque des mesures concrètes de mise en œuvre ont été prises, le droit peut être opposé à des actes qui viendraient remettre en cause dans leur principe même ces mesures.

Or, justement, pour l'ensemble des droits qui sont aujourd'hui proposés à la convention, les mesures de mise en œuvre ont déjà été prises : dans tous nos pays, il existe une sécurité sociale, des mécanismes d'aide au logement, une reconnaissance du droit de grève. Tout ces droits se sont déjà vu reconnaître un contenu effectif par le législateur national et l'affirmation d'un droit à la sécurité sociale ou d'un droit au logement ne constitue donc nullement la création d'un droit nouveau.

Sans doute est-ce là le critère qui doit guider notre choix : nous devons retenir les droits qui sont déjà garantis dans tous nos pays et que, justement en raison de leur caractère fondamental, nous n'envisageons pas de remettre en cause dans leur essence même. A contrario, refuser d'inscrire un droit existant signifierait que l'on serait prêt à admettre sa disparition de l'ordre juridique.

3. Le fait que certains de ces droits reposent essentiellement sur des mesures nationales de mise en œuvre est-il un obstacle à leur inclusion dans la charte ?

Je crois que non et je dirais même que, au contraire, il est peut-être encore plus nécessaire de s'assurer que les institutions de la Communauté n'y porteront pas atteinte lorsqu'elles prendront des décisions dans le cadre de leurs compétences. En effet, **la Charte a pour fonction essentielle de soumettre les institutions de l'Union au respect des droits fondamentaux.** Il est nécessaire d'encadrer les pouvoirs des institutions tant à l'égard des droits qui correspondent à des domaines où ces institutions disposent d'une compétence pour agir qu'à l'égard des droits qui correspondent au domaine de compétence des Etats membres. Ainsi, c'est parce que nous avons tous des systèmes nationaux de sécurité sociale qu'il est important d'assurer que la Communauté européenne ne remet pas en cause ces systèmes lorsqu'elle agit dans le cadre de ses compétences, par exemple au titre de ses attributions en matière de concurrence.

Poser un droit n'est pas créer une compétence ; c'est au contraire encadrer les compétences existantes. Or, compte tenu de l'étendue des compétences de la Communauté et de l'Union, il leur est déjà possible de violer, en théorie, la plupart des droits auxquels on peut songer.

Il est difficile d'exclure a priori l'hypothèse d'une atteinte à un droit fondamental donné par un acte des institutions au seul motif que ce droit n'entre pas directement dans le champ de leurs compétences. Ainsi, alors que la Communauté n'est pas compétente pour établir la peine de mort ou pour autoriser la torture, elle pourrait être amenée à méconnaître l'interdiction de la peine capitale ou de la torture si, par exemple, elle adoptait, dans le cadre de ses compétences en matière d'asile et d'immigration, des règles prévoyant le retour d'un étranger dans un pays où il risque l'un de ces traitements. De même pourrait-elle méconnaître le droit au logement tel qu'il est organisé dans les différents Etats membres si elle décidait que toute aide au logement est incompatible avec le traité. Ces quelques exemples montrent que tous les droits fondamentaux sont pertinents même s'ils correspondent à un domaine où la Communauté ne dispose pas de compétence directe pour agir.

4. La légitimité de la Charte et, donc, au fond, son sort dépendra dans une large mesure de sa capacité à intégrer les droits économiques et sociaux.

A Cologne, le Conseil européen a souligné que " le respect des droits fondamentaux constituait l'un des principes fondateurs de l'Union et la condition indispensable pour sa légitimité ". C'est pourquoi il a confié à la Convention le soin de réunir dans une Charte l'ensemble des droits fondamentaux qui sont au cœur du contrat social qui régit nos sociétés démocratiques. Dans ce cadre, il est évident que **les droits économiques et sociaux doivent avoir toute leur place dans la Charte** en se référant, comme le Conseil européen l'indique expressément, à la Charte sociale européenne et la Charte communautaire des droits sociaux fondamentaux des travailleurs, à l'exception de ceux qui constituent uniquement des objectifs pour l'action de l'Union, comme, par exemple, la réalisation d'un niveau d'emploi élevé (article 2 du TCE).

Compte tenu de l'importance que revêtent les droits économiques et sociaux dans la vie quotidienne de nos concitoyens, de leur place essentielle dans l'équilibre de nos sociétés et de la dimension sociale affirmée de la construction communautaire, la Charte devra comporter l'ensemble des droits économiques et sociaux fondamentaux. **Si la Charte devait être en retrait par rapport au niveau actuel de protection des droits sur cette question essentielle, sa légitimité même serait remise en cause** : de même que l'on ne pourrait admettre que la Charte réduise le niveau de protection des droits déjà assurée par la Convention européenne des droits de l'homme, on ne pourrait admettre que la Charte soit, pour les droits économiques et sociaux, en recul par rapport au niveau actuel de protection de ces droits tant au plan européen que national.

5. Le contenu actuel des droits économiques et sociaux tels qu'ils figurent dans le projet de Charte (convent 34) est encore insuffisant.

Des droits économiques et sociaux dont le caractère fondamental est indiscutable ont ainsi été éliminés du projet de Charte, alors qu'ils figuraient sur la liste initiale de base soumise à la convention au début de ses travaux :

a) le droit au travail en tant que tel : il s'agit pourtant d'un droit tout à fait fondamental qui vise notamment à empêcher les restrictions abusives à l'accès aux emplois et qui doit conduire à favoriser l'accès de chacun au monde du travail, notamment par les services de placement ; il ne

signifie en aucun cas que chaque individu peut exiger de se voir donner un emploi : une telle interprétation est, à l'évidence, erronée voire fallacieuse. Ce droit fondamental, qui est reconnu dans tous les Etats membres (au niveau constitutionnel : Belgique, France, Finlande, Grèce, Espagne, Pays-Bas et Portugal) et qui est consacré par la Charte sociale européenne et la pacte des Nations-Unies sur les droits économiques, sociaux et culturels doit impérativement figurer dans la Charte.

b) Le droit à une rémunération équitable et à un salaire minimum : il s'agit également d'un droit essentiel qui a déjà été reconnu dans plusieurs actes de droit communautaire dérivé en vigueur et par l'article 30 de la Charte sociale européenne révisée ; certains Etats membres lui ont même reconnu une valeur constitutionnelle (Espagne, Finlande, Italie, Portugal). Tous les Etats membres ont institué un salaire minimum, même si le niveau de ce salaire est variable et même si des exceptions ont été prévues par les législations internes. La reconnaissance de ce droit ne doit bien sûr pas avoir pour effet de remettre en cause ces particularités nationales.

c) Le droit de grève : il s'agit d'un droit fondamental qui existe dans tous les Etats membres, même si, dans chaque Etat membre, des limites ont été posées à son exercice. Il a reçu la consécration constitutionnelle dans plusieurs Etats (France, Espagne, Grèce, Italie et Portugal). Si l'article 137 du TCE exclut la compétence de la Communauté pour réglementer le droit de grève (de même, d'ailleurs, que pour le droit d'association), il est possible que, dans l'exercice de ses compétences, elle prenne des mesures qui porterait atteinte à ce droit. Il est donc nécessaire de consacrer le droit de grève dans la Charte.

d) Le droit d'accès égal aux services d'intérêt général : l'importance des services d'intérêt général au sein des "valeurs communes de l'Union" et leur "rôle dans la cohésion sociale et territoriale de l'Union" sont consacrés par l'article 16 du TCE. La Charte doit refléter le droit communautaire en vigueur, précisé par la jurisprudence de la Cour de Justice, en consacrant le droit fondamental que constitue l'accès égal de tous aux services d'intérêt général.

Par ailleurs, on peut regretter l'absence d'un article spécifique pour certains droits essentiels :

- **le droit des femmes** : s'il est mentionné à l'article 22, relatif à l'interdiction des discriminations, le droit des femmes, eu égard à son importance, mériterait une disposition spécifique, comme cela était d'ailleurs initialement prévu dans le projet de Charte ;
- **le droit au logement**, qui n'apparaît qu'à l'article 41, mériterait également une disposition particulière, comme cela était initialement proposé : ce droit est garanti dans tous les Etats membres (certains lui ont même reconnu une valeur constitutionnelle : France, Belgique, Espagne, Finlande, Grèce, Pays-Bas et Portugal).

Je déposerai très prochainement auprès de la convention les amendements qui me semblent nécessaires pour donner aux droits économiques et sociaux la place qui leur revient au sein de la Charte.

Guy BRAIBANT
Représentant du Président de la République et du Premier ministre
à la Convention chargée d'élaborer la Charte des droits
fondamentaux de l'Union européenne

Editors' note to 4330/00 ADD 1,
Contribution de MM. Fischbach et Krüger,
observateurs du Conseil de l'Europe
(datée le 05/06/2000):

The INIT FR version was dated 5 June, and the words 'integral part' in the final sentence were underlined.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 22 June 2000**CHARTE 4330/00
ADD 1****CONTRIB 196****ADDENDUM TO COVER NOTE**

Subject : Draft Charter on fundamental rights of the European Union

Please find hereafter the English version of a contribution by MM. Fischbach and Krüger, Council of Europe observers. ¹

¹ This text exists in French and English.

5.6.2000

**OBSERVATIONS ON CONVENT DOCUMENTS 28 AND 34,
BY MR FISCHBACH AND MR KRÜGER,
COUNCIL OF EUROPE OBSERVERS**

The Council of Europe observers do not intend to propose any amendments to the text of the provisions submitted in documents Convent 28 and 34.

They note however that, as drafted in those documents, the statements of reasons contain elements which are essential to the comprehension and interpretation of the Charter. Such is the case in particular with the full text of the provisions taken from the European Convention on Human Rights and the reference to the case-law of the European Court of Human Rights. Such a reference is essential for at least two reasons.

1. Firstly, because of the fundamental importance of the case-law of the European Court of Human Rights in determining the level of protection guaranteed by the Charter.

The aim of the references to the ECHR in Articles 47 and 49 (Convent 34) is to prevent there being a lower level of protection under the Charter than that provided by the ECHR, which is considered a minimum standard. Since the adoption of the ECHR, the case-law has consistently raised the minimum standard to the point where today it is the case-law, just as much as the Convention, that determines the level of protection provided by the ECHR. There is every reason to believe that that trend will continue, as the Court has recently confirmed in its Selmouni judgment¹. For that reason, if the Charter is not to afford less protection than the ECHR, not only must regard be had to the relevant case-law, there must also be a legal obligation to that end.

Admittedly, as stated in the current draft of the statements of reasons, legal instruments are usually applied in accordance with their interpretation by the court empowered to construe them. Nevertheless, the text of the ECHR has been enhanced by no less than fifty years of case-law, and there can be no doubt but that that process will continue. Take, for example, all the positive obligations which the European Court of Human Rights has recognised and which *complement* the

¹ See the Selmouni judgment of 28 July 1999, § 101.

text of the Convention¹. How can parties to disputes under the Charter be ensured of benefiting from the existence of those obligations? Does the mere reference to the ECHR make it clear beyond doubt that they will automatically be taken into account when a corresponding provision of the Charter is being interpreted?

It cannot be said enough that a reference to the case-law of the European Court of Human Rights would not result in protection under the Charter being restricted to the ECHR level, as there is nothing to prevent the Charter being interpreted in such a way as to afford a higher level of protection. That is one of the effects of the current draft of Article 49 of the Charter. In that regard, such a reference would represent no danger to the Charter as, in the unlikely event that the level of protection under the ECHR were reduced by the case-law, the Charter would be unaffected since the ECHR level constitutes a *minimum* standard, not a *mandatory* one.

2. Furthermore, without such a reference to the case-law of the European Court of Human Rights there would be no legal guarantee that Community institutions would not interpret the ECHR differently when applying it under Articles 47 and 49 of the Charter. By acceding to the ECHR, the Contracting States have legally recognised the authority of the European Court of Human Rights in the interpretation of the ECHR (Articles 1, 32 and 46 ECHR). On the other hand, without a reference to the case-law of the European Court of Human Rights, the institutions of the European Union would escape that sort of obligation even though they, too, through the Charter, would be applying the ECHR as a minimum standard. That would result in a degree of imbalance between the Union and the member States, something which not only would be difficult to justify but could also become a source of legal uncertainty.

¹ Thus, for example, the Court has held that States have an *obligation to investigate* matters apt to constitute a violation of Articles 2, 3 or 5 of the ECHR. On the basis of Articles 2 and 3 it has imposed an obligation on States *to protect persons* whose life or physical integrity is endangered by others or by phenomena such as atmospheric pollution or nuclear radiation. Likewise, the Court has found various positive obligations to be implicit in Article 8, such as the obligations to create a suitable environment for *integrating children into their families*, to ensure effective enforcement of judicial decisions concerning the *custody of children*, to *inform the local population of health risks* resulting from certain forms of pollution and, if appropriate, to *intervene to eliminate the risks*. Very recently the Court held that Article 10 imposed a positive obligation on national authorities to make suitable arrangements to prevent groups of people, such as employers and employees, infringing each other's freedom of expression. Those are but a few examples of a long series of obligations that have been held to exist under the case-law.

For that reason, it is important to ensure that the statements of reasons, or at the very least the essential elements mentioned above, become an integral part of the Charter. The observers reserve the right to lodge proposals to that end if appropriate.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

**Brussels, 25 May 2000 (31.05)
(OR. multilingue)****CHARTE 4332/00****CONVENT 35****PRAESIDIUM NOTE**

Subject: Draft Charter of Fundamental Rights of the European Union
– Amendments submitted by the members of the Convention regarding civil and political rights and citizens' rights
(Reference document: CHARTE 4284/00 CONVENT 28 (REV 1 in French only))

Delegations will find attached the amendments submitted by members of the Convention.

Amendments are set out Article by Article, and paragraph by paragraph where applicable, and bear a serial number. General comments and desiderata regarding the preamble are set out separately at the beginning of the document. The preamble will be discussed separately once the amendments have been examined.

General comments

ANDREW DUFF M.E.P.

Subject : Draft Charter of Fundamental Rights of the European Union
- Amendments to Articles 1 to 30 (Civil and political rights and citizens' rights)

I. COMMENT

1. The amendments tabled here are drafted on the following presumptions:

- *the Charter will have binding effect on the institutions and agents of the European Union;*
- *the Charter will be inserted somehow into the Treaty of Nice;*
- *there will be no preamble to the Charter that qualifies its force or meaning;*
- *the statement of reasons (or 'definitions') will have equal force to that of the articles themselves: I have suggested amendments to both parts;*
- *if we are to paraphrase the existing treaties we should attempt to do so with more style and clarity than we have usually managed to achieve in the first draft.*

2 *My amendments are especially substantive concerning:*

Article 3 to include ecology

Article 12 to exclude honour and reputation

Article 13 to make specific reference to modern partnerships

Article 15 to protect cultural, national and regional minorities

Article 18 to widen the scope of access to documents

Article 21 to reinforce the rights of asylum seekers

Article 22 to reinforce regional and cultural minorities

Article 23 to assert the principle of democracy

Article 26 bis to include the right to diplomatic protection

Article 27 to ensure transparency of legislative acts and public access to information

Article HH to introduce a new horizontal clause allowing for the widening of the scope of application of the citizenship privileges.

3. *I have made no proposals at this stage about the re-ordering of the articles.*

ANDREW DUFF M.E.P.

Brussels

23 May 2000

Comments and proposals for amendments by the representative of the Danish Government,
Dr Erling Olsen,
concerning CONVENT 28 (Articles 1-30) of 5 May 2000

General comments

- (1) The following proposals for amendment are put forward on condition that the text of the various articles and the accompanying definition of rights constitutes a composite whole. The section in CONVENT 28 entitled “Statement of reasons” (which, incidentally, I would propose be called “definition of right”/Part B, which appears more to the point), should in other words form an integral part of the Charter. I would reserve any further comments on the provisions in CONVENT 28 until such time as an adapted version of the definition of rights is available from the Secretariat: see CONVENT 29.
- (2) At various points in the “Statements of reasons” it is indicated that the question of restrictions of the rights described will be settled in the relevant horizontal provision (former Article H.2, now Article 47 in CONVENT 34). In my view this is insufficient and could give rise to legal uncertainty regarding the extent to which the relevant restrictions are to apply. As has been pointed out on a number of occasions, the exceptions laid down in the European Convention on Human Rights (ECHR) are of widely differing nature. Accordingly, the restriction of the individual right should be set out in conjunction with the right in Part B. This is to some extent already the case as regards CONVENT 28, Articles 2,5, 6, 12, 14, 15 and 17. In these cases a reference should also be made to the case law of the Court of Justice in Strasbourg.

GENERAL COMMENT ON MY AMENDMENTS

R. VAN DAM

MEP

If the Charter is to be an official document of the European Union, it should include *only* rights that are relevant to the functioning of European Union institutions and bodies. It is, after all, intended to apply to those bodies. We should not lose sight of that objective if the Charter is not to become a pointless document. If the Charter includes all sorts of rights which are not related to the powers of the Union, it will be impossible to uphold. It will promise a great deal but the rights it includes cannot be guaranteed. Existing competence cannot be expanded by this document. That is why I am advocating the deletion of a number of articles. Their content is often praiseworthy but the Charter is not a human rights convention. Human rights have to be protected and developed at other levels. The Member States are responsible in the first instance for protecting and developing fundamental rights. Then international organisations such as the United Nations and the Council of Europe have an important task in this area. That is where the protection of human rights should be concentrated primarily. The institutions and bodies of the Union must *respect* rights, but they are not the bodies primarily responsible for *guaranteeing* them.

That brings me to another point. I consider it essential that there be a uniform system for the protection of human rights throughout Europe. The text of the Charter must therefore be as closely aligned as possible on the European Convention on Human Rights. Many of my amendments are therefore intended to bring about closer alignment on the ECHR. On that point, I strongly support the proposal by the representative of the Netherlands Government, Korthals Altes. In that connection I have opted for a number of limitations *per article*, despite the Praesidium's proposal that limitations be grouped in one general horizontal article. Formulating limitations per article makes the Charter more transparent. Finally, I also consider it essential that the wording of the rights do not conflict with Europe's Christian roots.

Amendments proposed by the representatives of the Parliament of the Netherlands to the articles as set out in CHARTE 4248/00 CONVENT 28

Submitted by: E.M.H Hirsch Ballin, M. Patijn (on behalf of G.J.W. van Oven)

I. General reservations

A general reservation has been entered to the effect that as work proceeds on the establishment of the Charter, there must be a consensus on its relationship with the European Convention on Human Rights.

The proposers of these amendments are assuming that the Charter will depart as little as possible from the ECHR. At a later stage in the establishment of the Charter, specific limitation clauses will have to be drafted for each article, in accordance with the ECHR system.

There is a further general reservation on the Dutch text of CHARTE 4248/00 CONVENT 28 on the grounds that in some instances it is not in line with prevailing Dutch legal terminology.

Heinrich Neisser

*Member of the Convention for the drawing up of a draft
Charter of fundamental rights of the European Union*

Vienna, 23 May 2000

Subject: Proposed amendments to Articles 1 - 30 (CONVENT 28)

Dear Mr Chairman,

I should like to bring to your attention below a number of concrete proposals for amendments to the Articles referred to above.

However, I should first like to make a general comment regarding the problem of reservations concerning restrictions: in the current version of the draft (CONVENT 28), a horizontal provision on restrictions has apparently continued to be retained, which was not taken from the provisions on restrictions contained in the European Convention on Human Rights. Instead, CONVENT 34 contains a horizontal Article 47 (Limitation of guaranteed rights) which is intended to replace these specific provisions.

As discussion of the final wording of this horizontal Article is not intended to be held until after the "second reading" of the Civil and Political Rights, my proposed amendments below do not relate to the question of any specific provisions on restrictions. It will be possible to judge whether such provisions should be inserted only when it is established how a horizontal provision on restrictions

could be worded. It might therefore prove necessary to return to the Articles on Civil and Political Rights after the discussion of Article 47 in order to insert specific reservations regarding restrictions at that stage, if possible.

(Complimentary close).

Heinrich Neisser

23 May 2000

M Jean-Paul Jacqué
Charter Praesidium
Brussels

DRAFT AMENDMENTS TO CONVENT 28

1. Thank you for sending me Convent 28 with the Praesidium's latest draft Articles 1-30. I would like to table the following written amendments.
2. The Praesidium's work to cross refer to the language and approach of the ECHR remains welcome. But as I mentioned in my letter of 17 March, we must go further. The explanatory notes provide some guidance as to the Convention's rationale for particular draft Articles. But they cannot be taken as having the same legal force and effect as a clear definition of the right, tying the right to the corresponding existing right, e.g. under the ECHR. I therefore regard a full and integrated "Definition of Rights" section as essential if we are to stay within the remit given by the Cologne Conclusions. I remain convinced that this approach is fully consistent with Union law, e.g. Article 6.2 TEU.
3. In submitting my draft amendments, I have therefore included language for the "Definition of Rights" section. I have included the appropriate "Definition" language alongside the corresponding "Proclamation" text. I envisage the two would be in different parts of the document. My reasons are not, of course, part of the revised text. Please note that the Part A text is offered on the basis that it must be given the solid legal ground I propose for Part B. Without Part B, my Part A proposals do not stand. I have not set out the ECHR or Treaty right in full in this document, although this could be done should the Convention prefer. For ease of reference, I will send a separate annex showing how the amended two-part document would look.
4. The Horizontal Articles will need to cover key ancillary provisions (e.g. ECHR Articles 17, 18 and where appropriate 16) which will need to be read together with the ECHR-based rights. Horizontal provisions will be needed to reinforce other aspects of the two-part approach (e.g. regarding the ability to derogate, respect for national identities and to clarify that the Charter does not contain new rights or remedies.)

Lord Goldsmith QC

Stockholm
2000-05-23

Mr Jean-Paul Jacqué
EU Charter Presidium
Council Secretariat
BRUSSELS

Draft Chart of Fundamental Rights of the European Union

Dear M. Jacqué,

I have the honour to submit to you my first suggestions regarding document "CONVENT" (draft Articles 1-30) of the draft Charter.

Further comments may follow once the full text of the charter and suggestions by other members of the Convention have been presented.

At this stage I wish to make two general comments. The first is that the Swedish translation of the texts in Convent 28 is not altogether satisfactory and will need to be reviewed at a later point.

The second is that the entire text of the Charter needs to be gender neutral. To this end, I have enclosed a separate proposal which I kindly ask you to take into consideration.

Yours sincerely,

Professor Daniel Tarschys

Gender neutrality

In addition to comments and proposals for the draft text I suggest that a gender neutral text be employed. For that reasons, all the pronouns "his" should be replaced with "his or her" throughout the text.

Example:

"Everyone has the right to liberty and security of person. No one shall be deprived of his *or her* liberty save in cases prescribed by law and in accordance with a procedure prescribed by law."

Daniel Tarschys

Preamble

Proposed amendment to Article: Preamble, paragraph 2

Submitted by: Dr Sylvia-Yvonne Kaufmann

Proposed text:

2. The Union and its institutions are founded on the principles of liberty, democracy, respect for human rights (*one word deleted*), the rule of law *and solidarity*, principles which are common to the Member States.

Reasons:

On the basis of the "Declaration of fundamental rights and freedoms" adopted by the European Parliament on 12 April 1989, in the Preamble to which the principle of solidarity and the social state are enshrined, I would propose that the term "solidarity" be included as a further principle in the Preamble to the Charter.

Draft Charter of fundamental rights of the European Union

CONVENT 28

Submitted by: Jürgen Gnauck

The current proposal for a text for "**Principle of democracy**" in CONVENT 17 should be included, at least in part, in the Preamble. This is why it has currently elicited no proposed amendments. However, it should be pointed out in advance that the wording "All public authority stems from the people" could create misunderstandings. If such a provision had to be included in the Preamble at all, it should preferably be worded: "All public authority stems from the peoples of the States brought together within the European Union".

Proposed amendment to the Preamble/Principle of democracy

Submitted by: Prof. Dr Jürgen Meyer/Pervenche Beres/Jo Leinen/Hans-Peter Martin/Ieke van den Burg

Proposed text:

The Union and its institutions are founded on the principles of liberty, democracy, equality, solidarity, respect for human rights and the rule of law, principles which are common to the Member States.

Reasons:

The proposed amendment reiterates the first pillar of the 3-pillar structure submitted on 4 May (CONTRIB 144).

The wording of the Article takes over a proposal from the Praesidium and adds to it the concepts of "equality" and "solidarity".

The principle of solidarity is a constituent element of every - also non-state - community. In Germany, it is implicitly contained in the social state principle laid down in the Basic Law ¹, in France in the historical constitutional link between the terms "solidarité" and "fraternité", in the Spanish Constitution (Article 2) and the Polish Constitution

¹ Jarass, Hans/Pieroth, Bodo: *Grundgesetz für die Bundesrepublik Deutschland. Kommentar.* Munich: Beck, 2000, Art. 20 para 105, p. 503 (5th edition)

(Preamble). For the EC/EU, the European Court of Justice refers to the "duty of solidarity assumed by the Member States through their accession to the Community" ECJ Judgment, Case 39/73, Rep. 1973, 101 [102]), and reiterates this in many other judgments and opinions (ECJ Opinion, Rep. 1977, 741 et seq. Opinion 1/76, ECJ Judgment, Rep. 1980, 907 et seq. Case 136/82; Case 263/82; Case 64/84; Case 250/84; Case 276/80; Case 203/86).

As the 3-pillar structure has met with general approval in the Convention, and above all the first pillar, the principle of solidarity should be taken into account in the Preamble or in a separate Article.

Proposed amendment to Article: Preamble/Principle of democracy

Submitted by: R. VAN DAM (MEP)

Proposed text:

Delete paragraph 1.

Reasons:

Sovereignty of the people is not a concept central to the Member States of the European Union.

Proposed preamble

Submitted by: Georges BERTHU, MEP

Proposed text:

“The Signatory States:

- Are convinced that peaceful and happy societies are based on respect for the fundamental rights of the person, which is sacred; they reject any form of contempt for human beings.
- Affirm that this central value of respect for the person of necessity entails:
 - protecting the life and dignity of every human being;
 - equality before the law which defines and protects fundamental rights;
 - mutual support in the face of the vagaries of existence;
 - the right of all persons to be self-governing; to participate fully as citizens in the life of their communities in order better to defend their families and protect their material and spiritual goods; to exercise freely their sovereign rights by political democracy and the market economy;
 - respect for the affection and solidarity felt by each person, and thus for the feeling of belonging based on transmitted culture, a learnt past and the use of a common language;
 - the inalienable right of all citizens to exercise effective control over their representatives; to delegate only close, controllable and always revocable powers; to give institutions only subsidiary and subordinate powers.

- Recognise that the citizens of Europe's countries express their desire for solidarity by specific associations and communities, such as family or local communities, cantons, Länder, counties, regions and provinces; that the broadest and firmest expression of that support is in a nation's shared values which is where democracy is most fully exercised, and where the main thrust of political association must be situated.
- Consider contempt for nations one of the major causes of the wars which have ravaged Europe; but that respect for the diversity of nations and their peoples will benefit Europe, since it will promote freedom, emulation and pluralism which are the sources of European civilisation's oldest and most steadfast wealth.
- Are convinced that ignorance of, forgetting or scorning the rights of the person, as of families, communities or nations, are the sole causes of public misfortune and government corruption;
- State therefore that the European Union is a union of nations which, in mutual respect for each other and the democratic expression of each people, must pursue the following goals:
 - encouraging a common defence of the peoples of Europe in order together to protect their values, rights, languages, social models, territories and borders;
 - contributing to laying the foundations for sustainable development, through respect for life and by seeking the most fulfilling balance between man and his natural environment;
 - promoting the prosperity of the peoples of Europe by domestic free trade and competition, and by negotiating external trade agreements for fair trade between zones with different rules.

Reasons:

What the European Union needs is less a charter of citizens' rights (which, with the notable exception of the right to democratic expression at national level, are already well protected), than a solemn declaration setting forth member countries' common values.

Such a declaration, answering the prime question of "What brings us together?", would have the merit of making the European Union much more "visible" (as the Cologne Council wanted) than a

mere list of legal rights which are in any case shared with many countries in the world outside the EU.

Proposed amendment to Article: Principle of democracy (page 24 of CONVENT 28)

Submitted by: Jean-Maurice DEHOUSSE, MEP, Alternate Member of the Convention

Proposed text:

1. Redraft paragraph 1 to read as follows:

“From the parish to Europe, all public authority stems from the people.”

2. Add a paragraph 3 to the proposed provision to read as follows:

“The requirement of transparency which characterises democracy implies that all legislative deliberations are open to the public.”

Reasons:

Re 1: It should be pointed out that the democratic principle applies, without exception, to all levels of public action.

Re 2: Applies a secular principle of democratic protection to the European Union.

Proposed amendment to Article: Principle of democracy

Submitted by: Simone BEISSEL

Proposed text:

All public authority stems from nations.

Reasons:

Proposed amendment to: Preamble**Submitted by:** Jean-Maurice DEHOUSSE, MEP, Alternate Member of the Convention**Proposed text:**

1. There are no rights without duties.
2. No freedom is absolute. The law, by its principles and in its texts, determines the circumstances in which limitations may be recognised, and any limits or derogations.
3. Any alien in Union territory shall enjoy the protection granted to persons and goods by this Charter, unless it provides otherwise.

Reasons:

Such important principles must be laid down at the beginning of the Charter if we do not want to distort the perception of the text or even its legal effectiveness.

Proposed amendment to Article: preamble (“Principle of democracy”)

Submitted by: Pervenche BERÈS

Proposed text:

1. Public authority stems firstly from the people.
2. The Union and its institutions are founded on the principles of liberty, equality, solidarity, democracy, respect for human rights and the rule of law, principles which are common to the Member States.

Reasons:

*All public authority does not stem directly from the people, or else judges would have to be elected.
Equality and solidarity must appear in a modern list of the Union’s founding principles.*

Proposals concerning the whole of Article 1

AMENDMENT 1

Proposed amendment to Article: 1

Submitted by: Andrew DUFF, MEP.

Proposed text:

Article 1. Personal Dignity [delete: 4 words]

1. The dignity of the (delete: 1 word) person [delete 5 words] is inviolable.
2. Everyone is equal before the law.

Reasons:

This Article appears as the first Article of the Charter since dignity of the (delete: 1 word) person is the very foundation of fundamental rights. The Universal Declaration of Human Rights sets out this principle in its preamble:

"Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world."

Respect for the dignity of the (delete: 1 word) person constitutes an inherent limitation to all the other rights, which may not be used to infringe that dignity.

Paragraph 2 sets out a principle which the Court has held to be a fundamental Community principle (judgment of 13 November 1984, Racke, Case 283/83, ECR 3791).

AMENDMENT 2

Proposed amendment to Article: 1

Submitted by: Dr Sylvia-Yvonne KAUFMANN

Proposed text:

1. **The dignity of the human person must be respected and protected.**
2. **Everyone is equal before the law.**
3. **Everyone has the right to develop their personality freely.**

Reasons:

The principle of freedom, like the principle of equality, stems from human dignity and should therefore not be left out of this article. General freedom of action is known to several European constitutions.

AMENDMENT 3**Proposed amendment to Article: 1**

Submitted by: Lord GOLDSMITH, QC

Proposed text:

Delete all. Substitute the following two-part text:

For Part A, “Proclamation of Rights”:

“Article 1: Object and purpose

“All human beings are born free and equal in dignity and rights and are entitled to equal protection of the law. In recognition of this, the European Union Institutions respect, within the spheres of their competences, the fundamental rights set out below.”

Reasons:

This draft of Article 1 is intended to state clearly at an early stage the important principles of dignity, equality and equal protection before the law which are the context and indeed the ultimate source of the substantive rights which follow. They are not, however, as the Praesidium’s draft of Article 1 might suggest, to be put on the same basis as existing, justiciable, substantive rights. For example, dignity does not, as such, exist as a separate right in the ECHR, or elsewhere in Union law. To treat these principles as constituting the same sort of justiciable rights could create legal uncertainty and confusion. It might lead to obligations of uncertain scope and effect for the European Union institutions – and for Member States when acting as agents. My approach is intended clearly to show that this opening article is of a different nature from the Articles which follow. It is for that reason also that the Article should appear before the first heading for “Proclamation of Rights” and why there appears to be no need to provide a Definition of Rights (Part B) text (although I reserve the right to reconsider that issue once the text is otherwise complete).

AMENDMENT 4

Proposed amendment to Article: 1.– Dignity of the human person

Submitted by: Gabriel Cisneros LABORDA

Proposed text:

1. The dignity of each human being must be respected and protected.
2. All human beings shall be equal before the law.

Reasons:

Avoid exclusions derived from specific interpretations of the concept of person. Furthermore, the expression *human being* is the one used in Article 1 of the Universal Declaration of Human Rights.

Perhaps owing to a translation oversight, paragraph 2 of the Spanish text of the proposal is grammatically and legally incomplete.

AMENDMENT 5

Draft Article 1 Dignity of the human person

Move 1.1. to a preambular part of the Charter.

Merge 1.2 (equality before the law) with Article 22 on equality and non-discrimination.

Reasons:

1. "Dignity" is not really a right but rather a fundamental convention that must inform all legislation and political action. The UN Universal Declaration of Human Rights sets out the principle of the dignity of "members of the human family", "human beings" and "the human person" in its preamble and not in the operative part of its text.

AMENDMENT 6

Proposed amendment to Article: 1.

Submitted by: RODOTA', PACIOTTI and MANZELLA

Proposed text:

Substitute the following for the article:

- “1. The dignity and the freedom of a human being are inviolable.
2. The European Union shall recognise and protect fundamental rights and guarantee the free development of personality and respect for the principle of solidarity”.

Reasons:

The term “inviolable” stresses the fundamental value of a human being’s dignity and freedom with respect to the specific rules concerning them.

The second paragraph stresses the relevance of fundamental rights as an element in the progressive and concrete self-assertion of the human being.

AMENDMENT 7**Proposed amendment to Article: 1**

Submitted by: Jean-Maurice DEHOUSSE, MEP, Alternate Member of the Convention

Proposed text:

- Reverse the order of the first two rights
- Replace paragraph 2 by the following:
Human beings are born free and equal in law and so remain.

Reasons:

- for the first point: A person must be born before he acquires dignity by deserving respect in his own right.
- for the second amendment:
 - we should not depart from tradition
 - the wording should be more in line with the spirit of the language

Proposals for Article 1(1)

AMENDMENT 8

Proposed amendment to Article: 1

Submitted by: Win Griffiths MP

Proposed text:

Article 1.1 Delete here but include in preamble of Clauses.

Reasons:

A statement similar to this one is included in the preamble of the Universal Declaration of Human Rights.

AMENDMENT 9

Proposed amendment to Article: 1 - Dignity of the human person – Paragraph 1

Submitted by: Georges BERTHU, MEP

Proposed text:

Delete paragraph 1

(“The dignity of the human person must be respected and protected.”)

Reasons:

This principle is so fundamental that it should not appear in the Charter itself but in the Preamble so that it permeates all of the rights set out in the rest of the text.

AMENDMENT 10

Proposed amendment to Article: 1(1)

Submitted by: Piero MELOGRANI

Proposed text ^{*}:

The dignity of the human person **is inviolable**.

Reasons:

The text proposed in CONVENT 28 is “*the dignity of the human person must be respected and protected*”. The qualification “*human*” may be omitted because it already appears in the title. On the other hand, the qualification “*inviolable*” is intended to strengthen the value of human dignity, also bearing in mind the fact that it frequently appears in national constitutions.

^{*} The amendments proposed are indicated by **bold type**.

AMENDMENT 11

Proposed amendment to Article: 1.

Submitted by: Johannes VOGGENHUBER

Proposed text:

1. The dignity of the human person is inviolable.

Reasons:

AMENDMENT 12

Proposed amendment to Article: 1.1.

Submitted by: Pervenche BERÈS

Proposed text:

Everyone shall be entitled to respect for and protection of his dignity.

Reasons:

In the interests of harmonious drafting, “everyone” ought to be the subject of this article.

AMENDMENT 13

Proposed amendment to Article: 1.1.

Submitted by: Alvaro Rodríguez BEREIJO, personal representative of the Spanish Prime Minister

Proposed text:

Respect for the inviolable dignity of the person and of the rights inherent therein shall constitute the foundation of the Union's legal, political and social order.

Reasons:

Improved drafting. The dignity of the person is not strictly speaking an actionable right or one on which courts can rule separately in the context of the foundation of all the rights that inherently attach to the person entitled to them. That being so, the wording of the provision does not express, with the force appropriate at the beginning of a charter such as this, the value of the dignity of the person or its relationship with the fundamental rights enunciated later.

Proposals for Article 1(2)

AMENDMENT 14

Proposed amendment to Article: 1

Submitted by: Win GRIFFITHS, MP

Proposed text:

Article 1.2 Delete but include in Article 8 (see later amendment).

Reasons:

Equality before the law is more suitable for Article 8.

AMENDMENT 15

Proposed amendment to Article: 1

Submitted by: Frits KORTHALS ALTES, representative of the Netherlands Government

Proposed text:

Transfer paragraph 2 to Article 22.

Reasons:

Paragraph 2 is better placed in Article 22 (provision on non-discrimination). See the amendment to Article 22.

AMENDMENT 16

Proposed amendment to Article: 1(2)

Submitted by: Pervenche BERÈS

Proposed text:

Make this a separate article (*Everyone is equal before the law.*)

Reasons:

Equality and dignity are two different concepts and each deserves its own article.

AMENDMENT 17

Proposed amendment to Article: 1.2.

Submitted by: Alvaro Rodríguez BEREIJO, personal representative of the Spanish Prime Minister

Proposed text:

Everyone is equal before the law.

Reasons:

The Spanish translation of this provision is incomprehensible (Equality of rights for all persons) and is not in line with the French text (Everyone is equal before the law).

The right to equality before the law must be compatible with the existence of differences in treatment that are proportionate and can be justified objectively and reasonably.

AMENDMENT 18

Proposed amendment to Article: 1.Dignity of the human person

Submitted by: Jordi SOLÉ TURA

Proposed text:

2. Everyone is equal before the law.

Reasons:

More appropriate wording in Spanish.

AMENDMENT 19

Proposed amendment to Article: 1(2): Dignity of the human person

Submitted by: Dr Ingo Friedrich

Proposed text:

“1. Die Würde des Menschen ist zu achten und zu schützen.

2. Alle Menschen sind vor dem recht gleich.”

(No change to the English text).

Reasons:

The term “Gesetz” (law) belongs to the Member States’ legal domain. “Gesetz” could be misunderstood as “a” law in the formal sense: fundamental rights have to apply to all legal pronouncements. Its use elsewhere in the draft Charter should consequently also be checked.

AMENDMENT 20

Proposed amendment to Article: 1(2)

Submitted by: Dr Peter Michael MOMBAUR, MEP

Proposed text:

"Alle Menschen sind vor dem Recht gleich". (No change to the English text).

Reasons:

The term "Gesetz" (law) belongs to the Member States' legal domain. Its use elsewhere in the draft Charter should consequently also be checked.

Proposals for Article 1a

AMENDMENT 21

Proposed amendment to Article: 1

Submitted by: RODOTA', MANZELLA and PACIOTTI

Proposed text:

After Article 1 insert the following:

"Article 1a. Equality and non-discrimination

1. Everyone shall be equal before the law.
2. Any form of discrimination on the basis of sex, race, skin colour, ethnic or social origin, language, religion or personal conviction, political opinion, membership of a national minority, possessions, birth, handicap, age or sexual orientation, genetic characteristics or state of health shall be prohibited.
3. Within the scope of the Treaty establishing the European Community and the Treaty on European Union all discrimination on the basis of nationality shall be prohibited.
4. The Union shall strive to eliminate existing inequality and to promote conditions that make equality effective".

Article 22 is accordingly deleted.

Reasons:

Every aspect of the fundamental principle of equality is regulated in full here (produced by combining the provisions of Articles 1 and 22, appropriately reframed, of the Praesidium text).

Proposals for the whole of Article 2

AMENDMENT 22**Proposed amendment to Article: 2****Submitted by:** François LONCLE**Proposed text:**

“Everyone is equal before the law.”

Reasons:

The purpose of this amendment is to separate the principle of equality from Article 1, which also deals with the dignity of the human person.

AMENDMENT 23

Proposed amendment to Article: 2, Statement of reasons

Submitted by: Dr Sylvia-Yvonne KAUFMANN

Proposed text:

Delete the statement of reasons

Reasons:

The statement of reasons should be deleted as the Charter is addressed to EU bodies and so does not have to fix exceptions as the ECHR does.

AMENDMENT 24

Proposed amendment to Article: 2

Submitted by: Andrew DUFF, MEP.

Proposed text:

Article 2. Right to life

1. Everyone has the right to life.
2. No one shall be condemned to (delete: 1 word) death (delete: 3 words).

Reasons:

Paragraph 1 is taken from Article 2 of the European Convention on Human Rights, which reads as follows:

- "1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.*
- 2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:*
 - (a) in defence of any person from unlawful violence;*
 - (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;*
 - (c) in action lawfully taken for the purpose of quelling a riot or insurrection."*

The exceptions referred to in Article 2(2) of the Convention apply in the context of this Charter in accordance with the general clause in draft Article H2 in CHARTE 4235/00 CONVENT 27.

Paragraph 2 is taken from the second sentence of Article 1 of Protocol No 6 to the European Convention on Human Rights. Article 2 of the Protocol is worded as follows:

"A State may make provision in its law for the death penalty in respect of acts committed in time of war or of imminent threat of war; such penalty shall be applied only in the instances laid down in

the law and in accordance with its provisions".

Since Protocol No. 6 was signed on 28 April 1983, the death penalty has been abolished in most Member States and has not been applied in any of them (Declaration No. 3 of the Treaty of Amsterdam relating to the Treaty on European Union). The problem of limitations will be resolved by the horizontal clause relating to the European Convention.

AMENDMENT 25**Specific proposals for amendment**

Submitted by: Evling OLSEN

Article 2: Replace “Everyone” by “Every individual”.

AMENDMENT 26

Proposed amendment to Article: 2. Right to life

Submitted by: Jean-Luc DEHAENE, personal representative of the Belgian Government

Proposed text:

1. (a) Everyone has the right to life.
(b) No one shall be condemned to the death penalty, or executed.

2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:
 - (a) in defence of any person from unlawful violence;
 - (b) in order to effect a lawful arrest or prevent the escape of a person lawfully detained;
 - (c) in action lawfully taken for the purpose of quelling a riot or insurrection.

Reasons:

The right to life is regarded as "*the supreme right*" among fundamental human rights (Human Rights Committee, No 146/1983, *Baboeram v. Suriname*, A/40/40, paragraph 697; General Comment 6/16 of 27 July 1982, paragraph, 1 and General Comment 14/23 of 2 November 1984; also to be found in: NOWAK, M., *UN Covenant on Civil and Political Rights. CCPR Commentary*, Kehl am Rhein, Engel Verlag, 1993, p. 851 and p. 861), or as "*one of the most fundamental provisions*" of the European Convention on Human Rights (Court of Human Rights, *McCann, Farrell and Savage*, 27 September 1995, *Publications of the Court*, Series A, Vol. 324, paragraph. 147; Court of Human Rights, *Andronicou and Constantinou*, 9 October 1997, *Reports*, 1997, paragraph. 171; Court of Human Rights, *Kaya*, 19 February 1998, *Reports*, 1998, paragraph 107; Court of Human Rights, *Caciki*, 8 July 1999, *Reports*, 1999, paragraph 86), in view of the fact that the exercise of all other protected rights presupposes respect for the right to life. The "fundamental nature" of the right to life requires that the possible restrictions be expressly included in Article 2 itself.

Proposals for Article 2(1)

AMENDMENT 27

Proposed amendment to Article: 2(1)

Submitted by: Piero MELOGRANI

Proposed text ^{*}:

Every *person* has the right to life.

Reasons:

It is proposed that *every person* be substituted for *everyone*, both to conform to the expression used in Article 1 (which refers to the "human person") and to avoid any interpretations that might lead to a general prohibition on abortion, contrary to many countries' national legislation.

* Proposed amendments are in **bold type**.

AMENDMENT 28

Proposed amendment to Article: 2(1)

Submitted by: Hubert HAENEL

Proposed text:

1. Everyone has the right to life *for the term of his natural life*.

Reasons:

The right to life is so fundamental that it should be without limits: whatever a person's age or state of health, that right should not be violated on any account. It is thus worth stating that this right applies until the end of a person's natural life.

AMENDMENT 29

Proposed amendment to Article: 2. Right to life, paragraph 1

Submitted by: Georges BERTHU, MEP

Proposed text:

1. Everyone has the right to life, **from the beginning until natural death.**

Reasons:

The addition of “from the beginning until natural death” is intended to mean that the right to life is in no way diminished by the person’s inability to express himself, either at the beginning or the end of his life.

On the other hand, the right to life may be subject to other limitations for various reasons (see paragraph 1a).

AMENDMENT 30

Proposed amendment to Article: 2(1)

Submitted by: Gabriel Cisneros LABORDA

Proposed text:

Every human being has the right to life from its beginning until its natural end.

Reasons:

The same argument as in connection with Article 1.

AMENDMENT 31**Proposed amendment to Article: 2****Submitted by:** R. VAN DAM, MEP**Proposed text:**Replace paragraph 2 by:

- That right shall be protected from conception to the end of life.

Reasons:

It is hard to imagine that Union bodies would ever acquire jurisdiction to impose penalties, much less a death penalty. This provision does not belong in a Charter addressed to the Institutions of the Union (cf. horizontal Article H.1(2) in CONVENT 27). A more precise definition of the right to life clarifies the implications which are inherent in inserting that right.

AMENDMENT 32

Proposed amendment to Article: 2(1)

Submitted by: M. PATIJN (on behalf of G.J.W. VAN OVEN)

Proposed text:

Replace current wording by: Everyone's right to life shall be protected by law.

Reasons:

The wording of that fundamental right should be closely aligned on the ECHR.

AMENDMENT 33

Proposed amendments to Article: 2. Right to life

Submitted by: Daniel TARSCHYS

Proposed text:

2.1 Everyone' s right to life shall be protected by law.

2.2 Retained.

Reasons:

Paragraph 2:1 is taken from Article 2 of the ECHR. However, while ECHR stipulates that the right shall be protected by law, no such formulation is included in the Convent 28 version of this Article. The ECHR places a positive obligation on Contracting States to ensure that their penal law includes provisions criminalising murder, manslaughter and also acts by which a person's death is caused unintentionally. It does not, however, hold them responsible for human rights violations as a result of acts (e.g. murders) committed by third parties. Since the draft Article has no equivalent formula, this might be interpreted as meaning that whoever is the addressee of the draft Article may be held responsible for ensuring that, for instance, no murders *de facto* take place within the EU territory.

AMENDMENT 34

Proposed amendment to Article: 2(1)

Submitted by: Pervenche BERÈS

Proposed text:

Everyone has the right to respect for his life.

Reasons:

To make the first paragraph less ambiguous.

AMENDMENT 35**Proposed amendment to Article: 2(1)**

Submitted by: Alvaro Rodríguez BEREIJO, personal representative of the Spanish Prime Minister.

Proposed text:

Todos tienen derecho a la vida. (No change to English text).

Reasons:

The proposal is to translate “everyone” by “todos” instead of “toda persona” to avoid any conflict in the legal definition of “person” which varies between Member States.

AMENDMENT 36

Proposed amendment to Article: 2(1)

Submitted by: EINEM/HOLOUBEK

Proposed text:

“Everyone's right to life shall be protected by law. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

- (a) in defence of any person from unlawful violence;*
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;*
- (c) in action lawfully taken for the purpose of quelling a riot or insurrection.”*

Reasons:

The general limitation clause in the “horizontal provisions” (Art. 47 of CHARTE 4316/00 CONVENT 34) is too broad for the fundamental right to life. The link with the clause on the level of protection, basically guaranteeing that no further limitations can be placed on the right to life, as provided in Article 2 of the ECHR, is not clear enough for citizens to understand. It is important to see immediately that the fundamental right to life can only be limited in specific circumstances.

To preclude any differing interpretations of Article 2 of the ECHR in this important area, the wording of that Article should be taken over.

AMENDMENT 37**Proposed amendment to Article: 2**

Submitted by: Lord GOLDSMITH, QC

Proposed text:

Amend to produce the following two-part text:

For Part A, "Proclamation of Rights":

Delete in 2.1: "Everyone has the right to life"

Substitute in 2.1: "Everyone's right to life shall be protected by law"

Retain 2.2 as drafted

For Part B, "Definition of Rights":

"The rights in Article 2 are the rights guaranteed by Article 2 of the ECHR and Articles 1 – 4 of Protocol 6 to the ECHR."

Reasons:

The Praesidium's draft of Article 2 is inconsistent with the corresponding right in the ECHR. It may be taken by the ECJ or others to have a different meaning, for example that it confers new rights upon the unborn. My amendment ensures that Article 2 is understood within the meaning of the relevant existing ECHR rights and subject to ECHR case law. I do not accept that limitations to this, or the other Charter rights, can be dealt with satisfactorily in a single "horizontal" clause. Limitations differ in type and effect from right to right. They need to be defined precisely in relation to each right so as to ensure legal certainty.

AMENDMENT 38

Proposed amendment to Article: 2 – Right to life
Paragraph 1a

Submitted by: Mr Georges BERTHU, MEP

Proposed text:

“However the law may lay down measures departing from the previous paragraph if they are absolutely vital to protect the lives of other persons from unlawful violence or in defence of society”.

Reasons:

After affirming the right to life, to be honest, we should immediately be reminded of the traditional limitations, either by an explicit reference to Article H2 (horizontal clause), or by stating the spirit of those limitations directly.

Not to do so might impair understanding of the Charter were the reader not to read right to the last line which radically alters the whole meaning.

Proposals for Article 2(2)

AMENDMENT 39

Proposed amendment to Article: 2 – Right to life
Paragraph 2

Submitted by: Mr Georges BERTHU, MEP

Proposed text:

Delete paragraph 2 (“No one shall be condemned to the death penalty, or executed”).

Reasons:

This paragraph does not correspond to any existing European Union powers.

AMENDMENT 40

Proposed amendment to Article: 2.

Submitted by: José BARROS MOURA and Maria Eduarda AZEVEDO

Proposed text:

1.
2. **The death penalty shall be prohibited.** No one shall be condemned **to death** or executed.

Reasons:

AMENDMENT 41**Proposed amendment to Article: 2**

Submitted by: RODOTÀ, PACIOTTI and MANZELLA

Proposed text:

Substitute the following for paragraph 2:

"2. No public authority may provide for the death penalty or impose or execute a sentence of death".

Reasons:

The aim of paragraph 2 is the outright elimination of the death penalty from the legal systems of the Union. The wording proposed addresses legislators, courts and administrative authorities alike.

AMENDMENT 42

Proposed amendment to Article: 2(2)

Submitted by: Alvaro Rodríguez BEREIJO, personal representative of the Spanish Prime Minister

Proposed text:

2. No one shall be condemned to death or executed, save under military criminal law in time of war.

Reasons:

Protocol No 6 to the ECHR provides, by way of exception to the abolition of the death penalty, for its application in time of war, and the Convention was ratified on that basis. With Organic Law 11/1995 of 27 November 1995 Spain abolished the death penalty even in such cases; Article 15 of Spain's constitution, however, provides for the possible application of the death penalty in the event of war if at that juncture the legislator so stipulates, a rule with which total abolition is not compatible.

The statement of reasons for the draft addresses that situation, but considers an exception to be made for it through the establishment of a general horizontal clause on the limitation of rights, a general approach used in the other articles, with all references to limitations, exceptions and definitions being omitted. I feel, on the contrary, that limitations on rights, as part and parcel of their make-up, must appear in the definition of the rights themselves, which provides, furthermore, the best guarantee that they will be safeguarded under implementing legislation, as well as ensuring proper coexistence of rights that may clash with each other.

The existence of a horizontal clause – subject at present to the drafting chosen for that clause so that it is acceptable to Spain – does not resolve the problems of the specific limitations on the exercise of certain rights; what would be unacceptable to Spain, as I have repeatedly indicated, is a clause that merely makes reference to the relevant provisions of the ECHR.

In addition, a general limitations clause is not a valid way of resolving the problem. In fact, in some of the articles it is not a question of enabling rights to be limited but rather of defining them negatively to make it clear beyond what point the content of the right does not extend. In other cases it is a matter of regulating those limits, to ensure that when the public authority (the legislator) establishes them it is similarly limited in the way in which it frames them. Clearly, that is not required in the case of every right in the Charter, but only for some which, because of their nature, so require.

The EU Charter of Fundamental Rights must be an autonomous text, drafted, naturally, in such a way as to comply with the fundamental rights "contained" in the ECHR, i.e. in content. But that does not mean that the EU Charter of Fundamental Rights must restrict itself merely to following or transcribing the text of the ECHR, as that would render unnecessary (being pointless and repetitive) a large part of the Convention's work.

In addition, the technique of resolving the problem of the limitations on the exercise of rights recognised in the Charter by means of a reference to the corresponding article of the ECHR in which exceptions or limitations are laid down is unacceptable, as I have already said in Convention working meetings. For that would mean introducing the ECHR law as directly applicable within the Charter. Or, in other words, including the ECHR in Community Treaty law, producing a result equivalent to the EU's accession to the ECHR. That is a possibility that the Council, the IGC and the Court of Justice of the European Communities have expressly rejected.

It should be noted that the reference to the ECHR in Article 6(2) of the TEU is not actually incorporating the ECHR into the text of the Treaty, but doing something quite different: obliging the European Union to respect fundamental rights, as guaranteed by the ECHR, as principles of Community law.

The proclamation of the fundamental rights and freedoms in the Charter (all the more so if the latter is to be incorporated into the EU Treaty as a text with legal force) must be an autonomous text, which does not need to be incorporated or supplemented (as if blank or incomplete) by other legal provisions alien to the Community law of which it forms part (such as the ECHR, the Universal Declaration of Human Rights or any other international law treaty or convention on human rights). There is therefore no room for any other source of human rights alongside or external to the Charter itself.

The contrary would mean that to a large extent the Charter (or at least that part of its content which overlaps with the ECHR) would be rendered redundant as a legal instrument, as it would serve to convert the ECHR into an autonomous standard by which to gauge the validity of acts and provisions of Community institutions and bodies from the point of view of the fundamental rights that the latter must respect.

If that were the case, there would be no need for the solemn declaration of those rights in the Charter and it would be sufficient if the Charter simply made reference to the ECHR, so that the Convention would be incorporated, as directly applicable law, into the Charter and into primary Community legislation.

I must make it clear that the amendment I propose is not meant to deny or detract from the crucial, outstanding value and importance of the role to be played by the ECHR and the case law of the CDH in the interpretation of the fundamental rights and freedoms in the Charter. Nor is it intended to call into question the relationship or cooperation between Community institutions (in particular the Court of Justice) and the Strasbourg court. Quite the contrary, what must be avoided is

that, through a legal subterfuge, what the European Council and the Luxembourg Court of Justice have rejected – EU accession to the ECHR – is indirectly incorporated into Community Treaty law, like some Trojan horse.

Perhaps many of the fears that have arisen in connection with the references to the ECHR might be dispelled if in the end it were clearly established in the horizontal clauses that the Charter does not alter existing legal rules or the jurisdiction of the courts. Furthermore, the risk that two courts may interpret the same rights text in different ways exists at present, witness the wording of the Treaties and the case law of the Luxembourg court.

Finally, I would say that, if the intention of the agreements reached at the European Council meeting in Cologne and the Convention is to draw up a Charter that makes fundamental rights and freedoms visible for the citizen, referring to another standard (such as the ECHR) for the purpose of settling the limits to their exercise in every case will deprive the Charter of all visibility, make it complicated and confused and render it accessible only to legal experts, since to know fully the scope and content of a right it will be necessary to have recourse to another, different text, which is just what "visibility" is meant to avoid.

AMENDMENT 43

Proposed amendment to Article: 2(2)

Submitted by: EINEM/HOLOUBEK

Proposed text:

No one shall be condemned to the death penalty or executed. *No limitation of this right shall be permissible.*

Reasons:

The first sentence is unchanged and corresponds exactly to the Praesidium proposal. The added second sentence is intended to make it clear to the citizen in a directly comprehensible manner that the death penalty has in fact been abolished. The possibility of making this provision subject to the general limitation of the horizontal clause in Article 43 of the draft would be a step backwards from the position of the ECHR.

The drafting proposed fundamentally takes over the level of protection afforded by Protocol No 6 to the ECHR. It goes further in that even "in time of war or of imminent threat of war" the death penalty is not permissible. In view of the rule-of-law and democratic standards achieved in the European Union there is no convincing basis for the death penalty at all. It is not necessary even in time of war. The dangers involved in this type of penalty are much greater than any benefit to society. This applies in time of war as well, because in exceptional circumstances the danger of defective procedures and accordingly of miscarriages of justice is particularly great.

Proposals for Article 2(3)

AMENDMENT 44**Proposed amendment to Article: 2**

Submitted by: Frits KORTHALS ALTES, representative of the Netherlands Government

Proposed text:

Add the following new paragraph 3:

3. No one shall be expelled or extradited to a State where there are substantial grounds for believing that he would be in danger of being subjected to the death penalty or execution.

Reasons:

This provision is more appropriate here than in Article 4, which deals with the prohibition of torture and inhuman treatment. The text is in line with the grounds adduced by the European Court of Human Rights in the Case Soering v United Kingdom of 7 July 1989.

Proposed amendment to Article: 2**Proposed text:**

Add the following new paragraph 4:

4. Deprivation of life shall not be regarded as in contravention of this Article when it results from the use of force which is no more than absolutely necessary, in accordance with the instances listed in Article 2(2) of the ECHR.

Reasons:

This provision is in line with Article 2(2) of the ECHR, which lists a number of instances of deprivation of life resulting from the use of force which is no more than absolutely necessary. In keeping with the desire for conciseness, reference is made to Article 2(2) of the ECHR. The same technique has been used in amending the other articles.

Proposals for Article 3 as a whole

AMENDMENT 45**Proposed amendment to Article: 3**

Submitted by: Lord GOLDSMITH, QC

Proposed text:

Delete this Article entirely but see Reasons below

Reasons:

I remain concerned as to how to deal with this issue pending the entry into force of the Human Rights and Biomedicine Convention in all the Member States. It is not yet ratified by the majority of Member States. The matters dealt with in the Convention on Human Rights and Biomedicine are complex and sensitive. Reference in the Charter to only some of the principles in the Biomedicine Convention is an unsatisfactory way forward and would be likely to create uncertainty, controversy and possible conflict with national positions. It should be noted that ECHR Articles 2, 3 and 8 have some bearing on the matters referred to in Charter Article 3. To that extent these matters may be covered by the Charter indirectly. I am not aware of any other rights existing at Union level.

I am prepared to consider this issue further but it could only be on the basis of a statement tied to existing national laws and practices, such as:

A: Everyone has the right to the respect of his or her physical and mental integrity in the application of biology and medicine.

B: The right in Article 3 is the right, to the extent recognised in national law, of:

- a) respect for the informed consent of the patient;
- b) prohibition of making the human body and its parts, as such, a source of financial gain;
- c) prohibition of creation of a human being identical to another human being whether living or dead.

It would have to be made clear, moreover, that the right cannot extend further than the corresponding provisions in the Biomedicine Convention.

AMENDMENT 46

Proposed amendment to Article: 3

Submitted by: Andrew DUFF, MEP

Proposed text:

Article 3. Right to respect for (delete: 1 word) personal integrity (delete: 4 words)

- 3. Everyone's (delete: 7 words) physical and mental integrity shall be respected.**
- 2. In the fields of medicine and biology, the following principles must be respected in particular:**
 - **prohibition of eugenics (delete: 1 word);**
 - **respect for the informed consent of the patient;**
 - **prohibition of making the human body and its products a source of financial gain;**
 - **prohibition of the reproductive cloning of human beings.**
- 3. In the field of ecology, the principle of sustainable development shall be respected.**

Statement of reasons

The principles in the field of medicine and biology are set out in the Convention on Human Rights and Biomedicine. It is not the aim of this Charter to derogate from those provisions. The list is not exhaustive, allowing for development to take account of future (delete: 1 word) developments in this area.

Article 2 of the Treaty on European Union as amended by the Treaty of Amsterdam sets for the Union the objective of achieving "balanced and sustainable development". Article 3(l) of the Treaty establishing the European Community establishes a competence in the field of environment

policy. The obligatory nature of the principle of sustainable development is established in Article 6, which reads:

"Environmental protection requirements must be integrated into the definition and implementation of Community policies and activities referred to in Article 3, in particular with a view to promoting sustainable development."

AMENDMENT 47**Proposed amendment to Article: 3**

Submitted by: Johannes VOGGENHUBER and Kathalijne BUITENWEG

Proposed text:

1. **Everyone has the right to respect for his physical and mental integrity.**
2. **Everyone has the right to a clean and healthy environment and to the protection of natural life support systems.**
3. **In the fields of medicine and biology, the following principles must be respected in particular:**
 - **any intervention directed at alteration of the human genome may be undertaken only for preventive, diagnostic or therapeutic purposes and only if it is not intended to bring about any alteration in the genome of progeny;**
 - **respect for the informed consent of the patient;**
 - **prohibition of making the human body and its products a source of financial gain;**
 - **prohibition of the reproductive cloning of human beings.**
4. **Everyone has the right to be informed of all data concerning his health and genetics. The wish not to be informed of such matters must be respected.**
5. **Genetic information may be used and passed on only with the patient's consent. The use of genetic diagnostics in employment and insurance matters is in any event prohibited.**

Reasons:

AMENDMENT 48

Proposed amendment to Article: 3. Right to respect for the integrity of the human person

Submitted by: Jürgen GNAUCK, Minister for Federal and European matters of Thuringia

Proposed text:

"Article 3. Right to respect for the integrity of the human person.

Everyone has the right to respect for his physical and psychological integrity."

Reasons:

Article 3 should contain only the above key statement. The term "psychological" also seems to be more appropriate than the term "mental" actually used.

Paragraph 2 should be deleted for the following two reasons: the principles mentioned in paragraph 2 are set out in the Convention on Human Rights and Biomedicine. It should be noted that not all Member States have acceded to that Convention.

The principles mentioned here also appear to be greatly in need of interpretation. Where, for example, does the boundary lie between genuine and reprehensible eugenic practices? In particular, the "prohibition of eugenic practices" referred to in the first indent is too indefinite, and so far-reaching in its effects as also to affect existing national provisions. Any measure intended to avoid genetically diseased progeny could ultimately be termed "eugenic". Accordingly, the abortion of a genetically affected embryo would also be "eugenic". This would also affect the current intensive discussion over pre-implantation diagnostics, as the latter's top priority aim is to detect genetic defects and "sort out" the corresponding embryos from the outset. In addition, the Article leaves the question entirely open as to whether "everyone" (cf. paragraph 1) covers the post-natal human being or also the unborn embryo. Paragraph 2 does not differentiate in this respect, however. In the case of "reproductive cloning of human beings" also referred to in paragraph 2, it does not seem clear what kind of human cloning (!) is indeed permitted (the cloning of parental cells, perhaps?). Further clarification in the statement of reasons at least would be helpful here.

Furthermore, it can be seen from the provisions of Article 3(2) how difficult it is to formulate "modern fundamental rights" succinctly. This is why the German Länder are in favour, at least

for the moment, of refraining from seeking a fundamental solution to problems such as medicine and biology, in particular, and of omitting the proposed paragraph 2. In the case of the problems raised, sufficient protection against abuse should be provided by Article 1 in conjunction with Article 3(1).

AMENDMENT 49

Proposed amendment to Article: 3

Submitted by: RODOTA', PACIOTTI and MANZELLA

Proposed text:

Replace the text of the Article with the following:

- "1. Everyone is entitled to respect for physical and mental integrity.**
- 2. No medical intervention can be carried out without the prior, free and informed consent of the person concerned and unless it is in conformity with his/her rights.**
- 3. The human body and its parts cannot be objects of trade.**
- 4. Eugenic practices aimed at organising the selection and the instrumentalisation of the person are prohibited.**
- 5. Human reproductive cloning is prohibited".**

Reasons:

The text, worded in prescriptive terms, reflects the state of development of the law regarding bioethics (cf. European Convention on Biomedicine).

AMENDMENT 50

Proposed amendment to Article: 3

Submitted by: Jean-Maurice DEHOUSSE, MEP, Alternate Member of the Convention

Proposed text:

Replace Article 3 by the following text :

1. The physical and mental integrity of the human person may not be harmed.
2. Respect for moral and physical integrity implies free access for all to advances in medicine and other sciences, and in particular equal access for all to health care.
3. Scientific research must also take account of everyone's rights:
 - increasing mastery of human genetics may not lead to eugenic practices designed to deprive the weakest of their rights;
 - the human body, its components and products may not be a source of financial gain;
 - more generally, living matter may not be patented, in whole or in part.
4. When old age impairs a person's integrity, that person shall receive specific help and assistance, regardless of his right to a pension,.
5. Everyone has the right to request and obtain a death which respects his dignity, particularly when respect for his physical and moral integrity or his dignity as a human being is infringed.
6. Everyone has the right to protection of the environment and shall have the right to compensation if that environment is altered without his agreement and his integrity is impaired.

Reasons:

Re 1: Stylistic improvement.

Re 2: Stylistic improvement; the right to free and equal access to health care is added as requested in a number of contributions to the Convention.

Re 3: Progress in genetics as a science requires a fuller text dispelling any ambiguity.

- Re 4: The community must rise to the challenges created by longer life-expectancy if human dignity is not to be sacrificed.
- Re 5: The Convention cannot avoid taking a stand on what happens when the right to life comes into conflict with respect for human dignity and is mistaken for a duty to remain alive.
- Re 6: The Charter cannot fail to address the implications of protection of the environment for the individual.

Proposals for Article 3(1)

AMENDMENT 51

Proposed amendment to Article: 3(1)

Submitted by: Peter ALTMAIER, Member of the German Parliament

Proposed text:

“Everyone has the right to respect for his physical, genetic and mental integrity.”

Reasons:

The reference to genetic integrity in Art. 3(1) clarifies the enumeration in Article 3(2). This seems desirable given the high value of genetic integrity.

AMENDMENT 52

Proposed amendment to Article: 3. Right to respect for the dignity of the human person

Submitted by: Jordi SOLÉ TURA

Proposed text:

p. 1 “Everyone has the right to respect for his physical and moral integrity.”

Reasons:

“Moral” is a more appropriate term than “mental” (in Spanish “psíquico”).

AMENDMENT 53**Proposed amendment to Article: 3(1)****Submitted by:** Piero MELOGRANI**Proposed text***

p. 1 Every **person** has the right to respect for his physical and mental integrity.

Reasons:

It is suggested that *everyone* be replaced by *every person* both in order to bring the text into line with Article 1 and with the title of Article 3 (which has “human person”) and to preclude interpretations which might lead to a general ban on abortion, in contrast to national legislation in many Member States.

* Proposed amendment in bold.

AMENDMENT 54

Proposed amendment to Article: 3(1)

Submitted by: Alvaro Roríguez BEREIJO, personal representative of the Spanish Prime Minister

Proposed text:

1. Everyone has the right to respect for his physical and moral integrity.

Reasons:

The French text does not contain the term “psychique”. Mental is a broader term, as is moral.

AMENDMENT 55

Proposed amendment to Article: 3(1)

Submitted by: EINEM/HOLOUBEK

Proposed text:

“Every *individual* has the right to respect for his physical and mental integrity”.

Reasons:

As a principle it seems expedient to make a clear distinction in the Charter between “individuals”, i.e. natural persons, and “persons” i.e. natural or legal persons. We therefore propose as a rule to speak of “individuals” when only natural persons are meant, and “persons” when natural and legal persons are meant.

There is no change to the content of the proposal by the Praesidium.

AMENDMENT 56

Proposed amendment to Article: 3(1)

Submitted by: Peter ALTMAIER, Member of the German Parliament

Proposed text:

“Everyone has the right to respect for his physical, genetic and mental integrity.”

Reasons:

The reference to genetic integrity in Art. 3(1) clarifies the enumeration in Art. 3(2). This seems desirable given the high value of genetic integrity.

Proposals for Article 3(2)

AMENDMENT 57**Proposed amendment to Article: 3****Submitted by:** Win GRIFFITHS, MP**Proposed Text:**

Everyone has the right to respect for his/her physical and mental integrity.

Delete 3.2

Reasons:

3.2 sets out criteria which, if included at all in the Charter, would be better placed in "Part B" – however that may be set out in the Charter.

It will also be necessary to indicate any limitations to the individual right to appeal when the individual himself/herself is not able to make decisions on his/her own.

AMENDMENT 58

Proposed amendment to Article: 3

Submitted by: Erling OLSEN

Proposed text:

Paragraph 2 should be deleted.

AMENDMENT 59**Proposed amendment to Article: 3**

Submitted by: Guy BRAIBANT, personal representative of the President of the French Republic and of the French Prime Minister

Proposed text:

In the third indent of the second paragraph, insert “, *its parts*” after “*the human body*”.

Reasons:

As presently drafted, the provision that the human body cannot be commercialised is incomplete as it does not cover organs.

AMENDMENT 60**Proposed amendment to Article: 3(2)**

Submitted by: E.M.H. HIRSCH BALLIN and M. PATIJN (on behalf of G.J.W. VAN OVEN)

Proposed text:

- Amend the introductory phrase to read as follows:

The following principles must be respected in this connection:

- Add the following to the fourth indent:

“and the creation of human/animal hybrids”.

Reasons:

The original introduction is too restrictive. The proposed addition reflects developments in bio-ethics.

AMENDMENT 61

Proposed amendment to Article: 3

Submitted by: R. VAN DAM, MEP

Proposed text:

Paragraph 2, fourth indent: prohibition of the (one word deleted) cloning of human beings.

Reasons:

The Article would thus provide greater protection against threats to human integrity.

AMENDMENT 62

Proposed amendment to Article: 3(2)

Submitted by: Piero MELOGRANI

Proposed text *:

In the fields of medicine and biology, the following principles must be respected in particular:

- prohibition of eugenic practices;
- respect for the informed consent of the patient, ***although an intervention may be carried out on a person who does not have the capacity to consent, solely for his or her direct benefit.***;
- prohibition of making the human body and its products a source of financial gain;
- prohibition of the reproductive cloning of human beings.

Reasons:

The words in bold are taken from Article 6 of the Oviedo Convention and are intended to allow interventions which may be necessary for minors and those who are temporarily or permanently incapacitated.

* Proposed amendment in bold.

AMENDMENT 63**Proposed amendment to Article: 3(2)**

Submitted by: Dr Sylvia-Yvonne KAUFMANN

Proposed text:

2. In the fields of medicine and biology, the following principles must be respected in particular:
 - prohibition of eugenic practices;
 - respect for the (*one word deleted*) consent of the patient;
 - prohibition of making the human body and its products a source of financial gain;
 - prohibition of the (*one word deleted*) cloning of human beings.

Reasons:

1. (Does not apply to the English text.)
2. It is a principle that the patient's decision must be respected and not made conditional upon prior information which doctors are in any case required to give.
3. Delete the term "reproductive" which to my mind (a) is unclear and (b) may be interpreted as restricting a total ban on cloning human beings.

AMENDMENT 64

Proposed amendment to Article: 3(2) Right to respect for the integrity of the human form

Submitted by: VITORINO, Commission representative on the Convention

Proposed text:

2. In the fields of medicine and biology, the following principles must be respected in particular:
 - prohibition of eugenic practices;¹
 - [...] free and informed consent of the patient;
 - prohibition of making the human body and its products a source of financial gain;
 - prohibition of the reproductive cloning of human beings.

Reasons:

1. “Respect” in the second indent repeats the verb in the introductory sentence.
2. Consent must not only be informed but also and above all free (see also Article 5(1) of the Convention on Human Rights and Biomedecine).

¹ The concept of eugenic practices must be clarified in the statement of reasons by, for instance, pointing out that its main purpose is the selection and instrumentalisation of persons.

AMENDMENT 65

Proposed amendment to Article: 3(2)

Submitted by: Dr Peter Michael MOMBAUR, MEP

Proposed text:

"Prohibition of the cloning of human beings"

Reasons:

The prohibition of the production of human beings with the same genetic material as a certain person living or dead must cover all stages of human development starting from the fusion of egg and sperm cell. Restricting the prohibition of cloning to reproductive cloning only would be wholly untenable and would certainly undermine acceptance of the Charter by numerous people in Europe.

AMENDMENT 66

Proposed amendment to Article: 3. Right to respect for the integrity of the human person

Submitted by: Mr Georges BERTHU, MEP

Proposed text:

Article 3. Right to respect for the integrity of the human person

1. Everyone has the right to respect for his physical and mental integrity.
2. In the fields of medicine and biology, the following principles must be respected in particular:
 - prohibition of eugenic practices;
 - respect for the informed **and stated** consent of the patient, **although that consent may not be to acts which are unlawful under domestic law or in breach of the rights guaranteed in this Charter and in particular in Article 2;**
 - prohibition of making the human body and its products a source of financial gain;
 - prohibition of the (...) cloning of human beings.

Reasons:

- A. The patient's consent must not only be based on detailed prior information, but must also be clearly expressed.
- B. There must be a total ban on cloning of human beings, not just on reproductive cloning, to prevent any risk of slippage. The distinction is in fact artificial, since the act is still the same and it is a fundamental principle that the law punishes acts, not the reasons for them.

AMENDMENT 67**Proposed amendment to Article: 3****Submitted by:** Pervenche BERÈS**Proposed text:****Article 3. Right to respect for the integrity of the human person**

Everyone has the right to respect for his physical and mental integrity.

In the fields of medicine and biology, the following principles must be respected in particular:

- prohibition of eugenic practices, with the purpose of selection and instrumentalisation of persons;
- respect for the informed consent of the person;
- prohibition of making the human body and its products into any kind of saleable commodity;
- prohibition of the reproductive cloning of human beings.

Reasons:

AMENDMENT 68

Proposed amendment to Article: 3: Right to respect for the integrity of the human person

Submitted by: Dr Ingo FRIEDRICH

Proposed text:

1. Everyone has the right to respect for his physical and mental integrity. (No change to English text)
2. In the fields of medicine and biology, the following principles must be respected in particular:
 - prohibition of eugenic practices;
 - respect for the informed consent of the patient;
 - prohibition of making the human body and its products a source of financial gain;
 - prohibition of the (one word deleted) cloning of human (one word deleted) life forms in all stages of their development.

Reasons:

Re paragraph 1:

Does not apply to the English text.

Re paragraph 2:

Only by banning the cloning of human beings can their uniqueness be ensured.

AMENDMENT 69**Proposed amendment to Article: 3****Submitted by:** Heinrich NEISSER**Proposed text:**

Article 3. Right to respect for the integrity of the human person

1. Everyone has the right to respect for his physical and mental integrity.
2. In the fields of medicine and biology, the following principles must be respected in particular:
 - prohibition of eugenic practices;
 - respect for the informed consent of the patient;
 - prohibition of making the human body and its products **as such** a source of financial gain;
 - prohibition of the reproductive cloning of human beings.

Reasons:

The expression “as such” bases the Article more closely on Article 21 of the Council of Europe Convention on Human Rights and Biomedicine. A total ban on any financial gain in connection with the human body and its parts seems excessive, particularly as far as getting blood and blood plasma from voluntary donors is concerned. The explanatory notes to Article 21 of the Convention state that organs and tissues proper should not be bought or sold or give rise to financial gain, but that technical acts (medical testing, pasteurisation, storage) performed in that connection should give rise to reasonable remuneration, and that medical devices incorporating processed human tissue may be sold. Further, blood and plasma donors may thus receive compensation (for their time and loss of income), but not payment in the sense of a purchase price.

AMENDMENT 70

Proposed amendment to Article: 3 : Right to respect for the integrity of the human person

Submitted by: Gabriel CISNEROS LABORDA

Proposed text:

1. Everyone has the right to respect for his physical and **moral** integrity.
2. At the end of the next paragraph, add:

All human life must necessarily result from the fusion of gametes of human origin.

Reasons:

1. *Moral* is considered a more appropriate word than *mental*.
2. Science is progressing constantly. Apart from cloning, research is being conducted into ways of creating life in which a human being will not originate from a man and a woman. Attempts are also being made to produce human eggs from any kind of living cell.

AMENDMENT 71

Proposed amendment to Article: 3. Right to respect for the integrity of the human person

Submitted by: Daniel TARSCHYS

Proposed text:

Article 3.1. Delete the words "physical and mental".

Article 3.2. It is suggested to make a separate paragraph of this Article.

Reasons:

Paragraph 1.

Swedish experts are uncertain as to the precise meaning of the expression "mental integrity". I would leave out the qualification.

The relationship of this Article to Article 12 (respect for private life) requires further consideration.

Paragraph 2.

While paragraph 1 of this draft Article is a more general protection clause, paragraph 2 appears to deal with very specific aspects of a person's physical and mental integrity. It would be better to treat these aspects separately.

(For the Swedish translation of the second indent, revert to the version used in Convent 13).

AMENDMENT 72**Proposed amendment to Article: 3**

Submitted by: Frits KORTHALS ALTES, representative of the Netherlands Government

Proposed text:

Delete paragraph 2.

Reasons:

Paragraph 2 may be omitted as it concerns a number of principles contained in the Council of Europe Convention on Human Rights and Biomedicine. Various Member States have not yet adopted a definitive position on a number of provisions of that Convention. It would also raise the question of why principles contained in other Council of Europe Conventions (such as the Framework Convention for the Protection of National Minorities, the European Charter of Local Self-government and the European Charter for Regional or Minority Languages) have not been included. This would not benefit the succinctness of the Charter, which is a further reason for deleting paragraph 2.

Proposed amendment to Article: 3**Proposed text:**

Add a new paragraph 3 reading as follows:

3. The right to respect for physical and mental integrity may be restricted only in accordance with the conditions laid down in Article 8(2) of the ECHR.

Reasons:

It would be preferable, as in the case of the ECHR, to indicate, for each right, the conditions under which the right in question may be restricted. A general restrictive clause would involve the danger that the possibilities for restriction might become too broad. In the interests of succinctness, Article 8(2) of the ECHR is not quoted in full, but merely referred to. It is thus clear that the conditions laid down by the ECHR must at least be fulfilled.

Proposals for Article 4

AMENDMENT 73

Proposed amendment to Article: 4. Prohibition of torture and inhuman treatment

Submitted by: Georges BERTHU, MEP

Proposed text:

Delete the second sentence (“No one may be expelled or extradited to a State where he would be in danger of being subjected to the death penalty, torture or other inhuman treatment.”).

Reasons:

While the first sentence sets out a general principle, the second sentence deals with a specific case.

This specific case would be better placed in Article 21 (Right to asylum and expulsion), assuming that the wording of Article 21 does not render it superfluous.

AMENDMENT 74**Proposed amendment to Article: 4****Submitted by:** R. VAN DAM, MEP**Proposed text:**Article 4 to be deleted.**Reasons:**

This Article may already be inferred implicitly from Articles 1 and 3 of the Charter. The expansion of the relevant concept in this Article does not contain any useful message for the *bodies of the European Union*. They do not have, nor should they be given, any penal jurisdiction. However necessary, protection against torture and inhuman or degrading treatment and punishment would be better dealt with in other contexts (e.g. in the Member States, the Council of Europe or the United Nations).

AMENDMENT 75

Proposed amendment to Article: 4. Prohibition of torture and inhuman treatment

Submitted by: Jordi SOLÉ TURA

Proposed text:

Sentence 2: “No one may be expelled or extradited to a State whose legal order does not condemn the death penalty, torture or inhuman treatment.”

Reasons:

The concept of “a State where he would be in danger of being subjected to” is inappropriate in law.

AMENDMENT 76

Proposed amendment to Article: 4

Submitted by: Guy BRAIBANT, personal representative of the President of the French Republic and of the French Prime Minister

Proposed text:

In the title, after “inhuman”, insert “or degrading”.

Also insert “or degrading” towards the end of the second sentence of the Article.

Reasons:

The aim is to make the title more consistent with the content of the Article and prevent the second sentence from being interpreted to mean that degrading treatment is not sufficient to prevent expulsion or extradition.

AMENDMENT 77

Proposed amendment to Article 4: Prohibition of torture and inhuman treatment

Submitted by: Dr Ingo FRIEDRICH

Proposed text: Delete sentence 2 from Article 4 and add as paragraph 2 to Article 21.

Reasons:

Contents belong to Article 21.

AMENDMENT 78

Proposed amendment to Article: 4

Submitted by: Lord GOLDSMITH, QC

Proposed text:

Amend to produce the following two-part text:

For Part A, “Proclamation of Rights”:

Delete the second sentence of this Article.

For Part B, “Definition of Rights”:

“The right in Article 4 is the right guaranteed by Article 3 of the ECHR.”

Reasons:

I believe that, as with the other formulations, a clear legal definition is required which avoids any risk of uncertainty or conflict and in every case attracts the relevant jurisprudence of the European Court of Human Rights. This is not the case here. Equally, it would be a mistake for the Charter to single out particular items of ECHR case law: that could imply that other important case law is less important or to be ignored.

AMENDMENT 79**Proposed amendment to Article: 4**

Submitted by: Piero MELOGRANI

Proposed text ^{*}:

No one shall be subjected to torture or to inhuman or degrading treatment or punishment. No one may be expelled or extradited to a State *where the circumstances give reason to believe that he could be* subjected to the death penalty, torture or other inhuman treatment.

Reasons:

The words in bold replace “*where he would be in danger of being*”, which cannot be seen as a sufficient guarantee. The proposed amendment is in line with the case law of the European Court of Human Rights.

* Proposed amendments are in bold.

AMENDMENT 80

Proposed amendment to Article: 4

Submitted by: Andrew DUFF, MEP

Proposed text:

Article 4. Prohibition of torture and inhuman treatment

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

No one may be expelled or extradited to a state where he or she would be in danger of being subjected to the death penalty, torture or other inhuman treatment.

Reasons:

This Article is taken from Article 3 of the European Convention on Human Rights:

No one shall be subjected to torture or to inhuman or degrading treatment or punishment. The second sentence of the Article (delete: 1 word) embodies the jurisprudence of the European Court of Human Rights (delete: 1 word) on Article 3.

AMENDMENT 81**Proposed amendment to Article: 4****Submitted by:** Erling OLSEN**Proposed text:**

The words "death penalty" contained in the second sentence of this provision should be deleted. (The prohibition on expulsion or extradition to countries in which the party concerned risks the death penalty comes under Article 2 of the Charter.)

Reasons:

The reason for this proposed amendment is that the prohibition on expulsion or extradition to countries in which the party concerned risks the death penalty does not follow from the jurisprudence of the Court of Human rights on Article 3 of the ECHR, as claimed in the "statement of reasons". On the contrary, the prohibition is regarded as a reflex effect of Article 2 of and Additional Protocol No 6 to the Convention. This provision therefore comes under Article 2 of the Charter, possibly through a reference to the relevant case law in part B.

AMENDMENT 82**Proposed amendment to Article: 4**

Submitted by: Frits KORTHALS ALTES, representative of the Netherlands Government

Proposed text:

Turn the first sentence into paragraph 1 and the second sentence into paragraph 2.

Reasons:

This corresponds more closely to the structure of the other Articles.

Proposed amendment to Article: 4 (second sentence)**Proposed text:**

The second sentence of Article 4 would read as follows:

2. No one may be expelled or extradited to a State where there are substantial grounds for believing that he would be in danger of being subjected to torture or inhuman or degrading treatment.

Reasons:

The text corresponds to the grounds of the European Court of Human Rights in the case of *Soering v. United Kingdom* of 7 July 1989. Article 4 relates to torture. There is no obvious reason, therefore, why the death penalty should be referred to here. See the amendment to Article 2.

AMENDMENT 83

Proposed amendment to Article: 4. Prohibition of torture and inhuman treatment

Submitted by: Jean-Luc DEHAENE, personal representative of the Belgian Government

Proposed text:

No one shall be subjected to torture or to inhuman or degrading treatment or punishment. No one may be expelled or extradited to a State where he would be in danger of being subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.

Reasons:

In order to bring the second sentence of this Article fully into line with the European Court case law on Article 3 of the European Convention on Human Rights (CDH, Cruz Varas et al., 20 March 1991, *Publications of the Court*, Series A, Vol. 201, par. 69-70; CDH, Vilvarajah et al., 30 October 1991, *Publications of the Court*, Series A, Vol. 215, par. 103), the words “*or degrading treatment or punishment*” need to be added to this provision (CONVENT 28 version).

AMENDMENT 84**Proposed amendment to Article: 4**

Submitted by: Win GRIFFITHS MP

Proposed text:

No one shall be subjected to torture or to inhuman or degrading treatment or punishment. No one may be expelled or extradited to a State where allegations against him/her would put him/her in danger of being subjected to the death penalty, torture or other inhuman treatment.

Reasons:

Amended text relates more specifically to any charge which would justify an application for extradition.

AMENDMENT 85

Proposed amendment to Article: 4, second sentence

Submitted by: E.M.H. HIRSCH BALLIN and M. PATIJN (also on behalf of Mr G.J.W. VAN OVEN)

Proposed text:

"No one may be expelled or extradited to a State if it can reasonably be foreseen that he may be subjected to torture or other inhuman treatment".

Reasons:

The wording proposed is more balanced than that contained in CONVENT 28.

AMENDMENT 86**Proposed amendment to Article: 4****Submitted by:** Pervenche BERÈS**Proposed text:**

No one shall be subjected to torture or to inhuman or degrading treatment or punishment. No one may be expelled or extradited directly or indirectly to a State where he would be in danger of being subjected to the death penalty, torture or other inhuman treatment.

Reasons:

The aim is to prevent expulsion to a destination from which an individual is likely to be ultimately expelled to a State where his physical integrity is threatened.

AMENDMENT 87

Proposed amendment to: 4 (second sentence)

Submitted by: Alvaro Rodríguez BEREIJO, personal representative of the Spanish Prime Minister

Proposed text:

Delete the second sentence or, if it is retained, refer only to a third State.

Delete “expelled”.

Reasons:

The wording of this provision is highly confusing and could well lead to misinterpretation. What does “in danger of being” actually mean? How can this be verified? As the European Union is not excluded from the scope of this clause, this right could be exercised between Union States, which is inadmissible in a Union of law. In the case of expulsion – if the text is interpreted literally – illegal immigrants (in breach of immigration laws) could not be expelled to their countries of origin under such circumstances.

The text must be seen in the light of Protocol 29 of the Treaty establishing the European Community which covers asylum and extradition between Member States of the Union; this provides that given the level of protection of fundamental rights and freedoms “Member States shall be regarded as constituting safe countries of origin in respect of each other for all legal and practical purposes in relation to asylum matters.”

Given the sweeping nature and vagueness of the concepts it introduces and the way it is drafted, this clause is unacceptable. It is as well to remember that within the European Union, members of terrorist groups frequently claim to be “in danger” of being subjected to torture or inhuman treatment and use this as a legal loophole to prevent their being expelled or extradited to a European Union Member State wishing to try them for terrorist acts they have committed.

AMENDMENT 88

Proposed amendment to Article: 4. Prohibition of torture and inhuman treatment

Submitted by: Jürgen GNAUCK, Minister for Federal and European Affairs of Thuringia

Proposed text:

Article 4. Prohibition of torture and inhuman treatment

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

Reasons:

Article 4 should contain only the above. The second sentence (prohibition of expulsion and extradition) should be added to Article 21 as a new paragraph 3 for reasons of logic.

AMENDMENT 89

Proposed amendment to: Article 4 (sentence 2)

Submitted by: Gabriel CISNEROS LABORDA

Proposed text:

No one may be expelled or extradited to a **third country whose legal order does not explicitly reject the death penalty, torture and other human treatment.**

Reasons:

The concept of “danger”, which is a clearly defined concept in criminal law, is unsuitable in this context and would be lacking in all legal rigour.

European Conventions on extradition provide that such bans must be limited to States which are not members of the European Union.

AMENDMENT 90

Proposed amendment to Article: 4

Submitted by: RODOTA', PACIOTTI and MANZELLA

Proposed text:

Delete from “No one may be expelled ...” to the end of the Article.

Reasons:

This sentence has been transferred to Article 21 (see corresponding amendment).

AMENDMENT 91**Proposed amendment to Article: 4****Submitted by:** EINEM/HOLOUBEK**Proposed text:**

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment. No one may be expelled or extradited to a State where he would be in danger of being subjected to the death penalty, torture or other inhuman treatment. *Any restriction of this right is prohibited.*”

Reasons:

Sentence 1 and sentence 2 of the proposed text remain unchanged. However, the third sentence which we propose adding should make it clear – in a way that the citizen can easily understand – that this fundamental right may not be restricted, in particular not in the framework of the “limitation of guaranteed rights” of Article 43 of the horizontal clauses.

Proposals for Article 5 as a whole

AMENDMENT 92

Proposed amendment to Article: 5. Statement of reasons

Submitted by: Dr Sylvia-Yvonne KAUFMANN

Proposed text:

Delete the statement of reasons

Reasons:

The statement of reasons should be deleted since the Charter refers to EU bodies and therefore none of the exceptions laid down in the ECHR apply.

AMENDMENT 93**Proposed amendment to Article: 5****Submitted by:** R. VAN DAM, MEP**Proposed text:**Article 5 to be deleted.**Reasons:**

This Article is already implied in Articles 1 and 3 of the Charter. Such expansion does not contain any useful message for the bodies or institutions of the European Union. In this case too, although the right in question needs to be protected, such protection would be better regulated and safeguarded elsewhere (e.g. in the Member States, the Council of Europe or the United Nations).

AMENDMENT 94**Proposed amendment to Article: 5**

Submitted by: Andrew DUFF, MEP

Proposed text:**Article 5. Prohibition of slavery and forced labour**

No one shall be (delete: 5 words) enslaved or subjected to forced labour.

(Delete: paragraph 2)

Reasons:

This Article is taken from Article 4 of the European Convention on Human Rights.

- "1. No one shall be held in slavery or servitude.*
- 2. No one shall be required to perform forced or compulsory labour.*
- 3. For the purpose of this Article the term "forced or compulsory labour" shall not include:*
 - (a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;*
 - (b) any service of a military character or, in case of conscientious objections in countries where they are recognised, service exacted instead of compulsory military service;*
 - (c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;*
 - (d) any work or service which forms part of normal civic obligations."*

The third paragraph of that Article, which indicates the cases in which labour is not regarded as forced or compulsory, has not been included. It will be incorporated via the horizontal clause relating to the European Convention on Human Rights. (Delete: 5 words) The concept of forced labour does not cover, inter alia, personal services laid down by law which are exacted of citizens for civic reasons or in case of an emergency or calamity, the fulfilment of military obligations or alternative service, or any work ordinarily exacted of a person deprived of liberty.

AMENDMENT 95

Proposed amendment to Article: 5. Prohibition of slavery and forced labour

Submitted by: Jürgen GNAUCK, Minister for Federal and European Affairs of Thuringia

Proposed text:

“Article 5. Prohibition of slavery, forced labour and trafficking in human beings.

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. Trafficking in human beings is prohibited.”

Reasons:

Trafficking in human beings is a growing problem throughout the world. It should, therefore, be expressly prohibited in the Charter.

AMENDMENT 96

Proposed amendment to Article: 5. Prohibition of slavery and forced labour

Submitted by: Daniel TARSCHYS

Proposed text:

Delete the draft text and replace it by Article 4 ECHR, possibly split between a part A and a part B.

Reasons:

Paragraph 3 of Article 4 of the ECHR does not merely contain definitions (a term used in the statement of reasons to the draft Article). Article 4 paragraph 3 of the ECHR implies significant limitations of the prohibition of forced and compulsory labour as found in paragraph 21 of the same Article. The only proper manner to deal with this is to reintroduce the exact wording of the ECHR, i.e. the whole text of Article 4 ECHR.

AMENDMENT 97

Proposed amendment to Article: 5

Submitted by: Lord GOLDSMITH, QC

Proposed text:

Amend to produce the following two-part text:

For Part A, “Proclamation of Rights”:

Retain existing text.

For Part B, “Definition of Rights”:

“The right in Article 5 is the right guaranteed by Article 4 of the ECHR”

Reasons:

I welcome the Praesidium’s reliance on the ECHR wording. But I disagree that limitations in this case or qualifications from ECHR case law “go without saying”. These matters are not necessarily obvious or beyond argument. The Charter must be completely clear and precise. It must avoid any legal uncertainty or conflict with existing obligations.

AMENDMENT 98**Proposed amendment to Article: 5****Submitted by:** Erling OLSEN**Proposed text:**

No changes to the wording of this Article are proposed. However, the definition of the right should make it clear that the performance of community service as an alternative to imprisonment is not covered by the term "forced or compulsory labour".

AMENDMENT 98

Blank

Proposals for Article 5(1)

AMENDMENT 99

Proposed amendment to Article: 5(1)

Submitted by: EINEM/HOLOUBEK

Proposed text:

No one shall be held in slavery or servitude. *Any restriction of this right is inadmissible.*

Reasons:

Sentence 1 corresponds word for word to the proposed text. Our proposal for an additional sentence 2 should make it immediately clear to citizens that this fundamental right cannot be restricted, and particularly not under the “general limitation clause” in Article 43 of the horizontal provisions.

Proposals for Article 5(2)

AMENDMENT 100

Proposed amendment to: Article 5(2) (addendum)

Submitted by: Alvaro Rodríguez BEREIJO, personal representative of the Spanish Prime Minister

Proposed text:

Add a third paragraph to read as follows: “**Forced or compulsory labour shall not include personal services as established by law or required of citizens for civic reasons or, in the case of an emergency or calamity, the performance of military service or alternative community service, or any work ordinarily required of a person in the course of detention.**”

Reasons:

Pursuant to Article 4(3) (a), (b), (c), and (d) of the ECHR “forced labour” excludes personal services exacted of citizens for civic reasons or in the case of an emergency or calamity, or the performance of military service or alternative community service or any work ordinarily required of a person in the course of detention. Although the statement of reasons states that the horizontal clause is a sufficient way of incorporating these exceptions, it must be stressed that, without pre-empting the status that this Charter must be given in the European legal order, a provision of this nature addressed to the States should set out in appropriate terms the legal justification for excluding the circumstances listed from being considered as forced labour.

The reasons given in the statement of reasons for the amendment to Article 2(2) should be reproduced here.

AMENDMENT 101

Proposed amendment to Article: 5(2)

Submitted by: Frits KORTHALS ALTES, representative of the Netherlands Government

Proposed text:

2. No one shall be required to perform forced or compulsory labour, save in the cases referred to in Article 4(3) of the European Convention on Human Rights.

Reasons:

Article 4(3) of the ECHR stipulates those activities not to be regarded as forced or compulsory labour for the purposes of that article. In view of the system followed as regards limitations, reference should be made to Article 4(3) of the ECHR.

AMENDMENT 102

Proposed amendment to Article: 5. Prohibition of slavery and forced labour
Paragraph 2

Submitted by: Georges BERTHU, MEP

Proposed text:

“No one shall be required to perform forced or compulsory labour, **subject to the reservations set out in Article H2** (provisional numbering)”.

Reasons:

The same as for Article 2(1).

AMENDMENT 103**Proposed amendment to Article: 5**

Submitted by: Johannes VOGGENHUBER and Kathalijne BUITENWEG

Proposed text:

1. ...
2. **No one shall be subjected to forced or compulsory labour.**

Reasons:

AMENDMENT 104

Proposed amendment to Article: 5

Submitted by: Jean-Maurice DEHOUSSE, MEP, Alternate Member of the Convention

Proposed text:

Replace paragraph 2 of the proposed text by the following:

Apart from a legal requisition to fulfil a social obligation, no one shall be required to perform forced or compulsory labour.

Reasons:

There are cases in which the survival of a community may justify compulsory labour, even if it is arduous or dangerous, but legal texts must lay down specific arrangements for the various cases conceivable.

Proposals for Article 6

Proposals for Article 6

AMENDMENT 105**Proposed amendment to Article: 6**

Submitted by: R. VAN DAM, MEP

Proposed text:

The second sentence to be deleted.

Reasons:

The second sentence bears no relation to the powers of the institutions and bodies of the European Union. In this case too, although the right in question needs to be protected, such protection would be better regulated and safeguarded elsewhere (e.g. in the Member States, the Council of Europe or the United Nations).

AMENDMENT 106

Proposed amendment to Article: 6. Reasons

Submitted by: Dr Sylvia-Yvonne KAUFMANN

Proposed text:

Delete the statement of reasons

Reasons:

The statement of reasons should be deleted since the Charter refers to EU bodies only and therefore none of the exceptions laid down in the ECHR apply.

AMENDMENT 107

Proposed amendment to Article: 6

Submitted by: Peter ALTMAIER, Member of the German Bundestag

Proposed text:

Delete sentence 2.

Reasons:

To be systematic, sentence 2 should be deleted since the general limitation clause in the horizontal provisions of the Charter of Fundamental Rights also applies to Article 6.

AMENDMENT 108**Proposed amendment to Article: 6**

Submitted by: Dr Peter Michael MOMBAUR, MEP

Proposed text:

Delete the second sentence.

Reasons:

The limitation results from the horizontal articles.

AMENDMENT 109**Proposed amendment to Article: 6**

Submitted by: José BARROS MOURA and Maria Eduarda AZEVEDO

Proposed text:

Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in **specified cases and in accordance with a procedure prescribed by law as laid down in the European Convention on Human Rights.**

AMENDMENT 110**Proposed amendment to Article: 6****Submitted by:** AndrewDUFF, MEP**Proposed text:****Article 6. Right to liberty and security**

Everyone has the right to liberty and security (delete: 2 words) . No one shall be deprived of (delete: 2 words) these save in cases prescribed by law (delete: 1 word) and in accordance with (delete: 1 word) judicial procedures (delete: 3 words).

Reasons:

Article 5 of the European Convention on Human Rights defines the cases in which a person may be deprived of his liberty as follows:

- "1. *Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:*
- (a) the lawful detention of a person after conviction by a competent court;*
 - (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;*
 - (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;*
 - (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;*

- (e) *the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;*
- (f) *the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.*
2. *Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.*
3. *Everyone arrested or detained in accordance with the provisions of paragraph 1.c of this article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.*
4. *Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.*
5. *Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation."*

The aim of Article 6 of the Charter is not to allow any cases of deprivation of liberty other than those authorised by the European Convention on Human Rights, which apply by virtue of draft Article H2(2) on the limitation of guaranteed rights, set out in CHARTE 4235/00 CONVENT 27. (Delete: 11 words) These rights should in particular be respected when, in accordance with Title VI of the Treaty on European Union, the Union adopts framework decisions for harmonisation in criminal matters.

AMENDMENT 111

Proposed amendment to Article: 6. Right to liberty and security

Submitted by: Dr Ingo FRIEDRICH

Proposed text:

Art. 6. Right to liberty (delete two words)

Everyone has the right to liberty (delete two words) of person. No one shall be deprived of his liberty save in specific cases and in accordance with a procedure prescribed by law.

Reasons:

If the concept of “security” was viewed in isolation, namely as an object of legal protection in its own right, including it in the Charter of Fundamental Rights would add a new dimension to its contents which would legally bind the State, i.e. the security authorities and thus also the police, to a very large extent. The Member States’ constitutions will not contain provisions of this sort explicitly guaranteeing (public) security. The Amsterdam Treaty does indeed set the Union the aim of creating “an area of freedom, security and justice” (Article 2 of the TEU) and this political objective may be seen as a guarantee of the security of persons living on Union territory. However, there is no need to create an individual legal status with very unspecific contents.

AMENDMENT 112

Proposed amendment to Article: 6. Right to liberty and security

Submitted by: Jürgen GNAUCK, Minister for Federal and European Affairs of Thuringia

Proposed text:

“Article 6. Right to liberty.

Everyone has the right to liberty. No one shall be deprived of his liberty save in cases prescribed by law and in accordance with a procedure prescribed by law”.

Reasons:

The term “security” in Article 6 sentence 1 still seems unacceptable to the Länder. Taken over from French judicial usage, this term could cause problems under a German understanding of law. It might, for example, give rise to the mistaken belief that citizens had claims to internal security measures. The term is not explained in detail in the statement of reasons; it therefore seems preferable to delete it.

AMENDMENT 113

Proposed amendment to Article: 6

Submitted by: Frits KORTHALS ALTES, representative of the Netherlands Government

Proposed text:

1. Everyone has the right to liberty and security of person.
2. No one may be deprived of his liberty except in the cases mentioned in Article 5(1) of the ECHR.
3. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.
4. Everyone arrested or detained in accordance with the introductory part of Article 5(1) and Article 5(c) of the ECHR shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.
5. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.
6. Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation.

Alternative text:

1. Everyone has the right to liberty and security of person.
2. No one may be deprived of his liberty except in the cases mentioned in Article 5(1) of the ECHR and having regard to the rights guaranteed in Article 5(2) to (5) of the ECHR.

Reasons:

As with the ECHR, it is preferable, in the case of each right, to indicate the conditions under which that right may be restricted. With a general restriction clause, the possibilities for restriction may become too extensive. As a result, the proposed text refers to the grounds mentioned in Article 5(1) of the ECHR.

The rights guaranteed in Article 5(2) to (5) of the ECHR are set out in paragraphs 3 to 6 of the present article. Reference to the ECHR would be insufficient here as what is involved is not possible restriction of rights but the substance of rights themselves. If this should prove undesirable given the wish to keep the Charter concise, it would suffice to refer to the rights of someone deprived of his liberty, as laid down in Article 5(2) to (5) of the ECHR. In this connection see the alternative amended text.

AMENDMENT 114**Proposed amendment to Article: 6**

Submitted by: E.M.H. HIRSCH BALLIN and M. PATIJN (also on behalf of G.J.W. VAN OVEN)

Proposed text:

The text of Article 5 (1) of the ECHR should be adopted word for word.

Reasons:

An exhaustive description of the fundamental right to liberty and security is contained in the ECHR. The text of Article 6 as contained in CONVENT 28 is loosely worded.

AMENDMENT 115

Proposed amendment to Article: 6

Submitted by: Lord GOLDSMITH, QC

Proposed text:

Amend to produce the following two-part text:

For Part A, “Proclamation of Rights”:

Amend to read: “Everyone has the right to liberty and security of person and cannot be deprived of it save in limited specific cases and in accordance with a procedure prescribed by law”

For Part B, “Definition of Rights”:

“The rights in Article 6 are the rights guaranteed by Article 5 of the ECHR”

Reasons:

I am happy with the substance of the Praesidium proposal but would suggest the small adaptation shown above which I think reads better and expresses the limitation better. My comments about Article 5 above are relevant. The Praesidium asserts in its commentary that these rights necessarily apply when the Union adopts framework decisions for harmonisation in criminal matters in accordance with Title VI of TEU. That assertion would have to be examined very carefully in the context of existing provisions about competence and justiciability.

AMENDMENT 116

Proposed amendment to Article: 6. Right to liberty and security

Submitted by: Daniel TARSCHYS

Proposed text:

Delete the second sentence of the draft Article. Reproduce the full Article 5 of the ECHR in a part B of the Charter.

Reasons:

Article 5 of the ECHR is the source of inspiration for this draft Article. It regulates in an exhaustive manner all the instances when the deprivation of a person's liberty is in line with the ECHR. To merely have a reference to (some) "cases" without express mention of those cases would be a step backwards as far as European protection of human rights is concerned. Moreover, the fact that important additional rights as provided for in Article 5 paragraphs 2-5 of the ECHR are left out of the draft Article means that the protection intended to be covered by it is not as wide-reaching as that already afforded by the ECHR.

AMENDMENT 117

Proposed amendment to Article: 6

Submitted by: Jordi SOLÉ TURA

Proposed text:

“Everyone has the right to liberty and security of person. No one shall be deprived of his liberty **save in cases prescribed by law and in accordance with a procedure prescribed by law.**”

Reasons:

More appropriate legal drafting in Spanish.

AMENDMENT 118**Proposed amendment to Article: 6****Submitted by:** Piero MELOGRANI**Proposed text** ^{*}:

Right to liberty

Everyone has the right to liberty (...) of person. No one shall be deprived of his liberty save in cases prescribed by law and in accordance with a procedure prescribed by law.

Reasons:

It is proposed that the reference to *security* be deleted from both title and text of the Article, as it is a potential source of misunderstanding. The words “right to security of person” tend to suggest a guarantee against danger, for example dangers relating to crime. The Court has consistently interpreted the “right to security of person” as a safeguard against arbitrary detention, as with the right of *habeas corpus*. That concept is covered by “right to liberty”.

* Proposed amendments are in bold.

AMENDMENT 119**Proposed amendment to Article: 6****Submitted by:** Pervenche BERÈS**Proposed text:**

Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in cases prescribed and in accordance with legal procedures.

Reasons:

“Loi” is a concept which does not exist in continental European law.

AMENDMENT 120**Proposed amendment to Article: 6**

Submitted by: Alvaro Rodríguez BEREIJO, personal representative of the Spanish Prime Minister

Proposed text:

“Everyone has the right to liberty and security of person. No one shall be deprived of his liberty **save in cases prescribed by law and in accordance with a procedure prescribed by law.**”

Reasons:

The proposed wording is a linguistic improvement [to the Spanish], and also brings the text into line with technical legal language: “specific” cases [used in the Spanish] are only those which are prescribed by law and the “legal means” [in Spanish] are the forms or procedures also prescribed by law. Moreover, this is the wording in the French text, suggesting that there must just be a problem with the Spanish translation.

AMENDMENT 121**Proposed amendment to Article: 6****Submitted by:** EINEM/HOLOUBEK**Proposed text:**

“Every *human being* has the right to liberty and security. No one shall be deprived of his liberty save in cases prescribed by law and in accordance with a procedure prescribed by law.”

Reasons:

It is only possible to deprive natural persons of their liberty. For the sake of clarity, we propose using “human being”.

AMENDMENT 122

Proposed amendment to Article: 6

Submitted by: RODOTA', PACIOTTI and MANZELLA

Proposed text:

After “security of person” add “and family”.

Reasons:

The aim in specifying further the concept of security is to ensure that it applies to the family sphere and not just the individual.

AMENDMENT 123**Proposed amendment to Article: 6**

Submitted by: Jean-Maurice DEHOUSSE, MEP, Alternate Member of the Convention

Proposed text:**Replace Article 6 by the following:**

1. No one shall be deprived of his liberty save in cases prescribed by law and in accordance with a procedure prescribed by law.
2. The public authorities have a duty to organise society in such a way that the safety of persons and property is guaranteed, giving society a sense of security.

Reasons:

Re 1: The general right to liberty has been recognised by Article 1(2). No amendment has been made to the second sentence of Article 6.

Re 2: Society's headlong slide into violence starting at school necessitates a more precise formulation very different from the text in the European Convention on Human Rights.

Proposals for Article 7

AMENDMENT 124**Proposed amendment to Article: 7**

Submitted by: Lord GOLDSMITH, QC

Proposed text:

Defer consideration of this Article (although see the proposal in the body of the Reasons)

Reasons:

This article creates problems which cannot be resolved until the totality of the other rights in the Charter have been finalised. This provision relates principally to the provision of remedies. The provision of remedies is rather the question of the horizontal articles and the legal status of the document.

The proposed Article is in any event unsatisfactory in extending Article 13 ECHR to all rights and in removing reference to “national authority”.

My position therefore is that this should be deferred until later. At that stage it may be possible to agree that a version along the following lines be put forward:

For Part A, “Proclamation of Rights”:

“Everyone whose rights and freedoms in this Charter are violated has the right to an effective remedy before an appropriate authority.”

For Part B, “Definition of Rights”:

“The rights in Article 7 are the rights provided a) in the case of acts of the Union Institutions, by Articles TEC 230 (action for annulment), 232 (failure to act); and 234 (preliminary rulings); and b) in the case of Member States implementing Community law, by national rules.”

AMENDMENT 126

Proposed amendment to Article: 7

Submitted by: Andrew DUFF, MEP

Proposed text:

Article 7. Right to an effective remedy

Everyone whose rights and freedoms are violated has the right to an effective remedy before a court.

Reasons:

This Article (delete: 1 word) reflects Article 13 of the European Convention on Human Rights:

"Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

The Court of Justice enshrined the principle in Community law in its judgment of 15 May 1986 (Johnston, Case 222/84, ECR I 651). According to the Court, this principle also applies to the Member States when they are implementing Community law. The inclusion of this precedent in the Charter is not intended to change the appeal system laid down by the Treaties, and particularly the rules relating to admissibility. This principle is to be implemented according to the procedures laid down in the Treaties: an action for annulment when the conditions for admissibility have been fulfilled or a preliminary ruling on admissibility when the case is brought before a national judge. The wording of the Article has been adapted to take account of the specific characteristics of the Union. Thus, reference to a national authority has been deleted, since the Charter applies only to institutions and organs of the Union and since, in this framework, an action may be brought either before the Community judge or before the national judge who is the ordinary-law judge as regards

application of Community law. Accordingly, reference to a national authority has been replaced with reference to a court because the Court precedent refers to judicial protection.

AMENDMENT 126

Proposed amendment to Article: 7

Submitted by: Pervenche BERÈS

Proposed text:

Everyone whose rights or freedoms **have been** violated has the right to an effective remedy before a court.

Reasons:

This wording is in line with the new wording of Article 4.

AMENDMENT 127

Proposed amendment to Article: 7. Right to an effective remedy

Submitted by: Georges BERTHU, MEP

Proposed text:

Everyone whose rights and freedoms are violated **within the framework of the activities of the European Union** has the right to an effective remedy **before an independent and impartial court**.

Reasons:

As the Charter should concern only the direct or indirect activities of the institutions of the European Union, it is important to emphasise that here.

Addition of the phrase “before an independent and impartial court” moreover makes it possible to do without Article 8 (see that Article).

AMENDMENT 128

Proposed amendment to Article: 7:

Submitted by: Heinrich NEISSER

Proposed text:

Article 7: Right to an effective remedy

*Everyone whose rights and freedoms **as set forth in this Charter** are violated has the right to an effective remedy before a court.*

Reasons:

This Article is meant to correspond to Article 13 of the European Convention on Human Rights. That Article contains a procedural guarantee which extends only to rights guaranteed in the ECHR; in other words it is accessory. Article 7 of the Draft should therefore also be accessory. However, the present version (CONVENT 28) would include a general right to access to a court, which already exists in Article 8 of the Draft. Our proposed wording would emphasise the binding character of the rights set forth in the Charter.

AMENDMENT 129

Proposed amendment to Article: 7. Right to an effective remedy

Submitted by: Daniel TARSCHYS

Proposed text:

Rephrase this Article in the following way: "Everyone whose rights and freedoms *according to this Charter* are violated has the right to an effective remedy before a *competent authority*".

Reasons:

There are two main problems with the draft version of this Article.

In the first place it is not at all clear what is to be understood by the notion of "rights and freedoms". Article 13 of the ECHR is limited to the rights and freedoms set forth in the ECHR. Are rights and freedoms under domestic law to be included or does the formula in Convent 28 refer only to the rights that are included in the proposed charter? Assuming the latter, I propose to insert a clarification on this point. If any right under domestic legislation is to be covered by the draft Article, including such rights that do not fall within the scope of a "civil right" as this notion is interpreted by the European Court of Human Rights in the light of Article 6 of the ECHR, parts of the procedural laws of Member States (cf. the reference in the statement of reasons to the application of "this principle" also to Member States when they are implementing Community law) probably have to be amended in order to fulfil the requirements of this Article.

A second problem is linked to the reference to "courts" rather than "national authorities", which is the term used in Article 13 of the ECHR. The statement of reasons is not convincing on this point, since national bodies are involved in the implementation of Community legislation.

AMENDMENT 130

Proposed amendment to Article: 7:

Submitted by: Heinrich NEISSER

Proposed text:

Article 7: Right to an effective remedy

*Everyone whose rights and freedoms **as set forth in this Charter** are violated has the right to an effective remedy before a court.*

Reasons:

This Article is meant to correspond to Article 13 of the European Convention on Human Rights. That Article contains a procedural guarantee which extends only to rights guaranteed in the ECHR; in other words it is accessory. Article 7 of the Draft should therefore also be accessory. However, this version (CONVENT 28) would include a general right to access to a court, which already exists in Article 8 of the Draft. Our proposed wording would place particular emphasis on the binding character of the rights set forth in the Charter.

AMENDMENT 131

Proposed amendment to Article: 7

Submitted by: Alvaro Rodríguez BEREIJO, personal representative of the Spanish Prime Minister

Proposed text:

Everyone whose rights and freedoms, as recognised in this Charter, are violated has the right to effective judicial protection”

Reasons:

1. Given the context of the Charter the precise scope of this right should be specified; it should therefore be stated explicitly that the rights and freedoms to be protected are those recognised by the Charter, and no others.
2. The Spanish word ‘recurso’ [appeal] is used when a case on which sentence has already been passed by a lower body is reviewed either by an administrative or a legal body. The technically more correct phrase – “access to effective judicial protection” is therefore proposed.

The right to effective judicial protection is a fundamental “service” right, requiring that the legislator regulate the relevant form and conditions (i.e. organise the judiciary and the administration of justice) for this right to be exercised and enjoyed by anyone.

AMENDMENT 132

Proposed amendment to Article: 7

Submitted by: Erling OLSEN

Proposed text:

As I already pointed out in my written submission of 17 March 2000, this provision should either be deleted or be dealt with separately as a horizontal provision.

In any case, the words "as referred to in this Charter" should be inserted after the words "rights and freedoms". Moreover, the words "before a court" should be deleted.

Reasons:

This provision does not make sense unless it is made clear which rights and freedoms it covers.

AMENDMENT 133

Proposed amendment to Article: 7

Submitted by: R. VAN DAM, MEP

Proposed text:

"Everyone whose rights and freedoms are violated has the right to an effective legal remedy before a court of competent jurisdiction."

Reasons:

This brings the text closer to Article 13 of the ECHR while taking account of the special characteristics of the Union.

AMENDMENT 134**Proposed amendment to Article: 7****Submitted by:** Piero MELOGRANI**Proposed text** ^{*}:

Everyone whose rights and freedoms are violated has the right to an effective remedy before a court *or an equivalent body*.

Reasons:

As the horizontal clauses specify, the Charter applies not merely to Union bodies but also to Member States when they are applying or implementing Community law. It should therefore be made clear that, at national level, effective remedy may also be sought before “*an equivalent body*”, i.e. a body which, while technically speaking not forming part of the judicial machinery, will by virtue of its position and procedures provide equivalent safeguards (impartiality, fair hearing, etc.) to those of the courts.

* Proposed amendments are in bold

AMENDMENT 135

Proposed amendment to Article: 7. Right to an effect remedy

Submitted by: Micheal O'KENNEDY, TD, personal representative of the Irish Head of State/Government

Proposed text:

Article 7

Everyone whose rights and freedoms are violated has the right to an effective remedy before a **competent authority.**

Reasons:

Change "court" to "competent authority" as there are wider sources of remedies than courts, such as an Ombudsman. This also reflects the language of the ECHR.

AMENDMENT 136

Proposed amendment to Article: 7. Right to effective legal protection (delete 1 word)

Submitted by: Dr Ingo FRIEDRICH

Proposed text:

Everyone whose rights and freedoms are violated has the right to (delete 6 words) effective legal protection before a court.

Reasons:

“Legal protection” should be used rather than “remedy”, since “remedy” has a specific and very narrow meaning. Further, “effective remedy” could create the mistaken impression that the remedy must also in some way be successful.

The term “court” should be understood in the sense decided by the CJEC in relation to requests for preliminary ruling pursuant to the second paragraph of Article 234 of the TEC; therefore rulings on appeal in the area of asylum law, for example, may also be taken by an independent and impartial review body (see Section III point 8 of the Council Resolution of 20 June 1995 on minimum guarantees for asylum procedures, OJ C 274/13 of 19 September 1996).

AMENDMENT 137

Proposed amendment to Article: 7. Right to effective remedy

Submitted by: Jürgen GNAUCK, Minister for Federal and European Affairs of Thuringia

Proposed text:

“Article 7. Right to effective remedy

Everyone whose rights and freedoms are violated has the right to an effective remedy before a court.”

Reasons:

The wording in CONVENT 13 seems preferable to that in CONVENT 28 since the term “remedy”, as understood in German law, has a specific and very narrow meaning.

AMENDMENT 138

Proposed amendment to Article: 7

Submitted by: Gabriel CISNEROS LABORDA

Proposed text:

“Every one whose rights and freedoms are violated has the right to **effective access to the courts**”.

Reasons:

The use of the word “recurso” [appeal] in the Spanish could cause confusion with a body of second instance.

AMENDMENT 139

Proposed amendment to: Article 7 (heading)

Submitted by: Frits KORTHALS ALTES, representative of the Netherlands Government

Proposed text:

Article 7. Right to an effective remedy before a court

Reasons:

This brings the wording of the heading into line with the wording used in the Article.

AMENDMENT 140

Proposed amendment to Article: 7

Submitted by: José BARROS MOURA and Maria Eduarda AZEVEDO

Proposed text:

Everyone whose rights and freedoms are violated has the right to an effective remedy before **the national or Community court having jurisdiction.**

AMENDMENT 141

Proposed amendment to Article: 7

Submitted by: Jean-Maurice DEHOUSSE, MEP, Alternate Member of the Convention

Proposed text:

Replace the proposed text of Article 7 by the following:

The European Union guarantees the right of everyone whose rights and freedoms are violated to an effective and rapid remedy before an independent court.

Reasons:

The European Union does not have the power to modify social conduct but has the right and the duty to establish a procedure for protection and remedy.

It is normal and necessary that rapidity be guaranteed; otherwise remedy becomes derisory.

Finally, in such a context, remedy cannot be sought in just any court.

Proposals for Article 8 as a whole

AMENDMENT 142

Proposed amendment to Article: 8. Right to a fair trial

Submitted by: Daniel TARSCHYS

Proposed text:

Reconsider the whole text of this Article.

Reasons:

Paragraph 1:

I have several problems with this text which is said to follow Article 6 of the ECHR. Not quite. Firstly, Article 6 ECHR makes a distinction between civil and criminal cases and the case law of the Strasbourg Court is extensive when it comes to the definitions, in particular regarding the meaning of "civil rights and obligations".

Paragraph 2

The draft Article leaves open the object of the "fair and public hearing". Can anyone request a tribunal to conduct a hearing on any matter whatsoever? Article 6 paragraph 1 of the ECHR applies only to cases where the "determination of [a person's] civil rights and obligations or of any criminal charge against [a person]" is concerned.

The way the present draft Article is construed leaves room for doubt as to whether there is a need for draft Article 7. The relationship between the two Articles needs further clarification.

I also question the second paragraph of the draft Article which seems to guarantee free legal aid in all cases, including civil matters. Like many other Member States, Sweden does not automatically grant legal aid in all matters. Article 6 of the ECHR, according to its wording, guarantees legal aid in the form of legal assistance in criminal matters only. Furthermore, neither the Article nor statement of reasons indicates who would bear the costs for what might become a substantial undertaking. EU institutions? Member States? Any estimate of the financial implications of this Article?

AMENDMENT 143

Proposed amendment to Article: 8. Right to a fair trial

Submitted by: Mr Georges BERTHU, MEP

Proposed text:

Delete this Article.

Reasons:

Paragraph 2 corresponds rather to a measure implementing the general principle set out in paragraph 1 (everyone is entitled to a fair hearing). It should therefore be included in a legislative text of a lower level, not in a charter of fundamental rights.

Paragraph 1 could be transferred to Article 8 (see amendment to that Article) so as to shorten the Charter by condensing provisions which are in any case already contained in a multitude of international texts and are disputed by no-one.

AMENDMENT 144**Proposed amendment to Article: 8****Submitted by:** Win GRIFFITHS, MP**Proposed text:**

1. Everyone is equal before the law and is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.
2. Legal aid shall be provided in circumstances prescribed by member states.

Reasons:

1. The inclusion of the principle of equality before the law is a more appropriate place, I believe, than in Article One where it is linked with the dignity of the person. It is better to link it with the right in a fair trial.
2. I am not aware of a legal base making legal aid a fundamental right so if it is to be mentioned at all it should be in the context of the legislation of member states.

AMENDMENT 145**Proposed amendment to Article: 8**

Submitted by: E.M.H. HIRSCH BALLIN and M. PATIJN (also on behalf of G.J.W. VAN OVEN)

Proposed text:

The title to be changed to: "Right to access to justice"

The following text to be added to paragraph 1: "Judgment shall be pronounced publicly."

Reasons:

The proposed amendments conform more closely to the ECHR.

AMENDMENT 146

Proposed amendment to Article: 8.1 Right to a fair trial

Submitted by: Michael O'KENNEDY, TD, personal representative of the Irish Head of State/Government

Proposed text:

Article 8

1. **In the determination of the civil and political rights and obligations of any person or of any criminal charge against any person,** everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

Reasons:

Article 8.1 requires an introduction in order to identify in which area the right applies. It is therefore suggested that the introduction from the ECHR be restored.

AMENDMENT 147

Submitted by: Erling Olsen

Article 8:

A description of the areas covered should be added to paragraph 1.

Paragraph 1 should be reworded as follows: “In the determination of his or her civil rights and obligations or of any criminal charge against him or her, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law”.

In paragraph 2 it should be added that legal aid is provided subject to the conditions laid down by national legislation or by the Rules of Procedure of the Court of Justice and the Court of First Instance.

Reasons:

Pursuant to Article 6 (1) of the ECHR, this provision covers only criminal offences and matters relating to civil rights and obligations. As regards the addition to paragraph 2, more detailed provisions concerning the right to a free trial are contained in national legislation and in the Rules of Procedure of the Court of Justice and the Court of First Instance. In its current form, this provision fails to specify *inter alia* that there must be reasonable grounds for conducting proceedings.

AMENDMENT 148**Proposed amendment to Article: 8****Submitted by:** Heinrich NEISSER**Proposed text** (for the Article and the comment):*Article 8. Right to a **fair trial***

1. *Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.*
2. **Everyone is entitled to be advised and represented by a legal counsel in matters of law.**
Legal aid shall be provided to those who lack sufficient resources insofar as such aid is indispensable to ensure effective access to justice.

Reasons:*This Article favours [...]**In Community law [...] applies*

The concept of a “court” is understood here in the broad sense as developed by the European Court for Human Rights in its case law on Article 6 of the ECHR: as an independent and impartial judicial body which decides on cases according to the law on the basis of a regulated procedure with appropriate guarantees. However, the mere fact of being termed a “court” is not sufficient.

The term “legal counsel” means that it is left to the national legal systems to regulate representation in and out of court under the law on professions.

The limitations have not been adopted [...]

Reasons:

The right to legal council is expressly provided for in some European constitutions (Netherlands, Portugal, Italy, Spain) and should therefore be included in the Draft.

The term “court” must be explained to take account of the wide range of judicial bodies in the Member States.

AMENDMENT 149

Proposed amendment to Article: 8

Submitted by: EINEM/HOLOUBEK

Proposed text: Article 8. Right to a **fair trial**

1. *In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.*
2. *Everyone is entitled to make use of a legal counsel.* Legal aid shall be provided to those who lack sufficient resources insofar as such aid is indispensable to ensure effective access to justice.

Reasons: The heading should refer to the general concept of a “fair trial”. The right to an impartial tribunal is only one part of this, albeit an important one.

Unlike the Praesidium Draft, the proposed wording of paragraph 1 follows the rule in Article 6(1) of the ECHR that this fundamental right applies to “the determination of (his) civil rights and obligations or of any criminal charge”. Right of access to a court for all actions – the basis for the statement of reasons in the Praesidium text – is already guaranteed in Article 7. The specific procedural guarantees, in particular the principle of a public trial, should in accordance with Article 6 of the ECHR refer to civil rights and obligations and/or criminal charges.

The proposed text avoids having to allow for numerous exceptional procedures (e.g. tax tribunals) via the “general limitation clause”. It makes it immediately clearer to citizens what their rights are. The wording should not create the impression that comprehensive and very far-reaching rights are being promised, which are then largely taken away by a single provision.

The first sentence of paragraph 2 contains a proposal for a new right entitling every person to make use of a legal counsel. In view of the complexity of legal provisions, this right is one of the essential requirements for holding a fair trial. It can also be seen as the logical prerequisite for the right to legal aid guaranteed under the second sentence of paragraph 2. This second sentence follows the Praesidium Draft word for word.

AMENDMENT 150

Proposed amendment to: Article 8

Submitted by: Alvaro Rodríguez BEREIJO, personal representative of the Spanish Prime Minister

Proposed text:

Right to an impartial judge

Replace “*prudencial*” with “*razonable*” [reasonable] in the Spanish text, replace “tribunal” with “judicial authority” and replace “established” with “predetermined”. Amend the second sentence by adding: “unless the claim is manifestly untenable or unfounded”.

Reasons:

The word “*razonable*” is more correct in Spanish, and moreover is the word used in the ECHR. The term “judicial authority” is more correct in Spanish in that it covers both single court judges and collegiate bodies, which is what tribunals are in Spain. The phrase “predetermined by law” is better than “established”.

As regards free legal aid, the ECHR has agreed that under the Convention such aid may be refused if the claim is manifestly unfounded.

AMENDMENT 151

Proposed amendment to Article: 8. Right to an independent tribunal

Submitted by: Jürgen GNAUCK, Minister for Federal and European Affairs of Thuringia

Proposed text:

“Article 8. Right to an independent tribunal.

1. “Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law”.
2. Legal aid shall be provided to those who lack sufficient resources insofar as such aid is indispensable to ensure effective access to justice, and where there is a reasonable chance of success.
3. Special tribunals are inadmissible.”

Reasons:

The addition to paragraph 2, “ and where there is a reasonable chance of success” is intended to prevent legal aid being requested for actions which are clearly hopeless or querulous.

The proposed paragraph 3 is intended to exclude special tribunals which would thwart the legal protection of citizens.

AMENDMENT 152

Proposed amendment to Article: 8

Submitted by: Lord GOLDSMITH, QC

Proposed text:

Substitute the following two-part text:

For Part A, “Proclamation of Rights”

"1. “Everyone is entitled to a fair and public hearing within a reasonable period of any criminal charge against him or her, or in determining his or her civil rights and obligations. Hearings shall be by an independent and impartial tribunal established by law.

"2. “If it is a criminal charge, the accused shall be presumed innocent until proved guilty according to law and has certain guaranteed rights to defend himself or herself.”

For Part B, “Definition of Rights”:

“The rights in Article 8 are the rights guaranteed by Article 6 of the ECHR”

Reasons:

My amendment defines the right in terms of the relevant ECHR provision. The CONVENT 28 draft is not an accurate expression of the relevant obligations accepted by parties to the ECHR. I do not accept the implied additional general obligations in Article 8 (*e.g.* relating to hearings in the determinations of all disputes, whether or not about a civil right or obligation or a criminal charge, and legal aid). Accordingly they should not be included in the Charter. I also disagree (for the reasons given in relation to Article 5 above) that it is possible or acceptable to deal with limitations to rights such as these in a general horizontal article.

In any event the detailed provisions of Article 6 ECHR, the corresponding right in this case, contain many positive rights which are not picked up by the short form text, either in the Praesidium’s text or in mine. It is to attract those, as well as any limitations, that the Part B definition text is necessary. This point applies also to several other ECHR-based Articles.

AMENDMENT 153

Proposed amendment to Article: 8. Right to a fair trial

Submitted by: Jean-Luc DEHAENE, personal representative of the Belgian Government

Proposed text:

1. Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.
2. To ensure effective access to justice, legal aid shall be provided to those who lack sufficient resources.

Reasons:

The proposed text retains the principle of free legal aid for those in need. The stipulation that the aid must be “indispensable” to ensure effective access to justice has been left out in order to widen access to justice. The omission of this supplementary condition is in line with the case law of the European Court of Human Rights (see the note to this Article in CONVENT 13).

Proposals for Article 8(1)

AMENDMENT 154**Proposed amendment to Article: 8(1)**

Submitted by: Frits KORTHALS ALTES, representative of the Netherlands government

Proposed text:

1. Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. *All or part of the trial may be held in camera under the conditions listed in Article 6(1) of the ECHR, but judgment shall be pronounced publicly.*

Reasons:

The proposed text follows Article 6(1) of the ECHR more closely since it states explicitly that judgment must be pronounced publicly and also refers to the grounds on which the court may decide that all or part of the proceedings are to be held in camera. For the sake of brevity, reference is made to Article 6(1) of the ECHR.

AMENDMENT 155

Proposed amendment to Article: 8

Submitted by: RODOTA', PACIOTTI and MANZELLA

Proposed text:

In paragraph 1, replace “established” by “already established”.

Reasons:

The proposed amendment is designed to strengthen the right to a fair trial: by emphasising that the tribunal must already be established, it aims to avoid the possibility of ad hoc laws.

AMENDMENT 156

Proposed amendment to Article: 8

Submitted by: R. VAN DAM, MEP

Proposed text:

A new paragraph to be inserted between paragraphs 1 and 2:

2. Judgment shall be pronounced publicly. This right shall not be subject to any restrictions other than those permitted under Article 6(1) of the ECHR.

Reasons:

The text thus conforms more closely to the ECHR.

Proposals for Article 8(2)

AMENDMENT 157

Proposed amendment to Article: 8(2) Right to a fair trial

Submitted by: Dr Ingo FRIEDRICH

Proposed text:

Delete paragraph 2

Reasons:

This provision is only binding for access to the CJEC, as the Union is not competent for regulating national provisions on legal aid. For the CJEC, the institution of legal aid is sufficiently embodied in its Rules of Procedure. Moreover, the intent of paragraph 2 is already contained in paragraph 1: it is inherent in the right to a fair trial.

The provision is also problematic from a budgetary perspective.

AMENDMENT 158

Proposed amendment to Article: 8(2)

Submitted by: Piero MELOGRANI

Proposed text ^{*}:

Legal aid shall be provided to those who lack sufficient resources insofar as such aid is ***necessary*** to ensure effective access to justice.

Reasons:

“*Necessary*” is proposed instead of “*indispensable*”, as it is felt that the latter excessively restricts the substance of the right to legal aid.

* Proposed amendments are in bold

AMENDMENT 159

Proposed amendment to Article: 8

Submitted by: José BARROS MOURA and Maria Eduarda AZVEDO

Proposed text:

Concerns the term used for “legal aid” in the Portuguese version only.

AMENDMENT 160**Proposed amendment to Article: 8**

Submitted by: RODOTA', PACIOTTI and MANZELLA

Proposed text:

In paragraph 2, replace “Legal aid shall be provided to those who lack sufficient resources insofar as such aid is indispensable” by “Those who lack sufficient resources shall be provided with the necessary legal aid”.

Reasons:

The proposed amendment is designed to strengthen the right to a fair trial.

AMENDMENT 161

Proposed amendment to Article: 8

Submitted by: Dr Sylvia-Yvonne KAUFMANN

Proposed text:

1. Free legal aid shall be provided to those who lack sufficient resources insofar as such aid is indispensable to ensure effective access to justice *and their defence*.
2. This also applies to witnesses and to victims of acts of criminal violence.

Reasons:

1. Legal aid must be free so as to ensure equality before the law for everyone.
2. With respect to paragraph 2, it would be desirable if – particularly in criminal proceedings – in addition to the rights of the accused, those of the witnesses or those of the victims of acts of criminal violence in general were provided for in an appropriate manner and if they were also guaranteed free, effective protection of their rights in proceedings. This is proposed in the new sentence 3.

AMENDMENT 162**Proposed amendment to Article: 8**

Submitted by: Prof. Jürgen MEYER/Pervenche BERES/ Jo LEINEN/Hans-Peter MARTIN /Ieke VAN DEN BURG

Proposed text:

Article 8 Right to a fair trial and legal counsel

1. Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Everyone is entitled in matters of law to be advised and represented by a lawyer.
2. Legal aid shall be provided to those who lack sufficient resources insofar as such aid is indispensable to ensure effective access to justice.

Reasons:

Paragraph 1 sentence 1 follows the Praesidium's wording.

In sentence 2 the right to a legal counsel is supplemented. Although this right is not explicitly mentioned in the German Basic Law, the Federal Constitutional Court has derived such a right from the concept of the constitutional state (Constitutional Court 63, 266, 284).

This right is expressly provided for in the constitutions of the Netherlands (Art. 18), Italy (Art. 24), Portugal (Art. 20(2) and Art. 269(3) and Spain (Art. 17(3) and Art. 24(2)).

Paragraph 2 follows the Praesidium's wording.

Proposals for Article 9 as a whole

AMENDMENT 163**Proposed amendment to Article: 9****Submitted by:** Andrew DUFF, MEP**Proposed text:****Article 9. Presumption of innocence and rights (delete: 2 words) to defence**

Everyone who has been charged shall be presumed innocent until proved guilty according to law, and shall have the right to a defence.

(Delete: paragraph 2)*Statement of reasons*

This Article is taken from Article 6(2) and (3) of the European Convention on Human Rights, which reads as follows:

- "2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.*
- 3. Everyone charged with a criminal offence has the following minimum rights:*
- (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;*
 - (b) to have adequate time and facilities for the preparation of his defence;*
 - (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;*
 - (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;*

- (e) *to have the free assistance of an interpreter if he cannot understand or speak the language used in court."*

Given the decision taken in favour of concise drafting, it was not thought necessary to include this Article in full, but in accordance with Article 6 of the TEU these provisions, which clarify the principles set out in the Article of the Charter, are applicable in Community law.

AMENDMENT 164

Proposed amendment to Article: 9. Presumption of innocence and rights of the defence

Submitted by: Michael O'KENNEDY, TD, personal representative of the Irish Head of State/Government

Proposed text:

Article 9

Everyone who has been charged **with a criminal offence** shall be presumed innocent until proved guilty according to law.

Everyone who has been charged **with a criminal offence** shall be guaranteed respect for that person's right to defence.

Reasons:

It is suggested that "with a criminal offence" be included as it conforms with the ECHR and it makes clear that the Article is about criminal offences only. The original formulation would cause unforeseen consequences if not amended.

AMENDMENT 165

Proposed amendment to Article: 9. Presumption of innocence and rights of the defence

Submitted by: Charlotte CEDERSCHIÖLD

Proposed text:

1. [In the Swedish text, the words "för ett brott" should be deleted and the word "hans" changed to "**hans/hennes**".]
2. Everyone who has been charged shall be guaranteed respect for his **or her** rights to defence.
[In the Swedish text, the words "för ett brott" should be deleted.]

Reasons:

The Swedish version, which includes the words "ett brott" ["a crime"], does not correspond to the French or English versions. The Swedish version should be changed so that it corresponds to the French and English versions; the words "ett brott" should therefore be deleted from this Article.

AMENDMENT 166**Proposed amendment to Article: 9**

Submitted by: Lord GOLDSMITH, QC

Proposed text:

Now covered in Article 8. Therefore delete.

Reasons:

My version of Article 8 deals with the matters in Article 9. In any event, as it stands and without a clear definition in the Part B text defining these rights as the right in Article 6 ECHR, Article 9 would be much too imprecise and apt to create confusion and conflict.

Proposals for Article 9(1)

AMENDMENT 167

Proposed amendment to Article: 9(1)

Submitted by: Piero MELOGRANI

Proposed text ^{*}:

Everyone who has been charged *with a criminal offence* shall be presumed innocent until proved guilty according to law.

Reasons:

This addition, whereby the person must have been charged “*with a criminal offence*”, comes from Article 6(2) of the ECHR and makes clear that the presumption of innocence does not apply to “charges” in connection with investigations under administrative law.

* Proposed amendments are in bold

AMENDMENT 168

Proposed amendment to Article: 9

Submitted by: Win GRIFFITHS, MP

Proposed Text:

Everyone who has been charged shall be presumed innocent until proven guilty according to the law and guaranteed respect for his/her rights of defence.

Delete 2

Reasons:

Brevity without loss of meaning.

Proposals for Article 9(2) and (3)

AMENDMENT 169**Proposed amendment to Article: 9**

Submitted by: Kathalijne BUITENWEG

Proposed text:

Paragraph 2 to be amended as follows:

2. Everyone charged with a criminal offence has the following minimum rights:

- (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
- (b) to have adequate time and facilities for the preparation of his defence;
- (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
- (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
- (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

Reasons:

This amendment replaces paragraph 2 with the verbatim text of Article 6(3) of the ECHR. A list of the "rights of the defence" is best placed in a charter of fundamental rights.

AMENDMENT 170

Proposed amendment to Article: 9

Submitted by: R. VAN DAM, MEP

Proposed text:

Article 6(2): Everyone who has been charged shall be guaranteed respect for his rights to defence pursuant to Article 6(2) and (3) of the ECHR.

Reasons:

The text thus conforms more closely to the ECHR.

AMENDMENT 171

Proposed amendment to Article: 9(2)

Submitted by: Dr Sylvia-Yvonne KAUFMANN

Proposed text:

“Everyone who has been charged has the right to respect for his rights of defence”. (No change to English text.)

Reasons:

The non-gender specific wording “jeder angeklagten Person” is preferable to “jedem Angeklagten” which can only be masculine (translator’s note: this applies to the German only).

AMENDMENT 172

Proposed amendments to Article: 9. Presumption of innocence and rights of the defence

Submitted by: Daniel TARSCHYS

Proposed textU:

Proposal (9.2):

It is suggested to change "respects for his rights" to "the right".

Reasons:

Article 6 paragraph 3 of the ECHR provides important minimum standards for human rights protection in the field of criminal procedural law. It therefore seems insufficient to refer to those rights merely by means of a reference to Article 6 of the TEU. In any event it seems uncertain in which situations this Article is supposed to be applied: to what extent does Community law allow its institutions to charge or prosecute individual citizens?

Guaranteeing only "respect for his rights" seems very weak.

AMENDMENT 173**Proposed amendment to Article: 9(2)**

Submitted by: Frits KORTHALS ALTES, representative of the Netherlands government

Proposed text:

2. Everyone charged with a criminal offence has the following minimum rights:
 - (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
 - (b) to have adequate time and facilities for the preparation of his defence;
 - (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
 - (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
 - (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

Alternative:

2. Everyone charged with a criminal offence is entitled to respect for his rights to defence, as laid down in Article 6(3) of the European Convention on Human Rights.

Reasons:

Article 6(3) of the ECHR has been incorporated word for word. The only change is the use of the term "*strafvervolging*" [charged with a criminal offence] instead of "*vervolging*" [charged] in Dutch, for the sake of clarity. It is not sufficient here to refer to the ECHR, as the provision is concerned not with any limitations on rights but with the actual substance of those rights. Should this version not be desirable in the interests of keeping the Charter concise, the alternative, making clear the defence rights involved by reference to Article 6(3) of the ECHR, will suffice.

AMENDMENT 174

Proposed amendment to Article: 9(3)

Submitted by: Pervenche BERÈS

Proposed text:

Add:

3. Everyone who has been denied justice has the right to compensation.

Reasons:

Proposals for Article 10 as a whole

AMENDMENT 175

Proposed amendment to Article: 10 – No punishment without law

Submitted by: Mr Georges BERTHU, MEP

Proposed text:

Delete this Article.

Reasons:

The first sentence of paragraph 1 posits an excellent principle (no punishment without law) but which, as it says itself, stems from national or international law, and not from European law.

The continuation of the Article (after the first sentence) sets out simple procedures for applying the general principle and should have been deleted in any case for reasons of simplification, even if the first sentence had been retained.

AMENDMENT 176

Proposed amendment to Article: 10

Submitted by: Dr Peter Michael MOMBAUR, MEP

Proposed text:

Proposed text for the heading:

"No punishment without general legal rule"

Reasons:

See reasons given for Article 1(2).

[For the record SN 2888/00: The term "law" ("Gesetz") belongs to the Member States' legal domain. Its use elsewhere in the draft Charter should consequently also be checked.]

AMENDMENT 177**Proposed amendment to Article: 10****Submitted by:** Pervenche BERÈS**Proposed text:**Title: Principle of legality

No one shall be held guilty of any offence on account of any act or omission which did not constitute an offence under national law or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the offence was committed. If, subsequent to the commission of the offence, the offence is abolished or a new law provides for a lighter penalty, that penalty shall be immediately applicable.

Reasons:

It is important to provide for the case where the offence no longer exists, as was the case with abortion, and in future the possible decriminalisation of certain drugs.

AMENDMENT 178

Proposed amendment to Article: 10. No punishment without law

Submitted by: Charlotte CEDERSCHIÖLD

Proposed text:

1. No one shall be held guilty of any offence on account of any act or omission which did not constitute an offence ¹ under national law or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the offence was committed. If, subsequent to the commission of the offence, the law provides for a lighter penalty, that penalty shall be applicable.
2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of international law.

Reasons:

The translation into Swedish which includes "ett brott" does not correspond to the French and English versions. "Offence" in English means more than "brott" does in Swedish – "brott" should be "criminal offence" in English. The Swedish version should be amended so that it corresponds to the French and English texts and therefore "ett brott" should be deleted from the Article.

"Lagöverträdelse" is proposed as a translation instead, which is closer to "offence"/"infraction" respectively.

¹ Does not concern English text.

AMENDMENT 179**Proposed amendment to Article: 10****Submitted by:** Heinrich NEISSER**Proposed text:**

Article 10. No punishment without law

1. *No one shall be held guilty of any offence on account of any act or omission which did not constitute an offence under national law or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the offence was committed. If, subsequent to the commission of the offence, the law provides for a lighter penalty, that penalty shall be **used as a basis when the penalty is determined.***
2. *This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of international law¹.*

Reasons:

In its original wording the last sentence of paragraph 1 is misleading since it literally directs that the penalty should be applicable in any case.

In the German version the more common term "Völkerrecht" should be used in paragraph 2 instead of "internationales Recht".

¹ Does not concern English text.

AMENDMENT 180

Proposed amendment to Article: 10

Submitted by: Lord GOLDSMITH, QC

Proposed text:

Substitute the following two-part text:

For Part A, “Proclamation of Rights”

Delete the last sentence of 10.1 and all of 10.2 so that the text reads:

“No one shall be held guilty of any offence on account of any act or omission which did not constitute an offence under national law or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the offence was committed”

For Part B, “Definition of Rights”:

“The right in Article 10 is the right guaranteed by Article 7 of the ECHR”

Reasons:

I have no objections of substance to the Praesidium’s proposed text, although I have previously suggested a text which might be shorter and easier to understand, namely “No one shall be punished except under the law.” My proposals for Part B ensure that Article 10 is understood within the meaning of ECHR Article 7. I have not included the reference made to the principle of retroactivity of a more lenient penal law. I confirm that the UK recognises that principle, but await confirmation that that is so in other Member States.

AMENDMENT 181

Proposed amendment to Article: 10. No punishment without law

Submitted by: Jean-Luc DEHAENE, personal representative of the Belgian Government

Proposed text:

1. No-one shall be held guilty of any offence on account of any act or omission which did not constitute an offence under national law or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the offence was committed. If, subsequent to the commission of an offence, the law provides for a lighter penalty, that penalty shall be applicable.
2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law.

Reasons:

The proposed text is intended to replace the term "*general principles of international law*" (CONVENT 28 version) with "*general principles of (international) law*". The latter term is broader in scope and is also more in keeping with the terminology used in public international law. The "*general principles of (international) law*" represent the fundamental rules of the various national legal systems (FRIEDMANN, W., "The uses of "General Principles" in the Development of International Law", in *American Journal of International Law*, 1963, pp. 279-299; DEGAN, V.D., "General Principles of Law – A Source of General International Law", in *Finnish Yearbook of International Law*, 1992, pp. 1-102; ELIAS, O. and LIM, C., "General Principles of Law", "Soft" Law and the Identification of International Law", in *Netherlands Yearbook of International Law*, 1997, pp. 3-50). As regards the origin of the "general principles of (international) law", legal theory divides them into three types (MOSLER, H., "General Principles of Law", in *Encyclopedia of Public International Law*, BERNHARD, R (ed.), Amsterdam, Elsevier, 1995, Vol.II, pp. 511-527): (1) the general principles of law which are recognised in national legal systems and which are relevant to international law; (2) the general principles of law which have come into being in international relations; (3) the general principles of law which apply in all kinds of legal systems, whether national or international.

Proposals for Article 10(1)

AMENDMENT 182

Proposed amendment to Article: 10

Submitted by: Andrew DUFF, MEP

Proposed text:

Article 10. No punishment without law

No one shall be held guilty of any offence (delete: 7 words) which did not constitute an offence under (delete: 4 words) law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the offence was committed. If, subsequent to the (delete: 1 word) committing of the offence, the law provides for a lighter penalty, that penalty shall be applicable.

(Delete: paragraph 2)

Reasons:

This Article is intended to reflect Article 7 of the ECHR, and follows the traditional principle of the non-retroactivity of laws and criminal sanctions. There has been added the principle of the retroactivity of a more lenient penal law which exists in a number of Member States and which features in Article 15 of the Covenant on Civil and Political Rights. Article 7 of the European Convention on Human Rights is worded as follows:

- "1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.*
- 2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations."*

In paragraph 2, the reference to "general principles of law recognised by civilised nations" has been replaced by the more modern reference to "general principles of international law"; this does not change the meaning of this paragraph, which refers to crimes against humanity in particular.

AMENDMENT 183

Proposed amendment to Article: 10

Submitted by: RODOTA', PACIOTTI and MANZELLA

Proposed text:

In paragraph 1, replace “under national or international law” with “under the law in force”.

Reasons:

The amendment to paragraph 1 is intended to prevent overlapping with paragraph 2.

AMENDMENT 184

Proposed amendment to Article: 10

Submitted by: François LONCLE

Proposed text:

Article 10

In the final sentence of paragraph 1, the word “lighter” should be replaced by “lesser”.

Reasons:

Editorial amendment in line with the terminology used in criminal law.

Proposals for Article 10(2)

AMENDMENT 185

Proposed amendments to Article: 10(2)

Submitted by: Alvaro Rodríguez BEREIJO, personal representative of the Spanish Prime Minister

Proposed text: regarding “Principle of legality in criminal cases”

Paragraph 2: should be deleted.

Reasons:

Paragraph 2 introduces an open-ended criminal offence, “any act or omission which, at the time when it was committed, was criminal according to the general principles of international law”, which is incompatible with the principle of legality in criminal cases. Vague, unspecific and open-ended references to “the general principles of international law” in order to classify forms of behaviour as offences are inadmissible. In criminal matters, which are strictly subject to a reservation in law, references to indefinite generic “principles” create major legal uncertainty.

This provision should be deleted or, at the very least, the term “general principles” should be removed.

AMENDMENT 186

Proposed amendments to Article: 10(2)

Submitted by: Dr Sylvia-Yvonne KAUFMANN

Proposed text:

2. This Article shall not prejudice the trial and punishment for any act or omission *in connection with crimes against humanity* which, at the time when it was committed, was criminal according to the general principles of international law.

Reasons:

The inclusion of the reference to “crimes against humanity” more clearly defines the purpose of Article 10(2).

AMENEDMENT 187

Proposed amendments to Article: 10(2)

Submitted by: RODOTA', PACIOTTI and MANZELLA

Proposed text:

In paragraph 2, replace “of international law” with “of the international legal system”.

Reasons:

The amendment to paragraph 2 uses the expression “international legal system” to include evolving principles now established in the international community.

Proposals for Article 10a

AMENDMENT 188

Proposed amendments to Article: 10

Submitted by: RODOTA', PACIOTTI and MANZELLA

Proposed text:

Add the following after Article 10:

“Article 10a. right to equal humane treatment

1. Any punishment or penalty shall be proportionate to the seriousness of the offence and shall not exceed the limits of what is appropriate and necessary to the achievement of the aim sought.
2. Punishment may not consist of inhumane treatment and shall be directed towards the re-education of the convicted person.”

Reasons:

The principle enshrined in paragraph 1 has frequently been asserted in the decisions of the Court of Justice (see judgement in the *Atalanta Case*, 21/6/79).

Paragraph 2 establishes a civilised principle accepted in a number of European constitutions or legal systems.

Proposals for Article 11

AMENDMENT 189

Proposed amendments to Article: 11. Right not to be tried or punished twice

Submitted by: Georges BERTHU, MEP

Proposed text: Delete this Article.

Reasons:

This Article deals explicitly with criminal law, which comes within the Member States' jurisdiction. If it were to remain, it would need to be linked to specific European jurisdiction, which is not the case here.

It should be noted that the same criticism could probably be levelled at the previous Articles, although there is no express reference in them to criminal law.

AMENDMENT 190**Proposed amendment to Article: 11****Submitted by:** Erling OLSEN**Proposed text:**

The provision in Article 4(2) of Protocol No 7 to the ECHR on the reopening of a criminal case should be incorporated into Article 11, or be clearly evident from Part B.

Reasons:

AMENDMENT 191**Proposed amendment to Article: 11****Submitted by:** Andrew DUFF, MEP**Proposed text:****Article 11. Right not to be tried or punished twice**

No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he has already been (delete: 1 word) lawfully acquitted or convicted (delete: 5 words).

Statement of reasons

Article 4 of Protocol No 7 to the European Convention of Human Rights reads as follows:

- "1. No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State.*
- 2. The provisions of the preceding paragraph shall not prevent the reopening of the case in accordance with the law and the penal procedure of the State concerned, if there is evidence of new or newly discovered facts, or if there has been a fundamental defect in the previous proceedings, which could affect the outcome of the case.*
- 3. No derogation from this Article shall be made under Article 15 of the Convention."*

Paragraph 2 of the Article in Protocol No 7 will be applicable by virtue of the horizontal clause relating to the Convention. The "non bis in idem" principle applies in Community law (see, among the many precedents, the judgment of 5 May 1996, Cases 18/65 and 35/65,

Gutmann v Commission [1966] ECR 150 and a recent case, the decision of the Court of First Instance of 20 April 1999, Joined Cases T-305/94 and others, Limburgse Vinyl Maatschappij-NV v Commission, not yet published).

AMENDMENT 192

Proposed amendment to Article: 11

Submitted by: R. VAN DAM, MEP

Proposed text:

No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he has already been finally acquitted or convicted in accordance with the law, in accordance with Article 4 of Protocol No 7 to the ECHR.

Reasons:

This text fits in better with the ECHR and moreover leaves open the possibility of a case being reviewed (on the basis of new facts or circumstances).

AMENDMENT 193**Proposed amendment to Article: 11****Submitted by:** Frits KORTHALS ALTES**Proposed text:**

No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he has already been finally acquitted or convicted in accordance with the law, *due account being taken of the requirements of Article 4 of Protocol No 7 to the European Convention on Human Rights*.

Reasons:

The addition of a reference to Article 4 of Protocol No 7 to the ECHR is necessary as the provision would otherwise be too imprecise.

AMENDMENT 194

Proposed amendments to Article: 11. Right not to be tried or punished twice

Submitted by: Daniel TARSCHYS

Proposed text:

The draft text needs to be complemented and include what is presently in paragraph 2 of Article 4 of Protocol 7 to the ECHR.

Reasons:

The draft roughly corresponds to paragraph 1 of Article 4 of Protocol 7 of the ECHR but leaves out paragraph 2. The explanation that the latter will be applicable by virtue of the horizontal clause is not sufficient. It needs to be reproduced, at least in part B.

If the Charter later becomes a legally binding text it would be acceptable only with an inclusion of paragraph 2 of Article 4 of Protocol 7 ECHR.

AMENDMENT 195**Proposed amendment to Article: 11**

Submitted by: Guy BRAIBANT, personal representative of the President of the French Republic and the French Prime Minister

Proposed text:

Add "*and with the penal procedure of that State*" to this Article after "*in accordance with the law*".

Reasons:

This addition is in line with Article 4 of Protocol No 7 to the ECHR. It is essential in order to ensure that no court interprets this provision as prohibiting the application of both an administrative and a criminal penalty for one and the same offence.

AMENDMENT 196

Proposed amendment to Article: 11. Right not to be tried or sentenced twice for one and the same offence

Submitted by: Jordi SOLÉ TURA

Proposed text:

"No one shall be liable to be tried or sentenced again in criminal proceedings for an offence for which he has already been finally acquitted or convicted in accordance with the law."

Reasons:

The term "sentenced" is more appropriate in law than "punished", which is a more general word, more often used outside the legal context. The amended title of the Article is clearer, since anybody can be tried and sentenced more than once for different offences.

AMENDMENT 197**Proposed amendment to Article: 11****Submitted by:** Piero MELOGRANI**Proposed text** *:

“No one shall be liable to be tried or punished again in criminal proceedings ***within the same legal system*** for an offence for which he has already been finally acquitted or convicted ***in criminal proceedings*** in accordance with the law ***of that system.***”

Reasons:

Article 4 of Protocol No 7 to the ECHR, from which the present regulation draws inspiration, establishes the *non bis in idem* principle only for the jurisdiction of a single State. At present, international law allows one country to try for the same act a person who has already been tried and convicted in another country (e.g. in cases of international drug trafficking or counterfeiting of money). It is therefore proposed to specify that the prohibition of second trials applies only within a single *"legal system"*. This expression is preferred to the word "State" used in Article 4 of Protocol No 7 to the ECHR to allow extension of the regulation to Union bodies in the event, rather remote in fact, that in the future the Union assumes direct powers in criminal matters. It also needs to be specified that the final judgment that prevents a second trial must be a judgment *"in criminal proceedings"*.

* The parts it is proposed to amend are indicated in bold.

AMENDMENT 198

Proposed amendment to Article: 11

Submitted by: E.M.H. HIRSCH BALLIN and M. PATIJN (also on behalf of G.J.W. VAN OVEN)

Proposed text:

Insert “, under the jurisdiction of the European Union or of one of its Member States,” between “for which” and “he has already been finally”.

Reasons:

This proposed qualification, which is also included in the ECHR, is indispensable.

AMENDMENT 199

Proposed amendment to Article: 11

Submitted by: Pervenche BERÈS

Proposed text:

Heading: Right not to be tried or convicted twice

Reasons:

The term “conviction” is more accurate.

AMENDMENT 200

Proposed amendment to Article: 11

Submitted by: Alvaro Rodríguez BEREIJO, personal representative of the Spanish Prime Minister

Proposed text:

Right not to be tried or **convicted** twice **in criminal proceedings for the same conduct**

No one shall be liable to be tried or convicted again in criminal proceedings for conduct for which he has already been finally acquitted or convicted in criminal proceedings.

or alternatively:

No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he has already been finally acquitted or convicted in criminal proceedings in accordance with the law.

Reasons:

The fact that this Article applies only to criminal proceedings needs to be made clearer, thus leaving open the possibility of both a criminal and a disciplinary penalty for the same conduct. Spain has not ratified Protocol No 7 to the ECHR. The problem which this principle raises is its extension to disciplinary matters, prohibiting the imposition of both a criminal and an administrative penalty for the same conduct in the case of the special constraints which apply, for instance, to civil servants or others having particularly close links with the administration (for example, an employee of the authorities may receive a custodial sentence for murder from a criminal court and may subsequently, as a consequence of the criminal conviction, be dismissed from the administration by an administrative authority in disciplinary proceedings. Besides this, the first wording is preferred in this case as it more precisely confines the scope of the preclusion of double jeopardy to two criminal penalties for the same **conduct**, rather than offence, although an alternative draft accommodating the above comments is also proposed.

The reservations expressed by Spain are shared by other States in the Union.

A qualification must be attached to the renewed assertion in the statement of reasons that “the “*non bis in idem*” principle applies in Community law (see, among the many precedents, the judgment of 5 May 1996, Cases 18/65 and 35/65, Gutmann v. Commission [1966] ECR 150 and a recent case, the decision of the Court of First Instance of 20 April 1999, Joined Cases T-305/94 and others, Limburgse Vinyl Maatschappij NV v. Commission, not yet published)”. At least in the case of the first decision, which it has been possible to consult, what it covers is a prohibition on double non-criminal disciplinary penalties (in the case in question, imposed by the Commission on a Community official) for the same conduct, a different matter from that considered here. In Spanish, the term [*sentencia*] “*firme*” (i.e. not open to any further appeal) is considered more technically correct than “*definitiva*” (i.e. not merely interlocutory) for “finally”.

AMENDMENT 201

Proposed amendment to Article: 11

Submitted by; Lord GOLDSMITH, QC

Proposed text:

Substitute the following two-part text:

For Part A, “Proclamation of Rights”

“No one shall be tried or punished twice for the same criminal offence”

For Part B, “Definition of Rights”:

“The right in Article 11 is the right guaranteed by Article 4 of Protocol 7 to the ECHR. It does not prevent the reopening of the case in accordance with the law if there is evidence of new or newly discovered facts, or if there has been a fundamental defect in the previous proceedings which could affect the outcome of the case”

Reasons:

The Praesidium draft differs from the corresponding ECHR right because it is not confined to retrial in the same state and because it may prevent cases being reopened in circumstances where ECHR Protocol 7 would permit that. I do not believe that ECJ case law or the constitutional traditions common to the member states justify the Praesidium wording. My version ensures that Article 11 is understood within the meaning of Article 4 of ECHR Protocol 7 and the case law. It also makes clear, in Part B, that there are very significant qualifications.

AMENDMENT 202

Proposed amendment to Article: 11

Submitted by: Gabriel CISNEROS LABORDA

Proposed text:

No one may be tried or **convicted** again for an offence for which he has already been finally acquitted or convicted in accordance with the law.

Reasons:

For reasons of legal exactitude, the phrase *punished in criminal proceedings* should be replaced by the word *convicted*.

AMENDMENT 203

Proposed amendment to Article: 11

Submitted by: RODOTA', PACIOTTI and MANZELLA

Proposed text:

After "acquitted or convicted", add "in criminal proceedings."

Reasons:

The double jeopardy principle relates solely to judgments in criminal cases (a disciplinary or administrative penalty is no obstacle to criminal proceedings for the same conduct).

AMENDMENT 204

Proposed amendment to Article: 11. Right not to be tried or punished twice

Submitted by: Jean-Luc DEHAENE, personal representative of the Belgian Government

Proposed text:

No one shall be liable to be tried or punished again in criminal proceedings in a Member State of the European Union for an offence for which he has already been finally acquitted or convicted in a Member State of the European Union.

Reasons:

The existing version (CONVENT 28) implies that the jurisdiction of every other State in the world must be recognised. However, Article 4 of Protocol No 7 to the ECHR limits such recognition to jurisdiction within a State. The text proposed here occupies an intermediate position and extends the recognition of judgments in criminal cases to Member States of the European Union. The preclusion of double jeopardy then applies within this single judicial area.

AMENDMENT 205**Proposed amendment to Article: 11**

Submitted by: Paul-Henri MEYERS, representative of the Luxembourg Government

Proposed text:

No one shall be liable to be tried or punished again in criminal proceedings by a court of a State for an offence for which he has already been finally acquitted or pardoned in accordance with the law of that State or of another State.

Reasons:

The absolute wording of the text is out of line with the provisions of the Rome Statute of the International Criminal Court, signed in Rome on 17 July 1998. In Article 20, the Statute expressly requires compliance with the double jeopardy principle (*ne bis in idem*). However, an exception to that principle is made in the same Article for instances where the aim of proceedings before another court was to shield a person from his criminal responsibility.

AMENDMENT 206

Proposed amendment to Article: 11

Submitted by: Simone BEISSEL

Proposed text:

“... finally acquitted or convicted in accordance with the law, **subject to the provisions concerning the jurisdiction and organisation of the International Criminal Court**”.

Reasons:

To avoid a conflict of texts.

Proposals for Article 12

AMENDMENT 207**Proposed amendments to Article: 12**

Submitted by: Daniel TARSCHYS

Proposed text:

Merge this text with the present draft Article 13 (paragraph 1) and make sure that the wording corresponds to Article 8 of the ECHR.

Reasons:

Draft Article 12 is said to be based on Article 8 of the ECHR. That Article, however, refers to respect for private *and* family life. It is difficult to separate the two concepts. A single Article covering both aspects would be preferable.

The words "honour and reputation" have been added. It is not entirely clear how these terms should be interpreted. Concern has been expressed that this addition might entail limitations on the freedom of expression.

Paragraph 2 of Article 8 of the ECHR has not been included in draft Article 12. Instead there is a separate draft horizontal Article dealing with limitations in general terms. That Article speaks of legitimate interests, a term found in the case-law of the European Court. Unlike Article 8 (and also Articles 9, 10 and 11) it does not specify which those interests are. Exceptions from a right should be defined as precisely as possible. It is therefore preferable to have a special paragraph in this Article dealing with exceptions, as in the ECHR.

AMENDMENT 208

Proposed amendment to Article: 12

Submitted by: Andrew DUFF, MEP

Proposed text:

Article 12. Respect for private life

Everyone has the right to respect for his or her privacy, (delete: 5 words) home (delete: 6 words) and communications.

Reasons:

This Article is based on Article 8 of the European Convention on Human Rights, which reads as follows:

- "1. Everyone has the right to respect for his private and family life, his home and his correspondence.*

- 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."*

AMENDMENT 209

Proposed amendment to Article: 12

Submitted by: R. VAN DAM, MEP

Proposed text:

Add: No limitations on this right going beyond those possible under Article 8 of the ECHR shall be permitted.

Reasons:

This aligns the text more closely on the ECHR.

AMENDMENT 210

Proposed amendment to Article: 12

Submitted by: Win GRIFFITHS, MP

Proposed text:

Everyone has the right to respect for his/her privacy, his/her home and correspondence.

Reasons:

This is closer to the ECHR Article 8. This issue of honour and reputation would be better considered in the preamble if inclusion is thought to be essential

Strasbourg Court judgements have already determined, I believe, that correspondence covers all forms of modern communication such as e-mails.

AMENDMENT 211

Proposed amendments to Article: 12

Submitted by: E.M.H. HIRSCH BALLIN and M. PATIJN (also on behalf of G.J.W. VAN OVEN)

Proposed text:

Delete “his honour and his reputation” and replace “geheim” (“secrecy”) in the Dutch text by “vertrouwelijkheid” (“confidentiality”).

Reasons:

The right to respect for honour and reputation has no need of protection as a fundamental right. Protection is already guaranteed by both the civil and the criminal law remedies which are available.

The equivalent of “confidential correspondence and communications” would be more natural in Dutch than “secrecy of correspondence” or “secrecy of communications”.

AMENDMENT 212

Proposed amendments to Article: 12

Submitted by: Kathalijne BUITENWEG and Johannes VOGGENHUBER

Proposed text:

Everyone has the right to respect for his privacy (5 words deleted), his home and the confidentiality of his correspondence and communications.

Reasons:

The addition of a right to the protection of honour and reputation goes beyond Article 15(2) of the ECHR and threatens to undermine freedom of expression and freedom of the press.

AMENDMENT 213

Proposed amendments to Article: 12. Respect for privacy

Submitted by: Dr Ingo FRIEDRICH

Proposed text:

"Article 12: Respect for privacy

1. Everyone has the right to respect for his privacy, his personality (5 words deleted), his home and place of business and his communications, in particular the confidentiality of his correspondence and communication.
2. (new) Everyone has the right to determine for himself whether his personal data may be disclosed and how they may be used.

Reasons:

Re the heading and paragraph 1:

The concept of "private life" appears to be too narrow in view of the risks facing modern man. "Privacy" is, therefore, a more appropriate term.

Both home and place of business need to be protected.

The insertion of the concept of "communications" is intended to cover new media developments, e.g. Internet communications.

Re paragraph 2:

Paragraph 2 has been taken from Article 19 on data protection, which is to be deleted, and in terms of both content and systematic arrangement belongs here.

AMENDMENT 214

Proposed amendment to Article: 12

Submitted by: Heinrich NEISSER

Proposed text:

Article 12. Respect for private life

*Everyone has the right to respect for his privacy, his honour and his reputation, his home and **his communications.***

Statement of reasons:

This Article is based on [...].

The term "honour" has been added [...].

This fundamental right has also to be weighed against other fundamental rights in individual instances, in particular the right to freedom of speech or of the press.

Reasons:

The English term "communications" is better rendered in German by the far more comprehensive term "*Kommunikation*".

Article 8 of the European Convention on Human Rights, on which this Article draws, does not include the terms "honour" and "reputation". Their inclusion in draft Article 12 could create the impression here that, in the event of a conflict of fundamental rights with the right to freedom of expression, the scales are being tilted against freedom of speech. The balance between respect for private life and freedom of speech should remain unaltered.

AMENDMENT 215**Proposed amendments to Article: 12**

Submitted by: Alvaro Rodríguez BEREIJO, personal representative of the Spanish Prime Minister

Proposed text:

"Everyone has the right to respect for his privacy, his honour and his reputation; the right to the inviolability of the home and the confidentiality of communications, irrespective of the medium used, shall also be guaranteed ... The exercise of such rights may be limited by law for reasons of public policy and, where appropriate, subject to prior judicial authorisation."

Reasons:

The alternative version includes a reference to the limits on the exercise of this right. The non-compliance expressed in the previous amendments to the form in which rights and their limits are defined is thus repeated. The conviction that the limits on rights are part and parcel of their content and very definition must be added to all that has been previously stated. In some cases, as with the freedom of expression, the limit is established specifically in defence of other rights, such as the right to honour or privacy. In the case of those rights which apply also to private relationships, the idea that the statement of limits somehow deprives the right of any expressive force, when what it does is precisely the reverse, i.e. it guarantees such right, has to be resisted. The limitations are intended not so much for States as for the citizenry. In this case there has to be a reference to both the existence of limits on such rights (see Article 8 of the ECHR), and even the requirement that they be established by law, and their guarantee, with the requirement of limitation by judicial act.

AMENDMENT 216

Proposed amendments to Article: 12. Respect for private life

Submitted by: Jürgen GNAUCK, Minister for Federal and European Affairs of Thuringia

Proposed text:

"Article 12: Respect for privacy

Everyone has the right to respect for his privacy, his honour and his reputation, his home and his communications, in particular the confidentiality of his correspondence and communications."

Reasons:

The notion of "private life" appears to be too narrow in view of the risks facing modern man. The term "privacy" is, therefore, proposed.

The adoption of the modern term "communications" – already originally provided for in CONVENT 13 – is designed to guarantee coverage of the entire Internet problem.

AMENDMENT 217**Proposed amendments to Article: 12**

Submitted by: Dr Sylvia-Yvonne KAUFMANN

Proposed text:

"Everyone has the right to respect for his privacy (*5 words deleted*), his home and the confidentiality of his correspondence and communications."

Reasons:

The explicit protection of a person's "honour and reputation" involves the risk of huge restrictions on the right of free speech, particularly in the case of criticism levelled at people in public life and at state institutions. Reference may also be made to Article 1, which expressly protects human dignity.

AMENDMENT 218

Proposed amendments to Article: 12

Submitted by: EINEM/HOLOUBEK

Proposed text:

"Everyone has the right to respect for his privacy, his honour and his reputation, his home and *the confidentiality of his information and communications (secrecy of correspondence and communications)*".

Reasons:

In order to give greater force to the idea, already tackled in the proposal of the Praesidium, that developments in means of communication be taken into account, we propose that a right to respect for the confidentiality of information and communications be fundamentally incorporated.

In the light of technical developments, it should be made clear at the outset that this Article extends protection to confidential information and communications, including if necessary the confidentiality of the sender or the recipient of such information or communications, irrespective of the means of communication selected. Such protection covers any information and communications intended by the sender not for general consumption but for a specific person or a limited, set number of persons, excluding third parties.

AMENDMENT 219

Proposed amendment to Article: 12

Submitted by: RODOTA', PACIOTTI and MANZELLA

Proposed text:

Replace the text of the Article with the following:

"Everyone has the right to respect for his privacy, his honour and his reputation, his home and for the freedom and confidentiality of his communications."

Reasons:

The rewording is intended to make the scope of the rule clearer.

AMENDMENT 220

Proposed amendment to Article: 12

Submitted by: Frits KORTHALS ALTES, representative of the Netherlands Government

Proposed text:

1. Everyone has a right to respect for his privacy, including his personal data, his home, his correspondence and other confidential communications.
2. The right referred to in paragraph 1 may be limited only in accordance with the conditions laid down in Article 8(2) of the European Convention on Human Rights.

Reasons:

It is preferable to drop Article 19 and include the right to protection of personal data in the general article on privacy. The proposed Article 19, which grants everyone the right to determine for himself whether his personal data may be disclosed and how they may be used, is too broad in view of (recent) legislation in force in the Member States on data protection. The basic assumption is that personal data may be processed, provided this is for justified purposes and that processing takes place in an appropriate manner, that there is sufficient transparency towards those concerned and that, where appropriate, they are given the opportunity to protest against the processing of their data. The same basic assumption is central to the EC Directive on data protection (Directive 95/46/EC), on which Member States' data protection legislation is based. The provision in the EU Charter need go no further than recognition of the right of every individual to protection of his personal data. Moreover, it is important that the limitation clause in Article 8(2) of the ECHR also applies to the handling of personal data.

It would be preferable to use the expression “*vertrouwelijke communicatie*” (“confidential communications”). This wording fits in better with language usage than “*communicatiegeheim*” (“confidentiality of .. communications”). Furthermore, “reputation” does not need separate protection, since it is already included in “privacy”. Singling out reputation for separate protection could also conflict with freedom of expression.

AMENDMENT 221

Proposed amendment to Article: 12

Submitted by: Lord GOLDSMITH, QC

Proposed text:

Substitute the following two-part text:

For Part A, “Proclamation of Rights”

“Everyone has the right to respect for his or her private and family life, home and correspondence. These rights may be interfered with only in limited, specified circumstances.”

For Part B, “Definition of Rights”:

“The right in Article 12 is the right guaranteed by Article 8 of the ECHR”

Reasons:

The Praesidium draft includes references to “honour”, “reputation” and “communication” which are not found in the relevant ECHR right; and it separates family life (see Article 13). I do not believe that the additional references are common to the constitutional traditions of the member states, or supported by ECJ case law, and I am concerned that they could entail new rights of uncertain meaning and application for the EU institutions and for member states when acting on their behalf. My version restores the meaning of the corresponding ECHR right. As regards “communication”, I believe, subject to the views of the Council of Europe representative, that the European Court of Human Rights has developed and continues to develop the meaning of “correspondence” in the light of its general jurisprudence – as it did in the Malone case, for example.

AMENDMENT 222

Proposed amendments to Article: 12

Submitted by: Kathalijne BUITENWEG and Johannes VOGGENHUBER

Proposed text:

Add a new paragraph reading:

"2. Everyone has the right to protect the confidentiality of his communications by means of encryption."

Reasons:

European and national governments have been unable and/or unwilling to protect their citizens' communications against uncontrolled tapping. Keyword: Echelon. Citizens and businesses should thus have the right to protect the confidentiality of their (digital) communications by cryptographic means. Promotion of the use of encryption to the point where it becomes a fundamental digital right is the logical end consequence of the developments of recent years, with national governments in the EU having eased and scrapped restrictions on the use of cryptography.

Compare the European Commission standpoint: "The public needs access to technical means providing effective protection against the violation of communications confidentiality. Data keying is often the only effective and affordable means of satisfying this need." (from European Commission document entitled "Towards a European Framework for Digital Signatures and Encryption" - COM (97) 503, October 1997).

Compare also the EP Resolution of 16 September 1998 on transatlantic relations/Echelon system : "considers that the increasing importance of the Internet and worldwide telecommunications in general and in particular the Echelon System, and the risks of their being abused, require protective measures concerning economic information and effective encryption."

AMENDMENT 223

Proposed amendments to Article: 12

Submitted by: Jean-Maurice DEHOUSSE, Member of the European Parliament, Alternate Member of the Convention

Proposed text:

Replace Article 12 with the following:

- “1. Everyone has the right to respect for his privacy, his honour and his reputation.
2. The home shall be inviolable.
3. The confidentiality of correspondence shall be respected and the law shall organise protection of other means of communication.
4. This Article may only be departed from by the law and for reasons of public policy.”.

Reasons:

The proposed text wrongly covers situations which are different to the point of being contradictory. Thus, the confidentiality of correspondence remains the rule in the social life of today, while the general public wrongly believes that confidentiality is ensured in telecommunications.

It is important, therefore, to distinguish between the general principle (par. 1), the specific situation of the home (para. 2) and the confidentiality of communications (pars. 3 and 4).

The Charter must guarantee that principles may be departed from only by force of law, with the contradictory publicity which that entails. Furthermore, there can be legislation to that effect solely for reasons of public policy, far removed from the degrading rules and regulations established by authorities which are too often faceless and acting purely on budgetary grounds, as happens in Belgium (and elsewhere) in the treatment of welfare beneficiaries.

Proposals concerning the whole of Article 13

AMENDMENT 224

Proposed amendments to Article: 13

Submitted by: Peter ALTMAIER, Member of the Bundestag (German Parliament)

Proposed text;

Delete paragraph 1.

Paragraph 2 to become paragraph 1.

Paragraph 3 to become paragraph 2 and to read:

“Marriage and family shall enjoy respect and protection.”

Reasons:

Article 13 as it stands is unclear and repetitive. The proposed wording of paragraph 2 (new paragraph 2) dispenses with the need for paragraph 1. The inclusion in the protection prescribed in Article 13, alongside the family, of marriages entered into in accordance with the respective national provisions would also seem to be appropriate.

AMENDMENT 225**Proposed amendment to Article: 13****Submitted by:** José BARROS MOURA and Maria Eduarda AZEVEDO**Proposed text:**

Article 13

1. ...
2. Everyone has the right to marry according to the national laws governing the exercise of this right.
3. Everyone has the right to found a family according to the national laws governing the exercise of this right.
4. Present paragraph 3.

AMENDMENT 226

Proposed amendment to Article: 13. Family life

Submitted by: Georges BERTHU, MEP

Proposed text:

- “1. **The family, which brings up children, is the basic unit of society; it has the right to the protection of the public authorities and of society.**
2. Everyone has a right to respect for his family life.
3. **Men and women** have the right to marry and to found a family, according to the national laws governing the exercise of this right.”

Reasons:

It should be remembered that the family is based on the union of a man and woman, who bring up any children. This wording is based on the Universal Declaration of Human Rights (Article 16(3)), which states that the family is the natural and fundamental element of society and has a right to the protection of society and of the State. The wording does not preclude the existence of other possible forms of union not resulting in the birth of children and ineligible, therefore, to claim the same protection from the public authorities as the family as such under this head.

The proposed amendment adds a new paragraph 1 defining the family and guaranteeing it the protection of the public authorities and of society (thereby making paragraph 3 of the basic text redundant).

AMENDMENT 227**Proposed amendment to Article: 13****Submitted by:** Andrew DUFF, MEP**Proposed text:****Article 13. Family life****(Delete: paragraph 1)**

**1 (ex: 2). Everyone has the right to marry, to form a partnership and to found a family
(delete: 12 words).**

2 (ex: 3). The family shall enjoy legal, economic and social protection.

Reasons:

The first paragraph of this Article is based on Article 12(2) (delete: 8) of the European Convention on Human Rights (delete: 9 words), which reads as follows:

"Men and women of marriageable age have the right to marry and to found a family according to the national laws governing the exercising of this right."

The reference to partnerships refers to the contemporary practice of establishing households outside the definition of orthodox marriage, and is consistent with Article 13 of the Treaty establishing the European Community.

(Delete: 19 words) Paragraph 2 (delete: 3) applies to the Union when it adopts measures within its powers to take account of family protection needs. (Delete: 15 words)

AMENDMENT 228**Proposed amendment to Article: 13**

Submitted by: Prof. Dr Jürgen MEYER/Jo LEINEN/Hans-Peter MARTIN

Proposed text:

Article 13. Marriage and family

1. Everyone has the right to marry and to found a family, according to national laws and with the free and full consent of the intending spouses.
2. Long-term partnerships shall have the right to protection against discrimination.
3. Marriage and the family shall enjoy special protection. The family shall enjoy legal, economic and social protection. Single parents, families with numerous children and families with disabled members shall be entitled to special social assistance from the public authorities.

Reasons:

The proposed amendment repeats, in a slightly amended form, the proposed amendment I submitted on 28 March (CONTRIB. 60) and clarifies my original draft for discussion (submitted on 6 January; CONTRIB. 2).

Protection of marriage and of family life is an essential fundamental and human right which must be taken into account in the Charter of Fundamental Rights.

Paragraph 1 firstly guarantees the right to marry freely and to found a family. Both rights represent rights of protection against State intervention.

This right is embodied in Articles 8 and 12 of the ECHR, in Article 16 of the Universal Declaration of Human Rights, in Article 23(2) and (3) of the International Covenant on Civil and Political Rights (ICCPR), in Article 6(1) of the (German) Basic Law and in numerous constitutions of the Member States.

The European Court of Justice has stated that the right to marry and the protection of the family already belongs to the fundamental rights recognised by Community law.¹ Even the European Court of Human Rights has repeatedly confirmed this principle.²

The restriction "according to national laws" is based on the identical provision in Article 12 of the ECHR. The aim is to avoid the Convention having to produce a Europe-wide definition of the term "marriage".

The statement "with the free and full consent of the intending spouses" takes over the corresponding wording of Article 23(3) of the ICCPR. This rule is also contained in the Universal Declaration of Human Rights (Article 16(2)), which conveys the rule's general recognition and esteem.

Paragraph 2 takes account of a sociological change in society which must be covered by a modern Charter of Fundamental Rights. The number of unmarried persons living together in Germany has increased more than six-fold between 1978 and 1998. Similar trends are to be noted in all European countries. Even conservative parties are therefore taking these sociological facts into account to an increasing extent.³

¹ See Wetter, Irmgard: *The Charter of Fundamental Rights of the European Court of Justice*. Frankfurt a.M. inter alia, 1998, pp. 168 et seq and the references to judgments of the European Court of Justice in the footnotes pp. 660 et seq.

² Frowein, Jochen Abr./Peukert, Wolfgang: *European Convention on Human Rights*, Strasbourg inter alia, 1996, pp. 421 et seq.

³ e.g. at the Small Party Congress of the German CDU, see *Frankfurter Allgemeine Zeitung* of 11.12.1999 "Small Party Congress discusses charity and family policy".

Even in new constitutions, for example in the Constitution of Brandenburg, the need for protection of long-term partnerships is recognised (Article 26(2)).

In addition, more and more Member States of the Union are also taking account of the rights of homosexuals by giving them the possibility of registering their partnership with the aim of preventing existing legal discrimination. While paragraph 2 is not intended to prompt any options in favour of a particular lifestyle, the ban on discrimination does, however, constitute a minimum requirement.

The second sentence of paragraph 3 takes over the wording adopted by the Praesidium. The third sentence of paragraph 3 places particular categories of families under the special protection of the Union. The protection of families with numerous children is embodied in the Constitutions of Greece (Article 21(2)), Italy (Article 31) and Poland (Article 71(1)). The Constitution of Brandenburg (Article 26(1)) also contains a protective rule concerning single parents and families with disabled members.

In accordance with the relevant case law of the European Court of Human Rights, Article 8 of the ECHR also protects single parents who come under general family protection.¹

Although the current proposal from the Convention (CONVENT 28) contains an explicit Article on the protection of children, it does seem appropriate at this point to place the sociological unit in which the majority of children live under special protection.

¹ Frowein, Jochen Abr./Peukert, Wolfgang: European Convention on Human Rights. Strasbourg, inter alia, 1996, p. 424.

AMENDMENT 229**Proposed amendment to Article: 13****Submitted by:** Pervenche BERÈS**Proposed text:**

1. Everyone has the right to respect for his life with his partner and for his family life.
2. Everyone has the right to marry and to found a family (eleven words deleted).
3. The family shall enjoy legal, economic and social protection.

Reasons:**Account should be taken of situations outside marriage.**

In the second paragraph the reference to national law should be deleted so that third-country nationals do not follow practices which are contrary to the principles of the Member States of the Union (polygamy, etc.).

AMENDMENT 230

Proposed amendment to Article: 13. Family life

Submitted by: Dr Ingo FRIEDRICH

Proposed text:

1. Everyone has the right to respect for and protection of his married and family life.
2. Men and women have the right to marry and to found a family, according to the national laws governing the exercise of this right.
3. Delete.

Reasons:

Re paragraph 1

Protection of the family is covered by the amended paragraph 1, which means that paragraph 3 can be deleted.

Re paragraph 2

The wording takes over the ECHR wording to a large extent.

AMENDMENT 231

Proposed amendment to Article: 13. Family life

Submitted by: Jürgen GNAUCK, Minister for Federal and European Affairs of Thuringia

Proposed text:

"Article 13. Family life

1. Everyone has the right to respect for his family life.
2. Everyone has the right to marry or to found a family according to the national laws governing the exercise of this right."

Reasons:

The use of the word "or" instead of "and" should make it clear in paragraph 2 that founding a family may also be possible and permissible irrespective of whether people are married.

Moreover, the German Länder are in favour, at least at present, of deleting paragraph 3, since its current wording would confer a comprehensive right to benefits.

AMENDMENT 232**Proposed amendment to Article: 13**

Submitted by: Dr Sylvia-Yvonne KAUFMANN

Proposed text:

1. Everyone has the right to respect for *his lifestyle*.
2. Everyone has the right to chose his lifestyle freely and to found corresponding partnerships.
3. All lifestyles shall enjoy equal respect and legal, economic and social protection.

Reasons:

This proposed amendment embraces everyone's right to marry and have a family. However, it also takes account of social trends towards a variety of lifestyles which means that, in accordance with individual Member States' laws, an individual's right to choose his lifestyle and partnership is to be guaranteed.

AMENDMENT 234

Proposed amendment to Article: 13

Submitted by: EINEM/HOLOUBEK

Proposed text:

- "1. Every *individual* has the right to respect for his family life.
2. Every *individual* has the right to marry and to found a family, according to the *Member States'* laws governing the exercise of this right. *No one shall be compelled to marry.*
3. The family shall enjoy legal, economic and social protection."

Reasons:

For reasons of clarity of terms it is proposed that "individual" be used, as only natural persons are meant.

The reference to the "Member States'" (instead of "national" in the draft) laws makes it clear that the Member States have jurisdiction over this matter.

The newly proposed second sentence of paragraph 2 is intended to make it clear that in particular even custom must not threaten the voluntary nature of marriage.

For the rest, the proposal takes over unchanged the draft text proposed by the Praesidium.

AMENDMENT 235

Proposed amendment to Article: 13

Submitted by: Lord GOLDSMITH, QC

Proposed text:

Substitute the following two-part text:

For Part A, “Proclamation of Rights”

“Men and women of marriageable age have the right to marry and found a family according to national law governing the exercise of this right”

For Part B, “Definition of Rights”:

“The right in Article 13 is the right guaranteed by Article 12 of the ECHR”

Reasons:

The Praesidium formulation of the relevant ECHR right (in Article 13.2) is not identical with that accepted by parties to the ECHR, and fails to attract the case law. The accretion in 13.3 has no satisfactory legal base and is inappropriate. 13.1 is unnecessary if my proposal to restore it to Article 12 is followed (see above). My version of Article 13 ensures that the acceptable content of Article 13 is understood within the meaning of the relevant ECHR provision, and the case law.

AMENDMENT 236

Proposed amendment to Article: 13(1)

Submitted by: Frits KORTHALS ALTES, representative of the Netherlands government

Proposed text:

(The change from “gezinsleven” to “familieleven” in the Dutch text does not affect the English version).

Reasons:

(Does not concern the English text).

Proposed amendment to Article: 13(3)

Proposed text:

Delete paragraph 3.

Reasons:

Paragraph 3 contains a vaguely-worded provision made redundant by the guarantee in paragraph 1.

AMENDMENT 237

Proposed amendments to Article: 13. Family life

Submitted by: Daniel TARSCHYS

Proposed text:

Merge paragraph 1 with Article 12.

Reasons:

Paragraph 1 is redundant as this right follows from other Articles (i.a. 3 and 12).

Paragraph 3 spells out an objective for public policy and is thus better placed in the preamble.

AMENDMENT 238

Proposed amendments to Article: 13

Submitted by: Jean-Maurice DEHOUSSE, Alternate Member of the Convention

Proposed text:

Replace Article 13 with the following:

1. Men and women of marriageable age have the right to marry and to found a family according to the procedures laid down by law.
2. The family shall enjoy, irrespective of its composition, legal, economic, social and fiscal protection.
3. Two persons, whether or not of the same sex, may enter into a long-term union the details of which are defined by law; the law shall also define the protection such a union is to enjoy.
4. Everyone has the right to respect for his family life.

Reasons:

Over the last half century, the situation described in this Article has evolved sufficiently for the wording of the Charter text to depart from the text of the European Convention in order to take account of that fact.

A single-parent family must, therefore, be protected in the same way as a traditional two-parent family.

Likewise, it is important to take account of changing habits regarding homosexuality.

Finally, measures applying to homosexual couples which have been recently introduced in several parts of Europe are proving useful in the case of couples whose homosexuality is a matter of fact, and not of love.

Experience also shows the value of including a fiscal chapter in family protection.

Proposals for Article 13(2)

AMENDMENT 239

Proposed amendments to Article: 13

Submitted by: Johannes VOGGENHUBER and Kathalijne BUITENWEG

Proposed text:

1. Everyone has the right to respect for his family life.
2. **Everyone has the right, under the laws governing the exercise of this right and by mutual consent, to marry or cohabit and to found a family."**

Reasons:

AMENDMENT 240

Proposed amendments to Article: 13

Submitted by: R. VAN DAM, MEP

Proposed text:

Paragraph 2: delete.

Reasons:

Paragraph 2 is unrelated to any Union powers.

AMENDMENT 241

Proposed amendments to Article: 13. Family life

Submitted by: Jordi SOLÉ TURA

Proposed text:

“2. Everyone has the right to found a family according to the national and Community laws governing the exercise of this right.”.

Reasons:

The word “**marry**” has been deleted since the family may or may not be founded on the basis of marriage, depending on the laws. the words “and **Community**” have been added in order to allow for European Union competence.

AMENDMENT 242

Proposed amendments to Article: 13(2)

Submitted by: Alvaro Rodríguez BEREIJO, personal representative of the Spanish Prime Minister

Proposed text:

“Men and women have an equal legal right to marry and to found a family according to the national laws governing the exercise of this right.”

Reasons:

Wording in line with Article 8 of the European Convention on Human Rights.

AMENDMENT 243

Proposed amendment to Article: 13(2). Family life

Submitted by: Hubert HAENEL

Proposed text:

2. *Men and women* have the right to marry and to found a family, according to the national laws governing the exercising of this right.

Reasons:

Discussions within the Convention have made it clear that the article on family life should guarantee the possibility for men and women to marry and found a family as a fundamental right. That possibility is also guaranteed by Article 12 of the European Convention on Human Rights, and the proposed amendment accordingly follows the wording of that provision.

Proposed amendment to Article: 13(3). Family life

Proposed text:

3. *Marriage and* the family shall enjoy legal, economic and social protection.

Reasons:

Legislation should not regulate the different forms of couple, as that is a matter of personal choice and thus of individual freedom. However, it is only right that marriage should enjoy the same legal, economic and social protection as the family.

AMENDMENT 244

Proposed amendment to Article: 13(2) and (3)

Submitted by: Gabriel CISNEROS LABORDA

Proposed text:

2. **Men and women have** the right to marry and to found a family, according to the national laws governing the exercise of this right.

Reasons:

To make it clear that marriage is understood as being between persons of different sexes. The proposed text makes it possible to reconcile Article 12 of the European Convention on Human Rights with present circumstances.

Proposals for Article 13(3)

AMENDMENT 245

Proposed amendment to Article: 13

Submitted by: Gunnar JANSSON, Tuija BRAX and Paavo Nikula

Proposed text:

It is proposed that Article 13(3) (“*The family shall enjoy legal, economic and social protection*”) be deleted on the grounds of being superfluous.

AMENDMENT 246

Proposed amendment to Article: 13(2) and (3)

Submitted by: Gabriel CISNEROS LABORDA

Proposed text:

3. **Marriage and** the family shall enjoy legal, economic and social protection.

Reasons:

To make it clear that marriage is understood as being between persons of different sexes. The proposed text makes it possible to reconcile Article 12 of the European Convention on Human Rights with present circumstances.

AMENDMENT 247**Proposed amendment to Article: 13****Submitted by:** R. VAN DAM, MEP**Proposed text:**

3. The family, as a natural and social unit, shall enjoy legal, economic and social protection.

Reasons:

Paragraph 3 gives a more detailed definition of the position of the family. The family is described in similar terms in Article 16 of the Universal Declaration of Human Rights, Article 16 of the European Social Charter and Article 10 of the International Covenant on Economic, Social and Cultural Rights.

AMENDMENT 248

Proposed amendment to Article: 13. Family life

Submitted by: Daniel TARCHYS

Proposed text:

Merge paragraph 1 with Article 12.

Move paragraph 3 to the preamble.

Reasons:

Paragraph 1 is redundant as this right follows from other articles (i.e. 3 and 12).

Paragraph 3 spells out an objective for public policy and is thus better placed in the preamble.

AMENDMENT 249

Proposed amendment to Article: 13

Submitted by: Erling OLSEN

Paragraph 3 should be deleted.

Reasons:

Paragraph 3 sets out an objective, not a right.

AMENDMENT 250**Proposed amendment to Article: 13****Submitted by:** Win GRIFFITHS, MP**Proposed text:**

1 and 2 as written. Delete 3

Reasons:

The reasons for the existing text throw doubt on its (Article 3.3) place here and raise an issue of when it would be relevant for the European Union to regard it as a fundamental right. Further discussion is needed before a decision can be made on the appropriateness of its inclusion in the Charter.

AMENDMENT 251

Proposed amendment to Article: 13

Submitted by: E.M.H. HIRSCH BALLIN and M. PATIJN (also on behalf of G.J.W. VAN OVEN)

Proposed text:

Delete paragraph 3 of the text in CONVENT 28.

Reasons:

The current formulation refers to an obligation which does not belong in this part of the Charter.

Proposals for Article 14

AMENDMENT 252

Proposed amendment to Article: 14. Freedom of thought, conscience and religion

Submitted by: Georges Berthu, MEP

Proposed text:

Every human being has the right to freedom of thought, conscience and religion. **This right includes freedom to change his religion or belief and freedom to manifest his religion or belief in worship, teaching and observance.**

Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of individuals.

Reasons:

This amendment incorporates the wording of Article 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which seems preferable.

- Paragraph 1: it is necessary to point out that freedom of thought, conscience and religion is not an abstract right, but has practical consequences and outward manifestations (worship, teaching, practice, etc.).
- Paragraph 2: same reasons as for Article 2 of the Charter (paragraph 1a). The presence of a final horizontal clause referring to possible limitations in general terms is not adequate in most cases. Where the need arises, details must be added to each article concerned.

AMENDMENT 253**Proposed amendment to Article: 14****Submitted by:** Andrew DUFF, MEP**Proposed text:****Article 14. Freedom of thought, conscience and religion****1 (new). Everyone has the right to freedom of thought, conscience and religion.****2 (new). No one is obliged to disclose thought, religion or belief.****Reasons:**

This wording (delete: 1 words) is based on Article 9 of the European Convention on Human Rights, which reads as follows:

- "1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.*
- 2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."*

The fact that the Charter does not incorporate the limitations set out in paragraph 2 does not deprive those restrictions of their effects under Union law, by virtue of the horizontal clause relating to the Convention. The Court of Justice of the European Communities endorsed religious freedom in the Prais Case (judgment of 27 October 1976, Case 130/75, ECR 1589). Given the decision in favour of concise drafting for the Charter, the implications of religious freedom have

not been included, but this is not intended to deprive these provisions of their effect as they are only the implications of the general principle.

Paragraph 2 accords inter alia with the principle of non-discrimination established by Article 13 of the Treaty establishing the European Community.

AMENDMENT 254

Proposed amendment to Article: 14

Submitted by: R. VAN DAM, MEP

Proposed text:

Add two new paragraphs:

2. This right includes the right to change religion and freedom, either alone or in community with others and in public or in private, to manifest one's religion or belief, in worship, teaching, practice and observance.
3. No limitations on this right are permissible other than those provided for in Article 9(2) of the ECHR.

Reasons:

These additions are essential if this right is to mean anything in practice. This text also corresponds more closely to the ECHR.

AMENDMENT 255

Proposed amendment to Article: 14

Submitted by: E.M.H. HIRSCH BALLIN and M. PATIJN (also on behalf of G.J.W. VAN OVEN)

Proposed text:

The text in CONVENT 28 should be deleted and replaced by the full text of Article 9(1) of the ECHR.

Reasons:

Article 9(1) of the ECHR contains a comprehensive statement of freedom of religion.

AMENDMENT 256**Proposed amendment to Article: 14**

Submitted by: Johannes VOGGENHUBER and Kathalijne BUITENWEG

Proposed text:

1. Everyone has the right to freedom of thought, conscience and religion. No one may be compelled to participate in a religious or ideological act, or to take a religious oath. *This right includes the freedom to manifest ones religion or belief either alone or in community with others and in public or private.*
2. No one shall be obliged to disclose his religious or ideological views.
3. If a citizen of the Union is unable to fulfil any obligations imposed on him by a public authority because they conflict with his conscience, the community may, as far as it is able, substitute other obligations of equal value. This does not apply to taxes and similar charges.

Proposed text: Meyer; amendments by Voggenhuber in italics.

Reasons:

AMENDMENT 257

Proposed amendment to Article: 14. Freedom of thought, conscience and religion

Submitted by: Professor Dr. Jürgen MEYER/Jo LEINEN/Hans-Peter MARTIN

Proposed text:

- "1. Everyone has the right to freedom of thought, conscience and religion. No one may be compelled to participate in a religious or ideological act or to take a religious oath. Freedom of religion shall include the public and private, individual and communal manifestation of religion and the right of churches and religious communities to order and administer their affairs in accordance with the laws of the Member States.
2. No one shall be obliged to disclose his religious or ideological views.
3. If a citizen of the Union is unable to fulfil any obligations imposed on him by a public authority because they conflict with his conscience, the community may, as far as it is able, substitute other obligations of equal value. This does not apply to taxes and similar charges.

Reasons:

The proposed amendment repeats, in a slightly amended form, the proposed amendment I submitted on 28 March (Contrib. 60) and clarifies my original draft for discussion (submitted on 6 January; Contrib. 2).

The first sentence of paragraph 1 follows the Praesidium's proposal (Convent 28) and the identically worded first sentence of Article 9(1) of the ECHR.

The second sentence makes it clear that the rights mentioned constitute freedoms in the sense that no one may be compelled to take part in ideological, religious or ritual acts. There are comparable rules in the Constitutions of Belgium (Article 20), Denmark (§ 68), Finland (§ 9), Luxembourg (Article 20), Sweden (Chapter 2 § 2) and Germany (Article 4(1) of the Basic Law). The European Court of Human Rights has also acknowledged a negative freedom of religion in its interpretation of the first sentence of Article 9(1)¹ and has spoken of protection for atheists, agnostics, sceptics and indifferent persons.²

The third sentence of paragraph 1 incorporates a rule corresponding to Declaration no 11, which was adopted by the Intergovernmental Conference during the Amsterdam Summit.

Paragraph 2 is based on corresponding rules in the Constitutions of Portugal (Article 41(3)), Sweden (Chapter 2 § 2), Spain (Article 16(2)), Slovakia (Article 41(2)), Poland (Article 53(7)) and Brandenburg (Article 13(2)). Article 136 of the Weimar Constitution which, under Article 140 of the Basic Law, is an integral part of that Law, also contains the right not to express one's religious convictions. Such a right can also be deduced from Article 5(1) of the Basic Law.³

Paragraph 3 gives substance to freedom of conscience. Since as a result of the Common Foreign and Security Policy a common defence policy (Article 17(1) TEU), which also includes combat forces (Article 17(2) TEU), will in future fall within the Union's sphere of competence, observance

¹ See in: Frowein, Jochen Abr./Peukert, Wolfgang: European Convention on Human Rights. Strasbourg inter alia, 1996, p. 371.

² Ibid., p. 368.

³ Maunz/Dürig/Herzog et al: Basic Law Commentary. Munich, 1991, Volume 1, (instalments 1-29), Article 5, NO 40.

of moral distress as a basic right must be incorporated in the Charter.

The right to conscientious objection as a possible, but not binding form of freedom of conscience, is recognised in the Constitutions of Germany (Article 4(3) of the Basic Law) and Portugal (Article 41(6)). Although the right to conscientious objection is not explicitly guaranteed in the ECHR (see Article 4(3)(b)), nevertheless Frowein/Peukert write in their ECHR comments on freedom of religion and conscience: "However, to expect that the State should take account of religion when determining obligations is an established right." ¹ To this extent the proposed wording would lead to affirmation of this right.

However, the restrictive wording "as far as it is able" and "this does not apply to taxes and similar charges" in paragraph 3 avoids a situation involving an arbitrary and excessive assertion of moral distress. The European Court of Human Rights has also consistently rejected corresponding attempts. ²

¹ Ibid., p. 378.

² Ibid., p. 376 et seq.

AMENDMENT 258

Proposed amendment to Article: 14. Freedom of thought, conscience and religion

Submitted by: Dr Ingo FRIEDRICH

Proposed text:

Article 14. Freedom of thought, conscience and religion

Everyone has the right to freedom of thought, conscience and religion. Freedom of religion includes the manifestation of faith in public and private, individually and in community with others and the right of churches and religious communities to order and manage their affairs in accordance with the laws of the Member States.

Reasons:

Inherent in every religion is the shared belief of more than one person. Consequently, every religion feeds on joint observance. The current wording does not reflect that. On the other hand, freedom of thought and conscience are individual matters.

The European Union's action affects not only the individual in his exercise of his fundamental right to freedom of religion, but also religious bodies, in particular churches and established religious communities. The Commission on Human Rights has in principle granted churches and religious communities the automatic right to have recourse to Article 9 of the ECHR. The reference to national legislation in the second sentence is in line with subsidiarity and the diversity of circumstances in which national established churches find themselves. It also follows from the Declaration on the status of churches and non-confessional organisations attached to the Amsterdam Treaty.

If the right of churches could be reflected in a general right relating to legal persons, parts of the second sentence could still be revised.

AMENDMENT 259

Proposed amendment to Article: 14. Freedom of thought, conscience and religion

Submitted by: Heinrich NEISSER

Proposed text:

*"Everyone has the right to freedom of thought, conscience and religion. **This right includes the freedom of the individual to change his religion or belief and the freedom, alone or in community with others and in public or private, to practise his religion or belief in worship, teaching, prayer and observance.**"*

in eventu

*"Everyone has the right to freedom of thought and conscience and, **alone or in community with others, religion.**"*

Reasons:

Article 9 of the European Convention on Human Rights, on which this Article is based, contains a right to freedom of religion which is not only individual, but also collective. Under the ECHR, churches and religious communities may therefore also refer to freedom of religion. On the other hand, the CJEC judgment in the Prais case, referred to in the reasons in support of Article 14 of the draft, concerned only the individual's right to freedom of religion and a collective right to freedom of religion cannot be derived therefrom. To guarantee a collective right as well, it therefore seems

necessary to go back to the text of Article 9(1) of the European Convention on Human Rights.

With the second proposed wording, an attempt is made to enshrine this principle in concise terms.

AMENDMENT 260

Proposed amendment to Article: 14

Submitted by: Alvaro Rodriguez BEREIJO, personal representative of the Spanish Prime Minister

Proposed text:

Addition of two paragraphs 2 and 3, reading as follows:

"2. The exercise of these rights shall be subject only to such limitations as are prescribed by law and are necessary and proportionate for the protection of public order, health and morals or for the protection of the rights and freedoms recognised in this Charter.

3. No one shall be compelled to make any statement about his ideology, religion or beliefs."

Reasons:

The limitations on this right, laid down in the second paragraph of Article 9 ECHR, which should be included in the Article, are omitted for the reasons already set out in previous amendments and which should be set out here too.

The addition of a new paragraph 3 aims to increase, by means of a general prohibition clause, the scope of this right to freedom, which is of fundamental importance for individual self-determination in a democratic society. This addition is particularly appropriate in view of the future enlargement of the European Union and the incorporation of new Member States with a complex social and religious structure and reality.

AMENDMENT 261

Proposed amendment to Article: 14. Freedom of thought, conscience and religion

Submitted by: Jürgen GNAUCK, Minister for Federal and European Affairs of Thuringia

Proposed text:

- "1. Everyone has the right to freedom of thought, conscience and religion.**
- 2. No one shall be compelled against his conscience to perform military service under arms."**

Reasons:

It seems appropriate to enshrine the right of conscientious objection also in the Charter by means of the proposed paragraph 2. In addition, it should be pointed out here that the freedom of religion granted in paragraph 1 at the same time comprises the exercise of religion in community.

Shortening by any other means the rule set out in Article 9 of the European Convention on Human Rights, on which this Article is based, would not be acceptable.

AMENDMENT 262

Proposed amendment to Article: 14. Freedom of thought, conscience and religion

Submitted by: Dr Sylvia-Yvonne KAUFMANN

Proposed text:

"1. Everyone has the right to freedom of thought, conscience and religion.

2. Everyone has the right to refuse to do military service."

Reasons:

With reference to the horizontal Article H.1 (Scope of the Charter), the scope of Article 14(2) applies to military operations within the context of the EU crisis forces agreed upon at the Helsinki summit and currently being set up. It does not touch upon national law. The basic right to conscientious objection is a vital component of the freedom of conscience of the individual, constituting freedom from State pressure to kill.

AMENDMENT 263

Proposed amendment to Article: 14

Submitted by: EINEM/HOLOUBEK

Proposed text:

"Everyone has the right to freedom of thought, conscience and religion. This right includes the freedom of the individual to change his religion or belief and the freedom, alone or in community with others and in public or private, to practise his religion or belief in worship, teaching, prayer and observance."

Reasons:

The first sentence corresponds to the text of the draft proposed by the Praesidium. The first sentence reproduces word-for-word the relevant second sentence of Article 9(1) ECHR.

By taking over Article 9(1) ECHR in full, in the first place debate on potential differences between the Charter and the ECHR – for instance, with regard to the right to practice religion publicly – is avoided. Secondly, by describing the guaranteed right more precisely, it is immediately clear to the citizen what rights he can derive from Article 14. The Charter is thus made easier to understand, because the citizen does not first have to look up Article 9(1) ECHR.

AMENDMENT 264

Proposed amendment to Article: 14. Freedom of thought, conscience and religion

Submitted by: VITORINO, Commission representative on the Convention

Proposed text:

Add a second sentence:

“This right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public and private, to manifest his religion or belief, in worship, teaching, practice and observance.”

Reasons:

This addition, which takes over the wording of Article 9 of the ECHR, is particularly significant in that it enshrines the freedom to manifest religion or belief, as well as the collective dimension of the freedom of religion. These two aspects of religious freedom are of great importance in modern society, which is becoming increasingly multicultural. The addition is also justified by a desire to ensure consistency between Article 14 and Article 15 (Freedom of expression): in the latter, the second sentence of the corresponding Article of the ECHR, explaining the contents of the right (“This right shall include ...”), has been taken over. If the corresponding sentence on the subject of freedom of religion is not used this might give the impression of a weakening in the freedom of religion.

AMENDMENT 265

Proposed amendment to Article: 14

Submitted by: Gabriel CISNEROS LABORDA

Proposed text:

Everyone has the right to freedom of thought, conscience and religion. **As regards religion, this right also includes public or private, individual or collective manifestations of religious communities.**

Reasons:

It is necessary to supplement the right to freedom of religion by freedom of worship.

AMENDMENT 266

Proposed amendment to Article: 14

Submitted by: Lord GOLDSMITH, QC

Proposed text:

Amend to produce two-part text, as follows:

For Part A, “Proclamation of Rights”

Add: “Limitations can be placed on this right only in limited, specified circumstances”

For Part B, “Definition of Rights”:

“The right in Article 14 is the right guaranteed by Article 9 of the ECHR”

Reasons:

The limitations explicit in the relevant ECHR right are of fundamental importance. I do not believe they can be dealt with satisfactorily in a general horizontal article. They are integral to the right. My amendment also ensures that Article 14 is understood within the meaning of ECHR Article 9 and associated case law.

AMENDMENT 270

Proposed amendments to Article: 14. Freedom of thought, conscience and religion

Submitted by: Daniel TARSCHYS

Proposed text:

Adapt current draft to the language of Article 9 ECHR.

Reasons:

Draft Article 14 is said to reproduce Article 9 of the ECHR but it fails to state what the right includes, nor does it contain a clause on limitations. It is difficult to see why draft Article 14 does not state the content of the right when draft Article 15 does so with respect to freedom of expression. As regards limitations, see my comments on draft Article 12. The complete text of Article 9 ECHR should be confirmed in a part B of the Charter.

AMENDMENT 271

Proposed amendment to Article: 14

Submitted by: RODOTA', PACIOTTI and MANZELLA

Proposed text:

Add the following paragraph:

"2. Freedom of individual and collective practice of religious belief shall be guaranteed."

Reasons:

The proposed paragraph guarantees the specific form of exercise of the religious freedom stipulated in the first paragraph: individually and collectively.

AMENDMENT 272

Proposed amendment to Article: 14

Submitted by: Dr Peter Michael MOMBAUR, MEP

Proposed text:

Proposed addition of a second sentence:

This right includes freedom, either alone or in community with others and in public or private, to manifest a religion or belief, in worship, teaching, practice and observance.

Reasons:

This addition is taken from Article 9 of the ECHR. It is geared in the main to European culture and should not be seen as arising from the horizontal provisions.

AMENDMENT 273

Proposed amendment to Article: 14

Submitted by: Jean-Maurice DEHOUSSE, MEP, Alternate Member of the Convention

Proposed text:

Add the following to the proposed text:

Everyone has the right to freedom of thought, conscience and religion, to the extent that thought, conscience and religion observe the principles of tolerance and democracy.

Reasons:

In an area as delicate and explosive as this, reference to the general limitation clause is not sufficient.

Proposals for Article 14a

AMENDMENT 274**Proposed amendment to Article: 14**

Submitted by: RODOTA', PACIOTTI and MANZELLA

Proposed text:

Insert the following after Article 14:

"Article 14a. Freedom of research.

1. There shall be freedom of research.
2. Everyone has the right to be able to benefit from the results of research."

Reasons:

The Article plugs a gap in the text proposed by the Praesidium, by asserting freedom of research as a fundamental right.

Proposals for Article 15

AMENDMENT 275

Proposed amendment to Article: 15 Freedom of expression

Submitted by: Georges BERTHU, MEP

Proposed text:

Everyone has the right to freedom of expression **of his opinions and** freedom to receive and impart information (...).

These rights shall be exercised within the framework of any moral duties and responsibilities which the law may prescribe in accordance with the European Convention on Human Rights and Fundamental Freedoms.

Reasons:

The text of the basic Article has been shortened. A reference has been added to the limitations which already exist in the ECHR as the wording as it stands might give the false impression of conferring an absolute right.

AMENDMENT 276

Proposed amendment to Article: 15

Submitted by: Andrew DUFF, MEP

Proposed text:

Article 15. Freedom of expression

1 (new). Everyone has the right to freedom of expression and to receive, hold and impart ideas and information. (Delete: 25 words)

2 (new). Expressions of cultural, national and regional diversity as well as plurality of opinion shall be respected.

Reasons:

This Article incorporates the principles of Article 10 of the European Convention on Human Rights, which reads as follows:

- "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.*
- 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."*

Paragraph 2 has not been included but it is applicable under Union law by virtue of the horizontal clause relating to the Convention. The Court of Justice has endorsed the principle of freedom of expression on several occasions, first and foremost in the ERT Judgment (judgment of 18 June 1991, Case C-260/89, ECR I-5485).

Paragraph 2 is intended to reflect Article 151 of the Treaty establishing the European Community and its Protocol on the System of Public Broadcasting in the Member States of the Treaty of Amsterdam.

AMENDMENT 277

Proposed amendment to Article: 15. FREEDOM OF EXPRESSION

Submitted by: Jordi SOLÉ TURA

Proposed text:

“Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authorities and regardless of frontiers.”

Reasons:

No change in meaning but better Spanish syntax.

AMENDMENT 278**Proposed amendment to Article: 15****Submitted by:** Win GRIFFITHS, MP**Proposed text:**

Everyone has the right to freedom of expression. This right shall include freedom to hold opinion and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent states from requiring the licensing of broadcasting, television or cinema enterprises.

Reasons:

It is better to include the whole of the ECHR Article 10.1 for the avoidance of doubt on the licensing issue.

AMENDMENT 279

Proposed amendment to Article: 15

Submitted by: Johannes VOGGENHUBER and Kathalijne BUITENWEG

Proposed text:

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.
2. **Freedom of the press and reporting freedom shall be guaranteed. The bodies of the Union shall be under an obligation to provide the press with information.**
3. *Diversity of opinion shall be safeguarded.*
3. **Art, science, research and teaching shall be free of constraint.**

(Basic text = Meyer, addition in italics = Voggenhuber)

Reasons:

AMENDMENT 280

Proposed amendment to Article: 15

Submitted by: Prof. Dr Jürgen MEYER/Jo LEINEN/Hans–Peter MARTIN/Ieke VAN DEN BURG

Proposed text:

Article 15. Freedom of expression

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.
2. **Freedom of the press and broadcasting and reporting freedom shall be guaranteed. The bodies of the Union shall be under an obligation to provide the press and broadcasting services with information.**
3. **Art, science, research and teaching shall be free of constraint.**
4. **The powers of the Member States to ensure public broadcasting services shall not be affected.**

Reasons:

This proposed amendment repeats, in a slightly altered form, the proposal I submitted on 28 March (Contribution 60) and clarifies my original discussion draft (submitted on 6 January; Contribution 2).

Paragraph 1 retains the wording proposed by the Praesidium.

Paragraph 2 adds a new right not hitherto covered. It is, however, an undoubted fact that press and broadcasting freedom is one of the most important rights in a democratic policy governed by the rule of law. Such freedom forms part of the lifeblood of democracy. That is the reason for its inclusion in nearly all the Constitutions of the Member States.

The obligation to provide information covered in the second sentence is guaranteed in the Federal Republic of Germany by straightforward laws in the individual Länder. Although no State obligation on the press to provide information can be derived from Article 5(1), second sentence, of the German Basic Law, Maunz/Dürig/Herzog conclude in their commentary on the Basic Law that any Government or administration which has demonstrably laid itself open to the charge of hostility to the press must inevitably expect to be asked whether its behaviour is prompted exclusively by a quite acceptable circumspection vis-à-vis the press or whether it rather constitutes a general aversion to publicity, which runs counter to the principle of democracy.¹ It is particularly important for the Union to respect this principle since only now can a spirit of openness be said to be emerging.

Paragraph 3 adds a new right to the Praesidium proposal which was included in the previous Presidency proposal (CONVENT 13) and supplemented at the time by the word “teaching” at my suggestion.

Since the right expressed in paragraph 3 is included in nearly all the Constitutions of the Member States and applicant countries, it is difficult to understand why this paragraph has been removed from the present Presidency proposal (CONVENT 28). This right is, for example, included in Article 5(3), first sentence, of the German Basic Law, Section 13(3) of the Finnish, Article 16(1) of the Greek, Article 33(1), first sentence, of the Italian, Article 42(1) of the Portuguese, Article 20(1) of the Spanish, Article 59 of the Slovenian, Article 73 of the Polish and Article 70G(1) of the Hungarian Constitutions. It is also included in the Constitutions of Brandenburg (Article 31(1)), Mecklenburg-Western Pomerania (Article 7(1)) and Saxony (Article 21).

Freedom of research and teaching is an undisputed human right, which is to be found inter alia in Article 15 of the International Covenant on Economic, Social and Cultural Rights.

¹ Maunz/Dürig/Herzog et al.: Grundgesetz Kommentar [Basic-Law Commentary]. Munich, 1991, Volume 1 (Parts 1-29), Article 5, No 138.

Paragraph 4 provides a permanent guarantee for public broadcasting. This paragraph is in line with Protocol 23 to the Amsterdam Treaty and is moreover included as a principle in individual Constitutions of the Member States (Article 38(5) Portugal) and in some of the Constitutions of the East German Länder (Article 19(4), Article 20(2)).

The whole of Article 15 is accompanied by a limitation clause in many Constitutions and Human Rights Agreements. Given the stage reached in the Convention's discussions, such a limitation is not yet being formulated here since we must first be clear on the rights being included before considering limitations. It can however already be said that there could be a general limitation clause based on Article 20(2) of the International Covenant on Civil and Political Rights.²

² “Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law”.

AMENDMENT 281**Proposed amendment to Article: 15****Submitted by:** Pervenche BERÈS**Proposed text:**

Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.

This freedom does not authorise racist or xenophobic propaganda. It does not prevent public authorities from putting in place licensing schemes for radio, television and cinema, or machinery to guarantee the pluralism of information.

Reasons:

Pluralism must be guaranteed if there is to be freedom of expression.

AMENDMENT 282

Proposed amendment to Article: 15 Freedom of expression

Submitted by: Dr Ingo FRIEDRICH

Proposed text:

Article 15. Freedom of expression and information

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.
2. Freedom of the press, broadcasting, cinema and other public media is guaranteed.
3. Art, science, research and teaching shall be free of constraint.

Reasons:

Title:

Freedom of information should be mentioned in the title.

Paragraph 2:

The right formulated in par. 1 may be interpreted as including freedom of the press, broadcasting and cinema.

However, for the sake of clarity, it is important to mention media freedom specifically, on the understanding that this does not mean any new powers for the EU, but recognition of Member States' powers, and that the dual system of public/private broadcasting services will continue. Express mention of freedom of the media would not only serve to show that the lessons of Germany's past have been learnt, but would also be a gesture towards the applicant countries, which were likewise deprived of media freedom for a long time.

Paragraph 3:

Express safeguards for art, science, research and teaching should be incorporated.

AMENDMENT 283**Proposed Amendment to Article: 15****Submitted by:** Heinrich NEISSER**Proposed text:***Article 15. Freedom of expression*

*Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. **This Article shall not prevent Member States from requiring the licensing of broadcasting, television or cinema enterprises.***

Reasons:

The new sentence reproduces the 3rd sentence of Article 10(1) of the ECHR. The European Court of Human Rights has ruled that this sentence allows Contracting States to use licensing procedures to pursue goals relating specifically to broadcasting policy that are not included among the grounds for intervention listed in Article 10(2) of the ECHR, such as pluralism, objectivity, quality and balanced programming. During discussion of this draft Article it was argued, broadly speaking, that this sentence has no individual significance any more, not least owing to the "Television without frontiers Directive", which guarantees the freedom to broadcast across borders. However, it might be countered that the Directive covers only advertising, sponsorship, protection of young people and basic programme requirements (e.g. no violence), thus leaving areas in which there is no Community harmonisation. Member States' power to pursue specifically broadcasting-policy goals should not be minimised here. However, under no circumstances should these state licensing procedures call into question the core of this right to freedom of expression.

AMENDMENT 284**Proposed amendment to Article: 15**

Submitted by: Guy BRAIBANT, personal representative of the President of the Republic and of the French Prime Minister

Proposed text:

Add, at the end of the Article "*it shall be exercised with due regard for the principles of financial transparency and political pluralism*".

Reasons:

This addition is in keeping with proposals from a number of Convention members. It spells out the scope of the right to freedom of expression and brings it up to date.

AMENDMENT 285

Proposed amendment to Article: 15

Submitted by: José BARROS MOURA and Maria Eduarda AZEVEDO

Proposed text:

In Portuguese, “*ideais*” (ideals) should be replaced by “*ideias*” (ideas) (English unaffected).

AMENDMENT 286

Proposed amendment to Article: 15

Submitted by: R. VAN DAM, MEP

Proposed text:

Add the following new paragraph:

2. This right shall not be subject to any limitations beyond those possible under Article 10(2) of the European Convention on Human Rights.

Reasons:

The text would thus reflect the ECHR more closely.

AMENDMENT 287**Proposed amendment to Article: 15****Submitted by:** Piero MELOGRANI**Proposed text** *:

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to **seek**, receive and impart information and ideas without interference by public authority and regardless of frontiers.

2. **Art, science and research shall be free of constraint.**

Reasons: The proposal is to specify that freedom of expression includes freedom to seek information. Furthermore, it is deemed necessary to insert a second paragraph confirming the freedom of art, science and research which, moreover, was contained in Article 15 of working document CONVENT 13.

* Proposed amendments are in bold.

AMENDMENT 288

Proposed amendment to Article: 15

Submitted by: Alvaro Rodríguez BEREIJO, personal representative of the Spanish Prime Minister

Proposed text:

Add a paragraph 2, reading as follows:

2. The exercise of these rights shall be limited by observance of those rights recognised in this Charter, those established by the laws implementing them, those deriving from public safety, and in particular, the right to a good name, privacy and protection of children and young people.

Reasons:

In this case, perhaps more clearly than in any other case, there is a need to refer expressly to the limits of these rights, in accordance with the wording of previous amendments concerning this question.

AMENDMENT 289

Proposed amendment to Article: 15. Freedom of expression

Submitted by: Jürgen GNAUCK, Minister for Federal and European Affairs of Thuringia

Proposed text:

- “1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. *Freedom of the press and of broadcasting shall be guaranteed.*
2. *Art, science, research and teaching shall be free of constraint.*”

Reasons:

Although, in some Member States, the right to freedom of expression does cover freedom of the press and of broadcasting, a corresponding passage should be inserted into the Charter in order to make it clear that these fundamental rights are protected throughout Europe. Press and radio/television serve the purposes of information by comprehensive and truthful reporting and by disseminating ideas. They contribute to education and entertainment and are both a medium and a factor in the free formation of opinions. They take account of cultural diversity in Europe and promote European integration.

Member States' right to guarantee the continuing existence and development of public broadcasting services remain unaffected.

In addition, the German Länder think it essential that the Charter should include specific safeguards for art, science, research and teaching. This is also broadly in line with previously submitted suggestions for Article 15 in CONVENT 13.

AMENDMENT 290**Proposed amendment to Article: 15**

Submitted by: RODOTA', PACIOTTI and MANZELLA

Proposed text:

The text of the Article should be replaced by the following:

- "1. Everyone has the right to freedom of expression.*
- 2. This right shall include freedom to hold opinions and to seek, receive and impart information and ideas without interference by public authority, regardless of frontiers, and without conditioning resulting from large media conglomerates.*
- 3. The cultural and political pluralism of the mass media shall be guaranteed."*

Reasons:

Given the invasive power of modern mass media, the Article should be redrafted in terms which offer the citizen an effective guarantee against manipulation and conditioning.

AMENDMENT 291

Proposed amendment to Article: 15. Freedom of expression

Submitted by: Daniel TARCHYS

Proposed text:

Adapt the current draft to the language of Article 10 ECHR.

Reasons:

The draft purports to reiterate the principles of Article 10 ECHR. In fact the draft Article 11, para. 1 has omitted the last sentence of the ECHR, namely: “This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises”.

Draft Article 15 may create the impression that no limitations are permitted. It is important to reproduce the limitations in the ECHR here and not in a horizontal article (cf. comments under Art. 12).

AMENDMENT 292

Proposed amendment to Article: 15

Submitted by: Dr Peter Michael MOMBAUR, MEP

Proposed text:

Proposed text for a new title:

Freedom of expression and information

1. In the second sentence the term "**interference by public authority**" should be replaced by "**ensorship**".
2. The following two sentences should be added to the Article:

Everyone shall have the right to obtain information, without hindrance, from generally accessible sources. The freedom of dissemination of information shall be guaranteed.

Reasons:

The right to obtain information freely is the logical counterpart to freedom of expression and a basis for civic electoral choice.

The freedom of information logically also requires the dissemination of information to be protected as a fundamental right, not only by press, radio and film but by all possible technical media both present and future. This is why the general term "dissemination of information" should be used.

AMENDMENT 293**Proposed amendment to Article: 15****Submitted by:** Frits KORTHALS ALTES**Proposed text:**

The following new paragraph 2 should be added:

2. The right referred to in paragraph 1 may be limited only in accordance with the conditions laid down in Article 10(2) of the European Convention on Human Rights.

Reasons:

In view of the system proposed as regards limitations, the article should include a separate paragraph referring to Article 10(2) of the ECHR.

AMENDMENT 294

Proposed amendment to Article: 15

Submitted by: Lord GOLDSMITH, QC

Proposed text:

Amend text to produce two-part text, as follows:

For Part A, “Proclamation of Rights”

Add to existing text: “Formalities, restrictions, conditions or penalties can be placed on this right only in limited, specified circumstances”

For Part B, “Definition of Rights”:

“The right in Article 15 is the right guaranteed by Article 10 of the ECHR”

Reasons:

My amendment would ensure that Article 15 is understood within the meaning of the relevant ECHR right and its case law. I am also proposing a reference to the limitations in Part A, for much the same reasons I offered in relation to Article 14. In both cases I think it important to reflect the different wording of the limitations in the individual ECHR right. This could not be achieved in a single horizontal article as is proposed by the Praesidium.

AMENDMENT 295

Proposed amendment to Article: 15

Submitted by: Jean-Maurice DEBOUSSE, MEP, Alternate Member of the Convention

Proposed text:

1. The following should be added to the existing text after the phrase "interference by public authority":

... except in order to protect democracy, fundamental rights and the young.

2. The text as amended above becomes §1, with insertion of the following paragraphs:

. § 2: Freedom of expression implies the right to speak one's own language.

. § 3: Where one or more administrative languages have to be chosen for the sake of an efficiently functioning society, the choice must be made by law.

. §4 : Where an indigenous language is not an administrative language, it shall nevertheless remain a fundamental cultural feature contributing to Europe's rich cultural heritage.

. §5 : By this token, any indigenous language which is a regional language within the meaning of the European Charter of Regional or Minority Languages deserves respect, protection and aid. The detailed rules for implementing this principle shall be determined by law, whereby the requirements of efficiency must not be allowed to infringe fundamental rights and freedoms.

3. Insertion of a new Article 15a, reading as follows

The press, radio and television are part of freedom of expression. However, this freedom must take account of the essential need to protect the young, the general ban on any apology for violence and any statement of opinion capable of infringing human dignity. No other restriction may be formulated other than by law.

Reasons:

Re 1: In an area as difficult as this, giving rise to such strong emotions, it is no longer enough merely to refer to the general limitations clause.

Re 2: Problems in this regard are bad enough in the existing Member States, but it is well known that most of the applicants for enlargement have much more serious problems and many more of them too. The Convention cannot neglect the problem, either in principle or in practice.

Re 3 : With the press so essential in a democratic society, and with the growing social impact of television, it is necessary both to affirm a fundamental liberty and to define its limits.

Proposals for Article 16 as a whole

AMENDMENT 296

Proposed amendment to Article: 16

Submitted by: R. VAN DAM, MEP

Proposed text:

Delete Article 16.

Reasons:

This Article has no bearing on the powers of the Union's institutions or bodies.

Moreover, the organisation and funding of schools are matters closely bound up with national identity.

AMENDMENT 297

Proposed amendments to Article: 16. Right to education.

Submitted by: Daniel TARSCHYS

Proposed text:

Delete the whole Article or align it with the ECHR (First Protocol Article 2)

Reasons:

Since the right to education can be assured only by Member States my first preference is to delete the draft Article.

If a revised text is nevertheless kept, I have the following suggestions: In draft paragraph 1 the link between the first and second sentence is weak. Vocational and continuing education are not compulsory.

Concerning draft paragraph 2: The establishment of schools is not limited under Swedish law but if a school seeks financial aid or the right to award degrees/certificates, certain conditions apply. Similar rules probably apply in other Member States. The present draft may be misinterpreted to imply changes in this respect.

Finally, concerning draft paragraph 3, I would suggest a closer alignment with the text of Article 2 of the first additional Protocol to the ECHR which has been ratified by most EU Member States, albeit with reservations/declarations. Attention should also be given to the right of adolescents to influence their own education.

AMENDMENT 298

Proposed amendment to Article: 16 - Right to education

Submitted by: Mr Georges BERTHU, MEP

Proposed text:

Deletion of this Article.

Reasons:

This provision would breach the current division of responsibilities between the Union and the Member States. Pursuant to Article 149 of the TEC, "the Community..." fully respects "the responsibility of the Member States for the content of teaching and the organisation of education systems".

AMENDMENT 299

Proposed amendment to Article: 16

Submitted by: Andrew DUFF, MEP

Proposed text:

Article 16. Right to education and training

- 1. Everyone has the right to education and the right of access to vocational and continuing training. These rights include the right to receive free compulsory education.**
- 2. The (delete: 1 word) independence of educational establishments shall be (delete: 2 words) respected.**
- 3. The right of parents to have their children (delete: 2 words) taught in accordance with their own religious and philosophical convictions shall be respected.**

Statement of reasons

This Article is based on the common constitutional traditions of Member States and on Article 2 of the Additional Protocol to the European Convention on Human Rights, which reads as follows:

"No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions."

It was considered useful to add the principle of free compulsory education. As it is worded, it merely implies that as regards compulsory education, each child has the possibility of attending an

establishment which offers free education. It does not require all establishments which provide education, in particular private ones, to be free of charge. (Delete: 16 words)

The competence of the European Union in education policy is established under Article 149 of the Treaty establishing the European Community, and in vocational training under Article 150. The Union must respect the practice of free compulsory education (delete: 9 words).

The principle of academic freedom is not included in the Charter, but it constitutes both a structural principle of academic organisation and the guarantee of the freedom of expression in this area. The Charter in no way infringes this principle.

AMENDMENT 300

Proposed amendment to Article: 16. Right to education

Submitted by: Dr Ingo FRIEDRICH

Proposed text:

1. No person shall be denied the right to education (16 words deleted). This right includes the right to receive free compulsory education.
2. (new) There shall be equal access to state education facilities.
3. The right of parents to have their children educated and taught in accordance with their religious and philosophical convictions shall be respected.

Reasons:

Paragraph 1:

The wording has been taken from Article 2(1) of the Additional Protocol to the ECHR. The Union has neither the power nor the budgetary resources to grant a subjective right to education or a right of access to vocational and continuing training. Setting the state a goal of this type seems inappropriate, and would anyway belong in the field of social rights.

Re paragraph 2:

The current paragraph 2 is now covered by Article 15(3) (freedom of teaching).

The new wording of paragraph 2 makes clear that the most that can be guaranteed is equal access to state educational institutions, not any more far-reaching subjective right.

AMENDMENT 301

Proposal for amendment to Article: 16

Submitted by: Pervenche BERÈS

Proposed text:

Title : [change affecting French text only]

1. Everyone has the right to education [change affecting French text only] and the right of access to vocational and continuing training. These rights include the right to receive free compulsory education.
2. The founding of educational establishments shall be free of constraint.
3. The right of parents to have their children educated and taught in accordance with their religious and philosophical convictions shall be respected, unless these are prejudicial to the child's development or socialisation.
4. State education must respect the principle of secularism.

Reasons:

In the French text, the word "education" should be replaced by "instruction" in order to establish a right/claim requiring positive action by the State.

AMENDMENT 302

Proposed amendment to Article: 16

Submitted by: Win GRIFFITHS, MP

Proposed text:

No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

Reasons:

I prefer the brevity of Article 2 of the Additional Protocol to the ECHR.

AMENDMENT 303

Proposed amendment to Article: 16. Right to education

Submitted by: Jürgen GNAUCK, Minister for Federal and European Affairs of Thuringia

Proposed text:

"Article 16. Right to education

1. Everyone has the right of access to existing educational establishments. This right includes the right to receive free compulsory education.
2. The right of parents to have their children educated and taught in accordance with their religious and philosophical convictions shall be respected."

Reasons:

The new wording of the first sentence of Article 16(1) makes clear that the duty on Member States to guarantee fair and equal access to educational institutions refers only to the capacity available. There is no question of any obligation to create new, additional capacity.

The objections to par. 2 are so serious as to require deletion. As currently worded, it would mean taking the founding of educational establishments out of all State control. However, this could not apply to private higher-education institutions, for example, where state authorisation will continue to be needed in order to guarantee that the education provided and the degrees awarded come up to minimum standards.

This makes the current paragraph 3 into paragraph 2. It is regarded as important that there must be no abuse of parental rights.

AMENDMENT 304

Proposed amendment to Article: 16. Right to education

Submitted by: Jean-Luc DEHAENE, personal representative of the Belgian Government

Proposed text:

1. Everyone has the right to education and the right of access to vocational and continuing training. These rights include the right to receive free compulsory education.
2. The right of parents to have their children educated and taught in accordance with their religious and philosophical convictions shall be respected.

Reasons:

To keep the text of the Charter as close as possible to the text of Article 2 of the First Protocol to the European Convention on Human Rights, the second paragraph of the version in CONVENT 28 ["2. *The founding of educational establishments shall be free of constraint.*"] should be deleted.

AMENDMENT 305

Proposed amendment to Article: 16

Submitted by: François LONCLE

Proposed text:

Article 16:

Word paragraph 1 of this Article as follows:

Everyone has the right to education. This right includes the right to receive free compulsory education.

Reasons:

The reference to vocational training belongs with economic and social rights.

II. Proposed text:

Delete paragraph 2 of this Article.

Reasons:

In the interests of readability, it seems preferable that this Article should concentrate on the child's right to education, without any interference from questions relating to the founding of educational establishments. In any case, the founding of such establishments is not an absolute right.

AMENDMENT 306**Proposed amendment to Article: 16**

Submitted by: Frits KORTHALS ALTES, representative of the Netherlands Government

Proposed text:

- “1. Every child has the right to free compulsory basic education within age limits set by national legislation.
2. There shall be freedom of choice of educational establishment.
3. The right of parents or legal guardians to have their children educated in accordance with their religious or philosophical convictions shall be respected.”

Reasons:

This form of words reflects individual Member States' educational systems more closely. Given the potential restrictions on persons residing unlawfully in a country, universal entitlement to education ceases above the compulsory school age. Regarding paragraph 2, it should be noted that freedom of choice does not imply any right to be admitted.

AMENDMENT 307

Proposed amendment to Article: 16

Submitted by: Lord GOLDSMITH, QC

Proposed text:

Substitute the following two-part text:

For Part A, “Proclamation of Rights”

“No one shall be denied the right to education”

For Part B, “Definition of Rights”:

“The right in Article 16 is the right guaranteed by Article 2 of the First Protocol to the ECHR, read with any reservation made in respect of it”

Reasons:

The Praesidium draft contains provisions not found in the relevant ECHR right. In my opinion these accretions are unnecessary and I am told that they would have potentially very significant financial and other implications for EU institutions and for the Member States when acting as their agents.

The UK maintains an important reservation to the ECHR right: “The principle affirmed in the second sentence of Article 2 ECHR is accepted by the UK only so far as it is compatible with the provision of efficient instruction and training, and the avoidance of unreasonable public expenditure.” Other Member States have similar reservations.

My version ensures that Article 16 is understood within the meaning of Article 2 to Protocol 1 of the ECHR, associated case law, and any national reservations. The latter consideration reflects the principles of subsidiarity and national diversity. These seem highly appropriate in this area. It also ensures that parents’ rights, as so understood, are covered.

Community competence on vocational training is limited to supporting and supplementing Member States’ action (Article 140 and 150 TEC).

AMENDMENT 308

Proposed amendment to Article: 16

Submitted by: Heinrich NEISSER

Proposed text (relates solely to the statement of reasons):

Article 16. Right to education

1. *Everyone has the right to education ... [unchanged]*

Statement of reasons

This Article is based [...]

It was considered useful [...]

The principle of free education relates only to the attendance of classes; any additional services (textbooks, accommodation, etc.) may be provided in return for payment. Moreover, this Article does not in any way provide a basis for entitlement to the payment of an educational grant or scholarship. The principle of academic freedom [...]

Reasons:

The addition of these two sentences to the statement of reasons for Article 16 clarifies that not all services connected with compulsory education have to be free of charge - only the provision of education itself.

AMENDMENT 309

Proposed amendment to Article: 16. Right to education

Submitted by: Ben FAYOT

Proposed text:

1. Everyone has the right to education and the right to initial and continuing training. These rights include the right to receive compulsory education.
2. (to be deleted).
3. The right of parents to have their children educated in accordance with their philosophical convictions and in compliance with the laws of the country shall be respected.

Reasons:

Re 1. The first amendment is a matter of wording (dropping access to and adding initial).

Re 2. The Luxembourg Constitution does not proclaim freedom to dispense education. As it stands, the proposed text thus runs counter to our constitutional tradition and cannot be accepted.

Re 3. It would be useful to specify that this concerns the education of children in a general sense rather than teaching; thus and taught should be deleted.

This right should be respected but it is important to stress the significance of national laws in protecting children.

AMENDMENT 310**Proposed amendment to Article: 16**

Submitted by: Jean-Maurice DEHOUSSE, MEP, Alternate Member of the Convention

Proposed text:**Replace as follows:**

1. Everyone has the right to equal and free access to schools providing compulsory education, which means that the public authorities must ensure that such schools exist in sufficient number.
2. The right of parents and subsequently of children to a free choice of school shall be respected.
3. It follows that the founding of educational establishments shall be free of constraint.
4. The right of parents to have their children educated and taught in accordance with their religious and philosophical convictions shall be exercised while respecting the principle of tolerance and the principle of democracy, which include the setting out by the public authority of programmes leading to approved diplomas which may be recognised as equivalent throughout the European Union.
5. The existence and future development of the Union, on the one hand, and the interest of each child considered individually, on the other, are combined factors making necessary the systematic and progressive teaching of three languages which shall commence as soon as possible.

Reasons:

Re 1. Freedom of access to education and even more so the obligation to provide free education will remain mere wishful thinking unless someone takes care of the necessary expenditure.

Re 2. At a time when considerable pressure is being exercised for a return to separate education for girls and boys or to urge that each school of thought (and in practice every sect) be guaranteed respect for its beliefs, to the extent of undermining the child's right to health, it is essential that a distinction be made between the free choice of educational establishment and the necessary compliance with basic programmes.

Re 4. The requirements for the equivalence of diplomas also strengthens the need to guarantee the quality of such diplomas.

Re 5. Insofar as the diversity of languages should be considered a crucial component

of the European cultural heritage, which includes endogenous languages, the multicultural reality of Europe requires an effort to bring people closer.

Benjamin FRANKLIN wrote a little over two centuries ago that knowing and understanding ourselves better was the price we pay for peace.

This reflection remains entirely relevant and in today's Europe finds a particularly fertile field of application.

AMENDMENT 311

Proposed amendment to Article: 16

Submitted by: Simone BEISSEL

Proposed text:

The founding of educational establishments shall be subject to approval by the competent authority of the Member State on whose territory they are situated.

Reasons:

In order to avoid the setting up of establishments under the direction and/or management of sects or similar associations which represent a risk to the moral and psychological balance of young people.

Proposals for Article 16(1) and (1a)

AMENDMENT 312

Proposed amendment to Article: 16(1) and (2)

Submitted by: Alvaro Rodríguez BEREIJO, personal representative of the Spanish Prime Minister

Proposed text:

- 1. Everyone has the right to education. This right includes the right to receive free compulsory education.**

Reasons:

The wording of the rule must be expressed positively in the Spanish version, as in the French version of the text. On the other hand, the reference to "vocational and continuing training" should be deleted since that is a social right, unlike the right to education. The fact that the right to education and to compulsory schooling includes the right to formal vocational training is a different matter since that is training which forms part of the educational system as an alternative to secondary education to minimum school-leaving age.

AMENDMENT 313**Proposed amendment to Article: 16**

Submitted by: Guy BRAIBANT, personal representative of the President of the French Republic and of the French Prime Minister

Proposed text:

At the end of the first paragraph, add: "*the neutrality of which is guaranteed*".

Reasons:

It is essential to balance recognition of freedom to found educational establishments against assertion of the duty of neutrality of free and compulsory education.

AMENDMENT 314

Blank

AMENDMENT 315

Proposed amendment to Article: 16

Submitted by: Ieke VAN DEN BURG

Proposed text:

Article 16(1):

Everyone has the right to education and the right of access to vocational training throughout his working life (instead of "and continuing training") etc.

Reasons:

This addition flows from the right proposed in Article X in CONVENT 18. The French and English versions speak of "vocational and continuing". In Dutch, following on from the wording used in the earlier text, this is better expressed by "gedurende het gehele beroepsleven".

AMENDMENT 316**Proposed amendment to Article: 16**

Submitted by: RODOTA', MANZELLA and PACIOTTI

Proposed text:

After the first paragraph, add the following:

"1a. Education aims not only to diffuse knowledge, but also to foster understanding between different cultures".

Reasons:

This amendment is based on the fundamental requirement within the Union for coexistence and mutual understanding between different cultures.

Proposals for Article 16(2)

AMENDMENT 317

Proposed amendment to Article: 16(1) and (2)

Submitted by: Alvaro Rodríguez BEREIJO, personal representative of the Spanish Prime Minister

Proposed text:

2. The founding of educational establishments shall be free of constraint, whilst respecting democratic principles and complying with national law.

Reasons:

It seems advisable to assert respect for democratic principles in the exercise of the right to found educational establishments, and to refer to the legislation of each Member State.

AMENDMENT 318**Proposed amendment to Article: 16**

Submitted by: Guy BRAIBANT, personal representative of the President of the French Republic and of the French Prime Minister

Proposed text:

At the beginning of the second paragraph, add: "within the scope of the laws regulating the question".

Reasons:

It is essential to balance recognition of freedom to found educational establishments against assertion of the duty of neutrality of free and compulsory education.

In the second paragraph, a reference to the scope of the law is necessary in the name of the principle of subsidiarity.

AMENDMENT 319

Proposed amendment to Article: 16

Submitted by: Erling OLSEN

Proposed text:

Paragraph 2 should be deleted.

Reasons:

Paragraph 2 is not sufficiently precise to constitute a right. It could moreover lead to misunderstanding about the scope of paragraph 3.

AMENDMENT 320**Proposed amendment to Article: 16**

Submitted by: E.M.H. HIRSCH BALLIN and M. PATIJN (also on behalf of G.J.W. VAN OVEN)

Proposed text:

Paragraph 2 should be replaced by: "The freedom to found educational establishments shall be guaranteed".

Reasons:

The wording "free of constraint" is too vague. The proposed wording makes it clear that this is an obligation on the authorities.

AMENDMENT 321

Proposed amendment to Article: 16(2)

Submitted by: Gabriel CISNEROS LABORDA

Proposed text:

The right to found educational establishments and to academic freedom shall be recognised.

Reasons:

Academic freedom is an essential element of educational freedom.

Proposals for Article 16(3)

AMENDMENT 322

Proposed amendment to Article: 16

Submitted by: RODOTA', MANZELLA and PACIOTTI

Proposed text:

Replace paragraph 3 by the following:

"3. Parents have the right to educate and teach their children in accordance with their own convictions and respect for the persons of minors".

Reasons:

This is intended to take account of the rights of minors.

AMENDMENT 323

Proposed amendment to Article: 16

Submitted by: Gunnar JANSSON, Tuija BRAX and Paavo NIKULA

Proposed text:

Article 16. Right to education

3. The right of parents to have their children educated in accordance with their religious and philosophical convictions shall be respected. *Children's views should be taken into account in accordance with their age and level of development.*

Reasons:

The parents' right to decide their children's education and teaching is not absolute, but includes their obligation to take into account children's own views on any decisions taken concerning them, in accordance with the children's level of intellectual development. Article 16 in its proposed new form is most in line with Article 23 – relating to children's rights – of the Charter of Fundamental Rights and Articles 12 and 14 of the Convention on the Rights of the Child.

Proposals for Article 17

AMENDMENT 324

Proposed amendment to Article: 17. Freedom of assembly and association

Submitted by: Georges BERTHU, MEP

Proposed text:

Everyone has the right to freedom of peaceful assembly and to freedom of association (remainder deleted).

Reasons:

The explicit reference to political parties in a Charter intended to be applied to the European Institutions could mean the recognition of European political parties. This would amount to an amendment to the Treaties, which goes beyond the instructions given by the Cologne Council.

AMENDMENT 325

Proposed amendment to Article: 17

Submitted by: Andrew DUFF, MEP

Proposed text:

Article 17: Freedom of assembly and association

Everyone has the right to freedom of peaceful assembly (delete: 3 words) and association (delete: 2 words), including the right to form and to join trade unions, professional or voluntary organisations, (delete: 1 word) and political parties.

Statement of reasons

This Article is based on Article 11 of the European Convention on Human Rights:

- "1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.*
- 2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."*

The question of restrictions will be covered by the horizontal clause relating to the European Convention on Human Rights.

Title VIII of the Treaty establishing the European Community, as amended by the Treaty of Amsterdam, recognises the formal role of management and labour in the conduct of social policy, including the representation and collective defence of workers and employers. Moreover, the Economic and Social Committee has been officially comprised of representatives of the various categories of economic and social activity since its foundation in 1958 (Article 257).

AMENDMENT 326**Proposed amendment to Article:** 17. FREEDOM OF ASSEMBLY AND ASSOCIATION**Submitted by:** Jordi SOLÉ TURA**Proposed text:**

“Everyone has the right to freedom of peaceful assembly and to freedom of association for civic or political purposes or in trade unions.”

Reasons:

This Article overlaps with Article 24 and gives rise to confusion. For example, Article 24 states that “Every citizen has the right to form a political party at the level of the Union ...”, whereas Article 17 recognises that “everyone” has this right, which may be interpreted as “everyone at any level”, extending beyond the Union and the citizens and countries constituting it. Furthermore, it makes no sense for the same concept – forming political parties – to be recognised in two Articles of the Convention.

AMENDMENT 327

Proposed amendment to Article: 17

Submitted by: Win GRIFFITHS, MP

Proposed text:

Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions.

Reasons:

It is not necessary to add political parties to the ECHR Article 11 text as political parties are a classic expression of the right to freedom of association and the issue of political parties organised at the European Union level is dealt with in Article 24.

AMENDMENT 328

Proposed amendment to Article: 17

Submitted by: Pervenche BERÈS

Proposed text:

Everyone has the right to freedom of peaceful assembly, (4 words deleted) cultural expression and association with others, including the right to form and to join trade unions or political parties.

Reasons:

AMENDMENT 329

Proposed amendment to Article: 17. Freedom of assembly and association

Submitted by: Dr Ingo FRIEDRICH

Proposed text:

Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions (*next three words to be deleted*) and coalitions.

Reasons:

Separate Article concerning political parties – see Article 24.

Article 34 also refers to employers and employees.

AMENDMENT 330**Proposed amendment to Article: 17****Submitted by:** Heinrich NEISSER**Proposed text:**

Article 17. Freedom of assembly and association

Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions [~~or political parties~~].

Reasons:

The right to form and to join political parties is already included in Article 24 of the draft, which did not yet exist when the present Article was being discussed. The reference to political parties in Article 17 is therefore unnecessary.

AMENDMENT 331

Proposed amendment to Articles: 17 and 24

Submitted by: Ben FAYOT

Proposed text:

Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right *at both national and European level* to form and to join trade unions or political parties. These political parties must respect the rights and freedoms guaranteed by this Charter.

Reasons:

It seems pointless to make a distinction between national level in Article 17 and European level in Article 24.

It also seems pedantic to make a distinction at European level between a citizen (having the right to form a party) and a simple resident (having the right to join one). Existing European parties do not in any case have individual membership but only party membership, i.e. parties of parties.

AMENDMENT 332**Proposed amendment to Article:****Submitted by:** R. VAN DAM, MEP**Proposed text:**Add the following new paragraph:

2. This right shall not be subject to any limitations beyond those possible under Article 11(2) of the European Convention on Human Rights.

Reasons:

The article would thus reflect the ECHR more closely.

AMENDMENT 333

Proposed amendment to Article : 17 Freedom of assembly and association

Submitted by: Charlotte CEDERSCHIÖLD

Proposed text:

Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right **to form, to join or not to join** trade unions or political parties.

Reasons:

Even though the freedom to refrain from doing something is implicit in “freedom”, that negative freedom should be expressly included in order to avoid any misunderstanding.

AMENDMENT 334

Proposed amendment to Article: 17

Submitted by: Alvaro Rodríguez BEREIJO, personal representative of the Spanish Prime Minister

Proposed text:

1. Everyone has the right to freedom of peaceful assembly and demonstration without prejudice to the restrictions imposed to safeguard public order.
2. Everyone has the right to form and to join associations or trade unions, except where they pursue unlawful aims or use unlawful means. This right may be subject to restrictions for members of the armed forces, armed corps or civil service.

Reasons:

The extension of the right to form political parties in Spain to those not possessing Spanish nationality does not comply with the internal system of Spanish law as such persons do not have the right to vote or to stand as candidates. This rule contradicts Article 24, which limits this right, at the level of the Union, to "citizens" of its Member States.

On the other hand, the omission of the limits of this right requires that, in accordance with Article 11 of the ECHR, express provision be made therefor in the Charter.

AMENDMENT 335

Proposed amendment to Article: 17. Freedom of assembly and association

Submitted by: Jürgen GNAUCK, Minister for Federal and European Affairs of Thuringia

Proposed text:

"17. Freedom of assembly and association

Everyone has the right to freedom of peaceful assembly and association with others, including the right to form and join trade unions. Associations must respect the rights and freedoms guaranteed by this Charter."

Reasons:

The current wording, granting the right to freedom of peaceful association but merely to freedom of association without mentioning that it should be "peaceful", could lead to misunderstandings. It is surely not intended that association should not be peaceful.

Furthermore, all provisions on political parties should be concentrated in Article 24. In addition, the right of parties to decide themselves on the admission of new members must remain unaffected. Any claim to admission should be rejected.

Finally, it would seem useful to incorporate an anti-abuse clause here too. Extremist associations can generate the same threats as extremist parties.

AMENDMENT 336

Proposed amendment to Article: 17

Submitted by: Lord GOLDSMITH, QC

Proposed text:

Amend to produce two-part text as follows:

For Part A, “Proclamation of Rights”

Delete “or political parties” and add “for the protection of his or her interests. These rights may be restricted only in limited, specified circumstances”

For Part B, “Definition of Rights”:

“The right in Article 17 is the right guaranteed by Article 11 of the ECHR”

Reasons:

The right to form and to be free to join political parties is contained within the relevant ECHR right. Referring to it in Article 17 may have the undesirable effect of casting doubt on other features of the ECHR right which are not specified in the Article itself. I am also concerned that CONVENT 28 drafting implies that the state should guarantee the right for everyone to join any political party. I consider that this could interfere with the ability of political parties to determine qualifications for entry. My version ensures that Article 17 is understood within the meaning of ECHR Article 11 and the case law. Consistent with my general approach I consider that specific reference to restrictions must be made in the proclamation of the right itself.

AMENDMENT 337

Proposed amendment to Article: 17

Submitted by: Gabriel CISNEROS LABORDA

Proposed text:

Everyone has the right to freedom of peaceful assembly and to freedom of association.

Reasons:

The proposal to delete the final clause referring to political parties is because it is also in Article 24.

AMENDMENT 338

Proposed amendment to Article: 17

Submitted by: RODOTA' and PACIOTTI

Proposed text:

Replace the text of the Article by the following:

"Everyone has the right to assemble peacefully, associate with others, form parties and trade unions and join them or not".

Reasons:

More precise and effective terms are used in this Article in order to assert a fundamental right which, in our view, renders Article 24 superfluous.

AMENDMENT 339

Proposed amendment to Article: 17

Submitted by: Ieke VAN DEN BURG

Proposed text:

Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions, political parties or non-governmental organisations. The European Union shall foster dialogue with social partners and non-governmental organisations.

Reasons:

The words "with others" should be included in the first part of the sentence (as in other language versions).

Non-governmental organisations have been added because of the increasingly important part they play in European policy-making.

The Social Dialogue with social partners and the Civil Dialogue with NGOs are an essential instrument of EU policy and should therefore be mentioned in the Charter.

AMENDMENT 340**Proposed amendment to Article: 17**

Submitted by: Frits KORTHALS ALTES, representative of the Netherlands Government

Proposed text:

Everyone has the right to freedom of assembly and to freedom of association with others, including the right to form and to join trade unions or political parties. *This right may be limited only in accordance with the conditions laid down in Article 11(2) of the European Convention on Human Rights.*

Reasons:

As in the ECHR, it is preferable to specify for each right the conditions under which that right may be limited. The article has therefore been supplemented with a reference to the limitations listed in Article 11(2) of the ECHR. See also the reasons given for the amendment to Article 3.

AMENDMENT 341

Proposed amendment to Article: 17

Submitted by: José BARROS MOURA and Maria Eduarda AZEVEDO

Proposed text:

1. ... (identical to the form of words proposed for the article as a whole).
2. **Any Union citizen residing in a Member State other than that of which he is a national shall enjoy the rights referred to in paragraph 1 under the same conditions as nationals of that other Member State.**

AMENDMENT 342

Proposed amendment to Article: 17

Submitted by: Jean-Maurice DEHOUSSE, MEP, Alternate Member of the Convention

Proposed text:

In the second line of the text, insert "democratic" before "parties".

Reasons:

The Charter cannot encourage the formation of anti-democratic institutions.

Proposals for Article 18

AMENDMENT 343

Proposed amendment to Article: 18. Right of access to documents

Submitted by: Dr Ingo FRIEDRICH

Proposed text:

Delete.

Reasons:

Access to documents is not traditionally a fundamental right.

Article 255(1) of the EC Treaty adequately covers access to documents.

AMENDMENT 344

Proposed amendment to Article: 18

Submitted by: Andrew DUFF, MEP

Proposed text:

Article 18. Right of access to documents

Everyone (delete: 10 words) has a right of access to the documents of the institutions of the European Union and of subsidiary bodies and agencies established by the institutions and by the Treaty on European Union. (delete: 8 words)

Statement of reasons

This Article is based on Article 255 of the EC Treaty, but ends the anomaly whereby only the Commission, Council and Parliament are specified. The reference to the TEU is intended to include any bodies created under the second or third pillars. The conditions and limits described in the remainder of Article 255 are still extant, and, for the other institutions, agencies and bodies, where relevant codes of conduct exist they will be respected.

Article 1 of the Treaty on European Union, as amended by the Treaty of Amsterdam, says that "... decisions are taken as openly as possible ..".

AMENDMENT 345

Proposed amendment to Article: 18

Submitted by: Erling OLSEN

Proposed text:

The following new paragraph should be added: "This right shall be exercised subject to the conditions and limitations laid down in the EC Treaty".

Reasons:

AMENDMENT 346**Proposed amendment to Article: 18**

Submitted by: E.M.H. HIRSCH BALLIN and M. PATIJN (also on behalf of G.J.W. VAN OVEN)

Proposed text:

Replace the present text by: "Everyone has a right of access to documents and information from the institutions and other bodies of the Union in all areas for which the Union has competence. That right may be limited in accordance with the limitations applicable to it in Community law and Union law".

Reasons:

There is no justification for limiting the right of access to documents to citizens of the Union or persons residing in the Union or to specific institutions of the Union. The proposed amendment refers, moreover, to the possibility of limitations being applicable in Community law (Article 255 of the EC Treaty) and in Union law. Such limitations are to be laid down in Community law and Union law.

AMENDMENT 347**Proposed amendment to Article: 18**

Submitted by: Kathalijne BUITENWEG and Johannes VOGGENHUBER

Proposed text:

“Everyone has a right of access to the information held by the institutions and bodies of the European Union.”

Reasons:

The scope of the fundamental rights should not be restricted needlessly as regards the persons covered. This was rightly not done in the case of Article 27 (Relations with the administration). Persons outside the Union, too, may have an interest in access to the European Union’s information.

“Information” is preferable to “documents”, because it also includes items such as databases.

The force of Article 1 of the TEU, which states that decisions are to be taken as openly as possible and as closely as possible to the citizen, is not confined to the European Parliament, the Council and the Commission. In order to ensure that the other EU institutions and bodies also heed this principle, it would be desirable for the Charter to show some ambition and widen the right of access to information to cover all EU institutions and bodies. Thanks to the European Ombudsman’s efforts, most of those institutions and bodies already have a procedure for access to their information.

The proposed amendment improves the article’s readability.

(This amendment obviously also involves a change to Article 48, as set out in CHARTE 4316/00 CONVENT 34, which should be converted from a non-progression clause into a non-regression clause.)

AMENDMENT 348**Proposed amendment to Article: 18**

Submitted by: Alvaro Rodríguez BEREIJO, personal representative of the Spanish Prime Minister

Proposed text:

Add at the end: “This right shall be exercised under the conditions laid down by Article 255 of the Treaty establishing the European Community”.

Reasons:

Without prejudice to any references made in the horizontal clause, there is a need to make express reference here to the Article of the Treaty establishing the European Community which regulates the right in question; that reference was also included in earlier drafts (see Article 14 in CONVENT 8).

AMENDMENT 349

Proposed amendment to Article: 18. Right of access to documents

Submitted by: VITORINO, Commission representative on the Convention

Proposed text:

"Every citizen of the Union or anyone residing in the Union has a right of access to the documents held by the European Parliament, the Council and the Commission."

Reasons:

This clarification is in line with the proposal for a Regulation forwarded by the Commission to the Council on 28 January 2000 on the basis of Article 255 of the EC Treaty.

AMENDMENT 350

Proposed amendment to Article: 18

Submitted by: Lord GOLDSMITH, QC

Proposed text:

Amend to produce two-part text as follows:

For Part A, “Proclamation of Rights”

Retain proposed text

For Part B, “Definition of Rights”:

“The right in Article 18 is the right guaranteed by Article 255 of the Treaty establishing the European Community and shall be exercised in accordance with the conditions and subject to any limitations made under and in accordance with that Treaty provision”

Reasons:

I am happy with the Praesidium draft text so far as proclaiming the right is concerned. The proposed part B ensures that Article 18 is understood within the meaning of the relevant treaty provision. The conditions and limitations described in Article 255 cannot be covered appropriately by a horizontal clause, as proposed by the Praesidium.

AMENDMENT 351

Proposed amendment to Article: 18

Submitted by: RODOTA', MANZELLA and PACIOTTI

Proposed text:

Replace the text of the Article by the following:

"Everyone has a right of access to the documents of the European Institutions".

Reasons:

The right of access to documents has been confirmed at length, with reference to both the subject-matter covered and the Institutions involved, in the Community regulations and case law which preceded the Treaty of Amsterdam.

AMENDMENT 352

Proposed amendment to Article: 18

Submitted by: Peter ALTMAIER, Member of the German Parliament

Proposed text:

"Every citizen of the Union has a right of access to information available from the bodies and other Institutions of the European Union".

Reasons:

The possibility of asserting the right of access to information should not be confined to the European Parliament, the Council and the Commission. The obligation to allow access to information should rather apply to every department of all bodies of the European Union and all other EU Institutions, e.g. the European Environment Agency, the Committee of the Regions, etc.

The object of this right should be based on a comprehensive definition of information, which is not adequately provided by the term "document" given developments in information technology. This should rather be a right which covers information not only in written form but also in the form of pictures, sound, EDP, etc., i.e. in all conceivable types of information storage, in order to preclude any circumvention of the provision through use of a means of information storage that is not covered and also to allow for future technological developments.

A limitation on persons enjoying this right should only come into play where the need for information is no longer justified by the democratic basis of citizenship of the Union. If there were plans to make this a universal right applicable not only to citizens of the Union but also to all non-EU citizens residing or legal persons having their registered offices in a Member State of the European Union, such a solution would run counter to the justification of a right of access to information on the basis of democratic principles. Non-EU citizens should not therefore enjoy this right of access. Nor should legal persons unless they are involved in or monitoring the democratic process as a group of citizens of the Union, e.g. citizen's initiatives and the like.

AMENDMENT 353**Proposed amendment to Article: 18**

Submitted by: Mr Frits KORTHALS ALTES, representative of the Netherlands Government

Proposed text:

Everyone has a right of access to the documents and information of the institutions and other bodies of the Union in all areas falling within the competence of the Union. This right may be limited in accordance with the relevant restrictions applicable under Community law.

Reasons:

There is no reason to restrict the right of access to documents to Union citizens or persons residing in the Union, or in relation to certain Union institutions. The proposal further refers to the possibility of imposing restrictions applicable under Community law (see also Article 255 EC). Such restrictions need to be laid down in Community law.

AMENDMENT 354

Proposed amendment to Article: 18

Submitted by: José BARROS MOURA and Maria Eduarda AZEVEDO

Proposed text:

Every citizen of the Union or anyone residing in the Union has a right of access to the documents of the European Parliament, the Council and the Commission **and of the Member States where implementing Community legislation.**

AMENDMENT 355

Proposed amendment to Article: 18

Submitted by: Jean-Maurice DEBOUSSE, MEP, Alternate Member of the Convention

Proposed text:

- Incorporate Article 18 (Right of access to documents) into Article 27 (Relations with the administration).
- Alternative amendment: convert Article 18 into Article 27a.

Reasons:

To improve the Charter's readability and bring together in the same section two articles both dealing with relations between citizens and the Union's bodies.

AMENDMENT 356

Proposed amendment to Article: 18

Submitted by: Simone BEISSEL

Proposed text:

“... a right of access to the **official** documents of the European Parliament, of the Council and of the Commission.”

Reasons:

There is a risk that the confidentiality of communications and of internal documents might be breached, thereby causing major damage to the proper conduct of the European Union’s affairs.

Proposals for Article 19

AMENDMENT 357

Proposed amendments to Article: 19. Data protection

Submitted by: Daniel TARSCHYS

Proposed text:

Rephrase this Article completely.

Reasons:

Personal data protection is a very sensitive field where the rights of the individual need to be balanced, i.a. against the freedom of expression, the need for transparency in public affairs and the need to protect public health and public order. The careful considerations contained in the Council of Europe's Convention on the protection of personal data and in national legislation is not adequately reflected in the draft Article.

Finally, the heading is too broad and should read "Personal data protection".

AMENDMENT 358**Proposed amendment to Article: 19. Data protection**

Submitted by: Ingo FRIEDRICH

Proposed text:

Delete.

Reasons:

The text of this Article should be added to Article 12 as paragraph 2, on substantive and systematic grounds.

AMENDMENT 359**Proposed amendment to Article: 19****Submitted by:** Andrew DUFF, MEP**Proposed text:****Article 19. Data protection**

Everyone has the right to determine the use and disclosure of (delete: 4 words) personal data (delete: 9 words).

Statement of reasons

Under Article 286 of the EC Treaty the Community Directives on data protection are applicable to the institutions and bodies. Those Directives are based on the Council of Europe Convention on the protection of personal data. It seems preferable to lay down a general rule rather than to include a detailed list of principles which will be subject to change in the light of technical advances. In any case, data protection is an aspect of respect for privacy.

AMENDMENT 360

Proposed amendment to Article: 19

Submitted by: Erling OLSEN

Proposed text:

The following words should be added to this provision: "subject to the conditions laid down in Community legal acts pursuant to Article 286 of the EC Treaty".

Reasons:

AMENDMENT 361

Proposed amendment to Article: 19. Data protection

Submitted by: Jordi SOLÉ TURA

Proposed text:

"Everyone has the right to have his personal data protected and to determine for himself whether they may be disclosed and how they may be used".

Reasons:

The first part of the sentence reverts to the original thrust of this Article and is added to the existing text, where the words "his personal data" are replaced by "they" in order not to repeat the phrase.

AMENDMENT 362

Proposed amendment to Article: 19

Submitted by: E.M.H. HIRSCH BALLIN and M. PATIJN (also on behalf of G.J.W. VAN OVEN)

Proposed text:

Add "... without prejudice to the powers of law-enforcement agencies to compile and use data in the cases provided for by law".

Reasons:

The right of everyone to determine for himself whether his personal data may be disclosed and how they may be used is not an absolute right.

AMENDMENT 363

Proposed amendment to Article: 19

Submitted by: Win GRIFFITSH, MP

Proposed text:

Everyone has the right to determine for himself/herself whether his/her personal data may be disclosed and how they may be used except in circumstances prescribed by law in connection with established infringements of the law.

Reasons:

On its own the original text would appear to give convicted criminals the right to decide whether their personal data ought to be published in the public interest.

AMENDMENT 364**Proposed amendment to Article: 19**

Submitted by: Piero MELOGRANI, who wishes to endorse the amendment replacing Article 19 submitted by Professor RODOTA'

Proposed text:

(Text proposed by Professor Rodota':

1. Everyone has the right to respect for the confidentiality of personal data as part of their own identity.
2. Personal data may be collected only for legitimate purposes and subject to the principle of proportionality.
3. Everyone has the right to determine freely whether their personal data may be collected, used and transmitted, to be informed about the purposes and methods of processing, to have access to the information collected and to seek independent verification.
4. No one shall be subjected to checks by surveillance technologies which may be prejudicial to human dignity, rights or freedoms.)

AMENDMENT 365

Proposed amendment to Article: 19

Submitted by: Kathalijne BUITENWEG and Johannes VOGGENHUBER

Proposed text:

Everyone has the right to determine for himself whether his personal data may be compiled and disclosed and how they may be used.

Reasons:

In order to ensure completeness.

AMENDMENT 366**Proposed amendment to Article: 19**

Submitted by: Johannes VOGGENHUBER and Kathalijne BUITENWEG

Proposed text:

1. **Everyone has the right to determine for himself whether his personal data may be disclosed and how they may be used.**
2. **Everyone has the right to know the data collected on him and, where appropriate, to request that corrections be made.**

Reasons:

AMENDMENT 367

Proposed amendment to Article: 19

Submitted by: Pervenche BERÈS

Proposed text:

Everyone has the right to authorise the disclosure and use of data concerning himself.

Reasons:

AMENDMENT 368

Proposed amendment to Article: 19. Data protection

Submitted by: Charlotte CEDERSCHIÖLD

Proposed text:

Everyone has the right to determine for himself/herself whether his/her personal data may be disclosed and how they may be used, **including proprietary information and business secrets.**

Reasons:

The owner of the information should be able to decide whether to restrict its use, or to disclose it to third parties.

AMENDMENT 369**Proposed amendment to Article: 19****Submitted by:** Heinrich NEISSER**Proposed text:***Article 19. Data protection*

*Everyone has the right to determine for himself whether his personal data may be disclosed and how they may be used, **insofar as he has an interest therein which should be protected.***

Reasons:

In the current version, the basic right to data protection seems to be worded in terms that are too absolute. It is also possible to conceive of situations in which the data subject should not have full freedom of decision-making. This manner of looking at such situations in relative terms is expressed by the second half of the sentence, which has also, for the past 20 years or so, formed part of the Austrian constitutional acquis (Section 1(1) of the Austrian Data Protection Act states that everyone is entitled to the confidentiality of the personal data concerning him, insofar as he has an interest therein that is worth protecting, particularly with regard to respect for his private and family life).

AMENDMENT 370**Proposed amendment to Article: 19**

Submitted by: Alvaro Rodríguez BEREIJO, personal representative of the Spanish Prime Minister

Proposed text:

Every natural person shall have a right to protection for his personal data.

Reasons:

1. Entitlement to this right, which forms part of the right to privacy, refers to natural persons.
2. It is not admissible for the disclosure and use of personal data to be in all cases subject to the consent of the data subject. Even if that is generally the case, in cases where data are obtained by the public administration for the performance of its duties, the use of the data in its possession cannot be subject to the consent of the data subject. Examples are the computerised records for tax, police and judicial purposes, etc. Respect for privacy and data confidentiality are a separate issue.
3. It is therefore proposed to revert to the wording of the previous text (CONVENT 8, Article 15).

AMENDMENT 371

Proposed amendment to Article: 19. Data protection

Submitted by: Jürgen GNAUCK, Minister for Federal and European Affairs of Thuringia

Proposed text:

"Article 19. Data protection

Everyone has the right to determine for himself whether his personal data may be collected or disclosed and how they may be used."

Reasons:

From the point of view of the German *Länder*, it is imperative that the citizen should be thoroughly protected as early as the data collection stage.

Furthermore, on terminological grounds the German term "personenbezogen" would be preferable.

AMENDMENT 372

Proposed amendment to Article: 19. Data protection

Submitted by: VITORINO, Commission representative on the Convention

Proposed text:

"Everyone has the right to determine for himself whether personal data *concerning him* may be *collected* and disclosed and how they may be used."

Reasons:

It is important to make clear that this provision applies from the time of collection of data by third parties. It should also be made clear that it applies to data concerning the person.

AMENDMENT 373**Proposed amendment to Article: 19**

Submitted by: RODOTA', MANZELLA and PACIOTTI

Proposed text:

Replace the text of the Article by the following:

- "1. Everyone has the right to respect fro the confidentiality of personal data as part of their own identity.
2. Personal data may be collected only for lawful purposes and in compliance with the principle of proportionality.
3. Everyone has the right to determine freely whether personal data may be collected, used and transmitted, to be informed about the purposes and methods of processing, to have access to the information collected and to seek independent verification.
4. No one shall be subjected to checks by surveillance technologies which may be prejudicial to human dignity, rights or freedoms."

Reasons:

In accordance with the criteria laid down in European Directives (in particular 95/46/EC), this proposal makes clearer the scope of the protection necessary to safeguard the fundamental right to confidentiality.

AMENDMENT 374

Proposed amendment to Article: 19. Data protection

Submitted by: Jean-Luc DEHAENE, personal representative of the Belgian Government

Proposed text:

Respect for the rights and freedoms laid down by this Charter, in particular the right to privacy, shall be guaranteed with regard to the processing, by whatever means, of any information concerning an identified or identifiable natural person. The information must be processed fairly and for specified purposes, and subject to the data subject's consent or to any other legitimate basis specified by law.

Reasons:

The alternative text proposed in the statement of reasons (CONVENT 8 version) is preferable. The text of the CONVENT 28 version is in any case too generally worded and does not allow for exceptions. The alternative text states the essence of the basic right and thus offers more effective protection of personal data.

AMENDMENT 375

Proposed amendment to Article: 19

Submitted by: Frits KORTHALS ALTES, representative of the Netherlands Government

Proposed text:

Article 19 to be deleted.

Reasons:

See the amendment to Article 12, which regulates data protection as part of the protection of privacy.

AMENDMENT 376

Proposed amendment to Article: 19

Submitted by: José BARROS MOURA and Maria Eduarda AZEVEDO

Proposed text:

Everyone, **including legal persons**, has a right

AMENDMENT 377

Proposed amendment to Article: 19

Submitted by: Lord GOLDSMITH, QC

Proposed text:

Substitute the following two-part text:

For Part A, “Proclamation of Rights”

“Every natural person has a right to protection for his or her personal data”

For Part B, “Definition of Rights”:

“The right in Article 19 is the right under Article 286 TEC and Community Directives on data protection and is subject to the conditions and limitations laid down in them”

Reasons:

I do not consider that the “general rule” proposed by the Praesidium is justified by the relevant treaty provisions or the ECHR or as a result of the common constitutional positions of the member states. My version ensures that Article 19 is understood within the meaning of the relevant Council of Europe provision and Community Directives. To the extent that this right is “an aspect of respect for privacy”, it is already covered by Article 12 above.

AMENDMENT 378

Proposed amendment to Article: 19

Submitted by: Jean-Maurice DEBOUSSE, Alternate Member of the Convention

Proposed text:

The proposed text should be replaced by the following:

1. Everyone has the right to establish what data concerning him/her are held on any data file of which he/she is aware.
2. Everyone has the right to have errors in data concerning him/her rectified.
3. No personal data may be made public without the authorisation of the data subject.

Reasons:

With all due respect for the authors of the proposed Article, I feel that a provision of this type is pointless in an age when it is well known that personal data files (for example on people's buying, travelling, transport and reading habits, etc.) are bought and sold.

Furthermore, the proposed Article does not contain two rights whose usefulness seems beyond dispute, viz., the right to establish the existence of a data file and to rectification of any errors it may contain.

Lastly, the proposal that publication should be subject to authorisation seems more realistic than others, given the highly public nature of publication, if I may put it in those terms.

Proposals for Article 19a

AMENDMENT 379

Proposed amendment to Article: Insertion of a new Article after Article 19

Submitted by: Peter ALTMEIER, Member of the German Bundestag

Proposed text:

Article 20/Primacy of private action

"The European Union shall abide by the principle that private action must take precedence. In the areas within its competence, it shall take action only if and in so far as the objectives of the proposed action cannot be achieved, or cannot be sufficiently achieved, by private action.

Reasons:

The principle of the primacy of private action is a development of the general principle of subsidiarity and also of the principle of the protection of human dignity; the intention is that the scope for private action and enterprise should not be unduly restricted by European rules. It is also designed to prevent national efforts to expand the private sector through privatisation and deregulation from being frustrated at European level.

Proposals for Article 20

AMENDMENT 380

Proposed amendment to Article: 20. Right to property

Submitted by: Georges BERTHU, MEP

Proposed text:

Every person has the right to own, use, dispose of **and bequeath** lawfully acquired possessions. No one may be deprived of his possessions, **nor of a basic right of use**, except in the public interest and in the cases and under the conditions provided for by the law, **subject to fair and prior compensation.**

Reasons:

The right to property normally comes under national law. However, as it may be affected or even truncated by many Community measures, its inclusion in the Charter is acceptable.

We would therefore propose three amendments to the basic article:

- an explicit reference to the right to bequeath appears necessary, to avoid the right being undermined by indirect measures at the time of death;
- the reminder that the withdrawal of the right of use is tantamount to the withdrawal of the right to property; this aspect seems particularly significant in relation to Community activities;
- the specification that compensation must be paid before the expropriation takes place (not just a promise of compensation).

AMENDMENT 381**Proposed amendment to Article 20**

Submitted by: Erling OLSEN

Proposed text:

The provision should be worded in accordance with Article 1 of the Additional Protocol to the ECHR. The words “a prior guarantee of” should in any case be deleted.

Reasons:

The wording proposed by the Praesidium leaves its interpretation open to doubt in a not insignificant way (for example the words “prior guarantee of fair compensation”), and may also give rise to uncertainty as to the scope of the obligation. I therefore prefer the wording in the Additional Protocol. Moreover, the question of fair compensation in the case of deprivation of property is included in the Court of Human Rights’ evaluation of whether the deprivation may be seen as a proportionate action. Part B should refer to the practice of the Court of Human Rights in this area.

AMENDMENT 382

Proposed amendment to Article: 20. Right to property

Submitted by: Jordi SOLÉ TURA

Proposed text:

“Every person has the right to own, use and dispose of lawfully acquired possessions. No one may be deprived of his property except in the public interest and in the cases and subject to the conditions provided for by law and subject to a fair compensation.”

Reasons:

The word “poseer” in the Spanish text is replaced by “propiedad” so as not to confuse the legal concepts of possession and ownership. At the end of the second sentence, the word “prior” is deleted because it imposes a constraint which not all EU Member States are in a position to accept. For instance, Article 33(3) of the Spanish Constitution refers to “compensation”, leaving it to the legislation to determine whether it is prior or subsequent.

AMENDMENT 383

Proposed amendment to Article: 20

Submitted by: Piero MELOGRANI

Proposed text * :

Every *natural or legal person* has the right ***to the enjoyment of his possessions, and to use and dispose of them within the limits and under the conditions laid down in national and Community law in accordance with the general interest.*** No one may be deprived of his possessions except in the public interest and in the cases and subject to the conditions provided for by law ***or Community law*** and subject to a prior guarantee of compensation ***commensurate with the presumed trade value of the possessions.***

Reasons:

The right to property should be extended to legal persons and not be limited to individuals. The deletion of “*lawfully acquired*” is proposed (as it seems pleonastic, since the concept of property implies a lawful situation) as is the replacement of the expression “*enjoyment of his possessions*” used in Article 1 of the Additional Protocol to the ECHR. This offers the advantage of covering every type of violation of the freedom enjoy one’s possessions.

It should also be noted that the wording proposed by the Presidency makes no mention of limitations to the right to property, taken into account in Article 1(2) of the Additional Protocol to the ECHR, which refers to the many cases where state intervention does not involve the loss of that right, but rather restricts the owner’s powers in such a way as substantially to reduce the enjoyment of the possessions. It is therefore proposed to refer to the power to use and dispose of the possessions, while making it clear that it may be restricted by law and by Community law only in accordance with the general interest.

Finally, the concept of “*fair compensation*” should be replaced by that of “*compensation commensurate with the presumed trade value of the possessions*”, an expression which, without obliging to a *restitutio ad integrum*, has the advantage of anchoring the compensation for the loss of property to an objective parameter.

* The proposed amendments are shown in boldface.

AMENDMENT 384**Proposed amendment to Article: 20****Submitted by:** Win GRIFFITHS, MP**Proposed text:**

Every natural or legal person is entitled to the peaceful enjoyment of his/her possessions. No one shall be deprived of his/her possession except in the public interest and subject to the conditions provided for by the law and by the general principles of international law.

Reasons:

I prefer to keep to Article 1 of the Additional Protocol to the ECHR.

AMENDMENT 385

Proposed amendment to Article: 20

Submitted by: E.M.H. HIRSCH BALLIN and M. PATIJN (also on behalf of G.J.W. VAN OVEN)

Proposed text:

The present text should be deleted and replaced with the verbatim text of the ECHR.

Reasons:

Unnecessary departures from the ECHR should be avoided.

AMENDMENT 386

Proposed amendment to Article: 20

Submitted by: Pervenche BERÈS

Proposed text:

Every person has the right to own, use and dispose of lawfully acquired possessions. Use of these possessions must not conflict with the public interest. No one may be deprived of his possessions except in the public interest and in the cases and subject to the conditions provided for by law and subject to a prior guarantee of fair compensation.

Reasons:

AMENDMENT 387

Proposed amendment to Article: 20. Right to property

Submitted by: Dr. Ingo FRIEDRICH

Proposed text:

First sentence: Every person has the right to own, use, inherit and dispose of lawfully acquired possessions. Use of these possessions must not conflict with the public interest. No one may be deprived of his possessions except in the public interest and in the cases and subject to the conditions provided for by law and subject to a prior guarantee of fair compensation.

Reasons:

The incorporation of the law of succession in the guarantee laid down in the first sentence of the first paragraph serves to ensure that Article 1 of the Additional Protocol to the ECHR is unanimously regarded as also protecting the entitlement of the heir testamentary or legal heir to universal succession.

AMENDMENT 388

Proposed amendment to Article: 20. Right to property

Submitted by: Charlotte CEDERSCHIÖLD

Proposed text:

Every person has the right to own, use and dispose of lawfully acquired possessions, **including intellectual and industrial property**. No one may be deprived of **his/her** possessions **except in essential public interest** and in the cases and subject to the conditions provided for by law and subject to a prior guarantee of fair compensation.

AMENDMENT 389

Proposed amendment to Article: 20

Submitted by: Alvaro Rodríguez BEREIJO, personal representative of the Spanish Prime Minister

Proposed text:

The right to property is guaranteed (or, alternatively, every person has the right to enjoy his possessions), in accordance with its (their) social function and the general interest. No one may be deprived of their property except in the public interest and in the cases and subject to the conditions provided for by law and in return for fair compensation.

Reasons:

The first sentence in Spanish is technically unsound as it confuses the right to property with the right to possession, two different concepts which are not interchangeable. The reference to “lawfully acquired” possessions raises problems of interpretation for countries where the statute of limitation exists. The cases where property is acquired by criminal means must be dealt with under the Criminal Codes.

On the other hand, it is essential, as is done in the ECHR, to mention the limitations to the right to property derived from its social function, since the absolute right of Roman Law (“*ius utendi, fruendi et abutendi*”) has now been replaced by a right to property defined by its social function and its subordination to the general interest or common good.

Finally, the requirement that the compensation be calculated or be paid **prior** to the occupation of the expropriated possession is not compatible with Article 33 of the Spanish Constitution. Such a wording would make the Spanish Constitution incompatible with the Charter, requiring a constitutional amendment. Furthermore, as became clear at the meetings of the Convention, the prior character of compensation for expropriation is not a principle common to all Member States according to their constitutional traditions.

The somewhat clumsy wording proposed in the Praesidium’s text to overcome this objection [“subject to a prior guarantee of fair compensation”] does nothing to change our minds about rejecting the text, since it still requires that fair compensation be guaranteed prior to the beginning of the expropriation proceedings, which comes down to the same thing in the end.

It is worth noting that the ECHR says nothing about the prior nature of compensation.

AMENDMENT 390

Proposed amendment to Article: 20. Right to property

Submitted by: Jürgen GNAUCK, Minister for Federal and European Affairs of Thuringia

Proposed text:

“Article 20. Right to property

1. Possessions and the law of succession shall be respected. Substance and limits shall be determined in accordance with national law. Possessions that derive from serious infringements of tax liability or from criminal offences or which are to be used for such purposes shall not be protected.
2. Use of these possessions must not conflict with the public interest.
3. Expropriation or a similar measure is permissible only if it is in the public interest and subject to compensation and only in the cases and subject to the conditions provided for by law. In order to protect the person concerned, provisions governing the nature and the degree of compensation should be laid down in this Charter. The compensation must be fair.”

Reasons:

The incorporation of the law of succession in the guarantee laid down in the first sentence of the first paragraph serves to ensure that Article 1 of the Additional Protocol to the ECHR is unanimously regarded as also protecting the entitlement of the heir testamentary or legal heir to universal succession, even if Article 1 of the Additional Protocol does not explicitly refer to the law of succession. The verbs “respect” and “guarantee” both ensure that the Charter contains a fundamental decision regarding property and the law of succession. However, it follows the wording of Article 1 of the Additional Protocol to the ECHR, thus making the proposal more acceptable.

Paragraph 1, second sentence contains two statements. Firstly, the provision leaves it to the Member States to determine the substance and the limits of the law. Secondly, it states that substance and limits with regard to property and the law of succession shall be laid down by law.

Paragraph 1, sentence 3 contains a clarification and sends a signal a barrier at European level against drugs trafficking and other forms of organised crime. This addition to the text stems from

the SPS parliamentary party's draft legislation of 4 February 1994 relating to Article 14 GG (BT-Drucks. 12/6784; see also Jürgen Meyer/Wolfgang Hetzer ZRP 1997, 13; and Jürgen Meyer in Article 10 of his discussion draft of 6 January 2000 which was submitted to the Convention – CHARTE 4102/00).

Paragraph 2 is the basis of the social cohesion demanded by all Convention members. As the Charter of Fundamental Rights contains no value judgement regarding the social state principle (which under Germany's Basic law forms the antithesis of the existing system of property ownership), the emphasis on social cohesion is of particular importance.

Paragraph 3 does not adopt the distinction between “deprived of his possessions” and “control the use of property” contained in Article 1 of the Additional Protocol to the ECHR. Rather, it takes the terminology of the Basic Law and makes the qualitative assessment of a measure such as expropriation (subject to compensation) or the determination of substance and limits dependent on the way in which the law is applied. For the purposes of the ECHR, “deprived of his possessions” essentially means formal deprivation. This (and this alone) involves obligatory compensation. This is not without problems, since restriction of the rights of property owners that involves deprivation can also take place outside the framework of formal expropriation proceedings. Moreover, the term “deprivation of property” (as defined by the Federal Constitutional Court) extends only to loss of property as the severest form of expropriation. Below this threshold, however, further restrictions on the rights of property owners that involve deprivation are possible.

Paragraph 3, first sentence also mentions a measure similar to expropriation (“a similar measure”). Rather than follow the Praesidium's proposal and cause confusion by introducing a second expression (“aus Gründen des öffentlichen Interesses”), the provision follows on from paragraph 2 by repeating the phrase “in the public interest” (“zum Wohl der Allgemeinheit”)¹. The proposed text (“by law”) ensures that administrative as well as legal expropriation is permissible. This obviates the need to supplement the provision with the phrase “or pursuant to a law”.

Paragraph 3, second sentence should replace the text proposed by the Praesidium, which requires expropriation to be preceded by an undertaking to pay compensation. Admittedly, this proposal moderates the first version of the draft, which required prior compensation. However, it still falls short of practical needs. In many Member States it is possible to go to law to contest the amount at which compensation is fixed. Promises cannot be given here, least of all before expropriation. Paragraph 3, second sentence emphasises (as a point against) the protection of the individual because it compels national law to be clear about whether the seizure of property itself is an act which constitutes expropriation and what compensation (paid from the public purse) it considers fair.

¹ Not applicable in the English version

AMENDMENT 391

Proposed amendment to Article: 20

Submitted by: Lord GOLDSMITH, QC

Proposed text:

Substitute the following two-part text:

For Part A, “Proclamation of Rights”

“Everyone is entitled to the peaceful enjoyment of his or her possessions. Public bodies may interfere with possessions or the way they are used only in specified, limited circumstances”

For Part B, “Definition of Rights”:

“The right in Article 20 is the right in Article 1 of the Additional Protocol to the ECHR”.

Reasons:

I am not in favour of an approach which seeks to “update the wording of the Convention”. The Convention is a living document and kept up to date by the jurisprudence of the Strasbourg Court. I consider that unnecessary and likely to produce new and uncertain obligations, potentially inconsistent with the ECHR, for the EU institutions and Member States acting on their behalf. My version ensures that Article 20 is understood within the meaning of the relevant ECHR right and associated case law.

AMENDMENT 392

Proposed amendment to Article: 20

Submitted by: Gabriel CISNEROS LABORDA

Proposed text:

No one may be deprived of the property of lawfully acquired possessions, except in the public interest and in the cases and subject to the conditions provided for by law and in return for fair compensation.

Reasons:

To eliminate the confusion in the draft between property and possession.

To remove the reference to “prior” compensation.

AMENDMENT 393

Proposed amendment to Article : 20

Submitted by: Daniel TARCHYS

Proposed text:

Delete “prior”.

Reason:

There is no such provision in the national legislation of many Member States, including Sweden.

AMENDMENT 394**Proposed amendment to Article : 20****Submitted by:** RODOTA', PACIOTTI and MANZELLA**Proposed text:***Replace Article 20 by the following :*

- “1. Every person has the right to own lawfully acquired possessions.
2. The right to property may be restricted by law in the general interest and in order to ensure the social function of property.
3. No one may be deprived of his possessions except in the public interest and in the cases and subject to the conditions provided for by law and subject to a prior guarantee of fair compensation, without prejudice to the exceptions laid down by criminal law.”

Reasons:

This text aligns the rules on the right to property on those in the Member States' Constitutions.

AMENDMENT 395

Proposed amendment to Article: 20. Right to property

Submitted by: Jean-Luc DEHAENE, personal representative of the Belgian Government

Proposed text:

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one may be deprived of his possessions except in the public interest and in the cases and subject to the conditions provided for by law and subject to a prior guarantee of fair compensation.

Reasons:

The first sentence takes over the text of the Additional Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms

AMENDMENT 396**Proposed amendment to Article: 20**

Submitted by: Paul-Henri MEYERS, representative of the Luxembourg Government

Proposed text:

Every person has the right to own, use and dispose of lawfully acquired possessions. No one may be deprived of his possessions except in the public interest and in the cases and subject to the conditions provided for by law and subject to the prior granting of fair compensation.

Reasons:

The term "guarantee" leaves open the amount of compensation to be awarded in the case of expropriation. Replacing "guarantee" by "granting" makes it clear that the expropriated person must have a decision on the amount of the compensation and the deadline for its payment.

AMENDMENT 397

Proposed amendment to Article: 20

Submitted by: Ieke VAN DEN BURG

Proposed text:

Every person has the right to own, use and dispose of lawfully acquired possessions within the limitations that may be imposed by the authorities in the general interest, etc.

Reasons:

The second paragraph of Article 1 of the Additional Protocol to the Convention for the Protection of Human Rights and Fundamental Freedom states that an authority must also be able to enforce laws in the general interest which may limit the exercise of property rights. This is made clear in the statement of reasons but in the text the general interest is mentioned only in connection with possible expropriation. In (national and European) practice, legal conflicts arise more frequently in connection with this limitation of the exercise and utilisation of property rights.

It is therefore important to include that element explicitly in the text of Article 20.

AMENDMENT 398**Proposed amendment to Article: 20****Submitted by:** Frits KORTHALS ALTES, representative of the Netherlands Government**Proposed text:**

Every person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the cases referred to in Article 1 of the First Protocol to the ECHR. The preceding provisions shall not in any way impair the right of the Union to enforce those provisions of Community law which are necessary within the Union to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

Reasons:

This Article is based on Article 1 of the First Protocol to the ECHR. It concerns a fundamental principle shared by all national constitutions. In order to avoid misunderstandings, it is advisable - partly in view of the case law of the European Court of Human Rights – to follow the wording of Article 1 of the First Protocol as closely as possible.

AMENDMENT 399

Proposed amendment to Article: 20

Submitted by: José BARROS MOURA and Maria Eduarda AZEVEDO

Proposed text:

Every person has the right to own, use and dispose of lawfully acquired possessions **subject to the restrictions imposed by the general interest.** No one may be (rest unchanged).

AMENDMENT 400

Proposed amendment to Article: 20

Submitted by: Simone BEISSEL

Proposed text:

delete "... subject to a prior guarantee of fair compensation" or possibly "provided for by law and subject to compensation".

Reasons:

In the current system, the prior guarantee of fair compensation would block all expiry procedures, and in any event for the expropriated party the compensation is never fair.

Proposals for Article 20a

AMENDMENT 401

Proposed amendment to Article: insertion of two new Articles after Article 20

Submitted by: Peter ALTMAYER, Member of the German Bundestag

Proposed text:

Article 21/ Prohibition on expulsion

“Every person is entitled to live peace, security and dignity in his place of residence, home and country. No one may be driven from his home by force or coercion, or compelled to flee. Displaced persons and refugees are entitled to return to their traditional homes.”

Article 22/ Rights of minorities

“The identity and the rights of minorities and their members, as well as linguistic and cultural diversity in the European Union, shall be respected and protected.”

Reasons:

The 20th century saw millions of people driven from their traditional homes by totalitarian regimes in Europe and other parts of the world. Even very recently, in the spring of 1999, the expulsion of several hundred thousand people from Kosovo led to NATO military intervention against the criminal regime of the Serbian dictator Milosevic. At the same time, the rights of minorities were and are repeatedly violated. Expulsion and contempt for minority rights are among the most serious and most common human rights violations in Europe. It would therefore seem essential for these rights to be expressly laid down in the Charter.

Proposals for Article 21

AMENDMENT 402**Proposed amendment to Article: 21****Submitted by:** Lord GOLDSMITH, QC**Proposed text:**

Delete this article entirely

Reasons:

The Praesidium text shows the great difficulty of formulating the relevant provisions concerning this sensitive subject in an acceptable way. Protocol 4 to the ECHR has not been accepted by all the Member States. Moreover the text is confined to non-EC citizens, which is understandable but incompatible with the Refugee Convention. Article 63 TEC quotes the title of the 1951 Convention and the 1967 Protocol; but it does not assert a right to asylum. Neither is it true to say that Article 63 incorporates the 1951 Convention into Community law; in fact it provides for new First Pillar legislation in accordance with the 1951 Convention. I consider that development of an acceptable text on asylum rights is beyond the reach of the Convention and that, in the time available, the matter should be reserved for separate consideration by the Member States.

AMENDMENT 403

Proposed amendment to Article: 21

Submitted by: Andrew DUFF, MEP

Proposed text:

Article 21. Right to asylum and expulsion

1. Nationals of third countries shall have the right to asylum in the European Union when in justified fear of political persecution or inhumane punishment, and in accordance with the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees.

2 (new). Asylum seekers shall have access to fair and efficient determination procedures, including reasoned decisions and the right to an appeal with suspensive effect.

3 (ex 2). Collective expulsion of (delete: 1 word) third country nationals is prohibited.

Reasons:

The right of asylum is a universal right under the terms of Article 14 of the Universal Declaration of Human Rights. The text of paragraph 1 is based on Article 63 TEC which incorporates the Convention on Refugees into Community law.

Paragraph 2 of this Article is based on best practice within the Member States of the European Union, which itself is in the process of developing a common asylum policy according to the Treaty of Amsterdam.

Paragraph 3 is based on Article 4 of Protocol No 4 to the European Convention on Human Rights concerning collective expulsion. Its purpose is to guarantee that every decision is based on a

specific examination and that no single measure can be taken to expel all persons with particular characteristics. (delete: 20 words) The provisions of Article 1 of Protocol No 7 to the ECHR concerning procedural safeguards in the event of expulsion have not been incorporated as most Member States have not signed or ratified that Protocol. In any event the Geneva Convention contains guarantees in that respect.

AMENDMENT 404**Proposed amendment to Article: 21**

Submitted by: Erling OLSEN

Proposed text:

The expression “nationals of third countries” must be changed to “everyone”. Moreover, it must be specified that there is a right to seek asylum “in any Member State of the European Union”.

Reasons:

Under the Geneva Convention on the legal status of refugees, everyone has the right to seek asylum. The comments on the article might refer to Protocol 29 on asylum for citizens in the Member States of the European Union.

AMENDMENT 404**Proposed amendment to Article: 21****Submitted by: Piero MELOGRANI****Proposed text***:Right to asylum and *prohibition on collective expulsion*

1. **Everyone** shall have the right to asylum in the European Union in accordance with the rules of ***international asylum law as laid down, in particular, in*** the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the Status of Refugees.
2. Collective expulsion of aliens is prohibited.

Reasons:

The first proposed amendment concerns the title of this Article: the use of “*right*” in connection with “expulsion” is infelicitous. Moreover, to prevent baseless discrimination, the right to asylum should – as laid down in Article 3 of the Geneva Convention relating to the Status of Refugees – cover everyone, including stateless persons, and not just “*nationals of third countries*”; this is also the position argued by Amnesty International in its submissions to the Convention.

Lastly, it should be made clear that the Geneva Convention, albeit central, is not the only international instrument for the protection of refugees. The proposed wording would mean that relevant future agreements would be automatically incorporated.

* Proposed amendments are in bold.

AMENDMENT 405**Proposed amendment to Article: 21****Submitted by:** Win GRIFFITHS, MP**Proposed Text:**

1. Nationals of third countries shall have the right to seek asylum in the European Union in accordance with the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees.
2. Collective expulsion of aliens is prohibited.

Reasons:

The right to asylum is not automatic but anyone does have the right to seek asylum.

AMENDMENT 406**Proposed amendment to Article: 21**

Submitted by: Johannes VOGGENHUBER and Kathalijne BUITENWEG

Proposed text:

1. Any person who has a justified fear of persecution shall have the right to asylum in the European Union pursuant to the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the Status of Refugees. Grounds for asylum specific to women shall be taken into consideration.
2. No one may be expelled to a State if there are valid reasons for assuming that the measures referred to in paragraph 1 are likely to be carried out.
3. Collective expulsions of aliens are not permitted.
4. Any person who applies for asylum shall be entitled to admittance, protection and support.
5. Any person who is granted asylum shall be entitled to reunion with their family.

Reasons:

AMENDMENT 407**Proposed amendment to Article: 21**

Submitted by: Jürgen MEYER/Jo LEINEN/Hans-Peter MARTIN/Ieke VAN DEN BURG

Proposed amendment:

Article 21 Asylum and expulsion

1. Any person who faces political persecution or inhuman or degrading punishment or treatment shall have the right to asylum. Grounds for asylum specific to women shall be taken into consideration.
2. Collective expulsions of aliens are prohibited.

Reasons:

The amendment restates – in slightly amended form – the proposed amendment which I submitted on 29 March (Contrib. 76) and clarifies my original discussion draft (submitted on 6 January; Contrib. 2).

The fundamental right to asylum is also considered in the proposal of the Praesidium. This is expressly welcomed as the Union will in the future acquire powers in this area pursuant to Article 63 of the EC Treaty.

The right to asylum is laid down inter alia in Article 14 of the Universal Declaration of Human Rights, in the constitutions of the Federal Republic of Germany (Article 16a), France (the preamble

to the 1946 constitution which is still in force), Italy (Article 10), Portugal (Article 33(6), Spain (Article 13(4), Slovakia (Article 53) and Poland (Article 56).

The inclusion in paragraph 1, second sentence of grounds for asylum specific to women is based on a realisation that is gaining in international acceptance, namely that women as a sociological group frequently face particular forms of persecution. In this connection the systematic rape of Muslim women during the armed conflict in former Yugoslavia, together with the fact that rape is regarded as a specific war crime by the UN, should be noted.

By incorporating such a clarification of persecution, the Union would be contributing towards the affirmation of a modern fundamental right that is already recognised in specific cases.¹ The wording proposed here is expressly welcomed by *Amnesty International*, PRO ASYL and *Terre des Femmes*.

Protection from expulsion as laid down in the amendment proposed previously (Contrib. 76) in the cases referred to in paragraph 1 has therefore been removed from this amendment because it has now been incorporated by the Praesidium in the second sentence of Article 4. This is expressly welcomed and is in keeping with the constitutions of many Member States (Finland, France, Greece, Italy, Portugal, Spain) and with Article 3 of the UN Convention against torture or other Cruel, Inhuman or Degrading Treatment or Punishment and Article 33(1) of the Geneva Convention relating to the Status of Refugees.

Paragraph 2 incorporates the wording proposed by the Praesidium.

¹ Magdeburg Administrative Court on 20 July 1996, coalition agreement of the Green/SPD Federal Government of 20 October 1998.

AMENDMENT 408

Proposed amendment to Article: 21

Submitted by : Pervenche BERÈS

Proposed text:

Any person not resident in a Member State, or resident in a Member State the rights of which have been suspended in the Union, shall have the right to asylum in the European Union in accordance with international rules.

Reasons:

The right to asylum should be opened to stateless persons.

The reference to the Geneva Convention makes the wording cumbersome and makes the Charter dependent on the assessment of a text over which the Union has no control.

AMENDMENT 409

Proposed amendment to Article: 21. Right to asylum and expulsion

Submitted by : Dr Ingo FRIEDRICH

1. (new) Politically persecuted persons who do not belong to the Union shall be protected in accordance with the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees.
2. (new) No one may be expelled or extradited to a State where he would be in danger of being subjected to the death penalty, torture or other inhuman treatment.
3. Collective expulsion of aliens is prohibited.

Reasons:

The Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 already offer sufficient international minimum standards for the treatment of refugees which are binding on Member States.

However, the Geneva Convention does not guarantee a right to asylum but only rights in the context of asylum. A reference to the Geneva Convention in a catalogue of fundamental rights might give the impression that Member States wanted to elevate the legal status of the Geneva Convention to the level of an individual fundamental right. This, however, is not the case.

Paragraph 2 is taken from former Article 4, second sentence.

AMENDMENT 410**Proposed amendment to Article: 21****Submitted by:** Heinrich NEISSER**Proposed text:**

Article 21. The right to asylum and expulsion.

1. Everyone shall have the right to asylum in the European Union in accordance with the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees.
2. Collective expulsion of aliens is prohibited.

Reasons:

In order not to fall below the level of protection of the Geneva Convention the right to asylum should basically be guaranteed to everyone and not only nationals of third countries. However, the *acquis* in accordance with the Protocol to the EC Treaty on asylum for nationals of the Member States of the EU (added by the Amsterdam Treaty) remains unchanged.

AMENDMENT 411**Proposed amendment to Article: 21**

Submitted by: Gunnar JANSSON, Tuija BRAX and Paavo NIKULA

Proposed text:**Article 21. Right to asylum and expulsion**

- 1. *Everyone shall have the right to asylum in the European Union in accordance with the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees.***
- 2. *Collective expulsion of aliens is prohibited. The expulsion order shall guarantee the right of the individual to present reasons against his expulsion before a court or any other independent body.***

Statement of reasons:

The right to asylum should be guaranteed to anyone applying for asylum in the territory of the European Union, not only to nationals of third countries. This wording is taken from the Convention on the Status of Refugees, to which there is also a reference in the text of this Article.

The right of the individual to have an expulsion order examined before an impartial body is in line with Article 13 of the UN Covenant on Civil and Political Rights which has been ratified by all the Member States.

AMENDMENT 412

Proposed amendment to Article: 21. Right to asylum and expulsion

Submitted by: Jürgen GNAUCK, Minister for Federal and European Affairs of Thuringia

Proposed text:

"Article 21. Right to asylum and expulsion

1. The protection of politically persecuted persons who do not belong to the Union shall be guaranteed in accordance with the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to status of refugees.
2. Collective expulsion of aliens is prohibited.
3. No one may be expelled or extradited to a State where he would be in danger of being subjected to the death penalty, torture or other inhuman treatment."

Reasons:

The wording proposed by the Presidency, i.e. "Nationals of third countries" makes no distinction at all between types of asylum seekers. It does not distinguish between politically persecuted persons and those seeking to enter for other reasons. Limiting the group of beneficiaries to politically persecuted persons takes account of the idea of the need for protection which lies at the heart of asylum.

The wording proposed by the Presidency i.e. "... shall have the right to asylum" suggests that the norm should be interpreted as an individual right under public law. Given Member States' heterogeneous legal position this concept appears to be too narrow. In view of the binding force of the Charter for EU bodies, it is important that a wording be found that also covers constitutions which merely provide for institutional guarantees relating to asylum. If an individual right were laid down EU bodies would be forced to act against those Member States whose constitution only provides for institutional guarantees. The wording proposed by the German Länder offers sufficient leeway here.

The ban on expulsion and extradition has been added to Article 21, which logically speaking is its rightful place, and not Article 4 as in CONVENT 28.

AMENDMENT 413**Proposed amendment to Article: 21**

Submitted by: Dr Sylvia-Yvonne KAUFMANN

Proposed text:

Article 21. Right to asylum and expulsion.

1. Anyone who is politically persecuted or exposed to inhuman or degrading treatment shall have a right to asylum. Account shall be taken of grounds for asylum relating specifically to women.
2. No one may be expelled to a State if there are valid reasons to assume that the acts described in paragraph 1 are a threat after expulsion. This also applies in particular to conscientious objectors from third countries in which there is no right to refuse to serve in a war.
3. Collective expulsion of aliens, male or female, is prohibited.

Reasons:

This proposed amendment basically draws on Professor Meyer's proposed amendment of 24 March 2000. The addition of the right to protection from expulsion for conscientious objectors goes beyond that proposal. The reference in the Presidency's proposal to the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees belongs in the statement of reasons relating to Article 21. It must be ensured that the fundamental right to asylum is individually enforceable through legal action and that it does not degenerate into an act of mercy by the State.

AMENDMENT 414**Proposed amendment to Article: 21**

Submitted by: VITORINO, Commission representative at the Convention

Proposed text:

The article could be split into two separate articles, one to deal with the right to asylum and the other with expulsion (Article 21(2) is not altered in substance):

“Article 21. Right to asylum

The right to asylum is guaranteed in compliance with the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and with other relevant treaties.

Article 21a. Expulsion

Collective expulsion is prohibited.”

Reasons:

1. Grouping asylum and the ban on expulsion in the same article is incompatible with the spirit of the conclusions of the Tampere European Council, which made a clear distinction between the problems of asylum and those of aliens' residence.
2. For a person who has the right of asylum, a neutral wording should be adopted, in compliance with the Treaties and in particular the Protocol on asylum for nationals of Member States of the European Union.

AMENDMENT 415**Proposed amendment to Article: 21****Submitted by:** François LONCLE**Proposed text:**

Word paragraph 1 of this Article as follows:

“Persons covered by the Geneva Convention of 28 July 1951 and by the Protocol of 31 January 1967 relating to the status of refugees shall be granted refugee status in the European Union, under the conditions laid down in those texts.”

Reasons:

This amendment is intended to remove two ambiguities in the present text:

- the first is the implication that the benefit of the Geneva Convention is limited to certain categories of persons, whereas in fact that text applies universally;
- the second is that this text mixes up the right of asylum, that is admission to the territory, which comes under the jurisdiction of each State, with refugee status, which is regulated by the Geneva Convention.

AMENDMENT 416

Proposed amendment to Article: 21. Right to asylum and expulsion

Submitted by: Jean-Luc DEHAENE, personal representative of the Belgian Government

Proposed text:

1. Everyone has the right to asylum in a Member State of the European Union in accordance with the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees.
2. Collective expulsion of aliens is prohibited.

Reasons:

In accordance with the obligations of Member States under the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees, every application for asylum must be treated individually, whether made by a citizen of the Union or a person who is not a citizen of the Union. Hence the proposed extension *ratione personae* of the right to asylum.

In the absence of a genuine European right to asylum, it is technically more correct to speak of a right to asylum in accordance with the law of the EU Member States.

AMENDMENT 417

Proposed amendment to Article: 21(a) (new): Prohibition of expulsion

Submitted by: Dr Ingo FRIEDRICH

Proposed text:

21(a) (new): Prohibition of expulsion

(New) The citizens of the European Union have a right to their home country. No one may by force of compulsion be expelled from his ancestral home, his place of residence or his country or be forced to flee. Displaced persons or refugees shall have the right to return to their ancestral home country.

Reasons:

In the 20th century millions of people were expelled by totalitarian regimes from their home countries in Europe and throughout the world. Only recently in the spring of 1999 the expulsion of several hundreds of thousands of people from Kosovo led to the military intervention by Nato against the criminal regime of Serbia's dictator Milosević.

The draft of Article 21(2) provides that the collective expulsion of aliens is prohibited. However, it is important that not only aliens, especially nationals from third countries, are protected by this right but also citizens of the European Union.

AMENDMENT 418

Proposed amendment to Article: 21b (new): Protection of minorities

Submitted by: Dr. Ingo FRIEDRICH

Proposed text:

21b (new): Protection of minorities

(New) The identity and the rights of historically-rooted and long-established minorities and their members, as well as linguistic and cultural diversity in the European Union, shall be respected and protected.

Reasons:

The rights of minorities are continuously violated even today. Expulsion and disregard for minority rights are among the most serious and the most frequent human rights violations in Europe.

AMENDMENT 419

Proposed amendment to Article: 21

Submitted by: Jean-Maurice DEHOUSSE, Member of the European Parliament, Alternate Member of the Convention

Proposed text:

- Convert Article 21(2) into Article 4(3) in order to combine issues relating to expulsion.
- Change the title of Article 21 as it now concerns only the right of asylum.
- Replace the proposed version of Article 21 with the following text:
 1. The European Union shall grant the right of asylum to any third-country national whose life is threatened or who is exposed to inhuman or degrading treatment. However, persons enjoying this right shall undertake to observe and observe in practice both the principles of tolerance and democracy and the fundamental laws of the Union and its Member States.
 2. When the reasons for the application are reviewed, grounds relating specifically to women may be taken into account.
 3. Collective expulsions of refugees or other aliens or expulsions aimed specifically at one nationality or religious or ideological group are prohibited.

Reasons:

A Union of 400 million people cannot guarantee the right of asylum to a global population outside the Union of over 5 billion human beings without fundamentally impugning the well-being of its inhabitants.

Moreover, the right of asylum has from time immemorial been regarded primarily as a personal right (which justifies references to it as such both in this section and elsewhere in the Charter). If there is a desire to treat it as a collective right, it should be dealt with in the relevant section.

Furthermore, good reasons have been found for not quoting legal sources thus far in the Charter, and this rule should not be modified for this one Article.

Lastly, it must be emphasised that the right of asylum is not conceived of as simply involving residence but as an act of adherence to the fundamental values of the Union as reflected moreover in the Charter.

The other changes are aimed at improving the form and do not alter the substance.

Proposals for Article 21(1) and (1a)

AMENDMENT 420

Proposed amendment to Article: 21. Right to asylum and expulsion – Paragraph 1

Submitted by: Georges BERTHU, MEP

Proposed text:

1. Nationals of third countries shall have the right to asylum in the **Member States of the** European Union in accordance with the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees.

Reasons:

Although there is a common asylum policy, it remains the fact that pursuant to Article 63 of the TEC it is the Member States which grant or refuse asylum to persecuted individuals. Article 21 should not present any ambiguity on this point.

AMENDMENT 421

Proposed amendment to Article: 21. Right to asylum and expulsion – Paragraph 1a

Submitted by: Georges BERTHU, MEP

Proposed text:

Aliens may be expelled from the territory of Member States, subject to the guarantees recognised by international law, if they have entered that territory illegally, if they have violated the laws of that State, or if they endanger public order and public safety.

Reasons:

It would be bizarre for an Article entitled “Right to asylum and expulsion” to have a first paragraph defining the right to asylum without the following paragraph defining cases where expulsion is permitted.

AMENDMENT 422

Proposed amendment to Article: 21. Right to asylum and expulsion

Submitted by: Michael O'KENNEDY, TD, personal representative of the Irish Head of State/Government

Proposed text:

Article 21

1. Nationals of third countries shall have the right to seek and enjoy asylum in the European Union in accordance with the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees.

Reasons:

It is suggested to include "seek and enjoy" as there is no right to "asylum" in international law. To "seek and enjoy" is in conformity with Article 14 of the Universal Declaration of Human Rights.

AMENDMENT 423

Proposed amendment to Article: 21

Submitted by: E.M H. HIRSCH BALLIN and M. PATIJN (also on behalf of G.J.W. VAN OVEN)

Proposed text:

In paragraph 1 the phrase “Nationals of third countries” should be replaced with “Any person”.

Reasons:

Stateless persons also have the right of asylum.

AMENDMENT 424

Proposed amendment to Article: 21(1)

Submitted by: Alvaro Rodríguez BEREIJO, personal representative of the Spanish Prime Minister

Proposed text:

“Nationals of third countries shall have the right to apply for asylum in the European Union.”

Add to Article 21(1) a reference to the Treaty establishing the European Community.

Reasons:

The internationally recognised right is to “apply for asylum”. The wording is incorrect and may be dangerously broad.

A reference needs to be made to the Community powers laid down in Articles 61 and following of the EC Treaty and Protocol No 29.

AMENDMENT 425

Proposed amendment to Article: 21(1)

Submitted by: Gabriel CISNEROS LABORDA

Proposed text:

Nationals of third countries shall have the **right to apply for asylum** in accordance with the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees.

Reasons:

The right to asylum cannot be considered to be absolute. It is subject to compliance with established requirements.

AMENDMENT 426

Proposed amendment to Article: 21(1)

Submitted by: Peter ALTMAIER, Member of the German Bundestag

Proposed text:

“Persons from third countries who are persecuted on political grounds shall be granted asylum in the European Union pursuant to the Geneva Convention of 28 July 1951 and the Protocol of 11 January 1967 relating to the Status of Refugees”.

Reasons:

This wording should prevent Article 21(1) of the Charter being invoked as justification for individual rights of asylum that go beyond the legal provisions in force in the Member States of the European Union.

AMENDMENT 427**Proposed amendment to Article: 21****Submitted by:** François LONCLE**Proposed text:**

Word paragraph 1 of this Article as follows:

"Persons covered by the Geneva Convention of 28 July 1951 and by the Protocol of 31 January 1967 relating to the status of refugees shall be granted refugee status in the European Union, under the conditions laid down in those texts."

Reasons:

This proposed amendment is intended to remove two ambiguities in the present text:

- the first is the implication that the benefit of the Geneva Convention is limited to certain categories of persons, whereas in fact the text applies universally;
- the second is that this text confuses the right of asylum, i.e. permission to reside in sovereign territory, which falls within the jurisdiction of each individual State, with refugee status which is regulated by the Geneva Convention.

AMENDMENT 428

Proposed amendment to Article: 21(1)

Submitted by: Frits KORTHALS ALTES, representative of the Netherlands Government

Proposed text:

1. *The right to apply for asylum shall be guaranteed in the European Union*, in accordance with the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees.

Reasons:

The proposed amendment to paragraph 1 is more in line with the obligations ensuing from the Geneva Convention.

AMENDMENT 429

Proposed amendment to Article: 21

Submitted by : RODOTA', PACIOTTI and MANZELLA

Proposed text:

In paragraph 1 replace “Nationals of third countries shall have the right to asylum” with “Everyone shall have the right to asylum”.

Reasons:

The proposed wording for paragraph 1 includes stateless persons and all persons without citizenship.

Proposals for Article 21(2)

AMENDMENT 430

Proposed amendment to Article: 21. Right to asylum and expulsion – Paragraph 2

Submitted by: Georges BERTHU, MEP

Proposed text:

Delete the paragraph (“Collective expulsion of aliens is prohibited”).

Reasons:

Paragraph 2 as presented here is deceptive because, although it is indeed based on Article 4 of Protocol No 4 to the European Convention on Human Rights, that Article is part of a legal instrument which provides for derogation, particularly “in time of war or other public emergency threatening the life of the nation” (Article 15 of ECHR).

In those circumstances, it is inappropriate to adopt a draft which could lead the non-specialist reader to believe that the collective expulsion of aliens is prohibited at all times and in all circumstances. The sentence should either be deleted or be qualified by the addition of “except in time of war or other public emergency, in accordance with international provisions in force”.

AMENDMENT 431

Proposed amendment to Article: 21(2)

Submitted by: Alvaro Rodríguez BEREIJO, personal representative of the Spanish Prime Minister

Proposed text:

Delete the paragraph.

Reasons:

Paragraph 2 comes from Protocol No. 4, which has not been ratified by Spain. The problem arises from the term “collective expulsions”: at what stage is an expulsion deemed to be collective? Can this prohibition be applied to the expulsion of several separate individuals who illegally enter a State? In the case of Spain, it is worth keeping in mind the well-known events arising from the nature of its borders. Such problems are also shared by other Member States of the Union.

AMENDMENT 432

Proposed amendment to Article: 21(2)

Submitted by: Peter Michael MOMBAUR, MEP

Proposed text:

“Collective expulsion is prohibited”.

Reasons:

The right of protection also concerns minorities within the present or, where appropriate, future territorial extent of the European Union.

Proposals for Article 21(3)

AMENDMENT 433

Proposed amendment to Article : 21

Submitted by : RODOTA', PACIOTTI and MANZELLA

Proposed text :

Add a new paragraph 3 as follows:

“3. No one may be expelled or extradited to a State where he would be in danger of being subjected to the death penalty, torture or other inhuman treatment.”

Reasons :

Paragraph 3 incorporates the wording of Article 4, transferred here for reasons of logic.

Proposals for Article 22 as a whole

AMENDMENT 434

Proposed amendment to Article: 22

Submitted by: Andrew DUFF, MEP

Proposed text:

Article 22. Equality and non-discrimination

- 1. Any discrimination based on sex, race, colour or ethnic or social origin, language, religion or belief, political opinion, association with a national, regional or cultural minority, property, birth, disability, age or sexual orientation shall be prohibited.**
- 2. Within the scope of application of the Treaty establishing the European Community and of the Treaty on European Union, any discrimination on grounds of nationality shall be prohibited.**
- 3. The Union shall seek to eliminate inequalities and to promote equality between men and women in particular equality between the sexes shall be ensured when setting pay and other working conditions.**

Reasons:

Paragraph 1 is based on the European Convention on Human Rights. The ECHR limits the application of the principle to guaranteed rights, but Community law goes further following the adoption of the Amsterdam Treaty. The list combines that in Article 13 of the Community Treaty with that in Article 14 of the ECHR. The principle of non-discrimination set out in paragraph 2 is enshrined in Article 12 of the EC Treaty. Protection of regional and cultural minorities is included in recognition of the diversity of the peoples of the European Union and of the need for solidarity between them. It also draws on the 1995 Council of Europe Framework Convention on the Protection of National Minorities.

Article 12 TEC: "Within the scope of application of this Treaty, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited.

The Council, acting in accordance with the procedure referred to in Article 251, may adopt rules designed to prohibit such discrimination."

The wording of paragraph 3 is intended to authorise positive action as provided for in the Treaty.

AMENDMENT 435**Proposed amendment to Article: 22****Submitted by:** Win GRIFFITHS, MP**Proposed Text:**

1. Any discrimination based on sex, nationality, race, colour or ethnic or social origin, language, religion or belief, political opinion, association with a national minority, property, birth, disability, age or sexual orientation shall be prohibited.
2. Men and Women shall have the right to equal treatment, and in particular when setting pay and working conditions and measures or social protection.
3. Persons belonging to minorities shall have the right to maintain and develop their own language and culture.

Reasons:

Article 22.2 can be deleted as it is covered by the inclusion of "nationality" and "association with a national minority" in Article 22.1.

New Article 2 is expressed in a way more consistent with the language and approach of the Charter without losing any of the context of the existing 3.

New paragraph 3 states in an overt and positive fashion what is only implied in paragraph 1. The legal base is Article 151 of the Consolidated Version of the Treaty establishing the European Union.

AMENDMENT 436

Proposed amendment to Article: 22 – Equality and non-discrimination

Submitted by: Ben FAYOT

Proposed text:

General principle of equality between men and women in all areas

1. The unconditional and fundamental principle of the equality of the sexes in all areas shall be ensured by the Union.
2. Any discrimination on grounds of sex is prohibited.
3. Positive measures shall be implemented to put the principle of equality into effect.

Reasons:

AMENDMENT 437**Proposed amendment to Article: 22****Submitted by:** Pervenche BERÈS**Proposed text:**

Any arbitrary discrimination based on sex, race, colour or ethnic or social origin, language, religion or belief, political opinion, association with a national minority, property, birth, genetic characteristics, health, disability, age or sexual orientation shall be prohibited.

Reasons:

The concept of “arbitrary discrimination” allows for the prospect of positive discrimination (or measures) aimed at restoring equality.

Genetic characteristics constitute a major discriminatory threat of the future: the Charter must ensure that they are kept confidential.

AMENDMENT 438

Proposed amendments to Article: 22 Equality and non-discrimination

Submitted by: Dr Ingo FRIEDRICH

Proposed text:

- (1) Any discrimination based on sex, race, colour or ethnic or social origin, language, religion or belief, political opinion, association with a national minority, property, birth, disability, age or sexual orientation shall be prohibited.
- (2) Within the scope of application of the Treaty establishing the European Community and of the Treaty on European Union, any discrimination on grounds of nationality shall be prohibited.
- (3) The Union shall seek to eliminate unequal treatment (delete one word) and to promote equality between men and women. Equal treatment of (delete two words ¹) the sexes shall be ensured in particular when setting pay and other working conditions.

Reasons:

The wording chosen in paragraph 3 - “Inequalities” and “equality between the sexes” - was not entirely felicitous.

¹ Delete one word in the German version.

AMENDMENT 439**Proposed amendment to Article: 22**

Submitted by: Gunnar JANSSON, Tuija BRAX and Paavo NIKULA

Proposed text:**Article 22. Equality and non-discrimination**

- 1. Any discrimination based on sex, (...), colour or ethnic or social origin, language, religion or belief, political opinion or *association with an ethnic, religious or linguistic minority*, property, birth, disability, age or sexual orientation or *another personal reason* shall be prohibited.**
- 2. Within the scope of application of the Treaty establishing the European Community and of the Treaty on European Union, any discrimination *between nationals of the European Union* on grounds of nationality shall be prohibited.**

Reasons:

The reference to race may be deleted since it is in fact contained in other discrimination grounds. Furthermore, its deletion is consistent with current linguistic usage.

The reason for replacing “national minority” as grounds for discrimination with a more explanatory version is that the reference to different kinds of minority provides a more comprehensive picture of the kinds of minority which actually exist and of which factors are most often the reason for discrimination. The example of different kinds of minority also specifically underlines the importance of prohibiting discrimination aimed at minorities. The proposed amendment is in line with the wording of Article 27 of the UN Convention on Civil and Political Rights.

The list of grounds for discrimination should be left open so that it might also cover grounds for discrimination previously specified. In this case, the Article is also closest in line with Article 14 of the European Convention on Human Rights.

In paragraph 2 Union nationality is also worthy of mention in connection with discrimination based on nationality, since otherwise the Article would acquire a wider meaning in this connection than is intended.

AMENDMENT 440

Proposed amendment to Article: 22. Equality and non-discrimination

Submitted by: VITORINO, Commission representative on the Convention

Proposed text:

1. In paragraph 1 add "or other opinion" before "political opinion" and "genetic characteristics" after "birth".
2. Paragraph 2 should be amended as follows:

"Within the scope of application of the Treaty establishing the European Community and the Treaty of the European Union, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited."
3. The second part of paragraph 3 should be deleted ("in particular equality between the sexes shall be ensured when setting ...").
4. The Commission representative proposes submitting an amendment inserting an Article on equality between men and women in social affairs (CONVENT 34).

Reasons:

1. The addition proposed for the first paragraph is necessary in order to take over a form of discrimination prohibited by Article 14 of the ECHR; the second addition takes account of the new bio-ethical challenges and is based on a suggestion by the European Ethics Committee.
2. The second paragraph takes over the first paragraph of Article 12 TEC. In order to avoid any legal uncertainty the wording must be identical to Article 12 TEC, with the sole exception of the principle of non-discrimination being henceforth explicitly extended to cover the scope of the TEU.
3. The current third paragraph is legally erroneous and contradictory: the first sentence enshrines the general principle of positive action in promoting *de facto* equality between men and women. The second sentence refers by way of example to equality in setting pay, which principle should however be interpreted in the strict sense and specifically does not allow for

positive action in favour of women. Payment of a higher salary to women than to men for the same work would disregard the basic principle enshrined in Article 141(1) TEC. The second part of the paragraph as currently proposed thus provides a wrong example for the principle set out in the first part and should accordingly be deleted.

AMENDMENT 441

Proposed amendment to Article: 22

Submitted by: Lord GOLDSMITH, QC

Proposed text:

Substitute the following two-part text:

For Part A, “Proclamation of Rights”

- 1. Discrimination between citizens of Member States of the European Union on grounds of nationality shall be prohibited*
- 2. The rights and freedoms in [ECHR-based rights] shall be secured without discrimination on any grounds such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.*

For Part B, “Definition of Rights”:

Paragraph 1 is the prohibition of discrimination on grounds of nationality in Article 12 of the Treaty establishing the European Community. The prohibition applies within the scope of application of, and without prejudice to special provisions contained in, that Treaty.

Paragraph 2 is the right in Article 14 of the ECHR

Reasons:

The Praesidium draft conflates the relevant ECHR provision (which applies only to the ECHR rights) with TEC Article 13 and TEC Article 12. TEC Article 13 is not a right. It is the basis on which the Council can take action. Such action is under current negotiation and it is not yet possible to determine the outcome with sufficient confidence to justify reference in the Charter at this time. I believe that much the same is true of the negotiations within the Council of Europe regarding the proposal to extend the right in Article 14 of the ECHR.

Article 14 of the ECHR says: “The enjoyment of rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or status.” The Charter should not provide for a free-standing non-discrimination right but like the ECHR the article should be “parasitic” on other provisions.

AMENDMENT 442

Proposed amendment to Article: 22. Equality and non-discrimination

Submitted by: Charlotte CEDERSCHIÖLD

Proposed text:

1. **Any discrimination shall be prohibited, for example discrimination** based on sex, race, colour or ethnic or social origin, language, religion or belief, political opinion, association with a national minority, property, birth, disability, age or sexual orientation.
2. Within the scope of application of the Treaty establishing the European Community and of the Treaty on European Union, any discrimination on grounds of nationality shall be prohibited.
3. **Delete**

Reasons:

The grounds on which discrimination might be based should be presented as examples, so that any other discrimination which might arise is also covered. Listing particular grounds for discrimination equates to expressly permitting anything which is not specifically mentioned.

In CHARTE 4284/00 CONVENT 28, Article 22(3) states that the Union shall seek to “eliminate inequalities”. However, to eliminate inequalities would mean a demand for one hundred percent equal distribution of all available resources between the citizens of the Union. As the whole Charter has arisen in order to promote equality in various areas, this aim does not need to be repeated in Article 22(3). Every Article of the Charter constitutes an attempt to ensure equality in various areas.

Equality between the sexes is ensured by Article 22(1), which prohibits all discrimination, amongst other things on the grounds of sex.

The Charter should contain absolute rights and should therefore not also contain provisions defining aims of the type in Article 22(3). If two paragraphs of an Article lay down absolute rights but a third paragraph of the same Article contains relative rights, there is a risk of weakening the absolute rights in the same Article.

AMENDMENT 443

Proposed amendment to Article: 22

Submitted by: RODOTA', PACIOTTI and MANZELLA

Proposed text :

Delete Article.

Reasons:

Taken over into the proposed Article 1a.

AMENDMENT 444**Proposed amendment to Article: 22**

Submitted by : Rocco BUTTIGLIONE MEP, on the authority of the Chairman of the European Parliament delegation

Proposed text:

Article 22. Equality and non-discrimination

2. Any discrimination based on sex, race, colour or ethnic or social origin, language, religion or belief, political opinion, association with a national minority, property, birth, disability or age shall be prohibited.

2. Within the scope of application of the Treaty establishing the European Community and of the Treaty on European Union, any discrimination on grounds of nationality shall be prohibited.

3. The Union shall seek to eliminate inequalities and to promote equality between men and women in particular equality between the sexes shall be ensured when setting pay and other working conditions.

Reasons:

No change.

AMENDMENT 445

Proposed amendment to Article: 22(3)

Submitted by: Hanja MAIJ-WEGGEN

Proposed text:

The Union shall seek to eliminate inequalities and to promote the equal treatment of men and women.

The equal treatment of men and women shall in particular be ensured with regard to pay, social security, taxation, access to vocational training and other working conditions.

Reasons:

Re 1st paragraph: There are certain biological differences between men and women. The term "equal treatment" is therefore preferable to "equality".

Re 2nd paragraph: Numerous studies show that equal pay for the same work cannot be guaranteed or is undermined if there are differences between men and women in social security (contributions and benefits), taxation (breadwinner arrangements), access to vocational training and other working conditions. These should therefore all be specified in this Article.

AMENDMENT 446**Proposed amendment to Article: 22**

Submitted by: Frits KORTHALS ALTES, representative of the Netherlands Government

Proposed text:

“1. The enjoyment of any right set forth by law shall be secured without discrimination. Any discrimination on grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation, or on any grounds whatsoever, shall be prohibited.

2. Any discrimination on grounds of nationality shall be prohibited in accordance with Article 12 of the Treaty establishing the European Community.

3. With a view to ensuring full equality within the Union, the principle of equal treatment shall not prevent measures from being maintained or adopted in order to prevent or compensate for disadvantages arising from the unequal position of persons of a particular sex, of a particular racial or ethnic origin, with a disability, or of a particular age or sexual orientation.”

Reasons:

To replace Article 1(2), paragraph 1 of this Article regarding the principle of equality is based on the wording of the draft twelfth Protocol to the ECHR.

The second sentence of paragraph 1 states that discrimination on “any grounds whatsoever” is prohibited. The non-discrimination grounds specifically given in that sentence are based on Article 13 of the EC Treaty.

As far as nationality is concerned, the prohibition of discrimination in paragraph 2 is confined to a reference to Article 12 of the EC Treaty.

Paragraph 3 lays the basis for positive action, and is based on Article 141(4) of the EC Treaty and the draft directives implementing Article 13 of the EC Treaty. In the light of Article 13 of the EC Treaty, it is not desirable to refer exclusively to difference in sex in paragraph 3. The wording of the draft text, containing “the promotion of equality between men and women”, was also considered to be less felicitous.

AMENDMENT 447**Proposed amendment to Article: 22**

Submitted by: Erling OLSEN

Proposed text:

Paragraph 1 should instead use the wording of Article 14 of the ECHR, which should apply as regards Articles coming from similar provisions in the ECHR.

Paragraph 2 should instead fully reflect the first paragraph of Article 12 of the EC Treaty: “Within the scope of application of the Treaty establishing the European Community, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited”.

Paragraph 3 should be deleted.

Reasons:

Article 13 of the EC Treaty, on which the Praesidium’s current draft is based, does not issue any directly applicable prohibitions, but merely provides authority for the Council to take measures to combat discrimination based on certain criteria. Paragraph 3 expresses an aim, not a right.

Proposals for Article 22(1)

AMENDMENT 448

Article 22. Equality and non-discrimination

Proposal:

Rephrase paragraph 1 completely.

Reasons:

Paragraph 1.

The scope of this paragraph is far too wide.

An instrument with elaborate and precise provisions aimed at combating discrimination in those sectors of society where it is most frequent and serious might be more effective. Such provisions are now being negotiated in a Council working group within the EU.

Further, there is no mention in Article 22.1 of positive measures. In several areas where our governments, or the EU institutions, are involved in compensating for injustices or supporting underprivileged groups to improve their position in society, those negatively affected by such action may raise the issue of discrimination. An Article on this delicate matter must therefore be based on a thorough analysis of such problems.

Thirdly, the wide scope of the Article would not necessarily create problems if we had reason to believe that it would apply only in relations between the individual and public authorities, in other words in the classic human rights sense. But this is not clear, nor is it clear to what extent Member States will be held liable for conduct of individuals, such as landlords, restaurant owners, employers, etc. This is not to say that discriminatory behaviour on their part should not be met with sanctions and perhaps be criminalised. But States should not be held liable for human rights violations as a result of conduct of third parties.

Finally, in the explanation for the proposal, one gets the impression that after the entry into force of the Amsterdam Treaty, community law on ethnic discrimination has been widened to include a total ban on all ethnic discrimination in all the areas enumerated in the proposed Article. On the contrary, Article 13 in the Treaty has no direct effect as it only provides an opportunity for Member States to decide in unanimity on proposals in this area. In fact, draft Article 22.1 goes much further than the Commission's own proposal on a directive against ethnic discrimination now being negotiated in a Council working group.

AMENDMENT 449

Proposed amendment to Article: 21(1) and 22(3)

Submitted by: Gabriel CISNEROS LABORDA

Proposed text:

1. **Everyone is equal before the law. All forms of discrimination shall be prohibited.**

Reasons:

1. Developments in society make it impossible to establish an exhaustive list of types of discrimination. The proposed wording allows for such developments, respects the Community's legal framework and is consistent with Article 26 of the UN International Covenant on Civil and Political Rights.

AMENDMENT 450

Proposed amendment to Article: 22(2)

Submitted by: Dr Sylvia-Yvonne KAUFMANN

Proposed text:

1. Any discrimination based on sex, race, colour or ethnic or social origin, language, religion or belief, political opinion, *nationality*, association with a national minority, property, birth, disability, age or sexual orientation shall be prohibited.

AMENDMENT 451

Proposed amendment to Article: 22

Submitted by: Alvaro Rodríguez BEREIJO, Personal Representative of the Spanish Prime Minister

Proposed text:

In paragraph 2, insert the words “between citizens of the Union” between “any discrimination” and “on grounds of nationality”.

Reasons:

The wording of paragraph 2 is contradictory, since it is obvious that the Charter contains rights which apply to persons or to citizens of the Union. For certain rights there is a distinction between European citizens and citizens of third countries. In order to avoid the absurd situation where the Charter prohibits a discrimination that it has itself introduced, it is suggested that the expression “between citizens of the Union” be inserted in the clause prohibiting any discrimination on grounds of nationality. Furthermore, it should be noted that Article 12 of the EC Treaty applies in principle to the citizens of the fifteen Member States. The cases in which it applies to citizens of third countries are rare and are laid down explicitly.

AMENDMENT 452

Proposed amendment to Article: 22. Equality and non-discrimination

Submitted by: Georges BERTHU, MEP

Proposed text:

1. The Union shall combat any inequality of treatment between persons, subject to the conditions and powers laid down by the Treaties and with due regard for the constraints of the public good.

Reasons:

Article 22(1) and (2) of the Charter, in the wording proposed by the Praesidium, go much further than Article 13 of the EC Treaty:

- in matters of substance: new areas of non-discrimination are added to those in the Treaty. Some are self-evident (property, birth), some should be categorically rejected (nationality ¹) and others require extensive clarification at the very least (national minorities);
- in matters of procedure, the draft of Article 22 of the Charter would absolutely prohibit all discrimination, whereas Article 13 TEC is more cautious and promises only to “combat” discrimination and then only “within the limits of the powers conferred upon the Community” and after a unanimous decision by the Council. Those safeguards would completely disappear with the Charter.

Hence the preference in this amendment for more general wording, referring to the existing provisions in the Treaties.

¹ It should be pointed out that the current Article 12 TEC, which prohibits any discrimination within the Union on grounds of nationality, allows for exceptions, particularly for the public service.

AMENDMENT 453

Proposed amendment to Article: 22(1)

Submitted by: Piero MELOGRANI

Proposed text ^{*}:

Any discrimination based on sex, race, colour or ethnic or social origin, language, religion or belief, political opinion, association with a national minority, property, birth, disability, age, sexual orientation, **or any other personal or social condition** shall be prohibited.

Reasons:

The addition of the phrase "or any other personal or social condition" makes it clear that this list of prohibited grounds for discrimination is open; not exhaustive.

* Proposed amendments are in bold.

AMENDMENT 454**Proposed amendment to Article: 22****Submitted by:** Kathalijne BUITENWEG**Proposed text:**

Amend paragraph 1:

1. Any discrimination on whatever grounds, such as sex, race, colour or ethnic or social origin, language, religion or belief, political opinion, association with a national minority, property, birth, disability, age, sexual orientation, marital or other status shall be prohibited.

Reasons:

The additions “on whatever grounds” and “or other status” ensure that the non-restrictive character of Article 14 of the ECHR is retained.

The addition “marital status” is in line with social trends, whereby the distinction between married and unmarried persons, particularly in the context of EU law, is losing its relevance.

AMENDMENT 455**Proposed amendment to Article: 22**

Submitted by: Johannes VOGGENHUBER and Kathalijne BUITENWEG

Proposed text:

Amend paragraph 1:

1. Any discrimination on any ground such as sex, race, colour or ethnic or social origin, language, religion or belief, political opinion, association with a national minority, property, birth, disability, age, sexual orientation or other status shall be prohibited.

Reasons:

The insertion of “on whatever ground” and “or other status” reflects the non-exhaustive character of Article 14 of the EHCR.

AMENDMENT 456

Proposed amendment to Article: 22. Equality and non-discrimination

Submitted by: Hubert HAENEL

Proposed text:

1. *Everyone is equal before the law. Any discrimination shall be prohibited.*

Reasons:

The text proposed in Article 22 lists a series of areas in which discrimination is prohibited.

A list of that kind is not conducive to a clear and concise text.

Moreover, as with any list, there is a serious risk of omissions.

It would therefore seem preferable to set out the principle of equality before the law in simpler terms and to prohibit any discrimination.

Proposals for Article 22(2)

AMENDMENT 457

Proposed amendment to Article: 22(2)

Submitted by: Dr Sylvia-Yvonne KAUFMANN

Proposed text:

(2) Delete paragraph 2 altogether.

Reasons:

Paragraph 2 duplicates the scope of Article H.1.

AMENDMENT 458

Proposed amendment to Article: 22. Equality and non-discrimination

Submitted by: Georges BERTHU, MEP

Proposed text:

2. The Union shall seek to eliminate inequalities **between men and women** and to promote equality between them (rest deleted).

Reasons:

Article 22(1) and (2) of the Charter, in the wording proposed by the Praesidium, go much further than Article 13 of the EC Treaty:

- in matters of substance: new areas of non-discrimination are added to those in the Treaty. Some are self-evident (property, birth), some should be categorically rejected (nationality ¹) and others require extensive clarification at the very least (national minorities);
- in matters of procedure, the draft of Article 22 of the Charter would absolutely prohibit all discrimination, whereas Article 13 TEC is more cautious and promises only to “combat” discrimination and then only “within the limits of the powers conferred upon the Community” and after a unanimous decision by the Council. Those safeguards would completely disappear with the Charter.

Hence the preference in this amendment for more general wording, referring to the existing provisions in the Treaties.

¹ It should be pointed out that the current Article 12 TEC, which prohibits any discrimination within the Union on grounds of nationality, allows for exceptions, particularly for the public service.

AMENDMENT 459

Blank.

Proposals for Article 22(3)

AMENDMENT 460**Proposed amendment to Article: 22**

Submitted by: Alvaro Rodríguez BEREIJO, Personal Representative of the Spanish Prime Minister

Proposed text:

Delete the last part of paragraph 3 regarding equality between the sexes in the employment field.

Reasons:

We believe that the wording of the paragraph is not precise (what is meant by “setting pay”?) and above all that it belongs in social rights, and that the wording used should be the same as in the EC Treaty.

AMENDMENT 461

Proposed amendments to Article: 22. Equality and non-discrimination

Proposed text:

The topic dealt within paragraph 3 could be dealt with in the preambular text of the Charter.

Reasons:

Paragraph 3 is an objective and would be better placed in the preamble.

AMENDMENT 462

Proposed amendment to Article: 22(1) and (3)

Submitted by: Gabriel CISNEROS LABORDA

Proposed text:

3. (Last sentence). Equality between the sexes shall be ensured **in the field of pay and other working conditions.**

Reasons:

3. Technical improvement

AMENDMENT 463**Proposed amendments to Article: 22**

Submitted by: José BARROS MOURA and Maria Eduarda AZEVEDO

1.
2.
3. The Union shall seek to eliminate inequalities and to promote **equalities** between men and women. In particular equality between the sexes shall be ensured **in access to employment**, when setting pay and other working conditions **and in social security**.

AMENDMENT 464

Proposed amendment to Article: 22. EQUALITY AND NON-DISCRIMINATION

Submitted by: Jordi SOLÉ TURA

Proposed text:

- 3: **“The primary objective of the Union shall be to eliminate inequalities and to promote equality between men and women. Equality between the sexes shall be ensured when setting pay and other working conditions.”** (this phrase changed in Spanish only)

Reasons:

It is not sufficient to say that the Union “shall seek to eliminate inequalities”. Eliminating them must be a “primary objective”. The last phrase in Spanish is syntactically more specific than the one in the existing text.

AMENDMENT 465**Proposed amendment to Article: 22**

Submitted by: E.M.H. HIRSCH BALLIN and M. PATIJN (also on behalf of G.J.W. VAN OVEN)

Proposed text:

The first sentence of paragraph 3 should be deleted.

Reasons:

For a prescriptive provision, the first sentence of paragraph 3 is drafted in terms which are too broad.

AMENDMENT 466

Proposed amendment to Article: 22. Equality and non-discrimination

Submitted by: Jürgen GNAUCK, Minister for Federal and European Affairs of Thuringia

Proposed text:

“Article 22. Equality and non-discrimination

(1)....

(2)....

(3) Men and women are equal. The Union shall seek to eliminate inequalities and to promote equality between men and women. Equality between the sexes shall be ensured in particular when setting pay and other working conditions.”

Reasons:

The fundamental point that men and women are equal ought to be explicitly stated at the beginning of paragraph 3, i.e. given prominence.

As for the rest, it is suggested that if no gender-neutral alternative can be found, the feminine form should be added in the wording of all Charter provisions.

AMENDMENT 467

Proposed amendment to Article: 22

Submitted by: EINEM/HOLOUBEK

Proposed text:

Delete paragraph 3 in Article 22

Reasons:

Paragraph 3 should be divided into two separate articles and amplified (cf. proposed amendment 2 to Article 22).

AMENDMENT 468

Proposed amendment to Article: 22(3)

Submitted by: Dr Peter Michael MOMBAUR, MEP

Proposed text:

The word "**inequalities**" should be replaced by "**unequal treatment**".

Reasons:

The proposal refers to the EU's possibilities for action. It corresponds to the proposal made by the German Federal Government in CONTRIB 154 and to the proposal made by the German Federal States in CONTRIB 142.

AMENDMENT 469**Proposed amendment to Article: 22**

Submitted by: Simone BEISSEL

Proposed text:

3.(a) Delete “to eliminate inequalities and”.

3.(b) Delete “in particular equality between the sexes working conditions”.

Reasons:

3.(a) The wording should be positive.

3.(b) Pay and working conditions should be covered by the section on social rights.

Proposals for Article 22a and b

AMENDMENT 470

Proposed amendment 2 to Article: 22

Submitted by: EINEM/HOLOUBEK

Proposed text: the following new Articles should be inserted after Article 22 (new):

“Article XX *Equality between men and women*

- (1) The Union shall seek to eliminate inequalities and to promote equality between men and women. *In order to bring about real equality, positive discrimination measures shall be permitted.*
- (2) Gender equality shall be ensured in particular when setting pay and other working conditions.

Article YY *Equality of minorities*

- (1) **Persons who belong to linguistic or ethnic minorities shall be entitled collectively and publicly to use their own language and preserve their own culture.**
- (2) **The Union shall strive to eliminate inequalities or discrimination.”**

Reasons:

In order to highlight the importance of individual rights, it is proposed that the general right to equality be enshrined in a separate Article in the same way as equality between men and women. In view of the vital importance of the right of minorities to equality, we also suggest that it be removed from the general ban on discrimination and dealt with in a separate Article.

The proposed Article XX on equality between men and women corresponds to the text of the draft proposed by the Praesidium. As a purely drafting proposal, we suggest that the duty of the Union to promote equality and the right to equal pay for the same work as provided for in the EC Treaty be covered in separate paragraphs.

The new second sentence of paragraph 1 of the proposed Article XX is intended to make it clear that measures involving “positive discrimination” are permissible in order to bring about real equality.

Article YY sets down in explicit terms a right which is particularly important if linguistic and ethnic minorities are to achieve equality; the right to use their own language and preserve their own culture. Paragraph 2 is intended to oblige the Union to eliminate inequalities or discrimination suffered by minorities.

Proposals for Article 23

AMENDMENT 471

Proposed amendment to Article: 23

Submitted by: Lord GOLDSMITH, QC

Proposed text:

Delete this Article.

Reasons:

This Article has no clear basis in the ECHR, the Treaties, nor has it been shown to be in the constitutional traditions common to all the Member States. Accordingly, it should not be included in the Charter.

As drafted the Article could be read as stating that children had to be treated as equal to adults which would clearly be inappropriate. This concept is expressed in the Convention on the Rights of the Child in terms of non-discrimination. The second half of the proposed Article is vague. The concept of a child “influencing” matters “pertaining to their person” could be interpreted in a way that goes much further than the Convention. I also see problems with the term “maturity” since – in social care terms – children can be “mature” in some respects beyond their years.

AMENDMENT 472

Proposed amendment to Article: 23. Children's rights

Submitted by: Georges BERTHU, MEP

Proposed text:

Delete this article.

Reasons:

Although the content of the article is worthy of interest, it does not appear to correspond to any existing European competence nor to be in the interests of the Charter as a whole, which runs the risk of becoming a list of the rights of many specific categories. If reference is made to children's rights, why not refer to the rights of the elderly or the sick, etc.

AMENDMENT 473**Proposed amendment to Article: 23****Submitted by:** Andrew DUFF, MEP**Proposed text:****Article 23. Children's rights****Children must be (delete: 7 words) allowed to influence matters pertaining to their person to a degree corresponding to their maturity****Reasons:**

This Article is in response to various requests and is based on the Convention on the Rights of the Child.

AMENDMENT 474

Proposed amendment to Article: 23. Children's rights

Submitted by: VITORINO, Commission representative on the Convention

Proposed text:

"1. Children shall have the right to such protection and care as is necessary to their well-being. They must be allowed to express their views freely in all matters affecting them, their views being given due weight in accordance with their age and maturity.

2. In all actions concerning children, whether undertaken by public institutions or bodies or by private social welfare institutions, the best interest of the child shall be a primary consideration."

Reasons:

The present amendment is designed to add to the current draft two most fundamental principles of the Convention on the Rights of the Child, these being the right to protection and care, and the principle of the best interest of the children. The wording of the second sentence follows that of Article 12(1) of the Convention on the rights of the child.

AMENDMENT 475**Proposed amendment to Article: 23**

Submitted by: Erling OLSEN

Proposed text:

“Every child has, without any discrimination, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State. The best interests of the child shall always be a primary consideration.”

Reasons:

The Praesidium’s text does not present childrens’ rights, as described in the heading of this Article, but rather expresses a political aim. One solution might be to use the main part of the wording in Article 24 of the International Covenant on Civil and Political Rights and refer in the statement of reasons to the full text and to the UN Convention on the Rights of the Child.

AMENDMENT 476**Proposed amendment to Article: 23****Submitted by:** Maria Pia VALETTO and Piero MELOGRANI**Proposed text** *:

Children must be treated as equal individuals, they must be allowed to influence matters pertaining to their person to a degree corresponding to their maturity. ***When decisions on such matters are taken, the interests of the child must be the primary consideration.***

Reasons:

The addition of the second sentence is intended to confirm the principle of the best interests of children, a principle established by a vast body of case-law of the Court of Human Rights on the custody of children.

* Proposed amendments are in bold.

AMENDMENT 477**Proposed amendment to Article: 23****Submitted by:** Win GRIFFITSH, MP**Proposed text:**

All children in the European Union shall have the right for their interests to be respected by the institutions of the European Union.

Reasons:

Member States have committed themselves to the UN Convention on the Rights of the Child and although there are no specific references to children in the European Union treaties the Consolidated Version of the Treaty Establishing the European Union in Article 13 does clearly refer to age discrimination.

AMENDMENT 478

Proposed amendment to Article: 23. Children's rights

Submitted by: Michael O'KENNEDY, TD, personal representative of the Irish Head of State/Government

Proposed text:

Article 23

~~Children must be treated as equal individuals, they must be allowed to influence matters pertaining to their person to a degree corresponding to their maturity.~~

In all cases concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be the primary consideration.

Reasons:

It is suggested that Article 23 be deleted and replaced with language from Article 3.1 of the UN Convention of the Rights of the Child.

The text as originally drafted appears to be drawn from Article 12.1 of the Convention on the Rights of the Child, although it does not accurately reflect that provision which, moreover, is just one of several provisions setting out detailed rights. A single Article in the Charter should more appropriately reflect a general principle, particularly the predominance of the best interests of the child. The amended provision proposed does so with the language of Article 3.1 of the Convention.

AMENDMENT 479**Proposed amendment to Article: 23**

Submitted by: E.M.H. HIRSCH BALLIN and M. PATIJN (also on behalf of G.J.W. VAN OVEN)

Proposed text:

The Union shall respect the rights of the child in accordance with the provisions of the Convention on the Rights of the Child. More particularly, children should be guaranteed protection of their family environment and the care required for their welfare and should be given the opportunity to form their own views and have the right to express those views freely in all matters affecting them, the views of the child being given due weight in accordance with their age and evolving capacities.

Reasons:

This provision expresses more clearly the fact that children are equal individuals and brings it more expressly into line with the Convention on the Rights of the Child, and in particular Article 12 thereof. It also ties in with the right to family life as laid down in Article 13 of the draft Charter.

AMENDMENT 480

Proposed amendment to Article: 23

Submitted by: Pervenche BERÈS

Proposed text:

Children shall enjoy all the rights recognised in respect of persons. The exercise and protection of those rights shall take into account the age and the ability of the child.

Reasons:

The expression “equal individual” should be clarified.

AMENDMENT 481**Proposed amendment to Article: 23**

Submitted by: Alvaro Rodríguez BEREIJO, personal representative of the Spanish Prime Minister

Proposed text:

Children shall enjoy the protection laid down in international agreements safeguarding their rights.

Reasons:

The wording of the provision is too detailed and raises many problems of interpretation yet does not set out a general principle of child protection.

AMENDMENT 482

Proposed amendment to Article: 23 Children's rights

Submitted by: Jürgen GNAUCK, Minister for Federal and European Affairs of Thuringia

Proposed text:

“Article 23. Children's rights

1. Children must be treated as equal individuals; they must be allowed to influence matters pertaining to their person to a degree corresponding to their maturity.
2. Every child has the right to the protection and care of the community.”

Reasons:

Children - like mothers – are particularly in need of protection. The German Federal States therefore advocate that Article 23 be supplemented by the proposed provision on protection.

AMENDMENT 483

Proposed amendment to Article: 23

Submitted by: EINEM/HOLOUBEK

Proposed text:

“Children must be treated as independent *human beings*; they must be allowed to influence matters pertaining to themselves person to a degree corresponding to their maturity.”

Reasons:

“Human beings”, rather than “persons”, should be used for natural persons.

AMENDMENT 484

Proposed amendment to Article: 23. Children's rights

Submitted by: Marie-Thérèse HERMANGE (Cornillet)

Proposed text:

- “1. In all actions concerning children, the best interests of the child shall be a primary consideration.
2. Every child who is capable of forming his or her own views has the right to express those views freely in all matters affecting the child, and to influence, depending on their degree of maturity, the issues affecting him or her personally.”

Reasons:

The International Convention on the Rights of the Child constitutes the universal reference and a minimum in terms of recognition of civil rights in respect of persons under 18 years of age.

This amendment therefore borrows heavily from Articles 2, 3, 6 and 12 of the International Convention on the Rights of the Child.

It emphasises the principle of the best interests of the child, which must apply to all the European Union's actions.

AMENDMENT 485**Proposed amendment to Article: 23**

Submitted by: Gabriel CISNEROS LABORDA

Proposed text:

Children must be treated as equal individuals, they must be allowed to influence matters pertaining to their person to a degree corresponding to their maturity, **and their best interests must be safeguarded in all cases.**

Children's right to adequate protection in a family environment shall be respected.

Reasons:

This wording is closer to the content of the Convention on the Rights of the Child, which is the essential point of reference.

AMENDMENT 486

Proposed amendment to Article: 23. Children's rights

Submitted by: Daniel TARSCHYS

Proposed text:

Delete the current text and replace with the following:

In all actions concerning children the best interests of the child shall be a primary consideration and the rights of the child shall be respected and ensured without discrimination of any kind. The child shall be assured the right to express its views freely in all matters affecting the child, the views of the child being given due weight.

Reasons:

This text is inspired by the wording in the UN Convention for the Rights of the Child (CRC) (Article 2, 3 and 12).

AMENDMENT 487

Proposed amendment to Article: 23. Children's rights.

Submitted by: RODOTA', PACIOTTI and MANZELLA

Proposed text:

Replace the Article by the following:

- “1. Children must be treated as equal individuals, they must be allowed to express their views on matters pertaining to their person to a degree corresponding to their maturity.**
- 2. Children must be protected against all threats to their intellectual development and their psychological and sexual integrity.”**

Reasons:

In paragraph 1 “influence” has been replaced by “express their views on”, which is far more appropriate to the child’s stage of development.

Paragraph 2 addresses the matter of threats to children (including through the use of information technology) and imposes an obligation to protect them on the public authorities.

AMENDMENT 488

Proposed amendment to Article: 23 (addition)

Submitted by: Hanja MAIJ-WEGGEN

Proposed text:

Article 23. Children's rights

Children must be treated as equal individuals, they must be allowed to influence matters pertaining to their person to a degree corresponding to their maturity

The European Union shall ensure that all EU activities are fully compatible with the principle of the best interests of the child as expressed in the UN Convention on the Rights of the Child.

Reasons:

An explicit reference to the Convention on the Rights of the Child is desirable since this is the most comprehensive statement of children's rights and has almost universal ratification.

AMENDMENT 489**Proposed amendment to Article: 23****Submitted by:** François LONCLE**Proposed text:**

Use the following wording for this Article:

“Children who are capable of forming their own views have the right to express those views freely in all matters affecting them. Their views shall be given due weight in accordance with the children’s age and maturity”.

Reasons:

Drafting amendment, inspired by the wording of Article 12(1) of the international Convention on the Rights of the Child.

AMENDMENT 490

Proposed amendment to Article: 23(1) - Children's rights

Submitted by: Hubert HAENEL

Proposed text:

Article 23: The rights of the child

1. A child must be treated as an equal individual, he/she must be allowed to influence matters pertaining to his/her person to a degree corresponding to his/her maturity, while taking his/her best interests into consideration.

Reasons:

As stated in the Convention on the Rights of the Child, in all decisions concerning a child, the child's best interests must be a primary consideration. Reference should be made to this consideration in the Charter of Fundamental Rights.

Moreover, as the Charter deals with the rights of "everyone" and not the rights of "all people", it seems preferable to deal here with the rights of "the child" and not "children's" rights

Proposed amendment to Article: 23 (inserting a paragraph 2) - Children's rights

Proposed text:

The child must not be separated from his/her parents against his/her wishes unless that separation is in his/her best interests.

Reasons:

As far as possible the child must be allowed to grow up in his/her family environment.

This should be stated in a provision based on the Convention on the Rights of the Child.

AMENDMENT 491

Proposed amendment to Article: 23. Children's rights

Submitted by: Jean-Luc DEHAENE, personal representative of the Belgian Government

Proposed text:

1. Every child has the right to respect for his or her moral, physical, mental and sexual integrity.
2. Children must be treated as equal individuals; they must be allowed to influence matters pertaining to their person to a degree corresponding to their maturity.

Reasons:

The proposed insertion (as a new paragraph 1) of the right of the child to respect for his or her moral, physical, mental and sexual integrity is based on the UN Convention on the Rights of the Child and on the Belgian Constitution. This provision, together with paragraph 2 (version in CONVENT 28), spells out the importance attached by the Member States of the European Union to children's rights.

AMENDMENT 492

Proposed amendment to Article: 23

Submitted by: Ieke VAN DEN BURG

Proposed text:

Addition: Children must be protected against harmful and exploitative forms of child labour

Reasons:

Children's rights should also include protection against harmful and exploitative forms of child labour. Reference may be made here to the broad consensus reached within the International Labour Organisation in 1999 on a new Convention against child labour (ILO Convention 182).

AMENDMENT 493**Proposed amendment to Article: 23****Submitted by:** Frits KORTHALS ALTES, representative of the Netherlands Government**Proposed text:**

The Union respects the rights of the child in accordance with the provisions of the Convention on the Rights of the Child. More particularly, children should be guaranteed the protection and care required for their welfare and should be given the opportunity to form their own views, have the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with his or her age and consistent with the evolving capacities of the child.

Reasons:

This provision expresses more clearly the fact that children are equal individuals and brings it more into line with the Convention on the Rights of the Child, and in particular Article 12 thereof.

AMENDMENT 494**Proposed amendment to Article: 23**

Submitted by: Jean-Maurice DEHOUSSE, MEP, Alternate Member of the Convention

Proposed text:

1. Turn Article 23 (Childrens' rights) into Article 13a, where it follows on naturally from family life.
2. Change the title, replacing "Childrens' rights" by "Rights of the child".

Reasons:

Amd 1: Improved structure for the Charter.

Amd 2: Sounds more natural.

Proposals for Article 23a

AMENDMENT 495

Proposed amendment to Article: 23a

Submitted by: Andrew DUFF, MEP

Proposed text:

Article 23a. Principle of democracy

1. Everyone has the right to a democratic form of government
2. **The Union and its institutions are founded on the principles of liberty, democracy, solidarity, respect for human rights and the rule of law, principles which are common to the Member States.**

Reasons:

Democracy is the one unarguable foundation stone of the European Union and an essential precondition for both accession and continued membership. This Article is intended to underscore that, and is drawn from Articles 2 and 6 of the Treaty on European Union, as well as from the Preambles of the Treaties.

Article 6(1) says: "The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States."

Article 2 sets out the Union's objectives to include the "promotion of economic and social progress" and the "strengthening of economic and social cohesion".'

AMENDMENT 496

Proposed amendment to Article: 23a (new)

Submitted by: José BARROS MOURA and Maria Eduarda AZEVEDO

Proposed text:

1. The Union shall guarantee respect of the national and regional identities of Member States and of their cultural and linguistic diversity, including the right to address institutions and receive replies from them in one of the official languages of the Union.
2. The Union shall support minority languages.

NOTE: These proposals are made without prejudice to other aspects to be included as horizontal clauses, and of future suggestions for a better systematisation.

AMENDMENT 497**Proposed amendment to Article: 23**

Submitted by: RODOTA', MANZELLA and PACIOTTI

Proposed text:

Insert the following after Article 23:

“Article 23a Right to nationality

- 1. Everyone has the right to a nationality.**
- 2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality. “**

Reasons:

This Article reproduces Article 15 of the Universal Declaration of Human Rights; it is an important precondition for establishing citizens' rights.

Proposals for six new articles after Article 24

AMENDMENT 518

Proposed amendment to Article: 24 (new) Principle of democracy

Article 24(1) National identity

Submitted by: Mr Georges BERTHU, MEP

Proposed text:

- 1. Every citizen has the right to respect for his national identity.**
- 2. In exercising its powers, both internally and externally, the Union shall defend the national identities of its Member States.**

Reasons:

Paragraph 1 takes up the principle already incorporated in Article 6(3) of the TEU, with different wording. This principle seems so important that it should not be lost in the overall text of the Treaty, but raised to the level of the Charter of Fundamental Rights.

Paragraph 2 is a reminder that the Member States created the Union in order jointly to defend their respective identities, not to abolish them.

AMENDMENT 519

Proposed amendment to Article 24 (new) Principle of democracy
Article 24(2) Democratic expression

Submitted by: Mr Georges BERTHU, MEP

Proposed text:

Citizens have the right to respect for their democratic expression at national level.

Reasons:

Respect for democratic expression at national level is so self-evident that the Treaties have not to date explicitly mentioned it. However, we have reached a stage in the development of the Union where the need for clarification is being felt.

This principle is so important that the right place for it to be included is in the Charter (without prejudice to the preamble, which should point out in particular that all public authority stems from the people).

AMENDMENT 520

Proposed amendment to Article: 24 (new) - Principle of democracy

Article 24(3) - Right of withdrawal

Submitted by: Georges BERTHU, MEP

Proposed text:

The citizens of each country decide freely on the accession of their State to the European Union. Similarly, they may democratically choose to withdraw.

Reasons:

The right to secede is not mentioned in the Treaty but, in a democratic context, it is implicit. The suggestion here is to make it explicit in the Charter.

AMENDMENT 521

Proposed amendment to Article: 24 (new) - Principle of democracy

Article 24(4) - Right to adopt safeguard measures

Submitted by: Georges BERTHU, MEP

Proposed text:

The citizens of Member countries have the fundamental right to adopt democratically national safeguard measures where compelling circumstances so require. In any event, these measures shall remain within the limits recognised by international law as permissible where the survival of the nation is threatened.

Reasons:

Here again, the right to national safeguard measures should be implicit. However, it is observed that it has been challenged by the Union's institutions in a number of recent cases, particularly those linked with public health. It should be noted here, at the formal level of the Charter, that , whatever form Community law takes in any particular field, no-one may remove a people's right to adopt the measures it deems essential to its survival.

AMENDMENT 522

Proposed amendment to Article: 24 (new) - Principle of democracy

Article 24(5) - States' right of organisation

Submitted by: Georges BERTHU, MEP

Proposed text:

The citizens of Member countries have the right to decide freely how their State shall be organised and in particular the limits and the operation of their public services.

Reasons:

Over recent years the Member countries and the institutions of the Union have become aware of certain undesirable effects of the principle of competition when applied indiscriminately to public services. To remove any ambiguity, the Charter provides the opportunity to note that the citizens of each Member country have the right to determine how their public services are to be organised.

AMENDMENT 523

Proposed amendment to Article: 24 (new) - Principle of democracy

Article 24(6) - Freedom of choice

Submitted by: Georges BERTHU, MEP

Proposed text:

The citizens of Member countries have the right to decide democratically not to take part in a particular form of cooperation at European level or to choose for themselves rules that are more protective than those of a cooperation arrangement in which they are taking part.

Reasons:

By explicitly recognising the democratic freedom of choice of the citizens of the Member countries, the Charter could demonstrate the possibility of a more flexible conception of the European institutions.

Proposals for Article 24

AMENDMENT 498

Proposed amendment to Article: 24

Submitted by: Frits KORTHALS ALTES, representative of the Netherlands Government

Proposed text:

Article 24 should be deleted.

Reasons:

The added value of this Article is not clear, given that the right to freedom of association and political parties are both referred to in Article 17.

AMENDMENT 499

Proposed amendment for Article: 24. Political parties

Submitted by: Daniel TARCHYS

Proposal:

Delete

Reasons:

The rights guaranteed in draft Article 17 provide sufficient protection.

AMENDMENT 500

Proposed amendment to Article: 24(1)

Submitted by: Gabriel CISNEROS LABORDA

Proposed text:

Delete

Reasons:

Doubts about the suitability of such a declaration in the Community context.

AMENDMENT 501

Proposed amendment to Article: 24

Submitted by: Lord GOLDSMITH, QC

Proposed text:

Delete this article

Reasons:

The fundamental right stated in this Article is entirely covered by the guarantee of freedom of assembly and association in Article 17. Political parties are a classic example of associations. The proposed accretions to the relevant ECHR rights in Article 24 have no clear basis in the Treaties or elsewhere. They raise serious technical and other difficulties which would affect other Member States and would need to be the subject of separate substantive consideration.

In any case, it is unclear why only Union citizens should be able to found a party. Under Article 17 and ECHR Article 11) anyone has that right. The limitations in Article 11 ECHR are important. All Member States restrict this freedom to exclude extremist parties e.g. those aiming to overthrow the constitution or who preach racism. The proposed Article appears to give an unqualified right.

AMENDMENT 502

Proposed amendment to Article: 24

Submitted by: Sylvia Yvonne KAUFMANN

Proposed text:

Delete Article 24 and do not replace

Reasons:

Article 24 is a duplication of the freedom of association guaranteed in Article 7.

AMENDMENT 503**Proposed amendment to Article: 24**

Submitted by: E.M.H. HIRSCH BALLIN and M. PATIJN (also on behalf of G.J.W. VAN OVEN)

Proposed text:

Article 24 should be deleted.

Reasons:

The rights referred to in the first sentence are already covered by Article 17 (freedom of assembly and of association). With regard to the second sentence, it is unclear who ought to ascertain whether a political party is abiding by this obligation and what the consequences are if it does not.

AMENDMENT 504

Proposed amendment to Article: 24

Submitted by: R. VAN DAM, MEP

Proposed text:

Delete Article 24.

Reasons:

The content of this Article is already guaranteed in Article 17 of the Charter. Its inclusion is superfluous.

AMENDMENT 505

Proposed amendment to Article: 24. Political parties

Submitted by: Georges BERTHU, MEP

Proposed text:

Delete this Article.

Reasons:

This Article probably adds nothing to what has already been said in the preceding Article 17 (Freedom of assembly and association). If it is admitted that it adds something, this can only be the idea of "European political parties", which goes beyond the current text of the Treaty (Article 191 TEC). In both cases the proposed text ought therefore to be deleted.

AMENDMENT 506**Proposed amendment to Article: 24****Submitted by: EINEM/HOLOUBEK****Proposed text:****Reasons:**

According to the text proposed by the Praesidium, "everyone" has the right to join a political party at the level of the Union. It is indicated in the statement of reasons that this right should only be open to "anyone living in a Member State". This limitation is not expressed in the text and that raises the question of whether it is intended or even useful.

AMENDMENT 507

Proposed amendment to Article: 24

Submitted by: Andrew DUFF, MEP

Proposed text:

Article 24. Political parties

Every citizen has the right to form a political party at the level of the Union and everyone has the right to join such a party. These political parties must respect the rights and freedoms guaranteed by this Charter.

Reasons:

Every Union citizen is guaranteed the right to found a political party, and the right to join such a party is open to anyone living in a Member State. The possibility of limiting the exercise of these rights will derive from the horizontal article concerning limitations.

The existence of political parties at the EU level is recognised in Article 191 of the TEC.

AMENDMENT 508

Proposed amendment to Article: 24

Submitted by: Erling OLSEN

Proposed text:

The text should be reworded as follows: “Everyone has the right to form a political party and everyone has the right to join such a party”. The second sentence should be deleted.

Reasons:

Article 191 of the EC Treaty does not provide any basis for the Praesidium’s proposed Article. In its way, the right to form a political party and to join one is already covered by the Article on the freedom of association (Article 17) and so Article 24 could be deleted.

AMENDMENT 509**Proposed amendment to Article: 24****Submitted by ::** Piero MELOGRANI**Proposed text** *:

Every citizen of the Union has the right to contribute to shaping the will of the European Institutions through political parties at Union level. The rules governing those parties shall respect the fundamental principles of democracy.

Reasons:

The text of CONVENT 28 merely confirms, at Union level, a right that Article 17 already generally recognises “everyone” as having. It should therefore be replaced by a text that clarifies the role of such parties at Union level.

The second sentence has been amended, so that it does not prevent a lawful, democratic party from supporting a programme that seeks to abolish or limit some of the rights guaranteed by the Charter.

* Proposed amendments are in bold

AMENDMENT 510

Proposed amendment to Article: 24. Political parties

Submitted by: Dr Ingo FRIEDRICH

Proposed text:

*“Every **Union** citizen has the right to form a political party at the level of the Union. **The right of parties to decide on the admission of members shall be guaranteed** (last sentence deleted).”*

Reasons:

If someone wishes to join an existing party, this should be left to the discretion of the party itself. There should be no automatic entitlement to admission.

The second sentence obliges political parties to respect the Charter of Fundamental Rights. In terms of the system followed, there are a number of considerable objections to this.

First, parties are not State bodies and are therefore not among those to whom fundamental rights are addressed. This is presumably also the thinking behind the Charter (see Article 46).

Also, the provision envisaged is a matter of conventional constitutional law. The legal status of political parties is amongst the issues that may have to be settled in any EU constitution, not in a charter of fundamental rights.

The suggested provision would further seem inadequate. Any attempt at setting standards for the conduct of parties should first and foremost focus on the observance of specific objective legal principles, such as upholding the basic democratic system, not on individual rights. What would also be needed are appropriate penalties and procedures for enforcement; none of this is the task of a charter of fundamental rights.

Article 50 of the latest draft of the Charter, moreover, affords protection against abuse of their position.

AMENDMENT 511

Proposed amendment to Article: 24. Political parties

Submitted by: Alvaro Rodríguez BEREIJO, personal representative of the Spanish Prime Minister

Proposed text:

“Every citizen of the Union has the right...”

Reasons:

To make it clear that this right, like the other citizenship rights recognised in the Charter, is reserved for citizens of the European Union and is not available to citizens of other States. A citizen of the Union is defined in Article 17 of the EC Treaty as “every person holding the nationality of a Member State”. This is a logical consequence of the fact that the EU is a political entity formed by the political grouping of the fifteen States which constitute it.

AMENDMENT 512

Proposed amendment to Article: 24. Political parties

Submitted by: Jürgen GNAUCK, Minister for Federal and European Affairs of Thuringia

Proposed text:

“Article 24. Political parties

Every citizen has the right also to form a political party at the level of the Union. The right of parties to decide on the admission of members shall be guaranteed. Political parties must respect the rights and freedoms guaranteed by this Charter.”

Reasons:

The word “also” makes it clear that the right to form a political party applies both at Member State and European Union level.

If someone wishes to join an existing party, this should be left to the discretion of the party itself. There should be no automatic entitlement to admission.

AMENDMENT 513

Proposed amendment to Article: 24

Submitted by: MANZANELLA

Proposed text:

Replace the text with the following:

- 1. Every citizen of the Union has the right to form, on the conditions laid down by the Treaties, political parties at the level of the Union, and every citizen of the Union has the right to join such parties in order to contribute, by democratic means, to building a genuine “European public area” and to the expression of the political will of its citizens .**

- 2. Aliens resident in the Union may join Union-level parties on the conditions laid down in their statutes.”**

Reasons:

In our proposal the purpose of forming political parties, which is the prerogative of citizens of the Union, is the creation of a “Union public area”. Aliens residing in the Union may join Union-level parties, which they are already entitled to do.

AMENDMENT 514

Proposed amendment to Article: 24

Submitted by: François LONCLE

Proposed text:

Article 24:

At the beginning of the first sentence, after "Every citizen" insert "of the European Union".

Reasons:

This amendment is intended to remove an ambiguity in the wording.

AMENDMENT 515

Proposed amendment to Article: 24

Submitted by: Dr Peter Michael MOMBAUR, MEP

Proposed text:

The word "**citizen**" should be replaced by "**citizen of the Union**".

Reasons:

For the same reasons as adduced for the proposed Article 24.

AMENDMENT 516

Proposed amendment to Article: 24. Political parties

Submitted by: Jean-Luc DEHAENE, personal representative of the Belgian Government

Proposed text:

Everyone has the right to form a political party at the level of the Union and everyone has the right to join such a party. These political parties must respect the rights and freedoms guaranteed by this Charter.

Reasons:

The aim of the proposed text is to grant "everyone" the right to form a political party, so that this provision is brought fully into line with Article 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms – which operates as a minimum standard in drawing up the Charter – and with Article 17 (CONVENT 28 version), in which the right to form a political party is explicitly granted to "everyone".

AMENDMENT 517

Proposed amendment to Article: 24

Submitted by: José BARROS MOURA and Maria Eduarda AZEVEDO

Proposed text:

Every citizen of the Union has the right to form a political party at the level of the Union and everyone has the right to join such a party. These political parties must **have a democratic internal structure** and respect ... (no changes).

Proposals for Article 25 as a whole

AMENDMENT 524

Proposed amendment to Article: 25

Submitted by: Andrew DUFF, MEP

Proposed text:

Article 25. Right to vote and to stand as a candidate for the European Parliament

- 1. Members of the European Parliament shall be elected by direct universal suffrage by free and secret ballot.**
- 2. Every citizen of the Union has the right to vote and to stand as a candidate in the Member State in which he resides under the same conditions as nationals of that State.**

Reasons:

Paragraph 1 follows Article 190(1) TEC: "The representatives in the European Parliament of the peoples of the States brought together in the Community shall be elected by direct universal suffrage".

(Delete: 2 words) Paragraph 2 follows Article 19(2) of the TEC: "2. Without prejudice to Article 190(4) and to the provisions adopted for its implementation, every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and to stand as a candidate in elections to the European Parliament in the Member State in which he resides, under the same conditions as nationals of that State. This right shall be exercised subject to detailed arrangements adopted by the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament; these arrangements may provide for derogations where warranted by problems specific to a Member State".

A reference to the conditions laid down in the Treaty will be made in a horizontal article.

AMENDMENT 525

Proposed amendment to Articles: 25 and 26

Submitted by: Jürgen MEYER/Pervenche BERES/Jo LEINEN/Hans-Peter MARTIN/Ieke VAN DEN BURG

Proposed text:

Article 25 Right to vote and to stand as a candidate

- 1. Members of the European Parliament shall be elected by direct universal suffrage by free and secret ballot.**
- 2. Every citizen of the Union has the right to vote and to stand as a candidate in elections to the European Parliament and municipal elections in the Member State in which he resides under the same conditions as nationals of that State.**
- 3. All citizens of third countries shall enjoy the rights referred to in paragraph 2 to the same extent if they have been legally resident in the territory of the Member States for five years.**

Reasons:

Paragraph 1 takes over the Presidency's wording of Article 25(1) (Convention 28).

Paragraph 2 merges Article 25(2) and Article 26 since they are worded identically, the first referring to European elections and the second to municipal elections.

Drafting two separate Articles runs counter to the Convention's requirement that the Charter be as concise as possible. The rewording does not in any way affect the substance of the Presidency's proposal.

Paragraph 3 reflects my original discussion text (submitted on 6 January: Contrib. 2). The underlying idea is to afford the possibility of democratic participation, as expressed through elections, to citizens who are legally resident in a Member State but are not citizens of the Union or of that State. One of the most important principles of democracy is that those who share in the financing of communal life must have a right to have a say in matters and to participate in elections. The requirement of five years' legal residence in a Member State attaching to participation in elections indicates that the third-country nationals concerned have decided to shift their centre of interests to the State in question.

AMENDMENT 526

Proposed amendment to Article: 25

Submitted by: Lord GOLDSMITH, QC

Proposed text:

Substitute the following two-part text:

For Part A, “Proclamation of Rights”

“Every citizen of the Union residing in a Member State of which he or she is not a national has the right, subject to specified rules and arrangements, to vote and stand as a candidate in elections to the European Parliament in the Member State in which he or she resides, under the same conditions as nationals of that State”

For Part B, “Definition of Rights”:

“The rights in Article 25 are the rights in Article 19(2) of the Treaty establishing the European Community. They shall be exercised in accordance with the detailed arrangements laid down under that Article”

Reasons:

To avoid any misunderstanding I am also proposing wording which is closer to the terms of TEC Article 19(2). My “B” text ensures that these rights will be understood within the meaning of the relevant Treaty provisions, including the conditions and ability to arrange for derogations. The reference in the proposed text to “specified rules and arrangements” picks up the requirement in Article 19 that the Member States agree specific rules for the exercise of these rights (which they have done). I disagree that such matters can effectively be dealt with in a single horizontal article. Finally I have omitted the reference to the manner of election for MEPs, which does not seem to fit here since it does not state a right.

AMENDMENT 527

Proposed amendment to Article: 25

Submitted by: Frits KORTHALS ALTES, representative of the Netherlands Government

Proposed text:

In the Dutch title of Article 25, "stemrecht" must be replaced by "kiesrecht" (not applicable to the English version).

Reasons:

The Dutch title of the Article erroneously refers to "stemrecht" instead of "kiesrecht".

Proposals for Article 25(1)

AMENDMENT 528

Proposed amendment to Article: 25 - Right to vote and to stand as a candidate for the European Parliament

Submitted by: Dr Ingo FRIEDRICH

Proposed text:

- 1. Members of the European Parliament shall be elected by direct, equal universal suffrage by free and secret ballot.**

Reasons:

Only an equal weighting of votes reflects the vote of the electors.

AMENDMENT 529

Proposed amendment to Article: 25(1)

Submitted by: Piero MELOGRANI

Proposed text ^{*}:

Members of the European Parliament shall be ***periodically*** elected by direct universal suffrage by free and secret ballot.

Reasons:

Adding the word “*periodically*” makes it clear, in accordance with the Treaty, that the European Parliament has to be elected at regular intervals.

* Amendments are given in bold.

AMENDMENT 530

Proposed amendment to Article: 25(1)

Submitted by: EINEM/HOLOUBEK

Proposed text:

- 1. Members of the European Parliament shall be elected by direct universal suffrage by free, *equal* and secret ballot.**

Reasons:

The “equal” right to vote, in the sense that each vote basically counts equally, is one of the fundamental voting rights recognised in a democratic society and should also apply in the case of elections to the European Parliament. The remainder of the text proposed by the Presidency is accepted.

AMENDMENT 531**Proposed amendment to Article: 25**

Submitted by: RODOTA', PACIOTTI and MANZELLA

Proposed text:

Replace paragraph 1 with the following:

“1. The citizens of the Union have the right to take part in the exercise of public authority at Union level through a representative assembly elected by direct universal suffrage by free and secret ballot.”

Reasons:

This alternative version of paragraph 1 makes as its subject the actual holders of the right, as in all the Articles of the Charter: in this case “the peoples of Europe” in their electoral manifestation. The wording comes from the case law of the Court of Justice (in particular the Roquette and Maizena judgment).

Proposals for Article 25(2)

AMENDMENT 532

Proposed amendment to Article: 25 – Right to vote and to stand as a candidate for the European Parliament

Submitted by: Dr Ingo FRIEDRICH

Proposed text:

2. **Every citizen of the Union has the right to vote and to stand as a candidate for the European Parliament in the Member State in which he resides under the same conditions as nationals of that State.**

Reasons:

This makes it clear that Article 25 applies only to European Parliament elections.

AMENDMENT 533

Proposed amendment to Article: 25. Right to vote and to stand as a candidate for the European Parliament

Submitted by: Ben FAYOT

Proposed text:

“2. Every citizen of the Union has the right to vote and to stand as a candidate in the Member State in which he resides under the same conditions as nationals of that State, subject to derogations where warranted by problems specific to a Member State.”

Reasons:

The Treaty (Article 19(1)) provides that the right to vote and the right to stand for election may be subject to derogations.

Reference needs to be made to that, otherwise the text will state an absolute right that is not put into perspective by the horizontal clauses.

AMENDMENT 534

Proposed amendment to Articles: 25 and 26

Submitted by: Johannes VOGGENHUBER/Kathalijne BUITENWEG

Proposed text:

For paragraph 2 (taken over from Prof. Meyer's proposal)

2. All nationals of third countries shall also enjoy these rights to the same extent if they have been legally resident for five years in the territory of the Union.

Reasons:

AMENDMENT 535

Proposed amendment to Article: 25(2)

Submitted by: Alvaro Rodríguez BEREIJO, personal representative of the Spanish Prime Minister

Proposed text:

2. Every citizen of the Union "**residing in a Member State of which he is not a national**" has the right to vote and to stand as a candidate (rest unchanged).

Reasons:

Primarily to conform to the text of Article 19(2) of the EC Treaty which includes the proposed paragraph. The text of the Treaty should be transcribed literally as in CONVENT 17. If streamlining the text is preferred, an alternative is to copy Article 190(1) of the TEC which states "The representatives in the European Parliament of the people of the States brought together in the Community shall be elected by direct universal suffrage".

This amendment is very important, just after the discussions provoked by the judgment of the European Court of Human Rights (in the Matthews case) on the right of Gibraltarians to participate in the European elections.

And it is essential to mention this here, in the definition of the right to vote and to stand as a candidate for the European Parliament, irrespective of the fact that in the horizontal clauses general limitations are established to which the rights contained in the Charter may be subject.

AMENDMENT 536

Proposed amendment to Article: 25(2)

Submitted by: Dr Sylvia-Yvonne KAUFMANN

Proposed text:

2. ***Every person resident in the EU* has the right to vote and to stand as a candidate in the Member State in which he resides under the same conditions as nationals of that State.**

Reasons:

(Translator's note: proposal affects the German text only, removing the inherent gender differentiation).

This wording should also be taken up in future regulations, such as that on the extension of the electorate.

Proposals for Article 25(3)

AMENDMENT 537

Proposed amendment to Article: 25

Submitted by: R. VAN DAM, MEP

Proposed text:

Add a new paragraph:

3. Article 19(2) of the EC Treaty sets out the conditions under which this right may be exercised.

Reasons:

The content of the right is defined more precisely.

Proposals for Article 26

AMENDMENT 538

Proposed amendment to Article: 26

Submitted by: R. VAN DAM, MEP

Proposed text:

Add a new paragraph:

2. Article 19(1) of the EC Treaty sets out the conditions under which this right may be exercised.

Reasons:

The content of the right is defined more precisely.

AMENDMENT 539

Proposed amendment to Article: 26. Right to vote and to stand as a candidate at municipal elections

Submitted by: Ben FAYOT

Proposed text:

Every citizen of the Union has the right to vote and to stand as a candidate at municipal elections in the Member State in which he resides under the same conditions as nationals of that State, subject to derogations where warranted by problems specific to a Member State.

Reasons:

Same as for Article 25.

AMENDMENT 540**Proposed amendment to Article: 26**

Submitted by: Alvaro Rodríguez BEREIJO, personal representative of the Spanish Prime Minister

Proposed text:

Every citizen of the Union residing in a Member State of which he is not a national has the right to vote and to stand as a candidate at municipal elections in the Member State in which he resides, under the same conditions as nationals of that State.

Reasons:

Ensuring conformity with Article 19(1) of the EC Treaty.

AMENDMENT 541

Proposed amendment to Article: 26

Submitted by: Dr Sylvia-Yvonne KAUFMANN

Proposed text:

Every person with citizenship of the Union and every person resident in the EU has the right to vote and to stand as a candidate at municipal elections in the Member State in which he resides under the same conditions as nationals of that State.

Reasons:

(Translator's note: Proposal affects the German text only, removing the inherent gender differentiation).

The wording should be taken up in future regulations, such as that on municipal voting rights for foreigners.

AMENDMENT 542

Proposed amendment to Article: 26

Submitted by: Lord GOLDSMITH, QC

Proposed text:

Substitute the following two-part text:

For Part A, “Proclamation of Rights”

“Every citizen of the Union residing in a Member State of which he or she is not a national has the right, subject to specified rules and arrangements, to vote and stand as a candidate in municipal elections in the Member State in which he or she resides, under the same conditions as nationals of that State”

For Part B, “Definition of Rights”:

“The rights in Article 26 are the rights in Articles 19(1) of the Treaty establishing the European Community. They shall be exercised in accordance with the detailed arrangements laid down under that Article”

Reasons:

As with the previous Article, I am proposing wording which is closer to the terms of TEC Articles 19(1). My “B” text ensures that these rights will be understood within the meaning of the relevant Treaty provisions, including the conditions and ability to arrange for derogations. The reference in the proposed text to “specified rules and arrangements” picks up the requirement in Article 19 that the Member States agree specific rules for the exercise of these rights (which they have done).

AMENDMENT 543**Proposed amendment to Article: 26**

Submitted by: Frits KORTHALS ALTES, representative of the Netherlands Government

Proposed text: (applies to Dutch text only)

In the Dutch title of the Article, “stemrecht” should be replaced by “kiesrecht” (does not apply to English text).

Reasons:

“Stemrecht” has been used wrongly in place of “kiesrecht” in the Dutch title of the Article.

AMENDMENT 544**Proposed amendment to Article: 26****Submitted by:** MANZELLA**Proposed text:**

Replace the text of the Article with the following:

“Article 26. Right to vote and to stand as a candidate

Every citizen of the Union may also exercise his political rights outside the territory of the Member State of which he is a national, under the conditions and in accordance with the arrangements laid down in the Treaties.”

Article 25(2) would therefore be deleted.

Reasons:

The text combines in a single form of words the entitlement of European citizens to exercise active citizenship rights in Member States other than the one of which they are nationals.

Proposals for Article 26a

AMENDMENT 545

Proposed amendment to Article: 26 bis

Submitted by: Andrew DUFF, MEP

Proposed text:

Article 26 bis. Right to diplomatic protection

Every citizen of the Union shall be entitled to diplomatic and consular protection by any Member State in third countries.

Reasons:

This clause reflects the provisions of Article 20 of the TEC.

Proposals for the whole of Article 27

AMENDMENT 545a

Proposed amendment to Article: 27(2) and (3)

Submitted by: Roman HERZOG

Proposed text:

Article 27. Relations with the administration

1. Every person has the right to have his affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union.

2. This includes the right of every person:
 - to be heard before any individual measure which would affect him adversely is taken in relation to him;
 - to see his file, while respecting the legitimate interests of confidentiality and of business secrecy;
 - to receive from the administration reasons for administrative decisions taken against him;
 - to address the institutions and bodies of the Union in one of the official languages of the Union and to receive an answer in that language.

Reasons:

The proposed amendment is essentially a recasting intended to make the Article more readable. Without prejudice to any further revision of the text as a whole, this proposal for an amendment is being formally submitted since, at least in the third indent of paragraph 2, a restriction is introduced, which constitutes a substantive change.

Proposals for Article 27(1)

AMENDMENT 546

Proposed amendment to Article: 27(1)

Submitted by: EINEM/HOLOUBEK

Proposed text:

1. "*Without prejudice to Articles 7 and 8*, every person has the right to have his affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union."

Reasons:

The addition of "without prejudice to Articles 7 and 8" is intended to indicate that the articles in question are also applicable without restriction with regard to the institutions of the European Union.

Since natural and legal persons are to be covered by this right, it is suggested that "jeder Person" be used in the German text. (*This is already the case in the English text*).

There is otherwise no change to the text of the Praesidium's draft.

AMENDMENT 547

Proposed amendment to Article: 27. Relations with the administration

Submitted by: VITORINO, Commission representative in the Convention

Proposed text:

Replace the words "the institutions and bodies of the Union" by the words "the administration".

Reasons:

The aim of this amendment is to give this article the same scope as the other articles in the Charter. Court of Justice case law already applies the general principles of administrative procedure, as laid down in Article 26, to the authorities of the Member States where they are acting within the scope of Community law (see the judgment in the Heylens case, 222/86, ECR 1987, 4097, on the duty to state reasons). This is a logical step insofar as national authorities are the main enforcers of Community law.

AMENDMENT 548

Proposed amendment to Article: 27(1)

Submitted by: Peter ALTMAIER, Member of the Bundestag

Proposed text:

"Every person who is affected by a measure under European law has the right to have his affairs handled impartially, fairly and within a reasonable time."

Reasons:

Since most of Community law is transposed into national law by the bodies and institutions of the Member States, any limitation of the application of Article 27(1) to the institutions and bodies of the European Union would result in differing levels of protection depending on whether a measure under European law was implemented by European or national authorities.

AMENDMENT 549

Proposed amendment to Article: 27(1)

Submitted by: Dr Sylvia–Yvonne KAUFMANN

Proposed text:

No change to the English text.

In the German text, “Jeder” is replaced by “Jede Person”.

Reasons:

The proposed wordings differ in using or avoiding gender-specific terms.

Proposals for Article 27(2)

AMENDMENT 550

Proposed amendment to Article: 27

Submitted by: R. VAN DAM, MEP

Proposed text:

Paragraph 2:

2nd indent should be modified as follows:

the right of every person to have access to his file (12 words deleted in Dutch), while respecting necessary confidentiality and secrecy.

3rd indent should be modified as follows:

the obligation of the institutions and bodies of the Union to give reasons for their decisions.

Reasons:

The amendment of the second indent broadens the meaning. The third indent has been amended because the Charter is addressed not to the Member States but to the institutions and bodies of the Union.

AMENDMENT 551

Proposed amendment to Article: 27. Relations with the administration

Submitted by: Jordi SOLÉ TURA

Proposed text:

Paragraph 2:

- **the right of every person to be heard before any measure is taken which would affect him adversely;**
- **the right of every person to have access to his file, etc.**

Reasons:

The words “in relation to him” are deleted because they are redundant if the measure affects him adversely. “Individual” is deleted because he may be adversely affected by a measure taken against one or more persons. In the second paragraph of the Spanish version “la” should be replaced by “le” (does not affect English text).

AMENDMENT 552

Proposed amendment to Article: 27(2). Relations with the administration

Submitted by: Charlotte CEDERSCHIÖLD

Proposed text:

This right includes:

- the right of every person to be heard before any individual measure which would affect him/**her** adversely is taken in relation to him/**her**;
- the right of every person to have access to his/**her** file, while respecting the legitimate interests of confidentiality and of business secrecy;
- the obligation of the administration to give reasons for its decisions.

Reasons:

Reference should also be made to women's rights, as otherwise the article would constitute discrimination on grounds of sex.

AMENDMENT 553

Proposed amendment to Article: 27(2), second indent

Submitted by: Gabriel CISNEROS LABORDA

Proposed text:

- the right of every person to have access to his file

Reasons:

Grammatical correction of the Spanish version (does not affect English text).

AMENDMENT 554

Proposed amendmens to Article: 27. Relations with the administration

Submitted by: Daniel TARSchYS

Proposed text:

Redraft paragraph 2.

Reasons:

The scope of the first indent in paragraph 2 appears to be without limits and therefore problematic to accept in the present shape. The second indent is difficult to understand as it is not at all clear who is responsible for what. In the third indent, the word negative should be added to make clear that favourable decisions need not necessarily be explained.

AMENDMENT 555

Proposed amendment to Article: 27

Submitted by: RODOTA', PACIOTTI and MANZELLA

Proposed text:

Delete paragraph 2.

Reasons:

The reason for deleting paragraph 2 is the need for simplification in regard to aspects which are already dealt with elsewhere or which cannot definitely be placed in the category of fundamental rights.

Proposals for Article 27(3)

AMENDMENT 556**Proposed amendments to Article: 27**

Submitted by: Erling OLSEN

Proposed text:

Paragraph 3 could usefully be transferred to become the first paragraph.

Reasons:

Moving paragraph 3 to become the first paragraph would make it clearer for citizens that Article 27 applies to cases which come under EU law.

AMENDMENT 557

Proposed amendment to Article: 27(3)

Submitted by: Dr Peter Michael MOMBAUR, MEP

Proposed text:

"Every person" should be replaced by "Every citizen of the Union".

Reasons:

The proposed wording is in line with Article 21 TEC.

AMENDMENT 558

Proposed amendment to Article: 27

Submitted by: RODOTA', PACIOTTI and MANZELLA

Proposed text:

In paragraph 3, the word “may” should be replaced by “has the right to”.

Reasons:

AMENDMENT 559

Proposed amendment to Article: 27(3)

Submitted by: Dr Sylvia-Yvonne KAUFMANN

Proposed text:

In the German text, replace "Jeder" by "Jede Person"

Reasons:

The proposed versions differ in using or avoiding a gender-specific term.

Proposals for Article 28

AMENDMENT 560**Proposed amendment to Article: 28****Submitted by:** EINEM/HOLOUBEK**Proposed text:**

Instead of "natural and legal person", simply read "person".

Reasons:

In line with our proposal that the word "individual" should be used when referring to natural persons and "person" when referring to natural and legal persons, it is sufficient in Article 28 to speak of every "person".

AMENDMENT 561**Proposed amendment to Article: 28**

Submitted by: Andrew DUFF, MEP

Proposed text:**Article 28. Ombudsman**

Every citizen and every natural and legal person residing or having its registered office in a Member State has the right to refer to the Ombudsman of the Union cases of maladministration by the institutions and (delete: 1 word) agents of the Union, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role.

Reasons:

The Article presents the principles which result from Articles 21 and 195 of the TEC.

Article 21:

"Every citizen of the Union may apply to the Ombudsman established in accordance with Article 195".

Article 195: "1. The European Parliament shall appoint an Ombudsman empowered to receive complaints from any citizen of the Union or any natural or legal person residing or having its registered office in a Member State concerning instances of maladministration in the activities of the Community institutions or bodies, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role. In accordance with his duties, the Ombudsman shall conduct inquiries for which he finds grounds, either on his own initiative or on the basis of complaints submitted to him direct or through a Member of the European Parliament, except where the alleged facts are or have been the subject of legal proceedings. Where the Ombudsman establishes an instance of maladministration, he shall refer the matter to the institution concerned, which shall have a period of three months in which to inform him of its views. The Ombudsman shall then forward a report to the European Parliament and the institution concerned. The person lodging the complaint shall be informed of the outcome of such inquiries.

The Ombudsman shall submit an annual report to the European Parliament on the outcome of his inquiries.

2. The Ombudsman shall be appointed after each election of the European Parliament for the duration of its term of office. The Ombudsman shall be eligible for reappointment. The Ombudsman may be dismissed by the Court of Justice at the request of the European Parliament if he no longer fulfils the conditions required for the performance of his duties or if he is guilty of serious misconduct.

3. The Ombudsman shall be completely independent in the performance of his duties. In the performance of those duties he shall neither seek nor take instructions from any body.

The Ombudsman may not, during his term of office, engage in any other occupation, whether gainful or not.

4. The European Parliament shall, after seeking an opinion from the Commission and with the approval of the Council acting by a qualified majority, lay down the regulations and general conditions governing the performance of the Ombudsman's duties."

A reference to the Treaty will be made in a horizontal clause.

AMENDMENT 562**Proposed amendment to Article: 28**

Submitted by: E.M.H. HIRSCH BALLIN and M. PATIJN (and also on behalf of G.J.W. VAN OVEN)

Proposed text:

Replace "Every citizen and every natural and legal person residing or having its registered office in a Member State" by "Every person". "Judicial" should also be inserted before "bodies".

Reasons:

This Article contains the principles which arise from Articles 21 and 195 of the EC Treaty. There is no reason why this right should not apply to every person.

AMENDMENT 563

Proposed amendment to Article: 28

Submitted by: R. VAN DAM, MEP

Proposed text:

1. Every citizen and every natural and legal person residing or having its registered office in a Member State has the right to refer to the Ombudsman of the Union cases of complaint concerning administration by the institutions and bodies of the Union, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role.
2. Article 195 of the EC Treaty lays down the conditions governing the performance of the Ombudsman's duties.

Reasons:

With regard to paragraph 1, this amendment widens access to the Ombudsman in comparison with the original text. Paragraph 2 is intended to render the Article more explicit.

AMENDMENT 564

Proposed amendment to Article: 28

Submitted by: Kathalijne BUITENWEG

Proposed text:

Every person (18 words deleted) has the right to refer to the Ombudsman of the Union cases of administration by the institutions and bodies of the Union, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role.

Reasons:

The personal scope of the fundamental rights must not be unnecessarily restricted. Article 27 (Relations with the administration) was correct in this respect.

The proposed modification renders the Article more readable.

(This amendment obviously also necessitates amendment of Article 48 in CHARTE 4316/00 CONVENT 34. That Article should become a provision to prevent regression instead of a provision to prevent progress.)

AMENDMENT 565

Proposed amendment to Article: 28. Ombudsman

Submitted by: Jürgen GNAUCK, Minister for Federal and European Affairs of Thuringia

Proposed text:

Article 28. Ombudsman

"Every citizen and every person residing in a Member State has the right to refer to the Ombudsman of the Union cases of maladministration by the institutions and bodies of the Union, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role."

Reasons:

It would seem that this is the first provision to include legal persons having their registered offices in Member States. Such explicit reference could lead to the converse conclusion that other fundamental rights are not applicable to legal persons. This must however be avoided. The best overall solution would be a specific horizontal provision for legal persons. That could read: "The rights and freedoms guaranteed by this Charter shall also apply to legal persons insofar as they are by their nature applicable to such persons".

AMENDMENT 566

Proposed amendment to Article: 28

Submitted by: Dr Sylvia-Yvonne KAUFMANN

Proposed text:

“Article 28. Ombudsman/*Ombudswoman*”

In the German version, also replace “Jeder Unionsbürger” by “Jede Unionsbürgerin und jeder Unionsbürger” (i.e. specifically referring to both male and female citizens).

Reasons:

The proposed versions differ in using or avoiding gender-specific terms.

AMENDMENT 567

Proposed amendment to Article: 28

Submitted by: Gabriel CISNEROS LABORDA

Proposed text:

Every natural person residing in a Member State has the right to refer to the Ombudsman of the Union

Reasons:

In the proposed text the reference to legal persons is deleted as it is not appropriate in a Charter of Fundamental Human Rights.

AMENDMENT 568

Proposed amendment to Article: 28

Submitted by: Rocco BUTTIGLIONE, MEP, under the authority of the head of the European Parliament delegation

Proposed text:

Article 28. Ombudsman

Every citizen and every natural and legal person residing or having its registered office in a Member State has the right to refer to the Ombudsman of the Union cases of maladministration by the institutions and bodies of the Union, with the exception of the European Parliament, the Court of Justice and Court of First Instance acting in their judicial role and the Court of Auditors.

Reasons:

Remain the same.

AMENDMENT 569

Proposed amendment to Article: 28. Ombudsman

Submitted by: Jean-Luc DEHAENE, personal representative of the Belgian Government

Proposed text:

Every citizen of the Union and every natural and legal person residing or having its registered office in a Member State has the right to refer to the Ombudsman of the Union cases of maladministration by the institutions and bodies of the Union, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role.

Reasons:

First sentence: The insertion of the words "*of the Union*" in the first part of the sentence (after "every citizen") is more in line with the EU Treaty.

AMENDMENT 570**Proposed amendment to Article: 28**

Submitted by: Frits KORTHALS ALTES, representative of the Netherlands Government

Proposed text:

The words “Every citizen and every natural and legal person residing or having its registered office in a Member State” should be replaced by “Everyone”.

Reasons:

This Article contains the principles derived from Articles 21 and 195 TEC. There is no reason why this right should not apply to everyone.

AMENDMENT 571**Proposed amendment to Article: 28**

Submitted by: Jean-Maurice DEHOUSSE, MEP, alternate member of the Convention

Proposed text:

1. Add the following to the text of the proposed article:

The same right is granted to nationals of third countries who are established outside the Union and maintain relations of governance with the Union, its bodies or its official representatives.

2. Add the following to the text of the proposed article:

The Ombudsman shall draw up an annual report on the implementation of the Charter. The report shall be the subject of public debate at the European Parliament.

Reasons:

Re 1: It is in the interests of the citizens of the Union to verify how its bodies behave in their relations with the outside world.

Re 2: It is in the interests of both the governing bodies of the Union and its citizens that particular care be taken in supervising the application of the Charter.

Proposals for Article 29

AMENDMENT 572

Proposed amendment to Article: 29

Submitted by: EINEM/HOLOUBEK

Proposed text:

Instead of "natural and legal person", simply read "person".

Reasons:

In line with our proposal that the word "individual" should be used when referring to natural persons and "person" when referring to natural and legal persons, it is sufficient in Article 29 to speak of every "person".

AMENDMENT 573**Proposed amendments to Article: 29****Submitted by:** Erling OLSEN**Proposed text:**

The words "on EU-related matters under the conditions and limitations laid down in Article 194 of the Treaty" should be added after "European Parliament".

Reasons:

Under Article 194 of the EC Treaty a petition can be addressed to the European Parliament on matters which come within the Community's fields of activity; that should be reflected in this provision.

AMENDMENT 574**Proposed amendment to Article: 29**

Submitted by: E.M.H. HIRSCH BALLIN and M. PATIJN (and also on behalf of G.J.W. VAN OVEN)

Proposed text:

The existing text should be replaced by the following:

Every person has the right to petition an institution or body of the Union.

Reasons:

This Article contains the principles which arise from Articles 21 and 194 of the EC Treaty. Every person must have this right (see Article 5 of the Netherlands Constitution). There is also no reason to limit the right to the European Parliament. Incidentally, a right to a reply cannot be inferred from the right of every person to petition.

AMENDMENT 575

Proposed amendment to Article: 29

Submitted by: Kathalijne BUITENWEG

Proposed text:

Every person (18 words deleted) has the right to petition the European Parliament.

Reasons:

The personal scope of the fundamental rights must not be unnecessarily restricted. Article 27 (Relations with the administration) was correct in this respect.

The proposed modification renders the Article more readable.

(This amendment obviously also necessitates amendment of Article 48 in CHARTE 4316/00 CONVENT 34. That Article should become a provision to prevent regression instead of a provision to prevent progress.)

AMENDMENT 576

Proposed amendment to Article: 29. Right to petition

Submitted by: Dr Ingo FRIEDRICH

Proposed text:

"Every citizen and every (delete three words) person residing (delete five words) in a Member State has the right to (delete rest) address a petition to the European Parliament on a matter which comes within the Union's fields of activity and which affects him/her directly."

Reasons:

A horizontal provision should be introduced on the applicability of rights to legal persons.

It should also be made clear, in accordance with Article 194 of the EC Treaty, that the right to petition only applies within the fields of activity of bodies of the European Union.

AMENDMENT 577

Proposed amendment to Article: 29. Right to petition

Submitted by: Jürgen GNAUCK, Minister for Federal and European Affairs of Thuringia

Proposed text:

“Article 29. Right to petition

Every citizen of the Union and *anyone residing* in a Member State has the right in matters which come within the Union's fields of activity and which affect him or her directly to address a petition to the European Parliament”.

Reasons:

Here too, one should initially avoid explicit reference to legal persons. As already indicated, there is therefore a need for a horizontal provision: "The rights and freedoms ensured by this Charter shall also apply to legal persons insofar as they are by their nature applicable to such persons".

It should, moreover, in accordance with Article 194 of the EC Treaty, be made clear that the right to petition only applies within the fields of activity of bodies of the European Union. This limitation of competence to deal with a matter could be achieved by inserting the text suggested by the German Länder.

AMENDMENT 578

Proposed amendment to Article: 29

Submitted by: Dr Sylvia-Yvonne KAUFMANN

Proposed text:

In the German version, "Jeder Unionsbürger" should be replaced by "Jede Unionsbürgerin und jeder Unionsbürger".

Reasons:

The two proposed wordings differ in using or avoiding a gender-specific term.

AMENDMENT 579

Proposed amendment to Article: 29

Submitted by: Gabriel CISNEROS LABORDA

Proposed text:

Every natural person residing in a Member State has the right to petition the European Parliament.

Reason:

In the proposed text the reference to legal persons is deleted as it is not appropriate in a Charter of Fundamental Human Rights.

AMENDMENT 580**Proposed amendment to Article: 29**

Submitted by: Rocco BUTTIGLIONE, MEP, under the authority of the head of the European Parliament delegation

Proposed text:

Article 29. Right to petition

Every citizen and every natural and legal person residing or having its registered office in a Member State has the right to petition the European Parliament and, accordingly, its Committee on Petitions.

The European Parliament, which elects the Ombudsman, shall, through the Committee on Petitions, exercise supervision of the role of the Ombudsman.

Reasons:

Remain the same.

AMENDMENT 581

Proposed amendment to Article: 29. Right to petition

Submitted by: Jean-Luc DEHAENE, personal representative of the Belgian Government

Proposed text:

Every citizen of the Union and every natural and legal person residing or having its registered office in a Member State has the right to petition the European Parliament.

Reasons:

First sentence: Insertion of the words "*of the Union*" in the first part of the sentence (after "every citizen") is more in line with the EU Treaty.

AMENDMENT 582

Proposed amendment to Article: 29

Submitted by: Frits KORTHALS ALTES, representative of the Netherlands Government

Proposed text:

Every person has the right to petition an institution or body of the Union.

Reasons:

This Article contains the principles which arise from Articles 21 and 194 of the EC Treaty. Every person must have this right (see Article 5 of the Netherlands Constitution). There is also no reason to limit the right to the European Parliament. Incidentally, a right to a reply cannot be inferred from the right of every person to petition.

Proposed amendment to add a horizontal clause

Proposed text of a horizontal clause:

Insofar as this Charter contains rights corresponding to rights laid down in the European Convention on Human Rights, their meaning and scope are the same as the meaning and scope of the rights under the ECHR, unless this Charter provides greater protection.

Reasons:

This clause makes it clear that the rights in the Charter have the same meaning and scope as the provisions of the ECHR, as interpreted by the CDH, even if the formulation differs. In Article 5 of the ECHR, security is linked to the individual person. The Charter does not therefore explicitly cover a right to security in the general sense, as is expressed for example in Article 2 of the Treaty on European Union which states that one of the objectives of the Union is "to maintain and develop the Union as an area of freedom, security and justice ...". Clearly that Article leaves open the possibility of further protection under the Charter.

Proposals for Article 30

AMENDMENT 583**Proposed amendment to Article: 30****Submitted by:** Pervenche BERÈS**Proposed text:**

Every citizen of the Union and every person legally resident in the Union has the right to move and reside freely within the territory of the Member States.

Reasons:

AMENDMENT 584

Proposed amendment to Article: 30. Freedom of movement

Submitted by: EINEM/HOLOUBEK

Proposed text:

“Article 30. Freedom of movement

1. *Every citizen of the Union has the right to move and reside freely within the territory of the Member States. Every citizen of a third country shall have the same entitlement to this right if they have been legally resident for five years within the territory of the Member States.*
2. *Every citizen of the Union shall be free to leave and then return to the territory of the Member States”.*

Reasons:

The existing text concerning this right should be extended or clarified in two respects: firstly, third-country nationals should also be given the right to freedom of movement after a specified period of legal residence. Secondly, it is moreover necessary here to draw the conclusions of experience in recent years when whole sections of populations have been repeatedly driven out of their homeland and subsequently prevented from returning there.

AMENDMENT 585

Proposed amendment to Article: 30. Freedom of movement

Submitted by: Georges BERTHU, MEP

Proposed text:

Every citizen of the Union has the right to move and reside freely within the territory of the Member States, **subject to national controls designed to preserve liberty and security of persons, in accordance with Article 6 of the Charter. Such controls must in all cases remain legitimate and proportionate.**

Reasons:

Recent cases (Wijsenbeek) have shown that freedom of movement is sometimes interpreted, wrongly, as automatically signifying the complete abolition of all forms of control. In line with the very spirit of Article 6 of the Charter, it is important to signify that controls may be exercised.

AMENDMENT 586

Proposed amendment to Article: 30

Submitted by: Andrew DUFF, MEP

Proposed text:

BB. Article 30. Freedom of movement

Every citizen of the Union has the right to move and reside freely within the territory of the Member States whether to live, work, seek work, study or undergo training.

Statement of reasons

This Article follows the principle set out in Article 18 of the TEC.

Article 18 TEC:

- "1. Every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in this Treaty and by the measures adopted to give it effect.*
- 2. The Council may adopt provisions with a view to facilitating the exercise of the rights referred to in paragraph 1; save as otherwise provided in this Treaty, the Council shall act in accordance with the procedure referred to in Article 251. The Council shall act unanimously throughout this procedure."*

The Article also acts as a reference point for the citizen in drawing together all the rights of EU citizens with regard to freedom of movement. A reference to the Treaty will be made in a horizontal clause.

AMENDMENT 587

Proposed amendments to Article: 30

Submitted by: Erling OLSEN

Proposed text:

“Subject to the conditions and limitations laid down in the EC Treaty” should be added after “within the territory of the Member States”.

Reasons:

It is important to make clear that this provision does not vary from Article 18 of the EC Treaty. See Court of Justice judgment of 11 April 2000 in Case C-356/98 (Kaba), which indicates that a Member State's citizen's right to reside in the territory of another Member State is not absolute.

AMENDMENT 588**Proposed amendment to Article: 30**

Submitted by: E.M H. HIRSCH BALLIN and M. PATIJN (and also on behalf of G.J.W. VAN OVEN)

Proposed text:

"Every citizen of the Union" should be replaced by "Every person with a lawful residence permit".

Reasons:

The proposed wording is in line with the applicable regulations.

AMENDMENT 589

Proposed amendment to Article: 30

Submitted by: Johannes VOGGENHUBER and Kathalijne BUITENWEG

Proposed text:

"Everyone who has been accorded refugee status or enjoys permanent right of residence in a Member State has the right to move and settle freely within the Union".

Reasons:

AMENDMENT 590

Proposed amendment to Article: 30

Submitted by: Alvaro Rodríguez BEREIJO, personal representative of the Spanish Prime Minister

Proposed text:

Add at the end of the sentence “in accordance with Article 18 of the Treaty establishing the European Community”.

Reasons:

In the text which defines the right, it is necessary to make an explicit reference to the Community Treaty in which this right is set out and limitations and conditions governing its exercise are established. This is without prejudice to the relevant horizontal clause which may be more detailed in setting out those limitations.

AMENDMENT 591

Proposed amendment to Article: 30

Submitted by: Dr Sylvia-Yvonne KAUFMANN

Proposed text:

Every citizen of the Union or anyone residing or having the right to reside in a Member State has the right to move (*one word deleted*), reside *or settle* freely within the territory of the Member States.

In the German version, also replace “Jeder Unionsbürger” by “Jede Unionsbürgerin und jeder Unionsbürger”.

Reasons:

1. In the German version, the two proposed wordings differ in using or avoiding a gender-specific term.
2. The Article should not refer solely to citizens.
3. The right to freedom of movement should not become no more than a right for citizens of the Union to travel freely, but should include the right for all persons living in the Member States to settle freely.

AMENDMENT 592

Blank.

AMENDMENT 593

Proposed amendment to Article: 30

Submitted by: Lord GOLDSMITH, QC

Proposed text:

Amend to produce two-part text as follows:

For Part A, “Proclamation of Rights”

Retain existing text

For Part B, “Definition of Rights”:

“The right in Article 30 is the right provided for in Article 18(1) of the Treaty establishing the European Community and is subject to the limitations and conditions laid down in that Treaty and by the measures adopted to give it effect”

Reasons:

I am very happy with the Praesidium text for the Proclamation of this right. However, I believe that we must ensure in Part B that Article 30 is understood within the meaning of the relevant Treaty provisions. It also preserves the effect of provisions laid down under as well as in the Treaty.

AMENDMENT 594

Proposed amendments to Article: 30. Freedom of movement

Submitted by: Daniel TARSCHYS

Reasons:

The conditions linked to this right should be explained in a part B.

Proposals for new Articles

AMENDMENT 595

Proposed amendment to Article: insertion of a new Article

Submitted by: Jean-Maurice DEHOUSSE, Member of the European Parliament, Alternate Member of the Convention

Proposed text:

- Insert in the Charter a new Article 31, worded as follows:

Upon leaving the territory of the Union, all citizens of the Union shall be entitled to diplomatic and consular protection. Such protection shall be afforded them by any official representative of the Union or of any of its Member States.

Reasons:

There is no reason to omit from the Charter the protection provided by Article 20 EC (under the Treaty of Amsterdam).

AMENDMENT 596

Proposed amendment to Article: HH

Submitted by: Andrew DUFF, MEP

Proposed text:

Article HH. European Union citizenship

Any right, privilege or obligation pertaining to citizens of the European Union may be extended in whole or in part to any natural or legal person by decision of the Union, in accordance with the principle of subsidiarity and where the extension of the scope of such rights shall not limit in any way those of EU citizens.

Statement of reasons

A new horizontal clause is required so that the rights falling to EU citizens in the above Articles may be extended to other categories of person. An extension of the right to vote in elections to resident third country nationals would be one such example. The reference to subsidiarity is appropriate in order to allow for a variable treatment of some citizenship rights as between Member States, as already exists in some cases, such as the franchise.

This clause would also allow for the development of the practice of freedom of movement of persons within the area of freedom, security and justice as foreseen by the Treaty of Amsterdam.

AMENDMENT 597**Proposed amendment to Article:**

Proposal for a special Article on protection of minorities

Article xxx Rights of minorities

(to be inserted preferably after Article 17, before Article 21 or after Article 22)

Submitted by: Prof. Reinhard RACK, MEP

Proposed text:

1. Members of any national, ethnic, cultural, linguistic, religious or other minority have the right also to live their traditional distinctiveness collectively and in public, to assemble freely and peacefully with others and associate freely with others and to settle their own internal affairs.
2. The Union shall work to promote the tradition and cultivation of minority rights.

Reasons:

In addition to individual protection for minorities, in accordance with European traditions in the Member States, care should be taken to protect and promote the collective rights of minorities. The above proposal takes on board the main substance of a number of European legal texts already in existence or currently being drawn up. Among others, mention should be made of the framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages. The fact that the framing of collective minority rights is not without its political difficulties in individual Member States, if anything, brings out the need to include this right in the European Union Charter of Fundamental Rights.

AMENDMENT 598

Proposed amendment to Article: (new Article)

Submitted by: Johannes VOGGENHUBER

Proposed text:

Rights of minorities

1. Anyone belonging to a minority has the right to use their own language and pursue their own culture, collectively and in public, with other members of their group.
2. Members of groups in practice at a disadvantage are entitled to special support.

Reasons:

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Brussels, 5 June 2000 (06.06)
(OR. fr,es)

CHARTE 4332/00 ADD 1

CONVENT 35

**ADDENDUM TO
PRAESIDIUM NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union
– Amendments submitted by members of the Convention regarding civil and political rights and citizens' rights
(Reference document: CHARTE 4284/00 CONVENT 28 (REV 1 in French only))

Delegations will find attached Amendment 545b submitted by Rodríguez Bereijo, representative of the Spanish Prime Minister.

Amendment 545b

Proposed amendment to Article: 27

Submitted by: Rodríguez Bereijo, personal representative of the Spanish Prime Minister

Proposed text:

Article 27. Relations with the administration

1. Every person has the right to have his affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union. Acts and provisions they adopt must respect the principle of legitimate expectations.
2. This right includes inter alia:
 - the right to legal security;
 - the right to have reasons for acts and provisions;
 - the right of the person concerned to have access to his file, while respecting the legitimate interests of confidentiality and of professional secrecy;
 - the right of the person concerned to be heard in all proceedings which affect him personally;
 - the right to legality and the right of defence in proceedings which are punitive or could have an adverse effect. In addition to the guarantees set out above, this right includes:
 - the right not to be the subject of administrative sanction without prior regulatory justification. Sanctions must be proportionate to the gravity of the offence committed;
 - the right to have no sanction imposed without proceedings in which the person concerned may be heard, knowledge of the offences with which he is charged, proof of guilt even if no more than failure to observe a rule, and reasons for the decision taken. Every person shall be presumed innocent until proved guilty and no one may be obliged to admit to the offence with which he is charged.

3. The institutions of the Union must make good any damage resulting from an illegal action wherever there is a causal relationship between the illegal action and the damage incurred, in accordance with the provisions of Article 288 of the Treaty establishing the European Community.
4. Every person may address the institutions of the Union in one of the official languages of the Union and must have an answer in that language.

Reasons:

The proposed amendment is intended to list the main rights to which the Court of Justice of the European Community has declared that the individual is entitled in his relations with the Community administration. The scope of the rights laid down in paragraphs 1 and 2 must be limited to the public administration, with the exception of the Court of Justice in its judicial functions.



DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 7 June 2000 (13.06)**CHARTE 4332/00 ADD 2****CONVENT 35****ADDENDUM
TO PRAESIDIUM NOTE**

Subject: Draft Charter of fundamental rights of the European Union
– Amendments submitted by the members of the Convention regarding civil and political rights and citizens' rights
(Reference document: CHARTE 4284/00 CONVENT 28 (REV 1 in French only))

Delegations will find attached amendments from:

- | | |
|---|-----------------------|
| – Mr Hirsch Ballin, Mr Patijn, Mr Van Oven (Article 27) | Amendment 599 |
| – Messrs Korthals Altes and Patijn (Article 27) | Amendment 600 |
| – Lord Goldsmith, QC (Articles 27-29) | Amendment 601 |
| – Mr Jansson, Ms Brax, Mr Nikula (Article 27) | Amendment 602 |
| – Mr Jens-Peter Bonde (Article 18) | Amendment 603 |
| – Mr Jens-Peter Bonde (new Article on minority rights) | Amendment 604. |

AMENDMENT 599

Proposed amendment to Article: 27

Submitted by: E.M.H. Hirsch Ballin, M. Patijn (and also on behalf of G.J.W. van Oven)

Proposed text:

1. Every person has the right to have his affairs handled properly and within a reasonable time by the institutions and bodies of the Union.
2. This right includes:
 - the right of every person to be heard before any individual measure which would affect him adversely is taken in relation to him;
 - the right of every person to have access to his file, while respecting the legitimate interests of confidentiality and of business secrecy;
 - the obligation of the administration to give reasons for its decisions.
3. *In preparing a decision the institutions and bodies of the Union shall take account of the following provisions:*
 - *the necessary knowledge shall be gathered about the relevant facts and the interests to be considered;*
 - *the competence to take a decision shall not be used for a purpose other than that for which competence has been granted;*
 - *the adverse effects of a decision on one or more interested parties may not be disproportionate in relation to the aims sought by the decision.*
4. Every person may address the institutions of the Union in one of the official languages of the Union and must have an answer in that language.

Reasons:

It is suggested that the term "properly" be used in paragraph 1. This also includes the concepts of impartiality and fairness. In paragraph 2, a choice has been made to include a number of European principles of proper administration as (partly) developed in the case law of the Court of Justice. However, a number of general principles of proper administration, which are included in Netherlands administrative law, are missing. These include the principle of careful preparation, prohibition of the misuse of powers and the principle of proportionality. These principles have been added in paragraph 3.

AMENDMENT 600

Proposed amendment to Article: 27

Submitted by: Frits Korthals Altes, representative of the Netherlands Government

Proposed text:

1. Every person has the right to have his affairs handled *properly* and within a reasonable time by the institutions and bodies of the Union.
2. This right includes:
 - the right of every person to be heard before any individual measure which would affect him adversely is taken in relation to him;
 - the right of every person to have access to his file, while respecting the legitimate interests of confidentiality and of business secrecy;
 - the obligation of the administration to give reasons for its decisions.
3. *In preparing a decision, the institutions and bodies of the Union shall take into account the following provisions:*
 - *the necessary knowledge shall be gathered about the relevant facts and the interests to be considered;*
 - *the competence to take a decision shall not be used for a purpose other than that for which competence has been granted;*
 - *the adverse effects of a decision on one or more interested parties may not be disproportionate in relation to the aims sought by the decision.*
4. Every person may address the institutions of the Union in one of the official languages of the Union and must have an answer in that language.

Reasons:

It is suggested that the term "properly", which also embraces the concepts of impartiality and fairness, be used in paragraph 1.

In the second indent of paragraph 2, it is suggested that the Dutch text be brought more into line with the English text. More generally, we have decided to insert in paragraph 2 a number of European general principles of proper administration, as (partly) developed in the case-law of the Court of Justice. However, a number of general principles of proper administration which are included in Netherlands administrative law are missing. These include the principle of careful preparation, prohibition of the misuse of power and the proportionality principle. These principles have been added in paragraph 3.

AMENDMENT 601

Proposed amendment to Articles: 27-29

Submitted by: Lord Goldsmith QC

Proposed text:

Amend to produce two-part text as follows:

(i) Part A

1. **Every person has the right in his or her dealings with the Institutions of the Union to be treated impartially, fairly and within a reasonable time.**
2. **In particular,**
 - (a) **every citizen of the Union and every natural and legal person residing or having its registered office in a Member State has the right, in accordance with specified conditions and procedures, to refer to the Ombudsman of the Union, cases of maladministration by Union institutions and bodies, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role.**
 - (b) **every citizen of the Union and every natural and legal person residing or having its registered office in a Member State has the right to petition the European Parliament in accordance with specified conditions.**
 - (c) **every person may write to the institutions of the Union in one of the official languages of the Union and have an answer in that language.**

(ii) Part B

The rights set out in Article 27 are the rights guaranteed by Article 21 of the Treaty establishing the European Community read with Articles 195 and 194 TEC and as are contained in general principles of Community law.

— Reasons:

These provisions are, in my view, strengthened by bringing them together into a single Article.

The right given by the TEC contains certain limitations which the Article should acknowledge.

The drafting change to paragraph 1 is to give more precision to what would otherwise be a very wide obligation on the institutions. The drafting changes to CONVENT 28 Article 27(3) are to bring it into line with Article 21 TEC. Paragraph two of CONVENT 28 Article 27 has been deleted as it has no clear basis in the Treaties. The case law of the ECJ sets down related rights in specific situations, eg competition matters, rather than as general principles. An individual's right of access to his or her file is covered by the right of access to documents in Article 18.

The proposed text in CONVENT 28 Article 29 expands the right to petition the EP in categories which do not have it under the TEC. As with access to the Ombudsman, the right is not absolute and text therefore refers to conditions.

AMENDMENT 602

Proposed amendment to Article: 27

Submitted by: Gunnar Jansson, Tuija Brax and Paavo Nikula

Proposed text:

Article 27. *Right to good governance*

1. Every person has the right to have his affairs handled impartially, fairly and within a reasonable time [].
2. This right includes *the right of the person concerned*
 - *to be heard before a decision is taken about his rights or obligations*
 - *to obtain the documents relating to his case, taking account of justified confidentiality and secrecy regarding such documents*
 - *to obtain a well-founded decision regarding his or her case*
3. Every person may address the institutions of the Union in one of the official languages of the Union and must have an answer in that language

Reasons:

It is proposed that paragraph 1 of this Article be amended so as to highlight the fact that legal persons may also avail themselves of this right. In addition, it is necessary to remove the reference to the institutions of the Union so that the Article will also apply to national authorities when they implement Community legislation.

The changes to paragraph 2 of this Article are of a more technical nature. The proposed wording underlines the rights of the *person concerned*.

There are grounds for removing the link between this right and nationality in the third paragraph as the right to contact the bodies of the European Union should not only be the right of nationals of the Union.

AMENDMENT 603

Proposed amendment to Article: 18

Submitted by: MEP Jens-Peter Bonde

Proposed text:

Right of access to information

Every citizen of the Union and anyone residing in the Union shall have a right of access to the documents possessed by the institutions of the European Union. Everything is open unless there is a decision allowing a derogation from the general principle of openness in public law and administration. Deviations should be followed by a concrete reason which can be appealed to the European Ombudsman. Exceptions from the general rule and implementation of the rules of access to information can be adopted according to Article 255 of the Treaty establishing the European Community.

Reasons:

It is fundamental for the relationship between the individual and the institutions that the individual has access to all files. Exceptions from this rule should therefore be limited and wellfounded. Exceptions should be followed by a concrete reason and it should be possible to complain about a rejection.

AMENDMENT 604

I propose that the following "new" right is included in the Charter in the chapter concerning civil and political rights:

Submitted by: MEP Jens-Peter Bonde

Proposed text:

Minority rights

Persons belonging to [national] minorities have the right to the protection and promotion of their ethnic, cultural, linguistic and religious identity *inter alia* through effective participation in cultural, religious, social, economic and public life within the Union, as set out in the UN Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities (1992), the OSCE Copenhagen Document (1990), the Council of Europe Framework Convention for the Protection of National Minorities (1995) and the European Charter for Regional or Minority Languages (1992) and other relevant standards.

Reasons:

The *right to the protection and promotion of ethnic, cultural, linguistic and religious identity* of national minorities is one of the basic human rights already guaranteed in Article 27 of the International Covenant on Civil and Political Rights, UN 1966. Almost all of the binding or non-binding international documents addressing the protection of minorities refer to their right to identity protection and promotion, such as Articles 1 and 2 of the UN Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities (1992); paragraphs 32 and 33 of the OSCE Copenhagen Document (1990), Article 5 of the Council of Europe Framework Convention for the Protection of National Minorities (1995) and the spirit enshrined in the preamble of the European Charter for Regional or Minority Languages (1992).

The *right to effective participation in cultural, religious, social, economic and public life* is one of the most important rights of minorities in order to be able to use the generally recognised human rights and minority rights guaranteed in the different international human rights documents. (Article 2 of the UN Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities (1992); paragraph 35 of the OSCE Copenhagen Document (1990), Article 15 of the Council of Europe Framework Convention for the Protection of National Minorities (1995).

In order to meet the needs and aspirations of persons belonging to national minorities concerning their identity protection and promotion, as well as to manage ethnic, linguistic, religious and cultural diversity, it is necessary to actively involve national minorities in the decision taking on all levels in the cultural, social, economic and public life of the society. This way the protection and promotion of their rights set out in the different UN, OSCE, and Council of Europe binding and non-binding documents can be realised and implemented.

"as set out in the UN Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities (1992), the OSCE Copenhagen Document (1990), the Council of Europe Framework Convention for the Protection of National Minorities (1995) and the European Charter for Regional or Minority Languages (1992)". The article would like to reinforce existing standards, without enlisting all the rights enshrined in the above documents. While the UN Declaration and the OSCE Copenhagen Document are soft law provisions, the Council of Europe Framework Convention and Language Charter are legally binding documents signed or ratified by most of the EU countries.

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DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Fundamental.rights@consilium.eu.int

Brussels, 27 June 2000 (30.06)

**CHARTE 4332/00
ADD 3**

CONVENT 35

**ADDENDUM TO
PRAESIDIUM NOTE**

Subject: Draft Charter of Fundamental Rights of the European Union
- Amendments relating to civil and political rights and citizens' rights submitted by members of the Convention
(Reference documents: CHARTE 4284/00 CONVENT 28 (REV 1 for the French version only))

Delegations will find attached amendments from:

Mr Jean-Luc Dehaene (Article 27)

Amendment 605

Mr Win Griffith (Article 27)

Amendment 606

Proposed amendment to Article: 27. Relations with the administration

Submitted by: Jean-Luc DEHAENE, personal representative of the Belgian Government

Proposed text: Right to good governance

1. Every person has the right to have his affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union.
2. This right includes:
 - the right of every person to be heard before any individual measure which would affect him adversely is taken in relation to him;
 - the right of every person to have access to his file,¹ while respecting the legitimate interests of confidentiality and of business secrecy;
 - the obligation of the administration to give reasons for its decisions.
3. Every person has the right to address the institutions of the Union in one of the official languages of the Union and must have an answer in that language within a reasonable time.

Reasons

The purpose of the proposal is to replace the title of the provision (CONVENT 28 version ["*Relations with the administration*"]) with "*Right to good governance*". This concept conveys more clearly the substance of the fundamental right in question and, moreover, ties in with the concept of "*good governance*". The addition of "*within a reasonable time*" in paragraph 3 ties in with the same provision in paragraph 1.

Paragraph 3: "*Every person has the right ...*" is a legally clearer and stronger form of words than the version in CONVENT 28 ["*Every person may*"].

¹ Translator's footnote: The Dutch version, unlike the EN and F original texts, contains here a clause reading: "insofar as that is necessary in order to adduce evidence,".

Proposed amendment to Article: 27**Submitted by:** Win Griffiths MP

Proposed text: 1. Every person has the right to have his/her affairs handled impartially, openly and fairly and within a reasonable time by the institutions of the Union.

2. Every person may address the institutions of the Union in one of the official languages of the Union and must have an answer in that language.

Reasons: Paragraph 2 of the original text can be deleted with the addition of "openly" to paragraph 1 and by the addition of an appropriate commentary in "Part B" of the Charter to take account of these more detailed issues.

The applicability of the Charter to bodies of the Union requires separate consideration.

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE**fundamental.rights@consilium.eu.int**

**Bruxelles, le 4 juin 2000 (04.06)
(OR. FR)****CHARTE 4333/00****CONVENT 36****NOTE DU PRESIDIUM**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne
 – Projet d'articles 1 à 30 (doc. CHARTE 4284/00 CONVENT 28)
 = Propositions d'amendements de compromis présentés par le Présidium

Article 1

Faire du paragraphe 2 un nouvel article 1bis.

S'appuie sur les amendements 5, 14, 15, 16.

Article 3

Nouvelle rédaction:

1. Toute personne a droit à son intégrité physique, génétique et mentale.
2. Dans le cadre de la médecine et de la biologie, les principes suivants doivent notamment être respectés:

- interdiction des pratiques eugéniques, notamment celle qui ont pour but la sélection et l'instrumentalisation des personnes
- consentement libre et éclairé du patient
- interdiction de faire du corps humain et de ses parties une source de profit
- interdiction du clonage reproductif des êtres humains.

s'appuie sur les amendements 49, 52, 54, 56, 59, 64, 67.

Article 4

Le Présidium suggère de déplacer le paragraphe 2 à l'article relatif au droit d'asile et de remplacer "serait menacé d'être" par "pourrait être".

Article 5

Nouvelle rédaction du paragraphe 2

2. Nul ne peut être astreint à accomplir un travail forcé ou obligatoire. Ne sont pas considérées comme travail forcé ou obligatoire les prestations personnelles qui, établies par la loi, sont exigées des citoyens pour des motifs civiques en cas d'urgence ou de calamité ainsi que le service militaire ou le travail exigé normalement d'une personne privée de liberté.

S'appuie sur les amendements 96, 100, 101, 102,104

Ajouter un paragraphe 3

3. La traite des être humains est interdite

S'appuie sur l'amendement 90

Article 8

Lire le paragraphe 1 comme suit

Toute personne a droit à ce que sa cause soit entendue équitablement, publiquement et dans un délai raisonnable, par un tribunal indépendant et impartial établi par la loi. Toute personne a la possibilité de se faire conseiller, défendre et représenter par un avocat.

Au paragraphe 2, au lieu de « serait indispensable », lire « serait nécessaire »

S'appuie sur les amendements 148, 149, 158, 162

Article 10

Lire le titre comme suit

« Principe de légalité et de proportionnalité des délits et des peines »

Au paragraphe 2, in fine, lire

« était criminelle d'après le droit international »

Ajouter un nouveau paragraphe 3

L'intensité des peines doit être proportionnelle à la gravité de l'infraction.

S'appuie sur les amendements 177, 179, 185, 187, 188

Article 11

Lire le titre comme suit

Droit à ne pas être jugé ou puni pénale deux fois pour un même délit

S'appuie sur l'amendement 199

Article 12

Lire le titre comme suit

Respect de la vie privée et familiale

Lire l'article comme suit

Toute personne a droit au respect de sa vie privée et de sa vie familiale, de son honneur et de sa réputation, de son domicile et du secret de sa correspondance et de ses communications.

S'appuie sur les amendements 207, 221

Article 13

Lire le titre comme suit

Droit de se marier et de fonder une famille

Supprimer le paragraphe 1

Le nouveau paragraphe 1 se lit ainsi

Le droit de se marier et le droit de fonder une famille sont garantis selon les lois nationales qui en régissent l'exercice

S'appuie sur l'amendement 243

Supprimer l'actuel paragraphe 2 qui sera inséré dans le droit sociaux

S'appuie sur l'amendement 251

Article 14

Lire l'article ainsi

Toute personne a droit à la liberté de pensée, de conscience et de religion ; ce droit implique la liberté de changer de religion ou de conviction, ainsi que la liberté de manifester sa religion ou sa

conviction individuellement ou collectivement, en public ou en privé, par le culte, l'enseignement, les pratiques et l'accomplissement des rites.

S'appuie sur les amendements 252, 254, 255, 256, 257, 258, 259, 263, 264, 265, 270, 271, 272

Article 15

Ajouter un paragraphe 2

La liberté de presse et d'information est garantie dans le respect de la transparence et du pluralisme

S'appuie sur les amendements 279, 280, 281, 282, 284, 290

Article 16

Lire le paragraphe 2 comme suit

La liberté de création des établissements d'enseignement est garantie, dans le respect des principes démocratiques, selon les règles nationales régissant l'exercice de ce droit

S'appuie sur les amendements 312, 318, 320

Article 17

Nouvelle rédaction

Toute personne a droit à la liberté de réunion pacifique et à la liberté d'association, notamment dans les domaines politique, syndical et civique

S'appuie sur les amendements 325, 326, 329, 330, 339

Article 19

Lire l'article comme suit

Toute personne a le droit de décider elle-même de la collecte, de l'utilisation et de la divulgation des

données à caractère personnel la concernant

S'appuie sur les amendements 359, 365, 367, 369, 372

Article 20

Lire l'article comme suit

Toute personne a le droit de posséder des biens acquis légalement, de les utiliser, d'en disposer et de les léguer. Nul ne peut être privé de sa propriété si ce n'est pour cause d'utilité publique, dans des cas et conditions prévues par une loi et moyennant une juste indemnité

S'appuie sur les amendements 380, 381, 382, 387, 389, 393, 400

Article 21

Lire comme suit

Le droit d'asile est garanti, conformément au traité instituant la Communauté européenne et dans le respect des règles de la convention de Genève du 28 juillet 1951 et du protocole du 31 janvier 1967 relatifs au statut des réfugiés ainsi que des autres traités pertinents

S'appuie sur les amendements 404, 404 bis (M. Melograni), 410, 414, 415, 416, 428, 429

Article 21 bis

Nouvel article qui reprend une partie de l'article 4 et se lit comme suit

1. Les expulsions collectives sont interdites
2. Nul ne peut être expulsé, ni extradé vers un Etat où il pourrait être soumis à la peine de mort, à la torture ou à d'autres peines ou traitements inhumains ou dégradants

S'appuie sur les amendements 82, 409, 412, 414, 432, 433

Article 22

Lire l'article comme suit

1. Est interdite toute discrimination fondée notamment sur le sexe, la race, la couleur, les origines ethniques ou sociales, les caractéristiques génétiques, la langue, la religion ou les convictions, les opinions politiques ou toute autre opinion, l'appartenance à une minorité nationale, la fortune, la naissance, un handicap, l'âge ou l'orientation sexuelle.
2. Dans le domaine d'application du traité instituant la Communauté européenne et du traité sur l'Union européenne et sans préjudice des dispositions particulières desdits traités, toute discrimination fondée sur la nationalité est interdite.
3. L'Union cherche à éliminer les inégalités et cherche à promouvoir l'égalité de statut entre les femmes et les hommes. L'égalité des sexes est notamment assurée dans la fixation des rémunérations et des autres conditions de travail.

S'appuie sur les amendements 437, 439, 440, 442, 453, 454

Article 23

Lire l'article comme suit

1. Les enfants ont droit à la protection et au soin nécessaire à leur bien-être. Ils peuvent exprimer leur opinion librement sur les sujets qui les concernent, ces opinions étant prise en considération en fonction de leur âge et de leur maturité.
2. Dans tous les actes relatifs aux enfants, qu'ils soient accomplis par des institutions publiques ou privées de protection sociale, l'intérêt supérieur de l'enfant doit primer

S'appuie sur les amendements 474, 476, 478, 479, 484, 485, 486, 487, 489, 490, 491, 493

Article 24

Après « tout citoyen », ajouter « de l'Union »

S'appuie sur les amendements 510, 511, 514, 515

Article 25

Inverser les paragraphes 1 et 2

Au paragraphe 2, après « éligibilité », ajouter « au Parlement européen »

S'appuie sur l'amendement 532

Article 27

Changer le titre « droit à une bonne administration »

Débuter ainsi le paragraphe 3

« Toute personne a le droit de s'adresser... »

s'appuie sur l'amendement 555 et sur l'amendement de M. Dehaene

Article 28

Ajouter « de l'Union » après « citoyen »

S'appuie sur les amendements 565 et 569

Article 29

Après « citoyen », ajouter « de l'Union »

S'appuie sur l'amendement 581

Article 29 bis

Nouvel article

Protection diplomatique et consulaire

Tout citoyen de l'Union bénéficie, sur le territoire d'un pays tiers où l'Etat membre dont il est ressortissant n'est pas représenté, de la protection de la part des autorités diplomatiques et consulaires de tout Etat membre, dans les mêmes conditions que les nationaux de cet Etat.

S'appuie sur l'amendement 545 et reproduit la première phrase de l'article 20 du traité CE

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 31 May 2000**CHARTE 4344/00****CONTRIB 208****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a contribution of Lord Goldsmith Q.C, personal representative of the government of the United Kingdom. The contribution shows how an integrated two-part document would look (reference: CHARTE 4284/00 CONVENT 28). ¹

¹ This text has been submitted in English language only.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Article 1 Object and purpose

All human beings are born free and equal in dignity and rights and are entitled to equal protection of the law. In recognition of this, the European Union Institutions respect, within the spheres of their competences, the fundamental rights set out below.

PROCLAMATION OF RIGHTS

(PART A)

Article 2 Right to Life

1. Everyone's right to life shall be protected by law
2. No one shall be condemned to the death penalty or executed.

Article 4 Prohibition of torture and inhuman treatment

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Article 5 Prohibition of slavery and forced labour

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.

Article 6 Right to liberty and security

Everyone has the right to liberty and security of person and cannot be deprived of it save in limited specific cases and in accordance with a procedure prescribed by law.

Article 8 Right to a fair trial

1. Everyone is entitled to a fair and public hearing within a reasonable period of any criminal charge against him or her, or in determining his or her civil rights and obligations. Hearings shall be by an independent and impartial tribunal established by law.

2. If it is a criminal charge, the accused shall be presumed innocent until proved guilty according to law and has certain guaranteed rights to defend himself or herself.

Article 10 No punishment without law

No one shall be held guilty of any offence on account of any act or omission which did not constitute an offence under national law or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the offence was committed.

Article 11 Right not to be tried or punished twice

No one shall be tried or punished twice for the same criminal offence.

Article 12 Respect for private life

Everyone has the right to respect for his or her private and family life, home and correspondence. These rights may be interfered with only in limited, specified circumstances.

Article 13 Family life

Men and women of marriageable age have the right to marry and found a family according to national law governing the exercise of this right.

Article 14 Freedom of thought, conscience and religion

Everyone has the right to freedom of thought, conscience and religion. Limitations can be placed on this right only in limited, specified circumstances.

Article 15 Freedom of expression

Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to received and impart information and ideas without interference by public authority and regardless of frontiers. Formalities, restrictions, conditions or penalties can be placed on this right only in limited, specified circumstances.

Article 16 Right to education

No one shall be denied the right to education.

Article 17 Freedom of assembly and association

Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his or her interests. These rights may be restricted only in limited, specified circumstances.

Article 18 Right of access to documents

Every citizens of the Union or anyone residing in the Union has a right of access to the documents of the European Parliament, of the Council and of the Commission.

Article 19 Data protection

Every natural person has a right to protection for his or her personal data.

Article 20 Right to Property

Everyone is entitled to the peaceful enjoyment of his or her possessions. Public bodies may interfere with possessions or the way they are used only in specified, limited circumstances.

Article 22 Non-discrimination

1. Discrimination between citizens of Member States of the European Union on grounds of nationality shall be prohibited.
2. The rights and freedoms in [ECHR-based rights] shall be secured without discrimination on any grounds such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Article 25 Right to vote and stand as a candidate for the European Parliament

Every citizen of the Union residing in a Member State of which he or she is not a national has the right, subject to specified rules and arrangements, to vote and stand as a candidate in elections to the European Parliament in the Member State in which he or she resides, under the same conditions as nationals of that State.

Article 26 Right to vote and stand as a candidate in municipal elections

Every citizen of the Union residing in a Member State of which he or she is not a national has the right, subject to specified rules and arrangements, to vote and stand as a candidate in municipal elections in the Member State in which he or she resides, under the same conditions as nationals of that State.

Article [27-29] Relations with the administration

1. Every person has the right in his or her dealings with the Institutions of the Union to be treated impartially, fairly and within a reasonable time.
2. In particular,
 - a) every citizen of the Union and every natural and legal person residing or having its registered office in a Member State has the right, in accordance with specified conditions and procedures, to refer to the Ombudsman of the Union, cases of maladministration by Union institutions and bodies, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role.
 - b) every citizen of the Union and every natural and legal person residing or having its registered office in a Member State has the right to petition the European Parliament in accordance with specified conditions.
 - c) every person may write to the institutions of the Union in one of the official languages of the Union and have an answer in that language.

Article 30 Freedom of Movement

Every citizen of the Union has the right to move and reside freely within the territory of the Member States.

DEFINITION OF RIGHTS

(PART B)

Article 2 Right to Life

The rights in Article 2 are the rights guaranteed by Article 2 of the ECHR and Articles 1 – 4 of Protocol 6 to the ECHR.

Article 4 Prohibition of torture and inhuman treatment

The right in Article 4 is the right guaranteed by Article 3 of the ECHR.

Article 5 Prohibition of slavery and forced labour

The right in Article 5 is the right guaranteed by Article 4 of the ECHR.

Article 6 Right to liberty and security

The rights in Article 6 are the rights guaranteed by Article 5 of the ECHR.

Article 8 Right to a fair trial

The rights in Article 8 are the rights guaranteed by Article 6 of the ECHR.

Article 10 No punishment without law

The right in Article 10 is the right guaranteed by Article 7 of the ECHR.

Article 11 Right not to be tried or punished twice

The right in Article 11 is the right guaranteed by Article 4 of Protocol 7 to the ECHR. It does not prevent the reopening of the case in accordance with the law if there is evidence of new or newly discovered facts, or if there has been a fundamental defect in the previous proceedings which could affect the outcome of the case.

Article 12 Respect for private life

The right in Article 12 is the right guaranteed by Article 8 of the ECHR

Article 13 Family life

The right in Article 13 is the right guaranteed by Article 12 of the ECHR

Article 14 Freedom of thought, conscience and religion

The right in Article 14 is the right guaranteed by Article 9 of the ECHR

Article 15 Freedom of expression

The right in Article 15 is the right guaranteed by Article 10 of the ECHR.

Article 16 Right to education

The right in Article 16 is the right guaranteed by Article 2 of the First Protocol to the ECHR, read with any reservation made in respect of it.

Article 17 Freedom of assembly and association

The right in Article 17 is the right guaranteed by Article 11 of the ECHR.

Article 18 Right of access to documents

The right in Article 18 is the right guaranteed by Article 255 of the Treaty establishing the European Community and shall be exercised in accordance with the conditions and subject to any limitations made under and in accordance with that Treaty provision.

Article 19 Data protection

The right in Article 19 is the right under Article 286 TEC and Community Directives on data protection and is subject to the conditions and limitations laid down in them.

Article 20 Right to Property

The right in Article 20 is the right in Article 1 of the Additional Protocol to the ECHR.

Article 22 Non-discrimination

Paragraph 1 is the prohibition of discrimination on grounds of nationality in Article 12 of the Treaty establishing the European Community. The prohibition applies within the scope of application of, and without prejudice to special provisions contained in, that Treaty.

Paragraph 2 is the right in Article 14 of the ECHR.

Article 25 Right to vote and stand as a candidate for the European Parliament

The rights in Article 25 are the rights in Article 19(2) of the Treaty establishing the European Community. They shall be exercised in accordance with the detailed arrangements laid down under that Article.

Article 26 Right to vote and stand as a candidate in municipal elections

The rights in Article 26 are the rights in Articles 19(1) of the Treaty establishing the European Community. They shall be exercised in accordance with the detailed arrangements laid down under that Article.

Article [27-29] Relations with the administration

The rights set out in Article [27-29] are the rights guaranteed by Article 21 of the Treaty establishing the European Community read with Articles 195 and 194 TEC and as are contained in general principles of Community law.

Article 30 Freedom of Movement

The right in Article 30 is the right provided for in Article 18(1) of the Treaty establishing the European Community and is subject to the limitations and conditions laid down in that Treaty and by the measures adopted to give it effect.

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE**fundamental.rights@consilium.eu.int**

Bruxelles, le 8 juin 2000**CHARTE 4352/00****CONTRIB 216****NOTE DE TRANSMISSION**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne

Veillez trouver ci-joint des propositions d'amendement concernant les droits civils et politiques et droits des citoyens, soumises par le Comité des Régions. ¹

¹ Ce texte a été soumis en langue française uniquement.

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPEENNE

Proposition d'amendement à l'article : sur le principe de démocratie

Auteur : Comité des régions

Texte proposé :

3 - Les collectivités territoriales élues exercent les responsabilités publiques qui leur sont légalement conférées, selon le principe de l'autonomie.

Justificatif :

1. Il résulte de l'article 1er du TUE qui prévoit que dans l'Union "les décisions sont prises dans le plus grand respect du principe d'ouverture et le plus près possible des citoyens" et des traditions constitutionnelles communes aux Etats membres que les assemblées locales élues disposent de l'autonomie dans le cadre de leurs compétences.
2. Il est important qu'un texte émanant de l'Union rappelle cette liberté fondamentale du citoyen de pouvoir élire les assemblées locales qui exercent des responsabilités publiques, dans le cadre de la loi, sous leur propre responsabilité et au profit de leur population.
3. Les collectivités locales sont l'un des principaux fondements de tout régime démocratique.

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPEENNE**Proposition d'amendement à l'article : 22**

Auteur : Comité des régions

Texte proposé : ajout

3. L'Union cherche à éliminer les inégalités et à promouvoir l'égalité entre les hommes et les femmes dans tous les domaines de la prise de décision.
(le reste sans changement)

Justificatif :

Dès lors qu'il s'agit de promouvoir l'égalité entre les hommes et les femmes, il semble important de préciser que cette intention doit se manifester dans le domaine le plus élevé, celui de la prise de décision, que celle-ci soit professionnelle ou politique.

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPEENNE

Proposition d'amendement à l'article : 22 - Egalité et non discrimination
ou d'un nouvel article après l'article 22

Auteur : Comité des régions

Texte proposé :

Si amendement, nouveau paragraphe 3 : Les minorités ont droit au respect de leur religion, de leur langue et de leur culture.

Si nouvel article : Droit des minorités : Les minorités ont droit au respect de leur religion, de leur langue et de leur culture.

Justificatif :

Référence à l'article 27 du Pacte international relatif aux droits civils et politiques.

Les articles 12, 14,15 et 22 s'appliquent à des personnes et non à des groupes.

Le concept de minorité mérite d'être intégré à la Charte des droits fondamentaux.

Cette insertion s'avère indispensable dès lors que l'Union sera élargie à des Etats comportant des minorités importantes.

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPEENNE**Proposition d'amendement à l'article : 27 - Relations avec l'Administration**

Auteur : Comité des régions

Texte proposé : nouveau paragraphe 3

3. L'action administrative est soumise au contrôle de légalité.

Justificatif :

Dès lors que le projet de Charte comporte un article sur les relations avec l'administration, il apparaît nécessaire de rappeler que l'action administrative est soumise au contrôle de légalité, ce qui constitue une garantie pour les administrés.

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPEENNE
Droit économiques et sociaux

Proposition d'amendement à l'article : Proposition d'un nouvel article après l'article 32

Auteur : Comité des régions

Texte proposé :

Les travailleurs ont droit à une formation professionnelle permanente.

Justificatif :

Les évolutions scientifiques et techniques modifient les qualifications requises par les entreprises. Il importe que les travailleurs puissent s'adapter ou se former aux nouveaux métiers.

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPEENNE**Proposition d'amendement à l'article :**

Proposition d'amendement à l'article 46 - Champ d'application

Auteur : Comité des régions

Texte proposé : ajout & 1

... ainsi qu'aux Etats membres et aux collectivités territoriales exclusivement dans le champ d'application du droit de l'Union.

Justificatif :

Les collectivités territoriales peuvent avoir à mettre en oeuvre des réglementations communautaires. Il importe que dans cette hypothèse, leur action ne porte pas atteinte aux droits fondamentaux énoncés par la Charte.

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPEENNE**Proposition d'amendement à l'article :**

Proposition d'un nouvel article après l'article 50 (actuel). Il s'agit de prévoir les modalités de recours en cas d'atteinte aux droits fondamentaux énoncés par la Charte.

Auteur : Comité des régions

Texte proposé :

Toute atteinte aux droits énoncés dans la présente Charte est susceptible de recours devant les juridictions appropriées nationales et européennes et si nécessaire avec une aide juridique et financière adaptée.

Justificatif :

Dès lors que la Charte énonce des droits, elle doit prévoir les modalités de recours en cas de non-respect de ces droits.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

**Brussels, 14 June 2000 (16.06)
(OR. fr)****CHARTE 4360/00****CONVENT 37****PRAESIDIUM NOTE**

Subject: Draft Charter of Fundamental Rights of the European Union
– Summary of amendments presented by the Praesidium
(Reference document: CHARTE 4284/00 CONVENT 28)

The purpose of this document, drawn up by the Secretariat at the request of the Convention, is to group the amendments to Articles 1 to 30 (CHARTE 4332/00) according to topic. This analysis does not cover drafting and linguistic amendments. These will be subject to specific examination. It will be noted that some of the Praesidium's compromise amendments are based on amendments not included in this analysis. This is because the Praesidium has already taken some linguistic or drafting amendments into account.

Article 1. Dignity of the human person

1. The dignity of the human person must be respected and protected.
2. Everyone is equal before the law.

Proposed amendments

Paragraph 1

- (1) adopt the wording: "the dignity of the human person is inviolable": Amendments 1 (Duff), 6 (Rodota, Paciotti, Manzella), 10 (Melograni), 11 (Voggenhuber)
- (2) move paragraph 1 to the preamble: Amendments 5 (Tarschys), 8 (Griffiths), 9 (Berthu)

Paragraph 2

- (1) adopt the wording: "All human beings are born free and equal in rights": Amendment 3 (Goldsmith) (which adds dignity)
- (2) change the position of paragraph 2: to a separate article, Amendments 16 (Berès), 22 (Manzella); with the principle of non-discrimination: Amendment 21 (Rodota, Paciotti, Manzella); with Article 8 (right to a fair trial) Amendment 14 (Griffiths)

Praesidium proposal: separate this article into two articles:

Make paragraph 2 into a new Article 1a.

On the basis of Amendments 5 (Tarschys), 14 (Griffiths), 15 (Korthals Altes), 16 (Berès).

Article 2. Right to life

1. **Everyone has the right to life.**
2. **No one shall be condemned to the death penalty, or executed.**

Proposed amendments

- (1) align with the European Convention: Amendments 26 (Dehaene), 31 (Van Dam), 33 (Tarschys), 36 (Einem/Holoubek), 37 (Goldsmith)
- (2) include the Convention's definitions: Amendment 26 (Dehaene), 36 (Einem/Holoubek), 38 (Berthu)
- (3) state that the right to life extends until its natural end, Amendments 28 (Haenel), 29 (Berthu), 30 (Cisneros), 31 (van Dam)
- (4) set out the exceptions to the prohibition of the death penalty: Amendment 42 (Bereijo)
- (5) prohibit limitations on prohibiting the death penalty: Amendment 43 (Einem/Holoubek)
- (6) insert here the prohibition of expulsions contained in Article 4: Amendment 44 (Korthals Altes)

Article 3. Right to respect for the integrity of the human person

1. **Everyone has the right to respect for his physical and mental integrity.**
2. **In the fields of medicine and biology, the following principles must be respected in particular:**
 - **prohibition of eugenic practices;**
 - **respect for the informed consent of the patient;**
 - **prohibition of making the human body and its products a source of financial gain;**
 - **prohibition of the reproductive cloning of human beings.**

Proposed amendments

- (1) deletion: Amendment 45 (Goldsmith)

paragraph 1

- (1) add the reference to genetic integrity; Amendment 51 (Altmaier)
- (2) delete physical and mental: Amendment 71 (Tarschys)

paragraph 2

- (1) delete the paragraph: Amendments 57 (Griffiths), 58 (Olsen), 72 (Korthals Altes)
- (2) supplement the list: Amendments 50 (Dehousse), 60 (Hirsch Ballin, Patijn) (prohibition of hybrids), 62 (Melograni) (clarifying the concept of informed consent), 66 (Berthu) (idem), 70 (Cisneros) (all life is the result of the fusion of human gametes)

- (3) prohibit all forms of human cloning, not merely reproductive cloning: Amendments 61 (Van Dam), 63 (Kaufmann), 65 (Mombaur), 66 (Berthu), 68 (Friedrich)

Praesidium proposal: clarify the wording of paragraph 2:

New drafting:

1. *Everyone has the right to respect for his physical, genetic and mental integrity.*
2. *In the fields of medicine and biology, the following principles must be respected in particular:*
 - *prohibition of eugenic practices, in particular those concerned with the selection and instrumentalisation of persons;*
 - *respect for the free and informed consent of the patient;*
 - *prohibition of making the human body and its parts a source of financial gain;*
 - *prohibition of the reproductive cloning of human beings.*

Article 4. Prohibition of torture and inhuman treatment

**No one shall be subjected to torture or to inhuman or degrading treatment or punishment.
No one may be expelled or extradited to a State where he would be in danger of being subjected to the death penalty, torture or other inhuman treatment.**

Proposed amendments

- (1) delete the article: Amendment 74 (van Dam)
- (2) delete the second sentence: Amendments 73 (Berthu), 78 (Goldsmith), 87 (Bereijo)

- (3) move the second sentence: Amendments 77 (Friedrich), 88 (Gnauck), 90 (Rodota, Paciotti, Manzella)
- (4) redraft the second sentence to clarify the fact that expulsion and extradition are prohibited where there is a risk of inhuman or degrading treatment or of being subject to the death penalty: Amendments 79 (Melograni), 82 (Korthals Altes), 83 (Dehaene), 84 (Griffiths), 85 (Hirsch Ballin, Patijn)
- (5) delete the danger of being subjected to the death penalty as this comes under Article 2: Amendment 81 (Olsen)
- (6) stipulate that any restriction is prohibited: Amendment 91 (Einem/Holoubek)

Praesidium proposal: move the second sentence to Article 21, clarify the wording in line with the amendments in (4):

The Praesidium suggests moving the second paragraph to the article on the right of asylum and replacing "would be in danger of being" by "could be".

Article 5. Prohibition of slavery and forced labour

- 1. No one shall be held in slavery or servitude.**
- 2. No one shall be required to perform forced or compulsory labour.**

Proposed amendments

- (1) delete the article: Amendment 93 (van Dam)
- (2) add the prohibition on trafficking in human beings: Amendment 95 (Gnauck)

- (3) take over Article 4 of the ECHR: Amendment 96 (Tarschys)
- (4) clarify the concept of forced labour: Amendments 98 (Olsen), 100 (Bereijo), 101 (Korthals Altes), 104 (Dehousse)
- (5) state that this right may not be restricted: Amendment 99 (Einem/Holoubek)

Praesidium proposal: clarify the definition of the right as requested in (3)

New drafting of paragraph 2

2. *No one shall be required to perform forced or compulsory labour. The term "forced or compulsory labour" shall not include services required by law of citizens for civic reasons in case of an emergency or disaster and military service or the work ordinarily required of persons imprisoned.*

Based on Amendments 96 (Tarschys), 100 (Bereijo), 101 (Korthals Altes), 102 (Berthu), 104 (Dehousse)

Add a paragraph 3

3. *Trafficking in human beings is prohibited.*

Based on Amendment 90 (Rodota, Paciotti, Manzella)

Article 6. Right to liberty and security

Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in cases prescribed by law and in accordance with a procedure prescribed by law.

Proposed amendments

- (1) delete the second sentence: Amendments 105 (van Dam), 107 (Altmaier), 108 (Mombaur)
- (2) add a reference to the ECHR: Amendment 109 (Barros Mourra/Azevedo) or take over the text of the ECHR: Amendments 113 (Korthals Altes), 114 (Hirsch Ballin/Patijn), 116 (Tarschys)
- (3) delete the reference to security: Amendments 111 (Friedrich), 112 (Gnauck), 118 (Melograni)
- (4) extend security to cover "of person and family": Amendment 122 (Rodota/Paciotti/Manzella) or add that society must find ways of ensuring security of persons and property: Amendment 123 (Dehousse)

Article 7. Right to an effective remedy

Everyone whose rights and freedoms are violated has the right to an effective remedy before a court.

Proposed amendments

- (1) add a reference to rights under this Charter: Amendment 124 (Goldsmith), 128 (Hirsch Ballin/Patijn), 129 (Tarschys), 130 (Neisser) 131 (Bereijo), 132 (Olsen)
- (2) replace the reference to a court by one to a competent or independent authority or delete any reference to the authority in question: Amendments 124 (Goldsmith), 129 (Tarschys), 132 (Olsen), 134 (Melograni), 135 (O'Kennedy)
- (3) amend the title: Amendment 139 (Korthals Altes)

Article 8. Right to a fair trial

- 1. Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.**
- 2. Legal aid shall be provided to those who lack sufficient resources insofar as such aid is indispensable to ensure effective access to justice**

Proposed amendments

- (1) re-examine: Amendment 142 (Tarschys)
- (2) delete: Amendment 143 (Berthu)
- (3) Align with the ECHR with a reference to disputes over civil rights or criminal charges: Amendments 146 (O'Kennedy), 147 (Olsen), 149 (Einem/Holoubek), 152 (Goldsmith)

- (4) refer to the ECHR: Amendment 154 (Korthals Altes)
- (5) delete paragraph 2: Amendment 157 (Friedrich)
- (6) clarify paragraph 2 by stating that aid must be necessary: Amendments 158 (Melograni), 160 (Rodota/Paciotti/Manzella)
- (7) add the right to a lawyer: Amendments 148 (Neisser), 162 (Meyer/Berès/Leinen/Martin/Van den Burg), 163 (Duff) (included under Article 9)

Praesidium proposal: accept the amendments in (6) and (7):

Paragraph 1 to read as follows:

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Everyone shall have the possibility of being advised, defended and represented by a lawyer.

In paragraph 2, replace "is indispensable" by "is necessary".

Based on Amendments 148 (Neisser), 149 (Einem/Holoubek), 158 (Melograni), 162 (Meyer/Berès/Leinen/Martin/Van den Burg)

Article 9. Presumption of innocence and rights of the defence

- 1. Everyone who has been charged shall be presumed innocent until proved guilty according to law.**
- 2. Everyone who has been charged shall be guaranteed respect for his rights to defence.**

Proposed amendments

- (1) delete: Amendment 166 (Goldsmith)
- (2) stipulate that the text concerns criminal offences: Amendments 164 (O’Kennedy) and 167 (Melograni)
- (3) replace this text with that of the ECHR: Amendment 169 (Buitenweg) and 173 (Korthals Altes)
- (4) add a reference to the ECHR: Amendment 170 (van Dam)
- (5) add that the victim of denial of justice has a right to damages: Amendment 174 (Berès)

Article 10. No punishment without law

- 1. No one shall be held guilty of any offence on account of any act or omission which did not constitute an offence under national law or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the offence was committed. If, subsequent to the commission of the offence, the law provides for a lighter penalty, that penalty shall be applicable.**
- 2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of international law.**

Proposed amendments

- (1) delete paragraph 2: Amendment 185 (Bereijo)
- (2) replace the reference to general principles of international law with different wording: Amendment 187 (Rodotà/Paciotti/Manzella)

- (3) add a reference to penalty being in proportion to the seriousness of the offence: Amendment 188 (Rodotà/Paciotti/Manzella)

Proposal from the Praesidium: accept (2) and (3):

Title to read as follows:

"Principle of legality and proportionality of offences and penalties"

The end of paragraph 2 to read as follows:

"was criminal according to international law"

add a new paragraph 3:

The severity of penalties shall be proportional to the gravity of the offence.

Based on Amendments 177 (Berès), 179 (Neisser), 185 (Bereijo), 187 (Rodotà/Paciotti/Manzella) and 188 (idem)

Article 11. Right not to be tried or punished twice

No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he has already been finally acquitted or convicted in accordance with the law.

Proposed amendments

- (1) delete: Amendment 189 (Berthu)
(2) copy the ECHR: Amendments 190 (Olsen) and 194 (Tarschys)

- (3) refer to the ECHR: Amendments 192 (van Dam) and 193 (Korthals Altes)
- (4) stipulate that this refers to criminal proceedings (Amendments 198 (Hirsch Ballin/Patijn), 199 (Berès) and 203 (Rodotà/Paciotti/Manzella) in the same State: Amendment 197 (Melograni)
- (5) include a proviso concerning the International Criminal Court: Amendment 206 (Beissel) and also Amendment 205 (Meyers)

Article 12. Respect for private life

Everyone has the right to respect for his privacy, his honour and his reputation, his home and the confidentiality of his correspondence and communications.

Proposed amendments

- (1) copy the ECHR: Amendment 207 (Tarschys)
- (2) refer to limits (ECHR): Amendments 209 (van Dam), 215 (Bereijo), 220 (Korthals Altes), 231 (Gnauck) and 233 (Kaufmann)
- (3) delete "honour and his reputation": Amendments 210 (Griffiths), 211 (Hirsch Ballin/Patijn), 212 Buitenweg, Voggenhuber), 213 (Friedrich) and 217 (Kaufmann)
- (4) add data protection: Amendment 213 (Friedrich)
- (5) delete "correspondence": Amendment 214 (Neisser)
- (6) right to encryption of communications: Amendment 222 (Buitenweg/Voggenhuber)

- (7) replace ‘private life’ with ‘privacy’: Amendments 213 (Friedrich) and 216 (Gnauck).

Proposal from the Praesidium: add reference to family life

The title to read as follows

Respect for private and family life

The article to read as follows

Everyone has the right to respect for his privacy, his family life, his honour and his reputation, his home and the confidentiality of his correspondence and communications.

Based on Amendments 207 (Tarschys) and 221 (Goldsmith).

Article 13. Family life

- 1. Everyone has the right to respect for his family life.**
- 2. Everyone has the right to marry and to found a family, according to the national laws governing the exercise of this right.**
- 3. The family shall enjoy legal, economic and social protection.**

Proposed amendments

- (1) delete paragraph 1: Amendment 224 (Altmaier)

- (2) draw a distinction between the right to marry and the right to found a family: Amendment 225 (Barros Moura/Azevedo), refer to forming a partnership: Amendments 227 (Duff), 228 (Meyer/Leinen/Martin), 230 (Friedrich), 238 (Dehousse) and 239 (Buitenweg/Voggenhuber)
- (3) copy the wording used in the ECHR (refer to only men and women having the right to marry): Amendments 226 (Berthu), 230 (Friedrich), 235 (Goldsmith), 238 (Dehousse), 243 (Haenel) and 244 (Cisneros)
- (4) mention living with a partner as distinct from family life: Amendments 229 (Berès) and 230 (Friedrich)
- (5) delete paragraph 3: Amendments 245 (Jansson/Brax/Nikula), 249 (Olsen), 250 (Griffiths) and 251 (Hirsch Ballin/Patijn)

Proposal from the Praesidium: *delete paragraph 1, move paragraph 3 into the section on social rights*

The title to read as follows:

Right to marry and to found a family

Delete paragraph 1

The new paragraph 1 to read as follows

The right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of this right.

Based on Amendment 243 (Haenel)

Delete present paragraph 2, which will be inserted in social rights

Based on Amendment 251 (Hirsch Ballin/Patijn).

Article 14 Freedom of thought, conscience and religion

Anyone has the right to freedom of thought, conscience and religion.

Proposed amendments

- (1) Many amendments aim to incorporate all or part of Article 9(1) of the ECHR on the freedom to change religion or beliefs and the freedom to manifest religion or beliefs alone or in community with others. Amendments 252 (Berthu), 254 (Van Dam), 255 (Hirsch Ballin/Patijn), 256 (Buitenweg/Voggenhuber), 257 (Meyer/Leinen/Martin), 258 (Friedrich), 259 (Neisser), 263 (Einem/Holoubek), 264 (Vitorino), 265 (Cisnros), 270 (Tarschys), 271 (Rodota/Paciotti/Manzella), 272 Mombaur).
- (2) Some amendments propose adding the right not to disclose one's religion or beliefs (Amendments 253 (Duff), 256 (Buitenweg/Voggenhuber), 257 (Meyer/Leinen/Martin), 260 (Bereijo)).
- (3) Some amendments aim to affirm the right to conscientious objection (Amendments 256 (Buitenweg/Voggenhuber), 257 (Meyer/Leinen/Martin), 261 (Gnauck), 262 (Kaufmann)).
- (4) Some amendments aim to make clear in the Article itself the restrictions which may be applied to the exercise of this freedom with texts which repeat word for word, refer to, or are based on, the wording of Article 9(2) of the ECHR (Amendments 252 (Berthu), 254 (Van Dam), 260 (Bereijo), 261 (Gnauck), 266 (Goldsmith), and 270 (Tarschys)). One amendment makes observance of the principles of tolerance and democracy a restriction on freedom (Amendment 273 (Dehousse)).

Praesidium proposal

The Article should read as follows:

"Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or in private, to manifest his religion or belief, in worship, teaching, practice and observance."

Based on Amendments 252 (Berthu), 254 (van Dam), 255 (Hirsch Ballin/Patijn), 256 (Voggenhuber/Buitenweg), 257 (Meyer/Leinen/Martin), 258 (Friedrich), 259 (Neisser), 263 (Einem/Holoubek), 264 (Vitorino), 265 (Cisneros), 270 (Tarschys), 271 (Rodotà/Paciotti/Manzella), 272 (Mombaur).

ARTICLE 14A (New): Freedom of research (in the arts and sciences) (Amendments 274 (Rodotta/Paciotti/Manzella), 279 (Buitenweg/Voggenhuber), 280 (Meyer/Leinen/Martin), 282 (Friedrich), 287 (Melograni), 299 Duff) and 321 (Cisneros).

Article 15

"Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers."

Proposed amendments

- (1) Several amendments aim to add a paragraph on freedom of press and information with due regard for transparency and pluralism (Amendments 76 (Duff), 279 (Buitenweng/Voggenhuber), 280 (Meyer/Leinen/Martin), 281 (Berès), 282 (Friedrich), 284 (Braibant), 289 (Gnauck), 290 (Rodota/Paciotti/Manzella), 292 (Mombaur).
- (2) Some amendments aim to add to the Article the final sentence of Article 10(1) of the ECHR, which states that freedom of expression does not prevent States from subjecting broadcasting companies to a system of authorisation (Amendments 278 (Griffiths), 281 (Berès), 283 (Neisser), 291 (Tarschys).
- (3) Several amendments propose incorporating in the Article the permitted restrictions on freedom of expression, whether by reference to Article 10(2) of the ECHR (Amendments 275 (Berthu), 286 (Van Dam), 291 (Tarschys), 293 Korthals Altes) and 294 (Goldsmith)) or in the form of alternative wordings (Amendments 281 (Berès), 288 (Bereijo), 295 (Dehousse)).
- (4) One amendment proposes adding a paragraph ensuring the existence of public broadcasting services (Amendment 280 (Meyer/Leinen/Martin)).

Praesidium proposal

Add a paragraph 2:

"Freedom of press and information shall be guaranteed with due respect for transparency and pluralism."

Based on Amendments 279 (Voggenhuber/Buitenweg), 280 (Meyer/Leinen/Martin/Van den Burg), 281 (Berès), 282 (Friedrich), 284 (Braibant), 290 (Rodotà/Paciotti/Manzella).

Article 16. Right to education

- 1. Everyone has the right to education and the right of access to vocational and continuing training. These rights include the right to receive free compulsory education.**
- 2. The founding of educational establishments shall be free of constraint.**
- 3. The right of parents to have their children educated and taught in accordance with their religious and philosophical convictions shall be respected.**

Three amendments propose deletion of Article 16 (Amendments 296 (Van Dam), 297 (Tarschys), 298 (Berthu)).

Paragraph 1:

- (1) Three amendments propose adopting the wording of the first sentence of Article 2 of the Additional Protocol to the ECHR ("No person shall be denied the right to education") (Amendments 300 (Friedrich), 302 (Griffiths) and 307 (Goldsmith)).
- (2) Three amendments propose deletion of the reference to "vocational and continuing training" (Amendments 300 (Friedrich), 305 (Loncle) and 312 (Bereijo)).
- (3) One amendment aims to assert the duty of neutrality of free and compulsory education (Amendment 313 (Braibant)); another proposes adding the principle of the secularism of education (Amendment 301 (Berès)).
Add "and training" to the title of the Article (Amendment 299 (Duff)).
- (4) One amendment proposes an alternative wording involving the need for the public authorities to ensure that schools exist in sufficient number (Amendment 310 (Dehousse)).

- (5) One amendment aims to define in a paragraph 1(a) – the aims of education (to diffuse knowledge and to foster understanding between different cultures) (Amendment 316 (Rodota/Paciotti/Manzella)), another adds the need for the progressive teaching of three languages (Amendment 310 (Dehousse)).

Paragraph 2

- (1) Three amendments propose deleting the principle of the free founding of educational establishments (Amendments 303 (Gnauck), 309 (Fayot), 319 (Olsen)); other amendments propose adding either public-authority approval (Amendment 311 (Beissel)) or respect for democratic principles and national laws (Amendments 317 (Bereijo) and 318 (Braibant)).

- (2) Alternative ideas are proposed:

respect for the independence of educational establishments (Amendment 299 (Duff)).

guarantee of equal access (Amendment 300 (Friedrich) or of freedom (Amendment 306 (Korthals Altes)) of access to education.

Paragraph 3

- (1) One amendment proposes deleting the term "education" (Amendment 99 (Duff)) and another amendment the term "instruction" (Amendment 309 (Fayot)).

- (2) Certain amendments make the exercise of parental rights subject to the personality of minors (Amendments 301 (Berès) and 322 (Rodota/Paciotti/Manzella)), the taking into account of children's views (Amendment 323 (Jannson/Brax/Nikula)), respect for the principles of tolerance and democracy (Amendment 310 (Dehousse)) or the laws of the country (Amendment 309 (Fayot)).

Praesidium proposal

Paragraph 2 should read as follows:

"The freedom to found educational establishments shall be guaranteed, with due respect for democratic principles, in accordance with the national laws governing the exercise of this right."

Based on Amendments 312 (Bereijo), 318 (Braibant) and 320 (Hirsch Ballin/Patijn).

Article 17 Freedom of assembly and of association

Everyone has the right to freedom of peaceful assembly and to freedom of association, including the right to form and join trade unions or political parties with others.

Proposed amendments

- (1) Most amendments aim to delete the reference to the right to form and join political parties, in order to avoid an overlap with Article 24 (Amendments 324 (Berthu), 326 (Solé Tura), 327 (Griffiths), 329 (Friedrich), 330 (Neisser) 334 (Bereijo), 335 (Gnauck), 337 (Cisnero), 338 (Rodotta/Paciotti)).
- (2) Two amendments aim to refer to NGOs and the social partners (Amendments 325 (Duff) and 339 (Van den Burg)).
- (3) Certain amendments qualify the right: right not to join (Amendment 333 (Cederschiöld)), right to form democratic parties only (Amendment 342 (Dehousse)) or peaceful associations (Amendment 335 (Gnauck)), need to respect the rights and freedoms guaranteed by the Charter (Amendment 335 (Gnauck)), requirement to pursue lawful aims or lawful means (Amendment 334 (Bereijo)).

- (4) Certain amendments aim to include in the Article restrictions on the exercise of the right, whether by reference to Article 11 of the ECHR (Amendments 332 (Van Dam) or 340 (Korthals Altes)) by opening up the possibility of restricting the right (Amendment 336 (Goldsmith)) or by mentioning categories which are professionally subject to restriction (Amendment 334 (Bereijo)).

Praesidium proposal:

New wording:

"Everyone has the right to freedom of peaceful assembly and to freedom of association with others, in particular in political, trade union and civic matters."

Based on Amendments 325 (Duff), 326 (Solé Tura), 329 (Friedrich), 330 (Neisser), 339 (Van den Burg).

Article 18. Right of access to documents

"Every citizen of the Union or anyone residing in the Union has a right of access to the documents held by the European Parliament, the Council and the Commission".

Proposed amendments

- (1) Most amendments aim to extend the right of access for beneficiaries ("anyone" (Amendments 344 (Duff), 346 (Hirsch Ballin/Patijn), 347 (Buitenweg/Voggenhuber), 351 (Rodottà/Paciotti/Manzella), 353 (Korthals Altes) and 603 (Bonde)), the institutions in respect

of which it is exercised – "EU institutions and subsidiary bodies" (Amendments 344 (Duff), 346 (Hirsch Balin/Patijn), 347 (Buitenweg/Voggenhubert), 351 (Rodatà/Paciotti/Manzella), 352 (Altmaier), 353 (Korthals Altes) and 603 (Bonde)); "Member States where implementing Community legislation" (Amendment 354 (Barros Moura/Azevedo)); type of document ("information") (Amendments 346 (Hirsch Balin/Patijn), 347 (Buitenweg/Voggenhuber), 352 (Altmaier), 353 (Korthals Altes)); documents "held by" (Amendments 347 (Buitenweg/Voggenhuber), 349 (Vitorino), 352 (Altmaier) and 603 (Bonde)).

- (2) Two amendments, on the other hand, are more restrictive. One proposes deletion of Article 18 (Amendment 343 (Friedrich)), while the other allows access to official documents only (Amendment 356 (Beissel)).
- (3) Certain amendments aim to include in the Article a reference to the possible restrictions on the exercise of this right (Amendments 345 (Olsen), 346 (Hirsch Balin/Patijn) and 353 (Korthals Altes)), in particular a reference to Article 255 TEC in the enacting terms (Amendment 348 (Bereijo)) or in the statement of reasons/Part B (Amendment 350 (Goldsmith)).
- (4) One amendment provides for a right of appeal to the Ombudsman in the event of refusal (Amendment 603 (Bonde)).
- (5) One amendment proposes including this Article in Article 27 (Relations with the administration; Amendment 355 (Dehousse)).

Article 19. Data protection

"Everyone has the right to determine for himself whether his personal data may be disclosed and how they may be used."

Proposed amendments

- (1) Some amendments aim to provide a more explicit definition of the scope of data protection:
 - inclusion of the principle of the legitimacy of (the) purposes (pursued) and of proportionality, right to be informed of collection, right to independent verification, right to rectification, authorisation to publish (Amendments 364 (Melograni), 366 (Buitenweg/Voggenhuber), 373 (Rodotà/Paciotti/Manzella), 374 (Dehaene), 378 (Dehousse)).
 - extension of the right to decide to include the collection of personal data (Amendments 364 (Melograni), 365 (Buitenweg/Voggenhuber), 371 (Gnauck), 372 (Vitorino), 373 (Rodotà/Paciotti/Manzella)).
- (2) Certain amendments, however, aim to make this right less absolute (Amendments 357 (Tarschys), 360 (Olsen)) by providing in the enacting terms for the possible collection and disclosure of personal data for legitimate purposes of public interest, as laid down by law (Amendments 362 (Hirsch Ballin/Patijn), 363 (Griffiths), 369 (Neisser)), or in the statement of reasons/Part B (Amendment 377 (Goldsmith)).
- (3) Two amendments aim to merge this Article with Article 12 on respect for private life (Amendments 358 (Friedrich), 375 (Korthals Altes)).
- (4) Two amendments aim to restrict the right to natural persons only (Amendments 370 (Bereijo) and 377 (Goldsmith)) while another amendment suggests on the contrary that it should be made clear that it also extends to legal persons (Amendment 376 (Barros Moura/Azevedo)).

Praesidium proposal

The Article should read as follows:

"Everyone has the right to determine for himself whether personal data concerning him may be collected and disclosed and how they may be used."

Based on Amendments 359 (Duff), 365 (Buitenweg/Voggenhuber), 367 (Berès), 369 (Neisser) and 372 (Vitorino).

NEW ARTICLE 19A: Principle of the primacy of private action (see Amendment 379 (Altmaier))

Article 20. Right to property

"Every person has the right to own, use and dispose of lawfully acquired possessions. No one may be deprived of his possessions, except in the public interest in the cases and subject to the conditions provided for by law and subject to the prior guarantee of fair compensation."

Proposed amendments

- (1) Several amendments aim to delete the requirement of a prior guarantee of the granting of fair compensation in the case of expropriation (Amendments 381 (Olsen), 382 (Solé Tura), 389 (Bereijo), 390 (Gnauck), 392 (Cisneros), 393 (Tarschys), 400 (Beissel)). On the other hand, three amendments propose a more toughly worded text whereby the fixing, indeed the payment, of compensation would occur prior to expropriation (Amendments 380 (Berthu), 395 (Dehaene) and 396 Meyers)).

- (2) Several amendments propose adding the social function of the right to property, more especially the requirement to use it in accordance with the general interest and possible consequent restrictions on the exercise of this right (Amendments 383 (Melograni), 386 (Berès), 389 (Bereijo), 390 (Gnauk), 394 (Rodotà/Paciotti/Manzella), 397 (Van den Burg), 398 (Korthals Altes), 399 (Barros Moura/Azevedo)).
- (3) Three amendments propose that the Article stipulate the right to bequeath property in one's possession (Amendments 380 (Berthu), 387 (Friedrich), 390 (Gnauck)).
- (4) Some amendments suggest keeping the wording of all or part of Article 1 of the Additional Protocol to the ECHR (Amendments 381 (Olsen), 384 (Griffiths), 385 (Hirsch Ballin/Patijn), 391 (Goldsmith), 395 (Dehaene)).

Praesidium proposal

The Article should read as follows:

"Every person has the right to own, use, dispose of and bequeath lawfully acquired possessions. No one may be deprived of his possessions, except in the public interest and in the cases and under the conditions provided for by the law, subject to fair compensation."

Based on Amendments 380 (Berthu), 381 (Olsen), 382 (Solé Tura), 387 (Friedrich), 389 (Bereijo), 393 (Tarschys), 400 (Beissel).

ARTICLE 20A new:

- (5) Prohibition on expulsion (Amendments 401 (Altmaier) and 417 (Friedrich)).
- (6) Rights of minorities (Amendments 295 (Dehousse), 401 (Altmaier), 418 (Friedrich), 435 (Griffiths), 470 (Einem/Holoubek), 496 (Barros Moura/Azevedo), 597 (Rack), 598 (Voggenhuber) and 604 (Bonde)).

Article 21. Right to asylum and expulsion

- 1. Nationals of third countries shall have the right to asylum in the European Union in accordance with the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees.**
- 2. Collective expulsion of aliens is prohibited.**

Proposed amendments:**Article 21(1):**

- (1) Several amendments aim at opening up right of asylum to "everyone" in order to cover citizens of the Union, stateless persons, or both (Amendments 402 (Goldsmith), 404 (Olsen), 404a (Melograni), 406 (Buitenweg/Voggenhuber), 407 (Meyer/Leinen/Van den Burg), 409 (Friedrich), 410 (Neisser), 411 (Jansson/Brax/Nikula), 412 (Gnauck), 413 (Kaufmann), 415 (Loncle), 416 (Dehaene), 423 (Hirsch Ballin/Patijn), 427 (Loncle), 429 (Paciotti/Manzella)).

- (2) Several amendments note that asylum is not an individual right and it is the right to seek/apply for asylum which should be recognised (Amendments 402 (Goldsmith), 405 (Griffiths), 422 (O'Kennedy), 424 (Bereijo), 425 (Cisneros), 428 (Korthals Altes).
- (3) Other amendments pursue a similar aim, stating that "politically persecuted persons shall be protected in accordance with the rules of the 1951 Geneva Convention" (Amendments 409 (Friedrich), 412 (Gnauck), 415 (Loncle), 426 (Altmaier), 427 (Loncle)).
- (4) Some amendments try to clarify the reasons for granting refugee status by restricting it to those who are the object of political persecutions (Amendments 409 (Friedrich), 412 (Gnauck), 426 (Altmaier)). Others, on the other hand, aim to broaden the reasons to persecution and inhuman and degrading treatment (Amendments 403 (Duff), 406 (Buitenweg/Voggenhuber), 407 (Meyer/Leinen/Van den Burg), 413 (Kaufmann), 419 (Dehousse)) or to make particular reference to reasons for asylum that are specific to women (Amendments 406 (Buitenweg/Voggenhuber), 407 (Meyer/Leinen/Van den Burg), 413 (Kaufmann), 419 (Dehousse)).
- (5) Various additions are also suggested:
 - . defining the minimum procedural requirements for processing applications for asylum (Amendment 403 (Duff)) and the social cover asylum seekers should receive during that process (Amendment 406 (Buitenweg/Voggenhuber)).
 - . stating that asylum is granted in each Member States and not in the Union as an area in itself (Amendment 404 (Melograni)).
 - . ensuring that the reference is not restricted to the 1951 Convention and the 1967 Protocol thereto (Amendments 404 (Melograni), 108 Berès, 414 (Vitorino)).
 - . add the right to reunion with the family (Amendment 406 (Buitenweg/Voggenhuber)).
 - . make provision for asylum seekers to be put under an obligation to adhere to the democratic values and fundamental laws of the Union (Amendment 419 (Dehousse)).

- (6) One amendment suggests that the entire article be deleted (Amendment 402 (Goldsmith)).

Article 21(2)

- (1) Two amendments suggest that the prohibition should not be restricted to aliens alone (Amendments 414 (Vitorino), 432 (Mombaur)).
- (2) One amendment suggests splitting asylum and the ban on expulsion into two separate articles (Amendment 414 (Vitorino)).
- (3) Three amendments propose the deletion of paragraph 2 (Amendments 402 (Goldsmith), 430 (Berthu) and 432 (Mombaur)).
- (4) One amendment envisages procedural assurances in the event of individual expulsion (Amendment 411 (Jansson/Brax/Nikula)).
- (5) One amendment sets out the ban in detail (Amendment 419 (Dehousse)).
- (6) Several amendments suggest including in the same article the ban on collective expulsions and the ban on individual expulsions/extraditions to a State which practices torture, the death penalty or any other inhuman treatment (Amendments 406 (Buitenweg/Voggenhuber), 409 (Friedrich), 412 (Gnauck), 413 (Kaufmann), 433 (Rodota/Paciotti/Manzella)).
- (7) One amendment envisages the possibility, subject to the guarantees recognised by international law, of expelling illegal immigrants or offenders (Amendment 421 (Berthu)).

Praesidium proposal:

To read as follows:

The right of asylum shall be guaranteed, in accordance with the Treaty establishing the European Community and with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and other relevant treaties.

Based on Amendments 404 (Olsen), 404a (Melograni), 410 (Neisser), 414 (Vitorino), 415 (Loncle), 416 (Dehaene), 428 (Korthals Altes), 429 (Rodotà/Paciotti/Manzella).

Article 21a

New article taking over part of Article 4 and to read as follows

- 1. Collective expulsions are prohibited.*
- 2. No one may be expelled or extradited to a State where he could be subjected to the death penalty, torture or other inhuman treatment.*

Based on Amendments 82 (Korthals Altes), 409 (Friedrich), 412 (Gnauck), 414 (Vitorino), 432 (Hirsch Ballin/Patijn), 433 (Rodotà/Paciotti/Manzella).

ARTICLE 22: Equality and non-discrimination (36 amendments)

Article 22. Equality and non-discrimination

- 1. Any discrimination based on sex, race, colour or ethnic or social origin, language, religion or belief, political opinion, association with a national minority, property, birth, disability, age or sexual orientation shall be prohibited.**
- 2. Within the scope of application of the Treaty establishing the European Community and of the Treaty on European Union, any discrimination on grounds of nationality shall be prohibited.**

- 3. The Union shall seek to eliminate inequalities and to promote equality between men and women. In particular equality between the sexes shall be ensured when setting pay and other working conditions.**

Proposed amendments

- (1) One amendment seeks to limit this Article to equality between men and women (Amendment 436 (Fayot)).
- (2) One amendment proposes inserting this Article in to Article 1a (Amendment 443 (Rodotà/Paciotti/Manzella)).

Article 22(1)

- (1) Several amendments favour presenting a list of forms of prohibited discrimination as examples (Amendments 439 (Jansson/Brax/Nikula), 442 (Cederschiöld), 446 (Rodotà/Paciotti/Manzella), 449 (Cisneros), 453 (Melograni), 454 (Buitenweg), 455 (Voggenhuber/Buitenweg), 456 (Haenel)).
- (2) The following additions to the list are proposed:
 - Belonging to a regional or cultural minority (Amendment 434 (Duff))
 - Nationality (Amendments 435 (Griffiths), 450 (Kaufmann))
 - Genetic characteristics, health status (Amendments 437 (Berès 440 (Vitorino))
 - (Political opinion) or any other opinion (Amendment 440 (Vitorino))

- Belonging to an ethnic, religious or linguistic minority (Amendment 439 (Jansson/Brax/Nikula))
 - Civil status (Amendment 454 (Buitenweg))
- (3) Deletions have been proposed:
- Include only the forms of discrimination mentioned in Article 14 of the ECHR (Amendment 441 (Goldsmith))
 - Sexual orientation (Amendment 444 (Buttiglione))
- (4) One amendment seeks to limit the principle of non-discrimination to those rights enshrined in the Charter (Amendment 441 (Goldsmith)).

Article 22(2)

- (1) Three amendments seek to restrict the benefit of the prohibition of discrimination based on nationality to citizens of the European Union only (Amendment 439 (Jansson/Brax/Nikula), 441 (Goldsmith) and 451 (Bereijo)). Certain amendments propose on the contrary that nationality be added to the list of prohibited discriminations in Article 22(1) thereby extending the benefit to all people (Amendments 435 (Griffiths) and 450 (Kaufmann)). Two other amendments suggest using the exact wording of Article 12 TEC ("without prejudice to any special provisions contained in the Treaties") (Amendments 440 (Vitorino) and 447 (Olsen)).
- (2) One amendment proposes the deletion of paragraph 2 (Amendment 457 (Kaufmann)).

Article 22(3)

- (1) Certain amendments propose mentioning equal treatment of women and men (Amendment 445 (Maij-Weggen)) (Amendment 438 (Friedrich), 468 (Mombaur)).
- (2) Five amendments propose the deletion of paragraph 3 (Amendments 442 (Cederschiöld), 447 (Olsen), 461 (Tarschys), 465 (Hirsch Ballin/Patijn) and 467). Others ask only for the deletion of the first sentence (Amendments 465 (Hirsch Ballin/Patijn)) or the second sentence (Amendments 440 (Vitorino), 458 (Berthu), 460 (Bereijo) and 469 (Beissel)).
- (3) Alternative formulations of the principle of positive discrimination, expressed in the first sentence of paragraph 3, were proposed (Amendments 436 (Fayot), 446 (Kothals Altes), 464 (Solé Tura), 469 (Beissel), 470 (Einem/Holoubek)).
- (4) Alternative wordings were also proposed for the second sentence of paragraph 3 (Amendments 435 (Griffith), 445 (Maij-Weggen), 462 (Cisneros), 463 (Barros Moura/Azevedo), 464 (Solé Tura)).

Praesidium proposal

The Article is to read as follows:

1. *Any discrimination based on aspects such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, association with a national minority, property, birth, disability, age or sexual orientation shall be prohibited.*
2. *Within the scope of application of the Treaty establishing the European Community and of the Treaty on European Union, and without prejudice to the special provisions of those treaties, any discrimination on grounds of nationality shall be prohibited.*

3. *The Union shall seek to eliminate inequalities and to promote equal status for men and women. In particular equality between the sexes shall be ensured when setting pay and other working conditions.*

Based on Amendments 437 (Berès), 439 (Jansson/Brax/Nikula), 440 (Vitorino), 442 (Cederschiöld), 453 (Melograni), 454 (Buitenweg)

Article 23. Children's rights

Children must be treated as equal individuals; they must be allowed to influence matters pertaining to their person to a degree corresponding to their maturity

Proposed amendments

- (1) Several amendments seek to insert the concept of the "best interest of the child", enshrined in the Convention on the Rights of the Child and the right to protection and care (Amendments 474 (Vitorino), 475 (Olsen), 476 (Valetto/Melograni), 478 (O'Kennedy), 479 (Hirsch Ballin/Patijn), 482 (Gnauck), 484 (Hermange), 485 (Cisneros), 486 (Tarschys), 488 (Maij-Weggen), 490 (Haenel), 493 (Korthals Altes)).
- (2) Two amendments seek the deletion of the Article (Amendments 471 (Goldsmith) and 472 (Berthu)).
- (3) There is a proposal for an explicit reference to protection from all threats to intellectual development and psychological and sexual integrity of the child (Amendment 487 (Rodotà/Paciotti/Manzella), 491 (Dehaene)) and against all harmful and exploitative forms of child labour (Amendment 492 (Van den Burg)).

- (4) One amendment suggested placing this Article after Article 13 on family life (Amendment 494 (Dehousse)).
- Shorter alternative versions were also proposed (Amendments 473 (Duff), 477 (Griffith), 480 (Berès), 481 (Bereijo), 489 (Loncle)).

Praesidium proposal

This Article is to read as follows:

- 1. Children shall have the right to protection and to the care necessary for their well-being. They may express their opinions freely on matters which concern them and these opinions shall be taken into consideration in a manner appropriate to their age and maturity.*
- 2. In all decisions relating to children, whether taken by public or private welfare bodies, the first concern shall be the child's best interests.*

Based on Amendments 474 (Vitorino), 476 Valetto/Melograni), 478 (O'Kennedy), 479 Hirsch Ballin/Patijn), 484 (Hermange), 485 (Cisneros), 486 (Tarschys), 487 (Rodotà/Paciotti/Manzella), 489 (Loncle), 490 (Haenel), 491 (Dehaene) and 493 (Korthals Altes)

NEW ARTICLE 23A

- (1) Principle of democracy (Amendments 495 (Duff), 519 (Berthu), 520 (Berthu), 521 (Berthu), 522 (Berthu) and 523 (Berthu)).
- (2) National and regional identities (Amendments 496 (Barros Moura/Azevedo) and 518 (Berthu)).
- (3) Right to nationality (Amendment 497 (Rodotà/Paciotti/Manzella)).

Article 24. Political parties

Every citizen has the right to form a political party at the level of the Union and everyone has the right to join such a party. These political parties must respect the rights and freedoms guaranteed by this Charter.

Proposed amendments

- (1) Several amendments propose that this Article be deleted (Amendments 498 (Korthals Altes), 499 (Tarschys), 500 (Cisneros), 501 (Goldsmith), 502 (Kaufmann), 503 (Hirsch Ballin/Patijn), 504 (Van Dam), 505 (Berthu), 506 (Einem/Holoubek)).
- (2) One amendment argues for a requirement for political parties to have a democratic internal structure (Amendment 517 (Barros Moura/Azevedo)).
- (3) One amendment proposes dispensing with the requirement that political parties observe the rights and freedoms guaranteed by the Charter (Amendment 510 (Friedrich)).
- (4) One amendment seeks to extend the right to form a political party and to join a political party to everyone (Amendment 516 (Dehaene)); another restricts the right to join to aliens resident in the Union (Amendment 513 (Loncle)).
- (5) Several amendments propose that "Union" or "of the Union" be added to "citizens" (Amendments 509 (Melograni), 510 (Friedrich), 511 (Bereijo), 512 (Gnauck), 513 (Manzella), 514 (Loncle), and 515 (Mombaur)).

Praesidium proposal

After "Every citizen" add "of the Union".

Based on Amendments 510 (Friedrich), 511 (Bereijo), 514 (Loncle), and 515 (Mombaur).

Article 25. Right to vote and to stand as a candidate for the European Parliament

- 1. Members of the European Parliament shall be elected by direct universal suffrage by free and secret ballot.**
- 2. Every citizen of the Union has the right to vote and to stand as a candidate in the Member State in which he resides under the same conditions as nationals of that State.**

Proposed amendments

- (1) Three amendments are designed to give the right to vote and to stand for election to third-country nationals legally resident for 5 years in the territory of the Member States (Amendments 525 (Meyer/Leinen/Martin/Berès/Van den Burg), 534 (Buitenweg/Voggenhuber), 536 (Kaufmann)).
- (2) Two amendments propose adding that universal suffrage shall be equal (Amendments 528 (Friedrich) and 530 (Einem/Holoubek)) and one amendment that elections shall be held regularly (Amendment 529 (Melograni)).
- (3) One amendment suggests merging Articles 25 and 26 (Amendment 525 (Meyer/Berès/Leinen/Martin/Van den Burg)).

- (4) Three amendments propose that it be stated in this Article that exercise of this right is subject to conditions (Amendments 526 (Goldsmith) and 537 (Van Dam), or could be the subject of derogations (Amendment 533 (Fayot)).

Praesidium proposal

Reverse the order of paragraphs 1 and 2.

In paragraph 2 after "candidate" add "for the European Parliament".

Based on Amendment 532 (Friedrich).

Article 26. Right to vote and to stand as a candidate in municipal elections

Every citizen of the Union has the right to vote and to stand as a candidate at municipal elections in the Member State in which he resides under the same conditions as nationals of that State.

Proposed amendments

- (1) Four amendments want it stated in the Article that exercise of this right is subject to conditions (Amendments 538 (Van Dam), 542 (Goldsmith) and 544 (Manzella)) or could even be subject to derogations (Amendment 539 (Fayot)).
- (2) One amendment suggests extending the right to persons resident in the Union (Amendment 541 (Kaufmann)).

(3) Repeat the wording of Article 19(1) TEC (Amendments 540 (Bereijo), 542 (Goldsmith)).

NEW ARTICLE 26A: Right to diplomatic protection (Amendments 545 (Duff) and 595 (Dehousse))

Praesidium proposal

Diplomatic and consular protection

Every citizen of the Union shall, in the territory of a third country in which the Member State of which he is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that Member State.

Based on Amendment 545 (Duff) and reproducing the first sentence of Article 20 TEC.

Article 27. Relations with the administration

- 1. Every person has the right to have his affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union.**
- 2. This right includes:**
 - the right of every person to be heard before any individual measure which would affect him adversely is taken in relation to him;**
 - the right of every person to have access to his file, while respecting the legitimate interests of confidentiality and of business secrecy;**
 - the obligation of the administration to give reasons for its decisions.**
- 3. Every person may address the institutions of the Union in one of the official languages of the Union and must have an answer in that language.**

Proposed amendments

- (1) One amendment proposes merging Articles 27, 28 and 29 into one single article (Amendment 601 (Goldsmith)).
- (2) Two amendments aim to extend the scope of paragraph 1 to Member States where they are acting within the scope of Community law (Amendments 547 (Vitorino) and 548 (Altmaier)). One amendment on the other hand, aims to make clear that the obligation to give reasons for decisions lies solely with the institutions and bodies of the Union (Amendment 550 (van Dam)).
- (3) Two amendments aim to define rules of conduct for the institutions and bodies of the Union before a decision is taken (e.g. gathering of relevant facts, prohibition of the misuse of powers, proportionality) (Amendments 599 (Hirsch Ballin/Patijn) and 600 (Korthals Altes/Patijn)).
- (4) Two amendments restrict the obligation to give reasons for individual decisions (Amendment 545a (Herzog)), or even to negative decisions only (Amendment 554 (Tarschys)).
- (5) One amendment proposes the deletion of paragraph 2 (Amendment 555 (Rodota/Paciotti/Manzella)).
- (6) One amendment proposes transforming the obligations of the administration into rights for everyone (Amendment 545b (Bereijo)); the same amendment adds to paragraph 2 a series of procedural guarantees where an administrative decision carries sanctions or has an adverse effect; it also adds a paragraph 3 on the civil liability of the administration.

- (7) One amendment suggests restricting the possibility (Amendment 558 (Rodotta/Paciotti/Manzella)) suggests presenting it as a right) for persons to address the institutions of the Union in one of the official languages of the Union to citizens of the Union only (Amendment 557 (Mombaur)); one amendment proposes replacing the word "address" by the word "write" (Amendment 601 (Goldsmith)).

Praesidium proposal

Change the title to "Right to good administration"

- A. Paragraph 3 to begin as follows

"Every person has the right to address..."

Based on Amendment 555 (Rodota/Paciotti/Manzella) and on the amendment of Mr Dehaene

Article 28. Ombudsman

Every citizen and every natural and legal person residing or having its registered office in a Member State has the right to refer to the Ombudsman of the Union cases of maladministration by the institutions and bodies of the Union, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role.

Proposed amendments

- (1) Three amendments propose extending the right to apply to the Ombudsman to everyone (Amendments 562 (Hirsch Ballin/Patijn), 564 (Buitenweg), 570 Korthals Altes)) or secondarily to nationals of third countries who are established outside the Union and maintain relations of governance with the Union (Amendment 571 (Dehousse)). One amendment proposes that the right should not be extended to legal persons (Amendment 567 (Cisneros)), another suggests a horizontal provision for legal persons (Amendment 565 (Gnauck)).
- (2) One amendment proposes that the cases referred should cover acts of agents of the Union (Amendment 561 (Duff)), a second suggests restricting these to acts of judicial bodies (Amendment 562 (Hirsch Ballin/Patijn)), and a third proposes excluding acts of the European Parliament and of the Court of Auditors (Amendment 568 (Buttiglione)).
- (3) One amendment proposes also placing the Ombudsman under an obligation to draw up an annual report (Amendment 571 (Dehousse)).
- (4) Another amendment proposes that provision be made in Article 29 for supervision of the role of the Ombudsman by the European Parliament Committee on Petitions (Amendment 580 (Buttiglione)).

Praesidium proposal

Add "of the Union" after "citizen"

Based on Amendments 565(Gnauck) and 569(Dehaene).

Article 29. Right to petition

Every citizen and every natural and legal person residing or having its registered office in a Member State has the right to petition the European Parliament.

Proposed amendments

- (1) Three amendments give every person the right to petition (Amendments 574 (Hirsch Ballin/Patijn), 575 (Buitenweg) and 582 (Korthals Altes)). One amendment proposes however that legal persons be excluded (Amendment 579 (Cisneros)); two others suggest adding a horizontal provision relating to legal persons (Amendments 576 (Friedrich) and 577 (Gnauck)).
- (2) Three amendments propose limiting the right to petition to matters which come within the Union's fields of activity and which directly or individually affect the person intending to exercise that right. (Amendments 573 (Olsen), 576 (Friedrich), 577 (Gnauck)).
- (3) Two amendments propose instituting the right to petition any institution or body of the Union (Amendments 574 (Hirsch Ballin/Patijn) and 582 (Korthals Altes)).
- (4) One amendment adds that this right shall be exercised under the conditions and limitations laid down in Article 194 of the Treaty (Amendment 573 (Olsen)).

Praesidium proposal

After "citizen" add "of the Union"

Based on Amendment 581 (Dehaene).

Article 30. Freedom of movement

Every citizen of the Union has the right to move and reside freely within the territory of the Member States.

Proposed amendments

- (1) Several amendments aim at extending freedom of movement to nationals of third countries either legally resident (Amendments 583 (Berès), 588 (Hirsch Ballin/Patijn), 591 (Kaufmann)), resident for 5 years or for a long time (Amendments 584 (Einem/Holoubek), 589 (Buitenweg/Voggenhuber)) or who have been granted refugee status (Amendment 589 (Buitenweg/Voggenhuber)).
- (2) Some amendments aim at making provision in this article for the right to be exercised subject to the restrictions and conditions laid down in the Treaty establishing the European Community (Amendments 587 (Olsen) and 590 (Bereijo)) or to set this out in the statement of reasons/Part B (Amendments 593 (Goldsmith) and 594 (Tarschys)). One amendment makes provision for freedom of movement to be exercised subject to national controls designed to preserve liberty and security of persons (Amendment 585 (Berthu)).
- (3) One amendment proposes adding the freedom to leave and then return to the territory of the Member States in a second paragraph (Amendment 584 (Einem/Holoubek)).
- (4) Two amendments propose adding the freedom to settle to the right to move and reside freely (Amendments 589 (Buitenweg/Voggenhuber) and 591 (Kaufmann)); another proposes spelling out the freedoms (live, work, seek work, study) (Amendment 586 (Duff)).

NEW HORIZONTAL ARTICLES:

- (1) Possibility of extending citizenship rights to any legal or natural person (Amendment 596 (Duff)).
 - (2) Interpretation and determination of the scope of rights and freedoms in the Charter which are similar to those laid down in the ECHR (Amendment 582 (Korthals Altes)).
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ENTWURF DER CHARTA DER GRUNDRECHTE DER EUROPÄISCHEN UNION**fundamental.rights@consilium.eu.int**

Brüssel, den 15. Juni 2000**CHARTE 4367/00****CONTRIB 230****ÜBERMITTLUNGSVERMERK**

Betr.: Entwurf der Charta der Grundrechte der Europäischen Union

Finden Sie bitte nachstehend einen Ergänzungsvorschlag zu den Identitätsrechten, vorgelegt von Herrn Wilhelm Brauner, Vertreter des Österreichischen Parlaments. ¹

¹ Dieser Text wurde nur in deutscher Sprache übermittelt.

Wien, am 15. Juni 2000

Prof. Dr. Wilhelm Brauner

*Ersatz-Mitglied des Konvents zur Erarbeitung eines Entwurfs einer
Grundrechte-Charta der Europäischen Union*

Herrn
Roman Herzog
Vorsitzender des Konvents

Betrifft: Ergänzungsantrag zur Grundrechte-Charta

Sehr geehrter Herr Vorsitzender!

In meinem Namen sowie dem des Konvents-Mitglieds Abgeordneter zum Nationalrat Dr. Harald Ofner unterbreite ich den folgenden Antrag, den Charta-Entwurf um die hier festgelegten Minderheitenrechte zu ergänzen.

Hochachtungsvoll

(o. Univ.-Prof. Dr. W. Brauner)

Ergänzungsvorschlag Ofner / Brauner zum Vorschlag der Präsidentschaft zu einem EU-Grundrechtskatalog.

Artikel ... Identitätsrechte

(1) Jede Person hat das Recht auf Achtung ihrer Identität in ethnischer, sprachlicher, kultureller, religiöser und weltanschaulicher Hinsicht.

(2) Das Recht auf Identität gewährleistet insbesondere die unbeschränkte und ungeschmälerte Ausübung der individuellen und gemeinschaftsbezogenen Grundrechte auf nationaler Ebene sowie auf der Ebene der Union.

Erläuterungen allgemein: Bewußt wird davon abgesehen, die Identitätsrechte sowie die Sprachenrechte als Minderheiten-(= Volksgruppen-, Nationalitäten-) rechte zu definieren. Sie sollen jeder Gruppe unbeschadet ihrer Größe zukommen. Es soll dadurch auch dem Denken in Minderheiten und Mehrheiten entgegengewirkt werden. Die Aufnahme der vorgeschlagenen Bestimmungen erscheint deshalb geboten, weil erstens Minderheitenschutzbestimmungen zahlreiche Verfassungen, auch solche von EU-Mitgliedsstaaten aufweisen, wie weiters vor allem in Hinblick auf Beitrittswerber aus Osteuropa. Hingewiesen sei auf folgenden Satz in der EU-Broschüre „Das Europäische Parlament und die Verteidigung der Menschenrechte“ (S. 13): „Bei der Unterstützung der Stärkung der aufstrebenden Demokratien Ost- und Mitteleuropas hat das Parlament insbesondere der Lage von Minderheiten Rechnung getragen“.

Die vorgeschlagenen Artikel sind als subjektive öffentliche Rechte konzipiert. Zusätzliche Zielbestimmungen erscheinen angesichts internationaler Verpflichtungen etwa aufgrund des „Rahmenübereinkommens zum Schutz nationaler Minderheiten“ wie auch der „Europäischen Charta der Regional- oder Minderheitensprachen“ für nicht notwendig beziehungsweise wegen der Notwendigkeit einer starken Detaillierung für nicht angebracht.

Erläuterung zu Abs. 1: Die Textierung geht von der Überlegung und Tatsache aus, daß sich die angeführten Identitätsbezüge nicht decken müssen. Der Gebrauch beziehungsweise das Bekenntnis zu einer bestimmten Muttersprache muß nicht identisch mit dem zu einer bestimmten Ethnie, die Zugehörigkeit zu einer bestimmten Kultur kann sprachen- und ethnübergreifend sein.

Erläuterung zu Abs. 2: Die Verwirklichung der Identität besteht in der Regel in der Ausübung individueller Grundrechte wie etwa des Rechts auf freie Meinungsäußerung oder auch des sozialen Grundrechts auf Bildung wie ferner im Gebrauch gemeinschaftsbezogener Grundrechte wie etwa der freien Vereinsbildung.

Artikel ... Sprachenrechte

- (1) Jede Person hat das Recht auf den Gebrauch ihrer Sprache im privaten und geschäftlichen Verkehr, auch in der Öffentlichkeit, sowie auf das Erlernen dieser Sprache an privaten Bildungsanstalten.**

- (2) Jede einer autochthonen ethnischen oder einer autochthonen sprachlichen Gruppe angehörende Person hat das Recht, bei ausreichendem Bedarf ihre Sprache an öffentlichen Bildungsanstalten jedenfalls im Gebiet dieser Gruppen zu erlernen. Sie hat ferner das Recht, diese Sprache im Verkehr mit Gerichten und Verwaltungsbehörden zu gebrauchen, ohne daß ihr dadurch ein zusätzlicher Kostenaufwand entsteht.**

- (3) Die Sprachenrechte gelten sinngemäß auch im Bezug auf Gebärdensprachen.⁷**

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 15 June 2000 (19.06)**CHARTE 4371/00****CONVENT 38****PRAESIDIUM NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

- Contribution from the former President of the Federal Republic of Germany, Roman Herzog, relating to Articles 1 to 7
-

Please find attached a revised version of Articles 1 to 7 from the former President of the Federal Republic of Germany. In producing his draft, he has drawn to a very large extent on the texts and comments of the Praesidium.

As the German translation of "statement of reasons", he has chosen to use "**Erläuterungen**" ("comments") instead of "Begründung".

President Herzog has introduced the statements of reasons using Lord Goldsmith QC's wording where available. In addition, he has in each case included in the statement of reasons a paragraph on the extent to which fundamental rights may be limited.

Article 1. (previously Article 1(1)). Dignity of the human person

The dignity of the human person must be respected and protected.

Statement of reasons

The dignity of the human person is the real basis of fundamental rights. For that reason the 1948 Universal Declaration of Human Rights enshrined this principle in its preamble as follows:

"Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.."

Consequently, Article 1 produces the following effects, inter alia:

1. None of the rights laid down in this Charter may be used to harm the dignity of another person.
2. The dignity of the human person is part of the actual substance of the rights laid down in this Charter and, pursuant to the second sentence of Article 47, must therefore be respected, even where a right is restricted by legislation.

Article 2 (previously Article 1(2)). Equality before the law.

Everyone is equal before the law.

Statement of reasons

Article 2 corresponds to a right which has been included in all European constitutions since the 1789 Declaration of Human and Civil Rights and has also been recognised by the Court of Justice in a judgment as a basic principle of Community law (Judgment of 13 November 1984, Racke, Case 283/83 [1984] ECR 3791).

Article 2 therefore goes beyond Article 14 of the European Convention on Human Rights, which simply prohibits discrimination with regard to the enjoyment "of the rights and freedoms set forth in this Convention".

Article 3 (previously Article 2) Right to life

- 1. Everyone has the right to life.**
- 2. No one shall be condemned to the death penalty, or executed.**

Statement of reasons

1. The content of paragraph 1 corresponds to the first sentence of Article 2(1) of the European Convention on Human Rights, which reads as follows:
"1. Everyone's right to life shall be protected by law..."
The second sentence of the provision, which referred to the death penalty, was superseded by Article 1 of Protocol 6 to the European Convention on Human Rights, which reads as follows:
"The death penalty shall be abolished. No-one shall be condemned to such penalty or executed."
Article 3(2) of the Charter is based on that provision.
2. Article 3 of the Charter may, pursuant to Article 47 thereof, be subject to limitations within certain limits. However, these limitations may "not exceed those permitted by the European Convention for the Protection of Human Rights and Fundamental Freedoms." Limitations are therefore only permissible in the context of the following provisions:
 - (a) Article 2(2) of the European Convention on Human Rights:
"Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

- (a) in defence of any person from unlawful violence;
 - (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
 - (c) in action lawfully taken for the purpose of quelling a riot or insurrection."
- (b) Article 2 of Protocol No 6 to the European Convention on Human Rights:
"A State may make provision in its law for the death penalty in respect of acts committed in time of war or of imminent threat of war; such penalty shall be applied only in the instances laid down in the law and in accordance with its provisions..."

Article 4 (previously Article 3)

Right to respect for the integrity of the human person

- 1. Everyone has the right to respect for his physical, genetic and mental integrity.**
- 2. In the fields of medicine and biology, the following principles must be respected in particular:**
 - **prohibition of eugenic practices, in particular those concerned with the selection and instrumentalisation of persons;**
 - **respect for the informed consent of the patient;**
 - **prohibition of making the human body and its products a source of financial gain;**
 - **prohibition of the reproductive cloning of human beings.**

Statement of reasons

The principles of this Article are already included in the Convention on Human Rights and Biomedicine. The Charter does not set out to depart from these principles.

The list in paragraph 2 is not exhaustive, but includes only those rules which are absolutely indispensable. They therefore leave open the possibility of taking account of any progress in this area.

Article 5 (previously Article 4). Prohibition of torture and inhuman treatment

No one shall be subjected to torture or to inhuman or degrading treatment.

Statement of reasons

The right in Article 5 is the right guaranteed by Article 3 of the European Convention on Human Rights, which has the same wording.

No limitations are admissible pursuant to Article 47(4) of the Charter.

Article 6 (previously Article 5). Prohibition of slavery and forced labour

- 1. No one shall be held in slavery or servitude.**
- 2. No one shall be required to perform forced or compulsory labour.**
"The term "forced or compulsory labour" shall not include services required by law of citizens for civic reasons in case of an emergency or disaster and military service or the work ordinarily required of persons imprisoned.
- 3. Trafficking in human beings is prohibited**

Statement of reasons

The right in Article 6 is the right guaranteed by Article 4(1) of the European Convention on Human Rights, which has the same wording.

Pursuant to Article 47 of the Charter, limitations of this right may "not exceed those permitted by the European Convention for the Protection of Human Rights and Fundamental Freedoms."

Consequently:

1. Paragraph 1 may not be limited at all.
2. Paragraph 2 may be limited only to the extent that Article 4(3) of the European Convention on Human Rights defines the prohibition of forced or compulsory labour. That provision reads as follows::

"For the purpose of this article the term "forced or compulsory labour" shall not include:

- (a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;
- (b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;
- (c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;
- (d) any work or service which forms part of normal civic obligations."

Paragraph 3 stems directly from the principle of human dignity and takes account of recent developments in crime.

Article 7 (previously Article 6)

Right to liberty and security

Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in cases prescribed by law and in accordance with a procedure prescribed by law.

Statement of reasons

The rights in Article 7 are the rights guaranteed by Article 5 of the European Convention on Human Rights.

Pursuant to Article 47 of the Charter, Article 7 may be restricted only within certain limits and under certain circumstances. However, such limitations may "not exceed those permitted by the European Convention for the Protection of Human Rights and Fundamental Freedoms " Therefore, the only limitations which are permissible are those in the context of Article 5 of the European Convention on Human Rights, which reads:

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
 - (a) the lawful detention of a person after conviction by a competent court;
 - (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
 - (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
 - (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

- (e) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.
2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.
 3. Everyone arrested or detained in accordance with the provisions of paragraph 1.c of this article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.
 4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.
 5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation."

Insofar as the Charter is applied in the Union context, the rights laid down in Article 7 must be particularly observed if, pursuant to Title VI of the Treaty on European Union, the Union adopts framework decisions to harmonise criminal law.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

**Brussels, 16 June 2000 (20.06)
(OR. fr)****CHARTE 4372/00****CONVENT 39****PRAESIDIUM NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union
- Amendments submitted by the members of the Convention regarding social rights and the horizontal clauses
(Reference doc.: CHARTE 4316/00 CONVENT 34)

Delegations will find attached the amendments submitted by members of the Convention.

Article 31

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 31

Submitted by: Jürgen Gnauck, Minister of Federal and European Affairs, Thuringia

Proposed text:

Deleted.

Reasons:

The proposal and the Statement of Reasons raise a number of questions and, accordingly, the introductory Article 31 should be deleted. For example, it leaves unresolved the question of what 'rights' and 'principles' are, the relationship with the horizontal provisions of Article 46 and to what extent a clear delineation can be made between the Charter and the 'political objectives' excluded by the Cologne mandate. In particular, it is not clear which of the social rights that are listed can be enforced at law, i.e. on an individual basis, and why in accordance with the Statement of Reasons only the legislative is to be bound by the fundamental rights. All of these issues will need to be discussed in depth.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 31

Submitted by: Pervenche BERÈS

Proposed text:

Delete this article.

Reasons:

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 31

Submitted by: Andrew Duff MEP

Proposed text:

Delete this article

Reasons:

The draft article duplicates other horizontal clauses, is not a fundamental right and therefore has no place here. Instead, the relevant Treaty provisions should be cited in the definitions, including Article 136.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 31

Submitted by: Jo Leinen

Proposed text:

Delete article.

Reasons:

The article contains limitations which are in any case already covered by Article 46, and gives the impression that special limitations exist on social rights. This is contrary to the idea of the indivisibility and universality of the rights enshrined in the Charter.

=====

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 31. Social Rights and principles

Submitted by: Lord Goldsmith QC

Proposed text:

Delete this article.

Reasons:

This article purports to impose far-reaching obligations on Member States to observe the economic and social rights listed and an obligation to implement the social principles set out in this Charter.

This is a wholly new approach when the Convention has, since its creation, been acting on the basis that the Charter is only to be addressed to EU Institutions and to Member States (at most) when acting to implement EC law and as a restriction on their powers. Further, there is no warrant in the Cologne mandate for imposing obligations or restrictions on the social partners who are not the addressees of the Charter.

=====

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**Proposed amendment t0: Article 31**

Submitted by: Ieke van den Burg

Proposed text:

Delete as a separate article

Reasons:

It is not necessary and contrary to the generally acknowledged indivisibility of fundamental rights to formulate separate horizontal clauses for the social and economic rights. Elements of the Proposed text may be included in art. 46.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 31. Social rights and principles

Submitted by: Prof. Daniel Tarschys, Sweden

Proposed text:

Delete this article.

Reasons:

The social partners are independent organisations, not part of the EU institutions or bodies. Most of the substance is already covered in Article 46.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 31

Submitted by: Charlotte Cederschiöld

Proposed text:

Delete

Reasons:

How to resolve the problems currently dealt with by social assistance must remain a national issue. The Charter must not prevent new models and modern structures emerging, and Article 31 therefore appears to be too far-reaching especially in the light of the statement of reasons to the article.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article: 31

Submitted by: Rodotà, Paciotti and Manzella

Proposed text: Delete article.

Reasons:

This article is recast in new Article 46a.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 31

Submitted by: Ernest M.H. Hirsch Ballin, representing the First Chamber of the States-General of the Netherlands

Proposed text:

Deleted.

Reasons:

The scope needs to be apparent from a general clause for the Charter as a whole. Any legally binding effect is apparent from the text of the individual provisions. Moreover, the proposed text of Article 31 suggests, wrongly, that it is legally binding on the social partners.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Articles 31 and 46

Submitted by: José Barros Moura and Maria Eduarda Azevedo, Members of the Portuguese National Assembly

Proposed text:

Maria Eduarda Azevedo is in favour of merging Articles 31 and 46.

Reasons:

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 31

Submitted by: Win Griffiths, MP

Proposed text:

The institutions and bodies of the Union and the Member States, exclusively with the scope of Community law, shall observe the rights set out in this Charter.

Reasons:

If such an article is needed, (given the proposed Article 46), it should refer to all rights and not just specify social rights.

=====

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 31. Social rights and principles

Submitted by: Mr Georges BERTHU, MEP

Proposed text:

The social rights and principles set out in this Charter shall be restricted to those areas covered by Community law and shall respect the right of each Member State to choose its own social model.

Reasons:

It is unnecessary to list all those who may be required to apply social rights and principles. It is vital, however, to mention that respect must be shown in all cases for the right of each Member State to choose its own social model, in accordance with the principle of subsidiarity

.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 31

Submitted by: Dr Erling Olsen, Danish Government representative

General remark:

As regards the integration of the 'main text' with its accompanying 'justification', refer to my general remark (1) to Convent 28.

Proposed text:

This provision is of a horizontal nature and it is therefore proposed that it should be entered as Article 46a as follows:

‘Fundamental social rights shall be interpreted under the conditions laid down by rules established in national law or collective agreement, and by custom and practice, in accordance with applicable Community law’.

Reasons:

Fundamental social rights differ from civil and political rights to a certain extent in that they can only be construed in the light of the legislator’s definition of those rights. Account must therefore be taken of the national legislator’s power to give practical expression to those rights. The substance of those rights will therefore derive from the national provisions applying within the framework of Community law. The aim of the provision is, by supplementing Article 46(2), to ensure that the Charter does not extend the scope of current Community law or restrict the national definition of the rights in question

=====

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 31

Submitted by: Jens-Peter Bonde

Proposed text:

The institutions and bodies of the Union and the social partners at Community level, acting within the framework of their respective powers, shall observe the social rights and implement the social principles set out in this Charter, taking account of the differences in national practice, especially as regards agreements.

Reasons:

The charter is addressed to the Union Institutions and bodies and not the Member States.

The relationship between the citizen and the Member State is in any case governed by national legislation and the conventions to which the individual Member States have acceded.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 31. Social rights and principles

Submitted by: Guy Braibant

Proposed text:

With due regard for the principle of subsidiarity, the institutions and bodies of the Union, the Member States, exclusively in the implementation of Community law, and the social partners at Community level shall observe and implement the social rights and principles set out in this Charter.

Reasons:

This amendment has three aims:

- *To specify that the articles on social rights should only apply to Member States when they implement Community law (a similar amendment has been submitted in relation to Article 46); the expression ‘within the scope of Community law’ is too broad and vague since it covers areas of shared competence and the Union’s second and third pillars. Such an extension is not acceptable.*
- *To indicate that the Charter includes social rights and principles.*
- *To refer to the principle of subsidiarity, which is particularly important in this area.*

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article 31: Social rights and principles

Submitted by: Piero Melograni

Proposed text:

Replace 'Community law' with 'Union law', and 'Community level' with 'Union level'.

Reasons:

The scope of the Charter is not restricted to the Community sphere alone, but extends to all areas of Union responsibility. See also Article 46(1), which reads as follows: 'The provisions of this Charter are addressed to the institutions and bodies of the Union within the framework of the powers conferred on them by the Treaties, and to the Member States exclusively within the scope of Union law'.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 31

Submitted by: Heinrich NEISSER

Proposed text:

Article 31. Social rights and principles

The institutions and bodies of the Union *and* the Member States, exclusively within the scope of Community law, ~~and the social partners at Community level, acting within the framework of their respective powers~~, shall observe the social rights and implement the social principles set out in this Charter.

Reasons:

In view of the organisational structure of the European Community, it is not defensible to regard the social partners as Community bodies and hence to impose requirements on them under provisions relating to fundamental rights. The institutional involvement of the social partners is regulated in the context of the Economic and Social Committee; only that committee possesses the status of a consultative body. For this reason the social partners also cannot be regarded in this section as institutions with an obligation to respect fundamental rights. Moreover, it should be made clear whether the phrase ‘scope of Community law’ is synonymous with ‘application’ or ‘implementation of Community law’.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 31. Social Rights

Submitted by: Gabriel Cisneros Laborda

Proposed text:

The Institutions and bodies of the Union and the Member States, exclusively within the scope of Community law, shall implement the rights set out in this Charter.

Reasons:

- *The mandates given in Cologne and Tampere laid down that the Charter shall include social rights insofar as they do not merely establish principles for Community action. The Charter should therefore confine itself to subjective rights. In its statement of reasons for this article, the Praesidium explains that 'these are principles whose application will, in a certain number of cases, be subject to the adoption of implementing measures'. Nevertheless, that clarification is not sufficient to comply with the mandates given, and would not be sufficient even if it were included in the articles. Furthermore, it should be pointed out that no clear distinction is drawn between rights and principles either in Article 31 or in the following articles.*
- *According to the most generally accepted theory, fundamental rights pose an obligation on the state but not on individuals. It is consequently proposed that the reference to the social partners as passive subjects be deleted.*

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 31

Submitted by: Dr Ingo Friedrich, MEP, and Dr Peter Mombaur, MEP

Proposed text:

Article 31. Social rights (*two words deleted*)

The institutions and bodies of the Union, the Member States, exclusively within the scope of Community law, and the social partners at Community level, acting within the framework of their respective powers, shall observe the social rights (*five words deleted*) set out in this Charter.

Reasons:

Without the statement of reasons, the article is likely to cause confusion rather than to have any other effect, particularly because of the differing concepts used, such as ‘rights’ on the one hand and ‘principles’ on the other.

The inclusion of mere State objectives and principles does not seem to be covered by the terms of reference adopted by the Cologne European Council on 3 and 4 June 1999. The European Council decision does indeed state that ‘in drawing up such a Charter account should (...) be taken of economic and social rights as contained in the European Social Charter and the Community Charter of the Fundamental Social Rights of Workers (Article 136 TEC)’, but it very specifically limits the terms of reference by adding ‘insofar as they do not merely establish objectives for action by the Union’.

In view of this clear instruction, it does not seem to the purpose to incorporate ‘social rights’ in the draft Charter whose substance is confined to merely stating objectives for the European Union and the Member States within the scope of the Charter and which do not, as the Council clearly intended, confer on citizens enforceable rights which can be invoked at law.

It will not be possible to explain to the public what purpose is served by laying down extensive and detailed social rights which do not alter the legal status quo.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 31

Submitted by: Frits Korthals Altes, representing the Netherlands Government

Proposed positioning and title:

The institutions and bodies of the Union, the Member States, exclusively within the scope of *Union* law, and the social partners at Community level, *each* acting within the framework of their respective powers, shall observe the *rights set out in this Charter and shall set themselves the goal of effectively realising the principles set out in the Charter.*

Reasons:

The difference in terminology in respect of the rights included in the Charter ('observe') and the principles ('set themselves the goal') is intended to make explicit the difference in nature between rights and principles. The term 'observe' is taken from Article 6 of the Treaty on European Union, whereas the term 'set themselves the goal of effectively realising' is taken from the preamble to part I of the Revised European Social Charter.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 31. Social rights and principles

Submitted by: Jean-Luc Dehaene, representative of the Belgian Government, Karel De Gucht and Roger L'Allemand, representatives of the Belgian Parliament

Proposed text:

Acting within the framework of their respective powers, the institutions and bodies of the Union, the Member States, within the scope of Union law, and the social partners at Community level shall observe and implement the social rights set out in this Charter.

Reasons:

The word ‘exclusively’ which preceded the phrase ‘within the scope of Community law’ has been deleted because the courts must be allowed to determine whether the Community is competent in respect of fundamental rights and not be restricted to applying the rights only within a previously determined area of competence.

In the same phrase, ‘Community law’ has been replaced with ‘Union law’. Violations of these social rights may occur as a result of action taken by the Union within its sphere of competence.

For the sake of greater clarity, the phrase ‘acting with the framework of their respective powers’ has been placed at the beginning of the sentence so that there is no doubt that it applies equally to the Union institutions and to the Member States. This applies, in particular, to the Dutch language version.

At the end of the article, the words ‘the social principles’ have been deleted from the phrase ‘shall observe the social rights and implement the social principles set out in this Charter’. There is no reason to refer to any principles other than the actual social rights.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 31

Submitted by: Mr François Loncle

Proposed text:

The institutions and bodies of the Union, the Member States when they apply Community law and the relevant social partners shall be responsible for implementing the social rights and principles set out in this Charter.

Reasons:

This amendment concerns the wording of the article.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 31 SOCIAL RIGHTS AND PRINCIPLES

Submitted by: JORDI SOLÉ TURA

Proposed text:

The institutions and *the* bodies of the Union, the Member States, exclusively within the scope of Community law, and the social partners *shall implement the rights and shall observe and implement (where appropriate) the social principles* at Community level, acting within the framework of their respective powers set out in this Charter.

Reasons:

It seems inconsistent that, in the existing text, rights should be observed and social principles be implemented. Rights shall not only be observed but shall also be implemented solely on the basis of the fact that they are proclaimed in the Charter and the social principles set out in the Charter shall be implemented, pursuant to what was laid down in the Cologne and Tampere resolutions, on the grounds that they are something more than mere general principles or once they become rights.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposal for a horizontal clause

In sofar as this Charter contains rights and principles corresponding to rights and principles laid down in the Revised European Social Charter, their meaning and scope shall be equivalent to the meaning and scope of the rights and principles in the Revised European Social Charter.

Submitted by: Frits Korthals Altes, representative of the Netherlands Government

Reasons:

The purpose of this provision is to ensure that the same meaning and scope are applied to the rights and principles laid down in the Charter as attach to the provisions in the Revised European Social Charter, even if their wording is different. It goes without saying that this shall apply only to the extent that the provisions of the Charter in fact correspond to those in the Revised European Social Charter. The article thus leaves intact the option of ensuring even greater protection by way of the Charter.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article 31 (new second paragraph)

Submitted by: **Álvaro Rodríguez Bereijo, Personal Representative of the Spanish Prime Minister**

Proposed text:

The recognition of, respect for and protection of the rights set out in Articles ... shall inform positive law, judicial practice and the action of the public authorities. They may only be invoked before a judicial authority in accordance with the provisions of the laws that embody them in detail.

Reasons:

The explanatory statement appears to express the position that, by reason of their special nature, certain social rights, insofar as they determine the mandatory provision of state services, cannot be considered as individual rights that can be directly applied and invoked, but, rather, as principles which must govern the action of the public authorities and may, accordingly, be invoked before the courts only where they are embodied in detail in law and in accordance with the terms of the laws concerned.

I fully agree with this position. The category of social and economic rights includes, in view of its particular nature, rights having different implications and different types of effectiveness in law.

Certain rights concern freedom and equality (e.g. the right to form and to join trade unions, the right to strike, the right to collective bargaining, the freedom to choose an occupation or profession, the right not to be discriminated against at work on grounds of gender, etc). These are individual rights which can be directly exercised as such, within the limits constituted by respect for other rights, protected goods and values recognised in the Charter.

Other rights (e.g. welfare rights, the right to social assistance in old age, the right to health, the right to decent housing, the right to environmental protection, etc) are guiding principles which require the intermediary action of the legislator and generate a form of individual right which may be invoked before the courts only in the terms and to the extent permitted by the laws that embody such rights in detail. They are 'legal rules of principle' which orientate social and economic policy in a form binding on the public authorities and, as guiding principles of the social and economic order, will inform positive law, judicial practice and the action of the public authorities. As such, they have a negative force or effectiveness (marking limits on the freedom of action of the legislator), insofar as they prohibit any acts of the public authorities that would manifestly flout or contradict them by pursuing ends contrary to or incompatible with the values which those rights embody.

Finally, it seems important to point out that certain social and economic principles which embody clear objectives of social and economic policy (e.g. full employment, economic growth and stability, the fair distribution of national income, the improvement of the quality of life and the environment, etc) should, according to the agreement reached by the Cologne European Council, remain outside the contents of the Charter of Fundamental Rights. This text stated that the drafting of the Charter should also take account of economic and social rights, on the same basis as the European Social Charter and the Community Charter of the Fundamental Social Rights of Workers (see Article 136

of the EC Treaty), insofar as they do not simply constitute bases for the objectives of the Union's action.

I believe that this important point should be explained clearly, by means of an article referring to 'rights of provision' of this type.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: positioning and title of Article 31

Submitted by: Frits Korthals Altes, representing the Netherlands Government

Proposed positioning and title:

Include Article 31 as a horizontal article with the title 'Obligations pursuant to the Charter'

Reasons:

The Charter should contain an article indicating the nature of the obligations derived from both the civil and political rights and rights of the citizen and from the social rights and principles that are included. Limiting the article to social rights and principles alone is inconsistent. This should be included with the horizontal articles.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 31

Submitted by: Prof. Dr Jürgen Meyer

Proposed text:

Article 31. Employment rights

- 1. Everyone has the right to work and the right to protection of his job. Every individual has the right to choose and engage in an occupation and trade and the right to free access to career assistance facilities.**
- 2. Everyone has a right to protection against unjustified or abusive termination of employment.**
- 3. Notwithstanding Article 22, the Member States shall take steps to promote the social and professional integration of particularly disadvantaged groups.**

Reasons:

Employment rights are set out Article 31(1). Similar provisions can be found in the constitutions of the Member States, e.g. Belgium (Article 23), Denmark (Articles 74 and 75(1)), Finland (§ 15), the preamble to the 1946 French Constitution, Greece (Article 22), Italy (Articles 4 and 35), Luxembourg (Article 11), Netherlands (Article 19), Portugal (Articles 47, 53 and 58) and Spain (Articles 35 and 40).

Provisions specifically relating to this subject are also to be found in the constitutions of the German Länder (Bavaria, Brandenburg, Hessen, Mecklenburg-West Pomerania, Saxony, Saxony-Anhalt and Thuringia) and in the constitutions of the applicant countries.

At international level, the Member States have recognised employment rights in Article 23 of the Universal Declaration of Human Rights (UDHR), Article 6 of the (UN) International Covenant on Economic, Social and Cultural Rights (ICESCR), Article 1 of the European Social Charter (ESC) and paragraphs 2 and 4 of the Community Charter of Basic Social Rights for Workers (CCBSRW).

Article 31(2) sets out the right to occupational freedom, which has been upheld by a large number of decisions of the Court of Justice (e.g. Nold, Case 4/73, Reports 1974, p. 491) and in Article 32 of the Praesidium's proposal. Freedom of access to career assistance facilities is a basic right of individuals, which in future will fall within the EU's sphere of competence, following the decisions of the Lisbon European Council (conclusions of the Lisbon European Council, paragraph 29).

Under Article 137 of the EC Treaty, protection against dismissal is part of the EC's sphere of competence. Article 31(2) takes over the Praesidium's proposal (Article 38, Convent 34) to a large extent and thereby upholds a basic principle which is contained in the constitutions of many Member States and applicant countries and is also given universal recognition in international conventions (e.g. ILO Convention No 158). Given that protection of one's employment is a human right, the term 'worker' has been replaced in the proposal with 'everyone'. This is in line with the wording of existing international provisions, such as those contained in the UDHR (Article 23), the ICESCR (Article 6(1)) and the ESC (Article 1).

Article 31(3) reiterates a basic principle already contained in Article 22(3) of the Praesidium's proposal (Convent 28) with respect to women and in Article 43 (Convent 34) with respect to disabled persons, extending it, beyond these specific cases, to all disadvantaged persons.

Reasons:

Those amendments are intended to expand on my original working draft (submitted on 6 January; Contrib. 2) and to establish the second and third pillars of my three-pillar model which obtained general approval in the Convention (submitted on 4 May; Contrib. 144).

The aim of my amendments is to reach a compromise between the different positions within the Convention regarding economic and social rights. The proposed amendment is intended to make the articles more readable so that Union citizens can identify with the system of values set out in the Charter without reducing the text's legal clarity. At the same time, it should not make promises which the Union will not be able to keep. The proposal therefore mainly seeks to establish rights which will protect people against any measures taken by the Union which might threaten the fundamental social rights of the individual, and to uphold objective social standards, which can form the basis of a

system of values on the European model. As a result of Articles 3 and 136 et seq. of the EC Treaty and the second and third pillar provisions, the European Union will in future have a wider sphere of competence which requires protection of fundamental rights as a matter of urgency to ensure that the high level of social protection - guaranteed by the Member States - is not undermined. This is why both 'neutral' and politically affiliated NGOs have called for recognition of fundamental social rights¹.

Given that the indivisibility and interdependence of fundamental rights and human rights have now gained universal recognition and that it has taken almost fifty years for this joint international position to be achieved, it is important that the social rights set out above be placed on an equal footing with the basic freedoms, EU citizens' rights and judicial rights established in Convent 28. Due account has therefore been taken of the proposal submitted by the UN Committee on Economic Social and Cultural Rights, by letter of 27 April 2000, to the chairman, Prof. Dr Herzog, including the suggestions and warnings contained therein.²

¹ One example can be found in the position of the European Union of Christian Democratic Workers (EUCDW) (Contrib. 128), which calls for 'a broad catalogue of fundamental social rights.'

² 'The Committee ... would nevertheless like to point out that if economic and social rights were not to be integrated in the Draft Charter on an equal footing with civil and political rights, such negative regional signals would be highly detrimental to the full realisation of all human rights at both the international and domestic level, and would have to be regarded as a retrogressive step contravening the existing obligations of Member States of the European Union under the International Covenant on Economic, Social and Cultural Rights.'

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 31(new)

Submitted by: Johannes Voggenhuber

Proposed text:

Everyone who does not have sufficient own resources available has the right to a minimum income as a means of safeguarding his/her dignity and to enable him/her to take part fully in social, cultural and political life.

Reasons:

New numbering of the entire article. Rights directly related to human dignity (fundamental and human rights) come before trade union rights.

Article 31 bis

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed Article 31a (new)

Submitted by: Mr Vitorino, Commission representative in the Convention

Proposed text:

Article 31a. Equal treatment for men and women

Equal opportunities and equal treatment for men and women as regards employment and work, including equal pay for equal work or for work of equal value, must be guaranteed.

The principle of equal treatment shall not prevent the maintenance or adoption of measures providing for specific advantages in order to make it easier for the under-represented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers.

Reasons:

Paragraph 1 of this article is inspired by point 16 of the Community Charter of the Fundamental Social Rights of Workers: 'Equal treatment for men and women must be assured. Equal opportunities for men and women must be developed. To this end, action should be intensified to ensure the implementation of the principle of equality between men and women as regards in particular access to employment, remuneration, working conditions, social protection, education, vocational training and career development ...'. The right to equal opportunities and equal treatment for men and women with regard to employment and work is also enshrined in Article 141 of the EC Treaty and Article 20 of the revised European Social Charter.

The possibility of positive measures to rectify existing situations of inequality between men and women (paragraph 2) is already recognised in Article 2(4) of Directive 76/207 and Article 141(4) of the EC Treaty, whose wording is used in the second paragraph of this amendment.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed Article 31a (new)

Submitted by: Pervenche BERÈS

Proposed text:

Article 31a. Equal rights for men and women

Equal rights shall be guaranteed for men and women, in particular as regards education, conditions of employment and pay, working relations and social protection systems. Implementation of these rights may lead to positive discrimination.

Reasons:

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article 31a (new article)

Submitted by: Álvaro Rodríguez Bereijo, Personal Representative of the Spanish Prime Minister

Proposed text:

The principle of equality between men and women shall be guaranteed in access to employment, working conditions and welfare provisions. There shall be no discrimination on grounds of gender. Male and female workers shall have the right to equal pay for equal work or work of equal value.

Reasons:

It is proposed to maintain, in the specific area of social rights, the principle of non-discrimination between men and women in the field of employment, to which the Treaty dedicates especial attention in view of its importance as an embodiment of the principle of equality, with provision being made additionally for positive discrimination measures as authorised by Article 141(4) of the EC Treaty.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment: New Article: Equality between men and women

Submitted by: Lord Goldsmith QC

Proposed text:

For Part A: Proclamation of Rights

Equality between men and women must be ensured with regard to pay, work and employment.

For Part B: Definition of Rights

The rights in this article are the rights provided for in Article 141 of the Treaty establishing the European Community and in the relevant secondary legislation adopted by the Community. They are subject to the limitations and derogations specified in those provisions and in any national measures adopted to give them effect.

Reasons:

These rights were previously included in Convent 18. It was my understanding of the Convention's discussion that these rights should be included in the draft Charter. My amendments to Convent 28 were made with the expectation that these rights would be included in Convent 34.

The specific existing rights in the Treaties concerning equality between men and women with regard to work and employment (including pay) deserve a separate article. I would therefore like to propose this article for inclusion.

Article 32

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 32. Freedom to choose an occupation

Submitted by: Mr Georges BERTHU, MEP

Proposed text:

The freedom to choose one's occupation, to conclude contracts and to set up a business shall be respected by Community law.

Reasons:

The freedom to choose an occupation, as described in the Praesidium's proposal, is both too limited and too extensive. It is too limited in terms of the areas covered: mention must also be made of the freedom to conclude contracts and to set up businesses, which are both essential in a market economy. It is too extensive in terms of the conditions of application: it is wrong to say that everyone has the right to choose his or her occupation without restriction; the sentence should be rephrased to show that this freedom is to be respected by Community law.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 32 FREEDOM TO CHOOSE AN OCCUPATION

Submitted by: JORDI SOLÉ TURA

Proposed text:

Everyone has the right to work, to choose his or her occupation freely and to receive sufficient remuneration to meet his or her personal needs and those of his or her family. Under no circumstances can there be any discrimination on the grounds of sex.

Reasons:

It is not enough to say that everyone has the right to choose and to engage in an occupation. Such a right and the pursuit of an occupation must provide the individual and his or her family with adequate remuneration and under no circumstances is it acceptable in a free, competitive society for this right and this freedom of choice to be restricted on the grounds of sex.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: title of Article 32

Submitted by: Frits Korthals, Altes, representing the Netherlands Government

Proposed text:

Article 32: Right to free choice of employment

Reasons:

The title of this Article is brought in line with the substance of the Article following adoption of the next amendment.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 32

Submitted by: Andrew Duff MEP

Proposed text:

Article 32. Freedom to choose *employment*

Everyone has the right to choose and *accept a job*

Reasons:

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DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**Proposed amendment to: Article 32****Submitted by: Ieke van den Burg****Proposed text:****Replace by:****Article 32. The right to work****Everyone has the right to earn a living in a freely chosen and accepted occupation.****Reasons:**

In conformity with the (Revised) European Social Charter (art. 1) and the UN International Covenant on Economic Social and Cultural Rights (art 6) the title is drafted as "right to work", and the content is adapted to both articles referred to. In the Reasons, these references should be included, and as such then also refer to what measures may be expected from authorities to guarantee this right. For the function of this Charter focused on the EU and its institutions the respect of this right is more relevant, than instruction norms for labourmarket activities.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 32. Freedom to choose an occupation.

Submitted by: Marie-Madeleine Dieulangard

Proposed text:

Amend the title of the article to read: “Right to work and freedom to choose an occupation.”

Re word the article to read as follows: “Everyone shall have the right to engage in an occupation of his own free choice, on a self-employed or employed basis, in a place of his choosing.”

Reasons:

This wording makes it possible to stress that everyone has the right to earn his living by an occupation freely chosen, and takes into account the increasing mobility of workers within Europe.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 32

Submitted by: Jürgen Gnauck, Minister of Federal and European Affairs, Thuringia

Proposed text:

Article 32: Freedom to choose a profession

Union citizens shall have the right to choose and to engage in an occupation.

Reasons:

Restricting this fundamental right to Union citizens is regarded as absolutely essential.

In the version as proposed, third-country nationals legally resident in the territory of the Member States would have the right to choose and to engage in an occupation. The Union has no jurisdiction for such a far-reaching provision. Article 137(3) of the EC Treaty merely allows it to regulate the 'conditions of employment of third-country nationals legally residing in Community territory'.

With the text as proposed there is also the risk of secondary rights and rights of association of third-country nationals being called into question.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 32

Submitted by: Dr Ingo Friedrich, MEP, and Dr Peter Mombaur, MEP

Proposed text:

Article 32. Freedom to choose an occupation

Every citizen of the Union has the right to choose and to engage in an occupation.

Reasons:

The proposed text would also confer the right to choose and to engage in an occupation on third-country nationals residing lawfully within the territory of the Member States. The Union does not have the power to adopt such a far-reaching provision; Article 137(3) of the EC Treaty allows it only to regulate ‘conditions of employment for third-country nationals legally residing in Community territory’. There is also a danger that such a provision might call into question secondary provisions and the provisions of association agreements for third-country nationals from the point of view of fundamental rights.

Moreover, under the established case law of the CJEC, the right of free and equal access to an occupation also implies a right of residence for third-country nationals in other Member States of the Union for the purpose of seeking employment and applying for a job (cf. for example Article 39(2) of the EC Treaty in conjunction with Articles 1-6 of Regulation (EEC) 1612/68). At present Community law confers on third-country nationals who are lawfully resident in a Member State the right to reside in another Member State for only three months (cf. Article 62(3), EC Treaty).



DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 32. Freedom to choose an occupation

Submitted by: Lord Goldsmith QC

Proposed text:

Amend to produce the following two-part text:

For Part A, “Proclamation of Rights”:

Every citizen of a Member State of the EU has the freedom to work, seek work, set up in business or provide services in any other Member State.

For Part B, “Definition of Rights”:

The right in Article 32 is the right provided for in the provisions of Articles 39 to 55 of the Treaty establishing the European Community and of the relevant secondary legislation adopted by the Community, and is subject to the limitations and derogations specified in those provisions and in any national measures adopted to give them effect.

Reasons:

First, the proposed article is not sufficiently clear. I assume it is intended to apply to free movement of workers and businesses and associated recognition of professional qualifications. However, the right of establishment (ie to set up in business) is a very important right, but is not included. The draft article therefore does not go far enough in describing one of the main benefits citizens have through EU membership.

Second, it is important that the right is clearly defined - my proposed amendment therefore makes a vital link between: the suggested Article; the main provisions of the Treaty (Articles 39 to 55); and the highly relevant secondary legislation covering free movement of workers and the recognition of qualifications (which facilitate free movement).

Third, the Article as drafted is in any event wrong in asserting that there is a “right” to employment. This would raise unrealistic expectations. Nor does the ECJ Nold case judgment support the argument that the right to choose and engage in an occupation is “recognised without any ambiguity in the case law of the Court”. What is important is the right to work and seek work in other Member States.

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DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 32

Submitted by: Charlotte Cederschiöld

Proposed text:

Everyone has the right to choose and to engage in an occupation and business activity, including the freedom of establishment and entrepreneurship.

Reasons:

The freedom of establishment is guaranteed in Article 43 in the EC Treaty. The proposed amendment is in accordance with the principle of the four freedoms.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 32

Submitted by: José Barros Moura and Maria Eduarda Azevedo, Members of the Portuguese National Assembly

Proposed text:

Everyone has the *freedom* to choose and *the right* to engage in an occupation.

Reasons:

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DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 32. Freedom to choose an occupation

Submitted by: Gabriel Cisneros Laborda

Proposed text:

Everyone has the right to choose an occupation.

Reasons:

The state is not always able to guarantee that a person can engage in the occupation he or she has chosen.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 32

Submitted by: Ben Fayot (Chamber of Deputies, Luxembourg)

Proposed text:

Article 32. Right to work

Everyone shall have the opportunity to earn his living in an occupation freely entered upon.

Reasons:

This text is taken from the European Social Charter (Revised), which combines the freedom to choose an occupation and the right to work. The freedom to choose an occupation is meaningless in the absence of a right to work.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article 32

Submitted by: Guy Braibant

Proposed text:

Article 32. Freedom to choose an occupation and right to work

Everyone has the right to engage in the occupation of his choice in compliance with the rules defined by law.

Everyone has the right to access to a free job placement service.

Reasons:

This amendment seeks to specify the conditions under which the freedom to choose an occupation is to be applied and to incorporate in the Charter the right to work, as enshrined in Article 1 of the European Social Charter, without however creating an individual right to employment. The right to work implies the right to have access to a free placement service

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 32

Submitted by: Frits Korthals Altes, representing the Netherlands Government

Proposed text:

Citizens of the Union shall have the right to earn their living in an occupation freely entered upon, subject to any restrictions which may be laid down pursuant to Article G of the Revised European Social Charter and Article 39(4) of the Treaty establishing the European Community.

Reasons:

The Praesidium's proposal differs substantially, in terms of wording, from existing provisions guaranteeing the right in question. Accordingly, a wording is proposed which reflects more closely Article 1(2) of the Revised European Social Charter (ESC), which says:

'Article 1 - The right to work

With a view to ensuring the effective exercise of the right to work, the Parties undertake:

...

- 1. to protect effectively the right of the worker to earn his living in an occupation freely entered upon;'*

It needs to be made clear that this provision in the Charter should have no other meaning than the meaning already attached in practice to Article 1(2) of the Revised ESC. That is to say: the right must be interpreted as a guarantee against discriminatory restrictions on freedom to choose an occupation and restrictions which can be regarded as a form of forced labour. Interpreting this right as a directive to the (European or national) authorities to guarantee every citizen of the Union the work of his choice does not follow from Article 1(2) of the Revised ESC and it is therefore unacceptable as an interpretation of the present provisions.

Freedom of choice of occupation is also guaranteed in Article 6(1) of the International Covenant on Economic, Social and Cultural Rights and is recognised in Article 12(1) of the European Parliament's Declaration of Fundamental Rights and Freedoms (1989) and in point 4 of the Community Charter of Fundamental Social Rights of Workers (1989).

This is a right which is granted solely to persons to whom the rules on the free movement of workers are applicable (Article 39, EC Treaty) This is brought out in the amendment by restricting the granting of the right to citizens of the Union.

It would be preferable to indicate in the article itself the conditions under which the right can be restricted. The danger of a general restrictive clause is that the scope for restriction is too broad. This is why there is a reference to Article G of the Revised ESC. Because of the concise nature of the text there is simply a reference to that article, without including the provisions of the article verbatim.

In connection with the restrictions still existing within the European Union on the eligibility of subjects of other Member States for the public service, there is also a reference to Article 39(4), ECT, which states that the provisions on the freedom of movement of workers within the Community shall not apply to the public service.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article: 32

Submitted by: Jean-Maurice Dehousse, MEP and substitute Member of the Convention

Proposed text: Article 32 to read:

Everyone has the right to choose and to engage in an occupation in accordance with the European provisions governing access thereto.

Reasons:

The right to choose one's occupation does not relieve one of the obligation to comply with the legal provisions governing access thereto.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 32. Freedom to choose and engage in an occupation

Submitted by: Prof. Daniel Tarschys, Sweden

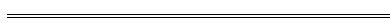
Proposed text:

Article 32. Freedom to choose and engage in an occupation

Add: 'according to the regulations governing each occupation'.

Reasons:

This limitation, as spelled out in the Community Charter of the Fundamental Social Rights of Workers, Article 4, should be included in order to give the correct information about the enjoyment of this right.



DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article: 32

Submitted by: Rodotà, Paciotti and Manzella

Proposed text: Article 32 to read:

Article 32. Right to employment and freedom to choose an occupation

1. Everyone has the right to fulfil their potential in an occupation freely chosen or accepted.
2. Everyone has the right freely to choose and engage in an occupation.
3. The Union shall promote continuing training and life-long learning aimed at enabling everyone to acquire new job-related knowledge and skills.

Reasons:

The first and third paragraphs are based on Article 1 of the Revised Social Charter. The second paragraph clarifies the freedom to choose an occupation.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 32

Submitted by: Pervenche BERÈS

Proposed text:

Article 32. Right to employment

1. **Everyone has the right to earn his living in an occupation freely chosen or accepted.**
2. **All employment shall confer the right to a fair remuneration.**

Reasons:

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article 32

Submitted by: Álvaro Rodríguez Bereijo, Personal Representative of the Spanish Prime Minister

Proposed text:

- 1. Everyone has the right to choose and engage in an occupation or profession, under the terms laid down by Community and Member State law.**
- 2. Every worker who is a national of a Member State of the European Union has the right to freedom of movement throughout the territory of the Union, under the terms laid down by the EC Treaty.**
- 3. Freedom of enterprise is recognised in the framework of the market economy.**

Reasons:

1. The right to choose and engage in an occupation ('profession' should be added - cf. the Community Charter of Social Rights, point 2) has been recognised by ECJ case-law, but on a basis subject to limitations, relating essentially to the objectives of Community integration (e.g. limits on imports and exports, security measures) and to the requirements of the administrative regulation of the professions; a reference to those limitations should be included, as a general provision is not sufficient, in particular because certain limitations arise from national law. In the 1974 ECR cited in the explanatory statement, it is stated that this freedom, far from being an absolute privilege, should be viewed in the context of the social function of the goods and activities protected, and that it has therefore to be exercised within the limits established in the public interest, including the objectives of general interest pursued by the Community. The same point is made in the ECR of 30 July 1996 and in many others.

2. It is proposed to include, as a separate right, the right of workers who are nationals of the EU Member States to freedom of movement as workers throughout the territory of the Union, under the conditions laid down in Article 39 of the Treaty. In a similar vein, point 1 of the Community Charter affirms the principle of the free movement of workers as the first of workers' social rights.

3. I believe it is important to include under economic and social rights the 'right of freedom of enterprise', as a logical correlative of the right to private property recognised in the Charter. This could be included in a separate article.

This right has been expressly recognised by the ECJ (see Decision of 27 September 1979, Case 230/78).

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 32. Freedom to choose an occupation

Submitted by: Jean-Luc Dehaene, representative of the Belgian Government, and Karel De Gucht and Roger L'Allemand, representatives of the Belgian Parliament

Proposed text:

Reasons:

Delete the second sentence of the ‘statement of reasons’. The text should no longer refer to the free movement of persons.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 32 (Statement of reasons)

Submitted by: Ernest M.H. Hirsch Ballin, representing the First Chamber of the States-General of the Netherlands

Proposed text:

This right is recognised in the case law of the Court as a fundamental right (see judgement of principle in Case 4/73 Nolde [1974] ECR 491).

Reasons:

The words 'without any ambiguity' need to be deleted from the first sentence: the judgement in the Nolde case is more flexible. The second sentence needs to be deleted in its entirety, because it has nothing to do with the proposed text of Article 32.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 32

Submitted by: Prof. Dr Jürgen Meyer

Proposed text:

Article 32. Right to fair and reasonable working conditions

- 1. Everyone has the right to safe and healthy working conditions. For the purposes of protecting this right, everyone has the right, in particular, to limitation of daily and weekly working hours, to an annual period of paid leave and to fair and equal pay for equal work.**
- 2. Young people, pregnant women and persons bringing up children have a right to special protection. This right includes the right to maternity leave and to parental leave following the birth or adoption of a child with the aim of reconciling family and professional lives.**

Reasons:

Article 32(1) summarises the provisions of Articles 35 and 36 (Convent 34), thereby tightening up the text of the Charter. The term 'workers' used in the Presidium's proposal has been replaced with 'everyone'. It should again be pointed out that the rights contained in Article 32 are, according to Article 23 of the UDHR and Article 7 of the ICESCR, applicable to everyone and therefore human rights and that a different wording would represent a regression in relation to the international standards. The constitutions of the Member States also consider this right to apply to everyone (e.g. Belgium (Article 23), Netherlands (Article 19(2)), Portugal (Article 59). Under the Cologne terms of reference, the Charter must also therefore adopt this wording.

The wording 'fair and equal pay for equal work' is based on Article 23(2 and 3) of the UDHR, Article 7 of the ICESCR, Articles 2 and 4 of the ESC and ILO Conventions 100 and 131, and is also contained in the constitutions of many of the Member States.

Article 32(2) combines Articles 37 and 39 of the Presidium's proposal (Convent 34).

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 32 (new)

Submitted by: Johannes Voggenhuber and Kathalijne Buitenweg

Proposed text:

Social security and social assistance

Everyone has the right to social security benefits, which guarantee protection particularly in the event of pregnancy, illness, need for care, old age, or unemployment.

Reasons:

Article 32 bis – ter

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article: 32

Submitted by: Manzella

Proposed text: Insert the following after Article 32:

Article 32a. Rights of workers who are EU citizens

Every EU citizen has the right to choose an occupation and to engage in economic and cultural activities in accordance with the provisions on freedom of movement and establishment within the territory of the Union set out in the Treaties.

Reasons:

While Article 32 covers all workers, whether they are EU citizens or not, the proposed article set out above is specifically intended to protect workers who are EU citizens.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed Article 32a (new)

Submitted by: Ben Fayot (Chamber of Deputies, Luxembourg)

Proposed text:

Article 32a (new). Right to life-long training

Everyone must have access to life-long professional training.

Reasons:

This provision is contained in Document ‘Convent 18’ and is also to be found in all convention or charter documents. It is a fundamental principle nowadays aimed at guaranteeing each individual’s ongoing professional adjustment and personal development.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed Article 32b (new)

Submitted by: Ben Fayot (Chamber of Deputies, Luxembourg)

Proposed text:

Article 32b (new). Right to fair and equal pay

Workers have the right to a fair remuneration sufficient for a decent standard of living. The right to equal remuneration for work of equal value shall be guaranteed.

Reasons:

This provision is taken from Convent 18 and the European Social Charter (Revised) to combine the two ideas which are closely related to the right to work: equal remuneration for men and women and a fair remuneration.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed insertion of additional article on the right to a minimum wage after Article 32

Submitted by: Marie-Madeleine Dieulangard

Proposed text:

- ‘1. Employees in an identical situation shall be entitled to equal remuneration on the basis of objective criteria.
2. Every employee has a right to receive a fixed minimum remuneration which may not be lower than the minimum wage set by the Member State in which he is employed.’

Reasons:

The aim is to include an article reflecting the current state of affairs in the European Union, namely the introduction by all the Member States of a minimum wage in line with the principle of equal pay, in other words equal remuneration for employees whose employment situation is identical.

A further aim is to ensure equal treatment for all employees, and in particular equality of treatment for men and women.

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DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed insertion of an additional article on the right to a minimum income after the article on the minimum wage

Submitted by: Marie-Madeleine Dieulangard

Proposed text:

‘Anyone who lacks adequate resources has the right to receive minimum social benefits to enable him to live in dignity.

Anyone who is deprived of employment has a right to income substitution benefit’.

Reasons:

Nowadays everyone should be entitled to a minimum income, as distinct from the minimum wage.

Article 33

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 33. Workers' right to information and consultation within the undertaking

Submitted by: Lord Goldsmith QC

Proposed text:

Delete all

Reasons:

The UK supports informing and consulting employees and believes that employee involvement mechanisms should reflect the requirements of individual organisations. The UK has signed up to directives in this area relating to specific cases: European Works Councils, Acquired Rights and Collective Redundancies. However, no general right as described in this article currently exists and I cannot accept one here.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 33

Submitted by: Win Griffiths, MP

Proposed text:

Delete – or significant rewording is required.

Reasons:

I have no doubt that this article sets out best practice for most companies but it is arguable as to whether it is a fundamental human right rather than very desirable good practice by employers.

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DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 33

Submitted by: Gabriel Cisneros Laborda

Proposed text:

It is proposed that this article be deleted.

Reasons:

Doubts as to the constitutional status of this right.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 33. Workers' right to information and consultation within the undertaking

Submitted by: Mr Georges BERTHU, MEP

Proposed text:

Article 33. Working conditions

Employment contracts and working conditions must respect the dignity and health of employees and enable them to lead a harmonious family life alongside their work.

Reasons:

The wording proposed in the amendment seeks to replace Articles 33 (Workers' right to information and consultation within the undertaking), 35 (Right to rest periods and annual leave), 36 (Safe and healthy working conditions), 37 (Protection of young people), 38 (Right to protection in cases of termination of employment) and 40 (Right of migrant workers to equal treatment). These articles set out principles which are certainly worthy of protection but should be dealt with at national level or through a directive, and not in a Charter of fundamental rights.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: title of Article 33

Submitted by: Frits Korthals Altes, representing the Netherlands Government

Proposed text:

Article 33: Informing and consulting workers within the undertaking

Reasons:

The title needs to be brought in line with the nature of this article which is a directive. Accordingly, the words 'right to' need to be deleted from the title.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 33

Submitted by: José Barros Moura and Maria Eduarda Azevedo, Members of the Portuguese National Assembly

Proposed text:

Amend the title and text of the article so that they refer not only to the *undertaking* but also to the *workplace*.

Reasons:

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DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 33

Submitted by: Frits Korthals Altes, representing the Netherlands Government

Proposed text:

The Union shall take measures such that workers or their representatives are regularly informed, pursuant to Article 21 of the Revised European Social Charter, of the economic and financial state of the undertaking which employs them and are consulted in good time on decisions being considered by the employer which might have a serious effect on workers' interests.

Alternative text:

The Union shall take measures such that workers or their representatives :

- a. are regularly informed in a comprehensible way of the economic and financial state of the undertaking which employs them;**
- b. are informed and consulted in good time on decisions being considered by the employer which might have a serious effect on their jobs, including decisions on collective redundancies, and on their working conditions.**

Reasons:

The proposed amendment seeks to tie in more closely with Article 21 of the Revised European Social Charter (ESC). It also establishes greater clarity concerning the cases in which workers or their representatives have to be informed and/or consulted.

The specific reference in the alternative text to cases of collective redundancies is based on Article 29 of the Revised ESC and the reference to working conditions comes from Article 22 of the Revised ESC.

The wording 'The Union shall take measures...' is also a better reflection of the character (that of a directive) of this Article than the Praesidium's proposal which mistakenly refers to a 'right'.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 33. Workers' right to information and consultation within the undertaking

Submitted by: Prof. Daniel Tarschys, Sweden

Proposed text:

Amend as follows: '**Workers *or* their representatives...**'

Reasons:

To avoid discrepancies it would be preferable to bring the text of the draft article in line with the (Revised) European Social Charter. Such a wording would also respect different national systems for information and consultation.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 33

Submitted by: Jens-Peter Bonde

Proposed text:

Workers and/or their representatives have the right to information and consultation in good time within the undertaking or group of undertakings which employs them.

Reasons:

The first change makes this provision more flexible, in that it will then be sufficient to inform either the workers or their representatives, which in many cases would be more appropriate. The addition of ‘group of undertakings’ aligns the wording on Directive 94/45 on European works councils.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 33 WORKERS' RIGHT TO INFORMATION AND
CONSULTATION WITHIN THE UNDERTAKING

Submitted by: JORDI SOLÉ TURA

Proposed text:

Workers and their *trade-union* representatives have the right to information and consultation in good time within the undertaking which employs them.

Reasons:

The purpose of this amendment is to specify that the representatives in question are trade-union ones.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 33

Submitted by: Charlotte Cederschiöld

Proposed text:

Workers and their representatives have the right to information and consultation within the undertaking which employs them.

Reasons:

The inclusion in the Article of the words “in good time” is beyond what is stated in Article 137.1.

The wording “in good time” is difficult to judge in the new economy. To make a right relative, as it would be with the inclusion of “in good time”, would be damaging to the conception of fundamental rights. European citizens should know what their rights are and there must not be any uncertainty.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 33

Submitted by: Andrew Duff MEP

Proposed text:

Article 33. *Right to information and consultation at work*

Workers (*delete: 3 words*) have the right to be informed and consulted within the undertaking that employs them.

Reasons:

The draft article goes beyond the existing EU consensus in this area. The reference to workers' representatives is implicit, being covered elsewhere in the Article on the recognition of trades unions. The phrase 'in good time' is a value judgement and therefore has no place as a fundamental right; it is also prejudicial to the current negotiations on the mergers and take-overs directive.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**Proposed amendment to: Article 33****Submitted by: Ieke van den Burg****Proposed text:****Workers and their representatives have the right to effective information (and), consultation and participation in major decisions at all relevant national or international levels within the undertaking which employs them.****Reasons:**

- *the word "effective" is to be interpreted in line with articles 21 and 29 of the Revised European Social Charter, meaning: "regularly, at appropriate time and in a comprehensive way", thus it covers "in good time"*
- *"and participation" is added, following art 22 of the Revised European Social Charter, which speaks also about participation in decisionmaking processes in the undertaking.*
- *"in major decisions" refers to different situations which may have major impact for workers such as formulated in the relevant (R)ESC articles, without naming them in detail*
- *"at all relevant national or international levels" is added to stress the importance of crossborder information, consultation and participation, where major decisions in transnational companies are taken often at a higher crossborder level.*

NB the Reasons should also refer to art. 22 and 29 of the RESC and to point 18 of the Community Charter on Fundamental Social Rights for Workers.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 33

Submitted by: Ben Fayot (Chamber of Deputies, Luxembourg)

Proposed text:

Article 33. Workers' right to information and consultation within the undertaking

Workers and their representatives have the right to information, consultation *and participation* in good time *and on a regular and effective basis*. *This right shall be guaranteed at all levels of the undertaking, both nationally and internationally.*

Reasons:

Worker participation, a widely established principle in the European social model, should be added, as should the international dimension, in the context of the internal market.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article: 33

Submitted by: Jean-Maurice Dehousse, MEP and substitute Member of the Convention

Proposed text: Article 33 to read:

Workers and their representatives have the right to be provided on a regular basis and in good time with comprehensive information about the economic and financial situation of the undertaking which employs them, without prejudice to the right not to divulge information which could be prejudicial to the undertaking, or to the possibility of requiring that certain information be kept confidential.

Workers and their representatives also have the right to be consulted in good time on decisions which could substantially affect the interests of workers, particularly by having an important impact on the employment situation in the undertaking.

Reasons:

- 1. The article is made clearer by the distinction made between information and consultation.*
- 2. Information is less useful when it is incomprehensible, fragmentary or late.*
- 3. The consultation system provided for in Article 21 of the Social Charter covers all the situations dealt with in the various proposals and has the additional advantage of referring clearly to threats to jobs. Article 29 of the Social Charter contains details regarding the implementation of the relevant rights.*

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 33. Workers' right to information and consultation within the undertaking.

Submitted by: Marie-Madeleine Dieulangard

Proposed text:

Replace the words 'consultation in good time' by the words 'prior and timely consultation'.

Reasons:

This wording makes it possible to involve workers more fully in the choices and decisions made within the undertaking.

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DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 33

Submitted by: Einem/Holoubek

Proposed text:

Workers and their representatives have the right to *appropriate and timely* information and consultation regarding all significant changes within the undertaking which employs them.

Reasons:

It should be specifically stated in the text that information and consultation should take place in an appropriate way, in an appropriate quantity and with regard to all significant changes in the undertaking.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 33

Submitted by: Dr Ingo Friedrich, MEP, and Dr Peter Mombaur, MEP

Proposed text:

Article 33. Workers' right to information and consultation within the undertaking

Workers and their representatives have the right to information and consultation in good time within the undertaking which employs them *with regard to matters of fundamental relevance to them.*

Reasons:

We support this proposal in principle, but this is not a classic fundamental right and can therefore be dealt with (or continue to be dealt with) elsewhere.

As labour-law entitlements are subject to regular change, and with the aim of incorporating in the European Charter of Fundamental Rights only rights which are genuinely fundamental, such entitlements should be governed by secondary law instead. If Article 46 is to be retained, the very wide scope of the article ought, at the minimum, to be restricted by means of the amendment. The German version of the headings to the articles ought to be rephrased so as to make it clear that the rights in question can be invoked at law and that the aim is not to secure third-party effect for fundamental rights.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 33

Submitted by: Jürgen Gnauck, Minister of Federal and European Affairs, Thuringia

Proposed text:

Article 33: Workers' right to information and consultation within the undertaking

Workers or their representatives have the right to information and consultation in good time within the undertaking which employs them on matters directly affecting them.

Reasons:

As far as the German wording is concerned, the term 'Recht' should always be used instead of the term 'Anspruch', and the title and the text should be brought in line. This also applies to some of the other articles.

Furthermore, the wording should be changed to 'Workers or their representatives...' in line with Article 21 of the Revised Social Charter.

Finally, it is necessary to specify the object of the information. Obviously it cannot mean that information has to be given on every aspect of the business policy and activities of the undertaking. This would go substantially beyond German law on co-determination - which is in any case very broad; nor is it the purpose, as the examples of collective redundancies and the transfer of undertakings quoted in the original version (Convent 18) show. It is therefore proposed that the phrase 'on matters directly affecting them' be added by way of clarification.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 33

Submitted by: Pervenche BERÈS

Proposed text:

Workers and their representatives have the right to information and consultation in good time *on proposed decisions which could concern them or affect their interests at all levels of the undertaking* which employs them.

Reasons:

=====

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article: 33

Submitted by: Rodotà, Paciotti and Manzella

Proposed text: Article 33 to read:

Article 33. Workers' right to information and consultation

Workers and their representatives have the right to be informed and consulted in good time by the undertaking or group of undertakings which employs them, about matters affecting their interests.

Reasons:

The amendment clarifies the scope of the right to information and consultation and brings it into line with the new international industrial environment.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 33

Submitted by: Johannes Voggenhuber

Proposed text:

New Article 47

1 (as original)

2 (new) Workers and their representatives have the right to be informed and consulted in good time, in any event prior to any final decisions by the management of the undertaking which affect their working conditions and interests, and in all situations involving restructuring, reorganisation or merger of the undertaking.

Reasons:

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Articles 33 and 34 (to be combined)

Submitted by: Jo Leinen

Proposed text:

Rights of collective bargaining and action

1. Everyone has the right to form trade unions and to take collective action to defend their economic and social interests.

All workers and their representatives have the right to information and consultation in good time within the undertaking which employs them.

2. The freedom of collective bargaining of trade unions and employers' associations shall be respected.

Reasons:

As the rights referred to in Articles 33 and 34 are related, it seems desirable to combine them, in order to streamline the Charter as a whole. (Translator's note: a sentence which does not affect the English version is omitted here). The first sentence of Paragraph 1 and the whole of Paragraph 2 are taken from the proposals by Prof. Meyer (Art. 33(1)).

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 33

Submitted by: Johannes Voggenhuber

Proposed text:

New Article 36

Reasons:

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 33

Submitted by: Prof. Dr Jürgen Meyer

Proposed text:

Article 33. Rights of collective bargaining and action

- 1. Everyone has the right to form trade unions and to take collective action to ensure that his economic and social interests are upheld and enforced.**
- 2. The right of trade unions and employers' organisations to collective bargaining shall be respected.**

Reasons:

Article 33(1) and (2) takes up the Presidium's proposals contained in Article 34 (Convent 34) and Article 17 (Convent 28) and is also based on similar provisions in the constitutions of the Member States (e.g. Germany Article 9(3), Finland § 10a, Italy Article 39, Portugal Article 55, Sweden Chapter II §17, Spain Article 37), the German Länder (Brandenburg Article 51, Saxony Article 25, Saxony-Anhalt Article 13(3) and Thuringia Article 37) and international treaties and conventions (UDHR Article 23(4), International Covenant on Civil and Political Rights/ICCPR Article 22, ICESCR Article 8, ESC Articles 6 and 7 and ILO Conventions Nos 87, 98 and 151).

The Presidium's restriction, i.e. 'under the conditions laid down by national legislation and practice' is not in line with the 'right to form a trade union', which is a human right, as defined in the UDHR Article 23(4), ICESCR Article 8(1) and ESC Article 5. The restriction would cause the text to fall short of existing international standards.

The article is not intended to confer new competences on the Union, but to ensure that the Union recognises this freedom, as guaranteed by the Member States and their international obligations.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 33

Submitted by: Johannes Voggenhuber and Kathalijne Buitenweg

Proposed text:

Everyone has the right of access to medical and health care.

Reasons:

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Article 33 bis

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed Article 33a (new article after Article 33)

Submitted by: Mr François Loncle

Proposed text:

Workers have the right to fair pay for their work.

Reasons:

It would seem justified to insert this essential article, which does not appear in the list of proposed articles.

Article 34

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 34

Submitted by: Charlotte Cederschiöld

Proposed text:

Delete

Reasons:

Article 137.6 in the EC Treaty explicitly prohibits the interference of the EU in national legislation on these matters. This Article cannot, therefore, remain in the Charter.

Principles stating only what everyone would wish for, hope for, and work for are too vague. If the right cannot be guaranteed, it risks damaging the Charter as a whole.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 34: Rights of collective bargaining and action

Submitted by: Dr Ingo Friedrich, MEP, and Dr Peter Mombaur, MEP

Proposed text:

Delete.

Reasons:

We support this proposal in principle, but this is not a classic fundamental right and can therefore be dealt with (or continue to be dealt with) elsewhere.

The agreements referred to in Article 139 of the EC Treaty should be governed by secondary law.

Moreover, freedom of association is already provided for by Article 17 (freedom of association and assembly).

=====

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 34. Rights of collective bargaining and action

Submitted by: Lord Goldsmith QC

Proposed text:

Delete all

Reasons:

Matters relating to the right of employers and workers to associate for the protection of their interests are covered by Article 11 ECHR and that Article is already reflected, and rightly so, in Article 17 of the draft Charter. To the extent that the text duplicates the effect of Article 17, and therefore of Article 11 of the ECHR, it is unnecessary. Moreover, to single out a particular aspect of Article 11 and deal with it separately at a different point in the Charter is undesirable because it undermines the integrity both of the ECHR Article and also of the Article of the Charter designed to reflect it.

However, my concern is not simply about duplication. The text goes further than Article 11 in imposing an obligation to negotiate and a right to take collective action that are to be found neither in the ECHR nor in Community law. In that connection the “statement of reasons” reads too much into the “Swedish Engine Drivers’ Union” case. Whilst in that case and others the Court has asserted that Article 11 implies a “right to be heard”, the case establishes that the existence of a right in national law to bargain collectively is no more than one of the ways in which it is possible to confer that “right to be heard”.

The text also implies that employers and workers have a cross-border right to defend their economic and social interests. That too goes beyond Article 11 and is not to be found in Community law.

The reference to conditions laid down by national legislation and practice is welcome. However, these words do not remove the effect of the preceding sentences in apparently conferring general rights to bargain collectively and take collective action and a cross-border right to defend interests.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 34

Submitted by: Frits Korthals Altes, representing the Netherlands Government

Proposed text:

- 1. Employers or organisations of employers and organisations of workers have the right to negotiate and conclude, by virtue of the procedures established in the Member States pursuant to Article 6(2) of the Revised European Social Charter, collective agreements.**
- 2. Workers and employers have the right to collective action, including the right to strike, in cases of conflicts of interest. This right may be restricted only subject to the conditions set out in Article G of the Revised European Social Charter.**

Reasons:

The wording of the amendment is more in line with Article 6 of the Revised European Social Charter (ESC).

In the first paragraph the reference to procedures for free bargaining valid in the Member States is linked to Article 6(2) of the ESC in which the Member States are obliged to work towards the creation of such procedures.

For the reason given in the reasons for the amendment to Article 32, the second paragraph includes a reference to Article G of the Revised ESC.

Moreover, it may be taken as read that the rights included in this Article, together with the right to trade unions in Article 17, for example, may also be exercised at European level. Accordingly, there is no need to add a sentence to this effect to the Article. By way of illustration - and in connection with the right to form and join trade unions in Article 17 - reference may be made to Article 5 ESC which explicitly includes the right to set up international organisations of employers and workers. It raises the question, however, of whether an addition on these lines might be necessary for more articles.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article: 34

Submitted by: Jean-Maurice Dehousse, MEP and substitute Member of the Convention

Proposed text: Article 34 to read:

Employers or employers' organisations and workers or workers' organisations have the right, where appropriate under the conditions laid down by national legislation or European Union rules, to negotiate and conclude collective agreements, including at European Union level.

The right to take collective action shall apply in cases of conflicts of interest and shall include the right to strike where all other means fail. This right may be restricted by the right of requisition where the public interest so requires, but that restriction must be laid down by law.

Reasons:

- 1. The separation of the article into two subparagraphs makes the text clearer.*
 - 2. Recognition of the above rights does not give the Community any powers to harmonise provisions governing the exercise of the right of association and the right to strike. Article 137(6) of the EC Treaty specifically excludes Community harmonisation in this area. Nonetheless, the inclusion of such a right gives full force to Article 138 of the EC Treaty, which provides that the Community shall promote the consultation of management and labour at European level.*
-

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article: 34

Submitted by: Rodotà, Paciotti and Manzella

Proposed text: Article 34 to read:

- 1. Workers and employers have the right to negotiate and conclude collective agreements, including at European Union level.**
- 2. In cases of conflicts of interest, workers and employers have the right to take collective action including the right to strike to defend their economic and social interests, including at European Union level.**

Reasons:

In the interests of clarity, a distinction should be made between the right to negotiate collective agreements and the right to take collective action to defend one's economic and social interests.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 34

Submitted by: Johannes Voggenhuber

Proposed text:

New Article 46

Employers and workers have the right to negotiate and conclude collective agreements and the right to transnational freedom of association.

Workers have the right, in cases of conflicts of interest, to take collective action, including at Union level, which also comprises the right to cross-border solidarity action and strikes.

Reasons:

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 34. Rights of collective bargaining and action

Submitted by: Guy Braibant

Proposed text:

Employers and workers have the right, at all levels, to negotiate and conclude collective agreements and to take collective action, including strike action, in cases of conflicts of interest, to defend their economic and social interests under the conditions laid down by national and Community legislation and practice.

Reasons:

This amendment refers to the freedom to take strike action, which is recognised in the laws of all the Member States. The specific reference to 'national and Community legislation and practice' enables the Member States and the Community to set the limits for the exercise of this right.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article 34: Rights of collective bargaining and action

Submitted by: Piero Melograni

Proposed text:

Add the words '**and Union**' after the word '**national**'.

Reasons:

The proposed amendment includes in the provisions any direct responsibilities which the Union may in future take on in respect of collective bargaining and action.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 34. Rights of collective bargaining and action

Submitted by: Marie-Madeleine Dieulangard

Proposed text:

Insert, after the words 'collective action', the words 'including the exercise of the right to strike,'

Reasons:

The right to strike should be recognised nowadays at European level.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 34. Rights of collective bargaining and action

Submitted by: Jean-Luc Dehaene, representative of the Belgian Government, and Karel De Gucht and Roger L'Allemand, representatives of the Belgian Parliament

Proposed text:

Employers and workers have the right to negotiate and conclude collective agreements and to take collective action to defend their interests.

Reasons:

The phrase ‘in cases of conflicts of interest’ has been deleted. It should be possible to take collective action even if such a conflict does not exist.

The adjectives ‘economic and social’ qualifying ‘their interests’ must be deleted because they place an undue restriction on negotiations and action.

The rest of the sentence has been deleted. The reference to ‘European Union level’ is unnecessary and the reference to the conditions of implementation laid down by national legislation and practice does not belong here. Implementing provisions are already contained in the horizontal clauses.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 34.

Submitted by: Andrew Duff MEP

Proposed text:

Article 34. Rights of collective bargaining and action

Employers and workers have the right to negotiate and conclude collective agreements and to take collective action, in cases of *primary* conflicts of interest (*delete 8 words*) at European Union level (*delete 10 words*)

Reasons:

The inclusion of the qualification ‘primary’ is necessary to exclude secondary action. The exclusion of the two other phrases is intended to avoid the obvious and to suppress needless repetition, respectively, as well as to emphasise the intended focus on the EU.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 34

Submitted by: Ben Fayot (Chamber of Deputies, Luxembourg)

Proposed text:

Article 34. Right of collective bargaining and action

Employers and *workers' organisations* have the right to negotiate and conclude collective agreements. *Workers* have the right to take collective action, *including the right to strike*, to defend *and promote* their *material and moral* interests.

Reasons:

Employers negotiate either individually or collectively, but always with workers' organisations. Due account should be taken of this in the structure of the text.

Workers take collective action not only to safeguard acquired rights, but also to promote their interests.

The structure of this article should highlight the fundamentally unbalanced relationship between employers and workers.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 34

Submitted by: Pervenche BERÈS

Proposed text:

Employers and workers have the right to negotiate and conclude collective agreements. In cases of conflicts of interest, *employees have the right to take collective action to defend their material and moral interests, including strike action.*

Reasons:

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DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**Proposed amendment to: Article 34****Submitted by: Ieke van den Burg****Proposed text:****Title: Right of association, collective bargaining and collective action**

Employers and workers have the right of association in order to constitute employers' organisations and trade unions for the defence of their economic interests, including at European Union level. Employers or employers' organisations and workers' organisations have the right to negotiate and conclude collective agreements, including at European Union level. Workers and their organisations have the right to take collective action, including the right to strike, in one or more EU Member States, including at EU level, in cases of conflicts of interest, and to support others in solidarity actions.

Reasons:

- *It is necessary to start with the right of association in this article, since it is essential that organisations of employers and workers have the right to negotiate and conclude collective agreements;*
- *The formula about the defence of their economic interests (stemming from art. 11 of the Community Charter) should be linked to the right of association and not to qualify the collective action;*
- *The right to take collective action is a workers' and a trade unions' right;*
- *This right should be respected and guaranteed across borders in all EU member states (be it in all or in only some of these states);*
- *The right should also include solidarity actions;*
- *The right to strike should explicitly be mentioned.*

In the Reasons reference should be made not only to the ECHR, article 5 RESC and the Community Charter, but also to ILO Conventions 135 (not ratified by Belgium and Ireland) C 87 and C 98, ratified by all EU member states!!

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 34

Submitted by: Dr Erling Olsen, Danish Government representative

Proposed text:

The text should specify that the right to negotiate and the right to take collective action apply **'under the conditions laid down by rules established in national law or collective agreement, by custom or practice.'** See amendment to Art. 31.

The phrase **'including at European level'** should also be deleted. The right to negotiate at EU level can be included in a separate paragraph 2 with the same wording as Article 139(1) of the EC Treaty: **'Should management and labour so desire, the dialogue between them at Community level may lead to contractual relations, including agreements.'**

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 34

Submitted by: Ernest M.H. Hirsch Ballin, representing the First Chamber of the States-General of the Netherlands

Proposed text:

[Does not affect the English version]

Reasons:

Editorial improvement.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 34

Submitted by: Heinrich NEISSER

Proposed text:

- Article 34. Rights of collective bargaining and action

Under the conditions laid down by national legislation and practice, employers and workers have the right to negotiate and conclude collective agreements and to take collective action, in cases of conflicts of interest, to defend their economic and social interests, including at European Union level, ~~under the conditions laid down by national legislation and practice.~~

Statement of reasons

The right to form and to join trade unions is recognised in Article 11 of the European Convention on Human Rights. [...] The concept of collective action includes, amongst other things, the right to strike and the right to impose a lockout.

Reasons:

It should be made clear in Article 34 that the right to take collective action likewise exists only under the conditions laid down by national legislation and practice. It should also be made clear that the concept of ‘conflicts of interest’ relates only to labour disputes and not to general political conflicts .

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 34

Submitted by: Prof. Dr Jürgen Meyer

Proposed text:

Article 34. Right to health protection

Everyone has the right to protection of his health. To enable this right to be exercised, the Union shall ensure, above all, that everyone has access to medical care and shall take measures to guarantee consumer protection and protection of natural conditions of life.

Reasons:

Article 34 incorporates the substance of the Praesidium's proposals for Articles 42, 44 and 45. It is intended to ensure that the Union does not infringe these rights which are predominantly guaranteed by the Member States. It also sets out an objective norm, against which EU action may be measured and which is already contained in the Treaties (Articles 3, 152, 153 and 174 of the EC Treaty). The right to health protection, a healthy environment and consumer protection is also contained in a large number of international conventions recognised by the Member States (e.g. UDHR Article 25, ICESCR Article 12 and ESC Article 11), and in the national constitutions (e.g. Belgium Article 23, Finland § 15a, Italy 21(3) and Article 38, Luxembourg Article 11, Netherlands Article 22, Portugal Articles 64 and 66 and Spain Article 43).

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 34 (new)

Submitted by: Johannes Voggenhuber

Proposed text:

Everyone has the right to adequate and suitable housing.

Reasons:

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Article 34 bis

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article: 34

Submitted by: Rodotà, Paciotti and Manzella

Proposed text: Insert the following after Article 34:

Article 34a. Right to a fair remuneration and to equal treatment

1. Every worker has the right to a fair remuneration for work carried out, such as to give him or her a decent standard of living.
2. Every worker has the right to a fair remuneration for work of equal value.
3. Equal treatment for men and women shall be ensured, inter alia by means of positive action, in respect of working conditions, work relations and the social protection system.
4. All non-EU nationals working lawfully in the territory of the Member States are entitled to treatment not less favourable than that of European Union workers.

Reasons:

Paragraph 1 of this new article is based on Article 4 of the Social Charter and Article 5 of the Community Charter of the Fundamental Social Rights of Workers, paragraphs 2 and 3 are based on Article 141 of the Treaty, while paragraph 4, which takes over the substance of Article 40 of this Charter, with a view to ensuring comprehensive coverage of this area.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed Article 34a (new)

Submitted by: Pervenche BERÈS

Proposed text:

Article 34a. Minimum wage

Every worker has the right to a minimum wage, in keeping with the economic and social situation in each Member State.

Reasons:

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Article 35

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 35. Right to rest periods and annual leave

Submitted by: Mr Georges BERTHU, MEP

Proposed text:

Delete this article.

Reasons:

The same reasons as for the amendment to Article 33. This article should come under national law or, at most, form part of a directive, but should certainly not be included in a Charter of fundamental rights.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 35: Right to rest periods and annual leave

Submitted by: Dr Ingo Friedrich, MEP, and Dr Peter Mombaur, MEP

Proposed text:

Delete.

Alternative proposal (if the above is rejected)

Every worker has the right to limitation of maximum working hours, to *appropriate* rest periods and to an annual period of paid leave.

Reasons:

We support this proposal in principle, but this is not a classic fundamental right and can therefore be dealt with (or continue to be dealt with) elsewhere.

With the aim of incorporating in the European Charter of Fundamental Rights only rights which are genuinely fundamental, labour-law entitlements should be governed by secondary law instead. If Article 46 is to be retained, and bearing in mind that entitlements are subject to regular change, the reference to ‘daily and weekly’ rest periods ought at the minimum to be deleted from the Charter.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**Proposed amendment to: Article 35****Submitted by: Ieke van den Burg****Proposed text:****Title: Right to reasonable working times****(NB : and change in reference: should be referred to article 2 of the Revised Social Charter****Reasons:**

This title covers the content of the article that not only refers to rest periods and annual leave, but also to reasonable daily and weekly working hours to be maximized.

Important: The Reasons should refer to article 2 of the Revised Social Charter. This refers a.o. to a minimum of four weeks' holiday, and to the Sunday rest.

A reference could also be included to point 8 of the Community Charter on Fundamental Social Rights for Workers which provides a precise formulation of this right.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: title of Article 35

Submitted by: Frits Korthals Altes, representing the Netherlands Government

Proposed title:

Article 35: *Reasonable hours of work, rest periods and annual leave*

Reasons:

The title should be made to reflect the nature of the article, which is a directive. Accordingly, the words 'Right to' need to be deleted from the title. Furthermore, and in accordance with the text of the next amendment, the words 'Reasonable hours of work' also need to be included in the title.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 35

Submitted by: Frits Korthals Altes, representing the Netherlands Government

Proposed text:

The Union shall take measures so that reasonable daily and weekly hours of work are defined and workers can have a weekly rest period which shall, as far as possible, coincide with the day which, through tradition or custom, is recognised as a day of rest in the Member States, and may be entitled to an annual period of paid leave.

Reasons:

This wording is more in line with Article 2, introduction and paragraphs 1 and 5, of the Revised European Social Charter, while the substance of the Article is made more precise.

The wording ('The Union shall take measures...') also better expresses the nature of this article, which is concerned with principles, that the Praesidium's proposal which refers to a 'right'.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article: 35

Submitted by: Jean-Maurice Dehousse, MEP and substitute Member of the Convention

Proposed text: Article 34 to read:

Every worker has the right to just conditions of work, which shall include limitation of maximum working hours, daily and weekly rest periods and an annual period of paid leave.

Reasons:

1. *To make the article clearer.*
 2. *Article 2 of the Revised Social Charter defines the term 'just conditions of work'.*
 3. *Sometimes major differences may exist between one Member State and another and even one sector and another in determining exactly what 'just conditions' may or should be.*
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-

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 35. Right to rest periods and annual leave

Submitted by: Lord Goldsmith QC

Proposed text:

Amend to produce the following two-part text:

For Part A, “Proclamation of rights”:

Every worker has the right to a weekly rest period and to an annual period of paid leave.

For Part B, “Definition of rights”:

The right in Article 35 extends so far as is required by the relevant secondary legislation adopted by the Community under Article 137(1) of the Treaty Establishing the European Community, subject to the limitations and derogations specified in that legislation and in any national measures adopted to give them effect.

Reasons:

I do not accept that a “general right to limitation of maximum working hours” currently exists and it is therefore inappropriate for this document. The article as drafted fails to take account of the provisions of the Working Time Directive whereby workers can choose to work in excess of 48 hours per week limit provided for in the Directive. This is subject to a review in 2003 but to include it here would pre-empt the outcome of that review. My wording more accurately reflects the current position under the Directive including the excluded areas.

As always, having a clear ‘Definition of Rights’ which ties the right to a precise legal source is an essential requirement for me to accept the short Part A statement.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 35

Submitted by: Jürgen Gnauck, Minister of Federal and European Affairs, Thuringia

Proposed text:

Right to rest periods and annual leave

Every worker has the right to limitation of working hours, to appropriate rest periods and to an annual period of leave with no loss of pay.

Reasons:

Again, it would be better to replace the term 'entitled' with 'right' and to leave out the word 'maximum'. Moreover, the concept of 'daily and weekly rest periods' is too restrictive and detailed; the flexible phrase 'appropriate rest periods' is better.

The phrase 'annual period of paid leave' should be replaced with the phrase 'annual period of leave with no loss of pay.' This makes it possible to avoid any misunderstanding that holiday pay should be granted as a fundamental right.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 35

Submitted by: Einem/Holoubek

Proposed text:

Every worker has the right to *effective* limitation of maximum working hours, to *adequate* daily and weekly rest periods and to an *appropriate* annual period of paid leave.

Reasons:

In order to make clearer and more comprehensible to the citizen what this article guarantees, it should be specifically stated that the restriction on maximum working hours should be controlled by appropriate measures in such a way as to be effective. It should also be specifically stated that the daily and weekly rest periods should fulfil their objectives adequately, and the length of the period of paid annual leave should be appropriate.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 35

Submitted by: Andrew Duff MEP

Proposed text:

Article 35. Right to rest periods and annual leave

Every worker has the right to *limited* working hours, to daily and weekly rest periods and to an annual period of paid leave.

Reasons:

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 35. Right to rest periods and annual leave.

Submitted by: Marie-Madeleine Dieulangard

Proposed text:

Insert the word 'weekly' before the words 'working hours'.

Reasons:

=====

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article: 35

Submitted by: Rodotà, Paciotti and Manzella

Proposed text: Article 35 to read:

1. Every worker has the right to daily and weekly rest periods and to an annual period of paid leave, and may not waive that right.
2. The maximum length of the working week shall be established by the competent legislative body.

Reasons:

The proposed amendment recasts the Praesidium's text and is intended to make a clear distinction between the right of workers to daily and weekly rest periods and annual leave and the guarantee that the maximum length of the working week shall be laid down by law.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 35

Submitted by: Johannes Voggenhuber

Proposed text:

Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave of at least 4 weeks.

Reasons:

=====

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 35

Submitted by: Win Griffiths, MP

Proposed text:

Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to annual paid leave as established in the law of Member States.

Reasons:

The right to rest periods is the earliest recorded right but its implementation, if included in the Charter needs proper clarification in Part B.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 35

Submitted by: Pervenche BERÈS

Proposed text:

Article 35. Right to rest periods and annual leave

- 1. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.**
- 2. Every hour of work beyond the maximum working hours confers a right to increased pay.**

Reasons:

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 35. Right to rest and annual leave

Submitted by: José Barros Moura and Maria Eduarda Azevedo, Members of the Portuguese National Assembly

Proposed text:

Every worker has the right to limitation of maximum working hours (*six words deleted*) and to *paid annual leave*.

Reasons:

Maria Eduarda Azevedo prefers a more general wording, i.e. deleting the reference to daily and weekly rest periods.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 35

Submitted by: Ernest M.H. Hirsch Ballin, representing the First Chamber of the States-General of the Netherlands

Proposed text:

[Does not affect the English version]

Reasons:

Editorial improvement.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article: 35 Right to rest periods and annual leave

**Submitted by: Jean-Luc DEHAENE, representative of the Belgian Government, and
Karel DE GUCHT and Roger LALLEMAND, representatives of the Belgian Parliament**

This amendment applies only to the DUTCH version of Amendment 35.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed Amendment to: Article 35

Submitted by: Prof. Dr Jürgen Meyer

Proposed text:

Article 35. Right to education

- (1) **Everyone has the right to education and the right of access to vocational and continuing training, as well as lifelong learning. This right includes the right to receive free compulsory education.**
- (2) **The founding of educational establishments shall be free of constraint.**
- (3) **The right of parents to have their children educated and taught in accordance with their religious, philosophical and educational convictions shall be respected.**

Reasons:

Article 35 takes over much of the Presidium's proposed wording for Article 16 (Convent 28) and incorporates it in the social provisions for organisational reasons. Given that the right to education – linked to the duty to attend school – is recognised in all Member States and contained in the ECHR (Article 2 of the additional Protocol), there is no need to provide a specific justification for this right which has not given rise to any controversy in the Convention. Given that the EC has certain responsibilities in this area under Articles 149 and 150 of the EC Treaty, fundamental rights must be guaranteed. The additional 'right to lifelong learning' is a universally recognised principle and is necessary for all individuals as a result of technical innovation. The Lisbon European Council described lifelong learning as 'a basic component of the European social model'.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 35 (new)

Submitted by: Johannes Voggenhuber

Proposed text:

Everyone has the right to earn a living by means of freely chosen or accepted work.

Reasons:

=====

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**Proposed amendment to: Article 35****Submitted by: Johannes Voggenhuber****Proposed text:****New Article 37****Reasons:**

Article 36

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 36

Submitted by: Gabriel Cisneros Laborda

Proposed text:

It is proposed that this article be deleted or, otherwise, that it be included in a chapter devoted to principles.

Reasons:

See the reasons for the amendment to Article 31 (first paragraph).

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DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 36. Safe and healthy working conditions

Submitted by: Mr Georges BERTHU, MEP

Proposed text:

Delete this article.

Reasons:

The same reasons as for the amendment to Article 33. This article should come under national law or, at most, form part of a directive, but should certainly not be included in a Charter of fundamental rights.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 36: Safe and healthy working conditions

Submitted by: Dr Ingo Friedrich, MEP, and Dr Peter Mombaur, MEP

Proposed text:

Delete.

Reasons:

We support this proposal in principle, but this is not a classic fundamental right and can therefore be dealt with (or continue to be dealt with) elsewhere.

The substance of the article is already covered by the right to physical integrity.

As labour-law entitlements are subject to regular change, and with the aim of incorporating in the European Charter of Fundamental Rights only rights which are genuinely fundamental, such entitlements should be governed by secondary law instead.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 36

Submitted by: Charlotte Cederschiöld

Proposed text:

Delete

(Every worker has the right to safe and healthy working conditions.)

Reasons:

This article, however ideal, will not be possible to be fulfilled or guaranteed by the Union. The EU can hardly guarantee the right to safe and healthy working conditions, which would mean that most day-care centres and building sites must be closed down. This would mean that the article becomes meaningless and that might put the whole Charter in jeopardy.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: title of Article 36

Submitted by: Frits Korthals Altes, representing the Netherlands Government

Proposed text:

Safe and healthy working conditions

Reasons:

The title is brought in line with the wording of the article following adoption of the next amendment.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 36

Submitted by: Frits Korthals Altes, representing the Netherlands Government

Proposed text:

The Union shall take measures to implement safe and healthy working conditions.

Reasons:

This wording ('The Union shall take measures...') better reflects the nature of this article, which is concerned with a question of principle, than the Presidium's proposal which refers to a 'right'. Moreover, the phrase 'right to safe and healthy working conditions' is too vague,. The amendment therefore includes the more accurate and specific wording 'safe and healthy working conditions'.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 36. Safe and health working conditions

Submitted by: Lord Goldsmith QC

Proposed text:

Amend to produce the follow two-part text:

For Part A, “Proclamation of Rights”:

Every worker’s right to safe and healthy working conditions is protected by law.

For Part B, “Definition of Rights”:

The right in Article 36 extends so far as is required by the relevant secondary legislation adopted by the Community under Article 137(1) of the Treaty establishing the European Community, subject to the limitations and derogations specified in that legislation and in any national measures adopted to give them effect.

Reasons:

As worded, the right is too general. But I accept the general thrust of this article as long as it can be made to reflect Community legislation accurately. My draft seeks to do this.

In particular my draft defines the content of this right by reference to existing law. I would not regard it as acceptable to have a right expressed in purely general terms.

=====

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 36

Submitted by: Win Griffiths, MP

Proposed text:

Every worker has the right to safe and healthy working conditions as established in the law of Member States.

Reasons:

This article if included in the Charter, requires clarification in Part B.

=====

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 36

Submitted by: Ernest M.H. Hirsch Ballin, representing the First Chamber of the States-General of the Netherlands

Proposed text:

[Does not affect the English version]

Reasons:

Brings the article more in line with Article 3 of the European Social Charter

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article: 36

Submitted by: Jean-Maurice Dehousse, MEP and substitute Member of the Convention

Proposed text: Article 36 to read:

Every worker has the right to safety and health protection at work.

Reasons:

- 1. To make the article clearer.*
 - 2. The existence of preventive measures are implicit in the notion of health protection. That notion covers more than just the adoption of measures aimed at preventing working practices or conditions from damaging the health of workers. Furthermore, this is the notion used in Directive 91/533.*
-

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 36

Submitted by: Ben Fayot (Chamber of Deputies, Luxembourg)

Proposed text:

Article 36. Safe, healthy *and hygienic* working conditions

Every worker has the right to safe, healthy *and hygienic* working conditions.

Reasons:

Hygiene at work is a well established concept in the workplace and there are many different national provisions on the subject. This is additional to the concept of health at work.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 36

Submitted by: Mr François Loncle

Proposed text:

Every worker has the right to safe and hygienic working conditions.

Reasons:

The term 'hygienic' is more in keeping with Article 3 of the revised Social Charter.

Translator's note: 'Hygiène' is the term used in the French version of the European Social Charter. The English version actually refers to 'safe and healthy working conditions'.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**Proposed amendment to: Article 36****Submitted by: Ieke van den Burg****Proposed text:****Every worker has the right to safe and healthy working conditions and to protection of his/her dignity at work****Reasons:**

Not only physically relevant protection, also protection against (sexual) harassment, aggression etc are important. The addition of this article is based on art. 26 of the RESC..

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 36

Submitted by: Pervenche BERÈS

Proposed text:

Every worker has the right to *safety and protection of his health and hygiene at work. Industrial accidents and occupational diseases confer the right to social benefits and compensation.*

Reasons:

=====

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 36. Safe and healthy working conditions

Submitted by: Marie-Madeleine Dieulangard

Proposed text:

Reword the existing text as follow:

1. “Every worker has the right to safe, hygienic and healthy working conditions and to conditions of work that are not detrimental to his physical and mental wellbeing and his private life’.”

Add the following paragraph:

2. “Any worker who sustains an industrial injury or contracts an occupational disease may apply for recognition of his disability or invalidity and for financial compensation.”

Reasons:

The aim is to highlight the protection of conditions of work.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 36

Submitted by: Johannes Voggenhuber

Proposed text:

1. (as original)

2. (new) Workers have the right, in cooperation with the management of the undertaking, to assess safety and working conditions in the undertaking and to request their improvement.

3. Everyone who suffers an industrial accident or industrial disease has the right to adequate social compensation.

Reasons:

=====

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 36

Submitted by: Jürgen Gnauck, Minister of Federal and European Affairs, Thuringia

Proposed text:

Article 36. Right to safe and healthy working conditions

Every worker has the right to safe and healthy working conditions.

Reasons:

The new wording [which does not affect the English version] (changing the German 'Anspruch' to 'Recht') seeks to standardise the way in which social rights are formulated.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Articles 36, 37 and 39 (to be combined)

Submitted by: Jo Leinen

Proposed text:

1. Every worker has the right to healthy and safe working conditions.

2. Young people, pregnant women and those with children to bring up have the right to special protection. This right includes, in particular, the right to maternity leave and parental leave with the aim of reconciling family life and employment. It also includes the right of young people to working conditions appropriate to their age and stage of development.

(Also incorporate in the statement of reasons/Part B the following text from Article 37 of the Praesidium proposal:)
The minimum age of admission to employment must not be lower than the minimum school-leaving age without prejudice to such rules as may be more favourable to young people, in particular those ensuring their preparation for work through vocational training and subject to *certain* derogations.

Reasons:

In order to streamline the Charter, Articles 36, 37 and 39 should likewise be combined, as they deal with closely related matters. The special protection of young people, pregnant women and those with children to bring up is taken, in this form, from Prof. Meyer's draft. The specific restriction for young people (former Article 37) is transferred to the statement of reasons, in line with the Praesidium's proposals for other articles.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 36

Submitted by: Johannes Voggenhuber

Proposed text:

New Article 38

Reasons:

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 36

Submitted by: Prof. Dr Jürgen Meyer

Proposed text:

Article 36. Right to housing

The right of individuals to adequate housing shall be respected.

Reasons:

Article 36 gives the right to housing EU recognition. This means that the obligations on the Member States under international law regarding the right to housing (e.g. UDHR Article 25(1), ICESCR Article 11, UN Convention on the Rights of the Child Article 27(3) and EC Article 31 rev.) may not be jeopardised by the Union. The right to housing is also mentioned explicitly in the constitutions of many Member States (Belgium Article 23, Finland § 15a, Greece Article 21(4), Portugal Articles 22(2) and 65, Sweden Chapter 1 § 2 and Spain Article 47) and implicitly in others (Germany Articles 1, 13, 14 and 20). This right is also recognised in the constitutions of the German Länder (e.g. Bavaria Article 206(1), Brandenburg Article 47 and Saxony-Anhalt Article 47).

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 36. Safe and healthy working conditions

Submitted by: Prof. Daniel Tarschys, Sweden

Proposed text:

Clarify the implications of this article.

Reasons:

It must be explained, preferably in a part B of the Charter, who the addressee of this article is. Under Swedish legislation an employee cannot hold his/her employer responsible before a national court for violations of Swedish law in this field. Such initiatives are reserved for the competent authorities.

Article 36 bis

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**Proposed Article 36a (new article after Article 36)****Submitted by: Mr François Loncle****Proposed text:****Every worker has the right to professional training throughout his working life.****Reasons:***This amendment is intended to rectify an omission.*

Article 37

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 37

Submitted by: Charlotte Cederschiöld

Proposed text:

Delete

Reasons:

This question is very important. However, there already exists a directive in this matter (94/33/EG) and this is sufficient for the protection of youths in employment situations.

There is a need to distinguish between what should be put in a Charter, which will eventually become a constitution, and what can be regulated with directives and secondary law. Not every regulation can be raised to constitutional level.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 37: Protection of young people

Submitted by: Dr Ingo Friedrich, MEP, and Dr Peter Mombaur, MEP

Proposed text:

Delete.

Alternative proposal (if the above is rejected)

The Community shall seek to ensure that a minimum age of admission to employment is laid down which is not lower than the minimum school-leaving age

Reasons:

We support this proposal in principle, but this is not a classic fundamental right and can therefore be dealt with (or continue to be dealt with) elsewhere.

The provision is complex, particularly as regards the exceptions permitted, and is already too detailed. Moreover, it relates only to employment. Its proper place, therefore, is secondary law.

=====

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**Proposed amendment to: Article 37. Protection of young people****Submitted by: Mr Georges BERTHU, MEP****Proposed text:****Delete this article.****Reasons:**

The same reasons as for the amendment to Article 33. This article should come under national law or, at most, form part of a directive, but should certainly not be included in a Charter of fundamental rights.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: title of Article 37

Submitted by: Frits Korthals Altes, representing the Netherlands Government

Proposed title:

Protection of children and young persons with regard to the labour process

Reasons:

This Article is concerned solely with the protection of children and young persons with regard to the labour process. A provision on the protection of children in general is already contained in Article 23. Furthermore, and by analogy with Article 7 of the Revised European Social Charter, the term 'children and young persons' is preferred to 'young people'. The amendment seeks to change the title of the article accordingly.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 37

Submitted by: Win Griffiths, MP

Proposed text:

The minimum age of admission to full time employment must not be lower than the minimum school-leaving age without prejudice to such rules as may be more favourable to young people.

Reasons:

This text is more concise and Part B can give a full explanation of its implementation.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 37

Submitted by: Jürgen Gnauck, Minister of Federal and European Affairs, Thuringia

Proposed text:

Article 37. Protection of young people

The minimum age of admission to employment must not be lower than the minimum school-leaving age.

Young people admitted to work must have working conditions appropriate to their age.

Reasons:

This article should be restricted to the important principle that admission to employment must not be permitted before the end of compulsory schooling. A list of exceptions is inadvisable because it may appear exhaustive .

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article: 37, first subparagraph

Submitted by: Jean-Maurice Dehousse, MEP and substitute Member of the Convention

Proposed text:

After 'minimum school-leaving age', insert 'nor, under any circumstances, fifteen years of age,'.

Reasons:

The rule banning work by children under fifteen years of age can, for example, free up more casual jobs for students and others.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 37

Submitted by: Ernest M.H. Hirsch Ballin, representing the First Chamber of the States-General of the Netherlands

Proposed text:

Free compulsory education shall be granted at least until the minimum age for entering the labour process. This age may not be less than fifteen, with the exception of certain forms of light work permitted by law for a maximum period of eight (?) hours per week.

Reasons:

Guarantees of the right to education are given priority. This stresses the guarantee nature of the article and cuts out the possibility of setting the two age limits at too low a level; the present text does not preclude this. The amendment also holds out the possibility of part-time compulsory education for young people in employment provided they are at least fifteen years old.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 37

Submitted by: Pervenche BERÈS

Proposed text:

Article 37. Protection of young people

The minimum age of admission to employment must not be lower than the minimum school-leaving age without prejudice to such rules as may be more favourable to young people, in particular those ensuring their preparation for work through vocational training (*9 words deleted*).

Young people admitted to work must have working conditions which suit their age.

Reasons:

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 37

Submitted by: Frits Korthals Altes, representing the Netherlands Government

Proposed text:

1. **The minimum age of admission to employment must not be lower than fifteen years, subject to exceptions for light work which shall be defined elsewhere and which is not harmful to the health, mental well-being or development of the child.**
2. **In accordance with Article 17 of the Revised European Social Charter, the Union shall work towards a situation where working conditions of persons under the age of 18 are in line with their development.**

Reasons:

In the first place this amendment numbers the different parts of the article.

The wording of the first paragraph of the amendment has been brought more in line with Article 7(1) of the Revised European Social Charter (ESC). Accordingly, the phrase 'the minimum school-leaving age without prejudice to such rules as may be more favourable to young people, in particular those ensuring their preparation for work through vocational training' is replaced with 'fifteen years'. Preference has been given to a text closer to the Revised ESC than that of the Community Charter, because the Revised ESC is a legally binding instrument with an adequate supervisory mechanism which has already generated a respectable body of case law in respect of the 1961 ESC. It is advisable not to run counter to practice - the risk of which increases the more the wording departs from that of the Revised ESC.

Furthermore, the reference to 'the minimum school-leaving age' is not clear, because it can vary from one Member State to another. Stating the age of 15 ensures that a standard which is clear to everyone is laid down. The reference to rules on 'preparation for work through vocational training' is superfluous in the light of paragraph 2 of the amendment.

The purpose of the second paragraph of the Presidium's proposed text is to adapt labour legislation rules for working young persons to the requirements of their development and the needs of their vocational training. Here, too, a wording is proposed for the second paragraph which in terms of substance has the same effect as the Presidium's proposal but which is linked more clearly to the relevant provisions in the ESC. For the sake of brevity, the text of Article 7 of the Revised ESC is not included verbatim; instead, there is a reference to it.

The wording of the second paragraph ('...the Union shall work towards...') better puts across the nature of this Article, which is concerned with a principle, than the Presidium proposal.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 37

Submitted by: Johannes Voggenhuber and Kathalijne Buitenweg

Proposed text:

New Article 40

The minimum age of admission to employment must not be lower than the minimum school leaving age without prejudice to such rules as may be more favourable to young people, in particular (7 words deleted) in regard to vocational training and subject to derogations limited to certain light work.

Young people admitted to work have the right to have working conditions which suit their age.

Reasons:

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DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**Proposed amendment to: Article 37****Submitted by: Ieke van den Burg****Proposed text:****Title: Protection of children and young persons**

1. as proposed
2. **Children and young people admitted to work have the right to working conditions which suit their age, protect their safety and health, and encourage the full development of their personality and of their physical and mental capacities.**

Reasons:

The amendment also refers to children, and extends the protection in the second part with the essential notion of art. 17 of the RESC of a responsibility with respect to a healthy development of children and young persons..

This would be the appropriate place for a reference to the UN Convention on the Rights of the Child, which has been ratified by all Member States; and ILO Conventions 182 and 138 dealing with the worst forms of Child Labour and Minimum Age.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 37. Protection of young people

Submitted by: Lord Goldsmith QC

Proposed text:

Amend to produce the follow two-part text:

For Part A, “Proclamation of Rights”:

The minimum age of employment must generally not be lower than the minimum age at which compulsory full-time schooling ends.

Young people under 18 years of age are entitled to working conditions which suit their age and to be protected against economic exploitation and any work likely to harm their safety, health or physical, mental, moral or social development or to jeopardise their education.

•

For Part B, “Definition of Rights”:

The right in Article 37 extends so far as is required by the relevant secondary legislation adopted by the Community under Article 137(1) of the Treaty establishing the European Community, subject to the limitations and derogations specified in that legislation and in any national measures adopted to give them effect.

Reasons:

I agree that it is important to protect the interests of young people in the workplace. It is very important to tie the Charter wording into the Young Workers Directive and I do not believe the Praesidium’s text goes far enough in this direction. It does not for example prevent the economic exploitation of young workers or the protection of their health and safety and needs to be strengthened. My amendment seeks to do this. The Praesidium text recognises the need for young people to be able to undertake work as part of vocational training and subject to limitations in the directive. This is covered through my part B text.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article: 37, second subparagraph

Submitted by: Jean-Maurice Dehousse, MEP and substitute Member of the Convention

Proposed text:

Young people admitted to work must have working conditions which suit their age *and be protected in particular against all types of work that may jeopardise their safety, health, personal, psychological, moral or social development or their education.*

Reasons:

The special working conditions required by young people need to be spelled out, and limits need to be set in this area.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 37. Protection of young people

Submitted by: Marie-Madeleine Dieulangard

Proposed text:

At the end of the existing text, insert the following sentence: 'They shall be subject to specific safeguards to protect them against hazards that might affect their health and their physical and mental development'

Reasons:

The aim is to ensure greater protection for minors in employment.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 37

Submitted by: Ben Fayot (Chamber of Deputies, Luxembourg)

Proposed text:

Article 37. Protection of young people.

- in the first paragraph, delete ‘and subject to derogations limited to certain light work’.
add the following: *‘Young people under 18 years of age must have working conditions which suit their age and be protected against any work likely to harm their safety, health or physical, mental, moral or social development or to jeopardise their education.’*

Reasons:

This amendment reintroduces the former, more explicit wording contained in Convent 18.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 37

Submitted by: Einem/Holoubek

Proposed text:

Protection of young people *in the workplace*

The minimum age of admission to employment must not be lower than the minimum school-leaving age without prejudice to such rules as may be more favourable to young people, in particular those ensuring their preparation for work through vocational training and subject to derogations limited to certain light work.

Young people admitted to work must have working conditions *and a level of protection in the workplace* which suit their age.

Reasons:

The title should describe the content of the article more precisely. No amendment is proposed to the first paragraph. The amendment to the second paragraph is intended to make clear that the aim of this provision is to protect young people in the workplace.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article 37: Protection of young people

Submitted by: Piero Melograni

Proposed text:

Reverse the order of the two paragraphs.

Reasons:

This amendment places the emphasis on the general principle of the type of working conditions to be provided for young people. The stipulation of the minimum age for admission to employment then establishes the scope for application of that general principle.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 37

Submitted by: Andrew Duff MEP

Proposed text:

Article 37. Protection of young people *at work*

The minimum *working age (delete 4 words)* must not be lower than the minimum school-leaving age without prejudice to such rules as may be more favourable to young people, in particular those ensuring their preparation for work through vocational training and subject to derogations limited to certain light work.

Young people admitted to work must have working conditions which suit their age.

Reasons:

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DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 37

Submitted by: Dr Erling Olsen, Danish Government representative

Proposed text:

I would propose that the phrase ‘**and cultural activities**’ be added to paragraph 1.

Reasons:

This is based on Council Directive (94/33/EC) on the protection of young people at work.

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DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 37

Submitted by: Prof. Dr Jürgen Meyer

Proposed text:

Article 37. Right to social security

Everyone has the right to social security and to access to social services for himself and his family with a view to leading a life guaranteeing respect for human dignity, in particular in the event of maternity, illness, dependence or old age.

Reasons:

Article 37 is both more specific than the Presidium's proposal (Article 41, Convent 34) and more concise. The specific reference to leading a life guaranteeing respect for human dignity is contained in the constitutions of the Member States (Belgium Article 23, Denmark § 75(2), Finland § 15a, preamble to the 1946 French Constitution, Greece Article 21(3), Italy Article 38, Luxembourg Article 11, Netherlands Article 20, Portugal Article 63, Sweden Chapter 1 § 2 and Spain Articles 40, 41 and 50), the constitutions of the applicant countries (Poland Article 67, Slovenia Articles 50 and 66 and Hungary Article 70e), the constitutions of the German Länder (e.g. Brandenburg Articles 45 and 47, Mecklenburg-West Pomerania Articles 17(2) and (3), Saxony Article 7 and Saxony-Anhalt Article 40) and international treaties (UDHR Articles 3 and 25, ICCPR Article 6¹, ICESCR Article 11, ESC Articles 12, 13 and 14, CCFR § 10 and ILO Convention No 102).

¹ On the interpretation of this article, see General Comment 6 of the UN Human Rights Committee in UN Doc HRI/GEN/1/Rev.2, para 5.

Article 37 bis

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**Proposed amendment to: Article 37a new****Submitted by: Ieke van den Burg****Proposed text:****Title: Gender equality**

In the perspective of obtaining substantial equality between men and women and of combating structural inequality, women have the right to enjoy positive measures particularly in the field of employment, working conditions, fair and equal pay, social security and pension rights.

Reasons:

In addition to the general anti-discrimination article, proposed by the Presidium in art. 22 , it is crucial to make an explicit statement of the right of women to enjoy "positive action" to be able to really obtain equality in the sphere of employment, pay and social security.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed Article 37a (new)

Submitted by: Pervenche BERÈS

Proposed text:

Article 37a. Protection of the elderly

All elderly persons have the right to lead an independent and decent life. They should be able to participate fully in political, social and cultural life.

All workers and their dependants have the right to a pension guaranteeing a decent standard of living and independence.

Reasons:

Article 38

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 38. Right to protection in cases of termination of employment

Submitted by: Mr Georges BERTHU, MEP

Proposed text:

Delete this article.

Reasons:

The same reasons as for the amendment to Article 33. This article should come under national law or, at most, form part of a directive, but should certainly not be included in a Charter of fundamental rights.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 38: Right to protection in cases of termination of employment

Submitted by: Dr Ingo Friedrich, MEP, and Dr Peter Mombaur, MEP

Proposed text:

Delete.

Alternative proposal (if the above is rejected)

All workers have a right to protection against *arbitrary* termination of employment.

Reasons:

We support this proposal in principle, but this is not a classic fundamental right and can therefore be dealt with (or continue to be dealt with) elsewhere.

In view of the numerous interests which have to be weighed against one another in cases where employment is terminated, protection against termination of employment is not a matter which ought to be dealt with by instituting a fundamental right. In view of its complexity, it should be dealt with by secondary law instead.

As an alternative, it should be stressed that in order to ensure respect for human dignity, protection against arbitrary termination of employment is necessary.

=====

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**Proposed amendment to: Article 38. Right to protection in cases of termination of employment****Submitted by: Lord Goldsmith QC****Proposed text:***Delete all***Reasons:**

The Article as drafted provides for a general and unqualified right which goes well beyond existing law. In principle, the UK accepts the need to protect workers against unjust terminations and has adopted legislation to implement protections including in the specific areas required by certain Directives, for example in the areas of acquired rights, health and safety at work, equal treatment, pregnancy and maternity and collective redundancies. But the text proposed goes well beyond the present legislation at EU level requiring protections in these specific instances and seeks to introduce a general right where none currently exists. If such legislation is to be introduced it should be done through the relevant part of the TEC (Article 137(3)) and discussed in that context.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 38. Right to protection in cases of termination of employment.

Submitted by: Prof. Daniel Tarschys, Sweden

Proposed text:

Delete this text.

Reasons:

Under Swedish legislation termination of employment on 'unjustifiable grounds' is prohibited and the meaning of the term 'unjustified' is wider than in the European Social Charter. The problem with the current draft article is that there is no generally accepted definition of the term 'unjustified'. It cannot be left to the ECJ to interpret that term.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: title of Article 38

Submitted by: Frits Korthals Altes, representing the Netherlands Government

Proposed title:

Protection in cases of termination of employment

Reasons:

The title should be brought in line with the nature of the article which is a directive. Accordingly, the words 'right to' should be deleted from the title.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 38

Submitted by: Frits Korthals Altes, representing the Netherlands Government

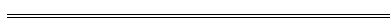
Proposed text:

The Union shall work towards employers being afforded effective protection against unjustified termination of employment.

Reasons:

The amendment seeks a closer link with Article 24 of the Revised European Social Charter.

Furthermore, the wording ('The Union shall work towards...') better expresses the nature of this article, which is concerned with a principle, than the Praesidium text which refers to a 'right'



DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 38

Submitted by: Andrew Duff MEP

Proposed text:

Article 38. *Protection against unfair dismissal*

Everyone has the right to protection against arbitrary termination of employment.

Reasons:

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DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article 38: Right to protection in cases of termination of employment

Submitted by: Jean-Luc DEHAENE, representative of the Belgian Government, and Karel DE GUCHT, representative of the Belgian Parliament

Proposed text:

All workers have a right to protection against arbitrary termination of employment.

Reasons:

The principle obtaining under Belgian law is that employers are not obliged to give any justification for termination of employment.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article: 38

Submitted by: Rodotà, Paciotti and Manzella

Proposed text: Article 38 to read:

Article 38. Right to job protection

All workers have the right not to be dismissed without good cause.

Reasons:

The proposed wording couches in positive terms the worker's right not to be dismissed unjustly or unlawfully.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 38

Submitted by: Charlotte Cederschiöld

Proposed text:

All workers have a right to protection against termination of employment with justifiable cause.

Reasons:

In this Article, we would like to change the English words "unjustified" and "abusive" to the English equivalent of the Swedish "saklig grund" or the German "sachliche gesetzliche Grund".

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 38

Submitted by: Ben Fayot (Chamber of Deputies, Luxembourg)

Proposed text:

Article 38. Right to protection in cases of termination of employment

All workers have a right to protection against unjustified or abusive termination of employment. *Protection of workers in the event of collective dismissals shall be guaranteed.*

Reasons:

Specific provision must be made for protection in the event of collective dismissal which is practiced for economic reasons and is particularly harmful to workers.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 38. Right to protection in cases of termination of employment

Submitted by: José Barros Moura and Maria Eduarda Azevedo, Members of the Portuguese National Assembly

Proposed text:

1. All workers have a right to protection against unjustified or abusive termination of employment.
2. *Collective termination of employment for economic reasons lacks any objective foundation and confers entitlement to compensation.*

Note: cf. Directive on collective termination of employment

Reasons:

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 38

Submitted by: Pervenche BERÈS

Proposed text:

Article 38. Right to protection in cases of termination of employment

- 1. All workers have a right to protection against unjustified or abusive termination of employment.**
- 2. All workers have a right to compensation in the event of termination of employment and reparation in the event of abuse of termination of employment.**
- 3. Workers in a company with high profit margins shall be protected against mass redundancy measures.**

Reasons:

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**Proposed amendment to: Article 38****Submitted by: Ieke van den Burg****Proposed text:****Title: Right to protection against unfair dismissal**

Every worker has the right to information about the conditions applicable to his/her contract or employment relationship and to protection against unjustified, abusive, or discriminatory termination of employment. Pregnant workers and workers enjoying maternity and parental leave, as well as trade union and workers' representatives have the right to a temporary prohibition of termination or employment. Every worker has the right to protection of his/her claims in case of insolvency of his/her employer

(NB additional references necessary!!)**Reasons:**

The amendment broadens the article, by adding the right to information about the employment Contract, as contained in Directive 91/533 of October 1991, and in article 2,6 of the Revised Social Charter. This is necessary to be sure that the protection against unfair dismissal may function adequately.

In the original protection against unfair dismissal also "discriminatory" reasons for termination of employment have been added, as well as the prohibition of dismissal for certain categories of workers. For a more elaborate qualification of invalid vs. valid reasons of termination of employment, I propose to refer to ILO Convention 158.

Protection in case of insolvency has been added, and should be referred to RESC art 25, ILO convention 173, and EC Directive 80/987.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 38. Right to protection in cases of termination of employment

Submitted by: Marie-Madeleine Dieulangard

Proposed text:

Replace the words 'unjustified or abusive' with the words 'unjustified, abusive or discriminatory'.

Add the following sentence: 'They shall have a right to apply to the courts'.

Add the following paragraph:

2. It shall be unlawful to dismiss pregnant women and women on maternity leave.

Reasons:

Workers may not be dismissed without due cause, and workers may appeal to the courts on the basis of the grounds for and conditions of their dismissal.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 38

Submitted by: Jürgen Gnauck, Minister of Federal and European Affairs, Thuringia

Proposed text:

Article 38. Right to protection in cases of termination of employment

All workers have a right to protection against arbitrary or abusive termination of employment.

Reasons:

The proposed wording is based on the Presidium's Statement of Reasons which seeks to make this article provide protection against arbitrary redundancy. 'Abusive' termination of employment refers to dismissal as a result of exploiting a formal legal position.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 38

Submitted by: Heinrich NEISSER

Proposed text:

Article 38. Right to protection in cases of termination of employment

All workers have a right to protection against unjustified or abusive termination of employment.

Statement of reasons

This Article simply provides for protection against arbitrary termination of employment.

Reasons:

As the concept of termination of employment may possibly have different meanings under the law of the individual Member States, it should be made clear that all forms of premature termination of employment are covered here.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 38

Submitted by: Prof. Dr Jürgen Meyer

Proposed text:

Article 38. Right of migrant workers to equal treatment

Third country nationals and their families working lawfully in the territory of the Member States are entitled to treatment not less favourable than that of European Union citizens in respect of working conditions and social security.

Reasons:

Article 38 takes over much of the wording of the Presidium's proposed Article 40 (Convent 34), with the additional phrases 'and their families' and 'and social security'. The protection of migrant workers' families is one of the key issues in this area. This is why families are explicitly referred to even in the title of the UN Convention relating to the protection of migrant workers¹. This convention also contains more extensive rights for migrant workers, such as the right to social security (Article 27 of the Convention on Migrant Workers). Failure to incorporate these two additions would mean that the European Union would fall behind international standards which have been achieved as a result of laborious negotiations.

¹ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, adopted by UN General Assembly Resolution 45/158 of 18 December 1990.

Article 38 bis

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**Proposed amendment to: Article 38 bis new****Submitted by: Ieke van den Burg****Proposed text:****Title: Right to fair remuneration****Every worker has the right to a fair remuneration****Reasons:**

This article disappeared from the proposals of the Praesidium. Equal pay for work of equal value has become an element in the anti-discrimination article(s), but the concept of fair remuneration, as it is contained in RESC article 4, is an essential element of the fundamental social and economic rights, which should also be included in the EU Charter.

Article 39

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 39: Right to reconcile family and professional life

Submitted by: Dr Ingo Friedrich, MEP, and Dr Peter Mombaur, MEP

Proposed text:

Delete.

Reasons:

We support this proposal in principle, but this is not a classic fundamental right and can therefore be dealt with (or continue to be dealt with) elsewhere.

From the systematic point of view, this article ought to be confined to the sphere of secondary law, and even there its formulation would be too ample. This right ought to be formulated in the light of the growing flexibility of the organisation of work and to take account of the interests of employers and the practical requirements of the individual work-place.

Protection of the family is already provided for in Article 13.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 39

Submitted by: Jo Leinen

Proposed text:

Delete article.

Reasons:

See reasons for Articles 36, 37 and 39 – Article 39 is incorporated in Article 36 (new).

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DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: title of Article 39

Submitted by: Frits Korthals Altes, representing the Netherlands Government

Proposed text:

Combining family and professional life

Reasons:

The title should be brought in line with the nature of the article which is a directive. Accordingly, the words 'right to' should be deleted from the title.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 39

Submitted by: Frits Korthals Altes, representing the Netherlands Government

Proposed text:

The Union shall work towards a situation where all workers can combine their family and professional lives. To this end the Union shall take measures to ensure an entitlement to maternity which shall at least satisfy the requirements of Article 8 of the Revised European Social Charter and an entitlement to appropriate parental leave following the birth or adoption of a child.

Reasons:

The wording of the two sentences ('The Union shall work towards a situation...' and '...the Union shall take measures...') better expresses the nature of this article, which is concerned with a principle, than the Praesidium text which refers to a 'right'.

Linking the duration of maternity leave to Article 8 of the Revised Social Charter guarantees a minimum period for such leave.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 39. Right to reconcile family and professional life

Submitted by: Mr Georges BERTHU, MEP

Proposed text:

1. All workers have the right to reconcile their family and professional lives (*29 words deleted*).
2. *Work within the family looking after children or elderly persons shall be considered as an occupation engaged in for the benefit of society.*

Reasons:

1. **It is unnecessary to list the specific means (maternity leave, parental leave, etc.) of reconciling family and professional life. The statement of principle is sufficient.**
2. *This article should not, however, be viewed solely from the point of view of people engaging in an occupation. It should also take account of people working within a family.*

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 39

Submitted by: Win Griffiths, MP

Proposed text:

All workers have the right to reconcile their family and professional lives.

Reasons:

If this article is to be included in the Charter the rights referred to in the second sentence of the original text need to be properly considered in Part B.

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DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**Proposed amendment to: Article 39****Submitted by: Andrew Duff MEP****Proposed text:****Article 39. *Parental rights******(Delete 17 words) Everyone has the right to maternity and paternity leave on the birth or adoption of a child.*****Reasons:**

The first sentence is incomprehensible

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 39. Right to reconcile family and professional life

Submitted by: Lord Goldsmith QC

Proposed text:

Delete “All workers have the right to reconcile their family and professional lives.” Amend to produce the following two-part text: Right to maternity and parental leave

For Part A, “Proclamation of Rights”:

Every woman has the right to maternity leave before and/or after childbirth and all workers have the right to parental leave following the birth or adoption of a child.

For Part B, “Definition of Rights”:

The right in Article 39 is the right provided for in the provisions of Article 137 and of the relevant secondary legislation adopted by the Community, and is subject to the limitations and derogations specified in those provisions and in any national measures adopted to give them effect.

Reasons:

Protection in the fields of maternity and parental leave is important. However, the first sentence of this article is far too general and without foundation in existing EU legislation. There are currently no general rights recognising the right to reconcile family and professional life and their inclusion in this document is therefore unjustified and risks raising expectations which will not be met. My amendments seek to address these points.

The content of the right is again defined by the Part B text.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article 39: Right to reconcile family and professional life

Submitted by: Piero Melograni

Proposed text:

All workers have the right to reconcile their family and professional lives. This right includes in particular the right to protection of maternity before and after childbirth, with female workers being provided with working conditions appropriate to their condition, the right to maternity leave before and after childbirth and the right to parental leave *inter alia* in the event of adoption of a child.

Reasons:

The proposed wording includes in this article the right to protection of maternity, involving the provision of working conditions appropriate for workers who are pregnant, in accordance with Article 8 of the Revised European Social Charter. It also stipulates that maternity leave covers the period both prior to and after childbirth. Lastly, the replacement of the words 'following the birth or adoption of a child' with the words 'inter alia in the event of adoption of a child' breaks the direct temporal link between the granting of parental leave and the birth or adoption (under Directive 96/34, parents may take parental leave up until the child reaches eight years of age).

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 39

Submitted by: Ernest M.H. Hirsch Ballin, representing the First Chamber of the States-General of the Netherlands

Proposed text:

All workers have the right to reconcile their family and professional lives. This right includes in particular the right to maternity leave before and after childbirth and the right to parental leave following the birth or adoption of a child.

Reasons:

*'Maternity leave before and/or after' is replaced with 'maternity leave before and after'.
By its very nature, an entitlement to maternity leave is required before and after childbirth.*

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 39

Submitted by: Dr Erling Olsen, Danish Government representative

Proposed text:

‘**and/or**’ should be replaced by ‘**in connection with**’ for the sake of clarity.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article: 39

Submitted by: Jean-Maurice Dehousse, MEP and substitute Member of the Convention

Proposed text:

Add the following:

Maternity and parental leave may, at the worker's own choice, be taken either in full or in part before the event giving entitlement to such leave.

Reasons:

For physical or psychological reasons, the time at which such leave needs to be taken can vary from worker to worker.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 39

Submitted by: Johannes Voggenhuber and Kathalijne Buitenweg

Proposed text:

New Article 42

Everyone with family responsibilities has the right to take or seek employment without thereby suffering discrimination, and to discharge his/her family responsibilities without jeopardising his/her employment or career.

All workers have the right to paid maternity leave of at least 14 weeks before and after the birth and the right to paternity leave of at least three months before the birth or adoption of a child.

Everyone has the right of access to paid childcare.

Reasons:

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DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 39

Submitted by: Pervenche BERÈS

Proposed text:

Article 39. Right to reconcile family and professional life

1. ***All individuals have the right to reconcile their family and professional lives. This right includes in particular the right of workers to paid maternity leave before and/or after childbirth and the right to parental leave following the birth or adoption of a child.***
2. All individuals with family responsibilities have the right to engage in or apply for a job without being discriminated against and to exercise their family responsibilities without their job or career being jeopardised.

Reasons:

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 39 RIGHT TO RECONCILE FAMILY AND PROFESSIONAL LIFE

Submitted by: JORDI SOLÉ TURA

Proposed text:

All workers have the right to reconcile their family and professional lives. This right includes in particular the right to maternity leave before and/or after childbirth and the right to parental leave so that the mother and father can share the period during which the employment contract is suspended on maternity grounds.

Reasons:

The purpose of this amendment is to improve the wording and to prevent confusion between maternity leave and parental leave.

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DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 39

Submitted by: Einem/Holoubek

Proposed text:

All workers have the right to reconcile their family and professional lives. This right includes in particular the right to maternity leave before and (*1 word deleted*) after childbirth, the right to parental leave following the birth or adoption of a child, and the right to carer's leave.

Reasons:

The word 'or', which leaves the question of whether the maternity leave should be granted before or after childbirth open, should be deleted. A suitable period before 'and' after the birth should be granted for the sake of the health of mother and child.

In addition to the rights contained in this article in the Presidency's version, a right to 'carer's leave' should also be specified. This right is one of the essential conditions for a family life based on partnership and for reconciling family and working life. From the point of view of the person needing care it is of fundamental importance that the care should be given by close family members. Carer's leave within the meaning of the proposed amendment covers care of close relatives in the case of acute illness that makes such care necessary. The necessity arises either from the seriousness of the illness or the particular needs of the family member, as in the case of a small child, for example.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**Proposed amendment to: Article 39****Submitted by: Ieke van den Burg****Proposed text:****Title: Right to combine work and family responsibilities****Every worker has the right to reconcile family and professional life.****Every person with family responsibilities has the right to remain in or apply for employment without being discriminated against, and to carry out family responsibilities without prejudice to his/her job or career.****Every female worker has the right to maternity protection, including the right to paid maternity leave.****Every worker has the right to parental leave.****Reasons:**

"Combination of work and family responsibilities" is a more precise title.

Also for the content of the article more precise formulations are proposed on the basis of articles 8 and 27 of the Revised Social Charter and the EC directives.

(NB the right to parental leave does not only exist immediately following birth or adoption!)

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 39

Submitted by: Prof. Dr Jürgen Meyer

Proposed text:

Article 39. Level of protection

- 1. No provision of this Charter may be interpreted as restricting the protection guaranteed by European and national law and international agreements and treaties, with particular regard to the European Convention for the Protection of Human Rights and Fundamental Freedoms, as interpreted by the European Court of Human Rights.**
- 2. For the purposes of interpreting the fundamental rights set out in this Charter, in particular economic and social rights, due account should be taken of those international agreements and treaties concluded by EU Member States.**

Reasons:

Article 39(1) takes over the wording of the Presidium's proposal for Article H 4 (Convent 27), which is preferable to the present version (Article 49, Convent 34), in which the level of protection has been lowered by the introduction of the condition that *all* Member States must, for example, have ratified an international convention.

Article 39(2) takes due account of the criticism often made in the Convention that social rights should not be set out in too much detail and that the interpretation of the Charter should be given a dynamic character. On this basis, I am proposing a practical approach to the third pillar of my three-pillar model. Paragraph 2 goes further than the Presidium's proposal by putting forward provisions on the interpretation of the rights contained in the Charter. The international protection of fundamental and human rights must be seen as a global system which has become clearer and more binding in the last 50 years. The reference to internationally established standards makes it possible to choose concise and comprehensible expressions without losing in legal clarity. Moreover, the provisions on interpretation of the Charter take account of the restrictions which certain states have introduced in the form of reservations, provided these are not contrary to the Vienna Convention on the law of Treaties.

Clearly, Article 39 also applies to agreements and treaties which will be concluded in the future (future developments clause).

Article 40

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 40. Rights of migrant workers to equal treatment

Submitted by: Lord Goldsmith QC

Proposed text:

Delete all.

Reasons:

The proposed draft right goes beyond existing rights. Whilst rights are enjoyed by the nationals of those countries which have entered into specifically negotiated association agreements with the European Union conferring those rights, there is no existing general right for third country nationals.

While the Community does have competence under Article 137(3) TEC to act in respect of "conditions of employment for third-country nationals legally residing in Community territory", this has not yet been exercised. The proposed Article 40 would therefore pre-empt the exercise of that power. If a general principle of equal treatment in employment is to be enshrined in Community law this should be done by means of a directive under Article 137(3) TEC.

=====

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 40: Right of migrant workers to equal treatment

Submitted by: Dr Ingo Friedrich, MEP, and Dr Peter Mombaur, MEP

Proposed text:

Delete.

Reasons:

In case of doubt, the concept ‘working conditions’ is likely to be interpreted broadly, and as a result might confer rights on third-country nationals equivalent to those enjoyed by EC workers pursuant to Article 39 of the EC Treaty. Under these circumstances, Article 40 might give rise both to rights of residence and to rights to equal social and fiscal privileges.

However, the EU does not have sufficient powers to confer such rights; at most, it can regulate certain ‘conditions of employment’ pursuant to Article 137(3) of the EC Treaty. Moreover, there is a danger that restrictions for third-country nationals under the Treaties and association agreements might be rendered ineffective.

From the systematic point of view, moreover, a fundamental right which is conferred only on third-country nationals has no place in a Charter of Fundamental Rights which assigns rights either to everyone or to citizens of the Union.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**Proposed amendment to: Article 40. Right of migrant workers to equal treatment****Submitted by: Mr Georges BERTHU, MEP****Proposed text:****Delete this article.****Reasons:**

The same reasons as for the amendment to Article 33. This article should come under national law or, at most, form part of a directive, but should certainly not be included in a Charter of fundamental rights.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 40

Submitted by: Jürgen Gnauck, Minister of Federal and European Affairs, Thuringia

Proposed text:

Deleted.

Reasons:

There are several arguments against the Presidium's proposal. In the first place this clause does not seem 'worthy' of a Charter: secondary legislative provisions suffice. Secondly, existing differences in rules should not be undermined by a clause on a fundamental right. The risk is that restrictions on third-country nationals may be undermined by treaties and association agreements.

Thirdly, the Charter should not include any rights granted only to third-country nationals. A fundamental right granted only to third-country nationals has no place in a charter of fundamental rights concerned with rights for all or with rights for Union citizens.

Moreover, the wording leaves open the question of what rights might be granted to stateless persons from third countries. If the aim is to prevent 'wage dumping', the Charter is not the appropriate tool.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article: 40

Submitted by: Rodotà, Paciotti and Manzella

Proposed text: Delete article.

Reasons:

The substance of this article is included in the fourth paragraph of Article 34a on equal treatment of workers.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 40

Submitted by: Andrew Duff MEP

Proposed text:

Article 40. *Rights of foreign workers*

Third-country nationals working lawfully *within* Member States *have the right* to treatment not less favourable to that of European Union workers (*delete 5 words*).

Reasons:

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**Proposed amendment to: Article 40****Submitted by: Ieke van den Burg****Proposed text:****Title: Right of workers from third countries and their families to equal treatment****Third country nationals working lawfully in the territory of the Member States, and their families, have the right to equal treatment in working conditions and regulations and provisions related to their status as a worker.****Reasons:**

The change in the title solves the inconsistency with the **Proposed text** of the Presidium.

The addition of "and their families" is in accordance with art. 19 of the RESC and with existing regulations and traditions in Member States.

The reference to working conditions is extended with one to regulations and provisions that are related to workers, and do also apply to third country nationals.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 40 (Convent 34)

Submitted by: M. Patijn, representative of the Lower House of the Netherlands Parliament

Proposed text:

Article 40. Right of migrant workers to equal treatment

The Union shall take measures to ensure that third-country nationals working lawfully in the Union are not treated less favourably than citizens of the Union in respect of the rights referred to in Articles 32 to 39.

Reasons:

As so many third-country nationals are living and working lawfully in the Union, it would not be appropriate to grant them more limited protection of their social rights than citizens of the Union. NB: the absence of any reference to Article 40 (social security) is deliberate.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article 40: Right of migrant workers to equal treatment

Submitted by: Jean-Luc DEHAENE, representative of the Belgian Government, and Karel DE GUCHT and Roger LALLEMAND, representatives of the Belgian Parliament

Proposed text:

Non-EU nationals working lawfully in the territory of the Member States are entitled to treatment not less favourable than that of European Union workers in respect of working conditions.

Reasons:

The above wording also takes in stateless persons who are legally resident in EU territory.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 40

Submitted by: Gunnar Jansson, Tuija Brax and Paavo Nikula

Proposed text:

Article 40. Right of migrant workers to *protection*

Migrant workers residing in the territory of the Member States are entitled to protection which guarantees them treatment not less favourable than that of citizens of the European Union in respect of working conditions.

Reasons:

Equal treatment of workers from outside the European Union is best ensured by protecting them. By stressing the right to protection, the Charter of Fundamental Rights will also harmonise with the European Social Charter (Article 19). In addition, the above amendment extends protection to stateless persons working in the territory of the Union.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article 40: Right of migrant workers to equal treatment

Submitted by: Piero Melograni

Proposed text:

Replace 'Third-country nationals' with 'All non-EU nationals'.

Reasons:

The proposed amendment extends the scope of this provision to cover displaced persons.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 40

Submitted by: Pervenche BERÈS

Proposed text:

Article 40. Right of migrant workers to equal treatment

Third-country nationals working lawfully in the territory of the Member States are entitled to treatment *identical to that of European Union workers (5 words deleted).*

Reasons:

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article 40

Submitted by: Álvaro Rodríguez Bereijo, Personal Representative of the Spanish Prime Minister

Proposed text:

Third-country nationals working lawfully in the territory of the Member States are entitled to *the same treatment as* European Union workers in respect of working conditions.

Reasons:

The wording requires improvement on technical grounds. The Praesidium's proposed wording is ambiguous: the phrase 'treatment not less favourable than' does not seem to belong in an article intended to affirm the right to equal treatment.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 40. Right of migrant workers to equal treatment

Submitted by: Marie-Madeleine Dieulangard

Proposed text:

Replace the words 'treatment not less favourable' by the words 'non-discriminatory treatment'.

Reasons:

The aim is to make this article more intelligible to the layman.

**Translator's note: as it stands, this amendment would render the original ungrammatical.*

Presumably the amendment should read:

'Replace the words 'treatment not less favourable than that of European Union workers in respect of working conditions by the words: 'non-discriminatory treatment.'

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 40

Submitted by: Johannes Voggenhuber

Proposed text:

New Article 43

Third country nationals working (one word deleted) in the territory of the Member States are entitled to equal treatment to that of European workers in respect of working conditions and income.

Reasons:

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DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 40

Submitted by: Ben Fayot (Chamber of Deputies, Luxembourg)

Proposed text:

Article 40. Right of workers *from third countries* to equal treatment

Third-country nationals working lawfully in the territory of the Member States are entitled to treatment not less favourable than that of European Union workers in respect of working conditions, *remuneration, social protection, housing and training*.

Reasons:

The provision should state more specifically what is meant by working conditions by listing the main aspects thereof.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 40

Submitted by: Einem/Holoubek

Proposed text:

Discrimination in respect of working conditions (particularly as regards wages, the retirement pension, social security, accommodation and training) against third-country nationals working lawfully in the territory of the Member States as opposed to employees who are nationals of an EU Member State shall be forbidden.

Every employee shall be guaranteed the right to equal pay for equal work.

Reasons:

The 'non-discrimination in respect of working conditions', to use the words of the Presidency's statement of reasons, which this article is intended to provide should also be expressed in its wording. Like comparable prohibitions, this should also be worded as a prohibition of discrimination. It is further suggested that the scope of this prohibition of discrimination in respect of working conditions should be clarified by an explanation of the term 'working conditions'.

The proposed new second paragraph ensures that the central tenet of the right of migrant workers to equal treatment, namely the right to receive equal pay for equal work, is guaranteed. Since Article 22(3) of the Charter provides this right in the context of equal treatment for men and women, it must again be stated expressly in the context of the rights of migrant workers.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 40

Submitted by: José Barros Moura and Maria Eduarda Azevedo, Members of the Portuguese National Assembly

Proposed text:

1. Third-country nationals working lawfully in the territory of the Member States are entitled to *non-discriminatory treatment vis-à-vis the treatment received by European Union workers in respect of work, remuneration and social security protection.*
2. **Access to employment on the part of third-country nationals legally resident within the territory of the Member States shall be governed by the same rules as those applicable to EU workers.**

Reasons:

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 40

Submitted by: Ernest M.H. Hirsch Ballin, representing the First Chamber of the States-General of the Netherlands

Proposed text:

Third-country nationals working lawfully in the territory of the Member States are entitled to treatment not less favourable than that of European Union workers in respect of terms of employment and working conditions.

Reasons:

The proposed amendment brings the text in line with the existing Statement of reasons which refers to 'terms of employment'. There may be a translation problem involved here.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 40

Submitted by: Frits Korthals Altes, representing the Netherlands Government

Proposed text:

Deleted.

Reasons:

The ban on discrimination in Article 22 already provides for equal treatment for migrant workers within the confines of the rules on the free movement of workers.

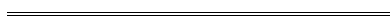
Alternative text:

Third-country nationals working lawfully within the Union are entitled to treatment not less favourable than that of workers from the European Union in respect of working conditions.

Reasons:

This amendment is essentially editorial in nature and is largely a question of translation. For example, the English term 'lawfully' should be translated by 'rechtmatig' and the English concept 'working conditions' by 'arbeidsvoorwaarden'.

Furthermore, the statement of reasons for this article should indicate that it ties in with article 19, introduction and fourth paragraph, of the Revised European Social Charter.



DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 40

Submitted by: Prof. Dr Jürgen Meyer

Proposed text:

Article 40. Scope

- 1. The provisions of this Charter are addressed to the institutions and bodies of the Union within the framework of the powers conferred on them by the Treaties, and to the Member States exclusively within the scope of Union law.**
- 2. This Charter does not establish any competence or any new task for the Community or the Union or modify competences and tasks defined by the Treaties.**

Reasons:

Article 40 takes over the wording proposed by the Presidium's proposal (Article 46, Convent 34).

Article 41

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 41

Submitted by: Charlotte Cederschiöld

Proposed text:

Delete

Reasons:

This Article is excessive in relation to our assignment, as it has relative dimensions (e.g., how do you guarantee “a decent existence” – and what is it?). To include such a right in the Charter risks making the fundamental and universal rights relative.

The means to achieve the political goal (to abolish dependence due to causes like maternity, old age, illness, and unemployment) should not become blocked through structures based on experiences only from the industrial society. This is not the place to solve these problems of poverty and the door for new alternatives must be kept open.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 41: Social security and social assistance

Submitted by: Dr Ingo Friedrich, MEP, and Dr Peter Mombaur, MEP

Proposed text:

Delete.

Reasons:

We support this proposal in principle, but this is not a classic or an independent fundamental right and can therefore be dealt with (or continue to be dealt with) elsewhere.

Paragraph 1's objective of ensuring that Member States provide protection against the well-known social risks is unexceptionable. However, the EU does not possess full competence, its powers being limited to workers (Article 137(3), first indent). Moreover, there is a danger that this provision might impose excessive constraints on the scope for the adoption of social measures by legislatures in that it could be interpreted as an institutional guarantee of traditional social insurance systems. Article 46(2) of the EC Treaty, which is confined to 'coordination', does not allow this.

Paragraph 2 requires provision to be made for social assistance and housing benefit. Here too, there is no obvious legal basis enabling the EU to lay down provisions concerning such entitlements. The provision is also superfluous as an aid to interpretation and application for the EU and its institutions, since the requirement to provide minimum means of subsistence is already covered by the obligation to respect human dignity.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 41

Submitted by: Dr Erling Olsen, Danish Government representative

Proposed text:

Instead of a detailed enumeration of the types of protection, 1 that paragraphs 1 and 2 are replaced by a general, descriptive provision as follows:.

Social protection and social security under the individual Member State's own provisions shall guarantee the individual an acceptable basic standard of living and a dignified life.

Reasons:

The present wording of the provision is too specific and selective.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article 41

Submitted by: Álvaro Rodríguez Bereijo, Personal Representative of the Spanish Prime Minister

Proposed text:

The public authorities shall operate a social security and social assistance system, in terms to be specified by the law of each Member State, in order to guarantee sufficient assistance and welfare benefits in situations of need.

Reasons:

This alternative wording is proposed in line with the remarks made earlier on the distinction between individual rights, on the one hand, and guiding principles which should orientate the work of the legislator, on the other.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 41. Social security and social assistance

Submitted by: Lord Goldsmith QC

Proposed text:

Amend to produce the following two-part text: Social security and social advantages

- *For Part A, “Proclamation of Rights”:*

Workers who are nationals of a Member State who reside in another Member States, and members of their families, have the right to the same social security benefits, social advantages and access to health care as nationals of that State.

- *For Part B, “Definition of Rights”:*

The rights in Article 41 are the rights provided for in the provisions of Article 42 of the Treaty establishing the European Community, and of the relevant secondary legislation adopted by the Community and is subject to the limitations and derogations specified in those provisions and in any national measure to give them effect.

Reasons:

Article 41 as drafted purports to impose new obligations on Member States. Further, it deals with matters which are essentially matters of national competence and therefore outside the intended scope of the Charter. The requirement to “guarantee a decent existence to anyone lacking sufficient resources” could entail new rights of uncertain meaning for Member States, with potentially significant financial implications for them.

My proposal, however, gives effect to important rights, deriving them from the Union for the nationals of Member States to enjoy social security benefits and advantages when in other Member States. It is convenient to deal at the same time with access to health care on the same basis.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 41

Submitted by: Win Griffiths, MP

Proposed text:

Everyone shall have the right to social security benefits as established in the law of Member States.

Reasons:

If this article is included in the Charter it needs to be clear that Member States are responsible for implementing social security legislation. Clarification of this right could be made in Part B.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 41. Social security and social assistance

Submitted by: Mr Georges BERTHU, MEP

Proposed text:

Provision shall be made in accordance with each Member State's rules for social benefits providing protection in the event of maternity, illness, dependence, disability or old age and in the event of unemployment or incapacity to resume work.

Reasons:

The Praesidium's proposal draws a distinction between social security and social assistance which would seem to be based essentially on the different types of funding (contributions or tax) but which may vary according to each Member State. It therefore seems preferable to reduce this article to a single general paragraph.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 41

Submitted by: Andrew Duff MEP

Proposed text:

Article 41. Social welfare

- Everyone in need has the right to social welfare

Reasons:

The draft article is not framed as a fundamental right. The new formulation to protect those 'in need' is less of a value judgement (and better English) than the draft 'guarantee a decent existence'.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 41

Submitted by: Gunnar Jansson, Tuija Brax and Paavo Nikula

Proposed text:

Article 41. *The right to social security and to guaranteed means of subsistence*

1. *Everyone has the right to social security and guaranteed means of subsistence. Social security benefits shall be provided in accordance with each Member State's legislation. Everyone shall be guaranteed the right to basic means of subsistence in the event of unemployment, illness, incapacity for work or old age and on account of the birth of a child or loss of the breadwinner.*

2. *Everyone who cannot attain the security required for a decent existence has the right to the essential means of subsistence and maintenance.*

Reasons:

The amendment is inspired by Articles 12 and 13 of the revised European Social Charter and by the European Code of Social Security. This principle should be applied in accordance with national legislation.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 41

Submitted by: Frits Korthals Altes, representing the Netherlands Government

Proposed text:

- 1. The Union shall take steps to ensure that persons legally resident or working in the Union are entitled to appropriate social security benefits in the event of maternity, illness, death or old age, inability to work and unemployment, which shall satisfy the standards laid down in the Revised European Code of Social Security.**
- 2. The Union shall take steps to ensure that persons legally resident in the Union and who, for reasons beyond their control, do not have the requisite resources for a decent existence receive appropriate social and medical assistance and/or housing benefit.**

Reasons:

The proposed text creates greater clarity concerning the type of persons who can claim appropriate social security and social assistance. The reference to national legislation and practice has been deleted since the provisions of the Charter are directed essentially towards the Union. There is therefore no need for a reference to national practice. The requisite policy area in this respect is created by the addition of the word 'appropriate'.

In the first paragraph addition of the last clause clarifies the level of the social benefits, since they must at least satisfy the agreement in question which was concluded within the Council of Europe and which contains minimum standards.

The following remarks concern a list of the risks to be covered by social security. The English text uses the term 'dependence'. This is not easy to translate into Dutch. The Dutch term 'afhankelijkheid' is not correct. On the assumption that this is what is intended, the proposed text therefore uses the Dutch word 'overlijden'. The amendment also proposes replacing the term 'unemployment' with the term 'inability to work and unemployment' because the rules on these sorts of risk differ and it would therefore be better to bring them under one denominator.

The proposed text of the second paragraph reflects customary practice in the Member States and is in line with what the Annex to the Revised European Social Charter (ESC) has to say about the scope of most provisions of the Revised ESC, including the right to social and medical assistance in Article 13(1).

In addition to social assistance and housing benefit, this clause includes medical assistance, not least to tie in more closely with the abovementioned Article 13(1) of the Revised ESC.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article: 41(1)

Submitted by: Ernest M.H. Hirsch Ballin, representing the First Chamber of the States-General of the Netherlands

Proposed text:

Any person lawfully employed within the Union shall enjoy protection in the event of maternity, illness, dependence or old age and in the event of unemployment.

Reasons:

This article is not concerned with an exclusive competency of the Member States, as the existing text suggests. Furthermore, this right is granted to non-Union citizens, too.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 41

Submitted by: Jo Leinen

Proposed text:

Article 41: Social security

1. In accordance with each Member State's rules, *everyone has the right to social security and access to social services which ensure a dignified existence, particularly in the event of maternity, illness, dependence or old age and in the event of unemployment.*

Reasons:

The right to social benefits should consistently be formulated as an individual right. A few stylistic abridgements are proposed and clearer reference is made to the dignity of the human person as referred to in Article 1. The right to housing is included in a separate article in accordance with the general consensus within the Convention and by analogy with Prof. Meyer's proposal.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 41. Social security and social assistance

Submitted by: Marie-Madeleine Dieulangard

Proposed text:

Reword the first paragraph to read as follows: ‘Everyone shall be entitled to receive the social security benefits guaranteed in accordance with each Member State’s rules and providing protection in the event of maternity, illness, dependence or old-age and in the event of unemployment’.

***Translator’s note:** the proposed amendment to the second paragraph does not affect the English text.

Reasons:

The aim is to ensure a higher level of protection than that implied by the existing wording of the text.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 41

Submitted by: Pervenche BERÈS

Proposed text:

Everyone has the right to benefit from social security providing protection in the event of maternity, illness, dependence or old age and in the event of unemployment, under the conditions laid down by the internal laws of the Member States and coordinated at Community level.

Reasons:

=====

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 41. Social security and social assistance

Submitted by: Guy Braibant

Proposed text:

1. Everyone is entitled, in accordance with each Member State's rules, to social security benefits providing adequate protection in the event of maternity, illness, dependence, or old age and in the event of unemployment.

2. (Amendment does not affect the English version of this paragraph.)

Reasons:

This amendment seeks to restore an intermediate drafting proposal whose wording was more satisfactory and to include a minimum specification - ('adequate') - regarding the level of protection to be guaranteed in the five areas of social security

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 41. Social security and social assistance

(This article should be split up into three new articles)

Submitted by: Ben Fayot (Chamber of Deputies, Luxembourg)

Proposed text:

Article 41. Social security

Social security benefits *shall be guaranteed* in accordance with each Member State's rules in order to provide *individual* protection in the event of maternity, illness, dependence or old age and in the event of unemployment.

Reasons:

It is important to individualise social security rights, especially in the case of women whose rights sometimes only exist through their husband.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article 41(1): Social security and social assistance

Submitted by: Piero Melograni

Proposed text:

Delete 'in accordance with each Member State's rules'.

Reasons:

The words deleted apply to almost all of the rights guaranteed by the Charter and their substance would be made implicit by means of the insertion in the general clauses of a reference to the subsidiarity principle (see the proposed amendment to Article 46).

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

First proposed amendment to: Article 41

Submitted by: Einem/Holoubek

Proposed text:

1. Provision shall be made in accordance with each Member State's rules for social security benefits providing protection in the event of maternity, illness, *accident*, dependence, *disability* or old age and in the event of unemployment *or invalidity*.

Reasons:

In Article 41, first paragraph, it is proposed that the group of cases in which the provision of social security benefits must be provided for is extended to cover accident, disability and invalidity. All three situations are part of the recognised standard provision in the Member States and should therefore be binding provisions particularly vis-à-vis the European Union. Accident and invalidity, furthermore, are also mentioned in Article 4 of Regulation 1408.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 41

Submitted by: Gabriel Cisneros Laborda

Proposed text:

It should have been made clear in these and other articles of similar content – which we shall not amend explicitly so as to avoid repetition – that they have the character of guiding principles or, better still, a separate chapter should have been reserved for them.

The following wording is proposed for paragraph 1: ‘Provision shall be made in accordance with each Member State’s rules for social security benefits providing protection in the event of maternity, illness, dependence, old age or disability and in the event of unemployment.’

Reasons:

See the reasons for the amendment to Article 31 (first paragraph).

The intention in amending paragraph 1 is to cover the situation of people with disabilities who do not meet the conditions for being classed as dependant but require benefits. This addition will not duplicate Article 43, since disability involves different aspects of social and vocational integration.

=====

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 41. Social security and social assistance

Submitted by: Prof. Daniel Tarschys, Sweden

Proposed text:

Retain para 1.

1. Rephrase para 2 to read: '... in accordance with each Member State's rules for... '

Reasons:

Whereas a reference is made in the first paragraph, it is left out in the second. For the sake of clarity and consequence, I suggest that the reference be made in both paragraphs.

Alternatively, paras 1 and 2 could be merged in order to ensure that Member States' rules apply in all situations.

I would also suggest that a reference be made to the revised European Social Charter, Articles 12 and 14 in the 'Statement of reasons'.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 41

Submitted by: Jürgen Gnauck, Minister of Federal and European Affairs, Thuringia

Proposed text:

Article 41. Social security and social assistance

- 1. Provision shall be made in accordance with each Member State's legal rules for social security benefits providing protection in the event of maternity, illness, dependence or old age and in the event of unemployment.**
- 2. Provision shall be made in accordance with each Member State's legal rules for social assistance and housing benefit in order to guarantee a decent existence to anyone lacking sufficient resources.**

Reasons:

The wording 'in accordance with each Member State's legal rules' makes clear - as the Presidium's Statement of Reasons says - that national legislation is meant, and not Community rules which merely take account of the peculiarities of individual Member States. This clarification is particularly necessary in paragraph 2.

There is no need to refer to 'housing benefit' since this is merely a sub-category of 'social assistance'.

Finally, it is important to leave untouched in the scope of paragraph 2 the principle of individual responsibility and to treat the social benefit referred to in it as a subsidiary benefit. It is also necessary to make clear that although individual Member States can certainly guarantee the legal framework for this to be effective, they cannot in every case guarantee the actual - in particular the economic - framework.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 41

Submitted by: Heinrich NEISSER

Proposed text:

Article 41. Social security and social assistance

1. *Provision shall be made in accordance with each Member State's rules for social security benefits providing protection in the event of maternity, illness, dependence or old age and in the event of unemployment.*
2. Provision shall be made for social assistance ~~and housing benefit~~ in order to guarantee a decent existence to anyone lacking sufficient resources.

Reasons:

The concept of housing benefit should not be included in Paragraph 2 because it describes only one form of social assistance.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article 41: Social security and social assistance

Submitted by: Jean-Luc DEHAENE, representative of the Belgian Government, and Karel DE GUCHT and Roger LALLEMAND, representatives of the Belgian Parliament

Proposed text:

2. Provision shall be made for social assistance, housing benefit and assistance in obtaining adequate food in order to guarantee a decent existence to anyone lacking sufficient resources.

Reasons:

The right to adequate food is included in an international code drawn up following the World Food Summit held in Rome in 1996. This right is referred to in Article 11 of the International Covenant on Economic, Social and Cultural Rights. Furthermore, Article 24 of the Convention on the Rights of the Child stipulates that States Parties must combat malnutrition in children. The international code is in the process of being ratified. The inclusion of this right, which forms an integral part of the right to an adequate standard of living, is intended to ensure that everyone may live in conditions respectful of their human dignity. It is inadmissible for anyone in today's single market to be suffering from hunger.

Adequate food means a healthy diet which meets the nutritional needs of the individual. This right plays a part in eradicating poverty and meeting fundamental needs.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**Proposed amendment to: Article 41****Submitted by: Ieke van den Burg****Proposed text:****Title: Right to social protection:**

Everyone has the right to social protection, including an adequate level of social security benefits, amongst others in the event of maternity, illness, dependence or old age and unemployment.

Any person who is without adequate resources, especially if he or she is unable to gain access to paid employment, has the right to a minimum income enabling him/her to live in dignity.

Everyone has the right of access to high-quality services and to protection against poverty and social exclusion.

Reasons:

Social protection is a broader concept, covering different elements of social security and social assistance. Under this title even the articles on healthcare and housing may be merged in the final text.

In the content of the article the right to a minimum income is introduced, being a more general and more advanced and modern formulation than social assistance and specific benefits. Access to high quality services, and protection against poverty and social exclusion is added.

Reference should not only be made to national legislation, but at least to articles 12, 13, 14 and 30 of the Revised Social Charter. It may be considered to also refer to relevant ILO conventions in this field.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article: 41

Submitted by: Rodotà, Paciotti and Manzella

Proposed text: Article 41 to read:

Article 41. Right to social security and social assistance

1. Every individual has the right to social security benefits providing protection in the event of maternity, illness, dependence or old age and in the event of unemployment.
2. Social security entitlements acquired in one Member State shall be maintained in all the other Member States.
3. Every individual lacking sufficient resources has the right to social assistance and housing benefit enabling him or her to lead a decent life.

Reasons:

The text has been recast so as to place the emphasis on the beneficiaries of the right, as is the case throughout the Charter. Furthermore, the 'maintenance principle', which is enshrined in Community law, has been included in paragraph 1.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 41 SOCIAL SECURITY AND SOCIAL ASSISTANCE

Submitted by: JORDI SOLÉ TURA

Proposed text:

1. *In accordance with each Member State's rules the social security benefits which are necessary to provide workers with proper protection in the event of unemployment, maternity, illness, dependence or old age shall be created.*
2. *A social assistance fund and a housing benefit fund shall also be set up in order to guarantee a decent existence to anyone lacking sufficient resources.*

Reasons:

Improvements to the wording.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 41

Submitted by: Mr François Loncle

Proposed text:

This amendment is a grammatical correction and does not affect the English version.

Reasons:

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article: 41

Submitted by: Jean-Maurice Dehousse, MEP and substitute Member of the Convention

Proposed text: Add the following to Article 41:

- 1. Everyone has the right, in accordance with each Member State's rules, to benefit from a social security system.**
- 2. That system shall in all cases provide social security benefits affording adequate protection in the event of (rest unchanged).**

Reasons:

The universality of the social security system must not be called into question by the wording Article 41.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**Proposed amendment to: Article 41****Submitted by: Johannes Voggenhuber****Proposed text:****New Article 44****Reasons:**

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 41

Submitted by: Prof. Dr Jürgen Meyer

Proposed text:

Article 41. Limitation of guaranteed rights

- 1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by the competent legislative authority. The actual substance of those rights and freedoms must be respected. Subject to the principle of proportionality, any limitation must remain within the limits which are necessary for the protection of legitimate interests in a democratic society and which are compatible with the nature of those rights.**
- 2. Nothing in this Charter may be interpreted as implying any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in this Charter.**

Reasons:

Article 41(1) takes over much of the wording of the Presidium's proposal (Article 47, Convent 34) and paragraph 2 is identical to the proposal for Article 50 (Convent 34). In paragraph 1 the phrase 'which are compatible with the nature of those rights' has been added to the Presidium's proposal. This is intended to define the limitation more precisely and is taken from Article 4 of the ICESCR.

Article 41 bis

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed Article 41a (new)

Submitted by: Pervenche BERÈS

Proposed text:

- Article 41a. Minimum wage

Every individual who lacks sufficient resources, in particular because he is unable to obtain gainful employment, has the right to a minimum wage enabling him to live in dignity.

Reasons:

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: new article (after Article 41)

Submitted by: Jo Leinen

Proposed text:

Right to appropriate housing

Everyone has the right to appropriate accommodation which permits them a dignified existence.

Reasons:

In accordance with the general consensus expressed in the Convention debates, it is proposed that a right to appropriate accommodation be incorporated in the Charter in a separate article. The reference to the dignity of the human person as guaranteed in Article 1 is very important for the interpretation of the concept 'appropriate'.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed Article 41a (new)

Submitted by: Ben Fayot (Chamber of Deputies, Luxembourg)

Proposed text:

Article 41a. Housing benefit

The right to decent housing shall be guaranteed, if necessary, through benefits granted to anyone lacking sufficient resources.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed Article 41b (new)

Submitted by: Pervenche BERÈS

Proposed text:

- Article 41b. Right to housing

Everyone has the right to decent and appropriate housing.

Reasons:

=====

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed Article 41b

Submitted by: Ben Fayot (Chamber of Deputies, Luxembourg)

Proposed text:

Article 41b. Right to protection against exclusion and poverty

Protection against exclusion and poverty shall be guaranteed.

Reasons:

Mention must be made of exclusion and poverty, as a specific issue and something which is unacceptable in an affluent society.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Second proposed amendment to: Article 41

Submitted by: Einem/Holoubek

Proposed text:

The following new article to be inserted after Article 41:

Article XX: Rights of the elderly

All elderly people shall have the right to lead independent, well-regulated lives. They must be able to take a full part in political, social and cultural life.

All employees and their entitled dependants shall be entitled to receive an old-age pension guaranteeing them an appropriate, independent standard of living.

Reasons:

In view of the special significance of elderly people in today's society, there should be a systematic link between the provisions on social security and social protection and a provision on the right of elderly people to self-determination and the social protection which will make it possible. The text of the article is based on that of Mrs Berès, Mrs Paciotti and Mrs van den Burg (doc. Charte 4328/00-Contrib 111).

=====

Article 42

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 42. Health protection

Submitted by: Lord Goldsmith QC

Proposed text:

Delete all (but see amendment to Article 41 above)

Reasons:

There is no general right to health care in the ECHR or the Treaties. These are matters essentially for national competence and I am not persuaded that they have a place in a Charter principally addressed to the EU Institutions in the exercise of their competences.

However there are EC Regulations giving citizens of one Member State social security entitlements (including health care) while working in another Member State. These are important rights and covered by my amendments to Article 41.

=====

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 42: Health protection

Submitted by: Dr Ingo Friedrich, MEP, and Dr Peter Mombaur, MEP

Proposed text:

Delete.

Reasons:

We support this proposal in principle, but this is not a classic, independent fundamental right and can therefore be dealt with (or continue to be dealt with) elsewhere.

The provision is, in principle, already implicit in Article 41. Moreover, its purpose is already served by the fundamental right to human dignity.

=====

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 42. Health protection

Submitted by: Mr Georges BERTHU, MEP

Proposed text:

Delete this article.

Reasons:

Access to medical care is automatically covered by Article 41 which guarantees access to social security benefits.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article 42

Submitted by: Álvaro Rodríguez Bereijo, Personal Representative of the Spanish Prime Minister

Proposed text:

The public authorities shall, in terms to be specified by the law of each Member State, organise and supervise public health provision, including prevention and medical care.

Reasons:

This alternative wording is proposed in line with the remarks made earlier on the distinction between individual rights, on the one hand, and guiding principles which should orientate the work of the legislator, on the other.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article: 42 Health protection

Submitted by: Frits Korthals Altes, representative of the Netherlands Government

Proposed text:

The Union shall promote improvements in public health, the prevention of human illness and diseases and the obviating of sources of danger to human health by ensuring a high level of human health protection in the definition and implementation of all Union policies and activities.

Reasons:

The above version is derived from Article 152 of the EC Treaty, and seeks to avoid raising unrealistic expectations that the Union will act to promote facilities such as access to medical-care when it will in practice be unable to do so.

The foregoing is consistent with the more general wording used in Article 12 of the International Covenant on Economic, Social and Cultural Rights.

Article 11 of the Revised European Social Charter also refers, not to access to medical care, but to the promotion of health and preventing ill-health, diseases and accidents.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 42 (Convent 34)

Submitted by: M. Patijn, representative of the Lower House of the Netherlands Parliament

Proposed text:

Article 42. Health protection

1. The Union shall promote improvements in public health, prevention of human diseases and disorders and the elimination of hazards to human health;
2. *The Union shall take measures to ensure that everyone who is lawfully resident within the Union has access to health care.*

Reasons:

The proposed text is more comprehensive and less noncommittal than the text proposed by the Praesidium; access to care, in particular, should be more strongly guaranteed: untreated patients may constitute a public health hazard, including in other countries.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 42

Submitted by: Ernest M.H. Hirsch Ballin, representing the First Chamber of the States-General of the Netherlands

Proposed text:

I support Mr M. Patijn's amendment.

Reasons:

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article: 42

Submitted by: Jean-Maurice Dehousse, MEP and substitute Member of the Convention

Proposed text: Article 42 to read:

Everyone must be able to benefit from preventive health protection provisions and to gain access to the health care required by his condition, in accordance with each Member State's rules.

Reasons:

- 1. To make the article clearer.*
 - 2. To ensure the universality of the recognised rights.*
 - 3. The wording is closer to that used in the Community Charter of Social Rights.*
-

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 42 HEALTH PROTECTION

Submitted by: JORDI SOLÉ TURA

Proposed text:

Everyone shall have access to medical care and prophylactic measures (*rest deleted*).

Reasons:

There are two reasons for deleting the words ‘in accordance with each Member State’s rules’. The first one is that if everyone has the right to such access, it will be in one of the Member States and the medical care and prophylactic measures which the individual receives will therefore be those of that particular Member State. The second reason is that including the words ‘in accordance with each Member State’s rules’ would allow one or more Member States to have weaker rules than the others and not to be under any obligation under EU law to improve its (or their) standard of care.

=====

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 42

Submitted by: Pervenche BERÈS

Proposed text:

- *Article 42.* Right to health care

Everyone is entitled to have access to appropriate medical care and prophylactic measures.

Reasons:

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DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 42

Submitted by: Andrew Duff MEP

Proposed text:

Article 42. Health care

Everyone *has the right to health care*

Reasons:

The draft article has a repetitious reference to Member States' rules; and its 'medical care and prophylactic measures' is an exceptionally cumbersome formulation.

=====

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article: 42

Submitted by: Rodotà, Paciotti and Manzella

Proposed text: Article 42 to read:

Every individual has the right to prophylactic measures and appropriate medical care.

Reasons:

The article has been recast so as to place the emphasis on the beneficiaries of the right, as is the case throughout the Charter.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 42. Health protection

Submitted by: Marie-Madeleine Dieulangard

Proposed text:

Replace the words ‘shall have access’ by the words ‘shall have guaranteed access’.

Reasons:

The aim is to ensure a higher level of protection than that implied by the existing wording of the text.

=====

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 42

Submitted by: Jürgen Gnauck, Minister of Federal and European Affairs, Thuringia

Proposed text:

Article 42. Health Protection

Everyone shall have access to existing medical care in accordance with each Member State's rules.

Reasons:

Since essentially this principle is to be transposed through the legislation of the individual Member States, this should be made clear in the article itself.

It is also necessary to clarify that access to medical care can be granted only in the context of existing capacities, which is why the word 'existing' is proposed. The additional phrase 'and prophylactic measures' can be dispensed with, since it is already covered by Article 41.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article 42: Health protection

Submitted by: Jean-Luc DEHAENE, representative of the Belgian Government, and Karel DE GUCHT and Roger LALLEMAND, representatives of the Belgian Parliament

Proposed text:

Everyone shall have access to medical care and prophylactic measures.

Reasons:

The words 'in accordance with each Member State's rules' should be deleted for the same reason as that given in point 3.2. above.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**Proposed amendment to: Article 42****Submitted by: Ieke van den Burg****Proposed text:****Delete: "in accordance with each member states' rules"****Reasons:**

Also this article may be derived from international (and national) standards as a general fundamental right. As with other articles of the Charter (and not only the articles dealing with social and economic rights) of course every Member State has its own rules and practices. It is not necessary to state that in the article.

In the Reasons reference should be made to art. 12 of the UN International Covenant of Economic, Social and Cultural Rights, .. of the Community Charter, and to art 11 and 13 of the RESC.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article 42: Health protection

Submitted by: Piero Melograni

Proposed text:

Insert the following at the beginning of the article: '**Everyone has a right to health protection.**'; delete: '**in accordance with each Member State's rules**'.

Reasons:

The sentence inserted makes the general statement that everyone has a right to health protection. This right has now been enshrined in many national constitutions and is the subject of a large body of national case law. The words deleted apply to almost all of the rights guaranteed by the Charter and their substance would be made implicit by means of the insertion in the general clauses of a reference to the subsidiarity principle (see the proposed amendment to Article 46).

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 42

Submitted by: Charlotte Cederschiöld

Proposed text:

Everyone shall have access to medical care in all countries.

Reasons:

The reasons apply to the Swedish text only.

Article 42 bis

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**Proposed amendment to: Article 42 bis new****Submitted by: Ieke van den Burg****Proposed text:****Title: Right to housing:****Everyone has the right to decent and appropriate housing****Reasons:**

This article may not be missing in the Charter, as it belongs to the core social rights included in the UN International Covenant (art 11), and the Revised Social Charter of the Council of Europe (art. 31). Particularly in the context of the battle against poverty and social exclusion, the problem of homeless is a focal issue.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article: 42

Submitted by: Rodotà, Paciotti and Manzella

Proposed text: The three signatories endorse the text set out in new Article 42a proposed by Mrs van den Burg.

Article 43

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 43

Submitted by: Charlotte Cederschiöld

Proposed text:

Delete

Reasons:

Naturally, measures to promote the disabled's' possibilities should be developed further. This is an important national task.

However, the work in the Convent aims to create a Charter at the highest level in the Union's legal hierarchy. There is thus no possibility of including specific references to every secondary regulation.

Instead, a prohibition of discrimination on any ground, including that of disability, should be - and already is - included in the Charter in Articles 1 and, above all, 22 in Convent 28.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 43. The disabled

Submitted by: Lord Goldsmith QC

Proposed text:

Delete all

Reasons:

The United Kingdom has adopted advanced legislation (the Disability Discrimination Act 1995) designed to protect persons with disabilities from unjustified discrimination in the workplace and in other contexts, and to require employers to make reasonable adjustments to help accommodate disabled workers. I understand this goes beyond rights in some other Member States. However, there is no existing European law. Proposals are currently under discussion for a framework directive under Article 13 which will include combating discrimination on the grounds of disability in relation to employment, occupation and vocational training.

The issues in this area are important, complex, and require detailed consideration and sensitive handling. This Charter is intended to state the restrictions, deriving from existing rights, on the legislation and acts of EU Institutions acting within their competences. I do not think it is appropriate for the Charter to attempt to define rights which ought to be accorded through carefully formulated national legislation drafted to take account of any Community action under Article 13 TEC. The inadequacy of the proposed Article only goes to demonstrate this.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 43: The disabled

Submitted by: Dr Ingo Friedrich, MEP, and Dr Peter Mombaur, MEP

Proposed text:

Delete.

Reasons:

We support this proposal in principle, but this is not a classic fundamental right and can therefore be dealt with (or continue to be dealt with) elsewhere.

The proposed formulation suggests a competence which the Union does not possess.

We endorse the objective underlying the formulation, namely to create equivalent living conditions for the disabled. However, we have reservations about this specific clause in the context of a charter of fundamental rights. The proposal goes far beyond the ESC/EC Treaty, so that it might arouse expectations which cannot be fulfilled. Moreover, the relationship of this provision to Article 22 (1) and (3) is unclear. There it is laid down that the EU will seek to eliminate inequalities (Convention 28, Charte 4284). The same matters seem to be dealt with here.

In addition, if this clause were intended to confer individual rights, extremely far-reaching entitlements might be derived from it which could not be fulfilled on budgetary grounds.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 43

Submitted by: Gabriel Cisneros Laborda

Proposed text:

It is proposed that this article be deleted or, otherwise, that it be included in a chapter devoted to principles.

Reasons:

See the reasons for the amendment to Article 31 (first paragraph).

=====

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article: 43 The disabled

Submitted by: Frits Korthals Altes, representative of the Netherlands Government

Proposed title:

Article 43 Integration of the disabled

Reasons:

The new version of the title proposed here provides a more specific indication of what is contained in this provision.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article: 43 The disabled

Submitted by: Frits Korthals Altes, representative of the Netherlands Government

Proposed text:

The Union shall promote, pursuant to Article 15 of the Revised European Social Charter, the integration into society of disabled persons through participation in occupational, social and cultural life.

Reasons:

Integration into society means being able to take part in all kinds of activities in society. For that reason the wording of the amended version has been made more specific with the addition of the concluding phrase. The connection that it is intended to establish with Article 15 of the Revised European Social Charter has also been made explicit.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 43 (Convent 34)

Submitted by: M. Patijn, representative of the Lower House of the Netherlands Parliament

Proposed text:

Article 43. The disabled

The Union shall promote the integration of the disabled into society and working life and their access to public facilities.

Reasons:

Positive action to assist the disabled should unambiguously include access to buildings with a public function, public transport and ICT-related services.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 43

Submitted by: Ernest M.H. Hirsch Ballin, representing the First Chamber of the States-General of the Netherlands

Proposed text:

I support Mr M. Patijn's amendment.

Reasons:

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 43

Submitted by: Win Griffiths, MP

Proposed text:

All disabled people have the right to lead their lives free from discrimination based on their disability and enjoy equal civil rights with the rest of society.

Reasons:

This text is more positive and declaratory of the rights of disabled people than the original text without being over-long.

=====

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 43

Submitted by: Ben Fayot (Chamber of Deputies, Luxembourg)

Proposed text:

Article 43. Rights of the disabled

The rights of the disabled in respect of social and vocational integration shall be guaranteed.

Reasons:

A question of wording: rather than talking about measures, the article should specify the underlying right.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 43

Submitted by: Andrew Duff MEP

Proposed text:

Article 43. *Rights of the disabled*

- Disabled persons have the right to special employment measures

Reasons:

Again, the draft needs to be reformulated as a right. Reference to Article 13 of the Treaty has already been made. Here it is only necessary to refer to Article 137(1) which concerns integration into the labour market.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 43. The disabled

Submitted by: Marie-Madeleine Dieulangard

Proposed text:

Replace the existing text by the following words:

‘Every disabled person must have the possibility of taking advantage of special measures to facilitate his social integration and participation in working life.’

Reasons:

The aim is firstly, to ensure a higher level of protection than that implied by the existing text, and secondly, to ensure that disabled persons can participate in the world of work.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 43 (CHARTE 4136/00 CONVENTION 34)

Submitted by: Johannes Voggenhuber and Kathalijne Buitenweg

Proposed text:
Article 48 (new).

People with a disability have a right to social and vocational integration measures (three words deleted).

Reasons:

We are drafting a Charter of Fundamental Rights. Wherever possible, its provisions should therefore be couched in terms of 'rights'.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 43

Submitted by: Einem/Holoubek

Proposed text:

People with disabilities

People with disabilities shall have the right to full social and vocational integration.

Reasons:

The wording of the text proposed by the Presidency is not sufficiently binding. Provision should be made for people with disabilities to be entitled to absolutely equal social and vocational treatment. Our proposed text is intended to achieve this. It is also intended to respond to the justified criticism of the European Disability Forum.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article: 43

Submitted by: Rodotà, Paciotti and Manzella

Proposed text: Article 43 to read:

Article 43. Rights of the disabled

Every disabled person has the right to benefit from appropriate measures to foster the free development of his or her personality and his or her vocational and social integration.

Reasons:

The article has been recast so as to place the emphasis on the beneficiaries of the right.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**Proposed amendment to: Article 43****Submitted by: Ieke van den Burg****Proposed text:****Title: Rights of persons with disabilities to social and professional integration****Every person with disabilities, whatever their origin and nature, has the right to additional specific measures aimed at social and professional integration, concerning in particular, vocational training, ergonomics, accessibility, mobility, means of transport and housing.****Reasons:**

The wording of the article comes from Article 26 of the Community Charter, but may also be referred to art. 15 of the RESC, and is recognised in several Member States' constitutions.

Declaration 22 annexed to the Treaty of Amsterdam appealed to the Community Institutions to take account of the specific rights of persons with disabilities.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 43

Submitted by: Pervenche BERÈS

Proposed text:

- *Article 43. Integration of the disabled*
- **All disabled persons, whatever the nature of their handicap, must have access to specific additional measures to promote their professional and social integration. These enhancing measures should, depending on the capacities of those concerned, relate to vocational training, ergonomics, accessibility, mobility, transport and housing.**

Reasons:

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DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 43

Submitted by: Jo Leinen

Proposed text:

Article 43: *The right of disabled people to social and vocational integration*

All disabled people, irrespective of the cause and nature of their disability, have the right to social and vocational integration. To this end, measures may be taken, in particular, to ensure that all disabled people have full access to the rights guaranteed in this Charter.

Reasons:

The Praesidium's draft concerning this right was inadequate, both in formulation and in substance. Organisations representing the disabled (the European Disability Forum at the hearing on 27 April 2000) pointed out that, at all events, the expression 'disabled people' was preferable. Moreover, the rights referred to here ought to be clearly formulated as individual rights. The second sentence is based on the proposals of the European Disability Forum but without incorporating the detailed list of fields in which special measures are possible and necessary. The third sentence reflects the fundamental problem that it may possibly be necessary to take special measures (for example with regard to the provision of information) to afford disabled people access to the rights covered by the Charter.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article 43

Submitted by: Álvaro Rodríguez Bereijo, Personal Representative of the Spanish Prime Minister

Proposed text:

Provision shall be made for social and vocational integration measures for the disabled *in such a way as to ensure that they are fully enabled to enjoy the rights recognised in this Charter.*

Reasons:

The aim is to reinforce the intention behind this article by encouraging the adoption of positive measures which will contribute to creating conditions that will enable persons having a physical or mental disability to enjoy the rights of the Charter on a basis of true equality.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 43. THE DISABLED

Submitted by: JORDI SOLÉ TURA

Proposed text:

All disabled people shall have the right to live free from any discrimination based on their disability and to exercise the same rights and fulfil the same obligations as the rest of society. To this end the necessary steps shall be taken to ensure that disabled people are fully integrated both socially and vocationally and that they have access to the necessary information which will enable them to secure a job and exercise their rights.

Reasons:

The purpose of this amendment is to extend the text and improve the wording, and also to introduce the concept of 'necessary information' which is demanded by all organisations for the disabled.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 43. The disabled

Submitted by: José Barros Moura and Maria Eduarda Azevedo, Members of the Portuguese National Assembly

Proposed text:

1. *Discrimination based on a physical or mental disability shall be prohibited.*
2. *Physical or architectural barriers preventing disabled persons from moving around or from entering public buildings shall be removed.*
3. *Provision shall be made for special teaching and for social and vocational integration measures for the disabled.*

Reasons:

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DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 43. The disabled

Submitted by: Prof. Daniel Tarschys, Sweden

Proposed text:

Rephrase the title to read: '**Article 43. Persons with disabilities**'

and replace the current draft text by the following: '**Provision shall be made for the independence, social and vocational integration and participation in the life of the community of persons with disabilities.**'

Reasons:

The term 'persons with disabilities' is the wording used in all international documents today, including the European Social Charter. My proposal is based on Article 15 of the revised Social Charter which in turn is inspired by the United Nations Standard Rules on the Equalisation of Opportunities for Persons with Disabilities (adopted by the General Assembly in 1993). Article 13 of the EC Treaty authorises the adoption of positive measures to prevent discrimination on grounds of disability.

Article 43 bis

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**Proposed amendment to: Article 43 bis new****Submitted by: Ieke van den Burg****Proposed text:****Title: Rights of elderly persons****Every elderly person has the right to lead an independent and decent life, and to be able to play an active part in political, social and cultural life.****Every worker has the right to enjoy a pension for him/her and his/her dependants that guarantees a decent and independent standard of living.****Reasons:**

A special article on elderly persons/pensioners is missing in the Charter. This article (as proposed earlier in Contribution 111) takes the essential elements of art. 23 of the RESC, which are not just covered in general articles about social protection, healthcare etc.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article: 43

Submitted by: Rodotà, Paciotti and Manzella

Proposed text: Insert the following after Article 43:

Article 43a. Rights of the elderly

Every elderly person has the right to an independent and decent existence and to take a full part in political, social and cultural life.

Reasons:

Owing to demographic trends in the EU Member States, special attention must be paid to the rights of the elderly. The provisions are based on Article 23 of the European Social Charter.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed Article 43a (new)

Submitted by: Pervenche BERÈS

Proposed text:

- Article 43a. Access to services of general interest

Everyone has the right to services of general interest providing quality facilities in all areas which have a bearing on the quality of life, sustainable development and, more generally, respect for fundamental rights. The provision of services of general interest shall be based on the principles of equal access, universality, continuity, democratic control and transparency.

Reasons:

Article 44

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 44

Submitted by: Charlotte Cederschiöld

Proposed text:

Delete

Reasons:

The aim of a good and healthy environment is an obvious objective to us all. However, the Charter is not the suitable level in the legislative hierarchy to deal with, and promote, environmental protection.

It is very unclear how such a "right" could be guaranteed by the Union. It is more to be regarded as a wish.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 44: Environmental protection

Submitted by: Dr Ingo Friedrich, MEP, and Dr Peter Mombaur, MEP

Proposed text:

Delete.

Reasons:

We support this proposal in principle, but this is not a classic fundamental right and can therefore be dealt with (or continue to be dealt with) elsewhere.

The substance of the Charter must be confined to rights which can be invoked at law. Accordingly, mere definitions of objectives and programmatic statements should not be included. Otherwise, the public will be disappointed in its expectations of the Charter. In the case of environmental protection, no precedent should be set, and the provisions of the EC Treaty are deemed adequate. Moreover, if objectives are set there is a danger that the CJEC might interpret them as individual rights, should the Charter become legally binding, and the legal and budgetary consequences of this are unpredictable.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article: 44 Environmental protection

Submitted by: Frits Korthals Altes, representative of the Netherlands Government

Proposed text:

Article 44 A clean and healthy environment

Reasons:

The new version of this title proposed here is more specific than that drafted by the Presidium.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 44. Environmental protection

Submitted by: Prof. Daniel Tarschys, Sweden

Proposed text:

2. Union policies shall *contribute to* environmental protection...

Reasons:

My proposal follows the wording of Article 174 of the EC Treaty which does not use the word 'ensure'. My proposal would also bring the draft text into line with Article 46.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article 44

Submitted by: Álvaro Rodríguez Bereijo, Personal Representative of the Spanish Prime Minister

Proposed text:

The definition and implementation of the Community's policies and actions shall incorporate the requirements of environmental protection, namely preserving, protecting and improving the quality of the environment, protecting human health and the prudent and rational utilisation of natural resources.

Reasons:

The aim is fidelity to Articles 6 and 174 of the EC Treaty.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article: 44 Environmental protection

Submitted by: Frits Korthals Altes, representative of the Netherlands Government

Proposed text:

The Union shall *ensure* the protection and preservation of a clean and healthy environment and *shall promote* the improvement of the quality of the environment, *taking into account* the principle of sustainable development.

Reasons:

The following can be stated with regard to the concluding part of the above sentence: 'Sustainable development' is one of the principal objectives of EU policy (Article 2 of the EU Treaty and Article 2 of the EC Treaty), It entails that the environment at human disposal must only be used so as to ensure that succeeding generations can continue to enjoy equivalent use of it. 'Prudent and rational utilisation of natural resources' (version proposed by the Praesidium) is an integral part thereof, but does not cover it completely. The principle of sustainable development has been enshrined in international law by way in particular of the 1993 UN Conference on the Environment and Development (UNCED) in Rio de Janeiro and consolidated into the case law of the International Court of Justice. It is precisely because that terminology has become common international property that preference should be given to using it here. The right of all present and future generations to live in a healthy and clean environment was further confirmed in 1998 in Article 1 of the ECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention).

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 44. Environmental Protection

Submitted by: Lord Goldsmith QC

Proposed text:

Amend to produce the following two-part text:

- For Part A, “Proclamation of Rights”:

Everyone has the right of access to environmental information, and to participate in environmental decision making.

- For Part B, “Definition of Rights”:

The rights in Article 44 extend so far as is required by the relevant secondary legislation adopted by the Community under Article 175 of the Treaty Establishing the European Community, subject to the limitations and derogations specified in that legislation and in any national measures adopted to give them effect.

Reasons:

Rather than including statements of policy as the proposed Article does, I propose a reference to the important existing rights of individuals under EU legislation. The policy objective of the Union remains as stated under Article 174 of the Treaty and need not be restated.

The definition of these rights under Part B is, as always, essential.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 44

Submitted by: Win Griffiths, MP

Proposed text:

Everyone is entitled to expect the European Union to implement policies to defend and improve the quality of the environment.

Reasons:

I prefer this right to be expressed in terms of individual expectation of European Union policies in this field.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 44

Submitted by: Andrew Duff MEP

Proposed text:

Everyone has the right to the enhancement of the natural environment.

Reasons:

The draft article needs to be reformulated as a right, and should reflect the Treaty accurately. Under Article 174, the Union shall 'contribute' towards and not 'ensure' an improved environment.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 44

Submitted by: Ben Fayot (Chamber of Deputies, Luxembourg)

Proposed text:

Article 44. Right to a clean and healthy environment

Everyone has the right to live in a clean and healthy environment and the duty to protect the quality of the environment for present and future generations.

Reasons:

This wording focuses on a fundamental right rather than a declaration of intent.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 44. ENVIRONMENTAL PROTECTION

Submitted by: JORDI SOLÉ TURA

Proposed text:

Everyone shall have the right to a suitable environment and the duty to protect it. Union policies, together with the law and collective solidarity, shall ensure environmental protection and preservation and improvements to the quality of the environment, the protection of human health and prudent and rational utilisation of natural resources.

Reasons:

The purpose of this amendment is to improve the wording of the text and, in particular, to stress people's right to a suitable environment and their duty to conserve it through collective solidarity.

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DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**Proposed amendment to: Article 44****Submitted by: Ieke van den Burg****Proposed text:****Title: Right to a clean and healthy environment****Everyone has the right to a clean and healthy environment, ensured by environmental protection, which involves preserving ...etc****Reasons:***The article is reformulated in the form of a right for everyone, as the other rights.*

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article: 44

Submitted by: Rodotà, Paciotti and Manzella

Proposed text: Article 44 to read:

Article 44. Right to a healthy environmental

1. Every individual has the right to live in a healthy, clean environment, and a duty to safeguard the quality of the environment for present and future generations.
2. **The Union shall ensure that the environment is protected and used in ways that do not conflict with the interests of society and that enable the quality of the environment to be protected and improved, health to be protected and natural resources to be used in a prudent and rational manner.**

Reasons:

The first paragraph establishes the fact that every individual has a right and a duty in relation to the environment. The second recasts the article, laying down the action to be taken by the Union with a view to implementing the right to a healthy environment.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 44 (CHARTE 4136/00 CONVENTION 34)

Submitted by: Johannes Voggenhuber and Kathalijne Buitenweg

Proposed text:
Article 49 (new).

Everyone has the right to a clean and healthy environment. Union policies shall ensure environmental protection, which involves preserving, protecting and improving the quality of the environment, protecting human health and prudent and rational utilisation of natural resources.

Reasons:

We are drafting a Charter of Fundamental Rights. Wherever possible, its provisions should therefore be couched in terms of 'rights'.

The right which we propose is already recognised as such, inter alia, in the Spanish and Belgian constitutions. Article 1 of the Aarhus Convention, which has been signed by the Community and all 15 Member States, likewise recognises 'the right of every person of present and future generations to live in an environment adequate to his or her health and well-being'.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article 44: Environmental protection

Submitted by: Jean-Luc DEHAENE, representative of the Belgian Government, and Karel DE GUCHT and Roger LALLEMAND, representatives of the Belgian Parliament

Proposed text:

Every person of present and future generations has the right to live in an environment adequate to his or her health and well-being. To that end, the European Union shall ensure a high level of environmental protection, which involves preserving, protecting and improving the quality of the environment, protecting human health and prudent and rational utilisation of natural resources.

Reasons:

The first sentence is copied from Article 1 of the Aarhus Convention on access to information, public participation in decision-making and access to justice in environmental matters, which has been signed by the 15 Member States. Since the Stockholm Declaration of 1972 the right to a healthy environment has been included, inter alia, in the constitutions of a large number of States (including Belgium) and the Treaty establishing the European Community (Articles 6 and 174). In its report on the drafting of a European Union Charter of Fundamental Rights (A5-0064/2000, p. 8) and the resolutions it has adopted (report by Claudia Roth, 1997), Parliament clearly emphasised the importance of adopting such a right.

The reference to a high level of protection is justified by the wording of Article 95 (ex Article 100a) of the EC Treaty, which stipulates that 'The Commission, in its proposals (...) concerning (...) environmental protection (...) will take as a base a high level of protection'. It should therefore be included here.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 44

Submitted by: Einem/Holoubek

Proposed text:

Union policies shall ensure *a high level of* environmental protection, which involves preserving, protecting and improving the quality of the environment, protecting human health and prudent and rational utilisation of natural resources.

Reasons:

Like Article 174(2) of the EC Treaty, the Charter must stress that the Community must provide a high level of environmental protection. There is no discernible reason to deviate from Article 174(2) of the EC Treaty.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 44

Submitted by: Heinrich NEISSER

Proposed text:

Article 44. Environmental protection

In the field of environmental protection, Union policies shall ensure a high level of protection. This shall include preserving, protecting and improving the quality of the environment, protecting human health and prudent and rational utilisation of natural resources.

~~Union policies shall ensure environmental protection, which involves preserving, protecting and improving the quality of the environment, protecting human health and prudent and rational utilisation of natural resources.~~

Reasons:

It seems desirable to harmonise Articles 44 and 45 as regards the use of the phrase ‘high level of protection’, since individuals have a very strong interest in a high level of protection in the field of environmental protection as well.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 44 (CONVENTION 34)

Submitted by: Hans-Peter MARTIN

Proposed text:

Article 44. Environmental protection

Union policies shall ensure environmental protection, which involves *in particular* preserving, protecting and improving the quality of the environment, protecting human health and *sparing, sustainable* and rational utilisation of natural resources.

Reasons:

The preamble to the Treaty on European Union refers to the principle of sustainable development. There should be no regression from this. The mention of the principle of sustainability is also necessary in order not to undermine the Community's negotiating position and arguments in bilateral and multilateral trade relations and conflicts in which reference is made to international environmental agreements (for example under the aegis of the WTO). In this regard the European Union is also assured of wide support from European public opinion.

The other conceptual corrections are intended to indicate that the list of fields of environmental protection is not complete and to stress more clearly that natural resources should be used in an environmentally sound manner.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 44

Submitted by: Paavo Nikula, Gunnar Jansson and Tuija Brax

Proposed text:

Article 44. Environmental protection

1. *Union policies shall ensure environmental protection, which involves preserving, protecting and improving the quality of the environment, protecting human health and prudent and rational utilisation of natural resources.* Everyone is responsible for nature and its diversity, environment and cultural tradition.
2. Everyone shall be guaranteed the opportunity to influence decision-making concerning their environment.

Reasons:

The aim is to increase the element of responsibility and thereby stress the fact that protection of nature and of other aspects of the environment is based on the inherent value of nature and on the fact that a right is at stake here which is indivisibly vested in all human beings, including future generations. Broad cooperation is needed among various parties in order to safeguard this right. This also requires that everyone should have the right to participate in decision-making concerning their own environment.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 44

Submitted by: Dr Erling Olsen, Danish Government representative

Proposed text:

I propose a new paragraph 2, as follows:

Everyone shall be guaranteed the right of access to information on the environment and public participation in environmental decision-making processes.

Reasons:

The right of free access to information on the environment is based on Directive 90/313/EEC on the freedom of access to information on the environment, and on the Convention on citizens' environmental rights, the Århus Convention on access to information, public participation in decision-making processes and access to justice in environmental matters, to which the Community acceded in June 1998. The objective of the Convention is to assist in safeguarding the right of every person in this and coming generations to live in an acceptable environment for his or her health and wellbeing by guaranteeing everyone the right to access to information on the environment and public participation in decision-making on environmental matters.

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DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 44

Submitted by: Ernest M.H. Hirsch Ballin, representing the First Chamber of the States-General of the Netherlands

Proposed text:

Union policies shall ensure environmental protection, which involves preserving, protecting and improving the quality of the environment, protecting human health and prudent and responsible utilisation of natural resources.

Reasons:

'Rational' replaced with 'responsible'. Editorial change.

Article 45

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 45

Submitted by: Charlotte Cederschiöld

Proposed text:

Delete

Reasons:

The promotion of consumer protection is an important aim. However, secondary legislation is the suitable level in the legislative hierarchy to deal with, and promote, this sort of protection.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 45

Submitted by: Jürgen Gnauck, Minister of Federal and European Affairs, Thuringia

Proposed text:

Deleted.

Reasons:

The objective of consumer protection is not a problem as such, but the contents of the Charter must be restricted to what can be enforced in the courts. Accordingly, what are pure objectives and programmes should not be included in the Charter. Moreover, the proposed article appears too specific and, given the provisions of the EC Treaty, superfluous.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 45. Consumer Protection

Submitted by: Lord Goldsmith QC

Proposed text:

Delete all

Reasons:

Like other Member States the UK recognises the need to protect the consumer. However, the text in this article is so vague as to provide no sensible restriction on the Institutions or any assistance to individuals in informing them of their rights. The Union already has obligations of this kind under Article 153 of the Treaty and there is no need for a further statement of aspirations here in the Charter.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 45: Consumer protection

Submitted by: Dr Ingo Friedrich, MEP, and Dr Peter Mombaur, MEP

Proposed text:

Delete.

Reasons:

We support this proposal in principle, but this is not a classic fundamental right and can therefore be dealt with (or continue to be dealt with) elsewhere.

In principle, the objective is not problematic. However, the substance of the Charter must be confined to rights which can be invoked at law. Accordingly, mere definitions of objectives and programmatic statements should not be included. Otherwise, the public will be disappointed in its expectations of the Charter. In the case of consumer protection, no precedent should be set, and the provisions of the EC Treaty are deemed adequate. Moreover, an effort should be made to keep the Charter of Fundamental Rights concise.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 45: Consumer protection

Submitted by: Prof. Daniel Tarschys, Sweden

Proposed text:

3. Union policies shall *contribute to* a high level of...

Reasons:

My proposal follows Article 153 of the EC Treaty which does not use the word 'ensure". My proposal would also bring this draft text into line with Article 46.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article: 45 Consumer protection

Submitted by: Frits Korthals Altes, representative of the Netherlands Government

Proposed text:

The Union shall contribute to protecting the health, safety and economic interests of consumers, as well as to promoting their right to consumer information, education and to organise themselves in order to safeguard their interests.

Reasons:

The above wording is derived from Article 153(1) (consumer protection) of the EC Treaty.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 45

Submitted by: Win Griffiths, MP

Proposed text:

Consumers are entitled to expect the European Union to provide high standards of protection where the European Union has responsibilities.

Reasons:

See Article 44.

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DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 45

Submitted by: Andrew Duff MEP

Proposed text:

Everyone has the right to an enhanced level of consumer protection

Reasons:

The draft article needs to be reformulated as a right. As the Union's powers are similar to those in the field of environment policy, it is best to follow Article 44.

=====

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 45. CONSUMER PROTECTION

Submitted by: Jordi Solé Tura

Proposed text:

Union policies shall ensure *protection of the health, safety and legitimate interests of consumers and users, shall promote the provision of information and education for consumers and users and shall promote consumers' and users' organisations.*

Reasons:

The purpose of this amendment is to improve the wording and to extend the framework and the concept of protection.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 45 (CHARTE 4136/00 CONVENTION 34)

Submitted by: Johannes Voggenhuber and Kathalijne Buitenweg

Proposed text:

Article 50 (new).

Consumers have a right to a high level of protection as regards their health, safety and other interests (two words deleted).

Reasons:

We are drafting a Charter of Fundamental Rights. Wherever possible, its provisions should therefore be couched in terms of 'rights'.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**Proposed amendment to: Article 45****Submitted by: Ieke van den Burg****Proposed text:**

Everyone has the right to be protected as a consumer against health and safety risks, and has the right to defend his/her interests individually and collectively.

Reasons:

The article is reformulated in the form of a right for everyone, as the other rights. With respect to the protection of consumers' interests the formulation of the Presidium is too general.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article 45

Submitted by: Álvaro Rodríguez Bereijo, Personal Representative of the Spanish Prime Minister

Proposed text:

Replace 'Union' by 'Community'

Reasons:

'Union' should be replaced by 'Community' since what is referred to here is Article 153 of the EC Treaty, which concerns specifically Community policies.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 45 (CONVENTION 34)

Submitted by: Hans-Peter MARTIN

Proposed text:

Article 45. Consumer protection

Consumers have the right to expect that Union policies will ensure a high level of protection as regards the health, safety and interests of consumers. Account shall be taken of the precautionary principle.

Reasons:

The mention of the precautionary principle is essential in order not to undermine the Community's negotiating position and arguments in bilateral and multilateral trade relations and conflicts (for example with the USA concerning hormone-treated beef or genetically modified organisms). The European Union has always invoked the precautionary principle in such conflicts, which has been politically and economically expensive for it but has been widely supported by European public opinion, and has also defined this principle in a communication of its own (COM(2000) 1). This non-discriminatory basic principle of the Community's consumer policy should therefore be laid down explicitly in the Charter for the sake of the credibility of its external economic policy. Otherwise there is a danger that the absence of a basis for it in the Charter may be used against the Community in legal proceedings connected with trade disputes.

By analogy with other articles, the introductory active formulation is intended to stress linguistically as well that it is consumers in whom an individual right is vested here.

Legal bases and other grounds for the precautionary principle can be found in Community law and case law, in political guidelines of the Community and in international law: e.g. in Art. 174(2) of the EC Treaty (environmental protection), Art. 95(3) of the EC Treaty (health, safety, environmental protection and consumer protection), the judgment given by the Court of Justice of the European Communities on 5 May 1998 concerning BSE (Cases C-157/96 and C-180/96, paras. 99 et seq.), a judgment given by the Court of First Instance on 16 July 1998 concerning consumer protection (Case T-199/96), the decision of the President of the Court of First Instance of 20 June 1999 (Case T-70/99), various communications from the European Commission and resolutions of the European Parliament, a Council Resolution of 13 April 1999 addressed to the Commission, the UNCED Rio Declaration of 1992 (15th principle), the preamble to the Biodiversity Convention of 1992 and Article 3 ('Principles') of the Convention on Climate Change of 1992.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 45. Consumer protection

Submitted by: Marie-Madeleine Dieulangard

Proposed text:

Reword the article to read as follows: 'Union policies, which shall embody the precautionary principle, shall ensure a high level of protection as regards the health, safety and interests of consumers'.

Reasons:

The introduction of measures to guarantee consumer protection is conditional on the prior application of this essential principle.

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DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

First proposed amendment to: Article 45

Submitted by: Einem/Holoubek

Proposed text:

A high level of consumer protection, which includes in particular the protection of their health, safety and economic interests, shall be ensured by the Union's policies. In order to guarantee the rights of consumers to information and education, the Union shall promote the formation of associations to protect consumers' interests.

Reasons:

The wording of this article should not deviate from that of Article 153(1) of the EC Treaty or give the misleading impression that the obligations arising from Article 153(1) of the EC Treaty have been toned down. It is therefore proposed that the wording of Article 153(1) should be adhered to more closely, and particularly that the founding of organisations to protect consumer interests should be specifically mentioned.

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DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article: 45

Submitted by: Rodotà, Paciotti and Manzella

Proposed text: Article 45 to read:

Article 45. Consumers

- 1. Every individual has the right to goods and services of a quality that will ensure a high level of protection for their health and safety, with due respect for the principle of sustainability and the interests of future generations.**
- 2. Consumers have the right to comprehensive information on the quality of goods and services and to advertising that is not misleading and that meets the criteria of transparency and truthfulness.**

Reasons:

The article has been recast in line with the principles that underpin European Union policy.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 45. Consumer protection

Submitted by: José Barros Moura and Maria Eduarda Azevedo, Members of the Portuguese National Assembly

Proposed text:

- 1. Union policies shall ensure a high level of protection as regards the health, safety and interests of consumers.*
- 2. Consumers must be provided with full, comprehensible information on the features and the hazards of each product. Misleading advertising shall be prohibited.*

Reasons:

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article: 45

Submitted by: Jean-Maurice Dehousse, MEP and substitute Member of the Convention

Proposed text: Article 45 to read:

1. Everyone has the right to safe products and safe services.
2. Consumer safety entails inter alia the provision of comprehensive, accurate and comprehensible information on the nature of products sold and services provided to the public.
3. The Member States and, by default or where the law so provides, the Union, shall take the necessary steps to establish and enforce such safety standards.

Reasons:

Over recent years there have been so many lapses in the protection of consumer safety and those lapses and their repercussions have become so serious that the Charter must clearly and forcefully affirm a right which is now less unquestionable than it was in the past and which is likely to come under renewed threat in the future.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed Article 45(4) (new)

Submitted by: Jean-Maurice Dehousse, MEP and substitute Member of the Convention

Proposed text: Take over the proposed amendment by Mrs Berès, Mrs Paciotti and Mrs van den Burg on services of general interest, and add the following:

Everyone must have access to services of general interest such as water and energy distribution and postal and telephone services.

Reasons:

The provisions of Article 16 of the EC Treaty and the reference made therein to 'the place occupied by services of general economic interest in the shared values of the Union as well as their role in promoting social and territorial cohesion' and the fact that 'the Community and the Member States, each within their respective powers and within the scope of application of this Treaty, shall take care that such services operate on the basis of principles and conditions which enable them to fulfil their missions' fully justify the inclusion of this provision in the Charter.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: New article

Submitted by: Johannes Voggenhuber

Proposed text:

Article 45

Every worker has the right to equal pay for equal work.

Reasons:

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DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 45

Submitted by: Jens-Peter Bonde

Proposed text:

Nothing in this treaty shall be interpreted as restricting or undermining human rights and fundamental freedoms recognised, in their respective fields of application, by the Member States' constitutions as interpreted by the Member States' courts, international law and international agreements to which the Union, the Community or the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, as interpreted by the European Court of Human Rights.

Reasons:

It is important for there to be a reference to the case law of the European Court of Human Rights where rights are concerned which stem from the European Convention for the Protection of Human Rights. This is the only way of ensuring that future interpretation of the Charter is consonant with the way rights are interpreted by the European Court of Human Rights.

We also need to ensure that the Charter does not limit the rights flowing from the international agreements individually acceded to by the Member States. There can be no question of their being only agreements to which all Member States are party, as this would encroach on the Member States' sovereign right individually to be party to international agreements.

Article 45 bis

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed Article 45a (new)

Submitted by: Guy Braibant

Proposed text:

Article 45a. Right of access to services of general interest

Everyone has the right to free and equal access to services of general interest.

Reasons:

This amendment is based on Article 16 of the EC Treaty, which specifically mentions the role of services of general interest in the shared values of the Union. The purpose of the amendment is to make it clear that, where services of general interest exist, people should have free and equal access to them, without prejudging whether they should be public or private or whether they should be free of charge

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DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed Article 45 (new)

Submitted by: Ben Fayot (Chamber of Deputies, Luxembourg)

Proposed text:

Article 45 (new). Right to equal access to services of general interest

The right to have access to quality services of general interest in the fields of education, culture, communications and health shall be guaranteed in accordance with each Member State's rules.

=====

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed insertion of an article on the right to services of general interest

Submitted by: Marie-Madeleine Dieulangard

Proposed text:

‘Everyone has a right to services of general interest. The provision of services of general interest is based on the principles of equal access, universality, continuity, democratic control and transparency, and guarantees the exercise of fundamental rights’.

Reasons:

The aim is to guarantee that everyone has an equal right of access to services of general interest.

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DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed Article : Right to a universal service

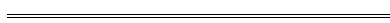
Submitted by: Jean-Luc DEHAENE, representative of the Belgian Government, and Karel DE GUCHT and Roger LALLEMAND, representatives of the Belgian Parliament

Proposed text:

Everyone shall have a right to high-quality services of general interest in all areas that have a bearing on quality of life and sustainable development and, in general, on respect for fundamental rights. The provision of services of general interest shall be based on the principles of equality of access, universality, continuity, democratic control and transparency.

Reasons:

The Member States must ensure that citizens are able to enjoy the rights set out in the Charter, such as education, medical care and legal aid. The existence of structures enabling them to do so, namely services of general interest, must therefore be guaranteed.



DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article: 45

Submitted by: Rodotà, Paciotti and Manzella

Proposed text: Insert the following after Article 45:

Article 45a. Right to services of general interest

Every individual has the right to services of general interest that provide the facilities required to guarantee an appropriate quality of life and access to employment. The provision of services of general interest shall be based on the principles of equal access, universality, continuity and transparency.

Reasons:

The proposed amendment is intended to recognise the right to benefit from services of general interest, inter alia as part of the promotion of social and territorial cohesion within the Union provided for in Article 16 of the EC Treaty.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 45 bis new

Submitted by: Ieke van den Burg

Proposed text:

Title: Access to services of general interest

Everyone has the right to high-quality services of general interest in all areas that are essential to the quality of life, sustainable development and, more generally, the protection of fundamental rights. Services of general interest are to be based on principles of equal access, universality, continuity, democratic scrutiny and transparency.

Reasons:

Reference for this right in art. 16 of the Amsterdam Treaty.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Second proposed amendment to: Article 45

Submitted by: Einem/Holoubek

Proposed text:

The following new article to be inserted after Article 45:

Article XX: The right of access to public-interest services

Every person shall have the right to equal, affordable access to public-interest services which provide qualitative services in all areas that contribute to the quality of life, sustainable development and in general to the guaranteeing of fundamental rights. Public-interest services shall be based on the principles of equal access, universality, continuity, democratic accountability and transparency.

Reasons:

Because of their supreme importance for the unrestricted development of the human personality, it is important that the Charter should specifically guarantee equal, affordable access to public-interest services. The principle is already acknowledged in Article 16 of the EC Treaty.

This proposal follows in principle that of Mrs Berès, Mrs Paciotti and Mrs van den Burg in the Document Charte 4238/00-Contrib 111. The wording proposed by us only clarifies the point that what is meant here is the right of access, a practical entitlement to equal and affordable access.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed new Article 45a

Submitted by: José Barros Moura and Maria Eduarda Azevedo, Members of the Portuguese National Assembly

Proposed text:

The right to housing shall be guaranteed.

Reasons:

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DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article:

Submitted by: Rodotà, Paciotti and Manzella

Proposed text: Add the following article:

Right to self-determination

Every individual has the right to decide freely on matters relating to his or her own life and person, free of any form of coercion, discrimination or violence and with full respect for gender equality.

Reasons:

This fundamental right has now become a common principle of the constitutional law of the EU Member States and is recognised in documents drawn up under the aegis of the United Nations (see paragraph 96 of the Beijing Conference document).

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article:

Submitted by: Rodotà and Paciotti

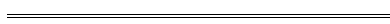
Proposed text: Add the following article:

Right to sexual freedom

Every individual has the right to decide freely on matters relating to his or her sexuality, which includes the right to sexual and reproductive health guaranteed against all forms of coercion, violence and discrimination between women and men.

Reasons:

The proposed article is based on Article 96 of the UN's Beijing Platform. The location of this article will depend on the final shape given to the Charter.



DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed insertion of additional article after Article 45: Fundamental duties.

Submitted by: Hubert HAENEL

Proposed text:

Article 45a

Fundamental rights imply the fulfilment of those duties which are necessary, in a democratic society, for public safety, for the protection of public order, health or morality, for sustainable development or for the protection of rights and liberties.

Reasons:

It appears to be highly desirable to devote an article of the charter to the subject of duties, as there can be no freedom without duty, no democracy without public-spiritiveness, no citizenship without responsibility.

Some people might take the view that this reminder is superfluous, or that it could appear solely in the preamble, as fundamental duties are the corollary of rights, and so affirming the latter amounts to implicitly affirming the former. For example, affirming the right to dignity could be taken as affirming the right to respect the dignity of others.

This argument is not, however, wholly convincing.

Firstly, because certain fundamental duties cannot easily be linked to a particular right: for example, the duty to take part in the defence of the nation, or the duty to pay taxes.

Secondly, because it is only true to say that one person's rights are another person's duties only in the context of relations between individuals, i.e. social relations. The right to work undoubtedly implies the duty to respect other people's right to work. But that distracts attention from the fact that, at the level of the individual, a right can imply a duty: the right to work implies the duty to work when one can. Similarly, the right to vote certainly implies respecting other people's right to vote (which goes without saying), but also the duty to vote, which is a moral duty in certain States and a legal obligation in others. If this is not spelt out, will not the legal obligation to vote imposed by certain States be condemned, as it could be argued that the right to vote implies the right not to vote?

Finally, more generally, we should not forget that we are seeking to send a strong, cogent and clear message to the citizens of Europe, and that we shall not succeed in doing so if we do not spell out all the implications.

We should, therefore, devote an article to duties, as does the Universal Declaration of Human Rights. The text proposed in this amendment is mainly inspired by the European Convention on Human Rights; it adds the notion of sustainable development, however.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 46

Submitted by: Dr Erling Olsen, Danish Government representative

Proposed text:

I propose that the reference to the Member States be deleted and that paragraph 1 should read:

1. **The provisions of this Charter shall be respected by the institutions and bodies of the Union within the framework of the powers conferred on them by the Treaties.**

Paragraph 2 to read:

2. **This Charter does not establish any new competence, tasks or *objectives* for the Community.**

Reasons:

The primary objective of the Charter is to establish the fundamental rights governing relations between citizens and the EU's institutions and bodies. This formulation is in line with Article 6(2) and Article 46(d) of the EU Treaty, which were incorporated through the Amsterdam Treaty. The question of the involvement of the Member States should be deferred until subsequent consideration of whether and, if so, how the Charter should be incorporated fully or partially into the Treaties and thereby be given a legally binding form, cf. the Cologne mandate.

As regards the addition to paragraph 2, it is logical to refer to both tasks and objectives, as both these concepts ensue from Article 2 of the EC Treaty.

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DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 46

Submitted by: Jens-Peter Bonde

Proposed text:

The provisions of this Charter are addressed to the institutions and bodies of the Union within the framework of the powers conferred on them by the Treaties.

Reasons:

See reasons quoted in Amendment 434 to Article 31.

Article 46

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 46. Scope

Submitted by: Lord Goldsmith QC

Proposed text:

. Amend paragraph 1 to read:

“The provisions of this Charter apply to the Institutions of the Union and bodies established by the Treaties or secondary legislation within the scope of application of the Treaties.”

Retain paragraph 2: “This Charter does not establish any competence or any new task for the Community or the Union or modify competences and tasks defined by the Treaties”.

Add paragraphs (3) and (4):

“3. Subject to paragraph (4), this Charter applies to the Member States when implementing Community law.

4. The provisions corresponding to rights in the ECHR or its Protocols apply to a Member State only to the extent to which it has consented to be bound in relation to the Convention or its Protocols and subject to any reservations and derogations in force for that Member State.”

Reasons:

As I have previously commented, “addressed to” is vague and may give wider scope than intended. I prefer “apply to”.

The Convention has noted the problems of definition and uncertainty about “bodies of the Union”. It would clearly be preferable to clarify what is meant. We should be as clear as possible about the application of the Charter and leave no room for doubt about the bodies to be covered.

“Framework of the powers” is an unusual expression and could imply that there is legality to be found which is greater than the sum of the specific individual powers. For the sake of clarity, I would prefer to refer simply to “the powers”, and to delete “on them”, but this is unnecessary if my amendments are accepted.

I am entirely content with paragraph 2 of Article 46.

I agree with the general sense of the last phrase of Article 46(1) - the words following the final comma in the English version - but I consider that more should be said to clarify the position. I think that can best be done by way of separate provisions.

*I consider it important that specific horizontal provision is made to safeguard the position of the Member States regarding their existing ability to derogate from or enter reservations according to national circumstances. This ability is a vital feature of sovereignty and subsidiarity and should not be prejudiced by application of the Charter. I deal with limitations in the Part A/Part B approach I have recommended, and in my amendment to Article 48 below. My proposed new paragraph (4) addresses reservations and derogations. They avoid asserting that the **Union** should adopt the lowest common denominator in these matters. Under my proposal, the standard of protection across the EU need not automatically be lowered simply because one Member state entered a derogation in respect of a particular right. I think that is a constructive step forward in this sensitive and difficult area.*

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 46

Submitted by: Heinrich NEISSER

Proposed text:

Article 46. Scope

1. The provisions of this Charter are addressed to the institutions and bodies of the Union ~~within the framework of the powers conferred on them by the Treaties~~, and to the Member States exclusively within the scope of Union law.
2. This Charter does not establish any competence or any new task for the Community or the Union or modify competences and tasks defined by the Treaties.

Reasons:

The amendment is intended to render the Article clearer and more concise.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 46. Scope

Submitted by: Prof. Daniel Tarschys, Sweden

Proposed text:

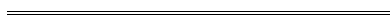
Move this article to the beginning of the Charter.

In para 1, replace the term '**Union law**' with '**Community law**'.

Reasons:

This article is of decisive importance for the interpretation of the whole Charter. It should therefore be placed among the first articles of the Charter.

It is not clear what is meant by 'Union law'. It seems preferable to stick to the established language: 'Community law'.



DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 46. Scope

Submitted by: Guy Braibant

Proposed text:

1. The provisions of this Charter are addressed to the institutions and bodies of the Union within the framework of the powers conferred on them by the treaties, and to the Member States exclusively when they implement Community law.

2. Unchanged

Reasons:

This amendment seeks to specify, as in the amendment to Article 31, that the Charter is addressed to the Member States only insofar as they implement Community law and not when they act 'within the scope of Union law' which would be too extensive and vague

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DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article 46(1)

Submitted by: Álvaro Rodríguez Bereijo, Personal Representative of the Spanish Prime Minister

Proposed text:

The provisions of this Charter are addressed to the institutions and bodies of the Union within the framework of the powers conferred on them by the Treaties, and to the Member States exclusively within the scope of Community law.

Reasons:

The aim is fidelity to the EC Treaty.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 46

Submitted by: Jürgen Gnauck, Minister of Federal and European Affairs, Thuringia

Proposed text:

Article 46. Scope

The provisions of this Charter are addressed to the institutions and bodies of the Union within the framework of the powers conferred on them by the Treaties, and to the Member States exclusively in the transposition and implementation of Community law.

Reasons:

The proposed wording 'within the scope of Union law' risks making provisions too binding on Member States, in particular in instances where the Union has not yet exercised its right to take action.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 46: Scope

Submitted by: Dr Ingo Friedrich, MEP, and Dr Peter Mombaur, MEP

Proposed text:

- 1. The provisions of this Charter are addressed to the institutions and bodies of the Union within the framework of the powers conferred on them by the Treaties, and to the Member States *insofar as they directly apply Union or Community law.***
- 2. This Charter does not establish any competence or any new task for the Community or the Union or modify competences and tasks defined by the Treaties.**

Reasons:

The version of the ‘scope’ clause proposed in CHARTE 4316/00 is different from the previous version (document 4235/00, Article H.1). As far as action by the Member States is concerned, the field covered by the Charter is now no longer the ‘application of Community law’ but ‘the scope of Union law’. This could be taken to mean that Member States were bound by the Charter not only for the purpose of the direct application of EU law but also in the domestic sphere in fields where the EU has powers or even to which the EU merely lays claim de facto.

The definition of ‘the scope of Union law’ therefore seems uncertain and open to misinterpretation. It could be clarified in the manner proposed above.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article: 46(1)

Submitted by: Frits Korthals Altes, representative of the Netherlands Government

Proposed text:

1. **The provisions of this Charter are addressed to the institutions and bodies of the Union within the framework of the powers conferred on them by Treaty or for the implementation thereof, as well as to the institutions or bodies active on the territory of the Union on the basis of a measure adopted by the Council, and to the Member States exclusively within the scope of Union law.**

Reasons:

The proposed version makes it clear that the provisions of the Charter also apply to the second and third pillars of the EU Treaty, viz. common foreign and security policy, and police and judicial cooperation in criminal cases. The Charter should consequently also be directed to the institutions, special units and bodies, as laid down in rules and regulations in force in Union territory, such as the Schengen Agreement. The phrase as well as to the institutions or bodies active on the territory of the Union on the basis of a measure adopted by the Council is added to allow institutions or bodies such as Europol to be included under the protection afforded by the Charter. The provision moreover makes it clear that the Charter will also apply to any new powers that may be acquired by the Union in future.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 46

Submitted by: Pervenche BERÈS

Proposed text:

Article 46. Scope

1. *Respect for the rights and implementation of the principles set out in this Charter are binding on the institutions and bodies of and the entities established within the Union within the framework of the powers conferred on them by the Treaties, on the Member States and the social partners within the scope of Union law, and on private persons acting with the agreement or consent of the Member States.*
2. This Charter does not establish any competence or any new task for the Community or the Union or modify competences and tasks defined by the Treaties.

Reasons:

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 46

Submitted by: Johannes Voggenhuber

Proposed text:

New Article 50

Delete Paragraph 2

Reasons:

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article: 46(2)

Submitted by: Hanja Maij-Weggen

Proposed text:

Delete Article 46(2).

Reasons:

This article is unnecessary and, furthermore, harmful with regard to public opinion.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article 46: Scope

Submitted by: Jean-Luc DEHAENE, representative of the Belgian Government, and Karel DE GUCHT and Roger LALLEMAND, representatives of the Belgian Parliament

Proposed text:

2. This Charter does not establish any competence or any new task for the Union or modify competences and tasks defined by the Treaties.

Reasons:

There is no need to mention the Community directly, as the reference to the Union covers the Community as well. The words 'the Community or' should therefore be deleted.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article 46(2):

Submitted by: Álvaro Rodríguez Bereijo, Personal Representative of the Spanish Prime Minister

Proposed text:

This Charter does not, either explicitly or implicitly, establish any new competences for the Union, the Community or their institutions, or extend the existing competences or objectives of the Community and its institutions.

Reasons:

The aim is to improve the wording while also reinforcing the point that the Charter does not, either explicitly or implicitly, modify the competences of the Community [remainder of justification concerns only the Spanish text].

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 46

Submitted by: Ieke van den Burg

Proposed text:

- 1. The provisions of this Charter are addressed to the institutions and bodies of the Union within the framework of the powers conferred on them by the Treaties, as well as to the Member States and to the social partners, acting in the scope of Union and Community law.**
- 2. This Charter does not in itself establish any competence or any new task for the Community or the Union unless explicitly formulated. (rest delete)**
- 3. Member States of the EU are bound to the content of this Charter by their own Constitutions, and by the international Conventions and Charters referred to in this Charter. Adoption of this Charter once more stresses their commitment to these broadly recognised fundamental rights and standards.**

Reasons:

- 1. In the first part the reference to social partners, that was proposed by the Presidium in a separate article 31, is included. A separate horizontal article referring only to the social and economic rights is not necessary and contrary to the principle of indivisibility of rights. Further refinements and possibly distinct treatment with respect to the justiciability of different rights may be necessary, but should not be dealt with by making different sets of rights with different status, scope and meaning.**
- 2. The addition of "in itself" and "unless explicitly formulated" is meant to keep open the possibility that in the final draft of and decision about this Charter some provision may be included that explicitly gives a new task or competence; for instance a provision giving the EU the task to make the Charter well known to the general public, to publish it, to evaluate it, or something similar.**
- 3. The addition of this third part is formulating the relationship that Member States have with respect to this Charter. In fact this relation is simply built upon their already existing commitment to the national and international standards of fundamental rights which form the basis of the Charter.**

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 46 (insertion of a new paragraph 3). Scope

Submitted by: Hubert HAENEL

Proposed text:

“3. This Charter shall uphold the principle of subsidiarity.”

Reasons:

The purpose of the Charter is to affirm the common values which underly the European Union. The aim of affirming respect for the principle of subsidiarity is both to draw attention to that principle and to render it enforceable in the courts.

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DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article 46: Scope

Submitted by: Piero Melograni

Proposed text:

Insert a new paragraph 3, to read: '**3. The Union shall take action to implement the provisions of this Charter in accordance with the principle of subsidiarity laid down in Article 5(2) of the Treaty establishing the European Community**'.

Reasons:

This new third paragraph includes in the Charter the subsidiarity principle under which the Union shall take action only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article: 46

Submitted by: Rodotà, Paciotti and Manzella

Proposed text: Insert the following after Article 46:

Article 46a. Social rights and principles

The Union institutions and bodies and the Member States, when acting within the scope of Union law, and the social partners at Union level, acting within their respective powers, shall apply the social principles and respect the rights recognised by this Charter, and shall promote the conditions for their implementation in accordance with the principle of solidarity.

Reasons:

The proposed article is intended to clarify the scope and limits of fundamental social rights with respect to the powers of those involved in implementing Union law. This article is intended to serve as a 'general' clause and its substance is therefore deemed implicit in all the following articles which lay down social and economic rights, without the need to refer repeatedly to individual provisions.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Supplementary proposal on bodies enjoying fundamental rights

Submitted by: Jürgen Gnauck, Minister of Federal and European Affairs, Thuringia

Proposed text:

The rights and freedoms listed in the Charter shall also apply to legal entities and other associations with registered offices in the territory of the community provided that they are so applicable by their nature.

Reasons:

The bodies enjoying fundamental rights are, in the first instance, natural persons but also, to a certain extent, legal entities and other associations. The proposed horizontal provision is intended to clarify this. The key element is registered offices in the territory of the Community. However, this is determined less by the registered offices pursuant to the articles of association and more by the actual offices, the 'self-appointed centre of activity' of the association .

Article 47

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 47. Limitation of guaranteed rights

Submitted by: Lord Goldsmith QC

Proposed text:

Delete all

Reasons:

My proposals for drafting the substantive rights in the Charter include references to limitations and qualifications on a right by right basis. I disagree that it is possible to provide satisfactorily for that in a single horizontal clause. I deal with limitations in the two-part 'Proclamation'/'Definition' I have recommended and in my amendment to Article 48 below. I have a number of difficulties with the drafting of the Praesidium text in any event:

- ◆ *“competent legislative authority” may exclude the common law*
 - ◆ *“actual substance ... must be respected” appears to exclude the possibility of lawful derogations and reservations by competent national authorities. Limitations could not lawfully be used wholly to negate a right, so the second sentence seems unnecessary.*
 - ◆ *“subject to the principle of proportionality ... democratic society” seems unnecessary given the definition of the rights, article by article.*
 - ◆ *“limitations” fails to capture “formalities”, “interferences”, “restrictions”, “penalties” etc as provided for expressly by the ECHR.*
 - ◆ *“permitted by the [ECHR]” excludes limitations permitted by the Treaties or elsewhere.*
-

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 47. Limitation of guaranteed rights

Submitted by: Gabriel Cisneros Laborda

Proposed text:

It is proposed that this article be replaced by specific limitations for each right.

Reasons:

In keeping with the position which Spain has been upholding for reasons of legal certainty, it is proposed that the rules governing each right should include the corresponding limits. Enshrining the limits to rights in a general clause which, moreover, refers to the limits provided for under another international law or Treaty runs counter to all the techniques of law-making. Furthermore, I believe that the Charter should avoid any wording which might be understood as a cross-reference to the European Convention for the Protection of Human Rights and Fundamental Freedoms.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article 47

Submitted by: Álvaro Rodríguez Bereijo, Personal Representative of the Spanish Prime Minister

Proposed text:

The fundamental rights guaranteed by this Charter are not absolute privileges, and their exercise may be restricted by limitations justified by law on the grounds of the objectives of general interest pursued by the Community, provided such limitations do not constitute, with regard to the aim pursued, disproportionate or unreasonable interference undermining the very substance of those rights. Limitations may in no circumstances exceed those permitted by the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Reasons:

This article is explained in the explanatory statement as the result of a decision to include a single general limiting clause, applying to all of the rights, thus removing the need to specify limitations for each right in turn. This option does not, however, eliminate the disadvantages of not spelling out what the limitations are for each right. Should the limitations be expressly introduced by law (and how would this be transposed to the Community context?)?, and until the law concerned existed, would the rights concerned be unlimited? How can a quasi-constitutional legal text like the Charter be limited by an instrument of lesser rank (directive, regulation, even national law), should it obtain the status of primary law? Who would rule, and how, whether the limits introduced respected the essential nature of the rights concerned and were proportionate? Finally, what would become of the economic and social rights not taken up by the Rome Convention? As the representation of the Spanish Prime Minister has stressed on numerous occasions, the limitations on particular rights should be part and parcel of their definition: each right should include the specification of its own limits, which, in many cases, arise out of other fundamental rights. From such a perspective, this article cannot be considered acceptable.

Another question is whether this clause should merely complement, rather than exclude, the specification of the limits on the various rights in the individual articles. Should this be the case, the clause may be accepted in the sense that, while its further development is a matter for the law, it lays down certain criteria which must be respected.

In any case, what is proposed here is an alternative wording, aimed at improving the drafting from the technical viewpoint. This does not mean that it should be considered unnecessary or superfluous to set out the limitations on the exercise of certain rights, as proposed in our amendments to the Charter.

The text proposed brings together the principles concerning limitations on the exercise of fundamental rights which have been recognised by ECJ case-law. See the following cases: 5/88 Wachauf, decision of 13 July 1989, ECR 1989, p. 2609; Case C-44/94, The Queen vs. Ministry of Agriculture, Fisheries and Food, Decision of 17 October 1995, ECR 1995 I, p. 3115. Case C-84/95, Bosphorus Hava Yollari Turizm Ve Ticarte AS vs. Ministry of Transport, Energy and Communications, Decision of 30 July 1996, ECR 1996 I, p. 3953; Case C-368/95, Vereinigte Familiapress Zeitungsverlags Und Vertriebs GmbH vs. Heinrich Bauer Verlag, Decision of 26 June 1997, ECR 1997 I, p. 3692; Case T-113/96, Édouard Dubois vs. Council and Commission, Decision

of 29 January 1998, ECR 1998 II, p. 125; Case C-200/96, Metronome Musik GmbH vs. Music Point Hokamp GmbH, Decision of 28 April 1998, ECR 1998 I, p. 1953; and Case C-292/97, Kjell Karlsson, Decision of 13 April 2000 (still unpublished).

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 47, first sentence

Submitted by: Ernest M.H. Hirsch Ballin, representing the First Chamber of the States-General of the Netherlands

Proposed text:

Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by statute.

Reasons:

This ties in better with the European Convention on Human Rights.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 47. Limitation of guaranteed rights

Submitted by: José Barros Moura and Maria Eduarda Azevedo, Members of the Portuguese National Assembly

Proposed text:

Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for, *under the terms of the Treaties*, by the competent legislative authority, (*rest unchanged*)

Reasons:

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DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 47

Submitted by: Mr François Loncle

Proposed text:

Amend the first two sentences as follows:

Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law. The actual substance of those rights and freedoms may not be undermined.

Reasons:

The new wording of the first sentence concerning limitations on the exercise of rights and freedoms refers to the law because the concept of a legislative authority is unsuited to the European Union framework. It would seem preferable to use the term 'law', in the sense of a general and abstract norm. The change in the second sentence is an amendment to the wording.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 47

Submitted by: Win Griffiths, MP

Proposed text:

Any limitation on the exercise of the rights of freedom recognised by the Charter must be provided for by the competent legislative authority. Limitations may not exceed those permitted by the European Convention for the Protection of Human Rights and Fundamental Freedom.

Reasons:

This text is more concise. Detailed criteria, if needed, could be considered in Part B.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 47. Limitation of guaranteed rights

Submitted by: Mr Georges BERTHU, MEP

Proposed text:

Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by the competent legislative authority. (19 words deleted). It must remain *proportionate* to the protection of legitimate interests in a democratic society. Limitations may not exceed those permitted by the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Reasons:

- The deleted phrase ('the actual substance of those rights and freedoms must be respected') was unnecessary since the following sentence states that limitations must remain proportionate to the protection of legitimate interests in a democratic society. It should be borne in mind that, even in a democratic society, certain rights may need to be suspended in the event of a crisis threatening the survival of a nation, e.g. in war time.

 - The amendment also rephrases the third sentence to make it more concise.
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DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 47

Submitted by: Jürgen Gnauck, Minister of Federal and European Affairs, Thuringia

Proposed text:

Article 47. Limitation of guaranteed rights

The essential nature of the rights and freedoms recognised in this Charter is inviolable. These rights and freedoms may only be restricted by the competent legislative authority. Subject to the principle of proportionality, any limitation must remain within the limits necessary for the protection of legitimate interests in a democratic society. The level of protection of the European Convention for the Protection of Human Rights and Fundamental Freedoms must not be reduced by such limitations.

Reasons:

The guarantee of the essential nature of the fundamental rights should come at the beginning since no limitations are permissible here. Recasting the second and fourth sentences is intended to make clear their intention.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 47: Limitation of guaranteed rights

Submitted by: Dr Ingo Friedrich, MEP, and Dr Peter Mombaur, MEP

Proposed text:

Any limitation on *(three words deleted)* the rights and freedoms recognised by this Charter *may only* be provided for by the competent legislative authority. The actual substance of those rights and freedoms must be respected. Subject to the principle of proportionality *and with due regard for the European Convention on Human Rights and Fundamental Freedoms*, any limitation must remain within the limits necessary for the protection of legitimate interests in a democratic society. *This shall be without prejudice to Article 48. The fundamental right which is limited must be named.*

Reasons:

A general and rigid link with the limitations provided for by the ECHR, as proposed in Article 47, fourth sentence, of CHARTE 4316/00, is problematic – if for no other reason – because the substance of the rights conferred by the Charter does not fully correspond with the substance of the ECHR. Moreover, a de facto link to the case law of the European Court of Human Rights would call into question the independence of the Charter; from the outset, the Charter would not be a self-contained whole, capable of interpretation without reference to any other source, as seems highly desirable in the interests of intelligibility to the public and effectiveness. It would also hamper the development of an autonomous doctrine of fundamental rights under EU law, in which case the Charter could fail to achieve one of its essential objectives.

On the other hand it ought to be made clear that the values enshrined in the ECHR will also have to be taken into account in determining limitations (cf. Article 6(2) of the Treaty on European Union). It is therefore proposed that the third sentence be amended as shown above.

In order to clarify the relationship with Article 48, a new fourth sentence should be inserted.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 47. Limitation of guaranteed rights

Submitted by: Guy Braibant

Proposed text:

Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law. Subject to the principle of proportionality, it must remain within the limits necessary for the protection of legitimate interests in a democratic society. The actual substance of the rights and freedoms must be respected.

Limitations may not exceed those permitted by the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Reasons:

This amendment replaces the phrase 'by the competent legislative authority' with 'by law', a term which is frequently used in the other articles of the Charter and is much less ambiguous, particularly in the light of the case law of the European Court of Human Rights concerning the concept of law

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DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article: 47

Submitted by: Frits Korthals Altes, representative of the Netherlands Government

Proposed text:

Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by the competent legislative authority. The actual substance of those rights and freedoms must be respected.

Reasons:

In previous amendments it was proposed that powers for imposing restrictions should be specified article by article, and the conditions also laid down under which restrictions could be imposed on fundamental rights. Only by thus specifying article by article the powers for imposing restrictions and the conditions under which restrictions would be admissible could discrepancies between the EU Charter and the ECHR be prevented from arising. It consequently cannot be recommended that a general restrictions clause, such as that included in Article 31 of the European Social Charter, should be drawn up. Both traditional and social fundamental rights will be better served if the restriction clauses are worded as accurately as possible as they apply to each specific right. It should be possible for both kinds of rights to be restricted in the interests of other fundamental rights (e.g. by way of a clause on the protection of other rights). In that way, troublesome discrepancies between traditional and social fundamental rights can be prevented from arising.

The first sentence is retained to make it clear that restrictions can be applied only by the competent legislative authority. What precisely the competent legislative authority is in a particular case will depend on the relevant Treaty provisions. The second sentence consolidates European Court case law relating to human rights.

Alternatively, in the event that the amendments calling for restrictions to be specified separately by fundamental rights are rejected:

Alternative text:

Any limitation on the exercise of the rights and freedoms recognised by this Charter may not be more extensive than those that have been authorised under the European Convention on the Protection of Human Rights and the Revised European Social Charter. Such limitations may be applied only by the competent legislative authority. The actual substance of the rights and freedoms concerned must be respected. Any such limitation must, having regard to the principle of proportionality, remain within such limits as are necessary to upholding legitimate interests in a democratic society.

Reasons:

On account of its great importance, the article begins with a reference to the limitation provisions in the ECHR and the ESC. The limitation provisions in the revised ESC (see Article G thereof) are equivalent to those in the ECHR.

By way of adaptation to Union law, the words by the competent legislative authority are added. What precisely the competent legislative authority is in a particular case will depend on the relevant Treaty provisions. It will also be necessary to comply with the requirements that the ECHR (as interpreted by the Revised ESC) attaches to the words as is in accordance with the law. The term 'law' has at all events a wide meaning in the ECHR (it can also include unwritten law), provided that the requirements that the ECHR and the European Court of Human Rights apply to such limitations are complied with (the law in question must in particular meet the requirements of accessibility and predictability). The criteria specified as objectives in the ECHR should to some extent be attributed to the EU. Article 8(2) of the ECHR could then be worded as follows:

There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of the security of the Union, public safety or the economic well-being of the Union, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**Proposed amendment to: Article 47****Submitted by: Ieke van den Burg****Proposed text:**

Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by the competent legislative authority. The actual substance of those rights and freedoms may not be affected. Subject to the principle of proportionality, any limitation must remain within the limits necessary (...) in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest. Limitations may not exceed those permitted by the European Convention for the Protection of Human Rights and Fundamental Freedoms and the Revised European Social Charter. The restrictions permitted under this Charter to the rights and freedoms set forth herein shall not be applied for any purpose other than for which they have been prescribed.

Reasons:

- *"may not be affected" is a clearer formulation in this context than "must be respected".*
- *Reformulation of the limits according to art. G 1 of the Revised European Social Charter (or art. 31 of the original Charter of 1961). This adds a reference to the possibility of conflicting rights.*
- *Addition of the reference to the Revised European Social Charter is essential, since in many articles references to this Charter are included.*
- *The last sentence is added as an extra element, and is based also on the general restrictions' article G (2nd part) of the RESC.*

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 47 (CHARTE 4136/00 CONVENTION 34)

Submitted by: Johannes Voggenhuber and Kathalijne Buitenweg

Proposed text:
Article 51 (new).

Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by the competent legislative authority. The actual substance of those rights and freedoms must be respected. Subject to the principle of proportionality, any limitation must remain within the limits necessary for the protection of legitimate interests in a democratic society. Limitations may not exceed those permitted by the European Convention for the Protection of Human Rights and Fundamental Freedoms *and its interpretation by the European Court of Human Rights.*

Reasons:

The insertion reduces the risk of disparate judicial interpretations of the ECHR. See also the statement of reasons for Article 49 in document CHARTE 4136/00 CONVENTION 34.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 47. Limitation of guaranteed rights

Submitted by: Prof. Daniel Tarschys, Sweden

Proposed text:

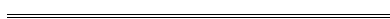
Add, in fine: '*as interpreted by the European Court of Human Rights*'.

Reasons:

All limitations must be spelled out in the respective articles. In the light of the many different rights guaranteed, and the very different nature of those rights, it is simply not possible to deal with all limitations in one place. It may be that each article thereby becomes longer but any other drafting method will defeat the main purpose of the Charter, i.e. to present the rights in a manner in which they will be understood without far-reaching references to other texts.

Draft Art. 47 should supplement such limitations in the various articles of the Charter.

Reference should also be made to the case-law of the ECHR.



DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 47

Submitted by: Einem/Holoubek

Proposed text:

Any limitation on *(3 words deleted)* the rights and freedoms recognised by this Charter must be *expressly* provided for by the competent legislative authority. *(11 words deleted)*. Subject to the principle of proportionality, any limitation must remain within the limits necessary for the protection of *public* interests in a democratic society. Limitations may *in any case* not exceed those permitted by the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Reasons:

Some of the fundamental rights guaranteed by the Charter should not be subject to limitation, or should be less subject to limitation than is provided for in the general limitation clause in Article 47. This should be expressly added to the articles in question (e.g. Articles 2, 4 and 5; see the proposals for amendments to these articles by Einem/Holoubek).

As to the wording of Article 47, our proposal contains the following changes to the text proposed by the Presidency:

The words 'the exercise of' after 'limitation on' in the first sentence have been deleted, since they are expendable and might in any case be open to misinterpretation.

Sentence 2 on the substance should be deleted entirely. Its protective effect is sufficiently well covered by the following sentence, which adheres to the generally acknowledged standard for legal limitations on fundamental rights. Any other generally applicable interpretations which might possibly be linked to the idea of 'substance' are extremely vague and more confusing than helpful.

Instead of 'legitimate' interests, the text should refer to 'public interests', in order to make it clear, in accordance with a generally accepted understanding of the concept, that the interests in question must be public interests. These of course include protection for the rights of third parties, as the ECHR's substantive provisos make clear.

Adding the words 'in any case' in the last sentence of Article 47 is intended to clarify specifically the fact that Article 47 does not make possible any limitations over and above the ECHR provisos, but that it is possible, conversely, for the Charter to allow limitations only to a more limited extent than the ECHR provisos.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 47. LIMITATION OF GUARANTEED RIGHTS

Submitted by: Jordi Solé Tura

Proposed text:

Limits may be imposed on the exercise of the rights and freedoms recognised by this Charter only if this has previously been provided for by the competent legislative authority and the actual substance of those rights and freedoms must in all circumstances continue to be respected. (Six words deleted) Any limitation must remain within the limits necessary for the protection of legitimate interests in a democratic society and limitations may not under any circumstances exceed those permitted by the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Reasons:

The purpose of this amendment is to improve the wording and to define concepts more accurately.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 47 (Convent 34)

Submitted by: M. Patijn, representative of the Lower House of the Netherlands Parliament

Proposed text:

Article 47. Limitation of guaranteed rights

Replace last sentence with: *The rights guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms shall be exercised in accordance with the conditions and limitations laid down in that Convention.*

Reasons:

This amendment is intended to make it clear that – as regards fundamental rights and freedoms – the codification and case law pursuant to the ECHR are the prime yardstick for the application and interpretation of the Charter. This could also avert the danger of competing interpretations by the Courts in Luxembourg and Strasbourg. The formulation corresponds with that of Article 48 dealing with rights enshrined by the EC Treaty.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article 47: Limitation of guaranteed rights

Submitted by: Piero Melograni

Proposed text:

Insert a new second subparagraph, to read: 'No limitations may be placed on the rights and freedoms recognised in Articles 1(1), 4 and 5(1) of this Charter.'

Reasons:

The inclusion of the new subparagraph draws attention to three rights (the inviolability of human dignity, the ban on torture and inhuman and degrading treatment, and the ban on slavery) which may never be limited by the competent legislative authority, even for the purpose of protecting legitimate interests in a democratic society.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article: 47

Submitted by: Rodotà, Paciotti and Manzella

Proposed text: Article 47:

Article 47. Guarantee of the rights and freedoms set out in the Charter

- 1. Further provision may be made by the competent legislative authority for the rights and freedoms recognised by this Charter, with due respect for their basic substance set out in the Charter and for the principle of proportionality between the interests being protected.**
- 2. The rights and freedoms recognised by this Charter which are already provided for in the European Convention for the Protection of Human Rights and Fundamental Freedoms may not be made subject to limitations that exceed those permitted by that Convention.**
- 3. The rights and freedoms recognised by this Charter which are already provided for in the Union Treaties shall be exercised under the conditions and subject to the limitations laid down by those Treaties.**

Reasons:

The proposed recasting of Article 47, which now incorporates Article 48, is intended to bring within one article the three instruments guaranteeing the rights and freedoms recognised by the Charter. Firstly, any further provision for those rights and freedoms is made subject to respect being shown for the principles of legality and proportionality; secondly, the principle of a level of protection no lower than that provided by the European Convention is established; and thirdly the principle of a level of protection no lower than that provided by the Treaties is also established.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 47

Submitted by: Dr Erling Olsen, Danish Government representative

Proposed text:

I refer to my general remarks (2) to Convent 28. Greater precision and legal certainty is achieved by stating the specific limitations in direct relation to the relevant articles.

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Article 48

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 48

Submitted by: Jo Leinen

Proposed text:

Delete article.

Reasons:

The limitations referred to in this article are superfluous, as the Charter as a whole, once incorporated in the Treaty, will already be limited by virtue of the definition of its scope in Article 46. Moreover, the formulation in Article 48 could give the impression that the individual rights in the Charter are bound by the provisions of the Treaty, which is not the case, since the rights to which it refers are universal fundamental rights.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 48

Submitted by: Einem/Holoubek

Proposed text:

Article 48 to be deleted.

Reasons:

The meaning of this article is unclear. If it is intended only to indicate that the rights arising from the EC Treaty which are not enshrined in the Charter will of course continue to apply, this is in any case quite clear, without specific mention of it needing to be made in the Charter.

If, on the other hand, it is intended to mean that rights which are enshrined both in the Charter and in the EC Treaty are to continue to be limited in accordance with the EC Treaty, then such an article should definitely be rejected. It is aimed directly at the exercise of powers under the EC Treaty. A more extensive possibility of limiting rights than that allowed by the Charter on the basis of the EC Treaty would render the Charter worthless.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article: 48

Submitted by: Frits Korthals Altes, representative of the Netherlands Government

Proposed text:

Deleted

Reasons:

This article is superseded by Article 46(2).

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article: 48

Submitted by: Rodotà, Paciotti and Manzella

Proposed text: Delete article.

Reasons:

The substance of Article 48 is incorporated in the third paragraph of the recast version of Article 47.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**Proposed amendment to: Article 48****Submitted by: Ieke van den Burg****Proposed text:*****Delete*****Reasons:****Not necessary and already included in the proposed article 46.**

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 48

Submitted by: Ernest M.H. Hirsch Ballin, representing the First Chamber of the States-General of the Netherlands

Proposed text:

Deleted.

Reasons:

Article 48 adds nothing to Article 47. The EC Treaty must not be regarded as a source of blanket limitations on competencies.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article 48:

Submitted by: **Álvaro Rodríguez Bereijo, Personal Representative of the Spanish Prime Minister**

Proposed text:

Reasons:

The Representation of the Spanish Prime Minister accepts this article, but believes that the limitations on the rights recognised in the Treaty should also be included in the definition of those rights.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 48 (CHARTE 4136/00 CONVENTION 34)

Submitted by: Johannes Voggenhuber and Kathalijne Buitenweg

Proposed text:
Article 52 (new).

Nothing in this Charter shall be interpreted as restricting or undermining the rights enshrined by the Treaty establishing the European Community.

Reasons:

This amendment is intended to turn the proposed article into a non-regression provision instead of a non-progression one.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 48. Conditions and limits defined by the Treaty

Submitted by: Lord Goldsmith QC

Proposed text:

Amend to read:

“The rights in the ‘Proclamation of Rights’ Section of articles 1 to [45] of this Charter are defined in the ‘Definition of Rights’ section in each of those articles, and are to be understood within the meaning and effect given to the corresponding rights under the ECHR by the European Court of Human Rights, and the TEU and the TEC by the European Court of Justice.”

Reasons:

I agree with the Praesidium’s proposal to tie those Charter rights which are based on the treaties to the treaty conditions and limits. However, I firmly believe, as I have consistently argued, that this policy should also extend to the ECHR. Divergence between the ECHR and the corresponding rights in the Charter would risk the creation of a two-tier system of rights protection in Europe. That would create legal and public confusion. It would not strengthen the protection of human rights but weaken it.

My version, therefore, which refers to the Part A/Part B approach (both proclaiming the rights and defining them), makes plain our intention that the rights in the Charter should be understood within the meaning of existing rights.

I believe it important that this article should be moved to the beginning of the Charter to set out its structure.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article 48: Conditions and limits defined by the Treaty

Submitted by: Piero Melograni

Proposed text:

After the word 'enshrined', insert 'both by this Charter and'.

Reasons:

The proposed amendment specifies that the rights referred to in this article are those guaranteed both by the Charter and by the Treaty.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 48

Submitted by: Pervenche BERÈS

Proposed text:

Article 48. Conditions and limits defined by the Treaty

The rights enshrined by the Treaty establishing the European *Union* shall be exercised under the conditions and within the limits laid down therein.

Reasons:

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DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 48

Submitted by: Jürgen Gnauck, Minister of Federal and European Affairs, Thuringia

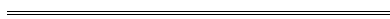
Proposed text:

Article 48. Conditions and limits defined by the Treaty

The rights and freedoms also enshrined by the Treaty establishing the European Community shall be exercised under the conditions and within the limits laid down therein.

Reasons:

The purpose of this article is to bring into line, in respect of scope and limitations, the fundamental rights already enshrined in the EC Treaty with the fundamental rights based on those rights contained in the Charter. The proposed wording seeks to achieve this.



DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 48

Submitted by: Heinrich NEISSER

Proposed text:

Article 48. Conditions and limits defined by the Treaty

The rights enshrined by Articles ... ~~the Treaty establishing the European Community~~ shall be exercised under the conditions and within the limits laid down *in the Treaty establishing the European Community therein*.

Reasons:

It is suggested that the numbers of the specific articles be stated here (e.g. Articles 24, 25 et seq.).

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 48

Submitted by: Dr Erling Olsen, Danish Government representative

Proposed text:

I refer to my remarks under Article 47.

Finally, I believe that consideration should be given to drawing up separate articles on **equality between men and women** and **prohibiting racism**.

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Article 49

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 49

Submitted by: Charlotte Cederschiöld

Proposed text:

Delete

Reasons:

The purpose of this Article, namely that this Charter will not set a lower standard for fundamental human rights, is already met in Article 50.

The reference to the Member States' constitutions is here less appropriate, as they contradict each other. In a Charter of fundamental rights, there must not be any contradictions. We cannot create a "Europe à la carte" in constitutional matters, where individuals get the impression that it is possible to pick the constitutions he or she wishes to adhere to. Fundamental rights must be absolute, precise and unconditional. The scope of the Charter is to make fundamental and universal human rights visible, understandable - and thus not contradictory - to European citizens.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article: 49

Submitted by: Jean-Maurice Dehousse, MEP and substitute Member of the Convention

Proposed text: Article 49 to read:

Nothing in this Charter shall be interpreted as restricting or undermining human rights and fundamental freedoms recognised, in their respective fields of application, by the *Treaties establishing the European Union, the Member States' constitutions or laws, international law or international agreements to which the Union, the Community or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, as interpreted in the case-law of the European Court of Human Rights or the Court of Justice of the European Communities.*

Reasons:

- 1. The Charter obviously cannot allow the effect of the protective provisions deriving from the European Treaties or the substantive law of the Member States to be limited.*
- 2. To ignore the case-law of the two courts would be to undermine the protection currently provided by certain provisions, which is not, and cannot be, the aim of this Charter.*

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article 49

Submitted by: Álvaro Rodríguez Bereijo, Personal Representative of the Spanish Prime Minister

Proposed text:

Delete the words 'the Union'

Reasons:

The European Union is not at present party to any international convention, as it does not have legal personality in its own right.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 49. LEVEL OF PROTECTION

Submitted by: JORDI SOLÉ TURA

Proposed text:

Delete the words ‘the Union’.

Reasons:

As things stand at present the Union has no legal personality and cannot therefore be party to an international convention.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 49. Level of Protection

Submitted by: Lord Goldsmith QC

Proposed text:

Amend to read:

“Nothing in this Charter is intended to restrict any right guaranteed by the law of any Member State or under international agreements to which the Union, the Community or the Member States are party”

Reasons:

I agree with what I take to be the intention behind this proposed Article. It would be unfortunate if the Charter had the result of adversely affecting such higher levels of protection as may exist in individual Member States (whatever their source) or under agreements with third parties made by the EU or EC. My version seeks to overcome some drafting difficulties I find in the Praesidium version; e.g.:

- ◆ “constitutions” (too narrow – compare ECHR Article 53)
- ◆ “international law” (too vague in this context)
- ◆ “including the ECHR” (already covered; double inclusion may create legal confusion about our intentions)

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 49: Level of protection

Submitted by: Dr Ingo Friedrich, MEP, and Dr Peter Mombaur, MEP

Proposed text:

This Charter shall not affect the human rights and fundamental freedoms guaranteed by the constitutions of the Member States or by international law or international conventions the contracting parties to which include the Union, the Community or all Member States.

Reasons:

It is open to doubt whether the version of Article 49 which appears in CHARTE 4316/00, and which is based on the ECHR, is as clear as claimed in the statement of reasons. The interpretation which is evidently deemed desirable – that the Charter will institute a minimum level of protection – seems possible. However, it would surely be equally possible to interpret it as establishing a substantive rule for resolution of conflict of laws to the effect that the legal rights conferred by the Charter are deemed, from the outset, not to be capable of limiting aspirations to rights based on other sources of law. It is questionable whether this interpretation would result in a substantively acceptable definition of the rules. The legal fora ought, therefore, to be clearly separated, for example by means of the proposed formulation.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 49

Submitted by: Jürgen Gnauck, Minister of Federal and European Affairs, Thuringia

Proposed text:

Article 49. Level of protection

This Charter is without prejudice to the human rights and fundamental freedoms recognised, in their respective fields of application, by the Member States' constitutions, international law and international agreements to which the Union, the Community or all the Member States are party.

Reasons:

Article 49 is intended to prevent a levelling down of human rights and fundamental freedoms guaranteed elsewhere and, in particular, a reduction in the level of protection. The wording 'This Charter is without prejudice to...' is intended to express this.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 49. Level of protection

Submitted by: Gabriel Cisneros Laborda

Proposed text:

Nothing in this Charter shall be interpreted as restricting or undermining human rights and fundamental freedoms recognised, in their respective fields of application, by the Member States' constitutions, international law and international agreements to which the Union, the Community or all the Member States are party.

Reasons:

It is proposed that the reference to the European Convention for the Protection of Human Rights and Fundamental Freedoms be deleted, in line with the second paragraph of the reasons for the amendment to Article 47.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 49. Level of protection

Submitted by: Prof. Daniel Tarschys, Sweden

Proposed text:

Delete the word 'Union'.

Add, in fine: '*as interpreted by the European Court of Human Rights.*'

Reasons:

The European Union is not a legal person which can enter into international agreements or adhere to international organizations.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 49 (CHARTE 4136/00 CONVENTION 34)

Submitted by: Johannes Voggenhuber and Kathalijne Buitenweg

Proposed text:
Article 53 (new).

Nothing in this Charter shall be interpreted as restricting or undermining human rights and fundamental freedoms recognised, in their respective fields of application, by the Member States' constitutions, international law and international agreements to which the Union, the Community or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, or as restricting or undermining the authoritative interpretation of these rights and freedoms, such as that by the European Court of Human Rights.

Reasons:

See the statement of reasons for Article 49 in document CHARTE 4316/00 CONVENTION 34: 'The reference to the European Convention on Human Rights obviously means the Convention as interpreted by the European Court of Human Rights, whether now or in the future, by virtue of the principle that any interpretation is incorporated into the text interpreted.' This important principle ought to be stated in the text of Article 49 itself.

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DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**Proposed amendment to: Article 49****Submitted by: Ieke van den Burg****Proposed text:**

No provision of this Charter may be interpreted as a limitation of the protection of fundamental rights provided for by European and national law and international conventions and treaties, referred to in this Charter, including their jurisprudence.

Reasons:

This paragraph is meant to provide a non-regression clause to prevent that the Charter may be misused to weaken existing protection of fundamental rights, as provided for by the national and international standards, and the jurisprudence based on them, that inspired the drafting of the EU Charter. The formulation is similar to article 53 of the ECHR.

In case the Convention is attached to mentioning particularly the ECHR, I propose to also add the RESC!

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article 49: Level of protection

Submitted by: Jean-Luc DEHAENE, representative of the Belgian Government, and Karel DE GUCHT and Roger LALLEMAND, representatives of the Belgian Parliament

Proposed text:

Nothing in this Charter shall be interpreted as restricting or undermining human rights and fundamental freedoms recognised, in their respective fields of application, by international law and international agreements to which the Union, the Community or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, the European Social Charter and the constitutional traditions common to the Member States.

Reasons:

The specific reference to the European Social Charter is justified by the fact that a number of the social rights set out in this draft Charter derive therefrom.

The reference to the constitutions of the Member States should be replaced by the words 'constitutional traditions common to the Member States', so as to bring the text into line with the wording of Article 6(2) of the Treaty on European Union.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 49

Submitted by: Gunnar Jansson, Tuija Brax and Paavo Nikula

Proposed text:

Article 49. Level of protection

Nothing in this Charter shall be interpreted as restricting or undermining human rights and fundamental freedoms recognised *in international law*, [] particularly any general convention for the protection of human rights and fundamental freedoms, and the Member States' constitutions [].

Reasons:

In its simplicity and clarity, this formulation corresponds to the statement of reasons in CONVENTION 34.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 49

Submitted by: José Barros Moura and Maria Eduarda Azevedo, Members of the Portuguese National Assembly

Proposed text:

Nothing in this Charter shall be interpreted as restricting or undermining human rights and fundamental freedoms recognised, in their respective fields of application, by the Member States' constitutions, international law and international agreements to which the Union, the Community or all the Member States are party, including *the Universal Declaration of Human Rights and the United Nations Pacts, the International Labour Organisation Conventions, the European Convention for the Protection of Human Rights and Fundamental Freedoms and the European Social Charter.*

Reasons:

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 49

Submitted by: Pervenche BERÈS

Proposed text:

Article 49. Level of protection

Nothing in this Charter shall be interpreted as restricting or undermining human rights and fundamental freedoms recognised, in their respective fields of application, by the Member States' constitutions, international law and international agreements to which the Union, the Community or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms. *This Charter shall supplement existing rights; it shall not prevent the maintenance or establishment of stronger protection measures by each Member State.*

Reasons:

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DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 49

Submitted by: Einem/Holoubek

Proposed text:

1. Nothing in this Charter shall be interpreted as restricting (*two words deleted*) human rights and fundamental freedoms recognised (*6 words deleted*) by the Member States' constitutions, international law and international agreements to which the Union, the Community or all the Member States are party. *This applies in particular to the European Convention for the Protection of Human Rights and Fundamental Freedoms, as interpreted by the European Court of Human Rights.*

2. *In interpreting the fundamental rights contained in this Charter, and particularly the economic and social rights, account shall be taken of international agreements and conventions concluded by the Member States of the European Union.*

Reasons:

The proposed wording endeavours to express the intention of Article 49 more clearly. It is based more closely on Article 53 ECHR than the Presidency's proposed text is.

In particular: no mention should be made of the idea that this Charter could be interpreted as 'undermining' human rights. Any reference to the 'fields of application' of international-law or Member State human rights provisions is confusing and unnecessary, because this is clear from the rights in any case. Because of its great importance the ECHR should be mentioned in a separate sentence, and it should also be stated that – as the Presidency's statement of reasons clearly says – the rights under the Convention are here to be understood as incorporating their interpretation by the European Court of Human Rights.

The proposed second paragraph – in accordance with a proposal by Mr Meyer (doc. 4271/00) – is intended to ensure the concordance of the Charter with other international human rights conventions binding on the Member States by stipulating that in interpreting the Charter these agreements and conventions are to be taken into account.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 49

Submitted by: Marie-Madeleine Dieulangard

Proposed text:

Article 49 (Level of protection) should be inserted after Article 47 (Limitation of guaranteed rights).

Reasons:

The aim is to make the Charter more coherent and intelligible to the layman.

Article 50

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed new Article 50

Submitted by: José Barros Moura and Maria Eduarda Azevedo, Members of the Portuguese National Assembly

Proposed text:

Any person whose rights and freedoms are violated shall be entitled to a proper hearing conducted by a judge nominated on the basis of a law.

Reasons:

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DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 50. Prohibition of abuse of rights

Submitted by: Lord Goldsmith QC

Proposed text:

Substitute ‘is to be’ for ‘may be’ in line one

Reasons:

The linguistic change proposed aligns the drafting of the Article more closely with the indicative mode employed in the other horizontal articles (as amended). I am otherwise content with the Praesidium text.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 50

Submitted by: Ernest M.H. Hirsch Ballin, representing the First Chamber of the States-General of the Netherlands

Proposed text:

[Does not affect the English version]

Reasons:

Correction of grammar.

Article 51

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed new Article 51

Submitted by: José Barros Moura and Maria Eduarda Azevedo, Members of the Portuguese National Assembly

Proposed text:

1. *Everyone shall be entitled to high-quality general services in all areas which are essential to the improvement of living conditions, sustainable development and, more generally, the protection of fundamental rights.*
2. *General services shall be governed by the principles of universality, equal access, continuity, transparency and democratic control.*

Reasons:

Article 51 bis

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to the following Articles

Submitted by: Einem/Holoubek

Proposed text:

The Union and the bodies it comprises are based on the principles of freedom, democracy, solidarity, respect for human rights, and the rule of law; these principles are common to all the Member States.

Reasons:

At least with reference to the articles of the Charter that deal with fundamental social and economic rights, a formula should be incorporated in a general preamble, as proposed, for example, by MEYER (doc. 4271/00), which specifically introduces the principle of solidarity. The text suggested by Rodota, Manzella and Paciotti (doc. 4308/00) also adopts this approach.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to: Article 42

Submitted by: Prof. Dr Jürgen Meyer

Proposed text:

Article. 42. Access to the courts

Anyone whose rights and freedoms have been infringed shall have the right to bring an action in a court or tribunal specified by law.

Reasons:

Article 42 contains the provision concerning access to the courts which I included in my original discussion draft (Contrib. 2).

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

**Brussels, 23 June 2000 (28.06)
(OR. fr)****CHARTE 4373/00****CONVENT 40****PRAESIDIUM NOTE**

Subject: Draft Charter of Fundamental Rights of the European Union
– Compromise proposal submitted by the Praesidium for Articles 31 to 40
(social rights and horizontal clauses)
(reference doc: Charte 4316/00 CONVENT 34)

Article 31

Becomes second paragraph of the current Article 46.

Based on amendments submitted by the following members of the Convention:

*Gnauck, Berès, Duff, Leinen, Van den Burg, Tarschys, Rodotà – Paciotti – Manzella, Hirsch Ballin,
Barros Moura – Azevedo, Goldsmith, Cederschiold.*

Article 32

Becomes Article 31.

New title: Freedom to choose an occupation and right to work

New text:

- "1. Everyone has the right to work, to choose his or her work and to enjoy job protection
2. Everyone has in particular the right to engage in an occupation or commercial activity, and to have access to a free job placement service."

Based on amendments submitted by the following members of the Convention:

Korthals Altes, Duff, Van den Burg, Dieulengard, Meyer, Cederschiöld, Goldsmith, Rodotà – Paciotti – Manzella, Barros Moura – Azevedo, Braibant

Article 33

Becomes Article 32.

Text unchanged.

Article 34

Becomes Article 33.

Drafting amendments:

"Employers and workers have the right, at all levels, to negotiate and conclude collective agreements and to take collective action (...) in cases of conflicts of interest, to defend their economic and social interests under the conditions laid down by national and Community legislation and practice."

*Based on amendments submitted by the following members of the Convention:
Braibant, Olsen.*

Article 35 and Article 36

Merge to become Article 34.

New title: Fair and just working conditions

Drafting amendments:

- "1. Every worker is entitled to working conditions which respect his or her health, safety and dignity
2. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave."

Based on amendments submitted by the following members of the Convention:

Leinen, Van den Burg, Dieulangard, Fayot, Loncle, Goldsmith, Meyer, Dehousse.

Article 37

Becomes Article 35.

New title: Protection of young people at work

Drafting amendments: Read the second paragraph as follows:

"Young people admitted to work must have working conditions appropriate to their age. and be protected against economic exploitation and any work likely to harm their safety, health or physical, mental, moral or social development or to jeopardise their education."

Based on amendments submitted by the following members of the Convention:

Van den Burg, Dieulangard, Goldsmith, Fayot, Dehousse.

Article 38

Becomes Article 36.

New title: (..) Protection in the event of unfair dismissal

Text unchanged.

Based on amendments submitted by the following members of the Convention:

Korthals Altes, Duff, Van den Burg, Rodotà, Paciotti – Manzella, Dehaene, Cederschiöld, Dieulengard

Article 39

Becomes Article 37.

New title: (..) Combining family and professional life

Text unchanged.

Based on amendments submitted by the following members of the Convention:

Korthals Altes, Van den Burg

Article 40

Becomes Article 38.

Drafting amendments: Read the paragraph as follows:

"Non-European Union nationals working lawfully in the territory of the Member States are entitled to benefit from working conditions which are no less favourable than those envisaged by European Union workers (...)."

Based on amendments submitted by the following members of the Convention:

Jansson, Brax, Nikula, Barros Moura – Azevedo, Dehaene, Dieulangard, Melograni, Einem, Houloubek, Voggenhuber, Fayot, Meyer.

Horizontal clauses

Article 46(current)

Drafting amendments: Read Article as follows:

- "1. The provisions of this Charter are addressed, with due regard for the principle of subsidiarity, to the institutions and bodies of the Union and to the Member States exclusively when they implement Union law.

2. The institutions and bodies of the Union, the Member States, exclusively within the scope of Community law, and the social partners at Community level, acting within the framework of their respective powers and in accordance with the principle of subsidiarity, shall observe the social rights and implement the social principles set out in this Charter.

3. This Charter does not establish any competence or any new task for the Community or the Union or modify competences and tasks defined by the Treaties.

Based on amendments submitted by the following members of the Convention:

Gnauck, Berès, Neisser, Berès, Haenel, Melograni, Duff, Braibant, Leinen, Van den Burg, Tarschys, Rodotà – Paciotti – Manzella, Hirsch Ballin, Barros Moura – Azevedo, Goldsmith, Cederschiold.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

fundamental.rights@consilium.eu.int

Brussels, 3 July 2000 (06.07)
(OR. fr)

CHARTE 4383/00

CONVENT 41

PRAESIDIUM NOTE

Subject: Draft Charter of Fundamental Rights of the European Union
– Summary of amendments received and of Praesidium compromise amendments on economic and social rights and on the horizontal clauses (Articles 31 to 50)
(reference documents: CHARTE 4316/00 (CONVENT 34), CHARTE 4372/00 (CONVENT 39))

This purpose of this document, drawn up by the Secretariat at the request of the Convention, is to group the amendments to Article 31 to 50 (CHARTE 4316/00) according to topic. This analysis does not cover drafting and linguistic amendments. These will be subject to separate examination.

Article 31. Social rights and principles

The institutions and bodies of the Union, the Member States, exclusively within the scope of Community law, and the social partners at Community level, acting within the framework of their respective powers, shall observe the social rights and implement the social principles set out in this Charter.

Proposed amendments

- (1) Delete the entire Article, to avoid any risk of inconsistency between Article 31 and Article 46: amendments 1 (Gnauck), 2 (Berès), 3 (Duff), 4 (Leinen), 5 (Goldsmith), 6 (van den Burg), 7 (Tarschys), 8 (Cederschiöld), 9 (Rodotà-Paciotti-Manzella), 10 (Hirsch Ballin). Amendments 11 (Barros Moura-Azevedo), 12 (Griffiths) and 14 (Olsen) also favour uniting these two Articles.
- (2) Begin the Article with a reference to subsidiarity: amendment 16 (Braibant)
- (3) Substitute "Union law" for "Community law": amendments 17 (Melograni), 21 (Korthals Altes) and 22 (Dehaene-De Gucht-Lallemand)
- (4) Delete the reference to "social partners": amendments 18 (Neisser) and 19 (Cisneros Laborda)
- (5) Amend the wording of the obligation, either to restrict its scope: amendments 19 (Cisneros Laborda), 20 (Friedrich- Mombaur), and 21 (Korthals Altes), or to reinforce it: 16 (Braibant), 22 (Dehaene, De Gucht, Lallemand), 23 (Loncle) and 24 (Solé Tura).
- (6) Add a reference to the principle of solidarity: amendment 388 (Rodotà-Paciotti-Manzella), [see also: amendment 446 (Einem-Holoubek)]
- (7) Add a new paragraph on invoking social rights on the basis of laws implementing them: amendment 26 (Rodriguez Bereijo)

- (8) Add a new paragraph explicitly referring to the Revised Social Charter: amendment 25 (Korthals Altes).

Praesidium proposal:

Becomes the second paragraph of the current Article 46

Based on amendments submitted by the following members of the Convention:

Gnauck, Berès, Duff, Leinen, van den Burg, Tarschys, Rodotà-Paciotti-Manzella, Hirsch Ballin, Barros Moura-Azevedo, Goldsmith, Cederschiöld.

ARTICLE 31a (new)

- (1) **Equal treatment for men and women:** amendments 30 (Vitorino), 31 (Berès), 32 (Rodriguez Bereijo), 33 (Goldsmith) [see also amendments: 110 (Rodotà-Paciotti-Manzella) and 176 (van den Burg)]

Article 32. Freedom to choose an occupation

Everyone has the right to choose and to engage in an occupation.

Proposed amendments

- (1) Add the concept of the "right to work": amendments 38 (van den Burg), 39 (Dieulangard), 46 (Fayot), 51 (Rodotà-Paciotti-Manzella), or of "employment rights": 28 (Meyer) to the title.
- (2) Limit this right to citizens: amendments 40 (Gnauck), 41 (Friedrich-Mombaur)

- (3) Improve the wording of the right: amendments 28 (Meyer), 37 (Duff), 38 (van den Burg), 39 (Dieulangard), 40 (Gnauck), 42 (Goldsmith), 43 (Cederschiöld), 44 (Barros Moura-Azevedo), 45 (Cisneros Laborda), 51 (Rodotà-Paciotti-Manzella), 131 (Voggenhuber)
- (4) Develop the content of the right as a right to the protection of one's employment and of free access to measures promoting employment: amendment 28 (Meyer)
- (5) Refer to the legal framework setting the conditions for the exercise of this right: amendments 47 (Tarschys), 48 (Korthals Altes), 49 (Dehousse), 50 (Braibant), 53 (Rodriguez Bereijo)
- (6) Add a new paragraph on open access to free job placement services: amendment 47 (Braibant)
- (7) Include the right to protection against unfair redundancy (new paragraph): amendment 28 (Meyer); or a new paragraph referring to the market economy: amendment 53 (Rodriguez Bereijo);

Praesidium proposal:

Becomes Article 31

New title: Freedom to choose an occupation and the right to work

New text:

1. Everyone has the right to work, to choose his or her work and to enjoy job protection.
2. Everyone has in particular the right to engage in an occupation or commercial activity, and to have access to a free job placement service.

Based on amendments submitted by the following members of the Convention:

Korthals Altes, Duff, Van den Burg, Dieulangard, Meyer, Cederschiöld, Goldsmith, Rodotà-Paciotti-Manzella, Barros Moura-Azevedo, Braibant.

ARTICLE 32a (new)

- (1) **The rights of workers who are EU citizens:** amendments 58 (Manzella) [see also amendment 53, para. 2 (Rodriguez Bereijo)]
- (2) **The right to life-long training:** amendment 59 (Fayot) [see also amendments 51 (Rodotà-Paciotti-Manzella), 154 (Loncle), 130 (Meyer)]
- (3) **The right to fair remuneration – the principle "equal work or work of equal value, equal pay":** 60 (Fayot), [see also 52 (Berès), 56 (Meyer), 89 (Loncle), 110 (Rodotà-Paciotti-Manzella), 196 (van den Burg) and 347 (Voggenhuber)]
- (4) **The right to a minimum wage:** amendment 61 (Dieulangard), [see also 111 (Berès)]
- (5) **The right to a minimum income:** amendment 62 (Dieulangard) [see also amendments: 29 (Voggenhuber), 251 (van den Burg) and 266 (Berès)]

Article 33. Workers' right to information and consultation within the undertaking

Workers and their representatives have the right to information and consultation in good time within the undertaking which employs them.

Proposed amendments

- (1) Delete the entire Article: amendments 63 (Goldsmith), 64 (Griffiths) and 65 (Cisneros Laborda)
- (2) Reformulate the Article as a task for the Union, by deleting the words "the right to": amendments 67 and 69 (Korthals Altes)
- (3) Make the wording more precise, either as regards matters covered by the right to information and consultation: amendments 75 (van den Burg), 77 (Dehousse), 79 (Einem Holoubek), 80 (Friedrich-Mombaur), 81 (Gnauck), 82 (Berès), 83 (Rodotà-Paciotti-Manzella), or as regards the level where the right is to be exercised: amendments 75 (van den Burg), 76 (Fayot), 82 (Berès), 83 (Rodotà-Paciotti-Manzella)
- (4) Add a paragraph providing for a strengthened right to consultation in the case of restructuring: amendment 84 (Voggenhuber).

Praesidium proposal:

Becomes Article 32

Text unchanged.

ARTICLE 33a (new)

- (1) **Right to fair pay:** amendment 89 (Loncle) [see also amendments 52 (Berès), 56 (Meyer), 60 (Fayot), 110 (Rodotà-Paciotti-Manzella), 196 (van den Burg) and 347 (Voggenhuber)]

Article 34. Rights of collective bargaining and action

Employers and workers have the right to negotiate and conclude collective agreements and to take collective action, in cases of conflicts of interest, to defend their economic and social interests, including at European Union level, under the conditions laid down by national legislation and practice.

Proposed amendments

- (1) Delete the entire Article: amendments 90 (Cederschiöld), 91 (Friedrich) and 92 (Goldsmith)
- (2) Explicitly mention the right to strike: amendments 93 (Korthals Altes), 94 (Dehousse), 95 (Rodotà-Paciotti-Manzella), 96 (Voggenhuber), 97 (Braibant), 99 (Dieulangard), 102 (Fayot), 103 (Berès) and 104 (van den Burg)
- (3) Widen the legal reference framework: amendments 93 (Korthals Altes), 97 (Braibant) and 98 (Melograni)

Praesidium proposal:

Becomes Article 33

Drafting amendments:

Employers and workers have the right, at all levels, to negotiate and conclude collective agreements and to take collective action in cases of conflicts of interest, to defend their economic and social interests (...) under the conditions laid down by national and Community legislation and practice.

Based on amendments submitted by the following members of the Convention:

Braibant, Olsen.

ARTICLE 34a (new)

- (1) **The right to fair remuneration and to equality of treatment:** amendment 110 (Rodotà-Paciotti-Manzella) [see also, besides Article 40, amendments 30 (Vitorino), 31 (Berès), 32 (Rodriguez Bereijo), 33 (Goldsmith), 176 (van den Burg), and amendments 60 (Fayot), 52 (Berès), 89 (Loncle), 196 (van den Burg) and 347 (Voggenhuber)]
- (2) **The right to a minimum wage:** amendment 111 (Berès) [see also amendment 61 (Dieulangard)]

Article 35. Right to rest periods and annual leave

Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

Proposed amendments

- (1) Delete the entire Article: amendments 112 (Berthu) and 113 (Friedrich-Mombaur)
- (2) Reformulate the Article as a task for the Union, and delete the words "Right to" in the title: amendments 115 and 116 (Korthals Altes)
- (3) Define the concept of maximum working hours on a weekly basis: amendments 116 (Korthals Altes), 122 (Dieulangard) and 123 (Rodotà-Paciotti-Manzella)
- (4) Set a minimum period (4 weeks) for the annual period of paid leave: amendment 124 (Voggenhuber)
- (5) Add a paragraph on the right to increased pay for time worked beyond the maximum working hours: amendment 126 (Berès).

Praesidium proposal:

Merge Articles 35 and 36 to become Article 34

New title: Fair and just working conditions*Drafting amendments:*

1. Every worker is entitled to working conditions which respect his or her health, safety and dignity.
2. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

Based on amendments submitted by the following members of the Convention:

Leinen, Van den Burg, Dieulangard, Fayot, Loncle, Goldsmith, Meyer, Dehousse.

Article 36. Safe and healthy working conditions

Every worker has the right to safe and healthy working conditions.

Proposed amendments

- (1) Delete the entire Article: amendments 133 (Cisneros Laborda), 134 (Berthu), 135 (Friedrich-Mombaur) and 136 (Cederschiöld)
- (2) Reformulate the Article as a task for the Union, and delete the words "the right to": amendments 137 and 138 (Korthals Altes)
- (3) Add the workers' right to the protection of his dignity: amendment 145 (van den Burg) or of his wellbeing and his private life: amendment 147 (Dieulangard)

- (4) Add a subparagraph or a paragraph on the right to compensation in the event of illness or accident at work: amendments 146 (Berès), 147 (Dieulangard) and 148 (Voggenhuber)
- (5) Add a paragraph on the right of workers to participate in improving their working conditions: amendment 148 (Voggenhuber)
- (6) Add a paragraph on the right of certain workers to special protection (inclusion in working conditions of the right to maternity and parental leave and the protection of young people): amendment 150 (Leinen).

Praesidium proposal:

See above (Praesidium proposal on Article 35)

ARTICLE 36a (new)

The right to professional training: amendment 154 (Loncle) [see also amendments 59 (Fayot), 151 (Rodotà-Paciotti-Manzella) and 130 (Meyer)]

Article 37. Protection of young people

The minimum age of admission to employment must not be lower than the minimum school-leaving age without prejudice to such rules as may be more favourable to young people, in particular those ensuring their preparation for work through vocational training and subject to derogations limited to certain light work.

Young people admitted to work must have working conditions which suit their age.

Proposed amendments

- (1) Delete the entire Article: amendments 155 (Cederschiöld), 156 (Friedrich-Mombaur) and 157 (Berthu)
- (2) Specify in the title that the Article refers to the protection of young people *at work*: amendments 158 (Korthals Altes) and 173 (Duff).
- (3) Amend the wording relating to the minimum working age, to strengthen it by setting a minimum: amendments 161 (Dehousse), 162 (Hirsch Ballin), 164 (Korthals Altes), or to attenuate it: amendments 160 (Gnauck), 167 (Goldsmith)
- (4) Delete [amendments 163 (Berès), 170 (Fayot)] or specify [amendments 162 (Hirsch Ballin), 164 (Korthals Altes)] possible derogations
- (5) Reformulate the second paragraph as a task for the Union: amendment 164 (Korthals Altes)
- (6) State the aims of adapting working conditions for young people: amendments 167 (Goldsmith), 169 (Dieulangard), 170 (Fayot) and 166 (van den Burg)

Praesidium proposal:

Becomes Article 35

New title: Protection of young people at work

Drafting amendments: Read the second paragraph as follows:

Young people admitted to work must have working conditions appropriate to their age, and be protected against economic exploitation and any work likely to harm their safety, health or physical, mental, moral or social development or to jeopardise their education.

Based on amendments submitted by the following members of the Convention:

Van den Burg, Dieulangard, Goldsmith, Fayot, Dehousse.

ARTICLE 37a (new)

- (1) **Gender equality:** amendment 176 (van den Burg) [see also amendments 30 (Vitorino), 31 (Berès), 32 (Rodriguez Bereijo), 33 (Goldsmith) and 110 (Rodotà-Paciotti-Manzella)]
- 2) **Protection of the elderly:** amendment 177 (Berès) [see also amendments 271 (Einem-Holoubek), 314 (van den Burg), 315 (Rodotà-Paciotti-Manzella)]

Article 38. Right to protection in cases of termination of employment

All workers have a right to protection against unjustified or unfair termination of employment.

Proposed amendments

- (1) Delete the entire Article: amendments 178 (Berthu), 179 (Friedrich-Mombaur), 180 (Goldsmith), 181 (Tarschys)
- (2) Reformulate the Article as a task for the Union and delete the words "Right to" in the title: amendments 182 and 183 (Korthals Altes)
- (3) Amend the description of the dismissal: amendments 184 (Duff), 185 (Dehaene-De Gucht-Lallemand), 186 (Rodotà-Paciotti-Manzella), 187 (Cederschiöld), 191 (van den Burg) and 192 (Dieulangard)
- (4) Add a specific provision for protection in the event of collective redundancies: amendments 188 (Fayot), 189 (Barros Moura-Azevedo) and 190 (Berès)

- (5) Add a right to compensation: amendments 189 (Barros Moura-Azevedo) and 190 (Berès)
- (6) Add a ban on dismissing pregnant women: amendments 191 (van den Burg) and 192 (Dieulangard)

Praesidium proposal:

Becomes Article 36

New title: (..) Protection in the event of unfair dismissal

Text unchanged.

Based on amendments submitted by the following members of the Convention:

Korthals Altes, Duff, van den Burg, Rodotà-Paciotti-Manzella, Dehaene, Cederschiöld, van den Burg, Dieulangard

ARTICLE 38a (new)

Right to fair remuneration: amendment 196 (van den Burg) [see also amendments 52 (Berès), 56 (Meyer), 60 (Fayot), 89 (Loncle), 110 (Rodotà-Paciotti-Manzella) and 347 (Voggenhuber)]

Article 39. Right to reconcile family and professional life

All workers have the right to reconcile their family and professional lives. This right includes in particular the right to maternity leave before and/or after childbirth and the right to parental leave following the birth or adoption of a child.

Proposed amendments

- (1) Delete the entire Article: amendment 197 (Friedrich-Mombaur)
- (2) Reformulate the Article as a task for the Union and amend the title accordingly: amendments 199 and 200 (Korthals Altes)
- (3) Restrict the wording to stating the general principle: amendments 201 (Berthu) and 202 (Griffiths) or to the right to maternity/parental leave: amendments 204 (Goldsmith) and 203 (Duff)
- (4) Expand on the definition of the right to maternity/parental leave: amendments 205 (Melograni), 206 (Hirsch Ballin), 209 (Voggenhuber-Buitenweg), 210 (Berès), 211 (Solé Tura), 213 (van den Burg) and 208 (Dehousse)
- (5) Add a statement of the principle of non-discrimination against workers with family responsibilities: amendments 209 (Voggenhuber-Buitenweg), 210 (Berès) and 213 (van den Burg)

Praesidium proposal:

Becomes Article 37

New title: (..) Combining family and professional life

Text unchanged.

Based on amendments submitted by the following members of the Convention:

Korthals Altes, van den Burg.

Article 40. Right of migrant workers to equal treatment

Third-country nationals working lawfully in the territory of the Member States are entitled to treatment not less favourable than that of European Union workers in respect of working conditions.

Proposed amendments

- (1) Delete the entire Article: amendments 215 (Goldsmith), 216 (Friedrich-Mombaur), 217 (Berthu) and 218 (Gnauck)
- (2) Reformulate the Article as a task for the Union: amendment 222 (Patijn)
- (3) Widen the scope to take in stateless persons: amendments 223 (Dehaene-De Gucht-Lallemand), 224 (Jansson-Brax-Nikula) and 225 (Melograni)
- (4) Extend the areas covered by the equality of treatment: amendments 195 (Meyer), 221 (van den Burg), 229 (Voggenhuber), 232 (Barros Moura-Azevedo), 230 (Fayot) and 231 (Einem-Holoubek)

Praesidium proposal:

Becomes Article 38

Drafting amendments: Read the paragraph as follows:

Non-European Union nationals working lawfully in the territory of the Member States are entitled to benefit from working conditions which are no less favourable than those of European Union workers (...).

Based on amendments submitted by the following members of the Convention:

Jansson, Brax, Nikula, Barros Moura – Azevedo, Dehaene, Dieulangard, Melograni, Einem, Holoubek, Voggenhuber, Fayot, Meyer.

Article 41. Social security and social assistance

- 1. Provision shall be made in accordance with each Member State's rules for social security benefits providing protection in the event of maternity, illness, dependence or old age and in the event of unemployment.**
- 2. Provision shall be made for social assistance and housing benefit in order to guarantee a decent existence to anyone lacking sufficient resources.**

Proposed amendments

- (1) Delete the entire Article: amendments 236 (Cederschiöld) and 237 (Friedrich-Mombaur)
- (2) Reformulate the Article as a general principle: amendments 238 (Olsen), 239 (Rodriguez Bereijo), 240 (Goldsmith), 241 (Griffiths), 242 (Berthu) and 243 (Duff)
- (3) Reformulate as a task for the Union: amendment 245 (Korthals Altes)
- (4) Strengthen the wording of paragraph 1: amendments 175 (Meyer), 247 (Leinen), 248 (Dieulangard), 249 (Berès), 251 (Fayot), 246 (Hirsch Ballin) and 260 (Rodotà-Paciotti-Manzella)
- (5) Add to the list of situations covered: amendments 244 (Jansson-Brax-Nikula), 245 (Korthals Altes), 253 (Einem-Holoubek) and 254 (Cisneros Laborda)
- (6) Add a reference to national legislation to paragraph 2: amendments 255 (Tarschys) and 256 (Gnauck)

Praesidium proposal:

Becomes Article 39

1. Provision shall be made in accordance with conditions established by national legislation and practice for social security benefits providing adequate protection particularly in the event of illness, maternity, dependence or old age and in the event of unemployment.
2. Provision shall be made for social assistance and housing benefit in accordance with the conditions established by national legislation and practice in order to guarantee a decent existence to anyone lacking sufficient resources.

Based on the Korthals Altes, Jansson, Berthu, Einem-Holoubek, Cisneros Laborda, Braibant, Gnauck and Tarschys amendments.

ARTICLE 41a (new)

- (1) **The right to a minimum wage:** 266 (Berès) [see also amendments 29 (Voggenhuber), 62 (Dieulangard), 259 (van den Burg)]
- (2) **The right to housing:** amendments 267 (Leinen), 268 (Fayot), 269 (Berès) [see also amendments 109 (Voggenhuber), 152 (Meyer), 290 (van den Burg), 291 (Rodotà-Paciotti-Manzella) and 366 (Barros Moura-Azevedo)]
- (3) **The right to protection against exclusion and poverty:** amendment 270 (Fayot) [see also amendment 259 (van den Burg)]
- (4) **The rights of the elderly:** amendment 271 (Einem-Holoubek) [see also amendments 177 (Berès), 314 (van den Burg) and 315 (Rodotà-Paciotti-Manzella)]

Article 42. Health protection

Everyone shall have access to medical care and prophylactic measures in accordance with each Member State's rules.

Proposed amendments

- (1) Delete the entire Article: amendments 272 (Goldsmith), 273 (Friedrich-Mombaur) and 274 (Berthu)
- (2) Focus the Article on public health protection, by public authorities: amendment 275 (Rodriguez Bereijo), or through encouragement by the Union: amendments 276 (Korthals Altes), 277 (Patijn), 278 (Hirsch Ballin)
- (3) Reformulate to make access to health care a task for the Union: amendments 277 (Patijn), 278 (Hirsch Ballin)
- (4) Strengthen the wording of the Article to make this a subjective right: amendments 279 (Dehousse), 280 (Solé Tura), 281 (Berès), 283 (Rodotà-Paciotti-Manzella), 284 (Dieulangard) and 108 (Meyer)
- (5) Delete the reference to each Member State's rules: amendments 280 (Solé Tura), 281 (Berès), 282 (Duff), 283 (Rodotà-Paciotti-Manzella), 286 (Dehaene-De Gucht-Lallemand), 287 (van den Burg), 288 (Melograni) and 289 (Cederschiöld)

Praesidium proposal:

Becomes Article 40

English title: "Health care"; French unchanged.

Provision shall be made for access to medical care and prophylactic measures in accordance with the conditions established by national legislation and practice.

Based on the Duff amendment.

ARTICLE 42a (new)

The right to housing: amendments 290 (van den Burg) and 291 (Rodotà-Paciotti-Manzella) [see also amendments 109 (Voggenhuber), 152 (Meyer), 267 (Leinen), 268 (Fayot), 269 (Berès) and 366 (Barros Moura-Azevedo)]

Article 43. The disabled

Provision shall be made for social and vocational integration measures for the disabled.

Proposed amendments

- (1) Delete the entire Article: amendments 292 (Cederschiöld), 293 (Goldsmith), 294 (Friedrich-Mombaur) and 295 (Cisneros Laborda)
- (2) Reformulate the Article as a task for the Union: amendments 297 (Korthals Altes), 298 (Patijn) and 299 (Hirsch Ballin)

- (3) Strengthen the wording of the Article to make this a subjective right: amendments 301 (Fayot), 302 (Duff), 303 (Dieulangard), 304 (Voggenhuber-Buitenweg), 305 (Einem-Holoubek), 306 (Rodotà-Paciotti-Manzella), 307 (van den Burg), 308 (Berès) and 309 (Leinen)

Praesidium proposal:

Becomes Article 41

In English the title becomes "Integration of persons with disabilities", in French "Intégration des personnes handicapées".

Provision shall be made for the independence, social and vocational integration and participation in the life of the community of persons with disabilities.

Based on the Tarschys amendment.

ARTICLE 43a (new)

- (1) **The rights of elderly persons: amendments** 314 (van den Burg), 315 (Rodotà-Paciotti-Manzella) [see also amendments 177 (Berès) and 271 (Einem-Holoubek)]
- (2) **Access to services of general interest:** amendment 316 (Berès) [see also amendments 356 (Dehousse), 359 (Braibant), 360 (Fayot), 361 (Dieulangard), 362 (Dehaene-De Gucht-Lallemand), 363 (Rodotà-Paciotti-Manzella), 364 (van den Burg), 365 (Einem-Holoubek) and 445 (Barros Moura-Azevedo)]

Article 44. Environmental protection

Union policies shall ensure environmental protection, which involves preserving, protecting and improving the quality of the environment, protecting human health and prudent and rational utilisation of natural resources.

Proposed amendments

- (1) Delete the entire Article: amendments 317 (Cederschiöld) and 318 (Friedrich-Mombaur)
- (2) Align the wording with that of Article 174 of the TEC: amendments 320 (Tarschys), 321 (Rodriguez Bereijo)
- (3) Strengthen the wording to make this a right: 325 (Duff), 327 (Solé Tura), 326 (Fayot), 328 (van den Burg), 329 (Rodotà-Paciotti-Manzella), 330 (Voggenhuber-Buitenweg) and 331 (Dehaene-De Gucht-Lallemand)
- (4) Add the concept of every person's duty: amendments 326 (Fayot), 327 (Solé Tura), 329 (Rodotà-Paciotti-Manzella) and 335 (Jansson-Brax-Nikula)
- (5) Add a paragraph on participation in decision-making concerning the environment: amendments 335 (Jansson-Brax-Nikula), 336 (Olsen), 323 (Goldsmith, as the only content of the Article)

Praesidium proposal:

Becomes Article 42

Union policies shall ensure the protection and preservation of a clean and healthy environment and the improvement of the quality of the environment, taking into account the principle of sustainable development.

Based on the Korthals Altes amendment

Article 45. Consumer protection

Union policies shall ensure a high level of protection as regards the health, safety and interests of consumers.

Proposed amendments

- (1) Delete the entire Article: amendments 338 (Cederschiöld), 339 (Gnauck) 340 (Goldsmith) and 341 (Friedrich-Mombaur)
- (2) Align the wording of the Article with that of Article 153(1) of the TEC: amendment 343 (Korthals Altes)
- (3) Reformulate as a right for consumers or a guarantee: amendments 344 (Griffiths), 345 (Duff), 346 (Solé Tura), 347 (Voggenhuber-Buitenweg), 348 van den Burg)
- (4) Add a reference to the precautionary principle: amendments 350 (H. P. Martin), 351 (Dieulangard)
- (5) Add a paragraph on information for consumers: amendments 353 (Rodotà-Paciotti-Manzella), 354 (Barros Moura-Azevedo), 355 (Dehousse)

ARTICLE 45a (new)

- (1) **Right of access to services of general interest:** amendments 359 (Braibant), 360 (Fayot), 361 (Dieulangard), 362 (Dehaene-De Gucht-Lallemand), 363 (Rodotà-Paciotti-Manzella), 364 (van den Burg) and 365 (Einem-Holoubek) [see also amendments 316 (Berès), 356 (Dehousse) and 445 (Barros Moura-Azevedo)]
- (2) **Right to housing:** amendments 366 (Barros Moura-Azevedo) [see also amendments 109 (Voggenhuber), 152 (Meyer) 267 (Leinen), 268 (Fayot) 269 (Berès), 290 (van den Burg) and 291 (Rodotà-Paciotti-Manzella)]
- (3) **Right to self-determination:** amendment 367 (Rodotà-Paciotti-Manzella)
- (4) **Right to sexual freedom:** amendment 367 (Rodotà-Paciotti-Manzella)
- (5) **Fundamental duties :** amendment 369 (Haenel)

Article 46. Scope

1. **The provisions of this Charter are addressed to the institutions and bodies of the Union within the framework of the powers conferred on them by the Treaties, and to the Member States exclusively within the scope of Union law.**
2. **This Charter does not establish any competence or any new task for the Community or the Union or modify competences and tasks defined by the Treaties.**

Proposed amendments

- (1) Member States should not be mentioned as addressees of the Charter: amendments 370 (Olsen), 371 (Bonde) or mentioned only to the extent that they are bound by the ECHR: amendment 372 (Goldsmith).
- (2) The list of addressees of the Charter should be supplemented by adding bodies "active in the sphere of the Union on the basis of an initiative by the Council": amendment 379 (Korthals Altes), the social partners: amendments 385 (van den Burg), 380 (Berès) or private persons: amendment 380 (Berès).
- (3) "Union law" should be replaced by "Community law": amendments 374 (Tarschys), 375 (Braibant), 376 (Rodriguez Bereijo) and 377 (Gnauck).
- (4) The 2nd paragraph should be deleted: amendments 381 (Voggenhuber) and 382 (Maij-Weggen)
- (5) A new paragraph on respect for the principle of subsidiarity should be added: amendments 386 (Haenel) and 387 (Melograni)

Praesidium proposal:

Drafting amendments: The Article should read as follows:

1. The provisions of this Charter are addressed, with due regard for the principle of subsidiarity, to the institutions and bodies of the Union and to the Member States exclusively when they implement Union law.
2. The institutions and bodies of the Union, the Member States, exclusively within the scope of Community law, and the social partners at Community level, acting within the framework of their respective powers and in accordance with the principle of subsidiarity, shall observe the rights and implement the social principles set out in this Charter.

3. This Charter does not establish any competence or any new task for the Community or the Union or modify competences and tasks defined by the Treaties.

Based on amendments submitted by the following members of the Convention:

Gnauck, Berès, Neisser, Haenel, Melograni, Duff, Braibant, Leinen, Van den Burg, Tarschys, Rodotà-Paciotti-Manzella, Hirsch Ballin, Barros Moura-Azevedo, Goldsmith and Cederschiöld.

Article 47. Limitation of guaranteed rights

Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by the competent legislative authority. The actual substance of those rights and freedoms must be respected. Subject to the principle of proportionality, any limitation must remain within the limits necessary for the protection of legitimate interests in a democratic society. Limitations may not exceed those permitted by the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Proposed amendments

- (1) Deletion of the entire Article: amendments 390 (Goldsmith), 391 (Cisneros Laborda) and 392 (Rodriguez Bereijo).
- (2) Beginning the Article with the principle of respect for the essential nature of these rights: amendment 398 (Gnauck) or by a general formula to the effect that these rights should not be considered as absolute privileges: amendment 392 (Rodriguez Bereijo)
- (3) Spelling out the objectives which might justify restrictions on the exercise of a right: by linking them with the objectives of the Community: amendment 392 (Rodriguez Bereijo) or by adding protection for rights and liberties: 402 (van den Burg)

- (4) Deletion of the reference to the ECHR: amendments 400 (Braibant), 401 (Korthals Altes) [see also 265 (Meyer)]
- (5) Addition of a reference to the revised European Social Charter: 402 (van den Burg)
- (6) Increasing the force of the reference to the ECHR system by making it more general: amendment 407 (Patijn) or mentioning the case law of the Court of Human Rights: amendments 403 (Voggenhuber-Buitenweg) and 404 (Tarschys)
- (7) Incorporation of Article 48 on the exercise of Treaty rights (Rodotà-Paciotti-Manzella)

Praesidium proposal

Scope of guaranteed rights

1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by the competent legislative authority. Subject to the principle of proportionality, limitations may only be made if they are necessary and genuinely correspond to objectives of general interest being pursued by the Communities or other legitimate interests to be respected in a democratic society. The actual substance of those rights and freedoms must be respected.
2. Limitations on rights and liberties which are also recognised by the European Convention for the Protection of Human Rights and Fundamental Freedoms may not exceed those permitted by the latter.
3. The rights defined by the Treaty establishing the European Community shall be exercised under the conditions and within the limits defined therein.

Based on amendments submitted by Rodriguez Bereijo and Van den Burg.

Article 48. Conditions and limits defined by the Treaty.

The rights enshrined by the Treaty establishing the European Community shall be exercised under the conditions and within the limits laid down therein.

Proposed amendments

- (1) Deletion of the entire Article: 411 (Leinen), 412 (Einem-Holoubek), 413 (Korthals Altes), 414 (Rodotà-Paciotti-Manzella), 415 (van den Burg), 416 (Hirsch Ballin) and 417 (Rodriguez Bereijo)
- (2) Redraft the Article to turn it into a non-regression provision: amendment 418 (Voggenhuber-Buitenweg)
- (3) Redraft the Article in order to break down Charter articles between the ECHR and the Treaties: amendment 419 (Goldsmith)
- (4) Replacement of "Treaty establishing the European Community" by "Treaty on European Union": amendment 421 (Berès)

Praesidium proposal:

Becomes Article 45(3)

Article 49. Level of protection

Nothing in this Charter shall be interpreted as restricting or undermining human rights and fundamental freedoms recognised, in their respective fields of application, by the Member States' constitutions, international law and international agreements to which the Union, the Community or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Proposed amendments

- (1) Deletion of the entire Article: amendment 425 (Cederschiöld)
- (2) Deletion of the reference to the possibility of international conventions to which the Union was party: amendments 427 (Rodriguez Bereijo) and 428 (Solé Tura)
- (3) Amendment of the list of references by substituting common constitutional traditions for Member States' constitutions: amendment 436 (Dehaene-De Gucht-Lallemand), adding the law of the Member States: amendment 429 (Goldsmith), adding the UN Pacts, ILO Conventions and the Social Charter: amendment 438 (Barros Moura-Azevedo)
- (4) Explicit reference to the case law of the Court of Human Rights: amendments 433 (Tarschys), 434 (Voggenhuber-Buitenweg), of the Court of Human Rights or the Court of Justice of the European Communities: amendment 426 (Dehousse), of national courts: amendment 358 (Bonde), and jurisprudence in general: amendment 435 (van den Burg)
- (5) Addition of a new subparagraph authorising the establishment or maintenance of stronger national protection measures: amendment 439 (Berès)
- (6) Addition of a paragraph on the interpretation of economic and social rights by reference to the Treaties and to international agreements :amendment 265 (Meyer) and 440 (Einem-Holoubek)

Praesidium proposal:

Becomes Article 46

Move "**by the Member States' constitutions**" to the end of the text: "**and by Member States' constitutions**".

Based on the Jansson amendment.

Article 50. Prohibition of abuse of rights

Nothing in this Charter may be interpreted as implying any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in this Charter.

Praesidium proposal

Becomes Article 47

In the first line, replace "**may be**" with "**must be**".

Based on the Goldsmith amendment.

ARTICLE 50a (new)

- (1) **Right to effective appeal:** amendment 442 (Barros Moura-Azevedo)[see also amendment 447 (Meyer)]

- (2) **Services of general interest:** amendment 445 (Barros Moura-Azevedo) [see also amendments 316 (Berès), 356 (Dehousse), 360 (Fayot), 361 (Dieulangard), 362 (Dehaene-De Gucht-Lallemand), 363 (Rodotà-Paciotti-Manzella), 364 (van den Burg) and 365 (Einem-Holoubek)]

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 26 June 2000**CHARTE 4385/00****CONTRIB 244****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a complementary suggestion to article 34 of document CHARTE 4316/00 CONVENT 34, submitted by Mr. Daniel TARCHYS, personal representative of the Gouvernement of Sweden.

Article 34 Rights of collective bargaining and action

Proposal (bold):

Employers and workers **or their organisations** have the right to negotiate and conclude collective agreements and to take collective action , in conflicts of interest, to defend **or promote** their economic and social interests, /.../under the conditions laid down by national legislation, **collective agreements, custom** or practice.

Should management and labour so desire, the dialogue between them at Community level may lead to contractual relations, including agreements.

Reasons:

The proposed amendments aim to confirm rights already existing at national level as well as those enshrined in the European Social Charter and the Community Charter in a way which will respect the different national systems for these rights.

The reference to the European level is unclear in the current draft article. It seems preferable to mention the right to negotiate at Community level in a separate paragraph and with the same wording as in Article 139.1 TEC.

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE**fundamental.rights@consilium.eu.int**

Bruxelles, le 27 juin 2000**CHARTE 4392/00****CONTRIB 251****NOTE DE TRANSMISSION**

Objet : **Projet de Charte des droits fondamentaux de l'Union européenne**
Contribution de Mme Anna Benaki-Psarouda, membre du Parlement grec

Veillez trouver ci-joint une contribution (propositions d'amendement) relative au document Charte 4284/00 CONVENT 28, soumise par Mme Anna BENAKI-PSAROUDA, membre du Parlement grec.¹

¹ Ce texte nous est parvenu en langues française et grecque.

ANNA BENAKI-PSAROUDA, Représentante du Parlement Hellénique
AMENDEMENTS AU PROJET DE CHARTE DES DROITS FONDAMENTAUX

ARTICLE 1a ou ARTICLE 22§3 (CONVENT 28 en combinaison avec CONVENT 36 et 37):

Il est proposé d'ajouter un 2ème paragraphe à l'article 1a ou de remplacer le paragraphe 3 de l'article 22 par le texte suivant :

“L'égalité substantielle entre femmes et hommes doit être garantie et appliquée dans tous les domaines. Toute discrimination directe ou indirecte en raison du sexe est interdite en tout domaine. Des mesures positives temporaires sont indiquées, avant tout pour améliorer la situation des femmes, jusqu'à ce que l'égalité substantielle entre femmes et hommes soit atteinte”.

Exposé des motifs

1. - L'égalité entre femmes et hommes est un “*principe fondamental*” du droit communautaire et un “*droit fondamental de la personne humaine*”, selon une jurisprudence constante de la CJCE (v. p. ex. arrêts du 15.6.1978, *Defrenne III*, 149/77, Rec 1509; du 10.2.2000, *Sievers*, C-270/97). Le Traité la proclame en tant que “*mission*” et objectif de la CE et impose à celle-ci l'obligation positive de la “*promouvoir*”, c'est à dire, de ne pas se contenter de l'égalité formelle, mais d'oeuvrer pour atteindre l'égalité substantielle entre femmes et hommes dans tous les domaines de son activité (articles 2, 3§2 traité CE).

Le respect de l'acquis communautaire et des impératifs du Traité exige que l'application d'un principe si fondamental de l'Union, comme l'est le principe de l'égalité substantielle entre femmes et hommes, soit garantie par un des premiers articles de la Charte, dans tous les domaines de compétence de l'Union, par un libellé exprès, clair et spécifique, qui ne soit susceptible d'aucun doute ou fausse interprétation. C'est ainsi seulement que sera obtenue la sécurité juridique qu'exige le mandat du Conseil de Cologne.

Le 1er alinéa du 3ème paragraphe de l'article 22 du Projet ne contient pas une norme générale satisfaisante. Par ailleurs, la mention indicative des rémunérations et autres conditions de travail, que contient le 2ème alinéa du même paragraphe, est tout à fait inadéquate, puisque le droit communautaire en vigueur contient des normes qui imposent l'égalité entre femmes et hommes dans bien d'autres domaines.

2. - Par ailleurs, l'égalité substantielle entre femmes et hommes constitue un principe universel, garanti aussi par des traités ratifiés par tous les États membres, tels les Pactes de l'ONU (article 3 du Pacte des droits civils et politiques, article 3 du Pacte des droits économiques, sociaux et culturels) et la Convention sur l'élimination des discriminations contre les femmes.

Comme il est constaté par les institutions communautaires et internationales compétentes, les clauses générales de non discrimination ne suffisent pas pour atteindre l'égalité substantielle entre femmes et hommes. Cela est dû au caractère particulier des discriminations en raison du sexe, qui continuent dans plusieurs domaines et dont souffrent surtout les femmes. Les discriminations à l'encontre de celles-ci sont, d'ailleurs, souvent multiples (en raison du sexe et d'autres motifs).

Cette situation a rendu nécessaires, en plus des clauses générales de non discrimination, des dispositions communautaires et internationales qui exigent l'égalité substantielle entre femmes et hommes, et même des traités spécifiques, telle la Convention pour l'élimination des discriminations contre les femmes dans tous les domaines. Cette Convention a été récemment enrichie d'un Protocole qui permet les recours individuels et que l'Union s'enorgueillit d'avoir soutenu et de promouvoir.

3. – Pour combattre effectivement les discriminations en raison du sexe, des mesures positives temporaires sont requises. Celles-ci ne constituent pas des discriminations, mais des moyens pour atteindre l'égalité substantielle entre femmes et hommes, selon la Convention sur l'élimination des discriminations contre les femmes (Art. 4§1) et le Traité CE (Art. 141). La Déclaration No 28 annexée au Traité d'Amsterdam précise qu'elles doivent viser “*avant tout à améliorer la situation des femmes*”.

Les mesures ou actions positives sont aussi prévues par un nombre croissant de Constitutions nationales (v. Constitutions allemande, article 3§2; autrichienne, article 7§2; portugaise, article 9(h); finlandaise, article 6§4; suédoise, chapitre 2§16; française, articles 3 et 4; hellénique-projet). Une “*tradition constitutionnelle commune*”, au sens de l'article 6§2 Traité UE, est ainsi formée. De telles mesures sont, d'ailleurs, recommandées et requises par les institutions communautaires et internationales compétentes.

La nature particulière des discriminations contre les femmes, ainsi que la nécessité des actions positives sont confirmées par la CJCE (arrêt *Badeck*, C-158/97, 26.3.2000).

ARTICLE 16 § 3 (CONVENT 28 en combinaison avec CONVENT 36 et 37).

Les ajouts suivants, qui sont soulignés, sont proposés :

«Le droit des parents d'assurer l'éducation et l'enseignement de leurs enfants conformément à leurs convictions religieuses et philosophiques, doit être respecté dans la mesure où celles-ci ne contreviennent pas aux principes démocratiques et aux droits reconnus par la Charte. Dans l'exercice de ce droit les parents doivent agir dans l'intérêt de l'enfant.»

Exposé des motifs

La nécessité du respect des principes démocratiques ainsi que des droits fondamentaux et des libertés fondamentales par les parents, dans le cadre de l'éducation et de l'enseignement de leurs enfants, ainsi que la nécessité d'enseigner aux enfants et aux jeunes ces principes, droits et libertés est évidente. Par ailleurs, la garantie de l'intérêt de l'enfant est requise aussi par la Convention sur les droits de l'enfant, ratifiée par tous les États membres.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

fundamental.rights@consilium.eu.int

Brussels, 29 June 2000
(OR. fr)

SN 3340/00

PRAESIDIUM NOTE

Subject : Draft Charter of Fundamental Rights of the European Union
– Proposals for horizontal Articles presented by the Praesidium

Article 46

Becomes Article 44, with the wording found in CHARTE 4373/00 CONVENT 40.

Read Article as follows:

- "1. The provisions of this Charter are addressed, with due regard for the principle of subsidiarity, to the institutions and bodies of the Union and to the Member States exclusively when they implement Union law.

2. The institutions and bodies of the Union, the Member States, exclusively within the scope of Community law, and the social partners at Community level, acting within the framework of their respective powers and in accordance with the principle of subsidiarity, shall observe the social rights and implement the social principles set out in this Charter.

3. This Charter does not establish any competence or any new task for the Community or the Union or modify competences and tasks defined by the Treaties."

Based on amendments submitted by the following members of the Convention:

Gnauck, Berès, Neisser, Haenel, Melograni, Duff, Braibant, Leinen, Van den Burg, Tarschys, Rodotà – Paciotti – Manzella, Hirsch Ballin, Barros Moura – Azevedo, Goldsmith, Cederschiold.

Article 47

Becomes Article 45

Scope of guaranteed rights

- 1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by the competent legislative authority. Subject to the principle of proportionality, limitations may only be made if they are necessary and genuinely correspond to objectives of general interest being pursued by the Communities or other legitimate interests to be respected in a democratic society. The actual substance of those rights and freedoms must be respected.**
- 2. Limitations to rights and liberties which are also recognised by the European Convention for the Protection of Human Rights and Fundamental Freedoms may not exceed those permitted by the latter.**
- 3. The rights defined by the Treaty establishing the European Community shall be exercised under the conditions and within the limits defined therein.**

Based on amendments submitted by Rodriguez Bereijo, Van den Burg.

Article 48

Becomes Article 45(3).

Article 49

Becomes Article 46

Move "**by the Member States' constitutions**" to the end of the text "**and by Member States' constitutions**".

Based on an amendment by Jansson.

Article 50

Becomes Article 47.

In the first line, replace "**may be**" with "**must be**".

Based on an amendment by Goldsmith.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

**Brussels, 30 June 2000 (05.07)
(OR. de)****CHARTE 4393/00****CONTRIB 252****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find attached an addition to the proposed amendment to Article 47 submitted by Mr Jürgen GNAUCK, Member of the German Bundestag.

Draft Charter of Fundamental Rights of the European Union Convent 34

Proposed amendment to Article 47: Limitation of guaranteed rights

Submitted by: Jürgen Gnauck, Thuringian Minister for Federal and European Affairs

Proposed text:

"Article 47. Limitation of guaranteed rights.

The actual substance of the rights and freedoms recognised by this Charter must be respected. These rights and freedoms may be limited only by the competent legislative authority. **A limitation is permissible only for the purpose of protecting the fundamental rights of third parties or other essential common goods.** Limitations may not exceed the degree that is absolutely necessary and must observe the principle of proportionality. These limitations must respect the level of protection afforded by the European Convention for the Protection of Human Rights and Fundamental Freedoms."

Reasons:

I think it important to add to my original proposed amendment to Article 47 by clarifying what kind of limits may be set. A limitation must not have the effect of nullifying a fundamental right. The previous wording – "Subject to the principle of proportionality, any limitation must remain within the limits necessary for the protection of legitimate interests in a democratic society" – would be unlikely to fulfil this intention as on this basis violations of a fundamental right could (too) frequently be seen as justified. A more restrictive interpretation of the general determination of limits would therefore seem indispensable in the interests of the citizen.

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DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

**Brussels, 3 July 2000 (05.07)
(OR. en,nl)****CHARTE 4397/00****CONTRIB 256****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a contribution relating to the horizontal clauses by Mr Hirsch BALLIN,
representative of the Parliament of the Netherlands.

E.M.H. Hirsch Ballin

Comments on the relationship between the Charter and the ECHR in connection with the "horizontal provision" in Article 47 (= Article 45 new), according to CHARTE SN 3340/00 of 29 June 2000.

1. Where reference is made to the ECHR, the "accompanying Protocols" must always be mentioned too. (Alternative: express this in a defining provision). Obviously the effect is limited, as in the case of the ECHR itself, to those Protocols of which provisions are incorporated in the Charter.
2. There are two aspects to clauses limiting fundamental rights: on the one hand they are enabling provisions, without which limitation of the fundamental right is not permitted; on the other hand they make limitation subject to conditions. (The conditions may be of different types: they may, for example, relate to the purpose for which or the interests in which limitations may be imposed, the authority which is entitled to impose them or the procedure which must be followed). There are also two aspects to any vagueness in a limitation clause: it can lead to authorities considering themselves justified in breaching a fundamental right, but can also be invoked to contest what may be a legitimate limitation in lengthy legal proceedings. For that reason vagueness in limitation clauses must be avoided as far as possible and no uncertainty must be generated regarding the relationship to (legal decisions on) the ECHR and Protocols.
3. I therefore support the proposal by various members that it be clearly and explicitly stated that the limitation clauses in the ECHR are applicable. Various ways of doing this could be envisaged (taking over the whole text, adopting a "Parts A and B" system, Korthals Altes proposal with references by Article). Ingo Friedrich's suggestion of listing the relevant provisions corresponding to the ECHR and Protocols in a single Article (which could be Article 47 = 45 new) seems to me a feasible one.
4. There are a few draft provisions in the Charter, e.g. Article 19 (personal data), which do not correspond, or correspond only to a small degree to provisions in the ECHR and Protocols. In these cases, which are fortunately rare, it will be necessary to formulate an independent limitation clause in the Charter. Otherwise, precisely in those places where we want the Charter to have added value, we would have to fall back on a vague, general limitation clause with all its accompanying dangers (see paragraph 2).
5. The revised text of Article 47 (= 45) retains a general condition for limitations of fundamental rights which was also found in previous drafts, namely that they must not affect "the actual substance" of the rights. The "actual substance guarantee" plays an important role in German constitutional law but the significance of incorporating this into the Charter is questionable. The ECHR follows a different line. It may be argued that the "actual substance guarantee" is in essence also to be found in the ECHR's limitation clauses, but then the addition is superfluous. If, on the other hand, we wish to add an extra condition to those in the ECHR – and the wording of the Article seems to imply that – then we are opening up a Pandora's box full of points of contention. I therefore also doubt if it is wise to incorporate the "actual substance guarantee" in our Charter; a reference to it in the notes with an explanation seems preferable to me.

6. I support the proposal by Mr Korthals Altes in amendment 582 (wrongly headed) relating to the interpretation of the Charter in relation to the ECHR (and Protocols – see paragraph 1).

E.M.H. Hirsch Ballin

29 June 2000

Note

Article 46(2) now limits itself to "Community law". That should be extended again to include the law of the Union as a whole.

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Brussels, 4 July 2000 (05.07)
(OR. fr)**CHARTE 4399/00****CONVENT 42****NOTE FROM THE PRAESIDIUM**

Subject : Draft Charter of Fundamental Rights of the European Union
– Compromise proposal submitted by the Praesidium for Articles 41 to 44
(social rights and horizontal clauses)
(reference document: Charte 4316/00 CONVENT 34)

Article 41. Social security and social assistance

Becomes Article 39

1. Provision shall be made in accordance with conditions established by national legislation and practice for social security benefits providing adequate protection particularly in the event of illness, maternity, dependence or old age and in the event of unemployment.
2. Provision shall be made for social assistance and housing benefit in accordance with the conditions established by national legislation and practice in order to guarantee a decent existence to anyone lacking sufficient resources.

Based on the Korthals Altes, Jansson, Berthu, Einem/Holoubek, Cisneros Laborda, Braibant, Gnauck and Tarschys amendments.

Article 42. Health protection

Becomes Article 40

English title: "Health care"; French unchanged.

Provision shall be made for access to medical care and prophylactic measures in accordance with the conditions established by national legislation and practice.

Based on the Duff amendment.

Article 43. The disabled

Becomes Article 41

In English the title becomes "Integration of persons with disabilities", in French "Intégration des personnes handicapées".

Provision shall be made for the independence, social and vocational integration and participation in the life of the community of persons with disabilities.

Based on the Tarschys amendment.

Article 44. Protection of the environment

Becomes Article 42

Union policies shall ensure the protection and preservation of a clean and healthy environment and the improvement of the quality of the environment, taking into account the principle of sustainable development.

Based on the Korthals Altes amendment.

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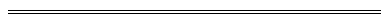
**Brussels, 14 July 2000
(OR. fr)****CHARTE 4400/00****CONVENT 43****PRAESIDIUM NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union
 – Draft preamble

PREAMBLE

1. The peoples of Europe have established an ever closer union between them and henceforth share the same destiny;
2. This Union is founded on the indivisible, universal principles of the dignity of the human being, of freedom, of the equality of all persons, both men and women, and of solidarity; it is based on the principles of democracy and the rule of law;
3. The Union contributes to the development of these common values while respecting the diversity of the cultures and traditions of the peoples of Europe as well as the national identities of the Member States and their constitutional organisation at the national, regional and local levels;
4. The protection of fundamental rights in the Union and their visibility to all require that they be anchored in a charter of fundamental rights of the European Union;

5. This charter confirms the rights that arise out of, *inter alia*, the constitutional principles common to the Member States, the Treaty on European Union, the Community Treaties, the European Convention on Human Rights, the social charters adopted by the Community and by the Council of Europe and the jurisprudence of the Court of Justice of the European Communities and of the European Court of Human Rights;
6. It adapts the content and the scope of these rights to the development of society, to social progress and to scientific and technological developments;
7. Enjoyment of these rights entails responsibilities and duties with regard both to other persons and to the human community;
8. The Charter neither increases nor amends the powers and tasks of the Community and of the European Union as laid down in the Treaties. When they implement Union law the institutions and bodies of the Union and the Member States will guarantee, with regard to every person, the following rights and freedoms, in accordance with the principle of subsidiarity.



DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 4 July 2000**CHARTE 4401/00****CONTRIB 258****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a compromise proposal on economic and social rights, submitted by Mr. Guy BRAIBANT, Representative of the Government of France and Mr. Jürgen MEYER, Representative of the German Parliament.¹

¹ This text has been submitted in English, French and German languages.

Berlin/Paris, 13.6.2000

Compromise on fundamental economic and social rights

proposed by Braibant/Meyer

The articles have been consolidated and renumbered as follows:

Convent 34	Braibant-Meyer Proposed compromise
Article 31	Omitted Based on amendments made by Gnauck, Meyer, Goldsmith, Leinen, van den Burg, Duff, Beres, Rodota/Pacioti/Manzella, Tarschys
Article 32	Article 31(1)
Article 33	Article 33(3)
Article 34	Article 33(1) and (2)
Article 35	Article 32(1)
new (replaces Article 16 Convent 28)	Article 35
Article 36	Article 32(1)
Article 37	Article 32(2)
Article 38	Article 31(2)
Article 39	Article 32(2)
New	Article 39
Article 40	Omitted Based on amendments made by Goldsmith, Gnauck, Friedrich/Mombaur, Berthu
Article 41	Articles 36/37
Article 42	Article 34
Article 43	Article 31(4)
Article 44	Article 38
Article 45	Article 38

Chapter: Solidarity**Article 31 Labour rights**

- (1) Everyone has the right to work¹ and the right to job protection. In particular, everyone has the right to choose and to engage in an occupation and the right of free access to job-placement services free of charge.**

¹ In German the term “Recht zu arbeiten” (right to work) has been deliberately chosen (instead of “Recht auf Arbeit” (≈ right to employment)) to indicate that it is not the right to pursue any particular occupation that is meant.

Based on amendments made by Braibant, Meyer, Dehousse, Beres, Fayot, Dieulangard, van den Burg, Rodota/Pacioti/Manzella

- (2) Everyone has a right to protection against unjustified or abusive termination of employment.**

Based on amendments made by Braibant, Meyer, Gnauck, Dehaene/Gucht, Dieulangard, van den Burg, Rodota/Pacioti/Manzella, Beres

- (3) Notwithstanding Article 22 (CONVENT 28) the social and occupational integration of particularly disadvantaged groups shall be promoted.**

- (4) Paragraph 3 shall apply in particular for the disabled.**

Based on amendments made by Braibant, Meyer, Taschys

Article 32 Right to just and favourable conditions of work

- (1) Everyone has the right to safe and healthy working conditions. For the protection of this right everyone is entitled in particular to have limits imposed on daily and weekly working hours, to have an annual period of paid leave and to have fair and equal remuneration for work of equal value.**

Sentence 1: Based on amendments made by Braibant, Meyer, Gnauck, Leinen, van den Burg, Loncle, Beres, Fayot, Dieulangard, Dehousse

Sentence 2 part 1: Based on amendments made by Braibant, Meyer, van den Burg, Dieulangard, Einem/Holoubek, Gnauck, Dehousse, Beres, Rodota/Pacioti/Manzella, Korthals Altes, Goldsmith

Sentence 2 part 2: Based on amendments made by Braibant, Meyer, van den Burg, Beres, Loncle, Fayot, Rodota/Pacioti/Manzella, Dieulangard

- (2) Young people, pregnant women and those bringing up children have the right to special protection. This right includes in particular the granting of maternity leave and parental leave following the birth or adoption of a child, with the aim of reconciling family and professional life.**

Based on amendments made by Braibant, Meyer, Beres, Dehousse, Leinen, Einem/Holoubek, van den Burg, Duff

Article 33 Rights of collective bargaining and action

- (1) Everyone has the right to form trade unions and to take collective action, including strike action, to protect their economic and social interests.**

Based on amendments made by Braibant, Meyer, van den Burg, Fayot, Dieulangard, Beres, Dehousse, Rodota/Paciotti/Manzella, Korthals Altes

- (2) The autonomy of the trade unions and the employers' organisations in negotiating wage rates shall be respected.**

Based on amendments made by Braibant, Meyer, Leinen

- (3) The rights of workers to be involved in measures affecting them within the undertaking shall be protected.**

Article 34 Right to health

Everyone has the right to health protection. For the implementation of this right the Union shall above all respect universal access to medical care.

Based on amendments made by Braibant, Meyer, Duff, Beres, Dehousse, Rodota/Paciotti/Manzella, Dieulangard

Article 35 Right to education and continuing training

- (1) Everyone has the right to education, the right of access to vocational and continuing training and the right to lifelong learning. These rights include the right to receive free compulsory education.**

Based on amendments made by Braibant, Meyer, Fayot, Loncle, Rodota/Paciotti/Manzella

- (2) The freedom to found educational establishments shall be guaranteed subject to democratic principles.**
- (3) The right of parents to have their children educated and taught in accordance with their religious, philosophical and pedagogical convictions shall be respected.**

Article 36 Right to housing

The universal right to adequate housing shall be respected.

Based on amendments made by Braibant, Meyer, Beres, Fayot, van den Burg

Article 37 Right to social security

- (1) The universal right to social security and the right of access to social services shall be protected, in order to enable everyone to lead a decent life especially in the event of unemployment, industrial accident, invalidity, maternity, illness or old age.**

Based on amendments made by Braibant, Meyer, Rodota/Pacioti/Manzella, Beres, Dieulangard, Dehousse

- (2) The Union shall protect the right of anyone lacking sufficient resources to be guaranteed a decent existence through social assistance.**

Based on amendments made by Braibant, Meyer, Dehaene/Gucht/Lallemande, Beres, Dieulangard, Rodota/Pacioti/Manzella, Duff, van den Burg, Leinen

Article 38 Right to a healthy environment and to consumer protection

- (1) The Union shall respect the universal right to a healthy environment and shall take steps to protect natural resources.**

Based on amendments made by Braibant, Meyer, Einem/Holoubek, Neisser, Dieulangard, Tarschys, van den Burg, Dehaene/Gucht/Lallemande, Rodota/Pacioti/Manzella, Bereijo, Duff

- (2) The Union shall ensure a high level of protection as regards the health, safety and interests of consumers.**

Article 39 Services of general interest

The Union shall respect the universal right of free and equal access to services of general interest.

Based on amendments made by Braibant, Meyer, van den Burg, Dehaene/Gucht/ Lallemande, Beres, Fayot, Einem/Holoubek, Dehousse, Dieulangard, Rodota/Pacioti/ Manzella

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

**Brussels, 4 July 2000 (06.07)
(OR. de)****CHARTE 4402/00****CONTRIB 259****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find attached a contribution on Articles 20-30, submitted by Mr Caspar EINEM,
Representative of the Austrian Parliament.

Dr CASPAR EINEM
Member of the Austrian National Council

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0043-01-317 28 05
Email:
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Vienna, 2 July 2000

Sir,

As I was unable to attend the meeting of the Convention on the afternoon of Friday 30 July, I would like to take this opportunity to forward you my comments on the Articles which were (presumably) discussed in the afternoon.

Article 20.

In Articles 1 to 30 the Praesidium has correctly attempted to formulate the fundamental right concerned very concisely, and to not include its limitations at the same time. In Article 20 the second sentence does not in my view state more than the general horizontal clause of Article 45 (new).

Therefore, my suggestion is: **delete the second sentence of Article 20.**

Article 21.

I fully agree with the Praesidium's compromise proposal on Article 21. It is the minimum which is to be achieved. Any limitation of the Geneva Convention in the Charter could not, however, be considered.

Article 21a.

I expressly agree with the Praesidium's proposal.

Article 22.

In the Convention's proceedings, the importance of the Charter's readability for citizens has been frequently discussed, as has the importance of its intelligibility. Article 22 provides in legally compressed form the basis of a prohibition of all forms of discrimination. However, in many cases a mere prohibition of discrimination is not enough. In these instances, there is a need for explicit compensation measures (positive discrimination).

For political reasons – i.e., in order to fulfil the hopes and meet the expectations of many people and many groups of people, and in order to make it clearer what is involved and who is to be favoured – as well as for reasons relating to the content, as an explicit provision on positive discrimination in the case of minorities is required, I would like to once again propose splitting Article 22 into three separate Articles:

1. **Delete the third paragraph of Article 22**
2. **A new Article 22a Equal status of women and men**
3. **A new Article 22b Equal status of minorities**

In this connection, I refer to the texts proposed by Einem/Holoubek (proposals for amendment 467 and 470).

Article 23.

The previous version of Article 23 formulated clear rights, one could say personal rights, for children. The Praesidium's compromise proposal now formulates a right to care but at the same time it deprives children of the right to manage their affairs – at least in comparison with the previous version of the text. I therefore propose leaving the previous text as paragraph 1 and adding paragraph 2, consisting of the first sentence of paragraph 1 and of paragraph 2 of the Praesidium compromise, as I also consider the principles of this text to be important.

Therefore, my proposed text is:

Article 23: Children's rights

- (1) **Children must be treated as equal individuals, they must be allowed to influence matters pertaining to their person to a degree corresponding to their maturity.**
- (2) **Children shall have the right to protection and to the care necessary for their well-being. In all decisions relating to children, whether taken by public or private welfare bodies, the first concern shall be the child's best interests.**

Article 30.

In line with my proposal for amendment 592, I would once again like to argue in favour of including a paragraph 2 which would also grant freedom of movement to third country nationals after a certain minimum period of legal residence. However, above all, in view of the expected effect on third parties, I believe it is important to include a paragraph 3 which – while not absolutely essential in legal terms, as it is covered by paragraph 1 – clearly formulates a right of return. Experience with expulsions of members of ethnic groups in the Balkans conflict – in countries, of which at least some are working towards membership of an enlarged Union – has highlighted the political importance of sending out a clear message!

Therefore, my proposed text is:

Article 30. Freedom of movement

- (1) Every citizen of the Union has the right to move and reside freely within the territory of the Member States.**
- (2) Every citizen of a third State shall enjoy this right to the same degree, if he or she has resided legally within the territory of the Member States for five years.**
- (3) Every citizen of the Union is entitled to leave the territory of the Member States and to return there.**

I hope that with these proposals I have put forward a number of arguments which you will find convincing and remain,

Yours faithfully,

Caspar Einem

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

**Brussels, 6 July 2000 (13.07)
(OR. de)****CHARTE 4405/00****CONTRIB 262****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find attached proposals for amendments to Articles 31 and 33-46 submitted by
Dr Sylvia-Yvonne KAUFMANN, Member of the European Parliament.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article 31

Submitted by: Dr Sylvia-Yvonne Kaufmann

Proposed text:

Delete the Article.

Reasons

A separate horizontal Article for fundamental economic and social rights runs counter to the obligation to treat all rights equally.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article 33

Submitted by: Dr Sylvia-Yvonne Kaufmann

Proposed text:

Article 33. *Right to information, (one word deleted) consultation and co-determination (three words deleted)*

1. Workers have the right to **full** information and consultation in good time.
2. *Workers and their representatives have the right to co-determination in industrial decision-making processes at national, transnational and Union level within the undertaking which employs them.*

Reasons

- I. Does not concern the English text.
- II. The German text should refer not to "Pflicht" ("duty") but to the individual right of workers to be informed and consulted within the undertaking. Moreover, the emphasis should be on information being given not only in good time but also in full.
- III. Workers' right to co-determination is referred to in Article 137(3) TEC as part of representation and collective defence of the interests of workers and employers. In the course of establishing European works councils, it is indispensable to secure workers' rights to representation of their interests by means of an individual right to co-determination in industrial decision-making processes. The ECSC Treaty, moreover, lays down specific

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

co-determination provisions. These provisions should not be undermined by the absence of an individual right of workers to co-determination in a firm's internal procedures. In addition, the Charter of Fundamental Rights must be open to future provisions on co-determination, as is clear from Article 137(3) TEC. As a general rule, the Charter should also be open to democratisation of industrial relations, which is playing an ever greater role internationally in discussions about fundamental social rights. From that point of view also, it would be a mistake not to establish workers' right to co-determination as part of fundamental social rights in the EU.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article 34

Submitted by: Dr Sylvia-Yvonne Kaufmann

Proposed text:

Article 34. Rights of collective bargaining and action

1. Employers and workers have the right to negotiate and conclude collective agreements *(23 words deleted)* under the conditions laid down by national legislation and practice.
2. *Workers and their trade unions have at national, transnational and Union level, an unlimited right of association, a right to engage in collective bargaining and solidarity action, to strike and to take other collective action.*
3. *Agreements to restrict or impede workers' right to freedom of assembly and association are invalid. Lock-outs are prohibited.*

Reasons:

- I. Does not concern the English text.
- II. The right of collective bargaining and action as contained in the Charter should not fall behind that in the ILO Conventions. In particular, the ILO Conventions stipulate that all attempts to undermine this right and by various acts prevent workers from enjoying it are invalid (ILO Convention No 98, Articles 1 and 2). Furthermore, the means by which

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

workers can enforce their economic and social interests, such as solidarity action, strikes and other collective action, should be mentioned. The International Covenant on Economic, Social and Cultural Rights explicitly lays down the right to strike in Article 8(1)(d).

- III. Lock-out is an illegitimate weapon which does not achieve "equality of arms". It is an inadmissible restriction of the right to strike as laid down in Article 8(1)(d) referred to above.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article 35

Submitted by: Dr Sylvia-Yvonne Kaufmann

Proposed text:

Article 35. Right to rest periods and annual leave

Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave. *Sundays and national holidays continue to be legally protected as days of rest and leisure.*

Reasons:

- I. Does not concern the English text.
- II. In many Member States Sunday is legally protected as a day of rest (cf. inter alia German Basic Law, Article 140). This secures the external conditions enabling workers not only to recover physically but also to rest and find time for social contacts.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article 37

Submitted by: Dr Sylvia-Yvonne Kaufmann

Proposed text:

Article 36. Safe and healthy working conditions

1. Every worker has the right to safe and healthy working conditions.
2. *Every worker has the right to refuse to work for a certain period if statutory labour, health and environmental provisions are being grossly violated at the workplace.*

Reasons:

- I. Does not concern the English text.
- II. In order fully to guarantee the rights of workers at work, it is absolutely essential to have an individual right to a direct remedy, i.e. the right to leave the workplace without endangering one's job. It further develops workers' rights to co-determination in a firm's internal affairs and protects them from damage to health at work and the loss of human dignity in the working environment.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article: 37

Submitted by: Dr Sylvia-Yvonne Kaufmann

Proposed text:

Article 37. Protection of *children and* young people

The minimum age of admission *of young people* to employment **may** not be lower than the minimum school-leaving age. (33 words deleted)

Young people admitted to work must have working conditions which suit their age.

Child labour is prohibited.

Reasons:

Union Member States prohibit any form of child labour and guarantee compliance on their territory with both ILO Conventions on child labour (C 138 and C 182).

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Proposed amendment to Article: 38

Submitted by: Dr Sylvia-Yvonne Kaufmann

Proposed text:

Article 38. *Right to work*

1. *Everyone has the right to decent work which guarantees an income.*
2. *Everyone has the right to equal pay for work of equal value.*
3. All workers have a right to protection against unjustified or abusive termination of employment.
4. *Everyone has a right to adequate benefits guaranteeing subsistence in the event of unemployment*

Reasons:

- I. Does not concern the English text.
- II. view of the ILO Conventions on employment rights which have been signed by Union Member States, limitation of this provision to the right to protection against unjustified or abusive termination of employment, as provided for in the Praesidium's draft, is incomprehensible.

I propose that the right **to** work be put before employment rights. The right to work is contained in the Universal Declaration of Human Rights adopted by the UN on

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10 December 1948. Article 23(1) reads: "Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment."

In the International Covenant on Economic, Social and Cultural Rights, the right to work is guaranteed by the Contracting States. Article 6(1) reads: "The States Parties to the present Covenant recognise the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right. "

The European Social Charter contains provisions on the right to work and employment rights. For example, Part I, 1 reads: "Everyone shall have the opportunity to earn his living in an occupation freely entered upon." Part I, 4 reads: " All workers have the right to a fair remuneration sufficient for a decent standard of living for themselves and their families." and Part II, Article 1, "The right to work," reads "With a view to ensuring the effective exercise of the right to work, the Contracting States undertake to accept as one of their primary aims and responsibilities the achievement and maintenance of as high and stable a level of employment as possible, with a view to the attainment of full employment."

The "right to work" and extensive "employment rights" are also laid down in many of the constitutions of Union Member States. For example, Article 4 of the Italian Constitution reads: " The Republic recognises the right of all citizens to work and promotes such conditions as will make this right effective", while Article 35 reads: "The Republic safeguards labour in all its forms and methods of execution. (...) It promotes and encourages international agreements, and organisations calculated to confirm and regulate the rights of labour (...) and (...) the protection of Italian labour abroad."

The French Constitution of 1958 includes references to employment rights which must be guaranteed. Thus, Article 34 stipulates that legislation to be enacted by Parliament must govern, inter alia, "employment, trade union and social security law."

In the constitutions of countries which will accede in the next few years as part of the EU enlargement process the "right to work" and "employment rights" are mentioned. For example, Article 24 of the Constitution of the Polish Republic reads: "Work shall be

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protected by the Republic of Poland. The State shall exercise supervision over the conditions of work." Article 65(1) reads: "Everyone shall have the freedom to choose and to pursue his occupation and to choose his place of work" and Article 66 (1) "Everyone shall have the right to safe and hygienic conditions of work. The methods of implementing this right and the obligations of employers shall be specified by statute." The Hungarian Constitution includes the following Section 70/B: 1. In the Republic of Hungary everyone shall have the right to work and the freedom to choose his work and profession. 2. Everyone shall have the right to the same pay for the same work without any form of discrimination. 3. Every employed person shall have the right to an income corresponding to the quantity and quality of his work. 4. Everyone shall have the right to rest, leisure and regular paid leave."

EEA countries also, such as the Kingdom of Norway, recognise obligations regarding the right to work. Article 110 of the Norwegian Constitution reads: "It is the responsibility of the authorities of the State to create conditions enabling every person capable of work to earn a living by his work. Specific provisions concerning the right of employees to co-determination at their place of work shall be laid down by law."

The constitutions of German Länder also include provisions on the right to work. For example, Article 39 of the Constitution of Saxony-Anhalt states that the Land and the local authorities have a constant obligation to give everyone the opportunity to earn his living through work which has been freely chosen. The corresponding provision of the Brandenburg Constitution, Article 48 I states that the Land has an obligation, within the limits of its powers, to ensure that the right to work, which encompasses the right of every individual to earn his living by work he has freely chosen, is put into effect by means of a policy of full employment and work promotion. There are similar provisions in the constitutions of Mecklenburg-Western Pomerania and Saxony. Article 18 of the Constitution of Berlin states that everyone has the right to work. It is the duty of the Land to protect and promote that right. The Land is to help to create and keep jobs and to guarantee a high level of employment in keeping with the overall balance of the economy. Where a person cannot be found work, he has a claim to maintenance payments from public funds.

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Last but not least, Article 127 TEC reads: "The Community shall contribute to a high level of employment by encouraging cooperation between Member States and by supporting and, if necessary, complementing their action. In doing so, the competences of the Member States shall be respected. The objective of a high level of employment shall be taken into consideration in the formulation and implementation of Community policies and activities."

At the EU Special Summit in Lisbon the Heads of State and Government adopted the achievement of full employment in the Union as one of the objectives of Union policies.

- III. Equal pay, protection from dismissal and benefits in the event of unemployment are essential employment rights which protect human dignity in the working environment, and references to them can be found in many constitutions of Union Member States. Employment rights are also explicitly guaranteed in Article 7 of the International Covenant on Economic, Social and Cultural Rights.

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Proposed amendment to Article: 39

Submitted by: Dr Sylvia-Yvonne Kaufmann

Proposed text:

Article 39: Right to reconcile family and professional life

All workers have the right to reconcile their family and professional lives. This right includes in particular the right to maternity leave before and/or after childbirth and the right to parental leave following the birth or adoption of a child.

Reasons:

Does not concern the English text.

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Proposed amendment to Article: 40

Submitted by: Dr Sylvia-Yvonne Kaufmann

Proposed text:

Article 40: Right of migrant workers to equal treatment

Third-country nationals working lawfully in the territory of the Member States *and their families* are entitled to treatment not less favourable than that of European Union workers in respect of working conditions *and other social benefits*.

Reasons:

- I. Does not concern the English text.
- II. This right should also be extended to the principle of equal treatment regarding social benefits as already laid down in Article 7(2) of Regulation (EEC) No 1612/68.

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Proposed amendment to Article: 41

Submitted by: Dr Sylvia-Yvonne Kaufmann

Proposed text:

Article 41: Social Security

- (1) *Every person has the right to social security*
- (2) *Every person has the right to protection from poverty and social exclusion.*
- (2) Provision shall be made in accordance with each Member State's rules for social benefits providing protection in the event of maternity, illness, dependence, *incapacity for work and invalidity*, old age, the need to care for survivors and in the event of unemployment.
- (3) *(phrase deleted)* Every person lacking sufficient resources *has the right to basic social security to guarantee a decent existence.*
- (4) *Every person has the right to adequate and decent housing.*

Reasons:

- I. The basic right to social security should be formulated as an individual right. In the "General Declaration of Human Rights" adopted by the UNO on 10 December 1948, the "Right to Social Security" is specifically laid down. Article 25(1) states that "everyone has the right to a standard of living adequate for the health and well-being of himself and of his family,

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including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control." In the European Social Charter, the references to a right to social security are clear. The right to social security and rights further articulating that right are incorporated in great detail, viz. Article 12, "The right to social security", Article 13, "The right to social and medical assistance", Article 14, "The right to benefit from social welfare services", Article 15, "The right of persons with disabilities to independence, social integration and participation in the life of the community", Article 16, "The right of the family to social, legal and economic protection", Article 17, "The right of children and young persons to social, legal and economic protection", and Article 4 of the Additional Protocol to the European Social Charter sets out the right of elderly persons to social protection. The right to social security is also stated directly or by implication in the constitutional traditions of individual Member States of the Union, for example in Article 38 of the Italian constitution, which states *inter alia* that "Every citizen incapacitated for work who lacks the necessary resources for life is entitled to support and social care".

Also in the constitutional traditions of the countries which are candidates for accession within the framework of EU enlargement reference is made to a fundamental right to social security. Thus Article 67 of the Polish constitution states that "1. Citizens have the right to social security in the event of incapacity for work following illness or invalidity and after reaching retirement age. The extent and form of social security is regulated by the law. 2. A citizen who through no fault of his own cannot obtain work and has no other means of maintaining himself has a right to social security". Furthermore, social rights are contained in Articles 68 to 71 and Article 75. The Hungarian constitution also recognises the following obligations: "Section 70/E 1. Citizens of the Hungarian Republic are entitled to social security; in old age, in the event of illness, if widowed, orphaned or unemployed through no fault of their own they are entitled to the care necessary for their continued existence". 2. In the Hungarian Republic the right to assistance through social insurance and the system of the social institutions is guaranteed".

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- II. To guarantee a decent existence, in order to articulate the obligation to safeguard human dignity adopted in Article 1 of the Charter, the "right to social security" must provide social assistance for every person lacking sufficient resources, sickness insurance and medical assistance, housing support and/or publicly financed housing. The "right to social security" must cover at least the minimum of socio-cultural existence and allow the person concerned to have an equal share in social life and to take responsibility for running his own life. It may not be linked to any form of condition, such as forced labour in the low pay sector.
- III. It is indispensable for any society which guarantees and protects the right of every person to dignity, and thus also to a decent existence, to keep in view the goal of offering guarantees of basic social rights; having emerged as premises in social movements since the French Revolution, they must not call into question the guaranteed freedoms of the rule of law but must actually bring about freedom for a majority of citizens and provide the opportunities for taking advantage of it. An idealistic approach to the degree of protection provided by defensive rights is one of the reasons for criticism of the non-specific nature of fundamental social rights; the social conditions for exercising fundamental rights go largely unconsidered. Not to develop to the fullest a clearly delineated fundamental right to social security would mean denying many citizens the material bases for assuming their fundamental rights and freedoms. In the preamble to the "International Covenant on Economic, Social and Cultural Rights", the States parties to the Covenant committed themselves to implementation of social rights, "...recognising that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights".

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IV. The "right to adequate and decent housing" is an indispensable element of the "right to social security". It is a necessary articulation of the material conditions through which alone the assumption of fundamental rights and freedoms for all people is possible. Here too, the Charter must not fall short of the "Universal Declaration of Human Rights" adopted by the UNO on 10 December 1948; this applies in particular to Article 25(1). Nor must the Charter fall short with regard to the right to adequate and decent housing accorded to every person in Article 11 of the "International Covenant on Economic, Social and Cultural Rights".

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Proposed amendment to Article: 42

Submitted by: Dr Sylvia-Yvonne Kaufmann

Proposed text:

Article 42. *Health*

Everyone shall have the right to health, medical attention and health care.

Reasons:

Article 42 should be worded as an individual right to health and on no account should it fall short of the rights confirmed in Article 12(1) and (2) of the International Covenant on Economic, Social and Cultural Rights. Article 12 reads: 1. The States Parties to the present Covenant recognise the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. 2. The steps to be taken by the States Parties to the present Covenant to achieve the full realisation of this right shall include those necessary for: (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child; (b) The improvement of all aspects of environmental and industrial hygiene; (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases; (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness. "

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Proposed amendment to Article: 43

Submitted by: Dr Sylvia-Yvonne Kaufmann

Proposed text:

Article 43. *People with disabilities.*

People with disabilities shall have the right to social and vocational integration measures.

Reasons:

The concept "the disabled" in Article 43 should be replaced by "people with disabilities" to prevent misunderstandings and discrimination caused by the verbal attribution of an essential characteristic.

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Proposed amendment to Article: 44

Submitted by: Dr Sylvia-Yvonne Kaufmann

Proposed text:

Article 44. Environmental protection

Everyone shall have the right to live in a healthy environment.

Reasons

The right to protection of the environment should, as for all Articles of the Charter, be formulated as an individual right.

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Proposed amendment to Article: 45

Submitted by: Dr Sylvia-Yvonne Kaufmann

Proposed text:

Article 45. Consumer protection

Everyone shall have the right to a high level of protection as far as health, safety and consumer interests are concerned.

Reasons:

- I. Does not concern the English text.
- II. This provision should, as in the case of the other Articles, be formulated as an individual right.

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Proposed amendment to Article: 46

Submitted by: Dr Sylvia-Yvonne Kaufmann

Proposed text:

Article 46. Scope

1. The provisions of this Charter are addressed to the institutions and bodies *of the Community* and the Union within the framework of the powers conferred on them by the Treaties, and to the Member States exclusively within the scope of *Community and* Union law.
2. This Charter does not establish any competence or any new task for the Community or the Union or modify competences and tasks defined by the Treaties.

Reasons:

It is clear from the wording used in Article 46(2) and Article 49 of the draft that a distinction is being made between the Community and the Union. Since the relationship between them is in fact very much debated, they should always be mentioned together so as to establish the scope of fundamental rights clearly.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

**Brussels, 6 July 2000
(bilingual version)****CHARTE 4406/00****CONTRIB 262****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a letter to the Convention by Mr. Frits KORTHALS ALTES, Representative of the Government of the Netherlands, relating to horizontal articles.¹

¹ This text has been submitted in a bilingual French/English version.

Letter of Frits KORTHALS ALTES, representative of the government of the Netherlands,
to the Convention

Re: EU Charter / relation to ECHR / my proposal for a horizontal article

I refer to my proposal for a new horizontal article on the relation between the EU Charter and the ECHR. The proposal was erroneously published in Charta 4332/00, as a second amendment to article 29 (number 582 on page 710). The proposal should, however, be taken into consideration within the context of the horizontal clauses that the Convention will deal with today.

I draw your attention to this proposal.

For your reference I repeat the contents of my proposal. It reads as follows:

'Insofar as this Charter contains rights corresponding to rights laid down in the European Convention on Human Rights, their meaning and scope are the same as the meaning and scope of the rights under the ECHR, unless this Charter provides greater protection.

Reasons

This clause makes it clear that the rights in the Charter have the same meaning and scope as the provisions of the ECHR, as interpreted by the CDH, even if the formulation differs. In Article 5 of the ECHR, security is linked to the individual person. The Charter does not therefore explicitly cover a right to security in the general sense, as is expressed for example in Article 2 of the Treaty on European Union which states that one of the objectives of the Union is "to maintain and develop the Union as an area of freedom, security and justice...". Clearly that Article leaves open the possibility of further protection under the Charter.

En français:

'Dans la mesure où la présente Charte contient des droits correspondants à des droits énoncés dans la Convention européenne des droits de l'homme, leur signification et leur portée sont similaires à la signification et à la portée que leur confère la CEDH, sauf si la présente Charte prévoit une protection plus étendue.

Justificatif:

Cette disposition fait clairement apparaître que les droits énoncés par la Charte ont la même signification et la même portée que les dispositions de la CEDH, telles qu'interprétées par la Cour européenne des droits de l'homme, même si la formulation diffère. Ainsi, la sûreté énoncée à l'article 5 de la CEDH est liée à la personne. Par conséquent, il ne s'agit nullement dans la Charte d'un droit à la sûreté au sens large, comme celui que est énoncé par exemple à l'article 2 du traité sur l'union européenne, aux termes duquel l'Union se donne notamment pour objectif 'de maintenir et de développer l'Union en tant qu'espace de liberté, de sécurité et de justice ...'. Bien entendu, cet article n'empêche pas d'offrir avec la Charte une protection plus étendue.

For the Secretariat: I kindly request you to arrange that copies of this letter be distributed during today's meeting of the Convention in Brussels, and be send around by e-mail.

+++ The Hague, 28 June, 2000

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 7 July 2000**CHARTE 4408/00****CONTRIB 265****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a contribution by Mr. Daniel TARSchYS, representative of the Swedish government.¹

¹ This text has been submitted in English language only.

7 July 2000

TOWARDS CONSENSUS

A Contribution by Daniel Tarschys

Time is short, and the Convention is still divided on a number of fundamental issues pertaining to the very architecture of the Charter. To move forwards and reach agreement on a forceful text, we must now urgently find a way of satisfying several seemingly contradictory demands on the Charter. In this paper, I seek to define some key tensions that must be resolved and outline the basis for a possible consensus.

1. Five Tensions in the Convention

There are above all five areas where we need to reconcile divergent positions:

- (i) First of all, we need to find a common ground between those who insist on the exclusively political character of the Charter and those who have their eyes set mainly on a further stage at which the text might be integrated into the Treaties.
- (ii) Secondly, we must agree on whether to draft a single text or to divide the substance into a part A and a part B, the former short and forceful and the latter specifying the conditions for exceptions and the links to the Treaties, the ECHR and eventually other legal instruments.
- (iii) Linked to this issue is a third problem of reconciling the different requirements of the two audiences to which the Charter is addressed. To grasp the interest of the general public, the text should be crisp and concise. But to prevent confusion and satisfy the legal experts, it must also be comprehensive and conform with the various legal instruments in force.
- (iv) We must also bridge the gap between the demand for an autonomous and innovative text and the plea for continuity and consistency with other instruments, particularly the ECHR.
- (v) A final tension persists between, on the one hand, the ambition to draft an inclusive catalogue where no important rights are left out and, on the other, the apprehension that a text offering ample promises in its first 43 articles and then taking large chunks of them back at the end (where it is explained that the rights just proclaimed are valid only within the limits of Community competence, which is in no way extended through the Charter) might fuel cynicism and Euro-scepticism.

For some advice on how to resolve such conflicts, I propose first to consult the house philosopher of the Convention.

2. Kant revisited

The task of the Convention as defined by the Cologne Council is to draft a Charter that could be solemnly proclaimed by the European Council together with the European Parliament and the European Commission. Whether and, if so, how the Charter should be integrated into the treaties is as we know a matter for later consideration.

In recognition of this uncertainty about the ultimate status of the Charter, the Convention has adopted a "Kantian approach". In drafting the political declaration requested by the Cologne Council, it follows the "as if" principle, considering the eventuality that this text might later be translated into law.

The "as if" principle has been invoked in our discussions more frequently than faithfully. What Kant actually wrote in his *Critique of Practical Reason* was the following:

Handle so, dass die Maxime deines Willens jederzeit zugleich als Prinzip einer allgemeinen Gesetzgebung gelten könne.

What occupied Kant in this context was not so much the individual rules or laws but the *principle(s)* underlying general legislation. In our own discussions we have moved more and more towards recognising the importance of such principles as a source of inspiration for political action (first in the old draft article 31, now in the new draft article 44:2). I believe that we could proceed even further in this direction and base the Charter on the conviction that the acceptance of common European principles is a powerful stimulus to the successive extension of common rights and standards.

We must also recognise that this is a gradual, laborious and demanding process. A "Europe of Fundamental Rights" does not come about through Summit proclamations; it can only be built through a long chain of sustained efforts. It evolves step by step through institution-building, legislation and jurisprudence. While we have already come a long way in developing fundamental rights in Europe and have a great many *acquis* to be proud of, there also challenges in front of us, areas in which common principles have not yet been translated into homogeneous rights or efficient political action. These challenges will certainly take years and decades to meet rather than months and weeks.

"*Statt Revolution Evolution*" -- those were Kant's words in *Streit der Fakultäten* (1798) where he pleaded for reformism and the patient but determined *Fortschritt zum Besseren*. Following this idea we should recognise that the strengthening of fundamental rights in Europe is an on-going process and define the role of the Charter accordingly as (1) a concise guide for our citizens and as (2) an expression of firm commitment to a Europe of common values and an impetus to further action on the basis of shared principles.

One purpose of the Charter should thus be to *provide a succinct summary* of the fundamental rights that have been recognised by the Union and its Member States and to *lay down* principles for action, particularly in the social field. But the Convention should not compete with or seek to replace the constitutionally regulated and treaty-bound legislative processes. As members of the Convention, we have been appointed by Governments, National Parliaments, the European Parliament and the European Commission -- but we have not been asked to take over the functions of these august bodies. Respecting the established democratic procedures and division of competence, we should therefore regard ourselves not as a legislature but as an eminently political body tasked with the important mission of promoting fundamental rights through a clear, concise and forceful presentation of the rules scattered in different and not so easily accessible legal instruments.

A second function of the Charter should be to give a powerful impetus to further measures purporting to enhance the respect for fundamental rights and principles, through the solemn commitment of the Member States and through the support for the Charter that can be mobilised

among European citizens. The keen interest in our work demonstrated by many non-governmental organisations should give added impact to the effort. The Charter will serve to remind the European institutions and the Member States of important obligations that they will have to honour in their political practice.

3. A Forceful and Dynamic Charter

My proposal to reconcile the divergent positions outlined above goes as follows:

(i) In its form, the Charter is clearly a political declaration. In its substance, however, it is both an extensive index of legally binding rights and a resumé of common principles. Most of the articles cover rights that have already been given legal force. The dynamic character resides in the fact that in the future, the number of such articles may gradually grow through the normal legislative process in the EU. Other articles cover political principles on which the Union and its Member States are agreed.

(ii) The Charter can be a single and concise text, accompanied by a commentary or a “user’s manual” which gives references to the legal instruments in which the specific rights and the conditions for exceptions to them are enshrined. While the division into a part A and a part B with equal status is an elegant solution if the Charter is construed as a *source of law*, this structure is not necessary if the text is clearly recognised to be a *guide to law*.

(iii) The text should be aimed at the general public. The legal experts will have to continue to consult the Treaties, and ECHR and other instruments where the details of the particular rights are specified. The Charter itself is not intended to compete with these instruments as a source of law. It is an overview, a guide and an index.

(iv) The Charter is a fully autonomous document, and it may very well refer to principles and rights not included in the Treaties and the ECHR if these are acceptable to the Member States.

(v) The Charter will be forceful only if it is truthful. It should therefore recognise that the strengthening of fundamental rights is a lengthy and unfinished process. It should not pretend that guarantees exist where they do not. In such cases, it is better to lay down principles or objectives. In view of the dualism introduced through draft article 44:2, it might be considered to call the final document of the Convention “The European Charter of Fundamental Rights and Principles”.

To give leverage to the Charter, it is important to emphasise its dynamic and evolutionary dimension. We must not allow it to be dismissed as a one-shot event, a document required only in a particular political conjuncture and then forgotten as quickly as it was drafted. It should be presented to the Council explicitly as an agenda for action, “*la Charte comme chantier*”.

The Charter should serve as a new departure and an important impulse to the process of making the European Union an area of common values. But it should not be seen as an attempt to replace the normal, treaty-bound legislative process by hasty improvisation and by attempts to settle thorny normative questions by shots from the hip. Not only would that compromise the whole enterprise we have embarked upon but it might also run counter to the very ends that we are seeking to pursue.

4. Implications for the Horizontal Articles

To express clearly that the Charter is a **forceful summary and presentation** of existing, legally binding rights and of important principles pursued by the European Union and its Member States, **not** an effort to reformulate these rights, we must redraft the horizontal articles. The Charter should not be addressed to the European institutions but to the European citizens. The relationship between the Charter and the ECHR would be less dramatic if it were obvious that each of these texts has its own specific purpose. Giving a succinct overview of fundamental rights recognised in Europe, the Charter would provide valuable guidance to the public, but to ascertain the precise substance of the many different rights covered in it the readers would have to consult the various legal texts (such as the Treaties, the secondary legislation, the ECHR) as well as the jurisprudence of the two Courts. In other words, the Charter should not duplicate or derogate existing legal instruments but provide a clear picture of the fundamental rights recognised in such texts.

A Testament from the Convention to Biarritz and Nice.

Words, words, words. Europeans are rightly suspicious of declarations not followed by action. A Charter adopted in Biarritz or Nice and then just shelved is worse than no Charter at all. The real measure of the our institutions' commitment to fundamental rights is not what they say but what they do -- and are prepared to pay for.

Many suggestions have been put forward to make additional rights justiciable. Before such ideas are considered it would seem imperative to assess how our European Courts are coping with the workload they already have. Waiting-times are growing unacceptably long both in Luxembourg and Strasbourg. The Strasbourg Court in particular is likely to face a dramatically mounting caseload as applications start coming in from the new member states in Central and Eastern Europe. Unless the resource needs of the two Courts are given adequate attention, there are reasons to expect a *sharp deterioration* of the system for fundamental rights protection in Europe, and even a collapse of the Strasbourg mechanism.

The Convention should alert the European Council of this threatening situation and recommend remedial action. It should also suggest further examination of the quarter-century old proposal to proceed to the ratification by the Community of the ECHR. Though the resistance to this idea is manifestly shrinking, the apprehensions expressed deserve serious analysis and the modalities of a ratification need to be clarified. A study of this issue could perhaps usefully be broadened to consider the non-hierarchical co-operation between the two Courts in the protection of European fundamental rights.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 13 July 2000**CHARTE 4411/00****CONTRIB 268****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter the text of the intervention made by M. Marc FISCHBACH, observer of the Council of Europe, in the debate on the horizontal provisions.¹

¹ This text has been submitted in French and English languages.



COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

30 June 2000

**Address by Mr Marc FISCHBACH,
on behalf of the Council of Europe observers,
in the debate on the horizontal provisions**

As you know, Mr President, we attach particular importance to the horizontal provisions, since they are calculated to dispel a large number of ambiguities and uncertainties which application of the Articles of the Charter as proposed at present would not fail to give rise to without them.

As I have already said on a number of occasions, the first concern of the Council of Europe observers is to ensure that the same rights are not interpreted in divergent or even contradictory ways by the Court of Justice on the one hand and the Strasbourg Court on the other. What we want is to ensure respect for the principle of the universality of human rights, which is nothing other than the European conception of human rights which we defend unceasingly on the international stage, particularly at the UN, in the face of States which have a very different idea of human rights.

After those observations, I would say at the outset that the text of the horizontal Articles, as now proposed, seems to me to satisfy adequately the requirement of ensuring consistency and legal certainty, which are, as you know, decisive factors for the success of the Charter. I therefore express my satisfaction about the wording of the new Articles 47 and 49, which I find sufficiently clear and precise to exclude all wider restrictions than those permitted by the ECHR, or a level of protection lower than that afforded by the ECHR.

However, I would add two provisos to the above assessment. The first concerns the fact that the references to the ECHR in Articles 47 and 49 do not mention the Protocols to the Convention. Yet in so far as the Charter includes certain rights taken from the First, Fourth and Seventh Protocols to the ECHR, it is necessary, in my opinion, to add to the references to the Convention a specific reference to those Protocols. We must not allow it to be thought that the rights in question – such as the right of property, the right to education, the prohibition of collective expulsions or the *ne bis in idem* principle – are not covered by the safeguards set forth in Articles 47 and 49.

Secondly, I must insist once more on the need to add to the reference to the ECHR a reference to the case-law of the European Court of Human Rights. Here I would refer to the arguments we put forward in our contribution of 5 June (Contrib 196), which have, moreover, been repeated today by a number of speakers. Without returning to those arguments in detail, I consider that it is necessary to include this reference to the case-law mainly in the interests of legal certainty. It will not be at all obvious – unless an express provision to that effect is included – that the minimum level of protection to be respected under Articles 47 and 49 of the Charter will also be applicable to those rights contained in the Charter whose equivalents are to be found not in the ECHR but in the case-law of the European Court of Human Rights.

That applies, for example, to the right to data protection, set forth in Article 19 of the Charter (Convent 37), a provision which, as such, has no equivalent in the text of the ECHR. However, the European Court of Human Rights has developed an important body of case-law on the question, but on the basis of the right to respect for private life (Article 8 of the ECHR). So when Article 47 of the Charter (Charter SN/3340/00) speaks of “rights and liberties *which are also recognised by the [ECHR]*” does that include the right to data protection as enshrined in the case-law of the Strasbourg Court? Should the rights and restrictions laid down in that case-law be taken into consideration for application of Article 19 of the Charter? It is immediately apparent that a simple reference to the case-law would dispel all doubts on this point, in the interests not only of legal certainty but also of enhanced protection of the rights concerned.

Moreover, I cannot understand the arguments of those who see in a mere reference to the case-law of the Strasbourg Court a threat to the autonomy of the Charter or of Community law. In any event, and this can not be repeated too often, such a reference would not fix interpretation of the Charter at the level of the ECHR, as nothing would prevent interpretation of the Charter going beyond that level, as Article 53 of the ECHR expressly provides. In that sense, such a reference would not represent any threat to the Charter, since if by some extraordinary chance the level of protection afforded by the ECHR were to fall as a result of developments in the case-law – though the first important judgments of the new Court prove that the opposite is true – this would not affect the Charter in any way, the level of the ECHR being a *minimum* level not a *compulsory* level.

Would a clear, easily comprehensible wording of the horizontal provisions, coupled with a reference to the case-law of the European Court of Human Rights guaranteeing the advances made under the Convention system, be sufficient to ensure consistency and legal certainty in the future? Here I must say that I do not share the optimism of those who consider that with the horizontal provisions there is no more reason to fear for the harmonious coexistence of the Charter and the ECHR, and who put their trust moreover in the good understanding between the Court of Justice in Luxembourg and the Strasbourg Court. Why?

Because the Charter, when applied and interpreted within the context of the European Union, that is in the framework of a Treaty with its own objectives, which include, moreover, new powers in the fields of immigration, asylum and judicial and police co-operation, is bound to take on a dynamic which is almost certain to affect the harmonious and consistent interpretation of fundamental rights. Since the organ creates the function, it is highly probable that the Charter will generate a far higher number of references to the Court of Justice for preliminary rulings than it receives at present. That will increase in the same proportion the risk that decisions of the Court of Justice will clash with later decisions of the Strasbourg Court, since the member States will remain responsible for their actions under the ECHR but will at the same time be required to comply with and apply Community law. A State obliged to apply a judgment of the Court of Justice which turned out to be at odds with a later judgment of the Strasbourg Court would be placed in a very difficult position.

That shows to what extent the Charter, designed to become a legally binding instrument, replaces on the agenda the question of accession by the European Communities to the ECHR, or at least the idea of a preliminary consultation mechanism, recognised by the member States, between the two Courts. As long as these questions remain unanswered the European Council, if it wishes to avoid the risk of creating legal uncertainty, will scarcely be in a position to reach a final decision on the nature of the Charter. Admittedly, it is not part of our terms of reference to state our views on that question. However, that should not dispense us from identifying and pointing out problems and above all it should warn us not to indulge the illusion that it will suffice to take the Charter and turn it into a legally binding instrument.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

**Brussels, 13 July 2000 (14.07)
(OR. fr)****CHARTE 4412/00****CONVENT 44****PRAESIDIUM NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union
 – Structure of the Charter

The Praesidium proposes to the Convention that the Articles in the Charter should be divided into the following 7 chapters:

- Chapter 1: Rights of the human person**
- Chapter 2: Freedoms**
- Chapter 3: Equality**
- Chapter 4: Citizenship**
- Chapter 5: Solidarity**
- Chapter 6: Justice**
- Chapter 7: General provisions.**

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

**Brussels, 11 July 2000 (13.07)
(OR. fr)****CHARTE 4413/00****CONTRIB 269****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find attached a contribution with a Charter plan from Mr Guy BRAIBANT, representative of the French Government.

GUY BRAIBANT

Paris, 7 July 2000

**CONTRIBUTION
CHARTER PLAN**

On 17 April President Herzog sent us a proposal for the layout of the Charter that comprised seven chapters. On receiving it, I agreed with the idea behind the plan, which to my mind has several advantages. It gets away from the artificial distinctions which emerged at the end of the Second World War and which separate "civil and political rights" from "economic and social rights", distinctions that are still found in the Cologne mandate. Moreover, it makes it possible to avoid the existence of a "basket" devoted to rights reserved for citizens of the European Union, which in any case are very few in number. The formula devised by President Herzog allows the articles to be rearranged in a way that is both more original and more legible. It was elaborated in a recent document.

While I agree with the principle behind the plan, I have some reservations regarding its application.

1. I propose to shorten the titles by using symbolic keywords that express the concepts of the Charter:

Chapter 1: the proposed title could be simplified by replacing it with the wording "Right of the human person".

Chapter 2: the word "freedoms" alone should be sufficient, without characterising them as "fundamental", since in any case we are dealing solely with fundamental rights.

Chapter 3: retain the word "equality" as the expression "equality and non-discrimination" is used for both the title of a chapter and the title of an article.

In this case Article 1a could be entitled "general principle of equality" and Article 22 "non-discrimination".

Chapter 4: the expression "political rights" could be replaced by the more modern term "citizenship".

Chapter 5: what is now Chapter 6 could be inserted here, with the title "Solidarity".

Lastly, the current Chapter 5 would become Chapter 6 with the title "Justice".

The general layout of the Charter would therefore be:

1. Right of the human person
2. Freedoms
3. Equality
4. Citizenship
5. Solidarity
6. Justice
7. General provisions.

Guy BRAIBANT
Representative of the President of the Republic and of the Prime Minister
to the Convention responsible for drawing up the Charter of Fundamental Rights
of the European Union

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PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE**fundamental.rights@consilium.eu.int**

**Bruxelles, le 12 juillet 2000
(OR. Fr/Es)****CHARTE 4414/00****CONTRIB 270****NOTE DE TRANSMISSION**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne

Veillez trouver ci-après une contribution de M. Rodriguez BEREIJO, Représentant du gouvernement d'Espagne. ¹

¹ Ce texte a été soumis en langues française et espagnole.



Representación Permanente de España
ante la
Unión Europea

**CONTRIBUTION DE M. ALVARO RODRIGUEZ BEREIJO, REPRESENTANT DU
PRESIDENT DU GOUVERNEMENT ESPAGNOL, AU SEIN DE LA CONVENTION
POUR L'ELABORATION DE LA CHARTE DES DROITS FONDAMENTAUX DE
L'UNION EUROPEENNE, RELATIVE AU CHAPITRE DES DROITS ECONOMIQUES
ET SOCIAUX.**

L'élaboration du chapitre des droits économiques et sociaux est cruciale pour la réussite de l'entreprise confiée à la Convention. Le Gouvernement espagnol accorde une grande importance à ce chapitre en tant que valeur ajoutée de la Charte au Droit communautaire, ce qui exige une combinaison adéquate de détermination et de rigueur, en accord avec le mandat du Conseil Européen de Cologne et avec les critères qui doivent guider les travaux de la Convention: ne pas attribuer de nouvelles compétences à l'Union Européenne ni étendre celles déjà existantes; ne pas modifier les Constitutions nationales des Etats Membres ; et ne pas créer de nouvelles charges ni obligations financières pour l'Union ou les Etats Membres.

A partir de ces prémisses, une affirmation adéquate des droits économiques et sociaux est une exigence impérative ayant pour conséquence directe l'évolution juridico-politique européenne. La Convention doit être à la hauteur du mandat reçu et éviter, d'une part, des formulations génériques, étendues ou insubstantielles –qui équivaldraient à un accomplissement défectueux du mandat et frustreraient les attentes que la Charte suscite- et, d'autre part, tomber dans l'excès d'un catalogue de droits juridiquement inapplicable et ne pouvant être assumé politiquement. Cet exercice d'équilibre et de pondération, dans le but de la recherche d'un consensus, se révèle tout particulièrement nécessaire dans le chapitre économique et social, dont la rédaction devrait prendre en spéciale considération les critères suivants :

- a) Ne pas altérer ce qui est prévu dans le Traité CE, ni vider de leur contenu les procédures que celui-ci établit en vue de l'adoption de la législation communautaire ;
- b) Ne pas imposer de charges financières additionnelles à l'Union ou à ses Etats Membres ;
- c) configurer des préceptes suffisamment « ouverts » tels qu'ils puissent contenir les différentes options de la politique économique de l'Union ou des Etats Membres, pour ce faire, la formule « en accord avec la législation et les pratiques nationales des Etats Membres » pourrait être

très utile, en accord avec la Charte Sociale Européenne et avec la Charte Communautaire des Droits Sociaux Fondamentaux des travailleurs; et,

- d) ne pas énoncer d'objectifs de la politique économique, conformément au mandat de Cologne.

Ainsi dessiné le périmètre spécifique du chapitre économique et social, et une fois admise la nécessité de l'alimenter aussi bien de droits subjectifs que de principes recteurs –comme il en découle de la clause horizontale 44.2-, nous devons identifier quels préceptes appartiennent à l'une ou l'autre catégorie et les formuler en accord avec leur caractère spécifique.

D'un point de vue juridique, sont considérées « droits » les facultés qui peuvent s'exercer directement d'elles mêmes dans le respect d'autres droits, de biens protégés et de valeurs reconnues. De ce fait, elles ont un caractère subjectif qui dérive de la sphère d'action de l'individu et font partie, en tant que droits de liberté et d'égalité, de la dignité de la personne dans une société démocratique.

De leur côté, les “principes” informent la législation et la pratique judiciaire et lient dans leurs agissements les pouvoirs publics. Il ont une force juridique négative, étant donné qu'ils limitent la disponibilité du législateur, qui dans l'exercice de son pouvoir ne peut les contredire ou les méconnaître. En fin, les “principes recteurs” pourront seulement être invoqués devant l'autorité judiciaire en accord avec ce qui est prévu dans les lois qui effectivement les développent.

Cette distinction a nécessairement des conséquences pratiques dans la formulation des préceptes correspondants: les “droits” proprement dits seront rédigés de la même manière que les droits classiques de liberté et d'égalité.

Au contraire, les “principes” doivent refléter leur caractère inspirateur de la politique sociale et économique, tout en évitant dans leur rédaction l'utilisation du terme « droit » pour des raisons de clarté et afin de ne pas induire en erreur. La décision relative à l'opportunité de leur développement, par lequel ils deviennent des droits de prestations concrètes, appartient à la volonté du législateur ou de l'autorité compétente, communautaire ou nationale, à qui l'on ne peut contraindre dans sa liberté d'agir moyennant l'imposition d'une obligation de faire dérivée d'un principe recteur. Cependant, si le législateur, dans l'exercice de son pouvoir, décidait de les développer, il devra en tous cas, respecter le contenu essentiel de ceux-ci.

La rédaction des « principes » exige, en définitive, un langage qui n'impose pas son développement législatif, ainsi que l'introduction d'une référence expresse au principe de subsidiarité en tant que critère de base pour un éventuel développement. (De même, certains droits subjectifs peuvent nécessiter un renvoi à la législation nationale, conséquence, en tous cas, du partage des compétences entre la Communauté et les Etats Membres).

En tant qu'illustration, on pourrait qualifier de droits sociaux subjectifs, entre autres, le droit au travail et au libre choix d'une profession ou d'un métier ; à la santé et à la sécurité au travail ; au repos ; à la liberté syndicale ; à la négociation et action collective ; et à la non discrimination du travail pour raison de sexe. De leur côté, seraient considérés « principes recteurs » le droit à la sécurité sociale ; à l'assistance sanitaire ; à un logement digne ; à la protection des consommateurs ; et à la protection de l'environnement.

En conclusion, l'élaboration du chapitre économique et social demande un soin tout particulier. Si, en matière de droits fondamentaux de liberté et d'égalité, le défi fondamental consiste à trouver le juste équilibre entre l'autonomie de la Charte et la sécurité juridique, dans le chapitre économique et social on doit tenir particulièrement présents ces critères: la non imposition de nouvelles obligations financières à l'Union ou aux Etats Membres, la non altération des compétences de l'Union ou des Etats Membres et la non imposition aux gouvernements des obligations d'agir de caractère programmatique qui entravent leur liberté d'action en vue d'orienter leurs politiques économiques.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

**Brussels, 13 July 2000 (17.07)
(OR. de)****CHARTE 4417/00****CONTRIB 273****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find attached a letter from Mr Roman HERZOG, President of the Convention, forwarded by Mr Caspar EINEM, member of the Austrian National Council.

Dr CASPAR EINEM
Member of the National Council

Wasagasse 11/55
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Tel/Fax:
0043-01-317 28 05
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caspar.einem@aon.at

Vienna, 13 July 2000

Dear Sir,

Please allow me to take this opportunity to make a number of comments and suggestions with regard to the discussions of the Convention.

1. Re Article 31a.

The title should read "**Equal treatment of women and men**" to make it clear that it concerns active measures to compensate for disadvantage.

The text should read:

"(1) The Union shall promote the equal treatment of women and men and thereby equality of opportunity, in particular in the areas of work and employment, including equal pay for equal work or work of equal value.

(2) Measures may be taken to promote genuine equality of treatment and/or to ensure that preference is given to the disadvantaged gender when individuals are equally qualified."

Reasons:

The wording "Equal treatment of men and women", as proposed by the Praesidium following Vitorino, is permissible where there are disadvantages that cannot be remedied because it disposes that inequality be treated equally.

This should also expressly remove the concern expressed in discussions in the Convention about preference being given to less qualified women over better qualified men. Preference given to the disadvantaged gender when individuals are equally qualified is what is involved.

2. Re Article 37

The text of this Article should read as follows:

(1) The minimum age of admission to employment must not be lower than the minimum school leaving age.

(2) Young people must have conditions of work and work protection appropriate to their age.

(3) Child labour is prohibited.

Reasons:

The reference to any more favourable arrangements that may exist in Member States may be deleted here and should be expressed in a horizontal Article.

The second paragraph may be worded more concisely without any loss of substance.

In order to make the message clear to the citizens concerned, the third paragraph should be expressly included even if its substance is already contained in paragraph 1.

3. Re Article 46a.

I would propose that an additional horizontal Article be included after "Article 46. Scope", to read as follows:

"Article 46a. Comparison of advantageousness

Any more favourable arrangements existing in the Member States, shall remain unaffected."

Reasons:

The discussions in the Convention have shown that, in particular in the area of economic and social fundamental rights, some Member States are seriously concerned that their often more extensive rights of the beneficiaries could be prejudiced by less extensive rights in the Charter. The new Article should take account of this understandable concern.

I should be obliged if you would pass on these suggestions to the other members of the Convention.

Yours faithfully,

Caspar Einem

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ENTWURF DER CHARTA DER GRUNDRECHTE DER EUROPÄISCHEN UNION**fundamental.rights@consilium.eu.int**

Brüssel, den 17. Juli 2000**CHARTE 4421/00****CONTRIB 277****ÜBERMITTLUNGSVERMERK**

Betr.: Entwurf der Charta der Grundrechte der Europäischen Union

Finden Sie bitte nachstehend eine Stellungnahme von Herrn Jo LEINEN, Mitglied des Europäischen Parlaments, zum Artikel 24 (Politische Parteien). ¹

¹ Dieser Text wurde nur in deutscher Sprache übermittelt.

Beitrag zum Chartakonvent zum Artikel 24 – Politische Parteien

Eingereicht von **Jo Leinen MdEP**

Den Artikel 24 wie folgt **beibehalten**:

Artikel 24:

Jeder Bürger der Union hat das Recht, mit anderen eine politische Partei auf der Ebene der Europäischen Union zu gründen.

Begründung

Nach der Debatte zu den Artikeln 1-30 am 10.7.00, insbesondere zum Artikel 24 möchte ich noch einmal darauf hinweisen, dass bei einer Streichung des Artikel 24 eine große Lücke im politischen Gefüge der Europäischen Union bestehen bleiben würde. Nach der in Convent 36 vorgeschlagenen Neuformulierung für Artikel 17 (der jetzt nur noch die "...politische... Versammlung" erwähnt, nicht aber politische Parteien), erscheint es umso wichtiger, den Artikel 24 mit einer expliziten Erwähnung der "*politischen Parteien auf europäischer Ebene*" **zu erhalten**. Artikel 17 deckt zwar unzweideutig das Recht ab, politischen Parteien beizutreten, aber es ist nicht klar, ob er auch die Gründung von Parteien auf transnationaler- europäischer Ebene garantiert. Durch Art 191 des EG Vertrages wird den Parteien auf europäischer Ebene eine klare Rolle zugeschrieben. Sie sind unentbehrlich für die Meinungsbildung und die Gestaltung des politischen Prozesses in Europa.

Die Charta der Grundrechte richtet sich an die Organe der Union, gleichzeitig muß sie die grundrechtlichen Rahmenbedingungen für den politischen Prozess in Europa festlegen – wie dies auch durch das Wahlrecht zum Europaparlament in Artikel 25 geschieht. Dabei handelt es sich, im Gegensatz zu Artikel 17, der sich an "jede Person" richtet, um ein **Europäisches Bürgerrecht**. Ich plädiere daher für die Beibehaltung von Art 24 in der revidierten Fassung (Konvent 36, mein Vorschlag siehe oben) als Recht jedes Unionsbürgers, auf europäischer Ebene eine politische Partei zu gründen.

Der Satzteil nach dem Komma ("...und jede Person hat das Recht, dieser beizutreten") ist durch Artikel 17 gedeckt und kann entfallen.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

**Brussels, 28 July 2000
(OR. fr)****CHARTE 4422/00****CONVENT 45****PRESIDENCY NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union
– Complete text of the Charter proposed by the Praesidium

The Members of the Convention will find below the complete text of the Charter proposed by the Praesidium in the light of discussions in the Convention. Members may forward their general comments on this draft, by 1 September 2000, to the following address:

Jean-Paul.Jacque@consilium.eu.int,

indicating:

- "for the attention of Mr Jansson" (for the representatives of the national Parliaments)
- "for the attention of Mr Mendez de Vigo" (for the members of the European Parliament delegation)
- "for the attention of Mr Braibant" (for the personal representatives).

The Secretariat will forward these comments to the relevant addressee.

PREAMBLE

1. The peoples of Europe have established an ever closer union between them and are resolved to share a peaceful future based on common values.
2. The Union is founded on the indivisible, universal principles of the dignity of men and women, freedom, equality and solidarity; it is based on the principle of democracy and the rule of law.
3. The Union contributes to the development of these common values while respecting the diversity of the cultures and traditions of the peoples of Europe as well as the national identities of the Member States and the organisation of their public authorities at national, regional and local levels; it ensures balanced and sustainable development through the free movement of persons, goods, capital and services.
4. In adopting this Charter the Union intends to enhance the protection of fundamental rights in the light of changes in society, social progress and scientific and technological developments by making those rights more visible.
5. This Charter reaffirms, with due regard for the powers and tasks of the Community and the Union and the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions common to the Member States, the Treaty on European Union, the Community Treaties, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Community and by the Council of Europe and the case law of the Court of Justice of the European Communities and of the European Court of Human Rights.
6. Enjoyment of these rights entails responsibilities and duties with regard to other persons, to the human community and to future generations.
7. Each person is therefore guaranteed the rights and freedoms set out hereafter.

CHAPTER I. DIGNITY

Article 1. Dignity of the person

The dignity of the person must be respected and protected.

Article 2. Right to life

1. Everyone has the right to life.
2. No one shall be condemned to the death penalty, or executed.

Article 3. Right to the integrity of the person

1. Everyone has the right to respect for his physical and mental integrity.
2. In the fields of medicine and biology, the following principles must be respected in particular:
 - free and informed consent of the person concerned,
 - prohibition of eugenic practices, in particular those concerned with the selection of persons,
 - prohibition on making the human body and its parts a source of financial gain,
 - prohibition of the reproductive cloning of human beings.

Article 4. Prohibition of torture and inhuman or degrading treatment and punishment

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Article 5. Prohibition of slavery and forced labour

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. Trafficking in human beings is prohibited.

CHAPTER II. FREEDOMS

Article 6. Right to liberty and security

Everyone has the right to liberty and security of person.

Article 7. Respect for private and family life

Everyone has the right to respect for his private and family life, his home and the confidentiality of his communications.

Article 8. Protection of personal data

Everyone has the right to the protection of personal data concerning him. Such data must be processed fairly for specified purposes on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him, and the right to have it rectified. Compliance with these rules shall be subject to control by an independent authority.

Article 9. Right to marry and right to found a family

The right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights.

Article 10. Freedom of thought, conscience and religion

Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.

Article 11. **Freedom of expression and information**

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.
2. Freedom of the media and freedom of information shall be guaranteed with due respect for pluralism and transparency.

Article 12. **Freedom of assembly and of association**

Everyone has the right to freedom of peaceful assembly and to freedom of association, in particular in political, trade union and civic matters.

Political parties at European level contribute to expressing the political will of the citizens of the Union.

Article 13. **Freedom of research**

Scientific research shall be free of constraint.

Article 14. **Right to education**

1. Everyone has the right to education and to have access to vocational and continuing training. This right includes the right to receive free compulsory education.
2. The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be guaranteed, in accordance with the national laws governing the exercise of such freedom and right.

Article 15. **Freedom to choose an occupation**

1. To earn a living, everyone has the right to engage in a freely chosen occupation.
2. Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide or receive services in any Member State.
3. Nationals of third countries who are authorised to reside in the territories of the Member States are entitled to working conditions equivalent to those of citizens of the Union.

Article 16. **Freedom to conduct a business**

The freedom to conduct a business is recognised.

Article 17. **Right to property**

1. Every person has the right to own, use, dispose of and bequeath his lawfully acquired possessions. No one may be deprived of his possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation. The use of property may be regulated insofar as is necessary for the general interest.
2. Intellectual property shall be protected.

Article 18. **Right to asylum**

The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty establishing the European Community.

Article 19. **Protection in the event of removal, expulsion or extradition**

1. Collective expulsions are prohibited.
2. No one may be removed, expelled or extradited to a State where he could be subjected to the death penalty, torture or other inhuman or degrading treatment.

CHAPTER III. EQUALITY**Article 20.** **Equality before the law**

Everyone, man or woman, is equal before the law.

Article 21. **Equality and non-discrimination**

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.
2. Within the scope of application of the Treaty establishing the European Community and of the Treaty on European Union, and without prejudice to the special provisions of those Treaties, any discrimination on grounds of nationality shall be prohibited.

Article 22. **Equality between men and women**

Equal opportunities and equal treatment for men and women as regards employment and work, including equal pay for equal work or for work of equal value, must be ensured.

The principle of equal treatment shall not prevent the maintenance or adoption of measures providing for specific advantages in order to make it easier for the under-represented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers.

Article 23. **Protection of children**

1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.
2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.

Article 24. **Integration of persons with disabilities**

Persons with disabilities have the right to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.

CHAPTER IV. SOLIDARITY

Article 25. **Workers' right to information and consultation within the undertaking**

Workers and their representatives must be guaranteed information and consultation in good time on matters which concern them within the undertaking, in accordance with Community law and national laws and practices.

Article 26. **Right of collective bargaining and action**

Employers and workers have the right to negotiate and conclude collective agreements and, in cases of conflicts of interest, to take collective action to defend their interests, in accordance with Community law and national laws and practices.

Article 27. **Right of access to placement services**

Everyone has the right of access to a placement service.

Article 28. **Protection in the event of unjustified dismissal**

Every worker has the right to protection against unjustified dismissal.

Article 29. **Fair and just working conditions**

1. Every worker has the right to working conditions which respect his or her health, safety and dignity.
2. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

Article 30. **Protection of young people at work**

The employment of children is prohibited. The minimum age of admission to employment must not be lower than the minimum school-leaving age without prejudice to such rules as may be more favourable to young people and except for limited derogations.

Young people admitted to work must have working conditions appropriate to their age and be protected against economic exploitation and any work likely to harm their safety, health or physical, mental, moral or social development or to interfere with their education.

Article 31. **Reconciling family and professional life**

The family shall enjoy legal, economic and social protection.

Everyone shall have the right to reconcile their family and professional lives, which includes in particular the right to protection from dismissal because of pregnancy and the right to paid maternity leave and to parental leave following the birth or adoption of a child.

Article 32. **Social security and social assistance**

1. The Union recognises and respects the entitlement to social security benefits and social services providing protection in the event of maternity, illness, industrial accidents, dependency or old age and in the event of loss of employment, in accordance with the rules laid down by Community law and national laws and practices.
2. Workers who are nationals of a Member State residing in another Member State, and members of their families, have the right to the same social security benefits, social advantages and access to health care as nationals of that State.
3. The Union recognises and respects the right to social assistance and housing benefit in order to ensure a decent existence for persons lacking sufficient resources, in accordance with the rules laid down by Community law and national laws and practices.

Article 33. **Health care**

Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices.

Article 34. **Access to services of general economic interest**

The Union respects the access to services of general economic interest as provided for in national laws and practices in accordance with the provisions of the Treaty establishing the European Community in order to promote the social and territorial cohesion of the Union.

Article 35. **Environmental protection**

All Union policies shall ensure the protection and preservation of a good quality living environment and the improvement of the quality of the environment, taking into account the principle of sustainable development.

Article 36. **Consumer Protection**

Union policies shall ensure a high level of protection as regards the health, safety and interests of consumers.

CHAPTER V. CITIZENSHIP**Article 37.** **Right to vote and to stand as a candidate in elections to the European Parliament**

1. Every citizen of the Union has the right to vote and to stand as a candidate in elections to the European Parliament in the Member State in which he resides, under the same conditions as nationals of that State.
2. Members of the European Parliament shall be elected by direct universal suffrage by free and secret ballot.

Article 38. **Right to vote and to stand as a candidate at municipal elections**

Every citizen of the Union has the right to vote and to stand as a candidate at municipal elections in the Member State in which he resides under the same conditions as nationals of that State.

Article 39. **Right to good administration**

1. Every person has the right to have his affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union.
2. This right includes:
 - the right of every person to be heard before any individual measure which would affect him adversely is taken in relation to him;
 - the right of every person to have access to his file, while respecting the legitimate interests of confidentiality and of business secrecy;
 - the obligation of the administration to give reasons for its decisions.
3. Every person has the right to have the Community make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.
4. Every person may write to the institutions of the Union in one of the official languages of such institutions and have an answer in the same language.

Article 40. **Right of access to documents**

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to European Parliament, Council and Commission documents.

Article 41. **Ombudsman**

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to refer to the Ombudsman of the Union cases of maladministration by Community institutions and bodies, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role.

Article 42. **Right to petition**

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to petition the European Parliament.

Article 43. **Freedom of movement and of residence**

1. Every citizen of the Union has the right to move and reside freely within the territory of the Member States.
2. Freedom of movement may be granted, in accordance with the Treaty establishing the European Community, to nationals of third countries legally resident in the territory of a Member State.

Article 44: **Diplomatic and consular protection**

Every citizen of the Union shall, in the territory of a third country in which the Member State of which he is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that Member State.

CHAPTER VI. JUSTICE

Article 45. Right to an effective remedy and to a fair trial

1. Everyone whose rights and freedoms are violated has the right to an effective remedy before a court.
2. Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.
3. Legal aid shall be made available to those who lack sufficient resources insofar as such aid is necessary to ensure effective access to justice.

Article 46. Presumption of innocence and right of defence

1. Everyone who has been charged shall be presumed innocent until proved guilty according to law.
2. Respect for the right of defence of anyone who has been charged shall be guaranteed.

Article 47. Principles of legality and proportionality of criminal offences and penalties

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national law or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed. If, subsequent to the commission of the criminal offence, the law provides for a lighter penalty, that penalty shall be applicable.

2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to international law.
3. The severity of penalties shall be proportional to the gravity of the criminal offence.

Article 48. **Right not to be tried or punished twice in criminal proceedings for the same criminal offence**

No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he has already been finally acquitted or convicted in accordance with the law.

CHAPTER VII. GENERAL PROVISIONS

Article 49. **Scope**

1. The provisions of this Charter are addressed to the institutions and bodies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers.
2. This Charter does not establish any new power or task for the Community or the Union, or modify powers and tasks defined by the Treaties.

Article 50. **Scope of guaranteed rights**

1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by the competent legislative authority. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest being pursued by the Union, other legitimate interests in a democratic society or the need to protect the rights and freedoms of others.
2. Rights recognised by this Charter which are based on the Community Treaties or the Treaty on European Union shall be exercised under the conditions and within the limits defined by those Treaties.
3. Insofar as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be similar to those conferred on them by the said Convention unless this Charter affords greater or more extensive protection.

Article 51. **Level of protection**

Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by international law and international agreements to which the Union, the Community or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' constitutions.

Article 52. **Prohibition of abuse of rights**

Nothing in this Charter shall be interpreted as implying any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms recognised in this Charter or at their limitation to a greater extent than is provided for herein.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

**Brussels, 31 July 2000 (17.08)
(OR. fr)****CHARTE 4423/00****CONVENT 46****PRESIDENCY NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union
– Text of the explanations relating to the complete text of the Charter as set out in CHARTE 4422/00 CONVENT 45

EXPLANATIONS RELATING TO THE PROVISIONS OF THE DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

The Members of the Convention will find attached an explanatory report on the provisions of the Charter. This report was drawn up by the Secretariat on the basis of instructions from the Praesidium, which requested that it be as factual as possible, setting out the texts or case law used as sources for the wording of each article and refraining from any attempt to interpret the Charter. This report reflects the text in its current state and will be amended as changes are made to the text of the Charter.

Any comments should be sent to the Secretariat either to the following e-mail address:

jean-paul.jacque@consilium.eu.int

or in writing to Jean-Paul Jacqué, Director in the Council Legal Service, Council of the European Union, 175 rue de la Loi, B-1048 Brussels.

CHAPTER I. DIGNITY

Article 1. Dignity of the person

The dignity of the person must be respected and protected.

Explanation

The dignity of the human person is the real basis of fundamental rights. For that reason the 1948 Universal Declaration of Human Rights enshrined this principle in its preamble as follows: "Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world."

Consequently, Article 1 produces the following effects, inter alia:

- 1. None of the rights laid down in this Charter may be used to harm the dignity of another person.*
- 2. The dignity of the human person is part of the actual substance of the rights laid down in this Charter and must therefore be respected, even where a right is restricted.*

Article 2. Right to life

1. Everyone has the right to life.
2. No one shall be condemned to the death penalty, or executed.

Explanation

1. *The content of paragraph 1 corresponds to the first sentence of Article 2(1) of the European Convention on Human Rights, which reads as follows:*

"1. Everyone's right to life shall be protected by law..."

The second sentence of the provision, which referred to the death penalty, was superseded by Article 1 of Protocol No 6 to the European Convention on Human Rights, which reads as follows:

"The death penalty shall be abolished. No-one shall be condemned to such penalty or executed."

Article 2(2) of the Charter is based on that provision.

2. *The right to life may, pursuant to Article 50 thereof, be subject to limitations within certain limits. However, these limitations may "not exceed those permitted by the European Convention for the Protection of Human Rights and Fundamental Freedoms." Limitations are therefore only permissible in the context of the following provisions:*
 - (a) *Article 2(2) of the European Convention on Human Rights:*

"Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

 - (a) *in defence of any person from unlawful violence;*
 - (b) *in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;*
 - (c) *in action lawfully taken for the purpose of quelling a riot or insurrection."*

 - (b) *Article 2 of Protocol No 6 to the European Convention on Human Rights:*

"A State may make provision in its law for the death penalty in respect of acts committed in time of war or of imminent threat of war; such penalty shall be applied only in the instances laid down in the law and in accordance with its provisions..."

The provisions of this Article correspond to those of the Articles of the European Convention on Human Rights quoted above. In accordance with Article 50(3), their meaning and scope are therefore similar to those of the Convention articles.

Article 3. Right to the integrity of the person

1. Everyone has the right to respect for his physical and mental integrity.
2. In the fields of medicine and biology, the following principles must be respected in particular:
 - free and informed consent of the person concerned,
 - prohibition of eugenic practices, in particular those concerned with the selection of persons,
 - prohibition on making the human body and its parts a source of financial gain,
 - prohibition of the reproductive cloning of human beings.

Explanation

The principles of this Article are already included in the Convention on Human Rights and Biomedicine. The Charter does not set out to depart from those principles.

Article 4. Prohibition of torture and inhuman or degrading treatment and punishment

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Explanation

The right in Article 4 is the right guaranteed by Article 3 of the European Convention on Human Rights, which has the same wording. In accordance with Article 50(3), its meaning and scope are therefore similar to those of that Article. The result is that limitations may not exceed those guaranteed by the Convention.

Article 5. Prohibition of slavery and forced labour

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. Trafficking in human beings is prohibited.

Explanation

The right in Article 5(1) and (2) is the right guaranteed by Article 4(1) and (2) of the European Convention on Human Rights, which has the same wording.

Pursuant to Article 50(3) of the Charter, its meaning and scope are therefore similar to those of Article 4 of the Convention. Consequently:

4. *paragraph 1 may not be limited at all;*
5. *in paragraph 2, "forced or compulsory labour" must be understood in the light of the "negative" definitions contained in Article 4(3) of the European Convention on Human Rights. That provision reads as follows:*

"For the purpose of this article the term "forced or compulsory labour" shall not include:

- (a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;*
- (b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;*
- (c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;*
- (d) any work or service which forms part of normal civic obligations."*

Paragraph 3 stems directly from the principle of human dignity and takes account of recent developments in crime. It is also based on the 1926 Slavery Convention, the 1953 Protocol to it and the 1957 Additional Convention.

CHAPTER II. FREEDOMS

Article 6. Right to liberty and security

Everyone has the right to liberty and security of person.

Explanation

The rights in Article 6 are the rights guaranteed by Article 5 of the European Convention on Human Rights.

Pursuant to Article 50(3) of the Charter, the meaning and scope of this right are similar to those of Article 5. Consequently, limitations may "not exceed those permitted by the European Convention for the Protection of Human Rights and Fundamental Freedoms." Therefore, the only limitations which are permissible are those in the context of Article 5 of the European Convention on Human Rights, which reads:

- "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:*
- (a) the lawful detention of a person after conviction by a competent court;*
 - (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;*
 - (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;*
 - (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;*
 - (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;*
 - (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.*

2. *Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.*
3. *Everyone arrested or detained in accordance with the provisions of paragraph 1.c of this article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.*
4. *Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.*
5. *Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation."*

Since the Charter is to apply within the context of the Union, the rights enshrined in Article 6 must be respected particularly when, in accordance with Title VI of the Treaty on European Union, the Union is adopting framework decisions for harmonisation in criminal matters.

Article 7. Respect for private and family life

Everyone has the right to respect for his private and family life, his home and the confidentiality of his communications.

Explanation

The rights guaranteed in Article 7 correspond to those guaranteed by Article 8 of the European Convention on Human Rights. To take account of developments in technology the word "correspondence" has been replaced by "communications".

In accordance with Article 50(3), the meaning and scope of this right are similar to those of the corresponding article of the Convention. Consequently, the limitations to this right which are

permissible are those which result from the Convention. Article 8 of the Convention reads as follows:

- "1. Everyone has the right to respect for his private and family life, his home and his correspondence.*
- 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."*

Article 8. Protection of personal data

Everyone has the right to the protection of personal data concerning him. Such data must be processed fairly for specified purposes on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him, and the right to have it rectified. Compliance with these rules shall be subject to control by an independent authority.

Explanation

This Article is based on Article 286 of the Treaty establishing the European Community and Directive 95/46/EC of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995) as well as on Article 8 of the ECHR and on the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data which has been ratified by all the Member States. [The latter Convention is currently being amended to enable the European Communities to accede.] The right to protection of personal data may be limited under the conditions set out in Article 50.

Article 9. Right to marry and right to found a family

The right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights.

Explanation

This Article is based on Article 12 of the European Convention on Human Rights, which reads as follows: "Men and women of marriageable age have the right to marry and to found a family according to the national laws governing the exercising of this right." To take account of changes in society, the wording has been altered to cover cases in which national legislation recognises arrangements other than marriage for founding a family.

Article 10. Freedom of thought, conscience and religion

Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.

Explanation

This right corresponds to the right guaranteed in Article 9 of the European Convention on Human Rights and, in accordance with Article 50(3) of the Charter, has similar meaning and scope. Limitations must therefore respect Article 9(2) of the Convention which reads as follows: "Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

Article 11. Freedom of expression and information

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.
2. Freedom of the media and freedom of information shall be guaranteed with due respect for pluralism and transparency.

Explanation

Paragraph 1 of this Article corresponds to Article 10 of the European Convention on Human Rights, which reads as follows:

- "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.*
- 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."*

Pursuant to Article 50(3) of the Charter, the meaning and scope of this right are similar to those guaranteed by the Convention and limitations may not exceed those provided for in Article 10(2) of the Convention.

Paragraph 2 of this Article spells out the consequences of paragraph 1 regarding freedom of the press and freedom of information. They are based on Court of Justice case law regarding television, particularly in case C-288/89 (judgment of 25 July 1991, Stichting Collectieve Antennevoorziening Gouda and others [1991] ECR I-4007) and the provisions of the Treaty establishing the European Community regarding rules of competition.

Article 12. Freedom of assembly and of association

Everyone has the right to freedom of peaceful assembly and to freedom of association, in particular in political, trade union and civic matters.

Political parties at European level contribute to expressing the political will of the citizens of the Union.

Explanation

Paragraph 1 of this Article corresponds to Article 11 of the European Convention on Human Rights which reads as follows:

- "1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.*
- 2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."*

The meaning and scope of the provisions of paragraph 1 are similar to those of the Convention, pursuant to Article 50(3) of the Charter. Limitations on that right may not exceed those provided for in Article 11(2) of the ECHR.

Paragraph 2 of this Article corresponds to Article 191 of the Treaty establishing the European Community.

Article 13. Freedom of research

Scientific research shall be free of constraint.

Explanation

This right is deduced from the right to freedom of thought and expression. It is to be exercised within the framework of Article 1 and subject to the limitation clause in Article 50. It is subject to respect for the dignity of the person.

Article 14. Right to education

1. Everyone has the right to education and to have access to vocational and continuing training. This right includes the right to receive free compulsory education.
2. The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be guaranteed, in accordance with the national laws governing the exercise of such freedom and right.

Explanation

This Article is based on the common constitutional traditions of Member States and on Article 2 of the Additional Protocol to the European Convention on Human Rights, which reads as follows:

"No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions."

It was considered useful to add the principle of free compulsory education. As it is worded, it merely implies that as regards compulsory education, each child has the possibility of attending an establishment which offers free education. It does not require all establishments which provide

education, in particular private ones, to be free of charge. Insofar as the Charter applies to the Union, this means that in its training policies the Union must respect free compulsory education, but this does not, of course, create new powers.

Freedom to found educational establishments is guaranteed as one of the aspects of freedom to conduct a business but it is limited by respect for democratic principles and is exercised in accordance with the arrangements defined by national legislation.

Article 15. Freedom to choose an occupation

1. To earn a living, everyone has the right to engage in a freely chosen occupation.
2. Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide or receive services in any Member State.
3. Nationals of third countries who are authorised to reside in the territories of the Member States are entitled to working conditions equivalent to those of citizens of the Union.

Explanation

Freedom to choose an occupation, as enshrined in paragraph 1, is recognised in Court of Justice case law (see inter alia judgment of 14 May 1974, Case 4/73 Nold [1974] ECR 491, paragraphs 12 to 14 of the grounds; judgment of 13 December 1979, Case 44/79 Hauer [1979] ECR 3727; judgment of 8 October 1986, Case 234/85 Keller [1986] ECR 2897, paragraph 8 of the grounds). This paragraph also draws upon Article 1(2) of the European Social Charter which was signed on 18 October 1961 and has been ratified by all the Member States, and on point 4 of the Community Charter of the Fundamental Social Rights of Workers of 9 December 1989.

The second paragraph deals with the three freedoms guaranteed by Articles 39, 43 and 49 et seq of the EC Treaty, namely freedom of movement for workers, freedom of establishment and freedom to provide services.

The third paragraph is based on TEC Article 137(3), fourth indent, and on Article 19(4) of the European Social Charter signed on 18 October 1961 and ratified by all the Member States.

Article 16. Freedom to conduct a business

The freedom to conduct a business is recognised.

Explanation

This Article is based on Court of Justice case law which has recognised freedom to exercise an economic or commercial activity (see judgments of 14 May 1974, Case 4/73 Nold [1974] ECR 491, paragraph 14 of the grounds, and of 27 September 1979, Case 230-78 Eridiana and others [1979] ECR 2749, paragraphs 20 and 31 of the grounds) and freedom of contract (see inter alia Sukkerfabriken Nykøbing judgment, Case 151/78 [1979] ECR I, paragraph 19 of the grounds, and judgment of 5 October 1999, C-240/97 Spain v. Commission (not yet published), paragraph 99 of the grounds) and TEC Article 4(1) and (2) which recognises free competition.

Article 17. Right to property

1. Every person has the right to own, use, dispose of and bequeath his lawfully acquired possessions. No one may be deprived of his possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation. The use of property may be regulated insofar as is necessary for the general interest.
2. Intellectual property shall be protected.

Explanation

This Article is based on Article 1 of the Additional Protocol to the European Convention on Human Rights:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

This is a fundamental right common to all national constitutions. It has been recognised on numerous occasions by the case law of the Court of Justice, initially in the Hauer judgment (13 December 1979, ECR [1979] 3727). The wording has been updated but, pursuant to Article 50(3), the meaning and scope of the right are similar to those of the right guaranteed by the Convention and the limitations may not exceed those provided for in the Convention.

Protection of intellectual property, one aspect of the right of property, is explicitly mentioned because of its growing importance.

Article 18. Right to asylum

The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty establishing the European Community.

Explanation

The text of the Article is based on TEC Article 63 which requires the Union to respect the Geneva Convention on refugees. The provisions of Article 1 of Protocol No 7 to the European Convention on Human Rights concerning procedural safeguards in the event of expulsion have not been incorporated, as most Member States have not signed or ratified that Protocol.

Article 19. Protection in the event of removal, expulsion or extradition

1. Collective expulsions are prohibited.
2. No one may be removed, expelled or extradited to a State where he could be subjected to the death penalty, torture or other inhuman or degrading treatment.

Explanation

Paragraph 1 of this Article is based on Article 4 of Protocol No 4 to the European Convention on Human Rights concerning collective expulsion. Its purpose is to guarantee that every decision is based on a specific examination and that no single measure can be taken to expel all persons who are nationals of a particular State.

*Paragraph 2 incorporates case law from the European Court of Human Rights regarding Article 3 of the European Convention on Human Rights (see *Ahmed v. Austria*, judgment of 17 December 1996, ECR 1996 VI.2206 and *Soering*, judgment of 7 July 1989).*

CHAPTER III. EQUALITY**Article 20. Equality before the law**

Everyone, man or woman, is equal before the law.

Explanation

*Article 2 corresponds to a principle which has been included in all European constitutions since the 1789 Declaration of Human and Civil Rights and has also been recognised by the Court of Justice in a judgment as a basic principle of Community law (judgment of 13 November 1984, *Racke*, Case 283/83 [1984] ECR 3791, judgment of 17 April 1997, Case 15/95 *EARL* [1997] ECR I-1961, and judgment of 13 April 2000, Case 292/97 *Karlsson*, not yet published).*

Article 21. Equality and non-discrimination

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.
2. Within the scope of application of the Treaty establishing the European Community and of the Treaty on European Union, and without prejudice to the special provisions of those Treaties, any discrimination on grounds of nationality shall be prohibited.

Explanation

Paragraph 1 draws on Article 13 of the EC Treaty, Article 14 of the European Convention on Human Rights and Article 11 of the Convention on Human Rights and Biomedicine as regards genetic heritage.

Paragraph 2 corresponds to Article 12 of the EC Treaty and must be applied in compliance with the Treaty.

Article 22. Equality between men and women

Equal opportunities and equal treatment for men and women as regards employment and work, including equal pay for equal work or for work of equal value, must be ensured.

The principle of equal treatment shall not prevent the maintenance or adoption of measures providing for specific advantages in order to make it easier for the under-represented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers.

Explanation

The first paragraph is based on Article 141 of the EC Treaty and draws on Article 20 of the revised European Social Charter of 3 May 1996 and on point 16 of the Community Charter.

The second paragraph is based on Article 141(4) of the EC Treaty and Article 2(4) of Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.

The principle of equal treatment does not prevent the maintenance or adoption of measures providing for specific advantages in order to make it easier for the under-represented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers.

Article 23. Protection of children

1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.
2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.

Explanation

This Article is based on the New York Convention on the Rights of the Child signed on 20 November 1989 and ratified by all the Member States, particularly Articles 3, 12 and 13 thereof.

Article 24. Integration of persons with disabilities

Persons with disabilities have the right to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.

Explanation

The principle set out in this Article is based on Article 15 of the European Social Charter and also draws on the revised Social Charter and point 24 of the Community Charter.

CHAPTER IV. SOLIDARITY**Article 25. Workers' right to information and consultation within the undertaking**

Workers and their representatives must be guaranteed information and consultation in good time on matters which concern them within the undertaking, in accordance with Community law and national laws and practices.

Explanation

This Article is based on the revised European Social Charter (Article 21) and the Community Charter (Article 17). There is a considerable Community acquis in this field: Directives 98/59/EC (collective redundancies), 77/187/EC (transfers of undertakings) and 94/45/EC (European works councils).

Article 26. Right of collective bargaining and action

Employers and workers have the right to negotiate and conclude collective agreements and, in cases of conflicts of interest, to take collective action to defend their interests, in accordance with Community law and national laws and practices.

Explanation

This Article is based on Article 1 of the European Social Charter and on point 6 of the Community Charter. The right of collective action was recognised by the European Court of Human Rights as one of the elements of trade union rights laid down by Article 11 of the European Convention on Human Rights.

Article 27. Right of access to placement services

Everyone has the right of access to a placement service.

Explanation

This Article is based on Article 2 of the European Social Charter and point 6 of the Community Charter.

Article 28. Protection in the event of unjustified dismissal

Every worker has the right to protection against unjustified dismissal.

Explanation

This Article draws on Article 24 of the revised Social Charter.

Article 29. Fair and just working conditions

1. Every worker has the right to working conditions which respect his or her health, safety and dignity.
2. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

Explanation

This Article is based on Directive 89/391/EC on the introduction of measures to encourage improvements in the safety and health of workers at work, Article 3 of the Social Charter and point 19 of the Community Charter. The right to dignity at work in particular is proclaimed in Article 26 of the revised Social Charter.

Paragraph 2 is based on Directive 93/104/EC concerning certain aspects of the organisation of working time, Article 2 of the European Social Charter and point 8 of the Community Charter.

Article 30. Protection of young people at work

The employment of children is prohibited. The minimum age of admission to employment must not be lower than the minimum school-leaving age without prejudice to such rules as may be more favourable to young people and except for limited derogations.

Young people admitted to work must have working conditions appropriate to their age and be protected against economic exploitation and any work likely to harm their safety, health or physical, mental, moral or social development or to interfere with their education.

Explanation

This Article is based on Directive 94/33/EC on the protection of young people at work, Article 7 of the European Social Charter and points 20 to 23 of the Community Charter.

Article 31. Reconciling family and professional life

The family shall enjoy legal, economic and social protection.

Everyone shall have the right to reconcile their family and professional lives, which includes in particular the right to protection from dismissal because of pregnancy and the right to paid maternity leave and to parental leave following the birth or adoption of a child.

Explanation

The first paragraph is based on Article 16 of the European Social Charter.

The second paragraph draws on Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding and Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC. It is also based on Article 8 (protection of maternity) of the European Social Charter and draws on Article 27 (right of workers with family responsibilities to equal opportunities and equal treatment) of the revised Social Charter.

Article 32. Social security and social assistance

1. The Union recognises and respects the entitlement to social security benefits and social services providing protection in the event of maternity, illness, industrial accidents, dependency or old age and in the event of loss of employment, in accordance with the rules laid down by Community law and national laws and practices.
2. Workers who are nationals of a Member State residing in another Member State, and members of their families, have the right to the same social security benefits, social advantages and access to health care as nationals of that State.
3. The Union recognises and respects the right to social assistance and housing benefit in order to ensure a decent existence for persons lacking sufficient resources, in accordance with the rules laid down by Community law and national laws and practices.

Explanation

The principle set out in paragraph 1 is based on Article 12 of the European Social Charter and point 10 of the Community Charter. The Union must respect it when exercising the powers conferred on it by Article 140 of the Treaty establishing the European Community.

The second paragraph is based on Article 13(4) of the European Social Charter and point 2 of the Community Charter and sets out the rules arising from Regulation No 1408/71 which implements Article 42 of the Treaty establishing the European Community.

The third paragraph draws on Articles 30 and 31 of the revised Social Charter and point 10 of the Community Charter. The Union must respect it in the context of policies based on Article 137 of the Treaty establishing the European Community, particularly the last paragraph.

Article 33. Health care

Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices.

Explanation

The principles set out in this Article are based on Article 152 of the EC Treaty and on Article 11 of the European Social Charter.

Article 34. Access to services of general economic interest

The Union respects the access to services of general economic interest as provided for in national laws and practices in accordance with the provisions of the Treaty establishing the European Community in order to promote the social and territorial cohesion of the Union.

Explanation

This Article is based on Article 16 of the Treaty establishing the European Community and does not of itself create any right but sets out the principle of respect by the Union for the access to services of general economic interest provided for by national provisions when it is compatible with Community legislation.

Article 35. Environmental protection

All Union policies shall ensure the protection and preservation of a good quality living environment and the improvement of the quality of the environment, taking into account the principle of sustainable development.

Explanation

The principles set out in this Article are based on Articles 2, 6 and 174 of the EC Treaty.

Article 36. Consumer Protection

Union policies shall ensure a high level of protection as regards the health, safety and interests of consumers.

Explanation

The principles set out in this Article are based on Article 153 of the EC Treaty.

CHAPTER V. CITIZENSHIP**Article 37. Right to vote and to stand as a candidate in elections to the European Parliament**

1. Every citizen of the Union has the right to vote and to stand as a candidate in elections to the European Parliament in the Member State in which he resides, under the same conditions as nationals of that State.
2. Members of the European Parliament shall be elected by direct universal suffrage by free and secret ballot.

Explanation

Paragraph 1 of this Article corresponds to the right guaranteed by Article 19(2) of the EC Treaty. Paragraph 2 corresponds to Article 190(1) of the EC Treaty. In accordance with Article 50(2) of the Charter, it applies under the conditions set out in the Treaty.

Article 38. Right to vote and to stand as a candidate at municipal elections

Every citizen of the Union has the right to vote and to stand as a candidate at municipal elections in the Member State in which he resides under the same conditions as nationals of that State.

Explanation

This Article corresponds to the right guaranteed by Article 19(1) of the EC Treaty. In accordance with Article 50(2) of the Charter, it applies under the conditions set out in the Treaty.

Article 39. Right to good administration

1. Every person has the right to have his affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union.
2. This right includes:
 - the right of every person to be heard before any individual measure which would affect him adversely is taken in relation to him;
 - the right of every person to have access to his file, while respecting the legitimate interests of confidentiality and of business secrecy;
 - the obligation of the administration to give reasons for its decisions.
3. Every person has the right to have the Community make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.
4. Every person may write to the institutions of the Union in one of the official languages of such institutions and have an answer in the same language.

Explanation

This right is based on the existence of a Community based on the rule of law and was developed in the case law which enshrined the principle of good administration (see inter alia Court of Justice judgment of 31 March 1992, Case C-255/90 P, Burbán, [1992] ECR 2253, and Court of First Instance judgments of 18 September 1995, Case T-167/94 Nölle [1995] ECR II 2589, and 9 July 1999, Case T-231/97 New Europe Consulting and others (not yet published)). The wording for that right in the first two paragraphs results from the case law (Court of Justice judgment of 15 October 1987, Case 222/86 Heylens [1987] ECR 4097, paragraph 15 of the grounds, judgment of 18 October 1989 in Case 374/87 Orkem [1989] ECR 3283, judgment of 21 November 1991 in Case C-269/90 TU München [1991] ECR I-5469, and Court of First Instance judgments of 6 December 1984 in Case T-450/93 Lisrestal [1994] ECR II-1177, 18 September 1995 in Case T-167/94 Nölle [1995] ECR II-258), and the wording regarding the obligation to give reasons comes from Article 253 of the EC Treaty.

Paragraph 3 reproduces the right guaranteed by Article 288 of the EC Treaty.

Paragraph 4 reproduces the right guaranteed by the third paragraph of Article 21 of the EC Treaty.

In accordance with Article 50(2) of the Charter, those rights are to be applied under the conditions and within the limits defined by the Treaties.

Article 40. Right of access to documents

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to European Parliament, Council and Commission documents.

Explanation

The right guaranteed in this Article is the right guaranteed by Article 255 of the EC Treaty. In accordance with Article 50(2), it applies under the conditions defined by the Treaty.

Article 41. Ombudsman

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to refer to the Ombudsman of the Union cases of maladministration by Community institutions and bodies, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role.

Explanation

The right guaranteed in this Article is the right guaranteed by Articles 21 and 195 of the EC Treaty. In accordance with Article 50(2) of the Charter, it applies under the conditions defined by the Treaty.

Article 42. Right to petition

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to petition the European Parliament.

Explanation

The right guaranteed in this Article is the right guaranteed by Article 21 and 194 of the EC Treaty. In accordance with Article 50(2) of the Charter, it applies under the conditions defined by the Treaty.

Article 43. Freedom of movement and of residence

1. Every citizen of the Union has the right to move and reside freely within the territory of the Member States.
2. Freedom of movement may be granted, in accordance with the Treaty establishing the European Community, to nationals of third countries legally resident in the territory of a Member State.

Explanation

The right guaranteed by paragraph 1 is the right guaranteed by Article 18 of the EC Treaty. In accordance with Article 50(2) of the Charter, it applies under the conditions and within the limits defined by the Treaty.

Paragraph 2 refers to the power granted to the Community by Article 62(3) and Article 63(4) of the EC Treaty.

Article 44. Diplomatic and consular protection

Every citizen of the Union shall, in the territory of a third country in which the Member State of which he is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that Member State.

Explanation

The right guaranteed by this Article is the right guaranteed by Article 20 of the EC Treaty. In accordance with Article 50(2), it applies under the conditions defined by the Treaty.

CHAPTER VI. JUSTICE

Article 45. Right to an effective remedy and to a fair trial

1. Everyone whose rights and freedoms are violated has the right to an effective remedy before a court.
2. Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

3. Legal aid shall be made available to those who lack sufficient resources insofar as such aid is necessary to ensure effective access to justice.

Explanation

Paragraph 1 is based on Article 13 of the European Convention on Human Rights:

"Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

However, in Community law the protection is more extensive since it guarantees the right to an effective remedy before a court. The Court of Justice enshrined the principle in its judgment of 15 May 1986 (Case 222/84 Johnston [1986] ECR 1651; see also judgment of 15 October 1987, Case 222/86 Heylens [1987] ECR 4097 and judgment of 3 December 1992, Case C-97/91 Borelli [1992] ECR I-6313). According to the Court, this principle also applies to the Member States when they are implementing Community law. The inclusion of this precedent in the Charter is not intended to change the appeal system laid down by the Treaties, and particularly the rules relating to admissibility. This principle is to be implemented according to the procedures laid down in the Treaties.

Paragraph 2 corresponds to Article 6(1) of the European Convention on Human Rights which reads as follows:

"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice."

In Community law, the right to a fair hearing is not confined to disputes relating to civil law rights

and obligations. That is one of the consequences of the fact that the Community is a community based on the rule of law as stated by the Court in Case 294/83, "Les Verts" v. European Parliament (judgment of 23 April 1986, [1988] ECR 1339); that means that there is a right to an effective judicial remedy (among the many precedents, Johnston, Case 222/84, judgment of 15 May 1986, [1986] ECR 1682, and the other cases cited above). Nevertheless, in all respects other than their scope, the guarantees afforded by the Convention apply in a similar way to the Union.

With regard to paragraph 3, it should be noted that in accordance with the case law of the European Court of Human Rights, provision should be made for legal aid where the absence of such aid would make it impossible to ensure an effective remedy (ECHR Judgment of 9.10.1979, Airey, Series A, Volume 32, 11). There is also a system of legal assistance for cases before the Court of Justice of the European Communities. That being so, it was deemed important to enshrine this principle in the Charter.

Article 46. Presumption of innocence and right of defence

1. Everyone who has been charged shall be presumed innocent until proved guilty according to law.
2. Respect for the right of defence of anyone who has been charged shall be guaranteed.

Explanation

This Article is based on Article 6(2) and (3) of the European Convention on Human Rights, which reads as follows:

- "2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.*
3. *Everyone charged with a criminal offence has the following minimum rights:*
 - (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;*
 - (b) to have adequate time and facilities for the preparation of his defence;*

- (c) *to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;*
- (d) *to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;*
- (e) *to have the free assistance of an interpreter if he cannot understand or speak the language used in court."*

In accordance with Article 50(3), the meaning and scope of this right are similar to those of the right guaranteed by the European Convention on Human Rights.

Article 47. Principles of legality and proportionality of criminal offences and penalties

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national law or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed. If, subsequent to the commission of the criminal offence, the law provides for a lighter penalty, that penalty shall be applicable.
2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to international law.
3. The severity of penalties shall be proportional to the gravity of the criminal offence.

Explanation

This Article follows the traditional principle of the non-retroactivity of laws and criminal sanctions. There has been added the principle of the retroactivity of a more lenient penal law which exists in a number of Member States and which features in Article 15 of the Covenant on Civil and Political Rights.

Article 7 of the European Convention on Human Rights is worded as follows:

- "1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.*
- 2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations."*

In paragraph 2, the reference to "general principles of law recognised by civilised nations" has been replaced by the more modern reference to "general principles of international law"; this does not change the meaning of this paragraph, which refers to crimes against humanity in particular. Paragraph 3 states the general principle of proportionality between penalties and criminal offences which is enshrined in the common constitutional traditions of the Member States and in the case law of the Court of Justice of the Communities.

Article 48. Right not to be tried or punished twice in criminal proceedings for the same criminal offence

No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he has already been finally acquitted or convicted in accordance with the law.

Explanation

Article 4 of Protocol No 7 to the European Convention of Human Rights reads as follows:

- "1. No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State.*

2. *The provisions of the preceding paragraph shall not prevent the reopening of the case in accordance with the law and the penal procedure of the State concerned, if there is evidence of new or newly discovered facts, or if there has been a fundamental defect in the previous proceedings, which could affect the outcome of the case.*
3. *No derogation from this Article shall be made under Article 15 of the Convention."*

The "non bis in idem" principle applies in Community law (see, among the many precedents, the judgment of 5 May 1996, Cases 18/65 and 35/65, Gutmann v. Commission [1966] ECR 103 and a recent case, the decision of the Court of First Instance of 20 April 1999, Joined Cases T-305/94 and others, Limburgse Vinyl Maatschappij NV v. Commission, not yet published). The rule prohibiting cumulation refers to cumulation of two penalties of the same kind, that is to say criminal law penalties.

*In accordance with Article 48, the "non bis in idem" principle applies not only within the jurisdiction of one State but also between the jurisdictions of several Member States. That corresponds to the *acquis* in Union law; see Articles 54 to 58 of the Schengen Convention, Article 7 of the Convention on the Protection of the European Communities' Financial Interests and Article 10 of the Convention on the fight against corruption. The very limited exceptions in those Conventions permitting the Member States to derogate from the "non bis in idem" principle are covered by the horizontal clause in Article 50(1) of the Charter regarding limitations.*

CHAPTER VII. GENERAL PROVISIONS

Article 49. Scope

1. The provisions of this Charter are addressed to the institutions and bodies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers.

2. This Charter does not establish any new power or task for the Community or the Union, or modify powers and tasks defined by the Treaties.

Explanation

The aim of this provision is to determine the scope of the Charter. It seeks to establish clearly that the Charter applies primarily to the institutions and bodies of the Union, within the framework of the Union's powers and tasks. In other words, the Charter applies only to matters covered by Community competence and the tasks of the Union, in compliance with the principle of subsidiarity. This provision is in keeping with Article 6(2) of the Treaty on European Union, which requires the Union to respect fundamental rights, and with the mandate issued by Cologne European Council. The term "institutions" is enshrined in the EC Treaty, Article 7 of which lists the institutions. The term "body" is commonly used to refer to all the authorities set up by the Treaties or by secondary legislation (see Article 286(1) of the Treaty establishing the European Community).

It follows unambiguously from the case law of the Court of Justice that the requirement to respect fundamental rights is also binding on the Member States when they act in the context of Community law (judgment of 13 July 1989, Case 5/88 Wachauf [1989] ECR 2609; judgment of 18 June 1991, ERT [1991] ECR I-2925). The Court of Justice recently confirmed this case law in the following terms: "In addition, it should be remembered that the requirements flowing from the protection of fundamental rights in the Community legal order are also binding on Member States when they implement Community rules..." (judgment of 13 April 2000, Case C-292/97, paragraph 37 of the grounds, not yet published). The second paragraph confirms that the Charter does not affect the competences and tasks which the Treaties confer on the Community and the Union

Article 50. Scope of guaranteed rights

1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by the competent legislative authority. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest being pursued by the Union, other legitimate interests in a

democratic society or the need to protect the rights and freedoms of others.

2. Rights recognised by this Charter which are based on the Community Treaties or the Treaty on European Union shall be exercised under the conditions and within the limits defined by those Treaties.
3. Insofar as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be similar to those conferred on them by the said Convention unless this Charter affords greater or more extensive protection.

Explanation

The purpose of this provision is to set the scope of the rights guaranteed. Paragraph 1 deals with the arrangements for the limitation of rights. The wording is based on the case law of the Court of Justice: "...it is well established in the case law of the Court that restrictions may be imposed on the exercise of fundamental rights, in particular in the context of a common organisation of the market, provided that those restrictions in fact correspond to objectives of general interest pursued by the Community and do not constitute, with regard to the aim pursued, disproportionate and unreasonable interference undermining the very substance of those rights" (judgment of 13 April 2000, Case C-292/97, paragraph 45 of the grounds).

Paragraph 2 specifies that where a right results from the Treaties it is subject to the conditions and limits laid down by them. The Charter does not alter the system of rights conferred by the Treaties. Paragraph 3 lays down the arrangements for rights which are also guaranteed by the European Convention on Human Rights. Where the Charter does not afford greater or more extensive protection, the meaning and scope of those rights are similar to those conferred on them by the European Convention on Human Rights. It goes without saying that the term "convention" covers both the Convention and its Protocols and that the meaning and scope of the rights are determined not only by the text of the Convention but also by the case law of the European Court of Human Rights. "Scope" means not only the extent of the rights as they result from the Convention but also the arrangements for limitations.

Article 51. Level of protection

Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by international law and international agreements to which the Union, the Community or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' constitutions.

Explanation

The aim of the provision is clear - to maintain the level of protection currently afforded by Union law, national law and international law. Owing to its importance, mention is made of the European Convention on Human Rights, which constitutes a minimum standard in all cases. The level of protection afforded by the Charter may not, in any instance, be lower than that guaranteed by the Convention, with the result that the arrangements for limitations may not fall below the level provided for in the Convention.

Article 52. Prohibition of abuse of rights

Nothing in this Charter shall be interpreted as implying any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms recognised in this Charter or at their limitation to a greater extent than is provided for herein.

Explanation

*This Article corresponds to Article 17 of the European Convention on Human Rights:
"Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention."*

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 14 July 2000 (14.7)
(multilingual version: En/Fr/Dk)**CHARTE 4427/00****CONTRIB 281****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a contribution from Dr. Erling OLSEN, representative of the Danish government, relating to a horizontal article concerning the relation between the Charter and the ECHR.

”Les droits dans les articles.....ont la même signification que les droits correspondants garantis par la Conventions Européenne des Droits de l’Homme et interprétés par la Cour Européenne des Droits de l’Homme.

Ces droits seront uniquement appliqués á un Etat Membre dans la mesure où il a adhéré á la Convention et ses protocoles tout en prenant en considération les réserves ou dérogations formulées par ledit Etat Membre”.

”The rights in Articles..... have the same meaning as the corresponding rights guaranteed under the ECHR as interpreted by the European Court of Human Rights.

These rights apply to a Member State only to the extent to which it has consented to be bound in relation to that Convention and its protocols and subject to any reservations or derogations in force for that Member State”.

”Rettighederne i artiklerne..... skal forstås i overensstemmelse med de tilsvarende rettigheder garanteret af Den Europæiske Menneskerettighedskonvention som fortolket af Den Europæiske Menneskerettighedsdomstol.

Disse rettigheder finder udelukkende anvendelse over for en medlemsstat i det omfang den har tilsluttet sig Den Europæiske Menneskerettighedskonvention og dens tillægsprotokoller og under hensyn til de forbehold, som den pågældende medlemsstats har taget”.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 20 July 2000**CHARTE 4428/00****CONTRIB 282****COVER NOTE**

Subject : Draft Charter of Fundamental rights of the European Union

Please find hereafter a contribution submitted by Lord Goldsmith QC, personal representative of the Government of the United Kingdom, on the structure of the draft Charter.

The European Union's Charter of Fundamental Rights and Freedoms and Common Principles

(Structure)

Chapter 1: Fundamental Rights

Rights of Individual Persons

Right to life (2)

Right to respect for the integrity of the human person (3)

Prohibition of torture and inhuman treatment (4)

Prohibition of slavery and forced labour (5)

Right to liberty and security (6)

Right to a fair trial (8/9)

Justice

No punishment without law (10)

Right not to be tried or punished twice [in criminal proceedings for the same offence] (11)

Respect for private [and family] life (12)

Right to marry and found a family (13)

Right to education (16)

[Equality and] Non-discrimination (22)

Right to property (20)

Equality between men and women

Right to effective remedy (7)

Chapter 2: Fundamental Freedoms

Freedom of thought, conscience and religion (14)

Freedom of expression (15)

Freedom of assembly and association (17)

Chapter 3: Foundations of the EU/EC

Freedom of movement of workers (30)

Freedom of establishment

Freedom of provision of services

Freedom of movement of goods

Freedom of capital

Chapter 4: Rights of Citizenship

Right to vote and to stand as a candidate for European Parliament (25)

Right to vote and to stand as a candidate in municipal elections (26)

Relations with the administration (27) including Ombudsman (28) & Right to petition (29)

Diplomatic and consular protection (29a)

Right of access to documents (18)

Chapter 5: Principles of Social Protection

Introduction to principles of Social Protection (18a)

Data Protection (19)

[Children's rights (23)]

Freedom of work (31)

[Workers' right to information and consultation within the undertaking (32)]

[Rights of collective bargaining and action (33)]

Fair and just working conditions (34)

Protection of young people at work (35)

Combining family and professional life (maternity/paternal leave) (37)

[Right of migrant workers to equal treatment (38)]

Social security and social [assistance] advantages (39)

Health Care (40)

Integration of persons with disabilities (41)

[Environmental protection (42)]

[Consumer Protection (43)]

Chapter 6: General Articles

Scope and definition of rights, freedoms and principles (44)

Conditions and limits obliged by the treaty [Scope of Guaranteed Rights] (45)

Level of Protection (46)

Prohibition of abuse of rights (47)

Lord Goldsmith, QC

18 July 2000

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 20 July 2000**CHARTE 4429/00****CONTRIB 283****COVER NOTE**

Subject : Draft Charter of fundamental rights of the European Union

Please find hereafter a contribution submitted by Lord Goldsmith QC, personal representative of the government of the United Kingdom, on the Preamble.¹

¹ This text has been submitted in English language only.

The European Union's Charter of Fundamental Rights and Freedoms and Common Principles

Preamble

Whereas:

1. The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law - principles which are common to the Member States;
2. The four freedoms enshrined in the Treaties establishing the European Communities namely, freedom of movement of goods, persons, services and capital continue to be enjoyed by citizens and implemented by the institutions and Member States as fundamental rights in the Union;
3. The Union is also obliged to respect fundamental rights as guaranteed by the ECHR and as they result from the constitutional traditions common to the Member States, as general principles of Community law;
4. The Union respects the Member States' national identities and the principle of subsidiarity;
5. All fundamental rights of the individual flow from the dignity of the person and the equality of each and every person before the law;
6. Enjoyment of these fundamental rights and freedoms entails responsibilities and duties, both towards other individuals and to society as a whole;
7. The Union recognises that, in addition to fundamental rights and freedoms, there are certain principles, especially in the field of social protection, which are common to all Member States. These are recognised in each Member State to the extent and in accordance with limitations appropriate in each Member State; its own national, regional and local identity; and the principle of subsidiarity;
8. At this stage in the Union's development there is a need to consolidate in a Charter the fundamental rights and freedoms applicable at Union level and the principles common to Member States to make them more visible to the union's citizens;

9. The Union's institutions and bodies [and the Member States when implementing community law] should respect these fundamental rights and freedoms and have due regard to those principles whilst respecting the principle of subsidiarity and the need, in accordance with the Community's overriding task in article 2 of the Treaty establishing the European Community. This task is to promote a harmonious, balanced and sustainable development of economic activities, a high level of employment and of social protection, equality between men and women, sustainable development and non-inflationary growth, a high degree of competitiveness and convergence of economic performance, a high level of protection and improvement of the quality of environment, the raising of the standard of living and quality of life, economic and social cohesion and solidarity among Member States;

10. Having regard to the constitutional traditions common to the Member States, the Community Treaties and the European Convention of Human Rights and drawing upon the Social Charters adopted by the Community and by the Council of Europe, as well as the jurisprudence of the Court of Justice of the European Communities and the European Court of Human Rights;

The Council, European Commission and European parliament proclaim in this Charter the following fundamental rights and freedoms and principles of social protection:

Lord Goldsmith, QC

18 July 2000

ENTWURF DER CHARTA DER GRUNDRECHTE DER EUROPÄISCHEN UNION**fundamental.rights@consilium.eu.int**

Brüssel, den 20. Juli 2000**CHARTE 4430/00****CONTRIB 284****ÜBERMITTLUNGSVERMERK**

Betr.: Entwurf der Charta der Grundrechte der Europäischen Union

Finden Sie bitte nachstehend eine Stellungnahme von Herrn Jürgen Gnauck, Vertreter des Deutschen Bundestages, zu den sozialen Rechten (Bezugsdokumente: Charta 4383/00 CONVENT 41 und CHARTE 4399/00 CONVENT 42).¹

¹ Dieser Text wurde uns nur in deutscher Sprache übermittelt.

Thüringer Staatskanzlei • Postfach 997 • 99021 Erfurt

Minister für Bundes- und
Europaangelegenheiten und
Chef der Staatskanzlei

An das
Sekretariat des Konvents
Rue de la Loi/Wetstraat 175

B-1048 Brüssel

Per Fax (0032-2-285 78 37)!

Per E-mail (Margit.Huy@consilium.eu.int)!

Geschäftszeichen:

Ihr Zeichen, Ihre Nachricht vom

Telefon

Datum

33/KI-03145

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Stellungnahme des Vertreters des Bundesrates im Konvent zu den Kompromissvorschlägen des Präsidiums zu den sozialen Rechten in den Dokumenten CHARTE 4383/00 CONVENT 41 und CHARTE 4399/00 CONVENT 42

Sehr geehrte Damen und Herren,

in der Sitzung des Konvents am 10./11. Juli 2000 wurde mit der Prüfung der Artikel 31 bis 50 begonnen. Die Prüfung soll in der nächsten Sitzung des Konvents am 17./18./19. Juli 2000 abgeschlossen werden. Mit Schreiben vom 31. Mai 2000 habe ich Ihnen bereits meine Änderungsvorschläge zu den Vorschlägen des Präsidiums zu den sozialen Rechten übermittelt. Nunmehr hat das Präsidium Anfang Juli seine Kompromissvorschläge zu den sozialen Rechten in den Dokumenten CHARTE 4383/00 CONVENT 41 und CHARTE 4399/00 CONVENT 42 veröffentlicht. Aus diesem Grund sehe ich mich veranlasst, nochmals auf grundsätzliche Positionen der deutschen Länder zu den sozialen Grundrechten einzugehen. Eine ausführliche Stellungnahme liegt meinem Schreiben bei. Ich möchte Sie bitten, diese den Mitgliedern des Konvents in der kommenden Sitzung am 17./18./19. Juli 2000 bekanntzugeben.

Mit freundlichen Grüßen

Jürgen Gnauck
Minister

Entwurf einer Charta der Grundrechte der Europäischen Union**Stellungnahme des Vertreters des Bundesrates im Konvent, Herrn Minister Jürgen Gnauck, zu den sozialen Rechten**

Angesichts der derzeitigen Beratungen im Konvent zu den sozialen Rechten sehe ich mich veranlasst, nochmals die grundsätzliche Position der deutschen Länder zu diesen Rechten darzulegen:

Die deutschen Länder bekennen sich zum Sozialstaatsprinzip. Auf dieser Grundlage sind sie in Deutschland Garanten eines hohen sozialen Schutzniveaus. Die Länder halten zugleich die soziale Dimension der Europäischen Union für wichtig und treten für eine Europäische Sozialordnung ein.

Hiervon zu unterscheiden ist jedoch die Frage, ob die vorgeschlagenen sozialen Gewährleistungen in eine Grundrechtecharta der Europäischen Union aufgenommen werden sollten. Die deutschen Länder orientieren sich hierbei an folgenden Kriterien:

Der Entwurf einer Grundrechtecharta hat sich streng an das Mandat des Europäischen Rates von Köln zu halten. Danach sind wirtschaftliche und soziale Rechte lediglich zu „berücksichtigen“, und zwar allein dann, wenn sie nicht nur Ziele für das Handeln der Union begründen. Es soll ein Katalog von Rechten erstellt werden, der die Bindung der Europäischen Union an die fundamentalen Rechtsüberzeugungen der Mitgliedstaaten für die Unionsbürger deutlich sichtbar macht. Nicht geht es um ein politisches Grundsatzprogramm der Union. Politische Zielbestimmungen scheiden mithin aus.

Des Weiteren darf es mit der Charta zu keinerlei Kompetenzerweiterung auf der Ebene der Europäischen Union kommen. Eine detaillierte Befassung mit Sachverhalten, für deren Regelung die Union nicht zuständig ist, mindert die angestrebte Wirkung der Charta, da die Union in diesen Bereich Rechte nicht selbst gewähren kann.

Es ist darüber hinaus stets darauf zu achten, dass die sozialen Rechte justizierbar, d. h. von den Gerichten anwendbar sind.

Ungeachtet all dessen wird die Charta entwertet, wenn sie mit Details überfrachtet wird. Nicht jede soziale Errungenschaft, die die europäischen Staaten auszeichnet, hat die Qualität eines unveräußerlichen Rechts, das auch und gerade unabhängig von der wirtschaftlichen Leistungsfähigkeit eines Gemeinwesen bestehen muss.

Schließlich soll die Charta knapp, lesbar und bürgerfreundlich formuliert sein, so dass sie sich auf allgemeinere, weniger detaillierte Regelungen beschränken muss. Diesen Ansatz hat sich der Konvent gerade auch bei den elementaren Rechten zu Eigen gemacht. Er sollte bei den sozialen Rechten von diesem sachgerechten Bestreben nicht abgehen. Es ist daher zu prüfen, ob nicht Regelungen auf der „einfachgesetzlichen“ Ebene ausreichen.

Da die Charta nach dem Mandat des Europäischen Rates die Rechtsbindung des Handelns der Organe der Union zum Ausdruck bringen soll und es damit um Verpflichtungen der hoheitlichen Gewalt geht, besteht schließlich kein Raum, eine unmittelbare Drittwirkung der Grundrechte, d. h. eine Verpflichtung auch von Bürgerinnen und Bürger oder Unternehmen, zu regeln. Die Länder lehnen eine solche Ausweitung grundsätzlich ab. Auch unter diesem Gesichtspunkt wäre bei einigen Regelungen eine weit größere Zurückhaltung angebracht, um durch einen Rechtstext nicht unerfüllbare Erwartungen bei den Unionsbürgern zu wecken.

An dieser von Beginn an vertretenen Auffassung halten die deutschen Länder unverändert fest. Sie betonen, dass es sich bei den sozialen Rechten in erster Linie nur um Abwehrrechte gegenüber der europäischen Hoheitsgewalt handeln darf, keinesfalls aber um Ansprüche des Einzelnen auf konkrete soziale Leistungen. Darüber hinaus bestehen keine Bedenken dagegen, Respektierungs- und Förderungspflichten in die Charta aufzunehmen, soweit sie nicht nur Ziele für das Handeln der Union begründen oder zu einer Kompetenzausweitung führen. Schließlich haben sich die Länder bereits dafür ausgesprochen, den Grundsatz der Solidarität in der zukünftigen Präambel zu verankern. Damit würde eine zusätzliche Werteentscheidung getroffen, die allen Mitgliedstaaten und den deutschen Ländern gemein ist.

Diesen Vorstellungen kommt der von Prof. Braibant und Prof. Meyer unter dem 13.06.2000 ausgehandigte Kompromissvorschlag nahe, dessen Konzeption (Respektierung/Schutz/Förderung) ebenfalls auf der Vorstellung beruht, soziale Rechte nur als Abwehrrechte in der Charta zu verankern. Prof. Meyer hat diesen Aspekt während der Konferenzberatungen mehrfach betont. Allerdings ist es aus der Sicht der Länder unabdingbar, dass der Charakter der sozialen Grundrechte als reiner Abwehrrechte stärker hervorgehoben wird, als das in dem angesprochenen Kompromisspapier der Fall ist. Für eine solche Klarstellung bieten sich die sogenannten horizontalen Regelungen (derzeit Art. 46 Abs. 2) an.

Soweit es um die Ausgestaltung der einzelnen sozialen Rechte geht, erscheint es für deren Beurteilung sinnvoll, den für Ende Juli angekündigten neuen Präsidiumsvorschlag abzuwarten.

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE**fundamental.rights@consilium.eu.int****Bruxelles, le 7 septembre 2000
Document multilingue****A L'ATTENTION DES MEMBRES DE LA CONVENTION****OBSERVATIONS RECUES RELATIVES AU
DOCUMENT CHARTE 4422/00 CONVENT 45**

Veillez trouver, pour information, un recueil des observations reçues, classées par ordre alphabétique:

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M. Barros Moura

Observations générales sur le projet de la Charte des Droits Fondamentaux (Charte 4422)

Je souscris les observations faites par Mr. Jürgen Meyer et autres (lettre du 30 août), à l'exception de la sous-alinéa ii. de l'alinéa b) du point II (Questions particulières) concernant la transparence des médias (article 11, 2, liberté d'expression), en ajoutant les observations suivantes:

1. Le numéro 3. du préambule devrait mentionner expressément la diversité linguistique.
2. Au texte du numéro 5 du préambule il faut ajouter la référence au droit international en général, en parallèle avec l'article 51° du projet, pour garantir la cohérence interne de la Charte.
3. A propos du numéro 3. de l'article 15° j'insiste, encore une fois, sur le fait que le principe de non discrimination des conditions de travail s'impose même si le travailleur reside illégalement dans le pays membre. En plus, il faut décourager l'utilisation par les employeurs de cette possibilité de *dumping* social...
4. La garantie de l'article 22° ne devrait pas se limiter à l'emploi et au travail. D'autres aspects, tels que la sécurité sociale, devraient aussi être compris. Pour cela suffit l'utilisation d'une formule exemplificative comme, par exemple, nottament.
5. A l'article 26° il faudrait expliciter que les droits respectifs peuvent être exercés à tous les niveaux, y compris le niveau européen. C'est la précisément la valeur ajoutée d'une Charte Européenne, tenant compte des dispositions du Traité.
6. A l'article 28° il convient d'ajouter le droit à une compensation dans les cas de licenciement par cause économique (tenant compte des directives européennes sur les licenciements collectifs).
7. La référence, dans l'article 30° à la possibilité de "derogations bien delimitées" au principe sur l'âge minimale ne devrait pas figurer dans un texte fondamentale comme la Charte doit être. En plus, l'article 50°, tenant compte de l'article 51°, permet résoudre le problème de la permission du travail d'enfants à caractère formatif et sans préjudice de la personnalité physique et morale de l'enfant. La dérogation doit donc disparaître.
8. L'article 34° devrait reprendre de la Déclaration n° 13 annexe au Traité d'Amsterdam, sur l'interprétation de l'article 16° (ex-article 7°-D) du Traité CE, la référence aux principes de l'égalité de traitement, de qualité et de continuité des services d'intérêt général.

9. L'article 43° semble être la place idéale pour garantir, en tant que noyau dur de la libre circulation européenne, l'exercice des droits prévus dans la Charte dans le pays de l'Union de résidence de la personne. Par exemple, les droits prévus à l'article 12° doivent être expressément garantis dans le pays de résidence.
10. Peut-être un article horizontal pourrait expliciter que les droits prévus par la Charte sont applicables aux personnes morales ou collectives dans toute la mesure compatible avec sa nature non humaine. Par exemple, il faut garantir la protection des données concernant les entreprises et c'est vrai que ces données-là ne revêtent pas un caractère personnel tel qu'il est prévu par l'article 8° du projet. Un article horizontal est une solution.

Les soussignés, **José Barros Moura** et **Maria Eduarda Azevedo**, représentants de Assembleia da República, Portugal, adoptent la position commune ci devant sur l'avant-projet de Charte proposé par le Praesidium (Charte 4422/00). Sur les questions de non-accord, chacun des représentants du Parlement portugais présente ou souscrit des positions différenciées.

Observations générales

En général, le texte préparé par le Praesidium a pris en compte les contributions orales et écrites des membres de la Convention et mérite une appréciation favorable. Mais il faut continuer le débat pour améliorer le texte, combler ses lacunes, corriger les imperfections qui subsistent. Nous avons le temps en conformité avec le mandat de Tampere, et serait une grave erreur limiter le débat seulement à cause des convenances d'un calendrier de la Présidence française. En tout cas, nous avons le temps jusqu'au 25 septembre pour faire le débat en profondeur qui est encore indispensable. Pas question, donc, de précipiter les choses dans la réunion du 11 et 12 septembre.

En ce qui concerne la systématique, il conviendrait de ne pas se référer, comme il est fait dans divers articles, aux "législations nationales" et "au droit communautaire". Nous demandons, en conséquence, la suppression de cette référence aux articles 9, 18, 25, 26, 32, 33 et 34.

Compte tenu de la disposition horizontale de l'article 49, al. 1 et 2, cette référence est superflue. Pour des considérations liées à la systématique, la Convention a convenu de formuler les questions horizontales séparément dans le but notamment de faciliter la lisibilité de la Charte et l'identification du citoyen avec l'UE.

La systématique du projet fait croire au citoyen que l'on tend à diluer des articles spécifiques par rapport à d'autres, ce qui n'est pas l'intention de la Convention et ne correspond pas au mandat de Cologne. Par ailleurs, elle peut faire croire que des droits fondamentaux relevant, dans leur acception générale, du droit premier sont valables sous réserve de réglementations nationales ou de

futures révisions du traité. Cette impression serait regrettable et contraire à l'esprit de l'article 6, al. 1 du traité de l'UE dans lequel il est dit expressément que l'Union accorde une priorité absolue au respect des droits de l'Homme et des libertés fondamentales. C'est pourquoi nous proposons la suppression pure et simple de l'article 50, al. 2.

Nous approuvons l'énumération au point 5 du préambule des principales sources dont s'inspire la Charte qui est, conformément au mandat de Cologne, la Convention européenne des droits de l'Homme, les traditions constitutionnelles communes des Etats membres, la Charte sociale européenne et la Charte communautaire des droits sociaux fondamentaux des travailleurs. Cependant, la cohérence du projet risque d'être compromise si l'on omet de mentionner ces sources également à l'article 51. Le préambule et l'article 51 relient entre eux les diverses parties du projet. C'est pourquoi nous plaidons en faveur de l'insertion également à l'article 51, en tant que niveau de protection minimal, les Chartes sociales adoptées par la Communauté et le Conseil de l'Europe. Et, *vice versa*, la mention au préambule du droit international en général en parallèle avec l'article 51 du projet pour assurer la cohérence interne de la Charte.

Peut-être un article horizontal pourrait expliciter que les droits prévus par la Charte sont applicables aux personnes morales ou collectives dans toute la mesure compatible avec sa nature non humaine. Par exemple, il faut garantir la protection des données concernant les entreprises et c'est vrai que ces données-là ne revêtent pas un caractère personnel tel qu'il est prévu par l'article 8 du projet.

D'une manière générale, il conviendrait de vérifier une nouvelle fois très attentivement l'équivalence des notions employées dans les différentes langues du texte de la Charte.

Nous espérons que la Convention disposera du texte de la Charte dans toutes les langues de l'UE avant sa transmission aux chefs d'état et de gouvernement.

Observations particulières

Le **numéro 3 du préambule** devrait mentionner expressément la diversité linguistique.

Article 10. Liberté de pensée, de conscience et de religion

Il convient d'ajouter à cet article un deuxième alinéa dans lequel sera inscrit le *droit à l'objection de conscience*. L'insertion donne suite à toute une série d'amendements et aux points de vue exprimés par une majorité au cours de la discussion à la Convention.

Article 13. Liberté de la recherche

Il convient d'ajouter à cet article la *liberté des sciences, de l'enseignement et des arts*. Cet ajout correspond à une proposition précédente du Présidium (Convent 13, art.15 al. 2, à l'exception de "l'enseignement") que la Convention n'avait pas critiquée à cet égard. Bien au contraire, plusieurs délégués avaient souligné, au cours du débat, l'importance de cet alinéa, le justifiant dans un grand nombre d'amendements. Par ailleurs, ces libertés correspondent aussi bien aux traditions constitutionnelles communes des Etats membres qu'aux conventions internationales.

Article 15. Liberté d'exercice d'une profession

Nous insistons, encore une fois, sur le fait que le principe de non-discrimination des conditions de travail s'impose même si le travailleur réside illégalement dans le pays membre. En plus, il faut décourager l'utilisation par les employeurs de cette possibilité de *dumping social*...

Article 22. Egalité entre hommes et femmes

La garantie ne devrait pas se limiter à l'emploi et au travail. D'autres aspects, tels que la formation professionnelle, la sécurité sociale, etc., devraient aussi

être compris. Pour cela suffit l'utilisation d'une formule exemplificative comme, par exemple, notamment.

Article 26. Droit de négociation et action collective

Il faudrait expliciter que les droits respectifs peuvent être exercés a tous les niveaux, y compris le niveau européen. C'est la précisément la valeur ajoutée d'une Charte Européenne, tenant compte des dispositions du Traité.

Article 30. Protection des jeunes au travail

La possibilité de "dérogations bien délimitées" au principe sur l'âge minimal" ne devrait pas figurer dans un texte fondamental comme la Charte doit être. En plus, l'article 50°, tenant compte de l'article 51°, permet résoudre le problème de la permission du travail d'enfants a caractère formatif et sans préjudice de la personnalité physique et morale de l'enfant. La dérogation doit donc disparaître.

Article 32. Sécurité sociale et aide sociale

Tout en approuvant l'article tel que formulé à l'alinéa 1 nous proposons de placer en tête de l'énumération de l'assurance sociale et des services sociaux les termes "*plus particulièrement*" afin de souligner que cette énumération n'est pas limitative. Les droits fondamentaux devant, par définition, avoir un caractère aussi durable que possible, il convient d'éviter toute liste limitative d'exemples, car les développements futurs dans ce domaine ne sont pas prévisibles.

Par ailleurs, le Présidium n'a retenu à l'alinéa 3, ce que nous déplorons, qu'un seul aspect du "droit au logement", à savoir l'aide au logement. Rappelons encore dans ce contexte que le "*droit au logement*" est reconnu en droit international par tous les Etats membres (cf. notamment art. 25, al. 1 de la Déclaration universelle des droits de l'Homme, art. 11 du Pacte international des Nations Unies relatif aux droits économiques, sociaux et culturels, art. 27, al. 3 de la Convention des Nations Unies relative aux droits de l'enfant, art. 31 de la Charte sociale européenne révisée) et ancré dans nombre de constitutions des

Etats membres (art. 23 Belgique, par. 15 a Finlande, art. 21, al. 4 Grèce, art. 22, al. 2, art. 65 Portugal, chapitre 1, par. 2 Suède, art. 47 Espagne; implicitement art. 1, 13, 14 et 20 Allemagne).

Article 34. Accès aux services d'intérêt général

Le texte devrait reprendre de la Déclaration n° 13 annexe au Traité d'Amsterdam, sur l'interprétation de l'article 16° (ex-article 7°-D) du Traité CE, la référence aux principes de l'égalité de traitement, de qualité et de continuité des services d'intérêt général.

Article 43. Liberté de circulation et de séjour

Voilà la place idéale pour garantir, en tant que noyau dur de la libre circulation européenne, l'exercice des droits prévus dans la Charte dans le pays de l'Union de résidence de la personne. Par exemple, les droits prévus à l'article 12° doivent être expressément garantis dans le pays de résidence

L'alinéa 2 de cet article ne définit pas de droit fondamental et annonce seulement une future révision éventuelle du traité susceptible de créer un droit à la libre circulation en faveur des ressortissants de pays tiers. L'article 63 n° 4 du traité de la CEE autorise l'égalité de traitement des ressortissants de pays tiers concernant la liberté de circulation. La liberté de circulation constitue, selon l'article 13 de la Déclaration universelle des droits de l'Homme, l'article 12 du Pacte international relatif aux droits civils et politiques et l'article 2 du protocole n°4 de la Convention européenne des droits de l'Homme, un droit de l'Homme et non pas un droit civil.

Il conviendrait d'étendre, dans la Charte des droits fondamentaux, la liberté de circulation aux ressortissants d'Etats tiers en substituant à l'alinéa 1 les termes "toute personne" au terme "citoyen", ou encore de supprimer l'alinéa 2.

Lisbonne 30 août, 2000

José Barros Moura

Maria Eduarda de Azevedo

PROF. ANNA BENAKIS M.P.
VICE PRESIDENT
OF THE HELLENIC PARLIAMENT

ATHENS, 30.8.2000

To the attention of **mr. Jansson**

PROF. ANNA BENAKIS M.P.
VICE PRESIDENT
OF THE HELLENIC PARLIAMENT

Παρατηρήσεις ANNAS ΜΠΕΝΑΚΗ-ΨΑΡΟΥΔΑ

(ΕΛΛΑΣ) επί του Σχεδίου Convent 45:

Αρθρ. 3 : Θα πρέπει να προστεθεί ένας επί πλέον όρος ότι: <<όλες οι ιατρικές πράξεις πρέπει να λαμβάνουν χώρα προς το συμφέρον του ατόμου>>.

Αρθρ. 8 : Επειδή σε περιπτώσεις δίωξης εγκληματικών πράξεων δέν πρέπει να επιτρέπεται η πρόσβαση στα αρχεία διωκτικών αρχών, πρέπει στο τρίτο εδάφιο και μετά τη φράση <<να έχει πρόσβαση στα συλλεγμένα δεδομένα που το αφορούν>> να προστεθεί η φράση <<σύμφωνα με τους περιορισμούς που ορίζει ο νόμος>>. Αυτό είναι σύμφωνο και με τη σχετική Κοινοτική Οδηγία.

Αρθρ. 10 : Οι θρησκευτικές πεποιθήσεις πρέπει να μπορούν να εκφράζονται καθ' οιονδήποτε τρόπο και όχι μόνο με τη λατρεία, την παιδεία κ.λπ. Γι' αυτό πρέπει το δεύτερο εδάφιο να διαμορφωθεί: <<Το δικαίωμα αυτό συνεπάγεται....., καθώς και το δικαίωμα της καθ' οιονδήποτε τρόπο εκδήλωσης του θρησκευματοςδημοσία ή κατ' ιδίαν, ιδίως με τη λατρεία..... και τις τελετουργίες>>.

Αρθρ. 11 : Στην παράγρ. 2 πρέπει να κατοχυρωθεί ο πάσης φύσεως έλεγχος του ΜΜΕ μέσω ανεξάρτητης διοικητικής αρχής. Γι' αυτό προτείνεται να προστεθεί το εξής εδάφιο: <<Ο σεβασμός των κανόνων αυτών υπόκειται στον έλεγχο ανεξάρτητης διοικητικής αρχής>>.

2

Αρθρ. 14 : Στο τέλος της παρ. 2 πρέπει να τεθεί η φράση: <<Κατά την άσκηση των δικαιωμάτων τους οι γονείς πρέπει πάντα να ενεργούν προς το συμφέρον του παιδιού>>.

Αρθρ. 15 : Σε σχέση με την παράγραφο αυτή πρέπει να διευκρινισθεί, εάν η προστασία περιλαμβάνει και τα πληρώματα υπηκόων τρίτων χωρών επί εμπορικών πλοίων χωρών της Ευρωπαϊκής Ένωσης. Αν ναι, η εξομοίωση πρέπει να περιορισθεί και να μην ισχύει ως προς τις αμοιβές και την κοινωνική ασφάλιση, αλλά να ακολουθούνται οι όροι των χωρών της υπηκοότητας των πληρωμάτων.

Αρθρ. 22 : Το άρθρο αυτό περιορίζει το πεδίο εφαρμογής της ισότητας μόνο στον τομέα της απασχόλησης και της εργασίας και γι' αυτό βρίσκεται πολύ πιο πίσω από το κοινοτικό κεκτημένο των άρθρ. 2 και 3 παρ.2 της Συνθήκης της Ε.Κ. Γι' αυτό και στην παράγρ.1 πρέπει να τεθεί μετά την φράση <<ίση μεταχείριση ανδρών και γυναικών>> η φράση <<σε όλους τους τομείς και ιδίως στον τομέα της απασχόλησης>>.

Η παράγρ.2 του άρθρου βρίσκεται ομοίως πολύ πιο πίσω από τα άρθρα 2 και 3 παρ. 2 της Συνθήκης που υποχρεώνουν την Ένωση να <<προωθεί>> την ισότητα <<σε όλους τους τομείς>> καθώς και με το άρθρο 141 παρ.4 της Συνθήκης και με τη Διακήρυξη Νο28 που προσαρτάται στη Συνθήκη του Αμστερνταμ. Για το λόγο αυτό ή πρέπει να αντικατασταθεί η παράγρ. 2 σύμφωνα με την πρότασή μου Contrib. 251 ή πρέπει να συμπληρωθεί με την εξής φράση: <<Μέχρις ότου εξασφαλισθεί η πλήρης ισότητα ανδρών και γυναικών η αρχή της ισότητας δεν εμποδίζει την διατήρηση ή υιοθέτηση μέτρων που προβλέπουν ειδικά

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πλεονεκτήματα υπέρ του λιγότερο εκπροσωπούμενου φύλου. Τα μέτρα αυτά πρέπει κυρίως να αποβλέπουν στην βελτίωση της θέσης των γυναικών>>.

Αρθρ. 31: Το άρθρο αυτό παρέχει πολύ περιορισμένη προστασία της μητρότητας και μόνο σε σχέση με την επαγγελματική ζωή.

Οφείλουμε να περιλάβουμε ξεχωριστό άρθρο για την προστασία της μητρότητας σύμφωνα με το κοινοτικό κεκτημένο, που θεωρεί το δικαίωμα αυτό αυτόνομο, ώστε πέραν των άλλων να απαγορεύεται και κάθε δυσμενής μεταχείριση της εγκύου κατά την πρόσβαση στην εργασία ή κατά τη διάρκεια αυτής ή της άδειας μητρότητας, να παρέχονται διευκολύνσεις κατ' αυτήν ή όταν επιστρέφει στην εργασία και να προστατεύεται από συνθήκες εργασίας που βλάπτουν αυτήν και το παιδί.

ΕΠΙΣΗΜΗ ΜΕΤΑΦΡΑΣΗ TRADUCTION OFFICIELLE OFFICIAL TRANSLATION

No. 409218/3390

Observations of Mrs. ANNA BENAKI-PSAROUDA
(GREECE) on the Draft of Convent 45:

- Article 3:** An additional term should be added, that: "all medical acts should be made to the benefit of the person"
- Article 8:** Because, in cases of prosecution of criminal acts the persecuted person should not be given access to the files, at the third item and after the phrase "to have access to the collected data that concern him", the phrase "in accordance with the limitations of law" should be added. This is consistent with the relevant Community Directive.
- Article 10:** Religious convictions should be able to be expressed in any way, and not just by worship, education etc. This is why the second item should be formulated as follows: "This right implies ... as well as the right of manifestation of the religion in any way .. in public or in private, namely by worship .. and rituals".
- Article 11:** In paragraph 2, all forms of control of the Mass Media should be secured through an independent administrative authority. This is why we recommend the addition of the following item: "The respect of these rules is subject to the control of an independent administrative authority".
- Article 14:** The following phrase should be put at the end of paragraph 2: "In the exercise of their rights, the parents should always act to the benefit of the child".
- Article 15:** Concerning this paragraph, it should be clarified whether the protection also includes the crews of third country citizens on commercial ships of European Union countries. If so, the equal ranking should be limited and should not be applicable concerning salaries and social

ΕΠΙΣΗΜΗ ΜΕΤΑΦΡΑΣΗ TRADUCTION OFFICIELLE OFFICIAL TRANSLATION

security, for which the terms of the countries of crew citizenship should be followed.

Article 22: This article limits the scope of equality only in the field of employment and work and, for this reason, it is way behind the community acquis of articles 2 and 3 para.2 of the EU Treaty. This is why in paragraph 1, after the phrase "equal treatment of men and women", the following phrase should be added "in all fields, notably in the field of employment ...".

Paragraph 2 of the article is similarly way behind articles 2 and 3 para.2 of the Treaty that oblige the Union to "promote" equality "in all fields" as well as article 141 para.4 of the Treaty and Resolution No.28 attached to the Amsterdam Convention. For this reason, paragraph 2 should either be replaced in accordance with my recommendation Contrib.251 or supplemented with the following phrase: "Until full equality of men and women is secured, the principle of equality does not obstruct the maintenance or adoption of measures that provide for special advantages in favour of the less represented sex. These measures should mainly aim at improving the position of women".

Article 31: This article grants very limited protection of maternity and only in relation to professional life.

We ought to include a separate article on the protection of maternity in accordance with the community acquis which considers this right as autonomous so that, apart all other things, any unfavourable treatment of the pregnant woman is prohibited in her access to work or during pregnancy or during the maternity leave, so that facilities are granted during maternity leave or on return to work and so that she is protected from work conditions that may do harm to her and the child.

Γραφείο Μεταφράσεων Υπουργείου Εξωτερικών, Αθήνα Athens 31 AUG 2008
 Service des Traductions du Ministère des Affaires Étrangères de la République Hellenique, Athenes Accurate translation in Greek
 Hellenic Republic, Ministry of Foreign Affairs, Translation Service, Athens The translator: Eleni Zorimou

BERES

Bruxelles, le 30 août 2000

au Président de la Convention

chargée de l'élaboration de la Charte des Droits fondamentaux de l'Union européenne
M. Roman Herzog

aux Vice-présidents

M. Guy Braibant, pour les représentants personnels des Gouvernements
M. Gunnar Jansson, pour les représentants des Parlements nationaux
M. Mendez de Vigo, pour les représentants du Parlement européen

Monsieur le Président,
Messieurs les vice-présidents,

Je souhaite vous faire part de ma surprise s'agissant de l'actuelle rédaction de l'article 23 concernant la protection des enfants.

En effet celle-ci ne retient pas le droit de chaque l'enfant d'entretenir des relations et contacts directs et réguliers avec ses deux parents.

L'enfant n'est jamais plus en situation de détresse que lorsqu'il se retrouve privé de sa famille, de ses parents ou de l'un d'entre eux, or ce cas de figure se manifeste de plus en plus souvent à l'heure où l'Union favorise la libre-circulation, les mariages mixtes et la mobilité des personnes.

Cette situation est contraire à la Convention de New-York sur le droit des enfants (1989), qui dans son article 19 dispose :

Les Etats parties respectent le droit de l'enfant séparé de ses deux parents ou de l'un d'eux d'entretenir régulièrement des relations personnelles et des contacts directs avec ses deux parents, sauf si cela est contraire à l'intérêt supérieur de l'enfant.

La jurisprudence de la Cour européenne des droits de l'homme reconnaît régulièrement qu'une telle situation est contraire à l'article 8 de la Convention européenne des droits de l'homme.

La présidence portugaise et aujourd'hui la présidence française ont l'une et l'autre reconnu que dans le domaine civil l'harmonisation du droit de la famille est la priorité, afin de régler les conflits qui impliquent des enfants issus de couples binationaux de l'UE. Moi-même, en tant que membre de la Commission parlementaire franco-allemande de médiation, je peux témoigner des nombreux drames

frappant les couples binationaux du fait de la coexistence de systèmes judiciaires différents, et du

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désarroi dans lequel se trouvent leurs enfants subitement privés de tout contact avec l'un de leurs parents.

Comment la Charte peut-elle dès lors prétendre consacrer "l'intérêt supérieur de l'enfant", trop souvent interprété par certains tribunaux comme étant un intérêt à ne pas changer de pays, et ignorer que chacun d'entre eux a un droit et un besoin fondamental de connaître et de bénéficier d'une présence significative de ses deux parents ?

Je serais heureuse que nous puissions encore améliorer le texte du projet de charte sur ce point.

En vous remerciant par avance de l'intérêt que vous porterez à ma requête, je vous prie de croire, Monsieur le Président, Messieurs les Vice-Présidents, à l'assurance de ma haute considération.

Pervenche Berès

BERES ET GROUPE SOCIALISTE

Bruxelles, le 31 août 2000
amend-CV45.doc

M. Iñigo Méndez de Vigo
Président de la Délégation du Parlement européen
auprès de la Convention chargée de l'élaboration
de la Charte des droits fondamentaux de l'Union Européenne

Bruxelles

*Objet : Observations générales au projet de la Charte des droits fondamentaux
(CONVENT 45)*

Les députés socialistes soussignés, membres de la délégation du Parlement européen à la Convention de la Charte, remercient le Présidium pour le travail qui a abouti à l'élaboration de ce projet de Charte dans lequel nous pouvons retrouver beaucoup de nos contributions. Néanmoins, nous souhaitons faire part des remarques suivantes :

Sur la structure :

La subdivision en 7 chapitres à chaque fois avec un titre comporte une nouveauté et contribue à une plus grande lisibilité du texte, néanmoins il serait souhaitable de revoir la distribution des articles de la Charte dans ces différents titres car dans certains cas cette répartition paraît un peu forcée et artificielle.

Sur le contenu général :

La référence faite dans certains articles de la Charte, et notamment dans le chapitre SOLIDARITÉ, aux législations nationales et au droit communautaire nous semblent tout à fait superflue compte tenu des dispositions énoncées dans l'article 49 relatif au champ d'application de la Charte. Aux yeux des citoyens, cette référence constante aux législations nationales utilisée uniquement dans certaines dispositions de façon arbitraire, surtout en matière relative aux droits sociaux, peut diminuer l'importance et l'impact de ces articles vis-à-vis des autres. Or la Charte, dans son ensemble, doit mettre en évidence l'indivisibilité des droits.

C'est pourquoi nous proposons de **supprimer** cette référence faite aux articles 9, 14, 18, 25, 26, 32, 33 et 34.

Nous soutenons l'énumération faite au paragraphe 5 du préambule des principales sources qui ont inspiré la rédaction de cette Charte qui d'ailleurs correspondent au mandat de Cologne, c'est-à-dire la Convention européenne des droits de l'Homme, les traditions constitutionnelles communes des Etats membres, la Charte sociale

européenne et la Charte communautaire des droits fondamentaux sociaux des travailleurs.

Cependant, la cohérence du projet risque d'être compromise si l'on omet de mentionner ces sources également à l'article 51. Le préambule et l'article 51 relient entre eux les diverses parties du projet. C'est pourquoi nous plaidons en faveur de l'insertion également à l'article 51, en tant que niveau de protection minimal, les Chartes sociales adoptées par la Communauté et le Conseil de l'Europe.

Dans le chapitre SOLIDARITÉ, nous avons remarqué que beaucoup des articles sont rédigés d'une façon vague ou ambiguë, par exemple, nous proposons de remplacer l'expression « l'Union reconnaît et respecte », par « **Toute personne a droit** ». Ceci permet une harmonisation de la terminologie valable pour tous les articles.

Sur quelques articles en particulier :

Article 11 – Liberté d'expression et d'information

Nous souhaitons qu'au paragraphe 1 soit mentionné expressément la liberté de "**chercher**" des informations, et non pas seulement de les recevoir. Ce droit, déjà existant dans l'article 19 de la Déclaration de l'ONU de 1948, est aujourd'hui essentiel étant donné la nouvelle dimension de l'Internet.

Quant au paragraphe 2, nous proposons l'ajout suivant : "**Elle peut nécessiter des limitations aux grandes concentrations des moyens de communication**".

Article 12 – Liberté de réunion et d'association

Paragraphe 1 : Nous proposons d'ajouter « **Toute personne a le droit de fonder et d'adhérer à ces associations au niveau européen.** »

Paragraphe 2 : Nous proposons d'ajouter : « les partis politiques au niveau européen contribuent, **par voie démocratique**, à l'expression (reste inchangé) ».

Article 13 – Liberté de la recherche

Nous proposons d'ajouter à cet article « **la liberté des sciences, de l'enseignement et des arts** » ainsi qu'un nouveau paragraphe : « **Toute personne a le droit de bénéficier, dans des conditions équitables, des résultats des recherches scientifiques, notamment dans le secteur bio-médical** ».

Article 15 – Liberté professionnelle et droit de travailler

Paragraphe 1 : Nouvelle rédaction : « **Toute personne a le droit de travailler, d'exercer une profession librement choisie ou acceptée et de créer une entreprise, dans le respect du principe du développement économique et social équilibré et durable** ».

Article 16 – Liberté d'entreprise

Nous proposons l'**inclusion** de cet article, comme rédigé, dans le premier paragraphe de l'article 15.

Article 23 bis (nouveau) – Personnes âgées

« **Toute personne âgée a le droit de mener une vie indépendante et décente et de jouer un rôle actif dans la vie politique, sociale et culturelle.** »

Article 26 – Droit de négociation et d'actions collectives

Nous proposons la rédaction suivante :

« **Les organisations des travailleurs ont le droit de négocier et de conclure des conventions collectives avec des employeurs ou leurs organisations, également au niveau de l'Union, et de recourir, en cas de conflits d'intérêts, à des actions collectives, y compris le droit de grève, pour la défense de leurs intérêts.**

Les pratiques et traditions des législations nationales sont respectées au niveau européen et l'effet transnational des droits est reconnu. »

Article 29 – Conditions de travail justes et équitables

Paragraphe 1 : A ce paragraphe doit être ajouté « **tout travailleur a droit à des conditions de travail saines, sûres, dignes et à une rémunération équitable** ».

Article 32 – Sécurité sociale et aide sociale

Paragraphe 1 : « **Toute personne a droit à l'accès aux prestations de la sécurité sociale et aux services sociaux (reste inchangé)** »

Paragraphe 3 : « **Toute personne a droit à une aide sociale et le droit au logement (reste inchangé)** »

Article 34 – Accès aux services d'intérêt économique général

Nous proposons de commencer l'article par: « **Toute personne a le droit d'accès (reste inchangé)** »

Article 36 – Protection des consommateurs

Nouvelle rédaction : « **Les consommateurs ont droit à une information complète sur la qualité des biens et des services ainsi qu'à une publicité non mensongère qui répond aux critères de transparence et de vérité** ».

Article 43 – Liberté de circulation et de séjour

Nous proposons que ce droit soit étendu aux ressortissants des pays tiers ainsi le paragraphe 1 doit commencer par « **Toute personne (reste inchangé)** ».

Le **paragraphe 2** de cet article doit en conséquence être **supprimé**.

Article 50 – Portée des droits garantis

Nous proposons la suppression du paragraphe 2 actuel pour le remplacer par le texte suivant : « **les droits reconnus par la présente Charte doivent s'exercer selon les**

pratiques et législations européennes et nationales existantes et sont valables au-delà des frontières dans toute l'Union européenne. »

Paragraphe 3 : Nous proposons l'ajout suivant : « Dans la mesure où la présente Charte contient des droits correspondant à des droits garantis par la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales, **et des Chartes sociales adoptées par la Communauté et par le Conseil de l'Europe**, leur sens et leur portée sont **les mêmes** que leur confère **lesdites conventions** (reste inchangé) ».

Article 51 – Niveau de protection

Nous proposons la **suppression du mot « tous »**, avant Etat membres dans la quatrième ligne ainsi que l'insertion après « Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales, **les Chartes sociales adoptées par la Communauté et par le Conseil de l'Europe** (reste inchangé) ».

Pervenche BERÈS

Elena PACIOTTI

Ieke van den BURG

Jo LEINEN

Hans-Peter MARTIN

Jean-Maurice DEHOUSSE

Ulpu IIVARI

Catherine LALUMIÈRE

BEREIJIO

OBSERVACIONES DE ALVARO RODRIGUEZ BEREIJO. REPRESENTANTE PERSONAL DEL PRESIDENTE DEL GOBIERNO ESPAÑOL AL TEXTO CONSOLIDADO DEL PROYECTO DE CARTA DE DERECHOS FUNDAMENTALES DE LA UNION EUROPEA (Documento del Presidium CONVENT 45 DE 28 DE JULIO DE 2000)

1. A la Estructura.

Se propone cambiar la denominación del capítulo IV "Solidaridad" por "**Derechos económicos y sociales**".

Justificación: La denominación es equívoca. Cada cabeza de capítulo debe guardar una coherencia estricta con su contenido. La solidaridad es un concepto mucho más amplio que el contenido que se enuncia en este Capítulo, especialmente en el ámbito de la Unión Europea.

2. Al Preámbulo.

- punto 1 . Modificar la frase introductoria: "Les peuples européens"....por la siguiente: "**Los ciudadanos de Europa han establecido entre ellos...**".

Justificación: Precisar que los sujetos autores de la Unión son los ciudadanos europeos, más que los pueblos.

- punto 7. Se propone su modificación en la siguiente forma: "**En los términos previstos en esta Carta, se garantizan los derechos y libertades que se enumeran...**"

Justificación:

coherencia con la estructura y contenido de la Carta: la titularidad de los derechos varía en función de su contenido (por ejemplo, algunos derechos corresponden sólo a los ciudadanos de la Unión); por otra parte, la Carta no sólo enuncia derechos sino principios no directamente invocables ante los Tribunales de Justicia.

3. Al Articulado.

En reiteradas ocasiones la representación española ha insistido en la necesidad de fijar en el propio articulado la definición de cada derecho con **los límites a su ejercicio**, en aquellos casos en que, por su naturaleza, así lo requiera una definición acabada del mismo. La determinación de las limitaciones al ejercicio de un derecho son un elemento esencial de su configuración que debe figurar en la definición del propio derecho. Ello no alargaría necesariamente, el texto del artículo correspondiente, como ya se pudo comprobar en algunos borradores propuestos por el propio Presidium a la Convención.

Esta definición, positiva y negativa a la vez, del derecho no es redundante ni incompatible con la existencia de los artículos "horizontales" relativos a los límites y condiciones bajo las cuales han de ejercitarse los derechos reconocidos en la Carta.

Por otra parte, los artículos horizontales no siempre resuelven el problema de los límites específicos que definen el contenido de un derecho,

Debería, al menos, redactarse una cláusula horizontal satisfactoria (en los términos que se expresarán más adelante) para que la representación española pueda desistir de esta petición que considera imprescindible. No puede, por ejemplo, mantenerse el derecho de asociación y sindicación en los términos que recoge el artículo 12.1, que, permitiría la libre sindicación de los militares o de los jueces, sin una cláusula que habilitara a los Estados a introducir límites al ejercicio de este derecho, como de hecho sucede en el Convenio Europeo de Derechos Humanos.

Por otra parte, y respecto al Capítulo IV. "Solidaridad", donde se contienen los derechos sociales y económicos, es preciso resolver de modo satisfactorio el distinto alcance y efectos, según se trate de "derechos" (subjetivos y justiciables) o de "principios" (que rigen la activación de los poderes públicos en su política social y económica, informan la legislación positiva y la práctica judicial. Son también "derechos", desde luego, pero requieren de la mediación del legislador para ser ejercidos como derechos subjetivos, en tanto **sólo podrán ser alegados ante la autoridad judicial de acuerdo con lo que dispongan las leyes que los desarrollen.**

Esta distinción ha de traducirse, necesariamente, en el lenguaje empleado en la formulación de los artículos correspondientes. Los "derechos subjetivos" se redactarán al modo de los derechos clásicos de libertad e igualdad. Por el contrario, aquellos derechos sociales y económicos que tengan el **carácter principal** deben reflejar en su formulación, su carácter

inspirador de la política social y económica, **evitando en ellos, en aras de la claridad y para no inducir a equívocos, la utilización del término "derecho"**.

4. Al Artículo 19.2.

Se propone modificar su redacción por el siguiente texto: **"se prohíben las expulsiones masivas" o "de colectivos regularmente instalados"**.

Justificación:

Este precepto procede de un protocolo al Convenio Europeo de Derechos Humanos no ratificado por España, debido a los múltiples problemas que plantea la configuración de sus fronteras en relación con la inmigración ilegal. Se propone esta redacción puesto que de otra manera, cabría interpretar que la redacción propuesta impide la expulsión de grupos de personas que atravesasen ilegalmente la frontera.

5. Al Artículo 24.

A fin de evitar la creación de un **"derecho prestacional"** nacido directamente de la Carta y exigible a los Estados miembros, convendría formularlo de otro modo. Se propone redactar la integración de los minusválidos como un principio que vincula a los Estados miembros más que un derecho directamente exigible.

"La Unión (o los poderes públicos) garantizarán a las personas discapacitadas el acceso y las medidas ..."

6. Al Artículo 27.

Se pide su supresión.

Justificación:

No es un derecho fundamental y no debe figurar como tal en la Carta. Es más propio de la legislación laboral ordinaria.

Además, en la formulación que se propone, es un derecho vacío de contenido que carece de sentido.

7. Al artículo 32.3

Se propone la supresión (o su reformulación con una redacción diferente) del apartado 3), especialmente en lo relativo al **derecho a una ayuda a la vivienda a toda persona**.

Justificación:

Lo que se reconoce aquí es un derecho de carácter prestacional y extendido a todas las personas (es decir, universalizado), en un ámbito que es más propio de la categoría de los principios rectores. No parece procedente, pues, dotarlo de carácter de derecho subjetivo como se hace en el texto propuesto. La remisión al derecho nacional aunque salva la cuestión competencial (subsidiariedad) no hace lo mismo con su carácter no directamente vinculante o al menos justiciable como derecho subjetivo.

8. Al artículo 33

Modificación: La Unión reconoce y respeta el derecho a beneficiarse de la prevención sanitaria y de acceder a los cuidados médicos en las condiciones establecidas por las legislaciones y prácticas nacionales.

Justificación:

De acuerdo con lo que se acaba de expresar, estas prestaciones a cargo del Estado deben configurarse más como un principio rector que un derecho. Esta propuesta de formulación es por lo demás coherente con la redacción del anterior artículo 32.1 de contenido muy similar de la que sin embargo se separa el texto del Presidium sin motivo aparente.

9. Al artículo 34.

Se pide su supresión

Justificación

Recrea libremente un derecho a partir del art. 16 del Tratado de la Comunidad Europea, que, a su vez, remite a los arts. 73,86 y 87. Estos artículos encierran una gran complejidad y sería necesario un estudio más detenido sobre sus consecuencias y repercusiones antes de incluirlo en la Carta.

10. Al Artículo 35

Supresión del inciso "de un entorno con la calidad de vida adecuada".

Justificación:

Nos se alcanza a comprender el significado de esta expresión que se separa notablemente del contenido del Tratado de la Comunidad.

11. Al Artículo 49.2

Supresión del último inciso del artículo que empieza "Por consiguiente,..." sustituyéndolo una disposición horizontal ad hoc en un Artículo separado e independiente de un tenor similar al siguiente:

- 1) **Las Instituciones y órganos de la Unión así como los Estados miembros exclusivamente en la ejecución del Derecho Comunitario, deben respetar los derechos, y observar y promover la aplicación de los principios reconocidos en esta Carta, conforme a su respectiva naturaleza.**
- 2) **Los derechos enumerados en los arts. 24, 32, 33, 35 y 36 informarán la legislación positiva, la práctica judicial y la actuación de los poderes públicos. Sólo podrán ser alegados ante la autoridad judicial de acuerdo con lo que dispongan las leyes que los desarrollen"**

Justificación:

Una cosa es asegurar el principio de subsidiariedad y la interdicción de la ampliación de competencias vía Carta, y otra la diferencia entre derechos y principios. Lo primero se asegura con la disposición propuesta, estableciendo el ámbito de aplicación, el principio de subsidiariedad y el de no ampliación de competencias. El principio de subsidiariedad se refuerza en diversos artículos remitiendo, sobre todo en el caso de los derechos sociales, a las legislaciones y prácticas nacionales, remisión que, puede interpretarse fundamentalmente como un criterio de asignación de competencias entre la Comunidad y los Estados.

Cuestión distinta es la reiteradamente expresada posición de España y otros miembros de la Convención en el sentido de que deben diferenciarse los derechos directamente justiciables de aquellos otros, fundamentalmente los de carácter social, que exigen una prestación estatal. En este último

caso, más que hablar de "derechos" procede referirse a "principios", puesto que muchos derechos sociales no son invocables sin su adecuada configuración legal, que se desarrolla en cada caso en función de los recursos presupuestarios que en cada momento pueden disponerse para este fin. Si no se acepta la propuesta española, por considerar que introduce dos diferentes categorías de derechos, al menos debe dejarse clara esa diferencia al intérprete: para ello se propone utilizar la propia formulación del Presidium, que se recoge como apartado 1) de esta propuesta distinguiendo la existencia en la Carta de derechos y de principios para que puedan extraerse las correspondientes consecuencias en el ámbito del amparo judicial. Es cláusula puede completarse con la cláusula prevista en el apartado 2) que aquí se propone.

12. Al Artículo 50.3 y 52.

Supresión del último inciso del artículo 50.3 a partir de "a menos que la presente carta no garantice una protección más elevada o más amplia" hasta el final y del último inciso del artículo 52 desde "o a unas limitaciones más amplias..."

Justificación:

La razón de la supresión es su incoherencia y sus efectos. Como se anticipó, si no se prevén límites en cada derecho, como sería deseable, debe al menos establecerse una buena cláusula horizontal que permita hacerlo. En este sentido se considera que cumplen esta función, los apartados 1,2, y 3 del artículo 50. No sucede sin embargo lo mismo con el último inciso del artículo 50.3 ni con el último inciso del artículo 52. No se entiende el último inciso del artículo 50.3, puesto que si no se incluyen en la Carta los límites a los derechos, entonces la Carta siempre proporcionará una mayor protección, en la medida en que formula los derechos de manera incondicionada por comparación al CEDH, que sí limita los derechos. En tal caso, no podrían entrar en juego las limitaciones del CEDH y Protocolos Adicionales que hayan sido suscritos por los Estados miembros o las contenidas en las Constituciones nacionales y se aplicarían los derechos de la Carta **sin restricción o limitación alguna a su ejercicio**. En contra, incluso, de lo que disponga la Constitución nacional (por ejemplo, en la libertad de asociación, de sindicación, en los trabajos obligatorios ... , arts. 5, 7, 10, 11 y 12). Ello refuerza la necesidad, ya expuesta al principio de estas observaciones, de especificar en cada caso, los límites al ejercicio del derecho reconocido en la Carta, en vez de formularlos como **derechos incondicionados**. Comentarios similares pueden hacerse en relación con

el inciso final del artículo 52. En definitiva, deben suprimirse los dos incisos, puesto que de lo contrario, se neutralizaría el efecto de la cláusula horizontal, y la Carta carecería de límites, algo que es absolutamente inadmisibile para la representación española,

Madrid, 1 de agosto de 2000

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GEORGES BERTHU

Bruxelles, le 29 août 2000

A Monsieur MENDEZ DE VIGO
Président de la délégation du Parlement
européen pour la Charte des droits
fondamentaux

Objet : observations sur le projet de Charte "Convent 45"

Cher Président,

Le projet de Charte des droits fondamentaux "Convent 45" appelle de ma part les observations générales suivantes :

1. Ce projet dépasse de loin les compétences européennes existantes, et empiète sur les droits nationaux. Il ne pourrait donc être rendu contraignant que par un nouveau traité. Toutefois, en l'état présent du texte, il faut admettre que ce nouveau traité bouleverserait complètement la répartition des pouvoirs entre l'Union et les Etats membres, ce qui ne paraît guère envisageable.
2. Dans l'hypothèse plus réaliste d'une simple déclaration politique – hypothèse dans laquelle je me place - il ne semble pas que la forme du texte actuel soit adéquate. On n'imagine pas, par exemple, une déclaration politique qui ne ferait aucune référence à la légitimité principale des nations et au droit fondamental des citoyens à l'expression démocratique dans le cadre national.
3. Ces défauts sont encore plus visibles au niveau du préambule, qui paraît trop étroit et juridique. Le bon niveau, pour un préambule, est celui des valeurs. Je vous joins en annexe, à titre indicatif, une proposition de préambule tel que je l'imagine.
4. D'un point de vue juridique, la présentation du texte – d'abord des droits présentés de manière absolue, puis des limitations éventuelles rejetées de manière globale et allusive en dispositions finales – biaise la compréhension. La première impression, qui conditionne la suite, est celle de droits sans limites. Quand on en arrive enfin aux limites (articles 49 et suivants), on s'aperçoit qu'elles ne sont pas claires.

.../...

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5. La Charte est beaucoup trop axée sur les droits individuels, et très peu sur les devoirs. Par exemple, on trouve un article 19 sur la protection en cas d'éloignement, d'expulsion ou d'extradition, mais rien sur les devoirs des étrangers dont l'inobservance peut justifier ces sanctions.
6. Enfin à de nombreuses reprises, le texte actuel mentionne des droits nouveaux, non-existants, ou qui ne sont pas en vigueur, contrairement au mandat de Cologne. Par exemple (entre autres), l'article 43-2 mentionne un droit de libre circulation des ressortissants de pays tiers qui est effectivement cité par le traité d'Amsterdam, mais est soumis, pour entrer en vigueur, à une série de conditions qui ne sont pas réalisées aujourd'hui. Il est donc prématuré d'en parler, a fortiori de l'inscrire dans une Charte de l'Union européenne.

Pour ces raisons, le texte actuel appelle de ma part les plus expresses réserves.

Vous trouverez ci-joint en annexe de nouvelles propositions d'amendements qui concrétisent ces observations générales.

Je vous prie de croire, cher Président, à l'expression de mes meilleurs sentiments.

Georges BERTHU

PJ : Amendements sur le "Convent 45" déposés le 29.08.2000

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BERTHU
29 août 2000

**PROJET DE CHARTE
DES DROITS FONDAMENTAUX
DE L'UNION EUROPEENNE**

**Amendements
au texte Convent 45
du 28 juillet 2000**

PROPOSITION DE NOUVEAU PREAMBULE

Les Etats européens signataires,

Désireux de développer entre eux une Union fondée sur le respect mutuel des peuples, la démocratie et l'Etat de droit,

1. déclarent, conformément à leurs différentes Constitutions nationales, que leurs sociétés reposent sur la valeur fondamentale du respect de la personne, qui découle de son caractère sacré ; ils rejettent toute forme de mépris de l'être humain,
2. reconnaissent, en accord avec les traditions des peuples d'Europe, que cette valeur fondamentale implique :
 - le droit à la vie et à la dignité de tout être humain,
 - l'égalité devant la loi, laquelle définit et protège les droits fondamentaux,
 - la solidarité avec les plus faibles et la protection de la famille, cellule fondamentale de la société,
 - le droit de chaque personne de se gouverner elle-même ; de participer pleinement, en tant que citoyen, à la vie de ses communautés ; de faire un libre usage de ses droits souverains par la démocratie politique et l'économie de marché,
 - le principe de subsidiarité, qui accorde à chaque citoyen le droit d'exercer un contrôle effectif sur ses représentants ; de ne consentir de délégations de pouvoirs que proches, contrôlables et révocables ; de ne jamais accorder aux institutions que des compétences subordonnées,
 - le respect des affections et des solidarités ressenties par chacun, et donc du sentiment d'appartenance fondé sur une culture transmise, une histoire apprise, une langue pratiquée en commun,

3. se déclarent attachés aux spécificités des peuples d'Europe autant qu'à leurs valeurs communes,
4. veulent contribuer à concilier, à ce dernier titre, l'économie de marché et l'expression démocratique, l'initiative individuelle et le soutien mutuel face aux aléas de l'existence,
5. constatent que les citoyens attachent au cadre national une légitimité forte, qui en fait naturellement le niveau principal de l'association politique,
6. estiment que le respect de la diversité des nations et de leurs peuples favorisera la liberté, l'émulation et le pluralisme, sources de la richesse la plus ancienne et la plus constante de la civilisation européenne,
7. déclarent dans ces conditions que l'Union européenne est une Union de nations qui se respectent mutuellement, et respectent l'expression démocratique de chaque peuple,
8. confient à l'Union européenne la mission de favoriser la coopération des peuples d'Europe pour accroître leur prospérité, établir les bases d'un développement durable, protéger leurs valeurs, leurs droits, leurs langues, leurs modèles de société, leurs territoires et leurs frontières,
9. rappellent dans la présente Charte les libertés, responsabilités et droits principaux communs aux Etats membres, qui tirent leur force juridique soit des lois et Constitutions nationales que se sont données les peuples d'Europe, soit des traités européens ou internationaux qu'ils ont régulièrement ratifiés.

Ces droits, responsabilités et libertés ainsi rappelés ne créent aucune compétence ni aucune tâche nouvelle pour la Communauté ou pour l'Union ; ils ne modifient pas la répartition inscrite dans les traités ; ils servent à définir l'esprit du contrôle qu'exerceront les Etats membres sur les institutions européennes.

Justificatif :

Le texte du préambule proposé par le Présidium manque d'ampleur, pour deux raisons :

- il reste trop bref et juridique, alors qu'un document de ce genre devrait élever le débat au niveau des valeurs,
- il n'évoque pas clairement l'expression démocratique dans le cadre national, qui est pourtant le premier fondement de l'Union.

C'est pourquoi nous proposons un essai de rédaction alternative. Si le Présidium maintenait son texte actuel, ou un texte de ce genre, il conviendrait alors que le Conseil européen, dans son rôle politique éminent, réécrive le préambule pour lui donner la dimension nécessaire.

29 août 2000

**PROJET DE CHARTE
DES DROITS FONDAMENTAUX
DE L'UNION EUROPEENNE**

**Amendements
au texte Convent 45
du 28 juillet 2000**

**Amendement à l'article 2 – Droit à la vie –
Paragraphe 2 :**

Auteur : M. Georges BERTHU, MPE

Texte proposé : Supprimer le paragraphe 2
(« Nul ne peut être condamné à la peine de mort, ni exécuté »).

Justificatif :

Ce paragraphe, comme beaucoup d'autres, ne correspond à aucune compétence existante de l'Union européenne.

29 août 2000

**PROJET DE CHARTE
DES DROITS FONDAMENTAUX
DE L'UNION EUROPEENNE**

**Amendements
au texte Convent 45
du 28 juillet 2000**

Amendement à l'article 3 – Droit à l'intégrité de la personne

Auteur : M. Georges BERTHU, MPE

Texte proposé :

Au paragraphe 2, supprimer « notamment », et ajouter un cinquième tiret ainsi rédigé :

« - et, d'une manière générale, prohibition de toute pratique qui serait contraire à la dignité humaine. »

Justificatif :

Dans le texte proposé par le Présidium, l'adverbe "notamment" donne l'impression d'un article incomplet. Il est préférable de le supprimer, et d'ajouter un cinquième tiret qui couvre de manière générale toutes les autres possibilités.

29 août 2000

**PROJET DE CHARTE
DES DROITS FONDAMENTAUX
DE L'UNION EUROPEENNE**

**Amendements
au texte Convent 45
du 28 juillet 2000**

Amendement à l'article 8 – Protection des données à caractère personnel

Auteur : M. Georges BERTHU, MPE

Texte proposé :

Article 8 – Protection des données à caractère personnel

Toute personne a droit à la protection des données à caractère personnel la concernant. Ces données doivent être traitées **exclusivement**, pour des finalités déterminées... (suite inchangée).

Justificatif :

L'adverbe "loyalement" introduit une marge d'interprétation subjective qu'il paraît préférable d'essayer d'éviter dans un texte juridique.

29 août 2000

**PROJET DE CHARTE
DES DROITS FONDAMENTAUX
DE L'UNION EUROPEENNE**

**Amendements
au texte Convent 45
du 28 juillet 2000**

Amendement à l'article 9 – Droit de se marier et droit de fonder une famille

Auteur : M. Georges BERTHU, MPE

Texte proposé :

Article 9 – Droit de se marier et de fonder une famille

Le droit de se marier et de fonder une famille est garanti selon les lois nationales qui en régissent l'exercice.

Justificatif :

Le texte proposé par le Présidium a le double inconvénient de sortir du droit communautaire et de créer un nouveau droit (le "droit de fonder une famille", distinct du "droit de se marier").

En outre, le contenu exact de ce nouveau droit est mystérieux, et il rend par contrecoup mystérieux le contenu du droit de se marier. Sachant qu'il est toujours possible de créer une famille en fait, si l'on veut ensuite la créer en droit, cela s'appelle se marier.

Si ce n'était pas le cas, il faudrait supposer que le "droit de se marier" apporte quelque chose de plus que "le droit de fonder une famille". Mais quoi ?

En conclusion, on ne peut pas créer de nouveaux droits sans même connaître leur contenu.

29 août 2000

**PROJET DE CHARTE
DES DROITS FONDAMENTAUX
DE L'UNION EUROPEENNE**

**Amendements
au texte Convent 45
du 28 juillet 2000**

**Amendement à l'article 12 – Liberté de réunion et d'association
Premier paragraphe**

Auteur : M. Georges BERTHU, MPE

Texte proposé :

Article 12 – Liberté de réunion et d'association

Toute personne a droit à la liberté de réunion pacifique et à la liberté d'association, notamment dans les domaines politique, syndical, civique **et religieux** ».

(Suite inchangée).

Justificatif :

L'addition du mot "religieux" traduit la conséquence pratique de la liberté de religion, déjà reconnue sous la forme de liberté de pensée par l'article 10.

29 août 2000

**PROJET DE CHARTE
DES DROITS FONDAMENTAUX
DE L'UNION EUROPEENNE**

**Amendements
au texte Convent 45
du 28 juillet 2000**

Amendement à l'article 13 – Liberté de la recherche

Auteur : M. Georges BERTHU, MPE

Texte proposé :

Article 13 – Liberté de la recherche

Dans le respect de la dignité de l'homme, la recherche scientifique est libre.

Justificatif :

Le texte proposé par le Présidium est trop lapidaire. On n'imagine pas, par exemple, une recherche scientifique qui utiliserait contre leur gré des cobayes humains.

29 août 2000

**PROJET DE CHARTE
DES DROITS FONDAMENTAUX
DE L'UNION EUROPEENNE**

**Amendements
au texte Convent 45
du 28 juillet 2000**

**Amendement à l'article 15 – Liberté professionnelle
Paragraphe 1**

Auteur : M. Georges BERTHU, MPE

Texte proposé :

Article 15 – Liberté professionnelle

1. Toute personne a le droit d'exercer une profession librement choisie, **dans le cadre des dispositions prévoyant des compétences particulières pour certaines professions.**
2. (...)

Justificatif :

Le membre de phrase "afin de gagner sa vie" est trivial, et pas vraiment lié à la liberté professionnelle. Il est possible de le supprimer. Si l'on voulait absolument maintenir une idée de cet ordre, on pourrait écrire : "Afin de subvenir à ses besoins et à ceux de sa famille..."

La deuxième partie de l'amendement est plus importante. Elle vise à rappeler que le choix d'une profession est limité par les réglementations d'ordre public.

29 août 2000

**PROJET DE CHARTE
DES DROITS FONDAMENTAUX
DE L'UNION EUROPEENNE**

**Amendements
au texte Convent 45
du 28 juillet 2000**

Amendement à l'article 19 – Protection en cas d'éloignement, d'expulsion et d'extradition - Paragraphe 1

Auteur : M. Georges BERTHU, MPE

Texte proposé :

Supprimer le paragraphe 1 («les expulsions collectives d'étrangers sont interdites »).

Justificatif :

La présentation de l'article 21 paragraphe 1 proposée ici est trompeuse. En effet, elle paraît inspirée de l'article 4 du protocole n° 4 à la Convention européenne des droits de l'homme, mais en réalité cet article doit être lu dans son contexte. Il s'insère en effet dans un cadre juridique qui admet les dérogations, notamment "en cas de guerre ou en cas d'autre danger public menaçant la vie de la nation" (article 15 - CEDH).

Dans ces conditions, on ne peut pas laisser subsister une rédaction qui peut faire croire à un lecteur non spécialiste que les expulsions collectives d'étrangers sont interdites à jamais et dans tous les cas. Ou bien cette phrase est supprimée, ou bien on lui ajoute la mention « **sauf en cas de guerre ou d'autre danger public, conformément aux règles internationales en vigueur** ».

29 août 2000

**PROJET DE CHARTE
DES DROITS FONDAMENTAUX
DE L'UNION EUROPEENNE**

**Amendements
au texte Convent 45
du 28 juillet 2000**

Amendement à l'article 20 – Egalité en droit

Auteur : M. Georges BERTHU, MPE

Texte proposé :

Article 20 – Egalité en droit

- 1. Toutes les personnes, hommes et femmes, sont égales en droit.**
- 2. Des droits et devoirs spécifiques sont attachés à la qualité de citoyen, d'un Etat membre ou de l'Union européenne.**

Justificatif :

Cet article 20 pourrait donner lieu à des interprétations erronées si n'étaient pas mentionnés de manière très claire l'existence de droits et devoirs spécifiques attachés à la qualité de citoyen national ou européen.

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29 août 2000

**PROJET DE CHARTE
DES DROITS FONDAMENTAUX
DE L'UNION EUROPEENNE**

**Amendements
au texte Convent 45
du 28 juillet 2000**

Amendement à l'article 21 – Egalité et non-discrimination

Auteur : M. Georges BERTHU, MPE

Texte proposé :

Article 21 – Egalité et non discrimination

L'Union combat tout traitement inégal entre les personnes, dans le cadre des conditions et compétences fixées par les traités, ainsi que dans le respect des contraintes de l'utilité publique.

Justificatif :

L'article 21, dans la rédaction proposée, énumère des discriminations figurant déjà dans les traités, mais aussi des motifs nouveaux ne figurant nulle part, et pouvant soulever de sérieux débats (minorités nationales, par exemple).

De plus, cet article 21 apparaît beaucoup plus contraignant que le droit existant : il "interdit" absolument, alors que l'article 13 TCE prévoit seulement que *"le Conseil, statuant à l'unanimité... peut prendre les mesures nécessaires en vue de combattre..."*

Dans ces conditions, il paraît opportun de remplacer les paragraphes 1 et 2 du texte du Présidium, par une rédaction plus générale.

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29 août 2000

**PROJET DE CHARTE
DES DROITS FONDAMENTAUX
DE L'UNION EUROPEENNE**

**Amendements
au texte Convent 45
du 28 juillet 2000**

Addition d'un article 25 – A nouveau

Auteur : M. Georges BERTHU, MPE

Texte proposé :

Avant l'article 25, insérer un article 25-A ainsi rédigé :

Article 25 – A – Libre choix du modèle social

Les droits et principes sociaux rappelés au présent chapitre, dans la mesure où ils ne sont pas déjà fixés par le droit communautaire en vigueur, ont un caractère indicatif.

Ils respectent le droit de chaque pays membre de choisir son modèle social.

Justificatif :

Il est indispensable de rappeler qu'en application du principe de subsidiarité, chaque pays membre est libre de choisir son modèle social.

En outre, plusieurs articles de ce chapitre se situant clairement hors du droit communautaire existant, il convient aussi de rappeler qu'en l'absence de nouveau traité, ils ne peuvent avoir qu'un caractère indicatif.

29 août 2000

**PROJET DE CHARTE
DES DROITS FONDAMENTAUX
DE L'UNION EUROPEENNE**

**Amendements
au texte Convent 45
du 28 juillet 2000**

Amendement à l'article 25 – Droit à l'information et à la consultation des travailleurs au sein de l'entreprise

Auteur : M. Georges BERTHU, MPE

Texte proposé :

Remplacer le mot « travailleur » par celui de « salarié ».

Justificatif :

Le mot "travailleur", dans le cas où il est opposé à une autre catégorie, exprime implicitement une opinion politique sur le clivage entre ceux qui travaillent et ceux qui ne travaillent pas. Il convient de le remplacer par un mot plus neutre.

29 août 2000

**PROJET DE CHARTE
DES DROITS FONDAMENTAUX
DE L'UNION EUROPEENNE**

**Amendements
au texte Convent 45
du 28 juillet 2000**

Amendement à l'article 26 – Droit de négociation et d'actions collectives

Auteur : M. Georges BERTHU, MPE

Texte proposé :

Remplacer le mot « travailleur » par celui de « salarié ».

Justificatif :

Le mot “travailleur”, dans le cas où il est opposé à une autre catégorie, exprime implicitement une opinion politique sur le clivage entre ceux qui travaillent et ceux qui ne travaillent pas. Il convient de le remplacer par un mot plus neutre.

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29 août 2000

**PROJET DE CHARTE
DES DROITS FONDAMENTAUX
DE L'UNION EUROPEENNE**

**Amendements
au texte Convent 45
du 28 juillet 2000**

**Amendement à l'article 29 – Conditions de travail justes et équitables
Paragraphe 2**

Auteur : M. Georges BERTHU, MPE

Texte proposé :

Article 29 – Conditions de travail justes et équitables

1. (...)
2. Tout travailleur a droit à une limitation de la durée maximale du travail, à une période annuelle de congés payés, ainsi qu'à des périodes de repos journaliers et hebdomadaires, **notamment le dimanche dans les pays qui ont cette tradition.**

Justificatif :

Dans une Charte européenne, il n'est pas déplacé d'évoquer les traditions des pays d'Europe.

29 août 2000

**PROJET DE CHARTE
DES DROITS FONDAMENTAUX
DE L'UNION EUROPEENNE**

**Amendements
au texte Convent 45
du 28 juillet 2000**

Amendement à l'article 34 – Accès aux services d'intérêt économique général

Auteur : M. Georges BERTHU, MPE

Texte proposé :

Article 34 – Accès aux services d'intérêt général

L'Union respecte le droit d'accès des citoyens aux services d'intérêt général, y compris les services d'intérêt économique général, tels qu'ils sont définis par les législations et pratiques nationales en conformité avec le droit communautaire.

Justificatif :

Cette proposition contient deux amendements de natures distinctes :

1. Il convient de mentionner, non seulement les services d'intérêt économique général, mais aussi l'ensemble des services d'intérêt général, y compris non économiques. Il serait en effet surprenant que la Charte n'y fasse aucune allusion.
2. La rédaction proposée par le Présidium pourrait signifier que les pouvoirs publics nationaux définissent les services d'intérêt économique général sur délégation donnée par le traité. Bien entendu, ce n'est pas exact : les institutions européennes bénéficient de délégations en matière de concurrence, mais le pouvoir de définir les services d'intérêt général reste aux Etats membres.

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29 août 2000

**PROJET DE CHARTE
DES DROITS FONDAMENTAUX
DE L'UNION EUROPEENNE**

**Amendements
au texte Convent 45
du 28 juillet 2000**

Proposition d'ajout

Insérer, entre les chapitres IV et V, un **chapitre IV bis – Démocratie**, comprenant des articles allant de 36-1 à 36-6.

Auteur : M. Georges BERTHU, MPE

Justificatif :

Ce chapitre a pour but d'explicitier les conséquences du droit à l'expression démocratique des citoyens mentionné par le préambule. C'est évidemment un droit fondamental qui doit occuper une place importante dans la Charte. De plus, il est particulièrement judicieux de l'évoquer ici, car il sert à définir la structure de l'Europe que nous souhaitons.

29 août 2000

**PROJET DE CHARTE
DES DROITS FONDAMENTAUX
DE L'UNION EUROPEENNE**

**Amendements
au texte Convent 45
du 28 juillet 2000**

**Au chapitre IV bis (nouveau) – Démocratie :
Introduction d'un article 36-1 – Expression démocratique**

Auteur : M. Georges BERTHU, MPE

Texte proposé :

Article 36-1 – Expression démocratique

Les citoyens s'expriment démocratiquement en pleine souveraineté, dans le cadre national. Ils décident notamment dans ce cadre des attributions de l'Union européenne qu'ils inscrivent dans les traités.

Justificatif :

Le respect de l'expression démocratique dans le cadre national va tellement de soi que les traités ne l'ont pas explicité jusqu'ici. Pourtant, nous sommes parvenus à une étape du développement de l'Union où le besoin d'une clarification se fait sentir.

Ce principe est tellement important que son niveau d'inscription adéquat est celui de la charte (sans préjudice du préambule, qui doit notamment rappeler de son côté que toute autorité publique émane du peuple).

29 août 2000

**PROJET DE CHARTE
DES DROITS FONDAMENTAUX
DE L'UNION EUROPEENNE**

**Amendements
au texte Convent 45
du 28 juillet 2000**

**Au chapitre IV bis (nouveau) – Démocratie :
Introduction d'un article 36-2 – Identité nationale**

Auteur : M. Georges BERTHU, MPE

Texte proposé :

Article 36-2 – Identité nationale

- 1. Tout citoyen a droit au respect de son identité nationale.**
- 2. Dans l'exercice de ses compétences, à l'intérieur comme à l'extérieur, l'Union défend les identités nationales de ses Etats membres.**

Justificatif :

Le paragraphe 1 reprend sous une forme différente le principe déjà inscrit à l'article 6-3 TUE. Ce principe paraît si important qu'il ne doit pas être laissé noyé dans l'ensemble du traité, mais être élevé au niveau de la charte des droits fondamentaux.

Le paragraphe 2 rappelle que les pays membres ont créé une Union pour mieux défendre en commun leurs identités respectives, et non pas pour les abolir.

29 août 2000

**PROJET DE CHARTE
DES DROITS FONDAMENTAUX
DE L'UNION EUROPEENNE**

**Amendements
au texte Convent 45
du 28 juillet 2000**

**Au chapitre IV bis (nouveau) – Démocratie :
Introduction d'un article 36-3 – Droit de retrait**

Auteur : M. Georges BERTHU, MPE

Texte proposé :

Article 36-3 – Droit de retrait

Les citoyens de chaque pays décident librement de l'adhésion de leur Etat à l'Union européenne. De même, ils peuvent choisir démocratiquement de s'en retirer.

Justificatif :

Le droit de sécession n'est pas mentionné dans le traité mais, dans un contexte démocratique, il va de soi. Nous proposons ici de l'explicitier dans la charte.

29 août 2000

**PROJET DE CHARTE
DES DROITS FONDAMENTAUX
DE L'UNION EUROPEENNE**

**Amendements
au texte Convent 45
du 28 juillet 2000**

**Au chapitre IV bis (nouveau) – Démocratie :
Introduction d'un article 36-4 – Droit de sauvegarde**

Auteur : M. Georges BERTHU, MPE

Texte proposé :

Article 36-4 – Droit de sauvegarde

Les citoyens des pays membres possèdent le droit fondamental de prendre démocratiquement des mesures de sauvegarde nationales lorsque des circonstances impérieuses l'exigent. Ces mesures restent en tout état de cause dans les limites de ce que le droit international reconnaît permis lorsque la survie de la nation est menacée.

Justificatif :

Ici encore, le droit de sauvegarde national devrait aller de soi. Pourtant, nous avons constaté qu'il s'est trouvé contesté par les institutions de l'Union dans diverses affaires récentes, liées notamment à la protection de la santé publique. Il importe de rappeler ici, au niveau solennel de la charte, que, quelles que soient les modalités du droit communautaire dans tel ou tel domaine précis, nul ne peut enlever à un peuple le droit de prendre les mesures qu'il estime indispensables à sa survie

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29 août 2000

**PROJET DE CHARTE
DES DROITS FONDAMENTAUX
DE L'UNION EUROPEENNE**

**Amendements
au texte Convent 45
du 28 juillet 2000**

**Au chapitre IV bis (nouveau) – Démocratie :
Introduction d'un article 36-5 – Droit d'organisation des Etats**

Auteur : M. Georges BERTHU, MPE

Texte proposé :

Article 36-5 – Droit d'organisation des Etats

Les citoyens des pays membres ont le droit de décider librement de l'organisation de leur Etat, et notamment des limites et du fonctionnement de leurs services publics.

Justificatif :

Depuis quelques années, les pays membres et les institutions de l'Union prennent conscience de certains effets pervers du principe de concurrence lorsqu'il est appliqué sans discernement à des services publics. Pour lever toute ambiguïté, il serait utile de saisir l'occasion de la charte pour rappeler que les citoyens de chaque pays membre ont le droit de choisir l'organisation de leurs services publics.

29 août 2000

**PROJET DE CHARTE
DES DROITS FONDAMENTAUX
DE L'UNION EUROPEENNE**

**Amendements
au texte Convent 45
du 28 juillet 2000**

**Au chapitre IV bis (nouveau) – Démocratie :
Introduction d'un article 36-6 – Liberté de choix**

Auteur : M. Georges BERTHU, MPE

Texte proposé :

Article 36-6 – Liberté de choix

Les citoyens des pays membres ont le droit de décider démocratiquement de ne pas s'associer à une coopération particulière au niveau européen, ou de choisir pour eux des règles plus protectrices que celles d'une coopération à laquelle ils participent.

Justificatif :

Par le biais de la reconnaissance explicite de la liberté de choix démocratique des citoyens des pays membres, la charte pourrait montrer la possibilité d'une conception plus flexible des institutions européennes.

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29 août 2000

**PROJET DE CHARTE
DES DROITS FONDAMENTAUX
DE L'UNION EUROPEENNE**

**Amendements
au texte Convent 45
du 28 juillet 2000**

Amendement au titre du chapitre V – Citoyenneté

Auteur : M. Georges BERTHU, MPE

Texte proposé :

Chapitre V – Citoyenneté européenne

Justificatif :

Lorsqu'on examine le contenu de ce chapitre V, on voit qu'il ne traite que de la citoyenneté européenne. Il convient dès lors de lever l'ambiguïté au niveau du titre.

29 août 2000

**PROJET DE CHARTE
DES DROITS FONDAMENTAUX
DE L'UNION EUROPEENNE**

**Amendements
au texte Convent 45
du 28 juillet 2000**

**Amendement à l'article 43 – Liberté de circulation et de séjour
Paragraphe 1**

Auteur : M. Georges BERTHU, MPE

Texte proposé :

Article 43 – Liberté de circulation et de séjour

Tout citoyen de l'Union a le droit de circuler et de séjourner librement sur le territoire des Etats membres, **sous réserve des contrôles destinés à préserver, conformément à l'article 6 de la charte, la liberté et la sûreté des personnes.**

Justificatif :

Des affaires récentes (Wijsenbeek) ont montré que la liberté de circulation est parfois interprétée, à tort, comme signifiant automatiquement l'abolition totale des contrôles de toutes natures. Il importe de rappeler, dans l'esprit même de l'article 6 de la charte, que des contrôles peuvent être exercés.

29 août 2000

**PROJET DE CHARTE
DES DROITS FONDAMENTAUX
DE L'UNION EUROPEENNE**

**Amendements
au texte Convent 45
du 28 juillet 2000**

**Amendement à l'article 43 – Liberté de circulation et de séjour
Paragraphe 2**

Auteur : M. Georges BERTHU, MPE

Texte proposé :

Supprimer le paragraphe 2 de l'article 43 – Liberté de circulation et de séjour.

Justificatif :

Ce paragraphe traite de la liberté de circulation qui "peut être accordée" (sous entendu "dans le futur") aux ressortissants de pays tiers. Or il convient que la Charte ne traite pas de droits futurs et encore potentiels, mais seulement des **droits existants**. En effet, si l'article 62 TCE envisage cette liberté de circulation dans un délai de cinq ans après l'entrée en vigueur du traité d'Amsterdam (1999), il y met tout une série de conditions qui ne sont pas réunies pour le moment. Il est donc prématuré d'évoquer cet aspect au niveau de la Charte.

29 août 2000

**PROJET DE CHARTE
DES DROITS FONDAMENTAUX
DE L'UNION EUROPEENNE**

**Amendements
au texte Convent 45
du 28 juillet 2000**

**Amendement à l'article 50 – Portée des droits garantis
Paragraphe 3**

Auteur : M. Georges BERTHU, MPE

Texte proposé :

3. Dans la mesure où la présente Charte contient des droits correspondant à des droits garantis par la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales, leur sens et leur portée sont similaires à ceux que leur confère ladite convention (**Reste supprimé**).

Justificatif :

La suppression du membre de phrase "à moins que la présente Charte n'assure une protection plus élevée ou plus étendue" est justifiée pour les deux raisons suivantes :

- la Charte ne doit pas dépasser les limites du droit existant ;
- ce membre de phrase rend la lecture de la Charte incompréhensible. Par exemple, devant l'article 6 « Toute personne a droit à la liberté et à la sûreté », comment le lecteur peut-il savoir si les limitations de la Convention européenne des droits de l'homme s'appliquent, ou bien s'il s'agit d'un article qui assure volontairement une « protection plus étendue » ?

MEP Jens-Peter Bonde's ændringsforslag til konvent 45 / Amendments to convent 45**New article 20**

Persons belonging to [national] minorities have the right to the protection and promotion of their ethnic, cultural, linguistic and religious identity *inter alia* through effective participation in cultural, religious, social, economic and public life within the Union.

Comment:

As set out in the UN Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities (1992), the OSCE Copenhagen Document (1990), the Council of Europe Framework Convention for the Protection of National Minorities (1995) and the European Charter for Regional or Minority Languages and other relevant standards.

Ny artikel 53

Intet i Unionens retsregler, traktaterne og dette charter kan tolkes så det strider imod menneskerettighederne, som de fortolkes af Den europæiske Menneskerettighedsdomstol i Strasbourg, eller mod grundrettighederne i de nationale forfatninger, som de fortolkes af de nationale forfatningsdomstole eller højesteretter.

Ny artikel 54

Lande, som i hovedsagen finansierer deres sociale sikringsystem gennem skatter i stedet for forsikrings- og arbejdsmarkedsbidrag, er ikke forpligtede til at stille de sociale sikringsydelser til rådighed for folk, som ikke har betalt skat til landet.

Ny artikel 55

Lande, som i hovedsagen lader arbejdsmarkedet regulere gennem frivillige aftaler på arbejdsmarkedet, kan lade sociale og arbejdsmarkedsmæssige rettigheder implementere gennem overenskomster, uden at være forpligtet til at beskytte dem, der ikke er omfattet af overenskomsterne.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int****LORD BOWNESS****Brussels, 28 July 2000
(OR. fr)****CHARTE 4422/00****CONVENT 45****PRESIDENCY NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union
– Complete text of the Charter proposed by the Praesidium

The Members of the Convention will find below the complete text of the Charter proposed by the Praesidium in the light of discussions in the Convention. Members may forward their general comments on this draft, by 1 September 2000, to the following address:

Jean-Paul.Jacque@consilium.eu.int,

indicating:

- "for the attention of Mr Jansson" (for the representatives of the national Parliaments)
- "for the attention of Mr Mendez de Vigo" (for the members of the European Parliament delegation)
- "for the attention of Mr Braibant" (for the personal representatives).

The Secretariat will forward these comments to the relevant addressee.

GENERAL

The Praesidium draft is welcome.

I would hope to see further changes to ensure

1) No uncertainty arises over rights drawn from ECHR and the Treaties. The horizontals must make clear that the existing Convention Treaties and Court decisions will prevail.

2) In the field of economic and social rights either in each article or in an horizontal it must be clear these are governed by the Treaties or National law.

3) The reasons for other changes are noted below.

4) Other changes are drafting changes to ensure clarity.

5) Article 13 is manageable as drawn.

PREAMBLE

1. ~~The people of Europe have established~~ An ever close union is being established between ~~them~~ and the peoples of Europe who are resolved to share a peaceful future based on common values.

Note: Drafting – it is an ongoing process.

2. The Union is founded on the ~~indivisible, universal~~ principles of ~~the dignity of men and women, freedom, equality and solidarity~~, it is based on the principle of democracy liberty democracy respect for human rights and fundamental freedoms and the rule of law.

Note: Follow TEV.

3. The Union contributes to the maintenance and development of these principals ~~common values~~ while respecting the diversity of the cultures and traditions of the peoples of Europe as well as the national identities of the Member States and the organisation of their public authorities at national, regional and local levels; it ~~ensures balanced and sustainable~~ development through the free movement of persons, goods, capital and services, and freedom of establishment.
4. ~~In adopting this Charter~~ In the light of changes in Society, social progress and technological developments the Union intends to enhance the protection of fundamental rights in the light of ~~changes in society, social progress and scientific and technological developments by making~~ and to make those rights more visible, the enjoyment of which entails responsibilities and duties with regard to other persons, to the human community and to future generations.
5. This Charter therefore reaffirms, with due regard for the powers and tasks of the Community and the Union and the principle of subsidiarity, the rights as they result, ~~in particular~~, from the constitutional traditions ~~common to~~ of the Member States, the Treaty on European Union, the Community Treaties, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Community and by the Council of Europe and the case law of the Court of Justice of the European Communities and of the European Court of Human Rights.

6. ~~Enjoyment of these rights entails responsibilities and duties with regard to other persons, to the human community and to future generations.~~

7. ~~Each person is therefore guaranteed the rights and freedoms set out hereafter.~~

CHAPTER I. DIGNITY

Article 1. Dignity of the person

The dignity of the person man or woman must be respected and protected.

Article 2. Right to life

1. ~~Everyone has~~ The right to life shall be protected by law.
2. ~~No one shall be condemned to the death penalty, or executed.~~

Article 3. Right to the integrity of the person

1. Everyone has the right to respect for his physical and mental integrity and subject to national laws and practice.
2. ~~In the fields of medicine and biology,~~ the following principles must be respected in particular:
 - free and informed consent of the person concerned,
 - prohibition of eugenic practices * ~~in particular those concerned with the selection of persons,~~
 - prohibition on making the human body and its parts a source of financial gain,
 - prohibition of the reproductive cloning of human beings.

Note: As drafted is this too wide?

Article 4. Prohibition of torture and inhuman or degrading treatment and punishment

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Article 5. Prohibition of slavery and forced labour

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. Trafficking in human beings is prohibited.

CHAPTER II. FREEDOMS

Article 6. Right to liberty and security

Everyone has the right to liberty and security of person.

Article 7. Respect for private and family life

Everyone has the right to respect for his private and family life, his home and the confidentiality of his communications.

Article 8. Protection of personal data

Everyone has the right to the protection of personal data concerning him. ~~Such data must be processed fairly for specified purposes on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him, and the right to have it rectified. Compliance with these rules shall be subject to control by an independent authority~~

Note: Too detailed and must have reference in national laws.

Article 9. Right to marry and right to found a family

The right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights.

Article 10. Freedom of thought, conscience and religion

Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or

in private, to manifest religion or belief, in worship, teaching, practice and observance.

Article 11. **Freedom of expression and information**

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.

~~3. Freedom of the media and freedom of information shall be guaranteed with due respect for pluralism and transparency.~~

Note: The principle is agreed – but it is covered by first paragraph European or national legislation may be needed but it is not for the charter.

Article 12. **Freedom of assembly and of association**

Everyone has the right to freedom of peaceful assembly and to freedom of association, in particular in political, trade union and civic matters.

~~Political parties at European level contribute to expressing the political will of the citizens of the Union.~~

Note: Agreed but it is not for the Charter.

Article 13. **Freedom of research**

~~Scientific research shall be free of constraint.~~

Note: This absolute right conflicts with Article 3 and would authorize many undesirable practices.

Article 14. **Right to education**

1. Everyone has the right to education and to have access to vocational and continuing training. This right includes the right to receive free compulsory education.

2. The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and ~~pedagogical convictions~~ shall be guaranteed, in accordance with the national laws governing the exercise of such freedom and right.

Note: Does not add to English texts.

Article 15. **Freedom to choose an occupation**

1. ~~To earn a living~~, Everyone has the right to choose ~~engage in a freely chosen~~ the occupation they wish to follow subject to and in accordance with Community and national laws.
2. Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide ~~or receive~~ services in any Member State.
3. Nationals of third countries who are authorised to ~~reside~~ in the territories of the Member States are entitled to legal protection of any employment law applicable to ~~working~~ ~~conditions equivalent to those of citizens of the Union.~~

Article 16. **Freedom to conduct a business**

The freedom to conduct a business is recognised together with the freedom of persons goods and services in accordance with Community law.

Article 17. **Right to property**

1. Every person has the right to own, use, dispose of and bequeath his lawfully acquired possessions including intellectual property and shall not ~~No one may be deprived of his possessions, or the use regulated~~ except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation paid without unreasonable delay. ~~The use of property may be regulated insofar as is necessary for the general interest.~~

2. ~~Intellectual property shall be protected.~~

Note: Drafting.

Article 18. Right to asylum

The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty establishing the European Community.

Article 19. Protection in the event of removal, expulsion or extradition

1. Collective expulsions are prohibited and
2. No one may be removed, expelled or extradited to a State where he could be subjected to ~~the~~ ~~death penalty~~, torture or other inhuman or degrading treatment.

Note: Would this create problems with other states with which member states have extradition treaties?

CHAPTER III. EQUALITY

Article 20. Equality before the law

Everyone, man or woman, is equal before the law.

Article 21. Equality and non-discrimination

1. Any discrimination based on ~~any ground such as~~ sex, race, colour, ethnic ~~or~~ social origin, genetic features, language, religion, ~~or~~ belief, ~~political or any other opinion~~, membership of a national minority, ~~property, birth, disability, age or sexual orientation~~ shall be prohibited.
2. Within the scope of application of the Treaty establishing the European Community and of the Treaty on European Union, and without prejudice to the special provisions of those Treaties, any discrimination on grounds of nationality shall be prohibited.

Note: As drafted is this too wide – some political parties which do not observe democratic

principles may be banned.

Article 22. Equality between men and women

Equal opportunities and equal treatment for men and women as regards employment and work, including equal pay for equal work or for work of equal value, must be ensured but this ~~The principle of equal treatment shall not prevent the maintenance or adoption of measures providing for specific advantages in order to make it easier for the under-represented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers.~~ To redress under representation of one sex in any activity or profession whilst maintaining vocational and professional standards and qualifications.

Note: To prevent a lowering of vocational/professional standards.

Article 23. Protection of children

1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely and such views shall be taken into consideration on matters ~~which concern them~~ concerning their well being and in accordance with their age and maturity.
2. In all actions relating to children, ~~whether~~ taken by public authorities or private institutions, the welfare of the child's best interests must be the primary consideration.

Note: Drafting, and to ensure welfare is the primary consideration.

Article 24. Integration of persons with disabilities

The Union respects the right of persons with disabilities ~~have the right~~ to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.

CHAPTER IV. SOLIDARITY SOCIAL COHESION

Article 25. Workers' right to information and consultation within the undertaking

In accordance with Community and national laws workers and their representatives ~~must be~~ guaranteed information should be informed and consultation consulted in good time on matters ~~which concern them within~~ the undertaking, in accordance with Community law and national laws ~~and practices~~.

Note: The reference to Community and national laws in this Article and those which follow could be avoided if the point is covered in a suitable horizontal article.

Article 26. Right of collective bargaining and action

Employers and workers ~~may have the right~~ to negotiate and conclude collective agreements and, in cases of conflicts of interest, to take collective action to defend their interests, subject to and in accordance with Community law and national laws and practices.

Article 27. Right of access to placement services

Everyone has the right of access to any free placement service which may exist.

Note: I would prefer to DELETE. This is not a fundamental right or principle.

Article 28. Protection in the event of unjustified dismissal

~~Every Workers has~~ have the right to protection against ~~unjustified~~ dismissal subject to national laws and practices.

Note; "Unfair" has a particular meaning in this regard.

Article 29. Fair and just working conditions

- ~~1. Every worker has the right to~~ Working conditions which respect the workers' ~~his or her~~ health, safety and dignity shall be promoted and shall include
- ~~2. Every worker has~~ the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave subject to national laws and practices.

Article 30. Protection of young people at work

The ~~employment of children is prohibited~~. The minimum age of admission to employment must not normally be lower than the minimum school-leaving age without prejudice to such rules as may be more favourable to young people and except for limited derogations.

Young people admitted to work must have working conditions appropriate to their age and be protected against economic exploitation and any work likely to harm their safety, health or physical, mental, moral or social development ~~or to interfere with their education~~.

Article 31. Reconciling family and professional life

The family shall enjoy legal, economic and social protection and the need to

~~Everyone shall have the right to reconcile their family and professional lives, which includes in particular the right to protection from dismissal because of pregnancy and the right to paid~~

~~maternity leave and to parental leave following the birth or adoption of a child.~~ shall be recognised subject to national laws and practices.

Article 32. Social security and social assistance

1. The Union recognises and respects the ~~entitlement~~ to social security benefits and social services providing protection in the event of maternity, illness, industrial accidents, dependency or old age and in the event of loss of employment, in accordance with the rules laid down by Community law and national laws and practices.
2. Workers who are nationals of a Member State residing in another Member State, and members of their families, have the right to the same social security benefits, social advantages and access to health care as nationals of that State.
3. The Union recognises and respects the right to social assistance ~~and housing benefit in order to ensure a decent existence for persons lacking sufficient resources~~, in accordance with the

rules laid down by Community law and national laws and practices.

Article 33. **Health care**

~~Everyone has the right of~~ Access to medical care shall be respected ~~preventive health care and the right to benefit from medical treatment~~ under the conditions established by national laws and practices.

Article 34. **Access to services of general economic interest**

The Union respects the access to services of general economic interest as provided for in national laws and practices in accordance with the provisions of the Treaty establishing the European Community in order to promote the social and territorial cohesion of the Union.

Note: I would prefer to D E L E T E. It does not have any real meaning.

Article 35. **Environmental protection**

All Union policies shall promote the improvement and ~~ensure the~~ protection and preservation of a ~~good quality living environment and the improvement of the quality of the environment~~, taking into account the principle of sustainable development.

Article 36. **Consumer Protection**

Union policies shall promote ~~ensure~~ a high level of protection ~~as regards~~ for the health, safety and commercial interests of consumers.

CHAPTER V. CITIZENSHIP

Article 37. **Right to vote and to stand as a candidate in elections to the European Parliament**

1. Every citizen of the Union has the right to vote and to stand as a candidate in elections to the European Parliament in the Member State in which he resides, under the same conditions as

nationals of that State.

2. Members of the European Parliament shall be elected by direct universal suffrage by free and secret ballot.

Article 38. **Right to vote and to stand as a candidate at municipal elections**

Every citizen of the Union has the right to vote and to stand as a candidate at municipal elections in the Member State in which he resides under the same conditions as nationals of that State.

Article 39. **Right to good administration**

1. Every person has the right to have his affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union and institutions national or local implementing community policies.
2. This right includes:
 - the right of every person to be heard before any individual measure which would affect him adversely is taken in relation to him;
 - the right of every person to have access to his file, while respecting the legitimate interests of confidentiality and of business secrecy;
 - the obligation of the administration to give reasons for its decisions.
3. Every person has the right to have the Community make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.
4. Every person may write to the institutions of the Union in one of the official languages of such institutions and have an answer in the same language.

Article 40. **Right of access to documents**

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to European Parliament, Council and Commission documents.

Article 41. **Ombudsman**

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to refer to the Ombudsman of the Union cases of maladministration by Community institutions and bodies, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role.

Article 42. **Right to petition**

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to petition the European Parliament.

Article 43. **Freedom of movement and of residence**

1. Every citizen of the Union and other persons to whom the right is granted by laws has the right to move and reside freely within the territory of the Member States.
2. ~~Freedom of movement may be granted, in accordance with the Treaty establishing the European Community, to nationals of third countries legally resident in the territory of a Member State.~~

Article 44: **Diplomatic and consular protection**

Every citizen of the Union shall, in the territory of a third country in which the Member State of which he is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that Member State.

CHAPTER VI. JUSTICE

Article 45. Right to an effective remedy and to a fair trial

1. Everyone whose rights and freedoms are violated has the right to an effective remedy before a court.
2. Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.
- ~~3. Legal aid shall be made available to those who lack sufficient resources insofar as such aid is necessary to ensure effective access to justice.~~

Note: Free legal aid is an impossible commitment.

Article 46. Presumption of innocence and right of defence

1. Everyone who has been charged shall be presumed innocent until proved guilty according to law.
2. Respect for the right of defence of anyone who has been charged shall be guaranteed.

Article 47. Principles of legality and proportionality of criminal offences and penalties

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national law or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed. If, subsequent to the commission of the criminal offence, the law provides for a lighter penalty, that penalty shall be applicable.
2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to international law.

3. The severity of penalties shall be proportional to the gravity of the criminal offence.

Article 48. Right not to be tried or punished twice in criminal proceedings for the same criminal offence

No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he has already been finally acquitted or convicted in accordance with the law.

CHAPTER VII. GENERAL PROVISIONS

Article 49. Scope

1. The provisions of this Charter are addressed to the institutions and bodies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers.
2. This Charter does not establish any new power or task for the Community or the Union, or modify powers and tasks defined by the Treaties.

Article 50. Scope of guaranteed rights

1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by the competent legislative authority, in accordance with the law. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest being pursued by the Union, other legitimate interests in a democratic society or the need to protect the rights and freedoms of others.
2. Rights recognised by this Charter which are based on the Community Treaties or the Treaty on European Union shall be exercised under the conditions and within the limits defined by those Treaties.
4. Insofar as this Charter contains rights which correspond to rights guaranteed by the

Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be similar to those the same as those conferred on them by the said Convention unless this Charter affords greater or more extensive protection.

Note: To avoid uncertainty and conflict.

Article 51. **Level of protection**

Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by international law and international agreements to which the Union, the Community or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' constitutions.

Article 52. **Prohibition of abuse of rights**

Nothing in this Charter shall be interpreted as implying any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms recognised in this Charter or at their limitation to a greater extent than is provided for herein.

BRAIBANT

Le projet de « charte des droits fondamentaux de l'Union européenne », dans la version transmise le 1^{er} août, peut être considéré comme globalement satisfaisant. Rédigé de façon claire et synthétique, ce document couvre non seulement les droits civils et politiques, mais également des droits économiques et sociaux ainsi que des droits dits « nouveaux ». Il répond donc pour l'essentiel au mandat qui avait été arrêté par le Conseil européen de Cologne.

Dans l'esprit des membres de son « praesidium », le travail de substance de la Convention sur le contenu de la Charte est désormais achevé et seules des améliorations rédactionnelles pourraient le cas échéant être apportées à cet avant-projet. Au demeurant et compte tenu des discussions difficiles auxquelles son élaboration a donné lieu, le risque existe que des demandes d'amendements ou de compléments substantiels n'aboutissent à rouvrir les débats et compromettre l'équilibre auquel sont parvenus les négociateurs.

Dans ces conditions, je ne peux que m'opposer à tout recul par rapport au texte actuel, en y incluant les précisions apportées par le Présidium dans sa réunion du 25 août sur les libertés syndicales et les actions collectives « à tous les niveaux ».

Dans l'hypothèse où d'autres Etats membres émettraient des critiques ou proposeraient des modifications de substance, j'insiste pour ma part sur les éléments suivants qui ne sont pas satisfaisants :

- certains droits sociaux essentiels tels que le droit au travail, le droit de grève, le droit à des moyens d'existence (revenu minimum notamment), le droit au logement ne sont pas explicitement mentionnés en tant que tels dans l'avant projet ;


- la formulation de l'article reconnaissant la liberté de circulation aux ressortissants des pays tiers (art. 43.2 de l'avant projet) devrait être revue : en l'état, elle peut, en effet, être interprétée comme allant au delà des dispositions pertinentes du Traité d'Amsterdam ;

- la rédaction actuelle de la liberté de la recherche scientifique (posée à l'article 13) devrait être assortie du rappel selon lequel celle-ci doit s'exercer dans le respect de la protection de l'être humain ;

- l'absence d'un droit à l'accès et à la participation à la vie culturelle est regrettable.

Guy BRAIBANT

**Représentant du Président de la République et du Premier ministre
à la Convention chargée d'élaborer la Charte des droits
fondamentaux de l'Union européenne**



BRAUNEDER

(Fettdruck = Vorschlag Präsidium)

PRÄAMBEL

1. (entfällt)

Da hier vieles fraglich ist, sollte dieser Punkt wegfallen, dessen Formulierung überdies so klingt, als sei die Entwicklung der Union bereits abgeschlossen („haben..geschaffen“, „teilen nurmehr dasselbe Schicksal“).

2. Die Völker der Union verbinden **die unteilbaren und universellen Grundsätze der Würde der Menschen, ihrer Freiheit, ihrer Gleichheit und ihrer Solidarität sowie die Grundsätze der Demokratie und der Rechtsstaatlichkeit.**

In der vorgeschlagenen Form „diese Union gründet sich...“ klingt die Bestimmung zu sehr auf die Organisation bezogen und nicht auf die Grundrechtsträger, die Individuen. Die hier vorgeschlagene Fassung will den Träger der Grundrechte klar gegenüber der Organisation herausstellen.

3. Die Union garantiert diese Grundsätze durch Grundrechte und **trägt damit zur Entwicklung dieser gemeinsamen Werte bei.** So wie die nationale Identität der Mitgliedstaaten achtet die Union auch die persönliche Identität und die Würde der Menschen.

Die im Vorschlag enthaltene Wortfolge „achtet dabei die Vielfalt der Kulturen und Traditionen der Völker Europas“ erscheint unüblich, da es gerade im Grundrechtsbereich eine nahezu identische Tradition gibt, ohne kulturelle oder traditionelle Varianten, und überdies dieser Passus als eine Einschränkung hinsichtlich der „gemeinsamen Werte“ erscheint. Das Weglassen bzw. die Modifikation der Wortfolge „die nationale Identität der Mitgliedstaaten sowie deren verfassungsmäßigen Aufbau auf nationaler, regionaler und lokaler Ebene“ versteht sich aus der schon zu Punkt 2. angestellten Erwägung, sie klingt in diesem Sinne zu „etatistisch“ und erscheint in einem Grundrechtskatalog fehl am Platz, da sie zum Organisationsrecht gehört. Die vorgeschlagene Wortfolge „garantiert diese Grundsätze durch Grundrechte“ versteht sich daraus, daß zwischen den „Grundsätzen“ in Punkt 2. und den Grundrechten eine Brücke zu schlagen ist. Die hier vorgeschlagene Fassung stellt der „nationalen Identität“ der Staaten die „persönliche Identität“ der Menschen zur Seite, auch, um den ansonsten „etatistischen“ Eindruck zu entschärfen.

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4. (entfällt)

Daß durch die Charta die Grundrechte verankert und sichtbar werden, ist für jeden Leser „sichtbar“ und kann damit als lapidare Feststellung entfallen. Überdies ist die Wortfolge „müssen...verankert werden“ verfehlt, da bei Inkrafttreten der Charta die Grundrechte nicht erst in der Zukunft „verankert werden“, sondern bereits „verankert sind“.

5. Diese Charta bestätigt jene Grundwerte und jene Rechte, die sich vor allem aus der gemeinsamen Grundrechtsauffassung der Mitgliedstaaten und aus der Europäischen Menschenrechtskonvention unter Berücksichtigung des bisherigen Standes der Entwicklung ergeben.

Betont werden soll die hier primär relevante Grundrechts tradition der Mitgliedstaaten bzw. der europäische Grundrechtsstandard, wie er sich zur Zeit der Abfassung der Charta darstellt. Statt „Verfassungsgrundsätze“ ist daher das Wort „Grundrechtsauffassung“ gewählt, da unter „Verfassungsgrundsätzen“ in einigen Staaten primär das demokratische Prinzip, eventuell das republikanische Prinzip, das Prinzip der Gewaltentrennung etc., nämlich überwiegend Organisationsrecht, verstanden werden; aus diesem Grund ist auch der Hinweis auf die Verträge über die Europäische Union und ihre Gemeinschaften entfallen. Der Hinweis auf die Rechtsprechung erübrigt sich dadurch, als einerseits die Europäische Menschenrechtskonvention nicht anders als im Sinne der Rechtsprechung zu verstehen ist, von ihr nicht losgelöst gesehen werden kann, andererseits diese sich als Teil der umfassenden „Entwicklung“ darstellt.

6. (entfällt)

Hiezu gilt das eben Gesagte: Die einzelnen Arten der Entwicklung sind im Wort „Entwicklung“ in Punkt 5. miteingedr.

7. Die durch die Charta gewährleisteten Rechte begründen durch ihre Respektierung Verantwortlichkeiten und Pflichten gegenüber den Mitmenschen.

Die bisherige Fassung klingt zu sehr nach einem do ut des. Ihr gegenüber sollte herausgestrichen werden, daß durch das gegenseitige Respektieren der Rechte Verantwortlichkeiten und Pflichten entstehen, wobei die Wortfolge „gegenüber den Mitmenschen“ sowohl die Einzelperson als auch deren Summe deckt.

8. (entfällt)

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Das Entfallen des ersten Satzes versteht sich daraus, daß eine derart technische Bestimmung in einer Präambel fehl am Platz ist und außerdem einer begründet entgegengesetzten Auslegung und Handhabung auch keinen Riegel vorzuschreiben vermag. Der Entfall des zweiten Satzes begründet die Ansicht, daß er zu sehr als Einschränkung verstanden werden könnte, ebenfalls in einer Präambel fehl am Platz ist und außerdem durch die grundsätzlichen Bestimmungen (horizontalen Bestimmungen) abgedeckt erscheint.

Insgesamt: Durch den obigen Textvorschlag bleibt der Geist der vom Präsidium vorgeschlagenen Präambel vollaufgezwahrt, jedoch unter Fortlassung „statistischer“, überflüssiger und anderswo ohnedies geregelter technischer Einzelheiten.

Changements proposés par MEP Prof. Rocco Buttiglione

➤ Dans le Préambule

« 2. L'Union est fondée sur les principes indivisibles et universels de la dignité transcendant des hommes et des femmes, de la liberté, de l'égalité et de la solidarité; elle repose sur le principe de démocratie et l'État de droit. »

« 6 Bis. Soucieuse de ses responsabilités envers le restant du monde, l'Union tient à confirmer son attachement aux droits de l'homme dans toutes ses relations avec des États tiers. »

➤ Dans le texte de la charte

Article 1

Remplacer le mot « *personne* » par « *être humain* » dans le titre de l'article et dans le texte de l'article même.

Article 3

Bien que l'adverbe « notamment » du paragraphe 2 montre que la liste des principes n'est pas exhaustive, il serait souhaitable d'ajouter un principe supplémentaire à respecter :

« interdiction de manière générale de toute pratique méconnaissant la dignité humaine »

En effet, les principes cités se réfèrent à l'état actuel de connaissances. Comme l'évolution de la science est très rapide, il serait bon d'ajouter un principe rédigé de manière plus générale.

Article 12. Liberté de réunion et d'association

« Toute personne a droit à la liberté de réunion pacifique et à la liberté d'association, notamment dans les domaines politique, syndical, ~~et~~ civique et religieux. »

Les partis politiques au niveau européen contribuent à l'expression de la volonté politique des citoyens de l'Union. »

Article 13

« La recherche scientifique est libre, sous réserve de ce qui est dit à l'article 3. »

CEDERSCHIÖLD

To the Chair of the Convention, Prof. Dr. Roman Herzog
 And to the Vice-Chairs, Inigo Mendez de Vigo, Gunnar Jansson and Prof. Dr. Guy Braibant

COMMENTS AND SUGGESTIONS FOR AMENDMENTS ON CONVENT 45

Submitted by: Mrs. CEDERSCHIÖLD, MEP

General remarks on Convent 45

The Charter, as it is formulated in Convent 45, is in many ways better than earlier drafts. However, I submit some general remarks and some suggestions for amendments.

Pro primo, the Charter should be restructured in the following way:

1. Dignity
2. Freedoms
3. Justice
4. Citizenship
5. Equality
6. Principles of solidarity
7. General provisions

Fundamental rights like everybody's dignity, integrity and equal value are entwined with the rights to be respected before court and to be able to participate in the formation of the society, *i.e.* the justice and citizenship chapters. The rights belong together and it is therefore more logical to group them together. The chapters of equality and the principles of solidarity focus on specific groups, such as women, employees or disabled, whereas the first four chapters in the list above are common to everyone; they are fundamental and universal.

Pro secundo, as regards the principles of solidarity: The means to achieve our political goals (*e.g.*, to provide sufficient resources for a decent existence for everyone) should not be blocked through structures based on experiences only from the industrial society. The door for new alternatives must be kept open – it is the achievement of the *goal* that is important! We can not know what Europe will look like in 100, or even in 50, years. The Charter will soon be outdated if we let it block new - and better! - solutions to these problems. If the Charter is seen as outdated, *all* rights in it will risk to be seen as relative and out-of-date. Secondary legislation is therefore the more suitable level to deal with, and promote, this sort of protection. Every regulation cannot be lifted to constitutional level. (The Convention works under the condition that the Charter may become binding.)

Pro tertio, the question of "he" must be solved. We cannot have a Charter that sometimes explicitly guarantees "his or her" rights but sometimes only "his" rights. It may seem a trivial question when drawing up an entire new Charter of Fundamental Rights. However, that is precisely why we cannot follow *old* drafts of Charters and let "him" include also "her". With this Charter, we make a statement of the fundamental principles from which we will create the new Europe. To only discuss "his" rights does not follow the principles of equality, which we so boldly state in the three Articles 20-22. For countries like Sweden, it would imply a

tremendous step backwards. It is easy to alter this mistake at least in the Swedish version, and in the English.

Finally, the Member States and the institutions and bodies of the European Union should be obliged to inform the citizens about the Charter.

Suggestions for amendments on Convent 45

PREAMBLE (amendment supported by Thierry Cornillet)

2. The Union is founded on the indivisible, universal principles of the dignity of men and women, freedom, equality and solidarity; it is based on the principle of democracy and the rule of law **and has a base in humanistic ethics.**

5. This Charter reaffirms, with due regard for the powers and tasks of the Community and the Union and the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions common to the Member States, the Treaty on European Union, the Community Treaties, the European Convention for the Protection of Human Rights and Fundamental Freedoms, drawing upon the Social Charters adopted by the Community and by the Council of Europe and the case law of the Court of Justice of the European Communities and of the European Court of Human Rights.

7. Each person is therefore, **by the institutions and bodies of the European Union and of the Member States, implementing Union law**, guaranteed the rights and freedoms set out hereafter.

CHAPTER I. DIGNITY

Article 1. Dignity of the person

The dignity of the person, **male or female**, must be respected and protected.

CHAPTER II. FREEDOMS

Article 8. Protection of personal data

It must be stated clearly that "everyone" and "him" include legal persons. This could be done in the part B of the Charter. In that part it must also be clearly stated that information, which represents an asset (of economic value), but are not intellectual rights, are protected under this Article.

Article 12. Freedom of assembly and of association

Everyone has the right to freedom of peaceful assembly and to freedom of association/**non-association**, in particular in political, trade union and civic matters.

Political parties at European level contribute to expressing the political will of the citizens of the Union.

In Sweden and Denmark, people who do not belong to a trade union may be harassed and sometimes are not allowed to seek employment at all places if they do not belong to a trade union. If they wish to leave the trade union, this may constitute a legal ground to fire them. This is deeply discriminatory. In the same way as it is a fundamental right to not have any religion or faith, it is a fundamental right not to be forced to join or stay with an organisation.

Article 14. Right to education

2. The freedom to found educational establishments with due respect for **principles of democracy and equality** and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be guaranteed, in accordance with the national laws governing the exercise of such freedom and right.

The freedom to found educational establishments can only be guaranteed if these establishments adhere to fundamental democratic principles such as equality. The demand for equality must be expressly stated in the Charter. Young women, not the least from third countries, must be given the same education and the same opportunities as young men to ensure future democracy!

Article 17. Right to property

(amendment supported by Andrew Duff, Ingo Friedrich, Thierry Cornillet and Marie-Thérèse Hermange)

1. Every person has the right to own, use, dispose of and bequeath his lawfully acquired possessions. No one may be deprived of his possessions except in **specified public interest**, in the cases and under the conditions provided for by law, subject to compensation **for the loss in due time**.

2. Intellectual property shall be protected.

The last sentence of part 1 should be moved as indicated above to ensure that there will not be problems of interpretation.

CHAPTER III. EQUALITY

Article 21. Equality and non-discrimination

Any discrimination based on any ground, such as **nationality**, sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion,

membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.

2. (delete)

CHAPTER IV. PRINCIPLES OF SOLIDARITY

Article 26. Right of collective bargaining and action

Delete

Article 137.6 in the EC Treaty explicitly prohibits the interference of EU in national legislation on these matters. This Article cannot, therefore, remain in the Charter.

Article 27. Right of access to placement services

Delete

As stated under "General Remarks" above, this can not be guaranteed as a fundamental right which can and will last for hundreds of years. We can find better ways of solving these matters in the future.

Article 28. Protection in the event of unjustified dismissal

Every worker has the right to protection against **legally** unjustified dismissal.

In this Article, we would like to change the English word "unjustified" to the English equivalence of the Swedish "saklig grund" or the German "sachliche gesetzliche Grund". The nearest equivalent is probably "legally justified".

Article 34. Access to services of general economic interest

Delete

This Article is incomprehensible. Which right is guaranteed, exactly? The Charter should be fairly easy to understand for European citizens. If the Charter contains an incomprehensible text like this one, it is a disgrace, which lowers the quality of the whole document. The Charter shall be "clean", concentrated, clear, solemn and well phrased. This article is most far from that and has no "fundamental character". One could as well turn it around and say that everything that could be run privately should.

Article 35. Environmental protection

[Delete] Union policies shall **promote** the protection and preservation of **[delete]** good **[delete]** environment **[delete]**, respecting sustainable development.

The Articles 35 and 36 should have a similar wording, therefore should “All” be deleted. The language should be made as simple and clear as possible. The Union will not be able to “ensure” environmental protection since the Union can not direct the environment. But it should certainly promote a sustainable development of the environment! If only the living environment is protected and scarcely populated areas are ignored, it will soon create a worse living environment.

Article 36. Consumer Protection

Union policies shall **promote** a high level of protection as regards the health, safety and interests of consumers.

The Union will not be able to “ensure” consumer protection since it cannot control every company and its products - or the consumers. But all Union policies should promote the protection of consumers. To guarantee and ensure things that the Union can not fulfil is to render the Charter useless in the eyes of the European citizens.

CHAPTER VI. JUSTICE

Article 47. Principles of legality and proportionality of **[delete one word]** offences and penalties

1. No one shall be held guilty of any **[delete]** offence on account of any act or omission which did not constitute a **[delete]** offence under national law or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the **[delete]** offence was committed. If, subsequent to the commission of the **[delete]** offence, the law provides for a lighter penalty, that penalty shall be applicable.
2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, **constituted an offence** according to international law.
3. The severity of penalties shall be proportional to the gravity of the **[delete]** offence.

The presumption of innocence and the other principles stated above are the trademarks of a true democracy. They are some of the most important fundamental rights. To abandon these principles in the way that has been done in Convent 45, Article 47, is very serious. We do not know which offences will be criminal in the future, but we must ensure that every man or woman are entitled to these fundamental devices for protection against unjustified punishment, no matter if the offence they are charged with happens to be in the Criminal Code or not. Otherwise politicians could avoid essential principles in a democracy through administrative measures, leading to a dilution of the Charter.

CHAPTER VII. GENERAL PROVISIONS

Article 49. Scope

3. (new) The Charter applies to legal and physical persons when otherwise has not been stated.

CEDERSCHIÖLD REV

Article 12. Freedom of assembly and of association

Everyone has the right to freedom of peaceful assembly and to freedom of association/**non-association**, in particular in political, trade union and civic matters.

Political parties at European level contribute to expressing the political will of the citizens of the Union.

In Sweden and Denmark, people who do not belong to a trade union may be harassed and sometimes are not allowed to seek employment at all places if they do not belong to a trade union. If they wish to leave the trade union, this may constitute a legal ground to fire them. This is deeply discriminatory. In the same way as it is a fundamental right to not have any religion or faith, it is a fundamental right not to be forced to join or stay with an organisation. The right to non-association is recognised in Art. 11 of the 1989 Community Charter of the Fundamental Social Right of Workers (referred to in TEU art. 136): "Employers and workers of the European Community shall have the right of association in order to constitute professional organisations or trade unions of their choice for the defence of their economic and social interests. Every employer and every worker shall have the freedom to join or not to join such organisations without any personal or occupational damage being suffered by him".

Article 17. Right to property

(amendment supported by Andrew Duff, Ingo Friedrich, Thierry Cornillet and Marie-Thérèse Hermange)

1. Every person has the right to own, use, dispose of and bequeath his lawfully acquired possessions. No one may be deprived of his possessions except in **specified** public interest, in the cases and under the conditions provided for by law, subject to compensation **for the loss in due time**.
2. Intellectual property shall be protected.

The last sentence of part 1 should be moved as indicated above to ensure that there will not be problems of interpretation. Without the amendments above, the right to property in the Charter would be weaker than the right as interpreted by the Court of Justice in Luxembourg. This can be seen in the Standley case, C-293/97, para. 54, which is further discussed in my opinion (from 22 February 2000) on the Charter adopted in the Legal Affairs Committee.

**Observation déposée par Thierry CORNILLET
sur le Convent 45 : Charte des Droits fondamentaux 4423/00**

à l'attention de Monsieur MENDEZ DE VIGO

Il me paraît essentiel que le principe de neutralité de l'action publique puisse figurer en tant que tel dans la charte.

La neutralité de l'action publique recouvre à la fois :

- La neutralité dont doit faire preuve l'administration vis-à-vis de celles et ceux qui s'adressent à elle quelle que soient leurs opinions ;
- La neutralité que doit s'imposer l'administration dans son action même et notamment en ne se faisant pas le reflet et le relais d'une idéologie dominante tant politique, philosophique ou religieuse.

Je propose donc que l'article 39 puisse être ainsi précisé, la neutralité venant, à mes yeux, heureusement compléter l'équité et l'impartialité :

Article 39 : Droit à une bonne administration

1. Toute personne a le droit de voir ses affaires traitées impartialement, équitablement SELON LE PRINCIPE DE NEUTRALITE DE L'ACTION PUBLIQUE et ce dans un délai raisonnable par les institutions et organes de l'Union.

Merci

Thierry Cornillet

31 août 2000

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DEHAENE

-----Original Message-----

From: AMANT Martine

Sent: mercredi 30 août 2000 10:43

To: 'JACQUE Jean-Paul'

Subject: BRU-BELGOEUROP - Observations de Monsieur J-L. Dehaene,
représentant personnel du Gouvernement belge

A L'ATTENTION DE MONSIEUR BRAIBANT

OBSERVATIONS DE J-L. DEHAENE, REPRESENTANT PERSONNEL DU
GOUVERNEMENT BELGEOBJET : Projet de Charte des droits fondamentaux de l'Union
européenne (Convent. 45 et 46).

1. Il convient de féliciter le Présidium pour le caractère équilibré du projet de Charte qu'il a élaboré à la base des amendements déposés par les membres de la Convention et des échanges de vues extrêmement riches qui se sont tenus au cours des séances plénières de la Convention.

Le Traité d'Amsterdam a consolidé la base institutionnelle de la protection des droits fondamentaux par l'Union en tant que telle, en étendant l'exercice du contrôle juridictionnel de la Cour de Justice en ce qui concerne le respect de ses droits dans le cadre de l'action des institutions.

Il n'en demeure pas moins que le citoyen dans ses relations avec les institutions et les Etats membres chargés de la mise en oeuvre du droit communautaire doit pouvoir identifier et comprendre la portée des droits fondamentaux dont il bénéficie à l'effet de s'assurer de leurs applications correctes et exiger, le cas échéant, le respect de ceux-ci.

C'est la raison pour laquelle une énonciation de ses droits telle qu'envisagée par la Charte conforte la protection offerte aux citoyens.

2. Dans cette perspective, il serait opportun que le préambule qui constitue en quelque sorte la raison d'être de la Charte exprime de façon plus explicite qu'il s'agit avant toute chose d'un instrument visant à clarifier les liens entre le citoyen et les institutions et à l'informer de ses droits. La protection accrue voulue par la Charte comporte à la fois une mission d'information et une mission de prévention ; une meilleure connaissance de ses droits fondamentaux doit permettre au justiciable de pallier immédiatement toute intervention qui menacerait la substance même de ceux-ci.

3. Le Gouvernement belge se félicite de l'intégration dans la Charte des droits économiques et sociaux qu'elle estime fondamentale.

4. La structure proposée qui regroupe les droits énoncés selon des domaines spécifiques de protection est une solution adéquate dans la mesure où elle évite le clivage traditionnel entre droits classiques et droits économiques et sociaux.

La classification des droits selon des domaines déterminés favorise la lisibilité de la Charte.

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En définissant soit les sphères d'activités des institutions et des Etats membres où les risques d'atteinte aux droits sont omniprésents, comme en matière de Justice, soit en regroupant les droits sans distinction de leur nature selon un principe directeur fondamental tel que l'égalité, on permet au citoyen d'identifier aisément la violation dont il serait victime.

5. Les observations qui suivent quant au libellé des articles du projet de Charte répondent à un souci d'adéquation de ce projet avec les explications reprises dans le doc. Charte 4423/00 Conv. 46.

* Art 15 - Liberté professionnelle.

Comme le précise le doc. Conv. 46, le paragraphe 1er de cet article s'inspire de l'article 1er paragraphe 2 de la Charte sociale européenne signée le 18 octobre 1961 ratifiée par tous les Etats membres.

Il est à noter que la Charte européenne consacre comme tel un droit au travail (cfr. intitulé de l'article 1er). Il paraît dès lors souhaitable que la Charte proclame également de façon explicite un droit au travail dont l'exercice effectif est notamment garanti par la liberté professionnelle (§ 1er), mais également en ce qui concerne le citoyen de l'Union par la libre circulation des travailleurs, la liberté d'établissement et de libre prestation de services (§ 2).

Le libellé suivant est suggéré :

« Art. 15 - Droit au travail

1. Afin de gagner sa vie, toute personne a un droit au travail qui implique notamment le droit d'exercer une profession librement choisie ».

* Art. 48 - Droit a ne pas être jugé ou puni pénalement deux fois pour un même délit.

Le doc. Conv. 46 précise que conformément à l'acquis du droit de l'Union le principe « non bis in idem » ne s'applique pas seulement à l'intérieur de la juridiction d'un même Etat mais aussi entre les juridictions des Etats membres. La version actuelle de l'article 48 implique que le pouvoir juridictionnel de n'importe quel autre Etat au monde doit être reconnu.

Il est dès lors suggéré d'adopter un libellé qui limite la reconnaissance des décisions judiciaires en matière pénale aux Etats membres de l'Union européenne. Ma proposition d'amendement 204 introduite antérieurement répond à cette exigence.

Le texte proposé était le suivant :

« Nul ne peut être poursuivi ou puni pénalement dans un Etat membre de l'Union européenne en raison d'une infraction pour laquelle il a déjà été acquitté ou condamné dans un Etat membre de l'Union européenne par un jugement définitif (conformément à la loi). »

* Art 50 - Portée des droits garantis.

Le paragraphe 1er de l'article 50 traite du régime des limitations. Comme le précise le doc. Conv. 46 la formule s'inspire de la jurisprudence de la Cour de Justice de Luxembourg.

Par souci de cohérence avec la teneur de cette jurisprudence et en vue d'assurer une protection maximale quant à la nature des restrictions permises, il serait opportun de compléter le § 1er en y ajoutant : « sans pour autant porter atteinte à la substance même de ces droits et libertés ».

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Le paragraphe 3 de l'article 50 précise le régime des droits qui sont également garantis par la Convention européenne des droits de l'Homme .

Ce paragraphe répond de façon adéquate à la nécessité d'assurer la cohérence et la sécurité juridique entre la Charte et la Convention européenne des droits de l'Homme.

Il n'en demeure pas moins que l'on ne peut exclure le risque que la Charte appliquée et interprétée dans le cadre de l'Union européenne, c'est à dire dans le cadre d'un Traité avec ses objectifs propres, ne génère une jurisprudence de la Cour de Justice de Luxembourg qui pourrait diverger de la jurisprudence de la Cour de Strasbourg.

A cet égard, le Gouvernement belge tient à souligner qu'une interprétation harmonieuse des droits fondamentaux serait hautement favorisée par une adhésion de l'Union à la Convention européenne des droits de l'Homme.

Enfin, il serait opportun de citer la Charte sociale européenne à l'art. 50 § 3. Cette référence permettrait de clarifier la portée qu'il convient de donner aux droits sociaux repris dans le projet de Charte et qui émanent de la Charte sociale européenne. L'interprétation de ces droits ont en effet connu, au fil du temps, une évolution en raison de la jurisprudence plus que trentenaire élaborée par un Comité d'experts indépendants, aujourd'hui devenu « Comité européen des droits sociaux ».

Il serait souhaitable de maintenir le dynamisme de la jurisprudence du Comité des droits sociaux dans la même mesure qu'on sauvegarde celui-ci pour la jurisprudence de la Convention européenne des droits de l'homme. De surcroît, la jurisprudence du Comité des droits sociaux tient compte de la jurisprudence de la Cour de Strasbourg là où des chevauchements se font avec les droits de la Convention européenne des droits de l'homme.

Le libellé suivant est suggéré :

« Art. 50.

3. Dans la mesure où la présente Charte contient des droits correspondant à des droits garantis par la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales ou par la Charte sociale européenne, leur sens et leur portée sont similaires à ceux que leur confèrent lesdites conventions, à moins que la présente Charte n'assure une protection plus élevée ou plus étendue ».

personnel du

Jean Luc DEHAENE,
Représentant

Gouvernement belge

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MPE/CRL/2000/181/mh

MPE/NEXT/2000/15/mh

Bruxelles, le 31 août 2000

DEHOUSSE

Monsieur Jean-Paul JACQUE
Directeur du Service Juridique du Conseil

À l'attention de M. MENDEZ DE VIGO

Monsieur le Directeur,

Le document (Charte 4422/00 - CONVENT 45) reprenant le texte complet de la Charte proposé le 28 juillet 2000 par le Présidium suite aux discussions de la Convention m'est bien parvenu et a retenu toute mon attention.

Je désire tout d'abord exprimer mes remerciements au Présidium pour les efforts considérables qu'il a accepté de fournir afin que la Convention dispose en temps voulu d'un projet structuré de texte.

En se souvenant des hésitations exprimées de part et d'autre lors des premières réunions de la Convention, on ne peut que mesurer avec satisfaction le chemin parcouru et je n'ignore pas le rôle déterminant rempli à cet égard par le Présidium.

Je m'en tiendrais là si le texte à adopter ne se situait pas dans le domaine primordial et essentiel à l'Europe des droits fondamentaux de la personne humaine.

Dans cette matière, personne ne peut renoncer à proposer des améliorations et c'est dans cet esprit que je formule les propositions suivantes.

1. Préambule

1.1. L'idée du caractère limitable des droits ne peut être exprimée par une clause horizontale introduite à la fin de la Charte sans être annoncée dès le début, par exemple sur base du texte suivant :

Aucune liberté n'est absolue. Le droit, par ses principes et dans des textes, détermine les circonstances dans lesquelles des limitations peuvent être reconnues et, dans le cas échéant, détermine les limites ou les dérogations.

1.2. Il serait utile de déterminer pareillement les titulaires des droits retenus, par exemple sur base du texte suivant:

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Tout étranger qui se trouve sur le territoire de l'Union jouit de la protection accordée par la présente Charte aux personnes et aux biens, sauf si une disposition de la Charte en dispose autrement.
"

A cet égard, je désire faire observer que, lorsque des droits ou des libertés sont garanties ou "respectées" au profit d'individus, le texte proposé spécifie toujours à quel "type" d'individus la disposition s'applique, c'est-à-dire "toute personne", "tout citoyen de l'Union", "tout travailleur", "les ressortissants des pays tiers en séjour régulier" (par exemple à l'article 15 sur la liberté professionnelle). Pourtant, aucune clause horizontale n'est prévue concernant les bénéficiaires de la Charte. Il est seulement indiqué à l'article 49 que la Charte s'adresse aux institutions et organes de l'UE ainsi qu'aux Etats membres lorsqu'ils mettent en oeuvre le droit de l'Union. Il apparaît par conséquent nécessaire d'introduire soit au Préambule soit dans les articles horizontaux le principe, conforme à la jurisprudence internationale et européenne en ce qui concerne les droits fondamentaux, selon lequel les droits conférés par la présente s'appliquent aux ressortissants d'Etats tiers résidant légalement sur le territoire de l'Union Européenne sauf si l'article contient une disposition spécifique relative aux destinataires des prérogatives en question.

2. Article 3, Droit à l'intégrité de la personne:

Ajouts suggérés:

- "Le respect de l'intégrité physique et morale implique l'accès libre de tous aux progrès de la médecine et des autres sciences, et en particulier l'accès égal de tous aux soins de santé.
- La matière vivante ne peut être brevetée ni dans sa globalité ni dans une de ses parties.
- Lorsque le vieillissement d'une personne porte atteinte à l'intégrité, celle-ci bénéficie, indépendamment de son droit à la pension, à une aide et une assistance spécifiques.
- Toute personne a le droit de demander et d'obtenir une mort qui respecte sa dignité, en particulier lorsque la dépendance porte atteinte au respect de l'intégrité physique et morale ou à la dignité de l'être humain.

Justifications:

Ad 1: Le principe de l'accès équitable aux soins de santé est prévu notamment par l'article 3 de la Convention sur les Droits de l'Homme et la biomédecine, élaborée dans le cadre du Conseil de l'Europe, entrée en vigueur le 1 décembre 1999, signée par neuf Etats membres et ratifiée par la Grèce et l'Espagne. Il est d'ailleurs fait référence à cette Convention dans l'exposé des motifs (CONV 46). Une autre base juridique qui permet de plaider en faveur de l'in

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sertion d'un accès libre et égal aux soins de santé est l'article 12 du Pacte des Nations Unies sur les droits économiques et sociaux, ratifié par tous les Etats membres, qui stipule que:

- "1. Les Etats parties au présent Pacte reconnaissent le droit qu'a toute personne de jouir du meilleur état de santé physique et mentale qu'elle soit capable d'atteindre.
2. Les mesures que les Etats parties au présent Pacte prendront en vue d'assurer le plein exercice de ce droit devront comprendre les mesures nécessaires pour assurer:
- a) La diminution de la mortalité et de la mortalité infantile, ainsi que le développement sain de l'enfant;
- b) L'amélioration de tous les aspects de l'hygiène du milieu et de l'hygiène industrielle;
- c) La prophylaxie et le traitement des maladies épidémiques, endémiques, professionnelles et autres, ainsi que la lutte contre ces maladies;
- d) La création de conditions propres à assurer à tous des services médicaux et une aide médicale en cas de maladie."

Ad 2: Le principe de non-brevetabilité de la matière vivante repose dès à présent sur les normes de droit international suivantes: le Pacte des Nations Unies sur les droits économiques et sociaux (article 1, § 1&2), mais surtout la Convention des Nations Unies sur la Biodiversité, ratifiée par tous les Etats membres de l'UE, et la Convention sur le Brevet Européen (CBE), dont l'article 52 établit que "seules sont brevetées les inventions nouvelles".

Ad 3 et 4: Le respect de la dignité de la personne, le droit à la vie (articles 1 et 2 du CONV 45) ainsi qu'une clause sur le droit à une vieillesse et une mort dans la dignité constituent des concepts parfaitement complémentaires.

3. Article 7: Respect de la vie privée

Je propose le maintien de la formulation de l'article 8 CEDH ("Toute personne a droit au respect de sa vie privée et familiale, de son domicile et du secret de sa correspondance") dans la mesure où, face au développement des techniques de communication, les possibilités techniques rendent la garantie du droit au "secret des communications" parfaitement illusoire. Assimiler ce qui est techniquement possible avec ce qui ne l'est pas, c'est construire une parodie de garantie et par conséquent affaiblir toute la Charte.

4. Article 9: Droit de se marier et de fonder une famille

Le texte proposé ne reflète pas les discussions qui ont eu lieu en séance plénière et qui pourraient aboutir sans problème sur un texte tel que celui-ci:

"Deux personnes peuvent contracter une union de longue durée dont les modalités sont définies par la loi, laquelle définit également

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la protection assurée à cette union."

Une formule de ce type prend en compte les nouvelles formes de la vie de couple qui apparaissent dans les différents Etats de l'Union comme ailleurs dans le monde.

5. Article 10 - Liberté de pensée, de conscience et de religion

Je note que le texte proposé par le Présidium affine de façon générale la liberté de pensée, de conscience et de religion.

Il renvoie donc implicitement le problème de la limitation aux clauses dites "horizontales".

Ceci ne me paraît pas satisfaisant en l'espèce. Dans un siècle marqué, y compris ces dernières années, par un retour en puissance de tous les sectarismes, il doit exister une condition de réciprocité.

C'est pourquoi j'avais par amendement demandé qu'il soit écrit que "toute personne a droit à la liberté de pensée, de conscience et de religion dans la mesure où la pensée, la conscience et la religion respectent le principe de tolérance et le principe de démocratie".

Je réitère mon appel en ce sens.

5.2. Par ailleurs, où finit la secte (dont on ne dit rien) et où commence la religion ?

6. Article 11 - Liberté d'expression

6.1. A nouveau, le texte présenté par le Présidium renvoie le problème des limitations aux clauses horizontales (et en l'occurrence au §2 de l'article 10 CEDH).

6.2. Tout d'abord, c'est avec raison que la CEDH formule des restrictions dans le texte, et à tort que l'on propose d'agir implicitement et indirectement pour la Charte.

6.3. Ensuite, la CEDH ne mentionne pas le souci de préserver l'enfance et la jeunesse, pourtant bien plus nécessaire aujourd'hui qu'en 1950.

6.4. Dès lors, je maintiens la proposition d'insérer, après le groupe nominal "ingérence des autorités publiques", les mots "sauf pour assurer la protection de la démocratie, des droits fondamentaux et de la jeunesse".

6.5. Par ailleurs, je suggère l'insertion des dispositions suivantes:

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- "La liberté d'expression implique le droit de s'exprimer dans sa propre langue.
- Là où les exigences d'efficacité sociale impliquent le choix d'une ou plusieurs langues administratives, ce choix doit s'opérer par la loi.
- Là où existe une langue endogène qui ne comporte pas le caractère de langue administrative, elle n'en demeure pas moins un trait culturel fondamental et l'un des éléments de richesse du patrimoine culturel européen.
- A ce titre, toute langue endogène, au sens de langue régionale par rapport à la Charte Européenne des Langues Régionales ou Minorités, mérite respect, protection et aide. La loi détermine les modalités d'application du présent principe, sans que les exigences d'efficacité puissent porter atteinte aux droits et libertés fondamentales."

A cet égard, l'évolution du monde implique une attention accrue au respect et à la protection de la diversité culturelle qui demeure une caractéristique essentielle de l'Europe.

7. Article 14 - Droit à l'éducation

7.1. L'efficacité et pour tout dire la mise en oeuvre du principe demande plusieurs clarifications et compléments. Ainsi, le texte gagnerait à comprendre les dispositions suivantes:

- Toute personne dispose du droit à un accès égal et gratuit aux écoles d'enseignement obligatoire, ce qui implique le devoir pour la collectivité d'assurer l'existence d'écoles en nombre suffisant.
- L'existence et le devenir de l'Union, d'une part, et l'intérêt de chaque enfant pris séparément, d'autre part, convergent pour rendre nécessaire un enseignement systématique et progressif de trois langues, enseignement qui doit commencer dès que possible."

Pour le reste, la garantie de l'accès aux écoles gratuites ne peut être effective que si des infrastructures suffisantes dans ce domaine sont prévues par la collectivité, faute de quoi on exprime un vœu au lieu d'énoncer un droit.

D'autre part, pourquoi la Charte ne tiendrait-elle pas compte de l'article 149.2 CE, qui stipule que "l'action de la Communauté vise à développer la dimension européenne dans l'éducation, notamment par l'apprentissage et la diffusion des langues des Etats membres" ? Si c'est le nombre de trois langues qui gêne le Présidium, je rappellerai que ce nombre a été proposé par le Président DELORS lors que celui-ci dirigeait la Commission Européenne. Mais une disposition se bornant à prévoir l'enseignement de plusieurs langues rencontrerait évidemment ma préoccupation.

7.2. La formule retenue par le Présidium pour l'article 14§2 ("assurer l'éducation et l'enseignement de leurs enfants conformément à leurs convictions religieuses, philosophiques et pédagogiques") e

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engendre plusieurs imprécisions dangereuses qui doivent être levées

Ainsi:

1°) les témoins de Jehovah refusent fréquemment que leurs enfants soient vaccinés en raison de leurs croyances: le Présidium propose-t-il de respecter cette volonté (qui met évidemment les autres enfants en péril)? C'est ce qui découle du texte écrit;

2°) le respect des valeurs implique-t-il pour le Présidium que certains enfants puissent échapper à l'obligation scolaire (ce qui est le cas si les parents "assurent l'enseignement")?

3°) Réapparaît ici la frontière parfois ténue entre sectes, religion et pensée (cf. supra 5.2).

8. Article 18 - Droit d'asile

Le droit d'asile ne se conçoit pas comme un simple droit de présence mais comme un acte d'adhésion aux valeurs qui fondent l'Union, et dont la Charte est du reste l'expression.

Ceci justifie l'insertion dans l'article 18 d'une disposition conditionnant l'octroi du droit d'asile à l'engagement du ou des bénéficiaires de respecter les principes de tolérance, le principe de démocratie ainsi que les lois fondamentales de l'Union et de ses Etats membres.

9. Article 25 - Droit à l'information et à la consultation des travailleurs au sein de l'entreprise

9.1. La proposition du Présidium, en stipulant que les travailleurs ont droit à "une information et une consultation en temps utile sur les questions qui les concernent", est très en retrait par rapport au grand nombre d'amendements déposés à ce sujet, qui tendaient à garantir aux travailleurs une information régulière et fiable afin de corroborer la notion de temps utile mais aussi pour s'assurer que les travailleurs ne doivent pas s'enquérir de leur propre initiative sur la situation de l'entreprise dans son ensemble.

9.2. La formule sur "les questions qui les concernent" laisse de toute évidence une trop grande marge d'appréciation à la direction de l'entreprise pour déterminer quels sont les sujets qui concerneraient l'entreprise mais sans concerner les travailleurs et paraît par conséquent inutile et dangereuse parce que partielle.

10. Article 26 - Droit de négociation et d'action collective

Comme le relevait le Professeur BRAIBANT dans sa "Contribution 188" du 23 mai 2000, l'article 137.6 CE stipule explicitement que le droit de grève ne relève pas des compétences de la Communauté Euro

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péenne mais ne signifie pas pour autant que ce droit ne doit pas être respecté par la CE dans la conduite de ses politiques.

En effet, le droit de grève est non seulement garanti par la Charte sociale européenne (article 6, al.4), texte de référence pour les travaux de la Charte selon le mandat de Cologne, mais aussi par le Pacte international relatif aux droits économiques, sociaux et culturels de 1966, ratifié par tous les Etats membres de l'UE, qui stipule à l'article 8: "Les Etats parties au présent Pacte s'engagent à assurer*d) le droit de grève, exercé conformément aux lois de chaque pays".

11. Article 31 - Conciliation de la vie familiale et de la vie professionnelle

Une adaptation du texte me paraît nécessaire, par exemple dans l'esprit du texte suivant:

"Quelle que soit la composition de la famille, la protection de celle-ci est garantie sur le plan juridique, économique, social et fiscal".

En effet, la formulation actuellement proposée ne tient pas compte de façon suffisamment explicite de la situation des familles qui ne correspondent pas au schéma classique, comme par exemple les familles monoparentales.

12. Article 32 - Sécurité sociale et aide sociale

A la lumière des traditions constitutionnelles d'un grand nombre d'Etats-membres ainsi que du Pacte international relatif aux droits économiques, sociaux et culturels, qui prévoit à l'article 9 que "les Etats parties au présent Pacte reconnaissent le droit à toute personne à la sécurité sociale", le droit à la sécurité sociale doit être reconnu à toute personne.

Il s'agit là d'un principe de droit qui, à l'aube du XXI^e siècle, fonde la spécificité du modèle social européen dans le monde et sa mention dans la Charte me paraît constituer un devoir essentiel.

13. Article 34 - Accès aux services d'intérêt général

Les principes de l'égalité et de la liberté d'accès garanties à toute personne, tel qu'avancés en dernier lieu par la proposition de compromis des Professeurs BRAIBANT et MEYER en date du 13 juin 2000, constituent un seuil en deçà duquel la garantie de l'accès aux services d'intérêt économique général ne peut être apportée dans la vie réelle et il me paraît que le Présidium devrait tenir pleinement compte de cette proposition très adéquate.

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Par ailleurs, j'ai pris note de l'invitation inscrite dans le document CONVENT 46 à vous transmettre des commentaires relatifs à ce texte.

A cet égard, lors de la réunion de la Délégation du Parlement Européen qui s'est tenue ce jeudi 31 août, Mme BERES, présidente de séance, a précisé que le document CONVENT 46 constituait un document technique que le Présidium n'avait du reste pas fait sien, du moins à ce jour -- comme le document le souligne indirectement lui-même.

De surcroît, il est également précisé que ce document "est amené à évoluer", ce qui me paraît également naturel.

Dans ces conditions, je ne désire faire aujourd'hui de commentaires ni sur ce que ce document contient ni sur ce qu'il ne contient pas.

Enfin je précise que j'ai mis dans la présente lettre l'accent sur une série de points qui me paraissent particulièrement importants, sans reprendre chacun des amendements que j'ai déposés antérieurement. Ceci ne signifie nullement que je renonce implicitement à ces amendements.

De même, j'ai délibérément omis de développer ici différents arguments dans la mesure où j'ai contresigné des observations formulées collectivement par les membres socialistes de la Délégation, comme j'ai marqué un accord pour partie sur les nouvelles considérations émises par le Professeur MEYER.

En vous remerciant d'avance de votre attention, je vous prie de croire, Monsieur le Directeur, en l'assurance de mes sentiments les meilleurs.

Jean-Maurice DEHOUSSE
Membre du Parlement Européen

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

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FINAL

ANDREW DUFF'S AMENDMENTS (DRAFT) TO CONVENT 45

**European Parliament
Brussels**

29 August 2000

PREAMBLE

1. — ~~The peoples of Europe have established an ever closer union between them and are resolved to share a peaceful future based on common values.~~

~~2. — The The European Union is founded on the indivisible, universal principles of the dignity of men and women, freedom, equality and solidarity; it is based on the principle of democracy and the rule of law. principles of peace, liberty, democracy, respect for human rights and the rule of law. Its task is to organise relations between its Member States and peoples in a manner demonstrating consistency and solidarity.~~

3. — ~~The Union contributes to the development of these common values while respecting The Union respects the diversity of the cultures and traditions of theits peoplesof Europe as well as the national identities of theits Member States and the organisation of their public authorities at national, regional and local levels.~~

~~levels; itThe Union promotes economic and social progress, ensures balanced and sustainable development, through asserts its identity in the world, protects the rights and interests of its citizens, develops an area of freedom, security and justice, and guarantees the free movement of persons, goods, capital and services.~~

4. — ~~In adopting this Charter the Union intends to enhance the protectionmake the overriding importance of fundamental rights in the light of changes in society, social progress and scientific and technological developments by making those rights more visible. and their relevance more visible to its citizens.~~

5. — ~~This Charter reaffirms, with due regard for the powers and tasks of the Community and the Union and the principle of subsidiarity, the rights as they result, in particular, fromThis Charter has regard to the constitutional traditions common to the Member States, the Treaty on European Union, the Community Treaties, Treaties of the European Union and Community, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Community and by the Council of Europe as well as the and the case-law jurisprudence of the Court of Justice of the European Communities and of the European Court of~~

Human Rights.

Enjoyment of these rights contained in this Charter entails responsibilities and duties with regard to ~~other persons, to the human community and~~ towards all other people and society as a whole, as well as to future generations.

7. ~~Each person is therefore guaranteed the rights and freedoms set out hereafter.~~ This Charter guarantees these fundamental rights and principles:

CHAPTER I. DIGNITY

Article 1. Dignity of the person

The dignity of the person must be respected and protected.

Article 2. Right to life

1. Everyone has the right to life.
2. No one shall be condemned to the death penalty, or executed.

Article 3. Right to the integrity of the person

1. Everyone has the right to respect for ~~his~~ their physical and mental integrity.
2. In the fields of medicine and biology, the following principles must be respected in particular:
 - free and informed consent of the person concerned,
 - prohibition of eugenic practices, in particular those concerned with the selection of persons,
 - prohibition on making the human body ~~and~~ or its parts a source of financial gain,
 - prohibition of the reproductive cloning of human beings.

Article 4. Prohibition of torture and inhuman or degrading treatment and punishment

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Article 5. Prohibition of slavery and forced labour

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. Trafficking in human beings is prohibited.

CHAPTER II. FREEDOMS

Article 6. Right to liberty and security

Everyone has the right to liberty and security of ~~the person~~.

Article 7. Respect for private and family life

Everyone has the right to respect for ~~his~~ ~~their~~ private and family life, ~~his~~ home and the confidentiality of ~~his~~ communications.

Article 8. Protection of personal data

Everyone has the right to the protection of their own personal data ~~concerning him~~. Such data must be processed fairly for specified purposes on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data about themselves ~~which has been collected concerning him~~, and the right to have it rectified. Compliance with these rules shall be subject to control by an independent authority.

Article 9. Right to marry and right to found a family

The right to marry and the right to found a family shall be guaranteed ~~in accordance with the~~ national laws governing the exercise of these rights.

Article 10. Freedom of thought, conscience and religion

Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.

Article 11. Freedom of expression and information

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.
2. Freedom of the media and freedom of information shall be guaranteed with due respect for pluralism and transparency.

Article 12. Freedom of assembly and of association

Everyone has the right to freedom of peaceful assembly and to freedom of association, in particular in political, trade union and civic matters.

~~Political parties at European level contribute to expressing the political will of the citizens of the Union.~~

Article 13. Freedom of research learning

The arts, teaching and scientific research shall be free of constraint.

Article 14. Right to education

1. Everyone has the right to education and to have access to vocational and continuing training. This right includes the right to receive free compulsory education.
2. The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be guaranteed, in accordance with the national laws governing the exercise of such freedom and right.

Article 15. **Freedom to choose an occupation work**

1. ~~To earn a living, E~~everyone has the right to engage in a freely chosen occupation and to earn a living.
2. Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide or receive services in any Member State.
3. Nationals of third countries who are authorised to reside in the territories of the Member States are entitled to ~~working~~ conditions equivalent to those of citizens of the Union.

Article 16. **Freedom to conduct a business**

The freedom to conduct a business is recognised.

Article 17. **Right to property**

1. ~~Everyone person~~ has the right to own, use, dispose of and bequeath ~~his~~ their lawfully acquired possessions. No one may be deprived of ~~his~~ their possessions, except in ~~the~~ an identified public interest and in the cases and under the conditions provided for by law, subject to fair compensation. The use of property may be regulated insofar as is necessary for the general interest.
2. Intellectual property shall be protected.

Article 18. **Right to asylum**

The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees ~~and in~~ accordance with the ~~Treaty~~ establishing the European Community.

Article 19. Protection in the event of removal, expulsion or extradition

1. Collective expulsions are prohibited.
2. No one may be removed, expelled or extradited to a sState where ~~he or she~~ could be subjected to the death penalty, torture or other inhuman or degrading treatment.

CHAPTER III. EQUALITY**Article 20. Equality before the law**

Everyone, ~~man or~~ and woman, is equal before the law.

Article 21. Equality and non-discrimination

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national or regional minority, property, birth, disability, age or sexual orientation shall be prohibited.
2. ~~Within the scope of application of the Treaty establishing the European Community and of the Treaty on European Union, and without prejudice to the special provisions of these Treaties, a~~ Any discrimination on grounds of nationality shall be prohibited.

Article 22. Equality between men and women

Equal opportunities and equal treatment for men and women ~~as regards~~ in the field of employment and work, including equal pay for equal work or for work of equal value, must be ensured.

The principle of equal treatment shall not prevent the maintenance or adoption of measures providing for specific advantages in order to make it easier for the under-represented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers.

Article 23. **Protection of children**

1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.
2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.

Article 24. **Integration of persons with disabilities**

Persons with disabilities have the right to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.

CHAPTER IV. SOLIDARITY

Article 25. **Workers' right to information and consultation within the undertaking**

Workers and their representatives must be guaranteed information and consultation in ~~good~~ reasonable time on matters which concern them within the undertaking, ~~in accordance with Community law and national laws and practices.~~

Article 26. Right of collective bargaining and action

Employers and workers have the right to negotiate and conclude collective agreements and, in cases of conflicts of interest, ~~the right to striketake collective action to defend their interests, in accordance with Community law and national laws and practices.~~

Article 27. Right of access to placement services

~~Everyone has the right of access to a placement service.~~

Article 28. Protection in the event of unjustified dismissal

Every worker has the right to protection against unjustified dismissal.

Article 29. Fair and just working conditions

1. Every worker has the right to working conditions which respect his or her health, safety and dignity.
2. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

Article 30. Protection of young people at work

The employment of children is prohibited. The minimum age of admission to employment must not be lower than the minimum school-leaving age without prejudice to such rules as may be more favourable to young people and except for limited derogations.

Young people admitted to work must have working conditions appropriate to their age and be protected against economic exploitation and any work likely to harm their safety, health or physical, mental, moral or social development or to interfere with their education.

Article 31. **Reconciling family and professional life**

The family shall enjoy legal, economic and social protection.

Everyone shall have the right to reconcile their family and professional lives, which includes in particular the right to protection from dismissal because of pregnancy and the right to paid maternity leave and to parental leave following the birth or adoption of a child.

Article 32. **Social security and social assistance**

1. The Union recognises and respects ~~the~~ entitlement to social security benefits and social services providing protection in the event of maternity, illness, industrial accidents, dependency or old age and in the event of loss of employment, ~~in accordance with the rules laid down by Community law and national laws and practices.~~
2. Workers who are nationals of a Member State residing in another Member State, and members of their families, have the right to the same social security benefits, social advantages and access to health care as nationals of that State.
3. The Union recognises and respects the right to social ~~assistance~~ and housing ~~benefit welfare~~ in order to ensure a decent existence for persons lacking sufficient resources, ~~in accordance with the rules laid down by Community law and national laws and practices.~~

Article 33. **Health care**

Everyone has the right of access to preventive health care and the right to benefit from medical treatment ~~under the conditions established by national laws and practices.~~

Article 34. **Access to services of general economic interest**

The Union respects ~~the access to services of general economic interest as provided for in national laws and practices in accordance with the provisions of the Treaty establishing the European Community~~ in order to promote the social and territorial cohesion of the Union.

Article 35. **Environmental protection**

All Union policies shall ensure the protection and ~~preservation of a good quality living environment and the improvement of the quality of the environment, taking into account in conformity with the~~ principle of sustainable development.

Article 36. **Consumer Protection**

Union policies shall ensure a high level of protection ~~as regards~~ for the health, safety and interests of consumers.

CHAPTER V. CITIZENSHIP**Article 37.** **Right to vote and to stand as a candidate in elections to the European Parliament**

1. — Every citizen of the Union has the right to vote and to stand as a candidate in elections to the European Parliament in the Member State in which he or she resides, under the same conditions as nationals of that State.
2. — ~~Members of the European Parliament shall be elected by direct universal suffrage by free and secret ballot.~~

Article 38. Right to vote and to stand as a candidate at municipal elections

Every citizen of the Union has the right to vote and to stand as a candidate at municipal elections in the Member State in which he or she resides under the same conditions as nationals of that State.

Article 39. Right to good administration government

1. Everyone has the right to a democratic form of government.

21. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union.

32. This right includes:

- the right of every person to be heard before any individual measure which would affect him or her adversely is taken ~~in relation to him~~;
- the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of business secrecy;
- the obligation of the administration to give reasons for its decisions.

43. Every person has the right to have the ~~Community~~ Union make good any damage caused by its institutions or by its servants in the performance of their duties, ~~in accordance with the general principles common to the laws of the Member States.~~

54. Every person may write to the institutions of the Union in one of the official languages of such institutions and have an answer in the same language.

Article 40. **Right of access to documents**

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to European Parliament, Council and Commission documents.

Article 41. **Ombudsman**

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to refer to the Ombudsman of the Union cases of maladministration by ~~Community~~ Union institutions and bodies, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role.

Article 42. **Right to petition**

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to petition the European Parliament.

Article 43. **Freedom of movement and of residence**

1. — Every citizen of the Union has the right to move and reside freely within the territory of the Member States.
2. — Freedom of movement may be granted, in accordance with the Treaty establishing the European Community, to nationals of third countries legally resident in the territory of a Member State.

Article 44: **Diplomatic and consular protection**

Every citizen of the Union shall, in the territory of a third country in which the Member State of which he or she is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that Member State.

CHAPTER VI. JUSTICE

Article 45. Right to an effective remedy and to a fair trial

1. Everyone whose rights and freedoms are violated has the right to an effective remedy before a court.
2. Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.
3. Legal aid shall be made available to those who lack sufficient resources insofar as such aid is necessary to ensure effective access to justice.

Article 46. Presumption of innocence and right of defence

1. Everyone who has been charged shall be presumed innocent until proved guilty according to law.
2. ~~T~~Respect for the right of to a defence of anyone who has been charged shall be guaranteed.

Article 47. Principles of legality and proportionality of criminal offences and penalties

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national law or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed. If, subsequent to the commission of the criminal offence, the law provides for a lighter penalty, that penalty shall be applicable.

2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to international law.
3. The severity of penalties shall be proportional to the gravity of the criminal offence.

Article 48. **Right not to be tried or punished twice in criminal proceedings for the same criminal offence**

No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted in accordance with the law.

CHAPTER VII. GENERAL PROVISIONS

Article 49. **Scope**

1. The provisions of this Charter are addressed to the institutions and bodies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers.
2. This Charter does not establish any new power or task for the Community or the Union, or modify powers and tasks defined by the Treaties.

Article 50. **Scope of guaranteed rights**

1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by the competent legislative authority. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest being pursued by the Union, other legitimate interests in a democratic society or the need to protect the rights and freedoms of others.
2. Rights recognised by this Charter which are based on the Community Treaties or the Treaty on European Union shall be exercised under the conditions and within the limits defined by those Treaties.
3. Insofar as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be similar to those conferred on them by the said Convention unless this Charter affords greater or more extensive protection.

Article 51. **Level of protection**

Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by international law and international agreements to which the Union, the Community or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' constitutions.

Article 52. Prohibition of abuse of rights

Nothing in this Charter shall be interpreted as implying any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms recognised in this Charter or at their limitation to a greater extent than is provided for herein.

Article 53. Definition of citizenship

Any right, privilege or obligation pertaining to citizens of the Union may be extended in whole or in part to any natural or legal person by a legislative act of the Union where the extension of the scope of such rights shall not limit in any way those of the Union citizen.

Article 54. Informing the citizen

The Union's institutions and bodies and its Member States undertake to inform the citizen comprehensively ~~the citizen~~ of the rights and duties established by this Charter.

Dr Caspar Einem
Vertreter des Österreichischen Nationalrates im Konvent
UnivProf Dr **Michael Holoubek**
Stellvertreter

Wien, 31. 8. 2000

An das
Präsidium des Konvents zur
Erarbeitung der Europäischen Charta
der Grundrechte
zHdn des Stellvertretenden Vorsitzenden
Gunnar Jansson

Sehr geehrter Herr Jansson!

Gemäß dem vom Präsidium in Convent 45 (Charte 4422/00) vorgeschlagenen Verfahren erlauben wir uns, folgende allgemeine Bemerkungen zum Gesamtentwurf der Europäischen Charta der Grundrechte zu übermitteln:

1. Wir möchten zunächst die Charta ausdrücklich als wesentlichen Schritt der Entwicklung der Europäischen Union und ihrer Mitgliedstaaten begrüßen. Auch danken wir dem Präsidium für die ausgezeichnete Arbeit, die es geleistet hat. Der vorliegende Entwurf ist eine gute und grundsätzlich zustimmungsfähige Grundlage für die weiteren Beratungen.
2. Wir treten der Stellungnahme, wie sie von Professor Jürgen Meyer abgegeben worden ist, bei. Darüber hinaus erlauben wir uns allerdings einige weite-

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re Anmerkungen zu machen, die wir Sie bitten, in die Endformulierung mit einzubringen:

3. Wir erachten die Verabschiedung einer für die Organe der Europäischen Union verbindlichen Grundrechtscharta für einen wesentlichen Schritt zu einer Rechtsgemeinschaft, in der der Einzelne, wohin er sich in der Europäischen Union auch begibt, stets davon ausgehen kann, dass er in Einklang mit einer gemeinsamen Ordnung von Grundwerten behandelt wird, dass er also berechtigt ist zu sagen „civis europæus sum“ und sich auf diesen Status berufen kann, um sich jeder Verletzung seiner Grundrechte zu widersetzen (vgl. in diesem Sinne die Ausführungen von Generalanwalt Jacobs, Rs C-168/91, Konstantinidis, Slg 1993, I-1191). In diesem Lichte ist es im Übrigen ausdrücklich zu begrüßen, dass Art 15 Abs 3 des vorliegenden Entwurfs auch Drittstaatsangehörige in den Schutzbereich der Berufsfreiheit mit einbezieht. Ebenso halten wir es, will man den Gedanken eines einheitlichen europäischen Grundrechtsraumes verwirklichen, für notwendig, dass Art 43 Abs 2 des Entwurfs das Recht auf Freizügigkeit für Staatsangehörige dritter Länder, die sich rechtmäßig im Hoheitsgebiet eines Mitgliedstaates der Union aufhalten, garantiert. Als bloße Ermächtigung, wie sie derzeit Art 43 Abs 2 des vorliegenden Entwurfs enthält, ist eine solche Bestimmung entbehrlich.

Es hieße freilich, die europäische Grundrechtstradition und auch den gemeinsamen Grundrechtsstandard, den zu erfassen ausdrücklicher Bestandteil des Kölner Auftrags des Konvents ist, zu verlassen, wenn eine Europäische Charta der Grundrechte verabschiedet würde, die keine ausdrückliche Garantie des Schutzes ethnischer, religiöser oder sprachlicher Minderheiten enthielte. Ein derartiges Recht ist als Bestandteil einer Europäischen Grundrechtscharta unverzichtbar. Den Angehörigen solcher Minderheiten ist Chancengleichheit und Gleichbehandlung zu garantieren. Als Mindest-

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standard, den eine Europäische Grundrechtscharta keinesfalls unterschreiten darf, um aus unserer Sicht zustimmungsfähig zu sein, muss daher jedenfalls ein Artikel über den Minderheitenschutz aufgenommen werden, der mindestens den Inhalt aufweist, den Sie, sehr geehrter Herr Jansson, in Ihrem Schreiben vom 21.7.2000 an die Vertreter der nationalen Parlamente im Grundrechtskonvent vorgeschlagen haben. Es darf im übrigen im Lichte der Haltung aller Fraktionen im österreichischen Parlament darauf hingewiesen werden, dass ein Text der Grundrechtscharta ohne jeden ausdrücklichen Minderheitenschutz wohl auch im Rat nur schwerlich Zustimmung finden wird, bedenkt man das Recht des Parlaments den österreichischen Ratsvertreter in dieser Frage rechtlich binden zu können.

Wir sind aber auch der Auffassung, dass schon in der Präambel unmißverständlich zum Ausdruck gebracht werden muss, dass die Europäische Union die im Folgenden in der Charta enthaltenen Rechte und Freiheiten nicht nur sichtbar macht und bekräftigt, sondern sie vor allem garantiert und gewährleistet. Dieses Anliegen könnte dadurch realisiert werden, dass in Punkt 5 der Präambel davon gesprochen wird, dass diese „Charta *gewährleistet und* bekräftigt ... die Rechte“, die sich aus den im Folgenden näher bezeichneten Quellen ergeben.

Der erwähnte Grundgedanke eines einheitlichen europäischen Grundrechtsraumes, in dem keine grundrechtsfreien Rechtsbeziehungen bestehen, ist zu vorderst durch die Bindung der Europäischen Union an die Europäische Charta der Grundrechte zu verwirklichen. Um diesem Anliegen umfassend Rechnung zu tragen müssen aber auch die Mitgliedstaaten nicht nur bei der unmittelbaren Durchführung, sondern immer im Anwendungsbereich des Rechts der Europäischen Union an die Rechte und Freiheiten der Charta gebunden werden. Art 49 sollte daher diesen einheitlichen europäischen

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Grundrechtsschutz auch dadurch zum Ausdruck bringen, dass „*diese Charta für die Organe und Einrichtungen der Union unter Einhaltung des Subsidiaritätsprinzips und für die Mitgliedstaaten im Anwendungsbereich des Rechts der Europäischen Union*“ gilt.

4. Wir sind der Auffassung, dass die Formulierung in Art 2 Abs 2 der Charta unmißverständlich zum Ausdruck bringt, dass auf dem Gebiete der Europäischen Union die Todesstrafe zu keiner Zeit und zu keinem wie immer gear teten Zweck eingeführt, verhängt oder vollstreckt werden darf. Eine Anwendung des Horizontalartikels 50 auf dieses Recht schließen wir insofern aus, als das Verbot der Todesstrafe keinem allgemeinen Gesetzesvorbehalt im Sinne des Art 50 Abs 1 des Entwurfs unterliegen kann. Insofern gewährleistet die Charta – anders als die Erläuternden Bemerkungen zum Entwurf meinen – einen höheren Standard als Art 2 des 6. Zusatzprotokolls zur EMRK. Wir begrüßen dies ausdrücklich, da es keinen ersichtlichen Grund gibt, auch heute noch die Todesstrafe, selbst bloß für den Kriegsfall, aufrecht zu erhalten.

In systematischer Hinsicht ist weiters zu bemerken, dass entsprechend der grundsätzlichen Konzeption der Charta der „horizontale“ Gesetzesvorbehalt des Art 50 des vorliegenden Entwurfs die Basis für Einschränkungen und Ausgestaltungen der in der Charta anerkannten Rechte und Freiheiten darstellt. Im Lichte dieser Systementscheidung ist es inkonsequent, in einzelnen Artikeln ausdrücklich auf die Ausgestaltung durch das Gemeinschaftsrecht oder das Recht der Mitgliedstaaten zu verweisen. Diese Verweise auf das Recht der Europäischen Union oder mitgliedstaatliche Rechtsvorschriften sollten daher aus den betreffenden Artikeln eliminiert werden (konkret insbesondere aus den Artikeln 25, 26, 32, 33 und 34). Überdies würde damit einem weiteren Grundanliegen des Konvents Rech-

nung getragen, nämlich zu vermeiden, Aussagen über Kompetenzzuweisungen an die Europäische Union und/oder die Mitgliedstaaten vorzunehmen.

5. Das Recht auf persönliche Freiheit bildet eine der Wurzeln des europäischen Grundrechtsschutzes überhaupt. Im Kern dieses Rechts steht die Garantie, dass einem Menschen seine Freiheit nur in den gesetzlich vorgeschriebenen Fällen und nur auf Grund einer richterlichen Entscheidung entzogen werden darf. Dies sollte in Art 6 des vorliegenden Entwurfs auch ausdrücklich gesagt werden, weil ansonsten ein wesentlicher Inhalt des Rechts auf Freiheit und Sicherheit nicht ersichtlich wird.

Die Garantie der Versammlungs- und Vereinigungsfreiheit ist ein wesentlicher Bestandteil einer demokratischen Gesellschaftsordnung. Dies schließt in der europäischen Tradition das Recht der Gewerkschaftsbildung und der Gründung politischer Parteien mit ein. Art 12 des vorliegenden Entwurfs sollte die grundlegende Bedeutung dieses Rechts und seine historischen Traditionen unmißverständlich zum Ausdruck bringen, wie dies insbesondere die ursprüngliche Fassung des Art 17 (Convent 37 [Charte 4360/00] – *„Jede Person hat das Recht, sich frei und friedlich mit anderen zu versammeln und sich frei mit anderen zusammenzuschließen; dazu gehört auch das Recht, Gewerkschaften oder politische Parteien zu gründen und diesen beizutreten.“*) getan hat. Die auf eine Abänderung dieser Formulierung zielenden Änderungsvorschläge und Diskussionsbemerkungen bezogen sich hauptsächlich auf die Vermeidung von Überschneidungen mit einem eigenen Recht, politische Parteien zu gründen (Art 24 Convent 37). Durch die vom Präsidium gewählte kluge Vorgangsweise, diese Punkte in einen Artikel zusammenzuziehen, ist dieses Problem weggefallen.

Im Lichte der gemeinsamen Verfassungstraditionen der Mitgliedstaaten und der kulturellen Tradition Europas überhaupt sollte in Art 13 des Entwurfs ausdrücklich auch die Freiheit der Wissenschaft und die Freiheit der Kunst garantiert werden.

6. Der Grundsatz der Gleichheit zählt zu den Eckpfeilern europäischer Grundrechtstradition. Es ist ausdrücklich zu begrüßen, dass Art 22 des vorliegenden Entwurfs ausdrücklich dazu verpflichtet, die Gleichheit von Männern und Frauen auch tatsächlich sicherzustellen.

Für eine demokratische und soziale Gesellschaft ist es von entscheidender Bedeutung und Aussagekraft, wie sie die Rechte von Menschen schützt, die diese auf Grund ihres Lebensalters nicht in ausreichendem Maß selbst durchsetzen können. Daher zählt die Anerkennung der Persönlichkeitsrechte von Kindern ebenso zum essentiellen Bestandteil eines europäischen Grundrechtskatalogs wie eine Garantie, die die Lebensinteressen älterer Menschen grundrechtlich berücksichtigt. Art 23 Abs 1 des vorliegenden Entwurfs sollte das vordringliche Anliegen der Anerkennung der Persönlichkeitsrechte der Kinder (wie es etwa Art 23 Convent 37 in seiner ursprünglichen Fassung – *„Kinder müssen als eigenständige Personen behandelt werden und die Möglichkeit haben, auf Angelegenheiten, die sie selbst betreffen, entsprechend dem Grad ihrer persönlichen Reife Einfluss zu nehmen.“* – trefflich zum Ausdruck gebracht hat) ebenso zum Ausdruck bringen wie eine eigene Bestimmung über den Schutz der Lebensinteressen alter Menschen in die Grundrechtscharta aufzunehmen wäre.

Um in Art 31 des vorliegenden Entwurfs tatsächlich den Einklang von Familien- und Berufsleben herzustellen und nicht ausschließlich auf Aspekte im Zusammenhang mit der Geburt von Kindern abzustellen, sollte der An-

spruch auf Pflegeurlaub für pflegebedürftige nahe Angehörige in Art 31 Abs 2 des Entwurfs verankert werden.

Der gleiche Zugang zu Diensten von allgemeinem wirtschaftlichen Interesse zu angemessenen und kontinuierlich gewährleisteten Bedingungen, der allen Menschen in der Europäischen Union gewährleistet ist, zählt zu den wesentlichen Errungenschaften europäischer Kultur und Tradition. Das Konzept der Dienste von allgemeinem wirtschaftlichen Interesse und die damit gewährleistete Versorgungssicherheit und soziale Versorgungsgerechtigkeit für die Bevölkerung ist eine genuin europäische Entwicklung. Es ist daher ausdrücklich zu begrüßen und unbedingt notwendig, dass eine Europäische Charta der Grundrechte eine Garantie des Zugangs zu derartigen Diensten von allgemeinem wirtschaftlichen Interesse enthält. Entsprechend der Tatsache, dass die Charta Rechte und Freiheiten garantiert, sollte auch Art 34 als Zugangsrecht zu derartigen Diensten formuliert werden.

Mit besten Empfehlungen

Caspar Einem

Michael Holoubek

ENTWURF DER CHARTA DER GRUNDRECHTE DER EUROPÄISCHEN UNION

Änderungsanträge zu KONVENT 45 / Charte 4422/00

Verfasser: Dr. Ingo Friedrich, MdEP

1.
<p>Präambel Ziffer 3</p> <p>Die Union trägt zur Entwicklung dieser gemeinsamen Werte, <u>die auf die christlich-jüdischen und humanistischen Wurzeln zurückgehen</u>, bei. <u>Sie achtet dabei die Vielfalt der Kulturen und Traditionen der Völker Europas sowie deren nationale Identität und die Organisation ihrer staatlichen Gewalt auf nationaler, regionaler und lokaler Ebene;</u> sie stellt durch den freien Personen-, Waren-, Kapital- und Dienstleistungsverkehr eine ausgewogene und nachhaltige Entwicklung sicher.</p>
2.
<p>Art. 3: Recht auf Unversehrtheit</p> <p>(1) Jede Person hat das Recht auf körperliche und psychische Unversehrtheit.</p> <p>(2) Im Rahmen der Medizin sowie <u>der Forschung und Wissenschaft</u> müssen folgende Grundsätze eingehalten werden:</p> <ul style="list-style-type: none"> - Streichung - Verbot eugenischer Praktiken, welche die Auswahl von Personen zum Ziel haben; - Verbot, den menschlichen Körper <u>oder</u> Teile davon <u>als solche</u> zur Erzielung von Gewinnen zu nutzen; - Verbot des Klonens von Menschen <u>in allen Stadien ihrer Entwicklung</u>.
3.
<p>Artikel 7: Achtung des Privat-, <u>Ehe</u> und Familienlebens</p> <p>Jede Person hat das Recht auf Achtung ihres Privat-, <u>Ehe-</u> und Familienlebens, ihrer <u>Wohn- und Geschäftsräume</u> sowie ihrer Kommunikation.</p>
4.
<p>Artikel 8: Schutz personenbezogener Daten</p> <p>Jede Person hat das Recht auf Schutz der sie betreffenden personenbezogenen Daten.</p> <p>Streichung des 2. Satzes Streichung des 3. Satzes Streichung des 4. Satzes</p>
5.
<p>Artikel 10: Gedanken-, Gewissens- und Religionsfreiheit</p> <p>Jede Person hat das Recht auf Gedanken-, Gewissens- und Religionsfreiheit. Dieses Recht umfaßt die Freiheit, seine Religion oder Weltanschauung zu wechseln, und die Freiheit, seine Religion oder Weltanschauung einzeln oder gemeinsam mit anderen öffentlich oder privat durch Gottesdienst, Unterricht, Bräuche und Riten zu bekennen. <u>Die Religionsfreiheit schließt das das Recht von Kirchen und Religionsgemeinschaften zur Ordnung und Verwaltung ihrer Angelegenheiten nach den einzelstaatlichen Gesetzen ein.</u></p>
6.
<p>Artikel 11: Freiheit der Meinungsäußerung und Informationsfreiheit</p> <p>(1) Jede Person hat das Recht auf freie Meinungsäußerung. Dieses Recht schließt die Meinungsfreiheit und die Freiheit ein, Informationen ohne Rücksicht auf Staatsgrenzen zu empfangen und weiterzugeben.</p>

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(2) Presse, Rundfunk, Film und die übrige an die Allgemeinheit gerichtete Kommunikation sind frei und unabhängig.

(3) Eine Zensur findet nicht statt.

7.

Artikel 12: Versammlungs- und Vereinigungsfreiheit

(1) Jede Person hat das Recht, sich insbesondere im politischen, gewerkschaftlichen und staatsbürgerlichen Bereich frei und friedlich mit anderen zu versammeln und sich frei mit anderen zusammenzuschließen.

(2) Politische Parteien auf europäischer Ebene tragen dazu bei, den politischen Willen der Unionsbürger zum Ausdruck zu bringen.

Diese politischen Parteien müssen die durch diese Charta gewährleisteten Rechte und Freiheiten achten.

8.

Artikel 13 Freiheit der Wissenschaft, Forschung und Lehre

Wissenschaft, Forschung und Lehre sind frei.

9.

Artikel 14: Recht auf Bildung

(1) Niemand darf das Recht zur Bildung verwehrt werden.

Der Zugang zur beruflichen Ausbildung und Weiterbildung nach Maßgabe der einzelstaatlichen Vorschriften ist zu achten.

(2) Die Freiheit zur Gründung von Lehranstalten unter Achtung der demokratischen Grundsätze sowie das Recht der Eltern, die Erziehung und den Unterricht ihrer Kinder entsprechend ihren eigenen religiösen, weltanschaulichen und erzieherischen Überzeugungen sicherzustellen, werden nach den einzelstaatlichen Regeln für ihre Ausübung gewährleistet.

10.

Artikel 15: Berufsfreiheit

(1) Jeder Unionsbürger hat das Recht, einen frei gewählten Beruf auszuüben, um seinen Lebensunterhalt zu verdienen.

(2) Jeder Angehörige eines Mitgliedstaats der Europäischen Union hat die Freiheit, in einem anderen Mitgliedstaat unter den gleichen Bedingungen wie die Angehörigen dieses Mitgliedstaats zu arbeiten, sich niederzulassen oder Dienstleistungen zu erbringen oder in Anspruch zu nehmen.

(3) Die Staatsangehörigen dritter Länder, die rechtmäßig im Hoheitsgebiet der Mitgliedstaaten arbeiten, haben Anspruch auf Arbeitsbedingungen, die denen der Unionsbürger entsprechen.

Dies umfasst nicht das Recht auf Zugang zum Arbeitsmarkt.

11.

Artikel 18: Asylrecht

Der Schutz politisch verfolgter Personen, die nicht der Union angehören, wird nach Maßgabe des Genfer Abkommens vom 28. Juli 1951 und des Protokolls vom 31. Januar 1967 über die Rechtsstellung von Flüchtlingen gewährt.

12.

(neu) 19a Recht auf Heimat

Die Bürger der Europäischen Union haben ein Recht auf ihre Heimat. Niemand darf durch Gewalt oder Zwang aus seiner angestammten Heimat, seiner Wohnstätte und seinem Land vertrieben oder zur Flucht genötigt werden. Vertriebene und Flüchtlinge haben das Recht auf Rückkehr in ihre angestammte Heimat.

13.

(neu) 19b Minderheitenschutz

Die Identität und die Rechte von historisch gewachsenen und alteingesessenen Minderheiten und ihren Angehörigen

sowie die sprachliche und kulturelle Vielfalt in der Europäischen Union werden geachtet und geschützt.
14.
Artikel 20: Gleichheit vor dem Gesetz Alle Menschen sind vor dem Recht gleich.
15.
Artikel 21: Gleichheit und Nichtdiskriminierung (1) Diskriminierungen insbesondere wegen des Geschlechts, der Rasse, der Hautfarbe, der ethnischen oder sozialen Herkunft, der genetischen Merkmale, der Sprache, der Religion oder der Weltanschauung, der politischen oder sonstigen Anschauung, der Zugehörigkeit zu einer nationalen Minderheit, der Geburt, einer Behinderung, des Alters oder der sexuellen Ausrichtung sind verboten.
16.
Artikel 22: Gleichheit von Männern und Frauen (1) Die Chancengleichheit und Gleichbehandlung von Männern und Frauen in den Bereichen Arbeit und Beschäftigung, einschließlich des Grundsatzes des gleichen Entgelts bei gleicher oder gleichwertiger Arbeit, sind sicherzustellen. (2) Der Grundsatz der Gleichbehandlung steht der Beibehaltung oder der Einführung spezifischer Vergünstigungen durch die Mitgliedstaaten zur Erleichterung der Berufstätigkeit des unterrepräsentierten Geschlechts oder zur Verhinderung oder zum Ausgleich von Benachteiligungen in der beruflichen Laufbahn nicht entgegen.
17.
Artikel 24: Integration von behinderten Menschen Behinderte Menschen haben Anspruch darauf, daß für sie Maßnahmen zur Gewährleistung ihrer Eigenständigkeit, ihrer sozialen und beruflichen Eingliederung und ihrer Teilnahme am Leben der Gemeinschaft nach Maßgabe der einzelstaatlichen Gesetze getroffen werden..
18.
Artikel 25: Recht auf Unterrichtung und Anhörung der Arbeitnehmer im Unternehmen Für die Arbeitnehmer oder deren Vertreter muß eine rechtzeitige Unterrichtung und Anhörung zu den sie betreffenden Fragen im Unternehmen nach dem Gemeinschaftsrecht und nach den einzelstaatlichen Rechtsvorschriften und Gepflogenheiten gewährleistet sein.
19.
Artikel 28 :Schutz bei ungerechtfertigter Entlassung Jeder Arbeitnehmer hat Anspruch auf Schutz vor willkürlicher Entlassung.
20.
Artikel 29: Gerechte und angemessene Arbeitsbedingungen (1) Jeder Arbeitnehmer hat das Recht auf gesunde, sichere und würdige Arbeitsbedingungen. (2) Jeder Arbeitnehmer hat das Recht auf eine Begrenzung der Höchstarbeitszeit, auf Ruhezeiten sowie auf bezahlten Jahresurlaub.
21.
Artikel 31: Einklang von Familien- und Berufsleben (1) Der rechtliche, wirtschaftliche und soziale Schutz der Familie wird nach Maßgabe der einzelstaatlichen Gesetze gewährleistet. (2) Das Recht auf Schutz vor Entlassung bei Mutterschaft sowie der Anspruch auf einen bezahlten Mutterschaftsurlaub und auf einen Elternurlaub nach der Geburt oder Adoption eines Kindes sind zu achten.
22.

Artikel 32: Soziale Sicherheit und soziale Unterstützung

- (1) Die Union anerkennt und achtet das Recht auf Zugang zu den Leistungen der sozialen Sicherheit und zu den sozialen Diensten, die bei Mutterschaft, bei Krankheit, bei einem Arbeitsunfall, bei Pflegebedürftigkeit oder im Alter sowie bei Verlust des Arbeitsplatzes Schutz gewährleisten, nach Maßgabe des Gemeinschaftsrechts und der einzelstaatlichen Rechtsvorschriften und Gepflogenheiten.
- (2) Arbeitnehmer, die Angehörige eines Mitgliedstaates sind und ihren Beschäftigungsort in einem anderen Mitgliedstaat haben sowie ihre Familienangehörigen haben nach Maßgabe des Gemeinschaftsrechts Anspruch auf die gleichen Leistungen der sozialen Sicherheit, auf die gleichen sozialen Vergünstigungen und auf den gleichen Zugang zur Gesundheitsfürsorge wie die Angehörigen dieses Mitgliedstaats.
- (3) Die Union anerkennt und achtet das Recht auf eine soziale Unterstützung und eine Wohnungsbeihilfe, die für jede Person, die nicht über ausreichende Mittel verfügt, ein menschenwürdiges Dasein sicherstellen sollen, nach Maßgabe des Gemeinschaftsrechts und der einzelstaatlichen Rechtsvorschriften und Gepflogenheiten.

23.

Artikel 34: Zugang zu Diensten von allgemeinem wirtschaftlichen Interesse
Streichung

24.

Artikel 35 Umweltschutz

Der Schutz und die Erhaltung der Umwelt sowie die Verbesserung ihrer Qualität werden zur Förderung einer nachhaltigen Entwicklung durch alle Politiken der Union auf hohem Niveau sichergestellt.

25.

Artikel 37: Aktives und passives Wahlrecht bei den Wahlen zum Europäischen Parlament

- (1) Jeder Unionsbürger besitzt in dem Mitgliedstaat, in dem er seinen Wohnsitz hat, das aktive und passive Wahlrecht bei den Wahlen zum Europäischen Parlament, wobei für ihn dieselben Bedingungen gelten wie für die Angehörigen des betreffenden Mitgliedstaats.
- (2) Die Mitglieder des Europäischen Parlaments werden in allgemeiner, unmittelbarer, freier und geheimer Wahl gewählt.
- (3) Das Nähere wird durch das Gemeinschaftsrecht geregelt.

26.

Artikel 39: Recht auf eine gute Verwaltung

- (1) Jede Person hat ein Recht darauf, daß ihre Angelegenheiten von den Organen und Einrichtungen der Union unparteiisch, gerecht und innerhalb einer angemessenen Frist behandelt werden.
- (2) Dieses Recht umfaßt insbesondere
 - das Recht einer jeden Person, gehört zu werden, bevor ihr gegenüber eine für sie nachteilige, individuelle Maßnahme getroffen wird,
 - das Recht einer jeden Person auf Zugang zu den sie betreffenden Akten unter Wahrung des legitimen Interesses der Vertraulichkeit und des Geschäftsgeheimnisses,
 - die Verpflichtung der Verwaltung, ihre Entscheidungen zu begründen.
- (3) Streichen

(4) Jede Person kann sich in einer der Amtssprachen der Organe der Union an diese wenden und eine Antwort in derselben Sprache erhalten.

27.

Artikel 40: Recht auf Zugang zu Dokumenten

Streichung

28.

Artikel 41: Der Bürgerbeauftragte

Jeder Unionsbürger sowie jede natürliche oder juristische Person mit Wohnsitz oder satzungsmäßigem Sitz in einem Mitgliedstaat hat das Recht, Beschwerden über Mißstände in der Verwaltung der Organe und Einrichtungen der Gemeinschaft, mit Ausnahme des Gerichtshofs und des Gerichts erster Instanz in Ausübung ihrer Rechtsprechungsbe-
fugnisse, an den Bürgerbeauftragten zu richten

29.

Artikel 45: Recht auf einen wirksamen Rechtsbehelf und ein unparteiisches Gericht

(1) Jede Person, deren Rechte oder Freiheiten durch die öffentliche Gewalt verletzt worden sind, hat das Recht, bei einem Gericht einen Rechtsbehelf einzulegen.

(2) Jede Person hat ein Recht darauf, daß ihre Sache von einem unabhängigen, unparteiischen und zuvor durch Gesetz errichteten Gericht in einem fairen Verfahren, öffentlich und innerhalb angemessener Frist verhandelt wird. Jede Person hat die Möglichkeit, sich beraten, verteidigen und vertreten zu lassen.

(3) Streichung

30.

Artikel 47: Grundsätze der Gesetzmäßigkeit und der Verhältnismäßigkeit im Zusammenhang mit Straftaten und Strafen

(1) Niemand darf wegen einer Handlung oder Unterlassung verurteilt werden, die zur Zeit ihrer Begehung nach innerstaatlichem oder internationalem Recht nicht strafbar war. Es darf auch keine schwerere Strafe als die zur Zeit der Begehung angedrohte Strafe verhängt werden. Wird nach Begehung dieser Straftat durch Gesetz eine mildere Strafe eingeführt, so ist diese zu verhängen.

(2) Dieser Artikel schließt nicht aus, daß jemand wegen einer Handlung oder Unterlassung verurteilt oder bestraft wird, die zur Zeit ihrer Begehung nach internationalem Recht strafbar war.

(3) Das Strafmaß muß im Verhältnis zur Schwere der Straftat und zur Schuld des Täters stehen.

31.

Kapitel VII Allgemeine Bestimmungen

Artikel 49: Anwendungsbereich

(1) Diese Charta gilt für die Organe und Einrichtungen der Union unter Einhaltung des Subsidiaritätsprinzips und für die Mitgliedstaaten ausschließlich bei der Anwendung des Rechts der Union. Dementsprechend achten sie die Rechte, halten sie sich an die Grundsätze und fördern sie deren Anwendung gemäß ihren jeweiligen Zuständigkeiten.

(2) Diese Charta begründet weder neue Zuständigkeiten noch neue Aufgaben für die Gemeinschaft und für die Union, noch ändert sie die in den Verträgen festgelegten Zuständigkeiten und Aufgaben.

(3) neu Die durch diese Charta gewährleisteten Rechte und Freiheiten gelten auch für juristische Personen und sonstige Vereinigungen, soweit sie ihrem Wesen nach auf diese anwendbar sind.

FRIEDRICH**ENTWURF DER CHARTA DER GRUNDRECHTE DER EUROPÄISCHEN UNION****Änderungsvorschlag zu Ziffer 3 der Präambel aus dem Dokument Charte 4422/00****Verfasser: Dr. Ingo Friedrich, MdEP****Textvorschlag:**

Neuer Text:

Die Union trägt zur Entwicklung dieser gemeinsamen Werte, die auf die christlich-jüdischen und humanistischen Wurzeln zurückgehen, bei. Sie achtet dabei die Vielfalt der Kulturen und Traditionen der Völker Europas sowie der nationalen Identität der Mitgliedstaaten und der Organisation ihrer staatlichen Gewalt auf nationaler, regionaler und lokaler Ebene; sie stellt durch den freien Personen-, Waren-, Kapital- und Dienstleistungsverkehr eine ausgewogene und nachhaltige Entwicklung sicher.

Begründung:

Auch bei einer strikten Trennung von Kirche und Staat dürfen die Menschen nicht diskriminiert werden, die sich auf Gott als Quelle der Grundwerte beziehen. Dies trifft mit Sicherheit auf den größten Teil der Bürger Europas zu.

Bei strikter Neutralität wäre eine Anlehnung an die polnische Verfassung auch denkbar: Die Völker Europas haben untereinander eine immer engere Union begründet und beschlossen, eine friedliche Zukunft zu teilen, die auf den Werten gründet, die den Menschen gemein sind, die an Gott als Quelle der Wahrheit und Gerechtigkeit glauben, wie auch den Menschen, die diese universellen Werte aus anderen Quellen ableitend achten.

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GNAUCK

Erfurt, den 31.08.2000

Entwurf der Charta der Grundrechte der Europäischen Union

Allgemeine Bemerkungen des Vertreters des Bundesrates im Konvent, Herrn Minister Jürgen Gnauck, zu dem Dokument CONVENT 45 vom 28. Juli 2000

Der vom Präsidium vorgeschlagene vollständige Text (CONVENT 45) kann insgesamt gesehen **mitgetragen** werden; er stellt eine gute Grundlage für die abschließenden Beratungen dar.

Es erscheint jedoch angebracht, den Entwurf als **Rechtstext** in einigen entscheidenden Punkten präziser zu fassen, die bereits in der rechtswissenschaftlichen Diskussion in Deutschland aufgegriffen worden sind. So bestimmt der Entwurf nicht mit hinreichender Klarheit, welche Gewährleistungen als unmittelbar geltende subjektive Rechte gedacht sind. Dies wirkt sich insbesondere im Bereich der sozialen Rechte aus, hinsichtlich derer klargestellt werden sollte, dass sie als Besitzstand aus der Europäischen Sozialcharta entnommen und fortgeschrieben wurden, ohne indes die rechtliche Ausrichtung der Sozialcharta aufzugeben, die nicht unmittelbar subjektive Leistungsrechte verleihen will. Ferner bleibt unklar, in welchen Fällen es eine sogenannte Drittwirkung, d.h. eine Wirkung zwischen Privaten geben soll. Schließlich bleiben die Einschränkungsmöglichkeiten jener Rechte undeutlich, die keine Entsprechung in der EMRK haben und hinsichtlich derer somit nicht auf die dortigen Kautelen zurückgegriffen werden kann.

Im Übrigen ist darauf hinzuweisen, dass angesichts des Prinzips der begrenzten Einzelermächtigung eine Reihe von Grundrechten keine rechtliche Bedeutung erhalten werden. Gerade in diesen Fällen muss eine Harmonisierung und insbesondere Nivellierung der in den Mitgliedstaaten und Regionen geltenden Grundrechte ausgeschlossen sein.

Im Einzelnen wären noch **folgende Verbesserungen wesentlich**:

1. Präambel Ziffer 1

Es wird weiterhin angeregt, dass die Eingangsformel der Präambel die **christlichen und humanistischen Grundlagen Europas** deutlich macht. Dies wäre mit einem **Hinweis auf Gott** verbunden. So könnte man an die ausgewogene Einleitung der Verfassung der Republik Polen vom 2. April 1997 anknüpfen, die sowohl diejenigen anspricht, die an Gott glauben, als auch diejenigen, die diesen Glauben nicht teilen, sondern die universellen Werte aus anderen Quellen ableiten.

2. Präambel Ziffer 2

Es wäre besser, im ersten Halbsatz statt von „Würde der Männer und der Frauen“ von der „**Würde des Menschen**“ zu sprechen. Dies entspräche Artikel 1 und würde einer möglicherweise verkürzten Sichtweise (Würde der Kinder?) entgegen wirken. Weiter sollte im 2. Halbsatz der **Grundsatz der Subsidiarität** genannt werden.

3. Präambel Ziffer 3

Es wird empfohlen, auf den **letzten Halbsatz** in Ziffer 3 zu **verzichten**. Die enge Verknüpfung zwischen dem freien Personen-, Waren-, Kapital- und Dienstleistungsverkehr

auf der einen und der Sicherstellung einer ausgewogenen nachhaltigen Entwicklung auf der anderen Seite würde einer zu engen, rein ökonomischen Nachhaltigkeitsdefinition Vorschub leisten. Dies widerspräche dem völker- und europarechtlichen Verständnis des Nachhaltigkeitsprinzips als Trias ökonomischer, sozialer und ökologischer Zielsetzungen und könnte daher vor allem im Zusammenspiel mit Artikel 35 zu der missverständlichen Interpretation von Nachhaltigkeit als einer Begrenzung des Umweltschutzes führen.

4. Artikel 3 Absatz 2

In Absatz 2 sollte der dritte Anstrich wie folgt formuliert werden: „Verbot, den menschlichen Körper und Teile davon als solche zur Erzielung von Gewinnen zu nutzen.“ Durch den Einschub der Worte „als solche“ würde die **Konformität mit Artikel 21 der Biomedizin-Konvention** gewahrt, der Grundlage der Formulierung der Charta ist. Ziel der Bestimmung in der Biomedizin-Konvention wie in der Charta ist schließlich, dass die Gewinnerzielung bei Organ- und Gewebehandel als solche, also insbesondere seine Kommerzialisierung, verboten werden soll, nicht aber Arzneimittel und Patente auf Gene.

5. Artikel 10

Es erscheint weiterhin wichtig, das **Recht zur Kriegsdienstverweigerung** als Bestandteil der Gewissensfreiheit in der Charta zu verankern.

6. Artikel 11

In **Absatz 1** sollte es eingangs „Jeder“ statt „Jede Person“ lauten, um klarzustellen, dass das Recht auf freie Meinungsäußerung nicht nur natürlichen, sondern zudem **juristischen Personen** zusteht. Im Übrigen wird angeregt, eine allgemeine Bestimmung zu den juristischen Personen und sonstigen Vereinigungen aufzunehmen (siehe unten Ziffer 16).

Die derzeitige Regelung der **Medien- und Informationsfreiheit** in **Absatz 2** erscheint nicht tragbar, insbesondere die Erwähnung des sehr auslegungsbedürftigen und missverständlichen Begriffes „Pluralismus“. Weiter wäre es wünschenswert, ausdrücklich ein Zensurverbot aufzunehmen. Artikel 11 Absatz 2 sollte daher wie folgt formuliert werden: „Presse, Rundfunk, Film und die übrige an die Allgemeinheit gerichtete Kommunikation sind frei und unabhängig. Eine Zensur findet nicht statt.“

In einem **neuen Absatz 3** sollte die **Freiheit der Kunst** ausdrücklich erwähnt werden. Gerade im Bereich der Kunst, d.h. in Architektur, Musik, Bildender Kunst, dem Schauspiel sowie in Film und Rundfunk zeigt sich das spezifisch europäische Erbe. Ein entsprechender neuer Satz 3 könnte lauten: „Die Kunst ist frei.“

7. Artikel 12 Abs. 1

Zur Klarstellung und Präzisierung wird angeregt, hinter dem Passus „friedlich“ den Zusatz „**ohne Waffen**“ einzufügen, so dass die Vorschrift lauten könnte: „Jede Person hat das Recht, sich insbesondere im politischen, gewerkschaftlichen und staatsbürgerlichen Bereich frei und friedlich ohne Waffen mit anderen zu versammeln und sich frei mit anderen zusammenzuschließen.“

8. Artikel 13

Es ist unverständlich, dass nur die Freiheit der Forschung, nicht aber die **Freiheit der Wissenschaft** allgemein und der **Freiheit der Lehre** in den Text der Vorschrift aufgenommen worden ist. Daher wird folgende weiter gehende Formulierung empfohlen: „Wissenschaft, Forschung und Lehre sind frei.“

9. Artikel 15/Artikel 16

Die Berufsfreiheit und die unternehmerische Freiheit sollten den **Unionsbürgerinnen- und -bürgern** vorbehalten bleiben. Es erscheint nicht sinnvoll, diese Grundrechte auch Drittstaatsangehörigen zu öffnen, da dies faktisch zu einer personellen Ausweitung der den Unionsbürgern zukommenden Grundfreiheiten des EG-Vertrages führen würde. Zudem besteht die Gefahr, dass bestimmte Beschränkungen im EG-Vertrag und in den Abkommen mit Drittstaaten unterlaufen werden. Nur so wird man zudem dem Mandat von Köln gerecht, dass es auch Rechte geben soll, die nur für die Unionsbürger gelten.

10. Artikel 18

Der Wortlaut gibt die Position des Konvents, dass Artikel 18 kein individuell einklagbares Recht auf Asyl verbürgt, nicht hinreichend zweifelsfrei wieder. Daher empfiehlt sich folgende Formulierung: „Der Schutz politisch verfolgter Personen, die nicht der Union angehören, wird nach Maßgabe des Genfer Abkommens vom 28. Juni 1951 und des Protokolls vom 21. Januar 1967 über die Rechtsstellung von Flüchtlingen gewährt.“

11. Artikel 22

Es wird vorgeschlagen, in Artikel 22 einen **neuen Absatz 1** einzufügen: „Frauen und Männer sind gleichberechtigt.“

Weiter erscheint es angebracht, in den „Erläuterungen“ zu Artikel 3 darauf hinzuweisen, dass die Beschneidung der weiblichen Genitalien eine gravierende Verletzung der körperlichen Unversehrtheit darstellt.

12. Artikel 23

In Absatz 2 empfiehlt sich eine **Angleichung** an die entsprechende **Formulierung in dem UN-Übereinkommen über die Rechte des Kindes** (Artikel 3 Abs. 1): „Bei allen Kinder betreffenden Maßnahmen öffentlicher oder privater Einrichtungen ist das Wohl des Kindes ein Gesichtspunkt, der vorrangig zu berücksichtigen ist.“

13. Artikel 32

Die Aufzählung in **Absatz 1** nach den Worten „sozialen Diensten“ bezieht sich sinngemäß nicht auf „soziale Dienste“, sondern auf „soziale Sicherheit“, und müsste daher nach den Worten „soziale Sicherheit“ folgen. Im Übrigen ist die Aufzählung nicht abschließend, was mit dem Wort „insbesondere“ zum Ausdruck gebracht werden sollte. Außerdem ist das wichtige Risiko der Invalidität zu erwähnen.

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Es erscheint notwendig, in **Absatz 2** die Worte „nach Maßgabe des Gemeinschaftsrechts“ einzufügen. Das geltende Gemeinschaftsrecht enthält nämlich, vor allem im Hinblick auf Familienangehörige, Einschränkungen gegenüber dem formulierten Gleichbehandlungsgrundsatz, die allerdings zu kompliziert sind, um in die Chartavorschrift aufgenommen zu werden. Durch die Charta sollen in diesem Bereich keinesfalls finanzielle Lasten begründet werden, die derzeit nicht bestehen.

Darüber hinaus ist es zwingend erforderlich, das Wort „Wohnsitz“ durch das Wort „Beschäftigungsort“ zu ersetzen. Im Bereich der sozialen Sicherheit knüpft das Gemeinschaftsrecht an den „Beschäftigungsort“ (lex loci laboris) an. Nach alledem empfiehlt sich folgende Fassung des Absatzes 2: „Arbeitnehmer, die Angehörige eines Mitgliedstaates sind und ihren Beschäftigungsort in einem anderen Mitgliedstaat haben sowie ihre Familienangehörigen haben nach Maßgabe des Gemeinschaftsrechts Anspruch auf die gleichen Leistungen der sozialen Sicherheit, auf die gleichen sozialen Vergünstigungen und auf den gleichen Zugang zur Gesundheitsfürsorge wie die Angehörigen dieses Mitgliedstaates.“

14. Artikel 34

Der **letzte Halbsatz** „um den sozialen und territorialen Zusammenhalt der Union zu fördern“ sollte **entfallen**. Seine Übernahme aus Artikel 16 EGV in ein Grundrecht wirkt sinnentstellend.

15. Artikel 35

Die **Formulierung des Artikels 35** sollte sich stärker an Artikel 6 und an Artikel 174 EGV orientieren. Damit soll vor allem vermieden werden, dass das bisher im EG-Vertrag verankerte Schutzniveau durch die Bezugnahme auf den völlig unbestimmten Begriff der „hohen Lebensqualität“ nivelliert werden könnte. Es wird daher folgende Formulierung vorgeschlagen: „Der Schutz und die Erhaltung der Umwelt sowie die Verbesserung ihrer Qualität werden zur Förderung einer nachhaltigen Entwicklung durch alle Politiken der Union auf hohem Niveau sichergestellt.“

16. Allgemeine Bestimmungen

Um Unklarheiten und Schwierigkeiten bei der Auslegung zu vermeiden, sollten in einer allgemeinen Bestimmung klargestellt werden, dass **juristische Personen** und **sonstige Vereinigungen** Träger von Grundrechten sein können. Es wird daher folgende Formulierung vorgeschlagen: „Die in der Charta aufgeführten Rechte und Freiheiten gelten auch für juristische Personen und für sonstige Vereinigungen mit Sitz in der Europäischen Union, soweit sie ihrem Wesen nach auf diese anwendbar sind.“

Bereits mit Schreiben vom 21. August 2000 habe ich mitgeteilt, dass der **Schutz von Minderheiten** ausdrücklich in der künftigen Charta Aufnahme finden muss. Dabei sollte allerdings die Formulierung so gewählt werden, dass die betroffenen Personen aus dem Minderheitenschutz keine Leistungsansprüche gegenüber der Europäischen Union herleiten könnten.

Lord Goldsmith
STATEMENT OF REASONS FOR PROPOSED AMENDMENTS TO
CONVENT 45

Comments on Specific Articles

THE PREAMBLE

General: The Preamble should reflect the purpose of the Charter and should also be legally accurate. Point 7 in particular gives a false impression as to the purpose of the Charter. It is also appropriate to use the Preamble to help maintain the balance referred to in my letter of general comments - so the proposed Article 3a. The reasons for the individual changes are as follows:

Point 1:

Amend to:

“The peoples of Europe in developing an ever closer Union are resolved to share a peaceful future based on common values”

Reasons: The Praesidium text is not a necessary statement in the Preamble; it is more appropriate to a Constitution which this document is not. However, if something along these lines is to be included, the proposed amendment is a more accurate statement of the position; compare Preamble to Treaty of Amsterdam

Point 2:

Amend to:

“The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law, principles which are common to

all Member States”

Reason: this is the statement in Article 6(1) of the Treaty of Amsterdam. It is neither desirable nor within the powers of the Convention to amend the Treaty.

Point 3:

Amend to:

“The Union contributes to the maintenance of these principles while respecting the diversity of the cultures and traditions of the peoples of Europe as well as the national identities of the Member States and the organisation of their public authorities at national, regional and local levels; it seeks to ensure balanced, socially cohesive and sustainable development through the free movement of persons, goods, capital and services and the freedom of establishment.”

Reasons: To make the statement legally accurate; the Treaty does not provide for the development of common values. To add a reference here to social cohesion (a better expression in the English text than “solidarity”) and to add a reference to freedom of establishment.

New point 3a:

Add:

“The Union is committed to action for jobs, innovation, economic reform and social cohesion”

Reason: It is appropriate that the Charter should recognise explicitly the agenda of the Union as reflected in the Conclusions of the Feira Council para 19)

Point 4:

Amend to:

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“At this stage in the Union’s development and in the light of changes in society, social progress, and scientific and technological developments, there is a need to consolidate in a Charter the fundamental rights and freedoms, including principles common to Member States, to make them more visible”

Reason: This is closer to the Cologne Conclusions which are our mandate. However, this formulation adds references to changes (as in the Praesidium draft) and introduces the concept of principles.

Point 5:

Amend to:

“This Charter reaffirms, with due regard for the powers and tasks of the Community and the Union and the principles of subsidiarity, these rights, freedoms and principles and as they result from the constitutional traditions common to the Member States, the Treaty on European Union, the Community Treaties, the European Convention for the Protection of Human Rights and Fundamental Freedoms, and the case law of the Court of Justice of the European Communities and of the European Court of Human Rights and taking account of the European Social Charter and the Community Charter of the Fundamental Social Rights of Workers.”

Reason: To delete the reference to “in particular” as there is nothing else; to include a reference to principles. And to recognise the somewhat different status of the Social Charters in the exercise as recognised explicitly in the Cologne Conclusions which uses this different language to which this text is faithful.

Point 6a:

Add:

“The dignity of the person, from which all individual rights and freedoms flow, must

be respected and protected.”

Reason: This concept appears best in the Preamble or as an introductory principle and not in a substantive article. This recognises its overriding importance as the justification from which all other rights flow.

Point 7:

Amend to:

“This Charter therefore sets out the rights, freedoms and principles which must be respected by the Union’s institutions and bodies, as well as by the Member States when they implement Union law so as to fulfil all the values set out above and the task of the Community

Reason: This is a more accurate statement of the purpose of the Charter. It is inappropriate to say that the Charter “guarantees” rights and freedoms especially when many of the provisions are in fact already guaranteed by national constitutions and laws as well as by the ECHR. Further it implies all that follows can be the subject of individual action in Court which cannot be stated to be the intention of the Charter.

INDIVIDUAL ARTICLES

The changes in the individual articles are to give effect to the points made in my letter of general comments. A number are therefore to align the text more closely with the corresponding ECHR articles: see eg Articles 2,7, 11, 12, 13,14, 17, 45. Others are to achieve a more consistent approach to setting certain economic and social rights as principles whose content is defined by national law and practice or by Community law where it exists; see eg Articles 24, 28,29, 33. The essential changes to the horizontal articles and other articles are also explained.

Article 1 : Dignity of the person

Reword as Introductory Principle:

“All fundamental rights of the individual flow from the dignity of the person and the equality of each and every person before the law”

It has previously been suggested that this reference should be moved to the Preamble. I consider that would be a better place for this important concept. I have serious reservations as to this remaining as a substantive provision where the content and definition of the right is legally uncertain. It is not a provision common to the constitutional traditions of all Members States.

Article 2 : Right to life

Amend to “*Everyone’s right to life shall be protected by law.*”

Reasons: The formulation of the right needs to be aligned with the ECHR, otherwise there is a risk of confusion about its meaning.

Article 3 : Right to the integrity of the person

Amend to:

“In the application of biology and medicine everyone has the right to respect of his or her physical and mental integrity in the conditions recognised by national law and practice. This includes respect for the following principles:

- *respect for the informed consent of the patient subject to the limitations recognised by law*
- *prohibition of making the human body and its parts as such a source of financial gain*
- *prohibition of the reproductive cloning of human beings.*”

Reasons: This article is intended to cover aspects of bioethics which figure in the Council of Europe Convention on Human Rights and Biomedicine. However, there are difficulties in achieving that end because the Convention has not yet been ratified by the majority of Member States.

The drafting needs to recognise that we are at this intermediate stage of development in this field and focus therefore on those areas which are presently the subject of national laws whilst recognising the limitations and conditions of the Biomedicine Convention.

An additional but important problem is that the first paragraph has now been separated from the concept of bioethics, giving rise to an apparent right of potentially great width. That would be unacceptable.

There are also certain important drafting changes:

- The reference to eugenic practices has been deleted as the expression is too vague and how it is intended to apply to prenatal diagnosis is uncertain.
- It is important to include the words “as such” (which reflect the Biomedicine Convention) so as to prevent the sale of blood, organs, etc, but to allow for the development of, for example, pharmaceutical products from research on donated tissue.

Article 5(3): Trafficking

Comment: There is no difficulty accepting the principle in Article 5(3), but it is important to be able to point to an appropriate legal base so that the reader of the Charter can find out what is meant legally by the terms “trafficking” and “human beings” and what protection is available. The legal sources referred to in Convent 46 do not answer any of these questions and are in any case not part of EU law. This matter requires further discussion in the Convention.

Article 7 : Respect for private and family life

Amend to:

“Everyone has the right to respect for his private and family life, his home and his communications”

Reasons: Deleting the words “the confidentiality of” avoids narrowing the protection recognised by the Article

Article 8: Protection of personal data

Amend to:

“Everyone has the right to the protection of personal data concerning him in accordance with the provisions of Community law.”

Reasons: This area is covered by existing Community law, notably Directive 95/46/CE on Data Protection made under Article 286 TEC. There is a risk of confusion unless the legal basis for this particular right is identified. That short statement of the right is more in keeping with other formulations in the Charter and avoids misleading elaborations.

Article 9 : Right to marry and found a family

Comment: The essence of the right expressed here is clearly not that in the corresponding Article of the ECHR, which is limited to marriage between a man and a woman. It needs to be established that the legal drafting permits national laws to limit the right to marriage between a man and a woman, ie that doing so is not an impermissible interference with the essence of the right.

Article 11 : Freedom of expression and information

Delete paragraph (2)

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Reasons: First, it is of course the case that the freedom of the press is already protected under Article 10(1) ECHR; it is one of the classic cases where the right has been repeatedly recognised; see eg *Sunday Times v UK, Judgment of 26 April 1979, Series A No 30*. So it is not necessary to single out the rights of this category of persons for special mention. But also it carries real risks. The clause suggests that the media should have greater rights of freedom of expression than other citizens. I cannot agree that this should be the case. Nor is it apparent what those additional rights should be. Such uncertainty is dangerous. For example, the clause is open to the interpretation that the freedom of the press should override other interests, such as the right of privacy (under Article 7 of the Charter), an argument which is strengthened by divorcing this particular freedom from the main body of Article 10 ECHR which would otherwise attract the limitations in Article 10(2) ECHR.

Second, it is not clear whether the reference to “due respect for pluralism and transparency” is supposed to limit the rights which the media have, or to justify what the extra rights broadcasters and newspapers are to have. Nor is it clear what this expression means. Transparency of what, for example?

Third, the reference to “freedom of information” is misplaced as it implies, at least in the English text, the wholly different area of the rights of citizens to obtain information from public bodies. To the extent this topic is to be dealt with in the Charter it is covered by proposed Article 40.

Article 12 : Freedom of assembly and of association

Delete second sentence.

Reasons: The second sentence is a statement having no place in a Charter of fundamental rights. It gives rise also to the risk that it could be used to undermine national controls on cross border party funding.

Article 13: Freedom of research

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Delete.

Reasons: I do not see the need for this article nor could it be accepted without many qualifications.

As to the need for the article, the right to publish the results of research and the right of others to receive such information is protected already by Article 10 ECHR and therefore by intended Article 11 of the Charter: see case *Hertel v Switzerland* (59/1997/843/1049) - judgement of 25th August 1998. Articles 8 ECHR (Article 7 Charter - right of privacy) and 9 ECHR (Charter article 10 - freedom of thought) are also relevant. So there is no need to have a separate article as the rights which do exist in relation to research would already be recognized in the articles which are to be included.

The right as drafted in any event would need many qualifications: scientific research is in fact constrained - and rightly so - in many areas. For example, there are restrictions on research in the bioethical field (recognised by the Declaration of Helsinki and the Biomedicine Convention); and in legislation protecting animals. The formulation "scientific research shall be free of constraint" implies also no standards of control over research eg in the safety and quality of clinical trials (which is inconsistent with existing EU acquis in medicines licensing); or in the safeguarding of sourcing and use of materials to prevent the transmission of communicable diseases eg BSE or CJD. It also implies that there should be no licensing requirements or health and safety requirements. It even implies that States should take steps to ensure that there is the funding to carry out particular research.

One of the disadvantages of separating this right from other existing ECHR rights is that it removes the limitations which are to be found in the ECHR and the case law which supports it.

Article 14 : Right to education

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Amend to:

“1. Everyone has the right to education and to have access to vocational and continuing training.”

“2. The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious and philosophical convictions shall be guaranteed, in accordance with the national laws governing the exercise of such freedom and right.”

“3. This right includes the right to receive free compulsory education.”

Reasons: This Article is a good illustration of the problems of divergence from the ECHR text. The second sentence of the first article (“This right includes the right to receive free compulsory education”) does not of course come from the ECHR. It may still be retained but it would be easier to put it into a separate paragraph (3) so that the horizontal article on convergence with the ECHR can distinguish between that right and the rest of the Article.

So far as the rest of the article is concerned, it should be made clear that this is otherwise the same rights as are contained in Article 2 to the First Protocol to the ECHR. This would require: (a) a clear horizontal article saying so (b) that the Commentary should make that fact clear and (c) the deletion of the word “pedagogical” in the list “religious, philosophical and pedagogical”. This word does not appear in Article 2 to the First Protocol to the ECHR which guarantees the right of parents to ensure teaching in conformity with “their own religious and philosophical convictions”. The word “philosophical” has been interpreted widely to include, for instance, convictions about the use of corporal punishment in schools (*Campbell and Cosans v UK, Judgment of 25 February 1982, Series A, No 48*). The addition of the word “pedagogical” is therefore either unnecessary or it is adding something even wider of uncertain width. For example, if a parent believes that formal education should start at the age of 4 (common in the UK) should that parent have the right to

insist on this in a Member State where formal education does not start until the age of 6? Or again could this be taken to undermine systems of selection for primary or secondary education where parents are disappointed with the choice available to their children. It is necessary therefore to remove this additional word of uncertain application or purpose.

Article 15 : Freedom to choose an occupation

“1. Everyone has the right to choose freely the occupation which they wish to pursue in accordance with Community law and national laws and practices.”

“2. Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State.”

“3. Nationals of third countries who are legally-entitled to work within the territory of a Member State are entitled to protection under the employment law of that Member State equivalent to that of citizens of the Union.”

Reasons: Article 15(1) does not recognize that there are many proper restrictions which need to be put on the practice of individual occupations so as, for example, to require appropriate professional or vocational qualifications and that there are certain legal restrictions eg that certain occupations, such as prostitution, may not be carried on or not carried on in a particular way. Some qualification to this apparently unlimited right is therefore appropriate. The formula used elsewhere “in accordance with Community and national law” would solve that problem.

The opening words “To earn a living” are unnecessarily restrictive and potentially discriminatory. Does the right not apply to women who choose to work although their husbands could support them? They would be better deleted.

Subparagraph (2): Art 49 TEC deals with the freedom to provide services and not their receipt.

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Subparagraph (3): This is not acceptable as drafted as it goes beyond existing rights in apparently according rights to work to third party nationals merely on the basis of lawful residence in a Member State. This would apparently apply to those admitted to enter a Member State for purposes other than employment. Article 137(3) cited in the Commentary gives a power to the Council acting with unanimity to regulate working conditions for such persons but the power has not been exercised. I believe that the intention may have been to ensure equivalent protection under the employment law of those legally entitled to work to that for citizens of the EU. That was the tenor of the Commission's observations on this point at the last Convention meeting.

Notes:

- (1) *Entitlement to work is determined on a State by State basis so it is appropriate to refer to individual States and not the Community as a whole.*
- (2) *The United Kingdom requires that the reference be to protection under the employment law of the Member State as the expression "working conditions" might be held to apply to certain tax credits which are related to working status but which are of the nature of benefits not necessarily accorded to non EU workers.*

Article 16 : Freedom to conduct a business

Amend to:

"Freedom to conduct a business and the free movement of workers, goods, capital and services and the freedom of establishment in accordance with Community law shall be protected."

Reasons: I welcome this reference but believe it can be improved:

First, it would be very valuable to expand this reference to include the other economic freedoms which are at the heart of the Communities and are of enormous importance

to many people in the Union whose jobs and livelihoods depend on them.

Secondly, the word “recognised” sits unhappily with the sort of word “protected” “guaranteed” “respected” etc used in relation to other rights. Freedom of enterprise is an important right which should attract similar protection.

Article 17 : Right to property

Amend to:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions”

Reasons: To reflect more closely the language in Article 1 of the First Protocol to the ECHR. This is an important provision in the ECHR which affects many areas of public and private life. It is encouraging that the Commentary says that this article corresponds to Article 1 of the First Protocol but no reason is given in the Commentary for the change of language other than a suggestion that this is to modernise the language. The language of the existing Article 1: “Every natural or legal person is entitled to the peaceful enjoyment of his possessions” is clear and direct and perfectly understandable to the modern citizen and therefore better than the proposed first sentence.

Of specific concern is that the first sentence would apparently rule out requiring property to be used for death duties or taxation of the words of the First Article.

As to the new subparagraph (2): “Intellectual property shall be protected.”, it is unnecessary in my view to single out this one category of property for special mention. Intellectual property constitutes “possessions” (French: “biens”) for the purposes of the First Protocol as one would expect: see Commission Decision in *Smith Kline and French Laboratories v Netherlands* (application 12633/87. Decisions and Reports Vol 66 p70).

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Article 18 : Right to asylum

Amend to:

“The right to asylum, under the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees, shall be guaranteed in accordance with national law and with the Treaty establishing the European Community.”

Reasons: The UK would prefer that this Article should be deleted. It falls into a different category from all the other rights in the Charter in that it is not concerned with showing the rights which citizens and others lawfully residing within the Union should enjoy. Asylum is at the moment an essentially national matter. When Community competence is exercised under Article 63 TEC it will be in accordance with the conditions in that Article which include specific reference to the Geneva Convention. So there is no real need for the Charter to say what is already covered by the Treaty. However, if there is a consensus in favour of including something in the Charter on this sensitive topic, the drafting must be very precise in stating the existing position as accepted by the Member States. I have suggested a small reformulation of the text to clarify and limit the reference to source of the right.

Article 19 : Protection in the event of removal, expulsion or extradition

Amend to:

“No one may be removed, expelled or extradited to a State where he would be subjected to torture or other inhuman or degrading treatment”

Reasons:

The first paragraph is based on Article 4 of the 4th Protocol to the ECHR. But not all Member States have ratified this Protocol. Consistently with the approach taken on other Articles this cannot therefore be taken as a common right to be included in the Charter.

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The second paragraph is said to be based on ECHR jurisprudence. However, it goes beyond that jurisprudence in two respects:

First, the ECtHR has not said that it is the threat of the death penalty alone which should prevent extradition; it is where there is a real risk of associated inhuman or degrading treatment eg through the application of long “death row” waits. This is the basis of the *Soering* decision referred to in the commentary. Therefore, countries may continue, in accordance with their international obligations, to extradite to other countries where this risk does not apply.

Second, in any event, the threshold is too low. The jurisprudence would be better reflected by replacing the word “could” (which connotes a mere possibility - and one unconnected with the offence in question) with “would”.

Article 21 : Equality and non-discrimination

Amend to:

21(1) “Any discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation shall be prohibited to the extent that the Council has, in accordance with the Treaty establishing the European Community, so provided”.

21(2) “The enjoyment of those rights and freedoms in this Charter which are guaranteed by the ECHR shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status”.

21(3) “Within the scope of application of the Treaty establishing the European Community and of the Treaty on European Union, and without prejudice to the special provisions of those Treaties, any discrimination on grounds of nationality shall be prohibited.”

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Reasons: Article 21(1) is unacceptable. It would constitute a new and open-ended prohibition on all discrimination in all fields. Whilst this may be a desirable political objective in the long run, such a statement would go beyond existing rights and would constitute a misleading promise. Moreover, such rights unless introduced in a careful and measured way risk imposing very substantial financial burdens. As evidence of the fact that this goes beyond existing law is the fact that there is a proposal from the Council of Europe for a more open-ended non-discrimination article (Protocol 12) but this has not been accepted by a number of the EU Member States. They cannot be expected to accept in the Charter what they are not prepared to accept in the Council of Europe.

The Commentary indicates that the source of this article is Article 13 TEC and Article 14 ECHR. Neither provision justifies the proposed article. As for Article 13 TEC this empowers the Council to take action in a closed list of cases. Proposals are being made but it is not possible to say that there are existing prohibitions in all areas. As for Article 14 ECHR it provides an open-ended list but its ambit is confined to the freedoms and rights given under the Charter. This is therefore overall an area where there may be objectives and aspirations but at this moment the Charter cannot anticipate the development of an open-ended across the board non-discrimination provision covering all areas of activity. What is more the present formulation would apparently by a side-wind grant to all nationals the rights which are restricted under the Treaty to nationals of Member States.

Article 24 : Integration of persons with disabilities

Amend to:

“The Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community”

Reasons: to reflect the article more clearly as a principle rather than a subjective right.

Article 25 : Workers right to information and consultation within the undertaking

Delete.

Reasons: The United Kingdom cannot accept this right. Its legislation contains no general right of consultation and information such as is contained in this Article but believes this to be a matter to be regulated by best practice save in the few specific cases where a right is granted by legislation. Nor is there any general EC legislation creating such a right.

As this is not therefore a right which is recognised in all the Member States it is not right, in the UK's view, to insist on the inclusion of something which is not a general and common right.

Article 26 : Right of collective bargaining and action

Amend to:

“Employers and workers are free to negotiate and conclude collective agreements, and in the event of conflict between them on matters which impact on them directly, to take collective action in accordance with national laws governing the exercise of such freedoms.”

Reasons: The reference to a “right” here creates the appearance of an obligation on the other party to negotiate ie to create a compulsory negotiating right which is not generally recognised in all countries.

The problem could, however, be solved by expressing this Article more consistently as a principle and as a freedom.

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Article 28 : Protection in the event of unjustified dismissal

Amend to:

“Workers are protected in the event of unfair dismissal subject to the conditions laid down by national law and practice.”

Reasons: This should be expressed as a principle tied to implementation by national law:

Article 29 : Fair and just working conditions

Amend to:

“(1) The provision of safe and healthy working conditions shall be protected by law.”

“(2) In general workers are entitled to limitation of maximum working hours, to daily and weekly rest periods and to annual period of paid leave in accordance with Community and national law and practice”

Reasons: First, this is an article which needs to be expressed as a principle implemented by Community and national law.

Second, the second paragraph is too unqualified and does not recognise for example, specific limitations and exceptions.

Article 30 : Protection of young people at work

Amend to:

“(1) The minimum age of admission to employment must generally not be lower than the minimum school-leaving age, except where Community or

national law allow for rules that are more favourable to children and young people or provide derogations.

(2) [As existing Praesidium text]

Reasons: The first sentence is new and might be taken to contradict what follows. It is unnecessary as what follows defines more clearly what the limits on the employment of young persons are.

It desirable also to identify the provenance of the rules which may allow for different treatment.

Article 31 : Reconciling family and professional life

Amend to:

“(1) The family shall enjoy legal, economic and social protection in accordance with national laws and practices.

(2) With a view to reconciling work and family responsibilities and protecting, where necessary, the health and safety of pregnant workers, protection from dismissal on grounds of pregnancy, and maternity leave and parental leave following the birth or adoption of a child, are available in accordance Community law and national law and practice.”

Reasons: This Article risks offering a lot more than it is capable of delivering and thereby creating disappointment and dashed expectations. It should therefore be adjusted to provide more realistic promises.

Article 32 : Social security and social assistance

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Amend to:

(1) The Union recognises and respects the entitlement to social security benefits providing protection in such events as maternity, illness, industrial accidents, dependency, old age or loss of employment, subject to conditions laid down by Community law and national laws and practices.

(2) Workers who are nationals of a Member State, and members of their families, residing in another Member State have the right to the same social security benefits, social advantages and access to health care as nationals of that State.

(3) The Union recognises and respects the entitlement to social assistance, subject to conditions laid down by Community law and national law and practice.

Reasons: Social security and assistance are matters essentially for national competence. This Article must therefore operate as it is drafted, as a principle, which recognises national differences. It cannot therefore be prescriptive about the events in which such benefits are to be available. Nor can the Charter be prescriptive about the level of benefits or open this question up to judicial interpretation rather than to the decision of those elected by the democratic choice of the people to govern.

Further the reference to “social services” for the first time is unacceptable. At least in the United Kingdom it refers to a range of services which are not provided by central government but by local authorities in accordance with the resources available to them.

Article 33 : Health care

Amend to:

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“Provision shall be made for access to medical care and health protection in the circumstances established by national legislation and practice”

Reasons: to reword as a principle.

Article 34 : Access to services of general economic interest

Amend to:

“The Union recognises the important place occupied by services of general economic interest and their role in promoting social and territorial cohesion subject to the provisions of the Treaty establishing the European Community.”

Reasons: To align with the Treaty. This Article was the subject of much debate at the last meeting of the Convention. The draft in Convent 45 goes beyond Article 16 TEC.

Article 35 : Environmental protection

Amend to:

“Environmental protection requirements must be integrated into the definition and implementation of all Community policies, in particular with a view to promoting sustainable development.”

Reasons: The Praesidium text is too strong a statement of the position as the Articles of the Treaty do not go so far as to “ensure” the protection of the environment. We should follow more closely Article 6 TEC.

There would be no objection, if desired, to adding a reference to Article 174 TEC by adding “The Community’s policy on the environment is required to contribute towards the following objectives: the protection, preservation and improvement of the quality of the environment, the protection of human health, the prudent and rational

use of natural resources and the promotion of measures at international level to deal with regional or world-wide environmental problems.”

Article 36 : Consumer protection

Amend to:

“In order to promote the interests of consumers and to ensure a high level of consumer protection, the Community shall contribute to protecting the health, safety and economic interests of consumers.”

Reasons: The statement that Union policies “shall ensure” is too strong and promises what cannot be delivered. We should follow more closely Article 153.

Article 43 : Freedom of movement and of residence

Amend to:

“Every citizen of the Union, and any other persons to whom the Council accords such rights pursuant to the powers in the TEC and in accordance with the conditions laid down, has the right to move and reside freely within the territory of the Member States.”

Reasons: The second paragraph does not seem a very elegant way of anticipating rights which may be granted in the future by virtue of the exercise of the powers in Articles 62(3) and 63(4) TEC.

Article 45 Right to an effective remedy and to a fair trial, and

Article 46 Presumption of innocence and right of defence

Amend to:

“(x) Everyone whose directly enforceable rights and freedoms granted under

Community law are violated by the Institutions or bodies of the Union or by Member States exclusively when implementing Union law has the right to an effective remedy before a Court.”

In such proceedings the rights guaranteed by [Article 45(2)] shall apply notwithstanding the character of such proceedings.”

(y) Everyone is entitled to a fair and public hearing in determining his or her civil rights and obligations. Hearings shall be by an independent and impartial tribunal established by law.”

Reasons: These Articles divide into two parts:

First, a substantive right to effective recourse to a tribunal where rights or freedoms are violated. This is contained in Article 45 (1).

Second, the essentially procedural guarantees of fair trial. These are contained in Article 45(2) and (3) and 46

Substantive right

This right is said to be based on Article 13 of the ECHR and on ECJ jurisprudence.

So far as Article 13 ECHR is concerned, in two important areas, the proposed Article goes significantly further. First, Article 13 ECHR applies only to the rights and freedoms set out in the ECHR alone. It does not therefore apply to any rights which do not derive from the Convention eg rights provided by a national Statute for which special provision may be made for the remedy. Secondly, the requirement is that there should be an effective remedy before a national authority; it is not essential that it should be before a Judge. The jurisprudence of the ECtHR shows that there are cases in which an effective remedy may be provided even though it is not before a judge (see eg Klass v FRG Series A No28: remedy before a Parliamentary Commission in surveillance cases held sufficient).

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But the Praesidium have suggested that this is appropriate because of ECJ jurisprudence eg *Johnston*. However, that jurisprudence has no application in purely domestic matters but only applies where there is a contravention of enforceable legal rights under a directly effective Community provision (see eg Opinion of AG Tesaro in *Factortame No 1* C-213/89 [1990] ECR I-2433 . The proposed Article however goes beyond this area. It may be said that as the Charter is only intended to apply to Union Institutions and Member States when implementing Union law this is what is intended. However, this is not clear from the Article which appears to have general application.

The result is an article whose breadth cannot be justified by the source of law on which it is said to be based.

The solution is to redraft this part of the Article to make it clear that it only applies in the cases where ECJ jurisprudence applies.

Procedural Guarantees

Article 6 of the ECHR is one of the most widely used rights in the whole of the ECHR. It is in daily use in Courts and Tribunals throughout the Union and is constantly considered by judges and lawyers. Any changes from its text must therefore be very anxiously considered. Although the UK would have preferred not to split its provisions between two articles (45 and 46) we are prepared to accept that the rights in Article 6(3) ECHR are dealt with in Article 46 provided there is a strong horizontal article making it clear that this is the same right as in the ECHR

Part of the problem with this Article is that it does not distinguish between domestic proceedings and purely Community matters.

In so far as the Article appears to deal with domestic proceedings, it is unacceptable that there should be any gloss on the Article 6 guarantees. There is a wealth of jurisprudence of the ECtHR and the Commission, interpreting the nature of the

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guarantees which people are entitled to enjoy in relation to the justice system. Member States have organised their laws and systems to comply with those requirements. It is unreasonable to attempt to rewrite these guarantees. So far therefore as domestic proceedings are concerned, there are a number of points:

- The Article 6 guarantees only apply to civil and criminal proceedings although these have been given a wide and autonomous interpretation by the ECtHR (see eg. Engel v Netherlands Series A No 22, Konig v FRG Series A No27) There remain other cases where these guarantees do not apply eg [certain administrative proceedings]. Those Member States which operate such systems cannot be expected to change them because of the Charter nor subscribe to a Charter which misrepresents the position under domestic law. The first sentence of Article 45(2) must therefore be corrected.
- The second sentence of Article 45(2) relates to legal representation. Outside the criminal law, the right to legal representation is not always essential So this would be creating a new right. Moreover the language appears to create a positive obligation to provide the resources for someone who does not possess them, thus creating new financial obligations.
- Article 45(3) both reduces the protection of criminal defendant and produces new financial obligations which are not acceptable in other cases. The position as to criminal proceedings under the ECHR is clear because it is provided expressly by ECHR Article 6(3) a person should be given legal assistance free “when the interests of justice so require.” This has been interpreted as requiring legal aid to be provided for all but the simplest criminal cases. This Article therefore risks reducing the protection for criminal defendants. So far as other proceedings are concerned, the ECJ jurisprudence (Airey, Series A No3) requires that legal aid be provided where a person cannot effectively plead his case himself. The test proposed in this article is not the same. The provision of legal aid carries with it enormous budgetary implications. The extent of this right should in domestic cases be left to ECHR jurisprudence

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It is said however, that in one respect the ECJ case law has gone further in allowing that the guarantees of Article 6 should apply to all proceedings in Community law even if administrative. If there is an extension, it only applies where proceedings in Community matters are concerned. We would not object therefore to the inclusion of the following sentence at the end of the new Article 45(1) we have proposed above:

“In such proceedings the rights guaranteed by [Article 45(2)] shall apply notwithstanding the character of such proceedings.”

Article 47 (3) : The severity of penalties shall be proportional to the gravity of the criminal offence.

Delete Paragraph 3.

Reasons: It is not acceptable to suggest that the ECJ should have the power to judge the appropriateness of sentences passed in domestic courts. This paragraph is therefore unacceptable and should be deleted.

Article 50 : Scope of guaranteed rights

Amend to:

“1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for in accordance with the law. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest being pursued by the Union, other legitimate interests in a democratic society or the need to protect the rights and freedoms of others.”

“2. The rights in Articles [here will be set out all the articles which cover the TEC/TEU field] have the same scope and meaning as the corresponding rights guaranteed under the Community Treaties or the Treaty on European Union and shall

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be exercised under the conditions and within the limits defined by those Treaties.”

“3. The rights in Articles [here will be set out all the articles which cover the ECHR field] have the same scope and meaning and are subject to the same permissible limitations as the corresponding rights guaranteed under the ECHR. These rights [ie the ones which correspond to the ECHR rights] apply to a Member State only to the extent to which it has consented to be bound in relation to that Convention and its protocols and subject to any reservations or derogations in force for that Member State.”

Reasons:

As explained in my letter of general comments the UK regards it as unacceptable that there be a lack of consistency between the rights in the Charter and the corresponding rights under the ECHR. The strong conviction has repeatedly been expressed in the Convention of the risks of creating a divergence from those rights or of creating the risk of uncertainty in those rights. These are the rights (liberty, security, freedom of thought and expression, of assembly, of property and of respect for private life etc) which are enjoyed by all persons within the EU and which are the bedrock of our democratic and free societies. We believe that we would be doing a grave disservice to the citizens of Europe if we created confusion and uncertainty about the freedoms which they are to enjoy. We believe that this would be the consequence of appearing to create a parallel and competing system of human rights protection in the areas of the freedoms covered by the ECHR. Such confusion would provide excuses for administrators and work for lawyers but no protection for citizens. The President of the European Court of Human Rights in a speech on 7 March 2000 noted that *“the Court’s main concern in the context of this discussion is to avoid a situation in which there are alternative, competing and potentially conflicting systems of human rights protection both within the Union and in the greater Europe. The duplication of protection systems runs the risk of weakening the overall protection offered and undermining legal certainty in this field.”* It is worth recalling in this context that legal certainty is itself an essential principle of Community law: see eg *Germany v Commission* 44/81 [1982] ECR 1855. Nor can Member States be expected to see a

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situation in which the Charter would impose different obligations of uncertain ambit in the field already covered by the obligations they have accepted under the ECHR.

As our purpose is to make clear what existing rights are, our starting point must be what are the existing common rights in this area. The position here we believe is clear: in the field of rights covered by the ECHR it is the rights in that Convention which are the fundamental rights to be respected by the Union institutions and not different rights. Thus Article 6(2) of the Treaty of Amsterdam demands that the Union “shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms”. It does not suggest that the Union should respect “similar” rights but the same rights. This is clear also from the jurisprudence of the ECJ; see for example the statement of AG Jacobs in the *Bosphorus Case* (1996 ECR I - 3953) “...for practical purposes the Convention can be regarded as a part of Community law and can be invoked as such both in this Court and in national courts where Community laws are in issue.” This is a logical and satisfactory position: each and every Member State has agreed to be bound by the provisions of the ECHR and so all citizens are entitled to the protection of those rights against the Member States. Neither the Union nor the Communities are parties to the European Convention but it is logical and right that they should be subject to the same constraints when acting within their field of competence as the Member States are when acting within theirs.

We believe that it is essential that the Charter should make clear that the rights which cover the same area as the ECHR rights are the same rights. There are, as has previously been discussed, different methods of achieving this. The UK preference would have been for a clear definition of rights which provided a clear definition in relation to each right eg that it was the right guaranteed by such and such an article of the ECHR. I am prepared to consider, however, an alternative way of achieving this clarity of definition by an unambiguous and strong horizontal article and by ensuring that the wording of the Article in question, if not identical to the ECHR article, does not stray too

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As to the necessary horizontal article the proposed Article 50(3) requires amendment to make it acceptable.

First, it uses the expression “similar” rather than “same”. This is a very important difference which defeats the objective of the clause which is to maintain consistency between the rights in the ECHR and the Charter and not to create merely similarity. Secondly, even with the change to the word “same” we consider that the formulation does not in any event achieve the desired effect. The reason is that, given the way that the Charter has been drawn up, there is no way of telling whether the “Charter affords greater or more extensive protection.” as indicated by the final words other than by interpreting the words of the respective articles. Where those words are different from the ECHR article it will be argued that the Charter must therefore have been intending to afford greater or more extensive protection. In other words, Article 50(3) will have no effect except in the case where the words of the Article is identical to that of the ECHR.

Further, the reference to “competent legislative authority” in the first sentence does not allow for the different legal traditions of those countries where limitations may derive from the common law.

Saving for existing reservations. There is a further important technical issue. The majority of Member States have lodged reservations or derogations in relation to specific aspects of the ECHR. For example, a number of Member States have registered reservations in relation to Article 2 of the First Protocol (education): It is unreasonable to expect a Member State to agree to a Charter which did not recognise the reservations it had made under the ECHR on the same matter. Equally it would be undesirable to take the lowest common denominator to apply to the Union institutions. It is proposed therefore to allow the continued application of the appropriate reservation or derogation but only in so far as concerns that Member State.

Article 51 : Level of protection

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As the United Kingdom does not have a written constitution, we would prefer the final words to be amended to, or add a reference to, “the law of the Member States”

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President Roman Herzog
Bundespräsident a.D.
Prinzregentenstrasse 89
D-81675 89 Munchen.

Fax: 00 49 89 4702 7168

21 August 2000

Copies to Representatives of Other Member States

EU CHARTER OF FUNDAMENTAL RIGHTS

1. I thank the Praesidium for the latest draft of the Charter (Convent 45), which I have studied closely.
2. The UK Government's goal remains successful adoption of the Charter at Nice. The latest draft is in some respects a step forward. I welcome this. But there remains a long way to go before we have a text to which the UK and - I suspect - several others could subscribe.
3. You asked for general comments on the text. I have four. Each entails changes which are in our view necessary to make the Charter acceptable and bring it into line with the mandate of the Cologne European Council:
 - (i) The text must make clear that the civil and political rights derived from the ECHR are the same as those in the ECHR. The current text fails to achieve this. Unless corrected, this risks dangerous legal confusion. We would be doing a grave disservice to the citizens of Europe if we were to create uncertainty about the freedoms which they enjoy. Such uncertainty would provide work for lawyers and excuses for administrators, but no help for citizens.

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There are a number of solutions. My preference remains for a two-part (A/B) approach throughout the Charter, under which each right is accompanied by a statement clearly defining the right and specifying the instrument from which it derives.

But there is an alternative approach which I would be willing to consider, as follows. First, there must be a stronger and unambiguous horizontal article making clear that the rights concerned have exactly the same scope and meaning, and are subject to the same limitations, as the corresponding right in the ECHR. The proposed article 50(3) does not achieve that end: it says the rights are "similar" rather than the "same" and the final phrase deprives the article of most of its benefit by leaving it to interpretation which articles are intended to give greater protection. Second, we must deal with significant deviation from the language used to describe each of the relevant rights in the Charter by bringing this into line with the language used in the relevant article of the ECHR. Third, the text must make clear that the rights apply to a Member State only to the extent to which they have consented to be bound by the ECHR and subject to any derogations or reservations.

- (ii) The text must not go beyond existing rights. The current text still seeks to introduce "new " rights which do not appear in either the European Convention of Human Rights or the European Union treaties, or in the national law or constitutions of all Member States. This was not what Heads of State and Government agreed at Cologne. There can be no proper consensus among member states on what such new rights should be. Nor is the Convention the right place to seek to invent them. Trying to do so will simply cause confusion and delay, and discredit the Charter and the Union.
- (iii) It must deal with social and economic issues differently and correctly. The text must recognise that social and economic rights are different in nature from civil and political rights, though this does not mean they are inferior; that these rights essentially take the form of principles, which will be respected and recognised by the Union's institutions and Member States when implementing Community law; that these principles in themselves do not create justiciable rights but the national or Community law through which they are implemented may do so; and that they are recognised and given effect in different ways and to different extents by different Member States.

This problem too can be fixed relatively easily, through new horizontal articles, greater clarity in the drafting of the individual articles, and ensuring consistency between the articles (eg the formula “The Union recognises and respects” and the phrase making clear that the content is in accordance with Community law where it exists and national law and practice should be used more consistently in relation to these articles).

- (iv) It must maintain balance between the various rights it proclaims and between these and the Union's other objectives. The Charter must avoid creating a new or different hierarchy of rights. It must permit legislators and courts to strike a proper balance between the various rights in the Charter; and between other objectives of the Union. For example, it is important that the Charter cannot be interpreted as having the effect of changing the task of the Community (Article 2 TEC), undermining the four freedoms of the Single Market, or affecting the political and economic decisions taken at the Lisbon and Feira European Councils. The text, including the Preamble, must therefore reflect these various objectives fully.

4. I hope that these four points will attract broad support from other Member States. Several have already made them forcefully in the Convention meetings. I hope therefore that they can be properly reflected in the next draft of the Charter. In order to facilitate this, I will shortly be circulating amendments illustrating how the necessary changes could be made, together with a commentary on each proposed change.

Yours sincerely,

Lord Goldsmith QC

[no signature as the document has been created electronically]

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DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int****Brussels, 28 July 2000****(OR: fr)****London: 23 August 2000****CHARTE 4422/00****CONVENT 45
SHOWING LORD
GOLDSMITH'S
PROPOSED CHANGES****PRESIDENCY NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union
– Complete text of the Charter proposed by the Praesidium

The Members of the Convention will find below the complete text of the Charter proposed by the Praesidium in the light of discussions in the Convention. Members may forward their general comments on this draft, by 1 September 2000, to the following address:

Jean-Paul.Jacque@consilium.eu.int,

indicating:

- "for the attention of Mr Jansson" (for the representatives of the national Parliaments)
- "for the attention of Mr Mendez de Vigo" (for the members of the European Parliament delegation)
- "for the attention of Mr Braibant" (for the personal representatives).

The Secretariat will forward these comments to the relevant addressee.

PREAMBLE

1. The peoples of Europe in developing have established an ever closer Union between them and are resolved to share a peaceful future based on common values.
2. The Union is founded on the indivisible, universal principles of liberty, democracy, respect for human rights and fundamental freedoms the dignity of men and women, freedom, equality and solidarity; it is based on the principle of democracy and the rule of law, principles which are common to all Member States.
3. ~~3.~~ The Union contributes to the maintenance development of these principles common values while respecting the diversity of the cultures and traditions of the peoples of Europe as well as the national identities of the Member States and the organisation of their public authorities at national, regional and local levels; it seeks to ensures balanced, socially cohesive and sustainable development through the free movement of persons, goods, capital and services and the freedom of establishment..
- 3a The Union is committed to action for jobs, innovation, economic reform and social cohesion.
4. At this stage in the Union's development and In adopting this Charter the Union intends to enhance the protection of fundamental rights in the light of changes in society, social progress and scientific and technological developments. there is a need to consolidate in a Charter the fundamental rights and freedoms, including principles common to Member States, to by make ing them these rights more visible.
5. This Charter reaffirms, with due regard for the powers and tasks of the Community and the Union and the principles of subsidiarity, these rights, freedoms and principles and as they result, in particular, from the constitutional traditions common to the Member States, the Treaty on European Union, the Community Treaties, the European Convention for the Protection of Human Rights and Fundamental Freedoms, and the case law of the Court of Justice of the European Communities and of the European Court of Human Rights and taking account of the European Social Charters and the Community Charter of the Fundamental Social Rights of Workers. adopted by the Community and by the Council of Europe and the

~~ease law of the Court of Justice of the European Communities and of the European Court of Human Rights.~~

6. Enjoyment of these rights entails responsibilities and duties with regard to other persons, to the human community and to future generations.

6a ~~The dignity of the person, from which all individual rights and freedoms flow, must be respected and protected.~~

~~*[or as specific introductory principle for Chapter 1 – see below]*~~

7. ~~7.—~~This Charter therefore sets out the rights, freedoms and principles which must be respected by the Union's institutions and bodies, as well as by the Member States when they implement Union law so as to fulfil all the values set out above and the task of the Community.

~~Each person is therefore guaranteed the rights and freedoms set out hereafter.~~

CHAPTER I. DIGNITY**Article 1. Dignity of the person****Introductory Principle**

All fundamental rights of the individual flow from the dignity of the person and the equality of each and every person before the law. must be respected and protected.

Article 12 [and renumber remainder]. Right to life

1. Everyone's has the right to life shall be protected by law.
2. No one shall be condemned to the death penalty, or executed.

Article 3. Right to respect for bio-ethical principles the integrity of the person

1. In the application of biology and medicine Everyone has the right to respect for his or her physical and mental integrity in the conditions recognised by national law and practice. This includes respect for the following principles:-
2. In the fields of medicine and biology, the following principles must be respected in particular:
 - Respect for the free and informed consent of the patient subject to the limitations recognised by law person concerned,
 - prohibition of eugenic practices, in particular those concerned with the selection of persons,
 - prohibition of making the human body and its parts as such a source of financial gain,
 - prohibition of the reproductive cloning of human beings.

Article 4. Prohibition of torture and inhuman or degrading treatment and punishment

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Article 5. Prohibition of slavery and forced labour

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. [Trafficking in human beings is prohibited.] *[see covering letter]*

CHAPTER II. FREEDOMS

Article 6. Right to liberty and security

Everyone has the right to liberty and security of person.

Article 7. Respect for private and family life

Everyone has the right to respect for his private and family life, his home and the confidentiality of his communications.

Article 8. Protection of personal data

Everyone has the right to the protection of personal data concerning him in accordance with the provisions of Community law. Such data must be processed fairly for specified purposes on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him, and the right to have it rectified. Compliance with these rules shall be subject to control by an independent authority.

Article 9. Right to marry and right to found a family

The right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights [*See covering letter*].

Article 10. Freedom of thought, conscience and religion

Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.

Article 11. Freedom of expression and information

- 1.—Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.
- 2.—~~Freedom of the media and freedom of information shall be guaranteed with due respect for pluralism and transparency.~~

Article 12. Freedom of assembly and of association

Everyone has the right to freedom of peaceful assembly and to freedom of association, in particular in political, trade union and civic matters.

~~Political parties at European level contribute to expressing the political will of the citizens of the Union.~~

Article 13. Freedom of research

~~Scientific research shall be free of constraint.~~

Article 14. Right to education

1. Everyone has the right to education and to have access to vocational and continuing training. ~~This right includes the right to receive free compulsory education.~~
2. The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, and philosophical ~~and pedagogical~~ convictions shall be guaranteed, in accordance with the national laws governing the exercise of such freedom and right.
3. This right includes the right to receive free compulsory education.

Article 15. **Freedom to choose an occupation**

1. ~~To earn a living, E~~everyone has the right to choose freely engage in a freely chosen the occupation which they wish to pursue in accordance with Community law and national laws and practices.
2. Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide ~~or receive~~ services in any Member State.
3. Nationals of third countries who are legally entitled to work within authorised to reside in the territories of a the Member States are entitled to protection under the employment law of that Member State ~~working conditions equivalent to that~~ of citizens of the Union.

Article 16. **Freedom to conduct a business**

~~The f~~Freedom to conduct a business and the free movement of workers, goods, capital and services and the freedom of establishment in accordance with Community law shall be protected is recognised.

Article 17. **Right to property**

1. Every natural or legal person is entitled to the peaceful enjoyment of has the right to own, use, dispose of and bequeath his lawfully acquired possessions. No one may be deprived of his possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation. The use of property may be regulated insofar as is necessary for the general interest.
2. Intellectual property shall be protected.

Article 18. **Right to asylum**

The right to asylum, under shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees,

shall be guaranteed in accordance with national law and in accordance with the Treaty establishing the European Community.

Article 19. Protection in the event of removal, expulsion or extradition

1. — ~~Collective expulsions are prohibited.~~
2. — No one may be removed, expelled or extradited to a State where he ~~could~~ would be subjected to the ~~death penalty~~, torture or other inhuman or degrading treatment.

CHAPTER III. EQUALITY**Article 20. Equality before the law**

Everyone, man or woman, is equal before the law.

Article 21. Equality and non-discrimination

1. Any discrimination based on any ~~ground such as sex, racial or race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation~~ shall be prohibited to the extent that the Council has, in accordance with the Treaty establishing the European Community, so provided.
2. The enjoyment of those rights and freedoms in this Charter which are guaranteed by the ECHR shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.
3. ~~2.~~ Within the scope of application of the Treaty establishing the European Community and of the Treaty on European Union, and without prejudice to the special provisions of those Treaties, any discrimination on grounds of nationality shall be prohibited.

Article 22. Equality between men and women

Equal opportunities and equal treatment for men and women as regards employment and work,

including equal pay for equal work or for work of equal value, must be ensured.

The principle of equal treatment shall not prevent the maintenance or adoption of measures providing for specific advantages in order to make it easier for the under-represented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers.

CHAPTER : ECONOMIC AND SOCIAL RIGHTS

1. The following articles (x to y) set out social and economic principles which are common to all Member States but are implemented differently in their national laws and practices.
2. The principles give rise to rights only in so far as Community law or national law provides such rights.
3. The Union's institutions and bodies shall observe these rights and principles when acting within the scope of their competences (as shall the Member States when implementing Community law). The Institutions of the Union recognise that the means and extent to which these principles are applied are matters solely for the national law and practice of the Member States, except such as are specifically provided for by provisions of the Treaties or Community legislation.

Article 23. Protection of children

1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.
2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.

Article 24. Integration of persons with disabilities

The Union recognises and respects the right of pPersons with disabilities have the right to benefit from measures designed to ensure their independence, social and occupational integration and

participation in the life of the community.

CHAPTER IV. SOLIDARITY

Article 25. — Workers' right to information and consultation within the undertaking

Workers and their representatives must be guaranteed information and consultation in good time on matters which concern them within the undertaking, in accordance with Community law and national laws and practices.

[Please refer to commentary on Article 25]

Article 26. Right of collective bargaining and action

Employers and workers ~~are free have the right~~ to negotiate and conclude collective agreements and, in the event of ~~eases of~~ conflicts between them on matters which impact on them directly ~~of interest~~, to take collective action ~~to defend their interests~~, in accordance with ~~Community law and national laws governing the exercise of such freedoms and practices~~.

Article 27. Right of access to placement services

Everyone has the right of access to a placement service.

Article 28. Protection in the event of unjustified dismissal

~~Workers are protected in the event of~~ Every worker has the right to protection against unjustified unfair dismissal subject to the conditions laid down by national law and practice.

Article 29. Fair and just working conditions

1. ~~The provision of safe and healthy~~ Every worker has the right to working conditions shall be protected by law, which respect his or her health, safety and dignity.
2. ~~In general~~ Every workers are entitled has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave in accordance with Community and national law and practice.

Article 30. Protection of young people at work

~~The employment of children is prohibited.~~ The minimum age of admission to employment must generally not be lower than the minimum school-leaving age, except where Community or national law allow for ~~without prejudice to such rules that are as may be more favourable to children and young people and except for limited~~ or provide derogations.

Young people admitted to work must have working conditions appropriate to their age and be protected against economic exploitation and any work likely to harm their safety, health or physical, mental, moral or social development or to interfere with their education.

Article 31. Reconciling family and professional life

The family shall enjoy legal, economic and social protection in accordance with national laws and practices.

With a view to reconciling work and family responsibilities and protecting, where necessary, the health and safety of pregnant workers, Everyone shall have the right to reconcile their family and professional lives, which includes in particular the right to protection from dismissal on grounds because of pregnancy, and the right to paid maternity leave and to parental leave following the birth or adoption of a child, are available in accordance with Community law and national law and practice.

Article 32. Social security and social assistance

1. The Union recognises and respects the entitlement to social security benefits ~~and social services~~ providing protection in such the events as of maternity, illness, industrial accidents, dependency, ~~or~~ old age or and in the event of loss of employment, subject to conditions in accordance with the rules laid down by Community law and national laws and practices.
2. Workers who are nationals of a Member State, and members of their families, residing in another Member State, and members of their families, have the right to the same social security benefits, social advantages and access to health care as nationals of that State.
3. The Union recognises and respects the entitlement ~~right~~ to social assistance ~~and housing benefit~~ in order to ensure a decent existence for persons lacking sufficient resources, subject to conditions in accordance with the rules laid down by Community law and national laws and practices.

Article 33. Health care

Provision shall be made for access to medical care and health protection in the circumstances
~~Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national~~ legislation ~~aws~~ and practices.

Article 34. Access to services of general economic interest

The Union recognises the important place occupied by ~~respects the access to~~ services of general economic interest ~~and their role in promoting as provided for in national laws and practices in accordance with the provisions of the Treaty establishing the European Community in order to promote the social and territorial cohesion of the Union.~~ subject to the provisions of the Treaty establishing the European Community.

Article 35. Environmental protection

Environmental protection requirements must be integrated into the definition and implementation of all Community policies. ~~in particular with a view to promoting~~ All Union policies shall ensure the protection and preservation of a good quality living environment and the improvement of the quality of the environment, taking into account the principle of sustainable development.

Article 36. Consumer Protection

In order to promote the interests of consumers and ~~Union policies shall~~ ensure a high level of consumer protection, ~~the Community shall contribute to protecting as regards~~ the health, safety and economic interests of consumers.

CHAPTER V. CITIZENSHIP**Article 37. Right to vote and to stand as a candidate in elections to the European Parliament**

1. Every citizen of the Union has the right to vote and to stand as a candidate in elections to the

European Parliament in the Member State in which he resides, under the same conditions as nationals of that State.

2. Members of the European Parliament shall be elected by direct universal suffrage by free and secret ballot.

Article 38. **Right to vote and to stand as a candidate at municipal elections**

Every citizen of the Union has the right to vote and to stand as a candidate at municipal elections in the Member State in which he resides under the same conditions as nationals of that State.

Article 39. **Right to good administration**

1. Every person has the right to have his affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union.
2. This right includes:
 - the right of every person to be heard before any individual measure which would affect him adversely is taken in relation to him;
 - the right of every person to have access to his file, while respecting the legitimate interests of confidentiality and of business secrecy;
 - the obligation of the administration to give reasons for its decisions.
3. Every person has the right to have the Community make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.
4. Every person may write to the institutions of the Union in one of the official languages of such institutions and have an answer in the same language.

Article 40. **Right of access to documents**

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to European Parliament, Council and Commission documents.

Article 41. **Ombudsman**

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to refer to the Ombudsman of the Union cases of maladministration by Community institutions and bodies, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role.

Article 42. **Right to petition**

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to petition the European Parliament.

Article 43. **Freedom of movement and of residence**

1. Every citizen of the Union, and any other persons to whom the Council accords such rights pursuant to the powers in the TEC and in accordance with the conditions laid down, has the right to move and reside freely within the territory of the Member States.
2. ~~Freedom of movement may be granted, in accordance with the Treaty establishing the European Community, to nationals of third countries legally resident in the territory of a Member State.~~

Article 44: **Diplomatic and consular protection**

Every citizen of the Union shall, in the territory of a third country in which the Member State of which he is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that Member State.

CHAPTER VI. JUSTICE**Article 45. Right to an effective remedy and to a fair trial**

1. Everyone whose directly enforceable rights and freedoms granted under Community law are violated by the Institutions or bodies of the Union or by Member States exclusively when implementing Union law has the right to an effective remedy before a eCourt.

In such proceedings the rights guaranteed by [Article 45(2)] shall apply notwithstanding the character of such proceedings.

2. Everyone is entitled to a fair and public hearing in determining his or her civil rights and obligations. Hearings shall be within a reasonable time by an independent and impartial tribunal previously established by law. ~~Everyone shall have the possibility of being advised, defended and represented.~~
3. ~~Legal aid shall be made available to those who lack sufficient resources insofar as such aid is necessary to ensure effective access to justice.~~

Article 46. Presumption of innocence and right of defence

1. Everyone who has been charged shall be presumed innocent until proved guilty according to law.
2. Respect for the right of defence of anyone who has been charged shall be guaranteed.

Article 47. Principles of legality and proportionality of criminal offences and penalties

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national law or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed. If, subsequent to the commission of the criminal offence, the law provides for a lighter penalty, that penalty shall be applicable.

2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to international law.
3. ~~The severity of penalties shall be proportional to the gravity of the criminal offence.~~

Article 48. Right not to be tried or punished twice in criminal proceedings for the same criminal offence

No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he has already been finally acquitted or convicted in accordance with the law.

CHAPTER VII. GENERAL PROVISIONS

Article 49. Scope

1. The provisions of this Charter are addressed to the institutions and bodies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers.
2. This Charter does not establish any new power or task for the Community or the Union, or modify powers and tasks defined by the Treaties.

Article 50. Scope of guaranteed rights

1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for ~~in accordance with the law by the competent legislative authority~~. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest being pursued by the Union, other legitimate interests in a democratic society or the need to protect the rights and freedoms of others.

2. The rights in Articles [here will be set out all the articles which cover the TEC/TEU field] ~~Rights recognised by this Charter which are based on~~ have the same scope and meaning as the corresponding rights guaranteed under the Community Treaties or the Treaty on European Union and shall be exercised under the conditions and within the limits defined by those Treaties.

3. The rights in Articles [here will be set out all the articles which cover the ECHR field] have the same scope and meaning and are subject to the same permissible limitations as the corresponding rights guaranteed under the ECHR ~~Insofar as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be similar to those conferred on them by the said Convention unless this Charter affords greater or more extensive protection.~~

These rights [ie the ones which correspond to the ECHR rights] apply to a Member State only to the extent to which it has consented to be bound in relation to that Convention and its protocols and subject to any reservations or derogations in force for that Member State.

Article 51. Level of protection

Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by international law and international agreements to which the Union, the Community or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the law of Member States. ~~the Member States' constitutions.~~



Article 52. Prohibition of abuse of rights

Nothing in this Charter shall be interpreted as implying any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms recognised in this Charter or at their limitation to a greater extent than is provided for herein.

GRIFFITH

FOR THE ATTENTION OF MR JANSSON

WIN GRIFFITHS M.P., OBSERVATIONS ON CONVENT 45

Subject: Draft Charter of Fundamental Rights of the European Union – Complete Text
Of the Charter proposed by the Presidium.

Preamble

1. Delete 'have established', replace with 'in developing'. Delete, 'between them and'.
2. Insert after 'women' "democracy, respect for human rights, the rule of law" delete all after 'solidarity'.
3. Line 4, delete 'ensures' replace with 'seeks', after 'balanced' insert 'socially cohesive'.

Article 2: 1. Amend to: 'Everyone's right to life shall be protected by law'.

Article 3: 1. After 'his' insert "/her" (or delete 'his' and replace with 'their')
N.B. 3: 2 I have no amendments at this stage but I believe further discussion is needed.

Article 6: Add at end 'except in limited specific cases prescribed by law'.

Article 8: Delete 'him' in lines 1 and 4, replace with 'them'

Article 10: Add 10:2, Article 9.2 of E.C.H.R.

Article 11: 1. Add at the end, new sentence "Limitations can be placed on this right only in limited, specified circumstances."
2. add after transparency ', and the right of Member States to require if desired the licensing of broadcasting, television and cinema enterprises'

Article 12: Add new sentence at end of first paragraph, "These rights may be restricted only in limited specified circumstances".
delete second paragraph.

Article 13: delete – or reword significantly

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Article 14: delete all and replace with Article 2 of the Additional Protocol to the ECHR.

Article 17: 2. Delete – or significant re-wording is required.

Article 21: 1a. Insert after 1, “Persons belonging to minorities shall have the right to maintain and develop their own language and culture”.
N.B. re 2, Why not delete and insert ‘nationality’ after ‘as’ 21.1?

Article 22: Delete and replace with ‘Equality between men and women must be ensured with regard to pay, work, employment and measures for social protection’.

Article 23: delete and replace with, “All children in the European Union shall have the right to expect their best interests, care and protection to be of primary consideration when developing and implementing policies which concern children”.

Article 24: Delete ‘participation’ and replace with ‘enjoyment of equal civil rights’.

Article 25: I believe this requires further thought and clearer expression of the fundamental rights at stake.

Article 31: Delete first paragraph

Article 32: 3. Delete after ‘assistance’ up to ‘in’
i.e. from “and.....resources”.

Article 34: Delete or re-word significantly.

Article 36: delete ‘a high’ and replace with “an appropriate”.

Article 39: 3. I am not sure of the intention here and look forward to a discussion of its purpose.

Article 45: 3. Further discussion of purpose needed.

Article 47: 3. Very subjective. Further discussion required.

Article 50: 3. Line 3 After ‘Convention’ insert, “and the case law of its Court”.

HERZOG
Allemagne
Berlin, le août 2000

Position

sur le projet de Charte des droits fondamentaux de l'Union européenne du 28 juillet 2000

- I. Le texte complet proposé par le Présidium (CONVENT 45) peut être approuvé.
- II. Les améliorations suivantes devraient encore être apportées :

1. Préambule, paragraphe 2

Au lieu la "dignité des hommes et des femmes", il est suggéré de parler de la "dignité de la personne humaine". En effet, la référence à la "dignité des hommes et des femmes" n'apparaît en tout état de cause linguistiquement pas heureuse en allemand et, située à cet endroit important, prêterait peut-être le flanc à des critiques de l'opinion publique. La reformulation proposée correspond à l'article 1. L'égalité des droits entre les hommes et les femmes est régie par des articles ultérieurs.

2. Préambule, paragraphe 3

Il apparaît souhaitable de renoncer au dernier membre de phrase du paragraphe 3, parce que le lien entre la libre circulation des personnes, des biens, des capitaux et des services et la garantie d'un développement équilibré et durable est équivoque.

3. Art. 3

Il est proposé de rédiger le troisième tiret du paragraphe 2 comme suit : "interdiction de faire du corps humain et de ses parties en tant que tels une source de profit".

Cette rédaction devrait être choisie pour coïncider avec l'article 21 de la convention sur la biomédecine, qui est la base de la formulation de la Charte. La suppression des termes "en tant que telles" pourrait conduire à de mauvaises interprétations selon lesquelles un

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changement concret serait recherché. Les termes "en tant que telles" sont surtout considérés comme importants pour la brevetabilité.

4. Art. 11

Il est suggéré de supprimer le terme "transparence" au paragraphe 2 concernant la liberté des médias et d'information. En effet, sa signification n'est pas claire et son maintien pourrait conduire à une incertitude juridique.

5. Art. 13

Il paraît souhaitable de mentionner aussi la liberté des sciences, de telle sorte que l'article s'établirait comme suit : "les sciences et la recherche scientifique sont libres":

6. Art. 20

Il est suggéré de modifier la formulation actuelle "toutes les personnes, hommes et femmes,...". Cette formulation est linguistiquement maladroite et est également malheureuse, entre autres parce qu'elle soulève la question de l'égalité des enfants. Elle mélange le principe général de l'égalité avec l'aspect spécifique de l'égalité des droits entre hommes et femmes, qu'il vaudrait mieux séparer. La rédaction suivante est suggérée :

„(1) Toutes les personnes sont égales devant la loi.

(2) les hommes et les femmes sont égaux en droits.“

Le dernier alinéa pourrait aussi être intégré à l'article 22 sous la forme d'un paragraphe 1.

7. Art. 22

Rédactionnellement, il est tout indiqué de parler d' "égalité de traitement" dans le titre, puisque l'article dans sa rédaction actuelle ne traite que de cette question.

8. Art. 23

Rédactionnellement, il est tout indiqué de conformer le paragraphe 2 au texte de l'article 3 paragraphe 1 de la convention des Nations Unies sur les enfants sur lequel il s'appuie : "Dans toutes les décisions qui concernent les enfants, qu'elles soient le fait des institutions publiques ou privées, l'intérêt supérieur de l'enfant doit être une considération primordiale ".

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La définition de l'enfant dans la convention devrait être autant que possible mentionnée dans l'explication, eu égard également à l'article 30.

9. Art. 25

Il est proposé de commencer l'article par les termes "les travailleurs ou leurs représentants" au lieu des termes "les travailleurs et leurs représentants". La formulation proposée tend à éviter de devoir toujours informer les travailleurs directement ainsi que leurs représentants, ce qui ne serait pas conforme au droit secondaire. La formulation proposée correspond à l'article 21 de la Charte sociale révisée et aux directives 98/59/CEE et 77/187/CEE.

Il est par ailleurs suggéré d'introduire, conformément à la distinction opérée dans la directive 77/187/CEE, les mots "ou exploitations" après "entreprises".

11. Art. 27

Il conviendrait d'étudier la possibilité d'introduire à nouveau le terme "gratuitement". Ceci serait conforme à l'article 1 de la Charte sociale et au paragraphe 6 de la Charte communautaire. L'absence de ce terme fait perdre à cet article beaucoup de sa substance.

12. Art. 30

L'emploi du terme "enfants" à l'article 23 et à l'article 30 paragraphe 1 première phrase et du terme "jeunes" à l'article 30 paragraphe 1 phrase 2 et paragraphe 2 pose rédactionnellement un problème de délimitation différente des deux expressions.

13. Art. 32 paragraphe 1

L'énumération après les mots "services sociaux" est source de difficultés. Elle n'est pas exhaustive, ce qui pourrait être explicité par le terme "notamment". Elle ne se réfère pas en substance aux services sociaux mais à la sécurité sociale et devrait de ce fait être placée après les mots "sécurité sociale". Enfin, elle ne mentionne entre autres pas le risque important de l'invalidité.

Pour ces raisons, la rédaction suivante apparaît souhaitable : " L'Union reconnaît et respecte le droit d'accès aux prestations de sécurité sociale assurant notamment une protection en cas de maternité, de maladie, d'invalidité, d'accident du travail, de dépendance ou de

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vieillesse et en cas de perte d'emploi, ainsi qu'aux services sociaux, selon les modalités établies par le droit communautaire et les législations et pratiques nationales."

14. Art. 32 paragraphe 2

Il est proposé d'introduire l'expression "selon les modalités établies par le droit communautaire". L'introduction de la formule "selon les modalités établies par le droit communautaire" est nécessaire parce que le droit communautaire en vigueur, eu égard notamment aux membres d'une même famille, contient des restrictions par rapport au principe formulé d'égalité de traitement qui sont trop compliquées pour être intégrées dans le texte. Il s'agit d'une demande prioritaire car la Charte ne doit créer dans ce domaine aucune charge financière n'existant pas actuellement. Les paragraphes 1 et 3 de cet article contiennent aussi une référence au droit communautaire.

Il est par ailleurs suggéré de remplacer le terme "résident" par le terme "employés". En effet, le droit communautaire (règlement 1408/71, règlement 1612/68) se réfère toujours, dans le domaine de la sécurité sociale, au lieu d'emploi au lieu d'emploi (lex loci laboris). Selon le droit communautaire, le travailleur est toujours soumis à la législation du lieu d'emploi. Ceci est approprié puisque le travailleur règle ses contributions et ses taxes dans le pays où il est employé. Cette règle est également valable dans le cas où, comme par exemple pour les travailleurs transfrontaliers, les lieux de résidence et d'emploi sont distincts. Dans le cas contraire, l'Etat de résidence devrait verser des prestations sans avoir perçu les contributions et taxes correspondantes.

Il en résulte dans l'ensemble la rédaction suivante : "(2) les travailleurs ressortissants d'un Etat membre et employés dans un autre Etat membre, ainsi que les membres de leur famille, ont droit selon les modalités établies par le droit communautaire aux mêmes prestations de sécurité sociale, aux mêmes avantages sociaux et à un même accès aux soins de santé que les ressortissants de cet Etat."

15. Art. 34

Le dernier membre de phrase à caractère uniquement programmatique n'a pas sa place dans le contexte de l'accès non discriminatoire.

16. Art. 35

Il apparaît souhaitable de mieux calquer cet article sur l'article 6 TCE sur lequel repose le texte de la Charte, c'est-à-dire de supprimer l'expression "en tenant compte du principe du

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développement durable" et d'ajouter à la fin de l'article "en particulier afin de promouvoir le développement durable".



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HIRSCH BALLIN
31 augustus 2000

Aan het presidium van de Conventie
Ter attentie van de heer Jansson

Geachte collega,

1. Graag wens ik het presidium geluk met de herziening van de tekst van het Handvest. Er ligt nu een goed geredigeerde, uitgebalanceerde tekst voor die op veel punten redelijke oplossingen bevat. Voor de beide kamers van het Nederlandse parlement is de relatie met het Europese Verdrag tot bescherming van de Rechten van de Mens en de Fundamentele Vrijheden (EVRM) een belangrijk punt. Met genoegen stel ik vast dat de artikelen van het Handvest die zich daarvoor lenen nu woordelijk gelijkkluidend zijn aan de kernbepalingen van het EVRM. Graag vertrouw ik erop dat dit ook in de eindtekst het geval zal zijn.

2. Evenals de andere Nederlandse vertegenwoordigers zou ik er verre de voorkeur aan geven, uitdrukkelijk – via een van de eerder gesuggereerde methodes – te verwijzen naar de relevante beperkingclausules van het EVRM. Artikel 50, derde lid, bevat zo'n verwijzing in algemene bewoordingen. Wanneer in een later stadium wordt besloten aan het Handvest juridisch bindende kracht te geven, zou dit alsnog aan de orde moeten komen in samenhang met de in onze ogen vereiste toetreding van de EU/EG tot het EVRM. Beter zou het dan ook zijn, nu reeds aan artikel 50, derde lid, een tabel toe te voegen waaruit blijkt naar welke bepalingen van het EVRM wordt verwezen.

3. In de preambule mis ik een verwijzing naar het *religious and cultural heritage* van Europa.

3. Een groot deel van het Handvest is nieuw in vergelijking met het EVRM. Dat geldt met name voor de economische en sociale rechten en de rechten verbonden aan het burgerschap van de Unie. De argumenten daarvoor acht ik in het algemeen steekhoudend. Op de volgende punten zie ik mogelijkheden om nog enige verbeteringen aan te brengen:

a. Artikel 16 zou wat meer substantie kunnen krijgen met de volgende tekst:

- (1) Freedom of enterprise is recognised in the framework of the social market economy.
- (2) Every citizen of the Union has the right to set up a business and to provide services.

b. De bepaling over de onderwijsvrijheid (artikel 14) zou kunnen worden aangevuld met een lid luidende: "The right of parents to educate their children in accordance with their religious and philosophical convictions shall be respected."

4. Een gemis is in mijn ogen dat het Handvest geen bepaling over de bescherming van minderheden bevat. Ik suggereer een nieuw artikel met als tekst: "The Union shall respect the cultural, religious, ethnic and linguistic diversity in Europe."

5. Artikel 34 steunt op artikel 16 van het EG-Verdrag. Daarmee staat echter niet vast dat het in het Handvest op zijn plaats is. Het omschrijft immers geen grondrecht.

6. Enkele punten van redactionele aard:

- a. Artikel 31 omvat twee leden; de nummers voor de artikelleden ontbreken echter.
- b. Het Nederlandse opschrift van Hoofdstuk VI ("Rechtvaardigheid") doet wat vreemd aan. Ook andere delen van het Handvest (bijvoorbeeld hoofdstuk IV) gaan over rechtvaardigheid. Beter zou zijn: "Rechtspleging."

- c. In artikel 48 zou moeten worden toegevoegd: "binnen de Europese Unie en haar lidstaten"; anders zou het *ne bis in idem* een veel te ruime toepassing kunnen krijgen (vgl. artikel 4 van het Zevende Protocol bij het EVRM).
- d. Waar wordt verwezen naar het EVRM moet - net als in artikel 19 EVRM - worden toegevoegd: "en de Protocollen daarbij."

Graag wens ik het presidium en het secretariaat succes bij de afronding van de werkzaamheden.

Met vriendelijke groeten,

Ernst M.H. Hirsch Ballin,
vertegenwoordiger van de Eerste Kamer der Staten-Generaal.

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Dr. Sylvia-Yvonne Kaufmann, MdEP
Vizepräsidentin der Delegation des Europäischen Parlaments
im Konvent

Sylvia-Yvonne Kaufmann, MdEP-Büro Berlin Friedrichstr. 95, Zi. 304/4

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Berlin, den 24. August 2000

An den Vorsitzenden des Konvents
zur Erarbeitung der Europäischen Charta der Grundrechte
Prof. Dr. Roman Herzog

sowie zu Händen der stellvertretenden Vorsitzenden
Prof. Dr. Guy Braibant, für die persönlichen Beauftragten
Gunnar Jansson, für die Vertreter der nationalen Parlamente
Mendez de Vigo, für die Mitglieder der Delegation des Europäischen Parlaments

Sehr geehrte Herren,

gemäß dem vom Präsidium in Convent 45 (Charte 4422/00) vorgeschlagenen Verfahren, reiche ich folgende allgemeine Bemerkungen zum Gesamtentwurf der Charta ein:

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I. Allgemeines

1. Dem Präsidium möchte ich ausdrücklich für den vorgelegten Entwurf danken. Anregungen aus schriftlichen Änderungsanträgen und mündlichen Beiträgen einzelner Delegierter sind eingearbeitet worden, so dass der Entwurf eine Grundlage für das weitere Verfahren sein kann.
2. Aus Gründen der Verständlichkeit und auch aus systematischen Gründen sollte jedoch davon abgesehen werden, in einzelnen Artikeln Verweise auf „einzelstaatliche Rechtsvorschriften“ bzw. „nach Maßgabe des Gemeinschaftsrechts“ aufzunehmen. Diese stehen m.E. im Widerspruch zu den horizontalen Bestimmungen in Art. 49 Abs. 1 und 2. Auch in den bisherigen Diskussionen im Konvent, u.a. im Bereich wirtschaftliche und soziale Grundrechte, hat sich eine Mehrheit der Konventsmitglieder gegen gesonderte Festlegungen des Geltungsbereiches in Einzelartikeln mit dem Verweis auf die horizontalen Artikel festgelegt. In diesem Sinne spreche ich mich dafür aus, die entsprechenden Verweise aus den Artikeln 18, 25, 26, 32, 33 und 34 zu streichen. Gegen die gesonderte Formulierung horizontaler Bestimmungen in einzelnen Artikeln spricht auch die Missverständlichkeit dieses Vorgehens. So könnte bei den Bürgerinnen und Bürgern der Eindruck entstehen, bestimmte Artikel seien weniger gewichtig als andere. Darüber hinaus könnte das Missverständnis auftreten, dass die Grundrechte unter den Vorbehalt einzelstaatlicher Regelungen und künftiger Vertragsrevisionen gestellt würden. Beides kann nicht die Intention des Konvents sein. In zahlreichen Dokumenten und Erklärungen hat die Europäische Union klargestellt, dass sie Menschenrechten und Grundfreiheiten absolute Priorität einräumt. Deshalb appelliere ich an Sie, den Art. 50 Abs. 2 ersatzlos zu streichen.
3. In Absatz 5 der Präambel werden die Hauptquellen, die zur Erarbeitung der EU-Grundrechtecharta herangezogen wurden, genannt. Diese Quellen sollten aber auch in Art. 51 genannt werden. Die Präambel und Art. 51 bilden die Klammer der Grundrechtecharta, insofern sollten auch in Artikel 51 die von der Gemeinschaft und dem Europarat beschlossenen Sozialcharten als Mindestschutzniveau erwähnt werden. Es ist nicht einsehbar, warum gerade die Europäische Sozialcharta nicht als Quelle in Art. 51 benannt wird, soll sie doch nach den Kölner Beschlüssen ausdrücklich Grundlage zur Erarbeitung der Grundrechtecharta sein.
4. Der Art. 15 „Berufsfreiheit“ des Präsidiumsentwurfs ist in das Kapitel IV „Solidarität“ einzugliedern. Es lässt sich nur schwer ein sachlicher Grund finden, diesen Artikel in Kapitel II

„Freiheiten“ einzugliedern. Ein solches Ansinnen widerspräche auch einer Mehrheit der Konventsmitglieder. Im übrigen ist nicht ersichtlich, warum die Kompromissfassung, die auf der Mehrheit der Änderungsanträge der Konventsmitglieder beruhte und unter dem Titel „Berufsfreiheit und Recht auf Arbeit“ (Convent 41) stand und die in Art. 31 die Formulierung „Jede Person hat das Recht zu arbeiten“ enthielt, sich im vorliegenden Präsidiumsentswurf nicht mehr wiederfindet.

5. Wie schon von zahlreichen deutschsprachigen Konventsmitgliedern bemerkt, ist die Formulierung „Behinderte Menschen“ im deutschen Entwurfstext in Artikel 24 selbst diskriminatorisch. Sie sollte daher unbedingt durch die Formulierung „Menschen mit Behinderung“ ersetzt werden, will man nicht selbst gegen Diskriminierungen mit einem diskriminatorischen Chartatext vorgehen (CONTRIB 262 Kaufmann).
6. Darüber hinaus durchzieht die deutsche Fassung des Präsidiumsentswurf eine in den Text selbst eingeschriebene geschlechterdiskriminierende Sprache, die angesichts des Wandels von Geschlechterrollen und Geschlechterbeziehungen schlicht untragbar ist. Auch hier sollte berücksichtigt werden, dass die Charta Grundrechte im 21. Jahrhundert garantieren soll und explizit auch für die Bürgerinnen der EU erkennbar sein muss. Ich schlage deshalb vor, in Artikeln, in denen ausschließlich die männliche Sprachform vorkommt, diese entweder durch eine geschlechtsneutrale Formulierung oder eine geschlechtsspezifisch ausgewogene zu substituieren.

II. Zum Entwurfstext

1. Präambel

a) In Absatz 1 wird ausschließlich Bezug auf die Völker Europas genommen, die „eine immer engere Union begründet und beschlossen haben“. Diese Formulierung trägt weder der Tatsache Rechnung, dass es bislang in erster Linie die Regierungen sind, die insbesondere über die Revision der Verträge im Ergebnis von Regierungsverhandlungen den Integrationsprozess gestalten noch widerspiegelt sie die doppelte Legitimation der Europäischen Union als „Union der Völker und Union der Staaten“. Ich halte es daher für unabdingbar, die doppelte Legitimation der EU im Chartatext auch entsprechend auszuweisen.

b) Schon in der Präambel im Absatz 2 fällt auf, dass eine Sozialstaatsverpflichtung oder ein Sozialstaatsprinzip keinerlei Erwähnung findet. Stattdessen wird durch den Verweis auf die 4 Freiheiten des EG-Binnenmarkts eine Marktorientierung zum alleinigen Maßstab gesellschaftlicher Entwicklung in der EU erhoben. Dies schlägt sich dann in der Formulierung nieder, dass „durch den freien Personen-, Waren-, Kapital- und Dienstleistungsverkehr eine ausgewogene und nachhaltige Entwicklung“ (Convent 45, Präambel, Abs. 3) sichergestellt wird.

c) In Absatz 6 der Präambel wird die Inanspruchnahme der Grundrechte an Pflichten gebunden. Dies stellt m.E. die Grundrechtecharta in ihrem Kern in Frage. Es sei noch einmal hervorgehoben, dass mit der Grundrechtecharta **die Rechte der Bürgerinnen und Bürger** gegenüber der Hoheitsgewalt der EU-Institutionen geschützt werden sollen. Rechte mit Pflichten zu verknüpfen, zeugt m.E. von einem rückwärtsgewandten Grund- und Menschenrechtsverständnis, das hinter die Allgemeine Erklärung der Menschenrechte von 1948 zurückfällt.

2. Würde des Menschen/Kapitel I

a) Art. 1 Würde des Menschen

Art. 1 ist insgesamt zu schwach formuliert. Die Würde des Menschen, die zu schützen ist, ist als Fundament der Grundrechtecharta ein so hohes Rechtsgut, dass die Formulierung lauten müsste: „Die Würde des Menschen ist unantastbar“. In diese Richtung gehen zahlreiche Änderungsanträge von Konventsmitgliedern (Convent 35: Änderungsanträge Nr. 2 Kaufmann, Nr. 4 Laborda, Nr. 6 Rodota, Paciotti, Manzella, Nr. 10 Melogranni, Nr. 11 Voggenhuber, Nr. 13 Bereijo). Es ist aus meiner Sicht unverständlich, warum die starke Formulierung des früheren Präsidiumsentwurfs „Die Würde des Menschen ist unantastbar“ (Convent 5) aufgegeben wurde. Selbst noch in Convent 13 lautete die Formulierung von Art.1 „Die Würde des Menschen wird unter allen Umständen geachtet und geschützt.“

3. Freiheiten/Kapitel II

Auf dem Feld der politischen Grund- und Freiheitsrechte trägt der vorliegende Präsidiumsentswurf im Bezug auf einige Artikel aus meiner Sicht keinen zukunftsweisenden Charakter.

a) Art. 9 Recht eine Ehe einzugehen und eine Familie zu gründen

Der ausschließliche Verweis auf die Regelungen in den einzelnen Mitgliedstaaten entspricht nicht dem Schutzcharakter einer Grundrechtecharta. Es ist nicht schlüssig, warum hier eine offensichtliche Abweichung des Vorgehens bei anderen Artikel vorgenommen wird. Die frühere Formulierung „Jede Person hat das Recht auf Achtung ihres Familienlebens“ (Convent 28) als Abs. 1 des Artikels, so wie sie noch in der ersten Fassung des Präsidiumsentswurfs vorlag, wurde auch in zahlreichen Änderungsanträgen unterstützt und verstärkt (Convent 35: Änderungsanträge Nr. 229 Berès, Nr. 230 Friedrich, Nr. 231 Gnauck, Nr. 234 Einem/Holoubek, Nr. 238 Dehousse). Die Mehrheitsmeinung bei den Diskussionen im Konvent und verschiedene Änderungsanträge (Convent 35: Änderungsanträge Nr. 232 Kaufmann, Nr. 238 Dehousse, Nr. 239 Voggenhuber/Buitenweg, Nr. 241 Tura) stützten dies und sprachen sich für eine möglichst weite, moderne Auslegung des Familienbegriffs aus.

b) Art.10 Gedanken-, Gewissens- und Religionsfreiheit

Dem Artikel ist ein Abs. 2 hinzuzufügen, in dem das „Recht auf Kriegsdienstverweigerung“ aufgenommen wird. Die Aufnahme eines solchen zweiten Absatzes entspricht einer Reihe von Änderungsanträgen (Convent 35: Änderungsanträge Nr. 256 Voggenhuber/Buitenweg, Nr. 257 Meyer/Leinen/Martin, Nr. 261 Gnauck und Nr. 262 Kaufmann u.a.). Zudem wies die Mehrheitsmeinung im Konvent deutlich in diese Richtung. Eine Nichtaufnahme des Grundrechts auf Kriegsdienstverweigerung würde einen Rückschlag hinsichtlich aller Bemühungen bedeuten, das Individualrecht auf Kriegsdienstverweigerung als unabdingbaren Teil des internationalen Menschenrechtsschutzes zu verankern.

c) Art. 18 Asylrecht

In Artikel 18 „Asylrecht“ findet sich keine individuelle Rechts- und Rechtsweggarantie für Asylsuchende in der Europäischen Union. Die Verankerung des Asylrechts als Individualrecht war von zahlreichen Konventsmitgliedern (Convent 35: Änderungsanträge Nr. 403 Duff, Nr. 404 Melogranni, Nr. 406 Voggenhuber/Buitenweg, Nr. 407 Meyer/Leinen/Martin/ Van den Burg, Nr.

408 Berès, Nr. 413 Kaufmann) gefordert worden. Der vorliegende ausschließliche Bezug auf die Genfer Konvention ohne die Formulierung „Jede Person hat das Recht“ wird diesem Ansinnen nicht gerecht.

4. Gleichheit/Kapitel III

a) Art. 22 Gleichheit von Männern und Frauen

Im früheren Präsidiumsentswurf wurde noch eine inhaltlich stärkere Formulierung gewählt: „Die Union wirkt darauf hin, Ungleichheiten zu beseitigen und die Gleichstellung von Männern und Frauen zu fördern“ (Convent 28). Im jetzigen Entwurf ist statt von „Gleichstellung“ nur noch von „Chancengleichheit“ und „Gleichbehandlung“ von Männern und Frauen die Rede. Diese Abschwächung ist aus meiner Sicht mit Blick auf die Diskussionen im Konvent nicht gerechtfertigt. Auch war in dem in Convent 28 vorgelegten Präsidiumsentswurf noch von einer Gewährleistung der „Gleichheit der Geschlechter ... insbesondere bei der Festsetzung der Arbeitsentgelte und der sonstigen Arbeitsbedingungen“ die Rede, während in Convent 45 sich die Maßgabe der Chancengleichheit und der Gleichbehandlung ausschließlich auf die Bereiche Arbeit und Beschäftigung bezieht. Auch dieses Abgehen von einem stärkeren Text, scheint mir im Ergebnis der Diskussionen im Konvent nicht gerechtfertigt. Die Grundrechtecharta muss jedoch gerade für die Unionsbürgerinnen erkennbar sein. Der Kampf gegen geschlechtsspezifische Ungleichheiten und die Gewährleistung der Gleichstellung von Frau und Mann ist als Rechtsgrundsatz der EU-Grundrechtecharta dafür unabdingbar. In diesem Sinne appelliere ich an Sie, auf die stärkere, in Convent 28 niedergelegte Fassung zurückzugehen und diese im Sinne des Änderungsantrags Nr. 185 Berès (Convent 39) zu präzisieren: „Die Gleichheit von Männern und Frauen ist insbesondere zu gewährleisten im Bildungsbereich, bei den Beschäftigungs- und Lohnbedingungen, den Arbeitsbeziehungen und den sozialen Sicherungssystemen. Ihre Umsetzung kann zu positiven Diskriminierungen führen.“

5. Solidarität/Kapitel IV

Die sozialen Grundrechte sind durch den Chartaentwurf nur unzureichend gewährleistet. Weder ein Recht auf Arbeit, noch wesentliche Grundrechte bei der Arbeit, noch ein Recht zu arbeiten,

wie von zahlreichen Konventsmitgliedern vorgeschlagen und wie in den ILO-Konventionen erwähnt und garantiert, fanden eine Aufnahme. Es ist nicht nachvollziehbar, weshalb die noch in Convent 41 (Art. 31 Berufsfreiheit und Recht auf Arbeit) enthaltenen Bestimmungen nunmehr weggefallen sind. Stattdessen wurde ein Grundrecht auf „unternehmerische Freiheit“ postuliert und keine Sozialbindung des Eigentums verankert. Hier zeigt sich ganz deutlich, dass der vorliegende Präsidiumsvorschlag ein gravierender Rückschritt im Bezug auf den bisher international erreichten Grundrechtsschutz ist. Wie ich schon in der Begründung meines diesbezüglichen Änderungsantrags (CONTRIB 262) ausgeführt habe, ist das „Recht auf Arbeit“ Bestandteil internationaler Menschenrechtskonventionen und verschiedener Verfassungen. So wird das „Recht auf Arbeit“ in der „Allgemeinen Erklärung der Menschenrechte“ in Art. 23 garantiert, im „Internationalen Pakt über wirtschaftliche, soziale und kulturelle Rechte“, in der „Europäischen Sozialcharta“. Es findet es sich zudem in den Landesverfassungen der fünf neuen Bundesländer der Bundesrepublik Deutschland oder in den Verfassungen der Beitrittskandidaten Polen, Ungarn und Tschechien. Insofern ist es umso unverständlicher, dass im vorliegenden Präsidiumsentwurf dieses grundlegende Menschenrecht nicht berücksichtigt wurde. Nicht zuletzt wiesen zahlreiche Änderungsanträge und die Diskussionen im Konvent in Richtung der Aufnahme eines Rechts auf Arbeit.

a) Art. 26 Recht auf Kollektivverhandlungen

In Artikel 26 wird nicht einmal das Streikrecht erwähnt. Dies stellt nicht nur eine Missachtung internationaler Standards (zahlreiche ILO-Konventionen, Internationaler Pakt über wirtschaftliche, soziale und kulturelle Rechte, Europäische Sozialcharta) dar. Insbesondere in der Europäischen Sozialcharta (Art. 6 Abs. 4) ist das Streikrecht als kollektive Maßnahme der Arbeitnehmerinnen und Arbeitnehmer ausdrücklich erwähnt. Die Europäische Sozialcharta stellt aber nach dem Mandat von Köln eine der Grundlagen der Arbeit des Konvents dar. Insofern ist es zwingend, die kollektiven Maßnahmen, „einschließlich des Streikrechts“, im Rahmen der EU-Grundrechtecharta zu garantieren. Im übrigen sei noch einmal auf die zahlreichen Änderungsanträge von Konventsmitgliedern, die ausdrücklich eine Aufnahme des Streikrechts in den Text der Grundrechtecharta einforderten, verwiesen (Convent 39: Änderungsanträge Nr. 93 Voggenhuber, Nr. 94 Dehousse, Nr. 95 Rodota/Paciotti/Manzella, Nr. 97 Braibant, Nr. 99 Dieulangard, Nr. 102 Fayot, Nr. 103 Berès, Nr. 104 van den Burg, CONTRIB 262 Kaufmann).

b) Art. 32 Soziale Sicherheit und soziale Unterstützung

Artikel 32 ist nicht als individueller Rechtsanspruch formuliert und läuft so Gefahr, rein symbolischen Charakter zu tragen. So wie auch die anderen sozialen Grundrechte rein symbolischen Charakter zu tragen drohen, was einer künftigen Rechtsverbindlichkeit der Grundrechtecharta zuwiderliefe. Darüber hinaus ist die Aufzählung der Gründe, bei denen soziale Leistungen in Anspruch genommen werden können, weder vollständig noch formulierungsoffen für zukünftige Entwicklungen. Daher sollte vor die Aufzählung die Formulierung „u.a.“ gestellt werden. Im übrigen sei auf die zwingende Unteilbarkeit und international anerkannte Gleichrangigkeit aller Grundrechte verwiesen.

In Art. 32 Abs.3 ist aus dem international und auch von den Mitgliedstaaten anerkannten „Recht auf Wohnen“, die Anerkennung und Achtung des Rechts auf Wohnungsbeihilfe geworden. Dies steht dem in der Allgemeinen Erklärung der Menschenrechte in Art 35 Abs.1 explizit fixierten „Recht auf Wohnen“ entgegen, nicht zu reden von Art. 11 Internationaler Pakt über wirtschaftliche, soziale und kulturelle Rechte, Art. 27 Abs. 3 UN-Kinderrechtskonvention und Art. 31 Europäische Sozialcharta. Die Nichtaufnahme dieses Rechts kommt einer Verletzung völkerrechtlicher Garantien gleich. Ich appelliere daher an Sie, Art. 32 im Sinne internationaler Menschenrechtsnormen zu revidieren.

c) Art. 33 Gesundheitsschutz

Für Art. 33 forderten zahlreiche Mitglieder des Konvents eine nachdrückliche Formulierung im Sinne eines subjektiven Rechts des Anspruchs auf ärztliche Versorgung, Gesundheitsvorsorge und Gesundheitsfürsorge (Convent 39: Änderungsanträge Nr. 279 Dehousse, Nr. 280 Tura, Nr. 281 Berès, Nr. 283 Rodota/Paciotti/Manzella, Nr. 284 Dieulangard, Nr. 108 Meyer, CONTRIB 262 Kaufmann). Es besteht ein großer Unterschied zwischen dem „Recht auf Gesundheitsfürsorge“ und dem „Recht auf Zugang zur Gesundheitsfürsorge“ (Convent 45). Diesen Änderungsanträgen sollte Rechnung getragen werden. Aus meiner Sicht gingen auch die Diskussionen im Konvent mehrheitlich in diese Richtung.

d) Art. 35 Umweltschutz

Es ist unverständlich, warum das Präsidium nicht den zahlreichen Änderungsanträgen einer Mehrheit der Konventsmitglieder Rechnung getragen hat, die die nachdrückliche Formulierung dieses Artikels im Sinne eines Rechtsanspruchs einforderten (Convent 39: Änderungsanträge Nr. 325 Duff, Nr. 327 Tura, Nr. 328 Burg, Nr. 329 Rodota/Paciotti/Manzella, Nr. 330 Voggenhuber/Buitenweg, Nr. 331 Dehane/De Gucht/Lallemand, CONTRIB 262 Kaufmann). Aus meiner Sicht wiesen auch die Diskussionen im Konvent in diese Richtung. Daher sollte Artikel 35 im Sinne eines individuellen Rechtsanspruchs formuliert werden.

e) Art. 36 Verbraucherschutz

Auch für Art. 36 gilt, dass zahlreiche Änderungsanträge von Konventsmitgliedern eine Formulierung im Sinne eines Rechtsanspruchs einforderten (Convent 39: Änderungsanträge Nr. 344 Griffiths, Nr. 345 Duff, Nr. 346 Tura, Nr. 347 Voggenhuber/Buitenweg, Nr. 348 van den Burg, CONTRIB 262 Kaufmann). Gerade hier erwarten Bürgerinnen und Bürger der EU einen umfassenden Schutz und umfassende Rechte, um sich gegen Gesundheits- und Umweltgefährdungen zur Wehr setzen zu können. Daher sollte die Formulierung des Artikels im Sinne eines individuellen Rechtsanspruchs auf Verbraucherschutz abgeändert werden.

6. Bürgerrechte/Kapitel V

a) Art. 43 Freizügigkeit und Aufenthaltsrecht

Zahlreiche Änderungsanträge zu Art. 43 Abs. 1 gingen zumindest in die Richtung, Drittstaatsangehörigen, die sich seit fünf Jahren in der Europäischen Union aufhalten, die gleichen Rechte zu gewähren wie Unionsbürgerinnen und Unionsbürgern (Convent 35: Änderungsanträge Nr. 583 Berès, Nr. 584 Einem/Holoubek, Nr. 588 Hirsch/Patijn/Van Oven, Nr. 589 Voggenhuber/Buitenweg, Nr. 591 Kaufmann). Erstaunlicherweise findet sich davon nichts im Entwurf des Präsidiums.

Der vorliegende Entwurf von Art. 43 Art. 2 enthält kein eigentliches Grundrecht, sondern nur einen Verweis auf zukünftige Vertragsrevision, mit der eventuell ein Recht auf Freizügigkeit auch Drittstaatsangehörigen eingeräumt werden könnte. Diese Formulierung entspricht aus meiner Sicht nicht der Mehrheitsmeinung, wie sie in den Diskussionen im Konvent artikuliert wurde (u.a. Voggenhuber, Meyer, van den Burg, Brax, Einem, Berès, Kaufmann, Paciotti, Leinen, Martin). Nach Art. 63 Nr. 4 EGV ist eine Gleichstellung von Drittstaatsangehörigen möglich. Darüber hinaus ist Freizügigkeit ein Menschenrecht, fixiert in der Allgemeinen Erklärung der Menschenrechte, im Internationalen Pakt über bürgerliche und politische Rechte und Art. 2 Protokoll Nr. 4 Europäische Menschenrechtskonvention. Daher appelliere ich an Sie, Art. 43 Abs. 2 in dem Sinne abzuändern, dass Freizügigkeit als Grundrecht für alle in der Union lebenden Menschen fixiert wird.

Fazit

Ich möchte mit Nachdruck dafür plädieren, im o.g. Sinne entscheidende Änderungen am Präsidiumsentswurf vorzunehmen, denn ich befürchte, die Grundrechtecharta könnte sonst von den Bürgerinnen und Bürgern und in der europäischen Öffentlichkeit als vergebene Chance für die Sicherung eines umfassenden Grundrechtsschutzes wahrgenommen werden.

Mit freundlichen Grüßen

Dr. Sylvia-Yvonne Kaufmann

Dr. Sylvia-Yvonne Kaufmann, MdEP
Membre de la Convention à l'élaboration de la Charte des
droits fondamentaux de l'Union européenne

Sylvia-Yvonne Kaufmann, ASP 9 G 206, Tel. 45756

KAUFMANN + 14 FEMMES

au Président de la Convention
à l'élaboration de la Charte des Droits fondamentaux de l'Union européenne
M. Roman Herzog

aux Vice-présidents

M. Guy Braibant, pour les représentants personnels des Gouvernements
M. Gunnar Jansson, pour les représentants des Parlements nationaux
M. Mendez de Vigo, pour les représentants du Parlement européen

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Bruxelles, 31 août 2000

Messieurs,

conformément à la procédure proposée par le présidium (document Convent 45 / Charte 4422/00) les femmes membres de la Convention:

Mme Maria Eduarda AZEVEDO

Mme Anna BENAKI-PSAROUDA

Mme Pervenche BERÈS

Mme Alima BOUMEDIENNE-THIERRY

Mme Tuija BRAX

Mme Ieke van den BURG

Mme Charlotte CEDERSCHIÖLD

Mme Marie-Madeleine DIEULANGARD

Mme Pernille FRAHM

Mme Marie-Thérèse HERMANGE

Mme Ulpu IIVARI

Mme Sylvia-Yvonne KAUFMANN

Mme Catherine LALUMIERE

Mme Hanja MAIJ-WEGGEN

Mme Elena Ornella PACIOTTI

présentent les amendements suivants, considérant qu'il est indispensable de les intégrer au texte final de la Charte des Droits fondamentaux de l'Union européenne.

L.L.

1. Toutes les versions linguistiques du texte du présidium contiennent un langage discriminatoire vis à vis du genre que nous ne pouvons pas accepter, étant donnés les changements profonds concernant les rôles et les relations entre les hommes et les femmes dans nos sociétés. La Charte qui est chargée de garantir les droits fondamentaux au 21 siècle, doit s'adresser notamment aussi à la population féminine, les citoyennes. Nous vous demandons donc de modifier tous les articles où ne figure que la forme linguistique masculine en sorte que celle-ci soit remplacée par une formule équilibrée au niveau des sexes.
2. Nous proposons de formuler l'article 22 comme suit:

Article 22. Égalité entre hommes et femmes

L'égalité entre les hommes et les femmes doit être assurée dans tous les domaines, y compris en matière d'emploi, de travail et de rémunération.

Le principe de l'égalité n'empêche pas le maintien ou l'adoption de mesures prévoyant des avantages spécifiques en faveur du sexe sous-représenté.

Explication:

Les traités, notamment l'article 2 et l'article 3 du Traité instituant la Communauté européenne, ne parlent pas de "l'égalité des chances et de traitement", comme cela est le cas dans le texte proposé par le présidium. La notion qui figure - à juste titre - dans les traités est "l'égalité entre les hommes et les femmes". Il s'agit là d'une notion qui va beaucoup plus loin.

En outre, les deux articles mentionnés ci-dessus fixent l'égalité entre les hommes et les femmes en tant que principe fondamental et comme mission et objectif de la Communauté dans tous les domaines. Il est indispensable que l'article 22 ne soit pas inférieur à ce qui est fixé comme acquis communautaire.

Dr. Sylvia-Yvonne Kaufmann, MdEP
Mitglied im Konvent zur Erarbeitung der Charta der
Grundrechte der Europäischen Union

Sylvia-Yvonne Kaufmann, ASP 9 G 206, Tel. 45756

KAUFMANN + 14 FRAUEN

An den Vorsitzenden des Konvents
zur Erarbeitung der Europäischen Charta der Grundrechte
Prof. Dr. Roman Herzog

sowie zu Händen der stellvertretenden Vorsitzenden

Prof. Dr. Guy Braibant, für die persönlichen Beauftragten
Gunnar Jansson, für die Vertreter der nationalen Parlamente

Mendez de Vigo, für die Mitglieder der Delegation des Europäischen Parlaments

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Brüssel, 31. August 2000

Sehr geehrte Herren,

gemäß dem vom Präsidium in Convent 45 (Charte 4422/00) vorgeschlagenen Verfahren reichen die weiblichen Mitglieder des Konvents:

Frau Maria Eduarda AZEVEDO
Frau Anna BENAKI-PSAROUDA
Frau Pervenche BERÈS
Frau Alima BOUMEDIENNE-THIERRY
Frau Tuija BRAX
Frau Ieke van den BURG
Frau Charlotte CEDERSCHIÖLD
Frau Marie-Madeleine DIEULANGARD
Frau Pernille FRAHM
Frau Marie-Thérèse HERMANGE
Frau Ulpu IIVARI
Frau Sylvia-Yvonne KAUFMANN
Frau Catherine LALUMIERE
Frau Hanja MAIJ-WEGGEN
Frau Elena Ornella PACIOTTI

nachstehende Änderungsanträge ein, deren Aufnahme in die Endfassung des Entwurfs der Charta der Grundrechte der Europäischen Union wir als unverzichtbar erachten.

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1. Alle Sprachfassungen des Präsidiumsentwurfs enthalten eine geschlechterdiskriminierende Sprache, die für uns angesichts des gravierenden Wandels von Geschlechterrollen und Geschlechterbeziehungen in unseren Gesellschaften nicht akzeptabel ist. Die Charta, die Grundrechte im 21. Jahrhundert garantieren soll, muß insbesondere auch die weibliche Bevölkerung, die Bürgerinnen, ansprechen. Wir appellieren daher an Sie, alle Artikel, in denen ausschließlich die männliche Sprachform vorkommt, dahingehend zu ändern, daß diese entweder durch eine geschlechtsneutrale oder eine geschlechterspezifisch ausgewogene Formulierung ersetzt werden.
2. Wir schlagen vor, Artikel 22 wie folgt zu formulieren:

Artikel 22. Gleichstellung von Männern und Frauen

Die Gleichstellung von Männern und Frauen ist in allen Bereichen, einschließlich der Bereiche Arbeit, Beschäftigung und Entlohnung, sicherzustellen.

Der Grundsatz der Gleichstellung steht der Beibehaltung oder der Einführung spezifischer Vergünstigungen zugunsten des unterrepräsentierten Geschlechts nicht entgegen.

Begründung:

In den Verträgen, namentlich in Artikel 2 und Artikel 3 des EG-Vertrages, ist nicht, wie im jetzigen Präsidiumsentwurf, von "Chancengleichheit" und "Gleichbehandlung" die Rede. Stattdessen wird völlig zu Recht der inhaltlich wesentlich weitergehende Begriff der "Gleichstellung" von Männern und Frauen verwandt.

Des weiteren ist in den beiden Artikeln die Gleichstellung der Geschlechter sowohl als Grundprinzip, als auch als Aufgabe und Ziel der Gemeinschaft in allen ihren Tätigkeiten festgeschrieben. Wir sehen es als unabdingbar an, daß Artikel 22 in seiner Formulierung nicht hinter den *acquis communautaire* zurückfällt.

Dr. Sylvia-Yvonne Kaufmann, MEP
Member of the Convention for the elaboration of the Charter
of Fundamental Rights of the European Union

Sylvia-Yvonne Kaufmann, ASP 9 G 206, Tel. 45756

KAUFMANN + 14 WOMEN

To the Chair of the Convention

for the elaboration of the Charter of Fundamental Rights of the European Union

Prof. Dr. Roman Herzog

And to the Vice-Chairs

Prof. Dr. Guy Braibant, for the personal representatives of the Governments

Gunnar Jansson, for the representatives of the national parliaments

Mendez de Vigo, for the representatives of the European Parliament

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Brussels, 31 August 2000

Dear Sirs,

according to the procedure proposed by the Presidium (Convent 45, Charte 4422/00), we,
female members of the Convention:

Ms. Maria Eduarda AZEVEDO
Ms. Anna BENAKI-PSAROUDA
Ms. Pervenche BERÈS
Ms. Alima BOUMEDIENNE-THIERRY
Ms. Tuija BRAX
Ms. Jeke van den BURG
Ms. Charlotte CEDERSCHIÖLD
Ms. Marie-Madeleine DIEULANGARD
Ms. Pernille FRAHM
Ms. Marie-Thérèse HERMANGE
Ms. Ulpu IIVARI
Ms. Sylvia-Yvonne KAUFMANN
Ms. Catherine LALUMIERE
Ms. Hanja MAIJ-WEGGEN
Ms. Elena Ornella PACIOTTI

present the following amendments, which we consider indispensable for the final version of the
draft Charter.

1. In all linguistic versions, the Presidium's draft contains a sex-discriminating wording, which is unacceptable to us having regard to the major changes in the roles of the sexes and the relations between the sexes in our modern societies. The Charter will guarantee fundamental rights in the 21st century, and it must, therefore, address the female population also. For this reason, we appeal to you to change all articles, which are formulated solely in masculine wording such that they are replaced by gender-neutral formulations or by existing linguistic forms for both genders equally.
2. We propose to reformulate Article 22 as follows:

Article 22: Equality between men and women

- (1) Equality between men and women must be ensured in all fields, including employment, work and remuneration.
- (2) The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the underrepresented sex.

Explanation:

In the Treaties (particularly in Articles 2 and 3 of the EC-Treaty) the terms "equal opportunity" and "equal treatment", which appear in the current Presidium text, are not used. Instead, the treaties contain the correct and much broader term "equality between men and women". Furthermore, gender equality is fixed in both abovementioned articles as a basic principle as well as a task and an aim for all fields of Community activities. In our view, it must be ensured that Article 22 does not fall short of the existing "acquis communautaire".

Jean-Paul.Jaque@consilium.eu.int

For the attention of Mr BRAIBANT

KORTHALS ALTES

The Hague, 28 August 2000

Cher Collègue et Ami,

This letter sets out my general comments on the full draft text of the Charter of Fundamental Rights of the European Union as presented by the Praesidium on 28 July 2000.

May I start by saying that the July version seems an improvement on previous ones, but that the intense time pressure under which the Praesidium and the Convention have been working means the drafting is still not adequate for a legally binding document. This could be risky since the Charter will become part of legal practice even if it does not acquire legally binding status. References to the explanatory notes in CONVENT 46 below are based on the French-language version as other language versions are not yet available.

Article 50, paragraph 3

As regards classical fundamental rights, the Dutch government has always attached great importance to ensuring that the rights set out in the Charter of Fundamental Rights of the European Union correspond as closely as possible to the equivalent rights in the ECHR. The main reason is that European citizens (and any others to whom these rights apply) are best served by a single, unitary regime of classical fundamental rights in both the ECHR and the Charter. The Dutch government sees the Charter's added value as lying mainly in its inclusion of fundamental social and economic rights in addition to civil rights.

Lord Goldsmith's proposal for a Part B containing definitions could have achieved completely identical definitions, grounds for restrictions to fundamental rights, and the conditions with which such restrictions must comply. Another way of achieving this could have been for every article governing a classical fundamental right to contain a reference to the corresponding article in the ECHR. When it looked as if Lord Goldsmith's proposal was not going to attract enough support I proposed amendments to this effect. The Praesidium did not adopt them. A third option for ensuring that the meaning and scope of classical

fundamental rights in the ECHR and Charter were as nearly as possible identical could have taken the form of a horizontal article, as I proposed in amendment 582. The Praesidium adopted this amendment in principle in article 50 paragraph 3. An irritating mistake was made, however, when the original Dutch wording was translated into French and I regret to say I did not notice it until after sending my letter of 28 June (distributed along with CHARTE 4406/00 CONTRIB 262 of 6 July), in which I incorporated the French and English versions as per CHARTE 4332/00 CONVENT 35 dated 25 May .

The French translation should have read:

Dans la mesure où la présente Charte contient des droits correspondants à des droits énoncés dans la Convention européenne des droits de l'homme, leur signification et leur portée sont *les mêmes que* la signification et la portée que leur confère la CEDH, sauf si la présente Charte prévoit une protection plus étendue.

Instead of "les mêmes que", the French version of CHARTE 4332/00 CONVENT 35 of 25 May reads "similaires à". The English translation, "the same as", is correct.

Article 50 paragraph 3 repeats the French wording "similaires à". The Praesidium or Secretariat obviously used French as its working language when drafting CHARTE 4422/00 CONVENT 45 and the mistake has been translated into the English version as "similar to". The Dutch translation reads "dezelfde als" ("the same as", "les mêmes que"), and I understand that the Danish, Finnish and Swedish versions match this. There is thus a discrepancy between the French and English versions on the one hand and the Dutch, Danish, Finnish and Swedish versions on the other, with the second group matching the original amendment 582.

My intention when tabling the amendment was for it to have the same meaning as the French *les mêmes que* or *identiques à* and the English *the same as* or *identical to*.

This horizontal provision is of great importance and I therefore strongly urge the Praesidium to ensure that the original intention is reflected correctly and unambiguously, i.e. that the classical fundamental rights in the Charter are identical to those in the ECHR even where wording differs. I also think it would make more sense to move the revised article 50 paragraph 3 to form article 50 paragraph 1.

I could accept Mr Olsen's suggestion to list the articles involved by number so as to make it clear to one and all what the horizontal provision refers to. It would also be possible to drop

the last clause if we agree that none of the relevant articles is intended to confer a higher degree of protection than derives from the ECHR, thus putting a stop to any attempt by lawyers to argue that the Charter seeks to provide more protection than the ECHR.

“Everyone” in articles 14 paragraph 1, 15 paragraph 1, 27 and 33, and “persons” in article 32 paragraph 3

The Dutch government maintains its insurmountable objections to the use of “everyone” in articles 14 paragraph 1, 15 paragraph 1, 27, and 33, and “persons” in article 32 paragraph 3, for the reasons I explained at the Convention meetings dealing with these articles. I repeat them below.

Article 14 paragraph 1: Foreign nationals over school leaving age (i.e. 17) and not legally resident in the Netherlands have no right to education and no access to vocational and continuing training. Our objection is insurmountable because a national court might rule on the basis of the Charter that foreigners living illegally in the Netherlands and above the age for compulsory schooling, who cannot be expelled for technical reasons (for example, because their country of origin is not known or they have no passport or valid identity document), have the right to education and to access to vocational and continuing training.

Article 15 paragraph 1: Only people legally resident in an EU member state who are legally entitled to work and in possession of the relevant qualifications have the right to engage in a freely chosen occupation. Persons illegally resident in the EU and asylum seekers whose asylum applications are still under consideration do not normally have the right to engage in a freely chosen occupation. Members of diplomatic representations from third countries are legally resident in a member state but are not allowed to engage in any profession other than the one for which they were granted diplomatic admission. Our objection is insurmountable because a national court might rule on the basis of the Charter that foreign nationals living illegally in the Netherlands who cannot be expelled for technical reasons (for example, because their country of origin is not known or they have no passport or valid identity document) have the right to engage in a freely chosen occupation. Article 50 paragraph 1 allows for limitations on the rights listed in the Charter and could be used to set qualifications and requirements for professions requiring specialised training (e.g. doctors and lawyers), but this does not entitle member states to limit rights that have been conferred on everyone for third-country nationals illegally resident on their territory. Dutch law does in fact provide for foreign nationals illegally resident in the Netherlands to be excluded from certain posts and services.

The Dutch government does not want to put such provisions at risk through loosely worded fundamental rights, even if they are only applicable to EU institutions and bodies and, for member states, within the field of application of EU law. Courts may turn out to be open to the argument that no domestic provisions can apply if they are deemed incompatible at EU level with fundamental rights applicable to everyone.

Article 27: The same reasons apply to our insurmountable objection to the use of “everyone” in article 27: only persons legally resident in a member state and entitled to work there have the right of access to a placement service.

Article 32 paragraph 3: Foreign nationals illegally resident in the Netherlands are not entitled to social assistance or housing benefit. The phrase “in accordance with the rules laid down by national laws and practices” is no solution. Dutch law does not impose any conditions on illegal aliens claiming social assistance or housing benefit; it debars them completely. Furthermore, asylum seekers whose applications are pending are provided with housing and social assistance differently from Dutch nationals and legal aliens, since they are accommodated in reception centres and receive some of their social assistance in kind.

Article 33: Foreign nationals illegally resident in the Netherlands are only entitled to emergency and preventive health care. Other than in emergencies they can only receive care if they pay for it themselves or through their existing insurance, and foreigners illegally resident in the Netherlands are generally not insured. I would also agree with Mr Patijn that the point is not to ensure access to curative and preventive health care but to prevent exclusion from health insurance.

In all the above cases the Dutch government is absolutely opposed to any risk of the courts forcing it to grant foreigners illegally resident in the Netherlands access to services from which legislation has explicitly debarred them. If the above provisions feature in the text put before the European Council, the Netherlands will be unable to cooperate in adopting the Charter without further modifications.

Further comments

I have a few more comments on individual articles, some of which are objections and some intended as suggested improvements.

Recital 7: The Charter contains some horizontal provisions and many references to national laws and practices and can therefore not be said to guarantee the rights and freedoms it lists. In any case, nothing could be guaranteed unless the European Council decided to give the Charter the force of law.

Article 3 paragraph 2: The use of “in particular” (“notamment”) suggests that there are other principles which must be respected but are not listed. That is unacceptable for the people who are expected to respect them. The same objection applies to the prohibition of eugenic practices: what other eugenic practices are prohibited in addition to those concerned with the selection of persons? The Dutch government would prefer to delete Article 3 paragraph 2 altogether. In any case it would like to delete the prohibition of eugenic practices on the grounds that its scope is too vague.

Article 11 paragraph 2: The words “with due respect for pluralism and transparency” (“dans le respect du pluralisme et de la transparence”) make the provision too imprecise. Does “dans le respect” narrow or broaden the scope? Is respecting pluralism and transparency a task for the government, or for the media whose freedom is being guaranteed? The explanatory notes in CONVENT 46 and the 25 July 1991 judgment on case C288/89 do not give any firm answer. How can the right to freedom of information be reconciled with article 40 which states that only citizens and residents of the EU and legal persons established in a member state may have access to European Parliament, Council and Commission documents?

Article 14 paragraph 1 second sentence: Primary education is free in the Netherlands, but fees must be paid for education, including compulsory education, over the age of 16. It is possible to claim reimbursement, however, whereby compulsory post-16 education can be partly or entirely free of charge. But CONVENT 46 refers to “le principe de gratuité de l’enseignement obligatoire”, and since it calls it a principle the question arises whether it is still permissible to charge school fees which are only refunded to those unable to pay. If this provision aims to make compulsory post-16 education free of charge and to prohibit fees for it, the Dutch government would be absolutely unable to accept it.

Article 15 paragraphs 1 and 2: It would be a good idea to switch these two paragraphs.

Article 15 paragraph 3: Not all nationals of third countries who are legally resident in the territory of a member state are entitled to conditions of employment equivalent to those of citizens of the Union. They also require a work permit for the relevant member state. The article should therefore read:

“Nationals of third countries who are authorised to work in the territories of a Member State are entitled to conditions of employment equivalent to those of citizens of the Union.”

Article 18: There is no right to asylum, only a right to request or seek asylum. The article should therefore begin:

“The right to *request asylum* shall be guaranteed ...”

Article 19 paragraph 2: The Dutch translation renders “pourrait être soumis ...” as a remote condition. This runs counter to case law from the European Court of Human Rights in Strasbourg, which maintains there must be a real risk of the person whose extradition has been requested being subjected to the death penalty, torture or other inhuman or degrading treatment. To be compatible with this case law the paragraph should therefore read:

“No one may be removed, expelled or extradited to a State where *there is a real risk that* he could be subjected to the death penalty, torture or other inhuman or degrading treatment.”

Article 22 paragraph 2: I suspect that some words have been omitted and that the paragraph should read:

“The principle of equal treatment shall not prevent the adoption, *in order to ensure full equality in practice for men and women in employment*, of measures for specific advantages in order to make it easier for the under-represented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers.”

Article 30 paragraph 1: In the Netherlands the period of compulsory full-time education (up to age 16) is followed by a period of compulsory part-time education (up to age 17) during which employment is allowed as long as it does not interfere with lessons. The second sentence should therefore read:

“The minimum age for admission to employment must not be lower than the *minimum age for leaving compulsory full-time schooling ...*”

Article 39 paragraph 2: The use of “includes” (“notamment”) is unacceptable for the same reasons as I gave for article 3 paragraph 2 above: the use of “includes” (“notamment”) suggests that the right set out in paragraph 1 includes other rights in addition to the three listed in paragraph 2, which are not mentioned and cannot be identified but do exist. That is acceptable neither for the people who might wish to invoke them nor for the people who are expected to respect them. A choice must therefore be made between listing all rights and omitting the word “includes” (“notamment”).

Article 41: It would be better to confer this right on everyone.

Article 45 paragraph 1: This article is couched in excessively general terms. The explanatory notes make it clear that the article only refers to the “inscription de la jurisprudence de la Cour de Justice de Luxembourg dans la charte” and is not intended “de modifier le système de recours prévu par les traités et notamment les règles relatives à la recevabilité”. This should be made clearer in paragraph 1 in order to ensure that it does not give rise to endless disputes about competence.

Article 47 paragraph 2: I suspect the words “the general principles of” have been omitted.

The article should therefore read:

“This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to *the general principles of international law.*”

Article 49 paragraph 1: This raises the question of whether the “institutions and bodies of the Union” is meant to include Europol. The Dutch government is in favour of its doing so. If the current form of words excludes Europol from the scope of this article it should be redrafted to include it. For example:

“The provisions of this Charter are addressed to the institutions and bodies of the Union *in accordance with the powers conferred on them by means of or for the implementation of the Treaties, and also to institutions and bodies operating within the sphere of the Union as a result of Council measures, with due regard for the principle of subsidiarity and ...*”

Also, the phrase “and to the Member States only when they are implementing Union law” could be better rephrased as

“and to the Member States only within the field of application of Union law”.

Article 50

1. I have already explained that I would prefer paragraph 3 to become paragraph 1. May I invite the Praesidium once again to reconsider my amendment and incorporate a reference to the corresponding articles in the revised European Social Charter along the lines of the current paragraph 3:

“Insofar as this Charter contains rights which correspond to rights guaranteed by the revised European Social Charter, the meaning and scope of those rights shall be the same as those conferred on them by the revised European Social Charter.”

In my view, the above text should become paragraph 2, and the current paragraphs 1 and 2 would be renumbered 3 and 4.

2. A further way to ensure this charter remains parallel with the ECHR and the revised European Social Charter, and to provide legal certainty, would be for the current paragraph 1 (paragraph 2 or 3 if my suggestions are accepted) to include a reference to the ECHR and the revised European Social Charter, perhaps as follows:

“Any limitation on the exercise of the rights and freedoms recognised by this Charter shall not extend further than permitted under the European Convention for the Protection of Human Rights and Fundamental Freedoms and the revised European Social Charter. Limitations to other rights may be provided for solely by the competent legislative authority. Subject to ...”

Finally I would recommend numbering the separate paragraphs of articles 12, 22, 30 and 31.

I am most grateful for the consideration the Praesidium will give to these general remarks. For the record, may I point out that I have sent a second letter to Mr JAQUÉ. This second letter is intended for the translation service and deals with translation errors and mistakes in the use of the Dutch language.

Yours sincerely,

[signed]

Frits KORTHALS ALTES

Personal Representative of the

Government of the Kingdom of the Netherlands

(*)

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A l'attention de M. Guy BRAIBANT

KORTHALS ALTES

La Haye, le 28 août 2000

Cher collègue et ami,

Vous trouverez ci-après mes observations générales concernant le texte complet du projet de Charte des droits fondamentaux de l'Union européenne qui a été proposé le 28 juillet dernier par le Présidium.

Je voudrais tout d'abord signaler que je trouve que les textes publiés le 28 juillet dernier ont été améliorés par rapport aux projets de textes précédents, mais qu'ils ne revêtent pas encore – notamment en raison du peu de temps imparti à la Convention et au Présidium – la qualité nécessaire à un document juridiquement contraignant. Cela n'est pas sans danger, car même sans force contraignante formelle, la Charte jouera un rôle dans la pratique judiciaire. Dans mes références aux commentaires contenus dans CONVENT 46, j'ai utilisé le texte français, les textes rédigés dans d'autres langues n'étant pas encore disponibles.

Article 50, paragraphe 3

En ce qui concerne les droits fondamentaux classiques, le gouvernement néerlandais a toujours attaché une grande valeur à une harmonisation aussi large que possible entre les droits fondamentaux à formuler dans la Charte et les droits correspondants formulés dans la Convention. La principale raison en est que le citoyen européen – et tous les autres auxquels ces droits s'appliquent – est le mieux servi par un seul et même régime de droits fondamentaux classiques inscrits dans la Convention et dans la Charte. Aux yeux du gouvernement néerlandais, la plus-value de la Charte par rapport à la Convention réside surtout dans la formulation des droits fondamentaux sociaux et économiques, en plus du règlement des droits civils.

On aurait pu parvenir à une identité totale des définitions, des motifs de limitation et des conditions dans lesquelles des limitations peuvent être apportées aux droits fondamentaux et des conditions auxquelles ces limitations doivent répondre en ajoutant une « partie B » contenant des définitions, comme l'avait proposé Lord Goldsmith, ou en renvoyant dans chaque article de la Charte concernant un droit fondamental classique à l'article correspondant dans la Convention. Lorsqu'il apparut que la proposition de Lord Goldsmith n'obtiendrait pas un soutien suffisant, j'ai soumis des amendements dans ce sens. Le Présidium n'a pas repris ces amendements. Je voyais une troisième possibilité de parvenir à une identité aussi grande possible de teneur et de portée entre les droits fondamentaux de la Convention et ceux de la Charte dans un article horizontal, comme je l'ai proposé dans l'amendement 582. Le Présidium a repris en principe cet amendement dans l'article 50, paragraphe 3. Toutefois, une faute gênante s'est glissée dans la traduction française du texte original néerlandais, faute que je n'ai malheureusement découverte qu'après avoir soumis ma lettre du 28 juin dernier, diffusée avec le document CHARTE 4406/00 CONTRIB 262 du 6 juillet dernier, dans

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laquelle j'avais repris la version française et la version anglaise telles qu'elles figuraient dans le document CHARTE 4332/00 CONVENT 35 du 25 mai dernier.

La traduction française correcte aurait dû être :

« Dans la mesure où la présente Charte contient des droits correspondants à des droits énoncés dans la Convention européenne des droits de l'homme, leur signification et leur portée sont *les mêmes que* la signification et la portée que leur confère la CEDH, sauf si la présente Charte prévoit une protection plus étendue. »

Au lieu de « les mêmes que », figurait dans la version française de CHARTE 4332/00 CONVENT 35 du 25 mai « similaires à ». Dans le texte anglais figurait à juste titre « the same as ».

Dans l'article 50, paragraphe 3, on retrouve à nouveau « similaires à ». À partir du français, qui était de toute évidence la langue de travail du Présidium ou du secrétariat pour la rédaction de CHARTE 4422/00 CONVENT 45, le texte anglais a été traduit par : « similar to ». Le texte néerlandais a été traduit par « dezelfde als » (les mêmes que). J'ai constaté que les textes danois, finlandais et suédois correspondent au texte néerlandais, comme si le texte français avait comporté « les mêmes que ». Des différences sont donc apparues entre le texte français et le texte anglais, d'une part, et les textes néerlandais, danois, finlandais et suédois, de l'autre, ces derniers textes correspondant à l'amendement original (582).

J'ai eu l'intention formelle de donner aux mots de mon amendement la signification rendue en français par « les mêmes que » ou « identiques à » et en anglais « the same as » ou « identical to ». Compte tenu de la grande importance de cette disposition horizontale, je prie instamment le Présidium de veiller à ce que dans toutes les langues, l'intention originelle – en dépit de la formulation divergente, les droits fondamentaux énoncés dans la Charte sont identiques à ceux contenus dans la CEDH – soit rendue de manière correcte et sans équivoque.

De plus, il me semble préférable, du point de vue de la systématique, que le texte (corrigé) de l'article 50, paragraphe 3, soit repris en tant qu'article 50, paragraphe 1. Je serais d'accord pour que, conformément à la proposition de M. Olsen, les articles dont il s'agit soient cités avec leur numéro, afin que tout le monde sache exactement à quels articles cette disposition horizontale se rapporte. Si nous convenions, par ailleurs, qu'aucune disposition de ces articles ne vise à conférer une protection plus élevée ou plus étendue que la CEDH, le dernier membre de phrase pourrait être supprimé. Cela peut tuer dans l'œuf les tentatives d'avocats de plaider que la Charte vise un degré de protection plus élevé que la CEDH.

« Toute personne » dans les articles 14, paragraphe 1, 15, paragraphe 1, 27, 32, paragraphe 3 et 33

Le gouvernement néerlandais maintient expressément ses objections insurmontables contre l'usage de la notion de « toute personne » dans les articles 14, paragraphe 1, 15, paragraphe 1, 27, 32, paragraphe 2, et 33 pour les raisons que j'ai exposées au cours des conférences de la Convention lors de l'examen de ces articles. Ces raisons sont les suivantes :

Article 14, paragraphe 1 : Les étrangers ayant dépassé l'âge de la scolarité obligatoire (17 ans), séjournant illégalement aux Pays-Bas, n'ont pas droit à

l'enseignement et n'ont pas accès à la formation professionnelle et continue. Le caractère insurmontable de l'objection des Pays-Bas réside dans le risque que, sur la base de la Charte, le juge national juge que les étrangers ayant dépassé l'âge de la scolarité obligatoire, séjournant illégalement aux Pays-Bas, qui ne peuvent pas être expulsés pour des raisons techniques (pays d'origine inconnu, l'intéressé n'a pas de passeport, ni un autre document d'identité valable, etc.) ont droit à l'enseignement et accès à la formation professionnelle et continue.

Article 15, paragraphe 1 : Seules les personnes qui séjournent légalement dans un État membre de l'Union et qui, de surcroît, ont le droit de travailler et possèdent les qualifications requises à cet effet, ont le droit d'exercer une profession librement choisie. Les personnes séjournant illégalement dans un État membre de l'Union et les demandeurs d'asile dont la demande est encore à l'examen, n'ont en général pas le droit d'exercer une profession librement choisie. Les membres des représentations diplomatiques de pays tiers séjournent légalement sur le territoire d'un État membre, mais ne sont pas autorisés à exercer un autre métier que celui pour lequel ils ont été admis en tant que diplomate. Le caractère insurmontable de l'objection du gouvernement néerlandais réside dans le risque de voir le juge national juger, sur la base de la Charte, que les étrangers séjournant légalement aux Pays-Bas qui ne peuvent pas être expulsés pour des raisons techniques (pays d'origine inconnu, l'intéressé n'a pas de passeport, ni un autre document d'identité valable, etc.) ont le droit d'exercer une profession librement choisie.

La possibilité offerte par l'article 50, paragraphe 1, d'apporter des limitations aux droits énoncés dans la Charte peut être utilisée pour imposer des critères de compétence et de qualité à des métiers exigeant une certaine formation (médecins, avocats), mais cette compétence ne confère pas aux États membres la liberté de limiter les droits fondamentaux qui ont été reconnus à toute personne uniquement pour des ressortissants de pays tiers séjournant illégalement dans un État membre. Il existe aux Pays-Bas une législation qui exclut les étrangers y séjournant illégalement de certaines compétences et facilités. Le gouvernement n'entend pas voir cette législation menacée par une formulation trop large des droits fondamentaux, même s'ils ne devaient valoir que pour les organes et institutions de l'Union et, en ce qui concerne les États membres, dans le champ d'application du droit communautaire. Le juge pourrait être sensible à l'argument selon lequel aucune réglementation ne peut être applicable dans un pays si elle est considérée, au niveau de l'Union, comme contraire aux droits fondamentaux reconnus à toute personne.

Article 27 : Il existe une objection insurmontable, pour les mêmes raisons, à l'utilisation de la notion de « toute personne » dans l'article 27. Seules les personnes qui séjournent légalement dans un État membre et ont le droit d'y travailler, peuvent faire valoir le droit d'accéder à un service de placement.

Article 32, paragraphe 3 : Les étrangers séjournant illégalement aux Pays-Bas n'ont pas droit à une aide sociale ou à une aide au logement. L'ajout du membre de phrase « selon les modalités établies par les législations et pratiques nationales » n'offre aucune issue. La législation néerlandaise ne pose pas aux étrangers séjournant illégalement aux Pays-Bas de conditions pour bénéficier d'une aide sociale ou d'une aide au logement. Le législateur les en a exclus. En outre, les demandeurs d'asile dont la demande est encore à l'examen bénéficient de conditions d'hébergement et d'aide sociale différentes de celles dont bénéficient les Néerlandais et les étrangers admis aux Pays-Bas, à savoir, ils sont

hébergés collectivement dans des centres d'accueil et reçoivent une aide partiellement en nature.

Article 33 : Les étrangers séjournant illégalement aux Pays-Bas ne bénéficient de soins médicaux et de la prévention sanitaire que dans des cas d'urgence. Ne peuvent bénéficier d'autres dispositifs que les services d'urgence les personnes qui peuvent en payer les coûts soit eux-mêmes, soit en vertu d'une assurance. Le problème des étrangers séjournant illégalement aux Pays-Bas est qu'ils ne sont en général pas assurés. Je souscris d'ailleurs à la remarque de monsieur Patijn qu'il ne s'agit pas, au fond, de l'accès aux soins de santé préventifs et curatifs, mais d'une interdiction d'exclusion de l'assurance frais de maladie.

Dans tous ces cas, les Pays-Bas ne veulent en aucun cas courir le risque de se voir condamnés à admettre des étrangers séjournant illégalement aux Pays-Bas à des dispositifs dont le législateur les a expressément exclus. Si ces dispositions figurent dans la version à soumettre au Conseil européen, les Pays-Bas ne pourront pas coopérer à l'élaboration de la Charte si elle reste inchangée.

Autres remarques :

Les remarques ci-dessous sont faites soit à titre d'objection, soit dans le but d'apporter une amélioration qualitative.

Préambule sous 7 : Compte tenu de l'importance de certaines dispositions horizontales et des nombreux renvois aux législations et pratiques nationales, il n'est pas question de garantie des droits et libertés énoncés dans la Charte. De plus, il ne pourrait être question de garantie que si le Conseil européen décidait d'arrêter une charte juridiquement contraignante.

Article 3, paragraphe 2 : L'utilisation du terme « notamment » signifie qu'il y a plus de principes à respecter, mais ceux-ci ne sont pas cités. Cela n'est pas acceptable pour ceux qui doivent respecter ces principes. La même objection s'applique à l'interdiction des pratiques eugéniques. Quelles sont les pratiques eugéniques interdites autres que celles qui visent la sélection des personnes ? Le gouvernement néerlandais préférerait que tout le paragraphe 2 de l'article 3 soit supprimé. Il souhaiterait, en tout cas, voir supprimée l'interdiction des pratiques eugéniques, celles-ci étant insuffisamment définies.

Article 11, paragraphe 2 : Les mots « dans le respect du pluralisme et de la transparence » rendent la disposition imprécise. Doit-on interpréter « dans le respect de » comme une limitation ou comme une extension ? Est-ce la tâche du gouvernement de respecter le pluralisme et la transparence ou de ceux à qui est garantie la liberté des médias ? Le commentaire dans CONVENT 46 et l'arrêt du 25 juillet 1999 dans l'affaire C288/89 ne sont pas concluants à ce sujet. Quel est le rapport entre la liberté d'information et le droit d'accès aux documents du Parlement européen, du Conseil et de la Commission qui n'est accordé dans l'article 40 qu'aux citoyens et aux résidents de l'Union et aux personnes morales ayant un siège statutaire dans un État membre ?

Article 14, paragraphe 1, deuxième phrase : Aux Pays-Bas, l'enseignement primaire est gratuit, mais le paiement d'un droit de scolarité est obligatoire pour l'enseignement post-primaire pour les jeunes à partir de 16 ans, même si cet enseignement est obligatoire. Il y a toutefois une possibilité de bénéficier d'une compensation, donc de suivre gratuitement l'enseignement post-primaire obligatoire, à plein temps ou à temps partiel. Le commentaire dans CONVENT 46 fait toutefois état du « principe de gratuité de l'enseignement obligatoire. » Comme on fait ici état d'un principe, la question se pose de savoir si la disposition laisse la liberté de prélever un droit de scolarité et de ne donner une allocation que dans les cas d'incapacité financière. Si la disposition vise

également la gratuité de l'enseignement post-primaire obligatoire et l'exclusion de la possibilité de demander une contribution, cette disposition suscite de la part du gouvernement néerlandais une objection insurmontable.

Article 15, paragraphes 1 et 2 : Il est recommandé d'intervertir les paragraphes 1 et 2.

Article 15, paragraphe 3 : Les ressortissants de pays tiers séjournant illégalement sur le territoire d'un État membre n'ont pas tous droit à des conditions de travail équivalentes. Ils doivent aussi être autorisés à travailler dans cet État membre. L'article devrait donc s'énoncer comme suit :

« Les ressortissants de pays tiers qui sont autorisés à travailler sur le territoire d'un État membre, ont droit à des conditions de travail équivalentes à celles dont bénéficient les citoyens de l'Union ».

Article 18 : Il n'existe pas de droit d'asile. Il existe toutefois un droit de demander asile ou de chercher asile. Le libellé correct devrait donc être :

« Le droit de *demander* asile est garanti... »

Article 19, paragraphe 2 : La traduction néerlandaise de « pourrait être soumis » marque le mode irréel, alors que la jurisprudence de la Cour européenne des droits de l'homme à Strasbourg part justement du principe qu'il doit y avoir un danger réel que la personne dont l'extradition est demandée soit condamnée à mort, ou soumise à la torture ou à d'autres peines ou traitements inhumains ou dégradants. Conformément à cette jurisprudence, l'article devrait être libellé comme suit :

« Nul ne peut être éloigné, expulsé ou extradé vers un État où il court un risque réel d'être soumis à la peine de mort, à la torture ou à d'autres peines ou traitements inhumains ou dégradants. »

Article 22, paragraphe 2 : Je suppose qu'un certain nombre de mots ont été omis et que ce paragraphe doit être libellé comme suit :

« Le principe de l'égalité de traitement n'empêche pas que, *pour assurer dans la pratique l'égalité totale de traitement entre les hommes et les femmes en matière d'emploi*, des mesures soient maintenues ou adoptées prévoyant des avantages spécifiques destinés à faciliter l'exercice d'une activité professionnelle par le sexe sous-représenté ou à prévenir ou compenser des désavantages dans la carrière professionnelle. »

Article 30, paragraphe 1 : Après une période de scolarité obligatoire à plein temps jusqu'à la 16^e année, les Pays-Bas connaissent une période de scolarité obligatoire partielle pendant la 16^e et la 17^e année. Un jeune est autorisé à travailler à cet âge, en tenant compte des heures d'enseignement obligatoire. La deuxième phrase devrait donc s'énoncer comme suit :

« L'âge minimal d'admission au travail ne doit pas être inférieur à l'âge auquel cesse la période de scolarité obligatoire à *plein temps*, »

Article 39, paragraphe 2 : L'utilisation du terme « notamment » soulève la même objection que celle que j'ai faite à l'article 3, paragraphe 2. L'utilisation du terme « notamment » suggère que le droit formulé au paragraphe 1 comprend plus de droits que les trois droits énumérés au paragraphe 2, qui ne sont toutefois pas cités et ne sont donc pas reconnaissables, mais qui existent bel et bien. Cela est inacceptable pour ceux qui peuvent invoquer ces droits et pour ceux qui doivent les respecter. Il convient donc de faire un choix entre énumérer tous les droits ou omettre le terme « notamment ».

Article 41 : Il est préférable de reconnaître ce droit à toute personne.

Article 45, paragraphe 1 : La formulation de cet article est beaucoup trop large. Il ressort du commentaire que l'article n'a pour but que « l'inscription de la jurisprudence de la Cour de Justice de Luxembourg dans la Charte » et non « de modifier le système de

recours prévu par les traités et notamment les règles relatives à la recevabilité ». Ceci devrait être exprimé plus clairement dans le texte du paragraphe 1 afin d'éviter l'apparition d'innombrables litiges de compétence sur la base de cet article dont la formulation est trop large.

Article 47, paragraphe 2 : Les mots « principes généraux du » ont probablement été omis, à tort. L'article s'énonçait et devrait encore s'énoncer comme suit :

« Le présent article ne porte pas atteinte au jugement et à la punition d'une personne coupable d'une action ou d'une omission qui, au moment où elle a été commise, était criminelle d'après *les principes généraux* du droit international. »

Article 49, paragraphe 1 : La question se pose de savoir s'il faut compter Europol parmi les « institutions et organes de l'Union ». Le gouvernement néerlandais est partisan d'inclure Europol dans le champ d'application de l'article. Si sa rédaction l'exclut, il convient de donner la préférence à une rédaction qui place Europol dans le champ d'application de cet article, et donc de la Charte. Par exemple :

« Les dispositions de la présente Charte s'adressent aux institutions et organes de l'Union *dans le cadre des compétences qui leur sont attribuées par des conventions ou pour leur mise en œuvre, ainsi qu'aux institutions ou organes qui sont actifs dans le domaine de l'Union, en vertu de mesures du Conseil*, dans le respect du principe de subsidiarité, ainsi... »

De plus, le passage « et uniquement lorsqu'ils mettent en œuvre le droit de l'Union » devrait plutôt s'énoncer comme suit :

« ainsi qu'aux États membres uniquement dans le champ d'application du droit de l'Union. »

Article 50 :

1. J'ai déjà indiqué que je préférerais que le paragraphe 3 prenne la place du paragraphe 1. Je prie à nouveau le Présidium de considérer mon amendement visant à renvoyer de la même manière que dans l'actuel paragraphe 3 aux articles correspondants de la Charte sociale européenne révisée :

« Dans la mesure où la présente Charte contient des droits et des principes sociaux correspondant à des droits et des principes énoncés dans la Charte sociale européenne révisée, leur sens et leur portée sont les mêmes que ceux que leur confère la Charte sociale européenne révisée. »

De mon point de vue, ce paragraphe devrait devenir le paragraphe 2, les paragraphes 1 et 2 étant à renuméroter 3 et 4.

2. Inclure dans le paragraphe 1 originel (de mon point de vue le paragraphe 2 ou 3) des références à la CEDH et à la Charte sociale européenne révisée, renforcerait encore davantage le parallélisme entre la Charte et la CEDH (et la Charte sociale européenne révisée) et, par conséquent, la sécurité juridique. Par exemple comme suit :

« Les limitations à l'exercice des droits et des libertés reconnus par la présente Charte ne doivent pas aller au-delà de celles qui sont autorisées par la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales et par la Charte sociale européenne révisée. Des limitations à d'autres droits fondamentaux ne peuvent être imposées que par l'autorité législative compétente. Dans le respect du principe de...etc. »

Enfin, j'attire l'attention sur le fait qu'il est recommandé de numéroter les paragraphes des articles 12, 22, 30 et 31.

J'apprécierai hautement l'attention que le Présidium voudra bien accorder à ces remarques générales. Je signale, à toutes fins utiles, que j'envoie une deuxième lettre à

monsieur JAQUÉ, à l'intention du service de traduction. Cette lettre concerne les erreurs de traduction et l'usage incorrect du néerlandais.

Veillez agréer, cher collègue et ami, les assurances de ma considération distinguée.

Frits Korthals Altes
Représentant personnel du gouvernement
du Royaume des Pays-Bas

Jean-Paul.Jaque@consilium.eu.int

A l'attention de M. Guy BRAIBANT

KORTHALS ALTES

La Haye, le 7 septembre 2000

Cher Collègue et Ami,

Hieronder volgen mijn algemene opmerkingen naar aanleiding van de volledige ontwerptekst van het handvest van de grondrechten van de Europese Unie die op 28 juli jl. door het Presidium is voorgesteld.

Vooraf maak ik de opmerking dat ik de op 28 juli jl. beschikbaar gekomen teksten in het algemeen verbeterd acht ten opzichte van voorgaande ontwerpteksten, maar dat – mede door de korte tijd die de conventie en het Presidium zijn gegund – de teksten nog niet de kwaliteit hebben die nodig is om tot een juridisch bindend document te geraken. Dat is niet zonder gevaar, want ook zonder formele bindende kracht zal het handvest een rol gaan spelen in de rechtspraak. Voor zover ik in het navolgende naar de toelichtingen in CONVENT 46 verwijs, heb ik gebruik gemaakt van de Franse tekst, daar teksten in andere talen nog niet beschikbaar zijn.

Artikel 50 lid 3:

De Nederlandse regering heeft wat de klassieke grondrechten betreft altijd grote waarde gehecht aan een zo groot mogelijke overeenstemming tussen de in het handvest van de grondrechten van de Europese Unie te formuleren grondrechten en de daarmee corresponderende grondrechten in het EVRM. De belangrijkste reden hiervoor is dat de Europese burger – en alle anderen voor wie deze grondrechten gelden – het meest is gediend met één en hetzelfde regiem van klassieke grondrechten onder EVRM en handvest. De meerwaarde van het handvest ten opzichte van het EVRM ziet de Nederlandse regering vooral in de formulering van de sociale en economische grondrechten, naast de vastlegging van de burgerrechten.

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Volledige gelijkheid van definitie, beperkingsgronden en voorwaarden waaronder beperkingen op grondrechten mogen worden aangebracht en voorwaarden waaraan deze beperkingen moeten voldoen, had bereikt kunnen worden door een definiërend “Part B”, zoals voorgesteld door Lord Goldsmith. Deze volledige gelijkheid had ook bereikt kunnen worden door in elk artikel betreffende een klassiek grondrecht te verwijzen naar het corresponderende artikel in het EVRM. Toen het er maar uitzag dat het voorstel van Lord Goldsmith onvoldoende ondersteuning zou krijgen, heb ik amendementen van deze strekking ingediend. Het Presidium heeft deze amendementen niet overgenomen. Als derde mogelijkheid van een zo groot mogelijke gelijkheid van inhoud en reikwijdte van de klassieke grondrechten tussen EVRM en handvest zag ik een horizontaal artikel, zoals door mij voorgesteld in amendement 582. Het Presidium heeft dit amendement in beginsel overgenomen in artikel 50 lid 3. Er is echter bij de vertaling van de oorspronkelijk in het Nederlands geformuleerde tekst in het Frans een storende fout opgetreden, die ik helaas pas heb ontdekt na indiening van mijn brief van 28 juni jl., verspreid met CHARTE 4406/00 CONTRIB 262 van 6 juli jl., waarin ik de Franstalige en de Engelstalige versie, zoals deze waren opgenomen in CHARTE 4332/00 CONVENT 35 van 25 mei jl., had overgenomen.

De juiste vertaling in het Frans had moeten luiden:

Dans la mesure où la présente Charte contient des droits correspondants à des droits énoncés dans la Convention européenne des droits de l’homme, leur signification et leur portée sont *les mêmes que* la signification et la portée que leur confère la CEDH, sauf si la présente Charte prévoit une protection plus étendue.

In plaats van “les mêmes que” stond in de Franse versie van CHARTE 4332/00 CONVENT 35 van 25 mei jl. ”similaires à”. In de Engelse tekst stond ten rechte “the same as”.

In artikel 50 lid 3 staat in de Franse tekst wederom “similaires à”. Uit het Frans, dat bij de opstelling van Charte 4422/00 CONVENT 45 duidelijk de werktaal van het Presidium of het secretariaat is geweest, is nu in de Engelse tekst vermeld “similar to”. In de Nederlandse tekst is dit vertaald als “dezelfde als” (les mêmes que). Mij is gebleken dat in het Deens, het Fins en het Zweeds de tekst overeenkomt met de Nederlandse, alsof in de Franse tekst gestaan zou hebben “les mêmes que”. Er zijn dus verschillen ontstaan tussen de Franse en Engelse tekst enerzijds en de Nederlandse, Deense, Finse en Zweedse tekst anderzijds, waarbij laatstgenoemde teksten overeenstemmen met het oorspronkelijke amendement (582).

Het is mijn uitdrukkelijke bedoeling geweest aan de woorden in mijn amendement de betekenis te geven die in het Frans wordt weergegeven met “les mêmes que” of “identique à” en in het Engels met “the same as” of “identical”.

Vanwege het grote belang van deze horizontale bepaling verzoek ik het Presidium met grote klem erop toe te zien dat in alle talen de oorspronkelijke bedoeling – de klassieke grondrechten zijn in het handvest, ongeacht afwijkende formulering, identiek aan die in het EVRM –juist en ondubbelzinnig wordt weergegeven.

Voorts acht ik het uit oogpunt van systematiek beter, wanneer de (verbeterde) tekst van artikel 50 lid 3 wordt opgenomen als artikel 50 lid 1. Ik zou mij ermee kunnen verenigen wanneer, overeenkomstig het voorstel van de heer Olsen, de artikelen waarom het gaat met hun nummer worden vermeld, zodat het voor een ieder duidelijk is op welke artikelen deze horizontale bepaling betrekking heeft. Wanneer wij het bovendien erover eens zouden zijn dat in geen van deze artikelen beoogd is een hogere of een ruimere mate van bescherming te verlenen dan het EVRM verleent, zou de laatste bijzin kunnen vervallen. Dat kan pogingen van advocaten om te pleiten dat het handvest een hogere beschermingsgraad beoogt dan het EVRM in de kiem smoren.

“Eenieder” in de artikelen 14 lid 1, 15 lid 1, 27, 32 lid 3 en 33:

De Nederlandse regering handhaaft uitdrukkelijk haar onoverkomelijke bezwaren tegen het gebruik van het begrip “eenieder” in de artikelen 14 lid 1, 15 lid 1, 27, 32 lid 3 en 33 op de gronden die ik tijdens de vergaderingen van de Conventie bij de behandeling van deze artikelen heb uiteengezet. Deze gronden zijn voor:

Artikel 14 lid 1: Vreemdelingen boven de leerplichtige leeftijd (tot en met 17 jaar) die niet rechtmatig in Nederland verblijven, hebben geen recht op onderwijs en geen toegang tot beroepsopleiding en bijscholing. Het onoverkomelijke karakter van het bezwaar van de Nederlandse regering is gelegen in het risico dat de nationale rechter op grond van het handvest zal oordelen dat onrechtmatig in Nederland verblijvende vreemdelingen boven de leerplichtige leeftijd die op technische gronden niet kunnen worden uitgezet (betrokkene heeft geen paspoort of ander geldig identiteitsbewijs, land van herkomst onbekend), het recht hebben op onderwijs en toegang tot een beroepsopleiding of bijscholing.

Artikel 15 lid 1: Alleen zij die rechtmatig in een lidstaat van de Unie verblijven en dan bovendien nog het recht hebben te werken en de daartoe vereiste kwalificaties hebben, hebben het recht een vrijelijk gekozen beroep uit te oefenen. Onrechtmatig in de Unie verblijvenden en asielzoekers wier asielverzoek nog in behandeling is, hebben in het algemeen niet het recht een vrijelijk gekozen beroep uit te oefenen. Leden van diplomatieke vertegenwoordigingen van derde landen verblijven rechtmatig op het grondgebied van een lidstaat, maar mogen geen ander beroep uitoefenen dan dat waarvoor zij als diplomaat zijn toegelaten. Het onoverkomelijke karakter van het bezwaar van de Nederlandse regering is gelegen in het risico dat de nationale rechter op grond van het handvest zal oordelen dat onrechtmatig in Nederland verblijvende vreemdelingen die

op technische gronden niet kunnen worden uitgezet (land van herkomst onbekend, betrokkene heeft geen paspoort of ander geldig identiteitsbewijs enz.), het recht hebben een vrijelijk gekozen beroep uit te oefenen.

De mogelijkheid die artikel 50 lid 1 biedt om beperkingen aan te brengen op de in het handvest genoemde rechten, kan wel worden aangewend om bevoegdheids- en kwaliteitseisen te stellen voor beroepen waarvoor een bepaalde opleiding vereist is (artsen, advocaten), maar deze bevoegdheid geeft lidstaten niet de vrijheid grondrechten die aan eenieder zijn toegekend alleen voor onderdanen van derde landen die onrechtmatig in die lidstaat verblijven, te beperken. In Nederland bestaat wel wetgeving die onrechtmatig in Nederland verblijvende vreemdelingen uitsluit van bepaalde bevoegdheden en faciliteiten. Die wetgeving wil de regering niet in gevaar brengen door te ruim geformuleerde grondrechten, ook al zouden die slechts gelden voor de organen en instellingen van de Unie en, wat de lidstaten betreft binnen de werkingssfeer van het Unierecht. De rechter zou gevoelig kunnen blijken voor het argument dat binnenslands geen regelingen kunnen gelden die op Unieniveau in strijd worden geacht met voor eenieder geldende grondrechten.

Artikel 27: Op dezelfde gronden bestaat onoverkomelijk bezwaar tegen het gebruik van het begrip “eenieder” in artikel 27. Alleen zij die rechtmatig in een lidstaat verblijven en het recht hebben aldaar werkzaamheden te verrichten, kunnen aanspraak maken op arbeidsbemiddeling.

Artikel 32 lid 3: Onrechtmatig in Nederland verblijvende vreemdelingen hebben geen aanspraak op bijstand of op huursubsidie. De toevoeging “onder de door de nationale wetgevingen en praktijken gestelde voorwaarden” biedt geen uitkomst. De Nederlandse wetgeving stelt aan onrechtmatig in Nederland verblijvende vreemdelingen geen voorwaarden voor bijstand of huursubsidie. De wetgever heeft hen daarvan uitgesloten. Bovendien geldt voor asielzoekers wier asielverzoek nog in behandeling is, dat zij op andere wijze huisvesting en bijstand ontvangen dan Nederlanders en toegelaten vreemdelingen, te weten gezamenlijke huisvesting in opvangcentra en ondersteuning deels in natura.

Artikel 33: Voor onrechtmatig in Nederland verblijvende vreemdelingen staan alleen de dringend vereiste medische en preventieve voorzieningen open. Andere dan dringend vereiste voorzieningen staan slechts open voor hen die de kosten daarvan zelf of krachtens een bestaande verzekering kunnen betalen. Het probleem van de onrechtmatig in Nederland verblijvende vreemdelingen is dat zij in het algemeen niet verzekerd zijn. Ik sluit mij bovendien aan bij de opmerking van de heer Patijn dat het in wezen niet gaat om de toegankelijkheid van de curatieve en preventieve gezondheidszorg, maar om een verbod tot uitsluiting van ziektekostenverzekering.

In al deze gevallen geldt dat de Nederlandse regering onder geen beding het risico wil lopen te worden veroordeeld onrechtmatig in Nederland verblijvende vreemdelingen toe te laten tot

voorzieningen waarvan de wetgever hen uitdrukkelijk heeft uitgesloten. Indien de bepalingen mochten voorkomen in de aan de Europese Raad voor te leggen versie, zal Nederland aan ongewijzigde totstandkoming van het handvest niet kunnen meewerken.

Overige opmerkingen:

Hieronder volgen artikelsgewijs nog enkele opmerkingen, hetzij als bezwaar, hetzij met het doel een kwalitatieve verbetering aan te bevelen.

Preambule § 7: Gelet op de betekenis van enkele horizontale bepalingen en de vele verwijzingen naar nationale wetgeving en praktijken, is er geen sprake van waarborging van de in het handvest vermelde rechten en vrijheden. Bovendien zou pas sprake kunnen zijn van waarborging als de Europese Raad zou besluiten tot vaststelling van een rechtens afdwingbaar handvest.

Artikel 3 lid 2: Het gebruik van het begrip “met name” (“notamment”) duidt erop dat er meer beginselen zijn die nageleefd moeten worden, die echter niet worden genoemd. Dat is voor degenen die deze beginselen moeten naleven niet aanvaardbaar. Hetzelfde bezwaar geldt het verbod van eugenetische praktijken. Welke eugenetische praktijken zijn er nog meer verboden dan die welke de selectie van personen ten doel hebben? De Nederlandse regering zou de voorkeur eraan geven het gehele tweede lid van artikel 3 te laten vervallen. In ieder geval zou zij het verbod van eugenetische praktijken, als zijnde te weinig omlijnd, geschrapt willen zien.

Artikel 11 lid 2: De woorden “met inachtneming van pluralisme en doorzichtigheid” (“dans le respect du pluralisme et de la transparence”) maken de bepaling onduidelijk. Moet “dans le respect de” worden uitgelegd als een beperking of als een uitbreiding? Is het een taak van de overheid om de pluriformiteit en de doorzichtigheid te eerbiedigen of van degenen aan wie de mediavrijheid wordt gegarandeerd. De toelichting in CONVENT 46 en het arrest van 25 juli 1991 in zaak C288/89 geven hierover geen uitsluitsel. Hoe verhoudt zich de vrijheid van informatie zich tot het recht op toegang tot documenten van het Europese Parlement, de Raad en de Commissie, dat in artikel 40 slechts aan burgers en ingezetenen van de Unie en rechtspersonen met statutaire zetel in een lidstaat is verleend?

Artikel 14 lid 1 tweede volzin: In Nederland is het basisonderwijs kosteloos, maar de betaling van schoolgeld voor vervolgonderwijs voor leerlingen vanaf 16 jaar verplicht, ook voor zover dit vervolgonderwijs verplicht is. Er is echter een mogelijkheid tot compensatie, dus een mogelijkheid het verplichte vervolgonderwijs (geheel of gedeeltelijk) kosteloos te volgen. In de toelichting in CONVENT 46 is echter vermeld dat het gaat om “le principe de gratuité de l’enseignement obligatoire”. Omdat het hier een principe wordt genoemd rijst de vraag of de bepaling wel de vrijheid laat schoolgeld te heffen en alleen in geval van onvermogensheid een tegemoetkoming te verlenen. Als de bepaling beoogt ook het verplichte vervolgonderwijs kosteloos te doen zijn en de mogelijkheid van het vragen van een bijdrage uit te sluiten, levert deze bepaling voor de Nederlandse regering een onoverkomelijk bezwaar op.

Artikel 15 leden 1 en 2: Het verdient aanbeveling de leden 1 en 2 om te wisselen.

Artikel 15 lid 3: Niet alle onderdanen van derde landen die rechtmatig op het grondgebied van lidstaten verblijven, hebben recht op gelijkwaardige arbeidsvoorwaarden. Zij moeten ook toestemming hebben om in die lidstaat te werken. Het artikel zou dus moeten luiden:

“Onderdanen van derde landen wie het is toegestaan te werken op het gebied van een lidstaat, hebben het recht op arbeidsvoorwaarden die gelijkwaardig zijn aan die welke de burgers van de Unie genieten.”

Artikel 18: Een recht op asiel bestaat niet. Wel het recht om asiel te vragen of om asiel te zoeken. De juiste redactie zou dus moeten luiden:

“Het recht *op het vragen van asiel* is gegarandeerd ...”

Artikel 19 lid 2: In de Nederlandse vertaling is “pourrait être soumis” een irrealis, terwijl de jurisprudentie van het Europese Hof voor de Rechten van de Mens te Straatsburg juist ervan uitgaat dat er een reëel risico moet bestaan dat de persoon van wie uitlevering is verzocht, ter dood wordt veroordeeld of aan marteling of aan andere onmenselijke of vernederende behandelingen of bestraffingen wordt onderworpen. De redactie in overeenstemming met deze jurisprudentie zou dus moeten luiden:

“Niemand mag worden verwijderd of uitgezet naar of uitgeleverd aan een staat *waarin hij een reëel risico loopt* aan de doodstraf, aan marteling of aan andere onmenselijke of vernederende behandelingen of bestraffingen *te worden onderworpen*.”

Artikel 22 lid 2: Ik vermoed dat een aantal woorden is weggefallen en dat dit artikellid als volgt dient te luiden:

“Het beginsel van gelijke behandeling belet niet dat, *om volledige gelijkheid van mannen en vrouwen in het beroepsleven in de praktijk te verzekeren*, maatregelen gehandhaafd of genomen worden waarbij specifieke voordelen worden ingesteld om de uitoefening van een beroepsactiviteit door het ondervertegenwoordigde geslacht te vergemakkelijken of om nadelen in de beroepsloopbaan te voorkomen of te compenseren.”

Artikel 30 lid 1: Nederland kent na de periode van volledige leerplicht tot het 16^{de} jaar nog een periode van partiële leerplicht gedurende het 16^{de} en 17^{de} jaar. Op die leeftijd mag wel gewerkt worden, met inachtneming van de te volgen lessen. Daarom zou de tweede volzin moeten luiden:

“De minimumleeftijd voor toelating tot het arbeidsproces mag niet lager zijn dan de leeftijd waarop de *volledige* leerplicht ophoudt, ...”

Artikel 39 lid 2: Hierbij geldt hetzelfde bezwaar tegen het gebruik van het begrip “met name” (“notamment”) als ik bij artikel 3 lid 2 heb gemaakt. Het gebruik van het begrip “met name” (“notamment”) duidt erop dat het in lid 1 geformuleerde recht meer rechten omvat dan de drie die in lid 2 zijn opgesomd, die echter niet worden genoemd en dus niet kenbaar zijn, maar wel bestaan. Dat is niet aanvaardbaar voor degenen die zich op deze mogen beroepen noch voor hen die deze rechten moeten eerbiedigen. Er moet dus een keuze worden gemaakt tussen het opsommen van alle rechten of het weglaten van “met name” (“notamment”).

Artikel 41: Het verdient de voorkeur dit recht toe te kennen aan eenieder.

Artikel 45 lid 1: Dit artikel is veel te ruim geformuleerd. Uit de toelichting blijkt dat het artikel slechts “inscription de la jurisprudence de la Cour de Justice de Luxembourg dans la charte” ten doel heeft en niet “de modifier le système de recours prévu par les traités et notamment les règles relatives à la recevabilité.” Dat zou in de tekst van lid 1 duidelijker tot uitdrukking gebracht moeten worden om talrijke competentiegeschillen op basis van dit te ruim geformuleerde artikel te voorkomen.

Artikel 47 lid 2: Vermoedelijk zijn ten onrechte de woorden “algemene beginselen van” weggefallen. Het artikel luidde en zou moeten blijven luiden:

“Dit artikel staat niet in de weg aan berechting en bestraffing van iemand die schuldig is aan een handelen of nalaten dat ten tijde van dat handelen of nalaten een misdrijf was overeenkomstig *de algemene beginselen van* internationaal recht.

Artikel 49 lid 1: De vraag rijst of onder “instellingen en organen van de Unie” ook Europol begrepen dient te worden. De Nederlandse regering is er voorstander van dat Europol wel onder de werkingssfeer valt. Mocht de huidige redactie dat uitsluiten, dan gaat de voorkeur ernaar uit dat een redactie wordt gekozen die Europol onder de werking van dit artikel en dus van het handvest brengt. Bijvoorbeeld:

De bepalingen van dit handvest zijn gericht tot de instellingen en organen van de Unie *in het kader van de bevoegdheden die hun bij verdrag of ter uitvoering daarvan zijn verleend, alsmede tot de instellingen of organen die op grond van maatregelen van de Raad werkzaam zijn op het terrein van de Unie*, met inachtneming van het subsidiariteitsbeginsel, en, ...”

Voorts zou de passage “en, uitsluitend wanneer zij het recht van de Unie ten uitvoer brengen, tot de lidstaten” beter kunnen luiden:

“en, uitsluitend binnen de werkingssfeer van het Unierecht, tot de lidstaten.”

Artikel 50:

1. Ik gaf al aan een voorkeur te hebben voor de plaatsing van lid 3 als lid 1. Ik verzoek het Presidium nogmaals mijn amendement te overwegen dat op soortgelijke wijze als in het huidige lid 3 gebeurt, te verwijzen naar de corresponderende artikelen in het Herziene Europees Sociaal Handvest:

“Voor zover de dit handvest sociale rechten en beginselen bevat die corresponderen met rechten en beginseleen die zijn opgenomen in het Herziene Europees Sociaal Handvest, zijn de inhoud en reikwijdte ervan dezelfde als die welke daaraan ingevolge het Herziene Europees Sociaal Handvest worden gegeven.”

Dit lid zou in mijn optiek dan lid 2 moeten worden, met vernummering van de huidige leden 1 en 2 tot 3 en 4.

2. De parallelliteit tussen handvest en EVRM (en Herziene Europees Sociaal Handvest) en daarmee de rechtszekerheid kan verder worden gediend door in het oorspronkelijke lid 1

(in mijn optiek lid 2 of lid 3) verwijzingen naar EVRM en Herzien Europees Sociaal Handvest op de nemen, bijvoorbeeld als volgt:

“Beperkingen op de uitoefening van de in dit handvest erkende rechten en vrijheden mogen niet verder strekken dan die welke door het Europees Verdrag tot bescherming van de rechten van de mens en de fundamentele vrijheden en het Herziene Europees Sociaal Handvest zijn toegestaan. Overige beperkingen kunnen slechts door de bevoegde wetgevende autoriteit worden gesteld. Met inachtneming van ...enz”

Tenslotte vestig ik nog de aandacht erop dat het aanbeveling verdient de leden van de artikelen 12, 22, 30 en 31 alsnog te nummeren.

Ik stel de aandacht die het Presidium aan deze algemene opmerkingen zal willen geven, op hoge prijs. Volledigheidshalve deel ik mede dat ik een tweede brief aan de heer JAQUÉ richt bestemd voor de vertaaldienst. Die brief heeft betrekking op vastgestelde vertaalfouten en onjuist gebruik van het Nederlands.

Met gevoelens van de meeste hoogachting, onder teken ik
Frits KORTHALS ALTES
Persoonlijk vertegenwoordiger van de
Regering van het Koninkrijk der Nederlanden

LEINEN

An

Das Präsidium des Konventes zur Erarbeitung der EU Grundrechtscharta

(Jean-Paul.Jacque@consilium.eu.int)

Zu Händen

Herrn Inigo Mendez de Vigo,

Vorsitzender der Delegation des Europa-Parlamentes im Chartakonvent

Brüssel, den 20.08.2000

Sehr geehrter Herr Mendez de Vigo

Ergänzend zu der gemeinsamen Stellungnahme zum neuen Gesamtentwurf der Grundrechtscharta vom 28.07.00, die der Kollege Prof. Meyer im Namen der Konventsmitglieder van den Burg, Boumediene-Thiery, Duff, Einem, Fayot, Holoubeck, Ilvari, Kaufmann, Leinen, Martin, Paciotti und Voggenhuber eingereicht hat, und deren Inhalt ich noch einmal der Aufmerksamkeit des Präsidiums empfehle, möchte ich noch einige persönliche Bemerkungen machen. Ebenso verweise ich auf den von mir mitgetragenen Kommentar der PSE Angehörigen in der Delegation des Europaparlamentes im Chartakonvent vom 31.08.2000.

Zur Formulierung allgemein:

Generell sollte in der gesamten Charta noch erheblich konsequenter in der Form „Jede Person hat das Recht...“ bzw. „Niemand darf...“ formuliert werden, denn es gibt nur wenige Artikel bei denen eine solche Formulierung aus juristischen oder formalen Gründen tatsächlich nicht sinnvoll ist. In diesem Sinne wären die Artikel 9, 16, 18, 20, 21, 23, 25, 30, 32, 34, 35, 36 zu überprüfen und gegebenenfalls zu ändern. (siehe unten)

Eine konsequente Anwendung dieser Formulierung würde die Lesbarkeit und auch den Identifikationswert der Charta für die Bürger Europas erheblich erhöhen.

Zu den Artikeln im Einzelnen:**Die Präambel**

Der Präambel kommt in diesem Zusammenhang besondere Bedeutung zu. Um dieser Bedeutung gerecht zu werden, sollte an dieser Stelle besonders auf eine konsequente und kohärente Formulierung geachtet werden.

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Abs. 1) Die Formulierung „*die Völker Europas*“ ist umstritten. Besser wäre daher die Formulierung „*Die Menschen Europas*“. Zusammen mit einer Kürzung des Absatzes schlage ich deshalb folgende Neuformulierung vor:

„Die Menschen Europas haben eine Union begründet, um auf der Grundlage gemeinsamer Werte eine friedliche Zukunft zu teilen.“

Abs. 7) Im Sinne der insgesamt verfolgten Systematik wäre es hier als Überleitung zu den konkreten Artikeln sinnvoll, nicht von einer „*Garantie*“ der Rechte zu sprechen, sondern ganz einfach zu formulieren:

„Daher hat jede Person die nachstehenden Rechte und Freiheiten.“

Art. 7 Achtung des Privat und Familienlebens

Im Sinne einer größeren Klarheit schlage ich die Ergänzung dieses Artikels um die folgenden zwei Begriffe vor:

„Jede Person hat das Recht auf die Achtung ihres Privat- und Familienlebens, die Unverletzlichkeit ihrer Wohnung sowie die Vertraulichkeit ihrer Kommunikation.“

Art. 8 Schutz personenbezogener Daten

Da es zum gegenwärtigen Zeitpunkt nicht klar ist, welche Ebene öffentlicher Kontrolle die Einhaltung dieser Rechte überwachen soll, ist die gewählte Formulierung irreführend, da nicht deutlich wird, ob die erwähnte „*unabhängige Stelle*“ schon existiert oder nicht. Deshalb wäre es besser, die unabhängige Kontrolle klar als Teil des Rechtes selbst zu identifizieren:

„Die Überwachung der Einhaltung dieser Rechte durch unabhängige Organe muss gewährleistet sein“

Art. 10 Gedanken-, Gewissens- und Religionsfreiheit

Diesem Artikel sollte im Sinne des von Prof. Meyer im Namen der o.g. Konventsmitglieder eingereichten Vorschlages ein zweiter Absatz hinzugefügt werden, in dem das *Recht auf Kriegsdienstverweigerung* verankert wird.

Art. 11 Freiheit der Meinungsäußerung und Informationsfreiheit

Der Artikel sollte im Sinne des von Prof Meyer im Namen der o.g Konventsmitglieder eingereichten Vorschlages geändert werden.

Art. 12 Versammlungs- und Vereinigungsfreiheit

Es ist generell zu begrüßen, dass die *europäischen Parteien* in Abs. 2) dieses Artikels Aufnahme gefunden haben. Allerdings ist die gewählte Formulierung missverständlich und könnte leicht als ein nicht-grundrechtsrelevanter Kommentar zur Rolle der Parteien kritisiert werden. Daher rege ich an, statt dessen als zweiten Absatz folgende Formulierung aufzunehmen:

„Jede Person hat das Recht, Zusammenschlüsse auf trans-nationaler oder europäischer Ebene zu gründen oder ihnen beizutreten.“

Art. 16 Unternehmerische Freiheit

Die für diesen Artikel gewählte Formulierung ist wenig aussagekräftig und durchbricht unnötigerweise die „Jede Person hat das Recht...“ Systematik. Besser wäre eine Formulierung wie:

„Jede Person hat das Recht, sich in Freiheit unternehmerisch zu betätigen“

Art. 18 Asylrecht

Dieses Recht muss unbedingt als ein „Jede Person hat das Recht“ Artikel formuliert werden. Außerdem ist zu überlegen, ob die Stellung des Asylrechtes *nach* beruflicher und unternehmerischer Freiheit seiner Bedeutung angemessen ist. Die Formulierung sollte also lauten:

„Jede Person hat das Recht auf Asyl nach Maßgabe des Genfer Abkommens vom 28. Juli 1951...“

Art. 20 Gleichheit vor dem Gesetz

Insbesondere, da Gleichbehandlung und Chancengleichheit in den beiden folgenden Artikeln (21 und 22) noch genauer spezifiziert werden, sollte der Artikel 20 unter allen Umständen lauten:

„Alle Menschen sind vor dem Gesetz gleich“

- damit hier nicht der Eindruck einer Einschränkung auf die Geschlechterproblematik entsteht.

Art. 21 Gleichheit und Nichtdiskriminierung:

Im Sinne der im vorhergehenden Artikel angesprochenen Logik erscheint es sinnvoll, diesen Artikel gegen den folgenden auszutauschen, so dass er zu Artikel 22 wird. Gleichzeitig sollte konsequent der Schutz einer jeden Person vor Diskriminierungen formuliert werden:

„Niemand darf auf Grund von... diskriminiert werden“

Art. 22 Gleichheit von Männern und Frauen

Wie im Kommentar zum vorhergehenden Artikel erwähnt, sollte diese Bestimmung unmittelbar auf Artikel 20 folgen. Bei der Formulierung sollte man sich im Deutschen an die alphabetische Reihenfolge der Geschlechter halten, also:

„Gleichheit von Frauen und Männern“

Art. 23 Schutz der Kinder

Abs. 1) Der zweiten Satz *„Sie können ihre Meinung frei äußern“* ist zu streichen, da er eine Sonderstellung für Kinder beim allgemeinen Recht auf Meinungsfreiheit suggeriert.

Abs. 2) wäre besser zu formulieren als:

„Bei allen Kinder betreffenden Maßnahmen öffentlicher oder privater Einrichtungen muß das übergeordnete Interesse des Kindes die (statt „eine“) vorrangige Erwägung sein.“

Art. 24 Integration von behinderten Menschen

Wie in dem gemeinsamen Kommentar zur deutschen Version bereits angemerkt, wäre auf jeden Fall die Formulierung *„Menschen mit Behinderungen“* zu verwenden.

Außerdem plädiere ich dafür, den Vorschlägen des European Disability Forums zu folgen und diesem Artikel einen Satz hinzuzufügen, der *die Maßnahmen zur Eingliederung in die Gemeinschaft* im Bezug auf diese Charta präzisiert, da ohne eine solche Bestimmung die Rechte der Charta für viele Menschen mit Behinderungen nicht zugänglich sind. Es sollte also ergänzt werden:

„Dies gilt insbesondere für Maßnahmen, die den Zugang zu den in dieser Charta aufgeführten Rechten ermöglichen“

Art. 25 Recht auf Unterrichtung und Anhörung der Arbeitnehmer im Unternehmen

Auch in diesem Artikel sollte im Sinne der internen Systematik der Charta konsequent ein individuelles Recht für Angehörige einer bestimmten Gruppe formuliert und diese Individuen zum Subjekt der Rechtsformulierung gemacht werden:

„Arbeitnehmer und ihre Vertretungen haben ein Recht auf...“

Art. 26: Recht auf Kollektivverhandlungen und Kollektivmaßnahmen:

Dieser Artikel sollte im Sinne des von Prof. Meyer im Namen der o.g. Konventsmitglieder eingereichten Kommentars geändert werden. Das *Streikrecht* ist ein unverzichtbarer Bestandteil des bestehenden internationalen Rechtes und der gemeinsamen Traditionen aller Mitgliedstaaten.

Art. 30 Schutz der Jugendlichen am Arbeitsplatz

Wie in den Anmerkungen zu Artikel 25 vorgeschlagen, sollte auch hier im Sinne der Einheitlichkeit besser formuliert werden:

„Jugendliche, die zur Arbeit zugelassen sind, haben ein Recht auf... und Schutz vor...“

Art. 31 Einklang von Familien und Berufsleben

Der im Titel und im Abs. 2 dieser Artikels verwendete Begriff *„Einklang“* ist sprachlich problematisch, da er eine Harmonie suggeriert, die nicht per Recht garantiert werden kann. Daher erscheint es sinnvoll, diesen Begriff im Deutschen durch den neutraleren der *„Vereinbarkeit“* zu ersetzen. Außerdem sollte auch hier ein Recht für jede Person formuliert und der Artikel insgesamt gestrafft werden. Ich schlage deshalb folgende Neuformulierung vor:

„Jede Person hat das Recht auf die Vereinbarkeit ihres Berufslebens mit ihrem Familienleben. Dieses Recht umfasst insbesondere den Anspruch auf Schutz vor Entlassung bei Mutterschaft sowie den Anspruch auf bezahlten Mutterschaftsurlaub und Elternurlaub nach der Geburt oder Adoption eines Kindes

Art. 32 Soziale Sicherheit und soziale Unterstützung:

Auch dieser Artikel sollte im Sinne der von Prof. Meyer im Namen der o.g. Konventsmitglieder eingereichten Stellungnahme geändert werden. Insbesondere sollte ein klares *Recht auf Wohnen* in den 3. Absatz dieses Artikels aufgenommen werden.

Sprachlich rege ich auch hier an, diesen Artikel als Recht einer jeden Person zu formulieren.

Der Absatz 1) könnte dementsprechend lauten:

„Jede Person hat das Recht auf Zugang zu den Leistungen der sozialen Sicherheit und zu den sozialen Diensten...Die Union anerkennt und achtet dieses Recht“

Art. 35 Umweltschutz

und

Art. 36 Verbraucherschutz

Beide Artikel durchbrechen unnötigerweise die individuelle Rechtssystematik und laufen in den gegenwärtigen Formulierungen Gefahr, als reine Politikziele außerhalb des Kölner Mandates zu fallen. Daher sollte in beiden Fällen konsequent formuliert werden:

„Jede Person hat das Recht auf ...“ mit dem Zusatz, dass *„die Union ...diese Rechte anerkennt und achtet“*.

Art. 37 Aktives und Passives Wahlrecht bei den Wahlen zum Europäischen Parlament.“

und

Art. 38 Aktives und Passives Wahlrecht bei Kommunalwahlen

Beide Artikel sollten im Deutschen *geschlechtsneutral* formuliert werden.

„Jeder Unionsbürger und jede Unionsbürgerin hat das Recht...“

Art. 39 Recht auf eine gute Verwaltung

Dieser Artikel ist von zentraler Bedeutung für die Akzeptanz und den politischen „Mehrwert“ der Grundrechtscharta. Deshalb schlage ich folgende Ergänzungen vor:

Abs. 2 (1. Spiegelstrich) sollte wie folgt geändert werden:

„ – das Recht einer jeden Person, gehört zu werden, bevor eine sie betreffende (ein Wort gestrichen) individuelle Maßnahme getroffen wird“ – diese Formulierung ist kürzer und umfassender als die vom Präsidium vorgeschlagene, denn es ist nicht immer im voraus klar, ob eine geplante Maßnahme für den Einzelnen tatsächlich *nachteilig* ist oder nicht.

Abs. 3 sollte sprachlich gestrafft werden:

„Jede Person hat Anspruch darauf, dass die Gemeinschaft Schäden, die ihre Organe oder Bediensteten in Ausübung ihrer Amtstätigkeiten verursachen, nach den allgemeinen Rechtsgrundsätzen ersetzt, die den Rechtsordnungen der Mitgliedstaaten gemeinsam sind.“

Abs. 4 sollte deutlicher als *Recht* formuliert werden:

„Jede Person hat das Recht, sich in einer der Amtssprachen der Union an die Organe der EU zu wenden, und eine Antwort in der derselben Sprache zu erhalten.“

Art. 40 Recht auf Zugang zu Dokumenten

Es erscheint als eine unberechtigte Einschränkung dieses Rechtes, wenn der Artikel eine *exklusive Liste der drei Hauptorgane* der Union enthält, denn damit wäre eine Anwendung auf *andere von der Union geschaffene oder abhängige Institutionen oder Organe*

ausgeschlossen. Ich rege deshalb an, eine offeneren Formulierung zu suchen und eventuell nötige Einschränkungen im Hinblick auf notwendige Geheimhaltung präziser zu formulieren.

Art. 43 Freizügigkeit und Aufenthaltsfreiheit

Dieser Artikel sollte im Sinne der von Prof. Meyer im Namen der o.g. Konventsmitglieder eingereichten Stellungnahme konsequent als *Recht einer jeden Person auf Freizügigkeit* formuliert werden.

Art. 45 Recht auf einen wirksamen Rechtsbehelf und ein unparteiisches Gericht

Im zweiten Absatz sollte der 2. Satz klarer als *Recht* formuliert werden:

„Jede Person hat das Recht, sich beraten, verteidigen und vertreten zu lassen.“

Der dritte Absatz sollte, der Systematik folgend, als ein Recht einer jeden Person, die einer bestimmten Gruppe angehört (nämlich der Gruppe derjenigen, die „nicht über ausreichende Mittel verfügen“) formuliert werden:

„Jeder Person, die nicht über ausreichende Mittel verfügt, wird...“

Art. 47 Grundsätze der Gesetzmäßigkeit und der Verhältnismäßigkeit im Zusammenhang mit Straftaten und Strafen

Der Titel erscheint zu lang und zu kompliziert. Man könnte statt dessen etwa formulieren:

„Recht auf Gesetz- und Verhältnismäßigkeit in Strafsachen“

Der Absatz 2) ist in der gegenwärtigen Form für Nicht- Juristen mißverständlich:

Hier sollte versucht werden, eine verständlichere Formulierung zu finden, etwa:

„Dieser Artikel schließt nicht aus, dass jemand wegen einer Handlung oder Unterlassung verurteilt oder bestraft wird, die zur Zeit ihrer Begehung nur nach internationalem Recht strafbar war.“

Art. 49 Anwendungsbereich

Das Wort „*ausschließlich*“ im ersten Absatz erscheint als überflüssige Einschränkung. Es sollte daher gestrichen werden. Ebenso erscheint der zweite Satz dieses Absatzes als selbstverständlich und könnte ebenfalls gestrichen werden. Damit würde der Artikel lauten:

(1) Diese Charta gilt für die Organe und Einrichtungen der Union unter Einhaltung des Subsidiaritätsprinzips und für die Mitgliedstaaten bei der Durchführung des Rechtes der Union.

(2) Diese Charta begründet weder neue Zuständigkeiten noch neue Aufgaben für die Gemeinschaft und für die Union, noch ändert sie die in den Verträgen festgelegten Zuständigkeiten und Aufgaben.

Art. 50 Tragweite der garantierten Rechte

Der Artikel zu den Einschränkungen der Rechte in der EU Grundrechtscharta muss klarstellen, dass der Artikel 1, das heisst die *Achtung und der Schutz der Menschenwürde*, unter keinen Umständen eingeschränkt werden darf. Ein entsprechender Vorbehalt sollte in den Absatz 1 des Artikels 50 aufgenommen werden.

Auf die Schwierigkeiten mit dem 2. Absatz des Artikel 50 ist bereits in der Gemeinschaftsstellungnahme der Konventsmitglieder van den Burg, Boumediene-Thiery, Duff, Einem, Fayot, Holoubek, Ilvari, Kaufmann, Leinen, Martin, Meyer, Paciotti und Voggenhuber eingegangen worden. Dieser Absatz erweckt den falschen Eindruck, als seien die Rechte der Charta durch die „Bedingungen und Grenzen“ der EU Verträge eingeschränkt, und er sollte daher unbedingt gestrichen werden. Auch der Verweis auf Einschränkungen, die zulässig sind, wenn sie "...den von der Union verfolgten Zielsetzungen von allgemeinem Interesse... entsprechen", ist zu weit gehend und muss überprüft werden.

Darüberhinaus sollte die Formulierung des 3. Absatzes unbedingt vereinfacht werden. Die in der Formulierung enthaltene doppelte Bedingung („soweit...sofern“) ist kaum verständlich.

Eine alternative Formulierung könnte lauten:

„Jene Rechte, die die EU Grundrechtscharta aus der Europäischen Konvention zum Schutze der Menschenrechte und Grundfreiheiten übernimmt, haben in der Charta die gleiche Bedeutung und Tragweite wie in der o.g. Konvention, es sei denn, die Charta gewährleistet einen höheren oder umfassenderen Schutz.“

LONCLE

D811YMD/CB

Paris, le 6 septembre 2000

**Observations sur la dernière version du Préambule
et de la Charte des droits fondamentaux
de l'Union européenne**

Le document *convent 45* constitue à la date du 28 juillet le dernier état du texte complet de la Charte proposé par le Présidium suite aux travaux de la convention les 17 et 18 juillet. Les membres de la convention peuvent adresser leurs observations sur ce projet au secrétariat de la Charte avant le 1^{er} septembre. La présente note a pour objet de soulever les difficultés que peuvent contenir certaines de ces propositions.

Préambule

Celui-ci aurait été bien accueilli lors des réunions du 17 et 18 juillet.

En affirmant dans son alinéa 3 que l'Union assure par la libre-circulation des personnes un développement équilibré et durable, la Charte anticipe sur la réalité, la libre-circulation des personnes n'étant en l'état reconnue que pour les seuls citoyens de l'Union européenne (art. 18 TCE). La clause de l'article 43, alinéa 2 de la Charte reconnaissant une liberté de circulation aux ressortissants d'Etats tiers résidant légalement sur le territoire d'un Etat membre n'y change rien, puisqu'elle anticipe également sur les compétences dévolues au

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Conseil par les articles 62 et 63-4 du TCE⁽¹⁾. Donc, dans ce domaine, cette disposition du Préambule anticipe sur l'avenir et empiète sur les compétences du Conseil.

Le cinquième alinéa du Préambule réaffirme les droits qui résultent notamment des jurisprudences de la Cour européenne des droits de l'homme et de la Cour de justice des Communautés européennes. Il y a quelque danger à « sacraliser » ainsi dans un texte normatif des jurisprudences par essence évolutives et parfois difficiles à interpréter. Au surplus, ceci constituerait une première dans un texte de droit international. La référence à la C.E.D.H., au traité sur l'Union, aux traités communautaires ainsi qu'au deux chartes sociales est suffisante et inclut de soi la jurisprudence.

Les droits de la Charte

Celle-ci est désormais divisée en sept chapitres. Plusieurs (sept) de ces droits sont nouveaux par rapport à la C.E.D.H. et à ses protocoles additionnels⁽²⁾.

La dignité de la personne : introduite à la demande du Président Herzog, cette disposition placée en tête des droits s'inspire de la Loi fondamentale allemande, qui l'a proclamée pour des raisons historiques évidentes et est reprise dans la jurisprudence constitutionnelle allemande. En France, elle a été invoquée par le Conseil d'Etat pour prohiber le lancer de nains, en 1995, et par le Conseil constitutionnel, à propos de la loi d'orientation relative à la lutte contre les exclusions, en 1998. S'il faut saluer l'introduction de ce principe, il faut savoir qu'il risque d'être abondamment invoqué devant le juge compétent, tant son contenu est flou. Au demeurant, cette notion de dignité recouvre les articles 1 à 5 de la Charte (*chapitre I*).

L'article 2 (« *droit à la vie* ») correspond aux articles pertinents de la C.E.D.H.

Le droit à l'intégrité de la personne (article 3) est repris de la convention d'Oviedo pour la protection des droits de l'homme et la biomédecine du 4 avril 1997.

L'article 4 (*interdiction de la torture et des traitements inhumains ou dégradants*) est calqué sur l'article 3 de la C.E.D.H.. Il y a également une parenté entre l'article 5 sur *l'interdiction de l'esclavage et du travail forcé* et l'article 4 de la C.E.D.H.

⁽¹⁾ Art. 62 : Le Conseil arrête dans les cinq ans suivant l'entrée en vigueur du traité d'Amsterdam... des mesures fixant les conditions dans lesquelles les ressortissants de pays tiers peuvent circuler librement ; art. 63,4 : le Conseil arrête dans les cinq ans suivant l'entrée en vigueur du traité d'Amsterdam des mesures définissant les droits de ressortissants des pays tiers en situation régulière de séjour dans un Etat membre de séjourner dans les autres Etats membres.

⁽²⁾ Dignité de la personne humaine ; intégrité de la personne ; protection des données à caractère personnel ; liberté de la recherche ; droit d'asile ; protection des étrangers en cas d'éloignement et protection des enfants.

Le chapitre II consacré aux libertés reprend largement les stipulations de la C.E.D.H., sous réserve de quelques novations. Celles-ci portent sur :

– *La protection des données personnelles* : les principes définis dans la Charte sont issus de la convention du 28 janvier 1981 sur la protection des personnes à l’égard du traitement automatisé des données à caractère personnel et de la directive européenne du 24 octobre 1995 ;

– *Le droit au mariage et à la fondation de la famille* est assoupli par rapport à la C.E.D.H., dans la mesure où sa définition est renvoyée désormais au droit national ;

– *La référence aux partis politiques au niveau européen* ; le libellé de l’article 12, alinéa 2 qui est choisi (« *les partis politiques au niveau européen contribuent à l’expression de la volonté politique des citoyens de l’Union* ») permettra de satisfaire aussi bien les promoteurs de l’Union européenne que ses détracteurs ;

– *La liberté de la recherche* proclamée à l’article 13 est reprise de la convention d’Oviedo. Sa mention signifie que la recherche ne s’oppose pas à l’innovation scientifique. Il conviendrait toutefois de bien préciser, ce qui n’est pas le cas en l’état de la lecture du document *convent 46*, qui contient les explications attachées à chaque article de la Charte, que cette liberté de la recherche exige le consentement de l’homme, lorsque celui-ci est sujet de celle-ci et est capable de donner son consentement. Il serait donc souhaitable de l’indiquer dans les explications de cet article, en faisant référence, tant à l’article 3 de la Charte (droit à l’intégrité de la personne) qu’aux articles 16, 17 et 18 de la convention d’Oviedo.

Les articles 14 (*droit à l’éducation*) et 15 (*liberté professionnelle*) n’appellent pas d’observation. A l’article 16, il serait sans doute préférable de parler de *liberté d’entreprendre*, plutôt que de *liberté d’entreprise*.

S’agissant du *droit de propriété* (article 17), il n’est prévu une expropriation que moyennant une juste indemnité. Cette disposition n’est pas incompatible avec l’article 1 du protocole additionnel à la C.E.D.H. qui protège le droit de propriété. Toutefois, le mandat de Cologne a demandé aux rédacteurs de la Charte de tenir compte des traditions constitutionnelles communes. Or, l’article XVII de la Déclaration des droits de l’homme et du citoyen de 1789 prévoit que cette indemnisation doit être « *juste et préalable* », ce qui n’est pas le cas ici et risque de poser un problème de contrariété de texte.

S'agissant du *droit d'asile* (article 18), il faut se réjouir que la référence à la convention de Genève de 1951, texte fondateur en la matière, ait eu finalement la préséance sur le TCE.

L'article 19 relatif à la protection en cas d'éloignement, d'expulsion et d'extradition n'apporte pas de nouveauté fondamentale par rapport à la jurisprudence de la Cour européenne des droits de l'homme ;

Axé sur l'égalité, le *chapitre III* appelle sans doute plus d'observations que le précédent. Si la rédaction de l'article 20, en garantissant l'égalité en droit de toutes les personnes, hommes et femmes, suscite l'approbation, il convient de bien mesurer la portée de l'article 21 sur l'égalité et la non-discrimination. Son premier alinéa pose le principe de l'interdiction de toute discrimination. Un double pas est ainsi franchi ; d'une part, par rapport à l'article 14 de la C.E.D.H. qui ne prohibe les discriminations qu'au regard des seules stipulations de la convention ; d'autre part, par rapport à l'article 13 du TCE qui autorise le Conseil à prendre des mesures pour combattre des discriminations. Par conséquent, le champ d'application de l'article 21, alinéa 1, est plus large que ces deux dispositions dans la mesure où il proscriit toute discrimination, *ex abrupto*. Par là même, on ne peut exclure un problème d'articulation entre cet article 21 et ces dispositions de la C.E.D.H. et du TCE, d'autant que l'alinéa 2 de l'article 21 prohibe les discriminations sur le fondement de la nationalité dans le seul domaine d'application du TCE.

Les articles 22 et 23 (*égalité entre hommes et femmes, protection des enfants*) n'appellent pas de remarque, dans la mesure où ils s'inspirent respectivement de l'article 20 de la charte sociale européenne et de la convention de New York (articles 3, 12 et 13).

L'accent mis sur l'intégration des personnes handicapées (article 24) est positif.

Le chapitre social intitulé « *solidarité* » ne manquera pas de décevoir ceux qui voyaient dans la consécration de droits sociaux la réelle valeur ajoutée de la Charte. Cette déception peut s'expliquer par trois raisons : un renvoi fréquent aux législations et pratiques nationales (art. 25, 26, 32, 33 et 34) ; une distinction entre les droits programmatiques (sécurité sociale et aide sociale ; accès aux services d'intérêt économique général) non opposables et les droits subjectifs opposables ; la timidité des droits subjectifs, puisque par exemple la liberté syndicale n'est pas affirmée et que le droit de grève n'est visé qu'implicitement à l'article 26, en étant mis sur le même plan que le *lock-out*.

L'allocation des prestations sociales prévue par l'article 32 est envisagée à minima, en étant réservée aux travailleurs ressortissants d'un Etat membre et résidant dans un

autre Etat membre, ainsi qu'aux membres de leurs familles. Ces droits se situent donc en deçà des principes affirmés par la jurisprudence de la Cour européenne des droits de l'homme, qui dans un arrêt *Gaygusuz c. Autriche* du 16 septembre 1996 a considéré que les droits sociaux ne pouvaient être attribués exclusivement aux ressortissants d'un Etat partie à la C.E.D.H. Mais en faisant jouer les dispositions plus favorables de la C.E.D.H., la clause horizontale de l'article 50 de la Charte palliera le degré de protection inférieure de cet article 32.

Les dispositions des articles 35 et 36 relatives respectivement à la protection de l'environnement et des consommateurs ne constituent pas des avancées considérables au regard des articles 174 et 153 du TCE.

Au *chapitre V (citoyenneté)*, plusieurs articles sont issus du TCE ou de directives. Cela est vrai des articles 37 (*droit de vote et d'éligibilité aux élections au Parlement européen*), 38 (*droit de vote et d'éligibilité aux élections municipales*), 41 (*médiateur*) et 44 (*protection diplomatique et consulaire*). La nouveauté de ce chapitre est triple. Elle réside d'abord dans la garantie d'un droit à une bonne administration de la part des institutions et organes de l'Union avec notamment la mise en jeu de leur responsabilité (article 39) ; elle est marquée ensuite par la consécration d'un droit d'accès aux documents dont la mise en œuvre était renvoyée jusqu'à maintenant au Conseil par l'article 255 du TCE. Enfin, on relève l'élargissement du champ des personnes autorisées à circuler et séjourner librement sur le territoire des Etats membres, déjà évoqué dans le Préambule avec les problèmes que l'on a relevés plus haut.

Au *chapitre VI* qui traite de la *justice*, comme au chapitre II (*libertés*), les dispositions soit sont proches de la C.E.D.H., soit s'en démarquent pour faire œuvre de nouveauté. Parmi les règles du premier type, on peut ranger la présomption d'innocence et les droits de la défense (art. 46), la légalité et la proportionnalité des délits et des peines (art. 47) et le respect du principe *non bis in idem* (art. 48). La Charte va plus loin en revanche que la C.E.D.H. dans le droit à un recours effectif et à un tribunal impartial (art. 45). Le champ des droits et libertés faisant l'objet d'un recours est en effet plus large que dans la C.E.D.H., puisque celle-ci renvoyait aux droits et libertés reconnus par la seule convention (art. 13). En outre, tous les contentieux pourront désormais faire l'objet d'un recours, alors que ce champ ne recouvrait à l'origine dans la C.E.D.H. que les contestations sur les droits et obligations de caractère civil et sur le bien-fondé de toute accusation en matière pénale (art. 6).

Le dernier chapitre (*chapitre VII. Dispositions générales*) ne manque pas de soulever plusieurs interrogations.

S'agissant de l'article 49 (*champ d'application*), on en retiendra deux. Elles portent sur le champ d'application de ce texte et sur sa justiciabilité.

La question du champ d'application de la Charte n'est pas incluse dans le mandat de Cologne. Cependant, la convention a décidé que la Charte s'adresserait « *aux institutions et organes de l'Union dans le respect du principe de subsidiarité ainsi qu'aux Etats membres uniquement lorsqu'ils mettent en œuvre le droit de l'Union* ». Il reviendra au Conseil de Nice de se prononcer sur la pertinence de ce champ d'application. Au-delà, on relève qu'en visant la « *mise en œuvre du droit de l'Union* », cette disposition embrasse les trois piliers de l'Union européenne. Cela mérite d'être noté car si le respect de la Charte ne s'imposait qu'à la mise en œuvre du droit communautaire, la portée de l'exercice aurait été d'un intérêt limité. Toucher en revanche au troisième pilier avec des matières (coopération judiciaire et policière) qui intéressent directement les droits et libertés énoncés par la Charte est beaucoup plus novateur, même si dans ces matières les principes posés par la C.E.D.H. sont d'ores et déjà applicables.

Reste la question de la justiciabilité. Car si le premier alinéa de l'article 49 définit un large champ d'application, le second alinéa précise que la Charte « *ne crée aucune compétence ni aucune tâche nouvelle pour la Communauté et pour l'Union et ne modifie pas les compétences et les tâches définies par les traités* ».

Cette disposition pourrait être perçue comme contradictoire avec le premier alinéa, dans la mesure où, précisément, jusqu'à maintenant, comme on l'a vu, la mise en œuvre des mesures du troisième pilier était soumise à la C.E.D.H. alors que désormais, ce sera la Charte qui leur sera applicable. En s'appliquant au troisième pilier, la Charte crée bien une nouvelle compétence pour l'Union. Mais ce qui est surtout intéressant de noter, c'est que les compétences de la Cour de justice des Communautés européennes devraient rester inchangées. L'article 46 du TUE combiné avec son article 35 limite en effet la compétence de la Cour de justice des Communautés européennes pour le troisième pilier, au contrôle à titre préjudiciel, de la validité et de l'interprétation des décisions-cadres et des décisions ainsi que de l'interprétation des conventions. La Charte pourra servir de norme de contrôle pour apprécier la légalité de ces textes mais les actes des Etats exclus aujourd'hui de ce contrôle continueront à l'être, compte tenu de la rédaction de cet article 49, alinéa 2.

La définition des droits garantis par la Charte, qui figure à l'article 50, a constitué sans doute l'un des exercices les plus difficiles de la convention. La rédaction choisie au premier alinéa n'est pas totalement satisfaisante. La première phrase dispose que « *toute limitation à l'exercice des droits et libertés reconnus par la présente Charte doit être prévue*

par l'autorité législative compétente ». On ne voit toujours pas à quel organe communautaire ou national renvoie cette notion. Comme cela a déjà été dit à plusieurs reprises, l'expression de « loi » serait d'autant meilleure qu'elle est utilisée par la C.E.D.H.. Dans la deuxième phrase du premier alinéa, il serait également préférable de faire référence aux objectifs d'intérêt général et à « des » intérêts légitimes, les objectifs d'intérêt général n'étant pas forcément légitimes et inversement.

Le troisième alinéa de cet article 50 est sans doute l'une des dispositions les plus importantes de la Charte. Elle prévoit que si la Charte contient des droits correspondant à des droits garantis par la C.E.D.H., leur sens et leur portée sont similaires à ceux que leur confère ladite convention, sauf si la Charte assure une protection plus élevée ou plus étendue. Cette règle est destinée à éviter des conflits d'interprétation entre ces deux textes et à conférer le cas échéant une autorité juridique plus importante à la Charte qu'à la C.E.D.H. Elle est apparue absolument indispensable dès le début des travaux de la convention, dans la mesure où la Charte s'est parfois démarquée de la C.E.D.H (droit au mariage, droit au recours effectif, égalité et non-discrimination, par exemple). Cependant, si comme l'indique le document convent 46, le mot « portée » renvoie aux limitations apportées aux droits, il serait préférable – et plus juridique, comme à l'alinéa 2 de l'article 50 –, de substituer aux mots « *leur sens et leur portée* » les mots « *les conditions et les limites de leur exercice* ». Sous ces réserves rédactionnelles, cet article n'appelle pas d'observations, pas plus que les dispositions finales des articles 51 et 52.

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* *

Cette version constitue une très nette amélioration par rapport aux textes précédents, qui mérite d'être relevée.

Il serait souhaitable toutefois, dans le Préambule, de revenir sur le droit à la libre-circulation, pour toutes les personnes, ce qui n'est pas la réalité juridique, et de gommer toute référence à la jurisprudence des Cours de Luxembourg et de Strasbourg ;

Dans le texte de la Charte, il conviendrait :

- d'être très attentif à la définition qui sera donnée des limites de la liberté de la recherche (art. 13) dans la partie explicative de ce document (*cf.* p. 3 de la présente note) ;

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- de modifier le libellé de la liberté d'entreprise pour lui substituer celui de liberté d'entreprendre (art. 16), qui a un contenu plus large ;
- d'ajouter le caractère préalable à l'indemnisation de l'expropriation (art. 17) ;
- de faire mention expresse du droit syndical et du droit de grève (art. 26) ;
- de faire référence à la loi et non à l'autorité législative compétente (art. 50, 1) et de supprimer dans le même article « *d'autres* » avant « *intérêts légitimes* » ;
- de substituer dans le troisième alinéa de cet article à « *leur sens et leur portée* » les mots « *les conditions et les limites de leur exercice* ».

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Göran Magnusson

2000-09-01

To the Praesidium of the Convention
(for the special attention of Mr Jansson)

**Comments on the draft Charter of Fundamental Rights of the European Union
(CONVENT 45)**

General remarks

This is the first time a complete draft of a Charter is at hand and the present draft of the Charter will need further consideration when the comments are available in all official languages. The Swedish version of the draft has a number of imperfections. Furthermore, it is not stated under the general provisions if the Charter is drawn up in the official languages of the Union and if all texts are equally authentic. Thus much work remains, and we need to use the time left before the European Council's meeting in Nice in December as fully as possible. According to the European Council's decision in Cologne, the Convention should "*present a draft document in advance of the European Council in December 2000*".

The Charter is an important contribution to the efforts to present and increase the visibility of the existing European protection for human rights and freedoms in a comprehensive document, with adherent explanations. According to the Cologne decision, the question of integrating the Charter into the Treaties should be decided after the Charter has been adopted. However, at this stage the text needs on my opinion further revisions if the Treaties should be supplemented with a catalogue of rights and freedoms. This is particularly true concerning present limitations of rights in Member States' Constitutions or in Treaties and Conventions, which according to the general provisions also should apply concerning the rights and freedoms that the Charter formulates. To safeguard a just application of law, I consider it necessary that such limitations of rights and freedoms in a legal binding text are formulated in a much more detailed manner.

In the drafts of a Charter and in the comments there is an on-going discussion on the relation between the Charter and the European Convention on the Protection of Human Rights and Fundamental Freedoms (ECHR). There are fundamentally three reasons for this: first, the ECHR has been incorporated into many of the Member States' Constitutions; second, the possibility of the European Union entering the ECHR has been discussed as an alternative to a European Charter; third, the ECHR has in many parts served as a basis and source of inspiration in the drafting of the Charter.

Today, the European Union's relation to the ECHR is that the Union as a general principle should respect the fundamental rights as guaranteed in the Convention of the Council of Europe and as follows from the common constitutional traditions of the Member States (article 6.2. of the Treaty on European Union). The provision is a

codification of the practice of the Court of the European Communities, which can be summarised in that the Court applies the ECHR as interpreted by the practice of the Strasbourg Court, but only to the extent that the cases in question fall inside the boundaries of the Treaties. Thus, the protection of human rights within the EU has been developed by the practice of the Court of the European Communities, of which at least three problems follow. First, the citizens are not ensured a complete protection, since the practice is limited by the cases that are accepted by the Court. This also complicates the general picture of the protection. Second, it cannot be excluded that the Court of the European Communities may come to conclusions different from those of the Strasbourg Court. Should the Court of the European Communities give a weaker protection than what follows from the practice of the Strasbourg Court, the result would be unsatisfactory from a human rights point of view. Third, it is not desirable that the Treaties' protection for the fundamental rights goes beyond the ECHR, since that would result in a confusing and unpredictable situation for the private citizen. Not least for the reasons above should the possibility of the EU adhering to the ECHR be worth considering.

Therefore, I would recommend that necessary preparations for adherence of the Union to the ECHR be made in parallel with working out the Charter. It is true that a number of juridical problems need to be sorted out before such an adherence is possible. However, those problems are not insoluble. Given the development the Union has seen during the last few years, there should be a solid enough basis for an adherence to the ECHR. The Swedish Government has worked for such an adherence. Naturally, that would require Treaty changes and also modifications of the ECHR itself. Such a system would, however, fully ensure a protection for human rights and fundamental freedoms in Europe and also bring about uniformity in the application of the protection.

Even though the present draft of a EU Charter is inspired by, above all, the ECHR, the desire to let the Charter be influenced by different UN Conventions has been expressed within the Convention. The areas that from a Swedish perspective are of most importance are children's and women's rights, and also social rights. Below follows a separate discussion of children's and women's rights in the Charter.

The structure

The Charter is in my opinion structured in a pedagogic way in a preamble and different chapters. From various points of view the grouping of certain rights can be discussed and it could also be questioned if it would not be preferable to move certain articles to the preamble, thus indicating that they more concern principles from which fundamental rights could derive rather than the rights themselves. There is also a lack of balance between the different articles as to how they are formulated; some are very brief whilst some are unnecessary detailed. The latter is especially evident when it comes to the articles, which are based on Community directives. The content in these legal acts are thus raised to a constitutional level which might in the future cause problems because of the fact that Member States have been free to implement them in various ways into their own national legal order.

Some articles refer to national legislation and jurisprudence. In my opinion it is very important that those references are not deleted. They provide important sources of information on the fact that some areas lie within the competence of the Member States

and may be regulated by them in various ways.

The preamble

The wording in *paragraph 1* should be brought in line with the wording of article 1 of the Treaty on European union, which indicates that the *process of creating an ever closer union* is a continuous task. The same goes for *paragraph 2*, which should be brought in line with the preamble of the Treaty on European union in which the Member states confirm “*their attachment to the principles of liberty, democracy and respect for human rights and fundamental freedoms and of the rule of law*”.

The reference in *paragraph 3* to the “*national identities of the Member states*” should because of regional differences - be restricted to the “*identities of the Member states*”. Furthermore, to mention only the four freedoms is in my view not enough. It is important to cover the ongoing development of the single market - this also covers what is mentioned as the fifth freedom - which aims to abolish the remaining restrictions for the employees and their organisations to work freely within the Union. Therefore the last indent should be replaced by the following: “*it ensures through progress of freedoms on the single market a balanced and sustainable development*”.

Paragraph 4 ought to be adapted to the Cologne decision. According to the decision the institutions shall “*solemnly proclaim*” not “*adopt*” the Charter.

Better adaptation to the Cologne decision is also important when it comes to *paragraph 5*. The first part of the first sentence should be replaced by the following: “*This Charter consolidates and makes more evident, with due regard for the powers and tasks of the Union and the Community and the principle of subsidiarity, the fundamental rights applicable at Union level, as they result.....*”. *Paragraph 5* should also contain references to international Conventions appearing in connection with the articles, e.g. relevant UN Conventions.

Since the general articles are placed in the last part of the Charter it is absolutely necessary to insert in the preamble a new wording of *paragraph 7*, which makes the scope of application of the Charter totally clear. I can therefore fully support the proposal of a new *paragraph 7* put forward by Mr. Tarschys.

The rights of the child and of women

Sweden has over the years acted actively in international fora in matters concerning the rights of the child and of women. It is thus natural to comment upon how these rights are mirrored in the draft of the Charter.

The rights of the child

Rights having to do with children are not brought together in one part of the draft but spread out over a number of articles. *Articles 14, 23, 30, and 31* are of special interest in this context, but also a number of other articles (e.g. *7 and 18*) are relevant. Most of these articles have another focus than the child (e.g. the family, the woman, or the migrant), which, compared to the alternative to let the child as such become the bearer

of the rights, may weaken the position of the child.

It has been pointed out that there exists potential conflicts between the formal bearer of the rights on the one hand and the child on the other even in those cases where the child forms a part of the collective bearer of the rights mentioned. An illustration to this is, as is the case both in Council of Europe Conventions and the draft of the Charter (*article 7*), when the bearer of the rights is the “family”. No problem exists in case the family functions properly and protects the child. But, as is well known, the opposite situation is quite common, and the draft does not indicate how the rights of the child should be protected in case a conflict of interests arises between the parents and the child or between the parents vis-à-vis the child.

A similar problem is connected with *article 14*, according to which everyone has the right to receive free compulsory education, and which ensures the parents the right to have their children educated and taught in conformity with their (i.e. the parents’) religious, philosophical and pedagogical convictions. The article is based on the constitutional tradition common to the Member States as well as article 2 of Protocol 2 to ECHR. It should be noted, however, that Sweden has ratified the Protocol with a reservation concerning the rights of the parents.

Article 23 concerning the rights of the child is based on the New York Convention on the Rights of the Child. There is however a considerable risk that this vaguely formulated article may be applied in a way giving the child less protection than what is given by existing Conventions.

Among other things the degree of influence given to the child according to *article 23* is problematic, especially since the scope of this influence is dependent on how the maturity of the child is judged. This means that the rights given become very relative. The core of the problem seems to be that it is difficult to grant such a complex and comprehensive phenomenon as the rights of the child in one short article. One way of solving this problem would be to list the rights in way more similar to what is done in the Convention on the Rights of the Child. It is true that a more detailed article would not totally solve the problem, but being more precise would give a better idea of which are the rights of the child.

In some places in the draft, notably in the *preamble* and in *article 20*, rights are given to “men and women”. This could be interpreted either as “adults of both sexes” or as “everybody, children included”. According to my view the text ought to be adjusted to avoid the possibility of different interpretations.

The rights of women

The draft does not contain any comprehensive listing of rights in the way that is done in the relevant UN Conventions. Indirectly women are given the same rights as men in the articles on civic and political rights, while rights specifically related to women could be found in the articles dealing with social and economic rights.

Gender-related rights are especially mentioned in *article 21* which i.a. prohibits any discrimination based on sex. This right corresponds at large with article 14 in ECHR but also with article 13 in the Treaty on European Union. The present draft includes the principle of equal treatment between the sexes when it comes to vocational activities

&c., but nothing is said about equality within the public sector, e.g. in politics.

The comments above on the rights of the child when being a part of a collective bearer of rights could *mutatis mutandis* be applied to women. Of special interest in this context is *articles 7 and 9*, concerning respect for family life and the right to marry respectively.

Specific articles

Article 1 – This article could be moved to the preamble

Article 2 – The article should be fully brought in line with the ECHR. Another alternative would be to delete the final line of article 50 paragraph 3 (see below). Otherwise there is a risk that the article would be interpreted as a prohibition of abortion. Such an interpretation is not in line with the ECHR.

Article 4 – The word “*cruel*” ought to be inserted before the word “*inhuman*” in order to correspond to existing international human rights instruments.

Article 8 – The reference to an independent authority ought to be deleted in order to harmonise it with other articles in which such references not are made, even though similar authorities do exist.

Article 11 – The article should be fully brought in line with the ECHR. It is important not to leave out the possibility of restrictions concerning licensing of television and radio stations put forward in Article 10 of the ECHR. Mr. Tarschys has also emphasised the importance of not leaving out the possibility of restrictions in ECHR. If the final line of Article 50 paragraph 3 is not deleted (see below) it is absolutely necessary to fully adapt the paragraph to the ECHR. If not there would, as is also pointed out by Mr. Tarschys, be a violation of Community law and Swedish constitutional law.

Article 12 – Paragraph 2 of this article ought to be deleted since the Charter is addressed to the institutions and bodies of the Union and to the Member States when they are implementing Union and Community law and this paragraph is beside the point.

Article 13 – This article is redundant since the freedom of research follows already from *article 11* concerning freedom of expression and information.

Article 17 – The article should be fully brought in line with the ECHR. The second paragraph of Article 1 of the Additional Protocol to the ECHR should be reflected in this article for reasons of clarity.

Article 18 – It should be made clear that there exist a right to *seek* asylum not a right to asylum as such.

Article 20 – This article concerns a principle and could be moved to the preamble. It must however also include children and the words “*women and men*” should therefore be deleted (see above).

Article 23 – A reference to the New York Convention on the Rights of the Child ought to be included in this article (see above). In paragraph 1 the second sentence ought to be

deleted, since this right is already included in article 11 and it could otherwise be misunderstood as if children are not included in that article.

Articles 25 and 26 – It is important that these rights also are applicable to workers organisations. The words “*or their organisations*” should therefore be inserted after “*workers*” in both articles. As for *article 26* the words “*including the right to strike*” ought to be incorporated after the words “*collective action*” in order not to devalue existing legislation.

Article 28 – The last part of the article ought to be reformulated as follows: “*...right to protection where their employment contract is terminated*”. Thereby the protection for workers will be more complete and will also cover situations where there is an unjustified dismissal.

Article 34 – The article is based on article 16 of the EC Treaty and could hardly, even if it is important as such, be regarded as a fundamental right. The article could therefore be deleted.

Article 37 – Paragraph 2 should be reformulated as a right for the citizens to elect members of the European Parliament in direct universal, free and secret ballots.

Article 39 – The second sentence in the second paragraph, about access to files, is already included in article 8, which concerns protection of personal data. Furthermore this right has been restricted here with reference to interests of confidentiality and of business secrecy. This sentence could be deleted.

Article 49 – In addition to the expression “*Union law*”, the expression “*Community law*” should also be included.

Article 50 – I fully support Mr. Tarschys and other members as regards the relation between the Charter and ECHR. It should thus be made clear that the Charter and the ECHR have *the same not a similar* sense and substance.

Furthermore the last sentence in paragraph 3 should be deleted since it is not in accordance with the decision in Cologne that fundamental rights applicable at Union level should be consolidated and made more evident. In particular it should be noted that it is stated in paragraph 5 of the preamble, that this Charter reaffirms the rights as they result from the ECHR, while article 50 paragraph 3 makes it possible to have a greater or more extensive protection. In case the Charter affords greater or more extensive protection this is obvious a problem. Here, I would also like to refer to the explanations given by Mr. Tarschys, whose remarks in connection with this article I fully support.

Article 51 – A reference to the jurisprudence of the courts in Strasbourg and Luxembourg ought to be included (see paragraph 5 in the preamble).

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Roma, 29 agosto 2000

M. Manzella

Ill.mo sig.

On. Gunnar JANSSON

Vice Presidente della Convenzione incaricata

di elaborare la Carta dei diritti fondamentali dell'Unione Europea

Nel complimentarmi con il Presidium per l'elaborazione del Progetto completo della Carta, rassegno qui di seguito le mie osservazioni, segnalando che analoghi rilievi vengono formulati, nelle rispettive sedi, dall'On. Elena Paciotti, rappresentante del Parlamento Europeo, e dal Prof. Stefano Rodotà, delegato del Presidente del Consiglio dei Ministri italiano.

Sul Preambolo:

Si propone la seguente modifica:

Al punto 3, dopo le parole: "attraverso la libera circolazione delle persone, dei beni, dei capitali e dei servizi", inserire le parole: "e promuovendo la coesione sociale".

La formula proposta dal Presidium al punto 3, in base alla quale l'Unione assicura uno sviluppo equilibrato e sostenibile "attraverso" la libera circolazione delle persone, dei beni, dei capitali e dei servizi, non appare, infatti, pienamente adeguata. Storicamente, l'Unione Europea ha cercato di promuovere uno sviluppo equilibrato e sostenibile favorendo la coesione sociale e il rispetto dell'ambiente. E' opportuno non ignorare nel Preambolo questo dato di fatto, componente essenziale del "Modello europeo".

Esprimo, inoltre, la mia perplessità sull'indicazione, al punto 5, tra le fonti da cui derivano i diritti fondamentali riconosciuti nella Carta, della giurisprudenza delle Corti europee, che non può essere collocata allo stesso livello dei Trattati, delle Convenzioni e delle Carte formalmente adottate dagli Stati.

Ulteriori perplessità crea la menzione, in questa sede, della Corte europea dei diritti dell'uomo, che appartiene ad un ordinamento diverso da quello dell'Unione: essa infatti non è indicata, a differenza della Corte di giustizia, nel mandato di Colonia. Rimarrebbe, invece, la esatta collocazione della Corte di Strasburgo nell'articolo 50.

Sulla struttura

E' pienamente condivisibile e apprezzabile, per la sua efficacia e novità, la suddivisione del testo sotto i titoli "dignità", "libertà", "uguaglianza", "solidarietà", "cittadinanza", "giustizia", anche se comporta inevitabilmente qualche forzatura nella collocazione di alcuni articoli, ispirati a principi molteplici.

Sarebbe tuttavia di gran lunga preferibile che l'articolo dedicato al diritto alla salute (attuale articolo 33) venisse collocato nel capo intitolato alla dignità. In questo modo si darebbe immediata e giusta evidenza ad uno fra i più significativi nuovi diritti considerato elemento essenziale per la tutela della dignità delle persone.

La libertà di circolazione (attuale articolo 43) andrebbe invece meglio inserita nel Capo relativo alle libertà.

Sull'articolato

Articolo 1.

Si propone di aggiungere, in fine, le seguenti parole:

"nella sua inviolabilità".

La garanzia e la tutela della dignità umana devono essere riferite ad un bene concettualmente intangibile da parte di pubblici poteri. Ci si preoccupa, infatti, del modo in cui i cittadini europei reagiranno alla lettura della Carta: poiché nei testi in cui è nominata (ad esempio, l'art. 1 del *Grundgesetz*) la dignità è appunto dichiarata "inviolabile" o "intangibile", ogni diversa formulazione può essere percepita come un indebolimento della tutela. E, trattandosi del primo articolo della Carta, questo potrebbe determinare una lettura complessiva della stessa come testo debole.

Articolo 11.

Si propongono le seguenti modifiche:

Al comma 1, dopo le parole: "libertà di ricevere", aggiungere le parole: "di ricercare".

Al comma 2, aggiungere le parole: "anche nei confronti delle concentrazioni dei mezzi di comunicazione di massa".

Si insiste perché, al comma 1, si indichi espressamente la libertà di "cercare" informazioni, non solo di riceverle. Tale diritto, già compreso nell'art. 19 della Dichiarazione dell'Onu del 1948, è oggi primario nella nuova dimensione di Internet (non a caso, i regimi dittatoriali cercano di negarlo).

Al comma 2, appare opportuno che la garanzia del pluralismo dell'informazione vada assicurata anche nei confronti delle gigantesche concentrazioni proprietarie in atto nel mondo.

Articolo 12

Si propone la seguente modifica:

**Al comma 2, dopo le parole: "ad esprimere",
aggiungere le parole: "con metodo democratico".**

E' essenziale infatti che l'Unione Europea, che si fonda sul principio di democrazia, come è anche detto nel Preambolo, riconosca la qualifica di partito politico soltanto alle formazioni che agiscono "con metodo democratico", nel rispetto, cioè, di quel valore.

Articolo 13

Si propone l'aggiunta del seguente comma:

**"Tutti hanno il diritto di beneficiare, a condizioni eque,
dei risultati delle ricerche scientifiche, in particolare nel
campo bio-medico".**

L'attenzione dell'opinione pubblica si è concentrata massimamente e con interesse crescente sui problemi della ricerca, soprattutto nel campo della bio-medicina, e sui problemi della brevettabilità e della commercializzazione esclusiva dei risultati della ricerca. Il comma di cui si propone l'introduzione stabilisce un principio di contemperamento tra il diritto di ognuno di beneficiare dei risultati della ricerca, in specie nel campo bio-medico, ed il giusto riconoscimento economico dei costi della ricerca stessa.

Articolo 15

Si propone di sostituire il primo comma con il seguente:

**"1. Ogni individuo ha il diritto di realizzare le sue
capacità personali con un lavoro liberamente scelto o
accettato".**

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La diversa formulazione del comma fa, infatti, riferimento alla realizzazione personale dell'individuo e non al solo elemento economico del guadagno per vivere, ma anche al lavoro nel suo significato più generale, comprendente ogni tipo di attività, economica, culturale e artistica, svolta in condizione di indipendenza o autonomia.

Articolo 16

Si propone di aggiungere, in fine, le seguenti parole:

"nel rispetto del principio di uno sviluppo economico e sociale equilibrato e sostenibile".

L'affermazione della libera imprenditorialità deve essere qui temperata con il concetto di sviluppo equilibrato e sostenibile, secondo l'indirizzo fondamentale del modello sociale europeo. Si ricorda a tal riguardo che in nessuna delle Costituzioni europee il diritto di impresa è affermato in maniera assoluta e incondizionata. Esso è sempre temperato con principi di sostenibilità sociale ed ecologica e di equilibrio economico.

Un elemento caratteristico di tutto il costituzionalismo del novecento, è stato, infatti, proprio quello di legare il riconoscimento dei diritti di libertà economica a finalità di ordine sociale. Se fosse mantenuta l'attuale formulazione dell'articolo 16 (come quella del successivo articolo 17), la norma in questione sarebbe percepita, pertanto, come un arretramento rispetto a tradizioni costituzionali comuni.

Articolo 17

Si propone di sostituire il terzo periodo del primo comma con il seguente:

"L'esercizio del diritto di proprietà può essere limitato dalla legge nell'interesse generale e per assicurarne la funzione sociale".

L'espressione "limitato dalla legge", in luogo di quella "regolamentato", offre una migliore garanzia del diritto di proprietà, perché esclude limitazioni che provengano da atti non aventi forza di legge.

Inoltre, il riferimento alla "funzione sociale" rafforza il riferimento all'"interesse generale", che sarebbe altrimenti troppo debole, ed è in linea con la tradizione del costituzionalismo del novecento, che tende a legare il riconoscimento dei diritti di libertà economica e di proprietà a fini sociali. Non basterebbe, a tal fine, la clausola orizzontale dell'art. 50, perché essa postula appunto l'ordinaria assolutezza dei diritti garantiti, mentre nel caso qui discusso (ed in quello di cui al precedente articolo 16) si tratta proprio di stabilire che il

riconoscimento di questi particolari diritti è ormai collegato strutturalmente con finalità di interesse generale.

Articolo 21

Si suggerisce l'aggiunta del seguente comma:

"3. L'unione adotta le politiche opportune per eliminare le disparità di fatto e per promuovere le condizioni che rendono effettiva l'uguaglianza".

L'enunciazione meramente formale e negativa del principio di uguaglianza appare, infatti, insufficiente. E', dunque, necessario rafforzarla vincolando l'Unione europea ad adottare politiche attive per rimuovere le condizioni che impediscono di fatto la parità delle opportunità e il riconoscimento di effettiva pari dignità a tutti gli individui.

Articolo 23

Appare opportuno aggiungere - all'inizio dell'articolo ovvero dopo il primo comma - il seguente comma:

"Le bambine e i bambini devono essere protetti contro ogni minaccia alla loro maturazione intellettuale e alla loro integrità psicologica e sessuale".

Il nuovo comma si fa carico delle minacce che incombono sui bambini (anche attraverso tecnologie di informazione) e vincola il potere pubblico ad un obbligo di protezione nei loro confronti. Si tratta di un'esigenza assai sentita dall'opinione pubblica europea.

Articolo 23-bis.

Si insiste sull'opportunità dell'inserimento di un nuovo articolo 23-bis, relativo ai diritti degli anziani, formulato come segue:

**"Articolo 23-bis. Diritti degli anziani.
Ogni individuo anziano ha diritto ad un'esistenza autonoma e dignitosa e a partecipare pienamente alla vita politica, sociale e culturale".**

L'andamento demografico nei paesi dell'Unione europea impone, infatti, di considerare specificamente la sfera dei diritti delle persone anziane. La norma proposta richiama, d'altronde, l'articolo 23 della Carta sociale europea.

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Articolo 26.

Si suggerisce la seguente modifica:

**dopo le parole: "concludere contratti collettivi",
inserire le parole: "anche a livello dell'Unione", e dopo
le parole: "azioni collettive", aggiungere le parole:
"compreso lo sciopero".**

Il riconoscimento nella Carta del diritto di negoziazione collettiva acquista significato, infatti, solo se accompagnato dalla specificazione del possibile ambito europeo della contrattazione. La mancata menzione del diritto di sciopero, riconosciuto dalla Carta sociale europea e da un gran numero di Convenzioni dell'OIL, oltre che dalle tradizioni costituzionali comuni dei Paesi membri, rischia, invece, di essere intesa come una restrizione dei diritti vigenti.

Articolo 29

Si propongono le seguenti modifiche:

**Al primo comma, aggiungere, in fine, le parole: "e ad
una giusta retribuzione proporzionata alla qualità e
quantità del lavoro prestato".
Al secondo comma, aggiungere, in fine, le parole: "e
non può rinunziarvi".**

Tra le condizioni di lavoro "giuste ed eque" deve necessariamente inserirsi il diritto ad una retribuzione giusta e proporzionata alla prestazione. L'irrinunciabilità alle ferie risponde, invece, ad una tipica necessità di protezione della parte più debole del rapporto di lavoro.

Articolo 34

Si propone di sostituire il testo dell'articolo con il seguente:

**"Al fine di promuovere la coesione sociale e territoriale
l'Unione riconosce e rispetta il diritto di ogni individuo
all'accesso a servizi di interesse generale che assicurino
le prestazioni necessarie a garantire la qualità della vita
e le possibilità di lavoro. Le prestazioni di servizi di
interesse generale si basano sui principi di uguaglianza**

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di accesso, di universalità, di continuità, di trasparenza".

E' opportuno che il diritto ad usufruire di servizi di interesse generale sia inquadrato in principi-guida che, salve le differenziazioni nazionali, ne garantiscano l'effettività, anche in funzione della promozione della coesione sociale e territoriale dell'Unione, prevista dall'articolo 16 del Trattato CE (se venisse menzionata la finalità di garantire le possibilità di lavoro potrebbe, inoltre, essere qui assorbito l'articolo 27 relativo ai servizi di collocamento).

Articolo 36

Si propone l'aggiunta del seguente comma:

"I consumatori hanno diritto ad una informazione completa sulla qualità dei beni e dei servizi e ad una pubblicità non ingannevole che risponda ai criteri di trasparenza e veridicità".

La sensibilità popolare europea si è fatta particolarmente acuta riguardo ai criteri di fabbricazione e manipolazione di prodotti alimentari e di beni di consumo personale. E' necessario che una Unione sempre più vicina ai bisogni della gente si faccia carico nelle sue politiche di queste diffuse preoccupazioni.

Articolo 36-bis

All'articolo 37, che apre l'enunciazione dei diritti riservati ai cittadini europei, andrebbe utilmente premesso un articolo del seguente tenore:

**"Articolo 36-bis. Diritto alla cittadinanza.
Ogni individuo ha diritto ad una cittadinanza. Nessuno può essere arbitrariamente privato della sua cittadinanza, né del diritto di mutare cittadinanza".**

Si tratta di un diritto universale, sancito all'articolo 15 della Dichiarazione universale di diritti dell'uomo, e appare importante come premessa di ogni altra specificazione dei diritti di cittadinanza.

Articolo 37

Si propone di premettere il seguente nuovo comma, che assorbirebbe il secondo comma previsto nel progetto del Presidium:

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"1. I cittadini dell'Unione hanno il diritto di partecipare all'esercizio del potere pubblico a livello dell'Unione per il tramite di un'assemblea rappresentativa eletta a suffragio universale diretto, libero e segreto".

Il principio di democrazia su cui, com'è detto nel Preambolo, si basa l'Unione europea, deve trovare nell'affermazione del "diritto al Parlamento", contenuto in questo nuovo comma, la concretizzazione di democrazia partecipativa e parlamentare. La formulazione è tratta dalla giurisprudenza della Corte di giustizia (e, in particolare, dalla sentenza Roquette e Maizena).

Il secondo comma nella formulazione del Presidium, è la specificazione di questo "diritto al Parlamento", che ne costituisce pertanto la premessa da esplicitare necessariamente.

Articolo 47

Si propone di aggiungere, alla fine del terzo comma, le seguenti parole:

"e devono tendere alla rieducazione del condannato".

E' infatti un principio di civiltà giuridica, recepito in varie Costituzioni e ordinamenti europei, che l'espiazione della pena debba accompagnarsi a misure dirette a recuperare e rieducare la personalità del condannato.

Articolo 49

Si propone di riformulare il primo comma come segue:

"1. Le istituzioni e gli organi dell'Unione, come pure gli Stati membri quando attuano il diritto dell'Unione, rispettano i diritti fondamentali e osservano i principi enunciati nella presente Carta e ne promuovono l'applicazione nel rispetto del principio di sussidiarietà".

Molti dei diritti fondamentali enunciati nella Carta trovano, infatti, attuazione principalmente nell'ambito nazionale, costituendo, per il diritto dell'Unione, un quadro di riferimento, di orientamento e di limitazione della regolamentazione comunitaria. Affermare che le disposizioni della Carta si applicano agli Stati membri "esclusivamente" nell'attuazione del diritto dell'Unione può creare incomprensioni, dato che al comma 2 dell'articolo 49 già si ribadisce che la Carta non modifica alcuna competenza istituzionale.

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Articolo 50

Si suggerisce di riformulare il terzo comma come segue:

"3. I diritti e le libertà riconosciuti dalla presente Carta, che siano già disciplinati dalla Convenzione Europea di salvaguardia dei diritti dell'uomo e delle libertà fondamentali, possono subire le medesime restrizioni previste dalla Convenzione: non possono subire restrizioni maggiori di quelle, ma possono godere della protezione maggiore e più estesa prevista dalla presente Carta".

Nel terzo comma del testo proposto dal Presidium, l'uso del termine "simili", riferito al significato ed alla portata dei diritti fondamentali, può essere fonte di confusione. Con il nuovo testo del comma, si intende proporre una formulazione più chiara e semplice di quella del Presidium, che metta in luce due dati essenziali: e cioè che, con riferimento ai diritti della Convenzione, non vi possono essere restrizioni maggiori di quelle previste dalla Convenzione stessa; ma che, al contempo, la Carta può garantire ad essi una protezione maggiore o più estesa.

Nella speranza che le predette osservazioni trovino consenso nel Presidium, all'unico scopo di migliorare l'eccellente lavoro già svolto, esprimo i sensi della mia più alta considerazione.

Andrea Manzella
Rappresentante del Senato della Repubblica Italiana

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All'attenzione del sig. Jansson**On. Piero Melograni - Osservazioni sul progetto di Carta dei diritti fondamentali dell'Unione europea (Convent 45)**

1. In via generale appare opportuna e anzi indispensabile, come lo stesso Presidium ha rilevato, **una attenta revisione stilistica e linguistica del testo.**

A volte si tratta di problemi di traduzione, ma a volte si tratta di questioni più impegnative, con rilevante incidenza sulla portata sostanziale delle norme. Si segnalano di seguito alcune osservazioni di carattere sostanziale (indicate in neretto), nonché, a titolo di esempio, una serie di rilievi di carattere linguistico.

⇒ al **punto 1 del preambolo** non appare logico dire che i popoli europei "hanno deciso di condividere un futuro di pace". Il futuro non può essere deciso da nessun abitante della terra, e sarebbe una bella pretesa ostentare tanta divina sicurezza fin dalle prime righe. Sarebbe anche più emozionante e drammatico far capire che l'impegno alla pace deve essere quotidianamente rinnovato. Una migliore formulazione potrebbe essere "hanno deciso di costruire insieme – o di impegnarsi insieme per costruire – un futuro di pace fondato su valori comuni".

⇒ **in molti articoli** (articoli 2 e 3, 6, 7, 8, 10, 11, 12, 14, 15, 17, 27, 31, 33, 39, 45) **mentre i testi in altre lingue usano quasi sempre il termine "persona" (o "everyone"), il testo italiano reca "individuo".**

Sembra **preferibile anche per l'italiano il termine "persona"**, in particolare per i primi articoli citati, come già indicato in alcuni miei emendamenti. Ciò anche in considerazione del fatto che, se nei Trattati internazionali elaborati in ambito ONU ricorre tendenzialmente il termine "individuo", in quelli elaborati in ambito europeo (CEDU, Carta comunitaria dei diritti sociali fondamentali) prevale il riferimento al termine "persona" (o "chiunque", come nella Dichiarazione dei diritti e delle libertà fondamentali adottata dal Parlamento europeo il 12 aprile del 1989). Anche in dottrina, secondo gli orientamenti più diffusi, si attribuisce al

termine "persona" la funzione di tradurre in una qualificazione rilevante per il diritto la condizione naturale dell'individuo.

- ⇒ sarebbe meglio al posto della formula burocratica "la presente Carta" scrivere "questa Carta" (ad esempio ai punti 4 e 5 del Preambolo, all'articolo 49 punti 1 e 2, all'articolo 50 punti 1,2,3, all'articolo 51 e all'articolo 52).
- ⇒ articolo 11. Il termine "media". Benché si tratti di parola latina, noi italiani preferiremmo forse "mezzi di comunicazione di massa".
- ⇒ articolo 12. Meglio dire "in campo politico, sindacale e civico" (anziché nei "settori").
- ⇒ **All'articolo 13 - o all'articolo 14 - potrebbe valutarsi l'opportunità di prevedere, accanto al diritto alla libera ricerca, anche il diritto al libero insegnamento, il cui contenuto appare distinto da quello del diritto di "creare istituti di insegnamento", riconosciuto all'articolo 14, comma 2.**
- ⇒ **articolo 15. Proporrei di togliere "Per guadagnarsi di che vivere", sia perché la frase è un po' rozza, sia perché il diritto deve ovviamente riguardare anche le persone che fortunatamente già hanno i mezzi per vivere. Lasciare quindi: "Ogni persona ha il diritto di esercitare una professione liberamente scelta." Punto e basta.**
- ⇒ **All'articolo 17 andrebbe forse specificato che la proprietà intellettuale è tutelata a norma della legislazione dell'Unione e delle convenzioni internazionali vigenti in materia.**
- ⇒ **All'articolo 18, in relazione al diritto di asilo, si potrebbe - come indicava il mio emendamento all'articolo 21 del Convent 28 - integrare, o sostituire, il riferimento alla Convenzione di Ginevra con quello alle norme internazionali vigenti in materia. Sembra infatti inopportuno, in questa sede, il riferimento solo alle norme di una specifica convenzione, in quanto ciò potrebbe limitare la**

tutela esclusivamente a quanto da questa prescritto, senza tenere conto di eventuali futuri accordi in materia. Per altro l'articolo 63 del Trattato CE incorpora nel diritto comunitario la Convenzione, per cui il riferimento al Trattato dell'ultima parte dell'articolo 18 potrebbe anche rendere superfluo il richiamo specifico a tale Convenzione.

- ⇒ All'articolo 23, comma 2, nella frase "l'interesse superiore del minore deve essere considerato preminente", dovrebbe essere soppressa la parola "superiore", del tutto ultronea.
- ⇒ L'attuale formulazione del **nuovo articolo 34** ("Accesso ai servizi di interesse economico generale") **lascia alquanto interdetti**. Esso non chiarisce in alcun modo di quali servizi si tratti. Si intendono favorire i consumatori o anche i produttori di elettricità che vogliono accedere per esempio alle reti distributive? È un diritto fondamentale? Ma allora perché ci si limita a dichiarare che l'Unione "rispetta" questo accesso?
- ⇒ All'articolo 35 ("In tutte le politiche dell'Unione sono garantiti la tutela e la salvaguardia di un ambiente di vita di buona qualità ed il miglioramento della qualità dell'ambiente nel rispetto del principio dello sviluppo sostenibile.") la ripetizione della parola ambiente non funziona affatto bene, tanto è vero che in altre lingue il Convent 45 usa termini diversi (in francese: "cadre de vie" e "environnement").
- ⇒ L'articolo 37 ("Diritto di voto e di eleggibilità") era linguisticamente migliore nella versione precedente (vedi articolo 25 del Convent 28). La formula "eleggibilità alle elezioni" non suona affatto bene. Meglio dire: "elettorato attivo e passivo". Lo stesso valga per l'articolo 38.
- ⇒ **L'articolo 46, comma 1**, fa riferimento alla presunzione di innocenza fino alla "prova legale" dell'eventuale colpevolezza. Al riguardo si sottolinea che, in base all'articolo 27, comma 2, della Costituzione italiana "L'imputato non è considerato colpevole **sino alla condanna definitiva**". Dovrebbe, anche in sede di lavori preparatori, essere chiarito che il riferimento alla prova legale della colpevolezza non dovrà comportare una tutela di grado

diverso e minore rispetto a quanto previsto nel nostro ordinamento.

- ⇒ **Un punto importante riguarda l'articolo 48** ("Diritto di non essere giudicato o punito due volte per lo stesso reato"). Credo che, allo stato attuale della costruzione di uno spazio europeo di libertà, sicurezza e giustizia, questo articolo 48 - per le ragioni già da me addotte nell'emendamento relativo all'allora articolo 11 del Convent 28 (con particolare riferimento, per esempio, ai casi di reati per falsificazione di moneta, commercio di droghe, tratta di esseri umani) - potrebbe incontrare **difficoltà di accettazione presso il Parlamento italiano**.
- ⇒ **L'articolo 50** ("Portata dei diritti garantiti") merita anch'esso una revisione linguistica. Meglio scrivere: "Tutte le eventuali limitazioni all'esercizio dei diritti e delle libertà riconosciuti in questa Carta **possono** essere previste **soltanto** dalla competente autorità legislativa". Da notare che nelle versioni tedesca, spagnola e francese non si dice "eventuali", ma "jede", "cualquier", "toute". In italiano, insomma, andrebbe bene **"tutte le eventuali"**.
- ⇒ Sempre **all'articolo 50**, comma 3, **l'aggettivo "simili" non sembra opportuno**. Nella versione tedesca, viene usato molto più correttamente il termine "entsprechende" che in italiano significa "corrispondente". Quindi proporrei che, per non ripetere il termine "corrispondenti" che già si trova all'inizio dell'articolo, potremmo scrivere: "il significato e la portata degli stessi equivalgono a quelli previsti dalla suddetta Convenzione, a meno che questa Carta non garantisca una protezione maggiore o più estesa."

2. L'impressione generale che desta la lettura dell'intero Convent 45 è quella di trovarsi di fronte ad un testo forse un po' troppo ampio. I diritti "veramente fondamentali" possono essere anche meno dei 52 diritti elencati nel Convent 45. Forse la Convenzione non si è abbastanza soffermata sui criteri che distinguono i diritti "veramente fondamentali" da tutti gli altri diritti. Insomma, se i Vertici di Biarritz e di Nizza dovessero esigere una maggiore stringatezza, in linea di massima non mi opporrei. È probabile che tutti avremmo da guadagnare se la Carta risultasse un po' più asciutta ed essenziale.

A l'attention de M. Jansson

M. Piero Melograni. Observations sur le projet de Charte des droits fondamentaux de l'Union européenne (CONVENT 45)

1. En principe **une révision stylistique et linguistique minutieuse**, comme le Présidium même l'a remarqué, paraît opportune, voire indispensable. Il s'agit parfois de problèmes de traduction, mais à d'autres endroits sont en jeu des questions de plus grande envergure, qui influent sur la portée substantielle des normes. On présente ci-après quelques observations de substance (en gras), ainsi qu'une série de remarques linguistiques à titre d'exemple.
 - + Au **point 1 du préambule** il ne semble pas logique de dire que les peuples européens «ont décidé de partager un avenir pacifique». Aucun habitant de la planète ne peut décider de l'avenir, et il serait prétentieux d'exhiber une telle divine assurance dès les premières lignes. Ce serait bien plus émouvant et dramatique si l'on faisait comprendre que l'engagement pour la paix doit être chaque jour renouvelé. Une meilleure formulation pourrait être la suivante: «ont décidé de bâtir ensemble – ou de s'engager ensemble pour bâtir – un avenir pacifique fondé sur des valeurs communes».
 - + **Dans de nombreux articles (2, 3, 6, 7, 8, 10, 11, 12, 14, 15, 17, 27, 31, 33, 39, 45), alors que les autres versions linguistiques utilisent presque toujours le terme «personne» (ou «everyone») la version italienne choisit «individuo».** En italien aussi, le mot «personne» semble préférable, particulièrement dans les premiers articles que je viens de mentionner, et comme je l'ai déjà fait valoir dans certains amendements que j'ai présentés. Ceci en considérant aussi le fait suivant: s'il est vrai que dans les Traités internationaux élaborés dans le contexte des Nations Unies le terme «individu» a tendance à apparaître plus fréquemment, dans les Traités élaborés dans le cadre européen (CEDU, Charte européenne des droits sociaux fondamentaux) la référence à la «personne» (ou alors à «chacun», comme dans la Déclaration des droits et des libertés fondamentales adoptée par le Parlement européen le 12 avril 1989) est celle qui prévaut. Dans la doctrine également, d'après les orientations les plus répandues, on attribue au mot «personne» la fonction d'exprimer la condition naturelle de l'individu à travers une qualification qui relève du droit.
 - + Il vaudrait mieux écrire, au lieu de la formule bureaucratique «la présente Charte», «cette Charte» (par exemple aux points 4 et 5 du Préambule, à l'article 49, points 1 et 2, à l'article 50, points 1,2 et 3, à l'article 51 et à l'article 52).
 - + Article 11; le terme «média»: bien qu'il s'agisse d'un mot latin, nous les Italiens aimerions davantage, peut-être, «moyens de communication de masse».
 - + Article 12. Il est mieux de dire «*in campo*» («dans le domaine») plutôt que «*nei settori*» («dans les secteurs»).
 - + A l'**article 13 – ou 14** – on pourrait réfléchir à l'opportunité de prévoir également, à côté du droit à la liberté de la recherche, **le droit à la liberté de l'enseignement**, dont le contenu apparaît distinct de celui du droit à la «création d'établissements d'enseignement», reconnu à l'article 14, alinéa 2.

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- + **Article 15.** Je propose de biffer «*afin de gagner sa vie* », parce que d'un côté c'est une façon de s'exprimer un peu rude, mais aussi parce qu'il va de soi que ce droit doit concerner aussi les personnes qui ont déjà, heureusement, de quoi vivre. Bornons-nous donc à dire : « Toute personne a le droit d'exercer une profession librement choisie ». Un point c'est tout.
- + A l'article 17 il faudrait peut-être spécifier que la propriété intellectuelle est protégée conformément aux normes de la législation de l'Union et aux conventions internationales en vigueur en la matière.
- + A l'article 18, relativement au droit d'asile, on pourrait – comme l'indiquait mon amendement à l'article 21 du CONVENT 28 – compléter ou remplacer la référence à la Convention de Genève par celle **aux normes internationales en vigueur en la matière**. Il paraît inopportun, dans ce contexte, ne se référer qu'aux normes d'une convention spécifique, car cela pourrait restreindre la protection à ce que ladite convention prescrit, sans tenir compte d'éventuels accords à venir en la matière. Par ailleurs l'article 63 du Traité CE transpose la Convention dans le droit communautaire, c'est pourquoi la référence au Traité à la fin de l'article 18 pourrait même rendre superflu le renvoi spécifique à cette Convention.
- + A l'article 23, al. 2 ; dans la phrase «*d'intérêt supérieur de l'enfant* » le mot 'supérieur' est redondant, et il serait mieux de le supprimer.
- + La rédaction actuelle du **nouvel article 34** «*accès aux services d'intérêt économique général* » me laisse rêveur. Il n'est absolument pas clair de quels services il s'agit. Est-ce que l'on vise à favoriser les consommateurs ou également les producteurs d'électricité qui veulent avoir accès, par exemple, aux réseaux de distribution ? Est-ce qu'il s'agit d'un droit fondamental ? Dans ce cas, pourquoi on se borne à déclarer que l'Union «*respecte* » cet accès ?
- + A l'article 35 («*protection de l'environnement*»), dans la traduction italienne le mot '*ambiente*' est répété deux fois, ce qui n'est pas bien, tant il est vrai que dans d'autres langues CONVENT 45 a recours à deux mots différents (en français : «*cadre de vie* » et «*environnement* »).
- + L'article 37 («*Droit de vote et d'éligibilité*») avait été mieux rédigé, du point de vue linguistique, dans la version précédente (voir l'article 25 du CONVENT 28). La formule «*éligibilité aux élections* » ne sonne pas bien. Il serait mieux de dire : «*électorat actif et passif* ». La même chose vaut pour l'article 38.
- + **L'article 46, al.1** concerne la présomption d'innocence jusqu'à ce que la culpabilité soit «*légalement établie* ». A cet égard il faut dire qu'aux termes de l'art. 27, al. 2 de la Constitution italienne «*de prévenu n'est pas considéré coupable jusqu'à ce que sa condamnation définitive n'ait été prononcée* ». Il devrait être clair, et cela aussi bien dans les travaux préparatoires, que la référence à l'établissement légal de la culpabilité ne pourra entraîner une protection différente et inférieure à ce qu'il est prévu dans notre législation.
- + **L'article 48** («*Droit à ne pas être jugé ou puni pénalement deux fois pour un même délit* ») concerne une question très importante. A l'état actuel de la construction d'un espace européen de liberté, sécurité et justice cet article 48 pourrait rencontrer, à mon avis, des difficultés à être accepté par le Parlement italien, pour les motifs que j'ai déjà expliqués dans mon amendement à l'ancien article 11 du CONVENT 28 (notamment en ce qui concerne, par exemple, les délits de contrefaçon de monnaie, trafic de stupéfiants, traite des personnes).

+ **L'article 50** («Portée des droits garantis») exigerait aussi une révision linguistique. Il serait mieux d'écrire, dans la version italienne : « *Tutte le eventuali limitazioni all'esercizio dei diritti e delle libertà etc.* » afin de mieux correspondre aux versions allemande, espagnole et française, qui portent 'jede', 'cualquier' et 'toute'. Dans la même phrase, au lieu des mots « *devono essere previste* » il vaudrait mieux écrire « *possono essere previste soltanto* » (en français : « ne peut être prévue que »)

+ Dans le même article 50, à l'al. 3, l'adjectif « **simili** » («similaires» en français) **ne semble pas opportun**. Pour ne pas répéter le mot « *corrispondenti* » («correspondants» en français, mais «*entsprechende*» en allemand) qui se trouve déjà dans la même phrase, je propose la rédaction suivante : « *il significato e la portata degli stessi equivalgono a quelli previsti dalla suddetta Convenzione, a meno che questa Carta etc.* » (en français ce serait: « leur sens et leur portée équivalent à ceux que leur confère la dite Convention, à moins que la présente Charte etc. »).

2. L'impression générale que l'on tire de la lecture de CONVENT 45 dans son entièreté est celle de se trouver devant un texte qui est peut être trop vaste.

Le nombre des droits «vraiment fondamentaux» peut aussi être inférieur aux 52 recensés dans CONVENT 45. Il se peut que la Convention ne se soit pas penchée suffisamment sur les critères distinguant les droits «vraiment fondamentaux» de tous les autres droits. Si les sommets de Biarritz et de Nice demandent plus de concision, en ligne générale je ne m'y opposerai pas. Il est probable que nous tous aurons quelque chose à gagner si la Charte résulte un peu plus succincte et essentielle.

For the attention of Mr Jansson

Hon. Piero Melograni - Comments of the draft Charter of Fundamental Rights of the European Union (CONVENT 45)

1. On a general plane, it appears advisable, indeed essential, to undertake a **careful stylistic and linguistic revision** of the text, as the Praesidium itself has noted.

In certain cases the problems are related to difficulties of translation, but in other instances they are more far-reaching, with a significant impact on the substantive scope of the measures. A number of substantial comments (shown in bold) are given below, together with examples of some of the linguistic issues mentioned above.

⇒ In **point 1 of the Preamble**, it does not seem logical to say that the peoples of Europe “hanno deciso di condividere un futuro di pace” (in English: “are resolved to share a peaceful future”). The future cannot be decided by anyone, and it would seem excessively bold to assert such divine certainty from the very first lines of the text. It would be more emotionally and dramatically effective to convey the fact that the commitment to peace must be renewed every day.

It might be better to say something along the lines of “hanno deciso di costruire insieme - o di impegnarsi insieme per costruire - un futuro di pace fondato su valori comuni” (in English: “... have decided to build together - or commit themselves to building together - a peaceful future based on common values”).

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⇒ **in many articles** (articles 2, 3, 6, 7, 8, 10, 11, 12, 14, 15, 17, 27, 31, 33, 39, 45), **the text in other languages nearly always contains the term “person” or “everyone”, while the Italian version uses “individuo” [individual]. It would be preferable to use “persona” [person] in the Italian text as well**, especially in the first articles cited, as previously indicated in some of my amendments. The case for this choice is even more compelling if we consider the fact that while international treaties drafted under the aegis of the UN tend to use “individual”, those drafted at the European level (European Convention on Human Rights, Community Charter of Fundamental Social Rights) opt for “person” (or “anyone”, as in the Declaration of Fundamental Rights and Freedoms by the European Parliament on 12 April 1989). The most widely accepted scholarly opinions also use the term “person” to represent the natural condition of the individual in law.

⇒ It would be better to use the expression “questa Carta” [this Charter] in place of the more bureaucratic formulation “la presente Carta” [the present Charter] in the Italian version of the text (see, for example, points 4 and 5 of the Preamble, paragraphs 1 and 2 of Article 49, paragraphs 1, 2 and 3 of Article 50, Article 51 and Article 52).

⇒ Article 11. Although “media” it is a Latin term, we Italians might prefer “mezzi di comunicazione di massa” [means of mass communication].

⇒ Article 12. It would be preferable to use “in campo politico, sindacale e civico” rather than “settori” (in English, “field” rather than “sectors”).

⇒ **In Article 13 (or Article 14)**, it might be worth considering including a “**freedom to teach**” alongside the freedom of research. It seems to

represent a different content from the “freedom to found educational establishments”, which is recognised in paragraph 2 of Article 14.

⇒ **In Article 15, I would suggest eliminating “to earn a living”,** both because the phrase is a bit too colloquial in tone and **because such a right must obviously include people who are already fortunate enough to have sufficient means.** I would therefore trim the text to “Everyone has the right to engage in a freely chosen occupation” and leave it at that.

⇒ **Article 17** should perhaps specify that intellectual property shall be **protected in accordance with European Union legislation and international agreements in force in this field.**

⇒ **Article 18,** in relation to the right of asylum, as indicated in my amendment to Article 21 of CONVENT 28, the reference to the Geneva Convention could be supplemented or replaced with a more general reference to **international regulations in this field.** Reference to a specific convention in this instance does not seem appropriate, as this could limit protection to the areas covered by this convention, without taking account of any future agreements in this area. Moreover, Article 63 of the EC Treaty incorporates the Convention into Community law, meaning that the reference to the Treaty at the end of Article 18 could well make any specific reference to the Convention superfluous.

⇒ **Article 23, paragraph 2,** the word “best” in the phrase “the child’s best interest must be a primary consideration” should be eliminated, as it is unnecessary.

- ⇒ The current phrasing of the **new Article 34** (“Access to services of general economic interest”) is **somewhat perplexing**. It does not clarify in any way just which services are intended. Is the intention to protect consumers or does its scope also include, say, electricity producers that wish to gain access to distribution networks? Is it a fundamental right? If so, why are we declaring only that the Union “respects” such access?
- ⇒ In Article 35 (“All Union policies shall ensure the protection and preservation of a good quality living environment and the improvement of the quality of the environment, taking into account the principle of sustainable development”) the repetition of the word “ambiente” [“environment” in English] doesn’t work very well. In fact, in other languages different terms have been used (e.g. in French: “cadre de vie” and “environnement”).
- ⇒ Article 37 (“Right to vote and to stand as a candidate”) was phrased better (in Italian) in the previous version (see Article 25 of CONVENT 28). The expression “eleggibilità alle elezioni” has a poor sound to it. A better solution would be “elettorato attivo e passivo”. The same comment holds for Article 38.
- ⇒ Article 46, paragraph 1, refers to the presumption of innocence until “proved guilty” according to law. Under Article 27, paragraph 1, of the Italian Constitution, “The accused is not considered guilty **until final judgement** has been issued”. It should be clarified, also during the preparatory stages, that “proved guilty” should not involve a lesser degree of protection than that afforded in the Italian system.

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- ⇒ **An important point concerns Article 48** (“Right not to be tried or punished twice for the same criminal offence”). I believe that at the current stage in the construction of a European space of freedom, security and justice, it could be **difficult to obtain the Italian Parliament’s approval** for this article - for the reasons I cited in the amendment to Article 11 of CONVENT 28 (with special regard to crimes such as, for example, counterfeiting, drug trafficking, trafficking in human beings).
- ⇒ **Article 50** (“Scope of guaranteed rights”) could also benefit from linguistic revision of the Italian version. It would be better to write **“Tutte le eventuali limitazioni all’esercizio dei diritti e delle libertà riconosciuti in questa Carta possono essere previste soltanto dalla competente autorità legislativa”**. The German, Spanish and French versions do not use “eventuali”, but rather “jede”, “cualquier” and “toute”. The Italian could use **“tutte le eventuali”**.
- ⇒ **The adjective “similar” (“simili” in Italian) in Article 50, paragraph 3, does not seem appropriate**. The German version uses “entsprechende”, which means “corrispondente” in Italian (“corresponding” in English). In order avoid repeating the term “corresponding”, which appears at the start of the paragraph, we could use “the meaning and scope of those rights shall be equivalent to those conferred on them by the said convention unless this Charter affords greater or more extensive protection” (In Italian, “il significato e la portata degli stessi equivalgono a quelli previsti dalla suddetta Convenzione, a meno che questa Carta ...”).

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2. The general impression one gets from reading the whole of CONVENT 45 is that it is perhaps overly broad. The number of “truly fundamental” rights could well be less than the 52 listed in CONVENT 45. Perhaps the Convention has not given enough attention to the criteria that distinguish “truly fundamental” rights from other rights. I would not object if the summits of Biarritz and Nice should call for greater brevity. It is likely that we will all gain if the Charter that emerges from our work is a more succinct, essential document.

MENDEZ DE VIGO

PREÁMBULO PÁRRAFO SEGUNDO

La Unión está fundada sobre los principios indivisibles y universales de dignidad de hombres y mujeres, **derivada de su destino trascendente**; libertad, igualdad y solidaridad; reposa en el principio de democracia y el Estado de Derecho.

ARTICLE 11

La liberté d'information et la liberté des médias est garantie dans le respect du pluralisme et de la transparence.

ARTÍCULO 12 LIBERTAD DE REUNIÓN Y DE ASOCIACIÓN

1.- Toda persona tiene derecho a la libertad de reunión pacífica y a la libertad de asociación, especialmente en los ámbitos político, sindical, cívico y **religioso**.

ARTICLE 21.1 INTRODUCTION

The Union shall respect the cultural, religious, ethnic and linguistic diversity in Europe.
Est interdite...(reste inchangé)

ARTICLE 22.1 INTRODUCTION Á L'ARTICLE 22

L'Union cherche à éliminer les inégalités et à promouvoir l'égalité entre les hommes et les femmes. Debe garantizarse... (reste inchangé)

ARTÍCULO 32 INCORPORAR AL PRINCIPIO DEL PUNTO 3

3.- **Con objeto de combatir la exclusión y la pobreza**, la Unión reconoce y respeta el derecho a una ayuda social a la vivienda para garantizar una existencia digna a toda persona que no disponga de recursos suficientes, según las modalidades establecidas por el Derecho comunitario y las legislaciones y prácticas nacionales.

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ARTICLE 49 (NOUVELLE RÉDACTION)

La présente Charte respecte les compétences de la Communauté et les taches de l'Union telles que définies par les Traités.

ARTICLE 50 (CHANGEMENT DU TITRE)

Exercice des droits garanties. Corresponde à l'actuel 50.1

ARTICLE 50 BIS (NOUVEAU TITRE)

Fondement et portée des droits

1.- Les droits reconnus par la présent Charte **qui** trouvent leur fondement dans les Traités communautaires où dans le Traité sur l'Union européenne s'exercent dans les conditions et limites définies par ceux-ci.

2.- Dans le mesure où la présente Charte contient des droits correspondants à des droits garantis par la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales, leur sens et leur portée sont similaires à ceux que leur confère ladite Convention.



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31. August 2000

MEYER ET 11 ANDERE

An den Vorsitzenden des Konvents
 zur Erarbeitung der Europäischen Charta der Grundrechte
 Prof. Dr. Roman Herzog

An die stellvertretenden Vorsitzenden
 Prof. Dr. Guy Braibant
 Gunnar Jansson
 Mendez de Vigo

Sehr geehrte Herren,

gemäß dem vom Präsidium in Convent 45 (Charte 4422/00) vorgeschlagenen Verfahren, reichen die Unterzeichner folgende allgemeine Bemerkungen zum Gesamtentwurf der Charta ein:

I. Grundsätzliches

- a) Die Unterzeichner begrüßen den Chartaentwurf ausdrücklich und danken dem Präsidium für die vorgelegte Arbeit. Viele Anregungen aus schriftlichen Änderungsanträgen und mündlichen Beiträgen einzelner Delegierter sind eingearbeitet worden, so dass der Entwurf eine gute Grundlage für eine zustimmungsfähige Charta ist.
- b) Aus systematischen Gründen sollte aber davon abgesehen werden, in einzelnen Artikeln einen Verweis auf „einzelstaatliche Rechtsvorschriften“ und „nach Maßgabe des

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Gemeinschaftsrechts“ aufzunehmen. Insofern sprechen sich die Unterzeichner dafür aus, diese Verweise aus den Artikeln 9, 18, 25, 26, 32, 33 und 34 zu streichen.

Es sei darauf hingewiesen, dass durch die horizontale Bestimmung in Art. 49 Abs. 1 und 2 ein solcher Verweis überflüssig ist. Aus systematischen Gründen hat sich der Konvent darauf geeinigt, horizontale Fragen separat zu formulieren, nicht zuletzt, um die Lesbarkeit der Charta und damit die Identifikationsmöglichkeit des Bürgers mit der EU zu fördern.

Durch die in Convent 45 vorgelegte Systematik wird dagegen beim Bürger der Eindruck erweckt, dass hier spezifische Artikel gegenüber anderen abgeschwächt werden sollen. Dies entspricht weder der Intention des Konvents noch dem Kölner Auftrag.

Darüber hinaus kann der Eindruck entstehen, dass Grundrechte, die nach allgemeinem Verständnis höchstrangiges Recht darstellen, unter den Vorbehalt einzelstaatlicher Regelungen oder zukünftiger Vertragsrevisionen gestellt werden. Dieser Eindruck wäre fatal und widerspräche dem Geist des Art. 6 Abs. 1 EUV, in dem deutlich zum Ausdruck gebracht wird, dass die Union der Achtung der Menschenrechte und Grundfreiheiten höchste Priorität beimisst. Aus diesem Grund appellieren die Unterzeichner dringend, den Art. 50 Abs. 2 ersatzlos zu streichen.

- c) Die Unterzeichner begrüßen es, dass in Punkt 5 der Präambel die Hauptquellen, die zur Erarbeitung der Charta herangezogen wurden, genannt werden. Dies sind gemäß dem Kölner Mandat die Europäische Menschenrechtskonvention, die gemeinsamen Verfassungstraditionen der Mitgliedstaaten, die Europäische Sozialcharta und die Gemeinschaftscharta der sozialen Grundrechte der Arbeitnehmer.

Die Kohärenz des Entwurfs wird aber dann gefährdet, wenn diese Quellen nicht auch in Art. 51 genannt werden. Die Präambel und der Art. 51 bilden die Klammer der Charta. Insofern plädieren die Unterzeichner dafür, auch in Artikel 51 die von der Gemeinschaft und dem Europarat beschlossenen Sozialchartas als Mindestschutzniveau aufzunehmen.

- d) Der Art. 15 „Berufsfreiheit“ sollte aus systematischen Gründen in das Kapitel IV „Solidarität“ aufgenommen werden und dabei die frühere, vom Präsidium vorgeschlagene Überschrift („Berufsfreiheit und Recht auf Arbeit“) und Allgemeinnorm („Jede Person hat das Recht zu arbeiten“) enthalten (vgl. Convent 41, alter Art. 31).

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Es ist kaum ersichtlich, warum der alte Präsidiumsvorschlag (Convent 41), der auf dem Braibant-Meyer-Vorschlag basierte, in der aktuellen Fassung in Stellung und Wortlaut verändert worden ist, obschon sich die überwiegende Mehrheit der Delegierten in der mündlichen Aussprache für den Kompromissvorschlag ausgesprochen hatte (u.a. Nikula, Voggenhuber, Friedrich, Einem, Paciotti, Leinen, Hirsch Ballin, Olsen, Barros Moura, van den Burg, Kaufmann). Auch hat - neben den bereits genannten - eine große Anzahl Delegierter in ihren schriftlichen Änderungsanträgen für eine Norm „Recht zu arbeiten“ plädiert (Convent 39: Änderungsanträge Nr. 35 Sole Tura, Nr. 39 Dieulangard, Nr. 46 Fayot, Nr. 47 Braibant, Nr. 51 Rodota/Paciotti/Manzella, Nr. 53 Beres u.a.)

- e) Generell sollte nochmals sorgfältig geprüft werden, ob die Charta in allen EU-Sprachen die jeweils adäquaten Begrifflichkeiten enthält. So wird z.B. in der deutschen Übersetzung in Art. 24 von „behinderten Menschen“ gesprochen, während anerkanntermaßen der korrekte Begriff „Menschen mit Behinderung“ ist. Auch ist fraglich, ob die in Punkt 2 der Präambel gewählte Formulierung „Würde der Männer und Frauen“ glücklich gewählt ist, da durch diese Begrifflichkeit z.B. Kinder nicht berücksichtigt werden.
- Die Unterzeichner gehen davon aus, dass vor der Übergabe an die Staats- und Regierungschefs die Charta in allen EU-Sprachen dem Konvent vorliegt.

II. Spezielles

a) Art. 10 Gedanken-, Gewissens- und Religionsfreiheit

Dem Artikel ist ein Abs. 2 hinzuzufügen, in dem das *Recht auf Kriegsdienstverweigerung* aufgenommen wird. Die Aufnahme eines solchen zweiten Absatzes entspricht einer Reihe von Änderungsanträgen (Convent 35: Änderungsanträge Nr. 256 Voggenhuber/Buitenweg, Nr. 257 Meyer/Leinen/Martin, Nr. 261 Gnauck und Nr. 262 Kaufmann, u.a.) und der Mehrheitsmeinung während der Konventsdiskussion.

b) Art. 11 Abs. 2 Freiheit der Meinungsäußerung und Informationsfreiheit

Während grundsätzlich die Zielrichtung des Art. 11 Abs. 2 begrüßt wird, und insbesondere durch den Begriff der „Medien“ weitere begriffliche Klarheit im Vergleich zu der vorherigen Version erreicht werden konnte (wobei die Begriffe „Presse- und

Rundfunkfreiheit bzw. „an die Allgemeinheit gerichtete Kommunikation“ präziser wäre), fehlen drei Aspekte in der vom Präsidium vorgeschlagenen Formulierung:

- i. Die Organe der Europäischen Union sollen zur *Auskunftspflicht gegenüber den Medien* verpflichtet werden. Dies ist im Hinblick auf die Herausbildung einer europäischen Öffentlichkeit ebenso von Belang, wie es ein Gebot der Transparenz innerhalb eines demokratischen Gemeinwesens ist. Zwar enthält der Präsidiumsentswurf mit Art. 40 ein allgemeines Recht auf Zugang zu Dokumenten; trotzdem sollte den Medien, mit ihrer speziellen Aufgabe als „Transmissionsriemen“ bzw. Bindeglied zwischen öffentlicher Gewalt und Bevölkerung, diesbezüglich ein explizites Recht gewährt werden.
- ii. Der Begriff der „*Transparenz*“ in Abs. 2 ist von einer Reihe von Medienanstalten scharf kritisiert worden. Hintergrund dabei ist die Befürchtung, dass freiheitsbeschränkende Maßnahmen durch die öffentliche Verwaltung unter Anwendung des Transparenzgebotes gerechtfertigt werden könnten.
Sollte mit der Regelung intendiert sein, die Medien zu demokratischer Berichterstattung zu verpflichten, wird dieses Ziel bereits über den horizontalen Art. 52 und über praktische Konkordanz erreicht. Wenn hingegen durch den Begriff erreicht werden soll, eine *finanzielle* Transparenz der Medien zu ermöglichen (Convent 35, Änderungsantrag Nr. 284 Braibant), bedarf dies keiner ausdrücklichen Absicherung in einer Grundrechtscharta. Aus diesem Grund wird empfohlen, den Begriff aus dem Artikel zu streichen, dies auch vor dem Hintergrund, dass die Aufnahme des Begriffs nur in einem Änderungsantrag gefordert worden ist.
- iii. Während der Diskussion innerhalb des Konvent wurde von einer Reihe von Delegierten die Unschärfe des Begriffs „*Pluralismus*“ kritisiert (Goldsmith, Hirsch Ballin, Rodota, Partijn). Diesen Begriff kann man schärfer fassen: Insofern sollte - auch unter Bezugnahme auf das Protokoll Nr. 23 zum Amsterdamer Vertrag - eine Bestandsgarantie für den öffentlich-rechtlichen Rundfunk in die Charta aufgenommen werden, da hiermit ein Nebeneinander von privaten und öffentlich-rechtlichen Medien gewährleistet und damit eine pluralistischen Berichterstattung sichergestellt werden kann.

c) Art. 13 Freiheit der Forschung

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Der Artikel ist um die *Freiheit der Wissenschaft, Lehre und Kunst* zu ergänzen. Dies entspricht einem älteren Präsidiumsvorschlag (Convent 13 Art. 15 Abs. 2, mit Ausnahme von „Lehre“), der in dieser Hinsicht vom Konvent nicht kritisiert worden war. Vielmehr hatte eine Reihe von Delegierten in der mündlichen Debatte die Wichtigkeit dieses Absatzes betont (Meyer, Friedrich, Rack, Leinen, Einem, Rodota, Braibant, Mombaur, Papadimitriou) und dies auch in einer großen Anzahl von Änderungsanträgen begründet. Weiterhin entsprechen die genannten Freiheiten sowohl den gemeinsamen Verfassungsüberlieferung der Mitgliedstaaten als auch internationalen Konventionen. Aus diesem Grund wird die Ergänzung des Artikels dringend empfohlen.

d) Art. 26 Recht auf Kollektivverhandlungen und Kollektivmaßnahmen

Die Unterzeichner sprechen sich dafür aus, dass in den Artikel die Worte „[kollektive Maßnahmen] *einschließlich des Streikrechts*“ eingefügt werden. Die Formulierung ist unmittelbar aus der Europäischen Sozialcharta entnommen (Art. 6 Abs. 4), die gemäß dem Kölner Mandat eine Grundlage der Konventsarbeit ist.

Diejenigen Delegierten, die das Streikrecht mit dem Hinweis aus der Charta herauslassen wollen, dass dann auch die „Aussperrung“ Eingang finden müsse, irren in diesem Punkt über bestehende gemeinsame Verfassungstraditionen und über von allen Mitgliedstaaten anerkanntes internationales Recht (Europäische Sozialcharta, Art. 8 Abs. 1 d Internationaler Pakt über wirtschaftliche, soziale und kulturelle Rechte, vielfache ILO-Konventionen).

Eine Nichterwähnung des Streikrechts würde dem Versuch gleichkommen, bestehendes Recht zurückzudrängen. Aus diesem Grund hat sich die Mehrheit der Delegierten in ihren Änderungsanträgen für dessen explizite Aufnahme in den Artikel ausgesprochen (Convent 39: Änderungsanträge Nr. 93 Voggenhuber, Nr. 94 Dehousse, Nr. 95 Rodota/Paciotti/Manzella, Nr. 97 Braibant, Nr. 99 Dieulangard, Nr. 102 Fayot, Nr. 103 Beres, Nr. 104 van den Burg).

e) Art. 32 Soziale Sicherheit und soziale Unterstützung

- i. Die Unterzeichner begrüßen den in Abs. 1 formulierten Artikel und regen dabei an, die Auflistung der sozialen Sicherheit und sozialen Dienste durch den Begriff „*insbesondere*“ einzuleiten, damit die Offenheit der Aufzählung hervorgehoben

wird. Da Grundrechte ihrem Wesen nach von möglichst langem Bestand sein sollen, sind abschließende Beispielformulierungen zu vermeiden, da kaum abzusehen ist, wie in diesem Bereichen die zukünftigen Entwicklungen aussehen werden.

- ii. In Abs. 3 hat das Präsidium leider erneut nur an einem einzigen Aspekt des „Rechts auf Wohnen“ – der Wohnungsbeihilfe – festgehalten, obschon mit dem Braibant-Meyer-Vorschlag ein von der Mehrheitsmeinung des Konvents getragener Kompromiss vorliegt, der eine ausschließliche Respektierungspflicht der Union enthält.

Es sei in diesem Zusammenhang erneut daran erinnert, dass das „*Recht auf Wohnen*“ völkerrechtlich von allen Mitgliedstaaten anerkannt (u.a. Art. 25 Abs. 1 Allgemeine Erklärung der Menschenrechte, Art. 11 Internationaler UN-Pakt über wirtschaftliche, soziale und kulturelle Rechte, Art. 27 Abs. 3 UN-Kinderrechtskonvention, Art. 31 revidierte Europäische Sozialcharta) und in vielen Verfassungen der Mitgliedstaaten enthalten ist (Art. 23 Belgien, § 15 a Finnland, Art. 21 Abs. 4 Griechenland, Art. 22 Abs. 2, Art. 65 Portugal, Kapitel 1 § 2 Schweden, Art. 47 Spanien; implizit in Art. 1, 13, 14 und 20 Deutschland).

f) Art. 43 Freizügigkeit und Aufenthaltsfreiheit

Der Abs. 2 des Artikels enthält kein Grundrecht, sondern nur einen Hinweis auf eine mögliche zukünftige Vertragsrevision, mit der ein Recht auf Freizügigkeit für Staatsangehörige dritter Länder eingeräumt werden könnte. Damit entspricht die neue Formulierung nicht der Mehrheitsmeinung, wie sie in der mündlichen Debatte innerhalb des Konvents vertreten wurde (u.a. Voggenhuber, Meyer, van den Burg, Brax, Einem, Beres, Kaufmann, Paciotti, Leinen, Martin).

Eine Gleichstellung von Drittstaatlern beim Recht auf Freizügigkeit ist nach Art. 63 Nr. 4 EGV möglich. Gemäß dem Art. 13 Allgemeine Erklärung der Menschenrechte, Art. 12 Internationaler Pakt über bürgerliche und politische Rechte und Art. 2 Protokoll Nr. 4 Europäische Menschenrechtskonvention ist die Freizügigkeit ein Menschen- und kein Bürgerrecht.

Entweder müsste – was die Unterzeichner befürworten – eine Ausweitung der Freizügigkeit auch auf Drittstaatler in die Grundrechtscharta aufgenommen werden, in

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dem in Abs. 1 der Begriff „Bürger“ durch „Jeder“ ersetzt wird, oder der Abs. 2 kann generell gestrichen werden.

Mit freundlichen Grüßen

Jürgen Meyer, Alima Bourmediene-Thiery, Andrew Duff, Caspar Einem, Ben Fayot, Michael Holoubek, Ulpu Ilvari, Sylvia-Yvonne Kaufmann, Jo Leinen, Hans-Peter Martin, Elena Paciotti¹, Ike van den Burg², Johannes Voggenhuber

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¹ Unter Vorbehalt zu den Kommentaren zu Art. 11 (II. b).

² Unter Vorbehalt zu den Kommentaren zu Art. 15 (I. d, Teilsatz 1).



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le 31 août 2000

MEYER ET 11 AUTRES

Monsieur
le professeur dr. Roman Herzog
Président de la Convention
chargée d'élaborer la Charte européenne
des droits fondamentaux

Messieurs
le professeur dr. Guy Braibant,
Gunnar Jansson,
Mendez de Vigo,
Vice-Présidents

Messieurs,

Conformément à la procédure proposée par le Présidium concernant la Convention 45 (Charte 4422/00), les soussignés présentent sur le projet complet de la Charte les observations générales ci-après :

I. Généralités

- a) Les soussignés approuvent expressément le texte proposé et remercient le Présidium pour le travail accompli. Un grand nombre de propositions de modification écrites et

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d'interventions orales de divers délégués a été pris en compte, de sorte que ce projet constitue une bonne base pour une Charte susceptible de recueillir une large approbation.

- b) Cependant, pour des considérations liées à la systématique, il conviendrait de ne pas se référer, comme il est fait dans divers articles, aux "législations nationales" et "au droit communautaire". Les soussignés demandent en conséquence la suppression de cette référence aux articles 9, 18, 25, 26, 32, 33 et 34.

Compte tenu de la disposition horizontale de l'article 49, al. 1 et 2, cette référence est superflue. Pour des considérations liées à la systématique, la Convention a convenu de formuler les questions horizontales séparément dans le but notamment de faciliter la lisibilité de la Charte et l'identification du citoyen avec l'UE.

La systématique de la Convention 45 fait croire au citoyen que l'on tend à diluer des articles spécifiques par rapport à d'autres, ce qui n'est pas l'intention de la Convention et ne correspond pas au mandat de Cologne.

Par ailleurs, elle peut faire croire que des droits fondamentaux relevant, dans leur acception générale, du droit premier sont valables sous réserve de réglementations nationales ou de futures révisions du traité. Cette impression serait regrettable et contraire à l'esprit de l'article 6, al. 1 du traité de l'UE dans lequel il est dit expressément que l'Union accorde une priorité absolue au respect des droits de l'Homme et des libertés fondamentales. C'est pourquoi les soussignés proposent la suppression pure et simple de l'article 50, al. 2.

- c) Les soussignés approuvent l'énumération au point 5 du préambule des principales sources dont s'inspire la Charte qui sont, conformément au mandat de Cologne, la Convention européenne des droits de l'Homme, les traditions constitutionnelles communes des Etats membres, la Charte sociale européenne et la Charte communautaire des droits fondamentaux sociaux des travailleurs.

Cependant, la cohérence du projet risque d'être compromise si l'on omet de mentionner ces sources également à l'article 51. Le préambule et l'article 51 relient entre eux les diverses parties du projet. C'est pourquoi les soussignés plaident en faveur de

l'insertion également à l'article 51, en tant que niveau de protection minimal, les Chartes sociales adoptées par la Communauté et le Conseil de l'Europe.

- d) Pour des considérations liées à la systématique, l'article 15 "Liberté professionnelle" devrait figurer au chapitre IV "Solidarité" avec le titre et la règle générale précédemment proposés par le Présidium ("Liberté professionnelle et droit de travailler" et "Toute personne a le droit de travailler") (cf. Convention 41, ancien art. 31).

On voit mal pour quelles raisons la place et le texte de l'ancienne proposition du Présidium (Convention 41), qui reposait sur la proposition Braibant-Meyer, ont été modifiés dans la version actuelle et ce en dépit du fait que, lors de la discussion de la proposition de compromis, une large majorité des délégués (notamment Nikula, Voggenhuber, Friedrich, Einem, Paciotti, Leinen, Hirsch Ballin, Olsen, Barros Moura, van den Burg, Kaufmann) se soit prononcée en sa faveur. Par ailleurs, outre les personnes mentionnées, un grand nombre de délégués avaient plaidé dans leurs propositions de modification écrites en faveur d'une règle concernant le "droit de travailler" (Convention 39 : amendements n° 35 Sole Tura, n° 39 Dieulangard, n° 46 Fayot, n° 47 Braibant, n° 51 Rodota/Paciotti/Manzella, n° 53 Beres et al.).

- e) D'une manière générale, il conviendrait de vérifier une nouvelle fois très attentivement l'équivalence des notions employées dans les différentes langues du texte de la Charte. C'est ainsi qu'à l'article 24 de la traduction allemande figurent les termes "behinderte Menschen" alors que les termes corrects généralement reconnus devraient être "Menschen mit Behinderung". On peut également se demander si les termes de "Würde der Männer und Frauen", au point 2 du préambule, sont bien choisis, car cette notion ne tient pas compte des enfants.

Les soussignés espèrent que la Convention disposera du texte de la Charte dans toutes les langues de l'UE avant sa transmission aux chefs d'État et de gouvernement.

II. Questions particulières

- a) Article 10. Liberté de pensée, de conscience et de religion

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Il convient d'ajouter à cet article un deuxième alinéa dans lequel sera inscrit le *droit à l'objection de conscience*. L'insertion donne suite à toute une série d'amendements (Convention 35 : amendements n° 256 Voggenhuber/Buitenweg, n° 257 Meyer/Leinen/Martin, n° 261 Gnauck et n° 262 Kaufmann notamment) et au point de vue exprimé par une majorité au cours de la discussion à la Convention.

b) Article 11, al. 2. Liberté d'expression et d'information

L'objectif de l'article 11, al. 2 est approuvé en principe, la notion de "médias" venant apporter plus de clarté par comparaison avec la version précédente (les notions de "liberté de la presse et de la radiodiffusion" ou de "l'information s'adressant au grand public" seraient toutefois plus précises); cependant, la rédaction du Présidium néglige trois aspects :

- i. Les organes de l'Union européenne *doivent être tenus de fournir des renseignements aux médias*. Cet aspect est tout aussi important pour la formation d'une opinion publique européenne que l'impératif de la transparence requise dans une communauté démocratique. Il est vrai que le projet du Présidium prévoit en son article 49 un droit d'accès général aux documents; néanmoins, compte tenu de leur rôle particulier en tant que "courroie de transmission" ou lien entre le pouvoir public et la population, les médias devraient se voir accorder un droit explicite à cet égard.
- ii. Le terme de "*transparence*" a été vivement critiqué par un certain nombre d'établissements du secteur des médias; ils craignent que l'administration publique n'invoque l'impératif de la transparence pour justifier des mesures ayant pour effet de restreindre la liberté.
Si la réglementation doit faire obligation aux médias d'assurer l'information selon les principes démocratiques, cet objectif est déjà atteint par les dispositions horizontales de l'article 52 et la concordance pratique. En revanche, si cette notion doit assurer la transparence *financière* des médias (Convention 35, amendement n° 284 Braibant), ce principe ne doit pas expressément être garanti dans une Charte des droits fondamentaux. C'est

pourquoi les soussignés proposent de rayer ce terme dans l'article en cause, d'autant que l'insertion de cette notion a fait l'objet d'un seul amendement.

- iii. Lors de la discussion à la réunion de la Convention, un certain nombre de délégués a critiqué le manque de précision de la notion de "*pluralisme*" (Goldsmith, Hirsch Ballin, Rodota, Partijn). Cette idée pourrait être exprimée avec plus de rigueur : à cet effet il conviendrait, en se référant notamment au Protocole n° 23 du traité d'Amsterdam, d'ajouter au texte de la Charte une garantie des acquis de la radiodiffusion de droit public, assurant ainsi la coexistence des médias privés et de droit public et de ce fait une information pluraliste.

c) Article 13. Liberté de la recherche

Il convient d'ajouter à cet article la *liberté des sciences, de l'enseignement et des arts*. Cet ajout correspond à une proposition précédente du Présidium (Convention 13, art.15 al. 2, à l'exception de "l'enseignement") que la Convention n'avait pas critiquée à cet égard. Bien au contraire, plusieurs délégués avaient souligné, au cours du débat, l'importance de cet alinéa (Meyer, Friedrich, Rack, Leinen, Einem, Rodota, Braibant, Mombaur, Papadimitriou), le justifiant dans un grand nombre d'amendements. Par ailleurs, ces libertés correspondent aussi bien aux traditions constitutionnelles communes des Etats membres qu'aux conventions internationales.

d) Article 26. Droit de négociation et d'actions collectives

Les soussignés proposent d'insérer dans cet article les termes "[actions collectives], y compris le droit de grève", formulation directement empruntée à la Charte sociale européenne (art. 6, al. 4) qui constitue, conformément au mandat de Cologne, une des bases sur lesquelles repose le travail de la Convention.

Les délégués qui souhaitent ne pas mentionner le droit de grève en invoquant le fait que son insertion dans la Charte appellerait également l'insertion du "lock-out", se méprennent sur ce point sur les traditions constitutionnelles communes existantes et sur le droit international reconnu par tous les Etats membres (Charte sociale européenne, art. 8, al. 1 d, Pacte international relatif aux droits économiques, sociaux et culturels, un grand nombre de Conventions de l'OIT).

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Renoncer à mentionner le droit de grève constituerait en quelque sorte une tentative de restreindre le droit en vigueur. C'est pourquoi la plupart des délégués se sont prononcés dans leurs amendements en faveur de la mention expresse du droit de grève dans cet article (Convention 39; amendements n° 93 Voggenhuber, n° 94 Dehousse, n° 95 Rodota/Paciotti/Manzella, n° 97 Braibant, n° 99 Dieulangard, n° 102 Fayot, n° 103 Beres, n° 104 van den Burg).

e) Article 32. Sécurité sociale et aide sociale

i. Les soussignés approuvent l'article tel que formulé à l'alinéa 1 et proposent de placer en tête de l'énumération de l'assurance sociale et des services sociaux les termes "*plus particulièrement*" afin de souligner que cette énumération n'est pas limitative. Les droits fondamentaux devant, par définition, avoir un caractère aussi durable que possible, il convient d'éviter toute liste limitative d'exemples, car les développements futurs dans ce domaine ne sont pas prévisibles.

ii. Par ailleurs, le Présidium n'a retenu à l'alinéa 3, ce que nous déplorons, qu'un seul aspect du "droit au logement", à savoir l'aide au logement, bien que la proposition Meyer-Braibant constitue un compromis majoritairement approuvé par la Convention et se contente de faire obligation à l'Union de respecter ce droit.

Rappelons encore dans ce contexte que le "*droit au logement*" est reconnu en droit international par tous les Etats membres (cf. notamment art. 25, al. 1 de la Déclaration universelle des droits de l'Homme, art. 11 du Pacte international des Nations Unies relatif aux droits économiques, sociaux et culturels, art. 27, al. 3 de la Convention des Nations Unies relative aux droits de l'enfant, art. 31 de la Charte sociale européenne révisée) et ancré dans nombre de constitutions des Etats membres (art. 23 Belgique, par. 15 a Finlande, art. 21, al. 4 Grèce, art. 22, al. 2, art. 65 Portugal, chapitre 1, par. 2 Suède, art. 47 Espagne; implicitement art. 1, 13, 14 et 20 Allemagne).

f) Article 43. Liberté de circulation et de séjour

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L'alinéa 2 de cet article ne définit pas de droit fondamental et annonce seulement une future révision éventuelle du traité susceptible de créer un droit à la libre circulation en faveur des ressortissants de pays tiers. De ce fait, la nouvelle rédaction n'exprime pas le point de vue défendu par la majorité lors des débats de la Convention (cf. notamment Voggenhuber, Meyer, van den Burg, Brax, Einem, Beres, Kaufmann, Paciotti, Leinen, Martin).

L'article 63 n° 4 du traité de la CEE autorise l'égalité de traitement des ressortissants de pays tiers concernant la liberté de circulation. La liberté de circulation constitue, selon l'article 13 de la Déclaration universelle des droits de l'Homme, l'article 12 du Pacte international relatif aux droits civils et politiques et l'article 2 du protocole n°4 de la Convention européenne des droits de l'Homme, un droit de l'Homme et non pas un droit civil.

Il conviendrait, et c'est ce que préconisent les soussignés, d'étendre, dans la Charte des droits fondamentaux, la liberté de circulation aux ressortissants d'Etats tiers en substituant à l'alinéa 1 les termes "toute personne" au terme "citoyen", ou encore de supprimer l'alinéa 2.

Avec mes meilleures salutations

Jürgen Meyer, Alima Bourmediene-Thiery, Andrew Duff, Caspar Einem, Ben Fayot, Michael Holoubek, Ulpu Ilvari, Sylvia-Yvonne Kaufmann, Jo Leinen, Hans-Peter Martin, Elena Paciotti¹, Ike van den Burg², Johannes Voggenhuber

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¹ Sous réserve des commentaires relatifs à l'art 11 (II. b).

² Sous réserve des commentaires relatifs à l'art 15 (I. d, parties des phrases).



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August, the 31^t 2000

MEYER AND 11 OTHERS

To the Chairperson of the Convent
 for elaborating the European Charter of Fundamental Rights
 Prof. Dr Roman Herzog

To the Vice-Chairpersons
 Prof. Dr Guy Braibant
 Gunnar Jansson
 Mendez de Vigo

Dear Sirs,

under the procedure proposed by the Praesidium in Convent 45 (Charte 4422/00), the signatories hereby submit the following general comments on the Draft Charter:

I. General

- (a) The signatories expressly welcome the Draft Charter and thank the Praesidium for the work it has accomplished. Many of the suggestions put forward in written amendments and in oral contributions by individual delegates have been incorporated in the Draft, which therefore provides a good basis for a Charter that can gain assent.
- (b) For systematic reasons, the reference in some articles to “national laws and practices” and “in accordance with Community law” should be taken out. The signatories are

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therefore in favour of deleting these references from Articles 9, 18, 25, 26, 32, 33 and 34.

It should be pointed out that this reference is superfluous because of the horizontal provision in Article 49(1) and (2). For systematic reasons the Convent agreed to formulate horizontal provisions separately, not least in order to render the Charter more legible and therefore make it easier for the citizens to identify with the EU.

In contrast, the system set out in Convent 45 gives the citizen the impression that specific articles are less important than others. That is consistent neither with the intention of the Convent nor with the Cologne mandate.

Moreover, it could give the impression that fundamental rights, which are generally understood as rights of the first order, are being made subject to the reservation of national laws and practices or future revisions of the Treaty. That would be a disastrous impression to give and would conflict with the spirit of Article 6(1) of the EU Treaty, which makes it quite clear that the Union attaches top priority to respect for human rights and fundamental freedoms. For that reason the signatories urgently call for Article 50(2) to be deleted without replacement.

- (c) The signatories welcome the fact that recital 5 of the Preamble lists the main sources drawn on in drafting the Charter. In accordance with the Cologne mandate, these are the European Convention on Human Rights, the constitutional traditions common to the Member States, the European Social Charter and the Community Charter of the Fundamental Social Rights of Workers.

The Draft risks being less coherent if these sources are not also named in Article 51. The Preamble and Article 51 form the cornerstone of the Charter. The signatories therefore also urge the inclusion of the Social Charters adopted by the Community and by the Council of Europe in Article 51 as a minimum level of protection.

- (d) Article 15 "Freedom to choose an occupation" should be incorporated in Chapter IV "Solidarity" for systematic reasons and contain the earlier heading ("Freedom to choose an occupation and the right to work") and the general principle ("Every person has the right to work") proposed by the Praesidium (cf. Convent 41, ex-Article 31).

It is difficult to understand why the position and wording of the earlier Praesidium proposal (Convent 41), which was based on the Braibant-Meyer proposal, has been

changed in the present version, even though a large majority of delegates had endorsed the compromise proposal during the oral discussion (including Nikula, Voggenhuber, Friedrich, Einem, Paciotti, Leinen, Hirsch Ballin, Olsen, Barros Moura, van den Burg, Kaufmann). Moreover, a large number of delegates, besides those just mentioned, had tabled written amendments calling for a “right to work” provision (Convent 39: draft amendments Nos 35 Sole Tura, 39 Dieulangard, 46 Fayot, 47 Braibant, 51 Rodota/Paciotti/Manzella, 53 Beres et alia).

- (e) In general, it should be carefully checked again whether the Charter is worded appropriately in all the EU languages. For instance, the German translation of Article 24 refers to “behinderte Menschen” (disabled persons), while the accepted correct term is “Menschen mit Behinderung” (persons with disabilities). It is also questionable whether the choice of wording in recital 2 of the Preamble “dignity of men and women” is a happy one, since that does not cover, for instance, children. The signatories assume that the Charter will be available to the Convent in all the EU languages before it is submitted to the Heads of State and Government.

II. Specific comments

(a) Article 10 Freedom of thought, conscience and religion

A second paragraph should be added, referring to the *right to refuse military service*. The inclusion of a second paragraph to that effect would correspond to a number of draft amendments (Convent 35: draft amendments Nos 256 Voggenhuber/Buitenweg, 257 Meyer/Leinen/Martin, 261 Gnauck and 262 Kaufmann, et alia) and to the majority opinion expressed during the Convent discussion.

(b) Article 11 (2) Freedom of expression and information

While in principle we welcome the intention of Article 11(2), and especially the greater clarity in comparison with earlier versions thanks to the use of the term “media” (although the terms “freedom of the press and broadcasting”, i.e. “communication directed at the general public” would be more precise), three aspects are missing in the wording proposed by the Praesidium:

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- i. The European Union bodies should have a binding *obligation to inform the media*. That is as important to the development of a European public as the need for transparency is within a democratic community. Although Article 40 of the Praesidium's Draft does provide for a general right of access to documents, nevertheless the media, with their special task of acting as a "transmission channel", i.e. a connecting link between the public authority and the people, should be granted an explicit right in this regard.
- ii. A number of media institutions have strongly criticised the use of the term "*transparency*" in paragraph 2. Their underlying fear is that the public authorities could justify freedom-restricting measures by applying the transparency provision.

Should the intention of this provision be to oblige the media to report democratically, that intention is already achieved by the horizontal provision of Article 52 and practical concordance. If, however, the intention is to provide for the *financial* transparency of the media (Convent 35, draft amendment No 284 Braibant), that does not need to be guaranteed explicitly in a Charter of Fundamental Rights. For that reason, we recommend deleting that term from the article, given also that only one draft amendment called for it to be incorporated.
- iii. During the discussion in the Convent, a number of delegates criticised the imprecision of the term "*pluralism*" (Goldsmith, Hirsch Ballin, Rodota, Partijn). This concept can be worded more precisely. Accordingly – with reference also to Protocol No 23 to the Amsterdam Treaty – the Charter should also include a guarantee of the continued existence of public broadcasting, since this would ensure the coexistence of private and public media and guarantee pluralist reporting.

(c) Article 13 Freedom of research

That article should be supplemented with *Freedom of science, teaching and art*. That would comply with an earlier Praesidium proposal (Convent 13, Article 15(2), with the exception of "teaching"), which the Convent did not criticise in that regard. In fact, a number of delegates had emphasised the importance of that paragraph during

the oral debate (Meyer, Friedrich, Rack, Leinen, Einem, Rodota, Braibant, Mombaur, Papadimitriou) and also justified it in a large number of draft amendments.

Furthermore, the freedoms in question are consistent both with the constitutional traditions common to the Member States and with international conventions. For that reason, we urgently recommend that this article be supplemented.

(d) Article 26 Right of collective bargaining and action

The signatories recommend incorporating in that article the words “[collective action] *including the right to strike*”. That wording is directly derived from the European Social Charter (Article 6(4)), on which the Convent’s activities are based pursuant to the Cologne mandate.

Those delegates who want to leave out the right to strike on the basis that reference would then also have to be made to “lockout” are mistaken here with regard to existing common constitutional traditions and to the international law recognised by all Member States (European Social Charter, Article 8(1)(d), International Covenant on Economic, Social and Cultural Rights, many ILO conventions).

Not to refer to the right to strike would be equivalent to an attempt to devalue existing legislation. For that reason the majority of the delegates tabled amendments calling for it to be explicitly incorporated in that article (Convent 39: amendments Nos 93 Voggenhuber, 94 Dehousse, 95 Rodota/Paciotti/Manzella, 97 Braibant, 99 Dieulangard, 102 Fayot, 103 Beres, 194 van den Burg).

(e) Article 32 Social security and social assistance

- i. The signatories welcome the wording of paragraph 1 and suggest introducing the list of social security benefits and social services with the words “*in particular*”, to emphasise that it is an open list. Since fundamental rights should by their nature continue to exist as long as possible, any conclusive lists of examples should be avoided, since we cannot foresee future developments in these areas.
- ii. In paragraph 3, unfortunately the Praesidium has yet again referred only to a single aspect of the “right to housing” – housing benefit – although the Braibant-Meyer compromise proposal, which was endorsed by a majority of

the Convent, contains a reference to the Union's obligation to fully respect that right.

In this context, it should be recalled that the "*right to housing*" under international law is recognised by all the Member States (among others Article 25 (1) of the Universal Declaration of Human Rights, Article 11 of the International UN Covenant on Economic, Social and Cultural Rights, Article 27(3) of the UN Convention on the Rights of the Child, Article 31 of the revised European Social Charter) and in many Member State constitutions (Article 23 Belgium, paragraph 15 a Finland, Article 21(4) Greece, Articles 22(2) and Article 65 Portugal, Chapter 1, paragraph 2 Sweden, Article 47 Spain, implicit in Articles 1, 13, 14 and 20 Germany).

(f) Article 43 Freedom of movement and of residence

Paragraph 2 of that article does not contain a fundamental right, only a reference to a possible future Treaty revision, under which third country nationals could be granted a right of freedom of movement. So the new wording does not reflect the majority opinion, as expressed during the oral debate in the Convent (among others Voggenhuber, Meyer, van den Burg, Brax, Einem, Beres, Kaufmann, Paciotti, Leinen, Martin).

Third country nationals can be granted an equal right to freedom of movement under Article 63(4) of the EU Treaty. Pursuant to Article 13 of the Universal Declaration of Human Rights, Article 12 of the International Covenant on Civil and Political Rights and Article 2 of Protocol No 4 to the European Convention on Human Rights, freedom of movement is a human right and not a civil right.

Either, as the signatories believe, the extension of freedom of movement to third country nationals should be incorporated in the Charter of Fundamental Rights by replacing the term "citizen of the Union" in paragraph 1 by "Everyone", or paragraph 2 can be deleted entirely.

With regards

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Jürgen Meyer, Alima Bourmediene-Thiery, Andrew Duff, Caspar Einem, Ben Fayot, Michael Holoubek, Ulpu Ilvari, Sylvia-Yvonne Kaufmann, Jo Leinen, Hans-Peter Martin, Elena Paciotti¹, Ike van den Burg², Johannes Voggenhuber

¹ With reservation to the comments made to Art. 11 (II. b).

² With reservation to the comments made to Art. 15 (I. d, first half of the sentence).

EUROPÄISCHES PARLAMENT



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17. August 2000
M/re

**Entwurf der Charta der Grundrechte der Europäischen
Union/CONVENT 45 vom 28. Juli 2000**

Sehr geehrter Herr Professor Herzog,
sehr geehrter Herr Kollege Mendez de Vigo,

zu dem oben angeführten Vorentwurf möchte ich unter Beschränkung auf das
Wesentliche folgende Anmerkungen machen:

1. Präambel:

Die Ziffern 1 und 2 entsprechen meines Erachtens noch nicht dem Ziel, durch
eine Grundrechtcharta die Identität der Europäer zu verdeutlichen. Mit der
bloßen Benennung „gemeinsamer Werte“ und deren Aufzählung würde die
Charta sogar noch hinter den geltenden Text des EGV zurückfallen, der das
gemeinsame kulturelle Erbe der Europäer benennt.

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EUROPÄISCHES PARLAMENT



RA DR. PETER MICHAEL MOMBAUR
MITGLIED DES EUROPÄISCHEN PARLAMENTS

In der Magna Charta Libertatum, in der Präambel des deutschen Grundgesetzes, der griechischen und der irischen Verfassung sowie auch der polnischen neuen Verfassung lesen sich die Grundrechtsgrundlagen ganz anders.

Ich schlage daher vor, den europäischen Grundrechtsschutz dadurch zu bekräftigen, daß seine tatsächlichen historischen und ideengeschichtlichen Grundlagen benannt werden: **Die christlich-jüdische Tradition, die Ideen der französischen Revolution und die Verantwortung der Politiker vor Gott.**

Wer andere Quellen benennen möchte, aus denen ähnliche Grundrechtswirkungen abzuleiten sind, sollte dies vorschlagen.

2. Zu Artikel 9:

Die vorgeschlagene Formulierung verfehlt gleich zwei Ziele:

- Sie berücksichtigt die Formulierung der Europäischen Menschenrechtskonvention nicht (übrigens anders als der Entwurf zu Artikel 10).
- Sie verfehlt die Wertschätzung eines zentralen europäischen Kulturwertes. Ehe und Familie sichern „als Keimzelle jeder menschlichen Gesellschaft“ (so Artikel 16 Europäische Sozialcharta) den Weiterbestand der Gesellschaft.

Wenn Artikel 21 ein Diskriminierungsverbot enthält und Artikel 31 Ziffer 2 einen Anspruch auf Elternurlaub „jeder Person“ zugesteht – unabhängig von der Betreuungskonstellation -, kann Artikel 9 nicht ein derart leerer Kompromiß bleiben.

Vorschlag: Entsprechend der EMRK a) **Ehe als Verbindung von Mann und Frau** und b) **das Recht zur Heirat und Familiengründung als zusammengehörendes Recht** zu definieren.

EUROPÄISCHES PARLAMENT



RA DR. PETER MICHAEL MOMBAUR
MITGLIED DES EUROPÄISCHEN PARLAMENTS

3. Zu Artikel 22:

Im Konvent bestand Übereinstimmung darüber, daß der Grundsatz des gleichen Entgelts bei gleicher oder gleichwertiger Arbeit auf den einzelnen Mitgliedsstaat zu beziehen ist. Dementsprechend schlage ich vor, zu formulieren:

„... des **gleichen Entgelts im jeweiligen Mitgliedsstaat** ...“

4. Zu Artikel 23:

Absatz 2 trägt der Balance zwischen dem Recht der Kinder und dem Elternrecht nicht ausreichend Rechnung. Dementsprechend schlage ich vor zu formulieren:

„... muß **das übergeordnete Interesse des Kindes im Rahmen des Elternrechts zur Erziehung des und Sorge für das Kind** eine vorrangige Erwägung sein.“

5. Zu Artikel 34:

Die Aufnahme dieses Artikels über Artikel 16 EGV hinaus ist entbehrlich. Der Artikel sollte **gestrichen** werden.

6. Zu Artikel 35 und 36:

Im Blick auf die unterschiedlichen Kompetenzen der Europäischen Union einerseits und der Mitgliedsstaaten andererseits mit Bezug auf Umweltschutz und Verbraucherschutz kann den Unionsbürgern realistischere nicht dargestellt werden, daß die Politik in der Union diese Schutzbereiche sicherstellt. Daher schlage ich vor, **realistisch** in beiden Artikeln zu formulieren, daß **die Politik in der Union zu diesen Zielen „beiträgt“**.

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EUROPÄISCHES PARLAMENT



RA DR. PETER MICHAEL MOMBAUR
MITGLIED DES EUROPÄISCHEN PARLAMENTS

7. Zu Artikel 50:

Artikel 50 Abs. (1) verletzt in der gegenwärtigen Formulierung das Gebot, daß die Möglichkeit, Grundrechte zu beschränken, ihrerseits Beschränkungen unterliegen muß.

Einschränkungen dürfen sich auch nicht auf Leerformeln stützen, die zur Beliebigkeit einladen und daher rechtsstaatlich nicht tolerabel sind. Daher schlage ich vor zu formulieren:

- **„Die Einschränkung darf den Wesensgehalt der Grundrechte nicht verletzen.“**
- Die **„anderen legitimen Interessen in einer demokratischen Gesellschaft“** zu streichen.

Mit freundlichen Grüßen
Dr. Peter M. Mombaur

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Heinrich Neisser

*Mitglied des Konvents zur Erarbeitung eines Entwurfs einer
Grundrechte-Charta der Europäischen Union*

An das
Präsidium des Konvents

z.H. des Stellvertretenden Vorsitzenden
Guy Braibant

Wien, am 31. August 2000

Betrifft: Allgemeine Bemerkungen zum Gesamtentwurf der Charta (Convent 45)

Sehr geehrter Herr Braibant!

Ich erlaube mir, Ihnen im Folgenden einige allgemeine Bemerkungen zum jüngsten Gesamtentwurf der Charta zur Kenntnis zu bringen.

Ich möchte zunächst dem Präsidium Dank und Anerkennung für die geleistete Arbeit aussprechen. Der derzeitige Textentwurf ist das bislang beste Dokument und grundsätzlich positiv zu beurteilen. Meiner Ansicht nach sind wir mit diesem Entwurf nicht mehr weit entfernt von einem Text, der vom Konvent im Konsens verabschiedet werden kann. Ich halte es dennoch für notwendig, einige kurze Anmerkungen zu machen.

1.) Allgemeines

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- Positiv zu vermerken ist die Aufnahme sozialer Grundrechte in die Charta, welche entsprechend der horizontalen Bestimmung des Artikels 49 Abs. 2 keine neuen Zuständigkeiten und Aufgaben für die Gemeinschaft, und somit auch keine unmittelbaren neuen finanziellen Verpflichtungen mit sich bringen dürfen. Der Entwurf spiegelt hier den derzeitigen Bestand dieser Rechte wider und trägt den Strukturunterschieden zwischen „klassischen“ und sozialen Grundrechten Rechnung. Die Kapitelüberschrift „Solidarität“ sollte jedoch besser durch „Sozialer Zusammenhalt“ (engl.: social cohesion) ersetzt werden. Dies entspräche der Textierung des EG-Vertrages (XVII. Titel: Wirtschaftlicher und sozialer Zusammenhalt).
- Insbesondere in der deutschen Sprachfassung sollte auf eine durchgängig geschlechtsneutrale Formulierung geachtet werden.
- Punkt 3 der Präambel scheint etwas zu technisch formuliert, insbesondere auf den letzten Halbsatz könnte verzichtet werden.

2.) Fehlende Grundrechte

- Wie bereits in der Diskussion von mir und zahlreichen anderen Mitgliedern betont, sollte die Charta die Rechte der Minderheiten keinesfalls unerwähnt lassen. Insbesondere der Änderungsantrag 598 (Voggenhuber, Convent 35) scheint mir eine geeignete Grundlage für die Aufnahme von Minderheitenrechten in die Charta, da er den sprachlichen und kulturellen Aspekt dieses Rechtes hervorhebt.
- Unvollständig ist weiters Artikel 13: Hier müsste die Freiheit der Wissenschaft, Forschung und Lehre verankert werden. Dies vor allem deshalb, weil die Forschung ein integrierender Bestandteil der Wissenschaft ist und die Verbindung von Lehre und Forschung ein Wesenselement wissenschaftlicher Tätigkeit ist. In diesem Zusammenhang ist darauf hinzuweisen, dass in den meisten nationalen Verfassungsordnungen dieser Grundrechtsbezug deutlich gemacht wird.

3.) Zu streichende Artikel

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- Die Diskussionen innerhalb des Konvents haben meiner Erinnerung nach eine breite Ablehnung einer Aufnahme von Artikel 34 (Zugang zu Diensten von allgemeinem wirtschaftlichen Interesse) gebracht. Die Aufnahme dieses Artikels widerspricht dem Charakter der Charta selbst: Diese soll nämlich eine Charta der Rechte darstellen; Artikel 34 begründet jedoch - wie aus den Erläuterungen hervorgeht - „kein eigentliches Recht“. Er sollte daher gänzlich gestrichen werden.

4.) Anmerkungen zu einzelnen Artikeln

- Der eher komplizierten Formulierung von Artikel 9 wäre eine Textierung im Sinne des Artikel 12 EMRK vorzuziehen.
- Die Verpflichtung zu Pluralismus und Transparenz in Artikel 11 Abs. 2 (Freiheit der Meinungsäußerung und Informationsfreiheit) könnte schwerwiegende Eingriffe in die Freiheit der Presse ermöglichen. Pluralismus und Transparenz in der Gesellschaft sollten nicht die Rechtfertigung für Eingriffe, sondern vielmehr das Ergebnis einer möglichst uneingeschränkten Medienfreiheit sein.
- Der neuerlich umformulierte Artikel 17 (Eigentumsrecht) lässt das Erfordernis einer vorherigen, angemessenen Entschädigung vermissen. Auf dieses Element kann nicht verzichtet werden. Im Lichte der Konventsdiskussion ergab sich eine Präferenz für eine Formulierung, die die Entschädigung vorher gewährleisten sollte.
- Artikel 35 (Umweltschutz) sollte insofern an Artikel 46 (Verbraucherschutz) angepasst werden, als auch beim Umweltschutz ein „hohes Schutzniveau“ anzustreben ist.
- Artikel 37 (Aktives und passives Wahlrecht zum Europäischen Parlament) sollte in Abs. 2 von gleicher, allgemeiner, unmittelbarer, freier und geheimer Wahl sprechen.
- Das aktive und passive Wahlrecht bei Kommunalwahlen (Artikel 38) korrespondiert mit der Autonomie der lokalen Gebietskörperschaften. Die Verankerung eines dementsprechenden Grundrechts auf lokale Selbstverwaltung

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würde der Bedeutung dieser Ausprägung des Subsidiaritätsprinzips Rechnung tragen.

3at

Paavo Nikula
elokuuta, 2000
Suomen hallituksen edustaja valmistelukunnassa

Helsingissä 28.

Tuija Brax
Suomen eduskunnan edustaja valmistelukunnassa

Jean-Paul Jacquè
Valmistelukunnan sihteeristön puheenjohtaja

Tiedoksi:

Guy Braibant
Ranskan tasavallan presidentin ja hallituksen edustaja valmistelukunnassa
Valmistelukunnan varapuheenjohtaja

Gunnar Jansson
Suomen eduskunnan edustaja valmistelukunnassa
Valmistelukunnan varapuheenjohtaja

EU:N PERUSOIKEUSKIRJA; HUOMAUTUKSIA LUONNOKSEEN EU:N PERUSOIKEUSKIRJAKSI (Convent 45)

Haluamme kiittää puheenjohtajistoa ensimmäisestä kokonaisvaltaisesta luonnoksesta Euroopan unionin perusoikeuskirjaksi. Olemme tutustuneet siihen huolellisesti ja keskustelleet siitä alan kansallisten asiantuntijoiden kanssa. Luonnos on myös esitelty Suomen hallitukselle.

Luonnos vastaa pitkälti niihin haasteisiin ja odotuksiin, joita perusoikeuskirjalle asetettiin, kun valmistelu aloitettiin. Olemme kiitollisia, että Suomen edustajien esittämiä ehdotuksia perusoikeuskirjaan kirjattaviksi oikeuksiksi on huomioitu luonnoksessa. Suomen hallituksen tavoitteena on, että Euroopan unionin perusoikeuskirja voidaan hyväksyä Nizzan Eurooppa-neuvoston kokouksessa joulukuussa 2000.

Haluamme kuitenkin tuoda vielä esiin muutamia kohtia, joiden osalta tarkennukset ovat tarpeen, jotta perusoikeuskirjasta tulee kattava, ja samalla Kölnin mandaatin mukainen asiakirja. Tässä muutosehdotukset artikloittain:

13 ja 14 artiklat. Tutkimuksen vapaus ja oikeus koulutukseen:

Muutosehdotus:

13 ja 14 artiklojen järjestys tulisi vaihtaa.

Perustelut:

On loogisempaa, että oikeus koulutukseen käsitellään ennen tutkimuksen vapautta.

17 artikla. Omaisuuden suoja:

Muutosehdotus:

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17(1) artiklan viimeinen virke (*omaisuuden käyttöä voidaan säännellä siinä määrin kuin sen on yleisen edun mukaan tarpeellista*) tulisi poistaa.

Perustelut:

Omaisuuksien käytön rajoittaminen ilman, että kävisi ilmi, missä olosuhteissa tällaisesta rajoituksesta on suoritettava korvaus, on epäselvä ja vaarantaa oikeusturvan. Koska käyttörajoitusta ei myöskään voi yksiselitteisesti liittää osaksi pakkolunastusta koskevaa korvausvelvollisuutta, tulisi virke poistaa kokonaan.

21 artikla. Syrjintäkielto:

Muutosehdotus:

Liitetään 21(1) artikla osaksi 20 artiklaa, jolloin 21(2) artiklasta tulee oma erillinen artiklansa. Uuden 21 artiklan perusteluista tulee ilmetä, että EU-kansalaisten syrjintäkielto on alisteinen kansainvälisten ihmisoikeussopimuksen yleiselle syrjintäkiellolle.

Perustelut:

Syrjintäkieltoartiklan jakautuminen yleiseen syrjintäkieltoon ja EU-kansalaisten syrjintäkieltoon on epäselvä ja aiheuttaa tulkintaongelmia. 21(1) artiklan liittäminen osaksi yleistä yhdenvertaisuutta selventäisi näiden kahden eri syrjintäkiellon eroa, ja toisi esiin sen, että EU-kansalaisten syrjintäkiellolla on oma erityinen soveltamisalansa. Tämänkin artiklan tulisi olla alisteinen kansainvälisten ihmisoikeussopimusten syrjintäkiellolle.

32 artikla. Sosiaaliturva ja sosiaaliapu

Muutosehdotus:

Haluamme muistuttaa, että olemme tehneet artiklaa koskevan muutosehdotuksen nro.0221 (Order n.244/ Amendment n.0221), jota puheenjohtajisto ei kuitenkaan huomionnut. Artiklan perusteluosassa tulisi viitata myös EY:n perustamissopimuksen 136 artiklaan, joka säätelee sosiaaliturvasta unionin tasolla. Perusteluosasta tulisi lisäksi käydä ilmi, että artiklassa mainittu hoidon tarve kattaa myös päivähoidon, samoin kuin työpaikan menetys kattaa myös työkyvyttömyystilanteen.

Perustelut:

Sosiaaliturvaa käsittelevän artiklan perusteluosa ei tällä hetkellä viittaa lainkaan EY:n perustamissopimuksen 136 artiklaan, joka on keskeinen sosiaaliturvasta säättävä artikla.

33 artikla. Terveiden suojelu:

Muutosehdotus:

1. Uusi otsikko: Terveys.

2. Artiklaan tulisi lisätä: Kaikkien yhteisön poliitikkojen ja toimintojen määrittelyssä ja toteuttamisessa varmistetaan ihmisten terveyden korkeatasoinen suojelu.

Perustelut:

Yleinen terveydenedistämismääräys on kirjattu EY:n perustamissopimukseen 152 artiklaan, minkä vuoksi tämän tulisi käydä ilmi myös perusoikeuskirjassa.

35 artikla. Ympäristönsuojelu:

Muutosehdotus:

Perusteluosaan tulisi lisätä, että artikla perustuu yhteiseen valtiosääntöperinteeseen sekä Euroopan ihmisoikeussopimuksen tulkintaan.

Perustelut:

Viittaus yhteiseen valtiosääntöperinteeseen ja Euroopan ihmisoikeussopimuksen tulkintakäytäntöön selventäisi artiklan oikeusperustetta. Asiaa on käsitelty yksityiskohtaisemmin ympäristönsuojeluartikkelia koskevan esityksemme yhteydessä (CHARTE 4205/00/Contribution 86, 4.4.2000).

39 artikla. Oikeus hyvään hallintoon:

Muutosehdotus:

Perusteluosasta tulisi käydä ilmi, että artiklan (2) kohdan luetteloa ei tule tulkita tyhjentävästi.

Perustelut:

Artiklan (2) kohdan luettelo on tarkoitettu esimerkinomaiseksi, ei tyhjentäväksi. Tämä tulisi selvittää perusteluosassa.

45 artikla. Oikeus tehokkaaseen oikeussuojakeinoon:

Muutosehdotus:

Perusteluosaan tulisi lisätä, että oikeus tehokkaaseen oikeussuojakeinoon, samoin kuin oikeus hyvään hallintoon, sisältää oikeuden hakea muutosta. Perusteluista tulisi lisäksi käydä ilmi, että muutoksenhakuoikeus on alisteinen 50 artiklan rajoituksille.

Perustelut:

Muutoksenhakuoikeus on yksilön kannalta keskeinen osa oikeusturvaa ja sen toteutumisen tausta. Tämän vuoksi perusteluissa tulisi mainita, että oikeus tehokkaaseen oikeussuojakeinoon, samoin kuin oikeus hyvään hallintoon, sisältää pääsääntöisesti myös oikeuden muutoksenhakuun.

7 luku. Yleiset määräykset:

Muutosehdotus:

Muutetaan luvun nimi: Perusoikeuskirjan soveltaminen

Perustelut:

"Yleiset määräykset" viittaavat usein teknisiin määräyksiin, joita kyseisessä luvussa olevilla määräyksillä ei tarkoiteta. Tämän, ja luvun keskeisen merkityksen vuoksi, uusi nimi olisi perustellumpi.

Lisäksi haluamme tuoda esiin, että perusoikeuskirjan perusteluosassa tulisi asianmukaisissa yhteyksissä Euroopan ihmisoikeussopimuksen ohella viitata myös muihin kansainvälisiin ihmisoikeussopimuksiin, jotka jäsenvaltioita sitovina kuuluvat yhteiseen valtiosääntöperinteeseemme. Tällaisia sopimuksia ovat ennen kaikkea YK:n kansalais- ja poliittisia oikeuksia (KP- sopimus) sekä taloudellisia, sosiaalisia ja sivistyksellisiä oikeuksia (TSS- sopimus) koskevat yleissopimukset sekä eräät ILO:n sopimukset. Perusoikeuskirjan 2 artiklan perusteluissa tulisi viitata KP- sopimukseen, samoin kuin Euroopan ihmisoikeustuomioistuimen käytäntöön voimankäytön rajoituksena. Vapautta ja turvallisuutta käsittelevän 6 artiklan perusteluissa tulisi mainita, että Euroopan ihmisoikeustuomioistuimen käytännön mukaan Euroopan ihmisoikeussopimuksen 5(1) artiklan d- f- kohtia tulisi tulkita supistavasti. Samaan viittaa myös YK:n ihmisoikeuskomitean käytäntö mielivaltaisen vapaudenriiston kiellon osalta. Koulutusta käsittelevän 14 artiklan perusteluissa tulisi viitata KP- sopimuksen 18(4) ja TSS- sopimuksen 13(3) artikloihin samoin kuin lasten oikeuksien sopimuksen 14(2) artiklaan.

Näiden artiklakohtaisten muutosehdotusten lisäksi haluamme kiinnittää huomion eri kieliversioiden epätarkkuuteen eri sukupuolia käsittelevien viittausten osalta. Artikloissa tulisi systemaattisesti viitata

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sekä nais- että miespuolisiin henkilöihin oikeuksien subjekteina. Toivomme, että puheenjohtajisto kiinnittää huomionsa asiaan ennen valmiin perusoikeuskirjaluonnoksen esittämistä hyväksyttäväksi.

Paavo Nikula
Oikeuskansleri
Suomen hallituksen edustaja valmistelukunnassa

Tuija Brax
Kansanedustaja
Suomen eduskunnan edustaja valmistelukunnassa

Paavo Nikula
Personal Representative of the Finnish Government

Helsinki 28th of August 2000

Tuija Brax
Representative of the Finnish Parliament

Mr. Jacquè
President of the Secretary

For the attention of:

Mr. Braibant
Personal Representative of the French Government and the President of the Republic
Vice-Chairperson of the Convention

Mr. Jansson
Representative of the Finnish Parliament
Vice-Chairperson of the Convention

**CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION;
AMENDMENTS TO THE DRAFT (Convent 45)**

We would like to thank the Praesidium for the first complete draft for the Charter of Fundamental Rights of the European Union (hereafter “the Draft”). We have carefully acquainted ourselves with the Draft and discussed it with national experts in the matters concerned. The Draft has also been presented to the Finnish Government.

The Draft meets well the expectations and challenges that were set when the negotiations for the Draft started. We are grateful that the amendments proposed by the Finnish representatives have been taken into account in the Draft. The goal of the Finnish Government is the adoption of the Charter of Fundamental Rights of the European Union in the European Council meeting in Nice in December 2000.

We would, however, like to draw attention to a few articles that need to be adjusted for the purpose of making the Charter of Fundamental Rights cover everything that is necessary, in accordance with the Cologne Mandate. We propose the following amendments:

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Articles 13 and 14. Freedom of research and the right to education:

Proposed amendment:

The order of articles 13 and 14 should be changed.

Explanation:

It is more logical to present the right to education before the freedom of research.

Article 17. Right to property:

Proposed amendment:

The last sentence of article 17 should be removed (*The use of property may be regulated insofar as necessary for the general interest*).

Explanation:

A restriction on the use of property, without providing for the conditions on which a compensation must be paid for such a restriction, is unclear and imperils the legal protection. However, since the provision concerning the regulation of the use of property cannot as such be inserted in the previous sentence providing for the obligation to pay compensation for expropriation, the sentence should be removed.

Article 21. Equality and non-discrimination:

Proposed amendment:

Paragraph 1 of article 21 should be inserted in article 20, making paragraph 2 of article 21 a separate article. The explanatory part of the new article 21 should indicate that the non-discrimination article concerning EU-citizens is dependent on the non-discrimination clauses of the international human rights conventions.

Explanation:

The division into a general prohibition of discrimination and a prohibition of the discrimination of EU citizens is unclear and causes problems of interpretation. Inserting paragraph 1 in the general provision concerning equality would clarify the difference between the two clauses of non-discrimination and would express the fact that the provision on the non-discrimination of the EU-citizens has its own special scope of application. This article too should be dependent on the non-discrimination clauses of the international human rights conventions.

Article 32. Social security and social assistance:

Proposed amendment:

We would like to observe that we have made a proposal of amendment number 0221 (Order No. 244/Amendment 0221) to this article, which the Praesidium did not take notice of. In the explanatory part of the article there should be reference also to article 136 EC which regulates the social security at the Union level. In addition the explanatory part

should make clear that the need of care mentioned in the article also covers children's day care and the loss of employment also covers the situation of disability for work.

Explanation:

At the moment the explanatory part of the article concerning the social security does not refer to article 136 EC at all, this being the most important article regulating social security.

Article 33. Health care:

Proposed amendment:

1. Change of the heading: Health.
2. The following should be added to the article: *A high level of human health protection shall be ensured in the definition and implementation of all Community policies and activities.*

Explanation:

A general duty to promote health is included in article 152 EC and should therefore be also mentioned in the Charter of Fundamental Rights.

Article 35. Environmental protection:

Proposed amendment:

It should be added to the explanatory part that the article is based on the common constitutional traditions as well as on the interpretation of the European Convention of Human Rights.

Explanation:

The legal basis of the article would be clarified with a reference to the common constitutional traditions and the interpretation of the European Convention of Human Rights. This has been dealt with in more detail in the contribution of the Finnish representatives (Contribution 86/CHARTE 4205/00, 4th of April 200).

Article 39. Right to good administration:

Proposed amendment:

It would be important that the explanatory part clearly mentions that the list in paragraph 2 of the article should not be interpreted as being exhaustive.

Explanation:

The list in paragraph 2 should be interpreted as being exemplary, not exhaustive. This should be made clear in the explanatory part.

Article 45. Right to an effective remedy and to a fair trial:

Proposed amendment:

It should be added to the explanatory part that the right to an effective remedy and to a fair trial as well as to a good administration includes the right to appeal. It should also be mentioned that the right to appeal is subject to the restrictions of article 50.

Explanation:

The right to appeal is an inherent part of the individual's legal protection and the guarantee for its implementation. This is why the explanatory part should mention that

the right to an effective remedy and to a fair trial as well as the right to good administration include, as a general rule, the right to appeal.

Chapter 7. General provisions:

Proposed amendment:

Change of the chapter's name: Application of the Charter of Fundamental Rights.

Explanation:

“General provisions” often refers to the technical provisions of a document, which is not the case here. Because of this and because of the high importance of the chapter the new name is justified.

In addition we would like to note that, in the explanatory part of the Charter, the European Convention of Human Rights together with the other international conventions of human rights, which because of their binding nature are part of the common constitutional traditions of the Member States, should also be referred to as appropriate. Conventions of this nature include above all the International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights and some of the ILO conventions. The explanatory part of article 2 of the Charter of Fundamental Rights should refer to the International Covenant on Civil and Political Rights as well as to the case-law of the European Court of Human Rights concerning the limitations of the use of force. The explanatory part of article 6 concerning freedom and safety should indicate that according to the case-law of the European Court of Human Rights article 5(1) (d) to (f) of the European Convention of Human Rights should be interpreted restrictively. The UN Committee for Human Rights applies the same kind of interpretation in cases concerning the prohibition of arbitrary detention. The explanatory part of the article 14 regulating education should refer to article 13(3) of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights as well as to article 14(2) of the Convention of the Rights of the Child.

In addition to these amendments concerning individual articles we would like to draw attention to the unclarity concerning the references made to the different sexes in the various language versions. The articles should systematically refer to both males and females as the subjects of the rights laid down in the Charter. We hope that the Praesidium pays attention to this fact before the Draft Charter of Fundamental Rights will be proposed to be accepted.

Paavo Nikula
Chancellor of Justice
Personal Representative of
the Finnish Government

Tuija Brax
Member of Parliament
Representative of
the Finnish Parliament

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DR. HARALD OFNER
VERTRETER DES NATIONALRATES
DER REPUBLIK ÖSTERREICH IM
CONVENT ZUR ERARBEITUNG DER
CHARTA DER GRUNDRECHTE DER
EUROPÄISCHEN UNION

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An das
Präsidium des Konvents zur Erarbeitung der
Charta der Grundrechte der Europäischen Union
z. Hd. Herrn Stellvertretenden Vorsitzenden
Gunnar Jansson

Wien, 31. August 2000
Dr. Ofner/V
V8918.DOC

Sehr geehrter Herr Vorsitzender!

Ihnen persönlich und mit Ihnen dem gesamten Präsidium des Konvents darf ich für die souveräne Bewältigung der umfangreichen Arbeit, der Sie sich im Zusammenhang mit der Erarbeitung des Entwurfes der Charta der Grundrechte der Europäischen Union in den vergangenen Wochen und Monaten so nachhaltig unterzogen haben, meinen und meiner parlamentarischen Umgebung in Österreich aufrichtigen Dank aussprechen.

Das Papier 4422/00 vom 28.7.2000 hält ein in der Tat respektables - wohl nur vorläufiges - Ergebnis dieser so eindrucksvollen Bemühungen fest.

Fristgerecht darf ich zu Ihren Händen, sehr geehrter Herr Vorsitzender, folgende Anmerkung zu einem Problemkreis, der in dem Entwurf bisher nicht einmal Erwähnung gefunden hat, obwohl ihm nach meinem Erachten wesentliche und sozusagen von Tag zu Tag steigende Bedeutung zukommt, anbringen:

Seit Jahren wird im Bereich der Europäischen Union und über ihre Grenzen hinaus immer deutlicher die Notwendigkeit der Normierung von Volksgruppenrechten, verbindlich und durchsetzbar, erkannt und hervorgehoben; das heißt, Festlegung von Regeln, die es autochthonen ethnischen Minderheiten ermöglichen, in ihrer angestammten Heimatgebieten weiter bestehen zu können, Minderheiten, die es in fast allen europäischen Ländern gibt.

Es geht diesbezüglich um viel mehr als nur um das Verbot der Diskriminierung von einzelnen Angehörigen von Minderheiten, sondern darüberhinaus um die Anerkennung von Minderheiten als Gruppen und um die Ausstattung eben dieser Gruppen mit besonderen Rechten.

b.w.

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Daß diese Problematik in dem Entwurf mit keinem Wort auch nur gestreift wird, wird dem Konvent, so fürchte ich, nicht nur den Vorwurf des politischen Zynismus eintragen, sondern auch die Beschlußfassung hinsichtlich des Gesamtwerkes der Charta wesentlich beeinträchtigen bzw. erschweren.

Ich bitte Sie, sehr geehrter Herr Vorsitzender, und über Sie das gesamte Präsidium des Konvents, sohin, im Rahmen der bevorstehenden Überarbeitung des Entwurfes der Formulierung und Aufnahme von Volksgruppenrechten im angeführten Sinne entsprechendes Augenmerk zu schenken.

Einer Erläuterung bedarf nach meinem Dafürhalten Punkt 6. der Präambel des Entwurfes:

Hier könnte man zu der Ansicht gelangen, daß der diesbezügliche Text beinhaltet, daß die Möglichkeit der Inanspruchnahme von Menschenrechten gemäß der Charta mit der Übernahme bzw. Erfüllung von Pflichten gegenüber Mitmenschen etc. junktiniert sei.

Ich persönlich neige zwar dieser Auslegung nicht zu, eine in dieser Richtung klärende Passage erschiene aber, so glaube ich, sinnvoll.

Mit aufrichtigem Dank und freundlichen Grüßen

O'KENNEDY

PROPOSED AMENDMENTS TO CONVENT 45 AND REASONING IN RELATION TO SUCH PROPOSALS

General Provisions

Article 49: Scope

Proposed amendment

In the second sentence of 49.1, delete the phrase “respect the rights, observe the principles” and replace with “observe the rights and recognise and respect the principles”.

Revised Article to read

49.1 *The provisions of this Charter are addressed to the institutions and bodies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore observe the rights and recognise and respect the principles and promote the application thereof in accordance with their respective powers.*

Reasons

This amendment is consistent with suggested amendments to the Preamble and the suggested amendment to Article 50 which would add a paragraph 4, and has the same purpose.

Article 50: Scope of guaranteed rights

Proposed amendments

In the first sentence of 50.1, delete “by the competent legislative authority” and replace with “in accordance with law”.

At the end of 50.2, insert “and secondary legislation”.

The Charter Articles to which it applies should be listed in 50.2.

In the third line of 50.3, “similar” should be deleted and replaced by “identical” and “unless this Charter affords greater or more extensive protection” should be deleted and replaced by “as interpreted by the European Court of Human Rights”.

The Charter Articles to which it applies should be listed in 50.3.

Insert a new horizontal provision, becoming 50.4, as set out below.

Revised Article to read

50.1 *Any limitation on the exercise of the rights and freedoms recognised by this Charter*

must be provided for in accordance with law. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest being pursued by the Union, other legitimate interests in a democratic society or the need to protect the rights and freedoms of others.

- 50.2 *Rights recognised by this Charter, in Articles [to be listed] which are based on the Community Treaties or the Treaty on European Union shall be exercised under the conditions and within the limits defined by those Treaties and secondary legislation.*
- 50.3 *Insofar as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights in Articles [to be listed] shall be identical to those conferred on them by the said Convention as interpreted by the European Court of Human Rights.*
- 50.4 *Articles [to be listed] set out economic and social principles which apply insofar as they are provided in Community law or national law and practice and shall be implemented or promoted accordingly. In the light of the foregoing, Article 50.1 does not apply to these principles.*

Reasons

As the conditions under which, and the limitations within which, rights are to be exercised are sometimes contained in secondary legislation under Treaty provisions, rather than in the Treaty provisions themselves, this fact should be covered in paragraph 2. This could be done simply by adding the words “.....and secondary legislation”. In the interest of certainty, the relevant Charter provisions should be listed in the paragraph.

The word “similar” in the third line of 50.3 is vague and implies that some difference between the effect of the corresponding provisions of the Charter and the Convention for the Protection of Human Rights and Fundamental Freedoms is not ruled out. To remove this implication, “similar” should be replaced by “identical”.

Likewise the final phrase in Article 50.3 “unless this Charter affords greater or more extensive protection” invites an examination of the Charter provisions to ascertain whether, as worded, they are more expansive. For example, in Charter Article 2.1, this would surely result in a conclusion that the exceptions in Article 2.2 of the Convention do not apply. Accordingly, the final phrase in Article 50.3 should be omitted. The addition of “as interpreted by the European Court of Human Rights” would ensure that the significant evolution of the Convention rights through the jurisprudence of the Court would be incorporated into the Charter.

In the interest of necessary certainty in the Charter, Article 50.3 should list the Charter Articles to which it applies.

The new horizontal Article 50.4 is to cover our concerns in relation to economic and social

principles as explained in the reasons for change to paragraph 4 of the Preamble.

THE PREAMBLE

Paragraph 4

Proposed amendment

Insert “and the recognition of economic and social principles” after “fundamental rights” in the first line; insert “and principles” after “those rights” in the third line.

Revised paragraph to read

In adopting this Charter the Union intends to enhance the protection of fundamental rights and the recognition of economic and social principles in the light of changes in society, social progress and scientific and technological developments by making those rights and principles more visible.

Reasons

The Charter deals with economic and social rights as well as fundamental civil and political rights. The former, although not inferior to the latter, differ from them, in conformity with their current status in the instruments from which they are drawn, in not being judicially enforceable. In the Charter, which includes these two sets of different rights, it would be misleading to apply the term “rights” to both. Thus it would be more appropriate to refer to the economic and social provisions as principles and to amend the paragraph accordingly.

Paragraph 5

Proposed amendment

Insert “and principles” after “rights” in the second line.

Revised paragraph to read

The Charter reaffirms, with due regard for the powers and tasks of the Community and the Union and the principle of subsidiarity, the rights and principles as they result, in particular, from the constitutional traditions common to the Member States, the Treaty on European Union, the Community Treaties, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Community and by the Council of Europe and the case law of the Court of Justice of the European Communities and of the European Court of Human Rights.

Reasons

For the reasons outlined above in relation to the amendment proposed to paragraph 4, it is necessary to include a reference to “principles”.

Paragraph 6

Proposed amendment

Insert “and principles” after “rights” in the first line.

Revised paragraph to read

Enjoyment of these rights and principles entails responsibilities and duties with regard to other persons, to the human community and to future generations.

Reasons

For the reasons outlined above in relation to the amendment proposed to paragraph 4, it is necessary to include a reference to “principles”.

Paragraph 7***Proposed amendment***

Delete in its entirety and replace by a new paragraph as set out below.

Revised paragraph to read

Therefore this Charter sets out the rights and fundamental freedoms to be observed, and the principles to be recognised and respected, by the institutions and bodies of the Union and the Member States when they are implementing Union law.

Reasons

The word “guaranteed” in the current paragraph 7 is inappropriate when the legal status of the Charter is undecided and is, in any case unacceptable in the context of the principles in the economic and social sphere. Therefore, it is preferable to use the suggested revised language for Article 49 of the draft Charter.

INDIVIDUAL ARTICLES

Article 3: Right to the integrity of the person

Proposed amendment

Insert “subject to the limitations recognised by law” at the end of the first indent of 3.2.

Revised Article to read

3.2 *In the fields of medicine and biology, the following principles must be respected in particular:*

- *free and informed consent of the person concerned subject to the limitations recognised by law,*
- *prohibition of eugenic practices, in particular those concerned with the selection of persons,*
- *prohibition on making the human body and its parts a source of financial gain,*
- *prohibition of the reproductive cloning of human beings.*

Reasons

Limitations are necessary in order to reflect current national medical norms and practices, for example, exceptional cases involving medical treatment of persons unable to give consent. Article 50.1 may not offer sufficient certainty in this respect.

Article 5: Prohibition of slavery and forced labour

Reasons

While we have no difficulty with the principle expressed in Article 5.3, in the absence of further clarification of the legal source for this right, and of definition of the terms “trafficking” and “human beings”, Article 5.3 as drafted is problematic. Further definition and clarification is therefore required.

Article 8: Protection of personal data

Proposed amendment

Add “in accordance with the provisions of Community law” at the end of the first sentence.

Revised Article to read

Everyone has the right to the protection of personal data concerning him in accordance with the provisions of Community law. Such data must be processed

fairly for specified purposes on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him, and the right to have it rectified. Compliance with these rules shall be subject to control by an independent authority.

Reasons

As the legal basis for this right is contained in an EC directive, it is preferable to include a reference to Community law.

Article 9: Right to marry and right to found a family

Proposed amendment

Insert “of men and women” after “The right” and delete “the right” where it appears in the second place in this Article.

Revised Article to read

The right of men and women to marry and to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights.

Reasons

The proposed amendment brings the essence of this right closer to that contained in the relevant Article in the ECHR. The existing language is too vague and would introduce confusion.

Article 11: Freedom of expression and information

Proposed amendment

Delete paragraph 2

Reasons

Paragraph 2 appears to be creating a new right, or rather, expanding an existing right, in an unacceptable fashion. Freedom of the press is protected adequately under Article 11.1. Highlighting it paragraph 2 is unnecessary. Also, paragraph 2 is linking it to undefined concepts of “pluralism” and “transparency” and it is unclear what the purpose of such linkage is.

Article 13: Freedom of research

Proposed amendment

Delete in its entirety.

Reasons

This Article is unacceptable and there is no need for it as the right is adequately covered by other Articles in the draft Charter, for example Articles 10 and 11. If it is to be specifically included, numerous qualifications will be necessary.

Article 14: Right to education***Proposed amendment***

Delete “and to have access to vocational and continuing training” in the first sentence of paragraph 1.

Insert a new paragraph 2 as set out below.

Renumber existing paragraph 2 as paragraph 3.

Revised Article to read

1. *Everyone has the right to education. This right includes the right to receive free compulsory education.*
2. *The Union recognises and respects the entitlement of its citizens and nationals of third countries who are legally entitled to work in the territories of the Member States to have access to vocational and continuing training in accordance with Community law and national law and practice.*
3. *The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be guaranteed, in accordance with national laws governing the exercise of such freedom and right.*

Reasons

In Ireland, access to vocational and continuing training is only available to EU citizens and those legally entitled to work in the country.

The provisions in Articles 14.2, 15.1, 16, 24, 26, 27, 28, 29.1, 31.1, 32.1 and 33 comprise provisions in relation to economic and social matters. As indicated in the explanation for change to paragraph 4 of the Preamble, these differ from other rights in not being judicially enforceable, in conformity with the instruments from which they are drawn. Their practical application rests on Community law and national law and practice. This difference should be reflected in the case of each of the above provisions by an introduction reading “The Union

recognises and respects the entitlement to...” and addition at the end of the phrase “in accordance with Community law and national law and practice.” As these changes usually require adjustment of the existing wording, the amended version of each of the individual provisions is set out.

Article 15: Freedom to choose an occupation

Proposed amendment

Reword the first paragraph as set out below.

Delete “or receive” in paragraph 2.

Insert “legally entitled to work” instead of “ authorised to reside” in paragraph 3.

Revised Article to read

1. *The Union recognises and respects the entitlement of everyone to engage in a freely chosen occupation to earn a living in accordance with Community law and national law and practice.*
2. Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State.
3. Nationals of third countries who are legally entitled to work in the territories of the Member States are entitled to working conditions equivalent to those of citizens of the Union.

Reasons

With regard to paragraph 1, the right to engage in an occupation does not exist without qualification. It is necessary therefore to introduce a reference to Community law and national laws and practices to clarify that this right can be fettered. It should also be restated as a principle, please see the explanation under Article 14.

The entitlement contained in paragraph 3 is available only to nationals of third countries who are legally entitled to work in the territories of Member States and the provision should so limit it.

Article 16: Freedom to conduct a business

Proposed amendment

Reword as set out below.

Revised Article to read

The Union recognises and respects the entitlement to conduct a business in accordance with Community law and national law and practice.

Reasons

This should be restated as a principle; please see the explanation under Article 14.

Article 17: Right to property***Proposed amendment***

Replace “has the right to own, use, dispose of and bequeath” with “is entitled to the peaceful enjoyment of” in the first sentence of paragraph 1.

Replace “his” with “these” in the second sentence of paragraph 1. Insert “and subject, in appropriate cases, to fair compensation” instead of “,subject to fair compensation” in the second sentence of paragraph 1.

Delete paragraph 2 of this Article.

Revised Article to read

Every person is entitled to the peaceful enjoyment of his lawfully acquired possessions. No one may be deprived of these possessions, except in the public interest and in the cases and under the conditions provided for by law, and subject, in appropriate cases, to fair compensation. The use of property may be regulated insofar as is necessary for the general interest.

Reasons

This right is derived from Article 1 of the First Protocol to the ECHR. Ireland has a concern that the changes to the language contained in Article 1 may imply a change in the scope of this right. Ireland would prefer, therefore, to keep to the essence of the wording contained in Article 1 of the First Protocol.

In addition, Ireland has concerns about the reference to fair compensation, as that right cannot exist in all cases. For example, in the field of intellectual property rights, international law allows some scope for exceptions to the protection of intellectual property rights (for example, copyright law allows free (that is no payment) exceptions for certain copying conducted for the purposes of research and private study, etc.). Therefore, the reference to fair compensation must be deleted or else qualified as proposed.

Ireland also advocates the deletion of paragraph 2 as intellectual property is protected under paragraph 1 in any case. If intellectual property is singled out for a particular mention then the same qualifications contained in paragraph 1 should be included.

Article 19: Protection in the event of removal, expulsion or extradition***Proposed amendment***

In paragraph 2, replace “could” with “would”.

Revised Article to read

2. ***No one may be removed, expelled or extradited to a State where he would be subjected to the death penalty, torture or other inhuman or degrading treatment.***

Reasons

Changing “could” to “would” introduces the concept of real risk to the Article. It also more accurately reflects ECHR jurisprudence.

Article 21: Equality and non-discrimination***Proposed amendment***

Reword paragraph 1 as set out below.

Insert a new paragraph 2 as set out below.

Renumber existing paragraph 2 as paragraph 3.

Revised Article to read

1. ***Any discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation shall be prohibited to the extent that the Council has, in accordance with the Treaty establishing the European Community, so provided.***
2. The enjoyment of those rights and freedoms in this Charter which are guaranteed by the ECHR shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.
3. **Within the scope of application of the Treaty establishing the European Community and of the Treaty on European Union, and without prejudice to the special provisions of those Treaties, any discrimination on grounds of nationality shall be prohibited.**

Reasons

Article 21 .1 as currently drafted is unacceptable to Ireland. It does not reflect an established right in any of the relevant instruments. Article 13 of TEC, which is cited as a source for this right, is an enabling provision to permit the Council to take action to combat discrimination

on the basis of an exhaustive list of grounds. Also, the application of Article 14 of the ECHR, which is cited as another source for this right, is confined to the freedoms and rights contained in the ECHR. The proposed revised wording addresses these concerns.

It would also be appropriate if this Article included a provision relating to affirmative action.

Article 24: Integration of persons with disabilities

Proposed amendment

Reword as set out below.

Revised Article to read

The Union recognises and respects the entitlement of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community in accordance with Community law and national law and practice.

Reasons

This should be restated as a principle; please see the explanation under Article 14.

Article 25: Workers' right to information and consultation within the undertaking

Proposed amendment

Delete in its entirety.

Reasons

There is no general right to information and consultation under Irish law or under Community law.

Article 26: Right of collective bargaining and action

Proposed amendment

Delete and replace in its entirety.

Revised Article to read

The Union recognises and respects the entitlement of employers and workers to negotiate and conclude collective agreements and, in cases of conflicts of interest, to take collective action in accordance with Community law and national law and

practice.

Reasons

This should be restated as a principle; please see the explanation under Article 14.

Article 27: Right of access to placement services

Proposed amendment

Reword as set out below.

Revised Article to read

The Union recognises and respects the entitlement of everyone to access to a placement service in accordance with Community law and national law and practice.

Reasons

This should be restated as a principle; please see the explanation under Article 14.

Article 28: Protection in the event of unjustified dismissal

Proposed amendment

Reword as set out below.

Revised Article to read

The Union recognises and respects the entitlement of every worker to protection against unjustified dismissal in accordance with Community law and national law and practice.

Reasons

This should be restated as a principle; please see the explanation under Article 14.

Article 29: Fair and just working conditions

Proposed amendment

Replace “Every worker has the right” with “The Union recognises and respects the entitlement of every worker” in paragraph 1.

Insert “in accordance with Community law and national law and practice” at the end of

paragraph 2.

Revised Article to read

1. *The Union recognises and respects the entitlement of every worker to working conditions which respect his or her health, safety and dignity.*
2. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave in accordance with Community law and national law and practice.

Reasons

This should be restated as a principle; please see the explanation under Article 14.

In addition, paragraph 2 should include a reference to Community law and national law and practice which set out qualifications which apply to the rights listed.

Article 31: Reconciling family and professional life

Proposed amendment

Reword paragraph 1 as set out below.

Reword paragraph 2 as set out below.

Revised Article to read

1. The Union recognises and respects the entitlement of the family to enjoy legal, economic and social protection in accordance with Community law and national law and practice.
2. There shall be protection from dismissal because of pregnancy, and paid maternity leave and parental leave shall be available following the birth or adoption of a child in accordance with Community law and national law and practice and with a view to allowing everyone to reconcile their family and professional lives.

Reasons

This should be restated as a principle; please see the explanation under Article 14.

Article 32: Social security and social assistance

Proposed amendment

Replace “social security and social services” with “social protection” in paragraph 1. Insert “subject to the rules laid down by Community law and national law and practice” instead of

“in accordance with the rules laid down by Community law and national laws and practices” at the end of paragraph 1 and reword the entitlements as set out below.

Reword paragraph 2 as set out below, including replacing “social security benefits, social advantages and access to health care” with the term “social protection”.

Delete paragraph 3.

Revised Article to read

1. The Union recognises and respects the entitlement to social protection in the event of sickness, maternity, invalidity, old age, accidents at work and occupational diseases, death and unemployment, and to ensure a decent existence for persons lacking sufficient resources, subject to the rules laid down by Community law and national law and practice.
2. Nationals of a Member State who are workers in another Member State, and members of their families, have the right to the same social protection as nationals of that State, subject to the rules laid down by Community law.

Reasons

The term “social protection” encompasses all the social and health benefits, including social assistance, provided in the various Member States. The term “social protection” is used already in the draft Charter, in Article 31.

The provision in paragraph 1 should be restated as a principle; please see the explanation under Article 14. The entitlements referred to are drawn from Article 4.1 of Regulation (EEC) No 1408/71.

In relation to paragraph 2, the various rights expressed therein are subject to conditions in secondary Community legislation to which there should be a reference.

The use of the term “social protection” and a reference to ensuring a decent existence for persons lacking sufficient resources in paragraph 1 enables the deletion of paragraph 3. The reference to housing benefit in this Article creates serious problems for Ireland, which does not address housing problems in this manner.

Article 33: Health care

Proposed amendment

Delete “Everyone has the right of” and replace with “The Union recognises and respects the entitlement to access to” and delete “the right ” before “to benefit”.

Replace the phrase “under the conditions established by national laws and practices” with “in accordance with Community law and national law and practice”.

Revised Article to read

The Union recognises and respects the entitlement to access to preventive health care

and to benefit from medical treatment in accordance with Community law and national law and practice.

Reasons

This should be restated as a principle; please see the explanation under Article 14.

Article 35: Environmental protection

Proposed amendment

Delete and replace in its entirety.

Revised Article to read

Environmental protection requirements must be integrated into the definition and implementation of all Community policies, in particular with a view to promoting sustainable development.

Reasons

This principle derives from Article 6 TEC and it is therefore necessary to reflect the wording contained in that Article. The current draft of Article 35 does not do so.

Article 39: Right to good administration

Proposed amendment

Replace “official languages of such institutions” with “languages referred to in Article 21 of the Treaty establishing the European Community” in paragraph 4.

Revised Article to read

Every person may write to the institutions of the Union in one of the languages referred to in Article 21 of the Treaty establishing the European Community and have an answer in the same language.

Reasons

Article 39(4) does not accurately reflect what is contained in the last paragraph of Article 21 of the TEC and as originally drafted does not include the right to correspond in the Irish language.

Article 45: Right to an effective remedy and to a fair trial

Proposed amendment

Delete paragraph 1 and replace by a new paragraph as set out below.

Delete paragraph 2 and replace by a new paragraph as set out below.

Delete paragraph 3 in its entirety.

Revised Article to read

Everyone whose directly enforceable rights and freedoms derived from community law are violated by the institutions or bodies of the Union or by a Member State exclusively when implementing Union law has the right to an effective remedy before a court. In such proceedings the rights guaranteed by Article 45.2 shall apply not withstanding the character of such proceedings.

Everyone is entitled to a fair and public hearing within a reasonable time in determining his or her civil rights and obligations. Hearings shall be by an independent and impartial tribunal established by law.

Reasons

The application of the Article should be limited as set out in the proposed amendment in the same way that Article 13 of the ECHR is limited to rights and freedoms as set forth in the Convention. Article 13 of the ECHR refers to an effective remedy before a “national authority” not necessarily a court. This broad interpretation is confirmed by the jurisprudence. The proposal would ensure that the Article applies only to alleged violations of EU law which would have to be dealt with by a court in any case.

In 45.2, the deletion of “previously” established by law is suggested as, although it is in accordance with ECHR jurisprudence, is not in Article 6 of the ECHR. The horizontal article will import ECHR jurisprudence.

It is suggested that the second sentence of 45.2 be deleted as in ECHR jurisprudence it is only in criminal cases that there is a guarantee of legal representation. The sentence would have the risk that it would require universal civil legal aid and that it would require the right to be legally represented before all administrative tribunals.

With regard to Article 45.3, this derives from ECHR jurisprudence with regard to civil cases. However, the ECHR requirement with regard to legal representation in criminal cases is more onerous. Attempting to reduce an ECHR decision to one sentence and attempting to apply it to criminal cases is not appropriate and consequently paragraph 3 should be deleted.

Article 47: Principles of legality and proportionality of criminal offences and penalties

Proposed amendment

Delete 47.3

Reasons

There is no apparent source for 47.3 in international law and we have concerns that the ECJ could involve itself in arguments that penalties for breaches of offences relating to community matters was not proportionate by comparison with other non EU offences in the jurisdiction.

Article 48: Right not to be tried or punished twice in criminal proceedings for the same criminal offence

Reasons

The Article appears to extend the immunity in Article 4 of Protocol 7 of the ECHR. The effect of this Article will need to be clarified.

Mme Paciotti

La Carta dei diritti fondamentali e le due Corti: la Corte di giustizia e la Corte europea dei diritti dell'uomo.

I quindici Stati membri dell'Unione europea hanno, ciascuno separatamente e in tempi diversi, sottoscritto e ratificato la Convenzione europea dei diritti dell'uomo e delle libertà fondamentali firmata il 4 novembre 1950 ed entrata in vigore il 3 settembre 1953. Ad essa aderiscono molti altri Stati europei (in tutto 41) che non fanno parte dell'Unione, ma fanno parte del Consiglio d'Europa.

Il Consiglio d'Europa, e in particolare la Corte di Giustizia, formata da un numero di giudici pari a quello degli Stati contraenti (ma che opera attraverso tre diversi tipi di organi: i comitati, composti di tre membri, le Camere, composte di sette giudici e la Grande Camera, composta di diciassette giudici) assicura la protezione dei diritti degli individui contro gli abusi dei pubblici poteri degli Stati contraenti, garantendo ai singoli un diritto di ricorso individuale allorché – esauriti i ricorsi interni al sistema giudiziario dello Stato contraente – si lamenti la persistenza dell'abuso.

Nell'Unione europea il rispetto del diritto nell'interpretazione e nell'applicazione del Trattato da parte degli Stati membri e delle Istituzioni e degli organi dell'Unione è assicurato dalla Corte di Giustizia, composta di quindici giudici (che può creare nel suo ambito delle sezioni), assistita da nove avvocati generali, nominati di comune accordo dai governi degli Stati membri.

In questa sua funzione la Corte di giustizia garantisce anche il rispetto nell'ambito dell'Unione dei diritti fondamentali: lo ha affermato reiteratamente la stessa Corte a partire dal 1969 (sentenza 12 novembre 1969 causa 29-69) osservando che "la tutela dei diritti fondamentali costituisce parte integrante dei principi giuridici generali di cui la Corte di giustizia garantisce l'osservanza". Lo stesso Consiglio Europeo di Colonia nella sua decisione di elaborare una Carta dei diritti ha ricordato che "... L'obbligo dell'Unione di rispettare i diritti fondamentali è confermato e definito dalla Corte di giustizia europea nella sua giurisprudenza."

L'attuale formulazione dell'art. 6, 2° comma del Trattato dell'Unione ha poi fissato esplicitamente questo dovere, prescrivendo: "l'Unione rispetta i diritti fondamentali quali sono garantiti dalla Convenzione europea per la salvaguardia dei diritti dell'uomo e delle libertà fondamentali, firmata a Roma il 4 novembre 1950, e quali risultano dalle tradizioni costituzionali comuni degli Stati membri, in quanto principi generali del diritto comunitario". Ovviamente, come ha stabilito la stessa Corte (sentenza 11 luglio 1985 cause riunite 60 e 61/84), "benché spetti alla Corte garantire l'osservanza dei diritti fondamentali nel settore specifico del diritto comunitario, non le spetta tuttavia esaminare la compatibilità con la Convenzione europea per la salvaguardia dei diritti dell'uomo e delle libertà fondamentali di una legge nazionale riguardante un campo soggetto alla valutazione del legislatore nazionale".

È evidente che ci si trova di fronte a due diversi sistemi ordinamentali, l'uno che fa capo al Consiglio d'Europa e l'altro che fa capo all'Unione europea: nel primo l'obiettivo principale del sistema è quello di garantire il rispetto dei diritti fondamentali delle persone all'interno degli Stati contraenti; nel secondo il rispetto dei diritti fondamentali è un requisito di legittimità dell'ordinamento sovranazionale. In ciascuno dei due diversi ordinamenti una apposita Corte, secondo apposite procedure, decide sull'osservanza delle norme e dei principi relativi ai diritti fondamentali.

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È teoricamente possibile che la giurisprudenza delle due corti europee diverga a proposito dell'interpretazione di taluno di questi diritti, ma in questo caso non si può parlare di un "conflitto" perché, appunto, le due Corti operano nell'ambito di ordinamenti diversi (nessuno parlerebbe di "conflitto" tra una corte francese e una corte tedesca, se interpretassero in modo diverso lo stesso principio): si tratterebbe di mere diversità interpretative che, in linea di massima, costituiscono una ricchezza e uno stimolo a una sempre più affinata e aggiornata evoluzione del diritto. In pratica, peraltro, questa divergenza interpretativa solitamente non si verifica poiché le due corti conoscono e tengono in considerazione la rispettiva giurisprudenza.

Allorché si è proposto di fare aderire la Comunità alla Convenzione europea dei diritti dell'uomo, giustamente la Corte di giustizia (parere 2/94 del 28 marzo 1996) ha osservato, fra l'altro, che ciò non sarebbe stato possibile in mancanza di una riforma dei Trattati perché tale adesione "determinerebbe una modificazione sostanziale dell'attuale regime comunitario di tutela dei diritti dell'uomo, in quanto comporterebbe l'inserimento della Comunità in un sistema internazionale distinto". L'ipotesi dell'adesione dell'Unione europea alla Convenzione europea per la salvaguardia dei diritti dell'uomo solleverebbe inoltre non pochi problemi pratici (per esempio circa la nomina di un ulteriore giudice in "rappresentanza" dei 15 Paesi già singolarmente "rappresentati") e giuridici, perché a questo punto si potrebbe verificare un vero e proprio "conflitto" tra le due corti, che apparirebbero allo stesso sistema ordinamentale, e perché occorrerebbe stabilire apposite procedure per risolvere questa ed altre non semplici questioni, come quella relativa al diritto di ricorso individuale generalizzato, esistente in un sistema e non nell'altro.

La decisione di redigere una Carta dei diritti fondamentali dell'Unione europea non crea alcun nuovo problema, mentre risolve alcuni problemi preesistenti.

Risolve, fra l'altro, il problema della definizione dei diritti fondamentali vigenti nell'Unione europea, finora affidato alla giurisprudenza "creativa" della Corte di giustizia.

Non determina alcuna nuova ipotesi di "conflitto" con la Corte di Strasburgo, perché, quanto al rapporto tra i due ordinamenti e le due corti, mantiene la situazione esistente, limitandosi a specificare esplicitamente quali siano i diritti fondamentali genericamente richiamati nell'articolo 6 del Trattato dell'Unione.

L'adozione della Carta dei diritti influirà comunque sulla giurisprudenza della Corte di giustizia: indirettamente, come riferimento culturale, se non avrà valore vincolante; direttamente, come riferimento normativo, se sarà in qualche forma integrata nei Trattati.

A questo punto perseguire parallelamente anche l'obiettivo dell'adesione dell'UE alla Convenzione europea per la salvaguardia dei diritti dell'uomo creerebbe ulteriori problemi, anche perché la Convenzione contempla unicamente i tradizionali diritti civili e politici, mentre la nuova Carta prevederà anche i diritti economici e sociali. Sicché si avrebbe l'ulteriore rischio di un duplice regime di tutela giurisdizionale, a seconda della natura del diritto fondamentale in questione: si creerebbe un insieme difficilmente districabile di problemi giuridici, procedurali, istituzionali che sarebbe auspicabile evitare.

Un possibile fondamento istituzionale del doveroso coordinamento della giurisprudenza delle due Corti potrebbe essere rinvenuto nella considerazione che delle tradizioni costituzionali comuni degli Stati membri fa parte la giurisprudenza della Corte di Strasburgo, nel senso che i diritti fondamentali delle persone contenuti nella Convenzione vengono interpretati dalle Corti statali tenendo presente la giurisprudenza di Strasburgo.

In questo modo anche la Corte di Giustizia, tenuta ad interpretare i diritti fondamentali "quali risultano dalle tradizioni costituzionali comuni degli Stati membri" (obbligo che non verrebbe

meno neppure quando i diritti fondamentali saranno inseriti nella Carta) non potrà prescindere dalla giurisprudenza della Corte europea per la salvaguardia dei diritti dell'uomo.

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PACIOTTI

Bruxelles, 30 agosto 2000

Ill.mo signore

Prof. I. Mendez de Vigo
Vice presidente della Convenzione
Incaricata di elaborare la Carta dei
diritti fondamentali dell'Unione europea

Nel complimentarmi con il Presidium per l'elaborazione del progetto completo della Carta, rassegno qui di seguito le mie osservazioni, segnalando che analoghi rilievi vengono formulati dal prof. Stefano Rodotà, delegato del Presidente del Consiglio dei Ministri italiano e dal prof. Andrea Manzella, rappresentante del Senato italiano.

Sul preambolo:

Al punto 3, non appare adeguata la formula secondo cui l'Unione assicura uno sviluppo equilibrato e sostenibile "attraverso" la libera circolazione delle persone, dei beni, dei capitali e dei servizi: si esprime così un rapporto da mezzo a fine fra libertà di circolazione e sostenibilità dello sviluppo che è perlomeno dubbio. Storicamente, l'Unione europea ha cercato di promuovere uno sviluppo equilibrato e sostenibile favorendo la coesione sociale e il rispetto dell'ambiente. E' opportuno non ignorare nel preambolo questo dato di fatto, componente essenziale del "modello europeo".

Si può rimediare all'incongruenza semplicemente dicendo "L'Unione assicura uno sviluppo equilibrato e sostenibile e garantisce la libera circolazione delle persone, dei beni, dei capitali e dei servizi"; meglio sarebbe, tuttavia, menzionare esplicitamente la coesione sociale (ed eventualmente anche il rispetto dell'ambiente), dicendo **"L'Unione assicura uno sviluppo equilibrato e sostenibile promuovendo la coesione sociale e il rispetto dell'ambiente e garantisce la libera circolazione..."**.

Al punto 5, crea perplessità l'indicazione, fra le fonti da cui derivano i diritti fondamentali riconosciuti nella Carta, della giurisprudenza delle Corti

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europee, che non può essere collocata allo stesso livello dei trattati, delle convenzioni e delle carte formalmente adottate dagli Stati.

Ulteriori perplessità crea la menzione in questa sede della Corte europea dei diritti dell'uomo, che appartiene ad un ordinamento diverso da quello dell'Unione: essa infatti non è indicata, a differenza della Corte di giustizia, nel mandato di Colonia.

(Sulla questione dei rapporti fra le due Corti europee in relazione alla Carta dei diritti fondamentali in corso di elaborazione, allego un appunto che esprime il mio punto di vista).

Sulla struttura:

E' pienamente condivisibile e apprezzabile, per la sua efficacia e novità, la suddivisione del testo sotto i titoli "dignità", "libertà", "uguaglianza", "solidarietà", "cittadinanza", "giustizia", anche se comporta inevitabilmente qualche forzatura nella collocazione di alcuni articoli, ispirati a principi molteplici. **Sarebbe tuttavia di gran lunga preferibile che l'articolo dedicato al diritto alla salute (attuale articolo 33) venisse collocato nel capo intitolato alla dignità.** In questo modo si darebbe immediata e giusta evidenza ad uno fra i più significativi nuovi diritti, considerato elemento essenziale per la tutela della dignità delle persone.

La libertà di circolazione (attuale articolo 43) andrebbe invece meglio inserita nel Capo relativo alle libertà.

Sull'articolato:

All'art.1 si ritiene necessario insistere sulla formula **"la dignità umana è inviolabile"** e comunque sulla menzione della inviolabilità della dignità della persona, nel senso che la garanzia e la tutela della dignità umana devono essere riferite a un bene concettualmente intangibile da parte dei pubblici poteri. Ci si preoccupa, infatti, del modo in cui i cittadini europei reagiranno alla lettura della Carta: poiché nei testi in cui è nominata (ad esempio, l'art.1 del Grundgesetz) la dignità è appunto dichiarata "inviolabile" o "intangibile", ogni diversa formulazione può essere percepita come un indebolimento della tutela: E, trattandosi del primo articolo della Carta, questo potrebbe determinare una lettura complessiva della Carta come testo debole.

All'art.11, Si propongono le seguenti modifiche:

Al comma 1, dopo le parole: "libertà di ricevere", aggiungere le parole: "di ricercare".

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Al comma 2, aggiungere le parole: "anche nei confronti delle concentrazioni dei mezzi di comunicazione di massa".

Si insiste perché, al comma 1, si indichi espressamente la libertà di "cercare" informazioni, non solo di riceverle. Tale diritto, già compreso nell'art. 19 della Dichiarazione dell'Onu del 1948, è oggi primario nella nuova dimensione di Internet (non a caso, i regimi dittatoriali cercano di negarlo).

Al comma 2, appare opportuno che la garanzia del pluralismo dell'informazione vada assicurata anche nei confronti delle gigantesche concentrazioni proprietarie in atto nel mondo.

All'art.12, Si propone la seguente modifica:

Al comma 2, dopo le parole: "ad esprimere", aggiungere le parole: "con metodo democratico".

E' essenziale infatti che l'Unione Europea, che si fonda sul principio di democrazia, come è anche detto nel Preambolo, riconosca la qualifica di partito politico soltanto alle formazioni che agiscono "con metodo democratico", nel rispetto, cioè, di quel valore.

All'art.13 Si propone l'aggiunta del seguente comma:

"Tutti hanno il diritto di beneficiare, a condizioni eque, dei risultati delle ricerche scientifiche, in particolare nel campo bio-medico".

L'attenzione dell'opinione pubblica si è concentrata massimamente e con interesse crescente sui problemi della ricerca, soprattutto nel campo della bio-medicina, e sui problemi della brevettabilità e della commercializzazione esclusiva dei risultati della ricerca. Il comma di cui si propone l'introduzione stabilisce un principio di contemperamento tra il diritto di ognuno di beneficiare dei risultati della ricerca, in specie nel campo bio-medico, ed il giusto riconoscimento economico dei costi della ricerca stessa.

All'art.15, comma 1, non appare accettabile che si dica che, per guadagnarsi da vivere ciascuno ha "il diritto di esercitare una professione" ma non di lavorare. Occorre aggiungere la menzione del diritto al lavoro. Si propone di sostituire il primo comma con il seguente:

"1. Ogni individuo ha il diritto di realizzare le sue capacità personali con un lavoro liberamente scelto o accettato".

La diversa formulazione del comma fa, infatti, riferimento alla realizzazione personale dell'individuo e non al solo elemento economico del guadagno per vivere, ma anche al lavoro nel suo significato più generale, comprendente ogni tipo di attività, economica, culturale e artistica, svolta in condizione di indipendenza o autonomia.

All'articolo 16 si propone di aggiungere, in fine, le seguenti parole:

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"nel rispetto del principio di uno sviluppo economico e sociale equilibrato e sostenibile".

L'affermazione della libera imprenditorialità deve essere qui contemperata con il concetto di sviluppo equilibrato e sostenibile, secondo l'indirizzo fondamentale del modello sociale europeo. Si ricorda a tal riguardo che in nessuna delle Costituzioni europee il diritto di impresa è affermato in maniera assoluta e incondizionata. Esso è sempre contemperato con principi di sostenibilità sociale ed ecologica e di equilibrio economico.

Un elemento caratteristico di tutto il costituzionalismo del novecento, è stato, infatti, proprio quello di legare il riconoscimento dei diritti di libertà economica a finalità di ordine sociale. Se fosse mantenuta l'attuale formulazione dell'articolo 16 (come quella del successivo articolo 17), la norma in questione sarebbe percepita come un arretramento rispetto a tradizioni costituzionali comuni.

All'articolo 17 si propone di sostituire il terzo periodo del primo comma con il seguente:

"L'esercizio del diritto di proprietà può essere limitato dalla legge nell'interesse generale e per assicurarne la funzione sociale".

L'espressione "limitato dalla legge", in luogo di quella "regolamentato", offre una migliore garanzia del diritto di proprietà, perché esclude limitazioni che provengano da atti non aventi forza di legge.

Inoltre, il riferimento alla "funzione sociale" rafforza il riferimento all' "interesse generale", che sarebbe altrimenti troppo debole, ed è in linea con la tradizione del costituzionalismo del novecento, come si è detto sopra. Non basterebbe, a tal fine, la clausola orizzontale dell'art. 50, perché essa postula appunto l'ordinaria assolutezza dei diritti garantiti, mentre nel caso qui discusso (ed in quello di cui al precedente articolo 16) si tratta proprio di stabilire che il riconoscimento di questi particolari diritti è ormai collegato strutturalmente con finalità di interesse generale.

All'art.21, Si suggerisce l'aggiunta del seguente comma:

"3. L'unione adotta le politiche opportune per eliminare le disparità di fatto e per promuovere le condizioni che rendono effettiva l'uguaglianza".

L'enunciazione meramente formale e negativa del principio di uguaglianza appare, infatti, insufficiente. E' dunque, necessario rafforzarla vincolando l'Unione europea ad adottare politiche attive per rimuovere le condizioni che impediscono di fatto la parità delle opportunità e il riconoscimento di effettiva pari dignità a tutti gli individui.

All'art.23, Appare opportuno aggiungere - all'inizio dell'articolo ovvero dopo il primo comma - il seguente comma:

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"Le bambine e i bambini devono essere protetti contro ogni minaccia alla loro maturazione intellettuale e alla loro integrità psicologica e sessuale".

Il nuovo comma si fa carico delle minacce che incombono sui bambini (anche attraverso tecnologie di informazione) e vincola il potere pubblico ad un obbligo di protezione nei loro confronti. Si tratta di un'esigenza assai sentita dall'opinione pubblica europea.

Si insiste sull'opportunità dell'inserimento di un nuovo articolo **23-bis**, relativo ai diritti degli anziani, formulato come segue:

"Articolo 23-bis. Diritti degli anziani.

Ogni individuo anziano ha diritto ad un'esistenza autonoma e dignitosa e a partecipare pienamente alla vita politica, sociale e culturale".

L'andamento demografico nei paesi dell'Unione europea impone, infatti, di considerare specificamente la sfera dei diritti delle persone anziane. La norma proposta richiama, d'altronde, l'articolo 23 della Carta sociale europea.

All'art.26, si suggerisce la seguente modifica:

dopo le parole: "concludere contratti collettivi", inserire le parole: "anche a livello dell'Unione", e dopo le parole: "azioni collettive", aggiungere le parole: "compreso lo sciopero".

Il riconoscimento nella Carta del diritto di negoziazione collettiva acquista significato, infatti, solo se accompagnato dalla specificazione del possibile ambito europeo della contrattazione. La mancata menzione del diritto di sciopero, riconosciuto dalla Carta sociale europea e da un gran numero di Convenzioni dell'OIL, oltre che dalle tradizioni costituzionali comuni dei Paesi membri, rischia, invece, di essere intesa come una restrizione dei diritti vigenti.

All'art.29, si propongono le seguenti modifiche:

Al primo comma, aggiungere, in fine, le parole: "e ad una giusta retribuzione proporzionata alla qualità e quantità del lavoro prestato".

Al secondo comma, aggiungere, in fine, le parole: "e non può rinunziarvi".

Tra le condizioni di lavoro "giuste ed eque" deve necessariamente inserirsi il diritto ad una retribuzione giusta e proporzionata alla prestazione. L'irrinunciabilità alle ferie risponde, invece, ad una tipica necessità di protezione della parte più debole del rapporto di lavoro.

Sorprende, nella formulazione di alcuni diritti sociali, l'uso di espressioni attenuate o indirette, che paiono affievolire il riconoscimento di alcuni diritti rispetto ad altri. Così, mentre all'art.31 si dice che "è garantita la protezione della famiglia" (pur trattandosi evidentemente di un diritto che richiede per la sua effettività interventi legislativi e amministrativi a molteplici livelli nell'ambito degli Stati membri e non solo dell'Unione), all'art.32, concernente la sicurezza e l'assistenza sociale, si usa una formula generica e non impegnativa: non solo

questi diritti non sono “garantiti”, ma l’Unione si limita a riconoscere e rispettare l’esistente “secondo le modalità stabilite dal diritto comunitario e le legislazioni e prassi nazionali”, formula questa più volte ripetuta soltanto per alcuni diritti , indipendentemente dal fatto che trovino regolamentazione primaria nella legislazione nazionale o in quella comunitaria, e pur trattandosi di una formula superflua in presenza della clausola generale dell’art.49.

All’art.34 si giunge poi ad una formulazione inaccettabile, che non fa cenno ad alcun diritto, neppure nella formula attenuata del riconoscimento da parte dell’Unione di un diritto sancito da legislazioni nazionali, ma al semplice “rispetto dell’accesso ai servizi d’interesse generale quale previsto dalle legislazioni e prassi nazionali, ai sensi delle disposizioni del Trattato...”. Si tratta di una formula tanto sovrabbondante quanto inutile, che dovrà essere adeguata al tenore degli altri articoli.

Si propone di sostituire il testo dell'articolo 34 con il seguente:

"Al fine di promuovere la coesione sociale e territoriale l'Unione riconosce e rispetta il diritto di ogni individuo all'accesso a servizi di interesse generale che assicurino le prestazioni necessarie a garantire la qualità della vita e le possibilità di lavoro. Le prestazioni di servizi di interesse generale si basano sui principi di uguaglianza di accesso, di universalità, di continuità, di trasparenza".

E' opportuno che il diritto ad usufruire di servizi di interesse generale sia inquadrato in principi-guida che, salve le differenziazioni nazionali, ne garantiscano l'effettività, anche in funzione della promozione della coesione sociale e territoriale dell'Unione, prevista dall'articolo 16 del Trattato CE (se venisse menzionata la finalità di garantire le possibilità di lavoro potrebbe, inoltre, essere qui assorbito l'articolo 27 relativo ai servizi di collocamento).

All’art.36, si propone l'aggiunta del seguente comma:

"I consumatori hanno diritto ad una informazione completa sulla qualità dei beni e dei servizi e ad una pubblicità non ingannevole che risponda ai criteri di trasparenza e veridicità".

La sensibilità popolare europea si è fatta particolarmente acuta riguardo ai criteri di fabbricazione e manipolazione di prodotti alimentari e di beni di consumo personale. E' necessario che una Unione sempre più vicina ai bisogni della gente si faccia carico nelle sue politiche di queste diffuse preoccupazioni.

All’art.37 si propone di premettere il seguente nuovo comma, che assorbirebbe il secondo comma previsto nel progetto del Presidium:

"1. I cittadini dell'Unione hanno il diritto di partecipare all'esercizio del potere pubblico a livello dell'Unione per il tramite di un'assemblea rappresentativa eletta a suffragio universale diretto, libero e segreto".

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Il principio di democrazia su cui, com'è detto nel Preambolo, si basa l'Unione europea, deve trovare nell'affermazione del "diritto al Parlamento", contenuto in questo nuovo comma, la concretizzazione di democrazia partecipativa e parlamentare. La formulazione è tratta dalla giurisprudenza della Corte di giustizia (e, in particolare, dalle sentenze Roquette e Maizena).

Il secondo comma nella formulazione del Presidium, è la specificazione di questo "diritto al Parlamento", che ne costituisce pertanto la premessa da esplicitare necessariamente.

All'art.47, si propone di aggiungere, alla fine del terzo comma, le seguenti parole:

"e devono tendere alla rieducazione del condannato".

E' infatti un principio di civiltà giuridica, recepito in varie Costituzioni e ordinamenti europei, che l'espiatione della pena debba accompagnarsi a misure dirette a recuperare e rieducare la personalità del condannato.

All'art.49, Si propone di riformulare il primo comma come segue:

"1. Le istituzioni e gli organi dell'Unione, come pure gli Stati membri quando attuano il diritto dell'Unione, rispettano i diritti fondamentali e osservano i principi enunciati nella presente Carta e ne promuovono l'applicazione nel rispetto del principio di sussidiarietà".

Molti dei diritti fondamentali enunciati nella Carta trovano, infatti, attuazione principalmente nell'ambito nazionale, costituendo, per il diritto dell'Unione, un quadro di riferimento, di orientamento e di limitazione della regolamentazione comunitaria. Affermare che le disposizioni della Carta si applicano agli Stati membri "esclusivamente" nell'attuazione del diritto dell'Unione può creare incomprensioni, dato che al comma 2 dell'articolo 49 già si ribadisce che la Carta non modifica alcuna competenza istituzionale.

All' art.50, si suggerisce di riformulare il terzo comma come segue:

"3. I diritti e le libertà riconosciuti dalla presente Carta, che siano già disciplinati dalla Convenzione Europea di salvaguardia dei diritti dell'uomo e delle libertà fondamentali, possono subire le medesime restrizioni previste dalla Convenzione: non possono subire restrizioni maggiori di quelle, ma possono godere della protezione maggiore e più estesa prevista dalla presente Carta".

Nel terzo comma del testo proposto dal Presidium, l'uso del termine "simili", riferito al significato ed alla portata dei diritti fondamentali, può essere fonte di confusione. Con il nuovo testo del comma, si intende proporre una formulazione più chiara e semplice di quella del Presidium, che metta in luce due dati essenziali: e cioè che, con riferimento ai diritti della Convenzione, non vi possono essere restrizioni maggiori di quelle previste dalla Convenzione stessa; ma che, al contempo, la Carta può garantire ad essi una protezione maggiore o più estesa.

Infine, si insiste affinché nel capo relativo alla **dignità** (ovvero in quello relativo alla libertà) siano aggiunti due articoli, già proposti in sede di emendamenti, il cui inserimento è sollecitato dai movimenti femminili, riferiti al diritto all'autodeterminazione e al diritto alla libertà sessuale. Si tratta di articoli che rispecchiano il testo di atti dell'Onu (si veda in particolare il par.96 della Dichiarazione di Pechino) sottoscritti da tutti i Paesi membri, idonei a qualificare le libertà degli europei rispetto a mondi vicini, che vedono l'oppressione quotidiana delle donne e la repressione di libertà sessuali presso di noi pienamente riconosciute. Se ne trascrivono i testi:

“Art.5 bis. Diritto all'autodeterminazione.

Ogni individuo ha il diritto di prendere liberamente le decisioni che riguardano la sua vita e la sua persona, al riparo da ogni forma di coercizione, discriminazione o violenza e con il pieno rispetto dell'eguaglianza tra i generi”.

“Art.5 ter. Diritto alla libertà sessuale.

Ogni individuo ha diritto di decidere liberamente per quanto riguarda la sua sessualità, che comprende il diritto alla salute sessuale e riproduttiva garantito contro ogni forma di coercizione, violenza e discriminazione tra donne e uomini”.

Quanto alla forma del progetto, cioè agli aspetti linguistici e redazionali, mi riservo qualche osservazione sulla versione italiana quando si disporrà del testo definitivo.

Con i sensi della mia più alta considerazione

Elena Paciotti

1 allegato

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PAPADIMITRIOU

August 30, 2000

Subject: Comments on CHARTE 4422/00

Dear Mr. Braibant

As personal representative of the Prime Minister of the Hellenic Republic, I would like to congratulate the Praesidium for their work and to welcome the outcome, the very balanced text of draft Charter (doc.4422/00).

Having said that, I would like, also, to forward to you some comments in order to clarify specific provisions and to ameliorate the general impression of the draft Charter.

1. In the Preamble, I believe that it is a matter of reasoning to redraft the first paragraph in order to show the logical sequence
"1. The peoples of Europe, resolved to share a peaceful future based on common values, have established an ever closer union between them."
2. In the Preamble, second paragraph, at the end, I think that the addition of *social justice* after the principle of democracy and the rule of law, would be the most appropriate way to announce *Chapter IV. Solidarity* that follows. This addition also improves the message of the Charter reflecting the social awareness and sensitivity of the Union.
3. In the Preamble, third paragraph, the second sentence (*it ensures...and services*) could become a separate paragraph (3a) underlining the current importance of sustainable development, recognized inter alia by article 6 TEC.
4. At the title of Chapter I could be added the adjective *HUMAN* in order to anticipate the forthcoming provisions.
5. The second sentence of article 12 is more appropriate to be placed at article 37 (as third paragraph) for systematic reasons.
6. At article 24, at the end, the present wording sounds as restricting the integration of persons with disabilities. It is, to my belief, better to rephrase as follows in order to achieve a better result: *"... participation in social and public life"*.
7. At article 45 par. 1, the expression *"Everyone whose rights and freedoms are violated..."* is not legally accurate. Since to certify such a violation could not be a prerequisite, in order to provide with an effective remedy, I think that the following wording is correct: *"Everyone whose rights and freedoms are deemed to be violated..."*
8. At article 49, par. 1, the expression *"... only when they are implementing Union law"* may produce the false assumption that, a contrario, in any other case, both the Union and its member states are not obliged to take account of the provisions of the Charter. Given the fact that the provisions of the Charter derive from common constitutional traditions and mutually ratified international conventions, this overclarification is both unnecessary and misleading. So, I would propose to strike out the word *only* in order to avoid undesirable interpretations of article 49.

Dear Mr. Braibant,

I finally recall that an exact and harmonized translation of the text of the Charter in every language of the Union is a matter of special concern and importance and must be conducted under the guidance of the personal representatives.

Sincerely yours,

Professor George Papadimitriou

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PATIJN

Aan: Het Presidium van de Conventie voor het Handvest van de grondrechten van de Europese Unie
Ter attentie van: de heer Jansson, Vice-voorzitter
Van: M. Patijn, vertegenwoordiger van de Nederlandse Tweede Kamer der Staten-Generaal bij de Conventie

Volgens de door de Conventie vastgestelde procedure doe ik u hieronder mijn algemene opmerkingen toekomen op het concept-Handvest, weergegeven in document CHARTE 4422/00 CONVENT 45, alsmede de daarop betrekking hebbende toelichting, weergegeven in document CHARTE 4423/00 CONVENT 46.

Ik complimenteer het Voorzitterschap met het tot nu toe bereikte resultaat, met name gelet op de omvang van de opdracht en de krappe termijn waarbinnen deze dient te worden gerealiseerd.

De voornaamste meerwaarde van het thans voorgestelde concept-Handvest is dat het een geslaagde poging betreft om alle bestaande grondrechten, fundamenteel en anderszins, die in diverse rechtsbronnen zijn vastgelegd, in één codificatie bijeen te brengen. Daarmee biedt het de burger van de Unie meer overzicht en duidelijkheid. Voorts zal het Handvest, gelet op het gestelde in artikel 49 van het thans voorliggende concept, de burger een betere rechtsbescherming kunnen bieden bij besluiten van de instellingen en organen van de Unie, alsmede van de Lidstaten wanneer zij Unieregelgeving tenuitvoerleggen.

Uitgangspunt is voor mij steeds geweest dat een te realiseren Handvest geen afbreuk dient te doen aan de werking van het Europees Verdrag voor de Rechten van de Mens en de daarop gebaseerde jurisprudentie van het Europese Hof voor de Rechten van de Mens te Straatsburg. Bij een zorgvuldige beoordeling van het thans voorliggende concept, met name voor wat betreft de juridische consistentie en houdbaarheid, dienen daarom nog enige verbeteringen te worden aangebracht, wil ik aan mijn parlement onverkort kunnen adviseren met het Handvest akkoord te gaan, laat staan in een latere fase mee te werken aan het toekennen van bindende werking daarvan. Mijn wensen tot verbetering hebben betrekking op de volgende punten.

1. Relatie Handvest-EVRM

De Nederlandse vertegenwoordigers hebben zich van meet af aan op het standpunt gesteld dat de juridische behandeling van fundamentele rechten die in het EVRM zijn geregeld, zodanig dient te zijn dat er in de praktische rechtstoepassing geen verschillen kunnen ontstaan tussen het Handvest enerzijds en het EVRM en de daarop gebaseerde jurisprudentie anderzijds, behoudens die gevallen dat het Handvest een verdergaande bescherming biedt. Dit uitgangspunt lijkt nog onvoldoende veilig gesteld in het huidige concept-Handvest. Artikel 50, lid 3 van het concept ondervangt dit, in juridische zin niet afdoende. Dit geldt met name de vraag of de in het EVRM toegestane beperkingen van fundamentele rechten, alsmede de jurisprudentie daarover, onverkort van toepassing zijn. Daarom dient in de artikelsgewijze toelichting, die een officiële status dient te krijgen, per artikel te worden vastgesteld dat het corresponderende EVRM-artikel en de daarop betrekking hebbende jurisprudentie van toepassing zijn. Hiertoe dient de toelichting helder te zijn. Zo dient bijvoorbeeld het woordgebruik eenduidig te worden gemaakt en dienen verschillende termen als “fondé sur” en “inspiré par” niet zonder reden naast elkaar gebruikt te worden.

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2. Codificatie nieuwe grondrechten

De in het Handvest op te nemen nieuwe grondrechten (zoals de rechten van het kind en de bescherming van persoonsgegevens) betreffen niet eerder gecodificeerde grondrechten. Uit de tekst van het concept-Handvest en de toelichting blijkt niet of en, zo ja, op welke wijze, deze nieuwe grondrechten door de wetgever van eventuele beperkingen mogen worden voorzien. Is bijvoorbeeld het recht op bescherming van persoonsgegevens absoluut?

3. Beperking van sommige grondrechten tot burgers van de Unie

Vraagtekens zet ik bij de huidige redactie van de artikelen 15 en 43. De beperking van een bepaald grondrecht tot burgers van de Unie betekent a contrario dat dit niet geldt voor burgers van derde landen met een vaste verblijfstitel. Beargumenteerd kan worden dat dit de huidige stand van zaken in de communautaire rechtsontwikkeling weergeeft. Het is echter beter de redenering om te draaien door deze rechten aan eenieder toe te kennen en in de tekst op te nemen dat deze rechten kunnen worden uitgeoefend in overeenstemming met de toepasselijke communautaire en nationale regelgeving.

4. Rechtsmacht HvJEG en EHRM

Hoewel het Handvest voorhands een niet-bindend karakter zal hebben en daardoor de afbakening van de rechtsmacht van het Hof van Justitie van de Europese Gemeenschap en van het Europese Hof voor de Rechten van de Mens thans nog geen discussie behoeven, dient reeds nu te worden nagedacht over de verhouding tussen beide Hoven voor het geval het Handvest uiteindelijk wél een bindend karakter zal hebben. Dit zal uitdrukkelijk onder de aandacht van de Europese Raad dienen te worden gebracht.

5. Strijdigheid van het Handvest met de Nederlandse wetgeving

De Nederlandse regeringsvertegenwoordiger, de heer Korthals Altes, heeft in zijn commentaar aan de heer Braibant gesteld onoverkomelijke bezwaren te hebben ten aanzien van de huidige formulering van de artikelen 14 lid 1, 15 lid 1, 27, 32 lid 3 en 33. Bij deze bezwaren sluit ik mij nadrukkelijk aan.

Den Haag, 31 augustus 2000

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observations Rack.txt

RACK

Sehr geehrter Herr Vizepräsident, lieber Inigo!

Zum Text der Charta, den das Präsidium uns übermittelt hat, möchte ich die folgenden Bemerkungen machen.

Erstens, der Text ist insgesamt nunmehr doch bereits recht ausgewogen und so gesehen eine gute Grundlage für unsere abschließende Arbeitsphase.

Zweitens, in einem wesentlichen Punkt glaube ich nach wie vor, daß eine Ergänzung des Textes um eine ausdrückliche Schutzgarantie für Rechte der Volksgruppen und Minderheiten im Lichte der historischen Erfahrungen, die wir in Europa im 20. Jahrhundert mit diesem Thema gemacht haben, unverzichtbar ist. Ich erneuere in diesem Sinn in meinem eigenen Namen und unter Berücksichtigung von vielen Zuschriften, die ich zum Thema Minderheitenschutz in den letzten Wochen erhalten habe, meine Bitte um Berücksichtigung meines seinerzeitigen Amendments 597 bzw. vergleichbarer Vorschläge anderer Konventionmitglieder. Wenn trotz allem ein derartiges spezifisches Minderheitenrecht nicht mehrheitsfähig erscheint, dann sollte zumindest die Vielfaltsgarantie des Art 37 Diversity aus dem Vorschlag von Hirsch Ballin/ Altmeier Eingang in unseren Text finden.

Drittens fehlt mir nach wie vor noch ein entsprechender ausdrücklicher Hinweis auf die Wertebasis der Charta. Ein Bezug auf das jüdisch-christliche Erbe Europas und die Zeit der Aufklärung könnte hier den einzelnen konkreten Grundrechtsgewährleistungen mehr Farbe und damit auch mehr Inhalt verleihen.

Eine vierte und abschließende Bemerkung betrifft die innere Ausgewogenheit des derzeit vorliegenden Textes. Hier meine ich, daß nach wie vor allzu große Unterschiede in der sprachlichen Formulierung alter klassischer Garantien und Gesetzesvorbehalte einerseits und neuer - und in diesem Sinn daher sichtlich noch nicht so ausgereifter - Garantien ohne ausformulierte Vorbehalte andererseits, die Wirkung der Charta insgesamt mit unnötigen Verständnis- und Akzeptanzproblemen belasten könnten. Auffallend der Unterschied zwischen Art 3, 8, 14 und 15 einerseits und Art 16 andererseits. Überall und dann gleichförmig weniger wäre vor allem ein Mehr an allgemeiner Verständlichkeit!

Ich hoffe, diese Bemerkungen tragen dazu bei unser gemeinsames Anliegen zu fördern.

Reinhard Rack

RODOTÁ

Bruxelles, 30 agosto 2000

Ill.mo signore

Guy Braibant
Presidium della Convenzione
Incaricata di elaborare la Carta dei
Diritti fondamentali dell'Unione europea

Nel complimentarmi con il Presidium per l'elaborazione del progetto completo della Carta, rassegno qui di seguito le mie osservazioni, segnalando che analoghi rilievi vengono formulati dall'on. Elena Paciotti, rappresentante del Parlamento europeo e dal prof. Andrea Manzella, rappresentante del Senato italiano.

Sul preambolo:

Al punto 3, non appare adeguata la formula secondo cui l'Unione assicura uno sviluppo equilibrato e sostenibile "attraverso" la libera circolazione delle persone, dei beni, dei capitali e dei servizi: si esprime così un rapporto da mezzo a fine fra libertà di circolazione e sostenibilità dello sviluppo che è perlomeno dubbio. Storicamente, l'Unione europea ha cercato di promuovere uno sviluppo equilibrato e sostenibile favorendo la coesione sociale e il rispetto dell'ambiente. E' opportuno non ignorare nel preambolo questo dato di fatto, componente essenziale del "modello europeo".

Si può rimediare all'incongruenza semplicemente dicendo "L'Unione assicura uno sviluppo equilibrato e sostenibile e garantisce la libera circolazione delle persone, dei beni, dei capitali e dei servizi"; meglio sarebbe, tuttavia, menzionare esplicitamente la coesione sociale (ed eventualmente anche il rispetto dell'ambiente), dicendo **"L'Unione assicura uno sviluppo equilibrato e sostenibile promuovendo la coesione sociale e il rispetto dell'ambiente e garantisce la libera circolazione..."**.

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Al punto 5, crea perplessità l'indicazione, fra le fonti da cui derivano i diritti fondamentali riconosciuti nella Carta, della giurisprudenza delle Corti europee, che non può essere collocata allo stesso livello dei trattati, delle convenzioni e delle carte formalmente adottate dagli Stati.

Ulteriori perplessità crea la menzione in questa sede della Corte europea dei diritti dell'uomo, che appartiene ad un ordinamento diverso da quello dell'Unione: essa infatti non è indicata, a differenza della Corte di giustizia, nel mandato di Colonia.

Sulla struttura:

E' pienamente condivisibile e apprezzabile, per la sua efficacia e novità, la suddivisione del testo sotto i titoli "dignità", "libertà", "uguaglianza", "solidarietà", "cittadinanza", "giustizia", anche se comporta inevitabilmente qualche forzatura nella collocazione di alcuni articoli, ispirati a principi molteplici. **Sarebbe tuttavia di gran lunga preferibile che l'articolo dedicato al diritto alla salute (attuale articolo 33) venisse collocato nel capo intitolato alla dignità.** In questo modo si darebbe immediata e giusta evidenza ad uno fra i più significativi nuovi diritti, considerato elemento essenziale per la tutela della dignità delle persone.

La libertà di circolazione (attuale articolo 43) andrebbe invece meglio inserita nel Capo relativo alle libertà.

Sull'articolato:

All'art.1 si ritiene necessario insistere sulla formula "**la dignità umana è inviolabile**" e comunque sulla menzione della inviolabilità della dignità della persona, nel senso che la garanzia e la tutela della dignità umana devono essere riferite a un bene concettualmente intangibile da parte dei pubblici poteri. Ci si preoccupa, infatti, del modo in cui i cittadini europei reagiranno alla lettura della Carta: poiché nei testi in cui è nominata (ad esempio, l'art.1 del Grundgesetz) la dignità è appunto dichiarata "inviolabile" o "intangibile", ogni diversa formulazione può essere percepita come un indebolimento della tutela: E, trattandosi del primo articolo della Carta, questo potrebbe determinare una lettura complessiva della Carta come testo debole.

All'art.11, Si propongono le seguenti modifiche:

Al comma 1, dopo le parole: "libertà di ricevere", aggiungere le parole: "di ricercare".

Al comma 2, aggiungere le parole: "anche nei confronti delle concentrazioni dei mezzi di comunicazione di massa".

Si insiste perché, al comma 1, si indichi espressamente la libertà di "cercare" informazioni, non solo di riceverle. Tale diritto, già compreso nell'art. 19 della Dichiarazione dell'Onu del 1948, è oggi primario nella nuova dimensione di Internet (non a caso, i regimi dittatoriali cercano di negarlo).

Al comma 2, appare opportuno che la garanzia del pluralismo dell'informazione vada assicurata anche nei confronti delle gigantesche concentrazioni proprietarie in atto nel mondo.

All'art.12, Si propone la seguente modifica:

Al comma 2, dopo le parole: "ad esprimere", aggiungere le parole: "con metodo democratico".

E' essenziale infatti che l'Unione Europea, che si fonda sul principio di democrazia, come è anche detto nel Preambolo, riconosca la qualifica di partito politico soltanto alle formazioni che agiscono "con metodo democratico", nel rispetto, cioè, di quel valore.

All'art.13 Si propone l'aggiunta del seguente comma:

"Tutti hanno il diritto di beneficiare, a condizioni eque, dei risultati delle ricerche scientifiche, in particolare nel campo bio-medico".

L'attenzione dell'opinione pubblica si è concentrata massimamente e con interesse crescente sui problemi della ricerca, soprattutto nel campo della bio-medicina, e sui problemi della brevettabilità e della commercializzazione esclusiva dei risultati della ricerca. Il comma di cui si propone l'introduzione stabilisce un principio di contemperamento tra il diritto di ognuno di beneficiare dei risultati della ricerca, in specie nel campo bio-medico, ed il giusto riconoscimento economico dei costi della ricerca stessa.

All'art.15, comma 1, non appare accettabile che si dica che, per guadagnarsi da vivere ciascuno ha "il diritto di esercitare una professione" ma non di lavorare. Occorre aggiungere la menzione del diritto al lavoro. Si propone di sostituire il primo comma con il seguente:

"1. Ogni individuo ha il diritto di realizzare le sue capacità personali con un lavoro liberamente scelto o accettato".

La diversa formulazione del comma fa, infatti, riferimento alla realizzazione personale dell'individuo e non al solo elemento economico del guadagno per vivere, ma anche al lavoro nel suo significato più generale, comprendente ogni tipo di attività, economica, culturale e artistica, svolta in condizione di indipendenza o autonomia.

All'articolo 16 si propone di aggiungere, in fine, le seguenti parole:

"nel rispetto del principio di uno sviluppo economico e sociale equilibrato e sostenibile".

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L'affermazione della libera imprenditorialità deve essere qui contemperata con il concetto di sviluppo equilibrato e sostenibile, secondo l'indirizzo fondamentale del modello sociale europeo. Si ricorda a tal riguardo che in nessuna delle Costituzioni europee il diritto di impresa è affermato in maniera assoluta e incondizionata. Esso è sempre contemperato con principi di sostenibilità sociale ed ecologica e di equilibrio economico.

Un elemento caratteristico di tutto il costituzionalismo del novecento, è stato, infatti, proprio quello di legare il riconoscimento dei diritti di libertà economica a finalità di ordine sociale. Se fosse mantenuta l'attuale formulazione dell'articolo 16 (come quella del successivo articolo 17), la norma in questione sarebbe percepita come un arretramento rispetto a tradizioni costituzionali comuni.

Si suggerisce quindi il seguente testo dell'articolo 16:

" è riconosciuta la libertà di impresa che si esercita nel rispetto dei diritti fondamentali e dei principi enunciati nella presente Carta".

All'articolo 17 si propone di sostituire il terzo periodo del primo comma con il seguente:

"L'esercizio del diritto di proprietà può essere limitato dalla legge nell'interesse generale e per assicurarne la funzione sociale".

L'espressione "limitato dalla legge", in luogo di quella "regolamentato", offre una migliore garanzia del diritto di proprietà, perché esclude limitazioni che provengano da atti non aventi forza di legge.

Inoltre, il riferimento alla "funzione sociale" rafforza il riferimento all' "interesse generale", che sarebbe altrimenti troppo debole, ed è in linea con la tradizione del costituzionalismo del novecento, come si è detto sopra. Non basterebbe, a tal fine, la clausola orizzontale dell'art. 50, perché essa postula appunto l'ordinaria assolutezza dei diritti garantiti, mentre nel caso qui discusso (ed in quello di cui al precedente articolo 16) si tratta proprio di stabilire che il riconoscimento di questi particolari diritti è ormai collegato strutturalmente con finalità di interesse generale.

All'art.21, Si suggerisce l'aggiunta del seguente comma:

"3. L'unione adotta le politiche opportune per eliminare le disparità di fatto e per promuovere le condizioni che rendono effettiva l'uguaglianza".

L'enunciazione meramente formale e negativa del principio di uguaglianza appare, infatti, insufficiente. E' dunque, necessario rafforzarla vincolando l'Unione europea ad adottare politiche attive per rimuovere le condizioni che impediscono di fatto la parità delle opportunità e il riconoscimento di effettiva pari dignità a tutti gli individui.

All'art.23, Appare opportuno aggiungere - all'inizio dell'articolo ovvero dopo il primo comma - il seguente comma:

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"Le bambine e i bambini devono essere protetti contro ogni minaccia alla loro maturazione intellettuale e alla loro integrità psicologica e sessuale".

Il nuovo comma si fa carico delle minacce che incombono sui bambini (anche attraverso tecnologie di informazione) e vincola il potere pubblico ad un obbligo di protezione nei loro confronti. Si tratta di un'esigenza assai sentita dall'opinione pubblica europea.

Si insiste sull'opportunità dell'inserimento di un nuovo articolo *23-bis*, relativo ai diritti degli anziani, formulato come segue:

"Articolo 23-bis. Diritti degli anziani.

Ogni individuo anziano ha diritto ad un'esistenza autonoma e dignitosa e a partecipare pienamente alla vita politica, sociale e culturale".

L'andamento demografico nei paesi dell'Unione europea impone, infatti, di considerare specificamente la sfera dei diritti delle persone anziane. La norma proposta richiama, d'altronde, l'articolo 23 della Carta sociale europea.

All'art.26, si suggerisce la seguente modifica:

dopo le parole: "concludere contratti collettivi", inserire le parole: "anche a livello dell'Unione", e dopo le parole: "azioni collettive", aggiungere le parole: "compreso lo sciopero".

Il riconoscimento nella Carta del diritto di negoziazione collettiva acquista significato, infatti, solo se accompagnato dalla specificazione del possibile ambito europeo della contrattazione. La mancata menzione del diritto di sciopero, riconosciuto dalla Carta sociale europea e da un gran numero di Convenzioni dell'OIL, oltre che dalle tradizioni costituzionali comuni dei Paesi membri, rischia, invece, di essere intesa come una restrizione dei diritti vigenti.

All'art.29, si propongono le seguenti modifiche:

Al primo comma, aggiungere, in fine, le parole: "e ad una giusta retribuzione proporzionata alla qualità e quantità del lavoro prestato".

Al secondo comma, aggiungere, in fine, le parole: "e non può rinunziarvi".

Tra le condizioni di lavoro "giuste ed eque" deve necessariamente inserirsi il diritto ad una retribuzione giusta e proporzionata alla prestazione. L'irrinunciabilità alle ferie risponde, invece, ad una tipica necessità di protezione della parte più debole del rapporto di lavoro.

Sorprende, nella formulazione di alcuni diritti sociali, l'uso di espressioni attenuate o indirette, che paiono affievolire il riconoscimento di alcuni diritti rispetto ad altri. Così, mentre all'art.31 si dice che "è garantita la protezione della famiglia" (pur trattandosi evidentemente di un diritto che richiede per la sua effettività interventi legislativi e amministrativi a molteplici livelli nell'ambito degli Stati membri e non solo dell'Unione), all'art.32, concernente la sicurezza e l'assistenza sociale, si usa una formula generica e non impegnativa: non solo

questi diritti non sono “garantiti”, ma l’Unione si limita a riconoscere e rispettare l’esistente “secondo le modalità stabilite dal diritto comunitario e le legislazioni e prassi nazionali”, formula questa più volte ripetuta soltanto per alcuni diritti, indipendentemente dal fatto che trovino regolamentazione primaria nella legislazione nazionale o in quella comunitaria, e pur trattandosi di una formula superflua in presenza della clausola generale dell’art.49.

All’art.34 si giunge poi ad una formulazione inaccettabile, che non fa cenno ad alcun diritto, neppure nella formula attenuata del riconoscimento da parte dell’Unione di un diritto sancito da legislazioni nazionali, ma al semplice “rispetto dell’accesso ai servizi d’interesse generale quale previsto dalle legislazioni e prassi nazionali, ai sensi delle disposizioni del Trattato...”. Si tratta di una formula tanto sovrabbondante quanto inutile, che dovrà essere adeguata al tenore degli altri articoli.

Si propone di sostituire il testo dell’articolo 34 con il seguente:

"Al fine di promuovere la coesione sociale e territoriale l'Unione riconosce e rispetta il diritto di ogni individuo all'accesso a servizi di interesse generale che assicurino le prestazioni necessarie a garantire la qualità della vita e le possibilità di lavoro. Le prestazioni di servizi di interesse generale si basano sui principi di uguaglianza di accesso, di universalità, di continuità, di trasparenza".

E' opportuno che il diritto ad usufruire di servizi di interesse generale sia inquadrato in principi-guida che, salve le differenziazioni nazionali, ne garantiscano l'effettività, anche in funzione della promozione della coesione sociale e territoriale dell'Unione, prevista dall'articolo 16 del Trattato CE (se venisse menzionata la finalità di garantire le possibilità di lavoro potrebbe, inoltre, essere qui assorbito l'articolo 27 relativo ai servizi di collocamento).

All’art.36, si propone l’aggiunta del seguente comma:

"I consumatori hanno diritto ad una informazione completa sulla qualità dei beni e dei servizi e ad una pubblicità non ingannevole che risponda ai criteri di trasparenza e veridicità".

La sensibilità popolare europea si è fatta particolarmente acuta riguardo ai criteri di fabbricazione e manipolazione di prodotti alimentari e di beni di consumo personale. E' necessario che una Unione sempre più vicina ai bisogni della gente si faccia carico nelle sue politiche di queste diffuse preoccupazioni.

All’articolo 37, che apre l’enunciazione dei diritti riservati ai cittadini europei, andrebbe utilmente premesso un articolo del seguente tenore:

"Articolo 36-bis. Diritto alla cittadinanza.

Ogni individuo ha diritto ad una cittadinanza. Nessuno può essere arbitrariamente privato della sua cittadinanza, né del diritto di mutare cittadinanza".

Si tratta di un diritto universale, che richiama l'articolo 15 della Dichiarazione universale di diritti dell'uomo, e appare importante come premessa di ogni altra specificazione dei diritti di cittadinanza.

All'art.37 si propone di premettere il seguente nuovo comma, che assorbirebbe il secondo comma previsto nel progetto del Presidium:

"1. I cittadini dell'Unione hanno il diritto di partecipare all'esercizio del potere pubblico a livello dell'Unione per il tramite di un'assemblea rappresentativa eletta a suffragio universale diretto, libero e segreto".

Il principio di democrazia su cui, com'è detto nel Preambolo, si basa l'Unione europea, deve trovare nell'affermazione del "diritto al Parlamento", contenuto in questo nuovo comma, la concretizzazione di democrazia partecipativa e parlamentare. La formulazione è tratta dalla giurisprudenza della Corte di giustizia (e, in particolare, dalle sentenze Roquette e Maizena).

Il secondo comma nella formulazione del Presidium, è la specificazione di questo "diritto al Parlamento", che ne costituisce pertanto la premessa da esplicitare necessariamente.

All'art.47, si propone di aggiungere, alla fine del terzo comma, le seguenti parole:

"e devono tendere alla rieducazione del condannato".

E' infatti un principio di civiltà giuridica, recepito in varie Costituzioni e ordinamenti europei, che l'espiazione della pena debba accompagnarsi a misure dirette a recuperare e rieducare la personalità del condannato.

All'art.49, Si propone di riformulare il primo comma come segue:

"1. Le istituzioni e gli organi dell'Unione, come pure gli Stati membri quando attuano il diritto dell'Unione, rispettano i diritti fondamentali e osservano i principi enunciati nella presente Carta e ne promuovono l'applicazione nel rispetto del principio di sussidiarietà".

Molti dei diritti fondamentali enunciati nella Carta trovano, infatti, attuazione principalmente nell'ambito nazionale, costituendo, per il diritto dell'Unione, un quadro di riferimento, di orientamento e di limitazione della regolamentazione comunitaria. Affermare che le disposizioni della Carta si applicano agli Stati membri "esclusivamente" nell'attuazione del diritto dell'Unione può creare incomprensioni, dato che al comma 2 dell'articolo 49 già si ribadisce che la Carta non modifica alcuna competenza istituzionale.

All' art.50, si suggerisce di riformulare il terzo comma come segue:

"3. I diritti e le libertà riconosciuti dalla presente Carta, che siano già disciplinati dalla Convenzione Europea di salvaguardia dei diritti dell'uomo e delle libertà fondamentali, possono subire le medesime restrizioni previste

dalla Convenzione: non possono subire restrizioni maggiori di quelle, ma possono godere della protezione maggiore e più estesa prevista dalla presente Carta".

Nel terzo comma del testo proposto dal Presidium, l'uso del termine "simili", riferito al significato ed alla portata dei diritti fondamentali, può essere fonte di confusione. Con il nuovo testo del comma, si intende proporre una formulazione più chiara e semplice di quella del Presidium, che metta in luce due dati essenziali: e cioè che, con riferimento ai diritti della Convenzione, non vi possono essere restrizioni maggiori di quelle previste dalla Convenzione stessa; ma che, al contempo, la Carta può garantire ad essi una protezione maggiore o più estesa.

Infine, si insiste affinché nel capo relativo alla **dignità** (ovvero in quello relativo alla libertà) siano aggiunti due articoli, già proposti in sede di emendamenti, il cui inserimento è sollecitato dai movimenti femminili, riferiti al diritto all'autodeterminazione e al diritto alla libertà sessuale. Si tratta di articoli che rispecchiano il testo di atti dell'Onu (si veda in particolare il par.96 della Dichiarazione di Pechino) sottoscritti da tutti i Paesi membri, idonei a qualificare le libertà degli europei rispetto a mondi vicini, che vedono l'oppressione quotidiana delle donne e la repressione di libertà sessuali presso di noi pienamente riconosciute. Se ne trascrivono i testi:

"Art.5 bis. Diritto all'autodeterminazione.

Ogni individuo ha il diritto di prendere liberamente le decisioni che riguardano la sua vita e la sua persona, al riparo da ogni forma di coercizione, discriminazione o violenza e con il pieno rispetto dell'eguaglianza tra i generi".

"Art.5 ter. Diritto alla libertà sessuale.

Ogni individuo ha diritto di decidere liberamente per quanto riguarda la sua sessualità, che comprende il diritto alla salute sessuale e riproduttiva garantito contro ogni forma di coercizione, violenza e discriminazione tra donne e uomini".

Quanto alla forma del progetto, cioè agli aspetti linguistici e redazionali, mi riservo qualche osservazione sulla versione italiana quando si disporrà del testo definitivo.

Con i sensi della mia più alta considerazione

Stefano Rodotà

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JORDI SOLÉ TURA

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Observaciones generales

sobre el proyecto final

de la

Carta Europea de Derechos Fundamentales.

Senador
ESPAÑA
Agosto 2000

PREÁMBULO

En general, el “**Preámbulo**” adolece de una redacción pesada. Yo estoy de acuerdo en situar a “**los pueblos europeos**” como los sujetos principales de la creación de una unión, pero tal como está redactado el párrafo num.1 “**la unión**” es un concepto genérico mientras que en el **párrafo 2** la “**Unión**”, con mayúscula, ya designa una estructura política consolidada. Creo, por consiguiente, que en el párrafo 1 habría que añadir, después de “..valores comunes.”, una nueva frase del tenor siguiente: “**La Unión Europea es la expresión de esta voluntad**”. Así tendría pleno sentido que el párrafo 2 empezase con la expresión de “La Unión.....”, etc.

El párrafo 5 debe estructurarse de otra forma y, a la vez, debería introducirse en él un concepto que no figura en la versión actual, como es el derecho internacional. Propongo, pues, la redacción siguiente :” **Con el respeto de las competencias y las tareas de la Comunidad y de la Unión, así como del principio de subsidiariedad, la presente Carta reafirma los derechos que resultan especialmente de las tradiciones constitucionales comunes de los Estados miembros y del derecho internacional, del Tratado de la Unión Europea, etc.etc.**”

El párrafo 6 se debe redactar de manera más sencilla. Propongo el siguiente texto: “ **El disfrute de estos derechos implica responsabilidades y deberes, tanto en lo que concierne a toda la comunidad humana como a las generaciones futuras**”

Capítulo I : DIGNIDAD

Creo que el **artículo 2**, sobre el derecho a la vida, está bien redactado pero quizá se podría enfatizar más su contenido introduciendo algunos conceptos generales como el siguiente: “**El derecho a la vida será protegido por la ley, la pena de muerte será abolida para siempre y nadie podrá ser condenado a ella ni ejecutado**”.

Nada que objetar al **artículo 3**, pero creo que el punto primero del párrafo 2 se podría redactar mejor, diciendo : “**-- consentimiento libre e informado de la persona concernida**”

En cuanto al **artículo 4** no entiendo porque se ha copiado el texto del artículo 5 de la Declaración Universal de los Derechos Humanos de 1948 pero, a la vez, se ha suprimido la palabra "cruels". Creo que habría que reproducir todo el texto del citado artículo 5 y decir, por consiguiente : **"Nadie prodrá ser sometido a tortura ni a tratos cruels, inhumanos o degradantes"**

El párrafo 2 del **artículo 5** plantea un problema importante en su párrafo 2 porque, como prevé el art. 4, 3. del Convenio Europeo de Derechos Humanos, hay trabajos obligatorios que no se consideran forzados, como los trabajos exigidos a los detenidos, los servicios de carácter militar, los servicios en casos de crisis o catástrofes y los trabajos que forman parte de las obligaciones cívicas. Estas excepciones deberían introducirse en el párrafo 2 o en un nuevo párrafo del art. 5.

Capítulo II. LIBERTADES.

Quizá se podría ampliar el **artículo 6** con alguna referencia a aspectos concretos del concepto de **"seguridad"**, sobre todo en lo que se refiere al derecho a ser informado de los derechos de la persona, en relación a las detenciones, a las garantías judiciales y a los derechos de los menores.

En el **artículo 7** hay que introducir el concepto de que sólo se puede entrar en un domicilio con autorización judicial o con consentimiento del titular, salvo en caso de flagrante delito. También hay que añadir que el secreto de las comunicaciones puede ser anulado por una resolución judicial. Y no estaría de más añadir el concepto de limitación del uso de la informática, todo ello en los términos del art. 18 de la Constitución Española, que en este punto se adelantó a muchas otras.

En el **artículo 8** la redacción se presta a algunas confusiones, por lo menos en las versiones española y francesa . Por ejemplo, la frase "Estos datos se tratarán de modo leal..." (versión española) y "doivent être traités loyalement(versión francesa) carecen de rigor jurídico. Por consiguiente, propongo la siguiente redacción : **"Estos datos se tratarán con el máximo respeto y con plena seguridad para fines legalmente determinados y siempre con el consentimiento de la persona afectada o en los términos específicos previstos por la ley. Toda persona tiene derecho a acceder a los datos que la conciernan y a exigir su rectificación cuando considere que no se ajustan a la verdad. El respeto y el control de estas normas corresponderán a una autoridad independiente"**.

Respecto al **artículo 9**, creo que hay que explicitar mejor su auténtico contenido. A mi entender, lo que se garantiza no es un derecho sino dos: por un lado, el derecho a contraer matrimonio y, por otro lado, el derecho a fundar o crear una familia, independientemente de que se haya contraído matrimonio o no, como en el caso de la pareja de hecho. La remisión genérica a las “.. leyes nacionales que rijan su ejercicio..” no añade nada nuevo o, más exactamente, se supedita a lo que digan ellas. Por esto creo que este artículo debería ser más contundente y propongo la siguiente redacción: “ **El derecho a contraer matrimonio y el derecho a fundar una familia, independientemente de que se haya contraído matrimonio o no, serán garantizados por las leyes nacionales**”.

Considero que en el **artículo 10** hay que introducir el concepto de **objeción de conciencia** porque no es suficiente reconocer la libertad de conciencia en general: una cosa es la libertad personal y otra la expresión legal de esta libertad en el ejercicio de otros derechos y deberes, como el del servicio militar.

Creo también que el concepto de “.. cambiar de religión o de convicciones” no resuelve el problema general de estas libertades y que, por consiguiente, habría que introducir otro concepto, como es el del **derecho a no tener creencias religiosas ni a practicar ninguna religión**. Del mismo modo hay que introducir el concepto de que **nadie está obligado a declarar sobre sus propias creencias**.

El **artículo 11** plantea un serio problema, como es el de los límites de la libertad de expresión y de información. El art. 10, 2 del Convenio Europeo de Derechos Humanos establece una serie de límites muy importantes para que la libertad de expresión no perjudique otros valores fundamentales de la sociedad democrática. Estos límites son reconocidos, a su vez, por algunos textos constitucionales, como el art. 20, 4. de la Constitución Española. Por esto considero que debe introducirse un apartado segundo en este artículo 11 que recoja los límites generales enunciados en estos textos.

Algo parecido ocurre en el **artículo 12** sobre la libertad de reunión y de asociación. El artículo 11 del Convenio Europeo de Derechos Humanos reconoce, en su apartado 2, la posibilidad y hasta la necesidad de algunas restricciones, sobre todo en lo que se refiere a la seguridad nacional, la seguridad pública, la defensa del orden, la prevención de la criminalidad, la protección de la sanidad o de la moral o la protección de los derechos y de las libertades de las personas y, de manera muy concreta, prevé la posibilidad de limitación de estos derechos a los miembros de las fuerzas armadas, la policía o la administración del Estado. En los mismos términos se expresa el artículo 28, 1 de la Constitución Española.

Por otro lado, no entiendo bien el sentido del **apartado 2 de dicho artículo 12**. El texto de este apartado parece más una afirmación optimista de carácter general que el reconocimiento de un derecho o de una libertad. Sin duda los

partidos políticos a escala europea contribuyen a expresar la voluntad política de los ciudadanos europeos , pero no son lo mismo los partidos democráticos que los antidemocráticos. Por lo demás, también contribuyen a expresar esta voluntad política general los partidos políticos democráticos de ámbito estatal, nacional o regional. Creo,por consiguiente, que este **apartado 2 del artículo 12** tiene que ser modificado o,incluso, eliminado .

En el apartado 1 del **artículo 15** propongo que se suprima el párrafo inicial "Para ganarse la vida ...". Es totalmente superfluo.

Entre los **artículos 16 y 17** hay diferencias en los tiempos verbales que no se comprenden, Así,por ejemplo, en el **artículo 16** se dice que "**Se reconoce** la libertad de empresa ", o sea, en tiempo verbal presente, mientras que en el apartado 2 del **artículo 17** se dice que "**Se protegerá** la propiedad intelectual...", en tiempo de futuro. Mejor sería utilizar en los dos casos una misma fórmula, como por ejemplo :"**Se reconoce y protege ...**" la libertad de empresa y la propiedad intelectual.

Capítulo III. IGUALDAD

En el apartado 1 del **artículo 22** el concepto de "Debe garantizarse....(versión española) o " .. doit être assurée.(versión francesa) no se corresponden con el sentido profundo del propio artículo ni , en general, con el contenido y la razón de ser de la Carta. Decir que que la igualdad entre hombres y mujeres "debe garantizarse" es abandonar la lógica jurídica de la Carta y convertirla en una especie de declaración de buenas intenciones. Propongo,por consiguiente, una nueva redacción : "**La igualdad de oportunidades y de trato entre hombres y mujeres en materia de empleo y de trabajo, incluida la igualdad de retribución por un mismo trabajo o por un trabajo de igual valor, es un principio fundamental que orientará la política económica y social de la Unión**".

Capítulo IV. SOLIDARIDAD

El **artículo 25** debe redactarse de forma que el concepto de garantía no se convierta en un principio inconcreto. Propongo, pues, la siguiente redacción: **“ Los trabajadores y sus representantes tendrán garantizadas, con anticipación suficiente, la información y las consultas necesarias sobre los asuntos que les conciernan en el seno de la empresa, de conformidad con el derecho comunitario y la legislación y las prácticas nacionales”**

En el **artículo 32** , apartados 1 y 3, se dice que la Unión reconoce y respeta unas determinadas prestaciones de la seguridad social y los servicios sociales y una ayuda a la vivienda ,pero todo ello condicionado por “las modalidades establecidas por el derecho comunitario y las legislaciones y las prácticas nacionales”. Tratándose, como se trata, de una cuestión esencial ,en el que la Unión debe formular estos derechos como otros tantos principios rectores de la presente Carta, no es serio que todo se reconduzca a un derecho comunitario ya existente y a unas legislaciones y unas prácticas nacionales igualmente existentes. Con este sistema, el artículo 32 dejar de ser un principio rector para convertirse en un simple recordatorio de derechos y legislaciones comunitarias y nacionales, que es tanto como transformar la presente Carta de Derechos Fundamentales en un documento secundario. Propongo, por consiguiente, suprimir las frases finales de los apartados 1 y 3 , **“.. según las modalidades establecidas por el derecho comunitario y las legislaciones y prácticas nacionales”**

El **artículo 33** repite el planteamiento del artículo anterior. Propongo, pues, suprimir la frase final **“.. en las condiciones establecidas por las legislaciones y prácticas nacionales”**.

Capítulo V. CIUDADANÍA

En diversos artículos de este capítulo aparece el concepto de “Todo ciudadano”, que engloba por igual al hombre y a la mujer. Considero que en estos casos – que afectan a la mayoría de los artículos del capítulo – el término “todo ciudadano” debería ser substituído por el de “ **Los ciudadanos y las ciudadanas de la Unión... tienen derecho**”. Tal es el caso de los **artículos 37, 1; 38 ; 40; 41; 42; 43 y 44.0**

Creo que hay que introducir en este capítulo una cláusula de futuro sobre el derecho de los ciudadanos y las ciudadanas de la Unión a ser electores y elegibles en las elecciones a los Parlamentos de los países miembros. Propongo, pues, un **nuevo artículo, 38 bis** ,con el siguiente contenido:

“En la medida en que la Unión fortalezca su unidad y su solidaridad todos los ciudadanos y las ciudadanas de la misma accederán al derecho de ser electores y elegibles en las elecciones parlamentarias , generales y regionales, del Estado miembro en que residan, en las mismas condiciones que los nacionales de dicho Estado”

Capítulo VI. JUSTICIA

Considero que en el **artículo 48** hay que introducir una referencia al concepto de jurisdicción única. Por consiguiente, propongo la siguiente redacción del texto: “ **Nadie podrá ser juzgado o condenado penalmente a causa de una infracción de la cual ya haya sido absuelto o condenado por una misma jurisdicción mediante sentencia penal firme conforme a la ley**”.

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Capítulo VII, DISPOSICIONES GENERALES

El **artículo 50** plantea varios problemas. El primero concierne al **apartado 1** cuando prevé la posibilidad de que una autoridad legislativa competente pueda limitar el ejercicio de los derechos y libertades reconocidos por la Carta. Ciertamente que estas limitaciones sólo serán factibles si son necesarias y responden a objetivos de interés general o a la protección de los derechos y libertades, pero éstos son conceptos genéricos que cualquier autoridad legislativa, a nivel de la Unión o de cada Estado miembro, puede interpretar a su manera, sin que este artículo 50 prevea ninguna limitación a la posible acción de una "autoridad legislativa". Incluso es posible que se puedan establecer limitaciones en artículos de la Carta que no las prevén expresamente. Y, por encima de todo, no está claro cuál es la autoridad superior que puede hacer respetar el principio de proporcionalidad e impedir la acción arbitraria de la genérica "autoridad legislativa competente". Por consiguiente propongo:

- A. Que se suprima el apartado 1 del artículo 50.
- B. En caso de no suprimirse, que se establezcan y se enumeren -- en el propio artículo o en forma de cláusula final -- el número y el contenido de las posibles limitaciones que puedan preverse en los derechos de configuración más compleja.

En cuanto al **apartado 3** de este mismo **artículo 50** propongo que en la frase "... su sentido y alcance serán similares a los que les confiere dicho Convenio..." las palabras "...serán similares..." se substituyan por "**no serán inferiores**". Con ello, creo que se puede suprimir la frase final de dicho apartado, "... a menos que la Carta asegure una protección más elevada o más amplia", que puede entrar en contradicción con el **artículo 51**.

PROPUESTAS DE MODIFICACIÓN DEL TEXTO DE LA VERSIÓN ESPAÑOLA

En la versión española del párrafo 2 del **Preámbulo** habría que decir “..la dignidad”, “la libertad, “la igualdad”, “la solidaridad” y substituir el verbo “reposa” por “**se basa**”.

En el párrafo 3 del **Preámbulo** habría que substituir la frase “.. el fomento de tales valores..” por “**el fomento de estos valores...**” y la frase final del párrafo, que empieza ,tras un punto y coma, con el verbo “..vela..” debería decir “... y **asegura, un desarrollo equilibrado y sostenible mediante la libre circulación de personas, bienes, capitales y servicios**”.

En el párrafo 4 habría que substituir la palabra inicial “mediante” por “**con**” y reemplazar las palabras “.. tiene la intención..” por “**quiere**”.

Remitiéndome siempre al texto de la versión española, creo que el **artículo 1** sobre la dignidad de la persona debe redactarse al revés y debe decir : “**La dignidad de la persona será respetada y protegida**”

En el **artículo 23** se plantea un problema de redacción. Si en la versión francesa se puede utilizar el término “enfants” y en la inglesa el término “children” para referirse a los niños y a las niñas, en español el término “niño” supone una discriminación de las niñas. Propongo,por consiguiente que en el enunciado del artículo se substituya la actual redacción – “Protección de los niños” – por el de “**Protección de los menores**”. Propongo también que en el apartado 1 del **artículo 23** (versión española) se haga una leve modificación del primer párrafo: “**Los menores tienen derecho a la protección y a los cuidados necesarios para su bienestar**” y, en general, que en el conjunto del artículo la palabra “niño” o “niños” se substituya por la de “**menores**”.

La versión española del **artículo 27** se presta a una cierta confusión, con el concepto de “servicio de empleo”. Propongo,pues, la siguiente redacción:” **Toda persona tiene derecho a acceder a un servicio de colocación y empleo**”.

La versión española del apartado 1 del **artículo 29** también debe redactarse de otra manera . Sugiero la siguiente redacción : “**Todo trabajador tiene derecho a trabajar en condiciones sanas, seguras y dignas**”.

El apartado 2 del **artículo 30** (versión española) debe redactarse de la siguiente forma: “**Los jóvenes admitidos a trabajar deben disponer de condiciones de**

trabajo adaptadas a su edad y estar protegidos contra la explotación económica o contra cualquier otro trabajo perjudicial para su seguridad, su salud, su desarrollo físico, mental, moral o social o que ponga en peligro su educación”

En la frase final del apartado 3 del **artículo 50** , debe suprimirse la palabra **“no”**. Si esta frase final se mantiene su redacción debe ser la siguiente: **.. a menos que la presente Carta garantice una protección más elevada o más amplia”**.

Stockholm 1 September 2000

Mr Guy Braibant
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Comments on Convent 45 by prof. Daniel Tarschys, Sweden

Dear Mr. Braibant,

In accordance with the procedure proposed by the Presidium I would like to share with you my observations on the first complete version of the Charter as presented in Convent 45.

Reflected in my comments are some early reactions by experts in various Swedish ministries and organisations. Since the valuable explanations contained in Convent 46 were not yet available in either Swedish or English, some of these experts have not been able to complete their examination of Convent 45. Further comments may therefore be added at a later stage.

In a subsequent letter to Mr. Jacqué I will make some suggestions on the Swedish translation of the text.

General comments

The Presidium and Secretariat have faced a great many tough choices and should be given due recognition for their work. Several articles now read much better than they did in previous drafts. This being said, significant changes are still needed before the text can be regarded as acceptable.

The most serious flaw in the draft Charter is still that it promises very much in Articles 1-48 and then takes back a substantial part of these pledges through the provisions in Articles 49-50. We must improve the document so as to make it completely honest and avoid raising irredeemable expectations.

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A second very important problem is the risk that the Charter, instead of promoting the cause of fundamental rights, might actually damage this important objective by introducing legal uncertainty where there is none today. At stake here are the significant *acquis* which have been attained over several decades through the ECHR, the Strasbourg caselaw, the EC and EU Treaties and secondary legislation as well as the Luxembourg jurisprudence.

1. The first-mentioned effect is brought about particularly through the framework established by the following five provisions:

- First we have the preambular paragraph 7 which claims that the rights and freedoms contained in the Charter are "guaranteed" - but without disclosing just *how* they are guaranteed, to *what extent* the various rights are justiciable, and *which particular institutions* can be held responsible for their enforcement or implementation.
- No light is shed on such questions until the declaration in art. 49:1 that the provisions in the Charter are addressed only to the institutions and bodies of the Union and to the member states exclusively when they implement Community law.
- Since no new tasks or additional competence are conferred upon the Union through the Charter (art. 49:2), this means that *most* public policies, *most* categories of government service provision and hence also *most* encounters between citizens and public authorities fall *outside* the area covered by the Charter. Some articles become virtually void of substance since what they promise are services *neither* provided by the European Union (e.g., compulsory basic education, social assistance) *nor* established through Community legislation. The fact that the Community is in many cases authorised to support, supplement or stimulate national policy does not place the national legislation in such fields within the sphere of art. 49:1.
- Then follow two very important restrictions on the rights recognised in the Charter. First, it is stated (art. 50:1) that limitations on the exercise of the rights and freedoms inscribed into the Charter may be imposed by the "competent legislative authority". It is not clear whether this expression refers to national institutions, union institutions, or both. Many articles obviously refer to national legislation, but the above-mentioned art. 49:1 limits the applicability of the Charter to the sphere of Community law,

and such legislation can hardly be modified unilaterally by national parliaments. This riddle remains unsolved.

- A second important restriction is introduced in art. 50:2 which proclaims that the provisions of the Charter are subject to all conditions and exceptions contained in the Treaties. If art. 50:3 makes the ECHR a "floor" for the rights recognised in the Charter, art. 50:2 produces an opposite effect by making the Treaties a "ceiling" for these rights. Promises which at first glance seem bold and innovative (e.g., art. 40 on access to union documents) are effectively neutralised through this rule, which implies that in the area covered by the Treaties, no new ground is broken by the Charter.

To produce a credible Charter, it is imperative to reconsider this framework. If art. 49 would be used as a criterion for selection of rights to be included in the Charter, a significant number of articles would have to be either dropped or, alternatively, reformulated so as to indicate more clearly that the purpose of their inclusion was not *to grant* these rights but to oblige EU institutions *to support or at least not impede* their implementation.

Such a Charter defining only the "EU added value" in fundamental rights protection would be relatively meagre and certainly disappointing to many of those who have followed the work of the Convention. A more attractive solution would be to maintain the ambition of drafting a comprehensive list of fundamental rights and principles recognised by both the EU and the member states, combined with an honest and truthful piece of "consumer information" in the Preamble explaining what readers are to expect.

My proposal is to achieve this through a new version of the preambular paragraph 7, which in its present form is categorically and irremediably unacceptable – particularly through its claim of "guarantees". My alternative would read:

The rights and principles recognised in this Charter shall be respected and promoted by the Union, subject to the restrictions contained in articles 49-52.

2. As for the second problem, the main issue is still the divergence in several articles between the Charter and the ECHR. The meaning of various concepts in the European Convention have been considered by

the Court and Commission over several decades. Introducing legal uncertainty and risking new rifts in Europe between EU members and non-members could introduce quite unnecessary obstacles to the defence of human rights. Following suggestions by i.a. Mr. Olsen and Mr. Korthals Altes, we should therefore amend art. 50 so that it is unambiguously clear that the provision in the Charter and the Convention do not have a *similar* but *the same* meaning and scope. The Swedish version already satisfies this requirement, but neither the French nor the English version.

A further necessity is to delete the final line of art. 50.3 which in its present form can have quite unintended consequences. Two examples:

- Art. 2:2 of the ECHR lists a number of cases in which every human being's "right to life" shall not be considered to have been violated. Art. 2 of Convent 45, in contrast, proclaims "the right to life" without any qualifications. Clearly, the Charter therefore offers a higher level of protection, which would imply that the particular exceptions listed in the European Convention would not be permissible under the Charter.

- In art. 10 of the ECHR there is a provision for the possible licensing of television and radio stations which is not reproduced in art. 11 of Convent 45. Such licensing would no longer be possible (within the EU legal system) since art. 50:3 of the Charter promises a higher level of protection in case of divergence between the two texts. This would run counter to the legislation of member states and, for Sweden, even come into conflict with the Constitution. It would also seem to contradict Council Directive 89/552/EC of 3 October 1989 which also allows restrictions.

* * *

Another problem much discussed during the meetings of the Convention is that of *brevity vs. comprehensiveness*.

Either of these solutions has its obvious advantages and disadvantages. Crisp and succinct articles are easier to read and more forceful. Longer provisions with more details and some principal exceptions spelled out are more correct and informative.

On balance, I support the decision of the Presidium to opt for brevity. This is more fitting for a political declaration aimed at the general public.

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Readers who want to learn about the details of the legally binding provisions will at any rate have to consult other texts such as the EHCR, the Treaties, secondary Community legislation, the jurisprudence of the Courts etc., and will be well advised in this respect by the explanations provided (presently Convent 46). It is in this way that the Charter will serve as a *guide to law*, not a *source of law*.

Convent 45, however, is not consistent in following the brevity line. After some short and snappy articles such as 4, 5, 6, and 7, the reader suddenly plunges into the much more detailed art. 8. There seems to be a need for harmonisation which would be best achieved by trimming some articles with excessive information. Some articles also become clumsy by clinging too closely the wording used in the Treaties. This is not necessary, given the blanket provision in art. 50:2.

Finally, I note with satisfaction that the Swedish version is now gender neutral and hope that this principle will be observed in the other languages, too.

Comments on the Preamble and Specific Articles

The **Preamble** has been improved but is still in need of substantial revision:

Paragraph 2. Instead of repeating my suggestions of 19 July, I would on further reflection like to align myself with those who have suggested a wording inspired by art. 6:1 in the TEU. The treaty-defined fundamental principles of the Union should be stable and not suddenly changed by the Convention. These principles should therefore be confirmed in a first sentence of this paragraph. A second sentence could then refer to such important objectives as solidarity and equality between women and men.

Paragraph 3 still does not read very well. I reiterate my point that the objective cannot be so much to “develop” the common values as to pursue them and make them guide and inspire our action.

Paragraph 4 echoes the Cologne mandate but remains superfluous.

Paragraph 5. There have been several suggestions to make references to further instruments such as the UN Covenants and ILO Conventions. One objection is that this would make the catalogue even heavier than it already is. My proposal would be to add a mere three words: **and**

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international obligations, to be inserted between “constitutional traditions” and “common to the member states”. Such a formula would automatically refer only to instruments ratified by all members states.

Paragraph 7. As indicated above I am particularly concerned about this text which must be reformulated to define adequately the character and implications of the Charter and also reflect the restrictions contained and limitations permitted in the horizontal articles.

Article 1 - dignity of the person

The Swedish heading is satisfactory but “Human dignity” would seem to be a better heading in English.

Article 3 – right to integrity of the person

The concept of “mental integrity” remains a mystery to Swedish experts who cannot find it in either the Convention on Biomedicine and Human Rights or any other international instrument.

I also have problems with the second indent of paragraph 2, where the clause starting “in particular” seems to indicate that there are eugenic methods with a different purpose than the one indicated in the clause. Unless there is some good explanation to this query it seems better to end this sentence after the first four words.

Article 4 – prohibition of torture and inhuman or degrading treatment and punishment

In order not to set lower standards than those in existing international human rights instruments (art. 5 of the UN Universal Decl., art. 7 of the ICCPR as well as the title and preamble of the UN Convention against torture), we should insert the word "cruel" before "inhuman".

A minor adjustment should be made in Convent 46, where there is mention of the limitations “guaranteed” by the ECHR. These limitations are not guaranteed but permitted.

Article 7 - respect for private and family life

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The scrapping of “correspondence” in favour of “communications” is of course intended to adapt the text to modern information technology, but this is not necessarily a change for the better. Electronic mail is also a form of correspondence whereas communications is a puzzling term in this context as it comprises many different forms of physical transportation.

Article 8 - protection of personal data

This text differs in style and detail from other articles. The most important provisions seem to be sentences 1 and 3 which should be presented as two separate paragraphs. The final sentence deals with an aspect not covered in other articles.

Article 11 - freedom of expression and information

In the general part I have already mentioned a serious problem with this text, i.e. the issue of television and radio licensing. Another one is paragraph 2 where the reference to pluralism and transparency is highly ambiguous. Are these objectives *motives* for guaranteeing the freedoms of media and information, or reasons for *restrictions* in such guarantees? If the latter, what kind of restrictions?

Article 12 – freedom of assembly and association

This text is not satisfactory. The final part of the first sentence seems to indicate that there is one area where the freedom of assembly and association is particularly important and another one, undefined, where it is less so. The second paragraph is normative in the Swedish version but descriptive in the French and English versions. Though undoubtedly true, this piece of information serves no particular purpose in the Charter.

Article 13 – freedom of research

Convent 46 rightly refers to Articles 1 and 50. It could also mention Article 3 which introduces some restrictions in the freedom of research.

Article 14 – right to education

In a previous version, the rights of the parents were to be “respected”. In the new draft they are to be “guaranteed”. I would propose a return to the former term, which corresponds to the wording of Protocol 1, art. 2, to

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the ECHR. Another problem with this article is that it gives complete precedence to the convictions of the parents over those of the child, which comes in conflict with Article 23. Accepting that it would be too complicated to add this aspect in Art. 14, I suggest instead a strongly worded cross-reference to Art. 23 in the explanation of Art. 14.

Article 15 – the right to choose an occupation

The heading of this article only reflects paragraph 1, which seems less important from an EU point of view than paragraph 2 and could well be deleted. Paragraph 3 is liable to misunderstanding in its present wording since the right of residence and right to work are not necessarily co-extensive.

Article 18 – the right to asylum

This text should be brought into conformity with the conclusions of the Tampere Council. I am not convinced of the need for a reference to the Treaty if the only motive for this is the argument advanced in Convent 46, which is that the Treaty obliges the Union to respect the Geneva Convention.

Article 20 – equality before the law

I suggest the deletion of the words "men or women" as redundant. They might also seem to exclude children which could not be the intention.

Article 21 – equality and non-discrimination

As I have explained at length in my comment to Convent 28, this article presents very serious difficulties. For an efficient combat against discrimination there is a need for more precise and targeted provisions, as evident from the discussions that have been conducted over several years both in the Council of Europe and in various institutions of the Union. Convent 46 claims that the provision is inspired by Art. 13 of the TEC, but the latter has no direct effect and can rather be seen as an agenda for action. With regard to ethnic discrimination, for instance, the proposed wording goes much further than the Commission's draft directive. The moot question of *Drittwirkung* is dealt with neither in the Article nor in the explanation.

Article 22 – equality between men and women

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I propose the insertion of the word "**education**" before "employment and work" to widen the scope of the provision.

Article 23 – protection of children

The new version appears to be a mixture of articles 3 and 12 of the UN Convention on the Rights of the Child (CRC) but with particular emphasis on the need for protection. This is a step backwards since the notion of the child as an active subject with its own rights has been toned down.

I would recommend that the title is changed to read: **the rights of the child**.

Furthermore, I would reiterate my previous proposal concerning the wording of this article: "***In all actions concerning children the best interestes of the child shall be a primary consideration and the rights of the child shall be respected and ensured without discrimination of any kind. The child shall be assured the right to express its views freely in all matters affecting the child, the views of the child being given due weight.***" This formulation should present no major problems as all EU member states have ratified the CRC.

Article 25 – workers right to information and consultation within the undertaking

The text should be fully brought in line with art. 2.1 of the Additional Protocol to the European Social Charter (1988) and art. 21 of the Revised Social Charter and therefore read "workers **or** their organisations", instead of "workers **and** their organisations". Divergence between the two texts might lead to harmful legal uncertainty.

Article 26 - workers' right to negotiations and collective agreements

Same point as under art. 25; in this case the crucial **or** is found in art. 6.2 of the Social Charter. I also want to reiterate my earlier proposal to insert the words "or promote" after "defend" (art 26, second sentence).

Article 28 – protection in the event of unjustified dismissal

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I suggest that art. 28 be brought in line with art. 24 of the revised European Social Charter of 1996 and therefore read: **"All workers have the right to protection in cases of termination of their employment."**

Article 30 – protection of young people at work

The UN Convention on the Rights of the Child (CRC) defines as child anybody under 18 years of age. This creates probably unintended consequences in the first sentence of *Article 30*, which should refer to “minors” rather than “children”.

The provision about “rules that may be more favourable to young people” is too ambiguous for the Charter since it is anybody’s guess what such rules may imply. In the second paragraph, the words “economic exploitation” are also ambiguous and can easily be deleted since they add nothing to the subsequent extensive definition of harmful work.

Article 34 – right of access to services of a general economic interest

This text reproduces a provision which is ambiguous already in art.16 TEC without adding any clarity about the delimitation of the services mentioned. The problem with these services, however defined, is hardly restrictions on the right of access but rather the cost barriers which may limit effective access. If the idea with this proposal is that certain types of monopoly or subsidy should be accepted, it would seem better to discuss such issues head-on with due regard also to the basic principles of free competition.

Article 39 – right to good administration

In this draft article, the nexus linking the first and second parts of the second indent of paragraph 2 is not sincere enough and the second part itself is not precise enough. What is intended here can hardly be anything else than a restriction on the right to access to documents. As such, it is too sweeping.

Article 45 - right to an effective remedy and to a fair trial

As explained in my comment on Convent 28, I have serious problems with this text. Art. 13 of the ECHR on which this provision is based is more precise as it is limited to the rights and freedoms recognised by the Convention. The present article is open-ended in all three paragraphs and

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may give the impression of creating opportunities for legal redress and legal aid which do not exist today.

Art. 6 in the ECHR and art. 14(3) of the ICCPR provide for legal aid only in criminal matters. Swedish national law is also more restrictive than the proposed provision. Careful considerations are required if the suggested wording is expected to impose new costs on either the Community or the member states.

For the above reasons I suggest that the draft article is reviewed and brought in line with the corresponding articles in the ECHR

Article 46 – presumption of innocence and right of defence

This text raises questions about the intended field of applicability, in the light of Art. 49:1.

Article 49 - field of application

I refer to my comments on this article in the general part.

Article 50 – scope of guaranteed rights

As indicated above, I propose the deletion of the final part of the last sentence of *Article 50:3*. Since so many provisions on permissible exceptions are not taken over from the ECHR, the level of protection will automatically seem to be much higher in the Charter (before the reader reaches the horizontal articles). With the present promise at the end of Art. 50 it would then appear as if the Charter derogated a number of rules in the ECHR which of course it has no authority to do.

Looking forward to discuss further any proposals which may not meet with the agreement of the Presidium, let me again express my high appreciation of the constructive efforts of the Presidium and the Secretariat and assure you of my sincere wish to contribute to the successful conclusion of the work of the Convention.

Yours sincerely

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Daniel Tarschys

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TOBISSON

To the Praesidium of the Convention

(for the special attention of Mr Jansson)

General comments on the first complete draft of the Charter (Convent 45)

1. The role and the status of the charter

The key question is the relationship between the Charter and other documents aiming at the protection of fundamental rights, in particular the ECHR.

Since its creation in 1950 an important role in furthering human values has been played by the ECHR in combination with the case-law that has evolved out of the original text. This convention has been of particular importance for the development of the new CEE democracies after the collapse of communism.

It would be most unfortunate, if there should exist in the future two separate and competing systems for the protection of fundamental rights on the European level. We would then run the risk that the ECHR could be looked upon as a lower set of rules for the countries outside the EU, which might erode the authority of the Strasbourg court.

Admittedly, there is a gap in the protection of the individual, when it comes to the application of EU law. This is basically due to the fact that the Union stands outside the Council of Europe and therefore has not adopted the ECHR. Furthermore, this unprotected area is widening, as new matters are brought under EU competence.

The question of the EU's accession to the ECHR and the formal complications associated with it does not fall under the mandate of the Convention. But when the proposed text of the Charter has been delivered, it is necessary to face the crucial problem of the relationship between the two documents.

The best solution would be that changes are made in the treaties of the Council of Europe and the European Union, so that the EU could join the Council and adopt the ECHR. When a future IGC sets out to consolidate the treaties - maybe even write a constitution for the EU - the proposed Charter could then be transformed into a preamble.

If the rights contained in such a legally binding text should go further than the ECHR, it would not constitute a problem - that is already the case with several national declarations of rights. The Luxembourg court should, of course, have jurisdiction based on its "constitution", but in those areas where the subject matter would be covered by the ECHR the final authority would lie in Strasbourg. In practice a consultative procedure could be expected to develop between the two courts.

The necessity to avoid a situation in Europe with two parallel systems and two competing courts, which could lead to conflicting decisions on matters concerning fundamental rights, leads to the conclusion that the EU Charter should be given the status of a political declaration *until* the reforms sketched above can be realised.

2. Structure

The draft Charter consists of a preamble, 48 articles of substance and 4 horizontal articles. The 52 articles are numbered consecutively. They are organised into seven chapters.

It is doubtful, if there is a real need for a division into chapters. The fact that there is no suggestion of a list of contents may be taken as an indication that it is superfluous.

Under all circumstances there should be no headings to the chapters. Those now proposed are arbitrarily chosen and do not correspond to the contents of the articles in the respective chapters.

The first chapter is a case in point. The heading is "Dignity". The very first article is then titled "Dignity of the person", which must be considered a mere repetition. The situation becomes even more confused, when one finds that the heading of the chapter

in the Swedish version is "Individens rättigheter" (= "The rights of the individual"), which is what the whole charter is about.

Moreover, the heading of Chapter II ("Freedoms") does not sound right in plural. In what way can the right to education (article 14) be considered "a freedom"? It seems to be more of a social right. And are the right to asylum (article 18) and the protection against removal, expulsion and extradition (article 19) really "freedoms"?

The chapter heading "Solidarity" has come to stand for what was in the discussions called "economic and social" issues. It would be better to spell that out, if chapter headings are really necessary.

In general, the distinction that was made by the Praesidium during the deliberations between "rights" and "principles" has been obfuscated. There are now many "rights" which are "ensured" when in reality they are "social principles" to be "promoted" - sometimes outside the competence of EU.

It would be preferable to follow the distinction in the original Cologne mandate between rights of different kinds. That would also mean that they would be presented in a more logical fashion and in an order more similar to the one used in our discussions.

Finally, it is somewhat unsatisfactory that a lot of far-reaching promises are given in the first 48 articles, only to be restricted - sometimes most appreciably - by the final horizontal clauses. Those restrictions should at least be hinted at in the preamble.

3. The preamble

In spite of the critical comments at the July 17-19 meeting of the Convention the general structure of the preamble outlined by the Praesidium has been maintained. A shorter version, more along the lines the Mr Tarschys indicated at the meeting, is to be preferred.

Each paragraph starts with a number (1-7). Are they supposed to remain? It seems a little strange to have figures in the lofty wording of a preamble and, therefore, they ought to be deleted.

As to the first paragraph I criticized already during the deliberations the "timing". The phrase should be turned around. Besides, it is strange that we "have established (*static!*) an ever closer (*evolving!*) union". The wording could be changed in the following way: *"Resolved to share a peaceful future based on common values the peoples of Europe are building an ever closer union between them."*

The second paragraph contains a lot of solemn and slightly bombastic words without a clear meaning. Its purpose seems mostly to be to foreshadow the following structure and division into chapters, which I have already questioned. It would be preferable to have something closer to the Tarschys proposal: *"The Union is founded on the principles of liberty, democracy, the rule of law, and equal opportunities for men and women"*.

In paragraph 3 it seems strange that fundamental values, which according to the preceding paragraph are "indivisible" and "universal", could be under "development". Maybe "evolution" would be a better word.

In paragraph 6 there is a lot of overlapping between "other persons", "human community" and "future generations". It should suffice to say "...other persons, including future generations".

In paragraph 7 the word "therefore" seems out of place. Moreover, the word "guaranteed" is much too strong. The wording should be replaced by the final (fourth) paragraph in Mr Tarschys` s version from the July meeting.

4. The articles

My comments on the draft charter have so far dealt with the structure and the preamble, which have been discussed rather hastily at the latest meeting of the Convention. The

wording of the proposed articles has been more thoroughly analyzed and debated. However, some additional remarks are motivated.

In general, in those cases where rights are covered by the ECHR there should be more of an ambition to use an identical wording in order to avoid the evolution of varying interpretations.

Moreover, for somebody who is not a legal expert it is somewhat confusing that the expression "Union law" alternates with "Community law" without any apparent reason.

Article 1. The heading of the article in relation to the chapter title has already been commented upon. In addition, the word "person" seems a bit awkward and a little ambiguous. Are "legal persons" (i.e. companies; cf. Article 40) included? Would it not be better to use the word "human being" here and elsewhere in the Charter, when human persons are aimed at exclusively?

Article 3. There is no need for a distinction between "physical" and "mental" integrity. Replace those words with "personal" (integrity). Incidentally, does the 2nd para, 3rd indent, mean that the sale of human hair for the production of wigs is forbidden?!

Article 12. Freedom of association is expressly excluded from Community law. If it is yet to be included in the Charter - with a particular emphasis put on "trade union matters" as in the proposed text - the right to remain outside an association should be treated in the same manner. There has been a clear development in case-law to place the positive and the negative aspects of the freedom to associate on an equal footing.

Article 17. The protection given to property rights in the Charter is too weak. Changes in the text compared to the original wording, which may have been done with the purpose to strengthen these rights, will in fact work the other way. The concept "fair compensation" can be misused to deny the owner adequate compensation for his loss. If the wording "full compensation" is impossible for some reason, the word "fair" must disappear under all circumstances. Write "compensation for his loss" or merely "compensation"!

In comparison to the initially proposed text the words "a prior guarantee" have disappeared. The reason is said to be that there are national bills of rights that don't include such a provision. But the right to compensation is not worth anything, if it takes years and years before it is paid out. After the word "compensation" there should, therefore, be added "to be paid without undue delay".

In paragraph 1 there has appeared a new, third sentence, probably with the aim to restrict the use of regulations to instances where a clear general interest is affected. But the concept of "general interest" - just as "public interest" in the second sentence - is vague and can be interpreted broadly. Therefore, the third sentence should be deleted and the second one reformulated. The whole paragraph 1 should then read:

"Every person has the right to own, use, dispose of and bequeath his lawfully acquired possessions. No one may be deprived of his possessions, except when there is a strong public need and in the cases and under the conditions provided for by law, subject to compensation (for his loss) to be paid without undue delay."

Article 20. There is no gender aspect to equality before the law. The insertion "man or woman", which actually weakens the universality of the concept, seems to have been inspired by the chapter heading, and it should be deleted.

Article 27. The right of access to a placement service can not be regarded as a fundamental right on the same level as other freedoms and rights in the Charter. Besides, this service is in the process of being transferred to private agencies working on the market. The whole article should be deleted.

Article 32. There have been efforts to include the social principle/objective of "good housing" in the Charter. This lies clearly outside the EU competence. But there appears in paragraph 3 a remnant of this idea in the form of a right to "housing benefit". This is, however, just one out of many methods to ensure that everyone lives under decent conditions. Subsidies of housing costs for the needy must be considered to be included in "social assistance", and the words "and housing benefit" should, therefore, be deleted.

Article 34. It is totally unclear what is meant by "services of general economic interest". The explanation given by Mr Patijn for the corresponding provision in the Treaty of Amsterdam shows that this is no fundamental right to be included in the Charter. Delete!

Article 35. The expression "a good quality living environment" looks and sounds strange and should be reformulated. The easiest way is to delete the word "quality".

5. Conclusion

My main concern is the relationship between the proposed Charter and other bills of rights, in particular the ECHR. The lack of clarity in this regard affects my willingness to endorse the Charter.

As to the proposed text my most important objections bear upon the structure of the document. This is the first time the members of the Convention see the complete text and can weigh its components (the preamble, the substantial and the horizontal articles) against each other. We have just received Convent 46 with the crucial explanatory text provided by the Secretariat, and this document has not even been discussed!

I deplore that the timetable has been speeded up with the intention to deliver the proposed Charter to the Biarritz summit in October instead of the Nice summit in December as originally decided. Several important aspects remain to be discussed, and many outstanding problems are not satisfactorily settled.

Therefore, as one of the two national parliamentarians from Sweden and representing the leading opposition party I can not recommend that the Charter is adopted - not even as a political declaration - in its present form.

Lars F Tobisson

VITORINO

Bruxelles, le 23/08/00 11:40

JAI/A1 FP/fp D(2000)

Observations du représentant de la Commission sur le document CONVENT 45

1. QUESTIONS DE FOND

- Préambule

Dans son troisième paragraphe, le préambule fait actuellement référence aux « quatre libertés », sans aucune référence à la citoyenneté de l'Union, donnant une image réductrice de l'intégration européenne. En même temps, la rédaction paraît maladroite car elle donne l'impression de réduire la notion de développement équilibré et durable, utilisée dans un sens très large à l'article 2, premier tiret TUE, aux seules quatre libertés du marché intérieur.

La Commission propose le texte suivant:

Insérer à la fin du deuxième paragraphe :

elle place la personne humaine au cœur de son action, en garantissant la libre circulation des personnes, des biens des capitaux et des services, en instituant la Citoyenneté de l'Union et en créant un espace de liberté, de sécurité et de justice.

Biffer la dernière partie du troisième paragraphe (« elle assure...et durable »)

- Article 25. Droit à l'information et à la consultation des travailleurs au sein de l'entreprise

L'article 25 fait désormais référence à l'information et à la consultation des travailleurs "sur les questions qui les concernent", un segment de phrase qui n'apparaissait pas dans la version précédente (Charte 4316/00 Convent 34, 16 mai 2000).

Le texte précédent était basé sur la Charte sociale européenne révisée (art. 21) et la Charte communautaire des droits sociaux (art. 17). Il était cohérent avec le texte que la Commission a proposé dans son projet de directive sur l'information et la consultation des travailleurs (COM 1998/612 final) qui est actuellement en discussion au Conseil.

Du point de vue juridique, la nouvelle formulation n'altère pas fondamentalement la version antérieure. En revanche, du point de vue

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politique, le texte actuel apparaît en retrait de la version antérieure, et donc aussi en retrait des textes qui en étaient la base.

La Commission propose le libellé suivant:

Les travailleurs et leurs représentants doivent se voir garantir une information et consultation en temps utile au sein de l'entreprise conformément au droit communautaire et aux législations et pratiques nationales.

• **Article 32, paragraphe 2. Sécurité sociale et aide sociale**

Après un examen attentif de ce texte, la Commission constate qu'il n'est pas conforme au droit communautaire en matière de sécurité sociale, en particulier aux principes essentiels garantis par le Règlement (CEE) n° 1408/71¹ qui coordonne les systèmes nationaux de sécurité sociale.

Le Règlement 1408/71 vise à protéger les droits à la sécurité sociale non seulement des travailleurs qui sont des ressortissants de l'Union et des membres de leur famille mais aussi d'autres catégories de personnes qui se déplacent à l'intérieur de l'Union, en vue de ne pas les léser par rapport aux personnes sédentaires. Il assure cette protection grâce à quatre grands principes fondamentaux, à savoir 1) l'égalité de traitement avec les ressortissants nationaux, 2) l'unicité de la législation applicable 3) l'exportation des prestations de sécurité sociale et enfin, 4) la totalisation des périodes d'assurance.

Considérant cette réglementation communautaire, la Commission estime que l'article 32, paragraphe 2 devrait être formulé différemment et propose le texte suivant :

Toute personne, qui réside et se déplace légalement à l'intérieur de l'Union, a droit aux prestations de sécurité sociale et aux avantages sociaux dans les conditions établies par les législations nationales et le droit communautaire.

Il est proposé ainsi de supprimer les termes de "travailleurs ressortissants d'un Etat membre et résidant dans un autre Etat membre" et de les remplacer par les termes "toute personne qui réside et se déplace légalement à l'intérieur de l'Union". En effet, le terme "travailleur" n'inclut pas certaines catégories importantes de personnes, telles que les étudiants et les retraités qui sont couvertes par le Règlement 1408/71.

En outre, le terme "personne" permet de couvrir non seulement les citoyens de l'Union, mais aussi les ressortissants des Etats tiers qui résident et se déplacent

¹ JO n° L 149 du 05.07.1971 p. 2-50.

légalement à l'intérieur de l'Union. En effet, bien que le Règlement 1408/71 s'applique, à l'heure actuelle, aux seuls ressortissants des Etats membres, il existe toutefois une proposition de la Commission européenne² qui vise à étendre ledit règlement aux ressortissants d'un Etat tiers qui résident et se déplacent légalement dans l'Union. Cette idée a été confirmée par le Conseil européen de Tampere du 18 octobre 1999³ et semble également la conséquence logique de la jurisprudence de la Cour européenne des droits de l'homme⁴.

Il est aussi proposé de remplacer les termes "ont droit aux mêmes prestations.....que les ressortissants de cet Etat" par "ont droit aux prestations de sécurité sociale... dans les conditions établies par les législations nationales et le droit communautaire".

En effet, bien que le texte actuel reflète le principe d'égalité de traitement avec les ressortissants nationaux, il néglige de tenir compte des principes fondamentaux de l'unicité de la législation applicable et de l'exportation des prestations garanties par le Règlement 1408/71. Ainsi, le principe de l'unicité de la législation applicable prévoit que c'est généralement la législation de l'État de travail seule qui s'applique et non pas la législation de l'État de résidence, ce que le texte actuel suggère. En outre, alors que le Règlement oblige l'État de travail à exporter les prestations aux assurés qui résident dans un autre Etat membre, le texte actuel ne se réfère qu'à un droit à des prestations servies par l'État de résidence, ce qui pourrait avoir des conséquences importantes, notamment en ce qui concerne les travailleurs transfrontaliers.

Suite à cette proposition de changement, les termes "à un même accès aux soins de santé" sont superflus car les soins de santé font partie de la notion plus large de "prestations de sécurité sociale".

- **Article 43. Liberté de circulation et de séjour**

Au paragraphe 2, il convient d'insérer une référence à la liberté de séjour, afin de tenir compte de la compétence donnée à la Communauté dans l'article 63, paragraphe 4 TCE (qui est déjà citée dans les explications à l'article 43).

² Proposition de règlement du Conseil visant l'extension aux ressortissants de pays tiers du règlement (CEE) n° 1408/71 relatif à l'application des régimes de sécurité sociale aux travailleurs salariés, aux travailleurs non salariés et aux membres de leur famille qui se déplacent à l'intérieur de la Communauté, Document COM (1997) 0561 final.

³ Paragraphe 21 : « *Le statut juridique des ressortissants de pays tiers devrait être rapproché de celui des ressortissants des États membres. Une personne résidant légalement dans un État membre pendant une période à déterminer et titulaire d'un permis de séjour de longue durée devrait se voir octroyer dans cet État membre un ensemble de droits uniformes aussi proches que possible de ceux dont jouissent les citoyens de l'Union européenne (...)* ».

⁴ Affaire *Gaygusuz*, n° 39/1995/545/631.

La Commission propose le libellé suivant :

La liberté de circulation et de séjour peut être accordée, conformément au traité instituant la Communauté européenne, aux ressortissants des pays tiers résidant légalement sur le territoire d'un État membre.

2. QUESTIONS DE REDACTION

- **Article 3. Droit à l'intégrité de la personne**

Étant donné la nouvelle rédaction de l'article 49, qui établit une nette distinction entre droits et principes contenus dans la Charte, la Commission considère que, pour des motifs de cohérence de rédaction, il convient désormais de distinguer clairement entre droits subjectifs et principes objectifs dans la Charte, et par conséquent d'éviter le mot "principes" là où on vise en réalité des droits subjectifs.

La Commission propose le libellé suivant:

Dans le cadre de la médecine et de la biologie, doivent notamment être respectés:

- *le consentement libre et éclairé de la personne concernée,*
- *l'interdiction des pratiques eugéniques, notamment celles qui ont pour but la sélection des personnes,*
- *l'interdiction de faire du corps humain et de ses parties une source de profit,*
- *l'interdiction du clonage reproductif des êtres humains.*

- **Article 11. Liberté d'expression et d'information**

La Commission s'interroge sur la formule "la liberté d'information" au 2ème paragraphe. Vu que le premier paragraphe consacre déjà la "liberté de recevoir ou de communiquer des informations", ou bien cette formule est un pléonasme, ou bien elle a une signification supplémentaire. Dans la dernière hypothèse, la Commission s'interroge si la signification de cette formule pourrait être celle d'une "freedom of information", c'est-à-dire le droit des individus à obtenir des informations des autorités publiques, à savoir ici des institutions communautaires. Interprétée d'une telle manière, cette formule pourrait non seulement avoir des conséquences pratiques graves pour le fonctionnement de la Commission, mais serait aussi clairement en conflit avec l'article 40 "droit d'accès aux documents" de la Charte qui règle l'accès aux informations des institutions de manière exhaustive et en respectant soigneusement l'état du droit actuel contenu dans l'article 255 TCE.

La Commission propose donc de clarifier, dans les explications (doc. CONVENT 46) sous cet article, que la formule "liberté d'information" n'est pas à interpréter dans le sens évoqué ci-dessus mais vise uniquement à affermir la liberté notamment des journalistes dans les médias de recevoir et communiquer des informations.

- **Article 35. Protection de l'environnement**

On pourrait encore améliorer la rédaction actuelle, pour mieux refléter les objectifs de la politique en matière d'environnement tels que fixés dans le TUE et le TCE, en y ajoutant une référence à la santé humaine. Il est certes probable que la protection de la santé humaine est déjà implicitement couverte par l'article 35 dans sa version actuelle, mais il paraît opportun d'exprimer cette notion de façon expresse, eu égard à son importance.

Le libellé proposé est donc le suivant :

La protection et la conservation d'un cadre de vie de qualité, ainsi que l'amélioration de la qualité de l'environnement et la protection de la santé des personnes, en tenant compte du principe du développement durable, sont assurées dans toutes les politiques de l'Union.

- **Article 39. Droit à une bonne administration**

Au 2ème tiret du paragraphe 2 de cet article, la formule "secret professionnel des affaires" est erronée car elle mélange deux concepts juridiques distincts, l'un étant le "secret des affaires", ce qui est la notion classique utilisée fréquemment dans la jurisprudence en matière de droit de concurrence, et l'autre le secret professionnel, concept plus large utilisé à l'article 287 TCE et qui vise tout ce dont un fonctionnaire d'une institution communautaire a pris connaissance en fonction du service (dont, le cas échéant des informations reçues par des entreprises qui peuvent faire partie du secret des affaires).

Il ne s'agit là probablement que d'une erreur de frappe, omettant le mot "et".

La Commission propose le libellé suivant :

- le droit d'accès de toute personne au dossier qui la concerne, dans le respect des intérêts légitimes de la confidentialité et du secret professionnel et des affaires ;

Afin d'éviter tout malentendu, la Commission propose par ailleurs de clarifier dans les explications (doc. CONVENT 46) que le terme "secret professionnel" correspond à celui utilisé dans l'article 287 TCE et qu'il vise dès lors le secret professionnel des fonctionnaires communautaires.

- **Article 47. Principes de la légalité et de la proportionnalité des délits et des peines**

Les mots "d'après le droit international" à la fin du deuxième paragraphe de cet article posent un problème rédactionnel. L'intention poursuivie par le Présidium avec cette formule est certes compréhensible: Il s'agit de moderniser le libellé de l'article 7.2 de la CEDH qui parle des "principes généraux de droit reconnus par les nations civilisées". Mais contrairement à l'intention du Présidium, le libellé actuel ne laisse pas apparaître que le paragraphe 2 de cet article constitue une *dérogation* du paragraphe 1, vu que ce dernier paragraphe vise, lui aussi, "une infraction d'après le droit national ou le droit international".

La Commission propose le libellé suivant :

Le présent article ne porte pas atteinte au jugement et à la punition d'une personne coupable d'une action ou d'une omission qui, au moment où elle a été commise, était criminelle d'après les principes généraux de droit reconnus par l'ensemble des nations."

Ce libellé correspond à celui de l'article 15.2 du Pacte international relatif aux droits civils et politiques)

- **Article 48. Droit à ne pas être jugé ou puni pénalement deux fois pour un même délit**

Le libellé actuel de cet article pourrait être compris en ce sens qu'un jugement définitif rendu dans n'importe quel pays tiers pourrait empêcher toute poursuite pénale dans un Etat membre.

Pour éviter ce malentendu, il convient d'insérer, après le mot "condamné", les mots "**dans l'Union européenne**".

VOGGENHUBER + BOUMEDIENE

Herrn Bundespräsident a.D.
Prof. Dr. Roman Herzog
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Herrn
Inigo Mendez de Vigo MdEP
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31. August 2000

Allgemeine Bemerkungen zum Entwurf der Charta der Grundrechte der Europäischen Union/CONVENT 45 vom 28.Juli 2000

Sehr geehrter Herr Professor Herzog,
Sehr geehrter Herr Kollege Mendez de Vigo,

Zu dem oben angeführten Vorentwurf möchte ich unter Beschränkung auf das Wesentliche folgende Anmerkungen machen und verweise darüberhinaus auf meine Unterstützung für die gemeinsame Stellungnahme von Herrn Prof. Meyer.

I Präambel.

Die Bürgerinnen und Bürger der Europäischen Union sind entschlossen, unter Wahrung ihrer kulturellen und staatlichen Eigenständigkeit eine immer engere Union zu errichten, sie auf die Unantastbarkeit der Würde des Menschen und die Prinzipien der Demokratie und der Rechtsstaatlichkeit zu gründen, darin frei unter Gleichen, solidarisch, in ökologischer Verantwortung, in äusserem und innerem Frieden zusammenzuleben und erklären die Achtung und den Schutz dieser Prinzipien zur Grundlage allen Handelns der Union in der Welt.

Artikel 2 Recht auf Leben

Die überragende Mehrheit des Konvents hat sich für eine Ächtung der Todesstrafe ohne die Einschränkungen der EMRK ausgesprochen. Dem wurde im Konvent 46 nicht Rechnung getragen.

Artikel 3 Recht auf Unversehrtheit

Der Artikel ist unvollständig, da er weder das Recht jeder Person auf Kenntnis aller Daten über ihre Gesundheit und ihr Erbgut noch das Verbot des Heranziehens von Gendiagnosen in Versicherungs- und Beschäftigungsverhältnissen enthält. Diese in einigen Ländern schon praktizierte Vorgehensweise verstösst gegen den Gleichheitsgrundsatz und die informationelle Selbstbestimmung und müsste in der Charta auf jedem Fall enthalten sein.

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Artikel 9 Recht eine Ehe einzugehen und eine Familie zu gründen

In Artikel 9 wird die gesellschaftliche Dynamik hin zu einer Vielfalt von Lebensformen nicht berücksichtigt. Dies entspricht nicht der Diskussion im Konvent, in der sich die Mehrheit für eine möglichst weite, moderne Auslegung des Familienbegriffes, der das Individualrecht auf die Wahl der Lebensform und Lebensgemeinschaft gewährleistet, ausgesprochen hat.

Artikel 15 Berufsfreiheit

Die Beschränkung des Anspruchs auf gleiche Arbeitsbedingungen wie Unionsbürger auf Staatsangehörige dritter Länder die sich legal in der Union aufhalten steht im Widerspruch zu Artikel 5 und bedeutet faktisch ein Ausbeutungsverbot nur bei legal ansässigen Drittstaatsangehörigen. Das Wort legal soll im Artikel 15, Abs.3 gestrichen werden.

Artikel 18 Asylrecht

Im Artikel 18 "Asylrecht" findet sich kein individuelles Recht und keine individuellen Rechtsgarantien für Asylsuchende in der Europäischen Union. Die Verankerung des Asylrechts als Individualrecht war von zahlreichen Konventsmitgliedern gefordert worden und die vorliegende Formulierung wird diesem Ansinnen nicht gerecht. Zusätzlich sollte das Recht auf Leben in der Familie aufgenommen werden, wie es ja auch schon Teil der Europäischen Menschenrechtskonvention ist. Die EU-Verträge können niemals den Wesensgehalt von Menschenrechten legitim einschränken, sondern haben sich Gegenteil an der Einhaltung der Grundrechte messen zu lassen. Die horizontale Bestimmung "gemäss dem Vertrag zur Gründung der Europäischen Gemeinschaft" ist daher systemwidrig.

Kapitel IV Solidarität

Das Kapitel Solidarität sollte umbenannt werden in Recht auf soziale Sicherheit. Die sozialen Grundrechte sind im Chartaentwurf nur unzureichend gewährleistet. Weder ein Recht auf Arbeit, noch wesentliche Grundrechte bei der Arbeit, noch ein Recht zu arbeiten, nicht einmal das Recht auf Mindestlohn/Grundsicherung wie von zahlreichen Konventionsmitgliedern vorgeschlagen und wie in den ILO-Konventionen festgelegt und garantiert, fanden eine Aufnahme.

Die unzureichende Anerkennung geltender sozialer Grundrechte im Völkerrecht bzw. den gemeinsamen Verfassungstraditionen der Mitgliedsländer führt zu einer inakzeptablen Schiefelage der gesamten Charta.

Artikel 35 Umweltschutz

Die aktuelle Fassung des Artikels 35 verpflichtet lediglich die Union, Umweltschutznormen zu erlassen. Die Pflicht korrespondiert nicht mit einem individuellen Recht auf Umweltschutz. Es ist unverständlich, warum das Präsidium nicht den zahlreichen Änderungsanträgen einer Mehrheit der Konventsmitglieder Rechnung getragen hat, die die nachdrückliche Formulierung dieses Artikels im Sinne eines Rechtsanspruches einforderten. Zudem sollte das Recht jeder Person, allein oder gemeinsam mit anderen, an Entscheidungen die ihre unmittelbare Umwelt betreffen, mitzuwirken in den Artikel aufgenommen werden.

Ein Artikel zu den Rechten von Minderheiten, der von der Mehrheit der Konventsmitglieder gefordert wurde findet sich im Entwurf 45 der Charta nicht wieder.

Dazu möchte ich noch einmal auf den Änderungsantrag Voggenhuber/Buitenweg hinweisen der das Recht als Individualrecht formuliert und wie folgt lautet:

- (1) Jede Person, die einer Minderheit angehört, hat das Recht gemeinsam und öffentlich mit anderen Angehörigen ihrer Gruppe ihre eigene Sprache zu gebrauchen und ihre eigene Kultur zu pflegen.
- (2) Angehörige von Gruppen, die faktisch benachteiligt werden, haben Anrecht auf besondere Förderung.

Artikel 40 Recht auf Zugang zu Dokumenten

Der Artikel ist insofern unvollständig da er nur das Recht auf Zugang zu Dokument nicht aber das Recht auf Auskunft enthält und sollte dementsprechend geändert werden.

Zu Art 50 Tragweite der garantierten Rechte

Artikel 50, Absatz 1 ist rechtsstaatlich nicht tolerabel. Die Einschränkungen der Grundrechte auf Basis "anderer legitimen Interessen in einer demokratischen Gesellschaft" ist willkürlich und muss ersatzlos gestrichen werden. Zum zweitem fehlt die Formulierung des Gebots dass die Möglichkeit Grundrechte einzuschränken niemals ihren Wesensgehalt verletzen darf.

Mit freundlichen Grüßen

Johannes Voggenhuber
Alima Boumediene-Thiery

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Strasbourg, le 22 août 2000

Observations des représentants du Conseil de l'Europe sur le projet de Charte du Présidium (Convent 45)

Notre souci principal étant de veiller à ce que les droits que la Charte emprunte à la Convention européenne des droits de l'homme (CEDH) ne donnent pas lieu à des interprétations divergentes voire contradictoires, selon qu'ils sont interprétés par la Cour européenne des droits de l'homme ou la Cour de justice de Luxembourg, nous estimons que le texte proposé rencontre largement cette préoccupation, en attendant une décision définitive sur sa nature juridique. Le mérite en revient à la Convention et à son Présidium, qui se sont montrés sensibles aux remarques et propositions exprimées tout au long des travaux par les observateurs du Conseil de l'Europe et ont apporté au texte des modifications propres à assurer la cohérence et l'harmonie entre la Charte et la CEDH.

C'est vrai en particulier des dernières modifications proposées par le Présidium, tel le nouveau paragraphe 3 de l'article 50, qui a le mérite de dissiper, en principe, tout malentendu quant au sens et à la portée des droits de la Charte correspondant à des droits garantis par la CEDH.¹ Encore faudra-t-il identifier les cas où la Charte entend assurer une protection « plus élevée ou plus étendue ». C'est ici que les explications au texte, telles qu'elles sont proposées dans le document Convent 46, rendront de grands services. Il faudra donc veiller à les rendre aussi accessibles aux lecteurs que le texte lui-même.

De son côté, la référence du Préambule à la jurisprudence de la Cour européenne des droits de l'homme, en confirmant le principe selon lequel l'interprétation d'autorité s'incorpore au texte interprété, dissipera tout malentendu dans l'identification des « droits correspondant à des droits garantis par la CEDH ». Grâce à elle, il est clair que le renvoi à la CEDH couvre aussi les droits reconnus dans la jurisprudence. De la sorte, la Convention fait œuvre de prévoyance, en assurant dès maintenant la cohérence et l'harmonie entre les développements futurs de la CEDH et de la Charte, évitant ainsi de briser la dynamique commune de ces deux textes.

Le renvoi à la jurisprudence sera essentiel aussi pour l'application de l'article 51 de la Charte, qui fixe le niveau de protection minimum offert par la Charte, notamment par référence à la CEDH. Ici aussi, il importe en effet d'assurer que ce niveau minimum suive tout mouvement ascendant de la jurisprudence.

Cela étant, toutes les précautions de rédaction ne pourront pas empêcher que le débat sur la nature de la Charte soulève un certain nombre de problèmes qui, s'ils ne trouvent pas de solution satisfaisante, seront source potentielle de dérapages dans l'interprétation des droits consacrés à la fois par la Charte et la CEDH, en particulier dans l'hypothèse où la Cour

¹ L'article 50 § 3 parle toutefois de droits ayant un sens et une portée *similaires* à ceux conférés par la CEDH, ce qui semble indiquer que certaines divergences sont permises. Or l'article 50 § 3 ne permet que deux hypothèses : *la même* protection que la CEDH ou une protection *plus élevée*. Cette dernière étant couverte par l'article 50 § 3 *in fine*, la première doit se voir reflétée dans la première partie de la disposition, qui devrait par conséquent se lire ainsi : « (...) leur sens et leur portée sont *les mêmes* que ceux que leur confère la CEDH (...) ». Cela éviterait tout doute inutile en la matière.

de justice aurait à se prononcer sur des questions non encore soumises à Strasbourg. Pourquoi ?

Parce que la Charte, appliquée et interprétée dans le cadre de l'Union européenne, c'est-à-dire dans le cadre d'un Traité avec ses objectifs propres et englobant par ailleurs de nouvelles compétences dans les domaines de l'immigration, de l'asile et de la coopération judiciaire et policière, ne manquera pas d'engendrer une dynamique qui ne devrait pas rester sans conséquences sur l'interprétation harmonieuse et cohérente des droits fondamentaux. L'organe créant la fonction, il est hautement probable que la Charte générera un contentieux préjudiciel incomparablement plus élevé que celui qui est actuellement porté devant la Cour de justice. Cela augmentera dans la même mesure les risques de voir des décisions de la Cour de justice contredites ultérieurement par la Cour de Strasbourg, au titre de la responsabilité des Etats membres tenus par ailleurs de respecter et d'appliquer le droit communautaire. Dans quel pétrin risque-t-on alors de mettre un Etat appelé à appliquer un arrêt de la Cour de justice qui se trouve en porte-à-faux avec un arrêt ultérieur de la Cour de Strasbourg ?

C'est dire que, dans la perspective d'une intégration harmonieuse de la Charte parmi les autres systèmes internationaux de protection des droits fondamentaux, le débat sur la nature de la Charte remettra à l'ordre du jour la question de l'adhésion des Communautés européennes et/ou de l'Union à la CEDH, selon des modalités à convenir, ou du moins celle d'un mécanisme de consultation préalable entre les deux Cours, cautionné par les Etats membres.²

Tant que ces questions ne seront pas résolues, le Conseil européen, s'il ne veut courir le risque de favoriser l'insécurité juridique, ne sera guère en mesure de se prononcer définitivement sur la nature de la Charte. Certes, il n'entre pas dans le mandat de la Convention de s'exprimer sur cette question. Cela ne devrait pas pour autant la dispenser de voir et de signaler à l'adresse du Conseil européen, sous une forme appropriée, les problèmes tels qu'ils se posent.

Marc Fischbach
Hans-Christian Krüger

² Voir à cet égard notre contribution du 21 février 2000 (Contrib 29, Charte 4136/00).

Strasbourg, 22 August 2000

**Observations of the Council of Europe representatives
on the draft Charter proposed by the Praesidium (Convent 45)**

Our primary concern is to ensure that the rights taken by the Charter from the European Convention on Human Rights (ECHR) are not interpreted in inconsistent or even contradictory ways depending on whether it is the European Court of Human Rights or the Court of Justice in Luxembourg that is construing them. We consider that the proposed text amply deals with that concern, pending a final decision on its legal nature. The Convention and the Praesidium must take the credit for that. They have heeded the comments and proposals made throughout the preparatory work by the observers of the Council of Europe and made the necessary amendments to ensure consistency and harmony between the Charter and the ECHR.

That is true in particular of the latest amendments proposed by the Praesidium such as the new paragraph 3 of Article 50, which has the merit of dispelling, in principle, any doubt over the meaning and scope of the Charter rights corresponding to the rights guaranteed by the ECHR¹. It will, however, still be necessary to identify the instances in which it is intended that the protection afforded by the Charter will be “greater or more extensive”. It is in this sphere that the commentary on the text, as proposed in the Convent 46 document, will prove very useful. It should therefore be made as accessible to readers as the text itself.

By confirming the principle that authoritative interpretations of an instrument are incorporated into the instrument itself, the reference in the preamble to the case-law of the European Court of Human Rights will clear up any misapprehension regarding identification of the “rights which correspond to rights guaranteed by the [ECHR]”. That reference makes it clear that the ECHR rights also include rights recognised by the case-law. By including it, the Convention has shown the foresight to ensure at the outset that future developments regarding the ECHR and the Charter will be consistent and harmonious and has thus avoided destroying the common dynamic of these two instruments.

The reference to the case-law will also be vital for the application of Article 51 of the Charter, which sets the minimum level of protection provided by that instrument, notably by reference to the ECHR. Here too it is important to ensure that the minimum level rises to match any enhanced protection afforded by the case-law.

Nevertheless, no amount of careful drafting can prevent the debate on the nature of the Charter posing a number of problems which, unless satisfactorily resolved, will prove a potential source of error in the interpretation of the rights embodied in both the Charter and

¹ Article 50 § 3 refers, however, to rights that have a *similar* meaning and scope to those conferred by the ECHR, which seems to suggest that divergences are permitted. Yet Article 50 § 3 allows of only two possibilities: *the same* protection as that afforded by the ECHR, or *greater* protection. As the latter possibility is covered by Article 50 § 3 *in fine*, the former must be reflected in the first part of the provision, which, for the avoidance of any unnecessary doubt on the subject, should consequently read as follows: “... the meaning and scope of those rights shall be *the same* as those conferred on them by the [ECHR]...”.

the ECHR, in particular if the Court of Justice finds itself called upon to decide issues that have not previously been before the Court in Strasbourg. Why?

Because the Charter, when applied and interpreted within the context of the European Union, that is to say in the framework of a Treaty with its own objectives and including new powers in the fields of immigration, asylum and judicial and police co-operation, is bound to take on a dynamic which is almost certain to affect the harmonious and consistent interpretation of fundamental rights. Since the organ creates the function, it is highly probable that the Charter will generate a far higher number of references for preliminary rulings than the Court of Justice receives at present. That will increase in the same proportion the risk that decisions of the Court of Justice will be at variance with later decisions of the Strasbourg Court, since the member States will remain responsible for their actions under the ECHR but will at the same time be required to comply with and apply Community law. A State obliged to apply a judgment of the Court of Justice which turned out to be at odds with a later judgment of the Strasbourg Court would be placed in a very awkward position.

As regards the Charter's being harmoniously combined with the other international systems of protection of fundamental rights, that point shows to what extent the debate about the nature of the Charter will restore to the agenda the question of accession by the European Communities and/or the Union to the ECHR, under arrangements to be agreed, or at least the idea of a preliminary consultation mechanism, recognised by the member States, between the two Courts.²

As long as these questions remain unanswered the European Council, if it wishes to avoid the risk of creating legal uncertainty, will scarcely be in a position to reach a final decision on the nature of the Charter. Admittedly, it is not part of the Convention's terms of reference to state its views on that question. However, that should not dispense it from identifying and pointing out to the European Council, in appropriate form, the problems as they exist.

Marc Fischbach
Hans-Christian Krüger

² See in this connection our contribution dated 21 February 2000 (Contrib 29, Charter 4136/00).

COMITE DES REGIONS

Monsieur Roman HERZOG
Président de la Convention de la Charte
des Droits fondamentaux de l'Union européenne
CONSEIL DE L'UNION EUROPEENNE
Rue de la Loi 170
1048 Bruxelles

Bruxelles, le
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Monsieur le Président,

Je vous remercie de m'avoir fait parvenir le projet de Charte des droits fondamentaux de l'Union européenne tel que proposé par le Présidium et dont j'ai pris connaissance avec la plus grande attention.

Comme vous le savez, le Comité des régions a suivi en tant qu'observateur les travaux de la Convention et a assisté avec beaucoup d'intérêt à ses réunions informelles. Il a ainsi eu l'occasion d'apprécier la qualité des membres de la Convention et le niveau élevé de leurs discussions.

A la suite de son avis sur la Charte des droits fondamentaux de l'Union européenne examiné en session plénière les 16 et 17 février 2000, le Comité des régions s'est autorisé à présenter des amendements qui ont rejoint certains de ceux qui étaient proposés par les membres de la Convention et qui figurent dans le texte du projet.

Toutefois, et alors même qu'il a fait l'objet d'un avis très favorable lors de l'audition organisée par le Comité des régions le 4 juillet dernier à laquelle ont participé les associations nationales et européennes représentatives des collectivités locales, l'amendement présenté par le Comité sur la nécessité de mentionner les autorités régionales et locales parmi les collectivités qui mettent en oeuvre les politiques de l'Union n'a pas été retenu.

Cette proposition d'amendement consistait à modifier l'alinéa 1 de l'article 49 comme suit :

"Les dispositions de la présente Charte s'adressent aux institutions et organes de l'Union dans le respect du principe de subsidiarité ainsi qu'aux Etats membres et à leurs autorités territoriales

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dans le cadre des règles institutionnelles de chaque Etat membre", le reste de l'article demeurant inchangé.

Il m'a été indiqué qu'il n'était pas possible qu'un texte émanant de l'Union prévoie une telle mention dès lors qu'il était fait état des Etats membres et ce, en se référant à l'article 230 (ancien article 173) du Traité sur l'Union européenne et à une décision de la Cour de Justice des Communautés européennes qui stipule dans son ordonnance du 21 mars 1997 :

"Il ressort de l'économie générale des traités que la notion d'Etat membre, au sens des dispositions institutionnelles et, en particulier, de celles portant sur les recours juridictionnels, ne vise que les seules autorités gouvernementales des Etats membres de communautés européennes et ne saurait être étendue aux gouvernements des régions ou de communautés autonomes et ce, quelle que soit l'étendue des compétences qui leur sont reconnues".

Je ne méconnaissais pas l'importance de cette ordonnance. Toutefois, je note que ces termes sont en partie contredits par une décision du Tribunal (5e alinéa Chambre élargie) du 30 avril 1998 qui stipule :

"S'il est vrai que les autorités régionales ne sont pas visées par la notion d'Etat membre au sens de l'article 173, 2e alinéa, elles doivent, en revanche, dès lors qu'elles jouissent de la personnalité juridique en vertu du droit national, être considérées comme des personnes morales au sens de l'article 173, 4e alinéa du Traité".

En l'occurrence, il me semble que le problème ne réside pas dans la reconnaissance de la capacité d'une autorité territoriale à former un recours devant la Cour de Justice des Communautés européennes mais de prendre acte de la réalité du rôle des autorités territoriales dans l'application des politiques relevant de la compétence de l'Union, rôle qui est reconnu dans la même ordonnance de la Cour du 27 mars 1997.

C'est le cas dans tous les Etats membres avec les différences inhérentes à leur organisation interne. Cette réalité qui ne peut être niée ne va pas à l'encontre du droit communautaire. Il apparaît dès lors normal et utile d'incorporer la mention de cette réalité dans l'un des articles d'application de la Charte. Elle rappelle aux autorités régionales et locales les obligations qui leur incomberont du fait de la Charte dès lors que celles-ci mettent en oeuvre les politiques de l'Union.

Je me permettrai d'ajouter qu'il m'apparaît important que ces mêmes autorités de proximité se mobilisent sur la mise en oeuvre de la Charte afin que les droits qu'elle formule pénètrent les esprits des citoyens de l'Union.

Je vous prie de bien vouloir examiner la proposition du Comité des régions soutenue par l'ensemble des associations des collectivités régionales et locales concernant cette modification à l'article 49 du projet de Charte.

Je vous prie de croire, Monsieur le Président, à l'assurance de ma haute considération.

J. CHABERT

Annexe

**NOTE DU COMITE DES REGIONS
SUR LA CHARTE DES DROITS FONDAMENTAUX DE L'UNION
EUROPEENNE
CONCERNANT LE ROLE DES AUTORITES REGIONALES ET LOCALES**

1 - EXPOSE DU PROBLEME

Le Comité des régions souhaite que les autorités régionales et locales soient mentionnées dans l'article d'application de la Charte des droits fondamentaux de l'Union européenne, dès lors qu'elles doivent mettre en oeuvre certaines politiques relevant de la compétence de l'Union.

Les rédacteurs de la Charte et notamment le Secrétariat général du Conseil de l'Union européenne considèrent qu'elles n'ont pas à être mentionnées dès lors que les Etats membres le sont. Pour ce faire, ils s'appuient sur l'article 230 (ancien article 173) du Traité sur l'Union européenne et sur une décision de la Cour de Justice des Communautés européennes qui stipule dans son ordonnance du 21 mars 1997¹ :

"Il ressort de l'économie générale des traités que la notion d'Etat membre au sens des dispositions institutionnelles et, en particulier de celles portant sur les recours juridictionnels, ne vise que les seules autorités gouvernementales des Etats membres de communautés européennes et ne saurait être étendue aux gouvernements des régions ou de communautés autonomes quelle que soit l'étendue des compétences qui leur sont reconnues. Admettre le contraire conduirait à porter atteinte à l'équilibre institutionnel prévu par les traités qui déterminent notamment les conditions suivant lesquelles les Etats membres, c'est-à-dire les Etats parties aux traités institutifs et aux traités des adhésions, participent au fonctionnement des institutions communautaires. Les communautés européennes ne peuvent, en effet, comprendre un nombre d'Etats membres supérieur à celui des Etats entre lesquels elles sont instituées."

2 - DISCUSSION

Dans ce problème, il ne s'agit pas de reconnaître la capacité d'une autorité territoriale à former un recours devant la Cour de Justice des Communautés européennes mais de prendre acte du fait que les autorités territoriales assurent le respect des règles du droit communautaire dans le cadre de l'application de certaines politiques relevant de la compétence de l'Union.

¹ affaire C95-97 : Région wallonne contre la Commission des Communautés européennes

A cet égard, il est à noter que cette faculté a été reconnue par l'arrêt du Tribunal (5e Chambre élargie) du 30 avril 1998² :

"S'il est vrai que les autorités régionales ne sont pas visées par la notion d'Etat membre au sein de l'article 173, 2e alinéa, elles doivent, en revanche, dès lors qu'elles jouissent de la personnalité juridique en vertu du droit national, être considérées comme des personnes morales au sens de l'article 173, 4e alinéa du Traité."

L'ordonnance de la Cour du 21 mars 1997 précise, en outre, que :

"S'il incombe à toutes les autorités des Etats membres qu'il s'agisse d'autorités du pouvoir central de l'Etat, d'autorités d'un Etat fédéré ou d'autres autorités territoriales, d'assurer le respect des règles du droit communautaire dans le cadre de leurs compétences, il n'appartient pas aux institutions communautaires de se prononcer sur la répartition des compétences par les règles institutionnelles de chaque Etat membre et sur les obligations qui peuvent incomber respectivement aux autorités de l'Etat fédéral et à celle de l'Etat fédéré."

De ces diverses jurisprudences, il résulte que la mention des autorités régionales et locales parmi les autorités compétentes pour l'application de la Charte dans le cadre de la mise en oeuvre des compétences de l'Union se justifie par la reconnaissance par l'Union de la capacité des autorités territoriales, dès lors qu'elle provient des règles institutionnelles de chaque Etat membre, d'assurer le respect des règles du droit communautaire et qu'elle n'apparaît pas incompatible avec les conditions mises à leur capacité de former un recours devant la Cour de justice des Communautés européennes.

Dans le cas où une personne physique formerait un recours devant la Cour de Justice des Communautés européennes contre une décision qui la concernerait directement au titre de la Charte des droits fondamentaux de l'Union européenne et qui résulterait de l'action d'une autorité territoriale infraétatique, il appartiendrait à la Cour de Justice des Communautés européennes de rappeler à l'Etat membre qu'il lui appartient de prendre les mesures pour faire respecter les termes de la Charte. En effet, en application de l'article 226 (anciennement 169) du Traité sur l'Union européenne, l'Etat ne peut invoquer le comportement de ses collectivités territoriales pour contester l'infraction qui lui serait reprochée.

Ainsi, la mention des autorités régionales et locales à l'article 49 de la Charte des droits fondamentaux de l'Union européenne ne va pas à l'encontre du droit communautaire. De

² affaire T214/95 : Région flamande contre la Commission des Communautés européennes

surcroît, elle présente l'avantage de rappeler aux dites autorités les obligations qui leur incombent du fait de la Charte, dès lors qu'elles mettent en oeuvre les politiques de l'Union.

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PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE
fundamental.rights@consilium.eu.int

Bruxelles, le 9 septembre 2000
Document multilingue

ADDENDUM A LA NOTE
A L'ATTENTION DES MEMBRES DE LA CONVENTION

OBSERVATIONS RECUES RELATIVES AU
DOCUMENT CHARTE 4422/00 CONVENT 45

Veillez trouver, pour information, la contribution de M. **OLSEN**, qui nous est parvenue seulement aujourd'hui, suite à un problème de transmission électronique.

Jean-Paul.Jaque@consilium.eu.int

Til hr. Braibant

København den 31. august 2000

Kære professor Braibant,

Må jeg indledningsvis complimentere præsidiets for det fremsendte charterudkast (Convent 45/46). Det har bragt os nærmere målet, men efter min mening er der endnu nogle skridt at tage. Derfor tillader jeg mig at fremsende tre generelle bemærkninger til udkastet samt i et bilag at nævne en række punkter, som jeg vil berøre under Konventets kommende gennemgang af udkastet.

Tre generelle bemærkninger.

1. Det bør klargøres, at de artikler, som kort udtrykker rettigheder, der følger af Den Europæiske Menneskerettighedskonvention, er identiske med disse rettigheder.

Her kunne man – som foreslået af mig i Contribution 281 – erstatte artikel 50 stk. 3 med følgende:

”Rettighederne i artiklerne ... skal forstås i overensstemmelse med de samme rettigheder garanteret af Den Europæiske Menneskerettighedskonvention som fortolket af Den Europæiske Menneskerettighedsdomstol.

Disse rettigheder finder udelukkende anvendelse over for en medlemsstat i det omfang den har tilsluttet sig Den Europæiske Menneskerettighedskonvention og dens tillægsprotokoller og under hensyn til de forbehold, som den pågældende medlemsstat har taget”.

Ved udtrykkeligt at henvise til hvilke artikler i charteret, der er de samme rettigheder, som de, der beskyttes i Den Europæiske Menneskerettighedskonvention, skabes der større (juridisk) klarhed over rækkevidden af bestemmelserne.

Man kunne også i artikel 50 stk. 3 fjerne ordene ”medmindre dette charter sikrer en højere eller mere omfattende beskyttelse” samt affatte den franske og engelske version (og muligvis de øvrige sprogversioner) af artikel 50, stk. 3, på følgende måde:

”I det omfang dette charter indeholder rettigheder svarende til dem, der er sikret ved den europæiske konvention til beskyttelse af menneskerettigheder og grundlæggende frihedsrettigheder, har de samme betydning og omfang som konventionens.”

I den franske tekst tales om, at: ”leurs sens et leur portée sont similaires...”. Dette kan give anledning til fortolkningstvivel, idet hensigten jo er at sikre, at de pågældende rettigheder har samme indhold som Den Europæiske Menneskerettighedskonvention. Det foreslås derfor at erstatte ”similaires” med ”identiques”. Tilsvarende i den engelske sprogversion tales om ”similar to those.”, der bør erstattes med ”same scope and meaning”.

Jeg forudsætter samtidigt, at den præambulære henvisning i nr. 5 til Den Europæiske Menneskerettighedskonvention og Menneskerettighedsdomstolens praksis opretholdes og jeg har med glæde noteret mig de forklaringer til artikel 50, der efterfølgende er udsendt i medfør af Convent 46.

2. ”Retten til Arbejde” og ”Retten til en Bolig” bør eksplicit nævnes i charteret under kapitel IV om solidaritet.

Retten til arbejde og retten til bolig genfindes i konventioner, som medlemsstaterne har tilsluttet sig i både FN- og Europarådsregi.

Jeg er i øvrigt enig i, at de økonomiske og sociale rettigheder er ligeværdige med de borgerlige og civile rettigheder.

De sociale og økonomiske rettigheder er ganske vist anderledes i deres karakter, idet de for hovedpartens vedkommende er udmøntet i national lovgivning, kollektive overenskomster eller ved tilslutning til FN's konvention om økonomiske, sociale og kulturelle rettigheder, og fordi de vanskeligt kan håndhæves ved domstolene. Det betyder imidlertid ikke, at de er af underordnet betydning.

Da charteret retter sig til EU's institutioner, indebærer de økonomiske og sociale rettigheder – som påpeget i Braibant-Meyer dokumentet – at institutionerne skal anerkende og respektere disse rettigheder og principper både i lovgivningsprocessen, og når der træffes konkrete afgørelse over for borgerne og virksomhederne.

3. Alle artikler i charteret skal formuleres i et kønsneutralt sprog.

Charteret bør formuleres i kønsneutral form og ikke - som det er tilfældet i flere artikler - henviser til han/ham.

A.

B.

C. BILAG

Bemærkninger jeg vil fremsætte under Konventets kommende møder.

Præambel:

Præambelens nr. 7 er ikke en præcis gengivelse af charterets indhold og bør derfor udgå eller omformuleres.

Til artikel 3:

Stk. 2 bør bringes i overensstemmelse med konventionen om menneskerettigheder og biomedicin.

Særligt pind. 2 om forbud mod racehygiejnisk praksis genfindes ikke præcist i den nævnte form i konventionen. Princippet's udformning i convent 45 efterlader således tvivl om rækkevidden af forbudet mod racehygiejnisk praksis.

Dette princip bør omformuleres i overensstemmelse med konventionen om menneskerettigheder og biomedicin.

Til artikel 5:

Jeg finder, jf. mit forslag i AMD 98 i convent 35, at det af forklaringerne til artiklen klart bør fremgå, at samfundstjeneste som et alternativ til frihedsstraf ikke er omfattet af begrebet ”tvangs- eller pligtarbejde”.

Til artikel 7:

Ordene ”fortroligheden af” bør udgå. I modsat fald kan bestemmelsen fortolkes som en ringere retsbeskyttelse end den, der følger af Den Europæiske Menneskerettighedskonventions artikel 8, stk. 1.

Til artikel 8:

Det foreslås at begrænse bestemmelsens ordlyd til følgende:

”Enhver har i overensstemmelse med fællesskabsretten ret til beskyttelse af personoplysninger, der vedrører den pågældende”.

Af forklaringerne bør det klart fremgå, at persondatadirektivet (Rådets og Parlamentets direktiv 95/46/EF) fastlægger de nærmere regler for beskyttelsens omfang.

Til artikel 11:

Stk. 2 bør udgå, da bestemmelsens rækkevidde er uklar.

Til artikel 12:

I stk. 1 bør sætningen efter kommaet (”navnlig når det gælder ...”) udgå, idet den skaber tvivl om, hvorvidt der er tilstræbt en forbedring i forhold til artikel 11 i Den Europæiske Menneskerettighedskonvention.

I øvrigt kunne stk. 2 udgå, da dette mere har karakter af en tilkendegivelse.

Til artikel 13:

Denne bestemmelse er højst uklar. Forskningen er ikke fri for begrænsninger. Det foreslås at lade bestemmelsen udgå. Rettigheden er allerede tildels omfattet af bestemmelsen om ytringsfrihed som fortolket af Den Europæiske Menneskerettighedsdomstol vedrørende Menneskerettighedskonventions artikel 10.

Til artikel 14:

I stk. 1 bør indsættes ”grundskoleundervisning” således, at bestemmelsen alene omfatter gratis obligatorisk grundskoleundervisning.

Ordet ”pædagogiske” bør udgå i stk. 2.

Forklaringen til stk. 2 om ”frihed til at oprette uddannelsesinstitutioner” kan opfattes som om der gælder et særligt etableringsfrihedsprincip på dette område. Jeg finder, at man bør begrænse omtalen af etableringsfriheder til artikel 16 om den generelle frihed til at oprette og drive virksomhed.

Til artikel 15:

Stk. 3 bør formuleres således:

”Tredjelandstatsborgere, der opholder sig lovligt på medlemsstaternes område, og som i overensstemmelse med de nationale regler har ret til at tage arbejde, har ret til samme arbejdsvilkår som unionsborgere”.

Baggrunden herfor er, at tredjelandstatsborgere skal have tilladelse efter national ret til at tage arbejde i medlemsstaten, førend de har ret til samme arbejdsvilkår som unionborgere.

Til artikel 17:

Som jeg tidligere har givet udtryk for, bør bestemmelsen nøje gengive ordlyden i artikel 1 i 1. tillægsprotokol til Den Europæiske Menneskerettighedskonvention.

Alternativt kunne bestemmelsen erstattes med følgende korte tekst:

”Enhver fysisk eller juridisk person har ret til respekt for sin ejendom”.

I forklaringerne til bestemmelsen bør der i så fald henvises til ordlyden i 1. tillægsprotokol.

Til artikel 19:

Jeg finder, at der i forklaringerne til stk. 2 bør henvises til Genève-konventionen af 28. juli 1951 med henblik på en opregning af de øvrige omstændigheder, hvorunder der ikke kan ske udvisning.

Til artikel 21:

Jeg finder det ønskeligt, at der i forklaringen til stk.1 gøres opmærksomt på, at bestemmelsen ikke er til hinder for positive særforanstaltninger med henblik på at rette op på en skævhed, når disse foranstaltninger er objektivt begrundet og respekterer princippet om proportionalitet.

Til artikel 24:

Det bør understreges, at integration af mennesker med handicap gælder deltagelse ”i alle dele af samfundslivet”.

Til artikel 32:

Stk.2 kan forekomme overflødig, idet rettigheden allerede følger af ligebehandlingsprincippet i artikel 21.

Bestemmelsen bør under alle omstændigheder omformuleres således, at rettigheden på samme måde som i stk. 1 og 3 gælder i overensstemmelse med ”de bestemmelser, der er fastsat ved EF-lovgivningen og medlemsstaternes lovgivning og praksis”.

Stk. 3 kan forekomme specifik og bør generaliseres, da også andre forhold end social bistand og boligstøtte kan bidrage til at sikre den enkelte en værdig tilværelse. Da retten til en bolig bør

indgår i charteret, som jeg har argumenteret for under mine generelle bemærkninger, kan den eksplicitte omtale af boligstøtte udgå.

II. Til artikel 34:

Bestemmelsen ser ud til at gå videre end EF-traktatens 16 og bør enten udgå eller bringes i overensstemmelse med sidstnævnte bestemmelse.

Til artikel 35:

Bestemmelsen bør iagttage og sikre, at kravet om "et højt beskyttelsesniveau" på miljøområdet, som findes i EF-traktatens artikel 2 og artikel 174 gengives. Hermed bør der tillige lægges vægt på artikel 6 i EF-traktaten. Dette sikrer også parallelitet vedr. kravet om "et højt beskyttelsesniveau" inden for miljøbeskyttelse og forbrugerbeskyttelse (artikel 36):

Bestemmelsen bør derfor omformuleres til:

"Der sikres et højt niveau for miljøbeskyttelse samt forbedring af miljøkvaliteten under iagttagelse af principperne om bæredygtig udvikling, forsigtighed, forebyggende indsats, fortrinsvis indsats ved kilden, forureneren betaler og proportionalitet".

Til artikel 43:

Bestemmelsen bør gengive TEF art. 18:

"Enhver unionsborger har ret til at færdes og opholde sig frit på medlemsstaternes område med de begrænsninger og på de betingelser, der er fastsat i fællesskabslovgivningen og i gennemførelsesbestemmelserne her til".

Til artikel 45:

Stk. 1 vil jeg foretrække omformuleret til:

” Enhver, hvis rettigheder og friheder er blevet krænket, skal have adgang til effektive retsmidler”.

Henvisningen til ”en domstol” bør udgå, da adgangen til effektive retsmidler ikke alene skal relateres til en domstol, men også andre myndigheder.

I stk. 3 bør det tilføjes, at retten til retshjælp også er betinget af, at søgsmålet ikke er åbenbart ugrundet. I forklaringerne til stk.3 bør det fremgå, at retshjælpsprincippet på dette punkt er i overensstemmelse med de regler, der gælder for meddelelse af fri proces, når borgerne anlægger sag ved De Europæiske Fællesskabers Ret i Første Instans (jf. artikel 94, stk. 2, i Rettens procesreglement).

Til artikel 48:

Det bør klart fremgå af bestemmelsen eller de ledsagende forklaringer, at rettigheden begrænses af de undtagelsesmuligheder, der følger af konventionen af 25. maj 1987 mellem De Europæiske Fællesskabers medlemsstater om forbud mod dobbelt strafforfølgning (ne bis in idem-konventionen), artikel 2.

Disse undtagelsesmuligheder gentages i øvrigt sædvanligvis i EU-retsakter, jf. f.eks. konventionen om beskyttelse af De Europæiske Fællesskabers finansielle interesser (svigskonventionen), artikel 7.

Til artikel 49:

Artikel 49, stk. 1, 2.pkt. bør ændres således, at ordene ”og fremmer anvendelsen heraf” (”et en prouvement l’application”) udgår.

Baggrunden herfor er, at det er uklart om der hermed skabes en positiv handlepligt for Unionens institutioner og/eller medlemsstaterne.

Til artikel 50:

Stk. 2 bør også indeholde en henvisning til afledt fællesskabsret. Det foreslås derfor, at bestemmelsen udformes således:

”De rettigheder, der anerkendes i dette charter, og som er baseret på fællesskabstraktaterne eller traktaten om Den Europæiske Union, udøves på de betingelser og med de begrænsninger, der er fastlagt i disse traktater og i gennemførelsesbestemmelser hertil.”

For en god ordens skyld henledes opmærksomheden på de ovenfor anførte bemærkninger til bestemmelsens stk. 3

Det bør i øvrigt for klarhedens skyld i forklaringerne til artikel 50 fremgå, at der er visse bestemmelser fra Den Europæiske Menneskerettighedskonvention, hvorfra fravigelser ikke kan ske. Dette drejer sig om charterets artikler 2 (undtagen ved død som følge af lovlige krigshandlinger) 4, 5, stk. 1 og 47.

Med venlig hilsen

Erling Olsen
(den danske statsministers personlige repræsentant)

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

fundamental.rights@consilium.eu.int

Brussels, 14 September 2000 (18.09)
(OR. fr)

CHARTE 4470/00

CONVENT 47

NOTE FROM THE PRAESIDIUM

Subject : Draft Charter of Fundamental Rights of the European Union
– Complete text of the Charter proposed by the Praesidium following the meeting held from 11 to 13 September 2000 and based on CHARTE 4422/00 CONVENT 45¹

PREAMBLE

The peoples of Europe, **in developing** an ever closer union between them, are resolved to share a peaceful future based on common values.

Taking inspiration from its cultural, humanist and religious heritage, the Union is founded on the indivisible, universal principles of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law. **It places the individual at the heart of its activities, establishing the citizenship of the Union and creating an area of freedom, security and justice.**

¹ Changes to the Articles are in bold.

The Union contributes to the development of these common values while respecting the diversity of the cultures and traditions of the peoples of Europe as well as the national identities of the Member States and the organisation of their public authorities at national, regional and local levels; it **aims to promote** balanced and sustainable development and ensures free movement of persons, goods, capital and services, **and the freedom of establishment**.

In adopting this Charter the Union intends to enhance the protection of fundamental rights in the light of changes in society, social progress and scientific and technological developments by making those rights more visible.

This Charter reaffirms, with due regard for the powers and tasks of the Community and the Union and the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions common to the Member States, the Treaty on European Union, the Community Treaties, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Community and by the Council of Europe and the case law of the Court of Justice of the European Communities and of the European Court of Human Rights.

Enjoyment of these rights entails responsibilities and duties with regard to other persons, to the human community and to future generations.

Each person is therefore **recognised as having** the rights and freedoms set out hereafter.

CHAPTER I DIGNITY

Article 1 Human dignity

Human dignity is inviolable. It must be respected and protected.

Article 2 Right to life

1. Everyone has the right to life.
2. No one shall be condemned to the death penalty, or executed

Article 3 Right to the integrity of the person

1. Everyone has the right to respect for his physical and mental integrity.
2. In the fields of medicine and biology, the following must be respected in particular:
 - **the** free and informed consent of the person concerned, **according to the procedures laid down by law,**
 - **the** prohibition of eugenic practices, in particular those **aiming at** the selection of persons,
 - **the** prohibition on making the human body and its parts **as such** a source of financial gain,
 - **the** prohibition of the reproductive cloning of human beings.

Article 4 Prohibition of torture and inhuman or degrading treatment and punishment

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Article 5 **Prohibition of slavery and forced labour**

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. Trafficking in human beings is prohibited.

CHAPTER II FREEDOMS**Article 6** **Right to liberty and security**

Everyone has the right to liberty and security of person.

Article 7 **Respect for private and family life**

Everyone has the right to respect for his private and family life, his home **and** [...] his communications.

Article 8 **Protection of personal data**

1. Everyone has the right to the protection of personal data concerning him.
2. Such data must be processed fairly for specified purposes on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him, and the right to have it rectified.
3. Compliance with these rules shall be subject to control by an independent authority.

Article 9 **Right to marry and right to found a family**

The right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights.

Article 10 **Freedom of thought, conscience and religion**

1. Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.
2. **The right to conscientious objection is recognised, in accordance with the national laws regulating its implementation.**

Article 11 **Freedom of expression and information**

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.
2. Freedom of the media **and of its pluralism shall be guaranteed.**

Article 12 **Freedom of assembly and of association**

1. Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters. **In particular, everyone has the right to form and to join trade unions for the protection of his interests.**
2. Political parties at European level contribute to expressing the political will of the citizens of the Union.

Article 13 **Freedom of the arts and sciences**

The arts and scientific research shall be free of constraint. Academic freedom shall be respected.

Article 14 **Right to education**

1. Everyone has the right to education and to have access to vocational and continuing training.
2. **This right includes the right to receive free compulsory education.**
3. The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical **and pedagogical** convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right.

Article 15 **Freedom to choose an occupation**

1. Everyone has the right to **work for his living and to** engage in a freely chosen **or accepted** occupation.
2. Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State.
3. Nationals of third countries **who are authorised to work** in the territories of the Member States are entitled to working conditions equivalent to those of citizens of the Union.

Article 16 **Freedom to conduct a business**

The freedom to conduct a business is recognised.

Article 17 **Right to property**

1. Everyone has the right to own, use, dispose of and bequeath his lawfully acquired possessions. No one may be deprived of his possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation **being paid within a reasonable period for their loss**. The use of property may be regulated insofar as is necessary for the general interest.
2. Intellectual property shall be protected.

Article 18 **Right to asylum**

The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty establishing the European Community.

Article 19 **Protection in the event of removal, expulsion or extradition**

1. Collective expulsions are prohibited.
2. No one may be removed, expelled or extradited to a State where **there is a serious risk that** he may be subjected to the death penalty, torture or other inhuman or degrading treatment.

CHAPTER III EQUALITY**Article 20** **Equality before the law**

Everyone is equal before the law.

Article 21 **Non-discrimination**

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.
2. Within the scope of application of the Treaty establishing the European Community and of the Treaty on European Union, and without prejudice to the special provisions of those Treaties, any discrimination on grounds of nationality shall be prohibited.

Article 22 **Cultural, religious and linguistic diversity**

The Union shall respect cultural, religious and linguistic diversity.

Article 23 **Equality between men and women**

Equality between men and women must be ensured in all areas, including employment, work and pay.

The principle of equality shall not prevent the maintenance or adoption of measures **in favour of** the under-represented sex.

Article 24 **The rights of the child**

1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.
2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.
3. **Every child shall have the right to maintain a personal relationship and direct contact with both his parents, unless that is contrary to his interests.**

Article 25 **Integration of persons with disabilities**

The Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.

CHAPTER IV SOLIDARITY

Article 26 **Workers' right to information and consultation within the undertaking**

Workers **or** their representatives must **at all levels** be guaranteed information and consultation in good time on matters **which concern them** within the undertaking, in **the cases and under the conditions provided for by** Community law and national laws and practices.

Article 27 **Right of collective bargaining and action**

Workers and employers, or their respective organisations, have, **at all levels,** the right to negotiate and conclude collective agreements and, in cases of conflicts of interest, to take collective action to defend their interests, **including strike action,** in accordance with Community law and national laws and practices.

Article 28 **Right of access to placement services**

Everyone has the right of access to a **free** placement service.

Article 29 **Protection in the event of unjustified dismissal**

Every worker has the right to protection against unjustified dismissal.

Article 30 **Fair and just working conditions**

1. Every worker has the right to working conditions which respect his health, safety and dignity.
2. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

Article 31 **Prohibition of child labour and protection of young people at work**

The employment of children is prohibited. The minimum age of admission to employment **may** not be lower than the minimum school-leaving age without prejudice to such rules as may be more favourable to young people and except for limited derogations.

Young people admitted to work must have working conditions appropriate to their age and be protected against economic exploitation and any work likely to harm their safety, health or physical, mental, moral or social development or to interfere with their education.

Article 32 **Family and professional life**

1. The family shall enjoy legal, economic and social protection.
2. **To** reconcile their family and professional lives, **everyone shall have** the right to protection from dismissal for a reason connected with pregnancy and the right to paid maternity leave and to parental leave following the birth or adoption of a child.

Article 33 **Social security and social assistance**

1. The Union recognises and respects the entitlement to social security benefits and social services providing protection in such events as pregnancy, illness, industrial accidents, dependency or old age, **and in the case of** loss of employment, in accordance with the rules laid down by Community law and national laws and practices.
2. **Every person residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with Community law and national laws and practices.**

3. **The** Union recognises and respects the right to social assistance and housing **assistance** in order to ensure a decent existence **for all those who lack** sufficient resources, in accordance with the rules laid down by Community law and national laws and practices.

Article 34 **Health care**

Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. **A high level of human health protection shall be ensured in the definition and implementation of all Community policies and activities.**

Article 35 **Access to services of general economic interest**

The Union **recognises and** respects the access to services of general economic interest as provided for in national laws and practices in accordance with the provisions of the Treaty establishing the European Community in order to promote the social and territorial cohesion of the Union.

Article 36 **Environmental protection**

A high level of environmental protection and the improvement of the quality of the environment shall be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.

Article 37 **Consumer Protection**

Union policies shall ensure a high level of **consumer** protection.

CHAPTER V CITIZENSHIP

Article 38 Right to vote and to stand as a candidate in elections to the European Parliament

1. Every citizen of the Union has the right to vote and to stand as a candidate in elections to the European Parliament in the Member State in which he resides, under the same conditions as nationals of that State.
2. Members of the European Parliament shall be elected by direct universal suffrage by free and secret ballot.

Article 39 Right to vote and to stand as a candidate at municipal elections

Every citizen of the Union has the right to vote and to stand as a candidate at municipal elections in the Member State in which he resides under the same conditions as nationals of that State.

Article 40 Right to good administration

1. Every person has the right to have his affairs handled impartially fairly, **in accordance with the principle of the neutrality of public action (policy?)**, and within a reasonable time by the institutions and bodies of the Union.
2. This right includes:
 - the right of every person to be heard before any individual measure which would affect him adversely is taken in relation to him;
 - the right of every person to have access to his file, while respecting the legitimate interests of confidentiality **and** of business secrecy;
 - the obligation of the administration to give reasons for its decisions.

3. Every person has the right to have the Community make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.
4. Every person may write to the institutions of the Union in one of the official languages of such institutions and **must** have an answer in the same language.

Article 41 **Right of access to documents**

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to European Parliament, Council and Commission documents.

Article 42 **Ombudsman**

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to refer to the Ombudsman of the Union cases of maladministration by Community institutions and bodies, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role.

Article 43 **Right to petition**

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to petition the European Parliament.

Article 44 **Freedom of movement and of residence**

1. Every citizen of the Union has the right to move and reside freely within the territory of the Member States.
2. Freedom of movement **and residence** may be granted, in accordance with the Treaty establishing the European Community, to nationals of third countries legally resident in the territory of a Member State.

Article 45 **Diplomatic and consular protection**

Every citizen of the Union shall, in the territory of a third country in which the Member State of which he is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that Member State.

CHAPTER VI JUSTICE**Article 46** **Right to an effective remedy and to a fair trial**

1. Everyone whose rights and freedoms **guaranteed by the law of the Union** are violated has the right to an effective remedy before a court.
2. Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.
3. Legal aid shall be made available to those who lack sufficient resources insofar as such aid is necessary to ensure effective access to justice.

Article 47 **Presumption of innocence and right of defence**

1. Everyone who has been charged shall be presumed innocent until proved guilty according to law.
2. Respect for the right of defence of anyone who has been charged shall be guaranteed.

Article 48 **Principles of legality and proportionality of criminal offences and penalties**

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national law or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed. If, subsequent to the commission of the criminal offence, the law provides for a lighter penalty, that penalty shall be applicable.
2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to **the general principles recognised by all nations**.
3. The severity of penalties **must not be disproportionate** to the criminal offence.

Article 49 **Right not to be tried or punished twice in criminal proceedings for the same criminal offence**

No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he has already been finally acquitted or convicted **within the European Union** in accordance with the law.

CHAPTER VII GENERAL PROVISIONS

Article 50 **Scope**

1. The provisions of this Charter are addressed to the institutions and bodies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers.
2. This Charter does not establish any new power or task for the Community or the Union, or modify powers and tasks defined by the Treaties.

Article 51 **Scope of guaranteed rights**

1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by **law and respect the essential content of those rights and freedoms**. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest being pursued by the Union, other legitimate interests in a democratic society or the need to protect the rights and freedoms of others.
2. Rights recognised by this Charter which are based on the Community Treaties or the Treaty on European Union shall be exercised under the conditions and within the limits defined by those Treaties.
3. Insofar as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be **the same as** those laid down by the said Convention unless this Charter affords greater or more extensive protection.

Article 52 **Level of protection**

Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by international law and international agreements to which the Union, the Community or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' constitutions.

Article 53 **Prohibition of abuse of rights**

Nothing in this Charter shall be interpreted as implying any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms recognised in this Charter or at their limitation to a greater extent than is provided for herein.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

**Brussels, 20 September 2000 (21.09)
(OR. fr)****CHARTE 4470/00 COR 1****CONVENT 47****CORRIGENDUM 1 TO THE NOTE FROM THE PRAESIDIUM**

Subject : Draft Charter of Fundamental Rights of the European Union
– Complete text of the Charter proposed by the Praesidium following the meeting held from 11 to 13 September 2000 and based on CHARTE 4422/00 CONVENT 45

The following corrections should be made to the text:

Preamble

Replace last sentence with:

"The European Union therefore recognises the rights and freedoms set out hereafter".

Article 33

The correction to the second line of paragraph 1 does not apply to the English text.

Add at the beginning of paragraph 3: **"To combat social exclusion and poverty, ..."**.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

**Brussels, 21 September 2000
(OR. fr)****CHARTE 4470/1/00
REV 1****CONVENT 47****NOTE FROM THE PRAESIDIUM**

Subject : Draft Charter of Fundamental Rights of the European Union
– Complete text of the Charter after being finalised by the Legal Linguistic Working Party

PREAMBLE

The peoples of Europe, in creating an ever closer union among them, are resolved to share a peaceful future based on common values.

Taking inspiration from its cultural, humanist and religious heritage, the Union is founded on the indivisible, universal principles of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law. It places the individual at the heart of its activities, by establishing the citizenship of the Union and by creating an area of freedom, security and justice.

The Union contributes to the development of these common values while respecting the diversity of the cultures and traditions of the peoples of Europe as well as the national identities of the Member States and the organisation of their public authorities at national, regional and local levels; it seeks to promote balanced and sustainable development and ensures free movement of persons, goods, services and capital, and the freedom of establishment.

In adopting this Charter the Union intends to enhance the protection of fundamental rights in the light of changes in society, social progress and scientific and technological developments by making those rights more visible.

This Charter reaffirms, with due regard for the powers and tasks of the Community and the Union and the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions common to the Member States, the Treaty on European Union, the Community Treaties, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Community and by the Council of Europe and the case law of the Court of Justice of the European Communities and of the European Court of Human Rights.

Enjoyment of these rights entails responsibilities and duties with regard to other persons, to the human community and to future generations.

The Union therefore recognises the rights and freedoms set out hereafter.

CHAPTER I

DIGNITY

Article 1

Human dignity

Human dignity is inviolable. It must be respected and protected.

Article 2

Right to life

1. Everyone has the right to life.
2. No one shall be condemned to the death penalty, or executed

Article 3

Right to the integrity of the person

1. Everyone has the right to respect for his or her physical and mental integrity.
2. In the fields of medicine and biology, the following must be respected in particular:
 - the free and informed consent of the person concerned, according to the procedures laid down by law,

- the prohibition of eugenic practices, in particular those aiming at the selection of persons,
- the prohibition on making the human body and its parts as such a source of financial gain,
- the prohibition of the reproductive cloning of human beings.

Article 4

Prohibition of torture and inhuman or degrading treatment or punishment

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Article 5

Prohibition of slavery and forced labour

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. Trafficking in human beings is prohibited.

CHAPTER II

FREEDOMS

Article 6

Right to liberty and security

Everyone has the right to liberty and security of person.

Article 7

Respect for private and family life

Everyone has the right to respect for his or her private and family life, home and communications.

Article 8

Protection of personal data

1. Everyone has the right to the protection of personal data concerning him or her.
2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.
3. Compliance with these rules shall be subject to control by an independent authority.

Article 9

Right to marry and right to found a family

The right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights.

Article 10

Freedom of thought, conscience and religion

1. Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.
2. The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right.

Article 11

Freedom of expression and information

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.
2. Freedom of the media and of its pluralism shall be guaranteed.

Article 12

Freedom of assembly and of association

1. Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters. In particular, everyone has the right to form and to join trade unions for the protection of his or her interests.
2. Political parties at European level contribute to expressing the political will of the citizens of the Union.

Article 13

Freedom of the arts and sciences

The arts and scientific research shall be free of constraint. Academic freedom shall be respected.

Article 14

Right to education

1. Everyone has the right to education and to have access to vocational and continuing training.
2. This right includes the right to receive free compulsory education.

3. The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right.

Article 15

Freedom to choose an occupation

1. Everyone has the right to engage in work and to pursue a freely chosen or accepted occupation.
2. Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State.
3. Nationals of third countries who are authorised to work in the territories of the Member States are entitled to working conditions equivalent to those of citizens of the Union.

Article 16

Freedom to conduct a business

The freedom to conduct a business is recognised.

Article 17

Right to property

1. Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated insofar as is necessary for the general interest.
2. Intellectual property shall be protected.

Article 18

Right to asylum

The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty establishing the European Community.

Article 19

Protection in the event of removal, expulsion or extradition

1. Collective expulsions are prohibited.
2. No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.

CHAPTER III

EQUALITY

Article 20

Equality before the law

Everyone is equal before the law.

Article 21

Non-discrimination

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.
2. Within the scope of application of the Treaty establishing the European Community and of the Treaty on European Union, and without prejudice to the special provisions of those Treaties, any discrimination on grounds of nationality shall be prohibited.

Article 22

Cultural, religious and linguistic diversity

The Union shall respect cultural, religious and linguistic diversity.

Article 23

Equality between men and women

Equality between men and women must be ensured in all areas, including employment, work and pay.

The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.

Article 24

The rights of the child

1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.
2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.
3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.

Article 25

Integration of persons with disabilities

The Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.

CHAPTER IV

SOLIDARITY

Article 26

Workers' right to information and consultation within the undertaking

Workers or their representatives must at all levels be guaranteed information and consultation in good time on matters which concern them within the undertaking, in the cases and under the conditions provided for by Community law and national laws and practices.

Article 27

Right of collective bargaining and action

Workers and employers, or their respective organisations, have, at all levels, the right to negotiate and conclude collective agreements and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action, in accordance with Community law and national laws and practices.

Article 28

Right of access to placement services

Everyone has the right of access to a free placement service.

Article 29

Protection in the event of unjustified dismissal

Every worker has the right to protection against unjustified dismissal.

Article 30

Fair and just working conditions

1. Every worker has the right to working conditions which respect his or her health, safety and dignity.
2. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

Article 31

Prohibition of child labour and protection of young people at work

The employment of children is prohibited. The minimum age of admission to employment may not be lower than the minimum school-leaving age, without prejudice to such rules as may be more favourable to young people and except for limited derogations.

Young people admitted to work must have working conditions appropriate to their age and be protected against economic exploitation and any work likely to harm their safety, health or physical, mental, moral or social development or to interfere with their education.

Article 32

Family and professional life

1. The family shall enjoy legal, economic and social protection.
2. To reconcile family and professional life, everyone shall have the right to protection from dismissal for a reason connected with maternity and the right to paid maternity leave and to parental leave following the birth or adoption of a child.

Article 33

Social security and social assistance

1. The Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by Community law and national laws and practices.
2. Everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with Community law and national laws and practices.
3. In order to combat social exclusion and poverty, the Union recognises and respects the right to social assistance and housing assistance, to ensure a decent existence for all those who lack sufficient resources, in accordance with the procedures laid down by Community law and national laws and practices.

Article 34

Health care

Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities.

Article 35

Access to services of general economic interest

The Union recognises and respects the access to services of general economic interest as provided for in national laws and practices in accordance with the Treaty establishing the European Community in order to promote the social and territorial cohesion of the Union.

Article 36

Environmental protection

A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.

Article 37

Consumer Protection

Union policies shall ensure a high level of consumer protection.

CHAPTER V

CITIZENS' RIGHTS

Article 38

Right to vote and to stand as a candidate at elections to the European Parliament

1. Every citizen of the Union has the right to vote and to stand as a candidate at elections to the European Parliament in the Member State in which he or she resides, under the same conditions as nationals of that State.
2. Members of the European Parliament shall be elected by direct universal suffrage by free and secret ballot.

Article 39

Right to vote and to stand as a candidate at municipal elections

Every citizen of the Union has the right to vote and to stand as a candidate at municipal elections in the Member State in which he or she resides under the same conditions as nationals of that State.

Article 40

Right to good administration

1. Every person has the right to have his or her affairs handled impartially, fairly, in accordance with the principle of the neutrality of acts by public authorities, and within a reasonable time by the institutions and bodies of the Union.

2. This right includes:

- the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;
- the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;
- the obligation of the administration to give reasons for its decisions.

3. Every person has the right to have the Community make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.

4. Every person may write to the institutions of the Union in one of the languages of the Treaties and must have an answer in the same language.

Article 41

Right of access to documents

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to European Parliament, Council and Commission documents.

Article 42

Ombudsman

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to refer to the Ombudsman of the Union cases of maladministration in the activities of the Community institutions or bodies, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role.

Article 43

Right to petition

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to petition the European Parliament.

Article 44

Freedom of movement and of residence

1. Every citizen of the Union has the right to move and reside freely within the territory of the Member States.
2. Freedom of movement and residence may be granted, in accordance with the Treaty establishing the European Community, to nationals of third countries legally resident in the territory of a Member State.

Article 45

Diplomatic and consular protection

Every citizen of the Union shall, in the territory of a third country in which the Member State of which he or she is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that Member State.

CHAPTER VI

JUSTICE

Article 46

Right to an effective remedy and to a fair trial

1. Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a court.
2. Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.
3. Legal aid shall be made available to those who lack sufficient resources insofar as such aid is necessary to ensure effective access to justice.

Article 47

Presumption of innocence and right of defence

1. Everyone who has been charged shall be presumed innocent until proved guilty according to law.
2. Respect for the rights of the defence of anyone who has been charged shall be guaranteed.

Article 48

Principles of legality and proportionality of criminal offences and penalties

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national law or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed. If, subsequent to the commission of the criminal offence, the law provides for a lighter penalty, that penalty shall be applicable.
2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles recognised by the community of nations.
3. The severity of penalties must not be disproportionate to the criminal offence.

Article 49

Right not to be tried or punished twice in criminal proceedings for the same criminal offence

No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law.

CHAPTER VII

GENERAL PROVISIONS

Article 50

Scope

1. The provisions of this Charter are addressed to the institutions and bodies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers.
2. This Charter does not establish any new power or task for the Community or the Union, or modify powers and tasks defined by the Treaties.

Article 51

Scope of guaranteed rights

1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest being pursued by the Union, other legitimate interests in a democratic society or the need to protect the rights and freedoms of others.
2. Rights recognised by this Charter which are based on the Community Treaties or the Treaty on European Union shall be exercised under the conditions and within the limits defined by those Treaties.

3. Insofar as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention unless this Charter affords greater or more extensive protection.

Article 52

Level of protection

Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by international law and international agreements to which the Union, the Community or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' constitutions.

Article 53

Prohibition of abuse of rights

Nothing in this Charter shall be interpreted as implying any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms recognised in this Charter or at their limitation to a greater extent than is provided for herein.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION
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Brussels, 25 September 2000 (26.09)
(OR. fr)

CHARTE 4470/1/00 REV 1 ADD 1

CONVENT 47

ADDENDUM 1
TO THE NOTE FROM THE PRAESIDIUM

Subject: Draft Charter of Fundamental Rights of the European Union
— Addendum to the version of the complete text of the Charter finalised by the Legal Linguistic Working Party: **Proposals from the Praesidium following the meetings of the four component parts of the Convention, 25 September 2000**

Preamble:

Second paragraph: *Conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity*

Third paragraph: *The Union contributes to the preservation and to the development of these common values*

Fourth paragraph: *To this end, it is necessary to strengthen the protection of fundamental rights in the light of changes in society, social progress and scientific and technological developments by making those rights more visible in a Charter.*

Fifth paragraph: *..... as they result, in particular, from the constitutional traditions and international obligations common to the Member States*

Seventh paragraph: *The Union therefore recognises the rights, freedoms and principles set out hereafter.*

Article 11:

Paragraph 2: Freedom of the media and its pluralism shall be *respected*.

Article 12:

Paragraph 1: in political, trade union and civic matters, *which implies the right of everyone to form and to join trade unions for the protection of his or her interests.*

Paragraph 2: Political parties at *Union* level contribute

Article 14:

[not applicable to the English translation of the text]

Article 15:

Title: Freedom to choose an occupation *and right to engage in work.*

Article 16:

The freedom to conduct a business *in accordance with Community law and national laws and practices* is recognised.

Article 17:

Paragraph 1:The use of property may be regulated *by law* insofar as is necessary

Article 24a (new):

The Union recognises and respects the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life.

Article 26:

Workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time (delete "on matters which concern them within the undertaking") in the cases and under the conditions provided ...

Article 27:

Workers and employers, or their respective organisations, have, in accordance with Community law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take ...

Article 29:

Every worker has the right to protection against unjustified dismissal, in accordance with Community law and national laws and practices.

Article 40:

Paragraph 1: Every person has the right to have his or her affairs handled impartially, fairly (delete "in accordance with the principle of the neutrality of acts by public authorities,") and within a reasonable time ...

Article 46:

(Delete paragraph numbers)

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a court *in compliance with the conditions laid down in this Article.*

Everyone is entitled ...

Legal aid ...

Article 51:

Paragraph 1, second sentence: ... objectives of general interest being pursued by the Union (delete "other legitimate interests in a democratic society") or the need to protect ...

Paragraph 2: unchanged

Paragraph 3: Insofar as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. *This provision shall not prevent Union law affording more extensive protection.*

Article 52:

First sentence: ... in their respective fields of application, by *Union law and* international law and *by* international agreements ...

Editors' note to CHARTE 4471/00,
**Praesidium note: Text of the Explanations relating
to the Complete Text of the Charter as set out
in CHARTE 4470/00 + COR 1:**

The document CHARTE 4471/00 COR 1 contains a corrigendum to the German version of CHARTE 4471/00, which adds to its first page as first two sentences “Die vorliegenden Erläuterungen sind vom Präsidium in eigener Verantwortung formuliert worden. Sie haben keine Rechtswirkung, sondern dienen lediglich dazu, die Bestimmungen der Charta im Lichte der Erörterungen, die der Konvent angestellt hat, zu verdeutlichen.” The English and all other language versions of CHARTE 4471/00 did already contain this disclaimer in their various languages.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

fundamental.rights@consilium.eu.int

Brussels, 20 September 2000 (22.09)
(OR. fr)

CHARTE 4471/00

CONVENT 48

NOTE FROM THE PRAESIDIUM

Subject : Draft Charter of Fundamental Rights of the European Union
– Text of the explanations relating to the complete text of the Charter as set out
in CHARTE 4470/00 CONVENT 47 + COR 1

These explanations have been prepared at the instigation of the Praesidium. They have no legal value and are simply intended to clarify the provisions of the Charter in the light of the discussions conducted by the Convention.

PREAMBLE

The peoples of Europe, in developing an ever closer union between them, are resolved to share a peaceful future based on common values.

Taking inspiration from its cultural, humanist and religious heritage, the Union is founded on the indivisible, universal principles of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law. It places the individual at the heart of its activities, establishing the citizenship of the Union and creating an area of freedom, security and justice.

The Union contributes to the development of these common values while respecting the diversity of the cultures and traditions of the peoples of Europe as well as the national identities of the Member States and the organisation of their public authorities at national, regional and local levels; it aims to promote balanced and sustainable development and ensures the free movement of persons, goods, capital and services, and the freedom of establishment.

In adopting this Charter, the Union intends to enhance the protection of fundamental rights in the light of changes in society, social progress and scientific and technological developments by making those rights more visible.

This Charter reaffirms, with due regard for the powers and tasks of the Community and the Union and the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions common to the Member States, the Treaty on European Union, the Community Treaties, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Community and by the Council of Europe and the case law of the Court of Justice of the European Communities and of the European Court of Human Rights.

Enjoyment of these rights entails responsibilities and duties with regard to other persons, to the human community and to future generations.

The European Union therefore recognises the rights and freedoms set out hereafter.

CHAPTER I. DIGNITY

Article 1. Human dignity

Human dignity is inviolable. It must be respected and protected.

Explanation

The dignity of the human person is not only a fundamental right in itself but constitutes the real basis of fundamental rights. For that reason the 1948 Universal Declaration of Human Rights enshrined this principle in its preamble as follows: "Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world."

Consequently, Article 1 produces the following effects, inter alia:

- 1. None of the rights laid down in this Charter may be used to harm the dignity of another person.*
- 2. The dignity of the human person is part of the actual substance of the rights laid down in this Charter and must therefore be respected, even where a right is restricted.*

Article 2. Right to life

1. Everyone has the right to life.
2. No one shall be condemned to the death penalty, or executed.

Explanation

1. *The content of paragraph 1 corresponds to the first sentence of Article 2(1) of the European Convention on Human Rights, which reads as follows:*
"1. Everyone's right to life shall be protected by law..."
The second sentence of the provision, which referred to the death penalty, was superseded by the entry into force of Article 1 of Protocol No 6 to the European Convention on Human Rights, which reads as follows:
"The death penalty shall be abolished. No-one shall be condemned to such penalty or executed.
" Article 2(2) of the Charter is based on that provision.

2. *Under Article 51 of the Charter, the right to life is clearly defined and the "negative" definitions appearing in the Convention must be regarded as also forming part of the Charter pursuant to Article 51(3). This right is defined as follows in the Convention:*
 - (a) *Article 2(2) of the European Convention on Human Rights:*
"Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:
 - (a) *in defence of any person from unlawful violence;*
 - (b) *in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;*
 - (c) *in action lawfully taken for the purpose of quelling a riot or insurrection."*

 - (b) *Article 2 of Protocol No 6 to the European Convention on Human Rights:*
"A State may make provision in its law for the death penalty in respect of acts committed in time of war or of imminent threat of war; such penalty shall be applied only in the instances laid down in the law and in accordance with its provisions..."

The provisions of this Article correspond to those of the Articles of the European Convention on Human Rights quoted above in accordance with Article 51(3) of the Charter. They therefore have the same meaning and scope as the latter.

Article 3. Right to the integrity of the person

1. Everyone has the right to respect for his physical and mental integrity.
2. In the fields of medicine and biology, the following principles must be respected in particular:
 - **the** free and informed consent of the person concerned, **according to the procedures laid down by law,**
 - **the** prohibition of eugenic practices, in particular those aiming at the selection of persons,
 - **the** prohibition on making the human body and its parts **as such** a source of financial gain,
 - **the** prohibition of the reproductive cloning of human beings.

Explanation

The principles of this Article are already included in the Convention on Human Rights and Biomedicine. The Charter does not set out to depart from those principles. The fact that only reproductive cloning is prohibited does not prevent the legislature from prohibiting other forms of cloning. It neither authorises nor prohibits other forms of cloning. The reference to eugenic practices, in particular those aiming at the selection of persons, relates to possible situations in which selection programmes are organised and implemented, involving campaigns for sterilisation, forced pregnancy, compulsory ethnic marriage among others, all acts deemed to be international crimes in the Statute of the International Criminal Court signed in Rome.

Article 4. Prohibition of torture and inhuman or degrading treatment and punishment

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Explanation

The right in Article 4 is the right guaranteed by Article 3 of the European Convention on Human Rights, which has the same wording. In accordance with Article 51(3), its meaning and scope are therefore the same as those of that Article, which reads as follows: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment".

Article 5. Prohibition of slavery and forced labour

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. Trafficking in human beings is prohibited.

Explanation

The right in Article 5(1) and (2) is the right corresponding to Article 4(1) and (2) of the European Convention on Human Rights, which has the same wording.

In accordance with Article 51(3) of the Charter, its meaning and scope are therefore the same as those of Article 4 of the Convention. Consequently:

1. *paragraph 1 may not be limited at all;*
2. *in paragraph 2, "forced or compulsory labour" must be understood in the light of the "negative" definitions contained in Article 4(3) of the European Convention on Human Rights. That provision reads as follows:*

"For the purpose of this article the term "forced or compulsory labour" shall not include:

 - (a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;*
 - (b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;*

- (c) *any service exacted in case of an emergency or calamity threatening the life or well-being of the community;*
- (d) *any work or service which forms part of normal civic obligations."*

Paragraph 3 stems directly from the principle of human dignity and takes account of recent developments in organised crime, such as the organisation of lucrative illegal immigration or sexual exploitation networks. The annex to the Europol Convention contains the following definition which refers to trafficking for the purpose of sexual exploitation: "traffic in human beings: means subjection of a person to the real and illegal sway of other persons by using violence or menaces or by abuse of authority or intrigue with a view to the exploitation of prostitution, forms of sexual exploitation and assault of minors or trade in abandoned children". Chapter VI of the Schengen Convention, which has been integrated into the "acquis communautaire", in which the United Kingdom participates and Ireland has requested to participate, contains the following wording in Article 27(1) which refers to illegal immigration networks: " The Contracting Parties undertake to impose appropriate penalties on any person who, for financial gain, assists or tries to assist an alien to enter or reside within the territory of one of the Contracting Parties in breach of that Contracting Party's laws on the entry and residence of aliens."

CHAPTER II. FREEDOMS

Article 6. Right to liberty and security

Everyone has the right to liberty and security of person.

Explanation

The rights in Article 6 are the rights guaranteed by Article 5 of the European Convention on Human Rights.

In accordance with Article 51(3) of the Charter, the meaning and scope of these rights are the same as those of Article 5. Consequently, limitations may not exceed those permitted by the European Convention for the Protection of Human Rights and Fundamental Freedoms. Therefore, the only limitations which are permissible are those in the context of Article 5 of the European Convention on Human Rights, which reads:

- "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
 - (a) the lawful detention of a person after conviction by a competent court;*
 - (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;*
 - (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;*
 - (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;*
 - (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;*
 - (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.**
- 2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.*
 - 3. Everyone arrested or detained in accordance with the provisions of paragraph 1.c of this article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.*

4. *Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.*
5. *Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation."*

Since the Charter is to apply within the context of the Union, the rights enshrined in Article 6 must be respected particularly when, in accordance with Title VI of the Treaty on European Union, the Union is adopting framework decisions for harmonisation in criminal matters.

Article 7. Respect for private and family life

Everyone has the right to respect for his private and family life, his home **and** [...] his communications.

Explanation

The rights guaranteed in Article 7 correspond to those guaranteed by Article 8 of the European Convention on Human Rights. To take account of developments in technology the word "correspondence" has been replaced by "communications".

In accordance with Article 51(3), the meaning and scope of this right are the same as those of the corresponding article of the Convention. Consequently, the limitations to this right which are permissible are those which result from the Convention. Article 8 of the Convention reads as follows:

- "1. Everyone has the right to respect for his private and family life, his home and his correspondence.*

2. *There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."*

Article 8. Protection of personal data

1. Everyone has the right to the protection of personal data concerning him.
2. Such data must be processed fairly for specified purposes on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him, and the right to have it rectified.
3. Compliance with these rules shall be subject to control by an independent authority.

Explanation

This Article is based on Article 286 of the Treaty establishing the European Community and Directive 95/46/EC of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995) as well as on Article 8 of the ECHR and on the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data which has been ratified by all the Member States. The right to protection of personal data may be limited under the conditions set out in Article 51 of the Charter.

Article 9. Right to marry and right to found a family

The right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights.

Explanation

This Article is based on Article 12 of the European Convention on Human Rights, which reads as follows: "Men and women of marriageable age have the right to marry and to found a family according to the national laws governing the exercising of this right." To take account of changes in society, the wording has been altered to cover cases in which national legislation recognises arrangements other than marriage for founding a family. This Article neither prohibits nor imposes the granting of the status of marriage to unions between people of the same sex.

Article 10. Freedom of thought, conscience and religion

1. Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.
2. **The right to conscientious objection is recognised, in accordance with the national laws regulating its implementation.**

Explanation

The right guaranteed in paragraph 1 corresponds to the right guaranteed in Article 9 of the ECHR and, in accordance with Article 51(3) of the Charter, has the same meaning and scope. Limitations must therefore respect Article 9(2) of the Convention which reads as follows: "Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

The right guaranteed in paragraph 2 corresponds to national constitutional traditions and to the development of national legislation on this issue.

Article 11. Freedom of expression and information

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.
2. **Freedom of the media and of its pluralism shall be guaranteed.**

Explanation

This Article corresponds to Article 10 of the European Convention on Human Rights, which reads as follows:

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. *The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."*

Pursuant to Article 51(3) of the Charter, the meaning and scope of this right are the same as those guaranteed by the Convention and limitations may not exceed those provided for in Article 10(2) of the Convention, without prejudice to any restrictions which Community law may impose on Member States' right to introduce the licensing arrangements referred to in the third sentence of Article 10(1) of the ECHR..

Paragraph 2 of this Article spells out the consequences of paragraph 1 regarding freedom of the press. It is based in particular on Court of Justice case law regarding television, particularly in case C-288/89 (judgment of 25 July 1991, Stichting Collectieve Antennevoorziening Gouda and others [1991] ECR I-4007). According to the Court of Justice, the pluralism requirement authorises inter alia the competent authorities to take the measures needed to guarantee diversity of sources of information.

Article 12. Freedom of assembly and of association

1. Everyone has the right to freedom of peaceful assembly and to freedom of association **at all levels**, in particular in political, trade union and civic matters. **In particular, everyone has the right to form and to join trade unions for the protection of his interests.**
2. Political parties at European level contribute to expressing the political will of the citizens of the Union.

Explanation

Paragraph 1 of this Article corresponds to Article 11 of the European Convention on Human Rights which reads as follows:

- "1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.*
- 2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."*

The meaning and scope of the provisions of paragraph 1 are the same as those of the European Convention on Human Rights, with the exception of their area of application since they apply at all levels including European level. In accordance with Article 51(3) of the Charter, limitations on that right may not exceed those provided for in Article 11(2) of the ECHR.. This right is also based on Article 11 of the Community Charter of the Fundamental Social Rights of Workers.

Paragraph 2 of this Article corresponds to Article 191 of the Treaty establishing the European Community.

Article 13. Freedom of the arts and sciences

The arts and scientific research shall be free of constraint. Academic freedom shall be respected.

Explanation

This right is deduced primarily from the right to freedom of thought and expression. It is to be exercised within the framework of Article 1 and subject to the limitation clause in Article 51. It is subject to respect for the dignity of the person and all the fundamental rights, must be exercised having regard to Article 1 and may be restricted in order to guarantee respect for those rights.

Article 14. Right to education

1. Everyone has the right to education and to have access to vocational and continuing training.
2. **This right includes the right to receive free compulsory education.**
3. The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right.

Explanation

This Article is based on the common constitutional traditions of Member States and on Article 2 of the Protocol to the European Convention on Human Rights, which reads as follows:

"No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions."

It was considered useful to extend this right to vocational and continuing training and to add the principle of free compulsory education. As it is worded, the latter principle merely implies that as regards compulsory education, each child has the possibility of attending an establishment which offers free education. It does not require all establishments which provide education, in particular private ones, to be free of charge. Insofar as the Charter applies to the Union, this means that in its training policies the Union must respect free compulsory education, but this does not, of course, create new powers. Regarding the right of parents, it must be interpreted in conjunction with the provisions of Article 24.

Freedom to found public or private educational establishments is guaranteed as one of the aspects of freedom to conduct a business but it is limited by respect for democratic principles and is exercised in accordance with the arrangements defined by national legislation.

Article 15. Freedom to choose an occupation

1. Everyone has the right to **work for his living** and to engage in a freely chosen **or accepted** occupation.
2. Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State.
3. Nationals of third countries **who are authorised to work** in the territories of the Member States are entitled to working conditions equivalent to those of citizens of the Union.

Explanation

Freedom to choose an occupation, as enshrined in paragraph 1, is recognised in Court of Justice case law (see inter alia judgment of 14 May 1974, Case 4/73 Nold [1974] ECR 491, paragraphs 12 to 14 of the grounds; judgment of 13 December 1979, Case 44/79 Hauer [1979] ECR 3727; judgment of 8 October 1986, Case 234/85 Keller [1986] ECR 2897, paragraph 8 of the grounds).

This paragraph also draws upon Article 1(2) of the European Social Charter which was signed on 18 October 1961 and has been ratified by all the Member States, and on point 4 of the Community Charter of the Fundamental Social Rights of Workers of 9 December 1989.

The second paragraph deals with the three freedoms guaranteed by Articles 39, 43 and 49 et seq of the EC Treaty, namely freedom of movement for workers, freedom of establishment and freedom to provide services.

The third paragraph is based on TEC Article 137(3), fourth indent, and on Article 19(4) of the European Social Charter signed on 18 October 1961 and ratified by all the Member States. The question of recruitment of seamen having the nationality of third States for the crews of vessels flying the flag of a Member State of the Union is governed by Community law and national legislation and practice.

Article 16. Freedom to conduct a business

The freedom to conduct a business is recognised.

Explanation

This Article is based on Court of Justice case law which has recognised freedom to exercise an economic or commercial activity (see judgments of 14 May 1974, Case 4/73 Nold [1974] ECR 491, paragraph 14 of the grounds, and of 27 September 1979, Case 230-78 SPA Eridiana and others [1979] ECR 2749, paragraphs 20 and 31 of the grounds) and freedom of contract (see inter alia Sukkerfabriken Nykøbing judgment, Case 151/78 [1979] ECR I, paragraph 19 of the grounds, and judgment of 5 October 1999, C-240/97 Spain v. Commission [not yet published], paragraph 99 of the grounds) and TEC Article 4(1) and (2) which recognises free competition. Of course, this right is to be exercised with respect for Community law and national legislation. It may be subject to the limitations provided for in Article 51(1) of the Charter.

Article 17. Right to property

1. Everyone has the right to own, use, dispose of and bequeath his lawfully acquired possessions. No one may be deprived of his possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid **within a reasonable time for their loss**. The use of property may be regulated insofar as is necessary for the general interest.
2. Intellectual property shall be protected.

Explanation

This Article is based on Article 1 of the Protocol to the European Convention on Human Rights: "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

This is a fundamental right common to all national constitutions. It has been recognised on numerous occasions by the case law of the Court of Justice, initially in the Hauer judgment (13 December 1979, ECR [1979] 3727). The wording has been updated but, in accordance with Article 51(3), the meaning and scope of the right are the same as those of the right guaranteed by the Convention and the limitations may not exceed those provided for in the Convention.

Protection of intellectual property, one aspect of the right of property, is explicitly mentioned in paragraph 2 because of its growing importance and Community secondary legislation. Intellectual property covers not only literary and artistic property but also patent and trademark rights and associated rights.

Article 18. Right to asylum

The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty establishing the European Community.

Explanation

The text of the Article is based on TEC Article 63 which requires the Union to respect the Geneva Convention on refugees. The provisions of Article 1 of Protocol No 7 to the European Convention on Human Rights concerning procedural safeguards in the event of expulsion have not been incorporated, as most Member States have not signed or ratified that Protocol. Reference should be made to the Protocols relating to the United Kingdom and Ireland annexed to the Treaty of Amsterdam and to Denmark to determine the extent to which those Member States implement Community law in this area and are, in accordance with Article 50(1), bound by the present Article This Article is in line with the Protocol on Asylum annexed to the Treaty of Amsterdam.

Article 19. Protection in the event of removal, expulsion or extradition

1. Collective expulsions are prohibited.
2. No one may be removed, expelled or extradited to a State where **there is a serious risk that he may** be subjected to the death penalty, torture or other inhuman or degrading treatment.

Explanation

Paragraph 1 of this Article has the same meaning and scope as Article 4 of Protocol No 4 to the European Convention on Human Rights concerning collective expulsion. Its purpose is to guarantee that every decision is based on a specific examination and that no single measure can be taken to expel all persons who are nationals of a particular State.

Paragraph 2 incorporates case law from the European Court of Human Rights regarding Article 3 of the European Convention on Human Rights (see Ahmed v. Austria, judgment of 17 December 1996, [1996] ECR VI.2206 and Soering, judgment of 7 July 1989).

CHAPTER III. EQUALITY

Article 20. Equality before the law

Everyone is equal before the law.

Explanation

This Article corresponds to a principle which has been included in all European constitutions since the 1789 Declaration of Human and Civil Rights and has also been recognised by the Court of Justice as a basic principle of Community law (judgment of 13 November 1984, Case 283/83 Racke [1984] ECR 3791, judgment of 17 April 1997, Case 15/95 EARL [1997] ECR I-1961, and judgment of 13 April 2000, Case 292/97 Karlsson, not yet published).

Article 21. Non-discrimination

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.
2. Within the scope of application of the Treaty establishing the European Community and of the Treaty on European Union, and without prejudice to the special provisions of those Treaties, any discrimination on grounds of nationality shall be prohibited.

Explanation

Paragraph 1 draws on Article 13 of the EC Treaty, Article 14 of the European Convention on Human Rights and Article 11 of the Convention on Human Rights and Biomedicine as regards genetic heritage.

Paragraph 2 corresponds to Article 12 of the EC Treaty and must be applied in compliance with the Treaty.

Article 22. Cultural, religious and linguistic diversity

The Union shall respect cultural, religious and linguistic diversity.

Explanation

This Article is based on Article 6 of the Treaty on European Union and on Article 151(1) and (4) of the TEC concerning culture. It is also inspired by declaration No 11 to the Final Act of the Amsterdam Treaty on the status of churches and non-confessional organisations.

Article 23. Equality between men and women

Equality between men and women **must be ensured in all areas, including** employment, work, and pay.

The principle of equality shall not prevent the maintenance or adoption of measures **in favour of** the under-represented sex.

Explanation

The first paragraph is based on Article 141 of the EC Treaty and draws on Article 20 of the revised European Social Charter of 3 May 1996 and on point 16 of the Community Charter on the rights of workers.

It is also based on Article 141(4) of the EC Treaty and Article 2(4) of Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.

Paragraph 2 takes over in shorter form Article 141(4) of the EC Treaty which provides that the principle of equal treatment does not prevent the maintenance or adoption of measures providing for specific advantages in order to make it easier for the under-represented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers. In accordance with Article 51(2), the present paragraph does not amend Article 141(4) EC.

Article 24. The rights of the child

1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.
2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.
3. **Every child shall have the right to maintain a personal relationship and direct contact with both his parents, unless that is contrary to his interests.**

Explanation

This Article is based on the New York Convention on the Rights of the Child signed on 20 November 1989 and ratified by all the Member States, particularly Articles 3, 12 and 13 thereof.

Article 25. Integration of persons with disabilities

The Union **recognises and respects** the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.

Explanation

The principle set out in this Article is based on Article 15 of the European Social Charter and also draws on Article 15 of the revised Social Charter and point 24 of the Community Charter on the rights of workers.

CHAPTER IV. SOLIDARITY

Article 26. Workers' right to information and consultation within the undertaking

Workers or their representatives must at all levels be guaranteed information and consultation in good time on matters which concern them within the undertaking, in the cases and under the conditions provided for by Community law and national laws and practices.

Explanation

This Article appears in the revised European Social Charter (Article 21) and the Community Charter on the rights of workers (points 17 and 18). There is a considerable Community acquis in this field: Directives 98/59/EC (collective redundancies), 77/187/EC (transfers of undertakings) and 94/45/EC (European works councils). The phrase "at all levels" includes the European level.

Article 27. Right of collective bargaining and action

Workers and employers, **or their respective organisations**, have, **at all levels**, the right to negotiate and conclude collective agreements and, in cases of conflicts of interest, to take collective action to defend their interests, **including strike action**, in accordance with Community law and national laws and practices.

Explanation

This Article is based on Article 1 of the European Social Charter and on the Community Charter of the Fundamental Social Rights of Workers (points 12 to 14). The right of collective action was recognised by the European Court of Human Rights as one of the elements of trade union rights laid down by Article 11 of the European Convention on Human Rights. The phrase "at all levels" includes the European level.

Article 28. Right of access to placement services

Everyone has the right of access to a **free** placement service.

Explanation

This Article is based on Article 1(3) of the European Social Charter and point 13 of the Community Charter of the Fundamental Social Rights of Workers.

Article 29. Protection in the event of unjustified dismissal

Every worker has the right to protection against unjustified dismissal.

Explanation

This Article draws on Article 24 of the revised Social Charter.

Article 30. Fair and just working conditions

1. Every worker has the right to working conditions which respect his health, safety and dignity.
2. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

Explanation

This Article is based on Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work, Article 3 of the Social Charter and point 19 of the Community Charter on the rights of workers. The right to dignity at work in particular is proclaimed in Article 26 of the revised Social Charter.

Paragraph 2 is based on Directive 93/104/EC concerning certain aspects of the organisation of working time, Article 2 of the European Social Charter and point 8 of the Community Charter on the rights of workers.

Article 31. Prohibition of child labour and protection of young people at work

The employment of children is prohibited. The minimum age of admission to employment **may** not be lower than the minimum school-leaving age without prejudice to such rules as may be more favourable to young people and except for limited derogations.

Young people admitted to work must have working conditions appropriate to their age and be protected against economic exploitation and any work likely to harm their safety, health or physical, mental, moral or social development or to interfere with their education.

Explanation

This Article is based on Directive 94/33/EC on the protection of young people at work, Article 7 of the European Social Charter and points 20 to 23 of the Community Charter of the Fundamental Social Rights of Workers.

Article 32. Family and professional life

1. The family shall enjoy legal, economic and social protection.
2. To reconcile their family and professional lives, everyone shall have the right to protection from dismissal for a reason connected with pregnancy and the right to paid maternity leave and to parental leave following the birth or adoption of a child.

Explanation

The first paragraph is based on Article 16 of the European Social Charter.

The second paragraph draws on Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding and Directive 96/34/EC on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC. It is also based on Article 8 (protection of maternity) of the European Social Charter and draws on Article 27 (right of workers with family responsibilities to equal opportunities and equal treatment) of the revised Social Charter.

Article 33. Social security and social assistance

1. The Union recognises and respects the entitlement to social security benefits and social services providing protection in events such as pregnancy, illness, industrial accidents, dependency or old age and in the case of loss of employment, in accordance with the rules laid down by Community law and national laws and practices.
2. **Every person residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with Community law and national laws and practices.**
3. To combat social exclusion and poverty, the Union recognises and respects the right to social assistance and housing assistance in order to ensure a decent existence for **all those** who lack sufficient resources, in accordance with the rules laid down by Community law and national laws and practices.

Explanation

The principle set out in paragraph 1 is based on Article 12 of the European Social Charter and point 10 of the Community Charter on the rights of workers. The Union must respect it when exercising the powers conferred on it by Article 140 of the Treaty establishing the European Community. The reference to social services relates to cases in which such services have been introduced for the management of certain social advantages. Where such services do not exist, this reference relates to the advantages allocated directly by public bodies.

The second paragraph is based on Article 13(4) of the European Social Charter and point 2 of the Community Charter and sets out the rules arising from Regulation No 1408/71.

The third paragraph draws on Articles 30 and 31 of the revised Social Charter and point 10 of the Community Charter. The Union must respect it in the context of policies based on Article 137(2) of the Treaty establishing the European Community, particularly the last paragraph.

Article 34. Health care

Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. **A high level of human health protection shall be ensured in the determination and implementation of all Community policies and activities.**

Explanation

The principles set out in this Article are based on Article 152 of the EC Treaty and on Article 11 of the European Social Charter. The second sentence of the Article takes over Article 152(1).

Article 35. Access to services of general economic interest

The Union **recognises and** respects the access to services of general economic interest as provided for in national laws and practices in accordance with the provisions of the Treaty establishing the European Community in order to promote the social and territorial cohesion of the Union.

Explanation

This Article fully respects Article 16 of the Treaty establishing the European Community and does not create any new right. It merely sets out the principle of respect by the Union for the access to services of general economic interest as provided for by national provisions, when those provisions are compatible with Community legislation.

Article 36. Environmental protection

A high level of environmental protection and the improvement of the quality of the environment shall be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.

Explanation

The principles set out in this Article are based on Articles 2, 6 and 174 of the EC Treaty.

Article 37. Consumer protection

Union policies shall ensure a high level of consumer protection.

Explanation

The principles set out in this Article are based on Article 153 of the EC Treaty.

CHAPTER V. CITIZENSHIP**Article 38. Right to vote and to stand as a candidate in elections to the European Parliament**

1. Every citizen of the Union has the right to vote and to stand as a candidate in elections to the European Parliament in the Member State in which he resides, under the same conditions as nationals of that State.
2. Members of the European Parliament shall be elected by direct universal suffrage by free and secret ballot.

Explanation

Paragraph 1 of this Article corresponds to the right guaranteed by Article 19(2) of the EC Treaty. Paragraph 2 corresponds to Article 190(1) of the EC Treaty. In accordance with Article 51(2) of the Charter, it applies under the conditions set out in the Treaty. Paragraph 2 of this Article states the basic principles of the electoral system in a democratic State.

Article 39. Right to vote and to stand as a candidate at municipal elections

Every citizen of the Union has the right to vote and to stand as a candidate at municipal elections in the Member State in which he resides under the same conditions as nationals of that State.

Explanation

This Article corresponds to the right guaranteed by Article 19(1) of the EC Treaty. In accordance with Article 51(2) of the Charter, it applies under the conditions set out in the Treaty.

Article 40. Right to good administration

1. Every person has the right to have his affairs handled impartially, fairly, **in accordance with the principle of the neutrality of public policy** and within a reasonable time by the institutions and bodies of the Union.
2. This right includes:

- the right of every person to be heard before any individual measure which would affect him adversely is taken in relation to him;
 - the right of every person to have access to his file, while respecting the legitimate interests of confidentiality and of professional **and** business secrecy;
 - the obligation of the administration to give reasons for its decisions.
3. Every person has the right to have the Community make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.
 4. Every person may write to the institutions of the Union in one of the official languages of such institutions and **must** have an answer in the same language.

Explanation

This right is based on the existence of a Community based on the rule of law and was developed in the case law which enshrined the principle of good administration (see inter alia Court of Justice judgment of 31 March 1992, Case C-255/90 P, Burbán [1992] ECR I-2253, and Court of First Instance judgments of 18 September 1995, Case T-167/94 Nölle [1995] ECR II-2589, and 9 July 1999, Case T-231/97 New Europe Consulting and others [not yet published]). The wording for that right in the first two paragraphs results from the case law (Court of Justice judgment of 15 October 1987, Case 222/86 Heylens [1987] ECR 4097, paragraph 15 of the grounds, judgment of 18 October 1989 in Case 374/87 Orkem [1989] ECR 3283, judgment of 21 November 1991 in Case C-269/90 TU München [1991] ECR I-5469, and Court of First Instance judgments of 6 December 1994 in Case T-450/93 Lisrestal [1994] ECR II-1177, 18 September 1995 in Case T-167/94 Nölle [1995] ECR II-258), and the wording regarding the obligation to give reasons comes from Article 253 of the EC Treaty.

Paragraph 3 reproduces the right guaranteed by Article 288 of the EC Treaty.

Paragraph 4 reproduces the right guaranteed by the third paragraph of Article 21 of the EC Treaty. In accordance with Article 51(2) of the Charter, those rights are to be applied under the conditions and within the limits defined by the Treaties.

Article 41. Right of access to documents

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to European Parliament, Council and Commission documents.

Explanation

The right guaranteed in this Article is the right guaranteed by Article 255 of the EC Treaty. In accordance with Article 51(2) of the Charter, it applies under the conditions defined by the Treaty.

Article 42. Ombudsman

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to refer to the Ombudsman of the Union cases of maladministration by Community institutions and bodies, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role.

Explanation

The right guaranteed in this Article is the right guaranteed by Articles 21 and 195 of the EC Treaty. In accordance with Article 51(2) of the Charter, it applies under the conditions defined by the Treaty.

Article 43. Right to petition

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to petition the European Parliament.

Explanation

The right guaranteed in this Article is the right guaranteed by Article 21 and 194 of the EC Treaty. In accordance with Article 51(2) of the Charter, it applies under the conditions defined by the Treaty.

Article 44. Freedom of movement and of residence

1. Every citizen of the Union has the right to move and reside freely within the territory of the Member States.
2. Freedom of movement **and residence** may be granted, in accordance with the Treaty establishing the European Community, to nationals of third countries legally resident in the territory of a Member State.

Explanation

The right guaranteed by paragraph 1 is the right guaranteed by Article 18 of the EC Treaty. In accordance with Article 51(2) of the Charter, it applies under the conditions and within the limits defined by the Treaty.

Paragraph 2 refers to the power granted to the Community by Article 62(3) and Article 63(4) of the EC Treaty. Consequently, the granting of this right depends on the institutions exercising that power.

Article 45. Diplomatic and consular protection

Every citizen of the Union shall, in the territory of a third country in which the Member State of which he is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that Member State.

Explanation

The right guaranteed by this Article is the right guaranteed by Article 20 of the EC Treaty. In accordance with Article 51(2) of the Charter, it applies under the conditions defined by the Treaty.

CHAPTER VI. JUSTICE

Article 46. Right to an effective remedy and to a fair trial

1. Everyone whose rights and freedoms **guaranteed by the law of the Union** are violated has the right to an effective remedy before a court.
2. Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.
3. Legal aid shall be made available to those who lack sufficient resources insofar as such aid is necessary to ensure effective access to justice.

Explanation

Paragraph 1 is based on Article 13 of the European Convention on Human Rights:

"Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

However, in Community law the protection is more extensive since it guarantees the right to an effective remedy before a court. The Court of Justice enshrined the principle in its judgment of 15 May 1986 (Case 222/84 Johnston [1986] ECR 1651; see also judgment of 15 October 1987, Case 222/86 Heylens [1987] ECR 4097 and judgment of 3 December 1992, Case C-97/91 Borelli [1992] ECR I-6313). According to the Court, this principle also applies to the Member States when they are implementing Community law. The inclusion of this precedent in the Charter is not intended to change the appeal system laid down by the Treaties, and particularly the rules relating to admissibility. This principle is to be implemented according to the procedures laid down in the Treaties. It applies to the institutions of the Union and of Member States when they are implementing Union law and does so for all rights guaranteed by Union law.

Paragraph 2 corresponds to Article 6(1) of the European Convention on Human Rights which reads as follows:

"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice."

In Community law, the right to a fair hearing is not confined to disputes relating to civil law rights and obligations. That is one of the consequences of the fact that the Community is a community based on the rule of law as stated by the Court in Case 294/83, "Les Verts" v. European Parliament (judgment of 23 April 1986, [1988] ECR 1339); that means that there is a right to an effective judicial remedy (among the many precedents, Johnston, Case 222/84, judgment of 15 May 1986, [1986] ECR 1682, and the other cases cited above). Nevertheless, in all respects other than their scope, the guarantees afforded by the Convention apply in a similar way to the Union.

With regard to paragraph 3, it should be noted that in accordance with the case law of the European Court of Human Rights, provision should be made for legal aid where the absence of such aid would make it impossible to ensure an effective remedy (ECHR Judgment of 9.10.1979, Airey, Series A, Volume 32, 11). There is also a system of legal assistance for cases before the Court of Justice of the European Communities. That being so, it was deemed important to enshrine this principle in the Charter.

Article 47. Presumption of innocence and right of defence

1. Everyone who has been charged shall be presumed innocent until proved guilty according to law.
2. Respect for the right of defence of anyone who has been charged shall be guaranteed.

Explanation

This Article is based on Article 6(2) and (3) of the European Convention on Human Rights, which reads as follows:

- "2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.*
3. *Everyone charged with a criminal offence has the following minimum rights:*
- (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;*
 - (b) to have adequate time and facilities for the preparation of his defence;*
 - (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;*
 - (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;*
 - (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court."*

In accordance with Article 51(3), this right has the same meaning and scope as the right guaranteed by the European Convention on Human Rights.

Article 48. Principles of legality and proportionality of criminal offences and penalties

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national law or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed. If, subsequent to the commission of the criminal offence, the law provides for a lighter penalty, that penalty shall be applicable.
2. This article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to **the general principles recognised by all nations**.
3. The severity of penalties **must not be disproportionate** to the criminal offence.

Explanation

This Article follows the traditional principle of the non-retroactivity of laws and criminal sanctions. There has been added the principle of the retroactivity of a more lenient penal law which exists in a number of Member States and which features in Article 15 of the Covenant on Civil and Political Rights.

Article 7 of the European Convention on Human Rights is worded as follows:

"1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.

2. *This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations."*

In paragraph 2, the reference to "civilised" nations has been deleted; this does not change the meaning of this paragraph, which refers to crimes against humanity in particular. In accordance with Article 51(3), the right guaranteed here therefore has the same meaning and scope as the right guaranteed by the European Convention.

Paragraph 3 states the general principle of proportionality between penalties and criminal offences which is enshrined in the common constitutional traditions of the Member States and in the case law of the Court of Justice of the Communities.

Article 49. Right not to be tried or punished twice in criminal proceedings for the same criminal offence

No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he has already been finally acquitted or convicted **within the European Union** in accordance with the law.

Explanation

Article 4 of Protocol No 7 to the European Convention on Human Rights reads as follows:

- "1. No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State.*
2. *The provisions of the preceding paragraph shall not prevent the reopening of the case in accordance with the law and the penal procedure of the State concerned, if there is evidence of new or newly discovered facts, or if there has been a fundamental defect in the previous proceedings, which could affect the outcome of the case.*

3. *No derogation from this Article shall be made under Article 15 of the Convention."*

The "non bis in idem" principle applies in Community law (see, among the many precedents, the judgment of 5 May 1996, Cases 18/65 and 35/65, Gutmann v. Commission [1966] ECR 103 and a recent case, the decision of the Court of First Instance of 20 April 1999, Joined Cases T-305/94 and others, Limburgse Vinyl Maatschappij NV v. Commission, not yet published). The rule prohibiting cumulation refers to cumulation of two penalties of the same kind, that is to say criminal law penalties.

*In accordance with Article 49, the "non bis in idem" principle applies not only within the jurisdiction of one State but also between the jurisdictions of several Member States. That corresponds to the *acquis* in Union law; see Articles 54 to 58 of the Schengen Convention, Article 7 of the Convention on the Protection of the European Communities' Financial Interests and Article 10 of the Convention on the fight against corruption. The very limited exceptions in those Conventions permitting the Member States to derogate from the "non bis in idem" principle are covered by the horizontal clause in Article 51(1) of the Charter regarding limitations. The right guaranteed here has the same meaning as the corresponding right in the European Convention, but its scope is wider.*

CHAPTER VII. GENERAL PROVISIONS

Article 50. Scope

1. The provisions of this Charter are addressed to the institutions and bodies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers.
2. This Charter does not establish any new power or task for the Community or the Union, or modify powers and tasks defined by the Treaties.

Explanation

The aim of this provision is to determine the scope of the Charter. It seeks to establish clearly that the Charter applies primarily to the institutions and bodies of the Union, in compliance with the principle of subsidiarity. This provision is in keeping with Article 6(2) of the Treaty on European Union, which requires the Union to respect fundamental rights, and with the mandate issued by Cologne European Council. The term "institutions" is enshrined in the EC Treaty, Article 7 of which lists the institutions. The term "body" is commonly used to refer to all the authorities set up by the Treaties or by secondary legislation (see Article 286(1) of the Treaty establishing the European Community).

As regards the Member States, it follows unambiguously from the case law of the Court of Justice that the requirement to respect fundamental rights defined in a Union context is only binding on the Member States when they act in the context of Community law (judgment of 13 July 1989, Case 5/88 Wachauf [1989] ECR 2609; judgment of 18 June 1991, ERT [1991] ECR I-2925). The Court of Justice recently confirmed this case law in the following terms: "In addition, it should be remembered that the requirements flowing from the protection of fundamental rights in the Community legal order are also binding on Member States when they implement Community rules..." (judgment of 13 April 2000, Case C-292/97, paragraph 37 of the grounds, not yet published). Paragraph 2 confirms that the Charter may not have the effect of extending the competences and tasks which the Treaties confer on the Community and the Union. Explicit mention is made here of the logical consequences of the principle by which the Union only has those powers which have been conferred upon it. The fundamental rights as guaranteed in the Union do not have any effect other than in the context of the powers determined by the Treaty.

Article 51. Scope of guaranteed rights

1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law **and respect the essential content of those rights and freedoms**.
Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest being pursued by the Union, other legitimate interests in a democratic society or the need to protect the rights and freedoms of others.
2. Rights recognised by this Charter which are based on the Community Treaties or the Treaty on European Union shall be exercised under the conditions and within the limits defined by those Treaties.
3. Insofar as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be **the same as** those laid down by the said Convention unless this Charter affords greater or more extensive protection.

Explanation

The purpose of this provision is to set the scope of the rights guaranteed. Paragraph 1 deals with the arrangements for the limitation of rights. The wording is based on the case law of the Court of Justice: "...it is well established in the case law of the Court that restrictions may be imposed on the exercise of fundamental rights, in particular in the context of a common organisation of the market, provided that those restrictions in fact correspond to objectives of general interest pursued by the Community and do not constitute, with regard to the aim pursued, disproportionate and unreasonable interference undermining the very substance of those rights" (judgment of 13 April 2000, Case C-292/97, paragraph 45 of the grounds). The reference to other legitimate interests relates to possible situations in which the exercise of a right may adversely affect factors other than the public interest or the rights and freedoms of others: reputation, business secrecy, etc.

Paragraph 2 specifies that where a right results from the Treaties it is subject to the conditions and limits laid down by them. The Charter does not alter the system of rights conferred by the Treaties.

Paragraph 3 is intended to ensure the necessary consistency between the Charter and the ECHR by establishing the principle that, insofar as the rights in the present Charter also correspond to rights guaranteed by the ECHR, the meaning and scope of those rights, including authorised limitations, are the same as those laid down by the ECHR. This means in particular that the legislator, in laying down limitations to those rights, must comply with the same standards as are fixed by the detailed limitation arrangements laid down in the ECHR without thereby adversely affecting the autonomy of Community law and of that of the Court of Justice of the European Communities. The list of rights which may at the present stage, without precluding developments in the law, be regarded as corresponding to rights in the ECHR within the meaning of the present paragraph is given hereafter. It does not include rights additional to those in the ECHR..

1. Articles of the Charter where both the meaning and the scope are the same as the corresponding Articles of the European Convention on Human Rights:

- *Article 2 corresponds to Article 2 of the ECHR*
- *Article 4 corresponds to Article 3 of the ECHR*
- *Article 5(1) and (2) correspond to Article 4 of the ECHR*
- *Article 6 corresponds to Article 5 of the ECHR*
- *Article 7 corresponds to Article 8 of the ECHR*
- *Article 10(1) corresponds to Article 9 of the ECHR*
- *Article 11 corresponds to Article 10 of the ECHR without prejudice to any restrictions which Community law may impose on Member States' right to introduce the licensing arrangements referred to in the third sentence of Article 10(1) of the ECHR*
- *Article 17 corresponds to Article 1 of the Protocol to the ECHR*
- *Article 19(1) corresponds to Article 4 of Protocol No 4*
- *Article 19(2) corresponds to Article 3 of the ECHR as interpreted by the European Court of Human Rights*
- *Article 47 corresponds to Article 6(2) and(3) of the ECHR*
- *Article 48(1) (with the exception of the last sentence) and (2) correspond to Article 7 of the ECHR*

2. *Articles where the meaning is the same as the corresponding Articles of the ECHR, but where the scope is wider:*
- *Article 12(1) corresponds to Article 11 of the ECHR, but its scope is extended to European Union level*
 - *Article 14(1) corresponds to Article 2 of the Protocol to the ECHR, but its scope is extended to cover access to vocational and continuing training*
 - *Article 14(3) corresponds to Article 2 of the Protocol to the ECHR as regards the rights of parents*
 - *Article 46(2) corresponds to Article 6(1) of the ECHR, but the limitation to the determination of civil rights and obligations or criminal charges does not apply as regards Union law and its implementation*
 - *Article 49 corresponds to Article 4 of Protocol No 7 to the ECHR, but its scope is extended to European Union level between the Courts of the Member States.*
3. *Finally, citizens of the European Union may not be considered as aliens in the scope of the application of Community law, because of the prohibition of any discrimination on grounds of nationality. The limitations provided for by Article 16 of the ECHR as regards the rights of aliens therefore do not apply to them in this context.*

Article 52. Level of protection

Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by international law and international agreements to which the Union, the Community or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' constitutions.

Explanation

This provision is intended to maintain the level of protection currently afforded within their respective scope by Union law, national law and international law. Owing to its importance, mention is made of the European Convention on Human Right. The level of protection afforded by the Charter may not, in any instance, be lower than that guaranteed by the Convention, with the result that the arrangements for limitations may not fall below the level provided for in the Convention.

Article 53. Prohibition of abuse of rights

Nothing in this Charter shall be interpreted as implying any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms recognised in this Charter or at their limitation to a greater extent than is provided for herein.

Explanation

*This Article corresponds to Article 17 of the European Convention on Human Rights:
"Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention."*

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 11 October 2000 (18.10)
(OR. fr)**CHARTE 4473/00****CONVENT 49****NOTE FROM THE PRAESIDIUM**

Subject : Draft Charter of Fundamental Rights of the European Union

– Text of the explanations relating to the complete text of the Charter as set out in CHARTE 4487/00 CONVENT 50

These explanations have been prepared at the instigation of the Praesidium. They have no legal value and are simply intended to clarify the provisions of the Charter.

PREAMBLE

The peoples of Europe, in creating an ever closer union among them, are resolved to share a peaceful future based on common values.

Conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law. It places the individual at the heart of its activities, by establishing the citizenship of the Union and by creating an area of freedom, security and justice.

The Union contributes to the preservation and to the development of these common values while respecting the diversity of the cultures and traditions of the peoples of Europe as well as the national identities of the Member States and the organisation of their public authorities at national, regional and local levels; it seeks to promote balanced and sustainable development and ensures free movement of persons, goods, services and capital, and the freedom of establishment.

To this end, it is necessary to strengthen the protection of fundamental rights in the light of changes in society, social progress and scientific and technological developments by making those rights more visible in a Charter.

This Charter reaffirms, with due regard for the powers and tasks of the Community and the Union and the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the Treaty on European Union, the Community Treaties, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Community and by the Council of Europe and the case law of the Court of Justice of the European Communities and of the European Court of Human Rights.

Enjoyment of these rights entails responsibilities and duties with regard to other persons, to the human community and to future generations.

The Union therefore recognises the rights, freedoms and principles set out hereafter.

CHAPTER I. DIGNITY

Article 1

Human dignity

Human dignity is inviolable. It must be respected and protected.

Explanation

The dignity of the human person is not only a fundamental right in itself but constitutes the real basis of fundamental rights. The 1948 Universal Declaration of Human Rights enshrined this principle in its preamble: "Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world."

It results that none of the rights laid down in this Charter may be used to harm the dignity of another person, and that the dignity of the human person is part of the substance of the rights laid down in this Charter. It must therefore be respected, even where a right is restricted.

Article 2

Right to life

1. Everyone has the right to life.
2. No one shall be condemned to the death penalty, or executed.

Explanation

1. *Paragraph 1 of this Article is based on the first sentence of Article 2(1) of the ECHR, which reads as follows:*

"1. Everyone's right to life shall be protected by law..."

2. *The second sentence of the provision, which referred to the death penalty, was superseded by the entry into force of Article 1 of Protocol No 6 to the ECHR, which reads as follows:*

"The death penalty shall be abolished. No-one shall be condemned to such penalty or executed."

Article 2(2) of the Charter is based on that provision.

3. *The provisions of Article 2 of the Charter correspond to those of the above Articles of the ECHR and its Protocol. They have the same meaning and the same scope, in accordance with Article 52(3) of the Charter. Therefore, the "negative" definitions appearing in the ECHR must be regarded as also forming part of the Charter:*

- (a) *Article 2(2) of the ECHR:*

"Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

- (a) *in defence of any person from unlawful violence;*
 - (b) *in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;*
 - (c) *in action lawfully taken for the purpose of quelling a riot or insurrection."*

- (b) *Article 2 of Protocol No 6 to the ECHR:*

"A State may make provision in its law for the death penalty in respect of acts committed in time of war or of imminent threat of war; such penalty shall be applied only in the instances laid down in the law and in accordance with its provisions..."

Article 3

Right to the integrity of the person

1. Everyone has the right to respect for his or her physical and mental integrity.
2. In the fields of medicine and biology, the following must be respected in particular:
 - the free and informed consent of the person concerned, according to the procedures laid down by law,
 - the prohibition of eugenic practices, in particular those aiming at the selection of persons,
 - the prohibition on making the human body and its parts as such a source of financial gain,
 - the prohibition of the reproductive cloning of human beings.

Explanation

The principles of Article 3 of the Charter are already included in the Convention on Human Rights and Biomedicine, adopted by the Council of Europe (ETS 164 and additional protocol ETS 168).

The Charter does not set out to depart from those principles, and therefore prohibits only reproductive cloning. It neither authorises nor prohibits other forms of cloning. Thus it does not in any way prevent the legislature from prohibiting other forms of cloning.

2. *The reference to eugenic practices, in particular those aiming at the selection of persons, relates to possible situations in which selection programmes are organised and implemented, involving campaigns for sterilisation, forced pregnancy, compulsory ethnic marriage among others, all acts deemed to be international crimes in the Statute of the International Criminal Court adopted in Rome on 17 July 1998 (see its Article 7(1)(g)).*

Article 4

Prohibition of torture and inhuman or degrading treatment or punishment

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Explanation

The right in Article 4 is the right guaranteed by Article 3 of the ECHR, which has the same wording: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment". By virtue of Article 52(3) of the Charter, it therefore has the same meaning and the same scope as the ECHR Article.

Article 5

Prohibition of slavery and forced labour

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. Trafficking in human beings is prohibited.

Explanation

1. *The right in Article 5(1) and (2) corresponds to Article 4(1) and (2) of the ECHR, which has the same wording.*

It therefore has the same meaning and scope as the ECHR Article, by virtue of Article 52(3) of the Charter. Consequently:

- no limitation may legitimately affect the right provided for in paragraph 1;*
- in paragraph 2, "forced or compulsory labour" must be understood in the light of the "negative" definitions contained in Article 4(3) of the ECHR:*

"For the purpose of this article the term "forced or compulsory labour" shall not include:

- (a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;*
- (b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;*
- (c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;*
- (d) any work or service which forms part of normal civic obligations."*

2. *Paragraph 3 stems directly from the principle of human dignity and takes account of recent developments in organised crime, such as the organisation of lucrative illegal immigration or sexual exploitation networks. The annex to the Europol Convention contains the following definition which refers to trafficking for the purpose of sexual exploitation: "traffic in human beings: means subjection of a person to the real and illegal sway of other persons by using violence or menaces or by abuse of authority or intrigue with a view to the exploitation of prostitution, forms of sexual exploitation and assault of minors or trade in abandoned children". Chapter VI of the Convention implementing the Schengen Agreement, which has been integrated into the "acquis communautaire", in which the United Kingdom participates*

and Ireland has requested to participate, contains the following wording in Article 27(1) which refers to illegal immigration networks: " The Contracting Parties undertake to impose appropriate penalties on any person who, for financial gain, assists or tries to assist an alien to enter or reside within the territory of one of the Contracting Parties in breach of that Contracting Party's laws on the entry and residence of aliens."

CHAPTER II. FREEDOMS

Article 6

Right to liberty and security

Everyone has the right to liberty and security of person.

Explanation

The rights in Article 6 are the rights guaranteed by Article 5 of the ECHR, and in accordance with Article 52(3) of the Charter, they have the same meaning and scope. Consequently, the limitations which may legitimately be imposed on them may not exceed those permitted by the ECHR, in the wording of Article 5:

- "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:*
- (a) the lawful detention of a person after conviction by a competent court;*
 - (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;*

- (c) *the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;*
 - (d) *the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;*
 - (e) *the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;*
 - (f) *the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.*
2. *Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.*
 3. *Everyone arrested or detained in accordance with the provisions of paragraph 1.c of this article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.*
 4. *Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.*
 5. *Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation."*

Since the Charter is to apply within the context of the Union, the rights enshrined in Article 6 must be respected particularly when, in accordance with Title VI of the Treaty on European Union, the Union is adopting framework decisions to define common minimum provisions as regards the categorisation of offences and punishments.

Article 7

Respect for private and family life

Everyone has the right to respect for his or her private and family life, home and communications.

Explanation

The rights guaranteed in Article 7 correspond to those guaranteed by Article 8 of the ECHR. To take account of developments in technology the word "correspondence" has been replaced by "communications".

In accordance with Article 52(3), the meaning and scope of this right are the same as those of the corresponding article of the ECHR. Consequently, the limitations which may legitimately be imposed on this right are the same as those allowed by Article 8 of the ECHR:

- "1. Everyone has the right to respect for his private and family life, his home and his correspondence.*
- 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."*

Article 8

Protection of personal data

1. Everyone has the right to the protection of personal data concerning him or her.

2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.
3. Compliance with these rules shall be subject to control by an independent authority.

Explanation

This Article is based on Article 286 of the Treaty establishing the European Community and Directive 95/46/EC of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995) as well as on Article 8 of the ECHR and on the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data, which has been ratified by all the Member States. The right to protection of personal data is to be exercised under the conditions laid down in the above Directive, and may be limited under the conditions set out by Article 52 of the Charter.

Article 9

Right to marry and right to found a family

The right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights.

Explanation

This Article is based on Article 12 of the ECHR, which reads as follows: "Men and women of marriageable age have the right to marry and to found a family according to the national laws governing the exercising of this right." The wording of the Article has been modernised to cover cases in which national legislation recognises arrangements other than marriage for founding a family. This Article neither prohibits nor imposes the granting of the status of marriage to unions between people of the same sex. This right is thus similar to that afforded by the ECHR, but its scope may be wider when national legislation so provides.

Article 10

Freedom of thought, conscience and religion

1. Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.
2. The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right.

Explanation

The right guaranteed in paragraph 1 corresponds to the right guaranteed in Article 9 of the ECHR and, in accordance with Article 52(3) of the Charter, has the same meaning and scope. Limitations must therefore respect Article 9(2) of the Convention, which reads as follows: "Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

The right guaranteed in paragraph 2 corresponds to national constitutional traditions and to the development of national legislation on this issue.

Article 11

Freedom of expression and information

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.
2. The freedom and pluralism of the media shall be respected.

Explanation

1. *Article 11 corresponds to Article 10 of the European Convention on Human Rights, which reads as follows:*

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. *The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."*

Pursuant to Article 52(3) of the Charter, the meaning and scope of this right are the same as those guaranteed by the ECHR. The limitations which may be imposed on it may therefore not exceed those provided for in Article 10(2) of the Convention, without prejudice to any restrictions which Community competition law may impose on Member States' right to introduce the licensing arrangements referred to in the third sentence of Article 10(1) of the ECHR.

2. *Paragraph 2 of this Article spells out the consequences of paragraph 1 regarding freedom of the media. It is based in particular on Court of Justice case law regarding television, particularly in case C-288/89 (judgment of 25 July 1991, Stichting Collectieve Antennevoorziening Gouda and others [1991] ECR I-4007), and on the Protocol on the system of public broadcasting in the Member States annexed to the EC Treaty, and on Council Directive 89/552/EC (particularly its seventeenth recital).*

Article 12

Freedom of assembly and of association

1. Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests.
2. Political parties at Union level contribute to expressing the political will of the citizens of the Union.

Explanation

Paragraph 1 of this Article corresponds to Article 11 of the ECHR, which reads as follows:

- "1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.*

2. *No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."*

The meaning of the provisions of paragraph 1 is the same as that of the ECHR, but their scope is wider since they apply at all levels including European level. In accordance with Article 52(3) of the Charter, limitations on that right may not exceed those considered legitimate by virtue of Article 11(2) of the ECHR.

2. *This right is also based on Article 11 of the Community Charter of the Fundamental Social Rights of Workers.*
3. *Paragraph 2 of this Article corresponds to Article 191 of the Treaty establishing the European Community.*

Article 13

Freedom of the arts and sciences

The arts and scientific research shall be free of constraint. Academic freedom shall be respected.

Explanation

This right is deduced primarily from the right to freedom of thought and expression. It is to be exercised having regard to Article 1 and may be subject to the limitations authorised by Article 10 of the ECHR.

Article 14

Right to education

1. Everyone has the right to education and to have access to vocational and continuing training.
2. This right includes the possibility to receive free compulsory education.
3. The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right.

Explanation

1. *This Article is based on the common constitutional traditions of Member States and on Article 2 of the Protocol to the ECHR, which reads as follows:*

"No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions."

It was considered useful to extend this right to vocational and continuing training (see point 15 of the Community Charter of the Fundamental Social Rights of Workers and Article 10 of the Social Charter) and to add the principle of free compulsory education. As it is worded, the latter principle merely implies that as regards compulsory education, each child has the possibility of attending an establishment which offers free education. It does not require all establishments which provide education, in particular private ones, to be free of charge. Nor does it exclude certain specific forms of education having to be paid for, if the State takes measures to grant financial compensation. Insofar as the Charter applies to the Union,

this means that in its training policies the Union must respect free compulsory education, but this does not, of course, create new powers. Regarding the right of parents, it must be interpreted in conjunction with the provisions of Article 24.

- 2. Freedom to found public or private educational establishments is guaranteed as one of the aspects of freedom to conduct a business but it is limited by respect for democratic principles and is exercised in accordance with the arrangements defined by national legislation.*

Article 15

Freedom to choose an occupation and right to engage in work

1. Everyone has the right to engage in work and to pursue a freely chosen or accepted occupation.
2. Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State.
3. Nationals of third countries who are authorised to work in the territories of the Member States are entitled to working conditions equivalent to those of citizens of the Union.

Explanation

Freedom to choose an occupation, as enshrined in Article 15(1), is recognised in Court of Justice case law (see inter alia judgment of 14 May 1974, Case 4/73 Nold [1974] ECR 491, paragraphs 12 to 14 of the grounds; judgment of 13 December 1979, Case 44/79 Hauer [1979] ECR 3727; judgment of 8 October 1986, Case 234/85 Keller [1986] ECR 2897, paragraph 8 of the grounds).

This paragraph also draws upon Article 1(2) of the European Social Charter, which was signed on 18 October 1961 and has been ratified by all the Member States, and on point 4 of the Community Charter of the Fundamental Social Rights of Workers of 9 December 1989. The expression "working conditions" is to be understood in the sense of Article 140 of the EC Treaty.

The second paragraph deals with the three freedoms guaranteed by Articles 39, 43 and 49 et seq of the EC Treaty, namely freedom of movement for workers, freedom of establishment and freedom to provide services.

The third paragraph is based on TEC Article 137(3), fourth indent, and on Article 19(4) of the European Social Charter signed on 18 October 1961 and ratified by all the Member States. Article 52(2) of the Charter is therefore applicable. The question of recruitment of seamen having the nationality of third States for the crews of vessels flying the flag of a Member State of the Union is governed by Community law and national legislation and practice.

Article 16

Freedom to conduct a business

The freedom to conduct a business in accordance with Community law and national laws and practices is recognised.

Explanation

This Article is based on Court of Justice case law which has recognised freedom to exercise an economic or commercial activity (see judgments of 14 May 1974, Case 4/73 Nold [1974] ECR 491, paragraph 14 of the grounds, and of 27 September 1979, Case 230-78 SPA Eridiana and others [1979] ECR 2749, paragraphs 20 and 31 of the grounds) and freedom of contract (see inter alia Sukkerfabriken Nykøbing judgment, Case 151/78 [1979] ECR I, paragraph 19 of the grounds, and judgment of 5 October 1999, C-240/97 Spain v. Commission [not yet published], paragraph 99 of

the grounds) and TEC Article 4(1) and (2), which recognises free competition. Of course, this right is to be exercised with respect for Community law and national legislation. It may be subject to the limitations provided for in Article 52(1) of the Charter.

Article 17

Right to property

1. Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law insofar as is necessary for the general interest.
2. Intellectual property shall be protected.

Explanation

This Article is based on Article 1 of the Protocol to the ECHR:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

This is a fundamental right common to all national constitutions. It has been recognised on numerous occasions by the case law of the Court of Justice, initially in the Hauer judgment (13 December 1979, ECR [1979] 3727). The wording has been updated but, in accordance with Article 52(3), the meaning and scope of the right are the same as those of the right guaranteed by the ECHR and the limitations may not exceed those provided for there.

Protection of intellectual property, one aspect of the right of property, is explicitly mentioned in paragraph 2 because of its growing importance and Community secondary legislation. Intellectual property covers not only literary and artistic property but also patent and trademark rights and associated rights. The guarantees laid down in paragraph 1 shall apply as appropriate to intellectual property.

Article 18

Right to asylum

The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty establishing the European Community.

Explanation

The text of the Article is based on TEC Article 63 which requires the Union to respect the Geneva Convention on refugees. Reference should be made to the Protocols relating to the United Kingdom and Ireland annexed to the Treaty of Amsterdam and to Denmark to determine the extent to which those Member States implement Community law in this area and the extent to which this Article is applicable to them. This Article is in line with the Protocol on Asylum annexed to the EC Treaty.

Article 19

Protection in the event of removal, expulsion or extradition

1. Collective expulsions are prohibited.
2. No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.

Explanation

Paragraph 1 of this Article has the same meaning and scope as Article 4 of Protocol No 4 to the ECHR concerning collective expulsion. Its purpose is to guarantee that every decision is based on a specific examination and that no single measure can be taken to expel all persons having the nationality of a particular State (see also Article 13 of the Covenant on Civil and Political Rights).

*Paragraph 2 incorporates case law from the European Court of Human Rights regarding Article 3 of the ECHR (see *Ahmed v. Austria*, judgment of 17 December 1996, [1996] ECR VI-2206 and *Soering*, judgment of 7 July 1989).*

CHAPTER III. EQUALITY

Article 20

Equality before the law

Everyone is equal before the law.

Explanation

This Article corresponds to a principle which is included in all European constitutions and has also been recognised by the Court of Justice as a basic principle of Community law (judgment of 13 November 1984, Case 283/83 Racke [1984] ECR 3791, judgment of 17 April 1997, Case 15/95 EARL [1997] ECR I-1961, and judgment of 13 April 2000, Case 292/97 Karlsson, not yet published).

Article 21

Non-discrimination

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.
2. Within the scope of application of the Treaty establishing the European Community and of the Treaty on European Union, and without prejudice to the special provisions of those Treaties, any discrimination on grounds of nationality shall be prohibited.

Explanation

Paragraph 1 draws on Article 13 of the EC Treaty, Article 14 of the ECHR and Article 11 of the Convention on Human Rights and Biomedicine as regards genetic heritage. Insofar as this corresponds to Article 14 of the ECHR, it applies in compliance with it.

Paragraph 2 corresponds to Article 12 of the EC Treaty and must be applied in compliance with the Treaty.

Article 22

Cultural, religious and linguistic diversity

The Union shall respect cultural, religious and linguistic diversity.

Explanation

This Article is based on Article 6 of the Treaty on European Union and on Article 151(1) and (4) of the EC Treaty concerning culture. It is also inspired by declaration No 11 to the Final Act of the Amsterdam Treaty on the status of churches and non-confessional organisations.

Article 23

Equality between men and women

Equality between men and women must be ensured in all areas, including employment, work and pay.

The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.

Explanation

The first paragraph is based on Articles 2 and 3(2) of the EC Treaty, which impose the objective of promoting equality between men and women on the Community, and on Article 141(3) of the EC Treaty. It draws on Article 20 of the revised European Social Charter of 3 May 1996 and on point 16 of the Community Charter on the rights of workers.

It is also based on Article 141(3) of the EC Treaty and Article 2(4) of Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.

Paragraph 2 takes over in shorter form Article 141(4) of the EC Treaty which provides that the principle of equal treatment does not prevent the maintenance or adoption of measures providing for specific advantages in order to make it easier for the under-represented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers. In accordance with Article 51(2), the present paragraph does not amend Article 141(4) EC.

Article 24

The rights of the child

1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.

2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.
3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.

Explanation

This Article is based on the New York Convention on the Rights of the Child signed on 20 November 1989 and ratified by all the Member States, particularly Articles 3, 9, 12 and 13 thereof.

Article 25

The rights of the elderly

The Union recognises and respects the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life.

Explanation

This Article draws on Article 23 of the revised European Social Charter and Articles 24 and 25 of the Community Charter of the Fundamental Social Rights of Workers. Of course, participation in social and cultural life also covers participation in political life.

Article 26

Integration of persons with disabilities

The Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.

Explanation

The principle set out in this Article is based on Article 15 of the European Social Charter and also draws on Article 23 of the revised Social Charter and point 26 of the Community Charter of the Fundamental Social Rights of Workers.

CHAPTER IV. SOLIDARITY

Article 27

Workers' right to information and consultation within the undertaking

Workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions provided for by Community law and national laws and practices.

Explanation

This Article appears in the revised European Social Charter (Article 21) and in the Community Charter on the rights of workers (points 17 and 18). It applies under the conditions laid down by Community law and by national laws. The reference to appropriate levels refers to the levels laid down by Community law or by national laws and practices, which might include the European level when Community legislation so provides. There is a considerable Community acquis in this field: Articles 138 and 139 of the EC Treaty, and Directives 98/59/EC (collective redundancies), 77/187/EEC (transfers of undertakings) and 94/45/EC (European works councils).

Article 28

Right of collective bargaining and action

Workers and employers, or their respective organisations, have, in accordance with Community law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action.

Explanation

This Article is based on Article 6 of the European Social Charter and on the Community Charter of the Fundamental Social Rights of Workers (points 12 to 14). The right of collective action was recognised by the European Court of Human Rights as one of the elements of trade union rights laid down by Article 11 of the ECHR. As regards the appropriate levels at which collective negotiation might take place, see the explanation given for the above Article. Collective action, including strike action, comes under national laws and practices, including the question of whether it may be carried out in parallel in several Member States.

Article 29

Right of access to placement services

Everyone has the right of access to a free placement service.

Explanation

This Article is based on Article 1(3) of the European Social Charter and point 13 of the Community Charter of the Fundamental Social Rights of Workers.

Article 30

Protection in the event of unjustified dismissal

Every worker has the right to protection against unjustified dismissal, in accordance with Community law and national laws and practices.

Explanation

This Article draws on Article 24 of the revised Social Charter. See also Directive 77/187/EEC on the safeguarding of employees' rights in the event of transfers of undertakings, and Directive 80/987/EEC on the protection of employees in the event of the insolvency of their employer.

Article 31

Fair and just working conditions

1. Every worker has the right to working conditions which respect his or her health, safety and dignity.
2. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

Explanation

1. *This Article is based on Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work. It also draws on Article 3 of the Social Charter and point 19 of the Community Charter on the rights of workers, and, as regards dignity at work, on Article 26 of the revised Social Charter. The expression "working conditions" must be understood in the sense of Article 140 of the EC Treaty.*
2. *Paragraph 2 is based on Directive 93/104/EC concerning certain aspects of the organisation of working time, Article 2 of the European Social Charter and point 8 of the Community Charter on the rights of workers.*

Article 32

Prohibition of child labour and protection of young people at work

The employment of children is prohibited. The minimum age of admission to employment may not be lower than the minimum school-leaving age, without prejudice to such rules as may be more favourable to young people and except for limited derogations.

Young people admitted to work must have working conditions appropriate to their age and be protected against economic exploitation and any work likely to harm their safety, health or physical, mental, moral or social development or to interfere with their education.

Explanation

This Article is based on Directive 94/33/EC on the protection of young people at work, Article 7 of the European Social Charter and points 20 to 23 of the Community Charter of the Fundamental Social Rights of Workers.

Article 33

Family and professional life

1. The family shall enjoy legal, economic and social protection.
2. To reconcile family and professional life, everyone shall have the right to protection from dismissal for a reason connected with maternity and the right to paid maternity leave and to parental leave following the birth or adoption of a child.

Explanation

Article 33(1) is based on Article 16 of the European Social Charter. The second paragraph draws on Council Directive 92/85/EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding and Directive 96/34/EC on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC. It is also *based on Article 8 (protection of maternity)*

of the European Social Charter and draws on Article 27 (right of workers with family responsibilities to equal opportunities and equal treatment) of the revised Social Charter. "Maternity" covers the period from conception to weaning.

Article 34

Social security and social assistance

1. The Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by Community law and national laws and practices.
2. Everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with Community law and national laws and practices.
3. In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Community law and national laws and practices.

Explanation

The principle set out in Article 34(1) is based on Articles 137 and 140 of the EC Treaty and on Article 12 of the European Social Charter and point 10 of the Community Charter on the rights of workers. The Union must respect it when exercising the powers conferred on it by Article 140 of the Treaty establishing the European Community. The reference to social services relates to cases in which such services have been introduced to provide certain advantages but does not imply that

such services must be created where they do not exist. "Maternity" must be understood in the same sense as in the preceding Article.

The second paragraph is based on Article 13(4) of the European Social Charter and point 2 of the Community Charter of the Fundamental Social Rights of Workers and reflects the rules arising from Regulation No 1408/71 and Regulation No 1612/68.

The third paragraph draws on Articles 30 and 31 of the revised Social Charter and point 10 of the Community Charter. The Union must respect it in the context of policies based on Article 137(2) of the Treaty establishing the European Community, particularly the last subparagraph.

Article 35

Health care

Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities.

Explanation

The principles set out in this Article are based on Article 152 of the EC Treaty and on Article 11 of the European Social Charter. The second sentence of the Article takes over Article 152(1).

Article 36

Access to services of general economic interest

The Union recognises and respects access to services of general economic interest as provided for in national laws and practices, in accordance with the Treaty establishing the European Community, in order to promote the social and territorial cohesion of the Union.

Explanation

This Article fully respects Article 16 of the Treaty establishing the European Community and does not create any new right. It merely sets out the principle of respect by the Union for the access to services of general economic interest as provided for by national provisions, when those provisions are compatible with Community legislation.

Article 37

Environmental protection

A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.

Explanation

The principles set out in this Article are based on Articles 2, 6 and 174 of the EC Treaty. It also draws on the provisions of some national constitutions.

Article 38

Consumer Protection

Union policies shall ensure a high level of consumer protection.

Explanation

The principles set out in this Article are based on Article 153 of the EC Treaty.

CHAPTER V. CITIZENS' RIGHTS

Article 39

Right to vote and to stand as a candidate at elections to the European Parliament

1. Every citizen of the Union has the right to vote and to stand as a candidate at elections to the European Parliament in the Member State in which he or she resides, under the same conditions as nationals of that State.
2. Members of the European Parliament shall be elected by direct universal suffrage in a free and secret ballot.

Explanation

Article 39 applies under the conditions laid down by the Treaty, in accordance with Article 52(2) of the Charter. Article 39(1) corresponds to the right guaranteed in Article 19(2) of the EC Treaty and Article 39(2) corresponds to Article 190(1) of that Treaty. Article 39(2) takes over the basic principles of the electoral system in a democratic State.

Article 40**Right to vote and to stand as a candidate at municipal elections**

Every citizen of the Union has the right to vote and to stand as a candidate at municipal elections in the Member State in which he or she resides under the same conditions as nationals of that State.

Explanation

This Article corresponds to the right guaranteed by Article 19(1) of the EC Treaty. In accordance with Article 52(2) of the Charter, it applies under the conditions set out in the Treaty.

Article 41**Right to good administration**

1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union.

2. This right includes:

- the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;
- the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;
- the obligation of the administration to give reasons for its decisions.

3. Every person has the right to have the Community make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.

4. Every person may write to the institutions of the Union in one of the languages of the Treaties and must have an answer in the same language.

Explanation

Article 41 is based on the existence of a Community subject to the rule of law whose characteristics were developed in the case law which enshrined inter alia the principle of good administration (see inter alia Court of Justice judgment of 31 March 1992 in Case C-255/90 P, Burbán [1992] ECR I-2253, and Court of First Instance judgments of 18 September 1995 in Case T-167/94 Nölle [1995] ECR II-2589, and 9 July 1999 in Case T-231/97 New Europe Consulting and others [1999] ECR II-2403). The wording for that right in the first two paragraphs results from the case law (Court of Justice judgment of 15 October 1987 in Case 222/86 Heylens [1987] ECR 4097, paragraph 15 of the grounds, judgment of 18 October 1989 in Case 374/87 Orkem [1989] ECR 3283, judgment of 21 November 1991 in Case C-269/90 TU München [1991] ECR I-5469, and Court of First Instance judgments of 6 December 1994 in Case T-450/93 Lisrestal [1994] ECR II-1177, 18 September 1995 in Case T-167/94 Nölle [1995] ECR II-258), and the wording regarding the obligation to give reasons comes from Article 253 of the EC Treaty.

Paragraph 3 reproduces the right guaranteed by Article 288 of the EC Treaty.

Paragraph 4 reproduces the right guaranteed by the third paragraph of Article 21 of the EC Treaty. In accordance with Article 52(2) of the Charter, those rights are to be applied under the conditions and within the limits defined by the Treaties.

The right to an effective remedy, which is an important aspect of this question, is guaranteed in Article 47 of this Charter.

Article 42

Right of access to documents

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to European Parliament, Council and Commission documents.

Explanation

The right guaranteed in this Article is the right guaranteed by Article 255 of the EC Treaty. In accordance with Article 52(2) of the Charter, it applies under the conditions defined by the Treaty.

Article 43

Ombudsman

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to refer to the Ombudsman of the Union cases of maladministration in the activities of the Community institutions or bodies, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role.

Explanation

The right guaranteed in this Article is the right guaranteed by Articles 21 and 195 of the EC Treaty. In accordance with Article 52(2) of the Charter, it applies under the conditions defined by the Treaty.

Article 44

Right to petition

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to petition the European Parliament.

Explanation

The right guaranteed in this Article is the right guaranteed by Articles 21 and 194 of the EC Treaty. In accordance with Article 52(2) of the Charter, it applies under the conditions defined by the Treaty.

Article 45

Freedom of movement and of residence

1. Every citizen of the Union has the right to move and reside freely within the territory of the Member States.
2. Freedom of movement and residence may be granted, in accordance with the Treaty establishing the European Community, to nationals of third countries legally resident in the territory of a Member State.

Explanation

The right guaranteed by paragraph 1 is the right guaranteed by Article 18 of the EC Treaty. In accordance with Article 52(2) of the Charter, it applies under the conditions and within the limits defined by the Treaty.

Paragraph 2 refers to the power granted to the Community by Article 62(1) and (3) and Article 63(4) of the EC Treaty. Consequently, the granting of this right depends on the institutions exercising that power.

Article 46

Diplomatic and consular protection

Every citizen of the Union shall, in the territory of a third country in which the Member State of which he or she is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that Member State.

Explanation

The right guaranteed by this Article is the right guaranteed by Article 20 of the EC Treaty. In accordance with Article 52(2) of the Charter, it applies under the conditions defined by the Treaty.

CHAPTER VI. JUSTICE**Article 47****Right to an effective remedy and to a fair trial**

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

Legal aid shall be made available to those who lack sufficient resources insofar as such aid is necessary to ensure effective access to justice.

Explanation

The first paragraph is based on Article 13 of the ECHR:

"Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

However, in Community law the protection is more extensive since it guarantees the right to an effective remedy before a court. The Court of Justice enshrined the principle in its judgment of 15 May 1986 (Case 222/84 Johnston [1986] ECR 1651; see also judgment of 15 October 1987, Case 222/86 Heylens [1987] ECR 4097 and judgment of 3 December 1992, Case C-97/91 Borelli [1992] ECR I-6313. According to the Court, this principle also applies to the Member States when they are implementing Community law. The inclusion of this precedent in the Charter is not intended to change the appeal system laid down by the Treaties, and particularly the rules relating to admissibility. This principle is therefore to be implemented according to the procedures laid down in the Treaties. It applies to the institutions of the Union and of Member States when they are implementing Union law and does so for all rights guaranteed by Union law.

The second paragraph corresponds to Article 6(1) of the ECHR which reads as follows: "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice."

In Community law, the right to a fair hearing is not confined to disputes relating to civil law rights and obligations. That is one of the consequences of the fact that the Community is a community based on the rule of law as stated by the Court in Case 294/83, "Les Verts" v. European Parliament (judgment of 23 April 1986, [1988] ECR 1339). Nevertheless, in all respects other than their scope, the guarantees afforded by the ECHR apply in a similar way to the Union.

With regard to the third paragraph, it should be noted that in accordance with the case law of the European Court of Human Rights, provision should be made for legal aid where the absence of such aid would make it impossible to ensure an effective remedy (ECHR Judgment of 9.10.1979, Airey, Series A, Volume 32, 11). There is also a system of legal assistance for cases before the Court of Justice of the European Communities.

Article 48

Presumption of innocence and right of defence

1. Everyone who has been charged shall be presumed innocent until proved guilty according to law.
2. Respect for the rights of the defence of anyone who has been charged shall be guaranteed.

Explanation

Article 48 is the same as Article 6(2) and (3) of the ECHR, which reads as follows:

- "2. *Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.*
3. *Everyone charged with a criminal offence has the following minimum rights:*
 - (a) *to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;*
 - (b) *to have adequate time and facilities for the preparation of his defence;*
 - (c) *to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;*
 - (d) *to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;*
 - (e) *to have the free assistance of an interpreter if he cannot understand or speak the language used in court."*

In accordance with Article 52(3), this right has the same meaning and scope as the right guaranteed by the ECHR.

Article 49

Principles of legality and proportionality of criminal offences and penalties

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national law or international law at the time when it was committed. Nor shall a heavier penalty be imposed than that which was applicable at the time the criminal offence was committed. If, subsequent to the commission of a criminal offence, the law provides for a lighter penalty, that penalty shall be applicable.
2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles recognised by the community of nations.
3. The severity of penalties must not be disproportionate to the criminal offence.

Explanation

This Article follows the traditional principle of the non-retroactivity of laws and criminal sanctions. There has been added the principle of the retroactivity of a more lenient penal law, which exists in a number of Member States and which features in Article 15 of the Covenant on Civil and Political Rights.

Article 7 of the ECHR is worded as follows:

- "1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.*
- 2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations."*

In paragraph 2, the reference to "civilised" nations has been deleted; this does not change the meaning of this paragraph, which refers to crimes against humanity in particular. In accordance with Article 52(3), the right guaranteed here therefore has the same meaning and scope as the right guaranteed by the ECHR.

Paragraph 3 states the general principle of proportionality between penalties and criminal offences which is enshrined in the common constitutional traditions of the Member States and in the case law of the Court of Justice of the Communities.

Article 50

Right not to be tried or punished twice in criminal proceedings for the same criminal offence

No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law.

Explanation

Article 4 of Protocol No 7 to the ECHR reads as follows:

- "1. No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State.*
- 2. The provisions of the preceding paragraph shall not prevent the reopening of the case in accordance with the law and the penal procedure of the State concerned, if there is evidence of new or newly discovered facts, or if there has been a fundamental defect in the previous proceedings, which could affect the outcome of the case.*
- 3. No derogation from this Article shall be made under Article 15 of the Convention."*

The "non bis in idem" principle applies in Community law (see, among the many precedents, the judgment of 5 May 1996, Cases 18/65 and 35/65, Gutmann v. Commission [1966] ECR 103 and a recent case, the decision of the Court of First Instance of 20 April 1999, Joined Cases T-305/94 and others, Limburgse Vinyl Maatschappij NV v. Commission [1999] ECR II-931). The rule prohibiting cumulation refers to cumulation of two penalties of the same kind, that is to say criminal law penalties.

*In accordance with Article 50, the "non bis in idem" principle applies not only within the jurisdiction of one State but also between the jurisdictions of several Member States. That corresponds to the *acquis* in Union law; see Articles 54 to 58 of the Schengen Convention, Article 7 of the Convention on the Protection of the European Communities' Financial Interests and Article 10 of the Convention on the fight against corruption. The very limited exceptions in those Conventions permitting the Member States to derogate from the "non bis in idem" principle are covered by the horizontal clause in Article 52(1) of the Charter concerning limitations. As regards the situations referred to by Article 4 of Protocol No 7, namely the application of the principle within the same Member State, the guaranteed right has the same meaning and the same scope as the corresponding right in the ECHR.*

CHAPTER VII. GENERAL PROVISIONS

Article 51

Scope

1. The provisions of this Charter are addressed to the institutions and bodies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers.

2. This Charter does not establish any new power or task for the Community or the Union, or modify powers and tasks defined by the Treaties.

Explanation

The aim of Article 51 is to determine the scope of the Charter. It seeks to establish clearly that the Charter applies primarily to the institutions and bodies of the Union, in compliance with the principle of subsidiarity. This provision is in keeping with Article 6(2) of the Treaty on European Union, which requires the Union to respect fundamental rights, and with the mandate issued by Cologne European Council. The term "institutions" is enshrined in the EC Treaty, Article 7 of which lists the institutions. The term "body" is commonly used to refer to all the authorities set up by the Treaties or by secondary legislation (see Article 286(1) of the Treaty establishing the European Community).

As regards the Member States, it follows unambiguously from the case law of the Court of Justice that the requirement to respect fundamental rights defined in a Union context is only binding on the Member States when they act in the context of Community law (judgment of 13 July 1989, Case 5/88 Wachauf [1989] ECR 2609; judgment of 18 June 1991, ERT [1991] ECR I-2925). The Court of Justice recently confirmed this case law in the following terms: "In addition, it should be remembered that the requirements flowing from the protection of fundamental rights in the Community legal order are also binding on Member States when they implement Community rules..." (judgment of 13 April 2000, Case C-292/97, paragraph 37 of the grounds, not yet published). Of course this principle, as enshrined in this Charter, applies to the central authorities as well as to regional or local bodies, and to public organisations, when they are implementing Union law.

Paragraph 2 confirms that the Charter may not have the effect of extending the competences and tasks which the Treaties confer on the Community and the Union. Explicit mention is made here of the logical consequences of the principle of subsidiarity and of the fact that the Union only has those powers which have been conferred upon it. The fundamental rights as guaranteed in the Union do not have any effect other than in the context of the powers determined by the Treaty.

Article 52

Scope of guaranteed rights

1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.
2. Rights recognised by this Charter which are based on the Community Treaties or the Treaty on European Union shall be exercised under the conditions and within the limits defined by those Treaties.
3. Insofar as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.

Explanation

The purpose of Article 52 is to set the scope of the rights guaranteed. Paragraph 1 deals with the arrangements for the limitation of rights. The wording is based on the case law of the Court of Justice: "...it is well established in the case law of the Court that restrictions may be imposed on the exercise of fundamental rights, in particular in the context of a common organisation of the market, provided that those restrictions in fact correspond to objectives of general interest pursued by the Community and do not constitute, with regard to the aim pursued, disproportionate and unreasonable interference undermining the very substance of those rights" (judgment of 13 April 2000, Case C-292/97, paragraph 45 of the grounds). The reference to general interests recognised by the Union covers both the objectives mentioned in Article 2 and other interests protected by specific Treaty provisions such as Articles 30 or 39(3) of the EC Treaty.

Paragraph 2 specifies that where a right results from the Treaties it is subject to the conditions and limits laid down by them. The Charter does not alter the system of rights conferred by the Treaties.

Paragraph 3 is intended to ensure the necessary consistency between the Charter and the ECHR by establishing the principle that, insofar as the rights in the present Charter also correspond to rights guaranteed by the ECHR, the meaning and scope of those rights, including authorised limitations, are the same as those laid down by the ECHR. This means in particular that the legislator, in laying down limitations to those rights, must comply with the same standards as are fixed by the detailed limitation arrangements laid down in the ECHR without thereby adversely affecting the autonomy of Community law and of that of the Court of Justice of the European Communities. The reference to the ECHR covers both the Convention and the Protocols to it. The meaning and the scope of the guaranteed rights are determined not only by the text of those instruments, but also by the case law of the European Court of Human Rights and by the Court of Justice of the European Communities. The last sentence of the paragraph is designed to allow the Union to guarantee more extensive protection.

The list of rights which may at the present stage, without precluding developments in the law, legislation and the Treaties, be regarded as corresponding to rights in the ECHR within the meaning of the present paragraph is given hereafter. It does not include rights additional to those in the ECHR.

1. Articles of the Charter where both the meaning and the scope are the same as the corresponding Articles of the ECHR:

- Article 2 corresponds to Article 2 of the ECHR
- Article 4 corresponds to Article 3 of the ECHR
- Article 5(1) and (2) correspond to Article 4 of the ECHR
- Article 6 corresponds to Article 5 of the ECHR
- Article 7 corresponds to Article 8 of the ECHR
- Article 10(1) corresponds to Article 9 of the ECHR
- Article 11 corresponds to Article 10 of the ECHR without prejudice to any restrictions which Community law may impose on Member States' right to introduce the licensing arrangements referred to in the third sentence of Article 10(1) of the ECHR
- Article 17 corresponds to Article 1 of the Protocol to the ECHR
- Article 19(1) corresponds to Article 4 of Protocol No 4
- Article 19(2) corresponds to Article 3 of the ECHR as interpreted by the European Court of Human Rights
- Article 48 corresponds to Article 6(2) and(3) of the ECHR
- Article 49(1) (with the exception of the last sentence) and (2) correspond to Article 7 of the ECHR

2. Articles where the meaning is the same as the corresponding Articles of the ECHR, but where the scope is wider:

- Article 9 covers the same field as Article 12 of the ECHR, but its scope may be extended to other forms of marriage if these are established by national legislation
- Article 12(1) corresponds to Article 11 of the ECHR, but its scope is extended to European Union level
- Article 14(1) corresponds to Article 2 of the Protocol to the ECHR, but its scope is extended to cover access to vocational and continuing training
- Article 14(3) corresponds to Article 2 of the Protocol to the ECHR as regards the rights of parents

- *Article 47(2) and (3) correspond to Article 6(1) of the ECHR, but the limitation to the determination of civil rights and obligations or criminal charges does not apply as regards Union law and its implementation*
- *Article 50 corresponds to Article 4 of Protocol No 7 to the ECHR, but its scope is extended to European Union level between the Courts of the Member States.*
- *Finally, citizens of the European Union may not be considered as aliens in the scope of the application of Community law, because of the prohibition of any discrimination on grounds of nationality. The limitations provided for by Article 16 of the ECHR as regards the rights of aliens therefore do not apply to them in this context.*

Article 53

Level of protection

Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by Union law and international law and by international agreements to which the Union, the Community or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' constitutions.

Explanation

This provision is intended to maintain the level of protection currently afforded within their respective scope by Union law, national law and international law. Owing to its importance, mention is made of the ECHR. The level of protection afforded by the Charter may not, in any instance, be lower than that guaranteed by the ECHR, with the result that the arrangements for limitations may not fall below the level provided for in the ECHR.

Article 54

Prohibition of abuse of rights

Nothing in this Charter shall be interpreted as implying any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms recognised in this Charter or at their limitation to a greater extent than is provided for herein.

Explanation

This Article corresponds to Article 17 of the ECHR:

"Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention."

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PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE**fundamental.rights@consilium.eu.int**

Bruxelles, le 19 octobre 2000**CHARTE 4473/1/00****REV 1 (fr)****CONVENT 49****NOTE DU PRESIDIUM**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne

— Texte des explications relatives au texte complet de la Charte, tel que repris au doc. CHARTE 4487/00 CONVENT 50

Les présentes explications ont été établies sous la responsabilité du Présidium. Elles n'ont pas de valeur juridique et sont simplement destinées à éclairer les dispositions de la Charte.

PRÉAMBULE

Les peuples de l'Europe, en établissant entre eux une union sans cesse plus étroite, ont décidé de partager un avenir pacifique fondé sur des valeurs communes.

Consciente de son patrimoine spirituel et moral, l'Union se fonde sur les valeurs indivisibles et universelles de dignité humaine, de liberté, d'égalité et de solidarité; elle repose sur le principe de la démocratie et le principe de l'État de droit. Elle place la personne au cœur de son action en instituant la citoyenneté de l'Union et en créant un espace de liberté, de sécurité et de justice.

L'Union contribue à la préservation et au développement de ces valeurs communes dans le respect de la diversité des cultures et des traditions des peuples de l'Europe, ainsi que de l'identité nationale des États membres et de l'organisation de leurs pouvoirs publics au niveau national, régional et local; elle cherche à promouvoir un développement équilibré et durable et assure la libre circulation des personnes, des biens, des services et des capitaux, ainsi que la liberté d'établissement.

A cette fin, il est nécessaire, en les rendant plus visibles dans une Charte, de renforcer la protection des droits fondamentaux à la lumière de l'évolution de la société, du progrès social et des développements scientifiques et technologiques.

La présente Charte réaffirme, dans le respect des compétences et des tâches de la Communauté et de l'Union, ainsi que du principe de subsidiarité, les droits qui résultent notamment des traditions constitutionnelles et des obligations internationales communes aux États membres, du traité sur l'Union européenne et des traités communautaires, de la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales, des Chartes sociales adoptées par la Communauté et par le Conseil de l'Europe, ainsi que de la jurisprudence de la Cour de justice des Communautés européennes et de la Cour européenne des droits de l'homme.

La jouissance de ces droits entraîne des responsabilités et des devoirs tant à l'égard d'autrui qu'à l'égard de la communauté humaine et des générations futures.

En conséquence, l'Union reconnaît les droits, les libertés et les principes énoncés ci-après.

CHAPITRE I. DIGNITE

Article 1

Dignité humaine

La dignité humaine est inviolable. Elle doit être respectée et protégée.

Explication

La dignité de la personne humaine n'est pas seulement un droit fondamental en soi, mais constitue la base même des droits fondamentaux. La Déclaration universelle des droits de l'homme de 1948 établit ce principe dans son préambule : "... considérant que la reconnaissance de la dignité inhérente à tous les membres de la famille humaine et de leurs droits égaux et inaliénables constitue le fondement de la liberté, de la justice et de la paix dans le monde."

Il en résulte, notamment, qu'aucun des droits inscrits dans cette charte ne peut être utilisé pour porter atteinte à la dignité d'autrui et que la dignité de la personne humaine fait partie de la substance des droits inscrits dans cette charte. Il ne peut donc y être porté atteinte, même en cas de limitation d'un droit.

Article 2

Droit à la vie

1. Toute personne a droit à la vie.
2. Nul ne peut être condamné à la peine de mort, ni exécuté.

Explication

1. *Le paragraphe 1 de cet article est fondé sur l'article 2, paragraphe 1, première phrase, de la CEDH, dont le texte est le suivant :*

"1. Le droit de toute personne à la vie est protégé par la loi..."

2. *La deuxième phrase de cette disposition, qui concerne la peine de mort, a été rendue caduque par l'entrée en vigueur du protocole n° 6 annexé à la CEDH, dont l'article 1er est libellé comme suit :*

"La peine de mort est abolie. Nul ne peut être condamné à une telle peine ni exécuté."

C'est sur la base de cette disposition qu'est rédigé le paragraphe 2 de l'article 2 de la charte.

3. *Les dispositions de l'article 2 de la Charte correspondent à celles des articles précités de la CEDH et du protocole additionnel. Elles en ont le même sens et la même portée, conformément à l'article 52 § 3 de la Charte. Ainsi, les définitions "négatives" qui figurent dans la CEDH doivent être considérées comme figurant également dans la Charte:*

a) *l'article 2, paragraphe 2, de la CEDH :*

"La mort n'est pas considérée comme infligée en violation de cet article dans les cas où elle résulterait d'un recours à la force rendu absolument nécessaire :

- a. *pour assurer la défense de toute personne contre la violence illégale ;*
- b. *pour effectuer une arrestation régulière ou pour empêcher l'évasion d'une personne régulièrement détenue ;*
- c. *pour réprimer, conformément à la loi, une émeute ou une insurrection."*

b) *l'article 2 du protocole n° 6 annexé à la CEDH :*

"Un Etat peut prévoir dans sa législation la peine de mort pour des actes commis en temps de guerre ou de danger imminent de guerre; une telle peine ne sera appliquée que dans les cas prévus par cette législation et conformément à ses dispositions ...".

Article 3

Droit à l'intégrité de la personne

1. Toute personne a droit à son intégrité physique et mentale.
2. Dans le cadre de la médecine et de la biologie, doivent notamment être respectés:
 - le consentement libre et éclairé de la personne concernée, selon les modalités définies par la loi,
 - l'interdiction des pratiques eugéniques, notamment celles qui ont pour but la sélection des personnes,
 - l'interdiction de faire du corps humain et de ses parties, en tant que tels, une source de profit,
 - l'interdiction du clonage reproductif des êtres humains.

Explication

1. *Les principes contenus dans l'article 3 de la Charte figurent déjà dans la convention sur les droits de l'homme et la biomédecine, adoptée dans le cadre du Conseil de l'Europe (STE 164 et protocole additionnel STE 168). La présente charte ne vise pas à déroger à ces dispositions et ne prohibe en conséquence que le seul clonage reproductif. Elle n'autorise ni ne prohibe les autres formes de clonage. Elle n'empêche donc aucunement le législateur d'interdire les autres formes de clonages.*

2. *La référence aux pratiques eugéniques, notamment celles ayant pour but la sélection des personnes, vise les hypothèses dans lesquelles des programmes de sélection sont organisés et mis en œuvre, comportant par exemple des campagnes de stérilisation, de grossesses forcées, de mariages ethniques obligatoires... tous actes qui sont considérés comme des crimes internationaux par le statut de la Cour pénale internationale adopté à Rome le 17 juillet 1998 (voir article 7 § 1 g).*

Article 4

Interdiction de la torture et des peines ou traitements inhumains ou dégradants

Nul ne peut être soumis à la torture, ni à des peines ou traitements inhumains ou dégradants.

Explication

Le droit figurant à l'article 4 correspond à celui qui est garanti par l'article 3 de la CEDH, dont le libellé est identique: "Nul ne peut être soumis à la torture ni à des peines ou traitements inhumains ou dégradants". En application de l'article 52 paragraphe 3 de la Charte, il a donc le même sens et la même portée que ce dernier article.

Article 5

Interdiction de l'esclavage et du travail forcé

1. Nul ne peut être tenu en esclavage ni en servitude.
2. Nul ne peut être astreint à accomplir un travail forcé ou obligatoire.
3. La traite des êtres humains est interdite.

Explication

1. *Le droit inscrit à l'article 5, paragraphe 1 et 2 correspond à l'article 4, paragraphes 1 et 2, au libellé analogue, de la CEDH. Il a donc le même sens et la même portée que ce dernier article, conformément à l'article 52, paragraphe 3, de la Charte. Il en résulte que:*
 - ☞ *Aucune limitation ne peut affecter de manière légitime le droit prévu au paragraphe 1.*
 - ☞ *Au paragraphe 2, les notions de "travail forcé ou obligatoire" doivent être comprises en tenant compte des définitions "négatives" contenues à l'article 4, paragraphe 3, de la CEDH:*

"N'est pas considéré comme "travail forcé ou obligatoire" au sens du présent article:

 - a. *tout travail requis normalement d'une personne soumise à la détention dans les conditions prévues par l'article 5 de la présente Convention, ou durant sa mise en liberté conditionnelle;*
 - b. *tout service de caractère militaire ou, dans le cas d'objecteurs de conscience dans les pays où l'objection de conscience est reconnue comme légitime, à un autre service à la place du service militaire obligatoire;*
 - c. *tout service requis dans le cas de crises ou de calamités qui menacent la vie ou le bien-être de la communauté;*
 - d. *tout travail ou service formant partie des obligations civiques normales."*
2. *Le paragraphe 3 résulte directement du principe de la dignité de la personne humaine et tient compte des données récentes en matière de criminalité organisées, telles que l'organisation de filières lucratives d'immigration illégale ou d'exploitation sexuelle. La convention Europol contient en annexe la définition suivante qui vise la traite à des fins d'exploitation sexuelle: "Traite des êtres humains: le fait de soumettre une personne au pouvoir réel et illégal d'autres personnes en usant de violence et de menaces ou en abusant d'un rapport d'autorité ou de manœuvres en vue notamment de se livrer à l'exploitation de la prostitution d'autrui, à des formes d'exploitation et de violences sexuelles à l'égard des mineurs ou au commerce lié à l'abandon d'enfants" Le chapitre VI de la convention d'application de l'accord de Schengen qui a été intégré dans l'acquis communautaire, et auquel le Royaume-Uni participe, l'Irlande*

ayant demandé à participer, contient, à l'article 27 § 1, la formule suivante qui vise les filières d'immigration illégale : "Les Parties contractantes s'engagent à instaurer des sanctions appropriées à l'encontre de quiconque aide ou tente d'aider, à des fins lucratives, un étranger à pénétrer ou à séjourner sur le territoire d'une Partie contractante en violation de la législation de cette Partie contractante relative à l'entrée et au séjour des étrangers".

CHAPITRE II. LIBERTES

Article 6

Droit à la liberté et à la sûreté

Toute personne a droit à la liberté et à la sûreté.

Explication

Les droits prévus à l'article 6 correspondent à ceux qui sont garantis par l'article 5 de la CEDH, dont ils ont, conformément à l'article 52, paragraphe 3 de la charte, le même sens et la même portée. Il en résulte que les limitations qui peuvent légitimement leur être apportées ne peuvent excéder les limites permises par la CEDH dans le libellé même de l'article 5:

- "1 Toute personne a droit à la liberté et à la sûreté. Nul ne peut être privé de sa liberté, sauf dans les cas suivants et selon les voies légales :*
- a s'il est détenu régulièrement après condamnation par un tribunal compétent;*
 - b s'il a fait l'objet d'une arrestation ou d'une détention régulières pour insoumission à une ordonnance rendue, conformément à la loi, par un tribunal ou en vue de garantir l'exécution d'une obligation prescrite par la loi;*

- c s'il a été arrêté et détenu en vue d'être conduit devant l'autorité judiciaire compétente, lorsqu'il y a des raisons plausibles de soupçonner qu'il a commis une infraction ou qu'il y a des motifs raisonnables de croire à la nécessité de l'empêcher de commettre une infraction ou de s'enfuir après l'accomplissement de celle-ci;*
 - d s'il s'agit de la détention régulière d'un mineur, décidée pour son éducation surveillée ou de sa détention régulière, afin de le traduire devant l'autorité compétente;*
 - e s'il s'agit de la détention régulière d'une personne susceptible de propager une maladie contagieuse, d'un aliéné, d'un alcoolique, d'un toxicomane ou d'un vagabond;*
 - f s'il s'agit de l'arrestation ou de la détention régulières d'une personne pour l'empêcher de pénétrer irrégulièrement dans le territoire, ou contre laquelle une procédure d'expulsion ou d'extradition est en cours.*
- 2 Toute personne arrêtée doit être informée, dans le plus court délai et dans une langue qu'elle comprend, des raisons de son arrestation et de toute accusation portée contre elle.*
- 3 Toute personne arrêtée ou détenue, dans les conditions prévues au paragraphe 1.c du présent article, doit être aussitôt traduite devant un juge ou un autre magistrat habilité par la loi à exercer des fonctions judiciaires et a le droit d'être jugée dans un délai raisonnable, ou libérée pendant la procédure. La mise en liberté peut être subordonnée à une garantie assurant la comparution de l'intéressé à l'audience.*
- 4 Toute personne privée de sa liberté par arrestation ou détention a le droit d'introduire un recours devant un tribunal, afin qu'il statue à bref délai sur la légalité de sa détention et ordonne sa libération si la détention est illégale.*
- 5 Toute personne victime d'une arrestation ou d'une détention dans des conditions contraires aux dispositions de cet article a droit à réparation."*

La Charte devant s'appliquer dans le cadre de l'Union, les droits inscrits à l'article 6 doivent être respectés tout particulièrement lorsque l'Union adopte, conformément au titre VI du traité sur l'Union européenne, des décisions-cadre pour la définition de dispositions communes minimales en ce qui concerne la qualification des infractions et les peines.

Article 7

Respect de la vie privée et familiale

Toute personne a droit au respect de sa vie privée et familiale, de son domicile et de ses communications.

Explication

Les droits garantis à l'article 7 correspondent à ceux garantis par l'article 8 de la CEDH. Pour tenir compte de l'évolution technique le mot "communications" a été substitué à celui de correspondance.

Conformément à l'article 52, paragraphe 3, ce droit a le même sens et la même portée que celle de l'article correspondant de la CEDH. Il en résulte que les limitations susceptibles de leur être légitimement apportées sont les mêmes que celles tolérées dans le cadre de l'article 8 en question:

- "1 Toute personne a droit au respect de sa vie privée et familiale, de son domicile et de sa correspondance.*
- 2 Il ne peut y avoir ingérence d'une autorité publique dans l'exercice de ce droit que pour autant que cette ingérence est prévue par la loi et qu'elle constitue une mesure qui, dans une société démocratique, est nécessaire à la sécurité nationale, à la sûreté publique, au bien-être économique du pays, à la défense de l'ordre et à la prévention des infractions pénales, à la protection de la santé ou de la morale, ou à la protection des droits et libertés d'autrui."*

Article 8

Protection des données à caractère personnel

1. Toute personne a droit à la protection des données à caractère personnel la concernant.

2. Ces données doivent être traitées loyalement, à des fins déterminées et sur la base du consentement de la personne concernée ou en vertu d'un autre fondement légitime prévu par la loi. Toute personne a le droit d'accéder aux données collectées la concernant et d'en obtenir la rectification.
3. Le respect de ces règles est soumis au contrôle d'une autorité indépendante.

Explication

Cet article se fonde sur l'article 286 du traité instituant la Communauté européenne et sur la directive 95/46/CE du Parlement européen et du Conseil relative à la protection des personnes physiques à l'égard du traitement des données à caractère personnel et à la libre circulation de ces données (JO n° L 281 du 23.11.95), ainsi que sur l'article 8 de la CEDH et sur la Convention du Conseil de l'Europe pour la protection des personnes à l'égard du traitement automatisé des données à caractère personnel du 28 janvier 1981, ratifiée par tous les Etats membres. Le droit à la protection des données à caractère personnel s'exerce dans les conditions prévues par la directive susvisée et peut être limité dans les conditions prévues par l'article 52 de la Charte.

Article 9

Droit de se marier et droit de fonder une famille

Le droit de se marier et le droit de fonder une famille sont garantis selon les lois nationales qui en régissent l'exercice.

Explication

Cet article se fonde sur l'article 12 de la CEDH qui se lit ainsi : " A partir de l'âge nubile, l'homme et la femme ont le droit de se marier et de fonder une famille selon les lois nationales régissant l'exercice de ce droit." La rédaction de ce droit a été modernisée afin de recouvrir les cas dans lesquels les législations nationales reconnaissent d'autres voies que le mariage pour fonder une famille. Cet article n'interdit, ni n'impose l'octroi du statut du mariage à des unions entre personnes du même sexe. Ce droit est donc semblable à celui prévu par la CEDH, mais sa portée peut être plus étendue lorsque la législation nationale le prévoit.

Article 10

Liberté de pensée, de conscience et de religion

1. Toute personne a droit à la liberté de pensée, de conscience et de religion. Ce droit implique la liberté de changer de religion ou de conviction, ainsi que la liberté de manifester sa religion ou sa conviction individuellement ou collectivement, en public ou en privé, par le culte, l'enseignement, les pratiques et l'accomplissement des rites.
2. Le droit à l'objection de conscience est reconnu selon les lois nationales qui en régissent l'exercice.

Explication

Le droit garanti au paragraphe 1 correspond au droit garanti à l'article 9 de la CEDH et, conformément à l'article 52, paragraphe 3, il a le même sens et la même portée que celui-ci. Les limitations doivent de ce fait respecter le paragraphe 2 de cet article 9 qui se lit ainsi : "La liberté de manifester sa religion ou ses convictions ne peut faire l'objet d'autres restrictions que celles qui, prévues par la loi, constituent des mesures nécessaires, dans une société démocratique, à la sécurité publique, à la protection de l'ordre, de la santé ou de la morale publiques, ou à la protection des droits et libertés d'autrui."

Le droit garanti au paragraphe 2 correspond aux traditions constitutionnelles nationales et à l'évolution des législations nationales sur ce point.

Article 11

Liberté d'expression et d'information

1. Toute personne a droit à la liberté d'expression. Ce droit comprend la liberté d'opinion et la liberté de recevoir ou de communiquer des informations ou des idées sans qu'il puisse y avoir ingérence d'autorités publiques et sans considération de frontières.
2. La liberté des médias et leur pluralisme sont respectés.

Explication

1. *L'article 11 correspond à l'article 10 de la CEDH qui se lit ainsi :*

"1 Toute personne a droit à la liberté d'expression. Ce droit comprend la liberté d'opinion et la liberté de recevoir ou de communiquer des informations ou des idées sans qu'il puisse y avoir ingérence d'autorités publiques et sans considération de frontière. Le présent article n'empêche pas les Etats de soumettre les entreprises de radiodiffusion, de cinéma ou de télévision à un régime d'autorisations.

- 2 *L'exercice de ces libertés comportant des devoirs et des responsabilités peut être soumis à certaines formalités, conditions, restrictions ou sanctions prévues par la loi, qui constituent des mesures nécessaires, dans une société démocratique, à la sécurité nationale, à l'intégrité territoriale ou à la sûreté publique, à la défense de l'ordre et à la prévention du crime, à la protection de la santé ou de la morale, à la protection de la réputation ou des droits d'autrui, pour empêcher la divulgation d'informations confidentielles ou pour garantir l'autorité et l'impartialité du pouvoir judiciaire."*

En application de l'article 52, paragraphe 3, ce droit à le même sens et la même portée que celui garanti par la CEDH. Les limitations qui peuvent être apportées à ce droit ne peuvent donc excéder celles prévues dans le paragraphe 2 de l'article 10, sans préjudice des restrictions que le droit communautaire de la concurrence peut apporter à la faculté des Etats membres d'instaurer les régimes d'autorisation visés à l'article 10 § 1, troisième phrase de la CEDH.

2. *Le paragraphe 2 de cet article explicite les conséquences du paragraphe 1 en ce qui concerne la liberté des médias. Il est notamment fondé sur la jurisprudence de la Cour relative à la télévision notamment dans l'affaire C-288/89 (arrêt du 25 juillet 1991, Stichting Collectieve Antennevoorziening Gouda e.a.; Rec. I-4007) et sur le protocole sur le système de radiodiffusion publique dans les Etats membres, annexé au traité CE ainsi que sur la directive 89/552/CE du Conseil (voir notamment son 17e considérant).*

Article 12

Liberté de réunion et d'association

1. Toute personne a droit à la liberté de réunion pacifique et à la liberté d'association à tous les niveaux, notamment dans les domaines politique, syndical et civique, ce qui implique le droit de toute personne de fonder avec d'autres des syndicats et de s'y affilier pour la défense de ses intérêts.
2. Les partis politiques au niveau de l'Union contribuent à l'expression de la volonté politique des citoyens de l'Union.

Explication

1. *Les dispositions du paragraphe 1 de cet article correspondent aux dispositions de l'article 11 de la CEDH qui se lit ainsi:*
"1 Toute personne a droit à la liberté de réunion pacifique et à la liberté d'association, y compris le droit de fonder avec d'autres des syndicats et de s'affilier à des syndicats pour la défense de ses intérêts.

- 2 *L'exercice de ces droits ne peut faire l'objet d'autres restrictions que celles qui, prévues par la loi, constituent des mesures nécessaires, dans une société démocratique, à la sécurité nationale, à la sûreté publique, à la défense de l'ordre et à la prévention du crime, à la protection de la santé ou de la morale ou à la protection des droits et libertés d'autrui. Le présent article n'interdit pas que des restrictions légitimes soient imposées à l'exercice de ces droits par les membres des forces armées, de la police ou de l'administration de l'Etat."*

Les dispositions du paragraphe 1 du présent article 12 ont le même sens que celles de la CEDH, mais leur portée est plus étendue étant donné qu'elles peuvent s'appliquer à tous les niveaux, ce qui inclut le niveau européen. Conformément à l'article 52 § 3 de la Charte, les limitations à ce droit ne peuvent excéder celles considérées comme pouvant être légitimes en vertu du paragraphe 2 de l'article 11 de la CEDH.

2. *Ce droit se fonde également sur l'article 11 de la Charte communautaire de droits sociaux fondamentaux des travailleurs.*
3. *Le paragraphe 2 de cet article correspond à l'article 191 du traité instituant la Communauté européenne.*

Article 13

Liberté des arts et des sciences

Les arts et la recherche scientifique sont libres. La liberté académique est respectée.

Explication

Ce droit est déduit en premier lieu des libertés de pensée et d'expression. Il s'exerce dans le respect de l'article 1er et peut être soumis aux limitations autorisées par l'article 10 de la CEDH.

Article 14

Droit à l'éducation

1. Toute personne a droit à l'éducation, ainsi qu'à l'accès à la formation professionnelle et continue.
2. Ce droit comporte la faculté de suivre gratuitement l'enseignement obligatoire.
3. La liberté de créer des établissements d'enseignement dans le respect des principes démocratiques, ainsi que le droit des parents d'assurer l'éducation et l'enseignement de leurs enfants conformément à leurs convictions religieuses, philosophiques et pédagogiques, sont respectés selon les lois nationales qui en régissent l'exercice.

Explication

1. *Cet article est inspiré tant des traditions constitutionnelles communes aux Etats membres que de l'article 2 du protocole additionnel à la CEDH qui se lit ainsi :*
"Nul ne peut se voir refuser le droit à l'instruction. L'Etat, dans l'exercice des fonctions qu'il assumera dans le domaine de l'éducation et de l'enseignement, respectera le droit des parents d'assurer cette éducation et cet enseignement conformément à leurs convictions religieuses et philosophiques."
Il a été jugé utile d'étendre ce droit à la formation professionnelle et continue (voir point 15 de la charte communautaire des droits sociaux fondamentaux des travailleurs et article 10 de la charte sociale) ainsi que d'ajouter le principe de gratuité de l'enseignement obligatoire. Tel qu'il est formulé, ce dernier principe implique seulement que pour l'enseignement obligatoire, chaque enfant ait la possibilité d'accéder à un établissement qui pratique la gratuité. Il n'impose pas que tous les établissements, notamment privés, qui dispensent cet enseignement soient gratuits. Il n'interdit pas non plus que certaines formes spécifiques d'enseignement puissent être payantes dès lors que l'Etat prend des mesures destinées à octroyer une compensation financière. Dans la mesure où la Charte s'applique à l'Union,

ceci signifie que dans le cadre de ses politiques de formation, l'Union doit respecter la gratuité de l'enseignement obligatoire, mais cela ne crée bien entendu pas de nouvelles compétences. En ce qui concerne le droit des parents, il doit être interprété en relation avec les dispositions de l'article 24.

- 2. La liberté de création d'établissements, publics ou privés, d'enseignement est garantie comme un des aspects de la liberté d'entreprendre, mais elle est limitée par le respect des principes démocratiques et s'exerce selon les modalités définies par les législations nationales.*

Article 15

Liberté professionnelle et droit de travailler

1. Toute personne a le droit de travailler et d'exercer une profession librement choisie ou acceptée.
2. Tout citoyen ou toute citoyenne de l'Union a la liberté de chercher un emploi, de travailler, de s'établir ou de fournir des services dans tout État membre.
3. Les ressortissants des pays tiers qui sont autorisés à travailler sur le territoire des États membres ont droit à des conditions de travail équivalentes à celles dont bénéficient les citoyens ou citoyennes de l'Union.

Explication

La liberté professionnelle, consacrée au premier paragraphe de l'article 15, est reconnue dans la jurisprudence de la Cour de justice (voir, i.a., les arrêts du 14 mai 1974, aff. 4/73, Nold, Rec. 1974, 491, no. 12 - 14; du 13 décembre 1979, aff. 44/79, Hauer, Rec. 1979 p. 3727; du 8 octobre 1986, aff. 234/85, Keller, Rec. 1986, 2897, no. 8). Ce paragraphe s'inspire également de l'article 1

paragraphe 2 de la Charte sociale européenne signée le 18 octobre 1961, ratifiée par tous les Etats membres, et du point 4 de la Charte communautaire des droits sociaux fondamentaux des travailleurs du 9 décembre 1989. L'expression "conditions de travail" doit être entendue au sens de l'article 140 du traité CE.

Le deuxième paragraphe reprend les trois libertés garanties par les articles 39, 43 et 49 et svts. du traité CE, à savoir la libre circulation des travailleurs, la liberté d'établissement et la libre prestation des services.

Le troisième paragraphe se fonde sur l'article 137 (3), quatrième tiret TCE, ainsi que sur l'article 19 No. 4 de la Charte sociale européenne, signée le 18 octobre 1961, ratifiée par tous les Etats membres. L'article 52 § 2 de la Charte est donc applicable. La question du recrutement de marins ayant la nationalité d'Etats tiers dans les équipages de navires battant pavillon d'un Etat membre de l'Union est réglée par le droit communautaire et les législations et pratiques nationales.

Article 16

Liberté d'entreprise

La liberté d'entreprise est reconnue conformément au droit communautaire et aux législations et pratiques nationales.

Explication

Cet article se fonde sur la jurisprudence de la Cour de justice qui a reconnu la liberté d'exercer une activité économique ou commerciale (voir les arrêts du 14 mai 1974, aff. 4/73, Nold, Rec. 1974, 491, no. 14; et du 27 septembre 1979, aff. 230-78, SPA Eridania et a., Rec. 1979, 2749, no. 20 et 31) et la liberté contractuelle (voir, i.a., les arrêts "Sukkerfabriken Nykoebing", aff. 151/78, Rec. 1979, 1, no. 19; 5 octobre 1999, Espagne c. Commission, C-240/97 [non encore publié] no. 99), ainsi que

sur l'article 4 (1) et (2) TCE qui reconnaît la liberté de concurrence. Ce droit s'exerce bien entendu dans le respect du droit communautaire et des législations nationales. Il peut être soumis aux limitations prévues à l'article 52 § 1 de la Charte.

Article 17

Droit de propriété

1. Toute personne a le droit de jouir de la propriété des biens qu'elle a acquis légalement, de les utiliser, d'en disposer et de les léguer. Nul ne peut être privé de sa propriété, si ce n'est pour cause d'utilité publique, dans des cas et conditions prévus par une loi et moyennant en temps utile une juste indemnité pour sa perte. L'usage des biens peut être réglementé par la loi dans la mesure nécessaire à l'intérêt général.
2. La propriété intellectuelle est protégée.

Explication

Cet article correspond à l'article 1er du protocole additionnel à la CEDH :

"Toute personne physique ou morale a droit au respect de ses biens. Nul ne peut être privé de sa propriété que pour cause d'utilité publique et dans les conditions prévues par la loi et les principes généraux du droit international.

Les dispositions précédentes ne portent pas atteinte au droit que possèdent les Etats de mettre en vigueur les lois qu'ils jugent nécessaires pour réglementer l'usage des biens conformément à l'intérêt général ou pour assurer le paiement des impôts ou d'autres contributions ou des amendes."

Il s'agit d'un droit fondamental commun à toutes les constitutions nationales. Il a été consacré à des maintes reprises par la jurisprudence de la Cour de justice et en premier lieu dans l'arrêt Hauer (13 décembre 1979, Rec. p. 3727). La rédaction a été modernisée, mais, conformément à l'article 52 § 3, ce droit a le même sens et la même portée que celui garanti par CEDH et les limitations prévues par celle-ci ne peuvent être excédées.

La protection de la propriété intellectuelle, qui est un des aspects du droit de propriété, fait l'objet d'une mention explicite au paragraphe 2 en raison de son importance croissante et du droit communautaire dérivé. La propriété intellectuelle couvre, outre la propriété littéraire et artistique, le droit des brevets et des marques ainsi que les droits voisins. Les garanties prévues au paragraphe 1 s'appliquent de façon appropriée à la propriété intellectuelle.

Article 18

Droit d'asile

Le droit d'asile est garanti dans le respect des règles de la convention de Genève du 28 juillet 1951 et du protocole du 31 janvier 1967 relatifs au statut des réfugiés et conformément au traité instituant la Communauté européenne.

Explication

Le texte de l'article se fonde sur l'article 63 CE qui impose à l'Union de respecter la convention de Genève sur les réfugiés. Il convient de se référer aux dispositions des protocoles relatifs au Royaume-Uni et à l'Irlande annexés au traité d'Amsterdam ainsi qu'au Danemark afin de déterminer dans quelle mesure ces Etats membres mettent en œuvre le droit communautaire en la matière et dans quelle mesure cet article leur est applicable. Cet article respecte le protocole relatif à l'asile annexé au traité CE.

Article 19

Protection en cas d'éloignement, d'expulsion et d'extradition

1. Les expulsions collectives sont interdites.
2. Nul ne peut être éloigné, expulsé ou extradé vers un État où il existe un risque sérieux qu'il soit soumis à la peine de mort, à la torture ou à d'autres peines ou traitements inhumains ou dégradants.

Explication

Le paragraphe 1 de cet article a le même sens et la même portée que l'article 4 du protocole additionnel n° 4 à la CEDH en ce qui concerne les expulsions collectives. Il vise à garantir que chaque décision fasse l'objet d'un examen spécifique et que l'on ne puisse décider par une mesure unique d'expulser toutes les personnes ayant la nationalité d'un Etat déterminé (voir aussi l'article 13 du Pacte sur les droits civils et politiques).

*Le paragraphe 2 incorpore la jurisprudence de la Cour européenne des droits de l'homme relative à l'article 3 de la CEDH (voir *Ahmed c. Autriche*, arrêt du 17 décembre 1996, Rec.1996, VI-.2206 et *Soering*, arrêt du 7 Juillet 1989).*

CHAPITRE III. EGALITE

Article 20

Égalité en droit

Toutes les personnes sont égales en droit.

Explication

Cet article correspond au principe qui est inscrit dans toutes les constitutions européennes et que la Cour a jugé être un principe fondamental du droit communautaire (arrêt du 13 novembre 1984, Racke, affaire 283/83, rec. 1984, p. 3791, arrêt du 17 avril 1997, c-15/95, EARL, rec.1997, I-1961 et arrêt du 13 avril 2000, C-292/97, Karlsson, non encore publié).

Article 21

Non-discrimination

1. Est interdite, toute discrimination fondée notamment sur le sexe, la race, la couleur, les origines ethniques ou sociales, les caractéristiques génétiques, la langue, la religion ou les convictions, les opinions politiques ou toute autre opinion, l'appartenance à une minorité nationale, la fortune, la naissance, un handicap, l'âge ou l'orientation sexuelle.
2. Dans le domaine d'application du traité instituant la Communauté européenne et du traité sur l'Union européenne, et sans préjudice des dispositions particulières desdits traités, toute discrimination fondée sur la nationalité est interdite.

Explication

Le paragraphe premier s'inspire de l'article 13 du traité CE et de l'article 14 de la CEDH ainsi que de l'article 11 de la convention sur les droits de l'homme et la biomédecine en ce qui concerne le patrimoine génétique. Pour autant qu'il coïncide avec l'article 14 de la CEDH, il s'applique conformément à celui-ci.

Le paragraphe 2 correspond à l'article 12 du Traité CE et doit s'appliquer conformément à celui-ci.

Article 22**Diversité culturelle, religieuse et linguistique**

L'Union respecte la diversité culturelle, religieuse et linguistique.

Explication

Cet article se fonde sur l'article 6 du traité sur l'Union européenne et sur l'article 151 paragraphes 1 et 4 du traité CE relatif à la culture. Il s'inspire également de la déclaration n° 11 à l'acte final du traité d'Amsterdam sur le statut des Eglises et des organisations non confessionnelles.

Article 23**Égalité entre hommes et femmes**

L'égalité entre les hommes et les femmes doit être assurée dans tous les domaines, y compris en matière d'emploi, de travail et de rémunération.

Le principe de l'égalité n'empêche pas le maintien ou l'adoption de mesures prévoyant des avantages spécifiques en faveur du sexe sous-représenté.

Explication

L'alinéa 1 de cet article se fonde sur les articles 2 et 3, paragraphe 2, du traité CE qui imposent comme objectif à la Communauté de promouvoir l'égalité entre les hommes et les femmes et sur l'article 141 § 3 du traité CE. Il s'inspire de l'article 20 de la Charte sociale européenne révisée du 3.5.1996 et du point 16 de la Charte communautaire des droits des travailleurs.

Il se fonde également sur l'article 141 § 3 du traité CE et sur l'article 2 § 4 de la directive 76/207/CEE du Conseil relative à la mise en œuvre du principe de l'égalité de traitement entre hommes et femmes en ce qui concerne l'accès à l'emploi, à la formation et à la promotion professionnelles, et les conditions de travail.

L'alinéa 2 reprend, dans une formule plus courte, l'article 141 § 4 du traité CE selon lequel le principe d'égalité de traitement n'empêche pas le maintien ou l'adoption de mesures prévoyant des avantages spécifiques destinés à faciliter l'exercice d'une activité professionnelle par le sexe sous-représenté ou à prévenir ou compenser des désavantages dans la carrière professionnelle. Conformément à l'article 51 § 2, le présent paragraphe ne modifie pas l'article 141 § 4 CE.

Article 24

Droits de l'enfant

1. Les enfants ont droit à la protection et aux soins nécessaires à leur bien-être. Ils peuvent exprimer leur opinion librement. Celle-ci est prise en considération pour les sujets qui les concernent, en fonction de leur âge et de leur maturité.

2. Dans tous les actes relatifs aux enfants, qu'ils soient accomplis par des autorités publiques ou des institutions privées, l'intérêt supérieur de l'enfant doit être une considération primordiale.
3. Tout enfant a le droit d'entretenir régulièrement des relations personnelles et des contacts directs avec ses deux parents, sauf si cela est contraire à son intérêt.

Explication

Cet article se fonde sur la Convention de New York sur les Droits de l'enfant, signée le 20 novembre 1989, ratifiée par tous les Etats membres, et notamment sur les articles 3, 9, 12 et 13 de ladite Convention.

Article 25

Droits des personnes âgées

L'Union reconnaît et respecte le droit des personnes âgées à mener une vie digne et indépendante et à participer à la vie sociale et culturelle.

Explication

Cet article est inspiré de l'article 23 de la Charte sociale européenne révisée et des articles 24 et 25 de la Charte communautaire des droits sociaux fondamentaux des travailleurs. La participation à la vie sociale et culturelle recouvre bien entendu la participation à la vie politique.

Article 26

Intégration des personnes handicapées

L'Union reconnaît et respecte le droit des personnes handicapées à bénéficier de mesures visant à assurer leur autonomie, leur intégration sociale et professionnelle et leur participation à la vie de la communauté.

Explication

Le principe contenu dans cet article se fonde sur l'article 15 de la charte sociale européenne et s'inspire également de l'article 23 de la Charte sociale révisée et du point 26 de la Charte communautaire des droits sociaux fondamentaux des travailleurs.

CHAPITRE IV. SOLIDARITE

Article 27

Droit à l'information et à la consultation des travailleurs au sein de l'entreprise

Les travailleurs ou leurs représentants doivent se voir garantir, aux niveaux appropriés, une information et une consultation en temps utile, dans les cas et conditions prévus par le droit communautaire et les législations et pratiques nationales.

Explication

Cet article figure dans la Charte sociale européenne révisée (article 21) et la Charte communautaire des droits des travailleurs (points 17 et 18). Il s'applique dans les conditions prévues par le droit communautaire et les droits nationaux. La référence aux niveaux appropriés renvoie aux niveaux prévus par le droit communautaire ou par le droit et les pratiques nationales, ce qui peut inclure le niveau européen lorsque la législation communautaire le prévoit. L'acquis communautaire dans ce domaine est important : article 138 et 139 du traité CE, directives 98/59/CE (licenciements collectifs), 77/187/CEE (transferts d'entreprises) et 94/45/CE (comités d'entreprise européens).

Article 28

Droit de négociation et d'actions collectives

Les travailleurs et les employeurs, ou leurs organisations respectives, ont, conformément au droit communautaire et aux législations et pratiques nationales, le droit de négocier et de conclure des conventions collectives aux niveaux appropriés et de recourir, en cas de conflits d'intérêts, à des actions collectives pour la défense de leurs intérêts, y compris la grève.

Explication

Cet article se fonde sur l'article 6 de la Charte sociale européenne, ainsi que sur la Charte communautaire des droits sociaux fondamentaux des travailleurs (points 12 à 14). Le droit à l'action collective a été reconnu par la Cour européenne des droits de l'homme comme l'un des éléments du droit syndical posé par l'article 11 de la CEDH. En ce qui concerne les niveaux appropriés auxquels peut avoir lieu la négociation collective, voir les explications données sous l'article précédent. Les actions collectives, parmi lesquelles la grève, relèvent des législations et des pratiques nationales, y compris la question de savoir si elles peuvent être menées de façon parallèle dans plusieurs Etats membres.

Article 29

Droit d'accès aux services de placement

Toute personne a le droit d'accéder à un service gratuit de placement.

Explication

Cet article se fonde sur l'article 1 § 3 de la Charte sociale européenne, ainsi que sur le point 13 de la Charte communautaire des droits sociaux fondamentaux des travailleurs.

Article 30

Protection en cas de licenciement injustifié

Tout travailleur a droit à une protection contre tout licenciement injustifié, conformément au droit communautaire et aux législations et pratiques nationales.

Explication

Cet article s'inspire de l'article 24 de la Charte sociale révisée. Voir aussi les directives 77/187 sur la protection des droits des travailleurs en cas de transferts d'entreprises, 80/987 sur la protection des travailleurs en cas d'insolvabilité.

Article 31

Conditions de travail justes et équitables

1. Tout travailleur a droit à des conditions de travail qui respectent sa santé, sa sécurité et sa dignité.
2. Tout travailleur a droit à une limitation de la durée maximale du travail et à des périodes de repos journalier et hebdomadaire, ainsi qu'à une période annuelle de congés payés.

Explication

1. *L'article 31 se fonde sur la directive 89/391/CEE concernant la mise en œuvre de mesures visant à promouvoir l'amélioration de la sécurité et de la santé des travailleurs au travail. Il s'inspire également de l'article 3 de la Charte sociale et du point 19 de la Charte communautaire des droits des travailleurs ainsi que, pour ce qui concerne le droit à la dignité dans le travail, de l'article 26 de la Charte sociale révisée. L'expression "conditions de travail" doit être entendue au sens de l'article 140 du traité CE.*
2. *Le paragraphe 2 se fonde sur la directive 93/104/CE concernant certains aspects de l'aménagement du temps de travail, ainsi que sur de l'article 2 de la Charte sociale européenne et sur le point 8 de la Charte communautaire des droits des travailleurs.*

Article 32

Interdiction du travail des enfants et protection des jeunes au travail

Le travail des enfants est interdit. L'âge minimal d'admission au travail ne peut être inférieur à l'âge auquel cesse la période de scolarité obligatoire, sans préjudice des règles plus favorables aux jeunes et sauf dérogations limitées.

Les jeunes admis au travail doivent bénéficier de conditions de travail adaptées à leur âge et être protégés contre l'exploitation économique ou contre tout travail susceptible de nuire à leur sécurité, à leur santé, à leur développement physique, mental, moral ou social ou de compromettre leur éducation.

Explication

Cet article se fonde sur la directive 94/33/CE relative à la protection des jeunes au travail, ainsi que sur l'article 7 de la Charte sociale européenne et sur les points 20 à 23 de la Charte communautaire des droits sociaux fondamentaux des travailleurs.

Article 33

Vie familiale et vie professionnelle

1. La protection de la famille est assurée sur le plan juridique, économique et social.
2. Afin de pouvoir concilier vie familiale et vie professionnelle, toute personne a le droit d'être protégée contre tout licenciement pour un motif lié à la maternité, ainsi que le droit à un congé de maternité payé et à un congé parental à la suite de la naissance ou de l'adoption d'un enfant.

Explication

Le premier paragraphe de l'article 33 est fondé sur l'article 16 de la Charte sociale européenne. Le deuxième paragraphe est inspiré de la directive 92/85/CEE du Conseil concernant la mise en œuvre de mesures visant à promouvoir l'amélioration de la sécurité et de la santé des travailleuses enceintes, accouchées ou allaitantes au travail et de la directive 96/34/CE concernant l'accord-cadre sur le congé parental conclu par l'UNICE, le CEEP et la CES. Il se fonde également sur

l'article 8 (protection de la maternité) de la Charte sociale européenne et s'inspire de l'article 27 (droit des travailleurs ayant des responsabilités familiales à l'égalité des chances et de traitement) de la Charte sociale révisée. Le terme de maternité recouvre la période allant de la conception à l'allaitement.

Article 34

Sécurité sociale et aide sociale

1. L'Union reconnaît et respecte le droit d'accès aux prestations de sécurité sociale et aux services sociaux assurant une protection dans des cas tels que la maternité, la maladie, les accidents du travail, la dépendance ou la vieillesse, ainsi qu'en cas de perte d'emploi, selon les modalités établies par le droit communautaire et les législations et pratiques nationales.
2. Toute personne qui réside et se déplace légalement à l'intérieur de l'Union a droit aux prestations de sécurité sociale et aux avantages sociaux, conformément au droit communautaire et aux législations et pratiques nationales.
3. Afin de lutter contre l'exclusion sociale et la pauvreté, l'Union reconnaît et respecte le droit à une aide sociale et à une aide au logement destinées à assurer une existence digne à tous ceux qui ne disposent pas de ressources suffisantes, selon les modalités établies par le droit communautaire et les législations et pratiques nationales.

Explication

Le principe énoncé au premier paragraphe de l'article 34 se fonde sur les articles 137 et 140 du traité CE ainsi que sur l'article 12 de la Charte sociale européenne et sur le point 10 de la Charte communautaire des droits des travailleurs. Il doit être respecté par l'Union lorsqu'elle met en œuvre les compétences que lui confère l'article 140 du traité instituant la Communauté européenne. La référence à des services sociaux vise les cas dans lesquels de tels services ont été instaurés pour

assurer certaines prestations mais n'implique aucunement que de tels services doivent être créés quand il n'en existent pas. L'expression "maternité" doit être entendue dans le même sens que dans l'article précédent.

Le deuxième paragraphe se fonde sur l'article 13 § 4 de la Charte sociale européenne, ainsi que sur le point 2 de la Charte communautaire des droits sociaux fondamentaux des travailleurs et reflète les règles qui découlent du règlement 1408/71 et du règlement 1612/68.

Le troisième paragraphe s'inspire des articles 30 et 31 de la Charte sociale révisée, ainsi que du point 10 de la Charte communautaire. Il doit être respecté par l'Union dans le cadre des politiques fondées sur l'article 137 § 2 du traité instituant la Communauté européenne et notamment son dernier alinéa.

Article 35

Protection de la santé

Toute personne a le droit d'accéder à la prévention en matière de santé et de bénéficier de soins médicaux dans les conditions établies par les législations et pratiques nationales. Un niveau élevé de protection de la santé humaine est assuré dans la définition et la mise en oeuvre de toutes les politiques et actions de l'Union.

Explication

Les principes contenus dans cet article se fondent sur l'article 152 du traité CE, ainsi que sur l'article 11 de la Charte sociale européenne. La seconde phrase de l'article reproduit le paragraphe 1 de l'article 152.

Article 36

Accès aux services d'intérêt économique général

L'Union reconnaît et respecte l'accès aux services d'intérêt économique général tel qu'il est prévu par les législations et pratiques nationales, conformément au traité instituant la Communauté européenne, afin de promouvoir la cohésion sociale et territoriale de l'Union.

Explication

Cet article respecte pleinement l'article 16 du traité instituant la Communauté européenne et ne crée pas de droit nouveau. Il pose seulement le principe du respect par l'Union de l'accès aux services d'intérêt économique général tel qu'il est prévu par les dispositions nationales, dès lors que ces dispositions sont compatibles avec le droit communautaire.

Article 37

Protection de l'environnement

Un niveau élevé de protection de l'environnement et l'amélioration de sa qualité doivent être intégrés dans les politiques de l'Union et assurés conformément au principe du développement durable.

Explication

Le principe contenu dans cet article se fonde sur les articles 2, 6 et 174 du traité CE. Il s'inspire également des dispositions de certaines constitutions nationales.

Article 38

Protection des consommateurs

Un niveau élevé de protection des consommateurs est assuré dans les politiques de l'Union.

Explication

Le principe contenu dans cet article se fonde sur l'article 153 du traité CE.

CHAPITRE V. CITOYENNETE

Article 39

Droit de vote et d'éligibilité aux élections au Parlement européen

1. Tout citoyen ou toute citoyenne de l'Union a le droit de vote et d'éligibilité aux élections au Parlement européen dans l'État membre où il ou elle réside, dans les mêmes conditions que les ressortissants de cet État.
2. Les membres du Parlement européen sont élus au suffrage universel direct, libre et secret.

Explication

L'article 39 s'applique dans les conditions prévues par le traité, conformément à l'article 52 § 2 de la Charte. En effet, le paragraphe 1 de l'article 39 correspond au droit garanti à l'article 19, paragraphe 2, du traité CE et le paragraphe 2 de cet article à l'article 190, paragraphe 1. Ce dernier reprend les principes de base du régime électoral dans un système démocratique.

Article 40**Droit de vote et d'éligibilité aux élections municipales**

Tout citoyen ou toute citoyenne de l'Union a le droit de vote et d'éligibilité aux élections municipales dans l'État membre où il ou elle réside, dans les mêmes conditions que les ressortissants de cet État.

Explication

Cet article correspond au droit garanti à l'article 19, paragraphe 1, du traité CE. Conformément à l'article 52, paragraphe 2, il s'applique dans les conditions prévues par le traité.

Article 41**Droit à une bonne administration**

1. Toute personne a le droit de voir ses affaires traitées impartialement, équitablement et dans un délai raisonnable par les institutions et organes de l'Union.

2. Ce droit comporte notamment :

- le droit de toute personne d'être entendue avant qu'une mesure individuelle qui l'affecterait défavorablement ne soit prise à son encontre ;
- le droit d'accès de toute personne au dossier qui la concerne, dans le respect des intérêts légitimes de la confidentialité et du secret professionnel et des affaires ;
- l'obligation pour l'administration de motiver ses décisions.

3. Toute personne a droit à la réparation par la Communauté des dommages causés par les institutions, ou par leurs agents dans l'exercice de leurs fonctions, conformément aux principes généraux communs aux droits des États membres.

4. Toute personne peut s'adresser aux institutions de l'Union dans une des langues des traités et doit recevoir une réponse dans la même langue.

Explication

L'article 41 est fondé sur l'existence d'une Communauté de droit dont les caractéristiques ont été développées par la jurisprudence qui a consacré notamment le principe de la bonne administration (voir i.a., l'arrêt de la Cour du 31 mars 1992, C-255/90 P, Burban, Rec. 1992, I-2253; ainsi que les arrêts du tribunal de première instance du 18 septembre 1995, T-167/94, Nölle, Rec. 1995, II-2589; 9 juillet 1999, T-231/97, New Europe Consulting e.a., Rec.II-2403). Les expressions de ce droit énoncées dans les deux premiers paragraphes résultent de la jurisprudence (arrêts de la Cour du 15 octobre 1987, aff. 222/86, Heylens, Rec. 1987, 4097, no. 15; du 18 octobre 1989, aff. 374/87, Orkem, Rec. 1989, 3283; du 21 novembre 1991, C-269/90, TU München, Rec. 1991, I-5469; et les arrêts du tribunal de première instance du 6 décembre 1994, T-450/93, Lisrestal, Rec. 1994, II-1177; 18 septembre 1995, T-167/94, Nölle, Rec.1995, II-258) et, en ce qui concerne l'obligation de motiver, de l'article 253 du traité CE.

Le paragraphe 3 reproduit le droit garanti à l'article 288 du traité CE.

Le paragraphe 4 reproduit le droit garanti à l'article 21, troisième alinéa, du traité CE. Conformément à l'article 52, paragraphe 2, ces droits s'appliquent dans les conditions et limites définies par les traités.

Le droit à un recours effectif qui constitue un aspect important de cette question est garanti à l'article 47 de la présente Charte.

Article 42

Droit d'accès aux documents

Tout citoyen ou toute citoyenne de l'Union ou toute personne physique ou morale résidant ou ayant son siège statutaire dans un État membre a un droit d'accès aux documents du Parlement européen, du Conseil et de la Commission.

Explication

Le droit garanti à cet article est le droit garanti à l'article 255 du traité CE. Conformément à l'article 52, paragraphe 2, il s'applique dans les conditions prévues par le traité.

Article 43

Médiateur

Tout citoyen ou toute citoyenne de l'Union ou toute personne physique ou morale résidant ou ayant son siège statutaire dans un État membre a le droit de saisir le médiateur de l'Union en cas de mauvaise administration dans l'action des institutions ou organes communautaires, à l'exclusion de la Cour de justice et du Tribunal de première instance dans l'exercice de leurs fonctions juridictionnelles.

Explication

Le droit garanti à cet article est le droit garanti aux articles 21 et 195 du traité CE. Conformément à l'article 52, paragraphe 2, il s'applique dans les conditions prévues par le traité.

Article 44

Droit de pétition

Tout citoyen ou toute citoyenne de l'Union ou toute personne physique ou morale résidant ou ayant son siège statutaire dans un État membre a le droit de pétition devant le Parlement européen.

Explication

Le droit garanti à cet article est le droit garanti par les articles 21 et 194 du traité CE. Conformément à l'article 52, paragraphe 2, il s'applique dans les conditions prévues par le traité.

Article 45

Liberté de circulation et de séjour

1. Tout citoyen ou toute citoyenne de l'Union a le droit de circuler et de séjourner librement sur le territoire des États membres.
2. La liberté de circulation et de séjour peut être accordée, conformément au traité instituant la Communauté européenne, aux ressortissants de pays tiers résidant légalement sur le territoire d'un État membre.

Explication

Le droit garanti par le premier paragraphe est le droit garanti par l'article 18 du traité CE. Conformément à l'article 52, paragraphe 2, il s'applique dans les conditions et limites prévues par le traité.

Le deuxième paragraphe rappelle la compétence accordée à la Communauté par l'article 62, paragraphes 1 et 3, et 63, paragraphe 4 du traité CE. Il en résulte que l'octroi de ce droit dépend de l'exercice de cette compétence par les institutions.

Article 46

Protection diplomatique et consulaire

Tout citoyen de l'Union bénéficie, sur le territoire d'un pays tiers où l'État membre dont il est ressortissant n'est pas représenté, de la protection des autorités diplomatiques et consulaires de tout État membre dans les mêmes conditions que les nationaux de cet État.

Explication

Le droit garanti par cet article est le droit garanti par l'article 20 du traité CE. Conformément à l'article 52, paragraphe 2, il s'applique dans les conditions prévues par le traité.

CHAPITRE VI. JUSTICE**Article 47****Droit à un recours effectif et à accéder à un tribunal impartial**

Toute personne dont les droits et libertés garantis par le droit de l'Union ont été violés a droit à un recours effectif devant un tribunal dans le respect des conditions prévues au présent article.

Toute personne a droit à ce que sa cause soit entendue équitablement, publiquement et dans un délai raisonnable par un tribunal indépendant et impartial, établi préalablement par la loi. Toute personne a la possibilité de se faire conseiller, défendre et représenter.

Une aide juridictionnelle est accordée à ceux qui ne disposent pas de ressources suffisantes, dans la mesure où cette aide serait nécessaire pour assurer l'effectivité de l'accès à la justice.

Explication

Le premier alinéa se fonde sur l'article 13 de la CEDH:

"Toute personne dont les droits et libertés reconnus dans la présente Convention ont été violés, a droit à l'octroi d'un recours effectif devant une instance nationale, alors même que la violation aurait été commise par des personnes agissant dans l'exercice de leurs fonctions officielles".

Cependant, en droit communautaire, la protection est plus étendue puisqu'elle garantit un droit à un recours effectif devant un juge. La Cour de justice a consacré ce principe dans son arrêt du 15 mai 1986, Johnston, aff. 222/84, Rec. p.1651; voir aussi les arrêts du 15 octobre 1987, aff. 222/86, Heylens, Rec. 1987, 4097, et 3 décembre 1992, C-97/91, Borelli, Rec. 1992, I-6313. Selon la Cour, ce principe s'applique également aux Etats membres lorsqu'ils appliquent le droit communautaire. L'inscription de cette jurisprudence dans la charte n'a pas pour objet de modifier le système de recours prévu par les traités et notamment les règles relatives à la recevabilité. Ce principe est donc mis en œuvre selon les voies procédurales prévues dans les traités. Il s'applique à l'égard des institutions de l'Union et des Etats membres lorsqu'ils mettent en œuvre le droit de l'Union et ce pour tous les droits garantis par le droit de l'Union.

Le deuxième alinéa correspond à l'article 6 § 1 de la CEDH qui se lit ainsi :

"Toute personne a droit à ce que sa cause soit entendue équitablement, publiquement et dans un délai raisonnable, par un tribunal indépendant et impartial, établi par la loi, qui décidera, soit des contestations sur ses droits et obligations de caractère civil, soit du bien-fondé de toute accusation en matière pénale dirigée contre elle. Le jugement doit être rendu publiquement, mais l'accès de la salle d'audience peut être interdit à la presse et au public pendant la totalité ou une partie du procès dans l'intérêt de la moralité, de l'ordre public ou de la sécurité nationale dans une société démocratique, lorsque les intérêts des mineurs ou la protection de la vie privée des parties au procès l'exigent, ou dans la mesure jugée strictement nécessaire par le tribunal, lorsque dans des circonstances spéciales la publicité serait de nature à porter atteinte aux intérêts de la justice."

En droit communautaire, le droit à un tribunal ne s'applique pas seulement à des contestations relatives à des droits et obligations de caractère civil. C'est l'une des conséquences du fait que la Communauté est une communauté de droit comme l'a Cour l'a constaté dans l'affaire 194/83, Les Verts contre Parlement européen (arrêt du 23 avril 1986, rec. p.1339. Cependant, à l'exception de leur champ d'application, les garanties offertes par la CEDH s'appliquent de manière similaire dans l'Union.

En ce qui concerne le troisième alinéa, il convient de noter que d'après la jurisprudence de la Cour européenne des droits de l'homme, une aide judiciaire doit être accordée lorsque l'absence d'une telle aide rendrait inefficace la garantie d'un recours effectif (Arrêt CEDH du 9.10.1979, Airey, Série A, Volume.32, 11). Il existe également un système d'assistance judiciaire devant la Cour de justice des Communautés européennes.

Article 48

Présomption d'innocence et droits de la défense

1. Tout accusé est présumé innocent jusqu'à ce que sa culpabilité ait été légalement établie.
2. Le respect des droits de la défense est garanti à tout accusé.

Explication

L'article 48 est le même que l'article 6 § 2 et 3 de la CEDH qui se lit ainsi :

"2 Toute personne accusée d'une infraction est présumée innocente jusqu'à ce que sa culpabilité ait été légalement établie.

3 Tout accusé a droit notamment à :

- a être informé, dans le plus court délai, dans une langue qu'il comprend et d'une manière détaillée, de la nature et de la cause de l'accusation portée contre lui;*
- b disposer du temps et des facilités nécessaires à la préparation de sa défense;*
- c se défendre lui-même ou avoir l'assistance d'un défenseur de son choix et, s'il n'a pas les moyens de rémunérer un défenseur, pouvoir être assisté gratuitement par un avocat d'office, lorsque les intérêts de la justice l'exigent;*
- d interroger ou faire interroger les témoins à charge et obtenir la convocation et l'interrogation des témoins à décharge dans les mêmes conditions que les témoins à charge;*
- e se faire assister gratuitement d'un interprète, s'il ne comprend pas ou ne parle pas la langue employée à l'audience."*

Conformément à l'article 52 § 3, ce droit a le même sens et la même portée que le droit garanti par la CEDH.

Article 49

Principes de légalité et de proportionnalité des délits et des peines

1. Nul ne peut être condamné pour une action ou une omission qui, au moment où elle a été commise, ne constituait pas une infraction d'après le droit national ou le droit international. De même, il n'est infligé aucune peine plus forte que celle qui était applicable au moment où l'infraction a été commise. Si, postérieurement à cette infraction, la loi prévoit une peine plus légère, celle-ci doit être appliquée.
2. Le présent article ne porte pas atteinte au jugement et à la punition d'une personne coupable d'une action ou d'une omission qui, au moment où elle a été commise, était criminelle d'après les principes généraux reconnus par l'ensemble des nations.
3. L'intensité des peines ne doit pas être disproportionnée par rapport à l'infraction.

Explication

Cet article reprend le principe classique de la non-rétroactivité des lois et des peines en matière pénale. Il a été ajouté le principe de la rétroactivité de la loi pénale plus douce qui existe dans de nombreux Etats membres et qui figure à l'article 15 du Pacte sur les droits civils et politiques.

L'article 7 de la CEDH est rédigé comme suit:

- "1 Nul ne peut être condamné pour une action ou une omission qui, au moment où elle a été commise, ne constituait pas une infraction d'après le droit national ou international. De même il n'est infligé aucune peine plus forte que celle qui était applicable au moment où l'infraction a été commise.*
- 2 Le présent article ne portera pas atteinte au jugement et à la punition d'une personne coupable d'une action ou d'une omission qui, au moment où elle a été commise, était criminelle d'après les principes généraux de droit reconnus par les nations civilisées."*

On a simplement supprimé au paragraphe 2 le terme "civilisées" ce qui n'implique aucun changement dans le sens de ce paragraphe qui vise notamment les crimes contre l'humanité. Conformément à l'article 52 § 3, le droit garanti a donc le même sens et la même portée que le droit garanti par la CEDH.

Le paragraphe 3 reprend le principe général de proportionnalité des délits et des peines consacré par les traditions constitutionnelles communes aux Etats membres et la jurisprudence de la Cour de justice des Communautés.

Article 50

Droit à ne pas être jugé ou puni pénalement deux fois pour une même infraction

Nul ne peut être poursuivi ou puni pénalement en raison d'une infraction pour laquelle il a déjà été acquitté ou condamné dans l'Union par un jugement pénal définitif conformément à la loi.

Explication

L'article 4 du protocole n° 7 à la CEDH se lit ainsi:

- "1 Nul ne peut être poursuivi ou puni pénalement par les juridictions du même Etat en raison d'une infraction pour laquelle il a déjà été acquitté ou condamné par un jugement définitif conformément à la loi et à la procédure pénale de cet Etat.*
- 2) Les dispositions du paragraphe précédent n'empêchent pas la réouverture du procès, conformément à la loi et à la procédure pénale de l'Etat concerné, si des faits nouveaux ou nouvellement révélés ou un vice fondamental dans la procédure précédente sont de nature à affecter le jugement intervenu.*
- 3 Aucune dérogation n'est autorisée au présent article au titre de l'article 15 de la Convention."*

Le principe «non bis in idem» s'applique en droit communautaire (voir, parmi une importante jurisprudence, arrêt du 5 mai 1966, Gutmann c/Commission, aff. 18/65 et 35/65, Rec 1966, p.150 et pour une affaire récente arrêt du Tribunal du 20 avril 1999, aff. jointes T-305/94 et autres, Limburgse Vinyl Maatschappij NV c/Commission Rec. II-931). Il est précisé que la règle du non cumul vise le cumul de deux sanctions de même nature, en l'espèce pénales.

Conformément à l'article 50, le principe "non bis in idem" ne s'applique pas seulement à l'intérieur de la juridiction d'un même Etat, mais aussi entre les juridictions de plusieurs Etats membres. Ceci correspond à l'acquis du droit de l'Union; voir les articles 54 - 58 de la Convention d'application de l'accord de Schengen, l'article 7 de la Convention relative à la protection des intérêts financiers de la Communauté; l'article 10 de la Convention relative à la lutte contre la corruption. Les exceptions bien limitées par lesquelles ces conventions permettent aux Etats membres de déroger au principe "non bis in idem" sont couvertes par la clause horizontale de l'article 52, paragraphe 1, sur les limitations. En ce qui concerne les situations visées par l'article 4 du protocole n° 7, à savoir l'application du principe à l'intérieur d'un même Etat membre, le droit garanti a le même sens et la même portée que le droit correspondant de la CEDH.

CHAPITRE VII. DISPOSITIONS GÉNÉRALES

Article 51

Champ d'application

1. Les dispositions de la présente Charte s'adressent aux institutions et organes de l'Union dans le respect du principe de subsidiarité, ainsi qu'aux États membres uniquement lorsqu'ils mettent en œuvre le droit de l'Union. En conséquence, ils respectent les droits, observent les principes et en promeuvent l'application, conformément à leurs compétences respectives.

2. La présente Charte ne crée aucune compétence ni aucune tâche nouvelles pour la Communauté et pour l'Union et ne modifie pas les compétences et tâches définies par les traités.

Explication

L'objet de l'article 51 est de déterminer le champ d'application de la Charte. Elle vise à établir clairement que la Charte s'applique d'abord aux institutions et organes de l'Union dans le respect du principe de subsidiarité. Cette disposition est fidèle à l'article 6 § 2 du traité sur l'Union européenne qui impose à l'Union de respecter les droits fondamentaux ainsi qu'au mandat donné par le Conseil européen de Cologne. Le terme "institutions" est consacré par le traité CE qui énumère les institutions dans son article 7. Le terme "organe" est couramment employé pour viser toutes les instances établies par les traités ou par des actes de droit dérivé (voir l'article 286, paragraphe 1, du traité instituant la Communauté européenne).

En ce qui concerne, les Etats membres, il résulte sans ambiguïté de la jurisprudence de la Cour que l'obligation de respecter les droits fondamentaux définis dans le cadre de l'Union ne s'impose aux Etats membres que lorsqu'ils agissent dans le cadre du droit communautaire (Arrêt du 13 juillet 1989, Wachauf, affaire 5/88, rec. p.2609; arrêt du 18 juin 1991, ERT, rec.1991, I-2925). Tout récemment, la Cour de justice a confirmé cette jurisprudence dans les termes suivants: "De plus, il y a lieu de rappeler que les exigences découlant de la protection des droits fondamentaux dans l'ordre juridique communautaire lient également les Etats membres lorsqu'ils mettent en œuvre des réglementations communautaires ..." (Arrêt du 13 avril 2000, aff. C-292/97, attendu 37, non encore publié). Bien entendu, ce principe, tel que consacré dans la présente charte, s'applique aussi bien aux autorités centrales qu'aux instances régionales ou locales ainsi qu'aux organismes publics lorsqu'ils mettent en œuvre le droit de l'Union.

Le second paragraphe confirme que la charte ne peut avoir pour effet d'étendre les compétences et tâches conférées par les traités à la Communauté et à l'Union. Il s'agit de mentionner de façon explicite ce qui découle logiquement du principe de subsidiarité et du fait que l'Union ne dispose que de compétences d'attribution. Les droits fondamentaux tels qu'ils sont garantis dans l'Union ne produisent d'effets que dans le cadre de ces compétences déterminées par le traité.

Article 52

Portée des droits garantis

1. Toute limitation de l'exercice des droits et libertés reconnus par la présente Charte doit être prévue par la loi et respecter le contenu essentiel desdits droits et libertés. Dans le respect du principe de proportionnalité, des limitations ne peuvent être apportées que si elles sont nécessaires et répondent effectivement à des objectifs d'intérêt général reconnus par l'Union ou au besoin de protection des droits et libertés d'autrui.
2. Les droits reconnus par la présente Charte qui trouvent leur fondement dans les traités communautaires ou dans le traité sur l'Union européenne s'exercent dans les conditions et limites définies par ceux-ci.
3. Dans la mesure où la présente Charte contient des droits correspondant à des droits garantis par la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales, leur sens et leur portée sont les mêmes que ceux que leur confère ladite convention. Cette disposition ne fait pas obstacle à ce que le droit de l'Union accorde une protection plus étendue.

Explication

L'objet de l'article 52 est de fixer la portée des droits garantis. Le paragraphe 1 traite du régime de limitations. La formule utilisée s'inspire de la jurisprudence de la Cour de justice: "... selon une jurisprudence bien établie, des restrictions peuvent être apportées à l'exercice des droits fondamentaux, notamment dans le cadre d'une organisation commune de marché, à condition que ces restrictions répondent effectivement à des objectifs d'intérêt général poursuivis par la Communauté et ne constituent pas, par rapport au but poursuivi, une intervention démesurée et intolérable, qui porterait atteinte à la substance même de ces droits" (arrêt du 13 avril 2000, aff. C-292/97, considérant 45). La mention des intérêts généraux reconnus par l'Union couvre aussi bien les objectifs mentionnés à l'article 2 que d'autres intérêts protégés par des dispositions spécifiques du traité comme l'article 30 ou 39 (3) CE.

Le paragraphe 2 précise que lorsqu'un droit résulte des traités, il est soumis aux conditions et limites prévues par ceux-ci. La Charte ne modifie pas le régime des droits conférés par les traités.

Le paragraphe 3 vise à assurer la cohérence nécessaire entre la Charte et la CEDH en posant le principe que, dans la mesure où les droits de la présente Charte correspondent également à des droits garantis par la CEDH, leur sens et leur portée, y compris les limitations admises, sont les mêmes que ceux que prévoit la CEDH. Il en résulte en particulier que le législateur, en fixant des limitations à ces droits doit respecter les mêmes standards que ceux fixés par le régime détaillé des limitations prévu dans la CEDH, sans que ceci porte atteinte à l'autonomie du droit communautaire et de la Cour de justice des Communautés européennes. La référence à la CEDH vise à la fois la Convention et ses protocoles. Le sens et la portée des droits garantis sont déterminés non seulement par le texte de ces instruments, mais aussi par la jurisprudence de la Cour européenne des droits de l'homme et par la Cour de justice des Communautés européennes. La dernière phrase du paragraphe vise à permettre au droit de l'Union d'assurer une protection plus étendue.

La liste des droits qui peuvent au stade actuel et sans que cela exclue l'évolution du droit, de la législation et des traités, être considérés comme correspondant à des droits de la CEDH au sens du présent paragraphe est reproduite ci-dessous. Ne sont pas reproduits les droits qui s'ajoutent à ceux de la CEDH.

1. Articles de la Charte dont le sens et la portée sont les mêmes que les articles correspondants de la CEDH:

- l'article 2 correspond à l'article 2 CEDH
- l'article 4 correspond à l'article 3 CEDH
- l'article 5 § 1 et 2 correspond à l'article 4 CEDH
- l'article 6 correspond à l'article 5 CEDH
- l'article 7 correspond à l'article 8 CEDH
- l'article 10 § 1 correspond à l'article 9 CEDH
- l'article 11 correspond à l'article 10 CEDH sans préjudice des restrictions que le droit communautaire peut apporter à la faculté des Etats membres d'instaurer les régimes d'autorisation visés à l'article 10 § 1, troisième phrase de la CEDH.
- l'article 17 correspond à l'article 1 du protocole additionnel à la CEDH
- l'article 19 § 1 correspond à l'article 4 du protocole additionnel N° 4
- l'article 19 § 2 correspond à l'article 3 CEDH tel qu'interprété par la Cour européenne des droits de l'homme
- l'article 48 correspond à l'article 6 § 2 et 3 CEDH
- l'article 49 § 1 (à l'exception de la dernière phrase) et 2 correspond à l'article 7 CEDH.

2. Articles dont le sens est le même que les articles correspondant de la CEDH, mais dont la portée est plus étendue :

- l'article 9 couvre le champ de l'article 12 CEDH, mais son champ d'application peut être étendu à d'autres formes de mariages dès lors que la législation nationale les institue
- l'article 12 § 1 correspond à l'article 11 CEDH, mais son champ d'application est étendu au niveau de l'Union européenne
- l'article 14 § 1 correspond à l'article 2 du protocole additionnel CEDH, mais son champ d'application est étendu à l'accès à la formation professionnelle et continue
- L'article 14 § 3 correspond à l'article 2 du protocole additionnel à la CEDH, en ce qui concerne les droits des parents

- *l'article 47 § 2 et 3 correspond à l'article 6 § 1 CEDH, mais la limitation aux contestations sur des droits et obligations de caractère civil ou sur des accusations en matière pénale ne joue pas en ce qui concerne le droit de l'Union et sa mise en œuvre*
- *l'article 50 correspond à l'article 4 du protocole n° 7 CEDH, mais sa portée est étendue au niveau de l'Union européenne entre les juridictions des Etats membres*
- *Enfin, les citoyens de l'Union européenne ne peuvent, dans le champ d'application du droit communautaire, être considérés comme des étrangers en raison de l'interdiction de toute discrimination sur la base de la nationalité. Les limitations prévues par l'article 16 CEDH en ce qui concerne les droits des étrangers ne leur sont donc pas applicables dans ce cadre.*

Article 53

Niveau de protection

Aucune disposition de la présente Charte ne doit être interprétée comme limitant ou portant atteinte aux droits de l'homme et libertés fondamentales reconnus, dans leur champ d'application respectif, par le droit de l'Union, le droit international et les conventions internationales auxquelles sont parties l'Union, la Communauté ou tous les États membres, et notamment la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales, ainsi que par les constitutions des États membres.

Explication

Cette disposition vise à préserver le niveau de protection offert actuellement dans leur champ d'application respectif par le droit de l'Union, le droit des Etats membres et le droit international. En raison de son importance, mention est faite de la CEDH. En aucun cas le niveau de protection offert par la charte ne pourra être inférieur à celui garanti par la CEDH, ce qui a pour conséquence que le régime de limitations prévu dans la charte ne peut descendre en dessous du niveau prévu par la CEDH.

Article 54

Interdiction de l'abus de droit

Aucune des dispositions de la présente Charte ne doit être interprétée comme impliquant un droit quelconque de se livrer à une activité ou d'accomplir un acte visant à la destruction des droits ou libertés reconnus dans la présente Charte ou à des limitations plus amples des droits et libertés que celles qui sont prévues par la présente Charte.

Explication

Cet article correspond à l'article 17 de la CEDH :

"Aucune des dispositions de la présente Convention ne peut être interprétée comme impliquant pour un Etat, un groupement ou un individu, un droit quelconque de se livrer à une activité ou d'accomplir un acte visant à la destruction des droits ou libertés reconnus dans la présente Convention ou à des limitations plus amples de ces droits et libertés que celles prévues à ladite Convention."

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 19 September 2000**CHARTE 4475/00****CONTRIB 326****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find enclosed the Council of Europe's observations on document CHARTE 4422/00
CONVENT 45.¹

¹ This text has been submitted in French and English languages.

Strasbourg, 22 August 2000

**Observations of the Council of Europe representatives
on the draft Charter proposed by the Praesidium (Convent 45)**

Our primary concern is to ensure that the rights taken by the Charter from the European Convention on Human Rights (ECHR) are not interpreted in inconsistent or even contradictory ways depending on whether it is the European Court of Human Rights or the Court of Justice in Luxembourg that is construing them. We consider that the proposed text amply deals with that concern, pending a final decision on its legal nature. The Convention and the Praesidium must take the credit for that. They have heeded the comments and proposals made throughout the preparatory work by the observers of the Council of Europe and made the necessary amendments to ensure consistency and harmony between the Charter and the ECHR.

That is true in particular of the latest amendments proposed by the Praesidium such as the new paragraph 3 of Article 50, which has the merit of dispelling, in principle, any doubt over the meaning and scope of the Charter rights corresponding to the rights guaranteed by the ECHR¹. It will, however, still be necessary to identify the instances in which it is intended that the protection afforded by the Charter will be “greater or more extensive”. It is in this sphere that the commentary on the text, as proposed in the Convent 46 document, will prove very useful. It should therefore be made as accessible to readers as the text itself.

By confirming the principle that authoritative interpretations of an instrument are incorporated into the instrument itself, the reference in the preamble to the case-law of the European Court of Human Rights will clear up any misapprehension regarding identification of the “rights which correspond to rights guaranteed by the [ECHR]”. That reference makes it clear that the ECHR rights also include rights recognised by the case-law. By including it, the Convention has shown the foresight to ensure at the outset that future developments regarding the ECHR and the Charter will be consistent and harmonious and has thus avoided destroying the common dynamic of these two instruments.

The reference to the case-law will also be vital for the application of Article 51 of the Charter, which sets the minimum level of protection provided by that instrument, notably by reference to the ECHR. Here too it is important to ensure that the minimum level rises to match any enhanced protection afforded by the case-law.

Nevertheless, no amount of careful drafting can prevent the debate on the nature of the Charter posing a number of problems which, unless satisfactorily resolved, will prove a potential source of error in the interpretation of the rights embodied in both the Charter and the ECHR, in particular if the Court of Justice finds itself called upon to decide issues that have not previously been before the Court in Strasbourg. Why?

¹ Article 50 § 3 refers, however, to rights that have a *similar* meaning and scope to those conferred by the ECHR, which seems to suggest that divergences are permitted. Yet Article 50 § 3 allows of only two possibilities: *the same* protection as that afforded by the ECHR, or *greater* protection. As the latter possibility is covered by Article 50 § 3 *in fine*, the former must be reflected in the first part of the provision, which, for the avoidance of any unnecessary doubt on the subject, should consequently read as follows: “... the meaning and scope of those rights shall be *the same* as those conferred on them by the [ECHR]...”.

Because the Charter, when applied and interpreted within the context of the European Union, that is to say in the framework of a Treaty with its own objectives and including new powers in the fields of immigration, asylum and judicial and police co-operation, is bound to take on a dynamic which is almost certain to affect the harmonious and consistent interpretation of fundamental rights. Since the organ creates the function, it is highly probable that the Charter will generate a far higher number of references for preliminary rulings than the Court of Justice receives at present. That will increase in the same proportion the risk that decisions of the Court of Justice will be at variance with later decisions of the Strasbourg Court, since the member States will remain responsible for their actions under the ECHR but will at the same time be required to comply with and apply Community law. A State obliged to apply a judgment of the Court of Justice which turned out to be at odds with a later judgment of the Strasbourg Court would be placed in a very awkward position.

As regards the Charter's being harmoniously combined with the other international systems of protection of fundamental rights, that point shows to what extent the debate about the nature of the Charter will restore to the agenda the question of accession by the European Communities and/or the Union to the ECHR, under arrangements to be agreed, or at least the idea of a preliminary consultation mechanism, recognised by the member States, between the two Courts.²

As long as these questions remain unanswered the European Council, if it wishes to avoid the risk of creating legal uncertainty, will scarcely be in a position to reach a final decision on the nature of the Charter. Admittedly, it is not part of the Convention's terms of reference to state its views on that question. However, that should not dispense it from identifying and pointing out to the European Council, in appropriate form, the problems as they exist.

Marc Fischbach
Hans-Christian Krüger

¹ See in this connection our contribution dated 21 February 2000 (Contrib 29, Charter 4136/00).

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 20 September 2000**CHARTE 4477/00****CONTRIB 328****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find enclosed the Communication (COM(2000) 559 final) by the Commission of the European Communities, on the Charter of Fundamental Rights.

EN



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 13.9.2000
COM(2000) 559 final

COMMISSION COMMUNICATION

on the Charter of Fundamental Rights of the European Union

COMMISSION COMMUNICATION

on the Charter of Fundamental Rights of the European Union

1. INTRODUCTION

1. The preparation of the draft Charter of Fundamental Rights is now at a crucial stage. The Feira European Council concluded that:

"The Convention is urged to continue its work in accordance with the timetable laid down in the mandate from the Cologne European Council so that a draft document is presented in advance of the European Council in October 2000"

2. After months of intensive work the Convention has produced a new preliminary draft of the Charter.¹
3. The preliminary draft has been drawn up using the approach adopted by the Convention when it began its work, which involved preparing the draft for submission to the European Council **as if it was subsequently to be incorporated into the Community Treaties** with mandatory legal force. At the instigation of its President, Roman Herzog, the Convention concluded that this was the only approach that could leave the European Council the choice it will have to make in due course, in accordance with the Cologne mandate, about whether the Charter should take the form of a declaration or be incorporated in the Treaties with mandatory legal force.
4. The work done by the Convention in the last few months involved giving each member of the Convention the possibility of submitting **written amendments** to previous texts. Over a thousand amendments were submitted, reflecting the full range of feelings within the Convention. The preliminary draft is a compromise drawn up by the Praesidium. It is intended to take account of all the points of view and feelings expressed by the Convention.
5. **With a view to concluding the Convention's work and forwarding the draft Charter to the Biarritz European Council**, the Praesidium asked the members of the Convention to submit any comments on the preliminary draft text they considered helpful by 1 September. It also established the agenda for the Convention's two final meetings:

- 11 - 12 September the members of the Convention will meet in groups and on 13 September they will inform the Convention of their positions regarding the preliminary draft;
- the meeting of 25 - 26 September is intended to pull together the group's points of view and to enable the President of the Convention, in line with the Cologne conclusions, to establish a consensus within the Convention and forward the draft to the Heads of State or Government.

¹ The draft is contained in the document CHARTE 4422/00, CONVENT 45 of 28 July 2000: *Complete text of the Charter proposed by the Praesidium* » .

6. **The purpose of this communication is therefore:**

- **to set out the Commission's position concerning the content of the preliminary draft, with the aim of furthering the development of consensus within the Convention, and**
- **to highlight the political and institutional questions the Commission believes to be of particular importance, especially with regard to the nature of the Charter.**

2. **THE OBJECTIVES OF THE CHARTER**

7. The Cologne European Council set the main objective of the Charter of Fundamental Rights of the Union: **to make their overriding importance and relevance more visible to the Union's citizens.**

Consequently, the European Council mandated the Convention to draw up the Charter, a task of revelation rather than creation, of compilation rather than innovation.

8. However, the Cologne conclusions were reached at a historic time for European integration. There is a need for a Charter of Fundamental Rights because the European Union has entered a new, more resolutely political phase of integration. The Charter is a major milestone for Europe as a political force, which is evolving into an integrated area of freedom, security and justice, simply as a consequence of citizenship. It is an indispensable instrument of political and moral legitimacy, both for the citizens of Europe in relation to politicians, administrations and national powers and for economic and social operators. It is an expression of the common values that are at the very core of our democratic societies.

9. The Charter should be the best possible combination of pragmatism and ambition. It should **add real value** to the abundance of existing legal or political texts dealing with human rights in Europe.

The Charter is **pragmatic**, in that it must not give way to the temptation to innovate at all costs and must remain within the framework of the Cologne mandate.

Nevertheless, its added value is **ambitious**. It has been produced by:

- codifying material from various sources of inspiration: the European Convention on Human Rights, common constitutional traditions, the European Social Charter, the Community Charter of the Fundamental Social Rights of Workers, primary and secondary Community legislation, international conventions (Council of Europe, UN, ILO) and rulings by the Court of Justice and the European Court of Human Rights;

- incorporating in the Charter, alongside the classic civil and political rights and the rights of citizens deriving from the Treaties, fundamental economic and social rights, *"insofar as they do not merely establish objectives for action by the Union"*;
- enshrining certain "new" rights which already exist but have not yet been explicitly protected as fundamental rights, notwithstanding the values they are intended to protect, such as the protection of personal data and the principles of bioethics or the right to good administration.

10. As well as raising the profile of fundamental rights, it must be pointed out that the Charter provides significant **legal certainty**. This will make it possible to improve the current level of protection of fundamental rights in the Union, by moving beyond the current system, which is basically in the hands of the courts.

In the current Treaties, Article 6 of the Treaty on European Union is the point of reference for questions related to fundamental rights. Its first paragraph sets out the general principles on which the Union is based and which, if seriously and persistently breached, can lead to the imposition of the penalties set out in Article 7 of the Union Treaty. Paragraph 2 lists the sources of fundamental rights respected by the Union, at least one of which (constitutional traditions common to the Member States) it is difficult to challenge by way of legal action. Leaving aside its ultimate legal nature, the adoption of the Charter sets out clearly and concisely the fundamental rights covered by Article 6(2). This could also clarify the principles set out under Article 6(1) and the provisions referring to it (Articles 7 and 49 of the Union Treaty).

11. **The Charter applies to the institutions and bodies of the Union, and to the Member States solely where they implement Union law.** It will therefore be possible to assess all measures taken in this field on the basis of the rights and freedoms set out in the Charter. This means that, in terms of the protection of fundamental rights, the Charter is an instrument for controlling the exercise of powers devolved by the Treaties to the Union's institutions and bodies
12. With the Union now developing a real common foreign and security policy, in which respect for fundamental rights will play a key role, the adoption of a catalogue of rights will make it possible to give **a clear response** to those who accuse the Union of employing **one set of standards at external level and another internally**. The Charter will provide the Union with a clear catalogue of rights that it will have to respect when implementing both internal and external policies.
13. There is no way to avoid addressing the possible repercussions of the adoption of the Charter on the enlargement of the Union. **First and foremost, it will be necessary to dispel all fears about the impact of the Charter on enlargement.** The Charter imposes no additional conditions on applicant countries. The acceptance of the established body of

EU law, for example, on the protection of personal data, already involves the acceptance of and respect for the rules and principles contained in the Charter. In fact, the Charter sets out clear rules regarding fundamental rights, thereby providing the applicant countries and citizens in general with legal certainty. In doing so, it demonstrates that it is an extremely important milestone in the development of Europe as a political force.

14. To ensure that the Charter is a success, it is advisable not simply to highlight its objectives and added value, but also to point out clearly that it will not have certain effects which may have caused alarm in some quarters:

- a) **The Charter will not be a vehicle to extend or reduce the powers of the Union and the Community**, as established by the Union Treaty and EC Treaty. The Charter is neutral with regard to the division of powers. Changes in any powers would be a matter for the Intergovernmental Conference, not for the Convention.

The Charter's neutrality on the subject of the powers of the Union and the Community is also a consequence of the very nature of fundamental rights. As they protect the individual from abuses of public power, the main purpose of fundamental rights is to allow for the control of existing powers at a given political level, whatever level that may be.

Since fundamental rights are also the values which guide the actions of the Community and the Union, it is clear that such action must be carried out within the framework of the powers of the Community and the Union and with respect for the principle of subsidiarity. This applies particularly to rights requiring implementing measures, such as social rights and principles.

- b) **The Charter will not require, as has been shown by the discussions within the Convention, any amendments to the Member States' constitutions.** As regards the respect for fundamental rights at national level, in its field of application it will clearly not replace national constitutions; in fact, it will basically group together rights already existing in different documents and in the Treaties.
- c) **The Charter will have no impact on forms of court action or the court structure put in place by the Treaties**, as it does not provide for new channels of access to Community courts. The right to a court hearing, be it a national or Community court, will be exercised using existing legal channels:
- by bringing an action before the Court of Justice, on the basis of Articles 230, 232 and 235/288 of the EC Treaty, as long as the conditions of admissibility are duly satisfied, or
 - by bringing an action before a national court which may give rise to a request for a preliminary ruling under Article 234 of the EC Treaty.

- d) **The Charter neither requires nor precludes accession to the European Convention on Human Rights.** The development of the Charter has once again highlighted the question of the Community or the Union signing up to the ECHR. In view of the mandate given to the Convention by the Cologne European Council, the Convention has admitted ever since its work began that this matter does not concern it.

However, the existence of a Charter does not diminish the interest in joining, as accession would effectively establish external supervision of fundamental rights at Union level. Moreover, accession to the ECHR would in no way lessen the importance of drawing up a European Union Charter. The question has also become topical following a recent ruling by the European Court of Human Rights in Strasbourg on a piece of primary Community legislation (Application No 24 833/94, *Matthews v United Kingdom*, judgment on 18 February 1999).

3. THE CONTENT OF THE PRELIMINARY DRAFT

15. The preliminary draft has given rise to a number of observations, which are set out below.

3.1. Structure

16. The preliminary draft consists of 52 Articles and an introductory preamble. Apart from the general provisions at the end of the document (Articles 49 to 52), the Articles are grouped around six fundamental values: dignity (Articles 1 to 5), freedoms (Articles 6 to 19); equality (Articles 20 to 24); solidarity (Articles 25 to 36); citizenship (Articles 37 to 44) and justice (Articles 45 to 48).
17. The preliminary draft is accompanied by an explanatory memorandum (CONVENT 46, annexed to this Communication), which lists the sources that provide the basis for the Charter's Articles (including Community Treaties, the Rome Convention on the Protection of Human Rights and Fundamental Freedoms, other international conventions and rulings by the Court of Justice). The Commission believes that this explanatory memorandum could be of help with further interpretation of the Charter.

3.2. Form

18. In keeping with the spirit of the Cologne Conclusions, which called for a Charter of Fundamental Rights of the Union to be drawn up to make their overriding importance and relevance more visible to the Union's citizens, the drafting has been characterised by a desire for conciseness and clarity.

3.3. The list of rights

19. In line with the Cologne conclusions and taking account of the principle of the indivisibility of fundamental rights, the preliminary draft includes the rights of liberty and equality, together with the procedural rights guaranteed by the Rome Convention and by

the constitutional traditions of the Member States, the fundamental rights of citizens of the European Union and fundamental economic and social rights, grouping them on the basis of the abovementioned structure.

20. The Convention's work has resulted in the explicit inclusion of rights not on the list drawn up by the Praesidium of the Convention as a basis for discussion (CHARTE 4112/00): freedom of scientific research (Article 13); freedom to conduct a business (Article 16); the protection of intellectual property (Article 17); the right to good administration (Article 39); children's rights (Article 23); access to services of general economic interest (Article 34); protection in the event of unjustified dismissal (Article 28). Equality, which found a place in the Praesidium's draft solely in connection with bans on discrimination, is the subject of two specific Articles: one establishing the rule of equality before the law (Article 20) and the other dealing with the equality of men and women (Article 22). Reference is also made in the preamble to duties with regard to other persons.
21. Conversely, certain rights envisaged at the beginning have not been included:
- either because they were seen as simply setting policy objectives, which the Cologne conclusions prevent from being included in the Charter; this is the case as regards the right to work or right to an equitable wage; or
 - because, without being excluded from the list, they were already implicit in other provisions in the preliminary draft; this is the case, for example, of the right to strike, which is covered by Article 26 concerning the right of collective bargaining and action, or the right to a minimum income, which is covered by Article 32 dealing with social assistance.
22. Clearly, the most difficult task for the Convention was to decide which economic and social rights to include in the preliminary draft. This concerns Chapter IV Solidarity (Articles 25 to 36) and Articles 15 (freedom to choose an occupation and to seek work), 22 (equality between men and women) and 24 (integration of persons with disabilities). It is likely to be difficult to reach a consensus within the Convention on these rights.
23. For its part, the Commission believes that the rights contained in the preliminary draft, be they civic and political rights, rights of citizens and economic and social rights, do strike a good balance. True, it would have preferred some rights to be expressed more explicitly (such as the right to strike covered by Article 26 on the right of collective bargaining and action and freedom in trade union matters in Article 12 or the European dimension of the exercise of these rights) or more forcefully (in particular for the protection of the environment in Article 35). But the Commission still considers that the preliminary draft provides an adequate basis for securing a consensus within the Convention.
- 3.4. Holders of rights**
24. This initially appeared to be a complex question but was resolved pragmatically: a response was provided for each right contained in the preliminary draft. There is a broad consensus for this approach, which is fully supported by the Commission.

25. In accordance with the principle of the universality of rights, most of the rights listed in the preliminary draft are granted to everyone.

However, certain rights are granted to specific groups of people:

– children (Article 23);

– workers, in relation to some of the social rights;

– Union citizens: freedom to work, to seek work, to settle or provide services in any Member State (Article 15(2)); right to the same access to social security benefits and welfare assistance in another Member State (Article 32(2)); right to take part in elections to the European Parliament (Article 37) and municipal elections (Article 38); right to move and reside freely within the territory of the Member States (Article 43(1)) and diplomatic and consular protection (Article 44),

– Citizens of the Union and persons residing in the Union: right of access to institution documents (Article 40); right to refer cases to the Ombudsman (Article 41) and right to petition the European Parliament (Article 42).

It should be added that certain rights granted to Union citizens may also be accorded to nationals of third countries, such as freedom of movement (Article 43(2)).

Some provisions do not establish subjective rights that can be invoked by the individual directly but set out principles which can be enforced against Community or national authorities in the performance of their legislative or executive functions. This applies to entitlement to social security benefits and social services (Article 32(1)), access to services of general economic interest (Article 34), environmental protection (Article 35) and consumer protection (Article 36).

3.5. Scope and limits of the rights guaranteed

26. With certain exceptions, exercise of the rights may be restricted where other legitimate interests must be respected, either the public interest, for example in the fight against crime, or private interests where the rights or freedoms of others are involved.

The Commission supports the insertion of a horizontal article applicable to almost all rights (Article 50(1)), an approach that has found widespread support within the Convention. Chosen in preference to the approach of explaining possible restrictions on each right, this strategy avoids cumbersome repetitions while giving all the guarantees needed to protect these rights effectively. The restrictions may affect only the exercise of

the right; they do not challenge its substance. The appropriate national or Community legislative authorities must make provision for them, and they must be necessary to achieve objectives of general interest that are pursued by the Union, other legitimate interests in a democratic society or the need to protect the rights and freedoms of others. They must also be subject to the principle of proportionality.

27. Provision has been made for rights based on the Community Treaties to be exercised under the conditions and within the limits defined by those Treaties (Article 50(2)).

3.6. Level of protection

28. The Commission fully shares the desire expressed in Article 51 of the preliminary draft to prevent the interpretation of the Charter restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by the various laws and agreements in force in the Union.

29. The Commission also fully shares the desire to ensure that differing conceptions of fundamental rights do not develop in Europe, if, contrary to the frequently expressed hope of the Commission, the Union is not eventually allowed to accede to the Rome Convention. For this reason, it supports Article 50(3) of the preliminary draft, which is intended to ensure consistency in the interpretations of the provisions contained in the Rome Convention and the corresponding provisions in the Charter, while respecting the principle of the autonomy of Community law.

3.7. The authorities required to respect the Charter

30. The Commission fully supports the solution chosen in the preliminary draft (Article 49(1)) addressing the provisions of the Charter to the institutions and bodies of the Union and to the Member States only when they are implementing Union law. This means that the Charter would apply uniformly to all the activities carried out by the institutions and bodies of the Union and by the national authorities under the three pillars of the Union. Of course, this would include the particularly sensitive areas of maintaining and developing the area of freedom, security and justice.

From a legal point of view, this solution is in line with the consistent case-law of the Court of Justice, which has pointed out on numerous occasions that Member States are required to respect fundamental rights when implementing Community law.

31. As pointed out above, the drawing up of the Charter in no way calls into question the powers of the Union or the principle of subsidiarity. The provisions on the subject in the preliminary draft (Article 49) and its preamble have a declaratory value which will help to clarify any misunderstandings on this point. Far from extending the powers of the Union, the Charter, as the sum of the common values recognised in the Union, will in fact be the instrument which explicitly ensures that these powers are exercised in the manner established by the Treaties.

4. THE LEGAL NATURE OF THE CHARTER

32. At current stage in the proceedings, attention should continue to be focused as a matter of priority on the content of the Charter until such time as the draft Charter has been finalised, for only if the Charter is sure to be an ambitious document will the question of its legal nature and its incorporation in the Treaty be a matter of any importance.

33. This question was raised by the Heads of State or Government themselves. The Cologne conclusions clearly state that, after the European Parliament, the Council and the Commission have jointly proclaimed the Charter:

"It will then have to be considered whether and, if so, how the Charter should be integrated into the treaties."

It was for this reason that the line taken by the Convention from the outset of its work was to produce a draft Charter with a content that would allow it to be incorporated in the Treaties.

34. The Commission also notes that the European Parliament stated its clear support for the idea of incorporating the Charter in the Treaties in its resolution adopted in March 2000, a view shared by the Governments of several Member States. The same is true of numerous non-governmental organisations.

35. For its part, the Commission believes that, as the drawing up of the Charter involves the national and Union legislative and executive powers as represented in the Convention, and as long as it remains ambitious, the Charter will have the effect of a proclamation, irrespective of the legal value formally conferred on it.

However, in view of the preliminary draft, the Commission believes that incorporating the Charter in the Treaties would remedy some of the shortcomings in the existing system of protection of fundamental rights in the Union. This system is characterised by indirect protection by means of general principles of Community law, this protection being basically in the hands of the courts, established by judgments on cases brought before them, and by protection which is not immediately evident to its direct beneficiaries.

36. As stated above, the conclusions of the Cologne European Council also raise the question of how the Charter should be incorporated into the Treaties. If the European Council were inclined to give the Charter mandatory force and incorporate it into the Treaties, this would obviously have serious repercussions on the present political dynamics of the Union. Thought would have to be given to the technical arrangements for incorporating the Charter into the Treaties in the future using the methods for the revision of the Treaties

37. For this reason, as soon as the draft Charter has been finalised and depending on the what it has developed into, the Commission will present a communication on the question of its legal nature.

5. CONCLUSIONS

38. In conclusion:

- a) in principle, the Commission supports the preliminary draft Charter as set out in document CONVENT 45 of 28 July; it realises, however, that, in view of the comments made by the members of the Convention, the preliminary draft may still be amended and therefore reserves the right to re-examine the text at a later stage;
 - b) the Commission will present a communication on the legal nature of the Charter once the draft has been finalised by the Convention.
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DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 25 September 2000**CHARTE 4479/00****CONTRIB 330****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find enclosed a contribution by the Council of Europe's observers, on the draft appendix to the explanatory notes regarding the Article 51 § 3 of the Charter. ¹

¹ This text has been submitted in French and English languages.

19.9.2000

**Note by the Council of Europe Observers
for the attention of the members of the Convention**

We have the following observations on the document of 15 September 2000 containing a draft appendix to the explanatory notes on Article 51 § 3 of the Charter (Convent 47).

1. On the basis of the current draft of the Charter, the following amendments to the two lists would appear necessary:

- ❑ Article 9 (right to marry and to found a family), which is not mentioned, should appear in the second list.
- ❑ In the second list, the passage relating to Article 12 (freedom of assembly and of association) should read: “Article 12 § 1 corresponds to Article 11 of the ECHR, but its scope is extended, by paragraph 2, to the European Union level”.
- ❑ Article 14 § 3 (the part concerning the right of parents to ensure the education of their children) should appear in the first list.
- ❑ Article 21 § 1 (non-discrimination), which is not mentioned, should appear in the second list.

2. However, care should be taken to avoid these lists acting to prevent the case-law on the European Convention on Human Rights being taken into account in the application of the Charter. The same applies, *mutatis mutandis*, to future additional Protocols to the ECHR.

So as to avoid any confusion, it would be appropriate to ensure that the minimum level of protection rule set out in Articles 51 § 3 and 52 of the Charter is valid also for those Charter rights for which, at this point, the equivalent is to be found in the case-law of the European Court of Human Rights, not in the text of the ECHR¹. Indeed, Article 51 § 3 speaks of “rights” guaranteed by the ECHR, not by the Articles of that Convention, and the Charter itself contains rights that are based on the Court’s case-law rather than the text of the ECHR. Examples are provided by Article 19 § 2 (prohibition on removal entailing a risk of ill-treatment) and Article 46 § 3 (right to legal aid; see the explanatory notes on these provisions in Convent 46).

Here are some further examples of Charter provisions (Convent 47) that are covered – at least in part – by the case-law of the European Court of Human Rights:

- ❑ Article 8 (protection of personal data) – see, among other authorities, the following judgments *Leander v. Sweden*, 26 March 1987; *Amman v. Switzerland*, 16 February 2000; and *Rotaru v. Romania*, 4 May 2000;
- ❑ Article 13 (protection of art) – see, in particular, the *Müller and Others v. Switzerland* judgment of 24 May 1988 and the *Karatas v. Turkey* judgment of 8 July 1999
- ❑ Article 13 (protection of research): see the *Hertel v. Switzerland* judgment of 25 August 1998
- ❑ Article 22 (protection of cultural, religious and linguistic diversity): decision of 25 May 2000 in the case of *Noack and Others v. Germany* (no. 46346/99)

¹ See on this point our contribution of 30 June 2000 (Contrib 268, Charte 4411/00).

- ❑ Article 24 (rights of the child): see, in particular, the T. and V. v. the United Kingdom judgment of 16 December 1999; and the Scozzari and Giunta v. Italy judgment of 13 July 2000
- ❑ Article 25 (integration of persons with disabilities): see the Botta v. Italy judgment of 24 February 1998
- ❑ Article 36 (environmental protection): see, in particular, the following judgments: Lopez Ostra v. Spain, 9 December 1994; Guerra and Others v. Italy, 19 February 1998; L.C.B. v. the United Kingdom, 9 June 1998
- ❑ Article 48 § 3 (proportionality of criminal penalties): in the context of the examination of the necessity for certain measures of interference (see, for example, the Constantinescu v. Romania judgment of 27 June 2000).

Indeed, it is for that reason that the wise precaution has been taken in the explanatory notes (Convent 46) on Article 50 § 3 (currently 51 § 3) to indicate : “It goes without saying that the term “convention” covers both the Convention and its Protocols and that the meaning and scope of its rights are determined not only by the text of the Convention but also by the case-law of the European Court of Human Rights”. For the same reason, the Council of Europe stressed the importance of having a reference to the case-law in the text of the Charter, (the reference is to be found in the Preamble).

The proposed lists should therefore reflect that state of affairs. This could be done by adding a clause explaining that the lists “*have been drawn up without prejudice to the application of Article 51 § 3 to rights of the Charter for which there is an equivalent in the case-law of the European Court of Human Rights or in the additional Protocols to the European Convention on Human Rights*”.

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DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

**Brussels, 28 September 2000
(OR. fr)****CHARTE 4487/00****CONVENT 50****NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

PREAMBLE

The peoples of Europe, in creating an ever closer union among them, are resolved to share a peaceful future based on common values.

Conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law. It places the individual at the heart of its activities, by establishing the citizenship of the Union and by creating an area of freedom, security and justice.

The Union contributes to the preservation and to the development of these common values while respecting the diversity of the cultures and traditions of the peoples of Europe as well as the national identities of the Member States and the organisation of their public authorities at national, regional and local levels; it seeks to promote balanced and sustainable development and ensures free movement of persons, goods, services and capital, and the freedom of establishment.

To this end, it is necessary to strengthen the protection of fundamental rights in the light of changes in society, social progress and scientific and technological developments by making those rights more visible in a Charter.

This Charter reaffirms, with due regard for the powers and tasks of the Community and the Union and the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the Treaty on European Union, the Community Treaties, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Community and by the Council of Europe and the case law of the Court of Justice of the European Communities and of the European Court of Human Rights.

Enjoyment of these rights entails responsibilities and duties with regard to other persons, to the human community and to future generations.

The Union therefore recognises the rights, freedoms and principles set out hereafter.

CHAPTER I

DIGNITY

Article 1

Human dignity

Human dignity is inviolable. It must be respected and protected.

Article 2

Right to life

1. Everyone has the right to life.
2. No one shall be condemned to the death penalty, or executed.

Article 3

Right to the integrity of the person

1. Everyone has the right to respect for his or her physical and mental integrity.
2. In the fields of medicine and biology, the following must be respected in particular:
 - the free and informed consent of the person concerned, according to the procedures laid down by law,

- the prohibition of eugenic practices, in particular those aiming at the selection of persons,
- the prohibition on making the human body and its parts as such a source of financial gain,
- the prohibition of the reproductive cloning of human beings.

Article 4

Prohibition of torture and inhuman or degrading treatment or punishment

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Article 5

Prohibition of slavery and forced labour

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. Trafficking in human beings is prohibited.

CHAPTER II

FREEDOMS

Article 6

Right to liberty and security

Everyone has the right to liberty and security of person.

Article 7

Respect for private and family life

Everyone has the right to respect for his or her private and family life, home and communications.

Article 8

Protection of personal data

1. Everyone has the right to the protection of personal data concerning him or her.
2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.
3. Compliance with these rules shall be subject to control by an independent authority.

Article 9

Right to marry and right to found a family

The right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights.

Article 10

Freedom of thought, conscience and religion

1. Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.
2. The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right.

Article 11

Freedom of expression and information

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.
2. The freedom and pluralism of the media shall be respected.

Article 12

Freedom of assembly and of association

1. Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests.
2. Political parties at Union level contribute to expressing the political will of the citizens of the Union.

Article 13

Freedom of the arts and sciences

The arts and scientific research shall be free of constraint. Academic freedom shall be respected.

Article 14

Right to education

1. Everyone has the right to education and to have access to vocational and continuing training.
2. This right includes the possibility to receive free compulsory education.

3. The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right.

Article 15

Freedom to choose an occupation and right to engage in work

1. Everyone has the right to engage in work and to pursue a freely chosen or accepted occupation.
2. Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State.
3. Nationals of third countries who are authorised to work in the territories of the Member States are entitled to working conditions equivalent to those of citizens of the Union.

Article 16

Freedom to conduct a business

The freedom to conduct a business in accordance with Community law and national laws and practices is recognised.

Article 17

Right to property

1. Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law insofar as is necessary for the general interest.
2. Intellectual property shall be protected.

Article 18

Right to asylum

The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty establishing the European Community.

Article 19

Protection in the event of removal, expulsion or extradition

1. Collective expulsions are prohibited.
2. No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.

CHAPTER III

EQUALITY

Article 20

Equality before the law

Everyone is equal before the law.

Article 21

Non-discrimination

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.
2. Within the scope of application of the Treaty establishing the European Community and of the Treaty on European Union, and without prejudice to the special provisions of those Treaties, any discrimination on grounds of nationality shall be prohibited.

Article 22

Cultural, religious and linguistic diversity

The Union shall respect cultural, religious and linguistic diversity.

Article 23

Equality between men and women

Equality between men and women must be ensured in all areas, including employment, work and pay.

The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.

Article 24

The rights of the child

1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.
2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.
3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.

Article 25

The rights of the elderly

The Union recognises and respects the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life.

Article 26

Integration of persons with disabilities

The Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.

CHAPTER IV

SOLIDARITY

Article 27

Workers' right to information and consultation within the undertaking

Workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions provided for by Community law and national laws and practices.

Article 28

Right of collective bargaining and action

Workers and employers, or their respective organisations, have, in accordance with Community law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action.

Article 29

Right of access to placement services

Everyone has the right of access to a free placement service.

Article 30

Protection in the event of unjustified dismissal

Every worker has the right to protection against unjustified dismissal, in accordance with Community law and national laws and practices.

Article 31

Fair and just working conditions

1. Every worker has the right to working conditions which respect his or her health, safety and dignity.

2. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

Article 32

Prohibition of child labour and protection of young people at work

The employment of children is prohibited. The minimum age of admission to employment may not be lower than the minimum school-leaving age, without prejudice to such rules as may be more favourable to young people and except for limited derogations.

Young people admitted to work must have working conditions appropriate to their age and be protected against economic exploitation and any work likely to harm their safety, health or physical, mental, moral or social development or to interfere with their education.

Article 33

Family and professional life

1. The family shall enjoy legal, economic and social protection.
2. To reconcile family and professional life, everyone shall have the right to protection from dismissal for a reason connected with maternity and the right to paid maternity leave and to parental leave following the birth or adoption of a child.

Article 34

Social security and social assistance

1. The Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the procedures laid down by Community law and national laws and practices.
2. Everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with Community law and national laws and practices.
3. In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the procedures laid down by Community law and national laws and practices.

Article 35

Health care

Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities.

Article 36

Access to services of general economic interest

The Union recognises and respects access to services of general economic interest as provided for in national laws and practices, in accordance with the Treaty establishing the European Community, in order to promote the social and territorial cohesion of the Union.

Article 37

Environmental protection

A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.

Article 38

Consumer Protection

Union policies shall ensure a high level of consumer protection.

CHAPTER V

CITIZENS' RIGHTS

Article 39

Right to vote and to stand as a candidate at elections to the European Parliament

1. Every citizen of the Union has the right to vote and to stand as a candidate at elections to the European Parliament in the Member State in which he or she resides, under the same conditions as nationals of that State.
2. Members of the European Parliament shall be elected by direct universal suffrage in a free and secret ballot.

Article 40

Right to vote and to stand as a candidate at municipal elections

Every citizen of the Union has the right to vote and to stand as a candidate at municipal elections in the Member State in which he or she resides under the same conditions as nationals of that State.

Article 41

Right to good administration

1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union.

2. This right includes:
- the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;
 - the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;
 - the obligation of the administration to give reasons for its decisions.
3. Every person has the right to have the Community make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.
4. Every person may write to the institutions of the Union in one of the languages of the Treaties and must have an answer in the same language.

Article 42

Right of access to documents

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to European Parliament, Council and Commission documents.

Article 43

Ombudsman

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to refer to the Ombudsman of the Union cases of maladministration in the activities of the Community institutions or bodies, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role.

Article 44

Right to petition

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to petition the European Parliament.

Article 45

Freedom of movement and of residence

1. Every citizen of the Union has the right to move and reside freely within the territory of the Member States.
2. Freedom of movement and residence may be granted, in accordance with the Treaty establishing the European Community, to nationals of third countries legally resident in the territory of a Member State.

Article 46

Diplomatic and consular protection

Every citizen of the Union shall, in the territory of a third country in which the Member State of which he or she is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that Member State.

CHAPTER VI

JUSTICE

Article 47

Right to an effective remedy and to a fair trial

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

Legal aid shall be made available to those who lack sufficient resources insofar as such aid is necessary to ensure effective access to justice.

Article 48

Presumption of innocence and right of defence

1. Everyone who has been charged shall be presumed innocent until proved guilty according to law.
2. Respect for the rights of the defence of anyone who has been charged shall be guaranteed.

Article 49

Principles of legality and proportionality of criminal offences and penalties

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national law or international law at the time when it was committed. Nor shall a heavier penalty be imposed than that which was applicable at the time the criminal offence was committed. If, subsequent to the commission of a criminal offence, the law provides for a lighter penalty, that penalty shall be applicable.
2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles recognised by the community of nations.
3. The severity of penalties must not be disproportionate to the criminal offence.

Article 50

Right not to be tried or punished twice in criminal proceedings for the same criminal offence

No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law.

CHAPTER VII

GENERAL PROVISIONS

Article 51

Scope

1. The provisions of this Charter are addressed to the institutions and bodies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers.
2. This Charter does not establish any new power or task for the Community or the Union, or modify powers and tasks defined by the Treaties.

Article 52

Scope of guaranteed rights

1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognized by the Union or the need to protect the rights and freedoms of others.
2. Rights recognised by this Charter which are based on the Community Treaties or the Treaty on European Union shall be exercised under the conditions and within the limits defined by those Treaties.

3. Insofar as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.

Article 53

Level of protection

Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by Union law and international law and by international agreements to which the Union, the Community or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' constitutions.

Article 54

Prohibition of abuse of rights

Nothing in this Charter shall be interpreted as implying any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms recognised in this Charter or at their limitation to a greater extent than is provided for herein.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

**Brussels, 10 October 2000
(OR. fr)****CHARTE 4487/1/00
REV 1 (el,en,fr,it,sv)****CONVENT 50****NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

PREAMBLE

The peoples of Europe, in creating an ever closer union among them, are resolved to share a peaceful future based on common values.

Conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law. It places the individual at the heart of its activities, by establishing the citizenship of the Union and by creating an area of freedom, security and justice.

The Union contributes to the preservation and to the development of these common values while respecting the diversity of the cultures and traditions of the peoples of Europe as well as the national identities of the Member States and the organisation of their public authorities at national, regional and local levels; it seeks to promote balanced and sustainable development and ensures free movement of persons, goods, services and capital, and the freedom of establishment.

To this end, it is necessary to strengthen the protection of fundamental rights in the light of changes in society, social progress and scientific and technological developments by making those rights more visible in a Charter.

This Charter reaffirms, with due regard for the powers and tasks of the Community and the Union and the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the Treaty on European Union, the Community Treaties, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Community and by the Council of Europe and the case law of the Court of Justice of the European Communities and of the European Court of Human Rights.

Enjoyment of these rights entails responsibilities and duties with regard to other persons, to the human community and to future generations.

The Union therefore recognises the rights, freedoms and principles set out hereafter.

CHAPTER I

DIGNITY

Article 1

Human dignity

Human dignity is inviolable. It must be respected and protected.

Article 2

Right to life

1. Everyone has the right to life.
2. No one shall be condemned to the death penalty, or executed.

Article 3

Right to the integrity of the person

1. Everyone has the right to respect for his or her physical and mental integrity.
2. In the fields of medicine and biology, the following must be respected in particular:
 - the free and informed consent of the person concerned, according to the procedures laid down by law,

- the prohibition of eugenic practices, in particular those aiming at the selection of persons,
- the prohibition on making the human body and its parts as such a source of financial gain,
- the prohibition of the reproductive cloning of human beings.

Article 4

Prohibition of torture and inhuman or degrading treatment or punishment

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Article 5

Prohibition of slavery and forced labour

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. Trafficking in human beings is prohibited.

CHAPTER II

FREEDOMS

Article 6

Right to liberty and security

Everyone has the right to liberty and security of person.

Article 7

Respect for private and family life

Everyone has the right to respect for his or her private and family life, home and communications.

Article 8

Protection of personal data

1. Everyone has the right to the protection of personal data concerning him or her.
2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.
3. Compliance with these rules shall be subject to control by an independent authority.

Article 9

Right to marry and right to found a family

The right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights.

Article 10

Freedom of thought, conscience and religion

1. Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.
2. The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right.

Article 11

Freedom of expression and information

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.
2. The freedom and pluralism of the media shall be respected.

Article 12

Freedom of assembly and of association

1. Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests.
2. Political parties at Union level contribute to expressing the political will of the citizens of the Union.

Article 13

Freedom of the arts and sciences

The arts and scientific research shall be free of constraint. Academic freedom shall be respected.

Article 14

Right to education

1. Everyone has the right to education and to have access to vocational and continuing training.
2. This right includes the possibility to receive free compulsory education.

3. The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right.

Article 15

Freedom to choose an occupation and right to engage in work

1. Everyone has the right to engage in work and to pursue a freely chosen or accepted occupation.
2. Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State.
3. Nationals of third countries who are authorised to work in the territories of the Member States are entitled to working conditions equivalent to those of citizens of the Union.

Article 16

Freedom to conduct a business

The freedom to conduct a business in accordance with Community law and national laws and practices is recognised.

Article 17

Right to property

1. Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law insofar as is necessary for the general interest.
2. Intellectual property shall be protected.

Article 18

Right to asylum

The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty establishing the European Community.

Article 19

Protection in the event of removal, expulsion or extradition

1. Collective expulsions are prohibited.
2. No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.

CHAPTER III

EQUALITY

Article 20

Equality before the law

Everyone is equal before the law.

Article 21

Non-discrimination

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.
2. Within the scope of application of the Treaty establishing the European Community and of the Treaty on European Union, and without prejudice to the special provisions of those Treaties, any discrimination on grounds of nationality shall be prohibited.

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Cultural, religious and linguistic diversity

The Union shall respect cultural, religious and linguistic diversity.

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Equality between men and women

Equality between men and women must be ensured in all areas, including employment, work and pay.

The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.

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1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.
2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.
3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.

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The Union recognises and respects the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life.

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Integration of persons with disabilities

The Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.

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SOLIDARITY

Article 27

Workers' right to information and consultation within the undertaking

Workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions provided for by Community law and national laws and practices.

Article 28

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Workers and employers, or their respective organisations, have, in accordance with Community law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action.

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Everyone has the right of access to a free placement service.

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Every worker has the right to protection against unjustified dismissal, in accordance with Community law and national laws and practices.

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1. Every worker has the right to working conditions which respect his or her health, safety and dignity.

2. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

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Prohibition of child labour and protection of young people at work

The employment of children is prohibited. The minimum age of admission to employment may not be lower than the minimum school-leaving age, without prejudice to such rules as may be more favourable to young people and except for limited derogations.

Young people admitted to work must have working conditions appropriate to their age and be protected against economic exploitation and any work likely to harm their safety, health or physical, mental, moral or social development or to interfere with their education.

Article 33

Family and professional life

1. The family shall enjoy legal, economic and social protection.
2. To reconcile family and professional life, everyone shall have the right to protection from dismissal for a reason connected with maternity and the right to paid maternity leave and to parental leave following the birth or adoption of a child.

Article 34

Social security and social assistance

1. The Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the modalities laid down by Community law and national laws and practices.
2. Everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with Community law and national laws and practices.
3. In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the procedures laid down by Community law and national laws and practices.

Article 35

Health care

Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities.

Article 36

Access to services of general economic interest

The Union recognises and respects access to services of general economic interest as provided for in national laws and practices, in accordance with the Treaty establishing the European Community, in order to promote the social and territorial cohesion of the Union.

Article 37

Environmental protection

A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.

Article 38

Consumer Protection

Union policies shall ensure a high level of consumer protection.

CHAPTER V

CITIZENS' RIGHTS

Article 39

Right to vote and to stand as a candidate at elections to the European Parliament

1. Every citizen of the Union has the right to vote and to stand as a candidate at elections to the European Parliament in the Member State in which he or she resides, under the same conditions as nationals of that State.
2. Members of the European Parliament shall be elected by direct universal suffrage in a free and secret ballot.

Article 40

Right to vote and to stand as a candidate at municipal elections

Every citizen of the Union has the right to vote and to stand as a candidate at municipal elections in the Member State in which he or she resides under the same conditions as nationals of that State.

Article 41

Right to good administration

1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union.

2. This right includes:

- the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;
- the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;
- the obligation of the administration to give reasons for its decisions.

3. Every person has the right to have the Community make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.

4. Every person may write to the institutions of the Union in one of the languages of the Treaties and must have an answer in the same language.

Article 42

Right of access to documents

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to European Parliament, Council and Commission documents.

Article 43

Ombudsman

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to refer to the Ombudsman of the Union cases of maladministration in the activities of the Community institutions or bodies, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role.

Article 44

Right to petition

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to petition the European Parliament.

Article 45

Freedom of movement and of residence

1. Every citizen of the Union has the right to move and reside freely within the territory of the Member States.
2. Freedom of movement and residence may be granted, in accordance with the Treaty establishing the European Community, to nationals of third countries legally resident in the territory of a Member State.

Article 46

Diplomatic and consular protection

Every citizen of the Union shall, in the territory of a third country in which the Member State of which he or she is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that Member State.

CHAPTER VI

JUSTICE

Article 47

Right to an effective remedy and to a fair trial

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

Legal aid shall be made available to those who lack sufficient resources insofar as such aid is necessary to ensure effective access to justice.

Article 48

Presumption of innocence and right of defence

1. Everyone who has been charged shall be presumed innocent until proved guilty according to law.
2. Respect for the rights of the defence of anyone who has been charged shall be guaranteed.

Article 49

Principles of legality and proportionality of criminal offences and penalties

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national law or international law at the time when it was committed. Nor shall a heavier penalty be imposed than that which was applicable at the time the criminal offence was committed. If, subsequent to the commission of a criminal offence, the law provides for a lighter penalty, that penalty shall be applicable.
2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles recognised by the community of nations.
3. The severity of penalties must not be disproportionate to the criminal offence.

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Right not to be tried or punished twice in criminal proceedings for the same criminal offence

No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law.

CHAPTER VII

GENERAL PROVISIONS

Article 51

Scope

1. The provisions of this Charter are addressed to the institutions and bodies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers.
2. This Charter does not establish any new power or task for the Community or the Union, or modify powers and tasks defined by the Treaties.

Article 52

Scope of guaranteed rights

1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.
2. Rights recognised by this Charter which are based on the Community Treaties or the Treaty on European Union shall be exercised under the conditions and within the limits defined by those Treaties.

3. Insofar as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.

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Level of protection

Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by Union law and international law and by international agreements to which the Union, the Community or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' constitutions.

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Prohibition of abuse of rights

Nothing in this Charter shall be interpreted as implying any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms recognised in this Charter or at their limitation to a greater extent than is provided for herein.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 11 October 2000 (12.10)
(OR. fr)**CHARTE 4487/1/00**
REV 1 COR 1 (en)**CONVENT 50****NOTE: CORRIGENDUM**

Subject : Draft Charter of Fundamental Rights of the European Union

Page 15, Article 34(a) In paragraph 1, third line

For: "in accordance with the modalities laid down by ..."

Read: "in accordance with the rules laid down by ...".(b) In paragraph 3; third line

For: "in accordance with the procedures laid down by ..."

Read: "in accordance with the rules laid down by ...".

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

**Brussels, 9 November 2000
(OR. fr)****CHARTE 4487/2/00
REV 2 (en)****CONVENT 50****NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

PREAMBLE

The peoples of Europe, in creating an ever closer union among them, are resolved to share a peaceful future based on common values.

Conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law. It places the individual at the heart of its activities, by establishing the citizenship of the Union and by creating an area of freedom, security and justice.

The Union contributes to the preservation and to the development of these common values while respecting the diversity of the cultures and traditions of the peoples of Europe as well as the national identities of the Member States and the organisation of their public authorities at national, regional and local levels; it seeks to promote balanced and sustainable development and ensures free movement of persons, goods, services and capital, and the freedom of establishment.

To this end, it is necessary to strengthen the protection of fundamental rights in the light of changes in society, social progress and scientific and technological developments by making those rights more visible in a Charter.

This Charter reaffirms, with due regard for the powers and tasks of the Community and the Union and the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the Treaty on European Union, the Community Treaties, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Community and by the Council of Europe and the case law of the Court of Justice of the European Communities and of the European Court of Human Rights.

Enjoyment of these rights entails responsibilities and duties with regard to other persons, to the human community and to future generations.

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2. In the fields of medicine and biology, the following must be respected in particular:
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- the prohibition of eugenic practices, in particular those aiming at the selection of persons,
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No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

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1. No one shall be held in slavery or servitude.
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3. Trafficking in human beings is prohibited.

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Everyone has the right to respect for his or her private and family life, home and communications.

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2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.
3. Compliance with these rules shall be subject to control by an independent authority.

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The right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights.

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The arts and scientific research shall be free of constraint. Academic freedom shall be respected.

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2. This right includes the possibility to receive free compulsory education.

3. The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right.

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The freedom to conduct a business in accordance with Community law and national laws and practices is recognised.

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EQUALITY

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Equality before the law

Everyone is equal before the law.

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Non-discrimination

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.
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The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.

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1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.
2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.
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Young people admitted to work must have working conditions appropriate to their age and be protected against economic exploitation and any work likely to harm their safety, health or physical, mental, moral or social development or to interfere with their education.

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Article 34

Social security and social assistance

1. The Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by Community law and national laws and practices.
2. Everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with Community law and national laws and practices.
3. In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Community law and national laws and practices.

Article 35

Health care

Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities.

Article 36

Access to services of general economic interest

The Union recognises and respects access to services of general economic interest as provided for in national laws and practices, in accordance with the Treaty establishing the European Community, in order to promote the social and territorial cohesion of the Union.

Article 37

Environmental protection

A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.

Article 38

Consumer Protection

Union policies shall ensure a high level of consumer protection.

CHAPTER V

CITIZENS' RIGHTS

Article 39

Right to vote and to stand as a candidate at elections to the European Parliament

1. Every citizen of the Union has the right to vote and to stand as a candidate at elections to the European Parliament in the Member State in which he or she resides, under the same conditions as nationals of that State.
2. Members of the European Parliament shall be elected by direct universal suffrage in a free and secret ballot.

Article 40

Right to vote and to stand as a candidate at municipal elections

Every citizen of the Union has the right to vote and to stand as a candidate at municipal elections in the Member State in which he or she resides under the same conditions as nationals of that State.

Article 41

Right to good administration

1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union.

2. This right includes:

- the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;
- the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;
- the obligation of the administration to give reasons for its decisions.

3. Every person has the right to have the Community make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.

4. Every person may write to the institutions of the Union in one of the languages of the Treaties and must have an answer in the same language.

Article 42

Right of access to documents

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to European Parliament, Council and Commission documents.

Article 43

Ombudsman

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to refer to the Ombudsman of the Union cases of maladministration in the activities of the Community institutions or bodies, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role.

Article 44

Right to petition

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to petition the European Parliament.

Article 45

Freedom of movement and of residence

1. Every citizen of the Union has the right to move and reside freely within the territory of the Member States.
2. Freedom of movement and residence may be granted, in accordance with the Treaty establishing the European Community, to nationals of third countries legally resident in the territory of a Member State.

Article 46

Diplomatic and consular protection

Every citizen of the Union shall, in the territory of a third country in which the Member State of which he or she is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that Member State.

CHAPTER VI

JUSTICE

Article 47

Right to an effective remedy and to a fair trial

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

Legal aid shall be made available to those who lack sufficient resources insofar as such aid is necessary to ensure effective access to justice.

Article 48

Presumption of innocence and right of defence

1. Everyone who has been charged shall be presumed innocent until proved guilty according to law.
2. Respect for the rights of the defence of anyone who has been charged shall be guaranteed.

Article 49

Principles of legality and proportionality of criminal offences and penalties

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national law or international law at the time when it was committed. Nor shall a heavier penalty be imposed than that which was applicable at the time the criminal offence was committed. If, subsequent to the commission of a criminal offence, the law provides for a lighter penalty, that penalty shall be applicable.
2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles recognised by the community of nations.
3. The severity of penalties must not be disproportionate to the criminal offence.

Article 50

Right not to be tried or punished twice in criminal proceedings for the same criminal offence

No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law.

CHAPTER VII

GENERAL PROVISIONS

Article 51

Scope

1. The provisions of this Charter are addressed to the institutions and bodies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers.
2. This Charter does not establish any new power or task for the Community or the Union, or modify powers and tasks defined by the Treaties.

Article 52

Scope of guaranteed rights

1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.
2. Rights recognised by this Charter which are based on the Community Treaties or the Treaty on European Union shall be exercised under the conditions and within the limits defined by those Treaties.

3. Insofar as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.

Article 53

Level of protection

Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by Union law and international law and by international agreements to which the Union, the Community or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' constitutions.

Article 54

Prohibition of abuse of rights

Nothing in this Charter shall be interpreted as implying any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms recognised in this Charter or at their limitation to a greater extent than is provided for herein.

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE**fundamental.rights@consilium.eu.int**

Bruxelles, le 5 octobre 2000**CHARTE 4952/00****CONTRIB 352****NOTE DE TRANSMISSION**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne

Veillez trouver ci-après une contribution de M. Jean-Luc Dehaene, représentant personnel du gouvernement belge.^{1 2}

¹ Ce texte nous est parvenu en langue française uniquement.

² La contribution date du 28 septembre, elle nous est parvenue le 3 octobre, suite à des problèmes de transmission électronique.

Monsieur le Président,

1. A lecture des deux derniers documents qui nous ont été transmis par le Présidium, je crois pouvoir dire que nous avons répondu de manière adéquate au mandat qui nous avait été confié par le Conseil européen de Cologne. Je tiens tout particulièrement à féliciter le Présidium d'avoir pu élaborer un projet de Charte équilibré à l'issue de débats menés au sein de la Convention mais aussi de ses composantes qui ont reflété l'expression de sensibilités parfois difficilement conciliables.

Le projet de Charte se présente sous une structure qui a l'immense mérite de ne pas opérer un clivage entre les droits dits « traditionnels » et les droits économiques et sociaux mais celui-ci consacre également des droits qui bien qu'existant n'avaient pas encore été reconnus en qualité de droits fondamentaux nonobstant les valeurs importantes qu'ils visent à protéger, comme les principes bioéthiques, le droit à une bonne administration ou encore l'accès aux services d'intérêt économique général.

Comme je viens de le préciser, nous avons rempli notre mission et répondu à l'objectif fixé, il s'agissait non pas d'innover, de créer des droits nouveaux mais de se livrer à une compilation des droits existants à l'effet de les rendre plus visibles pour le citoyen.

Il faut par ailleurs se féliciter de ce que le texte proposé respecte le vœu exprimé par le Président Herzog au début de nos travaux. La rédaction d'un texte sous forme juridique devrait permettre le cas échéant, son intégration future dans les traités.

2. En vue de répondre à certaines critiques qui évoquent le caractère trop peu ambitieux de nos travaux, j'observe que la Charte renforcera la sécurité juridique.

Comme le précise, sans ambiguïté la Charte, celle-ci s'adressera aux institutions de l'Union et aux Etats membres quant ils agissent dans la sphère d'application du droit communautaire.

Dorénavant, toutes les mesures qui seront prises par ces acteurs importants de la mise en œuvre des droits fondamentaux, seront appréciées au regard des principes énoncés par la Charte.

L'Union s'est dotée d'un catalogue de droits qui s'impose à elle dans l'exercice des compétences qui lui sont conférées par les traités et je songe plus précisément au secteur particulièrement sensible d'un espace de liberté, de sécurité, et de justice, mais également dans la mise en œuvre de ses politiques externes comme l'a souligné judicieusement la Commission dans sa dernière contribution.

3. Je souhaite par ailleurs vous exprimer mon opinion au sujet des deux difficultés essentielles sur lesquelles ont buté nos travaux : les rapports entre la Charte et la CEDH et l'épineuse question de la définition des droits sociaux.

3.1. Certes on ne peut sous estimer les craintes exprimées par certains qui prédisent que la Charte va favoriser le développement de conceptions divergentes des droits fondamentaux selon que leur interprétation sera faite par la Cour de Luxembourg au regard d'objectifs propres au droit communautaire ou par la Cour de Strasbourg, gardienne de la CEDH.

A cet égard, le nouveau texte de l'article 51 § 3 permet de dissiper grandement les malentendus quant à la portée des droits énoncés par la Charte et correspondant à des droits garantis par la CEDH. Il serait cependant préférable qu'il y soit explicitement prévu une référence à la jurisprudence de la Cour de Strasbourg.

J'estime toutefois pouvoir me référer à la contribution des représentants du Conseil de l'Europe, selon lesquels la référence dans le préambule à la jurisprudence de la Cour de Strasbourg permet de considérer que le renvoi à la CEDH couvre également les droits reconnus par la jurisprudence de cette Cour. (cfr. observations des représentants du Conseil de l'Europe relatives au doc. 4422/00 Convent 45).

Par ailleurs, la Belgique comme elle a déjà maintes fois eu l'occasion de le plaider reste persuadée qu'une interprétation harmonieuse des droits fondamentaux serait favorisée par une adhésion de l'Union à la CEDH.

3.2. J'en viens maintenant à la définition des droits sociaux.

Nous l'avons constaté tous les EM ne sont pas parties aux mêmes conventions en matière de droits sociaux et le système de protection sociale connaît des développements différents selon les Etats membres.

L'approche minimaliste de certains qui prétendirent que la Charte devait se contenter d'énoncer exclusivement les droits que le citoyen pouvait réclamer en justice aurait conduit à un instrument d'une extrême pauvreté, le droit à la santé, la protection de l'environnement ne sont pas toujours concrétisés par des droits directement justiciables mais il n'en demeure pas moins qu'ils constituent des principes essentiels qui doivent être mis en œuvre par les autorités publiques dans leurs politiques.

Il est heureux qu'un consensus paraisse se dégager même si, personnellement je regrette que certains droits soient énoncés de façon fort peu volontariste ainsi le droit à un revenu minimum garanti est couvert implicitement par l'article 33 qui prévoit que l'Union reconnaît et respecte une aide sociale à l'effet d'assurer une existence digne à tous ceux qui ne disposent pas de ressources suffisantes.

En vue de répondre aux critiques de ceux qui considèrent la Charte comme un instrument de régression sociale, il est primordial de préciser que celle-ci ne portera pas atteinte aux droits sociaux fondamentaux garantis par d'autres instruments internationaux ou par les législations nationales.

En vue de dissiper certaines craintes à ce sujet, il conviendrait à l'article 52 de faire une référence explicite à la Charte sociale européenne.

Un travail important d'explication de la Charte, de ses objectifs de son mécanisme et notamment de ses clauses horizontales devra être mené.

Les explications élaborées par le Présidium s'avèrent un instrument précieux qu'il faudra rendre accessible au lecteur en même temps que le texte de la Charte.

4. La nature juridique de la Charte est également un sujet qui alimente la réflexion des diverses sphères politiques et associatives qui s'interrogent quant à la valeur ajoutée de l'instrument que nous préparons.

Les conclusions de Cologne prévoient une proclamation conjointe de la Charte par le Parlement européen, le Conseil et la Commission. Toutefois, il ne faut pas perdre de vue qu'après cette proclamation il faudra examiner si et, le cas échéant, de quelle façon intégrer la Charte aux traités.

Conférer à la Charte un caractère contraignant et l'insérer dans les traités renforcerait à mon sens la légitimité de l'Union. La Charte est un jalon important de cette Europe politique qui est en train de se constituer. Le développement d'une politique étrangère et de sécurité commune impose l'adoption d'un instrument de référence en matière de droits de l'homme, que l'Union devra respecter dans la mise en œuvre de ses politiques tant internes qu'externes.

En septembre 1999, le Président de la Commission européenne m'avait invité ainsi que Monsieur Richard Von Weizsäcker, ancien Président de la République Fédérale d'Allemagne et Lord Simon of Highbury, à lui remettre un rapport sur les implications institutionnelles de l'élargissement.

Nous avons insisté à l'époque sur la nécessité de rapprocher le citoyen des institutions européennes. Parmi les propositions que nous formulions à cet effet figurait la restructuration des traités européens. Les traités pourraient ainsi être séparés en deux parties. Un traité de base pourrait fixer les objectifs, les principes et le cadre institutionnel de l'Union ainsi que les droits fondamentaux des citoyens européens. Un texte séparé contiendrait les autres dispositions des traités actuels et leurs modifications. L'institut européen de Florence a remis un rapport qui propose dans un sens similaire une réorganisation des traités et l'adoption d'un traité fondamental.

Il va de soi que la Charte des droits fondamentaux s'inscrirait, dans une telle perspective, parfaitement dans un Traité de base de l'Union dont elle pourrait constituer un chapitre introductif. L'Union serait ainsi dotée d'un texte fondateur comparable aux constitutions des Etats. La légitimité de ses institutions et la conscience européenne ne pourraient qu'en tirer avantage.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 17 October 2000**CHARTE 4953/00****CONTRIB 353****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a contribution sent on 20 September 2000 by Mrs. VAN DER BURG. Mrs. VAN DER BURG (Member of the European Parliament) asked for publication of this contribution.¹

¹ This text has been submitted in English language only.

Note to the attention of the Presidium of the Convention (for its meeting on 20 September), and to the members of the Convention

Improvement of the Draft EU Charter of Fundamental Rights (convent 47) with the objective to bring it in line with the Revised European Social Charter of the Council of Europe

1. The last draft of the Charter text, Convent 47, is still lacking a clear reference to the Revised European Social Charter (as was proposed a.o. by the PSE members, and by the Dutch and Belgium government representatives Korthals Altes and Dehaene). This is the more striking, now the Presidium has elaborated a detailed annex with an explanation as to the correspondence of articles in the EU Charter with specific articles in the ECHR. A similar exercise is necessary for the articles that correspond with the content of the Council of Europe's instruments on social rights. With this note I would like to give some background information to underpin the urgent appeal to make the relationship of the EU Charter with the Revised European Social Charter clear, in the interest both of those who presently criticize the draft EU Charter as a step backwards compared to the Revised, and even the 1961 Social Charter, as to those who fear that an open formulation of particularly social and economic rights may give rise to misinterpretations and undue pressures on Member States, if they lack a clear context of interpretation and case law. Particularly for the countries, that prepare for accession tot the EU, it is imperative to bring in line the demands from the Council of Europe in which they are actively working already and the EU-'acquis' on fundamental rights in draft EU charter.
2. Both the criticisms and the misunderstandings may be largely taken away by including a clear reference to the Revised European Social Charter of the Council of Europe, not only in the preamble, but also in the (horizontal) articles 51(3) and 52. Such a reference does not put any direct or indirect obligations to Member States vis-a-vis this Revised Social Charter of the Council of Europe ¹. With full respect for the individual national responsibilities and choices of Member States with respect to the ratification process and the selection of articles to be ratified ², it is possible and from the point of view of these Member States desirable to have a joint reference framework for the interpretation of the articles in the draft EU Charter that correspond with articles in the (R)ESC. As is formulated in the former horizontal article 49, now art. 50, this interpretation and reference exclusively deals with the obligations of the EU institutions and bodies (and to the Member States where they implement Union law) to respect, observe and promote the rights and principles in this Charter. So a reference to the RESC in art's 51 and 52, in addition to that to the ECHR, and a detailed reference to the ESC and RESC and its case law, as well as to ILO Conventions, UN conventions and other sources of inspiration and interpretation in the explanatory text of Convent 46, is not in any way binding or committing Member States in their individual relation to the Council of Europe (or these other international organisations), but only providing them with a joint reference framework for the EU Charter.

¹ All the 15 Member States have ratified the European Social Charter of 1961 and decided to and participated in the revision of that Charter, that led to the Revised European Social Charter of 1996. Three Member States have already ratified the Revised Charter; the others are in the process of ratification. Also the accession countries are actively involved in implementing the Social Charter's provisions. See [annex 1](#) for a more precise description on the basis of information of the Council of Europe.

² In the structure of the European Social Charter it is possible not to ratify all the individual articles. Nevertheless reporting and monitoring activities take place throughout the Council of Europe members with respect to all the elements.

3. Analyzing the parallelity of Convent 47 with the Revised European Social Charter³, some omissions are clearly striking, and have alarmed both legal experts⁴ the European Trade Union Confederation and organisations of NGO's⁵. Taking into account that not the complete text of the RESC can be included, and that some articles of the draft EU Charter have been formulated that broad that they may include elements of several RESC articles, three substantial elements of the RESC are most obviously missing in the present draft text: 1) fair remuneration (which as the most evident element of working conditions may be added to the present article 30), 2) housing and the protection against poverty and social exclusion (which may be included in art. 33(3) and the rights of elderly persons (which may be added in the Equality chapter as an article about the (respect for) "the rights of the elderly to an independent and decent existence and to take full part in political, social and cultural life" (which is more than non-discrimination on the basis of age). Taking into account that the substance of these articles as such is not controversial in the careful formulation of the texts as they are now drafted, the addition of them may make the Charter more complete and corresponding to the (R)ESC. Additionally in the context of all the activities with respect to Employment Guidelines and employment policies in the EU, it would be also an inexplicable omission if not (in line with the - formulation of the - articles 34, 36 and 37) the ensuring of a high level of employment would be included as a separate article, in line with the Treaty⁶.
4. In Convent 47 the Presidium has followed up the suggestion to include the clause in 51(1) that limitations may never infringe upon the very substance of the fundamental rights. Nevertheless the EP delegation's demand to also delete the clause "other legitimate interests in a democratic society" has not been followed. The text of this article would be improved by deleting this clause, and by adding a sentence that was contained in previous drafts, making clear that restrictions and limitations may not exceed those of the ECHR and RESC. This also serves the objective of parallelity with the ECHR and RESC.
5. Horizontal article 51, para 2 is still formulated in a way that is interpreted by several legal experts as implying that the fundamental rights included in the Treaty might be overruled and subordinated by changes in the Treaties. This is not in line with the explanatory text in Convent 46 that explains that this paragraph is meant to say that where a right results from the Treaties it is subject to the conditions and limits laid down by these Treaties. Since in several cases the rights that are indicated here (a precise list of these would also be useful) also exist in the ECHR and/or the (R)ESC, it is necessary to at least add a clause saying that this reference to the Treaties (and the possibility to change these in future) cannot undermine the guarantees given in the other two paragraphs of this article. (the start of the sentence could read: " Without prejudice

³ See annex 2 for a (provisional) comparison, drafted with the assistance of the Council of Europe's services. This comparison shows that 16 rights (mainly in chapter IV) are more or less corresponding with rights in the 1961 ESC and the 1996 RESC. The vast majority of these are contained both in the 1961 ESC and in the Revised ESC, so all member states are bound to these rights. Only one did not exist yet in the 1961 ESC (dismissal protection), one existed only in the preamble (non-discrimination), and 2 rights were part of the protocol of 1988 (equality men/women; information and consultation of workers). Of the 7 "missing" rights that are not (yet) included in Convent 47, one forms part of both Charters (fair remuneration), two (elderly persons, and the participation of workers in working conditions and environment decisions) were already in the 1988 protocol, and 4 exist only in the RESC.

⁴ See for instance the Executive Summary of the International Conference "The Challenge of the EU Charter" of Leiden University in Noordwijk 4-5 september 2000.

⁵ See press releases and comments of the last weeks.

⁶ Both article 2 TEU and art. 1 of the 1961 and of the Revised European Social Charter speak about a high level of employment

to the other two paragraphs of this article"). From the point of view of logic and readability, it would further be preferable to start with para 3 of this article, followed by 1, and then end with the para referring to the Treaties as amended.

6. In (horizontal) article 52 (level of protection) the Revised European Social Charter should be mentioned explicitly, and the word "all" in front of Member States should be deleted. As argued under 2 above, this does not imply that this affects the position of individual Member States who may happen not to be bound by particular international conventions. In fact it is exactly the same situation as with the reference to the Member States' Constitutions in the same provision. Here also Member State A is not via the EU Charter bound to the provisions of Member State B's Constitution. The article is precisely meant to guarantee that the interpretation of the EU Charter will not undermine the substance of rights and freedoms provided for in the international or national fundamental rights that the Member States are bound to. It should prevent Member States from having to deal with conflicting interpretations and demands, also with respect to those international obligations that do not have the signature of all other EU countries.

Text proposals:

Summarizing, the following changes in Convent 47 are proposed (in the sequence of the draft text) :

Chapter III:

Add a new article (before or after art. 25), dealing with the rights of the elderly:

"The Union recognizes and respects the right of elderly persons to an independent and decent existence and full participation in political, social and cultural life."

Chapter IV:

Add a new article (right at the start of the chapter before art. 26), dealing with the employment objective:

"A high level of employment is ensured in the policies of the Union"

Add a paragraph (preferably the first) on fair remuneration in article 30:

"Every worker has the right to fair remuneration"

Add to article 33(3) a reference to the fight against social exclusion and poverty, and change "housing benefit" into "housing":

"With a view to fighting social exclusion and poverty, the Union recognizes and respects the right to social assistance and to housing, in order to ensure a decent existence for all those lacking sufficient resources, in accordance with.. etc "

Chapter VII:

Article 51.

(NB change the order of paragraphs: 3,1,2)

1. (previously 3):

"Insofar as this charter contains rights which correspond to rights guaranteed by the ECHR and the Revised European Social Charter, the meaning and scope of those rights shall be the same as those conferred on them by the said Council of Europe instruments and their case law, unless this Charter affords greater or more extensive protection."

2. (previously 1):

delete: "other legitimate interests in a democratic society"

and add: "Restrictions may not exceed the restrictions permitted by the ECHR and RESC in the corresponding articles"

3. (previously 2):

"Without prejudice to the paragraphs 1 and 2 of this article, rights recognised by this Charter which are based on the Community Treaties or the Treaty on European Union shall be exercised under the conditions and within the limits defined by those Treaties.

Article 52:

Delete "all" in front of Member States

And add after ECHR: "and the Revised European Social Charter"

Ieke van den Burg, 20 september 2000

Annex 1

Information about the European Social Charter and the Revised European Social Charter of the Council of Europe

- 1) The Council of Europe is founded in 1949, and presently has 41 Member States, of which all the EU member states and all accession countries. In 1961 the Council of Europe adopted the European Social Charter. This has consequently been signed and ratified by all EU member states. In 1988, 1991, and 1995 additional protocols were concluded. In 1991 the Ministerial Conference decided (unanimously) to make a Revised European Social Charter, with the purpose of updating and replacing the old charter and the protocols.
- 2) In 1996 this Revised European Social Charter was unanimously adopted, first in the so-called CHARTE-REL Committee that drafted the text in a long intensive process; and consequently in the Committee of Ministers. The Revised European Social Charter is due to progressively replace the old one and the protocols, which means that those Member States ratifying the Revised Charter are no longer bound by the 1961 Charter and that in the transitional period different situations of ratification exist.
- 3) The Revised European Social Charter is presently ratified by the EU member states France, Italy, and Sweden, (and by Romania, Slovenia, Cyprus, Bulgaria, and Estonia). The other 12 are still bound by their ratification of the 1961 Charter. EU member states Austria, Belgium, Finland, Ireland and Portugal, and non-EU states Albania, Croatia, Latvia, Liechtenstein, Moldova, Switzerland, the former Yugoslav Republic of Macedonia, Ukraine, Georgia, Lithuania, and the Russian Federation are engaged now actively in the process of ratification.
- 4) A Committee of 9 independent experts, called the European Committee of Social Rights, monitors reports that Member States (after consultation of social partners) must submit; their conclusions and recommendations go to the Governmental Committee, composed of representatives of Member States, and - in cases of serious infringements, to the Committee of Ministers, that may make recommendations to Member States. Trade unions, employers' organisations and NGO's may also raise complaints with the ECSR, which after investigation may bring these to the Committee of Ministers. This complaint procedure is an optional one which has been accepted to date by Cyprus, Finland, France, Greece, Italy, Norway, Portugal, Slovenia and Sweden.
- 5) The structure of the Charter and its ratification is such that there is room for optional selection of articles, under clear conditions of a minimum number in certain clusters of articles.
- 6) In the first article of the "Social Chapter" (art 136, TEC) a reference is made to the 1961 Charter (at the time of the negotiations on the Amsterdam Treaty, the Revised Charter was not yet adopted); the Cologne mandate for the EU Charter also refers to the European Social Charter.
- 7) In the Council of Europe the Parliamentary Assembly recently pleaded for an integration of fundamental social rights in the European Convention on Human Rights (Recommendation 1415, adopted on 23 June 1999). The Ministerial Committee has not yet taken a position on this.
- 8) In its Recommendation 1439 and Resolution 1210 of January 2000 on the drafting of an EU Charter of Fundamental Rights, the Parliamentary Assembly of the Council of Europe expressed its clear recommendation that the EU charter should take into account the revised European Social Charter when referring to social rights.

Presently a new resolution is prepared for the Plenary Assembly of 25/26 september. Both the Legal Affairs Committee, the Political Affairs Committee and the Social Affairs Committee contribute to that resolution. The text that has been distributed to the Convention Members is that of the Legal Affairs Committee (rapporteur Magnusson); the Social Affairs Committee text is under preparation

(rapporteur Evan) and will undoubtedly again contain the recommendation to include a reference to the RESC in the EU Charter.

Annex 2

Table with a provisional comparison of the Draft EU charter articles corresponding with the 1961 European Social charter and/or the 1996 revised European Social Charter

Art.	Eu charter Convent 47	1961 ESC	1996 RESC
12	Freedom of assembly and of association	Art. 5	Art. 5
14	Right to education		
14.1	Vocational training	Art. 1.4, Art. 9 + 10	Art. 1.4, Art. 9 + 10
14.2	Free compulsory education		Art 17.2
15	Right to work		
15.1		Art. 1	Art. 1
15.2		Art. 18	Art. 18
15.3		Art. 19	Art. 19
21	Non-discrimination	Preamble	
23	Equality between men and women	4.3 + add. Protocol 1988 art. 1	Art. 20
24	Children's rights	Art. 7	Art. 7
25	Integration of persons with disabilities	Art. 15	Art. 15
26	Information and consultation	Protocol 1988 art. 2	Art. 21 + 29
27	Collective bargaining and action	Art. 6	Art. 6
28	Placement services	Art. 1.3	Art. 1.3
29	Dismissal protection	-	Art. 24
30	Fair and just working conditions		
30.1	Health, safety and dignity	Art. 3	Art. 3 + 26 (dignity)
30.2	Working hours	Art. 2	Art. 2
31	Child labour /young persons	Art. 7	Art. 7 + 17
32	Family and professional life		
32.1	Prot. Family	Art. 16	Art- 16
32.2	Combination work-family	Art. 8	Art. 8
33	Social security and social assistance		
33.1		Art. 12	Art. 12
33.2		Art. 12.4	Art. 12.4
33.3		Art. 13	Art. 13 (art. 30/31)
34	Health care	Art. 11 + 13	Art. 11 + 13

Missing articles			
Add to art. 30	Fair remuneration	Art. 4	Art. 4
	Determination and improvement working conditions and environment	Protocol 1988 art. 3	Art. 22
Add as a new art. Inch II	Elderly persons	Protocol 1988 art. 4	Art. 23
	Insolvency claims		Art. 25
	Protection workers representatives		Art. 28
	Protection against poverty an social exclusion		Art. 30
	Right to housing		Art. 31

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

**Brussels, 26 October 2000 (31.10)
(OR. de)****CHARTE 4960/00****CONVENT 55****SECRETARIAT NOTE****Subject : Draft Charter of Fundamental Rights of the European Union**

Please find attached, for your information, a translation of the letter sent to President CHIRAC by former President HERZOG upon completion of the Convention's proceedings.

Brussels, 5 October 2000

President CHIRAC
President of the European Council
General Secretariat of the Council of the European Union
Rue de la Loi 175
B-1048 Brussels

Sir,

In accordance with the conclusions of the European Council (meeting in Tampere), may I hereby submit to you a draft Charter of Fundamental Rights of the European Union, which received the almost unanimous agreement of the Convention's members at their meeting on 26 September 2000. I have therefore concluded, in close consultation with the Vice-Chairmen of the Convention to draw up the Charter, that the draft can be agreed to on all sides.

(Complimentary close)

Roman HERZOG
former President of the Federal Republic of Germany
Chairman of the Convention

Enclosure: draft Charter (CHARTE 4487/00 CONVENT 50)

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 13 November 2000 (13.11)**CHARTE 4961/00****CONTRIB 356****COVER NOTE**

Subject : Draft Charter of fundamental rights of the European Union

Please find hereafter the Comments of the Council of Europe observers on the draft Charter. ¹

¹ This text has been transmitted in English and French languages.

Strasbourg, 9 November 2000

**Comments of the Council of Europe observers
on the draft Charter of Fundamental Rights of the European Union**

The Council of Europe observers wish to express their satisfaction with the draft Charter of Fundamental Rights of the European Union, as approved by the Heads of State and Governments of the member States of the European Union at the European Council's informal session at Biarritz on 14 October 2000 (Convent 50).

Firstly, the Charter draws to a significant degree on certain Council of Europe conventions, namely the European Convention on Human Rights (ECHR), the revised Social Charter and the Convention on Human Rights and Biomedicine. At the same time, in certain spheres, the Charter extends their scope or level of protection and even establishes new rights. That is a noteworthy development, particularly as it is consistent with the aforementioned instruments, thus answering a major concern voiced by the Council of Europe observers throughout the duration of the works on the Convention, since, in the domain of fundamental rights, inconsistencies not only undermine legal certainty, but above all entail a risk that the rights will be weakened rather than strengthened.

That is particularly true of the links between the Charter and the ECHR. Harmony between the two instruments is essential, as when implementing Community law the member States of the European Union will be bound by both the ECHR and the Charter, once it is in force. Thus, the slightest discrepancy between the two instruments would place the member States in a difficult position, one that must accordingly be avoided at all cost. It is to that end that the Charter expressly relies on the ECHR and, thus, constitutes a sort of extension to it in Community law.

That this is so is clearly apparent from Articles 52 § 3 and 53 of the Charter, whose effect, in substance, is to ensure an identity of scope and meaning between the rights contained in the two instruments, without preventing Union law from affording wider protection than that provided under the ECHR. The ECHR is thus recognised as a minimum standard for the interpretation and application of the Charter. That solution is entirely compatible with the ECHR, Article 53 of which indicates that the ECHR is not intended to impose a uniform level of protection of human rights throughout Europe, but solely to ensure a minimum standard, which the Contracting Parties to the ECHR are free to raise, either individually or by agreement with other States. It is the latter situation which will be brought about by the Charter, if it is given binding force.

Of course, for these principles to be implemented correctly the case-law of the European Court of Human Rights will need to be taken into account. It is the European Court of Human Rights which, through its interpretation of the ECHR, has continually determined and increased the level of protection afforded by the ECHR, a level which is today recognised by the Charter as a minimum standard. Furthermore, certain rights set out in the Charter have no equivalent in the ECHR, but are echoed in the case-law of the European Court of Human Rights. Examples of this are the protection of personal data (Article 8 of the Charter) and of

children (Article 24). Certain provisions of the Charter – Articles 19 § 2 and 47 § 3 – even expressly adopt parts of that case-law. It is in order to reflect the role and importance of the case-law that a reference is made to it in the Preamble to the Charter and in the accompanying explanations. By thus establishing at the outset that future case-law developments regarding the ECHR and the Charter may be taken into account, the danger that the common dynamic which these two instruments have the potential to produce will be destroyed has been avoided.

The coherence established between the Charter and the ECHR serves not only to preserve – even enhance – with legal certainty, the level of protection of fundamental rights already attained in Europe, but also to respect the universality of human rights, a notion which reflects the European conception of the value of every human being. The fact that human rights are universal does not prevent the member States of the European Union from reinforcing the protection of fundamental rights through the Charter. However, that protection would be totally undermined if the Charter was designed not to complete or to reinforce the ECHR, but to replace it by establishing a new minimum standard applicable only in the member States of the European Union. The Committee of Ministers (press release on the 106th session, 10-11 May 2000) and the Parliamentary Assembly of the Council of Europe (Resolutions 1210 (2000) of 25 January 2000 and 1228 (2000) of 29 September 2000) have each warned against such a development, since it would create a new dividing line in Europe and lend credence to the notion that the content of human rights may be adjusted to fit the economic situation of the States called upon to protect them. That would be counter to European tradition and deprive Europe of all credibility on the international scene when asserting the universality of human rights, since it would find itself accused of using different standards.

Mutatis mutandis, each of these considerations also applies to the relations between the Charter of Fundamental Rights of the European Union and the (revised) Social Charter of the Council of Europe. Even if the Charter of Fundamental Rights contains only some of the rights set out in the Social Charters, their inclusion, alongside the so-called “classic” rights, in an international instrument intended to be enforceable through the courts, represents real progress which is worthy of note.

Nevertheless, although the principles are clear and satisfactory, there will be many recurring practical difficulties in their implementation. Thus, for example, the application of the Charter rights borrowed from the ECHR presupposes the determination of the exact level of protection of that right afforded by the European Court of Human Rights, that being the minimum level recognised by Article 52 § 3 of the Charter.

In other words and *a fortiori*, no amount of careful drafting can prevent the debate on the final nature of the Charter from posing a number of problems which, unless satisfactorily resolved, will prove a potential source of error in the interpretation of the rights embodied in both the Charter and the ECHR, in particular if the Court of Justice finds itself called upon to decide issues that have not previously been before the Court in Strasbourg. Why?

Because the Charter, when applied and interpreted within the context of the European Union, that is to say in the framework of a Treaty with its own objectives and including new powers in such sensitive fields as immigration, asylum and judicial and police co-operation, is bound to take on a dynamic which is almost certain to affect the harmonious and consistent interpretation of fundamental rights. Since the organ creates the function, it is highly probable that the Charter will generate a far higher number of references for preliminary rulings than the Court of Justice receives at present. That will increase in the same proportion the risk that decisions of the Court of Justice will be at variance with later decisions of the Strasbourg Court, since the member States will remain responsible for their actions under the ECHR but will at the same time be required to comply with

and apply Community law. A State obliged to apply a judgment of the Court of Justice which turned out to be at odds with a later judgment of the Strasbourg Court would be placed in a very awkward position.

As regards the Charter's being harmoniously combined with the other systems of protection of fundamental rights, that point shows to what extent the debate about the nature of the Charter will restore to the agenda the question of accession by the European Communities and/or the Union to the ECHR, under suitable arrangements to be agreed by all those concerned. By entrusting a single court, the European Court of Human Rights, with the task of interpreting those ECHR rights which are also contained in the Charter, this solution would guarantee perfect harmony between the two instruments. In addition, it would have the advantage of enabling the Community Institutions to play a full role in proceedings before the European Court of Human Rights that concern Community law, so avoiding the risk that member States may find themselves obliged to bear sole responsibility under the ECHR while in certain cases being unable to take the action which a judgment may require at the Community level.

Marc Fischbach
Hans Christian Krüger



**COUNCIL OF
THE EUROPEAN UNION**

**Brussels, 17 November 2000 (28.11)
(OR. fr)**

13534/00

LIMITE

INST 72

NOTE

from : Presidency
dated : 17 November 2000
to : Permanent Representatives Committee

Subject : Charter of Fundamental Rights of the European Union – Solemn proclamation,
Nice, 7 December 2000

1. The Convention charged with elaborating a draft Charter of Fundamental Rights of the European Union reached agreement on 2 October 2000 on a text within the terms set out in the Presidency conclusions of the European Council, meeting in Tampere on 15 and 16 October 1999, Annex, point B(v).
2. The Presidency conclusions at the European Council, meeting in Cologne on 15 and 16 October 1999, Annex IV, fourth paragraph, provide that "*the European Council will propose to the European Parliament and the Commission that, together with the Council, they should solemnly proclaim on the basis of the draft document a European Charter of Fundamental Rights*". Mr Jacques CHIRAC, as President of the European Council, has written to the European Parliament and to the Commission to that effect.
3. The Presidency proposes that the Council sign the solemn proclamation in parallel with the European Council at Nice on 7 December 2000. The text to be signed will be the most recent revised version of the draft, preceded by the following text:

"The European Parliament, the Council and the Commission solemnly proclaim the text below as the Charter of Fundamental Rights of the European Union."
Done at Nice, 7 December 2000.
4. The Presidency requests that Coreper recommend that the Council approve this procedure as an "A" item and consider that, by so doing, it authorises the Presidency to sign the solemn proclamation on its behalf.



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**CONSEIL DE
L'UNION EUROPÉENNE**

Bruxelles, 21 février 2001

13891/00

LIMITE

CRS/CRP 47

COMPTE RENDU SOMMAIRE

**Objet : 1898ème réunion du COMITE DES REPRESENTANTS PERMANENTS
tenue à Bruxelles, les 29 novembre et 1er décembre 2000**

76. Préparation de la proclamation solennelle du Conseil, du Parlement européen et de la Commission relative à la Charte des droits fondamentaux de l'Union européenne - Nice 7/8 décembre 2000
doc. 13534/00 INST 72

Le Comité marque son accord unanime sur la procédure relative à la proclamation solennelle de la Charte des droits fondamentaux de l'Union européenne à Nice, le 7 décembre 2000, telle qu'elle est reprise dans le document 13534/00 INST 72 et invite le Conseil dans sa formation "Affaires générales" à l'adopter en point A lors de sa 2316ème réunion, les 4/5 décembre 2000.

77. Elargissement du Mandat du Groupe "Affaires Consulaires" (*)

Le Comité examine les suggestions de la Présidence concernant l'élargissement du mandat du Groupe de travail "Affaires consulaires" (cf. doc. 13950/00). Il invite le Service juridique du Conseil à rendre un avis à cet égard.

78. Sûreté nucléaire dans le contexte de l'élargissement
= Rapport au Coreper du Groupe des questions atomiques (*)
doc. 13789/00 ATO 74 ELARG 210
+ ADD 1

La contribution qui concerne le point susvisé fera l'objet d'un doc. Addendum au présent document.

79. Points à examiner à la suite de la session du Conseil (Budget) des 23/24 novembre 2000

Le Comité procède à un échange de vues en vue de préparer la réunion informelle du Parlement européen, du Conseil et de la Commission, prévue dans le relevé des conclusions de la concertation du 23 novembre 2000, afin de préciser le contenu du rapport d'étape que la Commission devrait soumettre à l'autorité budgétaire avant le 30 juin 2001.



**COUNCIL OF
THE EUROPEAN UNION**

**Brussels, 30 November 2000 (01.12)
(OR. fr)**

14101/00

LIMITE

INST 74

"A" ITEM NOTE

from-:	Permanent Representatives Committee
on:	29 November 2000
to:	Council
No prev. doc.:	13534/00 INST 72
Subject:	Charter of Fundamental Rights of the European Union – Solemn proclamation, Nice, 7 December 2000

1. The Presidency conclusions at the European Council meeting in Cologne on 3 and 4 June 1999, Annex IV, fourth paragraph, provide that "*the European Council will propose to the European Parliament and the Commission that, together with the Council, they should solemnly proclaim on the basis of the draft document a European Charter of Fundamental Rights*". Mr Jacques CHIRAC, as President of the European Council, has written to the European Parliament and to the Commission to that effect.
2. The Presidency proposes that the Council sign the solemn proclamation in parallel with the European Council meeting in Nice on 7 December 2000. The text to be signed will be the most recent revised version of the draft, preceded by the following form of words:

"The European Parliament, the Council and the Commission solemnly proclaim the text below as the Charter of Fundamental Rights of the European Union."

Done at Nice, 7 December 2000.
3. At its meeting on 29 November 2000, the Permanent Representatives Committee reached unanimous agreement on this form of words and on authorising the Presidency to sign the solemn proclamation on behalf of the Council.
4. It therefore requests the Council to approve the procedure set out in the Presidency note in 13534/00 INST 72, as an "A" item, with a view to the solemn proclamation in Nice on 7 December 2000.

III.4. NGOs and Others' Amendments and Contributions

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPEENNE**fundamental.rights@consilium.eu.int**

**Bruxelles, le 6 janvier 2000
(OR. f)****CHARTE 4101/00****CONTRIB 1****NOTE DE TRANSMISSION**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne

Veillez trouver ci-après un rapport de position établi par la Fédération Internationale des Ligues des Droits de l'Homme (Fidh) ¹.

¹ Ce document n'a été transmis qu'en langue française.

Une Charte des droits fondamentaux pour l'Union européenne : un réel progrès ?

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Le Conseil européen de Cologne des 3 et 4 juin 1999 a affirmé son intention d'«*établir une charte des droits fondamentaux afin d'ancreur leur importance exceptionnelle et leur portée de manière visible pour les citoyens de l'Union*». Le Conseil extraordinaire de Tampere des 15 et 16 octobre 1999 a mis sur pied l'enceinte pour l'élaboration du projet de charte des droits fondamentaux de l'Union européenne, définissant sa composition, sa méthode de travail et ses modalités pratiques de fonctionnement (voir Annexe). Jusqu'à présent, les discussions ont essentiellement porté sur des questions de procédure. Le temps est à présent venu de réfléchir aux enjeux d'une telle charte, dont la portée ne saurait demeurer symbolique.

En effet, la FIDH considère que la seule justification possible à l'adoption d'une Charte européenne, alors que tous les Etats membres sont déjà parties à la Convention européenne des droits de l'Homme, réside dans l'adoption d'une Charte qui soit davantage protectrice que la Convention européenne elle-même.

La FIDH demande, depuis plusieurs années, que la Communauté européenne adhère à la Convention européenne des droits de l'Homme, ainsi qu'à la Charte sociale européenne et à son Protocole additionnel prévoyant un système de réclamations collectives (1995). Lorsque tous les Etats membres de l'UE auront ratifié la Charte sociale européenne révisée, la Communauté devrait à son tour ratifier cette dernière.

La FIDH maintient sa position à cet égard, et considère que le débat sur l'adoption d'une nouvelle Charte des droits fondamentaux de l'UE ne doit en aucune façon reléguer cette question au second plan.

Par ailleurs, la FIDH se réserve de préciser sa position concernant l'adoption d'une nouvelle Charte en fonction du projet dont elle aura pu prendre connaissance. Si le nouvel instrument n'aboutit pas à un renforcement de la protection des droits de l'Homme qui prévaut actuellement, la FIDH n'hésitera pas à prendre position **contre** l'adoption d'un tel instrument. C'est le degré de protection effectif, réel, qui guidera le choix de notre organisation.

Il serait souhaitable qu'à l'occasion de l'adoption de la Charte des droits fondamentaux de l'Union européenne, la Communauté européenne se voie investie de la compétence d'adhérer aux instruments internationaux de protection des droits de l'Homme qui présentent un rapport avec les compétences déjà attribuées à la Communauté. A défaut, les Etats membres de l'Union européenne pourraient être accusés d'avoir surtout adopté ladite Charte afin de protéger l'ordre juridique communautaire contre toute tentation de la part de la Cour européenne des droits de l'Homme d'effectuer un contrôle plus poussé de la garantie qu'y reçoivent les droits fondamentaux. Il n'est pas indifférent à cet égard que le Conseil de Cologne à l'occasion duquel l'idée de la Charte des droits fondamentaux de l'Union européenne a été lancée à l'initiative de la présidence allemande, ait pris place quatre mois après l'arrêt *Matthews c. Royaume-Uni* de la Cour européenne des droits de l'Homme, dans lequel celle-ci affirme en termes nets que «*La Convention n'exclut pas le transfert de compétences à des organisations internationales, pourvu que les droits garantis par la Convention continuent d'être 'reconnus'. Pareil transfert ne fait donc pas disparaître la responsabilité des Etats membres*» (para. 32 de l'arrêt).

Il serait regrettable que l'initiative de l'élaboration d'une Charte des droits fondamentaux de l'Union européenne ait pour objectif – et, sinon pour objectif, pour conséquence – de placer le droit communautaire, autant que possible, à l'abri d'un contrôle de la Cour européenne des droits de l'Homme, et ainsi, de permettre aux Etats membres de l'Union d'échapper à la «responsabilité conjointe» qui est la leur, vis-à-vis de la Convention européenne des droits de l'Homme, dans l'élaboration du droit communautaire. L'adoption de la Charte des droits fondamentaux de l'Union européenne pourrait en effet avoir un tel effet, compte tenu de ce que la jurisprudence récente de la Cour européenne des droits de l'Homme, telle qu'elle résulte de l'arrêt *Matthews* précité, n'a pas formellement rejeté le raisonnement qui était à la base de la jurisprudence antérieure de la Commission européenne des droits de l'Homme. Cette jurisprudence considérait en effet que "*le transfert de pouvoirs à une organisation internationale n'est pas incompatible avec la Convention, à condition que, dans cette organisation, les droits fondamentaux reçoivent une protection équivalente*" (Cf. DH, déc. Meelchers et Co. c. RFA, du 9 février 1990, req. n°13258/87). Compte tenu de cette jurisprudence, l'adoption d'une Charte des droits fondamentaux au sein de l'Union européenne, dont le respect serait susceptible de contrôle juridictionnel de la part de la Cour de justice des Communauté européenne (CJCE), pourrait être de nature à encourager un contrôle moins exigeant de la part de la Cour européenne des droits de l'Homme sur les actes de droit communautaire, ou sur les actes étatiques qui s'inscrivent dans le champ d'application du droit communautaire.

La FIDH considère que l'adoption d'une nouvelle Charte des droits fondamentaux de l'UE génère au moins cinq enjeux, lesquels sont interdépendants et devront être examinés attentivement dans le cadre de l'enceinte chargée de l'élaboration de la Charte.

Le présent rapport de position part du postulat que la Charte des droits fondamentaux de l'Union européenne ne se présentera pas sous la forme d'une Déclaration solennelle des institutions communautaires (Commission, Conseil et Parlement européens), mais sous la forme d'un chapitre additionnel au traité sur l'Union européenne ou au traité CE.

Si la Charte ne devait faire l'objet que d'une Déclaration solennelle, sa valeur ajoutée par rapport à la protection déjà reconnue aux droits fondamentaux dans l'Union européenne serait faible ou nulle. L'initiative pourrait dans ce cas être suspectée de ne répondre qu'à des préoccupations démagogiques : gagner l'adhésion des citoyens au projet européen parfois en manque de légitimité. Les personnes vivant sur le territoire de l'UE seraient très surprises si elles ne pouvaient pas se prévaloir des droits inscrits dans la nouvelle Charte. A terme, une telle opération porterait atteinte à la crédibilité du projet européen.

Il convient cependant de préciser que la note est élaborée à un moment où la forme que revêtira la Charte n'a pas encore été tranchée.

I. Droits fondamentaux à reconnaître dans la Charte des droits fondamentaux de l'Union européenne

Le contenu des droits qui vont figurer dans la Charte doit tenir compte du statut qui est actuellement déjà reconnu aux droits fondamentaux dans l'Union européenne, statut par rapport auquel la Charte doit constituer une source de progrès.

A l'heure actuelle, les droits fondamentaux qui figurent parmi les principes généraux du droit communautaire, dont la CJCE assure le respect, sont puisés aux traditions constitutionnelles communes aux Etats membres et dans les instruments internationaux de protection des droits de l'Homme auxquels les Etats membres ont adhéré ou coopéré. Aux droits ainsi identifiés s'ajoutent des droits propres à l'ordre juridique communautaire. Ces sources s'interpénètrent fréquemment, si bien qu'il n'est pas toujours aisé d'identifier l'origine du droit fondamental que la Cour de justice choisit d'intégrer parmi les principes généraux du droit communautaire.

a) Les droits fondamentaux figurant dans les instruments internationaux relatifs aux droits de l'Homme auxquels les Etats membres ont adhéré ou à l'élaboration desquels ils ont participé

Parmi l'ensemble des droits ainsi consacrés par la jurisprudence communautaire - qui leur reconnaît le statut de principes généraux du droit communautaire, sur lequel l'on revient ci-dessous (Titre IV) -, il en est que la CJCE est tenue de respecter en vertu du droit communautaire lui-même.

L'article 307 du traité CE (anc. art. 234 du traité CE, amendé) dispose en effet que «*Les droits et obligations résultant de conventions conclues antérieurement*» à leur adhésion aux Communautés européennes par les Etats membres de celles-ci, «*entre un ou plusieurs Etats membres, d'une part, et un ou plusieurs Etats tiers, d'autre part, ne sont pas affectés par les dispositions du présent traité*» (al. 1). La véritable raison d'être de cet article n'est pas uniquement, comme le suggère la CJCE, de «*lever l'obstacle pouvant résulter pour un Etat membre à son adhésion à la Communauté, en ce qui concerne l'exécution de conventions antérieurement conclues avec des Etats tiers*». Elle n'est pas politique, mais juridique, en ce qu'elle est imposée par le droit international lui-même, qui ne permet pas qu'un Etat puisse échapper à ses obligations envers des Etats tiers par la conclusion d'un traité international postérieur.

A moins que l'on ne soit prêt à accepter une exception au principe de l'uniformité d'application du droit communautaire, chaque fois que celui-ci impose aux Etats membres des obligations contraires à celles contractées antérieurement par cet Etat dans l'ordre juridique international (ce qui serait la conséquence immédiate de l'article 307 du traité CE), cette disposition vise en réalité à prévenir de telles situations. **Elle oblige les institutions communautaires à ne pas prendre de dispositions contraires aux engagements antérieurs des Etats membres, si ces dispositions ne peuvent être respectées de manière uniforme à travers l'ensemble de la Communauté.**

Précisément, cela signifie que l'élaboration du droit communautaire doit tenir compte notamment des instruments internationaux relatifs aux droits de l'Homme suivants, chacun de ces instruments ayant été ratifié par au moins un Etat membre de l'Union européenne avant le 1er janvier 1958, date d'entrée en vigueur du traité de Rome, ou avant l'adhésion de cet Etat aux Communautés ou à l'Union européenne :

- la Convention européenne de sauvegarde des droits de l'Homme et des libertés fondamentales, ouverte à la signature le 4 novembre 1950 (STE, n°5), entrée en vigueur le 3 septembre 1955 à l'égard de cinq des six Etats membres originaires de la Communauté économique européenne ;
- le Protocole n°1 additionnel à la Convention européenne des droits de l'Homme, ouvert à la signature le 20 mars 1952 (STE, n°9), entré en vigueur le 18 mai 1954 ;
- les dispositions de la Charte sociale européenne, ouverte à la signature le 18 octobre 1961 (STE, n°35), entrée en vigueur le 26 février 1965, qui étaient déjà acceptées par les Etats (Royaume-Uni, Irlande, Danemark, Grèce, Espagne, Portugal, Finlande, Suède, Autriche) lors de leurs adhésions respectives aux Communautés ou à l'Union européennes ;
- le Protocole n°4 à la Convention européenne des droits de l'Homme, ouvert à la signature le 16 septembre 1963 (STE, n°46), entré en vigueur le 2 mai 1968 ;
- la Convention internationale sur l'élimination de toutes les formes de discrimination raciale, ouverte à la signature le 21 décembre 1965 (660 UNTS 195), entrée en vigueur le 4 janvier 1969 ;

- le Pacte international relatif aux droits civils et politiques, ouvert à la signature le 16 décembre 1966 (999 UNTS 171), entré en vigueur le 23 mars 1976 ;
- le Pacte international relatif aux droits économiques, sociaux et culturels, ouvert à la signature le 16 décembre 1966 (993 UNTS 3), entré en vigueur le 3 janvier 1976 ;
- la Convention sur l'élimination de toutes les formes de discrimination envers les femmes, ouverte à la signature le 18 décembre 1979, entrée en vigueur le 3 septembre 1981 ;
- la Convention pour la protection des personnes à l'égard du traitement automatisé des données à caractère personnel, ouverte à la signature le 28 janvier 1981 (STE, n°108), entrée en vigueur le 1er octobre 1985 ;
- le Protocole n°7 à la Convention européenne des droits de l'Homme, ouvert à la signature le 22 novembre 1984 (STE, n°117), entré en vigueur le 1er novembre 1988;
- la Convention internationale relative aux droits de l'enfant, ouverte à la signature le 20 novembre 1989, entrée en vigueur le 2 septembre 1990.
- certaines conventions fondamentales adoptées dans le cadre de l'Organisation Internationale du Travail.

L'énumération de ces instruments appelle deux précisions complémentaires, le caractère non limitatif de cette énumération ayant déjà été souligné.

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La première précision concerne **l'effet normatif** de l'article 307 du traité CE . Alors que cette disposition ne constitue que la traduction, dans le traité CE, du principe de la force obligatoire des traités internationaux et de leur effet relatif, la Cour de justice des Communautés européennes a dû se prononcer sur l'étendue des obligations qui résultaient de cet article pour les institutions communautaires, elles-mêmes. Dans ¹⁰des arrêts rendus notamment à propos de l'effet des conventions de l'OIT sur le travail de nuit des femmes ou de la convention unique de 1961 sur les stupéfiants , elle a décidé qu'il résultait de cet article que, lorsqu'une convention conclue par un Etat membre antérieurement à l'entrée en vigueur du traité CEE ou à son adhésion lui imposait certaines obligations, ce qu'il appartient aux juridictions nationales de vérifier, l'exécution de ces obligations internationales peut faire obstacle à l'application du droit communautaire, uniquement dans la mesure où il n'est pas possible à l'Etat d'en assurer l'exécution fidèle de manière compatible avec le droit communautaire. Il en résulte pour les institutions communautaires *«l'obligation (...) de ne pas entraver l'exécution des engagements des Etats membres découlant d'une convention antérieure. Toutefois, cette obligation des institutions communautaires ne vise qu'à permettre à l'Etat membre concerné d'observer les engagements qui lui incombent en vertu de la convention antérieure sans, pour autant, lier la Communauté à l'égard de l'Etat membre intéressé»* .

Ainsi, si l'article 307 CE permet de justifier certaines dérogations au principe de l'applicabilité uniforme du droit communautaire, et ainsi d'en réduire l'effectivité, il n'a pas pour effet d'imposer de nouvelles obligations à la Communauté dans l'ordre juridique international. Il ne saurait en aller autrement, conformément aux principes généraux du droit international, que dans l'hypothèse où la Communauté se substitue aux engagements internationaux d'un ou de plusieurs Etats membres, par la conclusion d'un nouvel accord qui, avec le consentement de tous les partenaires, prend la place du premier.

Dès lors, si les instruments internationaux relatifs aux droits de l'Homme qu'on a énumérés doivent être pris en compte dans l'élaboration de la Charte des droits fondamentaux de l'Union européenne, ce n'est pas parce que ces instruments obligeraient les Communautés ou l'Union européennes dans l'ordre juridique international, mais parce que si leurs prescrits ne sont pas respectés dans l'élaboration du droit communautaire, l'uniformité d'application de ce dernier à travers l'ensemble de la Communauté européenne est menacée. Cela pourrait notamment conduire à des distorsions de concurrence entre les entreprises selon l'Etat membre sur le territoire duquel elles conduisent leurs activités . Ainsi, par exemple, si les obligations imposées aux entreprises dans le domaine social ne sont pas uniformes sur tout le territoire de l'UE, des distorsions de concurrence en résulteraient.

La seconde précision concerne le cas particulier des **instruments internationaux relatifs aux droits de l'Homme qu'un Etat membre ratifie à un moment où il a déjà adhéré à l'Union européenne**, et où, par conséquent, l'article 307 du traité CE ne s'applique pas. Les règles qui, dans le droit international public, régissent la conclusion de traités successifs par un même Etat, conduisent à conclure que la responsabilité internationale de cet Etat, vis-à-vis des autres parties au traité postérieur, ne saurait être engagée pour les conséquences qui résultent du traité antérieur. Ainsi notamment, un Etat membre de l'Union européenne ne pourra normalement être tenu de répondre des conséquences qui pourraient résulter des actes de droit dérivé communautaire à l'adoption desquels il n'a pas pu s'opposer, même si ces conséquences sont en violation d'un instrument international de protection des droits de l'Homme auquel il a adhéré, lorsque ce dernier instrument est entré en vigueur à son égard à un moment où il était déjà membre de l'Union européenne.

Par contre, dans cette hypothèse, l'Etat demeure tenu de s'opposer à toute révision des traités constitutifs des Communautés européennes, ou à toute révision du traité sur l'Union européenne, dont l'effet serait d'aboutir à une violation des droits fondamentaux qu'il s'est engagé à respecter. Même si l'adhésion d'un Etat à un instrument international de protection des droits de l'Homme est postérieure à son adhésion à l'Union européenne, le fait de ratifier cet instrument crée dans le chef de l'Etat ce qu'on pourrait qualifier d'obligation de *standstill* (non-rétrogression) : l'Etat doit s'opposer, au sein de l'Union européenne, à toute évolution qui ne peut avoir lieu sans son assentiment, c'est-à-dire qu'il a le pouvoir d'empêcher, si pareille évolution risque de conduire à une violation des droits de l'Homme que cet Etat s'est internationalement engagé à respecter.

Telle était précisément l'hypothèse de l'affaire *Matthews c. Royaume-Uni*, qui a donné lieu le 18 février 1999 à un arrêt de la Cour européenne des droits de l'Homme dans lequel celle-ci condamne le Royaume-Uni pour avoir consenti à une extension des pouvoirs du Parlement européen lors des négociations du traité de Maastricht sur l'Union européenne, sans obtenir concomitamment une extension du droit de suffrage aux élections européennes au bénéfice des habitants de Gibraltar.

Un aspect notable de l'arrêt est en effet que la disposition violée était l'article 3 du Protocole n°1 à la Convention européenne des droits de l'Homme, alors que ce protocole s'applique à Gibraltar depuis le 25 février 1988, date postérieure à l'adhésion du Royaume-Uni aux Communautés européennes. Selon la Cour européenne des droits de l'Homme, «*La Convention n'exclut pas le transfert de compétences à des organisations internationales, pourvu que les droits garantis par la Convention continuent d'être 'reconnus'. Pareil transfert ne fait donc pas disparaître la responsabilité des Etats membres*».

Ainsi, s'il est loisible aux Etats membres de l'Union européenne de progresser sur la voie de l'union politique, en réalisant une intégration toujours plus poussée, c'est à condition de ne pas aller à l'encontre de leurs engagements internationaux en matière de droits de l'Homme, sans qu'y change quoi que ce soit la circonstance que l'intégration était déjà entamée avant leur adhésion aux instruments où ces engagements sont inscrits.

b) Les droits fondamentaux émanant des traditions constitutionnelles communes des Etats membres

Il résulte du paragraphe précédent que la Charte des droits fondamentaux de l'Union européenne doit au moins comprendre les droits fondamentaux inscrits dans les instruments internationaux de protection des droits de l'Homme énumérés. L'inclusion de ces droits est incontournable si la Charte a notamment pour objectifs (1) de faciliter le respect par les Etats membres de l'Union européenne de leurs engagements internationaux en matière de droits de l'Homme (la Charte devant alors énumérer des droits de façon telle que le processus d'intégration européenne pourra progresser sans que la responsabilité internationale des Etats membres risque d'être engagée au regard des instruments internationaux relatifs aux droits de l'Homme auxquels ils ont adhéré) et (2) d'éviter une mise en cause de l'uniformité d'application du droit communautaire, telle que la rend possible l'exception que ménage l'article 307 du traité CE. Cette disposition peut en effet être invoquée par un particulier devant une juridiction nationale pour inviter celle-ci à écarter la disposition du droit communautaire qui s'avérerait incompatible avec un traité international entré en vigueur à l'égard de l'Etat dont ce juge est l'organe avant son adhésion à l'Union européenne.

La Charte des droits fondamentaux de l'Union européenne pourrait tendre non seulement à éviter une mise en cause de **l'uniformité d'application** du droit communautaire sur l'ensemble du territoire de l'Union européenne, mais aussi à assurer la **primauté** du droit communautaire.

L'on sait en effet que cette primauté n'a été admise, notamment par le Tribunal constitutionnel fédéral allemand, que dans la mesure où la protection des droits fondamentaux dans l'ordre juridique communautaire demeure à un niveau suffisamment protecteur de l'individu. Soucieuse de ne pas reconnaître la subordination du droit communautaire aux ordres juridiques nationaux, y compris dans l'identification des principes généraux du droit communautaire dont elle assure le respect, la CJCE a parfois explicitement refusé d'aligner sa jurisprudence relative aux droits fondamentaux sur le droit national le plus protecteur. Elle court ainsi le risque, délibérément, d'un démenti de la part du juge constitutionnel national, si celui-ci choisit de faire primer les garanties de sa constitution étatique sur la reconnaissance de la primauté du droit communautaire.

Afin de mettre un terme aux doutes qui entourent encore les rapports entre ordre juridique communautaire et ordre juridique national – doutes que la décision du 12 octobre 1993 du Tribunal constitutionnel allemand relative à la constitutionnalité du traité de Maastricht sur l'Union européenne a encore ravivés –, la Charte des droits fondamentaux de l'Union européenne devrait être élaborée avec le souci de faire prévaloir le niveau de protection le plus élevé, en alignant systématiquement le niveau de protection du droit communautaire sur la protection constitutionnelle la plus forte.

c) Autres sources d'inspiration de la Charte des droits fondamentaux de l'Union européenne

Des motifs proprement juridiques incitent à proposer l'intégration dans la Charte des droits fondamentaux de l'Union européenne des droits figurant dans les deux sources mentionnées. Le même raisonnement ne peut en revanche être tenu à propos de l'intégration des garanties, particulièrement développées, qui figurent dans la Charte communautaire des droits sociaux fondamentaux des travailleurs, adoptée en décembre 1989 par onze Etats des douze Etats alors membres des Communautés européennes .

La FIDH est cependant favorable à l'intégration des garanties de cette Charte des droits sociaux fondamentaux des travailleurs dans la Charte des droits fondamentaux de l'Union européenne. La question centrale est celle de l'opportunité d'énoncer des droits sociaux dans la Charte – lesquels droits seraient alors juridiquement contraignants et susceptibles de produire des effets juridiques immédiats. A l'heure actuelle, la Charte de 1989 se limite en effet à définir les objectifs à atteindre par un programme législatif d'adoption du droit communautaire dérivé .

L'ensemble des droits de l'Homme - civils, politiques, économiques, sociaux et culturels – sont interdépendants et indivisibles. Ces principes ont été consacrés dans la Déclaration de Vienne de 1993, mais ont également été régulièrement réaffirmés depuis par l'UE elle-même. Le Premier Rapport annuel de l'Union européenne sur les droits de l'Homme est rédigé en des termes dépourvus de toute ambiguïté à cet égard.

Il serait paradoxal et difficilement justifiable qu'à l'heure où cette indivisibilité et cette interdépendance sont reconnues par l'ensemble des Etats membres de l'UE, le nouvel instrument envisagé ne couvre pas l'ensemble de ces droits.

Par ailleurs, le Premier Rapport annuel de l'Union européenne sur les droits de l'Homme souligne le besoin pour l'Union d'identifier des mesures concrètes que les gouvernements pourraient adopter pour renforcer la jouissance des droits économiques, sociaux et culturels, afin qu'ils deviennent une réalité pour tous. L'adoption d'une Charte incluant les droits économiques, sociaux et culturels serait un premier pas dans le sens d'une promotion et d'une protection renforcées de ces droits.

II. Catégories de droits fondamentaux

La notion de «droits sociaux» figure déjà dans les paragraphes qui précèdent, à différents endroits, pour désigner deux réalités distinctes qu'il importe de ne pas confondre en dépit de leur homonymie.

Le terme «droits sociaux» s'applique d'abord, dans certains cas, aux droits fondamentaux qui sont invoqués dans le contexte de l'emploi ou de la relation de travail : l'on y fera figurer, par exemple, le droit au respect de la vie privée du travailleur dans les rapports d'emploi, le droit à la liberté de circulation comprise comme droit d'accès à un emploi offert, ou la liberté d'association syndicale.

Seuls méritent un bref commentaire les droits qualifiés de «sociaux» non parce qu'ils seraient invoqués dans le contexte d'un rapport d'emploi, mais parce que, impliquant des prestations de la part de l'Etat, leur justiciabilité est parfois contestée, c'est-à-dire qu'il est parfois difficile de les invoquer devant le juge (juge national ou juge communautaire) afin que celui-ci en garantisse le respect. Tel est le cas par exemple du droit à une rémunération équitable (art. 4 de la Charte sociale européenne (CSE)), du droit à une formation professionnelle (art. 9 de la CSE), du droit à une protection sociale adéquate (art. 13 et 14 de la CSE), ou du droit à l'intégration professionnelle et sociale des personnes handicapées (art. 15 CSE).

Le droit international des droits de l'Homme affirme aujourd'hui l'identité de principe entre les droits dits «civils et politiques» et les droits «économiques et sociaux», lesquels réclament généralement une intervention de la part de l'Etat, notamment par l'engagement de ressources budgétaires. Cette tendance n'est pas seulement doctrinale . Elle se manifeste d'ailleurs de façon spectaculaire dans la jurisprudence de la Cour européenne des droits de l'Homme, lorsque celle-ci reconnaît les prolongements d'ordre économique et social que peuvent appeler, pour leur effectivité, les droits que la Convention européenne des droits de l'Homme énonce, ce qui se traduit par l'imposition à l'Etat d'obligations positives impliquant l'engagement de certaines ressources budgétaires .

La même tendance se traduit en outre, dans la jurisprudence, par l'émergence d'une série de techniques qui permettent d'atténuer la séparation entre les deux catégories de droits, selon qu'ils appellent ou non des prestations de la part de l'Etat. Ces techniques sont d'autant plus à rappeler qu'elles connaissent des manifestations en droit communautaire, précisément quand ce droit ne peut être appliqué directement et afin que son effectivité soit néanmoins garantie.

Une première technique consiste à permettre au particulier dont le droit à certaines prestations a été violé d'agir contre l'Etat **en réparation du dommage subi** du fait du manquement de celui-ci à son obligation internationale, au contentieux de la responsabilité . L'utilisation de cette technique afin d'assurer l'effectivité des droits sociaux repose sur l'idée que, s'il peut être délicat pour un juge de se substituer au législateur afin de donner un contenu concret et précis aux droits sociaux invoqués devant lui, en revanche, il n'est pas exclu que le juge puisse en constater la violation lorsque celle-ci est manifeste, et évaluer le dommage éventuel qui en résulte dans le chef du demandeur en responsabilité. Point n'est besoin pour un juge de mettre sur pied un système de formation professionnelle, s'il peut constater le manquement à son obligation internationale dont l'Etat se rend coupable en ne prenant aucune mesure en matière de formation professionnelle, alors que, l'offre et la demande de main d'oeuvre sur le marché du travail ne se rencontrant pas, subsiste un chômage massif. Face à l'inscription de droits sociaux dans la Charte des droits fondamentaux de l'Union européenne, on peut concevoir que le juge communautaire procède vis-à-vis de ces droits comme vis-à-vis des droits attribués par une directive communautaire que l'Etat n'a pas transposée dans les délais impartis : en affirmant que la méconnaissance de l'obligation de mettre en oeuvre lesdits droits «impose un droit à réparation» .

Une seconde technique consiste à imposer le respect d'une obligation de *standstill*, ou de non-rétrogression, à l'Etat qui s'est engagé au respect de certains droits sociaux qui n'ont pas été définis avec une précision suffisante, et ainsi ne peuvent comme tels fournir au juge le fondement nécessaire à sa décision de justice. Il s'agit à travers l'affirmation d'une telle obligation d'interdire de **réduire le niveau de protection déjà atteint** de ces droits. Entre les mains du juge, cette doctrine se traduit par le refus d'application de la règle qui, postérieure à la règle d'où l'obligation de *standstill* est déduite, prétend diminuer le niveau de protection du droit, par rapport au niveau qui était le sien au moment de l'entrée en vigueur de la règle imposant l'obligation de *standstill* : à la règle qui risque de diminuer le niveau de protection du droit déjà atteint, le juge préférera substituer la règle antérieure, ou le droit commun, qui avait permis d'atteindre tel niveau de protection déterminé. Ici encore, un tel effet de substitution n'est pas inconnu du droit communautaire, la CJCE. ayant, par exemple, résolu par le recours à une technique semblable le problème résultant du silence de la directive 76/207 relative à l'égalité de traitement quant au niveau des sanctions qu'œ la loi nationale d'un Etat membre doit prévoir dans l'hypothèse de violation de la règle de non-discrimination .

Une troisième technique résulte de **la combinaison de l'affirmation de tel droit requérant certaines prestations de la part de l'Etat avec la règle de non-discrimination**. La jurisprudence de la Cour européenne des droits de l'Homme admet l'autonomie de la règle qui prohibe toute différence de traitement discriminatoire dans la jouissance des droits et libertés reconnus dans la Convention ; par conséquent, la violation de la disposition garantissant tel droit ou telle liberté combinée avec l'exigence de non-discrimination est concevable, même en l'absence d'une violation de la première disposition considérée isolément. Identiquement ici, l'on peut concevoir que tel droit à une prestation, dont la violation indépendante ne saurait se concevoir faute pour ce droit d'être défini de manière suffisamment précise, produise néanmoins un effet juridique – et soit, à ce titre, justiciable –, si l'on en combine la garantie avec l'interdiction de toute discrimination : ainsi le droit au travail ou le droit au logement, même si l'on devait considérer qu'ils ne peuvent en tant que tels être invoqués devant le juge, pourraient être invoqués en combinaison avec la règle de non-discrimination ; ce pourrait être le cas si les règles relatives à l'accès à l'emploi ou au logement aboutissaient à créer entre catégories de personnes des différences de traitement non susceptibles d'une justification objective et raisonnable. Ce raisonnement est transposable aux droits sociaux qui seraient énumérés dans une Charte des droits fondamentaux de l'Union européenne : le juge communautaire, ou le juge national en application du droit communautaire, procéderaient comme lorsque, par exemple, des avantages sociaux sont accordés de façon discriminatoire en fonction de la nationalité des tributaires, donc en violation de l'article 12 du traité CE (ancien article 6) .

Enfin, il ne faut pas sous-estimer la **capacité du juge de prolonger l'oeuvre du législateur**, en identifiant plus concrètement le contenu de certains droits, dont la définition aurait été laissée relativement vague, par le choix de critères leur conférant une précision dont ils auraient été initialement dépourvus. Ainsi le comité européen des droits sociaux, alors appelé comité d'experts indépendants, a-t-il estimé que la notion de «rémunération suffisante» figurant à l'article 4, § 1er, de la Charte sociale européenne, doit s'entendre comme faisant référence à un «seuil de décence» établi à 68 % du salaire moyen national, en tenant compte non seulement du salaire effectivement versé, mais également des mécanismes de redistribution dont bénéficient les couches de la population les plus défavorisées (allocations familiales, aides au logement, prestations sociales importantes par exemple). En application de ce critère, l'Etat lié par cette disposition qui tolère que les travailleurs les moins bien payés se situent en-dessous de ce

seuil des 68% du salaire moyen national se place en infraction par rapport à son engagement « à reconnaître le droit des travailleurs à une rémunération suffisante pour leur assurer, ainsi qu'à leurs familles, un niveau de vie décent » (art. 4, § 1er, CSE) .

Cette quatrième technique implique que le juge, appelé à se prononcer sur la violation d'un droit social invoqué devant lui, compense par son inventivité le défaut de précision dans la formulation de ce droit : cela revient pour le juge à se substituer au législateur, afin de compléter son ouvrage. Les autres techniques réclament cependant moins de la part du juge. En accueillant l'action en responsabilité introduite contre l'Etat qui a échoué de manière manifeste à garantir les droits sociaux qu'il s'est engagé à respecter, en imposant de la part de l'Etat qu'il ne diminue pas le niveau de protection déjà atteint de ces droits, en combinant les droits sociaux avec l'exigence de non-discrimination, le juge se contente de reconnaître un effet utile aux droits sociaux ainsi consacrés, tout en demeurant dans les limites de son office.

La FIDH considère que les droits sociaux devraient figurer dans une Charte des droits fondamentaux de l'Union européenne, au même rang que les droits civils et politiques . La question n'est pas de savoir si ces droits sont justiciables ou non, car ils le sont. En les inscrivant dans la Charte, ses rédacteurs conféreront au juge le pouvoir, potentiellement considérable, de procurer une signification concrète à ces droits ; ils peuvent également privilégier l'option consistant à restreindre les virtualités de ces droits en définissant avec précision leur contenu et leur portée.

Les techniques passées en revue ont été présentées en fonction de l'hypothèse où des droits sociaux seraient invoqués contre l'Etat, et ce lorsque l'Etat met en oeuvre le droit communautaire ou fait usage d'une clause de dérogation prévue par le droit communautaire (voy. ci-dessous, section IV). Rien ne paraît cependant s'opposer à ce qu'il soit recouru à ces techniques afin d'obliger les institutions communautaires, dans les limites de leurs compétences, à respecter les droits sociaux. La possibilité d'engager la responsabilité extra-contractuelle des Communautés lorsque celles-ci se rendent coupables d'une violation manifeste des droits sociaux qu'elles se sont engagées à respecter (a), la possibilité de postuler l'annulation ou de faire constater l'invalidité de l'acte de droit communautaire dérivé qui, soit, diminue le niveau de protection déjà atteint des droits sociaux fondamentaux (b), soit reconnaît ces droits de façon discriminatoire (c), peuvent s'inscrire dans les modalités que recouvre déjà actuellement le contrôle juridictionnel communautaire.

III. Garanties juridictionnelles

L'utilité de la reconnaissance des droits fondamentaux est fonction des voies de recours qui permettent d'en réclamer le contrôle juridictionnel. Or, le système des voies de recours de l'ordre juridique communautaire présente deux insuffisances, l'une plus grave, l'autre plus marginale.

a) Le recours direct du particulier en annulation de l'acte communautaire de portée générale

La première insuffisance résulte des limites que met la jurisprudence actuelle de la CJCE à la recevabilité des recours directs en annulation du particulier, dans les conditions que prévoit l'article 230, al. 4 du traité CE. Il est exceptionnel que de tels recours puissent être reçus lorsqu'ils sont dirigés contre des actes communautaires de portée générale, c'est-à-dire contre des actes qui ne constituent pas des « décisions » au sens matériel du terme. Il en résulte qu'il est plus aisé pour les particuliers qui s'estiment victimes d'une violation de leurs droits fondamentaux d'introduire une requête en vertu de l'article 34 de la Convention européenne des droits de l'homme, y compris lorsque la violation alléguée a sa source dans un acte normatif de portée générale, que d'agir devant le juge communautaire en annulation des actes communautaires de portée générale.

Le problème qui résulte de cette situation est double. Tout d'abord, il en résulte une lacune dans la protection des droits fondamentaux des destinataires du droit communautaire. Dans son Rapport de mai 1995 sur certains aspects de l'application du traité sur l'Union européenne, la Cour de justice notait : « L'on peut (...) se demander si le recours en annulation prévu par l'article 173 du TCE et par les dispositions correspondantes des autres traités qui n'est ouvert aux particuliers qu'à l'égard des actes qui les concernent directement et individuellement est suffisant pour leur garantir une protection juridictionnelle effective contre les atteintes à leurs droits fondamentaux pouvant résulter de l'activité législative des institutions » (point 20). Elle semblait ainsi rejoindre une doctrine majoritaire qui regrette depuis les arrêts de 1962-1963 *Confédération nationale des producteurs des fruits et légumes* et *Plaumann* les limites mises à la recevabilité des recours en annulation introduits par les particuliers contre les actes communautaires ayant une portée générale .

L'autre difficulté résulte des différences qui séparent, sur le plan de la recevabilité des recours des particuliers contre les actes normatifs de portée générale, les interprétations jurisprudentielles de l'article 230, al. 4, du traité CE, d'une part, et de l'article 34 de la Convention européenne des droits de l'Homme, d'autre part. Cette situation implique en effet que tel individu qui estime ses droits fondamentaux lésés par l'existence d'un acte normatif communautaire de portée générale pourra être tenté d'introduire une requête auprès de la Cour européenne des droits de l'Homme, en prenant appui sur sa qualité de «victime» au sens de l'article 34 de la Convention, sans que l'on puisse lui reprocher de n'avoir pas agi en annulation devant le juge communautaire, et sans, par conséquent, qu'on puisse même songer à lui opposer l'exception de l'absence d'épuisement des voies internes de recours (art. 35 de la Convention). L'ordre juridique communautaire serait plutôt mieux préservé, et non menacé, d'un contrôle de la part de la Cour européenne des droits de l'Homme s'il procédait à un élargissement du recours direct en annulation du particulier.

Si l'utilité d'un élargissement des conditions du recours en annulation introduit par le particulier est généralement admise, les modalités qu'il devrait prendre ne sont pas toujours comprises de façon identique. La formulation choisie par la CJCE pour exprimer sa préoccupation à cet égard indique que sa préférence irait à un recours limité à la protection des droits fondamentaux, sur le modèle du *Verfassungsbeschwerde* prévu à l'article 93, § 4, de la Loi fondamentale allemande . D'autres imaginent un recours général, visant à faire sanctionner toute illégalité figurant dans un acte communautaire de droit dérivé, qu'elle conduise à une violation des droits fondamentaux ou non, et à la seule condition que le requérant ait un intérêt à agir contre l'acte querellé. Le choix entre ces différentes pistes doit tenir compte non seulement de la nécessité de ne pas encore surcharger un juge communautaire qui éprouve de plus en plus de difficultés à faire face au flot de recours ou de renvois qui lui sont présentés, mais également en fonction de la faisabilité – douteuse, et cela de l'avis même des meilleurs spécialistes de la matière – de la solution intermédiaire préconisée par la CJCE dans son rapport de mai 1995.

b) Le recours en annulation dans l'intérêt collectif

Certains ont suggéré que le traité reconnaisse le recours en annulation dans l'intérêt collectif, introduit par des personnes morales en vue de la protection de leur objet social, y compris contre les actes communautaires normatifs de portée générale.

Si elle était admise, une telle modification du régime du recours en annulation aboutirait à une décentralisation considérable de la mission de surveillance du traité que celui-ci confie encore essentiellement à la Commission européenne et aux États membres. Pourtant, cette solution pourrait s'avérer à certains égards plus prometteuse que l'extension pure et simple du droit du particulier d'agir en annulation contre des actes communautaires de portée générale. Spécialement, elle permettrait de garantir la représentativité de l'auteur du recours en annulation, laquelle est plus aisée à contrôler dans le chef d'un groupement que dans le chef d'un individu déterminé. Elle présenterait aussi l'avantage, dans les termes mêmes qu'emploie le juge communautaire, de permettre *«d'éviter l'introduction d'un nombre élevé de recours différents» dirigés contre les mêmes actes communautaires, ce qui présente, note le juge, des «avantages procéduraux»* .

Aussi cette solution mérite-t-elle qu'on l'étudie avec soin, même si l'on doit définir les limites dans lesquelles le recours en annulation dans l'intérêt collectif doit être admis, par analogie avec le droit des groupements d'agir en justice, dans les ordres juridiques étatiques, au contentieux administratif ou au contentieux de la constitutionnalité des lois.

La FIDH est convaincue que toute tentative d'améliorer la protection des droits fondamentaux dans l'ordre juridique communautaire devrait s'accompagner d'un assouplissement des conditions d'accès au juge communautaire ou, à défaut, d'une extension des circonstances dans lesquelles les juridictions nationales des États membres doivent accueillir l'action en justice portée devant elles et qui tend à la préservation de la légalité communautaire.

IV. Conséquences de la Charte des droits fondamentaux de l'Union européenne sur la définition des compétences de la Communauté européenne

L'article 25, § 1er, de la Déclaration des libertés et droits fondamentaux adoptée par le Parlement européen le 12 avril 1989 prévoyait que *«la présente Déclaration protège toute personne dans le champ d'application du droit communautaire»*.

Cette formulation est conforme au statut que reçoivent aujourd'hui les droits fondamentaux comme faisant partie des principes généraux du droit communautaire dont la CJCE assure le respect. Celle-ci a en effet estimé pouvoir imposer le respect des droits fondamentaux aux actes communautaires et aux actes étatiques s'inscrivant dans le domaine d'application du droit communautaire. La CJCE contrôle ainsi la conformité des actes des Etats membres aux droits fondamentaux figurant parmi les principes généraux du droit communautaire, soit, lorsque ces actes des Etats membres prétendent faire emploi d'une exception qu'autorise le droit communautaire, soit, lorsqu'ils appliquent le droit communautaire ou lui procurent exécution, soit encore lorsqu'ils s'inscrivent dans une procédure conduisant à l'adoption d'un acte communautaire. Par contre, elle se refuse à contrôler la compatibilité avec les droits fondamentaux inclus parmi les principes généraux du droit communautaire des mesures nationales ne présentant aucun lien de rattachement avec le droit communautaire.

Aux termes de l'arrêt *Cinéthèque* du 11 juillet 1985 : «*S'il est vrai qu'il incombe à la Cour d'assurer le respect des droits fondamentaux dans le domaine propre du droit communautaire, il ne lui appartient pas, pour autant, d'examiner la compatibilité, avec la convention européenne, d'une loi nationale qui se situe (...) dans un domaine qui relève de l'appréciation du législateur national*». Comme un arrêt ERT du 18 juin 1991 l'illustre parfaitement, le statut reconnu aux droits fondamentaux en tant que principes généraux du droit communautaire ne prive pas ces droits de toute portée autonome vis-à-vis des actes des Etats membres qui s'inscrivent dans le domaine d'application du droit communautaire : la reconnaissance de ces droits implique que des actes étatiques, par ailleurs conformes aux autres exigences du droit communautaire, pourraient être jugés incompatibles avec le droit communautaire s'ils sont adoptés en violation des droits fondamentaux. Par contre, les rapports juridiques régis par le seul droit national, c'est-à-dire vis-à-vis desquels le droit communautaire est indifférent, ne sont soumis qu'aux règles nationales ou, le cas échéant, aux instruments internationaux de protection des droits de l'Homme applicables dans cet Etat, sans que les principes généraux du droit communautaire trouvent à s'y appliquer.

Il convient d'interpréter dans le même sens l'article 6, § 2, du traité sur l'Union européenne (anc. art. F, § 2), qui énonce que «*l'Union respecte les droits fondamentaux, tels qu'ils sont garantis par la Convention européenne de sauvegarde des droits de l'Homme (...) et tels qu'ils résultent des traditions constitutionnelles communes aux Etats membres, en tant que principes généraux du droit communautaire*».

Cette dernière disposition, initialement introduite par le traité de Maastricht sur l'Union européenne du 7 février 1992, n'a eu d'autre effet que de constitutionnaliser la jurisprudence de la CJCE mentionnée précédemment. Il ne s'agissait pas d'affirmer une compétence de l'Union ou de la Communauté européennes en matière de droits fondamentaux, ni de fournir à la CJCE une base juridique sur laquelle fonder un éventuel contrôle de la conformité de l'ensemble des actes des Etats membres par rapport aux exigences des droits fondamentaux ; il s'agissait uniquement d'interdire à la fois aux institutions communautaires et aux Etats membres, dans la mesure où ils agissent dans le cadre du droit communautaire, de prendre des dispositions contraires à ces droits. Reconnaître aux droits fondamentaux un tel statut n'affecte pas l'étendue des compétences de la Communauté ou de l'Union européennes par rapport aux compétences des Etats membres.

Il n'est manifestement pas envisagé de reconnaître un statut différent aux droits figurant dans la Charte des droits fondamentaux de l'Union européenne. Pourtant la question se pose de savoir si l'insertion dans le traité CE d'un catalogue de droits fondamentaux ne peut pas conduire, au moins à terme, à une extension des compétences de la Communauté européenne, d'une part, à un rôle plus actif de la CJCE dans la garantie des droits fondamentaux par les Etats membres, d'autre part. Ces deux questions sont liées : elles affectent l'une et l'autre la répartition des compétences entre la Communauté et les Etats membres.

Cette question comporte différents aspects :

1. La plupart des droits fondamentaux dont l'insertion dans la Charte est envisagée sont susceptibles de faire l'objet de certaines restrictions, pour autant que celles-ci soient «*prévues par la loi*», et puissent être considérées comme «*nécessaires, dans une société démocratique*», à la réalisation de certaines fins considérées comme légitimes. La première de ces conditions, traditionnellement appelée condition de légalité, signifie que **des restrictions ne peuvent être apportées à un droit fondamental qu'au travers d'une réglementation suffisamment précise et accessible**, permettant au titulaire de droits de prévoir avec un degré de certitude suffisant les limites qui s'attachent à l'exercice de ces droits ; s'il estime que la restriction qui lui est imposée est arbitraire, il peut solliciter le juge pour qu'il contrôle les conditions entourant cette restriction.

Cette condition de légalité n'est pas problématique lorsqu'elle intervient dans le cadre du contrôle du respect des droits fondamentaux par des mesures étatiques qui, soit parce qu'elles apportent une restriction à une liberté, restriction que prévoit le droit communautaire, soit parce qu'elles mettent en oeuvre le droit communautaire, s'inscrivent dans son champ d'application, et doivent dès lors être conformes aux droits fondamentaux contenus dans une Charte des droits fondamentaux de l'Union européenne.

En revanche, lorsque telle mesure de droit communautaire dérivé crée une ingérence dans un droit fondamental de l'individu, mais sans que le droit communautaire définisse le régime juridique de l'ingérence litigieuse, le juge communautaire pourrait être amené à constater que cette condition de légalité est violée.

Une telle appréciation aurait pour conséquence d'imposer aux institutions communautaires qu'elles adoptent une réglementation suffisamment précise et complète en telle matière, afin de doter leurs interventions du cadre légal qui leur fait défaut, ou qui n'est pas suffisamment précis. Certes, cette exigence n'affecte pas directement la répartition des compétences entre le niveau communautaire et le niveau étatique ; mais elle peut impliquer que la Communauté européenne soit tenue d'adopter des réglementations particulièrement détaillées, le cas échéant en limitant la marge d'appréciation des autorités nationales lorsqu'elles mettent en oeuvre le droit communautaire.

Tel pourrait être le cas, à tout le moins, des actes de droit communautaire dérivé qui sont directement applicables par les autorités nationales, et qui aboutissent par conséquent à imposer au particulier l'adoption de comportements déterminés. En effet, dès lors que ces actes imposent certains comportements sous la menace de sanctions, communautaires ou nationales, l'imprécision des conditions entourant la restriction dont est assorti le droit considéré risque d'inciter le bénéficiaire de ce droit à ne pas l'exercer par crainte de subir des sanctions, dont il ne sait pas exactement dans quelles hypothèses elles peuvent être imposées.

2. L'insertion dans le traité CE d'une Charte de droits fondamentaux encouragerait un courant qui tend à **présenter la garantie des droits fondamentaux, à un niveau de protection uniforme sur l'ensemble du territoire de l'Union européenne, comme un aspect des libertés fondamentales de circulation.** Menacés de voir certains de leurs droits fondamentaux violés, certains bénéficiaires des libertés de circulation prévues en droit communautaire pourraient renoncer à exercer ces libertés qui leur sont formellement reconnues.

Cela justifierait que les droits fondamentaux soient considérés comme invoqués «*dans le domaine d'application du droit communautaire*» dès l'instant où une telle liberté de circulation a été exercée et qu'il en est résulté une violation d'un droit fondamental, ou lorsque cette liberté n'a pas pu être exercée en raison de la crainte, bénéficiaire de la liberté de circulation de voir ses droits fondamentaux violés s'il devait accepter un emploi, s'établir comme indépendant, ou offrir des services dans un autre Etat membre . L'on peut rappeler à cet égard que la directive 95/46/CE du Parlement européen et du Conseil du 24 octobre 1995 relative à la protection des personnes physiques à l'égard du traitement des données à caractère personnel et à la libre circulation de ces données «*précise et amplifie*» les garanties de la Convention n°108 conclue le 28 janvier 1981 dans le cadre du Conseil de l'Europe dans la même matière, notamment en «*considérant que l'établissement et le fonctionnement du marché intérieur dans lequel (...) la libre circulation des marchandises, des personnes, des services et des capitaux est assurée, nécessitent non seulement que des données à caractère personnel puissent circuler librement d'un Etat membre à l'autre, mais également que les droits fondamentaux des personnes soient sauvegardés*» ; la directive est adoptée, du reste, sur la base juridique de l'article 100 A du traité CE (actuel art. 95), qui prévoit la procédure applicable à l'adoption des mesures «*relatives au rapprochement des dispositions législatives, réglementaires et administratives des Etats membres qui ont pour objet l'établissement et le fonctionnement du marché intérieur*».

L'extension de cette tendance dans le droit communautaire impliquerait que le domaine d'application du droit communautaire, dans lequel les droits fondamentaux reconnus en droit communautaire sont susceptibles d'être invoqués, s'étendrait à toute hypothèse où une liberté communautaire a été exercée mais a abouti à placer celui qui a exercé cette liberté sous la juridiction d'un Etat qui viole ses droits, ou au contraire n'a pas pu être exercée en raison de ce que le titulaire de la liberté de circulation a eu des motifs de craindre de subir cette violation s'il en faisait usage.

Le nombre de situations où pourraient être invoqués les droits fondamentaux reconnus en droit communautaire se trouverait évidemment radicalement étendu à la suite d'une telle évolution. Pourtant l'on ne serait pas encore, pour autant, dans l'hypothèse maximaliste où toute violation des droits fondamentaux sous la juridiction d'un Etat membre de l'Union européenne serait interprétée comme une violation du droit communautaire, puisqu'un certain élément de rattachement au droit communautaire demeurerait requis.

3. Il résulte de la considération précédente que l'expression «*dans le domaine d'application du droit communautaire*» n'est pas toujours univoque, même si elle doit servir explicitement à éviter que l'inscription des droits fondamentaux dans le traité CE ne conduise à un bouleversement des compétences respectives de la Communauté européenne et des Etats membres. L'on doit encore souligner que la formulation de pareille limitation n'est pas la seule option ouverte.

Une autre option consisterait, sur le modèle de la clause de non-discrimination inscrite dans le traité CE par le traité d'Amsterdam du 2 octobre 1997 (nouvel article 13 du traité CE) ou sur celui de l'égalité de traitement (actuel article 141 du traité CE), à prévoir que **les institutions communautaires reçoivent la compétence de prendre les mesures propres à garantir les droits fondamentaux figurant dans la Charte des droits incluse dans le traité CE.**

Certes, une telle perspective paraît pour l'heure peu réaliste. Elle impliquerait en effet une extension des compétences de la Communauté, et un développement de l'activité législative de ses institutions, qui paraissent aller à contre-courant de la tendance actuelle, qui encourage plutôt une subsidiarité de l'intervention. En outre, même si une telle option aurait pour elle de créer dans l'ensemble de l'Union européenne un espace où les droits fondamentaux bénéficieraient d'une protection uniforme, contribuant de la sorte à l'effectivité des libertés de circulation dans cet espace, force est de constater que cette uniformité résulte déjà, très largement, du fait que tous les Etats membres de l'Union européenne sont Parties à la Convention européenne des droits de l'Homme.

4. Enfin, quelle que soit en définitive l'option choisie entre les différentes possibilités qui viennent d'être passées en revue, il convient de souligner que l'insertion d'une Charte des droits fondamentaux dans le traité CE devrait s'accompagner d'une **modification du traité permettant de surmonter l'obstacle que, dans son avis 2/94 du 28 mars 1996, la CJCE voyait à l'adhésion de la Communauté européenne à la Convention européenne des droits de l'Homme** .

Rendu à la veille de l'ouverture de la Conférence intergouvernementale qui allait déboucher sur le traité d'Amsterdam du 2 octobre 1997, l'avis 2/94 constatait qu'en raison de l'«*envergure constitutionnelle*» de l'adhésion envisagée, le recours à l'article 235 du traité CE (actuel article 308) ne pouvait suffire à lui fournir sa base juridique, à défaut d'une compétence plus explicite de la Communauté européenne dans le domaine des droits de l'Homme. Les négociateurs du traité d'Amsterdam n'ont cependant pas investi la Communauté européenne d'une telle compétence . Il est probable qu'il ne suffise pas, pour surmonter l'obstacle que la CJCE voyait à l'adhésion de la Communauté à la Convention européenne des droits de l'Homme, de faire figurer la protection des droits de l'Homme parmi les missions et objectifs de la Communauté (articles 2 et 3 du traité CE) : la création d'une nouvelle compétence, plus explicite, paraît requise .

V. Bénéficiaires des droits fondamentaux

Les instruments internationaux relatifs aux droits de l'Homme, et la Convention européenne des droits de l'Homme en particulier, garantissent ces droits à **toute personne placée sous la juridiction** des Etats que ces instruments obligent, **indépendamment de la nationalité** de ces personnes .

Certes, les garanties de la Charte sociale européenne, comme celles de la Charte sociale révisée de 1996, ne sont reconnues aux étrangers que «*dans la mesure où ils sont ressortissants des autres Parties résidant légalement ou travaillant régulièrement sur le territoire de la Partie intéressée (...)*» . Mais il convient de relativiser la portée de cette restriction, d'un double point de vue.

a) S'agissant de droits aussi fondamentaux que le sont, par exemple, le droit à la protection de la santé (art. 11 CSE) ou le droit à l'assistance sociale et médicale (art. 13 CSE), il est très contestable d'en réserver le bénéfice aux personnes séjournant légalement dans l'Etat où elles se trouvent. Si certains droits économiques et sociaux, notamment liés aux prestations de sécurité sociale, peuvent être subordonnés à la régularité du séjour sur le territoire de l'Union européenne du ressortissant d'un Etat tiers, **les droits à l'assistance médicale et sociale** sont au cœur de la dignité humaine et la privation de ces droits peut constituer un traitement inhumain et dégradant. Certains droits économiques et sociaux devraient ainsi être reconnus non seulement aux résidents légaux, mais également aux demandeurs et aux personnes en situation illégale. De même, le **droit des enfants à l'instruction** ne peut être refusé au motif que la situation administrative des parents ne serait pas régulière, et ne saurait être subordonné à la légalité du séjour.

Il faut par ailleurs garder à l'esprit la Déclaration universelle des droits de l'Homme, le Pacte international relatifs aux droits économiques, sociaux et culturels, ainsi que la Déclaration de l'OIT sur les droits fondamentaux des travailleurs (juin 1998).

On peut de plus s'interroger sur l'utilité d'exclure de ces garanties les personnes qui ne sont pas en ordre de séjour car, d'une part, une série de dispositions de la Charte sociale européenne ne peuvent par principe s'appliquer à ces personnes, parce qu'elles sont liées à l'exercice d'un emploi auquel elles n'ont pas accès, et, d'autre part, la différence entre la situation d'un étranger en séjour légal sur le territoire d'un Etat partie et celle d'un étranger qui n'est pas en ordre de séjour est suffisamment objective pour justifier, le cas échéant, une différence de traitement entre les deux situations, pour autant qu'elle soit raisonnablement justifiée.

b) Le fait de réserver aux seuls nationaux des Etats parties à la Charte sociale européenne révisée le bénéfice des droits qui s'y trouvent, suivant le modèle de la réciprocité, ne paraît guère compatible avec l'exigence de non-discrimination qui figure, dans la Convention européenne des droits de l'Homme, en tant que garantie complémentaire à chacun des droits protégés. Dans une affaire où était précisément revendiqué le bénéfice d'un droit social patrimonial - une allocation de chômage d'urgence -, la Cour européenne des droits de l'Homme a affirmé que «*seules des considérations très fortes peuvent [l]'amener (...) à estimer compatible avec la Convention une différence de traitement exclusivement fondée sur la nationalité*». Il est ainsi certain que, là du moins où c'est un même droit qui est reconnu à la fois par la jurisprudence relative à la Charte sociale européenne et par la Convention européenne des droits de l'Homme, la restriction de la protection aux seuls nationaux des autres Etats parties ne pourra pas être admise sans autre justification, plus circonstanciée.

Même dans les autres champs, une différence de traitement fondée uniquement sur la nationalité du bénéficiaire potentiel d'un droit ne semble pas pertinente : soit cette différence de traitement peut être justifiée, et alors les limites mêmes qu'impose la règle de non-discrimination suffisent à justifier cette différence de traitement – la règle de non-discrimination n'interdit pas une différence de traitement fondée sur une justification objective et raisonnable –; ou bien elle ne peut être justifiée, et alors elle constitue une discrimination, ce que prohibent d'autres instruments internationaux de protection des droits de l'Homme.

La FIDH considère absolument fondamental que les droits figurant dans une Charte des droits fondamentaux de l'Union européenne soient reconnus à toute personne, sans discrimination. Seule une telle définition des bénéficiaires des droits fondamentaux est conforme au droit international des droits de l'Homme et au principe d'universalité, qui en est un des fondements essentiels. Des différences de traitement pourront ensuite être établies entre les ressortissants d'Etats membres et les ressortissants d'Etats tiers, à condition cependant qu'elles demeurent objectivement justifiables et proportionnées à l'objectif, dont la Cour européenne des droits de l'Homme a reconnu la légitimité, de constituer entre Etats de l'Union européenne «*un ordre juridique spécifique, ayant instauré de surcroît une citoyenneté propre*».

Il est essentiel de délier nettement la reconnaissance des droits fondamentaux dans l'Union européenne de la notion de citoyenneté de l'Union européenne, et cela d'autant plus que la citoyenneté européenne est fondée sur le critère de la nationalité d'un Etat membre. Il convient d'ailleurs de noter que certains droits énoncés dans la deuxième partie du traité CE («La citoyenneté de l'Union») sont d'ores et déjà étendus aux personnes physiques résidant dans un Etat membre (droit de pétition au Parlement européen (art. 194 du traité CE), droit de s'adresser au médiateur de l'Union européenne (art. 195 du traité CE)). Il serait inadmissible que la nouvelle Charte marquât une régression à cet égard.

VI. Conclusion

La Charte des droits fondamentaux de l'Union européenne devrait tendre à un niveau de protection qui soit au moins équivalent à celui des instruments internationaux de protection des droits de l'Homme liant au moins un Etat membre de l'Union européenne au moment de son adhésion aux Communautés européennes, et aux dispositions constitutionnelles nationales les plus protectrices relatives aux droits de l'Homme. C'est à cette condition seulement que l'uniformité d'application du droit communautaire et la primauté dont il bénéficie dans l'application qu'en procurent les juridictions nationales seront préservées.

Les droits sociaux devraient figurer dans la Charte des droits fondamentaux de l'Union européenne, à l'instar des droits civils et politiques. Le juge devant qui ces droits seront invoqués, lorsque pareille invocation a lieu dans le domaine d'application du droit communautaire, dispose de techniques permettant de leur reconnaître un effet juridique. Le juge communautaire a développé ces techniques, notamment au moment où il a dû garantir l'effectivité des droits attribués par voie de directives, à l'instar du juge national lorsqu'il lui a fallu reconnaître la juridicité des droits sociaux.

L'accès des particuliers, voire des organisations non-gouvernementales et autres associations intéressées, aux garanties juridictionnelles (CJCE) devrait être élargi dans le domaine des droits fondamentaux.

L'inscription de droits fondamentaux dans une Charte propre à l'Union européenne n'opérera normalement reconnaissance de ces droits que dans le domaine d'application du droit communautaire ; l'identification exacte de ce que recouvre ce domaine d'application n'est cependant pas définitivement arrêtée. Aussi conviendrait-il de préciser de manière claire ce que signifie cette expression. En outre, il conviendrait de décider si, oui ou non, l'affirmation des droits fondamentaux investit les institutions communautaires d'une compétence nouvelle, celle de prendre les mesures propres à mettre en oeuvre les droits reconnus à l'échelle de la Communauté. Enfin, il faudrait prévoir dans le Traité une compétence nouvelle dans le chef de la Communauté européenne, celle d'adhérer aux instruments internationaux de protection des droits de l'Homme qui présentent un rapport avec les compétences déjà attribuées à la Communauté.

Les droits fondamentaux inscrits dans la Charte envisagée doivent être reconnus à tous, sans distinction aucune, notamment de nationalité. Seuls les droits politiques *stricto sensu*, c'est-à-dire les droits d'électorat et d'éligibilité actuellement reconnus aux citoyens de l'Union européenne, quel que soit leur Etat membre de résidence, peuvent être attachés à la citoyenneté de l'Union européenne. Ces droits devraient cependant également être étendus aux personnes résidant légalement sur le territoire de l'Union, sous certaines conditions à préciser.

D'autres droits jusqu'à présent réservés aux seuls ressortissants d'Etats membres, notamment les droits liés à la liberté de circulation, ne devraient pas – dans la logique même d'un espace sans frontières intérieures – être subordonnés à cette condition de nationalité. Dès à présent, l'exigence de non-discrimination détermine dans certaines limites l'exclusion de certaines personnes du bénéfice de ces droits. L'exigence de non-discrimination exclut en effet qu'une différence de traitement soit justifiée par le seul argument formel d'une différence de nationalité. On peut du reste considérer que le droit de «*circuler librement*» et de «*choisir librement sa résidence*» (art. 2, Protocole n°4 à la Convention européenne des droits de l'Homme), que la Convention européenne des droits de l'Homme reconnaît à «*quiconque se trouve régulièrement sur le territoire d'un Etat*», sera à l'avenir interprété de façon à imposer l'extension de ces droits à toute personne se trouvant sur le territoire de l'UE dans le cadre communautaire, à mesure même que progresse l'intégration de l'Union européenne.

Notes :

1. Voy. par ex. C.J.C.E., 18 mai 1982, AM & S Europe Ltd. c. Commission des C.E., 155/79, Rec., p. 1575 (confidentialité de la correspondance entre l'avocat et son client); ou C.J.C.E., 18 octobre 1989, Orkem c. Commission des C.E., 374/87, Rec., p. 3283 (droit de ne pas avoir à témoigner contre soi-même).
2. Voy. par ex. C.J.C.E., 14 mai 1974, J. Nold, Kohlen- und Baustoffenhandlung c. Commission des C.E., 4/73, Rec., p. 491; C.J.C.E., 13 décembre 1979, L. Hauer c. Land Rheinland-Pfalz, 44/79, Rec., p. 3727 (droit au respect des biens); C.J.C.E., 5 mars 1980, J. Pecastaing c. Etat belge, 98/79, Rec., p. 691 (équité du procès); C.J.C.E., 18 mars 1980, SpA Ferreira Valsabbia et al. c. Commission des C.E., aff. jtes 154/78, 205 et 296/78, 226/78, 228/78, 263/78, 264/78, 39/79, 31/79, 83/79, Rec., p. 907 (droit au respect des biens).
3. Notamment en matière de fonction publique communautaire : C.J.C.E., 4 juillet 1963, M. Alvis c. Conseil CEE, 32/62, Rec., p. 99; C.J.C.E., 1er juillet 1964, R. Degreef c. Commission CEE, 80/63, Rec., p. 767; C.J.C.E., 1er juillet 1964, Pistoij c. Commission CEE, 26/63, Rec., p. 681; C.J.C.E., 15 mars 1967, Max Gutmann c. Commission CEEA, aff. jtes 18 et 35/65, Rec., p. 75.
4. Voy. par ex. C.J.C.E., 13 déc. 1989, A. Oyowe et A. Traore c. Commission des C.E., C-100/88, Rec., p. 4285, not. pts 15 et 16 (liberté d'expression des fonctionnaires chargés de la rédaction du «*Courrier ACP-CE*»).
5. Cette expression résulte de l'arrêt rendu dans l'affaire Nold le 14 mai 1974, lequel est intervenu avant que la Convention en cause n'entre en vigueur à l'égard de la France; c'est pourquoi la CJCE ne pouvait pas retenir simplement "*les instruments internationaux auxquels les Etats membres ont adhéré*".
6. C.J.C.E., 14 octobre 1980, Attorney General c. Juan C. Burgoa, 812/79, Rec., p. 2787, pt 10.
7. Voy. l'article 30 de la Convention de Vienne sur le droit des traités, du 23 mai 1969.
8. Ne sont énumérés ici que les instruments les plus importants, dont l'objet présente certains liens avec les compétences communautaires, et qui garantissent certains droits substantiels, à l'exclusion d'autres instruments dont l'objet est sans lien avec les compétences des Communautés européennes, ou qui sont relatifs aux mécanismes de contrôle dans le système des Nations Unies ou dans celui du Conseil de l'Europe.

9. Le second alinéa de l'article 307 du traité C.E., qui figurait déjà dans l'article 234 du traité C.E. avant sa révision par le traité d'Amsterdam, précise : «*Dans la mesure où ces conventions ne sont pas compatibles avec le présent traité, le ou les Etats membres en cause recourent à tous les moyens appropriés pour éliminer les incompatibilités constatées*». Les traités ultérieurs n'ont apporté aucune modification à cet article, devenu art. 307 par l'effet de la renumérotation opérée par le traité d'Amsterdam. Du second alinéa, il se peut qu'il faille déduire dans le chef des Etats membres de l'Union une obligation de dénoncer le traité international incompatible avec le respect de leurs obligations communautaires. C'est en tout cas l'attitude adoptée par l'Etat français à la suite de l'arrêt Stoeckel de la Cour de justice (C.J.C.E., 25 juillet 1991, Stoeckel, C-345/89, Rec., p. I-4047) : la dénonciation de la convention n°89 de l'O.I.T. est intervenue le 26 février 1992, soit avant le prononcé de l'arrêt Lévy (C.J.C.E., 2 août 1993, Lévy, C-158/91, Rec., p. I-4287), dans lequel la Cour de justice admet pour la première fois que l'article 234 du traité C.E.E. fait obstacle à ce qu'il puisse être reproché à l'Etat partie à ladite convention de ne pas respecter la directive 76/207, sur le point où une incompatibilité existe. Voy. sur ceci les concl. de l'avocat général G. Tesoro du 16 janvier 1997 préc. C.J.C.E., 13 mars 1997, Commission des C.E. c. Rép. française, C-197/96. Si une telle obligation de dénonciation devait être affirmée - l'arrêt du 13 mars 1997 ne fournit cependant aucun indice à cet égard -, les conséquences en seraient considérables, la plupart des instruments internationaux relatifs aux droits de l'Homme précités fixant des conditions relativement peu exigeantes à leur propre dénonciation.
10. C.J.C.E., 2 août 1993, Lévy, C-158/91, précité; C.J.C.E., 3 févr. 1994, ONEM c. Minne, C-13/93, Rec., p. I-371.
11. C.J.C.E., 28 mars 1995, The Queen and Secretary of State for the Home Department, ex parte : Evan Medical Ltd and MacFarlan Smith Ltd, C-324/93,
12. C.J.C.E., 14 octobre 1980, Attorney General c. Juan C. Burgoa, 812/79, Rec., p. 2787, 2803 (pt 9).
13. Voy., parmi les considérants qui précèdent la directive 95/46/CE du Parlement européen et du Conseil du 24 octobre 1995 relative à la protection des personnes physiques à l'égard du traitement des données à caractère personnel et à la libre circulation de ces données, J.O.C.E., n°L 281/31 du 23.11.1995 : «*considérant que les différences entre Etats membres quant au niveau de protection des droits et libertés des personnes, notamment du droit à la vie privée, à l'égard des traitements de données à caractère personnel peuvent empêcher la transmission de ces données du territoire d'un Etat membre à celui d'un autre Etat membre ; que ces différences peuvent dès lors constituer un obstacle à l'exercice d'une série d'activités économiques à l'échelle communautaire, fausser la concurrence et empêcher les administrations de s'acquitter des responsabilités qui leur incombent en vertu du droit communautaire (...)* (pt 8) ; *considérant que l'objet des législations nationales relatives au traitement des données à caractère personnel est d'assurer le respect des droits et libertés fondamentaux, notamment du droit à la vie privée reconnu également à l'article 8 de la convention européenne de sauvegarde des droits de l'Homme (...)* ; *que, pour cette raison, le rapprochement de ces législations ne doit pas conduire à affaiblir la protection qu'elles assurent mais doit, au contraire, avoir pour objectif de garantir un niveau élevé de protection dans la Communauté* (pt 10)». Ces considérants nous paraissent pouvoir être transposés, mutatis mutandis, aux motivations qui doivent guider les négociateurs de la Charte des droits fondamentaux de l'Union européenne. Voy. ci-dessous, III.
14. «*Les Hautes Parties contractantes s'engagent à organiser, à des intervalles raisonnables, des élections libres au scrutin secret, dans les conditions qui assurent la libre expression de l'opinion du peuple sur le choix du corps législatif*».
15. Cour eur. D.H., arrêt Matthews c. Royaume-Uni (req. n°24833/94) du 18 février 1999, § 32.
16. Voy. BVerfG, 18 oct. 1967, Juristenzeitung, 23 (1968), n°3, p. 99, note W. Wengler, et R.T.D.E., 1968, p. 204 ; également BVerfG, 29 mai 1974, BvL 52/71, ainsi que G. Cohen-Jonathan, «*Cour constitutionnelle allemande et règlements communautaires*», C.D.E., 1975, p. 149 ; et BVerfG, 22 octobre 1986, trad. angl. C.M.L.Rev., 1987, p. 225. Pour des synthèses concernant le rapport entre la protection des droits fondamentaux dans l'ordre juridique communautaire et les conditions auxquelles les juridictions constitutionnelles nationales, notamment le Bundesverfassungsgericht, admettent la primauté du droit communautaire, voy. S. O'Leary, «*Aspects of the Relationship Between Community Law and National Law*», in : N. Neuwahl & A. Rosas, *The European Union and Human Rights*, Martinus Nijhoff Publ., Kluwer, The Hague-Boston-London, 1995, p. 23 ; L.B. Krogsgaard, «*Fundamental Rights in the European Community After Maastricht*», L.I.E.I., 1993/1, p. 99, spéc. p. 106 ; H.G. Schermers, «*The Scales in Balance : National Constitutional Court v. Court of Justice*», C.M.L. Rev., 1990, p. 97 ; J. Weiler, «*Eurocracy and Distrust : Some Questions Concerning the Role of the European Court of Justice in the Protection of Fundamental Human Rights Within the Legal Order of the European Communities*», 61 Wash. L. Rev. 1103 (1986).
17. Voy. not. C.J.C.E., 21 septembre 1989, Hoechst AG c. Commission, aff. jtes 46/87 et 227/88, Rec., p. 2919, 2924 (pt 17).
18. 2 BvR 2134/92 et 2 BvR 2159/92, trad. fr. R.U.D.H., 1993, p. 286.
19. Sur cet instrument, voy. not. Ch. Pettiti, «*La Charte communautaire des droits sociaux fondamentaux des travailleurs, un progrès ?*», Droit social, 1990, p. 387 ; E. Vogel-Polsky, «*Quel futur pour l'Europe sociale après le sommet de Strasbourg*», Droit social, 1990, p. 219.
20. Voy. ci-dessous, en II, à propos de la juridicité des droits sociaux appelés à figurer dans la Charte des droits fondamentaux de l'Union européenne.
21. Voy. not. la directive 91/533 du 14 octobre 1991, relative à l'obligation de l'employeur d'informer le travailleur des conditions applicables au contrat ou à la relation de travail, J.O.C.E., n°L 288/32 du 18.10.1991 ; ou la directive 93/104 du 23 novembre 1993, concernant certains aspects de l'aménagement du temps de travail, J.O.C.E., n°L 307/18 du 13.12.1993. Depuis l'entrée en vigueur du traité d'Amsterdam (le 1er mai 1999), c'est suivant les procédures prévues par le chap. I (Dispositions sociales) du Titre XI du traité C.E. (Politique sociale, éducation, formation professionnelle et jeunesse) (art. 136 et suivants du traité C.E.) que les institutions communautaires sont appelées à poursuivre la mise en oeuvre de ce programme législatif. Aux termes de l'article 137, § 6, demeurent exclus de l'harmonisation les rémunérations, le droit d'association, les droits de grève et de lock-out.
22. Voy., notamm., Comité des Nations Unies pour les droits économiques, sociaux et culturels, General Comment n°9 : *The Domestic Application of the Covenant*, adopted at the 51st meeting on 1 December 1998 (nineteenth session) (UN Doc. E/C.12/1998/24), où le Comité s'exprime ainsi en ce qui concerne l'invocabilité du Pacte international relatif aux droits économiques, sociaux et culturels devant le juge national : «*It is important (...) to distinguish between justiciability (which refers to those matters which are appropriately resolved by the courts) and norms which are self-executing (capable of being applied by courts without further elaboration). (...) There is no Covenant right which could not, in the great majority of <national legal> systems, be considered to possess at least some significant justiciable dimensions. It is sometimes suggested that matters involving the allocation of resources should be left to the political authorities rather than the courts. While the respective competences of the various branches of government must be respected, it is appropriate to acknowledge that courts are generally already involved in a considerable range of matters which have important resource implications. The adoption of a rigid classification of economic, social and cultural rights which*

puts them, by definition, beyond the reach of the courts would thus be arbitrary and incompatible with the principle that the two sets of human rights are indivisible and interdependent. It would also drastically curtail the capacity of the courts to protect the rights of the most vulnerable and disadvantaged groups in society» (para. 10).

23. Voy. parmi beaucoup d'exemples les arrêts suivants : Cour eur. D.H., arrêt Airey c. Irlande du 9 octobre 1979, Série A n°32, § 26 ; arrêt Artico c. Italie du 13 mai 1980, Série A n°37 ; arrêt Bouamar c. Belgique du 29 février 1988, Série A n°29 ; arrêt Union Alimentaria Sanders S.A. c. Espagne du 7 juillet 1989, Série A n°157, § 40 ; arrêt Pammel c. Allemagne du 1er juillet 1997, §§ 68-69.

24. Voy. par exemple les suites que pourrait connaître l'arrêt Aerts c. Belgique rendu par la Cour européenne des droits de l'Homme le 30 juillet 1998 : O. De Schutter et S. van Drooghenbroeck, «Internement d'aliénés, assistance judiciaire, et politique budgétaire des droits de l'Homme», A.P.T., 1998, pp. 223-250.

25. C.J.C.E., 19 novembre 1991, A. Francovich et al. c. Rép. italienne, aff. jtes C-6/90 et C-9/90, Rec., p. I-5357 (pt 39).

26. C.J.C.E., 8 novembre 1990, E.J.P. Dekker c. Stichting Vormingscentrum voor jong Volwassenen, C-177/88, Rec., p. I-3941.

27. Voy. ainsi C.J.C.E., 30 septembre 1975, Christini, 32/75, Rec., p. 1085 (réductions sur les transports publics en faveur des familles nombreuses) ; C.J.C.E., 27 mars 1985, Hoeckx et Scrivner (deux arrêts), 249/83 et 122/84, Rec., p. 982 et p. 1029 (minimum des moyens d'existence) ; C.J.C.E., 12 juillet 1984, Castelli, 261/83, Rec., p. 3199 (revenu garanti aux personnes âgées et aux ascendants à charge du travailleur) ; C.J.C.E., 14 janvier 1982, Reina, 65/81, Rec., p. 33 (octroi d'un prêt sans intérêt à la naissance).

28. Voy. par exemple Conclusions V, pp. 25-26 ; Conclusions XII-2, pp. 80-81 ; Conclusions XIII-1, pp. 112-113.

29. L'on notera d'ailleurs que la Déclaration des droits et libertés fondamentaux adoptée par le Parlement européen le 12 avril 1989 (doc. 12-3/89, J.O.C.E. n°C 120/51 du 16.5.1989) faisait référence à des droits tels que le droit à l'éducation et à une formation professionnelle (art. 12, § 2 : droit «de toute personne» à «une formation professionnelle appropriée et correspondant à ses besoins la qualifiant pour travailler» ; art. 16, al. 1 : «Toute personne a droit à l'éducation et à une formation professionnelle selon ses capacités»), le droit au travail (art. 12, § 3 : «Nul ne peut être privé d'un travail pour des raisons arbitraires (...)), le droit à des conditions de travail équitables (art. 13), le droit à une rémunération décente (art. 13, § 2 : «Les mesures nécessaires seront prises en vue d'assurer (...) une rémunération qui permette de mener une vie digne»), le droit à des soins de santé (art. 15, § 1 : «Toute personne a le droit de bénéficier de toutes les mesures lui permettant de jouir du meilleur état de santé possible»), le droit à la sécurité sociale (art. 15, § 2), le droit à l'assistance sociale et médicale (art. 15, § 3 : «Toute personne démunie de ressources a droit à l'aide sociale et médicale»), le droit au logement (art. 15, § 4 : «Toute personne qui, pour des raisons indépendantes de sa volonté, n'est pas en mesure de se loger décentement a droit, à cet effet, à l'aide des pouvoirs publics compétents»). Beaucoup de ces droits figuraient déjà, formulés en termes à peu près identiques, dans le projet de Constitution de l'Union européenne (résolution du Parlement européen du 10 février 1984).

30. C.J.C.E., 14 décembre 1962, Confédération nationale des producteurs de fruits et légumes et al. c. Conseil de la CEE, aff. jtes 16 et 17/62, Rec., VIII (1962), p. 901, ici pp. 917-918.

31 C.J.C.E., 15 juillet 1963, Plaumann & Co. c. Commission, 25/62, Rec., p. 197.

32. M. Fromont, «L'influence du droit français et du droit allemand sur les conditions de recevabilité du recours en annulation devant la Cour de justice des Communautés européennes», R.T.D.E., 1966, pp. 47-65; G. Rasquin & R.-M. Chevallier, «L'article 173, al. 2, du traité C.E.E.», R.T.D.E., 1966, pp. 31-46. On peut citer dans la doctrine plus récente en faveur d'une extension de la recevabilité des recours en annulation des particuliers contre les actes normatifs de portée générale: A. Barav, «Direct and Individual Concern: An Almost Insurmountable Barrier to the Admissibility of Individual Appeal to the EEC Court», C.M.L. Rev., 1974, pp. 191-198; R. Kovar & A. Barav, «Le recours individuel en annulation», C.D.E., 1976, p. 68; H. Rasmussen, «Why is Article 173 Interpreted against Private Plaintiffs?», E.L.Rev., 1980, pp. 112-127; R.M. Greaves, «Locus Standi under Article 173 When Seeking Annulment of a Regulation», E.L.Rev., 1986, pp. 119-133; J. Usher, «Individual Concern in general legislation - 10 years on», E.L.Rev., 1994, pp. 636 ss.; P. Craig, «Legality, Standing and Substantive Review in Community Law», Oxford Journ. Legal Studies, 1994, pp. 507-537; A. Arnulf, «Private Applicants and the Action for Annulment under Article 173 of the EC Treaty», C.M.L. Rev., 1995, pp. 7-49; D. Waelbroeck et A.-M. Verheyden, «Les conditions de recevabilité des recours en annulation des particuliers contre les actes normatifs communautaires à la lumière du droit comparé et de la Convention européenne des droits de l'homme», C.D.E., 1995, pp. 440-441; G. Vandersanden, «Pour un élargissement du droit des particuliers d'agir en annulation contre des actes autres que les décisions qui leur sont adressées», C.D.E., 1996, pp. 535-552; N. Neuwahl, «Article 173, Paragraph 4 EC: past, present and possible future», E.L.Rev., 1996, p. 17; F. Schockweiler, «L'accès à la justice dans l'ordre juridique communautaire», J.T.D.E., 1996, pp. 1-8. En revanche, conteste la nécessité d'une révision de l'article 173, al. 4, du traité C.E. sur ce point: P. Nihoul, «La recevabilité des recours en annulation introduits par un particulier à l'encontre d'un acte communautaire de portée générale», R.T.D.E., 1994, pp. 171-194.

33. C'est là aussi ce qu'avait envisagé la présidence irlandaise du second semestre 1996, le recours du particulier contre des actes communautaires de portée générale devant se trouver limitée à la protection de ses droits fondamentaux. Voy. Conference of The Representatives of the Governments of the Member States, Presidency Suggested Approach, 8 octobre 1996, CONF/3945/96, p. 4.

34. Il faut cependant souligner que lors d'une discussion informelle avec un des auteurs de ce rapport, le juge K. Lenaerts a souligné la difficulté qu'il y a à faire dépendre la recevabilité d'un recours de l'identité des moyens invoqués à l'appui du recours, surtout lorsque, ces moyens devant être pris de la violation des droits fondamentaux dans la proposition de la Cour de justice des C.E., ils peuvent couvrir une gamme d'arguments extrêmement vaste. En effet, le jugement de recevabilité sera très proche, du point de vue de la motivation qui sera requise et du point de vue de l'étude que l'affaire requiert de la part du juge, du jugement rendu au fond.

35. T.P.I., 6 juillet 1995, AITEC, aff. jtes T-447/93 et T-449/93, Rec., p. II-1971, pt 60.

36. C.J.C.E., 28 octobre 1975, R. Rutili, 36/75, Rec., p. 1219 (pt 32) ; C.J.C.E., 25 juillet 1991, Commission c. Pays-Bas, 353/89, Rec., p. 4089 (pt 30) ; C.J.C.E., 18 juin 1991, E.R.T., C-260/89, Rec., p. I-2925 (pt 43).

37. C.J.C.E., 13 juillet 1989, H. Wachauf, 5/88, Rec., p. 2609 (pt 19).

38. Voy. C.J.C.E., 3 décembre 1992, Oleificio Borelli SpA c. Commission des C.E., C-97/91, Rec., p. I-6313 (pts 14 et 15).

39. C.J.C.E., 11 juillet 1985, Cinéthèque S.A. et al., aff. jtes 60 et 61/84, Rec., p. 2605 (pt 24).

40. C.J.C.E., 18 juin 1991, ERT, C-260/89, Rec., p. I-2925 (pt 43).

41. En ce sens, voy. not. les concl. de l'avocat général M.F.G. Jacobs préc. C.J.C.E., 30 mars 1993, C. Konstantinidis, C-168/91, Rec., p. I-1191 (selon l'avocat général, le ressortissant communautaire qui exerce une liberté de circulation reconnue dans le traité «*n'a pas seulement le droit de poursuivre son entreprise ou sa profession et de bénéficier des mêmes conditions de vie et de travail que les ressortissants de l'Etat d'accueil ; il a droit, en outre, à l'assurance que, où qu'il se rende pour gagner sa vie dans la Communauté, il sera traité selon un code de valeurs fondamentales, en particulier celles inscrites dans la Convention européenne des droits de l'Homme*» (pt 46 des concl.). On retrouve une approche semblable dans le chef de l'avocat général W. van Gerven, dans ses concl. préc. C.J.C.E., 4 octobre 1991, The Society for the Protection of the Unborn Children Ltd. c. Stephen Grogan et al., 159/90, Rec., p. 4685, not. pt 31 des concl. (l'effectivité de la liberté de prestation des services suppose que toute réglementation nationale qui constitue une entrave à la libre prestation des services doit voir sa compatibilité évaluée au regard des droits fondamentaux, en l'espèce à la liberté d'expression figurant à l'article 10 de la Convention européenne des droits de l'Homme). En doctrine, voy. en ce sens J. Weiler, « The European Court at a Crossroads : Community Human Rights and Member State Action », in : Du droit international au droit de l'intégration. Liber amicorum Pierre Pescatore, Nomos Verlagsgesellschaft, Baden-Baden, 1987, p. 821, ici pp. 840-841.
42. Directive précitée.
43. Voy. C.J.C.E., 28 mars 1996, Avis 2/94, Rec., p. I-1759. Sur cet avis, voy. O. De Schutter et Y. Lejeune, « L'adhésion de la Communauté à la Convention européenne des droits de l'Homme. A propos de l'avis 2/94 de la Cour de justice des Communautés européennes », C.D.E., 1996, n°5-6, pp. 555-606.
44. Voy. O. De Schutter, « Les droits fondamentaux dans le traité d'Amsterdam », in : Y. Lejeune (coord.), Le traité d'Amsterdam. Espoirs et déceptions, Bruxelles, Bruylant, 1998, p. 153, ici pp. 154-155.
45. Comp. à cet égard O. De Schutter et Y. Lejeune, « L'adhésion de la Communauté à la Convention européenne des droits de l'Homme. A propos de l'avis 2/94 de la Cour de justice des Communautés européennes », op. cit., n°25, avec P. Wachsmann, « Les droits de l'Homme, R.T.D.E. (numéro spécial consacré au traité d'Amsterdam), 1997, pp. 883-902, ici p. 883, et avec le commentaire du même auteur, « L'avis 2.94 de la Cour de justice relatif à l'adhésion de la Communauté européenne à la Convention européenne des droits de l'Homme », R.T.D.E., 1996, pp. 467-491, ici p. 479.
46. Voy. l'article 1er de la Convention européenne des droits de l'Homme, ainsi que l'article 2, § 1er, du Pacte international relatif aux droits civils et politiques, et l'article 2, § 2, du Pacte international relatif aux droits économiques, sociaux et culturels.
47. Annexe à la Charte sociale européenne révisée: «Portée de la Charte sociale européenne révisée en ce qui concerne les personnes protégées». La Charte sociale européenne se distingue à cet égard de la Convention européenne des droits de l'Homme. Une autre trace en est les rédactions différentes que reçoit la clause de non-discrimination dans chacun de ces instruments : comp., avec l'article 14 de la C.E.D.H. (qui fait référence, entre autres motifs de discrimination prohibés, à l'«origine nationale»), l. E de la Charte sociale européenne révisée (qui ne réfère pas à ce critère de distinction mais seulement à l'«ascendance nationale», alors que le texte est manifestement inspiré de l'art. 14 C.E.D.H.). Ces deux dispositions, cependant, affirment que les motifs de distinction repris ne doivent pas être conçus comme limitativement énumérés. Aux termes du rapport explicatif de la Charte sociale révisée, «Alors que l'origine nationale n'est pas un motif de discrimination acceptable, l'exigence d'une citoyenneté spécifique peut être acceptée sous certaines circonstances, par exemple pour le droit d'être employé dans les forces armées ou dans l'administration» (§ 133). Ce passage semble en contradiction avec l'Annexe à la Charte sociale européenne révisée, dont on a rappelé le texte.
48. De ce point de vue, l'article E de la Charte sociale révisée, relatif à la non-discrimination, aurait largement suffi à justifier que les étrangers qui ne sont pas en ordre de séjour soient exclus du bénéfice de certaines prestations, sans qu'il soit nécessaire de les en écarter d'office.
49. Cour eur. dr. h., arrêt Gaygusuz c. Autriche du 16 septembre 1996, § 42.
50. Il faut s'attendre à des interactions, surtout, en ce qui concerne la liberté d'association syndicale (art. 11 C.E.D.H. et art. 5 de la Charte sociale révisée), le droit aux prestations de sécurité sociale (art. 1er du Prot. n°1 à la C.E.D.H. et art. 12 de la Charte sociale révisée), le droit de l'enfant à une protection de la part de l'Etat contre «la négligence, la violence ou l'exploitation» (art. 8 C.E.D.H. (voy. Cour eur. D.H., arrêt Stubbings c. Royaume-Uni du 22 octobre 1996, § 64: "Les enfants et autres personnes vulnérables ont droit à la protection de l'Etat, sous la forme d'une prévention efficace les mettant à l'abri de sortes aussi graves d'ingérence dans des aspects essentiels de leur vie privée") et art. 17, § 1er, de la Charte sociale révisée), et le droit au respect de la vie familiale (art. 8 C.E.D.H. et art. 16 de la Charte sociale révisée).
51. En ce sens, C. Pettiti, «La Charte sociale européenne révisée», Rev. trim. dr. h., 1997, pp. 3-16, ici pp. 13-14. Cependant, contrairement à ce que l'auteur suggère, nous ne sommes pas d'avis que la règle de non-discrimination conduit simplement à étendre la bénéfice des dispositions de la Charte sociale révisée aux seuls travailleurs étrangers «de la nationalité d'un des Etats membres du Conseil de l'Europe»: l'arrêt Gaygusuz ne contient nullement cette restriction.
52. Rapport explicatif de la Charte sociale révisée, § 133.
53. Cour eur. D.H., arrêt C. c. Belgique du 7 août 1996, § 38. Voy. déjà Cour eur. D.H., arrêt Moustaqim c. Belgique du 18 février 1991, Série A n°193, § 49.

Annexe 1 : Conclusions de la présidence

Conseil européen de Tampere (15 - 16 octobre 1999)

Annexe : Composition, méthode de travail et modalités pratiques de l'enceinte pour l'élaboration du projet de charte des droits fondamentaux de l'Union européenne envisagé dans les conclusions de Cologne.

A.Composition de l'enceinte

i) Membres

a) Chefs d'Etat ou de gouvernement des Etats membres
Quinze représentants des chefs d'Etat ou de gouvernement des Etats membres.

b) Commission
Un représentant du président de la Commission européenne.

c) Parlement européen
Seize membres du Parlement européen désignés par celui-ci.

d) Parlements nationaux
Trente membres des parlements nationaux (deux par parlement) désignés par ceux-ci.
Les membres de l'enceinte peuvent être remplacés par des suppléants en cas d'empêchement.

ii) Président et vice-présidents de l'enceinte

L'enceinte élit son président. Un membre du Parlement européen, un membre d'un parlement national et le représentant du président du Conseil européen exercent les vice-présidences de l'enceinte, s'ils n'ont pas été élus à la présidence.

Le membre du Parlement européen exerçant la vice-présidence est élu par les membres du Parlement européen faisant partie de l'enceinte. Le membre du parlement national exerçant la vice-présidence est élu par les membres des parlements nationaux faisant partie de l'enceinte.

iii) Observateurs

Deux représentants de la Cour de justice des Communautés européennes désignés par la Cour.

Deux représentants du Conseil de l'Europe, dont un représentant de la Cour européenne des droits de l'homme.

iv) Instances de l'Union européenne devant être entendues

Le Comité économique et social

Le Comité des régions

Le médiateur

v) Echange de vues avec les pays candidats

Il convient d'organiser un échange de vues approprié entre l'enceinte ou son président et les pays candidats.

vi) Autres instances, groupes sociaux ou experts devant être entendus

D'autres instances, groupes sociaux et experts peuvent être entendus par l'enceinte.

vii) Secrétariat

Le Secrétariat général du Conseil assure le secrétariat de l'enceinte. Afin de garantir une bonne coordination, des contacts étroits seront établis avec le Secrétariat général du Parlement européen, avec la Commission, et, dans la mesure nécessaire, avec les secrétariats des parlements nationaux.

B. Méthodes de travail de l'enceinte**i) Travaux préparatoires**

Le président de l'enceinte propose, en étroite concertation avec les vice-présidents, un programme de travail pour l'enceinte et effectue les autres travaux préparatoires nécessaires.

ii) Transparence des délibérations

En principe, les débats de l'enceinte et les documents présentés au cours de ces débats devraient être rendus publics.

iii) Groupes de travail

L'enceinte peut constituer des groupes de travail ad hoc, qui sont ouverts à tous ses membres.

iv) Rédaction

Sur la base du programme de travail établi par l'enceinte, un comité de rédaction, composé du président, des vice-présidents et du représentant de la Commission et assisté par le Secrétariat général du Conseil, élabore un avant-projet de charte en tenant compte des propositions de texte soumises par tout membre de l'enceinte.

Chacun des trois vice-présidents procède régulièrement à des consultations avec les composantes respectives de l'enceinte dont il est issu.

v) Elaboration du projet de charte par l'enceinte

Lorsque le président de l'enceinte, en concertation étroite avec les vice-présidents, estime que le texte du projet de charte élaboré par l'enceinte peut être en définitive adopté par toutes les parties, celui-ci peut être transmis au Conseil européen conformément à la procédure préparatoire habituelle.

C. Modalités pratiques

L'enceinte se réunit à Bruxelles, alternativement dans les locaux du Conseil et dans ceux du Parlement européen.

Le régime linguistique intégral s'applique aux réunions de l'enceinte.

Annexe 2 : Conseil européen de Cologne - 3 et 4 juin 1999

Communication préliminaire aux chefs d'Etat et de Gouvernement à propos du projet de Charte européenne des droits fondamentaux. Communication conjointe FIDH - Amnesty international

A la veille du Sommet européen de Cologne, où sera débattue la proposition de la présidence allemande de doter l'Union européenne d'une Charte de droits fondamentaux, la FIDH et Amnesty International entendent rappeler certaines données essentielles.

La présente communication préliminaire ne préjuge pas de la position de nos organisations sur l'utilité d'une Charte européenne des droits fondamentaux, mais a pour seule vocation de souligner, de façon non-exhaustive, quelques questions qu'il nous paraît essentiel de voir prises en compte dès le début des discussions sur le sujet. Pour autant, nos organisations considèrent que la seule justification possible à l'adoption d'une Charte européenne, alors que tous les Etats membres sont déjà parties à la Convention européenne des droits de l'Homme, réside dans l'adoption d'une Charte qui soit davantage protectrice que la Convention européenne elle-même.

A cet égard, nos organisations se réservent de préciser leurs positions en fonction du projet dont elles auront pu prendre connaissance et réitérent leurs appels précédents à ce que l'Union européenne en tant que telle se mette en position d'adhérer à la Convention européenne des droits de l'Homme et à la Charte sociale européenne révisée.

Les questions sur lesquelles nos organisations souhaitent d'ores et déjà attirer l'attention des Chefs d'Etat et de Gouvernement sont de trois ordres: elles concernent la détermination des catégories de droits et de leurs titulaires ; les garanties juridictionnelles dans le domaine des droits fondamentaux ; et enfin la coordination entre les instruments et les mécanismes de protection de l'Union européenne et du Conseil de l'Europe.

I. Catégories de droits fondamentaux et catégories de bénéficiaires

La notion de «droits civiques», utilisée notamment dans le Rapport du Comité des Sages, présidé par Maria de Lourdes Pintasilgo, intitulé «Pour une Europe des droits civiques et sociaux» (octobre 1995-février 1996) , est contestable en ce qu'elle fusionne deux catégories de droits distinctes quant à leurs destinataires, et prête ainsi à confusion.

Les droits dits «civils» doivent être reconnus à tous sans distinction, en raison même de leur caractère universel et fondamental. La Convention européenne de sauvegarde des droits de l'homme oblige d'ailleurs les Etats membres de l'Union européenne à garantir ces droits à toute personne se trouvant sous leur juridiction (art. 1er de la C.E.D.H); ils ne sauraient se délier de cette obligation internationale en déléguant certaines compétences aux Communautés européennes, sans que leur responsabilité internationale se trouve engagée vis-à-vis des autres parties à la Convention. De même les droits reconnus dans le Pacte international relatif aux droits civils et politiques doivent être accordés sans discrimination, fondée notamment sur l'origine nationale, «à tous les individus se trouvant sur le territoire et relevant de la compétence» des Etats ayant ratifié cet instrument (art. 2 du Pacte international du 16 décembre 1966 relatif aux droits civils et politiques)

Seuls les droits dits «politiques» - droit d'électorat et d'éligibilité – peuvent être réservés aux citoyens de l'Union, conformément à l'article 25 du Pacte international du 16 décembre 1966 relatif aux droits civils et politiques qui admet que soient réservés aux seuls «citoyens» certains droits de citoyenneté (prendre part à la direction des affaires publiques, voter et être élu, accès à la fonction publique). Ces droits devraient également être étendus aux personnes résidant légalement sur le territoire de l'Union, sous certaines conditions à préciser.

Le droit à la liberté de circulation, jusqu'à présent réservé aux seuls ressortissants des Etats membres de l'Union européenne, ne devrait pas – dans la logique même d'un espace sans frontières intérieures –être subordonné à cette condition de nationalité. On peut du reste considérer que le droit de «circuler librement» et de «choisir librement sa résidence» (art. 2, Protocole n°4 à la Convention européenne des droits de l'homme), que la Convention européenne des droits de l'Homme reconnaît à «quiconque se trouve régulièrement sur le territoire d'un Etat», sera à l'avenir interprété de façon à imposer cette exigence dans le cadre communautaire, à mesure même que progresse l'intégration de l'Union européenne.

Il convient d'autant plus de délier la reconnaissance des droits fondamentaux dans l'ordre juridique communautaire de la nationalité d'un Etat membre de l'Union européenne que les droits économiques et sociaux traditionnels, envisagés par la Cour européenne des droits de l'Homme comme des créances susceptibles de constituer des «biens» au sens de l'article 1 du Protocole n°1 à la Convention européenne des droits de l'Homme, ne peuvent selon cette juridiction être réservés aux seuls nationaux d'un Etat, sans que cette différence de traitement soit susceptible d'aboutir à une discrimination contraire aux articles 1 du Protocole n°1 et 14 combinés de la Convention européenne des droits de l'Homme. Selon la Cour européenne des droits de l'Homme en effet, «seules des considérations très fortes peuvent amener la Cour à estimer compatible avec la Convention une différence de traitement exclusivement fondée sur la nationalité» (Cour eur. D.H., arrêt *Gaygusuz c. Autriche* du 16 septembre 1996, § 42). De même, le Pacte international du 16 décembre 1966 relatif aux droits économiques, sociaux et culturels fait obligation aux Etats l'ayant ratifié de reconnaître les droits qui s'y trouvent énoncés sans discrimination, fondée notamment sur l'origine nationale (art. 2, § 2).

Certains droits économiques et sociaux, notamment liés aux prestations de sécurité sociale, peuvent être subordonnés à la régularité du séjour sur le territoire de l'Union européenne du ressortissant d'un Etat tiers; en revanche, les droits à l'assistance médicale et sociale sont au cœur de la dignité humaine et la privation de ces droits peut constituer un traitement inhumain et dégradant. Certains droits économiques et sociaux devraient ainsi être reconnus non seulement aux résidents légaux, mais également aux demandeurs d'asile et aux personnes en situation illégale. De même, le droit des enfants à l'instruction ne peut être refusé au motif que la situation administrative des parents ne serait pas régulière, et ne saurait être subordonné à la légalité du séjour.

II. Garanties juridictionnelles

La Cour de justice des C.E. garantit déjà un certain nombre de droits fondamentaux, qu'elle fait figurer parmi les principes généraux du droit communautaire dont elle assure le respect dans le domaine d'application du droit communautaire.

Les difficultés qui subsistent sont principalement au nombre de deux.

D'une part, **l'accès au juge communautaire ne garantit pas une protection pleinement efficace des droits fondamentaux**. Cela tient d'abord aux conditions restrictives auquel est soumis le recours direct en annulation introduit par un particulier (article 230, al. 4 du Traité C.E.) et à l'interprétation restrictive que la Cour de justice des C.E. fait de cette disposition; cette dernière impose d'ailleurs des conditions plus restrictives au recours du particulier que, par exemple, l'article 34 de la Convention européenne des droits de l'homme. L'insuffisance de la garantie communautaire tient ensuite à ce que l'alternative de la saisine d'une juridiction nationale suivie d'un renvoi préjudiciel vers la Cour de justice des C.E. (art. 234 du Traité C.E.) n'est pas satisfaisante dans le domaine des droits fondamentaux dans la mesure où elle peut contraindre l'individu, qui soupçonne que tel acte de droit dérivé communautaire viole ses droits fondamentaux, à violer cet acte ou la règle nationale qui en assure la transposition, afin de fournir au juge communautaire la possibilité de se prononcer sur sa validité.

D'autre part, si elle garantit effectivement les droits fondamentaux dits «civils», la Cour de justice des C.E. apparaît encore très réticente à accepter l'invocation en justice des **droits économiques et sociaux**, tels qu'ils sont codifiés, notamment, dans la Charte sociale européenne révisée ou dans la Charte communautaire des droits sociaux fondamentaux (au plan européen), ainsi que dans le Pacte international relatif aux droits économiques, sociaux et culturels (au plan international).

Aussi, toute tentative d'améliorer la protection des droits fondamentaux dans l'ordre juridique communautaire devrait s'accompagner d'un assouplissement des conditions d'accès au juge communautaire ou, à défaut, d'une extension des circonstances dans lesquelles les juridictions nationales des Etats membres doivent accueillir l'action en justice portée devant elles et qui tend à la préservation de la légalité communautaire. Demeurera également insatisfaisante toute réforme qui ne progressera pas vers l'affirmation du caractère juridiquement contraignant, dans le cadre communautaire, des droits sociaux fondamentaux.

III. Coordination entre l'Union européenne et le Conseil de l'Europe

Sur un nombre de questions toujours croissant, et notamment en ce qui concerne les droits sociaux et la protection de la vie privée vis-à-vis du traitement des données à caractère personnel, l'Union européenne prend des initiatives qui dédoublent les acquis du Conseil de l'Europe. Amnesty International et la FIDH insistent sur la nécessaire complémentarité qui doit exister entre les deux organisations, en lieu et place d'une concurrence aux conséquences essentiellement négatives.

Premièrement, une conception étroite de la nécessité de préserver l'autonomie de l'ordre juridique communautaire, qui conduit à préférer l'adoption de garanties des droits fondamentaux propres au système communautaire à l'adhésion de l'Union européenne ou des Communautés européennes aux instruments existants du Conseil de l'Europe, a pour conséquence que **la Communauté européenne n'est pas, ou n'est pas suffisamment, représentée au sein des instances du Conseil de l'Europe.**

Pourtant, le droit communautaire est effectivement soumis au jugement de ces instances, à travers la transposition ou l'exécution qu'en font les Etats membres. Rendu le 18 février 1999 par la Cour européenne des droits de l'homme, l'arrêt *Matthews c. Royaume-Uni* illustre ce danger : en dépit de ce que la Communauté européenne n'a pas adhéré à la Convention européenne des droits de l'Homme, les négociateurs du traité d'Amsterdam n'ayant pas jugé devoir combler la lacune identifiée à cet égard dans les compétences de la Communauté européenne par la Cour de justice des C.E. (avis 2/94 du 28 mars 1996), la Cour européenne des droits de l'Homme s'est effectivement prononcée dans cet arrêt sur la compatibilité du droit communautaire dérivé (en l'espèce, l'acte portant élection du Parlement européen au suffrage universel direct (décision 76/787 du Conseil du 20 septembre 1976)) avec l'article 3 du Protocole n°1 à la Convention (droit à des élections libres au scrutin secret).

L'applicabilité directe de la plupart des dispositions du droit communautaire impliquant leur assimilation au droit interne des Etats membres, ces dispositions sont soumises au même contrôle que le droit interne; il s'imposerait d'en tirer les conséquences procédurales. L'adhésion des Communautés européennes ou de l'Union européenne aux instruments du Conseil de l'Europe qui sont pris dans le champ de leurs compétences permettrait ainsi une représentation spécifique du point de vue communautaire dans les institutions que ces instruments mettent sur pied.

Deuxièmement, les candidats à l'adhésion à l'Union européenne sont déjà membres du Conseil de l'Europe. Ils ont ratifié la plupart des conventions les plus importantes ouvertes à la signature dans le cadre de cette organisation et font d'importants efforts pour réformer leur système juridique. L'amélioration du système communautaire des droits fondamentaux par de nouveaux instruments différents de ceux existant déjà au sein du Conseil de l'Europe imposerait à ces pays un effort supplémentaire alors que **la logique du système voudrait que les ratifications des instruments du Conseil de l'Europe et les réformes qu'elles ont impliquées dans les systèmes juridiques de ces Etats, constituent une étape sur le chemin de leur adhésion à l'Union européenne.**

Amnesty International et la FIDH espèrent que les remarques contenues dans cette communication préliminaire seront entendues par les Chefs d'Etat et de Gouvernement des Etats membres de l'Union à Cologne, et que leurs préoccupations seront reflétées dans les décisions qui seront prises à l'issue du Conseil européen.

Notes :

1. La Commission européenne avait décidé la mise en place de ce Comité des Sages en avril 1995, notamment pour examiner les suites susceptibles d'être réservées à la Charte communautaire des droits sociaux des travailleurs dans le cadre de la révision des traités de l'Union européenne prévue par le Traité de Maastricht.

Annexe 3 : lettre ouverte de la FIDH et d'Amnesty international adressée aux membres du Comité des représentants permanents

To the members of the Committee of Permanent Representatives of Member States

Dear Permanent Representatives,

Re : Composition of the Body to elaborate a draft EU Charter of Fundamental Rights

We are writing you to express our concern in relation to the composition of the Body to elaborate a draft EU Charter of Fundamental Rights. The common position that came out of the discussions within the Committee of Permanent Representatives of Member States (Coreper) seems to be that human rights and social NGOs will not benefit from the status of observers to that Body. They will not necessarily be consulted by the Body and will not be allowed to systematically follow the discussions going on within the Body. Human Rights

and social NGOs " may " be invited by the body to give their views, which means that their consultation is not ensured.

We regret the weakness of this formula. The wording of the Decision of the European Council of Cologne (June 1999) was stronger in this regard (" social groups as well as experts should be invited to give their views "). The European Parliament also adopted a clearer position : " Calls, as regards the membership of the drafting authority and the organisation of its work : (...) for appropriate steps to be taken to ensure transparency of activities ; for contributions from NGOs and the general public also to be ensured, and for public hearings to be held ") .

Amnesty International and FIDH have already contributed in the past to the discussions concerning the establishment of a new EU Charter (notably through a note elaborated in view of the Cologne Council), and our organisations have also asked since a long time the accession of the European Community to the European Convention on Human Rights.

Amnesty International and FIDH intend to further contribute to the discussions concerning the EU Charter and will issue a position on this question before the end of the year. We are convinced that full consultation of specialised and representative NGOs as well as experts is essential in relation to such a delicate exercise.

The Platform of European Social NGOs, which regroups 25 European networks and federations working in the social field, maintains that representative NGOs must be fully consulted on, and involved in the preparation of the Charter and support the call of human rights NGOs for NGOs to be given observer status on the Drafting Committee.

As the Expert Group on Fundamental Rights established by the Commission says in its February 1999 report (Simitis report), " Experience shows that the development of both credible and efficient fundamental rights policies depends to a decisive extent on continuous dialogue with those whose rights are to be guaranteed " .

We hope that you will have the possibility to take into consideration the points we raised and that a fruitful collaboration will take place during the whole drafting process of the Charter.

We remain,

Sincerely yours

Brussels, October 6, 1999

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 7 January 2000**CHARTE 4104/00****CONTRIB 4****INTRODUCTORY NOTE**

Subject : Draft Charter of fundamental rights of the European Union
 - submission of the Permanent Forum of Civil Society

Please find hereafter a Draft European Citizen's Charter, submitted by the Permanent Forum of Civil Society.^{1 2}

¹ Place du Luxembourg 1, B-1050 Bruxelles, tel. 322 512 44 44, fax 322 512 66 73.

² This text has been submitted in French and English language.

European Citizens' Charter (Draft)

Preamble

This Charter constitutes the founding pact of a Community of Peoples and States reflecting the humanism characteristic of European civilization.

Presented on the 40th anniversary of the Treaty of Rome, it marks a turning point in the history of European construction.

It confirms the economic, social, cultural, civil and political rights of citizens of the Union. It also defines their duties.

This draft presented by the European Forum of Civil Society, in Rome on 22 March 1997, will be forwarded to the European Parliament for adoption and to the High Contracting Parties for ratification

The Signatory States agree to annex this Charter as a Joint Declaration to the Treaty on European Union. They undertake to make its provisions their criteria for the evaluation and approval of the Union's initiatives. They promise to ensure that the Treaty comes into force in accordance with the principles of the Charter.

Title I

A People's Europe

Article 1 The Union is based upon the human individual.

The human individual is at the heart of the European undertaking.

The Union is based upon all the fundamental rights prescribed by the Universal Declaration of Human Rights (New York, 1948), the European Convention on the Protection of Human Rights and Fundamental Freedoms (Rome, 1950), the European Social Charter (Turin, 1961, revised 1988), the Community Charter of Workers' Fundamental Social Rights (Strasbourg, 1989), the Charter for the Protection of Ethnic Minorities and the United Nations International Covenants on Civil, Political, Economic and Social Rights (1966). These rights form its ethical, moral and cultural heritage.

The Union adheres to the International Convention on the Protection of Minorities and the International Convention on the Protection of Children. The Union protects the diversity of identity of all its inhabitants.

The Union is the guardian of a common good made up of all individual civil, economic and social rights. It cultivates the shared values of civilisation that are peace, dignity and respect for the human individual, democracy, freedom and the duty of solidarity.

Article 2 European citizenship

Citizenship entails complementary local, regional, national, European and worldwide dimensions, in line with the principle of subsidiarity.

Every citizen of any Member State is a citizen of the Union. Residents have the right to obtain the citizenship of the State where they reside. The Union shall ensure the harmonization of rights of access to national citizenship.

European citizenship has two principal components: civic and political, social and economic. These two elements of citizenship are indivisible. The Union shall endeavour to strengthen them jointly.

European citizenship resides on a European model of society which includes respect for the individual and for fundamental rights and a commitment to solidarity amongst its members.

Article 3 Sovereign power

Within the framework of the competences of the Union, sovereign power belongs to the citizens of the European Union.

Article 4 The missions of the European Union

The Union shall have the task of ensuring peace and democracy, balanced and sustainable development, economic and social cohesion, full employment and occupation and cultural development based on pluralism, dignity and respect for others.

4.1 Sustainable human development

The Union shall work to promote sustainable human development that is at once economic, social and ecological, giving each individual the opportunity to participate in an employment-creating economic and social life. Every individual is entitled to a healthy environment. The Union shall guarantee respect for the integrity of the human person in the environment and in the face of technological development, in particular with respect to biotechnology and the information society. The rights of future generations are recognized and protected in the Union.

Rejecting unrestrained competition and all forms of exclusion, this project is based on solidarity and equity in relations between Europeans and between Europe and other regions of the world.

The Union shall base its external activities, in particular its common foreign and security policy, on peace and the promotion of sustainable development, economic, social, cultural, civil and political rights, economic and social equity, equality between men and women and the fight against poverty and social exclusion.

In the context of Community policies and legislation, the Union shall respect the undertakings agreed at the United Nations Conferences on the Environment and Development (Rio, 1992), Human Rights (Vienna, 1993), the Population (Cairo, 1994), Women (Beijing, 1995), Social Affairs (Copenhagen, 1995) and the Habitat (Istanbul, 1996).

The Union shall ensure that the World Trade Organization guarantees the tying-in of social standards and trade on the basis of corresponding ILO conventions on forced labour, child labour and all forms of discrimination at the workplace, freedom of association and the right to collective bargaining. All trade cooperation treaties or agreements to which the Union shall become a contracting party must establish positive social and environmental clauses inciting respect for human and democratic rights.

4.2 A cultural project

The Union's cultural and educational activities shall be built on both the diversity and richness of its cultural and linguistic heritage and recognition of a common heritage, and on a cultural community, shared values, respect for the arts and cultures of the peoples of Europe, cross-border cooperation and dialogue with other civilisations. Protection of the cultural and linguistic heritage are civic rights.

It shall promote the conditions enabling each individual to develop his cultural, civic, creative and cognitive abilities.

The Union shall assure the protection and development of the common European heritage composed of its natural resources and the environment and its natural, cultural and linguistic heritage, in all its diversity.

4.3 A European civic area

The Union is a representative and participatory democracy. It shall guarantee the balanced representation of men and women. It shall provide the means necessary for active participation, in particular through the democratization of knowledge of decision-making.

4.4 Security

The Union shall have the objective of ensuring the security of all its inhabitants by working in favour of the social integration of all and of protection of the environment and worldwide natural resources.

The Union shall also endeavour to protect citizens against all forms of crime which are a threat to security and the European civil area.

Title II

The European Civic and Political Area

Article 5 Civic and political citizenship

The equality of men and women is a fundamental principle of the Union. The Union prohibits all forms of racism and xenophobia. The Union and its Member States shall provide conditions of equality and freedom for men and women alike. The Union shall take measures necessary for the establishment of sanctions.

Every citizen of the Union, in exercising his civil, political, social and economic rights, is entitled to the diplomatic protection of the Union and its Member States, and to the consular protection of the Member States in accordance with international rules

Democracy at the level of the Union is made up of two components : representation and participation.

Article 6 A representative democracy

The will of the citizens, the sovereign power; shall express itself directly at the level of the Union in particular through the election of the European Parliament and indirectly through the Council.

The European Parliament shall elect the European Commission, after consultation of the Council of the Union.

The Commission shall be accountable to Parliament and the Council. The President of the Commission may replace a Member of the Commission at the request of the European Parliament.

All of the Union's legislation, constitutional and budgetary acts and international agreements shall require approval by the majority of Members of the European Parliament and the national governments meeting in the Council of the Union.

Article 7 A participatory democracy

All citizens and all representative organizations have the right to formulate and make known their opinions on every area of the Union's competence. The Union shall guarantee the participation of all, in particular individuals and groups in a situation of poverty and social exclusion.

Practical implementation of rights and duties must not be limited to relations between the institutions and individuals. It also requires the presence of group players who stimulate the development of these rights and duties, explain them, defend them and implement them. Civil society is structured in this way.

The Union shall recognize organisations representing civil society as its permanent partners. It shall consult them regularly on all areas of Union citizenship, in particular on all Community acts related to civil, political, economic and social rights recognized by this Charter.

7.1 Representation of citizens

All European citizens have the right to vote and stand for election in European and local elections in their place of residence, irrespective of their nationality. The right to vote and stand for election in European and local elections shall be extended to all persons having resided legally in the European Union for five years. There shall be one method of voting for European elections. The voting method chosen shall include the right to cast a vote of preference amongst different individuals, since lists of candidates may be established on a transnational basis.

7.2 The right to information, transparency and public enquiry

The deliberations, proposals and legislative acts of all Union bodies, in particular the Council of the Union, shall be public.

The Union shall guarantee access to information in every area for which it has competence. The public and private mandates exercised by European officials and agents shall be public.

7.3 The right to evaluation

The Community's plans, programmes, policies and budgets shall be subject to prior evaluation by the European Parliament in a procedure that is transparent, public, pluralist and adversarial, in line with the principles and rights recognized by this Charter. The European Parliament shall consult the Economic and Social Committee and the Committee of the Regions.

The Charter signatory States shall make such evaluation a prerequisite to their acceptance of proposals from the Commission.

7.4 The right of legislative initiative

This right may be exercised collectively by citizens of the Union, in accordance with the conditions laid down by a Community law.

7.5 The right of popular consultation

The exercise of this right by European citizens, following presentation of a petition which has obtained signatures in all the States of the Union, shall be governed by a Community law developed on the basis of existing national legislations and practices..

7.6 The right to justice

All European citizens and all individual residing in a Member State have the right to institute legal proceedings before the Court of Justice of the Union in cases of non-observance of Community legislation or of the rights and principles recognized by this Charter.

7.7 The right of association

The Union recognizes the right of association. It shall establish a statute of European association enabling European group players to participate in the life of the Union and, through social experimentation and innovation, to defend and implement the rights and duties of European citizenship. It shall involve them in regular assessment of its activities and policies. The Member States shall not restrict the right of association on grounds of the nationality of members.

Title III

The European social and economic area

Article 8 Social and economic citizenship

European citizenship entails economic and social rights which are an integral part of the objectives of the Union. The Union shall promote the right to human dignity, education, life-long training, paid employment, recognition of socially useful activities, a minimum income guaranteeing respect for human dignity, equitable working conditions and pay, retirement, housing, the professional and social integration of the disabled, social protection and the consideration of the interests of the family and of the child.

The need for social policies shall be implemented by means of a partnership between the public authorities and civil society.

European citizenship as defined above must lead every individual to participate fully in the economic and social life of the Union, his country of residence and his local communities.

8.1 Social Rights

The rights of citizens include those laid down in the revised Turin European Social Charter, the Community Charter of Workers' Fundamental Social Rights and conventions of the International Labour Organization and the World Health Organization.

The rights of trade unions are guaranteed. Transnational rights of association, information, consultation, negotiation and action, including the right to strike, are part and parcel of citizens' rights. The different bodies of the Union shall be responsible for developing European collective bargaining legislation.

Child labour and forced labour are prohibited in the European Union, as are all forms of trade in human beings.

8.2 Services of general interest

The Union is the guardian of solidarity and social cohesion. It shall establish to this effect public and social rules on the internal market and common development policies. Access of European citizens, at Union and Member State level, to services of general interest contributing to the objectives of equality, solidarity and social cohesion, is an integral part of the recognition and guaranteed exercise of the fundamental rights of the individual. Every European citizen shall be entitled in particular to a healthy environment, equal justice for all, education, health care and quality social services.

Title IV

Constitutional Pact

Article 9 Sanctioning of a Member State

In the event of an infringement of the principles of the present Charter, the Commission, the European Parliament, any Member State and any individual as defined in Article 7.6 may initiate proceedings before the Court of Justice of the Union, which is entitled to take sanctions.

Member State status shall be suspended by a vote of the European Parliament for any State found to be in serious infringement of the principles of this Charter. The infringement finding shall be made by the Court of Justice of the Union.

Article 10 Final and interim provisions

This Charter shall constitute the basis of a constitutional pact open to the Peoples and States of Europe willing to accept it. The Union and the Member States shall be charged with setting into place a constitutional process with the peoples of the Union.

(DRAFT) EUROPEAN CITIZENS' CHARTER

Explanatory Memorandum

1. In spite of the historical, institutional and practical importance of the treaty, mere reading of it will never be enough to draw crowds of enthusiastic European Union supporters, nor will its revision. *“The European Union must draw up a Charter of its own, clearly setting out the ideals on which it is based, its role and the values it hopes to represent.”* (Vaclav Havel). That is the ambition of the draft European Citizens' Charter.
2. The draft Charter is meant to establish a hierarchy of the Union's values. Where the Union is perceived as primarily a “free-trade area”, “a market”, *the Charter places men and women at the heart of the undertaking. It defines what constitutes the common good.*
3. The Charter presented on the fortieth anniversary of the Treaty of Rome is meant to mark a turning point in European history. It proposes a new founding pact for a community of Peoples and States reflecting the humanism characteristic of European civilisation. It proposes the definition of *a European model of society.*
4. It asserts that *sovereign power belongs to the citizens of the Union* and not to the market or the technocracy.
5. It constitutes the basis of a *constitutional pact* open to the Peoples and States willing to accept it.
6. As noted in the report by the Committee of Wise Men, For a Europe of Civil and Social Rights, “the European Union must assert its identity more clearly, an identity that cannot be separated from citizenship. At this stage, citizenship of the Union as laid down in Articles 8 to 8E of the EC Treaty is lacking in substance.” *The Charter develops the concept of European citizenship, recognizing its two principal elements: civil and political, social and economic.* It is aimed at defining a frame of reference for the Union's actions and laying down the bases of a future collective and democratic demarche: the constitutional process.
7. This Charter also concerns the definition of a *European civil area.* The text proposes *an inter-linking between European representative democracy and European participatory democracy.* The writing of the Charter itself puts this vision into practice: drafted at a forum bringing together more than 80 European organisations, the text was forwarded to the European Parliament with the request that it be debated, amended if necessary and adopted in a final version that would then be submitted to the States for ratification.

8. The Charter concerns the fundamental rights and duties resulting, on the one hand, from European citizenship and, on the other, *extended in part to all individuals residing legally on Union territory but who are not citizens of the Union.*

From the time of its creation, the Union has been a multinational, multicultural, multilingual and multireligious Community with a strictly secular nature. The Charter aspires to place its proposals on non-Union citizens residing legally on its territory within the framework of the geopolitical developments in which war and peace will be played out in the 21st century. Given the globalization of the economy, the communication technologies changing the world of work, the acceleration of population movements, the need to maintain a young population as a means of preserving the rights of retired Europeans, Europe must be given a strategy adapted to its new challenges. A “war of civilizations” must also be rejected. Civilizations considering foreigners to be their enemy either degenerate into barbarism or perish.

The Charter seeks to build bridges to other peoples and other civilizations. It plays the card of hospitality, integration, exchange and multiple memberships, convinced that this approach will best guarantee reciprocity and the economic and social future of Europeans and will make Europe the avant-garde of the future democracy without frontiers that will become a reality in the 21st century.

9. Social cohesion is at the heart of the challenges facing the Union and its identity. *The Charter defines the initial elements of a social and economic citizenship.* European citizenship encompasses economic and social rights that are an integral part of the objectives of the Union and which must make possible the full participation of every individual.

10. This Charter is the Charter of European Citizenship, and not simply of European Citizens' Rights. In laying down the elements of European citizenship, the Charter is structured on the idea “that there are no rights without responsibilities, nor democracy without a sense of civic duty”. The need to take action to ensure the success of the European civil area and of European policies promoting social cohesion is reflected in and built upon strong commitments by civil society. *The partnership with the new group players acting in civil society is recognized.*

11. The Charter defines an ambitious project for Europe. It takes as its foundations the most advantageous provisions existing in the Member States and rejects the smallest-common-denominator strategy. *The most favorable provisions in force in one or more Member States and incorporated into the Charter concern in particular the right to vote in European and local elections, the right of popular initiative and the right of popular consultation.*

12. The Charter complements existing treaties that form the foundation of the European Union. Rights and obligations at European level come on top of the fundamental rights guaranteed at national level. The organisations submitting it to Parliament *reiterate the imperative nature of the revision of the Treaty proper.* They note that their concerns regarding employment, social rights and the fight against poverty and social exclusion imply inclusion in the Treaty of a platform of social and civil rights. It is also imperative for the Treaty to make co-decision with Parliament and majority vote the rule.

13. One of the roles of the Charter is the definition of standards for the *strategic assessment of Community programmes, projects and budgets*. The Charter signatory States shall ensure that the Treaty comes into force in accordance with the principles outlined in the Charter. The Charter signatory States must undertake to make such evaluation a prerequisite for their acceptance of proposals from the Commission.

14. Just as the revised treaty shall be submitted to a vote by the European Parliament, this Charter shall be forwarded to the European Parliament for debate, amendment and adoption. The Forum calls on the Member States wishing to sign the Charter passed by Parliament to *establish a link between the timing of the signature of the revised Treaty and the signature of the present Charter*. If necessary, as in 1985 and 1992 precedents, the Forum shall ask Member States to postpone the signature of the Treaty until the time of adoption of the present Charter by Parliament and its annexation to the Treaty as a Joint Declaration of the Charter signatory States.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 18 January 2000**CHARTE 4106/00****CONTRIB 5****COVER NOTE**

Subject : Draft Charter of fundamental rights of the European Union

Please find hereafter the report of the Parliamentary Assembly of the Council of Europe
(Rapporteur: Mr. Göran Magnusson) ¹.

¹ This text has been submitted in French and English language.

Doc. 8611

14 January 2000

Charter of Fundamental Rights of the European Union

Report

Committee on Legal Affairs and Human Rights

Rapporteur: Mr Göran Magnusson, Sweden, Socialist Group

Summary

Is the coexistence of two parallel systems of human rights protection in Europe possible and in particular is it not likely to lead to inconsistencies? That is the question the Assembly was confronted with following the decision taken by the European Council, in Cologne in June 1999 to draw up a Charter of Fundamental Rights of the European Union.

The Assembly, while welcoming improvements in the guarantee of fundamental rights in Europe, draws the attention of the European Union to the existence of the European Convention on Human Rights, to which all of its member states have adhered, and to the European Court of Human Rights responsible for its interpretation. It also proposes solutions which would make it possible to avoid the inconsistencies of such a coexistence: the inclusion in the Charter of the rights contained in the European Convention on Human Rights and the ratification of the Convention by the European Union.

I. Draft resolution

1. The Assembly considers it necessary to make a number of observations following the decision by the EU European Council in Cologne on 3 and 4 June 1999 to draw up a Charter of Fundamental Rights of the European Union, to be submitted to the European Council in December 2000.
2. At this stage, without knowing the Charter's content, the Assembly wishes to bring a number of matters to the attention of those responsible for drafting this instrument, that is to say the "body" established to that end in Tampere, and may have occasion to make observations on the substance of the Charter in due course.
3. The European institutions, first the Communities and then the European Union, have always shown an interest in human rights, in particular the European Convention on Human Rights, and have mentioned those rights as the foundation of democracy in their successive treaties. The European Parliament and the Commission have on a number of occasions come out in favour of the Union's accession to the Convention. The Parliamentary Assembly has itself welcomed this proposal. However, it has not yet been translated into action, following an opinion by the Court of Justice in Luxembourg on whether accession to the Convention was compatible with the Community treaties, in which the Court found that, as Community law stood at the time, the Commission had no competence to accede.
4. At a time when it is reinforcing its powers, the Union wishes to make the importance of human rights more visible to its citizens, as stated in the decision taken in Cologne, and to bring these currently scattered rights together in a single text. The Assembly welcomes this initiative as a sign of a resolve to strengthen further the cause of human rights in Europe.
5. The Assembly nonetheless considers that, in adopting a Charter of Fundamental Rights, the achievements of the European Convention on Human Rights and the body of its case-law established over almost fifty years, which has had far-reaching effects on the law of the member states of the Council of Europe and therefore of the European Union, cannot be disregarded. It further draws attention to the risks of having two sets of fundamental rights which would weaken the European Court of Human Rights.

6. In this connection, the Assembly recalls the communication of 19 November 1990 issued by the Commission of the European Communities on accession to the European Convention on Human Rights, in which it stated that accession did not rule out the option of a set of fundamental rights specific to the Community. The opposite inference can therefore be made, ie that adoption of a Charter does not rule out accession to the Convention on Human Rights.

7. The European Union and the Council of Europe undeniably guarantee a number of rights which are not contained in the European Convention on Human Rights, particularly economic and social rights, and the Charter should therefore include these rights, adding to them others now accepted as fundamental rights. The Assembly draws attention to the other instruments for the protection of human rights on which the Charter could draw, in particular the revised European Social Charter, which guarantees economic and social rights and is an instrument to which the Assembly has invited the Union to accede. It recalls that, following the Treaty of Amsterdam, a reference to the Social Charter of the Council of Europe was included in the Treaty on the European Union.

8. The Assembly refers to the European Union report, prepared in February 1999 by an expert group chaired by Professor Simitis, which recommends that Articles 2 to 13 of the European Convention on Human Rights be incorporated into Community law, together with the rights secured in the protocols to the Convention. The inclusion of rights guaranteed by the Convention would be a means of avoiding having two different sets of rights in Europe, thus creating two categories of citizens enjoying different rights.

9. The Assembly believes that there can be no discrimination in the application of fundamental rights and that everyone coming under the jurisdiction of a Council of Europe member state must enjoy the protection of such rights, as provided for in Articles 1 and 14 of the European Convention on Human Rights.

10. In conclusion, in the light of the above, the Assembly invites the European Union:

to incorporate the rights guaranteed in the European Convention on Human Rights and its protocols in the Charter of Fundamental Rights and to do its utmost to safeguard the coherence of the protection of human rights in Europe and to avoid diverging interpretations of those rights;

to pronounce itself in favour of accession to the European Convention on Human Rights of the Council of Europe and make the necessary amendments to the Community treaties;

to make sure that when referring to social rights the revised European Social Charter of the Council of Europe will be taken into account.

II. Draft recommendation

1. The Assembly, having regard to its Resolution ... (2000) on the European Union Charter of Fundamental Rights, in which it invites the European Union:

to incorporate the rights guaranteed in the European Convention on Human Rights and its protocols in the Charter of Fundamental Rights and to do its utmost to safeguard the coherence of the protection of human rights in Europe and to avoid diverging interpretations of those rights

to pronounce itself in favour of accession to the European Convention on Human Rights of the Council of Europe and make the necessary amendments to the Community treaties;

to make sure that when referring to social rights the revised European Social Charter of the Council of Europe will be taken into account,

recommends that the Committee of Ministers of the Council of Europe pronounce itself in favour of the accession of the European Union to the European Convention on Human Rights and prepare the appropriate amendments to be made to this treaty.

III. Draft order

The Assembly, having regard to its Resolution ... (2000) and Recommendation ... (2000), instructs its Committee on Legal Affairs and Human Rights to carefully follow and monitor the outcome of the drafting work on the Charter of Fundamental Rights, and to report back to it on this subject in due course.

IV. Explanatory memorandum by Mr Magnusson

A. Introduction

1. In a motion for a resolution (Doc 8542), some members of the Parliamentary Assembly expressed their concern on learning of the decision taken by the European Union's European Council, in Cologne on 3-4 June 1999, to draw up a Charter of Fundamental Rights of the European Union.

2. As the draft is to be prepared and presented in time for the meeting of the European Council in December 2000, the signatories of the motion felt there was a certain urgency to take a stand on that decision. They considered it necessary that the Council of Europe be involved in the drawing up of such a Charter. They believed that such a Charter should not be integrated into the treaties of the European Union, as it would doubtless result in different interpretations of the Convention's provisions by the European Court on Human Rights on the one hand and the Court of Justice of the European Communities on the other.

3. They therefore called upon the Parliaments of the European Union's member States to renew their efforts in favour of the accession of the Union to the Council of Europe's European Convention on Human Rights (hereafter: ECHR), and in the meantime to do their utmost to prevent the granting of treaty value to any European Union Charter of Fundamental Rights.

4. The present draft report aims at analysing the situation, starting by summarising the relations of the European Institutions with human rights, trying to identify the possible developments in the light of the decision taken at the Cologne meeting and making proposals to avoid the above-mentioned risks of duplication in the interpretation of the rights and of two systems of protection, one for the citizens of the European Union's member States and another for the citizens of the rest of Europe.

B. The European Institutions and Human Rights

5. It is to be noted that the European Institutions, first the Communities and now the European Union (hereafter: EU), have always shown an interest in human rights and in so doing they have always made reference to the ECHR.

6. The preamble of the Single European Act of 1986 expressed the European Community member states' determination "to work together to promote democracy on the basis of the

fundamental rights recognised in the constitutions and laws of the member states, in the Convention for the Protection of Human Rights and Fundamental Freedoms and the European Social Charter, notably freedom, equality and social justice".

7. Some specific rights are explicitly included in the Treaties of the Communities, such as freedom of movement for workers, freedom of establishment and freedom to supply services, equality of treatment between men and women and non-discrimination on the ground of nationality.

8. To these rights four new rights have been added in the Treaty on the European Union: right to move and reside freely within the territory of member states; right to vote and to stand as a candidate in municipal and European elections in the member State where one resides; right to petition the European Parliament and right to apply to the European Ombudsman; protection in third countries by the diplomatic and consular authorities of any member State.

9. However, these rights are scattered and it has been thought that they should be grouped and also completed with other ones. At the same time, protection through accession to the ECHR was already envisaged in the 1970s.

10. As was recalled in the report on the accession of the European Community to the ECHR (Doc 7383) of 1995, presented by Mrs Wohlwend, following the Commission of the European Communities' memorandum of 4 April 1979 and the European Parliament Resolution of 27 April 1979, the Parliamentary Assembly of the Council of Europe welcomed the prospect of such accession, emphasising in its Resolution 745 of January 1981 that accession "would form an important bond between the European Communities and the member states of the Council of Europe in the specific field of human rights and fundamental freedoms, and would thus contribute to strengthening the principles of parliamentary democracy and the implementation of basic human rights".

11. This was reaffirmed several times by the European Parliament, which reiterated its support in three resolutions, on 18 January 1994, on 4 May 1994 and on 11 April 1995. The Parliamentary Assembly also reiterated its support in its Recommendation 1365 (1998).

12. In its Communication on the accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms and some of its Protocols (SEC (90) 2087 final of 19 November 1990), the Commission of the European Communities concluded as follows:

"The Commission accordingly requests that the Council:

- approve the request for the Community's accession to the ECHR
- authorise the Commission to negotiate the details of this accession in accordance with the directives set out in Annex 1, the aim being to make necessary adjustments to the Convention to make possible this accession (notably to provide for Community representation in the Commission of Human Rights and the Court of Human Rights)."

It also stated that the accession of the European Community to the ECHR does not exclude the option of a catalogue of fundamental rights specific to the Community.

13. The Parliamentary Assembly adopted Resolution 1068 (1995) on the accession of the European Community to the ECHR on 27 September 1995. In this text, it expressed the hope that the Community would soon take the necessary steps to submit its formal application for accession.
14. Since the adoption of that resolution important developments have taken place. First, on 26 April 1994, the Council of Ministers of the Community asked the Court of Justice of the European Communities for its opinion on the compatibility of accession to the European Convention on Human Rights with the Community treaties.
15. In its opinion adopted in March 1996, the Court held that "such a modification of the system for the protection of human rights in the Community, with equally fundamental institutional implications for the Community and for the Member States, would be of constitutional significance and would therefore be such as to go beyond the scope of Article 235. It could only be brought about by way of Treaty amendment" and it concluded that as Community law stood at that time the Community had no competence to accede to the ECHR.
16. Following this opinion by the Court of Justice, the question of European Community accession to the ECHR was not subsequently discussed in the framework of the Intergovernmental Conference which led to the conclusion of the Treaty of Amsterdam.
17. The Amsterdam Treaty, signed on 2 October 1997, and which entered into force on 1 May 1999, affirms in its Article 6§1 the European Union's commitment to human rights and fundamental freedoms and confirms the Union's attachment to fundamental social rights.
18. This is nothing new, as we have already seen.
19. What is new is the decision taken by the European Council of the European Union at its meeting in Cologne on 3 and 4 June 1999 "to draw up a Charter of Fundamental Rights of the European Union, to make their overriding importance and relevance more visible to the Union's citizens".
20. According to the terms of the decision "the European Council believes that this Charter should contain fundamental rights and freedoms as well as basic procedural rights guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and derived from the constitutional traditions common to the Member States, as general principles of Community law. The Charter should also include the fundamental rights that pertain only to the Union's citizens. In drawing up such a Charter account should furthermore be taken of economic and social rights as contained in the European Social Charter and the Community Charter of the Fundamental Social rights of Workers, insofar as they do not merely establish objectives for action by the Union".

C. Strengthening Human Rights in Europe

21. As already said, the concern for human rights has always been present in the European Union. However, with the adoption of the Amsterdam Treaty which reinforces the power of the EU, some member States felt it necessary to put in a single text the rights which are already guaranteed and to add to it other rights. Another reason for that is the wish to make visible EU concern for human rights (see para 19).

22. As stated before, the Commission of the European Communities already said in its communication of 1990 that the accession of the Community to the ECHR does not exclude the option of a catalogue of fundamental rights specific to the community.

23. Furthermore, the Parliamentary Assembly itself, in the explanatory memorandum to its Resolution 1068 (1995), acknowledged that the fundamental rights and freedoms of Community citizens needed to be clearly affirmed, especially as new protection requirements were becoming apparent. It also stated: "in the absence of explicit references in the treaties, some Community states have given the fundamental rights appearing in their national constitutions precedence over the provisions of derived Community law. Such a threat to the uniform application of Community law is one of the factors behind the drawing of a Community code of fundamental rights."

24. From all the foregoing it seems very clear that the decision to draw up a Charter is a logical consequence of the evolution in both the European Institutions and in the Council of Europe towards the protection of human rights in Europe.

25. What remains to be seen is how this aim would be best achieved.

26. The Council of Europe has to contribute to reaching this aim. One has to recall that all the member States of the EU are also members of the Council of Europe and that they should be coherent.

27. Firstly, concerning the involvement of the Council of Europe in the drawing up of the Charter of Fundamental Rights, the decision setting up the body¹ to elaborate a draft EU Charter foresees that the Council of Europe will be represented in the body set up to elaborate the Charter as an observer. It is entitled to two representatives, including one from the European Court of Human Rights.

28. Secondly, it must be taken into account that five members of the Parliamentary Assembly have been nominated among the two members from each national parliament, including the Rapporteur and the Chairperson of the Committee on Legal Affairs and Human Rights.

D. The Charter: contents and implementation

a. The rights to be guaranteed

29. As mentioned in the decision of Cologne, the ECRH is a reference to be taken into consideration when drafting the Charter. How?

30. Should the ECHR be included as such in the Treaty of the EU? This was to some extent the opinion expressed by the Expert Group on Fundamental Rights, chaired by Professor Simitis, which prepared a report at the request of the European Commission.

This report entitled "Affirming fundamental rights in the European Union - Time to act" was completed in February 1999. According to the Expert Group "the rights provided in Articles 2 to 13 of the ECHR should be incorporated in their entirety into the Community law, together with the rights in the Protocols to the ECHR". They considered that clauses detailing and complementing the ECHR must be added, as it appears necessary. They gave as an example a list of rights which are already recognised in Community law or in the case-law of the Court of Justice of Luxembourg:

¹ For its membership see Appendix I.

- the right to equality of opportunity and treatment, without any distinction such as race, colour, ethnic, national or social origin, culture or language, religion, conscience, belief, political opinion, sex or gender, marital status, family responsibilities, sexual orientation, age or disability ;
- the freedom of choice of occupation ;
- the right to determine the use of personal data ;
- the right to family reunion ;
- the right to bargain collectively, and to resort to collective action in the event of a conflict of interests; and
- the right to information, consultation and participation in respect of decisions affecting interests of workers.

31. One cannot know at this stage what will be the proposals by the body responsible for elaborating the Charter. However, the following comments have to be made regarding Professor Simitis's report.

32. First, the inclusion of the ECHR in the Community law would be a good solution in that it would avoid having two different sets of rights in Europe thus creating two categories of citizens entitled to different rights.

33. One has, however, to question the exclusion of article 1 of the ECHR. Article 1 of the ECHR states: "the High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in section 1 of the Convention".

34. This is an essential aspect of the protection of human rights: one cannot exclude people on the ground of their national origin, as mentioned in the article on non -discrimination cited as an example by the Expert Group. This should cover not only the citizens of the Union's member states wherever they are, but also the citizens of other countries who are within their jurisdiction. Only some political rights, such as the right to vote or to be elected, which are recognised to the citizens of the EU, could be linked to citizenship, although they could also be extended to persons residing on a legal basis on the territory of the Union.

35. The other articles which have been excluded by the Expert Group are Article 14 of the ECHR, which concerns the prohibition of discrimination, Article 15 concerning the derogation in time of emergency and Article 16 concerning restrictions on political activity of aliens.

36. Article 14 is the object of a draft Protocol No 12 to the ECHR with a view to extending it. The Assembly has been called upon to give its opinion on this draft Protocol. At this stage it is however obvious that the scope envisaged by the Expert Group is much wider than that of the draft Protocol.

37. This does not seem to be an obstacle, on the contrary. The approach is to take the ECHR as minimum standard to which the Union could add more rights in order to take into account its own law.

38. The report refers also to the "relevant rights in the Protocols to the ECHR". They mention the following rights: the right to property (Article 1 of the First Protocol), the right to vote (Article 3 of the First Protocol) and the right to free movement (Article 2 of the Fourth Protocol).

39. They leave out a number of other rights, such as the right to education, the prohibition of imprisonment for debt, the prohibition of expulsions of nationals, the prohibition of collective expulsion of aliens, the abolition of the death penalty, as well as Protocol No 7, which guarantees some procedural rights.

40. As regards the social rights one could also recommend the inclusion of the European Social Charter into the Community law. Of course the question of their implementation remains to be solved. Social rights require an intervention by the State and in particular have financial implications.

b. The implementation of the rights guaranteed

41. Even if the ECHR were included into the Charter of Fundamental Rights, the risk still exists that their interpretation might vary if two Courts are responsible for it. This is probably the main concern upon which the Parliamentary Assembly should concentrate.

42. The European Court on Human Rights is responsible for the interpretation of the ECHR and should continue to be so. Ways should be found to keep its competence for the interpretation of the rights contained in the ECHR even if they are included in the Charter, while the Court of Justice of Luxembourg should keep its competence to interpret the other rights and in particular the alleged violations of human rights by Community institutions without a member State intervention.

43. The report on which is based Resolution 1068 (1995), paragraph 25, had foreseen a problem which has occurred in the meantime. In implementing the Community's law, it is the member States that are ultimately liable to be subjected to the sanctions of the European Court of Human Rights in the Community's stead, and be condemned on account of derived Community law. The conclusion of the Community treaties by the states has not released them from the obligations they contracted in the framework of the ECHR. Consequently, it is still possible for an individual to submit to the Strasbourg Court an application against a member State in respect of a national measure designed to implement Community law, and even a measure taken by the Community, and for the state to be condemned.

44. This occurred recently in the Matthews case against the United Kingdom, which concerned the situation of the people of Gibraltar who were not allowed to vote in the European Parliament elections even though they were subject to European Union "legislation". The case was brought before the European Court of Human Rights.

45. Accession to the ECHR would remove this risk by permitting direct appeals against such acts as well as against implementing measures taken by member States in cases where they do not possess wide discretionary powers.

46. Of course both the accession of the European Communities/Union to the ECHR and the repartition of competencies between the two courts need adjustments. These adjustments are of a legal nature and if the political will exists they should not be an obstacle.

47. Different options exist, such as prejudicial request for an opinion of one Court to the other, or a repartition according to the right involved or the organ or State respondent for the alleged violation.

48. Already in 1990, the Commission of the Communities, in its Communication on the accession to the ECHR, appended the following negotiating directives:

- "1. The purpose of the negotiations is to draw up an additional Protocol to the ECHR of 1950, enabling the Community to become a party to the Convention and some of its Protocols;
2. In order to ensure that the Community participates fully in the organs of the Conventions, the Community will have to be represented as such in the (Commission of Human Rights) the Court of Human Rights. An ad hoc solution will have to be envisaged for its representation in the Committee of Ministers.
3. The negotiating directives will be defined, where necessary, by the usual procedures."

E. Preliminary conclusions

49. The Parliamentary Assembly recognises that the drawing up of a Charter of Fundamental Rights of the European Union is a logical development in the evolution of the European Union and considers it as a strengthening of the protection of human rights in Europe. It should ensure that this is the case and that the rights are guaranteed to everyone within the jurisdiction of the Union.

50. It however would like to draw attention to the existence of the ECHR and its mechanism of protection through the former European Commission and the Court of Human Rights, which have proved their efficiency. It accordingly calls on the attention of the body in charge of elaborating this Charter to take this mechanism into account. In particular, it recommends it to follow the conclusions of the Expert Group on Fundamental Rights, chaired by Pr Simitis, to include and incorporate the articles of the ECHR into the Community law, together with the relevant rights in the Protocols to the ECHR. One should avoid in the future a situation in which there are two different systems of protection with two different courts whose case-law could be divergent

51. The Parliamentary Assembly also reiterates its recommendation that the European Communities/Union accede to the ECHR, to which all its member states are Parties, as was advised on many occasions in the past both by the institutions of the European Communities and by the Council of Europe. It could also accede to the European Social Charter. In order to allow this accession, the Committee of Ministers should start preparatory work.

52. In addition, in order to avoid a different interpretation of these rights by the two European Courts, it recommends that the competence of each of them be clearly defined.

APPENDIX

COMPOSITION METHOD OF WORK AND PRACTICAL ARRANGEMENTS FOR THE BODY TO ELABORATE A DRAFT EU CHARTER OF FUNDAMENTAL RIGHTS, AS SET OUT IN THE COLOGNE CONCLUSIONS

A. COMPOSITION OF THE BODY

(i) Members

(a) Heads of State or Government of Member States

Fifteen representatives of the Heads of State or Government of Member States.

(b) Commission

One representative of the President of the European Commission.

(c) European Parliament

Sixteen members of the European Parliament to be designated by itself.

(d) National Parliaments

Thirty members of national Parliaments (two from each national Parliament) to be designated by national Parliaments themselves.

Members of the Body may be replaced by alternates in the event of being unable to attend meetings of the Body.

(ii) Chairperson and Vice-Chairpersons of the Body

The Chairperson of the Body shall be elected by the Body. A member of the European Parliament, a member of a national Parliament, and the representative of the President of the European Council if not elected to the Chair, shall act as Vice-Chairpersons of the Body.

The member of the European Parliament acting as Vice-Chairperson shall be elected by the members of the European Parliament serving on the Body. The member of a national Parliament acting as Vice-Chairperson shall be elected by the members of national Parliaments serving on the Body.

(iii) Observers

Two representatives of the Court of Justice of the European Communities to be designated by the Court. Two representatives of the Council of Europe, including one from the European Court of Human Rights.

(iv) Bodies of the European Union to be invited to give their views

The Economic and Social Committee

The Committee of the Regions

The Ombudsman

(v) Exchange of views with the applicant States

An appropriate exchange of views should be held by the Body or by the Chairperson with the applicant States.

(vi) Other bodies, social groups or experts to be invited to give their views

Other bodies, social groups and experts may be invited by the Body to give their views.

(vii) Secretariat

The General Secretariat of the Council shall provide the Body with secretariat services. To ensure proper coordination, close contacts will be established with the General Secretariat of the European Parliament, with the Commission and, to the extent necessary, with the secretariats of the national Parliaments.

I: B. WORKING METHODS OF THE BODY

(i) Preparation

The Chairperson of the Body shall, in close concertation with the Vice-Chairpersons, propose a work plan for the Body and perform other appropriate preparatory work.

(ii) Transparency of the proceedings

In principle, hearings held by the Body and documents submitted at such hearings should be public.

(iii) Working groups

The Body may establish ad hoc working groups, which shall be open to all members of the Body.

(iv) Drafting

On the basis of the work plan agreed by the Body, a Drafting Committee composed of the Chairperson, the Vice-Chairpersons and the representative of the Commission and assisted by the General Secretariat of the Council, shall elaborate a preliminary Draft Charter, taking account of

drafting proposals submitted by any member of the Body.

Each of the three Vice-Chairpersons shall regularly consult with the respective component part of the Body from which he or she emanates.

(v) Elaboration of the Draft Charter by the Body

When the Chairperson, in close concertation with the Vice-Chairpersons, deems that the text of the draft Charter elaborated by the Body can eventually be subscribed to by all the parties, it shall be forwarded to the European Council through the normal preparatory procedure.

II. C. PRACTICAL ARRANGEMENTS

The Body shall hold its meetings in Brussels, alternately in the Council and the European Parliament buildings.

A complete language regime shall be applicable for sessions of the Body.

Reporting committee: Committee on Legal Affairs and Human Rights

Budgetary implications for the Assembly: none

Reference to committee: Doc 8542, Reference No. 2440 of 24 September 1999

Draft resolution adopted unanimously with one abstention, and *draft recommendation and draft order* adopted unanimously by the committee on 10 January 2000

Members of the committee: MM Jansson (*Chairperson*), Bindig, Frunda, Moeller (*Vice-Chairpersons*), Mrs Aguiar, MM Akçali, Arzilli, Attard Montalto, Bal, Bartumeu Cassany, Brand, Bulic, Clerfayt, Columberg, Contestabile, Demetriou, Derycke, Enright, Mrs Err, Mrs Frimansdóttir, Mr Fyodorov (alternate: Mr Glotov), Ms Hlavac, Mr Holovaty, Mrs Imbrasienne (alternate: Mr Kuzmickas), MM Jaskiernia, Jurgens, Kelam, Kelemen, Lord Kirkhill, MM König, Kresak, Mrs Krzyzanowska, Mr Le Guen, Ms Libane, MM Lintner, Loutfi, Magnusson, Mancina, Mrs Markovic-Dimova, MM Martins, Marty, McNamara, Mozetic, Mrs Näslund, MM Nastase, Pavlov, Pollo,

Polydoras, Mrs Pourtaud, MM Robles Fraga, Rodeghiero, Mrs Roth, Mrs Roudy, MM Saakashvili, *Shishlov*, Simonsen, Solé Tura, Solonari, Svoboda, Symonenko, Tabajdi, Verhagen, Verivakis, *Vishnyakov*, *Vyvadil*, Mrs *Wohlwend*.

N.B. The names of those members who took part in the vote are printed in italics.

Secretaries to the committee: Mr Plate, Ms Coin and Ms Kleinsorge

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 20 January 2000**CHARTE 4108/00****CONTRIB 6****COVER NOTE**

Subject : Draft Charter of fundamental rights of the European Union

Please find hereafter an open letter to the members of the body from the European Parliament Intergroup (Fourth World European Committee) ¹

¹ This text has been submitted in French and English language.

**Open letter to the members of the body responsible
for drawing up a Charter of fundamental rights**

Brussels, 12 January 2000

Dear Sir/Madam/Colleagues,

Since 1980 Members of the European Parliament have met in an intergroup called the "European Fourth World Committee" in order to include the concerns of the poor in Parliament's discussions. The secretariat of this intergroup is run by the International Movement ATD Fourth World, which brings together people experiencing extreme poverty and other citizens who ally themselves with them. The Committee has decided to write to you today because its action has always been dominated by the fact that poverty is a violation of all fundamental rights (civil, political, economic, social and cultural).

It would like to inform you of its proposals regarding the drafting of a Charter of fundamental rights. It considers that:

(a) the Charter must be incorporated in the European Union Treaties and must be designed with this in mind, since it would otherwise amount to an ineffectual declaration and prove to be a source of further disappointment;

(b) the Charter must include all the rights enshrined in the European Convention on Human Rights (Rome, 1950) and in the revised European Social Charter (Strasbourg, 1996);

(c) this Charter must include not only the rights which can be invoked direct but also "positive-action" programmatic rights (which can be invoked only indirectly since they oblige the institutions concerned to take measures or implement programmes in order to give everyone access to the rights). This is particularly important as regards rights enshrined in the revised European Social Charter such as:

- the right to protection against poverty and social exclusion (Article 30),
- the right to housing (Article 31);

(d) this Charter must include, as the "Comité des sages" chaired by Ms Maria de Lourdes Pintasilgo proposed in 1996, the right to a guaranteed minimum income which allows all people to live in dignity, to safeguard their health and well-being and that of their families;

(e) this Charter must include the right of the European NGOs to participate in, and be consulted by, the European institutions through the implementation of a structured civil dialogue;

(f) this Charter must contain an explicit undertaking by the European Community that it will sign the European Convention on Human Rights and the revised European Social Charter.

In order for the views of the least favoured sections of the population to be heard, the Committee also asks you to give hearings to the International Movement ATD Fourth World during your discussions.

Our hope is that the European Union can be given a new grounding in fundamental rights.

Yours faithfully,

Marietta Giannakou-Koutsikou
Chair of the Fourth World European Committee

José María Gil-Roblés Gil-Delgado
Former President of the European Parliament

Sylviane Ainaridi Ieke van den Burg Hélène Flautre Graham Watson
Vice-Chairs of the Fourth World European Committee

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 20 January 2000**CHARTE 4109/00****CONTRIB 7****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find enclosed The Charter of Fundamental Rights and Freedoms - Evidence to Council of Europe January 2000 submitted by Bench House (Mr. Stephen Jakobi).^{1 2}

¹ This text has only been submitted in English language.

² Bench House, Ham Street, Richmond, TW10, 7 HR. Phone: 0181 332 2800.
Fax: 0181 332 2810.

THE CHARTER OF FUNDAMENTAL RIGHTS AND FREEDOMS

EVIDENCE TO COUNCIL OF EUROPE

January 2000

**BENCH HOUSE · HAM STREET, RICHMOND · TW10 7HR
PHONE: 0181 332 2800 • FAX: 332 2810**

THE CHARTER OF FUNDAMENTAL RIGHTS AND FREEDOMS

EVIDENCE TO COUNCIL OF EUROPE

1. **Outline of evidence**

1. The Fair Trials Abroad Trust is a unique EU based organisation concerned with the individual citizen's rights to justice when outside their own country. Our concerns are not theoretical but the practical enforcement of fundamental rights in the police stations and courts of first instance throughout the community.

2. *Background to the Charter* It is particularly important to take note of the creation of a European Legal Space initiated at the Tampere conference. A number of novel measures were proposed: mutual recognition of judgements, fast track extradition etc. These developments without appropriate counter measures pose unparalleled and unacceptable risks to civil liberties and fundamental rights within Community's geographical area. Such basic problems as equality before the law will become exacerbated by the Tampere proposals. Whilst there is now a general recognition by European institutions that there are problems it is unlikely that effective solutions to them will become universally operative because of treaty limitations.

3. *Standards of justice within the Union* Concern is expressed that in certain countries of the Union the individual facing serious criminal charges is unlikely to receive such fundamental rights as adequate interpretation or access to a competent lawyer to defend him if he cannot afford to pay. Crucially, there is as yet no general standard that the judicially advanced states of the Union, including the United Kingdom, consider adequate for their own citizens. There appears to be, in general terms, three standards of administration of justice co-existing within the Union: "Best practice," European Convention and Mediterranean.

4. *The need for an effective charter* The European Legal space is a creature of the successive treaties that have created the present parameters of the European Union: it is subject to the built in limitations of those treaties. The measures required to ensure that the citizen has adequate protection against abuse of fundamental freedoms cannot be formulated within them. It is clear that the European Convention of Human Rights does not represent an adequate standard for the Union: the enlargement process will make matters worse.

5. *Some essential characteristics of an effective Charter* We consider it important that the Charter be considered as the latest in a line of international instruments giving ever more detailed protection to the citizen. Effective mechanisms for adjudicating citizens grievances and supplying appropriate remedies are required. The shortcomings of the European Court of Human Rights are considered and recommendations made for improvements.

6. *Conclusions* The Union has a pressing need for a modern and effective charter. The European Convention standards are obsolescent and poorly policed by its mechanisms. Unless the Charter has substantive legal effect many Citizens will not enjoy the fundamental freedoms they expect in their native lands when they travel to other parts of the union. Having regard to the stasis in development of standards under the ECHR we would particularly encourage the concept of the Charter as a living document with sufficient flexibility to change with the times.

Introduction

7.The Fair Trials Abroad Trust was formed in July 1994 with the intention of ensuring Fair Trials for EU Citizens out of country. Now widely known as Fair Trials Abroad, or FTA for short, it remains the only EU based organisation concerned with the individual citizen's rights to justice when outside their own country. The basis of these rights are the domestic law of the country concerned including international treaty obligations where those obligations give rise to justiciable rights (European Convention of Human Rights, International Covenant on Civil and Political Rights) recognised in that country.

8.The Trust has developed into a major advisory body for all those concerned with interstate machinery of criminal justice problems affecting the Union Citizen. This it has done by concentrating on individual cases exhibiting injustices, and discovering patterns exhibiting problems in the machinery of justice. One of the most important tools of advice and research has proven to be the unique network of local native correspondents.

9.It will be seen that the trust is a practitioners organisation utilising international treaty law in the specialist sector of the administration of criminal justice. Our observations should be considered as directly applicable to our sphere of competence, though they may have more general implications for the content of the new Charter and its enforcement machinery.

Background to the Charter

10.It is particularly important to take note of developments in the parallel creation of a European Legal Space also initiated at the Tampere Conference. Mutual recognition of judgements was endorsed without any reference to standards of judicial competence or other safeguards (Clause 33). The Council approved fast track extradition without attention drawn to the potential for discrimination in the current lack of provisional liberty for non-native citizens. It was also apparent that extradition without formality was to be granted in cases of final judgement (even if trials have taken place in absentia and without notice to the accused!) (Clause 34).

11.These developments without appropriate counter measures pose unparalleled and surely unacceptable risks to civil liberties and fundamental rights within the Community's geographical area. There is now a general recognition by European institutions that what is needed is a twin track approach to the creation of a European Legal Space in which the innocent sojourner (to include visitors, asylum seekers and migrants as well as citizens) is protected against injustice by tackling the "Freedom" problems of defence simultaneously with the "Security" problems of prosecution.

12.Unfortunately, the history of Third Pillar development and consequent evolution of the department supporting the Commissioner of Justice and Home Affairs has been entirely law enforcement orientated. There was, so far as we are aware, no recorded instance of a civil liberties topic achieving priority for consideration by the Council of Ministers prior to the conception of the Charter of Freedoms during the German Presidency. The summit created a novel area of operational responsibility for Civil Liberty oriented tasks within the Commission. We have little doubt that a number of the problems highlighted by us will be tackled methodically and pragmatically over the next five years. If the pattern of compliance with European Court of Human Rights decisions in the past is any guidance, those countries which represent "best practice" of fundamental rights will undoubtedly improve the protection they

offer foreigners against injustice: nevertheless the citizens throughout the Union as a whole are likely to suffer if they have no direct remedies. Such basic problems as equality before the law and de facto application of fundamental rights to an acceptable standard will become exacerbated by the Tampere proposals.

Equality before the law.

13.The proposed measures were publicly and clearly aimed at international crimes of a conspiratorial nature (Community fraud, drug and human trafficking and terrorism) which represent menaces to society. The difficulties created in the pragmatic solutions to prosecution problems proposed by the European Council is that they will inevitably result in a far higher proportion of conspiracy cases involving a mixture of native and foreign defendants being brought before the various national courts of Europe. It follows that the numbers of defendants, some innocent, being handicapped by unequal treatment before the law will increase. Equality before the law is therefor an issue, and must be addressed by appropriate measures.

14.We should emphasise here that whilst one recognises there will be sections of the Charter that only apply to rights of citizens (freedom of movement, residence and rights to work) the rights to Fair Trial cannot be so confined. We are unaware of anywhere in the civilised world where a two tier system of criminal justice is countenanced.

The application of fundamental rights within the Union.

15.The issues of general protection from injustice were ignored in the preparations for Tampere and did not feature at the summit itself. This may have been due to two mistaken presumptions: that the standards of the European Convention on Human Rights are being implemented in practice throughout the Union and that these standards in themselves are adequate.

16.From the outset of our research into causes of injustice to the travelling Union citizen we have been concerned about obvious major defects in the observance of the ECHR within the Union. Two research projects we have been responsible for AJISE (Access To Justice in Southern Europe) and ELIP (European Legal Interpreters Project) gave substance to the proposition that in certain countries of the Union the individual facing serious criminal charges is unlikely to receive such fundamental rights as adequate interpretation so that he can understand and be understood, or access to a competent lawyer to defend him if he cannot afford to pay.

Standards of Justice within the Union

17.Crucially, there is as yet no general standard that the more judicially advanced states of the Union, including the United Kingdom, consider adequate for their own citizens within their own geographical boundaries: it is to the Charter that one must look for the creation of such a standard.

18.There appears to be, in general terms, three standards of administration of justice co-existing within the Union; “best practice,” European Convention and Mediterranean. The differences between them can be illustrated through the standards applied in the provision to the accused of state funded representation and interpretation services.

“Best practice”

19. Modern “best practice” was codified in a resolution adopted by General assembly of the United Nations in 1988, “**A body of principles for the protection of all persons, under any form of detention or imprisonment**”. It was adopted without a vote. These principles build on the experience of previous regional and international treaties and go into far more detail on protection than, for example, the International Convention on Civil and Political Rights (ICCPR.)

20. Under Principle 15, communication with counsel cannot be denied under any circumstances for more than a matter of days. He shall be entitled to have the assistance of counsel promptly after arrest (Principle 17) and have legal counsel assigned to him if he does not have means to pay.

21. Under Principle 14, a person who does not adequately understand or speak the language used by the authorities in question is entitled to receive promptly in a language he understands all information required under the principles and to have the assistance free of charge of an interpreter in connection with legal proceedings subsequent to his arrest.

22. It is also to be noted that the draft articles of the Corpus Juris, the attempt to provide a criminal code and procedure for the Community gave the following rights to the accused

: -Article 29 Rights of the Accused

23. In any proceedings brought for an offence as set out above (Articles 1 to 8), the accused enjoys the rights of the defence guaranteed by Article 6 of the European Convention on Human Rights and Article 10 of the UN International Covenant on civil and political rights.

24. A person may not be heard as a witness but must be treated as accused from the point when any step is taken establishing, denouncing or revealing the existence of clear and consistent evidence of guilt and, at the latest, from the first questioning by an authority aware of the existence of such evidence.

25. From the time of his first questioning, the accused has the right to know the content of the charges against him, the right to be assisted by a defence lawyer of his choice, and, if necessary, an interpreter.

26. **State funded legal representation.** Almost all Union states provide that when a citizen is detained for questioning the citizen has, in general, the right to demand a lawyer of his choice be contacted and to refuse to answer questions addressed to him until he has received legal advice. In “best practice” states such as Great Britain, Denmark and the Netherlands state funded legal advice and representation will be forthcoming at this stage if the person detained has no means to pay a lawyer. Without some form of duty solicitor scheme this is unlikely to be logistically feasible. e.g. In the Irish Republic, where there does not appear to be a duty solicitors scheme, a lawyer may sometimes be available and will operate under a post facto legal aid authorisation though this is not a rule.

27. **Interpretation and translation.** There is general agreement by “best practice” countries that there must be a right to be assisted from the outset by the services of a competent interpreter. In other countries it is commonplace for incompetent, ill-prepared or poorly skilled

interpreters to be provided. It is paramount for the accused in a foreign jurisdiction to have direct and full knowledge of the charges to enable him to mount an effective defence. Furthermore, it is not sufficient for an accused to have verbal interpretation only of the indictment. If there is any risk of the accused being put at a disadvantage he must be provided with a written translation of the indictment in a language which he understands and all statements should be tape recorded in both languages for verification in case of doubt.

European Convention of Human Rights.

28. Signed in 1950, and having come into force in 1953, the European Convention for the protection of Human Rights and Fundamental Freedoms (ECHR) is our regional human rights treaty and all current members of the Community have ratified it. The standards of the European Convention are currently the benchmark for judicial standards within the Union.

29. One of the main problems in considering the Convention is that adjudged by “best practice” there are also basic shortcomings in the standards set by articles 5 and 6 of the convention even after taking due account of the decisions of the court.

30. **State funded legal representation** Article 6 limits the scope of the right to a lawyer, in general, to the trial and preparation for it. There is a right to (6b) “adequate time and facilities for the preparation of the defence” and to (6d) “obtain witnesses and cross-examine the prosecution witnesses during the legal process” (though not necessarily at trial).

31. All citizens also have a right to Legal Aid if they cannot afford a lawyer and are facing serious criminal offences. Under Article 6(3) of the Convention everyone charged with a criminal offence has the following rights ‘to be given it (legal assistance) free when the interests of justice require....’

32. Other sections of the article and decisions by the European Court of Human Rights lay down the standards required. Legal Aid must be “ practical and effective” and not merely “theoretical or illusory” and where the Legal Aid lawyer proves incompetent or for any other reason incapable of carrying out an adequate defence, the authorities should intervene. (Article v Italy).

33. **Interpretation and translation.** Article 6 (3) provides that anyone charged with a criminal offence has the right, inter alia, “to be informed properly in a language which he understands and in detail, of the nature and cause of the accusation against him ” and “To have the free assistance of an interpreter if he cannot understand or speak the language used in court.”

34. A decision of the European Court of Human Rights (*Kamasinski v Austria*) related specifically to the provision of court interpretation services. It emphasises that all written documents, including statements of evidence, necessary to the defendant in putting his case adequately before the court should be translated. It also states that the provision of an interpreter alone is not enough. Those providing the service are responsible for the standard and competence of the interpreter. It is now ten years since that decision was delivered. The standards that it demands are ignored throughout the Union save in the “best practice” countries. We have yet to be consulted in a case in France or Spain where the stipulations as to translation of documents have been observed.

Mediterranean

35. We are particularly concerned that in countries bordering the Mediterranean (Greece, Italy, Portugal and Spain) the provision of competent state financed lawyers and appropriate interpretation services to citizens in serious trouble with the law would appear to be the exception rather than the rule.

36. **State funded legal representation.** The main continuously funded project of the trust has been a closely interlinked data bank and Europeanisation project designed to locate competent criminal lawyers with languages throughout the European Union. By March 1998, a correspondent and representative network of 600 lawyers had been achieved with some presence in every country of the Union. Much general information has been gained on Legal Aid systems from the specially designed questionnaire employed. In Northern European countries such as U.K and Germany those who have a dedicated Legal Aid practice are in the majority (70% and 67% respectively). In the Mediterranean countries this is unknown for experienced lawyers. In these states Legal Aid rates of pay are so low, if available, that only inexperienced lawyers will conduct cases.

37. **Interpretation and translation** Our own survey Communication within the Legal Process, a report on interpreting and translation in the courts of Europe, sets out the findings of an 18-month survey across 5 representative countries of the European Union. The survey was required to establish how communication is handled by the courts and investigating authorities when one or more parties are not native speakers. The guiding principle was the degree of access to justice without discrimination against non-native citizens. The general results were more disturbing than anticipated. Pay for interpreters working in the highly specialised arena of the courtroom is, in general so low that only the very dedicated or the untrained will present themselves for work. In Mediterranean countries appropriate training courses for legal interpreters are non-existent.

The Need for an effective charter

38. The European Legal Space is a creature of the successive treaties Rome, Maastricht and Amsterdam that have created the present parameters of the European Union. As such it is subject to the built in limitations of those treaties, the principles of sovereignty and subsidiarity as expounded through the treaties and the various European Councils.

39. We would argue that fundamental freedoms and human rights are not subject to these constraints and indeed the measures required to ensure that the citizen has adequate protection against abuse cannot be formulated within them. The abusers of fundamental rights are, in general, public servants of the sovereign national state utilising powers entrusted to them. It is surely for this reason that the appropriate international instruments of human rights and fundamental freedoms, once ratified, carry supranational authority and have embodied within their systems international tribunals to adjudicate on what is essentially state misconduct against individuals.

40. One of the essential questions for the Community is whether the local current standards and enforcement system in the fields of fundamental rights are adequate not only for the immediate present but for the foreseeable future. In other words does the European

Convention of Human Rights and the machinery provided by the European Court of Human Rights provide effective protection to the citizen in general “best practice” terms within the Union? We have already illustrated in some detail the variable geometry of national standards in the fundamental rights to legal representation and interpretation and it is clear that the European Convention of Human Rights does not represent an adequate standard for the Union.

41. Further, the question of equality before the law for citizens within the Union cannot essentially be tackled without some sort of declaration coupled with an enforcement procedure and this too is argues for the need for an effective Charter.

42. By 2010, we are likely to increase the membership of the Union by 12 nation states mainly from Central and Eastern Europe. The trusts casework experience of a number of these nations demonstrates virtual non recognition of fundamental rights to justice in most of these nations court systems. They are all members of the European Council and subject to the jurisdiction of the European Court of Human Rights. We cannot foresee improvement within a generation unless the citizens of these states have an unfettered right to make direct appeal to a new effective system under the Charter.

Some essential Characteristics of an effective Charter

43. We have already remarked that the trust is essentially a practitioners organisation and would not presume to give evidence outside its sphere of competence. It is not for us to give advice on the clauses or indeed the wording of the proposed charter. Our concern is with the practical effectiveness of the Charter and its enforcement mechanism in ensuring that the citizens fundamental rights are protected

The Charter as a development in international law .

44. We consider it important that the Charter be considered as the latest in a line of international instruments giving ever more detailed protection to the citizen involved in the determination of criminal accusations against him from investigation to completion of the trial process. We illustrate this by way of the provisions in international instruments for the protection of the citizen in the process of arrest and detention. A similar exercise, with the same result, could be performed for the trial process

45. **The Universal Declaration of Human Rights.** The Universal Declaration of Human Rights came into force in 1948. One of the foundation documents of the United Nations, it is considered generally applicable to the conduct of all nation states. It contains articles on arrest, detention and fair trial. **Article 9** states “No one shall be subjected to arbitrary arrest or detention.”

46. **The International Covenant On Civil and Political Rights** Adopted by UN general assembly 1966 and came into force 1976. This covenant is a formal legal agreement which recognises in more detail the fundamental rights and freedoms set out in the Universal Declaration of Human rights. For example the provisions on arrest and detention. **Article 9.1** No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law. **Article 9.2** Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him. **Article 9.3** Anyone arrested or detained on a criminal charge shall be brought

promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement. **Article 9.4** Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

47. The Principles for the Protection of all Persons Under Any Form of Detection or Imprisonment. This U.N resolution has already been referred to (paragraph 12) These principles go into far more detail on protection than the ICCPR. e.g. Principle 12 gives detailed requirements for recording the circumstances of arrest , consequent detention and the duty to communicate these records in writing to the arrested citizen and his legal representative.

48. Similar protective codes covering the same ground have been adopted on a national level within the Union. The Criminal Evidence Act in England and Wales has its equivalent in other “Best Practice” countries.

The relationship between Charter and Convention

49. We would assert that possible conflict between rights to apply to Luxembourg (Charter) and Strasbourg (Convention) are more apparent than real. It is not generally realised that coterminous Jurisdictions already exist in states of the European Union and the aggrieved accused has the choice between pursuing his remedies in Strasbourg or in Geneva under the provisions of the ICCPR before the UN commission for Human Rights.

50. The citizen is on election and confined to pursuing his remedies in only one of the fora. We would assume that such rules would also apply to the Charter.

Enforcing Rights under the Charter

51. Without effective mechanisms for adjudicating citizens grievances and supplying appropriate remedies the charter will become a mere declaration of moral principle. The European Court of Human Rights has now been in existence for 45 years and provides useful guidance to those considering the characteristics required by the machinery of court adjudication and enforcement of rights granted under the Charter. Problems that have not been solved by the ECHR that require attention include the following:

52. Initiating proceedings. In “Best Practice” countries abuse of fundamental freedoms are almost invariably resolved in domestic courts and within their appellate structures. However outside this group such problems cannot be safely left to the domestic structures. E.g. We have had several cases in France where persons who at worst might have been involved as minor soft drug couriers were held incommunicado from their spouses and nearest family for several months (in one case 15 months) despite appeals and contrary to the conventions on family life. In candidate nations such as Bulgaria abuse of basic rights to fair trial are commonplace for native and foreigner alike and the appellate system does not assist.

53. Further, the obligation to exhaust all domestic remedies before cases can be considered by the European Court of Human Rights, whilst administratively convenient, has often caused intolerable delay to the victimised and added unnecessary months and years of imprisonment. For example, the recent case of *Venables and Thompson v The United Kingdom* was adjudicated upon eight years after the original incident and some seven years after the original trial

54. It is for these reasons that citizen must be allowed direct access to the court (which we assume to be the European Court of Justice) provided he has shown a suitable prima facie case and he is short of an effective remedy. There will be a need for a filter to prevent frivolous or vexatious cases clogging up the court procedure. One solution to give effective remedies at national level might be to create a special court to consider complaints by aggrieved citizens under the Charter but this is dependent on the willingness of the nation state concerned to incorporate the Charter as part of national law. Since the European Court of Justice has to cope with these problems anyway it is again worth building on experience.

Powers of the court

55. **Injunctive relief.** A suitable fast track procedure must be available for appropriate cases of urgency. Decisions made by the ECHR on such topics as trial delay and provisional liberty do not provide effective relief for the individual concerned.

56. **Declaratory powers.** In cases which may require changes of law enforcement or trial procedure, whether in a particular state, a number of states or throughout the Union, a mechanism should be formulated for the monitoring of such changes with penalties for non compliance; presumably via an appropriate European institution. This is of course an automatic consequence of decisions by the European Court of Justice.

The aftermath of the decision in *Kamasinski v Austria* (Paragraph. 33) may be considered typical of the state of affairs under the European Convention. As a result of the case, which should have promoted rapid and effective changes in legal interpretation and translation procedures and practice throughout Europe, the effect was limited. Austria took steps to comply with the ruling. The Netherlands took steps to investigate whether changes in their practice were required. Certain northern European countries were already complying with the standards. The great majority of Council members have not complied.

EQUALITY BEFORE THE LAW

57. We have already stated that the Charter requires a declaration that all sojourners must be treated as equal before the law in national legal systems. Such a declaration will have the effect of the outlawing of discriminatory practices. Some examples of current discriminatory practices brought to our attention are:-

- Refusal of provisional liberty on the grounds of “lack of community ties” where the citizen is arrested outside his own country.

- Inadequate interpretation or translation facilities handicapping those who are not familiar with the native language.
- Trials in absentia of citizens from other Union countries.

CONCLUSIONS

The need for a Charter

1. For the past 45 Years. There has been a consensus that Europe needs a “charter” of fundamental rights together with adjudication and enforcement mechanisms. The European Convention of Human Rights and its mechanisms is the current response to this demand. What we attempt to demonstrate in our evidence is that in relation to the administration of Justice it is wholly inadequate.

2. We have considered at some length (paragraphs 28-37) the current standards set by the European Convention of Human Rights to two vital fundamental rights: that of effective legal advice and representation for the indigent and the provision of interpretation and translation services to the accused and court. It is clear that the standards set by the ECHR in these fields are obsolescent. Crucially, (Paragraph 17) there is as yet no general standard that the majority of the states of the Union, including the United Kingdom, consider adequate for their own citizens within their own geographical boundaries: it is to the Charter that one must look for the creation of such a standard. The Union has a pressing need for a modern and effective Charter.

3. Further, (Paragraph 41) the question of equality before the law for citizens within the Union cannot essentially be tackled without some sort of declaration coupled with an enforcement procedure and this too argues for the need for an effective Charter.

4. We believe that subsidiarity and sovereignty have no role to play in the scope and application of fundamental individual rights. Indeed they are restricting factors. “Subsidiarity” is for example perhaps the rationale behind the requirement that applicants to the European Court of Human Rights must have exhausted all local remedies as a precondition for their application: it weakens the effectiveness of the court (Paragraph 53). “Sovereignty” is the classic defence of governments throughout the ages against any outside interference with governmental abuse of the fundamental rights of their own natives.

The status of the Charter

5. Unless the Charter has substantive legal effect many citizens will not enjoy the fundamental freedoms to the standard they expect in their native lands when they travel to other parts of the Union.

6. We consider that the Charter requires a separate Treaty of equivalent status to the ECHR and ICCPR. We have discussed (Paragraphs 38,39) the limitations imposed by the fundamental Treaties of the Union not least the principles of sovereignty and subsidiarity as expounded through the Treaties and the various European Councils. Again, we would argue that fundamental freedoms and human rights are not subject to these constraints and indeed the measures required to ensure that the citizen has adequate protection against abuse cannot be formulated within them.

7. We have discussed the shortcomings of current mechanisms of enforcement under ECHR and the Court of Human Rights Justice (Paragraphs 52-56.). The “Charter court” must be of necessity the Court of Justice. We consider the arguments for individual direct access to the courts to be compelling (paragraphs 52-54). We would hope that the incorporation of

Charter provisions within National legal systems would follow the precedent set by the pattern of incorporation of the European Convention of Human Rights and thereby take some of the burden off the Court of Justice. Indeed we have made a suggestion that special National courts might be considered (Paragraph 54). We see no real conflict or concern with coterminous jurisdiction with the European Court of Human Rights at Strasbourg (Paragraph 49,50).

The scope of the Charter

8.The Charter should impose obligations on all national governments and European institutions. .The fundamental freedoms with regard to due process should apply to all sojourners (citizens, immigrants and visitors alike). We should emphasise here that whilst one recognises there will be sections of the Charter that only apply to rights of citizens (freedom of movement, residence and rights to work) the rights to Fair Trial cannot be so confined. We are unaware of anywhere in the civilised world where a two tier system of criminal justice is countenanced (Paragraph 14.)

The content of the Charter.

9.The trust is a practitioners organisation utilising international treaty law in the specialist sector of the administration of criminal justice. Our observations should be considered as directly applicable to our sphere of competence, though they may have more general implications for the content of the new Charter and its enforcement machinery.

10.However, with regard to “Due Process” problems and on examination of the Cologne Councils catalogue of derivative sources, we would argue that it is from the “rights derived from the constitutional traditions of the (Best Practice) member states” that the provisions of the Treaty we consider desirable can be evolved.

11.Having particular regard to the stasis in development of standards under the ECHR and the enormous practical difficulties of modernisation through protocol we would particularly encourage the concept of the charter as a living document with sufficient flexibility to change with the times.

12.A possible model for this approach in the field of due process would be the incorporation of a code of principles and conduct similar in kind to the U.N 1988 resolution on principles for the protection of all persons under any form of detection or imprisonment. Some States already have such codes in whole or in part, including the United kingdom.

13. Advancing standards in the development of state funded legal representation and professional standards in legal interpretation and translation as well as such technological developments as mechanical recording of law enforcement interviewing and evidence by close circuit television could then be incorporated as they arise.

Stephen Jakobi, January 2000.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 21 January 2000**CHARTE 4110/00****CONTRIB 8****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find enclosed the report "Property rights within european law" by the European Landowners Organisation (ELO)¹.

¹ This text has been submitted in French and English language.

European

ELO 3/99

Landowners

Organisation

PROPERTY RIGHTS WITHIN EUROPEAN LAW

1. INTRODUCTION

The development of property rights is a cornerstone of our cultural, political, economic and social system. Securing property rights and ensuring they work smoothly is a necessity which reflects the general interest. The Union has a role to play in this.

- 1.1 While property rights constitute an essential pillar of the common market, article 222 of the Treaty of Rome strangely leaves each member state the care to regulate it; "This Treaty shall in no way prejudice the rules in member states governing the system of property ownership."

The contents of article 222 of the EEC Treaty result from the will of member states to continue to decide alone the nationalisation of their private companies and the privatisation of their public companies. This legal vacuum within the Treaty of Rome has forced the court in Luxembourg to develop a jurisprudence in matters relating to the protection of property rights which is inspired in part from the judgements of the European Court of Human rights, in Strasbourg because article 222 does in no way contradict the development of a European property right.

- 1.2. The European Court of Justice in Luxembourg has only very progressively been brought to state that, since it had been entrusted with upholding the law, it had to scrutinise the fundamental rights recognised and guaranteed by the constitutions of the member states.

Thanks to this jurisprudence, the Court of Justice has taken several important steps with regard to the protection of property rights, thereby underlining the ambiguity of the Treaty.

Thus the Hauer Ruling, made in 1979, specifies that restrictions based on the general interest should not go further than needed, and should not touch the substance of property rights. In 1989 the Court went even further in the Wachauf case, which stated that when the infringement of property rights is too important, financial compensation must be paid.

In so doing, the European Court in Luxembourg offered what can be called a "minimum standard of protection".

- 1.3. The European Court of Human Rights in Strasbourg has approached the issue of property rights from a somewhat different angle. Whereas the Court in Luxembourg continues to interpret property rights as a fundamental principle of the organisation of the common market, the Strasbourg Court sees it as a fundamental right for the individual.
- 1.4. Finally, the Amsterdam Treaty offers the prospect of new developments. The EU in this Treaty commits itself to take into account the European Convention of Human Rights and, consequently, property rights.

However, article 164 of the Treaty of Rome specifies that the Court of Justice (in Luxembourg) shall ensure that, in the interpretation and application of this Treaty, the law is observed. The Court should thus be brought to ensure the implementation of the principles of the European Convention. It is not impossible that in the future we will see a competition between the two Courts with regard to the implementation of the Convention.

2. CURRENT SITUATION

A. DISTORTIONS IN COMPETITION

- 2.1 Articles 222 and 164 of the Treaty of Rome, completed by article 6-1 of the EU Treaty. (F and F1 of the Amsterdam Treaty) provide some necessary guarantees in relation to human rights, and thus to the recognition of property rights. Their lack of coherence underlines the extent to which property rights are not managed as a simple clear and uniform concept in European law.

European law is economic in nature, and thus is essentially preoccupied with the regulation of market practices, forgetting that owners of means of production – whatever these are – lie behind the market. European law can thus be compared to a cathedral builder who, faced with the magnitude of his achievements, and out of breath, is not able to install at its summit the keystone; as long as this is not done, the whole construction is in danger.

- 2.2 Some will state rightly that according to the Treaty of Rome property rights are, through subsidiarity, to be dealt with by the member state. The experience to date demonstrates that even if this initial concept is coherent, this situation generates not only a failure to take into account property rights but moreover is the source of distortions in competition such as defined by articles 85 and 86 of the Treaty.

While the intention is to build the Union, freedom has been left to each member state through article 222 of the Treaty to build its own system on bases which are sometimes very different. At the same time, owners and economic actors have to implement the competition rules outlined in articles 85 and 86.

B. SUBSIDIARITY

- 2.3 The Maastricht Treaty setting up subsidiarity leaves the door open to widely different methods of implementation of community regulations by the member states.
- 2.4 The main criticism made with regard to the protection of property as currently defined is that the various impacts which European directives have on property rights are not examined in sufficient depth, and fail to consider the situation as whole. These various impacts on property may be acceptable taken separately, but accumulated constraints often create an unbearable load. Everyone knows that, in Lilliput, Gulliver was not held down by a thick rope but by many very thin ropes. Does the same not apply to the landowner who, because of the many rural and environmental regulations he needs to respect, finds himself trapped in a system which deprives him of his freedom? The strength of this comparison does not rest only in the image of the very thin ropes, but equally in the

fact that Gulliver could be trapped because he was deeply asleep. Democratic freedom needs the participation of everyone in order not to fall asleep.

These "ropes" notably arise from the limitations deriving from the CAP (e.g. production quotas) from the EC's initiatives on environmental protection based on articles 130R and S of the Treaty, and very soon perhaps from the Community's initiatives on environmental liability, etc.

3. EXAMPLES

3.1 CAP Measures

The nature of CAP is market intervention with the allocation of rights, duties and subsidies to producers, not the property owners. The quota systems imposed have had significant impact. An example can be found in the application in the UK of the Sheep Annual Premium and Suckler Cow Premium Quota Regulations (No. 3567/92 and 3886/92). By allocating premium rights to producers with the option of trading them away from the holding, the owners' asset, as represented in the value of the land, is diminished. A challenge was made to certain articles of this regulation at the European Court of Justice (case C-38/94). The outcome was not satisfactory from the owners' view. The arguments were mainly on the legal meaning of articles that were intended to compensate owners for loss but in practice failed to do so. The point remains, that despite protestation to the contrary, the European Union does impose regulation that has a direct and negative impact on owners' rights in property. In this particular case, where there is no alternative enterprise choice to sheep farming in the hills, the transfer away from the land of quota rights by a tenant leaves the owner with a reduced asset value – his land – usually in favour of another owner of land.

Through subsidiarity, a margin of manoeuvre is given to member states to implement European regulation. This leads to situations in which European citizens in the same situation are treated unequally, depending on their geographical location. Thus, as we have just mentioned, British landowners receive no compensation for the loss and value of the land when the tenant farmer sells sheep premium rights away from the holding. On the other hand, in the Netherlands, when dairy quota are sold the tenant and the landowner share the proceeds of the sale.

In the same vein, member states have taken measures to implement European regulations on ceasing dairy production (Regulations 1336/86 and 2321/86). For instance, France have adopted implementation decrees regarding grants to producers who undertake to abandon definitively dairy production, and this without any consultation of the landowner or any compensation for the loss of value of the holding. However, as in the United Kingdom where, for topographic reasons only sheep can graze on the hills, some regions in France can only produce milk or meat. In the case of dairy production, taking away what has in practice become a right to produce, amounts to removing the only possible agricultural production on certain soils and consequently the income and profits which can be derived from them. The unavoidable consequence of this is the loss of value of the holding, which is borne by the landowner alone, regardless of the fact that he will no longer be able to rent his land or farm it directly.

3.2 Environmental Liability (Draft White Paper)

The aspect of this proposed European legislation that gives us most concern is the further EU erosion of private property rights by adding layers of negative regulation to existing Member State laws. All the independent evidence, both legal and economic, has demonstrated that there is no case for EU harmonisation in terms of further legislation.

We are concerned particularly about the proposal to give NGOs the powers (and taxpayer funds) to bring cases against owners and Member State regulating authorities. In all the member states, provision exists to sue others for actions of negligence and nuisance. The problems related to the unowned environment are dealt with by existing state regulatory authorities. Extending such powers to unelected organisations is an unjustifiable attack on the interests of property owners. It is against the public interest and contrary to the Western democratic systems.

Landowners in particular are concerned by this draft directive because of the responsibilities that may be imposed on them in the future while they will not necessarily have polluted the land themselves.

Two explicit examples can be used to illustrate this:

- Inputs spread on agricultural land. Landowners who do not farm the land (notably in France and Belgium) are refused by law (national law) the possibility to accept or refuse the spreading of inputs considered as potentially dangerous on their land, because the law states that this is a normal management act undertaken by the farmer. It is quite likely that a few years hence, acting in implementation of the environmental liability directive and certainly other regulations, the criteria determining dangerous levels of certain inputs will have been modified in line with changing scientific knowledge. It is landowners who will be held responsible for pollutions (on land and outputs) and who in any case will have to bear the consequences, in the shape of lost revenues because agricultural production will no longer be allowed on the land, an obligation to decontaminate the land and the loss of value of the asset or even its negative value.
- GMOs (genetically modified organisms): dangers of contamination exist there too: contamination of the soils, cross pollinisation to other crops, land being declared unfit for agricultural production, etc.

3.3. Habitats Directive – Natura 2000 (Directive 92/43/EEC)

This Directive which imposes land-use designation on private sites throughout the European Union causes much concern to landowners. There has been a failure by the Commission to consult adequately with landowners throughout the process. This is also true of many member states (one exception being Sweden). The recent activity of NGOs submitting additional "shadow lists" to the Commission is adding to the perception that the Commission are involved in a process of European State nationalisation of the use of private land.

The whole process has been badly managed by the Commission. They have failed to understand that they cannot simply draw lines on maps throughout Europe to define protected areas, and demand prescriptive land management practices without thought to the impact on private interests, and the expertise and resources needed to fulfil the objectives of the designation.

Our criticism is that private property rights have been, and continue to be ignored.

Subsidiarity also means that a great degree of freedom is left to member states to implement the Natura 2000 network. Disparities and ultimately distortions of competition can be observed. Sweden for instance has a legislation providing compensation for landowners who will accept to bring their holding within the Natura 2000 network and will consequently have to accept constraints to reach the stated objectives. However, in other member states, large areas have been designated sometimes without even consulting the main parties concerned by this classification, and with no plan to compensate them. Although costs may

have been evaluated, funding mechanisms have still not been set up.

This has very important consequences for landowners as they are the only ones who will have to bear these constraints in the general interest. For instance French tribunals have refused to compensate fish farmers whose production has been eaten by cormorants, a species protected by the Birds directive, and who have caused damages estimated at the time to more than 6 million French francs. This protection, which derives directly from the implementation of the Birds directive, does not take into account the legitimate interests of individuals. Another example is the implementation of the same directives in the Flemish region of Belgium, which completely bans the shooting of water-fowl on some of its territory, whereas other member states do not forbid it (is the Birds directive limited only to the Flemish region?). Individuals have seen the income from their mostly marshy land vanish, and can no longer afford its maintenance and management with a view to accommodating waterfowl. No compensation has been planned to make good the loss of income as well as the loss of value of the holding, as the Flemish authorities justify their action by the obligation they have to transpose the Birds directive into national legislation.

Must subsidiarity degenerate into a series of measures resulting in unequal treatment of European citizens? The losses then take place in a complete legal vacuum, where European regulations are adopted without the slightest care for the fundamental rights of citizens, and without any control.

The consequence of this is that many owners of marshy land in the Flemish region, who were interested in shooting, have no longer provided any irrigation, and the wetlands have reverted to scrub, with a much lower biodiversity value.

3.4 Nitrates Directive

There are many aspects about this Directive that give rise to concern to landowners – not the least the weakness of the public health case that underpins it. But the point that we make, in the context of this paper, is its effect on the owner's choice of land-use activity.

The implementation of the Directive has meant that for owners within Nitrates Vulnerable Zones, they are denied the freedom of enterprise choice. In many cases, this has resulted in reduced income or increased cost without compensation. In the UK, before the implementation of this directive, owners in Nitrates Sensitive Areas were compensated for losses due to change in land-use practice, and it was on a voluntary basis (but very well supported). The EU Directive has effectively removed entirely an appropriate voluntary provision with an expropriation of property rights without compensation.

Another example is that of the implementation of this Directive in the Flemish region. Some zones have been classified as vulnerable, with an obligation to implement the "zero fertilizer" rule, or to only keep two heads of livestock per hectare. In such conditions, agricultural holdings are no longer profitable, and from 2003 will disappear. Once again, this sort of regulation takes no account of the legitimate interest of the parties, and no compensation is planned for losses in income and in asset value. The Flemish region had taken measures with regard to compensation in its decrees on farmyard manure in 1995 and 1999. These measures are currently being contested by the Commission, which among other reasons refuses to endorse a payment of compensation for loss in asset value because it alleges that there has been no such loss.

However, the refusal to grant such compensation creates distortions in competition and discriminates between landowners who have to implement such measures and the others who do not have to, as can be seen in other EU countries.

The only motivation for the decree on farmyard manure taken by the Flemish region is to

reach the objectives defined in the Directive. If it didn't do this, it would be put in the docks by the Commission (which is anyway what has happened) and could be condemned by the European Court of Justice. National regulation is adopted only because member states are obliged to transpose European Directives to reach their objectives by all useful means.

On the one hand European institutions shelter behind the principle of subsidiarity to avoid having to take the burden of implementing regulations, and argue that it is up to member states to take responsibility for the laws and decrees they adopt. "The Commission notes that changes concerning the relative value of land in wetlands, natural zones and other regions in Flanders are due to the legislation adopted by the Belgium authorities with a view to fulfilling their obligations in the framework of the Nitrates Directive" (In: invitation to submit observations concerning subsidy C12/99-199/c-129/02;1 – page 8).

How can the affected owners get recognition of their fundamental rights as recognised by article F of the Amsterdam Treaty? There is a complete legal vacuum here which ignores the fundamental rights of European citizens and is contrary to the principle of an EU based on law. In this specific case, article 11 of the Belgian Constitution is blocked by the ban set by the Commission to give fair and prior compensation because, according to the Commission, this indemnity constitutes a distortion in competition.

4. **GENERAL PRINCIPLES OF ARTICLE 164 OF THE TREATY OF ROME**

Article 164 of the Treaty of Rome was used by the Court in Luxembourg to derive general principles which, once again, underline the lack of coherent treatment of this subject.

Developments in the jurisprudence of the Court of justice in Luxembourg on the protection of property rights were made possible by the interpretation given by the Court to article 164 of the Treaty. This article specifies that "The Court of justice shall ensure that in the interpretation and application of this Treaty the law is observed". Progressively however, the Court has been brought to declare that the respect of the law meant the respect of the fundamental rights recognised and guaranteed by the constitutions of the Member State.

In the Nold Ruling of 14 May 1974 (Rec.1974,481) the Court recognises property rights as a fundamental right, protected by Community law. The Court refers to the international instruments which member states have adopted or simply cooperate with and state that the Court "was under the obligation to draw its inspiration from the common constitutional traditions of the member states. Finally the ruling contains a new statement according to which the Court could not, therefore, admit measures incompatible with the fundamental rights recognised and guaranteed by the constitutions" of the member states.

The Hauer ruling of 13 December 1979 (REC.1979,3727) constitutes a decisive step in the evolution of the Court's jurisprudence with regard to the protection of property rights. The case concerned a German landowner, Mrs Liselotte Hauer, who wanted to plant vineyards on her land and whose request to do so was refused, notably because of Regulation 1162/76 EEC forbidding the planting of new vineyards during a certain period. For the first time, the Court quoted Article 1 of the First supplemental protocol of the Convention for the protection of human rights and interpreted as if it were a part of European Union legislation.

The Court used the principle of proportionality as a basic principle for the protection of property. The ruling stated that restrictions based on the general interest should go no further than needed, and should not touch the substance of property rights. *The Hauer* ruling is remarkable because of the new principles it sets down, but unfortunately can be criticised for the way in which it implements these principles in practice.

The Court makes a distinction between what constitutes a taking and what constitutes

regulation of usage. In this specific case the Court decided that the restriction did not constitute a taking as the owner could still use her land in other ways.

But how many uses are there? Does not a ban on planting vineyard on sloping land constitute a huge loss? What other uses are there for this land? At the very least the Court should have done what it decided later in the Wachauf case (ruling of 13 July 1989.REC.1989.2633). The Court considered in this ruling that a substantial limitation to the uses of a good had to be compensated financially. Following these developments in the jurisprudence of the Court of Justice, it is today recognised that there is a minimum protection of property rights within the European Union.

5. **ARTICLE 1 OF THE SUPPLEMENTAL PROTOCOL TO THE CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL LIBERTIES**

Article 1 states that any physical or moral person has a right to property protection. Nobody may have his property taken except for public interest purposes and pursuant to generally accepted international principles of law. It also states that these provisions do not limit the right of the state to put forward any legislation they consider necessary to regulate property use in the general interest or to ensure the payment of taxes or other contributions or fines. The European Court of Human Rights in Strasbourg has produced an abundant jurisprudence concerning the protection of property rights and the interpretation of article 1 of the first supplemental protocol which however doesn't give enough protection. One example of this is the famous *Sporrong et Lönnroth* Ruling of 23 September 1982 against the Swedish State. Land belonging to the couple *Sporrong Lönnroth* had been frozen for 23 years by a threat of expropriation. In its ruling, the Court considered that, in the absence of a formal expropriation, it had to look beyond appearances and analyse the reality of the case (ruling paragraph 63) in order to determine whether a fair balance was maintained between the requirements of the general interest of the community and the imperatives of the protection of the fundamental rights of the individual (ruling paragraph 69.2) and this even though the delivery and renewal of the expropriation permits respected Swedish law. (Ruling paras 67.3 and 68).

In other terms, the authorities cannot abuse the right they have to "freeze" the normal use of property during a period exceeding the necessary delay to conduct a feasibility study for the work envisaged. Upon the expiry of this period, the public authority must either proceed with the expropriations and give to those who have been expropriated the "fair indemnity" planned by the law or give up the project, or maintain the project and indemnify the landowner for the losses incurred by the freeze being extended beyond a reasonable period. Unfortunately one must remember that most citizens are unable to afford the luxury of such an appeal: the required budgets mean that justice becomes a class justice.

If European law was clear on these matters, a citizen would only need to appeal to its national jurisdiction.

6. **THE EU'S CALLING TO PROTECT FUNDAMENTAL RIGHTS**

The transformation of the EEC into a European Union, as well as the signing of the Amsterdam Treaty have deeply altered the initial concept that the EEC had no interest in fundamental rights to the extent that, today, it seems to be one of the requirements of the Union to respect them.

If this requirement were only skin-deep, and if, in reality, the protection of fundamental rights were viewed as a constraint imposed on the Union, there is then a risk that the Union will contribute to restrict these rights rather than develop them.

The Union does not have the option to select between different fundamental rights as, by

their very essence, the international community has recognised their indivisibility. 8

The Treaty on European Union (Article 6.1) specifies that : «The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law».

Beyond a simple reminder of fundamental rights, the vocation to protect them also implies securing their development. This means, by implication, that the European legislator will no longer be able to leave property rights to the subsidiarity of Member States.

There is a need to become aware that the general assertion of the principle of respect of fundamental rights has a much greater scope than the recognition of certain rights which are precisely defined within the body of the treaty itself.

This reminder of fundamental rights contributes to assimilating the text of the Treaty to a real Constitution. A Constitution is increasingly defined today as a text which not only organises the relationship between public bodies but more importantly proclaims the rights and liberties of individuals, with a guaranteed legal sanction.

7. PERSPECTIVES AND SUGGESTIONS

To get out of this dead-end, the objective must be the explicit recognition by Community law of the fundamental role played by property rights also in the organisation of the single market. Article 222 must be strengthened and the Treaty must include, on the one hand the protection of property rights and, on the other hand the associated right to a full compensation in case of expropriation or in case of an abusive limitation of the use of the asset.

In this process, two avenues are worth exploring.

A. Coherence

It is vital that the national legislation which define the use of property rights and especially those that restrict its use, are coherent.

This does not mean that legislation must be harmonised but that the underlying concept of compensation be applied as an integrated element in the protection of property rights throughout the Union.

Because of the single market, the distortions between national legislation on matters such as expropriation, protection of the environment, agricultural policy, national and regional development, etc. must be avoided in order to ensure an "equal treatment".

B. Motivation and evaluation of the cost of restrictive measures

Another avenue which could be explored is the setting up of an obligation to motivate measures restricting property rights. This obligation should bear not only on the usefulness of the proposed measure, but equally on its cost. It would entail, prior to certain regulations, to request an impact assessment study and to calculate notably the costs and reductions in value that this or that measure would impose on owners. This obligation to motivate and to calculate the impact on landholdings has been in force in the United States for more than ten years

An increased protection of the environment must go hand in hand with a strengthening of the protection of property in order to ensure a positive co-operation of the owner in the interest of public interest. The protection of property rights in the European Union must evolve and go beyond the existing framework of the jurisprudence of the Court in Luxembourg. The objective to reach – based on article 1 of the first supplemental protocol of the Convention for the protection of human rights – is a modification of article 222 of the Treaty of Rome with the objective including property rights among the fundamental rights of community law. Failing that change to the Treaty, an appropriate use of existing Community instruments could result in a noticeable improvement of the protection of property at European level. This would constitute a step forward in the search for an integration of property rights on the one hand and economic, social, and environmental policies, on the other hand.

Even though all the attacks on property rights originate, through subsidiarity, in member state legislation, they are still due each time to Community regulations. It is the legal vacuum of article 222 and the principle of subsidiarity which have harmful consequences for property rights.

The wide variety in the rulings of the Court of Justice and the lack of coherent jurisprudence clearly demonstrate that these problems derive from the Treaty, while the Court of Human Rights is more coherent.

For the ELO, the new Intergovernmental Conference and the drafting of a charter on fundamental rights are an occasion to fill once and for all this legal vacuum.

As fundamental rights are indivisible, it will no longer be possible to avoid this debate.

ELO POLICY GROUP
05 October 1999
A0842434

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DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

**Brussels, 27 January 2000 (28.01)
(OR. f)****CHARTE 4113/00****CONTRIB 9****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find attached the draft Opinion of the Committee of the Regions.

COM-Inst.Aff./008

Brussels, 25 November 1999

DRAFT OPINION
of the Committee of the Regions
on the
European Charter of Fundamental Rights

Rapporteurs: **Mr Bore** (UK, PSE) and **Mrs du Granrut** (F, EPP)

N.B.: This document will be discussed at the next plenary session on 16 and 17 February 2000. The Bureau's standing orders regarding the tabling of amendments (Rule 8.4) specify that amendments must reach the general secretariat not later than three working days before the opening of the plenary session, which in this case means by **5 p.m.** (Brussels time) **on 11 February** (fax: + 32 2 282 23 26). They must be submitted in writing and bear the names of the members sponsoring the amendment.

DOCUMENT SUBMITTED FOR TRANSLATION: 22 November 1999

The Committee of the Regions,

HAVING REGARD TO the decision of the Bureau of 15 September 1999 to draw up, in accordance with the fifth paragraph of Article 265 of the Treaty establishing the European Community, an opinion on the subject, and to instruct the Commission for Institutional Affairs to prepare the Committee's work on the subject;

HAVING REGARD TO the draft opinion adopted by the Commission for Institutional Affairs on 27 October 1999 (rapporteurs: **Mr Bore** (UK, PSE) and **Mrs du Granrut** (F, PPE));

WHEREAS the European Council feels there is a need, at the present stage in the development of the Union, to establish a European Charter of Fundamental Rights (Annex IV of the Presidency Conclusions of the Cologne European Council on 3 and 4 June 1999),

adopted the following opinion at its ... plenary session of ... (meeting of ...):

1. General comments

1.1. The Committee of the Regions has always stressed the need to strengthen citizenship and participatory democracy in the European Union, and the importance of formulating the rights of European citizens to attain this objective; it takes the view that, as the representative of regional and local authorities - the bodies which are closest to the citizens - and as the guarantor of the subsidiarity principle, it should make its contribution to drawing up the Charter of Fundamental Rights of the citizens of the European Union.

1.2. Basic rights constitute the bedrock of a society based on the principles of liberty, democracy, respect for human rights and fundamental liberties and the rule of law, as enshrined in the constitutional traditions which are common to the Member States.

The European Union's capacity to help build a society which corresponds to these aspirations largely depends on citizens claiming these rights - i.e. accepting them and above all exercising them.

1.3. The Committee of the Regions recognises the fast-changing character of the European Union and the growing challenges which it faces at the beginning of the 21st century. The last four decades have seen the gradual development of the European Union. Developing in several phases, an increasing number of European countries have pooled their resources and achieved together a very significant degree of economic growth, social stability and political harmony, without managing to generate the sense of commonality among the citizens of Europe needed to realise the full potential of a social and political Europe which guarantees fundamental rights.

The last fifteen years have seen an enormous acceleration of economic integration with the development of the single European market and a common European economic area. It is due to be further accelerated by the creation in 1999 and putting into circulation in 2002 of the single currency, the Euro.

1.4. A number of steps have been taken towards greater social cohesion and increased political cooperation. These have found expression in the establishment and development of new European institutions such as a directly elected Parliament and the Committee of the Regions and in the introduction of European-wide social and civil guarantees.

At the Council of Europe's initiative, a European Convention on Human Rights was drawn up, allowing for cases to be brought, and there is a European Social Charter which can be used for reference, but without the right to resort to legal action in the event of non-compliance.

It had been envisaged that the European Union as such would be a signatory of the European Convention on Human Rights. This is now excluded by Opinion 2/94 of the European Court of Justice, dated 28 March 1996, which states that this would involve the Community in a distinct international institutional system, that it would introduce all the provisions of the European Convention on Human Rights into the Community legal system, and finally that at the present stage of Community law the European Union does not have the powers to accede to the Convention.

1.5. Up to now, fundamental rights with respect to acts of sovereignty of the Community institutions have been safeguarded in the first place by the European Court of Justice. At an early stage, the Court of Justice established the binding force of fundamental rights as unwritten principles of law at EU level too. The Treaty bases for safeguarding fundamental rights in the EU were expanded and strengthened by the Maastricht and Amsterdam Treaties. The Treaty of Amsterdam, signed on 2 October 1997 and inaugurated on 1 May 1999, represents an important stage in the consolidation of the fundamental rights (cf. Article 6(2) of the consolidated Treaties). However, these wider issues have lagged behind the developments in the economic area.

Moreover, while the Treaty reaffirms the commitment of the Union to fundamental rights, it includes gaps and inconsistencies with regard to the guarantee of these rights or of those linked to the objectives set out.

Acknowledging the existence of these gaps and inconsistencies provides an opportunity to correct them and arrive at a clear, unequivocal text on the basic rights of European citizens and the ways to guarantee them.

1.6. The 1990s have seen signs of greater citizen uncertainty about these developments towards European integration. These have been reflected most recently in the very low turnout for the elections to the European Parliament in June 1999. A quickening in the pace of economic and financial integration, combined with a lessening of confidence by citizens in European institutions, represents a dangerous scenario for the future of the European Union. It requires swift action to bring the social, political and cultural needs of citizens into correspondence with the changing economic realities. This makes the call for a Charter of Fundamental Rights for European citizens all the more important and urgent. However, to address the issue of a lack of public confidence, this Charter needs to be a simple, straightforward, easily understood document, free from the bureaucratic and legalistic jargon that often mars formal constitutional documents.

At a time when the Treaties of Maastricht and Amsterdam have granted new powers to the European Community, giving rise to wider responsibilities in terms of fundamental rights for the Community, and when the Community has chosen not to subscribe to the European Convention on Human Rights, it seems urgent for the Community to take up a clear position on the basic rights which it wishes to see guaranteed to citizens of the Union, following from the scope of its action.

The Committee of the Regions is of the view that the incorporation of these rights into European Union Treaties would give a clear indication of Member States' commitment to building a Union based on the values of liberty, equality and solidarity.

The Committee points out that historically declarations of citizens' rights are preambles to Constitutions and have their *raison d'être* in them, as the basis of the powers needed for the exercise of those rights.

The Committee stresses the constitutional nature of the Charter because it feels that the process of drawing up a charter of rights cannot and must not be separated from the institutional reform to be undertaken by the next Intergovernmental Conference

2. The content of the Charter

The Charter of Fundamental Rights for citizens of the European Union must cover three fields: individual rights, economic, social and cultural rights, and civil and political rights.

The first field should cover the basic rights covered by the Universal Declaration of Human Rights, and more specifically by the European Convention on Human Rights.

2.1. Rights linked to the person

- Right to life, right not to be subjected to torture or inhuman or degrading punishment or treatment. Right not to be subjected to slavery, servitude or forced labour, right to freedom of movement.
- Right to freedom of thought, conscience and religion, freedom of expression and information.
- Right to a proper civil or penal trial.
- Right to privacy regarding private life, personal data, correspondence and home life.
- Right to housing, right to property and to respect for property.

2.2. Economic, social and cultural rights

- Right to work, to freely negotiated working conditions, to a fair wage, to a reasonable length of notice of termination of employment, to appropriate vocational guidance, training and re-training.
- Right to freedom of movement and establishment for workers and to equality of treatment with workers of the country concerned.
- Right to equality of opportunity and treatment, without discrimination based on race, sex, colour, ethnic, national or social origin, culture, language, religion, political beliefs, family situation, sexual orientation, age or disability.
- Right to set up trade union organisations and right to collective bargaining, information, consultation, and participation for decisions affecting workers' interests.
- Right to social security, social and medical assistance, and the benefit of social services.
- Right to education, right to freedom to choose an occupation and right to continuing vocational training.
- Rights linked to economic and entrepreneurial activity: right to property, right of competition, right to conclude contracts, etc.

2.3. Civil and political rights

- Right to vote in local and European Parliament elections for non-nationals from other EU countries in the Member State where they are resident.
- Right to set up European political parties, right of petition, association and demonstration.
- Right to check on legality of administrative action.
- Right of minorities to protection for their religion, language and culture.

2.4. Clearly, these rights cover a very broad canvas. The crucial task is to make them meaningful and practical, so that they give people a clear sense of the rights they enjoy across the European Union as a whole.

It is not enough to define rights. The principle of their justiciability must be established and appeal procedures set up for those who wish to claim them before national courts or before the Court of Justice of the European Communities.

2.5. As well as detailing these rights, the Charter should contain, as appropriate, complementary clauses expanding on particular aspects. This opinion from the Committee of the Regions wishes to highlight a number of areas where this is felt to be necessary.

2.5.1. In an increasingly multi-cultural, multi-racial, multi-ethnic European Union equal opportunities is a "horizontal theme" which cuts across a number of these rights. Thus, the Bill of Rights should guarantee the right to equality of opportunity and treatment without any distinction of race, ethnic, national or social origin, language, religion, gender, marital status, sexual orientation, age or disability.

2.5.2. In the light of the conclusions of the Tampere European Council on 15 and 16 October 1999 and its resolutions on the integration of third country nationals, the Committee of the Regions believes that the body responsible for drawing up the Charter of Fundamental Rights should examine the issue of whether long-term residents should be granted a set of rights that resemble as closely as possible those of EU citizens.

2.5.3. The right to a fair, public hearing needs to be reinforced by the creation of common legal standards and a common sense of justice throughout the European Union. Given the huge and growing degree of travel within the European Union for work, leisure and tourism, a set of common standards to ensure a common level of justice and fairness should be applicable across all EU Member States. We give two examples: a guarantee that effective legal advice and where necessary,

language interpretation services are available for EU citizens arrested outside their home Member State; the establishment of a common system of European bail so that people are not arrested and held on remand in cells in another country for lengthy periods.

2.5.4. Finally, with regard to the rights of private individuals, the new charter of rights needs to recognise the contemporary reality of patterns of divorce, separation and remarriage within modern European society. The new charter should make clear the rights of mothers and fathers to have fair and equitable access to their children in the event of divorce and/or separation; and indeed the rights of children to be able to see both of their parents if they so wish on a regular basis. There should be common rules governing access for parents and children across the European Union.

2.6. Beside these four specific areas where the introduction of the Charter of Fundamental Rights into European law will give clear civil and social rights to residents of the Union and help to match the growing common European economic space with a complementary social, civic and political space, the Committee of the Regions wishes to stress three issues related to European citizenship.

2.6.1. The Charter will enable each national of an EU Member State to identify his specific European citizenship as involving new rights and expressing membership of the new entity known as the European Union.

European citizenship is a major challenge for the European Union; it is not an alternative to national citizenship; it is at once complementary, unique and resolutely political.

For the Committee of the Regions the Charter of Fundamental Rights is the foundation of European citizenship.

2.6.2. The Committee of the Regions takes the view that the fundamental rights have a constitutional nature, enabling individuals who enjoy them to appeal to the relevant courts, where appropriate national courts and the Court of Justice of the European Communities, every time such a right is threatened.

In the case of the European Union, the Committee of the Regions takes the view that since the fundamental rights have a constitutional value of their own, and create a homogeneous, coherent Community legal order, they justify the application of a "constituent text".

2.6.3. The fundamental rights therefore have an essential political dimension, because they link the democratic basis of political society with its limitation by the recognition of citizens' rights.

The Committee of the Regions is convinced that this right of participation in public life, exercised first and foremost by electing local authorities, is the first and indispensable link in a chain of political responsibilities in which the citizen must participate and feel involved.

Once the citizen feels a part of the chain of power emanating from him and extending to the summit of the European Union, he will accept the constraints of the "res-publica" and the decisions of those whom he has entrusted with it.

The fundamental rights thus lay the basis for participatory democracy, which respects the citizen's power and that of the various levels of authority to which he delegates his power.

3. **The future process**

3.1. European Union leaders have agreed to the proposal for the drawing up of a Charter of Fundamental Rights. The preparation of the Charter is the responsibility of a working group made up of representatives of the governments of the Member States, a person appointed by the Commission President, MEPs and national parliamentarians. The Committee of the Regions is to be consulted in this procedure and has been invited to speak to the forum, but it believes that it should be more fully involved and be given observer status.

In compliance with the subsidiarity principle, the forum advocated by the European Council for drawing up the charter should be wide enough to allow every level concerned, that is Europe, the Member States and local and regional authorities, to obtain a hearing for their views on the content of the European Charter of Fundamental Rights and in particular enable the public to express views and have access to information prior to decisions being taken by Europe and the Member States.

3.2. The proposal to develop a Charter of Fundamental Rights is an important step forward by the European Union. The COR intends to participate fully in this process and to take forward the ideas contained within this opinion into that wider forum. The COR representatives will highlight the main themes in this opinion during the forum's deliberations. At the same time they will stress the importance for the final document not only to be incorporated within the EU Treaties, but also to be produced as a stand-alone document highlighting the key elements that form Europe's bill of political, social and civil rights.

4. **Conclusion**

The European Union is very much at a watershed in its development. It is vitally important that urgent steps are taken to involve the public in decision-making so as to boost public confidence in both European institutions and the European Union as a whole. Making clear, in very practical and straightforward terms, the key economic, social, cultural, civil and political rights which the Union guarantees to all of its members is the urgent task. The development of a Charter which gives

expression to a citizens' and people's Europe, which will complement the common economic space which is currently being developed, is the way forward. This should be the clear goal and objective of the Charter of Fundamental Rights. That is the task which the Committee of the Regions and its representatives will argue for in the months ahead.

4.2. The Committee of the Regions comes out firmly in favour of a Charter of Fundamental Rights of the citizens of the European Union, which will give the Union homogeneous, coherent Community law with constitutional force.

4.3. On the basis of this new participatory citizenship, it will then be a matter of considering the need to set up democratically - going beyond the Community *acquis* - a supra-national constituent power with the aim of uniting Europeans around a great common project, respecting national identities and regional diversities and capable of creating a Community of shared destiny.

4.4. The European Union, governed by law and based on adherence to common values which are legally guaranteed, is henceforth indispensable, and must be enshrined in the next Treaty on Union.

Brussels, ...

The President
of the
Committee of the Regions

The Acting Secretary-General
of the
Committee of the Regions

Manfred Dammeyer

Vincenzo Falcone

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 28 January 2000**CHARTE 4114/00****CONTRIB 10****COVER NOTE**

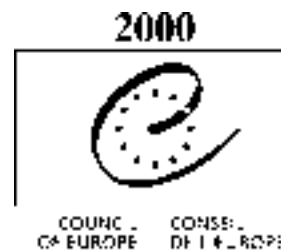
Subject : Draft Charter of Fundamental Rights of the European Union

Please find enclosed the opinion from the Political Affairs Committee of the Parliamentary Assembly of the Council of Europe. ¹

¹ This text has been submitted in French and English language.

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Doc. 8615

17 January 2000

Charter of Fundamental Rights of the European Union

Opinion ¹

Political Affairs Committee

Rapporteur: Mr Clerfayt, Belgium, Liberal, Democratic and Reformers' Group

I. INTRODUCTION

1. We should be careful not to regard the drafting of a Charter of Fundamental Rights for the European Union as a purely legal matter. Political and legal aspects are inextricably linked. It could even be said that many view the charter as the culmination, or at least a very important stage, of a long political process leading to a strengthened European Union.

2. The early stages of European integration were dominated by the quarrel between the federalists (also known as the constitutionalists), who wanted to build Europe in one go, on the basis of a single text, and the functionalists, who preferred to advance at a more gradual pace. The realism of the latter group prevailed and, from the creation of the Common Market to the present day, Europe has developed through a multitude of summits, political declarations and treaties.

3. Human rights occupy a modest and at times uncertain position in this rich but inevitably vague kaleidoscope of texts, although over the years the concept has assumed greater importance through the case-law of the Court of Justice of the European Communities (ECJ), so-called “human rights clauses” in co-operation agreements with third countries and a number of new provisions contained in the Maastricht and Amsterdam treaties. We are entitled to wonder whether we are now witnessing the resurgence of the constitutionalists, who view the codification of fundamental rights as an invaluable opportunity to bring greater coherence to the diverse mass of texts and equip the Union with a fundamental text that may act as an embryonic constitution.

¹ See Doc. 8611

4. Before discussing the merits and drawbacks of this initiative, we should stress, however, that other arguments appear to be combining in favour of the idea to draw up a charter. Since the start of European Union's enlargement process, the Union appears to have adopted a new stance, taking a more severe attitude² with regard to the human rights situation in applicant states.

II. WHAT EXACTLY IS MEANT BY A CHARTER OF FUNDAMENTAL RIGHTS?

5. We shall not dwell on the background to the decisions that led the European Union to set up a body with the specific task of drawing up a charter. A detailed description of this is given in various Assembly documents, in particular the report by the Committee on Legal Affairs and Human Rights. However, we should examine some of the texts and declarations that have been produced in connection with the process if we are to gain a better understanding of the instigators' intentions, the stated objectives and, in some cases, the contradictions that are evident in these texts.

6. It might be expected that the charter's supporters should have converging medium-term aims. However, as far as content, method and form are concerned, these aims appear unfocused. As things stand, work on the charter is characterised by the profusion of priorities that have been set or are envisaged. The special body therefore has an extremely tough task ahead of it.

7. In a resolution adopted in early 1996 – in other words, before the intergovernmental conference that was to prepare the amendment to the Treaty on European Union – the European Parliament stressed the importance of the section on human rights and listed a number of rights which should feature in the amended treaty. These included both “traditional” rights and other rights regarded as more innovative, such as protection against abuse, sexual harassment and anti-Semitic violence. The cultural and linguistic rights of minorities were also mentioned. In the same text, alongside the amendment of treaties, the Parliament urged the European Union to accede to the European Convention on Human Rights (ECHR).

8. The rest is history: the European Parliament's requests came to nothing, because in the meantime the ECJ delivered its famous opinion 2/94³ of 28 March 1996. Hence the matter was not dealt with in an amendment to the Amsterdam Treaty, the European Union was unable to accede to the ECHR and the question was simply put on the back burner until, on the initiative of the German government, it resurfaced, firstly in Cologne in June and then at the Tampere summit in October 1999.

9. Careful reading of the conclusions of the European Council meeting in Tampere reveals a wide range of proposals aimed at paving the way for an “area of freedom, security and justice”. The text attempts to reconcile the imperatives of internal order within the Union and its requirements with regard to external relations. The draft charter has a role to play in this impressive search for coherence and is described as being closely linked to the three areas mentioned above, although no indication of its content is given. However, the individual sections of the Tampere conclusions

² Article 7 of the Amsterdam Treaty (Article F.1 of the Treaty on European Union) provides that the Council may take measures against a member state failing to respect human rights by suspending the rights deriving from the application of the treaty, including voting rights within the Council. This article may be regarded as a “shield” against any abuses by future members.

³ For the wording, see Doc. 8611, paragraph 15.

contain frequent references to matters such as asylum, immigration, access to justice, family law and extradition.

10. At a press conference a few days before the adoption of the Tampere conclusions, the two co-rapporteurs of the European Parliament, MM Duff and Voggenhuber, reiterated the latter's views that the text should not be an empty declaration with no obligations but should be innovative and legally binding. Mr Voggenhuber added that there were an increasing number of "empty rights" within the Union because texts had not been translated into tangible rights. He felt that the future charter should also contain provisions on refugees, bioethics and data protection.

11. The management and labour and NGO representatives, in particular the representatives of the European Trade Union Confederation (ETUC), Amnesty International and the International Federation of Human Rights Leagues (FIDH), appeared to be unanimous in favouring the inclusion of social rights in the charter. The ETUC felt that the charter should be an integral part of the treaties forming the European Union and should include not only provisions taken from existing international legal instruments, but also new provisions dealing with "transnational trade union rights". In a preliminary communication to the European Council, Amnesty International and the FIDH stated that a charter would be pointless unless it offered better protection than the ECHR. They warned the Council that if such a project were to be embarked upon, discrimination in the treatment of non-EU citizens should be avoided. While certain "political" rights (for example, concerning elections) could be made available to European Union citizens only, "civil" rights should be guaranteed for everyone.

12. The various viewpoints summarised above⁴ clearly illustrate that at present, a consensus on the content of the charter would appear to be a long way off. Although the idea itself is praiseworthy, its boundaries are vague and there is therefore a danger that it might become a forum for a variety of far-fetched ambitions and interest groups. Are we to infer from this that the project cannot meet our expectations because it conveys a fragmentary notion of the purpose of the Union? We shall return to this point.

III. THE EUROPEAN UNION'S COMMITMENT TO HUMAN RIGHTS – A FEW POTENTIAL PROBLEMS

13. The statement made in paragraph 5 of Mr Magnusson's report that the Communities have always shown an interest in human rights is not entirely correct. It is a well-known fact that the texts instituting the Communities did not contain a single reference to human rights, with the exception of freedom of movement. Not until the 1986 Single European Act was the subject mentioned explicitly.

14. It should not be forgotten that originally, the ECSC first of all and then the EEC were primarily economic concepts. Initially, therefore, the body of Community law was built up around principles of economic liberalism and not equality and non-discrimination. In contrast, it was always difficult to incorporate concepts relating to social rights, for example, into an economics-oriented legal system.

15. We should applaud the efforts made in recent years within the Union to move away from and indeed transcend the by and large economic philosophy of the initial years. The institution of a "European citizenship", the inclusion into the Maastricht Treaty of strengthened social objectives

⁴ The main aspects of the report by the Expert Group on Fundamental Rights are described in detail in Doc. 8611 and have therefore not been reproduced here.

and rights (even though they were limited in scope and have not been accepted by all member states) and the multiplication of “joint positions” with regard to the protection of human rights in non-member countries are all new and encouraging factors towards this end.

16. Nonetheless, some of the principles and rights proclaimed continue to cause problems. The concept of “citizenship” established by the Maastricht Treaty is limited to the right to vote in the elections for the European Parliament and the right to participate in municipal elections in the host country. Does this restricted concept correspond to the leading role which the European Union should be playing in promoting political rights throughout the continent? The same is true for the Schengen agreements and the right of asylum. The emergence of Community solidarity and policy has had the indirect effect of making asylum seekers’ rights more restricted than they were before. The Schengen area which is aimed as a response to a security deficit and which could spread to encompass the whole of the European Union is increasing the number of control measures and making it more difficult for all categories of non-EU travellers to obtain visas. Asylum seekers’ rights have become more limited because:

- asylum requests submitted by foreigners having transited a state in which there is no risk of persecution in principle are rejected⁵;
- asylum requests between European Union member states are not accepted⁶.

17. An analysis of Community texts shows two things:

- it is very difficult to identify what may be termed “fundamental” rights,
- the noble declarations of principle of the European Union institutions are often at variance with a restrictive application of these principles, which can on occasion lead to effects which are contrary to the original intentions.

Accordingly, it is necessary to rework and amalgamate these texts.

18. European integration has always been a difficult and controversial process. In this field, there are likely to be further reserved reactions from certain European Union member states, if only in the name of the subsidiarity principle. The problems of competition and duplication of effort between the draft “charter” and the ECHR have been sufficiently developed by the Committee on Legal Affairs and Human Rights. I share Mr Magnusson’s view that the division of responsibilities between the two Courts does not need to be an obstacle and could be overcome by adjustments of a legal or practical nature.

19. The question we are faced with is more a political one. Is it not so that the initiative taken by the European Union to provide itself with a Charter of Fundamental Rights is rather an expression of the will of certain member states to establish a new political entity, which is more introspective in its self-satisfaction and self-sufficiency, and therefore indifferent to what takes place outside its borders? Is there not a danger that the Union could develop into a club of well-off democracies, considering itself to be the élite, disregarding the rest of Europe and behaving in a way which could lead to a rift in Europe, a new split, a new “wall”? This would be politically disastrous.

⁵ Council resolution by the ministers responsible for immigration (30 November 1992)

⁶ Protocol to the Treaty of Amsterdam

20. The European Union cannot wish to break itself off from this broader Europe represented by the Council of Europe. It can even less jeopardise the work of promoting democracy and human rights undertaken over the last 50 years by the Council of Europe, by setting up, alongside and outside the framework of the ECHR, something similar but competing. It should in contrast consolidate this work, by being part of it by acceding to the ECHR and, therefore, accepting that on the legal level it should be subject to the control mechanisms provided for in the ECHR with regard to its acts and decisions in the field of fundamental rights. If it does not, it risks negating the achievements of the last 50 years which should be maintained in the interests of the rest of Europe which is not yet (for some time to come) or which will never be in the European Union.

IV. CONCLUSIONS

21. On the basis that developments in the European Union are moving towards an extension and consolidation of fundamental rights, already proclaimed in fragmentary documents or those still being worked on, we are faced with the fundamental question of how best this objective can be achieved.

22. In essence, the answer is perhaps to be found in the ECJ's opinion 2/94. In speaking against EU accession to the ECHR, given the current state of the Community legal system, the Court expressed the view that "... such a modification ... would be of constitutional significance...". We note here the last two words which imply a revision of the treaties and denote the dividing line between the responsibilities of judges and politics.

23. Today, a constitution is no longer, as before, a set of rules governing the relationships between political institutions, but increasingly a catalogue of individual rights and freedoms. The proposal to amend the treaties to incorporate fundamental rights therefore comes down to likening all the treaties to a constitution. This notion could and should mark the starting point for any attempt to merge the various texts into a single one, in other words into a constitution of the European Union.

24. We know that in the European Parliament there are those who defend the idea of putting the Union onto a constitutional footing. This will doubtless be a long process but an essential one if the Union is to be thoroughly reformed. For some of them, the drafting of a Charter is an integral part of this constitutional process. Even though I share their fervour for the further development of the Union, our views are different with regard to the method and timing.

25. I would especially like them to be on their guard against the temptations of the isolationism of a European Union which is too self-focused and, consequently, unaware of the worthwhile achievements made and being made outside it in the field of the protection of fundamental rights, in other words the ECHR. Rather, the European Union should become part of it in order to reinforce it. It should therefore accede to the ECHR and overcome the legal obstacles which have been put forward hitherto. This is essential for a coherent political vision of the future of Europe.

26. The European Union, which has now become a world power in all sectors, and which will soon be enlarged, can no longer govern itself by a multitude of treaties; rather it deserves a single constituent text incorporating the principles of democracy, the rule of law and human rights. The European Union should provide itself with an internal legal system which corresponds to its world role and its requirements in its relations with non-member countries. This new strategy should reduce the trend towards "fortress Europe" which is hostile to foreigners; it should include a new approach to combat the evils of racism, xenophobia and ethnic violence; it should also incorporate

the results of a reflection on new information technologies and communications and their impact on society. It should be comprehensive, contemporary and effective.

27. Pending this, an intermediary formula should be found to enable the European Union to accede to a series of the Council of Europe's fundamental treaties, not only the ECHR, but also other legal instruments, such as the Framework Convention for the Protection of National Minorities, the Bioethics Convention, the Data Protection Convention and, obviously, the European Social Charter.

28. The ECHR has today become, above and beyond its standard-setting role, a reference of political culture and civilisation. Its acceptance is also a precondition for accession to the European Union. It is not normal, under such conditions, for the European Union not yet to be part of it. I am convinced that the European Union's accession to these instruments would enable its sensitivities and viewpoints to have an influence on their developing case-law and, conversely, this case-law could serve as a basis for the future revision of the European Union constituent texts.

* * *

Reporting committee: Committee on Legal Affairs and Human Rights

Committee for opinion: Political Affairs Committee

Reference to committee: Doc. 8568 and Reference No. 2440 of 4 November 1999

Opinion approved by the committee on 11 January 2000

Secretaries to the committee: Mr Perin, Mr Sich, Ms Ruotanen, Ms Hügel-Maffucci

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 28 January 2000**CHARTE 4115/00****CONTRIB 11****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find enclosed the texts adopted by the Parliamentary Assembly of the Council of Europe on 25 January 2000:

- recommendation 1439 (2000)
- resolution 1210 (2000) and
- directive no 561 (2000).¹

¹ These texts have been submitted in French and English language.

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Provisional edition

Charter of Fundamental Rights of the European Union

Recommendation 1439 (2000)¹

1. The Assembly, having regard to its Resolution 1210 (2000) on the European Union Charter of Fundamental Rights, in which it invites the European Union:

i. to incorporate the rights guaranteed in the European Convention on Human Rights and its protocols in the Charter of Fundamental Rights and to do its utmost to safeguard the coherence of the protection of human rights in Europe and to avoid diverging interpretations of those rights;

ii. to pronounce itself in favour of accession to the European Convention on Human Rights of the Council of Europe and make the necessary amendments to the Community treaties;

iii. to make sure that when referring to social rights the revised European Social Charter of the Council of Europe will be taken into account,

recommends that the Committee of Ministers of the Council of Europe pronounce itself in favour of the accession of the European Union to the European Convention on Human Rights and prepare the appropriate amendments to be made to this treaty.

¹ Assembly debate on 25 January 2000 (3rd Sitting). See Doc. 8611, report of the Committee on Legal Affairs and Human Rights (rapporteur: Mr Magnusson), Doc. 8615, opinion of the Political Affairs Committee (rapporteur: Mr Clerfayt) and Doc. 8627, opinion of the Social, Health and Family Affairs Committee (rapporteur: Mr Evin). Text adopted by the Assembly on 25 January 2000 (3rd Sitting).

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Provisional edition

Charter of Fundamental Rights of the European Union

Resolution 1210 (2000)¹

1. The Assembly considers it necessary to make a number of observations following the decision by the EU European Council in Cologne on 3 and 4 June 1999 to draw up a Charter of Fundamental Rights of the European Union, to be submitted to the European Council in December 2000.
2. At this stage, without knowing the Charter's content, the Assembly wishes to bring a number of matters to the attention of those responsible for drafting this instrument, that is to say the "body" established to that end in Tampere, and may have occasion to make observations on the substance of the Charter in due course.
3. The European institutions, first the Communities and then the European Union, have for some time past shown an interest in human rights, in particular the European Convention on Human Rights, and have mentioned those rights as the foundation of democracy in their successive treaties. The European Parliament and the Commission have on a number of occasions come out in favour of the Union's accession to the Convention. The Parliamentary Assembly has itself welcomed this proposal. However, it has not yet been translated into action, following an opinion by the Court of Justice in Luxembourg on whether accession to the Convention was compatible with the

¹ Assembly debate on 25 January 2000 (3rd Sitting). See Doc. 8611, report of the Committee on Legal Affairs and Human Rights (rapporteur: Mr Magnusson), Doc. 8615, opinion of the Political Affairs Committee (rapporteur: Mr Clerfayt) and Doc. 8627, opinion of the Social, Health and Family Affairs Committee (rapporteur: Mr Evin). Text adopted by the Assembly on 25 January 2000 (3rd Sitting).

Community treaties, in which the Court found that, as Community law stood at the time, the Community had no competence to accede.

4. At a time when it is reinforcing its powers, the Union wishes to make the importance of human rights more visible to its citizens, as stated in the decision taken in Cologne, and to bring these currently scattered rights together in a single text. The Assembly welcomes this initiative as a sign of a resolve to strengthen further the cause of human rights in Europe.

5. The Assembly nonetheless considers that, in adopting a Charter of Fundamental Rights, the achievements of the European Convention on Human Rights and the body of its case-law established over almost fifty years, which has had far-reaching effects on the law of the member states of the Council of Europe and therefore of the European Union, cannot be disregarded. It further draws attention to the risks of having two sets of fundamental rights which would weaken the European Court of Human Rights.

6. In this connection, the Assembly recalls the communication of 19 November 1990 issued by the Commission of the European Communities on accession to the European Convention on Human Rights, in which it stated that accession did not rule out the option of a set of fundamental rights specific to the Community. The opposite inference can therefore be made, ie that adoption of a Charter does not rule out accession to the Convention on Human Rights.

7. The European Union and the Council of Europe undeniably guarantee a number of rights which are not contained in the European Convention on Human Rights, particularly economic and social rights, and the Charter should therefore include these rights, adding to them others now accepted as fundamental rights. The Assembly draws attention to the other instruments for the protection of human rights on which the Charter could draw, in particular the revised European Social Charter, which guarantees economic and social rights and is an instrument to which the Assembly has invited the Union to accede. It recalls that, following the Treaty of Amsterdam, a reference to the Social Charter of the Council of Europe was included in the Treaty on the European Union.

8. The Assembly refers to the European Union report, prepared in February 1999 by an expert group chaired by Professor Simitis, which recommends that Articles 2 to 13 of the European Convention on Human Rights be incorporated into Community law, together with the rights secured in the protocols to the Convention. The inclusion of rights guaranteed by the Convention would be a means of avoiding having two different sets of rights in Europe, thus creating two categories of citizens enjoying different rights.

9. The Assembly believes that there can be no discrimination in the application of fundamental rights and that everyone coming under the jurisdiction of a Council of Europe member state must enjoy the protection of such rights, as provided for in Articles 1 and 14 of the European Convention on Human Rights.

10. In conclusion, in the light of the above, the Assembly invites the European Union:
- i. to incorporate the rights guaranteed in the European Convention on Human Rights and its protocols in the Charter of Fundamental Rights and to do its utmost to safeguard the coherence of the protection of human rights in Europe and to avoid diverging interpretations of those rights;
 - ii. to pronounce itself in favour of accession to the European Convention on Human Rights of the Council of Europe and make the necessary amendments to the Community treaties;
 - iii. to make sure that when referring to social rights the revised European Social Charter of the Council of Europe will be taken into account.

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Provisional edition

Charter of Fundamental Rights of the European Union

Order No. 561 (2000)¹

The Assembly, having regard to its Resolution 1210 (2000) and Recommendation 1439 (2000), instructs its Committee on Legal Affairs and Human Rights, and its Social, Health and Family Affairs Committee for an opinion, to carefully follow and monitor the outcome of the drafting work on the Charter of Fundamental Rights, and to report back to it on this subject in due course.

¹ Assembly debate on 25 January 2000 (3rd Sitting). See Doc. 8611, report of the Committee on Legal Affairs and Human Rights (rapporteur: Mr Magnusson), Doc. 8615, opinion of the Political Affairs Committee (rapporteur: Mr Clerfayt) and Doc. 8627, opinion of the Social, Health and Family Affairs Committee (rapporteur: Mr Evin). Text adopted by the Assembly on 25 January 2000 (3rd Sitting).

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 28 January 2000**CHARTE 4116/00****CONTRIB 12****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find enclosed the opinion from the Social and Family Affairs Committee of the Parliamentary Assembly of the Council of Europe. ¹

¹ This text has been submitted in French and English language.

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Doc. 8627

24 January 2000

Charter of Fundamental Rights of the European Union

Opinion¹

Social, Health and Family Affairs Committee

Rapporteur: Mr Claude Evin, France, Socialist Group

CONCLUSIONS OF THE COMMITTEE

1. The report presented by the Committee on Legal Affairs and Human Rights provides a comprehensive picture of a question which is crucial to Europe's institutional equilibrium and warrants close attention. It nevertheless raises questions which the Social, Health and Family Affairs Committee feels can be clearly and conclusively answered without an extensive examination.
2. The Social, Health and Family, Affairs Committee substantially agrees with the views expressed in the report, which welcomes the Union's initiative and determination to make human rights more visible to European citizens.
3. On the other hand, the Social, Health and Family, Affairs Committee considers that the debate ought not to centre on the sole question of the European Community's accession to the European Convention on Human Rights. The real question raised by the preparation of an EU Charter of Fundamental Rights concerns the shortcomings of the existing international legal instruments for the protection of human rights - the Council of Europe conventions included - particularly in that they do not adequately secure social rights.

¹ Doc. 8611 - report, draft resolution, draft recommendation and draft order adopted by the Committee on Legal Affairs and Human Rights on 10 January 2000.

4. In this respect, the committee fully endorses paragraph 7 of the draft resolution and takes the view that the inclusion in the future Charter of enforceable social rights would represent a considerable advance in citizens' protection in Europe.

5. Indeed, on the strength of the Council's long standing experience and recent work² the Committee considers it indispensable that the rights, social rights included, should be enforceable before courts and covered by a right of individual petition before a supranational judicial authority.

EXPLANATORY MEMORANDUM

6. Since their inception the Council of Europe as a whole and its Parliamentary Assembly in particular have been the nerve centre for furtherance of human rights in Europe. The Council of Europe has never yet abdicated its time-honoured mission of strengthening the institutions that uphold democracy and fundamental freedoms in Europe. It can therefore rightfully pride itself on its achievements in this regard at a time when the Europe of the 15 contemplates following in its footsteps.

7. The substance of the debate in hand is that the Assembly should consider and define its position on these three crucial questions:

- whether or not the Parliamentary Assembly is in favour of the European Union's drawing up a Charter of Fundamental Rights;
- whether or not the Parliamentary Assembly is in favour of the future Charter constituting not a plain policy statement by the Union but an integral part of the Treaties in the fullest sense, in order that the set of rights which it embodies may not only come within the remit of the European Commission, which would accordingly issue the appropriate instructions for their effective realisation by the Member States, but may also be enforceable, signifying that their infringement by the Member States would be liable to sanctions before the Court of Justice of the European Communities;
- regarding content, whether or not the Parliamentary Assembly is in favour of the future Charter enshrining a complete and coherent body of civil and political rights and social rights, as secured in particular by the European Convention on Human Rights and the European Social Charter.

8. Any impulsive liberal-mindedness would unhesitatingly prompt affirmative replies, whereas in fact none of the answers to these questions is straightforward. The advancement of human rights in Europe, social rights included, cannot be entirely realised at the present time through the mere existence of a European Convention on Human Rights and a European Social Charter.

9. It is salutary that the European Union displays firm social ambitions. Consequently, one is bound to welcome the process initiated and to support any genuine effort by the Community institutions with the intention of effectively strengthening human rights not only within the Union and for the full benefit of the citizens of the Europe of the 15 but also – a valuable opportunity – outside the Union in its relations with its non-member partners.

² Recommendation 1415 (1999) on an additional protocol to the European Convention on Human Rights concerning fundamental social rights (Doc. 8357)

10. Contrary to the previous evasiveness and hesitancy of the Union, which has not always put into practice the policy statements adopted, the present approach is more ambitious and anticipates a second Intergovernmental Conference (IGC) and a revision of the Treaties.

11. National MPs as well as MEPs have had frequent occasion to deplore the inadequacy of the human rights safeguards afforded by the Community instruments. There is no complete single text listing the civil, political and social rights which protect the citizens of the Union. The European Parliament has repeatedly advocated including in the body of the Treaty a catalogue of fundamental rights (see in particular its resolution adopting a Declaration on fundamental rights and freedoms of 12 April 1989, its resolution on the Constitution of the European Union of 10 February 1994, and its resolution on the IGC of 13 March 1996). There is of course a Community Charter of the Fundamental Social Rights of Workers dating from 1989 and now signed by all fifteen Member States albeit only with declaratory status. Yet the Amsterdam Treaty had to be awaited before definite progress occurred in objectifying the Union's social goals (references made to the European Social Charter; inclusion of Agreement on social policy forming Protocol No 14 to the Treaty establishing the European Community (Chapter 1, Title 11, new Rules 136 to 145), etc.).

12. It now proves truly indispensable to **clarify the role of our respective organisations in Europe:** Council of Europe and European Union. The two organisations are admittedly dissimilar in their legal foundation as well as in their procedures and their functions. The Council of Europe conventions - over 170 to date - and especially the European Convention on Human Rights and the European Social Charter are extremely fertile texts. However, the functions which have devolved on each organisation since they came into being are plainly tied to their institutional structure; the Union, because it holds supranational powers and does not strictly depend on intergovernmental co-operation, possesses a coercive authority that bears no comparison.

13. The Social, Health and Family Affairs Committee held a joint meeting in Brussels on 23 November 1999 with the European Parliament Committee on Employment and Social Affairs. Members discussed the draft Charter of Fundamental Rights, particularly the social dimension of the project.

14. The discussions held on that occasion raised the following points:

- human rights protection signifies a very different approach for the Council of Europe and the European Union; the Council of Europe acts as a pioneer in the human rights field, whereas the Community has a far lower profile on that score;
- the two organisations have legal instruments of a vastly different nature;
- the content of the Council of Europe texts, chiefly the European Convention on Human Rights and the European Social Charter, can enhance the Union's approach;
- the machinery for supervising enforcement of rights is very go-ahead in the Council of Europe as citizens can apply directly to the European Court of Human Rights;
- a legal instrument like the EU Charter of Fundamental Rights should be given great prominence, and so it is imperative to include this catalogue of rights in a new Treaty;
- the Charter should answer the purpose of enhancing the Union's social dimension and should therefore include a complete set of social rights;

- the Charter would be rendered virtually ineffective were it not binding on the Union institutions and Member States; the adoption of the Charter necessarily entails radical reform of the judicial control machinery, in order that every citizen may have direct access to the Court of Justice.

15. To advance reflection in the matter, the two committees decided to set up a joint working group whose task will be to ensure that the social rights as defined in the European Social Charter and the Community Charter of the Fundamental Social Rights of Workers are included in the EU Charter of Fundamental Rights.

16. As to the **substance** of the draft Charter of Fundamental Rights, it will quite conceivably be the subject of lengthy discussion in the Charter drafting body and the various institutions of the Union. It is equally certain that the principal Council of Europe legal instruments (European Convention on Human Rights, European Social Charter and revised Charter, European Code of Social Security and revised Code, etc.), by virtue of their substance, effective application and quality, can provide legal models and references and inform the Union's reflection. They are moreover evolutive instruments that move with the times and adjust to Europe's new political, economic and social challenges.

17. It is indispensable that the future Charter embody a **complete range of social rights**, relating to protection not only of workers but also of the family, women and children, freedom to form and join trade unions, collective bargaining, social security, health, housing, child welfare, etc.

18. In any event a widening of the gulf between the two Europes must be avoided. The aforementioned body should therefore be instructed to apply itself to drawing up a list of **identical rights** to those which the States have already undertaken to uphold as parties to the European Convention on Human Rights or the European Social Charter.

19. The **legal scope** of the future Charter of Fundamental Rights also remains to be considered. Given the present position of Community law and practice, it is only possible to point out the inadequacies of the supervisory machinery.

20. Nonetheless, the Charter's proposed integration with the Treaties means that it will be endowed with a dual supervisory system for verifying the due application of these rights at national level: on the one hand the European Commission's authority to issue Directives could allow a purposive Community policy to be framed; on the other hand, respect for the rights would be supervised under the Community judicial system.

21. This requires a clear commitment by the Community institutions, the European Commission in particular, to ensure that the States make the rights genuinely applicable and do not settle for vague token declarations.

22. Ultimately the future will reveal the reality of the Union's political intention to make a radical reform of its institutions and judicial machinery, as it remains to be seen whether the Union will allow its citizens the possibility of bringing direct individual petitions before the Court of Justice of the Communities when their rights are violated.

23. There is no point in drafting a Charter of Fundamental Rights unless it establishes civil, political, economic and social rights that are credible and concrete, as well as guaranteeing their reality and applicability for all persons. It is not a matter of securing their proclamation and promotion alone; effective safeguards must be introduced.

24. The Rapporteurs of the European Parliament Committee on Constitutional Affairs, MM A. Duff and J. Voggenhuber, have stated their support for conferring binding force on the Charter of Fundamental Rights and ensuring that citizens have direct access to the Court of Justice of the European Communities³.

25. Lastly, the current debate surrounding the Union's Charter of Fundamental Rights should not leave out of account the need to continue **the effort to promote and improve the existing Council of Europe conventions** and their supervisory machinery.

26. The Social, Health and Family Affairs Committee recalls in this connection that in April 1999 it presented the Parliamentary Assembly with a report on an *additional protocol to the European Convention on Human Rights concerning fundamental social rights*, in which it recalled that if democracy was to be firmly rooted in Europe, greater effectiveness and greater enforceability of social rights must be guaranteed. It therefore requested that consideration be given to the possibility of incorporating into the European Convention on Human Rights certain rights set forth in the revised European Social Charter.

27. The studies made by the Committee for some years and just recently show that is vital that there should exist at European level a body of social rights which are enforceable and which carry a right of individual petition to a supranational judicial authority.

28. In any case, also having regard to the technicality of the questions at issue, it is plainly imperative that a clear position be stated by the Council of Europe, which has observer status in the EU Charter drafting body. It will also need to impress upon the Union and the Union Member States its matchless experience built up over more than 50 years in the furtherance and protection of human rights in their entirety.

³ See working document EP 232.397 of 7 December 1999

Proposed amendments

29. The Social, Health and Family Affairs Committee wishes to put forward the following amendments to the draft resolution and the draft order:

Amendment No 1:

«In the draft resolution, replace paragraph 10. iii with the following text:

"to incorporate into the Charter of Fundamental Rights the whole range of social rights protecting workers, the family, women and children, taking into account the rights secured in the revised European Social Charter."»

Amendment No 2:

«In the draft order, add after "Human Rights":

", and its Social, Health and Family Affairs Committee for an opinion,"».

*
* *

Reporting committee: Committee on Legal Affairs and Human Rights (Doc. 8611)

Committee for opinion: Social, Health and Family Affairs Committee

Reference to committee: Doc. 8542, decision of the Bureau on 13.12.99, modifying Reference No. 2440, 24.9.99

Opinion approved by the committee on 24 January 2000

Secretaries to the committee: Mrs Meunier and Mrs Clamer

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 3 February 2000 (08.02)**CHARTE 4119/00****CONTRIB 15****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Delegations will find herewith a Resolution adopted by the Synod of the Protestant Church in Germany (EKD) at its meeting in Leipzig on 11 November 1999. ¹

¹ This text was submitted in English, French and German.



I. RESOLUTION

of the Synod of the Protestant Church in Germany at its meeting in Leipzig the 11th November 1999

on the

Charter of Fundamental Rights of the European Union

At the European Council meeting in Cologne on 3rd and 4th June 1999, the Council took the decision to draw up a draft Charter of fundamental rights. At the Tampere European Council on 15th and 16th October 1999 the body to do this was appointed: Members of the European Parliament, the national Parliaments, representatives of the Head of State or Government of Member States and representatives of the other European Institutions. This body has the task of finding a draft by the Council meeting in Paris in December 2000.

The Synod welcomes the fact that the Charter is being drawn up, a commitment on the part of the European Union to human rights and fundamental freedoms, in this transparent manner, whereby the results of the debate will be made accessible to the public for discussion.

The Synod asks the Council of the Protestant Church in Germany to involve itself unreservedly in compiling the contents of the Charter and to bring the ideas of the Protestant Church in Germany as to its composition to the attention of the German Bundestag, the German Government, and also raise it in dialogues between the other European sister churches and the European Parliament and other European authorities.

These should be the salient considerations:

- A Charter of fundamental rights offers the chance to reveal the very foundations of European polity as an order of peace of a unique kind and to set them out clearly for our citizens,
to emphasise the validity for the European Union of rights to freedom as they are laid down in the European Convention on Human Rights of the Council of Europe,
to secure basic social rights as being an inseparable part of fundamental rights.
- Religious liberty constitutes a basic tenet of the fundamental rights catalogue. Here, there is the need to guarantee both the right of religious bodies to self-govern their own affairs and the freedom of worship.

- The rights being formulated should not be limited to EU citizens only. Therefore all considerations on these rights must be start with the question as to their validity for persons who are nationals of third countries or asylum-seekers and do not have the citizenship of an EU Member State.
- The fundamental rights to be defined in the Charter must not only be applicable within the EU but constitute a leading principle in its external relations of the European Union. Thus, Community policies in the area of trade and development-co-operation must contribute to respect of human rights, for example by including human rights clauses.
- Efficient safeguard of fundamental rights presupposes in principle potential recourse to judicial protection. This should be the parameter by which the compatibility of actions taken by European authorities and institutions should be measured in relation to its basic principles. Even if the Charter is not initially legally binding, there should be an underlying aim while drawing it up to make it ultimately a binding part of the European treaties.
- The process of determining and revising fundamental rights on the European level should continue in the long-term to be an open one. This is essential in view of the challenging changes the EU faces with globalisation, new technologies, for example in the field of biotechnology and telecommunication and especially with the enlargement to countries in Central and Eastern Europe as well as in the Mediterranean area in the next decade.

Leipzig, 11th November 1999

The President of the Synod
of the Protestant Church in Germany

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Editors' note to CHARTE 4120/00 ADD 1,
**Declaration of the Association of Women
of Southern Europe (AFEM) (dated 29/01/00):**

The INIT FR version was dated 3 February 2000.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 28 February 2000**CHARTE 4120/00 ADD 1****CONTRIB 16****ADDENDUM TO COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter the English version of the declaration of the Association of Women of Southern Europe (AFEM).^{1 2}

¹ This text has been submitted only in English language.

² AFEM: 5, rue Villaret de Joyeuse - 75017 Paris. Tél: 33-1-72 12 03. Fax: 33-1-72 15 03
E-mail: assafem@aol.com

AFEM
ASSOCIATION DES FEMMES DE L' EUROPE MÉRIDIONALE
ASSOCIATION OF WOMEN OF SOUTHERN EUROPE
Declaration on the Charter of Fundamental Rights
Adopted by the Board at its meeting in Paris on the 29th of January 2000

The Association of Women of Southern Europe (AFEM) welcomes the European Union's decision to provide itself with a Charter of Fundamental Rights.

Being an essential element of a Community based on the rule of law and an indispensable means to promote a constant and balanced economic and social development, this Charter constitutes an opportunity to revive the more and more declining interest of the citizens in the EU.

However, as the Permanent Forum of the Civil Society also underlines, the following should be ensured:

- in respect of the procedure, a large consultation with the civil society;
- in respect of the content, an advance, in particular on economic and social rights;
- in respect of effectiveness, the binding force of the Charter, by integrating it in the Treaty.

The AFEM underlines **the necessity that the Charter**, after proclaiming the fundamental principle of equality and prohibiting any discrimination, **should guarantee substantive equality of women and men and prohibit any direct or indirect discrimination on the ground of sex in all areas, by a rule of direct effect.**

The AFEM considers it indispensable that the following should be expressly provided:

- "Democracy" means parity democracy.
- The "right to dignity" implies the interdiction of the traffic in the human body or part thereof, with or without the consent of the person concerned, since it is impossible to know whether this consent is freely given.
- The "right to protection against violence" implies the absolute interdiction of violence within the family as well as of sexual mutilations.
- The practical conditions for implementing the rights recognised to migrants should guarantee that women will effectively benefit therefrom, subject to the same conditions as men.
- For the granting of asylum, the fact that one is unable to dispose of oneself or that one's liberty or physical integrity is threatened should be considered as persecution, whether the authorities of the country of origin are the authors of such persecution or threats or they tolerate them or are unable to oppose them.
- Effective judicial protection of the aforementioned rights will not be achieved, unless NGOs have standing to have recourse and/or support the recourse of a victim before the competent national and European authorities.

Marcelle Devaud - Honorary President, *Micheline Galabert Augé*, President,
Annita Garibaldi, Vice-President, *Maria Angeles Ruiz Tagle Morales* - Vice-President, *Maria Alzira Lemos*, authorised by *Maria Regina Tavares da Silva* - Secretary General unable to attend, *Valérie Vection*, Treasurer, *Sophia Spiliotopoulos*, replacing until the next elections *Rena Lampsas*, Vice-President, deceased.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

fundamental.rights@consilium.eu.int

**Brussels, 8 February 2000 (11.02)
(OR. f)**

CHARTE 4124/00

CONTRIB 19

COVER NOTE

Subject : Draft Charter of Fundamental Rights of the European Union

Please find enclosed a Resolution of the European Trade Union Confederation (ETUC), adopted by its Executive Committee on 16/17 September 1999.¹

¹ This text was submitted in French, English and German.

ETUC Position:

"The incorporation of fundamental civic, social and trade union rights into the European Union Treaties" (adopted by the Executive Committee on 16-17 September 1999)

As a firm promoter of EU Fundamental Rights, ETUC welcomes the decision of the

Cologne European Council in June 1999 to initiate a procedure to draw up a concrete proposal on EU Fundamental Rights in the context of the next revision of the Treaty.

ETUC agrees with the Cologne Summit Conclusions that the "protection of fundamental rights is a founding principle of the Union and an indispensable prerequisite for her legitimacy", and, likewise, that there exists a clear need "to make their overriding importance and relevance more visible to the Union's citizens".

Although the Amsterdam Treaty did bring about some progress (e.g. TEU Art 6 & 7/human rights and TEC Art 13/non-discrimination), important shortcomings still exist.

The social implications of the realisation of EMU and the introduction of the EURO, the realisation of IM and the massive industrial restructuring, underpins the importance of securing fundamental rights at European level too.

A recent political initiative (intervention mechanism) and a ECJ pending ECJ case (C-67/96 on collective agreements) clearly shows clearly the potential pressure upon, and the threat to, vested trade union rights in the wake of the European integration process which will exist as long as fundamental trade union rights are not explicitly recognised at European level.

ETUC considers fundamental rights as an indispensable part, in combination with the development of the social socle, in the building of the Social Union and safeguarding and developing the European social model. Their incorporation will also be important in view of enlargement. The respect of fundamental rights is necessary for a Citizens' Europe to become a reality.

It should also be clear that the global trading partners will expect the European Union and its Member States themselves to secure the respect for fundamental rights when promoting these issues in the global trade agreements (as in the WTO).

4. The Cologne Summit did not conclude on "how the Charter should be integrated into the treaties". A solemn political declaration in the form of a "Charter", however, will not be sufficient to meet the stated objectives. A real "protection of fundamental rights" implies the legally binding incorporation of these rights in the treaties.

Therefore, in the ETUC 9th Congress resolutions, it is stated that: Above all, bringing the Union closer to its citizens requires political, civil, social and trade union rights - including cross-border sympathy action, including strikes – to be fully recognised by the Union and enshrined in the Treaty.

As regards specific trade union rights, ETUC calls for the full recognition of such rights in the EU Treaty beginning with the ILO Conventions on Freedom of Association, Collective Bargaining, Right to strike, Child Labour and Forced Labour.

Consequently, the ETUC 9th Congress decided to campaign for full recognition of these rights to be enshrined in the Treaty on the occasion of its next revision.

5. The fundamental political, civil, social and trade union rights to be incorporated into the Treaty should include the rights already laid down in existing international instruments and of EU specific cross border / transnational rights.

First, consequently, the rights included in the following instruments should consequently establish the core to be recognised by, and in, the EU:

Universal Declaration of Human Rights

European Convention on Human Rights

ILO Declaration on Fundamental Principles and Rights at Work

Community Charter of the Fundamental Social Rights of Workers

Revised European Social Charter

UN Convention on the Rights of the Child

These rights should be guaranteed throughout the territory of the European Union.

It goes without saying that these rights constitute a minimum, and a non-regression principle should be applied to existing rights in the EU or its Member States.

Secondly, the EU specific cross-border and transnational related rights as well should also be included, especially transnational trade union rights, freedom of movement and the European citizenship political rights.

6. As underlined by the ETUC 9th Congress, equal treatment must be extended to all people who are legally resident in the EU, whether or not they are EU citizens. This will be particularly important as regards fundamental rights in the EU.

The proposed approach is obvious as regards scope and content, obvious both from a political as well as from a practical point of view and should be time-saving. As underlined by the latest Commission expert report (Simitis report), "it is time to act". The issue has already been the subject of lengthy and in-depth political and legal analysis and debate over at least the last decade at least. The process establishing the 1989 Community Charter or the Commission "Comité des Sages" (Pintasilgo) report, the EP resolution on trade union rights as well as the Amsterdam Colloquium organised by ETUC in the Amsterdam IGC process are just examples of a number of initiatives taken.

There exists no need, therefore, to reopen an analytical debate on the basics, but, on the contrary, to take decisions to pursue and to complete a process which has been progressed upon in the Amsterdam Treaty.

The EU Member States have already all signed and ratified the mentioned international instruments and rights, (or as regards the Council of Europe revised Social Charter, are in the process of ratification). Beyond the inclusion of the European Human Rights Convention, the European treaties now also includes a reference to the Community Charter and the Council of Europe Social Charter.

The principal difference to the present situation, when incorporating these rights of the international instruments in the EU Treaty, will therefore be, that the Member States becomes obliged, in a binding manner vis à vis the European Union, to respect and adhere to these international instruments (and the compliance procedures of these institutions).

Whether the obligation vis -à-vis the European Union will become legally or politically binding depends on the method of incorporation into the EU Treaty.

8. For ETUC, the aim should be to anchor the recognition and respect for the EU fundamental rights visibly and efficiently in the Treaty. Enshrining the rights in the context of the Citizenship Chapter should therefore be considered.

A Charter based alone on a solemn political declaration would fall short of the needs and objectives set out by the Cologne Summit; ETUC (in line with its 9th Congress decisions) is in favour of incorporating in the Treaty in a binding manner a "EU Bill of Rights" based upon already existing core rights of international instruments combined with EU specific cross border and transnational rights. ETUC is actively preparing a proposal based on these principles with the objective of being introduced into the drafting process to be initiated at the Tampere European Council in October 1999.

However, should the EU Member States at present not be prepared to take this logical step in view of the achieved EU integration to integrate fully such a EU Bill of Rights, ETUC considers that the Tampere process, as a first step as a minimum in order to stay credible, should result in the incorporation in the Treaty of:

A binding Treaty obligation for the Member States (and the Union) to adhere to (the above mentioned) international instruments combined with a sanction procedure (political and/or legal)
and

b) Selected individual and collective universal core rights directly enshrined in the Treaty and with priority to EU-specific cross-border and transnational trade union and workers' rights:
national and transnational trade union rights of association, collective bargaining and trade union action, including the right to cross-border sympathy action and strike
national and transnational rights for workers to information, consultation and participation
the right of equal treatment and equal opportunities for men and women
prohibition of all forms of discrimination, racism and xenophobia
ban on child labour
the right of occupational health and safety protection
the right to a minimum income including social protection in case of unemployment
freedom of movement within the EU, including for third country nationals who are legally resident in the EU.

At a later stage, ETUC will submit a specific text on the above mentioned rights to be incorporated into the Treaty.

One outstanding issue to be clarified during the Tampere drafting process will be whether or not the European Union itself should accede to the European Convention on Human Rights and its additional Protocols (Council of Europe)."

9. ETUC believes that the development of the proposal for EU Fundamental Rights must be carried out by way of a transparent and participative procedure, involving, as decided at the Cologne Summit, the European Parliament and other EU institutions as well as national parliaments. ETUC however stresses the importance of fully involving civil society and the trade unions in the process. ETUC is looking forward to being invited to participate actively in the drafting procedure.

In view of the preparatory analysis and political clarification already undertaken, it is crucial and also realistic to conclude the Tampere drafting procedure on time to allow the EU Fundamental Rights proposal to be integrated into the next IGC procedure as planned

In July 1998, ETUC and the Platform of European Social NGO's launched jointly July 1998 a joint campaign for a Bill of Rights. The Cologne Summit decision to draw up a Charter of Fundamental Rights of the EU can be considered a first positive step and outcome. . Consequently, ETUC consequently therefore will therefore be intensifying its campaigning, both at European level vis-à-vis the European institutions and - carried by its affiliates - at national level, with the objective of rallying support for a real incorporation of fundamental rights in the Treaty.

Strong cooperation between the European trade union movement and civil society will be important. ETUC will therefore continue the joint campaign activities with the Platform of European Social NGO's, and it calls upon the affiliates to do the same at national level, as is customary according to the traditions. ETUC also calls upon especially the European Parliament to continue to play an active role as a promoter of fundamental rights and hence as a Citizens' Europe.

ENTWURF DER CHARTA DER GRUNDRECHTE DER EUROPÄISCHEN UNION**fundamental.rights@consilium.eu.int**

Brüssel, den 9 Februar 2000**CHARTE 4126/00****CONTRIB 21****ÜBERMITTLUNGSVERMERK**

Betr.: Entwurf der Charta der Grundrechte der Europäischen Union

Finden Sie bitte anliegend die Erklärung von Halle zur Europäischen Grundrechtscharta, vom 2.12.1999, vorgelegt vom Rat der Gemeinden und Regionen Europas - Deutsche Sektion. ¹

¹ Dieser Text ist uns nur in deutscher Sprache zugegangen.

ERKLÄRUNG VON HALLE

zur

Europäischen Grundrechtscharta

Die in der Delegiertenversammlung 1999 in Halle (Saale) versammelten Kommunalpolitiker/Kommunalpolitikerinnen aus den Mitgliedskommunen der Deutschen Sektion des RGRE

B e g r ü ß e n den Beschluss der Staats- und Regierungschefs der Mitgliedstaaten der Europäischen Union vom Juni 1999 (Kölner Gipfel), eine Charta der Grundrechte der Europäischen Union zu erarbeiten.

B e t r a c h t e n die Erarbeitung einer EU-Grundrechtscharta als wichtigen und notwendigen Schritt, um mit der ökonomischen und der politischen Einheit auch die konstitutionelle Einheit der Europäischen Union herbeizuführen.

W e i s e n darauf hin, dass mit einer EU-Grundrechtscharta die Chance besteht, die EU als eine Wertegemeinschaft, also auf gemeinsame Werte, Rechtsordnungen und Traditionen aufbauende Gemeinschaft, sichtbar zu machen.

E r a c h t e n eine gemeinsame Grundrechtscharta als ein wichtiges Element, um die Union den europäischen Bürgern näher zu bringen, indem sie Klarheit und Transparenz über die ihnen zustehenden Rechte schafft und damit zunehmend das Bewusstsein einer gemeinschaftlichen Identität vermittelt.

U n t e r s t r e i c h e n die Signalwirkung einer Grundrechtscharta für den Annäherungsprozess der Beitrittsländer Mittel- und Osteuropas an die Europäische Union als politische und Wertegemeinschaft

E r w a r t e n, dass sich die Erarbeitung der EU-Grundrechtscharta unter Einbeziehung aller gesellschaftlichen Gruppen in einem breitangelegten öffentlichen Dialog vollzieht, auch durch Beteiligung der RGRE/CCRE bei der angestrebten Anhörung.

B e t o n e n in dieser Hinsicht, dass die europäischen Kommunen und Regionen als die dem Bürger nächste Ebene im Verwaltungsaufbau der Europäischen Union ein wichtiger Impulsgeber sind und daher in diesem Dialog (über ihre repräsentativen Vereinigungen) beteiligt werden müssen.

B e g r ü ß e n die Absicht, den "Ausschuss der regionalen und lokalen Gebietskörperschaften" (AdR; Art. 263 ff EG-V) als Organ in die institutionelle Debatte miteinzubeziehen.

U n t e r s t ü t z e n die vom Präsidenten des Ausschusses der Regionen gegenüber der finnischen Ratspräsidentenschaft geäußerte Erwartung, bei den Arbeiten für eine europäische Grundrechtscharta die Verankerung des Prinzips der kommunalen Selbstverwaltung im EG-Vertrag vorzusehen.

F o r d e r n die Berücksichtigung folgender aus kommunaler Sicht wichtigen Elemente in einer europäischen Grundrechtscharta:

Kommunale Selbstverwaltungsgarantie

Das Recht der Bürger, über die Angelegenheiten der örtlichen Gemeinschaft - ihre Angelegenheiten - selbständig zu entscheiden, gehört in allen Mitgliedsländern der Europäischen Union zum gesicherten Verfassungsbestand (Art. 6 EU-Vertrag). Darüber hinaus haben alle Mitgliedsländer der Europäischen Union die Europäische „Charta der kommunalen Selbstverwaltung“ (des Europarates) unterzeichnet und bis auf Frankreich und Belgien auch ratifiziert und in innerstaatliches Recht umgesetzt.

Eine künftige Charta der Grundrechte der Europäischen Union muss daher das Recht auf bürgerschaftliche Selbstverwaltung als wichtigen Bestandteil der „nationalen Identität ihrer Mitgliedstaaten“ (Art. 6 Abs. 3 EU-Vertrag) gegenüber der Union und ihren Organen anerkennen und schützen.

Subsidiarität

Die Beachtung des Subsidiaritätsprinzips ist eine der wesentlichen Voraussetzungen für Bürgernähe in der Europäischen Union und damit letztendlich auch für die breite Akzeptanz des europäischen Integrationsprozesses in der europäischen Öffentlichkeit.

Das Subsidiaritätsprinzip ist mit dem Maastrichter Vertrag zu einem konstitutiven Element der europäischen (Verfassung-) Ordnung geworden (Art. 5 EG-Vertrag). Es trägt dazu bei, dass die Vielfalt und die Unterschiedlichkeit der Traditionen und Strukturen in Europa Bestand haben. Wegen dieser, für die Gestalt Europas identitätsbildenden Funktionen, gehört das Subsidiaritätsprinzip in eine EU-Grundrechtscharta.

Gleichzeitig muss das Subsidiaritätsprinzip konkretisiert und damit vervollständigt werden, indem die Kommunen und Regionen ausdrücklich in seine Anwendung durch die Organe der Union einbezogen werden.

Klagerecht bei Verletzungen der kommunalen Selbstverwaltungsgarantie und des Subsidiaritätsgrundsatzes

Ein wirksamer Schutz der kommunalen Selbstverwaltungsrechte und des Subsidiaritätsprinzips gegen ungerechtfertigte Eingriffe durch die Organe der Europäischen Gemeinschaft ist nur dann gewährleistet, wenn die Möglichkeit besteht, vermutete Verstöße gerichtlich feststellen zu lassen.

Das bürgerschaftliche Grundrecht auf kommunale Selbstverwaltung sowie das Subsidiaritätsprinzip bedürfen daher der Verfestigung durch die Gewährung eines Klagerechts vor dem Europäischen Gerichtshof bei Verstößen gegen die Grundsätze der kommunalen Selbstverwaltung und der Subsidiarität.

Dieses Klagerecht soll sich nicht auf die inneren Entscheidungen und Strukturen der Mitgliedstaaten und ihren Verwaltungsaufbau erstrecken, muss aber deren Schutz vor Eingriffen durch die EU und deren Organe garantieren (Abwehrrecht)

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 9 February 2000**CHARTE 4127/00****CONTRIB 22****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a submission from Euronet ¹ on the Recognition of the Rights of the Child in the Charter of Fundamental Rights. ²

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E-mail: savechildbru@skynet.be

² The text has only been submitted in English language.

EXECUTIVE SUMMARY

Recognition of the Rights of the Child in the Charter of Fundamental Rights

Submission from Euronet – The European Children's Network, to the drafting group for an EU Charter of Fundamental Rights

Euronet – the European Children's Network, is a network of children's rights organisations including transnational networks such as BICE (International Catholic Children's Bureau) and International Save the Children Alliance, and national members in all 15 EU member states.

Euronet welcomes the initiative of the Council of Ministers to elaborate a charter of fundamental rights. Euronet recommends that children's rights must be included in the charter of fundamental rights and that the charter should be legally binding. Children make up 20% of the EU population yet their rights as established in international law are currently almost invisible in EU legislation, programmes and political decisions. Additionally the Charter should not simply codify existing rights but advance human rights.

Reasons to mention children's rights explicitly in the Charter:

- To ensure that in areas where the EU legislates, children's interests are taken into account and that legislation is not inadvertently discriminating against children.
- To ensure that the EU itself is also implementing existing international commitments such as the UN Convention on the Rights of the Child.

The 1989 **UN Convention on the Rights of the Child** is the fullest contemporary international expression of the fundamental rights of all people under the age of 18 –ie children. It has almost universal ratification with only two countries (USA and Somalia) not having ratified. The Convention states clearly that the best interests of the child should be a primary consideration in all legislation and policy (Article 3). The Convention has been ratified by all EU member states. However, whilst member states have a legal obligation to promote the best interests of the child and protect children's fundamental rights, the EU is under no such obligation although there are many areas in which the EU currently passes legislation which have a direct or indirect bearing on children's lives. Examples include labour legislation, consumer legislation, information and media legislation, health and the environment. Integration of the Convention on the Rights of the Child would ensure that the EU would be obliged to use the Convention as a "child proofing" tool when passing legislation.

Children's current legal status in the EU Treaty is unclear as children's legal status as European citizens is unclear. The EU Treaty primarily focuses on the "citizen as worker", which excludes children. In EU law children are seen too often as only "victims" or "dependents" or "barriers to work" which is in direct contradiction with their status in the Convention on the Rights of the Child. At the moment the principle of "the best interests of the child" is only included in EU legislation on ad hoc basis. In some cases the EU has legislated to promote the highest standards of safety for children, for example in the Toy Safety Directive 1988. In other cases commercial considerations come before the best interests of the child with the potential to infringe children's rights, for instance the Distance Selling Directive and toy and TV advertising policies of the EU. Inclusion of a reference to children's rights in the Charter would help ensure that this process was systematic and no longer ad hoc. At present, many cases on children's rights in the EU have had to be established by taking cases to the Court of Justice. This is inefficient and costly – integration of children's rights into EU legislative processes would have made such cases unnecessary and ensure a more systematic protection and promotion of children's rights.

The current Amsterdam Treaty contains legal bases which give the Commission a limited competence to promote children's rights:

- Article K - which contains an explicit reference to "offences against children", creates an intergovernmental competence to tackle a whole range of cross border and transnational issues affecting children. However, this Article is outside the Community application of the Treaty and fails to cover many other areas of concern for children.
- Article 13 – Non Discrimination, in particular the non discrimination on the basis of age
- Article 137 – Social Exclusion, which can be used to address the problem of children facing social exclusion (20% of EU children are living in poverty, Eurostat figures)
- Article 141 – refers to equal treatment for men and women in matters of employment, which can indirectly benefit children
- Article 143 – Demography, which could be used to collect age disaggregated statistics, including improved information on the situation of Union citizens under the age of 18.

Children need their own special set of rights in the Charter of fundamental rights because:

- Existing international standards ie the Convention on the Rights of the Child recognise the need for children to have their own set of rights.
- Children have not always been accepted as holders of rights and animals were often given rights before children.
- Children are a special category of people who have specific needs different from adults and who do not have the ability to protect themselves.

Concerning **subsidiarity**, Euronet recognises the fact that the principal competence for policy and legislation on children's issues is the responsibility of the member states' governments. However, many issues affecting children are neither uniquely national or transnational, for example, legal consequences for children when their parents separate and choose to live in different countries of the EU and the standardisation of products and services (TV, internet, media).

Conclusions

It is recommended that:

- The Charter of Fundamental Rights contains a full reference to the protection and promotion of children's rights in the EU, best expressed by an explicit reference to the UN Convention on the Rights of the Child.
- The Charter of Fundamental Rights should be legally binding.
- A new Article should be inserted in the EU Treaties so that the Community can contribute to the promotion and protection of the rights and needs of children.

Recognition of the rights of the child in the Charter of Fundamental Rights.

Submission from Euronet – The European Children's Network, to the drafting group for an EU Charter of Fundamental Rights.

Introduction

Euronet welcomes the initiative of the Council of Ministers to elaborate a charter of fundamental rights. In this submission Euronet demonstrates why it is necessary to have a comprehensive reference to children's rights in the charter. Euronet recommends that in order to promote and protect children's rights and interests and to foster their development and protect them from unforeseen negative effects of growing European integration, a reference in the Charter of Rights would need to be accompanied by a comprehensive legal basis in the Treaty on European Union.

Euronet also recommends that the Charter of Fundamental Rights is legally binding and that it goes beyond already existing international and European legal instruments.

What is Euronet ?

Euronet – the European Children's Network, is a network of children's rights agencies including BICE (International Catholic Children's Bureau), International Save the Children Alliance, and national members in all 15 EU member states. Together these agencies shared a concern about the general invisibility of children in EU policy, legislation and programmes. Euronet began as a network to press for recognition of children's rights in the EU Treaty in 1995. Euronet members worked together to strengthen the rights of the child by, amongst other things, trying to include a reference in the Amsterdam Treaty to the norms of the UN Convention on the Rights of the Child, ratified by all member states of the EU. Following this, Euronet has gone on to develop a comprehensive EU Children's policy in "A Children's policy for 21st Century Europe: First Steps".¹

Euronet believes that children have a right to live without experiencing prejudice, exclusion and discrimination and have a right to be heard within the European institutions, including the European Parliament, Commission, Council of Ministers and Council of Europe.

¹ "A children's policy for 21st century Europe: First steps," Ruxton S, Euronet, Brussels, 1999

Children in the EU

Children in the EU make up 20% of the population but their rights as established in international law are currently almost invisible. This leads to children's invisibility in the legislation, policies, programmes and political decision making of the Union. Yet the future economic, social, political and cultural development of Europe is dependent on these 90 million children. As the ageing of Europe continues, children will become an even more precious and important resource. Neglecting their proper care and protection will have increasingly serious consequences. Furthermore, the EU institutions have frequently stated that it is important to "get closer to citizens" yet the interests of children are rarely included in EU legislation and Europe is still a long way from a "Citizens Europe" which includes children.

*"We are children and young people of the European Union meeting in Belfast at the end of May 1998. We demand that the European Union listen carefully to the voices of its 90 million children and young people under the age of 18 years of age. We as Europe's young citizens are eager to contribute actively to the development and progress of Europe...In our Europe every child will be respected and listened to and every child will have the right to participate in the democratic process."*²

At the beginning of the 21st Century, Europe is at a crossroads, as it enters monetary union, enlarges eastwards and faces demographic challenges. Children will be more affected by decisions with long term implications being taken now than any other population group.

Why do children's rights need to be included in the Charter ?

"Our efforts to discover children's needs in Europe are met with difficulties for two reasons. Firstly because in the EU citizens are seen as employers, employees and consumers only and secondly because children are seen as children of working parents only."³

The fundamental human rights of children⁴, as expressed in the UN Convention on the Rights of the Child (1989) are not yet integrated into any of the core legal texts of the EU and therefore are not integrated into EU policy and legislation. As a result children's needs are currently largely ignored. Indeed, at present, legislation is inadvertently affecting children in a negative way. Other groups such as consumers, women, animals, disabled people are at least mentioned in the existing EU Treaty.

² Active voices – children's choices – Belfast Euronet symposium, 28/29 May 1998

³ Children as Citizens of Europe – From Rhetoric to Reality, speech at Euronet Conference Belfast – 28/5/98.

⁴ Up to now the European Commission has preferred to use the term 'fundamental rights' in preference to human rights in discussing its work in this area.

This means that EU legislation, policy and programming is to a certain extent sensitive to their fundamental rights and interests. However in the area of children's policy this is currently not the case. EU member states, by comparison have made greater progress to integrate the principles of the Convention into their national laws since ratification and although Euronet believes that many member states still need to make improvements before their legislation fully reflects the principles of the best interests of the child, substantial progress has been made in this area (see for example "A children's policy for 21st Century Europe: First steps" p20 – 21⁵).

The briefing argues why children should be explicitly mentioned in the Charter in order to:-

- a) Ensure that the EU itself is also implementing existing international commitments such as the UN Convention on the Rights of the Child which all EU member states have ratified.
- b) Ensure that in areas where the EU legislates, children's interests are taken into account and that legislation is not inadvertently discriminating against children

The UN Convention on the Rights of the Child

*"The increasing importance attached to the concept of children's rights and the major role attributed by the international Community to the Convention on the Rights of the Child of 1989, serve to underline the desirability of a greater EU sensibility in this area... The Commission (should) ensure that all legislation it drafts is fully compatible with the requirements of the Convention."*⁶

The 1989 UN Convention on the Rights of the Child is the fullest contemporary international expression of the fundamental rights of all people under the age of 18 – ie children. More than any other human rights instrument it incorporates the whole spectrum of human rights, civil, political, economic, social and cultural rights. The Convention states clearly that the best interests of the child should be a primary consideration in all legislation, and policy.

*"In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legal bodies, the best interests of the child shall be a primary consideration,"*⁷

⁵ Op cit

⁶ Leading by Example – A Human Rights Agenda for the European Union for the Year 2000 – Cassese, Lalumière, Leuprecht, Robinson. Published by Academy of European Law, European University Institute, p 102.

⁷ Article 3 – Convention on the Rights of the Child.

The UN Convention on the Rights of the Child is the most widely ratified human rights instrument ever, having been ratified by all states in the world (except the USA and Somalia). All EU member states, EEA states and states about to accede to the EU have ratified the Convention. However, at the moment the EU itself is under no obligation to respect the principles of the UN Convention on the Rights of the Child.⁸

This means that whilst the member states have a legal obligation to promote the best interests of the child and protect children's fundamental rights, the EU and is under no such obligation. This is inconsistent and means for example that member states are regularly assessing and reviewing how their actions and legislation affects the human rights of children, whilst the EU does not do so. Without systematic reference to the Convention on the Rights of the Child as a yardstick by which to judge the extent to which actions and policies promote children's rights, there is no means by which to be sure that children's rights are being upheld and promoted.

As the EU moves towards further integration, more and more issues concerning children are becoming transnational ones. It is important that the EU should be bound by international standards that member states have already signed up to.

There are many areas in which the EU currently passes legislation which have a direct or indirect bearing on children's lives, these include, labour legislation (Young People at Work Directive, Parental Leave Directive), consumer legislation (see above), information and media legislation and policy, health and the environment. Integration of the principles of the Convention on the Rights of the Child would act as a "child proofing" tool and ensure that the EU was under the same obligations as its member states.

The Convention on the Rights of the Child enshrines children's right to participate in decisions which affect them.⁹ It is important that children are also given the possibility to participate actively in the development of the European ideal and concept.

Are Children's Rights dealt with by existing provisions in the Treaty covering human rights ?

Many commentators argue that the EU's overall legislative competence and approach to human rights is weak and that there is a human rights deficit.

⁸ For a further discussion see "Towards an EU Human Rights Agenda for Children" – International Save the Children Alliance Europe Group, 1998, Brussels, Rädta Barnen.

⁹ Article 12, Convention on the Rights of the Child.

“The Treaty did not and still does not even after the measures introduced by Amsterdam, list human rights among its objectives....the Community lacks any significant constitutional competence to deal with all but a very circumscribed range of human rights matters.”¹⁰

Similarly the report by the Comité de Sages concluded “As regards the Treaties of the European Union, what we have at present is not a genuine framework of social and civil rights but rather a set of ad hoc, piecemeal measures to accompany economic integration and to allow minimum social policies to be pursued.”¹¹

Euronet agrees with these assessments. Not only are existing human rights provisions in the EU Treaty weak, but those that are in the Treaty do not specifically mention children's human rights. This has very practical consequences, meaning that where human rights clauses are inserted into trade agreements or cooperation agreements, no specific attention is paid to children's rights.

Why do we need a separate expression of children's rights ?

If human rights cover all human beings, why do children need their own special set of rights ?

- Existing international standards ie the Convention on the Rights of the Child recognise the need for children to have their own set of rights, reflecting their particular needs and status.¹²
- Children have not always been accepted as holders of rights and animals were often given rights before children.
- Children are a special category of people who have specific needs and who do not have the ability to protect themselves. Adults rights are often different from children's rights and vice versa. Talking about human rights in general but not identifying specific rights for children renders children invisible and vulnerable.

¹⁰ See “Leading by example – A Human Rights Agenda for the European Union for the Year 2000”, Cassese, Lalumière, Leuprecht, Robinson, Academy of European Law, European University Institute, Florence, 1998, para 60

¹¹ “For a Europe of civic and social rights” – Report by the Comité de Sages, European Commission, Brussels, 1996.

¹² See “The Child and the European Convention on Human Rights, Kilkelly, Ursula, Ashgate, UK, 1999.

What about subsidiarity – Surely the protection of children's rights rests at the member state level ?

The principal competence for policy and legislation on children's issues is the responsibility of member state's Governments. However there is also a clear European dimension to the question of children's policy. Many issues affecting children are neither uniquely national nor transnational. For example, the legal consequences for children when their parents choose to live in different parts of the EU following family breakdown, the greater cross border dissemination of child pornography, and child trafficking. Similarly as standardisation and harmonisation of products and regulation of TV, internet and media takes place at EU level, in many cases the best interests of the child are overlooked.

Euronet is not arguing for the competence for children's policy to move to the European level but rather, where the EU passes legislation, policy and programmes, children's rights must be taken into account. The Charter should provide a clear, simple legal basis which enables European legislators to ensure that the best interests of the child is taken into account in all European policy, law and programming. Children are affected differently from adults by European legislation and it is important that all EU policy and legislative proposals takes their needs into consideration.

Would incorporation of the ECHR into the EU Treaty help children?

Legal opinion varies as to whether incorporation of the ECHR into the EU Treaty is possible and desirable. Leaving this wider debate aside, incorporation would bring limited value for children.

Children are not specifically mentioned in the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), although it has been frequently used to protect children's rights in such areas as respect for family life, the right to education, protection against discrimination and the protection of physical integrity. However there are significant limitations on the ECHR as an instrument for the promotion and protection of children's rights including its focus on relations between the state and individuals, its silence on many important areas of children's lives.¹³

The ECHR "is....in many ways blind to children. It does make limited reference to children for example – in respect of the public nature of court proceedings in respect of juveniles and liberty and security of the person. But it fails entirely to address the concept of human

¹³ See "Areas and Rights covered by the UN Convention on the Rights of the Child which are not covered by the European Convention on Human Rights" Pascale Boucard – Steering Committee for Human Rights, Council of Europe, Strasbourg, 1995.

rights for children within a framework appropriate to childhood in the way developed by the UN Convention on the Rights of the Child.”¹⁴

Children's rights as EU Citizens – a promise unfulfilled

“The advice I have received...is that the reference to all persons who have citizenship of a member state covers everybody, including children”¹⁵

Despite this positive statement, the rights of children as EU citizens are unclear. The focus in the Treaty on the “citizen as worker” has meant that children's legal status as European citizens is unclear. This has led for example to the failure to incorporate the best interests of the child into EU legislation. It also means that only a limited number of action programmes, and temporary budgetlines have children as a principal target group.

Article 17 (2) of the Treaty of Amsterdam states “Citizens of the Union shall enjoy the rights conferred by this Treaty and shall be subject to the duties imposed thereby.” However, citizenship of the Union only confers the rights which are covered by the Treaty, most of which exclude children. This is because the Treaty primarily regulates issues of an economic nature, therefore focusing on groups such as workers or people providing services. As a result rights are currently related to the fact that you are an economic entity. In EU law children are seen too often as only “victims” or “dependents” or “barriers to work” in direct contradiction with their status in the Convention on the Rights of the Child and in member states' laws.

The consequences of a lack of specific recognition for children's rights

One of the strongest illustrations of why it is necessary to have a reference to children in the Charter is the current ad hoc nature of inclusion of the principle of “the best interests of the child” (fundamental to the protection of children's rights in international law) in EU legislation. This is evident for example in the field of harmonisation and standardisation legislation as illustrated below.

a) Negative effects on children from EU Directives

The protection of children's human rights should be a priority for all policies. Because of children's particular vulnerability and needs, adults have a particular responsibility to safeguard them.

¹⁴ “European Convention on Human Rights – Implications for Children”1997, UK – Gerison Lansdown.

¹⁵ Statement from the then Irish Foreign Minister Gay Mitchell, representing the Irish Presidency of the EU, during revision of Amsterdam Treaty.

On the positive side there have been a number of cases where the EU has legislated to promote the highest standards of safety for children. These have included the Toy Safety Directive 1988, and other directives aimed at establishing standards for producers so that children cannot undo fastenings on potentially dangerous products, such as bottles of medicines. Beyond these specific cases, children have to some extent been covered by more general consumer protection initiatives.

However despite this, many problems remain. Too often commercial considerations come before the best interests of the child with the potential to infringe children's rights.

Examples of this:-

- **Distance Selling:** There is no reference to the protection of children in EU Directives on misleading advertising and on distance selling, despite evidence from consumer groups that children are often unable to distinguish between covert advertising and information and are therefore at specific risk.
- **Toy Advertising:** In a recent case toy manufacturers called on the European Commission to take action against the Greek Government. The Greek Government had banned TV advertising of toys because of a concern to promote the best interests of the child and ensure that no advertising was transmitted between certain hours. However the Commission claims that the Greek Government's action breaches single market rules, placing commercial interests above those of Europe's youngest citizens.
- **TV Advertising:** In a similar case in 1995 a UK TV station transmitted advertisements to children in Sweden, although these are prohibited for children under 12 in Sweden. Because the single Market creates a free market for movement of goods and services, this action is perfectly lawful, even though it may not be in the best interests of children.
- **Chemicals and Toys:** Although many member states took action to ban the use of PVC (polyvinylchlorides) in babies' toys, the European Commission took many months to introduce an EU wide ban on the use of PVC in toys. This was despite evidence from consumer and environmental groups that such toys contain harmful levels of chemicals and may damage children's rights to the highest attainable health standards.

All these examples demonstrate that the need for better protection of children's rights within the policy and decision making processes of the EU. Inclusion of a reference to children's rights in the Charter would help ensure that this process was systematic and no longer ad hoc.

b) Unnecessary Court of Justice Cases

The lack of recognition of the human rights of children in the EU Treaties, and in particular the principle of promoting the best interests of the child has meant that children's rights in the EU have developed in a piecemeal way. In some cases children's rights in the EU have had to be established by taking cases to the Court of Justice. This is inefficient and costly - it would be far more efficient to ensure that the principles of the Convention on the Rights of the Child were incorporated into the Treaty on European Union. Whilst both the judgements below did in fact rule in favour of the rights of the child, a further demonstration of the problems resulting from the lack of systematic protection of those rights, this was only achieved by taking the case to the European Court of Justice. Integration of the fundamental rights of the child into EU legislative processes would have made such cases unnecessary and ensure a more systematic protection and promotion of children's rights.

In the first case, the *Commission v Belgium* (42/87) established that children in one member state but living in another continue to be entitled to all forms of state education in the host country even if the working parent has retired or died in that state. The second case of *Moritz v the Netherlands Ministry of Education* (390/87) established that this was the case even if the child moves back to the state of origin.

c) Economic, Trade and Poverty issues

Children are also affected by EU economic and trade policies, EU Trade agreements, Economic and Monetary Union, and the single market all can impact on children, it is important that children's interests (which can be different from adults' interests) are not overlooked in these debates.¹⁶

EU economic policy for example which requires specific regions within Europe to undertake adjustment to a new economic environment can damage the development of entire generations of children in those regions. Children in such regions make up significant numbers of the 20% of EU's children suffering from social exclusion.

d) Asylum and Immigration policy

The EU is now legislating in a number of crucial areas of asylum and immigration policy as it moves from the third pillar to the first pillar. Children have very particular needs, especially child asylum seekers who are separated from their parents.

¹⁶ See "Children, Economics and the EU – Towards Child Friendly Policies" – Save the Children, 2000.

Do existing legal bases offer sufficient protection for children's rights ?

“The action taken by the EU in relation to the protection of children is still very limited, because of a lack of explicit legal bases and a failure to recognise that this action is of prime importance to the very future of the Union.”¹⁷

The current legal bases in the Amsterdam Treaty gives the Commission only a very limited competence to protect children's rights. In particular it creates a limited intergovernmental competence to tackle a whole range of cross border and transnational issues affecting children's rights.¹⁸

On the positive side, for the first time in the history of the EU, children are explicitly mentioned in the Amsterdam Treaty in Article K which contains an explicit reference to “offences against children”. Article K allows for increased cooperation between member states' police and judicial authorities in tackling crimes against children which cross national borders. Increasingly as borders disappear, children are at risk from organised crime and member states have had limited powers to deal with this in a coordinated fashion. However, Article K is outside the Community application of the Treaty, and any action has to be agreed on a case by case basis and has limited European dimension. Furthermore Article K is limited to offences against children and fails to cover many other areas of concern for children and does not provide for children's interests to be taken into account systematically in the drafting of EU legislation.

Therefore a major failing of the Treaty of Amsterdam is that it does not incorporate the respect for the fundamental principles of children's rights. It gives only a very limited competence to work at European level on a whole range of cross border and transnational problems affecting the fulfillment of children's rights. Below we analyse the limitations of other legal bases in promoting children's rights.

¹⁷ Quote from MEP in “Towards a Children's Policy for 21st Century Europe: First Steps” op cit.

¹⁸ For a more detailed analysis see Euronet - “The New Treaty on European Union – What is in it for children?”, Sutton, Diana, Brussels 1997 and Euronet “Towards a Children's Policy for 21st Century Europe”, op cit.

EU Treaty Articles relevant to children:

Article 13 - Non Discrimination:

In theory the inclusion of a non-discrimination clause on grounds of age should offer protection to children's rights, especially the right not to be discriminated against (Article 3 of the Convention on the Rights of the Child). However the reference to non discrimination on grounds of age in Article 13 has the following limitations:-

- Although age discrimination can occur at the lower end of the age range, the Commission has not yet interpreted "non discrimination on grounds of age" to include children.
- Secondly this clause does not have "direct effect", this means that it cannot be used by an individual in a court of law and cannot be used in the European Court of Justice.
- Thirdly, all measures proposed under this clause require the unanimous agreement of all EU member states' Governments.
- Fourthly, Article 13 has limited value for children because it only deals with measures aimed at combating discrimination and as we have seen children are affected by numerous other issues at a European level, and no measures can be taken under this clause to address these wider issues.
- Finally there is no spending power attached by Member States to this clause and therefore the impact of any measures taken under it will be very limited. It could not therefore be used as a legal basis for a European programme in the area of children's rights and children's policy.

Article 137 - Social Exclusion

The inclusion of Article 137 gives the Community a legal basis to combat social exclusion. This is welcome given that recent Eurostat figures demonstrate that 20% of the European Union's children are living in poverty. This new legal basis will be used for the adoption of an action programme on social exclusion, which can be used to address the problem of children facing social exclusion. It is recommended that Member States work with a broad definition of social exclusion. This clause can be agreed by qualified majority voting, thus eliminating potential problems with one or two member states blocking progress.

Article 141:

Although not directly relevant to children's rights issues this clause could be beneficial to children, since it makes reference to equal treatment for men and women in matters of employment and occupation, which could for example have a bearing on issues such as parental leave and child care.

Article 143 - Demography

This clause could be used to ensure that the European Union collects age disaggregated statistics, including improved information at the lower end of the age range, ie on the situation of Union citizens under the age of 18. Such an approach would enable the Union to have an accurate statistical assessment of the different ages of all its citizens and would assist the Union and Member States' in planning policy and services. It is important that information about the situation of children is included in such a report for a number of reasons. First children's needs are different from adults, second children will have to be responsible for supporting both financially and otherwise the Union's ageing population and finally children's services and interests must not be prejudiced as the Union and Member States focus their attention on the needs of Europe's ageing population.

The need for a legally binding charter of fundamental rights

Euronet recommends that the charter of fundamental rights is legally binding. Although a specific reference to children's rights in a non legally binding Bill of Rights would have the advantage of giving children and children's rights political visibility and as such may assist focusing the Commission and Member states attention more on the issue of European Children's policy, it would not have any legal significance and will therefore not assist in child proofing of legislation, its significance would therefore be only symbolic.

Moreover, Euronet recommends that the charter is not simply a declaration of existing rights but rather advances the promotion of children's rights and human rights. Euronet believes that a charter that is not legally binding would not address the problems of EU legislation inadvertently affecting children in a negative way which are raised in this submission.

Conclusions

It is recommended that the drafting of a Charter of Fundamental Rights should contain a full reference to the need for protection and promotion of children's rights in the EU. This is best expressed through a clear and explicit reference to the UN Convention on the Rights of the Child. Such a reference should be used to ensure that the child dimension is taken into account in all relevant EU policy, programmes and budgets. Member states should also ensure that existing legal bases are used to the greatest extent possible to promote children's rights.

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January 2000

Editors' note to CHARTE 4128/00 ADD 1,
**Contribution of the Secretariat of the Commission
of the Bishops' Conferences of the European
Community (COMECE) (dated 8/02/00):**

The INIT FR version was dated 11 February.

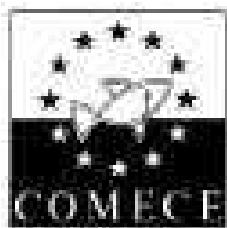
DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 7 March 2000**CHARTE 4128/00 ADD 1ⁿ****CONTRIB 23****ADDENDUM TO COVER NOTE****Subject : Draft Charter of Fundamental Rights of the European Union**

Please find hereafter the English version of the contribution of the Secretariat of the Commission of the Bishops' conferences of the European Community (COMECE).^{1 2}

¹ This text has been submitted only in English language.

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Contribution by the
COMMISSION of the BISHOPS' CONFERENCES of the EUROPEAN
COMMUNITY
- COMECE -
to the Draft
CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Document of the COMECE Secretariat

8 February 2000

I.	Text	p. 2
II.	Explanatory memorandum	p. 6

Translation from the **ORIGINAL FRENCH** version

I. Text

Preamble

ON BEHALF OF THE PEOPLES OF EUROPE,

CONSIDERING the Universal Declaration of Human Rights, proclaimed by the United Nations General Assembly of 10 December 1948,

CONSIDERING the European Convention for the Protection of Human Rights and Fundamental Freedoms, adopted by the Council of Europe on 4 November 1950,

CONSIDERING the European Community Charter of Fundamental Rights of Workers, adopted by the European Community on 9 December 1989,

CONSIDERING the revised European Social Charter, adopted by the Council of Europe on 3 May 1996,

CONSIDERING the respect for fundamental rights resulting from constitutional traditions common to the Member States, as one of the general principles of Community law,

RECALLING that all human beings are equal in dignity and under the law,

CONFIRMING that recognition of the inherent dignity of all members of the human family and the protection of their inalienable rights is the foundation of freedom, justice and peace in the world,

REAFFIRMING that the European Union is founded on the principle of freedom, democracy, respect for human rights and fundamental freedoms, the rule of law and justice,

RESOLVED to continue the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as closely as possible to the citizen, in accordance with the principle of subsidiarity,

DESIRING to further enhance the democratic and efficient functioning of the institutions to enable them to better carry out the tasks entrusted to them in the respect of human dignity and fundamental rights,

the High Contracting Parties have agreed as follows.

Right to life

Human life has an absolute value.

Every human being has the right to respect for his/her life from its beginning until its natural end.

Every human being has the right to be born of a man and a woman.

These rights must be specially safeguarded in medical and biotechnological applications, as well as in the context of research.

Family rights

The family is the natural and fundamental element of society and is entitled to protection by society and the State.

The right of men and women of marriageable age to marry and to raise a family shall be recognised, if they meet the conditions required by domestic laws, insofar as such conditions do not affect the fundamental principles established in this Charter.

No marriage shall be entered into without the free and full consent of the intending spouses.

The choice of one of the two spouses to stay home to take care of the children shall be protected.

Equal rights and judicious sharing of responsibilities between the spouses as to marriage shall be laid down in national law, during marriage and upon its dissolution. In the event of dissolution of the family, the law shall make the necessary provisions to ensure proper protection of the children, solely in their interest and for their wellbeing.

The law recognises that children born outside of wedlock have the same rights as those born in wedlock.

Freedom of thought, conscience and religion

Everyone has the right to freedom of thought, conscience and religion; this right includes the freedom to change one's religion or belief, as well as the freedom, either alone or in community with others and in public or private, to manifest one's religion or belief through worship, teaching, practice and observance.

Freedom of religion also includes the right for the Churches and religious associations or communities in the Member States to lay down all practical or legal acts relating to religion.

Right to education

Everyone has the right to education, which shall be based on the principles of freedom, dignity and solidarity. In the exercise of any function it may assume in the field of education, the Union shall respect the right of parents to provide for such education in line with their religious and philosophical convictions.

The right to religious education, provided for in accordance with the rules laid down in national law, is recognised to parents and to pupils.

Right to political asylum

All persons who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, are outside the country of their nationality and are unable or, owing to such fear, are unwilling to avail themselves of the protection of their country, have the right to request asylum in a State of the European Union.

No refugee shall be sent to a place where he/she is at risk of once again being persecuted.

Right to fair and proper access to health care

Everyone has a right to fair access to proper quality health care.

Right to protection against any form of discrimination on the grounds of health or genetic characteristics

Everyone has a right to protection against any form of discrimination on the grounds of health or genetic attributes.

Right of disabled people

Whatever the origin or nature of their disability, all disabled persons have the right to benefit from additional measures to promote their occupational and social integration, mobility and living conditions.

Right to rest and leisure

Everyone has a right to rest and leisure, including reasonable limitation of working time and periodic holidays with pay. This right includes the respect of Sunday, a day of rest common to all Member States and, as such, an expression of their identity and a part of their common cultural heritage.

Right to social protection and to satisfy basic material needs

Every worker in the European Union has a right to proper social protection and, irrespective of his/her status or the size of the enterprise for which he/she works, is entitled to an adequate level of social security benefits.

All persons legally resident on the territory of the Union who are excluded from the labour market either because they have not been able to enter it or because they have not been able to rejoin it, and who have no means of subsistence are entitled to adequate benefits and resources in line with their personal or family situation.

Pregnant women without the means of subsistence necessary for their personal or family situation are entitled to receive benefits and resources permitting them to take responsibility for their condition.

Protection of the elderly

Every worker in the European Union is entitled, when he/she retires, to benefit from sufficient resources to ensure that he/she has a decent standard of living.

Any person legally resident in the territory of the Union who has reached retirement age but has been excluded from entitlement to a pension and who has no other means of subsistence, is entitled to benefit from adequate resources and from welfare and medical assistance in line with their specific needs.

Rights of children in the labour market

In accordance with Article 1 of the 1989 Convention on the Rights of the Child, "child" means any human being under the age of 18, except where the age of majority is earlier under the legislation applying to him/her.

All young workers have a right to suitable initial vocational training, as well as to protection that takes into account their specific situation in the labour market.

The European Union shall respect the age of 18 as the minimum working age. However, derogations may be provided for young employees carrying out light work that is unlikely to affect their health, moral upbringing or education.

Children who are still subject to compulsory education shall never be employed in work that deprives them of the full benefit of such education.

Young workers have the right to fair pay. Their hours and days of work shall be limited in order to avoid harming the development of their health and personality.

National law shall ensure special protection against any physical or moral dangers to which children might be exposed, especially those resulting directly or indirectly from their work.

II. Explanatory memorandum

General comments

The Commission of the Bishops' Conferences of the European Community (COMECE) welcomes the decision adopted at the Cologne European Council in June 1999 to draw up a Charter of Fundamental Rights of the European Union. Protecting the fundamental rights of people in a way that is legally enforceable against the European Union and its organs is an important initiative to which COMECE attaches great value.

Since it is anxious to participate in a joint drafting of this Charter, the General Secretariat of the Commission of the Bishops' Conferences of the European Community (COMECE) is submitting a number of specific draft texts, together with a Memorandum to explain their scope.

The rights enshrined in the European Convention for the Protection of Human Rights and Fundamental Freedoms, as well as the acknowledged rights and freedoms of European Union citizens in the treaties of Maastricht and Amsterdam have now been adopted throughout the European Union. They have not been included in the draft submitted by COMECE, except where they sometimes appeared to need supplementing. Nonetheless, all of the rights and freedoms to which the European Union Member States have subscribed in the above treaties will, of course, need to be included in the Charter, either by referring to the said treaties or by fully integrating the text of the rights enshrined in the respective treaties.

Obviously a rational solution would be for the European Union to become a signatory of the European Convention for the Protection of Human Rights and Fundamental Freedoms. And it would be desirable for the forthcoming Intergovernmental Conference to adopt this decision.

The rights included in COMECE's proposal have been drawn up in the desire to give them binding legal force. Some of these rights relate to matters that already form part of the European Union's remit. Others are the remit of the Member State national authorities but, should the European Union's action encroach directly or indirectly upon their remit, it would be appropriate to ensure that these fundamental rights are respected.

In drawing up the draft articles, COMECE largely based its proposals on internationally agreed texts, i.e. the 1948 Universal Declaration of Human Rights, the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms, the 1961 European Social Charter, the 1966 International Covenant on Civil and Political Rights, the 1969 American Convention on Human Rights and the 1989 Convention on the Rights of the Child.

Preamble

The preamble states that this Charter has been adopted on behalf of the peoples of Europe. This reference confirms the authors' desire to ensure that the initiative remains close to citizens.

In the preamble, reference is also made to the main international texts on fundamental rights to which the Member States have adhered, as well as to the European Union's major objectives.

Finally, the preamble underscores that these fundamental rights are rooted in a concern for the respect of human dignity.

Right to life

It should be self-evident that this is the most important of all the fundamental rights. However, as a result of scientific advances, developments could result in certain abuses that undermine human dignity. For instance, current cloning techniques have shown that it is becoming possible to reproduce life without any merging of gametes, i.e. without an egg having been fertilised by a sperm.

Taking into account developments in scientific research, it is becoming an urgent matter to lay down absolute respect for human life and dignity.

Family rights

There have been changes in this sphere also, but in this case they involve questions of social lifestyle. Although the family has been the fundamental unit of society since the dawn of humanity, one must now take into consideration the fact that, alongside the family founded on marriage, there are other forms of union: single-parent families and cohabitation. In these cases, too, children have the right to protection.

Furthermore, these developments should not penalise the traditional family, which still deserves the protection of the State and society. Therefore no tax system adopted within the Union should discourage a spouse from remaining in the family home to raise the children. In the same spirit, even though new forms of conjugal living are becoming established, the principal characteristics of marriage should be reserved solely for this traditional institution.

Freedom of thought, conscience and religion

This right is very effectively enshrined in Article 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Nevertheless it warrants being supplemented in order to take into account the fact that the right enshrined in this article is generally considered from the angle of an individual right, even though it is externalised collectively and in public. In fact, freedom of thought, conscience and religion would be incomplete if it failed to take into consideration the collective dimension. By this, we mean that churches, religious associations and communities must be allowed to perform acts that are the concrete expression of this freedom, and these acts must be afforded legal recognition. Without this extra dimension, such freedom would to a large degree be meaningless.

Reference should be made in this regard to Joint Declaration no. 11, appended to the Treaty of Amsterdam.

Right to education

This right often gives rise to much debate within EU Member States.

Without wishing to undermine the principle of subsidiarity it is, however, desirable to clarify its scope and content in view of the comment on the previous article.

Right to political asylum

The protection of refugees is a highly topical issue in the European Union. At the Tampere European Council, the Member States that had signed the 1951 Geneva Convention reasserted their desire to allow individual protection for refugees. It is important to guarantee this right at Union level, since the Treaty of Amsterdam entrusted the Union with new powers to create an area of freedom, security and justice.

Right of fair and proper access to health care

Along with medical advances, sophisticated but also increasingly costly treatments are becoming widespread. In view of the increase in the European Union's ageing population and growing problems in balancing social security budgets, it is becoming urgent to provide fair measures of health care access for all.

Right to protection against any form of discrimination on the grounds of health or genetic attributes

There has been a plethora of scientific advances, which have been particularly spectacular in the field of genetics. However, such developments could lead to abuses for people who might be discovered to be prone to certain illnesses (with regard to employment contracts or the payment of insurance premiums, for example). In striving to combat a host of different forms of discrimination, we should not overlook the sort of discrimination based on health or genetic characteristics.

Right of handicapped people

In its concern to combat all forms of discrimination, the Treaty of Amsterdam has also included disability as an unacceptable criterion of discrimination. However, this provision is not enough in itself: positive measures must also be provided to assist disabled people.

Right to rest and leisure

The right to rest and leisure is one of the twentieth century's greatest achievements. This important social right is enshrined in the Universal Declaration of Human Rights, in particular.

Although the right to rest must take into account a number of criteria and be adapted to suit local requirements, it is nevertheless important to establish a common day for the convenience of families, the organisation of leisure, and cultural requirements. This day should obviously be Sunday, for centuries a day of rest common to all European countries. The choice of Sunday as a day of rest therefore forms part of Europe's cultural heritage.

Right to social protection and to the satisfaction of basic material needs

One of the European Union's greatest concerns is to combat social exclusion. The right to social protection and to the satisfaction of basic material needs (in terms of food, clothing, accommodation and urgent medical care) must be included in any Charter of Fundamental Rights.

Every worker in the European Union must be able to benefit from this right, as well as any person who is unable or no longer able to work (spouses remaining at home or unemployed people) and any person legally resident in the territory (for example, anyone who has been given the right of asylum).

This right should include pregnant women who lack the necessary means of subsistence, who must be provided with the assistance required to allow them to cope with and take responsibility for their condition.

Protection of the elderly

In the same concern as that expressed above, any persons in the European Union who find themselves in a situation where they are at a severe disadvantage must be allowed to benefit from protection that provides them with a decent standard of living. This of course also applies to elderly people, whether they are workers in the Union or people legally resident there, examples of which have been given in the previous article.

Rights of children in the labour market

The concern to ensure the wellbeing of all people in the European Union who deserve protection should not neglect young people, a group that is sometimes at a disadvantage in the labour market.

For the definition of "child", reference should be made to article one of the Convention on the Rights of the Child, adopted by the United Nations Organisation in 1989. This Convention and the European Social Charter of 1961 were the main sources of inspiration for this article.

Brussels, 8 February 2000

Editors' note to CHARTE 4129/00 ADD 1,
**Common statement by the International Federation
of Human Rights (FIDH) (dated 14/02/00):**

The INIT FR version was dated 16 February.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 7 June 2000**CHARTE 4129/00****ADD 1****CONTRIB 24****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter the English version of the common statement by the International Federation of Human Rights (FIDH) . ^{1 2}

¹ This text has been submitted in English and French languages.

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QUAKER COUNCIL FOR EUROPEAN AFFAIRS**

The European Union Charter of Fundamental Rights and Third Country Nationals

The European Council of Cologne (June 1999) resolved to draft a Charter of Fundamental Rights for the European Union (EU). The Extraordinary European Council in Tampere (October 1999) agreed on the composition and method of work of the Body to elaborate the draft EU Charter.

The debate has now entered a new phase: it is now time to go ahead on discussions on the drafting procedure and to address the content of the future Charter.

Taking into consideration the discussions so far on the Charter and the ambiguity surrounding the scope of the Charter (who it will apply to), our organisations call for the full and express recognition of the fundamental rights of Third Country Nationals within the territory of the European Union.

Consequently, the following three basic principles need to be remembered:

The universality of human rights

Human rights, by definition, benefit every human being for the simple reason that he/she is a human being. The universality of human rights has already been established through the body of existing international and regional Human Rights instruments, to which the EU member states are signatories. For example:

- Article 2 of the Universal Declaration of Human Rights states that:
«Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, language, religion, political or other opinion, national or social origin, property, birth or other status.»
- Article 1 of the European Convention of Human Rights (ECHR) provides that:
«The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section 1 of this Convention.»
- Article 2 of the International Covenant on Civil and Political Rights reads:
«Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.»
- Article 2 of the International Covenant on Economic, Social and Cultural Rights states, in paragraph 2, that:
«The State Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour,

sex, language, religion, political or other opinion, national or social origin, property, birth or other status.»

2. Non-discrimination

As the European Court of Human Rights has repeatedly stressed, distinctions between citizens and non-citizens of the EU can only be established on the condition that they are objectively justified and proportionate to the goal of setting up specific legal arrangements between the EU member states, after establishing its own citizenship. Hence, the principle of non-discrimination, an essential reference in the field of fundamental rights, implies that the rights restricted to EU citizens should be narrowly defined and that such a difference in treatment should be firmly justified and proportionate to the objective to be achieved.

In this regard, our organisations invite the body drafting the Charter to examine the best wording possible for the specific non-discrimination clause which will be included in the Charter. The proposed Protocol to the ECHR (Protocol 12) on non-discrimination will probably be adopted during the year 2000. This could form a good reference point for this purpose.

The basic principle must be that the rights enshrined in the Charter will be universal. Differences in application of the Charter's rights should result from an objective difference in the circumstances of those entitled to the rights. It is not necessary to create *a priori* categories of beneficiaries.

As for civil and political rights, international law at present allows the **rights to vote and eligibility to stand for election** in European and municipal elections to be conferred solely on EU citizens. The international treaties binding Member states (Article 25 of the International Covenant on Civil and Political Rights, Article 21 of the Universal Declaration of Human Rights) provide for the possibility of such a restriction. We urge however the drafters of the Charter to **extend this right to people residing legally** in the territory of the EU, provided they comply with specific conditions (e.g. 5 years of legal residence), as requested by the European Parliament in April 1999¹. The fact that Third Country Nationals live in the territory of the EU is today a permanent characteristic of European societies. The Council of Europe's Convention on the Participation of Foreigners in Public Life at local level (1992) could serve as a reference in this field.

If a form of **diplomatic protection** (Article 20 of EEC) could be reserved to the EU citizens, the **right to petition** before the European Parliament and the **right to introduce a complaint to the European Ombudsman** should continue to be available to all people residing in the territory of Member states. The **right to address** the European institutions in any of the 12 official languages and to receive a response in that language (Article 21 EEC) should equally be extended to all people under the jurisdiction of the EU Member states.

¹ Resolution on the strategy document on the Position of the European Union regards migration and asylum adopted 13 April 1999, para.23.

The **right to move and reside freely** (Article 18 EEC) within the EU is, for the time being, restricted to Member states nationals. Our organisations believe that this right should benefit all people residing legally within the EU, in conformity with the general prohibition of discrimination on the basis of nationality.

In addition, the extension of this right to third country nationals could be considered in the future to be a requirement resulting from the right to move freely within States, enshrined in various international human rights instruments. These instruments do not include any reference to nationality as a pre-condition (Article 2 of Protocol 4 to ECHR, Article 12 of the International Covenant on Civil and Political Rights²). In line with the progress of European integration, it is logical and fair that the right to move and reside freely within the EU should equally benefit all people residing legally in Member states. This would conform to the aim to create an internal market without borders.

Eventually, in relation to this right, the future Charter should include an explicit reference to the right of asylum-seekers, stateless people and people entitled to benefit from family reunification to enter the territory of Member states.

Other rights which would only benefit Third Country Nationals could be enshrined in the Charter. For example, the prohibition of collective expulsions of foreigners (as foreseen in Article 4 of Protocol 4 to ECHR).

The signatory organisations of this paper consider that **economic and social fundamental rights** should have the same scope of application to the persons as the civil and political rights. Therefore, the right to medical and social assistance (including the right to adequate housing and sufficient food), the right of children to education and the right to gender equality should benefit to all people under the jurisdiction of EU Member states. This should be regardless of their nationality and the legality of their residence in the EU.

Some social rights are linked to the exercise of a job (for example, the right to vocational training), others depend on the legality of residence (for instance, the right to work, the right to social welfare – this is different from the fundamental right to medical and social assistance). Therefore, those residing illegally in the territory of the Union will not benefit from these rights. A specific clause excluding these people from the benefit of such rights is neither necessary nor desirable.

² « Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.»

3. Harmonisation of the instruments of protection

Our organisations are convinced that the proposed EU Charter of Fundamental Rights and the ratification by the EU (or in default by the EC) of the European Convention on Human Rights and the Revised European Social Charter are complementary. It is only by combining these processes that contradictory jurisprudence will be avoided since in the medium term, the Charter might become a binding instrument and be invoked before the Community courts. This is also the only way to ensure coherence among the mechanisms of protection of fundamental rights in Europe.

Such an accession would require a revision of the EEC Treaty. Therefore, we call for the inclusion of the Charter of Fundamental Rights as well as the accession to the relevant instruments of the Council of Europe (in particular ECHR and the Revised ESC) on the agenda of the forth-coming Inter-Governmental Conference.

Our organisations call upon the Body elaborating the Charter of Fundamental Rights to make sure that all its thematic working groups duly take into account the situation of Third Country Nationals residing within the EU, and consistently keep in mind the universal nature of fundamental rights.

Brussels, 14 February 2000

This paper is signed by the following organisations:

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PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPEENNE**fundamental.rights@consilium.eu.int**

Bruxelles, le 16 février 2000**CHARTE 4130/00****CONTRIB 25****NOTE DE TRANSMISSION**

Objet : Projet de charte des droits fondamentaux de l'Union européenne

Veillez trouver ci-joint une contribution de la Fédération Européenne des Retraités et Personnes Agées (FERPA).^{1 2}

¹ Ce texte a été soumis seulement en langue française.

² FERPA: boulevard du Roi Albert II n° 5, 1210 Bruxelles, Belgique. Tel: +32-2-224 04 42.
Fax: +32-2-224 04 54. E-mail: jmontiel@etuc.org

Bruxelles, le 11 février 2000

Madame, Monsieur,

Lors de son Congrès de mai 1999, la FERPA a arrêté un catalogue énumérant les Droits Fondamentaux.

Cette liste a été élaborée après un examen des propositions faites notamment dans le rapport Staedelin au Comité Economique et Social, du Comité des Sages, du projet de Traité élaboré par Herman et présenté au Parlement Européen.

La FERPA, Fédération Européenne des Retraités et Personnes Agées compte dans ses rangs, des syndicalistes qui ont participé activement à la construction de l'Europe dès 1950 et à la création de la Confédération Européenne des Syndicats en 1973. Elle organise actuellement tous les syndicats des pensionnés et des personnes âgées des confédérations nationales affiliées à la CES. La FERPA regroupe quelques dix millions de membres dans les 15 Etats membres.

La FERPA lutte pour une Union Européenne de paix, démocratique, sociale et de solidarité entre générations. La FERPA se bat pour l'inclusion sociale des femmes et des hommes âgés. Elle veut davantage de justice, grâce à une répartition plus juste des richesses qui réduit les inégalités choquantes, élimine la pauvreté, garantit un minimum de pension et un minimum vital de ressources, de soins de santé et une habitation décente pour tous.

La FERPA est à la disposition de "l'Enceinte" devenue "Convention".

Projet de catalogue au niveau de l'Union des droits civiques, politiques, économiques et sociaux des citoyens européens

(à inscrire dans le traité)

Droits humains fondamentaux, civiques et politiques

1. Droit à la vie

Toute personne a droit à la vie. Nul ne peut être condamné à la mort, ni être soumis à la torture.

2. Droit à la dignité humaine

Droit fondamental à des ressources et prestations suffisantes pour vivre une vie humaine digne.

3. Egalité devant la loi

- Toute personne est égale devant la loi.
- Est interdite toute discrimination fondée sur le sexe, la race ou l'origine ethnique, l'appartenance à une minorité nationale, la religion ou les convictions, un handicap, l'âge ou l'orientation sexuelle, la fortune, la naissance.
- Egalité entre hommes et femmes (dans tous les domaines).
- Est interdite toute forme de racisme et de xénophobie.

4. Liberté de pensée, d'opinion et d'information

La liberté de pensée, de conscience et de religion est garantie, de même que la liberté d'expression et le droit de communiquer des informations ou des idées.

5. Vie privée

Toute personne a droit au respect de la vie privée.

6. Protection de la famille

Toute personne a droit de fonder une famille. La famille, la paternité et la maternité de même que l'enfant sont protégés .

7. Droit de circuler librement

Les citoyens européens ont le droit de circuler librement sur le territoire de l'Union et d'y choisir leur résidence.

8. Liberté de réunion et d'association

Toute personne a le droit d'organiser et de participer à des réunions et manifestations pacifiques et le droit à la liberté d'association. Un statut d'association européenne sera institué.

9. Droit de propriété

Le droit à la propriété est garanti.

10. Droit à l'éducation

Toute personne a droit à une éducation et une formation permanente tout au long de la vie et de choisir son propre cheminement et ce sur l'ensemble du territoire de l'Union.

11. La santé publique et la protection des consommateurs

La santé publique de l'ensemble de la population et la protection des consommateurs sont des objectifs impératifs à défendre d'une manière permanente.

12. Droit d'accès aux informations

Toute personne a un droit d'accès et de rectification pour les documents administratifs et les autres données qui la concernent.

13. Le Droit à la justice

Toute personne résidant dans un Etat membre a le droit d'ester en justice auprès de la Cour de justice de l'Union. L'accès à la justice est effective.

Droits économiques

14. Droit d'association

Les employeurs et les travailleurs ont le droit de s'associer pour défendre et promouvoir les droits, les intérêts et les causes qui les concernent directement et indirectement.

15. Le droit de négociation

Entre eux le droit est garanti au niveau européen, ainsi que celui de conclure des conventions collectives au niveau interprofessionnel et sectoriel. Le droit à des actions collectives, ainsi que le droit de grève est garanti.

16. Le droit d'information, de consultation et de participation

Les travailleurs ont le droit d'être informés régulièrement de la situation économique et financière de leur entreprise, d'être consultés sur les décisions susceptibles d'affecter leur intérêt et de participer à la prise de décision qui les concernent.

17. Liberté professionnelle et conditions de travail

- L'Union reconnaît le droit au travail. L'Union et les Etats membres prennent les mesures pour rendre ce droit effectif.
- Toute personne a le droit de choisir librement sa profession, ainsi que son lieu de travail et d'exercer librement sa profession.
- Nul ne peut être contraint d'effectuer un travail déterminé.
- Tout travailleur a droit à des conditions de travail équitables, à une rémunération juste et décente et à la protection contre tout licenciement arbitraire.
- Le droit à la santé dans le milieu du travail doit être garanti.

Droits sociaux

18. Tout travailleur a droit à une protection sociale adéquate et doit bénéficier, quel que soit son statut et quelle que soit la taille de l'entreprise dans laquelle il travaille de prestations de sécurité sociale d'un niveau suffisant (par rapport à son salaire, sa rémunération).

Les travailleurs indépendants ont droit à un système de sécurité sociale équivalent.

19. Tout travailleur doit bénéficier, au moment de la retraite, de ressources lui assurant un niveau de vie décent en rapport avec celui acquis avant sa retraite. Un minimum de pension doit être fixé et régulièrement adapté.

20. Le droit à un revenu minimal est garanti à toute personne qui ne bénéficie d'aucune autre ressource de revenu. Il doit être suffisant pour vivre décemment.

21. Toute personne a droit à l'accès à des soins de santé.

22. Toute personne handicapée doit bénéficier de mesures visant à favoriser son intégration professionnelle et sociale.

23. Toute personne qui n'est pas en mesure de se loger convenablement a droit à l'aide des pouvoirs publics compétents pour être logée.
24. L'Union est garante de la solidarité et de la cohésion sociale. L'accès des citoyens à des services d'intérêt général est garanti.
25. L'Union doit veiller à un environnement sain et le garantir pour les générations futures.

Georges DEBUNNE

Président de la Fédération Européenne des Retraités et Personnes Agées

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 18 February 2000**CHARTE 4132/00****CONTRIB 27****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a letter to the members of the Convention by the European Women's Lobby.^{1 2}

¹ European Women's Lobby: 18 rue Hydraulique, B-1210 Brussels. Tel: +32-2-217 9020.

Fax: +32-2-219 8451. E-mail: ewl@womenlobby.org

² The text has been submitted in English and French language.



LOBBY EUROPEEN DES FEMMES EUROPEAN WOMEN'S LOBBY

To the attention of the Members of the Convention responsible for drawing up a draft charter of Fundamental Rights for the European Union.

14th February 2000

Dear Member of the Convention,

I am writing to you on behalf of the European Women's Lobby (EWL), the largest coalition of women's non-governmental organisations in Europe with over 2700 member associations in the 15 Member States.

Having followed closely the work of the Convention, I note that the gender dimension has not been integrated in any part of the Convention's work. I regret very much this situation and would therefore like to make the following comments and recommendations:

Composition of the Convention

The EWL objects that only nine of the 62 persons involved in the elaboration of the Charter are women. The majority of the national governments and Parliaments have completely failed to nominate women as participants in the Convention. Of the eight women representing national institutions, four are alternate members, and as such, lack the right to speak and vote as long as the titular member is present. As for the European Parliament, its decision to nominate twice as many men as women clearly shows that its standpoint on gender balance in decision making is not always carried out in reality.¹

The EWL deeply regrets the present situation: not only because it is distressing to see that women's position is still undervalued within the EU institutions, national parliaments and governments, but also because the lack of women in the Convention will certainly affect the outcome of its work. The EWL fears that women's interest may be overlooked in the elaboration process and demands that this situation be corrected as soon as possible.

¹ The information of the composition of the Convention is based on facts presented on the web-site designed to keep the public up to date with the Convention's work; <http://db.consillium.eu.int/DF/intro.asp?lang=en>.

List of rights

The EWL calls for the integration in the Charter of a provision stating clearly the unconditional and fundamental principle of equality between women and men. In order to do so, the provision should not only prohibit discrimination on the grounds of sex, but also make the promotion of equality between men and women mandatory. Promoting equality between women and men is one of the tasks as well as a goal of the European Union. As such, it seems reasonable that the Charter's provision in question reflects this. Merely prohibiting discrimination on the grounds of sex is not sufficient.

Furthermore, I would like to draw your attention to the need for this provision to be dedicated *solely* to the fight against discrimination on the grounds of sex. The discrimination suffered by women is different from the discrimination against vulnerable groups of society such as disabled people, ethnic minorities or homosexuals. Women make up over 50 percent of the population in the EU. Many women suffer from multiple discrimination. It is clear that the discrimination suffered by women is more complex, far-reaching and more persistent than any other type of discrimination.

The EWL urges also the Convention to adopt a gender perspective while elaborating the entire draft Charter. The principle of mainstreaming applies to all EU activities and consequently needs to be respected also by the Convention throughout its work on the EU Charter on Fundamental Rights.

Lastly, I wish to reiterate the demand, put forward by the Platform of European Social NGOs, for a regular exchange of views between the civil society and the Convention. As a member of the Platform of Social NGOs, the EWL fully supports this demand.

I urge you to consider in a positive way our demands and would be very happy to meet with you to discuss these matters further.

Yours sincerely,

Denise FUCHS
President of the European Women's Lobby

Copy to: *Members of the European Parliament*

New .eu Domain

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Addendum: 1

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

**Brussels, 21 February 2000 (23.02)
(OR. fr)****CHARTE 4133/00****CONTRIB 28****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Attached hereto is a working document on Fundamental Social Rights in Europe produced by the European Parliament's Directorate General for Research. ¹

¹ Text supplied in French, German and English.

EUROPEAN PARLIAMENT

Directorate General for Research

WORKING DOCUMENT

FUNDAMENTAL SOCIAL RIGHTS IN EUROPE

SOCIAL AFFAIRS SERIES

SOCI 104 EN

This document is available in the following languages:

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EUROPEAN PARLIAMENT

Directorate General for Research

WORKING DOCUMENT

FUNDAMENTAL SOCIAL RIGHTS IN EUROPE

SOCIAL AFFAIRS SERIES

SOCI 104 EN

1-2000

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Part I: Introduction

1. Aim and contents of the study

At its meeting in Cologne in early June 1999 the European Council decided to set up a body composed of representatives of the Heads of State or Government, the President of the Commission and Members of the European Parliament and national parliaments to draft a Charter of Fundamental Rights of the European Union. Once the Council, the Commission and Parliament have solemnly proclaimed the Charter, it will be decided if it is to be integrated into the EU Treaty. Europe may thus be on the eve of a new era that begins with its own bill of rights and perhaps leads to the creation of a European constitution².

This working document is intended as a contribution to the debate on the creation of a bill of rights and on its contents. It considers the fundamental social rights that already exist at European level and especially those included in the constitutions of the Member States of the European Union. The constitutions of some candidate countries are also examined.

European Communities activity in the economic sphere and growing Member States' cooperation within the EU in internal affairs and law are such that almost all aspects of EU citizens' lives are now affected by EU legal acts. Thus there appears to be a need for the individual to identify his fundamental rights, by which these acts are gauged, not only in the constitution of his own country but also in EU primary law³. The present system, whereby the European Court of Justice develops general principles of Community law and references are made to the European Convention on Human Rights (ECHR)⁴, the European Social Charter (ESC) adopted by the Council of Europe in 1961 and the Community Charter of Fundamental Social Rights adopted in 1989⁵, does not ensure sufficient transparency⁶ and is unlikely to increase public confidence in the EU.

The low turnout for the elections to the European Parliament in 1999 is a clear sign of poor public identification with Europe. A bill of rights is also important in the context of eastward enlargement, common foreign and security policy and development cooperation. The EU will seem more credible when demanding that other countries respect human rights and obey the rule of law if it itself clearly bases its activities on these principles.

It remains to be seen how far social rights will form part of an EU bill of rights since, unlike the classical liberal civil rights and liberties recognised in all constitutions, social rights are not regarded as fundamental rights in all Member States.

² See Pernice, *Vertragsrevision oder europäische Verfassungsgebung*, *Frankfurter Allgemeine Zeitung*, 7 July 1999, p.7; Rengeling, *Eine Charta der Grundrechte*, *Frankfurter Allgemeine Zeitung*, 21 July 1999, p.13.

³ Report of the Expert Group on Fundamental Rights, 'Affirming Fundamental Rights in the European Union – Time to Act', European Commission, p.13.

⁴ This reference is to be found in Article 6(2) of the Treaty on European Union, but not in the EC Treaty.

⁵ Article 136 of the EC Treaty and the fourth recital of the preamble to the Treaty on European Union.

⁶ Report of the Expert Group on Fundamental Rights, *op. cit.* p.10.

2. Concept and definition of 'fundamental social rights'

Fundamental social rights in this context mean rights to which the individual citizen is entitled, which he can exercise only in his relationship with other human beings as a member of a group and which can be made effective only if the State acts to safeguard the individual's environment⁷. Social rights are a necessary complement to civil rights and liberties, since the latter cannot be enjoyed without a minimum of social security. In contrast to civil rights and liberties, this means that it is not freedom from the State that is achieved, but freedom with the State's help. These are, then, fundamental rights in the form of entitlements.

Although this would appear at first glance to indicate that they can be distinguished from the classical civil rights and liberties and the general principle of equality, there is considerable overlap. This study considers only those fundamental rights not included among the 'classical fundamental rights'. It does not therefore have anything to say on the right of freedom of occupation in the sense of freedom of occupational choice and the prohibition of forced labour or on the right to form associations and engage in collective bargaining or the right to strike. Nor will the study discuss in any depth fundamental rights which primarily concern equality and are generally recognised, such as the right to equal pay for men and women⁸.

Fundamental social rights in Europe should also be generally distinguished from European social policy, which cannot be considered in this context. It forms the basis of social rights, which are not, however, fundamental rights in the constitutional sense.

2. General comments on the protection of fundamental rights at constitutional level

The theories adopted by the various legal systems of the Member States as regards the protection of fundamental rights are reviewed in the following.

3.1. Functions of fundamental rights

Fundamental rights may take the form of litigable or 'individual' rights, i.e. the individual may refer directly to such rights in courts of law. In principle, this may be true both of rights of self-defence, i.e. rights concerning freedom from the State, such as the inviolability of the home and freedom of opinion, and of rights to equal treatment as well as entitlements that justify a claim to State action.

Fundamental rights may also take the form of guarantees of establishment, which require the State to ensure the existence of a given legal institution (e.g. private ownership, universities). They may further be included in provisions defining objectives of the State that require all its authorities to observe them in any action they take and so have an impact on legislation and administrative action.

⁷ H.-J. Wipfelder, Die verfassungsrechtliche Kodifizierung sozialer Grundrechte, *Zeitschrift für Rechtspolitik* 1986, p.140.

⁸ This right is also recognised as a general principle of Community law; see European Court of Justice, Case 149/77 – Defrenne, ECR 1978, p.1379.

Fundamental rights may also be policy clauses in the sense that they instruct the legislator to ensure that a right is made effective by means of ordinary laws. The individual can enforce the entitlements arising from this ordinary legislation – i.e. not from constitutional law – by applying to the ordinary courts or to special administrative or social courts provided the right takes the form of an individual right.

A further distinction needs to be made between a situation where a fundamental right is effective only vis-à-vis the State or third parties as well ('third-party effect'), i.e. where the individual may refer to his fundamental right only in a legal dispute with the State, and a situation in which it can also have a bearing in civil legal disputes, as in labour law. A distinction must then be made between direct and indirect third-party effect, depending on whether the fundamental right has a legal effect directly or simply indirectly in the form of, say, an interpretation of civil law or even an employment contract that upholds fundamental rights.

3.2. *Social rights as fundamental rights?*

All the Member States have social rights at the level of ordinary law. They are to be found in particular in labour law in the relationship between employees and employers, where they include, for example, rules on protection against dismissal, minimum wages, leave and safe working conditions. The social security systems are also governed by ordinary legislation that guarantees various social benefits in emergencies or where certain situations arise. The question is, however, whether social rights should be raised to the level of constitutional law.

Those who advocate that as many fundamental rights as possible be explicitly enshrined in the constitution claim this to be the only way to ensure that such rights are not eroded by ordinary legislation or the administration of justice, since constitutions are not as a rule as easy to amend as ordinary legislation and normally remain largely unchanged even after a change of government.

Critics, on the other hand, maintain that the inclusion of fundamental social rights in the constitution would result in the definition of a certain standard of living, which changing economic and financial circumstances might make it impossible to sustain, and in the inclusion of provisions inappropriate to future situations since they are based on current social conditions⁹.

Nor, according to the opponents of the inclusion of fundamental social rights in constitutions, should such rights be placed on a par with fundamental and inalienable human rights (such as the right to life, freedom and physical integrity), because most fundamental social rights cannot be guaranteed and do not have the same value. In a market economy, for example, the state is de facto unable to guarantee many rights, one such being the right to work because it cannot offer enough jobs. In contrast, it is able to guarantee rights to freedom, self-defence and equality, because all this usually entails is restraint on its part or the passing of legislation to bring about equality.

⁹ Such as full-time employment by a single employer, which will not necessarily be the rule in the future; see Boggetti, *Social Rights, a Necessary Component of the Constitution? The Lesson of the Italian Case*, in: Bieber/Widmer (eds), *L'espace constitutionnel européen, Der europäische Verfassungsraum, The European Constitutional Area*, Zürich 1995, pp.85 ff.

Where the EU is specifically concerned, another factor that must be considered in the debate is that the EU is not a State and has only the powers transferred to it by the Member States. As things now stand, therefore, it is able to protect its citizens' fundamental rights only where EU law applies, i.e. where the EU or one of the Communities acts or where national bodies take action within the scope of the Treaties. Otherwise, the protection of fundamental rights is left to the Member States unless they transfer this task in its entirety to Europe and a European court. With opinions differing widely in some respects, this is unlikely and given the present structure of the Union, or Communities, hardly possible¹⁰. Nor is there at present any genuine level of constitutional law by which EU action must be gauged. The establishment of a common bill of rights should logically be followed by the creation of an EU constitution and constitutional court.

The constitutional lawyer Udo Di Fabio, who has just been appointed as a judge to the German Federal Constitutional Court, has proposed in the context of the debate on the charter of fundamental rights that the monitoring of such rights should not be entrusted to a European Court of Justice that is already overextended. Instead, a separate Union court should be set up for issues relating to fundamental rights on the model of the European Court of Human Rights, which does not form part of the European Union. A court of this kind would have no other task but to monitor, when requested by Union citizens, the exercise of Community power, taking European fundamental rights as its yardstick¹¹.

Finally, it is important to realise that there is a rather tense relationship between the principles of democracy and the division of power on the one hand and the protection of fundamental rights on the other. If too many constraints are placed on the legislature by the constitution and especially the constitutional court, decisions will ultimately no longer be taken by the democratically legitimised parliament but by judges who have not been elected by the people¹². The executive too needs some room for manoeuvre if it is to be able to act effectively and must not be totally restricted by the constitution and constitutional court.

¹⁰ This is also rejected by the Committee of Wise Men (Cassese/Lalumière/Leuprecht/Robinson) in the agenda *Leading by example: A human rights agenda for the European Union for the year 2000*, p.9.

¹¹ Udo Di Fabio, Für eine Grundrechtsdebatte ist es Zeit, *Frankfurter Allgemeine Zeitung*, 17 November 1999, p.11.

¹² In the United Kingdom no real level of constitutional law by which acts of parliament must be gauged is therefore recognised; see Part III, section 2.15, below.

Part II: The recognition of fundamental social rights at European level

1. The European Social Charter

The European Social Charter (ESC) can be seen as the 'social counterpart' of the European Convention on Human Rights (ECHR). Like the ECHR, it emerged from the Council of Europe and since 1961 has been signed by 22 countries, though with reservations and derogations in some cases¹³.

The ESC requires the signatory states to take legal and administrative measures in the areas of working life and social security. Although it does not provide for any real sanctions for infringing the rules, it does obligate the signatory states to send a report every two years to the Committee of Experts, which then identifies infringements and submits proposals for changes. As a result, the ESC has had a major influence on the legislation of the signatory states, this being especially true of the first twenty years of its existence. In the 1970s, for example, the United Kingdom and Denmark amended their merchant shipping acts because they contravened the prohibition of forced labour referred to in Article 1(1) of the ESC.

The EU itself is not a party to the ESC. In the preamble to the 1987 Single European Act (SEA) the Member States of the Community nevertheless referred to the 'fundamental rights recognised in ... the European Social Charter, notably freedom, equality and social justice'¹⁴. This declaration is now also to be found in the preamble to the Treaty on European Union (fourth recital). The European Court of Justice has also referred to the ESC on several occasions in its judgements and uses it as a source of legal findings when establishing general principles of Community law¹⁵.

Articles 1 to 19 of the European Social Charter list the following fundamental rights:

- ❑ the right to work;
- ❑ the right to just, safe and healthy working conditions;
- ❑ the right to fair remuneration;
- ❑ the right to organise;
- ❑ the right to bargain collectively;
- ❑ the right of children and young persons to protection;
- ❑ the right of employed women to protection;
- ❑ the right to vocational guidance and training;
- ❑ the right to protection of health;

¹³ The signatory states, with date of entry into force: Austria (28.11.1969), Belgium (15.11.1990), Cyprus (6.4.1968), Denmark (2.4.1965), Federal Republic of Germany (26.2.1965), Finland (29.5.1991), France (8.4.1973), Greece (6.4.1984), Ireland (26.2.1965), Iceland (14.2.1976), Italy (21.11.1965), Luxembourg (9.11.1991), Malta (3.11.1988), Netherlands (22.5.1980), Norway (26.2.1965), Poland (25.7.1997), Portugal (30.10.1991), Slovakia (22.6.1998), Spain (5.6.1980), Sweden (26.2.1965), Turkey (24.12.1989), United Kingdom (26.2.1965).

¹⁴ See Irmgard Wetter, *Die Grundrechtscharta des Europäischen Gerichtshofes*, Frankfurt am Main 1998, pp.61 f.

¹⁵ See, for example, Rutili, Case 36/75 (1975), ECR 1219; Hoechst, Case 227/88 (1989), ECR 2859; Gravier, Case 293/83 (1985), ECR 593; it is worth noting that the ESC has even been taken as the basis for judgments concerning countries that have not ratified it; see, for example, Defrenne, Case 149/77 (1978), ECR 1365. The European Court of Justice therefore clearly considers some of the fundamental rights set out in the ESC to be general principles of Community law.

- ❑ the right to social security;
- ❑ the right to social and medical assistance and to benefit from social welfare services;
- ❑ the right of disabled persons to vocational training and integration;
- ❑ the right of the family to protection;
- ❑ the right of mothers and children to protection;
- ❑ and rights relating to the freedom of movement, combined with the right to protection and assistance.

A question that has yet to be answered is whether the EU, or EC, should itself accede to the ESC (and to the ECHR). Parliament has always favoured this, but the Court of Justice takes the view that the EC lacks a legal basis for such action¹⁶. The two charters might, however, be incorporated into Community law without formal accession¹⁷. A particular problem with accession is that, as the two charters would rank higher than EU law, it would have to be possible for the case law of the European Court of Justice to be reviewed by the European Court of Human Rights in Strasbourg. These issues cannot, however, be considered in any greater depth here¹⁸.

2. The Community Charter of the Fundamental Social Rights of Workers

The Community Charter of the Fundamental Social Rights of Workers of 9 December 1989 was signed at the time by all the EC Member States except the United Kingdom. It is neither a binding legal act of the EU, nor is it a treaty among the signatory states that is binding in international law. It is merely a solemn declaration by the Heads of State or Government of the Member States. It should nonetheless be used as an aid to the interpretation of the provisions of the EC Treaty, since it reflects views and traditions common to the Member States and represents a declaration of basic principles which the EU and its Member States intend to respect¹⁹. Together with the action programme for implementing the Community Charter, which has also been approved by the Heads of State or Government, it is therefore used by the Commission as a basis for justifying many of the directives it proposes²⁰.

Title I of the Community Charter of the Fundamental Social Rights of Workers details rights in the following areas:

- ❑ freedom of movement;
- ❑ employment and remuneration;
- ❑ improvement of living and working conditions;
- ❑ social protection;
- ❑ freedom of association and collective bargaining;
- ❑ vocational training;
- ❑ equal treatment of men and women;
- ❑ information, consultation and participation of workers;

¹⁶ See European Court of Justice 2/94, 28.3.1996.

¹⁷ See de Witte, 'Protection of Fundamental Social Rights in the EU – The Choice of the Appropriate Legal Instrument', in: Betten/McDevitt, *The Protection of Fundamental Social Rights in the European Union*, pp.66 ff.

¹⁸ For recent developments concerning the ESC and future prospects see: *The Social Charter of the 21st Century*, Council of Europe 1997.

¹⁹ E. Lundberg, *The Protection of Social Rights in Europe*, in: Drzewicki/Krausse/Rosas, op. cit., p.183.

²⁰ It should be remembered, however, that binding acts cannot be based solely on the Charter; it may only be cited together with provisions of the EC Treaty.

- health protection and safety at the workplace;
- protection of children and adolescents;
- elderly persons;
- disabled persons.

Title II of the Community Charter makes it clear that the Member States are generally responsible for guaranteeing fundamental social rights in accordance with national practices. The EU takes action only inasmuch as Articles 29 and 30 of the Charter require the Commission to draw up an annual report on the application of the Charter and to forward it to the Council, Parliament and the Economic and Social Committee. As a consequence, it has already been stated in the literature that the ESC of the Council of Europe (see 1 above) affords better protection of fundamental social rights than the EU Member States' Community Charter²¹. Now that the Treaty of Amsterdam has helped fundamental social rights to find their place in the preamble to the EU Treaty, the Court of Justice might take greater account of them – as the 'driving force of integration' – in its case law on fundamental rights and so make them an important element of the system of fundamental rights²².

²¹ E. Lundberg, loc. cit., with a reference, inter alia, to B. Hepple, The Implementation of the Community Charter of Fundamental Social Rights, *The Modern Law Review*, Vol. 53, p.645, and P. Watson, The Community Social Charter, *Common Market Law Review*, Vol. 28, p.49.

²² See Bergmann, in: Bergmann/Lenz (eds): *Der Amsterdamer Vertrag, Kommentar*, Cologne 1998, pp.35 f.

Part III: Fundamental social rights in the constitutions of the Member States

1. Preliminary remarks

Comparing systems of fundamental rights is difficult because some similar concepts are apparently defined differently and an accurate comparison always requires an examination of the environment of the constitution as a whole, the dogmatics of constitutional jurisprudence and the judgments of the constitutional court, where it exists. In this context no more than an overview can therefore be given of the various approaches adopted in the Member States' constitutions.

2. The constitutions of the Member States

2.1. Belgium

Compared to other recent constitutions, the Belgian constitution of 1994 refers to only a few fundamental social rights²³. Despite this restraint, Belgium has extensive social legislation and is therefore a genuine welfare state, even though the latter has not been defined in any detail in the constitution²⁴.

The most important social rights are based on Articles 23 and 24. Article 23 gives everyone the right to a decent life. This right is defined in paragraphs 1 to 5 and comprises both the right to work and the right to fair remuneration, social security, health protection, social, medical and legal assistance, adequate housing, a healthy environment and cultural and social self-fulfilment. According to paragraph 1, the state is responsible for guaranteeing these economic, social and cultural rights in that it is required to pass laws which enable the individual to lead a decent life. Although there is no instrument for enforcing social rights at constitutional level²⁵, the legislature would be contravening the constitution if it failed to make appropriate arrangements or restricted fundamental rights contrary to the constitution.

Article 24 of the Belgian constitution gives everyone the right to free and neutral training, free education and a moral or religious upbringing.

It is noticeable that these rights are not reserved for Belgians, but may be exercised by anyone²⁶. This is confirmed by Article 191 of the Belgian constitution, according to which any foreigner in principle enjoys the same protection of his person and his assets as any Belgian national.

2.2. Denmark

The Danish constitution of 5 June 1953 contains two provisions that provide for fundamental social rights within the meaning of this study, namely sections 75 and 76.

²³ Isabel Álvarez Véllez/Fuencisla Alcón Yustas, *Las Constituciones de los 15 estados de la Unión Europea*, p.145.

²⁴ *ibid.*, p.145.

²⁵ Aristovoulos Manassis, in: Julia Iliopoulos-Strangas (ed.), *Grundrechtsschutz im europäischen Raum - Der Beitritt der Europäischen Gemeinschaft zur Europäischen Menschenrechtskonvention*, p.33.

²⁶ *ibid.*, p.33.

Section 75(1) refers to a right to work in that it states that 'to further public welfare, the aim shall be to ensure that every citizen capable of work is able to work under conditions that secure his existence.' The wording itself makes it clear that this is not an individual right but a policy clause.

Section 75(2), on the other hand, is worded as an individual right: 'Anyone who is unable to support himself or his dependants and for whose welfare no one else is responsible shall be entitled to public assistance provided, however, that he enter into the obligations for which the law provides.' Whether this is indeed an individual right or a policy clause, however, is disputed in legal theory²⁷.

According to section 76, all children of school age are entitled to free elementary education. This is likely to be an individual right since it is so worded and the state has no difficulty in making it effective.

Fundamental social rights do not, then, feature very strongly in the constitution. One of the reasons for this is that the constitution was originally drawn up in 1849 and has largely remained liberal in nature. The Scandinavian countries also have a legal tradition of judicial restraint, the courts being wary of declaring acts of the legislature unconstitutional in their desire to respect the will of the democratically elected parliament²⁸. The Scandinavian welfare states are able to manage without a detailed list in their constitutions mainly because social rights frequently emerge from agreements between trade unions and employers and from consensus in politics and society.

In Denmark the social rights of the citizen therefore enjoy effective protection primarily under ordinary laws, and the ordinary courts are in principle there for decisions by the administration to be contested²⁹.

2.3. Germany

Unlike the Weimar constitution of 1919, the German Basic Law of 1949 does not generally refer to fundamental social rights. The only reference to an individual right is to be found in Article 6(4) of the Basic Law, under which every mother is entitled to protection and care. The main reason for this restraint is that the authors of the constitution wanted to avoid the need for such rights to be constantly adjusted to changing economic and social conditions³⁰.

Articles 20(1) and 28 describe the Federal Republic as a democratic and social federal state. All acts of the public authorities must comply with the welfare state principle. Although fundamental social rights, unlike the classical fundamental rights, are not specifically referred to in the German constitution, or Basic Law, they are nonetheless covered by the welfare state

²⁷ See Rosas, *The Implementation of Economic and Social Rights: Nordic Legal Systems*, in: Matscher (ed.), *Die Durchsetzung wirtschaftlicher und sozialer Grundrechte – eine rechtsvergleichende Bestandsaufnahme*, p.231, with further references.

²⁸ Katrougalos, *The Implementation of Social Rights in Europe*, *Columbia Journal of European Law* 1996, p.277; *ibid.*, p.295.

²⁹ Rosas, *op. cit.*, p.233.

³⁰ Luis María Díez-Picazo/Marie-Claire Ponthoreau, *The Constitutional Protection of Social Rights: Some Comparative Remarks*, p.18.

principle³¹. This principle is thus the overriding concept for the various social rights, and although this has the disadvantage that these rights are not specified, the shift in emphasis to ordinary laws has the advantage that the latter can be adjusted to requirements more quickly.

There are some references to fundamental social rights in the constitutions of the *Länder*. However, they are virtually unenforceable since the Federal Government has assumed almost total responsibility for social matters.

In 1994 Article 20a was inserted into the constitution to protect the environment. It is worded as a provision defining a state objective and therefore transfers to all three organs of state the responsibility for protecting the natural foundations of life for future generations. The need for this provision was due less to deficient protection than to a need for clarification, since such protection could be deduced from the fundamental rights even before Article 20a was inserted into the Basic Law. Just as a right to a minimum social subsistence level ensues from the first sentence of Article 2(2) in conjunction with Article 1(1) of the Basic Law, a right to a 'minimum ecological subsistence level' can, by analogy, be deduced³². A decent life is possible, after all, only in a decent environment. A fundamental environmental right was nonetheless eschewed since it proves extremely difficult to specify what is to be protected and it would be impossible to make a right of this kind litigable³³. Nor, then, can an enforceable entitlement of the individual to a fundamental right be inferred from this; it is more in the nature of an objective value decision by the constitution that commits the public authorities³⁴.

2.4. Greece

The part of the Greek constitution of 9 June 1975 as amended on 12 March 1986 that concerns fundamental rights (Part II, Articles 4-25) is very long and defines individual and social fundamental rights in detail.

The nine paragraphs of Article 16, for example, require the state to develop and promote art and science, research and teaching (paragraph 1), stipulate that education is a basic task of the state (paragraph 2), thus giving all Greeks the right to free education at all stages in state educational establishments (paragraph 4, first sentence) and the universities the right to financial assistance (paragraph 5, second sentence). Paragraph 4 also provides for assistance for students who distinguish themselves but need help or special protection. Under paragraph 9 the state has overall responsibility for sport and is required to subsidise all confederations of sports clubs.

Article 21(2) states that large families, persons disabled in war or peace, war victims, orphans and widows of persons killed in the war and persons suffering from incurable diseases are entitled to special state care. Paragraph 3 requires the state to ensure the health of its citizens and to take special measures to protect young people, the elderly, the disabled and persons unable to pay for care. Under paragraph 4 the provision of housing for persons with no or inadequate accommodation is a matter of particular concern for the state.

³¹ Kittner, in: Kommentar zum GG für die BR Deutschland, Vol. I, Articles 1-37, lit. 64.

³² Scholz, in: Maunz/Dürig, Article 20a GG I, lit. 28.

³³ *ibid.*, Article 20a GG I, lit. 12.

³⁴ *ibid.*, Article 20a GG I, lit. 33.

Article 22(1) recognises a right to work and places it under the protection of the state, which is required to ensure full employment and to provide the working rural and urban population with moral and physical support. Paragraph 4 also requires the state to ensure the social insurance of the working population, further details to be set out in a law.

Despite these detailed provisions, fundamental social rights in Greece cannot be enforced by law, and the state cannot be required by a court of law to take action³⁵. Social reality in Greece is also different. This is especially true of the right to free education, there being insufficient university places on many courses in Greece.

2.5. Spain

The Spanish constitution of 1978, like Portugal's, occupies a prominent position among European constitutions. This is primarily due to the fact that in these young constitutions an attempt has been made to take account of today's social problems rather than to exclude them. After 40 years of dictatorship the aim was to bring an end to lawlessness and allot to the individual as comprehensive a list of rights as possible³⁶.

The preamble refers to a desire to ensure democratic co-existence on the basis, *inter alia*, of a fair economic and social system. The Spanish constitution was guided by the German Basic Law³⁷ and emphasises in Article 1 that Spain is a social and democratic state based on the rule of law, the order in which the adjectives appear in this phrase revealing the importance of social rights in Spain³⁸. The institutions for which the constitution provides and the ordinary administration of justice must conform to this welfare state clause³⁹. However, the Spanish constitution differs significantly from Germany's in that it includes an unusually long list of social rights.

Fundamental rights in the Spanish constitution are divided into three groups⁴⁰. The first group (Articles 14 to 29) comprises the classical fundamental rights, including the right to education (Article 27). The second group (Articles 30 to 38) is primarily concerned with citizens' rights and obligations, including the right to work (Article 35), while the third group (Articles 39 to 52) is largely devoted to the protection of rights arising from the economic and social policies.

The principles governing the last group mainly concern the social sphere of interest here:

- Under Article 39 the state affords the family legal and social protection.
- Article 40 requires the public authorities to improve the conditions for the fairer distribution of incomes and conditions relating to continuing education and training and protection at the workplace and to guarantee leave and limited working hours.
- Article 41 guarantees a public system for the social security of the public that provides them with adequate help in emergencies and especially when they are unemployed.

³⁵ P. Spyropoulos, *Constitutional Law in Hellas*, p.139.

³⁶ José Vida Soria in Matscher, op. cit., p. 290, Manassis, op. cit., p.47.

³⁷ Díez-Picazo/Ponthoreau, op. cit., p.20.

³⁸ Vida Soria, op. cit., p.292.

³⁹ Díez-Picazo/Ponthoreau, op. cit., p.20.

⁴⁰ *ibid.*, p.21.

- Article 43 recognises a right to health protection, paragraph 2 requiring the public authorities to organise this protection and paragraph 3 requiring them to promote health education⁴¹.
- Article 44 guarantees the individual access to culture, paragraph 2 also requiring the public authorities to promote culture.
- Article 45 entitles everyone to the enjoyment of nature and also requires the state to use its influence to ensure the preservation and restoration of the environment (paragraph 2).
- Article 47 grants all Spaniards the right to housing, the necessary conditions to be promoted by the public authorities.
- Article 48 requires the public authorities to create the conditions for the involvement of young people in social development.
- Article 49 is devoted to the integration and protection of disabled people.
- Article 50 guarantees adequate provision for old age and support for the elderly with respect to health, housing, culture and leisure.

The protection of these rights is governed by Article 53. Under Article 53(1) and (2) the rights of the first two groups can be claimed before the ordinary courts, and all legislation must respect the essential substance of these rights. As regards enforceability, rights are graded in such a way that those in the first group – which include the right to education – may be claimed, pursuant to Article 53(1) in conjunction with Article 161(b) in conjunction with Article 53(2), before the constitutional court after all other legal means have been exhausted. These are, then, individual and also litigable fundamental rights.

The particularly topical right to work is, pursuant to Article 53(1), binding on the public authorities and may be claimed before the ordinary courts. The opposite conclusion to be drawn from Article 53(3), however, shows that only the rights it lists enjoy protection to be obtained by appealing to the constitutional court. As the right to work cannot be claimed before the constitutional court, it is not a litigable fundamental right.

Similarly, the rights to health, a healthy environment and adequate housing are worded as individual rights. Under Article 53(2), however, they are principles which are binding on the three organs of state and so take the form of a provision defining a state objective without providing the foundations for an individual right⁴².

2.6. France

The French constitution of 1958 was drawn up in 'great haste because of the Algerian crisis'⁴³. It contains no more than a minimum of fundamental rights⁴⁴ and no social rights at all. It pivots on

⁴¹ The same applies to physical education, sport and the suitable use of leisure time pursuant to Article 43(3).

⁴² Díez-Picazo/Ponthoreau, p.22.

⁴³ Marco Itin, *Grundrechte in Frankreich*, p.6.

the preamble, in which reference is made to the 1946 constitution and the 1789 Declaration of Human and Civil Rights to the extent that they refer to human rights and the principles of national sovereignty⁴⁵. The 1946 constitution was influenced by the experience of totalitarianism and is geared primarily to the protection of workers, the structure of the economy and the social order.

The reference in the 1958 preamble results in the rights arising from the 1946 preamble also being enshrined in the constitution. It also means that the 1789 Human Rights Declaration has constitutional force⁴⁶. It remains to be seen what form these rights take and whether an individual right arises from them. The 'classical' rights referred to in the 1789 Human Rights Declaration, which are 'inalienable and sacred', are recognised as forming the basis of French public law⁴⁷ and are also actionable.

The situation is different where the social rights arising from the 1946 preamble are concerned. Thus although everyone has not only a duty to work but also a right to employment under paragraph 5 of the preamble, this is, despite the wording, an instruction to the legislator to find solutions to unemployment rather than an individual right⁴⁸. The tenth section requires the nation to lay the necessary foundations for the individual and his family to develop, the wording itself revealing that it is for the state to decide how this is to be achieved. The same is true of the eleventh section, which requires children, mothers and older workers to be assisted in the areas of health, physical security, rest and leisure. Anyone incapable of working is entitled to adequate resources, the question of adequacy again leaving considerable scope for interpretation. The right to education and training in the thirteenth section is similarly so worded as to oblige the state to make the necessary provisions, to which the individual has an undisputed fundamental right⁴⁹, although its form is determined by the state.

Social rights are thus not recognised in the constitution in the same way as the classical fundamental rights, which are protected by the 1789 declaration. They have a complementary effect and require the legislature to create appropriate laws, but are not themselves litigable⁵⁰.

2.7. Ireland

Ireland adopted its first constitution in 1922, but as it was based on a treaty between Ireland and Britain, it was not widely recognised. A new constitution intended to put Ireland's actual independence to the test was therefore introduced in 1937⁵¹.

⁴⁴ They concern the principles of equality and religious freedom (Article 2(1)), the freedom to form political parties and groupings (Article 4) and the freedom of movement (Article 66).

⁴⁵ Marco Itin, *op. cit.*, p. 12. Owing to the broad interpretation of the term 'human rights', the problem of the scale of reference along these lines hardly arises, since the 1789 Human Rights Declaration and the 1946 preamble contain few statements that concern neither human rights nor the principles of national sovereignty.

⁴⁶ *ibid.*, p. 17; Díez-Picazo/Ponthoreau, *op. cit.*, p.14.

⁴⁷ Itin, *op. cit.*, p.14.

⁴⁸ Díez-Picazo/Ponthoreau, *op. cit.*, p.16.

⁴⁹ Itin, *op. cit.*, p. 112. The right to secular and free education is undisputed and even an obligation.

⁵⁰ Díez-Picazo/Ponthoreau, *op. cit.*, p.16. This is confirmed by Article 34 of the constitution, according to which the law defines the principles for labour law, trade union law and social safeguards.

⁵¹ Byrne/McCutcheon, *The Irish Legal System*, p.8.

The Irish constitution clearly reflects the deep religious convictions of the Irish people. This finds expression primarily in the preamble, but also in the fundamental rights. Thus the family is recognised in Article 41 as a moral institution of society, and in the second sentence of paragraph 1 the state guarantees to protect it. Paragraph 2 in particular requires the state to support mothers so that they need not go out to work and are able to devote themselves to their families and so contribute to the public welfare. This is a particularly clear illustration of the highly traditional attitude of the Irish state on the woman's role.

Article 42, which concerns education, again makes it clear how far the Irish constitution is devoted to religious values. Under Article 42(1) the family is responsible for bringing up children, and, according to paragraph 3, the state cannot force parents to send their children to school if this is incompatible with their conscience. The second sentence, however, requires the state to ensure that every child receives a minimum of moral, spiritual and social education. It also emerges from paragraph 4 that the state is obliged to provide free primary education.

Under the heading 'Directive Principles of Social Policy' Article 45(2)(i) states that the policy is to be directed in particular towards ensuring that citizens have the right to earn a living through their occupations. In paragraph 4 the state also pledges itself to protect and support financially the weaker sections of the community. It will also endeavour to ensure that workers are not exploited and no one is forced by economic necessity to undertake activities unsuited to their gender, age or strength.

The wording clearly reveals that the authors of the constitution preferred policy clauses to specific fundamental rights.

Other fundamental social rights arise from Article 40(III), although they are not explicitly enumerated⁵², the words 'in particular' showing that Article 40(III) covers other rights as well as those referred to⁵³. It is generally acknowledged that these rights include the right to work and the right to health protection⁵⁴. However, the right to work does not go so far as to oblige the state to provide the citizen with a job. It comprises rather his right freely to decide how to use his labour and the freedom to choose and pursue a given occupation⁵⁵. The fundamental rights referred to are also effective as they stand, without further action on the part of the legislature⁵⁶. However, it is also true to say that the rights which are not explicitly referred to are not absolute, but must be taken into account by the public authorities insofar as they are able⁵⁷.

2.8. Italy

The Italian constitution of 27 December 1947 as amended in 1993 refers to a number of fundamental social rights, some of which are also individual rights. In Article 4 of the section

⁵² Duncan S.J. Grehan, in: Eberhard Grabitz (ed.), *Grundrechte in Europa und USA*, p.294.

⁵³ Article 40(3), first sentence: 'The State guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate the personal rights of the citizen.'

Article 40(3), second sentence: 'The State shall, *in particular*, by its laws protect as best it may from unjust attack and, in the case of injustice done, vindicate the life, person, good name, and property rights of every citizen.'

⁵⁴ Grehan in: Grabitz, op. cit., pp.295 f.

⁵⁵ *ibid.*, p.295.

⁵⁶ James Casey, *Constitutional Law in Ireland*, p.309.

⁵⁷ *ibid.*, pp.316, 329; see also footnote 40: '*as far as practicable*'.

headed 'Basic principles' the Republic recognises the right of all citizens to work and promotes such conditions as will make this right effective.

Article 31 requires the state to facilitate, by means of economic and other provisions, the formation of the family and the fulfilment of the tasks connected therewith, with particular consideration for large families, and to protect mothers, children and young people by promoting and encouraging institutions necessary for this purpose.

Article 32 requires the Republic to provide health safeguards as a basic right of the individual and in the interests of the community and to grant free medical assistance to the indigent.

Article 34 stipulates that at least eight years of elementary education are to be compulsory and free and gives capable and deserving pupils the right to attain the highest grades of learning even if they lack financial resources. The Republic is required to give effect to this privilege by means of scholarships, contributions to the families of pupils and other provisions, to be awarded by competitive examination.

The right to work – arising from Article 4 – is complemented by Article 36, which stipulates that everyone is entitled to remuneration which is in proportion to the quantity and quality of his work and is sufficient to provide him and his family with a free and dignified existence. Article 36 also provides for any employed person to have a weekly day of rest and annual paid leave.

Besides the principle of equal remuneration for women, Article 37 rules that conditions of work must make it possible for women to fulfil their essential family duties and provide for the adequate protection of mothers and children.

Article 38 guarantees a right to social security by granting a right to private and social assistance to anyone unable to work who does not have the resources necessary for life and to all workers a right to adequate insurance for their requirements in the event of accident, illness or disability, in old age and when unemployed. The State is required to designate or set up institutions to perform these tasks. The same is true of the right to education and vocational training for citizens completely or partly unable to work.

In the opinion of the Italian Constitutional Court, however, this list is not complete. In its judgements it has recognised other fundamental social rights, which it gleans from the constitution, especially a right to adequate housing⁵⁸ and a right to a healthy environment. The Court arrives at the latter right from a broad interpretation of the right to health (Article 32) and the protection of the environment (Article 9). The Constitutional Court has added various facets to the right to health, including a right to sexual identity as part of the right to mental and physical integrity⁵⁹.

The Court generally plays an important role in the protection of fundamental rights in Italy, since it has recognised some of the fundamental rights referred to above as individual rights. In Italian constitutional law a distinction is made between 'unconditional' and 'conditional' fundamental rights. Unconditional fundamental rights are those for which provision is made in the

⁵⁸ Sciarra, *From Strasbourg to Amsterdam*, p. 12, with a reference to Decision 404/1988; de Vergiottini, in: Matscher, *op. cit.*, p.330, with a reference to Decisions 49/1987, 217/1988, 404/1988 and 252/1985.

⁵⁹ de Vergiottini, *op. cit.*, p.330.

constitution and which are effective in themselves, without requiring legislation. Conditional rights, on the other hand, require some kind of 'infrastructure' to become effective⁶⁰.

The right to health, for example, is an unconditional, enforceable right inasmuch as it entails a right to mental and physical integrity, but a conditional right inasmuch as it represents a right to benefit from the health system⁶¹. The right to housing is similarly not recognised as an unconditional right⁶².

In various cases the Constitutional Court and Supreme Court of Appeal have accepted that unconditional fundamental rights are effective in themselves in relation both to the State and to third parties⁶³. They include the right to paid leave (Article 36), the right to fair remuneration (Article 36) and the right to social security (Article 38). It would thus seem that the distinction between conditional and unconditional fundamental rights has not been consistently maintained, since the right to social security also calls for action on the part of the legislature to create the necessary institutions.

A peculiarity in Italy is that the citizen has no means of appealing directly to the Constitutional Court. The individual may, on the other hand, appeal directly to the ordinary courts for the recognition of unconditional fundamental rights.

*Bognetti*⁶⁴ is highly critical of fundamental social rights being made individual rights, especially by the Constitutional Court. He points out that this has done the Italian State enormous damage since it has taken it to the brink of financial ruin. He claims that this is because the provisions of the constitution were used by trade unions and Marxist parties in the 1970s and 1980s to mobilise public opinion against the government by accusing it of not doing enough to achieve the social objectives of the constitution. The subsequent increase in government expenditure led to inflation and heavy public indebtedness, which the constitution seeks to prevent (Articles 47 and 81) and which harmed the country's economic situation⁶⁵.

2.9. Luxembourg

The Luxembourg constitution dates back to 1868 and was last amended in 1998. Like its predecessor, which was adopted in 1841, it is very closely aligned with the Belgian constitution and with the constitutional law of other neighbouring countries. In the interpretation of its constitution Luxembourg has again always been guided by its neighbours' constitutional doctrine, partly because the absence of a law faculty of their own has forced Luxembourg lawyers to acquire their knowledge abroad⁶⁶.

The constitution refers to very few fundamental social rights. Under the heading 'Luxembourgers and their rights' Article 11 states that the law guarantees the right to work and ensures that every citizen may exercise this right. The aim of this constitutional provision, which was amended in

⁶⁰ de Vergiottini, op. cit., p.237; Díez-Picazo/Ponthoreau, *The Constitutional Protection*, p.11.

⁶¹ *ibid.*, p.11.

⁶² de Vergiottini, op. cit., p.332.

⁶³ *ibid.*, p.327.

⁶⁴ Giovanni Bognetti, Professor at the University of Milan, op. cit., pp.90 ff.

⁶⁵ *ibid.*, pp.92 f.

⁶⁶ Manassis, op. cit., p.35; Danny Pieters in: Grabitz (ed), op. cit., p.447.

1948, was to provide a constitutional guarantee for rights hitherto protected only by ordinary laws⁶⁷. This was intended to prompt the legislature to give wider form to social rights and to adapt them to the economic environment⁶⁸.

Article 11 also provides for workers' social security, health protection and recreation. Article 23 requires the state to ensure that every Luxembourger receives free and compulsory primary education. It also states that medical and social assistance are regulated by law. However, it is generally recognised that these rights are not fundamental rights of the individual, but rather legislative programmes for whose organisation the state is responsible⁶⁹.

In addition, fundamental rights of a social nature can be deduced from the third paragraph of Article 11, which guarantees the natural rights of the individual and of the family⁷⁰. However, this is a very vague legal basis since it can be seen as a principle under which the ensuing rights must be viewed and may also represent an authorising basis for the practical creation of further rights⁷¹. So far, however, no advantage has been taken of the latter.

2.10. The Netherlands

Until the early 1980s the Netherlands had one of the oldest constitutions in Europe. It was only in 1983 that the 1815 constitution was completely revised and brought up to date⁷².

To establish the welfare state constitutionally, the Netherlands constitution has defined social rights as a mandate for the state⁷³. Article 19(1) calls on the state to provide sufficient employment. The authors of the Netherlands constitution opted against wording that granted an individual right, since they were aware that the state does not allocate jobs on its own and can therefore improve the labour market situation only by taking certain measures⁷⁴. Article 20(1) also makes it the state's responsibility to secure the individual's means of subsistence and to distribute wealth. This again is an instruction to the state to take appropriate measures.

As Article 20(2) requires the adoption of legislation on social security, the legal basis for the citizen is ordinary law.

Article 20(3) grants needy Dutch nationals a right to public assistance, but as this is to be governed by a law, the constitution again fails to grant the citizen a fundamental right in this respect.

Article 21 specifies that it is for the state to protect and improve the environment.

Article 22 requires the state and the other public authorities to take steps to promote public health, the creation of sufficient housing and social and cultural development, including leisure activities.

⁶⁷ Álvarez Vélez/Alcón Yustas, op. cit., p.441.

⁶⁸ Pieters, op. cit., p.467.

⁶⁹ *ibid.*, pp.467, 469.

⁷⁰ *ibid.*, p.463.

⁷¹ *ibid.*, pp.463 f.

⁷² Manassis, op. cit., p.37.

⁷³ Álvarez Vélez/Alcón Yustas, op. cit., p.463.

⁷⁴ van der Pot, *Handboek van het Nederlandse Staatsrecht*, p.293.

Article 23 makes education the government's responsibility and stipulates that it is free, though supervised by the authorities. Under Article 23(4) it is the municipalities' responsibility to ensure that school education is provided.

The Netherlands constitution does not, then, grant citizens any individual rights and has instead opted to instruct or require the state to take action.

It should also be noted that the constitution does not refer to any means for its own protection or for the enforcement of rights and that Article 120 even goes so far as explicitly to prohibit reviews of the constitutionality of acts of parliament.

2.11. Austria

The Austrian constitution does not refer to any fundamental social rights, only to 'classical' liberal fundamental rights, such as the right to work (Article 6 of the Basic State Law) and the right freely to choose and practise an occupation (Article 18).

However, a debate on whether fundamental social rights should be enshrined in the constitution has been in progress since the 1980s. Building on the deliberations of a working party of experts, a political fundamental rights commission has listed in two drafts the various rights that are conceivable and defined the form in which each of these rights should be made effective in the constitution⁷⁵. The following fundamental social rights (within the meaning of the study) were referred to in this context:

The right to work (including aspects of vocational guidance, government employment policy and protection against dismissal), the right to appropriate remuneration (guarantees of a minimum wage and equal pay for men and women), the right to fair conditions of employment (working hours, appropriate rest periods, employee participation), the right to the protection of children, young people and mothers (including the prohibition of child labour, the exclusion of women from certain occupations), the right to housing (including government promotion of housing construction), the right to education (including free education), the right to social security (above all, a guarantee of the social insurance system and public assistance).

According to Article 1(4) of the second draft, there should also be an individual right to free placement and vocational guidance.

According to the draft that followed the fundamental rights reform inquiry, the institution of social insurance for illness, accidents, disability, old age and unemployment should be enshrined in the constitution, and it should also be possible for the Constitutional Court to review the right to equal participation in the social insurance system. After all, even the chairman of the commission of inquiry believed this concern to enshrine fundamental social rights in the constitution sought nothing other than an improved guarantee of the continued existence of the welfare state, the substance of which, he claimed, was already set out in numerous conventions and agreements between the two sides of industry⁷⁶.

⁷⁵ Okresek, in: Matscher, op. cit., p.195.

⁷⁶ Quoted in Okresek, op. cit., p.196.

However, no fundamental social rights have yet been enshrined in the constitution. Despite this, Austria ranks among the Member States with the most extensive social security.

2.12. Portugal

The Portuguese constitution, which dates back to 1976, was last revised extensively in 1997. It describes fundamental rights in even greater detail than the Spanish constitution. Like the latter, the Portuguese constitution was intended to safeguard democracy as far as possible after the period of dictatorship, and economic and social rights as well as fundamental civil rights and liberties are therefore guaranteed⁷⁷.

Article 2 of the constitution defines Portugal as a democratic state based on the rule of law and having economic, social and cultural democracy as its goal. Accordingly, the constitution distinguishes between economic, social and cultural rights. The first category includes the right to work, which is covered by Article 58. Article 59 guarantees not only regular and paid leave but also an entitlement to unemployment benefit and fair remuneration.

The social rights comprise the right to social security (Article 63), the right to health protection (Article 64), the right to appropriate housing that meets adequate standards of hygiene (Article 65), the right to a healthy environment (Article 66) and the right of the family (Article 67), parents (Article 68), children (Article 69), young people (Article 70), the disabled (Article 71) and the elderly (Article 72) to protection.

The cultural rights include not only the right to education and culture (Article 73) and to school and university education (Articles 74 and 76) but also the right to participate in cultural life (Article 78) and to physical training and sport (Article 79).

This list shows how the Portuguese constitution has endeavoured to cover as much of the sphere of concern to the citizen as possible. The rights are all worded as individual rights, creating the impression that they are also enforceable. However, the second section of the various rights regularly instructs the State on how rights are to be made effective. The right of the citizen is thus always accompanied by a specific duty of the State⁷⁸.

The right to work, for example, is complemented by the State's duty to use certain economic and social policy plans⁷⁹.

The entitlement to social security is defined by the State's obligation to develop a social insurance system that covers the citizen in the event of illness, old age, disability, the death of a spouse and of parents and in all other cases in which an individual becomes incapable of working.

The State has a duty to implement an appropriate housing policy and to ensure medical care throughout the country.

⁷⁷ José Vida Soria, in: Matscher, op. cit., p.304; Manassis, op. cit., p.44.

⁷⁸ Vida Soria, op. cit., p.308.

⁷⁹ They include the implementation of a policy of full employment, equality of opportunity in the choice of occupation or employment and the cultural, professional and vocational training of workers.

These rights are protected by Articles 17 and 18. Article 17 explains the application of the system of rights, freedoms and guarantees to the rights referred to in Section II and to fundamental rights of a similar nature. Article 18 stipulates that the provisions of the constitution concerning rights, freedoms and guarantees are directly applicable and are binding on public and private bodies.

Like Spain's constitution, Portugal's faces the problem of 'eternal effectiveness' as regards the protection of social and economic fundamental rights⁸⁰. However, the preferential treatment of fundamental rights under Article 17 applies only to the rights referred to in Section II. On the other hand, as the fundamental social rights described above are covered by Section III, they are not protected⁸¹. The possibility of analogous application referred to in Article 17 is not exploited in practice, evidently owing to a fear of too broad an interpretation of analogous rights.

The Portuguese constitution does not provide for the possibility of a complaint to the Constitutional Court in the event of an infringement of fundamental rights. This is most certainly true of social rights⁸². Pursuant to Article 283, however, the Constitutional Court may rule that there has been failure to comply with the constitution by omission on the part of the necessary legislative acts.

2.13. Finland

Section 15 of the Finnish constitution of 17 July 1919 as amended on 1 August 1995 not only recognises the right to freedom of occupation and calls for the 'protection of labour' but also stipulates that the public authorities are to promote employment and to strive to secure the right to work for everyone. It also requires the legislature to enshrine the right to vocational training in appropriate laws.

These are not litigable fundamental rights, as is evident from the wording. However, the literature also includes the opposite view that there is a legal right to work, although this should not be understood as a right to the 'immediate' allocation of a job⁸³.

At the level of ordinary law Finland had something like an individual right under a 1987 Employment Act for people under 20 years of age and the long-term unemployed⁸⁴. This has since been so amended, however, that only people under 25 have an individual right to further training if they are unemployed and cannot find a training place.

Section 15a of the Finnish constitution states that anyone unable to obtain the security needed for a decent life has a right to essential assistance and care. Paragraph 2 defines this as a right to the provision of the basic needs for life at times of unemployment, illness, incapacity, advanced age, confinement or loss of the provider.

⁸⁰ Vida Soria, op. cit., p.308.

⁸¹ *ibid.*, p.308; the preferentially protected rights, however, include the right to protection against dismissal and to participation in the employer's decision-making.

⁸² Vida Soria, op. cit., p.310.

⁸³ See C. Tomuschat, 'The Right to Work', in: Rosas & Helgesen (eds): *Human Rights in a Changing East-West Perspective*, 1990, pp.181 ff.

⁸⁴ See Rosas, op. cit., p.230.

Paragraph 3 requires the public authorities to secure for everyone, 'in the manner stipulated in greater detail by Act of Parliament, ... adequate social welfare and health services Public authorities shall also support the abilities of families and others charged with the care of children to provide for their welfare and individual growth.' Paragraph 4 specifies that it is the task of the public authorities to promote the right to housing and to support the individual in any attempt to find accommodation by his own efforts. The wording of the first sentence of paragraph 3 indicates that there is an individual right to the social benefits referred to in accordance with the legal provisions. Otherwise, these are policy clauses.

At the level of ordinary law there is a clear tendency to make social benefits individual public rights that can be enforced before the administrative courts, examples being the right to social assistance, accommodation for children under the age of 3, support for and the provision of housing for children and their families in emergencies and certain kinds of assistance for seriously disabled people⁸⁵.

Outside the part of the constitution concerning fundamental rights (Part II) fundamental social rights are to be found in Part XIII, which concerns education. Section 78, for example, requires the State to promote research and higher education in technology, agriculture and commerce and the other applied sciences and the pursuit of the fine arts. If these subjects are not taught at the universities, the State is to maintain special colleges and support private institutions established for these purposes (second sentence). This provision can be seen as an institutional guarantee.

Under section 79 institutions of higher general education and higher elementary education are to be maintained or, if necessary, assisted at the State's expense. In the view of Parliament's Constitution Committee it cannot be inferred from the words 'if necessary, assisted' that any institution facing financial crisis is entitled to individual assistance⁸⁶.

Pursuant to section 13, everyone has the right to free primary education, and the second sentence of section 80 reiterates that primary school education is free for everyone. Section 81 requires the state to maintain the teaching establishments for the technical occupations, for agriculture and ancillary trades, for commerce and seafaring and for the fine arts or to support them with government resources if the need arises. This provision is intended to safeguard vocational training.

The fundamental rights that can be deduced from this part of the constitution are again not individual rights but institutional guarantees and policy clauses. Nonetheless, they are very important for constitutional reality in Finland, since the State does indeed guarantee many social benefits in the sphere of education in accordance with these provisions. Thus higher education is not only free but also includes meals, health care and, in some cases, free transport to school and accommodation. This depends on the local authorities, which are responsible and meet the cost jointly with central government. Vocational school pupils enjoy the same advantages. University attendance is also free; scholarships and loans are available to meet the cost of living⁸⁷.

2.14. Sweden

⁸⁵ Rosas, op. cit., p.234.

⁸⁶ Pentti Arajärvi: The Right to Education in Finland, in: Drzewicki/Krause/Rosas (eds), op. cit., p.282.

⁸⁷ *ibid.*, pp.282 f.

In the constitution of the Kingdom of Sweden of 1 January 1975 as amended on 1 January 1980 Article 2(2) of Chapter 1 – headed 'Basic Principles' – states that the personal, economic and cultural welfare of the individual is the fundamental aim of public activity. According to the second sentence of this paragraph, it is, in particular, incumbent upon the public administration to secure the right to work, housing and education and to promote social care and security and a good living environment.

It is noticeable that reference is made to these fundamental social rights not in Chapter 2 (Fundamental Rights and Freedoms) but among the basic principles of the constitution. This reflects the fact that the Kingdom of Sweden sees itself as a welfare state. The fundamental social rights referred to can therefore be seen as provisions defining the state's objectives, by which any public activity is to be guided. It is also clear from this, however, that these fundamental rights are not litigable⁸⁸.

As in the other Scandinavian countries, the many social rights of the citizen are defined in ordinary legislation and, where they are individual rights, they are enforceable before administrative courts⁸⁹. The administration of justice in social matters has not been left to the ordinary courts in Sweden because there has traditionally been some scepticism about the judiciary, with its largely conservative background. It has been feared that their judgments would erode social rights⁹⁰.

Sweden considers it particularly important that social assistance from the State does not lead to the stigmatisation of individuals. In principle, everyone is therefore entitled to a wide range of State benefits regardless of his financial background⁹¹. This reveals the image of a State which not only guarantees a minimum of security for the citizen and gives everyone the same rights but also seeks to achieve real social equality.

2.15. *United Kingdom*

To understand how fundamental rights are protected in the United Kingdom's legal system, it must first be remembered that Britain has no written constitution in the form of a comprehensive document and that there is no list of fundamental rights. Instead, various texts, such as the Magna Carta of 1215, the Petition of Rights of 1627, the Act of Habeas Corpus of 1679 and the Bill of Rights of 1689 form a kind of 'constitution'.

In principle, however, there is no formal distinction between constitutional law and ordinary law, owing to the fact that it is not the people but parliament that is the sovereign power. Its laws cannot therefore be unconstitutional and must be applied by the courts. Nor is there a system of constitutional courts to enable acts of the public authorities to be examined for their constitutionality⁹². Instead, it is for the judges in ordinary courts of law to interpret the acts of parliament and to develop law in the form of common law. The individual's fundamental rights

⁸⁸ Rosas, op. cit., p.229, with a reference to the official commentary by Petren & Ragnehalm, *Sveriges grundlagar och tillhörande författningar med förklaringar*, Stockholm 1980, p. 20; Katrougalos, op. cit., pp.294 f.

⁸⁹ Rosas, op. cit., p.233.

⁹⁰ Katrougalos, op. cit., p.295.

⁹¹ *ibid.*, pp.293 f.

⁹² Ridley: 'The British Constitution and Constitutional Reform in Britain', in: Bieber/Widmer (eds), *L'Espace constitutionnel européen – Der europäische Verfassungsraum – The European constitutional area*, Zürich 1995, pp.30 ff.

must therefore be deduced from ordinary acts of parliament and from common law. This is made particularly difficult by the fact that parliament does not as a general rule formulate any positive rights along the lines of 'Everyone shall have the right to ...', but that the various spheres are covered by detailed rules from which the protection of fundamental rights can be deduced. In simple terms, this means that the individual has any right as long as it is not explicitly restricted⁹³.

This concept results in civil rights and liberties playing a major role, whereas fundamental social rights in the sense of participatory rights have not yet, by and large, been recognised in British jurisprudence. Fundamental rights are here equated with freedom from the State. Gaining freedom and security as fundamental rights with the help of the State is inconceivable for most British lawyers⁹⁴.

British lawyers point out in particular that extending fundamental rights to include fundamental social rights would mean sacrificing individual freedoms and that there is no point in putting rights that are not for the most part directly enforceable but represent policy clauses on a par with traditional civil rights and liberties. This would simply dilute the idea of fundamental rights⁹⁵.

A right to work, for example, is recognised only insofar as the individual has a right to practise his chosen occupation without being unjustifiably excluded from it⁹⁶.

A constitutional right to social security does not exist in the United Kingdom. Despite this, there are, of course, various social benefits comparable with those in other Member States and a national health service to which everyone has free access⁹⁷.

There is also an individual right to enjoy these social benefits in accordance with the provisions of law. This is not, however, a constitutional right. Disputes with the administration can be referred to 'administrative tribunals'. Appeals may then be lodged with the 'social security commissioners'⁹⁸. In contrast, the ordinary courts and common law play virtually no part in the protection of social rights, since the courts have generally refused to develop social rights⁹⁹.

3. Overview of existing rights

3.1. Table

⁹³ Dicey, Introduction, p.197.

⁹⁴ Trautwein, *Der Schutz der bürgerlichen Freiheiten und der sogenannten sozialen Grundrechte in England*, pp.189 ff.

⁹⁵ *ibid.*, pp.191 f.

⁹⁶ *ibid.*, p.195, with a reference to *Nagler v Feilden* (1966), 1 All E.R. 689, 693; *Quinn v Letham* (1901), A.C. 495, 534.

⁹⁷ The national health insurance scheme is governed by the National Health Reorganisation Act 1973, the provision of housing by the public authorities by the Housing Act 1957, social assistance by the National Security Act 1975; see Kingston/Imrie: 'Vereinigtes Königreich von Großbritannien und Nordirland', in: Grabitz (ed): *Grundrechte in Europa und USA*, Kehl, Strasbourg, Arlington, 1986.

⁹⁸ Harris in: Matscher, op. cit., p.218.

⁹⁹ *ibid.*, pp.218, 201; for the situation in Scotland, which differs in some respects, see Kingston/Imrie, op. cit., pp.833 ff.

FUNDAMENTAL SOCIAL RIGHTS IN EUROPE

The following table is an overview of the contents of the Member States' constitutions. It shows what fundamental social rights are enshrined in the constitutions. It is impossible, however, to forge a link between the existence of fundamental social rights and the existence and level of social benefits and institutions in the Member States concerned¹⁰⁰. This is clear primarily from Austria and the United Kingdom, their columns being empty whereas they do, of course, have social rights.

The symbol ■ in the table means that the right concerned is referred to in the constitution. The symbol □ means that, though not explicitly enshrined in the constitution, it is recognised.

¹⁰⁰ See Arbeitskreis 'Europäisches Sozialrecht', Soziale Rechte in der EG, Berlin 1990, p.24.

FUNDAMENTAL SOCIAL RIGHTS IN EUROPE

	B	DK	D	GR	E	F	IRL	I	L	NL	A	P	FIN	S	UK
Right to work -fair/safe working conditions -fair wages -paid leave	■ ■ ■	■		■	■ ■ ■	■	□	■ ■ ■ ■	■	■		■ ■ ■ ■	■	■	
Right to education and training -free elementary education -free secondary school education -free university education -vocational training	■ ■	■		■ ■ ■	■ ■ ■	■	■ ■	■	■			■ ■ ■ ■	■ ■ ■ ■	■	
Right to housing	■			■	■			□		■		■ ■	■	■	
Right to health -free for the indigent	■			■	■			■ ■	■	■		■ ■	■ ■ ■ ■		
Right to social security -public welfare -special protection for mothers -special protection for families/parents -special protection for the disabled -special protection for children/young people. -special protection for the elderly	■	■	□ ■ ■	■ ■ ■ ■	■ ■ ■ ■ ■ ■ ■	■ ■ ■ ■ ■ ■ ■	■ ■ ■ ■	■ ■ ■ ■ ■ ■ ■	■	■		■ ■ ■ ■ ■ ■ ■ ■	■ ■ ■ ■ ■ ■ ■ ■	■	
Right to culture	■				■					■					
Right to a healthy environment	■		■		■			□		■		■		■	

3.2. *The three models*

The table shows that social rights are enshrined in the constitutions of almost all the Member States. They are all welfare states that have set themselves the goal of eliminating excessive social differences. A comparison of the Member States does, however, reveal different approaches to incorporating social rights in the constitution. In the final analysis, a constitution always reflects a country's traditions and economic and political experience. Fundamental rights can be divided into various 'generations'. The first generation comprises the classical civil rights and liberties. Social rights did not emerge at constitutional level until the late 19th or early 20th century and were consolidated after the Second World War. The third generation consists of the fundamental rights that concern culture and the environment. Here again, it is clear that developments in society always have an influence on the constitution. Unlike the civil rights and liberties, which are directly applicable, what the second- and third-generation rights have in common is that the reference to them in the constitution is not enough on its own for them to be effective: this depends on the goodwill of the legislature¹⁰¹. As regards incorporation in constitutions, a rough distinction can be made between three systems: a liberal model, a southern European model and a moderate model, although they overlap to some extent.

3.2.1. *The liberal model*

It must first be remembered the United Kingdom and Austria occupy a special position among the Member States in that both have forgone the inclusion of social rights in their constitutions. For one thing, there is no constitution in the United Kingdom in the conventional sense of the term, and for another, the liberal attitude to the economy and politics is difficult to reconcile with the adoption of specific social rights¹⁰². Although the United Kingdom paved the way in social legislation with the introduction of the poor laws¹⁰³, the judiciary has always been very restrained in granting entitlements¹⁰⁴. Like the USA, the United Kingdom prefers market-oriented solutions that emerge regardless of any influence the state may bring to bear. From the wide-ranging social safeguards in Austria and the United Kingdom, however, it is clear that fundamental social rights do not need to be enshrined in the constitution for the public to be assured of basic social services.

3.2.2. *The southern European model*

The 'southern European model' is characterised by the fact that extensive fundamental social rights have been included in the constitution. The authors of such constitutions endeavoured to cover every sphere of life and to provide as comprehensive protection as possible for the citizen in their constitutions. The countries concerned include Italy, Greece, Spain and Portugal. The words 'Everyone shall have the right to ...' are frequently to be found in their constitutions, creating the impression that they are individual fundamental rights. Despite the choice of words,

¹⁰¹ Iliopoulos-Strangas, op. cit., p.19.

¹⁰¹ *ibid.*, p.279.

¹⁰² *ibid.*, p.279.

¹⁰³ The poor laws were met with fierce criticism since they were seen as granting state assistance not as a right but as charity. At the beginning of this century the foundation stone was laid for today's social legislation. The system was expanded after the Second World War, when it began to be guided by the principles of universality, equality and justice. These principles were primarily intended to prevent the exclusion of poorer sections of the population, who depend on the solidarity of the rest of society.

such rights are rarely enforceable. In some cases the constitutions do not even provide for complaints to be lodged with a constitutional court. The individual right is ultimately treated as an instruction to the State to initiate measures that enable the citizen to exercise the right concerned.

3.2.3. *The moderate model*

The constitutions of the other countries combine liberal tendencies with the definition of rights, whether as individual rights, as objectives of the State or as policy clauses.

The authors of these constitutions were aware, however, that the opportunities for exercising influence in a market economy are limited and, in particular, that it is difficult to make the fundamental right to work effective. Nevertheless, almost all countries have included it in their constitutions, at least as a policy clause, in order to obligate governments to stimulate the labour market.

An exception is the German Basic Law, which protects social rights through the welfare state clause which the public authorities are required to respect in any action they take. It is also worth mentioning that in Scandinavia, unlike the other countries, there has always been a cross-party consensus on the need for social safeguards in a market economy system.

Part IV: The constitutions of the Central and Eastern European candidate countries

1. Preliminary remarks

Given the impending enlargement of the EU, the position of the first countries to accede should be considered in the debate on a bill of rights. The constitutions of the Central and Eastern European countries are therefore considered in the following.

All the former Communist countries of Central and Eastern Europe have adopted new democratic constitutions in recent years, often guided by western models. The market economy is accepted everywhere as the basic system for the economy, and in some cases the principle of the 'social market economy' on the German model is explicitly enshrined in the constitution, as in Article 20 of the Polish constitution and in the preamble to the Hungarian constitution. The role of the State in the redistribution of wealth is no longer explicitly mentioned. Fundamental social rights played an important role in the socialist theory of constitutional law and were regarded as the main element of individual rights and freedoms¹⁰⁵. Despite some criticism¹⁰⁶, they have been retained or reinstated in the new constitutions, albeit in varying degrees of detail.

2. Czech Republic

In the Czech Republic's constitutional system fundamental rights are to be found not in the constitution of 16 December 1992 itself, but in a separate declaration of fundamental rights and freedoms. Pursuant to Article 3 of the constitution, this forms part of the constitutional order. Its Chapter 4 contains an extensive list of fundamental social rights within the meaning of this study.

Pursuant to Article 26(3), everyone has the right to earn his living by work, and the state is required to provide an adequate level of material security for those citizens who are unable, through no fault of their own, to exercise this right. Pursuant to the fourth sentence of Article 6(3), further details will be set out in laws. This wording is also to be found in Articles 28, 29, 30, 31, 32, 33, 34 and 35. Fundamental social rights are thus to be accurately defined in ordinary legislation.

Article 28 gives employees the right to fair remuneration and satisfactory working conditions. Article 29(1) gives women, adolescents and persons with health problems the right to increased protection of their health at work and to special working conditions. According to Article 29(2), adolescents and persons with health problems also have the right to special protection in labour relations and to assistance in vocational training. Otherwise, Article 31 gives everyone the right to health protection: citizens have the right, on the basis of public insurance, to free medical care and to medical aids under conditions provided for by law. Under Article 30(1) citizens have a right to material security in old age, during periods of work incapacity and in the event of the

¹⁰⁴ Kedzia, Social Rights in the (Draft) Constitutions of Central and Eastern Europe, in: Drzewicki, Krause, Rosas, pp.203 f.

¹⁰⁵ Katrougalos, op. cit., p.300.

loss of their provider. Article 30(2) refers to the right to assistance in the event of material need to the extent necessary to ensure a basic standard of living.

Under Article 32(1) parents, families, children and young people enjoy the particular protection of the law. Article 32(2) guarantees pregnant women special care, protection in labour relations and suitable working conditions.

Article 33 concerns the right to education, defining it as a right to free school and university education. Under conditions defined by law citizens have a right to assistance from the state during their studies.

Article 34(2) grants the right of access to the nation's cultural wealth under the conditions set by law, while Article 35(1) gives everyone the right to a favourable environment and Article 35(2) the right to timely and complete information on the state of the environment and natural resources.

The Czech constitution thus includes one of the most detailed lists of fundamental social rights in Europe, most of them being formulated as individual rights.

3. Estonia

The Estonian constitution of 28 June 1992 is less detailed in its definition of fundamental social rights than the Czech constitution. Article 27 refers to special protection for the family, parents and children. Under Article 28 everyone has a right to health protection and to state assistance in old age, when unable to work, in the event of the loss of the provider and in emergencies. Article 29(3) requires the state to provide for vocational training and to assist job-seekers. On the other hand, there is no right to work. The right to education is guaranteed by Article 37. It includes the right to instruction in Estonian and to free education in state schools.

4. Hungary

The Hungarian constitution of 20 August 1949 as amended in 1997 is generally very precise and contains only three brief provisions that refer to fundamental social rights, Articles 16, 17 and 18. They require the Republic of Hungary to pay particular attention to the economic security, education and upbringing of young people and to protect their interests (Article 16), to provide for extensive social measures for the needy (Article 17) and to safeguard the right of each individual to a healthy environment (Article 18).

5. Poland

The new Polish Basic Law was adopted by the National Assembly on 2 April 1997 and confirmed in a referendum held in October 1997. The very first chapter concerning the republic sets out the obligation to abide by the principle of social justice (Article 2), to ensure equal access of the people to cultural assets (Article 6(1)) and to assist Poles living abroad so that they may retain their links with their national cultural heritage.

Part IV of Chapter 2 contains a list of economic, social and cultural rights. Where work is concerned, Article 65(4) merely requires a minimum wage or the manner in which it is determined to be specified by law. Paragraph 5 requires the state to pursue a policy geared to full employment by implementing programmes that combat unemployment, by creating jobs in the public sector and by intervening in the economy. Thus, although it includes a right to work for the individual, it sets out broad lines of labour market policy in the context of fundamental rights. A right to healthy and safe working conditions is required by Article 66(1), and Article 66(2) covers the right to a minimum amount of leave in accordance with more detailed provisions to be set out in a law.

Article 67 refers to the right of citizens to social security in the event of invalidity and in old age. According to Article 68(1), everyone has the right to health protection. Article 68(3) requires the State to take particular care of children, pregnant women, disabled persons and the elderly.

Article 70 grants the right to education. Education in state schools is free, according to Article 70(2). Detailed provisions on the protection of families and children are included in Articles 71 and 72. Particularly worth noting in this context is that Article 72 gives everyone the right to require the organs of state to protect children against violence, brutality, exploitation and acts that endanger their morals.

Article 74 requires the state to ensure the ecological security of the present and future generations with the policy it pursues. As in the Czech constitution, Article 74(3) defines a right to information on the quality of the environment and its protection. Article 74(4) requires the state to support activities undertaken by the public to protect the environment.

The state is also required to pursue a policy that takes account of the public's housing requirements and to protect the rights of tenants by law (Article 75).

The Polish Basic Law thus contains numerous policy clauses that require the state to pass laws and take practical measures.

6. Slovenia

Article 2 of the Slovenian constitution of 23 December 1991 includes a clause on the welfare state, which is explained in greater detail in Articles 50 et seqq.

The right to social security under the law exists for all citizens in accordance with Article 50, the right to health protection in accordance with Article 51. Security and vocational training for disabled persons are guaranteed by Article 52. Article 56 provides for the special protection and care of children and Article 57 for free education and for the state to ensure appropriate education for all citizens. Article 66 requires the state to provide for employment, while Article 72 gives everyone the right to a healthy environment pursuant to more detailed provisions of laws. Article 78 instructs the State to create the necessary conditions for everyone to be adequately housed.

The Slovenian constitution thus details few fundamental social rights.

7. Summary

To some extent, it can be inferred from the wording of fundamental rights, the general nature of their protection and the granting of the right of access to the courts in these countries that fundamental social rights are protected by the same means as other rights, i.e. they may be claimed before the courts¹⁰⁷. However, as it is usually left to ordinary legislation to determine in more precise terms what form fundamental social rights are to take, the enjoyment of rights largely depends, of course, on the economic situation and on the political will of the country's leaders.

As in the EU countries, the constitutions of the candidate countries in no way reflect social reality but, at best, the strength of the political will to guarantee the citizen's fundamental social rights. Although the Commission stated in its 1998 reports on progress towards accession by the various candidate countries¹⁰⁸ that economic, social and cultural rights are respected, it calls for improvements in the health sector, health protection and safety at the workplace and in the social dialogue in almost all the countries.

¹⁰⁷ Kedzie, op. cit., p.207.

¹⁰⁸ Commission of the European Communities, Regular report from the Commission on progress towards accession by the Czech Republic in 1998; idem, Regular report from the Commission on progress towards accession by Estonia in 1998; idem, Regular report from the Commission towards accession by Hungary in 1998; idem, Regular report from the Commission on progress towards accession by Poland; idem, Regular report from the Commission on progress towards accession by Slovenia in 1998; published under <http://europa.eu.int.comm/dg1a/enlarge/report>. Similar reports have been drawn up exist on all the other candidate countries.

Part V: The European Parliament's position in the past

The European Parliament (EP) first adopted a resolution on respect for the fundamental rights of citizens in the Member States in the development of Community law¹⁰⁹ on 4 April 1973. This was followed by a resolution on the precedence of Community law and the protection of fundamental laws, which was adopted on 15 June 1976¹¹⁰. The EP submitted a draft European constitution on 14 February 1984.

The most important EP document is the Declaration of Fundamental Rights and Freedoms of 12 April 1989¹¹¹. This contains a comprehensive list of fundamental rights that includes fundamental social rights and state objectives as well as the classical fundamental rights:

- 'Article 7: The family shall enjoy legal, economic and social protection.'
- 'Article 13(1): Everyone shall have the right to just working conditions.'
- 'Article 13(2): The necessary measures shall be taken with a view to guaranteeing health and safety in the workplace and a level of remuneration which makes it policy to lead a decent life.'
- 'Article 14(3): Workers shall have the right to be informed regularly of the economic and financial situation of their undertaking and to be consulted on decisions likely to affect their interests.'
- 'Article 15(1): Everyone shall have the right to benefit from all measures enabling them to enjoy the best possible state of health.'
- 'Article 15(2): Workers, self-employed persons and their dependants shall have the right to social security or an equivalent system.'
- 'Article 15(3): Anyone lacking sufficient resources shall have the right to social and medical assistance.'
- 'Article 15(4): Those who, through no fault of their own, are unable to house themselves adequately, shall have the right to assistance in this respect from the appropriate public authorities.'
- 'Article 16(1): Everyone shall have the right to education and vocational training appropriate to their abilities.'
- 'Article 24: The following shall form an integral part of Community policy: the preservation, protection and improvement of the quality of the environment; the protection of consumers and users against the risks of damage to their health and safety and against unfair commercial transactions. The Community institutions shall be required to adopt all the measures necessary for the attainment of these objectives.'

Even before the intergovernmental conferences that led to the Treaty of Maastricht, Parliament had called for the list of fundamental rights it had adopted to be included in the Treaties, but with as little success as it had before the intergovernmental conferences in 1996, which led to the Treaty of Amsterdam¹¹².

¹⁰⁹ OJ C 26, 1973, pp.7 f.

¹¹⁰ Reproduced in EuGRZ 1976, pp.246 f.

¹¹¹ OJ C 120, 16.5.1989, pp. 51 ff.

¹¹² See 'Martin report' of 20 November 1990 (EP Doc A3-270/90) and the resolution of 13 March 1996, reproduced in EuGRZ 1996, p.167.

The 1998 Declaration is nonetheless tremendously important, since it was adopted by the European Parliament, the only institution at European level to have direct democratic legitimation. It represents an expression of the 'popular will' of the European peoples. The EU's own bill of rights will not therefore come into being without the explicit approval of the European Parliament, whatever its status in law may be.

Part VI: Summary

In early June 1999 the European Council meeting in Cologne decided to set up a body to draft a charter of fundamental rights for the European Union. As decisions by the EU now affect almost all areas of the lives of the Union's citizens, it is time to develop a bill of rights as a yardstick for the institution's actions. Only then can it be ensured that the citizen is aware of his fundamental rights, since the present system of references to the ECHR, ESC and Community Charter of Fundamental Social Rights of Workers does not ensure sufficient transparency.

Fundamental social rights in this context are the rights to which the individual is entitled as a member of a group and which can be made effective only if the State takes action to safeguard the individual's environment. They do not give effect to freedom from the State but to freedom with the State's assistance. Particular reference should be made in this context to the right to work, the right to education and training, the right to housing, the right to health, the right to social security, the right to culture and the right to a healthy environment.

They are to be found in various forms in constitutions. On the one hand, they may take the form of individual rights. This means that the individual may appeal directly to courts for such rights to be respected. Many constitutions also refer to fundamental social rights in the form of policy clauses and provisions defining the State's objectives. The legislature and all public authorities are then required to make the rights concerned effective.

Whether or not social rights should be enshrined in constitutions is a contentious issue. On the one hand, it ensures that such rights cannot be eroded by legislation and case law. On the other hand, a certain standard of living is then specified in the constitution, and it may not be possible to ensure it is respected in the future because of economic and social changes.

Another problem arising in connection with the creation of a bill of rights for the EU is that the EU is not a State and derives its competence from the Member States. It can therefore protect fundamental rights only to the extent that EU law is applied.

At European level there are two charters setting out fundamental social rights. The Community itself is not a party to the European Social Charter, and the Community Charter of Fundamental Social Rights of Workers is no more than a solemn declaration by the Heads of State or Government of the Member States. It is primarily through the case law of the European Court of Justice, however, that the two charters influence Community law.

In the Member States' constitutions various courses have been charted in enshrining fundamental social rights. Owing to the liberal basic attitude in Austria and the United Kingdom, for example, there are no constitutional social rights in these countries. The German Basic Law does not specify any fundamental social rights apart from the right of mothers to special protection. Germany nonetheless sees itself as a welfare state and, by defining state objectives, requires the public authorities to base all their actions on the welfare state principle. The Benelux countries, France and the Scandinavian countries have fundamental social rights in the form of individual rights, policy clauses or provisions defining the state's objectives, but tend to be restrained when it comes to detail, leaving this to ordinary legislation.

The southern European countries all have extensive bills of rights, which also include detailed fundamental social rights, formulating them primarily as individual rights. Despite the wording, however, they are not as a rule enforceable rights but instructions to the legislature to make them effective.

Three of the candidate countries, Estonia, Hungary and Slovenia, tend to adopt a moderate approach in the wording of fundamental social rights, while the Czech Republic and Poland follow the southern European model.

It is impossible, however, to forge a link between the existence of fundamental social rights in a constitution and social reality in the country concerned.

The European Parliament has always advocated the creation of a Community bill of rights. The most important document is the Declaration of Fundamental Rights and Freedoms of 1989, which also includes a number of fundamental social rights. The particular value of this declaration is its democratic legitimation.

In a resolution on the establishment of the Charter of Fundamental Rights the European Parliament 'draws attention to the need for an open and innovative approach to shaping the Charter, the nature of the rights to be featured in it, and the part it will play and the status it will command in the constitutional development of the Union'¹¹³.

¹¹³ Resolution B5-0110/99 of 16 September 1999, not yet published in the Official Journal.

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DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 29 February 2000**CHARTE 4143/00****CONTRIB 33****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a contribution from the European Bureau for Lesser Used Languages (EBLUL).^{1 2}

¹ EBLUL: E-mail: eblul@eblul.org

² The text has been submitted only in English language.



Brussels 25.2.2000

Call for Linguistic Rights in New Fundamental Rights Charter

The European Bureau for Lesser Used Languages (EBLUL) welcomes the decision of the European Union to draft and approve the Charter of Fundamental Rights of the European Union. The Charter will be a further step in the process of European integration. It is highly significant because it signals a move away from mostly economic matters which have been at the centre of European attention in recent years towards a more comprehensive understanding of European citizenship, incorporating the notion of fundamental rights.

Cultural and linguistic diversity in Europe lies at the heart of fundamental rights for its citizens as the integration process advances. An essential part of this diversity are the regional and minority languages traditionally spoken by linguistic communities within the EU member states.

The importance of preserving and promoting these languages has been considered highly important by some relevant European institutions. The European Charter on Regional and Minority Languages can be considered to be Council of Europe's convention setting out basic minimum standards. There are several other relevant documents, including the Council of Europe's own Framework Convention for the Protection of National Minorities. The OSCE mentions minority languages in several documents, including their Document of the Copenhagen Meeting of the Conference on the Human Dimension, adopted in June 1990, containing 11 paragraphs relating to linguistic minorities. Furthermore, the activities of the High Commissioner, the Foundation of Inter-Ethnic Relations adopted in 1996, the Hague recommendations regarding the education rights of National Minorities and in 1998 the Oslo Recommendations regarding the linguistic rights of national minorities, must be considered. These latter two documents give a comprehensive overview of the rights needed for protection and promotion of languages.

EBLUL stresses the need for clauses specifically related to linguistic rights of communities speaking regional and minority languages to be included in the Charter of Fundamental Rights for the European Union. The Charter should provide at least a minimum standard of protection of regional and minority languages which will become a fundamental basis in this field for the European Union itself and for its current and future member states.

EBLUL will remain at the disposal of the Body elaborating the draft EU charter of Fundamental Rights and other EU institutions as well as member states' governments and parliaments for any further consultations in this matter.

The European Bureau for Lesser Used Languages will also evaluate the possibility of producing more detailed proposals on this matter.

Bojan Brezigar
President
European Bureau for
Lesser Used Languages
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ENTWURF DER CHARTA DER GRUNDRECHTE DER EUROPÄISCHEN UNION**fundamental.rights@consilium.eu.int**

Brüssel, den 29. Februar 2000**CHARTE 4144/00****CONTRIB 34****ÜBERMITTLUNGSVERMERK**

Betr.: Entwurf der Charta der Grundrechte der Europäischen Union

Sie erhalten nachstehend einen Diskussions-Vorschlag der EU-Vertretung der Bundesarbeitsgemeinschaft der Freien Wohlfahrtspflege (BAGFW).^{1 2}

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Dieser Text wurde nur in deutscher Sprache übermittelt.

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**Diskussions-Vorschlag
der Bundesarbeitsgemeinschaft der Freien Wohlfahrtspflege (BAGFW)
zum Entwurf einer EU- Grundrechtscharta**

Artikel

Recht auf Bürgerdialog und Grundsicherung

- (1) Jeder Mensch in der Europäischen Union hat ein Recht auf gesellschaftliche Partizipation (Bürgerdialog) und auf Schutz vor Armut und Ausgrenzung (Grundsicherung).
- (2) Der Bürgerdialog wird nach den Prinzipien der Solidarität und Subsidiarität auf lokaler, regionaler, nationaler und europäischer Ebene insbesondere durch die Zusammenarbeit mit den Sozialpartnern, Nichtregierungsorganisationen und Wohlfahrtsverbänden als Akteuren der Bürgergesellschaft gewährleistet
- (3) Die Grundsicherung beinhaltet das Recht auf ein sozio-kulturelles Existenzminimum in allen sozialrechtlichen Regelungen. Dazu gehört das Recht auf Inanspruchnahme sozialer Dienste, die unter Mitwirkung von Freiwilligen von den Sozialpartnern und von Wohlfahrtsverbänden als dem Gemeinwohl verpflichtete Akteure des Sozialschutzes und als Träger gemeinnütziger Einrichtungen und Dienste angeboten werden.

Begründung :

Die Bürger müssen mehr Vertrauen in den europäischen Einigungsprozess gewinnen. Die weltweit zu beobachtende, sich weiter öffnende Kluft zwischen Arm und Reich sowie die damit einhergehende Beschäftigungskrise erfordert neue Wege der Bekämpfung von Armut und Ausgrenzung. Nur so kann den Ängsten vor der Globalisierung im allgemeinen und vor der Erweiterung der EU im besonderen Rechnung getragen werden. Das europäische Sozialmodell muss weiter entwickelt werden. Die nach dem gegenwärtigen Stand bereits Ende 2000 von der EU zu beschließende Grundrechtscharta muss deshalb auch soziale Rechte beinhalten.

Für das neu einzuführende Recht auf Bürgerdialog muss die Zusammenarbeit mit den Sozialpartnern, Nichtregierungsorganisationen und Wohlfahrtsverbänden als Akteuren der Bürgergesellschaft gewährleistet werden, und zwar auf lokaler, auf regionaler, auf nationaler und auf europäischer Ebene. Nur durch ausreichende Gewährleistung gesellschaftlicher Partizipation kann das Demokratieprinzip nachhaltig gesichert werden. Dabei müssen die Prinzipien der Subsidiarität und der Solidarität beachtet werden.

Es muss ein Recht auf ein sozio-kulturelles Existenzminimum in allen sozialrechtlichen Regelungen eingeführt werden. Entsprechend Art. 14 der Europäischen Sozialcharta muss das auch ein Recht auf Inanspruchnahme sozialer Dienste beinhalten. Die Zusammenarbeit mit den Sozialpartnern und mit Wohlfahrtsverbänden als Träger sozialer Einrichtungen und Dienste (vgl. Maastrichter Erklärung Nr. 23 zur «Zusammenarbeit mit den Wohlfahrtsverbänden»), die den Beitrag der freiwilligen Dienste zur Entwicklung der sozialen Solidarität nutzen (vgl. Amsterdamer Erklärung Nr. 38 zu «freiwilligen Diensten»), entspricht in besonderer Weise den in Art. 136 des EG-Vertrages (Amsterdamer Fassung) verankerten Zielen der europäischen Sozialpolitik.

Bonn, den 16. Februar 2000

Soscha Gräfin zu Eulenburg BAGFW-Präsidentin

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

**Brussels, 8 March 2000 (10.03)
(OR. fr)****CHARTE 4153/00****CONTRIB 40****COVER NOTE**

Subject : Draft Charter of fundamental rights of the European Union

Please find enclosed the opinion of the Committee of the Regions, adopted by the Committee on 16 February 2000.

COM-Inst.Aff./008

Brussels, 28 February 2000

OPINION

of the Committee of the Regions

of 16 February 2000

on the

"Process of drawing up a Charter of Fundamental Rights of the European Union"

The Committee of the Regions,

HAVING REGARD TO the decision of the Bureau of 15 September 1999 to draw up, in accordance with the fifth paragraph of Article 265 of the Treaty establishing the European Community, an opinion on the subject, and to instruct the Commission for Institutional Affairs to prepare the Committee's work on the subject;

HAVING REGARD TO the draft opinion adopted by the Commission for Institutional Affairs on 27 October 1999 (rapporteurs: **Mr BORE** (UK, PSE) and **Mrs du GRANRUT** (F, PPE));

WHEREAS the European Council feels there is a need, at the present stage in the development of the Union, to establish a Charter of Fundamental Rights of the European Union (Annex IV of the Presidency Conclusions of the Cologne European Council on 3 and 4 June 1999) ;

WHEREAS the Convention to draft a Charter of Fundamental Rights of the European Union was set up on 17 December 1999,

adopted the following opinion at its 32nd plenary session of 16 and 17 February 2000 (meeting of 16 February 2000):

*
* * *

1. General comments

1.1 The Committee of the Regions has always stressed the need to strengthen citizenship and participatory democracy in the European Union, and the importance of formulating the rights of European citizens to attain this objective; it takes the view that, as the representative of regional and local authorities - the bodies which are closest to the citizens - and as the guarantor of the subsidiarity principle, it should make its contribution to drawing up the Charter of Fundamental Rights of the citizens of the European Union.

1.2 Basic rights constitute the bedrock of a society based on the principles of liberty, democracy, respect for human rights and fundamental liberties and the rule of law, as enshrined in the constitutional traditions which are common to the Member States.

The European Union's capacity to help build a society which corresponds to these aspirations largely depends on citizens claiming these rights - i.e. accepting them and above all exercising them.

1.3 The Committee of the Regions recognises the fast-changing character of the European Union and the growing challenges which it faces at the beginning of the 21st century. The last four decades have seen the gradual development of the European Union. Developing in several phases, an increasing number of European countries have pooled their resources and achieved together a very significant degree of economic growth, social stability and political harmony, without managing to generate the sense of commonality among the citizens of Europe needed to realise the full potential of a social and political Europe which guarantees fundamental rights.

The last fifteen years have seen an enormous acceleration of economic integration with the development of the single European market and a common European economic area. It is due to be further accelerated by the creation in 1999 and putting into circulation in 2002 of the single currency, the Euro.

1.4 A number of steps have been taken towards greater social cohesion and increased political cooperation. These have found expression in the establishment and development of new European institutions such as a directly elected Parliament and the Committee of the Regions and in the introduction of European-wide social and civil guarantees.

At the Council of Europe's initiative, a European Convention on Human Rights was drawn up, allowing for cases to be brought, and there is a European Social Charter which can be used for reference, but without the right to resort to legal action in the event of non-compliance.

It had been envisaged that the European Union as such would be a signatory of the European Convention on Human Rights. This is now excluded by Opinion 2/94 of the European Court of Justice, dated 28 March 1996, which states that this would involve the Community in a distinct international institutional system, that it would introduce all the provisions of the European Convention on Human Rights into the Community legal system, and finally that at the present stage of Community law the European Union does not have the powers to accede to the Convention.

1.5 Up to now, fundamental rights with respect to acts of sovereignty of the Community institutions have been safeguarded in the first place by the European Court of Justice. At an early stage, the Court of Justice established the binding force of fundamental rights as unwritten principles of law at EU level too. The Treaty bases for safeguarding fundamental rights in the EU were expanded and strengthened by the Maastricht and Amsterdam Treaties. The Treaty of Amsterdam, signed on 2 October 1997 and inaugurated on 1 May 1999, represents an important stage in the consolidation of the fundamental rights (cf. Article 6(2) of the consolidated Treaties). However, these wider issues have lagged behind the developments in the economic area.

Moreover, while the Treaty reaffirms the commitment of the Union to fundamental rights, it includes gaps and inconsistencies with regard to the guarantee of these rights or of those linked to the objectives set out.

Acknowledging the existence of these gaps and inconsistencies provides an opportunity to correct them and arrive at a clear, unequivocal text on the basic rights of European citizens and the ways to guarantee them.

1.6 The 1990s have seen signs of greater citizen uncertainty about these developments towards European integration. These have been reflected most recently in the very low turnout for the elections to the European Parliament in June 1999. A quickening in the pace of economic and financial integration, combined with a lessening of confidence by citizens in European institutions, represents a dangerous scenario for the future of the European Union. It requires swift action to bring the social, political and cultural needs of citizens into correspondence with the changing economic realities. This makes the call for a Charter of Fundamental Rights for European citizens all the more important and urgent. However, to address the issue of a lack of public confidence, this Charter needs to be a simple, straightforward, easily understood document, free from the bureaucratic and legalistic jargon that often mars formal constitutional documents.

At a time when the Treaties of Maastricht and Amsterdam have granted new powers to the European Community, giving rise to wider responsibilities in terms of fundamental rights for the Community, and when the Community has chosen not to subscribe to the European Convention on Human Rights, it seems urgent for the Community to take up a clear position on the basic rights which it wishes to see guaranteed to citizens of the Union, following from the scope of its action.

The Committee of the Regions is of the view that the incorporation of these rights into European Union Treaties would give a clear indication of Member States' commitment to building a Union based on the values of liberty, equality and solidarity.

The Committee points out that historically declarations of citizens' rights are preambles to Constitutions and have their *raison d'être* in them, as the basis of the powers needed for the exercise of those rights.

The Committee stresses the constitutional value of the Charter because it feels that the process of drawing up a charter of rights cannot and must not be separated from the institutional reform to be undertaken by the next Intergovernmental Conference.

2. The content of the Charter

The Charter of Fundamental Rights for citizens of the European Union must cover three fields: individual rights, economic, social and cultural rights, and civil and political rights.

The first field should cover the basic rights covered by the Universal Declaration of Human Rights, and more specifically by the European Convention on Human Rights.

2.1 **Rights linked to the person**

- Right to life, right not to be subjected to torture or inhuman or degrading punishment or treatment.
- Right not to be subjected to slavery, servitude or forced labour, right to freedom of movement.
- Right to freedom of thought, conscience and religion, freedom of expression and information.
- Right to a proper civil or penal trial.
- Right to privacy regarding private life, personal data, correspondence and home life.
- Right to housing, right to property and to respect for property.
- Right to health protection.

2.2 **Economic, social and cultural rights**

- Right to work, to freely negotiated working conditions, to a fair wage, to a reasonable length of notice of termination of employment, to appropriate vocational guidance, training and re-training.
- Right to freedom of movement and establishment for workers and to equality of treatment with workers of the country concerned.
- Right to equality of opportunity and treatment, without discrimination based on race, sex, colour, ethnic, national or social origin, culture, language, religion, political beliefs, family situation, sexual orientation, age or disability.
- Right to set up trade union organisations and right to collective bargaining, information, consultation, and participation for decisions affecting workers' interests.
- Right to social security, social and medical assistance, and the benefit of social services.
- Right to education, right to freedom to choose an occupation and right to continuing vocational training.
- Rights linked to economic and entrepreneurial activity: right to property, right of competition, right to conclude contracts, etc.

2.3 Civil and political rights

- Right to vote in local and European Parliament elections for non-nationals from other EU countries in the Member State where they are resident.
- Right to set up European political parties, right of petition, association and demonstration.
- Right to local democratically constituted decision-making bodies.
- Right to check on legality of administrative action.
- Right of minorities to protection for their religion, language and culture.
- Right to equal opportunities of women and men in all decision-making fields.

2.4 Clearly, these rights cover a very broad canvas. The crucial task is to make them meaningful and practical, so that they give people a clear sense of the rights they enjoy across the European Union as a whole.

It is not enough to define rights. The principle of their justifiability must be established and appropriate access to national courts and the European Court of Justice defined or clarified, to ensure that rights can be exercised in practice.

2.5 As well as detailing these rights, the Charter should contain, as appropriate, complementary clauses expanding on particular aspects. This opinion from the Committee of the Regions wishes to highlight a number of areas where this is felt to be necessary.

2.5.1 In an increasingly multi-cultural, multi-racial, multi-ethnic European Union equal opportunities is a "horizontal theme" which cuts across a number of these rights. Thus, the Bill of Rights should guarantee the right to equality of opportunity and treatment without any distinction of race, ethnic, national or social origin, language, religion, gender, marital status, sexual orientation, age or disability.

2.5.2 In the light of the conclusions of the Tampere European Council on 15 and 16 October 1999 and its resolutions on the integration of third country nationals, the Committee of the Regions believes that the body responsible for drawing up the Charter of Fundamental Rights should examine the issue of whether long-term residents should be granted a set of rights that resemble as closely as possible those of EU citizens.

2.5.3 The right to a fair, public hearing needs to be reinforced by the creation of common legal standards and a common sense of justice throughout the European Union. Given the huge and growing degree of travel within the European Union for work, leisure and tourism, a set of common standards to ensure a common level of justice and fairness should be applicable across all EU Member States. We give two examples: a guarantee that effective legal advice and where necessary, language interpretation services are available for EU citizens arrested outside their home Member State; the establishment of a common system of European bail so that people are not arrested and held on remand in cells in another country for lengthy periods.

2.5.4 Finally, with regard to the rights of private individuals, the new charter of rights needs to recognise the contemporary reality of patterns of divorce, separation and remarriage within modern European society. The new charter should make clear the rights of mothers and fathers to have fair and equitable access to their children in the event of divorce and/or separation; and indeed the rights of children to be able to see both of their parents if they so wish on a regular basis.

2.5.5 The Charter of Fundamental Rights must also address questions related to new areas such as the knowledge society, environmental changes or biotechnology.

2.6 Beside these four specific areas where the introduction of the Charter of Fundamental Rights into European law will give clear civil and social rights to residents of the Union and help to match the growing common European economic space with a complementary social, civic and political space, the Committee of the Regions wishes to stress three issues related to European citizenship.

2.6.1 The Charter will enable each national of an EU Member State to identify his specific European citizenship as involving new rights and expressing membership of the new entity known as the European Union.

European citizenship is a major challenge for the European Union; it is not an alternative to national citizenship; it is at once complementary, unique and resolutely political.

For the Committee of the Regions the Charter of Fundamental Rights is the foundation of European citizenship.

2.6.2 The Committee of the Regions takes the view that the fundamental rights have a constitutional value, enabling individuals who enjoy them to appeal to the relevant courts, where appropriate national courts, the Council of Europe's Court of Human Rights and the Court of Justice of the European Communities, every time such a right is threatened.

The Committee of the Regions considers that fundamental rights need to be effectively guaranteed within the European Union, within a framework that ensure that citizens will have recourse to appropriate legal remedies.

2.6.3 The Charter of Fundamental Rights should therefore reiterate **in some form** the principles of local self-government as set out in Article 3 of the Council of Europe's Charter of Local Self-Government.

2.6.4 The fundamental rights therefore have an essential political dimension, because they link the democratic basis of political society with its limitation by the recognition of citizens' rights.

The Committee of the Regions is convinced that this right of participation in public life, exercised first and foremost by electing local authorities, is the first and indispensable link in a chain of political responsibilities in which the citizen must participate and feel involved.

Once the citizen feels a part of the chain of power emanating from him and extending to the summit of the European Union, he will accept the constraints of the "res-publica" and the decisions of those whom he has entrusted with it.

The fundamental rights thus lay the basis for participatory democracy, which respects the citizen's power and that of the various levels of authority to which he delegates his power.

2.6.5 As regards social and economic rights, the principle of subsidiarity needs also to be taken into account, given the different social, economic and legal structures within the Member States.

3. **The future process**

3.1 European Union leaders have agreed to the proposal for the drawing up of a Charter of Fundamental Rights. The preparation of the Charter is the responsibility of a working group made up of representatives of the governments of the Member States, a person appointed by the Commission President, MEPs and national parliamentarians. The Committee of the Regions is to be consulted in this procedure and has been invited to speak to the Convention, but it believes that it should be more fully involved and be given observer status.

In compliance with the subsidiarity principle, the Convention advocated by the European Council for drawing up the charter should be wide enough to allow every level concerned, that is Europe, the Member States and local and regional authorities, to obtain a hearing for their views on the content of the European Charter of Fundamental Rights and in particular enable the public to express views and have access to information prior to decisions being taken by Europe and the Member States.

3.2 The proposal to develop a Charter of Fundamental Rights is an important step forward by the European Union. The COR intends to participate fully in this process and to take forward the ideas contained within this opinion into that wider forum. The COR representatives will highlight the main themes in this opinion during the forum's deliberations. The COR does not rule out drawing up a further position which could supplement and clarify the opinion in the light of the work of the Convention responsible for drawing up the draft Charter of Fundamental Rights to be submitted to the European Council in Nice in December 2000. At the same time they will stress the importance for the final document not only to be incorporated within the EU Treaties, but also to be produced as a stand-alone document highlighting the key elements that form Europe's bill of political, social and civil rights.

4. Conclusion

4.1 The European Union is very much at a watershed in its development. It is vitally important that urgent steps are taken to involve the public in decision-making so as to boost public confidence in both European institutions and the European Union as a whole. Making clear, in very practical and straightforward terms, the key economic, social, cultural, civil and political rights which the Union guarantees to all of its members is the urgent task. The development of a Charter which gives expression to a citizens' and people's Europe, which will complement the common economic space which is currently being developed, is the way forward. This should be the clear goal and objective of the Charter of Fundamental Rights. That is the task which the Committee of the Regions and its representatives will argue for in the months ahead.

4.2 The Committee of the Regions comes out firmly in favour of a Charter of Fundamental Rights of the citizens of the European Union, which will give the Union homogeneous, coherent Community law with constitutional value within which these rights may be effectively exercised.

4.3 Thus the European Union, governed by law and based on adherence to common values which are legally guaranteed, will be enshrined in that form in the next Treaty on European Union.

Brussels, 16 February 2000

The President
of the Committee of the Regions

The Acting Secretary-General
of the Committee of the Regions

Jozef Chabert

Vincenzo Falcone

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPEENNE**fundamental.rights@consilium.eu.int**

Bruxelles, le 14 mars 2000**CHARTE 4155/00****CONTRIB 41****NOTE DE TRANSMISSION**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne

Veillez trouver ci-après une contribution intitulée "Convention européenne de protection contre la violence et le harcèlement raciste" soumise par M. Joël Zylberberg, psychoanalyste, expert devant les tribunaux Belges. ^{1 2}

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² Ce texte a été soumis en langue française uniquement.

**TRAVAUX CONÇUS ET DIRIGES PAR
JOËL ZYLBERBERG,
PSYCHANALYSTE, EXPERT DEVANT LES TRIBUNAUX BELGES.**

CONVENTION EUROPEENNE

DE PROTECTION CONTRE LA VIOLENCE ET

LE HARCELEMENT RACISTE

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1. **INTRODUCTION**

Si le politique ou le législateur est appelé à prendre position au sujet du racisme il est primordial qu'il prenne le temps d'étudier, une bonne fois pour toute, la nature de ce qu'il prétend traiter **avant** de s'exprimer !

C'est trop souvent par méconnaissance, qu'il recourt à des arguments paralogiques permettant au racisme de se développer tout en étant apparemment combattu.

Il serait sain que nos dirigeants prennent le temps de s'interroger sur l'existence même du racisme au sein de la société en tant que révélateur de leur méconnaissance des mécanismes qui le sous-tendent.

Car, au-delà des discours creux, personne ne semble disposé à établir le constat paradoxal suivant, comme point de départ de l'absolue priorité à devoir le combattre sous un autre angle : **LE RACISME CROIT PAISIBLEMENT GRACE A LA DEMOCRATIE.** Les rares esprits brillants de ladite démocratie qui ont vaguement perçu le phénomène, en ont conclu, par une erreur de raisonnement supplémentaire, qu'il fallait incriminer à la publicité que l'on faisait indirectement au racisme en le traitant, la cause de ce paradoxe. Cet « argument » les conduisit, tout naturellement, à la super conclusion que seul le **SILENCE** pouvait combattre le racisme.

En extrapolant à peine, dans la voie de ce discours, le seul remède contre le racisme serait feindre de l'ignorer ! N'oublions jamais qu'il est autant à craindre du silence des pantoufles que du bruit des bottes !

Il n'est que trop significatif qu'il faille pousser le raisonnement adopté par nombre de démocraties, presque jusqu'à la caricature, pour qu'il révèle l'exacte nature de ce qu'il renferme. La démonstration qui précède illustre combien, laissé en l'état, il donne bonne conscience à ceux qui l'adoptent, puisqu'il ne crache son paradoxe que si on le presse au-delà de sa logique apparente.

Or la seule conclusion logique, à laquelle ce paradoxe devrait amener tout esprit en alerte, est que si le racisme croît lorsqu'on le combat c'est parce que le remède n'est pas adapté au mal.

Cette bavure découle de l'ignorance de la nature EXACTE du mal. Il est donc vital pour notre société de reprendre l'étude du phénomène à la base et d'en dégager, à partir de ces nouvelles données, des moyens adaptés et par conséquent efficaces à combattre ce fléau. **CE N'EST QU'A CE PRIX QUE L'ON CONSTATERA QUE LE SEUL MILIEU OU LE RACISME NE PEUT CROITRE C'EST LA DEMOCRATIE JUSTEMENT !** Il serait temps que le racisme sache que le glas sonnera pour lui le jour où la démocratie sortira de sa position frileuse et somnolente à son égard. Le paradoxe naît de ce que les moyens ne sont pas adaptés à la nature du phénomène et non du combat en lui-même.

* *

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2. ETUDE DE LA NATURE REELLE DU RACISME

LE RACISME EST L'EXPRESSION D'UN TROUBLE PSYCHIQUE !

En tant que tel, le racisme n'est que la partie apparente d'un iceberg, alors ne faisons pas comme l'idiot qui, lorsqu'un doigt pointe vers la lune, regarde le doigt !

En fait, le racisme est l'expression, l'extériorisation, non d'une opinion mais de l'arrêt du développement mental de l'individu qui en est porteur, au stade de l'enfant confronté à la découverte de l'autre et par conséquent à la prise de conscience de lui-même. **LE RACISTE EST MENTALEMENT UN ENFANT DANS UN CORPS D'ADULTE.**

Pour bien mesurer la portée de cet éclairage il nous faut faire référence à l'évolution du petit d'homme en général ce qui permettra de mieux cerner en quoi le racisme est la **conséquence** d'une évolution individuelle pathologique.

Qu'il nous soit fait crédit par le lecteur, jusqu'à ce qu'il atteigne la fin de ce paragraphe, que le développement qui va suivre s'inscrit dans la substantifique moelle de notre explication et n'est, en aucune façon, une digression de « psy. » en manque d'interprétation sauvage à propos de tout et n'importe quoi. L'effort consenti par le lecteur à ce stade de notre développement le positionnera sur un plan tel, qu'au terme de cet article, il n'aura plus le regard fixé sur le doigt mais bien vers la lune !

Dans l'histoire de tout être humain, la prise de conscience de son identité n'est pas un acquis depuis la naissance, mais est le fruit d'un long processus maturatif que l'on peut, pour les besoins de la démonstration, scinder en quatre étapes :

PREMIERE ETAPE :

Avant sa naissance tout un chacun préexiste pour ceux qui vont le concevoir et est le fruit d'un désir. Ses géniteurs le créent en lui ayant attribué une place pour qu'il puisse advenir. Pendant la grossesse on l'imagine, on lui parle, on lui aménage son espace, on lui attribue un nom... En fait, depuis l'idée de la conception jusqu'à la naissance, ce qui préside à l'histoire de tout être, qui aura ou non la chance d'exister à ses propres yeux un jour, est le résultat plus ou moins heureux de la séquence synthétisée ci-dessus. Le bon déroulement de cet enchaînement fait de la naissance l'aboutissement d'une première étape de l'évolution de l'être et non son début.

Le bébé naissant dans un tel contexte est comparable à la pièce maîtresse manquante d'un puzzle dont les contours sont parfaitement définis par les pièces qui l'entourent et qui n'a plus qu'à prendre place à l'endroit qui l'attend, complétant ainsi le tout conçu pour lui et lui donnant sens. Un tel bébé, désiré, attendu et reconnu trouvera dans son entourage la sécurité nécessaire pour poursuivre son évolution vers notre deuxième étape.

DEUXIEME ETAPE :

Elle s'étend en gros sur les huit à dix premiers mois de la vie. Elle devient visible à partir d'un zoom arrière effectué au départ de la première où elle apparaît comme l'englobant. La future notion de conscience de soi s'inscrit dans une continuité ou dans un chaos, selon que cette étape prolonge harmonieusement ou non la précédente.

Elle comprend cette période où le bébé et l'entourage interagissent avec plus ou moins de bonheur pour répondre le plus adéquatement possible à un compromis entre la place que le bébé prend, tant par sa présence physique que par l'éveil de sa personnalité, et la place que l'entourage, de par la personnalité des gens qui le composent, est prêt à lui consentir en fonction de l'image qu'il avait de lui avant sa naissance.

En d'autres termes, la poursuite du développement normal d'un petit d'homme dépend de la délicate résultante entre lui et :

- 1° la place que les membres de son entourage lui donnaient à l'intérieur d'eux-mêmes avant sa naissance
- 2° La place que les membres de son entourage lui donnent depuis sa naissance.
- 3° Sa présence physique réelle
- 4° Ses traits de caractère innés.

En résumé, à cette étape, l'enfant reçoit ou non une place effective dans le monde aux yeux des autres alors qu'il ne sait pas qui il est.

Il existe pour les autres alors qu'il n'a pas conscience d'exister à ses propres yeux !

Cette étape peut être comparée à l'existence, pour l'enfant, d'une continuation, sur le plan psychique, de la vie intra-utérine, où il baignait dans un milieu qui subvenait à tous ses besoins.

Du point de vue de l'enfant, à ce stade, le degré de **différenciation entre lui et les autres est quasi nul**. Vue sous l'angle qui nous intéresse, la fin de cette période se signale par un changement d'attitude qu'adoptera l'enfant vis-à-vis des personnes ne faisant pas partie de son entourage direct, ce qui témoignera d'un cap dans l'acquisition d'un nouveau degré de différenciation.

TROISIEME ETAPE :

L'enfant adopte une **attitude de retrait**, voire de peur, lorsqu'il est mis en présence d'êtres qui ne lui sont pas familiers, alors qu'avant, il ne manifestait aucune différence de comportement, quelle que fût la nature de celui en présence duquel on le mettait.

Or, on constate que les manifestations de peur sont d'autant plus intenses que l'enfant n'a pas pu développer des liens positifs puissants avec les membres de son entourage proche.

En d'autres termes, la place que l'enfant va donner à l'existence de l'autre, alors qu'il ne sait toujours pas lui-même qui il est, est d'autant plus facile à intégrer qu'il aura évolué dans un milieu où il possédait une place aux yeux des siens.

Réciproquement, il va rejeter l'existence de l'autre à l'image du rejet dont il fut victime !

La compréhension de cette étape est capitale pour la suite de nos propos car elle lie la manière dont un bébé réagit vis-à-vis d'un autre à la manière dont on a agi vis-à-vis de lui antérieurement.

La précocité de cette loi (nous parlons des premiers mois de la vie !) devrait retenir toute l'attention du lecteur car, comme il le pressent, du moins l'espérons-nous, elle contribue grandement à définir ce qui plus tard ne donnera lieu, pour certains, qu'à une expression parmi d'autres d'une opinion « démocratiquement » respectable et qui s'appellera **LE RACISME ! !**

Il manque encore toutefois quelques chaînons à notre démonstration pour que son analyse soit limpide.

Que traduit l'apparition de ce comportement chez l'enfant ?

- **Primo**, que le bébé a atteint un degré de maturité suffisant lui permettant d'accéder à un niveau de discrimination où il prend conscience qu'il existe une différence entre les individus (ce qui n'était pas perçu auparavant !).

Ceci conduit à la création de deux classes d'individus : d'une part ceux qui lui sont proches et donc **ses familiers** auxquels il sourit et qui le font rire et d'autre part, ceux qui lui sont éloignés et donc **étrangers** et qui lui font peur et pleurer.

- **Secundo**, que c'est par la présence des autres (compris comme le reste du monde moins son entourage), que le bébé va acquérir la notion complémentaire des siens. La prise de conscience de l'identité des siens n'est possible, en tant que forme consciente, que parce que le degré de sa maturité lui fait d'abord apparaître le reste des individus comme le fond.

La forme ne se détache et donc n'existe que grâce au fond : avant lui tout est uniforme ! Rien ne se détache de rien, tout est interchangeable (lui, les autres,

le monde, le dedans, le dehors). Puisque rien n'a de statut propre, rien n'existe ! En conséquence, et alors que le bébé n'a toujours pas conscience de son identité propre, c'est par la pertinente information que lui apporte, sans le vouloir, l'étranger à son entourage, qu'il va pouvoir ressentir un lien d'appartenance liant les individus distincts de son milieu.

En d'autres termes la conscience de l'existence des autres étrangers est la manifestation PREMIERE, NECESSAIRE à ce que la conscience de l'existence des autres proches puisse advenir !

- **Tertio**, que le risque est que cette expérience princeps se vivant dans un premier temps sur fond d'anxiété et de peur, il n'assimile la conscience de l'autre à une expérience négative.

Le racisme part du tertio !! ...

Ici, deux cas de figure se présentent :

- a) soit le bébé a grandi dans un milieu favorable où il a eu sa place et l'expérience évolue positivement car le milieu, par son action, joue un rôle apaisant ; alors, le phénomène ne réactive pas la trace chez l'enfant d'un vécu semblable, rapporté à lui, et où il n'eut pas de place en tant qu'autre.
- b) Soit le milieu est défavorable et l'expérience réactive la souffrance liée à l'histoire propre du bébé. La peur s'enracinera alors et il aura tendance à percevoir l'existence de l'autre comme cause de cette peur.

La réaction « normale », de son point de vue, sera l'agressivité dirigée contre l'autre pour le détruire afin de supprimer, croit-il, la peur.

L'autre, de par son existence, devient un reproche vivant qui empêche de « vivre ».

Toute l'énergie de l'individu est mise au service de cette cause de survie et aucun moyen ne semble déplacé pour atteindre sa fin.

L'existence de l'autre devient son obsession et légitime tous ses actes dont la place de la parole à ce stade (huit à dix mois) est assez absente (bonjour la future démocratie !).

Il se sent victime de l'existence de l'autre et devient bourreau par défense ! ? ! ...

QUATRIEME ETAPE :

C'est celle de la prise de conscience de soi qui s'étend plus ou moins du huitième au vingt-quatrième mois.

A ce stade, le niveau de conscience de départ auquel se trouve le petit d'homme sera avantageusement illustré par l'expérience suivante : si vous mettez un enfant de cet âge devant un miroir il ne se reconnaîtra pas. Plus encore, il aura tendance à aller voir derrière le miroir et il imitera les gestes que sa propre image lui renvoie, de la même manière que mis face à un autre enfant du même âge, il imitera ses gestes. De cette expérience nous pouvons tirer l'enseignement suivant :

1°/ l'enfant n'a pas une conscience innée de lui puisqu'il vit son image comme si il s'agissait d'un autre enfant .

2°/ L'enfant qui a conscience de lui-même a acquis cette notion.

3°/ **L'acquisition de la conscience de soi se fait par et grâce à**

l'existence d'un autre. En effet, c'est grâce à la perception globale du corps d'un enfant du même âge que lui, que le bébé va acquérir la conscience de l'entité du sien.

C'est donc à nouveau la présence mais cette fois-ci d'un pair, qui sera la condition nécessaire à l'évolution de la prise de conscience propre qu'aura l'enfant de lui-même. Dans cette évolution vers la prise de conscience de soi il y a d'abord confusion : **le bébé se prend pour l'autre !**

Quand l'autre se fait mal et pleure, le bébé qui n'a rien se met à pleurer. Quand il frappe sur l'autre, il dit que c'est lui qui est battu.

La source de l'identité propre d'un être est l'autre et ce n'est que dans un deuxième temps que l'enfant va pouvoir acquérir la conscience de lui-même à la première personne.

En bref, lors d'une évolution normale, pour qu'un individu puisse un jour se prendre pour lui-même, il faut qu'il se soit pris au départ pour un autre !

Il est également à noter que, à cette étape, l'enfant ne dit pas JE quand il parle de lui-même, mais il dit « **IL** » ! (ou il s'appelle par son prénom).

Cet indice linguistique supplémentaire prouve que la notion de conscience de soi n'est pas innée et que, même dans l'acquisition du langage, **l'enfant adopte le point de vue de l'autre pour parler de lui !**

Après cette synthèse de l'évolution normale chez tout individu, de la notion d'entourage familial et de la notion de prise de conscience de soi, **nous allons enfin pouvoir analyser correctement la nature même du phénomène raciste.**

Quels sont les ingrédients du propos raciste et leurs articulations ?

- 1°/ La peur de ce qui **N'EST PAS FAMILIER** rapport à un entourage connu et prétendument sécurisant. Sur le plan adulte, la notion de famille proche, existant vers plus ou moins huit mois, est devenue la notion de **NATION** et la seule identité possible est **L'IDENTITE NATIONALE.**
- 2°/ L'insécurité, engendrée par la présence d'étrangers n'ayant pas la même origine, est définie comme la **CAUSE DE L'INSECURITE.**
- 3°/ L'accroissement du sentiment de l'identité nationale est présenté comme le **REMEDE** à la peur et à l'insécurité.
- 4°/ Identifié comme la cause de la peur et de l'insécurité, **l'étranger** est donc bien un **agresseur** qui, n'étant pas chez lui sur la terre du raciste, est **PAR NATURE** hors la loi ! Toute réaction pour l'en chasser est donc assimilée à de la légitime défense, le raciste étant victime de l'agression que perpétue l'étranger par sa seule présence.
- 5°/ La résistance de l'étranger à rentrer chez lui justifie le recours à la violence devenue légitime. C'est dans un ultime effort de « respect » de l'étranger que le raciste le convie gentiment à disparaître de sa vue, faute de quoi la résistance que manifesterait l'étranger à reconnaître sa nature d'agresseur obligerait le raciste, bien malgré lui, à recourir à la **violence légitime,**

institutionnalisée comme seul moyen de survie et étant décrite comme l'étape « malheureusement » nécessaire à pouvoir enfin vivre en paix entre gens de bien.

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3. **ANALYSE CRITIQUE DU RACISME, DE LA NATURE DE SES PROPOS A SA LOGIQUE INTERNE.**

Le lecteur objectif qui nous aura suivi jusqu'à ce point ne pourrait qu'être frappé par la révélation de ce que la nature des propos racistes est identique en tous points à la nature des notions définissant l'évolution normale de tout être face à son environnement et face à la prise de conscience de lui-même (peur, insécurité...). Or, si l'évolution normale de ces étapes conduit un individu à vivre en harmonie avec les autres et avec lui-même, la reprise de ces mêmes notions par les racistes, avec comme but final l'élimination de « l'étranger », prouve que **LE RACISME EST L'EXPRESSION D'UN CONFLIT INFANTIL NON RESOLU.**

Qu'il n'est que la traduction, par des êtres psychologiquement immatures, d'une pathologie relationnelle dont l'origine se situe dans l'échec de l'évolution de la conscience de soi, ainsi que de celle de son rapport à l'entourage proche. C'est en effet **L'ABSENCE** d'un entourage proche et chaleureux, n'ayant offert aucune place à l'enfant qu'il fut, qui précipitera, par un **DOUBLE RETOURNEMENT** (1°/ de la famille sur le monde extérieur et 2°/ de son désespoir en agressivité), le futur raciste dans sa haine du non familial. Sa peur légitime, lors de ses premières expériences de contact avec l'étranger à sa famille, n'est pas adoucie par son milieu proche. Il va donc attribuer comme cause à sa peur la présence de l'autre.

Alors que cette peur n'est que l'indice d'une évolution normale et, comme nous l'avons décrit plus haut, ne devrait être que passagère, elle devient permanente par la carence du **rôle tampon** que devraient jouer ses parents proches à cet période cruciale.

La peur et l'insécurité exprimées par les racistes proviennent de cette période de leur évolution et **N'A RIEN A VOIR AVEC L'EXISTENCE PRESENTE D'ETRANGERS POUR EUX.** Si ce n'est que cette **présence réactive** le traumatisme infantile, ce qui les pousse doublement à souhaiter leur disparition !

C'est par un renversement que, adulte, le raciste idéalise la **nation** comme sa famille proche (cf. point 1 des propos), alors qu'enfant c'est justement sa famille proche, son entourage familial qui était carenciel par rapport à ce qu'il en attendait. Il faut bien comprendre qu'il est souvent **psychiquement intolérable** pour un être d'attribuer à des figures aussi fondamentales de son existence que sont son père ou sa mère la cause de son désespoir.

Voici pourquoi le **premier renversement** s'opère **vers l'extérieur**. L'intolérable, dû en réalité à l'absence d'une identité familiale sécurisante, ne vient plus de l'intérieur mais de **l'extérieur à son monde** ! Comme il a rejeté dehors le négatif, **l'intérieur devient MAGIQUEMENT positif !**

La dynamique du point deux des propos racistes (insécurité) est directement issue du même processus, et se doit d'idéaliser à ce titre l'identité nationale (assimilée au **pôle positif interne**) comme le creuset sécurisant, garant de l'apaisement de la peur citoyenne légitime face à l'étranger (assimilé au **pôle négatif externe**).

N'oublions pas que **ce premier renversement va masquer à tout jamais la réalité et précipiter l'individu dans un monde de mensonges par rapport à lui-même, ouvrant la voie à la pathologie.**

La source de l'intolérable se voyant à présent localisée à l'extérieur, le **deuxième renversement** va s'opérer et aura pour résultat de muer le désespoir interne en agressivité externe. Cette agressivité est dirigée vers celui dont la présence involontaire a révélé inconsciemment cette carence affective du milieu proche et qui peut, à présent, être consciemment identifié comme la source intolérable ! « C'est sa faute si tout ça est arrivé »... Voilà le point quatre des propos racistes qui montre le bout de nez : « l'étranger est la cause de la peur et de l'insécurité et est donc bien un agresseur » ! ?

Il devient « **LOGIQUE** », à partir de cette perception tronquée de la réalité, que c'est par sa nature que l'étranger est responsable du préjudice qu'il inflige au raciste. Que cette manière de ne pas comprendre qu'il l'agresse est irritante en soi ! Que tout ceci arme la légitime violence comme droit à la défense de sa survie ! ?...

Or, « l'étranger » d'aujourd'hui dans l'histoire du raciste ne comprend pas plus que celui d'hier, dans l'histoire de l'enfant qu'il fût, le rôle qu'on lui attribue. Sa présence, dans les deux cas, est involontaire et n'a, du chef de l'étranger, aucune intention destructrice à l'égard de quiconque.

Vécu à l'échelle de son drame personnel, tout ceci n'est que la résultante d'un double renversement, qu'adulte, il projettera sur la scène du monde, inconscient de sa méprise !

Le raciste va donc se mettre « légitimement » à battre l'étranger (point 5).

Tel l'enfant de plus ou moins huit à dix-huit mois qui dit être battu lorsqu'il bat, le raciste aura le vécu d'être la victime luttant pour sa survie face à l'agresseur étranger.

Or, justement, en voulant détruire l'autre, le raciste signe la pathologie de son évolution : rappelons-nous que le décours d'une évolution normale de la conscience de soi passe inmanquablement par un stade où l'autre est le référent qu'introjecte le petit enfant comme source à son identité. La négation de l'existence de l'autre conduit au fantasme d'auto-engendrement, qui plus tard chez le raciste, prendra la forme de sa xénophobie, ne lui réservant le droit de se reproduire qu'avec des individus appartenant au même « groupe ».

L'aboutissement de la logique interne du raciste lui impose de se perdre une deuxième fois, car, à l'image du traumatisme de son enfance où il refusa à l'autre d'être le support de son identité, ce qui l'empêcha d'acquérir une identité mature, il définit l'étranger comme destructeur et ne peut par conséquent pas voir en lui la source qui pourrait enfin le faire exister.

En refusant le miroir de lui-même qu'est tout être humain, le raciste meut son existence, ainsi que celle de sa civilisation, **en mouvoir** dont il rendra responsables ceux-là même qui étaient sa planche de salut !

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4 CONCLUSIONS PROVISOIRES :

A) ANALYSE CRITIQUE DES MECANISMES D'EVOLUTION DE L'IDEE RACISTE.

B) PASSAGE DU NIVEAU INDIVIDUEL AU NIVEAU GROUPEL.

Ce long développement fut rendu nécessaire parce que l'attitude de certains démocrates face au racisme nous semblait indigne. A présent, un peu mieux informés des racines profondes du racisme, nous espérons qu'ils auront quelques réserves à soutenir que le racisme est à considérer comme une opinion politique parmi d'autres qui, bien que ne recevant pas leur aval quant au fond, devrait jouir du droit à l'expression.

Nous espérons qu'au terme de notre analyse ces mêmes démocrates prendront conscience que le racisme est l'expression d'une pathologie relationnelle reflétant une immaturité psychologique et dont sont le siège des individus infantiles. Le racisme est la traduction d'une tentative inconsciente de solutionner un problème identitaire propre à l'individu.

IL N'Y A PAS DE PROJET SOCIAL DANS LE RACISME.

S'il regroupe des gens, ces derniers souffrent tous de la même pathologie c'est ce qui les unit ! Enfants enfermés dans des corps d'adultes, privés de maturité, ils adulent un chef qui pense à leur place. Cette configuration donnera au racisme la forme d'une **PIEVRE** : une « tête pensante » et des tentacules.

C'est dans cette structure que réside le vrai danger car **si les adeptes du racisme pensent comme des enfants ils frappent comme des adultes !**

Cet aspect illustre que le racisme ne peut recruter que chez des êtres immatures, décérébrés, qui forment corps autour de ce chef.

Or, si le racisme recrute c'est parce que **la nature de son discours est pervers !** Il utilise les mots, la communication, non pour éveiller l'esprit des citoyens permettant que chacun d'entre eux devienne une tête pensante, capable de condamner tout propos portant atteinte à la dignité humaine, mais comme une pompe à vide destinée à faire disparaître en eux tout reste d'humanité.

A ce premier stade, **le discours** manipulateur **du « chef » opère une illusion criminelle** : il provoque le sentiment d'exister chez certains citoyens, au moment même où il les prive de leur droit à l'existence propre ! Il atteint son but suprême lorsqu'il a réussi à transformer les citoyens qui l'écoutent en morts-vivants.

Le racisme est un discours de mort qui a rendez-vous avec la mort, dont la survie dépend de cette unique tête pensante à laquelle ils adhèrent pour ne pas mourir une deuxième fois. Le **paradoxe du racisme** c'est que ses adhérents vont vouer fidélité et abnégation à celui-là même qui les a mis à mort. Le racisme est d'abord l'assassinat mental de ses adhérents.

Comme on le constate, la pieuvre du racisme n'a pas visage humain et ne respecte même pas la dignité de ceux qui « y adhèrent », puisqu'elle les prive de leur cerveau.

Or, l'idéal de la démocratie est la multiplication des têtes pensantes.

Il est capital que les citoyens prennent conscience de ce que le racisme est au sein de la démocratie comme une poudrière munie d'un système de mise à feu à retardement.

Prétendre qu'en parler c'est lui faire de la publicité, c'est mal en définir la nature. Il faut savoir que le racisme est comme la moisissure. Comme elle, mise à la lumière, elle se dessèche et ne peut se développer. Ce n'est que dans l'obscurité des esprits qui sommeillent qu'elle prend corps, alors que les projecteurs de l'information ne peuvent contribuer qu'à l'éveil des consciences.

L'histoire a prouvé que lorsque le racisme tente de s'ancrer ce n'était ni le fait de se boucher les oreilles ni celui de se cacher les yeux qui n'avait désamorcé ou empêché son explosion.

Le ferment du racisme est l'ignorance, la bêtise, les préjugés, la violence.

Démonter les mécanismes simplistes sur lesquels le racisme prend appui, ses raisonnements tronqués, ses manipulations, ses généralisations fallacieuses, ne peut que l'affaiblir en renforçant l'esprit critique des citoyens les rendant attentifs et actifs dans la lutte contre ce **virus de la démocratie**.

Ce changement d'attitude n'est envisageable que par une participation active des médias et des politiques qui, bien loin de se contenter du silence au pire ou d'une répercussion passive de l'information au mieux, adopteront une position critique et engagée mettant en évidence les mécanismes qui se prétendent invisibles et qui soutiennent l'architecture du racisme.

De plus, **ne pas parler** de l'existence d'une réalité qui ronge les entrailles de la démocratie **c'est se rendre complice actif** de son évolution **par le consensus du silence** en infantilisant les citoyens par une attitude

paternaliste ou l'on décide de ce qu'il est bon ou non de leur divulguer.

Or, justement, c'est cette attitude de déresponsabilisation des citoyens qui contribue à en faire des citoyens irresponsables et vulnérables parce que faibles face à un discours de propagande visant à les faire agir comme un seul homme en les privant de tout esprit critique.

Le racisme ne peut que se briser s'il se heurte à des citoyens adultes et réfléchis dont on ne pourra noyauter la solidarité autour d'une idée simpliste et globalisante jetant l'anathème sur d'autres humains.

Le racisme est, rappelons-le, une pieuvre qui n'autorise qu'une tête pensante transformant le reste des citoyens en autant de tentacules décérébrées destinées à lui obéir aveuglément. Combien de citoyens conscients et informés sainement seraient candidats à ce destin ?

Ne pas parler du racisme c'est entretenir l'analphabétisme civique des citoyens.

N'oublions jamais que si l' Histoire se répète ce n'est pas parce qu'elle est un mauvais professeur mais parce qu'il n'y a pas d'élèves dans sa classe. Combattre le racisme en en parlant c'est permettre de remplir la classe de l'Histoire et donc contribuer à ce qu'elle ne se répète plus.

Or, les démocraties agissent trop souvent inconsciemment envers le racisme, comme le ferait un adulte vis-à-vis d'un enfant, ne lui prêtant pas plus d'intérêt ! Il faudrait pourtant à tout prix combattre le germe de l'idée raciste pour ne pas avoir à combattre ses conséquences.

Que les démocraties prennent garde à ce que laissant le racisme affirmer que l'enfer c'est les autres il ne les transforme en brasier !

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1. 5. INTRODUCTION AU PROJET DE CONVENTION

L'éclairage que nous avons apporté dans les pages précédentes ouvrent les portes à une toute nouvelle approche du racisme.

Peut être qu'à ce stade, certains lecteurs seraient encore habités par quelques scrupules à ôter au raciste le droit de recourir à quelques principes appliqués en démocratie tel l'exercice de «la liberté d'expression». ?!

A ceux là nous aimerions proposer la réflexion suivante : peut-on indéfiniment prétendre que le droit, démocratiquement acquis, d'exprimer une opinion puisse servir de cadre de référence à l'expression de contre-vérités consciemment sélectionnées et « savamment » articulées ? !

A) IL FAUT RESERVER L'EXERCICE DES LIBERTES DEMOCRATIQUES AUX SEULS DEMOCRATES

L'argumentation selon laquelle tout raciste en raison du fait qu'il vit en démocratie aurait droit à en revendiquer les privilèges doit être réfutée parce qu'elle est construite sur un sophisme.

La structure de ce sophisme est la suivante :

La démocratie permet la liberté d'opinion,
le raciste vit en démocratie,
donc le raciste a le droit à la liberté d'expression.

Le défaut de cette argumentation ressort si on affirme une fois pour toute que :

1°/ Si **le raciste** vit en démocratie il **n'est pas démocrate**

puisque l'opinion, dont il revendique le droit à l'expression, s'attaque à l'origine même de l'espèce dont il est issu et que

2°/ Par son attitude **il se met lui-même hors de la démocratie.**

On ne peut, par conséquent, concevoir logiquement que cette dernière lui accorde ses privilèges ou qu'il se permette de les revendiquer.

La position du raciste est léonine en ce qu' **il avance en utilisant la démocratie comme masque** exigeant les droits qu'elle offre sans en respecter les devoirs.

Tendant à considérer l'individu raciste comme un "super-citoyen", cette argumentation est de ce fait particulièrement dangereuse. Cette constatation peut être faite si on garde à l'esprit que la liberté d'expression n'a jamais été absolue, puisque tout système démocratique prévoit toujours d'en limiter l'exercice¹ et que le principe de limitation fait en quelque sorte intrinsèquement partie de cette liberté.

¹ A titre d'exemple de limite à l'exercice de la liberté d'expression, on peut citer les crimes de lèse-majesté ou les injures à magistrats.

On peut dès lors affirmer que prétendre ne pas pouvoir porter atteinte au droit que les individus racistes auraient à exercer leur liberté d'expression c'est vouloir ignorer que dans certains contextes des limites sont déjà posées. Les individus racistes auraient de ce fait l'exorbitant privilège d'une non-limitation absolue, sorte de "super-loi" pour "super-citoyens".

B) Par contre il faut utiliser les moyens de la démocratie pour condamner les individus racistes

Nous ne pouvons donner raison à ceux qui prétendent que le raciste, parce qu'il se met en dehors de la démocratie, ne peut bénéficier des mêmes garanties démocratiques pour se défendre.

Nous sommes dans un état de droit. Ce qui différencie l'état de droit de la barbarie qu'est le racisme c'est qu'il prévoit pour chacun le droit aux mêmes moyens pour se défendre.

Notre état se doit de condamner les individus racistes en utilisant les moyens que la démocratie donne à tout individu, dût-il avoir été irrespectueux de ses principes fondateurs.

Le jury populaire est l'une de ces garanties, éminemment démocratique, qui doit être maintenue au bénéfice de tout citoyen pour lequel ce procédé a été prévu.

L'établissement d'un jury a certes été prévu pour garantir l'exercice d'une liberté, mais n'a certainement jamais eu pour objectif de conférer une immunité absolue à celui qui en bénéficie. "Vue sous un autre angle que celui de la seule garantie, l'institution d'un jury pourrait être approchée sous l'angle d'un mécanisme auto-régulateur de l'exercice de la liberté d'expression.

Pour mieux illustrer notre propos faisons la comparaison entre les mécanismes d'auto-régulation que sont un jury populaire et une assemblée parlementaire lorsqu'elle décide de lever une immunité parlementaire.

Dans les deux cas, l'assemblée parlementaire comme le jury populaire sont une sorte de verrou de protection de l'espace de liberté.

Le dépassement de certaines limites qui encadrent l'exercice de la liberté ainsi protégée pourra donner lieu à la levée du verrou de protection pour permettre la sanction.

De la même manière, pourrait-on considérer que le jury initialement conçu comme mécanisme protecteur de la liberté d'expression puisse décider en fonction du caractère raciste d'une publication de lever le verrou de sa protection pour exercer une répression.

Pour justifier du renvoi des délits de presse à caractère raciste devant des tribunaux correctionnels, certains ont prétendu que l'atteinte portée à la dignité humaine par le propos raciste était telle qu'elle effaçait tout débat sur la liberté d'expression.

En réalité, comme nous venons déjà de le constater, l'atteinte à la dignité n'efface pas le débat sur la liberté mais articule la loi dans un autre esprit qui veut que ce qui protège le journaliste démocrate puisse également servir à condamner l'auteur de propos raciste.

On peut également souligner qu'à la notion de garantie telle qu'elle est rattachée à la liberté d'expression il doit également être ajoutée celle de responsabilité de la part du journaliste lorsqu'il décide de publier une information.

Si cette responsabilité n'est pas assumée en fonction de la nature de ce qu'il diffuse, la loi devra intervenir pour le sanctionner.

Avoir le droit ou le privilège de s'exprimer n'équivaut pas à donner la permission de dire n'importe quoi.

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6. EXPOSE DES MOTIFS PRESIDANT A LA REDACTION DE LA CONVENTION EUROPEENNE EN MATIERE DE VIOLENCES ET DE HARCELEMENT RACISTE

De nombreuses législations ont déjà vu le jour en matière de racisme, mais force est de constater que chacune d'entre elles traduit la même difficulté à cerner ce qu'elles tentent de combattre : **racisme ou discrimination ?**

Trop nombreux sont ceux qui se perdent dans l'idée que le racisme est une forme de discrimination, ce qui amène les différents projets de lois à dresser de véritables catalogues d'actes jugés discriminatoires sans nécessairement couvrir toutes les hypothèses et possibilités que les esprits pervertis par des idées racistes auront tôt fait de développer.

Exposer la différence entre ces concepts de racisme et de discrimination permet d'éviter l'écueil ci-dessus mentionné, mais surtout permet de briser le cercle vicieux que la confusion de ces deux notions engendre et qui a pour gravissime conséquence, qu'involontairement le législateur participe au renforcement de l'idéologie raciste en la consacrant même dans ces textes de loi !

Pour distinguer racisme et discrimination, partons de cette première constatation : le concept de discrimination peut donner lieu à des autorisations de la loi (discriminations positives) et n'est donc pas ipso facto punissable.

Le racisme lui, ne souffre d'aucune exception légale et **ne trouve à s'exprimer qu'au mépris du principe de base qui assure la cohérence de l'espèce humaine à savoir l'unicité de la race rapportée au genre humain.**

L'incohérence du propos raciste trouve son origine dans le fait que celui qui l'exprime énonce un jugement de valeurs sous la forme d'une hiérarchie.

Cependant, comme tout jugement suppose nécessairement qu'un point de comparaison serve de référence à ce que l'on évalue et **QU'AU SEIN DU GENRE**

HUMAIN AUCUNE AUTRE RACE QUE LA RACE HUMAINE N'EXISTE, cela

implique que celui qui exprime une pensée raciste ne peut que se situer en dehors de la seule race à laquelle lui comme nous tous appartenons.

Ce raisonnement démontre ce que la logique ne peut admettre, à savoir qu'un individu puisse prétendre se placer en dehors de ce qui le définit lui-même en tant qu'être humain.

EN INFERIORISANT CERTAINS GROUPES DE PERSONNES sous le couvert de leur race, **L'AUTEUR DE TEL PROPOS RACISTE S'ATTAQUE EN REALITE NON SEULEMENT A LUI-MEME, PUISQU'IL ATTAQUE LA SEULE RACE QUE SON ESPECE COMPOSE, MAIS IL VISE EGALEMENT TOUTES LES AUTRES PERSONNES QUI EN FONT PARTIE, A SAVOIR L'HUMANITE TOUTE ENTIERE.**

Le **racisme** EST l' **injure suprême** à la **démocratie** et à l'humanité toute entière.

Trop souvent pourtant, a t'on voulu considérer que seuls ceux contre qui des actes racistes étaient dirigés étaient concernés, sans se rendre compte en fait qu'en tant qu'hommes ce n'était pas eux mais nous tous qui étions visés.

Croire au droit à la liberté d'expression de ceux qui se placent en dehors de ce dont ils font en réalité partie c'est nécessairement se placer comme eux en dehors du seul groupe dont nous faisons tous partie et par de là participer à l'incohérence de leur système.

La position du raciste peut être comparée à celle d'une personne atteinte d'une maladie auto-immune. Dans ce cas, l'organisme ne reconnaît plus toutes ses parties constituantes comme un tout lui appartenant, mais se met à en combattre certaines, comme si elles lui étaient étrangères, ce qui le conduit à la limite à sa propre destruction.

Partant de cette idée de vie et de survie de notre société, il est essentiel de définir le principe de base de l'espèce humaine et des sociétés qu'elles composent :

"LA RACE EN TANT QUE CONCEPT RAPPORTE A L'ESPECE HUMAINE EST COMPRISE COMME UNE ENTITE INDIVISIBLE."

Ce postulat fait partie de notre propre définition en tant qu'être humain. Le nier revient donc à se nier en tant qu'homme.

L'individu ou le groupe d'individus qui conçoit la race humaine autrement que dans son acception d'unicité ne commet en réalité aucune discrimination puisque celle-ci exigerait pour avoir lieu que plusieurs races existent au sein du genre humain.

C'est de cette confusion entre les concepts de discrimination et de racisme qu'est née l'impossibilité des textes de loi de prohiber le premier sans involontairement consacrer le second.

En effet, l'affirmation dans un texte de loi, de ce qu'une discrimination pourrait exister si le critère de la race est avancé, serait la prohibition de la discrimination en tant que telle, ce qui consacrerait implicitement mais certainement l'existence d'au moins deux races, sans quoi l'existence de la discrimination que l'on dénoncerait n'est pas fondée...

Prétendre se placer dans le chef de celui qui discrimine pour énumérer les critères qu'il invoque et qu'on ne peut accepter ne nous fait pas sortir de cette incohérence.

C'est en cela que **ce texte de convention est novateur**, constructif et dynamisant.

Il part de la définition du concept de race rapporté à l'humain et énonce un principe qui est de nos jours scientifiquement reconnu et prouvé :

L'UNICITE ET L'INDIVISIBILITE DE LA RACE HUMAINE.

Par sa simple énonciation ce principe exclu nécessairement ce qu'il n'est pas.

Il permet au législateur de ne pas tomber dans le piège de l'énumération de ce qui ne peut être admis, pour laisser la seule place à ce qui l'est.

En conséquence, la définition du principe d'unicité ainsi formulé lui donne :

une portée universelle : ce qui permet de définir ceux qui n'y adhèrent pas de criminel envers l'humanité toute entière;

une efficacité maximale : car tout défenseur d'une autre acception se trouvera confronté, face aux tribunaux, aux renversement de la charge de la preuve qu'il sera incapable de fournir s'assurant par voie de conséquence la condamnation.

Les dispositions civiles, reprises à la page 18 (Partie III) de la convention, complètent l'esprit de cette dernière en la mettant d'application dans la vie courante. Elles sensibilisent et responsabilisent chaque citoyen en plaçant à l'avant plan, lors de toute transaction, le facteur humain.

Ceci aura pour effet de créer **une cohérence dans la société** entre l'aspect fondateur de cette convention (aspect théorique) et sa mise en application. Chaque citoyen serait à la fois un partenaire actif et une sorte de courroie de transmission.

Il est historiquement avéré qu'aucun régime raciste une fois établi n'est démocratique. Il en va donc de la survie de la démocratie de tuer dans l'oeuf tout mouvement dont l'objectif, même masqué, comporte une atteinte à son intégrité. Dans cette veine le racisme est la **priorité des priorités**.

La future Charte Européenne des Droits Fondamentaux offrirait un siège idéal au principe de l'unicité de la race humaine et de son corollaire le droit de tout être humain au respect de son intégrité psychique.

Pour être efficace, il est impératif que cette charte soit de nature contraignante.

Le projet de convention devrait, quant à lui, figurer parmi les instruments de droit pénal européen destinés à sanctionner toute violation de ce principe.

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PROJET :

CONVENTION EUROPEENNE

DE PROTECTION CONTRE LA VIOLENCE ET

LE HARCELEMENT RACISTE

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Préambule

Considérant que les états membres de l'Union européenne ont confirmé dans le préambule de l'Acte Unique Européen leur détermination à promouvoir ensemble la démocratie en se fondant sur les droits fondamentaux reconnus dans leur Constitution, dans la Convention de Sauvegarde des Droits de l'Homme et des Libertés Fondamentales, dans la Charte Sociale Européenne ainsi que dans le traité d'Amsterdam qui prévoit en son article 6 (ex article F) que «l'Union est fondée sur les principes de la liberté, de la démocratie, du respect des droits de l'homme et des libertés fondamentales, ainsi que de l'Etat de droit, principes qui sont communs aux Etats membres.»

Considérant que l'article 29 (ex article K.1) du traité d'Amsterdam prévoit que l'Union Européenne a pour objectif d'offrir aux citoyens un niveau élevé de protection dans un espace de liberté, de sécurité et de justice et qu'elle peut à cette fin élaborer une action commune aux états membres dans le domaine de la coopération policière et judiciaire en matière pénale, en prévenant le racisme et en luttant contre ce phénomène.

A cette fin, déterminés à faire respecter le principe de l'unicité de la race humaine en reconnaissant que toute doctrine de supériorité est scientifiquement fautive, universellement reconnue injustifiable en théorie comme en pratique, moralement condamnable, socialement dangereuse, et nécessairement fondée sur une acception de l'espèce humaine reconnue illégale par la présente Convention.

Convaincus que défendre, diffuser, prôner et faire la propagande de telles doctrines par le biais d'action, de diffamation ou d'injure constitue des abus de la liberté d'expression. Que de tels abus mettent en péril la dignité humaine et la société démocratique.

Affirmons que l'interdiction de la diffusion et de la propagande de telles doctrines est une des restrictions de la liberté d'expression qui "constituent des mesures nécessaires, dans une société démocratique, à la sécurité nationale, à l'intégrité territoriale et à la sûreté publique, à la défense de l'ordre et à la prévention du crime, à la protection de la santé ou de la morale, à la protection de la réputation ou des droits d'autrui..."²

Convaincus que l'existence de groupements ou d'associations dont l'objet est la défense, la diffusion et la propagande de telles doctrines est un danger pour la survie et la stabilité de toute démocratie et résolu à dissoudre tout groupement ou association qui aurait diffusé, prôné ou fait la propagande de telles doctrines et à condamner toute personne en raison de son appartenance à de tels groupements ou associations.

Sont convenus de ce qui suit :

² Convention de Sauvegarde des Droits de l'Homme et des Libertés Fondamentales; Article 10§2.

PARTIE I : DISPOSITIONS GENERALES

Section 1 : définitions et notions

Article 1

La présente Convention réprime la **violence raciste**. Par **violence raciste** il y a lieu d'entendre : "toute menace de violence ou toute violence dans le cadre de laquelle les victimes sont "choisies", non en tant qu'individus, mais en tant que représentants de «communautés minoritaires [ou non] imaginées"³.

Article 2

La **violence raciste** doit être considérée comme un **acte de cruauté mentale** constitutif de violences psychiques. La **cruauté mentale** réside dans la menace de violence que renferme tout acte raciste et la contrainte morale qu'elle exerce sur la victime et les membres du «groupe» que la victime est sensée représenter.

Section 2 : énoncé des principes

Article 1

Les états parties reconnaissent **l'unicité** comme concept fondateur de toute référence à l'espèce humaine, que cette référence soit faite sur le plan individuel ou non.

Ils reconnaissent **l'universalité** de ce principe et déclarent que toute violation de ce principe est un crime qui sera réprimé par la présente convention sous la dénomination de « crime de harcèlement raciste ».

Article 2

³ Rob Witte, "Combattre la violence raciste et xénophobe en Europe" in Conseil de l'Europe, 1997;p. 13. "La nature et les causes de la violence raciste et xénophobe en Europe".

La seule acception légale du concept et du terme de **race** est celle qui se fonde sur le principe d'unicité énoncé à l'article 1§1, les définit en terme d'entité indivisible.

L'expression de toute autre acception, en ce qu'elle ne pourrait pas ne pas nier qu'elle soutient que la réalité de tout groupe ou individu humain serait concevable dans son essence même en d'autres termes que ceux qui sont communs à l'ensemble de l'espèce, viole le principe d'unicité énoncé à l'article 1 §1.

Article 3

La seule acceptation et utilisation légale du concept et du terme de **groupe** rapporté à l'être humain est celle qui par respect du principe d'unicité énoncé à l'article 1§1, le définit par un ensemble de caractéristiques communes qui ne lui sont propres qu'à lui à l'exclusion de tout autre, et dans lesquelles il se reconnaît lui-même.

L'expression ou l'utilisation de toute autre acception du concept ou du terme de groupe rapporté à l'être humain viole le principe d'unicité susmentionné au même titre que l'article 2 § 2.

Article 4

La Convention déclare criminels les organisations, institutions et les individus qui commettent le crime de harcèlement raciste.

La Convention tient pour pénalement responsable sur le plan international les personnes qui favorisent ou encouragent indirectement la perpétration du crime de harcèlement raciste ou y coopèrent directement.

Est notamment considéré comme favorisant ou encourageant indirectement la perpétration du crime de harcèlement raciste le fait pour une autorité publique d'inscrire ou de maintenir l'inscription sur une liste électorale d'un parti qui défend, prône ou diffuse des idées ou des théories racistes de manière manifeste ou répétée.

Article 5

L'obéissance hiérarchique ne justifie pas celui qui, agissant par ordre de ses supérieurs pour des objets du ressort de ceux-ci, exécute un ordre qui viole la présente convention.

Les peines prévues par la présente convention sont appliquées tant aux supérieurs qui ont donné l'ordre qu'à ceux qui les ont exécutés.

Section 3 : description de l'infraction de harcèlement raciste et de ses composantes

Article 1 : Définition de l'infraction

L'infraction de harcèlement raciste est tout acte de violence raciste⁴ commis par action ou omission qui **porte atteinte au principe d'unicité fondateur de toute identité humaine, individuelle ou de groupe :**

- en provoquant un sentiment d'insécurité, de terreur et d'angoisse ce qui rompt l'équilibre psychique de la victime et des membres du groupe ou de la communauté qu'elle représente ou auquel elle a été associée;

⁴ Cf. Partie I, Section 1 : définitions des notions , article 2, p. 36.

- en rongant et déchirant le tissu social ce qui met en danger l'existence même de toute société humaine ainsi que les principes qui sont communs aux états membres de l'Union.⁵

Article 2 : Comportement matériel de l'infraction

Pour être constaté par le juge, le comportement matériel de l'infraction requiert la réunion des éléments suivants :

- 1 La commission d'un acte de violence raciste au sens de la présente convention⁶ ;
- 2 Accompli dans l'une des conditions de publicité suivantes :
 - dans des réunions ou des lieux publics;
 - en présence de plusieurs individus, dans un lieu non public, mais ouvert à un certain nombre de personnes ayant le droit de s'y assembler ou de le fréquenter;
 - dans un lieu quelconque, en présence de la victime et devant témoins; par des écrits imprimés ou non, des images ou des emblèmes affichés, distribués ou vendus, mis en vente ou exposés aux regards du public;
 - par des écrits non rendus publics, mais adressés ou communiqués à plusieurs personnes.
- 3 Dirigé contre un groupe, contre une communauté ou contre une personne perçue comme leur appartenant ou leur étant associée.

⁵ Cf. art. 6 Traité d'Amsterdam précité au préambule.

- 4 A l'occasion duquel il est constaté que l'auteur a fait référence aux caractéristiques phénotypiques de la victime ou/et à son origine nationale ou/et à sa religion ou/et à sa culture ou/et à tout stéréotype généralement utilisé pour caractériser l'identité de certaines personnes.

Formes explicite ou implicite de la référence :

La référence est **explicite** lorsqu'elle a donné lieu à des propos, des écrits, des images ou des emblèmes à l'occasion de la commission de l'infraction.

La référence est implicite lorsque le comportement incriminé est une discrimination au sens de la présente convention.⁷

Dans ce cas, la preuve du caractère objectivement justifié d'une discrimination, et du rapport raisonnable et proportionnel avec le but poursuivi par son auteur est toujours à charge de celui-ci.⁸

5. De nature à provoquer des sentiments d'insécurité, de terreur et d'angoisse.

Article 3 : Élément moral de l'infraction

Il s'agit d'un acte commis dans l'intention de rejeter, de stigmatiser un groupe, une communauté ou une personne perçue comme leur appartenant ou leur étant associée sans tenir compte du danger que cet acte fait encourir à la structure même de la société.

⁶ Ibid.

⁷ Proposition de loi tendant à lutter contre la discrimination (déposée par M. Lallemand, Mme Merchiers et consorts) in Documents Parlementaires ; Sénat de Belgique – Session ordinaire 1998-1999 ;

Chap. 1er, Art. 2

« il y a lieu d'entendre par discrimination : «les comportements ayant directement ou indirectement pour but ou pour effet, dans les domaines politique, économique, social ou culturel ou dans tout autre domaine de la vie sociale, d'établir une distinction entre les personnes, les groupes de personnes ou les communautés, basée sur ...la naissance...ou une caractéristique physique, dénuée de justification objective et sans rapport raisonnable et proportionnel avec le but poursuivi. ».

⁸ Ibidem.

Article 4 : Preuve de l'intention

Est à charge de l'auteur et doivent être cumulativement rapportées,

- les preuves de ce que :
- la/les caractéristique(s) de la victime à laquelle/auxquelles l'auteur a fait référence lors de l'infraction sont **commune(s)** au groupe ou à la communauté prétendument défini;
 - la/les caractéristique(s) de la victime à laquelle/auxquelles l'auteur a fait référence lors de l'infraction est/sont **propres** à ce groupe ou à cette communauté, **à l'exclusion** de tout autre;
 - la/les caractéristiques à laquelle/auxquelles l'auteur a fait référence fait/ont partie d'un ensemble de caractéristiques dans lequel **le groupe se reconnaît**.

Section 4 : les circonstances aggravant la peine de l'infraction de harcèlement raciste

LES CIRCONSTANCES RELATIVES A L'AUTEUR DE L'INFRACTION

- 1. La préméditation.**
- 2. La récidive.**
- 3. La qualité de fonctionnaire, d'officier public, de dépositaire ou d'agent public de l'auteur lorsqu'il commet l'infraction de harcèlement raciste dans l'exercice de ses fonctions.**

LES CIRCONSTANCES RELATIVES AUX FAITS

1. L'infraction de harcèlement raciste commise à l'aide de violences physiques ou de menaces de violences physiques.

2 L'infraction de harcèlement raciste qui a pour conséquence des Traumatismes psychiques graves.

Sont considérés comme graves les traumatismes psychiques qui engendrent chez la victime une infirmité permanente.

L'infirmité permanente existe dès que la victime « présente un état confusionnel variable mais permanent, que ses facultés mentales sont gravement et définitivement atteintes, qu'elle est incapable de mener une vie indépendante sur le plan économique ou même personnel et qu'elle vit emmurée dans ses propres carences.»⁹

L'existence d'une infirmité permanente sera constatée par un expert devant les tribunaux¹⁰.

3 L'incitation au harcèlement raciste : par "inciter" au harcèlement raciste il y a lieu d'entendre le fait d'entraîner et de pousser autrui à rejeter, à stigmatiser ou à ressentir de la haine à l'égard d'un groupe ou d'une communauté ou à l'égard d'une ou de plusieurs personnes perçues comme appartenant ou associées à ce groupe ou à cette communauté.

⁹ Cass. crim. 25 mars 1980 (Bull. crim. n°101 p.236).

¹⁰ Cf. Développements annexés à la présente convention : «évaluation de la gravité du PTSD», page 61, note n° 7.

4 Le caractère organisé des actes de harcèlement raciste

est considéré comme organisé :

- l'acte de violence raciste accompli par une organisation, un groupement ou une association raciste.
- L'acte, qui sans pouvoir être directement imputé à une organisation, un groupement ou une association raciste, décèle un certain degré d'organisation. Un degré d'organisation est considéré comme suffisant lorsqu'une des deux conditions suivantes est constatée :
 - l'acte a nécessité une certaine structure humaine, technique, administrative ou financière;
 - l'acte démontre une stratégie :
 - soit parce qu'un lien de connexité existe entre plusieurs actes ce qui permet de les considérer comme une "série" d'actes orchestrés et menés à l'encontre d'un même groupe de victimes spécifiques ou de la même victime;
 - soit parce que le lieu de commission de l'infraction démontre à lui seul qu'une stratégie a été adoptée;
 - soit parce que les moyens mis en oeuvre sont significatifs d'une stratégie

5 La commission d'actes de harcèlement raciste dans les lieux de culte ou des lieux symboliques pour le groupe ou la communauté visée.

Section 5 : imprescriptibilité de l'infraction de harcèlement raciste

Article 1

Les infractions prévues par la présente Convention sont imprescriptibles.

Le principe d'imprescriptibilité s'applique aux infractions commises après l'entrée en vigueur de la présente Convention dans l'état contractant et s'applique également aux infractions commises avant cette entrée en vigueur dès lors que le délai de prescription n'est pas encore expiré.

PARTIE II: DISPOSITIONS PENALES

Section 1 : la répression de l'infraction de harcèlement raciste

A. LES INFRACTIONS A L'EGARD DES PERSONNES OU DES CORPS CONSTITUTES

Article 1

Est puni par l'emprisonnement d'une durée de 1 mois à 1 an et d'une amende de 500 à 1000 € ou de l'une de ces deux peines seulement, quiconque aura adressé une injure raciste à un groupe, à une communauté ou à une personne perçue comme leur appartenant ou leur étant associée.

En cas de condamnation le tribunal pourra en outre ordonner les peines accessoires suivantes:

- l'inéligibilité du condamné pendant un terme de 5 à 10 ans.
- l'affichage de sa décision en caractères très apparents, dans les lieux qu'il indique, aux frais du condamné;
- la publication intégrale ou partielle de la décision ou l'insertion d'un communiqué, informant le public des motifs et du dispositif de celle-ci, aux frais du condamné.

Lorsque l'injure raciste est aggravée, elle est punissable de 6 mois à 2 ans de prison et le juge pourra en outre prononcer les mêmes peines accessoires que celles prévues à l'alinéa précédent.

Article 2

Est puni par l'emprisonnement d'une durée de 1 mois à 1 an et d'une amende de 500 à 1000 € ou de l'une de ces deux peines seulement, quiconque aura dans une intention raciste commis une discrimination¹¹.

En cas de condamnation le tribunal pourra en outre ordonner les peines accessoires suivantes:

- : - l'inéligibilité du condamné pendant un terme de 5 à 10 ans.
- l'affichage de sa décision en caractères très apparents, dans les lieux qu'il indique, aux frais du condamné;
- la publication intégrale ou partielle de la décision ou l'insertion d'un communiqué, informant le public des motifs et du dispositif de celle-ci, aux frais du condamné.

¹¹ Cf. notes n°5 & 6.

Lorsque l'infraction est aggravée, elle est punissable de 6 mois à 2 ans de prison et le juge pourra en outre prononcer les mêmes peines accessoires que celles prévues à l'alinéa précédent.

Article 3

Est puni par l'emprisonnement d'une durée de 2 à 5 ans et d'une amende de 5000 à 10.000 €, ou de l'une de ces deux peines seulement, quiconque aura calomnié ou diffamé, dans une intention raciste, un groupe, une communauté ou une personne perçue comme leur appartenant ou leur étant associée.

En cas de condamnation le tribunal pourra en outre ordonner les peines accessoires suivantes:

- l'inéligibilité du condamné pendant un terme de 5 à 10 ans.
- l'affichage de sa décision en caractères très apparents, dans les lieux qu'il indique, aux frais du condamné;
- la publication intégrale ou partielle de la décision ou l'insertion d'un communiqué, informant le public des motifs et du dispositif de celle-ci, aux frais du condamné.

Lorsque l'infraction de calomnie ou de diffamation raciste est aggravée, elle est punissable de 5 à 10 ans de prison et le juge pourra en outre prononcer les mêmes peines accessoires que celles prévues à l'alinéa précédent.

Article 4

Est puni d'une peine de prison de 5 à 10 ans quiconque aura, dans une intention raciste, fait des blessures ou porté des coups à une personne.

Lorsque l'infraction est aggravée ou que les coups ou les blessures ont causé une maladie ou une incapacité de travail personnelle, le coupable sera puni d'une peine de dix à quinze ans de prison.

Outre l'affichage et la publication de la décision, le juge pourra ordonner l'inéligibilité à perpétuité du condamné.

Article 5

Est puni d'une peine de dix à quinze ans de prison et sera frappé d'inéligibilité à perpétuité quiconque aura, dans une intention raciste, volontairement fait des blessures ou porté des coups sans intention de donner la mort et l'aura donnée.

Le juge pourra en outre ordonner l'affichage et la publication de la décision aux frais du condamné.

Article 6

Est puni par les travaux forcés à perpétuité quiconque aura, dans une intention raciste, causé la mort d'une personne.

Le juge pourra en outre prononcer l'affichage et la publication de la décision aux frais du condamné.

B. LES INFRACTIONS CONTRE LES PROPRIETES

Article 1

Est puni par une peine de prison à perpétuité ceux qui auront, dans une intention raciste, mis le feu à des propriétés appartenant à un groupe, à une communauté ou à une personne perçue comme leur appartenant ou leur étant associée, si l'auteur a dû présumer qu'il s'y trouvait une ou plusieurs personnes au moment de l'incendie.

Le juge pourra en outre prononcer l'affichage et la publication de la décision aux frais du condamné.

Article 2

Est puni par une peine de prison de quinze à vingt ans et sera frappé d'inéligibilité à perpétuité ceux qui auront, dans une intention raciste mis le feu à des propriétés immobilières appartenant à un groupe, à une communauté ou à une personne perçue comme leur appartenant ou leur étant associée.

Le juge pourra en outre prononcer l'affichage et la publication de la décision aux frais du condamné.

Article 3

Est puni par une peine de prison de dix à quinze ans et sera frappé d'inéligibilité à perpétuité ceux qui auront, dans une intention raciste mis le feu à des propriétés mobilières appartenant à un groupe, à une communauté ou à une personne perçue comme leur appartenant ou leur étant associée.

Le juge pourra en outre prononcer l'affichage et la publication de la décision aux frais du condamné.

Article 4

Seront punis des peines portées par les articles précédents et d'après les distinctions qui y sont établies, ceux qui auront, dans une intention raciste, détruit ou tenté de détruire, par l'effet d'une explosion, des propriétés appartenant à un groupe, à une communauté ou à une personne perçue comme leur appartenant ou leur étant associée.

Article 5

Quiconque aura, dans une intention raciste et en dehors des cas visés aux articles précédents, détruit en tout ou en partie, mutilé ou dégradé, par quelque moyen que ce soit, des propriétés appartenant à un groupe, à une communauté ou à une personne perçue comme leur appartenant ou leur étant associée, sera puni d'une peine de 5 à 10 ans de prison.

Le juge pourra en outre prononcer l'inéligibilité du condamné pour un terme de 5 à 10 ans ainsi que l'affichage et la publication de la décision aux frais du condamné.

C. LES ORGANISATIONS, GROUPEMENTS ET ASSOCIATIONS RACISTES**Article 1**

Sera dissout, toute organisation, groupement ou association qui soit défendrait, prônerait ou diffuserait des idées ou des théories racistes, soit inciterait autrui à rejeter, à stigmatiser ou à ressentir de la haine à l'égard d'un groupe, d'une communauté ou de toute personne perçue comme leur appartenant ou leur étant associée.

Article 2

L'organisation, le groupement ou l'association raciste sera condamné à la

confiscation spéciale :

- des choses formant l'objet de l'infraction et de celles qui ont servi ou devaient servir à la commettre.
- Des choses produites par l'infraction.
- Des avantages patrimoniaux tirés directement de l'infraction ainsi que des biens et valeurs qui leur ont été substitués et des revenus de ces avantages investis.

Article 3

Seront punis de la réclusion et de l'inéligibilité de 5 à 10 ans, ceux qui font partie ou qui ont prêté leur concours à des organisations, groupements ou associations qui ont défendu, prôné ou diffusé des idées ou des doctrines racistes de manière manifeste ou répétée.

Article 4

Les états parties dont l'autorité publique admet ou maintient l'inscription d'un parti sur une liste électorale alors qu'il défend, prône ou diffuse des idées ou des théories racistes de manière manifeste ou répétée pourront voir leur responsabilité internationale engagée et seront passibles d'une astreinte de 100.000 à 500.000 € par jour et jusqu'à la suppression définitive de l'inscription incriminée.

En cas de condamnation le tribunal pourra en outre ordonner les peines accessoires suivantes :- l'inéligibilité du condamné pendant un terme de 5 à 10 ans.

- l'affichage de sa décision en caractères très apparents, dans les lieux qu'il indique, aux frais du condamné;
- la publication intégrale ou partielle de la décision ou l'insertion d'un communiqué, informant le public des motifs et du dispositif de celle-ci, aux frais du condamné.

Section 2 : la répression de l'abstention coupable face à la violence raciste

Article 1

Le fait pour quiconque ayant connaissance d'un crime de harcèlement raciste dont il est encore possible de prévenir ou de limiter les effets ou dont les auteurs sont susceptibles de commettre de nouveaux crimes qui pourraient être empêchés, de ne pas en informer les autorités judiciaires ou administratives est puni d'une amende de 1000 à 5000 €.

Sont exceptés des dispositions qui précèdent, sauf en ce qui concerne les crimes commis sur les mineurs :

- 1) les parents en ligne directe et leurs conjoints, ainsi que les frères et sœurs et leurs conjoints, de l'auteur ou du complice du crime;
- 2) Le conjoint de l'auteur ou du complice du crime, ou la personne qui vit notoirement en situation maritale avec lui.¹²

¹² Article qui s'inspire du Code pénal français; Art 434-1, Chap. IV.

Article 2

Est puni par l'emprisonnement d'une durée de 1 mois à 6 mois et d'une amende de 2000 à 5000 € ou de l'une de ces deux peines seulement, quiconque, pouvant empêcher par son action immédiate, un fait qualifié de crime de harcèlement ou de crime d'incitation au harcèlement raciste, s'abstient volontairement de le faire ».

PARTIE III : DISPOSITIONS CIVILES**Article 1**

Sans préjudice des sanctions prévues par la présente convention, toute infraction de harcèlement raciste donne lieu à une réparation sous forme de dommages et intérêts.

Article 2

Sont nulles les clauses d'un contrat contraires aux dispositions de la présente convention et celles qui prévoient qu'un ou plusieurs contractants renoncent par avance aux droits garantis par la présente convention.

Article 3

La référence au principe d'unicité tel qu'il est formulé à l'article 1er , Partie I, Section 2 de la présente convention est une des conditions de validité substantielle de tout contrat.

Sont nuls les contrats qui ne remplissent pas cette condition.

Article 4

Dès l'entrée en vigueur de la présente Convention, les états parties veilleront à ce que tous les manuels d'enseignement soient épurés de toute expression qui pourrait à la lumière du présent texte être jugée raciste. La constatation d'un manquement à une telle obligation pourra donner lieu à des astreintes pour le cas où il ne serait pas mis fin.

PARTIE IV : EFFETS DE LA CONVENTION

Article 1

Les états parties reconnaissent à la présente convention un effet direct dans leur ordre juridique interne et poursuivront tout comportement qui par application des articles 2 §2 et 3§2 ¹³de la présente convention porterait atteinte au principe d'unicité énoncé à l'article 1 §1 ¹⁴.

Article 2

Tout manquement à l'obligation de poursuivre engagera la responsabilité pénale internationale de l'état défaillant. La constatation d'un tel manquement pourra donner lieu à des astreintes pour le cas où il n'y serait pas mis fin.

Sont considérés comme des manquements à l'obligation de poursuivre le fait pour des autorités judiciaires de ne pas engager de poursuites pour des faits que la présente convention qualifie de crime de harcèlement raciste dans un délai de 1an à dater du jour où ces faits ont été portés à leur connaissance ou pouvaient leurs être connus.

¹³ Cf. Partie I, Section 2, p.36.

¹⁴ Ibidem.

Article 3

Les états partie à la présente convention s'engagent à poursuivre les auteurs du crime de harcèlement raciste, qu'ils résident ou non sur le territoire de l'état dans lequel ces actes ont été perpétrés, et qu'il s'agisse de ressortissants de cet état ou d'un autre état ou de personnes apatrides.

Article 4

Les états parties enregistreront tout les incidents dont le caractère raciste est allégué par la victime en se référant au modèle d'enregistrement européen prévu à cet effet.

Article 5

Sont considérés comme des manquements à l'obligation d'enregistrement :

- le fait pour des autorités administratives ou judiciaires de ne pas procéder à l'enregistrement d'incidents dont les victimes allèguent le caractère raciste;
- le fait pour des autorités administratives ou judiciaires de procéder à l'enregistrement d'un incident dont la victime allègue le caractère raciste sans tenir compte des normes et des critères prévus par le modèle européen d'enregistrement des incidents racistes.

Article 6

Chaque état partie s'engage à établir un système général de suivi des affaires concernant des actes de violence raciste et transmettra un rapport annuel à l'Observatoire européen contre le racisme pour l'informer sur l'évolution des incidents racistes enregistrés sur son territoire et sur les suites qui leurs ont été données.

PARTIE V : PROCÉDURE

Article 1

Les états parties assureront à toute personne soumise à leur juridiction une protection et une voie de recours effective, devant les tribunaux nationaux et autres organismes d'état compétents, contre tout acte de violence raciste ainsi que le droit de demander à ces tribunaux satisfaction ou réparation juste et adéquate pour tout dommage dont elle pourrait être victime par suite d'un tel acte.¹⁵

Article 2

L'action devant les juridictions internes peut être déclenchée par :

- la constitution de partie civile des victimes de l'infraction;
- lorsqu'un préjudice est porté aux fins statutaires qu'ils se sont données pour mission de poursuivre, toute association et tout établissement d'utilité publique jouissant de la personnalité juridique.
- Le ministère public.

¹⁵ Article s'inspirant de l'article 6 de la Convention de New York de 1966.

PARTIE VI : DISPOSITIONS FINALES

Article 1

La présente Convention ne peut faire l'objet d'aucune réserve et est ouverte à la signature de tous les Etats membres de l'union.

Article 2

La présente convention est d'application sur tous les territoires de pays de l'Union.

DEVELOPPEMENTS & COMMENTAIRES DES ARTICLES

A. Généralités

L'une des nombreuses questions qui s'est posée lors de la rédaction de ce projet de convention était de savoir s'il y avait eu lieu de prévoir une convention de droit pénal européen ou de droit pénal international.

Sachant qu'une convention de droit pénal avec effet direct dans les états contractants était de toute façon « une première » il fallait dans les deux cas de figure envisager de profondes réformes.

Un argument qui penchait en faveur d'une convention de portée internationale était que le principe d'unicité de la race humaine concerne l'humanité toute entière et qu'il était dès lors assez cohérent et souhaitable d'essayer d'obtenir une adhésion à cette convention qui soit « la plus universelle possible », soit de la part du plus grand nombre d'états possible. Cependant, lorsque nous avons évalué la possibilité d'une convention de droit pénal international, nous avons parmi d'autres relevé les difficultés suivantes :

- un plus grand nombre de pays étant à consulter sur le plan international, une prise de position commune qui se concrétiserait par l'adoption d'une convention serait assez difficile à obtenir.
- D'un point de vue technique, le seul organe international actuellement compétent
- Pour connaître des plaintes émanant tant des états que des particuliers est le Tribunal Pénal International (TPI). Or, le TPI est uniquement compétent pour les crimes que ses statuts énumèrent. Le crime de harcèlement raciste n'y figurant pas, la seule solution serait de prévoir une extension de ses compétences par une

modification de ses statuts (ce qui est possible selon le texte mais sans doute difficile à obtenir vu le nombre de pays qui devraient le voter).

Ce qui nous a finalement incités à choisir l'insertion de cette convention sur le plan européen plutôt qu'international ce sont les arguments suivants :

- une position commune des pays de l'union serait peut être moins ardue à obtenir car des déclarations émanant des pays de l'union qui affirment le souhait d'adopter des actions communes en matière de justice et plus particulièrement de lutte contre le racisme ont déjà été consacrées par les textes (cf. traité d'Amsterdam);
- un véritable espace de justice et de sécurité européen est en train de voir le jour et dispose déjà de nombreux outils juridiques tels que les conventions d'entraide judiciaire, de coopération et d'extradition ainsi que de nombreuses organisations telles qu'Europol, etc...

Quelles seraient les principales réformes juridiques à envisager pour insérer cette convention sur le harcèlement raciste dans les instruments de droit pénal européen ?

Il faudrait entre autre :

- élargir le champ matériel d'application de l'article 31 point e (ex-article K.3) du traité de l'union européenne aux infractions de racisme;
- insérer dans la future «charte européenne des droits de l'homme »¹⁶ (en espérant qu'elle soit de nature contraignante) le principe d'unicité de la race humaine qui confère à chaque individu le droit à la protection de son identité (intégrité) psychique contre toute violation de ce principe

¹⁶ Projet en cours de réalisation d'une sorte de «constitution européenne » (concrétisation aux environs de 2001).

L'adoption d'une constitution européenne rendrait la cour européenne de Luxembourg compétente pour sanctionner les états de l'union qui ne respecteraient pas les droits que cette constitution consacre.

B. Commentaires article par article

Partie I – Section 2

Article 4 § 3

Le mot «notamment» est présent pour indiquer qu'il a lieu de donner au comportement précisé par ce paragraphe une portée seulement exemplative.

Article 5

Pour rappel : les agents publics doivent respecter les deux obligations suivantes : - le devoir d'obéissance hiérarchique;
- le respect de la légalité.

Lorsque l'ordre hiérarchique est manifestement illégal, une jurisprudence constante et unanime considère que le devoir d'obéissance s'efface et qu'il ne justifie plus l'exécution de l'ordre par l'agent.

Le présent article prévoit quant à lui, que le respect de la légalité, à savoir le respect de la présente convention, doit toujours primer sur le devoir d'obéissance.

Cet article introduit l'idée selon laquelle la résistance à un ordre manifestement illégal n'est pas seulement un droit dont les fonctionnaires peuvent se prévaloir mais une obligation pour l'agent subordonné.¹⁷

¹⁷ «L'émergence d'un droit de résistance à un ordre illégal » dans « Ordre illégal et obéissance hiérarchique dans le droit disciplinaire de la fonction publique ; J.T. 1998, p. 267.

Partie I – Section 3

Article 1

Est visé par le présent article tant l'action que l'omission.

Une discrimination commise dans une intention de harcèlement raciste peut prendre la forme d'une omission. Ainsi le refus de fourniture d'un produit ou d'un service par une personne normalement tenue à cette prestation en raison d'une obligation légale ou morale.

Il faut souligner l'aspect multidimensionnel de l'infraction de harcèlement raciste. Cette infraction porte atteinte au principe d'unicité de la race humaine or ce principe est le fondement de toute identité :

- humaine (1ère dimension) ;
- individuelle (2ème dimension) et
- de groupe (3ème dimension).

Un acte raciste porte donc triplement atteinte au principe d'unicité susmentionné :

- quant à l'atteinte à l'identité individuelle de la victime, la constatation de l'infraction nécessite la preuve que l'intention de l'auteur raciste est de rejeter et de stigmatiser la victime¹⁸;
- quant à l'atteinte à l'identité de groupe et à l'identité humaine : elle porte atteinte au tissu de la société ce qui met en danger son existence.

¹⁸ Cf. dans le texte de la convention « la preuve de l'intention », article 4, page 41.

Cette mise en danger de la société a lieu par la seule commission de l'acte raciste; vu sous cet angle l'infraction de harcèlement raciste est ce que l'on appelle une infraction de mise en danger¹⁹, c'est-à-dire une infraction formelle. L'insouciance sociale de l'auteur suffit comme intention morale.

Article 2

Point 4 : forme explicite ou implicite de la référence

Lorsque l'auteur commet l'infraction et exprime de manière explicite son rejet à l'égard d'un groupe, d'une communauté ou d'une personne (injures lors de l'infraction etc. ...) il ne devrait y avoir aucune difficulté pour le juge (il y a alors référence «explicite» selon le texte de la convention.

Beaucoup plus difficiles sont les cas de harcèlement raciste « silencieux » (référence «implicite»). Il nous a semblé que dans ces cas de figure il fallait tenter de procéder par étape. La première étape consiste à prouver que l'auteur a commis une discrimination non objective et non proportionnelle. Une fois cette discrimination établie, il restera à prouver que l'intention poursuivie par l'auteur était une intention de harcèlement raciste. Dans ce cas, c'est la discrimination à elle seule qui constitue le corps matériel de l'infraction à savoir : l'acte de violence raciste.

Point 5

«de nature à provoquer des sentiments d'insécurité, de terreur et d'angoisse.» Ce point restera de l'appréciation subjective des juges.

¹⁹ « La mise en danger est le comportement actif ou passif, qui engendre un risque concret de lésion pour une valeur sociale pénalement protégée. L'élément psychologique de l'incrimination consisterait dans cette insouciance sociale qui témoigne d'une absence de considération pour autrui et pour les normes qui assurent la protection d'autrui . » in Revue internationale de droit pénal, 1969 ; n°0270, page 84 .

Cependant, le catalogue des comportements incriminés par la présente convention permettra aux juges de se référer à des «comportements racistes types» : injures, diffamation, ...

Article 3

A noter que cet élément moral précise « ...sans tenir compte du danger que cet acte fait encourir à la structure même de la société.». Ainsi il y a lieu de considérer que l'élément moral de l'infraction de harcèlement raciste est non seulement l'intention de stigmatiser ou de rejeter mais également « l'insensibilité ou l'insouciance sociale ainsi que l'état d'immaturation qui se manifeste par une absence de considération pour l'intégrité, les droits et les biens d'autrui.»²⁰

Article 4

Cet article établit un renversement de la charge de la preuve à l'égard de l'auteur de l'infraction.

II. Partie I – Section 4

Circonstances relatives aux faits – point 1

Lorsque l'acte de violence raciste qui rappelons-le est un acte de violence et de menace psychique, est accompagné de violences ou de menaces physiques, il y a aggravation de la peine.

En effet, il est important de souligner que ce qui est réellement novateur dans ce projet de convention c'est de prendre en considération la cruauté mentale que représente la violence raciste.

²⁰ Revue Internationale de droit pénal, 1969, p. 74 .

Dès lors, toute menace ou tout acte de violence physique ne viendrait que se « surajouter » à la violence psychique subie par la victime de harcèlement raciste ce qui justifie l'aggravation de la peine déjà encourue par l'auteur de cette infraction.

Circonstances relatives aux faits– point 2. traumatismes psychiques graves

Il faut souligner que l'infraction de harcèlement raciste est conçue comme étant une infraction de mise en danger. Le simple fait de porter atteinte au principe d'unicité de la race humaine met en danger les intérêts protégés et est réprimé.

Il s'agit d'une infraction qui existe dès sa commission indépendamment de toute lésion causée. Le «indépendamment de toute lésion causée» ne signifie nullement qu'aucune lésion ne soit concrètement provoquée.

Il est malheureusement scientifiquement établi qu'un lien de causalité existe entre la violence raciste subie et des troubles psychiques ou le PTSD (« Posttraumatic Stress Disorder) que présente la victime après l'agression.²¹

Ce que la convention prévoit c'est l'aggravation de la peine lorsque le PTSD de la victime est grave. L'évaluation de la gravité du PTSD est rendue possible par l'utilisation d'échelles qui permettent de mesurer certains symptômes provoqués par de la violence raciste tel que l'angoisse²².

²¹ «Gender Issues in the Assessment of Posttraumatic Stress Disorder » par J. Wolfe et R. Kimerling in «Posttraumatic Stress Disorder – a comprehensive Text » édité par P.A. Saigh & J. D. Bremner ; Chapter 7, page 192.

«Gender and Posttraumatic Stress Disorder» par G. Saxe et J. Wolfe édité dans la même revue ; Chapter 8, page 160.

²² National Center for PTSD, Dudley D. Blake & Weathers : Caps-DX Scale.

Une lésion pourra être reconnue comme «grave» au sens de la présente convention lorsqu'un certain degré d'intensité, de fréquence et de permanence du symptôme sera constaté.

Il y aura alors une circonstance qui aggravera la peine déjà encourue par l'auteur. Afin de garantir une application homogène de cette convention dans tous les pays de l'union, il importe qu'au cours du processus d'adoption de la présente convention les états parties précisent l'échelle qu'ils s'engageront à utiliser.

Partie II – Section 1

Remarques générales :

1. Le taux des peines encourues est uniquement indiqué à titre exemplatif. En effet, il y aura lieu de vérifier que les peines prévues par la présente convention respectent le principe de proportionnalité des peines.²³ Une gradation dans la sévérité de ces peines est représentative de la gravité de l'atteinte subie par la victime : c'est ainsi que si l'injure (art. 1) et la discrimination avec intention de harcèlement raciste (art. 2) sont punies des mêmes peines de prison et d'amende, l'infraction de calomnie et de diffamation (art. 3) est quant à elle beaucoup plus sévèrement punie puisqu'elle présuppose qu'une intention de l'auteur était d'atteindre la victime en donnant à son acte une publicité plus grande.

2. Il a été souhaité qu'une sévérité particulière caractérise les peines encourues par les organisations, associations et groupements racistes ainsi que pour toute personne qui en fait partie ou qui lui a prêté son concours.²⁴ La raison de cette sévérité est le danger que ces organisations, associations et groupements représentent pour nos démocraties et le rôle malheureusement déterminant qu'ils

²³ J. Biancarelli, « Les principes généraux du droit communautaire applicables en matière pénale », Rev. Sc. Crim. 1987, p. 131-166, p. 150.

²⁴ « Les organisations, groupements et associations racistes », p. 49

ont dans la montée de violence raciste qui se constate ces dernières années dans de nombreux pays.

Par les termes «organisations, associations et groupements » sont également visés les partis politiques.

La convention distingue trois types de responsabilités :

- la responsabilité pénale des **organisations**, associations et groupements (responsabilité pénale des personnes morales) qu'elle sanctionne par des peines de confiscation et de dissolution;
- la responsabilité pénale des **personnes** qui en faisaient partie ou qui leurs ont prêté leurs concours et qu'elle sanctionne des peines de réclusion et d'inéligibilité;
- la responsabilité pénale internationale de **l'état** dont l'autorité publique admet ou maintient l'inscription sur une liste électorale d'un parti qui défend, prône ou diffuse des idées ou des théories racistes de manière manifeste ou répétée. Quant à cette dernière catégorie de responsabilité, les situations pratiques peuvent être les suivantes :
 - * le parti politique est déjà inscrit sur une liste électorale lorsqu'il se met au cours de sa campagne électorale à prôner, diffuser ou inciter autrui à avoir des idées ou des théories racistes. Dans ce cas, par application de l'article 1er²⁵, les autorités judiciaires doivent introduire une action en dissolution dudit parti et par application de l'article 4 de la même section les autorités publiques ne peuvent maintenir l'inscription électorale de ce parti sous peine d'engager la

²⁵ Voir Partie II, Section 1, Point C, page 49.

responsabilité internationale de l'état.

- * Le parti politique fait déjà l'objet d'une action en dissolution lorsqu'il demande son inscription sur une liste électorale. Dans ce cas par application de l'article 4 de la même section il ne pourra être inscrit par l'autorité publique sans que celle-ci ne voit sa responsabilité engagée.

Partie II – Section 2

Inspirés par le code pénal français, l'article 1 et 2 de cette section distingue :

- la non information des autorités judiciaires (article 1) :

il s'agit d'une obligation d'informer les autorités judiciaires de ce qu'un crime de harcèlement raciste a été commis ou de ce qu'il est en préparation.

Le code pénal français prévoit que certaines catégories de personnes soient exemptées de cette obligation en raison de leur parentèle avec l'auteur de l'infraction. Il nous a semblé que cette exemption pouvait être maintenue.

Il est à noter que les catégories de personnes qui bénéficient de l'exemption du devoir d'information sont restrictivement énumérées ce qui implique que les personnes légalement tenues au secret professionnel (et qui ne figurent pas en tant que telles dans cette énumération) ne pourront invoquer ce secret pour échapper à l'application de la convention.

Une remarque doit cependant être faite quant à l'exception prévue pour les «crimes commis sur des mineurs» : il y aura lieu en effet d'harmoniser l'âge de la minorité en matière pénale au sein des quinze états de l'union.

- La non opposition à un crime de harcèlement raciste (article 2) :
il s'agit d'une obligation de s'opposer à la commission de l'infraction. Ce qui nécessite que l'infraction ne soit pas seulement au stade de la préparation (dans ce cas il y aurait application de l'article 1er) mais bien au stade de sa commission. La manière dont on s'oppose à la commission d'une infraction de harcèlement raciste n'est volontairement pas déterminée dans la présente convention.

Des critères permettront aux juges de constater qu'une opposition a bien eu lieu. Ainsi, cette opposition devra être immédiate et efficace. Elle sera également adaptée aux circonstances et aux moyens dont dispose la personne sur laquelle pèse cette obligation.

Partie III : Dispositions civiles

Article 1

La réparation civile donne lieu au paiement de dommages et intérêts. Il est à noter que lorsque la victime présente un traumatisme psychique grave l'évaluation psychométrique de ce dommage permettra un dédommagement plus juste.

Article 3 et Article 4

Ces dispositions poursuivent un but éducatif. De nombreux états ont déjà pris des mesures pour informer et éduquer les jeunes à l'école (l'article 4 s'inspire d'une mesure prise par les autorités hollandaises). Par l'insertion de l'article 3 nous souhaitons étendre cet aspect éducatif à toute personne contractante.

Partie IV : Effets de la convention

Article 3

Cet article établit une compétence universelle qui permet à tout état partie à la convention et sur le territoire duquel l'infraction de harcèlement raciste a été commise d'engager les poursuites.

Articles 4 et 5

Il a été relevé que le caractère raciste allégué par la victime était souvent mis de côté voire ignoré par les autorités chargées de prendre leur déposition.

Ces articles ont pour but d'imposer l'utilisation d'une grille (modèle de questions) aux autorités chargées d'enregistrer les plaintes pour violence raciste.

Le but est d'éviter toute subjectivité dans le types de questions posées aux victimes Lorsqu'elles déposent et de s'assurer que leur perception des faits sera fidèlement reproduite et prise en considération.

Partie V: Dispositions finales

Article 1

Face aux nombreuses réserves qu'ont pu exprimer certains états parties à la Convention internationale sur l'élimination de toutes les formes de discrimination raciale de 1966, beaucoup de l'efficacité de ce texte (qui n'était pas à effet direct) a été perdue. Dès lors, c'est pour conserver l'unité, la cohérence et l'efficacité de cette convention sur le harcèlement raciste, qu'il ne sera pas permis aux états contractants d'émettre des réserves.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 13 March 2000**CHARTE 4157/00****CONTRIB 42****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a contribution of the Association of Women of Southern Europe (AFEM) on the proposed Charter provisions.^{1 2}

¹ AFEM: 5, rue Villaret de Joyeuse - 75017 Paris.

² This text has been submitted in English only.

AFEM
ASSOCIATION DES FEMMES DE L' EUROPE MÉRIDIONALE
ASSOCIATION OF WOMEN OF SOUTHERN EUROPE

PROPOSED CHARTER PROVISIONS

I. INTRODUCTORY NOTE

1.- Following their Declaration on the Charter (CONTRIB 16), the Association of Women of Southern Europe (AFEM) has the honour to propose, as a *minimum*, some provisions which follow, in principle, the outline of the Praesidium's Proposal.

On this occasion, the AFEM asks the Convention to kindly note that the expressions used in the provisions should be sex neutral or should refer to both sexes (see, e.g., *infra* the proposed formulation of Articles 1, 2, 17, 21, 23, 24). This should apply also to provisions which are taken from the EC Treaty (e.g., Article 141(2): "in respect of his/her employment, from his/her employer"), the ECHR (e.g., Article 2: "his/her life") or any other instrument.

2.- The AFEM underlines the need to take into consideration the EU acquis, the international one (treaties ratified by all Member States), as well as the constitutional acquis common to the Member States, as *minimum standards*, and to ensure an advance in relation to these.

3.- The EU will thus prove its dedication to the universal principles proclaimed by Article 6(1) EU Treaty¹ and its determination to ensure that neither this provision nor those of Articles 7² and 49³ of this Treaty become a dead letter. It will thus confirm that it really wants to be a Community based on the rule of law and will strengthen its credibility both with its citizens and the international community.

4.- The AFEM recalls the solemn declarations of the EU according to which:

- "economic success cannot be ensured unless human rights are observed and guaranteed";
- the EU "insists" on the "equivalence", the "interdependence" and "inter-relatedness" of all human rights, including economic, social and cultural rights whose judicial protection it wishes to promote⁴.

5.- It is common knowledge that general non-discrimination clauses do not suffice to eradicate direct and indirect discrimination on the ground of sex, in particular against women, and to establish substantive equality between women and men. The acknowledgement of this fact has led:

¹ Article 6(1) EU Treaty: "The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law, principles which are common to the Member States."

² Sanctions against Member States which violate the principles proclaimed by Article 6(1) EU Treaty.

³ The respect of these principles constitutes a fundamental condition of admission to the EU.

⁴ Annual Report of the EU on human rights (1999), paras. 5.1, 5.2, Statement by Mr. J.Fischer on behalf of the EU to the Commission of Human Rights annexed to this Report.

a) at international level:

- * to the adoption of special instruments guaranteeing fundamental rights of women⁵;
- * then, to the inclusion of specific provisions prohibiting discrimination on the grounds of sex in the CovenantCPR and the CovenantESCR;
- * further, as even this has proved insufficient⁶, to the adoption of the Convention on the elimination of all forms of discrimination against women;

b) at Community level:

- to the enshrinement of equality between women and men as a general principle and a specific fundamental right (well-established ECJ case law);
- to the proclamation of equality between women and men as a fundamental mission and objective of the Community which it undertakes to promote in all areas of its jurisdiction (Articles 2, 3(2), 137 EC Treaty);
- to the development of an *acquis* deriving from legislation and case law in respect of equality between women and men and of the prohibition of direct and indirect discrimination based on sex, including any kind of unfavourable treatment on the ground of pregnancy or maternity;
- to the development of an *acquis* deriving from legislation and case law and concerning judicial protection against direct and indirect sex discrimination;

c) at national level, to explicit and specific constitutional guarantees of equality between women and men.

6.- However, in spite of all that, *substantive equality between women and men has not been achieved as yet*. In order to remedy this situation:

- * the Convention on the elimination of all forms of discrimination against women [Art.(1)] provides for positive action in favour of women and the Commission which monitors the application of this Convention insists on the necessity of such action;
- * the organs which monitor the application of the two International Covenants insist on the necessity of positive action in favour of women;
- an increasing number of national constitutions guarantee substantive equality between women and men and legitimise positive action⁷, thus forming a “*constitutional tradition common to the Member States*”;
- Article 141(4) EC Treaty provides for positive action “with a view to ensuring full equality in practice between men and women in working life” and Declaration No 28 annexed to the Treaty of Amsterdam specifies that such action “*should, in the first instance, aim at improving the situation of women*”;

⁵ Conventions on the political rights of women, on the nationality of married women etc.

⁶ See Preamble of the Convention on the elimination of all forms of discrimination against women.

⁷ German [Article 3(2)], Austrian [Article 7(2)], Portugese [Article 9(h)], Finnish [Article 6(4)], Swedish, French [Articles 3, 4], Greek [draft] Constitutions.

- specific Community action programmes for promoting substantive equality between women and men are being adopted and implemented;
- the EU proclaims officially and solemnly “*the need to emphasise women's rights*”, including those of the “*girl child*”⁸;
- the UN General Assembly has adopted an optional Protocol to the Convention on the elimination of all forms of discrimination against women, which provides for individual complaints; the EU underlines that it “has supported this initiative” and “is now working for the early entry into force of this new instrument”⁹.

7.- It is thus obvious that if the Charter is limited to a general non-discrimination clause, without explicitly enshrining substantive sex equality, it will constitute a regression in respect of equality between women and men which certainly nobody wishes. Discrimination on the grounds of sex is of a particular, structural, nature and affects mainly women. Women are not a minority, but more than half of the European population and often suffer multiple discrimination. They have the right to enjoy effectively all fundamental rights and freedoms and to be full citizens, in all areas.

8.- The family, as a “natural and fundamental unit of society”, as well as children are protected by numerous Community and international instruments and by national Constitutions, while the EU solemnly declares the “there is an urgent need to strengthen children’s rights”¹⁰.

Abbreviations

CCR: International Convention on Children’s Rights

CEDAW: International Convention on the Elimination of all Forms of Discrimination against Women

CJEC: Court of Justice of the European Communities

CCPR: International Covenant on Civil and Political Rights

CESCR: International Covenant on Economic Social and Cultural Rights

ECHR: European Convention on Human Rights

ECtHR: European Court on Human Rights

EP Decl.: European Parliament Declaration on Fundamental Rights and Freedoms

Proposal: Articles proposed by the Praesidium (CONVENT 5 and 8)

Social Charter: European Social Charter (revised)

Article preceding proposed Article 1

The Union and the Community as well as Member States secure to everyone within their jurisdiction the effective enjoyment of the rights and freedoms defined in the following Articles, which may be relied upon as against their organs and institutions as well as against individuals, in all areas of Union and Community jurisdiction. (Art. 1 ECHR, Horizontal Questions (BODY 3), para, 8).

⁸ EU Report on Human Rights, *op.cit.* paras. 5.12, 5.13, Statement of J.Fischer, *op.cit.*

⁹ EU Report on Human Rights, *op.cit.*, para. 5.12.

¹⁰ Statement of J.Fischer, *op.cit.*, EU Report on Human Rights, *op.cit.*, para. 5.13.

Comments: We consider that, since there is a kind of dualism between the EU and the EC and since there are doubts as to whether the EU possesses a legal personality, it would be preferable that reference should be made to both. Besides, it is obvious that, without vertical and horizontal direct effect, the provisions of the Charter will be a dead letter.

Article 1. Dignity of the human person

Everyone has the right to the respect and protection of his/her dignity. The human body or any part thereof is not for trade, regardless of whether the person concerned has consented. (Art. 1 Poposal; Art. 1 EP Decl.)

Comments: We consider that the exemption of the human body from trade, so that nobody may derive profit or any other benefit therefrom, is a way of implementing respect and protection of human dignity rather than a corollary of the right to life. Consequently, this provision should not be limited to the area of medicine and biology, but should have a more general scope which should also include the prohibition of trafficking in persons, in particular in women and children, for the purpose of forced labour or sexual exploitation, so that the well-known and constantly increasing problems of trafficking in women and children throughout Europe are dealt with. It is indispensable to specify that the consent of the person concerned is irrelevant, since it is obvious and confirmed by common experience that it is impossible to know whether this consent has been freely given. Moreover, extensive research on the matter has proved that, in the great majority of cases, women engaging in prostitution, at least at the outset, do not act with their free consent.

For the rest, we agree with para. 3 of Article 1 of the Praesidium's Proposal. As concerns para. 2 of Article 1 of this Proposal, see *infra*, Comments under Article 2.

Article 2. Right to life

Everyone has the right to the protection of his/her life and of his/her physical, psychological and genetic integrity. Torture or inhuman or degrading punishment or treatment, such as sexual mutilations, as well as any other kind of physical or moral violence, including violence within the family, are in particular prohibited.

(Art. 1, 2 Proposal; Art. 2, 3 ECHR; Art. 6, 7 CCPR; Art. 2 EP Decl.)

Comments: The prohibition of torture may be included in Article 2 or in Article 1 as in the Praesidium's Proposal. What is important is the reference to "sexual mutilations" which, as it is well-known, take place even on European territory, as well as the prohibition of "any other kind of physical or moral violence". For the rest, we agree with para 2 of Article 2 of the Praedisium's Proposal, in its alternative wording.

Article 4. Right to an effective judicial remedy and to a fair trial

1. Everyone, without distinction of any kind, is entitled to real and effective judicial protection of the rights and freedoms recognised by the present Charter as well as of any other right conferred by Community or Union law, against any public authority and any individual. This right comprises in particular the right to effective access to justice and to legal aid in case of insufficient resources, the right to effective judicial control as regards respect of one's rights and freedoms, the right to fair trial, the right that a real and effective sanction against violations be inflicted by the competent court, and the right to execution of any final judgment.

(Art. 4, 5 Proposal; CJEC case law; Directive 97/80; Art. 6 ECHR; Art. 2, 14 CCPR; Art. 19 EP Decl.)

Comments: We consider that it is necessary to enhance the formulation of Article 4 of the Praesidium's Proposal, in view of CJEC case law in conjunction with ECtHR case law. The CJEC has ruled up to now on certain expressions of the principle of real and effective judicial protection, a principle it has established by drawing inspiration from Articles 6 and 13 of the ECHR and from the constitutional traditions common to the Member States. It has in particular developed the right of access to court, the right to effective judicial control as regards respect of substantive rights derived from Community law, as well as rights relating to the kind of evidence and the burden of proof and the right to a real and effective sanction¹¹. CJEC case law seems more advanced in certain respects than ECtHR case law, but the former is complemented in certain other respects (e.g., in matters of legal aid and execution of judgments) by the latter as well as by Articles 2 and 14 CCPR.

We agree with the transposition of ECHR Article 6 to Article 5 of the Praesidium's Proposal, but we consider that this is not sufficient and that it is necessary, in any event, to have a more explicit provision relating to the content of the right to judicial protection and corresponding to the successive stages of this protection. This is why we propose the second sentence of para. 1.

2. Trade unions and NGOs have the right to lodge any complaint or judicial proceedings or to support those lodged by a person who alleges a violation of the rights mentioned in the 1st paragraph of the present Article, with any competent national or European judicial or other authority.

Comments: The usefulness of the above provision is obvious. In all areas, the support of trade unions and NGOs encourages victims of violations of rights and freedoms and protects them from prejudicial consequences of their complaints.

Article 9. Right to found a family and right of the family to protection

1. Men and women of marriageable age have the right to marry and to found a family, according to their national law. Marriage should be entered into with the free consent of each intending spouse.

2. Spouses shall enjoy equality of rights and responsibilities before national and European authorities as well as between them and in their relations with their children, during marriage and in the event of its dissolution. In all cases, the best interests of the child shall be a primary consideration.

3. The family as well as all its members as such have the right to protection, without any distinction, in all areas of Union and Community jurisdiction, as well as the right to claim this protection from any competent national and European authority. Large and single parent families have the right to special protection.

(Art. 9 Proposal; Art. 12 ECHR and Art. 5 Protocol No 7 ECHR; Art. 16 Social Charter; Art. 23 CCPR; Art. 10 CESC; Art. 3, 18, 20, 21 CCR; Art. 7 EP Decl.)

Comments: This Article should come after Article 8 of the Praesidium's Proposal. The more general protection of children should be the object of a special provision. See *infra* Art. 21.

¹¹ See in particular certain leading cases: Case 222/84 *Johnston* [1986] ECR 1651; Case 222/86 *UNECTEF/Heylens* [1987] ECR 4112; Case 14/83 and Case. 79/83 *von Colson and Harz* [1984] ECR 1891 and 1921; Case C-177/88 *Dekker* [1990] ECR I-3941; Case C-97/91, *Oleificio Borelli* [1992] ECR I-6330; Case 199/82, *San Giorgio* [1983] ECR 3595; Case 109/88, *Danfoss* [1989] ECR 3220.

Article 17. Rights of aliens

1. Everyone who is persecuted has the right of asylum in the Union; it is in particular considered that there is persecution[,] when a woman or a man is unable to freely dispose of him/herself or his/her freedom or fundamental rights or physical or psychological or genetic integrity are threatened, whether the authorities of the country of origin are the authors of such persecution or threats or they tolerate them or are unable to oppose them.

2. The conditions for the implementation in practice of the rights conferred on migrants shall secure that women benefit therefrom under the same conditions as men.

3. Collective expulsions of aliens are prohibited.

(Art. 17 Proposal; Art. 63 EC Treaty; Art. 4 Protocol No 4 and Art. 1 Protocol No 7 ECHR)

Article 20. Right to substantive and effective equality between women and men

1. In all areas of Union and Community jurisdiction, women and men have equal rights, including the equal right to work freely chosen or accepted, the right to the same working conditions, the right to fair and equal pay for work of equal value, the equal right to social security and assistance for themselves and their family. Any direct or indirect discrimination on the ground of sex is prohibited in any area. Positive measures are advisable, in order to improve, in the first instance, the position of women, until substantive and effective equality between men and women is achieved.

2. For the purposes of the principle of equal pay between men and women for work of equal value, “pay” means.....(the rest of the text of Article 141(2) EC Treaty should be inserted here).

(Art. 19(2) Proposal; Art. 141 EC Treaty; Declaration No 28 annexed to the Treaty of Amsterdam; Art. 4(1) CEDAW; Directives 76/207, 75/117, 79/7, 86/613, 96/97; Art. 4, 20 Social Charter; Art. 3 CCPR; Art. 3, 7 CESC; ILO Convention No 100).

Comments: For the reasons mentioned in the Introductory Note (Nos 5-7), we consider that the above provision should constitute a separate Article, which should come after the Articles containing the general non-discrimination clauses and should guarantee real and effective equality between men and women in all areas of Union and Community jurisdiction. This is necessary in order that the relevant Community acquis be taken into consideration, consolidated and developed. Such a provision is also required by virtue of the Member States' international obligations, in particular those obligations undertaken through the ratification of the Convention on the elimination of all forms of discrimination against women (CEDAW).

Furthermore, the inclusion of sex as a ground of discrimination among the other grounds mentioned in Article 13 EC Treaty is not advisable, since discrimination on the ground of sex is of a particular, structural, nature and sex differs fundamentally from the other grounds of discrimination which concern mainly minorities. This is why positive measures are necessary “in order to improve, in the first instance, the position of women”, according to Declaration No 28 annexed to the Treaty of Amsterdam, and which will be temporary, until substantive and effective equality between women and men is achieved, according to Article 4(1) of the CEDAW. Consequently, the general non-discrimination clause should not include “sex”.

Paragraph 2 is necessary in order to consolidate the Community acquis in respect of the concepts of “pay” and “work of equal value”.

Article 21. Rights of children

Every child, without any distinction in his/her respect or in respect of his/her parents, has the right to a legal existence, to the protection of his/her interests and to the enjoyment of the rights and freedoms defined in Articles.....of the present Charter. (CCR; Art. 7, 17 Social Charter; Art. 24 CCPR; Art. 10 CESCR)

Article 22 Right to the protection of pregnancy and maternity

Every woman, without any distinction, has the right to the protection of pregnancy and maternity, including the right to sufficient maternity leave, at least of the duration provided by Community law and remunerated through social security benefits and to the maintenance, during this leave, of her rights relating to her employment, as well as to be guaranteed protection against working conditions which may harm her and/or her child, before or after confinement, and against ailments which have their origin in pregnancy, confinement or breast-feeding. (Art. 152(1) EC Treaty; Directive 92/85; Art. 8 Social Charter; Art. 10 CESCR)

Article 23 Rights of parents

Every mother and father has the right to the protection of his/her parental and family function, including the right to leaves, at least of the duration provided by Community law and remunerated through social security benefits, in order to raise and take care of her/his children, and to the maintenance, during this leave, of the rights relating to her/his employment. Any discrimination against them is prohibited. (Directive 96/34; ILO Convention No 156; Art.27 Social Charter)

Article 24. Right to an adequate and decent standard of living

Everyone has the right to an adequate and decent standard of living for him/herself and his/her family and to protection against social exclusion. (Art. 11 CESCR; Art. 30, 31 Social Charter; Art. 15 EP Decl.)

Article 25. Protection of the elderly, incurables, handicapped and indigent

Every person who is elderly, incurable, handicapped or indigent has the right to special protection.

Article 26.

The Union and the Community as well as the Member States ensure that the provisions of the present Charter are brought to the knowledge of the persons whose rights they guarantee, by all appropriate and effective means. These persons have the right to be informed thereof. (Cf. Art. 7 Directive 75/117; Art. 6 Directive 76/207)

Article X. RIGHTS OF CITIZENS OF THE EU

Every citizen of the Union, without any distinction, has the rights provided by the law of the Union and national law in respect of access to candidacy for elections and exercise of the corresponding functions, as well as to posts of the organs and institutions of the Union, the Community and the Member States; positive measures are advisable, in order to favour equal access of women and men thereto. (Art. 19, 190 EC Treaty; Art. 25 CCPR; Art. 17 EP Decl.)

Article Z. LEVEL OF PROTECTION

No provision of this Charter may be interpreted as placing restrictions on the protection afforded by the provisions of the European Convention on Human Rights and the other international instruments relating to human rights and freedoms, ratified by the Member States, as well as by the provisions of the Constitutions and legislation of Member States relating to such rights and freedoms.

Comments: Article Z of the Praesidium's Proposal is reinforced in view of what has been stated *supra*, in the Introductory Note. The EU cannot ignore the international obligations of its Member States without losing its credibility both with its citizens and the international community, the more so as it considers itself and must be a Community based on the rule of law and wishes to play a leading role in the respect and promotion of human rights around the world. The Charter has no raison d' être unless it is built on the international *acquis* and the constitutional *acquis* of its Member States and develops them. It is to the universal values and principles that Article 6(1) EC Treaty refers. Article Z, as proposed, is also in line with the Community and international principle according to which Community and international provisions contain minimum standards which may be surpassed by national law and may in no case serve as an excuse for lowering the existing national level of protection (see also Art. 137(5) EC Treaty).

Note: The new Articles proposed by the Praesidium (CONVENT 8) have just come to our knowledge, after the proposed provisions had been drafted. We welcome the inclusion of a specific provision on equality between men and women, since this constitutes an advance in relation to the Draft List of fundamental rights (BODY 4). However, for the reasons indicated in our Introductory Note (Nos 5-7) and in our Comments under Article 20 *supra*, we consider that it is necessary to include in the Charter an even more specific and explicit provision, applying to all areas of Union and Community jurisdiction, which will consolidate and develop the Community *acquis* and will take into consideration the international obligations of the Member States, such as the provision we propose (Article 20).

We have further noted with great interest that the Convention intends to give particular attention to the content of the Article concerning the principle of democracy. We have no doubt that it will be proclaimed in this Article that real democracy is parity democracy.

In thanking the Convention for their attention and congratulating them on their efforts to promote and guarantee fundamental rights, the AFEM wishes them successful completion of their task.

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Editors' note to CHARTE 4157/00 ADD 1,
**Contribution de l'Association des Femmes
de l'Europe Méridionale (AFEM):**

The French version differs slightly from the English (paragraph on gender-neutral language at §1 excluded) and so is included.

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE**fundamental.rights@consilium.eu.int**

Bruxelles, le 17 mars 2000**CHARTE 4157/00 ADD 1****CONTRIB 42****ADDENDUM AU NOTE DE TRANSMISSION**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne

Veillez trouver ci-joint la version française d'une contribution de Association des Femmes de l'Europe Méridionale (AFEM).^{1 2}

¹ AFEM: 5, rue Villaret de Joyeuse - 75017 Paris.

² Ce document existe en langues anglaise et française.

AFEM
ASSOCIATION DES FEMMES DE L'EUROPE MÉRIDIONALE

PROPOSITION DE DISPOSITIONS DE LA CHARTE

I. NOTE INTRODUCTIVE

- 1.- Suite à sa Déclaration sur la Charte (CONTRIB 16), l'Association des Femmes de l'Europe Méridionale (AFEM) a l'honneur de proposer quelques dispositions, qui suivent, en principe, le schéma de la Proposition du Présidium.
- 2.- L'AFEM souligne le besoin de prendre en compte l'acquis communautaire et international (traités ratifiés par tous les États membres), ainsi que l'acquis constitutionnel commun aux États membres, comme *standards minima*, et de marquer une avancée par rapport à ceux-ci.
- 3.- Ainsi, l'UE fera preuve de son attachement aux *principes universels proclamés par l'article 6§1er Traité UE*¹ et de sa détermination d'assurer que ni cette disposition ni celles des articles 7² et 49³ de ce Traité ne deviendront lettre morte. Elle confirmera ainsi qu'elle se veut vraiment une Communauté de droit et renforcera sa crédibilité tant envers ses citoyens qu'envers la communauté internationale.
- 4.- L'AFEM rappelle les déclarations solennelles de l'UE selon lesquelles:
 - “le succès économique ne peut être assuré que si les droits humains sont observés et garantis”;
 - l'UE “insiste” sur “l'équivalence”, “l'interdépendance” et “l'unicité” de tous les droits, y compris les droits économiques, sociaux et culturels dont elle souhaite promouvoir la justiciabilité;⁴
- 5.- *Il est bien connu que les clauses générales de non discrimination ne suffisent pas pour éliminer les discriminations directes et indirectes en raison du sexe, et surtout celles contre les femmes, et à établir une égalité substantielle entre femmes et hommes.* La constatation de ce fait a conduit:

¹ Article 6§1er Traité UE: “L'Union est fondée sur les principes de la liberté, de la démocratie, du respect des droits de l'homme et des libertés fondamentales, ainsi que de l'État de droit, principes qui sont communs aux États membres.”

² Sanctions contre les États membres qui violent les principes de l'article 6§1er Traité UE.

³ Le respect de ces principes constitue une condition primordiale de l'adhésion à l'UE.

⁴ Rapport annuel de l'UE sur les droits de l'homme (1999), points 5.1, 5.2, et Déclaration de M. J.Fischer au nom de l'UE à la Commission des Droits de l'Homme annexée à ce Rapport.

a) au niveau international:

- à l'adoption d'instruments spéciaux garantissant des droits fondamentaux des femmes⁵;
- puis à l'insertion dans le Pacte DCP et le Pacte DESC de clauses spécifiques interdisant les discriminations en raison du sexe;
- ensuite, comme même cela s'est avéré insuffisant⁶, à l'adoption de la Convention sur l'élimination des discriminations à l'égard des femmes;

b) au niveau communautaire:

- à la consécration de l'égalité entre femmes et hommes comme principe général et droit fondamental spécifiques (jurisprudence constante de la CJCE);
- à la proclamation de l'égalité entre femmes et hommes comme mission et objectif fondamentaux de la Communauté et à l'engagement de celle-ci à la promouvoir dans tous les domaines de sa compétence (articles 2, 3§2, 137 Traité CE);
- au développement de l'acquis législatif et jurisprudentiel en matière d'égalité entre femmes et hommes et d'interdiction des discriminations, directes ou indirectes, fondées sur le sexe, y compris toute espèce de traitement défavorable en raison de la grossesse ou de la maternité;
- au développement de l'acquis législatif et jurisprudentiel en matière de protection juridictionnelle contre les discriminations, directes ou indirectes, en raison du sexe;

c) au niveau national, à des garanties constitutionnelles expresses et spécifiques de l'égalité entre femmes et hommes.

6.- Cependant, en dépit de tout cela, *l'égalité substantielle entre femmes et hommes n'est pas encore atteinte*. Pour remédier à cette situation:

- la Convention sur l'élimination des discriminations à l'égard des femmes (article 4§1er) prévoit des actions positives en faveur des femmes et la Commission qui contrôle l'application de la Convention insiste sur la nécessité de ces actions;
- les organes qui contrôlent l'application des deux Pactes internationaux insistent sur la nécessité d'actions positives en faveur des femmes;
- un nombre croissant de Constitutions nationales garantit l'égalité substantielle entre femmes et hommes et légitimise les actions positives⁷, en formant ainsi une "tradition constitutionnelle commune aux États membres";
- l'article 141§4 Traité CE prévoit des actions positives "pour assurer concrètement une pleine égalité entre hommes et femmes dans la vie professionnelle" et la Déclaration No 28 annexée au Traité d'Amsterdam précise que ces actions doivent "*avant tout améliorer la situation des femmes*";

⁵ Conventions sur les droits politiques des femmes, sur la nationalité des femmes mariées etc.

⁶ V. préambule de la Convention sur l'élimination des discriminations à l'égard des femmes.

⁷ Constitutions allemande [article 3§2], autrichienne [article 7§2], portugaise [article 9(h)], finlandaise [article 6§4], suédoise, française [articles 3 et 4], hellénique (projet).

- des programmes d'action communautaire spécifiques, pour promouvoir l'égalité substantielle entre femmes et hommes, sont adoptés et mis en oeuvre;
- l'UE déclare officiellement et solennellement qu'une "*priorité spéciale doit être accordée aux droits des femmes*", y compris ceux *des petites filles*⁸;
- l'Assemblée Générale de l'ONU vient d'adopter un Protocole facultatif à la Convention sur l'élimination des discriminations à l'égard des femmes qui rend possibles les recours individuels; l'UE souligne qu'elle a appuyé cette initiative et qu'elle oeuvre en vue de l'entrée en vigueur à bref délai de ce nouvel instrument⁹.

7.- *Il est ainsi évident que, si la Charte se limite à une clause générale de non discrimination sans consacrer explicitement l'égalité effective des sexes, elle marquera une régression en matière d'égalité entre femmes et hommes, que certes personne ne souhaite. Les discriminations en raison du sexe sont de nature particulière, structurelle, et affectent surtout les femmes. Celles-ci ne sont pas une minorité, mais plus que la moitié de la population européenne et souffrent souvent de discriminations multiples. Elles ont le droit de jouir effectivement de tous les droits et libertés fondamentaux et d'être des citoyennes à part entière, dans tous les domaines.*

8.- La *famille*, en tant qu' "élément naturel et fondamental de la société", ainsi que les *enfants* sont protégés par de nombreux instruments communautaires et internationaux et par les Constitutions nationales, tandis que l'UE déclare solennellement qu'il est "*urgent de renforcer les droits des enfants*"¹⁰.

II. PROPOSITION DE DISPOSITIONS

Abréviations

CDE: Convention internationale sur les droits des enfants

CEDH: Convention européenne des droits de l'homme

CEDF: Convention sur l'élimination des discriminations à l'égard des femmes

Charte sociale: Charte sociale européenne (révisée)

CJCE: Cour de Justice des Communautés européennes.

CourEDH: Cour européenne des droits de l'homme

Décl. PE: Déclaration des droits et libertés fondamentaux du Parlement Européen (1989).

PacteDCP: Pacte international relatif aux droits civils et politiques

PacteDESC: Pacte international relatif aux droits économiques, sociaux et culturels

Proposition: Proposition d'articles établie par le Présidium (CONVENT 5 et 8)

Article précédant l'Article 1 de la Proposition

L'Union et la Communauté européennes ainsi que les États-membres garantissent à toute les personnes relevant de leur juridiction la jouissance effective des droits et libertés définis aux articles suivants, dont elles pourront se prévaloir à l'encontre de leurs organes et institutions, comme à l'encontre des particuliers, dans tous les domaines de compétence de l'Union et de la Communauté. (Art. 1 CEDH; Questions horizontales (BODY 3), point 8).

⁸ Rapport de l'UE sur les droits de l'homme, points 5.12, 5.13, Déclaration J.Fischer, op.cit.

⁹ Rapport de l'UE sur les droits de l'homme, op. cit., point 5.12.

¹⁰ Rapport de l'UE sur les droits de l'homme, op. cit., point 5.12.

Commentaire: Nous croyons que, puisqu'il existe une sorte de dualisme entre l'UE et la CE et qu'il subsiste des doutes quant à la personnalité morale de l'UE, il serait préférable de se référer à toutes les deux. Par ailleurs, il est évident que sans effet direct, vertical et horizontal, les dispositions de la Charte resteront lettre morte.

Article 1. Dignité de la personne humaine

Toute personne a droit au respect et à la protection de sa dignité. Le corps humain ou quelconque partie de celui-ci est hors commerce, que ce soit sans ou avec le consentement de la personne concernée. (Art. 1 Proposition; art. 1 décl.PE.)

Commentaire: Nous considérons que la mise du corps humain ou de quelconque partie de celui-ci hors commerce, afin que personne n'en puisse tirer profit, est une forme de respect et de protection de la dignité de la personne humaine, plutôt qu'un corollaire du droit à la vie. Par conséquent, cette disposition ne doit pas être limitée au domaine de la médecine et de la biologie, mais avoir une portée plus générale qui inclut aussi l'interdiction de la traite des êtres humains, notamment des femmes et des enfants, aux fins d'exploitation de leur travail ou d'exploitation sexuelle, afin que puissent être envisagés les problèmes bien connus et constamment croissants de traite de femmes et d'enfants à travers l'Europe. Il est indispensable de préciser que le consentement de la personne concernée est sans incidence, puisqu'il est évident et confirmé par l'expérience commune qu'il est impossible de savoir si celui-ci est donné librement. Des recherches multiples en la matière ont d'ailleurs démontré que dans la grande majorité des cas, la prostituée, au moins au commencement, n'agit pas après une décision prise librement.

Pour le reste, nous sommes d'accord avec le paragraphe 3 de l'article 1 de la Proposition. En ce qui concerne le paragraphe 2 de l'article 1 de cette Proposition, voy. ci-dessous, Commentaire sous l'article 2.

Article 2. Droit à la vie

Toute personne a droit au respect et à la protection de sa vie et de son intégrité physique, psychique et génétique. Sont notamment interdits la torture et les peines ou traitements inhumains et dégradants, telles les mutilations sexuelles, ainsi que toute autre forme de violence physique ou morale, y compris celle exercée au sein de la famille.

(Art. 1, 2 Proposition; art. 2, 3 CEDH; art. 6, 7 Pacte DCP; art. 2 décl.PE).

Commentaire: L'interdiction de la torture peut être insérée dans l'article 2, ou bien dans l'article 1 comme dans la Proposition. Ce qui importe est la mention des "mutilations sexuelles" qui, comme il est bien connu, ont lieu même sur le territoire européen, ainsi que l'interdiction de "toute autre forme de violence physique ou morale". Pour le reste, nous sommes d'accord avec le paragraphe 2 de l'article 2 de la Proposition, dans sa formule alternative.

Article 4. Droit à un recours effectif et à un procès équitable

1. Toute personne, sans distinction aucune, a droit à la protection juridictionnelle effective et efficace des droits et libertés reconnus dans la présente Charte et de tout autre droit conféré par le droit communautaire ou de l'Union Européenne, envers toute autorité publique et tout particulier. Ce droit comprend notamment les droits à l'accès effectif à la justice et à l'aide juridique en cas de ressources insuffisantes, au contrôle juridictionnel effectif sur le respect de ses droits et libertés, à un procès équitable, à une sanction effective et efficace contre les violations prononcée par le tribunal compétent et à l'exécution de tout jugement définitif. (Art. 4, 5 Proposition; jurispr. CJCE; Directive 97/80; art. 6 CEDH; art. 2, 14 Pacte DCP; art. 19 décl.PE).

Commentaire: Il est nécessaire que la formulation de l'article 4 de la Proposition soit enrichie, compte tenu de la jurisprudence de la CJCE en combinaison avec celle de la CourEDH.

La CJCE s'est prononcée jusqu'à aujourd'hui sur quelques expressions du principe de protection juridictionnelle effective et efficace, principe qu'elle a consacré en s'inspirant des articles 6 et 13 CEDH et des traditions constitutionnelles communes aux États membres; elle a notamment consacré le droit à l'accès au juge, le droit au contrôle juridictionnel effectif sur le respect des droits communautaires substantiels, ainsi que des droits relatifs aux moyens et à la charge de la preuve et le droit à une sanction effective et efficace¹¹. Sa jurisprudence semble être plus avancée à quelques égards que celle de la CourEDH, mais elle est complétée à d'autres égards (p.ex. en matières d'aide juridique et d'exécution des jugements) par celle de la CourEDH et par les articles 2 et 14 du PacteDCP.

Nous sommes d'accord sur la transposition de l'article 6 de la CEDH dans l'article 5 de la Proposition, mais nous croyons que ni cela ne suffit et qu'il est nécessaire, en tout cas, d'avoir une disposition plus explicite sur le contenu du droit à la protection juridictionnelle qui corresponde aux étapes successives de cette protection. C'est pourquoi nous proposons le second alinéa du 1er paragraphe de l'article 4 ci-dessus.

2. Les organisations syndicales et les ONG ont le droit de porter plainte ou de former un recours juridictionnel ou de soutenir ceux d'une victime de violation des droits mentionnés au 1er paragraphe du présent article auprès de toute instance compétente nationale ou européenne.

Commentaire: L'utilité d'une telle disposition est évidente. Dans tous les domaines, le soutien des organisations syndicales et des ONG encourage la victime de violations des droits et libertés et la protège contre les conséquences préjudiciables de sa plainte ou de son recours juridictionnel.

Article 9. Droit de fonder une famille et droit de la famille à la protection

1. A partir de l'âge nubile, l'homme et la femme ont le droit de se marier et de fonder une famille selon le droit national. Le mariage doit être librement consenti par chacun des futurs époux.

2. Les époux jouissent de l'égalité de droits et d'obligations dans leurs rapports avec les autorités nationales et européennes, ainsi qu'entre eux et dans leurs relations avec leurs enfants, durant leur mariage et lors de sa dissolution. Dans tous les cas l'intérêt de l'enfant sera la considération primordiale.

3. La famille, ainsi que ses membres en tant que tels, ont droit à la protection, sans distinction aucune, dans tous les domaines de compétence de l'Union et de la Communauté européenne, ainsi que le droit de revendiquer cette protection auprès des instances compétentes nationales et européennes. Les familles nombreuses ou monoparentales ont droit à une protection spéciale.

(Art. 9 Proposition; art. 12 CEDH et art. 5 Protocole No 7 CEDH; art. 16 Charte sociale; art. 23 PacteDCP; art. 10 Pacte DESC; art. 3, 18, 20, 21 CDE; art. 7 décl. PE).

Commentaire: Cet article suit l'article 8 de la Proposition. La protection plus générale des enfants doit faire l'objet d'une disposition spéciale. V. ci-dessous art. 21

¹¹ Voy. notamment quelques arrêts de principe: CJCE 15.5.1986, aff. 222/84, *Johnston*, Rec. p. 1651; CJCE 15.10.1987, aff. 222/86, *UNECTEF/Heylens*, Rec. p. 4112; CJCE 10.4.1984, aff. 14/83 et aff. 79/83 *von Colson et Harz*, Rec. pp. 1891 et 1921; CJCE 8.11.1990, aff. C-177/88, *Dekker*, Rec. p. I-3941; CJCE 3.12.1992, aff. C-97/91, *Oleificio Borelli*, Rec. p. I-6330; CJCE 9.11.1983, $\nu\pi\acute{o}\theta$. 199/82, *San Giorgio*, Rec. p. 3595; CJCE 17.10.1989, aff. 109/88, *Danfoss*, Rec. p. 3220.

Article 17. Droits des étrangers

1. *Toute personne persécutée a le droit d'asile; est notamment considérée comme persécution, pour les femmes comme pour les hommes, le fait de ne pouvoir disposer librement de soi-même ou d'être menacé(e) dans sa liberté ou ses droits fondamentaux ou dans son intégrité physique, psychique ou génétique, que les pouvoirs publics du pays d'origine soient les auteurs de ces persécutions ou menaces, qu'ils les tolèrent, ou qu'ils soient dans l'incapacité de s'y opposer.*
2. *Les conditions pratiques de mise en oeuvre des droits reconnus aux migrants doivent garantir que les femmes en bénéficieront effectivement dans les mêmes conditions que les hommes.*
3. *Les expulsions collectives d'étrangers sont interdites.*

(Art. 17 Proposition, art. 63 CE; art. 4 protocole No 4 et art. 1 Protocole No 7 CEDH)

Article 20. Droit à l'égalité substantielle et effective entre femmes et hommes

1. *Dans tous les domaines de compétence de l'Union et de la Communauté européennes, femmes et hommes ont des droits égaux, y compris les droits au travail librement choisi ou accepté, aux mêmes conditions d'emploi, à une rémunération équitable et égale pour un travail de valeur égale, à la sécurité et à l'assistance sociale pour eux/elles-mêmes et leur famille. Toute discrimination, directe ou indirecte, en raison du sexe est interdite dans quelque domaine que ce soit. Des mesures positives sont indiquées, avant tout pour améliorer la situation des femmes, jusqu'à ce que l'égalité substantielle et effective entre femmes et hommes soit atteinte.*
2. *Aux fins d'application du principe de l'égalité des rémunérations entre femmes et hommes pour un travail de valeur égale, on entend par rémunération.....(continuer en insérant tout le reste du texte du paragraphe 2 de l'article 141 Traité CE).*

(Art. 19§2 Proposition, art. 141 Traité CE; Déclaration No 28 annexée au Traité d'Amsterdam; art. 4§1 CEDF; Directives 76/207, 75/117, 79/7, 86/613, 96/97; art. 4, 20 Charte Sociale; art. 3 PacteDCP; art. 3, 7 PacteDESC; Convention OIT No 100).

Commentaire: Pour les raisons indiquées dans la Note introductive (Nos 5-7) nous considérons que la disposition ci-dessus doit constituer un article distinct, qui suive les articles contenant des clauses générales de non discrimination, et qui garantisse l'égalité effective et substantielle entre les hommes et les femmes dans tous les domaines de compétence de l'Union et de la Communauté. Cela est nécessaire afin que soit pris en compte, consolidé et développé l'acquis communautaire en la matière. Une telle disposition est aussi requise par les engagements internationaux des États membres, et notamment ceux entrepris par la ratification de la Convention sur l'élimination des discriminations à l'égard des femmes.

Par ailleurs, l'insertion du sexe comme un motif de discrimination parmi les autres motifs mentionnés dans l'article 13 du Traité CE n'est pas indiquée, puisque la discrimination fondée sur le sexe est de nature particulière, structurelle, et que le sexe diffère fondamentalement des autres motifs de discrimination, qui se réfèrent surtout à des minorités. C'est pour cela que sont nécessaires des mesures positives, "avant tout pour améliorer la situation des femmes", selon la Déclaration No 28 annexée au Traité d'Amsterdam, et temporaires, jusqu'à ce que l'égalité substantielle et effective entre femmes et hommes soit atteinte, selon l'article 4§1 de la Convention sur l'élimination des discriminations à l'égard des femmes. Par conséquent, la clause générale de non discrimination ne doit pas inclure le sexe.

Le paragraphe 2 est nécessaire pour consolider l'acquis communautaire en ce qui concerne les notions de "rémunération" et de "travail de valeur égale".

Article 21. Droits des enfants

Tout enfant, sans distinction aucune, à son égard ou à l'égard de ses parents, a droit à une existence légale, à la protection de son intérêt et à la jouissance des droits et libertés reconnus par les articles.....de la présente Charte.

(CDE; art. 7, 17 Charte Sociale; art. 24 PacteDCP; art. 10 PacteDESC)

Article 22. Droit à la protection de la grossesse et de la maternité

Toute femme, sans distinction aucune, a droit à la protection de la grossesse et de la maternité, y compris le droit à un congé de maternité suffisant, au moins de la durée prévue par le droit communautaire, et rémunéré par des prestations de sécurité sociale, et au maintien pendant ce congé des droits liés à son emploi, ainsi qu'à la garantie de protection contre les conditions d'emploi qui peuvent nuire à elle-même et/ou à son enfant, avant et après l'accouchement, et contre les affections qui ont leur origine dans la grossesse, l'accouchement ou l'allaitement.

(art. 152§1 Traité CE; Directive 92/85/CEE; art. 8 Charte Sociale, art. 10 PacteDESC)

Article 23. Droits des parents

Toute mère et tout père a droit à la protection de sa fonction parentale et familiale, y compris le droit à des congés, au moins de la durée prévue par le droit communautaire, et rémunérés par des prestations de sécurité sociale, pour élever et soigner ses enfants. Toute discrimination à leur égard est interdite.

(Directive 96/34/CE; Convention OIT No 156; art.27 Charte Sociale)

Article 24. Droit à un niveau de vie suffisant et décent

Toute personne a droit à un niveau de vie suffisant et décent pour elle-même et sa famille et à la protection contre l'exclusion sociale.

(Art. 11 PacteDESC, art. 30, 31 Charte Sociale, art. 15 décl.PE)

Article 25. Protection des personnes âgées, incurables, handicapées ou indigentes

Toute personne âgée, incurable, handicapée ou indigente a droit à une protection spéciale.

Article 26

L'Union et la Communauté européennes, ainsi que les États membres veillent à ce que les dispositions de la présente Charte soient portées à la connaissance des personnes dont elles garantissent les droits, par tout moyen approprié et efficace. Ces personnes ont le droit d'en être informées.

(Cf. article 7 Directive 75/117/CEE, article 6 Directive 76/207/CEE)

DROITS DES CITOYENS DE L'UNION

Article X. *Tous les citoyens de l'Union européenne, sans distinction, ont les droits prévus par le droit de l'Union et le droit national en matière d'accès aux mandats électoraux et aux fonctions électives, ainsi qu'aux postes des institutions et organes de l'Union, de la Communauté et des États membres. Des mesures positives sont indiquées pour favoriser l'égal accès des femmes et des hommes à ces mandats, fonctions et postes.*

(Art. 19, 190 Traité CE, art. 25 PacteDCP, art. 17 décl.PE,)

Article Z. NIVEAU DE PROTECTION

Aucune disposition de la présente Charte ne peut être interprétée comme restreignant la protection offerte par les dispositions de la Convention européenne des droits de l'homme et des autres instruments internationaux relatifs aux droits et libertés de la personne humaine, ratifiés par les États membres, ainsi que par les dispositions des Constitutions et des législations des États membres relatives à ces droits et libertés.

Commentaire: L'article Z de la Proposition de la Convention est renforcé en considération de ce qui est exposé dans la Note introductive ci-dessus. L'UE ne peut ignorer les obligations internationales de ses États membres sans perdre sa crédibilité tant envers ses citoyens qu'envers la communauté internationale, d'autant plus qu'elle se veut et doit être une Communauté de droit et qu'elle veut et doit jouer un rôle moteur pour le respect et la promotion des droits humains dans le monde. La Charte n'a de raison d'être que si elle est construite sur l'acquis international et l'acquis constitutionnel des États membres et développe ceux-ci. C'est aux valeurs et principes universels que se réfère l'article 6§1er du Traité UE. L'article Z, en sa teneur proposée, est aussi en ligne avec le principe communautaire et international selon lequel les dispositions communautaires et internationales contiennent des standards minima qui peuvent être dépassés par le droit national et ne peuvent en aucun cas servir d'excuse pour l'abaissement du niveau national de protection en vigueur. Voy. aussi article 137§5 du Traité CE.

Note: Nous venons de prendre connaissance, après la rédaction des dispositions ci-dessus, des nouvelles Propositions d'articles du Présidium (CONVENT 8). Nous nous félicitons que l'insertion d'une disposition spécifique sur l'égalité entre les femmes et les hommes y soit incluse, ce qui constitue un progrès par rapport au Projet de liste de droits fondamentaux (BODY 4). Cependant, pour les raisons indiquées dans la Note introductive ci-dessus (Nos 5-7) et notre Commentaire sous l'article 20 ci-dessus, nous considérons qu'il est nécessaire d'inclure dans la Charte une disposition encore plus spécifique et expresse, applicable dans tous les domaines de compétence de l'Union et de la Communauté, qui consolide et développe l'acquis communautaire et tienne compte des engagements internationaux des États membres, comme celle que nous proposons (article 20).

Par ailleurs, nous avons noté avec grand intérêt que la Convention se propose d'accorder une réflexion particulière au contenu de l'article sur le principe de la démocratie. Nous ne doutons pas que dans cet article sera explicitement proclamé qu'il n'est de démocratie véritable que paritaire.

En remerciant la Convention de son attention et en la félicitant de ses efforts pour promouvoir et garantir les droits fondamentaux, l'AFEM lui souhaite un bon aboutissement de ses travaux.

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ENTWURF DER CHARTA DER GRUNDRECHTE DER EUROPÄISCHEN UNION**fundamental.rights@consilium.eu.int**

Brüssel, den 14. März 2000**CHARTE 4159/00****CONTRIB 43****ÜBERMITTLUNGSVERMERK**

Betr.: Entwurf der Charta der Grundrechte der Europäischen Union

Finden Sie bitte anliegend einen Beitrag der Konrad-Adenauer-Stiftung zur EU-Grundrechtscharta.¹

¹ Dieser Text wurde nur in deutscher Sprache übermittelt.

Dr. Burkard Steppacher	FuB
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EU-Grundrechtscharta

Ziele – Methoden – Bewertung

Gliederung:

Zusammenfassung

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 4. Zusammensetzung des Gremiums und Arbeitsmethode
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-

Zusammenfassung

Zur Ausarbeitung einer „Charta der Grundrechte der Europäischen Union“ trat erstmals im Dezember 1999 in Brüssel ein 62köpfiges Gremium („Konvent“) zusammen, in dem Beauftragte der Staats- und Regierungschefs der EU sowie Mitglieder der nationalen Parlamente, der Europäischen Kommission und des Europäischen Parlaments vertreten sind. Auftrag des Gremiums ist es, einen Entwurf auszuarbeiten, der im Dezember 2000 (unter französischer EU-Präsi-dentschaft) feierlich proklamiert und gegebenenfalls in die EU-Verträge aufgenom-men werden soll.

Entscheidend für den Erfolg des Projektes wird es sein, a) eine inhaltlich glaubwürdige, das heißt nicht überzogene Grundrechtscharta zu erarbeiten, und dabei b) die Bürger in den Entstehungsprozeß stark einzubeziehen.

1. Zielsetzung

Krisen können Wendepunkte sein. In einer solchen Situation befand sich 1999 die Europäische Union. In der Folge der monatelangen Glaubwürdigkeitskrise der EU, die im Rücktritt der Santer-Kommission gipfelte, beschloß der Europäische Rat bei seiner Tagung in Köln am 3./4. Juni 1999, „daß es im gegenwärtigen Entwicklungsstand der Union“ erforderlich ist, eine Charta der Grundrechte zu erstellen.

Absicht dieses ambitionierten Projektes ist es, die Legitimität der Europäischen Union zu stärken. Der Rückgriff auf die bereits 1950 vom Europarat aufgelegte „Europäische Konvention zum Schutze der Menschenrechte und Grundfreiheiten (EMRK)“ genügt aus EU-Sicht offenkundig nicht mehr.

So wie die Mitgliedstaaten der EU in ihren Verfassungen eigenständige Grundrechtskataloge enthalten – und dies vom Ansatz her ja auch nicht mit der Mitgliedschaft im Europarat und dem Vorhandensein der EMRK kollidiert, so schlagen die Staats- und Regierungschefs der EU die Ausarbeitung einer speziellen Grundrechtscharta vor. Ziel ist es, die überragende Bedeutung der Grundrechte in der EU auch in einem Dokument der EU eigens herauszustellen.

Konkret sollen die auf der Ebene der Union im Primär- und Sekundärrecht geltenden Grundrechte sowie die wesentlichen Elemente der ständigen Rechtsprechung des Europäischen Gerichtshofs (EuGH) in einer Charta zusammengefaßt und dadurch „für die Unionsbürger sichtbarer“ gemacht werden.

2. Bisherige Rechtslage

Schon im Vertrag von Maastricht (1992: Art. F Abs. 2 EUV) verpflichtete sich die EU auf die Achtung der Grundrechte gemäß der Europäischen Konvention zum Schutze der Menschenrechte und Grundfreiheiten (EMRK) von 1950 und entsprechend der gemeinsamen Verfassungsüberlieferungen der Mitgliedstaaten.

In Amsterdam wurde dies 1997 konkretisiert, indem der neue Art. 6 EUV(ex-Art. F) festhält: „Die Union beruht auf den Grundsätzen der Freiheit, der Demokratie, der Achtung der Menschenrechte und Grundfreiheiten sowie der Rechtsstaatlichkeit; diese Grundsätze sind allen Mitgliedstaaten gemeinsam“.

Daß dies bereits heute schon auch die Mitgliedstaaten der EU verpflichtet, zeigen die Sanktionsmöglichkeiten des Art. 7 EUV, der in Amsterdam neu in das Unionsrecht aufgenommen wurde: „Auf Vorschlag eines Drittels der Mitgliedstaaten oder der Kommission und nach Zustimmung des Europäischen Parlaments kann der Rat, der in der Zusammensetzung der Staats- und Regierungschefs tagt, einstimmig feststellen, daß eine schwerwiegende und anhaltende Verletzung von in Artikel 6 Absatz 1 genannten Grundsätzen durch einen Mitgliedstaat vorliegt“. ¹ Wird unter diesen vertraglich klaren Voraussetzungen eine derartige Feststellung getroffen, so kann der Rat mit qualifizierter Mehrheit beschließen, bestimmte Rechte auszusetzen, die sich aus der Anwendung des Vertrags auf den betroffenen Mitgliedstaat herleiten, einschließlich des Stimmrechts im Rat (vgl. Art. 7 Abs. 2 EUV). Dabei muß der Rat allerdings die möglichen Auswirkungen einer solchen Aussetzung auf die Rechte und Pflichten natürlicher und juristischer Personen berücksichtigen.

Die Formulierungen des Art. 6 EUV gewährleisten allerdings keinen Individualschutz. Hier ist die bereits erwähnte Rechtsprechung des Europäischen Gerichtshofs von Bedeutung. In einer Vielzahl von EuGH-Urteilen wurde die Verpflichtung der EU zur Achtung der Grundrechte bestätigt und ausgeformt.

¹ Interessanterweise haben sich die Staats- und Regierungschefs der EU auch bei der prophylaktischen Androhung von Sanktionen (Erklärung der portugiesischen Ratspräsidentschaft vom 31.01.2000) im Falle einer mißliebigen österreichischen Regierungskoalition auf diese beiden EUV-Artikel berufen, was nicht nur in Österreich, sondern auch bei EU-Rechtsexperten heftig umstritten ist. Schon ein erster Blick zeigt aber, daß hier weder die materiellen, noch die formellen Voraussetzungen des Vorgehens korrekt waren.

3. Zu den Inhalten einer Grundrechtscharta

Wie umfassend und detailliert der Inhalt einer solchen „Charta der Grundrechte der Europäischen Union“ sein soll, ist umstritten. Zum Teil wird sogar die Notwendigkeit einer eigenständigen Kodifikation der Grundrechte überhaupt angezweifelt und auf das Vorhandensein der EMRK verwiesen, welche nach dieser Position ausreicht, um Grundrechtsschutz zu gewähren.

Nach Auffassung des Europäischen Rates allerdings soll die geplante „Charta der Grundrechte der Europäischen Union“ die Freiheits- und Gleichheitsrechte sowie die Verfahrensgrundrechte umfassen, wie sie in der EMRK und entsprechend der gemeinsamen Verfassungsüberlieferungen der Mitgliedstaaten bestehen. Darüber hinausgehend sollen in ihr die Grundrechte enthalten sein, die nur den Unionsbürgern zustehen (z.B. Niederlassungsrecht). In Köln haben die Staats- und Regierungschefs zudem beschlossen, daß bei der Ausarbeitung der Charta auch wirtschaftliche und soziale Rechte „zu berücksichtigen“ sind, wie sie in der Europäischen Sozialcharta und in der Gemeinschaftscharta der sozialen Grundrechte der Arbeitnehmer (vgl. Art. 136 EGV) enthalten sind.

Gerade die zuletzt genannten Punkte sind aber politisch sehr umstritten.

Letztlich steht das Projekt einer „Charta der Grundrechte der Europäischen Union“ vor der Frage, inwieweit als Ergebnis lediglich ein Minimalkonsens (*status quo*, oder eventuell ein *status quo minus*) vereinbart werden kann, ob eine sinnvolle Aktualisierung der heute verstreut vorhandenen Grundrechte in Frage kommt (z.B. Datenschutz, Recht auf Zugang zu Informationen etc.) oder ob – was problematisch wäre – im Rahmen von Kompromissen als Ergebnis die Summe aller potentiell Wünschbaren ins Haus stehen könnte.

4. Zusammensetzung des Gremiums und Arbeitsmethode

Bevor an die konkrete Arbeit gegangen werden konnte, mußte geklärt werden, „wer, was, zu welchem Ziel, in welcher Frist und mit welcher Methode“ in Angriff nehmen sollte. Anfänglich war heftig umstritten, ob das Gremium eher eine Art konventioneller Regierungskonferenz sein sollte und in welchem Umfang Mitglieder der nationalen Volksvertretungen und des Europäischen Parlaments im Gremium repräsentiert würden.

Der Europäische Rat legte schließlich fest, zur Ausarbeitung eines solchen Entwurfs einer „Charta der Grundrechte der Europäischen Union“ eine Ad-hoc-Instanz einzuberufen, die sich aus

Vertretern unterschiedlicher Institutionen zusammensetzt. Die Zusammensetzung dieses Gremiums, dessen Grundzüge bereits in Köln skizziert wurden, wurde auf der Tagung des Europäischen Rates am 15. und 16. Oktober 1999 in Tampere präzisiert.

Mitglieder des Gremiums

Das Gremium umfaßt 62 Mitglieder, die in vier Gruppen eingeteilt werden können:

- fünfzehn Beauftragte der Staats- und Regierungschefs der Mitgliedstaaten,*
- ein Beauftragter der Kommission,*
- sechzehn Mitglieder des Europäischen Parlaments,*
- dreißig Mitglieder der nationalen Parlamente.*

Die Mitglieder des Gremiums können sich im Verhinderungsfalle durch Stellvertreter vertreten lassen. (vgl. die Mitgliederliste im Anhang)

Von deutscher Seite sind Mitglieder des Gremiums Prof. Dr. Roman Herzog (Beauftragter der Bundesregierung); Prof. Dr. Jürgen Meyer, MdB (SPD) (Deutscher Bundestag); Peter Altmaier, MdB (CDU) (Stellvertreter); Jürgen Gnauck (Thüringen) (Bundesrat); Wolf Weber (Niedersachsen) (Bundesrat, Stellvertreter); Deutsche EP-Abgeordnete im Gremium sind: Ingo Friedrich (CSU/EVP), Hans-Peter Martin (SPD/SPE), Martin Schulz (SPD/SPE), Sylvia-Yvonne Kaufmann (PDS/KVEL/NGL) sowie Peter Michael Mombaur (CDU/EVP, Stellvertreter).

Die Beobachter

Es gibt vier Beobachter, und zwar zwei Vertreter des Gerichtshofs der Europäischen Gemeinschaften, die von diesem benannt werden, und zwei Vertreter des Europarates, darunter einer des Europäischen Gerichtshofs für Menschenrechte.

Zu hörende Einrichtungen der Europäischen Union

- Wirtschafts- und Sozialausschuß*
- Ausschuß der Regionen*
- Europäischer Bürgerbeauftragter*

Darüber hinaus können sonstige Gremien, gesellschaftliche Gruppen oder Sachverständige gehört werden (noch offen).

Der Europäische Rat hat in Tampere ferner vorgesehen, daß ein angemessener Gedankenaustausch des Gremiums oder seines Vorsitzenden mit den Beitrittsländern stattfinden soll.

Geklärt ist mittlerweile auch die Frage des Vorsitzes. Der Vorsitz rotiert nicht halbjährlich zwischen Vertretern aus den Staaten, die jeweils die EU-Ratspräsidenschaft innehaben, vielmehr hat sich der insbesondere vom Europäischen Parlament nachdrücklich vertretene Gedanke durchgesetzt, einen Vorsitzenden für die gesamte Wirkungsdauer aus der Mitte des Gremiums zu wählen, wodurch die Unabhängigkeit des Gremiums gegenüber dem Rat unterstrichen wird.

Bei der konstituierenden Sitzung des Gremiums am 17. Dezember 1999 wurde der ehemalige deutsche Bundespräsident Prof. Dr. Roman Herzog zum Vorsitzenden gewählt.

Als drei gleichberechtigte Stellvertreter wurden aus den drei großen Delegationen bestimmt:

- Gunnar Janson (Finnland) für die nationalen Parlamentsabgeordneten,
- Iñigo Mendez de Vigo (EVP, Spanien) für das Europäische Parlament sowie
- Pedro Bacelar de Vasconcellos (Portugal) als Beauftragter der EU-Präsidenschaft.

Der Vorsitzende und die Stellvertreter haben anschließend ein Arbeitsprogramm für das weitere Vorgehen entworfen, worüber bei der folgenden Plenarsitzung am 1./2. Februar 2000 beraten wurde. Zu klären waren Arbeitsmethode und Vorgehensweise einschließlich eines Zeitplans (*s. unten*). Entsprechend der Vorgaben des Europäischen Rates von Tampere kann das Gremium Ad-hoc-Arbeitsgruppen einsetzen, die allen Mitgliedern des Gremiums offenstehen.

Koordiniert werden diese Arbeiten durch einen *Redaktionsausschuß*, der sich aus dem Vorsitzenden, den drei stellvertretenden Vorsitzenden sowie dem Vertreter der Kommission zusammensetzt und der vom Generalsekretariat des Rates unterstützt wird.

5. **Transparenz und Öffentlichkeit**

Anders als bei Regierungskonferenzen oder Ausschuarbeiten wird die Ausarbeitung der Charta völlig transparent sein: Grundsätzlich sollen die Sitzungen des Gremiums und die in diesen Sitzungen vorgelegten Dokumente der Öffentlichkeit zugänglich sein.

Damit sich die interessierte europäische Öffentlichkeit ein aktuelles Bild von den Arbeiten an der Grundrechtscharta machen kann, wurde zur Umsetzung des Transparenzgrundsatzes eine eigene *Internet-Website* eingerichtet. Die Website, die in allen elf Amtssprachen angeboten wird, soll die Öffentlichkeit über den Zeitplan und den Inhalt der Beratungen des Gremiums informieren, ihr alle im Verlauf der Erörterungen des Gremiums vorgelegten Dokumente zugänglich machen sowie alle

von außerhalb vorgelegten Beiträge, die dem Gremium unterbreitet werden, aufnehmen und einordnen. Die Adresse lautet < <http://db.consilium.eu.int/df/> > .

Ebenso wurde für externe Nutzer eine *spezielle E-mail-Adresse* zur Verfügung gestellt, über die eine Kontaktaufnahme mit dem Gremium möglich ist:

< fundamental.rights@consilium.eu.int >. Auf der Website befinden sich spezielle Angaben über die Form von Dokumenten und zur Dokumentensuche.

6. Zeitplan

Nach den Plenarsitzungen vom 17.12.1999 und 1./2.2.2000 wird das Gremium am 21./22.3. und 5./6.6.2000 erneut in Brüssel gesamthaft zusammentreten. Ab Ende Februar finden zum Teil in ein- bis zweiwöchigen Abständen im Parlaments- und im Ratsgebäude Arbeitstreffen statt.

Auf der Grundlage des Arbeitsplans und unter Berücksichtigung der Formulierungsvorschläge der Mitglieder soll der Redaktionsausschuß noch vor der Sommerpause 2000 einen ersten Entwurf der Charta erstellen, die dann bis Oktober überarbeitet und dem Europäischen Rat übergeben werden kann (vgl. den *Zeitplan im Anhang*).

In welcher Form das Gremium selbst letztlich über den Entwurf befinden wird (z.B. die Frage einer qualifizierten Abstimmungs Mehrheit bei der Schlußabstimmung), ist gegenwärtig noch nicht entschieden.

7. Bewertung des Vorhabens

Im derzeitigen Anfangsstadium der Arbeiten kann noch wenig über die *inhaltlichen Ergebnisse* gesprochen werden. Allerdings lassen die heute bekannten und in mancher Hinsicht recht detailverliebten Vorschläge für die Grundrechtscharta befürchten, daß die Charta inhaltlich überfrachtet werden könnte. Schon der Auftrag des Kölner Gipfels war zu weit gefaßt. Es kann nicht jeder Wunsch und jede Forderung zu einem EU-Grundrecht werden.

Noch nicht abschließend geklärt ist die Frage, ob der auszuarbeitende Entwurf tatsächlich ein justitierbarer Rechtstext werden soll oder ob er – wegen der zu befürchtenden Aufblähung – eine letztlich unverbindliche politische Erklärung wird. Wenn das Ziel, die Grundrechte in der Union zusammenzufassen und dadurch „für die Unionsbürger sichtbarer“ zumachen, aber ernst gemeint

ist, dürfen sich die Arbeiten nicht darauf beschränken, eine Art „Werbefroschüre für Europa“ zu produzieren.

Das weitere Vorgehen ist noch offen: In den Schlußfolgerungen des Europäischen Rates von Köln wird der Entwurf als Grundlage für eine „feierlich zu proklamierende“ interinstitutionelle Erklärung zwischen Rat, Parlament und Kommission eingestuft, wobei „im Anschluß daran geprüft“ wird, „ob und gegebenenfalls auf welche Weise“ der Text in die Verträge aufgenommen werden kann. Wenn beabsichtigt ist, die Charta als Rechtstext in die Verträge (bzw. konkret in den EU-Vertrag) aufzunehmen, müssen aber die Arbeiten im Gremium entsprechend gestaltet und daraufhin konzentriert werden. Die Entscheidung darüber kann nicht bis Herbst aufbewahrt werden.

Die *Zusammensetzung des Gremiums* ist ein innovativer Schritt. Anders als bei früheren Reformkonferenzen sind hier die zentralen Akteure in der EU und ihren Mitgliedstaaten vertreten, so daß das Gremium einen recht hohen Grad an Repräsentativität besitzt. Insofern besteht die Chance, daß mögliche Ergebnisse nicht schon im Vorhinein in Frage gestellt und zerredet werden. Es wird zu prüfen sein, inwieweit diese Zusammensetzung modellhaft für künftige Reformkonferenzen sein kann.

Positiv ist der Ansatz, die *Öffentlichkeit* umfassend über die Tätigkeiten zu informieren und den Bürgern und gesellschaftlichen Gruppen über das Internet die Möglichkeit der Einbindung in die Arbeiten zu geben. Von entscheidender Wichtigkeit für den Erfolg des Projektes wird es aber sein, ob und wie die Politiker das Thema in der Öffentlichkeit vermitteln.

Problematisch ist nicht zuletzt der *Zeitdruck*, unter dem das Vorhaben steht. Es stellt sich die Frage, ob die Qualität des ambitionierten Vorhabens dadurch nicht leiden könnte. Allerdings bietet der knappe Zeitrahmen auch die Chance, sich auf das Wesentliche zu beschränken.

Das Vorhaben der Ausarbeitung einer „Charta der Grundrechte der Europäischen Union“ steht in engem Zusammenhang mit der ebenfalls in diesem Jahr aus-zuarbeitenden institutionellen Reform des EU-Rechts. Zu bedauern ist, daß keine personelle und inhaltliche Verknüpfung beider Projekte vorgenommen wurde. Beide Vorhaben sind ein Beitrag zur Reform der bereits bestehenden, aber fragmentierten Verfassung der Europäischen Union.

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE**fundamental.rights@consilium.eu.int**

Bruxelles, le 14 mars 2000**CHARTE 4161/00****CONTRIB 45****NOTE DE TRANSMISSION**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne

Veillez trouver ci-après une contribution du Conseil Central des Communautés Philosophiques non Confessionnelles de Belgique (CCL-CVR) ^{1 2}

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² Ce texte a été soumis uniquement en langue française.

Contribution du CCL-CVR à la Charte des droits fondamentaux

Vocation humaniste de l'Europe

En Europe ont convergé les apports de divers courants de sensibilité et de pensée. L'humanisme est fait de toutes les valeurs qui ont germé dans ces différentes cultures. De nombreux courants ont contribué d'une manière ou d'une autre à la formation de l'humanisme moderne : certes, ils ont également recelé des tendances anti-humanistes et ont pu entrer parfois en contradiction les uns avec les autres.

On peut retenir les principales valeurs constitutives de l'humanisme, dont l'Europe a été le creuset. Tout d'abord, au-delà de toutes distinctions ou situations, la dignité égale de toute personne humaine, d'où découlent la liberté et la justice comme exigences indivisibles et universelles. Cette valeur inconditionnelle, irréductible, doit être affirmée comme présumé incontournable. Il s'agit là d'un sentiment commun, d'une conviction, qui se sont progressivement imposés au cours de l'histoire, et qui marquent chaque homme, quelles que soient les motivations diverses dont on les étaye.

La reconnaissance de l'égalité de dignité de toute personne humaine, femme ou homme, induit un type de société qui permet et favorise la dimension foncièrement relationnelle de la liberté humaine. Même régulée par des lois, d'ailleurs en constant remaniement, cette société doit s'ouvrir à la possibilité de transgressions responsables car celles-ci sont le ferment indispensable d'autonomie personnelle et de progrès des institutions.

La conscience de la fragilité de tout système suscite des structures ouvertes aptes à l'écoute, au dialogue, au changement. D'où le refus de tout "intégrisme" et la capacité d'intégrer du nouveau. Cette mémoire, qui confère à l'Europe une chance et une responsabilité spécifiques, doit cependant nous rappeler aussi les dérives particulièrement graves dont elle porte le poids.

Le brassage des cultures qui a fait l'identité européenne et sa richesse impose aux gouvernants et aux citoyens de l'Europe un devoir d'ouverture et d'acceptation de la diversité. Enfin, les valeurs de tolérance et d'humanisme qui constituent le patrimoine commun et le ciment de l'Europe moderne, au-delà des différences nationales, régionales ou traditionnelles implique dans le chef de toute autorité publique une rigoureuse impartialité à l'égard de toutes les conceptions philosophiques ou religieuses et la garantie de l'indépendance de la sphère privée des citoyens en matière d'option confessionnelle ou non confessionnelle.

Les valeurs communes européennes exigent de toutes les institutions publiques, celles de l'Union et celles des Etats, un rigoureux devoir d'impartialité et la garantie de la dignité des personnes et des droits humains.

Par leur adhésion aux différents traités et à l'Union, les Etats membres garantissent en leur nom et au nom des institutions européennes l'égalité de tous devant la loi sans distinction de sexe, d'origine, de culture, de conviction ou de choix de vie.

Relations de l'Union européenne avec les Églises

Sous "l'Ancien Régime", les Églises (le plus fréquemment seule l'Église de la religion dominante) intervenaient dans les affaires de la Cité.

Actuellement les Églises se considèrent toujours comme porte-parole de valeurs, de normes et de règles de vie que tous les citoyens sont censés partager. On constate que des fidèles, de plus en plus nombreux et même ceux d'entre eux qui recourent à des cérémonies religieuses, ne suivent plus les mots d'ordre de leur Église et souvent contestent ceux-ci en de nombreuses matières.

Les Églises ne sont plus représentatives de l'ensemble de leurs fidèles et certainement pas de l'ensemble des citoyens dont un nombre de plus en plus important n'adhère plus à aucune Église. Il faut remarquer que plusieurs d'entre elles sont organisées de manière non démocratique.

Le cas de l'Église catholique est particulier car elle a la possibilité d'intervenir par le biais de l'État du Saint Siège, État lequel n'a pas adhéré et n'est pas en condition d'adhérer à la Convention européenne des droits de l'Homme.

Une charte des droits fondamentaux doit affirmer la laïcité des institutions européennes et le principe d'impartialité qui implique qu'aucune conception religieuse ou philosophique particulière ne peut bénéficier d'un traitement privilégié (ce qui implique notamment le retrait du statut d'observateur et des privilèges diplomatiques accordés à un Etat sans peuple, tel le Vatican.)

Aucune scorie de l'histoire ne peut plus justifier l'ingérence d'une autorité religieuse, quelle qu'elle soit, dans les affaires publiques de l'Union ou des Etats membres.

Une charte des droits fondamentaux doit relever qu'au même titre que tout autre groupe de pression ou tout mouvement associatif les Eglises peuvent être entendues par les autorités publiques de l'Union ou des Etats membres, mais que ces consultations éventuelles ne peuvent être institutionnalisées, ni donner l'apparence d'une confessionnalisation de l'Europe ou d'un Etat membre, en contradiction avec l'idéal démocratique.

Une charte des droits fondamentaux doit faire référence à la liberté religieuse garantie, notamment par la Convention européenne de sauvegarde des droits de l'Homme et par les Constitutions nationales des États membres de l'Union. La charte doit préciser que cette liberté essentielle instituée au bénéfice des personnes de toutes convictions, confessionnelles et non confessionnelles ne confère aucun privilège aux institutions religieuses, entièrement soumises à la loi commune. La charte doit aussi rappeler qu'aucune prescription religieuse ne peut avoir d'effet contraignant sous l'angle de la loi civile et que la force publique ne peut en aucune hypothèse y prêter main forte.

Neutralité des pouvoirs publics

L'acceptation du pluralisme induit une ouverture, une pratique de la tolérance à l'égard de la personne d'autrui et une stricte neutralité des pouvoirs publics des États et de l'Union à l'égard de toutes les convictions religieuses et philosophiques.

Pour autant que les fondements de la démocratie soient respectés, le principe de la séparation des Églises et de l'État implique:

- 1° la non-ingérence de toute organisation religieuse ou philosophique non confessionnelle dans les affaires des États et de l'Union.
- 2° la non-ingérence des États et de l'Union dans les affaires de toute organisation religieuse ou philosophique non confessionnelle. Un État se garde d'intervenir dans leur organisation interne, dans la définition de leurs positions éthiques ou encore dans la nomination de leurs représentants;
- 3° la garantie par les États et l'Union de la sphère d'autonomie de chaque individu quant à ses conceptions philosophiques ou religieuses;
- 4° dans le cas où les États et l'Union financent les organisations religieuses ou philosophiques non confessionnelles, ce financement doit répondre aux critères d'équité, de transparence et de démocratie interne de l'organisation subsidiée.
- 5° l'abandon par les États et l'Union de toutes les pratiques de participation à des cérémonies religieuses officielles ou encore l'attribution de places privilégiées aux représentants d'un seul culte qui tendent à présenter de facto le culte majoritaire comme religion d'État.

Dispositions établissant les relations entre les personnes morales de droit public et les organisations ou communautés religieuses ou philosophiques non confessionnelles.

Article 1er

Les prescriptions religieuses ne peuvent faire obstacle à la pleine jouissance et au plein exercice des droits civils et politiques. Elles ne peuvent davantage dispenser du respect de ces droits. Aucune prescription religieuse ne peut être retenue comme cause de justification, cause d'excuse ou de circonstance atténuante d'une infraction pénale.

Article 2

Les personnes morales de droit public ne peuvent, directement ou indirectement, organiser de cérémonies officielles qui font référence, notamment par des circonstances de temps ou de lieu, à une conception philosophique confessionnelle ou non confessionnelle.

Article 3

Les protocoles des pouvoirs publics donnent, de plein droit, la préséance aux corps constitués et aux autorités civiles. S'il y a lieu, ils attribuent aux représentants des organisations et communautés philosophiques ou religieuses un même rang protocolaire. Le titre de doyen du corps diplomatique est reconnu au diplomate, chef de corps accrédité, le plus ancien dans la fonction.

Article 4

Aucun bien meuble ou immeuble affecté à un service public ne peut contenir ou être orné de signe ou d'objet quelconque caractéristique d'une conception religieuse ou philosophique. Cette disposition ne concerne pas les signes ou objets exposés dans les musées ou expositions ou intégrés à des monuments et sites classés.

Respect de la personne et de la dignité humaine

La charte de droits fondamentaux devrait, sur ces questions, demeurer très générale.

La référence au respect de la personne et de la dignité humaine, s'appliquant aux questions éthiques, est très largement dépendante de l'état des connaissances scientifiques, à un moment déterminé, sur la question envisagée.

C'est la raison pour laquelle la Convention dite de biomédecine du Conseil de l'Europe prévoit une révision à intervalles réguliers. Même si une part de l'objectif de l'établissement d'une charte des droits fondamentaux peut être de rassurer des citoyens, il ne serait pas raisonnable d'inclure dans celle-ci des matières aussi sujettes à évolution que les tests génétiques, les pratiques de clonage ou de recherche sur embryons, pour ne citer que celles là.

Il convient de faire observer que les interdictions de recherches sont en contradiction avec la "*liberté de recherche scientifique*" qu'une charte européenne se doit de proclamer comme faisant partie de la grande tradition et du fonds commun de l'héritage européen.

La formule alternative de l'article 2 §2 telle qu'elle est proposée par le Présidium dans le document du 15 février 2000 paraît donc inappropriée alors que la formulation première, très générale, garde toute son importance: "*nul ne peut être soumis à la torture, ni à des peines ou traitements inhumains ou dégradants*".

D'autre part, la charte devrait prévoir d'assurer *la dignité de la personne dans les conditions de travail*.

Liberté d'expression

Toute personne a droit à la liberté d'expression. *Ce droit ne peut être limité par des considérations d'ordre politique ou religieux.*

Non discrimination

En complément des dispositions de l'article 13 (ex 6 A) du Traité de l'Union, il y aurait lieu d'ajouter dans la charte à l'article 19 § 1 de la proposition du Présidium:

La non discrimination entre les sexes comporte l'égalité entre les hommes et les femmes à l'accès aux charges publiques et privées et à la protection sociale.

Droit à l'éducation

Toute personne a droit à l'éducation.

1- Ce droit ne comporte pas l'obligation des pouvoirs publics de subventionner un enseignement autre qu'un enseignement ouvert à tous, en dehors de toute référence politique et religieuse. Les Pouvoirs publics ne peuvent imposer un enseignement religieux.

2- Les parents ont le droit d'assurer l'éducation religieuse ou philosophique de leurs enfants conformément à leurs convictions, dans un système éducatif visant à former des citoyens responsables, capables de contribuer au développement d'une société démocratique, solidaire, pluraliste et ouverte aux autres cultures.

Justificatif

La liberté de choix des parents ne peut avoir pour conséquence le renforcement de tendances anti-démocratiques ou intolérantes.

Commentaires

- 1- Pour éviter toute confusion ou reconnaître d'emblée qu'un enseignement de caractère confessionnel peut évidemment s'inscrire avec ses références philosophiques ou religieuses dans les objectifs visés ici, il suffit qu'il reconnaisse que d'autres valeurs, d'autres références sont aussi légitimes dans une société que celles qu'il a lui-même retenues.
- 2- Dans un tel système éducatif, les élèves y sont formés à reconnaître la pluralité des valeurs qui constituent l'humanisme. En ce sens, il fournit aux jeunes les éléments d'information qui contribuent au développement libre et graduel de leur personnalité et qui leur permette de comprendre les options différentes ou divergentes qui constituent l'opinion.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

**Brussels, 15 March 2000 (16.03)
(OR. fr)****CHARTE 4162/00****CONTRIB 46****COVER NOTE**

Subject : Draft Charter of fundamental rights of the European Union

Please find attached a contribution from the Federation of Catholic Family Associations in Europe.¹

¹ Text supplied in French, German and English.

PROJECT FOR THE CHART OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

CONTRIBUTION OF THE FEDERATION OF CATHOLIC FAMILY ASSOCIATIONS IN EUROPE

Paris March 7th 2000

The Federation of Catholic Family Associations in Europe groups numerous national family associations originating in divers European countries. It represents 5,5 million European families, or about 25 million persons.

Strengthened by this mandate and conscious of the importance of the future European Chart of Fundamental Rights, we intend to submit the fruit of our experience to your reflection.

EXPOSURE OF MOTIVES

The Federation of Catholic Family Associations in Europe supports the reflection being currently devoted by the European Union to the elaboration of a Chart of Fundamental Rights conform to the conclusions formulated by the presidency at the European Councils of Cologne and Tampere. However, it is not the object of the FCFAE to take a stand on the constraining character of this Chart or on the rapport of jurisdictions between the European Court of Justice and the European Court on Human Rights.

The Federation of Catholic Family Associations in Europe,

- **Rejoicing** that fundamental rights have benefited from constant attention on behalf of the European Court of Justice as well as the Council of Ministers,
- **Concerned** the European fundamental rights remain faithful to their philosophical and religious foundation, notably by a just understanding of the dignity of the human person and his life environment,
- **Considering** the Universal Declaration of Human Rights proclaimed by the United Nations' General Assembly of 10 December 1948, in particular Article 1 (*All human beings are born free and equal in dignity and in rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.*)
- **Considering** the European Convention of the Protection of the Human Rights and Fundamental Liberties, adopted by the Council of Europe on the 4 November 1950, and in particular its Articles 8 and 12,

- **Considering** the revised European Social Chart, adopted by the Council of Europe on the 3 May 1996, and in particular its Articles 16, 17 and 19,
- **Considering** the principle of subsidiarity of citizens, families, cities, regions, nations and States, which implies the respect of the national and the regional laws of the member countries and the candidate countries,
- **Considering** that there are fundamental duties which correspond to fundamental rights
- **Reminding all** that the family, the community of the life of a man and a woman, founded upon the stable public engagement of marriage and open to life, structures society and assures its cohesion, and that it is the only social cell capable of transmitting life, all the while offering to the child an adapted educative milieu, and that the family consequently merits having its' legal recognition, protection and promotion reinforced within the fundamental rights .
- **Considering** that child's rights, and notably as they are guaranteed on the international level by the United Nations Convention on Child's Rights of 1989, are an integral part of fundamental rights, and in particular in its preamble and its Articles 5 and 18,
- **Reiterating** that the first right of a child is that of a "protected childhood" within the heart of a stable family and that law must favor this protection and stability,
- **Concerned** that the contribution of families to the economic activity of the European Union, and that their importance as a factor of growth as investors, educators and consumers be justly appreciated,
- **Desirous** that particular attention be accorded to the educative tasks accomplished within the heart of the family, and that the family's irreplaceable value on the human, social, cultural, as well as economic levels, be taken into account,

The Federation of Catholic Family Associations in Europe insists that the following rights be guaranteed within the framework of the Chart of Fundamental Rights of the European Union.

RESOLUTION

The first human right is the right to life. The respect of human life extends to all ages of life, whatever may be the state of health of the person.

The right to contract a marriage, as the union of a man and a woman, and the right to found a family must be recognized, if the future spouses have reached the required age and unite the conditions demanded in this case by national laws, to the extent that these laws do not conflict with the fundamental principles established in the present chart. The marriage can only be contracted with the free and full consent of the future spouses.

The family is the natural and fundamental element of society. It has the right to specific economic, juridical and social protection, notably by the means of social and family benefits, by fiscal measures, by the encouragement to build lodgings adapted to the needs of families, by help given to young households, and by all and any other appropriate measures.

Every child has the right to be raised by its natural or adoptive parents. The European Union will respect the right of parents to assure the education of their children conform to their religious and philosophical convictions.

Migrant families have the right to the same social protection as that accorded to other families.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

fundamental.rights@consilium.eu.int

Brussels, 15 March 2000

CHARTE 4163/00

CONTRIB 47

COVER NOTE

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a Memorandum of the Dutch Standing Committee of experts on international immigration, refugee and criminal law, written as evidence for the inquiry of the European Communities Committee Sub-Committee E (Law and Institutions) of the House of Lords of the United Kingdom. ^{1 2}

¹ Dutch Standing Committee of experts on international immigration, refugee and criminal law: P.O. Box 201, 3500 AE Utrecht, the Netherlands. Tel: + 31-30 297 4328.

Fax: +31-30 296 0050. E-mail: cie.meijers@forum.imo.nl

² This text has been submitted in English only.

**MEMORANDUM ON THE EU CHARTER OF FUNDAMENTAL RIGHTS
BY
THE STANDING COMMITTEE OF EXPERTS
ON INTERNATIONAL IMMIGRATION, REFUGEE AND CRIMINAL LAW**

for the European Communities Committee
Sub-Committee E (Law and Institutions)
of the House of Lords

February 2000

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**MEMORANDUM ON THE EU CHARTER OF FUNDAMENTAL RIGHTS
BY
THE STANDING COMMITTEE OF EXPERTS
ON INTERNATIONAL IMMIGRATION, REFUGEE AND CRIMINAL LAW**

1. Introduction

The Standing Committee of Experts on International Immigration, Refugee and Criminal Law is pleased to give evidence to Sub-Committee E of the House of Lords on the important subject of the EU Charter of Fundamental Rights. We welcome inquiries in national parliaments in advance of decision-making which can contribute to proper deliberation in a public forum on a controversial initiative to adopt a Charter by the end of the current IGC. We would bring to the Sub-Committee's attention the fact that a similar initiative was undertaken by the Dutch members of the 'Convention' preparing the EU Charter. Several members of our Committee have actively participated in the hearing organized in The Hague, in order to assist the Dutch representatives in the process of assessing the Charter's potential implications.¹

In our opinion, the proposed EU Charter raises difficult legal questions as to how precisely it must be positioned within the legal order of the European Union, its precise scope, what its relationship will be with other international systems of human rights protection, in particular that of the European Convention on Human Rights, and how the substantive rights it confers can be enforced and applied in practice.

One of the main avowed purposes of this EU Charter is the political drive to appear to do something concrete for the citizen in the EU, something he or she can directly relate to. The question is of course whether a non-binding declaration of existing fundamental rights without a specific means of redress will indeed fulfil the function of doing something that the citizen can as such directly relate to in the context of the EU. Another purpose must be, in the light of recent fraud and corruption scandals at the level of the EU, to address concerns about the lack of accountability of EU institutions as actors in the political and administrative decision-making process. The idea presumably is in this context that by providing a visible focus of the fundamental rights context within which these institutions operate the citizen will recover confidence in the EU integration process as a whole. Finally there is the related wish to codify in the context of the text of the EU Treaties themselves a list of the applicable fundamental rights provisions in the application of Community and or Union law. This would address concerns about the current structural lack of transparency of the system of fundamental rights protection which essentially relies upon the role of the Court of Justice in Luxembourg in "discovering", interpreting and applying these norms. It is of course impossible for the citizen to understand at present how precisely the provisions at national level, in the European Convention on Human Rights and the Court's case-law interact nor what the practical consequences of such interaction might be.

¹ Public hearing of 21 February 2000, written report not yet available.

Memorandum on the EU Charter

But do we really need another charter at the international level in order to fulfil these functions? Is the risk not that an additional “Charter of Human Rights” at the European level will not only threaten to undermine the position of the European Convention on Human Rights but would also considerably add to the fragmentation of human rights protection at the international level?

We have in particular been asked for our views on the need for and the status, scope and content of the EU Charter and we address each of these issues in turn.

2. The Need for an EU Human Rights Charter

The epicenter of human rights *protection* in Europe is without doubt the European Convention on Human Rights (ECHR) and the supervisory system it sets in place. The ECHR was drafted on the presumption that all implementation and applicability of the law is the responsibility of a single (clearly identified) state². The question arose decades ago with regard to the European Community, that since the Community is itself not a party to the ECHR, does that imply that, by transferring power to the Communities, it was possible for the Member States to *de facto* deprive their citizens from the very protection previously enjoyed by virtue both of the terms of the ECHR itself (as well as by virtue of their national constitutions)? The answer by now is well known and national constitutional courts, the Court of Justice and the supervisory organs in Strasbourg all ultimately adopted a tandem approach accepting the pivotal (and exclusive) role of the Court of Justice in ensuring the protection of human rights within the scope of Community law as a specific instance of a "general principle" of Community law.

The Court of Justice, in the absence of any express provision in the Treaties themselves, "incorporated" in a certain sense the provisions of the ECHR as well as principles gleaned from the constitutional traditions of the Member States into the Community legal order. The Court thereby successfully fought off the threat posed by rebellious constitutional courts in various Member States as well as the risk that the Strasbourg organs would assume human rights jurisdiction over matters falling within the scope of Community law. Measures incompatible with fundamental human rights were deemed to be unacceptable and judicial protection of those rights took root in the Community legal order. Respect for human rights became a condition of the lawfulness of *Community* acts and is supervised by the Court of Justice itself. In addition, *national* acts or measures in so far as they have effects falling within the scope of Community will also be scrutinized for their compatibility with the human rights norms developed by the Court of Justice.

As is well known the European Commission on Human Rights responded to the Court of Justice's established line of case law by asserting that it had no jurisdiction in actions brought by private individuals directly or indirectly against the European Communities. One of the major factors in prompting this reply by the European Commission on Human Rights was the protection provided by the Court of Justice in the Community legal system.³

² See Article 25 of the original version of the Convention: "The Commission may receive petitions...claiming to be a violation by one of the High Contracting Parties..." (*cf.* Article 34 of the Convention as amended by Protocol No. 11).

³ See the decisions of 10 July 1978, *CFDT v. European Communities*, No. 8030/77, DR 13, p. 231; of 19 January 1989, *Dufay v. European Communities*, No. 13539/88 and of 9 February 1990, *M and Co v. Federal Republic of Germany*, No. 13258/87, DR 64, p. 138.

Memorandum on the EU Charter

Over the years however much criticism has been voiced as to the approach of the Court of Justice in this regard. The criticism ranged from worry as to the possibility that the two courts in question (Strasbourg and Luxembourg) could give divergent interpretations of the same provision of the ECHR despite the so-called “incorporation” of the ECHR into the Community legal order⁴ to the more aggressive accusation that the Court of Justice did not take human rights seriously.⁵ The complexity and unclear nature of the institutional system for the individuals affected (Strasbourg incorporated in Luxembourg and applied by the Luxembourg judges but only within the scope of application of Community law) was also emphasized.⁶

In these circumstances the possibility of the Community simply acceding as such to the ECHR has featured prominently over the years in institutional debates about the reform of the EC. Indeed, it has long been assumed that accession by the EC to the ECHR would be the best way forward, both symbolically but also in terms of ensuring control by an *external* judge.⁷ The accession option became however much more unlikely since the Court of Justice's opinion to the effect that the Community did not currently possess the legal capacity to accede, largely on institutional-technical grounds.⁸ What seems to have *sotte voce* been a key consideration was the fact that upon accession the Strasbourg Court would have had the last word on human rights matters and that this might prove incompatible with the Court of Justice's perception of the entire system of EU judicial remedies.

In our view the key problem in the current approach to human rights protection at the EU level is *the lack of structural visibility* of fundamental rights in the legal order of the European Union. It can reasonably be argued that fundamental rights can only fulfil their function if both legislators and citizens are aware of their existence. When drafting legislation, decision makers should be guided by an authoritative set of basic rights and fundamental freedoms which form the foundations of their society; individuals should be conscious of their ability to enforce these rights. It is consequently crucial to express and present fundamental rights in a way that permits the individual to know and access them: fundamental rights must be visible. It is in this regard in particular that the current regulation of human rights in the EU legal order falls short. Fundamental rights are not elaborated in the text of the EU Treaties as such, with a few almost haphazard exceptions (right of access to information, right of non-discrimination and right to equal pay). This makes it extremely difficult for both the Community legislator and the individual to know in a structured fashion what rights are entitled to protection in the Community legal order and by what means they are to be enforced.

⁴ See, for example, R. Lawson, “Confusion and Conflict? Diverging Interpretations of the European Convention on Human Rights in Strasbourg and Luxembourg” in R. Lawson and M. de Blois (eds.) *The Dynamics of the Protection of Human Rights in Europe. Essays in Honour of H.G.Schermers*, Vol. III, (Dordrecht, 1994), p. 219-252.

⁵ See, J. Coppel and A. O’Neill, “The European Court of Justice: Taking Rights Seriously?” 29 CML Rev. (1992), p. 669-692.

⁶ See, A. Clapham, “A human rights policy for the European Community” in *Yearbook of European Law*, vol. 10 (1990), p. 309-366.

⁷ See, for example, the President of the Court of Justice himself, Rodriguez Iglesias, in: *The protection of fundamental rights in the case law of the Court of Justice of the European Community*, *Columbia Journal of European Law*, 1 (1995) p. 169.

⁸ See, Opinion 2/94 of 28 march 1996, ECR 1996, pp. I-1759. See for further comments N. Burrows, *Question of Community Accession to the European Convention Determined*, E.L. Rev. 22 (1997), pp. 58-63; G. Gaja, *ECJ-Opinion 2/94: Accession by the EC to the ECHR*, CMLR 33 (1996), pp. 973-989; T. Jaag, *Beitritt der EG zur EMRK?*, Aktuelle Juristische Praxis 5 (1996), pp. 980-984; S. O’Leary, *Accession by the European Community to the European Convention on Human Rights - The Opinion of the EJC*, EHRLR (1996), pp. 362-377; H.G. Schermers, *Toetreding van de EG tot het EVRM: Het Hof van Justitie adviseert*, NJCM-Bulletin 21 (1996), pp. 874-883; C. Vedder, *Anmerkung zum Gutachten 2/94, EMRK, des EuGH*, EuR 31 (1996), pp. 309-319; P. Wachsmann, *L’avis 2/94 de la Cour de justice relatif à l’adhésion de la Communauté européenne à la Convention de sauvegarde des droits de l’homme et des libertés fondamentales*, RTD eur. 32 (1996), pp. 467-491.

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This structural invisibility was only rectified to a limited extent in the Treaty of Amsterdam. That Treaty essentially affirmed the practice of the Court by providing that the Union “shall respect fundamental rights, as guaranteed by the European Convention [on Human Rights] ... and as they result from the constitutional traditions common to the Member States, as general principles of Community law”. This approach displays once more the uncertain status of fundamental rights in the Community legal order: they are to be qualified as “general principles” of Community law, on a par with other judicially developed general principles such as the principle of proportionality and the principle of legitimate expectations but with no clear hierarchy in the Community legal system. Moreover it is clear from the wording used that the provisions of the ECHR are not binding as such but rather a source of inspiration for the Court alongside the national constitutional traditions in working out what are the applicable standards at the Community level.

At the last IGC, the Dutch Addendum to the Dublin Draft Treaty involved the reinforcement of the role of the Court of Justice in the protection of human rights within the European Union. It entailed the amendment of the EU Treaty so that the EU would be *bound* by the terms of the ECHR as such and not merely as discretionary elements of the “general principles” of Community law (the current situation). This would have involved some alteration of what the late Federico Mancini famously termed the ECJ’s “genetic code”⁹. Instead the Amsterdam treaty in its final form rather more weakly provided that its terms must be “guaranteed” as “general principles of law” which represented essentially the *status quo*. Experience has shown that this does not mean that the provisions of the ECHR are binding as such and without further ado in the Union legal system but rather that due account is taken of the provisions and the interpretation given by the Strasbourg supervisory organs without interfering with the discretion of the ECJ in the final instance.

The fact that this discretion may indeed involve the ECJ explicitly departing from the interpretation of the Strasbourg Court on a provision of the ECHR has recently been explicitly confirmed by the ECJ itself. In the *Emesa* case the applicant, who was litigating before the ECJ, sought leave to submit observations in response to the Opinion of the Advocate General. In this connection the applicant relied on well-established case-law of the European Court of Human Rights, according to which the right to adversarial proceedings entails that the parties to a criminal or civil trial must have the opportunity to have knowledge of and comment on all evidence adduced or observations filed, including the submissions of the Advocate General before the highest national jurisdictions.¹⁰ The ECJ, however, rejected this argument, concluding that the

“case-law of the European Court of Human Rights does not appear to be transposable to the Opinion of the Court’s Advocates General”.¹¹

Of course, one may share the ECJ’s analysis or disagree – but the point is that the ECJ’s ruling cannot be reviewed by the organ specifically charged with the interpretation and application of the ECHR: the European Court of Human Rights.

⁹ F. Mancini and D. Keeling, “Language, Culture and Politics in the Life of the European Court of Justice”, *Columbia Journal of European Law* 1 (1995), p. 397.

¹⁰ See, *inter alia*, the judgments of: 20 February 1996 in *Vermeulen v Belgium* (Reports of Judgments and Decisions, 1996, p. 224); 20 February 1996 in *Lobo Machado v Portugal*, Reports 1996, p. 195); 25 June 1997 in *Van Orshoven v Belgium*, Reports 1997, p. 1040); 27 March 1998 in *J.J. and K.D.B. v Netherlands*, Reports 1998, pp. 604 and 621); and most recently 8 February 2000, *Voisine v France* (n.y.r.), paragraph 30.

¹¹ Case C-17/98, *Emesa Sugar (Free Zone) NV v. Aruba*, judgement of 4 February 2000.

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At any rate it seems safe to say that the ECJ is not applying the terms of the ECHR as interpreted by the Strasbourg Court, but rather that it enjoys considerable discretion with regard to its formulation of the general principles within the Community legal order.¹² This reinforces in our view the need to reinforce the structural visibility of the substantive rights applicable in the EC/EU context. In this sense one can speak of a “need” to formulate and adopt an EU Charter.

At the same time the *status quo* has changed in Strasbourg too since *Matthews v. United Kingdom*. This case arose from the fact that Gibraltar was excluded from participating in the direct elections to the European Parliament. The United Kingdom was of the opinion that it was not liable for this exclusion under the terms of the ECHR since Community law was at the origin of this exclusion. The Court disagreed and concluded that the United Kingdom had indeed violated article 3 of the First Protocol to the Convention and was responsible for the violations of the Convention even where the power in question had been transferred to an international organization. It ruled that:

“The Convention does not exclude the transfer of competences to international organizations provided that Convention rights continue to be “secured”. Member States’ responsibility therefore continues even after such a transfer.

In the present case, the alleged violation of the Convention flows from an annex to the 1976 Act, entered into by the United Kingdom, together with the extension to the European Parliament’s competencies brought about by the Maastricht Treaty. [...] The United Kingdom, together with all the other parties to the Maastricht Treaty, is responsible *ratione materiae* under Article 1 of the Convention and, in particular, under Article 3 of Protocol No. 1, for the consequences of that Treaty.

The suggestion that the United Kingdom may not have effective control over the state of affairs complained of cannot affect the position, as the United Kingdom’s responsibility derives from its having entered into treaty commitments subsequent to the applicability of Article 3 of Protocol No. 1 to Gibraltar”.¹³

This seems to be quite a clear signal from the Court in Strasbourg that it is entering a new phase in its relationship with international organizations in general and the European Union in particular. In other words, the “need” for an EU Charter within the context of the EU has been shown if individual (or collective) Member State liability for breach of the Convention is to be avoided within the scope of EU law.

3. The Status of an EU Human Rights Charter

It is difficult to comment in the abstract on the status of a Charter the legal context of which has not been decided upon. It would however seem logical and desirable to incorporate any such Charter into the EU treaty as such, either in the preliminary general provisions as a separate, albeit rather detailed article or else to use the instrument of a protocol to the treaty as the more specific working out of a general provision included within the introductory provisions to the EU treaty. Such protocol would in principle have the same legal status as the substantive provisions of the treaties themselves. In our view it is essential that the proposed charter of fundamental rights is inserted into the EU treaty as such and thus would cover in principle the full spectrum of activity by the EU as well as all the bodies

¹² See also CFI, 20 April 1999, joined cases T-305/94 a.o., *Limburgse Vinyl Maatschappij a.o. v Commission*, n.y.r., par. 419-420: “That case-law is [...] based on the existence of a general principle of Community law [...]. The fact that the case-law of the European Court of Human Rights [...] has evolved [...] therefore has no direct impact on the merits of the solutions adopted in those cases”.

¹³ ECHR, judgement of 18 February 1999 (n.y.r.), paragraphs 32-34.

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and institutions operating in that context. It would not be acceptable to anno 2000 draw up a Charter, which would only apply, to activities by institutions operating within the more limited concept of the EC treaties.

It is suggested that this is in line with the existing provisions of the Amsterdam treaty. The EU has acknowledged in diverse ways that it has an important role to play in promoting respect for human rights of those resident within the Union and of ensuring those rights are fully respected. The Amsterdam Treaty proclaims that “the Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law” while making it obvious that the Member States remain the principal guardians of human rights within their own territories¹⁴. Moreover, the Union attempts to staunchly defend human rights in its external affairs by *inter alia* insisting that those States seeking admission to the Union and those seeking cooperation agreements or aid or benefit from trade preferences undertake to respect human rights.¹⁵ If that undertaking is breached then the agreement in question can be suspended. Moreover since the Amsterdam Treaty any Member State violating human rights in a “serious and persistent” way can lose its rights under the Treaty.

Given the existing *status quo* of enforcement of fundamental rights by the Courts in Luxembourg with particular reference to the provisions of the ECHR, it is suggested that the legal status of the Charter must be a legally binding one and one which is subject to enforcement by judicial means. It is submitted that the most obvious way to ensure enforcement of the Charter in the EU legal order is by the Court of Justice itself. The main difference with the existing *status quo* would be that the legal status of the Charter and its incorporation of all the substantive rights into the EU legal order would entail that the rights and freedoms are clearly regulated and no longer have the status of “general principles” of EU law. Moreover the ECJ would be bound to apply the provisions of the ECHR as specifically incorporated into the Charter as such and would no longer enjoy its current discretion in that regard (as to the precise contents of the general principles and where precisely it seeks inspiration in so doing). The further development of the EU Charter as a “living instrument” would obviously be a matter for the Court of Justice although it may be considered desirable to further consider to what extent the Court of Justice will be bound in the future by the ongoing judgements of the Strasbourg Court on the interpretation of relevant provisions of the ECHR (in origin).

It is further submitted that as a matter of course the current system of judicial remedies will fully apply to the provisions of a binding Charter and that individuals and privileged complainants should be able to invoke violation of its terms as a ground for annulment of legal measures or other measures. One point which in our view requires separate consideration in this context is the question of amending the *locus standi* of individuals (and groups) so that they may more easily challenge EU measures where they submit that their fundamental rights as contained in the EU Charter have been violated. In this context it is considered desirable that individuals are rather easily given *locus standi* where it can be shown that their rights and interests have been affected by EU action or inaction as broadly defined. At the same time it is submitted that great caution should be taken in revamping the preliminary reference mechanism in a manner, which could make it more difficult for individuals to have questions of human rights violations, brought indirectly before the ECJ. Access to justice is indispensable in the area of fundamental rights.

¹⁴ See further, P. Alston (ed.), *The EU and Human Rights*, (Oxford, 1999).

¹⁵ See, in general, E. Riedel and M. Will, “Human Rights Clauses in External Agreements of the EC”, *ibid.*

*Memorandum on the EU Charter***4. The Scope of the EU Charter***§ 4.1 The 'Passive Scope' of the Charter: Protection against the EU*

The EU Charter should protect individuals against arbitrary interferences by the EU. Traditionally, the ECJ's jurisdiction – and thus the Court's protection of fundamental rights – is confined to activities in the first pillar (the three Communities). However, an effective protection of the rights and freedoms guaranteed by the Charter requires activities within the second and third pillars to fall with the 'passive scope' of the Charter too. The same is true for the conduct of more or less independent entities, such as Europol. We are witnessing a genuine proliferation of new forms of inter-governmental cooperation. To the extent that these new bodies are capable of interfering with individual rights, the rule of law requires judicial review of their activities. The Charter should reflect this: it should contain a provision stipulating that it offers protection against acts and omissions of the EC/EU institutions and organs, as well as entities which have been established on the basis of the EU Treaty. The other side of the coin is that the ECJ should be competent to review these acts and omissions. This competence has already been recognized in some cases (such as Europol), but certainly not on a systematic basis.

On the other hand, the EU Charter is not – and should not be – directed against the national authorities. Their conduct is subject to their constitutions and laws, as well as the ECHR. To subject them to the EU Charter too, would create confusion. Still one has to face the fact that complications are likely to occur where domestic authorities implement Community law or derogate from it. In these circumstances the ECJ has consistently held that the domestic authorities are equally bound by the general principles of Community law, including fundamental rights.¹⁶ As it is unlikely that the adoption of the EU Charter will entail a loss of ECJ competence, one may anticipate that the EU Charter will bind the domestic authorities where they implement Community law or derogate from it. This means that the domestic courts may be confronted with two distinct standards: the EU Charter, as interpreted by the ECJ, and the ECHR, as interpreted by the European Court of Human Rights. This underlines the importance of avoiding diverging interpretations at all costs.

§ 4.2 The 'Active Scope' of the Charter: Holders of Guaranteed Rights

One of the basic tenets of international human rights law is that civil rights, such as the prohibition of torture, apply to anyone within the jurisdiction of the State concerned. This is clearly reflected in Article 1 ECHR ("The High Contracting Parties shall secure to everyone within their jurisdiction..."). Nationality and residence status are irrelevant in this connection. The same should apply to the EU Charter: anyone within the Union's jurisdiction should be entitled to rely on the 'classic' rights and freedoms guaranteed by the Charter. In this connection it should be recalled that rights extend to both natural and legal persons.

Traditionally, however, certain political and social rights have been reserved to specific groups of individuals (nationals of the State, European citizens). Mention may be made of the right to vote, the right to diplomatic and consular protection, access to the Community civil service, free movement of workers. At first sight it seems acceptable to extend the guarantee of these rights in the EU Charter only to nationals of the Member States. Any preferential treatment, however, must always be based on objective and reasonable grounds. And in the case of difference of treatment based exclusively on the ground of nationality, the European Court of Human Rights insists that "very weighty reasons" must be put forward to justify this under the Convention.¹⁷

¹⁶ See for instance ECJ, case 5/88, *Wachauf* [1989] ECR 2639, § 19; case C-260/89, *ERT* [1991] ECR I-2964, § 42.

¹⁷ See in this connection the important judgment of the European Court of Human Rights in the case of *Gaygusuz v Austria* of 16 September 1996, (Reports 1996, p. 1129), paragraph 42

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Besides, as Community law evolves, more rights are being granted to third country nationals. This pleads against restricting rights to Union citizens alone, at least as far as social rights are concerned. Rather, it is the scope *ratione personae* that determines the applicability of the EU Charter. If a third country national falls outwith the scope of EU law, he/she will be unable to invoke the rights of the EU Charter. Conversely, if he/she falls within the scope of EU law, it seems in line with the fundamental nature of human rights to accord social rights to him/her as well.

5. The Content of the EU Charter

§ 5.1 *The rights and freedoms of the ECHR*

It is common ground that the EU Charter should not take a step backwards in relation to the existing *acquis*. Article 6 TEU requires the Union to respect the rights and freedoms of the ECHR as general principles of Community law. Thus, from a legal point of view, the ECHR already constitutes a minimum standard and the Charter could not fall short of the ECHR as interpreted by the European Court of Human Rights. It may be added that each Charter provision that offers less protection than its corresponding ECHR provision would damage the credibility of both the EU human rights policy and the Convention.

Against this background some critical remarks may be leveled against the draft list of fundamental rights which was proposed on 11 February 2000 by the presidency of the 'Convention' preparing the Charter (CHARTE 4123/1/00/REV 1). The draft articles differ from the Convention provisions. To give three examples:

- The right to a fair trial (Article 5) does not specify that judgment shall be pronounced publicly, as required by Article 6. Is this a deliberate omission, or just an accident?
- To incorporate a general limitation clause (as was previously suggested by the presidency) will obviously do away with the detailed and sophisticated case-law of the Strasbourg authorities under the Articles 8 to 11, par. 2. Indeed, the right to respect for private life (Article 8 of the Draft) does not contain a specific limitation clause. What does this mean for the applicability of the Strasbourg jurisprudence? For instance, the Court tends to subject limitations of the freedom of the press (Article 10 ECHR) to careful scrutiny, whereas it leaves a wider margin of appreciation to State authorities restricting the right to respect for family life in the case of expulsion (Article 8 ECHR). Would this distinction still apply under a general limitation clause?
- What is the relationship between the right to respect for family life (Article 8 of the draft) and the protection of the family envisaged in Article 9 of the same draft?

These examples illustrate how delicate the question of phrasing the Charter is. From the perspective of legal certainty, and assuming that the Strasbourg level of human rights protection must not be undermined, we therefore recommend that the substantive rights and freedoms of the Convention and its protocols are integrally transferred to the Charter. This is all the more necessary if the accession of the EU to the Convention is not guaranteed.

*Memorandum on the EU Charter**§ 5.2 Additional rights and freedoms guaranteed in other instruments*

This is not to say that the body preparing the EU Charter should limit itself to copying the substantive provisions of the ECHR. There are at least two reasons to move beyond a mere reproduction of the ECHR:

- In practice most attention tends to be directed towards the ECHR, but other instruments contain important additions. To the remaining States parties to these treaties it is unacceptable for the EU Member States to transfer powers to the EU, if the latter is not bound to these additional rights.
- The discussions on the Charter should provide for an opportunity to develop rights and freedoms, which are geared to the powers and functions of the EU.

An obvious source of inspiration may be found in the treaties on which the Member States have collaborated. To mention some of the most important ones: the European Social Charter, the Genocide Convention (1948), the UN Convention on the Elimination of All Forms of Racial Discrimination (1965), the two UN Covenants of 1966, the UN Convention on the Elimination of All Forms of Discrimination against Women (1979), the UN Convention on the Rights of the Child (1989) and several ILO Conventions.

It must be realized, however, that not all Member States have ratified all these instruments, whereas some have made reservations to specific provisions. In addition, the constitutional traditions of the Member States have always been regarded as a source for Community rights as well.

It is hard to predict which synthesis will be acceptable for the body preparing the EU Charter. Yet, already at this stage one can foresee that certain internationally recognized rights will not make it to the Charter. This will create the risk of *a contrario* types of reasoning: the absence of a specific norm might be taken to mean that it does not bind the EU. A similarly undesirable situation may occur if international human rights law continues to develop – which it is likely to do – and new instruments are adopted. Obviously the EU Charter will not reflect these changes. Should it then have to be amended?

The disadvantages of a 'static' Charter might be taken away by the introduction of the following provision, which is borrowed from the ECJ's case-law:¹⁸

The European Union will also respect the fundamental rights and freedoms which have been laid down in international treaties for the protection of human rights on which the Member States have collaborated or of which they are signatories.

§ 5.3 Economic and Social Rights

It is hard to defend the view that the Charter should limit itself to civil and political rights. A watertight division between 'classical' and social rights has never existed, and the development of positive obligations under the ECHR has blurred the distinction even further. In recent EU-documents the indivisibility is acknowledged and emphasized.¹⁹

In this connection it is suggested that social rights are not necessarily mere policy guidelines or instructions addressed to the authorities. Especially in the case of basic needs (such as medical care in case of emergency or basic social welfare), individual entitlements exist. The best way forward is to examine each separate right and determine which elements lend themselves to judicial review.

¹⁸ See ECJ, case 4/73, *Nold*, [1974] ECR 507, § 13.

¹⁹ See, e.g., the *EU Annual Report on Human Rights 1998-1999*, adopted by the Council in October 1999, p. 33.

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§ 5.4 'New' rights

The Court of Justice has recently developed quite stringent case-law with regard to the respect of fundamental rights by the EC institutions themselves, in particular with regard to the securing of the principle of good administration within the EU institutions and the fact that everyone is entitled to a fair legal process. In so doing it has relied very explicitly on the provisions of the ECHR and applied them directly. Moreover, it appears that the Court is, within the limits of its current jurisdiction, contributing to the securing of the EU citizens' right of participation in an "effective political democracy". In other words the Court has in a number of test cases already made a significant contribution to a citizens' right to obtain information about the decision-making processes from a number of EU institutions and bodies (the Council, the Commission and "comitology" committees).²⁰ In an effective political democracy, the idea of an informed citizenry, the free expression of opinion of the people in the choice of the legislature and the possibility to complain about one's government and administration must indeed be secured as fundamental rights. The Court is responsible for the development and application of these ideas in the context of the EU. It provides an excellent example of the ECJ going further than the minimum provisions in this regard provided in the ECHR and could provide an example of the kinds of rights that could be included in an EU Charter as a "new" generation of rights applicable in the specific context of the EU.

6. Conclusions

The inclusion of an EU Charter in the circumstances outlined above could provide a clarification of the current system of protection and reinforce the aim of structural visibility of such rights within the evolving EU legal order. It is however imperative in our view that clear provisions be included as to the enforceability of the substantive rights in question and the remedies available to different categories of complainants in different circumstances. At the same time it must be acknowledged that in the long term interests of visibility as well as in the interests of (truly) external control (accountability of EU institutions to an external supervisory body) the most rational and transparent solution remains accession by the EU as such to the ECHR system.

Professor Deirdre Curtin, University of Utrecht
 Dr. Rick Lawson, University of Leiden
 Professor André Nollkaemper, University of Amsterdam

Standing Committee of Experts on International Immigration, Refugee and Criminal Law,
 Utrecht, the Netherlands, 22 February 2000

²⁰ See further, D. Curtin, "Citizens' Fundamental Right of Access to EU Information: An Evolving Digital *Passepartout?*" 37 CML Rev. (2000), pp. 1-35.

ENTWURF DER CHARTA DER GRUNDRECHTE DER EUROPÄISCHEN UNION**fundamental.rights@consilium.eu.int**

Brüssel, den 16. März 2000**CHARTE 4164/00****CONTRIB 48****ÜBERMITTLUNGSVERMERK**

Betr.: Entwurf der Charta der Grundrechte der Europäischen Union

Finden Sie bitte anliegend Vorschläge der Initiative "Netzwerk Dreigliederung".^{1 2}

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² Dieser Text wurde nur in deutscher Sprache übermittelt.

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Vorschläge zum Entwurf der Charta der Grundrechte der Europäischen Union

im Rahmen der Anhörungen von Repräsentanten der Zivilgesellschaft durch den Konvent¹

Vorbemerkung: Die Vorschläge folgen der im Dokument CHARTE 4141/00 CONVENT 10 vom 28.02.00 vorgeschlagenen Gliederung in Abschnitte, durch welche sich die in CHARTE 4112/2/00 REV 2 vorgeschlagene Reihenfolge und Zählung der Rechte teilweise ändert.²

Vorschläge zum 1. Abschnitt: Die fundamentalen Rechte des Menschen

Kommentar: Wir schlagen eine eigene Fassung vor, obwohl wir uns der teilweisen Überschneidung mit den bereits vorliegenden Vorschlägen bewusst sind. Wir möchten jedoch durch Anregungen dazu beitragen, dass bei diesem so delikaten und zugleich so entscheidend wichtigen Teil der Charta die einzelnen Formulierungen nuanciert genug sind und zugleich in einem inneren Zusammenhang, nicht als bloße additive Aufreihung, erscheinen.

-
- 1 Unter Verwendung der Texte des Grundgesetzes für die Bundesrepublik Deutschland, der UNO–Menschenrechtsdeklaration, der Europäischen Menschenrechtskonvention, der schweizerischen Bundesverfassung, von Vorschlägen der Initiative Schweiz im Gespräch, der Aktion mündige Schule Schleswig–Holstein und des Kuratoriums für einen demokratisch verfassten Bund deutscher Länder.
- 2 Zwar zeigt sich bei dieser Systematik die Schwierigkeit, eine Ausgewogenheit zwischen den Abschnitten herzustellen. Dies ist auch in unserem Vorschlag sichtbar. Wir denken jedoch, dass diese Schwierigkeit eher dadurch zu lösen ist, dass noch weitere Abschnitte eingefügt werden und die Gliederung dadurch feinmaschiger wird, als durch Rücknahme des Gedankens der abschnittswisen Gliederung. Entsprechend dem im Dokument CHARTE 4141/00 vom 28.2. durch den Vorsitzenden des Konvents gemachten Vorschlag beginnt auch bei uns die Numerierung der Artikel in jedem Abschnitt mit einem Artikel 1. Der Übergang zur abschnittswisen Darstellung und die dadurch notwendige neue Numerierung erschwert allerdings die Übersichtlichkeit bei Vorschlägen, die sich auf vorliegende Entwürfe beziehen. Daher haben wir, um eine leichtere Übersicht zu ermöglichen, jeweils auch ausdrücklich vermerkt, wo wir keinerlei Veränderungsbedarf gegenüber bereits vorliegenden Entwürfen sehen.

Artikel 1 [Menschenwürde; staatliche Grundrechtsbindung]

- (1) Die Würde des Menschen ist unantastbar. Die menschliche Individualität zu achten, zu schützen und in ihrer Selbst- und Mitverantwortung zu fördern, ist höchste Verpflichtung aller staatlichen Gewalt.**

Wir schlagen vor, Absatz (2) und evtl., falls man diese Frage im Abschnitt 1 regeln will, auch (3) aus CHARTE 4123/1/00 REV 1 in Art. 2 zu plazieren, da sie bereits eine Spezialisierung des generellen Postulats der Menschenwürde darstellen.

- (2) Die Europäische Union (EU) und ihre Mitgliedstaaten verpflichten sich darum zur Wahrung und Verwirklichung der unverletzlichen und unveräußerlichen Menschenrechte als Grundlage jeder menschenwürdigen Gemeinschaft, des Friedens und der Gerechtigkeit in der Welt.**
- (3) Diese Grundrechtscharta bindet alle rechtssetzende, rechtsanwendende und rechtsprechende Gewalt in der EU und deren Mitgliedstaaten. Sie umfasst individuell einklagbare Ansprüche des einzelnen sowie wegleitende Ordnungsprinzipien einer freiheitlichen, demokratischen und sozialen Gesellschaft.**

Begründung: Wir halten es für notwendig, gleich am Anfang zu betonen, dass die Grundrechte dieser Charta einklagbare Rechte sind.

Artikel 2 [Recht auf Leben]

(1) und (2) wie in CHARTE 4123/1/00 REV 1 CONVENT 5, S. 2 formuliert (wobei allerdings u.E. „psychische Unversehrtheit“ schwer definierbar sein dürfte).

Das Verbot der Folter (in der oben zitierten Aufzeichnung des Präsidiums im Artikel 1 platziert) sollte u.E. in Artikel 2, Absatz (3) mit der Feststellung über die Abschaffung der Todesstrafe zusammengezogen werden.

Artikel 3 [Freiheit der Person; Handlungs- und Vertragsfreiheit]

- (1) Jeder hat das Recht auf die freie Entfaltung seiner Persönlichkeit, soweit er nicht die Rechte anderer verletzt und nicht gegen die grundrechtliche Ordnung der Europäischen Union bzw. der Mitgliedstaaten verstößt.**
- (2) Jeder Mensch hat im Rahmen allgemeiner Handlungsfreiheit der Person das Recht, seine Beziehung zu anderen durch vertragliche Vereinbarung zu regeln und zu gestalten.**

Begründung: Die Anschauung des Menschen als eines mündigen, d.h. zum verantwortungsvollen Handeln aus eigener Einsicht fähigen Wesens, ist der innerste Kern des modernen Rechtsbewusstseins. Die sich daraus ergebende Handlungsfreiheit der Person sollte explizit formuliert sein.

Vorschläge zum 2. Abschnitt: Freiheitsrechte

Artikel 3 bis 7 aus Dokument CHARTE 4123/1/00 REV 1 CONVENT 5 haben wir hier nicht berücksichtigt, da sie nach der Systematik der Abschnitte jetzt in den Abschnitt 6 (Justizielle Rechte) fallen.

Artikel 1 [Gedanken-, Gewissens- und Religionsfreiheit]

Wir schlagen eine Modifikation des entsprechenden Artikels 10 aus CHARTE 4137/00 vor. Die Änderungsvorschläge sind fett gesetzt:

- (1) Jede Person hat das Recht auf Gedanken-, Gewissens- und Religionsfreiheit; dieses Recht umfasst die Freiheit, **seine Religion, seine weltanschauliche und ethische Überzeugung frei zu bestimmen** (*statt: die Religion oder Weltanschauung zu wechseln*), **und diese** (*statt: und die Freiheit, die Religion oder Weltanschauung*) einzeln oder gemeinsam mit anderen öffentlich oder privat durch Gottesdienst, Unterricht, (*streichen: oder Praktizieren von*) Bräuche und Riten **oder auf andere Weise** zu bekennen **und zu praktizieren.**

Begründung: Mündigkeit bedeutet, sich seine eigene Auffassung der Welt bilden, d.h. diese frei bestimmen zu dürfen. Das ist mehr als das Recht, die Religion oder Weltanschauung zu wechseln. Auch sollte die ethische Überzeugung ausdrücklich in den Artikel einbezogen werden. Das Praktizieren der eigenen Weltanschauung und Lebensorientierung muss möglichst umfassend geschützt werden. Daher sollte jeder Anschein vermieden werden, dass der von diesem Artikel gewährte Rechtsschutz sich auf das Praktizieren von Bräuchen und Riten reduziert. Die übrigen Änderungsvorschläge sind sprachliche Vereinfachungen.

- (2) **Niemand darf gegen sein Gewissen zum Kriegsdienst mit der Waffe gezwungen werden.**

Begründung: Dies ergibt sich zwar eigentlich als logische Konsequenz aus der Gewissensfreiheit, sollte aber u.E. ausdrücklich formuliert werden.

Artikel 2 [Meinungs-, Informations-, Medienfreiheit; Kunst und Wissenschaft]

- (1) **Jeder Mensch hat das Recht, seine Meinung frei zu bilden und mit allen Verständigungsmitteln ungehindert zu äußern und zu verbreiten sowie das Recht auf uneingeschränkten Zugang zu allen öffentlichen Informationen.**

Hier wäre u.U. als Absatz einzufügen das im Entwurf des Präsidiums (CHARTE 4137/00) als eigener Artikel 14 (Recht auf Zugang zu Information) formulierte Zugangsrecht zu Dokumenten der EU-Organe.

Begründung: Wir halten es für problematisch, das Informationsrecht an dieser Stelle auf den Zugang zu EU-Dokumenten zu beschränken.

- (2) **Die freie Berichterstattung durch die Medien ist gewährleistet. Sie findet ihre Schranke allein an der unantastbaren Würde der Person anderer sowie am Anspruch der Kinder und Jugendlichen auf besonderen Schutz der Unversehrtheit ihrer Person und Entwicklung. Das Redaktionsgeheimnis ist unverletzlich. Eine Zensur findet nicht statt.**
- (3) **Die Freiheit der Kunst und des Unterrichts sowie der wissenschaftlichen Forschung und Lehre sind gewährleistet.**

Begründung: Wir halten es für sinnvoll, den Artikel differenzierter auszugestalten als bisher in der Aufzeichnung des Präsidiums (CHARTE 4137/00) unter 11 (Freiheit der Meinungsäußerung) vorgesehen. Nur diese Ausgestaltung gibt auch die Möglichkeit, das Problem des Schutzes der Persönlichkeitsrechte und des Jugendschutzes in einer durch Medien geprägten Gesellschaft aufzugreifen, ohne dabei den Grundsatz „Im Zweifel für die Freiheit“ in Frage zu stellen.

Artikel 3 [Versammlungs-, Vereinigungs- und Koalitionsfreiheit]

Wir halten eine ausführlichere Formulierung als die in Artikel 13 CHARTE 4137/00 vorgesehene für erwägenswert. Eine Möglichkeit wäre die folgende:

- (1) **Jeder Mensch hat das Recht, sich ohne Erlaubnis friedlich und ohne Waffen zu versammeln.**
- (2) **Jeder Mensch hat das Recht, sich mit anderen zu Vereinen, Gesellschaften oder anderen selbstverwalteten Körperschaften zusammenzuschließen.**
- (3) **Das Recht, zur Wahrung und Förderung der Arbeits- und Wirtschaftsbedingungen Vereinigungen zu bilden, ist allgemein gewährleistet.**
- (4) **Niemand darf gezwungen werden, einer Vereinigung anzugehören.**

Artikel 4 [Bewegungsfreiheit]

Wie in der Grundrechtsliste des Präsidiums (CHARTE 4112/2/00 REV 1) bereits vorgesehen. Wir haben keinen eigenen Formulierungsvorschlag.

Artikel 5 [Unverletzlichkeit der Privatsphäre, Datenschutz]

- (1) **Jeder Mensch hat Anspruch auf Schutz seines privaten Lebensbereichs. Die Vertraulichkeit nichtöffentlicher Mitteilungen in Wort, Schrift, Bild oder Zeichen ist unverletzlich.**
- (2) **Jeder Mensch hat ein Recht an seinen persönlichen Daten, auf Einsicht in alle ihn betreffenden Akten und Datenbestände sowie auf deren Schutz.**

Begründung: Wir hielten es für zweckmäßig, die Gesichtspunkte von Art. 8 (CHARTE 4123/1/00 REV 1) und 15 (CHARTE 4137/00) zusammenzuziehen.

Artikel 6 [Asylrecht]

Vgl. Art. 19 in CHARTE 4137/00. Dieser Artikel sollte das Asylrecht in Europa menschenrechtskonform regeln und festhalten, dass Flüchtlinge nicht in einen Staat abgeschoben oder ausgeliefert werden dürfen, in dem sie verfolgt werden. Ferner, dass niemand in einen Staat abgeschoben werden darf, in dem ihm Folter oder eine andere Art grausamer und unmenschlicher Behandlung oder Bestrafung drohen.

Artikel 7 [Recht auf Familiengründung, Rechte und Schutz von Kindern und Jugendlichen]

- (1) Jeder hat das Recht, eine Familie zu gründen.

(Wie in CHARTE 4123/1/00 REV 1 in Art. 9 Familienleben.)

- (2) **Kinder und Jugendliche haben Anspruch auf umfassende Erziehung und Ausbildung, welche sich an den Bedingungen und Möglichkeiten der Entwicklung ihrer Individualität orientiert.**
- (3) **Pflege und Erziehung der Kinder sind das natürliche Recht der Eltern und die primär ihnen obliegende Pflicht. Die staatliche Gemeinschaft gewährleistet, dass auch außereheliche oder ohne elterliche Betreuung lebende Kinder im Schutz einer Lebensgemeinschaft aufwachsen können. Sie schützt und fördert jede Lebensgemeinschaft, in der Kinder und Jugendliche aufwachsen, bei ihrer selbstverantwortlichen Aufgabenerfüllung.**
- (4) **Kinder und Jugendliche haben darüber hinaus Anspruch auf besonderen Schutz der Unversehrtheit ihrer Person und ihrer Entwicklung.**

Begründung: Wir halten es für notwendig, die Rechte der Kinder und Jugendlichen zu stärken. Daher schlagen wir vor, diesem Thema breiteren Raum zu geben.

Es ist noch zu fragen, ob die Artikel 7 und 8 nicht in einen eigenen Abschnitt kommen sollten, da sie ihrem Gehalt nach nicht nur Freiheitsrechte sind, sondern z.B. auch die Chancengerechtigkeit beinhalten.

Artikel 8 [Recht auf Bildung]

- (1) **Jeder Mensch in Europa hat das Recht auf Bildung. Für Kinder und Jugendliche darf der Besuch von Bildungseinrichtungen nicht von den wirtschaftlichen Verhältnissen der Eltern abhängig sein.**
- (2) **Die Freiheit der elterlichen Erziehungsverantwortung ist gewährleistet; sie umfasst namentlich das Recht der Eltern, für ihre Kinder die Art der Bildungseinrichtung frei zu wählen.**
- (3) **Der Staat garantiert den gleichen Zugang und die freie Wahl der Schule durch die Ermöglichung und gleichberechtigte Förderung von öffentlichen Schulen in staatlicher und freier Trägerschaft.**

- (4) **Die von den Eltern gewählten Schulen in staatlicher oder freier Trägerschaft nehmen gleichberechtigt ihren öffentlichen Bildungsauftrag wahr. Das Recht zur Gründung sowie autonomen Gestaltung und Verwaltung von Schulen in freier Trägerschaft, einschließlich der eigenständigen Ausbildung der Lehrkräfte, ist gewährleistet.**
- (5) **Angehörige nationaler oder ethnischer Minderheiten haben das Recht, ihre Muttersprache zu lernen und eigene Schulen zu gründen und zu unterhalten.**
- (6) **Das Schulwesen untersteht der Rechtsaufsicht der einzelnen europäischen Staaten.**

Begründung: Das sich integrierende Europa sollte ein modernes freiheitliches Bildungswesen anstreben. Dem sollte die Formulierung des Rechts auf Bildung entsprechen. Sie sollte keinesfalls hinter den Artikel 26 [Recht auf Bildung] der Allgemeinen Erklärung der Menschenrechte und hinter die Entschließung des Europäischen Parlaments über die Freiheit der Erziehung (14. März 1984) zurückfallen. Daher schlagen wir vor, die Formulierung des Art. 12 aus CHARTE 4137/00 zu erweitern. Der dort enthaltene Absatz (4) ist sinngemäß Bestandteil unseres Art. 2 dieses Abschnitts und würde sich deshalb hier erübrigen.

Artikel 9 [Eigentum]

- (1) **Eigentum wird gewährleistet. Sein Gebrauch und seine Formen sollen zugleich der Erhaltung und Entwicklung der natürlichen und sozialen Lebensbedingungen dienen.**
- (2) **Eine Enteignung ist nur im öffentlichen Interesse zulässig. Sie darf nur durch Gesetz oder auf Grund eines Gesetzes erfolgen, das Art und Ausmaß der Entschädigung regelt. Die Entschädigung ist unter gerechter Abwägung der Interessen der Allgemeinheit und der Beteiligten zu bestimmen.**

Begründung: Wir halten es für ein modernes Eigentumsrecht für notwendig, zugleich mit der klaren Garantie des individuellen Eigentums die Sozialbindung des Eigentums deutlich zu formulieren. (Vgl. Art. 16 in CHARTE 4137/00.)

3. Abschnitt Gleichheitsrechte

Artikel 1 [Gleichheit]

Wie in CHARTE 4137/00, Art. 18.

Artikel 2 [Nichtdiskriminierung]

Wie in CHARTE 4137/00, Art. 19.

Vorschläge zum 4. Abschnitt: Wirtschaftliche und soziale Rechte, Sozialziele, Umweltschutz und Nachhaltigkeit

Wir schlagen zunächst vor - in Übereinstimmung mit der in CHARTE 4112/2/00 formulierten Intention -, Sozialrechte und Sozialziele zu unterscheiden. Außerdem schlagen wir eine Formulierung zum Umweltschutz und zum Prinzip der Nachhaltigkeit vor. Der letzte Gedanke könnte natürlich auch systematisch in einem eigenen Abschnitt behandelt werden.

Artikel 1 [Berufs- und Konsumfreiheit; vertragliche Gestaltungsfreiheit und Selbständigkeit der Wirtschaft]

- (1) Die freie Wahl, Zugänglichkeit und Ausübung des Berufs sind gewährleistet; ebenso die Selbstbestimmung des Verbrauchers und die Vertragsfreiheit zwischen den Wirtschaftsteilnehmern. Die gesetzlichen Bestimmungen zum Schutz der Menschen und der Natur bleiben vorbehalten.**
- (2) Die Wirtschaft regelt und verwaltet ihre Angelegenheiten auf der Grundlage der staatlichen Rahmengesetzgebung selbständig; sie kann dazu vertragsberechtigte Organe bilden, an denen alle Wirtschaftsteilnehmer, Unternehmer, Mitarbeiter und Konsumenten, verantwortungsvoll beteiligt sind.**

Kommentar: Es handelt sich um einen Formulierungsversuch für den in CHARTE 4112/2/00 REV 2, D S. 6 vorgesehenen Artikel 6 Recht auf Arbeit und Berufsfreiheit. Hier halten wir es für sachgemäß, den Zusammenhang von Berufs- bzw. Gewerbefreiheit mit der Konsumfreiheit und der Freiheit der Vertragsgestaltung zwischen den Wirtschaftsteilnehmern zu betonen - im Rahmen der Schutzgesetzgebung für Mensch und Natur. Die Frage der Arbeitsförderung sollte u.E. in den Artikel über die Sozialziele verschoben werden (s. weiter unten).

Artikel 2 [Recht auf Hilfe in Notlagen]

- (1) Wer in Not gerät, hat Anspruch auf Hilfe und Betreuung und auf die Mittel, die für ein menschenwürdiges Dasein unerlässlich sind.**

Kommentar: Wir waren der Meinung, dass eine solche knappe Formulierung den möglichen Konsens in Europa hinsichtlich eines einklagbaren Anspruchs auf Solidarität - bei Offenhaltung der einzelnen Verwirklichungsformen - am besten zum Ausdruck bringt. Es wäre allerdings auch denkbar, diesen Artikel als Absatz 4 in den Artikel 2 zu platzieren. Damit wäre bereits in der Beschreibung der Fundamentalrechte die Bandbreite zwischen Freiheits- und Sozialaspekt der Menschenrechte aufgewiesen.

Artikel 3 [Gewährleistung sozialer Sicherheit]

- (1) Es ist Ziel der Gesellschaft als Ganzer sowie ihrer einzelnen Mitglieder, dass jeder Mensch innerhalb und außerhalb der Europäischen Union an der allgemeinen Entwicklung der Lebensbedingungen in angemessener Weise teilnehmen kann.**
- (2) Die Europäische Union und ihre Mitgliedstaaten setzen sich im Rahmen ihrer Zuständigkeit dafür ein, dass arbeitsfähige Menschen Aufgaben unter angemessenen Arbeitsbedingungen finden oder entsprechende Verhältnisse selbst schaffen können.**
- (3) Für Menschen, die keine Möglichkeit dazu haben und deshalb arbeitslos sind oder deren Arbeitsfähigkeit infolge von Krankheit, Unfall oder Invalidität nicht gegeben ist oder die aufgrund ihrer Jugend, ihrer Pflicht zur Erziehung oder Sorge für andere, ihres Alters oder aus anderen gesellschaftlichen Gründen von der Arbeit freigestellt sind, stellen die EU bzw. ihre Mitgliedstaaten den notwendigen Lebensunterhalt rechtlich sicher; dieser bemisst sich anhand gesellschaftlicher Vergleichbarkeit. Ebenso schaffen sie Rahmenbedingungen für eine menschenwürdige medizinische Betreuung und Versorgung.**
- (4) Im Mittelpunkt der rechtlichen Gewährleistungspflicht der sozialen Sicherheit stehen unabhängig verwaltete sozialpartnerschaftliche Lösungen oder solche gesellschaftlicher Solidarität. Private Initiative und Verantwortung können ergänzend in die Sicherstellung einbezogen werden. Private Vorsorgeformen befreien dagegen nicht von zumutbaren Beiträgen an allgemeine soziale Sicherheitseinrichtungen.**
- (5) In Ergänzung zu diesen Formen sozialer Sicherheit kann der Staat auch materielle Beiträge leisten; diese bedürfen einer gesetzlichen Grundlage und richten sich nach den verfügbaren Mitteln.**
- (6) Wissenschaftsfreiheit, Methodenpluralismus, Therapiefreiheit und die Selbstbestimmung des Patienten einschließlich freier Wahl von Arzt und Krankenhaus sind generell wie auch innerhalb solidarischer Finanzierungsformen zu gewährleisten.**

Begründung: Es ist u.E. wichtig, die Sozialziele so zu formulieren, dass keine bloßen Prinzipien verkündet werden, sondern Leitlinien staatlichen Handelns formuliert werden, die realisierbar sind, zugleich aber den Grundsatz der Subsidiarität beachten, d.h. den Staat als Gewährleistungsinstanz sozialer Sicherheit - dies auch durch Förderung selbstverwalteter Solidarlösungen -, nicht aber als sozialbürokratisch-allzuständiges Gebilde zu fassen. Aus dem Solidarproblem der Finanzierung darf also kein Vormundschaftsproblem erwachsen. In diesem Sinne halten wir es für richtig, diesen Artikel nicht durch zuviele Einzelbestimmungen zu befrachten. Ungeachtet dessen könnten hier aber weitere in CHARTE 4112/2/00 aufgelistete Sozialrechte Aufnahme finden, soweit ihre ausdrückliche Nennung für nötig erachtet wird.

Artikel 4 [Umweltschutz, Grundsatz der Nachhaltigkeit; Achtung des Lebens]

- (1) Die EU und ihre Mitgliedstaaten gewährleisten den Schutz des Menschen und seiner natürlichen Umwelt vor schädlichen Einwirkungen. Die Kosten der Vermeidung solcher Einwirkungen trägt der Verursacher.**

- (2) **Die EU und ihre Mitgliedstaaten sind dem Grundsatz der Nachhaltigkeit verpflichtet. Sie regeln die Verfügbarkeit über die nicht vermehrbaren Güter, wie Boden, Wasser, Luft und Rohstoffe derart, dass ihr Charakter als Lebensgrundlage für die künftigen Generationen gewahrt bleibt und ein ausgewogenes Verhältnis zwischen der Beanspruchung der Natur und der Pflege ihrer Artenvielfalt und Erneuerungsfähigkeit entsteht.**
- (3) **Die EU und ihre Mitgliedstaaten sind der Achtung des Lebens verpflichtet. Sie gewährleisten insbesondere den Schutz der Tiere als Mitgeschöpfe des Menschen.**

Begründung: Es handelt sich um den Versuch, Punkt 19. des Entwurfs einer Grundrechtsliste durch den Präsidenten (CHARTE 4112/2/00) umzusetzen, d.h. die Inhalte Umwelt- und Lebensschutz in einem eigenen Artikel zu formulieren und mit dem zukunftsweisenden Gedanken der Nachhaltigkeit zu verbinden.

Vorschläge zum 5. Abschnitt: Politische Rechte

Artikel 1 [Recht auf Mitwirkung im staatlich-politischen Leben; Initiativ- und Abstimmungsrecht, Wahlrecht]

- (1) **Alle volljährigen Bürgerinnen und Bürger der Union haben das Recht, an der Gestaltung des staatlich-politischen Lebens ihres Landes und der Europäischen Union auf allen Ebenen teilzunehmen.**
- (2) **Dies geschieht durch die Ausübung des Initiativ- und Abstimmungsrechtes sowie die Teilnahme an allgemeinen, freien, gleichen und geheimen Wahlen.**
- (3) **Die Chancengleichheit der bei Abstimmungen oder Wahlen konkurrierenden Inhalte oder Bewerber ist zu gewährleisten.**

Begründung: Wir halten es für wichtig, die demokratischen Beteiligungsrechte in Europa zu stärken und zu betonen, dass alle Staatsgewalt von den Bürgerinnen und Bürgern der Union ausgeht.

Artikel 2 [Zulassung zu öffentlichen Ämtern, Recht zur Gründung von Parteien, Petitionsrecht]

- (4) **Alle Bürgerinnen und Bürger in der Union haben unter gleichen Bedingungen das Recht auf Zulassung zu öffentlichen Ämtern in ihrem Lande und in der Europäischen Union.**
- (5) **Das Recht zur Gründung von Parteien und sonstigen politischen Vereinigungen ist gewährleistet.**
- (6) **Jeder Mensch hat das Recht, sich einzeln oder in Gemeinschaft mit anderen schriftlich mit Petitionen oder Beschwerden an die zuständigen Stellen und an die Volksvertretungen zu wenden; es dürfen ihm daraus keine Nachteile erwachsen.**

Begründung: Es ist sicher eine Ermessensfrage, ob man - wie in CHARTE 4141/00, Art. 1 - das Petitionsrecht unter die justiziellen Rechte einreihet. Unser Gesichtspunkt ist, dass das moderne Petitionsrecht kein bloßes Beschwerderecht (geschweige denn bloßes Bittrecht) ist, sondern das Vorschlags- und Initiativrecht einschließen muss, was seine Einordnung unter die politischen Rechte begründen könnte.

Artikel 3

Hier können spezielle weitere Rechte der Unionsbürgerinnen und -bürger, wie in CHARTE 4112/2/00 aufgelistet, ihren Platz finden.

6. Abschnitt: Justizielle Rechte

Zu diesem Abschnitt haben wir keine eigenen Vorschläge, sondern beziehen uns auf die CHARTE 4141/00 bereits vorgeschlagenen Formulierungen.

Vorschlag auf Aufnahme eines eigenen Abschnitts 7:

Grundrechtsgarantie

Kommentar: Wir schlagen vor, den Grundrechtsgarantien einen eigenen Abschnitt zu widmen. Die auch vom Präsidium des Konvents beabsichtigte Wesensgehaltsgarantie (vgl. in CHARTE 4123/1/00 REV 1 den Artikel Y. Einschränkungen) würde damit stärker betont. Zudem würde nationaler Rechtsprechung - z.B. dem Urteil des deutschen Bundesverfassungsgerichts zum Maastricht-Vertrag - deutlicher Rechnung getragen.

Artikel 1 [Einschränkung von Grundrechten; Wesensgehalts- und Rechtswegegarantie]

- (1) **Jeder Mensch ist in Ausübung seiner Rechte und Freiheiten nur den Beschränkungen unterworfen, die das Gesetz ausschließlich zu dem Zwecke vorsieht, um die Anerkennung und Achtung der Rechte und Freiheiten anderer zu gewährleisten bzw. ein überwiegendes öffentliches Interesse zur Geltung zu bringen. Der Grundsatz der Verhältnismäßigkeit muss bei jedem Eingriff in Grundrechte gewahrt werden. In keinem Falle darf ein Grundrecht in seinem Wesensgehalt angetastet werden.**
- (2) **Soweit ein Grundrecht durch Gesetz oder auf Grund eines Gesetzes eingeschränkt werden kann, muss das Gesetz allgemein und nicht nur für den Einzelfall gelten. Außerdem muss das Gesetz das Grundrecht unter Angabe des Artikels nennen.**
- (3) **Die Grundrechte gelten auch für juristische Personen innerhalb der Europäischen Union, soweit sie ihrem Wesen nach auf diese anwendbar sind.**

Artikel 2 [Verwirklichung der Grundrechte]

- (1) Die Grundrechte müssen in der gesamten Rechtsordnung zur Geltung kommen.**
- (2) Wer Grundrechte ausübt, muss die Grundrechte anderer achten.**
- (3) Wer öffentliche Aufgaben wahrnimmt, ist zur aktiven Verwirklichung der Grundrechte verpflichtet.**

Begründung: Dieser Artikel würde zusammen mit dem einleitenden Menschenwürdeartikel u.E. eine wichtige Klammer der Charta bilden.

Artikel 3 [Niveau des Grundrechtsschutzes]

- (1) Weitergehende Grundrechtsgarantien der einzelnen Mitgliedstaaten sowie der Europäischen Konvention zum Schutze der Menschenrechte und Grundfreiheiten (EMRK) werden in ihrem Bestand durch diese Grundrechtscharta nicht berührt.**

Begründung: Vgl. hierzu S. 11 in CHARTE 4123/1/00 REV 1. Die Intention der dort vorgeschlagenen Formulierung wird aufgegriffen und zugleich generalisiert (Gedanke der Irreversibilität des einmal erreichten Grundrechtsniveaus).

Vorschlag für einen zusätzlichen Abschnitt 8 der Charta: Prinzipien und Aufgaben der Europäischen Union, die sich aus den Grundrechten ergeben

Begründung: Wir halten es für dringend erforderlich, die Prinzipien und Aufgaben zu entwickeln, die sich aus den Grundrechten notwendig für das Staatsverständnis und das Staatshandeln in der Union ergeben.

Insbesondere halten wir es für erforderlich, dass zentrale Prinzip der Subsidiarität in einem eigenen Artikel zu behandeln. Dies auch deshalb, weil die Charta nicht nur Ausdruck des europäischen Rechtsbewusstseins ist, sondern u.a. auch zu seiner Schärfung beitragen könnte. Ein so zentraler Gedanke wie der der Subsidiarität sollte daher rechtlich sauber gefasst werden.

Artikel 1 [Prinzipien der Europäischen Union, Widerstandsrecht]

- (1) Die Europäische Union ist eine Gemeinschaft souveräner Staaten, die dem Frieden, demokratischen, rechtsstaatlichen, sozialen und föderativen Prinzipien und dem Grundsatz der Subsidiarität verpflichtet ist. Ihre vornehmste Aufgabe sieht sie in der Schaffung der rechtlichen und tatsächlichen Bedingungen dafür, dass die in dieser Charta proklamierten Grundrechte von jedem Menschen innerhalb der Union auch faktisch wahrgenommen werden können.**

- (2) **Alle Staatsgewalt in der Europäischen Union geht von den Bürgerinnen und Bürgern aus. Sie wird in Wahlen, in Abstimmungen und durch besondere Organe der Gesetzgebung, der vollziehenden Gewalt und der Rechtsprechung ausgeübt.**
- (3) **Die Gesetzgebung ist an die verfassungsmäßige Ordnung, die vollziehende Gewalt und die unabhängige Rechtsprechung sind an Gesetz und Recht gebunden.**
- (4) **Gegen jeden, der es unternimmt, die freiheitliche, demokratische und soziale Grundrechtsordnung zu beseitigen, haben alle Menschen innerhalb der Union das Recht zum Widerstand, wenn andere Abhilfe nicht möglich ist.**

Artikel 2 [Subsidiarität]

- (1) **Die EU und ihre Mitgliedstaaten fördern das Ergreifen gesellschaftlicher Aufgaben aus freier Initiative und Verantwortung in allen Bereichen, welche der Gesetzgeber nicht aus zwingenden Gründen staatlichem Handeln vorbehält. Staatliche Aufgaben sind auf der jeweils untersten möglichen Stufe wahrzunehmen und zu regeln.**
- (2) **Die EU und ihre Mitgliedstaaten schaffen fördernde Rahmenbedingungen, damit die Kultur sich in ihrer Vielfalt frei und selbstverwaltet entfalten kann; sie wahren den Grundsatz der staatlichen Neutralität gegenüber den verschiedenen kulturellen Bestrebungen.**
- (3) **Die EU und ihre Mitgliedstaaten sichern den Grundsatz der vertraglichen Selbstgestaltung des Wirtschaftslebens; sie schaffen geeignete Rahmenbedingungen für eine leistungsfähige, strukturell und regional ausgewogene, sozialverantwortliche Wirtschaft. Die EU und ihre Mitgliedstaaten werden selbst nicht wirtschaftlich tätig; Ausnahmen regelt das Gesetz.**

Begründung: s. oben.

Artikel 3 [Erfüllung öffentlicher Aufgaben]

- (1) **Die staatlichen Organe der EU und ihrer Mitgliedstaaten erfüllen ihre Aufgaben in Verwirklichung der Grundrechte und Sozialziele bürgerfreundlich, sachgemäß und wirtschaftlich.**
- (2) **Die EU, ihre Mitgliedstaaten, sowie die nichtstaatlichen Organisationen, welche öffentliche Aufgaben erfüllen, schöpfen alle geeigneten Möglichkeiten und Formen der Zusammenarbeit aus, insbesondere die regionale und sozialpartnerschaftliche. Sie stärken dabei die Selbstverantwortungs- und Selbstverwaltungskräfte der betroffenen Menschen.**
- (3) **Aufgaben sind regelmäßig daraufhin zu überprüfen, ob sie notwendig sind und die Art ihrer Erfüllung zweckmäßig ist. Durchführungsqualität und Wirtschaftlichkeit sind laufend zu evaluieren und wo nötig zu verbessern.**

- (4) **Die EU und ihre Mitgliedstaaten sorgen in ihrem Zuständigkeitsbereich für eine umfassende, aufeinander abgestimmte Aufgaben- und Finanzplanung; sie geben Rechenschaft über deren Umsetzung und erstellen eine Sozialbilanz.**

Begründung: Dem Staatshandeln in Europa einen verbindlichen Rahmen in dieser Art zu setzen, wird unter anderem auch die Akzeptanz der Charta bei den Bürgerinnen und Bürgern Europas verbessern.

Vorschläge zu Übergangs- und Schlussbestimmungen

Übergangs- und Schlussbestimmungen

- (1) **Die EU und ihre Mitgliedstaaten unterstellen die Grundrechtscharta einem Referendum ihrer Bürgerinnen und Bürger.**

Begründung: Absatz 1 begründen wir mit der großen Bedeutung der Charta für die europäische Entwicklung. Um der Glaubwürdigkeit der Festschreibung der demokratischen Rechte in der Charta willen, sollte diese selbst nicht ohne einen demokratischen Willensakt der Bürgerinnen und Bürger der Union in Kraft gesetzt werden.

- (2) **Die EU erklärt ihre Absicht, bis spätestens im Jahre 2005 der Europäischen Menschenrechtskonvention beizutreten.**

Mit dieser Formulierung folgen wir der Forderung der parlamentarischen Versammlung des Europarats, die EU möge offiziell der EMRK beitreten.

Stuttgart, den 12. März 2000

Gerald Häfner

Dr. Christoph Strawe

Dr. Robert Zuegg

Editors' note to CHARTE 4165/00,
**Contribution submitted by the Europeans
Landowner's Organisation (ELO) (dated 15/03/00):**

The revised version REV 1 does not contain the annex included in the initial version.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 16 March 2000**CHARTE 4165/00****CONTRIB 49****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a contribution of Europeans Landowner's Organisation (ELO) concerning the article 16 of the draft EU Charter on Fundamental Rights.^{1 2}

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² This text has been submitted in English only.

Charter of Fundamental Rights

Article 16 : Right to Ownership

The European Landowners' Organisation (ELO) proposes that the text of the article on the Right on Ownership should be:

Everyone is entitled to the peaceful enjoyment of his possessions. No one may be deprived of his possessions or restricted in their use, except where deemed necessary in the public interest and in the cases and subject to the conditions provided for by law and subject to full and prior compensation.

Explanatory Memorandum

The European Landowners' Organisation (ELO) supports the objectives, agreed at the Cologne Summit in 1999, of establishing a Charter of Fundamental Rights, and of making the overriding importance and relevance of those rights more visible to the Union's citizens.

In particular, the ELO very much welcomes that the Presidium has proposed the inclusion in the draft Charter, an article on the right to ownership. This memorandum explains why the right to ownership is so important for all Europe's citizens, and proposes some amendments to the current text of the draft Charter in relation to this right (article 16). These amendments would reinforce the positive work so far undertaken by the Convention to include this right to ownership.

The ELO speaks for 30 million land based rural business owners who provide employment, a living countryside, food and other products, amenities and environmental land management across the European Union. The ELO is well placed to speak on this subject, because its members are engaged, day to day, in the active management of property which serves as a base in satisfying needs and demands of modern society.

The need for a secure framework of ownership rights

Human rights are the cornerstone of democracy. Amongst these basic rights must be a right for the protection of ownership.

History shows with emphasis, however, that when ownership rights are not properly protected, both economic development and the environment are endangered. An efficient protection of ownership rights becomes even more important as the EU prepares for the entrance of a number of candidate countries which have in the past suffered from a lack of protected ownership rights.

In addition, the "new economy" (high-technology revolution) requires protection of intellectual property, so that the entrepreneurial climate will inspire investment, employment and incomes in Europe.

A social market economy, essential to a mature democracy, and for optimal management of the world's resources and the environment, cannot work without secure ownership rights. Ownership rights are a prerequisite for **long term investment**, not only in intellectual property but also in agriculture, forestry and manufacturing. A secure framework of ownership rights is vital for the long-term stewardship of our environment. Not only is a long-term perspective needed, but so often environmental conservation involves the positive management and individual commitment that can be provided only by someone with the ownership of the property.

Moreover, **there is across Europe a social aspiration to ownership**, seen as a symbol of permanence, prosperity and security.

Of course, with rights come responsibilities. Ownership must cede if it is necessary to satisfy an overriding public interest. But this can be done with the maintained respect for the owners' legitimate interests and without distorting the functioning of the market economy, provided that the owner is granted full compensation for his loss.

A framework of rights, particularly ownership rights, makes it possible for society to enter into secure, productive and transparent relationships with individuals and businesses. These relationships require, but also enable, those individuals and businesses successfully to meet the demands of the public for improving standards.

The ELO submits that the EU Charter is a unique opportunity – not to be missed – to redefine this relationship between public authorities, acting on the basis of EU legislation and policy (itself directed by the Charter) and individuals and businesses, to reflect a more enlightened balance between constructive partnership on the one hand, and regulation on the other.

Individuals and businesses are the providers of investment, innovation, stewardship and improving standards, in the countryside and elsewhere. Wherever possible, public authorities and their agencies should work in partnership with rural and other businesses to engage their **voluntary co-operation and commitment**. Compulsion should be only the last resort. Regulation, restriction and at its extreme, expropriation, can prevent actions, but cannot inspire positive initiative. So there should be a greater emphasis on partnership and a lesser dependence on regulation and constraint.

The text of the Charter on ownership rights should reflect this positive and forward-looking approach. ELO is pleased to note that the proposals made by the Presidium (Convent 9) are a good step in this direction. The submissions of ELO should be seen as a devoted effort, based on vast experience, to improve even further the article 16.

Specific amendments to the draft article on the right to ownership

ELO submits that the words “**or restricted in their use**” should be added after “possessions”.

The legislative and administrative practices of Member States and, in particular, EU legislation, have highlighted that many modern day-to-day problems that hamper the efficiency in managing assets stem from restrictions of use, which may have the same economic consequence as expropriation. It should be noted that such restrictions, if not compensated, may not only cause problems for the owner but will ultimately have negative effects on society as a whole as they will most certainly lead to distortions in the market economy and an inefficient allocation of resources.

ELO submits that the words “**where deemed necessary**” should be added after “except”.

These words oblige the authority acting on behalf of the “public interest” to demonstrate that action to deprive a person of his possessions, or to restrict him in their use, is the only way to meet that overriding public interest. In fact there is a growing urge already reflected in at least one national constitution to qualify the requirement “public interest” by prescribing that it should be “a significant public interest”. ELO submits also this wording for possible consideration by the Convention.

ELO submits that “fair” should be replaced by “**full**”.

Several constitutions of European countries (Holland, Finland, Denmark) provide for full compensation. There is no reason why an individual should support the burden of a limitation of his property use (that can sometime reach the situation of quasi-expropriation), when that burden is applied in the general interest.

It cannot be regarded correct that the state, when depriving a citizen of his possessions, may compensate him with a lower value than his fellow citizens would pay him if that property was traded in the open market.

ELO further supports the requirement that compensation should be prior to a taking or a restriction. Even if not all constitutions do not already have such wording, it would send wrong signals to the citizens if the Charter did not reflect the higher standard prescribed in some constitutions. An alternative wording could be to prescribe that full compensation be guaranteed.

A mechanism for citizens to invoke the right

This submission does not go into detail on the issue of the legal status of the Charter. However, ELO believes that it will be essential for a direct and effective mechanism to be created to enable citizens and businesses to invoke the Charter, and to seek a practical remedy where they believe their right to ownership may be infringed.

Conclusion

At a time when there is an increasing demand for the Union’s Institutions to build a “Europe of citizens”, and in the context of the enlargement to countries where people suffered negative economic and social consequences of the nationalisation of their properties, the EU Charter must meet key tests to be successful.

First: in order to direct the institutions of the EU to uphold fundamental rights when they make EU policy and legislation, the Charter must set out these rights clearly, and in a way that could eventually enable its incorporation into the EU’s Treaty base. The Charter can then fill a gap that currently exists, in that basic human rights are already incorporated into national legislation, but not into the policy and law making functions of the EU itself.

Second, the Charter must respond to the legitimate demands of individuals and groups within society to enjoy a protection of basic human rights, including ownership rights, which they will find acceptable and in terms they can understand. Commitments in the Charter to uphold the rights in such a manner will be welcomed by the public.

Third; the Charter must demonstrate that the EU is forward looking, and capable of responding to new challenges. Since Europe's citizens will benefit from less bureaucratic institutions and from an innovative market economy, regulation and control should play a diminishing role. Incentives to positive action will become more and more important. And so will an improved protection of ownership both for material and intellectual property, enabling citizens to take a long term approach to investment and economic development, and reassuring them that they will not be deprived of the fruits of their work. The Charter must fully embrace this forward-looking approach, in particular in a clear and effective text on ownership rights.

The Charter must succeed in defining the rules for ownership rights in a way which not only protects the citizen but which also promotes the best use of resources, both human and natural.

ELO is pleased to be able to submit this paper and would welcome the opportunity to develop our reasoning further or provide any clarification needed.

15th March 2000

Annex

The UN-Declaration on Human Rights

- Art. 17: Everyone has the right to own property alone as well as in association with others.
No one shall be arbitrarily deprived of his property.
- Art. 29 Everyone has duties to the community in which alone the free and full development of his personality is possible.
In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.
These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

The European Convention for the Protection of Human Rights and Fundamental Freedoms

Article 1 of the Protocol to the Convention:

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

The European Parliament Declaration of fundamental rights and freedoms (Doc. A2-3/89, J.O. No. C 120/51)

- Article 9: The right of ownership shall be guaranteed. No one shall be deprived of their possessions except where deemed necessary in the public interest and in the cases and subject to the conditions provided for by law and subject to fair compensation.
- Article 25 1. This declaration shall afford protection for every citizen in the field of application of Community law.
2. Where certain rights are set aside for Community citizens, it may be decided to extend all or part of the benefit of these rights to other persons.
3. A Community citizen within the meaning of this declaration shall be any person possessing the nationality of one of the Member States.
- Article 26: The rights and freedoms set out in this Declaration may be restricted within reasonable limits necessary in a democratic society only by a law which must at all events respect the substance of such rights and freedoms.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 16 March 2000**CHARTE 4166/00****CONTRIB 50****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a contribution by the European Bureau for Lesser Used Languages (EBLUL).¹

¹ This text has been submitted in French and English languages.

Call for Linguistic Rights in European Fundamental Rights Charter

The European Bureau for Lesser Used Languages (EBLUL) welcomes the decision of the European Union to draft and approve the Charter of Fundamental Rights of the European Union. The Charter will be a further step in the process of European integration. It is highly significant because it signals a move away from mostly economic matters which have been at the centre of European attention in recent years towards a more comprehensive understanding of European citizenship, incorporating the notion of fundamental rights.

Cultural and linguistic diversity in Europe lies at the heart of fundamental rights for its citizens as the integration process advances. An essential part of this diversity are the regional and minority languages traditionally spoken by linguistic communities within the EU member states.

The importance of preserving and promoting these languages has been considered highly important by some relevant European institutions. The European Charter on Regional and Minority Languages can be considered to be Council of Europe's convention setting out basic minimum standards. Another relevant document of the Council of Europe is the Framework Convention for the Protection of National Minorities.

The OSCE mentions minority languages on several occasions, including the Document of the Copenhagen Meeting of the Conference on the Human Dimension, adopted in June 1990, containing 11 paragraphs relating to linguistic minorities. Furthermore, the following should also be considered: the activities of the High Commissioner for National Minorities; the Foundation of Inter-Ethnic Relations in 1996; the Hague Recommendations Regarding the Education Rights of National Minorities as adopted in 1996 and the Oslo Recommendations Regarding the Linguistic Rights of National Minorities as adopted in 1998. These latter two documents give a comprehensive overview of the rights needed for protection and promotion of languages.

EBLUL stresses the need for clauses specifically related to linguistic rights of communities speaking regional and minority languages to be included in the Charter of Fundamental Rights for the European Union. The Charter should provide at least a minimum standard of protection of regional and minority languages which will become a fundamental basis in this field for the European Union itself and for its current and future member states.

Brussels 25.2.2000

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 16 March 2000**CHARTE 4167/00****CONTRIB 51****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a contribution of European Round Table of Charitable Social Welfare Associations (ETWelfare).^{1 2}

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² This text has been submitted in English only.



ETWelfare

Proposal from
ETWelfare
(European Round Table of Charitable Social Welfare Associations)
concerning the draft of an EU Charter of Basic Rights

Article ...
The Right to Civil Dialogue and Basic Protection

- (1) Every person in the European Union has a right to social participation (civil dialogue) and to protection against poverty and exclusion (basic protection).
- (2) Civil dialogue adheres to the principles of solidarity and subsidiarity, and will be conducted at the local, regional, national and European levels, in particular by means of co-operation with the social partners, non-governmental organisations and charitable social welfare associations as actors of civil society.
- (3) Basic protection includes the right to a socio-cultural subsistence, to be anchored in all social policy regulations. Part of this is the right to benefit from social welfare services, that are offered by the social partners and the charitable associations, with the involvement of volunteers, as actors of social protection and institutions responsible for voluntary establishments and services.

Reasons:

The citizens need to have more confidence in the process of European unification. The rift between rich and poor and the inherent employment crisis are evident at a global level, and require new ways of fighting against poverty and exclusion. This is the only way to encounter the fears of globalisation in general and of enlarging the EU in particular. It is imperative to further develop the European social model. The current state of play seems to indicate that the EU may adopt a Charter of Basic Rights by the end of 2000, and for the reasons given above it must include social rights.

The newly to be created right to civil dialogue requires the guarantee that there will be co-operation with the social partners, non-governmental organisations and charitable social welfare associations as actors of civil society, at the local, regional, national and European levels. Only a sufficient degree of social participation can give durability to the principle of democracy. And in doing so, it must respect the principles of subsidiarity and solidarity.

All social policy regulations need to include the right to a socio-cultural subsistence level. Pursuant to Article 14 of the European Social Charter this must include the right to benefit from social welfare services. Co-operation with the social partners and the charitable associations responsible for social establishments and services (see Maastricht Declaration N° 23 on "Co-operation with Charitable Associations"), and that use the input from voluntary services to develop social solidarity (see Amsterdam Declaration N° 38 on "Voluntary Services") corresponds specifically to the objectives of European social policy as stipulated in Article 136 of the EU Treaty (Amsterdam version).

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Brussels, 3 March 2000

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE**fundamental.rights@consilium.eu.int**

Bruxelles, le 16 mars 2000**CHARTE 4168/00****CONTRIB 52****NOTE DE TRANSMISSION**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne

Veillez trouver ci-après une contribution du Groupement Européen des Fédérations intervenant dans l'immobilier (GEFI) ¹

¹ Ce texte a été soumis en langue française seulement.

CHARTE EUROPÉENNE DES DROITS FONDAMENTAUX

PROJET DU GEFI

Groupement Européen des Fédérations intervenant dans l'Immobilier

**Transmis le jeudi 16 mars pour diffusion sur le site internet :
Consilium.eu.int**

INTRODUCTION

- 1 Dans l'Europe qui se constitue, au sein de l'ensemble communautaire, la propriété est un droit fondateur, acquis pour les uns depuis quelques siècles, retrouvé pour les autres depuis quelques années. Et pour chacun, le droit de disposer d'une propriété demeure une motivation dans son activité professionnelle et dans sa vie personnelle.

Pour autant, demander à voir ce droit reconnu dans un texte, constitué de principes directeurs de l'action des institutions communautaires, ne relève pas de la redondance. C'est d'ailleurs ce que traduit globalement le plan d'action de Vienne, qui avait demandé le 3 décembre 1998 que trois notions, pourtant ancrées dans l'esprit collectif européen, soient protégées : la liberté, la sécurité et la justice.

- 2 Dans sa sagesse, le Conseil européen de Cologne a confirmé, en faisant suite au Traité d'Amsterdam (articles 6 et 7 du Traité sur l'UE), qu'il n'existait pas d'évidence en matière de Droits de l'Homme. Il a jugé qu'à ce stade du développement de l'Union européenne, la subsidiarité était compatible avec l'affirmation solennelle d'un état de droit demeuré jusque là implicite et insuffisamment cohérent.

Ce souci de visibilité des droits fondamentaux, qui devrait notamment se fonder sur l'acquis précieux de la Convention européenne des Droits de l'Homme et de la Cour de Strasbourg, ainsi que sur les traditions constitutionnelles communes des Etats membres, consacre, quelle que soit la valeur juridique du texte à venir, un basculement de l'ère des agents économiques à celle des citoyens européens, d'une communauté d'intérêts à un état de droit.

Cette configuration nouvelle laisse la liberté d'inventer un modèle cohérent, qui concilie nos destins nationaux et notre communauté de destin européen. A l'évidence, ce défi ne se limite pas à la reconnaissance de droits établis. Il suppose également de les concilier avec de nouvelles exigences et de trouver par là un nouveau sens, une vocation renouvelée de ces droits fondateurs.

- 3 La propriété illustre cette nouvelle donne. Etroitement liée à l'ensemble des libertés qui sont le fondement, l'objet même de la Communauté Européenne et qui se déclinent en liberté d'entreprendre, liberté de la concurrence, ou liberté de la circulation, elle a vu son rôle évoluer au cours des dernières années.

Certes, elle demeure plus que jamais une motivation, un ressort essentiel pour l'activité humaine. Elle encourage et permet de mener un projet personnel, d'imaginer son futur, celui de sa famille. Elle constitue, en ce sens, un moteur économique et un facteur d'harmonie sociale unique, qu'il est indispensable de préserver et plus encore de développer.

Parallèlement, elle participe d'autres objectifs, celui de la solidarité notamment, face à l'accroissement, depuis le début de la décennie 80, du nombre des sans-abri et à l'insuffisance des moyens engagés en faveur des personnes âgées, des handicapés et des sous-populations aux besoins spécifiques. Elle est de plus en plus intégrée dans les politiques de protection de l'environnement et de développement durable. La propriété,

qui induit le partage, assure par là un des fondements essentiels de la citoyenneté moderne.

C'est cette double faculté de la propriété qui explique le renouvellement de son rôle économique et social dans l'ensemble des Etats membres de la Communauté Européenne, au cours des années 80.

- 4 La fondation au niveau de l'Union Européenne d'un droit de propriété moderne et pérenne doit donc tenir compte de la conservation pleine et entière de ce droit d'intérêt général, dans des conditions qui permettent de répondre aux exigences du temps présent, ainsi qu'à celles de notre avenir commun.

Cela revient à s'interroger sur les limites aux atteintes qui lui sont portées, de sorte que l'exception n'annihile pas le principe et que les restrictions d'usage ne privent pas de facto le propriétaire de son droit.

Au préalable, un état des lieux s'impose, qui montrera toute l'utilité d'une clarification communautaire.

A l'image de nombreux autres droits fondamentaux, en effet, l'espace européen de la propriété immobilière n'existe pas (II), mais il se construit progressivement (III).

Absence d'espace européen de la propriété et convergences nationales croissantes

- 5 Pourquoi un espace européen de la propriété immobilière ? parce que c'est un droit fondamental, inscrit de surcroît dans un espace économiquement intégré, qui se veut socialement cohérent. L'égalité de traitement doit permettre en tous domaines une fluidité des capitaux et des investissements dans l'immobilier, une mobilité transnationale du travail, une égalité de traitement pour les revenus les plus modestes voulant accéder au logement ou à la propriété.

A cet égard, le filtre des politiques nationales permet de discerner quelques conceptions concrètes de la propriété, souvent ancrées dans une histoire récente, celle des 50 dernières années, et dans des environnements nationaux différents (2.A). Cela ne remet pas pour autant en cause des valeurs communes, qui s'accompagnent de réelles convergences (2.B).

2.A. Des choix stratégiques et des réglementations différenciées

- 6 Si tous les pays membres de l'Union s'interrogent sur la meilleure politique du logement possible pour répondre notamment aux nouvelles formes d'exclusion, les voies et moyens adoptés divergent.

Les choix stratégiques fondamentaux pourtant partagés après-guerre n'ont pas donné lieu à mise en œuvre dans des conditions comparables. Dans la mesure où ils ne furent

jamais remis en cause, si ce n'est au Royaume-Uni, du moins dans leurs grands principes, les évolutions qui en ont résultées ont le plus souvent divergé.

2.A.1 Les choix stratégiques de l'après-guerre

7 Al'issue de la Seconde guerre mondiale, deux types de réponses ont été apportés au problème de l'insuffisance de logements :

| soit, l'Etat a investi directement dans le secteur et construit des logements dont il était propriétaire, à charge pour lui de les louer ou de les vendre ;

| soit, il a adopté des mesures d'incitation des agents économiques à investir dans le secteur du logement, des ménages pour leur fonction de consommateurs de service du logement et de tous les autres, pour leur fonction d'épargne et de gestion de leur patrimoine.

Le choix entre ces deux options s'est, en général opéré, suivant des considérations pragmatiques d'efficacité des interventions et de rapidité d'obtention des résultats. C'est le poids relatif de six facteurs principaux, qui permet d'expliquer les différences entre les politiques du logement retenues. **Leur énumération rapide permet de comprendre l'actualité et la pertinence de cette grille de lecture pour toute politique du logement, à quelque niveau que ce soit :**

- la philosophie économique et sociale des dirigeants ;
- le degré de légitimité des interventions de l'Etat dans le secteur du logement ;
- le degré d'acuité de la crise du logement ;
- le niveau d'organisation des institutions sur lesquelles l'Etat peut s'appuyer pour intervenir ;
- la situation générale de l'économie ;
- le degré de motivation préalable des agents économiques.

8 **Dans tous les pays, les gouvernements ont mis en œuvre des politiques d'incitation à l'accession à la propriété**, essentiellement dans « le neuf », par l'octroi de primes, de subventions, de bonification d'intérêts, d'avantages fiscaux ou de prêts à taux réduits.

| Là où la légitimité de l'intervention étatique était ancienne, la solution de l'Etat investisseur fut immédiatement retenue, démarche des pays scandinaves et du Royaume-Uni.

| Là où elle apparaissait plus faible ou plus récente, il s'est agi de permettre aux ménages les plus modestes d'accéder à des logements décentes, sans effort trop lourd. Cette politique restreinte du logement (plafonnement des ressources) s'est traduite par la construction de logements sociaux en France, en Belgique, au Luxembourg et, de façon temporaire, en RFA.

| Les Pays-Bas avaient adopté une position plus nuancée, orientée vers le logement social, qui se traduisait dans les faits par un libre accès à ce parc.

| L'Espagne, la Grèce et le Portugal, dans leur contexte politique particulier et compte tenu de leur isolement international, ne purent commencer à mettre en oeuvre une véritable politique du logement que beaucoup plus tard.

9 Dans le secteur locatif, la situation était plus diversifiée encore :

| dans les pays scandinaves et au Royaume-Uni, la puissance publique ont joué un rôle déterminant soit en aidant les acteurs privés, soit en se substituant à eux.

| dans les autres pays européens, la situation plus ambiguë a conduit les gouvernements à tergiverser : ils ont refusé d'intervenir dans le secteur locatif au-delà de la distribution de quelques aides à la construction, tout en comptant sur les acteurs privés, au point de leur aménager des conditions législatives exceptionnelles. Ce fut l'échec, en France et en Allemagne notamment, qui a conduit l'Etat à intervenir massivement au travers d'organismes d'utilité publique.

2.A.2 Les politiques ultérieures et l'émergence de groupes de pays

10 L'amélioration générale de la conjoncture à partir de la fin de la décennie 50 va faciliter la résorption des tensions sur le marché de l'immobilier. Pourtant une ligne de fracture va très rapidement se faire jour :

| Dans les pays où les gouvernements sont intervenus rapidement, l'accroissement de l'offre de logements et l'élévation des revenus réels ont permis de lever rapidement le contrôle des loyers : la RFA est en 1963, le premier pays à le faire. Dans ces pays, les pouvoirs publics ont pu également s'appuyer sur les investissements privés. En RFA, par exemple, l'Etat s'est retiré, dès la fin des années cinquante, du système des logements subventionnés et a favorisé le secteur locatif par l'octroi d'aides de caractère essentiellement fiscal.

| Dans les pays où l'action de l'Etat fut plus tardive et moins massive, la levée des contrôles des loyers n'est intervenue que beaucoup plus tard : le cas extrême est celui des pays de l'Europe du Sud. Toutefois, dans ces pays, l'Etat cherche à réduire ses interventions financières en utilisant la progression des revenus réels. Il multiplia les catégories de logements. Chaque catégorie devait correspondre à un groupe particulier de population selon ses revenus. C'est sans doute la France qui est allée le plus loin possible dans cette voie : en 1968, on ne comptait pas moins de 6 catégories de logements ouverts aux organismes locatifs sociaux.

11 A l'inverse de l'effet recherché, les pays peu interventionniste ont vu se réduire l'offre de logements de bonne qualité sur le marché locatif privé, ce qui a contribué à une baisse générale de l'investissement dans le logement et de l'entretien du parc. L'Etat a dû, au fil des années, répondre à ces carences, en renforçant son intervention, notamment en compensant le recul du parc locatif privé par le développement du parc locatif public.

Les pays les plus rapides (RFA, Pays-Bas, Danemark, pays nordiques) ont en revanche créé une spirale vertueuse : après avoir résorbé les déséquilibres quantitatifs, ils ont pu transférer au secteur privé la responsabilité de l'accroissement de l'offre nouvelle de logements, sans jamais abandonner complètement le secteur privé au marché, de sorte qu'il remplisse une vraie fonction sociale.

12 Le déclenchement de la crise de 1974 va contribuer à figer les situations nationales en imposant progressivement une « orthodoxie budgétaire » peu favorable au secteur social en particulier, aux dépenses publiques en général. Cette nouvelle option va se traduire par l'incitation à l'accession à la propriété privée.

- 13 Les années suivantes vont confirmer une segmentation des pays en trois groupes principaux :
- | L'Europe du Nord (Danemark, Pays-Bas, RFA) se caractérise par une volonté des pouvoirs publics de faire jouer à la propriété privé un rôle social qui contribue à son développement, notamment sous la forme de conventionnements.
 - | L'Europe du Sud (Espagne, Grèce, Italie, Portugal) place le secteur locatif privé sous contrôle, ce qui conduit à la disparition d'une offre locative, conditionne le choix de l'accession assistée, aboutit le plus souvent au délabrement du patrimoine immobilier.
 - | L'Europe de l'Ouest (Belgique, France, Grande-Bretagne, Irlande) choisit le désengagement général de l'immobilier en assurant la promotion à l'accession Cela a induit des risques de rupture sociale, notamment par le développement d'une ségrégation spatiale, ce contre quoi les pouvoirs publics s'efforcent aujourd'hui de lutter.

2.B. Des convergences croissantes

- 14 Les politiques nationales ne résument pas à elles seules la façon par laquelle on peut caractériser le statut de la propriété dans les pays membres de l'Union Européenne. Elles traduisent un état de fait, dont il convient de tenir compte, mais elles ne délimitent en aucune façon un cadre indépassable.

En revanche la base constitutionnelle reconnue à la propriété dans chacun des pays est révélatrice de l'importance fondamentale de ce droit, ainsi que d'une vraie cohérence des pays membres de l'Union sur ce point.

Au-delà même de cette unanimité de principe quasi absolue, les orientations récentes des politiques nationales semblent indiquer des évolutions convergentes.

2.B.1 Les Constitutions, unanimes mais nuancées

- 15 Presque tous les pays d'Europe, héritiers du droit romain, ont inscrit la propriété privée dans leur Constitution comme droit fondamental et inviolable, sous réserve de restrictions inspirées par des motivations d'intérêt public. Seul le Royaume-Uni a conservé un droit issu du système féodal, régi par la « common law ». A noter une autre singularité, l'Autriche : sa Constitution ne traite que des règles d'organisation des pouvoirs publics.

De conception la plus souvent récente, les textes originels ou issus de révisions constitutionnelles adoptent pour la plupart d'entre eux une formulation pragmatique. Mais certains choisissent une affirmation plus solennelle de ce droit.

- 16 C'est le cas en particulier de l'Irlande et de la France. Dans son article 43, la Constitution irlandaise dispose « **L'Etat reconnaît que l'homme, en vertu de son être raisonnable, a le droit normal, antérieur à la loi positive, à la propriété privée** des marchandises externes ». Le texte français, issu de la Déclaration des Droits de l'Homme et du citoyen du 26 août 1789 (art.17), est le suivant : « **La propriété étant un droit inviolable et sacré**, nul ne peut en être privé, si ce n'est lorsque la nécessité publique, légalement constatée, l'exige évidemment, et sous la condition d'une juste et préalable indemnité ».
- 17 Les autres textes constitutionnels vont d'emblée à la **nécessité de l'équilibre à instaurer entre propriété privée et intérêt public**. A cet égard, l'exigence des constituants est plus ou moins grande, eu égard au respect de la propriété privée. **Quatre groupes de pays peuvent être distingués** :
- | les pays dont les constituants exigent une pleine compensation (Danemark, Finlande, Grèce, Pays-Bas) ;
 - | les pays dont les Constitutions garantissent une juste et parfois préalable indemnisation (Belgique, France, Luxembourg, Portugal) ;
 - | les autres pays évoquent le principe d'équité ou de caractère approprié dans le dédommagement (Allemagne ; Espagne)
 - | la dernière catégorie, la moins représentée, est illustrée par les pays ne caractérisant pas précisément la nature de la compensation (Italie, Suède)

2.B.2 Les orientations récentes, convergentes

- 18 Outre ce voisinage de principe entre les Etats européens, les préoccupations communes qui se sont exprimées durant les années 90 révèlent désormais une problématique partagée, relative aux orientations politiques en matière de logement et de propriété immobilière.
- 19 Ces convergences sont plus particulièrement visibles pour les actions en faveur du secteur locatif privé.

Ce secteur représente actuellement de l'ordre de 21% du parc de logements des Etats membres (contre 18% pour le parc locatif social et 56% pour les propriétaires et accédants) et enregistre des signes de regain encourageants.

L'exemple de l'Allemagne, qui par des aides fiscales en faveur des propriétaires bailleurs a permis de conserver un puissant secteur locatif privé, de qualité et de confort, et le contre-exemple d'une baisse sensible de l'offre liée à la réglementation des loyers, accompagnée du développement de l'insalubrité (exemple : le Portugal), ont conduit les Etats européens à reconsidérer le rôle de la propriété privée.

Les actions entreprises depuis une dizaine d'années dans la plupart des Etats en faveur du secteur locatif privé commencent à progressivement produire des effets. Les réglementations des loyers ont été presque partout assouplies, des incitations fiscales accompagnent le plus souvent les orientations des politiques publiques, des actions de réhabilitation du parc existant sont engagées, des systèmes de conventionnement se développent.

- 20 Cette première partie de l'analyse, si elle montre la diversité européenne, constat qui ressort de l'évidence, met également en exergue des traits communs fondamentaux et, de plus en plus, des évolutions convergentes. Une déclaration des Droits ne saurait ainsi ignorer que les différences nationales temporaires ne font indubitablement pas obstacle à une mise en cohérence, d'autant qu'elle est initiée par les gouvernements. Un tel texte a, en outre, pour vocation, d'encourager ces évolutions, dans le sens du respect le plus grand des droits dont il est question.

Cette tâche est facilitée par le fait que le travail européen et communautaire a déjà été entamé.

Logique de cohérence européenne et prise en compte de nouveaux enjeux

- 21 L'Europe, par la voix des Cours de Strasbourg et de Bruxelles, a apporté les premiers éléments de cohérence de ces politiques nationales et établi certains principes de hiérarchisation des droits (3.A).

Mais ces évolutions demeurent encore trop souvent ancrées dans une vision traditionnelle du droit de propriété et de ses relations avec les puissances publiques. Non seulement la Charte peut aisément établir un cadre juridique sur la base de l'existant. Mais elle peut, plus encore, préparer certaines évolutions probables et souhaitables (3.B).

3.A. Un fondement juridique européen aujourd'hui bien établi

3.A.1 L'article 1^{er} du protocole additionnel à la Convention européenne de sauvegarde des Droits de l'Homme et des Libertés Fondamentales

- 22 L'article 1^{er} du Protocole n°1 est ainsi rédigé :

« Toute personne physique ou morale a droit au respect de ses biens. Nul ne peut être privé de sa propriété que pour cause d'utilité publique et dans les conditions prévues par la loi et les principes généraux du droit international.

Les dispositions précédentes ne portent pas atteinte au droit que possèdent les Etats de mettre en vigueur les lois qu'ils jugent nécessaires pour réglementer l'usage des biens conformément à l'intérêt général ou pour assurer le paiement des impôts ou d'autres contributions ou des amendes. »

Selon la jurisprudence de la Cour de Strasbourg, cet article contient **trois normes** distinctes (arrêt *James et autres C. Royaume-Uni*, du 21 février 1986) : la première, qui s'exprime dans la première phrase du premier alinéa et revêt un caractère général, énonce **le principe du respect de la propriété** ; la deuxième, figurant dans la seconde phrase du même alinéa, vise la **privation de propriété** et la soumet à certaines conditions ; quant à la troisième, consignée dans le second alinéa, **elle reconnaît aux**

Etats contractants le pouvoir, entre autres, de réglementer l'usage des biens conformément à l'intérêt général.

- 23 Sur cette base, la Cour de Strasbourg a produit une jurisprudence très abondante relative au droit de propriété, qui vise en général à concilier sa protection nécessaire avec l'existence de droits concurrents et reconnus par là inférieurs dans l'ordre juridique communautaire.

Quelques arrêts permettront à titre d'exemple d'évaluer la portée de cette jurisprudence qui ne s'en tient pas à une garantie formelle du droit de propriété.

∂ Ainsi, dans un arrêt *Sporrong et Lönnroth* . Suède du 23 septembre 1982, la Cour a jugé que l'absence d'expropriation formelle conduisant néanmoins au gel d'un terrain pendant 23 ans ne respectait pas un juste équilibre entre des exigences d'intérêt général et les impératifs de sauvegarde des Droits de l'Homme.

- Plus récemment, la Cour a jugé qu'une loi établissant une présomption irréfragable selon laquelle les propriétaires riverains, parce qu'ils tirent profit de la construction d'une route nationale, ne peuvent être indemnisés que pour une partie des biens expropriés, s'avère d'une « rigidité excessive » et fait supporter aux propriétaires une « charge spéciale et excessive », qui emporte violation de l'article 1 du Protocole 1 (*Papachelas C. Grèce, 25 mars 1999*).

÷ Des réglementations d'usage ont également été condamnées par la Cour à l'occasion de 2 arrêts très récents.

| Ainsi, l'obligation faite aux petits propriétaires français par la loi « Verdeille » de faire apport du droit de chasse sur leurs fonds à une ACCA poursuit bien un but d'intérêt général – éviter une pratique anarchique de la chasse et favoriser une gestion rationnelle du patrimoine cynégétique-, mais constitue une violation du droit de propriété en ce qu'elle fait peser une « charge démesurée » sur les propriétaires, qui ne disposent en pratique d'aucun moyen d'échapper à cet apport forcé (*Chassagnou et autres c. France, 29 avril 1999*).

| Est aussi une réglementation de l'usage des biens la législation qui, par la prolongation de baux locatifs et la suspension puis l'échelonnement de l'exécution forcée des décisions judiciaires ordonnant aux locataires de libérer les lieux, place un propriétaire dans l'impossibilité d'obtenir l'exécution d'une décision d'expulsion (*Immobiliare SAFFI C. Italie, 28 juillet 1999*). Une telle législation, qui tend à faire face à des besoins urgents en matière de logement et à éviter des tensions sociales, poursuit bien un but légitime. Bien que reconnaissant au législateur une ample marge d'appréciation en matière de réglementation de l'usage des biens, la Cour juge ici que l'application de la législation italienne à la requérante a placé celle-ci pendant environ 11 ans dans l'incertitude quant au moment où il lui serait possible de récupérer son appartement et lui a fait subir une « charge spéciale et excessive » constitutive d'une violation de l'article 1 du Protocole 1.

- 24 La lecture de ces quelques exemples jurisprudentiels montre le souci des juges de Strasbourg de porter son regard au-delà des limitations d'usage dès lors qu'elles emportent l'impossibilité effective de jouir de son bien.

Mais la justice européenne est un luxe auquel peu de concitoyens européens peuvent accéder, ce qui légitime la protection au sein de l'Union de ces droits, ainsi qu'un renforcement de l'intervention des juges de Luxembourg.

3.A.2 Un dispositif de mieux en mieux relayé au sein de l'Union Européenne

- 25 La base juridique de l'intervention de l'Union en matière de droits fondamentaux, à l'origine très étroite, s'est au cours des dernières années notablement étendue.

C'est en effet l'article 6 (F), deuxième alinéa, du traité de l'Union Européenne, qui fait obligation à l'Union de respecter les droits fondamentaux tels qu'ils sont garantis par la Convention européenne de sauvegarde des Droits de l'Homme et des libertés fondamentales .

Pour le respect de ces droits, certaines dispositions peuvent être prises contre certains Etats membres qui se rendent coupables de violations à leur égard. Ces dispositions sont applicables en vertu de l'article 236 (309, paragraphe 2) du Traité de l'Union.

Par ailleurs, les articles 11 § 1 (J.1 § 2), 5^{ème} tiret, et 30 (K.2) § 1 du traité de l'Union, ainsi que l'article 177 (130 U) § 1 et 2 du traité CE, mentionnent la protection des droits fondamentaux et les droits de l'homme.

Enfin, le préambule de l'Acte unique se réfère à la Convention européenne de sauvegarde des droits de l'homme.

- 26 Hors des procédures contentieuses, le Parlement Européen a pris depuis 1977 des initiatives visant à une meilleure protection des libertés fondamentales des citoyens européens. En 1993, la Commission des libertés publiques et des affaires intérieures, mise en place après le traité de Maastricht, a établi le premier rapport annuel sur le respect des droits de l'homme dans la Communauté, suivi d'une résolution sur le même sujet. C'est par ailleurs, sur son initiative, qu'a été envisagée l'adhésion de l'Union à la Convention européenne des Droits de l'Homme, idée rejetée par la Cour de Justice dans un avis du 28 mars 1996.

- 27 La Cour de Luxembourg a pris le relais des textes et des initiatives parlementaires. Elle a été amenée à fonder sa jurisprudence sur les droits fondamentaux reconnus et garantis par les Constitutions des Etats membres, ainsi que sur le texte de la Convention Européenne pour assurer le respect des droits fondamentaux dans l'Union Européenne. C'est ainsi qu'elle a pu établir **dès 1974 que les droits fondamentaux, tel que le droit de propriété, faisaient partie des principes généraux du droit, équivalents, dans la hiérarchie des normes communautaires, au droit communautaire primaire.**

- 28 Par ailleurs, sa jurisprudence est allée en se précisant, dans le sens de garanties mieux affirmées du droit de propriété. Mais elle demeure encore, à certains égards, imprécise.

Dans l'arrêt Nold du 14 mai 1974, la Cour reconnaît le droit de propriété en tant que droit fondamental, protégé par l'ordre juridique communautaire. Elle fait référence aux instruments internationaux auxquels les Etats membres ont adhéré ou simplement coopéré et énoncent que la Cour «est tenue de s'inspirer des traditions

constitutionnelles communes aux Etats membres ». A cet effet, il est précisé qu'il ne saurait être admis « des mesures incompatibles avec les droits fondamentaux reconnus et garantis par les Constitutions » des Etats membres.

L'arrêt « Hauer », rendu le 13 décembre 1979, constitue une étape décisive vers une protection plus effective de la propriété. Il précise, en effet, que les restrictions justifiées par l'intérêt général ne sauraient aller au-delà de la mesure nécessaire, ni porter atteinte à la substance même du droit de propriété. Le principe de proportionnalité ainsi affirmé se fonde pour la première fois sur l'article 1^{er} du Premier Protocole additionnel à la Convention européenne et l'interprète comme s'il s'agissait d'une disposition de droit communautaire.

Cette avancée notable de la jurisprudence connaît néanmoins une limite, qui tient à la distinction faite entre privation et règlement de l'usage de la propriété: le même arrêt Hauer précise qu'il n'existe pas de privation si le propriétaire peut continuer à disposer de sa propriété et en user de toutes autres manières, sous réserve qu'elles ne soient pas prohibées.

La limite ainsi établie entre la substance d'un droit et les restrictions qui peuvent y être apportées est plus que ténue, en tout cas mal définie. Dans la mesure où cette substance n'est pas établie et où les atteintes portées sont conformes au droit existant, tous les abus de droit restent possibles.

Cela renvoie notamment à la distinction artificielle faite dans un certain nombre de droits nationaux entre la perte totale de la propriété, qui est indemnisée, et la perte d'éléments qui, même s'ils peuvent apparaître comme fondamentaux (par exemple une inconstructibilité totale) ne le sont pas. De nombreuses atteintes remettant en cause le sens et la portée du droit de propriété peuvent ainsi échapper à une réparation.

A cet égard, la Cour a pris, dans l'affaire Wachauf du 13 juillet 1983, une position qui va dans le sens de l'indemnisation du préjudice subi. Elle a, en effet, estimé qu'une importante limitation au droit de propriété, devait être compensée financièrement. L'influence de la jurisprudence de la Cour européenne des droits de l'Homme apparaît ici avec la force de l'évidence. Ainsi, la Cour fait-elle du bilan coût-avantage un élément fondamental que toute Charte moderne du droit de propriété paraît devoir aujourd'hui appliquer.

Cette évolution jurisprudentielle apparaît finalement aussi encourageante qu'elle est inachevée. Dans la situation actuelle, le droit de propriété, même reconnu, ne jouit pas de garanties stables face aux droits concurrents. En réalité, il n'existe pas encore.

3.B. Une actualisation indispensable

- 29 Le futur article de la Charte relatif au droit de propriété doit, compte tenu des dispositions constitutionnelles de certains des Etats membres de l'Union et de la jurisprudence de la Cour Européenne des Droits de l'Homme aller au-delà des dispositions de l'article 1 du Protocole 1 de la Convention européenne de sauvegarde des Droits de l'Homme et des Libertés Fondamentales.

- 30 Il convient tout d'abord d'affirmer **le rôle que joue la propriété immobilière dans l'équilibre social et le développement économique des pays membres de l'Union**. C'est précisément ce rôle et la conscience qu'en ont les propriétaires eux-mêmes et les Etats, qui fondent les droits relatifs à sa protection.

L'exercice de ce droit ne pose problème que dès lors que des droits concurrents viennent limiter son libre exercice. A cet égard, plusieurs éléments doivent être mentionnés dans le texte futur :

- 31 Il doit être rappelé, comme le fait l'article 1 du Protocole 1 de la Convention, que « nul ne peut être privé de sa propriété que pour une cause d'utilité publique ».
- 32 Ce droit de la puissance publique doit être encadré par l'existence de **normes législatives et constitutionnelles**. Il peut en effet être envisagée qu'une loi ne soit pas nécessairement confrontée à ces normes suprêmes de la hiérarchie des normes. Il est donc nécessaire que la conformité de la loi à la Constitution soit examinée d'office.

La compensation liée à ces opérations doit se conformer à des garanties de fond et de procédure.

- 33 Sur le fond, il est indispensable de ne plus distinguer les restrictions à l'usage de la propriété de privations pures et simples, dans la mesure où, comme on l'a vu, l'un aboutit de fait souvent à l'autre. C'est la raison pour laquelle, la **compensation prévue doit être pleine et entière** et non pas seulement équitable. Cette dernière notion revêt, en effet, un caractère relatif qui laisse à l'arbitraire une place trop grande.
- 34 **Cette compensation doit être également préalable** pour éviter, autant que faire ce peut, que l'empiètement sur l'exercice du droit de propriété ne se transforme en privation .
- 35 Enfin, le propriétaire ne peut appréhender complètement un préjudice que s'il dispose de toute l'information utile à la formation de son appréciation. Aussi, convient-il d'ajouter l'exigence **d'une procédure loyale et contradictoire**.

Conclusion

La meilleure protection des droits des locataires et la réalisation effective du droit au logement passe, comme le démontrent les politiques nationales dans les pays du nord de l'Europe, ainsi qu'en Allemagne, par une protection effective des droits des propriétaires.

C'est là une condition de la confiance dans les rapports entre propriétaires et puissance publique et une étape indispensable vers certaines formes de partenariat.

C'est dans ce cadre, qui intègre un principe de solidarité indispensable, et renouvelle donc le rôle de la propriété immobilière dans la Cité que des garanties nouvelles doivent être ajoutées à celles que les institutions européennes ont déjà reconnues.

La base de cette reconnaissance ne saurait donc se limiter durablement à ce qui n'est qu'une référence de base, la Convention européenne de sauvegarde des Droits de l'Homme et des Libertés Fondamentales.

L'Union Européenne sera ainsi en mesure de répondre à sa vocation d'espace politique cohérent, faisant application d'un cadre juridique uniformément respecté et inspirant durablement les pratiques étatiques.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 17 March 2000**CHARTE 4169/00****CONTRIB 53****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a contribution by the European Children's Network (Euronet). ^{1 2}

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² This text has been submitted in English only.

To: The Convention to draft the EU Charter of Fundamental Rights
Mr Roman Herzog, Chair of the Convention
c/o European Council of Ministers
175 Rue de la Loi
1048 Bruxelles

Re: Note from the Praesidium CHARTE 4123/1/00 REV 1, Convent 5

Brussels, 27 February 2000

Dear Mr Herzog,

Rights of the Child

I am writing to follow up your note with draft articles for the Draft Charter of Fundamental Rights of the European Union of 15 February 2000. Euronet, the European Children's Network was particularly interested in your comments on Article 9 Family life and in particular the commentary on the Convention on the Rights of the Child.

We welcome the fact that the Convention drafting the Charter is giving consideration to adding the phrase "in accordance with the UN Convention on the Rights of the Child 20 November 1989" to paragraph 3. This is in line with recommendations by Euronet in its submission to the Convention drafting the EU Charter of fundamental rights. In particular we would like to answer the question posed by the Convention, as to whether reference should be made to an instrument external to Union which may develop independently. We recommend that a reference to the UN Convention on the Rights of the Child, as the most comprehensive contemporary expression of children's rights, with almost universal ratification, is the most straightforward way to integrate the rights of the child. Although the UN Convention on the Rights of the Child can be amended, Article 50 (3) states clearly that when an amendment enters into force, it shall be binding only on those states parties which have accepted it. Other states parties are bound by the provisions of the present Convention (and any earlier amendments which they have accepted.) Therefore it is not possible to envisage a situation where the Union would be bound to a changing and developing legal instrument, as amendments only bind states which agree to them. In addition the phrase "in

accordance with the UN Convention on the Rights of the Child” does not amount to ratification by the EU and simply means that the EU has to respect the principles of the present Convention. In the event that the Convention decides that a reference to international legal instruments is not possible, then we would urge that reference is made to the principle of the best interests of the child and the other four key principles (Articles 2, 3, 6 and 12) in the UN Convention on the Rights of the Child.

We would also like to point out that the current reference proposed in the draft Charter in Article 9 should be wider than “The Union shall ensure protection of children.” The UN Convention on the Rights of the Child contains a number of other important rights not only protection rights. Our submission also raises a number of other issues and not only child protection. Children should not merely be seen as objects of rights but as bearer of rights. We would therefore urge that a reference is included to the Union ensuring protection and promotion of the rights of the child.

We would be pleased to discuss these comments further with you.

Yours sincerely,

Mieke Schuurman
Euronet Co-ordinator

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 20 March 2000**CHARTE 4171/00****CONTRIB 54****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a contribution of European Liaison Committee on Services of General Interest (CELSIG).^{1 2}

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2 March 2000

**CELSIG Propositions in view of
the elaboration of the Charter of Fundamental Rights
and the Intergovernmental Conference**

Services of general interest constitute a significant element of the Union's common values. This opinion has been underlined by the Commission itself in its communication of September 1996:

“European societies are committed to the general interest services they have created which meet basic needs. These services play an important role as social cement over and above simple practical considerations. They also have a symbolic value, reflecting a sense of community that people can identify with. They form part of the cultural identity of everyday life in all European countries.”

Today, following the establishment of the common market over the whole European territory and the introduction of the common currency, we may add that these services, equally constitute a factor of economic cohesion in the European Union. Further, the Treaty of Amsterdam (article 16) recognises their role in the strengthening of social and territorial cohesion. The services of general interest play, in addition, an essential role in the guarantee to all, of the application of individual's fundamental rights.

These orientations should be consolidated during the elaboration of the Charter of fundamental rights in the European Union and during the Intergovernmental Conference.

That is why the European Liaison Committee on Services of General Interest proposes the following:

1/ Charter of fundamental rights

Democratic values and the respect of Human Rights are the basis of the European civilisation. The Charter of fundamental rights must allow the exercise of these values by all European citizens and residents. The proper functioning of the European democracy depends on this aspect.

The Charter of fundamental rights, based on the European Social Charter (Council of Europe), must guarantee the integrity, the freedom, the equality, the dignity, the well being and personal advancement of the person. Services of general interest are a factor that guarantees the exercise of these fundamental rights, of having access to goods and essential services such as food, security, employment, housing, culture, education and training, health treatment, transport, energy, information and communication (postal services, telecommunications, Internet, media), access to financial and bank services, consumer protection, good quality environment for today and for generations to come.

...

We therefore propose that the following appear in the Charter:

"Article X – Services of general interest

1. Every individual has a right to access to services of general interest
2. Services of general interest guarantee the exercise of fundamental rights".

“Article Y – Right to an effective appeal action

Any individual, physical or moral, whose rights and liberties have been violated, has a right to an effective appeal action before a judge designated by the law, including before the Court of Justice of the European Communities."

The Charter of fundamental rights should be integrated into the treaty of the European Union, in order to have constraining legal significance.

2/ Intergovernmental Conference

On these bases, the article 16 (formerly article 7D) of the Treaty must be supplemented:

- "a) Services of general interest are components of the common values of the Union; they participate in ensuring the exercise of the fundamental rights of the individual as defined in the present Treaty; they contribute to the promotion of social and territorial cohesion in the Union.
- "b) The European Union and its Member States guarantee the access of everyone to services of general interest.

- "c) Without prejudice to articles 73, 86 and 87, the Community and its Member States, each within their respective powers and within the sphere of implementation of the present Treaty, guarantee that such services operate on the basis of principles and conditions which enable them to fulfil their missions. Such measures are established in full respect of, *inter alia*, the principles of equality of treatment, quality, continuity of these services, as well as of the principles of transparency and evaluation concerning their definition, their application and their operation".

3/ Charter of the services of general interest

A Charter of the services of general interest at the Community level should be elaborated with all stakeholders (institutions, elected representatives, enterprises, employees and unionists, consumer organisations, civic NGOs, etc). Such a Charter should permit the taking into account of the principle of subsidiarity and it should in particular include:

- the creation of democratic evaluation bodies at each relevant level (local, national, European);
- the establishment of regulations at the respective levels;
- the consideration of the creation of services of general interest at the Community level, in certain sectors of European interest.

Further, CELSIG suggests that an encompassing directive, democratically elaborated, provides the possibility for the general interest coherence to the sector related directives and for the provision of a legal basis to these propositions.

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPEENNE**fundamental.rights@consilium.eu.int**

Bruxelles, le 22 mars 2000**CHARTE 4172/00****CONTRIB 55****NOTE DE TRANSMISSION**

Objet : Projet de charte des droits fondamentaux de l'Union européenne

Veillez trouver ci-joint une déclaration de l'Association des Femmes de l'Europe Méridionale (AFEM), délibérée en Assemblée Générale réunie à Strasbourg le 17 mars 2000. ^{1 2}

¹ Ce texte a été soumis seulement en langue française.

² AFEM: 5, rue Villaret de Joyeuse - 75017 Paris. Tél.: 33-1-45 72 1203.
Fax: 33-1-45 72 1503. E-mail: assafem@aol.com

AFEM
ASSOCIATION DES FEMMES DE L'EUROPE MERIDIONALE

Déclaration de l'AFEM sur la Charte des Droits Fondamentaux
Délibérée en Assemblée Générale réunie à Strasbourg le 17 mars 2000

L'Association des Femmes de l'Europe Méridionale (AFEM) se félicite que l'Union européenne ait décidé de se doter d'une Charte des Droits Fondamentaux.

L'AFEM note avec intérêt l'avancement des travaux de la Convention, et notamment la proposition du Praesidium d'inclure une disposition spécifique sur l'égalité entre les femmes et les hommes.

Elle estime toutefois qu'il faut aller plus loin et insérer parmi les premiers articles de la Charte un article spécifique qui consacre le droit fondamental à l'égalité substantielle entre femmes et hommes dans tous les domaines en tant qu'élément constitutif de l'ordre public en Europe. Ainsi il sera impossible de déroger à ce droit, dont le bénéfice sera automatiquement acquis à toute personne présente sur le territoire de l'Union.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 22 March 2000**CHARTE 4173/00****CONTRIB 56****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a contribution by Amnesty International on the right of asylum and the protection of refugees under the European Union Charter of fundamental rights. ^{1 2}

¹ Amnesty International: rue du Commerce 70-72, B-1040 Brussels. Tel: +32-2-502 1499.

Fax: +32-2-502 5686. E-mail: Amnesty-EU@aieu.be

² This text has been submitted in English only.



AMNESTY INTERNATIONAL

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Convention for the EU Charter of fundamental rights
Convention Secretariat
c/o Council Legal Secretariat
175 rue de la Loi
B-1048 Brussels

Brussels, 20 March 2000

Dear Sirs,

In light of the discussions that the Convention Working Group is expected hold in the near future on the draft article 17 of the European Union Charter of fundamental rights, which relates to the “right of asylum and expulsion”, please find enclosed some comments by Amnesty International on the right of asylum and the protection of refugees.

Amnesty International acknowledges the transparency in the working methods of the Convention as well as its expressed interest in receiving the views of civil society.

Although our organisation will present at a later stage a comprehensive position on the subject, we would like to recall that the adoption of a Charter of fundamental rights must not result in diminishing the current level of protection that human rights enjoy in member states under the European Convention on Human Rights and other relevant international human rights instruments and that the Charter of fundamental rights should take account of the developments in international law, both of treaty and of customary legal nature, and therefore serve to crystallise fundamental rights that have not been object of written formulation so far.

Amnesty International is an independent worldwide movement working for the release of all prisoners of conscience, fair and prompt trials for political prisoners and an end to torture, extrajudicial executions, "disappearances" and the death penalty. It is funded by donations from its members and supporters throughout the world. It has formal relations with the United Nations, Unesco, the Council of Europe, the Organization of African Unity and the Organization of American States.

Amnesty International also recalls that under international human rights law, the fundamental rights of individuals cannot be object of discrimination on account of national origin. The Charter of fundamental rights must therefore ensure that the rights of all individuals present in the territory of the European Union are recognised

I hope that you will find these comments useful in the development of your work.

Thank you very much for your attention.

Sincerely yours,

María-Teresa Gil-Bazo
Executive Officer

Brussels, 20 March 2000

Comments by Amnesty International on the right of asylum and the protection of refugees under the European Union Charter of fundamental rights

(in light of the discussions on draft article 17 on the “right of asylum and expulsion”)

- 1.- Amnesty International welcomes the inclusion of a provision on the right of asylum in the EU Charter of fundamental rights. Indeed, this reflects the development of international law and gives substance to the undertaking made by member states under article 3 of the Dublin Convention to examine the application for asylum of any individual, in accordance with their international obligations.
- 2.- Amnesty International would like to see an express reference to the UN Refugee Convention but also to other relevant international obligations for member states, such as the European Convention on Human Rights, in line with article 63 of the Treaty on the European Community.
- 3.- Amnesty International notes that the current draft provision excludes nationals of member states from the right of asylum. Such limitation constitutes a clear violation of the UN Refugee Convention and other international human rights treaties.

Amnesty International recalls that under international law, discrimination in the enjoyment of fundamental rights on the grounds of national origin is forbidden (article 2 of the Universal Declaration of Human Rights, article 3 of the UN Refugee Convention, article 3 of the International Covenant on Civil and Political Rights, article 14 of the European Convention on Human Rights) and therefore calls for the express recognition of the right of asylum to all individuals. Such recognition would be in line with conclusion 13 of the Tampere Summit, whereby the Heads of State and Government reaffirmed “the importance the Union and Member States attach to absolute respect of the right to seek asylum”. Evenmore, the obligation of states to respect the right to seek asylum is a norm of customary international law and as such, no derogation from it is permitted (article 53 of the Vienna Convention on the Law of Treaties).

- 4.- Amnesty International would like to see an express provision on the absolute norm of *non-refoulement*, as included in article 33 para. 1 of the UN Refugee Convention and in other international treaties, of universal and regional application, such as article 3 of the UN Convention against torture and article 3 of the European Convention on Human Rights, which prohibit the forced return of individuals to the territories where their lives or freedom are at risk.
- 5.- Amnesty International would like to see an express provision on the guarantees that assist individuals in expulsion, extradition, or any other form of forced removal that they may be subjected to. Such provision would be in line with article 13 of the International Covenant on Civil and Political Rights (to which all member states are parties) and with the case-law of international monitoring bodies, such as the European Court of Human Rights, the UN Human Rights Committee or the UN Committee against Torture.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 22 March 2000**CHARTE 4174/00****CONTRIB 57****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter an open letter by the European Federation of National Organisations Working with the Homeless (FEANTSA) to the members of the Convention.^{1 2}

¹ FEANTSA: 1 rue Defacqz, B-1000 Brussels. Tel.+32-2-538 6669. Fax: +32-2-539 4174.

E-mail: office@feantsa.org

² This text has been submitted in French and English languages.

Brussels, 21 February 2000

**Open letter to the members of the Convention responsible for drafting
the proposed European Union Charter of Fundamental Rights**

Dear Madam / Sir,

I am writing to you on behalf of FEANTSA - the European Federation of National Organisations Working with the Homeless. FEANTSA brings together some 60 not-for-profit organisations in the social or community sector that provide a wide range of services to homeless people in all the EU member states, and in a number of the accession countries.

We have been very interested to hear about the work being carried out by the Convention with responsibility for drafting the proposed European Union Charter of Fundamental Rights. We are convinced that the proposed EU Charter should also enshrine those rights which are most important to the most disadvantaged members of our societies - including the right to housing.

Decent housing and living conditions are among the most basic needs of each individual. Gaining secure access to adequate accommodation is often a pre-condition for exercising many of the fundamental rights which form the foundations of all decent societies, and should be enjoyed by everyone. These include the right of access to education, the right to work, the right to social protection, the right to healthcare services, the right to personal privacy and family life, as well as access to basic services such as water and electricity.

The European Observatory on Homelessness (which has conducted research on homelessness in the Member States on behalf of FEANTSA since 1991) has compiled an overview of the situation in the fifteen EU member states. Approximately three million people have no fixed home of their own, while a further 15 million people live in sub-standard or overcrowded accommodation. On this basis, we can estimate that across the European Union, one person in 20 is denied access to decent housing.

Since 1948, the Universal Declaration on Human Rights has proclaimed that: "*everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services*" (Article 25.1). More than 100 states are committed to taking appropriate steps to ensure the realisation of the right to housing, under article 11.1 of the International Covenant on Economic, Social and Cultural Rights (1966).

At the level of the Council of Europe, the European Social Charter was adopted in 1961, and the revised European Social Charter (RESC) was opened for signature in 1996. The right to housing is enshrined in Article 31 of the RESC, which sets out a series of three objectives:

"With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed:

- 1. to promote access to housing of an adequate standard;*
- 2. to prevent and reduce homelessness with a view to its gradual elimination;*
- 3. to make the price of housing accessible to those without adequate resources".*

The Revised European Social Charter officially entered into force on 1 July 1999. But the current situation is that only five countries have completed the ratification process: France, Italy, Sweden, Romania and Slovenia. Most of the EU countries have signed but not yet ratified the RESC: Austria, Belgium, Denmark, Finland, Greece, Luxembourg, Portugal and the United Kingdom. FEANTSA strongly advocates that every European country should sign and ratify the Revised European Social Charter. This will provide us with a common foundation, upon which we can develop and implement effective policy solutions at all levels, in order to tackle social exclusion and homelessness.

In relation to the proposed European Union Charter of Fundamental Rights, we must ask the following question: Will the proposed Charter represent a step forward in terms of protecting the fundamental rights of the most disadvantaged members of our societies?

We welcome the fact that the Convention is willing to consider all the main dimensions of fundamental human rights, including civil, political, legal, social and economic rights. However, we are extremely concerned that the right to housing was not included in the draft list of fundamental rights which was presented at the most recent meeting of the Convention.

As civilised and democratic societies, we have a collective responsibility to ensure that all citizens and residents are able to gain access to adequate accommodation. The prevention and elimination of homelessness can only be achieved through the recognition and realisation of the right to housing. This conviction is enshrined in the revised European Social Charter, and is also reflected in numerous texts of national constitutions and laws that have been enacted in the member states of the European Union.

We fear that the adoption of an EU Charter of Fundamental Rights which excludes the right to housing would send out a negative signal to the citizens of Europe and to the national governments of the member states and of the accession countries. It would suggest that the right to housing is somehow less important than other fundamental human rights. It would imply that our societies are willing to tolerate that thousands of people become homeless every year. It could undermine the efforts of those of us who are working to protect the fundamental rights of the most disadvantaged members of our societies.

We respectfully appeal to you to ensure that the full range of social rights - including the right to housing - are included in the proposed EU Charter of Fundamental Rights.

Yours sincerely,

John Evans
President of FEANTSA

ENTWURF DER CHARTA DER GRUNDRECHTE DER EUROPÄISCHEN UNION**fundamental.rights@consilium.eu.int**

Brüssel, den 22. März 2000**CHARTE 4175/00****CONTRIB 58****ÜBERMITTLUNGSVERMERK**

Betr.: Entwurf der Charta der Grundrechte der Europäischen Union

Finden Sie bitte nachstehend einen Beitrag des Zentralverband der Deutschen Haus-, Wohnungs- und Grundeigentümer e.V. ("Hans und Grund Deutschland").^{1 2}

¹ Hans und Grund Deutschland: Cecilienallee 45, 40474 D-Düsseldorf. Tel: +49-211-4 78 17 0.
Fax: +49-211-4 78 17 23.

² Dieser Text wurde nur in deutscher Sprache übermittelt.

Herrn
Prof. Dr. Roman Herzog
Vorsitzender des Konvents zur Erarbeitung
einer europäischen Grundrechtscharta
Rue de la Loi / Wetstraat 175
B-1048 Brüssel

8. März 2000

Sehr geehrter Herr Vorsitzender,
sehr geehrte Mitglieder des Konvents,

in Erfüllung des Auftrages des Europäischen Rates vom 3. und 4. Juni 1999 erarbeitet der Konvent derzeit eine europäische Grundrechtscharta, um die auf der Ebene der Union geltenden Grundrechte zusammenzufassen und dadurch „die überragende Bedeutung der Grundrechte und ihre Tragweite für die Unionsbürger sichtbar zu verankern“.

Haus & Grund Deutschland begrüßt diese Entwicklung. Sie darf jedoch nicht dazu führen, dass der Grundrechtsschutz in der Bundesrepublik Deutschland geschwächt wird. Denn anders als im bislang geltenden Völkerrecht bietet das Grundgesetz einen starken Eigentumsschutz.

Der europäische Grundrechtskatalog darf lediglich die Europäischen Gremien binden, so wie dies im bisher vorliegenden Entwurf der Präambel oder des Artikel 1 vorgesehen ist. Gleichzeitig muss ein umfassender Schutz des Eigentums vorgesehen sein, da über die Rechtsetzung der Europäischen Union zwangsläufig Eingriffe in das nationale Recht zu erwarten sind.

Der in Art. 16 des Entwurfs der Grundrechtscharta festgelegte Eigentumsschutz bleibt jedoch hinter dem in der Bundesrepublik zurück. So bedarf es insbesondere der Ergänzung, dass Art. 16 einen unmittelbar durchsetzbaren Anspruch und eine Bestandsgarantie des Eigentums bewirkt.

Der Schutz des Eigentums auf nationaler Ebene muss auch weiterhin der Eigentumsordnung der Mitgliedstaaten überlassen bleiben, so wie es Art. 222 EGV bereits jetzt festhält: Dieser Vertrag (d.i. EG-Vertrag) lässt die Eigentumsordnung in den verschiedenen Mitgliedstaaten unberührt. Dies steht auch im Einklang mit dem häufig zitierten Subsidiaritätsprinzip, so wie es in Art. 3 b EGV niedergelegt wurde, da alles, was durch die Mitgliedsstaaten geregelt werden kann, auch weiterhin von ihnen geregelt werden sollte. Dies trifft auch auf die Eigentumsordnung zu.

Weitere Ausführungen entnehmen Sie bitte unserer in der Anlage beigefügten Stellungnahme.

Mit freundlichen Grüßen

Dr. Friedrich-Adolf Jahn

Stellungnahme

In Erfüllung des Auftrages des Europäischen Rates vom 3. und 4. Juni 1999 erarbeitet der Konvent derzeit eine europäische Grundrechtscharta, um die auf der Ebene der Union geltenden Grundrechte zusammenzufassen und dadurch „die überragende Bedeutung der Grundrechte und ihre Tragweite für die Unionsbürger sichtbar zu verankern“.

Haus & Grund Deutschland begrüßt diese Entwicklung. Sie darf jedoch nicht dazu führen, dass der Grundrechtsschutz in der Bundesrepublik Deutschland geschwächt wird. Anders als im bislang geltenden Völkerrecht bietet das Grundgesetz einen starken Eigentumsschutz. Dieser starke Schutz des Eigentums ist vor dem Hintergrund der deutschen Geschichte zu erklären. Vor diesem Hintergrund muss auch die Betonung des Föderalismus und die explizite Bindung der drei Gewalten an Recht und Gesetz sowie die Rechtswegegarantie gesehen werden

Zu den Grundrechten zählen im deutschen Grundgesetz bspw. die persönlichen Freiheitsrechte, der Gleichheitsgrundsatz sowie nicht zuletzt die Eigentumsgarantie, die als elementares Grundrecht - als „Wertentscheidung von besonderer Bedeutung“ - vor anderen Verfassungsrechten besonders betont wird. Art. 14 GG konstatiert: „Das Eigentum und das Erbrecht werden gewährleistet.“ Dieses Recht gilt für alle natürlichen und juristischen Personen, jedoch nicht für den Staat. Gleichzeitig wird in Satz 2 normiert, „Inhalt und Schranken werden durch die Gesetze bestimmt.“ Dies verbietet jedoch kein Recht des Gesetzgebers, den Eigentumsbegriff frei zu definieren und dadurch in seiner Substanz auszuhöhlen; die Begriffsdefinition muss sich vielmehr an dem durch die Rechtsordnung vorgegebenen Eigentumsbegriff orientieren. Durch Art. 14 Abs. 1 S. 1 GG werden zum einen die konkreten Vermögensrechte (Rechtstellungsgarantie) und zum anderen die Wirtschafts- und Gesellschaftsordnung (Institutsgarantie) geschützt. Demnach wäre es nicht mit der Verfassung zu vereinbaren, weite Bereiche der Gesellschaftsordnung ohne Privateigentum zu organisieren. Damit spricht sich die Verfassung jedoch noch nicht für eine bestimmte Wirtschaftsverfassung aus, weder für eine soziale, noch für eine anders geartete Marktwirtschaft. Sie gibt lediglich einen festen verfassungsrechtlichen Rahmen vor. Wenn nämlich Bestand und Wert des Eigentums in der Hand des Eigentümers gesichert wird, kann die Wirtschaftsordnung nicht ohne Markt existieren.

Unter Eigentum wird i.S.d. Art. 14 GG jedes vermögenswerte Recht verstanden. Daher fallen unter den Eigentumsschutz z.B. das Grundeigentum sowie alle daraus abgeleiteten Rechte, aber auch Anliegerrechte, d.h. bspw. das Recht des Zutritts zum öffentlichen Straßennetz. Nicht geschützt sind Gewinnchancen, Interessen, wirtschaftliche Möglichkeiten u.ä. Es wird zudem das Recht am Eigentum und nicht ein Recht auf Eigentum geschützt. Das Recht auf Eigentum kann durch Art. 14 GG nicht geschützt werden, da dieses Rechts sich gegen das Eigentum eines Dritten richten würde. Die Garantie des Instituts Privateigentum allein ist ein schwacher Schutz. Erst durch Art. 1 Abs. 3 GG wird die „Institutsgarantie“ zu unmittelbar geltendem Recht. Art. 1 Abs. 3 GG stellt fest: „Die Grundrechte (sie umschließen die Eigentumsgarantie des Art. 14 GG, d.V.) binden die drei staatlichen Gewalten als unmittelbar geltendes Recht.“ Damit wird das Recht am Eigentum zum durchsetzbaren Anspruch.

Das Eigentumsrecht gilt nicht unbegrenzt, es unterliegt der Sozialbindung. Es ist zu beachten: Inhalt und Schranken des Eigentums werden durch Gesetze bestimmt (Art. 14 Abs. 1 Satz 2 GG). Zudem konstatiert Art 14 Abs. 2 GG: Eigentum verpflichtet. Sein Gebrauch soll zugleich dem Wohl der Allgemeinheit dienen. Damit ist zwar ein „Einfallstor“ für Eingriffe in das Privateigentum geschaffen, auch und insbesondere im Bau- und Wohnraummietrecht, aber die Eigentumsrechte dürfen unter dem Hinweis auf die Sozialpflichtigkeit nicht soweit eingeschränkt werden, dass das Recht nur noch eine „leere Hülse“ ist.

Zwar lässt der Eigentumsschutz eine Enteignung zu, sie „ist jedoch nur zum Wohle der Allgemeinheit zulässig. Sie darf nur durch Gesetz oder auf Grund eines Gesetzes erfolgen, das Art und Ausmaß der Entschädigung regelt.“ (Art. 14 Abs. 3 GG). Damit dürfen Enteignungen nicht willkürlich, sondern nur auf der Grundlage eines Gesetzes vorgenommen werden. Zudem sind sie nur zulässig, wenn das Wohl der Allgemeinheit, nicht bereits wenn das öffentliche Interesse sie erfordert. Folglich sind Enteignungen grundsätzlich möglich, müssen jedoch an strenge Voraussetzungen geknüpft werden. Zwingend erforderlich ist dann eine Entschädigung (Junktivsklausel). Eine Entschädigung kann jedoch keine rechtswidrige Enteignung rechtfertigen, das wäre eine Enteignung, die zum Wohle der Allgemeinheit eben nicht notwendig ist.

Bei einer Verletzung des Eigentumsrechts steht dem Betroffenen der ordentliche Rechtsweg offen, nach Ausschöpfung dieser Möglichkeit bleibt der Weg zum Bundesverfassungsgericht. Doch die konkrete Fassung des Eigentumsrechts, die Ausdehnung bzw. Einschränkung bleibt der Rechtsprechung überlassen.

Im Vertrag über die Europäische Gemeinschaft (EG-Vertrag) wird in Art. 222 EGV festgehalten: „Dieser Vertrag (EG-Vertrag, d.V.) lässt die Eigentumsordnung in den verschiedenen Mitgliedstaaten unberührt.“ Dieser Artikel ist eine sog. negative Kompetenzbestimmung. In diesem Sinne stellt er lediglich fest, dass die Mitgliedstaaten über die Gestaltung ihrer Eigentumsordnung selbst entscheiden.

Damit verfügt die EU über keinerlei Zuständigkeiten im Bereich der Eigentumsordnung. Auf diese Weise sind zunächst die geltenden Eigentumsordnungen der Mitgliedstaaten vor Eingriffen der Gemeinschaft geschützt, die Mitgliedstaaten verfügen weiterhin über das Recht, ihre Eigentumsordnung entsprechend ihren politischen Vorstellungen zu gestalten. Gleichzeitig verhindert die Formulierung des Art. 222 EG-Vertrag - zumindest grundsätzlich - einen Eingriff der Gemeinschaft durch Sekundärrecht in die Eigentumsordnungen der Mitgliedsländer.¹

Diese Vorschrift erscheint auch im Zusammenhang mit dem häufig zitierten Subsidiaritätsprinzip, wie es in Art. 3 b EGV niedergelegt wurde, sinnvoll, da alles, was durch die Mitgliedstaaten geregelt werden kann, auch weiterhin von ihnen geregelt werden sollte. Und dies trifft auch auf die Eigentumsordnung zu.

¹ Diese neutrale Haltung der Europäischen Verträge gegenüber den Eigentumsordnungen der Mitgliedsländer wird allerdings durch eine Reihe sekundärrechtlicher Vorschriften gebrochen, mit deren Hilfe die Gemeinschaft im Zuge der Erfüllung von Aufgaben in die Verfügungsgewalt der Eigentümer einschränkend oder steuernd eingreift, so z.B. im Zuge des Wettbewerbspolitik der Gemeinschaft. Doch dies ist weitgehend vergleichbar mit Eingriffen in das Eigentumsrecht durch deutsche Gesetze.

Daher ist es unseres Erachtens sinnvoll, den Schutz des Eigentums auf nationaler Ebene auch weiterhin der Eigentumsordnung der Mitgliedstaaten zu überlassen, so wie es Art. 222 EGV bereits jetzt festhält: Dieser Vertrag (d.i. EG-Vertrag) lässt die Eigentumsordnung in den verschiedenen Mitgliedstaaten unberührt.

Der europäische Grundrechtskatalog darf lediglich die Europäischen Gremien binden, so wie dies im bisher vorliegenden Entwurf der Präambel oder des Artikel 1 vorgesehen ist. Gleichzeitig muss ein umfassender Schutz des Eigentums vorgesehen sein, da über die Rechtsetzung der Europäischen Union zwangsläufig Eingriffe in das nationale Recht zu erwarten sind. Die Ausführungen des Eigentumsschutzes in Art. 16 des Entwurfes der Grundrechtscharta enthält jedoch einen Grundrechtsschutz, der hinter dem nach der vorstehend erläuterten verfassungsrechtlichen Regelung in der Bundesrepublik zurückbleibt. So bedarf es insbesondere der Ergänzung, dass Art. 16 in erster Linie einen unmittelbar durchsetzbaren Anspruch und eine Bestandsgarantie des Eigentums bewirkt.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 27 March 2000**CHARTE 4190/00****CONTRIB 73****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a contribution by three European owners organisations; European Association of Real-estate Owners (GEFI), the European Confederation of Forest owners (CEPF) and the European Landowners' Organisation (ELO).¹

¹ This text has been submitted in English language only.

To the Convention's members

Right to ownership

The three main European owners organisations, representing dozens of millions of European family owners, share the same position in favour of a better recognition and protection of the Fundamental Rights and Freedoms within the European Union.

It is with a great satisfaction that the GEFI (Groupement européen des Fédérations intervenant dans l'Immobilier – European Association of Real-estate Owners), the CEPF (Confédération européenne des Propriétaires Forestiers – European Confederation of Forest owners) and the ELO (European Landowners' Organisation) have noted the Praesidium's intention to formally include the right of ownership in the Charter.

Through the attached paper, GEFI, CEPF and ELO encourage the Praesidium and the Convention to ensure a balanced protection and recognition of property which guarantees its economic, environmental and social permanence.

GEFI, CEPF and ELO will give all needed support to the Praesidium and the Convention on the issue of ownership rights.

21st March 2000

(Signed)

M. Gildas de Kerhalic

M. Joseph Crochet

M. Johan Nordenfalk

GEFI

CEPF

ELO

Charter of Fundamental Rights

Article 16 : Right to Ownership

The GEFI (Groupement européen des Fédérations intervenant dans l'Immobilier – European Association of Real-estate Owners), the CEPF (European Confederation of Forest Owners) and the European Landowners' Organisation (ELO) propose that the text of the article on the Right on Ownership should be:

Everyone is entitled to the peaceful enjoyment of his possessions. No one may be deprived of his possessions or restricted in their use, except where deemed necessary in the public interest and in the cases and subject to the conditions provided for by law and subject to full and prior compensation.

Explanatory Memorandum

The GEFI (Groupement européen des Fédérations intervenant dans l'Immobilier – European Association of Real-estate Owners), the CEPF (European Confederation of Forest Owners) and the ELO (European Landowners' Organisation) support the objectives, agreed at the Cologne Summit in 1999, of establishing a Charter of Fundamental Rights, and of making the overriding importance and relevance of those rights more visible to the Union's citizens.

In particular, the GEFI, the CEPF and the ELO very much welcome that the Presidium has proposed the inclusion in the draft Charter, an article on the right to ownership. This memorandum explains why the right to ownership is so important for all Europe's citizens, and proposes some amendments to the current text of the draft Charter in relation to this right (article 16). These amendments would reinforce the positive work so far undertaken by the Convention to include this right to ownership.

The GEFI, the CEPF and the ELO speak for dozens of millions of land based business owners who provide employment, a living countryside, food and other products, amenities and environmental land management across the European Union. The GEFI, the CEPF and the ELO are well placed to speak on this subject, because their members are engaged, day to day, in the active management of property which serves as a base in satisfying needs and demands of modern society.

The need for a secure framework of ownership rights

Human rights are the cornerstone of democracy. Amongst these basic rights must be a right for the protection of ownership.

History shows with emphasis, however, that when ownership rights are not properly protected, both economic development and the environment are endangered. An efficient protection of ownership rights becomes even more important as the EU prepares for the entrance of a number of candidate countries which have in the past suffered from a lack of protected ownership rights.

In addition, the “new economy” (high-technology revolution) requires protection of intellectual property, so that the entrepreneurial climate will inspire investment, employment and incomes in Europe.

A social market economy, essential to a mature democracy, and for optimal management of the world's resources and the environment, cannot work without secure ownership rights. Ownership rights are a prerequisite for **long term investment**, not only in intellectual property but also in agriculture, forestry and manufacturing. A secure framework of ownership rights is vital for the long-term stewardship of our environment. Not only is a long-term perspective needed, but so often environmental conservation involves the positive management and individual commitment that can be provided only by someone with the ownership of the property.

Moreover, **there is across Europe a social aspiration to ownership**, seen as a symbol of permanence, prosperity and security.

Of course, with rights come responsibilities. Ownership must cede if it is necessary to satisfy an overriding public interest. But this can be done with the maintained respect for the owners' legitimate interests and without distorting the functioning of the market economy, provided that the owner is granted full compensation for his loss.

A framework of rights, particularly ownership rights, makes it possible for society to enter into secure, productive and transparent relationships with individuals and businesses. These relationships require, but also enable, those individuals and businesses successfully to meet the demands of the public for improving standards.

The GEFI, the CEPF and the ELO submit that the EU Charter is a unique opportunity – not to be missed – to redefine this relationship between public authorities, acting on the basis of EU legislation and policy (itself directed by the Charter) and individuals and businesses, to reflect a more enlightened balance between constructive partnership on the one hand, and regulation on the other.

Individuals and businesses are the providers of investment, innovation, stewardship and improving standards, in the countryside and elsewhere. Wherever possible, public authorities and their agencies should work in partnership with rural and other businesses to engage their **voluntary co-operation and commitment**. Compulsion should be only the last resort. Regulation, restriction and at its extreme, expropriation, can prevent actions, but cannot inspire positive initiative. So there should be a greater emphasis on partnership and a lesser dependence on regulation and constraint.

The text of the Charter on ownership rights should reflect this positive and forward-looking approach. GEFI, CEPF and ELO are pleased to note that the proposals made by the Presidium (Convent 9) are a good step in this direction. The submissions of GEFI, CEPF and ELO should be seen as a devoted effort, based on vast experience, to improve even further the article 16.

Specific amendments to the draft article on the right to ownership

GEFI, CEPF and ELO submit that the words “**or restricted in their use**” should be added after “possessions”.

The legislative and administrative practices of Member States and, in particular, EU legislation, have highlighted that many modern day-to-day problems that hamper the efficiency in managing assets stem from restrictions of use, which may have the same economic consequence as expropriation. It should be noted that such restrictions, if not compensated, may not only cause problems for the owner but will ultimately have negative effects on society as a whole as they will most certainly lead to distortions in the market economy and an inefficient allocation of resources.

GEFI, CEPF and ELO submit that the words “**where deemed necessary**” should be added after “except”.

These words oblige the authority acting on behalf of the “public interest” to demonstrate that action to deprive a person of his possessions, or to restrict him in their use, is the only way to meet that overriding public interest. In fact there is a growing urge already reflected in at least one national constitution to qualify the requirement “public interest” by prescribing that it should be “a significant public interest”. GEFI, CEPF and ELO submit also this wording for possible consideration by the Convention.

GEFI, CEPF and ELO submit that “fair” should be replaced by “**full**”.

Several constitutions of European countries (Holland, Finland, Denmark) provide for full compensation. There is no reason why an individual should support the burden of a limitation of his property use (that can sometime reach the situation of quasi-expropriation), when that burden is applied in the general interest.

It cannot be regarded correct that the state, when depriving a citizen of his possessions, may compensate him with a lower value than his fellow citizens would pay him if that property was traded in the open market.

GEFI, CEPF and ELO further support the requirement that compensation should be prior to a taking or a restriction. Even if not all constitutions do not already have such wording, it would send wrong signals to the citizens if the Charter did not reflect the higher standard prescribed in some constitutions. An alternative wording could be to prescribe that full compensation be guaranteed.

A mechanism for citizens to invoke the right

This submission does not go into detail on the issue of the legal status of the Charter. However, GEFI, CEPF and ELO believe that it will be essential for a direct and effective mechanism to be created to enable citizens and businesses to invoke the Charter, and to seek a practical remedy where they believe their right to ownership may be infringed.

Conclusion

At a time when there is an increasing demand for the Union’s Institutions to build a “Europe of citizens”, and in the context of the enlargement to countries where people suffered negative economic and social consequences of the nationalisation of their properties, the EU Charter must meet key tests to be successful.

First: in order to direct the institutions of the EU to uphold fundamental rights when they make EU policy and legislation, the Charter must set out these rights clearly, and in a way that could

eventually enable its incorporation into the EU's Treaty base. The Charter can then fill a gap that currently exists, in that basic human rights are already incorporated into national legislation, but not into the policy and law making functions of the EU itself.

Second, the Charter must respond to the legitimate demands of individuals and groups within society to enjoy a protection of basic human rights, including ownership rights, which they will find acceptable and in terms they can understand. Commitments in the Charter to uphold the rights in such a manner will be welcomed by the public.

Third; the Charter must demonstrate that the EU is forward looking, and capable of responding to new challenges. Since Europe's citizens will benefit from less bureaucratic institutions and from an innovative market economy, regulation and control should play a diminishing role. Incentives to positive action will become more and more important. And so will an improved protection of ownership both for material and intellectual property, enabling citizens to take a long term approach to investment and economic development, and reassuring them that they will not be deprived of the fruits of their work. The Charter must fully embrace this forward-looking approach, in particular in a clear and effective text on ownership rights.

The Charter must succeed in defining the rules for ownership rights in a way which not only protects the citizen but which also promotes the best use of resources, both human and natural.

GEFI, CEPF and ELO are pleased to be able to submit this paper and would welcome the opportunity to develop our reasoning further or provide any clarification needed.

21st March 2000

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Editors' note to CHARTE 4194/1/00 REV 1,
**Contribution submitted by the Platform of
European Social NGOs and the European Trade
Union Confederation (ETUC):**

The initial version mentions that this contribution was submitted by “the platform of European social NGOs (CES ETUC)”.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 28 April 2000**CHARTE 4194/1/00 REV 1****CONTRIB 75****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a contribution by the Platform of European Social NGOs and the European Trade Union Confederation (ETUC).¹

¹ This text has been submitted in 11 languages.



Platform of European Social NGOs

CES ETUC

Plate-forme des ONG européennes du secteur social

- **FUNDAMENTAL RIGHTS:**
- **THE HEART OF EUROPE**

Campaign paper

**for the incorporation of fundamental rights in the European Union
and
European Community Treaties**

Foreword

Introduction

- 1. General Principles**
- 2. Explicit fundamental rights**
- 3. Binding political objectives**
- 4. Rights in the Union's external policies**

Fundamental Rights: The Heart of Europe

The European Trade Union Confederation and the Platform of European Social NGOs have prepared this campaign document to animate a debate amongst our members. We are launching a concerted campaign throughout the fifteen countries of the Union in order to involve our constituencies and seek their opinions so that we may make informed representations to the EU Convention which is drafting the European Charter of Fundamental Human Rights.

The social implications of the realisation of Economic and Monetary Union and the introduction of the EURO underpin the importance of securing fundamental rights at European level. We consider fundamental rights as an indispensable part in the building of the Social Union and safeguarding and developing the European social model. Their incorporation will also be important in view of enlargement. The respect of fundamental rights is necessary for a Citizens' Europe to become a reality.

It is time for action. A Charter, which guarantees civil, social, economic, political and cultural rights will counter the apathy and scepticism which appears so prevalent. It is time to put ideals back into Europe.

Some people argue that a new Charter is unnecessary, as the European Convention on Human rights and the European Social Charter already exist. But these documents are neither broad enough, or sufficiently legally enforceable, to guarantee the full range of civil, political, social and economic rights. An EU Charter of Fundamental Human Rights would, for the first time, give all who are living in the EU a common framework of enforceable and wide-ranging rights.

This campaign document does not intend to be a definitive text. It is meant to inform and inspire debate. Over the coming months we will hold conferences, seminars and meetings in all the EU Member States to discuss what rights should be in the EU Charter of Fundamental Rights and how these rights should be made enforceable in law.

The prosperity of Europe has been built on our ability to balance our need to be economically competitive with that of ensuring we live in a society based on solidarity with access to basic social rights for all. This balance is being threatened by some of the effects of globalisation and must be redressed by ensuring that the whole range of civil, political, social, economic and cultural rights are guaranteed for all. It is time to put fundamental rights at the heart of Europe.

INTRODUCTION

The June 1999 EU Summit decided that a Charter of fundamental rights for Europe should be drawn up. Support for the European integration project had been put at risk by the social effects of introducing the Single Currency and by finalising the Single Market. Citizens had lost trust in Europe. It was now important to reassert the social dimension of the European integration by underlining the importance of protecting fundamental rights at the European level.

At stake and at issue was going to be the nature of the Charter to be prepared. Would it be a simple proclamation or would it be a legally binding set of rights, which could be seen to protect and advance human rights in the Union? There were differences of opinion among EU Leaders, with the result that, the Summit left the delicate issue of the status of the Charter to be decided at a later stage. In October of that same year, meeting in the Finnish town of Tampere, the EU Council decided to set up a Convention, composed of national and European parliamentarians, as well as representatives of governments, to draw up the Charter of Rights.

The Convention will be meeting at regular intervals throughout the Year 2000 and will consult with a wide spectrum of civil society organisations before drawing up and agreeing the Charter by October 2000. It is then to be endorsed by the European Parliament and Commission in time for the December 2000 EU Summit taking place in Nice, France.

In recent years, significant advances have been made to recognise the importance of fundamental rights within the Union. **The Amsterdam Treaty, states «the Union is founded on principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States».**¹ It also stipulates that **«the Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as principles of Community law».**² In addition, Article 46 of the Treaty of the European Union (TEU), which deals with the jurisdiction of the European Community Court of Justice, gives competence to rule on the actions of the Institutions of the European Union in relation to the European Convention for the Protection of Human Rights and Fundamental Freedoms (Council of Europe, 1950).

The Amsterdam Treaty makes it a binding obligation for the Union to respect the European Convention of Human Rights,³ and also for the Member States to respect the principle of “liberty, democracy, respect for human rights and fundamental freedoms and the rule of law”, on which the Union is founded.⁴

¹ Art 6.1 TEU

² Art 6.2 TEU

³ Art 6.2 TEU

⁴ Art 6.1 TEU

The Amsterdam Treaty prescribes a political rather than a judicial means of enforcement in the event of a Member State being in serious breach of the founding principles of the Union.⁵ Article 7 of the TEU gives the Council the possibility to suspend certain rights of a Member State, for example, suspension of the right to vote in Council. The European Court of Justice has competence to judge on matters relating to the respect of human rights only in relation to the activities of the Union or its Institutions.

The Maastricht and Amsterdam Treaties made progress in the protection of fundamental rights within the European Union. Amongst the most significant provisions were:

- Article 13 of the European Community Treaty (TEC) relating to non-discrimination against individuals or groups on grounds of gender, race or ethnic origin, religion or beliefs, disability, age or sexual orientation.
- The incorporation into the Treaties of references to the 1989 Community Charter of Fundamental Social Rights of Workers and the European Social Charter (Turin, 1961). (Article 136 of the TEC).
- The recognition of European Citizenship and the provision of rights – such as freedom of movement, the right to vote in local and European elections and the right to petition. (Articles 17-22 of the TEC).
- Article 137 of the TEC, which gives the Union competence to put in place programmes to fight poverty and promote social inclusion.

In spite of this progress, the process of European integration, with its clear implications for human rights, requires that real and effective protection of fundamental rights are afforded to the citizens and workers of Europe and that these rights should be set out explicitly in one coherent text.

Fundamental rights are an indispensable part both in strengthening the Social dimension of the European Union and in safeguarding and developing the European social model. The incorporation of the Charter in the Treaties is of paramount importance in view of the forthcoming enlargement of the Union.

The European Union is asserting itself as one of the key players in the global scene. Council, Parliament and Commission make frequent calls on the need to advance human rights as agreed through Declarations, Covenants and Conventions drawn up by the United Nations and its institutions. The EU Council has stated that Europe must become a clarion voice for human rights. This respect of fundamental rights must become an integral and coherent part of the commitments and demands of the European Union and its Member States in their trade and foreign relations.

⁵ Art 6.1 TEU

Human rights are indivisible. The full set of rights: civil, political, economic, social, cultural and trade union, should be incorporated in the Treaty in a binding manner. An EU Charter of fundamental rights which limits itself to being a solemn political declaration, would fall short of what is needed now in terms of the objectives of a European construction, the enlargement of the Union and our global role. More importantly, it would not reinstate our fellow Europeans' faith that alongside the economic and monetary union, we intend to give equal importance to the social dimension of European integration that should focus on the individual.

Respect of fundamental rights is essential for the realisation of a Citizens' Europe.

A CHARTER OF FUNDAMENTAL RIGHTS FOR EUROPE

1. GENERAL PRINCIPLES

The incorporation of rights into the Treaty must remain consistent with and subject to the fundamental rights as defined in:

- the Universal Declaration of Human Rights (UN 1948) and relevant Covenants (ICCPR & ICESCR, 1966);
- the European Convention on Human Rights (Council of Europe, 1950)
- the Revised European Social Charter (Council of Europe, 1996)
- the Community Charter of Workers' Fundamental Social Rights (European Union, 1989)
- the ILO Conventions referred to in the ILO Declaration on Fundamental Principles and Rights at Work (1998)
- the Convention on the Elimination of all Forms of Discrimination against Women (UN, 1979)
- the Convention on the Rights of the Child (UN, 1989)
- the Convention on the Status of Refugees (UN, 1951) and its Protocol (UN, 1967)

The general principles common to all Member States reflect the obligations undertaken by them in these instruments and formally commit them to a series of obligations. The Member States and the Union should therefore assume joint responsibility for the enforcement of the rights appearing in these Instruments.

The rights to be included in the Treaty shall be guaranteed throughout the territory of the European Union. They should be regarded as a minimum level of protection and consequently are a minimum guarantee. They must not be used to undermine rights which already exist at European Union or Member State level and which may derive from either legislation or collective agreements. The Charter must not set rights which constitute a retreat from those already agreed through the UN and its Institutions or through the Council of Europe. They shall not lie below international standards.

The rights to be included in the Treaty shall, in principle, be available to all citizens of a Member State as well as third country nationals lawfully residing in a Member State of the Union. The rights which are to be afforded to other individuals who are on the territory of the Union are dealt with in a separate section of this document.

In order to emphasise the indivisibility of human rights, and in a spirit of pan-European political cohesion, the European Union shall also make the commitment to accede to the European Convention on Human Rights (including its Protocols), and to the Revised European Social Charter.

Legal implications: enforcement and jurisdiction

All rights to be included in the EU and EC Treaties should be subject to enforcement either on an individual or collective basis according to the following principles:

The legal system within each Member State will be competent with respect to the enforcement of fundamental rights which are not protected by any specific EU provision. This however does not exclude the use of the political sanction mechanism in relation to serious breaches of human rights.

The European Court of Justice will have competence, in accordance with existing procedures, with respect to the enforcement of EU provisions on a Union level and with respect to the implementation of both Union and Community law on a national level.

The European Court of Justice will have competence in relation to cross-border rights such as the freedom of movement and trans-national trade union rights.

In its case law, the European Court of Justice shall take into consideration all applicable practice and case law, established by other competent international bodies of the UN, ILO and the Council of Europe, so as to avoid the European Court of Justice deciding rulings, the effect of which would be to reduce the level of protection offered.

Any recourse for the interpretation and/or enforcement of these rights brought before the competent bodies established by international human rights instruments, other than the EU ones, cannot be re-addressed in the first instance or in appeal before the European Court of Justice.

The EU may adopt measures designed to promote the implementation by Member States of the binding political objectives or programmatic rights, listed in this document.

The Council, after due consultation with the other European Institutions, social partners and European NGOs, must adopt a five-year plan on the implementation of programmatic rights. Such a plan shall fix the calendar of deadlines and the procedures and mechanisms of enforcement. The draft plan should be submitted to the Council by the Commission within the year following the ratification of the Treaty. The Commission will submit regular progress reports and a follow-up plan will be prepared to be adopted at the end of the first five years.

2. EXPLICIT FUNDAMENTAL RIGHTS

2.1 Civil and political rights

The civil and political rights enshrined in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (UN) and the European Convention on Human Rights (Council of Europe) must be guaranteed throughout the European Union.

The following civil and political rights shall be available to all citizens of the European Union and to third country nationals who are legally resident in one of the Member States of the Union:

- No one shall be sentenced to death.
- No one shall be submitted to torture or to inhuman or degrading treatment.
- Freedom of thought, opinion and religion, freedom of expression and communication of information and ideas as well as the right to property.
- Freedom of association, of representation and of action at the local, national and European level.
- The right to life and to the protection of privacy.
- Everyone is equal before the law and must enjoy effectively and without any discrimination, all rights listed in the Treaty.
- Everyone shall have the right to equal treatment and opportunities without discrimination on grounds of sex, social, racial or ethnic origin, religion or belief, disability, age, or sexual orientation.

Rights linked to citizenship

The Treaties define a citizen of the Union as every person who holds the nationality of a Member State and that citizenship of the Union shall complement and not replace national citizenship (Art. 17, TEC).

The following rights must be guaranteed:

- Every citizen shall have the right to move, to reside freely and to work throughout the territory of the Union. These rights also apply to third country nationals lawfully residing in one of the member States of the Union.
- European citizenship also includes effective direct and indirect participation through the representative European Institutions (European Parliament, Economic and Social Committee, Committee of the Regions). After a specified period of legal residence, third country nationals must gain the right to vote in local and European elections.
- The right of citizenship requires a transparency of decision-making procedures and freedom of information.
- Everyone has the right of access to and correction of the administrative documents and other data, which are related to them. (Exceptions to this rule must be defined by law)
- The right to petition the European Parliament.
- The individual and collective right to challenge, with the possibility of recourse to the courts, the actions and shortcomings of the European Institutions.

The Treaty recognises the importance of the social dialogue with employers' and workers' organisations both within and across sectors of activity and this dialogue can also be extended to cross-border agreements. The right to European Collective Agreements must now be established.

The right to consultation of European NGOs must be recognised and result in the establishment of a structured civil dialogue.

Rights of third country nationals legally residing in the European Union

Third country nationals legally residing in the EU must have equality of treatment with EU citizens as regards civil, political, economic, social and cultural rights, including freedom of movement.

The Union and the Member States shall take co-ordinated measures to combat all forms of discrimination and ensure the promotion of equality of treatment.

Rights of third country nationals who are within the territory of the Union without being legally resident

The Union shall oversee the respect of the right to asylum as specified by the 1951 Geneva Convention and its 1967 Protocol. The Member States must take co-ordinated measures to give full effect to this right.

Every person on the territory of the Union shall be guaranteed the following rights without discrimination based on gender, race, social or ethnic origin, religion or belief, disability, age or sexual orientation:

- The right to life and to the protection of privacy. No one shall be sentenced to death. No one shall be submitted to torture or to inhuman or degrading treatment.
- The right to medical, legal and social assistance (food and shelter).
- The right of access for school-age children to education on the basis of equality of treatment with nationals of the State in which they reside.
- The right to equality before the law, to transparency and to understand decisions that concern them, and access to a system of appeal.
- The right to form associations and to take part in actions which concern them.

2.2. Social and economic rights

The following social and economic rights must be guaranteed:

- Everyone shall have the right to equal treatment and opportunity in all fields of life and work; regardless of gender, race, social or ethnic origin, religion or belief, disability, age or sexual orientation.
- Everyone is entitled to social, legal and economic protection.

- The right of all individuals, regardless of status, to a decent minimum income, enabling them and their family to live in dignity, to ensure their health and well-being.
- The right to social protection in case of unemployment.
- The right to social and medical assistance.
- Everyone has the right to privacy, and the protection of personal data.
- All children shall have the rights laid down in the Convention on the Rights of the Child.
- All children have the right to protection of their integrity and personal development, as well as to safety, education and health. The Union and the Member States shall take all necessary and effective measures to ban any form of child labour, which could endanger their health, safety or morality and to respect the guarantee the two ILO Conventions relating to child labour (ILO 138 and ILO 182).

Rights pertaining to work:

- Workers shall have the national and trans-national right of freedom of association, collective bargaining and trade union action, including the right to cross-border solidarity action and to strike;
- Everyone shall have the right to earn a living through their work, to choose their occupation freely, to just and satisfactory working conditions, and to protection against unemployment;
- Everyone has the right to equal pay for equal work without discrimination;
- Workers shall have the right to efficient occupational health and safety protection at work;
- Workers shall have the right to information, consultation and participation at work at all levels and at national as well as cross-border levels.

Policies, programmes and measures need to be implemented in order to ensure access to all of these direct social rights.

3. BINDING POLITICAL OBJECTIVES (PROGRAMMATIC RIGHTS)

Programmatic rights are those rights which depend on the implementation of political programmes. Such rights require appropriate policies, programmes and measures to ensure their promotion, access, enforcement and effectiveness.

The following programmatic rights shall be guaranteed:

- The right to work and to full employment must be ensured by joint actions of the European Union and of its Member States;
- The right to protection against arbitrary dismissal;
- The right to education and to life-long learning;
- The right to choose one's educational system is assured throughout the territory of the Union;
- The right to equivalence of diplomas;
- The right to effective social protection, and appropriate health care;
- The right to decent housing;
- The right of people with disabilities to programmes and measures to promote their occupational and social integration;
- The right of elderly persons to live a decent life; the entitlement to a decent income, care allowance, and social protection;
- The right of every worker at the time of retirement to resources necessary for a decent standard of living;
- The right to a minimum pension to be set and regularly reviewed;
- The right for people and families to protection against poverty and social exclusion;
- The right for everyone, as a member of society, to economic, social and cultural rights essential to dignity and the freedom to develop their personality;
- Consumers' rights (fairness in credit, financial services, general interest services, healthy and environmentally-sound products); the right to public health;
- Citizens' rights to be informed and consulted at the relevant level of authority (European, national and local) for instance on matters concerning public health, area planning and management, the environment and quality of life;
- Right of access to services of general interest without discrimination.

The Council, after due consultation with the other European Institutions, social partners and European NGOs, must adopt a five-year plan on the implementation of programmatic social rights. Such a plan shall fix the calendar of deadlines and the procedures and mechanisms of enforcement. The draft plan should be submitted to the Council by the Commission within the year following the ratification of the Treaty. The Commission will submit regular progress reports and a follow up plan will be prepared to be adopted at the end of the first five years.

4. RIGHTS IN THE UNION'S EXTERNAL POLICIES

The Treaties stipulate that one of the objectives of the Union's and Community's external policies is "the development and strengthening of democracy and the rule of law, as well as the respect of human rights and fundamental freedoms."⁶ The external policies of the Union, following the example of those of the Community defined in Articles 177 and 178 (TEC), must therefore promote fundamental rights, as enshrined in the instruments of the United Nations and other competent organisations.

To this end, the agreements between the Union and third countries shall include a clause requiring the respect of fundamental rights as described in particular in the Universal Declaration on Human Rights and the ILO Declaration on Fundamental Social Rights. This clause shall also be binding in international relations and in negotiations within the multilateral institutions involving the European Union or the European Community.

The Union shall draw on the social guarantees enshrined in the Generalised Preference System in order to promote the abolition in third countries of forced labour and of the worst forms of child labour. Within this framework, the Union shall also promote the Core ILO Conventions governing the right of association, to collective bargaining, child labour, slave and bonded labour, freedom from discrimination and equal pay.

The Union shall ensure that Member States and applicant countries ratify and enforce the Instruments of the Council of Europe pertaining to fundamental rights (European Convention of Human Rights and Revised European Social Charter) as well as the international standards specified in the General Principles of the present document. The Union shall support the emergence and the reinforcement of civil society in these applicant countries.

* * *

⁶ Art 11 TEU & Arts 177 and 178 TEC

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 31 March 2000**CHARTE 4197/00****CONTRIB 78****COVER NOTE**

Subject : **Draft Charter of Fundamental Rights of the European Union**
Declaration of the European Health Forum Gastein 1999
(EHFG) submitted by the International Forum

Please find hereafter a Declaration of the European Health Forum Gastein (dated 06/09/10/99) submitted by the International Forum Gastein.^{1 2}

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² This text has been submitted in English, French, German and Spanish languages.



European Health Forum Gastein 1999

Creating a better Future for Health in Europe

Health and Social Security

6 to 9 October 1999

Gastein Health Declaration

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Preamble

From October 6 to 9, 1999 politicians, scientists, industry and business representatives, health experts, non-governmental organisations and representatives of affected groups gathered in Bad Hofgastein to discuss problems of health and social security with the aim of “Creating a Better Future for Health in Europe”.

Renowned personalities from over 30 countries highlighted this event with their participation and contribution. Just to name a few:

Hajdu Gabor, Romanian Minister for Health, **Caspar Einem**, Austrian Minister for Science, **Erwin Jordan**, German Secretary of State for Health, **Fernand Sauer**, Executive Director of the European Agency for the Evaluation of Medicinal Products (EMA), **Marlene Haffner**, US Food and Drug Administration (FDA), Prof. **Rolf Krebs**, Vice-President of the International Federation of Pharmaceuticals Manufacturers Associations, **Ulrich Bode**, President of the Austrian Association of Pharmaceutical Industries, Prof. **Spencer Hagar**, London School of Hygiene and Tropical Medicine, Prof. **Albert R. Bakker** International Medical Informatics Association, **Mary McPhail**, European Public Health Alliance, **Albert van der Zeijden**, International Alliance of Patients’ Organisations.

In the numerous contributions made by the various speakers on different perspectives of health and social security in Europe, particular attention was given to the following issues: solidarity for health, the connection of the health industry’s needs with those of social security systems, the WHO concept of “Health for All” as a challenge for the health economy, and the role of non-governmental organisations in the areas of health and social security.

The most important results of the six Forums and an additional workshop that worked on the following topics are presented below:

1. “Improving the Quality of Care”
Main recommendation: access to good health quality for all (in care, treatment, and services) within reasonable time.
2. “Improving Equity in Health and Health Care”
Main recommendation: The existing gap in access, scope, and quality of health must be studied and gradually abolished, whereas certain groups of persons (e.g. migrants and refugees), the adjustment of the membership candidates, and certain areas (e.g. employment possibilities, alcohol, and drugs) require particular attention.
3. “The Role of Public Health and Health Promotion in a Changing Europe”
Main recommendation: The proposed EU-declaration of the rights of citizens must include references to health and public health measures. Further, public health research must be integrated more efficiently into existing structures, both within the EU and in the member states.

4. “Information Technology: Health and Technological Developments”
Main recommendation: A system for certification of HC Telematic products at the European level should be set up, to ensure that these products are medically cost beneficial, technically interoperable and reliable as well as beneficial to the patient (directly or indirectly). The certification is to be carried out by independent neutral bodies.
5. “Rare Disorders and Orphan Drugs: Research without Return on Investment”
Main recommendation: All efforts (public and private) on an European level must aim at combining funds, research programmes, and information initiatives, as well as at reducing relevant taxes and promoting investment in this area for the benefit of those affected.
6. “The Impact of Biotechnology on Health Systems and Health Services”
Main recommendation: Basic biotechnological research will lead to the development of new drugs, vaccinations, diagnostic methods, and medical procedures. In order to derive practical benefits from these achievements for those affected, it is necessary to establish an open dialog and a functioning communication between researchers in biotechnology, other experts, and the general public.
7. Workshop: “European Economic Integration and Health Systems in an Enlarged Europe”
Main Recommendation: Health should be given a higher priority in the accession process and more support should be given to their health reform . Candidate Countries should be more ‘actively’ integrated in the European health arena.

In detail, the participants of the six Forums developed the following scenarios and recommendations, which were adopted and further elaborated upon by the authors of the present declaration.

Günther Leiner,
President of the European Health Forum Gastein

Forum I: Improving the Quality of Care

1. Situation

- 1.1 The quality concept must be defined on different levels and with different targets: politicians, professionals, managers, economists, patients, consumers, etc. must co-operate.

The quality concept is about

- Defining / developing criteria (ideals)
- Implementing / improving good quality
- Measuring / comparing outcomes (effectiveness)

1.2 Consensus on main principles

- It is useful to talk about „quality“ in terms of improvement referring to the needs and interests of healthcare users.
- Patients / consumers are the real stake-holders and remain the ultimate point of reference for quality criteria.
- Criteria should not primarily be provider-induced.
- Integral quality-improvement should be based on experience, information exchange and the education of professionals as well as that of patients / consumers.
- Patients / consumers should be called upon to set criteria, put to contribution and participate in the evaluation of the outcome.

2. Recommendations

2.1 Recommendations on national level

- Access for all to good quality of care, treatment and, services within reasonable time. Quality should be based on equity.
- Participation of patients / consumers in decision-making on the quality of care and the healthcare system in general.
- Empowerment of individual users in decision-making on their own treatment (integrated approach).
- Support of patient / consumer organisations in providing advice, education, information, etc. to users and providers.
- Training of all professionals in awareness of good quality as a goal, not as a threat. Stress on the importance of effective interaction with patients and awareness-building of their real needs.

2.2 EU-targets in quality of care

- EU has the role – within the limits of subsidiarity – of promoting good quality of care
- Why?
 - Four freedoms
 - Promoting equity
 - Identification of best practise

- Obstacles
 - Legal limitations
 - Cultural and economic differences
 - Institutional resistance
 - Unequal starting points
 - Confusion between different levels
- Targets for the EU
 - Encourage the member states to implement national recommendations.
 - Gather and exchange information; networking.
 - Standardise methodology in data collection, measuring and processing, etc., for quality improvement
 - Set indicative standards and objectives for good practise

2.3 Agenda for EU-action

- Develop quality standards and quality targets
 - Promote the establishment of databases on quality outcome, using existing expertise in member states; standard information
 - Use this information to develop indicative standard objectives and targets for good practise
 - Disseminate the information to member states and relevant organisations
- Support patient and consumer groups in getting involved in quality improvement
 - Support existing organisations and bring them together on the European level
 - Provide them with information on quality and benchmarking
 - Promote patient advocacy by training and consultancy
 - Promote the involvement of patients and consumers in meetings on health care
- Support training of health professionals on quality issues
 - Define minimum standards for training and working conditions
 - Provide national authorities and professional organisations with information concerning training in quality awareness
- Promote research on quality improvement
 - Improve existing methodology on defining quality indicators and quality evaluation
 - Promote inventories and the analysis of “patient needs”, related to consumer-induced quality criteria
 - Analyse the effect of cross-cultural differences on the application of quality standards

Forum II: Improving Equity in Health and Health Care

1. Situation

Behind the issue of improving the equity of access to health care lies a vast range of diverging interests. Different financial capacities and competencies in national health care systems as well as the presence of social security systems of extremely varying capacity can be found. Moreover, political and economic interests from various areas collide, each with an impact on the actual health policy situation in a region, a country, or within the EU. Enhancing the social value of “health” by targeted and co-ordinated efforts from the various levels may constitute a remedy. The forum’s objective was to demonstrate how this can be achieved and for whom it would require a change of views.

The majority of the participants stressed the large gap between the access, scope, and quality of national health care systems in EU member countries as compared to those existing in the candidate countries. The identification of regional problem zones in health care as well as a regional or national definition of poverty limits would enable a better targeting of EU interventions and of national or regional efforts. The participants believe that health gaps can be filled by increasingly identifying interfaces of interest with other socio-political areas of action. As a result, both supranational aid, particularly in the area of research, and national policy action could ensure that in future the people affected no longer fall through the social net. By presenting regional examples, various participants pointed to the fact that some parts of the EU are still too slow in combating the link between structural poverty, poor health, and more difficult access to diagnosis and treatment. On an abstract level, health care systems are often seen as distribution systems for funds, and important references to other areas with a direct or indirect impact on the quality of life and health care are not sufficiently understood.

2. Recommendations

2.1 General recommendations

- The creation of employment and the establishment of dignified living conditions constitute political and social priorities. This eminent social responsibility is considered the duty of the Community and of national and regional decision-makers.
- The existing gap in access, scope, and quality of health care must be studied and gradually abolished.
- A social understanding of disease must be established and developed, and the value of moral principles in health matters must be enhanced.
- Disease is not merely a personal state of emergency but is also determined by social factors – particularly among the unemployed and the disabled.

2.2 Recommendations on a national level

- There is need to establish more and better information on the social determinants of disease and to develop health perspectives, particularly for the poor and the elderly.
- Research on the causes of disease and dissemination of knowledge must increasingly replace the mere treatment of symptoms in the health sector.
- Interfaces with other social areas of responsibility must be defined and health gaps must be filled.

2.3 EU objectives in connection with “Equity in Health and Health Care”

- Approximation of the candidate countries to EU standards is to be achieved through increasing efforts to enhance the value of health and social policy in those countries.
- The creation of employment opportunities is of utmost significance.

2.4 Objectives for EU campaigns

- EU standards must be established in the areas of health insurance and old-age pension provision as well as in the area of other social benefits – in particular for migrants and refugees.
- Health regions with comparable health-related situations must be defined.

- Social tasks with an impact on the health situation must be identified on an EU level as well as on a national and regional level. A “Think European, Act Local” approach is necessary.
- There is need to develop information on issues with a high social impact like alcohol, nicotine, and drugs. This information must then be disseminated in a manner which encourages people to act.

FORUM III: The Role of Public Health and Health Promotion in a Changing Europe

1. Situation

- 1.1 The health status of European Union citizens today is better than it has ever been before. However, there is still room and need for improvement, especially considering the big differences between and within member states. These differences are even more striking, when one looks at Europe as a whole.
- 1.2 Public Health, which has been defined as the “organised attempt by society to prevent illness, lengthen life and to promote health on the basis of scientific evidence”, has a key role in meeting this challenge.
- 1.3 Health promotion is an important delivery mechanism for public health activities. It should not be regarded as a cost, but rather as an investment for society, making society more conducive for health and leading to health gain. This will also enable society to support excluded groups and elderly people and to help them to engage in economic activities which would again lead to further economic gain.

2. Recommendations at EU and member state level

- 2.1. There is a need to generate public pressure and to mobilise concerns so that public health issues receive higher priority in Europe – both in the EU and within individual countries. In order to be effective, public health actions must promote change at all levels.
- 2.2. At Community level, the proposed EU-declaration of the rights of the citizens must include references to health.
- 2.3. Health inequalities as a major crosscutting theme could become a major topic of the next European Health Forum Gastein.
- 2.4. Health impact assessments can be an important tool in order to understand the health consequences of certain policy measures. Policies on nutrition are an important example illustrating how a better understanding of policies and actions can influence dietary habits and the quality of foods.

- 2.5. Stronger structural linkages between public health action and public health research – be it in the Member States, be it in the EU – have to be established. Research has a key role in determining and addressing public health priorities.
- 2.6. General objectives and priorities of public health policy should not be subordinated to single-issue concerns and health scares. Work on food safety, communicable diseases and health information must be integrated into a coherent health policy logic.
- 2.7. Public health concerns must play an important role in the enlargement process of the EU. The Community's public health policy must address the needs and requirements of applicant countries.
- 2.8. NGOs are of crucial importance in public health, in terms of their advocacy work and their involvement in specific public health activities.
- 2.9. Health promotion is a new tool in addressing health issues and problems at different levels. Further investments in health promotion are needed to develop mechanisms to include the societal context into interventions and evaluation of projects. Health promotion should be seen as a learning activity. While there is a pan-European dimension, it is heavily culturally determined.
- 2.10. New fields of action need to be explored and new instruments need to be developed to reach the socially excluded.

Forum IV: Information Technology: Health and Technological development

1. General conclusions and actual situation

Basically the required technology is available, the emphasis should be now on implementation rather than on experiments and prototypes (although there still is a need to develop products based on the knowledge and experience gained).

To harvest the potential benefits of telematics, adaptation of the processes will be necessary (this will probably lead to adaptation of the organisational structures as well; similar effects have occurred in other industries). This could represent an unique opportunity to put the citizen in the centre of the adapted health systems.

To allow for successful application of telematics accompanying measures will often be necessary with respect to: education, financing, infrastructure.

Internet exists and is growing rapidly, with its regulations based on the market. Some special regulations will be necessary in the domain of security. As a minimum Codes of Conduct must be defined.

The countries, which are candidates for enlargement of the EU, may be in a favourable position to take advantage of this new technology because there will be less opposition from existing structures.

2. Recommendations for action

2.1 At the regional/national level

- The definition of the implementation plans should involve all the various partners (health care professionals, HCEs, patients' organisations, technicians) and not only the latter.
- Both initial and continuous education should be organised for all professions and for the patients. This will also contribute to reducing the risk of social exclusion.
- In the implementation plans, the targets to be achieved have to be clearly formulated. Systematic assessment of the degree in which the targets have been met must be established.
- Regulations and legislation should be adapted to allow for the effective use of telematics in health care in all the necessary areas (e.g. electronic signatures, electronic media, coding systems).

2.2 At the EU level

- European co-operation in developing educational programmes should be stimulated.
- The development of tools for evaluation should be stimulated as well as exchange of assessment results.
- A system for certification of HC telematics products at the European level should be set-up, to ensure that these products are medically cost-beneficial, technically interoperable and reliable, as well as beneficial to the patient (directly or indirectly). The certification to be carried out by independent neutral bodies.
- The development of Codes of Conduct for the use of Internet in Health Care and the definition of info-ethical regulations for the use of telematics in health care should be stimulated.
- Standardisation in health telematics should get a higher priority. In addition, a system should be set up to make specifications of products and solutions widely available (de facto standards).

Forum V: Rare Disorders and Orphan Drugs: Research without Return on Investment

1. Situation

Rare diseases are defined in Europe as those which affect 5 in 10,000 of the population or less or those which need special measures to combat their effects because of the small numbers involved. Although individually a disease may not be rare there are very many different conditions - over 8000 have been identified - so the number of people affected (either directly or indirectly) is large. It has been estimated that in the EU this number may add up to 30 million.

For many patients with rare diseases, hopes for a cure rest on orphan drugs. Orphan drugs are those which, due to the small number of those who need them, are not economically viable to develop under normal commercial consideration and which need special incentives in order for the patients to benefit from their development.

Not all rare diseases need to be treated by orphan drugs. Some will be able to benefit from new uses of existing drugs. Most rare diseases will remain untreatable for the foreseeable future due to a lack of knowledge about their basic biology and the need for much more fundamental research.

In response to the needs of those affected with rare disorders the EU is in the process of introducing two measures, the Rare Diseases Programme and Orphan Medicinal Products Regulations. Rare diseases are also a feature of the 5th Framework Programme.

The Rare Diseases Programme is foreseen for a period of five years. A budget of 6.5m Euro (1.3m/yr) was allocated and three areas of activity were defined, namely the creation of information databases on rare disorders, support for patient groups for those affected and for umbrella bodies and -investigation of clusters of rare diseases.

Orphan medicinal product regulations will give to the European Agency for the Evaluation of Medical Products (EMA) the power to stimulate the development of orphan products and to approve their use by granting market authorisation. Orphan products will benefit from a ten-year period of market exclusivity, during which time no similar product will be licensed for use in respect of the use claimed by the orphan product. The USA has had orphan drug laws for seventeen years and in that time almost 200 new drugs have been authorised. The FDA's Office of Orphan Drugs has a substantial budget to stimulate research and to waive the fees normally charged for granting market approval. The European Parliament has just approved a budget for EMA which does not include any funding for the operation of the orphan medicinal products regulations when they come into force early in the New Year. Without proper budgetary provisions the Agency will be unable to be proactive, nor will it be able to waive fees normally charged to applicants.

2. Recommendations

2.1 Recommendations for the EU

- The original budget for the Rare Disease Programme (30m Euro) should be restored in order for the programme to have a significant impact on opportunities for those at whom it is targeted.
- EMA should be given a dedicated budget to enable it to operate the Orphan Medicinal Products regulations effectively and ensure the speedy release of orphan drugs on the market.
- EU agencies responsible for the rare diseases programme, orphan medicinal products regulations and the Fifth Framework Programme should collaborate with each other and with external agencies such as patient groups, the Engelhorn Foundation and others to ensure the efficient and effective use of resources and best value for money.

- Procedures developed to manage these programmes should stimulate, not stifle innovation, encouraging investment and the creation of new enterprises and new jobs.

2.2 Recommendations for member states

- Tax credits and other fiscal incentives to stimulate R & D of orphan products should be introduced.
- Rules for the prescription and/or reimbursement of orphan products should be such that all those who need them can benefit. Furthermore, products are not to be denied to patients on grounds of cost.
- Medical education programmes should be developed to increase doctors' knowledge of rare disorders.

2.3 Recommendations for others

- Public understanding of the potential benefits of biotechnology and genetic medicine should be encouraged and enhanced through the media and other channels.
- The investment potential afforded by orphan medicinal products from private sector sources should be publicised and promoted.
- Solidarity and the willingness of society to respond to the health care needs of all its members should be emphasised when considering the use of health care resources (and also when working out the economic, social and human costs associated with not treating when potentially treatment would be possible).
- Patient groups should be recognised and supported in their role of reducing the isolation and improving the services and support for those with rare disorders.

Forum VI: The Impact of Biotechnology on Health Systems and Health Services

1. Situation

Biotechnology and research in genetics will have a large impact on medicine through an increased knowledge base. An important milestone will be reached in about 2 -years, when the whole human genome will have been sequenced.

These data together with bio-informatics are opening up the path for genomics, which in many years to come will expand our understanding of how the human body functions at the cellular and molecular level. Genomics are leading to a constant flow of new drugs, diagnostics and vaccines.

At the same time, new medical procedures such as cellular therapies, bio-surgery, organ transplants as well as gene therapy are being developed and are becoming available to patients. Some of these new (not all genetics based) techniques are increasingly posing novel challenges for the health care system and are raising fundamental questions about the nature and value of human life.

2. Recommendations to be enacted both at national and European levels:
 - 2.1 Both basic and problem oriented research need to be increasingly funded. There will be no applied research without continuing basic research. The competent authorities should take note of the fact that government funding for biomedical research is massively on the increase in the USA. Nations ought to have clear ethical and legal guidelines on research. These should be derived from broad societal deliberations. A common European standard is necessary.
 - 2.2 The authorities should encourage industries to develop new drugs, diagnostics, vaccines and medical procedures, including those needed by small groups of patients with rare diseases. These rare diseases represent a major health care problem affecting in total approximately 25-30 million Europeans. Such encouragement needs financial backing. The health care system needs to be flexible enough to allow the rapid introduction of new beneficial materials and procedures. National governments will have to ensure that those who need the innovative products and services can afford them.
 - 2.3 There needs to be a more open dialogue between researchers in biotechnology, the medical profession and the general public. Without a broad understanding of what science and technological innovation can offer, individuals, groups and political decision-makers may have difficulty in making balanced and informed judgements with the risk that worthwhile opportunities will be lost. Professionals need to take the concerns and worries of patients seriously. They should communicate with the patient and the general public, accepting them as equal partners - communication is a two-way process: each side can and should learn from the other. This is also important in Eastern Europe, where open public debates don't have a long tradition.
 - 2.4 Governments are encouraged to address ethical issues raised by the application of new technologies. Society depends on a "contrat social" based on common ethical principles founded on human rights, solidarity and diversity. Many of the ethical issues appear to be novel, and although in some cases there are underlying similarities to issues long discussed (if not resolved), each society, each generation will have to confront them. Again, a good level of understanding and access to information will contribute to resolving differences and balanced use of innovation.
 - 2.5 There is an urgent need for the EU to introduce and enact (or adapt) science-based legislation that will allow Europeans to benefit from products and services generated through biotechnology (as discussed in the workshop, it is not biotechnology but its applications that are being discussed). At the same time the maintenance of a high level of safety is imperative. Without a reliable and rational regulatory framework, the European industrial base is likely to erode in this area. This also applies to the area of patenting, where discoveries may not be patented (nobody is attempting to obtain "Patents on Life"). However inventions need the possibility of being patented in order to maintain the incentive for investment in research and development, while ensuring prompt and effective diffusion of the new knowledge and techniques. To further this aim, patents should be available on useful innovations, but not on genetic material (human or other) in its natural state.

Workshop: European Economic Integration and Health Systems in the Enlarged Europe:

1. Situation

- 1.1 All candidate countries make important efforts in reforming their health systems, albeit different in advances and scope.
- 1.2 But the candidate countries' health systems show important flaws giving raise to doubts about their ability to fully participate in the European social security co-ordination: the gap in health status and health systems, insufficient resources devoted to the health sector, over-capacity and ill maintained health care facilities, low motivation of health professionals and lack of communication to and encouragement of participation of the population. All this could lead to migration pressure (health professionals) and the health status gap is a potential burden on the European Union's economic capacity.
- 1.3 Additionally, the future European Member States face similar problems with respect to the increasing economic integration as the present member states, even though these could in some cases even be considered as opportunity: the possibility of "exporting" health services (Kohll/Dekker) to other Member States represents an important incentive for quality improvement and could attract the necessary capital for updating health care facilities.

2. Recommendations

- 2.1 Health should be given a higher priority in the accession process. Special support should be given to the upgrading of health care facilities in the candidate countries.
- 2.2 Candidate countries should take into account the influences of European law when reforming their health care systems and increasingly voice their concerns and interests in the "European health arena".
- 2.3 Many of the issues discussed at the Gastein Forum are very relevant in the context of enlargement. There is a clear role for the Community in the support of quality issues: development of Europe-wide standards (services, facilities, professionals, dissemination of best practices). The candidate countries should be fully integrated in this process.
- 2.4 Active "integration" of candidate countries should include the exchange of professionals, administrators and researchers. Increased communication and easily accessible information systems are essential.
- 2.5 Increasing involvement of candidate countries in health activities at the European level, especially in those meetings which focus on the internal market and health issues.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 4 April 2000**CHARTE 4198/00****CONTRIB 79****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a contribution submitted by European Justice and Peace Commissions, International Federation of Leagues for Human Rights (FIDH), European Migrant's Forum, International Catholic Migration Commission (ICMC), KAIROS Europe, Pax Cristi International, Representatives of Communities of African Origin, and Quaker Council for European Affairs (QCEA).¹

¹ This text has been submitted in English language only.

**EUROPEAN JUSTICE AND PEACE COMMISSIONS
INTERNATIONAL FEDERATION OF LEAGUES FOR HUMAN RIGHTS (FIDH)
EUROPEAN MIGRANTS' FORUM
INTERNATIONAL CATHOLIC MIGRATION COMMISSION (ICMC)
KAIROS EUROPE
PAX CHRISTI INTERNATIONAL
REPRESENTATIVES OF COMMUNITIES OF AFRICAN ORIGIN
QUAKER COUNCIL FOR EUROPEAN AFFAIRS**

The European Union Charter of Fundamental Rights and Third Country Nationals

The European Council in Cologne (June 1999) decided to draft a Charter of Fundamental Rights for the European Union (EU). The Extraordinary European Council in Tampere (October 1999) agreed the composition and methodology of the Drafting Body.

The debate has now entered a new phase: realistically, it is too late to alter the adopted drafting procedure, but there is still time to contribute to the content of the future Charter.

With regard to the interventions and debates so far, on the substance of the Charter and the ambiguity surrounding who the Charter will apply to, our organisations would like to call for the complete and express recognition of the Fundamental Rights of Third Country Nationals within the territory of the European Union.

Consequently, the following three basic principles need to be remembered:

1. The universal character of human rights

Human rights, by definition, benefit all humans. The universality of human rights has already been established through the collective protection offered by existing international and regional instruments, to which the member-states of the EU are signatories. For example:

- Article 2 of the Universal Declaration of Human Rights laid-out that:
“Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, language, religion, political or other opinion, national or social origin, property, birth or other status.”
- Article 1 European Convention of Human Rights (ECHR) foresees that:
“The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section 1 of this Convention.”
- Article 2 of the International Covenant on Civil and Political Rights reads:
“Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

- Article 2 of the International Covenant on Economic, Social and Cultural Rights states, in paragraph 2, that:
“The State Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

2. Non-discrimination

As the European Court of Human Rights has continuously underlined, the distinctions between citizens and non-citizens of the EU can only be established on the condition that they are objectively justified and consistent with the goal of setting up specific legal arrangements, between member-states, relating to citizenship. Hence, the principle of non-discrimination is an essential reference within the field of EU fundamental rights, as it implies that the rights of EU citizens should be narrowly defined and that such a difference in treatment should be in response to a firm justification which is in proportion to the objective concerned.

In this regard, our organisations invite the Drafting Body of the Charter to examine the best formulation possible for the specific non-discrimination clause of the Charter. The proposed Protocol of the ECHR (Protocol 12) on non-discrimination will probably be adopted within 2000. This could form a good reference point for the Charter’s Drafting Body.

The basic principle must be that the rights within the Charter will be universal. Any differences in application of the Charter’s rights should be as a result of a difference in circumstances rather than status. It should not be necessary to create *a priori* categories of beneficiaries.

As for civil and political rights, international law at present allows the **rights to vote and eligibility to stand for election** in European and municipal elections to be reserved for EU citizens. Freedom to make such a restriction is in fact provided for in the international agreements, which are binding on the Member-states (Article 25 of the International Covenant on Civil and Political Rights, Article 21 Universal Declaration on Human Rights). The signatory organisations call for the drafters of the Charter to **extend this right to people legally resident** in the territory of the EU, in accordance with certain conditions (eg. 5 years of legal residence), as proposed by the European Parliament in April 1999¹. The existence of Third Country Nationals living in the territory of the EU will be a permanent characteristic of European societies. The Council of Europe’s Convention on the Participation of Foreigners in Public Life at local level (1992) could serve as a good reference in this field.

If a form of **diplomatic protection** (Article 20 of EEC) is to be reserved for the citizens of the EU, the **right to petition** before Parliament and the **right to introduce a complaint to the European Ombudsman** should be available to all residents of the member-states. The **right to be addressed in one of the 11 official languages** of the European institutions and to receive a response in that language (Article 21 EEC) should elsewhere equally be heard by all the relevant persons in the member-states and the EU.

¹ Resolution on the strategy document on the Position of the European Union regards migration and asylum adopted 13 April 1999, para.23

The rights of **freedom of movement and establishment** (Article 18 EEC) within the EU is, at present, reserved for member-state nationals. Our organisations believe that this right should be of benefit to all persons legally resident in the EU in order to conform to the general clause on anti-discrimination on the basis of nationality.

In addition, the extension of this right to Third Country Nationals could be considered in the future to be a result of the right to freedom of movement, as consecrated in various international human rights protection instruments. These clauses have no references to nationality as a criteria for application (Article 2 of Protocol 4 ECHR, Article 12 of International Pact on Civil and Political Rights²). In regards to European integration, it is logical and fair that the rights to freedom of movement and establishment within the EU should equally benefit all persons legally resident. This would follow the ethos of those who originally dreamt of an internal market and Union without borders.

Finally, in relation to this right, the future Charter should include an explicit reference to the right of asylum-seekers, persons considered stateless and those who should benefit from family reunification to enter the territory of the EU.

There are other rights that are likely to figure in the Charter, but only benefit Third Country Nationals. For example, the prohibition of collective expulsions of foreigners (as foreseen in Article 4 of Protocol 4 ECHR).

The signatory organisations of this paper consider that **fundamental economic and social rights** should have the same field of personal application as the civil and political rights. Therefore, the rights to medical and social assistance (including the right to adequate housing and a sufficient standard of living), the right of children to an education and the right to equal treatment on the basis of gender should benefit all persons under the jurisdiction of the member-states of the EU. This should be regardless of their nationality and the permanence of their stay on EU territory.

Certain social rights are bound to the employment status of the individual (for example, the right of association), others are dependent on the permanence of their stay (for instance, the right to work, the right to social security – this is different from the fundamental right to medical and social assistance). Therefore by consequence, those with irregular status residing in the territory of the Union will not benefit from these rights. A specific clause on their exclusion is neither necessary nor desirable.

3. Harmonisation of the protective instruments

Our organisations are convinced of the complementary goals of the proposed EU Charter of Fundamental Rights and the potential ratification by the EU (or by default by the EC) of the European Convention on Human Rights and the European Social Charter (revised). It is only by combining these proposals that the overlapping of jurisdictions could be avoided; otherwise, in the medium term, the Charter could become a restrictive instrument in Community law. This is also the only way to assure coherence in the protection of European fundamental rights.

² “Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.”

Such an addition would require a revision of the preamble to the Treaty basis of the European Union. Therefore, we call for this debate to be included on the agenda of the forth-coming Inter-Governmental Conference.

In conclusion, our organisations call upon the Drafting Body of the Charter of Fundamental Rights to be watchful that all the thematic working groups, given the task of creating the Charter, duly take into account the situation of Third Country Nationals within the EU, and consistently protect the universal nature of fundamental rights.

Brussels, 14 February 2000-03-23

This paper is signed by the following organisations:

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PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE**fundamental.rights@consilium.eu.int**

Bruxelles, le 7 avril 2000**CHARTE 4213/00****CONTRIB 89****NOTE DE TRANSMISSION**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne

Veillez trouver ci-joint une contribution de la Confédération Européenne des Syndicats Indépendants (CESI) .^{1 2}

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² Ce texte a été soumis en langues française et allemande.

Prise de position de la CESI sur la création d'une charte des droits fondamentaux européens

Introduction:

Le Conseil européen de Cologne et les réflexions poursuivies dans le cadre du Conseil de Tampere ont posé les jalons de la création d'une charte des droits fondamentaux européens. Une convention composée de 65 délégués sous la présidence de Roman Herzog devrait proposer un projet pour la fin 2000.

Dans ce contexte, l'on constate une très grande disparité entre le sens, la place et la portée attribués à cette charte par les différents acteurs. Une partie de ceux-ci nient la nécessité de la création d'une Charte communautaire en se référant à un document déjà existant, la Convention européenne des droits de l'homme. D'autres prônent seulement la proclamation de « tables de la loi », c'est-à-dire une déclaration de principe politique sans caractère coercitif. En définitive, l'on encourage la création d'un catalogue des droits fondamentaux plus ou moins étoffé, qui serait intégré dans les traités et aurait valeur de constitution.

La CESI est d'avis qu'une Charte communautaire européenne dotée d'un catalogue de droits fondamentaux, des principes d'État de droit ainsi que d'un arsenal légal nécessaire à l'exécution des droits de défense devrait être élaborée et intégrée plus tard aux traités.

La CESI motive son avis comme suit:

Communauté de valeurs et catalogue de droits fondamentaux

Les États membres garantissent déjà une protection étendue des droits fondamentaux au sein de l'Union européenne et ont également signé la Convention européenne des droits de l'homme. Le simple citoyen de la Communauté jouit ainsi d'un florilège de droits élémentaires et de droits de défense par rapport aux Institutions étatiques. Par ailleurs, les traités communautaires - sans présenter de catalogue des droits fondamentaux - contiennent de nombreuses dispositions séparées qui garantissent les droits fondamentaux ou au moins des droits équivalents (interdiction de toute discrimination, les quatre libertés fondamentales de l'économie de marché, liberté d'association, etc.). Par ailleurs, la Cour de justice des Communautés européennes (CJCE) a élaboré une série de principes relatifs à la philosophie de l'État de droit (droit d'être entendu devant un tribunal, principe de proportionnalité, etc.) et relatifs aux droits fondamentaux proprement dits (par exemple: les libertés, règle d'égalité, liberté de confession, respect de la vie privée et de la vie familiale).

La CESI estime toutefois que, sans préjudice des droits fondamentaux protégeant déjà les personnes morales et juridiques au sein de l'Union européenne, la nécessité d'une charte européenne des droits fondamentaux existe. En se référant à la subsidiarité et aux traditions juridiques des différents États membres, l'on peut interpréter la notion de « nécessité » de telle sorte qu'une Charte communautaire ne soit pas obligatoire. Cependant, l'intégration croissante entraîne inéluctablement la création d'une communauté de valeurs trop souvent citée par le passé qui devrait s'exprimer concrètement, selon la CESI, dans une charte des droits fondamentaux. Il ne s'agit pas seulement de faire la clarté sur la portée des droits fondamentaux, sur la prévisibilité, la sécurité juridique et l'application des droits la plus rapide possible, mais surtout d'identifier les citoyens de l'Union. D'après la CESI, cet argument, que de nombreux critiques taxent de « creux », est pourtant l'un des plus convaincants. Comme l'ont confirmé les dernières élections européennes, l'Union européenne ne joue qu'un rôle secondaire dans la conscience des citoyens, en dépit de son influence considérable et sans cesse plus importante. Force est toutefois de constater qu'une Union qui ne peut pas prendre pied dans la société et qui ne se base pas sur la reconnaissance de ses citoyens et de leurs représentants politiques, ne parviendra qu'avec difficulté à atteindre l'intégration approfondie souhaitée. La CESI estime par conséquent que la création d'une charte de droits fondamentaux européens est absolument nécessaire.

Relations avec la Convention européenne des droits de l'homme

L'objectif des six membres fondateurs de la Communauté européenne, qui sont en même temps les pères fondateurs du Conseil de l'Europe et les États signataires de la Convention européenne des droits de l'homme, consiste à créer une communauté exclusivement orientée sur des préoccupations d'ordre économique. La protection des droits fondamentaux n'était investie que d'un rôle secondaire, voire inexistant. Au fur et à mesure de l'intégration de la Communauté économique européenne, de la Communauté européenne et enfin de l'Union européenne, les Institutions européennes se sont vu doter de compétences législatives, exécutives et judiciaires plus étendues, alors que l'adhésion à la Convention européenne des droits de l'homme, et, ce faisant, la soumission à la jurisprudence de la Cour européenne de Justice en matière de droit de l'homme, restait limitée aux États nationaux. Cette évolution a entraîné une situation quelque peu paradoxale où les droits fondamentaux, c'est-à-dire des droits de défense contre les Institutions européennes, ne sont pas dérivés des constitutions nationales ni de la Convention européenne des droits de l'homme, mais seulement des droits fondamentaux communautaires – incomplets.

C'est la raison pour laquelle l'on a sollicité à maintes reprises l'adhésion de l'Union européenne à la Convention européenne des droits de l'homme en tant qu'organisation supranationale. Seul ce geste fort pourrait permettre de construire un système cohérent pour protéger les droits de l'homme. Un protocole supplémentaire devrait permettre de combler le manque d'engagement des organisations supranationales.

La CESI se prononce en faveur de l'adhésion de l'Union européenne à la Convention européenne des droits de l'homme, mais insiste toutefois pour créer une Charte communautaire. Les spécificités de la supranationalité de l'Union européenne exigent – en plus de la Convention européenne des droits de l'homme – la création d'une propre Charte communautaire permettant en particulier d'opposer des droits de défense étendus et spécifiques aux compétences législatives et réglementaires étendues transmises à l'Union européenne

La Charte communautaire et la Convention européenne des droits de l'homme créent une protection des droits fondamentaux cohérente en Europe

La condition déterminante pour la création d'une Charte communautaire européenne est, dans un premier temps, l'éclaircissement de sa position par rapport à la Convention européenne des droits de l'homme ratifiée par tous les États membres. La CESI estime qu'il convient à tout prix d'éviter la mise en place de plusieurs catalogues de droits fondamentaux européens indépendants les uns des autres, puisque le danger de la naissance d'une Europe à deux vitesses contredit le principe de l'universalité des droits de l'homme. C'est la raison pour laquelle la CESI sollicite la création d'une relation non équivoque entre la Convention européenne des droits de l'homme et la nouvelle charte qui permette une coexistence complémentaire. La CESI se félicite dès lors expressément des propositions avancées par Roman Herzog, selon lesquelles il convient de reprendre des références à la Convention européenne des droits de l'homme dans la Charte communautaire. Dans ce contexte, la Charte communautaire devrait jouir de la priorité – en se fondant sur des principes constitutionnels – pour autant qu'elle ne limite pas la portée de la protection conférée par la Convention européenne des droits de l'homme. Ce faisant, l'on tiendrait compte des objectifs à réaliser selon la CESI (la spécificité de la supranationalité de l'Union européenne et la cohérence entre la Convention européenne des droits de l'homme et la Charte communautaire).

Applicabilité de la charte des droits fondamentaux

La Charte communautaire devrait être applicable comme « Constitution de l'Union européenne » dans le cas où des Institutions ou des organes européens – dans le cadre des compétences et des tâches leur attribuées conformément au 1^{er}, 2^{ème} ou 3^{ème} pilier – prennent des mesures que les États membres appliquent ou transposent le droit communautaire ou de l'Union. La CESI rejette une restriction du champ d'application sur la prise de mesures des Institutions et organes européens dans le cadre du droit communautaire. D'une part, il s'agit de garantir des droits de défense correspondants à toutes les formes de transposition et à tous les aspects du droit communautaire et de l'Union, d'autre part, la distinction entre le droit communautaire et le droit de l'Union n'est pas pertinente dans ce cas. En effet, le passage aisé du droit communautaire au droit de l'Union ainsi que l'élargissement du droit communautaire et des compétences des organes communautaires dans des domaines réservés jusqu'ici au droit de l'Union, ne peuvent pas motiver de distinction dans la problématique du champ d'application des droits fondamentaux communautaires. Les objectifs de prévisibilité, de sécurité du droit et d'application étendue du droit sont ainsi manqués.

Droits fondamentaux et principes de l'État de droit

La CESI estime qu'une Charte doit définir, outre un catalogue des droits fondamentaux clair et explicitement formulé, des principes généraux de l'État de droit ainsi que l'arsenal juridique permettant d'appliquer les droits de défense. Les principes de l'État de droit jouent un rôle tout aussi important que les droits fondamentaux au sein des États démocratiques et ne doivent pas entrer en vigueur par la seule force du droit prétorien, c'est-à-dire par des décisions de principe de la Cour européenne de Justice. La CESI se félicite dès lors de la division en deux de la Charte en une partie générale, où les droits fondamentaux proprement dits sont énumérés, et une partie spécifique destinée à garantir la « sécurité du droit ».

Portée et essence des droits fondamentaux

Le catalogue des droits fondamentaux devrait contenir à la fois les droits de l'Homme *généraux* conformément à la Convention européenne des droits de l'homme et des droits fondamentaux spécifiques à l'Union. La CESI prône par ailleurs de garantir les principes fixés dans la Charte communautaire des droits fondamentaux sociaux. Dans ce cadre, l'on met notamment en exergue les principes de la liberté d'exercer une profession, de l'égalité des chances, du droit à un salaire décent, de la liberté d'association, de la liberté des conventions collectives, de la cogestion des salariés, de l'accès à une formation professionnelle, de la protection sociale adaptée ainsi que de la protection de la santé et de la sécurité sur les lieux de travail. De plus, conformément à la Charte sociale, il convient de reprendre dans le projet de charte fondamentale le droit pour chacun de gagner sa vie grâce à un travail non contraint.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 10 April 2000**CHARTE 4215/00****CONTRIB 91****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a contribution by the European Forum for Freedom in Education (EFFE), submitted with a view for the hearing on 27 April 2000.^{1 2}

¹ EFFE: Annener Berg 15, G-58454 Witten. Tel: +49-2302-699 442. Fax: +49-2302-699 443

² This text has been submitted in German, French and English. (The commentary has been submitted in German and English only).

Charter of Fundamental Rights of the European Union (Article 16)

1. Everyone shall have the right to education.
2. There shall be freedom of education. Education shall foster the full development of individual gifts and abilities.
3. The right of parents to have their children educated and taught in accordance with their religious, philosophical and educational convictions shall be guaranteed.
4. There shall be the right to found and administer educational establishments. Choice of educational establishment shall be ensured through equitable distribution of public resources to governmental and non-governmental schools.

Proposal

Article 16

Addressing the Right to Education

for the

Draft Charter of Fundamental Rights of the European Union

Article 16

1. Everyone shall have the right to education.
2. There shall be freedom of education. Education shall foster the full development of individual gifts and abilities.
3. Parents shall have the right to educate their children in accordance with their religious, philosophical and educational convictions.
4. The right to establish educational establishments and to provide instruction shall be guaranteed. Free choice in education shall be ensured through the equitable distribution of public resources for governmental and non-governmental schools.

Commentary

The European Forum for Freedom in Education (EFFE) fully supports the decision to draft a bill of rights for the united European countries in which the significance of human rights is justifiably addressed through the recognition of the right to education as well as the right to freedom in education as fundamental rights.

Regardless of whether or not the right to education is understood and enforced as a fundamental social right, the issue of education must be introduced into a Charter of Fundamental Rights of the European Union.¹ The right to education is a human right which can be made effective only if the State acts to safeguard the individual's environment. Thus this does not have merely a protective character.

The goal of such a Charter must be to strengthen the rights of the European citizen. We must take those countries that have realised the human and fundamental rights in an exemplary manner as our point of departure.² Only in this way will Europe be able to become a Europe of its citizens.

The European Forum for Freedom in Education hereby submits the above proposal for Article 16 pertaining to the right to education in the Charter of Fundamental Rights of the European Union in accordance with the working principles of the Convention and in reference to the constitutions of the member countries, Articles 149 and 150 of the Treaty of the European Community, Article 2 of Protocol No. 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, taking into consideration the European Parliament's Draft of an European Constitution (1994), the resolution of the European Parliament concerning freedom of education in the European Community (March 14, 1984), Article 10 of the European Social Charter and Article 8 of the European Charter for Regional and Minority Languages of the European Council, as well as Articles 14, 18, 28, 29 and 30 of the UN Convention on the Rights of the Child.

¹ This is also the position taken by the German government, which has stated that "the Charter of Fundamental Rights must contain all rights, the denial of which could lead to a constitutional complaint. This applies to the rights named in Articles 1-19....The Charter should...also [include] such fundamental social rights that are justifiably considered to be individual rights....such as the right to education....in as much as this lies within the sovereignty of the Union."; Herta Däubler Gmelin, From Citizen of the Market to Citizen of the Union, FAZ from 10. January 2000, P.11.

² Compare Frank-Rüdiger Jach, *Schulverfassung und Bürgergesellschaft in Europa*, Berlin 1999.

Until now the fundamental right to freedom in education has been guaranteed by the constitutional traditions of the Member States as well as by the European Human Rights Convention and the approach taken by the European Court of Justice in its jurisdiction. Article 2 of Protocol No. 1 of the EHRC from 20. March, 1952 is thus particularly relevant. It says:

"No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions."

The European Parliament has also recognised the right to education and has stated in Article 16 of the Declaration of Fundamental Rights and Freedoms from 12. April 1989 that:

"Everyone shall have the right to education and vocational training appropriate to their abilities.
There shall be freedom in education.
Parents shall have the right to make provision for such education in accordance with their religious and philosophical convictions."

Although this position is still to be found in Title VIII, Article 14 of the European Parliament's Draft of a European Constitution³, where it is phrased as follows:

"Everyone has the right to education and vocational training appropriate to their abilities.
There shall be freedom in education.
Parents have the right to make provision for such education in accordance with their religious and philosophical convictions, whilst respecting the right of the child to his own development."

in the study entitled Protecting Fundamental Rights in the European Union prepared by the committee of experts on 'Fundamental Rights', the right to education is not mentioned. The fact that this right has been omitted shows that the study is in need of amendment.

In order to ensure that education meets the expectations voiced in the EHRC and inherent in the constitutional traditions of the Member States, an article addressing educational rights and freedoms must contain the following:

³ PE 203.601/endg.2

- Protection of the fundamental social rights of parents and children
- Prohibition of discrimination based on nationality, race, citizenship, sex, philosophical or religious convictions, social class, or economic standing
- Guarantee of educational diversity
- Recognition of academic freedom
- Recognition of the importance of education's role in achieving tolerance and a European consciousness.

§ 1. Everyone shall have the right to education.

The central focus of an article addressing educational rights within a European Charter of Fundamental Rights must be to ensure that no one shall be denied access to education. This follows from the position taken in the Treaty of Amsterdam, where, in the Preamble, the resolve of the Member States to uphold a high standard of knowledge among their citizens through non-discriminatory access to education and continuing education is clearly stated.⁴ Unquestionably, the right to education must include access to compulsory education without cost.

Everyone, regardless of his or her nationality, race, citizenship, sex, philosophical or religious conviction, social class or economic standing, has the right to an education appropriate to his or her individual gifts and abilities and capable of fostering his or her sense of freedom and social responsibility.

§2. There shall be freedom of education. Education shall foster the full development of individual gifts and abilities.

Education must not become subservient to economic policy. Especially in the face of economic globalisation, the right to childhood must be recognised and protected.

The purpose of education to enable children and young people to become mature, socially responsible, tolerant individuals can be recognised as an important part of the cultural inheritance of Western Europe. It implies the right of the child to evolve his or her own sense of identity as is given by the right to an education that fosters the full development of individual gifts and abilities.

In accordance with fundamental human rights and freedoms, the primary obligation in education is to guarantee the right of the child to develop the full spectrum of his or her individual abilities with respect for the child's sense of identity and cultural values; within this framework tolerance towards all cultural, religious, philosophical and ethnic differences is of the utmost importance.

⁴ Preamble, Treaty of the European Community, Paragraph 8

§3. The right of parents to educate their children in accordance with their religious, philosophical and educational convictions shall be guaranteed.

In addition to the fundamental right to education referred to as the right of access to education and the guarantee of the principle of equal access, a European bill of rights must recognise the primacy of the educational responsibility of parents.

Thus the rejection of a state monopoly of education corresponds with the right of parents to decide upon the form of education appropriate for their children, reflected in the right to free choice of educational establishment. Within the European Union, the parental right of educational choice, in addition to the right of choice based on religious conviction or ethnicity, is inherent in the constitutional traditions of the Member States.⁵

§4. There shall be the right to found educational establishments and provide instruction. Choice in education shall be ensured through the equitable distribution of public resources for compulsory education to governmental and non-governmental schools.

The primary responsibility of parents for the education of their children necessitates the recognition of the right to found and administer independent schools as the foundation upon which free choice of educational establishment is possible

The right of choice in education can, however, only then be guaranteed if the choice between governmental and non-governmental schools is placed upon an equitable economic base.

An article addressing education within the Charter of Fundamental Rights of the European Union is connected to other fundamental freedoms stated in the Treaty of the European Community. Private education comes under the category of active and passive services and must not be unduly hindered.

Within the jurisdiction of the European Court of Justice it is recognised that Article 2 of the Protocol No. 1 of the EHRC does guarantee the right to found and administer private schools without guaranteeing a corresponding right to have such schools financed. It is, however, important to keep in mind that a majority of the Member States do provide financial support to private schools and that by the adoption of Protocol No. 1, Holland took the position that Article 2 does indeed call for financial support for non-governmental schools.⁶

⁵ Compare Frank-Rüdiger Jach, *Schulverfassung und Bürgergesellschaft in Europa*, Berlin 1999

⁶ Compare Karl Josef Partsch, *Die Rechte und Freiheiten der europäischen Menschenrechtskonventionen*, Berlin 1966, P. 240; Claus Eiselstein, *Staatliches Bildungsmonopol und Europäische Menschenrechtskonvention*, in: Hans-Jörg Birk/Armin Dittmann/Manfred Erhardt, *Kulturverwaltungsrecht im Wandel*, Stuttgart 1981, P. 178 (184).

The European Forum for Freedom in Education wishes particularly to call to mind the Declaration of the European Parliament concerning Freedom of Education in the European Community from 14. March 1984.⁷ This declaration calls for the protection of freedom in education and teaching and for respect for the parents right to choice in education. Inherent in the stated position is the governmental recognition of freely established schools as well as their right to award the same qualifications as State schools. In this Declaration, the European Parliament also calls for the practical realisation of this right through financial support and takes the position that non-governmental schools should receive the same treatment as governmental schools in the distribution of public resources without discrimination as regards administration, parents, pupils or staff. Notwithstanding this, however, freely established schools may be expected "to make a certain contribution of their own as a token of their own responsibility and as a means of supporting their independent status".

Thus in a number of decisive points stated in the Declaration from 1984, the European Parliament has laid the foundation for a European bill of rights. With regard to the fundamental right to freedom of education, the EP has submitted an exemplary proposal corresponding to the constitutional traditions of the Member States and manifesting the right to education as a fundamental right of all European citizens.

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See Albert Fernandez/Siegfried Jenker, Ed., International Declarations and Conventions on the Right to Education and the Freedom of Education, published by the European Forum for Freedom in Education, Bd. 8

ENTWURF DER CHARTA DER GRUNDRECHTE DER EUROPÄISCHEN UNION**fundamental.rights@consilium.eu.int**

Brüssel, den 7. April 2000**CHARTE 4216/00****CONTRIB 92****ÜBERMITTLUNGSVERMERK**

Betr.: Entwurf der Charta der Grundrechte der Europäischen Union

Finden Sie bitte nachstehend einen Beitrag von Herrn Thomas Clement zu den Bürgerrechten.^{1 2}

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² Dieser Text wurde nur in deutsche Sprache übermittelt.

Thomas Clement

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An den Konvent zur Ausarbeitung der Grundrechte der Europäischen Union Brüssel Sehr geehrte Damen und Herren, Sehr geehrter Herr Vorsitzender Herzog, mit Interesse verfolge ich die Regierungskonferenz 2000 über die Reform der Organe der EU und war überrascht, daß hinsichtlich der Formulierung einheitlicher Grundrechte in der EU ein gesonderter Konvent einberufen wurde. Da ich an den Rat der Europäischen Union (bzw. an dessen Generalsekretär) und an die Kommission einen "Vertrag betreffend die Verfassung der Europäischen Union" als Antwort auf die Aufgaben der Regierungskonferenz 2000 gesendet habe, möchte ich Ihnen die, die Grundrechte betreffenden Ausschnitte (einschließlich von Kurzkomentaren) hieraus auf diesem Wege übermitteln:

Teil V. - Die Bürgerrechte der Europäischen Union

Abschnitt 1 - Unionsbürgerschaft

Artikel 12

- (1) Die Staatsbürger der Unionsstaaten sind Unionsbürger im Sinne dieser Verfassung; davon ausgenommen sind Staatsbürger von Unionsstaaten, die ihren ständigen Wohnsitz in Teilen des Staatsgebiets ihres Heimatstaates haben, die vom Unionsgebiet ausgeschlossen sind.
- (2) 1. Jedem Unionsbürger, der sich in einem Unionsstaat dauernd niedergelassen hat, deren Staatsbürgerrecht er nicht besitzt, ist auf Antrag spätestens sieben Jahre nach seiner dauernden Niederlassung das Staatsbürgerrecht des Unionsstaates und spätestens ein Jahr nach seiner dauernden Niederlassung das Bürgerrecht der Gemeinde zu verleihen.
2. Die Unionsstaaten wenden bei der Ausführung der Bestimmungen dieses Absatzes das Kapitel I. des am 6. Mai 1963 in Straßburg unterzeichneten Übereinkommens über die Verringerung der Mehrstaatigkeit und über die Wehrpflicht von Mehrstaatern an; sie können gegebenenfalls durch Staatsvertrag davon abweichendes festlegen.
3. Unionsbürger können in keinem Unionsstaat dem Ausländerrecht unterworfen werden und gelten nicht als Ausländer.
- (3) Die Union kann einheitliche Vorschriften für die Erwerbung und den Verlust der Staatsbürgerschaft eines Unionsstaates durch Verfassungsgesetz erlassen.

Rechtsvergleiche

ersetzt die Artikel 17 Absatz 1 und 19 Absatz 1 EGV.

Kurzkommentar

Der Artikel präzisiert die Angaben des Artikel 17 Absatz 1 Satz 1 und 2 EGV, die im Verfassungsentwurf zusammengefaßt werden, indem er die Staatsbürger der Unionsstaaten, die in den, gemäß Artikel 2.1 Absatz 2 des Verfassungsentwurfs ausgeschlossenen Teilen des Staatsgebiets wohnhaft sind, von der Unionsbürgerschaft ausschließt. Ansonsten sind alle Staatsbürger der Unionsstaaten automatisch auch Unionsbürger im Sinne des Verfassungsentwurfs. Der durch den Amsterdamer Vertrag angefügte Satz 3 des Artikels 17 Absatz 1 EGV wurde wieder weggelassen, da die nationale Staatsbürgerschaft, auf der die Unionsbürgerschaft in Artikel 12 ausdrücklich ruht, nur durch Verfassungsänderung bzw. Vertragsänderung abgeschafft werden könnte.

Absatz 2 ist eine **neue Rechtsnorm**, die besagt, daß Unionsbürger, die sich in einem Unionsstaat niedergelassen haben, dessen Staatsangehörigkeit sie nicht besitzen, nach dem Ablauf von sieben Jahren nach ihrer dauernden Niederlassung auf Antrag die Staatsangehörigkeit des betreffenden Unionsstaates erlangen können und somit einen Rechtsanspruch genießen. Die zweite neue Rechtsnorm, die den Artikel 19 Absatz 1 EGV unter vollständiger Neufassung und unter anderen Gesichtspunkten das kommunale Wahlrecht der Unionsbürger sichert; spätestens ein Jahr nach seiner dauernder Niederlassung ist einem Unionsbürger das Gemeindebürgerrecht auf Antrag zu verleihen, auch wenn er nicht oder noch nicht Staatsbürger des, der Gemeinde angehörenden Staates ist. Die Verleihung des Gemeindebürgerrechts ist in einigen Unionsstaaten (wie z.B. Frankreich, welches das passive Wahlrecht in Bezug auf den Maire nicht auf die Unionsbürger erstreckt; diese Bestimmung wurde jedoch Frankreich durch Übergangsbestimmung belassen) weitergehend als das Kommunalwahlrecht für Unionsbürger nach Artikel 19 Absatz 1 EGV (z.B. hat ein Teil der deutschen Bundesländer den Artikel 19 EGV so umgesetzt, daß die Unionsbürger vollberechtigte Gemeindebürger werden).

Der zweite Unterabsatz des Absatzes 2 macht den Unionsstaaten und den Unionsbürgern hinsichtlich der doppelten Staatsangehörigkeit dahingehende Einschränkungen, daß eine doppelte Staatsbürgerschaft (hier sind die nationalen Staatsbürgerschaften, auf denen die Unionsbürgerschaft ruht, gemeint) in Übereinstimmung mit dem Übereinkommen über die Verringerung der Mehrstaatigkeit und über die Wehrpflicht von Mehrstaatern vom 6.5.1963 nicht zulässig ist, daß also ein Unionsbürger, der nach Maßgabe des Absatzes 2 erster Unterabsatz die Staatsbürgerschaft eines Unionsstaates begehrt, mit der Verleihung dieser Staatsbürgerschaft, seine ursprüngliche Staatsbürgerschaft zurückgeben muß.

Der dritte Unterabsatz verbietet es den Unionsstaaten, Unionsbürger aus anderen Unionsstaaten als Ausländer zu behandeln; sie können zwar einem besonderen Recht unterworfen werden, nicht aber dem Ausländerrecht und sie dürfen nicht als Ausländer gelten. So müßte z.B. der § 15 des deutschen Aufenthaltsgesetz/EWG geändert werden.

Absatz 3 bestimmt, daß die Union nach Maßgabe des Artikels 25 Absatz 3 durch ein Verfassungsgesetz gemeinsame Vorschriften über die Staatsbürgerschaften der Unionsstaaten verabschieden kann. Mit der Aufnahme dieses Absatzes 3 wird verhindert, daß Artikel 25 Absatz 3 dritter Spiegelstrich Anwendung findet.

Schlußfolgerungen

Weitreichende Rechtsänderungen. Die Unionsbürger erhalten durch Unionsvertrag einen Anspruch auf die Staatsbürgerschaft des Staates, in dem sie ihren Hauptwohnsitz genommen haben. Das Staatsbürgerschaftsrecht bleibt zwar Angelegenheit der Unionsstaaten, doch schränkt der Verfassungsentwurf diese Zuständigkeit etwas ein.

Abschnitt 2 - Europäische Menschenrechtskonvention

Artikel 13

Die in der, am 4. November 1950 in Rom unterzeichneten Konvention zum Schutze der Menschenrechte und Grundfreiheiten und deren Zusatzprotokollen aufgeführten Rechte und Freiheiten binden die Gewalten der Europäischen Union als unmittelbar geltendes Recht.

Rechtsvergleiche

ersetzt Artikel 6 Absatz 2 EUV; entspricht Artikel 3 des Entwurfs zu einer Satzung der Europäischen (Politischen) Gemeinschaft vom 10. März 1953.

Kurzkomentar

Im Gegensatz zu Artikel 6 Absatz 2 EUV besagt der Artikel 13, ähnlich wie Artikel 1 Absatz 3 des Grundgesetzes für die Bundesrepublik Deutschland vom 23. Mai 1949, daß die durch die Europäische Menschenrechtskonvention und deren Zusatzprotokollen festgestellten Menschenrechte und Grundfreiheiten (Artikel 2 bis 18 MRK, Artikel 1 bis 3 ZP, Artikel 1 bis 4 4.ZP, Artikel 1 und 2 6.ZP, Artikel 1 bis 5 7.ZP) für die Gewalten der Europäischen Union (P Artikel 15 des Verfassungsentwurfs) verbindlich sind. Die genannten Rechte und Freiheiten gelten als unmittelbares Recht in allen Unionsstaaten.

Die Vorbehalte hinsichtlich einiger Grundrechte und Freiheiten, welche die Unionsstaaten gemäß der Konvention eingelegt haben und die gemäß der Konvention abgegebenen Territorialerklärungen finden gemäß der Übergangsbestimmungen zu Artikel 13 weiterhin Anwendung, doch kann der Ministerrat die einzelnen Unionsstaaten auffordern, diese Vorbehalte und Territorialerklärungen zu ändern, zurückzunehmen oder aufzuheben.

Die Europäische Union ist zum Zeitpunkt des Inkrafttretens dieses Verfassungsentwurfs trotz der weitreichenden Bestimmung des Artikels 13 auch weiter nicht Vertragspartei der Menschenrechtskonvention im Sinne des Völkerrechts, doch kann die EU gemäß Artikel 5.3 Vertragspartei der Konvention werden, da ihr durch den Artikel 13 (insbesondere durch die Übergangsbestimmung zu Artikel 13) eine indirekte Zuständigkeit der Konvention übertragen wird.

Schlußfolgerungen

Im Gegensatz zur Verfassung des Deutschen Reiches von 1871, die durch Verträge zwischen den nachmaligen Bundesstaaten des Deutschen Reiches festgestellt wurde, verzichtet dieser Verfassungsentwurf keinesfalls auf Grundrechte. Grundrechte haben heute eine ganz andere Bedeutung als Grundrechte im Jahr 1871, was man schon daran erkennt, daß es in Europa (und zwar das vom Atlantik bis zum Ural) eine Menschenrechtskonvention gibt, die gleichzeitig einen Gerichtshof zur Überwachung dieser Konvention über alle nationalen Grenzen hinaus einsetzt .

Die in den einzelnen Unionstaaten weitergehenden Grundrechte bleiben aber bestehen, sofern sie nicht einen Punkt berühren, in welchem die EU Europarecht erläßt und somit gemäß Artikel 1.4 Absatz 2 das Unionsrecht Vorrang vor dem nationalen Grundrecht genießt. Interessantes Beispiel in Deutschland ist der Artikel 16a des Grundgesetzes für die Bundesrepublik Deutschland vom 23. Mai 1949 und der Artikel 105 in Verbindung mit Artikel 98 der Verfassung des Freistaates Bayern vom 2. Dezember 1946. Der Artikel der Bayerischen Verfassung geht hinsichtlich des Asylrechts bedeutend über den Artikel des Grundgesetzes hinaus, doch findet der Artikel des Grundgesetzes volle Anwendung, da das Ausländerrecht Sache des Bundes ist; die bayerische Verfassung bleibt hier unberücksichtigt.

Abschnitt 3 - Bürgerrechte

Artikel 14.1

- (1) Jeder Unionsbürger hat das Recht, sich im Unionsgebiet frei zu bewegen, sich dort aufzuhalten und sich dauernd niederzulassen.
- (2) Durch oder aufgrund eines Unionsgesetzes kann die Ausübung dieser Rechte für den Fall außergewöhnlicher Umstände eingeschränkt werden.

Rechtsvergleiche

ersetzt Artikel 18 EGV.

Kurzkommentar

Der Artikel 14.1 ist die Fortschreibung der Artikel 39 bis 48 EGV (Freizügigkeit der Arbeitskräfte, Niederlassungsrecht). Das Recht der Freizügigkeit und der Niederlassung der Unionsbürger im gesamten Gebiet der Union, das zwar praktisch bereits besteht aber noch nicht als Recht festgestellt ist, wird festgeschrieben. Die Einschränkung dieser Rechte durch die Artikel 39 bis 48 EGV (besonders die Beschränkung auf Arbeitskräfte) oder durch die, gemäß Artikel 18 Absatz 1 EGV erlassenen Durchführungsvorschriften fallen innerhalb einer Frist von zehn Jahren fort, wie die Übergangsbestimmungen zu Artikel 14.1 bestimmen (P Übergangsbestimmungen zu Artikel 14.1). Im Gegensatz zu Artikel 18 Absatz 2 EGV, der den Rat zum Erlaß von Vorschriften zur Erleichterung der Ausübung des Freizügigkeitsrechts ermächtigte, ermächtigt Artikel 14.1 Absatz 2 die Union, Gesetze zu erlassen, welche die Ausübung dieser Rechte für den Fall außergewöhnlicher Umstände einschränken kann. Dadurch erkennt man, daß das Recht der Freizügigkeit und des Niederlassungsrechts nach Absatz 1 allumfassend und nicht eingeschränkt zu verstehen ist. Die Umschreibung "für den Fall außergewöhnlicher Umstände" ist einschränkend oder freizügig auslegbar; ob z.B. eine Einschränkung der Freizügigkeit für Luxemburg aufgrund des bereits sehr hohen Ausländeranteils in Luxemburg ein außergewöhnlicher Umstand ist, wird Auslegungssache sein (Stichwort: Aufrechterhaltung von öffentlicher Ordnung und Sicherheit).

Die Übergangsbestimmungen finden auch nach dem Ablauf der zehnjährigen Übergangsfrist auf Großbritannien sowie Irland gemäß den bestehenden Protokollen zu Großbritannien und Irland Anwendung (P Protokoll über die Anwendung bestimmter Aspekte des Artikels 14 des Vertrags zur Gründung der Europäischen Gemeinschaft auf das Vereinigte Königreich und Irland vom 2.10.1997 und das Protokoll über die Position des Vereinigten Königreichs und Irlands vom 2.10.1997.).

Schlußfolgerungen

Die größtenteils bereits vorhandene Freizügigkeit und Niederlassungsfreiheit für Staatsbürger der Mitgliedstaaten der Europäischen Union in allen ihren Mitgliedstaaten, teilweise auch mittels des Artikels 308 EGV durchgesetzt, wird endlich rechtlich als "Grundrecht der Unionsbürger" festgeschrieben.

Artikel 14.2

Jeder Unionsbürger hat das Recht, aus Gewissensgründen den Dienst mit einer Waffe zu verweigern.

Rechtsvergleiche

z.B. Artikel 4 Absatz 3 des Grundgesetzes für die Bundesrepublik Deutschland.

Kurzkomentar

Durch die Einführung einer gemeinsamen Verteidigungspolitik gemäß Artikel 7.1 wurde auch das Recht der Wehrdienstverweigerung als allgemeines Grundrecht für die EU übernommen. Da dieses Recht in der MRK fehlt (wie auch im Vertrag über die Gründung der Europäischen Verteidigungsgemeinschaft vom 27. Mai 1952, in Artikel 12 des Militärprotokolls aber angedeutet), wird es hierher übernommen, da in allen Mitgliedstaaten der Europäischen Union das Recht der Wehrdienstverweigerung geltendes Recht ist.

Schlußfolgerungen

Keine wesentliche Rechtsänderung !

Artikel 14.3

Jeder Unionsbürger mit Wohnsitz in einem Unionsstaat, dessen Staatsbürgerrecht er nicht besitzt, kann in dem Unionsstaat, in dem er seinen Wohnsitz hat, das aktive und passive Wahlrecht bei den Wahlen zum Europäischen Parlament ausüben, wobei für ihn dieselben Bedingungen gelten, wie für die Angehörigen des betreffenden Unionsstaates.

Rechtsvergleiche

ersetzt Artikel 19 Absatz 2 EGV.

Kurzkomentar

Das Wahlrecht für die Wahlen des Europäischen Parlaments in einem Unionsstaat, dessen Staatsbürgerschaft ein Unionsbürger (noch) nicht besitzt, wird durch den Artikel 14.3 uneingeschränkt bestätigt. Artikel 19 Absatz 2 Satz 2 EGV, der den Rat ermächtigte, sowohl die Einzelheiten für die Ausübung dieses Rechts wie auch Ausnahmeregelungen für einige Mitgliedstaaten mit besonderen Problemen (z.B. Luxemburg mit seinem hohen EU-Bürger-Anteil) zu erlassen, entfällt ohne Übergangsfrist.

Das Recht bedarf keiner Durchführungsbestimmungen, da der Artikel alle erforderlichen Bestimmungen enthält. Das Wahlrecht der Unionsbürger gilt für diese unter denselben Bedingungen wie für die eigenen Staatsbürger des betreffenden Mitgliedstaates.

Schlußfolgerungen

Nur für diejenigen Mitgliedstaaten, die eine Ausnahmeregelung gemäß Artikel 19 Absatz 2 Satz 2 EGV im Rat durchgesetzt haben, ist diese Bestimmung eine **Rechtsänderung**. Für die übrigen Mitgliedstaaten ist die Weglassung der Ausnahmebestimmungen keine Rechtsänderung.

Artikel 14.4

- (1) Jeder Unionsbürger sowie jede natürliche oder juristische Person mit Wohnort oder satzungsmäßigem Sitz in einem Unionsstaat kann allein oder zusammen mit anderen Bürgern oder Personen in Angelegenheiten, die in die Tätigkeitsbereiche der Union fallen und die ihn oder sie unmittelbar betreffen, eine Petition an das Europäische Parlament richten.
- (2) Jeder Unionsbürger kann sich an den Bürgerbeauftragten der Europäischen Union wenden.
- (3) Jeder Unionsbürger kann sich schriftlich in einer der Amtssprachen der Europäischen Union an jedes Organ oder an jede Einrichtung der Europäischen Union wenden, und eine Antwort in derselben Sprache erhalten.

Rechtsvergleiche

ersetzt die Artikel 21 und 194 EGV.

Kurzkomentar

siehe Kommentare zu den Artikeln 21 und 194 EGV.

Schlußfolgerungen

Das Petitionsrecht der Bürger der Union an das Parlament bleibt bestehen, wird jedoch in einem Artikel zusammengefaßt und an die Stelle der Grundrechte verschoben. **Keine Rechtsänderung.**

Artikel 14.5

- (1) Jeder Unionsbürger sowie jede natürliche oder juristische Person mit Wohnsitz oder satzungsmäßigem Sitz in einem Unionsstaat hat das Recht auf Zugang zu Dokumenten des Europäischen Rates, des Europäischen Parlaments, des Ministerrates der Europäischen Union und der Kommission in allen Amtssprachen der Europäischen Union, vorbehaltlich der Grundsätze und Bedingungen, die nach Absatz 2 festzulegen sind.
- (2) 1. Die allgemeinen Grundsätze und die aufgrund öffentlicher oder privater Interessen geltenden Einschränkungen für die Ausübung dieses Rechts auf Zugang zu Dokumenten werden durch einen verbindlichen Rechtsakt der Union festgelegt.

2. Jedes der genannten Organe legt in seiner Geschäftsordnung Sonderbestimmungen hinsichtlich des Zugangs zu seinen Dokumenten fest.

Rechtsvergleiche

ersetzt Artikel 255 EGV.

Kurzkommentar

Der Artikel wurde erst durch den Amsterdamer Vertrag vom 2.10.1997 in den EGV eingestellt. Er gibt den Bürgern das Recht auf Einsicht in alle Dokumente der Organe der Europäischen Union unter den Einschränkungen, die durch Rechtsakt der Union bestimmt sind. Jedes einzelne Organ kann zusätzlich zu diesem verbindlichen Rechtsakt noch Sondervorschriften bezüglich des Zugangs zu seinen Dokumenten machen.

In einer Übergangsbestimmung zu Artikel 14.5 wird ausdrücklich das Fortgelten der nach Maßgabe des Artikels 255 EGV erlassenen Einschränkungen des Rechts auf Zugang zu den Dokumenten der Europäischen Union bestimmt.

Schlußfolgerungen

Das Grundrecht auf Dokumenteneinsicht, das der Bürgernähe dienen soll, kann durch einfachen Rechtsakt der Union, in der Regel in der Form eines Unionsgesetzes (p Artikel 24.1 Absatz 2 des Verfassungsentwurfs), stark eingeschränkt werden. Es wurde trotzdem zu den Bürgerrechten hinzugefügt, um die Übersichtlichkeit dieser Bürgerrechte zu gewährleisten.

Keine Rechtsänderung !

Artikel 14.6

- (1) 1. Jeder Unionsbürger hat das Recht auf den Schutz der ihn betreffenden personenbezogenen Daten, soweit er daran ein schutzwürdiges Interesse hat.

2. Durch Rechtsakt der Union kann über den Schutz natürlicher Personen bei der Verarbeitung personenbezogener Daten und dem freien Verkehr solcher Daten Beschränkungen festgelegt werden.
- (2) Durch Rechtsakt der Union wird eine unabhängige Kontrollinstanz errichtet, die für die Überwachung der Anwendung solcher Unionsgesetze auf die Organe und Einrichtungen der Union verantwortlich ist; der Rechtsakt legt erforderlichenfalls andere einschlägige Bestimmungen fest.

Rechtsvergleiche

ersetzt Artikel 286 EGV.

Kurzkomentar

Der Artikel wurde erst durch den Amsterdamer Vertrag vom 2.10.1997 in den EGV eingestellt. Er gibt den Bürgern das Recht auf Datenschutz. Der Artikel ist weiter gefaßt als der Artikel 286 EGV, der nur für Daten, die von der Europäischen Union und ihrer Organe verarbeitet werden, gültig war.

Der Artikel 14.6 des Verfassungsentwurfs dagegen gibt jedem Unionsbürger das Recht auf den Schutz der ihn betreffenden personenbezogenen Daten, jedoch unter der Einschränkung, daß dieses Recht durch einfachen Rechtsakt, der in der Regel in der Form eines Unionsgesetzes (p Artikel 24.1

Absatz 2 des Verfassungsentwurfs) zu erlassen ist, stark eingeschränkt werden kann. Solange und soweit ein solcher Rechtsakt der Union nicht erlassen wird, können die Unionsstaaten weiterhin Gesetze zum Datenschutz erlassen. Das Subsidiaritätsprinzip nach Artikel 1.4 wirkt hier auf die EU fast so einschränkend, wie die Fassung des Artikels 286 EGV.

Der Absatz 2 entspricht den Bestimmungen des Artikels 286 Absatz 2 EGV, der zur Durchsetzung der Datenschutzbestimmungen in den Organen und Einrichtungen der Union ein unabhängiges Kontrollorgan ermöglicht.

In einer Übergangsbestimmung zu Artikel 14.6 wird ausdrücklich das Fortgelten der nach Maßgabe des Artikels 286 EGV erlassenen Einschränkungen des Rechts auf Datenschutz bestimmt.

Schlußfolgerungen

Das Grundrecht auf Datenschutz, das im EGV bisher nur eingeschränkt galt, wird als Bürgerrecht der Unionsbürger voll als europäisches Recht ausgeweitet. Dieser Artikel, insbesondere der Absatz 1 ist eine **Rechtsänderung und eine Kompetenzergänzung** gegenüber den bisherigen Verträgen, wobei jedoch hier auch das Subsidiaritätsprinzip die Kompetenz der Union wiederum einschränkt.

Artikel 14.7

Diskriminierungen von Unionsbürgern aus Gründen der Staatsangehörigkeit sind verboten.

Rechtsvergleiche

ersetzt Artikel 12 EGV.

Kurzkomentar

Der Artikel legt das älteste Grundrecht in der EU fest, das Diskriminierungsverbot, das bereits im Jahr 1957 durch den EWGV eingeführt wurde. Da die in Artikel 12 EGV ermöglichten Einschränkungen dieses Verbots nicht ergangen sind, wohl aber einige Urteile des Gerichtshofs das Recht ausgelegt haben, wurde es durch den Verfassungsentwurf als Bürgerrecht nochmals aufgewertet und jegliche Diskriminierung von Unionsbürgern aus Gründen ihrer Staatsangehörigkeit untersagt. Das Recht gilt unmittelbar und kann gemäß diesem Verfassungsentwurf nicht beschränkt werden.

Das in Artikel 12 EGV faktisch für alle Diskriminierungen aus Gründen der Staatsangehörigkeit (also auch für Staatsbürger außerhalb der Unionsbürgerschaft) gültige Recht wird auf die Staatsbürgerschaften innerhalb der Unionsbürgerschaft, also nur für die Unionsbürger im Sinne des Artikels 12 des Verfassungsentwurfs beschränkt.

Schlußfolgerungen

Keine wesentliche Rechtsänderung.

Artikel 14.8

Diskriminierungen aus Gründen des Geschlechts, der Rasse, der ethnischen Herkunft, der Religion oder der Weltanschauung, einer Behinderung, des Alters oder der sexuellen Ausrichtung sind zu bekämpfen. Das Nähere regelt ein besonderes Unionsgesetz.

Rechtsvergleiche

ersetzt Artikel 13 EGV.

Kurzkomentar

Das durch den Artikel bestimmte allgemeine Diskriminierungsverbot für Unionsbürger und Ausländer ist so formuliert, daß darin kein einklagbares Recht (im Gegensatz zum Diskriminierungsverbot nach Artikel 14.7) entsteht. Er verpflichtet die Union und ihre Staaten dazu, Diskriminierungen aus Gründen des Geschlechts, der Rasse, der ethnischen Herkunft, der Religion, einer körperlichen oder geistigen Behinderung, des Alters oder der sexuellen Ausrichtung zu bekämpfen. Diese Bekämpfung erfolgt in spezifischen Tätigkeitsbereichen der EU durch einfaches Unionsrecht, allgemein aber durch das in Artikel 14.8 genannte besondere Unionsgesetz (Unionsgesetz mit einstimmiger Zustimmung des Rates).

Der Artikel ist jedoch durch den Artikel 14 der Europäischen Menschenrechtskonvention in Verbindung mit Artikel 13 des Verfassungsentwurfs teilweise überlagert, da dieser unmittelbar geltendes Recht in der EU ist. So ist die EU nur verpflichtet, die Diskriminierung wegen einer Behinderung, des Alters oder der sexuellen Ausrichtung zu bekämpfen, die anderen Diskriminierungsarten sind einklagbare Rechte nach Artikel 13 des Verfassungsentwurfs.

Schlußfolgerungen

Das Diskriminierungsverbot nach Artikel 14.8 des Verfassungsentwurfs, das eher ein Staatsziel als ein Grundrecht ist, kann durch ein besonderes Unionsgesetz (siehe Artikel 25 Absatz 1 des Verfassungsentwurfs) als unmittelbar geltendes Recht ausgebaut werden. **Keine wesentliche Rechtsänderung !**

Artikel 14.9

- (1) Kein Unionsbürger darf an einen Staat außerhalb der Union ausgeliefert werden.
- (2) Wer in einem Unionsstaat wegen eines Verbrechens angeklagt ist und sich der Strafverfolgung durch Flucht in einen anderen Unionsstaat entzieht und dort aufgegriffen wird, ist an den Unionsstaat, aus dem er geflohen ist, auszuliefern, sobald die Regierung dieses Unionsstaates es verlangt.

Rechtsvergleiche

ersetzt Artikel 31 Buchstabe b); siehe auch Artikel 3 des 4. Zusatzprotokolls zur MRK vom 16. September 1963.

zu Absatz 1 vergleiche die Verfassungen einiger Mitgliedstaaten der Europäischen Union (z.B. Artikel 16 Absatz 2 des Grundgesetzes für die Bundesrepublik Deutschland vom 23. Mai 1949, § 7 der Finnischen Regierungsform vom 17. Juli 1919, Artikel 33 Absatz 1 der Verfassung der Republik Portugal vom 2. April 1976, Kapitel 2 § 7 Absatz 1 der Verfassung der Königreichs Schweden vom 1. Januar 1975).

zu Absatz 2 vergleiche Artikel IV. Abschnitt 2 Absatz 2 der Verfassung der Vereinigten Staaten von Amerika vom 17. September 1787.

Kurzkomentar

Der Artikel schafft ein neues Recht, das eng mit dem Ausbau der Unionsstaatsbürgerschaft des Artikels 12 zusammenhängt.

Der Artikel 3 des 4. Zusatzprotokolls zur MRK, der gemäß Artikel 13 des Verfassungsentwurfs unmittelbar geltendes Recht der Europäischen Union ist, besagt, daß kein Staatsbürger durch seinen eigenen Staat aus dessen Staatsgebiet ausgewiesen werden kann. Zwar sind Ausweisung und Auslieferung aufgrund einer strafbaren Handlung zwei verschiedene Rechtssachen, doch besteht ein gewisser Zusammenhang, da eine Auslieferung eine besondere Art der Ausweisung bzw. richtiger gesagt eine Abschiebung aus einem Staatsgebiet und die Verbringung in ein anderes Staatsgebiet darstellt. Die Abschiebung erfolgt jedoch faktisch erst, wenn eine behördlich ausgesprochene Ausweisung durch den Ausgewiesenen nicht erfolgt ist.

Während der Absatz 1 also der Union und ihren Mitgliedstaaten verbietet, einen Unionsbürger, auf welcher Staatsangehörigkeit auch immer diese beruht, im Sinne des Völkerrechts auszuliefern, verpflichtet Absatz 2 die Mitgliedstaaten, eine in einem Unionsstaat straffällig gewordene Person, die sich in ihren Heimatstaat (oder einen anderen Unionsstaat) geflüchtet hat, an den Unionsstaat, in dem die Person straffällig geworden ist (Ort der Straftat) auszuliefern. Somit würden die in den oben aufgeführten Verfassungen der Mitgliedstaaten der EU festgelegten Auslieferungsverbote für eigene Staatsbürger hinsichtlich der Auslieferung an einen Unionsstaat obsolet.

Schlußfolgerungen

Das Auslieferungsverbot für Unionsbürger wurde als Bürgerrecht eingestuft und steht deshalb an dieser Stelle im Verfassungsentwurf. Es enthält einige **neue Rechtsbestimmungen**, die sich auf den gemäßigten Ausbau der Unionsbürgerschaft positiv auswirken und die Union zu einem einheitlichen Rechtsverfolgungsraum im Sinne der Schaffung eines Raums der Freiheit, der Sicherheit und des Rechts nach dem Dritten Teil, Titel IV. EGV und Titel VI. EUV (nach dem Verfassungsentwurf dann Titel IV. Kapitel 1 und 2 EUVneu) machen sollen.

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Artikel 30.7

- (1) Wird in einem Verfahren vor dem Gerichtshof eine grundsätzliche Frage bezüglich der Auslegung oder des Umfangs der Rechte und Freiheiten aus der, am 4. November 1950 in Rom unterzeichneten Konvention zum Schutze der Menschenrechte und Grundfreiheiten und den weiteren, diese Konvention ergänzenden und ändernden Zusatzprotokolle aufgeworfen, so ist der Gerichtshof verpflichtet, das Verfahren an den, durch diese Konvention errichteten Europäischen Gerichtshof für Menschenrechte abzugeben. Das Urteil des Europäischen Gerichtshofs für Menschenrechte hat die Wirkung eines endgültigen Urteils des Gerichtshofs.
- (2) Entscheidungen des Gerichtshofs über die Auslegung oder den Umfang der Rechte und Freiheiten aus der, am 4. November 1950 in Rom unterzeichneten Konvention zum Schutze der Menschenrechte und der weiteren, dieser Konvention ergänzenden und ändernden Zusatzprotokolle können beim Europäischen Gerichtshof für Menschenrechte nach Maßgabe der genannten Konvention angefochten werden.

Rechtsvergleiche

Siehe Artikel 45 des Entwurfs zu einem Vertrag über die Satzung der Europäischen Politischen Gemeinschaft vom 10. März 1953.

Kurzkommentar

Der Artikel beschreibt die Sondervorschriften des Gerichtshofs bei der Auslegung des Artikels 13 des Verfassungsentwurfs.

Der Gerichtshof hat die Zuständigkeit als Wahrer der Menschenrechte und Grundfreiheiten nach den Verfahren der Vorabentscheidung (P Artikel 28.4), gegen einen Unionsstaat (P Artikel 29.1 bis 29.4) und der Nichtigkeitsklage (P Artikel 29.5 und 29.6), da der Artikel 13 des Verfassungsentwurfs die Menschenrechte und Grundfreiheiten, die im Abschnitt 1. der Europäischen Menschenrechtskonvention und den weiteren Zusatzprotokollen zu dieser Konvention aufgeführt sind, mit unmittelbarer Rechtswirkung in der Europäischen Union ausstattet (unter Einschränkung nach den Bestimmungen der Übergangsbestimmung zu Artikel 13).

So kann sowohl ein Gericht eines Unionsstaates wegen Verletzung eines Rechts aus der Menschenrechtskonvention in einem seiner Verfahren den Gerichtshof anrufen wie auch die ausführende Gewalt (sowohl der Ministerrat als auch die Kommission) und jeder Unionsstaat einen anderen Unionsstaat wegen der Verletzung eines solchen Rechts vor dem Gerichtshof verklagen. Natürlichen und juristischen Personen steht ein direktes Klagerecht im Verfahren der Nichtigkeit (P Artikel 29.5 Absatz 2) zu.

Der Gerichtshof wird jedoch durch den Artikel 30.7 verpflichtet, wenn er feststellt, daß in einem Verfahren eine grundsätzliche Frage bezüglich der Auslegung oder dem Umfang eines, in der Konvention niedergelegten Rechts aufgeworfen wird, dieses Verfahren an den Europäischen Gerichtshof für Menschenrechte abzugeben. Wie das weitere Verfahren in einem solchen Fall ist, kann durch den Verfassungsentwurf nicht bestimmt, werden; hier wird wohl eine Absprache zwischen dem Gerichtshof und dem Gerichtshof für Menschenrechte getroffen oder ein Vertrag zwischen der Europäischen Union und dem Europarat geschlossen werden müssen; in jedem anderen Fall müßte ein Unionsstaat, der nicht von dem Verfahren betroffen ist, als Hohe Vertragspartei der Konvention von dem EU-Gerichtshof aufgefordert werden, eine Klage nach Artikel 33 der Konvention ("Staatenbeschwerde") einzulegen. Die Entscheidungen des Gerichtshofs für Menschenrechte nach diesem Artikel haben dann dieselbe Wirkung wie ein Urteil des EU-Gerichtshofs.

Nach Absatz 2 bleibt es einer Verfahrenspartei vor dem EU-Gerichtshof nicht versagt, gegen das Urteil des Gerichtshofs beim Europäischen Gerichtshof für Menschenrechte nach Maßgabe der Konvention eine Klage einzulegen. Hier findet die Konvention, insbesondere der Artikel 34 der Konvention ("Individualbeschwerde") Anwendung und das Urteil des EU-Gerichtshofs gilt als Urteil der letzten innerstaatlichen Instanz.

Schlußfolgerungen

Der Artikel ist zum Schutz der ausschließlichen und endgültigen Auslegung der Menschenrechte nach der Konvention durch den Gerichtshof für Menschenrechte eingefügt worden. Der Gerichtshof wird somit ermächtigt, ohne Urteil das Verfahren an den Gerichtshof für Menschenrechte weiterzuleiten.

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Teil IX. - Übergangsbestimmungen

.....

Zu Artikel 12 Absatz 2 erster Unterabsatz

Für Frankreich findet der Artikel 12 Absatz 2 erster Unterabsatz nur nach Maßgabe des Artikel 88-3 der Verfassung der Französischen Republik Anwendung, und zwar während der Dauer der Gültigkeit des Artikels 88-3 der Verfassung der Französischen Republik.

Anmerkungen

Die Unionsbürger können nach Artikel 88-3 der französischen Verfassung auch weiterhin (auch als ordentliche Gemeindebürger im Sinne des Artikels 12 Absatz 2 erster Unterabsatz dieses Verfassungsentwurfs) nicht Bürgermeister einer französischen Gemeinde werden. Nur wenn der Unionsbürger auch französischer Staatsbürger wird, findet diese Bestimmung keine Anwendung.

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Zu Artikel 13

Die gemäß den Artikeln 56 und 57 der am 4. November 1950 unterzeichneten Konvention zum Schutze der Menschenrechte und Grundfreiheiten und den entsprechenden Artikeln der

Zusatzprotokolle zu dieser Konvention von den Unionsstaaten abgegebenen Erklärungen und Vorbehalte bleiben in Kraft, bis sie durch die Vertragsparteien der Konvention geändert, zurückgenommen oder aufgehoben werden. Solange die Europäische Union nicht Vertragspartei der Konvention ist, kann der Ministerrat die Vertragsparteien verpflichten, die von ihnen abgegebenen Erklärungen und Vorbehalte zu ändern, zurückzunehmen oder aufzuheben oder von einem Unionsstaat nicht ratifizierte Zusatzprotokolle zu ratifizieren.

Anmerkungen

Da in den Verfassungsentwurf keine eigene Grundrechtscharta aufgenommen wurde, dafür aber der Artikel 13 des Verfassungsentwurfs die seit 1953 in Kraft befindliche Europäische Menschenrechtskonvention (MRK) als unmittelbar geltendes Recht erklärt hat (und somit die, seit 1959 einheitlich für alle Mitgliedstaaten des Europarates durch den Europäischen Gerichtshof für Menschenrechte ausgelegten Menschenrechte in allen Teilen der Union Verfassungsrecht sind), wird in der Übergangsbestimmung zum Artikel 13 auf die unterschiedliche Geltung einzelner Bestimmungen der MRK in jedem Unionsstaat Rücksicht genommen. Nur diejenigen Menschenrechte und Grundfreiheiten gelten einheitlich in der EU, für welche durch die Unionsstaaten keine Vorbehalte gemacht wurden.

Die in dem Verfassungsentwurf als Unionsstaaten vorgesehenen Staaten haben alle Vorbehalte oder wenigstens Erklärungen zur MRK abgegeben, außer Belgien, Zypern, Dänemark, Griechenland, Italien, Lettland, Luxemburg, Polen, Slowenien und Schweden; für die genannten Staaten gelten also alle Menschenrechte und Grundfreiheiten nach der EMRK, wiederum jedoch nicht alle, in den Protokollen niedergelegten Menschenrechte. Frankreich, Großbritannien und die Niederlande haben sogar Territorialerklärungen abgegeben, die Teile ihres Staatsgebiets (hier insbesondere außereuropäische Gebiete) von der Wirkung der MRK ausnehmen (ganz oder teilweise). Das Protokoll Nr. 4 zur MRK (Verbot von Freiheitsentziehung wegen Schulden, Freizügigkeit, Verbot von Ausweisungen) wurde von Großbritannien nicht ratifiziert. Das Protokoll Nr. 6 (Abschaffung der Todesstrafe) wurde von Belgien, Zypern, Estland, Griechenland, Lettland, Litauen, Polen und Großbritannien zwar nicht ratifiziert, die Todesstrafe wurde jedoch nach nationalem Recht abgeschafft bzw. nicht mehr angewendet (hierzu besteht auch eine Erklärung in der Schlußakte zum Vertrag von Amsterdam vom 2.10.1997). Das Protokoll Nr. 7 (verschiedene Bestimmungen zum Strafverfahren) wurde von Belgien, Zypern, Deutschland, Irland, den Niederlanden, Polen, Portugal, Spanien und Großbritannien noch nicht ratifiziert. Die, die Protokolle ratifizierenden Staaten haben teilweise Vorbehalte oder Erklärungen abgegeben.

Die Vorbehalte und Erklärungen zur MRK und dessen Zusatzprotokollen bleiben in den einzelnen Unionsstaaten gemäß der Übergangsbestimmung zwar erhalten, da eine solche Ungleichheit in der Rechtswirkung einzelner Grundrechte der MRK und seiner Protokolle in den einzelnen Unionsstaaten nicht auf Dauer bestehen kann und soll, wird jedoch der Ministerrat ermächtigt (solange die EU nicht selbst Vertragspartei der MRK ist), einzelne Mitgliedstaaten zu verpflichten, solche Vorbehalte oder Erklärungen zurückzunehmen und Zusatzprotokolle zu ratifizieren. Der Unionsstaat hat dieser Verpflichtung nachzukommen.

Zu Artikel 14.1

1. Die bestehenden Beschränkungen der Freizügigkeit für Unionsbürger innerhalb des Unionsgebiets bleiben für weitere zehn Jahre in Kraft, doch kann die Union durch verbindliche Rechtsakte im Rahmen der Bestimmungen der Artikel 40, 41 und 42 des Vertrags über die Europäische Union sowie der Artikel 40, 42, 44 und 47 des Vertrags zur Gründung der Europäischen Gemeinschaft Vorschriften erlassen, mit denen die Ausübung dieses Rechts erleichtert wird.

Durch verbindlichen Rechtsakt ist sicherzustellen, daß mit dem Ablauf der zehnjährigen Frist das Recht der Freizügigkeit innerhalb des Unionsgebiets nach Maßgabe des Artikels 14.1 uneingeschränkt wahrgenommen werden kann.

Mit dem Ablauf der zehnjährigen Übergangsfrist werden folgende Bestimmungen des Vertrags über die Europäische Union geändert:

- a) In Artikel 40 Buchstabe a) werden die Worte "Maßnahmen zur Gewährleistung des freien Personenverkehrs nach Artikel 14 des Vertrags zur Gründung der Europäischen Gemeinschaft in Verbindung mit unmittelbar damit zusammenhängenden flankierenden" gestrichen.
 - b) In Artikel 41 Nr. 1 werden die Worte: ", daß Personen, seien es Bürger der Union oder" ersetzt durch "daß" und nach dem Wort "Länder" entfällt das Komma.
2. Für das Königreich Dänemark findet das Protokoll über die Position Dänemarks im Anhang zum Vertrag über die Europäische Union und zum Vertrag zur Gründung der Europäischen Gemeinschaft weiterhin Anwendung. 3. Für das Vereinigte Königreich von Großbritannien und Nordirland sowie für Irland findet das "Protokoll über die Anwendung bestimmter Aspekte des Artikels 14 des Vertrags zur Gründung der Europäischen Gemeinschaft auf das Vereinigte Königreich und auf Irland" auch nach dem Ablauf der in Absatz 1 festgelegten zehnjährigen Frist entsprechende Anwendung.

Anmerkungen

Die Ziffer 1 der Übergangsbestimmung zu Artikel 14.1 des Verfassungsentwurfs entwickelt den Artikel 18 EGV weiter, indem er die Freizügigkeit für Unionsbürger innerhalb des Unionsgebiets, das im Artikel 18 Absatz 1 EGV mit genereller Einschränkung geschaffen, und deren Beschränkungen in Artikel 14.1 des Verfassungsentwurfs fast vollständig aufgehoben wurden. Da jedoch eine sofortige vollständige Freigabe der Freizügigkeit durch die Mitgliedstaaten wohl nicht gewünscht und auch nicht durchgesetzt werden könnte, hat der Verfassungsentwurf erstmals eine zehnjährige Frist gesetzt, während der die Freizügigkeit mit Blick auf die volle Gültigkeit des Artikels 14.1 geschaffen werden soll. Mit dem Ablauf der Frist fällt jede Beschränkung fort, auch wenn der in Absatz 2 der Ziffer 1 vorgesehene Rechtsakt zur Sicherstellung der Freizügigkeit nicht ergangen wäre. Mit dem Ablauf der Frist kann jeder Unionsbürger sein Freizügigkeitsrecht gerichtlich einklagen und somit auch durchsetzen. Die im Absatz 3 genannten Verfassungsänderungen dienen der Klarstellung der, nach der Frist eintretenden Rechtslage im Bereich der Innenpolitik der EU.

Hinweis: die genannten Artikel 40, 41 und 42 des EUV haben den (nur in Details geänderten) Wortlaut der Artikel 61, 62 und 62 EGV in der geltenden Fassung; die genannten Artikel 40, 42, 44 und 47 EGV wurden teilweise erheblich geändert !

Die Ziffern 2 und 3 bestätigen wiederum das Sonderrecht Dänemarks, Großbritanniens und Irlands hinsichtlich der Freiheit des Personenverkehrs innerhalb der EU, zu dem auch die Freizügigkeit gehört.

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Zu Artikel 14.5

Die gemäß Artikel 255 des Vertrags zur Gründung der Europäischen Gemeinschaft in der Fassung des am 2. Oktober 1997 unterzeichneten Vertrags von Amsterdam festgelegten Grundsätze und Bedingungen gelten bis zum Erlaß des Unionsgesetzes gemäß Artikel 14.5 dieser Verfassung entsprechend fort; diese können nur durch einen verbindlichen Rechtsakt der Union geändert, ergänzt oder aufgehoben werden.

Anmerkungen

Um eine neuerliche Beschlußfassung über die Grundsätze betreffend den öffentlichen Zugang zu den Dokumenten der Europäischen Union, die bereits gemäß dem bisherigen Artikel 255 EGV erlassen werden konnten, auszuschließen, wurden die bereits beschlossenen Grundsätze in der Übergangsbestimmung zu Artikel 14.5 als fortgeltend bezeichnet; die bisherige Beschlußfassung hat somit dieselbe Rechtswirkung wie der in Absatz 2 des Artikels genannte Rechtsakt der Union und kann auch nur durch einen solchen geändert, ergänzt oder aufgehoben werden.

Die Übergangsbestimmung ist eine Sonderbestimmung zur Fortgeltung von bestehendem Recht unter dem Verfassungsentwurf und damit eng mit der zweiten Schlußbestimmung des Verfassungsentwurfs verbunden.

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Zu Artikel 14.6

Die gemäß Artikel 286 des Vertrags zur Gründung der Europäischen Gemeinschaft in der Fassung des am 2. Oktober 1997 unterzeichneten Vertrags von Amsterdam anwendbaren Rechtsakte gelten bis zum Erlaß des Unionsgesetzes gemäß Artikel 14.6 entsprechend fort; diese können nur durch Unionsgesetz geändert, ergänzt oder aufgehoben werden.

Anmerkungen

Wie die Übergangsbestimmung zu Artikel 14.5 ist auch die Übergangsbestimmung zu Artikel 14.6 eine Sonderbestimmung zur Fortgeltung bestehenden Rechts, hier das Recht auf Datenschutz, das gemäß dem bisherigen Artikel 286 EGV erlassen werden konnte.

Ich hoffe auf ein gutes Gelingen des Konvents und verbleibe hochachtungsvoll
Thomas Clement

PROYECTO DE CARTA DE LOS DERECHOS FUNDAMENTALES DE LA UNIÓN EUROPEA**fundamental.rights@consilium.eu.int**

**Bruselas, 10 de abril de 2000 (12.04)
(OR. fr)****CHARTE 4217/00****CONTRIB 93****NOTA DE TRANSMISIÓN**

Asunto: Proyecto de Carta de los derechos fundamentales de la Unión Europea

Se adjunta una contribución de D. Isaac Ibáñez García. ^{1 2}

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² Este texto se ha presentado en lengua española únicamente.

PROPUESTA RELATIVA AL CONTENIDO DE LA CARTA DE DERECHOS FUNDAMENTALES DE LA UNION EUROPEA

Autor: Isaac Ibáñez García

I.- INTRODUCCION.

En el Consejo Europeo de Colonia (3 y 4 de junio de 1.999) los Jefes de Estado o de Gobierno, se pusieron de acuerdo sobre la idea de que, en el actual estado de evolución de la Unión, era necesario establecer una Carta de los derechos fundamentales con el fin de poner de manifiesto la importancia sobresaliente y el alcance de los mismos ante los ciudadanos de la Unión.

La Carta se adoptaría mediante una declaración solemne y conjunta del Consejo Europeo, el Parlamento Europeo y la Comisión.

En una fase posterior a este proceso se examinaría si la Carta debe incorporarse a los Tratados y, en caso afirmativo, de qué modo ha de hacerse.

El Consejo ha estimado que dicha Carta deberá incluir los derechos de libertad e igualdad y los principios procesales fundamentales. **La carta deberá contener asimismo los derechos básicos que corresponden únicamente a los ciudadanos de la Unión.**

A mi juicio, en dicha Carta, con finalidad codificadora, deben incluirse asimismo aquellos derechos fundamentales ya reconocidos por los Tratados, como el **Derecho de petición**.

II.- EL DERECHO DE PETICIÓN EN LA UNION EUROPEA.

En mi opinión el artículo 21 del Tratado CE, en su redacción dada por el Tratado de Ámsterdam, supone un avance sobre su regulación anterior, pero tiene una redacción confusa, que puede llegar a ser interpretada como que el Derecho de petición únicamente puede ejercitarse ante el Parlamento Europeo y no ante el resto de las instituciones u organismos de la Unión. De hecho así ha llegado a interpretarse por alguna.

Restringir el ejercicio de petición al Parlamento Europeo no tiene sentido jurídico, pues las peticiones deben poder dirigirse a todas aquellas instituciones que tienen poder de iniciativa en los ámbitos de actuación de la Comunidad.

Asimismo, el inciso “**que le afecte directamente**” incluido en el artículo 194 del Tratado CE, supone desconocer el Derecho de petición como un derecho de carácter fundamentalmente político (vid. Derecho de petición y derecho de queja. I. Ibáñez García. Ed. Dykinson. Madrid, 1993). De hecho, la Comisión de peticiones del Parlamento Europeo ha llegado a interpretar este inciso de forma contraria a su interpretación literal, con el fin de no restringir la utilización del propio Derecho.

El artículo 8 D del Tratado CE, en su redacción dada por el Tratado de Maastricht, era del siguiente tenor:

“Todo ciudadano de la Unión tendrá el derecho de petición ante el Parlamento Europeo, de conformidad con lo dispuesto en el artículo 138 D.

Todo ciudadano de la Unión podrá dirigirse al Defensor del Pueblo instituido en virtud de lo dispuesto en el artículo 138 E”.

Al antiguo artículo 8 D del Tratado CE (ahora artículo 21), el Tratado de Amsterdam ha añadido un importante tercer párrafo:

“Todo ciudadano de la Unión podrá dirigirse por escrito a cualquiera de las instituciones u organismos contemplados en el presente artículo o en el artículo 7 en una de las lenguas mencionadas en el artículo 314 y recibir una contestación en esa misma lengua”.

Se amplía así el derecho de petición originariamente reconocido ante el Parlamento Europeo y el Defensor del Pueblo (en este caso, *rectius*, derecho de queja o reclamación), al resto de las instituciones y organismos de la Unión, es decir, puede ejercitarse tal derecho, además, ante el Consejo, la Comisión, el Tribunal de Justicia, el Tribunal de Cuentas, el Comité Económico y Social y el Comité de las Regiones.

De la Resolución del Parlamento Europeo sobre las deliberaciones de la Comisión de Peticiones durante el año parlamentario 1998-1.999 y del Informe de dicha Comisión sobre sus deliberaciones en citado año parlamentario, pueden destacarse las siguientes apreciaciones:

- Considerando que el derecho de petición impone al Parlamento Europeo la correspondiente obligación de tramitar las peticiones de la forma más efectiva posible, con la asistencia de la Comisión y de los órganos competentes del Parlamento.
- Subraya que el derecho de petición aumenta las posibilidades de los ciudadanos de la Unión en cuanto a la participación e información democráticas...
- Destaca que es el Parlamento en su conjunto quien, debido a su propia función y responsabilidad política, garantiza en una respuesta directa al ciudadano el derecho de petición reconocido en el Tratado de la Unión Europea.
- Las cifras demuestran que los ciudadanos recurren con frecuencia a su derecho de petición, gratuito para ellos y que puede referirse a todos los asuntos comunitarios que incidan en el ámbito de actividades de la Unión Europea.
- Las peticiones tienen una importante función en la detección y tramitación de casos de infracción.
- Las peticiones se pueden transmitir (por la Comisión de Peticiones) a otra comisión o delegación de acuerdo con los procedimientos establecidos, “para información”, “para actuación”, para que se tengan en cuenta en el examen de cualquier propuesta legislativa relacionada, o “para opinión”, único caso en que cabe exigir una respuesta escrita de la comisión de que se trate.

El Informe de 6 de mayo de 1.988 de la Dirección General de Estudios del Parlamento Europeo, concluye:

“El derecho de petición se considera en todos los países europeos como una característica esencial del Estado de Derecho. Con frecuencia, este derecho tiene un efecto preventivo. En los países en los que desempeña un papel más importante, este hecho tiene como consecuencia que el parlamento sea informado más detalladamente de las preocupaciones y de las opiniones de los ciudadanos y que, de este modo, pueda satisfacer de forma más eficaz su misión de órgano de control del ejecutivo. **De la función del derecho de petición como instrumento político podrían derivarse consecuencias para un parlamento en forma de la aprobación o la modificación de leyes**”.

La Comisión Europea, en su segundo informe sobre la ciudadanía de la Unión, de 27 de mayo de 1.997, considera que las peticiones constituyen una medida extrajudicial de protección de los derechos individuales y colectivos, a disposición de toda persona residente en la Unión; señalando que a través de las peticiones la Comisión ha abierto diversos procedimientos de infracción contra Estados miembros por violación del Derecho comunitario.

De las palabras de BENJAMIN CONSTANT, en su famosa conferencia de 1819 *De la liberté de les modernes comparée avec celle des anciens* (recogidas por el profesor GARCIA DE ENTERRIA en su obra: Justicia y seguridad jurídica en un mundo de leyes desbocadas. Civitas, 1999) se ve como el derecho de petición es un instrumento al servicio de la libertad:

“Preguntaos primero, señores, lo que en nuestros días un inglés, un francés, un habitante de los Estados Unidos de América entienden por la palabra libertad. Es para cada uno el derecho de no estar sometido más que a leyes, de no poder ser detenido, ni llevado a prisión, ni condenado a muerte ni maltratado de ninguna manera por el efecto de la voluntad arbitraria de uno o varios individuos. Es para cada uno el derecho de decir su opinión, de escoger su trabajo y de ejercerlo; de disponer de su propiedad, incluso de abusar de ella; de ir y venir sin necesidad de obtener un permiso y sin tener que dar cuenta de sus motivos o de sus pasos. Es, para cada uno, el derecho de reunirse con otros individuos, sea para tratar de sus propios intereses, sea para profesar el culto que él y sus asociados prefieran, sea, simplemente, para llenar sus días y sus horas de la manera más conforme a sus inclinaciones, a sus fantasías. **En fin, es el derecho para cada uno de influir sobre la administración del gobierno, bien por el nombramiento de todos o de ciertos funcionarios, bien por exposiciones, peticiones, demandas que la autoridad esté más o menos obligada a tomar en consideración**”.

III.- C O N C L U S I O N . P R O P U E S T A .

A nuestro juicio, el Derecho de Petición debe ser incorporado a la Carta de derechos fundamentales de la Unión Europea; con una redacción que posibilitara una recta interpretación del Derecho reconocido en el Tratado y que, en su momento –si decide incorporarse el contenido de la Carta a los Tratados- mejorara la redacción de los mismos.

Una posible redacción a incorporar a la Carta sería la siguiente:

“Cualquier ciudadano de la Unión, así como cualquier persona física o jurídica que resida o tenga su domicilio social en un Estado miembro, tendrá derecho a presentar ante las instituciones u organismos contemplados en los Tratados, individualmente o asociado con otros ciudadanos o personas, una petición sobre un asunto propio de los ámbitos de actuación de la Unión Europea. El peticionario tiene derecho a recibir una contestación motivada sobre el fondo del asunto planteado en el más breve plazo posible”.

Asimismo, considero que debería recogerse en la Carta el derecho a presentar quejas ante el Defensor del Pueblo Europeo.

Plasencia, 31 de marzo de 2.000

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 7 April 2000**CHARTE 4219/00****CONTRIB 94****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a recommendation and a report by the Council of Europe on Protection of human rights and dignity of the terminally ill and dying, submitted by Mr. Reinhard Rack, member of the German Bundestag. ¹

¹ These texts have been submitted in French and English languages.



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Provisional edition

Protection of the human rights and dignity of the terminally ill and the dying

Recommendation 1418 (1999)¹

1. The vocation of the Council of Europe is to protect the dignity of all human beings and the rights which stem therefrom.
2. Medical progress, which now makes it possible to cure many previously incurable or fatal diseases, the improvement of medical techniques and the development of resuscitation techniques, which make it possible to prolong a person's survival, defer the moment of death. As a result the quality of life of the dying is often ignored, as is their loneliness, their suffering and that of their families and of the care-givers.
3. In 1976, in its Resolution 613, the Assembly declared that it was "*convinced that what dying patients most want is to die in peace and dignity, if possible with the comfort and support of their family and friends*", and added in its Recommendation 779 that "*the prolongation of life should not in itself constitute the exclusive aim of medical practice, which must be concerned equally with the relief of suffering*".
4. Since then, the European Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine has formed important principles and paved the way without explicitly referring to the specific requirements of the terminally ill or dying.

¹ Assembly debate on 25 June 1999 (24th Sitting). See Doc. 8421, report of the Social, Health and Family Affairs Committee (rapporteur: Mrs Gatterer) and Doc. 8454, opinion of the Committee on Legal Affairs and Human Rights (rapporteur: Mr McNamara). Text adopted by the Assembly on 25 June 1999 (24th Sitting).

5. The obligation to respect and to protect the dignity of a terminally ill or dying person derives from the inviolability of human dignity in all stages of life. This respect and protection find their expression in the provision of an appropriate environment, enabling a human being to die in dignity.

6. This task has to be carried out especially for the benefit of the most vulnerable members of society, a fact demonstrated by the many experiences of suffering in the past and the present. Just as a human being begins his or her life in weakness and dependency, he or she needs protection and support when dying.

7. Fundamental rights deriving from the dignity of the terminally ill or dying person are threatened today by a variety of factors:

- i. the insufficient access to palliative care and good pain management;
- ii. the often lacking treatment of physical suffering and psychological, social and spiritual needs;
- iii. the artificial prolongation of the dying process by either using disproportionate medical measures or by continuing treatment without a patient's consent;
- iv. the lack of continuing education and psychological support for health care professionals, working in palliative medicine,
- v. insufficient care and support for relatives and friends of terminally ill or dying patients, which otherwise could elevate human suffering in its various dimensions,
- vi. the fear of patients to loose control of themselves and to become a burden to and totally dependent upon relatives or institutions;
- vii. the lack or inadequacy of a social as well as institutional environment in which someone may take leave of his relatives and friends peacefully;
- viii. the insufficient allocation of funds and resources for the care and support of the terminally ill or dying;
- ix. the social discrimination of the phenomena of weakness, dying and death.

8. The Assembly calls upon member states to provide in domestic law the necessary legal and social protection against these specific dangers and fears which a terminally ill or dying person may be faced with in domestic law, and in particular against:

- i. dying exposed to unbearable symptoms (for example, pain, suffocating, etc.);
- ii. prolongation of the dying process of a terminally ill or dying person against his or her will;

- iii. dying in social isolation and disintegration;
- iv. dying under the fear of being a social burden;
- v. limiting of life-sustaining treatment due to economic reasons;
- vi. insufficient provision of funds and resources for adequate supportive care of the terminally ill or dying.

9. The Assembly therefore recommends that the Committee of Ministers encourage the member states of the Council of Europe to respect and protect the dignity of terminally ill or dying persons in all respects:

a. by recognising and protecting a terminally ill or dying person's right to comprehensive palliative care, while taking the necessary measures

- i. to ensure that palliative care be recognised as a legal entitlement of the individual in all member states;
- ii. to provide equitable access to appropriate palliative care for all terminally ill or dying persons;
- iii. to ensure that relatives and friends be encouraged to accompany the terminally ill or dying and be professionally supported in their endeavours. If family and/or private networks prove to be either insufficient or overstretched, alternative or supplementing forms of professional medical care are to be provided;
- iv. to provide for ambulant hospice teams and networks, to ensure that palliative care be available at home, wherever ambulant care for the terminally ill or dying may be feasible;
- v. to ensure co-operation between all those involved in the care of a terminally ill or dying person;
- vi. to ensure the development and implementation of quality standards for the care of the terminally ill or dying;
- vii. to ensure that a terminally ill or dying person will receive adequate pain relief (unless the patient chooses otherwise) and palliative care, even if this treatment as a side-effect may contribute to the shortening of the individual's life;
- viii. to ensure that health professionals be trained and guided to provide medical, nursing and psychological care for any terminally ill or dying person in co-ordinated teamwork, according to the highest standards possible;
- ix. to set up and further develop centres of research, teaching and training in the fields of palliative medicine and care as well as in interdisciplinary thanatology;

- x. to ensure that specialised palliative care units as well as hospices be established at least in larger hospitals, from which palliative medicine and care are to evolve as an integral part of any medical treatment;
- xi. to ensure that palliative medicine and care be firmly established in public awareness as an important goal of medicine.
- b. by protecting the terminally ill or dying person's right to self-determination, *while taking the necessary measures*
- i. to give effect to a terminally ill or dying person's right to truthful and comprehensive, yet compassionately delivered information on his or her health condition while respecting an individual's wish not to be informed;
- ii. to enable any terminally ill or dying person to consult doctors other than his or her usual doctor;
- iii. to ensure that no terminally ill or dying person be treated against his or her will while ensuring that the individual neither be influenced nor pressured by another person. Furthermore, safeguards are to ensure that this wish not be formed under economic pressure;
- iv. to ensure that a currently incapacitated terminally ill or dying person's advance directive or living will refusing specific medical treatments be observed. Furthermore, by ensuring that criteria of validity as to the bearing of such advance directives as well as the nomination of proxies and the scope of their authority be defined; and by ensuring that surrogate decisions by proxies based on advance personal statements of will or assumptions of will are only to be taken if the will of the person concerned has not been expressed directly in the situation or if there is no recognisable will. In this context, there must always be a clear connection to statements that were made by the person in question close in time to the decision-making situation, referring specifically to the dying situation, and in an appropriate situation without exertion of pressure or mental disability. To ensure that surrogate decisions that rely on general value judgements present in society should not be admissible and that in case of doubt, the decision must always be for life and the prolongation of life;
- v. to ensure that — notwithstanding the physician's ultimate therapeutic responsibility — expressed wishes of a terminally ill or dying person with regard to particular forms of treatment be taken into account, provided they do not violate human dignity;
- vi. to ensure that in situations where an advance directive or living will does not exist the patient's right to life not be infringed upon. A catalogue of treatments which under no condition may be withheld or withdrawn is to be defined.
- c. by upholding the prohibition against intentionally taking the life of terminally ill or dying persons, *while taking the necessary measures*
- i. recognising that the right to life, especially with regard to a terminally ill or dying person, is guaranteed by the member states, in accordance with Article 2 of the European Convention on Human Rights which states that “*no one shall be deprived of his life intentionally...*”;

- ii. recognising that a terminally ill or dying person's wish to die never constitutes any legal claim to die at the hand of another person;
 - iii. recognising that a terminally ill or dying person's wish to die cannot of itself constitute a legal justification to carry out actions intended to bring about death.
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Doc. 8421

21 May 1999

Protection of the human rights and dignity of the terminally ill and the dying

Report

Social, Health and Family Affairs Committee

Rapporteur: Mrs Edeltraud Gatterer, Austria, Group of the European People's Party

Summary

At the approach of death, patients are faced with specific fears, anxieties and dangers, which are most often ignored or underestimated. Their vulnerability, state of weakness and dependency, their suffering and loneliness are painful factors which weigh heavily on them.

Respect and protection of the dignity of a terminally-ill or a dying person implies above all the provision of an appropriate environment, enabling him or her to die in dignity. Priority should therefore be given to the development of palliative care and the treatment of pain, and to the social and psychological support of patients and their families.

Legal and social protection should be strengthened. In this framework, a right to self-determination and a right to comprehensive information, need to be recognised for the terminally-ill and the dying. Patients should never be given treatment against their will.

Lastly, the fundamental right to life as established in Article 2 of the European Convention on Human Rights needs to be recalled and fully guaranteed, in the special conditions which constitute the terminal phase of life. The report consequently calls on states to uphold the prohibition of intentionally taking the life of terminally-ill or dying persons.

I. Draft recommendation

1. The vocation of the Council of Europe is to protect the dignity of all human beings and the rights which stem therefrom.
2. Medical progress, which now makes it possible to cure many previously incurable or fatal diseases, the improvement of medical techniques and the development of resuscitation techniques, which make it possible to prolong a person's survival, defer the moment of death. As a result the quality of life of the dying is often ignored, as is their loneliness, their suffering and that of their families and of the care-givers.
3. In 1976, in its Resolution 613, the Assembly declared that it was "*convinced that what dying patients most want is to die in peace and dignity, if possible with the comfort and support of their family and friends*", and added in its Recommendation 779 that "*the prolongation of life should not in itself constitute the exclusive aim of medical practice, which must be concerned equally with the relief of suffering*".
4. Since then, the European Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine has formed important principles and paved the way without explicitly referring to the specific requirements of the terminally ill or dying.
5. The obligation to respect and to protect the dignity of a terminally ill or dying person derives from the inviolability of human dignity in all stages of life. This respect and protection find their expression in the provision of an appropriate environment, enabling a human being to die in dignity.
6. This task has to be carried out especially for the benefit of the most vulnerable members of society, a fact demonstrated by the many experiences of suffering in the past and the present. Just as a human being begins his or her life in weakness and dependency, he or she needs protection and support when dying.
7. Fundamental rights deriving from the dignity of the terminally ill or dying person are threatened today by a variety of factors:
 - i the insufficient access to palliative care and good pain management;
 - ii the often lacking treatment of physical suffering and psychological, social and spiritual needs;
 - iii the artificial prolongation of the dying process by either using disproportionate medical measures or by continuing treatment without a patient's consent;
 - iv the lack of continuing education and psychological support for health care professionals, working in palliative medicine,

- vi. insufficient care and support for relatives and friends of terminally ill or dying patients, which otherwise could elevate human suffering in its various dimensions,
- vii. the fear of patients to loose control of themselves and to become a burden to and totally dependent upon relatives or institutions;
- viii. the lack or inadequacy of a social as well as institutional environment in which someone may take leave of his relatives and friends peacefully;
- viii. the insufficient allocation of funds and resources for the care and support of the terminally ill or dying;
- ix. the social discrimination of the phenomena of weakness, dying and death.

8. The Assembly calls upon member states to provide in domestic law the necessary legal and social protection against these specific dangers and fears which a terminally ill or dying person may be faced with in domestic law, and in particular against:

- i. dying exposed to unbearable symptoms (e.g. pain, suffocating, etc);
- ii. prolongation of the dying process of a terminally ill or dying person against his or her will;
- iii. dying in social isolation and disintegration;
- iv. dying under the fear of being a social burden;
- v. limiting of life-sustaining treatment due to economic reasons;
- vi. insufficient provision of funds and resources for adequate supportive care of the terminally ill or dying.

9. The Assembly therefore recommends that the Committee of Ministers encourage the member states of the Council of Europe to respect and protect the dignity of terminally ill or dying persons in all respects:

a) *by recognising and protecting a terminally ill or dying person's right to comprehensive palliative care, while taking the necessary measures*

- i. to ensure that palliative care be recognised as a legal entitlement of the individual in all member states;
- ii. to provide equitable access to appropriate palliative care for all terminally ill or dying persons;
- iii. to ensure that relatives and friends be encouraged to accompany the terminally ill or dying and be professionally supported in their endeavours. If family and/or private networks prove to be either insufficient or overstretched, alternative or supplementing forms of professional medical care are to be provided;
- iv. to provide for ambulant hospice teams and networks, to ensure that palliative care be available at home, wherever ambulant care for the terminally ill or dying may be feasible;

- v. to ensure co-operation between all those involved in the care of a terminally ill or dying person;
 - vi. to ensure the development and implementation of quality standards for the care of the terminally ill or dying;
 - vii. to ensure that a terminally ill or dying person will receive adequate pain relief (unless the patient chooses otherwise) and palliative care, even if this treatment as a side-effect may contribute to the shortening of the individual's life;
 - viii. to ensure that health professionals be trained and guided to provide medical, nursing and psychological care for any terminally ill or dying person in co-ordinated teamwork, according to the highest standards possible;
 - ix. to set up and further develop centres of research, teaching and training in the fields of palliative medicine and care as well as in interdisciplinary thanatology;
 - x. to ensure that specialised palliative care units as well as hospices be established at least in larger hospitals, from which palliative medicine and care are to evolve as an integral part of any medical treatment;
 - xi. to ensure that palliative medicine and care be firmly established in public awareness as an important goal of medicine.
- b. by protecting the terminally ill or dying person's right to self-determination, *while taking the necessary measures*
- i. to give effect to a terminally ill or dying person's right to truthful and comprehensive, yet compassionately delivered information on his or her health condition while respecting an individual's wish not to be informed;
 - ii. to enable any terminally ill or dying person to consult doctors other than his or her usual doctor;
 - iii. to ensure that no terminally ill or dying person be treated against his or her will while ensuring that the individual neither be influenced nor pressured by another person. Furthermore, safeguards are to ensure that this wish not be formed under economic pressure;
 - iv. to ensure that a currently incapacitated terminally ill or dying person's advance directive or living will refusing specific medical treatments be observed. Furthermore, by ensuring that criteria of validity as to the bearing of such advance directives as well as the nomination of proxies and the scope of their authority be defined;
 - v. to ensure that - notwithstanding the physician's ultimate therapeutic responsibility - expressed wishes of a terminally ill or dying person with regard to particular forms of treatment be taken into account, provided they do not violate human dignity;
 - vi. to ensure that in situations where an advance directive or living will does not exist the patient's right to life not be infringed upon. A catalogue of treatments which under no condition may be withheld or withdrawn is to be defined.

c. *by upholding the prohibition against intentionally taking the life of terminally ill or dying persons, while taking the necessary measures*

i. to ensure that the right to life, especially with regard to a terminally ill or dying person, be guaranteed by the member states, in accordance with Article 2 of the European Convention on Human Rights which states that “*no one shall be deprived of his life intentionally...*”;

ii. to ensure that a terminally ill or dying person’s wish to die never constitutes any legal claim to die at the hand of another person;

iii. to ensure that a terminally ill or dying person’s wish to die never constitutes any legal justification to carry out actions intended to bring about death.

II. Explanatory memorandum by Mrs Gatterer

INTRODUCTION

1. It is undisputed that dealing with the concerns of the terminally ill or dying is to be guided by the notion of human dignity and the concept of human rights founded therein.
2. The 1997 European Convention for the Protection of Human Rights and Dignity of the Human Being with Regard to the Application of Biology and Medicine protects in accordance with other relevant international documents on human rights the dignity and identity of every human being. It guarantees everybody, without discrimination, respect for their integrity and rights and fundamental freedoms.
3. Dignity is bestowed equally upon all human beings, regardless of age, race, sex, particularities or abilities, of conditions or situations, which secures the equality and universality of human rights. Dignity is a consequence of being human. Thus a condition of being can by no means afford a human being its dignity nor can it ever deprive him or her of it.
4. Dignity is inherent in the existence of a human being. If human beings possessed it due to particularities, abilities or conditions, dignity would neither be equally nor universally bestowed upon all human beings. Thus a human being possesses dignity throughout the course of life. Pain, suffering or weakness do not deprive a human being of his or her dignity.
5. The equality and universality of human dignity and human rights do not originate from a convention. One possesses dignity and its subsequent rights not due to the recognition of other human beings, but due to one's descent from them.
6. An individual's dignity can be respected or violated, yet it can neither be granted nor lost. Respect for human dignity is independent of factual reciprocity. Respect for human dignity is also due where reciprocity is not, not yet or not anymore possible (i.e. towards patients in coma). To believe that human dignity may be divided or limited only to certain stages or conditions of life is a form of disregard for human dignity.
7. The recognition and protection of the dignity of the most vulnerable members of society – who may find it difficult to express themselves on a societal level – have proven to be inadequate. The terminally ill or dying are among these vulnerable members of society. Due to their public marginalisation they are in danger of being exposed to individual, social and societal pressure.
8. The responsibility of affording a terminally ill or dying person with the means and the infrastructure worthy of his or her dignity results from the fundamental understanding that human dignity is imperishable.
9. Among the factors obstructing humane dying and palliative care in our societies, the primary one is the decreasing willingness to confront oneself with death and dying.
10. Most people wish to die in familiar surroundings, yet, in Europe, in the majority of cases, death takes place in hospitals and nursing homes. This is related to lacking or deficient social structures.

11. Although palliative medicine and care have made remarkable progress, its practical application still appears far behind the state of the art. This deficiency results from lack of training and teaching, false apprehensions, prejudices as well as lack of societal awareness.
12. It is evident that there is a tendency to use excessive technical therapy and to apply inappropriately high medical technology even in cases where an agonising process of dying thereby is prolonged in an inhumane way.
13. Especially deficiencies in the structures of public health care providers create problems with regard to care for the terminally ill or dying.
14. Human care for the terminally ill or dying implies the readiness to provide sufficient allocations of funds and resources for the benefit of palliative medicine and care.
15. Illness, suffering and death per se cannot deprive any individual of his or her dignity, yet often, certain circumstances may be regarded as inhumane to the extent that an individual is left alone in his helplessness in those instances where suffering could be avoided.
16. Meeting the needs of a terminally ill or dying person is the purpose of palliative medicine and care. Palliative medicine and care therefore should become an integral part of medicine as such.
17. The World Health Organisation describes palliative care as *“the active total care of patients whose disease is not responsive to curative treatment. Control of pain, of other symptoms and of psychological, social and spiritual problems is paramount. The goal of the palliative care is achievement of the best possible quality of life for patients and their families.”*
18. Palliative medicine and care thus is an approach of understanding human being holistically in both its psychological and physical dimensions. In addition to pain-treatment in the narrower sense of the word, it therefore comprises psycho-social and spiritual care.
19. An individual’s right to self-determination is rooted in his inviolable and inseparable dignity. This right to self-determination is to be protected against any extraneous influences.
20. The legal systems of the Member States of the Council of Europe penalise the killing of human beings. Now, it is necessary to confirm this fundamental legal good especially with regard to the terminally ill and dying, since there is a grave danger that in particular with regard to this group of people at their last stage of life, justifications may be sought under various pretences (pity, shortage of resources, ambivalent expressions of will) in order to undermine the fundamental prohibition against taking life.

A. TO RECOGNISE AND TO PROTECT A TERMINALLY ILL OR DYING PERSON’S RIGHT TO COMPREHENSIVE PALLIATIVE CARE

21. The Member States are to pay special attention to making it possible to fulfil the wish of the majority of the terminally ill or dying to be able to die in a familiar surrounding. Ambulatory, flexible care services are to be supported. Socio-political programmes operating under given conditions are to enable children to accompany their parents in taking leave of this world as they themselves cared for their children when they entered into it.

22. Apart from the Convention for the Protection of Human Rights and the Dignity of the Human Being with Regard to the Application of Biology and Medicine, article 13 of the European Social Charter also foresees equal access to health care services of appropriate quality. To guarantee this principle for the terminally ill or dying is a pressing need.
23. One important political goal of health services is to guarantee palliative medicine and care of appropriate quality. The humanity of a society finds its expression not least in its care of the weak and dying.
24. If a family desires to care for a dying person they often need professional advice and help. There is not only a need for medical and nursing assistance but also for psychological and, if wished, for religious and spiritual support. Familiar relations in the widest sense (family, friends, neighbours ...) as close and trusted contacts, are to be supported by professional services in such a way that they can adequately accompany the last phase of life at home. In this context the necessary measures must be taken to provide for instruction in basic care for this circle of persons.
25. The additional use of voluntary assistants play an important part in accompanying and caring for dying persons. Continuity and normality of life can be maintained through their contribution. Volunteers in the care of dying persons should be trained and supported and take over independent tasks in a team with professionals.
26. In numerous hospitals throughout Europe, relatives and friends or other involved persons are restrained from spending the amount of time they would wish to spend with a terminally ill or dying. Adequate infrastructures are thus to be provided enabling and enhancing the prudent inclusion of the familiar environment of a terminally ill or dying person, whose wishes are thereby to be given prevalence.
27. The goal of palliative medicine and care is to provide a comprehensive improvement in the quality of life of the patient while respecting his or her wishes. A necessary precondition in achieving this goal is the mutually trusting co-operation of all persons involved.
28. The goal of medical intervention is to cure illness and relieve pain, not however to prolong life at all costs. To relieve all suffering of persons who - at least by human standards - must be deemed terminally ill is one of a physician's obligations. The unbearable symptoms and pain of a patient should not be left untreated for fear of a minimal shortening of the life span which might be related to the therapy for the alleviation of pain. This fear is often the cause of inadequate efforts to relieve pain. In these difficult instances physicians are to be granted adequate discretionary powers.
29. Administrative barriers to providing an efficient pain relief treatment are to be removed.
30. All professions confronted with terminally ill or dying persons are to receive qualified instructions in the course of their duties. Forms of education and further training are to be preferred that are interdisciplinary and include - in addition to the medical or nursing fields - relevant aspects from psychology, sociology, anthropology, ethics or theology in order to be able to accept and respect persons in the last phase of life. Therefore, the education of physicians, nurses and other health professionals in all Member States of the European Council concerning palliative medicine and care has to be improved.

31. The degree of recognition of palliative medicine and care varies considerably throughout Europe. If there are still no or only inadequate educational facilities for palliative medicine and care no efforts should be spared in coming abreast with the state of the art. Palliative medicine and care as a discipline should be prominent in the programme of every educational institution for future health professionals. Graduates of these schools and universities should have successfully completed practical and theoretical examinations in the field of palliative medicine and care.

32. Since 1967, when the physician and social worker Cicely Saunders founded the modern hospice in England, there have been exemplary cases of adequate pain relief through the observant control of symptoms and attentive humane care that testify to the fact that it is possible to make the last phase of life worth living and to maintain human dignity: The hospice movement has spread – with varying density -throughout Europe as a grass-root movement. In contrast to the traditional hospital the hospice focuses its attention on the dying person in companionship with his or her closest relations. Supporting the foundation of further hospices is one effective way to provide for the care of the terminally ill or dying in accordance with human dignity.

33. A sufficient number of hospital wards and hospices must be established in order to make possible the education and further education in palliative medicine and care. Palliative medicine and care - as is the case with other fields as well - cannot be learned merely theoretically. Every student of medicine or nursing should be obliged to absolve a clinical practice in a ward dealing mainly with palliative medicine and care. This applies equally to the postgraduate training for physicians, psychologists, psychotherapists as well as social workers. These professions must learn that accompanying the terminally ill or dying can only be accomplished in an interdisciplinary team. As medical progress cannot exclude the care for the terminally ill and dying provisions must be made for research in the field of palliative medicine and care. For this reason as well it is necessary to establish further palliative wards and hospices.

34. Whenever killings of the terminally ill or dying in institutions have shaken the general public – as was the case in Austria, Germany, Denmark, the Netherlands, France and other countries – deficiencies in training and counselling and coaching of the responsible health care staff have regularly shown to be one of the main reasons for these incidents. This demonstrates that professional as well as voluntary health care staff are in need of support to fulfil their task. Support is to be provided in part by the interdisciplinary team (this needs sufficient time and space) and in part by staff counsellors and coaches.

35. Deficiencies in their training as well as the feeling of being overwhelmed by their task may mislead health care staff to contemplate taking the life of a terminally ill or dying person. The wish to die expressed by a terminally ill or dying person should therefore be thoroughly examined. Health care staff as well as the individual's family, friends or other involved persons are primarily obliged to determine whether this wish is the authentic expression of the individual's determination or rather a cry for more intensive therapeutic, social and spiritual attention.

The aims of this training should meet the following standards:

- palliative medicine and care affirm life and regard dying as a normal process,
- neither hastens nor postpones death,
- provides relief from pain and other distressing symptoms,
- integrates the psychological and spiritual aspects of patient care,
- offers a support system to help patients live as actively as possible until death, and
- offers a support system to help the family and other involved persons cope during the patient's illness in their own bereavement.

37. Research on palliative medicine and care is urgently needed. It should address the physical, psychological and socio-economic issues related to caring for people with terminal illnesses. Such research should address pain and other physical symptoms, depression and other mental health conditions, spirituality and existential meaning, communication between physician and patient, family and other involved persons, burdens on care-givers and economic hardships.

38. In the public discourse it is important to stress that palliative medicine and care need to become and stay an integral part of any medical teaching and training. Any medical therapy should comprise palliative components, palliative medicine and care, however, should not be implemented in isolation.

B. TO PROTECT A TERMINALLY ILL OR DYING PERSON'S RIGHT TO SELF-DETERMINATION

39. According to article 5 of the Convention on the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine any medical intervention is allowed only after the person in question has been fully informed about the projected intervention and has freely agreed to it. This is also the case with the terminally ill and dying.

40. Modern medical diagnosis and therapy can ease much pain and suffering when they are applied carefully and in accordance with the will of the individual in question. The medically possible does not, however, always correspond with the wishes of the terminally ill or dying person. The patient must be given the real - not the only theoretical - opportunity to refuse further therapy. However, in order to be able to participate meaningfully in the decision making, full information - about the illness itself, the assumed prognosis and the sense and objectives, the burdens and the goals of further diagnostic and therapeutic efforts - must be made comprehensible to the patient.

41. It is not unusual that fulfilling the basic rights of each person to all available information about his or her health condition presents difficulties. Most recent studies show that a significant number of physicians hesitate to provide comprehensible information with reference to diagnosis and further treatment. These explanations are often considered to be the most difficult and burdensome professional task because they are concerned not only with empathetically communicating medical information but also with providing help in making life-and-death decisions. Given the patients consent, his or her family or other involved persons should ideally be included in such consultations. In the interest of his or her self-determination, a terminally ill or dying person needs careful attention as the questions and anxieties with which he or she is concerned in this final phase of life.

42. A terminally ill or dying person can make a self-determined decision for or against a further life prolonging treatment only on the basis of truthful and comprehensible information as to his or her condition. Foregoing therapy instead of unwanted prolongation of suffering - when this is in accord with the wish of the patient - must be acceptable and legally guaranteed. The knowledge that a cessation of therapy can be legal and is strictly to be distinguished from "physician-assisted suicide" or "mercy killing" must be conveyed to professionals in the field of health.

43. Any pressure on the terminally ill or dying to forego therapy for economic reasons must be avoided. It has been empirically demonstrated, that the health costs in the last phase of life rise

considerably. In view of the scarcity of funds and resources of both the health sector and, within that sector, for palliative medicine and care, there is a grave danger that instead of dignified support of a terminally ill or dying person economic pressure makes itself felt to forego further - and arguably appropriate - curative or palliative therapy.

44. While expressions of the will of a patient to forego certain treatments must be recognised and abided to by the physician, the wish for actively ending life must be denied. The physician must never impinge on the integrity of the body or soul of a patient even upon his or her wish.

45. The wishes of a terminally ill or dying person, the fulfilment of which is contrary to human dignity as well as relevant codes of professional conduct carry no weight. Article 4 of the Convention for the Protection of the Human Rights and Dignity of the Human Being with Regard to the Application of Biology and Medicine demands the observance of relevant codes of professional conduct (e.g. the World Medical Association Declarations of Madrid - 1987 and Marbella - 1992). Wishes of a terminally ill or dying person that are not in line with these codes of professional conduct are not to be executed. The following passage from the Madrid World Medical Association Declaration of 1987 maintains: "*deliberately ending the life of a patient, even at the patient's own request or at the request of close relatives, is unethical. This does not prevent the physician from respecting the desire of a patient to allow the natural process of death to follow its course in the terminal phase of sickness.*"

46. Wishes such as those for "mercy killing" and "assisted suicide" are those that are illegitimately put to health care professionals. Such wishes are not to be executed, as they are in violation of ethically founded codes of professional conduct. The World Medical Association Marbella Declaration of 1992 maintains: "*Physician-assisted suicide, ..., is unethical and must be condemned by the medical profession.*"

47. In order to preserve the right to self determination of those terminally ill or dying persons who are temporarily or permanently incapacitated, formerly expressed wishes regarding medical care should be taken into serious consideration. This conforms to article 9 of the Convention for the Protection of the Human Rights and Dignity of the Human Being with Regard to the Application of Biology and Medicine.

48. In the consideration of anticipated wishes and statements it must be distinguished between a refusal of treatment and other wishes regarding for example a specific treatment.

49. Wishes for a specific treatment, however, must be viewed from the standpoint of medical advisability, because a patient cannot expect a physician to initiate a treatment that does not conform to the standards of his or her profession. A patient cannot force a physician to undertake a treatment contrary to the rules of medical science or the ethics of the medical profession. Should a physician on the basis of his or her professional competence be convinced that it is necessary to act contrary to a written wish of a patient, then he or she should make a written explanation to clarify the decision for the patient, the patient's attorney, and his or her family.

50. In cases in which – due to factual incapacitation of the terminally ill or dying person – a surrogate decision becomes necessary this decision is to be taken to the patients welfare. Determination of the patients welfare is to be undertaken in a process of deliberation between those involved in the individual's care. Proxies, family or other involved persons may play an important part in this process. They should, however, remain simply interpreters and refrain from making independent value judgements. Their role in the decision making process must remain a subsidiary one which is overridden as soon as the patient decides him- or herself or as soon as the physician

gains the impression that the views of the family are not in the interests of the dying person but are guided by extraneous interests.

51. Criteria of validity as to the bearing of such surrogate or proxy decisions are of particular relevance with reference to permanently incapacitated (e.g. permanently incapacitated persons such as the mentally disabled). For the protection of this particularly vulnerable group it appears essential to determine certain treatments that under no conditions may be withheld or withdrawn.

C. TO UPHOLD THE PROHIBITION AGAINST INTENTIONALLY TAKING LIFE ALSO WITH REGARD TO TERMINALLY ILL OR DYING PERSONS

52. The European Convention for Protection of Human Rights and Fundamental Freedoms states in article 2 that *“everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally...”*.

53. The fundamental right to life and the prohibition of intentionally taking human life are to be upheld also under the special conditions of the terminal phase of an individual’s life. Dying is a phase of life. Thus the right to die in dignity corresponds with the right to a life in dignity. This principle of an unconditional protection of dignity is also reflected in the preamble of the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: *“Convinced of the need to respect the human being both as an individual and as a member of the human species and recognising the importance of ensuring the dignity of the human being”*.

54. Guaranteeing the individual’s right to a life in dignity the Member States thereby acknowledge a right to die in dignity. A terminally ill or dying person has the right to self-determination as to the course of the process of dying, he or she, however, has no right to be killed.

55. The legal system prohibits the killing of a human being even if the killing is wished for by the individual. This applies to the elderly, the sick or the disabled and indisputable to the terminally ill or dying as well. Abating the prohibition to take a human being’s life with regard to the terminally ill or dying will bring incalculable consequences for the legal system. Inevitably individual or societal pressure on a terminally ill or dying person would mount, given that he or she is under the impression of being a burden while society offers the option of having oneself killed. Experiences in societies that have a lenient approach towards the prohibition against taking life show that in due consequence human beings are killed without their consent. This development undermines the fundamental protection of life and furthermore threatens to lead to the acceptance of annihilation of life deemed senseless.

Society recognises the practice and especially the ethics of the healing professions that nobody shall participate in the taking of the life of another human being.

57. A terminally ill or dying person’s wish to die constitutes no legal justification to have one’s life taken by another human being. Otherwise this would mean that the legal system would signal permission to kill another human being deliberately and actively.

58. Taking a patient's life is no therapeutic option, especially as it is not directed towards terminating the patients suffering but rather at terminating the patient himself.

59. With no claim to being complete this recommendation strives to promote measures for the protection of terminally ill or dying. The Council of Europe remains truthful towards its intention and ambition of protecting human rights with special awareness of the needs of the most vulnerable and weak members of society. Amongst the weakest members of society are the terminally ill or dying.

Reporting committee: Social, Health and Family Affairs Committee

Budgetary implications: none

Reference to committee: Doc. 7236, Reference No. 1996, 15.03.95

Draft recommendation adopted by the committee on 11 May 1999 with 19 votes in favour, 4 against and 4 abstentions

Members of the committee: *Mr Cox (Chairman)*, Mr Weyts, *Mrs Ragnarsdottir*, Mr Gross (*Vice-Chairs*), Mrs Albrink, MM. *Alis Font, Arnau, Mrs Belohorska*, Mrs Biga-Friganovic, Mrs Björnemalm, *Mrs Böhmer*, MM. Christodoulides, Chyzh, *Dees*, Dhaille, *Duivesteijn*, Evin, *Flynn*, *Mrs Gatterer*, MM. *Gibula, Gregory*, Gusenbauer, Haack, *Hancock, Hegyi, Mrs Høegh*, Mrs Hornikova, Mrs Jirousova, Mr Kalos, Mrs Kulbaka, Mrs Laternser, *Mr Liiv, Mrs Lotz*, Mrs Luhtanen, Mr Lupu (*Alternate: Mr Popescu*), Mrs Markovska, MM. Marmazov, Martelli (*Alternate: Mr Evangelisti*), *Mattéi*, Mozgan, Mularoni, Mrs Näslund, MM. Niza, Paegle, *Poças Santos*, Mrs Poptodorova, *Mrs Pozza Tasca, Mrs Pulgar*, MM. *Raskinis*, Regenwetter, Rizzi (*Alternate: Mr Polenta*), *Sharapov*, Silay, Sincai (*Alternate: Mr Paslaru*), Skoularikis, Mrs Stefani, MM. Surján (*Alternate: Mr Kelemen*), Tahir, Valkeniers, *Vella*, Mrs Vermot-Mangold, MM. Volodin, Voronin, *Wójcik, Yürür*

NB: *The names of those members present at the meeting are printed in italics.*

Secretaries to the committee: Mr Perin, Mrs Meunier and Mrs Clamer

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE**fundamental.rights@consilium.eu.int**

Bruxelles, le 11 avril 2000**CHARTE 4220/00****CONTRIB 95****NOTE DE TRANSMISSION**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne

Veillez trouver ci-joint une contribution du Conseil des communes et régions d'Europe (CCRE), en vue de l'audition du 27 avril 2000.^{1 2}

¹ CCRE: 14 rue de Castiglione. F-75001 Paris. Tél: +33-1-44 50 5959. Fax: +33-1-44 50 5960.
Bruxelles: 22-24 Rue d'Arlon. B-1050 Bruxelles. Tél: +32-2-511 7477. Fax: +32-2-511 0949.

² Texte du message a été transmis en français, en allemand et en anglais. Texte du "Le principe de subsidiarité" a été transmis en français uniquement.



CONSEIL DES COMMUNES ET REGIONS D'EUROPE

SECTION EUROPEENNE DE IULA

22.3.2000/cg

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CHARTRE DES DROITS FONDAMENTAUX

MESSAGE DU CCRE A L'ATTENTION DE LA CONVENTION

Réuni sous la présidence de Valéry Giscard d'Estaing à Sintra le 21 mars 2000, le Bureau Exécutif du CCRE :

- ◆ RAPPELLE son attachement à l'élaboration d'une Charte des droits fondamentaux, socle d'une nouvelle Union européenne ;
- ◆ ESTIME indispensable que le statut qui sera accordé à cette Charte permette de renforcer concrètement les garanties dont disposent les citoyens européens dans le domaine de la protection de leurs droits, qu'ils soient politiques, économiques ou sociaux ;
- ◆ APPORTE son soutien aux travaux de réflexion actuellement conduits par la Convention, et notamment l'énumération des droits des citoyens européens ;
- ◆ INVITE la Convention à inclure, parmi ces droits fondamentaux des citoyens, sous une forme ou une autre, les principes essentiels de l'autonomie locale tels qu'ils sont définis par la Charte européenne de l'autonomie locale et à prendre en compte les aspirations au développement de l'autonomie régionale ;
- ◆ SUGGERE que des dispositions précisent les moyens juridiques adaptés permettant de garantir les droits de l'autonomie locale vis-à-vis des actes et décisions de l'Union européenne ;
- ◆ REDIT sa disponibilité à participer ,dans un esprit de partenariat, aux prochaines auditions de la Convention.



Congress of Local and Regional Authorities of Europe
Chamber of Local Authorities

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**Les Chartes de l'autonomie locale et régionale
du Conseil de l'Europe : la subsidiarité en action**

**Compétences et finances des collectivités
locales et des régions**

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"Le principe de subsidiarité -

**Fondement de l'autonomie des administrations locales et régionales
dans l'Union européenne"**

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"Le principe de subsidiarité -

Fondement de l'autonomie des administrations locales et régionales dans l'Union européenne"

A) En introduction: le contexte

1) Elargissement de l'Union européenne et proximité citoyenne

A l'heure actuelle, l'Union européenne compte quinze membres et environ 371 millions d'habitants. Un tel ordre de grandeur n'est *a priori* pas véritablement conciliable avec cette "proximité citoyenne" réclamée de toute part. Le contraste est d'autant plus frappant qu'il se situe à un moment où une, voire plusieurs étapes d'un nouvel élargissement sont très concrètement envisagées. En admettant que la première décennie du siècle et du millénaire à nos portes pourrait voir - et verra sans doute - adhérer douze à quinze nations, petites et grandes, l'Union européenne comptera prochainement un demi-milliard d'habitants. Les négociations sont engagées avec un premier contingent de candidats à l'adhésion¹, un second groupe² comprend certains pays qui prétendent être tout aussi bien préparés³. Si l'adhésion de Malte⁴ ne soulève aucune contestation, l'Union n'est quant à elle pas prête sur le plan institutionnel⁵. En effet, il est urgent de mettre en chantier un grand nombre de réformes internes afin de garantir le mode de fonctionnement de l'UE, dès lors que la prochaine admission de nouveaux membres "n'est pas simplement une adhésion de plus"⁶, mais que bien plus elle signifie une transformation tant quantitative que qualitative de l'Union⁷.

Or une Union de 500 millions d'habitants, plus encore que l'actuelle Communauté, est guettée par le risque d'impopularité auprès de citoyens la jugeant abstraite, lointaine, opaque. Risque d'autant plus réel que les milieux et les responsables de la politique nationale, et parfois même régionale, ont depuis longtemps pris pour habitude de "se décharger" sur Bruxelles, pour ainsi dire. Nombre de dysfonctionnements nationaux sont imputés à une Union jouant un rôle de "bouc émissaire" facile à accuser et peu enclin à se défendre. De même, rien n'est plus facile que d'expliquer la paralysie des réformes nationales en faisant remarquer qu'il serait impossible - ou à tout le moins peu souhaitable - de faire cavalier seul sur tel ou tel dossier, ne serait-ce que pour des raisons juridiques

¹ Il s'agit de l'Estonie, de la Pologne, de la Hongrie, de la République tchèque, de la Slovénie et de Chypre.

² Lettonie, Lituanie, Slovaquie, Bulgarie, Roumanie.

³ C'est ainsi que la Lettonie a vivement protesté parce qu'elle ne faisait pas partie du premier groupe, exigeant d'être placée sur un pied d'égalité avec l'Estonie, qui a atteint un stade incontestablement très avancé.

⁴ Dès 1990, Malte avait sollicité son adhésion en tant que membre à part entière, mais le gouvernement de gauche dirigé par le Premier ministre Sant, en 1996, avait "différé" cette demande, réactivée par le gouvernement démocrate-chrétien élu en septembre 1998 et dirigé par Fenech Adami, l'objectif déclaré étant l'adhésion d'ici à 2004.

⁵ D'après les règles habituellement appliquées jusqu'ici, Malte devrait avoir la faculté (par exemple comme le Luxembourg) d'être représentée par un membre à la Commission et par six députés au Parlement européen. Mais à un moment où un élargissement aussi important est à l'ordre du jour, l'Union ne souhaitera pas "prolonger" une telle pratique.

⁶ Cf. l'exposé exhaustif des problèmes et des questions en suspens, Wiczorek-Zeul, "Nicht einfach ein 'weiter Beitritt'", in Frankfurter Allgemeine Zeitung du 18 août 1998, p. 11

⁷ La Commission a donc présenté avec "l'Agenda 2000" une base de travail résumant les réformes à mettre en chantier et les ficelant en un ensemble soumis à négociation.

tenant à la nécessité d'unifier les règles européennes. Vu l'imminence d'un élargissement concrètement envisagé, le risque est réel que l'élan intégrateur ne fléchisse, que la cohésion ne pâtisse d'un sentiment d'aliénation et de manque d'identité, voire que l'ensemble un jour ne se désintègre.

Si tous les intéressés ont en filigrane effectivement conscience de cet aspect, rares ont été pendant toutes ces années les tentatives sérieuses de le prendre à la racine. Au contraire, la réforme institutionnelle visée a échoué alors même que Maastricht allait marquer une étape décisive d'un parachèvement de l'union politique par le biais d'une union monétaire décidée et ancrée irrévocablement.

Ce n'est pas ici l'endroit pour examiner les étapes à suivre vers l'union politique. Mais force est de constater que dans "l'Euroland", pour reprendre le terme utilisé occasionnellement pour qualifier l'Europe communautaire, tous les hommes politiques n'ont de cesse d'invoquer à bon marché et en restant dans le flou une "proximité citoyenne" qui s'étendrait même à l'Union européenne, à ses organes et à sa politique concrète, par exemple les nombreuses directives et règlements, aussi judicieux soient-ils.

Dans le cas de l'Allemagne, au surplus, la Loi fondamentale postule expressément le dessaisissement d'une administration exécutive propre au niveau national. Aux termes de l'art. 30 GG (Loi fondamentale), "l'exercice des prérogatives de l'Etat et l'accomplissement des missions de l'Etat relèvent... de la compétence des Länder" dans la mesure où la Loi fondamentale n'admet ou ne prévoit pas expressément d'autres règles. Ce principe s'applique donc également aux missions de l'Union européenne dès lors que leur mise en œuvre incombe aux Etats membres. Rares sont les Etats membres ayant atteint un tel degré de décentralisation ou, plus précisément, rares sont les nations dont à tout le moins l'organisation interne de l'exécutif soit aussi clairement régie par le principe de subsidiarité.

Or les Länder (eux avant tout) font à leur tour largement appel aux villes, aux communes et aux districts. Puisque nous parlons de proximité citoyenne, il existe sous ce rapport une possibilité réelle, par le biais d'agents recrutés au niveau communal et placés sous la responsabilité de la commune, de pratiquer la proximité citoyenne sur le lieu même de la mise en application pratique, et du même coup de rapprocher l'Europe de ses citoyens dans l'exercice de l'autorité et la communication des décisions au jour le jour.

2) Intégration croissante : centralisme ou subsidiarité ?

Ce n'est pas un hasard si le Traité de Maastricht, tout en prévoyant l'achèvement de l'Union économique et monétaire et le lancement d'une monnaie unique, facteur important de l'intégration européenne, notamment d'un point de vue psychologique, s'est accompagné de l'invocation expresse du principe de subsidiarité de la part de l'Union. L'article 3 B de ce Traité⁸ réitère cette référence au principe de subsidiarité du préambule⁹, principe qu'il fait expressément porter sur les

⁸ L'actuel article 5 du Traité sur l'Union européenne.

⁹ Dans le préambule au Traité sur l'Union européenne, les parties contractantes se déclarent „résolues à poursuivre le processus de création d'une union sans cesse plus étroite des peuples d'Europe au sein de laquelle les décisions sont prises conformément au principe de subsidiarité et aussi près que possible des citoyens. En outre, le Traité d'Amsterdam précise en son art. 1 al. 2 : "Le présent traité constitue une nouvelle étape dans la réalisation d'une union sans cesse plus étroite des peuples d'Europe, dans laquelle les décisions sont prises aussi ouvertement et aussi près que possible des citoyens."

relations entre l'Union et les Etats membres. Sans doute l'objectif politique défini par cet article est-il très diversement apprécié¹⁰. Ainsi, il est souvent considéré en France comme une clause débouchant sur une extension des compétences de l'Union¹¹ ; de fait, la formulation du principe selon lequel les tâches dont les Etats ne peuvent eux-mêmes s'acquitter seront confiées à l'Union est l'autre face de l'interprétation exclusive qui en est faite en Grande-Bretagne, selon laquelle le transfert de compétences vers Bruxelles devrait être aussi réduit que possible. L'application et l'interprétation allemandes reflètent plutôt l'expérience nationale d'un principe agissant „dans les deux sens«¹².

La **notion de subsidiarité** remonte à l'Antiquité (hellénique), mais elle est dans son acception actuelle marquée par la **doctrine sociale de l'Eglise catholique** des XIX^e et XX^e siècles, sur la base des encycliques du Vatican¹³. L'encyclique "Quadragesimo anno" de 1931, notamment, utilise des formules que les Etats et la Société des Nations avaient à l'époque en vue, mais qui ont inspiré le libellé du Traité de Maastricht¹⁴. Il n'est donc pas surprenant que les débats à propos de l'introduction du principe de subsidiarité aient été projetés de la politique italienne¹⁵ sur la scène européenne. Lors de l'élaboration du projet de constitution du Parlement européen de 1984¹⁶ - sous l'égide du député italien Altiero **Spinelli** -, les organes de la Communauté européenne engagèrent sur ce principe de subsidiarité une discussion qui déboucha sur l'art. 3 B.

¹⁰ Cf. Hort, "Am Ende steht das Wort", in *Frankfurter Allgemeine Zeitung*, avec des précisions sur la très grande diversité dans l'utilisation politique de la notion de subsidiarité.

¹¹ Cf.

¹² Ainsi, le Bundesrat a reconnu en 1995, dans la perspective de la préparation du Traité d'Amsterdam, que le principe de subsidiarité avait pour objet "non seulement une consolidation des Etats membres, mais aussi une extension des compétences de l'Union européenne" ; cité d'après le P^r Dammeyer, président du "Comité des Régions" (CdR) de l'UE, cf. *Frankfurter Allgemeine Zeitung* du 18.07.1998, p. 5.

¹³ Sur les racines du principe de subsidiarité et son importance dans l'évolution juridique de l'UE, cf. M. Schmidhuber (alors Commissaire de la CE), "Le principe de subsidiarité dans le Traité de Maastricht", in *DVBI* 1993, 417 sq. et ib. in *NVWZ* 1992, 720 sq., Hoffschulte in "Autonomie des administrations communales et régionales dans l'Europe des régions - Du rôle du quatrième niveau dans l'Union européenne", in Knemeyer (dir. de publ.) "L'Europe des régions - L'Europe des communes", 135 sq. 150/151.

¹⁴ Cf. Pape Pie XI dans l'encyclique "Quadragesimo anno", notamment les chiffres 78 à 80, ainsi que le prolongement et l'actualisation de ces textes dans l'encyclique "Pacem in Terris", Pape Jean XXIII, du 11 avril 1963, notamment les chiffres 140 et 141. Cf. à ce sujet Hoffschulte *op. cit.*, 151/152. De même, la "3ème encyclique sociale" ("Mater et Magistra"), Pape Jean XXIII, du 15 mai 1961, réitère le principe de subsidiarité, cf. notamment chiffre 53 id.

¹⁵ Cf. entre autres l'exposé très approfondi de Paolo Magagnotti, "Il Principio di Sussidiarietà nella Dottrina Sociale della Chiesa".

¹⁶ Le "projet Spinelli", ainsi nommé d'après le député italien Spinelli qui avait présidé un groupe de travail du PE chargé d'élaborer un projet de constitution. Spinelli était communiste à l'origine, et député communiste au Parlement italien, où il échangea ses points de vue avec Don Sturzo, député chrétien-démocrate et jésuite. En 1979, alors qu'il avait déjà rendu sa carte du Parti communiste italien, il était cependant l'un des candidats sur la liste du PCI lors des premières élections directes au PE, dont il fut l'un des parlementaires les plus considérés.

Ce principe du Traité de Maastricht s'applique-t-il également **aux relations entre l'Union et les substructures des Etats membres** ? Les arguments juridiques avancés sont controversés¹⁷. Mais la négation d'une telle applicabilité directe fait peu de cas du dynamisme de la formule politique dont Jacques Delors, longtemps président de la Commission européenne, n'a pas été le seul à souligner la force¹⁸. Cette négation est par ailleurs à courte vue parce que l'article F du Traité de Maastricht¹⁹ se greffe sur les structures et les traditions juridiques de l'Etat membre considéré, et qu'en outre l'art. 3 B du Traité sur l'Union européenne, l'actuel art. 5 du Traité CE, vise, du moins indirectement, le troisième et quatrième niveau de l'Union européenne, - en ce sens à structure fédérale -, et de ses membres. D'ailleurs, la Commission européenne, répondant pour son compte à une question expresse sur la ratification du Traité de Maastricht, s'est déclarée liée par le principe de subsidiarité, et de ce fait tenue dans son travail de respecter également les communes et les régions en tant que parties intégrantes des Etats membres lorsque sont présentés des règlements ou des directives intéressant les communes ou les régions²⁰. Et les Länder allemands, appuyés sur ce point par les fédérations des communes allemandes²¹, ont souscrit au même point de vue, estimant qu'aucune tâche à exécuter au sein de l'Union ne devait remonter au niveau européen dès lors que les communes et les régions sont généralement mieux à même de s'en acquitter²².

La formulation exacte de l'actuel art. 6 du Traité UE, et du texte qui l'avait précédé (art. 3 B), fit à l'époque l'objet d'âpres discussions, dont l'enjeu était en particulier de mettre les choses au clair en traçant une ligne de démarcation par rapport à ce qui aurait pu être une nouvelle "clause d'habilitation"²³ qui, en dernière analyse, signifierait une extension des compétences des organes de l'Union. Le 4 décembre 1991, le Gouvernement allemand, reprenant une proposition des chefs de

¹⁷ Cf. l'aperçu qu'en donne Schäfer, "Die deutsche kommunale Selbstverwaltung in der Europäischen Union", p. 285 sq., constatant en résumé que l'art. 3 B al. 2 du Traité CE établit un principe juridique qui n'est sanctionnable que dans certaines limites et qui ne saurait actuellement offrir aucune protection efficace contre les interventions communautaires dans l'autonomie administrative des communes des Etats membres.

¹⁸ Cf. les développements de Jacques Delors devant le Parlement européen *in*: Débats du PE, n° 3-424/160, 164 sq. du 18 novembre 1992. De même, le "Protocole de subsidiarité" du Traité d'Amsterdam, élaboré en 1997 à la demande allemande dans le prolongement des textes d'Edimbourg, parle d'un "concept dynamique" de subsidiarité.

¹⁹ L'actuel art. 6 du Traité sur l'Union européenne, complété à Amsterdam par un nouvel al. 3 : "L'Union respecte l'identité nationale de ses Etats membres."

²⁰ Cf. à ce propos Hoffschulte *op. cit.*, 153/154

²¹ Cf. les propositions du RGRE (de la Section allemande du "Conseil des communes et des régions d'Europe) du 15 mai 1996 à propos du prolongement des décisions d'Edimbourg de 1992 (cf. *infra*) et la position de l'Union fédérale des Communes allemandes du 28 mai 1996 dans le cadre de l'audition des commissions en charge des affaires européennes au sein des deux chambres du Parlement allemand à propos du "Principe de subsidiarité dans l'UE" le 8 mai 1996, ainsi que...

²² ...la précédente déclaration du 26 novembre 1992 des Länder de la R.F.A. en préparation du Sommet d'Edimbourg (11 et 12 décembre 1992). Dans le même esprit, les chiffres 2 et 3 de la "Déclaration de Munich" du 27 octobre 1987 des Ministres-présidents - Conférence des Länder ; cf. notamment Knemeyer "Subsidiarité - Fédéralisme, décentralisation", DVBl 1990, 449 sq., 450 et Konow (secrétaire d'Etat à Düsseldorf), "A propos du principe de subsidiarité du Traité de Maastricht", DÖV 1993, 405 sq., 411.

²³ On redoutait une "habilitation" d'une simplicité semblable à ce que permettait l'ex-article 235 des Traités de Rome, c.-à.d. l'actuel art. 308 du Traité CE, fréquemment appliqué également pour étendre les compétences de Bruxelles.

gouvernement des Länder, avait donc présenté une version plus (re)strict(iv)e de la formulation de l'art. 3 B alinéa 2 du Traité UE ; mais cette version s'avéra impossible à faire passer²⁴.

L'avenir nous dira comment évoluera la pratique dans ce domaine. Certes, le Gouvernement allemand du Chancelier Helmut Kohl avait tenté de clarifier ce point lors du "Sommet de la subsidiarité" à Edimbourg²⁵, mais aussi en amont du Traité d'Amsterdam (1997) qui, tout en reprenant les dispositions du Traité de Maastricht l'ayant précédé, devait avoir pour objet de parachever, de clarifier et de compléter le Traité de 1992²⁶.

L'intensification des relations juridiques directes et indirectes entre l'Union européenne d'une part et les communes d'autres part est encore largement ignorée de larges secteurs de la vie publique²⁷. Ainsi, il y a plusieurs années déjà, alors que la Commission présentait un Livre blanc sur la réalisation du Marché intérieur, environ 120 des 286 projets institutifs de droit énumérés à l'époque concernaient le niveau communal. Si l'on passe en revue les organigrammes des municipalités ou des districts, en s'intéressant tout particulièrement aux agents qui appliquent le droit européen, on constatera que, dans la presque totalité des secteurs, les administrations communales transposent le droit communautaire - désormais appelé droit de l'Union - dans la vie quotidienne de nos concitoyens. De la qualité de l'eau potable aux directives concernant les caisses d'épargne en matière de droit bancaire, de la réglementation du trafic automobile et de l'immatriculation des véhicules à la législation relative aux plans d'aménagement des paysages, aux plans d'occupation des sols et aux plans d'urbanisme passés au crible du droit de l'Union pour s'assurer de leur compatibilité avec l'environnement, du droit de la médecine vétérinaire aux contrôles des denrées alimentaires qui, par suite de l'ouverture des frontières, touchent les produits de tous les pays, l'Europe est de plus en plus présente dans notre vie quotidienne, et par conséquent dans notre action au niveau communal.

A cela s'ajoutent **de nombreux programmes** de l'Union européenne conçus pour venir en aide à l'agriculture en mutation structurelle, ainsi qu'aux régions traditionnellement fondées dans le charbon, la sidérurgie, l'industrie navale et le textile. Des programmes comme RECHAR, RESIDER, RENAVAL, RETEX sont autant d'exemples de coopération entre les communes et l'Union européenne, et les régions transfrontalières telles que l'EUREGIO germano-néerlandaise élaborent avec Bruxelles des expertises structurelles et des programmes d'investissement dans le transfrontalier (INTEREG). Sans même parler de l'importance de l'aide régionale dans les Länder

²⁴ La teneur en était la suivante : "Dans les domaines *qui sont réglementés dans le Traité* et qui ne relèvent pas de sa compétence exclusive, la Communauté n'entre en action, conformément au principe de subsidiarité, que si et dans la mesure où les objectifs des mesures envisagées ne peuvent pas être *suffisamment* réalisés à l'échelon des Etats membres et *de ce fait*, en raison de leurs dimensions ou de leurs effets, peuvent être mieux réalisés au niveau communautaire." (Les passages en italique soulignent les conceptions alternatives les plus importantes du point de vue allemand).

²⁵ Cf. les "Lignes directrices pour l'application du principe de subsidiarité et de l'art. 3 B du Traité sur l'Union européenne" dans la version des "Conclusions du Conseil européen à Edimbourg les 11 et 12 décembre 1992", ainsi que les compléments du "Projet d'accord interinstitutionnel entre le Parlement européen, le Conseil et la Commission sur les procédures d'application du principe de subsidiarité."

²⁶ Cf. ladite "Clause de révision" du Traité de Maastricht sur l'Union européenne, art. N al. 2, qui spécifiait que 1992 serait l'année de convocation d'une nouvelle conférence intergouvernementale aux fins de révision du Traité, et qui de ce chef entraînait l'obligation d'engager des négociations, lesquelles aboutirent ultérieurement au Traité d'Amsterdam.

²⁷ Voir cependant à ce propos le compte rendu exhaustif de van Ameln dans cette publication.

issus de l'ex-RDA, où il n'est guère de communes qui ne fonctionnent sans les aides de l'Union européenne²⁸.

Mais alors, s'il est incontestable que les règles de droit et les programmes de l'Union européenne exercent, tant directement qu'indirectement, une influence croissante non seulement sur les Etats nationaux, mais aussi sur leurs substructures et sur les collectivités territoriales²⁹, il ne peut à la vérité subsister la moindre raison de douter que le même principe de subsidiarité doive régir également les **rappports de la Communauté d'une part avec les organes de l'administration et de l'autonomie des communes et des régions d'autre part**³⁰.

Mieux, on est en droit d'affirmer que l'idée fondamentale de subsidiarité, une fois ancrée dans le droit constitutionnel de l'Union, si elle doit bien s'appliquer aux rapports avec les Etats nationaux, doit d'autant plus („à plus forte raison“) régir les relations avec les régions et les collectivités territoriales, et cela pour une double raison : d'une part, l'article 30 GG (Loi fondamentale), replacé dans le cadre de l'Union européenne, aboutit pour ainsi dire automatiquement, - du moins en Allemagne -, à ce que les Länder (et les villes constitutives de Länder), représentent le niveau sur lequel porte le droit européen directement applicable (règlements)³¹ ; d'autre part, on voit surgir ici l'autre approche de la subsidiarité, fondamentalement différente de l'objectif de la décentralisation, une assimilation erronée faite dans la plupart des pays ; si l'adoption du principe de subsidiarité, plus encore que dans l'évolution qu'a connue jusqu'ici l'Union européenne, s'accompagne d'une réflexion sur l'éventualité et l'admissibilité juridique d'un transfert de missions et de compétences „du bas vers le haut“³², les raisons de transférer au niveau européen les missions pouvant généralement être accomplies par les régions et les collectivités territoriales seront moins invocables encore que cela n'est d'ores et déjà le cas des missions et des compétences situées au niveau national³³.

²⁸ Le 28 janvier 1998, en faisant une "Communication sur un projet de 'Programme d'action en vue du développement durable des villes'", la Commission a fourni un exemple d'actualité illustrant l'intensité de l'intervention et de l'action dans le domaine relevant des tâches communales ; cf. van Ameln *op. cit.*

²⁹ Cf. l'exposé éloquent de Habertzettel-Roth-Schläger "L'Europe dans les mairies - Répercussions de la législation européenne sur les communes". Les auteurs examinent à simple titre exemplatif ces effets sur le droit électoral des communes, la législation en matière d'énergie, la passation de marchés, la culture, la politique d'environnement et la politique structurelle.

³⁰ Cf. la proposition de compléter en ce sens l'art. 3 B, l'actuel art. 5 du Traité CE, Hoffschulte, pp. 157/158, id. *in* "Autonomie administrative des communes et des régions dans l'Allemagne de l'après-Maastricht" *in* „L'Europe pour les politiques au niveau communal« (Fondation de formation à la politique communale (1994), p. 9 sq., pp. 33-34.)

³¹ Ce à quoi ne s'oppose pas le fait que, dans le cas d'une exécution défailante de la part de l'Union, seul l'Etat national, c'est-à-dire en l'espèce le Gouvernement fédéral, peut être mis en accusation par-devant la CJCE puisqu'il doit s'agir sur ce point de faire observer les traités.

³² Sur le principe de subsidiarité comme "principe structurel" des rapports Etat - communes, cf. Knemeyer, Importance et configuration du principe de subsidiarité en Allemagne, manuscrit du 18 juin 1993, p. 9 sq.

³³ Sur le principe de subsidiarité eu égard par exemple à la politique structurelle de l'UE ou de la CE, cf. Derenbach, "Politique structurelle européenne: fonds structurels et programmes d'action ayant une incidence sur les communes". Manuscrit (pour la Conférence des *Landkreise*) d'août 1993, p. 15 sq. Derenbach met l'accent sur la décentralisation systématique, même à l'intérieur des Etats membres, et sur "l'interface" avec l'échelon communal.

Cependant, il n'échappera à personne que les **demandes de subventions** ont plutôt pour effet d'amollir la résolution des intéressés sur cette question, et à cet égard de **contrarier** plus souvent qu'il ne le faudrait l'application consécutive du **principe de subsidiarité**. Naturellement, cela vaut surtout pour les Etats membres plus faibles économiquement qui, dans l'espoir d'obtenir une aide de Bruxelles, ne sont que trop enclins à appeler de leurs vœux l'intervention de la centrale européenne. Mais cela vaut aussi dans une mesure croissante pour le rôle des régions, et même des communes : dans de nombreux cas, il y va d'aides financières à des projets de développement régionaux ou même locaux qui, si l'UE restait davantage en retrait, pourraient parfaitement rentrer dans le cadre de la subsidiarité et faire l'objet d'une péréquation financière régionale ou nationale, ou de programmes de soutien à l'échelon national. Les fréquents débats sur la délimitation des domaines bénéficiaires d'une aide illustrent le problème de manière très éclairante : pris isolément, un problème peut être énorme pour une ville, une commune ou une région ; considéré d'un point de vue européen et „converti« à l'échelle du pays où il se situe, il apparaît souvent convenir davantage à une intervention régionale, ou nationale dans les cas extrêmes³⁴. Le Sommet de Berlin, début 1999, a démontré éloquemment combien il était après coup difficile de redresser la situation.

La politique agricole de l'UE est - sous ce rapport - un domaine dans lequel, même depuis Maastricht, on hésite beaucoup à se demander s'il ne vaudrait pas mieux, pour des raisons d'efficacité et de moyens à mobiliser, intervenir sur le plan national, ou même régional, pour aider des structures et des secteurs spécifiques en difficulté, à tout le moins dans le cas de mutations structurelles et d'aides aux entreprises, et non pas d'interventions à grande échelle et de flux financiers ayant plutôt pour effet de cimenter les structures en place. La réforme financière de l'UE, au programme des deux prochaines années, nous réserve sans doute quelques surprises en termes de subsidiarité et de retour des responsabilités au niveau national. Les arguments ne manquent pas en faveur d'une "**renationalisation**" partielle du financement agricole préalablement à l'élargissement de l'UE, comme le montre une circonstance remontant à plusieurs années déjà, et dans laquelle les premiers pas de la réforme agraire se soldèrent pour l'agriculture allemande par des réductions qui, à brève échéance (et aussi sous la pression des gouvernements des Länder du sud de l'Allemagne) conduisirent au déblocage de ressources fédérales correspondantes³⁵. Les débats récurrents autour de la nécessité de réductions budgétaires de l'UE, le plus souvent assortis du refus contre toute logique de s'accommoder d'une diminution correspondante de ses propres ressources (par exemple dans l'agriculture), portent à croire qu'il s'est agi là d'un cas plutôt exceptionnel d'application - financière - du principe de subsidiarité.

Une question importante concerne en outre les effets de l'impératif de proportionnalité que le Traité de Maastricht fait dériver du principe de subsidiarité dans le cas d'interventions et de répercussions sur l'autonomie administrative des communes et dans les conditions de l'art. 5 al. 3 du Traité CE³⁶.

³⁴ C'est ainsi que les Etats riverains de la Méditerranée, redoutant du fait de l'unification de l'Allemagne une diminution des aides leur provenant, eurent pour première réaction de rejeter les problèmes des nouveaux Länder sur "l'opulente" Allemagne, à leurs yeux suffisamment puissante pour résoudre seule ces problèmes. Il fallut l'intervention énergique du Chancelier allemand, et l'assurance concomitante que les anciens bénéficiaires ne subiraient aucun désavantage, pour que les Länder de l'ex-RDA fussent mis sur les programmes d'aide de l'UE.

³⁵ Il était alors question de réaffectations budgétaires d'un montant de 3 milliards de DM.

³⁶ L'ex-article 3 B du Traité sur l'Union européenne, qui stipulait : "Les mesures de la Communauté n'excèdent pas ce qui est nécessaire pour la réalisation des objectifs du présent Traité."

Avant même Maastricht, ce principe dominait l'ordre juridique de la Communauté³⁷. En cette matière, la CJCE a souligné que „les moyens choisis pour la réalisation du but visé doivent être appropriés et ne peuvent excéder les proportions requises à cet effet.»³⁸

Les annexes au **Traité d'Amsterdam** ont donné une orientation décisive à cet impératif de proportionnalité³⁹. De ce principe de proportionnalité découlent les critères d'adéquation, de nécessité et d'appropriation qui, entre autres, peuvent parfaitement être invoqués pour protéger les communes⁴⁰. Toutefois, la protection⁴¹ assurée par cet alinéa 3 de l'art. 5 du Traité CE prendra davantage la forme d'une prise d'influence politique dès lors que le Comité des régions pourra invoquer cet article lors de la mise en consultation de documents et de projets de directives et de règlements. De même, les Etats membres ont de plus en plus tendance à se réclamer de ce principe afin de repousser des réglementations trop détaillées. Dans ses délibérations, le Parlement européen jouit des mêmes prérogatives, en particulier lorsque le Comité des régions a souligné les interventions ou les effets prévisibles.

B) De l'importance et de l'application futures du principe de subsidiarité et de la proximité citoyenne en Europe

Ni le cadre ni le moment présents ne conviennent à l'exposé des instruments disponibles pour renforcer le rôle des communes ou des régions dans le sens de la subsidiarité. Les résultats obtenus au fil des ans sont étonnamment abondants, que ce soit au Conseil de l'Europe ou dans l'Union européenne.

S'agissant du **Conseil de l'Europe**, nous mentionnerons à simple titre d'exemple : l'adoption de la "Charte de l'autonomie communale", signée par 37 des 41 Etats membres, et déjà ratifiée par pas moins de 30 d'entre eux ; la mise en place d'un Congrès des Pouvoirs locaux et régionaux de l'Europe doté de deux chambres ; l'efficacité croissante d'une procédure de "monitoring", de la part de la Chambre des communes, servant à contrôler l'avancement de la mise en pratique de la Charte de 1985 et l'évolution de l'autonomie administrative des communes dans les Etats membres ; l'incalculable contribution du Conseil de l'Europe et du Congrès à la démocratisation "par le bas" des Etats d'Europe centrale et de l'Est grâce à la mise en place, dans les anciens Etats centralisés, d'une autonomie administrative améliorée sur le plan local et régional, etc.

Pour l'**Union européenne**, il s'agit avant tout de la création d'un "Comité consultatif des Pouvoirs locaux et régionaux" auprès de la Commission de la CE, à un moment où le Conseil des ministres croyait encore pouvoir exclure les communes et les régions ; ensuite, avec le Traité de Maastricht, son renforcement et sa transformation en "Comité des collectivités locales et régionales", aujourd'hui abrégé en CdR (Comité des régions) un peu par paresse (et au détriment des intérêts des communes) ; l'intégration du principe de subsidiarité dans le Traité de Maastricht, principe auquel le Conseil d'Edimbourg allait peu après donner corps ; la revalorisation du CdR au

³⁷ Cf. Kutscher, "Principe de proportionnalité", p. 89 sq. et, à la même source, la mention de la jurisprudence de la CJCE ; voir également Langguth *in* Lenz, art. 3 B, numéro en marge 12 n.

³⁸ Cf. par ex. Rs. C-426/93 (Allemagne c/ Conseil), Jurispr. 1995, I. p. 3723 sq.

³⁹ Cf. les développements pour la proportionnalité *in* Chiffre 6 du „Protocole relatif à l'application des principes de subsidiarité et de proportionnalité« annexé au Traité d'Amsterdam *in* EU-Nachrichten, documentation n° 3, p. 47 sq., 48.

⁴⁰ En ce sens, voir par ex. Schäfer, *op. cit.*, p. 282.

⁴¹ Schäfer *op. cit.*, p. 284, fait observer à juste titre qu'il ne peut en découler aucune protection juridique.

niveau d'interlocuteur du Parlement européen par le Traité d'Amsterdam ; le partenariat effectif entre l'UE et les régions, mais aussi les communes, dans le cadre des programmes d'aide et de développement régional, où la concrétisation pratique des programmes, très souvent et parfois même mieux que dans la politique nationale, a été décentralisée et reconvertie en procédure "bottom-up" ("du bas vers le haut"), conformément au principe de subsidiarité ou de "proximité".

Le **Sommet européen de Cologne** a chargé un groupe de travail composé d'experts indépendants - choisis à dessein en dehors d'appareils gouvernementaux et nationaux hésitants - d'élaborer d'ici à la fin 2000 un projet de **Charte des droits fondamentaux** des citoyens européens. Est restée en suspens la question de savoir si les conclusions seraient intégrées aux Traités de Rome⁴², par exemple dans la section du Traité de Maastricht instituant pour la première fois une citoyenneté de l'Union⁴³, revendication appuyée par de nombreuses parties, allemande notamment. D'autres tentèrent d'y faire obstacle, voulant se ménager la possibilité d'en rester à une "Déclaration solennelle", semblable par exemple à celle que les organes de la CE firent en leur temps pour proclamer que la Convention européenne des droits de l'homme était désormais un "droit commun" à tous les membres, qui s'engagèrent à le respecter, sans qu'il fût préalablement nécessaire de modifier les traités. L'expérience a montré qu'il ne pourrait s'agir là que d'un intermède peu satisfaisant, ne pouvant, même dans le cas de la déclaration d'alors, résister à la pression politique qui déboucha sur une institutionnalisation dans les traités.

Dans ce contexte, il conviendrait de saisir l'occasion et de tout mettre en œuvre pour que soit atteint l'objectif d'une **formalisation de la protection de l'autonomie administrative des communes et des régions**. Pour ce faire, il existe un quadruple "levier" :

- **Le droit à l'autonomie administrative des communes est un droit fondamental des citoyens** (exercé par leurs représentations). Une charte des droits des citoyens devrait aussi dégager et souligner les niveaux auxquels le citoyen lui-même peut encore prendre ses droits en mains. Vu sous cet angle, l'exercice communautaire des droits fondamentaux est en soi un droit fondamental essentiel, que doit reconnaître une charte des droits fondamentaux inspirée par le principe de subsidiarité, et protéger contre les interventions abusives et les atteintes disproportionnées à l'autonomie administrative régionale et locale de la part l'UE et de ses organes.
- Dans le contexte de l'élargissement du Conseil de l'Europe par suite du changement de régime en Europe centrale et de l'Est, tous les candidats à l'adhésion ont dû signer et ratifier deux (des nombreuses) conventions du Conseil de l'Europe : la **Convention des droits de l'homme** et la **"Charte de l'autonomie de l'administration communale" du Conseil de l'Europe** de 1985. La première, du fait de la mention expresse des droits de l'homme dans le Traité de Maastricht (1992) est *de facto* devenue une part du droit constitutionnel de l'UE. [(Ainsi, le préambule parle de "l'engagement (des Etats membres) de respecter les droits de l'homme et les libertés fondamentales". L'art. 6 al. 2 Traité UE (ex-art. F de Maastricht) dispose : "L'Union respecte les droits fondamentaux, tels qu'ils sont garantis dans la Convention européenne pour la défense des droits de l'homme et des libertés fondamentales, signée à Rome le 4 novembre 1950...". Et depuis Amsterdam, l'art. 6 al. 1 Traité UE précise en outre : "L'Union repose sur les principes de la liberté, de la démocratie, du respect des droits de l'homme et des libertés fondamentales ainsi que de l'Etat de droit ; ces principes sont communs à tous les Etats membres.")]

⁴² Cf. Rengeling, „Une Charte des droits fondamentaux« in Frankfurter Allgemeine Zeitung du 21 juillet 1999.

⁴³ Les actuels art. 8 sq. du Traité CE.

- Il faut que cette incorporation réussie d'une convention du Conseil de l'Europe s'étende également à la "Charte communale" ! Compte tenu que tous les 15 membres de l'UE ont signé la Charte communale depuis 1985, même si la France et la Belgique ne l'ont pas encore ratifiée, alors que même la Grande-Bretagne, qui avait longtemps refusé de signer, a fini par signer et ratifier la Charte (1997/98). Sur un nombre d'actuellement 41 Etats membres, 37 ont signé la Charte communale (31 l'ayant ratifiée), l'art. 6 al. 1 du Traité UE complété à Amsterdam vaut donc également pour cette Charte : "Ces principes sont communs à tous les Etats membres."
- Si l'on considère au demeurant que le même art. 6 Traité UE ajoute depuis Amsterdam : "**L'Union respecte l'identité nationale de ses Etats membres**", la conséquence en est là aussi, - du moins en République fédérale d'Allemagne et en Autriche, pour ne citer que des Etats où une large autonomie de gestion des communes et des régions revêt une grande importance constitutionnelle, sociale et politique -, que l'Union est tenue de respecter cette autonomie comme faisant partie de "**l'identité nationale**", et qu'elle n'est donc pas habilitée, sans motif contraignant, à restreindre davantage que les Etats eux-mêmes ne le font (ne peuvent le faire) les deux formes de responsabilité et d'autonomie citoyennes. Ce serait en même temps tenir compte du fait que, dans plusieurs Etats membres, pour ne pas dire dans la plupart, l'autonomie administrative régionale et locale a une longue histoire qui correspond à ce que l'al. 2 du même art. 6 Traité UE circonscrit comme "**les traditions constitutionnelles communes aux Etats membres** en tant que principes généraux du droit communautaire« que l'Union s'engage à respecter.

Dans le même sens, on citera l'observation de **Benjamin R. Barber**, politologue américain et conseiller du Président Clinton⁴⁴ : "Dans les milieux du Fonds monétaire international, de l'industrie internationale du divertissement, de l'OTAN ou de la Commission européenne, le citoyen n'a plus aucun poids." L'un de ses projets vise donc à "familiariser progressivement avec des processus de décision démocratiques les participants à des initiatives communales." D'après Benjamin Barber, "**la participation aux décisions reste cantonnée au niveau communal**, alors que l'exercice du pouvoir est de plus en plus centralisé." Et d'ajouter : "Plus la politique s'éloigne de la base, plus la démocratie (!) se porte mal."⁴⁵ En son temps, Jean-Jacques Rousseau avait fait la même remarque, observant que le citoyen perd d'autant plus d'argent que s'éloigne de lui la gestion de taxes et d'impôts ensuite redistribués avec de grandes pertes, et que son mécontentement vis-à-vis de l'Etat n'en sera que plus vif. Pourquoi devrait-il en être autrement dans une Union européenne élargie ?!?

Naturellement, je serais très heureux que vous puissiez intégrer ces réflexions et objectifs aux avis qui devront être prochainement élaborées. Nul doute qu'un **vote du Comité des Régions** en ce sens pèserait d'un grand poids. Par ce biais, le CdR réaffirmerait résolument les exigences et les objectifs qui avaient été les siens jusqu'alors ; d'ailleurs, les Länder allemands ont déjà défendu la même cause à Amsterdam. Simplement, par égard envers les Etats membres hésitants sur ce point, il ne faut jamais cesser de répéter qu'il ne s'agit pas d'intervenir dans les structures internes, - serait-ce uniquement pour des raisons liées à la subsidiarité -, mais que les communes (comme les régions) doivent être mises à l'abri d'autres interventions, restrictions et sollicitations de la part de l'UE et de

⁴⁴ Cf. Focus 19/1999 du 10 mai 1999.

⁴⁵ Il convient de faire remarquer que d'après Focus (*op. cit.*), ce politologue américain entretient "de bons contacts avec Roman Herzog, président de la R.F.A.", que le Chancelier Schröder, d'après la même source, a prié de participer en tant que représentant de l'Allemagne et expert au groupe de travail chargé d'élaborer un projet de Charte des droits fondamentaux entre l'automne 1999 et la fin 2000.

ses organes. Cela s'inscrirait logiquement dans le prolongement du principe de subsidiarité. Mais il en irait avant tout du respect de „l'identité nationale des Etats membres« (art. 6 al. 3 Traité UE).

Dans le même esprit, le Conseil des communes et des régions de l'Europe négociera avec les membres du Parlement européen, d'autant plus qu'il élabore un Livre blanc sur la mise en pratique effective du principe de subsidiarité.

Les principaux objectifs et exigences des communes et des régions européennes peuvent se résumer comme suit :

- Sans les communes et les régions, la **proximité citoyenne** dans l'Union européenne est irréalisable. L'autonomie des administrations locales et régionales doit être d'autant plus renforcée que l'UE s'élargit, ce qui permettra ainsi de rapprocher les citoyens du fonctionnement quotidien de l'UE et de son droit communautaire.
- **L'autonomie administrative des communes**, nonobstant la multiplicité de ses traditions et de ses formes dans les divers pays, constitue un **droit fondamental et communautaire des citoyens** dans une Europe de liberté⁴⁶. Une **garantie formelle de l'autonomie administrative** doit en constituer le pendant dans le droit communautaire⁴⁷.
- Dans ses traités, l'Union européenne doit à l'avenir reconnaître la "**Charte de l'autonomie administrative des communes**" du Conseil de l'Europe (1985) comme droit commun à l'Union et à ses Etats membres, ce qui apparaît un prolongement logique compte tenu de la réussite de la Charte au cours des 10 dernières années.
- Une future **Charte des droits fondamentaux** des citoyens de l'UE doit également protéger le droit à **l'autonomie citoyenne** vis-à-vis de l'Union et de ses organes.
- L'application par les organes de l'Union du **principe de subsidiarité** régissant également leurs relations et normes juridiques vis-à-vis des régions et des communes, c'est-à-dire l'application du droit matériel de la garantie d'autonomie administrative, doit se développer conformément aux protocoles annexés au Traité d'Amsterdam.
- Le droit des communes, de leurs groupements représentatifs ou du CdR **d'ester en justice** en cas de violation de ces deux principes et garanties.
- Le renforcement de **l'autonomie administrative** des communes et des régions reste toutefois un **défi permanent au sein des Etats membres**. L'autonomie ne pourra être protégée au niveau européen que si elle reflète non seulement les traditions nationales, mais aussi la pratique quotidienne des Etats membres.
- L'assistance et le soutien dans la mise en place d'administrations autonomes et efficaces au niveau local et régional des **nouveaux Etats démocratiques de l'Europe centrale et de l'Est** restera pendant une génération au moins une mission importante pour tous les Etats, aussi bien dans l'UE que dans le Conseil de l'Europe.

⁴⁶ Cf. art. 6 Traité UE (complétant l'art. F du Traité de Maastricht) : "L'Union repose sur les principes de la liberté, de la démocratie, du respect des droits de l'homme et des libertés fondamentales ainsi que de l'Etat de droit ; ces principes sont communs à tous les Etats membres."

⁴⁷ L'art. 6 al. 3 du Traité UE dispose : "L'Union respecte l'identité nationale de ses Etats membres." Voir également l'avis du Bundesrat sur le Traité d'Amsterdam, 28 novembre 1997, Section II.

- La **procédure du Conseil de l'Europe** visant à contrôler l'avancement de l'autonomie administrative des 41 Etats membres est à cet égard l'un des instruments les plus importants dont le perfectionnement devra se poursuivre.

Conclusion :

La force de l'Europe tient à sa diversité. Le rôle futur des communes et des régions de l'Union européenne de la génération à venir devra refléter cette diversité et la faire valoir. Une Union vaste et puissante, comptant alors un demi-milliard de "citoyens européens", cherchera son identité dans cette diversité, elle devra par conséquent respecter et conforter l'autonomie et la responsabilité locales et régionales si elle veut à son tour être acceptée comme une unité nécessaire.

Subsidiarité et proximité citoyennes impliquent par ailleurs que "l'Europe des citoyens" soit une Europe des régions et des communes - sous peine d'échouer. Il s'agit là d'un élément irremplaçable, d'un trait caractéristique de la nouvelle identité européenne.

ENTWURF DER CHARTA DER GRUNDRECHTE DER EUROPÄISCHEN UNION

fundamental.rights@consilium.eu.int

Brüssel, den 12. April 2000

CHARTE 4223/00

CONTRIB 98

ÜBERMITTLUNGSVERMERK

Betr.: Entwurf der Charta der Grundrechte der Europäischen Union

Finden Sie bitte nachstehend die vorläufige Stellungnahme der "European Co-operation in Anthroposophical Curative Education and Social Therapy" (ECCE).^{1 2}

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² Dieser Text wurde nur in deutscher Sprache übermittelt.

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An die Europäische Union

Konvent für Grundrechte

7.4.2000

**Sehr geehrter Herr Prof. Dr. Herzog,
Sehr geehrte Damen und Herren,**

**Die Europäische Kooperation für anthroposophische Heilpädagogik und Sozialtherapie
umfasst Verbände von Angehörigen behinderter
Menschen sowie Verbände von Einrichtungen in zehn Ländern der europäischen Union.**

**Wir beobachten die Schaffung von europäischen Grundrechten mit großem Interesse und
möchten uns in den laufenden Prozess mit der folgenden Stellungnahme einbringen.
Ergänzungen anhand der weiteren Entwicklung bleiben vorbehalten.**

Wir sind gerne bereit , unsere Positionen bei einer Anhörung persönlich zu vertreten.

Mit freundlichen Grüßen

**Hellmut Hannesen
(Beauftragter für EU-Grundrechte)**

Beauftragter für EU-Grundrechte:
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Stand: 2000-04-07

Vorläufige Stellungnahme zur Charta der Grundrechte der Europäischen Union

1. Würde des Menschen

Der Schutz der Menschenwürde wird in Artikel 1, Charta 4149/00 vom 2000-03-08 kurz aber eindeutig festgelegt. Zum Schutz der Menschenwürde gehören auch das Thema Bioethik (siehe unten 2) und ein Mindestmass an sozialer Sicherung (siehe unten 5).

2. Recht auf Leben

In Artikel 2 (4149/00) heißt es: „Jede Person hat das Recht auf Leben“. Besser wäre hier die gleiche Wortwahl wie in Artikel 1 („Würde des Menschen“), da von einigen Vorden-kern der Bioethik zwischen Mensch und Person unterschieden wird.

In Artikel 2, Fassung 2000-02-15 (Charta 4123/1/00) wurde in Absatz 2 zusätzlich ge-regelt: „Jeder hat das Recht auf körperliche, psychische und genetische Unversehrtheit.“ Zu Absatz 2 wurde außerdem eine ausführliche Alternativfassung vorgeschlagen, die die aktuellen Themen der Bioethik behandelt.

Dies ist in der Fassung vom 2000-03-08 in einen Artikel 3 eingegangen. Dort fehlt die „genetische Unversehrtheit“. Immerhin sind aber in Absatz 2 einige Aspekte der Bioethik geregelt, wie Verbot eugenischer Praktiken, Verbot des Klonens von Menschen usw.

Hier sollte ein Zusatz eingefügt werden: „Medizinische Forschung ist nur zulässig, wenn der Betroffene selbst wirksam eingewilligt hat.“

3. Nichtdiskriminierung

Im Entwurf vom 2000-02-24 (4137/00) gab es einen „Artikel 19 Nichtdiskriminierung“, in dessen Aufzählung auch Behinderung enthalten war. Diese Bestimmung sollte im neuen Entwurf wieder aufgenommen werden.

4. Familie und Kinder

In Artikel 9 in der Fassung vom 2000-02-15 (4123/1/00) wurde auf den „rechtlichen, wirtschaftlichen und sozialen Schutz der Familie“ und speziell auf den „Schutz des Kindes“ hingewiesen.

Wegen aktueller Gefährdungen durch vorgeburtliche Praktiken sollte das Lebensrecht jedes Kindes besonders betont werden: „Jedes Kind hat ein Recht auf Leben“. (Dies gehört systematisch in Artikel 2 der Fassung vom 2000-03-08.)

Das Aufwachsen der Kinder ist aber heute ebenfalls gefährdet durch Umweltzerstörung, Einfluss der Massenmedien, Lärm, Technisierung usw. Deshalb ist eine Benennung dieses Schutzbedürfnisses angebracht.

5. Soziale Sicherung

In den Grundrechten sollten nicht nur individuelle Rechte enthalten sein, sondern auch ein Mindestmaß an sozialer Solidarität normiert werden, etwa in folgender Formulierung:

- 1) Jeder hat ein Recht auf menschenwürdige Existenz und die dazu erforderlichen materiellen Mittel.
- 2) Die Gesellschaft bekennt sich zu solidarischer Hilfe und zur Teilhabe aller am allgemeinen Wohlstand.
- 3) Bei der Gewährung sozialer Leistungen ist das Recht auf Selbstbestimmung und auf freie Wahl von Angeboten und Diensten zu achten.

Da der Sozialstaat eine Entwicklung der neueren Zeit ist, fällt es schwer die wesentlichen, grundrechtlichen relevanten Aspekte kurz und knapp zu fassen. Anliegen ist hier, einerseits auf eine Verpflichtung der Gemeinschaft hinzuweisen, dass ein menschenwürdiger sozialer Standard (Mindestmaß!) gewährleistet werden muss, andererseits muss deutlich gemacht werden, dass die Freiheit der Lebensgestaltung und Selbstbestimmung auch gegeben sein muss, wenn ein Mensch auf finanzielle oder sachliche Hilfe der Gemeinschaft angewiesen ist (Pflege, Betreuung, ambulante Dienste usw.). Er darf dann nicht ein Objekt der Bürokratie und Sozialplanung werden. Z.B. muss er zwischen unterschiedlichen Therapierichtungen der Medizin wählen können (z.B. Homöopathie) oder soziale Dienste von Trägern mit unterschiedlicher Konzeption und Arbeitsmethode.

Da es sich teilweise um ein Freiheitsrecht handelt, könnte dieser Teil auch bei dem allgemeinen Recht auf persönliche Freiheit bzw. Entfaltungsfreiheit angesiedelt werden.

In der Charte 4193/00 vom 29.3.2000 sind gute Vorschläge für die soziale Sicherung enthalten. Es fehlt aber die wichtige Regelung über Selbstbestimmung und Wahlmöglichkeiten auf diesem Gebiet.

ENTWURF DER CHARTA DER GRUNDRECHTE DER EUROPÄISCHEN UNION**fundamental.rights@consilium.eu.int**

Brüssel, den 12. April 2000**CHARTE 4224/00****CONTRIB 99****ÜBERMITTLUNGSVERMERK**

Betr.: Entwurf der Charta der Grundrechte der Europäischen Union

Finden Sie bitte nachstehend eine Stellungnahme des Forum Menschenrechte zur Grundrechtscharta. ^{1 2}

¹ AG EU-Grundrechtscharta des Forum Menschenrechte: c/o FIAN, Overwegstr. 31.
D-44625 Herne. Tel: +49-2323-490099. Fax: +49-2323-490018. E-mail: fian@fian.de
² Dieser Text wurde nur in deutscher Sprache übermittelt.

FORUM MENSCHENRECHTE

Stellungnahme zur EU-Grundrechtscharta

Das FORUM MENSCHENRECHTE begrüßt den Beschluss des Europäischen Rates vom Juni 1999, eine Charta der Menschen- und Bürgerrechte auszuarbeiten, wie wir schon 1997 gefordert haben.¹

Transparenz und Partizipation

Der Europäische Rat hat dem Konvent, der die Grundrechtscharta ausarbeiten soll, jedoch einen sehr engen Zeitplan gesetzt: schon im Oktober 2000 will der Konvent seinen Entwurf vorlegen, im Dezember soll die Grundrechtscharta vom Europäischen Rat "feierlich erklärt" werden. Dies lässt uns daran zweifeln, dass die immer wieder eingeforderte starke Bürgerbeteiligung zum Tragen kommt. Ein transparenter und partizipativer Prozess kann nicht so aussehen, dass von den 350 Millionen EU-Bürgern gerade mal ein paar Dutzend Experten an diesem Prozess beteiligt sind. Dies wird sich auch nicht durch die Internetseite des Rates (<http://ue.eu.int>) ändern.

Als Zusammenschluß von 40 Menschenrechtsorganisationen in Deutschland ist es dem FORUM MENSCHENRECHTE wichtig, angesichts der wachsenden Macht der EU-Institutionen die Rechte der Einzelnen zu stärken.

Verbindlichkeit

Dieser Grundrechtsschutz kann nur gewährleistet werden durch eine Charta, die für alle Organe und Behörden der EU sowie ihrer Mitgliedsstaaten unmittelbar verbindlich gilt. Dies gilt gerade auch in Hinblick auf die neu hinzukommenden Bereiche der gemeinsamen Außen- und Sicherheitspolitik und der Innen- und Justizpolitik. So muß z.B. im Bereich der Militärpolitik die Gewissensfreiheit von Kriegsdienstverweigerern geschützt werden.

Die Charta muß in den Vertrag selbst aufgenommen werden, damit die in ihr verankerten Menschen- und Bürgerrechte durch die einzelstaatlichen Gerichte und letztlich durch den EuGH, zu dem die Bürger direkt Zugang haben, nachprüfbar sind. Eine bloße Proklamation der Grundrechtscharta wäre ohne Rechtsverbindlichkeit eher kontraproduktiv und würde nicht zu der angestrebten Identifikation der Menschen mit der EU beitragen.

Es muß Ziel sein, einen Großteil der in der Grundrechtscharta verankerten Rechte allen Menschen zuzusprechen und nur einige ausgewählte Rechte den Unionsbürgerinnen und -bürgern vorzubehalten. Das Grundrecht auf diplomatischen und konsularischen Schutz muß auch auf anerkannte Asylbewerber ausgedehnt werden, da diese den Schutz des Herkunftslandes nicht mehr in Anspruch nehmen können. Gleichzeitig darf das Asylrecht Staatsangehörige der EU-Mitgliedsstaaten auf keinen Fall ausschließen.

Das Verfahren zur Einschränkung der in der Charta verankerten Menschen- und Bürgerrechte muß so ausgestaltet werden, dass das Europäische Parlament massgeblich beteiligt ist.

¹ Siehe Dokumentation des Kongresses "Für ein Europa der politischen und sozialen Rechte", Materialien Nr. 8

Den Grundrechtesschutz stärken

Keine Neuformulierung einer Charta zum Schutz der Menschen- und Bürgerrechte kann im 21. Jahrhundert auf die Berücksichtigung neuer Probleme und Gefahren verzichten, wie z.B. Umweltprobleme, informationelle Selbstbestimmung und Bio- und Gentechnologie. Eine bloße Kodifizierung bereits bestehender Grundrechte reicht deshalb nicht aus.

Dabei dürfen die Errungenschaften aus früheren Zeiten nicht vergessen werden. Wir möchten auf vier Bereiche aufmerksam machen, in denen nach Stand der aktuellen Diskussion ein Rückschritt droht: wirtschaftliche und soziale Menschenrechte, das Menschenrecht auf Asyl, das Verbot der Todesstrafe und Minderheitenrechte.

Wirtschaftliche, soziale und kulturelle Menschenrechte

Die Unteilbarkeit der Menschenrechte gehört zu den Grundlagen der Menschenrechtsidee auf denen die internationalen Menschenrechtserklärungen aufbauen. In Kontinuität dieser Tradition wurde auf der Wiener Menschenrechtskonferenz 1993 festgestellt: "Alle Menschenrechte sind universell, unteilbar, bedingen einander und hängen miteinander zusammen". Diese Grundübereinkunft hat in den letzten Jahren zu einer erheblichen Stärkung der Anerkennung wirtschaftlicher, sozialer und kultureller Menschenrechte geführt. In den neuen Verfassungen der letzten 15 Jahre werden wirtschaftliche und soziale Menschenrechte selbstverständlich und gleichberechtigt integriert.

Wir wenden uns gegen das Missverständnis, dass die Durchsetzung wirtschaftlicher, sozialer und kultureller Menschenrechte den Aufbau eines zentralen Versorgungsstaates erfordert. Vielmehr geht es dabei um die Schaffung und Sicherung sozialer und wirtschaftlicher Teilhabe. Der Staat hat in dieser Hinsicht Verpflichtungen auf drei Ebenen: die Respektierungspflicht, die Schutzpflicht und die Gewährleistungspflicht. Da das Gemeinschaftsrecht grundsätzlich dem nationalen Recht vorausgeht, ist eine Bindung der gesetzgebenden und ausführenden Organe auf EU-Ebene und in den Mitgliedsstaaten an die Respektierung der wirtschaftlichen, sozialen und kulturellen Menschenrechte zwingend notwendig. Die Respektierung dieser Menschenrechte muß auch Grundlage in der Beziehung zu Drittstaatenangehörigen und für alle Menschen einklagbar sein. Sozial benachteiligte Personen haben das Recht auf besondere Unterstützung. Ziel muss es sein, die wirtschaftlichen, sozialen und kulturellen Menschenrechte als Maßstab für politisches Handeln im Auge zu haben, auf nationalstaatlicher wie auf europäischer Ebene. Um dies zu gewährleisten, müssen die wirtschaftlichen, sozialen und kulturellen Menschenrechte Bestandteil der Grundrechtscharta werden, basierend auf den Internationalen Pakt über wirtschaftliche, soziale und kulturelle Menschenrechte.

Das Menschenrecht auf Asyl

Die Frage nach dem Maßstab für politisches Handeln stellt sich zur Zeit insbesondere in der Weiterentwicklung einer gemeinsamen Innen- und Justizpolitik. Grundlage für diese Politik bietet der Amsterdamer Vertrag, der am 1. Mai 1999 in Kraft trat. Bis zum Jahr 2004 sollen zentrale Bereiche der Asyl- und Migrationspolitik Gemeinschaftsrecht werden, das für alle EU-Mitgliedsstaaten bindend sein wird.

Bedeutend ist die Frage nach dem Maßstab für politisches Handeln deshalb, weil der Vertrag von Amsterdam zwar eine weitgehende Verlagerung der Asyl- und Migrationspolitik auf den ersten Pfeiler anstrebt, es aber unterlassen wurde, wirkungsvolle Mechanismen der demokratischen und gerichtlichen Kontrolle bereits für die fünfjährige Übergangszeit zu installieren. Durch die Beibehaltung des reinen Anhörungsrechts für das Europäische Parlament und durch die geringen Kontrollmöglichkeiten des Europäischen Gerichtshofes bleibt es bei der untragbaren Situation, daß Regierungen im Rat als Legislative beschließen und zu Hause als Exekutive die Regelungen umsetzen, ohne einer demokratischen Kontrolle unterworfen zu sein.

Der Schutz vor Verfolgung ist ein bedeutender Rechtsfortschritt im System des allgemeinen Menschenrechtsschutzes seit 1948. Die Entwicklung des Flüchtlingsrechts bildete sich gegen vielfältige staatliche Widerstände heraus. Sein Aushöhlung ist vorprogrammiert, wenn der Flüchtlingsschutz allein, wie im Fall der EU, vom staatlichen bzw. politischen Willen der Regierungen abhängig wird. Der völkerrechtliche Bezugsrahmen des Flüchtlingsrechtes, der höhere Rang des internationale Flüchtlingsschutzes als besondere Form des allgemeinen Menschenrechtsschutzes ist ins Zentrum zu rücken. Die Genfer Flüchtlingskonvention wird zu Recht als Magna Charta des Flüchtlingsrechtes bezeichnet. Insgesamt haben 137 Staaten die Konvention ratifiziert. Alle Mitgliedsstaaten der EU sind Unterzeichnerstaaten der Genfer Flüchtlingskonvention.

Dieser völkerrechtliche Mindeststandard bildet außerdem die Grundlage für die europäische Gestaltung des Asyl- und Flüchtlingsrechtes. Auf dem Sondergipfel in Tampere sind die Staats- und Regierungschefs der EU "... übereingekommen, auf ein Gemeinsames Asylsystem hinzuwirken, das sich auf die uneingeschränkte und allumfassende Anwendung der Genfer Flüchtlingskonvention stützt²".

Die Zukunft des europäischen Asylrechts hat Auswirkungen nicht nur auf den Menschenrechtsstandard in Europa, sondern auch weit darüber hinaus, wie Jean Noel Wetterwald, Vertreter des UNHCR kürzlich feststellte: *“Die zukünftige EU-Asylpolitik wird maßgeblich auch darüber entscheiden, wie im nächsten Jahrhundert das internationale Schutzsystem für Flüchtlinge überhaupt aussehen wird. Die politisch Verantwortlichen müssen sich bewußt sein: Die Wertegemeinschaft Europäische Union steht hier in der Verantwortung für einen Grundwert, nämlich für die Institution des Asyls, deren Einrichtung man durchaus auch nach den Erfahrungen in diesem Jahrhundert als Antwort der Zivilisation auf die Barbarei begreifen kann.”*

Ein grundrechtlich garantiertes Recht auf Asyl und eine Rechtsschutzgarantie sind die beste Garantie dafür, daß die Europäischen Union und ihre Mitgliedsstaaten ihren völkerrechtlichen Verpflichtungen gerecht werden. Die Rechtsweegegarantie ist das Rückgrat des modernen Rechtsstaates. Die Aufnahme des Flüchtlingsschutzes in die Grundrechtscharta ist die beste Gewähr, daß die EU ihren eigenen Ansprüchen gerecht würde. Der Text der Charta sollte unbedingt einen expliziten Verweis auf die Genfer Flüchtlingskonvention enthalten.

² Schlussfolgerungen des Vorsitizes - Europäischer Rat Tampere . Oktober 1999

Das Verbot der Todesstrafe und der Folter

Ebenfalls explizit verankert werden muß das Verbot der Todesstrafe und der Folter. Die Verankerung des Verbots der Todesstrafe und der Folter muß unabhängig von Spekulationen über eine Wiedereinführung der Todesstrafe als ein Menschenrecht in der Charta verankert werden. Mit einer Grundrechtscharta, die das Verbot der Todesstrafe und der Folter nicht explizit enthält, würde die EU ausserdem die Bemühungen um ein weltweites Verbot der Todesstrafe und der Folter negativ beeinflussen.

Das Prinzip des individuellen Abschiebeschutzes entsprechend der Genfer Flüchtlingskonvention und der Europäischen Menschenrechtskonvention muß in die Charta aufgenommen werden. Hier muß ein Verweis auf das Verbot der Todesstrafe und der Folter erfolgen.

Minderheitenrechte

“Niemand darf wegen seiner Rasse, Abstammung, Nationalität, Sprache, seines Geschlechts, seines Alters, seiner sexuellen Identität, seiner sozialen Herkunft oder Stellung, seiner Behinderung, seiner religiösen, weltanschaulichen oder politischen Überzeugung bevorzugt oder benachteiligt werden.” Die besonderen Bedürfnisse von Minderheiten müssen im Sinne der Gleichbehandlung Eingang in der EU-Grundrechtscharta finden. Denn Minderheiten sind Bestandteil einer jeden Gesellschaft. Minderheiten werden immer wieder Opfer von Diskriminierungen, die von Intoleranz bis hin zu physischer Vernichtung reichen.

Das A und O des Minderheitenschutzes ist das Prinzip der Gleichbehandlung. Das daraus abgeleitete Diskriminierungsverbot muss für die EU-Bürgerinnen und Bürger wie für Drittstaatenangehörige in gleicher Weise gelten. Richtig verstanden bedeutet Gleichbehandlung, dass Personen, die wegen ihrer Zugehörigkeit zu einer Minderheit Nachteile erlitten haben, eine besondere Unterstützung zusteht. Dies gilt für alle Minderheiten, seien sie ethnische, sprachliche, religiöse oder soziale Minderheiten.

Unbewältigte Minderheitenfragen, wie die Missachtung von sprachlichen Minderheiten, gibt es sowohl in den EU-Mitgliedsstaaten als auch in den Ländern, die der EU möglichst bald beizutreten wünschen. Die Aufnahme von Minderheitenrechten in die Grundrechtscharta würde klar signalisieren, dass sich die künftige Politik der EU am Schutz von Minderheiten und an dem Prinzip der Nicht-Diskriminierung ausrichtet. Dies schließt insbesondere die Respektierung und den Schutz sowie die Förderung der Minderheitensprachen ein.

Für eine glaubwürdige Menschenrechtspolitik

Die EU-Grundrechtscharta wird Auswirkungen haben auf die internationale Menschenrechtsdiskussion, insbesondere auf die konzeptionelle Weiterentwicklung der wirtschaftlichen und sozialen Menschenrechte, auf das Asylrecht, das Verbot der Todesstrafe und auf den Umgang mit Minderheiten. Hier wird die EU ihre Glaubwürdigkeit als ein politisches Gebilde, das sich an den Menschenrechten orientiert, beweisen müssen. Nur dann sind menschenrechtliche Klauseln in internationalen Verträgen überzeugend.

Die EU muss in Zukunft eine kohärente und konsequente Menschenrechtspolitik betreiben: nach außen und nach innen.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 12 April 2000**CHARTE 4226/00****CONTRIB 101****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a submission by the Confederation of British Industry (CBI).^{1 2}

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² The message has been submitted in English only.

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CBI SUBMISSION TO THE EU CHARTER OF FUNDAMENTAL RIGHTS DRAFTING CONVENTION

The Confederation of British Industry (CBI) is the voice of British business, representing more than 250,000 employers, large and small, industrial and commercial.

Introduction

1. The CBI supports the European Council's objective of making the existing recognised fundamental rights and freedoms more visible to European citizens, thus promoting a culture of rights and responsibilities across the European Union.
2. We believe that EU member states already participate in a successful system of rights protection, and that the Charter should complement and not compete with this system. The best way of adding value to existing rights, instruments and systems is through a Charter that:
 - highlights the existing rights and freedoms which are generally recognised as fundamental within the EU but does not attempt to create new rights; and
 - clarifies the existing rights system, but does not undermine it.
3. This submission concentrates on the question of economic and social rights as this is the locus of the business community. The CBI is concerned that a Charter which seeks to extend beyond existing fundamental rights and complicate the existing system of rights protection could prove very damaging to the interests of European business and European citizens.

The Charter should highlight the existing rights and freedoms which are generally recognised as fundamental within the EU

4. The European Union already has an effective system for the protection of fundamental human rights, guaranteed by member states' adherence to the European Convention on Human Rights (ECHR) and by the European Treaties.
5. There is however a strong case for a Charter to:

- set out the fundamental values that all EU member states share at the start of the 21st century;
 - make visible to EU citizens the existing fundamental rights and how they are justiciable.
6. A high profile Charter will help reinforce the European culture of rights – which benefits European businesses as well as citizens.
7. For this to achieve wide acceptance – including in the business community - the Charter must:
- focus on existing fundamental rights; and
 - complement the existing rights protection system.

The Charter should focus on existing fundamental rights

8. The Charter should focus on the existing rights and freedoms which are generally recognised as fundamental and inalienable within the EU such as the dignity of human beings, the right to life, to liberty and security and the right to a fair trial. There are certain social rights which are equally fundamental; equal treatment between men and women, the freedom to choose and engage in an occupation are, for example, clearly recognised as legal rights by member states and individuals.
9. Other social rights, such as the right to rest periods and annual leave, the right to parental leave, and certain rights to workers' information and consultation are well-established in EU legislation. They are however of a different nature to the above fundamental rights. They are limited and qualified employment rights. They are not fundamental or universal; they could be modified should the Directives that established them be reviewed, and they are therefore not inalienable rights. The inclusion in the Charter of these rights would devalue the notion of fundamental rights.

The Charter should complement the existing rights protection system

10. The CBI supports the idea of a declaratory Charter clearly setting out the status and scope of the fundamental rights which are currently recognised by the EU. We have welcomed the UK Government's proposal of a two-part document, the first part identifying the existing rights in clear and simple language for maximum impact, the second explaining the nature and scope of those rights and pointing to the appropriate source instrument and existing enforcement mechanisms.
11. This is the best way to add value to existing rights, instruments and systems, without prejudice to legal certainty. It also offers a more flexible means of highlighting rights within a wider context than would a legally binding text, which would be very difficult to agree given Member States' differing approaches.

The Convention should not seek to create new fundamental rights or new legal mechanisms for enforcement

12. Many organisations have argued that the Charter should both increase the scope of fundamental social and economic rights and ensure that they are included in the EU Treaties. We set out below why this approach is:

- wrong in principle as new rights should only be created through inter-governmental negotiations;
- potentially deeply damaging European businesses in practice should political aspirations be construed in fundamental rights; and
- likely to undermine the existing rights protection system should the Charter become legally binding.

The Convention should not bypass the normal EU decision making process by creating new fundamental rights

13. Fundamental rights are special. They are a recognition of the critical importance of an independent judiciary in protecting universal and inalienable rights. They are superior law to which all actors and legislation must conform. Placing this enormous responsibility on an unelected judiciary is reasonable only in certain cases, where rights are truly fundamental.

14. Creating new fundamental rights must therefore be done only after very serious consideration. To allow judicial review at the European level of decisions taken by national or local governments risks taking decisions out of the hands of democratically elected politicians which are rightly their responsibility.

15. Creating new fundamental rights should not be the aim of the Charter and is not the approach intended by the European Council. The Charter should not bypass the normal EU decision making process by creating new fundamental rights across EU member states. The balance of rights between the European institutions and the Member States should only be altered by governments through inter-governmental negotiations.

16. Business rejects suggestions to include in the Charter the rights in respect of workers' information and consultation, collective bargaining and action, or training. Although certain rights to workers' information and consultation are well-established in EU legislation through the collective redundancy Directive and the European works councils Directive, these are qualified and limited employment rights in specific circumstances. No fundamental, unqualified right to information and consultation of workers is recognised in the EU. Similarly, issues such as collective bargaining or training have traditionally been the responsibility of member states, in accordance with the subsidiarity principle. All member states make some provision for the use of collective agreements. However, laws and practice in relation to collective bargaining and industrial action vary considerably across member states. There is no common basis for a fundamental right. There is no legal right to vocational training currently recognised at EU level.

Political aspirations construed as fundamental rights would be damaging

17. The distinction established by the European Council at Cologne between fundamental rights and policy objectives is a vital one. Political aspirations, particularly on economic and social issues, must be recognised as such and not given legal status. The Charter should not reproduce the confusion caused by an indiscriminating use of the word ‘right’ in earlier EU texts such as the 1989 Community Charter. Political aspirations must not become ill-defined justiciable ‘rights’.
18. Turning political aspirations into legal rights would also potentially breach the subsidiarity principle. The social and employment chapters of the Treaties have already set out the powers of the Union to act on a European level. The Member States have specifically excluded the topics of pay, right of association, as well as the right to strike or impose a lockout from EU legislative competence. For example, a ‘right to fair remuneration’ would potentially jeopardise member states’ responsibility for and effective control over wages policy, breaching the subsidiarity principle. These are aspirations all member states share. But it is equally clear that member state governments have taken the view that these aspirations can only be delivered at national or local level.
19. This is not just an important point of principle. It also has major practical implications as, unlike other genuinely fundamental rights, these aspirations would be almost impossible to interpret in practice by a Court, generating uncertainty for businesses. For example:
 - It is not clear how ‘fair remuneration’ could sensibly be decided by the European Court of Justice. Wage policies should reflect national economic and political conditions – any ‘one size fits all’ EU level approach could cause significant increases in unemployment in some European countries.
 - Adequate social protection is also a policy objective, which is mainly the responsibility of national Governments, not an EU level legal right. The difficulties of determining what an adequate level of social security provision would be in a legal sense are compounded by the variety of social protection systems across the EU.
20. If incorporated into the Treaties, these aspirations would allow judicial review by the European Court of national policy. Decisions would have direct effect, requiring member states to make immediate changes to national and local legislation.

The Convention should not seek to create new legal mechanisms for enforcement

21. The CBI believes that a legally binding Charter, effectively transferring jurisdiction over core fundamental rights from the Human Rights Court at Strasbourg and national courts to the European Court of Justice, would undermine the existing rights system and create legal uncertainty.

22. The Strasbourg Court – which has jurisdiction over the ECHR - has developed a balanced approach to the interpretation and protection of fundamental rights over fifty years. In particular it has interpreted civil and political rights which have application in the employment context - such as the right to freedom of expression or the right to freedom of assembly and association - sensitively, in line with national differences. The ECJ's experience is of a different nature; it is one of harmonisation, through the creation of common standards of interpretation.
23. The CBI agrees with the Parliamentary Assembly of the Council of Europe, who have underlined the potential risks of creating a parallel human rights jurisdiction through the ECJ. Overlaps of jurisdiction between the Strasbourg Court and the European Court of Justice would lead to different interpretations of fundamental rights, creating legal uncertainty. It would also create a two-speed system between EU members and the rest of the non-EU members of the Council of Europe, weakening the latter. The Charter should not bring into question the responsibilities of the existing European Courts.

Conclusion

24. The CBI supports the idea of a declaratory Charter, without legally binding effect, setting out clearly the fundamental rights which are currently recognised by the EU. We believe this is the best way to add value to existing rights and instruments, without prejudice to legal certainty. As we have highlighted, the Convention should not seek to create new fundamental rights or new legal mechanisms for enforcement

April 2000

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 18 April 2000**CHARTE 4228/00****CONTRIB 102****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a submission by the Initiative "Netzwerk Dreigliederung", submitted with a view for the public hearing on the 27th of April 2000 in Brussels.^{1 2}

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² This text has been submitted in English and German languages.

**Contribution to the public hearing on the Charter of fundamental rights of the European
Union on the 27th of April 2000 in Bruxelles**

Christoph Strawe / Initiative „Netzwerk Dreigliederung“
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Ladies and Gentlemen,

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

Subsidiarity

We suggest to include an article „subsidiarity“ in a passage „Principles and functions of the European Union, which result from the fundamental rights“. In the Maastricht contract the EU has committed itself to the principle of subsidiarity, which - as formulated in a classic phrasing - has the following meaning: „[...] just as that, which the individual can accomplish out of his own initiative and with his own strength, may not be taken from him and given to the activity of society, thus it violates justice if that, which the smaller and subordinate communities can accomplish and lead to a good end, is being claimed for the broader and superordinate community [...]“.¹

1 Enzyklika „Quadragesimo anno“, Pius XI., 1931.

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

Otherwise the state will be „covered and crushed under too many obligations and liabilities“². And it is even more important, that the responsibility of the single competent human being be not „covered and crushed“. In this point the principle of subsidiarity connects itself with the principle of the human rights, because these human rights, which to protect is the most distinguished obligation of the states of Europe, make individual humans the starting point and carrier of social organization.

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

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

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

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

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

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

2 Quadragesimo anno.

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

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 18 April 2000**CHARTE 4229/00****CONTRIB 103****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a contribution by the Association of German Public Service Broadcasting Corporations (ARD) and German Television (ZDF) with a view for the hearing on the 27 April 2000.^{1 2}

¹ ARD: Rue de la Loi 223, B-1040 Brussels. Tel: +32-2-280 1785. Fax: +32-2-230 4434.

² This text has been submitted in German, French and English.

Draft

for a

EUROPEAN FUNDAMENTAL RIGHT TO FREEDOM OF EXPRESSION AND INFORMATION

in the

European Charter on Fundamental Rights

submitted by
the Association of German Public Service Broadcasting Corporations (ARD)
and German Television (ZDF)
1.4.2000

A. Draft text

1. The right to freedom of expression shall be guaranteed. Likewise, the right to obtain comprehensive information from a range of generally accessible sources shall be guaranteed. This includes, but is not limited to, access to cultural and educational content.
2. The freedom of the press, broadcasting, film and other communications addressed to the public shall be guaranteed.
3. These rights may be restricted by law only to protect legal interests of higher priority. In no case may they be restricted on account of the content of the opinion expressed, unless such a restriction serves to protect minors or personal honour, or to prevent the glorification of violence or the expression of opinions that fail to respect human dignity.
4. There shall be no censorship.

B. Notes

I. General notes

The draft text for a European fundamental right to freedom of expression and information is founded on the guarantees in Article 10 of the European Convention on Human Rights (ECHR). It takes account of the jurisdiction of the European Court of Human Rights but presents it in more concrete and more extensively developed terms. The underlying consideration is that the ECHR already provides a benchmark for fundamental rights for the whole of Europe and that its contents represent a common denominator for all European states in this respect.

This draft European fundamental right to freedom of expression and information for a European Charter on Fundamental Rights deals with key principles, especially for broadcasting. Broadcasting is protected by the constitutions of all countries (except in the case of the United Kingdom, which has no written constitution). It is either an express provision (for example, in Germany and Portugal) or part of general freedom of opinion (for example, in Italy, France, Spain, Belgium and in Article 10(1) ECHR). In all countries, broadcasting is assigned a special role in the formation of public opinion and, hence, for society. The fundamental right to broadcasting freedom always has an objective legal aspect, too, according to the equivalent construction in all states.

Moreover, all European institutions, including - to a minor extent - the European Court of Justice (ECJ) in its jurisdiction, have repeatedly and expressly emphasized the fundamental importance and necessity of securing pluralism in broadcasting. The context of the pluralism principle also provides the justification of a dual broadcasting system. Such a system exists in all EU Member States, with central broadcasting functions assigned to public broadcasting. At a European level this consensus on the leading role of public broadcasting is set out in the Protocol to the Amsterdam Treaty. Here the special role of public broadcasting for democracy, social integration and culture is expressly pointed out and thus acknowledged at the level of the Amsterdam Treaty. Similarly, it guarantees the competence of the Member States to regulate the mission, financing and organization of public broadcasting. These guarantees and large-scale exemption of the financing of public broadcasting from the provisions of the EC Treaty must not be affected by the creation of a charter of fundamental rights. In this respect, the draft contains no assignment of competence that would favour EU institutions.

The addressee and holders of the fundamental right to freedom of expression and information are specified in the general provisions of the Charter on Fundamental Rights. In this context, it must be ensured that the charter is addressed only to the European Union and its bodies and institutions. The European Charter on Fundamental Rights including the Fundamental Right to Freedom of Opinion and Information may neither replace nor supersede the constitutions of the Member States and their regulations on media law. In particular, the way the freedom of broadcasting and, especially, public broadcasting is organized falls within the competence of each Member State and can be measured only by the respective fundamental rights guaranteed by each Member State.

One of the basic requirements for a European Charter on Fundamental Rights is that its guarantees must be justiciable. The holders of fundamental rights must be able to defend themselves in court against EU bodies and institutions. Therefore, a judicial EU authority must be created separately from the ECJ to provide effective (individual) legal protection against violations of fundamental rights by EU bodies and institutions, through special proceedings. There must also be a clear demarcation between that authority and the European Court of Human Rights, to avoid any incompatibility with the latter's jurisdiction.

ARD and ZDF regard as indispensable these requirements regarding the content and function of a European Fundamental Right to Freedom of Opinion and Information, its addressees and limitations on its effectiveness and organization according to the laws of the Member States and regarding the special judicial protection of fundamental rights. If some of these requirements cannot be achieved, ARD and ZDF recommend that a European Charter of Fundamental Rights should be brought about in such a way that the European Union should accede to the European Convention on Human Rights after meeting the corresponding pre-conditions.

II. Individual notes

1. Paragraph 1

Sub-paragraph 1 of paragraph 1 defines the "right to freedom of expression" as the fundamental right to freedom to hold opinions in a traditional and comprehensive sense. Both the internal process of forming an opinion and the external action of expressing it should be protected. With the wording "[...] shall be guaranteed", sub-paragraph 1 makes it clear that as well as being a subjective defensive right, the fundamental right also has objective legal content which must be respected by European institutions.

Sub-paragraph 2 fundamentally protects freedom of information from generally accessible sources. This guarantee is found in the same, or similar, form in all constitutions and in Article 10 ECHR and thus takes up traditional regulations. The right to gain "comprehensive" information from "varied" sources expressly accounts for the principle of pluralism, which plays a central role in all European constitutions and is emphasized by EU institutions time and again. In view of the development of an information and knowledge society, this is obviously of great importance, particularly since the constantly increasing amount of information is - to some extent - restricted by technical and financial conditions.

Sub-paragraph 3 places the guarantee in sub-paragraph 2 in more concrete, broader terms. The wording "access to cultural and educational content" - in addition to the pluralism guarantee - aims to take account of the move towards an information and knowledge society and to ensure that such content may be enjoyed. In this respect, it meets the corresponding concerns of broadcasting providers to be able to provide coverage.

2. *Paragraph 2*

Paragraph 2 protects the press, broadcasting, film and all other (mass) communication media and their activities. Alongside its role in providing a subjective defensive right against state intervention, it also contains an institutional safeguard. Owing to the importance of these media for society and democracy, this guarantee of fundamental rights has received a paragraph of its own. It protects communication in a comprehensive manner. The guarantee is open to any kind of media development.

3. *Paragraph 3*

Paragraph 3 regulates restriction options for the guarantees given in paragraphs 1 and 2 and their pre-conditions.

Under sub-paragraph 1 the fundamental rights in paragraphs 1 and 2 may be restricted only to protect legal interests of a higher priority. This may occur solely on the basis of consideration of each individual case. In addition, such a restriction must be effected "by law". The term "law" means a type of action described in the general provisions of the Charter of Fundamental Rights. In view of the outstanding importance of the freedom of opinion and information, the formal requirements for this type of action must be of a high standard, which involves, in particular, qualified participation by the European Parliament.

Sub-paragraph 2 points out in sub-sub-paragraph 1 that no restriction may be made on account of the content of the opinion expressed. Exceptions to this rule are listed in the form of a final catalogue in sub-sub-paragraph 2 and concern the protection of minors, the protection of honour, protection against the glorification of violence and the protection of human dignity. Sub-paragraph 2 must be understood in conjunction with sub-paragraph 1. As regards restrictions on a given opinion, consideration is also required in individual cases, but the inviolability of human dignity may not be the subject of consideration.

4. *Paragraph 4*

Paragraph 4 features the traditional ban on censorship. This guarantee is of fundamental importance. The ban on censorship should essentially emerge from the overall view of the other provisions in this draft and thus has only a declarative meaning. However, to avoid any uncertainty regarding the existence of a ban on censorship it has been expressly mentioned in the last paragraph.

ENTWURF DER CHARTA DER GRUNDRECHTE DER EUROPÄISCHEN UNION**fundamental.rights@consilium.eu.int**

Brüssel, den 18. April 2000**CHARTE 4230/00****CONTRIB 104****ÜBERMITTLUNGSVERMERK**

Betr.: Entwurf der Charta der Grundrechte der Europäischen Union

Finden Sie bitte nachstehend einen Beitrag des Diakonischen Werks der Evangelischen Kirche in Deutschland, im Hinblick auf die Anhörung am 27. April 2000. ¹

¹ Dieser Text wurde nur in Deutscher sprache übermittelt.

Schriftliche Stellungnahme des Diakonischen Werkes der EKD zur Vorlage beim Konvent der EU zur Ausarbeitung einer europäischen Grundrechte-Charta.

Das Diakonische Werk der EKD beteiligt sich als einer der sechs Spitzenverbände der Freien Wohlfahrtspflege in Deutschland an dem Diskussionsprozeß um die Europäische Grundrechtecharta. Das Diakonische Werk vertritt über 30 000 Einrichtungen mit über 800 000 freiwilligen und hauptamtlichen Mitarbeitern, die in partnerschaftlicher Zusammenarbeit mit den staatlichen Institutionen der Bundesrepublik Deutschland soziale Dienste und Aufgaben der Daseinsvorsorge erfüllen. Im Rahmen dieser Partnerschaft ist das Diakonische Werk Bestandteil des deutschen Sozialstaatssystems. Als kirchlicher Wohlfahrtsverband richtet das Diakonische Werk sein Handeln am christlichen Menschenbild aus. Seine Arbeit ist Wesens- und Lebensäußerung der Evangelischen Kirche. Darüber hinaus gehört das Diakonische Werk zur "Zivilgesellschaft". Es erfüllt sozialanwaltschaftliche Funktionen und hat es sich zur Aufgabe gemacht, Menschen in allen Lebenslagen zu beraten und zu begleiten, die Stimme zu erheben für diejenigen, die nicht gehört werden, und für eine menschenwürdige Gesetzgebung einzutreten. Gleichzeitig bringt es seine Erfahrung als bedeutendes internationales Hilfswerk in die Diskussion ein, das sich weltweit für Gerechtigkeit und Wahrung der Menschenrechte einsetzt.

Für das Diakonische Werk als wertorientiert arbeitenden Wohlfahrtsverband liegt große Bedeutung in der Tatsache, daß die EU mit der Ausarbeitung der Grundrechtecharta Wertvorstellungen zur Richtschnur ihrer Politik macht. Die EU-Bürger werden mit Rechtspositionen ausgestattet, die für diese Freiheiten und Ansprüche begründen. Das ist eine greifbare Konkretisierung der in Artikel 6 EUV niedergelegten Zielbestimmung, daß sich das politische Handeln der EU an Wertvorstellungen orientieren muß, die allen europäischen Staaten gemeinsam sind.

In diesem Prozeß der Umsetzung von Wertorientierung in Politikgrundsätze und Rechtspositionen möchte das Diakonische Werk sich vor dem Hintergrund seines Selbstverständnisses und seiner Aufgabenstellung vor allem zu drei Themenbereichen äußern und dabei jeweils nur auf ausgewählte Artikel eingehen, um seine Position klar darzulegen. Diese drei Themenbereiche sind:

- 1) Freiheitsgrundrechte, insbesondere Menschenwürde, Religionsfreiheit und Asylrecht
- 2) Politische Partizipation
- 3) Soziale Grundrechte

ad 1): Freiheitsgrundrechte, insbesondere Menschenwürde, Religionsfreiheit und Asylrecht

Das Diakonische Werk unterstützt nachdrücklich die Absicht des Konvents, in Artikel 1 der Charta die Wahrung der Menschenwürde festzuschreiben. Als "Muttergrundrecht", aus dem sich die meisten weiteren Freiheits- und Gleichheitsrechte und die sozialen Grundrechte ableiten lassen, gebührt der Menschenwürde dieser herausgehobene Platz in der Charta.

Noch klarer als der derzeitige Formulierungsvorschlag "Die Würde des Menschen wird unter allen Umständen gewahrt" wäre eine Formulierung in Anlehnung an Artikel 1 des Grundgesetzes:

"Die Würde des Menschen ist unantastbar".

Der Grundsatz der Wahrung der Menschenwürde verpflichtet die staatlichen Gewalten – und damit auch die Organe der EU - für jeden Menschen Lebensfreiräume zu sichern, ihm die materielle Grundlage für ein würdiges Leben zu verschaffen und insbesondere die Rechte der Schwachen und Fremden zu achten und ihnen Gerechtigkeit zukommen zu lassen. Nach Auffassung des Diakonischen Werkes besteht eine unauflösbare Verknüpfung zwischen der Gewährleistung von Freiheits- Gleichheits- und schließlich sozialen Rechten. Freiheitsrechte, die bei den elementaren Lebensgrundrechten beginnen und in den ideellen Freiheiten der Gedankens- und Gewissensfreiheit ihre Fortsetzung haben, sind nicht denkbar ohne die einzelnen Ausformungen der Gleichheitsgrundrechte, die jedem die gleichberechtigte Teilhabe am politischen und sozialen Leben ermöglichen. Die gleichberechtigte Teilhabe ist wiederum nicht denkbar ohne daß für jeden einzelnen durch die Festschreibung sozialer Grundrechte die materielle Grundlage dafür gesichert ist.

Dementsprechend begrüßt das Diakonische Werk die im Charta-Entwurf gewählte Grundrechtehierarchie, die mit den elementaren Freiheitsrechten - Recht auf Leben, Recht auf körperliche Unversehrtheit, Verbot der Folter und unmenschlicher Behandlung einschließlich des Verbotes der Todesstrafe (Artikel 2-4) - beginnt. Das Diakonische Werk tritt für eine möglichst weite Auslegung dieser Rechte ein, die frauenspezifische Aspekte umfaßt.

Zu den Lebensfreiräumen jedes einzelnen gehört nach Auffassung des Diakonischen Werkes unbedingt die Freiheit des weltanschaulichen oder religiösen Bekenntnisses. Dieses Recht ist insofern von besonderer Natur, als es die Freiheit des einzelnen, sich zu einer Weltanschauung oder zu einer Religion zu bekennen, und gleichzeitig die Freiheit des gemeinschaftlichen Bekenntnisses und die Freiheit, dieses Bekenntnis gemeinsam auszuüben, umfaßt. Die gemeinschaftliche Ausübung des Bekenntnisses ist oftmals dessen Ausdrucksform. Diese äußert sich in vielen Bereichen des gesellschaftlichen und politischen Lebens, die im Chartaentwurf präzisiert werden sollten. Für besonders bedeutend hält das Diakonische Werk Tätigkeiten in Form von Nothilfe, struktureller Hilfe und Hilfe zur Selbsthilfe, die unter dem Begriff der "karitativen Tätigkeiten" zusammengefaßt Teil des aktiven Praktizierens von Weltanschauungen und Religionen sind.

Das Diakonische Werk begrüßt daher die Festschreibung der Gedankens- Gewissens- und Religionsfreiheit in Artikel 14 der Charta. Es bedauert die Entscheidung des Konventes, es bei der kurzen Formulierung des Artikel 14 zu belassen ("Jede Person hat das Recht auf Gedanken-, Gewissens- und Religionsfreiheit") und schließt sich daher dem Vorschlag der EKD zu einer ergänzenden Formulierung an:

"Jede Person hat das Recht auf Gedanken- Religions- und Gewissensfreiheit. Die Religionsfreiheit schließt das öffentliche und private, individuelle und gemeinschaftliche Bekenntnis sowie das Recht von Kirchen und Religionsgemeinschaften zur Ordnung und Verwaltung ihrer Angelegenheiten nach den Gesetzen der Mitgliedstaaten ein"

Da das Diakonische Werk es sich zur Aufgabe macht, besonders für die Rechte der Fremden einzustehen, hält es die Festschreibung eines Asylgrundrechtes in der Europäischen Grundrechtecharta für unbedingt notwendig. Das Diakonische Werk unterstützt die in dem Änderungsantrag von Herrn Jürgen Meyer vorgeschlagene Formulierung des Asylrechtes und möchte sie um einen Verweis auf die Genfer Flüchtlingskonvention ergänzen:

Artikel 19 Asyl

- (1) **Jeder, der nach Maßgabe der Genfer Flüchtlingskonvention politisch verfolgt wird oder unmenschlicher oder erniedrigender Bestrafung oder Behandlung ausgesetzt ist, genießt Asylrecht. Frauenspezifische Asylgründe sind zu berücksichtigen.**
- (2) **Niemand darf in einen Staat abgeschoben werden, wenn stichhaltige Gründe für die Annahme bestehen, daß nach der Abschiebung die in Abs. 1 beschriebenen Maßnahmen drohen.**
- (3) **Kollektivausweisungen von Ausländern sind nicht zulässig.**

Der Schutz vor Verfolgung ist ein bedeutender Rechtsfortschritt im System des allgemeinen Menschenrechtsschutzes seit 1948. Auf dem Sondergipfel in Tampere sind die staats- und Regierungschefs der EU "übereingekommen, auf ein Gemeinsames Asylsystem hinzuwirken, das sich auf die uneingeschränkte und allumfassende Anwendung der Genfer Flüchtlingskonvention stützt" (Schlußfolgerungen des Vorsitzes – Europäischer Rat Tampere, Oktober 1999). Die Aufnahme des Flüchtlingsschutzes in die Grundrechtscharta ist die beste Gewähr, dass die EU ihren eigenen Ansprüchen gerecht würde. Die Zukunft des europäischen Asylrechts hat dabei Auswirkungen nicht nur auf den Menschenrechtsstandard in Europa, sondern auch weit darüber hinaus, wie Jean Noel Wetterwald, Vertreter des UNHCR kürzlich feststellte: "Die Wertegemeinschaft Europäische Union steht hier in der Verantwortung für einen Grundwert, nämlich für die Institution des Asyls, deren Einrichtung man durchaus auch nach den Erfahrungen in diesem Jahrhundert als Antwort der Zivilisation auf die Barbarei begreifen kann." (Vgl. Stellungnahme des "FORUM MENSCHENRECHTE" zur Vorlage bei der gemeinsamen Anhörung von Bundestag und Bundesrat, an der das Diakonische Werk mitgewirkt hat.)

Das Asylrecht bedarf nach Auffassung des Diakonischen Werkes einer Ergänzung im Bereich des Schutzes der Familie. Flüchtlinge müssen am Recht auf Familienleben partizipieren können. Das Diakonische Werk begrüßt deshalb die Formulierung des Artikel 13 des Charta-Entwurfes in der "Jeder"-Form: auch Flüchtlinge im Sinne der Genfer Konvention müssen Teilhaber dieses Rechtes sein.

Zu Artikel 13 verweist das Diakonische Werk im Übrigen auf die Stellungnahme der Arbeitsgemeinschaft der Familienverbände, die dem Konvent vorliegt.

ad 2: Politische Partizipation

Das Diakonische Werk bedauert, daß in den Abschnitt über die "Bürgerrechte" keine Vorschrift über die politische Teilhabe der Bürger durch Vereinigungen und Verbände eingefügt worden ist. Wenn die Absicht der europäischen Institutionen, den "Bürgerdialog" stärker zu strukturieren und die Beteiligung der "Zivilgesellschaft" an der politischen Meinungsbildung zu intensivieren, umgesetzt werden sollen, muß sich dies in der Charta in einem Grundrecht auf Bildung entsprechender Vereinigungen niederschlagen. Ein solches individuelles Partizipationsrecht ist außerdem eine wichtige Ergänzung zu dem in Artikel 15 niedergelegten Grundrecht auf Freie Meinungsäußerung. Das Diakonische Werk schlägt daher vor, in den Abschnitt "Bürgerrechte" nach Artikel D "Recht auf Teilnahme an Kommunalwahlen" folgenden neuen Artikel E einzufügen:

Artikel E Vereinigungs- und Koalitionsfreiheit

Jeder Unionsbürger hat auf Ebene seines Mitgliedstaates und auf der Ebene der Europäischen Union das Recht, Vereine und Gesellschaften zu bilden. Solche Vereinigungen können der Durchsetzung wirtschaftlicher und sozialer Interessen dienen und in Rechtssetzungsverfahren gehört werden.

ad 3: Soziale Grundrechte:

Das Diakonische Werk begrüßt nachdrücklich den in den Schlußfolgerungen des Rates von Köln festgelegten Grundsatz, soziale Grundrechte in die Charta einzufügen. Menschenrechte sind unteilbar. Ihre Unteilbarkeit ist ein Gebot der Menschenwürde. Die Festschreibung sozialer Grundrechte zu verweigern, hieße, die Ausübung der zu beschränken oder gar unmöglich zu machen.

Das Diakonische Werk ist sich bewußt, daß es bei der Gewährleistung der sozialen Grundrechte unterschiedliche Ebenen gibt. Im internationalen Menschenrechtsschutz hat sich dafür folgende Terminologie gebildet: "to protect, to respect and to fulfill": soziale Grundrechte können ihrer Natur nach politische Zielbestimmungen sein, die staatliches Handeln – oder das Handeln der EU – binden, oder justitiable individuelle Rechtspositionen.

Das Diakonische Werk tritt für die Formulierung solcher individuellen justitiablen Rechtspositionen ein. Die Europäische Union steht an der Schwelle ihrer Entwicklung von der Wirtschaftsunion zu einer politischen Union, die alle Aspekte gesellschaftlichen Lebens umfaßt. Nur wenn in dieser Union die individuelle Durchsetzung von Rechtspositionen im sozialen Bereich gewährleistet ist, ist sichergestellt, daß das Wohlergehen des einzelnen Menschen ebensolche Beachtung findet wie die Durchsetzung der Wirtschaftsinteressen im Binnenmarkt.

Besonders nachdrücklich möchte das Diakonische Werk folgende Artikel des Charta-Entwurfes unterstützen bzw. kommentieren:

Artikel II Berufsfreiheit.

Jede Person hat das Recht, ihren Beruf und ihr Gewerbe frei zu wählen und auszuüben, unbeschadet der die Freizügigkeit von Personen betreffenden Bestimmungen des Vertrages.

Gleichberechtigte Teilhabe am Berufs- und Erwerbsleben ist ein maßgeblicher Bestandteil eines menschenwürdigen Lebens. Sie bedeutet Teilhabe am gesellschaftlichen und sozialen Leben und damit Integration in die Gesellschaft. Aufgrund des oben beschriebenen Selbstverständnisses ist es dem Diakonischen Werk ein zentrales Anliegen, daß jeder ein individuelles Recht auf Zugang zum Beruf hat. Dementsprechen unterstützt das Diakonische Werk nachdrücklich das in Artikel X formulierte Recht auf Berufsausbildung und Berufsberatung.

Artikel XIII Daseinsvorsorge

- (1) Jede Person hat entsprechend den jeweiligen Gegebenheiten der einzelnen Staaten Anspruch auf staatliche Daseinsvorsorge, insbesondere auf Sozialleistungen von notwendigem Umfang**
- (2) Jede Person hat das Recht, soziale Dienste ihrer Wahl gemäß ihrer Weltanschauung in Anspruch zu nehmen.**

Staatliche Daseinsvorsorge ist die wichtigste Ausformung des Grundsatzes, daß jeder Mensch ein seiner Würde entsprechendes Leben führen kann. Die europäischen Gesellschaften gründen sich auf den Grundsatz der Solidarität. Jeder muß gleichberechtigten Zugang zu Leistungen der Daseinsvorsorge und des sozialen Schutzes haben. Das schließt mit ein, daß die Bereitstellung dieser Leistungen von allen Mitgliedern einer Gesellschaft getragen und deswegen als staatliche Aufgabe definiert wird. Die Ableitung dieses Rechtes aus der Menschenwürde gebietet es, einen Rechtsanspruch auf Daseinsvorsorge zu formulieren und die Bereitstellung von Leistungen der Daseinsvorsorge und sozialer Dienste nicht den freien Marktkräften zu überlassen. Da soziale Dienstleistungen auch mit Wertorientierungen verknüpft sind, ist die Wahlfreiheit zwischen verschiedenen Angeboten Äquivalent des Artikel 14 ad 1) Gedankens- Gewissens- und Religionsfreiheit.

Artikel XIV Recht auf garantierte Mindestsicherung

Jeder Person muß entsprechend den jeweiligen Gegebenheiten der einzelnen Staaten eine angemessene soziale Unterstützung gewährt werden, die es ihr ermöglicht, ein menschenwürdiges Leben zu führen. Die Mindestsicherung soll darauf ausgerichtet sein, zur Selbsthilfe zu befähigen.

Das Recht auf garantierte Mindestsicherung ist ein notwendiges Korrelat zu dem Rechtsanspruch auf Leistungen der Daseinsvorsorge: gerade die Ärmsten in einer Gesellschaft dürfen – wiederum unter Berufung auf die Menschenwürde – nicht von der Solidarität der Gemeinschaft ausgeschlossen werden. Im bundesdeutschen Sprachgebrauch ist die Verwendung des Begriffs "Sozialhilfe" für eine garantierte Mindestsicherung an dieser Stelle mißverständlich, weil sie auf die Sozialleistung Sozialhilfe verweist, die in der Bundesrepublik nur einem ausgewählten Personenkreis gewährt wird. (z.B. keine Asylbewerber). Angelehnt an die "Empfehlungen des Rates über gemeinsame Kriterien für ausreichende Zuwendungen und Leitungen im Rahmen der Systeme der sozialen Sicherung" wird hier der Ausdruck "garantierte Mindestsicherung" empfohlen.

Die garantierte Mindestsicherung bezieht sich nicht nur Einkommen und damit auf Geldleistungen, sondern z.B. auch Beratung zur Sicherung von Rechtsansprüchen. Sie muß auf die individuellen Bedürfnisse ausgerichtet sein, weil gerade in Notsituationen der individuelle Bedarf stark variiert. Die Ergänzung, daß die Mindestsicherung an dem in dem Mitgliedstaat geltenden Minimum ausgerichtet sein soll, betont die Bedeutung der Mindestsicherung als Instrument zur gesellschaftlichen Integration.

Das Diakonische Werk schlägt außerdem die Ergänzung vor, daß die Unterstützung der Aktivierung von Selbsthilfe dienen soll. Ausgehend von der protestantischen Sozialethik und der katholischen Soziallehre ist von unserem Verständnis her jeder gehalten, nach seinen Mitteln selbst für sich zu sorgen; ist er dazu nicht fähig, bekommt er die Unterstützung, die ihn wieder in die Lage zur Selbsthilfe bringt.

Artikel XV Recht auf Zugang zu Gesundheitsleistungen

Jede Person muß entsprechend den jeweiligen Gegebenheiten der einzelnen Staaten Zugang zu umfassenden individuell notwendigen Gesundheitsleistungen haben.

Das Recht auf Gesundheitsleistungen sollte so umfassend wie möglich formuliert und interpretiert werden, da Zugang zu Leistungen der Behandlungspflege allein nicht ausreichend sind. Auch ist die Präzisierung wichtig, daß medizinische Bedürfnisse individuell höchst verschieden sind und dem Einzelbedarf entsprechen müssen.

Jürgen Gohde
Präsident

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 18 April 2000**CHARTE 4231/00****CONTRIB 105****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a contribution by the Association of Women of Southern Europe (AFEM) with a view for the hearing on the 27 April 2000. ¹

¹ This text has been submitted in French and English.

AFEM
ASSOCIATION DES FEMMES DE L'EUROPE MÉRIDIONALE
ASSOCIATION OF WOMEN OF SOUTHERN EUROPE

ADDENDUM TO THE PROPOSAL OF AFEM (CONTRIB 42)
FOR THE HEARING OF 27 APRIL 2000

The AFEM wishes to thank the Convention for admitting it to the hearing and welcomes the advancement of the Convention's work. The AFEM recalls that it has been among the first NGOs which submitted contributions to the Convention: a Declaration of its Board (CONTRIB 16), a Proposal of provisions (CONTRIB 42) and a declaration of its General Assembly (CONTRIB 55), in French and English.

Following the evolution of the Convention's work and on the occasion of the hearing of 27 April 2000, the AFEM has the honour to submit an Addendum to its Proposal (CONTRIB 42) which concerns certain articles of CONVENT 13, 17, 18 and 19.

All the proposals of AFEM are supported by the *European Women's Lobby* and the *Marangopoulos Foundation of Human Rights*.

• **CONVENT 13**

The fundamental principle of gender equality in all areas

Gender equality is a fundamental principle of Community law, a task of the Community and an objective, which the Community is obligated to promote in all its activities, and a fundamental human right (CJEC, EC Treaty)¹.

We welcome the proposal of Mr. Guy Braibant (CONTRIB 63, Article I) to proclaim this general principle in all areas, due to its importance, by one of the first Articles of the Charter and then to apply it in economic and social matters. This proposal reinforces the coherence of the Charter. It is, however, necessary to complement it as follows:

“1. *Substantive equality between women and men must be ensured and applied in all areas; any direct or indirect discrimination on the ground of sex is prohibited.*”

“2. *Temporary positive measures are indicated, in order to improve, in the first instance, the position of women, until substantive equality between women and men is achieved.*”

Comments: In this way the Charter will implement CJEC case law and will respond to the findings of the competent Community and international organs that general non discrimination clauses do not suffice to eradicate discrimination on the ground of sex and to establish substantive equality between women and men.

Sex differs fundamentally from the other grounds of discrimination mentioned in Article 13 EC Treaty. Discrimination on the ground of sex is of a particular nature. It is due to prejudice which has infiltrated social and economic structures and affects mainly women. Women are neither a minority nor a group, but one of the two forms in which the human being is incarnated, and they often suffer multiple discrimination, on the ground of sex and on other grounds.

¹ Cases 149/77 *Defrenne III* [1978] ECR 1509, C-270/97 *Sievers* 10.2.2000; Arts. 2, 3(2) EC Treaty.

This is why temporary positive measures are indicated. These do not constitute discrimination, but means for achieving substantive or *de facto* gender equality, according to Article 4(1) of the Convention for the elimination of discrimination against women and Article 141(4) EC Treaty. Declaration No 28 annexed to the Amsterdam Treaty specifies that these measures “*should, in the first instance, aim at improving the situation of women*”. Such measures are also provided by an increasing number of national Constitutions² and are recommended by the competent Community and international organs. They must be applied until prejudice is overcome and substantive equality between women and men is achieved. - If the Charter does not provide for such measures, it will constitute a regression with regard to Community and international “*acquis*” (see our CONTRIB 42, Introductory Note).

The particular nature of discrimination against women and the aforementioned character of positive action have been very recently confirmed by the CJEC judgment in *Badeck* (Case C-158/97, 26.3.2000).

ARTICLE 3: Right to the respect of physical and mental integrity. This right implies the absolute prohibition:

- of *eugenic practices*, with or without the consent of the person concerned;
- of the *cloning of human beings*, with or without the consent of the person concerned;
- of the *trading in the human body* or any *part* thereof (we have proposed that these be declared “*not for trade*”), with or without the consent of the person concerned.

Comments: It is indispensable to specify in all cases that the consent of the person concerned is irrelevant. In the 1st and 2nd case this mention is required by bioethics. In the 3rd case it is obvious that it is impossible to know whether the consent is freely given. The prohibition of trading should not be limited to the areas of medicine and biology, but should be of a wider scope, including also the prohibition of trafficking in human beings, namely women and children, the transnational dimensions of which is a serious concern of the EU, as well as the prohibition of trading in children with a view to adoption and the renting of surrogate mothers (see Article 1 of our CONTRIB 42 and comments thereon).

ARTICLE 4: Prohibition of torture and inhuman or degrading treatment or punishment. Sexual mutilation (which, as it is well known, is practised even on European territory) and any other form of physical or mental violence, including violence within the family, should be expressly prohibited (see our CONTRIB 42, Article 2).

ARTICLE 16(3). Right to education. “*The right of parents to have their children educated and taught in accordance with their religious and philosophical convictions shall be guaranteed, to the extent that the latter do not contravene the values and rights recognised by this Charter. In exercising this right parents shall act in the child’s best interest*” (the last sentence adopts a proposal of Mr. G. Papadimitriou, see CONTRIB 97).

² Constitutions: German [Art. 3(2)], Austrian [Art. 7(2)], Portuguese [Art. 9(h)], Finnish [Art. 6(4)], Swedish [Chapter 2 §16], French [Art. 3 and 4], Greek (under discussion in Parliament).

ARTICLE X. Limitations. Such an Article, if it is to be included, should:

- mention to which Articles it refers and, in any event, exclude at least Articles 1, 2, 3, 4, 5(1), 7, 8, 9 and the principle of gender equality on which neither the EC Treaty nor most of the Constitutions allow limitations³;
- be complemented as follows: ***“Without prejudice to provisions affording more protection than this Charter or the European Convention on Human Rights or any other international instrument relating to human rights and freedoms, ratified by the Member States, as well as to the provisions of the Constitutions and legislation of Member States relating to such rights and freedoms...”***

See our CONTRIB 42, Article Z, and Comments thereon, according to which:

The EU cannot ignore the international obligations of its Member States without losing its credibility both with its citizens and the international community, the more so as it considers itself and must be a Community based on the rule of law and wishes to play a leading role in the respect and promotion of human rights around the world. It is to the universal values and principles that Article 6(1) EC Treaty refers. This Article, as proposed, is also in line with the Community and international principle according to which Community and international standards are a minimum which may be surpassed by national law and may in no case serve as an excuse for lowering the existing national level of protection (see also Art. 137(5) EC Treaty).

ARTICLE Y. Level of protection. This article should be complemented as follows:

“No provision of this Charter may be interpreted as placing restrictions on the protection afforded by the European Convention on Human Rights or any other international instrument relating to human rights and freedoms, ratified by the Member States, as well as by the provisions of the Constitutions and legislation of Member States relating to such rights and freedoms” (see our CONTRIB 42, Article Z, and Comments thereon as quoted *supra* under Article X).

FIELD OF APPLICATION: See our CONTRIB 42, introductory Article:

“The Union and the Community as well as Member States secure to everyone within their jurisdiction the effective enjoyment of the rights and freedoms defined in the following Articles, which may be relied upon as against their organs and institutions as well as against individuals, in all areas of Union and Community jurisdiction.”

Comments: This Article specifies that individuals have not only rights, but also obligations. Moreover, the term “jurisdiction” means that the Charter applies in all areas that member states have yielded, or will yield in future, to EC or EU jurisdiction.

• **CONVENT 17 - RIGHTS OF CITIZENS**

ARTICLE A: This Article should be complemented as follows:

“The Union and its institutions are founded on the principles of liberty, democracy, respect of human rights and equality between women and men⁴ and the rule of law, principles which are common to the Member States.”

³ The Greek constitutional provision that allows exceptions, subject to strict conditions, is in the course of being abolished in order to be replaced by a provision relating to positive action

⁴ Article 3(2) EC Treaty, CJEC case law [Case 43/75 *Defrenne II* [1976] ECR 455: Article 119 (now 141) EC Treaty “forms part of the foundations of the Community”].

CONVENT 18 - SOCIAL RIGHTS

ARTICLE I. Equality between women and men. This Article should be complemented as follows, in accordance with the general principle of gender equality (*supra* A. I):

“1. Substantive equality between women and men must be ensured with regard to employment and social protection; any direct or indirect discrimination on the ground of sex is prohibited. Are namely ensured the equal rights of men and women to work freely chosen or accepted, to the same working conditions, to fair and equal pay for work of equal value, to social security and assistance for themselves and their family.”

“2. For the purposes of the principle of equal pay between men and women for work of equal value, “pay” means.....(insert the rest of Article 141(2) EC Treaty).

“3. Temporary positive measures are indicated, in order to improve, in the first instance, the position of women, until substantive equality between women and men is achieved.”

Comments: The 1st and 2nd paras. implement the “*acquis Communautaire*”. In respect of the 3rd para. see *supra* Comments under A. I (principle of gender equality).

ARTICLE VIII: Rights of children. According to contemporary conceptions, which are expressed in the Convention on the rights of the child, the child should not be only an object of protection, but furthermore a subject of rights. **SPECIFIC ARTICLE:**

“1. Children shall be treated as individuals and shall be permitted to influence matters affecting them according to their degree of maturity.” (Proposal of Mr. Paavo Nikula inspired from Article 6 of the Finnish Constitution, CONVENT 8)

“2. Every child, without any distinction in his/her respect or in respect of his/her parents, has the right to a legal existence, to the protection of his/her interests and to the enjoyment of the rights and freedoms defined in Articles.....of this Charter.”

(the Articles relating to rights that do not presuppose the age of majority should be cited; see our CONTRIB 42, Article 21).

ARTICLE XI: Right to protection of maternity. This right constitutes an expression not only of Article 137 (protection of health and security of workers), but also of Article 152 (high level of protection of human health) EC Treaty. It is inherent to human dignity and of capital importance for the very survival of Europe. It is thus wider than the right to maternity leave and belongs to every woman, not only employed women. This is why we have proposed the following Article which takes also into consideration of CJEC case law on Directive 92/85 (maternity protection) and Directive 76/207 (equal treatment). See our CONTRIB 42, Article 22:

“Every woman, without any distinction, has the right to the protection of pregnancy and maternity, including the right to sufficient maternity leave, at least of the duration provided by Community law and remunerated through social security benefits and to the maintenance, during this leave, of her rights relating to her employment, as well as to be guaranteed protection against working conditions which may harm her and/or her child, before or after confinement, and against ailments which have their origin in pregnancy, confinement or breast-feeding.”

Comments: By referring to Community law as concerns the length of the leave we ensure that the above *minimum* rights shall be adapted to any Community law evolution.

ARTICLE XII. Rights of parents. The social rights of parents should not be limited to parental leave. See our CONTRIB 42, Article 23, to which should be added that: “*the organisation of working time must ensure the conciliation of family and professional life*”. As to the length and remuneration of parental leave, see *supra* our proposals on maternity protection.

- **CONVENT 19**

ARTICLES XIII-XV. We agree with Mr. G. Braibant that the rights to social security and health must belong to every person and cover also pregnancy and maternity (see *supra* our Art. XI). The guarantee of an “adequate” level should remain.

LANGUAGE: The expressions used in the Charter should either be sex neutral or refer to both sexes (e.g. he/she, his/her).

- **FINAL DECLARATION:** The AFEM supports the proposals of the **EURONET** on the rights of the child (CONTRIB 22) as well as those of the European Bureau for Lesser Used Languages (**EBLUL**, CONTRIB 50).

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Editors' note to CHARTE 4232/00 ADD 1,
**Contribution by the International Federation of
Human Rights (FIDH) with a view to the hearing
on 27/04/00:**

The INIT FR version was dated 18 April.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 7 June 2000**CHARTE 4232/00****ADD 1****CONTRIB 106****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter the English version of the contribution by the International Federation of Human Rights (FIDH) with a view to the hearing on 27 April 2000. ¹

¹ This text has been submitted in English and French languages.

fidh

Fédération Internationale des Ligues des Droits de l'Homme

ORGANISATION INTERNATIONALE NON GOUVERNEMENTALE AUNT STATUT CONSULTATIF AUPRES DES NATIONS UNIES, DE L'UNESCO,
ET DU CONSEIL DE L'EUROPE ET D'OBSERVATEUR AUPRES DE LA COMMISSION AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES

INTERNATIONAL FEDERATION
OF HUMAN RIGHTS

FEDERACION INTERNACIONAL
DE LOS DERECHOS HUMANOS

الائتلاف الدولية لحقوق الانسان

FIDH INTERVENTION BEFORE THE CONVENTION Hearing of April 27, 2000

« **All human rights are universal, indivisible and interdependent and interrelated**» (par. 5 of the Vienna Declaration and Programme of Action, 1993).

These words are not rhetoric : they have a very concrete meaning and real consequences – notably on the elaboration of the new instrument currently drafted at the EU level.

1. **Universality** means that all individuals under the jurisdiction of the European Union Member States must benefit from the fundamental rights stated in the Charter. It would be inadmissible for FIDH that the Charter would establish categories of beneficiaries, distinguishing between European citizens, legal residents, and illegal immigrants. As a rule, the rights enshrined in the Charter should apply to all human beings; only very limited exceptions will possibly be provided for certain specific rights (right to vote and of being elected, diplomatic protection). The rights limited to European citizens should be exceptions.

In this regard, FIDH calls on the Convention to seize the occasion of the drafting process of the Charter to propose the extension of the European citizenship to persons residing legally in a member State for at least five years.

2. The universal character of human rights also means that they represent a **common standard of achievement for all peoples and all nations**. If the Council of Europe, followed by the EU, have been built on the basis of human rights, this does not mean that these values are proper to Europeans only ; that they are their own attribute or an original characteristic. Human rights lay the foundation of the identity of all human beings, and not only of Europeans. The Universal Declaration of Human Rights was adopted even before the European Community was born.

It is true that the EU is composed of strong democracies and that people living in its territory benefit from a particularly developed system of guarantees of their rights. However, people from other regions of the world also aspire to the acknowledgement of their fundamental rights, and every single day, a lot of them put their life or their security in danger for the sole reason that they appeal to the respect of these universal human rights.

If the external policy of the EU is based on human rights and democratic principles, it is precisely because these are universal values – and not because they are specifically European ones.

As the EU is elaborating a new instrument for the protection of human rights, it should reaffirm, more than ever, the universal character of these rights, as resulting from the United Nations and ILO instruments. These instruments are the everyday reference of human rights organisations and human rights defenders all around the world. By letting believe that human rights represent a European specificity, the EU would weaken its capacity of action in favour of human rights at the international level, facing the risk to be accused of « cultural imperialism » by authoritarian regimes.

In this perspective, the submission of the European institutions to the external control of the European Court of Strasbourg would have a determinant symbolic impact vis-à-vis third States and their nationals. **The Charter must not be a pretext allowing the European institutions to withdraw from all external control. The elaboration of a Charter and the accession to the relevant instruments of the Council of Europe are two parallel and complementary processes.**

3. Human rights are **indivisible and interdependent**. The terminology used has no incidence in this regard :the expressions « human rights », « rights of the person » or « fundamental rights » always refer to the same rights. In international law, the only distinction admitted amongst human rights is the one distinguishing between rights which cannot be derogated, whatever the circumstances (war, etc.), and the other fundamental rights (cf. art. 15.2 ECHR, art. 4.2 of the International Covenant on civil and political rights, art. 3 common to the four Geneva Conventions of 1949). The other distinctions sometimes referred to are not valid and their only effect is to increase confusion.

The rights are **indivisible** : they are of equal importance, and their implementation is closely linked, being civil and politic rights, or economic, social and cultural rights. Therefore, it is desirable that the future Charter consecrate all these rights.

4. The accession of the EU to the European Convention for the Protection of Human Rights (ECHR) and to the revised European Social Charter (ESC) remains an essential point that must be kept in mind while elaborating the Charter.

Regarding the accession to ECHR :

The European Parliament has rightly stressed the dangers, for legal security as well as for the coherence of the system of human rights protection in Europe¹, that might result from a Charter that would be binding. Indeed, the highest carefulness is necessary to avoid the adoption of the Charter making the European jurisdictional system obscure to citizens, already often ignorant of the existing procedures.

Submitting Community and Union acts to an external control, as for the acts of sovereign national authorities and jurisdictions, could reassure constitutional Courts about the existence of an equivalent protection of fundamental rights in the Community legal body. The risk that constitutional Courts of some States could question the primacy and uniform application of community law, deciding to check themselves the conformity of community acts to fundamental rights, would therefore be reduced.

As regards the risk of **divergent – or even contradictory - interpretations**, adopted by the European Courts, adhering to the ECHR and the external control it entails could limit the apparition of such incoherence, and have a preventive effect, binding the Community institutions to take more care over the respect for ECHR when preparing community legislation.

¹ « Insists that the rights contained in the Charter must in principle be made justiciable by the European Court of Justice, after careful consideration concerning, and adequate legislative forestalling, the multiple potentially conflicting jurisdiction as between the European Court of Human Rights, the European Court of Justice, and the highest Constitutional Court of the Member States » EP resolution on the Area of Freedom, Security and Justice, 15 Febr. 2000). « Underlines the need to establish a clear hierarchy of legal rules and a proper definition and delimitation of the powers of the Court of Justice of the European Communities, the Court of Human Rights and the national courts, in order to prevent different legal standards from being applied ». Resolution on the report on Human Rights in the EU, March 16, 2000, point 87. See also : Memorandum on the EU Charter of fundamental rights by the Standing Committee of experts on international immigration, refugee and criminal law, February 2000, p. 7 et 11 : « The EU Charter will bind the domestic authorities where they implement Community law or derogate from it. This means that the domestic courts may be confronted with two distinct standards : the EU Charter, as interpreted by the ECJ, and the ECHR, as interpreted by the European Court of Human Rights. This underlines the importance of avoiding diverging interpretations at all costs... the most rational and transparent solution remains accession by the EU as such to ECHR system ».

The European Parliament has several times requested the accession of the European Communities, and more recently, of the EU, to the ECHR². The Parliamentary Assembly of the Council of Europe has also asked for it³.

It is important to note that the attribution of the legal personality to the Union and its accession to the ECHR appear amongst the issues the Portuguese Presidency might propose to the European Council of June to be added to the mandate of the IGC (inter-governmental conference).

FIDH considers that, by adopting a Charter of fundamental rights and by including it in the Treaty of the EU, Member States establish fundamental rights as an object (objective) of the EU. This means that the accession of the EU to the instruments of the Council of Europe will henceforth be possible, by virtue of Article 308 of the EC Treaty (former article 235).⁴

In fact, in its opinion of March 28, 1996, the Court of Justice of the European Communities (ECJ) stated that, if no specific competence - being express or implicit –confers generally to the Community institutions the power of promulgating rules in the field of human rights or to conclude international conventions in this field, one had to consider whether art. 235 of the Treaty (new art. 308) could form a legal basis for the accession of the European Communities to the ECHR. The Court considered that the consequences of such an accession would have gone beyond the limits of art. 235, and therefore would have supposed a previous modification of the Treaty, because the general frame resulting from the treaty provisions, and especially those defining the missions and actions of the Community, did not explicitly refer to human rights.

Taking into account this case-law, FIDH considers that if they include in the Treaty a reference to the new Charter, or even the full text of the Charter, Member States will remove the obstacle to the accession of the European Communities to the ECHR.

By adopting the Charter, Member States would take a big step towards the accession to ECHR. No fundamental objection to this accession will remain.

In particular resolution on respect for human rights in the European Union, 16 March 2000, point 88, « Urges Member States to give the EU legal personality to enable it to accede to the ECHR ». Resolution on the Charter of fundamental rights, 16 March 2000, point S and art. 15 : « Whereas the Union's access to the European Convention on Human rights following the necessary amendments to the Treaty on European Union would represent an important step towards the strengthening of the protection of fundamental rights in the Union... calls upon the IGC to enable the Union to become a party to the ECHR so as to establish close co-operation with the Council of Europe, whilst ensuring that appropriate action is taken to avoid possible conflicts or overlapping between the Court of Justice of the European Communities and the European Court of Human Rights. »

³ Resolution of 25/01/2000

⁴ Art. 308 : If action by the Community should prove necessary to attain, in the course of the operation of the common market, one of the objectives of the Community and this Treaty has not provided the necessary powers, the Council shall, acting unanimously on a proposal from the Commission and after consulting the European Parliament, take the appropriate measures.

Some of the Member States could consider that the accession to ECHR would imply in-depth modifications of the European system of protection of human rights (constitutional level). In that case, FIDH calls for the insertion in the Treaty, on the occasion of the Inter-governmental Conference, of an express provision foreseeing the possibility for the EU to accede to the ECHR.

Regarding the accession to the revised European Social Charter :

It is appropriate to distinguish between the accession to the ECHR and to the revised ESC because the monitoring mechanisms established by these instruments are completely different ; This has as consequences that (1) the reasons calling for these two ratifications do not present the same urgency and (2) these accessions do not have comparable implications on the revision of the Treaties.

- (1) The ECHR comes together with an extremely elaborated jurisdictional mechanism, which generates a risk of incoherence and confusion if the EU adopts a binding Charter with its own jurisdictional mechanism. This powerful argument in favour of the accession to the Charter is only valid to a lesser extent concerning the accession to the revised ESC, which is endowed of a less developed monitoring mechanism than the ECHR. There is however some risk of contradictory decisions between the ECJ (when it will be responsible for monitoring the respect of the future Charter) and the European Committee for social rights (which controls the respect of the ESC). The accession of the EU to the ESC is therefore desirable, but not so urgent as the accession to the ECHR – notably because all the EU Member States have not yet ratified the revised ESC.
- (2) The accession of the EU to the revised ESC would not have consequences of « constitutional scope » (cf. opinion 2/94 of 28 March 1996, ECJ), precisely because the monitoring mechanisms set up by the revised ESC are much less developed than those set up by the ECHR. The EU should therefore be able to ratify the revised ESC without any previous modification of the Treaties.

5. The competence of the EU has considerably increased, notably since the entry into force of the Treaty of Amsterdam. The Charter should therefore cover the three pillars of the EU Treaty, including the common foreign and security policy and the judicial and police co-operation in criminal matters (which are part of the competence of the Union and not of the European Community – 3rd pillar). Indeed, the matter would be of a Charter of fundamental rights of the *European Union* - and not of the European Communities – covering consequently **the three pillars of the European Union Treaty**. This orientation corresponds to the political will expressed on the occasion of the European Councils of Cologne and Tampere, where it has systematically been question of a Charter of fundamental rights of the European Union. Furthermore, that understanding answers the will of increasing visibility in the field of fundamental rights and of increasing legal security.

The same reasoning is valid concerning the accession to the ECHR and to the revised European Social Charter. **The European Union should accede as such** to the relevant instruments of the Council of Europe, in order to ensure that all the acts posed by the European institutions that could have consequences on the enjoyment of fundamental rights would be submitted to the control of the Court of Strasbourg. The next inter-governmental Conference should be the occasion to confer to the EU the legal personality, in order that it could accede as such to the instruments of the Council of Europe.

6. Many people, to begin with the ECJ itself, have recognised that the right of individuals to appeal to the Court is too restricted, which is particularly unfortunate in the field of the protection of fundamental rights. FIDH considers that if the drafters of the Charter do not broaden the conditions of introduction of individual appeals before the Court - which would lead to overburden the Court - , an alternative solution could be to **allow the petition of collective interest** (by NGOs) in the cases where individual appeal is not admissible (e.g. : claim to strike out a ruling of general application). This mid-way solution would allow to avoid a congestion of the Court, that would lead to an excessive extension of procedures, violating therefore the right to a fair trial. This would also guarantee a jurisdictional protection of all the rights included in the future Charter, avoiding that some cases escape from all jurisdictional control. Besides, the environmental NGOs have also asked for such a mechanism (in the field of environment, damages very seldom affect directly and individually one person only, but have, on the contrary, collective consequences⁵).

The alternative solution generally presented consists in creating a mechanism of *preliminary ruling from ECJ to ECHR* for the questions related to the interpretation of the ECHR or to the compatibility of Community law with the Convention. That proposal does **not seem satisfactory**. First, it does not seem easily feasible, because of the lengthening of the procedures it would imply. Second, it is not desirable for substantial reasons : ECHR is not supposed to decide *in abstracto* on the compatibility of the internal law of a State party with the ECHR. Furthermore, to entrust an international jurisdiction external to the Community legal order the power of establishing the invalidity of an act of Community law would go beyond what the accession to ECHR requires. It would almost certainly derogate from the principle of the autonomy of the legal order of the European Communities. The EC would indeed be deprived of the possibility to decide on the ways to execute a possible decision of condemnation issued by ECHR.

FIDH SIX POINTS OF RECOMMANDATIONS:

1. no categories of beneficiaries of rights
2. to recall strongly the universal character of human rights
3. to consecrate all human rights (civil, political, economic, social and cultural) within the Charter, and propose an increase of the level of protection of fundamental rights
4. to include the Charter within the Treaties in order to confer it a binding character and open the door to the accession of the EU to the relevant instruments of the Council of Europe, and at least to the ECHR
5. recognition, to allow such an accession, of the legal personality of the Union
6. allowing NGOs to appeal to the ECJ when individual appeal is not possible

⁵ See : « Verdir le Traité III », recently adopted by the main environmental NGOs in preparation of the next IGC, p 7-9.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 18 April 2000**CHARTE 4233/00****CONTRIB 107****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a contribution by the Conference of European Churches with a view to the hearing on the 27 April 2000.^{1 2}

¹ Conference of European Churches, Church and Society Commission, rue Joseph II 174, B-1000 Brussels.

² This text has been submitted in English language only

CONFERENCE OF EUROPEAN CHURCHES

CHURCH AND SOCIETY COMMISSION

THE EU CHARTER OF FUNDAMENTAL RIGHTS - FIRST SUBMISSION TO THE CONVENTION

1 Introduction

- 1.1 The Conference of European Churches brings together 125 Anglican, Protestant, Old Catholic and Orthodox churches throughout the whole of Europe. The task of its Church and Society Commission includes following developments in the institutions of the European Union both on behalf of all the member churches of the Conference and specifically on behalf of those in member states of the Union.
- 1.2 The Executive Committee of the Church and Society Commission has discussed the initial steps towards the drafting of an EU Charter of Fundamental Rights and has made a first comment on certain elements of the Charter. The present document has been developed further following comments by members of the Commission's working groups in the light of developments in the Convention drafting the Charter. As the drafting of the Charter is a dynamic process, this document will be submitted to the plenary meeting of the Commission at the beginning of May 2000 which will discuss the matter further, review developments in the Convention which is drafting the Charter and will adopt any further comment necessary on the Charter.
- 1.3 The document has two sections following this introduction. In the section 2 there are a number of remarks relating to more general aspects of the Charter. In the following section 3 there is a more specific discussion of the issue of freedom of thought, conscience and religion including a suggested wording for an article on this subject. The Church and Society Commission would want to stress that it sees the Charter as an important development in the life of the European Union and its member states. It views it as an opportunity to make the Union more real to all those who live within the European Union by ensuring that they are offered a standard of human rights protection in relation to the Union and all its institutions and policies which is as high as they enjoy *vis à vis* the Member State in which they live.

2 General Comments

- 2.1 On the assumption that the content of the Charter is acceptable, there would be support for **a legally binding Charter**. Even if the drafting Convention has no clear mandate to prepare a legally binding document, the Charter should be more than an exercise containing only political declarations, however solemn, if it is to meet the expectations of people in the Member States. The Charter should be framed in such a way that it can become a binding part of the European Union treaties.

- 2.2 The Charter should be concerned not with an exhaustive list of general rights but should be **directly linked with the actions of the European Union and of member states executing the policies and legislation of the Union**. It should, therefore, cover the Common Foreign and Security Policy and the Co-operation in the Fields of Justice and Home Affairs as well as the European Community. A Charter on these lines would have an added value in clearly stating to people resident on the Union's territory that the Union's activities are at least as much linked to fundamental rights as are those of the Member States, all of which have signed and ratified the European Convention on Human Rights. At present there is technically a lower standard of human rights protection with regard to the actions of the European Union and its institutions than there is in relation to the member states. A natural corollary of this could be to amend the Union treaty to allow the European Union itself to adhere to the European Convention on Human Rights which should remain the minimum reference point for human rights throughout Europe. There would certainly need to be, however, a means of ensuring that there was a procedure to ensure that there was no conflict between the European Court of Justice and the European Court of Human Rights and no sense of there being two standards of human rights in Europe as a whole which could be used to relativise human rights and deny their universality.
- 2.3 As a pan-European body, the Conference of European Churches hopes that the Charter will be of interest throughout Europe and, in particular, it would expect the fullest possible **consultation with and participation of countries currently seeking membership of the European Union**. The proposal of the European Parliament's Commission on Constitutional Affairs that such countries should be given observer status in the context of the Convention and that permanent dialogue may be engaged with them in the context of the European Conference is supported.
- 2.4 The possibility of **direct access by individuals to the European Court of Justice** in case of infringements of rights should be considered. Direct protection of fundamental rights would be seen as an important step towards strengthening judicial control in the EU. An element of direct democracy would then strengthen the relationship between the process of developing of the Charter and deepening the character of European integration. It would be another step towards bringing the European Union closer to those who reside on its territory.
- 2.5 The question of **social, economic and cultural rights** should be considered in an appropriate way. The churches have a history, at least in recent times, of arguing for social justice and would welcome extensions of rights which give effect to that aim. It is recognised, however, that defining what is appropriate is a difficult task especially if the Charter is to be legally binding. It is essential that any rights granted in a legally binding Charter must be defined in such a way that they can be enforced. Thus provisions relating to equal treatment between women and men, the protection of children and young people and the right to social assistance clearly be made enforceable. It is important, however, that such rights should be expressed in sufficiently general way that the Charter does not have to be revised every time standards are raised. There must be a balance between precision and generality.

- 2.6 **Fundamental Rights listed in the Charter should not be limited automatically to EU citizens.** Rights of non-EU citizens, migrants, people who are nationals of third countries and asylum seekers need to be considered and there is a need to examine each provision carefully to see whether it requires to be limited to EU Citizens with it is hoped the presumption that whenever possible rights should be extended to the widest group possible. A number of particular concerns are found in this area relating to the enjoyment of the right to asylum and the need for it to have a priority over financial and administrative practice. While it would be unrealistic for persons on the territory of the Union without appropriate documentation to have every right, they are at least entitled to the absolutely fundamental right of being treated fairly and with dignity. These are issues which the Church and Society Commission is currently following up with the Churches Commission for Migrants in Europe.
- 2.7 Nevertheless, there should be a discussion as to whether the preparation of the Charter should also be taken as an opportunity to define the **rights of Citizens of the European Union** so as to give a real content to the concept first expressed in the Treaty on European Union in 1992. For example, consideration could be given to a right for Citizens of the European Union to vote in one of the member states to which they have a relationship at all levels in addition to their existing right to vote in the lowest level of local elections and in elections to the European Parliament.

3 **Freedom of Thought, Conscience and Religion**

- 3.1 Christian churches along with other communities of faith and conviction have an interest to see a provision in the Charter on **freedom of religion and the right to express faith or conviction individually or collectively.** At present the proposals being discussed in the Convention concentrate on statements of a positive character and it is noted that it will later address the question of general or specific clauses expressing limitations on the exercise of rights. For the moment the Church and Society Commission has followed the same pattern and would want to return to the question of limitation clauses at the time when the Convention discusses them.
- 3.2 The following wording is proposed for article 14 of the Convention as an alternative to the text currently being discussed by the Convention:

Everyone has the right to freedom of thought, conscience and religion. Freedom of religion includes the public and the private, the individual and the corporate manifestation of belief as well as the right of churches and religious communities to organise and to administer their own affairs according to the laws of the Member States.

- 3.3 The following **statement of reasons** supports this proposal. Actions of the European Union not only affect how individuals exercise fundamental rights but also religious institutions, especially churches and established religious communities. The European Commission on Human Rights linked to the Council of Europe has in several statements emphasised the right of churches and religious communities to appeal under Article 9 of the European Convention of Human Rights in their own right and not only on behalf of their members. In doing so the Human Rights Commission has in fact recognised that, under Article 9, churches and religious communities can be considered as principals. To avoid ambiguity in law, it is therefore appropriate to include the praxis of these statements in the formulation of Article 14 of the EU Charter of Fundamental Rights. Furthermore the European Union is bound by the Declaration No. 11 annexed to the Treaty of Amsterdam concerning the status of churches and philosophical and non-confessional organisations. The status which churches and religious associations and communities have in Member States under national law should be respected and not prejudiced. The same applies to philosophical and non-confessional organisations.
- 3.4 Churches and religious communities in the Member States can be organised in many different ways and have different relationships to the state. Such structures and relationships can sometimes be regulated by law or through Church/State agreements. Many churches and religious communities have a high degree of autonomy in organising and administering their own affairs. The way in which new religious and quasi religious communities acquire established status varies from Member State to Member State. It is vital, therefore, to indicate in the Charter how the legal status in the Member States hinders actions in the Union. A reference to national law would be parallel to the proposed wording of Article 13 of the Charter dealing with family life. The right to marry and start a family is also regulated very differently in each Member State and there is, therefore, reference to national law in Article 13. In the same way reference must also be made here to the national law in the Article 14 of the Charter.

April 2000

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DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 2 May 2000**CHARTE 4234/00****CONTRIB 108****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a submission by the General Council of the Bar of England and Wales.^{1 2}

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² This text has been submitted in English language only.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

SUBMISSION BY THE GENERAL COUNCIL OF THE BAR OF ENGLAND AND WALES [1]

WHAT IS THE CHARTER FOR?

1. An EU Charter of Rights means different things to different people. The purposes which might be served by such a Charter, not all of them consistent with one another, include:

- * Publicising existing rights
- * Guaranteeing new rights
- * Cementing the supremacy of EU over national law
- * Providing the basis for an EU Constitution
- * “Bringing Rights Home” from Strasbourg to the EU

2. The first and most modest of those purposes is suggested by the Presidency Conclusions of the Cologne Council of 3 and 4 June 1999, which identified the need for a Charter to “consolidate” the fundamental rights applicable at Union level “in order to make their overriding importance and relevance more visible to the Union’s citizens”. It was pressed by Lord Goldsmith QC, the UK Government representative at the second plenary meeting of the Drafting Body on 2 February 2000. [2]

3. The more ambitious aim of guaranteeing new rights also derives support from the Cologne and Tampere Conclusions. It is difficult to see why there would need to be discussion of whether the Charter should be integrated into the Treaties, or why such an august Drafting Body should have been convened, [3] if the purpose of the Charter was limited to a publicity exercise of the kind envisaged by the United Kingdom Government. [4] The European Parliament has called for the Charter to have “an innovative character”, [5] and the President of the European Commission has described the drafting of the Charter as providing “a unique opportunity to set up a coherent and effective system of human rights protection in Europe” . [6]

4. The other three purposes identified are concerned more with constitutional matters than with the protection of human rights.

5. The third purpose – cementing the supremacy of EU over national law – recalls the jurisprudence of a number of national constitutional courts, most famously the German Federal Constitutional Court in its Solange I and Solange II cases, to the effect that the supremacy of Community law will be acknowledged only to the extent that the Community provides equivalent protection of fundamental rights to that provided under national constitutional law. [7] The decisions of the German and Danish Supreme Court in their Maastricht cases demonstrate the continued importance of this issue. [8]

6. As to the fourth purpose, the European Parliament has referred to “a mandatory fundamental rights system” as “a fundamental step towards providing the European Union with a democratic constitution”. [9] In the words of the Danish delegate to the Drafting Body, Eurosceptic MEP Jens-Peter Bonde: “Whether we like it or not, we are busy drawing up a Constitution”. [10] The consequences of this are potentially far-reaching and are considered further below. [11]

7. The fifth possible purpose – “bringing rights home” from Strasbourg – engages the delicate relationship between the European Convention of Human Rights and the EU. The adoption of a binding Charter may diminish the effectiveness of the arguments which have consistently been made by the Community institutions and a substantial number of Member States for EU accession to the Convention. [12] It might also give the ECJ the latitude to develop its own human rights jurisprudence, distinct from that of Strasbourg. [13] There are implications here not only for the EU but for the coherence of human rights protection in a greater Europe which already stretches from the Atlantic to the Pacific. [14]

THE NEED FOR AN EU CHARTER

8. Whether a Charter is needed depends upon what purpose one wishes it to serve. A comprehensive and fully enforceable Charter of Human Rights might well be considered necessary or at least highly desirable by anyone wishing to see the construction of a federal European Union on the model of a nation state. It would also strengthen the hand of the ECJ as against both those national constitutional courts which have challenged its supremacy on human rights related grounds, and the European Court of Human Rights which has indicated that it will assert jurisdiction over acts falling within the Community sphere if and to the extent that human rights protection in the EU is lacking. [15]

9. We express no opinion on the essentially political question of whether those developments would be desirable or not. We do however comment from a human rights perspective on the issues raised by the first two purposes identified in the opening paragraph of this submission: whether a Charter is necessary in order either to expand or to publicise the protection of human rights in the EU. We shall do so principally in the context of the judicial protection of human rights, though we are mindful that there are many non-judicial dimensions to the question, relating for example to the competence of the Union to integrate human rights into its other policies, and the impact that a Charter would have on the human rights clauses in EU Association Agreements and on the Lome Convention. [16]

Expanding Human Rights Protection

Civil and Political Rights

10. Article 6 of the Treaty on European Union declares the Union to be founded on the principle of respect for human rights and fundamental freedoms, and commits it to respecting fundamental rights as guaranteed by the ECHR and as they result from the constitutional traditions common to the Member States.

11. In relation to matters of Community law, justiciable in the ECJ and the Courts of the Member States, that commitment is generally honoured in practice. Under pressure from the courts of (in particular) Germany and Italy, the ECJ has been careful to give effect to fundamental rights, as regards both the acts of the Community institutions themselves [17] and – more recently – the acts of the Member States within the scope of Community law. [18] Though it is always possible to point to cases in which the ECJ wrongly understood the ECHR, [19] it is more difficult to point to a case in which the ECJ has knowingly departed from its requirements.

12. Advocate-General Jacobs was therefore correct when he stated:

“For practical purposes the European Convention of Human Rights can be regarded as part of Community law and can be invoked as such both in this Court and in national courts where Community law is in issue.” [20]

This is notwithstanding the continued non-accession of the Communities to the ECHR. In limited respects, the ECJ has even built upon the jurisprudence of the European Court of Human Rights, notably in acknowledging the right to carry on a business, distinct from the rights in Article 1 of Protocol 1 to the Convention, and in extrapolating Convention principles to cover a right to a name. [21]

13. Any practitioner of EU law would acknowledge that there are gaps in the existing mechanisms for protecting civil and political rights. Some of the more obvious difficulties in this respect are:

- (a) the complete absence of judicial control over the remaining third pillar matters (police and judicial co-operation in criminal matters);
- (b) the highly restrictive standing rules for judicial review of Community acts in the Community courts (in particular, the requirement under Art. 230 (ex 173) of “individual concern”); [22]
- (c) the length of time that a case takes to go through the Community courts; [23] and
- (d) opaque decision-making processes within the Community institutions, coupled with inadequate access to documents.

A further and rather more esoteric gap, identified by the European Court of Human Rights in *Matthews v UK*, is the absence of any judicial control of human rights violations inherent in the Community Treaties themselves, as they exist or as they may be amended in the future. [24]

14. It does not however follow from the existence of these gaps that the adoption of an EU Charter is an appropriate or necessary way to fill them. The gaps relate not so much to deficiencies in the standards of human rights protection already acknowledged by the ECJ, as to political exclusions of certain areas from those standards and to methods of enforcing such standards as exist. Specific solutions exist for such problems. Thus, the jurisdiction of the ECJ could be extended to second and third pillar matters (as it already has been, by the Treaty of Amsterdam, in relation to immigration and asylum); the rules on standing could be relaxed by Treaty amendment or judicial decision; ECJ procedures could be reformed, and the necessary resources provided; and recent tentative advances towards freedom of information could be accelerated. It appears that in Strasbourg at least, there is even a remedy in relation to unreviewable provisions of Union law which are not Convention-compliant. [25] A number of suggestions have also been made for improving co-ordination between the ECJ and the European Court of Human Rights. [26]

15. It follows that in our opinion, the proposed Charter is not an obvious or necessary solution to such shortcomings as exist in the EU’s protection of civil and political rights.

Economic Social and Cultural Rights

16. There are proponents of economic, social and cultural rights who would like to see them take a more central place in the legal scheme of the EU, and who see the Charter as a means to that end. Though Community law grants many social and economic rights to Union citizens, those rights have been developed in the context of market integration. They have therefore historically concerned non-discriminatory access by Union citizens to such social provision and economic opportunity as Member States choose to make available to their own citizens, rather than the imposition of minimum standards of provision in favour of all those within the jurisdiction of the Member States. Even in those specific fields where minimum standards are now required by Community law (e.g. equal pay and treatment, working time, parental leave, industrial democracy), such standards have been motivated to a large extent by concerns to create a level playing field for businesses within the Union.

17. Economic and social rights of a more general nature are still perceived, in most if not all Member States, as beyond the reach of hard law. Such rights have traditionally been regarded as little more than exhortations to governments and decision-makers. They have very weak international enforcement mechanisms, [27] and, at the domestic level, courts have either lacked jurisdiction, or have hesitated to interfere with what are held to be political decisions, often involving the allocation of resources.

Existing Conventions have the potential to guide the development of EU law in this field, as Article 136 (ex 117) of the EC Treaty already acknowledges with its express reference to fundamental social rights such as those set out in the European Social Charter (1961) and the Community Charter of the Fundamental Social Rights of Workers (1989). The European Social Charter has also been referred to on a number of occasions by the ECJ, its Advocates-General and the Court of First Instance. [28] However, responsibility for social, educational and welfare provision still rests overwhelmingly with the Member States rather than the Union. The last Inter-Governmental Conference showed itself unwilling to incorporate into the Treaty a specific list of social and economic rights, as had been proposed by the Comité des Sages responsible for the report prepared for the IGC on a Europe of Civic and Social Rights. In this field, the Union will clearly have to proceed with caution.

18. The universal nature of most social, economic and cultural rights is still sufficiently controversial for the question of whether there is a gap in the protection of social, economic and cultural rights in the Union to be

essentially a political one. Even if it is accepted that such a gap exists (because, for example, it is considered to be unconscionable that anyone resident in the Union should be unhoused, or unfed, or paid below a certain level) it has not so far as we know been suggested that the Conventions already referred to in Article 117 of the Treaty are inadequate as a statement of the relevant rights.

19. Debate is likely to centre rather on the extent to which some such rights should be rendered fully justiciable in the Community court and in the courts of the Member States in their capacity as courts of Community law. When dealing with rights which are so general in scope, and so potentially expensive in their application, it may well be that the best way of achieving the full justiciability of particular social, economic or cultural rights would be by addressing each issue in the specific Treaty context in which it arises.

Conclusion

20. We favour measures aimed at ensuring the greater effectiveness of human rights protection in the Community, but doubt the utility of the proposed EU Charter as a significant means to that end. Catalogues of fundamental rights are a necessary foundation for any modern legal order: but such catalogues already exist, in the Treaties themselves and in the various human rights Conventions already referred to in the Treaties. The energies being devoted to the formulation of the Charter might be more productively employed on less glamorous but more practical projects aimed at improving the effectiveness of human rights enforcement in the Community.

21. We are strengthened in those views by the conclusions of the EUI Final Report on the Project on the European Union and Human Rights, and by the conclusions of the Comité des Sages for whom the Final Report constituted the principal reference document. [29] No fewer than 56 specific recommendations are made in the Report, ranging from EU accession to the ECHR to procedural reforms and the introduction of detailed measures giving full effect to the anti-discrimination provision, Article 13 EC. The formulation of a Charter of Rights is conspicuous by its absence, both from the Report and from the recommendations of the Comité des Sages.

22. The final paragraph of the Report deserves quotation at length:

“The principal shortcoming of the EU’s human rights policy is not a lack of novelty or grand gestures. It is a consistent reluctance to come to grips with some basic home truths about the indivisibility of internal and external human rights policy, the need for a clear and unambiguous commitment at all levels, and the need for effective political and

bureaucratic structures to give effect to those commitments. The various components of the recipe for achieving those objectives have been evident for a number of years. Until those indispensable building blocks are put into place by the Member States and the institutions of the Union there will be little point in creating grand new designs for their own sake.”

We agree. The “grand gesture” of the Charter may serve a political purpose, but it is difficult to see it having much of a tangible effect on human rights protection in the EU.

Publicising Human Rights Protection

23. The United Kingdom Government’s alternative conception of the Charter is of a document that does no more than publicise the existing protection of human rights. Lord Goldsmith QC envisages a document that is “capable of being pinned to the wall in every government office and company headquarters to remind everyone of the rights which must be respected”. [30] His suggested draft structure would contain (in Part A) a simple list of the existing rights enjoyed within the EU, and (in Part B) a statement of the legal basis for each right and of the conditions applicable to it.

24. The utility of such a document should not be over-emphasised. It would presumably not be given Treaty status, and could be no substitute for the practical measures of the type identified in the Final Project Report of the EUI. Nonetheless, we would applaud any document, officially-endorsed or otherwise, which renders the arcane world of European Union and human rights law more comprehensible to the ordinary citizen, or even to the ordinary lawyer. There are many barristers’ chambers and solicitors’ firms that could benefit from such a document, and none – we suspect – that would have no need for it. A Charter along those lines could have a useful role to play, particularly if accompanied by a wide-ranging education programme, though that role would be a far more limited one than appears to be envisaged by the establishment of the drafting apparatus and procedures that are currently in operation.

THE STATUS OF THE CHARTER

25. A Charter that took the form of a restatement or paraphrase of existing rights would be of the nature of a Treaty commentary rather than a Treaty provision. To give such a document Treaty status would appear to be pointless and even counter-productive. It would duplicate rights already embedded in the Treaty, and could open the way for arguments that established rights were to be construed in the light of the paraphrased version.

26. On the contrary assumption that the Charter that is proclaimed in December 2000 seeks to expand existing levels of human rights protection, the decision as to whether it should be given Treaty status is more difficult and more political. Any concluded view at this stage, when the content of the Charter is entirely unknown, would be premature. One comment may however be in order.

27. Whether to give Treaty status to whatever Charter emerges from the political process seems to us to be a question of greater importance for the future constitution of Europe than it is for the effectiveness of judicial human rights protection within the Union.

28. So far as human rights protection is concerned, the ECJ – and national courts applying Community law – may choose to apply the provisions of the Charter regardless of whether or not it is actually incorporated in the Treaty, and are likely to do so where necessary to achieve justice in the individual case. [31]

29. At the constitutional level, however, there can be no doubt but that to give Treaty status to a free-standing catalogue of fundamental and other rights would assist those who see the European Union developing into an autonomous State. It is not fanciful to suppose that the EU will some day acquire legal personality and a constitution of its own. [32] Any modern constitution may be expected to rest upon a catalogue of fundamental rights. The ECJ currently borrows the fundamental rights to which it gives effect from international Conventions (principally, the ECHR) and from the constitutional traditions of the Member States. A “patriated” catalogue of EU rights, tailored to the specific requirements of the EU, would strengthen the hand of those who wish for the EU to develop on the traditional model of the federal nation State.

30. The manner in which such a catalogue is introduced might also have far-reaching implications for the balance of power within the constitution of the Union. In particular, to the extent that a catalogue of fundamental rights is accorded the status of a “basic law”, whether by the express words of the treaties or by the European Court of Justice in interpreting the Treaties, it could provide a benchmark by which the ECJ could examine the constitutionality not only of secondary legislation and Community action but of subsequent Treaty amendments proposed by the Member States – and perhaps even of existing Treaty provisions. [33] In that event, it would no longer be true to say of the Member States that they are, in the well-known phrase of the German Federal Constitutional Court, “the Masters of the Treaties”.

31. We conclude that if the function of the Charter is to publicise or comment upon existing rights, there would be no point in giving it Treaty status. If its function is to guarantee new rights, the question of whether it should have Treaty status is an essentially political one, with important consequences for the future constitution of Europe, including the balance of power between the ECJ and the Member States.

THE SCOPE OF THE CHARTER

32. Under this heading, a number of issues arise upon which we comment only briefly.

On whom should the Charter impose obligations?

33. There appear to be at least two issues here, which will arise in the event that the Charter is given legal force: how if at all the public authorities upon whom any obligations will principally rest are to be defined; and the extent to which, if at all, the rights enshrined in the Charter should apply also in legal relations between individuals.

34. As to the first of those issues, there are a number of different contexts in which the concept of public authority falls to be defined in the law of the EU. The developing case law of the ECJ on those emanations of the State against which directly effective provisions of law may be enforced would provide the obvious model. [34] This is an area where the ECJ could sensibly be allowed to develop its own jurisprudence.

35. As to the second issue, the concept of *Drittwirkung*, or the horizontal enforcement of human rights, is a notoriously complex one. Whilst *Drittwirkung* is not a requirement of the ECHR, nothing in the ECHR prevents the States from conferring *Drittwirkung* upon Convention rights and freedoms within their national legal systems. [35] Whether the EU will wish to do so is another matter.

36. The appropriate course – as chosen by the United Kingdom in the Human Rights Act 1998 - may well be to impose any obligations against “public authorities” and to leave it to the courts to decide the extent to which the courts, as public authorities themselves, find it appropriate to give horizontal effect to particular obligations. The courts may however be assisted by some appropriate words in whatever Charter is drafted. Sir Sydney Kentridge QC has made a persuasive plea for the advantages of *Mittelbaredrittwirkung*, as practised by the courts of South Africa under the Constitution of 1996, whereby human rights have an indirect influence on the development of all jurisprudence by means of a constitutional requirement that “when developing the common law ... every court must promote the spirit, purport, and objects of the Bill of Rights”. [36]

To whom should the Charter give rights?

37. To the extent that the Charter merely rehearses rights granted under the Treaty to EU or EEA nationals (e.g. the right to move freely between States and to work without discrimination), there can be no objection to so limiting those rights in the form in which they may be summarised, reproduced or extended in the Charter.

38. Where fundamental rights are at stake, however, we can see no justification for limiting them to nationals of the EU. Ever since the UN Declaration of 1948, the universality of human rights has been recognised as inherent in the very nature of human beings. The ECHR requires Contracting States to secure the rights and freedoms defined in the Convention to “everyone within their jurisdiction”. The Charter should do the same.

Should the Charter apply to all three pillars?

39. The Charter should in our opinion be presumed to apply to all EU law that is justiciable before the ECJ and national courts in their capacity as courts of EU law. [37] Some areas currently excluded – in particular, police co-operation under the third pillar – have the potential to raise serious human rights issues. To the extent that there are legitimate sensitivities about judicial intrusion, it would seem appropriate to deal with these by the terms in which the rights themselves are formulated rather than by a blanket exclusion of whole policy areas from the courts and from the Charter.

THE CONTENT OF THE CHARTER

40. If the purpose of the Charter is to publicise existing human rights protection, as the United Kingdom Government believes, the content of the Charter will be self-evident: a catalogue of all existing rights, whether derived from the law of the EU, from international human rights conventions or from the constitutional principles of the Member States.

41. If the purpose of the Charter is to “patriate” Strasbourg rights, including principally the ECHR, we consider that any change to the wording of long-established Convention provisions should be avoided, and that express words should be included (as they were in s2. Human Rights Act 1998) requiring the ECJ and other courts applying EU law to take account of any relevant judgment, decision, declaration or advisory opinion of the European Court of Human Rights. [38]

42. There are three reasons for this view. First, to have two similar but distinct catalogues of fundamental rights and freedoms, which would sometimes be applicable in the same case, would cause confusion within the EU, even to professionals in the field. Secondly, it would tend to diminish the attraction of the Council of Europe and its Conventions to the States of eastern Europe and the former Soviet Union. Thirdly, it would make it more difficult for the EU in the future to accede to the ECHR, a step which we believe could well prove to be a positive one.

43. It is sometimes pointed out that Contracting Parties to the Council of Europe have their own national catalogues of fundamental rights, distinct from those in the ECHR, and suggested that there is no reason why the EU should not do the same. That argument overlooks the fact that the EU is not a contracting party to the ECHR, and therefore not subject to its overall control. The political reality may well prove to be that once it has its own distinct Charter of fundamental rights, the EU will diverge from the Strasbourg model with unfortunate effects for the remainder of Europe.

44. To the extent that the Charter includes rights not so far formulated in any Council of Europe or other international convention, such rights should so far as possible reflect international thinking. For example, if as has been suggested a freestanding non-discrimination requirement is to be included in the Charter, its formulation should take careful account of the negotiations that are taking place within the Council of Europe as regards the formulation of an equivalent requirement. [39]

45. We are asked, finally, about the role of subsidiarity in a Charter of EU Rights. Subsidiarity arguments may be influential in arguing for the non-inclusion of a particular right in the Charter, or for the manner in which a particular right is expressed. Once the Charter exists, however, we doubt that the concept will have much relevance. Rights contained in the EU Treaties are presumed to apply equally to all Member States: derogations are granted only exceptionally and for time-limited periods. Similarly, the derogations and reservations entered by Contracting Parties to the ECHR are relatively few in number, and new adherents to the ECHR are in many cases being required to accede to Protocols that even long-standing members did not ratify for many years. [40]

46. There may be room for Charter standards to be applied in different ways in different Member States. That room is however likely to be limited, and would be better defined in terms of margin of appreciation (broadly, the tolerance of national conditions that is exercised by a supranational court) rather than subsidiarity (the principle that rules should be adopted at the closest practicable level to the people). Even the “colonial clause” of the ECHR [41] has been narrowly construed: a similar clause could be contained in the Charter, but it would be unrealistic to expect it to have a wide application within the EU.

CONCLUSION

47. Few independent commentators and few lawyers practising in the field would have put an EU Charter of Rights anywhere near the top of their lists of useful initiatives for improving the effectiveness of human rights protection in the EU. Such gaps as we are aware of in the protection of human rights in the EU could have been filled, given the political will, in more focussed and more effective ways.

48. The constitutional implications of an EU Charter are at least as important as the human rights implications. Two of these stand out. First, a Charter has the potential to weaken the close bonds between the EU and the human rights enforcement machinery of the Council of Europe. We hope that this will not be allowed to happen. It would have been preferable in many ways if the EU had chosen to go in the opposite direction by committing itself to accession to the ECHR. Secondly, a Charter with Treaty status has the potential to boost the evolution of the EU as a self-standing federation on a nation-state model, and to increase the power of the ECJ at the expense of the Member States. On that essentially political issue we express no view.

49. Against that background, it is easy to understand why the United Kingdom Government has taken the minimalist approach of support for a Charter which would be nothing more than an informative catalogue of existing rights. There would be modest value in such a Charter, though it would hardly deserve such a grand name. It remains to be seen whether it will be sufficient to satisfy the political appetite in some quarters for more.

9 February 2000

[1] Written evidence on behalf of the Bar Council International Relations Committee, Bar Human Rights Committee, and the Bar European Group as submitted to the European Communities Committee, Sub-committee (Law and Institutions), House of Lords, England. This joint submission was drafted by David Anderson Q.C. with substantial assistance from Mathew Heim, Jemima Stratford and Margaret Gray, February 9, 2000.

[2] At the time of submitting this submission, the minutes of this plenary meeting are not available and we are unaware of its conclusions.

[3] Annex to the Presidency Conclusions of the Tampere European Council, 15 and 16 October 1999.

[4] Christian Democrat Ernst Hirsch Ballin, representing the Dutch Parliament, commented on Lord Goldsmith's proposal "We are not here to draw up a brochure to promote Europe but to draw up a legal text, transposable into law:" Agence Europe No. 7648, 4 February 2000.

[5] Resolution annexed to Draft Report of 10 January 2000.

[6] "Added Value and Shared Values", Speech to Parliamentary Assembly of the Council of Europe, Strasbourg, 25 January 2000.

[7] See, generally, Slaughter Sweet and Weiler, *The European Courts and National Courts – Doctrine and Jurisprudence* (Hart, 1998).

[8] [1994] 1 CMLR 57 and [1999] 3 CMLR 854.

[9] Draft Resolution on drawing up a Charter, 10 January 2000, last recital.

[10] Agence Europe No. 7648, 4 February 2000.

[11] See paragraphs 29-30, below.

[12] The Community was held to lack competence to acceded in Opinion 2/94 [1996] ECR I-1759; but the position could be reversed by Treaty amendment at any time.

[13] We are not aware of any group or institution which has overtly pressed "independence from Strasbourg" as a reason for adopting a binding Charter. However there are substantial sensitivities on the point within the Council of Europe: see the Resolution of the Council of Europe Parliamentary Assembly of 25 January 2000, with its conclusion that "the existence of two systems of human rights protection in Europe would ... run the risk of inconsistency between their case-law, weaken the Council of Europe Court of Human Rights and be detrimental to legal certainty" (press release on Council of Europe website).

[14] There are 41 Contracting Parties to the ECHR, with a total population of more than 800 million, as against 370 million in the 15 Member States of the EU.

[15] *M & Co. v Germany* 64 DR 138 (1990); *Matthews v United Kingdom*, Judgment of 18 February 1999 (see further fn. 24 below).

[16] See, e.g., Alston and Weiler, "An 'ever closer union' in need of a human rights policy: The European Union and human rights' in *The EU and Human Rights* (ed. Alston, OUP 1999). That chapter is an amended version of the Final Project Report of the EUI Project on the EU and Human

Rights which was the principal reference document used by the Comité des Sages in “Leading by Example: a Human Rights Agenda for the European Union for the Year 2000” (EUI 1998).

[17] Case 26/69 Stauder [1969] ECR 419, 425.

[18] Case 5/88 Wachauf [1989] ECR 2609, 2639.

[19] The classic examples are Joined Cases 46/87 and 227/88 *Hoechst v Commission* [1989] ECR 2859 (application of Article 8 ECHR to business premises) and Case 374/87 *Orkem v Commission* [1989] ECR 3283 (privilege against self-incrimination: judgment implicitly criticised by European Court of Human Rights in *Funke* (1993) A 256-A).

[20] Case C-84/95 *Bosphorus* [1996] ECR I-3953, 3972 para 53.

[21] Case C-168/91 *Konstantinidis*, per Jacobs A-G (though see, contra, *Gulmann A-G* in Case C-2/92 *Bostock* [1994] ECR I-955, fn. 12).

[22] To some extent this gap is remedied by the opportunity to assert Community rights in the national courts, coupled with the availability of the procedure for a preliminary ruling under Art. 234 (ex 177) EC. However there are significant drawbacks to this method of attacking acts and measures of the Community institutions, notably the lack of suitability of the reference procedure for the finding of fact (as to which, see *Jacobs A-G* in Case C-188/92 *TWD* [1994] ECR I-833) and the time which a reference takes even in an urgent case.

[23] In Case C-185/95P *Baustahlgewebe*, Judgment of 17 December 1998, the ECJ characterised a delay of more than 4 years by the Court of First Instance as a violation of the requirement in Article 6(1) ECHR of a trial within a reasonable time. In *Pafitis v Greece*, Judgment of 26 February 1998, the European Court of Human Rights characterised the 32-month period that it took for a preliminary ruling to be made as “relatively long”

[24] *Matthews* concerned a provision denying the people of Gibraltar the right to vote in European elections which was (by Council decision) incorporated into the EC Treaty and was therefore not subject to challenge in the ECJ. The Strasbourg Court ruled that the provision violated the ECHR. The case marks a new willingness on the part of Strasbourg to hold the Member States to account for their participation in EU decisions in respect of which the judicial structure of the Union provides insufficient remedies. It also creates a dilemma for the ECJ, which may not disregard or overturn the Community Treaties and which therefore appears to lack the jurisdiction to follow the Strasbourg ruling.

[25] Another possibility would be for the ECJ to assert its own jurisdiction to review Treaty provisions for compatibility with fundamental rights, a course that might be open to it were the Community to accede to the ECHR. Indeed even in advance of such accession, it would have to decide whether to give effect to the Convention over a Treaty provision if – as is possible – the subject-matter of the *Matthews* case were ever to come before it. Such an assertion of jurisdiction would have fundamental consequences for the ultimate balance of power in the Union: see paragraph 30, below.

[26] We are not attracted by the suggestion of a reference

procedure modelled on Article 234 EC whereby the ECJ could consult the European Court of Human Rights on Convention issues (see e.g. Schermers (1990) 27 CMLRev 97-105; Lenaerts (1991) 16 ELRev 367 at 380). This could only add to the already lengthy delays that afflict almost all litigation in Luxembourg. There would be much to be said though for more contact between the two Courts, and for the circulation of judges between them.

[27] For example, the application of the European Social Charter is submitted solely to a system of supervision. There are national reports every two years which are examined by a Committee of Independent Experts, a Governmental Committee and a Parliamentary Assembly which adopts an Opinion. A recommendation may be made to a Contracting Party by the Committee of Ministers. The Community Charter of the Fundamental Social Rights of Workers does not even provide for a system of supervision, but simply for an annual report by the Commission. It is accompanied by an action programme, but progress towards implementation has been slow.

[28] See e.g. Case 24/86 Blaizot [1988] ECR 379; Case 236/87 Bergemann [1988] ECR 5125; Case C-192/89 Sevince [1990] ECR I-3461; Case T-45/90 Speybrouck [1992] ECR II-33.

[29] “Leading by Example: A Human Rights Agenda for the European Union for the Year 2000” (EUI, 1998).

[30] Address to Second Plenary Meeting of the Charter of Rights Convention, 2 February 2000.

[31] That is demonstrated by the current position of the ECJ in relation to the ECHR, which does not have binding legal force in the Community legal order but is for all practical purposes applied as if it did: see the comment of Jacobs A-G in the Bosphorus case cited at paragraph 12, above.

[32] Commentators have argued that such a constitution already exists: but it is difficult to accept that the Treaties establish a constitution in the true sense of an instrument that creates a legal system without deriving its own validity from any other legal system. See generally T. Hartley, *Constitutional Problems of the European Union* (Hart, 1999) at pp. 179-181.

[33] Some of the academic literature relating to this possibility is referred to by T. Hartley, *op. cit.*, p. 146 at footnote 75.

[34] See, e.g., Case C-188/89 Foster v British Gas [1990] ECR I-3313.

[35] See the discussion in van Dijk and van Hoof, *Theory and Practice of the European Convention of Human Rights* (3rd edn., 1998), pp. 22-26.

[36] “Lessons from South Africa” in *The Impact of the Human Rights Bill on English Law* (ed. Markesinis, OUP 1998) at pp. 27-28.

[37] That is the current position: see e.g. Case C-299/95 Kremzow [1997] ECR I-2969, in which the ECJ refused to rule on questions involving fundamental rights because they arose in an area outside the ambit of Community law. There is an interesting debate, more appropriately

resolved by courts than by the draftsmen of Charters, as regards the circumstances in which an act of a Member State falls within the ambit of EU law for the purposes of the application of general principles, including fundamental rights: *R v MAFF ex p First City Trading* [1997] 1 CMLR 250 (Laws J).

[38] Clearly, the Charter would have to be construed as a living instrument, as is the ECHR itself by the European Court of Human Rights.

[39] Article 1 of Draft Protocol 12 to the ECHR. The current draft would extend the scope of the non-discrimination clause contained in Article 14 from the rights and freedoms of the ECHR itself to “any right set forth by law”.

[40] Notably Protocol 6 on the abolition of the death penalty, which the United Kingdom ratified only very recently.

[41] Article 56(3), ex 63(3), which provides: “The provisions of this Convention shall be applied in [certain territories for whose international relations a Contracting Party is responsible] with due regard, however, to local requirements.”

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 18 April 2000**CHARTE 4236/00****CONTRIB 109****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a preliminary statement of the Union of Industrial and Employers' Confederations of Europe with a view to the hearing on the 27 April 2000.^{1 2}

¹ UNICE: rue Joseph II box 4, B-1000 Brussels. Tel: +32-2-237 6511. Fax: +32-2-231 1445.

E-mail: main@unice.be

² This text has been submitted in French and English languages.



Union of Industrial and Employers' Confederations of Europe
Union des Confédérations de l'Industrie et des Employeurs d'Europe

27 March 2000

Preliminary UNICE statement

on a

Charter of Fundamental Rights

1. UNICE supports the objective of the Cologne European Council to establish a charter on fundamental rights and make their overriding importance and relevance more visible to the Union's citizens. Article 6 paragraph 2 of the Treaty on the European Union already asserts that the Union shall respect fundamental rights as a general principle of the Community law. This objective is important not only for EU citizens but also for citizens of countries aspiring to join the EU.
2. Undoubtedly the proposed Charter should unambiguously recognise those rights and freedoms which are generally considered to be fundamental and inalienable such as the respect of dignity of the human person, the right to life, to liberty and security, or the right to a fair trial.
3. The Charter should also include other freedoms and rights associated with democracy such as freedom of assembly, freedom of expression, and the right to own and enjoy property, including intangible assets such as intellectual and industrial property.
4. In drafting the Charter, recognition should be given to the vital need for Europe to remain competitive in a global and open trading system, since this is the best way to guarantee social well being and employment. The Treaty's four fundamental freedoms - free movement of persons, goods, services and capital- should be explicitly included in the Charter, as these freedoms represent an important dimension of European citizenship. In this context, the Charter should acknowledge the key issues of freedom of enterprise and trade. Should the Charter encourage the free flow of information, this ought to be balanced against the right to privacy and data protection, including the protection of business secrets and proprietary information.
5. The application of the Charter should be limited to the Institutions and bodies of the European Union within the framework of the powers and tasks assigned to them by the European Treaties. It should respect present competences of the European Union and should not extend existing powers. The obligation to respect fundamental rights should be a constraint on the Community's action and not a licence to legislate.

6. The Charter should:
- make the existing human rights and fundamental freedoms for European citizens more visible;
 - be consistent and compatible with international conventions and Member States' national constitutions;
 - be applicable to the Union's institutions within the context of EU legislative competencies.
 - give a clear statement of the common values of democracy, tolerance and liberty for all while at the same time respecting Europe's diversity;
 - be clear and simple for maximum public impact.
7. The credibility and broad public acceptance of the Charter could be threatened if expectations are raised that cannot be fulfilled. Fundamental rights and political aspirations must be clearly delineated. In addition it should be remembered that the social and employment chapters of the Treaties have already set out the powers of the Union to act on a European level. Any change should be a specifically inter-governmental matter. It should be kept in mind that hitherto the Member States have specifically excluded the topics of pay, right of association, as well as the right to strike or impose a lockout from EU legislative competence.
8. Whatever status is given to the Charter it is essential that it should not give rise to legal uncertainty. The Charter should neither compromise existing rights nor raise conflicts of jurisprudence. In particular, overlaps of jurisdiction should be avoided, and it is important that the Charter should not raise new questions of responsibilities of the existing European Courts.
9. A forward-looking Charter should not miss the unique opportunity to express Europe's readiness to meet the upcoming challenges of developing a well-functioning market economy throughout the European Union. Therefore the freedom of establishment and entrepreneurship should be fully recognised in order to ensure the development of a democratic and enlarged Union. In focussing on the rights of European citizens, it is vital that the rights of European undertakings are also respected. Finally, UNICE believes that the Charter should specifically recognise the value and richness of diversity in Europe.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 18 April 2000**CHARTE 4237/00****CONTRIB 110****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a statement of the European Bureau for Lesser Used Languages (EBLUL) with a view to the hearing on the 27 April 2000. ¹

¹ This text has been submitted in French and English languages.



Statement of the European Bureau for Lesser Used Languagesⁱ on European languages in the Charter of Fundamental Rights for the European Union

A. Preamble

Having regard to the principle of non-discrimination as a fundamental principle of human rights, established in conventional and customary law binding the member states of the European Unionⁱⁱ;

recognising that this principle must be essential to the Charter of Fundamental Rights for the European Union;

maintaining that freedom of expression and the respect for cultural identity as established in international law include the protection of linguistic rightsⁱⁱⁱ;

emphasizing that the protection of cultural and linguistic diversity in the European Union is a matter of concern to all citizens of the member states^{iv};

the European Bureau for Lesser Used Languages wishes the following principles to be incorporated in the Charter of Fundamental Rights for the European Union:

B. Article

1.
European Citizens have the right to maintain and develop their own language and culture, in community with the other members of their group, as an expression of the cultural and linguistic diversity that is a common heritage of Europe.

2.
Within its spheres of competence, the European Union shall promote the effective exercise of this right.

3.
No policies and measures of the European Union shall be adopted or applied in ways that are detrimental to the linguistic diversity of Europe.

C. Justification

1.

“European Citizens have the right to maintain and develop their own language and culture, in community with the other members of their group, as an expression of the cultural and linguistic diversity that is a common heritage of Europe.”

Justification

This principle is already established in other documents binding the member states of the European Union^v.

The Charter of Fundamental Rights of the European Union should lead EU member States to elaborate policy and law protecting and promoting official, State, and regional or minority languages of the member states.

This task of definition is all the more urgent, as the European Union through the process of enlargement will meet demands to address the protection of linguistic rights in the applicant countries.

2.

“Within its spheres of competence, the European Union shall promote the effective exercise of this right.”

Justification

Within its spheres of competence, the European Union already deals with matters concerning linguistic diversity^{vi}.

The development of the Regions of Europe necessarily has a cultural dimension.

European integration will in the future need support of further policies in this field, especially on plurilinguistic education and promotion of cultural diversity in media and arts.

3.

“No policies and measures of the European Union shall be adopted or applied in ways that are detrimental to the linguistic diversity of Europe.”

Justification

Measures concerning unification of the Common Market of the European Union present a risk of conflict with the principle of protection of local languages.

There is need for an instrument to balance harmonisation and integration with respect for linguistic and cultural diversity.

The suggested instrument would commit the EU to a general principle of respect for linguistic diversity, supplementing more detailed approaches developed through other instruments^{vii}.

Notes

ⁱ The European Bureau for Lesser Used Languages (EBLUL, www.eblul.org) is an independent Non-Governmental Organization. It acts and speaks on behalf of the more than 40 million European Union citizens who speak an autochthonous language other than the main official language of the State in which they live. The Bureau's general aim is to promote the autochthonous lesser used (regional, minority and non-territorial) languages of the member states of the European Union and the linguistic rights of those who speak these languages. One of the Bureau's goals is to define legal frameworks that could be applied to authorities at all levels in order to guarantee all citizens belonging to a linguistic minority all of the services they need to develop and use their language in everyday life. The members' associations are organized within Member State Committees. At present, the European Bureau is made up of 13 Committees which represent the interests of the various communities (Portugal and Greece are excepted). The Member State Committees comprise cultural organizations, official institutions and other bodies active in the field of regional or minority languages and cultures. EBLUL is in special consultative status with the Economic and Social Council of the United Nations; in operational relations with UNESCO; and having consultative status with the Council of Europe. It works in close co-operation with the European Parliament and takes part in the meetings of the Intergroup for Regional and Minority Languages. It has active relations with the Committee of the Regions.

ⁱⁱ United Nations Universal Declaration of Human Rights 1948, article 2 ; Convention for the Protection of Human Rights and Fundamental Freedoms, Council of Europe 1950, article 14; Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, 1990, paragraphs 30 – 40

ⁱⁱⁱ International Covenant on Civil and Political Rights, United Nations 1966, article 27; Convention on the Rights of the Child, United Nations 1989, articles 29 and 30; Convention Against Discrimination in Education, United Nations 1960, article 5; Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE 1990, paragraphs 32, 33, 34, 35, 40

^{iv} European Charter for Regional or Minority Languages, Council of Europe 1992; Framework Convention for the Protection of National Minorities, Council of Europe 1995

^v International Covenant on Civil and Political Rights, United Nations 1966, article 27; Convention on the Rights of the Child, United Nations 1989, articles 29 and 30; Convention Against Discrimination in Education, United Nations 1960, article 5; Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE 1990, paragraphs 32, 33, 34, 35, 40

^{vi} Proposal for a decision of the European Parliament and of the Council on European Year of Languages 2001, COM(1999) 485 final

^{vii} European Charter for Regional or Minority Languages, Council of Europe 1992, articles 1 and 2; Framework Convention for the Protection of National Minorities, Council of Europe 1995, article 5

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 19 April 2000**CHARTE 4239/00****CONTRIB 112****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a position by the European Union of Christian Democratic Workers (EUCDW) with a view to the hearing on the 27 April 2000. ¹

¹ This text has been submitted in French, German and English languages.



**Position of the EUCDW in view of the inclusion
of Fundamental Social Rights in the Charter of human rights with the objective to be
included in the EU Treaty**

12.04.00

The EUCDW considers social rights as a necessary addition to the freedom rights. Basic freedom rights can only be practised when a minimum of social security is ensured. Fundamental Social Rights should be considered equally as liberties. On the contrary of "classical" freedom rights, which represent in principle "defensive rights" against the state, we demand the realisation of freedom with the help of the state.

A point of crucial importance is the exigence of work. Work is more than just a job, more than only a security of material existence. It is also a crucial factor for the own development, the own satisfaction. It also opens the chance to participate in the formation of our society. For these reasons everyone has the duty and the right to building within his own possibilities.

A number of rights result from those considerations. Those rights have to avoid that working conditions are beneath human dignity and prevent the temptation to see work only as good.

In this field, the EUCDW requires first of all the recognition of the following rights in the European Union:

- the Universal Declaration of Human Rights
- The European Convention of Human Rights
- The ILO Declaration on fundamental principles and rights at work
- The Community Charter of Workers' Fundamental Social Rights
- the above mentioned European Social Charter
- The United Nations Convention on the Rights of the Child.

The EUCDW also demands a broadly catalogue of Fundamental Social Rights, which covers beyond the rights of Workers, also the rights related to the entire life situation of persons:

- The right for families to legal, economic and social protection
- The right to equal treatment and equal chances for men and women
- The prohibition of all forms of discrimination based on sex, racial or ethnic origin, religion or belief, disability, age and sexual orientation
- The right for disadvantaged groups to be integrated into the job market and society.
- The prohibition of Child labour.
- The right to a large social protection, which guarantees a human existence in particular in the case of unemployment, illness, care dependence and old age.
- The right to a minimum income, which makes a human existence possible.
- The right to education and training as well as lifelong education in accordance with the abilities of each person.
- The right to free choice of work.
- The right to health and safety protection at work.
- The national and trans-national right of freedom of association, collective bargaining and trade union action, including the right to cross-border solidarity action and strike.
- The right to information, consultation and participation at work on national as well as cross-border level.
- The right to conservation, protection and the improvement of the quality of the environment, to protection of the consumers and the users against an endangerment of their health and as well security against unfair commercial practices
- The right to free movement, also the third country nationals who are legally resident in the EU.
- The right to family reunification for all those who are legally in the EU.

The EUCDW demands the legally and binding inclusion of the Fundamental Social Rights in the new EU Treaty. The EUCDW is convinced that those rights, included in the Treaty, must be the best guarantee for the protection of the citizens.

For the EUCDW, respect for fundamental rights is a criterion for the adhesion to the European Union. Additionally, it is of the opinion that sanctions must be foreseen, in case of infringement of those rights.

The EUCDW also emphasises that each one which enjoys a right, has also the obligation to respect those rights: for the protection of human dignity, in particular in order to guarantee the basic values of liberty, solidarity and democracy.

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DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 19 April 2000**CHARTE 4240/00****CONTRIB 113****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a contribution by the European Children's Network (EURONET) with a view to the hearing on the 27 April 2000. ¹

¹ This text has been submitted in English language only.



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12 April 2000

To: The Convention to draft the EU Charter of Fundamental Rights
Mr Roman Herzog, Chair of the Convention
c/o European Council of Ministers
175 Rue de la Loi
1048 Bruxelles

Contribution by the European Children's Network

Dear Mr Herzog

Re: Note Convent 13 and 18 from the Praesidium: Draft Charter of Fundamental Rights of the European Union

We are writing to follow up the most recent note from the Praesidium to enclose our comments and proposals for the draft Article on the Rights of the Child.

We welcome the fact that there has been a specific commitment by the Convention to include an Article on the Rights of the Child (given in the statement of reasons for Article 13 in Convent 13). This would help ensure that the EU is in line with international commitments made by member states when ratifying the Convention on the Rights of the Child 1989. It also recognises the fact that some of the rights in the Charter would not be appropriate or applicable to children and that an article is therefore needed on the rights of the child. A more detailed explanation of the need for a reference to children's rights in the Charter of Rights is contained in our submission to the Convention. (Recognition of the Rights of the Child in the Charter of Fundamental Rights, Submission from Euronet).

We have pleasure in enclosing a number of possible suggestions for texts of the article on the Rights of the Child.

The first proposal is suggested for inclusion in the introduction as an overall principle on human rights for children:

“The Union shall respect and promote children’s rights, as guaranteed by the UN Convention on the Rights of the Child adopted on 20 November 1989.”

The second proposal is to be placed within the different categories of rights:

“The European Union shall ensure that all EU activities are fully compatible with the principle of the best interests of the child as a primary consideration as expressed in the UN Convention on the Rights of the Child.”

Our preference is for an article in the Charter which contains an explicit reference to the Convention on the Rights of the Child, since this is the most comprehensive statement of children’s rights and has almost universal ratification.

We have noted that several members of the Convention have tabled amendments concerning children and youth and education. We would like to refer members of the Convention to the Convention on the Rights of the Child of 1989. This Convention, adopted in 1989, is the fullest contemporary international expression adopted on human rights for children below the age of 18 years and expresses an holistic view of the child.

At this stage we are also writing to express our views about the proposals for Article 16 – Right to education (Convent 13). We believe that Articles 28, 29 and 30 of the UN Convention on the Rights of the Child deal more appropriately with the question of education of the child in line with religious, and philosophical convictions (a copy is enclosed). Article 30 states that a child belonging to a religious, linguistic minority or of indigenous origin shall not be denied the right to enjoy his or her own culture, profess and practise his or her own religion or use his or her own language. Similarly Article 14 of the UN Convention on the Rights of the Child states that states parties shall respect the right of the child to freedom of thought, conscience and religion. In this respect we also would like to refer to Articles 2, 3 and 12 of the UN Convention on the Rights of the Child, which concern the principles of non-discrimination, the best interests of the child and the child’s right to express its opinion.

We therefore believe a better way of phrasing this would be:

No child shall be denied the right to education, which promotes “his or her own cultural identity, religion, language and values and the national values in the country in which the child is living, the country from which he or she may originate and for civilizations different from his or her own.”

An additional suggestion on the right to education we have is:

“Every child has the right to education”

“Children of minority communities and indigenous populations have the right to enjoy their own culture and to practise their own religion and language”.

We would also like to comment on your recent proposal for social rights in Convent 18. Article VIII refers to the protection of children and young people in respect of employment and working conditions. We would like to include a reference here to the ILO Convention 182, which aims to ban the worst forms of child labour. We see this Article as complementary to the general Article on the Rights of the Child.

We would be pleased to discuss these areas in more detail with the Convention and those responsible for drafting it.

Yours sincerely

Mieke Schuurman
Euronet Co-ordinator

Encl:

- Recognition of the Rights of the Child in the Charter of Fundamental Rights, Submission Euronet
- Copy UN Convention on the Rights of the Child, Articles 28, 29, 30.

EXECUTIVE SUMMARY

Recognition of the Rights of the Child in the Charter of Fundamental Rights

Submission from Euronet – The European Children’s Network, to the drafting group for an EU Charter of Fundamental Rights

Euronet – the European Children’s Network, is a network of children’s rights organisations including transnational networks such as BICE (International Catholic Children’s Bureau) and International Save the Children Alliance, and national members in all 15 EU member states.

Euronet welcomes the initiative of the Council of Ministers to elaborate a charter of fundamental rights. Euronet recommends that children’s rights must be included in the charter of fundamental rights and that the charter should be legally binding. Children make up 20% of the EU population yet their rights as established in international law are currently almost invisible in EU legislation, programmes and political decisions. Additionally the Charter should not simply codify existing rights but advance human rights.

Reasons to mention children’s rights explicitly in the Charter:

- To ensure that in areas where the EU legislates, children’s interests are taken into account and that legislation is not inadvertently discriminating against children.
- To ensure that the EU itself is also implementing existing international commitments such as the UN Convention on the Rights of the Child.

The 1989 UN **Convention on the Rights of the Child** is the fullest contemporary international expression of the fundamental rights of all people under the age of 18 –ie children. It has almost universal ratification with only two countries (USA and Somalia) not having ratified. The Convention states clearly that the best interests of the child should be a primary consideration in all legislation and policy (Article 3). The Convention has been ratified by all EU member states. However, whilst member states have a legal obligation to promote the best interests of the child and protect children’s fundamental rights, the EU is under no such obligation although there are many areas in which the EU currently passes legislation which have a direct or indirect bearing on children’s lives. Examples include labour legislation, consumer legislation, information and media legislation, health and the environment. Integration of the Convention on the Rights of the Child would ensure that the EU would be obliged to use the Convention as a “child proofing” tool when passing legislation.

Children’s current legal status in the EU Treaty is unclear as children’s legal status as European citizens is unclear. The EU Treaty primarily focuses on the “citizen as worker”, which excludes children. In EU law children are seen too often as only “victims” or “dependents” or “barriers to

work” which is in direct contradiction with their status in the Convention on the Rights of the Child. At the moment the principle of “the best interests of the child” is only included in EU legislation on ad hoc basis. In some cases the EU has legislated to promote the highest standards of safety for children, for example in the Toy Safety Directive 1988. In other cases commercial considerations come before the best interests of the child with the potential to infringe children’s rights, for instance the Distance Selling Directive and toy and TV advertising policies of the EU. Inclusion of a reference to children’s rights in the Charter would help ensure that this process was systematic and no longer ad hoc. At present, many cases on children’s rights in the EU have had to be established by taking cases to the Court of Justice. This is inefficient and costly – integration of children’s rights into EU legislative processes would have made such cases unnecessary and ensure a more systematic protection and promotion of children’s rights.

The current Amsterdam Treaty contains legal bases which give the Commission a limited competence to promote children’s rights:

- Article K - which contains an explicit reference to “offences against children”, creates an intergovernmental competence to tackle a whole range of cross border and transnational issues affecting children. However, this Article is outside the Community application of the Treaty and fails to cover many other areas of concern for children.
- Article 13 – Non Discrimination, in particular the non discrimination on the basis of age
- Article 137 – Social Exclusion, which can be used to address the problem of children facing social exclusion (20% of EU children are living in poverty, Eurostat figures)
- Article 141 – refers to equal treatment for men and women in matters of employment, which can indirectly benefit children
- Article 143 – Demography, which could be used to collect age disaggregated statistics, including improved information on the situation of Union citizens under the age of 18.

Children need their own special set of rights in the Charter of fundamental rights because:

- Existing international standards ie the Convention on the Rights of the Child recognise the need for children to have their own set of rights.
- Children have not always been accepted as holders of rights and animals were often given rights before children.
- Children are a special category of people who have specific needs different from adults and who do not have the ability to protect themselves.

Concerning **subsidiarity**, Euronet recognises the fact that the principal competence for policy and legislation on children’s issues is the responsibility of the member states’ governments. However, many issues affecting children are neither uniquely national or transnational, for example, legal consequences for children when their parents separate and choose to live in different countries of the EU and the standardisation of products and services (TV, internet, media).

Conclusions

It is recommended that:

- The Charter of Fundamental Rights contains a full reference to the protection and promotion of children’s rights in the EU, best expressed by an explicit reference to the UN Convention on the Rights of the Child.
- The Charter of Fundamental Rights should be legally binding.
- A new Article should be inserted in the EU Treaties so that the Community can contribute to the promotion and protection of the rights and needs of children.

Recognition of the rights of the child in the Charter of Fundamental Rights.

Submission from Euronet – The European Children’s Network, to the drafting group for an EU Charter of Fundamental Rights.

Introduction

Euronet welcomes the initiative of the Council of Ministers to elaborate a charter of fundamental rights. In this submission Euronet demonstrates why it is necessary to have a comprehensive reference to children’s rights in the charter. Euronet recommends that in order to promote and protect children’s rights and interests and to foster their development and protect them from unforeseen negative effects of growing European integration, a reference in the Charter of Rights would need to be accompanied by a comprehensive legal basis in the Treaty on European Union.

Euronet also recommends that the Charter of Fundamental Rights is legally binding and that it goes beyond already existing international and European legal instruments.

What is Euronet ?

Euronet – the European Children’s Network, is a network of children’s rights agencies including BICE (International Catholic Children’s Bureau), International Save the Children Alliance, and national members in all 15 EU member states. Together these agencies shared a concern about the general invisibility of children in EU policy, legislation and programmes. Euronet began as a network to press for recognition of children’s rights in the EU Treaty in 1995. Euronet members worked together to strengthen the rights of the child by, amongst other things, trying to include a reference in the Amsterdam Treaty to the norms of the UN Convention on the Rights of the Child, ratified by all member states of the EU. Following this, Euronet has gone on to develop a comprehensive EU Children’s policy in “A Children’s policy for 21st Century Europe: First Steps”.¹

Euronet believes that children have a right to live without experiencing prejudice, exclusion and discrimination and have a right to be heard within the European institutions, including the European Parliament, Commission, Council of Ministers and Council of Europe.

Children in the EU

Children in the EU make up 20% of the population but their rights as established in international law are currently almost invisible. This leads to children’s invisibility in the legislation, policies, programmes and political decision making of the Union. Yet the future economic, social, political and cultural development of Europe is dependent on these 90 million children. As the ageing of Europe continues, children will become an even more precious and important resource. Neglecting their proper care and protection will have increasingly serious consequences. Furthermore, the EU institutions have frequently stated that it is important to “get closer to citizens” yet the interests of children are rarely included in EU legislation and Europe is still a long way from a “Citizens Europe” which includes children.

¹ “A children’s policy for 21st century Europe: First steps,” Ruxton S, Euronet, Brussels, 1999

“We are children and young people of the European Union meeting in Belfast at the end of May 1998. We demand that the European Union listen carefully to the voices of its 90 million children and young people under the age of 18 years of age. We as Europe’s young citizens are eager to contribute actively to the development and progress of Europe...In our Europe every child will be respected and listened to and every child will have the right to participate in the democratic process.”²

At the beginning of the 21st Century, Europe is at a crossroads, as it enters monetary union, enlarges eastwards and faces demographic challenges. Children will be more affected by decisions with long term implications being taken now than any other population group.

Why do children’s rights need to be included in the Charter ?

*“Our efforts to discover children’s needs in Europe are met with difficulties for two reasons. Firstly because in the EU citizens are seen as employers, employees and consumers only and secondly because children are seen as children of working parents only.”*³

The fundamental human rights of children⁴, as expressed in the UN Convention on the Rights of the Child (1989) are not yet integrated into any of the core legal texts of the EU and therefore are not integrated into EU policy and legislation. As a result children’s needs are currently largely ignored. Indeed, at present, legislation is inadvertently affecting children in a negative way. Other groups such as consumers, women, animals, disabled people are at least mentioned in the existing EU Treaty. This means that EU legislation, policy and programming is to a certain extent sensitive to their fundamental rights and interests. However in the area of children’s policy this is currently not the case. EU member states, by comparison have made greater progress to integrate the principles of the Convention into their national laws since ratification and although Euronet believes that many member states still need to make improvements before their legislation fully reflects the principles of the best interests of the child, substantial progress has been made in this area (see for example “A children’s policy for 21st Century Europe: First steps” p20 – 21⁵).

The briefing argues why children should be explicitly mentioned in the Charter in order to:-

- a) Ensure that the EU itself is also implementing existing international commitments such as the UN Convention on the Rights of the Child which all EU member states have ratified.
- b) Ensure that in areas where the EU legislates, children’s interests are taken into account and that legislation is not inadvertently discriminating against children

² Active voices – children’s choices – Belfast Euronet symposium, 28/29 May 1998

³ Children as Citizens of Europe – From Rhetoric to Reality, speech at Euronet Conference Belfast – 28/5/98.

⁴ Up to now the European Commission has preferred to use the term ‘fundamental rights’ in preference to human rights in discussing its work in this area.

⁵ Op cit

The UN Convention on the Rights of the Child

“The increasing importance attached to the concept of children’s rights and the major role attributed by the international Community to the Convention on the Rights of the Child of 1989, serve to underline the desirability of a greater EU sensibility in this area....The Commission (should) ensure that all legislation it drafts is fully compatible with the requirements of the Convention.”⁶

The 1989 UN Convention on the Rights of the Child is the fullest contemporary international expression of the fundamental rights of all people under the age of 18 – ie children. More than any other human rights instrument it incorporates the whole spectrum of human rights, civil, political, economic, social and cultural rights. The Convention states clearly that the best interests of the child should be a primary consideration in all legislation, and policy.

“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legal bodies, the best interests of the child shall be a primary consideration,”⁷

The UN Convention on the Rights of the Child is the most widely ratified human rights instrument ever, having been ratified by all states in the world (except the USA and Somalia). All EU member states, EEA states and states about to accede to the EU have ratified the Convention. However, at the moment the EU itself is under no obligation to respect the principles of the UN Convention on the Rights of the Child.⁸

This means that whilst the member states have a legal obligation to promote the best interests of the child and protect children’s fundamental rights, the EU and is under no such obligation. This is inconsistent and means for example that member states are regularly assessing and reviewing how their actions and legislation affects the human rights of children, whilst the EU does not do so. Without systematic reference to the Convention on the Rights of the Child as a yardstick by which to judge the extent to which actions and policies promote children’s rights, there is no means by which to be sure that children’s rights are being upheld and promoted.

As the EU moves towards further integration, more and more issues concerning children are becoming transnational ones. It is important that the EU should be bound by international standards that member states have already signed up to.

There are many areas in which the EU currently passes legislation which have a direct or indirect bearing on children’s lives, these include, labour legislation (Young People at Work Directive, Parental Leave Directive), consumer legislation (see above), information and media legislation and policy, health and the environment. Integration of the principles of the Convention on the Rights of the Child would act as a “child proofing” tool and ensure that the EU was under the same obligations as its member states.

⁶ Leading by Example – A Human Rights Agenda for the European Union for the Year 2000 – Cassese, Lalumière, Leuprecht, Robinson. Published by Academy of European Law, European University Institute, p 102.

⁷ Article 3 – Convention on the Rights of the Child.

⁸ For a further discussion see “Towards an EU Human Rights Agenda for Children” – International Save the Children Alliance Europe Group, 1998, Brussels, Rädä Barnen.

The Convention on the Rights of the Child enshrines children's right to participate in decisions which affect them.⁹ It is important that children are also given the possibility to participate actively in the development of the European ideal and concept.

Are Children's Rights dealt with by existing provisions in the Treaty covering human rights ?

Many commentators argue that the EU's overall legislative competence and approach to human rights is weak and that there is a human rights deficit.

"The Treaty did not and still does not even after the measures introduced by Amsterdam, list human rights among its objectives...the Community lacks any significant constitutional competence to deal with all but a very circumscribed range of human rights matters."¹⁰

Similarly the report by the Comité de Sages concluded "As regards the Treaties of the European Union, what we have at present is not a genuine framework of social and civil rights but rather a set of ad hoc, piecemeal measures to accompany economic integration and to allow minimum social policies to be pursued."¹¹

Euronet agrees with these assessments. Not only are existing human rights provisions in the EU Treaty weak, but those that are in the Treaty do not specifically mention children's human rights. This has very practical consequences, meaning that where human rights clauses are inserted into trade agreements or cooperation agreements, no specific attention is paid to children's rights.

Why do we need a separate expression of children's rights ?

If human rights cover all human beings, why do children need their own special set of rights ?

- Existing international standards ie the Convention on the Rights of the Child recognise the need for children to have their own set of rights, reflecting their particular needs and status.¹²
- Children have not always been accepted as holders of rights and animals were often given rights before children.
- Children are a special category of people who have specific needs and who do not have the ability to protect themselves. Adults rights are often different from children's rights and vice versa. Talking about human rights in general but not identifying specific rights for children renders children invisible and vulnerable.

⁹ Article 12, Convention on the Rights of the Child.

¹⁰ See "Leading by example – A Human Rights Agenda for the European Union for the Year 2000", Cassese, Lalumière, Leuprecht, Robinson, Academy of European Law, European University Institute, Florence, 1998, para 60

¹¹ "For a Europe of civic and social rights" – Report by the Comité de Sages, European Commission, Brussels, 1996.

¹² See "The Child and the European Convention on Human Rights, Kilkelly, Ursula, Ashgate, UK, 1999.

What about subsidiarity – Surely the protection of children’s rights rests at the member state level ?

The principal competence for policy and legislation on children’s issues is the responsibility of member state’s Governments. However there is also a clear European dimension to the question of children’s policy. Many issues affecting children are neither uniquely national nor transnational. For example, the legal consequences for children when their parents choose to live in different parts of the EU following family breakdown, the greater cross border dissemination of child pornography, and child trafficking. Similarly as standardisation and harmonisation of products and regulation of TV, internet and media takes place at EU level, in many cases the best interests of the child are overlooked.

Euronet is not arguing for the competence for children’s policy to move to the European level but rather, where the EU passes legislation, policy and programmes, children’s rights must be taken into account. The Charter should provide a clear, simple legal basis which enables European legislators to ensure that the best interests of the child is taken into account in all European policy, law and programming. Children are affected differently from adults by European legislation and it is important that all EU policy and legislative proposals takes their needs into consideration.

Would incorporation of the ECHR into the EU Treaty help children?

Legal opinion varies as to whether incorporation of the ECHR into the EU Treaty is possible and desirable. Leaving this wider debate aside, incorporation would bring limited value for children.

Children are not specifically mentioned in the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), although it has been frequently used to protect children’s rights in such areas as respect for family life, the right to education, protection against discrimination and the protection of physical integrity. However there are significant limitations on the ECHR as an instrument for the promotion and protection of children’s rights including its focus on relations between the state and individuals, its silence on many important areas of children’s lives.¹³

The ECHR “is....in many ways blind to children. It does make limited reference to children for example – in respect of the public nature of court proceedings in respect of juveniles and liberty and security of the person. But it fails entirely to address the concept of human rights for children within a framework appropriate to childhood in the way developed by the UN Convention on the Rights of the Child.”¹⁴

¹³ See “Areas and Rights covered by the UN Convention on the Rights of the Child which are not covered by the European Convention on Human Rights” Pascale Boucard – Steering Committee for Human Rights, Council of Europe, Strasbourg, 1995.

¹⁴ “European Convention on Human Rights – Implications for Children”1997, UK – Gerison Lansdown.

Children's rights as EU Citizens – a promise unfulfilled

“The advice I have received...is that the reference to all persons who have citizenship of a member state covers everybody, including children”¹⁵

Despite this positive statement, the rights of children as EU citizens are unclear. The focus in the Treaty on the “citizen as worker” has meant that children’s legal status as European citizens is unclear. This has led for example to the failure to incorporate the best interests of the child into EU legislation. It also means that only a limited number of action programmes, and temporary budgetlines have children as a principal target group.

Article 17 (2) of the Treaty of Amsterdam states “Citizens of the Union shall enjoy the rights conferred by this Treaty and shall be subject to the duties imposed thereby.” However, citizenship of the Union only confers the rights which are covered by the Treaty, most of which exclude children. This is because the Treaty primarily regulates issues of an economic nature, therefore focusing on groups such as workers or people providing services. As a result rights are currently related to the fact that you are an economic entity. In EU law children are seen too often as only “victims” or “dependents” or “barriers to work” in direct contradiction with their status in the Convention on the Rights of the Child and in member states’ laws.

The consequences of a lack of specific recognition for children’s rights

One of the strongest illustrations of why it is necessary to have a reference to children in the Charter is the current ad hoc nature of inclusion of the principle of “the best interests of the child” (fundamental to the protection of children’s rights in international law) in EU legislation. This is evident for example in the field of harmonisation and standardisation legislation as illustrated below.

a) Negative effects on children from EU Directives

The protection of children’s human rights should be a priority for all policies. Because of children’s particular vulnerability and needs, adults have a particular responsibility to safeguard them.

On the positive side there have been a number of cases where the EU has legislated to promote the highest standards of safety for children. These have included the Toy Safety Directive 1988, and other directives aimed at establishing standards for producers so that children cannot undo fastenings on potentially dangerous products, such as bottles of medicines. Beyond these specific cases, children have to some extent been covered by more general consumer protection initiatives.

However despite this, many problems remain. Too often commercial considerations come before the best interests of the child with the potential to infringe children’s rights. Examples of this:-

¹⁵ Statement from the then Irish Foreign Minister Gay Mitchell, representing the Irish Presidency of the EU, during revision of Amsterdam Treaty.

- **Distance Selling:** There is no reference to the protection of children in EU Directives on misleading advertising and on distance selling, despite evidence from consumer groups that children are often unable to distinguish between covert advertising and information and are therefore at specific risk.
- **Toy Advertising:** In a recent case toy manufacturers called on the European Commission to take action against the Greek Government. The Greek Government had banned TV advertising of toys because of a concern to promote the best interests of the child and ensure that no advertising was transmitted between certain hours. However the Commission claims that the Greek Government's action breaches single market rules, placing commercial interests above those of Europe's youngest citizens.
- **TV Advertising:** In a similar case in 1995 a UK TV station transmitted advertisements to children in Sweden, although these are prohibited for children under 12 in Sweden. Because the single Market creates a free market for movement of goods and services, this action is perfectly lawful, even though it may not be in the best interests of children.
- **Chemicals and Toys:** Although many member states took action to ban the use of PVC (polyvinylchlorides) in babies' toys, the European Commission took many months to introduce an EU wide ban on the use of PVC in toys. This was despite evidence from consumer and environmental groups that such toys contain harmful levels of chemicals and may damage children's rights to the highest attainable health standards.

All these examples demonstrate that the need for better protection of children's rights within the policy and decision making processes of the EU. Inclusion of a reference to children's rights in the Charter would help ensure that this process was systematic and no longer ad hoc.

b) Unnecessary Court of Justice Cases

The lack of recognition of the human rights of children in the EU Treaties, and in particular the principle of promoting the best interests of the child has meant that children's rights in the EU have developed in a piecemeal way. In some cases children's rights in the EU have had to be established by taking cases to the Court of Justice. This is inefficient and costly - it would be far more efficient to ensure that the principles of the Convention on the Rights of the Child were incorporated into the Treaty on European Union. Whilst both the judgements below did in fact rule in favour of the rights of the child, a further demonstration of the problems resulting from the lack of systematic protection of those rights, this was only achieved by taking the case to the European Court of Justice. Integration of the fundamental rights of the child into EU legislative processes would have made such cases unnecessary and ensure a more systematic protection and promotion of children's rights.

In the first case, the *Commission v Belgium* (42/87) established that children in one member state but living in another continue to be entitled to all forms of state education in the host country even if the working parent has retired or died in that state. The second case of *Moritz v the Netherlands Ministry of Education* (390/87) established that this was the case even if the child moves back to the state of origin.

c) Economic, Trade and Poverty issues

Children are also affected by EU economic and trade policies, EU Trade agreements, Economic and Monetary Union, and the single market all can impact on children, it is important that children's interests (which can be different from adults' interests) are not overlooked in these debates.¹⁶

EU economic policy for example which requires specific regions within Europe to undertake adjustment to a new economic environment can damage the development of entire generations of children in those regions. Children in such regions make up significant numbers of the 20% of EU's children suffering from social exclusion.

d) Asylum and Immigration policy

The EU is now legislating in a number of crucial areas of asylum and immigration policy as it moves from the third pillar to the first pillar. Children have very particular needs, especially child asylum seekers who are separated from their parents.

Do existing legal bases offer sufficient protection for children's rights ?

“The action taken by the EU in relation to the protection of children is still very limited, because of a lack of explicit legal bases and a failure to recognise that this action is of prime importance to the very future of the Union.”¹⁷

The current legal bases in the Amsterdam Treaty gives the Commission only a very limited competence to protect children's rights. In particular it creates a limited intergovernmental competence to tackle a whole range of cross border and transnational issues affecting children's rights.¹⁸

On the positive side, for the first time in the history of the EU, children are explicitly mentioned in the Amsterdam Treaty in Article K which contains an explicit reference to “offences against children”. Article K allows for increased cooperation between member states' police and judicial authorities in tackling crimes against children which cross national borders. Increasingly as borders disappear, children are at risk from organised crime and member states have had limited powers to deal with this in a coordinated fashion. However, Article K is outside the Community application of the Treaty, and any action has to be agreed on a case by case basis and has limited European dimension. Furthermore Article K is limited to offences against children and fails to cover many other areas of concern for children and does not provide for children's interests to be taken into account systematically in the drafting of EU legislation.

¹⁶ See “Children, Economics and the EU – Towards Child Friendly Policies” – Save the Children, 2000.

¹⁷ Quote from MEP in “Towards a Children's Policy for 21st Century Europe: First Steps” op cit.

¹⁸ For a more detailed analysis see Euronet - “The New Treaty on European Union – What is in it for children?”, Sutton, Diana, Brussels 1997 and Euronet “Towards a Children's Policy for 21st Century Europe”, op cit.

Therefore a major failing of the Treaty of Amsterdam is that it does not incorporate the respect for the fundamental principles of children's rights. It gives only a very limited competence to work at European level on a whole range of cross border and transnational problems affecting the fulfillment of children's rights. Below we analyse the limitations of other legal bases in promoting children's rights.

EU Treaty Articles relevant to children:

Article 13 - Non Discrimination:

In theory the inclusion of a non-discrimination clause on grounds of age should offer protection to children's rights, especially the right not to be discriminated against (Article 3 of the Convention on the Rights of the Child). However the reference to non discrimination on grounds of age in Article 13 has the following limitations:-

- Although age discrimination can occur at the lower end of the age range, the Commission has not yet interpreted "non discrimination on grounds of age" to include children.
- Secondly this clause does not have "direct effect", this means that it cannot be used by an individual in a court of law and cannot be used in the European Court of Justice.
- Thirdly, all measures proposed under this clause require the unanimous agreement of all EU member states' Governments.
- Fourthly, Article 13 has limited value for children because it only deals with measures aimed at combating discrimination and as we have seen children are affected by numerous other issues at a European level, and no measures can be taken under this clause to address these wider issues.
- Finally there is no spending power attached by Member States to this clause and therefore the impact of any measures taken under it will be very limited. It could not therefore be used as a legal basis for a European programme in the area of children's rights and children's policy.

Article 137 - Social Exclusion

The inclusion of Article 137 gives the Community a legal basis to combat social exclusion. This is welcome given that recent Eurostat figures demonstrate that 20% of the European Union's children are living in poverty. This new legal basis will be used for the adoption of an action programme on social exclusion, which can be used to address the problem of children facing social exclusion. It is recommended that Member States work with a broad definition of social exclusion. This clause can be agreed by qualified majority voting, thus eliminating potential problems with one or two member states blocking progress.

Article 141:

Although not directly relevant to children's rights issues this clause could be beneficial to children, since it makes reference to equal treatment for men and women in matters of employment and occupation, which could for example have a bearing on issues such as parental leave and child care.

Article 143 - Demography

This clause could be used to ensure that the European Union collects age disaggregated statistics, including improved information at the lower end of the age range, ie on the situation of Union citizens under the age of 18. Such an approach would enable the Union to have an accurate statistical assessment of the different ages of all its citizens and would assist the Union and Member States' in planning policy and services. It is important that information about the situation of children is included in such a report for a number of reasons. First children's needs are different from adults, second children will have to be responsible for supporting both financially and otherwise the Union's ageing population and finally children's services and interests must not be prejudiced as the Union and Member States focus their attention on the needs of Europe's ageing population.

The need for a legally binding charter of fundamental rights

Euronet recommends that the charter of fundamental rights is legally binding. Although a specific reference to children's rights in a non legally binding Bill of Rights would have the advantage of giving children and children's rights political visibility and as such may assist focusing the Commission and Member states attention more on the issue of European Children's policy, it would not have any legal significance and will therefore not assist in child proofing of legislation, its significance would therefore be only symbolic.

Moreover, Euronet recommends that the charter is not simply a declaration of existing rights but rather advances the promotion of children's rights and human rights. Euronet believes that a charter that is not legally binding would not address the problems of EU legislation inadvertently affecting children in a negative way which are raised in this submission.

Conclusions

It is recommended that the drafting of a Charter of Fundamental Rights should contain a full reference to the need for protection and promotion of children's rights in the EU. This is best expressed through a clear and explicit reference to the UN Convention on the Rights of the Child. Such a reference should be used to ensure that the child dimension is taken into account in all relevant EU policy, programmes and budgets. Member states should also ensure that existing legal bases are used to the greatest extent possible to promote children's rights.

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January 2000

*UN CONVENTION ON THE RIGHTS OF THE CHILD***Article 28**

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:
 - (a) Make primary education compulsory and available free to all;
 - (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
 - (c) Make higher education accessible to all on the basis of capacity by every appropriate means;
 - (d) Make educational and vocational information and guidance available and accessible to all children;
 - (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.
2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.
3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

Article 29

1. States Parties agree that the education of the child shall be directed to:
 - (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;
 - (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
 - (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;
 - (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
 - (e) The development of respect for the natural environment.
2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 30

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE**fundamental.rights@consilium.eu.int**

Bruxelles, le 25 avril 2000**CHARTE 4241/00****CONTRIB 114****NOTE DE TRANSMISSION**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne

Veillez trouver ci-après une contribution de CAFECs en vue de l'audition publique du 27 avril 2000. ¹

¹ Ce texte a été soumis en langue française uniquement.

**DES
DROITS FONDAMENTAUX**

**Contribution de CAF ECS
à l'élaboration
de la Charte des droits fondamentaux
de
l'Union européenne**

avril 2000

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CONTRIBUTION DE CAFECES

Depuis septembre 1996, à la suite de la publication du rapport « Pour une Europe des droits civiques et sociaux » - élaboré, à la demande de la Commission européenne, par un Comité des Sages présidé par Mme Pintasilgo, ancien premier ministre du Portugal, et dont Frédéric Pascal et Jean-Baptiste de Foucauld ont été membre et rapporteur - la Fonda anime un débat en vue de sensibiliser les associations à la construction d'une Europe plus civique et plus sociale.

La Fonda réunit des acteurs associatifs issus de secteurs diversifiés qui, au-delà de leurs divers champs d'activité, veulent contribuer à faire avancer l'idée d'une Europe qui puisse réussir son intégration politique, son développement social, son union monétaire et son élargissement. Ils se réunissent au sein d'un groupe qui a pris le nom de CAFECES (Carrefour pour une Europe civique et sociale), groupe ouvert et pluraliste. Ses membres et les associations dont ils sont issus adhèrent à la construction d'une Europe civique et sociale et se réfèrent à la Déclaration du 25 mars 1997 « Pour une Europe civique et sociale » qui a recueilli 370 signatures émanant de personnalités du monde associatif, syndical, politique et religieux.

CAFECES a salué la décision du Conseil européen de Cologne de mettre en chantier l'élaboration d'une Charte des droits fondamentaux de l'Union européenne, selon une procédure de consultation nettement améliorée par rapport aux méthodes inter-gouvernementales habituelles.

CAFECES déplore parallèlement la brièveté des délais qui sont prévus, l'incertitude qui accompagne le rôle et la place future de la Charte et surtout l'absence de démarche de citoyenneté active qui aurait permis de mener en profondeur une réflexion commune sur les finalités de la construction européenne.

Pour pallier ces lacunes, les membres de CAFECES ont pensé qu'il serait intéressant d'expérimenter, à échelle réduite, la méthode qui aurait dû, à leur sens, être employée pour définir des droits. Ils ont donc décidé de travailler plus particulièrement un certain nombre de droits pour lesquels ils se sentaient une appétence et une compétence particulières.

Chaque texte a été préparé par un membre de CAFECES, qui sert de relais avec la ou les associations où il milite, le sujet ayant été choisi en fonction des préoccupations propres à chaque association. Les textes préparés ont fait l'objet, dans un premier temps, de débats au sein de CAFECES, puis remis en débat lors d'un séminaire élargi sur la base des signataires de la Déclaration du 25 mars 1997, le samedi 11 mars 2000, séminaire qui a réuni 110 participants. La rédaction définitive des textes, tenant compte des travaux du séminaire, fait l'objet de la présente publication.



Le Carrefour pour une Europe civique et sociale (CAFECES) est animé par **Jean-Baptiste de Foucauld** (Convictions) et **Frédéric Pascal** (Fonda)

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DES DROITS FONDAMENTAUX

La liste des droits étudiés ne prétend pas à l'exhaustivité. Elle résulte des intérêts dont sont porteurs les associations dont les responsables sont membres de CAFECES.

- ☞
- ☞☞☞☞ Identité européenne et droits de l'homme
- ☞☞☞☞☞ Droit d'accès au sens et au patrimoine symbolique de l'humanité
- ☞☞☞☞☞ Développement « durable » et droits de l'homme
- ☞☞☞☞☞ Du droit au travail au droit à la pleine activité
- ☞☞☞☞☞ Droit à des moyens d'existence digne
- ☞☞☞☞☞ Droit au temps choisi
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- ☞☞☞☞☞ Droits du citoyen et technologies de l'information et de la communication
- ☞☞☞☞☞ Bioéthique et droits de l'homme
- ☞☞☞☞☞ Droit d'accès aux droits fondamentaux

Identité européenne et droits de l'homme

Si l'Union Européenne ressent aujourd'hui la nécessité d'établir une Charte des droits fondamentaux, c'est qu'elle a conscience d'avoir à exprimer une identité pour être elle-même. C'est précisément parce qu'elle se constitue sur une base volontaire, coopérative, démocratique, non-violente que l'Europe doit définir son identité. Parce que son développement politique ne repose ni sur la force, ni sur l'idéologie, l'Europe est contrainte d'innover et de construire son identité.

Cela est d'autant plus vrai que la situation identitaire de l'Europe est paradoxale : elle a un passé, une mémoire, un héritage commun ; mais il est fait autant de divisions et de guerre que d'unité, autant de conquêtes et de domination que d'ouverture à autrui ; elle a développé une conception exigeante de la personne et a su formuler les droits de l'Homme avant de les universaliser ; mais elle les a particulièrement violés aussi. En sorte qu'au lendemain de la guerre, l'union de l'Europe s'est faite largement autour du refus de la Shoah et de la lutte contre le totalitarisme, et cela au moment même où la Déclaration universelle des droits de l'Homme était élaborée comme un rempart à la barbarie. L'Europe se situe ainsi au coeur des contradictions du monde moderne ; elle vise à les assumer et à les dépasser.

L'Europe, pour toutes ces raisons ne peut se contenter de se référer aux droits fondamentaux. Elle doit bien entendu le faire, mais en les affinant et en leur apportant sa coloration particulière, sa vision, son expérience, son idéal. Ceci conduit à trois affirmations :

- les droits et les responsabilités sont fragiles, difficiles à exercer et à faire respecter ; il y faut une attention particulière, une pédagogie constante et des garanties soigneusement élaborées ;

- le principe fondamental d'égalité de chacun est d'une extrême exigence, presque utopique, plus souvent violé que respecté, rarement appliqué dans son intégralité ; la conscience aiguë de cette situation doit mener à la vigilance et à un travail constant sur les institutions, afin qu'elles servent bien les finalités qui leur sont assignées ;
- dans toute société, mais particulièrement en Europe du fait de son histoire, la conciliation entre l'unité et la diversité constitue l'enjeu démocratique fondamental. Cette conciliation présente de nombreux aspects, qui ont chacun leurs difficultés propres. Cela est particulièrement le cas dans le domaine culturel.

Face aux défis du monde moderne, l'Europe est un pari risqué et difficile : porter l'ardente obligation de réaliser effectivement, concrètement, pour chaque personne le projet des droits de l'homme, sans se contenter de les déclarer et d'en affirmer l'existence formelle. C'est précisément dans ce défi, qui suppose que ces droits et responsabilités soient portés par des politiques, des institutions et des comportements concrets, que réside la vocation de l'Europe.

L'Europe se caractérise par l'extrême diversité des peuples qui la composent, mais aussi par la communauté des valeurs autour desquelles ceux-ci se retrouvent. Ils attachent la même valeur suprême à la dignité de la personne humaine, et ils ont des conceptions et des exigences communes en matière de démocratie et de droits de l'homme. Ce sont ces valeurs, inscrites dans une histoire et dans un projet communs, qui font l'identité européenne. L'Europe ne peut être elle-même qu'en mettant au premier rang de ce qu'elle entreprend, que ce soit dans la construction de ses institutions, dans ses politiques internes, dans sa politique d'élargissement ou dans ses relations avec le reste du monde. Nous proposons aux représentants des peuples européens de se fixer des objectifs qui soient des réponses aux défis du monde moderne conformes aux valeurs qu'ils proclament.

Principaux défis

1. La globalisation

Elle se présente aujourd'hui principalement comme un phénomène subi. Il faut apprendre à la construire en utilisant de nouveaux outils politiques.

Elle rend plus aiguë la conscience des obligations envers les peuples étrangers et plus évident le devoir de protéger les droits de l'homme partout où ils sont menacés. La nécessité s'impose de faire émerger un nouvel ordre mondial, qui comportera des institutions à compétence planétaire. Il ne s'agit pas d'abolir les institutions existantes, mais de les faire évoluer et de les intégrer, en créant, quand c'est nécessaire, des instances de pouvoir mondial dont l'autorité soit fondée juridiquement et qui soient dotées de réels moyens. Ceci oblige aussi à considérer avec plus d'acuité un problème encore mal résolu : comment concilier l'universalité et les particularismes.

2. L'extrême pauvreté et la croissance démographique

Aujourd'hui plus d'un milliard d'hommes vivent en dessous du seuil de dignité. Dans les cinquante ans qui viennent la population mondiale verra doubler son effectif par rapport à celui du début des années 90. La technique rend théoriquement possible de relever ces deux défis, mais il faut définir un nouvel ordre économique et le mettre en place.

3. Les techniques de production

La techno-science permet d'intervenir de plus en plus profondément au coeur de la matière et de la vie, et de plus en plus massivement. Il en résulte des menaces qui intéressent la collectivité humaine tout entière, et la liberté d'entreprendre ne peut plus être affirmée sans limitations. Les principes qui fondent ces limitations nouvelles doivent être dégagés.

4. La communication et l'information

L'exercice de la citoyenneté dans un monde globalisé et complexe nécessite la mise à disposition des opinions publiques d'informations très variées et vérifiées, et d'évaluations sérieusement établies. Les nouvelles techniques de traitement et de diffusion de l'information rendent cela possible, mais elles représentent aussi une menace pour la liberté spirituelle et personnelle.

Objectifs fondamentaux

En considération de ces défis, il nous paraît urgent de rappeler les valeurs

fondamentales auxquelles sont attachés les peuples européens et de proclamer leur volonté de poursuivre ensemble les objectifs fondamentaux suivants :

1. Améliorer les institutions de l'Europe pour les rendre plus efficaces

et plus démocratiques. Renforcer le pouvoir européen en lui confiant les décisions qui par leur nature ne peuvent être conçues que du point de vue communautaire (subsidiarité positive) tout en continuant à respecter le principe de subsidiarité négative, et parallèlement cultiver la diversité qui fait la richesse de l'Europe.

2. Donner aux citoyens la possibilité de participer effectivement aux décisions politiques et, plus généralement, à la construction du monde qu'ils légueront à leurs descendants. A cet effet la formation pendant l'enfance et tout au long de la vie, la disposition de temps pour l'exercice d'activités citoyennes, l'accès à un champ très large d'informations vérifiées et d'évaluations sérieusement fondées, sont des droits qui demandent à être mieux définis et considérablement élargis.

3. Eliminer de son sein les situations d'extrême pauvreté et d'exclusion sociale.

4. Reconnaître leur pleine dignité aux étrangers vivant sur notre sol.

5. Accueillir les peuples voisins que l'histoire a tenus écartés de la première phase de construction de l'Europe, dès lors qu'ils adhèrent aux mêmes valeurs et qu'ils partagent les mêmes objectifs.

6. Encourager la création dans les autres régions de la terre d'entités de même type, basées elles aussi sur la communauté de vision et sur la proximité géographique.

7. Contribuer à la définition d'un nouvel ordre mondial, tel que les droits politiques, économiques et sociaux de l'ensemble des humains, dans leur effectif prévisible, puissent être effectivement respectés et les conditions d'un développement durable réunies.

8. Contribuer à l'élaboration d'institutions mondiales disposant de l'autorité juridique et de moyens pratiques suffisants pour mettre en place et gérer ce nouvel ordre dans le respect des principes démocratiques.

**Droit d'accès au sens
et au patrimoine symbolique
de l'humanité**

« Qui osera mesurer les conséquences de l'interruption forcée des divers processus qui mènent à long terme à des prises de conscience sur les plans ontologique, éthique et historique et qui dépendent à la fois de l'accès aux sources et de la confrontation ouverte des idées en cours de recherche ? Bref, qui peut mesurer les conséquences de l'impossibilité d'une quelconque circulation normale de l'information, de la pensée, des connaissances, des valeurs et de toutes les prises de position publiques ? (...) A quelle profonde impuissance morale et spirituelle cette castration de la culture ne risque-t-elle pas de mener demain la nation ? »

Vaclav Havel

Lettre ouverte à Gustav Husak

1975

*Ce projet espère contribuer à la définition du modèle démocratique dont est porteuse l'Europe, un modèle où la personne humaine est au centre du dispositif politique, non seulement parce que ses droits les plus fondamentaux y sont reconnus et protégés, mais parce qu'en tant que sujet moral et responsable, elle participe, avec toutes ses ressources, à l'élaboration du destin commun de l'humanité. C'est dire qu'il propose de spécifier le modèle démocratique européen, comme un cadre politique concerné, de par son origine historique même, par **le perfectionnement de l'humain en l'homme.***

I - Exposé des motifs

La démocratie est la forme politique qu'ont élaborée les modernes pour donner pleinement expression à la reconnaissance de l'égalité souveraineté et dignité de chaque être humain. C'est parce que les hommes sont libres et égaux, qu'il ne peut y avoir de souveraineté politique que collective et que **chacun est appelé à participer** à l'élaboration du destin commun, **à la création de l'histoire humaine.**

Le récent effondrement des systèmes idéologiques et étatiques, qui, sous prétexte de quitter l'ordre ancien - dont le fondement était religieux - en avaient reconstruit la dimension totalisante, fait apparaître véritablement, pour la première fois dans l'histoire, la promesse démocratique dans toute son exigence : **il ne s'agit rien moins que de faire advenir le régime de la pluralité humaine.**

Un tel horizon implique, outre des formes de représentation et de participation renouvelées, **un rôle à la fois plus conscient et accru de la société civile dans la définition des valeurs et des finalités de l'existence collective.** Plus que jamais, d'ailleurs, les défis politiques, économiques, et scientifiques interrogent le sens qui doit inspirer nos différentes formes d'action dans l'histoire et la capacité que nous avons d'en maîtriser les conséquences. Du fait de la maîtrise croissante de la nature et de sa propre nature biologique, l'homme se voit en effet investi de responsabilités aussi nouvelles que considérables, qu'il ne peut assumer sans lucidité sur les risques pris, et donc sans conscience aigüe de ce qu'il a appris de lui-même au cours de l'histoire et sans interrogation sur le mystère qu'il est à lui-même. D'autre part, la question montante de l'exclusion sociale, liée à l'accumulation productive et à la sélectivité croissante du marché du travail, pose en termes nouveaux la question de la fraternité, de la solidarité et du rapport à l'autre, qui doivent être en permanence actualisées et refondées. C'est dire que les enjeux auxquels l'humanité se confronte, sont, de plus en plus, d'abord d'ordre éthique.

La prise en charge par la collectivité du sens de sa destinée ne saurait toutefois être pensable sans une aptitude de plus en plus grande des individus à donner signification à leur propre existence et à se construire comme personnes. Plus qu'auparavant, la démocratie exige de véritables sujets, conscients de leur liberté et de leur responsabilité. **C'est donc,**

plus généralement, les conditions d'accès de chaque individu à sa propre souveraineté qui méritent d'être examinées sous un nouveau jour, tout comme les risques d'exclusion de cet accès.

Cette perspective conduit à reconsidérer la frontière entre la sphère privée et la sphère publique, entre l'homme et le citoyen. La démocratie aujourd'hui, pour être réelle, exige en effet, comme le souhaitaient les penseurs de sa fondation, que soient formés des citoyens intéressés à la chose publique, responsables et conscients de leurs droits et de leurs devoirs, c'est-à-dire, ayant intériorisé les règles du jeu démocratique. Mais plus largement encore, elle nécessite des consciences aptes à la réflexion, à la délibération, et à l'innovation morales, afin de nourrir activement le débat d'opinion permanent dans lequel elle se constitue dynamiquement, selon un processus historique ouvert. Elle demande une véritable culture morale des individus.

A l'intérieur de l'espace public démocratique en effet, et dans le respect de ses règles, l'orientation morale des décisions politiques ne saurait s'imposer a priori, mais doit être construite **à partir de différentes sources éthiques**, en vue d'un consensus lui-même provisoire sur ce qui est humainement bon, ici et maintenant. **A la pluralité des hommes, telle que veut la respecter et la déployer la démocratie, doivent donc correspondre, dans la culture démocratique, la pluralité des points de vue sur l'homme** et une recherche plurielle de la vérité.

Le travail de création de sens de la démocratie ne saurait donc se faire sans, d'une part, l'enracinement personnel des individus dans des traditions spirituelles vivantes et sans, d'autre part, la présence active de ces traditions dans le champ culturel. Et loin qu'en chaque être humain s'opposent l'individu privé et le sujet politique, ils sont appelés à fonctionner dans un processus dialectique, la personne, avec toutes ses aspirations et ses expériences de vie, contribuant à former le citoyen, tandis que, réciproquement, le citoyen enrichit l'homme.

Or, parce que les démocraties modernes ont en commun d'avoir succédé à un ordre théologico-politique, et parce qu'elles se sont construites parfois de façon conflictuelle contre lui, elles ont procédé, à des degrés divers, à une mise à l'écart de la morale et de la religion, renvoyées à la sphère de l'existence individuelle.

Cette privatisation d'une partie des ressources de sens est d'abord cause d'un appauvrissement du patrimoine culturel dont dispose la société démocratique pour se penser elle-même et travailler son identité en puisant dans les différentes strates qui se sont constituées à travers l'histoire. Cette privatisation est ensuite **source d'inégalité profonde**, tout particulièrement à l'égard des milieux socialement défavorisés. Sous couvert de neutralité, elle n'offre pas la chance à tous les hommes d'avoir accès à la diversité des systèmes d'interprétations de la vie humaine, et de construire leur identité personnelle. Elle ne permet pas non plus à tous les individus de donner une expression culturelle, dans l'espace public, à ce qui fait sens pour eux. En refoulant la dimension morale et spirituelle de l'existence humaine de la culture commune, **elle nourrit les phénomènes fondamentalistes, communautaristes et sectaires**. Elle met en danger à la fois le bon fonctionnement et la vitalité de la démocratie, dont elle affaiblit l'imagination créatrice.

Si un des enjeux majeurs des débuts historiques des démocraties au XIX^{ème} siècle fut la généralisation de l'instruction, pour instaurer le suffrage universel, le défi auquel elles doivent faire face, à l'aube du XXI^{ème} siècle, devient le problème de l'accès de tous à l'ensemble des réponses morales et métaphysiques que l'être humain a apportées, dans l'histoire, au sens de son existence, pour former le jugement éthique de chacun, construire son autonomie et accéder à une souveraineté plus responsable et plus authentique.

Parce qu'elle a été construite, après la seconde guerre mondiale, sur le refus de la dénégation de l'homme, l'Europe constitue déjà, en soi, un espace éthique. Parce qu'elle est aussi au carrefour de plusieurs héritages civilisationnels et spirituels, et riche de présences culturelles variées, elle est le lieu où peut s'affirmer, historiquement, aujourd'hui, cette démocratie plus existentielle, qui ne soit pas seulement un espace où coexistent pacifiquement de libres individualités concurrentes et où est assurée l'égalité de leurs droits, mais le lieu d'une naissance à soi pour chaque être humain et, par un même mouvement, d'une histoire voulue pour la société dont il est membre, dans le souci permanent du discernement de ce qui est humain. Dans l'espace européen, coexistent en outre plusieurs formes d'expression institutionnelle et culturelle de la laïcité, produits de contextes socio-historiques différents, et dont la mise en dialogue est un atout pour faire surgir cet **humanisme pluriel**.

II - Nature et extension d'un « droit d'accès au sens et patrimoine symbolique de l'humanité »

Il résulte des considérations précédentes que les démocraties modernes, pour fonctionner, doivent garder présentes et en débat les sources historiques, philosophiques, littéraires, spirituelles et religieuses de l'humanité, et les interrogations dont elles sont porteuses, pour s'appuyer sur elles dans le processus de construction du sens personnel et collectif. Mais la transmission des systèmes de valeurs, du fait de l'individualisation et du relâchement du lien social, ne se fait plus de façon naturelle et mécanique. Elle doit donc être construite socialement et collectivement, en respectant des règles d'objectivité et de pluralisme.

C'est l'un des buts des systèmes éducatifs. Mais d'une part, certaines disciplines qui ont pour objet la mémoire des sources sont dévalorisées et menacées, au nom d'un pragmatisme à courte vue ; d'autre part, en raison de la séparation excessive entre espace public et espace privé déjà évoquée, certaines sources, notamment les sources religieuses, ne sont pas prises en considération.

Il en résulte qu'un principe de nature juridique devrait être posé pour organiser l'accès de chacun à la diversité de nos sources symboliques, autrefois justement dénommées « humanités », et que ce principe devrait inspirer les modalités européennes d'organisation des espaces publics de transmission et d'échange culturels mis en place par la puissance publique, ou auxquels elle contribue, qu'il s'agisse :

- du système d'enseignement,
- de la formation permanente,
- des médias,
- ou des aides publiques à la production culturelle.

C'est pourquoi nous lançons un appel pour que les droits fondamentaux européens **concernant l'information, l'éducation et la culture** soient formulés de façon à inclure de façon explicite **le droit à l'accès au sens et au patrimoine symbolique de l'humanité**. Il ne s'agirait pas tant d'ajouter un nouveau droit à la liste des principaux droits fondamentaux, que d'infléchir la rédaction des droits cités, en précisant leur contenu, dans le sens de la dimension humaniste de l'entité européenne.



Développement durable et droits de l'homme

Soumis au double impératif éthique de solidarité synchronique avec la génération présente et de solidarité diachronique avec les générations futures, le développement durable poursuit une finalité sociale : l'épanouissement de tout l'homme et de tous les hommes (François Perroux) ou, si l'on préfère, la construction d'une civilisation de l'être dans le partage équitable de l'avoir (Joseph Lebret). Chemin faisant, il veille au respect des contraintes environnementales tout en recherchant la viabilité économique, condition instrumentale, néanmoins essentielle, pour sa réalisation.

La Charte des Nations Unies, la Déclaration universelle des droits de l'homme, le Pacte international relatif aux droits civils et politiques et le Pacte international relatif aux droits économiques et culturels jalonnent le processus **de l'internationalisation des droits de l'homme**.

En parallèle, sous la pression des mouvements citoyens et sociaux et de l'opinion publique, on assiste dans de nombreux pays à la consolidation des Etats de droit, le renforcement des garanties des **libertés négatives** (freedom from) et l'élargissement des **libertés positives** (freedom for). Partout ailleurs la lutte pour les droits de l'homme, avec ses succès et ses échecs lourdement payés, constitue un axe fondamental de la politique. Alors que se consolide le registre de **la première génération des droits** politiques, civils et civiques balisant le pouvoir d'action de l'Etat et s'étoffe celui de la **deuxième génération des droits** sociaux, économiques et culturels imposant une action positive à l'Etat, une

troisième génération de droits, cette fois-ci **collectifs**, fait son apparition : droit à l'enfance, droit à l'environnement, droit à la ville, droit au développement des peuples, enfin reconnu à la Conférence de Vienne en 1993. Enfin, Luiz Carlos Bresser Pereira postule une **quatrième génération de droits** républicains garantissant aux citoyens l'accès et le bon usage des patrimoines publics – historique, environnemental et économique – (la res publica au sens littéral du terme).

Développement et démocratisation se confondent en tant que processus historique, à condition de donner une acception large au second terme. Au-delà de la simple instauration (ou rétablissement) de l'Etat de droit et des institutions de gouvernance démocratique, la démocratisation c'est aussi l'approfondissement, jamais achevé, de la démocratie au **quotidien**, de l'exercice de la **citoyenneté** en vue de l'expansion, de l'universalisation et de l'appropriation effective des droits de seconde et troisième générations.

Alors qu'en théorie les droits de l'homme sont indivisibles, dans la pratique on ne peut tout à fait éluder la question de leur hiérarchisation, notamment pour ce qui est de l'application des différents droits économiques et sociaux au vu de la multiplicité des besoins et de la pénurie des moyens. A partir de ce constat, la tentation est grande de procéder à des arbitrages abusifs. L'efficacité socio-économique ne saurait être en aucun cas invoquée pour justifier la dérive autoritaire. L'expérience tragique de notre siècle nous a appris que les droits de la première génération constituent une valeur absolue. Quant aux arbitrages délicats portant sur les droits de seconde génération, ils relèvent du fonctionnement de l'Etat de droit démocratique.

La Déclaration et le Programme d'action de Vienne, adoptés par la Conférence mondiale sur les droits de l'homme, proposent, dans le paragraphe 98, pour renforcer la jouissance des droits économiques, sociaux et culturels, la mise en oeuvre d'un système d'indicateurs pour évaluer les progrès accomplis dans la réalisation des droits énoncés dans le Pacte international.

L'analyse du développement en tant qu'appropriation des droits de l'homme pourrait donner lieu à l'élaboration d'un rapport sur la condition humaine d'une richesse considérable et d'une utilité certaine pour la

formulation des politiques publiques de développement, recentrées sur la promotion des quatre générations des droits de l'homme.

Après avoir choisi la liste des droits considérés, il faudrait enquêter pays par pays sur l'état d'appropriation effective de chaque droit en distinguant la situation des différentes catégories sociales.

L'entreprise peut paraître ambitieuse. Elle est à la mesure de l'enjeu et tout à fait praticable, à condition de mobiliser les organisations citoyennes du tiers secteur travaillant dans les différents domaines couverts par un tel rapport. Elle se prête en outre à une réalisation par modules si l'opération devait s'échelonner sur plusieurs années ou devenir permanente. Il suffirait, dans ce cas, de choisir chaque année un nombre limité de droits ou encore de restreindre la portée géographique de l'étude à une région, de privilégier tantôt les populations urbaines, tantôt les populations rurales, les découpages se faisant en fonction des moyens. Mais la démarche la plus judicieuse pourrait consister à européaniser et à adapter cette démarche au processus de la Charte des droits fondamentaux.

Il s'agirait ainsi d'ouvrir une démarche précise coiffant l'ensemble des propositions : **l'analyse du développement en tant qu'appropriation des droits fondamentaux pourrait donner lieu à l'élaboration d'un rapport sur la réalisation de ceux-ci. Il s'agirait d'enquêter pays par pays sur l'état d'appropriation effective de chaque droit en distinguant la situation des différentes catégories sociales.**

Une telle démarche serait d'utilité certaine pour la formulation et l'évaluation des politiques publiques de développement recentrées sur la promotion des différentes générations de droits humains.

La proposition suivante, formulée par Ignacy Sachs, pourrait être valable pour l'ensemble de la Charte : « *La Déclaration et le Programme d'action de Vienne, adoptées par la Conférence mondiale sur les droits de l'homme proposent, dans le paragraphe 98, pour renforcer la jouissance des droits économiques, sociaux et culturels, la mise en oeuvre d'un système d'indicateurs pour évaluer le progrès accomplis dans la réalisation des droits énoncés dans le Pacte international.* »

Mais la pratique des « indicateurs » (généralement chiffrés) peut être très réductrice. On devrait plutôt songer à des dispositifs d'analyse et d'évaluation en termes de « grille ».

Du droit au travail au droit à la pleine activité

Exposé des motifs

L'inscription de ce droit dans la Charte répond à un double objectif :

- faciliter l'intégration dans la société, des personnes exclues ou menacées d'exclusion par la persistance d'un chômage structurel que le retour à la croissance ne permettra pas d'éliminer ;
- assurer la satisfaction de besoins individuels ou sociaux, partiellement insolvables ou mal assurés grâce au développement d'un tiers secteur moins coûteux et moins rigide que les services publics classiques, mieux adapté aux réalités de la société contemporaine, au prolongement de la vie humaine, au développement des organisations non gouvernementales.

L'innovation que représente le droit à la pleine activité suppose que soit écartées d'emblée deux objections : l'instauration de ce droit ne saurait s'accompagner de nouvelles contraintes imposées aux chômeurs, ni se traduire par le développement camouflé d'un nouveau secteur public.

Modalités de mise en oeuvre

Une grande souplesse dans l'application devrait être laissée aux Etats. Ceux-ci pourront organiser eux-mêmes la pleine activité ou en confier la mise en oeuvre aux collectivités décentralisées. Ils seront cependant comptables devant l'Union de la garantie effective du droit à la pleine activité. On peut se demander s'il ne conviendrait pas de reconnaître une possibilité, voire une obligation d'intervention de l'Union, en cas de carence d'un Etat.

Les Etats ou les collectivités décentralisées pourront avoir recours à des associations ou à des entreprises pour l'offre de contrats d'activité et l'organisation de services destinés à employer les titulaires de ces contrats.

Sélection des candidats

Le droit à la pleine activité ne sera subordonné à aucune condition de diplôme ou d'expérience professionnelle. Chaque candidat aura la possibilité d'exiger qu'une offre raisonnable lui soit présentée. Après trois refus successifs de sa part, il pourra faire appel à une instance d'arbitrage. Celle-ci appréciera si les offres rejetées étaient raisonnables. Il faut entendre par là l'offre d'une activité correspondant aux capacités du demandeur et dans la mesure du possible à ses souhaits, mais non nécessairement à son niveau de qualification ou à ses expériences professionnelles antérieures. Un mécanisme d'appel devra être prévu afin d'assurer une jurisprudence harmonisée dans l'ensemble des Etats membres.

Les Etats membres auront la faculté, mais non l'obligation, de limiter l'offre de pleine activité aux personnes à qui aucune offre d'emploi satisfaisante dans l'économie marchande n'a pu être proposée.

Le contrat pourra être interrompu si l'organisme employeur estime que le titulaire ne donne pas satisfaction. Celui-ci aura la faculté de solliciter un autre contrat auprès d'un autre organisme. En cas de litige, il pourra faire appel à l'instance d'arbitrage.

Il ne saurait être question d'étendre le droit à la pleine activité aux retraités. Il serait dépourvu de toute signification pour les bénévoles. En revanche, le développement d'un tiers secteur d'économie sociale devrait permettre la mobilisation de retraités et de bénévoles en vue de tâches d'intérêt général.

Les bénévoles recevraient des indemnités pour frais, par exemple de transport, ou des indemnités complémentaires en cas d'insuffisance de leurs revenus. Il en serait de même des retraités. Ceux-ci pourraient notamment, en fonction de leurs capacités et de leurs expériences, se voir confier des tâches d'encadrement.

Tâches susceptibles d'être assurées par un tiers secteur d'économie sociale

On ne donnera ici que quelques exemples dans le domaine de l'aide aux personnes, de la santé, de la sécurité, de l'environnement et de la justice.

1 – Aide aux personnes

Le tiers secteur serait particulièrement utile pour permettre le maintien à domicile des personnes âgées (l'aide aux achats, aux formalités administratives, soins mineurs, réconfort moral), l'aide aux couples ayant des enfants et dont les deux conjoints exercent une profession (garde des enfants à domicile, accompagnement à la crèche ou à la halte garderie, voire assistance scolaire à domicile).

2 – Santé

Le recours au tiers secteur permettrait d'améliorer les services rendus aux personnes hospitalisées et, dans certains cas, de réduire la durée des hospitalisations (voir ci-dessus aide aux personnes âgées qui peut aussi bien s'appliquer aux personnes en convalescence).

3 – Sécurité

Le maintien ou le rétablissement de la sécurité, en particulier dans les transports et dans le milieu scolaire fait partie des tâches qui pourraient être confiées à des titulaires de contrats d'activité, aussi bien jeunes qu'adultes ou en retraite. Les contrats emplois-solidarité offerts à des jeunes constituent une première expérience qui s'est révélée utile et devrait être pérennisée.

4 – Environnement

De nombreux travaux d'entretien ou d'aménagement gagneraient à être confiés à des associations lorsque les administrations d'Etat ou locales n'ont pas les moyens de les exécuter. Il en est ainsi en particulier des travaux qui ne nécessitent pas l'emploi d'un matériel lourd ou même dont l'emploi d'un matériel lourd est de nature à compromettre la bonne exécution. Tel est le cas de l'entretien des sentiers, cours d'eau et de leurs berges.

Dès à présent, l'entretien et la mise en valeur de certains éléments du patrimoine naturel ou architectural sont assurés par des associations de bénévoles. L'action de ces associations pourrait être utilement développée si elles disposaient d'un encadrement permanent dans le cadre de contrats d'activité. Elles pourraient aussi offrir des contrats à des demandeurs d'activité.

5 – Justice

Il est généralement reconnu que la prison n'est pas le meilleur mode de traitement de la délinquance primaire. L'organisation de chantiers soumis à une discipline stricte serait sans aucun doute préférable à l'enfermement qui place de jeunes délinquants primaires sous l'emprise de délinquants ou de criminels confirmés.

Dans ce domaine, il pourrait être fait appel à des personnes en retraite ou en pré-retraite ayant exercé des fonctions d'autorité, qu'il s'agisse d'enseignants, de militaires ou de cadres du secteur privé.

Certes, l'organisation de chantiers pour délinquants primaires ne pourrait relever entièrement des contrats d'activité. Mais ceux-ci devraient en faciliter la mise en place et en réduire le coût.

Retour à l'emploi-formation

La proposition visant à reconnaître, à côté du droit à l'emploi, un droit à l'activité est parfois décrite comme une menace d'extension de la précarité. Il s'agit là d'un contresens. En effet, l'un des objectifs essentiels qui vise la reconnaissance de ce droit est précisément de faire échapper à la précarité toutes les personnes qui manifestent un désir sincère et une volonté réelle de s'intégrer à la société et de se rendre utiles.

Cet objectif sera d'autant mieux reconnu que seront ménagées les possibilités de retour à l'emploi dans l'économie marchande ou dans les services publics. C'est pourquoi des formations devront être offertes aux titulaires de contrats d'activité : soit en début de contrat, lorsqu'une formation préalable s'avère nécessaire, soit en cours de contrat, en vue d'un perfectionnement, soit en fin de contrat, en vue soit d'un changement d'affectation au sein du tiers secteur, soit du passage ou du retour à

l'économie marchande ou aux services publics. Concernant ces derniers, il serait approprié de reculer les limites d'âge en fonction de la durée du travail, dans un contrat d'activité, voire d'en faire un critère d'admission aux concours des fonctions publiques d'Etat, locale ou hospitalière.

La reconnaissance du droit à la pleine activité ne saurait être considérée comme un palliatif temporaire à la crise de l'emploi. Il s'agit en réalité d'un mode de transformation de la société donnant sa juste place à des activités ne relevant ni du secteur marchand, ni des services publics classiques. Il s'agit aussi, dans l'optique de ce qu'Edgar Morin appelle une « politique de civilisation », d'offrir à toutes les personnes qui en ont le désir et la possibilité de participer à la vie de la société en exerçant une activité d'intérêt général, le plus souvent contre rémunération, mais aussi, le cas échéant, à titre totalement ou partiellement bénévole.

En généralisant une telle innovation, l'Union européenne libérerait ses Etats membres de rigidités qui les paralysent tout en mettant à son actif une véritable avancée de civilisation.

Proposition

« Toute personne adulte dépourvue d'emploi doit se voir offrir la possibilité de participer à une activité d'intérêt général normalement rémunérée. »



Droit à des moyens d'existence digne

Ce texte a soulevé des réserves de la part des associations, tant sur le principe que sur les modalités, au cours des différentes réunions de CAFECs. Ces idées doivent continuer à être approfondies, car elles sont novatrices.

Exposé des motifs

A mesure que, globalement, le monde s'enrichit, on note que les inégalités s'accroissent. Le droit au travail est inscrit dans la Déclaration universelle des droits de l'homme, mais le travail est inégalement réparti. Or, chaque individu, comme producteur et/ou consommateur, contribue à tout âge à l'augmentation du PIB d'un pays, d'un continent ou de la planète. A défaut de la reconnaissance de ces rôles naturels d'agents économiques, une large partie des citoyens se trouve ainsi spoliée. On tend alors à rompre l'unité du corps social dont chaque individu est l'une des composantes, obligeant ainsi les plus démunis à se déclarer pauvres et à dépendre de l'assistance des autres. Il s'agit donc d'un droit fondamental : celui de l'accès aux fruits de la richesse collective pour disposer de moyens d'existence digne. Ce constat nous oblige à réfléchir sur l'évolution des modes d'appropriation et de répartition des richesses :

- peut-on persister à vouloir faire du travail le seul facteur d'intégration sociale ?
- le temps n'est-il pas venu de prendre en compte la richesse collective ?

- chacun n'a-t-il pas un droit naturel à en recevoir une part ?
- en ce sens peut on encore refuser la reconnaissance d'un droit à des moyens d'existence digne ?

Pour répondre à ces interrogations, réfléchissons sur la valeur donnée au travail dans notre société, plus particulièrement dans les rapports entre :

- le travail et la propriété
- le travail et la productivité
- le travail et les revenus.

I - Travail et propriété

Si la propriété individuelle est un droit naturel de l'homme, car il est légitime de posséder ce que l'on a obtenu par ses efforts ou par ceux des siens, la délimitation de la part revenant à chacun pose un double problème :

1- D'une part, en raison de l'importance de l'héritage culturel commun. En effet, toute appropriation privée (de machines, de travail) ainsi que les revenus qui en découlent sont aussi le résultat d'échanges multiples, marchands mais aussi non marchands, dépendant de l'ensemble des connaissances, du capital matériel et social accumulé, et encore des infrastructures et de la culture même dans laquelle nous sommes plongés. C'est cet ensemble qui conditionne l'efficacité des efforts individuels et caractérise le niveau de vie d'un pays. Ces fruits appartiennent donc à tous, qu'ils travaillent ou non, et la justice sociale impose que chacun en reçoive une part égale.

2 - D'autre part, la multiplication des échanges, la mondialisation de la circulation des biens et des hommes génèrent de nouvelles formes de richesses, dont il est difficile d'identifier les auteurs et donc de déterminer la part leur revenant en propre. En outre, la révolution informationnelle dématérialise le travail et produit des synergies multiples et en réseaux. A qui appartient le produit de ce travail ? Qui peut en revendiquer la propriété de bout en bout ? Personne en propre. Dans ce contexte, le travail individuel est comme dissout, mais ses effets sont démultipliés dans des proportions non mesurables.

Ces phénomènes existaient déjà en proportion moindre jusqu'ici ; leur amplification soudaine nous les rend incontournables. Ils nous imposent, aujourd'hui, de trouver la contre-partie revenant à chacun de la reconnaissance de ce capital collectif.

II - Travail et productivité

Dans l'entreprise, on ne peut éluder les effets des gains de productivité sur la réduction de la durée du travail ni en tirer les conséquences. Il y a un siècle on travaillait 4.000 heures et actuellement moins de la moitié ; le temps libre est ainsi devenu supérieur au temps de travail, selon une tendance inscrite dans une évolution historique irréversible. La productivité est bonne en soi, car elle améliore notre qualité de vie, d'autant qu'en permettant l'augmentation du temps libre, elle devient créatrice de richesses par les relations et les activités non marchandes quelle suscite, si elle s'accompagne d'un large effort d'éducation et de communication.

Mais cette augmentation de temps libre serait récessive si elle devait entraîner une baisse de revenu, tout particulièrement pour les catégories les moins favorisées.

III - Travail et revenus

Un nombre appréciable d'individus ou d'institutions disposent d'un pouvoir non négligeable sur le maintien de leur revenu : les fonctionnaires par leur statut protégé, les salariés des grandes entreprises par la pression syndicale, les détenteurs de capitaux par leur rentabilité à long terme, les retraités par la sécurité de leur retraite. A l'opposé, les travailleurs indépendants, les occasionnels, les petits salariés du privé sont totalement livrés aux fluctuations du marché.

Ce sont précisément ceux qui pour vivre ne dépendent que de leur seul travail ou ne disposent que de minima précaires, car conditionnels, qui subissent le plus violemment les incidences des mutations technologiques et économiques. En outre, la volonté de travailler n'assure plus un revenu suffisant au travailleur précaire qui n'a aucune prise sur le marché du travail. Sa précarité est aggravée par un triple constat : il ne peut choisir

son activité ni négocier sa rémunération, et il vit au jour le jour sans assurance pour le lendemain.

La condition de ceux qui se trouvent ainsi paupérisés crée un nouveau clivage social et la nouvelle grande inégalité sociale d'aujourd'hui.

Proposition

On retrouverait le sens de la liberté et de la fraternité en investissant dans la personne par la reconnaissance de son droit à des moyens d'existence digne tout au long de sa vie.

Pour la collectivité ce serait prendre en compte la part du capital social humain revenant de droit à chaque individu. Loin d'être une charge, cela réaliserait un vivifiant investissement social, car l'individu, lors de sa vie active, serait ainsi incité à contribuer par lui-même à l'enrichissement collectif. Ce droit apporterait le gène du changement au bénéfice d'une société au service de l'homme, dans laquelle :

- la sécurité serait mieux assurée et les initiatives libérées
- chaque homme serait reconnu dans son appartenance à la communauté.

On imagine le caractère fédérateur de ce nouveau contrat social s'il était proposé par la France, inspiratrice des droits de l'homme, pour être peu à peu adopté dans l'Union européenne par les Etats membres.



Droit au temps choisi

Exposé des motifs

Tout individu adulte est titulaire de responsabilités envers lui-même, envers sa famille, envers les groupes sociaux dont il fait partie ou avec lesquels il contracte. A l'exercice de chacune de ces responsabilités, l'individu alloue la partie requise du temps total dont il dispose. Encore faut-il que les contraintes de l'organisation sociale ne s'opposent pas à cette allocation du temps, notamment celui nécessaire à la vie personnelle et familiale à laquelle la personne a droit comme l'un des garants de sa dignité.

Or, les évolutions contemporaines mettent en cause la capacité de l'individu de gérer son temps, donc sa capacité de faire face à l'ensemble des responsabilités qui lui incombent. Deux grandes tendances se font jour :

- l'une est la difficulté de plus en plus grande à encadrer contractuellement le temps de travail. Le temps de travail est plus difficile à contrôler du fait que, sous l'effet notamment des nouveaux moyens de communication, il n'y a plus de relation, aussi systématique que dans le passé, entre temps de travail et lieu de travail. Par ailleurs, la flexibilité des horaires et du calendrier de travail s'accroît. Dans certains cas, la dimension mondiale des échanges professionnels soumettent d'aucuns aux rythmes temporels de personnes situées dans un tout autre contexte géographique et social. Or la flexibilité s'oppose à la prévisibilité. Elle obère donc la capacité de l'individu à organiser ses autres temps sociaux ;

- la deuxième tendance renforce la première. C'est le fait que la fonction économique prend de plus en plus le pas sur toutes les autres fonctions,

quand elle ne nie pas purement et simplement leur légitimité et leur rôle. C'est en imposant ses temps et ses rythmes qu'elle marque sa prééminence et contrarie l'exercice des responsabilités sociales essentielles portées par les individus.

Affirmation d'un droit

En conséquence, dans le cadre européen, qui semble particulièrement bien adapté pour en traiter, il convient d'affirmer le droit suivant :

Dans le cadre contractuel des relations de travail, chacun a le droit de faire valoir tout au long de son existence, l'harmonie des temps consacrés à sa vie professionnelle, à sa formation, à l'exercice de ses responsabilités familiales et civiques et à son épanouissement personnel.

Modalités de mise en oeuvre de ce droit

La mise en oeuvre d'un tel droit n'est pas aisée. Elle doit se traduire, soit par des dispositifs réglant :

- la quantité de temps consacrée à la vie professionnelle,
- les interférences de la vie professionnelle avec les autres responsabilités sociales,
- les délais de prévenance pour les changements d'affectation du temps ; soit par la précision d'un certain nombre de principes découlant de ce droit fondamental, principes qui pourront être invoqués en cas de recours pour non respect dudit droit.

1. Quantité de temps consacrée à la vie professionnelle

Pour que l'intégrité de la personne soit respectée, les législations nationales doivent comporter :

- des règles d'âge minimum ;
- une ou des définitions du temps de travail effectif qui se référeront au temps à disposition de l'employeur, quelle que soit la localisation de la personne. Pourraient être considérés comme temps à disposition de l'employeur les temps d'interruption de l'activité professionnelle

inférieurs à un certain pourcentage du temps de travail quotidien, ainsi que les temps pendant lesquels il est fait obligation au salarié d'être joignable par tout moyen de communication ;

- des durées maximales quotidienne, hebdomadaire, annuelle. Pour s'adapter aux caractéristiques des secteurs professionnels, ces durées maximales ne seront pas fixées de manière absolue, mais conditionnelle ; par exemple, plus la durée hebdomadaire maximum sera élevée, plus la durée annuelle maximum sera faible ;
- des règles de compensation du non-respect des durées contractuelles, avec abondement d'un compte épargne-temps.

2. Interférences réciproques de la vie professionnelle et des autres responsabilités sociales

Pour que l'intégrité de la personne et l'exercice de ses responsabilités familiales et sociales soient respectés, il convient d'encadrer la vie professionnelle de telle manière que ses modalités d'organisation n'aient pas pour effet de perturber les autres temps sociaux. Inversement, les autres temps sociaux ne doivent interférer sur la vie professionnelle que dans des cas limités et précis.

L'application du premier principe se traduit par :

- l'ouverture d'une possibilité, pour chacun, d'adapter la durée, les horaires et le calendrier de travail aux contraintes résultant de l'exercice de ses responsabilités familiales et sociales. Cette possibilité est, la plupart du temps, déjà ouverte par des dispositions du droit du travail, soit pour des événements familiaux (maternité, décès de proches, mariage, ...), soit pour l'exercice de responsabilités syndicales. Elle pourrait être étendue par des dispositifs d'épargne-temps avec des règles de tirage, modulées selon les motifs du tirage, ou par la pratique de la renégociation des temps contractuels de travail, en cas de changement dans la situation familiale, voire sociale, du salarié ;

- le respect de délais de prévenance en cas de changement d'horaire ou de calendrier de travail. Les délais de prévenance peuvent être réduits, tant pour le salarié que pour l'employeur, pour les seuls cas de force majeure. L'invocation de la force majeure est elle-même limitée à un certain nombre de cas dans l'année et fait jouer, à chaque fois, une clause

de pénalisation en temps au profit du salarié ou au profit de l'employeur, selon les cas ;

- un devoir de préservation, dans le travail, de l'intégrité du salarié de telle sorte que ne soit pas obérée sa capacité d'assumer ses responsabilités hors de son travail.

L'application du deuxième principe se traduit par :

- un devoir de ne pas utiliser de façon abusive les règles instaurées pour préserver les temps sociaux autres que le temps professionnel,

- le jeu à double sens des pénalisations liées au non-respect des délais de prévenance.



Droit d'asile

Exposé des motifs

Le respect, la promotion et la sauvegarde des droits de l'homme et des principes démocratiques, qui font l'objet de références explicites dans le dispositif du Traité sur l'Union européenne, constituent un facteur essentiel des relations entre la Communauté européenne et les pays tiers. Le respect des droits de l'homme, qui s'affirme comme l'un des éléments fondamentaux de l'appartenance à l'Union européenne, a été consacré comme principe de base de son action.

Le droit à l'asile est reconnu comme un droit fondamental de toute personne, quelle que soit son origine, qui se sent persécutée, et que tout Etat de droit se doit de respecter indépendamment du contexte économique et politique (et donc de la politique migratoire) du moment. Il est inscrit dans de nombreux textes de proclamation des droits : dans certaines constitutions européennes, en particulier dans le préambule de celle de la France, et dans la Déclaration universelle des droits de l'homme. La Convention de Genève du 28 juillet 1951 relative au statut des réfugiés et dont le champ d'application a été étendu hors d'Europe par un Protocole de 1967 donne une définition du réfugié et fixe son statut. Ces deux textes - la Convention et le Protocole - ont été signés et ratifiés par tous les actuels Etats membres de l'Union européenne. Ils fournissent le socle juridique sur lequel doit être fondé le droit d'asile à l'intérieur de l'Union.

Mais depuis la fin des années 70, les conditions d'exercice du droit d'asile ont été rendues plus difficiles dans les pays riches, notamment dans les pays de l'Union européenne, du fait :

- du nombre toujours important et grandissant des réfugiés (violations massives des droits de l'homme dans le monde entier, développement de l'information et prise de conscience de leurs droits par les victimes, développement des moyens de transport),
- de la montée du chômage dans les pays européens et de la fermeture de leurs frontières à l'immigration économique, rendant plus problématique le simple accès sur leurs territoires,
- de la plus grande complexité des relations diplomatiques.

En conséquence les pays d'accueil, notamment européens, ont semblé être pris de court par l'augmentation des demandes d'asile ; d'autre part les réfugiés sont quelquefois utilisés comme un enjeu dans les relations (politiques, économiques, diplomatiques) entre les gouvernements, des Etats n'admettant pas que certains de leurs ressortissants puissent trouver protection auprès d'un autre Etat. Ces éléments ont conduit à des variations dans l'application de la Convention de Genève de 1951 et du traitement des demandes d'asile dans les différents pays de l'Union européenne qui ont senti la nécessité d'harmoniser leurs pratiques.

Aussi, depuis une quinzaine d'années, les questions touchant au droit d'asile sont une préoccupation constante dans les relations intergouvernementales des Etats membres. Elles sont formalisées dans le Traité de Maastricht instituant l'Union européenne et seront probablement communautarisées, au moins partiellement dans les cinq ans de l'entrée en vigueur du Traité d'Amsterdam.

Les conclusions du Sommet européen de Tampere abordent pour la première fois la question du droit d'asile en termes de droits de l'homme « 4. Notre objectif est une Union européenne ouverte et sûre, pleinement attachée au respect des obligations de la Convention de Genève sur les réfugiés et des autres instruments pertinents en matière de droits de l'homme, et capable de répondre aux besoins humanitaires sur la base de la solidarité... ».

Mais cette déclaration, dont les interprétations peuvent être diverses, ne trouve pas encore sa traduction dans les traités ou les textes fondamentaux de l'Union européenne.

Le droit d'asile doit être inscrit parmi les tout premiers droits politiques dans une Charte des droits fondamentaux de l'Union européenne :

- parce que, étant l'une des valeurs fondatrices de l'Europe et touchant à un point particulièrement sensible du monde moderne, le traitement du problème par l'Union européenne aura des conséquences dans le monde entier. Si l'Europe veut être un modèle en matière de droits de l'homme, elle se doit de les proclamer et de les respecter d'abord chez elle ;
- parce que si la solidarité en matière d'accueil de réfugiés s'exerce dans le partage entre pays européens, elle est aussi un devoir et une nécessité au plan international, car les réfugiés sont accueillis, en écrasante majorité, dans les pays pauvres ;
- parce que, bien que toujours proclamé, c'est un des droits les plus menacés pour les raisons citées ci-dessus. La Convention de Genève de 1951 elle-même, qui connaît des variations dans son application, a subi des attaques frontales de la part de certains gouvernements européens (notamment par l'Autriche). La pléthore de textes dans ce domaine (résolutions, conclusions, recommandations, positions communes...) élaborés entre pays de l'Union depuis quinze ans est d'ailleurs le reflet de cette menace. Il convient donc d'en fixer le principe, qui devra être appliqué selon la Convention de Genève et le droit dérivé des traités, sous le contrôle de la Cour de justice ;
- parce que la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales signée au sein du Conseil de l'Europe - le seul grand texte européen sur les droits de l'homme actuellement efficace, puisqu'il est assorti d'une instance juridictionnelle chargée de sanctionner, sur saisine individuelle, les manquements au respect de ses dispositions - n'en traite pas. Plusieurs tentatives, dans les années 80, d'y annexer un protocole sur l'asile n'ont pas abouti ;
- parce que les Etats candidats à l'entrée dans l'Union européenne n'ont pas les mêmes traditions à cet égard et doivent sans ambiguïté s'aligner sur les standards communs en la matière en cas d'élargissement de l'Union.

Propositions

Une Charte des droits fondamentaux de l'Union européenne devrait donc :

- 1** - proclamer le droit de quiconque craignant une persécution, quels que soient son sexe, son origine géographique, sa nationalité, sa religion, etc... de trouver asile dans l'Union. Ce droit implique l'accès des demandeurs d'asile à une procédure juste et efficace pour l'examen de leur demande et, par voie de conséquence, l'accès au territoire des Etats membres en tenant compte de leur choix du pays en raison des attaches familiales, culturelles, linguistiques ou autres. Des conditions de vie dignes doivent être assurées dès l'entrée sur le territoire ;
- 2** - programmer la signature par l'Union elle-même de la Convention de Genève de 1951 qui doit être appliquée sans restriction et de façon harmonisée conformément à la doctrine du Haut commissariat des Nations Unies ;
- 3** - rappeler le caractère non inamical de l'acte d'accorder l'asile.



Droits du citoyen et technologies de l'information et de la communication

Contexte

L'entrée dans l'ère numérique représente une révolution qui est certainement du même ordre d'importance que celle qu'a représentée l'imprimerie. Elle a une dimension technique et une dimension économique qui ne doivent pas être négligées, mais elle entraînera aussi une transformation culturelle profonde. L'homme de l'ère numérique disposera de possibilités absolument nouvelles pour produire, traiter et diffuser les informations et les savoirs. Si ces possibilités sont intelligemment exploitées et convenablement maîtrisées, elles ouvrent des perspectives considérables à l'enrichissement personnel et à la participation des citoyens à la vie publique. Mais ces effets heureux ne sont que possibles, il faut les vouloir et les construire.

La Commission européenne a réagi à l'ampleur du défi que représentent les nouvelles techniques en définissant l'initiative eEurope (1).

L'initiative de la Commission mérite d'être suivie d'effet, mais elle fait preuve aussi d'insuffisances, ce qui inspire les propositions qui suivent.

Propositions

1 - Le programme d'éducation tel qu'il est proposé est essentiellement tourné vers la maîtrise de l'outil technique. C'est évidemment la première étape à franchir, mais c'est la plus facile. Le véritable enjeu, c'est d'apprendre aux nouvelles générations à s'orienter, à gérer un flux

permanent d'informations d'une importance jamais vue. Il y a un risque que les esprits soient noyés ou restent passifs devant cette masse. Il faut donc qu'ils apprennent à sélectionner, comprendre, interpréter avec un esprit critique, enfin à utiliser ces informations et ces savoirs.

2 – L'action « gouvernements en ligne » semble se limiter au niveau communautaire et gouvernemental. Tout en respectant le principe de subsidiarité, il conviendrait d'encourager et d'aider les actions au niveau local et territorial. C'est un échelon privilégié déjà riche d'initiatives où pourront être expérimentées, dans la diversité, des formes nouvelles d'exercice de la démocratie.

3 - Le besoin d'information du citoyen n'est pas limité au secteur gouvernemental. Quel que soit leur statut, public ou privé, les entreprises et les associations ont une activité qui intéresse la collectivité toute entière. Elles devraient être soumises à des obligations de transparence et d'évaluation de leur activité plus grandes qu'actuellement. Les nouvelles techniques permettent de rendre disponible en ligne la masse d'informations et de rapports qui en résulterait, à condition qu'elle soit dans un langage clair et accessible.

4 - La Commission se montre très sensible aux possibilités de la « nouvelle économie » en termes de croissance et d'emplois. Ce sont en effet des aspects importants. Il serait néanmoins dangereux de ne pas envisager la dimension complète de la révolution en cours. Il faut ouvrir la place à une utilisation non exclusivement marchande de la Toile, en considérant celle-ci comme un véritable service public de la communication citoyenne, ce qui suppose multiplication des points d'accès publics, moyens de financement, acteurs autorisés et peut-être là encore autorité de régulation.

5 - Les conditions de la naissance de la Toile ont fait que la langue anglaise y est très largement prédominante. L'Europe devrait introduire dans son programme une dimension de préservation de sa diversité linguistique. Cela commence par la mise en place de normes de logiciels permettant d'écrire et de transporter sans les déformer les signes qui ne sont pas utilisés en anglais (accents).

6 - L'ère numérique ouvre un champ nouveau à la liberté d'expression, donc aussi à des abus possibles de cette liberté. Il conviendrait de réfléchir

aux conditions d'application des limites déjà existantes (diffamation, protection de la vie privée, incitation au crime, etc...) mais aussi à la possibilité d'authentifier les informations (labels de vérification, autorité de contrôle ?).

7 - Dans une organisation où la plupart des actes de la vie courante sont susceptibles de laisser une trace informatique, la puissance des outils informatiques en matière de saisie, de stockage de données, de regroupement de fichiers, ouvre des possibilités de manipulations attentatoires à la liberté, à la dignité ou à l'intimité des personnes. Le droit à la protection des données, tel qu'il est actuellement formulé n'est pas suffisant. La loi devrait également prévoir des restrictions concernant le stockage et l'exploitation qui est faite de ces données.

8 - Les techniques de traitement de l'information et de la communication, si elles ne sont pas mises à la portée de tous, constitueront un nouveau facteur d'inégalité, voire d'exclusion. Bien utilisées, elles peuvent au contraire servir à lutter contre l'exclusion. Il est donc très important de bien formuler les conditions pratiques d'exercice du droit à l'accès à la Toile.



- (1) Les objectifs qu'elle a retenus sont les suivants :
- « faire entrer tous les citoyens, foyers, entreprises, écoles, et administrations dans l'ère numérique et leur donner un accès en ligne ;
 - introduire en Europe une culture numérique soutenue par un esprit d'entreprise favorable au financement et au développement de nouvelles idées ;
 - veiller à ce que l'ensemble de ce processus ait une vocation d'intégration sociale, gagne la confiance du consommateur et renforce la cohésion sociale. »

Bioéthique et droits de l'homme

Les progrès de la biologie et de la médecine posent des questions pour les droits de l'homme.

Ils sont incontestablement positifs pour certains droits : le droit à la connaissance, le droit à la protection de la santé. Mais ils présentent des risques : que l'homme soit traité en objet, qu'il soit soumis à des discriminations. Ces risques ont été formalisés par la doctrine eugéniste, à la fin du XIX^{ème} siècle, visant à améliorer l'espèce humaine. Le nazisme se présenta comme une mise en oeuvre de cette doctrine.

Une réponse morale fut d'abord apportée par les médecins : Code de Nuremberg (1947), Déclaration d'Helsinki (1964). Des réponses juridiques ont été ensuite formulées dans des lois (en France, lois « bioéthique », 1994), des conventions internationales (Convention « biomédecine » du Conseil de l'Europe, 1996).

La Communauté européenne a intégré dans son champ de compétences ces questions. Au « Groupe des conseillers pour l'éthique de la biotechnologie », créé en 1991 auprès de la Commission, a succédé, en 1997, le « Groupe européen d'éthique des sciences et des nouvelles technologies » (GEE). Il a rendu des avis sur les banques de tissus humains et sur la recherche sur l'embryon humain. Une directive sur les brevets en matière génétique a été adoptée en 1998. Le Parlement européen a adopté une résolution, en 1998, en faveur de l'interdiction du clonage des êtres humains.

Des droits ont été dégagés : dignité de la personne humaine, respect de la vie privée, non-discrimination, droit à la protection de la santé. Leur protection passe par le respect de certaines conditions : consentement

de la personne, non patrimonialité du corps humain, intégrité de la personne.

La découverte, permanente et de plus en plus rapide, de nouvelles techniques médicales et de nouvelles données biologiques, pose, sans cesse, la question de l'acceptabilité de l'usage de ces découvertes au regard de ces droits.

Pour répondre, il convient, et c'est peut-être le plus difficile, d'identifier les critères qui sont pertinents et ceux qui ne le sont pas.

Premier axe : qui peut (et doit) poser des règles ?

Ce sont les autorités politiques, en ce qu'elles sont démocratiques. Ce ne sont ni les autorités médicales, ni les autorités religieuses, ni les acteurs économiques. Autrement dit, il revient à la loi de trancher en cas de conflit.

Deuxième axe : existe-t-il des principes qui doivent guider le législateur et le juge ?

Un premier principe correspond à la finalité des règles : elle est éthique, ce qui signifie que la fin des décisions est le respect des personnes (Jean-Paul Thomas : « il n'est pas d'autre principe éthique que celui du respect des personnes (1) »). Un deuxième principe est la prise en compte, dans l'usage des techniques nouvelles, de la notion de proportionnalité entre la fin et les moyens. On en trouve une application dans la directive sur les brevets.

L'Union européenne intervient, de façon normative, dans les domaines de la recherche biologique et de la santé. Ses actes doivent être inspirés par des principes directeurs qu'il convient de formaliser.



(1) in La bioéthique est-elle de mauvaise foi ? PUF, 1999, p.39)

Droit d'accès aux droits fondamentaux

L'affirmation de droits fondamentaux ne suffit pas si n'est pas garantie leur pleine effectivité.

Constat

□□□□ Les personnes en difficulté n'ont pas un accès satisfaisant à l'ensemble de la palette des droits offerts (manque d'information, complexité des procédures, temps administratifs ne correspondant pas aux rythmes sociaux, arbitraires administratifs, absence d'aide au remplissage des formulaires et à la recherche des justificatifs demandés...). Elles ne peuvent en conséquence mobiliser convenablement leur pleine capacité à sortir de leur précarité, de leur marginalité ou de leur isolement.

□□□□ Les personnes en difficulté ont besoin, plus que d'autres, d'un accompagnement pour les aider à retrouver dignité et citoyenneté. L'accompagnement social, bien que prévu dans un certain nombre de dispositifs (logement, emploi, revenu minimum) reste souvent trop aléatoire ou trop restrictif.

□□□□ Les aides et interventions délivrées par les administrations (guichets et services divers...) sont trop souvent cloisonnées et souffrent de discontinuité les unes par rapport aux autres, engendrant une grande perte d'efficacité.

□□□□ Plutôt que de rendre effectif pour chacun l'accès aux droits existants, une mauvaise tentation est trop souvent éprouvée par les pouvoirs publics

de créer des droits, plus ou moins au rabais, qui marginalisent les plus démunis.

Propositions

Une réelle garantie de la pleine efficacité des droits doit reposer sur trois piliers :

- l'accessibilité et la proximité
- la garantie de plein exercice
- l'évaluation contradictoire

1. *L'accessibilité et la proximité des droits fondamentaux*

Devant la complexité du droit et des dispositifs publics, aujourd'hui sont contredites les affirmations « nul n'est censé ignorer la loi » et « tous sont égaux devant la loi ». On ne peut que déclarer « nul n'est censé connaître la loi » et « la loi protège les forts et délaisse les faibles ».

Droit à l'information

Pour que le droit soit effectif, il faut envisager l'obligation pour les administrations d'informer sur la nature et l'étendue des droits des publics concernés.

- Créer des lieux d'information inter-administratifs.
- Instaurer dans chaque ville, quartier ou zone rurale un service public de conseil juridique.
- Rendre responsable tout service public du bon traitement (délais) et de la transmission des dossiers (guichet unique interne).
- Obliger fermement toutes les administrations et services publics à motiver précisément tout refus d'accès à un droit ouvert et à donner toutes les informations utiles pour faciliter un éventuel recours.
- Renforcer les mesures qui encouragent les personnes les plus qualifiées et expérimentées à s'investir professionnellement dans les zones géographiques défavorisées.
- Prévoir dans tout dispositif public des moyens de communication adaptés aux publics les plus démunis.

□□□□□ Instaurer un **droit à l'interprétation** pour les personnes d'origine étrangère.

Droit à la formation

Pour que le droit ne soit pas une source d'incompréhension pour tous ceux qui doivent s'y référer dans leurs interventions et démarches, il faut généraliser une formation à la connaissance des situations et des processus d'exclusion sociale.

□□□□□ Introduire, dans les programmes de formation initiale et continue des professionnels susceptibles d'être en contact avec les populations en difficulté (enseignants, personnels de justice, policiers, professionnels de santé, travailleurs sociaux...), un enseignement leur permettant de mieux connaître et prendre en compte les réalités des situations de précarité, pauvreté ou exclusion sociale.

□□□□□ Promouvoir la formation dans les écoles à l'ensemble des droits de l'homme (droits civiques, civils, économiques, sociaux et culturels...)

Droit à la représentation et au partenariat

Pour que tous soient à même de voir pris en compte leurs droits dans les lieux où se décident leur avenir

□□□□□ Instaurer un **droit à la représentation** des personnes en difficulté ou des associations ou organisations syndicales au sein desquelles elles font entendre leur parole dans toutes les instances où se définissent des orientations ou des décisions concernant leurs droits fondamentaux.

□□□□□ Etablir un **droit à la domiciliation** pour l'ensemble des personnes y compris pour les personnes sans domicile fixe.

□□□□□ Instaurer un **droit à l'accompagnement** pour toute personne en difficulté sociale : l'accompagnement devant être entendu comme une démarche volontaire engageant de manière réciproque accompagnant et accompagné.

2. La garantie d'exercice des droits fondamentaux

Droit au recours non juridictionnel : c'est-à-dire à la médiation, la conciliation et l'arbitrage

- Généraliser auprès de chaque autorité locale la présence permanente et disponible d'un correspondant du médiateur national.
- Accroître le nombre de médiateurs-conciliateurs auprès des tribunaux.

Droit au recours juridictionnel

- Renforcer la justiciabilité de tous les droits fondamentaux affirmés, y compris les « droits interprétables » (ex. : aide sociale).
- Rendre pleinement accessible l'aide juridique.
- Donner sa pleine application à la notion de délai raisonnable de jugement définie par la Cour européenne des droits de l'homme.

Droit à la continuité

- Rendre impossibles les chutes brutales de ressources liées à des changements de situation administrative.
- Introduire des dispositifs accompagnant les ruptures financières : surendettement, garantie d'accès à l'énergie et à l'eau, garantie du droit à un logement...

3. L'évaluation contradictoire

Pilotée par une instance indépendante, l'évaluation de la pleine effectivité de l'accès aux droits fondamentaux est essentielle pour garantir que les personnes qui en ont le plus besoin ne restent pas à l'écart de leurs droits.

- Produire tous les deux ans un rapport public rassemblant l'expression de toutes les parties concernées par la mise en oeuvre de la législation garantissant les droits fondamentaux.
- Promouvoir à l'échelon local et régional des consultations des usagers des services publics et des associations au sein desquelles ils font entendre leur parole.



BILAN PROVISOIRE DES TRAVAUX DE LA CONVENTION

Les 11 et 12 septembre 2000, la Convention chargée de l'élaboration du projet de Charte des droits fondamentaux de l'Union européenne transmettra le résultat de ses travaux au Conseil et au Parlement européen. S'engagera alors un débat portant à la fois sur le contenu et sur le statut de la Charte, qui sera conclu à l'occasion du Conseil européen de Nice les 7 et 8 décembre 2000. Quelle que soit l'issue de ce processus, l'état des travaux de la Convention permet de dresser un bilan provisoire de cette expérience originale.

Ce bilan provisoire peut se lire sous deux angles :

- l'appréciation du contenu du projet de Charte : l'état d'élaboration de la soixantaine d'articles sur lesquels la Convention a concentré ses travaux ;
- l'appréciation de la valeur de la procédure originale qui a été suivie par la Convention.

1 - Pour ce qui concerne le contenu de la Charte, il apparaît que la Convention aura globalement rempli sa mission : la soixantaine d'articles qu'elle proposera consolideront les droits épars dans diverses conventions internationales sous une forme lisible par les citoyens européens. Seront ainsi confortés à la fois le support d'une citoyenneté enrichie par rapport aux actuels Traités et un ancrage plus explicite de l'Union dans les formes d'une communauté politique régie par le droit.

Il est par contre probable que certaines des difficultés rencontrées dans les travaux de la Convention ne trouveront pas de solution définitive à l'échéance du Conseil de Nice :

- l'expression de certains droits liés à l'évolution des sciences et des techniques (intégrité du corps humain, protection des données individuelles) ou à celle de nos sociétés (éducation, droit de la famille) gardera une formulation provisoire qui, pour être adaptée aux réalités du monde actuel, nécessitera une poursuite de la réflexion ;
- il en est de même en matière de droit au travail et à un revenu, de temps choisi, de droit à l'initiative, de droit à l'insertion, et plus généralement de droit à un développement socialement et écologiquement durable, pourtant au coeur des débats de société actuels ;
- la définition actuelle de la citoyenneté européenne, liée à la nationalité dans les Etats-membres, ne permettra pas une distinction claire et définitive entre les droits des citoyens européens, ceux des résidents sur le territoire de l'Union, et ceux garantis à toute personne se trouvant sur ce territoire, quel que soit son statut ;
- la distinction entre les droits fondamentaux, les principes directeurs des politiques de l'Union et certaines décisions destinées à favoriser l'exercice de ces droits restera ambiguë (égalité des sexes, statut d'association européenne).

Dans ces différents domaines, la Charte revêtira le caractère d'un exercice ambitieux, permettant une affirmation politique immédiate, mais en même temps provisoire, et nécessitant un approfondissement ultérieur.

2 - Pour ce qui concerne la procédure en elle même, il est clair qu'elle aura démontré ses mérites :

- le caractère ouvert et public des travaux, qui donne lieu à des échanges approfondis contraste heureusement avec celui, limité, abscons et codifié de la CIG (Conférence intergouvernementale), prisonnière de sa configuration diplomatique et de son ordre du jour limité. S'il s'agit d'approfondir la question : « pourquoi voulons nous vivre ensemble, et pour quoi faire ? », la procédure de la Convention apparaît considérablement plus imaginative que celle de la CIG (Conférence intergouvernementale) ;

- l'association des Parlements nationaux au processus de la construction européenne apparaît considérablement plus prometteur que celle offerte par les procédures habituelles (COSAC) qui restent axées sur le contrôle extérieur.

Il apparaît, dans le même temps qu'elle n'aura pas pu aller jusqu'au bout de la démarche qu'elle a initié :

- la Convention n'a réellement développé ses travaux selon la méthode ouverte et publique qu'elle a initiée qu'à compter de février 2000. La notoriété de celle-ci reste ainsi limitée et réservée à un cercle restreint d'associations et de responsables familiers des enceintes bruxelloises. Beaucoup de voix qui méritaient d'être entendues n'auront pu s'exprimer que tardivement et partiellement ;

- sur beaucoup de questions abordées, le dialogue aura à peine eu le temps de se nouer (cf. les points soulignés au 1° ci-dessus) et laisserait un sentiment d'inachèvement s'il devait s'arrêter en décembre 2000. Clore les travaux de la Convention à l'automne 2000 serait ainsi une source de frustration par rapport aux espoirs soulevés par le caractère ambitieux de la démarche qu'elle a initiée. « Siffler la fin de la récréation » laisserait à beaucoup l'impression d'avoir été manipulés, ce qui n'était certainement pas le but de l'exercice.

3 - Quelle que soit l'approche retenue, celle du contenu comme celle de la procédure, **il apparaît impensable que l'exercice en cours soit clos avec le Conseil européen de Nice**. Ceci serait de surcroît contradictoire avec les objectifs stratégiques 2000-2005 « Donner forme à la nouvelle Europe » proposés par la Commission (1) , qui font de la « promotion de nouvelles formes de gouvernance » permettant de renforcer la voix de la société civile dans l'élaboration et la mise en oeuvre des politiques la première des quatre priorités de l'Union pour la période considérée. La seule question qui devrait se poser est donc celle du comment poursuivre les travaux entamés : faut-il pérenniser la formule de la Convention, inventée dans une perspective précise (celle du Conseil de Nice), ou imaginer une procédure plus « institutionnelle » qui garde un lien privilégié avec le Parlement européen et accorde un rôle plus

(1) COM 2000 - 154 final 9.02.2000 « Objectifs stratégiques 2000-2005 »

explicite à un Comité économique et social dont le troisième collège serait rénové en conséquence ?

Afin d'éviter toute rupture démobilisatrice, le plus sage serait de proroger les travaux de la Convention pour une période de trois ans et, à la lumière d'une procédure qui aurait ainsi pu aller jusqu'à son terme, décider de l'avenir de ce type de mécanisme participatif. Les travaux de la Convention ainsi prolongée auraient trois débouchés distincts :

- la mise au points de compléments à la Charte retenue à l'automne 2000 (quel que soit son statut) sur les points qui méritent un approfondissement ;
- l'élaboration de principes directeurs pour les politiques de l'Union (par exemple la lutte contre les discriminations), qu'ils soient généraux ou spécifiques à certaines politiques ;
- la proposition de mesures destinées à « renforcer la voix de la société civile » : par exemple un statut européen pour les associations et les fondations.

En conséquence, CAF ECS propose d'ajouter dans les traités, l'article suivant :

« La Charte des droits fondamentaux est complétée par une nouvelle réunion de la Convention pour une période de trois ans et selon une procédure analogue ».

1er avril 2000



Annexe 1

Déclaration

pour une Europe civique et sociale

La société change, un autre monde est en train de naître. L'Europe est à la croisée des chemins. Elle a besoin d'une nouvelle fondation pour répondre aux défis auxquels elle est confrontée, ceux de la monnaie unique, de l'approfondissement politique, de l'élargissement à l'Est et de son ouverture sur le monde.

Les questions civiques et sociales sont désormais au coeur des défis de la construction européenne. L'Union européenne ne se construira pas sur fond de chômage et d'exclusion. Sans cohésion sociale, la monnaie unique sera friable. Or, le défi de l'emploi et de l'exclusion exige un renouvellement important des politiques et des conceptions du travail et de l'activité. Il faut défendre le modèle social européen, mais aussi innover pour faire progresser cet atout de compétitivité et de redistribution. Enfin, l'Union doit affirmer beaucoup plus nettement son identité et celle-ci est indissociable de la citoyenneté. Or, l'ébauche de citoyenneté européenne instituée par le Traité de Maastricht a un contenu principalement fonctionnel et n'apparaît pas encore comme l'expression d'une société politique en gestation.

Les nouvelles fondations de l'Europe seront civiques et sociales ou ne seront pas. Cela suppose que le sens et le contenu du projet politique européen soient débattus, puis définis clairement. L'Europe doit réfléchir aux finalités qu'elle se donne et mettre l'économie à sa place, au service de l'homme et non l'inverse.

A cet égard, les conditions actuelles de déroulement de la Conférence intergouvernementale ne paraissent pas à la hauteur des enjeux. La CIG n'aura véritablement atteint son but que si elle donne une assise suffisante à la citoyenneté et à la solidarité. Alors l'Union sortira renforcée, pourra s'élargir dans de bonnes conditions et faire face aux défis auxquels elle est confrontée.

13 dispositions constituent le minimum que les citoyens sont en droit d'attendre de la CIG

1 - Intégrer dans le Traité une liste de droits fondamentaux civiques et sociaux indivisibles, en particulier le principe de non discrimination et de promotion de l'égalité des chances dans le progrès, un meilleur exercice de la liberté de circulation et d'association pour tous les résidents. Le respect de ces droits s'imposerait à toutes les institutions de l'Union. Ils seraient directement applicables par la Cour de justice des Communautés européennes.

2 - Permettre à la Cour de justice des Communautés européennes de contrôler le respect des droits fondamentaux reconnus par la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales du Conseil de l'Europe, par la Charte sociale de ce même Conseil et par les conventions internationales signées par tous les Etats membres, comme celles de l'OIT ou de l'ONU.

3 - Ouvrir un espace public de délibération permettant l'expression d'une citoyenneté active. Le processus de révision institutionnelle de l'Union ne peut rester strictement intergouvernemental et doit permettre aux citoyens, à leurs organisations ou à leurs représentants de s'exprimer. L'Europe civique et sociale a besoin d'une méthode dont les principes doivent être posés dès maintenant par la CIG :

- en associant plus étroitement le Parlement européen aux travaux de la CIG ;
- en posant le principe que la règle de la majorité qualifiée s'applique pour la mise en oeuvre des droits civiques et sociaux dans le cadre des compétences de l'Union ;
- en prévoyant que les citoyens, la société civile, le Comité économique et social, le Comité des régions, les parlements nationaux et le Parlement européen soient réellement associés à l'élaboration et à la mise en oeuvre

des politiques communautaires et aux progrès institutionnels de l'union politique européenne ;

- en assurant la lisibilité des textes, nécessaire au débat public, en particulier en regroupant en un seul document les textes concernant la Communauté européenne et l'Union européenne, actuellement dispersés en 15 traités ;

- en lançant dès à présent un processus d'élaboration collective d'une charte pour le progrès des droits et responsabilités civiques et sociaux, processus s'étendant sur plusieurs années et permettant de prendre en compte les nouvelles aspirations et contraintes de nos sociétés (éducation tout au long de la vie, environnement, générations futures, temps choisi, bioéthique, nouvelles techniques d'information, minorités, etc.).

4 - Etablir et fonder des politiques communes en matière de justice et d'affaire intérieures sur le respect des droits fondamentaux de la personne et des conventions internationales, notamment pour les politiques d'immigration et d'asile, d'entrée et de séjour des citoyens des pays tiers ; les faire rentrer sur ces bases dans le domaine communautaire.

5 - Prévoir des dispositions particulières pour permettre à l'Union de mener des actions de lutte contre l'exclusion, coordonnées avec celles des Etats et reconnaître, au niveau de l'Union, le principe du droit à un revenu minimum les modalités et conditions étant déterminées par les Etats membres.

6 - Conférer aux politiques sociales relevant de la compétence de l'Union une efficacité aussi grande que les autres : les regrouper dans un titre unique intégrer le Protocole social dans le Traité après en avoir élargi le contenu en matière de lutte contre l'exclusion sociale ; leur appliquer la règle de la majorité qualifiée ; évaluer systématiquement sur une base pluraliste et contradictoire l'impact des politiques et programmes de l'Union sur la cohésion sociale.

7 - Affirmer fortement la légitimité des dispositions qui permettent à l'Union, à la Commission et au Parlement européen de mener des actions d'animation du débat, de coordination, d'impulsion, de coopération, d'expérimentation et d'évaluation, notamment dans le domaine social. L'Europe doit apprendre à s'enrichir de ses différences dans le respect des principes de subsidiarité et de proportionnalité, qui ne doivent pas pour autant constituer un alibi à l'immobilisme ou aux crispations nationales.

8 - Définir clairement les responsabilités de l'Union en matière d'emploi et les instruments monétaires, économiques et financiers nécessaires pour les assumer. La CIG devra notamment :

- prévoir des dispositions pour que les orientations relatives à la politique de l'emploi et à la politique économique permettent de promouvoir la croissance et l'emploi en même temps que la stabilité des prix ;
- assigner à la Banque Centrale européenne un objectif de pleine utilisation des forces productives s'ajoutant à l'objectif actuel de stabilité des prix.

9 - Renforcer le rôle de partenaire de toutes les organisations syndicales et patronales représentatives dans le domaine des relations de travail, des droits économiques et sociaux, dans l'élaboration et le suivi des politiques sociales ; reconnaître un véritable droit européen des conventions collectives sur le plan interprofessionnel et au niveau des branches, afin notamment de lutter contre le dumping social.

10 - Reconnaître plus explicitement le rôle des associations : les impliquer davantage dans le processus d'élaboration et de suivi des politiques sociales ; faire une place particulière aux organisations de la société civile qui s'efforcent de promouvoir la participation et la représentation des chômeurs et des exclus.

11 - Reconnaître la spécificité des modes de production et des structures des organisations de l'économie sociale (coopératives, mutualités, associatims/fondations) reconnaître le caractère d'intérêt général de certaines de leurs opérations adopter un statut de coopérative européenne, de mutualité européenne et d'association européenne permettant des coopérations sur une base transnationale.

12 - Reconnaître explicitement dans le Traité, le rôle des services publics et d'intérêt général en matière de cohésion sociale et d'aménagement du territoire.

13 - Contribuer par des mesures adéquates non seulement au développement économique, mais aussi à la promotion des droits civiques et sociaux dans les pays émergents et dans les pays à l'écart du développement.

25 mars 1997

Annexe 2

Pour une citoyenneté active en Europe

Le récent Conseil européen de Cologne a décidé la convocation d'une Conférence intergouvernementale pour résoudre les questions institutionnelles qui n'ont pas été réglées à Amsterdam et doivent l'être avant l'élargissement. Il a également estimé que, « à ce stade de développement de l'Union Européenne, il conviendrait de réunir les droits fondamentaux en vigueur au niveau de l'Union dans une charte de manière à leur donner une plus grande visibilité ». L'annexe 4 des conclusions de la présidence précise le contenu et surtout les modalités d'élaboration de cette charte : « Une enceinte composée des représentants des Chefs d'Etat et de Gouvernement et du Président de la Commission européenne ainsi que de membres du Parlement européen et des parlements nationaux, devrait élaborer un projet... Des représentants de la Cour de justice devraient y participer à titre d'observateurs. Des représentants du Comité économique et social et du Comité des régions ainsi que des groupes sociaux et des experts, devraient être entendus. Le secrétariat devrait être assuré par le Secrétariat général du Conseil ». Cette enceinte doit « présenter un projet en temps utile avant le Conseil européen en décembre de l'an 2000 ». La Charte sera alors solennellement proclamée, et « ensuite il faudra examiner si et, le échéant, la manière dont la charte pourrait être intégrée dans les traités ».

Il faut certes se féliciter que cette proposition du Comité des Sages, fortement soutenue par le mouvement associatif et reprise par plusieurs partis politiques (les partis socialistes européens et, en France, les Verts

et l'UDF), ait été ainsi validée et que l'on sorte de façon ténue, sur ce point au moins, de la méthode intergouvernementale dont on a trop vu les limites.

Il importe cependant de ne pas se tromper sur la portée de l'entreprise. Autant par son mode d'élaboration que par son contenu, la Charte des droits fondamentaux est une occasion unique d'ouvrir la voie au pacte constitutionnel qui se révélera nécessaire pour accompagner et réussir le grand élargissement vers l'Est et vers le Sud. L'exercice de discussions des droits, la manière de les élaborer, importe autant que leur proclamation et leur application. C'est une bonne façon d'initier l'espace politique de débat public dont nous avons besoin pour être assurés du fonctionnement démocratique de l'Union et du respect de la souveraineté populaire. Plus qu'un traité, moins qu'une constitution, ce texte devrait être l'expression de cette démocratie participative constituante que les Etats membres n'ont pas su mettre en oeuvre jusqu'ici et que les méthodes strictement intergouvernementales de révision des traités ne permettent pas.

Or, du fait de la méthode retenue, la décision de Cologne risque d'aboutir, si elle est appliquée limitativement, à une codification sans grande portée de textes existants. On aurait ainsi manqué un rendez-vous historique pour vivifier une citoyenneté européenne menacée par l'abstention et pour bâtir ensemble le projet de civilisation dont l'Europe a besoin. Les insuffisances de la procédure envisagée apparaissent dans quatre domaines :

1) Il ne s'agit pas seulement de « réunir les droits fondamentaux en vigueur », mais de les affiner, de les approfondir, et de les compléter pour tenir compte des évolutions de la société. Une série de questions nouvelles se pose en effet : comment se décline aujourd'hui le droit au travail ? faut-il créer un droit à l'insertion ? au temps choisi ? à un environnement de qualité ? faut-il compléter le droit à la santé par un droit des malades ? comment prendre en compte les droits des générations futures ? comment protéger la vie privée ? quelles sont les limites des recherches génétiques ? Et quelles sont les responsabilités de l'Etat, mais aussi les devoirs de la société civile pour parvenir à un exercice effectif de ces droits ? Et cette liste n'est évidemment pas limitative et devra faire l'objet d'un débat.

2) Un travail collectif important est donc indispensable pour formuler de façon correcte et réaliste cet ensemble de droits et de responsabilités. Cette charte ne peut pas être octroyée d'en haut, élaborée à dire d'experts, ni résulter d'un collage technocratique des déclarations existantes. Son élaboration doit être issue d'un processus de citoyenneté active qui lui donne toute sa valeur et toute sa force. A cet égard, le processus de consultation envisagé, bien que substantiellement amélioré, n'est ni assez large, ni assez ouvert ; en particulier, la société civile, dans toutes ses composantes, ne pourra pas être vraiment associée aux débats. Les sujets à traiter sont en effet très complexes et techniques et très discutés, notamment par des ONG spécialisées qui ont beaucoup à dire. Il conviendrait donc qu'un ensemble de livres blancs concernant les différents droits et devoirs en cause soit rédigé puis discuté avant que les instances politiques ne tranchent.

3) Tout cela prend nécessairement du temps : c'est là le prix de la démocratie ! Il est illusoire de penser qu'un vrai travail démocratique puisse être réalisé en un peu plus de un an. Soit l'on se contentera d'un bref « bill of rights », soit l'exercice sera bâclé. Il est donc indispensable de se donner le temps nécessaire. Notamment pour permettre au Parlement européen nouvellement élu de débattre du projet de Charte, après avoir auditionné les représentants des forces civiques et sociales européennes. Faire l'économie de ce débat serait dénier au Parlement son rôle de représentation des citoyens et donner indirectement raison aux abstentionnistes dont la proportion croissante était unanimement déplorée à l'issue de l'élection du 13 juin dernier.

4) Enfin, un délai plus long, pour une opération plus lourde, n'a de sens que si elle est assurée de son utilité, c'est-à-dire s'il est convenu, dès le départ, que la Charte sera pleinement intégrée dans les Traités. Ce point devrait donc être acté dès le démarrage du processus.

Ne gâchons pas une belle occasion de faire de la politique autrement et de réconcilier l'Europe et le citoyen : cette chance est à notre portée.

Pour CAFECES
Jean-Baptiste de Foucauld
Jean Nestor - Frédéric Pascal
La Croix - 7.10.99

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 19 April 2000**CHARTE 4242/00****CONTRIB 115****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a contribution by the European Housing Forum (EHF) with a view to the hearing on the 27 April 2000. ¹

¹ This text has been submitted in French and English languages.

CECODHAS
COFACE
ENHR
EOSH
ESCS
EUROCITIES
FEANTSA
IUT
RHF
UEPC



EUROPEAN HOUSING FORUM

A
Forum
for
a
Housing
Debate
in
the
european
Union

The right to housing and the charter of fundamental rights of the european union

Formed following the European Parliament resolution on social aspects of housing (May 1997), the European Housing Forum is a centre of exchange and discussion between networks involved in housing present in Brussels (local authorities, social landlords, private developers, surveyors, charitable and family associations, tenants, researchers).

Its aims are the exchange of information between its members, the identification of themes deserving discussion, the instigation of joint initiatives with regard to EU institutions on specific subjects unanimously chosen by its members, and the promotion of the importance of the housing sector at all levels.

The Forum members are the European federations most representative in the housing sector:

CECODHAS, European liaison committee for social housing, housing nearly one out of four Europeans in the European Union,

COFACE – housing commission, Confederation of family organisations in the European Union,

ENHR, European Network for Housing Research, grouping together nearly a thousand researchers from all disciplines working on questions concerning housing,

EOSH, European social housing observatory,

ECSH, European society of chartered surveyors,

EUROCITIES, European network of major European cities,

FEANTSA, European federation of national associations working with the homeless,
IUT, international tenants association,
RHF, Network, habitat and French-speaking countries,
UEPC, European association of builders and developers.

Within the scope of auditioning NGOs and civil society, the forum members wished to contribute collectively to the works of the convention by inviting its members to discuss the right to housing, based on an inventory of the recognition of the right to housing on international, European, Community and national levels.

In addition, the Forum members invite the convention members and the NGO and civil society representatives to participate in their European conference which will take place on 15 September at UNESCO in Paris on the theme of: "Access to housing in the European Union: a right?" within the framework of the 12th informal meeting of European Union housing ministers which will take place on 18 and 19 September in Paris on the theme of access to housing.

Brussels, 14 April 2000

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The recognition of the right to housing:

A inventory for a debate on the convention of the right to housing

THE RIGHT TO HOUSING AT INTERNATIONAL LEVEL	
Universal declaration of human rights, 1948	article 25.1: “every person has the right to a standard of living sufficing to ensure his health, his well-being and those of his family, in particular as regards food, clothing, housing, medical care, as well as for the necessary social services”.
Agreement on economic, social and cultural rights, 1966	article 11: “ the States which are party to this agreement acknowledge the right of every person to a standard of living sufficing for himself and his family, including sufficient food, clothing and housing, as well as a constant improvement in his living conditions”.
Declaration on progress and development in the social domain (United Nations, 1969)	article 10 f part II defines as one of the main objectives of the development policies: “To provide for all, and in particular for people with a low income and large families, satisfactory housing and collective services”.
Workers (ILO, 1962), refugees (ILO, 1961), children (UN, 1959, 1989), women (UN, 1979), elderly workers (ILO, 1980), immigrant workers (ILO, 1990), minorities (UN, 1991), native peoples (UN, 1993)	Are all target groups which are protected, in particular, by an explicit reference to housing conditions.
Habitat Conference II 3 to 14 juin 1996	International undertaking and plan of action consisting of “obligations of the government to help the population to obtain housing and to protect and improve the neighbourhoods”. Affiliation of the European Union to the Istanbul declaration

THE RIGHT TO HOUSING AT EUROPEAN LEVEL	
Council of Europe European Agreement on the protection of human rights and basic liberties, 4 November 1950:	No reference is made to the right to housing but... Article 8 states the right of all people to respect for their private and family life, their home and their correspondence and article 12, the right to found a family.
Council of Europe The European Social Charter drawn up at the Council of Europe on 18 October 1961 and revised on 3 May 1996	The revised social charter adds new rights, specifying in particular that all people have the right to protection against poverty and social exclusion and that all people have the right to housing. Article 31 “With a view to ensuring the proper exercise of the right to housing, the parties undertake to take measures intended: To encourage access to housing of an adequate standard, to prevent and reduce the state of homelessness with a view to its gradual elimination, to make the cost of housing accessible to people who do not have sufficient resources.
Permanent conference of local and regional authorities of Europe, 1993	Recommendation aiming at integrating the right to housing in the existing legal instruments, in particular the European Agreement of Human Rights

THE RIGHT TO HOUSING AT COMMUNITY LEVEL	
Treaty of the European Union	Article 136 of the Treaty instituting the European Community refers to the fundamental social rights set out in the European Social Charter of 1961. (the revised social charter includes the right to housing).
European Parliament, Commission on the freedom and rights of citizens, Bertal Haarder report (March 2000)	The report demands that all economic and social rights – ranging from social protection to adequate housing conditions and from health care to appropriate education – be incorporated in the future EU Charter of basic rights.
European Parliament resolution on the social aspects of housing (May 1997)	“Invite the European Union to include the right to housing in treaties and in the CIG.
European Parliament resolution on the United Nations Habitat II conference (May 1996)	“Immediately invite the European Union to incorporate the right to housing in all treaties and charters regulating the activities and goals of the European Union”.
European Parliament, Resolution on housing for the homeless (June 1987)	“(…) that the right to a habitat be guaranteed by legislative texts, that the member States acknowledge it as a fundamental right”
Committee of the regions: announcement of initiative for the homeless (1999/C 293/ 07) :	Recommendations 5.4: “To reinforce the principle of the right to housing on a European Union scale Considering that housing is the first condition to enable a person to engage in a process of social and professional insertion, the Committee of the regions invites the European courts to increase the study of the principle of the right to housing”
European Commission Communication: Building a Europe of “inclusion” (March 2000)	“The loss of housing is one of the most serious representations of poverty and social exclusion”. “...improve the general impact of social inclusion measures thanks to a framework legislation that defines exclusion in terms of access to fundamental rights in the fields of employment, housing, health care, justice, education, culture, family and the protection of children”.

THE RIGHT TO HOUSING IN THE MEMBER STATES	
Constitution: Belgium	Article 23 of the Constitution of 1994: “Everyone has the right to lead a life which respects human dignity (...) by guaranteeing economic, social and cultural rights (...) These rights include: ... the right to decent housing”
Constitution: Spain	Article 47 of the Constitution of 1978: “All Spanish people have the right to enjoy decent and suitable housing...”
Constitution: Greece	Article 21 of the Constitution of 1975: “The obtaining of housing by the homeless or those who are housed in an unsuitable fashion constitutes a matter for special attention by the State”
Constitution: Portugal	Article 65 of the Constitution of 1976 revised in 1992 : “Everyone has the right for himself and his family to housing of a suitable size, meeting standards of hygiene and comfort and preserving personal and family privacy...”
Constitution: Finland	Section 15a of the Constitution of 1995: “The public authorities must (...) promote everyone’s right to decent housing and encouraging everyone’s efforts to have his own housing is the task of the public authorities”
Constitution: Netherlands	Article 22.2 of the Constitution of 1984: “The public authorities have the duty of supplying proper housing”
Constitution: Sweden	Article 2, chapter I of the Constitution of 1976/77: “ ...it is incumbent on the community to ensure the right to housing...”
Constitution of certain German länder	Bremen, Berlin, Brandenburg, Bavaria, Hamburg
Law : France	Law of 22 June 1982; law of 31 May 1990, exclusion law of 1998: exclusion law “The right to lodging is a fundamental right” Decision of the Constitutional Council of 19 January 1995 “the possibility of everyone to have decent housing is an objective of constitutional value”
Law: Denmark	Anti-poverty legislation: the law on social assistance places on the town councils the burden of supplying suitable housing
Law: United Kingdom	Housing Act of 1996: the law imposes on the local authorities [the duty] to house certain categories of homeless persons
Law: Italy	The right to housing is acknowledged in the legislation of a number of Italian regions; it is considered to have a constitutional role. Judgments of the constitutional court of Italy: housing is a fundamental social right
Law: Ireland	Housing Act of 1988: the local authorities are obliged to assess the importance of housing needs, to make a census of homeless persons and to set housing priorities
Law: Luxembourg	No specific legislation
Law: Germany	Despite a refusal by the federal authorities to speak of the right to housing, the länder and the Communities must ensure that nobody sleeps in the street. For public order’s sake, they may requisition vacant housing.

EUROPEAN HOUSING FORUM

Conference 2000

CECODHAS – COFACE – ENHR – EOSH – ESCS – EUROCITIES – FEANTSA – IUT – RHF - UEPC

Access to housing in the EU :A right ?

venue
UNESCO - Paris
14-16 september 2000

14 september 2000

6.30 pm - 7 pm : registration - dossier

7 pm : cocktail of welcome

8 pm : free

(invited persons to be confirmed)

15 september 2000

8.30 : welcome

9.15 : Opening of the conference by Mrs Martine Aubry, french minister of employment and solidarity

9.30 : Introductory report on access to housing in the EU and the right to housing (expert)

10.00 : European Housing Forum panel : from right to practices : focal issues of partnership process

10.00 : Local authorities (EUROCITIES)

10.30 : debate

10.45-11.30 : coffee break

11.30 : Social sector (CECODHAS-RHF)

11.45 : Private sector (UEPC - ESCS)

12.00 : Associative sector (FEANTSA)

12.15 : debate

12.30 - 2.00 : lunch

2.00 : Tenants and families associations (IUT - COFACE)

2.15 : debate

2.30 : synthesis and conclusions of the panel by ENHR

3.00 : The right to housing and the european charter of fundamental rights : stakes for social and urban cohesion of the EU (a european parliamentary : reporter of human rights report)

3.30 : Political panel :

- United Nations : Klaus Topfer, Habitat : security of tenure and urban governance campaign
 - Council of Europe : Antonio Mesquita : social charter and access to housing
 - European Parliament : Nicole Fontaine : Charter of fundamental rights of the EU
 - Committee of the Region : François Geindre : report on housing for the homelessness
 - European commission : Anna Diamantopoulou : building a Europe of social inclusion
- A Mayor of a city of a eastern country candidate : access to housing dilemma and strategies in eastern Europe

5.00 : adoption of the resolution of the conference towards the convention, the ministries of housing and the french presidency

5.15 : conclusions of the conference by Louis Besson, State secretary on housing, France

5.30 : cocktail

16 septembre 2000 (to be confirmed)

9.30 - 12.00 : professionnall visits on projects on access to housing for target groups in Paris and the region Ile-de-France

Reminder :

18-19 september 2000 – Paris : 12th informal meeting of EU housing ministers on access to housing and public policies

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE**fundamental.rights@consilium.eu.int**

Bruxelles, le 19 avril 2000**CHARTE 4243/00****CONTRIB 116****NOTE DE TRANSMISSION**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne

Veillez trouver ci-après une contribution du Collectif pour la Charte des droits fondamentaux (CCDF) en vue de l'audition publique du 27 avril 2000. ¹

¹ Ce texte a été soumis en langue française uniquement.

Sur la logique et la structure du projet

1. Le CCDF a décidé de ne pas ajouter une revue exhaustive des articles du projet à celles qui ont été déjà entreprises... souvent par des organisations qui comptent parmi ses membres. Il concentrera donc ses remarques, suggestions et propositions d'amendements, d'une part sur les partis méthodologiques et dispositions du projet qui posent problème au regard de sa plate-forme initiale, d'autre part sur certaines dispositions dont l'enjeu lui semble particulièrement essentiel.
2. Il apparaît ainsi dès l'examen des articles 1^{er} à 16 - mais cette remarque concerne à la vérité l'ensemble du texte - que la structure même du projet ne peut, en l'état, satisfaire aux exigences de transparence et de sécurité juridique qui s'imposent tout particulièrement dans l'élaboration d'une Charte des droits fondamentaux.

Le texte est en effet dédoublé en une succession d'articles numérotés, rédigés avec concision et reproduits en caractères gras, et en une série d'« exposés des motifs » accompagnant chacun de ces articles, si bien qu'un lecteur de bonne foi, fût-il juriste, s'attend à ce que, comme leur nom l'indique, les « exposés des motifs » se bornent à expliquer les raisons pour lesquelles ont été retenues les normes contenues dans la-série des articles.

Il n'en est malheureusement pas ainsi. Il arrive que l'« exposé des motifs » restreigne considérablement le contenu (par exemple article 2.2) et/ou la portée (par exemple article 1^{er}) de la norme posée dans l'article correspondant, cependant que la formulation à la fois brève, très générale voire ambiguë, des articles en vient parfois à priver d'effectivité les principes posés et les droits reconnus (par exemple du fait du recours à « notamment » dans l'article 3.2, ou de la simple référence à « des cas spécifiques » dans l'article 6).

Le lecteur qui se bornerait à prendre connaissance des articles, comme il est habitué à le faire en lisant par exemple la Déclaration française de 1789 ou la Déclaration universelle de 1948, d'une part croirait intégralement protégés des droits qui ne le sont que partiellement ou conditionnellement (par exemple en ce qui concerne l'interdiction de la peine de mort posée apparemment sans restrictions par l'article 2.2), d'autre part ne peut toujours mesurer avec une certitude raisonnable la portée de la reconnaissance et de la protection des droits fondamentaux, du fait des formulations elliptiques et ambiguës ci-dessus critiquées.

On peut en particulier se demander pourquoi les références à la CEDH ont toutes été renvoyées aux « exposés des motifs », alors qu'elles constituent souvent des restrictions de la portée des droits énoncés dans les articles. Il serait moins trompeur pour le lecteur de pratiquer des références explicites, fussent-elles concises, dans le corps des articles ; cela permettrait du même coup de s'interroger sur l'opportunité de certaines de ces références qui ont pu vieillir au point de heurter les conceptions des droits fondamentaux que nous partageons aujourd'hui (par exemple lorsque l'article 5^e de

la CEDH, cité par l'exposé des motifs de l'article 6, admet la détention des personnes porteuses d'une maladie contagieuse et des vagabonds... ; les rédacteurs ont parfois senti le danger au point de réécrire certaines formules : ainsi les « principes généraux du droit reconnus par les nations civilisées » de l'article 7.2 de la CEDH sont-ils devenus dans l'article 10.2 « les principes généraux du droit reconnus par les nations démocratiques » ; il se confirme ainsi que l'écriture dans le corps des articles a des effets salutaires).

La reprise des formulations de la CEDH peut comporter des conséquences franchement inadmissibles, par exemple lorsque l'article 13, portant sur le respect de la vie familiale, énonce un « droit de se marier et de fonder une famille » qui subordonne l'existence de la famille au prononcé du mariage. Que la liberté du mariage mérite d'être protégée en tant que telle ne fait aucun doute ; que soient pour autant niés ou ignorés les droits et libertés des couples non mariés (et notamment des couples homosexuels) passe aujourd'hui l'entendement.

Il est donc absolument indispensable de revenir à l'usage qu'impose la logique : au dispositif la norme, à l'exposé des motifs la glose, et au lecteur la garantie de la sincérité de cette répartition des espaces et des valeurs.

La Charte et la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales : questions de rédaction

Le Conseil européen a demandé que la Charte des droits fondamentaux de l'Union européenne contienne les droits de liberté et d'égalité ainsi que les droits de procédure tels que garantis par la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales.

Pour la plupart des articles, le projet reprend le texte de la Convention affirmant le droit et renvoie dans un exposé des motifs les dispositions de la Convention qui précisent les cas dans lesquels l'exercice de ces droits peut être limité. Par ailleurs, un article « horizontal » (convent 13, 8 mars 2000, article X) définit de façon générale les conditions de licéité des limitations « au respect des droits et libertés » reconnus dans la Charte.

Qu'il soit nécessaire de préciser ces conditions est certain. C'est un élément essentiel de la garantie des droits et libertés. Et les conditions définies par l'article X sont convenables, même si l'exposé des motifs interprète de façon extensive l'arrêt Huvig, en admettant que l'exigence de loi soit comprise au sens matériel et non formel. Cela est une régression par rapport à la démocratie, comme le pensait Sir Robert Megarry dans l'affaire Malone (28 février 1979) et comme la Cour interaméricaine des droits de l'homme ne l'admet pas (9 mai 1986).

Une interrogation subsiste sur l'opportunité de reprendre dans l'exposé des motifs l'intégralité des dispositions de la Convention européenne de sauvegardes des droits de l'homme. En effet, il apparaît que certaines reflètent des conceptions qui avaient cours en 1950, mais qui ne sont plus admissibles cinquante ans après. Par exemple, l'exposé des motifs du projet d'article 6 (droit à la liberté et à la sûreté) reprend l'article 5 CEDH, avec l'ensemble de ses exceptions, y compris le e), qui permet la détention « d'une personne susceptible de propager une maladie contagieuse, d'un aliéné, d'un alcoolique, d'un toxicomane ou d'un vagabond ».

En ce qui concerne les vagabonds, cette disposition reflète des conceptions du XIX^e siècle, que le nouveau code pénal français a abandonnées. Pour les maladies contagieuses, elle est lourde de menaces, compte tenu des risques de traitement discriminatoire qui ont surgi avec l'apparition du SIDA. C'est, en définitive, l'ensemble du e) qui est contestable, comme reflet d'une volonté de contrôle social aboutissant à l'exclusion.

Il serait donc nécessaire de réexaminer la Convention européenne des droits de l'homme en tenant compte de l'évolution de la pensée libérale.

Sur le projet d'article 3 : droit au respect de l'intégrité

L'alinéa 2 porte sur le respect de principes dans le cadre de la médecine et de la biologie. Qu'il faille poser des principes dans ce domaine est certain. Ils doivent correspondre à la finalité poursuivie par les décisions dans ce domaine, qui ne peut être que le respect des personnes, seul principe éthique de portée générale (Jean-Paul Thomas : « il n'est pas d'autre principe éthique que celui du respect des personnes », in *La bioéthique est-elle de mauvaise foi ?* P.U.F.1999,p.39).

Des droits ont été affirmés depuis un demi-siècle. Leur respect s'impose dans le cadre de la recherche biologique et de la médecine : ce sont la dignité de la personne humaine, le respect de la vie privée, la non-discrimination, le droit à la protection de la santé. Leur protection passe par le respect de certaines conditions : consentement de la personne, non patrimonialité du corps humain, intégrité de la personne.

Qu'au lieu de réaffirmer ces droits et le principe de respect des personnes, une charte des droits fondamentaux pose des interdictions revient à aborder la question à l'envers. Les rédacteurs sont alors contraints, dans l'exposé des motifs de préciser que « l'énumération n'est pas exhaustive, ce qui permet une évolution pour tenir compte des progrès éventuels en la matière ». C'est faire penser que des progrès doivent se traduire par de nouvelles interdictions. C'est aussi supposer que les Etats puissent s'accorder sur l'admissibilité de ces progrès, alors qu'on sait qu'il n'en est rien. Ni l'Allemagne, ni l'Angleterre, pour des raisons opposées, n'ont ratifié la convention européenne pour la protection des droits de l'homme et de la dignité de l'être humain à l'égard des applications de la biologie et de la médecine. La charte ne peut éluder le rôle du législateur national.

Cette approche naît plus de la diabolisation des progrès de la connaissance biologique et de la médecine, que des interdictions permettraient d'exorciser, que d'un réel souci de mettre le respect de l'homme au centre des droits (cf. Jean-Pierre Baud, *L'affaire de la main volée, une histoire juridique du corps*, Seuil, 1993).

Une charte des droits doit affirmer des droits (respect de la personne, protection de la vie privée, non discrimination, droit à la protection de la santé) qui devront être protégés dans tous les cas et ne pas se contenter d'interdictions qui ne correspondent qu'aux craintes du moment.

Droit d'asile

Proposition d'amendement

Le Point 2 sur les expulsions collectives devrait faire l'objet d'un article séparé. Le titre de l'article 17 se réduirait donc à : droit d'asile. En associant le droit d'asile à la notion d'expulsion, on se place dans une logique de police de l'immigration et non dans une logique de droits fondamentaux.

17.1

Remplacer le paragraphe par : « **Toute personne fuyant la persécution a droit de trouver asile dans un Etat membre de l'Union. Ce droit implique l'accès des demandeurs d'asile à une procédure juste et efficace pour l'examen de leur demande et, par voie de conséquence, l'accès au territoire des Etats membres, en tenant compte de leur choix du pays en raison des attaches familiales, culturelles, linguistiques ou autres. Les Etats de l'Union appliquent la convention de Genève de 1951 sur les réfugiés sans restriction et de façon harmonisée. Ils rappellent le caractère non inamical à l'égard du pays d'origine de l'acte d'accorder l'asile.** »

Exposé des motifs :

I.- La Charte des droits fondamentaux de l'Union européenne ne peut pas énoncer des droits en deçà de ce qu'énonce et garantit déjà le droit international. Or la Convention de Genève de 1951 sur les réfugiés (avec son protocole de 1967) n'admet plus de restrictions géographiques à son champ d'application et prohibe toute discrimination quand au pays d'origine (article 3)

1/ Sur le principe, la notion de « pays sûr », qui est implicite dans la rédaction proposée de l'article 17.1, et celle de droit d'asile sont antinomiques.

- d'une part, parce qu'aucun Etat n'est jamais définitivement « sûr ». La démocratie et le respect des droits de l'homme sont garantis aussi par l'existence de contre-pouvoirs, de procédures de contrôle et de recours contre d'éventuelles dérives dont aucun Etat n'est totalement à l'abri (les exemples ne manquent pas). Un Etat vraiment « sûr » n'a pas besoin de se proclamer tel.

- d'autre part, si le fait de donner l'asile à une personne, et a fortiori d'examiner sa demande d'asile, est considéré comme un acte inamical ou un jugement de valeur sur le pays d'origine, il n'y aura plus de droit d'asile car, surtout dans un contexte de mondialisation de l'économie, celui-ci sera l'objet de pressions diplomatiques et de marchandages de toutes sortes au détriment du droit des gens.

2/ en droit, la définition actuelle du réfugié peut s'appliquer à toute personne qui se trouve hors de son pays d'origine ou, pour les apatrides, de celui où elle a sa résidence habituelle, c'est-à-dire hors du pays duquel elle est en droit d'attendre une protection. Cette protection s'exerce, à travers la détention d'un passeport ou d'un titre de voyage, par les représentations consulaires des Etats. Or il n'y a pas encore de passeport unique et de consulats de l'Union européenne. Exclure la possibilité pour les ressortissants d'un Etat de l'Union de pouvoir demander l'asile dans un autre Etat de l'Union reviendrait à restreindre le champ d'application de la Convention de Genève de 1951 ainsi que l'a souligné Haut Commissariat des Nations Unies pour les Réfugiés.

3/ La portée de cette restriction du champ d'application d'une convention internationale protectrice qui a été élaborée par et pour l'Europe serait concrètement négligeable car il y a très peu de demandes dans l'actuelle Union européenne. Par contre son impact juridique et sa possible utilisation à travers le monde seraient redoutables.

Pour toutes ces raisons, les défenseurs du droit d'asile ne peuvent pas accepter la rédaction proposée de l'article 17.1. C'est toute la Charte des droits fondamentaux qui deviendrait suspecte à leurs yeux si cette rédaction était maintenue.

Il faut noter que la France n'a jamais reconnu la notion de « pays sûr » en matière de droit d'asile et n'a jamais établi officiellement de liste de pays sûrs.

Le protocole sur le droit d'asile pour les ressortissants des Etats membres de l'Union européenne a déjà donné lieu, en septembre 1998, à un avis dans ce sens de la Commission Nationale consultative des droits de l'homme auprès du Premier ministre.

II.- Par « fuyant une persécution », il faut entendre que l'intéressé craint une persécution et que c'est en raison de cette crainte qu'il a fui son pays.

III.- Le réfugié doit être protégé et ses droits fondamentaux garantis. L'application de la convention de Dublin qui définit l'Etat responsable de l'examen d'une demande d'asile ne doit pas conduire au non respect d'autres droits, notamment en séparant les familles. C'est pourquoi son choix du pays d'asile doit être pris en considération.

ANNEXEI.- Rappel du projet présenté par le présidium de la Convention :**Article 17. Droit d'asile et expulsion**

1. Les personnes qui ne sont pas ressortissantes de l'Union ont un droit d'asile dans l'Union européenne [conformément à la Convention de Genève du 28 juillet 1951 et au protocole du 31 janvier 1967 relatifs au statut des réfugiés][dans les conditions prévues par les traités].

2. Les expulsions collectives d'étrangers sont interdites.

Commentaire

Cet article est inspiré de l'article 4 du protocole N° 4 à la convention européenne des droits de l'homme en ce qui concerne les expulsions collectives. La déclaration du Parlement européen de 1989 ne contenait aucune indication mais il n'existait pas à l'époque de politique communautaire. Le texte du paragraphe 1 est inspiré de l'article 63 CE qui incorpore en droit communautaire la convention sur les réfugiés. Les dispositions de l'article 1 du protocole n° 7 à la convention européenne des droits de l'homme relatives aux garanties procédurales en cas d'expulsion n'ont pas été reprises car la plupart des Etats membres n'ont pas signé ou ratifié ce protocole. De toute façon, la convention de Genève contient des garanties en ce domaine. Il a été suggéré d'ajouter une référence au droit à une protection temporaire pour les personnes déplacées « dans les conditions fixées par les traités ou les mesures prises pour son application, mais en l'état actuel du droit positif, existe-t-il un tel droit ?

Sur les « droits des citoyens »

Dans le « convent 10 » du 28 février, la structure de la Charte comportait une section consacrée aux « droits politiques ». Ce terme a été remplacé par celui de « droits des citoyens » dans le « convent 17 » du 20 mars 2000.

Ce changement semble regrettable. Le terme de « droits politiques » a l'avantage d'être plus clair, plus facile à cerner. Utiliser le terme de « droits des citoyens » est une extrapolation abusive des articles 17 à 22 CE, introduits par le traité de Maastricht, sous le titre de « citoyenneté de l'Union ». Il s'agissait alors de rapprocher l'Europe des citoyens, ce qui était un ancien projet, qu'on peut faire remonter au sommet de Copenhague de 1973. Pour cela, la voie choisie a été l'attribution de droits liés à la libre circulation des travailleurs. On a ainsi permis à des travailleurs de continuer à exercer leurs droits civiques aux élections locales de leur lieu de résidence et aux élections européennes, comme cela avait été esquissé dans le rapport Adonino de 1984, en liant ces droits à la liberté de circulation et de séjourner, et en y ajoutant le droit à une protection diplomatique, le droit de pétition et le recours à un médiateur.

De son côté, le Parlement européen a adopté, en 1989, une Déclaration sur les droits et libertés fondamentaux, sans limiter leur bénéfice aux citoyens des Etats membres de la Communauté européenne.

Le terme de « citoyenneté » a eu un énorme succès, sans qu'on s'interroge nécessairement sur son contenu. A priori, on a considéré que c'était un pas en avant, vers une Europe plus politique, moins strictement économique.

Il est fâcheux de continuer à « enrichir » cette notion, sans réfléchir sur le sens même du terme de citoyenneté, car cela conduit à ...appauvrir la portée des droits, en réservant aux « citoyens » des droits dont il n'y a aucune raison de refuser le bénéfice à tous. Ainsi, le projet réserverait aux citoyens le droit à une bonne administration.

La difficulté est ressentie par les rédacteurs, qui utilisent alternativement la formule « citoyen » et « toute personne » (articles E, H).

Il convient donc de distinguer les droits politiques, réservés aux citoyens de l'Union européenne, et les autres droits. Pour de nouveaux droits, comme le droit à une bonne administration, il n'y a aucune raison de ne pas les attribuer à toute personne. Pour les droits créés par le traité de Maastricht, sous la rubrique « citoyenneté de l'Union », mais qui ne sont pas des droits politiques (accès au médiateur, liberté de mouvement) il convient d'une part de s'interroger sur la pertinence de la référence au citoyen et d'autre part d'intégrer les modifications apportées par le traité d'Amsterdam.

Enfin, nous estimons qu'il faudra parvenir à dissocier l'attribution de la citoyenneté de l'Union européenne de la nationalité des Etats membres.

Sur les droits sociaux

La Charte des droits fondamentaux de l'Union Européenne doit assurer la prise en compte des droits sociaux dans l'ordre juridique européen. Elle devra donc comporter un corpus dédié à ces préoccupations, en prenant le soin :

- d'entendre les droits sociaux au delà de l'acception courante,
- de les garantir par une rédaction utile.

Quels sont les droits sociaux à garantir ?

La Charte des droits fondamentaux de l'Union Européenne doit affirmer :

1. Dans le travail :

- le droit à une rémunération équitable,
- le droit à l'égalité de traitement entre les hommes et les femmes,
- le droit à la liberté d'exercice professionnel dans tous les pays de l'Union,
- le droit à l'information, à la consultation, et à la participation, des travailleurs,
- le droit d'association, de négociation et d'action collective des employeurs et des travailleurs,
- le droit au repos hebdomadaire et aux congés annuels payés,
- le droit à la sécurité et à l'hygiène dans le travail,
- l'interdiction du travail pour les mineurs de moins de 16 ans et le droit à des conditions spécifiques pour les travailleurs de moins de 18 ans,

- le droit à la protection en cas de licenciement,
- le droit à la formation et à l'orientation professionnelle,
- le droit des travailleurs à la protection maternelle,
- le droit des travailleurs au congé parental.

2. Dans la garantie de revenus.

- le droit à un revenu minimum garanti indépendamment du travail pour ceux qui n'occupent pas un travail.

3. Dans le logement.

- le droit à un logement décent.

4. Dans la protection sociale :

- le droit à la sécurité sociale pour toute personne, travailleur et ses ayants droits,
- le droit à l'aide sociale pour toute personne dont la situation ne permet pas de bénéficier des prestations de sécurité sociale.

5. Dans l'accès aux soins de santé :

- le droit à l'information de santé,
- le droit aux moyens de prévention en matière de protection de la santé,
- le droit aux soins de santé.

6. Dans les droits de personnes malades et handicapées.

Il semble nécessaire d'ajouter des droits pour les personnes malades ou handicapées (pour éviter les discriminations en raison de l'état de santé). Ce sont aussi parfois des droits des personnes tout simplement (accès au dossier médical).

On trouvera en annexe une contribution à cet égard. Chaque élément est sans doute à ventiler entre les articles transversaux (anti-discriminations) et des articles spécifiques (droit à la protection des données informatiques personnelles, droit au dossier, droit à la dignité...).

Quelle rédaction revendiquer ?

- ⇒ Il faut insister sur la nécessité de rédactions précises en posant le principe que tout membre de phrase pouvant générer un doute ou une interrogation doit être complété, soit par une indication temporelle, soit par une précision spatiale, soit par tout critère ad hoc. C'est la seule manière d'aller au delà d'une charte "pétition programmatique".
- ⇒ Mais, c'est peut-être dans les articles transversaux qu'il faut œuvrer le plus pour faire en sorte que les droits reconnus par la Charte soient effectifs, le plus possible, pour les personnes (exemple de l'article anti-discrimination).
- ⇒ Il faut aussi penser à la rédaction "cliquet" :

« Toute disposition conférant un droit supérieur à celui reconnu par les dispositions de la présente charte s'applique sans préjudice des droits énoncés par cette dernière ».

Contribution sur les droits des personnes malades :

Droit à l'information.

« Le patient a le droit d'être pleinement informé de son état de santé, y compris des données médicales qui s'y rapportent ; des actes médicaux envisagés, avec les risques et avantages qu'ils comportent, et des possibilités thérapeutiques alternatives, y compris des effets d'une absence de traitement et du diagnostic, du pronostic et des progrès du traitement.

Le patient a le droit de ne pas être informé, sur sa demande expresse.

Le patient a le droit de choisir une personne qui, le cas échéant, devra recevoir l'information en leur nom ».

Droit au consentement.

« Aucun acte médical ne peut être pratiqué sans le consentement éclairé préalable du patient. Il a le droit de refuser un acte médical ou de l'interrompre.

Lorsqu'un représentant légal est requis, le patient doit être néanmoins associé à la prise de décision.

Le consentement du patient est également requis pour la conservation et l'utilisation des substances provenant de son corps.

Le consentement éclairé du patient est aussi nécessaire pour toute participation à l'enseignement clinique et pour toute participation à une activité de recherche scientifique ».

Droit d'accès au dossier médical.

« Le patient, le cas échéant par l'intermédiaire d'une personne qu'il désigne, a le droit d'accéder directement à son dossier médical, de recevoir copie de la totalité ou de partie de ces dossiers. Cet accès ne s'applique pas aux données relatives à des tiers ».

Droit à la protection du dossier médical.

« Les informations confidentielles concernant un patient ne peuvent être divulguées que si le patient y consent explicitement ou que si la loi l'autorise expressément. Toutes les données identifiables concernant un patient doivent être protégées par un moyen de protection adapté au mode de stockage choisi. Les substances humaines à partir desquelles des données identifiables peuvent être obtenues, doivent également être protégées.

Le patient a le droit de demander que soit corrigées, complétées, supprimées, précisées et/ou mises à jour, les données de caractère personnel ou médical le concernant, lorsqu'elles sont inexactes, incomplètes, ambiguës ou périmées, ou sans rapport avec les besoins du diagnostic, du traitement et des soins ».

Droit à la protection de la vie privée et de l'intimité.

« Le patient a le droit au respect de sa vie privée qui ne peut faire l'objet d'aucune ingérence sauf si elle est justifiée par les nécessités du diagnostic, le traitement et les soins, et que le patient y consent.

Le patient a le droit au respect de l'intimité de sa personne ».

Droit à la dignité.

« Le patient a le droit d'être soulagé de la douleur, dans la mesure où le permettent les connaissances. Il a le droit de recevoir des soins palliatifs humains et de mourir dans la dignité ».

Droit à l'assistance religieuse et au soutien.

« Le patient a le droit de recevoir ou de refuser une aide spirituelle ou morale, y compris celle d'un ministre représentant la religion de son choix.

Le patient a le droit de recevoir ou de refuser le soutien de ses parents, proches et amis, ou des représentants d'une organisation non gouvernementale de son choix ».

Droit à la participation.

« Les patients ont un droit collectif à être représentés à chaque niveau du système de santé à propos des questions relatives à la planification et à l'évaluation des services, y compris la gamme, la qualité et le fonctionnement des prestations et services ».

Droit à la médiation et à la réclamation.

« Le patient doit avoir accès aux informations et aux conseils lui permettant d'exercer les droits énoncés ci-dessus. Celui qui estime que ses droits n'ont pas été respectés doit avoir la possibilité de faire examiner son litige par un organisme indépendant, le cas échéant également compétent pour exercer une médiation, et/ou devant une juridiction ».

Sur les services d'intérêt général

- a) Toute personne a droit à l'accès aux services d'intérêt général.
- b) Les services d'intérêt général garantissent l'exercice des droits fondamentaux.
- c) Un contrôle continu et démocratique s'assure de leur efficacité et de leur capacité à s'adapter en permanence aux évolutions des besoins ainsi qu'au progrès social et technologique.

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE**fundamental.rights@consilium.eu.int**

Bruxelles, le 19 avril 2000**CHARTE 4244/00****CONTRIB 117****NOTE DE TRANSMISSION**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne

Veillez trouver ci-après une contribution du Conseil Central des Communautés Philosophiques non-Confessionnelles (CCL) en vue de l'audition publique du 27 avril 2000. ¹

¹ Ce texte a été soumis en langue française uniquement.

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Charte des droits fondamentaux

Audition de la société civile du 27 avril 2000

Mémoire et vocation de l'Europe: L'humanisme européen

En Europe, de nombreux apports de divers courants de sensibilité et de pensée ont convergé. L'humanisme est fait de toutes les valeurs qui ont germé dans ces différentes cultures. Ces courants ont contribué d'une manière ou d'une autre à la formation de l'humanisme moderne : certes, ils ont également recelé des tendances anti-humanistes et ont pu entrer parfois en contradiction les uns avec les autres.

On peut retenir les principales valeurs constitutives de l'humanisme, dont l'Europe a été le creuset. Tout d'abord, au-delà de toutes distinctions ou situations, la *dignité égale de toute personne humaine*, d'où découlent *la liberté et la justice* comme exigences indivisibles et universelles. Cette valeur inconditionnelle, irréductible, doit être affirmée comme pré-supposé incontournable. Il s'agit là d'un sentiment commun, d'une conviction, qui se sont progressivement imposés au cours de l'histoire, et qui marquent chaque homme, quelles que soient les motivations diverses dont on les étaye.

La reconnaissance de l'égalité de dignité de toute personne humaine, femme ou homme, induit un type de société qui permet et favorise la dimension foncièrement relationnelle de la liberté humaine. Même régulée par des lois, d'ailleurs en constant remaniement, cette société doit s'ouvrir à la possibilité de transgressions responsables car celles-ci sont le ferment indispensable d'autonomie personnelle et de progrès des institutions.

La conscience de la fragilité de tout système suscite des structures ouvertes aptes à l'écoute, au dialogue, au changement. D'où le refus de tout "intégrisme" et la capacité d'intégrer du nouveau. Cette mémoire, qui confère à l'Europe une chance et une responsabilité spécifiques, doit cependant nous rappeler aussi les dérives particulièrement graves dont elle porte le poids.

Le brassage des cultures qui a fait l'identité européenne et sa richesse impose aux gouvernants et aux citoyens de l'Europe un *devoir d'ouverture et d'acceptation de la diversité*

Enfin, les valeurs de tolérance et d'humanisme qui constituent le patrimoine commun et le ciment de l'Europe moderne, au delà des différences nationales, régionales ou traditionnelles implique dans le chef de toute autorité publique une rigoureuse impartialité à l'égard de toutes les conceptions philosophiques ou religieuses et la garantie de l'indépendance de la sphère privée des citoyens en matière d'option confessionnelle ou non confessionnelle.

Les valeurs communes européennes exigent de toutes les institutions publiques, celles de l'Union et celles des Etats, un rigoureux devoir d'impartialité et la garantie de la dignité des personnes et des droits humains.

Par leur adhésion aux différents traités et à l'Union, les Etats membres garantissent en leur nom et au nom des institutions européennes l'égalité de tous devant la loi sans distinction de sexe, d'origine, de culture, de conviction ou de choix de vie.

Pour une charte étendue

Il est certes intéressant de présenter clairement au public européen certains droits que l'on pourrait appeler de base. Ceux-ci sont acquis et exprimés dans des textes dont tous ne sont pas encore bien connus des citoyens.

Nous ferons à ce propos quelques remarques par rapport aux articles actuellement proposés par le Présidium.

Mais une charte européenne devrait pouvoir faire davantage.

Une partie importante de la population s'interroge et voudrait entendre exprimer des droits qu'elle considère fondamentaux, compte tenu de l'évolution de la société moderne.

Le risque est grand de décevoir ces citoyens européens en publiant une charte qui ne répond pas à leur attente concernant les exigences, de droits culturels, de droits sociaux, de droits des enfants, de normes et indicateurs de développement durable,

Ne pourrait on également définir les droits à une participation des citoyens à des services d'intérêt général ?

Il s'agit, non plus de droits individuels, mais de droits collectifs (collective rights).

Nous ferons à cet égard quelques suggestions

Une charte des droits fondamentaux doit affirmer *la laïcité des institutions européennes et le principe d'impartialité qui implique qu'aucune conception religieuse ou philosophique particulière ne peut bénéficier d'un traitement privilégié* .

La charte fait référence à la liberté religieuse garantie, notamment par la Convention européenne de sauvegarde des droits de l'Homme et par les Constitutions nationales des États membres de l'Union.

Une charte des droits fondamentaux doit préciser que cette liberté essentielle instituée au bénéfice des *personnes* de toutes convictions, confessionnelles et non confessionnelles ne confère aucun privilège aux *institutions* religieuses, entièrement soumises à la loi commune.

La charte doit aussi rappeler qu'aucune prescription religieuse ne peut avoir d'effet contraignant sous l'angle de la loi civile et que la force publique ne peut en aucune hypothèse y prêter main forte.

Une charte des droits fondamentaux doit relever qu'au même titre que tout autre groupe de pression ou tout mouvement associatif les Eglises peuvent être entendues par les autorités publiques de l'Union ou des États membres, mais que ces consultations éventuelles ne peuvent être institutionnalisées, ni donner l'apparence d'une confessionnalisation de l'Europe ou d'un État membre, en contradiction avec l'idéal démocratique (annexe 2).

Remarques concernant la proposition du Présidium

ART. 3 - **Droit au respect de l'intégrité**

§ 2, 4^{ème} alinéa - **Clonage reproductif humain**

Le paragraphe 2 dernier alinéa relatif au clonage reproductif humain n'a pas sa place dans une Charte des droits fondamentaux et devrait être retiré.

Commentaires:

Comme le souligne le commentaire du document, ce point est extrait de la Convention de biomédecine du Conseil de l'Europe, convention qui peut être régulièrement soumise à révision par les Puissances signataires, notamment pour des raisons d'évolution des connaissances scientifiques. Il ne paraît pas indiqué de devoir faire évoluer de telle sorte la Charte.

Il convient également de faire observer que cette interdiction est en contradiction avec la "*liberté de recherche scientifique*" que la charte entend proclamer et qui fait partie de la grande tradition et du fonds commun de l'héritage européen.

Un commentaire plus général est en annexe 1.

ART 14 - **Liberté de conscience**

Il y aurait lieu d'ajouter un second paragraphe:

Toute personne a droit à la garantie par les États et l'Union de la sphère d'autonomie quant à ses conceptions philosophiques ou religieuses.

Commentaire:

L'acceptation du pluralisme induit une ouverture, une pratique de la tolérance à l'égard de la personne d'autrui et une stricte neutralité des pouvoirs publics des États et de l'Union à l'égard de toutes les convictions religieuses et philosophiques. (annexe 2)

Cette neutralité implique:

la non-ingérence des États et de l'Union dans les affaires de toute organisation religieuse ou philosophique non confessionnelle. Un État se garde d'intervenir dans leur organisation interne, dans la définition de leurs positions éthiques ou encore dans la nomination de leurs représentants;

la non-ingérence de toute organisation religieuse ou philosophique non confessionnelle dans les affaires des États et de l'Union.

ART 15 - **Liberté d'expression**

Au §1 il conviendrait d'ajouter:

La liberté d'expression vaut aussi pour les informations et idées qui heurtent, choquent ou inquiètent

ART 16 - Droit à l'éducation

Toute personne a droit à l'éducation.

Le § 1 devrait être complété comme suit:

Ce droit ne comporte pas l'obligation des pouvoirs publics de subventionner un enseignement autre qu'un enseignement ouvert à tous, en dehors de toute référence politique et religieuse.

Les Pouvoirs publics ne peuvent imposer un enseignement religieux.

Le § 3 devrait être modifié comme suit:

Les parents ont le droit d'assurer l'éducation religieuse ou philosophique de leurs enfants conformément à leurs convictions, dans un système éducatif visant à former des citoyens responsables, capables de contribuer au développement d'une société démocratique, solidaire, pluraliste et ouverte aux autres cultures.

i) Justificatif

La liberté de choix des parents ne peut avoir pour conséquence le renforcement de tendances anti-démocratiques ou intolérantes.

ii) Commentaires

Pour éviter toute confusion ou reconnaître d'emblée qu'un enseignement peut s'inscrire avec ses références philosophiques ou religieuses dans les objectifs visés ici, il suffit qu'il reconnaisse que d'autres valeurs, d'autres références sont aussi légitimes dans une société que celles qu'il a lui-même retenues.

Les élèves doivent être formés à reconnaître la pluralité des valeurs qui constituent l'humanisme européen. En ce sens, le système éducatif fournit aux jeunes les éléments d'information qui contribuent au développement libre et graduel de leur personnalité et qui leur permette de comprendre les options différentes ou divergentes qui constituent l'opinion.

Droits à établir

Non-discrimination

1- Une clause indépendante de non-discrimination devrait être prévue, s'inspirant de l'article 13 (ex 6A) du Traité de l'Union:

La jouissance des droits fondamentaux doit bénéficier à toute personne sans discrimination fondée sur le sexe, l'origine ethnique ou sociale, les croyances religieuses ou philosophiques, un handicap, l'âge ou l'orientation sexuelle. La non discrimination entre les sexes comporte l'égalité entre les hommes et les femmes à l'accès aux charges publiques et privées et à la protection sociale.

2- Discrimination sur base religieuse

Les prescriptions religieuses ne peuvent faire obstacle à la pleine jouissance et au plein exercice des droits civils et politiques. Elles ne peuvent davantage dispenser du respect de ces droits.

Aucune prescription religieuse ne peut être retenue comme cause de justification, cause d'excuse ou de circonstance atténuante d'une infraction pénale.

Annexe 1

C'est principalement au nom du respect de la dignité humaine qu'est condamnée *a priori* la naissance programmée d'un enfant qui serait la réplique exacte, la "photocopie" d'une personne vivante ou ayant existé. Ce seul fait le priverait de toute personnalité propre puisqu'il ne serait ni plus ni moins qu'un moyen de satisfaire une curiosité, le fantasme de l'immortalité ou celui, plus inacceptable encore, d'une réserve d'organes immunocompatibles.

Cette présentation est assurément réductrice en cela qu'elle ne souligne que l'inacceptable perspective de la conception d'un être comme moyen et non comme une fin en soi. Cette attitude excessive se doit en effet d'être nuancée d'autant plus qu'elle justifie aux yeux de beaucoup une interdiction absolue de tout transfert d'un noyau humain dans un ovocyte énucléé, qu'il s'agisse d'aboutir à la naissance d'une personne, à la production de pré-embryons ou à celle de cellules différenciées en culture.

Il est par ailleurs inexact d'affirmer qu'un tel transfert nucléaire crée une copie parfaite. Cette assertion fait une fois de plus l'apologie du déterminisme génétique et ignore les influences épigénétiques qu'exercent le cytoplasme de l'ovocyte, les échanges foeto-maternels durant la gestation, l'environnement de l'enfant.

Nul n'est jamais la réplique exacte d'un autre. Tout au plus lui est-il physiquement très semblable comme le sont les vrais jumeaux à chacun desquels l'Eglise accorde d'ailleurs une âme et l'Etat, le droit de vote. Ils sont donc très loin d'être privés l'un ou l'autre de leur propre dignité, ceux qui sont d'incalculables véhicules de culture comme le souligne si bien le professeur Fernand LEROY dans l'ouvrage qu'il leur consacre ("Les Jumeaux dans tous leurs états" Ed. De Boeck Université, 1995).

C'est l'intention qui est à la base de la conception volontaire d'une prétendue copie et non l'existence de celle-ci qui fait d'elle un moyen ou une fin en soi. La création *ex vivo* de jumeaux ne semble donc pas être justifiable alors que la multiplication embryonnaire par dissociation précoce des blastomères pourrait fort bien trouver sa raison d'être dans la perspective de recherches ou dans la constitution d'une réserve de pré-embryons pour augmenter les chances de succès d'une fécondation *in vitro*. Cette justification pourrait tout aussi bien s'appliquer au transfert des noyaux d'un embryon précoce fait de quelques cellules d'autant plus qu'aucune de ces deux stratégies ne bouleverserait les règles de la parenté.

Un moratoire volontaire

Un moratoire pourrait permettre une réflexion en profondeur sur l'opportunité d'envisager la conception d'un être par clonage dans des circonstances exceptionnelles. Il pourrait par exemple s'agir de satisfaire le désir d'avoir un enfant génétique manifesté par un couple dont la femme souffre d'une affection héréditaire grave transmise par les seules mitochondries du cytoplasme des ovocytes (myopathie, cardiomyopathie, neuropathie optique de Leber) ou encore celui manifesté par un couple dont le partenaire masculin est totalement stérile. Dans le premier cas, un enfant qui ne serait la réplique de personne pourrait naître du transfert d'un noyau d'un pré-embryon du couple concerné dans le cytoplasme d'un ovocyte d'une donneuse. Dans le second, un noyau somatique d'un des parents pourrait être transféré. L'enfant qui en serait issu serait assurément le "clone" de sa mère ou de son père dans le sens qu'on a donné à ce mot à propos de la naissance de Dolly. Mais l'intention d'avoir un enfant et non un sosie doit ici être prise en considération.

Ajoutons que dans le cas du transfert d'un noyau paternel dans l'ovocyte énucléé maternel, le génome nucléaire du premier serait accompagné du génome mitochondrial du second et qu'à ce titre, l'enfant ne serait pas une réplique génétique parfaite du père. Les influences épigénétiques feraient d'ailleurs aussi de leur fille une personne différente de la mère.

Ces deux exemples ne font qu'illustrer la complexité d'un problème qu'on ramène trop souvent à la vision diabolique d'armées d'individus identiques soumis au pouvoir d'un petit nombre. Lorsque furent connus les premiers essais de fécondation *in vitro* menés par le Prof. R. EDWARDS, des voix se sont élevées dénonçant une pratique qui ne pouvait conduire qu'à la dégénérescence de l'espèce humaine...

Extrait de: Henri Alexandre, in Outils de réflexion, Centre d'action laïque, Bruxelles, (2000)

Annexe 2 - Relations avec les Églises

Sous "l'Ancien Régime", les Églises (le plus fréquemment seule l'Église de la religion dominante) intervenaient dans les affaires de la Cité.

Actuellement les Églises se considèrent toujours comme porte-parole de valeurs, de normes et de règles de vie que tous les citoyens sont censés partager. On constate que des fidèles, de plus en plus nombreux et même ceux d'entre eux qui recourent à des cérémonies religieuses, ne suivent plus les mots d'ordre de leur Église et souvent contestent ceux-ci en de nombreuses matières.

Les Églises ne sont plus représentatives de l'ensemble de leurs fidèles et certainement pas de l'ensemble des citoyens dont un nombre de plus en plus important n'adhère plus à aucune Église. Il faut remarquer que plusieurs d'entre elles sont organisées de manière non démocratique.

Le cas de l'Église catholique est particulier car elle a la possibilité d'intervenir par le biais de l'État du Saint Siège, lequel n'a pas adhéré et n'est pas en condition d'adhérer à la Convention européenne des droits de l'Homme.

Aucune scorie de l'histoire ne peut plus justifier l'ingérence d'une autorité religieuse, quelle qu'elle soit, dans les affaires publiques de l'Union ou des Etats membres (ce qui implique notamment le retrait du statut d'observateur et des privilèges diplomatiques accordés à un Etat sans peuple, tel le Vatican.) .

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE**fundamental.rights@consilium.eu.int**

Bruxelles, le 19 avril 2000**CHARTE 4245/00****CONTRIB 118****NOTE DE TRANSMISSION**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne

Veillez trouver ci-après une contribution de "Terre Des Hommes France" en vue de l'audition publique du 27 avril 2000. ¹

¹ Ce texte a été soumis en langue française uniquement.



TERRE DES HOMMES FRANCE

4, rue Franklin - 93200 Saint Denis - ☎ : 01.48.09.09.76 - Fax 01.48.09.15.75 - CCP 2133Z Paris

La grave situation d'exclusion et de pauvreté qui touche des millions d'êtres humains a probablement deux causes fondamentales :

- d'une part , les graves déséquilibres Nord Sud : le poids négatif de la dette sur les efforts de développement des pays pauvres, la politique internationale d'échanges commerciaux (OMC)...
- d'autre part, le déséquilibre de réalisation entre les droits civils et politiques et les droits économiques, sociaux et culturels .

Le dernier rapport du Développement humain réalisé par le Programme des Nations Unies pour le Développement affirme que : « ...plus de 80 pays ont aujourd'hui un revenu par habitant inférieur à ce qu'il était il y a dix ans...»

Nous sommes parvenus à la certitude qu'un travail de solidarité ne suffit pas à lui seul et que notre devoir d'ONG est d'agir, en collaboration avec nos partenaires, pour faire reconnaître les droits économiques, sociaux et culturels comme une dimension pleine et entière du développement humain.

Tout comme René Cassin croyait en la force d'une déclaration pour faire avancer les droits de l'Homme, Terre des Hommes pense qu'il ne saurait y avoir de progrès durable dans le Monde sans l'adoption de textes juridiques applicables qui reconnaissent les droits économiques, sociaux et culturels comme un droit fondamental de la personne humaine.

De quel autre moyen disposons nous pour lutter contre la situation dénoncée par Bernard Cassen dans le Monde Diplomatique de Novembre 1999 à propos de Seattle: "...les représentants de gouvernements dont seulement une poignée ont les moyens humains de suivre des dossiers techniques complexes. Autour d'eux, les milliers de lobbyistes des multinationales les encadrent et les conseillent. Ce sont eux seuls qui sont demandeurs d'une nouvelle dose de libéralisme affectant des domaines d'activité jusqu'ici à l'abri de la marchandisation comme l'éducation et la santé".

Voilà pourquoi Terre des Hommes France mène un combat pour une reconnaissance juridique et économique des droits économiques, sociaux et culturels, et souligne leur interdépendance et leur indivisibilité.

L'association veut particulièrement attirer l'attention sur ces droits qui, en dépit d'efforts formels, semblent encore négligés. Une charte des droits fondamentaux ne peut décemment se construire à partir d'une hiérarchisation des droits.

Longtemps considérés comme subsidiaires, les droits économiques, sociaux et culturels ont démontré qu'ils étaient une condition de réalisation des droits civils et politiques.

- Que vaut la liberté de la presse pour l'analphabète,
- le droit de vote pour l'esclave,
- que signifie la citoyenneté pour l'affamé ?

En conséquence, Terre des Hommes France propose la contribution suivante, base de son intervention le 27 avril 2000 dans le cadre du projet de Charte des Droits fondamentaux:

L'exemple du droit à l'éducation tel qu'il est aujourd'hui abordé dans le projet de charte suscite les inquiétudes de l'association.

D'une part, parce qu'il est séparé des autres droits économiques, sociaux et culturels.

S'il n'est pas faux de le concevoir comme un droit fondamental, il paraît inique de le traiter en dehors du champ social global déterminé par les droits économiques, sociaux et culturels.

On ne peut accepter l'argument qu'un titre relatif aux droits de l'enfant développera la question car le droit à l'éducation n'est pas spécifique à l'enfance.

D'autre part, parce que la conception de ce droit, tel qu'il est présenté, est réductrice.

C'est une vision libérale essentiellement qui consacre le droit à l'instruction conçu comme un droit d'accès à l'enseignement public, gratuit et obligatoire sans proposer une vision rénovée du droit à l'enseignement. Le texte entretient la confusion entre instruction, éducation et enseignement et semble s'orienter vers un droit à l'éducation qui serait un droit/liberté (n'exigeant pas une action positive de l'Etat). Seul le droit à l'instruction apparaît comme un droit/créance.

Si nous ne nous en tenons qu'au droit à l'instruction, le combat de la gratuité est aujourd'hui dépassé, car ce droit ne se réduit pas à la gratuité et à l'obligation. S'instruire, c'est disposer d'un enseignement de qualité dans un environnement favorable au développement des facultés intellectuelles.

Le droit à l'instruction se confond dans la Charte avec le droit à l'enseignement. L'école est-elle aujourd'hui et sera t-elle demain la seule dispensatrice des savoirs?

Il existe dans les sources internationales des droits de l'Homme qui font allusion à l'épanouissement individuel par l'éducation et qui intègrent une dimension culturelle (Déclaration universelle des droits de l'Homme de 1948 ; Pacte relatif aux droits économiques, sociaux et culturels de 1966 dans son article 13 ; Convention sur les droits de l'enfant de 1990 dans son article 29). Or, le nouveau projet ne fait pas référence à ces textes mais cite exclusivement les traditions constitutionnelles des États et l'article 2 du Protocole additionnel de la Convention européenne des droits de l'Homme de 1950. Il semble qu'il y ait là une marque idéologique.

Enfin, il semble nécessaire que l'Europe intègre une dimension culturelle aux droits fondamentaux à travers le droit à l'éducation qui se définit comme « la mise en œuvre des moyens propres à assurer la formation et le développement d'un être humain ». L'ensemble des droits culturels, dont la teneur est définie dans le projet de déclaration de l'Unesco, ne peuvent exister sans éducation, d'où la nécessité selon nous de consacrer un titre au droit à l'éducation dans lequel pourraient apparaître deux paragraphes, le premier sur l'instruction, le second sur les droits « éducatifs » (culture et famille) qui ne sauraient être confondus avec l'instruction.

Christiane CHARRETON
Présidente

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 19 April 2000**CHARTE 4246/00****CONTRIB 119****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a contribution by the European Region of the International Lesbian and Gay Association (ILGA-Europe) with a view to the hearing on the 27 April 2000. ¹

¹ These texts have been submitted in English language only.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Address by ILGA-Europe¹, The European Region of the International Lesbian and Gay Association, to the Charter Convention on 27 April 2000

It is a great honour for our organisation, the European Region of the International Lesbian and Gay Association, to address the Convention on behalf of Europe's lesbian, gay, bisexual and transgendered communities. But for us it is more than an honour: it is an important symbol of the immense change taking place in European society: 20, 15, even 10 years ago our presence at an event such as this would have been unthinkable. Centuries-old patterns of exclusion, enforced invisibility, oppression, even at times persecution, are breaking up. And with the break-up of these patterns an immeasurable burden of isolation, emotional deprivation, self-denial and discrimination is being lifted from the shoulders of millions of people in Europe.

The European Union has made important contributions to this development, with repeated resolutions by the Parliament, and of course with Article 13 of the EC Treaty. It can make a further very important contribution with the Charter, particularly in the articles covering non-discrimination and family life.

The Treaty of Amsterdam broke new ground with the inclusion of age, disability and sexual orientation in Article 13 of the EC Treaty. We believe most strongly that all three characteristics should be included in the non-discrimination article of the Charter.

As regards sexual orientation discrimination, the reality is that, despite the progress referred to above, discriminatory practices remain widespread, involving both private individuals, and governments. Our written submission to you provides much detail. Suffice it to say here:

- that such discrimination can be found in the laws or regulations of seven member states and eight accession countries, including both the criminal code, and access to certain types of state employment;
- that discrimination by individual employers is extensive;
- that homophobic violence remains a serious problem, as last year's London pub bombing, which killed three people and injured sixty, reminded us all too tragically.

¹ ILGA-Europe is a non-governmental organisation that seeks to defend the human rights of lesbian, gay, bisexual and transgendered persons at European level. Its membership consists of over 150 non-governmental organisations, whose members are mainly lesbian, gay, bisexual and transgendered individuals, in over 30 European countries. It is a member of the Platform of European Social NGOs and enjoys consultative status with the Council of Europe.

But the problem goes beyond particular acts of discrimination by governments or individuals: the fact remains that many people both in public life and as private citizens still consider the expression of homophobic attitudes legitimate and respectable. Explicit reference in the Charter is needed above all to signal that sexual orientation discrimination is as unacceptable as discrimination based, for example, on race or religion.

Transsexual and transgender people experience very similar types of discrimination: violence, harassment, and the denial of jobs or services. Their small number makes them particularly vulnerable on the one hand, but on the other, makes it extremely difficult for them to obtain any protection against discrimination through new legislation. For these reasons, we urge that you also include gender identity in the non-discrimination article of the Charter.

Turning now to the question of partnerships and family life: some of the realities of life in Europe today are:

- that millions of people are living together as same-sex partners;
- that in many cases children are being brought up by these couples, or indeed by single people who are lesbian, gay, bisexual or transgendered.

To repeat: these are realities. They cannot be wished away or ignored.

The qualities which go to make up a good partnership and a good family -- for example, love, mutual respect, commitment, equality, -- are in no sense dependent on the sex of the members. The desire to be a parent, and the qualities that make a good parent, are also unrelated to the sexual orientation or gender identity of the individual.

These partners, these children, these parents, these families, deserve the protection and support of society just as much as any others. This protection and support can come only with proper and full legal recognition. We urge therefore that the articles of the Charter dealing with these issues be drafted in a manner that is inclusive rather than exclusive, acknowledging that a variety of forms of family exists in today's society.

We have emphasised the need for the new Charter both to signal the unacceptability of discrimination based on sexual orientation or gender identity, and to foster a vision of family life which is humane, inclusive, and grounded in reality. We have highlighted the progress made in recent years, but also shown how far there is still to go. Europe will be a better, freer, and more accepting place for all its citizens when those who are lesbian, gay, bisexual and transgendered can be themselves, openly and without fear. We believe that if our suggestions are taken up in the Charter, that Europe will be one step closer to becoming a reality.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Submission of ILGA-Europe¹, the European Region of the International Lesbian and Gay Association, to the Charter Convention²

1. Summary

ILGA-Europe's main recommendations are as follows:

The non-discrimination article of the Charter should include every ground of discrimination listed in Article 13 of the EC Treaty and Article 14 of the European Convention on Human Rights. The list in Article 13 EC, adopted in 1997, includes three important new grounds, disability, age and sexual orientation, which do not appear in the list in Article 14 of the Convention, adopted in 1950. However, ILGA Europe would wish to see the combined EC Treaty/Convention list supplemented in the European Union Charter by one additional ground, gender identity. We believe that this would serve to emphasise the need for protection from discrimination of a small, but very vulnerable group, transgendered people.

Article 13, Family Life of the draft Charter should be worded to recognise the **diversity of family life** in today's Europe.

2. NON-DISCRIMINATION

2.1 The inclusion of sexual orientation in the list of prohibited grounds of discrimination

The two main arguments for the inclusion of sexual orientation in the non-discrimination clause of the European Union Charter rest on the serious and wide-spread nature of the discrimination, and on the numerous precedents which now exist in European and national law for the inclusion of such a reference.

¹ ILGA-Europe is a non-governmental organisation that seeks to defend the human rights of lesbian, gay, bisexual and transgendered persons at European level. Its membership consists of over 150 non-governmental organisations, whose members are mainly lesbian, gay, bisexual and transgendered individuals, in over 30 European countries. It is a member of the Platform of European Social NGOs and enjoys consultative status with the Council of Europe.

² Drafted for the Board of ILGA-Europe by Nigel Warner, with the assistance of Dr. Robert Wintemute, School of Law, King's College, University of London, United Kingdom, and Dr. Kees Waaldijk, Faculty of Law, University of Leiden, Netherlands.

2.1.1 The seriousness of sexual orientation discrimination

ILGA Europe has recently published a comprehensive survey of discrimination against lesbian, gay and bisexual persons in Europe³. This reveals a most disturbing picture of the extent and seriousness of sexual orientation discrimination in Europe, whether among Member States of the European Union, the accession countries, or other European countries. For example:

- * Discrimination on the basis of sexual orientation can be found in the laws or regulations of 7 Member States⁴, and 8 accession countries.⁵ The most common such provision, a discriminatory age of consent (4 Member States and 6 accession countries), has been ruled a violation of the European Convention on Human Rights by the European Commission on Human Rights.⁶
- * 4 Member States and 2 accession countries⁷ have legal provisions or regulations that deny employment on the basis of sexual orientation in certain fields of state employment. The most common such provision, in the case of the armed forces (applying in 3 Member States and 2 accession countries), has been ruled a violation of the Convention by the European Court of Human Rights.⁸
- Studies in Sweden and the UK show that employment discrimination by individual employers is extensive. For example, a 1997 report by the Swedish Ministry of Labour included a survey of 650 lesbian, gay and bisexual persons. 12% said they had been turned down for a job as a result of sexual orientation, 8% had been denied promotion, and 8% had been forced to leave their job.⁹
- Homophobic violence is very common, as surveys in Ireland, Sweden and the United Kingdom have revealed.¹⁰ Typically, around a quarter of respondents in these surveys had been the victim of a violent attack. It is clear that in many European countries it can be very dangerous to identify oneself in public places as gay.

³ “*Discrimination Against Lesbian, Gay And Bisexual Persons In Europe*” - A report by ILGA-Europe to the Legal Affairs and Human Rights Committee of the Parliamentary Assembly of the Council of Europe as a contribution to the preparation of its Report and Recommendations on the Situation of Lesbians and Gays in the of the Council of Europe (Motion for a Resolution - Doc. 8319) 16th February 2000 – available at:

<http://www.steff.suite.dk/ilgaeur.htm#Information>

⁴ Austria, Germany, Greece, Ireland, Luxembourg, Portugal, UK

⁵ Bulgaria, Cyprus, Estonia, Hungary, Lithuania, Poland, Romania, Turkey

⁶ European Commission of Human Rights report on Application No.25186/94, *Euan Sutherland against United Kingdom* (1 July 1997)

⁷ Germany, Greece, Luxembourg, Poland, Portugal, Turkey. In the case of Germany, a report in the *Tageszeitung* on 8th April 2000 suggests that the Ministry of Defence, faced with losing a case before the Federal Constitutional Court, is in the process of lifting the restrictions on homosexuals serving in the armed forces.

⁸ *Lustig-Prean & Beckett v. United Kingdom* (Applications nos. 31417/96 and 32377/96) (27 Sept. 1999)

⁹ Arbetsmarknadsdepartementet. Stockholm (1997): Förbud mot diskriminering i arbetslivet på grund av sexuell läggning. Betänkande av utredningen mot diskriminering i arbetslivet på grund av sexuell läggning (SEDA). Statens offentliga utredningar 1997:175

¹⁰ Gay and Lesbian Equality Network and NEXUS Research Co-operative (1995) - *Poverty, Lesbians and Gay Men: The Economic and Social Effects of Discrimination* Dublin: Combat Poverty Agency; Tiby, E and Lander, I (1996) – “Hat, hot, våld - utsatta homosexuella kvinnor och män. En pilotstudie i Stockholm. Stockholm: Folkhälsoinstitutet; Mason, A. and Palmer, A. (1996) - “Queer Bashing -- a national survey of hate crimes against lesbians and gay men”. London: Stonewall;

- * Only 4 Member States and one accession country¹¹ accord a significant degree of legal recognition to same-sex partnerships (none of which is without discriminatory elements).

Inclusion of sexual orientation in the non-discrimination clause of the European Union Charter is made all the more necessary by:

the failure of so many governments to recognise that sexual orientation discrimination is as pernicious and as damaging as other forms of prohibited discrimination, and to take steps to eliminate it both from their own laws and regulations, and to counter it in society generally; The fact that many people, both in public life, and as private citizens, still consider the expression of homophobic attitudes to be legitimate and respectable.

2.1.2 Precedents in European and National Law¹²

The European Community has express competence to combat sexual orientation discrimination under Article 13 of the EC Treaty, inserted by the Treaty of Amsterdam in 1997. This is a most important precedent, in the light of which the exclusion of sexual orientation discrimination from the non-discrimination clause of the Charter would be highly anomalous. Indeed, omission from the Charter would represent a signal that the Union had weakened its view as to the unacceptability of sexual orientation discrimination.

Although the European Convention on Human Rights does not make explicit mention of sexual orientation, a recent judgment of the European Court of Human Rights recognises that sexual orientation discrimination is a prohibited ground of discrimination under Article 14 of the Convention.¹³ Moreover, the Parliamentary Assembly of the Council of Europe voted in January 2000 to support a recommendation that sexual orientation be included in the list of prohibited grounds in the new draft Protocol No 12 to the Convention, which is currently under consideration by the Committee of Ministers. It took the view that explicit reference should be made to grounds of discrimination that were “especially odious”, and that sexual orientation discrimination was amongst these.¹⁴

¹¹ Denmark, France, Hungary, Netherlands, Sweden

¹² For a comprehensive survey of the national and international precedents, see Submission of ILGA-Europe to the Steering Committee for Human Rights (CDDH), Council of Europe (28 February 2000) on enshrining the principle of equality between men and women in the new Draft Protocol No. 12, and on the inclusion of sexual orientation discrimination in the list of prohibited grounds of discrimination. The submission can be accessed at: http://www.steff.suite.dk/Protocol_12_Submission1.doc

¹³ Salgueiro Da Silva Mouta C. Portugal - (Application no 33290/96) (21 Dec. 1999)

¹⁴ Opinion No. 216 (2000) – Assembly debate on 26 January 2000

Since the 1970s, national anti-discrimination legislation and bills of rights in national constitutions, within and outside Europe, have increasingly recognised sexual orientation discrimination. Within the Member States of the European Union, the term "sexual orientation" (or a similar ground intended to cover sexual orientation) appears as a prohibited ground of discrimination in the legislation of 8 states: Denmark, Finland, France, Ireland, Luxembourg, the Netherlands, Spain and Sweden. It also appears in the legislation of one accession country, Slovenia, in that of two other European countries, Iceland and Norway, and in that of seven countries outside Europe, Canada¹⁵, Australia¹⁶, the United States¹⁷, Israel, Namibia, New Zealand and South Africa. Moreover, in four countries, South Africa (1993), Ecuador (1998), Fiji (1998) and Switzerland (1999), sexual orientation (or a similar ground intended to cover sexual orientation) is included in the non-discrimination provision of the national constitution.

2.2 Gender Identity¹⁸

2.2.1 ILGA-Europe submits that the non-discrimination article of the EU Charter should also include the ground "gender identity" so as to make it clear that people who are transsexual or transgender¹⁹ are protected and in recognition of the particular vulnerability of this group.

2.2.2 The seriousness of discrimination

Transsexual and transgender people are one of the most vulnerable minorities in Europe. Their relatively small numbers make it extremely difficult for them to obtain any protection against discrimination through new legislation. They face violence, harassment and the denial of jobs or services because their gender identity or expression does not correspond with their recorded birth sex.²⁰ The discrimination they face can be quite as severe as that faced by other groups who traditionally are accorded specific protection by national and international anti-discrimination legislation.

¹⁵ In legislation at the federal level, in 9 of 10 provinces, and in 1 of 3 territories; in addition the Supreme Court of Canada has ordered that it be "read into" the legislation of the 3 remaining jurisdictions.

¹⁶ In the legislation of 5 of 6 states and in both territories

¹⁷ In the legislation of 11 of 50 states, the District of Columbia, and most major cities

¹⁸ For a more detailed statement of the arguments, see "*Proposed Additional Protocol Broadening Article 14 Of The European Convention: The Need For Express Inclusion Of "Gender Identity"*" (A submission by ILGA-Europe to the Steering Committee on Human Rights, Council of Europe – accessible at: <http://www.steff.suite.dk/art14trans.htm>)

¹⁹ The term transgender is used as an umbrella term that includes both pre- and post-surgical reassignment transsexual people. It also includes transsexual people who choose not or who, for some other reason, are unable to undergo genital reconstruction. It further includes all persons whose perceived gender or anatomic sex may conflict with their gender expression, such as masculine-appearing women and feminine-appearing men.

²⁰ See Melanie McMullan & Stephen Whittle, *Transvestism, Transsexualism and the Law*, 2d ed. (London: The Beaumont Trust, The Gender Trust, 1995).

When a transsexual person undergoes gender reassignment, some countries refuse to acknowledge the change of their social gender and/or the change of their body morphology²¹. In these states transsexual people are forced to endure the almost daily humiliation of revealing their birth sex in many practical areas of life, so making them vulnerable to discrimination and prejudice regardless of the success of their gender role transition. The European Court of Human Rights condemned this practice, where forced disclosure of birth sex is sufficiently frequent, by finding a violation of Article 8 in *B. v. France* (1992). In that case, the applicant could not legally change her male forename, and could not prevent the disclosure of her birth sex (male) in documents such as her national identity card and her passport, and in her social security number.²²

Additionally this failure to recognise their new gender role means that for many they are effectively unable, in law, to found families and to take on the full social responsibilities embedded within the family.

2.2.3 Increasing recognition at the European and national level

There is throughout Europe ever wider recognition of transsexuality both by legislation and judicial decision and sex change surgery is allowed in every member state of the European Community.

In 1989 the Parliamentary Assembly of the Council of Europe adopted Recommendation 1117 on discrimination against transsexuals and a Resolution on the condition of transsexuals, which in cases of transsexualism called on Member States to introduce legislation whereby

“all discrimination in the enjoyment of fundamental rights and freedoms is prohibited in accordance with Article 14 of the European Convention of Human Rights.”²³

Moreover, despite the extreme difficulties that transsexual people experience in attempting to invoke the legislative process, there have been in the 1990s a growing number of precedents within countries for express protection. The anti-discrimination legislation of a number of cities in the USA includes “gender identity” as a prohibited ground²⁴. In the US state of Minnesota, anti-discrimination legislation defines “sexual orientation” as including “having ... a self-image or identity not traditionally associated with one’s biological maleness or femaleness”²⁵ and in California gender and gender expression are protected categories under the state’s Hate Crime’s legislation²⁶.

²¹ See Amicus Brief by Liberty in the Sheffield and Horsham case - <http://www.pfc.org.uk/legal/lib-amic.htm>

²² *B v France* [1992], Ser. A, No. 232-C, paras. 25-26, 59-63. The Court noted, at para. 12, that the applicant was “unable to find employment because of the hostile reactions she aroused”.

²³ Recommendation 1117, 1989, Parliamentary Assembly of the Council of Europe

²⁴ These cities include Minneapolis, San Francisco, Evanston (Illinois), Louisville (Kentucky) and Houston

²⁵ See Minn. Stat. Ann. s. 363.01(45).

²⁶ Calif. Stat. AB 1999, signed on the 28th September 1998.

Discrimination against transsexual persons is also expressly prohibited in South Australia²⁷ and in the Northern Territory of Australia²⁸ where the ground sexuality is defined to include ‘transsexuality’, and in the Australian Capital Territory, where “transsexuality” is a separate prohibited ground²⁹. In New South Wales in Australia³⁰ discrimination is prohibited ‘on transgender grounds’ and the legislation refers to people as ‘being transgender’.

2.3 A Non-Exhaustive List of Grounds

The Charter’s non-discrimination article will establish a general non-discrimination principle for the EU. Such a general principle can only be established if the list of grounds in the article is open-ended or non-exhaustive, as is the case in Article 14 of the European Convention (“on any ground such as ... or other status”), Article 2 of the Universal Declaration of Human Rights (“without distinction of any kind, such as ... or other status”), or Article 26 of the International Covenant on Civil and Political Rights (“on any ground such as ... or other status”).

The current draft of the Charter’s non-discrimination article – Draft Article 19(1) (CHARTE 4137/00 – CONVENT 8) is not open-ended. It should therefore be reworded as follows: “1. Any discrimination based on any ground such as ... or other status shall be prohibited.”

3 PRIVATE AND FAMILY LIFE

The European Convention on Human Rights includes respect for private and family life in one article, with the following wording: “the right to respect for private and family life”.

The most recent draft of the text covering private and family life available at the time of writing (CHARTE 4149/00 CONVENT 13) separates the right to respect for family life from that for private life by placing it in Article 13, Family Life, and refers to “privacy” rather than “private life”. We believe that it would be preferable for the Charter to follow the approach used in the Convention:

a. “Private life” is a concept that has been interpreted by the European Court and Commission of Human Rights in a large number of published decisions. “Privacy”, found in Article 26 of the International Covenant on Civil and Political Rights, may or may not have the same breadth as “private life”, and has been interpreted in relatively few cases by the United Nations Human Rights Committee.

²⁷ Equal Opportunity Act, 1984.

²⁸ Anti-Discrimination Act (REPA007), 1996.

²⁹ Discrimination Act No.81 of 1991.

³⁰ Anti-Discrimination Act No 48 of 1977, as amended by the Transgender (Anti-Discrimination and Other Acts Amendment) Act No. 22 of 1996, Schedule 1.

b. “Private life” should also appear in the same article as “family life”, to emphasise, as the European Court of Human Rights has done in its case law, that family life can exist between cohabiting partners in the absence of a marriage. In both Article 2 of the Universal Declaration of Human Rights and Article 26 of the International Covenant on Civil and Political Rights, the reference to “privacy” is followed immediately by a reference to “family”. This is logical in that “family life” is one of the most important aspects of a person’s “private life”.

4 RIGHT TO MARRY AND TO FOUND A FAMILY

The most recent draft of the article on Family Life (CHARTE 4149/00 CONV 13) reads as follows:

“Article 13. Family life

1. Everyone has the right to respect for his family life.
2. Everyone has the right to marry and to found a family, according to the laws of the Member States governing the exercise of this right.
3. Protection of the family on a legal, economic and social level shall be ensured.”

As noted above, we believe that the “right to respect for family life” should be moved to Article 12, Respect for Private Life.

In addition, we suggest that Draft Article 13(3) should be amended as follows:

“3. Protection of families on a legal, economic and social level, and recognition of their diversity, shall be ensured.”

It is abundantly clear at the dawn of the 21st century that we can no longer speak of “the family”, as if every family in the EU consisted of a married heterosexual couple and their children living together. We would not speak of “the religion”, because there are different religions in the EU. Similarly, there is now a variety of forms of “families” in the EU, and the EU Charter must provide for the recognition of this social reality.

5 LEGAL STATUS OF CHARTER

ILGA-Europe considers that the Charter must be incorporated in the European Union Treaties, so as to avoid amounting to no more than an ineffectual declaration.

6 THIRD COUNTRY NATIONALS

ILGA-Europe supports the complete and express recognition of the fundamental rights of third country nationals within the territory of the European Union.

15th April 2000

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 19 April 2000**CHARTE 4247/00****CONTRIB 120****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a contribution by the European Women's Lobby with a view to the hearing on the 27 April 2000. ¹

¹ This text has been submitted in French and English languages.



LOBBY EUROPEEN DES FEMMES EUROPEAN WOMEN'S LOBBY

10/04/00

EWL opinion on a gender perspective in the drafting of a European Union Charter on Fundamental Rights

Having followed closely the work of the Convention in charge of the drafting of a EU Charter on Fundamental Rights, the European Women Lobby formulates the following demands in relation to the introduction of a gender perspective in the Charter¹:

1. Concerning the content of the Charter:

- The EWL stresses that **human rights are indivisible** and that the full set of rights, civil, political, social and economic and political should be incorporated in the Charter.
- The EWL urges the Convention to adopt a **gender perspective** while elaborating the whole Charter. The principle of gender **mainstreaming** i.e. the integration of women's interests and perspective needs to be respected by the Convention throughout its work on the EU Charter on Fundamental Rights.
- The **List of rights** should include:
 - **The prohibition of gender-based discrimination**

A provision solely dedicated to the fight against discrimination on the ground of sex is crucially needed. It should clearly state the unconditional and fundamental principle of equality between women and men. The provision must not only ensure equal treatment and rights before the law, or prohibit discrimination on the ground of sex, but also commit the EU to the goal of de facto gender equality, thus taking the shape of positive obligation.

- **Parity democracy**

The principle of parity democracy, meaning the equal representation of women and men in all bodies, should be established as a fundamental principle for both the European integration and the institutions of the Union.

EWL- LEF, 18 rue Hydraulique, B-1210 Bruxelles
Tel. +32 2 217 90 20 – Fax: +32 2 219 84 51 - e-mail: ewl@womenlobby.org
Website: <http://www.womenlobby.org>

¹ A more complete opinion in relation to the Charter is being prepared by the EWL.

- **Integrating a gender dimension in asylum policy**

The Charter should contain a provision recognising the special needs of women asylum seekers and refugees. Specific gender-related violence or persecution should be considered a violation of women's human rights, on the basis of which asylum can be granted.

These persecutions include among others, genital mutilation, forced marriage, rape and other forms of sexual violence, restrictions or discriminatory treatment, whether they are enforced by legal norms or imposed by social or religious norms, and which threaten or harm women's physical or psychological integrity.

2. Concerning the form of the Charter and the composition of the Convention

- **Form of the Charter**

The EU Charter should have a fully binding legal status and a mandatory character upon the institutions and the Member States.

It should also be given direct effect, allowing any European Citizen to bring an action to court on the basis of a violation of a provision contained in the Charter.

- **Composition of the Convention in charge of drafting the Charter**

The EWL deplors that only 9 of the 62 members working on the elaboration of the Charter are women. Of 8 women representing national institutions, 4 are alternate members, and as such, do not have the right to speak and vote when the full member is present. The EWL fears that women's interest may be overlooked in the elaboration process and demands that this situation be corrected as soon as possible.

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE**fundamental.rights@consilium.eu.int**

Bruxelles, le 19 avril 2000**CHARTE 4248/00****CONTRIB 121****NOTE DE TRANSMISSION**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne

Veillez trouver ci-après une contribution de Eurocities, soumise par M. Delebecque, vice-Président de la Communauté Urbaine de Lille, en vue de l'audition publique du 27 avril 2000. ¹

¹ Ce texte a été soumis en langue française uniquement.

AF/PB/137.2000

Mesdames et Messieurs,

An nom d'EUROCITES je tiens à vous remercier vivement d'avoir bien voulu accepter de nous recevoir pour vous exposer **les grandes lignes** de nos préoccupations en tant qu'Elus, maires de grandes villes et leaders de métropoles européennes.

Créé il y a plus de 10 ans, Eurocities réunit actuellement **97 grandes villes** et métropoles de l'Union Européenne auxquelles sont associées des villes appartenant à des Pays d'Europe de l'Est et d'Europe centrale qui devraient intégrer l'Union Européenne au cours des années à venir.

En tant que Maires et Elus, nous avons donc en charge « le destin » de près de 100 millions de citoyens qui sont pour l'essentiel des **citadins**, qui travaillent et vivent dans un **milieu urbain** au sens large du terme. Nos responsabilités nous obligent à être extrêmement attentifs à leurs besoins et à leurs attentes.

Les collectivités locales sont les premiers donneurs d'ordre en terme d'investissements et nous avons en tant qu'Elus une double responsabilité à l'égard de nos citoyens : **une responsabilité financière**, en réalisant les équipements, les services publics et les infrastructures les mieux adaptés aux objectifs de progrès et de développement, tout en étant respectueux de l'argent publics.

Une responsabilité politique et morale, en faisant en sorte que les citoyens soient les acteurs à part entière de la vie de la cité et qu'ils puissent pleinement prendre part à tous les domaines de la vie quotidienne : économique, sociale, éducative, culturelle, etc...

Or, depuis 10 ans, nous sommes bien placés pour observer et constater des tendances qui s'expriment avec acuité dans les grandes villes : la pauvreté, les détresses morales, l'isolement, la difficulté d'affronter les administrations, l'insécurité, le tout sur fond de chômage...

Certes, les grandes villes sont à bien des égards des « moteurs de développement » et c'est ce qui incite des catégories de personnes à venir y habiter, y trouver refuge espérant obtenir sinon les attributs d'une citoyenneté reconnue, du moins un peu de quiétude et de secours élémentaires.

Mais les grandes villes sont aussi et malheureusement des lieux où se concentrent et s'accumulent les difficultés. Les maires ne peuvent pas à eux seuls faire face à cette accumulation de problèmes, et résoudre les situations personnels qu'ils rencontrent quotidiennement. En tous les cas, nous ne voulons plus nous satisfaire de cette situation ! ...

C'est la raison pour laquelle les Maires d'Eurocities saluent chaleureusement l'initiative de l'Union Européenne, de doter l'Europe d'une Charte des Droits Fondamentaux qui de surcroît, aura « **force de Loi** » en s'imposant aux Etats-membres. Le Parlement Européen qui a massivement approuvé son caractère **juridiquement contraignant** par le biais de son incorporation au Traité d'Amsterdam, est un élément fondamental pour EUROCITES.

Car en effet, il faut savoir que les maires de grandes villes ont tout autant que les simples citoyens, beaucoup de difficultés à démêler les fils inextricables d'administrations qui, à tous les niveaux, rendent les procédures toujours plus complexes à l'égard des citoyens.

De ce fait ils leur est souvent impossible d'apporter des solutions à leurs problèmes. Ils seraient simples à régler s'ils ne se heurtaient pas à une multiplicité d'acteurs dont les points de vue et règlements sont souvent en opposition... Et voilà pourquoi chaque Etat s'avère le plus souvent incapable d'améliorer par lui même la condition de certaines catégories de citoyens.

Or, grâce à ce que l'on peut déjà considérer comme une **loi « supra nationale »** la Charte Européenne permettra par le simple fait d'y faire référence, d'apporter **la** solution au problème pratique rencontré « sur le terrain » et contourner ainsi les procédures administratives locales qui faisaient précisément obstacle à une solution satisfaisante et cohérente...

Pour le reste, et je ne vous étonnerai pas, en vous disant combien EUROCIDTES est sensible et motivé sur le respect et l'application de certains droits fondamentaux tels que :

⇒ le droit de vote aux **élections municipales** pour les citoyens des villes et communes qui n'ont pas la nationalité d'un état-membre de l'Union Européenne mais qui travaillent et vivent au sein d'une collectivité où ils sont régulièrement et durablement installés.

⇒ les droits **sociaux** et **économiques** sont également au cœur de nos préoccupations pour les raisons que j'évoquais précédemment et je veux citer pour exemple :

- le droit à une éducation et une formation répondant au voeu de chacun,
- le droit d'accéder et de participer à la vie culturelle de la cité,
- le droit de bénéficier d'une information claire et complète sur les droits et les devoirs des citoyens
- le droit de bénéficier d'un environnement écologique et urbain adapté et équilibré,
- le droit à la dignité et à la santé, à l'assistance en faveur des plus défavorisés,
- le droit de vivre dans un logement sain et adapté aux familles,
- la prise en compte des enfants et des jeunes en les dotant de droits protecteurs, en leur forgeant un sentiment d'identité européenne, en faisant d'eux les acteurs de développement de demain. Etc...

Je sais qu'actuellement la Convention travaille sur ces différents points et, vous savez pouvoir compter sur nous, si vous souhaitiez obtenir **un avis** sur les problématiques urbaines dans leur ensemble.

EUROCIDTES a adressé à ses membres, **un questionnaire** qui permettra, au vu des observations formulées, d'élaborer **un texte solennel d'Eurocities** sur la question des droits des citoyens qui vivent au cœur de nos villes.

Ce texte vous sera adressé au début du mois de novembre, afin qu'il soit en quelque sorte la **contribution à la Charte** dont vous aurez défini les termes.

Soyez assurés de notre soutien en faveur de votre démarche. Celle-ci doit marquer un **tournant décisif** dans la prise de conscience des Européens quant à leur sentiment d'**appartenance** à l'Europe et la certitude que jamais dans l'Histoire, la dignité humaine et le respect des droits des citoyens n'auront été affirmés et **effectivement appliqués** avec autant de lucidité et de conviction.

ENTWURF DER CHARTA DER GRUNDRECHTE DER EUROPÄISCHEN UNION**fundamental.rights@consilium.eu.int**

Brüssel, den 19. April 2000**CHARTE 4249/00****CONTRIB 122****ÜBERMITTLUNGSVERMERK**

Betr.: Entwurf der Charta der Grundrechte der Europäischen Union

Finden Sie bitte nachstehend einen Beitrag von der Evangelischen Akademie Thüringen zu Forderungen der Frauentagung.^{1 2}

¹ Evangelische Akademie Thüringen, Zinzendorfhaus, D-99192 Neudietendorf.

² Tel: +33-036202-9840. E-mail: evakthue@t-online.de
Dieser Text wurde nur in deutscher Sprache vorgelegt.

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Forderungen der Frauentagung der Evangelischen Akademie Thüringen „Frauenstimmen im Vaterland - Frauen und nationale Identität“:

Am Wochenende vom 31.03.-02.04.2000 fand im thüringischen Neudietendorf eine internationale Frauentagung statt. Die Teilnehmerinnen aus Polen, Litauen, Tschechien, Bosnien, Russland, der Türkei, aus Deutschland, Migrantinnen und Asylbewerberinnen beschäftigten sich auch mit der zur Zeit entstehenden Europäischen Charta der Menschenrechte. Als Ergebnis der Tagung stellen die Frauen folgenden Forderungskatalog auf:

- Änderungsvorschlag zu Artikel 1 des Charta-Entwurfs: **Gleichheit von Männern und Frauen**

Die Gleichheit von *Frauen und Männern* in den Bereichen Arbeit und Beschäftigung und sozialer Schutz ist zu gewährleisten.

„Die Gleichbehandlung von *Frauen und Männern* ist zu gewährleisten. Die Chancengleichheit für Frauen und Männer ist zu *garantieren*. Zu diesem Zweck sind *alle notwendigen Maßnahmen durchzuführen*, mit denen die Verwirklichung der Gleichheit von Frauen und Männern vor allem im Hinblick auf den Zugang zu Beschäftigung, Arbeitsentgelt, Arbeitsbedingungen, sozialen Schutz, allgemeine und berufliche Bildung sowie beruflichen Aufstieg sichergestellt wird. *Es sind Instrumente einzuführen, welche die Umsetzung dieser Maßnahmen auf nationaler und internationaler Ebene kontrollieren. Hierzu müssen geschlechtsspezifische Erhebungen und Statistiken erstellt und weitergeführt werden.*“

- Änderungsvorschlag zu Artikel 19 des Charta-Entwurfs: **Asyl**

(Dieser Vorschlag bezieht sich auf den Änderungsvorschlag, der durch Prof. Dr. Jürgen Meyer im Konvent eingebracht wurde.)

1. *Jeder und jede, der oder die politisch verfolgt wird oder unmenschlicher oder erniedrigender Bestrafung oder Behandlung ausgesetzt ist, genießt Asylrecht. Frauenspezifische Asylgründe, vor allem Vergewaltigung oder Handlungen die das sexuelle Selbstbestimmungsrecht (z.B. durch Menschenhandel) verletzen, sind zu berücksichtigen.*

2. Niemand darf in einem Staat abgeschoben werden, wenn stichhaltige Gründe für die Annahme bestehen, dass nach der Abschiebung die in Abs. 1 beschriebenen Maßnahmen drohen.
3. Kollektivausweisungen von *Ausländerinnen und Ausländern* sind nicht zulässig.

Begründung:

Die in Abs.1 Satz 2 enthaltene Aufnahme von frauenspezifischen Asylgründen lehnt sich an der international zunehmenden Erkenntnis an, dass Frauen als *Hälfte der Menschheit* oftmals besonderen Verfolgungen ausgesetzt sind.

- Aufnahme **reproduktiver und sexueller Rechte** in die Charta

(Dieser Vorschlag bezieht sich auf die IPPF-Charta über sexuelle und reproduktive Rechte)

Reproduktive und sexuelle Rechte, das heisst die Rechte auf sexuelle Orientierung, auf Entscheidungsfreiheit über Heirat, Gründung und Planung einer Familie und Lebensgemeinschaft sollen allen Personen gegen eine erzwungene Eheschließung schützen, sowie ihnen die Entscheidungsfreiheit über Kinderzahl und das Lebensalter der Frauen, in dem die Kinder geboren werden, garantieren.

Das Recht auf Gesundheitsversorgung und den Schutz der Gesundheit soll das Recht aller Personen auf den bestmöglichen Grad medizinischer Versorgung schützen und ebenso das Recht auf Schutz vor traditionellen Praktiken, die die Gesundheit gefährden.

Das Recht auf Freiheit von Folter und Mißhandlungen soll Kinder, Frauen und Männer vor allen Formen sexueller Gewalt, Ausbeutung und Mißbrauch schützen.

- Aufnahme einer **Geschlechterquote bei Entscheidungsprozessen** in die Charta

Es soll sichergestellt werden, dass in den Gremien der EU Frauen nicht weniger als 40 Prozent ausmachen.

Kommentar:

Dieser demokratische Grundsatz wird in den Programmen der UNO bereits verwirklicht.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 20 April 2000**CHARTE 4250/00****CONTRIB 123****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a submission by the European Blind Union with a view to the hearing on the 27 April 2000.¹

¹ This text has been submitted in English language only.

M. Jean Paul Jacque
Convention Secretariat
Council Legal Service
Council of the European Union
Justus Lipsius Building
Rue de la Loi 175
B-1048 Brussels
Belgium

19 April 2000

By email to fundamental.rights@consilium.eu.int, copied to
Margit.Huy@consilium.eu.int

Dear M. Jacque

**Re: European Blind Union participation in the hearing at the Convention
meeting of 27 April 2000.**

Further to your letter to our President John Wall CBE of 7 April with details of the hearing on 27 April 2000, please find below a short submission on behalf of the European Blind Union. This begins on the following page. We would be very grateful if this could be circulated to members of the Convention ahead of the hearing.

Many thanks in advance for your cooperation.

Yours sincerely

Julian Smith
On behalf of John Wall CBE, President of the European Blind Union

Submission of the European Blind Union:

About blind and partially sighted people in the EU

Across the fifteen EU member countries the number of blind and partially sighted people is 7.4 million. As the age profile of the visually impaired population is biased towards older people, the increase in the number of older people across Europe will lead to an increase in the number of people with a visual impairment. It is clear therefore that the rights and needs of visually impaired people will remain an important subject for the European Union and will need to be borne in mind by the Convention.

A summary of the European Blind Union's views on the Draft Charter

The Convention's work on drafting a Charter of Fundamental Rights offers an historic opportunity for the rights of visually impaired people to be publicly recognised by the EU as a whole. Such recognition would help enormously the many visually impaired people in the EU who are working for proper social and related rights to be included in individual items of legislation as they affect our everyday lives. Having a positive Charter to refer to would strengthen our arguments in favour of our rights being met in each relevant law and standard as they are negotiated, in a huge variety of subject areas – for example, on accessible design of future transport vehicles and systems, on access to information from the public and private sector, and on employment rights for visually impaired people. These are just three examples of the huge number of policy subjects which could be assisted by a strong Charter of Fundamental Rights.

The primary concern for visually impaired people is the right to have access to information in a format we can use. Without access to the same information the rest of society receives, visually impaired people are effectively discriminated against and excluded from parts of life which others take for granted.

The following four specific points are suggested for inclusion in the Charter:

1. All disabled people in the European Union have the right to lead their lives free from discrimination based on their disability and to enjoy equal civil rights with the rest of society. The EU governments and institutions agreeing this Charter recognise the need for actions to be taken to make these rights a reality, beginning as a priority with the right of people to have access to information in a format they can use and the right to be able to work.

2. The EU governments and institutions agree to meet the rights and needs of disabled people in the EU when drawing up measures relating to the Internal Market for goods, services, capital and labour.
3. The EU governments and institutions agree to assess the ways in which all proposed EU and national legislation and programmes can take account of the needs and rights of disabled people.
4. The EU governments and institutions agree to consult widely with disabled people themselves, through their representative organisations at EU and national level, when assessing proposed legislation and programmes, particularly when these are specifically targeted at meeting the needs and rights of disabled people. Such consultation should include disability-specific organisations where appropriate, for example consulting the European Blind Union where visually impaired people are directly affected by a particular proposed measure.

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PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE**fundamental.rights@consilium.eu.int**

Bruxelles, le 26 avril 2000**CHARTE 4251/00****CONTRIB 124****NOTE DE TRANSMISSION**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne

Veillez trouver ci-après une contribution de l'Office catholique d'information et d'initiative pour l'Europe (OCIPE) en vue de l'audition publique du 27 avril 2000. ¹

¹ Ce texte a été soumis en langue française uniquement.

Charte des droits fondamentaux

Consultation des ONG

27 avril 2000

Proposition de l'OCIFE

Office catholique d'information et d'initiative pour l'Europe

3 rue de Trévires, 1040 Bruxelles

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Pierre de Charentenay

L'OCIFE propose de commencer la Charte par un préambule qui pourrait contenir des éléments comme suit (en l'absence de préambule, ces éléments devraient être présents dans la Charte):

Préambule

Les peuples de l'Union Européenne se dotent d'une Charte des droits fondamentaux pour manifester à tous, citoyens d'Europe et citoyens du monde, les valeurs qui sont les leurs et qu'ils veulent promouvoir autant dans leurs frontières qu'à l'extérieur. Fondés sur la dignité humaine, ces droits trouvent leur sens dans la possibilité pour chaque citoyen de constituer des communautés de vie et de travail. Ne pouvant être réalisés que par l'action déterminée de chacun, ces droits forment un ensemble de tâches à accomplir dont la première est l'exigence de solidarité et de fraternité. Dans le respect des différences, tous les citoyens de l'Union européenne sont acteurs et bénéficiaires de ces droits pour former ensemble une communauté politique.

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE**fundamental.rights@consilium.eu.int**

Bruxelles, le 26 avril 2000**CHARTE 4252/00****CONTRIB 125****NOTE DE TRANSMISSION**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne

Veillez trouver ci-après une contribution de "World Conference on Religion & Peace" (WCRP) en vue de l'audition publique du 27 avril 2000. ¹

¹ Ce texte a été soumis en langue française seulement.

W C R P Europe
World Conference on Religion & Peace

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Bruxelles, le 25 avril 2000

PROJET POUR L'AUDITION

Monsieur le Président,

La "World Conference on Religion and Peace " (W.C.R.P.), O.N.G. reconnue par les Nations Unies regroupe des représentants des grandes religions du monde en vue de promouvoir la paix et de soutenir tous les efforts susceptibles d'y conduire, une paix durable au bénéfice de tous les être humains.

Dans cette perspective, la W.C.R.P. soutient le " Projet de Charte des Droits fondamentaux de l'Union européenne " dans la mesure où d'une part il ne met pas en cause les droits de l'homme déjà reconnus en Europe, et d'autre part se centre sur des droits liés directement à une citoyenneté européenne.

A. La question des droits de l'homme.

LA W.C.R.P. considère que les droits de l'homme sont par excellence une préoccupation appartenant à l'ensemble de l'humanité représentés par les Etats membres des Nations Unies. Il en est tout particulièrement ainsi depuis que la Déclaration et le programme d'action de la Conférence mondiale sur les droits de l'homme de Vienne en juin 1993, a été adopté par consensus par les représentants des 171 Etats. Ce document associe clairement les droits de l'homme et le principe de démocratie. Il présente un programme de développement et de lutte contre la pauvreté et les inégalités comme moyen d'aboutir à une paix durable.

Les droits de l'homme appartenant à toute l'humanité, la W.C.R.P. attire l'attention de l'Union européenne sur la nécessité de maintenir sa claire adhésion à la Convention européenne des droits de l'homme et au principe d'une Cour européenne des Droits de l'homme.

La W.C.R.P. s'associe donc aux craintes exprimées par le Conseil de l'Europe ainsi qu'aux vues exprimées par le Rapport Simitis exprimant l'avis d'un groupe d'experts réunis par la Commission européenne.

La W.C. R. P. estime qu'une Charte européenne ne peut remettre en cause des engagements qui sont pris dans une perspective mondiale.

B. Une Charte des droits des citoyens.

La W. C. R. P. voit dans le projet d'une Charte européenne une occasion de combler un vide grandissant dans le processus politique plutôt qu'économique. Au niveau des personnes, cela a conduit à un déficit démocratique incontestable.

Le processus européen qui semble devoir s'étendre à terme à l'ensemble des Etats du continent européen soulève le problème d'un 'espace conceptuel commun de la nationalité'. Celui-ci se doit de renforcer le respect des droits de l'homme en y associant une vision commune des droits liés à la prééminence du principe de territoire, à l'acquisition de celui-ci, à la question d'une défense prioritaire par l'Europe d'un accès aux réfugiés persécutés en raison de leur religion ou de leurs convictions philosophique et politique. Le droit des travailleurs à la présence de leur famille se doit d'être respecté : le droit électoral de l'ensemble des citoyens européens doit être garanti.

Une Charte ainsi conçue posséderait ainsi son objet propre et viendrait heureusement compléter l'application par l'Europe des droits de l'homme. Ceci constituerait un pas supplémentaire d'un processus dont l'objectif Premier est de maintenir la paix en Europe et d'aider à la défense de celle-ci dans le monde.

Dr. Joseph AGIE de SELSATEN
WCRP Belgium
Président

Mr. Jehangir SAROSH
WCRP Europe
Moderator

ENTWURF DER CHARTA DER GRUNDRECHTE DER EUROPÄISCHEN UNION**fundamental.rights@consilium.eu.int**

Brüssel, den 2. Mai 2000**CHARTE 4253/00****CONTRIB 126****ÜBERMITTLUNGSVERMERK**

Betr.: Entwurf der Charta der Grundrechte der Europäischen Union

Finden Sie bitte anliegend die Stellungnahme des Europäischen Forums für Freiheit im Bildungswesen (EFFE) anlässlich der Anhörung vom 27. April 2000. ¹

¹ Dieser Text wurde nur in deutscher Sprache übermittelt.

Herrn
Jean Paul Jacqué
Rue de la Loi 175

B-1048 Bruxelles

25.4.2000

Charta der Grundrechte der Europäischen Union

Sehr geehrter Herr Jacqué,

das Europäische Forum für Freiheit im Bildungswesen unterbreitet für einen Bildungsartikel der Charta der Grundrechte der Europäischen Union (zur Zeit Art. 16 des Entwurfs) folgenden Formulierungsvorschlag:

Artikel 16: Recht auf Bildung

- (1) Jeder hat das Recht auf Bildung. Dazu gehört der unentgeltliche Zugang zum allgemeinbildenden Unterricht bei gleichen finanziellen Bedingungen für alle allgemeinbildenden Schulen.**
- (2) Bildung und Erziehung sind frei. Sie sind auf die volle Entfaltung der Fähigkeiten und Begabungen gerichtet.**
- (3) Das Recht der Eltern, Erziehung und Bildung ihrer Kinder entsprechend ihren religiösen, weltanschaulichen und pädagogischen Überzeugungen sicherzustellen, wird garantiert.**
- (4) Jeder hat das Recht zur Errichtung und zum Betrieb von Bildungseinrichtungen unter Beachtung der Menschenrechte und Grundfreiheiten. Die freie Wahl der Schule wird garantiert.**

Begründung:

Das Europäische Forum für Freiheit im Bildungswesen ist ein Netzwerk von Bürgern Europas aus 30 Ländern, die davon überzeugt sind, daß die Zukunft Europas entscheidend davon abhängt, wieviel innere und äußere Freiheit Bildung und Erziehung ermöglichen. Darum begrüßt und unterstützt das EFFE die Forderung nach einer Charta der Grundrechte für die Europäische Union,

in der auch das Recht auf Bildung und die Unterrichtsfreiheit ihren Ausdruck finden. Das Recht auf Bildung ist Menschenrecht und kann nur durch staatliche Leistungen verwirklicht werden. Dementsprechend geht es über einen rein abwehrrechtlichen Charakter hinaus.

Der zuletzt veröffentlichte Entwurf des Art. 16 gewährleistet bereits

- die Anerkennung des Rechts auf Bildung,
- die unentgeltliche Teilnahme am Pflichtschulunterricht,
- die Gründungsfreiheit,
- das Elternwahlrecht in Übereinstimmung mit eigenen religiösen und weltanschaulichen Überzeugungen.

Nach Auffassung des EFFE fehlen jedoch zwei unverzichtbare Bestandteile eines den gegenwärtigen Zeitforderungen entsprechenden Bildungsartikels. Ziel der Charta der Grundrechte muß es sein, die Rechte der Bürger Europas zu stärken. Deswegen reicht auf dem Feld der Bildung und Erziehung ein Minimalkonsens auf in allen Mitgliedstaaten bereits verwirklichte Verfassungsgrundsätze nicht aus. Den Orientierungsrahmen bieten vielmehr die Staaten, in denen die Menschen- und Grundrechte bereits vorbildlich verwirklicht worden sind. Nur so kann Europa zu einem Europa der Bürger werden.

1. Elternwahlrecht in Übereinstimmung mit pädagogischen Überzeugungen:

Der Entwurf von Art. 16 gewährleistet bereits die primäre Erziehungsverantwortung der Eltern und ihr Recht, die Grundentscheidung über die Erziehung ihrer Kinder durch die freie Wahl der Schule zu treffen. Darin liegt zugleich die Absage an ein staatliches Schulmonopol und die Förderung von Vielfalt im Bildungsleben. Die Gewährleistung einer lebendigen, das Schulsystem der Mitgliedstaaten immer neu befruchtenden Vielfalt darf sich aber nicht darauf beschränken, religiöse und weltanschauliche Überzeugungen zu respektieren, sondern muß auch für pädagogische Überzeugungen Raum bieten. In der Europäischen Union ist neben dem religiösen auch das pädagogische Elternrecht Bestandteil der Verfassungstradition der Mitgliedstaaten.

2. Das Prinzip der Nichtdiskriminierung hinsichtlich der finanziellen Bedingungen für alle allgemeinbildenden Schulen unabhängig von ihrer Trägerschaft:

Erziehung und Bildung dürfen nicht zum Objekt finanzieller Interessen werden. In einer Zeit der Leistungsgesellschaft haben die Mitgliedstaaten insbesondere die Verpflichtung, dafür zu sorgen, daß Bildung und Erziehung weder von einzelnen Staaten im Sinne eines Schulmonopols für sich beansprucht werden noch dem Wettbewerb eines freien Marktes überlassen werden, sondern vielmehr von Bürgerinnen und Bürgern Europas in eigener gesellschaftlicher Verantwortung als öffentliche Aufgabe gestaltet werden.

Die primäre Erziehungsverantwortung der Eltern erfordert neben dem Recht, die Schule frei zu wählen, die Anerkennung des Rechts zur Gründung und Unterhaltung von Schulen in freier Trägerschaft. Dieses Wahlrecht setzt jedoch voraus, daß Eltern unter gleichen materiellen Bedingungen zwischen staatlichen und nichtstaatlichen Schulen frei wählen können.

Ein Bildungsartikel für die Europäische Charta der Grundrechte steht auch in engem Zusammenhang mit anderen Grundfreiheiten des Gemeinschaftsvertrages. So fällt der Unterricht an privaten Bildungseinrichtungen unter die aktive und passive Dienstleistungsfreiheit und darf nicht behindert werden.

In der Rechtsprechung des Europäischen Gerichtshofs für Menschenrechte ist anerkannt, daß Art. 2 des ersten Zusatzprotokolls der Europäischen Menschenrechtskonvention das Recht garantiert, eine Privatschule zu begründen und zu führen. Daraus wird zwar ein Recht auf Finanzierung dieser Schulen nicht unmittelbar hergeleitet; jedoch gewährt die Mehrheit der Mitgliedstaaten nichtstaatlichen Schulen Finanzleistungen. Ferner haben die Niederlande bei Abschluß des Zusatzprotokolls den Standpunkt vertreten, daß sehr wohl eine Finanzierung der nichtstaatlichen Schulen durch Art. 2 des ersten Zusatzprotokolls geboten sei.

Das EFFE erinnert außerdem nachdrücklich an die Entschließung des Europäischen Parlaments zur Freiheit der Erziehung in der Europäischen Gemeinschaft vom 14.3.1984. Ziffer I 9 dieser Entschließung lautet:

"Aus dem Recht der Freiheit der Erziehung folgt wesensnotwendig die Verpflichtung der Mitgliedstaaten, die praktische Wahrnehmung dieses Rechts auch finanziell zu ermöglichen und den Schulen die zur Durchführung ihrer Aufgaben und zur Erfüllung ihrer Pflichten erforderlichen öffentlichen Zuschüsse ohne Diskriminierung der Organisatoren, der Eltern, der Schüler oder des Personals zu den gleichen Bedingungen zu gewähren, wie sie die entsprechenden öffentlichen Unterrichtsanstalten genießen;

dem steht jedoch nicht entgegen, daß von den frei gegründeten Schulen ein gewisser Eigenbetrag als Ausdruck der Eigenverantwortlichkeit und zur Unterstützung ihrer Unabhängigkeit zu fordern ist."

Mit freundlichen Grüßen
für das Europäische Forum
für Freiheit im Bildungswesen

(Krampen)

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE**fundamental.rights@consilium.eu.int**

Bruxelles, le 2 mai 2000**CHARTE 4254/00****CONTRIB 127****NOTE DE TRANSMISSION**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne

Veillez trouver ci-après la présentation du "Diakonischen Werks der Evangelischen Kirche in Deutschland" à l'occasion de l'audition du 27 avril 2000. ¹

¹ Ce texte a été soumis en langues française et allemande.

Présentation orale de la prise de position du „Diakonisches Werk der Evangelischen Kirche Deutschlands“ à l’occasion de l’audition de la Société civile tenue par la Convention pour l’élaboration d’une Charte des Droits fondamentaux de l’Union Européenne.

Le „Diakonisches Werk der Evangelischen Kirche Deutschlands“ participe au débat de l’élaboration de la Charte des Droits fondamentaux en tant qu’une des six Grandes Organisations allemandes de solidarité et d’assistance sociale. Le „Diakonisches Werk“ représente plus de 30.000 sous-organisations avec plus de 800.000 employés salariés ou volontaires. En partenariat avec l’Etat fédéral allemand, le Diakonisches Werk offre des services sociaux de tout genre. Depuis 150 ans, nous sommes un acteur important de la Société civile. Basé sur l’image chrétienne de l’homme nous collaborons avec notre organisation-soeur, la Caritas, pour combattre l’exclusion sociale.

Le „Diakonisches Werk“ considère la dignité de la personne humaine telle qu’elle sera définie dans l’article premier du projet de Charte comme le droit de base, dont tous les autres droits fondamentaux doivent être déduits (article 1, document „Convention 13”).

Nous estimons que l’un des droits les plus importants à déduire de la dignité de la personne humaine est la liberté de pensée, de conscience et de religion (article 14, document „convention 13”). Ce droit doit inclure le droit à l’exercice commun de la religion ou conviction. Quant à la rédaction de ce droit sous forme d’un paragraphe supplémentaire à la version actuelle de l’article 14 nous nous joignons à la proposition de l’Eglise Protestante Allemande (Evangelische Kirche Deutschlands). Le droit d’exercice commun d’une conviction ou religion peut s’avérer dans la Société civile comme source d’actions inspirées par des valeurs.

En rédigeant nos propositions pour les articles concernant les droits sociaux nous nous sommes basés sur notre richesse d’expérience comme acteur de la Société civile inspiré par des valeurs. En revendiquant des droits fondamentaux sociaux, nous voulons assurer la possibilité de chacun de participer à la vie sociale. Pour nous, cette participation de chacun est partie intégrante de la dignité de la personne humaine.

Par conséquent, nous estimons nécessaire de munir chacun d’un droit à l’accès aux prestations et aux services sociaux. Je souligne: d’un droit à l’accès. En demandant les droits fondamentaux sociaux, nous ne voulons pas obliger l’Etat à des prestations irréalisables. Nous voulons plutôt assurer le droit individuel de chacun de participer aux prestations et aux services sociaux dans la mesure où il en a besoin. Nous considérons ce droit individuel comme base pour le combat efficace contre l’exclusion sociale.

Il s’agit précisément de ce droit de chacun de participer à la vie sociale et aux régimes de sécurité sociale quand nous parlons de Services d’Intérêt Général. („Daseinsvorsorge“). C’est en toute connaissance de cause que nous avons introduit cette notion de Services d’Intérêt Général dans notre proposition de rédaction de l’article XIII du document „Convention 19“ Par cette notion nous entendons une sécurité de base au sens large, une sécurité de base dans son meilleur sens. Par cette notion nous n’entendons pas une hyperprotection, mais l’accès garanti aux prestations sociales, apte à mobiliser des forces pour des efforts personnels des personnes aidées.

Nous tenons spécialement aux articles garantissant l'accès à la profession, aux prestations dans le domaine de la santé et à un minimum de sécurité sociale (articles II, XV et XIV du document „Convention 18“). Nous sommes convaincus que la garantie de l'accès à ces prestations de Services d'Intérêt Général dans le cadre des législations des Etats membres exprime le principe de solidarité que déjà maintenant le Traité de l'Union Européenne évoque comme un de ses éléments de base. La Charte des droits fondamentaux doit être à la hauteur de ce principe.

Qui veut vraiment garantir les droits fondamentaux au niveau européen, doit, si nécessaire, assurer pour chacun les conditions matérielles qui lui permettent de jouir des droits de liberté et d'égalité. Uniquement si l'on assure des droits fondamentaux sociaux individuels dans l'Union Européenne, on réalise une condition essentielle pour que le bien-être de chacun soit reconnu au même niveau que les intérêts économiques des acteurs du grand marché intérieur.

Bruxelles, le 27 avril 2000

ENTWURF DER CHARTA DER GRUNDRECHTE DER EUROPÄISCHEN UNION**fundamental.rights@consilium.eu.int**

Brüssel, den 28. April 2000**CHARTE 4255/00****CONTRIB 128****ÜBERMITTLUNGSVERMERK**

Betr.: Entwurf der Charta der Grundrechte der Europäischen Union

Finden Sie bitte nachstehend eine Stellungnahme der Europäischen Union Christlich-Demokratischer Arbeitnehmer (EUCDA) zur Einbeziehung sozialer Grundrechte anlässlich der Anhörung am 27. April 2000. ¹

¹ Dieser Text wurde nur in deutscher Sprache vorgelegt.



Stellungnahme der EUCDA
zur Einbeziehung sozialer Grundrechte in die Charta der
Menschenrechte mit dem Ziel, sie in den EU-Vertrag aufzunehmen

15.04.00

Die EUCDA sieht in den sozialen Rechten eine notwendige Ergänzung zu den Freiheitsrechten. Grundfreiheiten können nicht wahrgenommen werden, wenn nicht ein Mindestmaß an sozialer Sicherheit gewährleistet ist. Von daher sind soziale Grundrechte vom Verfahren her auf eine Stufe zu stellen mit den Freiheitsrechten. Im Gegensatz zu den "klassischen" Freiheitsrechten, die im Prinzip "Abwehrrechte" gegen den Staat darstellen, fordern wir die Verwirklichung von Freiheit mit Hilfe des Staates ein.

Ein Punkt von zentraler Bedeutung ist dabei die Forderung nach Arbeit. Arbeit ist mehr als Beschäftigung, mehr als nur eine Absicherung der materiellen Existenz. Sie ist auch ein entscheidender Faktor der eigenen Entwicklung, der Selbstverwirklichung. Sie eröffnet aber auch die Chance zur Teilnahme am Aufbau der Gesellschaft. Aus diesen Gründen hat jeder im Rahmen seiner Möglichkeiten die Pflicht zur und das Recht auf Arbeit.

Aus dieser Überlegung folgt eine Reihe von Rechten, die menschenunwürdige Arbeitsbedingungen ebenso verhindern sollen wie die Versuchung, Arbeit allein als käufliche Ware zu betrachten.

Die EUCDA schließt sich in diesem Zusammenhang zunächst einmal der Forderung an, daß von der Europäischen Union folgende Rechte anerkannt werden sollen:

- die allgemeine Erklärung der Menschenrechte
- die Europäische Konvention zum Schutze der Menschenrechte und Grundfreiheiten
- IAO- Erklärung über die Grundprinzipien und Grundrechte am Arbeitsplatz
- die Gemeinschaftscharta der sozialen Grundrechte der Arbeitnehmer
- die überarbeitete Europäische Sozialcharta
- UN- Übereinkommen über die Rechte des Kindes

Die EUCDA fordert darüber hinaus einen breit angelegten Katalog an sozialen Grundrechten, der über die Rechte der Arbeitnehmerinnen und Arbeitnehmer hinaus soziale Rechte und auch Verbote umfaßt, die die gesamte Lebenssituation der Menschen betreffen:

- *das Recht der Familie auf rechtlichen, wirtschaftlichen und sozialen Schutz*
- *das Recht auf gleiche Behandlung und gleiche Chancen für Männer und Frauen*
- *das Verbot aller Formen der Diskriminierung aus Gründen des Geschlechts, der Rasse, der ethnischen Herkunft, der Religion oder der Weltanschauung, einer Behinderung, des Alters oder der sexuellen Ausrichtung*
- *das Recht bislang benachteiligter Gruppen auf Eingliederung in den Arbeitsmarkt und die Gesellschaft*
- *das Verbot der Kinderarbeit*
- *das Recht auf einen umfassenden sozialen Schutz, der insbesondere im Fall der Arbeitslosigkeit, bei Krankheit, bei Pflegebedürftigkeit und im Alter ein menschenwürdiges Dasein garantiert*

- *das Recht auf ein Mindesteinkommen, das ein menschenwürdiges Dasein ermöglicht*
- *das Recht auf Bildung und Ausbildung sowie lebenslange Weiterbildung gemäß den Fähigkeiten jedes Einzelnen*
- *das Recht auf freie Berufswahl*
- *das Recht auf Sicherheit und Gesundheitsschutz am Arbeitsplatz*
- *das Recht auf nationale und grenzüberschreitende Vereinigungsfreiheit und Kollektivverhandlungen sowie auf Gewerkschaftsaktionen einschließlich des Rechts zu grenzüberschreitenden unterstützenden Aktionen und Streiks*
- *das nationale und grenzüberschreitende Recht der Information, Konsultation und Partizipation der Arbeitnehmerinnen und Arbeitnehmer*
- *das Recht auf die Erhaltung, den Schutz und die Verbesserung der Qualität der Umwelt, auf den Schutz der Verbraucher und der Benutzer vor einer Gefährdung ihrer Gesundheit und Sicherheit sowie gegen unlautere Handelspraktiken*
- *das Recht auf Freizügigkeit, auch für die Angehörigen von Drittstaaten, die sich legal in der EU aufhalten*
- *das Recht auf Familienzusammenführung für alle diejenigen, die sich rechtmäßig auf dem Gebiet der EU aufhalten*

Das mittel- und langfristige Ziel der EUCDA ist es, daß die sozialen Grundrechte rechtlich verbindlich und einklagbar in den neuen EU-Vertrag aufgenommen werden. Sie ist davon überzeugt, daß die Rechte, die in die Verträge aufgenommen werden, die besten Standards für den Schutz der Bürgerinnen und Bürger setzen müssen.

Dabei ist es der EUCDA bewußt, daß einige Grundrechte unmittelbar anwendbar sind, während andere Grundrechte nur durch ein individuelles Klagerecht auf der Grundlage eines Rechtsaktes (Richtlinie, Gesetz etc.) durchgesetzt werden können. Dieser Rechtsakt selbst muß selbstverständlich auf einem Grundrecht beruhen.

Die EUCDA sieht in der Einhaltung von Grundrechten nicht nur ein Kriterium für die Aufnahme in die Europäische Union, sie hält es auch geboten, Sanktionsmechanismen für den Fall von deutlichen Verstößen gegen sie einzurichten.

Die EUCDA hebt auch hervor, daß jeder, der Rechte genießt, auch die Verpflichtung hat, durch eigenes Verhalten für diese einzustehen: für die Wahrung der Menschenwürde, insbesondere für die Sicherung der Grundwerte der Freiheit und der Solidarität sowie für eine Stärkung der Demokratie.

Europäische Union Christlich-Demokratischer Arbeitnehmer

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PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE**fundamental.rights@consilium.eu.int**

Bruxelles, le 28 avril 2000**CHARTE 4256/00****CONTRIB 129****NOTE DE TRANSMISSION**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne

Veillez trouver ci-après une intervention de la Plate-forme des ONG européennes du secteur social, présentée par M. Olivier Gerhard lors de l'audition publique du 27 avril 2000. ¹

¹ Ce texte a été soumis en langue française seulement.

**Intervention de la Plate-forme des ONG européennes du secteur social,
présentée par Olivier Gerhard, devant la Convention chargée de
l'élaboration d'une Charte des droits fondamentaux dans l'Union européenne,
Bruxelles, le 27 avril 2000**

Mesdames et messieurs les membres de la Convention,

La Plate-forme des ONG européennes du secteur social rassemble une trentaine d'ONG. Elle s'est engagée en faveur d'une Charte des droits fondamentaux dans l'Union européenne dès que cette proposition a été formulée par le Comité des Sages, présidé par Mme Maria Lourdes Pintasilgo. En 1998, avec la Confédération européenne des syndicats, elle a lancé un appel pour qu'une telle Charte soit élaborée. Depuis, cette collaboration s'est renforcée et a conduit la Confédération européenne des syndicats et la Plate-forme des ONG européennes du secteur social à mener une campagne commune, comportant d'une part des documents de proposition et d'autre part des réunions dans les 15 Etats membres, de façon à prendre en compte, dans l'élaboration de cette Charte, les attentes des personnes qui vivent dans l'Union européenne et qui, souvent, mais malheureusement pas toujours, y travaillent.

Au cours de l'année dernière, nous avons élaboré en commun un document de travail intitulé " Les droits fondamentaux : le coeur de l'Europe " et sous-titré " Intégrer les droits fondamentaux dans les Traités de l'Union ". Permettez-moi donc de souligner aujourd'hui cinq points indispensables afin que la Charte que vous êtes en train d'élaborer place les droits fondamentaux, dans leur ensemble, au centre de la construction européenne.

Le premier point a déjà été souligné par de nombreux orateurs. Cette Charte serait sans valeur si elle n'était pas contraignante et intégrée dans les Traités.

Le second point tient à ce que cette Charte doit bénéficier à tous. Nous nous félicitons que la plupart des articles prévus disent " toute personne a droit à .. ". Nous pensons pourtant que certains droits réservés pour le moment aux citoyens comme le droit à la libre circulation ou le droit de vote aux élections locales et européennes doivent être étendus aux résidents. Il serait également nécessaire d'introduire dans la Charte un article prévoyant une égalité de traitement en matière de droits civils, politiques, économiques, sociaux et culturels entre citoyens européens et ressortissants de pays tiers résidant légalement dans l'Union européenne.

Lors de ses travaux, et ce sera le troisième point, la Convention s'est référée de façon permanente à la Convention européenne des droits de l'homme. Maintenant qu'elle aborde la question des droits sociaux, nous souhaitons qu'elle prenne de même pour référence la Charte sociale européenne, cet instrument du Conseil de l'Europe qui a été révisé en 1996. Cette révision a amené une série de nouveaux droits, aussi bien pour les travailleurs (par exemple le droit à la dignité dans le travail) que pour toute personne (par exemple le droit au logement ou le droit à la protection contre la pauvreté et l'exclusion sociale). Avec son mécanisme de contrôle et la possibilité de réclamation collective, cette Charte est un instrument moderne dont il faut s'inspirer. Il faut aussi savoir faire des pas supplémentaires. Par exemple, la Charte sociale européenne révisée prévoit un " droit à

l'aide sociale ", repris dans les projets soumis actuellement par le secrétariat à la Convention. Sur ce point, la Convention doit suivre les progrès faits par quasiment l'ensemble des Etats membres en inscrivant le " droit à un revenu minimum garanti pour vivre dans la dignité ". Par rapport à ce droit au revenu minimum garanti comme sur d'autres droits sociaux, trois députées européennes membres de votre Convention, Mme Bérès, Paciotti et van den Burg ont soumis plusieurs amendements, nous vous demandons de les soutenir.

Le quatrième point porte sur la façon dont la Charte des droits fondamentaux dans l'Union européenne sera contraignante. Pour les droits civils et politiques, les juristes sont habitués à prévoir des recours individuels ou collectifs. Concernant les droits sociaux, il s'agit souvent moins de recours directs que de recours par rapport à l'action, aux programmes, aux moyens (ou au manque de tels moyens) mis en oeuvre par l'Union et les Etats membres pour assurer l'accès effectif aux droits. C'est pourquoi nous proposons que, dans la Charte, figure l'engagement de l'Union de mettre en oeuvre un plan quinquennal de mise en oeuvre des droits sociaux, avec un mécanisme précis d'évaluation et de suivi.

Le cinquième et dernier point porte sur les ONG. Cette audition est une mise oeuvre d'une consultation des ONG, d'un dialogue civil. Ce qui est ici vécu est désormais reconnu comme essentiel au bon fonctionnement de la démocratie. C'est pourquoi nous demandons que la Charte comporte un article sur le droit des ONG à être consultées au niveau de l'Union européenne, droit qui doit donner lieu à l'établissement d'un dialogue civil structuré.

Nous vous remercions de nous avoir permis d'exercer ici ce droit.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 28 April 2000**CHARTE 4257/00****CONTRIB 130****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a submission by the Eversheds Business Lawyers in Europe. ^{1 2}

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DX 33016 Cardiff. Tel: +44-1222 471147. Fax: +44-1222 464347.

² E-mail: audreywilliams@eversheds.com

² This text has been submitted in English language only.

SUBMISSIONS ON THE DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Eversheds is a European law firm, with key locations within a number of EU jurisdictions. The exercise which we have undertaken is to draw comparisons across three of the EU jurisdictions, by way of illustration, to explain the existing provisions, and help to illustrate whether the fundamental rights are really required via a separate EU Charter. We make this submission following a review of the proposed new rights and having undertaken a review of the existing legislation in each of the EU countries where we operate, or as appropriate propose new legislation. We have considerable experience in relation to dealing with issues of discrimination, fundamental rights, employment issues and human rights. We are particularly concerned that the most effective venue for enforcement of rights at the nature identified, is in the domestic courts and legislation. In the establishment of the EU Charter, individuals presumably, would be given the right to seek to challenge and refer matters to the European Court of Justice on assistance and interpretation. Organisations and business in particular, will therefore face the potential for further claims and challenges. A more effective method by which rights of the nature set out in the Charter are introduced should be via the existing route of directives which are then interpreted as appropriate and brought into effect by domestic laws where they become enforceable in the domestic courts.

Summary Response

Our overriding concern in relation to the proposed Charter is that it extends well beyond the scope of the original terms of the Treaty of Rome. In addition, it also touches upon rights already provided for in the European Convention on Human Rights (“*ECHR*”). The potential for dual challenges to be brought by individuals may therefore exist under both the EU Charter as well as the European Convention, and potentially a third challenge where in particular jurisdictions the rights guaranteed by the ECHR have been in-acted within domestic legislation.

There is a particular issue in this regard within the United Kingdom, where, with effect from October 2000, the Human Rights Act 1998 will introduce new domestically enforceable rights within the UK jurisdiction as well as placing public bodies, including the courts, under an obligation to observe and enforce the rights enshrined within the ECHR.

We set out below, based on the proposed Articles to be contained in the Charter, our comments on each fundamental right.

1 **Article I - Equality between Men And Women**

Proposal: “*Equality between men and women must be ensured with regard to work and employment and social protection*”.

Such protection is already contained within a number of EU provisions including:

- Article 141 (in respect of pay);
- The Equal Treatment directive; and
- The Equal Pay directive.

certainly as regards work.

In the UK, such rights are enshrined both by direct reliance upon the European provisions, as well as the Equal Pay Act 1970 and the Sex Discrimination Act 1975.

In the Netherlands, Article 1 of the Dutch constitution (“*GRONDWET*”), the General Equal Treatment Act and the Act of Equal Treatment of Men and Women in Labour Relations of 1980. Furthermore, Article 7: 646, 647 and 647 of the Dutch civil code deals with preventing discrimination in training programmes, conditions of employment and promotion as well as when terminating employment contracts.

French law contains provisions regarding equality between men and women within the Labour code (Article L.123-1 and L.122-45) both during the recruitment procedure, the term of the contract and at dismissal. The French provisions moreover carry the sanction of criminal penalties against an employer.

2 Article II - Right to choose an Occupation

Proposal: *“Everyone has the right to choose and to engage in his occupation or business, without prejudice to the rules in the Treaty relating to the free movement of persons”*.

Within the European Union and indeed the European Economic Area, freedom of movement is provided for across the member states. To this extent the right to choose and engage in occupation is protected.

Furthermore, in the UK as well as preventing sex discrimination, the context of which are dealt with above, the Race Relations Act 1976 also prevents discrimination on grounds of an individual’s race, colour, ethnic or national origin.

Of course, freedom of movement is also a fundamental right embodied within the Treaty of Rome.

Again in the Netherlands, Section 19 paragraph 3 of the Dutch constitution contains a right to freedom of labour to prevent interference by the authorities - although these rights are subject to social economic circumstances.

Under French law, the same right to choose an occupation is implicit within the preamble of the 1958 constitution. However, there are certain regulated professions for which freedom is restricted.

It is suggested that such a potentially wide ranging right to choose an occupation, would have to be qualified as appropriate, taking into account policy considerations and occupations where qualifications are clearly essential in order to be able to carry out the role in question.

3 Article III - Worker’s Right to Information & Consultation

Proposal: *“Workers and their representatives have the right to effective information and consultation within the undertaking which employs them, particularly in the context of collective redundancy procedures and decisions relating to conditions of work and to the working environment”*.

Again, provisions have already been enacted at European level to deal with European Works Councils in respect of transnational bodies and Community undertakings.

Within the UK, there is already a substantial amount of protection which requires consultation with worker's representatives (Trade Union or employee representatives) and obligations to inform and consult in respect of:-

- Collective redundancies;
- Contractual changes which are proposed;
- Collective matters which may result in dismissal; and
- Health and safety consultation obligations.

In the Netherlands, a substantial body of existing law already provides for the establishment of works councils and collective consultation, including:-

- The Works Council Act;
- The Notification of Redundancy Act;
- Social Economic Council Merger Conduct Code; and
- Collective Employment Contract.

Works Councils under the first item listed must be established in undertakings of 50 or more consisting of employee representatives elected by the employees. Rights to certain information is also provided, including details concerning the control, reduction, expansion or changes to the undertaking in which the employee works. The Notification of Redundancy Act requires collective consultation and information and there are also provisions dealing with mass lay off.

In France, the right to information is provided through the requirement placed upon an employer to post minimum information (for example in respect of working hours and collective agreements which are applicable) at the works premises and again, there is a

mechanism for the election and appointment of staff representatives. Information and consultation obligations exist for works councils concerning matters affecting the volume structure, working time, conditions of the workforce as well as changes in the economics or control and structure of the employer company. Substantial remedies exist in respect of infringement of these provision, including imprisonment and/or a fine.

Many European Union countries already have a provision which enact the provisions concerning workers representatives and redundancies under Directive 98/59/EC in addition to the European Works Council provisions.

4 **Article IV - Freedom of Association, Rights of Collective Bargaining and Collective Action**

Proposal: *“Employers and workers have the right to associate freely, including at European Union level, in order to form the professional or trades union organisations of their choice to defend their economic and social interests.*

Every employer and every worker has the right to join or not to join these organisations, without this causing him any personal or professional harm”.

In the UK, provisions already exist to protect individuals from joining or indeed declining to join a recognised Trade Union. This protection extends to prevent individuals being refused employment, being subjected to a detriment or indeed being dismissed or victimised in any other way. In addition, under the Trade Union and Labour Relations (Consolidation) Act 1992, recognised Trade Unions and their representatives gain the right to certain minimum information concerned with collective bargaining as well as health and safety rights and time off rights for training. Thus, provision already exists to allow freedom of association.

Under Dutch legislation, both the constitution (Article 8), the Dutch Civil Code (Article 7: 670 sub 5) and the Collective Employment Contracts Act protects the individual’s right and freedom to join a Trade Union and termination of the contract, because of membership or because the individual has undertaken the activities of an association or Trade Union, is unlawful.

Similarly, under the French jurisdiction, there is the right to associate a protection against dismissal or discrimination. Discrimination on grounds of Union membership is indeed a criminal offence (punishable by two years' imprisonment and/or a fine).

Proposal: *“Employers or employers’ organisations, on the one hand, and workers’ organisations, on the other hand, have the right, under the conditions laid down by national legislation practice, to negotiate and conclude collective agreements, including at European Union level”.*

As such, legislation does not exist to provide the right to negotiate and conclude collective agreements European wide. However, there is nothing to prevent organisations from forming PAN European Associations and indeed a number of employers and indeed Union bodies already do so.

At a domestic level, under UK legislation, the right to negotiate and conclude collective agreements (known as *“recognition”*) is about to be introduced by new legislation in the summer of 1999 under the Employment Relations Act 1999. It would be of major concern if, in addition to the freedom of association rights contained in the ECHR and the new rights contained in the Employment Relations Act 1999, a further additional right and requirement was invoked by the introduction of the EU Charter provisions.

Collective bargaining is also already provided for under Dutch law in the Collective Employment Contract Act, the Works Council Act and Social Economic Council Merger Conduct Code. Whilst this is provided on a private law basis, it is based on the principle of freedom of contracts and although there is no right to require an organisation to determine or agree a collective employment contract, the right to so contract exists.

Proposal: *“Workers and employers have the right in cases of conflicts of interest to take collective action at European Union level should the occasion arise, including the right to strike”.*

Within each jurisdiction, individual employees have a right to strike or take other collective action although this right does not appear to be formally recognised in legislation. However, the Council of Europe Social Charter which recognises the right to collective action is, for example, deemed applicable in the Netherlands. It is in fact a constitutional right under

French law and special protection exists in the UK to restrict or limit the circumstances in which individuals who are taking collective action can be dismissed.

The Charter here however appears to envisage the right to take collective action at European Union level, presumably, where a particular issue arises between the worker and employer which has an impact at a PAN European level. Our view is that the right to strike and to take other action needs to be carefully regulated and set out and that it is preferable for the circumstances in which action can be permitted to be determined by domestic laws. From the point of view of encouraging the economic well being of the European Union, we would not support the encouragement of European level collective action save in circumstances where there genuinely is an “*EU issue*” at stake.

5 **Article VII - Right to Equal Remuneration for Equal Work**

Proposal: “*Every worker has the right to equal remuneration for work of equal value*”.

We refer to our observations at Article I above as to the provisions already applying.

Many jurisdictions have already enacted the Equal Pay Directive and are obliged to observe Article 141 of the Treaty, and we do not see the need to duplicate these requirements and rights by separate EU Charter legislation.

6 **Article VI - Right to Rest Periods and Annual Leave**

Proposal: “*Every worker has the right to a weekly rest period and to an annual period of paid leave*”.

These provisions were required to be introduced in all member states by the Working Time Directive. It is suggested therefore that protection already exists in this area and all European Union member countries should have enacted the Working Time Directive provisions in October of 1998. If the Commission is not satisfied that all individual employees and workers are being given these rights, we suggest that that is a matter which should be addressed via infringement proceedings.

Again, we are concerned that what is being proposed amounts to a duplication of rights.

The UK have certainly introduced the Working Time Directive, which does guarantee weekly rest and annual periods of leave through its Working Time Regulations.

In France, Articles L-223-1 of the Labour Code provides for 5 weeks' paid holiday and 20 minute rest breaks for every 6 hours as well as a requirement that individuals are not required to work more than 6 consecutive hours and, reflecting the EU Directive a daily 11 hour rest.

In the Netherlands the Working Hours Act again addresses minimum holiday entitlement (20 days) which can be increased by collective agreement or individual agreement (together with maximum work times and minimum rest periods).

7 **Article VII - Safe and Health Working Conditions**

Proposal: *“Every worker has the right to safe and healthy working conditions”*.

Again, there is European Directive legislation via the “*framework*” directive and subsequent daughter directives, which have been enacted in the UK, again via the management of Health and Safety Work Regulations, in the Netherlands by a number of items of legislation including:-

- The Working Conditions Act;
- The Working Conditions Regulations; and
- The Working Conditions Scheme.

Similarly, it is part of the Labour Code in France contained within Article L-231-1.

These provisions respectively deal with the requirement to establish works committees with health and safety responsibilities and to consult on such items.

8 **Article VIII - Protection of Children and Young People**

Proposal: *“The minimum age of admission to employment must not be lower than the minimum school leaving age and, in any case, not lower than 15 years.*

Young people under 18 years of age must have working conditions which suit their age and be protected against any work likely to harm their safety, health or physical, mental, moral or social development or to jeopardise their education”.

The Working Time Directive referred to in paragraph 6 above provides for the protection of young workers throughout the European Union.

As stated in paragraph 6 the Directive has been implemented within the UK. Young workers are defined in the Directive as being aged between 15 or the minimum school leaving age (whichever is the lowest) and 18. The Directive provides for the protection of young workers as defined including minimum rest periods of 12 consecutive hours in each 24 hours, a weekly rest period of not less than 48 hours in each 7 day period the young worker is employed, and protection to ensure that the young worker’s specific development and vocational training and access to employment needs are met.

In Holland, the Working Hours Act define a minor as a person under the age of 18 and, from the age of 16 only is entitled to enter into an employment agreement. Any person under the age of 16 can only be employed with the permission of his legal representative. There are special working hours and rest period restrictions and night working and overtime employment is forbidden.

Similarly, under the French labour code, specific protection exists for what are defined as young workers and this includes restrictions on their working time so that those under 18 cannot work for more than 8 hours per day or 4½ hours without a break.

9 **Article IX - Right to Protection in Cases of Termination of Employment**

Proposal: *“Workers have the right not to have their employment terminated without valid reason and to adequate compensation or other appropriate relief if their employment is terminated without valid reason”.*

It is accepted that the provisions as to termination and protection in this regard is very limited under EU legislative provisions. In the UK, protection exists under the Employment Rights Act 1996, in laws which prevent what is known as “*unfair dismissal*”. These

provisions go on to limit the circumstances in which an individual can be dismissed for fair reasons and provide remedies currently at £50,000 as a maximum award where a dismissal is not for a valid (fair) reason. Additional compensation and in some circumstances reinstatement or re-engagement to require the employer to take the individual back in their employ exists, for example in relation to pregnancy related dismissals, Trade Union related dismissals and indeed, dismissals on grounds of health and safety or representative status.

In the Netherlands, an employer is required to obtain a permit from the Director or the District Employment Services Authority before giving notice to terminate or alternatively an application must be made to the Cantonal Court under the Dutch Civil Code, requesting the setting aside of a contract of employment for serious reasons. Again, special protection exists to prevent dismissal for reasons such as Trade Union membership and political affiliation. Finally, there is also the right to be granted severance pay upon termination provided the employee is not at fault for the dismissal. The amount of severance pay reflects the damages suffered.

In France again, there are certain protected employees (such as staff representatives) who cannot be dismissed without prior authorisation from the Labour Inspector which will only be given after a contradictory enquiry is undertaken. There is also a legal dismissal procedure in respect of non-protected employees.

10 **Article X - Right to Vocational Training and Guidance**

Proposal: *“Everyone must have access, without discrimination, to appropriate vocational training and guidance and to benefit therefrom throughout his working life”*.

In the UK, there is the concept of lifetime training and encouragement is certainly given to provide vocational training although no specific right to training provided. There is similarly no such right under Dutch law, although in France, an employer has an obligation of guidance and adaptation in respect of his employees.

11 **Article XI - Right of Employed Women to Protection of Maternity**

Proposal: *“Every employed woman has the right to maternity leave of at least 14 weeks before and/or after childbirth”*.

The Pregnant Workers Directive introduced minimum requirements to be invoked in each member state. In the UK, this was enacted in 1993 and has further been enhanced by a recent change which provides to all individuals the right to 18 weeks' maternity leave (if their baby is expected on or after the 30th April 2000).

In Holland, 16 weeks' maternity leave on full pay is an obligation as well as other special protection and in France a minimum of 6 weeks before giving birth and 10 weeks after.

Again, these rights are already guaranteed and provided by the implementation of the Pregnant Workers Directive, in each member state. We therefore do not see the merit in further duplication.

12 **Article XII - Right to Parental Leave**

Proposal: *“Every worker has the right to parental leave of at least 3 months following the birth or adoption of a child”*.

The Parental Leave Directive again, as with the Pregnant Workers Directive, obliges member states to introduce a minimum right to parental leave in respect of a child following birth or adoption.

This has been enacted in the UK, Holland and France. Given again that this is a more recent new right, we cannot see the merit or indeed the driving force behind imposing this as a fundamental right in the European Union through the Charter, when it is already provided for and in existence.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 2 May 2000**CHARTE 4258/00****CONTRIB 131****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter two contributions by the Union of European Federalists (UEF) on occasion of the hearing on 27 April 2000. ¹

¹ This text has been submitted in French, English and German languages.

UEF

Union of European Federalists
Union des Fédéralistes Européens
Union der Europäischen Föderalisten

Charter of Basic Rights

Resolution of the UEF Federal Committee on the Charter of Basic Rights and the Intergovernmental Conference (Extract)

Brussels, 20 – 21 November 1999

The Union of European Federalists,

(...)

- recalls the decision of the Cologne European Council in June 1999 that “the fundamental rights applicable at Union level should be consolidated in a Charter and thereby made more evident”;
- insists that this proposed Charter, which is important in itself, must not be a substitute for a **European Union Constitution**;
- welcomes the introduction of a new working method involving representatives of the European Parliament, national parliaments, citizen's organisations and the Member States' governments in the preparation of the Charter, thereby establishing a new procedure which provides the method by which the European Union Constitution should be drawn up.

The Union of European Federalists,

therefore calls on the European Council meeting in Helsinki to decide on joint action with the European Parliament and the Member States' Parliaments to **adopt the same procedure as agreed by the European Council of Cologne for the Charter of Basic Rights to draw up a Constitution of the European Union which should include citizen's rights and obligations.**

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Resolution on the EU Charter of Fundamental Rights as an important step towards a European Constitution

The UEF Federal Committee meeting in Brussels on 1 and 2 April 2000,

1. Welcomes the initiative for the drafting of an EU Charter of Fundamental Rights and reminds
 - that the European Union is a union of shared values
 - that a consolidation of these crucial basic and human rights constitutes an important point of reference for European citizens
 - that the fundamental rights of the European Union include not only human but also social and cultural rights as well as rights devolving from the implications of the IT society;
2. Underlines the democratic principle that all political power originates from the political will of the citizens. This principle has to be integrated in the EU Charter of Fundamental Rights. The coming into office of the future European Government has to reflect the result of European elections;
3. Calls for
 - the incorporation of the EU Fundamental Rights into the EU and EC treaties, thus granting them fully binding legal status
 - the application of the EU Charter of Fundamental Rights throughout the Union and any infringements to be dealt with by the European Court of Justice;
4. Calls for the members of the EU Fundamental Rights Convention to initiate a broad public debate involving the parliaments and assemblies at different levels as well as organisations of the civil society;
5. Considers
 - that the elaboration of the EU Charter of Fundamental Rights is an important step towards a European Constitution
 - that other elements will have to follow such as the provisions on the decision-making process of the European Union and the distribution of competences between the EU, the Member states, and the subnational levels of governments;

Welcomes the introduction of a new method by which members of the European Parliament, members of national parliaments and representatives of the national governments - involving the organisations of the civil society - are working together for the drafting of the Charter. After the successful completion of the deliberations on the EU Charter of Fundamental Rights, the Convention should commence to work on further elements of a European Constitution.

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DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 2 May 2000**CHARTE 4259/00****CONTRIB 132****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter the statement by the European Newspaper Publishers' Association (ENPA) given at the hearing on 27 April 2000. ¹

¹ This text has been submitted in English, French and German languages.

Hearing on a draft Charter of Fundamental Rights 27 April 2000, European Parliament, Brussels

- Statement by the European Newspaper Publishers' Association ENPA -

ENPA represents some 3000 daily, weekly and Sunday newspapers from seventeen European countries. The associated publishing houses sell more than 91 million copies each day, which are read by over 240 million people.

In the context of framing a draft Charter of Fundamental Rights, freedom of expression and press freedom are of paramount importance to ENPA.

European newspaper publishers welcome the Convention's attempt to put the fundamental right to freedom of expression at the heart of its proposal. Nevertheless, a general clause such as this demands clarification, such as how it is subsequently to be understood by the newspapers.

Freedom of expression as an essential prerequisite for the realisation and development of the individual is well established in the classic tradition of human rights. As such, this freedom is an integral requirement of a democratic system of government. Accordingly, the European Court of Human Rights stressed that freedom of expression, according to Article 10, paragraph 1 of the European Convention on Human Rights (ECHR), is one of the foundation stones of a democratic society and is essential to its further development as well as individual self-realisation. Furthermore this freedom is recognised as a general legal principle in Community law (Article 6 TEU).

Given this background and the stipulation that press freedom is part of the right to freedom of expression, the European newspaper publishers support the following interpretations of the aforementioned rights.

Press freedom is primarily a right to defence against intervention from both public and private sectors. Only a free press, free from censorship, can fulfil its important democratic function.

Publishers and other media companies must, therefore, be able to establish themselves freely in society like other private businesses. They are therefore in journalistic and economic competition, in which public authorities are fundamentally not allowed to intervene. This must be rooted in the principle that anyone, at any time has the right to run a press business without the permission of the authorities and without a licence.

Gathering information is also a basic prerequisite for a functioning press. In particular, this includes unhindered access to information available in public institutions and its divulgence by the competent offices.

Furthermore, every possible technical means of communication must play a part in guaranteeing press freedom. The right to freedom of expression would be worthless if the press were hindered in the dissemination of their products.

Moreover, press freedom must not be differentiated according to individual product categories and journalistic or technical qualities. Freedom covers the entire content of publications, including editorial as well as advertising.

Existing limitations, as we know them for instance from the European Convention on Human Rights, must be interpreted narrowly with regard to the Charter and must not infringe the basic right of press freedom. This is untouchable.

In this context ENPA has the following expectations of the Charter and its interpretation.

- The defence of the fundamental right to press freedom in the framework of the European Charter, should not retreat from the framework established by Article 6, paragraph 2 (TEU). The guarantee of press freedom as a basic right also derives from Article 10 (ECHR) and from the joint constitutional traditions of the Member States.
- A codified basic right to press freedom at a European level should primarily be a right to defence against state or state-tolerated third-party intervention.

- Rerwordings by the Charter must not reduce the current level of press freedom. On the contrary: for the benefit of democracy and the development of the individual this should be recognised as an opportunity to blaze a trail for a more liberal level.

The convention will shortly receive a comprehensive legal opinion on the subject of press freedom at a European level, commissioned by the “Foundation for Democracy and Press Freedom“ and the foundation “Press Freedom”. Both are German institutions.

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE**fundamental.rights@consilium.eu.int**

Bruxelles, le 2 mai 2000**CHARTE 4260/00****CONTRIB 133****NOTE DE TRANSMISSION**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne

Veillez trouver le texte proposé de la Fédération Humaniste Européenne à l'occasion de l'audition du 27 avril 2000. ¹

¹ Ce texte a été soumis en langue française seulement.

Fédération Humaniste Européenne

Voici le texte proposé par notre Fédération dans le cadre de l'audition de ce jeudi 27 avril.

Je vous en souhaite bonne réception

Charte des Droits fondamentaux de l'Union Européenne.

Audition de la société civile du 27 avril 2000 - Parlement Eurpéen - Bruxelles.

Texte proposé par la Fédération Humaniste Européenne/European Humanist Federation.

La Fédération Humaniste Européenne, qui regroupe plus de vingt cinq associations dans seize pays européens, s'inscrit dans la tradition humaniste des Lumières. A ce titre ses membres militent pour le dépassement des nationalismes, pour le respect des droits de l'homme, pour une démarche morale humaniste s'appuyant sur la responsabilité et la solidarité civile et sociale et pour le pluralisme philosophique.

Leur action se fonde sur une approche éthique rationnelle reposant essentiellement sur la libre pensée et la liberté de conscience.

Notre Fédération s'inscrit donc sans réticence dans le projet d'une Europe ouverte et tolérante.

La réflexion qui nous rassemble fait partie d'une démarche pleine de promesses, à condition que celle-ci se fasse dans la cohérence. C'est la raison pour laquelle la FHE réitère son souhait, déjà exprimé lors des auditions dans le cadre de la CIG précédente, de voir l'UE adhérer

à la Convention Européenne des Droits de l'Homme. Celle-ci devrait s'accompagner de la reconnaissance de la juridiction obligatoire de la Cour européenne des droits de l'homme et du droit de présenter des requêtes individuelles. Ce système aurait l'avantage de permettre le contrôle, par un juge externe à l'ordre juridique communautaire, de la compatibilité du droit communautaire avec la Convention européenne des droits de l'homme.

Fidèle à sa tradition, la FHE insiste pour que la Charte sauvegarde, sans ambiguïté, la préséance des droits individuels fondés sur l'affirmation humaniste des libertés fondamentales par rapport à toute autre grille de lecture de la notion de droits de l'homme. A ce titre, la liste des différentes formes de discrimination à l'article 13 du traité d'Amsterdam devrait être étendue afin d'englober celle fondée sur les convictions philosophiques.

Cette protection due à l'individu, qui est - tout compte fait- la minorité la plus minoritaire, s'accompagne de la nécessité de promouvoir la responsabilité citoyenne. Cette notion doit encore être largement renforcée en Europe. C'est la raison pour laquelle nous souhaitons que la Charte soit proclamée au nom des citoyens européens et qu'elle soit ratifiée, dans les différents états, après une large consultation de ces mêmes citoyens.

La Charte doit clairement poser le principe de la non discrimination entre les hommes et les femmes et, en matière de liberté de conscience, il convient de rappeler que celle-ci englobe le droit de changer de religion ou de ne pas en avoir. En matière d'éducation, si les parents ont certes le droit d'élever leurs enfants en fonction de leurs convictions, il n'en reste pas moins que ces enfants doivent pouvoir devenir des adultes autonomes et responsables, capable de formuler leurs propres jugements de valeurs et choix de vie.

Une autre de nos préoccupations est d'éviter que la notion des "Droits de l'Homme" soit détournée de son véritable objet par une interprétation ou une utilisation extensive et abusive. Ce problème se pose, entre autres, dans deux domaines sensibles: celui de l'autonomie de décision en matière de choix de vie et celui de la bioéthique.

Par exemple, il serait inacceptable de voir la Charte interprétée pour limiter la liberté individuelle face à des questions aussi délicates que le droit à une mort digne ou la possibilité pour les femmes d'interrompre une grossesse non désirée. De même, utiliser une Charte des droits fondamentaux pour empêcher les recherches sur l'embryon ou

le génome humain ne nous paraîtrait pas plus concevable dans une Europe soucieuse de respecter la diversité des approches en matière d'éthique. Enfin, inclure dans la Charte des dispositions destinées à protéger un concept de "famille" dont la définition ne tiendrait pas compte des récentes évolutions que celui-ci a subi ne manquerait pas de mettre le texte en porte à faux par rapport à la réalité sociologique qui prédomine dans nos pays.

La Charte se doit aussi d'intégrer et de protéger le modèle social européen comme rempart contre l'exclusion. Il conviendrait donc de s'inspirer de la Charte européenne des droits sociaux adoptée par le Conseil de l'Europe. De même, une réflexion s'impose afin que l'adoption de la Charte ne renforce pas la forteresse "Europe" et que ses dispositions en matière de droits sociaux tiennent aussi compte de l'importance que continueront à avoir dans l'avenir les communautés de migrants en fonction des politiques d'asile et d'immigration de l'UE. Ces politiques devraient, selon nous, aller de pair avec une coopération plus active avec les pays tiers, notamment ceux qui sont en voie de développement.

Enfin, et nous l'avons salué, l'Europe qui se construit est une Europe de la diversité culturelle, ethnique, religieuse. Elle se doit donc d'être une aire de tolérance et, mieux encore, de respect et de compréhension mutuelle. La Fédération insiste sur le rôle que la puissance publique doit jouer en cette matière, particulièrement en matière d'enseignement.

Nous considérons que seule la prééminence du civil sur le religieux, de l'intérêt public général sur les aspirations de groupes idéologiques particuliers, seront en mesure d'éviter que la diversité socio-culturelle ne se traduise en une juxtaposition de ghettos indifférents, voire opposés, sinon hostiles, les uns aux autres.

Si l'Union européenne veut être un espace de liberté, de sécurité et de justice,

c'est en affirmant, en vertu de la légitimité démocratique, le principe de base de la séparation de l'autorité publique de toute puissance particulière ou influence partisane de quelque nature que ce soit, qu'elle y parviendra le plus sûrement.

Texte présenté par la

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DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 2 May 2000**CHARTE 4262/00****CONTRIB 135****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a submission by the Young European Federalists (JEF) on the occasion of the hearing on 27 April 2000. ¹

¹ This text has been submitted in English language only.

	
<p>Jeunes Européens Fédéralistes Young European Federalists</p> <p>International Organisation</p>	
<p>JEF Place du Luxembourg plein1, B-1050 Bruxelles/Brussel</p> <p style="text-align: center;">—</p>	<p>JEF European Secretariat Place du Luxembourg plein1 B-1050 Bruxelles/Brussel Tel: +32-2-512.0053 Fax: +32-2-512.6673 e-mail: info@jef-europe.org</p>

THE YOUNG EUROPEAN FEDERALISTS ON THE CHARTER OF FUNDAMENTAL RIGHTS

The Young European Federalists welcome the decision to establish a Charter of the Fundamental Rights of the European Union and stress the following points:

1. **The establishment of a Charter of the Fundamental Rights of the European citizens is a crucial achievement and could be the first piece of a real European Constitution.** The European Union and the European Communities are still dominated by the economic dimension, the Single European Market and the Monetary Union. Most of the citizens feel the Union as distant, bureaucratic and far from their problems. The establishment of the Charter could mark the start of a new Europe focussed on the citizens and moving forward to a real Political Union. However, the Charter can unfold all its potential only if its creation is soon accompanied by a radical and comprehensive reform of the Union's foundations and institutions, that lead to a true European federal Constitution, to give the Union the capacity to pursue effectively the values and goals that the Charter will solemnly enshrine. It would be very important if the Convention kept such point in front of the member states, specially considering the parallel ongoing process of the Intergovernmental Conference.

2. **It is vital that the Charter becomes a legally binding document, integral part of the Treaties, and does not remain a simple Declaration.** The European Union has already seen many Fundamental Rights declarations (see for example the European Parliament Declaration from 1989). Many international organisations have issued Declarations and Conventions of Rights, without having the powers to enforce them. What the Union needs now is a visible and transparent Bill of Rights of the European Citizens which gives the people awareness of their rights and access to the European Court of Justice for their enforcement. A binding Charter - by defining clearly the values, principle and goals at the heart of the Union - would also enhance the legitimisation and credibility of the future work and actions of the all Union's institutions. This is even more important in view of the enlargement of the Union to new members.

3. **The Charter should acknowledge and enshrine the unique features of the European model.** A mixture and balance of individual freedom, in all its aspects, and solidarity and welfare make the European model unique. This should be reflected in the Charter. Moreover, European unification marks the historic achievement of European pacification by the creation of a Union among nations and peoples that fought each other for centuries: the inclusion in the Charter of the individual's "right to peace", and the Union's obligation to defend it, would symbolise perfectly such novelty of the European experiment. An other important way to transform "empty rights" in the Treaties into tangible rights would be to guarantee the right of direct access by individuals to the European Court of Justice, and to extend the civil rights to all residents of the EU, regardless of their citizenship.

4. **The Charter should acknowledge and enshrine the achievements of the European political tradition paving the way for a clarification of what the Union is and how it works.** Centuries of political fights in Europe have established the basic principle that "sovereignty lies in the people" and that of the division of powers. These historic achievements at national level are still opposed in the European Union, which is therefore not yet a democracy. The "European citizenship" has been created by the Amsterdam Treaty, but it remains an empty word as long as the citizens are deprived of the fundamental right of

5. citizenship: the power to decide the Government and the policies of the Union. The institutions of the Union are the embryo of a real supranational democracy, but the European Parliament is still denied full legislative powers, the Council combines legislative and executive powers ineffectively, the Commission is not a real Government - all this makes the Union still undemocratic and ineffective. If the Charter reaffirmed the basic principle of “people sovereignty” in the Union, this could pave the way for a comprehensive redefinition of what the Union is and how it works, and thus for a real European democracy.

6. **The Convention process to draft the Charter is very innovative and should be extended to the reform of the Union’s institutions.** So far, the building of Europe has left aside the citizens and their elected representatives in the European Parliament, it has been the exclusive domain of the representatives of the member states governments. The involvement of the European Parliament and the national parliaments, as well as the dialogue with the civil society, makes the mechanism to elaborate the Charter profoundly innovative and more democratic than any other procedure experienced at European level so far. This method should replace the elaboration of fundamental texts of the European Union by Intergovernmental Conferences. The Convention could make its voice heard on this point already during the current Intergovernmental Conference.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 4 May 2000**CHARTE 4263/00****CONTRIB 136****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a contribution by the Federation of Catholic Family Associations in Europe on the occasion of the hearing on 27 April 2000. ¹

¹ This text has been submitted in French, German and English languages.

PROJECT FOR THE CHART OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Contribution of the Federation of Catholic Family Associations in Europe

Paris March 7th 2000

**Fédération des Associations Familiales Catholiques en Europe
Föderation der Katholischen Familienverbände in Europa
Federation of Catholic Family Associations in Europe**

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The Federation of Catholic Family Associations in Europe groups numerous national family associations originating in divers European countries. It represents 5.5 million European families, or about 25 million persons.

Strengthened by this mandate and conscious of the importance of the future European Chart of Fundamental Rights, we intend to submit the fruit of our experience to your reflection.

EXPOSURE OF MOTIVES

The Federation of Catholic Family Associations in Europe supports the reflection being currently devoted by the European Union to the elaboration of a Chart of Fundamental Rights conform to the conclusions formulated by the presidency at the European Councils of Cologne and Tampere. However, it is not the object of the FCFAE to take a stand on the constraining character of this Chart or on the rapport of jurisdictions between the European Court of Justice and the European Court on Human Rights.

The Federation of Catholic Family Associations in Europe,

Rejoicing that fundamental rights have benefited from constant attention on behalf of the European Court of Justice as well as the Council of Ministers,

Concerned the European fundamental rights remain faithful to their philosophical and religious foundation, notably by a just understanding of the dignity of the human person and his life environment,

Considering the Universal Declaration of Human Rights proclaimed by the United Nations' General Assembly of December 10th 1948, in particular Article 1 (*All human beings are born free and equal in dignity and in rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.*)

Considering the European Convention of the Protection of the Human Rights and Fundamental Liberties, adopted by the Council of Europe on the 4th of November 1950, and in particular its 8th and 12th articles,

Considering the revised European Social Chart, adopted by the Council of Europe on the 3rd of May 1996, and in particular its 16th, 17th and 19th articles,

Considering the principle of subsidiarity of citizens, families, cities, regions, nations and States, which implies the respect of the national and the regional laws of the member countries and the candidate countries,

Considering that there are fundamental duties which correspond to fundamental rights

Reminding all that the family, the community of the life of a man and a woman, founded upon the stable public engagement of marriage and open to life, structures society and assures its cohesion, and that it is the only social cell capable of transmitting life, all the while offering to the child an adapted educative milieu, and that the family consequently merits having its' legal recognition, protection and promotion reinforced within the fundamental rights .

Considering that child's rights, and notably as they are guaranteed on the international level by the United Nations Convention on Child's Rights of 1989, are an integral part of fundamental rights, and in particular in its preamble and its 5th and 18th article,

Reiterating that the first right of a child is that of a "protected childhood" within the heart of a stable family and that law must favor this protection and stability,

Concerned that the contribution of families to the economic activity of the European Union, and that their importance as a factor of growth as investors, educators and consumers be justly appreciated,

Desirous that particular attention be accorded to the educative tasks accomplished within the heart of the family, and that the family's irreplaceable value on the human, social, cultural, as well as economic levels, be taken into account,

The Federation of Catholic Family Associations in Europe insists that the following rights be guaranteed within the framework of the Chart of Fundamental Rights of the European Union.

RESOLUTION

The first human right is the right of life. The respect of human life extends to all ages of life, whatever may be the state of health of the person.

The right to contract a marriage, as the union of a man and a woman, and the right to found a family must be recognized, if the future spouses have reached the required age and unite the conditions demanded in this case by national laws, to the extent that these laws do not conflict with the fundamental principles established in the present chart. The marriage can only be contracted with the free and full consent of the future spouses.

The family is the natural and fundamental element of society. It has the right to specific economic, juridical and social protection, notably by the means of social and family benefits, by fiscal measures, by the encouragement to build lodgings adapted to the needs of families, by help given to young households, and by all and any other appropriate measures.

Every child has the right to be raised by its natural or adoptive parents. The European Union will respect the right of parents to assure the education of their children conform to their religious and philosophical convictions.

Migrant families have the right to the same social protection as that accorded to other families.

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE**fundamental.rights@consilium.eu.int**

Bruxelles, le 4 mai 2000**CHARTE 4264/00****CONTRIB 137****NOTE DE TRANSMISSION**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne

Veillez trouver ci-joint l'introduction de la Conférence des Régions Périphériques maritimes d'Europe (CRPM) faite à l'occasion de l'audition du 27 avril 2000.¹

¹ Ce texte a été soumis en langue française seulement.

CONTRIBUTION DE LA CRPM A L'ELABORATION DU PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPEENNE

Nous voudrions tout d'abord vivement remercier la convention de permettre à la CRPM, organisation représentant 126 régions d'Europe, de s'exprimer sur une question aussi majeure pour nos citoyens.

Le respect des droits fondamentaux de nos citoyens est l'un des principes fondateurs de l'Union européenne et la condition essentielle pour sa légitimité, comme l'affirme à juste titre le Traité. Bien qu'un encadrement juridique contraignant existe déjà en partie, nous considérons toutefois que la décision du Conseil européen de Cologne des 3 et 4 juin 1999, d'établir une Charte des Droits Fondamentaux, est essentielle afin de renforcer leur visibilité et leur portée auprès des citoyens de l'Union.

Dans cette configuration, la CRPM souhaiterait aujourd'hui même rappeler deux grands principes qui lui semblent indispensables d'être érigés à terme comme des droits fondamentaux.

Le premier principe est celui de la relation essentielle entre la gouvernance de l'Union européenne et la mobilisation des citoyens européens au travers de la reconnaissance et de l'implication du niveau régional. Rapprocher l'Europe des citoyens, est en effet un des enjeux majeurs de l'avenir de la construction européenne et l'une des garanties de sa crédibilité. Prendre en considération dans l'élaboration de cette Charte des droits fondamentaux, les droits économiques et sociaux des citoyens, est à juste titre un élément essentiel et indispensable. Nous considérons toutefois qu'il est également important de ne pas oublier que l'Union est aussi fondée sur le principe intangible de démocratie, reconnu sous la forme de la démocratie représentative, c'est à dire du droit des citoyens de participer à la gestion des affaires publiques par l'intermédiaire de leurs représentants élus. Sans vouloir rentrer ici dans le débat sur le déficit de démocratie, nous considérons que le droit d'expression des citoyens dans la définition et la mise en œuvre des orientations stratégiques et des politiques de l'Union passe nécessairement par la reconnaissance du « fait » régional, ou d'une plus grande implication des échelons infra-étatiques à la gouvernance de l'Union. Echelons qui représentent aujourd'hui au mieux les préoccupations de nos citoyens et qui constituent leur plus proche capacité d'expression. Cette reconnaissance d'un plus grand rôle des régions comme partenaires à part entière de la construction européenne est seule à même de redonner aux citoyens un véritable « droit d'expression » sur les orientations générales de l'avenir de l'Union et surtout sur les politiques ayant un impact territorial, et qui, de ce fait, les concernent directement.

Le second principe est intimement lié au précédent. Il s'agit de la reconnaissance de l'objectif de cohésion territoriale au même titre que celui de la cohésion économique et sociale et ce si nous voulons éviter la construction d'une Europe à deux voire trois vitesses avec tous les risques de rejet et d'éclatement que celle-ci impliquerait. Cette dimension territoriale est un autre élément que la Charte devrait prendre en considération. La tendance actuelle est en effet à la concentration

des activités économiques dans les régions fortes de l'Union, autour de grandes capitales, ce qui se traduit par de fortes disparités de développement entre nos territoires. Les principaux écarts de compétitivité subsistent, voire se creusent en termes d'accessibilité aux marchés, d'innovation, de formation et d'adaptation des systèmes productifs. Cette évolution ne peut perdurer d'autant plus que l'élargissement risque encore d'accroître les écarts de développement. Nos citoyens pourront-ils adhérer au projet européen tant qu'il subsiste un réel déséquilibre de développement entre leurs territoires, tant que la croissance et le développement de l'économie européenne ne profitent pas à tous et n'offrent pas à chacun l'opportunité de s'épanouir dans son espace culturel et social de référence ? Le territoire ne doit pas, à notre sens, rester uniquement un espace de référence politique mais devenir également un espace capable d'offrir à ses habitants toutes les opportunités de développement économique. Or la cohésion territoriale, c'est à dire le développement harmonieux et équilibré du territoire européen, trop absente du débat européen, doit devenir un complément indispensable à la cohésion économique et sociale qui figure déjà à l'article 2 du Traité. Nous considérons ainsi qu'il est fondamental de donner à chaque citoyen européen, quel que soit le territoire où il réside, les mêmes opportunités de développement, d'accès à l'éducation, à la formation, au savoir etc. Il s'agit d'un véritable droit dont doivent jouir nos concitoyens et que la Charte devrait, par conséquent, prendre légitimement en considération.

Comme vous pouvez le constater, il s'agit de deux principes de base qui nous semblent devoir être absolument affirmés et qui donc à ce titre trouvent toute leur place au sein d'une telle charte. De toute évidence, leur prise en compte et leur affirmation constituent aux yeux de la CRPM une condition indispensable pour une bonne poursuite du processus d'intégration européenne.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 4 May 2000**CHARTE 4265/00****CONTRIB 138****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a contribution with specific reference to the revised European Social Charter by Mr. Klaus Lörcher. ¹

¹ This text has been submitted in English language only.

Contribution
to the
Draft Charter of Fundamental Rights
of the European Union

(CHARTE 4112/2/00 REV 2)

FUNDAMENTAL SOCIAL RIGHTS
with specific reference
to the
REVISED EUROPEAN SOCIAL CHARTER

by Klaus Lörcher

March 2000

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Introduction

This contribution to the Draft Charter of Fundamental Rights of the European Union is aimed at facilitating the work on the formulation of the fundamental social rights. Its basis is the Presidency note (CHARTE 4112/2/00 REV 2) containing the 'list of rights'.

Following the principal line of the Presidency note the contribution is mainly based on the Revised European Social Charter (ESC) of the Council of Europe. In guaranteeing the social rights the ESC is the indivisible counterpart of the European Convention on Human Rights.

The first part of the contribution is devoted to the comparison of the short description in the 'list of rights' with wording of the ESC of the respective rights.

Furthermore, the contribution aims at showing that a significant number of rights contained in the Revised European Social Charter have not been incorporated in the 'list of rights' as yet. Thus, the second part of this paper.

In general, these remarks could be seen in the context of the references in CHARTE 4124/00 (CONTRIB 19) to the Revised European Social Charter and should be seen as argument to prevent any further progress in respect of fundamental social rights.

**PART I: FUNDAMENTAL SOCIAL RIGHTS CONTAINED IN THE REVISED
EUROPEAN SOCIAL CHARTER AND REFERRED TO IN THE LIST (CHARTE
4112/2/00 REV 2)**

This table aims at comparing the list of economic and social rights contained in CHARTE 4112/2/00 REV 2 (the list) with the wording² of the

- Revised European Social Charter (ESC)³ and the
- Community Charter of Fundamental Social Rights of Workers (Com.Ch.).

Besides the references in the list to the

- Treaty establishing the European Community (EC) and
- the Declaration of fundamental rights and freedoms adopted by the European Parliament on 12 April 1989 (EP Decl.)

it further adds short references to

- secondary legislation in the social policy field by EC Directives⁴ (EC Dir.) and
- ILO Conventions⁵ (ILO Conv.) relevant to the rights in question.

² The text in 'Arial' is quoting CHARTE 4112/2/00 REV 2; all additions to this text appear in 'Times New Roman'.

³ The text of the provisions of the ESC does not contain the horizontal provisions in Part V of the ESC and in the Appendix.

⁴ These references are not exhaustive; in particular all the individual directives on safety and health are not mentioned.

⁵ These references are not exhaustive; in general they stick to the most recent Convention. Furthermore, Recommendations are not mentioned either.

COMPARATIVE TABLE FOR SOCIAL RIGHTS (CHARTE 4112/2/00 REV 2)

No.	Description	right or objective	ESC	(Revised) European Social Charter (ESC)	Com Ch.	Community Charter on Fundamental Social Rights of Workers (Com.Ch.)	EC	EP Decl	EC Dir.	ILO Conv
			Article¹	With a view to ensuring the effective exercise of the right ..., the Parties undertake ²	Point		Article	Article		No.
(13) ³	Right to education and vocational training, freedom of choice of method of education ⁴		10	[see No. 7]	15	[see No. 7]	150	16		
(14)	Freedom of association and assembly, including freedom to demonstrate, freedom to form trade unions and freedom to join a political party		5	that national law shall not be such as to impair, nor shall it be so applied as to impair, this freedom. The extent to which the guarantees provided for in this article shall apply to the police shall be determined by national laws or regulations. The principle governing the application to the members of the armed forces of these guarantees and the extent to which they shall apply to persons in this category shall equally be determined by national laws or regulations.	11	Employers and workers of the European Community shall have the right of association in order to constitute professional organizations or trade unions of their choice for the defence of their economic and social interests. Every employer and every worker shall have the freedom to join or not to join such organizations without any personal or occupational damage being thereby suffered by him.				87

¹ The figures in []-brackets refer to the paragraphs of the articles of the ESC

² This is the introductory part of every article of the European Social Charter, it has to be complemented by the right in question.

³ Nos. (13) and (14) refer to the first part of rights in the list of CHARTE 4112/2/00 REV 2; the following numbers refer to the part 'Economic and social right/objectives'

⁴ For the new formulation for the "Right to education" see CHARTE 4149/00, CONVENT 13, Art. 16 (vocational training is not mentioned)

No.	Description	right or objective	ESC	(Revised) European Social Charter (ESC)	Com Ch.	Community Charter on Fundamental Social Rights of Workers (Com.Ch.)	EC	EP Decl	EC Dir.	ILO Conv
1.	Right to work	Objective of a high level of employment,	1 [1]	to accept as one of their primary aims and responsibilities the achievement and maintenance of as high and stable a level of employment as possible, with a view to the attainment of full employment;			127			122
		freedom to choose and engage in an occupation	1 [2]	to protect effectively the right of the worker to earn his living in an occupation freely entered upon;	4	Every individual shall be free to choose and engage in an occupation according to the regulations governing each occupation.				
2.	Right to safety and health at work	right or political objective	3 [1]	to formulate, implement and periodically review a coherent national policy on occupational safety, occupational health and the working environment. The primary aim of this policy shall be to improve occupational safety and health and to prevent accidents and injury to health arising out of, linked with or occurring in the course of work, particularly by minimising the causes of hazards inherent in the working environment;	19	Every worker must enjoy satisfactory health and safety conditions. Appropriate measures must be taken in order to achieve further harmonisation of conditions in this area while maintaining the improvements made. These measures shall take account, in particular, of the need for training, information, consultation and balanced participation of workers as regards the risk incurred and the steps to eliminate or reduce them. The provisions regarding implementation of internal market shall help to ensure such protection.	140	13	89/ 391 and a large number of individual directives	155 and a large number of further Conventions
			3 [2]	to issue safety and health regulations;						
			3 [3]	to provide for the enforcement of such regulations by measures of supervision;						
			3 [4]	to promote the progressive development of occupational health services for all workers with essentially preventive and advisory functions.						

No.	Description	right or objective	ESC	(Revised) European Social Charter (ESC)	Com Ch.	Community Charter on Fundamental Social Rights of Workers (Com.Ch.)	EC	EP Decl	EC Dir.	ILO Conv
3.	Fair remuneration and minimum wage	Distinguish what falls under a right and what constitutes a political right	4 ⁵ [1]	to recognise the right of workers to a remuneration such as will give them and their families a decent standard of living;	5 ⁶	All employment shall be fairly remunerated. To this end, in accordance with arrangements applying in each country: (i) workers shall be assured of an equitable wage, i.e. a wage sufficient to enable them to have a decent standard of living; (ii) workers subject to terms of employment other than an open-ended full-time contract shall benefit from an equitable reference wage;		13		
			4 [5]	to permit deductions from wages only under conditions and to the extent prescribed by national laws or regulations or fixed by collective agreements or arbitration awards.		(iii) wages may be withheld, seized or transferred only in accordance with national law; such provisions should entail measures enabling the worker concerned to continue to enjoy the necessary means of subsistence for him or herself and his or her family.				95
4.	Right to weekly rest period and	right or political objective	2 [5]	to ensure a weekly rest period which shall, as far as possible, coincide with the day recognised by tradition or custom in the country or region concerned as a day of rest;	8	Every worker of the European Community shall have a right to a weekly rest period and to annual paid leave, the duration of which must be progressively harmonized in accordance with national practices.			93/104 Art. 5	14, 106
	paid holidays		2 [3]	to provide for a minimum of four weeks' annual holiday with pay;					93/104 Art. 7	132

⁵ Last part of Art. 4 ESC: „The exercise of these rights shall be achieved by freely concluded collective agreements, by statutory wage-fixing machinery, or by other means appropriate to national conditions.“

⁶ Although Point 4 of the Community Charter is mentioned here, it is obvious that Point 5 was meant (see the correct reference in No. 1 to Point 4 of the Community Charter).

No.	Description	right or objective	ESC	(Revised) European Social Charter (ESC)	Com Ch.	Community Charter on Fundamental Social Rights of Workers (Com.Ch.)	EC	EP Decl	EC Dir.	ILO Conv
5.	Pensions ⁷	right or political objective	23	to adopt or encourage, either directly or in co-operation with public or private organisations, appropriate measures designed in particular: to enable elderly persons to remain full members of society for as long as possible, by means of: a adequate resources enabling them to lead a decent life and play an active part in public, social and cultural life;	24 and	According to the arrangements applying in each country: 24. Every worker of the European Community must, at the time of retirement, be able to enjoy resources affording him or her a decent standard of living.				
				to enable elderly persons to choose their life-style freely and to lead independent lives in their familiar surroundings for as long as they wish and are able, by means of: b the health care and the services necessitated by their state;	25	25. Any person who has reached retirement age but who is not entitled to a pension or who does not have other means of subsistence, must be entitled to sufficient resources and to medical and social assistance specifically suited to his needs.				
6.	Free access to placement services	right or political objective	1 [3]	To establish or maintain free employment services for all workers;	6	Every individual must be able to have access to public placement services free of charge.				96
7.	Vocational guidance and continuing training	right or political objective	9 and ...	9. to provide or promote, as necessary, a service which will assist all persons, including the handicapped, to solve problems related to occupational choice and progress, with due regard to the individual's characteristics and their relation to occupational opportunity: this assistance should be available free of charge, both to young persons, including schoolchildren, and to adults.	15	Every worker of the European Community must be able to have access to vocational training and to benefit therefrom throughout his working life. In the conditions governing access to such training there may be no discrimination on grounds of nationality. The competent public authorities, undertakings or the two sides of industry, each within their own sphere of				142

⁷ The word 'pension' might not be correct in this context, since this area is linked to 'social security' (see No. 12), whereas the principal area here seems to be the general protection of the elderly people in respect of their financial resources

No.	Description	right or objective	ESC	(Revised) European Social Charter (ESC)	Com Ch.	Community Charter on Fundamental Social Rights of Workers (Com.Ch.)	EC	EP Decl	EC Dir.	ILO Conv
						competence, should set up continuing and permanent training systems enabling every person to undergo retraining more especially through leave for training purposes, to improve his skills or to acquire new skills, particularly in the light of technical developments.				
			10 [1]	To provide or promote, as necessary, the technical and vocational training of all persons, including the handicapped, in consultation with employers' and workers' organisations, and to grant facilities for access to higher technical and university education, based solely on individual aptitude;						
			10 [2]	To provide or promote a system of apprenticeship and other systematic arrangements for training young boys and girls in their various employments;						
			10 [3]	to provide or promote, as necessary: a adequate and readily available training facilities for adult workers; b special facilities for the retraining of adult workers needed as a result of technological development or new trends in employment;						
			10 [4]	to provide or promote, as necessary, special measures for the retraining and reintegration of the long-term unemployed;						
			10 [5]	to encourage the full utilisation of the facilities provided by appropriate measures such as: a reducing or abolishing any fees or charges;						

No.	Description	right or objective	ESC	(Revised) European Social Charter (ESC)	Com Ch.	Community Charter on Fundamental Social Rights of Workers (Com.Ch.)	EC	EP Decl	EC Dir.	ILO Conv
				<p>b granting financial assistance in appropriate cases;</p> <p>c including in the normal working hours time spent on supplementary training taken by the worker, at the request of his employer, during employment;</p> <p>d ensuring, through adequate supervision, in consultation with the employers' and workers' organisations, the efficiency of apprenticeship and other training arrangements for young workers, and the adequate protection of young workers generally.</p>						
8.	Workers' right to information and consultation		6 [1]	to promote joint consultation between workers and employers; ⁸	17	<p>Information, consultation and participation for workers must be developed along appropriate lines, taking account of the practices in force in the various Member States.</p> <p>This shall apply especially in companies having establishments in two or more Members States of the European Community.</p>	137	14	Many articles in individual directives; 94/45 ⁹	
9.	Right to collective bargaining		6 [2]	to promote, where necessary and appropriate, machinery for voluntary negotiations between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements;	12	<p>Employers or employers' organizations, on the one hand, and workers' organizations, on the other, shall have to right to negotiate and conclude collective agreements under the condition laid down by national legislation and practice.</p> <p>The dialogue between the two sides of industry at European level which must be developed, may, if the parties deem it desirable, result in contractual relations at</p>	137			98

⁸ The reference should not only contain Art. 6 para. 1 ESC, but also Art. 21 ESC ('The right to information and consultation') and Art. 22 ESC ('The right to take part in the determination and improvement of working conditions and working environment')

⁹ European Works Council Directive

No.	Description	right or objective	ESC	(Revised) European Social Charter (ESC)	Com Ch.	Community Charter on Fundamental Social Rights of Workers (Com.Ch.)	EC	EP Decl	EC Dir.	ILO Conv
						inter-occupational and sectoral level.				
10.	Right to strike		6 [4]	and recognise: the right of workers and employers to collective action in cases of conflicts of interest, including the right to strike, subject to obligations that might arise out of collective agreements previously entered into.	13	The right to resort to collective action in the event of a conflict of interests shall include the right to strike, subject to obligations arising under national regulations and collective agreements. In order to facilitate the settlement of industrial disputes the establishment and utilization at the appropriate levels of conciliation, mediation and arbitration procedures should be encouraged in accordance with national practice. ¹⁰		14		¹¹
11.	Right to health	right or political objective	11	either directly or in co-operation with public or private organisations, to take appropriate measures designed <i>inter alia</i> :	19	[see under No. 2]	152	15		
			11 [1]	to remove as far as possible the causes of ill-health;						
			11 [2]	to provide advisory and educational facilities for the promotion of health and the encouragement of individual responsibility in matters of health;						
			11 [3]	to prevent as far as possible epidemic, endemic and other diseases, as well as accidents.						
12.	Right to social security, right	right or political	{12}	to establish or maintain a system of social security;	10	According to the arrangement applying in		15		102, 121,

¹⁰ see in this respect ESC Art. 6 para. 3: to promote the establishment and use of appropriate machinery for conciliation and voluntary arbitration for the settlement of labour disputes; (which has not been referred to expressly in the list)

¹¹ Case-law of the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) and Committee on Freedom of Association (CFA)

No.	Description	right or objective	ESC	(Revised) European Social Charter (ESC)	Com Ch.	Community Charter on Fundamental Social Rights of Workers (Com.Ch.)	EC	EP Decl	EC Dir.	ILO Conv
	to social and medical assistance	objective	¹² [1]			each country: 10. Every worker of the European Community shall have a right to adequate social protection and shall, whatever his status and whatever the size of the undertaking in which he is employed, enjoy an adequate level of social security benefits. Persons who have been unable to enter or re-enter the labour market and have no means of subsistence must be able to receive sufficient resources and social assistance in keeping with their particular situation.				128, 130, 168.
			{12} [2]	to maintain the social security system at a satisfactory level at least equal to that necessary for the ratification of the European Code of Social Security;						
			{12} [3]	to endeavour to raise progressively the system of social security to a higher level;						
			{12} [4]	to take steps, by the conclusion of appropriate bilateral and multilateral agreements or by other means, and subject to the conditions laid down in such agreements, in order to ensure: a equal treatment with their own nationals of the nationals of other Parties in respect of social security rights, including the retention of benefits arising out of social security legislation, whatever movements the						

¹² The list is not referring to Art. 12 ESC (that is why Art. 12 only appears in { }-brackets); but the reference to Point 10 of the Community Charter makes it perfectly clear that this is the content of the 'right to social security' (Art. 13 ESC, which is referred to alone only deals with the field of the 'right to social and medical assistance').

No.	Description	right or objective	ESC	(Revised) European Social Charter (ESC)	Com Ch.	Community Charter on Fundamental Social Rights of Workers (Com.Ch.)	EC	EP Decl	EC Dir.	ILO Conv
				persons protected may undertake between the territories of the Parties; b the granting, maintenance and resumption of social security rights by such means as the accumulation of insurance or employment periods completed under the legislation of each of the Parties.						
			13 [1]	to ensure that any person who is without adequate resources and who is unable to secure such resources either by his own efforts or from other sources, in particular by benefits under a social security scheme, be granted adequate assistance, and, in case of sickness, the care necessitated by his condition;						
			13 [2]	to ensure that persons receiving such assistance shall not, for that reason, suffer from a diminution of their political or social rights;						
			13 [3]	to provide that everyone may receive by appropriate public or private services such advice and personal help as may be required to prevent, to remove, or to alleviate personal or family want;						
			13 [4]	to apply the provisions referred to in paragraphs 1, 2 and 3 of this article on an equal footing with their nationals to nationals of other Parties lawfully within their territories, in accordance with their obligations under the European Convention on Social and Medical						

No.	Description	right or objective	ESC	(Revised) European Social Charter (ESC)	Com Ch.	Community Charter on Fundamental Social Rights of Workers (Com.Ch.)	EC	EP Decl	EC Dir.	ILO Conv
				Assistance, signed at Paris on 11 December 1953.						
13.	Protection of maternity		8 [1]	to provide either by paid leave, by adequate social security benefits or by benefits from public funds for employed women to take leave before and after childbirth up to a total of at least fourteen weeks;					92/85 Art. 8	103, ¹³
			8 [2]	to consider it as unlawful for an employer to give a woman notice of dismissal during the period from the time she notifies her employer that she is pregnant until the end of her maternity leave, or to give her notice of dismissal at such a time that the notice would expire during such a period;					92/85 Art. 10	158 Art. 5 lit. e
			8 [3]	to provide that mothers who are nursing their infants shall be entitled to sufficient time off for this purpose;					-	
			8 [4]	to regulate the employment in night work of pregnant women, women who have recently given birth and women nursing their infants;					92/85 Art. 7	89 with Prot.
			8 [5]	to prohibit the employment of pregnant women, women who have recently given birth or who are nursing their infants in underground mining and all other work which is unsuitable by reason of its dangerous, unhealthy or arduous nature and to take appropriate measures to protect the employment rights of these women.					92/85 Art. 6	45
14.	Protection of children and		{7} ¹⁴ [1]	to provide that the minimum age of admission to employment shall be 15 years, subject to exceptions	20 seq.	20. Without prejudice to such rules as may be more favourable to young people, in			94/33 Art. 4	138

¹³ The International Labour Conference 2000 will most probably adopt a revised Convention

No.	Description	right or objective	ESC	(Revised) European Social Charter (ESC)	Com Ch.	Community Charter on Fundamental Social Rights of Workers (Com.Ch.)	EC	EP Decl	EC Dir.	ILO Conv
	young persons			for children employed in prescribed light work without harm to their health, morals or education;		particular those ensuring their preparation for work through vocational training, and subject to derogations limited to certain light work, the minimum employment age must not be lower than the minimum school-leaving age and, in any case, not lower than 15 years.				
			{7} [2]	To provide that the minimum age of admission to employment shall be 18 years with respect to prescribed occupations regarded as dangerous or unhealthy;					94/33 Art. 7	
			{7} [3]	To provide that persons who are still subject to compulsory education shall not be employed in such work as would deprive them of the full benefit of their education;						
			{7} [5]	To recognise the right of young workers and apprentices to a fair wage or other appropriate allowances;		21. Young people who are in gainful employment must receive equitable remuneration in accordance with national practice.			-	
						22. Appropriate measures must be taken to adjust labour regulations applicable to young workers so that their specific development and vocational training and access to employment needs are met.				
			{7} [4] and	4. to provide that the working hours of persons under 18 years of age shall be limited in accordance with the needs of their development, and particularly with their		The duration of work must, in particular be limited - without it being possible to circumvent this limitation through recourse			94/33 Art. 8	79

¹⁴ The list is not referring to Art. 7 ESC (that is why Art. 7 only appears in []-brackets); but the reference to Point 20 seq. Of the Community Charter makes it perfectly clear that this is the content of the 'protection of children and young workers' (Art. 17 ESC, which is referred to instead deals with the wider field of 'the right of children and young persons to social, legal and economic protection'.

No.	Description	right or objective	ESC	(Revised) European Social Charter (ESC)	Com Ch.	Community Charter on Fundamental Social Rights of Workers (Com.Ch.)	EC	EP Decl	EC Dir.	ILO Conv
			[8]	need for vocational training; 8. to provide that persons under 18 years of age shall not be employed in night work with the exception of certain occupations provided for by national laws or regulations;		to overtime - and night work prohibited in case of workers under 18 years of age, save in the case of certain jobs laid down in national legislation or regulations.			and 9	
			{7} [6]	To provide that the time spent by young persons in vocational training during the normal working hours with the consent of the employer shall be treated as forming part of the working day;		23. Following the end of compulsory education, young people must be entitled to receive initial vocational training of a sufficient duration to enable them to adapt to the requirements of their future working life; for young workers, such training should take place during working hours.			94/33 Art. 8 para. 3	
			{7} [9]	to provide that persons under 18 years of age employed in occupations prescribed by national laws or regulations shall be subject to regular medical control;						77 and 78
			17	either directly or in co-operation with public and private organisations, to take all appropriate and necessary measures designed: a to ensure that children and young persons, taking account of the rights and duties of their parents, have the care, the assistance, the education and the training they need, in particular by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose; b to protect children and young persons against negligence, violence or exploitation; c to provide protection and special aid from the state for children and young persons temporarily or definitively deprived of their family's support;						

No.	Description	right or objective	ESC	(Revised) European Social Charter (ESC)	Com Ch.	Community Charter on Fundamental Social Rights of Workers (Com.Ch.)	EC	EP Decl	EC Dir.	ILO Conv
			17 [2]	to provide to children and young persons a free primary and secondary education as well as to encourage regular attendance at schools.						
15.	Integration of disabled persons		15 [1]	to take the necessary measures to provide persons with disabilities with guidance, education and vocational training in the framework of general schemes wherever possible or, where this is not possible, through specialised bodies, public or private;	26	All disabled persons, whatever the origin and nature of their disablement, must be entitled to additional concrete measures aimed at improving their social and professional integration. These measures must concern, in particular, according to the capacities of the beneficiaries, vocational training ...				159
			15 [2]	to promote their access to employment through all measures tending to encourage employers to hire and keep in employment persons with disabilities in the ordinary working environment and to adjust the working conditions to the needs of the disabled or, where this is not possible by reason of the disability, by arranging for or creating sheltered employment according to the level of disability. In certain cases, such measures may require recourse to specialised placement and support services;		... ergonomics ,...				
			15 [3]	to promote their full social integration and participation in the life of the community in particular through measures, including technical aids, aiming to overcome barriers to communication and mobility and enabling access to transport, housing, cultural activities and leisure.		... accessibility, mobility, means of transport and housing.				

I. PART II: FUNDAMENTAL SOCIAL RIGHTS CONTAINED IN THE REVISED EUROPEAN SOCIAL CHARTER AND NOT REFERRED TO IN THE LIST (CHARTE 4112/2/00 REV 2)

The following compilation is based on Part II of the Revised European Social Charter. It contains all substantive articles. Only those provisions which have been taken account of in the 'list of rights' have been taken off, instead one will find a special reference to the relevant number in Part I "[See No. in the list in Part I]".

Many of these major deficiencies are even less understandable, since the rights are already recognised not only in the Revised European Social Charter but also by EC Directives and/or ILO Conventions.

Rights¹	ESC provisions	EC Directives	ILO Conventions No.
Information on essential aspects of the contract	Art. 2 para. 6	91/533	
Protection in case of night work	Art. 2 para.7	93/104 Art. 8 seq.	171
Period of notice for termination of employment	Art. 4 para. 4		158
Migrant Workers	Art. 18 and 19		97 and 143
Termination of employment	Art. 24		158
Protection of workers' claims in the event of the insolvency of their employer	Art 25	80/987	
Workers with family responsibilities	Art. 27		156
Workers' representatives protection in the undertaking and facilities to be accorded to them	Art. 28		135
Information and consultation in collective redundancy procedures	Art. 29	75/129	158

Some 'new' provisions remain. The main elements should also be taken into account when formulating fundamental social rights in the new perspective of the European Union and European Community, which is also standing for these rights²:

- right to dignity at work (Art. 26 ESC)

¹ Taken from the Revised European Social Charter in numerical order

² be it be Recommendations (dignity at work) or by programmes (poverty and social exclusion).

- poverty and social exclusion (Art. 30 ESC)
- right to housing (Art. 31).

N.B.

Although the following provisions also have not been taken account of in the list there seem to be specific reasons

Content	Provisions of the ESC	Possible Reasons
Equality of men and women	Art. 4 par. 3 and Art. 20 ESC	New Art. 141 EC
Consultation and contribution	Art. 21 and 22 ESC	See No. 8 in Part I

EUROPEAN SOCIAL CHARTER

(Revised)
Strasbourg, 3.V.1996
ETS No. 163

Part II

Article 1 - The right to work

With a view to ensuring the effective exercise of the right to work, the Parties undertake:

1. [See No. 1 in the list in Part I]
2. [See No. 1 in the list in Part I]
3. [See No. 1 in the list in Part I]
4. to provide or promote appropriate vocational guidance, training and rehabilitation.³

Article 2 - The right to just conditions of work

With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake:

1. [See No. 4 in the list in Part I]
2. to provide for public holidays with pay;
3. [See No. 4 in the list in Part I]
4. to eliminate risks in inherently dangerous or unhealthy occupations, and where it has not yet been possible to eliminate or reduce sufficiently these risks, to provide for either a reduction of working hours or additional paid holidays for workers engaged in such occupations;
5. to ensure a weekly rest period which shall, as far as possible, coincide with the day recognised by tradition or custom in the country or region concerned as a day of rest;
6. to ensure that workers are informed in written form, as soon as possible, and in any event not later than two months after the date of commencing their employment, of the essential aspects of the contract or employment relationship;
7. to ensure that workers performing night work benefit from measures which take account of the special nature of the work.

Article 3 - The right to safe and healthy working conditions

With a view to ensuring the effective exercise of the right to safe and healthy working conditions, the Parties undertake, in consultation with employers' and

³ Although this provision has not been referred to expressly it could be regarded to be covered by No. 7 of the list in Part I

workers' organisations:

1. [See No. 2 in the list in Part I]
2. [See No. 2 in the list in Part I]
3. [See No. 2 in the list in Part I]
4. [See No. 2 in the list in Part I]

Article 4 - The right to a fair remuneration

With a view to ensuring the effective exercise of the right to a fair remuneration, the Parties undertake:

1. [See No. 3 in the list in Part I]
2. to recognise the right of workers to an increased rate of remuneration for overtime work, subject to exceptions in particular cases;
3. to recognise the right of men and women workers to equal pay for work of equal value;
4. to recognise the right of all workers to a reasonable period of notice for termination of employment;
5. [See No. 3 in the list in Part I].

The exercise of these rights shall be achieved by freely concluded collective agreements, by statutory wage-fixing machinery, or by other means appropriate to national conditions.

Article 5 - The right to organise

With a view to ensuring or promoting the freedom of workers and employers to form local, national or international organisations for the protection of their economic and social interests and to join those organisations, the Parties undertake

[See No. (13) in the list in Part I]

Article 6 - The right to bargain collectively

With a view to ensuring the effective exercise of the right to bargain collectively, the Parties undertake:

1. [See No. 8 in the list in Part I]
2. [See No. 9 in the list in Part I]
3. [See No. 10 in the list in Part I]

and

4. [See No. 10 in the list in Part I]

Article 7 - The right of children and young persons to protection

With a view to ensuring the effective exercise of the right of children and young persons to protection, the Parties undertake:

1. [See No. 14 in the list in Part I]
2. [See No. 14 in the list in Part I]
3. [See No. 14 in the list in Part I]
4. [See No. 14 in the list in Part I]
5. [See No. 14 in the list in Part I]
6. [See No. 14 in the list in Part I]
7. to provide that employed persons of under 18 years of age shall be entitled to a minimum of four weeks' annual holiday with pay;⁴
8. [See No. 14 in the list in Part I]
9. [See No. 14 in the list in Part I]
10. to ensure special protection against physical and moral dangers to which children and young persons are exposed, and particularly against those resulting directly or indirectly from their work.

Article 8 - The right of employed women to protection of maternity

With a view to ensuring the effective exercise of the right of employed women to the protection of maternity, the Parties undertake:

1. [See No. 13 in the list in Part I]
2. [See No. 13 in the list in Part I]
3. [See No. 13 in the list in Part I]
4. [See No. 13 in the list in Part I]
5. [See No. 13 in the list in Part I]

Article 9 - The right to vocational guidance

With a view to ensuring the effective exercise of the right to vocational guidance, the Parties undertake

[See No. 7 in the list in Part I]

Article 10 - The right to vocational training

With a view to ensuring the effective exercise of the right to vocational training, the Parties undertake:

1. [See No. 7 in the list in Part I]
2. [See No. 7 in the list in Part I]
3. [See No. 7 in the list in Part I]

⁴ Since the general provision on paid leave has been included [see No. 4 in the list in Part I] and since there is no higher standard required for young persons, this provision seems to be covered by the list.

4. [See No. 7 in the list in Part I]

Article 11 - The right to protection of health

With a view to ensuring the effective exercise of the right to protection of health, the Parties undertake, either directly or in co-operation with public or private organisations, to take appropriate measures designed *inter alia*:

1. [See No. 11 in the list in Part I]
2. [See No. 11 in the list in Part I]
3. [See No. 11 in the list in Part I]

Article 12 - The right to social security

With a view to ensuring the effective exercise of the right to social security, the Parties undertake:

1. [See No. 12 in the list in Part I]
2. [See No. 12 in the list in Part I]
3. [See No. 12 in the list in Part I]
4. [See No. 12 in the list in Part I]

Article 13 - The right to social and medical assistance

With a view to ensuring the effective exercise of the right to social and medical assistance, the Parties undertake:

1. [See No. 12 in the list in Part I]
2. [See No. 12 in the list in Part I]
3. [See No. 12 in the list in Part I]
4. [See No. 12 in the list in Part I]

Article 14 - The right to benefit from social welfare services

With a view to ensuring the effective exercise of the right to benefit from social welfare services, the Parties undertake:

1. to promote or provide services which, by using methods of social work, would contribute to the welfare and development of both individuals and groups in the community, and to their adjustment to the social environment;
2. to encourage the participation of individuals and voluntary or other organisations in the establishment and maintenance of such services.

Article 15 - The right of persons with disabilities to independence, social integration and participation in the life of the community

With a view to ensuring to persons with disabilities, irrespective of age and the nature and origin of their disabilities, the effective exercise of the right to independence, social integration and participation in the life of the community, the Parties undertake, in particular:

1. [See No. 15 in the list in Part I]
2. [See No. 15 in the list in Part I]
3. [See No. 15 in the list in Part I]

Article 16 - The right of the family to social, legal and economic protection

With a view to ensuring the necessary conditions for the full development of the family, which is a fundamental unit of society, the Parties undertake to promote the economic, legal and social protection of family life by such means as social and family benefits, fiscal arrangements, provision of family housing, benefits for the newly married and other appropriate means.

Article 17 - The right of children and young persons to social, legal and economic protection

With a view to ensuring the effective exercise of the right of children and young persons to grow up in an environment which encourages the full development of their personality and of their physical and mental capacities, the Parties undertake,

1. [See No. 14 in the list in Part I]
2. [See No. 14 in the list in Part I]

Article 18 - The right to engage in a gainful occupation in the territory of other Parties

With a view to ensuring the effective exercise of the right to engage in a gainful occupation in the territory of any other Party, the Parties undertake:

1. to apply existing regulations in a spirit of liberality;
2. to simplify existing formalities and to reduce or abolish chancery dues and other charges payable by foreign workers or their employers;
3. to liberalise, individually or collectively, regulations governing the employment of foreign workers;

and recognise:

4. the right of their nationals to leave the country to engage in a gainful occupation in the territories of the other Parties.

Article 19 - The right of migrant workers and their families to protection and assistance

With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Party, the Parties undertake:

1. to maintain or to satisfy themselves that there are maintained adequate and free services to assist such workers, particularly in obtaining accurate information, and to take all appropriate steps, so far as national laws and regulations permit, against misleading propaganda relating to emigration and immigration;

2. to adopt appropriate measures within their own jurisdiction to facilitate the departure, journey and reception of such workers and their families, and to provide, within their own jurisdiction, appropriate services for health, medical attention and good hygienic conditions during the journey;
3. to promote co-operation, as appropriate, between social services, public and private, in emigration and immigration countries;
4. to secure for such workers lawfully within their territories, insofar as such matters are regulated by law or regulations or are subject to the control of administrative authorities, treatment not less favourable than that of their own nationals in respect of the following matters:
 - a remuneration and other employment and working conditions;
 - b membership of trade unions and enjoyment of the benefits of collective bargaining;
 - c accommodation;
5. to secure for such workers lawfully within their territories treatment not less favourable than that of their own nationals with regard to employment taxes, dues or contributions payable in respect of employed persons;
6. to facilitate as far as possible the reunion of the family of a foreign worker permitted to establish himself in the territory;
7. to secure for such workers lawfully within their territories treatment not less favourable than that of their own nationals in respect of legal proceedings relating to matters referred to in this article;
8. to secure that such workers lawfully residing within their territories are not expelled unless they endanger national security or offend against public interest or morality;
9. to permit, within legal limits, the transfer of such parts of the earnings and savings of such workers as they may desire;
10. to extend the protection and assistance provided for in this article to self-employed migrants insofar as such measures apply;
11. to promote and facilitate the teaching of the national language of the receiving state or, if there are several, one of these languages, to migrant workers and members of their families;
12. to promote and facilitate, as far as practicable, the teaching of the migrant worker's mother tongue to the children of the migrant worker.

Article 20 - The right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex

With a view to ensuring the effective exercise of the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex, the Parties undertake to recognise that right and to take appropriate measures to ensure or promote its application in the following fields:

- a access to employment, protection against dismissal and occupational reintegration;
- b vocational guidance, training, retraining and rehabilitation;
- c terms of employment and working conditions, including remuneration;
- d career development, including promotion.

Article 21 - The right to information and consultation

With a view to ensuring the effective exercise of the right of workers to be informed and consulted within the undertaking, the Parties undertake to adopt or encourage measures enabling workers or their representatives, in accordance with national legislation and practice:

- a to be informed regularly or at the appropriate time and in a comprehensible way about the economic and financial situation of the undertaking employing them, on the understanding that the disclosure of certain information which could be prejudicial to the undertaking may be refused or subject to confidentiality; and
- b to be consulted in good time on proposed decisions which could substantially affect the interests of workers, particularly on those decisions which could have an important impact on the employment situation in the undertaking.

Article 22 - The right to take part in the determination and improvement of the working conditions and working environment

With a view to ensuring the effective exercise of the right of workers to take part in the determination and improvement of the working conditions and working environment in the undertaking, the Parties undertake to adopt or encourage measures enabling workers or their representatives, in accordance with national legislation and practice, to contribute:

- a to the determination and the improvement of the working conditions, work organisation and working environment;
- b to the protection of health and safety within the undertaking;
- c to the organisation of social and socio-cultural services and facilities within the undertaking;
- d to the supervision of the observance of regulations on these matters.

Article 23 - The right of elderly persons to social protection

With a view to ensuring the effective exercise of the right of elderly persons to social protection, the Parties undertake to adopt or encourage, either directly or in co-operation with public or private organisations, appropriate measures designed in particular:

- to enable elderly persons to remain full members of society for as long as possible, by means of:
 - a [See No. 5 in the list in Part I]
 - b provision of information about services and facilities available for elderly

persons and their opportunities to make use of them;

to enable elderly persons to choose their life-style freely and to lead independent lives in their familiar surroundings for as long as they wish and are able, by means of:

a provision of housing suited to their needs and their state of health or of adequate support for adapting their housing;

b [See No. 12 in the list in Part I]

to guarantee elderly persons living in institutions appropriate support, while respecting their privacy, and participation in decisions concerning living conditions in the institution.

Article 24 - The right to protection in cases of termination of employment

With a view to ensuring the effective exercise of the right of workers to protection in cases of termination of employment, the Parties undertake to recognise:

a the right of all workers not to have their employment terminated without valid reasons for such termination connected with their capacity or conduct or based on the operational requirements of the undertaking, establishment or service;

b the right of workers whose employment is terminated without a valid reason to adequate compensation or other appropriate relief.

To this end the Parties undertake to ensure that a worker who considers that his employment has been terminated without a valid reason shall have the right to appeal to an impartial body.

Article 25 - The right of workers to the protection of their claims in the event of the insolvency of their employer

With a view to ensuring the effective exercise of the right of workers to the protection of their claims in the event of the insolvency of their employer, the Parties undertake to provide that workers' claims arising from contracts of employment or employment relationships be guaranteed by a guarantee institution or by any other effective form of protection.

Article 26 - The right to dignity at work

With a view to ensuring the effective exercise of the right of all workers to protection of their dignity at work, the Parties undertake, in consultation with employers' and workers' organisations:

1. to promote awareness, information and prevention of sexual harassment in the workplace or in relation to work and to take all appropriate measures to protect workers from such conduct;
2. to promote awareness, information and prevention of recurrent reprehensible or distinctly negative and offensive actions directed against individual workers in the workplace or in relation to work and to take all appropriate measures to protect workers from such conduct.

Article 27 - The right of workers with family responsibilities to equal opportunities and equal treatment

With a view to ensuring the exercise of the right to equality of opportunity and treatment for men and women workers with family responsibilities and between such workers and other workers, the Parties undertake:

1. to take appropriate measures:
 - a to enable workers with family responsibilities to enter and remain in employment, as well as to re-enter employment after an absence due to those responsibilities, including measures in the field of vocational guidance and training;
 - b to take account of their needs in terms of conditions of employment and social security;
 - c to develop or promote services, public or private, in particular child daycare services and other childcare arrangements;
2. to provide a possibility for either parent to obtain, during a period after maternity leave, parental leave to take care of a child, the duration and conditions of which should be determined by national legislation, collective agreements or practice;
3. to ensure that family responsibilities shall not, as such, constitute a valid reason for termination of employment.

Article 28 - The right of workers' representatives to protection in the undertaking and facilities to be accorded to them

With a view to ensuring the effective exercise of the right of workers' representatives to carry out their functions, the Parties undertake to ensure that in the undertaking:

- a they enjoy effective protection against acts prejudicial to them, including dismissal, based on their status or activities as workers' representatives within the undertaking;
- b they are afforded such facilities as may be appropriate in order to enable them to carry out their functions promptly and efficiently, account being taken of the industrial relations system of the country and the needs, size and capabilities of the undertaking concerned.

Article 29 - The right to information and consultation in collective redundancy procedures

With a view to ensuring the effective exercise of the right of workers to be informed and consulted in situations of collective redundancies, the Parties undertake to ensure that employers shall inform and consult workers' representatives, in good time prior to such collective redundancies, on ways and means of avoiding collective redundancies or limiting their occurrence and mitigating their consequences, for example by recourse to accompanying social measures aimed, in particular, at aid for the redeployment or retraining of the workers concerned.

Article 30 - The right to protection against poverty and social exclusion

With a view to ensuring the effective exercise of the right to protection against poverty and social exclusion, the Parties undertake:

a to take measures within the framework of an overall and co-ordinated approach to promote the effective access of persons who live or risk living in a situation of social exclusion or poverty, as well as their families, to, in particular, employment, housing, training, education, culture and social and medical assistance;

b to review these measures with a view to their adaptation if necessary.

Article 31 - The right to housing

With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed:

1. to promote access to housing of an adequate standard;
2. to prevent and reduce homelessness with a view to its gradual elimination;
3. to make the price of housing accessible to those without adequate resources.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 22 May 2000**CHARTE 4266/00****CONTRIB 139****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter the submission by the Society for Threatened Peoples International in occasion of the hearing on 27 April 2000. ¹

¹ This text has been submitted in German and English languages.

Towards the effective protection of minorities in the EU 's future Charter on Fundamental Rights

**Written submission by Society for Threatened Peoples International to the hearing of the
European Parliament in Brussels on 27 April 2000**

**Mr President,
Representatives of the European Parliament
and the EU Member States,
Ladies and Gentlemen,**

On behalf of the Society for Threatened Peoples (Gesellschaft für bedrohte
Völker/GfbV) International we salute you and thank you for the invitation to attend this hearing.

Our human rights organisation, which has been working for more than 30 years on behalf of
linguistic, ethnic and religious minorities subjected to discrimination and persecution in Europe and
throughout the world, welcomes the advent of a European Union Charter on Fundamental Rights. It
is high time for the growing might of the EU institutions to be balanced by the establishment of
legal rights of a binding and individually accessible nature for the people living in Europe. We note
with particular concern, however, that the draft texts of the Convention on Fundamental Rights to
date have made no provision for the necessary protection of linguistic, ethnic and religious
minorities in Europe.

Minorities are an integral part of every society. They contribute to the essential diversity of
cultures. They are therefore entitled to recognition and protection. Nevertheless time after time
minorities in Europe have become the victims of persecution, climaxing in the crimes of
genocide, class murder and mass deportation committed by the National Socialism, Fascist and
Communist dictatorships. Such crimes are still continuing in the Balkans today. Even in the stable
democracies of western Europe people are discriminated against on account of their skin
colour, language, culture or religion.

The victims of discrimination also include members of linguistic minorities and ethnic groups long-
established in Europe. Although citizens of their own national states and of the EU, they are
frequently deprived of the resources their educational and cultural institutions require. This has
resulted in a process of progressive cultural impoverishment: the „euromosaic“ study published by
the European Commission in 1996 indicated that almost half the 46 minority languages of Europe
had either only „limited“ or „no prospects of survival“.

It is the opinion of international lawyers of repute that the only effective source of protection for linguistic, ethnic, religious and similar communities is the guarantee of their collective rights. However it appears to have already been decided that, following the tradition of international agreements on human rights already in force and the constitutions of the European democracies, the Charter on Fundamental Rights will embody individual rights. It appears all the more important, then, that the Charter should incorporate an Article which guarantees **minimum rights for the members of ethnic or national, linguistic and religious minorities**. Based on Article 27 of the International Covenant on Political and Civil Rights of 1966 we propose the following form of words:

Persons belonging to ethnic or national, linguistic or religious minorities shall have the right, in community with other members of their group, to practise their religion, to promote their own culture and to use their own language in private or public.

The **outlawing of discrimination** on the grounds of race, origin, nationality, language, gender, sexual orientation, religion, ideology or political opinion is likewise imperative if minorities are to be protected. It is almost certain that the Charter on Fundamental Rights will in fact contain an Article dealing with this subject and it is essential therefore that the prohibition of discriminations should apply not only to the citizens of the Union but explicitly to all peoples within the area of the EU.

As we are aware from discussions relating, for example, to the equal status of men and women or the problems of disabled persons, discrimination applied in practice against entire groups can often only be remedied with difficulty. In order to ensure that equal opportunities for such groups is a reality, we call for „affirmative action“ along the lines of the successful American model: groups that have suffered discrimination should qualify for special support. Such support should moreover be targeted in particular at members of long-established linguistic, ethnic or national minorities. The discussion concerning whether the Charter should include political targets in addition to individual rights has been a source of controversy. Nevertheless we are now proposing that the following paragraph be added to the Article dealing with the protection of minorities:

The EU and the Member States call for specific measures to be taken to ensure the genuine equality of members of national majorities and members of linguistic, ethnic or national minorities. The EU calls for trans-border co-operation in minority regions.

We also urge the EU to give a lead regarding the prevention of genocide, mass expulsion and other grave crimes against humanity by adopting the Charter on Fundamental Rights. In addition to making this a target for political action, we would also urge the inclusion of an Article on the **right to a homeland** that would offer **individual protection from expulsion** :

1. Every person shall have the right to remain in their place of residence, their home region and their own country.
2. Every person shall have the right likewise to return of their own free decision to a place of their choice within their country of origin.

The prohibition of individual or collective expulsion, the right to a return home in safety and the freedom to choose a place of residence are already enshrined in different Articles of the International Covenant on Civil and Political Rights and in the European Convention on Human Rights and the Supplementary Protocols thereto. The right to a homeland was introduced in the Draft Declaration on Population Transfers and the Implantation of Settlers unanimously adopted by the UN Human Rights Commission on 17 April 1998.

Finally we would counsel against any attempt to limit the scope of the Fundamental Rights concerned or to restrict the Charter to a non-binding declaration. Not only would this result in the destruction of the concept of a European „Bill of Rights “,the international evolution of human rights would also experience a severe setback. In the final declaration issued by the Council of Europe meeting in Copenhagen in 1993 the Members of what was then the EC stated that their willingness to agree to the admission of additional states was conditional on the enactment of legislation incorporating the protection of minorities into the constitutions of the countries concerned.The adoption of such a right in the Charter on Fundamental Rights has therefore become a test of credibility.

On behalf of GfbV International we wish the members of the Convention every sagacity,courage and success in dealing with the task in front of them.

Luxembourg/Goettingen, April 2000,
Tilman Zulch, President of GfbV International,
Andre Rollinger, Vice-president

The Society for Threatened Peoples (Gesellschaft für bedrohte Völker/GfbV)International, human rights organization for discriminated and persecuted ethnic,religious and national minorities,has offices in Germany, Luxembourg,Austria,Switzerland,South Tyrol/Italy,Bosnia-Hercegovina and in France.Since 1993,she has Consultative Status (Cat.Spec.)with the Economic and Social Council (ECOSOC)of the United Nations.

To get more information about our human rights work,to support this submission for a better protection of minorities in the EU 's future Charter on Fundamental Rights or in case of any questions,suggestions or new ideas concerning this campaign,please contact Dr.Andreas Selmeçi at our main office,P.O.Box 20 24,D-37010 Göttingen,Tel.+49 551 49906-22,Fax +49 551 58028,e-mail pogrom@gfbv.de.Information about this campaign is also available on our homepage www.gfbv.de (click on the British banner and look at „Documents and Statements about Threatened Peoples and Minorities “).

Editors' note to CHARTE 4268/00,
**Intervention du Mouvement international ATD Quart
Monde à l'occasion de l'audition publique
du 27/04/00:**

CHARTE 4267/00 never issued.

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE**fundamental.rights@consilium.eu.int**

Bruxelles, le 5 mai 2000**CHARTE 4268/00****CONTRIB 141****NOTE DE TRANSMISSION**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne

Veillez trouver l'intervention du Mouvement international ATD Quart Monde à l'occasion de l'audition du 27 avril 2000. ¹

¹ Ce texte a été soumis en langue française seulement.

Intervention du Mouvement international ATD Quart Monde, devant la Convention chargée d'élaborer une Charte des droits fondamentaux dans l'Union européenne, jeudi 27 avril 2000

Le Mouvement ATD Quart Monde qui est né en 1957, dans la glaise d'un bidonville de la banlieue parisienne de la volonté du Père Joseph Wresinski, un homme qui avait personnellement connu la grande pauvreté, se réjouit d'avoir été retenu dans le cadre de cette audition dédiée à la Charte des droits fondamentaux dans l'Union européenne.

Associé aux prises de position de nombreuses ONG présentes et, notamment au " Common statement " signé par beaucoup d'entre elles, le Mouvement international ATD Quart Monde voudrait vous exprimer cinq propositions.

Tout d'abord - et c'est le premier point, nous nous réjouissons de voir les travaux de la Convention progresser dans une optique très positive, qui consiste à rédiger une Charte à caractère contraignant et destinée à être intégrée dans les Traités de l'Union européenne. Cette attitude correspond à l'attente de millions de citoyens et de citoyennes qui seraient très déçus de trouver en fin de compte une coquille vide.. entourée d'un très joli ruban.

Du coup - et c'est mon deuxième point - on aborde le contenu de la Charte. Celle-ci doit comprendre l'ensemble des droits garantis dans la Convention européenne des droits de l'homme (Rome 1950) et dans la Charte sociale européenne révisée (Strasbourg 1996) qui constitue une excellente base pour les droits sociaux. Elle comprend notamment, à son article 30, un droit qui ne figurait dans aucun autre instrument des droits de l'homme, le " droit à la protection contre la pauvreté et l'exclusion sociale ". Ce nouveau droit a été obtenu suite aux propositions des personnes et familles très pauvres. Il devrait figurer aussi dans votre Charte, de même que le droit au logement qui se trouve à l'article 31 de la Charte sociale européenne révisée.

Je vais maintenant mettre l'accent sur un 3^{ème} point, le droit à un revenu minimum garanti, qui est une revendication très ancienne du Mouvement ATD Quart Monde. Nous nous sommes réjouis lorsqu'en 1996, le Comité des Sages, présidé par Mme Maria Lourdes Pintasilgo avait proposé que ce droit figure parmi les droits fondamentaux à mettre dans le Traité d'Amsterdam comme symbole de l'Europe sociale. Car ce droit doit permettre à chacun de vivre dans la dignité. Il constitue un tremplin pour que chacun puisse être intégré à la société et assurer sa santé, son bien-être et celui de sa famille. Le projet travaillé actuellement par votre Convention comprend un article XIV sur le " droit à l'aide sociale ". A nos yeux, la ligne de progrès dans ce domaine serait de passer de " l'aide sociale " au " revenu minimum garanti ". Nous sommes heureux que plusieurs membres de la Convention aient déposé un amendement en ce sens.

Un quatrième point correspond également à l'une de nos plus anciennes demandes, c'est l'inscription dans la Charte du droit à la consultation et à la participation des ONG européennes auprès des Institutions européennes. De récentes initiatives nous laissent espérer des avancées dans ce que l'on désigne désormais par " dialogue civil structuré ". En tout cas, l'audition organisée aujourd'hui par la Convention conforte cet espoir.

En conclusion, il n'est pas inutile de rappeler que l'adhésion de l'Union européenne à la Convention européenne des droits de l'homme et à la Charte sociale européenne révisée favoriserait une cohérence entre les différentes politiques de protection des droits en Europe.

Ainsi, sur ce point comme sur d'autres, l'action du Mouvement international ATD Quart Monde s'inscrit dans une mémoire, dans une histoire. Le 17 octobre 1987, le Père Joseph Wresinski réunissait une nombreuse assistance au Trocadéro à Paris. Depuis, cette date a été prise par l'ONU comme Journée mondiale du refus de la misère et on peut lire sur la Dalle du Parvis des Libertés et des Droits de l'homme cette inscription : “ Là où des hommes sont condamnés à vivre dans la misère, les droits de l'homme sont violés. S'unir pour les faire respecter est un devoir sacré. ”

Le 10 mai 1998, à la Haye, lors du 50^{ème} anniversaire du premier Congrès européen, au cours duquel les Européens avaient été appelés à “ faire échec à la guerre, à la peur et à la misère ”, Madame Alwine de Vos van Steenwijk, présidente internationale du Mouvement ATD Quart Monde, était intervenue à la séance de clôture pour que le XXe siècle ne se termine pas sans un acte fort, un Sommet européen contre la pauvreté. Le récent Conseil européen de Lisbonne, malgré un ordre du jour chargé, a donné une première réponse à cette demande en lançant une nouvelle méthode ouverte de coordination prenant en compte les millions d'exclus et en qualifiant la situation “ d'intolérable ”.

Monsieur le Président, je ne cacherai pas mon émotion en vous confiant ce message au nom des plus démunis : “ Dans cette Europe que nous voulons construire avec plus de paix, de prospérité et de solidarité, ne nous laissez pas camper aux portes de la Cité, parce que nous voulons contribuer à réaliser une démocratie digne de ce nom, fondée sur les droits fondamentaux pour tous. ”

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 8 May 2000**CHARTE 4273/00****CONTRIB 146****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter the position paper of the Irish Business Bureau (IBB) and Employers Confederation (IBEC) following the hearing of 27 April 2000. ^{1 2}

¹ This text has been submitted in English language only.

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The Inter-Governmental Conference of the European Union

and

The Charter on Fundamental Human Rights

Position Paper of the Irish Business and Employers Confederation

This submission is IBEC's contribution to the Irish Government both in respect of the recently opened negotiations to revise the European Union's Treaties and the simultaneous, but separate, elaboration of a Charter on Fundamental Human Rights.

1. The Inter-Governmental Conference

The legal rationale for holding yet another Inter-Governmental Conference (IGC) stems from a Protocol annexed to the last treaty revision, the 1997 Amsterdam Treaty. It stipulated that at least one year before the membership of the European Union exceeds twenty, a conference of the 15 EU governments would be convened in order to revise 'the composition and functioning of the institutions'. Thus, for enlargement to become a reality, the EU would be obliged to reform its working methods.

This IGC opened on 14 February 2000, not one year before enlargement to new Member States, as foreseen by Amsterdam, but years before that could realistically happen. The Heads of State and Government, at the Helsinki European Council in December 1999, agreed that the three so-called 'leftover' issues¹ from Amsterdam must be addressed right now, before the enlargement negotiations started at all. This means that what is decided over the coming year by the 15 will actually settle the shape and working methods of a Union eventually comprising upwards of 13 more countries.²

A more ambitious agenda of reform, as articulated by the Commission, has been postponed.

The IGC will continue to meet on a weekly basis at the level of personal representatives of the EU's Foreign Ministers, chaired by the Portuguese and subsequently by the French Presidencies. It is envisaged that the negotiations will conclude at the Nice Summit on 7-8 December.

The issues that are relevant from a business and employer perspective include:

- * Ireland's influence within the Community Institutions
- * Extending Qualified Majority Voting
- * The scale of ambition of the IGC

- IBEC's Overarching Views

IBEC takes the view that the Irish Government should not restrict itself to a cautious and incremental approach to the negotiations on Treaty reform, but should adopt a robust and pro-active attitude to adapt the Community in advance of enlargement.

While recognising political realities at EU level, IBEC believes it is in the long-term interest of the Community to proceed now with fundamental constitutional reform. Rather than focusing on the limited agenda favoured by the majority of Member States, there is merit in considering extending the IGC process to other areas, some of which have been identified by the Commission. Recognising that enlargement will not happen before 2005, Member States could set the target of having the results of a more comprehensive IGC submitted to Europe's electorate in June 2004, the date of the next direct elections to the European Parliament.

IBEC also believes that, at a fundamental level, the current negotiations must not lead to the traditional balance between large and small Member States being re-weighted in favour of the former, to the extent that a 'directory' of five, and eventually six countries, could come to dominate the future direction and policies of the EU. This would not achieve the declared Treaty goal of 'deepening the solidarity between the peoples of Europe while respecting their history, their culture and their traditions'.

- Reform of the European Commission

The Treaty of Amsterdam stipulated that at the date of the next enlargement - now expected sometime between 2004 to 2006 - the Commission would comprise of only one representative from each country, thus reducing the number of Commissioners from Germany, France, Italy, Spain and the UK. In the short term therefore, assuming that fewer than five countries join in the first wave, this would possibly mean all countries which have two Commissioners would lose one nomination.

IBEC does not share the view that some Member States can be ultimately left un-represented within the College of Commissioners. In particular, any attempt to fix the number of Commissioners at a level³ which would result in uninterrupted representation of large Member States but with some form of rotation for smaller countries, is not acceptable. The essence of democracy is adequate representation. In Ireland's case, it is inconceivable that we would be excluded from the Executive given the pivotal role it plays.

By contrast, the option of re-casting the role of Commissioners would be much more practicable. In this scenario, the President would head a College comprising of a reduced number of ‘senior’ Commissioners, with ‘junior’ Commissioners reporting to individual Commissioners, much in the same way as cabinet government already operates in several Member States. The number of junior positions could easily vary as a function of the number of countries in the EU at any given time; while the allocation of the senior Commission portfolios would be decided by the President elect, on the basis of merit rather than the country of origin of the prospective Commissioner, and independently of deliberations within the Council, as has been the case up to now. In this way, the calibre of politicians putting their names forward for a post in the Commission would be the decisive factor in the quality of their post in Brussels.

- Re-weighting of Voting Strengths in the Council of Ministers

The above-mentioned Amsterdam Protocol stated that the modification of national representation in the Commission would be conditional upon an appropriate re-weighting of votes in the Council, thereby ‘compensating’ larger Member States for the loss of their second Commissioner. The two options suggested at Amsterdam were a straight re-weighting of the number of votes allocated to each country, or the introduction of a dual majority, in which a qualified majority would equal, not 71% of the votes cast, but would instead constitute a simple majority of the Member States and a majority of the EU population.

The latter of these options is favoured by IBEC, as it guarantees the interests of sovereign states - one Irish vote being equal to one German vote, just as Alaska (0.6 million people) and California (32 million) are equally represented in the US Senate. On the other hand, the will of the EU population as a whole would be justly reflected in the need for all adopted legislation to represent a majority of EU citizens - thus in a system with 370 votes (each vote representing 1 million voters) where 186 were necessary to adopt a proposal, Ireland would have 4 votes and Germany 87; each vote representing one million voters. This dual majority system would have the benefit of simplicity, transparency and ultimately flexibility, in the event of successive enlargements.

- Voting Procedures in the Council of Ministers

Qualified majority voting already applies to over 70% of all legislation negotiated in Brussels and Strasbourg. It is proposed that QMV be extended to all of the remaining spheres of Community legislation, with the exception of major constitutional decisions, such as accession of new Member States and reforms of the treaties. IBEC accepts in principle the logic of a further extension of QMV to some of the areas, in particular internal market issues, still covered by unanimity.

IBEC believes QMV should be extended to the following areas:

- in the budgetary field of own resources (Art. 269);
- measures taken when a Member State is threatened with severe difficulties caused by exceptional occurrences (Art. 100);
- transport regime affecting living standards and employment (Art. 71,2);
- culture (Art. 151,5⁴), decisions on freedom of movement in the EC (Art. 18,2⁵);
- rights of self-employed to provide services in other Member States (Art. 47, 2⁶); and
- actions in favour of the competitiveness of industry (Art. 157,3).

Further consideration needs to be given regarding the extension of QMV to external trade policy issues (Art. 133).

A failure to grasp the nettle of a further pooling of sovereignty in these areas can only increase the threat of greater use of 'closer co-operation' between some Member States. Ireland has already experienced, in a less than ideal manner, the operation of such flexibility both from the inside and the outside (EMU and Schengen).

The provisions in the treaty on EMU need to be updated, taking account of the fact that the euro is now a reality, and providing greater clarity for potential second and third wave entrants. In addition, for the purpose of simplicity and greater democratic accountability, IBEC considers that the existing articles on economic and monetary policy under Title VII of the EC Treaty relating to the use of the 'co-operation' procedure should be replaced with the co-decision procedure.

No further extension of QMV can be accepted in areas fundamental to the sovereignty and national interests of Member States. This includes national social security arrangements (and all other measures foreseen by Art. 137,3), environment measures of a fiscal nature (and all other measures foreseen by Art. 175,2), tasks and objectives of the structural funds (Art. 161), and, above all, taxation policy and tax rates (Art. 93-94). However, implementing decisions which stem from earlier unanimous framework decisions in the taxation field could be taken by QMV.

- Other Issues

In the event that the IGC extends its agenda to such matters as the first and second pillars, IBEC would reserve the right to make a further submission.

2. Charter On Fundamental Human Rights

The Treaty of Amsterdam states (Article 6.1): *"The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms.* Thus there is already a clear assertion that fundamental rights exist and must be respected.

In trying to create a "Europe of the Citizen", fundamental rights were deemed by politicians only to work if they are highly visible and if ascertainable rights *"stimulate the readiness to accept the EU and to identify with its growing intensification"* in the EU citizen. The expected 'Bill of Rights' did not appear in the Amsterdam Treaty.

In attempting to address these concerns, the Helsinki European Council has brought together a Convention of MEPs, members of government (Michael O'Kennedy T.D. for the Irish government) and members of national parliaments (Desmond O'Malley T.D. and Bernard Durkan T.D. for *Dáil Éireann*). Their brief is to produce a draft Charter of Fundamental Rights covering civil, political and social rights.

The list of rights the group is reviewing is extensive, inspired by the 'main' Charters which already apply including the European Convention of Human Rights, various ILO, UN and Council of Europe Treaties. One issue which has already emerged is whether a distinction could be made between civil and political rights and economic and social objectives and how they may be implemented. The biggest problem is less the content of the Charter but its legal status. At present, the aim is to establish a Bill of Rights, rather than conferring new powers on the Union to legislate in the field of fundamental rights. While the Charter is intended to apply solely to the Union's institutions and not to activities of Member States, the efficient safeguard of fundamental rights as a rule presupposes judicial protection. Thus there is significant political pressure to make the Charter legally binding as part of the EU's Treaties.

The impact of this aspiration has not yet been thought through. To give legal status to, for example, the right to a healthy environment or to join a trade union could give any citizen the right to bring an individual company or Member State to a national court or the ECJ for not safeguarding that right, or *in extremis* could force the national legislator or the ECJ to develop a more coherent theory of limitation. The binding nature of the Charter would not be a problem if it merely listed the rights that have an essentially justiciable character. However, if the Charter included rights that would ordinarily be considered to be in the nature of non-binding commitments or aspirations, the whole project could become a legal minefield. Creating legal uncertainty must be avoided at all costs. While the choice is a political one, the Charter is already being drafted so that it is capable of being incorporated into the treaties if needed.

A binding Charter is strongly supported by the European Parliament whose MEPs foresee plaintiffs taking cases on foot of the Charter having access to the ECJ. The Parliament also has on its agenda that fundamental rights could be extended to cover such matters as biotechnology.

A strategy which is gaining in popularity within the Convention is to have two parts to the Charter, one which is legally binding, the other describing these rights and obligations and which reflects aspirations and is not binding. This is the ideal way to give added value to European citizens, without prejudice to legal certainty.

Another complication is that the Charter may place those rights simultaneously under the jurisdiction of the European Court of Justice and the European Court of Human Rights, creating the need for a new relationship to be worked out.

The draft Charter will be ready by the end of 2000, and may become part of the new Treaty on institutional reforms which may be adopted by the Nice Summit in December.

IBEC supports the drawing up of a Charter subject to the following comments:

1. Only fundamental and universal rights should be covered by the Charter. Standards set by Community Directives should not fall within the remit of the Convention.
2. The Charter should express the Treaty's four fundamental freedoms (free movement of goods, people, services and capital), but should not declare these principles to be fundamental rights.
3. The Charter should state, perhaps in the Preamble, that the protection of fundamental rights recognises the importance of maintaining Europe's competitiveness.
4. It should clarify existing rights, but not undermine them.
5. No new rights should be promulgated.
6. No new powers should be given to the Community's Institutions. The Charter is not a licence for the EU to regulate.
7. The Charter should not be legally binding.
8. There should be no commitment to a right to vocational training (ref: Article 12) or to workers' information and consultation (these issues are more appropriate to secondary legislation, or to Codes of Best Practice).
9. The right to join a trade union should be balance with a right to exercise freedom not to join a trade union or association (ref: Article 13).
10. The right to ownership should have regard to Ireland's constitutional position on property rights and the Planning Act 2000 (ref: Article 16).
11. Respect for the Charter should be conditional of continuing membership of the Union.
12. The autonomy of the European social partners under the Social Protocol should be acknowledged, perhaps by an interpretative statement.
13. The current non-binding Social Charter should not be amended by the Convention. Proposals to enshrine trade union rights and to incorporate such rights as the right to a minimum wage, the right to housing and the right to protection from social exclusion and to include a right of access to social rights are, in accordance with the principle of subsidiarity, not a matter for determination at Community level.

The Charter will be portrayed as being of real significance to the Union's citizens. Therefore nothing should be included that cannot be fulfilled. A clear distinction should be made between fundamental rights and political aspirations. Corresponding obligations should also be included where this is relevant.

Finally, IBEC would like to know whether a referendum will be needed in Ireland if the Charter is adopted.

3. Communicating “Europe”

The Programme for Prosperity and Fairness includes a commitment that a programme will be put in place by government “*to adjust Irish public awareness of EU matters away from the direct cash transfers and towards the more indirect but still substantial benefits arising from the social, economic and cultural development of the EU*”. (Framework IV, section 4.6.4).

IBEC believes this initiative should be launched as soon as possible in the context of the current IGC and the on-going work of the Convention. Public awareness of Europe in Ireland is positive. Therefore it is critical that the issues being negotiated this year are communicated in a professional, timely and transparent manner. A debate about Ireland’s role in an enlarged Europe should be encouraged.

April 2000

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- ¹ Size and composition of the European Commission; weighting of votes in the Council of Ministers; and possible extension of qualified majority voting in the Council.
- ² Poland, the Czech Republic, Hungary, Slovenia, Estonia and Cyprus; who were joined by Slovakia, Latvia, Lithuania, Romania, Bulgaria and Malta following the Helsinki Summit, with Turkey recognised as a long-term candidate. Positive reaction to the recent political advances in Croatia would suggest that both it and other Balkan states will not be excluded from the enlargement process.
- ³ For example, fixing the number of Commissioners at 21 would hypothetically allow 6 Member States to be guaranteed a seat, but would force the remaining 21 countries to be represented in only 5 of 7 Commission terms of office.
- ⁴ Decisions in this sphere, while taken by co-decision between the institutions, are seriously delayed by the requirement for unanimity in Council throughout the procedure. A similar anomaly for decision in the R&D sector was removed at Amsterdam.
- ⁵ *Ibid.*
- ⁶ *Ibid.*

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE**fundamental.rights@consilium.eu.int**

Bruxelles, le 8 mai 2000**CHARTE 4274/00****CONTRIB 147****NOTE DE TRANSMISSION**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne

Veillez trouver ci-joint le texte de l'exposé de la Fédération des Associations Familiales Catholiques en Europe à l'occasion de l'audition du 27 avril 2000.¹

¹ Ce texte a été soumis en langue française uniquement.

FEDERATION DES ASSOCIATIONS FAMILIALES CATHOLIQUES EN EUROPE

FÖDERATION DER KATHOLISCHEN FAMILIENVERBÄNDE IN EUROPA

FEDERATION OF CATHOLIC FAMILY ASSOCIATIONS IN EUROPE



Charte Européenne des Droits Fondamentaux

Intervention auprès de la Convention le 27 avril 2000

le 25.04.2000

Monsieur le Président, Mesdames et Messieurs les Députés, Mesdames et Messieurs,

Au nom de **La Fédération des AFC en Europe**, qui représente 5.5 millions de familles, je vous remercie de l'audition qui nous est accordée.

La **Famille** est la plus ancienne structure de la Communauté humaine, elle précède toute organisation publique ou d'Etat, elle est l'élément naturel et fondamental de la Société.

Communauté de vie d'un homme et d'une femme, établie sur l'engagement public stable du mariage, ouverte à la vie, la **Famille** structure la Société et assure sa cohésion en profondeur. Elle est le lieu privilégié à l'accueil de la vie.

C'est en son sein que s'accomplit l'apprentissage fondamental et indispensable du « **vivre en société** » par les tâches éducatives qui incombent aux parents, mais aussi à travers des liens d'amour, d'affection et de protection, qu'aucune loi ne peut décréter.

C'est en **famille** que l'on apprend l'acceptation de l'autre différent de soi, le vivre ensemble au jour le jour, le partage des biens matériels comme aussi des joies et des peines, la tolérance et le pardon qui permettent de dépasser les situations conflictuelles, le soutien aux plus faibles, la solidarité et la prise en charge intergénérationnelle. La **Famille** n'est-elle pas la première caisse de chômage pour les jeunes en quête d'emploi ?

Par la complémentarité **Homme-Femme, Père-Mère** dans leurs rôles éducatifs respectifs, dès le plus jeune âge, l'enfant peut se structurer psychiquement et affectivement. « *L'enfant, pour l'épanouissement harmonieux de sa personnalité, doit grandir dans le milieu familial, dans un climat de bonheur, d'amour et de compréhension* ». (Conv. Droits de l'enfant). L'enfant a le droit d'être élevé par sa mère et son père.

Certes, des dysfonctionnements existent dans certaines familles, d'autres sont blessées, notamment par des séparations, cependant cela n'enlève en aucun cas les valeurs essentielles pour la vie en société, transmises dans et par la **cellule familiale**.

C'est pourquoi, une Société soucieuse de son avenir doit veiller à la **stabilité des familles** et favoriser **l'accueil de la vie**.

Aucune structure d'Etat n'est en mesure de remplacer la **Famille**, plusieurs exemples à travers l'histoire l'ont largement démontré. Plutôt que de tenter de se substituer aux **familles**, les pouvoirs publics ont le devoir de soutenir les **familles**, de les encourager, de leur garantir des droits spécifiques.

L'ONU dans sa « Déclaration Universelle des Droits de l'Homme », Le Conseil de l'Europe dans sa « Convention Européenne des Droits de l'Homme » et dans sa « Charte Sociale Révisée », enfin la « Convention des Nations Unies sur les droits de l'enfant » mentionnent clairement que « *la **Famille** est l'élément naturel et fondamental de la société, qu'elle est le milieu naturel pour la croissance et le bien être de tous ses membres et en particulier des enfants, et qu'elle doit recevoir la protection et l'assistance dont elle a besoin pour pouvoir jouer pleinement son rôle dans la communauté.* »

Il nous paraît indispensable que la **Famille** soit intégrée dans la « **Charte Européenne des Droits Fondamentaux** ». Cette **Charte** ne peut pas rester en deçà des conventions susmentionnées déjà ratifiées par beaucoup d'Etats. Il est hautement souhaitable qu'une recommandation européenne en faveur d'une réelle **politique familiale** soit élaborée afin de servir de cadre aux Etats-membres.

La **Famille** représente infiniment plus que des droits individuels additionnés, (droit de l'Homme, droit de la Femme, droit de l'Enfant) et par le principe de la non discrimination, elle doit être prise en compte en tant que telle, élément naturel et fondamental de la Société, à laquelle sont attachés des droits comme aussi des devoirs.

C'est cela que nous demandons dans notre « **Contribution** », Contribution qui vous fut adressée et dont je vous remercie de bien vouloir prendre connaissance, afin d'en tenir compte dans la rédaction de la **CHARTE**.

Je vous remercie de votre attention.

ENTWURF DER CHARTA DER GRUNDRECHTE DER EUROPÄISCHEN UNION**fundamental.rights@consilium.eu.int**

Brüssel, den 8. Mai 2000**CHARTE 4275/00****CONTRIB 148****ÜBERMITTLUNGSVERMERK**

Betr.: Entwurf der Charta der Grundrechte der Europäischen Union

Finden Sie bitte nachstehend einen Beitrag des deutschen Städte- und Gemeindebundes. ¹

¹ Dieser Text wurde nur in deutscher Sprache vorgelegt.



Deutscher Städte- und Gemeindebund

Herrn
Bundespräsident a.D.
Prof. Dr. Roman Herzog
Präsident des EU-Grundrechtekonvents
Postfach 86 04 45
81631 München

Dr. Gerd Landsberg

Geschäftsführendes
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Berlin, den 17. April 2000

G/3 050-25 zi

Erarbeitung einer EU-Charta der Grundrechte

Appell des Deutschen Städte- und Gemeindebundes nach einem Recht auf Selbstverwaltung in der EU-Charta der Grundrechte

Sehr geehrter Herr Bundespräsident a.D. Professor Dr. Herzog,

der Deutsche Städte- und Gemeindebund möchte Ihnen gerne einen Vorschlag im Rahmen der Erarbeitung einer EU-Charta der Grundrechte unterbreiten.

Die deutschen Städte und Gemeinden sind in vielfältiger Weise vom europäischen Integrationsprozess betroffen. Sie legen dabei ein klares Bekenntnis zur Europäischen Union und zum europäischen Einigungsprozess ab. Wenn davon gesprochen wird, ein "Europa der Bürger und Bürgerinnen" errichten zu wollen, so möchten wir in diesem Zusammenhang darauf hinweisen, dass es die kommunale Ebene ist, die dem Bürger am nächsten steht und tagtäglich vor diesen in der Verantwortung, die Politikgestaltung der höheren politischen Ebenen zu vertreten und umzusetzen. Gleichmaßen erlaubt und gewährleistet es die kommunale Selbstverwaltung, die Identifizierung des Bürgers mit dem Staat zu stärken und Demokratie als politische Mitwirkungsmöglichkeit unmittelbar erlebbar zu machen.

Der Deutsche Städte- und Gemeindebund ist daher der Auffassung, dass der Prozess der Erarbeitung einer EU-Charta der Grundrechte auch Anlass sein sollte, über dieses Politikmodell und dessen Zukunft im europäischen Integrationsprozess nachzudenken und entsprechende Schlüsse für die Charta zu ziehen.

Bei der EU-Charta der Grundrechte geht es nicht nur darum, einen Konsens unter den nationalen (verfassungs-)rechtlichen Grundpositionen zu erzeugen. Die supranationalen Handlungsformen der EU haben Frage- und Problemstellungen auch für bürgerschaftliche Rechtspositionen erzeugt, die naturgemäß bisher von den nationalen Rechtsordnungen nicht beantwortet werden mussten. Daher muss eine EU-Charta der Grundrechte notwendigerweise über den Konsens der nationalen Ordnungen hinaus Antworten auf diese europäischen Fragen geben.

Dies betrifft insbesondere das Subsidiaritätsprinzip, das in der sowohl in der Präambel des EU-Vertrages wie auch in Art. 5 des EG-Vertrages unmittelbar im europäischen Primärrecht verankert ist. Da es sich hierbei um ein so tragendes wie grundlegendes Prinzip für die (zukünftige) Entwicklung der Europäischen Union handelt, muss das Subsidiaritätsprinzip auch als bürgerschaftliche Rechtskomponente Aufnahme in die EU-Charta der Grundrechte finden.

Wir schlagen daher vor, dies dadurch anzustreben, dass folgende Textpassage eines "Rechts auf Selbstverwaltung" zur Verwirklichung des Subsidiaritätsprinzips im Verhältnis zum Bürger in die Charta aufgenommen wird:

"Die Europäische Union gewährleistet und fördert das Recht der Bürgerinnen und Bürger, ihre örtlichen Angelegenheiten mit Hilfe kommunaler Gebietskörperschaften selbst effektiv zu gestalten, die über demokratisch legitimierte Beschlussfassungsorgane und eine große Autonomie im Hinblick auf ihre Befugnisse und Mittel verfügen."

Ein bürgerschaftliches Recht auf effektive Gestaltung der örtlichen Angelegenheiten durch demokratisch gewählte Vertretungen ist eine praktische Ausprägung des Subsidiaritätsprinzips. So wie es möglich war, die Inhalte der Europäischen Menschenrechtskonvention in Artikel 6 des EU-Vertrages aufzunehmen, muss es auch möglich sein, die für die Bürgernähe wesentlichen örtlichen Freiheits- und Gestaltungsrechte in geeigneter Form zu gewährleisten. Dies gilt umsomehr, als die lokale Gestaltung des unmittelbaren Lebensumfeldes ein wichtiger Bestandteil europäischen Kultur- und Politikverständnisses ist.

Vor der Gründung der Nationalstaaten war Europa ein Gebilde aus Städten und Gemeinden. Aus diesen selbstbewussten dezentralen Strukturen ist auch die EU gewachsen. Die in der Charta der kommunalen Selbstverwaltung des Europarates (1988) festgeschriebenen Grundsätze der kommunalen Selbstverwaltung sind allen EU-Mitgliedsstaaten gemein. Diese Charta wurde von nahezu allen EU-Mitgliedsstaaten völkerrechtlich verbindlich ratifiziert. Daher kann bereits davon gesprochen werden, dass die Grundsätze kommunaler Selbstverwaltungstätigkeit zur nationalen Identität der Mitgliedsstaaten im Sinne des Art. 6 Abs. 3 EU-Vertrag zählen.

Der beratende Ausschuss der regionalen und lokalen Gebietskörperschaften in der Europäischen Union (AdR) hat wiederholt ihre Aufnahme in die EG-Verträge gefordert. Dies ist um so notwendiger und nützlicher, als die Charta der kommunalen Selbstverwaltung die erste rechtliche Vereinbarung zwischen europäischen Staaten war, in der das Subsidiaritätsprinzip definiert wird.

Bei dem Subsidiaritätsprinzip handelt es sich um ein sozialphilosophisches Konzept. Es betrifft in grundlegender Weise die Gestaltung einer gesellschaftlichen Kompetenz- und Zuständigkeitsverteilung. Diese Verteilung lässt in erkennbarer Weise Schlüsse für die Zuweisung von Kompetenzen für die über- und untergeordneten Regierungs- und Verwaltungsebenen eines Staates zu. Es wäre somit angemessen, in der EU-Charta der Grundrechte die Grundsätze einer effektiven Gestaltung der örtlichen Lebensverhältnisse als bürgerschaftliche Rechtsposition aufzunehmen.

Der "örtliche Bezug" des Subsidiaritätsprinzips ist bereits heute im EG-Vertrag erwähnt. So gibt bspw. Art. 19 Abs. 1 EG-Vertrag jedem Unionsbürger das aktive und passive Wahlrecht bei Kommunalwahlen. Dieses durch den EG-Vertrag gewährleistete Recht unterstellt denknötwendig eine effektive Gestaltung der Lebensverhältnisse vor Ort durch demokratisch gewählte Vertretungen. Es ist daher nur konsequent, diese Komponente auch in der EU-Charta der Grundrechte anzuerkennen. Schließlich bringt es das Subsidiaritätsprinzip schlechthin zum Ausdruck, dass politische Entscheidungen möglichst bürgernah getroffen werden. Mit einem modernen Grundrecht auf Selbstverwaltung und Subsidiarität betritt man also im EG-Recht nicht grundsätzlich "Neuland".

Der AdR hat in seiner Stellungnahme zur Erarbeitung einer EU-Grundrechtecharta (Dokument CdR 327/99 rev. 1) ebenfalls aufgefordert, ein bürgerschaftliches Recht aufzunehmen, nach dem die örtlichen Angelegenheiten von demokratisch gewählten Vertretungen effektiv wahrgenommen werden können. Dies wird zu dem zutreffend in der Initiativstellungnahme des Ausschusses der Regionen zu dem Thema "Unionsbürgerschaft" (Az.: CdR 226/99 rev. 2) zum Ausdruck gebracht.

Gerade im Zusammenhang mit der Erweiterung der EU nach Mittel- und Osteuropa hat dieser Zusammenhang neue Bedeutung erlangt. Die Beitrittsstaaten legen großen Wert auf die Kultivierung lokaler und regionaler Demokratie, gerade und auch im EU-Zusammenhang. Durch eine möglichst bürgernahe Politik in der EU erfolgt zudem eine Stärkung der Europäischen Integration. Der Formulierungsvorschlag des Deutschen Städte- und Gemeindebundes für ein Recht auf Selbstverwaltung als Ausprägung des Subsidiaritätsprinzips überlässt es zudem ganz im Sinne des Subsidiaritätsprinzips den Mitgliedsstaaten und Regionen selbst, wie die konkrete Ausgestaltungen örtlicher Demokratie erfolgen soll.

Wir würden Sie daher sehr gerne darum bitten, sehr geehrter Herr Bundespräsident a.D. Professor Dr. Herzog, sich im Sinne unseres Vorschlags beim weiteren Prozess der Erarbeitung der EU-Charta der Grundrechte einzusetzen.

Mit freundlichen Grüßen

(Dr. Gerd Landsberg)

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE**fundamental.rights@consilium.eu.int**

Bruxelles, le 8 mai 2000**CHARTE 4276/00****CONTRIB 149****NOTE DE TRANSMISSION**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne

Veillez trouver ci-joint le texte de l'intervention de l'OCIFE à l'occasion de l'audition du 27 avril 2000.^{1 2}

¹ Pierre de Charentenay, Directeur de l'OCIFE (Bureau européen des jésuites)
3 rue de Trévires, 1040 Bruxelles. Tél. 737 97 22.

² Ce texte a été soumis en langue française uniquement.

Audition de l'OCIPE à la Convention de la Charte des droits fondamentaux
27 avril 2000

Je veux d'abord approuver le travail déjà fait par la Convention et appuyer tout ce processus de rédaction d'une Charte des droits fondamentaux. Ces droits doivent être défendus et leur mise en forme est une étape politique essentielle pour l'Europe.

Mais mon propos voudrait insister sur la dimension collective de notre vie commune. Le bien de la communauté politique européenne ne sera pas automatiquement servi par une juxtaposition des droits individuels. Cette juxtaposition risque d'isoler les individus, voire de les opposer les uns aux autres, en tout cas de briser le lien de solidarité sans lequel il n'y a pas de société humaine. Nous avons tous besoin de relations, de communauté autant que du respect de nos droits individuels. Quelle société européenne aurons nous construit, si nous préparons des vies protégées mais dans la solitude et l'ignorance mutuelle ? Nous aurons renforcé le côté négatif de la modernité de plus en plus individualiste en augmentant l'anomie et l'isolement dans lesquels vit chaque citoyen. Dans ce contexte, une défense absolue des droits individuels risque de favoriser les effets pervers d'éclatement de nos sociétés comme si l'individu pouvait vivre seul au monde.

Or notre modèle européen est un modèle unique d'équilibre qui allie le respect de l'individu et de la communauté. Il n'est ni entièrement dominé par le seul souci de l'individu, ni entièrement dominé par la seule préoccupation de la communauté. Ainsi les individus ont-ils des obligations vis-à-vis de la collectivité. Quant à la communauté, elle a aussi des droits, même si elle n'a pas tous les droits. La dignité humaine, fondement des droits, ne peut être réalisée et protégée que dans le cadre d'une vie en communauté. C'est là dessus que la Charte doit prendre position en soulignant l'obligation sociale des individus et le droit correspondant de chaque citoyen à une vie relationnelle, une vie communautaire humaine

Si cette charte doit être au moins aussi exigeante que tous les grands textes précédant elle ne peut pas faire moins que la Déclaration Universelle des droits de l'homme de 1948 qui dans son article 1 invite tous les êtres humains " à agir les uns envers les autres dans un esprit de fraternité "

C'est dans cet esprit que je propose que soit rédigé un court préambule à cette charte, dont je vous mets un projet ci-dessous:

Préambule

Les peuples de l'Union Européenne se dotent d'une Charte des droits fondamentaux pour manifester à tous, citoyens d'Europe et citoyens du monde, les valeurs qui sont les leurs et qu'ils veulent promouvoir autant dans leurs frontières qu'à l'extérieur. Ces droits sont fondés sur le respect de la dignité humaine. Ils trouvent leur expression dans une vie sociale et politique, et dans la possibilité pour chaque citoyen de constituer des communautés de vie et de travail. Ne pouvant être réalisés que par l'action déterminée de chacun, ces droits forment un ensemble de tâches à accomplir dont la première est l'exigence de solidarité et de fraternité. Dans le respect des différences, tous les citoyens de l'Union européenne sont acteurs et bénéficiaires de ces droits pour former ensemble une communauté politique.

Pierre de Charentenay

OCIPE

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE

fundamental.rights@consilium.eu.int

Bruxelles, le 12 mai 2000

CHARTE 4277/00

CONTRIB 150

NOTE DE TRANSMISSION

Objet : Projet de Charte des droits fondamentaux de l'Union européenne

Veillez trouver ci-joint une contribution du Centre Européen des Entreprises à Participation Publique et des Entreprises d'Intérêt Économique Général (CEEP) ^{1 2}

¹ Ce texte a été soumis en langue française seulement.

² CEEP: rue de la Charité 15 boîte 12, B-1210 Bruxelles. Tél: +32-2-219 2798.
Fax: +32-2-218 1213. [E-mail: CEEP@interweb.be](mailto:CEEP@interweb.be)

CENTRE EUROPEEN DES ENTREPRISES
 À PARTICIPATION PUBLIQUE
 ET DES ENTREPRISES
 D'INTÉRÊT ÉCONOMIQUE GÉNÉRAL
 EUROPEAN CENTRE OF ENTERPRISES
 WITH PUBLIC PARTICIPATION
 AND OF ENTERPRISES
 OF GENERAL ECONOMIC INTEREST

CEEP.00/S.P.05
 Le 5 mai 20000

CONTRIBUTION DU CENTRE EUROPÉEN DES ENTREPRISES À PARTICIPATION PUBLIQUE ET DES ENTREPRISES D'INTÉRÊT ÉCONOMIQUE GÉNÉRAL (CEEP)

Droits fondamentaux et services d'intérêt général

Parmi les droits fondamentaux, on peut distinguer les droits de nature constitutionnelle tels que le droit d'expression, le droit d'association, ... qui sont affirmés par des textes de portée juridique, et que les citoyens peuvent exercer individuellement ou collectivement. Aucune structure particulière n'est nécessaire pour permettre l'exercice de ces droits. Si un citoyen considère que ses droits sont bafoués, il a la possibilité de s'adresser directement au pouvoir judiciaire pour faire cesser le trouble.

Mais il existe d'autres types de droits, principalement dans le domaine économique et social, qui constituent en fait des objectifs, tels le droit à la santé, à l'éducation, au logement, les droits d'accès à des moyens de communication, de déplacement, Ces droits sont des objectifs pour nos sociétés démocratiques, dont la mise en oeuvre est assurée par des services. Ces services ont des caractéristiques particulières, notamment en ce qui concerne l'égalité d'accès, et la continuité de service, et des modalités d'organisation et de gestion dont les principes doivent être définis et contrôlés par l'autorité publique, principalement dans les domaines de la sécurité, la tarification, et la qualité de service. Ce sont des services d'intérêt général .

Les droits fondamentaux doivent être garantis

Affirmer les droits fondamentaux des citoyens suppose que des mesures efficaces sont prises pour en assurer le respect.

En ce qui concerne les droits qui peuvent être exercés directement par les citoyens, la garantie de l'exercice de ces droits est assurée par un texte ayant une portée juridique permettant l'accès individuel au tribunal compétent.

Lorsque les droits nécessitent l'accès à un service d'intérêt général, il appartient à l'autorité publique compétente d'organiser ce service en respectant certains critères dont les principaux ont été évoqués précédemment. Si cette organisation est défailante, le recours aux tribunaux n'est possible que dans des cas limités (discrimination individuelle par exemple).

La nécessité d'un document de référence au niveau européen concernant les services d'intérêt général

Si des droits fondamentaux basés sur des services d'intérêt général sont affirmés au niveau de l'Union Européenne, un texte doit être établi au même niveau pour définir les principes régissant ces services, afin d'assurer une garantie et cohérence minimales concernant l'exercice de ces droits au niveau européen, et de servir de référence aux Etats candidats à l'adhésion. Il faut souligner qu'il n'existe actuellement même pas une définition commune de la notion de service d'intérêt général, et que le seul texte officiel est une communication de 1996 de la Commission Européenne, qui ne traite qu'une partie du sujet et qui n'a pas de portée réglementaire.

Ce texte de référence pourrait prendre la forme d'une Charte des Services d'Intérêt Général.

Le CEEP demande à la Convention de prendre en considération cette lacune, en préconisant dans ses conclusions la préparation d'une Charte des Services d'Intérêt Général comme complément indispensable de la Charte des Droits Fondamentaux.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 8 May 2000**CHARTE 4278/00****CONTRIB 151****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter the intervention by the Franciscans (Commission for Justice, Peace and Integration of Creation) made at the hearing on 27 April 2000. ¹

¹ This text has been submitted in English language only.

Dear Ladies and gentlemen, members of the European Parliament

We appreciate the chance that you give the Franciscan movement, to contribute to the Charter intended to improve and guarantee the rights of the people in the European Union. We stand in the tradition of St. Francis of Assisi respecting all life.

Related to the Tampere paper “Franciscans International”, the NGO of the Franciscan family together with the International Catholic Migration Commission, intervened during the 56th U.N. Human Rights commission on the question of migrant workers informing the Commission of the seminar: “Europe: an area of freedom, security and justice?”(10 and 11 April 2000). The seminar on European Refugee and Migration Policy brought 90 participants together mostly from Church based organizations all over Europe. Human Dignity, inalienable, indivisible and inherent to every human being, no matter where they come from or which legal status they may enjoy, was at the centre of all our reflections during these two days. In our view, the respect for Human Dignity implies a specific approach to the different policy areas. We are glad to see, that this value is also reflected in the Charter. Values need to be fed by a spirituality that strengthen people to fulfill human values. Some results of the conference I will share with you:

- **Refugees and Asylum seekers:** Among the Member States of the European Union, there is a need for harmonized asylum procedures as well as a common refugee definition. Together with decent reception conditions there is a need to respect the basic rights of every refugee or asylum applicant. These measures will not only help refugees in an uncertain situation, but also prevent an “Asylum Shopping” in different Member States. According to the Universal Declaration of Human Rights, the notion of security does not only apply to the States but also every human being. In this context, we are concerned about the European Union’s readmission policy with regard to States where the security of the refugee cannot be guaranteed.
- **Migrants:** We call for a positive approach to Migration, which is, and always has been be an important benefit in our societies. The present lack, in many European Countries, of a coherent immigration legislation has a role to play in forcing people to use the asylum corridor to immigrate, and eventually get into an illegal situation. Our economies make large profit from migrants, not only by importing highly qualified specialists, but also by implicitly accepting the system’s need for clandestine, low-qualified and badly-paid labour force. In this context, we may never forget the dignity of every migrant who is often in search for a better life for him- or herself and his/her family.
- **Trafficked Women and Children.** Our concern goes to the victims of trafficking who are the weakest of all, having been humiliated, raped and consequently deprived of the most basic rights. They are often traumatized and need long term protection, legal and social assistance. They should be entitled to a permanent legal resident status, not to be limited to the sole purpose of serving as witnesses against the traffickers. Trafficking with human beings is a world business with high profit and low risk, compared to the trafficking with drugs and weapons. Traffickers who use coercion should undergo severe punishment, the confiscated money being used to provide help to the victims. However, as long as no coercion is used, trafficking might be the only hope for a refugee to get to the European Union. It is therefore indispensable to ensure the access to EU territory in order to provide for the examination of an asylum claim. This element finally shows the close links that exist between the different policies needed to create an area of freedom, security and justice for all.

Point 3 on page 10 of the charter speaks about the treatment of refugees. I suppose, this also means, that the so-called Dublin claimants and the repeated asylum seekers have the right for a shelter, food etc. We experience that these refugees have not always access to this rights in the Netherlands and sometimes not always in other European countries.

The procedures do not give people a citizen status for years resulting in psychological damages and other trauma.

In the whole discussion on migration we see the reduction of human beings to an economic factor: In fact to buy computer specialist in Poland and India without giving European citizens rights is a form of colonialism; could be experienced as a new form of colonialism human knowledge from the south to the industrialized Northern countries.

As a catholic worker priest in Berlin last year proved a lot of people who work illegal are exploited: low wages and the total lack of social security.

Women and children are trafficked for the sex industry. As soon as they are found they have no right of protection nor the necessary support for the trial against the traffickers and for their own rehabilitation. They have been abused by citizens of Europe.

Some examples: I know a case of a young 17 year old woman, who did not get sufficient support from the German authorities to proceed against traffickers in the Netherlands. She wanted to stay on a safe place in Germany.

A Dutch woman from Moroccan origin does not get the necessary protection against her family, who do not accept her independence. Human Rights means direct protection without any reserve.

Human Rights means, that a human being is more than a economic asset or a juridical entity.

Asylum seekers don't have the same rights and obligations as other people and the authorities. If a asylum seeker don't observe the rules and the terms, he or she loses his or her case. However, if the authorities don't observe the rules and the terms there often are no sanctions.

Man and woman ought to have the same right in the asylum procedure.

Refugees should have the right to visit their family, if the family lives in another region or country.

A citizen of Europe can contribute to the society. A asylum seeker has no right to contribute to his or her stay during the procedure by looking for work: a strange situation, that encourages and stimulates xenophobia. This prescription prevents asylum seekers having the possibility contributing to the society they live in.

Human Rights means, that anyone, who has a legal status has the right to marry without restrictions. Very often Government officials, who have to judge the story of an asylum seeker, are of the opinion, that every asylum seeker is a liar, unless he proves the opposite.

So we agree with your viewpoint on page 46: the Charter has to cover anyone in the territory of the Union, which includes foreigners and, in particular, immigrants.

On page 21 you talk about the right on peace. Therefore I ask you to support the European Network for Civil Peace Services, that wants to intermediate in areas of conflicts.

Economic sanctions referred to on page 48 function only with the support of opposition leaders, who are recognized as decent women and men. With regard to foreign policy we have to realize the consequences of our colonial past until now. This is also important for economic relations and trade.

I suppose, that this charter will function as international law so that the member states are obliged to implement this Charter. We agree with conclusion 4 on page 50.

Good and just rights will prevail.

Two other points: Equality of the person with regard to the law and Human Rights can't imply differentiation between rich and poor. We see that people with money can protract a procedure while people with little money are forced to stop their procedure for the court. Security means also traffic security. That gives the authorities the obligation to make traffic more secure. Last weekend (Eastern) until Sunday evening here in Belgium were already 14 people killed by accidents.

We want to contribute further if you so wish.
Peace and all Good.
Louis Bohte ofm

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 8 May 2000**CHARTE 4279/00****CONTRIB 152****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a letter from the Marangopoulos Foundation for Human Rights to the Convention.¹

¹ This text has been submitted in English language only.

To the Convention elaborating the
Draft Charter of Fundamental Rights
of the European Union

By this letter the Marangopoulos Foundation for Human Rights, which enjoys consultative status with the UN [ECOSOC (special), DPI], the UNESCO (official relations) and the Council of Europe, expresses its support to the AFEM proposals concerning the European Human Rights Charter (CONTRIB 105 in conjunction with CONTRIB 42).

We would be grateful if you could transmit this letter to the President and the members of the Convention and have it published on the website of the Convention.

Sincerely,

Prof. Alice Yotopoulos-Marangopoulos
President of the Foundation

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE

fundamental.rights@consilium.eu.int

Bruxelles, le 5 mai 2000
(OR. d)

CHARTE 4281/00

CONTRIB 154

NOTE DE TRANSMISSION

Objet : Projet de Charte des droits fondamentaux de l'Union européenne

Veillez trouver ci-après les observations concernant les documents CHARTE 4149/00 CONVENT 13, CHARTE 4137/00 CONVENT 8, CHARTE 4170/00 CONVENT 17, CHARTE 4192/00 CONVENT 18, CHARTE 4193/00 CONVENT 19, CHARTE 4227/00 CONVENT 26 et CHARTE 4235/00 CONVENT 27, élaborées par le gouvernement, le ministère des affaires étrangères et le ministère de la justice de la République fédérale d'Allemagne.¹

¹ Ce texte est présenté en langue allemande et en langue française.

Berlin, le 26 avril 2000

Observations concernant les documents Convent 13, 8, 17, 18, 19, 26, 27

Article 13 Vie familiale (Convent 13)

Modification possible : Complément éventuel concernant les communautés de vie (par exemple : "Les communautés de vie établies de façon durable ont un droit à la protection contre la discrimination").

Article 16 Droit à l'éducation (Convent 13)

Observation : Se pose la question du lien avec l'article sur la formation et l'orientation professionnelles, article X (Convent 18).

Article 13 Liberté de réunion et d'association (Convent 8)

Observation : Se pose la question du lien avec les dispositions relatives aux partis, article B (Convent 17), et aux syndicats, article IV (Convent 18).

Article 14 Droit d'accès aux informations (Convent 8)

Proposition de modification : Au lieu de "institutions de l'Union européenne", adopter une formulation plus proche du texte de l'article 255 : "...droit d'accès aux documents *du Parlement européen, du Conseil et de la Commission.*"...

Article 15 Protection des données (Convent 8)

Modification possible : La formulation pourrait être plus axée sur le droit des personnes à déterminer ce qui peut être fait des données les concernant (par exemple : "Toute personne a le droit de décider elle-même de la divulgation et de l'utilisation de ses données personnelles, ainsi que d'obtenir des informations sur l'enregistrement de ces mêmes données, dans la mesure où les droits de tiers ne s'y opposent pas.").

Article 16 Droit de propriété (Convent 8)

Modification possible : Dans le texte, on pourrait remplacer "indemnité préalable" par "indemnité octroyée rapidement" ou par une autre formule analogue.

Article 17 Droit d'asile et expulsion (Convent 8)

Observation : Sous réserve de propositions de modification.

Article 19 Non-discrimination (Convent 8)

Observation : Il y aurait lieu de préciser le lien entre ce droit fondamental et l'interdiction des discriminations entre les ressortissants des États membres, article J (Convent 17).

Article A Principe de démocratie (Convent 17)

Proposition de modification : Il y a lieu de renoncer au paragraphe 1, étant donné que la notion de "peuple" ne peut faire l'objet d'un consensus et qu'elle ne renvoie à aucun droit. Au paragraphe 2, on peut supprimer le terme "institutions". Au paragraphe 3, on peut parler des "membres du Parlement européen". Au paragraphe 3, deuxième moitié de la phrase, il serait souhaitable d'ajouter le critère de l'égalité de suffrage.

Article C Droit de participer aux élections du Parlement européen (Convent 17)

Observation : Possibilité de fusionner les articles C et D. Possibilité de renoncer le cas échéant à la deuxième phrase compte tenu de la clause horizontale H 3.

Article D Droit de participer aux élections municipales (Convent 17)

Observation : L'article D peut être fusionné avec l'article C. Possibilité de renoncer le cas échéant à la deuxième phrase compte tenu de la clause horizontale H 3.

Article E Droit à une bonne administration [relations avec l'administration] (Convent 17)

Proposition de modification : Il conviendrait d'ajouter le mot "notamment" ("ce droit comporte notamment...") avant l'énumération qui figure au paragraphe 2, étant donné que celle-ci n'est pas exhaustive. Le cercle des destinataires devrait être étendu à tous les citoyens de l'Union ("Tout citoyen de l'Union et toute personne...").

Article J Non-discrimination (Convent 17)

Observation : Le lien avec d'autres discriminations interdites (Article 19 Convent 8) et la place par rapport à celles-ci restent à préciser.

Article I Égalité entre les hommes et les femmes (Convent 18)

Proposition de modification : Le texte devrait parler d'"égalité de traitement" au lieu d'"égalité".

Observation : La possibilité de procéder à une "discrimination positive" pourrait être ouverte dans le cadre de la disposition générale relative à la non-discrimination (actuellement article 19 Convent 8).

Article II Liberté professionnelle (Convent 18)

Proposition de modification : Les termes "Toute personne" devraient être remplacés par "Tout citoyen et toute citoyenne de l'Union". Il y aurait alors lieu de supprimer la deuxième moitié de la phrase à partir de "sans préjudice".

Article III Droit à l'information et à la consultation des travailleurs (Convent 18)

Proposition de modification : Dans la version allemande, remplacer, dans le titre de l'article "Pflicht zur" par "Recht auf" [cette proposition ne concerne pas le texte français]. Au début du texte doit figurer un "ou" au lieu d'un "et" ("Les travailleurs ou leurs représentants") conformément à l'article 21 de la Charte sociale. Alléger le reste du texte dans la mesure du possible, c'est-à-dire supprimer le membre de phrase commençant par "notamment...".

Article IV Droit d'association, de négociation et d'action collective (Convent 18)

Proposition de modification : La deuxième phrase du paragraphe 1 devrait être supprimée. Il serait souhaitable de supprimer la référence au droit de grève.

Article V Droit à une rémunération égale pour un travail égal (Convent 18)

Proposition de modification : Devrait être supprimé, car l'article 4 de la version révisée de la Charte sociale, en son point 3, qui concerne ce sujet, a un autre contenu et ce principe ne peut être formulé comme un droit sans que cela pose des problèmes considérables.

Article VI Droit au repos et au congé annuel (Convent 18)

Modification possible : On peut se demander si cet élément mérite de figurer dans la Charte ou s'il entre trop dans les détails.

Article VIII Protection des enfants et des adolescents (Convent 18)

Proposition de modification : La limite d'âge de quinze est trop rigide. Il doit pouvoir y avoir des exceptions, comme celles permises par le point 20 de la Charte communautaire des droits sociaux fondamentaux. Les termes "en tout cas" doivent être supprimés. Il sera peut-être nécessaire de modérer encore le texte. Se pose en outre la question de savoir si cette disposition est trop spécifique, ou si ce domaine de protection est couvert par d'autres droits fondamentaux. Une disposition générale relative à la protection des enfants et des adolescents est encore en cours d'examen au sein de la Convention.

Article IX Droit à la protection en cas de licenciement (Convent 18)

Observation : Des exceptions doivent être possibles, pour les petites entreprises comportant jusqu'à cinq salariés et pour les relations de travail durant les six premiers mois, par exemple. Au cas où la clause générale de limitation ne le permettrait pas, la possibilité de faire des exceptions devrait être prévue dans le texte de la disposition.

Article X Droit à la formation et à l'orientation professionnelles (Convent 18)

Proposition de modification : Dans l'intitulé, il conviendrait d'ajouter les termes "un accès sans discriminations à" après "Droit à". Par ailleurs, il faut tirer au clair la question du lien avec le droit à l'éducation (actuellement article 16, Convent 13).

Article XI Droit des travailleuses à la protection de la maternité (Convent 18)

Proposition de modification : Afin de rendre le texte plus général, il convient d'insérer après "maternité" le mot "approprié" et de supprimer les termes "d'au moins quatorze semaines" : "Toute travailleuse a droit à un congé de maternité *approprié* avant et/ou après l'accouchement." Reste à savoir si cet élément mérite de figurer dans la Charte et s'il n'est pas trop spécifique.

Article XII Droit au congé parental (Convent 18)

Proposition de modification : Afin de rendre le texte plus général, il convient d'insérer après "parental" le mot "approprié" et de supprimer les termes "d'au moins 3 mois" : "Tout travailleur a droit à un congé parental *approprié* à la suite de la naissance ou de l'adoption de son enfant." Reste à savoir si cet élément mérite de figurer dans la Charte et s'il n'est pas trop spécifique.

Article XIII Sécurité sociale (Convent 19)

Proposition de modification : Au lieu de "selon les modalités", formuler de la manière suivante : "selon la situation juridique."

Article XIV Droit à l'aide sociale (Convent 19)

Proposition de modification : Au lieu de "ressources suffisantes", mieux vaut opter pour "ressources nécessaires". Ajouter le cas échéant le droit à une aide permettant d'accéder à un logement convenable.

Article XV Droit à l'accès aux soins de santé (Convent 19)

Observation : Problème des destinataires (compétences de l'Union).

Article XVI Droit des personnes âgées à la protection sociale (Convent 26)

Observation : La question du lien de cet article avec la protection sociale en général pourrait être soulevée.

Article XVII Droits des personnes handicapées à l'insertion sociale et professionnelle (Convent 26)

Observation : Le texte pourrait par la suite être formulé de manière à être plus proche de l'article 19, paragraphe 2 (Convent 8), et même y être éventuellement inséré.

Article XVIII Droit des travailleurs migrants à l'égalité de traitement (Convent 26)

Observation : Ce texte pose un problème, parce qu'il fonde un droit dont ne bénéficient que des pays tiers. Se pose par ailleurs la question de sa place par rapport aux autres dispositions relatives à la non-discrimination.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 2 May 2000**CHARTE 4282/00****CONTRIB 155****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter the presentation by the General Council of the Bar of England and Wales at the hearing on 27 April 2000.^{1 2}

¹ General Council of the Bar of England and Wales Brussels Office: Avenue de la Joyeuse Entree 1, B-1040 Brussels. Tel: +32-2-230 4810. Fax: +32-2-230 4596.

² This text has been submitted in English language only.

Charter of Fundamental rights, Hearing, April 27

Bar Council of England and Wales contribution

On February 9, 2000 the Bar Council International Relations Committee submitted a 13 page paper to the House of Lords Select Committee, (Upper House of the British Parliament) which was at the time considering a number of questions about the Charter, and had sought the Bar's opinion. That document was submitted by the Bar to the Convention in advance of this hearing, and I refer you to it for a detailed exposé of our position.

Some of the main points arising are :

- * The Tampere Council's objective to "consolidate" the fundamental rights applicable at Union level "in order to make their overriding importance and relevance more visible to the Union's citizens" is not necessarily best served by the creation of a new charter.
- * Expansion of human rights protection could be achieved by other means, including the extension of the ECJ's jurisdiction to second and third pillar matters, and the development of the jurisprudence in line with existing conventions, as has happened in relation to the ECHR. The Bar also believes that, in any event, the Community should become a signatory to the Convention.
- * We are concerned, apart from anything else, not to give the wrong signal to non-EU signatories and potential signatories to the Convention.
- * Treaty status - we consider that this question is of more political and constitutional significance than legal - treaty status is not an essential pre-requisite to improving the effectiveness of judicial human rights protection in the Union.

However, since that document was drafted, the voices in favour of having a Charter, which will be incorporated into the Treaties, seem to have become louder. Accordingly, whilst I commend to you the Bar's submitted paper which sets out the debate, today I would like to mention a few practical concerns that we have, based on that assumption.

Justicability and enforceability

The Bar, being an independent referral profession, has the scope, possibly more than almost any other branch of the legal profession, apart from those in large law firms, to specialise. However, even those who validly claim to be specialists in the field of human rights experience difficulty from time-to-time in dealing with national human rights protection and the Convention system.

A third layer of Community law, differing from the others, would result in great confusion for all - most especially for the very citizens we are supposed to be serving.

It is essential to ensure that the Charter is uncomplicated to understand and does not increase legal complexity.

New rights - provided they are clearly drafted, we do not choose to comment on them substantively at this point.

However, any rights that are already covered by the Convention should be incorporated in exactly the form in which they are already familiar from that.

Areas of confusion over jurisdiction, notably between the European Court of Human rights ("ECHR") and the European Court of Justice ("ECJ"):

Situation when the rights are the same or similar to those in the European Convention are incorporated into the Charter,

- * What force of law will the jurisprudence of the ECHR have?
- * How can it be ensured that the courts develop consistent jurisprudence hereafter?
- * If there are contradictions, which will have precedence?
- * Could we end up with a situation where national courts could cherry-pick between them?
- * If the same issue is before both courts at the same time, which, if either, should stay the procedure pending the others' decision?
- * Where does this leave us in advising clients both within the EU and outside?

New rights

- * If an issue is within the scope of EU law, will new rights apply?
- * If it is outside the scope of EU law but within that of the European Convention will the new rights still apply? Again, what if there is a conflict with Strasbourg?

Balance of Powers

In its 1999 judgement in the Matthews case, the ECHR took the dramatic stance of striking down a Treaty article for breach of the Convention.

* Is the ECJ to be able to do the same?

* What effect will that have on the balance of powers? - Member States would no longer hold sole power to change the Treaty?

Thank you.

Evanna Fruithof
General Council of the Bar of England and Wales,
Brussels Office
Ave de la Joyeuse Entrée 1 - 5,
B-1040

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 8 May 2000**CHARTE 4283/00****CONTRIB 156****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter the statement by Food First Information and Action Network (FIAN-International) for Forum Menschenrechte given at the hearing on 27 April 2000. ¹

¹ This text has been submitted in English language only.

Charter of Fundamental Rights

Public Hearing of the Convent

April, 27th 2000, Brussels

**Contribution by Michael Windfuhr,
Executive Director,
FIAN – FoodFirst Information and Action Network**

For Forum Menschenrechte (German Forum for Human Rights)

Today, Forum Menschenrechte, which was founded in connection with the 1993 Conference for Human Rights in Vienna, is bringing together 40 German human rights organisations. The Forum Menschenrechte has been following the debate on the fundamental rights in the European Union and since 1997 has been calling for a Charter of Fundamental Rights¹.

Forum Menschenrechte has formulated a joint statement on the Charter which has been presented to the German members of the Charter, and which can be obtained from the homepage of the European Council. Forum Menschenrechte has asked Michael Windfuhr from FIAN to represent the German human rights organisations in the hearing of the Convent.

FIAN (FoodFirst Information and Action Network) was founded in 1986 by human rights activists in Belgium, Germany and Sweden with the aim of establishing an international human rights organisation concerned with the question of the implementation of social, economic and cultural human rights (esc-rights). As the International Covenant on Economic, Social and Cultural rights comprises of a variety of rights, the founding members of FIAN decided to focus the mandate of FIAN on the right to adequate food (Article 11 of the Covenant). Currently, FIAN-International has sections and co-ordinating bodies in 20 countries, and members in about 60 countries. FIAN has advisory status with the United Nations, as well as with the OAU and the European human rights system.

Why include economic rights in the Charter of Fundamental Rights?

Essentially, there are five arguments for the inclusion of economic rights in the Charter. These should be mentioned here, before discussing the arguments that are commonly levelled against the inclusion of economic rights in the Charter, especially the lack of justiciability.

¹ See documentation of the congress held in 1997 „Für ein Europa der politischen und sozialen Rechte“ Forum Menschenrechte, Materialien Nr. 8

Five arguments for the inclusion of economic rights in the Charter of fundamental rights:

1. The defence of human dignity calls for the recognition of the indivisibility of human rights

In the Universal Declaration of Human Rights, the signatory states obligate themselves to the “creation of a world in which the human beings, free from fear and need, enjoy the freedom of speech and belief.” This statement has its origin in the observation that social crisis has commonly been one of the factors in promoting rises in fascism. These words of the preamble of the Universal Declaration of Human Rights are pointing to the close connection between, and the common reference of, both civil-political, and economic, social and cultural human rights, which is manifesting itself in the concept of human dignity. In 1966, the United Nations finalised the adoption of two treaties codifying human rights, making them legally binding – the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights. Both became effective in 1976, bound together by a joint preamble that emphasises the indivisibility of human rights: “The ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights.”

2. The division of human rights is undermining the effective protection of human rights

Additional to the historical reasons for the emphasis on the indivisibility of human rights, practical experiences has made it mandatory for human rights organisations to defend the indivisibility of human rights. Those who are facing political persecution and discrimination are often activists, trade unionists etc., who are engaging themselves in the defence of economic, social and cultural rights.

Working with organisations in the defence of the human right to food, FIAN is on a daily basis experiencing this close relationship. For the victims of human rights violations, any differentiation in classes of human rights is irrelevant. They experience both types of threats as what they are: a violation of their dignity as human beings.

3. Lately, the idea of the indivisibility of human rights has experienced impressive support

The indivisibility of human rights is part of the consensus on which the international treaties in the field of human rights are based. Following this tradition, the 1993 Vienna Conference on human rights again emphasised the indivisibility of human rights – “All rights are universal, indivisible, and interdependent and interrelated.” This basic consensus has led to an immense improvement in the recognition of esc-rights during the last 15 years. A lot of new constitutions have placed esc-rights alongside civil-political rights. The work on esc-rights within the human rights system of the United Nations has developed dramatically since the end of the 1980s. In the African, inter-American and European human rights systems, esc-rights have naturally been integrated, and the inter-American and the European system have even developed an appeal procedure.

4. A Charter of Fundamental Rights lacking economic human rights would be a step backward and a precarious international signal

Until today, 50 years after the Universal Declaration of Human Rights, the indivisibility of human rights has not been realised neither in state practice or in the human rights instruments of the United Nations and in public consciousness. Translating this human rights mandate into practice has to be the central aim of a modern human rights system. A Charter of Fundamental Rights lacking economic human rights would throw us back 20 years in the understanding of human rights and would call into question the results of the Vienna Conference. For the human rights system this would weigh more heavily than the questioning of human rights using cultural arguments. States responsible for massive violations of economic, social and cultural rights could point to an European Charter lacking economic rights in defence of their actions.

5. All EU member states have accepted the protection and the fulfilment of esc-rights as binding obligations

In all EU member states, esc-rights have been accepted for a long time already, and are therefore part of the state obligations of the EU countries. In addition, the EU members have supported the European Social Charter and have ratified a variety of other conventions which explicitly and implicitly include esc-rights, and which therefore imply obligations for the EU member states. These are for example the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, as well as a variety of conventions of the ILO. During several World Summits throughout the 1990s, the EU member states have declared their intention to implement esc-rights (World Population Summit, World Social Summit, etc). It is therefore obvious that they have taken on the responsibility to respect, to protect and to fulfil these rights when also acting within the framework of the European Union. This is even more important as decisions on the EU-level have direct influence on the fulfilment of the esc-rights of those people resident in the member states of the European Union.

Discussion of arguments and problems which are levelled against the inclusion of esc-rights in the Charter of Fundamental Rights

Below are the series of arguments which are generally levelled against esc-rights, some of which can be found also in the discussion on the Charter

The first argument questioning the nature of esc-rights as fundamental and human rights is the high costs connected with the fulfilment of these rights. In order to provide all people with access to adequate food, housing, education and health services, massive investment and economic development is needed. Another argument closely connected with the one of high costs is a justiciable one, dealing with the nature of esc-rights. All rights have to be directly implementable. Esc-rights, on the other hand, are said to be implementable only over a long period of time and are therefore to be seen as political goals, not as rights. Another conclusion on the different legal nature

of the two groups of human rights is that civil-political human rights are first of all ‘negative rights’ protecting the individual against abuse of state power, while esc-rights call for an active role of the state in their implementation and are therefore called ‘positive rights’. From this point of view, the writing-down of esc-rights as directly implementable fundamental rights would restrict the states too much politically and would reduce political fields of action.

The rest of this text will deal with the counter arguments to these assumptions. At the centre is the change in direction that has been achieved in the human rights system dealing with esc-rights during the last few years. This change in direction has coincided with several other developments supporting this change: the end of the Cold War, the growing demands for economic rights by NGOs; the creation of an UN Committee on Economic, Social and Cultural Rights that is equal in status to the UN Human Rights Committee; and the strengthening of esc-rights in the regional human rights systems.

1. The legal nature of esc-rights is not different from civil-political rights: they comprise of state obligations on three levels

The starting point of this change in direction lies with the growing experience of concrete cases of violations of esc-rights that have been documented by NGOs and by the UN bodies working on human rights. Of course, not every hungry or illiterate person is the victim of human rights violations. However, the influence of wrong or missing state intervention on the number of hungry, illiterate and homeless people is very high. State forces are often directly involved when people are evicted from their land or when homes are destroyed for urban development. They do not act when peasants are violently thrown from their land by the owners of large estates, when wages are paid below the minimum wage or when certain groups are denied their right to work. Often, they only use a percentage of available resources to enable people without any income to get access to productive resources.

These examples illustrate that the old judicial opposition of negative and positive rights cannot be justified objectively. Esc-rights do not essentially obligate states to anything different from civil-political rights:

1. The respect of existing possibilities for participation, both political and economic, meaning the respect of an individual’s physical integrity as well as freedom of profession or the access to land (**obligation to respect**)
2. The protection of the individual by legal systems and the police, for example the freedom to act politically as well as the freedom to use resources for economic purposes (freedom from corruption, security of land titles, protection of the tenant etc.) (**obligation to protect**).
3. State action to create supportive frameworks for the fulfilment of human rights, this means the reduction of destructive frameworks and the creation of supportive ones (**obligation to fulfil**).

2. The costs of implementing esc-rights are not necessarily higher than implementing civil-political rights

Civil-political rights call for the same state involvement and are in the same way impossible to be realised without money. No state can immediately guarantee free access to land to everyone the same as no state can immediately guarantee an independent judiciary based on fair trial. The

number of human rights specialists and of NGOs who, in agreement with the results from the Vienna Conference, see an end to the differential interpretation of the two Covenants and who only see slight differences in the degree of the obligations to respect, to protect and to fulfil, is growing rapidly. Human rights law both obligate states to refrain from violating human rights and to pursue an active policy aimed at fulfilling these rights. **The implementation of esc-rights does not call for the revival or the cementing of a centralised supplier state, but for the creation of opportunities and the protection of social and economic participation for everyone.**

3. **esc-rights are often seen as second-class rights, as their complete fulfilment can be achieved only step by step or gradually. However, this is also the case with other fundamental rights that belong to the group of civil-political rights (For example non-discrimination of men and women). In the same way as these rights, esc-rights should be recognised as fundamental rights, even if their fulfilment can be achieved only gradually.**

The protection of fundamental rights can therefore not be restricted to directly implementable and justiciable rights but has to be comprehensive. The line deviding directly implementable and justiciable rights does not lie between civil-political rights and esc-rights but between the possibility for direct realisation of different levels of state obligations resulting from human rights. The obligations to respect and to protect are largely directly implementable and justiciable.

4. **esc-rights are largely directly implementable, so one cannot talk of a lack of justiciability**

In its legal commentary on the nature of state obligations in relation to esc-rights (General Comment No. 3), the UN Committee on Economic, Social and Cultural Rights has pointed out that many obligations resulting from the esc-rights are directly realisable, for example all anti-discriminatory measures. The state obligations to respect and protect these rights are largely directly implementable and justiciable.

5. **The nature of esc-rights should generally not be questioned using the argument that for their full implementation positive state action is needed. The availability of state social security forms the basic content of esc rights and should also be at the core of the Charter of Fundamental Rights.**

The realisation of civil-political rights also requires positive state action, without their legal nature being called into question. Should the fulfilment bound obligations on esc rights be excluded from the Charter as they can only be realised gradually and consequently represent political goals rather than rights?

Answering this question, we have to make the difference of whether we are talking about the implementation of basic standards or about the full realisation of these rights. In its previous work, the UN Committee on Economic, Social and Cultural Rights has made explicit that the obligation to fulfil first of all obligates the state to identify all groups at risk and to design policies to support them. If the state fails to do so, it has already violated the right concerned (for example the right of minorities to access education services). Furthermore, the Committee has developed the concept of “core content” (for the right to education: access to primary education), which implies that basic

services should be provided by all states irrespective of their level of development. International jurists have impressively supported this in the Maastricht Guidelines. In our opinion, in the Charter of Fundamental Rights, the right to a living wage should be read as the core content of the right to an adequate standard of living.

The question of available resources for the implementation of esc-rights becomes relevant only beyond the fulfilment of the core content. The full realisation of the right to education requires more financial resources. In article 2, the Covenant on Economic, Social and Cultural Rights calls for the use of the “maximum of available resources”. This full implementation can certainly only be included in the Charter as a political goal, so that the state’s freedom to act is not restricted too much. However, the progressive full implementation of esc-rights has to be supplemented with benchmarks and has to be monitored regularly.

6. In the international human rights system, esc-rights are provided for with weaker instruments and have been largely neglected by international law. This discrimination against esc-rights should however not be used as an argument for continuing discrimination in the future.

Except for the obligation to report, international law does not know any instruments for enforcement of esc-rights, like a procedure for individual complaint. This means that no case law has been developed. The inter-American and the European human rights systems have in the meantime accepted procedures for individual complaints. Concerning the Covenant on Economic, Social and Cultural Rights, an optional protocol to the Covenant is currently being considered by the Commission on Human Rights.

Again and again, it is suggested that esc-rights are not formulated in a precise legal manner, because the relevant clauses in the Covenant are not exact. Again, one can say, that, as with all fundamental rights, interpretation and the development of case law will help develop a more precise understanding. Case law of the ECHR has contributed to an immense improvement in the understanding of these rights. In the field of esc-rights, the Committee on Economic, Social and Cultural Rights has started to develop precise legal commentaries in the form of “General Comments”. The accusation that esc-rights are not well enough defined has its roots in the fact that intensive legal occupation with these rights has only started recently. Case law and legal interpretations will help to overcome this backward nature.

However, there are also other reasons than legal ones responsible for the neglect of esc-rights. Both groups of human rights have been politically instrumentalised during the Cold War. While the Western countries have been referring to the violation of civil-political rights in Eastern Europe, the East was pointing to the neglect of economic and social rights in the West (like unemployment and homelessness). This political take-over has thoroughly influenced the understanding and education on human rights. In Western countries, the public understanding and media coverage of human rights is dominated by the focus on civil-political rights like the right to be free from torture, death penalty and political oppression.

7. The inclusion of esc-rights in the Charter will not extend the responsibilities of EU institutions beyond those laid down in the EU treaties. The aim of including esc-rights is firstly to ensure that all the esc-rights of those resident within the EU are not violated by decisions taken on the European level.

Especially in the field of the fulfilment of esc-rights, the EU has already far-reaching legal capabilities. The accountability of policies of all organs of the EU and the member states is very important, especially as the economic frameworks are largely determined at the European level. Esc-rights imply negative rights, protecting all residents in the EU against the possible negative implications of EU-policy on the application of these rights.

The European citizens and all those resident within the EU, will not understand and accept the implied set-back in the protection of their rights if the Charter does not include the respect, the protection and the fulfilment of their economic, social and cultural rights.

Conclusion

- Through their commitment to human rights, states are obligated to not violate these rights and to actively pursue their fulfilment. The implementation of esc-rights does not call for the revival or the cementing of a centralised supplier state, but for the creation of opportunities and the protection of social and economic participation for everyone.

- A Charter of Fundamental Rights lacking economic human rights would throw us back 20 years in the understanding of human rights and would call into question the results of the Vienna Conference. For the human rights system this would weigh more heavily than the questioning of human rights using cultural arguments. States responsible for massive violations of economic, social and cultural rights could point to an European Charter lacking economic rights in defence of their actions.

Editors' note to CHARTE 4286/00,
**Common Statement of the Platform of European
Social NGOs and the European Trade Union
Confederation (ETUC) given at the public
hearing on 27/04/00:**

See also CHARTE 4324/00.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 12 May 2000**CHARTE 4286/00****CONTRIB 158****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a Common Statement of the Platform of European Social NGOs and the European Trade Union Confederation (ETUC) participating in the public hearing on 27 April 2000.

1 2

¹ For the names of the NGO's, please refer to page 2.

² This text has been submitted in English language only.

Association des Femmes de l'Europe Méridionale (AFEM)
ATD Quart Monde
Carrefour pour une Europe civique et sociale (CAFECES)
Collectif sur la Charte des droits fondamentaux
Commission Justice et Paix
Eurolink Age
European Anti Poverty Network (EAPN)
European Movement
European Union Migrant's Forum
Fédération européenne du Personnel des Services Publics (EUROFEDOP)
FONDA pour la vie associative
Franciscans (Commission for Justice, Peace and Integration of Creation)
Initiative "Netzwerk Dreigliederung"
International Rehabilitation Council for Torture Victims
Office catholique d'information et d'initiative pour l'Europe (OCIPE)
Permanent Forum of Civil Society
Society for Threatened Peoples International
Terre des Hommes France
The European Region of the International Lesbian and Gay Organisation (ILGA)
Union des Fédéralistes Européens (UEF)*
Young European Federalists (JEF)*

* avec le commentaire suivant : "L'élaboration de la Charte des droits fondamentaux doit s'inscrire dans le cadre d'un processus d'élaboration d'une Constitution européenne".

THE QUALITY TEST”

Common Statement of NGOs participating in the Hearing on the Charter of Fundamental Rights Brussels, 27 April 2000.

What the Charter needs to be What that requires

1. An EU Charter, shining beacon across Europe on common values and objectives of peoples sharing the same aspiration to peace, development and freedom, belonging to various faiths, beliefs and civilisations and part of the first planetary generation.

2. A Charter for Women and Men

3. A Charter for all: Citizens, Residents, Migrants, Refugees, Undocumented persons

4. A Charter on essential rights from the Council of Europe, the U.N. and I.L.O agreements

5. A Charter on Individual and Collective Rights,

6. A Charter on the Common Good

- To address the universal character of Fundamental Rights.
- To recognise equality between women and men as a founding principle of the Union
- To use inclusive language.
- To recognise the principle of non discrimination
- To protect the rights of minorities, to use their languages and to transmit their cultures and values in accordance with the Charter
- Never to fall short of agreements even if signed only by some of the EU Member States
- To supplement, strengthen, build on existing rights
- To protect collective rights such as cultural and linguistic rights, the rights of trade unions and associations
- To guarantee a right of consultation for NGOs at the European level
- To recognise access to justice at EU level for NGOs defending the common good and the rights of future generations
- To secure recognition of the common good which is the foundation of a community of persons living together in solidarity and respect
- To give everyone access to the common goods and Public Services, secure transparency in management and participation in the assessment of

7. A Charter on civil and political, social, cultural and ecological rights

- the management
- To declare that the Charter secures indivisible rights
- To recognise and guarantee the right to local self-government
- To guarantee the key programmatic social, environmental, cultural and education rights for all, for the implementation of which
 - (i) indicators and convergence mechanisms need to be designed
 - (ii) a multiannual implementation programme needs to be developed
 - (iii) a system of monitoring, benchmarking and assessment needs to be in place

8. A Charter on Participatory Democracy at European level

- To secure transparency and access to information
- To define participatory democracy rights at EU as well as at local level
- To recognise the right to a democracy based on equality and parity
- A Charter which defines the criteria for strategic impact assessments of EU policies on all those who find themselves affected by EU actions abroad

9. A Charter which inspires the Union in all its external actions.

- The Charter should be legally binding for all the EU Institutions and the Member States.
- Infringement should be examined by the EU Court of Justice and Member State status should be suspended for any State found to be in serious infringement

10. A legally binding Charter

- To be submitted to an indicative vote by the Parliamentary Assembly of the Council of Europe, involving MPs of all EU Applicant Countries
- To ask for an indicative vote of NGOs on the draft Charter
- To pass the above quality test successfully.

11. A Charter adopted by a participatory procedure

12. A Charter to be integrated in the Treaty

The Signatories request the opportunity to have a real debate with the Members of the Convention on 6 June 2000, at the occasion of the “open doors” day organised by the Convention in the EP.

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE**fundamental.rights@consilium.eu.int**

Bruxelles, le 8 mai 2000**CHARTE 4287/00****CONTRIB 159****NOTE DE TRANSMISSION**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne

Veillez trouver ci-joint l'intervention du Comité européen de coordination de l'habitat social (CECODHAS) faite à l'occasion de l'audition du 27 avril 2000.¹

¹ Ce texte a été soumis en langue française uniquement.

Intervention de J. Berké, au nom du CECODHAS,
à la séance d'audition par la convention chargée
d'élaborer la charte des droits fondamentaux de
l'Union Européenne le 27 avril au Parlement
européen

Destinataires :

- N. Van Velzen – M. Delebarre
- J. Badet
- P.L. Marty
- Convention

Je me présente, Jacques Berké, vice-président de l'Union nationale HLM et vice-président du CECODHAS, le comité européen de coordination de l'habitat social, présidé par Nico Van Velzen, que je représente aujourd'hui.

Le CECODHAS réunit l'ensemble des fédérations d'organismes qui produisent et gèrent des logements sociaux en Europe. Nous produisons 500.000 logements par an, nous en gérons 20 millions et nous avons vendu ou financé 10 millions de logements en accession ; en résumé nous logeons environ un européen sur 5.

Nous avons examiné avec attention, compte tenu de notre diversité, l'idée d'intégration du droit au logement dans la charte des droits fondamentaux de l'Union européenne.

Naturellement, les traités ne reconnaissent pas de compétence à l'Union en matière de logement et nous sommes en faveur du maintien du principe de subsidiarité en ce domaine.

Mais au niveau européen, la charte sociale de 1996 fait déjà référence au droit au logement dans son article 31 ; je la cite : en vue d'assurer l'exercice effectif du droit au logement, les parties s'engagent à prendre des mesures destinées :

- A favoriser l'accès à un logement d'un niveau suffisant,
- A prévenir et à réduire l'état de sans abri en vue de son élimination progressive,
- A rendre le coût du logement accessible aux personnes qui ne disposent pas de ressources suffisantes.

Il y a donc là une première reconnaissance, au niveau européen, du droit au logement.

Nous avons ensuite étudié la situation dans nos différents pays. La référence au droit au logement n'apparaît pas dans toutes les législations du fait notamment des interprétations différentes données à la notion de droit : droit programmatique ou droit sanctionnable ? Nous avons noté que si certains pays n'ont pas inscrit ce droit dans leurs législations, ces mêmes pays vont parfois plus loin que les autres dans la mise en œuvre effective de ce droit pour certains types de populations : je pense en particulier aux femmes seules avec des enfants en Grande Bretagne ou aux sans abri en Allemagne.

Enfin nous avons constaté que la garantie d'un certain nombre d'autres droits passe par la mise en œuvre du droit au logement comme l'a rappelé C. Parmentier tout à l'heure au nom des sans abri : les droits relatifs à la sûreté de la personne, au respect de la vie privée, de la vie familiale, le droit au travail, à l'éducation, à la santé supposent évidemment l'accès à un logement ; la notion même de dignité humaine suppose des conditions décentes d'habitat.

Compte tenu de tous ces éléments, nous avons considéré à l'unanimité des représentants des 15 pays dans notre comité, que le droit au logement devait être reconnu comme un droit de nature programmatique, qui oblige les pouvoirs publics de chaque pays à développer les politiques et mobiliser les moyens qui permettent de favoriser l'accès à un logement décent.

Si ce droit programmatique ne peut être un droit sanctionnable, nous pensons que la mise en œuvre de ce droit passe par le développement d'une politique de logement social que nous avons proposée à la commission européenne de définir ainsi : des logements locatifs ou en accession à la propriété pour lesquels sont définies des règles d'accès en faveur des ménages ayant des difficultés à se loger, ceci précisément afin de favoriser la mise en œuvre du droit au logement.

ENTWURF DER CHARTA DER GRUNDRECHTE DER EUROPÄISCHEN UNION**fundamental.rights@consilium.eu.int**

Brüssel, den 8. Mai 2000**CHARTE 4288/00****CONTRIB 160****ÜBERMITTLUNGSVERMERK**

Betr.: Entwurf der Charta der Grundrechte der Europäischen Union

Finden Sie bitte nachstehend zwei Briefe, die die Jungen Europäischen Föderalisten (JEF) an Herrn Bundespräsident a.d. Roman HERZOG gerichtet haben. ¹

¹ Dieser Text wurde nur in deutscher Sprache vorgelegt.



internationale
Junge Europäische Föderalisten
Bundesverband

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Berlin/Hamburg, 27.11.1999

Arbeit des Grundrechtskonvents

Sehr geehrter Herr Prof. Herzog,

zunächst möchten wir Ihnen zu Ihrer Nominierung als Mitglied des Europäischen Grundrechtskonventes als Vertreter des Bundeskanzlers gratulieren.

Wir, die Jungen Europäischen Föderalisten, sind eine in 30 europäischen Staaten aktive, europapolitische, aber parteipolitisch unabhängige Jugendorganisation und haben uns der Förderung der europäischen Integration durch Aktionen, Kampagnen, Seminarveranstaltungen, Vorträgen und Veröffentlichungen verschrieben.

So setzen wir uns seit Jahrzehnten für die Schaffung einer föderalen europäischen Verfassung ein.

1997 haben wir in diesem Zusammenhang die Kampagne für eine europäische Verfassung gestartet und eine *virtuelle Arbeitsgruppe Verfassung* ins Leben gerufen, die über das Internet Gedanken zu den wünschenswerten Inhalten einer Verfassung für einen Europäischen Bundesstaat austauschte. Die von uns diskutierten Punkte betrafen die Kompetenzverteilung, die Grundprinzipien einer künftigen Europäischen Verfassungsordnung wie Demokratie, Rechtsstaatlichkeit, Menschenrechte, Subsidiarität und Solidarität und v. a. eine umfassende Grundrechtsordnung.

Vorangestellt haben wir unserem Vorschlag demgemäß als Kernpunkt einer künftigen europäischen Verfassung einen Katalog von Grund-, Freiheits- und Verfahrensrechten, den Sie anliegend erhalten.

In diesem Zusammenhang begrüßen wir auch die Einrichtung eines konstitutionellen Ausschusses im neugewählten Europaparlament.

Wir verstehen unsere Arbeit als Input für alle, die an der Schaffung einer europäischen Verfassungsordnung arbeiten und haben uns demgemäß mit Politikern aus Bundestag und Europaparlament in Verbindung gesetzt um ihnen unsere Ideen zu vermitteln.

Zu unserer Freude hat sich zu Beginn der neuen Legislatur des Europäischen Parlaments eine interfraktionelle *Intergroup* für eine Europäische Verfassung gegründet, der bereits über 130 Abgeordnete angehören.

Wir würden uns freuen, wenn sich auch der europäische Grundrechtskonvent mit unseren Ideen auseinandersetzen und die JEF im Rahmen der Beteiligung von Nichtregierungsorganisationen mit in seine Arbeit einbeziehen würde.

Wir wünschen Ihnen viel Erfolg bei Ihrer Arbeit und verbleiben

mit freundlichen Grüßen

Marc-Oliver Pahl

David Schneider-Addae-Mensah

Bundesvorsitzender

Stv. Bundesvorsitzender

Anlage: Ideen der virtuellen JEF-AG Verfassung zu einem europäischen Grundrechtskatalog



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An den
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c/o Generalsekretariat des Rates
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Berlin/Hamburg, 14. März 2000

Arbeit des Grundrechtskonvents

Sehr geehrte Mitglieder des Grundrechtskonvents,

wie wir bereits mit Schreiben vom 27.11.1999 an den Vorsitzenden des Grundrechtskonvents, Herrn Prof. Dr. Roman Herzog, auf das wir bedauerlicherweise keine Antwort erhielten, mitteilten, sind wir, die Jungen Europäischen Föderalisten, eine in 30 europäischen Staaten aktive, europapolitische, aber parteipolitisch unabhängige Jugendorganisation.

Wir haben uns der Förderung der europäischen Integration durch Aktionen, Kampagnen, Seminarveranstaltungen, Vorträgen und Veröffentlichungen verschrieben.

So setzen wir uns seit Jahrzehnten für die Schaffung einer föderalen europäischen Verfassung ein.

1997 haben wir in diesem Zusammenhang die Kampagne für eine europäische Verfassung gestartet und eine *virtuelle Arbeitsgruppe Verfassung* ins Leben gerufen, die über das Internet Gedanken zu den wünschenswerten Inhalten einer Verfassung für einen Europäischen Bundesstaat austauschte.

Die von uns diskutierten Punkte betrafen die Kompetenzverteilung, die Grundprinzipien einer künftigen Europäischen Verfassungsordnung wie Demokratie, Rechtsstaatlichkeit, Menschenrechte, Subsidiarität und Solidarität und v. a. eine umfassende Grundrechtsordnung.

Vorangestellt haben wir unserem Vorschlag demgemäß als Kernpunkt einer künftigen europäischen Verfassung einen Katalog von Grund-, Freiheits- und Verfahrensrechten, den wir bereits an Herrn Prof. Herzog übersandt hatten.

Wir verstehen unsere Arbeit als Input für alle, die an der Schaffung einer europäischen Verfassungsordnung arbeiten und haben uns demgemäß mit Politikern aus Bundestag und Europaparlament in Verbindung gesetzt um ihnen unsere Ideen zu vermitteln.

Zu unserer Freude hat sich zu Beginn der neuen Legislatur des Europäischen Parlaments eine interfraktionelle *Intergroup* für eine Europäische Verfassung gegründet, der bereits über 130 Abgeordnete angehören.

Wir appellieren an den Konvent, mit seiner Arbeit nicht nur einen weiteren Katalog von Grundrechten zu schaffen, der dann in der Luft hängt.

Vielmehr fordern wir den Prozeß der Grundrechtskodifikation mit jenem der derzeit laufenden Vertragsrevision zu verknüpfen und die von Ihnen erarbeitete Grundrechtscharta bereits in Nizza in den EU-Vertrag zu integrieren. Nur so kann eine echte Union der Bürger entstehen.

Ein wirklich demokratisches Europa braucht eine Verfassung!

Demokratisch gebotene Transparenz in der Europäischen Union erfordert die Auflösung der derzeitigen, verworrenen Vertragssituation und den Übergang von der Vertragslogik zur Verfassungslogik.

Zur wirklichen Demokratisierung der Europäischen Union bedarf es tiefgreifender institutioneller Reformen, die sich nicht in der Bearbeitung der *left overs* von Amsterdam erschöpfen, sondern ein Europäisches Parlament mit zentraler Bedeutung für die europäische Gesetzgebung schaffen und den Rat zu einer zweiten parlamentarischen Kammer machen.

Nur so wird die Union der 25 oder 30 wirklich überlebensfähig sein.

Ein demokratisches Europa verlangt aber auch eine klare Kompetenzaufteilung zwischen der EU und ihren Mitgliedstaaten, in der durchaus auch der Rückfluß einzelner Zuständigkeiten an die Mitgliedstaaten und Regionen denkbar ist.

Dennoch legen wir größten Wert auf eine exklusive Kompetenz der EU in der Außen- und Verteidigungspolitik und weitgehenden Kompetenzen in der Innen- und Rechtspolitik.

Ein *System Weimar* muß verhindert werden. D. h. die von Ihnen erarbeiteten Grundrechte der Union müssen einklagbare subjektive Rechte darstellen, weswegen wir die Schaffung einer europäischen Verfassungsgerichtsbarkeit mit entsprechenden Rechtsbehelfen für unabdingbar halten.

Solch tiefgreifende institutionelle Veränderungen sind aber nur im Rahmen einer europäischen Verfassung möglich.

Deshalb fordern wir den Konvent auf, seine Arbeit nicht isoliert zu sehen, sondern als historische Chance zum Einstieg in einen echten Konstitutionalisierungsprozeß in Europa zu begreifen.

Als europaweit agierender Verband möchten wir Sie bitten, uns gemäß dem Kölner Ratsbeschuß künftig stärker in Ihre Arbeit einzubinden.
Nur durch den Kontakt mit gesellschaftlichen Gruppen der Mitgliedstaaten kann eine wirkliche Bürgerverfassung für Europa gelingen.

In diesem Sinne wünschen wir Ihnen und uns allen ein gutes Gelingen der Grundrechtscharta als Grundstein einer künftigen europäischen Verfassung und verbleiben

mit freundlichen Grüßen

Marc-Oliver Pahl

David Schneider-Addae-Mensah

Bundesvorsitzender

Stv. Bundesvorsitzender

ENTWURF DER CHARTA DER GRUNDRECHTE DER EUROPÄISCHEN UNION**fundamental.rights@consilium.eu.int**

Brüssel, den 10. Mai 2000**CHARTE 4289/00****CONTRIB 161****ÜBERMITTLUNGSVERMERK**

Betr.: Entwurf der Charta der Grundrechte der Europäischen Union

Finden Sie bitte nachstehend eine Stellungnahme der Kommission Europa des Deutschen Juristinnenbundes.^{1 2}

¹ Dieser Text wurde nur in deutscher Sprache vorgelegt.

² Deutscher Juristinnenbund: Reuterstraße 241, 53113 D-Bonn. Tel: +49-0228-91510-0.
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Deutscher
Juristinnenbund

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Charta der Grundrechte der Europäischen Union

Stellungnahme der Kommission Europa des djbb

Stand: 5. Mai 2000

Die Grundrechtscharta der Europäischen Union wird das Europa der Bürgerinnen und Bürger um einen großen und entscheidenden Schritt voranbringen. Der djbb begrüßt es, wenn hiermit der heute erreichte Grundrechtsstandard niedergeschrieben wird und gleichzeitig die Chance genutzt wird, diesen weiterzuentwickeln, bspw. durch die Aufnahme sozialer Grundrechte.

Ausgangspunkt

Derzeit hat die EU gemäß Art. 6 Abs. 2 EUV die Grundrechte gemäß der EMRK, und wie sie sich aus den gemeinsamen Verfassungsüberlieferungen der Mitgliedstaaten ergeben, zu achten. Hierzu liegt bereits umfangreiche Rechtsprechung des EuGH vor.

Fortentwicklung

Es ist allerdings zu beachten, daß die EMRK nicht mehr den aktuellsten Stand der europäischen Grundrechtskultur formuliert; so weist sie z.B. Lücken beim Gleichheitssatz auf. Bei einer Gesamtschau der europäischen Verfassungstraditionen sollten auch die Verfassungen der deutschen Länder berücksichtigt werden; diese formulieren z.B. weitergehende Handlungsziele.

Ziel

Die Bürgerinnen und Bürger der Europäischen Union sollen wissen, welche Rechte Ihnen zustehen (*Transparenz*), daß die EU sich hieran halten will (*rechtliche Verbindlichkeit*) sowie daß und wie sie diese durchsetzen können (*effektiver Rechtsschutz*).

Transparenz

Die Grundrechte müssen für die EU-Bürgerinnen und Bürger verständlich geschrieben und leicht auffindbar sein. Letzteres spricht auch dafür, sie in den EUV aufzunehmen.

Rechtliche Verbindlichkeit

Um diese Verbindlichkeit zu erreichen, sollte die Grundrechtscharta entsprechend formuliert in den EUV selbst aufgenommen werden. Eine umfassende Bindung der EU ist dabei anzustreben (Handlungen aller Organe etc.).

Effektiver Rechtsschutz

Der Rechtsschutz ist effektiv zu gestalten. Zu den bisherigen Möglichkeiten wie z.B. Vorlageentscheidungen nationaler Gerichte an den EuGH hinzu kommen muß daher eine Grundrechtsklage insbesondere für die einzelnen Bürgerinnen und Bürger direkt zum EuGH und zwar nach Erschöpfung des nationalen Rechtsweges sowie wenn keine gleichzeitige Klagemöglichkeit andernorts besteht. Hierbei sollte auch Verbänden – wie z.B. dem djb - zumindest ein Recht zur Stellungnahme eingeräumt werden; eine Verbandsklage wäre wünschenswert.

Zwingende Folge einer solchen zusätzlichen Klagemöglichkeit ist eine verbesserte Ausstattung des EuGH im Hinblick auf seine Ressourcen. Denkbar wäre eine Grundrechtskammer. Bei der Besetzung ist neben einem Proporz der Mitgliedstaaten auch ein Geschlechterproporz notwendig.

Sprachliche Fassung:

Die vom Präsidium vorgelegten überarbeiteten Artikel (Convent 13) sind geschlechtsneutral bzw. geschlechtsdifferenziert formuliert worden. Der djb regt an, daß die gesamte Grundrechtscharta entsprechend formuliert wird.

Die bis jetzt vorliegenden Formulierungsvorschläge sind grundsätzlich zu begrüßen, da sie den europäischen Grundrechtsstandard sachgerecht formulieren. Klarstellungen und Änderungen werden für folgende Bereiche vorgeschlagen:

Art. 1 Würde des Menschen (Convent 13)

Die Würde des Menschen wird unter allen Umständen geachtet und geschützt.

Anmerkung:

Sinnvoll ist die Regelung des Geltungsbereichs in einem Artikel 1 vor der Nennung der Grundrechte oder in einer Präambel.

Keinesfalls darf der Grundrechtskatalog aber in irgendeiner Form von der Regelung des Geltungsbereichs unterbrochen werden. Sonst besteht die Gefahr, daß die Bindung an die vor der Regelung stehenden Grundrechte angezweifelt wird. Insofern sollte die Regelung des Geltungsbereichs auch nicht in einem Absatz 2 zu dem Artikel über die Menschenwürde stehen.

Art. 2 neu Recht auf freie Entwicklung der Persönlichkeit

Alle Menschen haben das Recht, sich frei in ihrer Persönlichkeit zu entwickeln, soweit sie nicht gegen die Rechte anderer, innerstaatliches Recht oder das Recht der Europäischen Union verstoßen. Der Kern ihrer Persönlichkeit ist frei von hoheitlicher Einmischung.

Begründung:

Eine allgemeine Handlungsfreiheit ist mehreren europäischen Verfassungen bekannt. Ihre Auffangfunktion macht eine Überprüfung der Rechtmäßigkeit jeglicher belastender Eingriffe möglich, insbesondere des auch europarechtlich anerkannten Grundsatzes der Verhältnismäßigkeit.

Als besonders wichtige Ausprägung der Menschenwürde bedarf es eines ausdrücklichen absoluten Schutzes des Persönlichkeitskerns, der auch über den Schutz des Privatlebens im Sinne des Art. 12 (Convent 13) hinausgeht.

Die Menschenwürde stellt eine absolute Tabugrenze dar, die klassisch mit Bereichen wie Menschenhandel, Folter, Todesstrafe oder Euthanasie verbunden wird.

Die neuere Rechtsentwicklung und die durch sie reflektierte rasante Entwicklung im technologischen Bereich haben jedoch gezeigt, daß auch Fälle wie die Verwendbarkeit von Tagebucheintragungen, die Speicherung persönlicher Daten, der Schutz des Namens, das Recht auf Kenntnis der eigenen Abstammung etc. den Kernbereich sowohl der allgemeinen Handlungsfreiheit als auch der Menschenwürde berühren. Eine ausdrückliche grundrechtliche Absicherung ist deshalb geboten.

Die Formulierung „Achtung ihres Privatlebens“ aus Art. 12 (Convent 13) dagegen deutet auf eine Begrenzung des Persönlichkeitsschutzes auf den Bereich außerhalb des Berufs, des öffentlichen Lebens, kurz innerhalb der eigenen vier Wände hin, der zwar notwendig aber nicht ausreichend ist

Art. 7 Recht auf gerichtlichen Rechtsschutz und Verfahrensgrundsätze (Convent 13)

Jede Person, deren Rechte und Freiheiten verletzt worden sind, hat das Recht auf wirksamen Rechtsschutz vor einem Gericht.

Jede an einem Gerichts- oder Verwaltungsverfahren beteiligte Person hat Anspruch auf rechtliches Gehör.

Jede Person hat einen Anspruch darauf, daß Verfahren in angemessener Dauer durchgeführt und mit einer anfechtbaren sowie mit einer begründeten Entscheidung abgeschlossen werden.

Für das Handeln der Gemeinschaftsorgane gilt der Grundsatz der Verhältnismäßigkeit.

Der Grundsatz der Vertraulichkeit und Amtsverschwiegenheit wird garantiert.

Begründung:

Es erscheint wünschenswert wegen der zu erwartenden Zunahme von Verfahrensentscheidungen der Gemeinschaftsorgane nicht nur die Beschwerdemöglichkeit einzuräumen, sondern schon für das vorher stattfindende Verwaltungsverfahren die grundlegenden Verfahrensprinzipien in die Grundrechtscharta aufzunehmen und somit die Rechtsstaatlichkeit auch dieses Handelns festzuschreiben.

Es könnte einfach auf die insoweit bereits existierende Rechtsprechung zu den vom EuGH anerkannten bzw. entwickelten Verfahrensgrundrechten zurückgegriffen werden. Die Beachtung dieser Verfahrensrechte in allen Verfahren ist ein elementarer Grundsatz des Gemeinschaftsrechts.

Wegen der Bedeutung dieser allgemeinen Verfahrensgrundsätze sollten diese als Abs. 2 – 5 angefügt werden.

Art. 8 Recht auf ein unparteiisches Gericht (Convent 13)

Jede Person hat Anspruch darauf, daß ihre Sache in billiger Weise öffentlich und innerhalb einer angemessenen Frist von einem unabhängigen und unparteiischen, auf Gesetz beruhenden Gericht verhandelt wird. Für diejenigen, die nicht über ausreichende Mittel verfügen, wird eine unentgeltliche Prozeßkostenhilfe bereitgestellt, sofern diese Hilfe unerläßlich ist, um den Zugang zum Recht wirksam zu gewährleisten. Dies gilt auch für Zeuginnen und Zeugen sowie Opfer von Gewaltstraftaten.

Begründung:

Wünschenswert wäre im Hinblick auf Satz 2, daß - insbesondere in Strafverfahren - neben den Rechten des Beschuldigten auch die Rechte der Zeugen beziehungsweise allgemein der Opfer von Gewaltstraftaten angemessen auszugestalten sind und ihnen ebenfalls unentgeltlich effektiver Schutz ihrer Rechte im Verfahren gewährleistet wird. Dies wird in dem neuen Satz 3 vorgeschlagen.

Eine solche Regelung ist für Frauen besonders wichtig, da sie oft über kein eigenes Einkommen oder lediglich über geringes Einkommen verfügen.

Art. 12 Achtung des Privatlebens (Convent 13)

Jede Person hat Anspruch auf Schutz des Privatlebens vor Zugriffen anderer oder der Union so auf freie Gestaltung ihrer Privatsphäre, auf Schutz ihrer Ehre, ihrer Wohnung sowie ihrer Kommunikation.

Begründung:

Die vom Präsidium vorgeschlagene Formulierung "*Achtung des Privatlebens*" ist ungenau und vermittelt den Eindruck eines im Schutzgehalt nur gering ausgestalteten subjektive Rechts. Es wird daher eine Präzisierung vorgeschlagen, die deutlich macht, daß das Recht auf Privatleben sowohl ein subjektives Abwehrrecht, als auch ein subjektives Recht auf Gestaltung der privaten Sphäre nach eigener persönlicher Entscheidung umfaßt.

Die Einfügung des Begriffes der "*Ehre*" wird begrüßt, da damit über den gegenständlich zu erfassenden Privatbereich hinaus ein Anspruch auf Schutz persönlicher Wertvorstellungen, Empfindungen und Einstellungen gewährt wird. Der Schutz der Ehre ist von Art. 1 "*Würde des Menschen*" zwar grundsätzlich mit abgedeckt, dennoch ist eine Konkretisierung gegenüber dem allgemein gefaßten Grundrecht der Menschenwürde notwendig. Durch die Einbeziehung der Ehre in den Schutzbereich des Privatlebens wird der persönlichen Integrität eines jeden Menschen eine hervorragende Bedeutung zugemessen.

Die Aufnahme des Ehrenschatzes in den Bereich der Schutzklausel zur Achtung des Privatlebens bedeutet eine Aufwertung gegenüber der Ehrenschatzregelungen des deutschen Grundgesetzes. Dort ist die Ehre in Artikel 5 Abs. 2 GG als eine Schranke des Grundrechts der Meinungs-, Presse- und Rundfunkfreiheit normiert.

Unter Zugrundelegung eines weitgehenden Verständnisses des Ehrenschatzes wird von dessen Schutzbereich nicht nur die Abwehr ehrverletzender Äußerungen oder Werturteile erfaßt, sondern vielmehr auch jede weitere Handlung gegen die persönliche Integrität, insbesondere die – psychische und physische – Gewalt in der Ehe oder sonstige Belästigungen, die in den Persönlichkeitsbereich eines Menschen eingreifen.

Der Ehrenschatz geht im übrigen weiter, als der in Artikel 3 (Convent 13) geschützte Bereich der körperlichen und psychischen Unversehrtheit. Dort zeigt insbesondere Abs. 2, daß der Schutzbereich von Artikel 3 eher in die Richtung einer medizinisch-biologischen Unversehrtheit zu verstehen ist, wohingegen der Ehrenschatz die Unversehrtheit der Gefühle, Empfindungen und Wertvorstellungen erfaßt.

Die Gewährung des Ehrenschatzes darf nicht zur Einschränkung der Selbstbestimmung von Frauen führen.

Art. 13 Ehe und Familie (Convent 13)

Jede Person hat das Recht auf rechtlichen, wirtschaftlichen und sozialen Schutzes ihres Familienlebens.

Jede Person hat das Recht, nach den Gesetzen der Mitgliedstaaten, die die Ausübung dieses Rechtes regeln, eine Ehe einzugehen und eine Familie zu gründen. Niemand darf zur Eheschließung gezwungen werden.

Die Vereinbarkeit von Familie und Erwerbsarbeit ist zu gewährleisten.

Begründung:

Zu Abs. 1:

Die vom Präsidium vorgeschlagene Formulierung „Achtung“ ist zu präzisieren unter Zuhilfenahme des vom Präsidium vorgeschlagenen Absatzes 3. Die hier vorgeschlagene Formulierung „rechtlicher, wirtschaftlicher und sozialer Schutzes“ (bisher Abs. 3 des Präsidiumsvorschlages) ist differenzierter und faßt es als subjektives Recht klarer. Alleinerziehende, kinderreiche Lebensgemeinschaften und solche mit behinderten Angehörigen sind mit der vorgeschlagenen Formulierung ebenso erfaßt wie Menschen, die in häuslicher Gemeinschaft Kinder aufziehen oder Hilfsbedürftige betreuen.

Zu Abs. 2:

Die zentrale Gefährdungslage im Eherecht – der Zwang zur Eheschließung – ist im Präsidiumsvorschlag nicht berücksichtigt und sollte ergänzt werden.

Zu Abs. 3:

Das Recht auf Ehe und Familie kann nicht losgelöst von der im täglichen Leben immer auftauchenden Frage der Vereinbarkeit mit der Erwerbsarbeit geregelt werden. Frauen und Männer sind Erwerbstätige und tragen zugleich Familienverantwortung. Dies gilt insbesondere im Zuge der fortschreitenden Individualisierung der Rechte und im Hinblick darauf, daß die Alleinverdienerfamilie heute nicht mehr die Lebenswirklichkeit widerspiegelt. Dieses Spannungsfeld ist zu thematisieren und die Vereinbarkeit als Handlungsziel in die Grundrechtscharta aufzunehmen. Die Union sollte verpflichtet werden, die Vereinbarkeit von Familie und Erwerbsarbeit von Frauen und Männern zu berücksichtigen, wenn sie im Rahmen ihrer Zuständigkeiten Maßnahmen beschließt.

Art. 18 Gleichheit (Convent 8, S. 7)

Alle Menschen sind vor dem Recht gleich.

Unterscheidungen nach der ethnischen oder sozialen Herkunft, der Hautfarbe, der Religion, der politischen Anschauung, der sexuellen Identität oder der Behinderung sind untersagt, sofern sie nicht zum Ausgleich bestehender Nachteile erforderlich sind.

Begründung:

Abs. 2:

Der hier vorgeschlagene Abs. 2 entspricht im Kern dem vom Präsidium vorgeschlagenen Art. 19. Die Rechtsgleichheit wird hier im Sinne genereller rechtlicher Differenzierungsverbote konkretisiert. Kompensatorische Maßnahmen sind ausdrücklich zulässig. Allerdings müssen diese auch erforderlich sein. Die vorgeschlagene Umschreibung des Benachteiligungsverbot ist klarer und juristisch eindeutiger als ein Diskriminierungsverbot. Es sind wesentliche Merkmale ausgewählt worden, die elementaren Unrechtserfahrungen entsprechen. Das vom Präsidium auf der Grundlage der EMRK vorgeschlagene generelle Unterscheidungsverbot nach dem Alter oder dem Vermögen wird abgelehnt. In beiden Fällen existieren vielfältige und allgemein akzeptierte gesetzliche Differenzierungen (Altersgrenzen; Steuer- und Leistungsgesetze), die ein generelles Differenzierungsverbot nicht sachgerecht erscheinen lassen. Der allgemeine Gleichheitssatz bietet hier einen ausreichenden Schutz.

Art. 19 Gleichstellung von Frau und Mann (Convent 8, S. 7)

Die Union und die Mitgliedstaaten sind verpflichtet, die Bedingungen für die Gleichstellung von Frauen und Männern in allen Bereichen zu schaffen und bei ihren Maßnahmen die Geschlechtergleichstellung miteinzubeziehen.

Neben der Ungleichbehandlung nach dem Geschlecht ist die Verwendung von Kriterien untersagt, die formal geschlechtsneutral sind, jedoch einen erheblich höheren Anteil der Angehörigen eines Geschlechtes betreffen, ohne daß sie durch wichtige Gründe, die nicht auf das Geschlecht bezogen sind, gerechtfertigt werden können.

Zur Herstellung tatsächlicher Gleichberechtigung sind Maßnahmen zur Förderung des benachteiligten Geschlechts zulässig.

Begründung:

Die vom Präsidium vorgeschlagene Einbindung der Geschlechtergleichstellung in die Nichtdiskriminierung (Art. 19) ist unangemessen. Die Verankerung der Gleichstellung von Frauen und Männern sollte in einem eigenständigen Artikel besonders herausgehoben werden. Mehr als die Hälfte der Bevölkerung in den Mitgliedstaaten sind Frauen. Die Rechte von Frauen sind deshalb nicht als ein Aspekt des Minderheitenschutzes zu betrachten.

Abs.1:

Die Voraussetzungen der tatsächlichen Gleichberechtigung können von der Union und den Mitgliedstaaten verwirklicht werden. Das Ergebnis selbst, wie z.B. die gleiche Teilhabe auf allen Ebenen des Erwerbslebens kann nicht von den Mitgliedstaaten oder der Union hergestellt werden. Im zweiten Teilsatz ist der gender-mainstreaming-Ansatz formuliert. Union und Mitgliedstaaten müssen die Geschlechtergleichstellung überall miteinbeziehen.

Abs. 2:

Das unmittelbare Diskriminierungsverbot ist in einer Grundrechtscharta festzuschreiben. Dazu gehören auch verdeckte Benachteiligungen, die nur ein Geschlecht betreffen. Die Verankerung eines qualifizierten mittelbaren Diskriminierungsverbotes ist gleichfalls notwendig. Das entspricht der bisherigen Rechtslage.

Abs. 3:

Die Wirklichkeit zeigt deutlich notwendigen Handlungsbedarf. Frauen nehmen anders als Männer am öffentlichen Leben und am Erwerbsarbeitsleben teil. Sie sind in Entscheidungspositionen im wirtschaftlichen und politischen Bereich deutlich unterrepräsentiert, wenn überhaupt vertreten. Im Hinblick auf die effektive Gewährleistung der vollen Gleichberechtigung von Frauen und Männern sind deshalb spezifische Vergünstigungen des benachteiligten Geschlechts beizubehalten oder zu beschließen. Eine Kompensationsklausel, wie in Abs. 3 vorgeschlagen, ist deshalb in die Grundrechtscharta aufzunehmen.

Art. 19 Asyl (Convent 8, S. 6)

(1) Jede nicht der Union angehörende Person, die politisch, aus religiösen oder rassistischen Gründen verfolgt wird oder unmenschlicher oder erniedrigender Bestrafung oder Behandlung ausgesetzt ist, hat ein Recht auf Asyl in der Europäischen Union. Sie hat ein Bleiberecht bis zum Abschluß des Verfahrens.

Kollektivausweisungen von Ausländerinnen und Ausländern sind nicht zulässig.

Begründung:

Das Asylrecht in Abs. 1 ist differenzierter zu fassen. Die vorgeschlagene Formulierung ermöglicht die Anerkennung religiöser, rassistischer und frauenspezifischer Fluchtgründe. Der notwendige Abschiebungsschutz ist als Satz 2 angefügt.

Art. E Recht auf Vertretung

Die gleichberechtigte Teilhabe und Vertretung von Frauen und Männern sind zu gewährleisten.

Begründung:

Frauen sind in EU-Gremien eklatant unterrepräsentiert. Die Besetzung des Konvents zum Entwurf einer Grundrechtscharta ist hierfür ein deutlicher Beweis (9 Frauen und 53 Männer).

Die vorgeschlagene Regelung sichert, daß zukünftig die wahlrechtlichen und organisatorischen Voraussetzungen für eine angemessene Beteiligung von Frauen und Männern getroffen werden müssen. Eine solche Verpflichtung kann in unterschiedlicher Weise umgesetzt werden. Eine Regelung mit langfristiger Geltung sollte kein bestimmtes Verfahren festlegen, sondern offen sein für Weiterentwicklungen und Anpassungsnotwendigkeiten an geänderte Verhältnisse.

Art. II Berufsfreiheit (Convent 18)

(1) Jede Person hat das Recht, ihren Beruf und ihr Gewerbe frei zu wählen und auszuüben, unbeschadet der die Freizügigkeit von Personen betreffenden Bestimmungen des Vertrages.

(2) Zwangsarbeit ist verboten.

Begründung:

Abs. 2:

Das in einem neuen Absatz 2 vorgeschlagene Verbot der Zwangsarbeit entspricht den Grundsätzen der mitgliedstaatlichen Demokratien.

Art. XI Rechte der Arbeitnehmerinnen und Arbeitnehmer als Eltern (Convent 18)

Arbeitnehmerinnen und Arbeitnehmer genießen als Eltern besonderen Schutz. Den Belangen von schwangeren Arbeitnehmerinnen ist besonders Rechnung zu tragen.

Begründung:

Elternschaft ist Aufgabe von Müttern und Vätern, die in aller Regel gleichzeitig Arbeitnehmerinnen und Arbeitnehmer sind. Um ihren gesellschaftlich wichtigen Betreuungs- und Erziehungsaufgaben nachkommen zu können, benötigen sie einen besonderen Schutz. Dieser besondere Schutz beschränkt sich nicht auf die Gewährung von Elternurlaub. Der durch die Richtlinie 96/34/EG vorgegebene Anspruch auf mindestens drei Monate Elternurlaub ist zudem ausbaufähig. Es sind auch andere Maßnahmen, wie etwa die Freistellung wegen Krankheit des Kindes oder ein Anspruch auf Teilzeit denkbar. Entsprechende gesetzliche Regelungen existieren bereits auf nationaler Ebene oder sind in Vorbereitung.

Im Präsidiumsvorschlag wird in Art. XI (Convent 18) ein Mutterschutz von mindestens vierzehn Wochen als Recht der Arbeitnehmerin formuliert, der gestrichen werden sollte. Der Vorschlag entspricht zwar der momentanen Rechtslage (Richtlinie 92/85/EG). Es ist aber denkbar, daß weitergehende und andere Maßnahmen zum Schutz schwangerer Arbeitnehmerinnen entwickelt werden. Eine Grundrechtscharta sollte diese Entwicklungsmöglichkeit bieten.

Wegen des Sachzusammenhangs sollten die vom Präsidium vorgeschlagenen Art. XI und XII zu dem hier vorgeschlagenen einheitlichen Art. XI zusammengefaßt werden.

gez. Sabine Overkämping
Vorsitzende der Kommission Europa des djb

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 10 May 2000**CHARTE 4290/00****CONTRIB 162****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter the position and the statement by the Amnesty International presented at the hearing on 27 April 2000. ¹

¹ This text has been submitted in English language only.

(a) amnesty international



EUROPEAN CHARTER OF FUNDAMENTAL RIGHTS

April 2000

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Amnesty International is an independent worldwide movement working for the release of all prisoners of conscience, fair and prompt trials for political prisoners and an end to torture, extrajudicial executions, "disappearances" and the death penalty. It is funded by donations from its members and supporters throughout the world. It has formal relations with the United Nations, Unesco, the Council of Europe, the Organization of African Unity and the Organization of American States.

Introduction

The question of how to protect human rights in the European Union (EU) legal order has been debated since the very first steps were taken to found the European Communities.

As the activity of the European Community (EC) started to extend to areas in which it had an increasing influence on individual rights, the concern among Member States in relation to human rights protection grew¹. While the European Court of Justice stated the primacy of Community Law, even over the constitutional orders of Member States, it refused to recognise jurisdiction on matters of fundamental rights, in absence of Community Law provisions². However, the European Court of Justice, concerned that the precedence of the Community legal order might be questioned by Member States, soon started to develop an indirect protection of human rights, stating that fundamental rights are enshrined in the general principles of Community law, and protected by the Court³. In 1974, the European Court of Justice stated that in guaranteeing respect for human rights, the Court is bound to draw inspiration from the constitutional traditions common to Member States and from the international human rights treaties on which the Member States have collaborated or of which they are signatories⁴. A year later, the European Court of Justice referred for the first time to the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) as a reference for the protection of fundamental rights within the EC legal order⁵. The International Covenant on Civil and Political Rights was first mentioned in the *Orkem* case, judgment of 18 October 1989⁶.

The importance of respect for fundamental rights has been repeatedly recognised by the other EU institutions in non-legally binding texts, such as the Joint Declaration on Fundamental Rights of the European Parliament, the Council and the Commission of 5 April 1977⁷, which has been followed by several other texts of political nature⁸.

A treaty reference to human rights was first introduced by the Preamble of the 1986 Single European Act, and was later included in the body of a treaty by article F(2) of the 1992 Treaty on the European Union (TEU), the Maastricht Treaty. Article 6 of the TEU, as amended by the 1997 Amsterdam Treaty, is the current human rights provision applicable to the activities of the EU, which as article F(2) already did before, states that “the Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law”. The Amsterdam Treaty has also introduced a mechanism for the Union to address “serious and persistent” violations of human rights by Member States (article 7 of the TEU), which reinforces the accountability of Member States in relation to human rights protection.

¹ Cases *Frontini e Pozzari*, judgment of 27 December 1973 (*Il Foro Italiano*, 1974-I, p. 315) and first *Solange* case, judgment of 29 May 1974 (BverfGE, 37, p. 271).

² Case 1/58, *Stork v. High Authority* [1959] ECR 17, later confirmed by Joint Cases 36, 37, 38 and 40/59, *Comptoir de vente de charbon de la Ruhr v. High Authority* [1960] ECR 423.

³ Case 29/69, *Stauder*, [1969] ECR 419.

⁴ Case 4/73, *Nold* [1974] ECR 491.

⁵ Case 36/75, *Rutili* [1975] ECR 1219.

⁶ Case 374/87, *Orkem* [1989] ECR 3283.

⁷ OJ 1977 C 103/1.

⁸ For a list of such texts, see European Court of Justice Opinion 2/94 (*ECHR*) [1996] ECR I-1759, at I-1768.

The latest step in this process is the elaboration of the European Charter of Fundamental Rights, decided by the European Council meeting in Cologne in June 1999.

As a human rights organisation, Amnesty International welcomes initiatives to improve human rights protection. Amnesty International is an independent and impartial worldwide movement with more than a million members and supporters. Its mission is to contribute to the observance throughout the world of human rights as set out in the Universal Declaration of Human Rights. It campaigns to fulfil this goal by promoting human rights in general as well as opposing specific abuses. Recognising that all human rights are indivisible and interdependent, Amnesty International urges all governments to ratify and implement international human rights standards. It seeks to improve on the protection offered by those standards, in particular in respect of fundamental civil and political rights.

Amnesty International's interest in the proposed European Charter is a positive one in that it offers a perspective of real improvement in the human rights protection currently afforded by the European Union. At the same time Amnesty International is concerned that it should in no way result in a lowering of the current level of protection, and that any ambiguity in that respect be ruled out.

To that end, this paper analyses the issues raised by the adoption of the European Charter and advances recommendations so that it could constitute a real improvement in the human rights protection currently afforded by the EU. In doing so, Amnesty International wishes to emphasise that the European Charter should only be adopted as a legally binding instrument if certain basic conditions are fulfilled.

Part I: Horizontal issues

1. Legal nature of the European Charter

The mandate that the Convention in charge of drafting the European Charter has received from the Cologne European Council is the elaboration of a non-legally binding declaration. However, as the Cologne conclusions already foresaw, its legally binding nature may be decided at a later stage.

Amnesty International believes that the incorporation of a charter recognising the strongest possible guaranteed human rights into the provisions of the TEU or in an annexed protocol, thus ensuring its legally binding nature, would be a desirable step, provided certain essential conditions are satisfied, for the following reasons:

- 1) The status of human rights in the EU legal order would be clearly spelled out, thus correcting the legal uncertainty which currently surrounds this issue.
- 2) Human rights would obtain an enhanced status in the EU legal order, thus ensuring that they are not considered “inferior law”, and subordinated to the “higher law” of the economic freedoms granted by the Treaty establishing the European Community (TEC).
- 3) A new layer of human rights protection would be established, while access to the Council of Europe protection organs would still be available.

A legally binding European Charter, however, must meet certain conditions in order to constitute a real improvement in human rights protection in the EU:

- 1) The adoption of the European Charter must not result in a possible diminution of the current level of protection that human rights enjoy in its Member States under the European Convention on Human Rights and other relevant international human rights instruments, as interpreted by relevant courts and monitoring bodies.
- 2) Furthermore, as the European Convention on Human Rights and other international human rights instruments provide for a minimum contemporary standard, nothing precludes the EU going beyond that minimum standard and developing the highest level of protection for individuals subject to its jurisdiction. Therefore, the European Charter should take account of the developments in international law, both of treaty and of customary legal nature, as well as developments reflected in a variety of non-treaty standards and serve to include fundamental rights that have not necessarily been included in other international instruments.
- 3) Everyone's fundamental rights must be recognised without discrimination, since under international human rights law, fundamental rights cannot be object of discrimination on account of national origin.
- 4) The European Charter rights must be justiciable. Therefore, the necessary treaty amendments should be adopted in order to ensure that the European Court of Justice has jurisdiction in all the areas of EU activity in relation to human rights violations, this is, full jurisdiction not only on EC matters (including Title IV of the TEC) but also on Title V (Common Foreign and Security Policy) and Title VI (Justice and Home Affairs) of the TEU. Similarly, the necessary treaty amendments should be adopted in order to ensure proper access by the individual to the European Court of Justice⁹.

Amnesty International calls for a legally binding European Charter provided that it guarantees the fundamental rights of all individuals without discrimination, strengthens rather than weakens the current level of human rights protection in the EU, serves to include fundamental rights that have not necessarily been included in other international instruments, and is fully justiciable by the European Court of Justice and by national courts when applying EC/EU Law.

2. Scope of the European Charter

The European Charter is currently intended to apply to the activities of the EU institutions and to those actions of Member States which fall within the scope of EC/EU legislation. It is also intended to apply to all activities of the EU, this is to all three pillars (European Community, Common Foreign and Security Policy, Justice and Home Affairs) and not only to activities under the framework of EC law.

An effective protection of fundamental rights requires that not only the traditional EU actors are bound by the European Charter, but also the different entities created under the TEU, particularly in the framework of the intergovernmental cooperation, as their activities are increasingly likely to have an effect on fundamental rights (for instance, the High Level Working Group on Asylum and Migration, which has received the mandate to adopt an inter-pillar approach in its activities).

⁹ These arguments shall be developed below, under section 3.

In line with the case law of the European Court of Justice, the European Charter should also be applicable to private parties acting with the consent or acquiescence of governments, when human rights violations result from their activities. An example of such action by private parties is that of carriers' involvement in immigration control¹⁰, which may result in the violation of the right of everyone to leave a country in which they fear persecution¹¹.

Such a scope for the European Charter would confirm the *status quo*. A new dimension in the field of human rights protection in the EU would be to ensure that the European Charter covers Member States' action *outside* the current sphere of EC/EU law. This would enhance human rights protection through EC/EU Law and would confer added value to the European Charter even if such action was only justiciable at the national level¹².

Amnesty International calls for a European Charter that applies to all the activities of the EU institutions, the entities created under the TEU, Member States when acting within and also outside the sphere of EC/EU law and to private parties acting with the consent or acquiescence of governments.

3. Justiciability of human rights in the EU

In assessing the protection of human rights by the European Court of Justice, it is important to note that the European Court of Justice is neither an international human rights court nor a court of appeal. In this regard, and notwithstanding the protection of fundamental rights developed by the European Court of Justice which has been described above, the jurisdiction of the European Court of Justice is a *sui generis* one.

a) Limited access by individuals

In application of article 230 of the TEC, an individual may bring a case before the European Court of Justice asking for the repeal of certain decisions adopted by the EU when such decisions are addressed to him or her, or when, although in the form of a regulation or a decision addressed to another person, they are of direct and individual concern to the former. The European Court of Justice has developed a very restrictive interpretation of these requirements. In addition, the grounds for these claims are very limited: the European Court of Justice shall have jurisdiction in actions brought on grounds of lack of competence, infringement of an essential procedural requirement, infringement of the TEC or of any rule of law relating to its application, or misuse of powers. The possibilities for individuals to bring their cases before the European Court of Justice for assessment of alleged human rights violations by the EU are therefore very limited.

¹⁰ ILPA submissions on an European Union Charter of Fundamental Rights (ILPA European Update: March 2000, p. 6).

¹¹ Cf. Human Rights Committee general comment on article 12 of the ICCPR.

¹² Clapham, A. *On Complementarity in Europe*, paper presented at the Conference "The Protection of Human Rights in the 21st Century: Towards Greater Complementarity within and between European Regional Organisations", organised by Irish Presidency of the Council of Europe, 3-4 March 2000, Dublin.

b) Limited scope *ratione materiae*

Under article 46 of the TEU, the jurisdiction of the European Court of Justice is extended to article 6, but it is limited to actions by the institutions, in so far the European Court of Justice has jurisdiction according to the relevant provisions in the treaties. And indeed, several areas of EC/EU action which are likely to have an effect on fundamental rights are either excluded from the European Court of Justice control or such control is limited.

This is the case in relation to Title IV of the TEC, where the general rules on the European Court of Justice jurisdiction are applied restrictively in the field of asylum, as it is provided by article 68 of the TEC: the European Court of Justice is only given jurisdiction on cases where a question on the interpretation of the Treaty provisions or on the validity or interpretation of acts of the institutions of the Community based on such provisions is raised in a case pending before a court or a tribunal of a Member State against whose decisions there is no judicial remedy under national law. In that case, that court or tribunal is not obliged to submit the case to the European Court of Justice, but shall do so only if it considers that a decision on the question is necessary to enable it to give judgment. However, despite this restrictive jurisdiction, due to the fact that decisions by the European Court of Justice on interpretation of EC Law are binding on all Member States, any decision on one individual case would be automatically applicable in all Member States.

Similarly, under article 35 of the TEU, the European Court of Justice jurisdiction on Justice and Home Affairs matters is restricted and furthermore, Title V on Common Foreign Security Policy is completely excluded from the jurisdiction of the Court.

Amnesty International calls for the necessary treaty amendments to be adopted in order to ensure greater access for individual complaints about the violation of fundamental rights and that the European Court of Justice has jurisdiction in all the areas of EU activity in relation to human rights, this is, full jurisdiction not only on EC matters (including Title IV of the TEC) but also on Title V (Common Foreign and Security Policy) and Title VI (Justice and Home Affairs) of the TEU.

4. International accountability of the EU in the field of human rights: accession to the European Convention on Human Rights

Even if the EU adopted a legally binding European Charter of fundamental rights applicable to all EU activities, fully justiciable by the European Court of Justice, the interpretation of human rights observance would remain sealed within the EU's own institutional system. It would not fulfill the fundamental requirement that the EU be subject to international obligations and monitoring in this field.

a) The need for international accountability of the EU in the field of human rights

While EU Member States' violations of international human rights law can be assessed by international monitoring bodies, EU activities lack international accountability as no international court or other body has jurisdiction to assess violations of international human rights law by the EU.

Taking note that Member States have ceded ever increasing areas of competence to the EU, which results in an ever larger impact on the individual by rules determined and adopted at EU level, Amnesty International recalls that ceding competence to take action in certain fields to a supra-national authority should not remove those fields from the scope of application of Member States' international commitments. Member States when implementing European Union law remain subject to the supervisory mechanisms of the European Convention on Human Rights. However, the EU decisions as such are not subject to external supervision under the European Convention on Human Rights. Independent investigation and assessment by the international human rights monitoring mechanisms established under international treaties is critical to the protection of human rights. The effectiveness of international instruments in safeguarding human rights is diminished where external scrutiny is excluded. The principle of accountability of states and supra-national bodies for human rights compliance to international human rights enforcement mechanisms must be respected.

This approach, however, raises issues related to the competence of the EC/EU in the field of human rights. Article 5 of the TEC establishes that the Community is to act within the limits of the powers conferred upon it by the Treaty and of the objectives assigned to it therein. Therefore, the EC has only those powers which have been conferred to it.

The European Court of Justice has played a key role in the development of the source, nature and extent of EC competence. The European Court of Justice case law has established that the powers on the basis of which the EC acts are not necessarily the express consequence of specific provisions of the Treaty but may also be implied from them¹³. In relation to human rights, the Court held in its opinion 2/94 on accession by the EC to the European Convention on Human Rights that there is no express or implicit EC competence to act in the field of human rights, as “no Treaty provision confers on the Community institutions any general power to enact rules on human rights or to conclude international conventions in this field”¹⁴. Such competence would require Treaty amendment.

b) Diverging interpretations of the European Charter and the European Convention on Human Rights

In the ever increasing context of EU activity in the field of human rights, the risks of different interpretations of the same fundamental rights by the two bodies charged with the interpretation of the European Charter and the European Convention on Human Rights should not be underestimated.

Although the European Court of Justice has followed the case-law of the Strasbourg organs in its interpretation of European Convention on Human Rights provisions in most cases, the European Court of Justice has not considered itself bound to do so, and it has sometimes produced its own interpretation of European Convention on Human Rights provisions¹⁵.

¹³ Opinion 1/76 (*European laying-up fund for inland waterway vessels*) [1977] ECR 741.

¹⁴ [1996] ECR I-1759, at I-1787.

¹⁵ Diverging interpretations can be found, for instance, in Case 260/89, *ERT* [1989] ECR 2925 and *Informationsverein Lentia et al. c. Austria*, on article 10 European Convention on Human Rights; or Cases 46/87 and 227/88, *Hoerchts* [1989] 2859 and *Nimietz v. Alemania*, judgment of 16 December 1992 on article 8. On this issue, see Lawson, R. “Confusion and Conflict? Diverging Interpretations of the European Convention on Human Rights in Strasbourg and Luxembourg”, in Lawson, R. and de Blois, M. (eds.) *The Dynamics of the Protection of Human Rights in Europe. Essays in Honour of Henry G. Schermes*, 1994, pp. 219-252.

Although international monitoring bodies do not have jurisdiction to examine decisions by EU institutions, they do have jurisdiction to examine claims from individuals against Member States decisions in application of EU law. It can be expected that as more competencies are transferred to the EC in areas that affect basic human rights (and particularly in relation to rights of an absolute nature, such as the right to life or to freedom from torture), there is also a risk that divergence of interpretations may become more common. The Strasbourg organs have stated that although they have no jurisdiction to examine claims against EU institutions, they do have jurisdiction to examine the compatibility of measures adopted by State Parties in application of EC law with the European Convention on Human Rights.

The case law of the European Court of Human Rights has outlined the relation between EC Law and the European Convention on Human Rights in several decisions. In a recent case, the European Court of Human Rights has pronounced itself on the compatibility of the application of the Dublin Convention (whose content should be the object of an EC instrument in application of article 63 of the TEC) with the European Convention on Human Rights in *TI v. the UK* (decision following the admissibility hearing of 7 March 2000). The Court stated that the UK could not rely automatically “on the arrangements made in the Dublin Convention concerning the attribution of responsibility between European countries for deciding asylum claims” since “where States establish international organisations, or *mutatis mutandis* international agreements, to pursue co-operation in certain fields of activities, there may be implications for the protection of fundamental rights. It would be incompatible with the purpose and object of the Convention if Contracting States were thereby absolved from their responsibility under the Convention in relation to the field of activity covered by such attribution”.

As we can see, in the case of diverging interpretations between the European Convention on Human Rights and European Charter, Member States may sometimes be faced with the obligation to comply with two contradictory international obligations or even judgments in relation to the same matter. Accession by the EC/EU to the European Convention on Human Rights would be one way to ensure a uniform interpretation of the same provisions.

Amnesty International recommends that a method be devised to ensure that the EC/EU act in conformity with the European Convention on Human Rights and its Protocols, as interpreted by the European Court of Human Rights, as well as other international human rights law and standards. One way of achieving this objective, which Amnesty International has recommended in the past, would be to make the necessary amendments to the Treaties to enable and require the EC/EU to accede to the European Convention on Human Rights¹⁶. As the EC can acquire exclusive external competence in certain areas through different means, Amnesty International recommends that great care be taken in the drafting of any Treaty provision in this regard, so as to exclude the possibility that the EC/EU acquire any exclusive external competence in the field of human rights, as it would be detrimental to the international development of human rights standards if Member States were precluded from adhering to new conventions setting higher human rights standards.

¹⁶The organisation has already expressed itself in the same terms in 1993 as the issue was raised by the Belgian Presidency of the EU and in 1996 in the context of the IGC which resulted in the Amsterdam Treaty.

Part II: Fundamental Rights in the European Charter

The following comments by Amnesty International are based on the draft articles included in document CHARTE 4149/00, except those related to freedom of assembly and association and to the right to asylum, which are based in document CHARTE 4137/00, as the wording of these rights has not been the object of revision by the Convention so far. However, the organisation may wish to submit further comments on future drafts.

Article 2. Right to life.

The fundamental right to life, as recognised in international law and standards, including the European Convention on Human Rights and its Protocols, should be enshrined in the European Charter. This right is non-derogable in all circumstances.

Amnesty International opposes the death penalty as a violation of human rights, holding that it violates the right to life and is the ultimate cruel, inhuman and degrading punishment. Although Amnesty International recognises the logic of including the prohibition of the death penalty in the article on the right to life, as has been done in many national constitutions, it recommends that the prohibition of the death penalty is linked also to the prohibition of torture and cruel, inhuman or degrading treatment or punishment, as has been done in some national constitutions. In Amnesty International's view, the death penalty violates both of these rights.

Support for this position comes from court decisions, such as the Hungarian Constitutional Court ruling of 24 October 1990 that the death penalty violates the right to life and to human dignity as provided under the country's constitution. Further support is evidenced by the adoption of international and regional instruments providing for the abolition of the death penalty: the Second Optional Protocol to the International Covenant on Civil and Political Rights, Protocol No. 6 to the European Convention on Human Rights. Furthermore, under the Rome Statute of the International Criminal Court adopted in 1998, the death penalty is excluded from the punishments which this court will be authorised to impose, even though it has jurisdiction over extremely grave crimes: crimes against humanity, including genocide, and violations of the laws of armed conflict. Similarly, in establishing the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda in 1993 and 1994 respectively, the UN Security Council excluded the death penalty for these crimes.

Amnesty International calls for a European Charter provision which not only prohibits that individuals shall be condemned to the death penalty or executed, but which also includes the prohibition of enacting or retaining any laws that provide for the death penalty. Amnesty International also recommends that the prohibition of the death penalty (without exception) be linked not only to the right to life, but to other human rights, in particular the right to physical and mental integrity (and specifically the right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment).

Articles 3 and 4. The right to respect for integrity and the prohibition of torture

The principle that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment, as recognised in international law and standards, including the European Convention on Human Rights and its Protocols, should be enshrined in the European Charter. This right is non-derogable in all circumstances.

Torture and other cruel, inhuman or degrading treatment or punishment violate the integrity and dignity of the human person, constitute a breach of all accepted norms of civilised behaviour and are universally prohibited under national and international law.

2. Amnesty International recalls that the victims of torture can include not only political prisoners, but also members of vulnerable groups such as ethnic and sexual minorities, refugees and asylum-seekers, immigrants, common criminal suspects and prisoners, the socially deprived and the economically marginalised.

Amnesty International calls on EU member states to commit themselves to the total abolition of torture and other forms of ill-treatment, including the adoption of effective laws to take action so that those responsible for torture from anywhere in the world who enter their territory are brought to justice, either by submitting their cases to their prosecuting authorities or by extraditing the suspects, as required by the Convention against Torture.

Amnesty International calls for a European Charter provision that enshrines the principle that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Therefore, the current wording should read “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”, in line with Article 7 of the International Covenant on Civil and Political Rights and Article 5 of the Universal Declaration on Human Rights.

Article 6. Right to liberty and security

The fundamental right to liberty and security of person, as recognised in international law and standards, including the European Convention on Human Rights and its Protocols, should be enshrined in the European Charter. The essential corollary to the right to liberty is protection against arbitrary arrest or unlawful detention. This basic guarantee applies to everyone, whether held in connection with criminal charges or on any other grounds, such as for instance, immigration control.

The current wording of Article 6 falls short of the guarantees recognised in the European Convention on Human Rights and its Protocols and other relevant international law and standards, such as the International Covenant on Civil and Political Rights, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, the Rome Statute of the International Criminal Court, the Statutes and Rules of Procedure and Evidence of the International Crimes Tribunals for the former Yugoslavia and for Rwanda, the UN Standard on Minimum Rules for the Treatment of Prisoners, the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, the UN Basic Principles on the Independence of the Judiciary, or the UN Basic Principles on the Role of Lawyers.

Amnesty International notes that imprisonment and other severe deprivation of physical liberty in violation of fundamental rules of international law, as well as other infringements of fundamental rights which may result from such deprivations, such as torture and “disappearances”, may –as recognised in the Rome Statute- constitute a crime against humanity if committed on a widespread or systematic basis pursuant to or in furtherance of a state or organisational policy.

Therefore, the article on the right to liberty and security should not only be non-derogable, but should also include the safeguards reflecting the broad framework of existing and evolving international law and standards, including the relevant jurisprudence and interpretation, which include the following rights among those set out in more detail in Amnesty International’s *Fair Trials Manual*, 1998 (AI Index: POL 30/02/98):

- 1.- The right to be promptly informed of one’s rights, including the right to lodge complaints about one’s treatment.
- 2.- The right to be brought before a judicial authority without delay after being taken into custody.
- 3.- The right to prompt access to a lawyer and family or friends.
- 4.- The right to have a lawyer present during questioning.
- 5.- The right to challenge the lawfulness of detention.
- 6.- The right to trial within a reasonable time or to release from detention.

Article 7. Right to an effective remedy

The fundamental right to an effective remedy, as recognised in international law and standards, including the European Convention on Human Rights and its Protocols, should be enshrined in the European Charter. This right should be non-derogable.

The current wording of Article 7 falls short of the guarantees recognised in the European Convention on Human Rights and its Protocols and other relevant international law and standards, such as the International Covenant on Civil and Political Rights, the Convention against Torture, the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, the Final Report prepared by Mr Joinet pursuant to Sub-Commission decision 1996/119, Annex II: Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity, UN Doc. E/CN.4/Sub. 2/1997/20(1997) (Joinet Principles), the UN Commission on Human Rights Independent Expert on the Right to restitution, compensation and rehabilitation for victims of grave violations of human rights and fundamental freedoms, Draft Basic Principles and Guidelines on the Right to a Remedy and Reparation for victims of International Human Rights and Humanitarian Law (Final Draft), 18 January 2000, U.N. Doc. E/CN.4/2000/62(2000) (Van Boven-Bassiouni Principles) or the rights of victims and accused to remedies in Articles 75 and 85 of the Rome Statute of the International Criminal Court.

Therefore, the article on the right to an effective remedy should also include the safeguards reflecting the broad framework of existing and evolving international law and standards, including the relevant jurisprudence and interpretation. In this regard, the current wording omits the clarification that the right applies “notwithstanding that the violation has been committed by persons acting in an official capacity”. The provision should not be construed as excluding remedies before national authorities, in so far the responsibility of member states may be engaged in the application of the European Charter.

Articles 8 and 9. Right to a fair trial and rights of the defence

The fundamental right to a fair trial, which includes rights to an effective defence, as recognised in international law and standards, including the European Convention on Human Rights and its Protocols, should be enshrined in the European Charter. This right should be non-derogable in all circumstances. Indeed, depriving a protected person under international humanitarian law of the right to a fair trial during armed conflict may constitute a war crime in certain circumstances.

The current wording of Articles 8 and 9 falls short of the guarantees recognised in the European Convention on Human Rights and its Protocols and other relevant international law and standards, such as the International Covenant on Civil and Political Rights, the Convention against Torture, the Rome Statute of the International Criminal Court, the Statutes and Rules of Procedure and Evidence of the International Crimes Tribunals for the former Yugoslavia and for Rwanda, the UN Standard Minimum Rules for the Treatment of Prisoners, the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, the UN Basic Principles on the Independence of the Judiciary, or the UN Basic Principles on the Role of Lawyers. Therefore, the specific rights enshrined in international treaties and standards should be expressly included in the provisions.

Amnesty International also notes that (see Amnesty International's *Fair Trials Manual*, 1998; AI Index: POL 30/02/98):

1. Article 8 omits a number of important aspects of the right to a fair trial in Article 14 (1) of the International Covenant on Civil and Political Rights, not expressly mentioned in Article 6 of the European Convention on Human Rights, including the right to equality before courts and tribunals, to be tried by competent tribunal and to a public judgment.
2. The right to free legal aid in Article 8 is more restrictive than in Article 14 (3) (d) of the International Covenant on Civil and Political Rights and Article 67 (1) (d) of the Rome Statute by requiring a threshold showing that it is "indispensable" and it changes the standard from "the interests of justice" to the undefined "ensure the effectiveness of access to justice".
3. Other important rights to a fair trial recognised in contemporary international instruments not found in the European Convention on Human Rights or its Protocols are omitted, such as the right to remain silent, without such silence being a consideration in the determination of guilt or innocence (Article 55 (2) (b) of the Rome Statute, Rules 42 (A) (iii) of the International Criminal Tribunal for the former Yugoslavia and International Criminal Tribunal for Rwanda Rules of Procedure and Evidence) and the right not to be questioned in the presence of counsel unless the person has voluntarily waived his or her right to counsel (Article 55 (2) (d) of the Rome Statute and Rules 42 (B) of the International Criminal Tribunal for the former Yugoslavia and International Criminal Tribunal for Rwanda Rules of Procedure and Evidence, both of which include the right to be informed of the right before questioning). These examples are, of course, only illustrative.
4. Article 9 falls short of the guarantees of the right to a presumption of innocence in Articles 66 and 67 (i) of the Rome Statute.

Article 11. Right not to be tried or punished twice

The fundamental right not to be tried or punished twice, as recognised in international law and standards, including the European Convention on Human Rights and its Protocols, should be enshrined in the European Charter. This right should be non-derogable.

The current wording of Article 11 falls short of the guarantees recognised in the European Convention on Human Rights and its Protocols and other relevant international law and standards, such as the International Covenant on Civil and Political Rights.

Therefore, the article on the right not to be tried or punished twice should reflect the broad framework of existing and evolving international law and standards, including the relevant jurisprudence and interpretation. In particular, it should include a reference to the single jurisdiction limitation, in line with Article 4 para. 1 of Protocol 7 to the European Convention on Human Rights.

Article 14. Freedom of thought, conscience and religion

The fundamental right to freedom of thought, conscience and religion, as recognised in international law and standards, including the European Convention on Human Rights and its Protocols, should be enshrined in the European Charter. This is a non-derogable right.

The current wording of Article 14 falls short of the guarantees recognised in the European Convention on Human Rights and its Protocols and other relevant international law and standards, such as the International Covenant on Civil and Political Rights.

Therefore, the article on the right to freedom of thought, conscience and religion (a non-derogable right under article 4 of the International Covenant on Civil and Political Rights) should reflect the broad framework of existing and evolving international law and standards, including the relevant jurisprudence and interpretation. In particular, the provision should reflect that freedom of thought, conscience and religion includes the right conscientious objection and that the right to freedom of religion includes the right to change one's religion or belief, the freedom, either alone or in community with others and in public or private, to manifest one's religion or beliefs in worship, teaching, practice and observance, as well as the right not to hold any religious beliefs or to practice any religion

Article 15. Freedom of expression

The fundamental right to freedom of expression, as recognised in international law and standards, including the European Convention on Human Rights and its Protocols, should be enshrined in the European Charter.

The current wording of Article 15 falls short of the guarantees recognised in the European Convention on Human Rights and its Protocols and other relevant international law and standards, such as the International Covenant on Civil and Political Rights. For example, Article 15 fails to make clear that it protects the right to freedom to hold opinions and to receive and impart information and ideas without interference by public authorities and regardless of frontiers.

Therefore, the article on the right to freedom of expression, and any restrictions on this right, should reflect the broad framework of existing and evolving international law and standards, including the relevant jurisprudence and interpretation.

Article 13 (CHARTER 4137/00). Freedom of assembly and association

The right of everyone to freedom of peaceful assembly and to freedom of association, as recognised in international law and standards, including the European Convention on Human Rights and its Protocols, should be enshrined in the European Charter. Any limitations must be consistent with international law and standards.

Many individuals throughout the world are detained because they have exercised peacefully their right to freedom of assembly and association. This right is at the core of Amnesty International's work and should be enshrined in the European Charter as strongly as possible.

Article 17 (CHARTER 4137/00). The right to asylum and *non-refoulement*

The right of everyone to asylum should be enshrined in the European Charter. This right is already enshrined in the legal orders of all member states, so its inclusion in the European Charter would reflect this legal development in an international instrument at the European level.

Amnesty International would like to see an express reference to the UN Refugee Convention and to other relevant international obligations for member states, such as the European Convention on Human Rights, in line with article 63 of the Treaty on the European Community.

Amnesty International notes that the current draft provision excludes nationals of member states from the right to asylum. In order to ensure that people who would risk serious human rights violations if returned to a particular country are identified as such and afforded protection, all asylum-seekers should have access to a fair and satisfactory asylum procedure.

Restricting the right to asylum on the grounds of national origin constitutes a clear violation of the UN Refugee Convention and other international human rights treaties. Amnesty International recalls that under international law, discrimination in the enjoyment of fundamental rights on the grounds of national origin is forbidden (article 2 of the Universal Declaration of Human Rights, article 3 of the UN Refugee Convention, article 3 of the International Covenant on Civil and Political Rights, article 14 of the European Convention on Human Rights) and therefore calls for the express recognition of the right to asylum for all individuals. Such recognition would be in line with conclusion 13 of the Tampere Summit, whereby the Heads of State and Government reaffirmed "the importance the Union and Member States attach to absolute respect of the right to seek asylum".

Amnesty International asks for an express provision on the absolute principle of *non-refoulement*, a norm of customary international law, as included in article 33 para. 1 of the UN Refugee Convention and in other international treaties, of universal and regional application, such as article 3 of the UN Convention against torture and article 3 of the European Convention on Human Rights,

which prohibit the forced return of individuals (whether directly or indirectly) to the territories where their lives or freedom are at risk or where they would be at risk of torture. Amnesty International asks for this provision to include an express prohibition against sending an individual to a country where he or she would face an unfair trial or the death penalty.

Amnesty International asks for an express provision on the guarantees that assist individuals in expulsion, extradition, or any other form of forced removal procedures that they may be subjected to in accordance with due process of law. Such provision would be in line with Article 32 of the UN Refugee Convention and article 13 of the International Covenant on Civil and Political Rights (to which all member states are parties) and with the case-law of international monitoring bodies, such as the European Court of Human Rights, the Human Rights Committee or the Committee against Torture.

Summary of recommendations by Amnesty International

1.- As a human rights organisation, Amnesty International welcomes initiatives to improve human rights protection. Recognising that all human rights are indivisible and interdependent, Amnesty International urges all governments to ratify and implement international human rights standards. Amnesty International's interest in the proposed European Charter is a positive one in that it offers a perspective of real improvement in the human rights protection currently afforded by the European Union. At the same time Amnesty International is concerned that it should in no way result in a lowering of the current level of protection, and that any ambiguity in that respect be ruled out. Amnesty International wishes to emphasise that the European Charter should only be adopted as a legally binding instrument if certain basic conditions are fulfilled.

2.- Amnesty International calls for a legally binding European Charter provided that it guarantees the fundamental rights of all individuals without discrimination, strengthens rather than weakens the current level of human rights protection in the EU, serves to include fundamental rights that have not necessarily been included in other international instruments, and is fully justiciable by the European Court of Justice and by national courts when applying EC/EU Law.

3.- Amnesty International calls for a European Charter that applies to all the activities of the EU institutions, the entities created under the TEU, Member States when acting within and also outside the sphere of EC/EU law and private parties acting with the consent or acquiescence of governments.

4.- Amnesty International calls for the necessary treaty amendments to be adopted in order to ensure greater access for individual complaints about the violation of fundamental rights and that the European Court of Justice has jurisdiction in all the areas of EU activity in relation to human rights, this is, full jurisdiction not only on EC matters (including Title IV of the TEC) but also on Title V (Common Foreign and Security Policy) and Title VI (Justice and Home Affairs) of the TEU.

5.- Amnesty International recommends that a method be devised to ensure that the EC/EU act in conformity with the European Convention on Human Rights and its Protocols, as interpreted by the European Court of Human Rights, as well as with other international human rights law and standards. One way of achieving this objective, which Amnesty International has recommended in the past, would be to make the necessary amendments to the Treaties to enable and require the EC/EU to accede to the European Convention on Human Rights. As the EC can acquire exclusive external competence in certain areas through different means, Amnesty International recommends that great care be taken in the drafting of any Treaty provision in this regard, so as to exclude the possibility that the EC/EU acquire any exclusive external competence in the field of human rights, as it would be detrimental to the international development of human rights standards if Member States were precluded from adhering to new conventions setting higher human rights standards.

6.- Amnesty International urges that the articles on fundamental rights be drafted to reflect the broad framework of existing and evolving international law and standards, including the relevant jurisprudence and interpretation.

Statement by Amnesty International

Convention NGO Hearing on the European Charter of Fundamental Rights

27 April 2000

The question of how to protect human rights in the European Union (EU) legal order has been debated since the very first steps were taken to found the European Communities.

As a human rights organisation, Amnesty International welcomes initiatives to improve human rights protection throughout the world. Recognising that all human rights are indivisible and interdependent, Amnesty International urges all governments to ratify and implement international human rights standards. Amnesty International's interest in the proposed European Charter is a positive one in that it offers a perspective of real improvement in the human rights protection currently afforded by the European Union. At the same time Amnesty International is concerned that it should in no way result in a lowering of the current level of protection, and that any ambiguity in that respect be ruled out. Amnesty International wishes to emphasise that the European Charter should only be adopted as a legally binding instrument if certain basic conditions are fulfilled.

To that end, the organisation has issued a paper which analyses the issues raised by the adoption of the European Charter as well as the draft articles as they stand today, and advances recommendations so that it could constitute a real improvement in the human rights protection currently afforded by the EU. Copies of this paper are available now and an electronic version shall be forwarded to the Convention Secretariat.

1. Amnesty International calls for a legally binding European Charter provided that it guarantees the fundamental rights of all individuals without discrimination (particularly discrimination on the grounds of national origin), strengthens rather than weakens the current level of human rights protection in the EU, serves to include fundamental rights that have not necessarily been included in other international instruments, such as the fundamental right to asylum, and is fully justiciable by the European Court of Justice and by national courts when applying EC/EU Law.

2. Amnesty International calls for a European Charter that applies to all the activities of the EU institutions, the entities created under the TEU, Member States when acting within and also outside the sphere of EC/EU law and private parties acting with the consent or acquiescence of governments.

3. Amnesty International calls for the necessary treaty amendments to be adopted in order to ensure greater access for individual complaints about the violation of fundamental rights and that the European Court of Justice has jurisdiction in all the areas of EU activity in relation to human rights, this is, full jurisdiction not only on EC matters (including Title IV of the TEC) but also on Title V (Common Foreign and Security Policy) and Title VI (Justice and Home Affairs) of the TEU.

4. Amnesty International further recommends that a method be devised to ensure that the EC/EU act in conformity with the European Convention on Human Rights and its Protocols, as interpreted by the European Court of Human Rights, as well as with other international human rights law and standards. One way of achieving this objective, which Amnesty International has recommended in the past, would be to make the necessary amendments to the Treaties to enable and require the EC/EU to accede to the European Convention on Human Rights. As the EC can acquire exclusive external competence in certain areas through different means, great care should be taken in the drafting of any Treaty provision in this regard, so as to exclude the possibility that the EC/EU acquire any exclusive external competence in the field of human rights, as it would be detrimental to the international development of human rights standards if Member States were precluded from adhering to new conventions setting higher human rights standards.

5. Amnesty International urges that the articles on fundamental rights be drafted to reflect the broad framework of existing and evolving international law and standards, including the relevant jurisprudence and interpretation.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 10 May 2000**CHARTE 4291/00****CONTRIB 163****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter the presentation by the European Landowner's Organisation (ELO) given at the hearing on 27 April 2000. ¹

¹ This text has been submitted in English language only.

Presentation by Johan Nordenfalk, President of ELO, at the public hearing regarding the Charter of Fundamental Human Rights, given before the Convention on April 27, 2000.

Mr President, Ladies and Gentlemen,

We from the European Landowners' Organisation – ELO – thank you very much for allowing us to come here and present our views on ownership rights.

ELO is a federation of national landowners' organisations in the EU countries. We represent, directly or indirectly, 30 million people owning land in the countryside - quite a force, for instance four times bigger than the 7 million agricultural farmers. Many of us are also involved in agriculture, but most perform other rural activities, ranging from forestry and small business to energy production and aqua-culture etc.

Today I represent also the forest-organisation **CEPF** and the millions of urban owners, as their organisations **GEFI** and **UIPI** have authorised us to speak on their behalf.

Why then are ownership rights so important?

Well history shows that whenever ownership rights are neglected, the economy and the environment suffers - look for instance at former eastern Europe.

As to the economy, this is particularly important right now when the Union is embarking on an ambitious economic program to achieve full employment.

In my country, Sweden, we learnt this the hard way, because when earlier ownership was less well protected, major entrepreneurs like the founders of well-known companies like Ikea, Tetrapak etc migrated. The Union must not repeat that mistake. Ownership conditions for secure long term investments are crucial.

As to the environment: what nobody owns, nobody cares about. What is needed is an owner that loves his property, cares for it, wants to pass it on to his children, and feels safe enough to share it also with others. A secure owner is the environment's best friend!

And now to the wording of the article.

We are very glad that the Praesidium has proposed some changes in comparison with the European Convention on Human Rights, which is not adequate for the demands of today. The Praesidium's wording is an important step in the right direction. We have however, in a document registered as contribution 73 submitted proposals for some further improvements.

Before commenting on these, let me just underline that we fully accept that the authorities always must have the right to intervene for some good reason – it is the criteria and the conditions we are discussing.

Mr President, in order to describe our submissions, let me use an example that can fit both the countryside and the cities

Suppose you own a house with a nice garden. One day the authorities come and say that you must for some reason, perhaps biodiversity, plant thistles all over your garden.

I guess you would be upset – your children will not be able to play on your lawn, enjoy the flowers etc.

But the authorities may say: "Why complain? You still own your house and your garden!"
"But", you say, "I have little use for it anymore!"

This is why we want the words **"and restricted in their use"** included – it must be clearer that is not only depriving you of your house that counts.

Secondly, there must be some acceptable reason for the authorities' intrusion. Maybe in our example there is - it depends on the circumstances. But to only prescribe **"in the public interest"** is too weak - almost anything can be labelled

"public interest", as also very recent history shows. We suggest **"where deemed necessary"**. Also other wordings are possible, like some already used in the Union countries: for instance **"significant public cause"**, or **"public need"**.

Thirdly the compensation. Suppose in our example that you decide to sell your house and instead buy another one just like it. Before the thistle decision they were both worth, say, 100. Now you will only get, say, 80 for yours but the other still costs 100. I believe most of us would consider it correct that you get compensation for your loss of 20 so that you can buy the similar house. That is why we have proposed **"full and prior compensation"**.

Anyone of you who owns a house, a business or whatever, may one day face a compulsory intervention – something that can change your life. It can not be correct that one person alone shall carry the burden for something that should benefit society as a whole and thus be born by all of us as taxpayers.

In addition to these three changes submitted in our document, our German members have mentioned that the "Grundgesetz" also explicitly protects "inheritance". To make it more clear we would thus propose to add **"right to inheritance"** to the first sentence in your wording.

Mr President, Ladies and Gentlemen!

One task of the Charter is to make the rights more visible to the Union's citizens.

We believe that our suggestions achieve just that and make the article on ownership more clear and understandable.

But equally important, we believe that with our wording, we will have ownership rights that will benefit the whole Union, its economy, the employment and the environment.

ELO proposed wording of article on ownership rights :

Everyone is entitled to the peaceful enjoyment of his possessions and the rights to inheritance. No one may be deprived of his possessions or restricted in their use, except where deemed necessary in the public interest and in the cases and subject to the conditions provided for by law and subject to full and prior compensation.

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DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 23 May 2000**CHARTE 4292/00****CONTRIB 164****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter an open letter to the Convention and the intervention by the Federation of National Organisations Working with the Homeless (FEANTSA) given at the hearing on 27 April 2000.¹

¹ This text has been submitted in French and English languages.

Brussels, 8 May 2000

**Open letter to the members of the Convention responsible for drafting
the proposed European Union Charter of Fundamental Rights**

Dear Madam / Sir,

I am writing to you on behalf of FEANTSA - the European Federation of National Organisations Working with the Homeless. FEANTSA brings together some 60 not-for-profit organisations in the social or community sector that provide a wide range of services to homeless people in all the EU member states, and in a number of the accession countries.

We have been very interested to hear about the work being carried out by the Convention with responsibility for drafting the proposed European Union Charter of Fundamental Rights. We are convinced that the proposed EU Charter should also enshrine those rights which are most important to the most disadvantaged members of our societies - including the right to housing.

Decent housing and living conditions are among the most basic needs of each individual. Gaining secure access to adequate accommodation is often a pre-condition for exercising many of the fundamental rights which form the foundations of all decent societies, and should be enjoyed by everyone. These include the right of access to education, the right to work, the right to social protection, the right to healthcare services, the right to personal privacy and family life, as well as access to basic services such as water and electricity.

The European Observatory on Homelessness (which has conducted research on homelessness in the Member States on behalf of FEANTSA since 1991) has compiled an overview of the situation in the fifteen EU member states. Approximately three million people have no fixed home of their own, while a further 15 million people live in sub-standard or overcrowded accommodation. On this basis, we can estimate that across the European Union, one person in 20 is denied access to decent housing.

Since 1948, the Universal Declaration on Human Rights has proclaimed that: "*everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services*" (Article 25.1). More than 100 states are committed to taking appropriate steps to ensure the realisation of the right to housing, under article 11.1 of the International Covenant on Economic, Social and Cultural Rights (1966).

At the level of the Council of Europe, the European Social Charter was adopted in 1961, and the revised European Social Charter (RESC) was opened for signature in 1996. The right to housing is enshrined in Article 31 of the RESC, which sets out a series of three objectives:

"With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed:

- 1. to promote access to housing of an adequate standard;*
- 2. to prevent and reduce homelessness with a view to its gradual elimination;*
- 3. to make the price of housing accessible to those without adequate resources".*

The Revised European Social Charter officially entered into force on 1 July 1999. But the current situation is that only five countries have completed the ratification process: France, Italy, Sweden, Romania and Slovenia. Most of the EU countries have signed but not yet ratified the RESC: Austria, Belgium, Denmark, Finland, Greece, Luxembourg, Portugal and the United Kingdom. FEANTSA strongly advocates that every European country should sign and ratify the Revised European Social Charter. This will provide us with a common foundation, upon which we can develop and implement effective policy solutions at all levels, in order to tackle social exclusion and homelessness.

In relation to the proposed European Union Charter of Fundamental Rights, we must ask the following question: Will the proposed Charter represent a step forward in terms of protecting the fundamental rights of the most disadvantaged members of our societies?

We welcome the fact that the Convention is willing to consider all the main dimensions of fundamental human rights, including civil, political, legal, social and economic rights. However, we are extremely concerned that the right to housing was not included in the draft list of fundamental rights which was presented at the most recent meeting of the Convention.

As civilised and democratic societies, we have a collective responsibility to ensure that all citizens and residents are able to gain access to adequate accommodation. The prevention and elimination of homelessness can only be achieved through the recognition and realisation of the right to housing. This conviction is enshrined in the revised European Social Charter, and is also reflected in numerous texts of national constitutions and laws that have been enacted in the member states of the European Union.

We fear that the adoption of an EU Charter of Fundamental Rights which excludes the right to housing would send out a negative signal to the citizens of Europe and to the national governments of the member states and of the accession countries. It would suggest that the right to housing is somehow less important than other fundamental human rights. It would imply that our societies are willing to tolerate that thousands of people become homeless every year. It could undermine the efforts of those of us who are working to protect the fundamental rights of the most disadvantaged members of our societies.

We respectfully appeal to you to ensure that the full range of social rights - including the right to housing - are included in the proposed EU Charter of Fundamental Rights.

Yours sincerely,

John Evans
President of FEANTSA

Public Hearing of the Convention on the EU Charter of Fundamental Rights

European Parliament, Brussels, 27 April 2000

Address by Catherine Parmentier, Secretary General of FEANTSA

Mr Chairman, Ladies and Gentlemen members of the Convention, the following address is made on behalf of FEANTSA, the European Federation of National Organisations Working with the Homeless.

FEANTSA currently brings together some seventy national and regional associations working to provide a broad range of services for the homeless in the Member States of the EU as well as in a number of candidates for EU membership. FEANTSA is also responsible for running a research structure, the European Observatory on Homelessness, which works in cooperation with 15 universities and research organizations throughout the Member States.

The wish we express today is for recognition by the members of the Convention of a right to decent and affordable housing for all, even for those on low incomes.

1. The context

At present, 18 million Europeans (or one person in twenty) in the 15 countries of the European Union are denied access to reasonable housing. Of these, 3 million are actually homeless, and 15 million are living in sub-standard and overcrowded housing.

The European housing market is characterized by rising costs, particularly in the private rented sector, while insecurity in the labour market means that the resources households are able to devote to housing are increasingly under pressure.

In these conditions there is an urgent need for the right to decent housing to be placed at the centre of the political agenda at all levels, and consequently also therefore at the centre of the Charter of Fundamental Rights.

2. Housing and the other Fundamental Rights

Adequate housing and reasonable living conditions are among the most basic needs of each individual. Housing is the first and last line of defence against social exclusion.

The access to decent, stable housing is frequently also the indispensable precondition for the exercise of most of the other fundamental rights currently under discussion in this forum and whose inclusion in the Charter appears not to pose a problem.

What real relevance for homeless people have any of the following rights: the right to privacy? the right to personal dignity? the right to lifelong education? the right to maternity care? the right to social protection? the right to protection of children? the right to the integration of the handicapped? the right to the protection of family life? the right to health care? the right to education for children? the right to personal security? the right to work? the right to a normal working week? The right to vote?

These rights are all devoid of meaning for people who have lost their homes. It is no exaggeration to describe homelessness as a negation of citizenship.

3. Integrating the right to housing in the Charter

Housing is too important and too expensive an item to be decided by the law of the market with no public regulation. Recognition of a right to adequate and affordable housing by the public authorities at all levels constitutes the best long-term guarantee for the implementation of general policies designed to address this fundamental and universal need.

I would like to remind you (and on this subject the document drawn up by the European Housing Forum can be consulted on the websites of the Convention and of the Forum) that the need for recognition of the right to housing has received backing at the community level from several sources, including :

- the European Parliament: three Resolutions (87, 96 and 97) and the Bertel Haarder report in March 2000 of the Commission on the freedom and rights of the citizens;
- the Committee of the Regions: Own Initiative report, 1999, Opinion on housing and the homeless;
- the European Commission, in its March 2000 Communication *Building an inclusive Europe*, points out that '*Homelessness is one of the most severe expressions of poverty and social exclusion*'.

It is relevant to mention here that the European political calendar over the next two years contains a unique combination of initiatives for promoting adequate housing provision for everyone:

- the examination in the annual meetings of housing ministers under four successive presidencies - Portugal, France, Sweden and Belgium - of the role of public policy in facilitating access to housing;
- the work of the group of specialists on access to housing of the Council of Europe and the publication by this group in 2001 of a report on housing among disadvantaged groups in Europe, plus recommendations to the Committee of Ministers of the Member States;
- the launch this year by the United Nations of the Global Campaign for Security of Tenure, and the organization in 2001 at New York of the World Habitat Conference (Istanbul + 5).

The European Union must include these ideas and efforts in its action.

Access to decent and affordable housing for all is an absolute precondition for the social cohesion which was identified at the Lisbon Summit as one of the main objectives for the Union.

Ladies and Gentlemen of the Convention, I submit that if the Charter of Fundamental Rights is to be a truly coherent document, forming the basis of a project for European society, with the aim defined by the committee of experts on Fundamental Rights of informing the action of the European Union in all areas and at all times, then the right to housing must be included. This is a priority.

Thank you.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 16 May 2000**CHARTE 4293/00****CONTRIB 165****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter the position paper from Eurolink Age on occasion of the public hearing on 27 April 2000.^{1 2}

¹ This text has been submitted in French and English languages.

² Eurolink Age: Tel: +44-181 765 7715. Fax: +44-181 679 6727.

European Union proposals for a draft Charter of fundamental rights of the EU

Eurolink Age position paper

Introduction

Eurolink Age is a network of organisations and individuals throughout the European Union that promotes good policy and practice on ageing in the interests of the 121.4 million older people (defined as 50+) in the EU. It has been in operation since 1981. As a non-governmental organisation we are delighted to respond to the invitation to contribute to the drafting process for a Charter of fundamental rights for the EU.

This position paper, based on the Presidency note of 27 January 2000, has been drawn up in consultation with c.140 Eurolink Age members across Europe who are concerned to ensure that older people's interests are fully taken into account by the Charter drafted by the Convention.

Comments on 'Draft list of fundamental rights' circulated by the Portuguese Presidency on 27 January 2000

List of rights

Eurolink Age draws to the attention of the Convention some specific rights which are particularly sensitive for older people, aspects of which should, in our opinion, be addressed as detailed drafting work continues. The following comments are numbered in accordance with the Portuguese Presidency list.

Dignity

1. This right should incorporate the relevant United Nations Principle for Older Persons: 'Older persons should be able to live in dignity and security and be free of exploitation and physical or mental abuse'.

Right to life

2. This right must take account of the sensitive issue of end of life rights, relating to access to medical treatment, to health-related choices in later life, and in relation to euthanasia. This is an emotive matter which must be treated with great respect.

Liberty and security

3. The European Convention on Human Rights and Fundamental Freedoms sets out exceptions to the general right to protection in the event of deprivation of liberty. These include: ‘the lawful detention of personsof unsound mind,’ (Article 5(e)). In view of the higher incidence of mental frailty among older people, Eurolink Age believes it is important that ‘persons of unsound mind’ be defined in such a way that adequate protection is ensured for individuals, such as Alzheimer’s disease sufferers, whose liberty may be infringed while they are still capable of – and can benefit from – taking some responsibility for their own affairs.

Respect for private and family life: right to privacy, home, correspondence

8. In practice today, this right is often infringed in the case of frail older people. The Charter should follow the United Nations Principles which address these issues, particularly in relation to supporting the continuing independence of older people and also concerning their ‘human rights and fundamental freedoms when residing in any shelter, care or treatment facility’.

Due regard should be given to those older people who find themselves victim to family abuse.

Article 23 of the Revised European Social Charter, on the right of elderly people to social protection, guarantees the respect of older people living in institutions. Eurolink Age calls on the Convention to incorporate Article 23 in its entirety into the draft Charter.

Right to education and vocational training, freedom of choice of method of education

13. The drafting of this right should take account of life-long learning, and the need to tailor education and vocational training to individual requirements. Research by Eurolink Age suggests that within the workplace older workers are often unable to benefit from training due to inappropriate delivery aimed at younger people.

Freedom of movement

17. The EC affords limited rights for those above retirement age to reside in another Member State. We believe that this right should be expressed in such a way that individuals will be able to rely on it when the implementing provisions are not applied in the spirit of the Treaties by all Member States, as is often the case today.

Right to property

18. Eurolink Age believes that the term ‘property’ should be defined to include social security rights and benefits which apply and which are accrued by the individual in the course of their life.

Non-discrimination

21. Age as a basis for discrimination is included in Article 13 of the EC Treaties but not *per se* in the ECHR (Article 14). Eurolink Age believes that all persons of whatever age should enjoy the right of freedom from discrimination in all aspects of their lives, including the workplace, health and other services.

Economic and social rights/objectives

2,3 and 4. Working conditions

Eurolink Age welcomes the basic rights put forward for the benefit of all workers. It is important that those with informal employment status are also taken into account, including volunteers and informal family carers.

5. Pensions

Eurolink Age argues that there should be a right to an adequate pension for all older people, in line with Council Recommendation 92/441/EEC on common criteria concerning sufficient resources and social assistance in social protection systems. Older people currently make up the highest proportion of Europe's socially excluded people - 35% of those living below the poverty line in the EU are age 50 and over (ECHP, 1995 wave). They are among the most vulnerable, and least able to change their situation.

11, 12 and 15. Social protection

Eurolink Age believes that everyone covered by the Charter should enjoy a right to a minimum level of healthcare, to social security, social and medical assistance, and – if affected by a disabling condition – to positive measures towards integration in society.

Implementing the Charter

Accessible for all

2. The EU Council has stated that the protection of fundamental rights is a founding principle of the EU, and that there is a need to make these fundamental rights more visible to the Union's citizens.¹ Eurolink Age believes that these rights will only be visible to individuals if they are presented in an understandable and accessible manner, and if there is straightforward, affordable recourse for individuals whose rights are denied.

3. The Convention has indicated that it is not yet certain what legal status the Charter will have, if any. Eurolink Age argues that it is imperative that the Charter is legally binding and can ultimately be relied upon by individuals. Unless the Charter is applied in practice, the original goal set out at the Cologne summit in June 1999 – 'to establish a Charter of fundamental rights in order to make their overriding importance and relevance more visible to the Union's citizens' – becomes a nonsense. In particular, we believe that it is no longer acceptable to sideline those – such as non-EU citizens or older people without a history of involvement in the labour market - who may be affected by, but not yet protected by the EC Treaties.

¹ Conclusions of the European Council in Cologne, 3-4/6/99

Grievances should be dealt with within an acceptable timeframe.

4. At present, those provisions under the EC Treaties with direct effect (which can be relied upon by individuals) are enforceable through national judicial systems and the European Court. The process is time consuming. Where a case is referred to the Court of Justice, it can take two years or longer before a judgment is given. If the final Charter is to be relied upon by individuals, legal procedures must ensure that an already lengthy system is not further worsened as a result of the Charter. Especially for elderly people, recourse must be obtainable within an acceptable timeframe.

5. We draw the attention of the Convention to the ‘Declaration of principles to mark the end of the European Year of the Elderly and Solidarity between Generations’ agreed by the EU Council and Ministers for Social Affairs, meeting on 8 December 1993, as well as to the United Nations Principles for Older Persons². We believe that these principles should be incorporated into the draft Charter.

² Resolution 46/91, adopted by the UN General Assembly on 16 December 1991

Annex 1**Extract from the Declaration of Principles of the Council of the European Union and the Ministers for Social Affairs, meeting within the Council of 8 December 1993 to mark the end of the European Year of the Elderly and of Solidarity between Generations (1993)**

Ministers

9. DECLARE that:

- Member States recognize, in their legislation and policies, the full citizenship of the elderly, in freedom and with equal rights and obligations, in all areas of the life of the community;

- they intend to promote the integration of the elderly in all areas of the life of the community, thereby acting to counter social exclusion and isolation as well as discrimination, given that all persons of any age are entitled to recognition of their human dignity;

10. – DECLARE that Member States wish to pursue policies based on the essential principles of solidarity between and within generations in order to:

- promote the social integration of the elderly by enabling them to manifest themselves in society in the spheres of family, social, political, cultural, recreational and educational life;

- encourage respect for the elderly as individuals and their right to privacy and physical integrity, and promote opportunities for the elderly to assume their responsibilities;

11. CALL UPON MEMBER STATES, in accordance with the above principles, to approve the following objectives framing policies concerning areas of special interest to the elderly:**(i) regarding level of income and standard of living:**

(a) take measures to guarantee the elderly the right to minimum resources and/or access to other systems of social protection and to enable them to play a continuing part in social life on an independent basis;

(b) grant the elderly, when ceasing work at the end of their working lives, a substitute income, determined by means of standard benefits or calculated in relation to their earlier earnings, maintaining their standard of living in a reasonable manner, on the basis of their participation in appropriate social-security schemes;

- (c) refer, in setting amounts, to such indicators as they consider appropriate, e.g. statistics on the average available income in the Member State concerned, statistics on household consumption, the statutory minimum wage, if any, or price levels;
 - (d) introduce arrangements for periodic review of such amounts in accordance with these indicators, to ensure that needs continue to be met;
 - (e) ensure that the elderly can remain active in society and, having due regard to the economic and employment situation in each Member State, can retain links with the labour market;
 - (f) in due course, adapt pension schemes to demographic changes, while maintaining the basic role of statutory retirement arrangements;
- (ii) regarding housing and mobility:
- (a) encourage a flexible housing policy providing for a variety of accommodation which enables the elderly to continue to play a part in the life of the community; in this connection, account should be taken of the personal wishes of the elderly to continue living in their own homes;
 - (b) ensure that the independence and privacy of the elderly are respected;
 - (c) encourage the independence of the elderly by promoting a residential environment and transport infrastructure that are accessible and safe;
- (iii) regarding provision of care and services:
- (a) on the basis of objective criteria, provide adequate assistance geared to the autonomy and physical, mental and social well-being of the elderly; such assistance could include home care, home help, mobile services, sheltered housing and health services;
 - (b) encourage co-ordination of the various health and social services;
 - (c) promote a range of qualified services to meet the new requirements of a population with increasing numbers of very elderly people, so that dependence and institutionalization can be avoided as far as possible; this applies in particular to persons suffering from ageing diseases;

- (d) establish criteria for introducing and organizing such services and facilities;
 - (e) without concentrating exclusively on the elderly as a target group, envisage preventive measures aimed at forestalling or delaying the onset of diseases and the beginning of dependence;
- (iv) regarding employment of elderly workers and preparation for retirement:
- take initiatives to:
 - (a) assess, in a spirit of solidarity between generations, the extent to which differential treatment based on age is justified;
 - (b) make possible a smooth transition from working life to retirement;
 - (c) provide appropriate support for the elderly during that transition by introducing facilities for advice and counselling, information and practical assistance and streamlining administrative procedures accordingly;
 - (d) encourage the passing on of expertise to rising generations in order to take advantage of the experience of the elderly;
- (v) regarding the participation of the elderly:
- promote, in all layers of society, full involvement of the elderly in the life of the community through suitable provision of the information needed for active involvement in appropriate fashion in all areas concerning them;

12. EMPHASIZE that:

- (a) the attainment of the above objectives can make a considerable contribution towards combating and preventing the social exclusion and isolation of the elderly;
- (b) it is desirable to encourage the attainment of those objectives in the Member States;
- (c) the Council and the Ministers for Social Affairs will periodically review progress in implementing those objectives;

13. NOTE the following statement by the Commission:

‘The Commission emphasizes that demographic trends, and the ageing of the population in particular, constitute one of the major challenges for social policies. It further points out that the European Year of the Elderly and of Solidarity between Generations has enabled firm progress to be made on, in particular, data analysis, the debate on the implications of ageing, the development of innovative approaches, the exchange of experience, the mobilization of the bodies involved, co-operation between the latter and active participation by the persons concerned.

In this connection, it emphasizes that activities need to be undertaken which draw on this progress and that the 1994 budget guidelines provide a modest, but useful, basis for this purpose.

On the basis of the evaluation under way and the achievements of the European Year it intends to make medium-term proposals in 1994 for increased Community support for Member States’ policies in this area.’

Annex 2

Revised European Social Charter

Article 23 the right of elderly persons to social protection

With a view to ensuring the effective exercise of the right of elderly persons to social protection, the Parties undertake to adopt or encourage, either directly or in co-operation with public or private organisations, appropriate measures designed in particular:

- to enable elderly persons to remain full members of society for as long as possible, by means of:
 - a adequate resources enabling them to lead a decent life and play an active part in public, social and cultural life;
 - b provision of information about services and facilities available for elderly persons and their opportunities to make use of them;
- to enable elderly persons to choose their life-style freely and to lead independent lives in their familiar surroundings for as long as they wish and are able, by means of:
 - a provision of housing suited to their needs and their state of health or of adequate support for adapting their housing;
 - b the health care and the services necessitated by their state;
- to guarantee elderly persons living in institutions appropriate support, while respecting their privacy, and participation in decisions concerning living conditions in the institution.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 12 May 2000**CHARTE 4294/00****CONTRIB 166****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter the presentation by "European citizens and their associations" (ECAS), given at the public hearing on 27 April 2000. ^{1 2}

¹ This text has been submitted in English language only.

² ECAS: 53, rue de la Concorde, B-1050 Brussels. Tel: +32-2-548 0490.
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Presentation by ECAS to THE HEARING FOR NGOS ON THE DRAFT CHARTER on fundamental rights

ECAS is an advice service for European citizens and their associations. As part of the "Dialogue with citizens" project, our team of lawyers has handled over 30,000 questions from ordinary people about their rights to live and work in the EU. You can find with us the evidence of how Europe is not working properly for citizens in the areas of recognition of free movement, social rights and professional qualifications. We have also carried out discussion groups and research on European citizenship.

There is much rhetoric in the discussion of rights. We hope that the convention will keep in mind the concerns of ordinary people. There is a need to reaffirm European citizenship. All too often there is a clash between the expectations to which this concept gives rise and what happens in practice when Member States' administrations apply the exceptions rather the spirit of Community law. How can the 16 year old German girl denied access to a training course in France because of her nationality, or the aid worker facing an expulsion order from Belgium, or the teacher waiting five years for her qualifications to be recognised in Spain take the concept of European citizenship seriously? It is vital therefore for the convention to address how effective mechanisms for advice, conciliation and access to justice can be developed nationally and at EU level. The charter should hold out tangible benefits to people.

We would like to make three points referring in particular to the proposed articles on the rights of citizens (doc. Charte 4170/00, convent 17) and a fourth point concerning relations between the Charter and the European convention on human rights:

1. The need for a focal point on European citizenship

Why since Maastricht has citizenship of the Union remained a cinderella concept? One reason is that in the Treaties and hence in the administrative and committee structures of the Institutions the notion of citizenship is atomised and responsibilities scattered. The charter could therefore provide a focal point by bringing together and strengthening in a single text all EU provisions relating to European citizens. The convention, in articles A to J, is making progress on grouping together different aspects of the citizen's relations with the EU Institutions and political rights. More needs to be done in the area of freedom of movement in the broadest sense where there is only one article proposed, letter J, thus neglecting other Treaty provisions on free movement of workers, recognition of qualifications and access to employment in the public sector.

For example, the right to diplomatic and consular protection was included in the draft list of fundamental rights proposed on 27 January 2000 but appears to be forgotten so far in the draft articles. The Commission and European Parliament have often called for a regrouping of all articles relating to European citizenship and free movement, whilst the report of the high level panel chaired by Simone Veil of March 1997 called for a single Commissioner.

2. The need to develop the concept of European citizenship

The convention should also come forward with ideas to develop European citizenship, since article 18 of the Treaty recognises that it is an evolving concept. In response therefore to your question “Where rights are reserved for citizens alone, should there be a general clause to the effect that such rights may be extended to third country nationals?”, our reply is “yes”, but subject to certain conditions such as legal residence in a Member State for five years or over. Why in an internal market and a global economy does the EU allow its own citizens to live and work in other Member States, whilst keeping third country nationals locked in separate national economies? And there are other issues here too. By accepting Article 18 as it stands with its apparently innocuous phrase “subject to the limitations and conditions laid down”, the convention would be endorsing an economic, 19th century concept of citizenship whereby EU citizens without sufficient resources may be expelled from another Member State. The EU’s own concept of citizenship is at variance with other Treaty provisions on non-discrimination and fighting social exclusion. Free movement is easier for those in employment than for job seekers, trainees or students. If all EU citizens were given a one year unrestricted residence right, many problems could be resolved.

3. The need to solve problems and make rights enforceable

People expect European citizenship to mean that the EU Institutions have a responsibility to deal with their problems, and are transparent and accountable. The convention is responding to this demand, but the draft articles remain rather general, and could address as follows, some more specific and legitimate grievances:

- One could add to the principles of democracy in Article A that “*deliberations of a legislative nature in the Institutions are held in public*” which is true in this house but not in the Council of Ministers.
- One could also add to Article E “*citizens of the Union have a right to be informed of their European rights and duties and of the policies of the Union*”, which is really a precondition to having any relations with the administration.
- The right to be heard and receive a response should be defined (i.e. not exceeding one month) and also applied to the particular issue to which the ombudsman has drawn attention, i.e. the accountability of the Commission to complainants;

In this report, we would propose an amendment to strengthen the rights of the citizen as follows:

“Every natural of legal person has the right to address a complaint to the European Commission and to be informed of the action taken, or of the reasons why the Institution considers that no action should be taken. If the absence of action has no legal grounds, the plaintiff with a legitimate interest may bring the matter directly before the European Court of Justice”.

This sanction does not mean that we are in favour of litigation per se. On the contrary we know that people are extremely reluctant to go to court, and we believe that the convention should also reflect the mood both of the public and ministries of justice in favour of quick, inexpensive and effective alternative dispute resolution.

4. The Charter and the European Convention on human rights

For the last 10 years, like other NGOs we have been demanding that the EU should adhere to the Council of Europe convention on the protection of human rights and fundamental freedoms. Citizens should have the same right of appeal in relation to EU decisions as they have in relation to their own governments and courts. Today we would probably go further. The Council of Europe has enlarged rapidly, some would say too rapidly, with the risk of erosion of its human rights “acquis”. It is also the traditional meeting place of EU members and applicant states. The convention should not only recommend the Treaty changes and protocols necessary for the EU to join, but also how to strengthen and modernise the Council of Europe’s human rights machinery and provide for sanctions to ensure that the decisions of the Strasbourg Court are enforced. There is often a case for strengthening Institutions which exist rather than creating new ones, which in this case would simply add to the widespread confusion about the role of the different European and International Courts.

Finally, there can be no true citizenship based solely on rights without the other side of the coin – responsibilities - and we do not find this reflected yet in the draft.

SUMMARY OF THE ECAS POSITION
ON EUROPEAN CITIZENSHIP AND FUNDAMENTAL RIGHTS

- 1) Every person holding the nationality of a member state and/or legally resident in the European Union for over five years should be able to acquire certain European citizenship rights.
- 2) The Union should accede to the European Convention for the protection of human rights and fundamental freedoms and its protocols.
- 3) Every person should be guaranteed protection against discrimination on whatever grounds including age, disability, race, religion, sex and sexual orientation. Positive discrimination to ensure equal rights should be allowed.
- 4) The Union should have action programmes which cover the issues of social rights, access to services, safety, health and the environment. There should be particular attention to vulnerable groups in society.
- 5) Citizens of the Union have a right to seek work and reside freely anywhere in the Union without internal border controls and a common external frontier. An action programme should seek to eliminate the visible and hidden barriers to exercising these rights.
- 6) Every citizen of the Union residing in another Member State should have the right to vote and stand as a candidate in all elections and to participate in referenda.
- 7) Citizens of the Union should have the right to associate freely and establish European associations or foundations across borders to make their voice heard by the Union institutions.
- 8) Citizens of the Union should have a right to be informed of the Union's policies whilst enjoying freedom of access to documents and the legislative process.
- 9) Every natural or legal person should be able to hold the Commission accountable to respond to complaints in addition to the right to petition the European Parliament or apply to the Ombudsman.
- 10) Every person, or association acting on their behalf, should be able to defend their European rights in a tribunal and be able to appeal to the European Court of Justice if other remedies are exhausted.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 16 May 2000**CHARTE 4296/00****CONTRIB 168****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter the intervention by the European Council of Steiner Waldorf Schools given at the hearing on 27 April 2000. ¹

¹ This text has been submitted in English language only.

**European Council of Steiner Waldorf Schools
STATEMENT MADE AT THE HEARING OF NGOs ON APRIL 27th, 2000 BEFORE THE
CONVENT ENTRUSTED WITH DRAFTING A EUROPEAN CHARTER OF
FUNDAMENTAL RIGHTS**

Dear Mr. Chairman, dear members of the convent,

my name is Detlef Hardorp and I am speaking here today on behalf not only of the German "Bund der Waldorfschulen", but also on behalf of the European Council of Steiner Waldorf Schools (ECSWS). We represent the largest school movement *independent* of church and state in Europe. Of the 800 plus Steiner Waldorf schools world-wide, 589 are in Europe, in 19 European countries. We have been working together with a number of other European organisations like ECNAIS and OIDEL, representing altogether more than ten million pupils in European independent schools, on a wording for article 16, and a joint proposal will be presented this afternoon by the European Forum for Freedom in Education (EFFE).

My plea here today is for a Europe which actively supports more diversity in education with a stronger emphasis on understanding and tolerance within a multi-cultural Europe. Steiner Waldorf schools follow an international curriculum that gets adapted to the particular culture of the region the school happens to be in, with a strong emphasis on the European dimension. For example, Steiner Waldorf Schools immerse children in two foreign languages and their respective cultures from class one - with 80 years of experience to look back upon.

The Netherlands have treated all providers of primary and secondary education equally since 1917, without discrimination with regard to public funding. This could have a model function. Other countries demand that a school follow their national curriculum in order to be eligible for subsidies. This can lead to discrimination against those parents who, for example, opt for a stronger European or international orientation of the school of their choice. Should this remain acceptable in Europe? Is it not precisely the task of the EU to reinforce the European dimension of education (as noted, for example, by Andrew Duff, CHARTE 4218/00, page 104)?

Without subsidies, independent schools either turn into classic "private" schools for the rich - which is not compatible with the social philosophy of Steiner Waldorf education, or they are forced to underpay their teachers and to constantly hover on the brink of economic disaster - the plight of Steiner Waldorf schools in a number of European countries. So my plea here is for diversity in education which must guarantee funding through the member states.

It would suffice to take seriously the "Resolution on Freedom of Education in the European Community" of the EP, passed in 1984 (14-3-1984). I would like to quote one sentence in particular:

»In accordance with the right to freedom of education, Member States shall be required to provide the financial means whereby this right can be exercised in practice, and to make the necessary public grants to enable schools to carry out their tasks and fulfil their duties under the same conditions as in corresponding State establishments, without discrimination as regards administration, parents, pupils or staff.«

Besides the Netherlands, there is a definitive tendency in this direction. Sweden, for example, put this into practice about a decade ago: primary and secondary education is now equitably funded in that country. In other words, schools run by the state and schools run by third sector NGOs receive the same amount of money. National authorities there no longer privilege themselves. There has been no remorse about the greater diversity of education this has brought about in Sweden.

The EU is not and should not be in a position to regulate the content of education beyond assuring diversity and non-discrimination and furthering the European dimension. But that is already a lot, if taken seriously and given a binding framework.

Please allow me a brief comment on the fear of sects opening schools, which has been voiced occasionally in the discussion. It should go without saying that all schools must respect human and fundamental rights. The fear of sects seems to come largely from countries with little experience with diversity in education. I have not heard of sects taking over schools in countries that already have a lot of diversity. Is the fact that paper money can be counterfeited an argument against the free circulation of money? Obviously measures against counterfeiting need to be taken, and these exist.

Please allow a further remark with regard to M. Berthu's minority opinion: subsidiarity is not only applicable between different levels of governmental authorities, but should also be applied between authorities and citizens! Precisely *because* we want freedom and diversity, we need an article on education in the charter which takes us a step forward in giving more responsibility in education to the third sector.

I quite agree with Mr. Griffith and others that it is insufficient to speak only of parental choice with regards to religious and philosophical convictions, but that *educational* preferences (critères pédagogiques) need to be included in the wording of the charter.

To sum up: It would be helpful to have a European Charter of Fundamental Rights which guarantees minority rights also in the educational sector with regard to reasonable educational convictions of parents, and which stipulates non-discrimination also for powerful member states with regards to less powerful NGOs trying to serve the needs of these minorities with innovative quality education: subsidiarity at the lowest level. This is - in my view - the direction in which education needs to develop in a civil society.

Thank for your attention!

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CZECH REPUBLIC: Asociace waldorfských škol

DENMARK: Sammenslutningen af Rudolf Steiner Skoler i Danmark

ESTONIA: Eesti Waldorfkoolide Ühendus

FINLAND: Steinerpedagogiikan seura ry

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LUXEMBURG: Veräin fir Waldorfpädagogik Lëtzebuerg

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RUSSIA: Association of Waldorf Schools

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SWITZERLAND: Arbeitsgemeinschaft der Rudolf Steiner Schulen

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DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 25 May 2000**CHARTE 4298/00****CONTRIB 170****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter the second submission by the Confederation of British Industry (CBI). ¹

¹ This text has been submitted in English language only.

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Switchboard: 0171 379 7400
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Website: <http://www.cbi.org.uk>**CBI SECOND SUBMISSION TO THE EU CHARTER OF FUNDAMENTAL RIGHTS
DRAFTING CONVENTION**

The Confederation of British Industry (CBI) is the voice of British business, representing more than 250,000 employers, large and small, industrial and commercial.

This second CBI submission to the Convention focuses on the economic and social rights which are currently being discussed.

Summary

1. As outlined in its earlier submission to the Convention, the CBI supports a declaratory Charter which sets out existing justiciable fundamental rights – whether derived from the European Convention on Human Rights or the EU Treaties – and how citizens can enforce them. We believe this approach will maximise the visibility of fundamental rights to EU citizens, whilst preserving the existing, effective legal mechanisms.
2. We remain deeply concerned by calls to extend the list of existing fundamental rights and to make the Charter legally binding by incorporating it into the Treaties. The advocates of this approach aim to develop a European Constitution by creating binding rights at EU level in areas which have traditionally been the ultimate responsibility of national governments. This would be an enormous political step. Such shifts in sovereignty have major implications and should only be considered through full intergovernmental discussions. We do not believe that contemplation of such a radical approach is compatible with the mandate provided at Cologne – which was clear that the Convention’s primary role was to consider how to make existing rights more visible.
3. The term ‘fundamental social rights’ can create confusion. It is used in different community texts to describe both justiciable rights and political aspirations which cannot be enforced by the Courts. For example, the European Convention on Human Rights clearly has direct legal effect – EU citizens can take cases under it to the Strasbourg Court. Such rights should, in our view, be included in the Charter. By contrast, the fundamental rights referred to in the 1961 European Social Charter and the 1989 Community Charter of Fundamental Social Rights of Workers are political aspirations, values and policy objectives that all member states agree to pursue at the appropriate level, but which have no legal effect. Whilst these are of great importance, they do not have the same legal status as justiciable rights. We do not believe that they should be included in the Charter.

The CBI believes that it is critical that the differing legal status of “fundamental social rights” must be fully acknowledged in discussion of both the scope and legal status of the Charter.

A declaratory Charter focusing on those rights which are currently justiciable is the best way to meet the Council’s objective of raising EU citizens’ awareness of their fundamental rights.

5. The CBI believes the role of the Charter is to raise EU citizens’ awareness of their existing rights – an objective that we fully support. Looking at the Conventions 18, 19 and 26, the CBI believes that only those fundamental rights and freedoms which are at present directly enforceable should be incorporated into the Charter, namely:
 - The freedom to choose and practise trade and profession, which is closely associated with the right to move and reside freely within the territory of the Member States as established in article 18 of the TEC.
 - The right to equal pay between men and women, as set out in article 141 of the TEC.
 - The right to freedom of association, set out in article 11 of the ECHR.
 - The right to equality between men and women and the right of disabled persons to social and professional integration should be considered as elements of the general principle of non-discrimination established in article 14 of the ECHR.
6. The Charter should set out these justiciable rights in clear and simple language for maximum impact and point to the appropriate source instrument and existing legal mechanisms by which citizens can enforce these rights.
7. The legal mechanisms for enforcing ECHR rights would be altered if they were incorporated into the EU Treaties. This would undermine the current effective system of enforcement and generate considerable legal uncertainty:
 - Overlaps of jurisdiction between the Strasbourg Court and the European Court of Justice would lead to different interpretations of fundamental rights, undermining legal certainty.
 - It would also create a two-speed system of case law development that would weaken the Council of Europe. The European Court would develop its own body of case law that would not be applicable to non-EU members of the Council of Europe.
 - The Strasbourg Court – which has jurisdiction over the ECHR - has developed a balanced approach to the interpretation and protection of fundamental rights over fifty years, which should be built on rather than undermined. Some have argued that even if the ECHR were incorporated into the Treaty, it would be possible to ensure the precedence of the Strasbourg Court over ECHR rights. It is unclear how this could be achieved given that the European Court has responsibility for Treaty rights.

The balance of powers between the EU and member states should only be altered through intergovernmental negotiations

8. There have been many calls to include in the Charter fundamental rights which are not currently legally enforceable by citizens through the Courts. There have been particular demands for inclusion of the political aspirations outlined in the 1961 European Social Charter and the 1989 Community Charter of Fundamental Social Rights of Workers. These Charters set out important values and objectives which EU member states have agreed to respect and work towards, at national or European level as appropriate. But these “fundamental rights” are clearly of a different nature and status from the justiciable rights in the European Convention and enshrined in the EU Treaties (as set out above). The CBI believes that they should not be incorporated into a legally binding Charter as this would:

- Create new rights at EU level, shifting the balance of power between member states and the EU outside of the normal process of intergovernmental negotiations; and
- Create considerable legal confusion for business and individual citizens.

9. The CBI believes that guaranteeing new rights at EU level through their incorporation into the Treaty would change the balance of power between member states and the EU. The social and employment chapters of the Treaties have clearly set out the powers of the Union to act on a European level, specifically excluding topics such as pay, the right of association, the right to strike or impose a lockout from EU legislative competence. To incorporate such rights in a legally binding Charter would expand the competence of the EU in these areas. For example:

- Empowering the ECJ to undertake judicial review of the French SMIC or the UK national minimum wage would undermine member states’ responsibility for and effective control over wages policy.
- Collective bargaining systems vary considerably across member states. To introduce an unqualified fundamental right to collective bargaining in EU law would risk overturning national industrial relations cultures.
- Each member state has its own unique system of social protection. Creating EU level rights in relation to social security would risk undermining national systems which are responsive to the democratic choices of the electorate.

Equally, issues such as health, education and employment policy have traditionally been the responsibility of national governments. The principle of subsidiarity – that action should be taken at the lowest effective level – requires that these remain largely national rather than EU-level issues.

10. From a practical viewpoint, the CBI believes that incorporating such ‘aspirational’ rights into the Charter would create legal confusion, as they would be almost impossible to interpret in practice by a Court. For example, it is not clear how rights to ‘fair remuneration’ or to ‘adequate social security’ could be interpreted at EU level. Wage policies need to take into account national economic conditions; there is no “one size fits all” approach. Equally, the diversity of social security systems across the EU would make it very difficult to determine what is an ‘adequate’ level.

Directives should not become justiciable fundamental rights

11. There are, of course, a range of areas covered by the 1961 and 1989 Charters where the EU has a Treaty competence. Maternity rights, rights to parental leave, rest periods, certain rights to workers' information and consultation, and to health and safety in the workplace (and so on) are well established in EU legislation. However, they are heavily qualified legislative rights which apply only in specific circumstances. To turn them into unqualified justiciable fundamental rights would potentially lead to a more expansive interpretation of these rights by the ECJ. This would require member states to make immediate changes to national and local legislation, therefore generating legal uncertainty for business. For example, an unqualified right to information and consultation would potentially lead to a complete overhaul of all national frameworks of industrial relations. Whilst there are already information and consultation rights set out in Directives on European Works Councils, Collective Redundancies, Acquired Rights etc., these only apply when certain conditions have been met. And at national level, consultation rights are triggered in differing situations following national industrial relations traditions. An unqualified binding fundamental right in this area would allow the ECJ to develop a more expansive, harmonising jurisprudence that would fail to respect national culture and practice.

ILO Conventions are different

12. A number of organisations have also argued that some of the rights outlined in ILO Conventions signed by EU member states should be included in the Charter. These are critically important global minimum standards, which are binding on those member states that ratify them. But they are not directly justiciable rights which can be enforced by individuals in a way which can be compared with the ECHR or the Treaty rights. Instead they are enforced through decrees of an ILO committee following successful applications from either trade unions or employer organisations. Their inclusion in a legally binding Charter - where they would have direct effect on the law of member states through judgements of the European Court - would not be appropriate.

Conclusion

13. The CBI supports a declaratory Charter clearly setting out the existing justiciable fundamental rights and freedoms set out in the Treaties and in the ECHR.
14. Those fundamental rights which do not have direct legal effect, such as those referred to in the 1961 and 1989 Charters, are of a different nature and status. They are political aspirations of the European Union, best delivered either at national level or through Directives – where Treaty powers exist. The Convention should take full account of this distinction when drafting the Charter.

15. It is not appropriate for the Convention to seek to shift the balance of power between the EU and member states through the development of a Charter to be incorporated into the Treaty. Any such shifts in sovereignty should only be proposed following full intergovernmental discussions.

Human Resources Policy, May 2000

ENTWURF DER CHARTA DER GRUNDRECHTE DER EUROPÄISCHEN UNION**fundamental.rights@consilium.eu.int**

Brüssel, den 23. Mai 2000**CHARTE 4300/00****CONTRIB 172****ÜBERMITTLUNGSVERMERK**

Betr.: Entwurf der Charta der Grundrechte der Europäischen Union

Finden Sie bitte nachstehend eine Stellungnahme der Evangelischen Kirche in Deutschland (EKD), im Hinblick auf die Anhörung am 27. April 2000. ¹

¹ Dieser Text wurde nur in deutscher Sprache vorgelegt.

Stellungnahme der Evangelischen Kirche in Deutschland (EKD) zur Erarbeitung einer Charta der Grundrechte der Europäischen Union

I. Vorbemerkungen

1. Die Evangelische Kirche in Deutschland (EKD) begrüßt den Beschluss der Staats- und Regierungschefs der Europäischen Union, den Schutz der Grundrechte in der Europäischen Union durch eine Charta zu verstärken, und verfolgt die Beratungen des mit der Erarbeitung beauftragten Konvents mit großer Aufmerksamkeit. Die Synode der Evangelischen Kirche in Deutschland hat anlässlich ihrer Tagung im November 1999 in Leipzig einige Grundprinzipien formuliert, die für die Erarbeitung der Charta leitend sein sollten. Dieser Beschluss wurde dem Konvent bereits übermittelt und ist auf der Website des Rates zur Charta verfügbar.

Die Evangelische Kirche in Deutschland erwartet, dass die Charta dazu beitragen wird, der Union ein für Bürgerinnen und Bürger sichtbares politisches Fundament zu geben und die Rechtsgemeinschaft zwischen der Union und den Mitgliedstaaten zu stärken. Sie hält das Vorhaben zudem für dringlich, da die Europäische Konvention zum Schutz der Menschenrechte und Grundfreiheiten (EMRK) ungeachtet Artikel 6 Abs. 2 des EU-Vertrages die supra-nationalen Institutionen der Europäischen Union zur Zeit nicht unmittelbar bindet, da die Europäische Union bzw. die Europäische Gemeinschaft dieser Konvention bisher nicht beigetreten ist bzw. beitreten konnte.

2. Grund- und Menschenrechte sowie Grundwerte sind Ausdruck von Wertüberzeugungen und Einstellungen, die für den gesellschaftlichen Zusammenhalt eines Gemeinwesens wichtig sind und von denen die Erfüllung der staatlichen Aufgaben abhängt. Gerade der weltanschaulich neutrale Staat, der – wie es im Diktum des deutschen Verfassungsrechtlers Ernst-Wolfgang Böckenförde heißt – von Voraussetzungen lebt, die er selbst nicht garantieren kann, ist darauf angewiesen, dass Kirchen, Religions- und Weltanschauungsgemeinschaften Werte bilden und vermitteln. Die Evangelische Kirche in Deutschland nimmt daher die Gelegenheit gerne wahr, zur Erarbeitung der Charta Stellung zu nehmen. Sie möchte in diesem Zusammenhang nicht unerwähnt lassen, dass einige Grundrechte, namentlich der Schutz der Menschenwürde, zum Kern der christlichen Tradition unserer europäischen Kultur gehören.

II. Zum Inhalt der Charta

1. Die Akzeptanz der geplanten Charta wird vermutlich erleichtert und gefördert, wenn sie sich im Bereich der Menschenrechte und Grundfreiheiten an den Artikeln 2 bis 14 der Europäischen Menschenrechtskonvention orientiert. Gleichwohl muss auch hier der Fortentwicklung durch die Zusatzprotokolle sowie der Rechtsprechung des Menschenrechtsgerichtshofs ausreichend Rechnung getragen werden. Die Evangelische Kirche in Deutschland hält daher eine horizontale Klausel für unabdingbar, die sicherstellt, dass der durch die Charta vermittelte Schutz der Grund- und Menschenrechte jedenfalls nicht hinter dem durch die

EMRK einschließlich der zu ihr entwickelten Rechtsprechung zurückbleiben darf. Daneben ist die eigenständige Rechtsentwicklung in der Europäischen Gemeinschaft, die Auswirkungen der Binnenmarktfreiheiten sowie die Ausprägungen von Grundrechten eigener Art wie beispielsweise die Gleichbehandlung von Frauen und Männern im Arbeitsleben bei der Formulierung von Rechten gebührend zu berücksichtigen.

Da Artikel 6 EU-Vertrag sich bezüglich der Achtung der Menschenrechte nicht ausschließlich auf die EMRK, sondern darüber hinaus auf die „gemeinsamen Verfassungsüberlieferungen der Mitgliedstaaten“ bezieht, erscheint es geboten, bei der Konzipierung der Charta auch die Verfassungskataloge der Mitgliedstaaten zu beachten. Dem Geist der Gemeinschaft und den Traditionen, die sich in der Geschichte der europäischen Integration herausgebildet haben, würde es nach kirchlicher Auffassung entsprechen, auch die Grundrechtskataloge der Verfassungen der EU-Beitrittskandidaten ergänzend zu Rate zu ziehen, um beispielsweise herauszufiltern, was sie zu den gemeinsamen Verfassungsüberlieferungen der Mitgliedstaaten beitragen werden.

2. Die Evangelische Kirche in Deutschland ist der Auffassung, dass der Charta eine **Präambel** vorangeschickt werden sollte, in der neben einem Bekenntnis zu den unverletzlichen und unveräußerlichen Menschenrechten auch Gemeinschaftsprinzipien als politische Handlungsziele der Union formuliert werden sollten. In Anlehnung an Artikel 6 Abs. 1 EU-Vertrag sollten Freiheit, Demokratie, Achtung der Menschenrechte und Rechtsstaatlichkeit als Voraussetzung für die Entfaltung föderaler, sozialer und kultureller Prinzipien unter Beachtung des Grundsatzes der Subsidiarität festgehalten werden.

3. Zu den bereits vorliegenden Artikelvorschlägen des Präsidiums sind folgende Anmerkungen zu machen:

Artikel 1. Würde des Menschen

Die Evangelische Kirche in Deutschland schlägt vor, diesen Artikel anders als im Dokument CONVENT 13, COR 1 folgendermaßen zu formulieren:

„Die Würde des Menschen ist unantastbar. Sie zu achten und zu schützen, ist Verpflichtung aller öffentlichen Gewalt, soweit sie durch die Europäische Union ausgeübt wird.“

Artikel 13. Familienleben

Der Artikel sollte die Überschrift Ehe und Familie erhalten und wie folgt lauten:

- (1) Jeder hat das Recht auf Achtung seines Familienlebens.
- (2) Männer und Frauen haben das Recht, nach den innerstaatlichen Gesetzen, welche die Ausübung des Rechts regeln, eine Ehe einzugehen und eine Familie zu gründen.
- (3) Der Schutz der Familie und ihre rechtliche, wirtschaftliche und soziale Förderung werden gewährleistet.

Aus kirchlicher Sicht ist eine derartige Formulierung geboten, um klarzustellen, dass eine Ehe nur zwischen zwei Personen verschiedenen Geschlechts geschlossen werden kann. Die Förderung der Familie ist nach kirchlicher Auffassung in erster Linie Aufgabe der Mitgliedstaaten. Dieser Anknüpfungspunkt bei den Mitgliedstaaten stellt auch in Zukunft sich verändernde gesellschaftliche und rechtliche Entwicklungen im Blick auf Ehe und Familie sicher.

Artikel 14. Gedanken-, Gewissens- und Religionsfreiheit

Um sicherzustellen, dass auch die korporative Religionsfreiheit gewährleistet ist, wird in Abänderung der Formulierung in Dokument CONVENT 13 folgender Text vorgeschlagen:

Jede Person hat das Recht auf Gedanken-, Religions- und Gewissensfreiheit. Die Religionsfreiheit schließt das öffentliche und private, individuelle und gemeinschaftliche Bekenntnis sowie das Recht von Kirchen und Religionsgemeinschaften zur Ordnung und Verwaltung ihrer Angelegenheiten nach den Gesetzen der Mitgliedstaaten ein.

Durch das Handeln der Union ist nicht nur der einzelne in der Ausübung seiner Grundrechte betroffen, sondern auch Körperschaften im Bereich der Religion, insbesondere Kirchen und verfasste Religionsgemeinschaften. Die Menschenrechtskommission des Europarates hat in ihrer Spruchpraxis der letzten Jahre zunehmend Kirchen oder Religionsgemeinschaften eine Berufung auf Artikel 9 EMRK aus eigenem Recht und nicht nur stellvertretend für ihre Mitglieder zugesprochen und damit grundsätzlich die Rechtsträgerschaft einer Religions- oder Weltanschauungsgemeinschaft nach Artikel 9 anerkannt. Aus Gründen der Rechtsklarheit ist es angezeigt, diese Spruchpraxis in der Formulierung von Artikel 14 aufzunehmen.

Des Weiteren ist die Union durch die Erklärung zum Status der Kirchen und weltanschaulichen Gemeinschaften zum Vertrag von Amsterdam (Erklärung Nr. 11) gehalten, den Status, den Kirchen und religiöse Vereinigungen oder Gemeinschaften in den Mitgliedstaaten nach deren Rechtsvorschriften genießen, zu achten und nicht zu beeinträchtigen. Gleiches gilt für Weltanschauungsgemeinschaften.

Die Organisationsformen von Kirchen und Religionsgemeinschaften und ihr jeweiliges Verhältnis zu den Mitgliedstaaten ist in der Union sehr unterschiedlich. Teilweise ist es mit Verfassungsrang ausgestattet oder durch Konkordate und Staatskirchenverträge ausgestaltet. Viele Kirchen und Religionsgemeinschaften genießen ein hohes Maß an Autonomie bei der Regelung und Verwaltung ihrer Angelegenheiten. Die Einwirkungen des Gemeinschaftsrechtes ist angesichts dieser Vielfalt ebenso unterschiedlich. Zudem ist die Anerkennungspraxis neuer religiöser und quasireligiöser Gemeinschaften von Mitgliedstaat zu Mitgliedstaat sehr uneinheitlich. Aus diesen Gründen ist es unverzichtbar, in die Charta einen Bezug auf die Rechtslage in den Mitgliedstaaten als Schranke für das Handeln der Union aufzunehmen. Eine Anknüpfung an innerstaatliches Recht steht zudem in Parallele zur Regelung des Entwurfs für Artikel 13 Abs. 2 zum Familienleben. Da das Recht, eine Ehe einzugehen und eine Familie zu gründen, in den Mitgliedstaaten sehr unterschiedlich geregelt ist, muss auch hier die Charta eine Anknüpfung an innerstaatliches Recht der Mitgliedstaaten vornehmen.

Wirtschaftliche und soziale Rechte

Da die europäische Sozialordnung auch eine Ausprägung der christlichen Tradition Europas ist, hält die Evangelische Kirche in Deutschland es für wichtig, dass die Charta **Bestimmungen zu wirtschaftlichen, sozialen und kulturellen Rechten** enthält, die so formuliert werden, dass sie keine Probleme der Justitiabilität aufwerfen und zur richterlichen Überprüfung im Individualbeschwerdeverfahren geeignet sind. Daher ist bei elementaren Mindestschutzforderungen, wie sie z.B. im Rahmen der ILO und des UN-Sozialpaktes enthalten sind, an eine Aufnahme in die Charta zu denken, insbesondere, soweit die Mitgliedstaaten ihnen beigetreten sind und diese in allen EU-Staaten verfassungsrechtlich oder einfachgesetzlich gewährleistet sind.

Der Beschluss des Europäischen Rates von Köln hat die Europäische Sozialcharta ausdrücklich als Referenzdokument für die Erarbeitung der Charta genannt. Hiermit sind jedoch unbestreitbar eine Reihe von Problemen, z.B. die unterschiedliche Verbindlichkeit gegenüber den Signatarstaaten sowie der ggfs. rasche Wandel von Einzelbestimmungen verbunden, die in den Beratungen dieses Kapitels der Charta auch im Konvent bereits angesprochen worden sind. Letztlich wird am Bereich der wirtschaftlichen und sozialen Rechte die Problematik einer Ausgestaltung der Rechte als Menschenrechte – von der grundsätzlich ausgegangen werden sollte - bzw. als EU-Bürgerrechte besonders deutlich.

Statt konkreter Artikelvorschläge möchte die Evangelische Kirche in Deutschland auf folgende Herausforderungen hinweisen, die bei der Beratung von wirtschaftlichen und sozialen Rechten beachtlich sind:

- Generationengerechtigkeit und Nachhaltigkeit
- Stärkung der Selbstverantwortung des Menschen einerseits, damit der Sozialstaat nicht durch ein Übermaß an Ansprüchen überfordert wird, und Verpflichtung zur Hilfe für diejenigen, die sich aus eigener Kraft nicht helfen können, andererseits,
- Verstärkung der Ausbildungs- und Weiterbildungsangebote z.B. für Niedrigqualifizierte
- Ausbau der Rechte Behinderter
- Bekämpfung von Ausgrenzung und Armut
- Verantwortung der Industrieländer für die weltweite Entwicklung.

III. Zum Geltungsbereich der Charta

Ungeachtet der offenen Frage, ob die Charta durch eine Implementierung in das Vertragswerk unmittelbare Rechtsverbindlichkeit erlangen wird, sollte dieses Ziel bei ihrer Formulierung durchgängig bedacht werden, damit eine Einfügung in das Vertragswerk ohne große textliche Änderungen möglich wird.

Bislang noch nicht hinreichend deutlich ist die Formulierung der horizontalen Bestimmungen bzw. der Schranken der in der Charta verankerten Grund- und Menschenrechte. Die Evangelische Kirche in Deutschland möchte zu folgenden Aspekten konkrete Vorschläge machen:

Träger von Grundrechten

Als Träger von Grundrechten kommen in erster Linie natürliche Personen in Betracht, in einem gewissen Umfang jedoch auch juristische Personen. Hierzu wird folgender Formulierungsvorschlag unterbreitet:

Die in der Charta aufgeführten Grundrechte gelten für natürliche und für juristische Personen sowie für sonstige Vereinigungen, soweit sie ihrem Wesen nach auf diese anwendbar sind.

Bindungswirkung und Schutzniveau

Zur Bindungswirkung wird folgender Vorschlag gemacht:

Die in dieser Charta enthaltenen Grundrechte binden die Organe der Europäischen Union und die Mitgliedstaaten, soweit sie Gemeinschaftsrecht vollziehen. Keine Bestimmung dieser Charta darf als Einschränkung des Schutzes ausgelegt werden, der durch die Europäische Menschenrechtskonvention in der Auslegung durch den Europäischen Menschenrechtsgerichtshof gewährt wird.

Konkurrierende Kontrollmechanismen

Es scheint dringend geboten zu verhindern, dass es in der Konsequenz der Grundrechtecharta zu konkurrierenden Kontrollmechanismen durch den Europäischen Gerichtshof für Menschenrechte und den Europäischen Gerichtshof kommt. Die vom Generalsekretär des Europarates Dr. Walter Schwimmer angeregte Regelung, die es dem EuGH erlauben würde, Auslegungsfragen dem Europäischen Gerichtshof für Menschenrechte vorzulegen, erscheint unter diesem Gesichtspunkt sehr erwägenswert (vgl. Walter Schwimmer, Einheit – auch in den Menschenrechten, FAZ vom 14. März 2000, S. 12).

Brüssel, den 10. April 2000

Heidrun Tempel
Oberkirchenrätin
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Für Rückfragen:

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DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 17 May 2000**CHARTE 4301/00****CONTRIB 173****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a contribution by the International Institute for Right of Nationality and Regionality.¹

¹ This text has been submitted in German and English languages.

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A. Draft of a minority protection clause in the Charter on Fundamental Rights of the European Union

Article x

A minority in the sense of this charter is a group numerically inferior to the rest of the population of a State, in a nondominant position, whose members – being citizens of the Union traditionally settling in their well-defined and long-established territories – possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language.

Article y

(1) Persons belonging to national or ethnic, religious or linguistic minorities have the right to equality before the law and equal protection of the law. Any discrimination based on belonging to a minority shall be prohibited. Every person belonging to a minority shall have the right freely to choose to be treated or not to be treated as such and no disadvantage of any kind shall result from this choice. Affirmative action policies intending to promote equality in fact between persons belonging to minorities and persons belonging to the majority in all areas of economical, social, political, and cultural life, shall not be considered to be an act of discrimination. Within the framework of their general integration policy, member States shall refrain from policies and practices aimed at assimilation of minorities against their will. This applies especially to measures of any kind in the traditional settling territories of those minorities.

(2) Persons belonging to such minorities shall have the freedom to peaceful assembly and shall have the right to found associations and organizations, including political parties.

(3) Persons belonging to such minorities shall have the right to enjoy their own culture and traditions, to profess and practice their own religion or to use their own language across frontiers and also in community with other members of their group. This shall include the right to use their names in the minority language and the right to official recognition of them.

(4) In their traditional settling areas persons belonging to such minorities shall have the right to use their minority languages in relation with administrative and judicial authorities, which shall include the right to receive answers from these authorities in their minority languages. In case of an arrest a person belonging to a minority shall have the right to be informed in a language which he understands of the nature and cause of any accusation against him, and to defend himself in this language, if necessary with the free assistance of an interpreter.

(5) Persons belonging to such minorities shall have the right to learn their minority language. In their traditional settling areas they shall have the right to be instructed in their languages. These rights shall be implemented by the member States within the frameworks of their educational systems or by permitting the right to set up and manage private educational establishments. Member States contribute financially to the latter mentioned establishments an proportional amount that equals their proportional financial engagement in public educational establishments. Moreover, the member States shall take measures in fields of education and research to foster knowledge of the culture, history, language and religion of such minorities and of the majority.

Article y

The member States respect the identity and the interests of immigrant groups. Persons belonging to such groups have the right to equality before the law and equal protection of the law. Any discrimination based on belonging to such a group shall be prohibited.

B. Conclusions (short version)

The elaboration of a Charter on Fundamental Rights of the European Union is a wise amendment of the body of community law despite the already existing fundamental rights jurisprudence of the Court of Justice of the European Communities. Through its transparency a written statute of fundamental rights illustrates these rights for the citizens of the Union, thus raising the acceptance of the Union and the identification with the Union on the side of the citizens. However, the latter mentioned goal can only be achieved, if legally binding provisions are laid down, not just political intentions or hortatory provisions.

The inclusion of a minority protection clause in the Charter on Fundamental Rights of the European Union is necessary, because community law does not yet contain any direct provisions ensuring the protection of minorities and the few provisions that provide some indirect minority protections are insufficient and extremely fragmented.

The international standard of the substantive law of minority protection is enshrined in Article 27 of the International Covenant of Civil and Political Rights of 1966 and in the Declaration of the General Assembly of the United Nations on the Rights of members of national or ethnic, religious and linguistic minorities of 1992. The minority protection within the framework of the CSCE/OSCE system in as far as the CSCE documents influenced and inspired the respective works of other bodies like the Council of Europe or the European Union.

For the determination of the European standard of minority protection the work of the Council of Europe, in particular the European Charter on Regional or Minority Languages of 1992, the draft additional protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms on the Protection of National Minorities and the Framework Convention of the European Council on the Protection of National Minorities of 1995, can be considered as crucial. Especially the last mentioned document contains the current standard of substantive minority protection law, that should also be codified in a minority protection clause in the Charter on Fundamental Rights of the European Union. This result is also reflected in the state practice of the European Union, e.g. regarding the criteria that have been formulated for a diplomatic recognition of the successor states of Yugoslavia or the criteria that have been formulated for the accession of the middle and east European states to the European Union.

Immigrant groups, or “new minorities” as they are referred to by some academics in the field of public international law are in a situation which differs fundamentally from the situation of the “classic”, i.e. the well-defined and long-established minorities. Whereas immigrant groups are above all interested in protection against discrimination and their smooth integration into the society of their new resident country, minorities, which are normally fully integrated into the majority society, are rather interested in preserving their cultural specifics, which are constantly endangered by a certain pressure to assimilate flowing from the constant exposure to the majority culture. Both immigrant groups and minority groups are in need of special protection and also deserve special protection. However, applying an identical protection concept to both groups would amount to ignoring their particular and very different protection needs. Therefore, the task must be to develop protection concepts for each group, immigrants on the one hand and minorities on the other hand, which are individually tailored to suit their particular protection needs. The formulation of a minority protection clause or a minority definition must be clearly based on this approach.

The Court of Justice of the European Communities must be charged with the control of the enforcement of the provisions of the Charter on Fundamental Rights of the European Union.

C. Detailed paper on the inclusion of a minority protection clause in the Charter on Fundamental Rights of the European Union

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I. Initial thoughts

The idea to elaborate a Charter on Fundamental Rights of the European Union emerged from the desire to agree on a set of fundamental rights for the EU citizens to be included in the body of substantive EC law, despite the existence of the European Charter on Human Rights (ECHR) and the fundamental rights jurisprudence of the Court of Justice of the European Communities (ECJ). Germany chairing the European Council in the first half of 1999 had a strong interest in the creation of such a Charter and accordingly put the issue on the agenda for its presidency. Communicating the focal points of the German EU-presidency to the European Parliament, the German minister of foreign affairs, *Joseph Fischer*, announced the following statement on January 12, 1999 in Strassbourg:¹

“In order to strengthen the rights of the citizens, Germany proposes in the long run the elaboration of a European Charter on Fundamental Rights. We intend to launch an initiative in this direction during our presidency. Our aim is to consolidate the legitimacy and identity of the EU. The European Parliament, which provided important preliminary work elaborating the draft constitution of 1994, as well as the national parliaments and possibly many other social groups shall participate in the drafting of such a Charter on Fundamental Rights.”

This initiative was warmly welcomed by German EU politicians across party lines and - with only little dispute with regard to the contents and the implementation of the project - strongly supported. In late April 1999 the (then) 47 MEPs of the CDU/CSU revived the discussion about a Constitution for the EU with a proposal that also touched on the creation of a Charter on Fundamental Rights.² On behalf of the German MEPs *Georg Jarzembowski* (CDU) stressed how important it was for the EU citizens to know which rights they were entitled to in a Europe that was more and more turning into a federal state. If they feel that their fundamental rights have been violated there must be the possibility to bring the case in the European Court of Justice. The codification of a European Charter on Fundamental Rights would be a crucial element to get there. On behalf of the Federal Government the Minister of Justice *Herta Däubler-Gmelin* stated that the drafting of a Charter on Fundamental Rights would be a difficult but very rewarding project.³ Party chairman *Wolfgang Schäuble* (CDU) and the foreign affairs spokesman of the CDU/CSU fraction in the German Bundestag *Karl Lamers* also issued opinions on this topic suggesting the creation of a “European Constitutional Treaty” (“europäischer Verfassungsvertrag”), which, among other things, would have to answer the question about the fundamental values, convictions and interests that tie the Europeans together.⁴ Moreover, there would be a consensus in Germany that the profile of the EU as a “community of values” would have to be sharpened, without aiming at the creation of a “super-state Europe” and that the elaboration of a European Charter on Fundamental Rights would be an appropriate instrument to reach that goal. Within the framework of the European Council summit on June 3 and 4, 1999 in Cologne the German presidency managed to convince their European partners of the importance to elaborate a Charter on Fundamental Rights of the European Union and the following decision was taken:

¹ Cited from Frankfurter Allgemeine Zeitung (FAZ) of December 13, 1999.

² FAZ of April 24, 1999.

³ FAZ of April 28, 1999.

⁴ *Schäuble/Lamers*, Europa braucht einen Verfassungsvertrag, in: FAZ of May 4, 1999.

“The safeguarding of fundamental rights is a founding principle of the European Union and the indispensable prerequisite for its legitimacy. The obligation of the Union to respect fundamental rights has been confirmed and developed by the jurisprudence of the European Court of Justice. In view of the current status of the Union it is necessary to draft a Charter on these rights to visibly lay down the significance of the fundamental rights and their range for the citizens of the Union.

In the opinion of the European Council this Charter shall comprise equality, liberty and due process rights, as they are guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they follow from the constitutional traditions common to the Member States, as general principles of Community law. Moreover, the Charter shall include fundamental rights that only the citizens of the Union shall be entitled to. Furthermore, when the Charter will be drafted economical and social rights, as they are laid down in the European Social Charter and in the Community Charter on Fundamental Social Rights of Workers (Article 136 EC Treaty), shall also be considered in as far as they do not merely determine aims for actions of the Union (...)”⁵

In the decision the German presidency asked the future Finnish chair to create the prerequisites for the implementation of this decision until the next European Council special summit on October 15 and 16, 1999 in Tampere.⁶ Moreover, it was decided in Cologne to generally revise the Community Treaties with the Amsterdam amendments within the framework of an intergovernmental conference during the course of 2000. It is planned to begin this intergovernmental conference under Portuguese presidency in the first half of 2000 and to complete it under French presidency until the end of 2000.⁷

The necessity to include a minority protection clause in such a Charter on Fundamental Rights of the European Union arises from a variety of political reasons. One of the main reasons is that especially in the conflict in former Yugoslavia it became very clear how drastic ethnic tensions can erupt where a functioning system of minority protection is lacking. However, this conflict was only the tip of the iceberg, effectively presented by the mass media, of European minority problems. Many unresolved minority crises are looming, even in the Member States of the European Union or the Council of Europe. A further reason to consider the inclusion of a minority protection provision in a Charter on Fundamental Rights of the European Union is that the academic world almost unanimously criticizes the existing European law on the protection of minorities as inefficient or insufficient.⁸

⁵ Decision of the European Council of June 4, 1999 on the elaboration of a Charter on Fundamental Rights of the European Union, Annex IV. Text cf.: EuGRZ 1999, pp. 364.

⁶ European Council of Cologne, Final conclusions of the presidency.

⁷ FAZ of June 5, 1999; *Gelinsky*, Ein Luftschloss ?, in: FAZ of September 28, 1999.

⁸ Cf.: *Hofmann*, Minderheitenschutz in Europa (Berlin 1995), pp. 63; *Streinz*, Minderheiten- und Volksgruppenrechte in der Europäischen Union, in: *Blumenwitz/Gornig*, Der Schutz von Minderheiten- und Volksgruppenrechten durch die Europäische Union (Köln 1996), p. 11, 29; *Siegert*, Minderheitenschutz in der Bundesrepublik Deutschland (Berlin 1999), p. 93; *Niewerth*, Der kollektive und der positive Schutz von Minderheiten und ihre Durchsetzung im Völkerrecht (Berlin 1996), pp. 215; *Scherer-Leydecker*, Minderheiten und sonstige ethnische Gruppen (Berlin 1997), p. 167.

1. The current situation under EC law and the European Council decision of Cologne

Starting point and background of the reflections to create a Charter on Fundamental Rights of the European Union is the discussion – that has been going on for some time both in academia and in practice - about the existence or emergence of a European constitutional law and about the codification of European fundamental rights.⁹ Even if we do not have a written catalogue of fundamental rights in substantive community law yet, this does not mean that the EU citizens are unprotected in that respect.¹⁰ Since its ruling in the *Stauder* case¹¹ in 1969 the European Court of Justice protects the fundamental rights, which the Court derives as general principles of community law from a synopsis of the constitutional traditions common to the Member States and a blink towards the ECHR.¹² In particular the ECJ has defined the following fundamental community rights and applied them in different cases: the right to human dignity, the right to privacy in various forms, the right to equal protection by the law, the principle of equal opportunities, the freedom of religious belief, the freedom to form associations, the principle of free trade, the occupational liberty, the right to own property, the prohibition of gender discrimination, the principle of equality before the law, the freedom of speech and the freedom of the press, the prohibition of retroactive criminal laws and due process rights.¹³ A individual or collective fundamental right envisaging the protection of minorities does, as of yet, neither exist in community law, nor can it be found by the jurisdiction of the ECJ.¹⁴ With regard to fundamental rights the Union citizen faces the difficulty of

⁹ Cf. the recent article by the director of the Walter-Hallstein-Institute for European Constitutional Law at Humboldt University Berlin Professor Dr. *Ingolf Pernice*, *Vertragsrevision oder Europäische Verfassungsgebung*, in: FAZ of July 7, Juli 1999. Cf. generally on the issue: *v. Bogdandy*, *Skizzen einer Theorie der Gemeinschaftsverfassung*, in: *v. Danwitz*, *Auf dem Weg zu einer Europäischen Staatlichkeit* (Bonn 1993), pp. 9; *Häberle*, *Die europäische Verfassungsstaatlichkeit*, in: *Weber/Rath-Kathrein*, *Neue Wege zur Allgemeinen Staatslehre* (Kehl 1993), pp. 29; *Grimm*, *Braucht Europa eine Verfassung?*, in: *JZ* 1995, pp. 581; *Rodriguez-Iglesias*, *Zur „Verfassung“ der Europäischen Gemeinschaft*, in: *EuGRZ* 1996, pp. 125; *Schilling*, *Die Verfassung Europas*, in: *StW&StPr* 1996, pp. 387; *Zuleeg*, *Die Verfassung der Europäischen Gemeinschaft in der Rechtsprechung des Europäischen Gerichtshofs*, in: *BB* 1994, pp. 581; *Schuppert*, *Zur Staatswerdung Europas – Überlegungen zu Bedingungsfaktoren und Perspektiven der europäischen Verfassungsentwicklung*, in: *StW&StPr* 1994, pp. 35; *v. Bogdandy/Nettesheim*, *Die Europäische Union: ein einheitlicher Verband mit eigener Rechtsordnung*, in: *EuR* 1995, pp. 3162; *Schröder*, *Grundsatzfragen einer europäischen Verfassungsgebung*, in: *FS Heymanns Verlag*, pp. 349.

¹⁰ Cf. generally on the issue: *Streinz* (footnote 8), pp. 11; *Rengeling*, *Eine Charta der Grundrechte*, in: FAZ of July 21, 1999; *Gelinsky*, *Kleine Schritte genügen nicht*, in: FAZ of April 18, 1999; *Gelinsky*, *Im Jubiläumsjahr des Grundgesetzes steht Europa im Mittelpunkt*, in: FAZ of April 26, 1999.

¹¹ ECJ Case 29/69, *Erich Stauder vs. Stadt Ulm*, E.C.R. pp. 419 (1969).

¹² *Streinz*, *Europarecht* (Heidelberg 1996), 3rd Ed., pp. 108.

¹³ *Streinz* (footnote 12), pp. 115; *Hummer/Simma/Vedder*, *Europarecht in Fällen* (Baden-Baden 1999), 3rd Ed., pp. 415.

¹⁴ In this context reference shall be made to an initiative of the *Europäische Akademie Bozen*: in December of 1998 the Academy presented an action plan to promote human rights, minority rights, cultural diversity and economic and social consolidation to the President of the European Commission. Academics who participated in drafting this study tried, sometimes through the use of extensive interpretations of current provisions, to shed new light on the way ahead with regard to Community law. These interpretations, however, question in no way the call for the codification of a Charter on Fundamental Rights of the European Union. Cf.

lacking transparency, because, as has been mentioned before, the fundamental rights have not been laid down in a written catalogue yet. Apart from the fundamental freedoms the EC Treaty only contains the principle of equal remuneration for men and women (Article 141 EC Treaty) and the prohibition of discrimination (Article 12 EC Treaty). Moreover, Article 6 EU Treaty spells out that the Union is based on the principles of freedom, democracy, the respect for human rights and fundamental freedoms, as well as the rule of law and that the Union respects fundamental rights as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law. As regards the necessity to formulate European fundamental rights the German Foreign Office (Auswärtiges Amt) stated on August 9, 1999 in its report on the status of the implementation of the European Council decision of Cologne and in preparation of the summit of Tampere:

“With regard to fundamental rights that have to be observed by the Union the Treaties only point in a general clause to the European Convention for the Protection of Human Rights and Fundamental Freedoms and the constitutional traditions common to the Member States (Article 6 Paragraph 2 EU Treaty). Moreover, reference is made to the European Social Charter and the Charter of Social Fundamental Rights of the Workers (Article 136 EC Treaty). A codification of fundamental community rights would render the fundamental rights more visible with regard to their range and significance and would thus strengthen the identity and legitimacy of the Union. Also the transparency and legal certainty with regard to the scope of the protection of fundamental rights would be enhanced that way.”

More transparency and clarity for the Union citizen with regard to the existence of his fundamental rights thus become important reasons for the elaboration of a Charter on fundamental rights of the European Union. Moreover, seen from the perspective of European human rights foreign policy within the framework of the Common Foreign and Security Policy it seems wise to be able to point to a set of fundamental rights laid down in a written catalogue. Finally, the Union would give some guidance to the accession candidates in Middle and Eastern Europe on how to run a fundamental rights policy on a national level.¹⁵ Bearing in mind the futile efforts of other bodies at other times, the codification of fundamental rights on the initiative of the European Council now seems to be the right way at the right time. In 1989 for example the European Parliament passed a declaration on fundamental rights and fundamental freedoms and in 1994 it rendered a resolution on the constitution of the European Union.¹⁶ Once again these drafts did not contain any provisions on the minority protection on a European basis.

Europäischen Akademie Bozen, Paket für Europa, Arbeitsheft der Akademie Nr. 10 (1998). Cf. also: Blumenwitz, Die minderheitenschutzrechtlichen Anforderungen der EU hinsichtlich des Beitritts der ost- und ostmitteleuropäischen Staaten, in: Blumenwitz/Gornig/Murswiek, Fortschritte im Beitrittsprozeß der Staaten Mitteleuropas zur EU (Bonn 1999), p. 25, 34.

¹⁵ *Rengeling* (footnote 10), in: FAZ of July, 21 1999.

¹⁶ Second report of the institutional committee on the constitution of the European Union of February 9, 1994 („Herman-Report“); cf.: *Hilf, Eine Verfassung für die Europäische Union: Zum Entwurf des Institutionellen Ausschusses des Europäischen Parlaments*, in: *Integration 1994/2*, pp. 68; *Rengeling* (footnote 10), in: FAZ of July, 21 1999.

These initiatives were then not picked up by bodies who would have been competent to implement them. The last initiative to lay down European fundamental rights in the substantive body of community law had been launched in 1996 as an accession of the European Community to the European Convention for the Protection of Human Rights and Fundamental Freedoms had been contemplated. According to the ECJ an accession of the European Community to the ECHR could only be executed in the form of an explicit amendment of the Treaties because of the massive impact this would have on the legal system of the Community.¹⁷ In the decisive passage of its opinion the ECJ holds:¹⁸

“Respect for human rights is therefore a condition of the lawfulness of Community acts. Accession to the Convention would, however, entail a substantial change in the present Community system for the protection of human rights in that it would entail the entry of the Community into distinct international institutional system as well as integration of all the provisions of the Convention into the Community legal order.”

The ECJ concluded that under current EC law the Community is lacking the competence to accede to the ECHR.¹⁹ The content of a Charter on Fundamental Rights of the European Union to be drafted was roughly outlined by the European Council in its Cologne decision of June 4, 1999. Apart from liberty rights, equality rights and due process rights, which can also be found in the ECHR and in the constitutions of the Member States, the inclusion of economic and social rights in the Charter on Fundamental Rights, like those laid down in the European Social Charter of October 18, 1961 and the Community Charter of fundamental social rights of workers of December, 9, 1989, shall also be considered. The addition that economic and social rights shall only be included *“in as far as they do not merely determine aims for actions of the Union“*, signals that those rights to be created shall be enforceable by the individual citizen, and shall not be merely aims for action or programmatic clauses.²⁰ Moreover, a distinction between human rights and Union citizen rights shall be drawn.

¹⁷ ECJ, opinion 2/94, *accession of the Community to the European Convention on the Protection of Human Rights and Fundamental Freedoms*, E.C.R. pp. I-1763 (1994).

¹⁸ ECJ, opinion 2/94, *accession of the Community to the European Convention on the Protection of Human Rights and Fundamental Freedoms*, E.C.R. pp. I-1763 (1994), note 34.

¹⁹ ECJ, opinion 2/94, *accession of the Community to the European Convention on the Protection of Human Rights and Fundamental Freedoms*, E.C.R. pp. I-1763 (1994), note 36.

²⁰ Cf. *Rengeling* (footnote 10), in: FAZ of July 21, 1999.

2. The fundamental choice between a legally binding and a hortatory document

A very fundamental initial decision must be taken with respect to the question whether a Charter on Fundamental Rights of the European Union should be legally binding under public international law or Community law or whether it should merely be hortatory as a political document. Although both options entail advantages, the decision should be in favor of a legally binding document.

A classic example for a mere policy instrument are the documents of the Conference for Security and Cooperation in Europe (CSCE). Clear advantage of these kinds of diplomatic arrangements is the inclination of the negotiating parties to make farther reaching commitments and to formulate the provisions more clearly than they would be if a binding international treaty would be negotiated which could perhaps be enforced by other States or even by individual citizens in national courts. Even if no distinct legal obligations exist, such political arrangements can have great impact in the international area. The CSCE process for example, which was initiated in 1975 in Helsinki, was of decisive significance for the East West disengagement and eventually for the end of the "Cold War". Nevertheless it can also not be denied that this process did not entail a significant improvement of the substantive legal position of the individuals living in the CSCE States. A Charter on Fundamental Rights of the European Union could be adopted as mere policy agenda in the hope that the ECJ may incorporate the Charter in the body of directly applicable and effective Community law through its jurisprudence. The improved chances of being able to achieve further reaching and clearer provisions that way would be obvious. However, to proceed that way can be quite risky. Even if in the early years the ECJ's jurisdiction showed a certain inclination to declare provisions directly applicable, which initially were not necessarily supposed to have that effect,²¹ it is highly unlikely that nowadays the ECJ would still maintain such an inclination. To even consider its direct effect the ECJ basically requires a provision to be "sufficiently precise and unconditional".²² A direct effect of provisions in international treaties, even if they may be binding under public international law, is granted very seldom by the ECJ. The jurisprudence concerning GATT/WTO provisions²³ or in the context of association treaties of the EU with third country States²⁴ may prove this estimation right. Moreover, in its opinion on the ECHR²⁵ the ECJ makes it very clear, that it is not willing to assume the political responsibility for the introduction of a written catalogue of fundamental rights, if the Member States themselves seem reluctant to agree to an

²¹ Cf. especially the decision of the ECJ on the direct applicability of primary EC law, commencing with case 26/62, *van Gend & Loos*, E.C.R. pp. 1 (1963); or the jurisprudence on the direct effect of directives: cf. the leading cases 148/78, *Ratti*, E.C.R. pp. 1629 (1979); case 41/74, *van Duyn*, E.C.R. pp. 1337 (1974).

²² Cf. case 190/87, *Moormann*, E.C.R. pp. 4689 (1988).

²³ Cf. the decisions of the ECJ in joint cases 21-24/72, *International Fruit Company*, E.C.R. pp. 1219 (1972); or case C-280/93, *Germany v. Council (Banana market regulation)*, E.C.R. pp. I-4973 (1994).

²⁴ Cf. case 12/86, *Demirel*, E.C.R. pp. 3719 (1987).

²⁵ ECJ, opinion 2/94, *accession of the Community to the European Convention on the Protection of Human Rights and Fundamental Freedoms*, E.C.R. pp. I-1763 (1994).

explicit amendment of the Treaties in that respect.

The drafting of a Charter on Fundamental Rights of the European Union in the form of binding Community law and possibly as integral part of primary EC law by laying it down in the Treaties themselves, seems to be the clearly favorable option. Although the European Council is as of yet undecided in that respect, it showed a slight inclination towards the option of a legally binding document.²⁶ In the decision of June, 4 1999 the European Council states:²⁷

“The European Council will propose to the European Parliament and the Commission to ceremoniously proclaim together with the Council a Charter on Fundamental Rights of the European Union on the basis of the draft. Subsequently, it must be determined if and should the occasion arise in which way the Charter shall be included in the Treaties. The European Council charges the General Council with initiating the necessary steps until the Tampere summit of the European Council.”

The Federal Government supports the inclusion of the Charter in the Treaties.²⁸ In any event, it should be decided that the Court of Justice shall have jurisdiction over the rights enshrined in the Charter. This is not self-evident as can be seen looking at the limited jurisdiction of the ECJ with regard to the second and third pillar of the European Union, the common foreign and security policy and the cooperation in justice and home affairs.²⁹ Whether or not to introduce some kind of “European constitutional complaint” to the ECJ is an issue that can be tackled after the core content of fundamental rights to be included in the Charter has been drafted.³⁰

3. The political situation until the European Council at Tampere (15./16.10.1999)

As regards the procedural aspects of the drafting of a Charter on Fundamental Rights of the European Union the European Council has rendered the following decision:³¹

“The European Council is of the opinion that such a Charter of Fundamental Rights of the European Union must be drafted by a committee that consists of representatives of the heads of States and governments and the president of the European Commission as well as members of the European Parliament and the national parliaments. Representatives of the Court of Justice shall participate as observers. Representatives of the Economic and Social Council, the Council of the

²⁶ Cf. for the latest negotiation results: *Gelinsky* (footnote 7), in: FAZ of September 28, 1999.

²⁷ Decision of the European Council of June 4, 1999 on the elaboration of a Charter on Fundamental Rights of the European Union, Annex IV. Text cf.: EuGRZ 1999, pp. 364.

²⁸ Report of August 12, 1999 by the AA to the EU-Committee of the Deutsche Bundestag under § 3 EuZBBG and § 3 EuZBLG. Cf. also the unequivocal statement of Bundesjustizministerin *Däubler-Gmelin* at the Richtertag 1999 in Karlsruhe, reported in: FAZ of October 5, 1999.

²⁹ Cf. article 46 EU Treaty.

³⁰ Cf. *Gelinsky* (footnote 10), in: FAZ of April 18, 1999; *Gelinsky* (footnote 10), in: FAZ of April 26, 1999.

³¹ Decision of the European Council of June 4, 1999 on the elaboration of a Charter on Fundamental Rights of the European Union, Annex IV. Text cf.: EuGRZ 1999, pp. 364.

Regions and social groups as well as experts shall be consulted. The secretariat general of the Council shall be charged with administrative tasks. The committee shall timely present a draft until the European Council summit meeting in December 2000.”

On its meeting on June 3 and 4, 1999 in Cologne the European Council has asked the Finnish presidency to take the necessary steps for the implementation of its decision until the special European Council meeting on October 15 and 16, 1999 in Tampere. Together with the European Parliament the Council must decide the issue of the composition of the committee, the chair of the committee and procedural question. After informal consultations with the European Parliament the position of the Council was scheduled to be determined by the general council on October 11 and 12, 1999 the latest. The decision was subsequently taken by the European Council on its special meeting in Tampere.³² In preparation of this decision an ad-hoc-group was installed that met twice until the Tampere summit. Until the Tampere summit the following issues were considered as not yet decided by the Finnish Presidency: regarding the chair of the committee there are three options: a) the respective representative of the Council chair (1999 Finland, first half of 2000: Portugal, second half of 2000: France); b) permanent chairman; c) permanent chairman to be determined by the committee itself. As regards the number of member of the European Parliament it remains to be decided whether 8 MEPs (reflecting the number of fractions of the EP) or 15 MEPs (reflecting the number of representatives of the heads of States and governments) should participate. With regard to the number of representatives of the national parliaments there are also two options: a) 15 members of national parliaments altogether or b) 30 members altogether to enable States with bicameral systems to send a representative from each chamber. As concerns the working procedure three options are currently discussed: a) “small” secretariat: chairman and vice-chairman of the committee together with the Council secretariat; b) “large” secretariat: all representatives of the heads of States and governments are members, to increase the influence of the national governments; c) determination of this issue by the committee itself. Eventually, the adoption of the Charter by the committee remains to be decided. Again there are three options: a) “soft consensus”: draft Charter is deemed to be adopted as soon as the chair is convinced that a respective consensus is achieved; b) majority decision or c) the adoption procedure will be determined by the committee itself.³³ These formal aspects were finally determined at the Tampere summit.³⁴

Even before the Tampere summit an agreement could be reached with regard to the following issues.³⁵ First of all, it was decided that 15 representatives of the heads of States and governments and a representative of the president of the Commission shall participate. The representative of the

³² Cf. FAZ of October 16, 1999 and FAZ of October 18, 1999.

³³ Cf. the report of August 12, 1999 by the AA to the EU-Committee of the Deutsche Bundestag under § 3 EuZBBG and § 3 EuZBLG and the report of the Council Presidency to COREPER of July 30, 1999.

³⁴ The decisions of the Tampere summit were not yet available when this paper was written. According to information provided by FAZ the committee will consist of 62 members who will appoint a chairman. Cf. FAZ of October 16, 1999 and FAZ of October 18, 1999.

³⁵ The decisions of the Tampere summit were not yet available when this paper was written. According to information provided by FAZ the committee will consist of 62 members who will appoint a chairman. Cf. FAZ of October 16, 1999 and FAZ of October 18, 1999.

Federal Republic of Germany is former Federal President *Roman Herzog*.³⁶ Furthermore, there was consensus that two representatives of the European Court of Justice will participate having observer status. Moreover, the vast majority of delegations would like to invite representatives of the Council of Europe and the European Court of Human Rights – in view of their great expertise in the field of fundamental rights - giving them also observer status. Also undisputed is that the Economic and Social Council, the Council of the Regions and the European ombudsman shall be consulted as organs of the European Union and that the accession candidates shall also have a fair chance to be involved. The committee shall be entitled to consult other bodies, social groups or experts. The secretariat shall be administered by the secretariat general of the Council. As regards procedural issues it was decided that the meetings of the committee shall be public and the documents deliberated shall be accessible for the public. The committee will convene in Brussels in the Council building and the Parliament building alternately. The meetings shall be interpreted in all Community languages.³⁷

II. The international standard of substantive minority protection law

The first thing to be contemplated if a minority clause is to be included in the Charter on Fundamental Rights of the European Union is the content of such a provision. In order to do this it seems useful to start out by analyzing the current international standard of substantive minority protection law.

In view of the failure of the minority protection system during the time between the world wars, the architects of a future world order lost their faith in systems providing collective protection of minorities at the end of World War II.³⁸ The human individual moved to the center of the protection efforts. The leading opinion³⁹ at that time was that if only the international community could succeed in establishing a comprehensive system of the protection of individual human rights, minority protection would almost naturally be included in such a system.⁴⁰ The protection of the group, in other words the social context of the individual, seemed superfluous. Neither the Charter of the United Nations of June 26, 1946, nor the Universal Declaration of Human Rights of December 10, 1948 contained minority protection provisions. Only General Assembly Resolution 217 (III) C of December 10, 1948 stated laconically that the United Nations must not turn a blind eye on the fate of minorities.⁴¹

³⁶ *Gelinsky* (footnote 7), in: FAZ of September, 28 1999.

³⁷ Cf. the report of August 12, 1999 by the AA to the EU-Committee of the Deutsche Bundestag under § 3 EuZBBG and § 3 EuZBLG and the report of the Council Presidency to COREPER of July 30, 1999.

³⁸ *Thornberry*, International law and the rights of minorities (Oxford, New York 1994), pp. 46.

³⁹ *Kunz*, Present status of the international law for the protection of minorities, in: 48 AJIL 282 (1954); *Lerner*, Group rights and discrimination in international law (Dordrecht u.a. 1991), p. 14.

⁴⁰ Cf. the 1950 study of the UN secretariat general „Study of the Legal Validity of the Undertakings Concerning Minorities“, UN Doc. E/CN.4/367, pp. 70.

⁴¹ Res. 217 (III) C., „Fate of minorities“, UN Doc. A/3/SR.183, S. 935; cf. *Scherer-Leydecker* (footnote 8), pp. 47.

A new glacial period for the further development of the law of minority protection, at least in its collective form, set in. Even the dedicated efforts of the Sub-Commission on Prevention of Discrimination and Protection of Minorities,⁴² which had been established in 1947 by the UN Human Rights Commission, on the one hand, and the inclusion of a minority protection provision⁴³ in the International Covenant on Civil and Political Rights of December 19, 1966 on the other hand, could not change this. Only countries that were driven by the fear that their multi-ethnic identity might lead to the decline of the integrity of their whole state had a vital interest in pushing the development of minority rights ahead within the international community.⁴⁴

However, in the beginning of the eighties a process of rethinking and reconsidering the issue of minority rights slowly set in as after the death of *Josip Broz Tito* the Yugoslavian tragedy took its course. Both Yugoslavia and the Soviet Union were decomposed by the erupting nationalism of their ethnic minorities, which could no longer be subdued. The stability of the “Cold War” was gone and in Europe as well as in other continents historically deeply rooted nationality conflicts broke out again, often in a cruel way.⁴⁵ “Pandora’s box” of minority and ethnic groups problems had been opened once again.⁴⁶

Scholars and practitioners realized that these conflict potentials could not be tamed by merely providing human rights, but that re-introducing and ensuring means to legally protect the rights of minorities was absolutely indispensable.⁴⁷ The British scholar *Patrick Thornberry* saw the law of minority protection rise again like phoenix from the ashes.⁴⁸ And indeed, the beginning of the nineties saw the emergence of significant instruments for the protection of minorities both on an international⁴⁹ and a national level.⁵⁰

⁴² *Ansbach*, Die Unterkommission zur Verhinderung der Diskriminierung und zum Schutz von Minderheiten – Perspektiven ihrer weiteren Arbeit, in: AVR 1993, pp. 232.

⁴³ Article 27 CCPR.

⁴⁴ *Brems*, Die politische Integration ethnischer Minderheiten (Frankfurt am Main 1995), pp. 21 and 224; *Meissner*, Nationale Autonomie und Minderheitenschutz in der Sowjetunion, in: *Blumenwitz/v. Mangoldt*, Neubestätigung und Weiterentwicklung von Menschenrechten und Volksgruppenrechten in Mitteleuropa (Bonn 1991), pp. 95.

⁴⁵ *Brems* (footnote 45), p. 1.

⁴⁶ *Blumenwitz*, Minderheiten- und Volksgruppenrecht - Aktuelle Entwicklung (Bonn 1992), p. 5.

⁴⁷ Vgl. etwa: *Capotorti*, Die Rechte der Angehörigen von Minderheiten, in: VN 1980, pp. 113; *Gerdes*, Minderheitenschutz – eine internationale Rechtsnorm auf der Suche nach ihrem Gegenstand, in: VN 1980, pp. 126; *Ermacora*, Späte Einsichten - Der Entwurf der UN-Erklärung zum Minderheitenschutz, in: VN 1992, pp. 149.

⁴⁸ *Thornberry*, Is there a Phoenix in the Ashes? International law and minority rights, in: 15 TexasILJ 421 (1981).

⁴⁹ Cf. the „Declaration on the rights of persons belonging to national or ethnic, religious and linguistic minorities“ of December 18, 1992, which was adopted by the UN General Assembly as Resolution 47/135; UN Doc. A/RES/47/135, pp. 210.

⁵⁰ Cf. for example the document of the Copenhagen conference on the human dimension of the CSCE of June 29, 1990, reprinted in: 29 ILM 1305 (1990); cf. also the European Charter on Regional and Minority Languages of June 22, 1992, BGBl. 1998 II, pp. 1315; and the European Framework Convention for the Protection of National Minorities of November 10, 1994, EuGRZ 1995, pp. 268.

1. Art. 27 of the International Covenant of Civil and Political Rights of 1966

A careful change in the States' position towards the protection of minorities through instruments of public international law on a universal level came about in the sixties and led to the codification of article 27 of the International Covenant on Civil and Political Rights of December 19, 1966 (CCPR)⁵¹. This provision held:

*“In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.”*⁵²

The CCPR entered into force on March 23, 1973. Although article 27 of the CCPR is primarily an individualistic fundamental right, it also contains a collective element through the formulation “in community with other members of their group”.⁵³ As regards the content⁵⁴ of the provision, minorities undoubtedly are guaranteed a privileged right to commonly enjoy their culture, language and religion as against the majority of the population. As a primarily negating right, the provision obliges the State parties to refrain from any action, which could pressure the minorities towards assimilation. However, according to the predominant opinion⁵⁵ the States are not obliged to actively promote their minorities, in other words they are not urged to introduce “affirmative action” measures. Because of its universal application article 27 CCPR is formulated in a very general way.⁵⁶ Together with a facultative protocol⁵⁷ the Covenant provides for means to enforce the guaranteed rights. According to article 40 CCPR the State parties are obliged to report to a Human Rights Committee, which was established by virtue of article 28 *et seq.* of the CCPR, the measures they have taken in order to implement the guaranteed rights by the CCPR. Under the facultative protocol persons belonging to minorities can reprimand a violation of their rights to the Human Rights Committee by virtue of an individual request for relief. This slowly established a sort of article 27 “case law”, which helps clarifying contested questions on the interpretation of the provision.⁵⁸ Persons belonging to a minority in the sense of article 27 CCPR are defined by the Human Rights Committee - in accordance with the dominant academic opinion and the states practice - by subjective criteria (e.g. free confession to belong to a minority) which are counterbalanced by objective (e.g. a certain stability of the minority group) criteria.⁵⁹ The Human

⁵¹ BGBl. 1973 II pp. 1534.

⁵² Definition: BGBl. 1973 II p. 1534.

⁵³ *Kimminich*, Minderheiten- und Volksgruppenrecht im Spiegel der Völkerrechtsentwicklung nach dem Zweiten Weltkrieg, in: BayVBl. 1993, p. 321, 323; *Hofmann*, Minderheitenschutz in Europa, in: ZaöRV 1992, p. 1, 9.

⁵⁴ *Nowak*, UNO-Pakt über bürgerliche und politische Rechte und Fakultativprotokoll. CCPR-Kommentar (Kehl am Rhein u.a. 1989), Art. 27, footnotes 38 et seq.; *Hofmann* (footnote 54), pp. 9.

⁵⁵ *Franke/Hofmann*, Nationale Minderheiten – Ein Thema für das Grundgesetz ?, in: EuGRZ 1992, p. 401, 403; *Hailbronner*, Der Schutz der Minderheiten im Völkerrecht, in: Im Dienste der Gemeinschaft, Festschrift für D. Schindler (Basel u.a. 1989), p. 75, 83.

⁵⁶ *Blumenwitz* (footnote 47), p. 49.

⁵⁷ BGBl. 1992 II S. 1247 ff.

⁵⁸ *Rensmann*, Der Minderheitenschutz im Rechtssystem der Vereinten Nationen, in: AWR-Bulletin 1992, p. 99, 101 ff. (brief presentation of the leading cases).

⁵⁹ *Oxenknecht*, Der Schutz ethnischer, religiöser und sprachlicher Minderheiten in Art. 27 des Internationalen Paktes über bürgerliche und politische Rechte vom 16. Dezember 1966

Rights Committee expressly includes aliens, i.e. persons who do not have the citizenship of the country where they reside, in the scope of application of article 27 CCPR.⁶⁰ However, in the light of the ongoing developments under the auspices of the CSCE and the Council of Europe, which will be explained in detail *supra*, it seems very doubtful whether this opinion is shared by the States in a way permitting to consider this opinion as customary law in that respect.⁶¹

(Frankfurt am Main u.a. 1988), pp. 191; *Hofmann* (footnote 54), pp. 8.

⁶⁰ *Nowak* (footnote 55), Art. 27, footnote 17.

⁶¹ *Hofmann* (footnote 54), pp. 7.

2. The Declaration of Rights of persons belonging to national or ethnic, religious and linguistic minorities of 1992

In 1971 the Sub-Commission on Prevention of Discrimination and Protection of Minorities charged its member *Francesco Capotorti* with elaborating a comprehensive study on the rights of minorities. This study,⁶² which was completed in 1977, concluded that the General Assembly should render a basic resolution supposed to facilitate the implementation of the rights guaranteed by article 27 CCPR. The study is based on a dynamic interpretation that understands article 27 CCPR, because of its indefinite operative aims, as a framework provision to be brought to life by adequate executing action on a national level.⁶³

After the Sub-Commission adopted the goals of this study, Yugoslavia came forth with a draft declaration,⁶⁴ which was the subject of the following debates together with the *Capotorti*-study. In detail the Yugoslavian draft contains the right of existence of a minority, the right to claim respect and the promotion of the particular minority specificities as well as the right of full equality as against the majority population. Moreover, the draft lays down the principle of non-discrimination and acknowledges the necessity of measures, which enable the minority to freely express and develop their cultural characteristics. The fundamental rights are formulated in a way that give them a collective effect.⁶⁵ The consultations in a especially established open ended working group dragged on until 1991. Only under the impression of resurrecting nationality conflicts in east and southeast Europe and after express request by the General Assembly, the working group came forth with a final draft⁶⁶ in December of 1991. The 48th session of the Human Rights Commission deliberated eventually adopted this draft in February 1992 and sent it via the Economic and Social Council (ECOSCO) to the 48th General Assembly, which adopted the declaration⁶⁷ on December 18, 1992 in consensus.

⁶² *Capotorti*, Study on the rights of persons belonging to ethnic, religious and linguistic minorities, UN Doc. E/CN.4/Sub.2/384/Rev. 1.; cf. also *Capotorti* (footnote 48), pp. 113.

⁶³ *Dicke*, Die UN-Deklaration zum Minderheitenschutz, in: EA 1993, p. 107, 109.

⁶⁴ UN Doc. E/CN.4/L.1367/Rev.1.

⁶⁵ *Blumenwitz* (footnote 47), S. 50.

⁶⁶ „Draft Declaration on the rights of persons belonging to national or ethnic, religious and linguistic minorities”, UN Doc. E/CN.4/1992/48.

⁶⁷ General Assembly, Res. 47/137 of December 18, 1992.

The declaration consists of a preamble and nine operating articles.⁶⁸ In the preamble the General Assembly spells out its motives. It considers the protection of minorities as integral part of the protection of human rights thereby strengthening the individualistic concept and rejecting the Yugoslavian conception of collective group rights.⁶⁹ Article 1 of the Declaration determines that States must create safe and favorable development conditions for the existence and identity of minorities through legislation and otherwise. Articles 2 and 3 define the rights of persons belonging to minorities. Those shall have the right to exercise their own culture, religion and language alone and in community with other members of their group. Moreover, within the limits of national laws they shall have the right to participate in political decisions on a national or regional level as far as these decisions touch on the minorities' interests. They are permitted to found associations and to maintain relations with members of their own group across State borders and with other minorities. Article 3 contains a special non-discrimination provision: persons belonging to minorities may exercise their rights individually or in community with other members of their group without any discrimination resulting from this. Article 4 contains four tiered State obligations. States are obliged to take measures to enable persons belonging to minorities to enjoy their human rights without being discriminated against. The States must create favorable conditions to enable minorities to exercise their particularities with regard to culture, language, religion and tradition, safe actions that would violate national laws or international standards. The other three State obligations are weaker. States shall ensure, as far as possible, that persons belonging to minorities get the chance to learn their mother tongue or to be taught in that respective language. Furthermore, States shall ensure the possibility for minorities to learn about their history, their traditions, their language and their culture. Persons belonging to minorities must have the opportunity to acquire knowledge about the society they live in. This provision was created to prevent the segregation of minorities and facilitate their integration. Persons belonging to minorities shall be able to participate in the economic development of the country and shall be adequately consulted with regard to matters of national policy making as well as of international cooperation according to article 5. Articles 6 and 7 contain hortatory provisions concerning cooperation, the exchange of information and experience in the field of minority issues. These provisions underscore the conflict preventive character of the law of minority protection. According to article 8 State measures based on the Declaration shall not be considered to be an act of discrimination,⁷⁰ which puts affirmative action measures in the field of minority protection in conformity with human rights. However, the Declaration justifies on violation of the goals and principles of the Charter of the United Nations and in particular the sovereign equality, territorial integrity and political independence of States. Finally, article 9 encourages the organs and special organizations within the United Nations system to help implementing the goals and rights enshrined in the Declaration within their respective competence to the fullest possible extent.

⁶⁸ „Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities“ of the General Assembly of December 18, 1992, UN Doc. A/RES/47/135; cf.: *Dicke* (footnote 64), pp. 107; *Rensmann* (footnote 59), pp. 99; *Ermacora* (footnote 48), pp. 149.

⁶⁹ Preamble, point 4.

⁷⁰ In the sense of the Universal Declaration of Human Rights of 1948.

The Declaration has been criticized for giving the States too much discretion with regard to the implementation of the rights, because on the one hand the formulations were too cautious and too vague⁷¹ and on the other hand provisions envisaging the implementation and the enforcement of the rights were lacking altogether.⁷² What is also missing is the definition of the term “minority”, what led the German delegation to issue a declaration stating that the Federal Republic of Germany would only recognize citizens as minorities who have been living in its territory for a long period of time, thereby excluding aliens and migrant workers from the scope of minority protection. However, what finally remains to be said about the Declaration is that it is based on a modern understanding of statehood and sovereignty. The State founded on the principles of democracy and the rule of law is the prerequisite of an effective system of minority protection. The principle of the prohibition of discrimination already deeply rooted in international law is consequently supplemented by the obligation of the States to promote the existence and identity of minorities and to prevent assimilative pressure.⁷³ The success of the Declaration, however, depends on the willingness of the States to implement into national policy the underlying insight of the Declaration, that the protection of ethnic, religious and linguistic minorities needs special promotion. From a legal point of view the Declaration is not a binding act under public international law but merely a hortatory guideline and thus soft law.⁷⁴ However, if the goals of the Declaration are sufficiently and universally recognized, there is a possibility that it might become a general principle of international law and thus customary law.⁷⁵

⁷¹ *Blumenwitz* (footnote 47), p. 51.

⁷² *Ermacora* (footnote 48), p. 149, 151.

⁷³ *Dicke* (footnote 64), p. 107, 115.

⁷⁴ *Heintschel von Heinegg*, in: *Ipsen*, *Völkerrecht* (München 1990), 3rd Ed., § 19 notes 13.

⁷⁵ *Ermacora* (footnote 48), p. 149, 151.

3. Further provisions of public international law

On a universal level the discussed provisions on the protection of minorities are flanked by further provisions of public international law.⁷⁶ In order to gather a “minimum standard“ of the substantive law of minority protection, analyzing these flanking provisions seem to be unproductive. For this reason they will not be further assessed at this point.⁷⁷

III. Minority protection under the CSCE/OSCE system

A further object of examination shall be the development of the system of minority protection within the Conference on Security and Cooperation in Europe (CSCE).

1. The emergence of the substantive minority protection

In the Helsinki final act⁷⁸ of August 1, 1975 minority protection was explicitly mentioned for the first time. In principle VII, the so called human rights principle, the CSCE States declared to recognize the right of persons belonging to minorities to equality before the law and to let those people enjoy human rights and fundamental freedoms to the fullest extent. Unfortunately, this confession was limited to those States where minorities existed. This, however, gives the States the possibility to get around their obligation to protect minorities by simply denying their existence on the country's territory. Nevertheless, with the acknowledgement of specific justified demands of persons belonging to minorities the foundation was laid for a development that was later referred to as the “CSCE-process”.⁷⁹ At the follow-up meetings in Belgrade (1977/78) and Madrid (1980-83) no further progress with regard to minority protection could be achieved. The development of the protection of minorities was continued at the follow-up meeting in Vienna, which began on November 4, 1986 and ended with the adoption of the final document on January 15, 1989.⁸⁰ Besides the repetition of the declaration of Helsinki (protection of fundamental rights and prohibition of discrimination) a totally new aspect was introduced: the guarantee to protect the ethnic, cultural, linguistic and religious identity of national minorities was supplemented by the declaration to create conditions to promote that identity. This meant that the participating States explicitly committed themselves to taking actions in the field of minority protection (principle sections 18 and 19). Persons belonging to minorities were allowed to maintain contacts across borders with persons sharing the same national origin or the same cultural heritage (section 31). Moreover, educational training in the field of their own culture and instruction of the children in their own language, religion and cultural identity by the parents was granted (section 68).⁸¹ A real breakthrough in the field of minority protection was reached with the adoption of the final

⁷⁶ *Hailbronner* (footnote 56), p. 85 ff.

⁷⁷ Cf. the instruments on the protection of „indigenous peoples“ (cf.: *Heintze*, *Völkerrecht und indigenes peoples*, *ZaöRV* 1990, pp. 39).

⁷⁸ Reprinted in: EA 1975, D 437.

⁷⁹ *Widmer*, *Europäische Bemühungen zur Lösung der Minderheitenfrage*, in: EA 1993, p. 265, 267; *Kimminich* (footnote 54), p. 321, 325.

⁸⁰ Reprinted in: *EuGRZ*, 1989, pp. 85.

⁸¹ *von Studnitz*, *Minderheitenschutz im KSZE-Prozess*, in: *Blumenwitz/von Mangoldt*, *Neubestätigung und Weiterentwicklung von Menschenrechten und Volksgruppenrechten in Mitteleuropa* (Bonn 1991), p. 31, 35.

document⁸² at the Copenhagen meeting of the conference on the human dimension of the CSCE on June 29, 1990. The overcoming of the East-West conflict brought about a very favorable political climate. The body of minority rights that were passed at the Copenhagen meeting filled a whole chapter in the final document (Chapter IV, sections 30-40) is still the basis of the law of minority protection of the CSCE system. The participating States granted their national minorities the right to enjoy their human rights and fundamental freedoms without discrimination and in full equality before the law and declared to take affirmative action measures if necessary to enforce these rights (section 31). Moreover, it was agreed that every person belonging to a minority shall have the right freely to choose to be treated or not to be treated as such and no disadvantage of any kind shall result from this choice (section 32). Section 32 paragraphs 1 through 6 contain further and more detailed individual minority rights, concerning in particular the private and public use of minority languages, the practice of a religion, the guarantee to cross-border contacts, the freedom to form associations, and cultural activities. Section 34 contains the commitment to provide the opportunity for minorities to be instructed in their mother tongue and to use their mother tongue before authorities. Sections 33 through 35 oblige to protect and to promote the identity of national minorities.⁸³ For the time being the process of creating substantive minority rights came to an end with the success of Copenhagen. In the “Charter of Paris for a new Europe” of November 21, 1990⁸⁴ the participating States merely affirmed that the ethnic, cultural, linguistic and religious identity of national minorities must be protected and that persons belonging to national minorities must have the right to freely express, to preserve and to develop this identity without any discrimination and in full equality before the law. In order to improve the cooperation with regard to minorities and in the field of minority protection it was decided to hold an expert meeting on July 1 through 19, 1991 in Geneva on the issue. There, however, no progress could be made predominantly because of the hesitant and counterproductive positions of countries like Bulgaria, Romania, France, Greece and Turkey. Accordingly, the final act⁸⁵ is characterized by compromises. Some collective minority rights were granted and it was agreed that supporting minority rights must not be considered as an intervention in the internal affairs of another participating country. However, these “gains” were significantly weakened by the accord that not all ethnic, cultural, linguistic or religious differences would necessarily lead to the formation of a national minority, because this formulation gives the States the possibility to deny the existence of minorities.⁸⁶

⁸² Reprinted in: EuGRZ, 1990, pp. 239.

⁸³ *Hofmann* (footnote 54), pp. 14.

⁸⁴ Reprinted in: EuGRZ 1990, pp. 517; cf.: *Schöndube*, Eine Ära des Föderalismus in Europa ist angesagt - die Wiederentdeckung der nationalen Minderheiten, in: Das Parlament of May 1, 1992, p. 2.

⁸⁵ Reprinted in: EuGRZ, 1991, pp. 492.

⁸⁶ *Blumenwitz* (footnote 47), p. 54; *Hofmann* (footnote 54), pp. 16.

2. The emergence of institutional protection

The third meeting of the conference on the human dimension, which was held from September 10 through October 4, 1991 in Moscow,⁸⁷ could not agree to adopt new provisions in the field of minority protection. However, the participating countries agreed on a procedural mechanism to check whether the obligations concerning the granting of human rights and minority protection were accordingly met. This procedure was named “the mechanism of the human dimension”. Should a human rights or minority rights problem occur, either the concerned State or a group of otherwise interested States can - if necessary even without the consent of the concerned State - invite a CSCE expert commission. This commission is charged with finding facts, reporting and issuing recommendations. The recommendations of the experts will then be considered by the Committee of High Officials of the CSCE, which can take further action. Since the second meeting of the Council of Foreign Ministers of the CSCE Member States on January 30 and 31, 1992 in Prague,⁸⁸ such a decision to seek further action, which formerly required a consensus, can now be taken even without the consent of the concerned State in cases of clear, flagrant and ongoing violations of obligations under the “human dimension” of the CSCE. This agreement was named “consensus-minus-one-rule”.⁸⁹ It is quite remarkable that the “mechanism of the human dimension” now allows new interventions in the principle of non-interference in internal affairs, which was formerly defended vigorously by several States.⁹⁰ Also at the fourth follow-up meeting on March 24 through July 8, 1992 in Helsinki⁹¹ no further progress in the field on minority rights was made. Executing a recommendation of this follow-up meeting, the heads of States and Governments decided at their summit on July 9 and 10, 1992 in Helsinki to establish the office of a “High Commissioner on national minorities”.⁹² The mandate of the High Commissioner, however, is very limited. Under the auspices of the Committee of High Officials he deals with emerging conflicts threatening to aggravate into international conflicts. The High Commissioner, whose task it is to draw the attention of the competent CSCE bodies to dangerous developments, may initiate emergency action to prevent conflicts. However, he will not be able to consider individual complaints filed with his office by single persons belonging to minorities. Moreover, he is explicitly barred from dealing with those minority conflicts that entail violent acts of terrorism.⁹³ Eventually, it was decided to hold so-called implementation meetings on a regular basis and in the presence of non-governmental-organizations. Purpose of those meetings is a details exchange of opinions about the latest implementation developments with regard to the obligations under the “human dimension” including the provisions on minority protection.⁹⁴ The first implementation meeting on

⁸⁷ Final act reprinted in: EuGRZ 1991, pp. 495.

⁸⁸ Final act reprinted in: EuGRZ 1992, pp. 124.

⁸⁹ von Studnitz, Politische Vertretung von Minderheiten- und Volksgruppenrechten auf verschiedenen staatlichen und zwischenstaatlichen Ebenen, in: Blumenwitz/Gornig, Minderheiten- und Volksgruppenrechte in Theorie und Praxis (Bonn 1993), p. 17, 21; Hausmann, KSZE ... Ein Kürzel, das die Welt veränderte, in: Das Parlament of May 1, 1992, p. 5.

⁹⁰ Widmer (footnote 82), p. 265, 270.

⁹¹ Final act reprinted in: Bulletin des Presse- und Informationsamtes der Bundesregierung 1992, pp. 773.

⁹² Cf.: The Economist, September 11, 1999, p. 39 and Rüb, Früh und regelmäßig, in: FAZ of November 19, 1999.

⁹³ Widmer (footnote 82), p. 265, 271; Hofmann, Die Bedeutung des Schutzes von Minderheiten und Volksgruppen für eine neue Ordnung in Europa und in der Welt, in: AWR-Bulletin, No. 1-2/94, p. 19.

⁹⁴ von Studnitz (footnote 94), p. 17, 21.

the “human dimension” was held on September 27 through October 15, 1993 in Warsaw.⁹⁵

⁹⁵ Cf. EA, 1993, Z 246.

3. Current developments

For the time being, the development in the field of minority protection under the CSCE system came to an end with the summit in December of 1994 in Budapest, where the renaming of the CSCE in “Organization for Security and Cooperation in Europe (OSCE)” took place.⁹⁶ This change, however, had no influence on the existing institutional structure. Some of the existing institutions were renamed.⁹⁷ The substantive standard of minority protection was neither extended or refined in Budapest nor anytime later.

4. The legal character of the CSCE/OSCE documents

Finally, a brief word on the legal character of the CSCE/OSCE documents and acts shall be said. At several follow-up and expert meetings the CSCE/OSCE managed to adopt quite an impressive number of minority rights. One of the reasons for this success might have been the legal character or quality of the final acts, which are mere political agreements and do not have a legally binding effect as long as they have not become customary law yet.⁹⁸ But still these provisions, which are usually adopted by consensus, are politically binding, what led to a quite satisfactory adherence to them. The lately passed consensus rules show an effect which is increasingly binding. Especially the control mechanisms make it difficult for the Member States to get around the obligations they have committed themselves to.⁹⁹

IV. Minority protection by the works of the Council of Europe

Next, the work of the Council of Europe in the field of minority protection shall be analyzed.¹⁰⁰ The Council of Europe as a regional European international organization has compulsory competence on the field of human rights. The efforts of the Council of Europe with regard to the protection of minorities were in most instances initiated by the Parliamentary Assembly of the Council of Europe.¹⁰¹ After initial efforts in the field of minority protection proved futile, the nineties brought the adoption of the Charter on the Protection of Minority or Regional Languages and the Framework Convention on the Protection of National Minorities.¹⁰²

⁹⁶ Cf. the Budapest document reprinted in: Bulletin des Presse- und Informationsamtes der Bundesregierung 1994, pp. 1079; cf. also *Tretter*, Von der KSZE zur OSZE – Einführung in die für den Schutz der Menschenrechte relevanten Teile des Budapester KSZE-Dokuments 1994, in: EuGRZ 1995, pp. 296.

⁹⁷ Details cf.: *Scherer-Leydecker* (footnote 8), pp. 184.

⁹⁸ *Blumenwitz* (footnote 47), p. 52; *Hofmann* (footnote 54), p. 14.

⁹⁹ *Widmer* (footnote 82), p. 265, 267; *von Studnitz* (footnote 84), p. 31, 34.

¹⁰⁰ Cf. generally: *Konstantinov*, Minderheitenschutz und Europarat, in: *Heintze*, Selbstbestimmungsrecht der Völker – Herausforderung der Staatenwelt (Bonn 1997), pp. 177.

¹⁰¹ Formerly: Counselling Assembly.

¹⁰² Cf.: *Scherer-Leydecker* (footnote 8), pp. 141; *Hofmann* (footnote 8), pp. 33; *Niewerth* (footnote 8), pp. 203

1. Initial efforts

On the initiative of the Danish delegate *Hermod Lannung* the issue of the inclusion of a minority protection clause in the ECHR¹⁰³ was already debated at the consultative meeting of the Council of Europe when it was drafting the ECHR. However, a provision on minority protection was not included in the final version of this document.¹⁰⁴ In 1956 the issue minority protection was again on the agenda of the Counseling Assembly of the Council of Europe. The Assembly established a sub-committee of the legal committee to analyze the issue. The work of the minority sub-committee dragged on for several years until a group of delegates suggested to draft an additional protocol to the ECHR on the protection of minorities. First of all, the minority sub-committee dealt with the definition of the term minority and reached a consensus that only “*separate or distinct groups, well-defined and long established on the territory of a state*“ should be comprised.¹⁰⁵ In 1961 the legal committee finally agreed on the wording of a minority protection provision, which was supposed to be adopted as an additional protocol to the ECHR.¹⁰⁶

„Persons belonging to a national minority shall not be denied the right, in community with other members of their group, and as far as compatible with public order, to enjoy their own culture, to use their own language, to establish their own schools and receive teaching in the language of their choice or to profess and practice their own religion.“

The codification of a minority definition had been dropped. Even though the Assembly adopted this provision as recommendation no. 285 (1961) and sent it to the Committee of Ministers for its adoption, the provision never entered into force, because the majority of the members of the Council of Europe opposed it.¹⁰⁷ It was argued, that the protection of minorities was already ensured by many documents in the field of public international law and that the practices of the States of the Council of Europe did not show the need for immediate action in that area.¹⁰⁸

¹⁰³ Cf. *Lannung*, The rights of minorities, in: FS for Modinos, pp. 181; *Modeen*, The International Protection of National Minorities in Europe (Abo 1969), p. 127.

¹⁰⁴ Cf. *infra*.

¹⁰⁵ *Lannung* (footnote 106), pp. 181.

¹⁰⁶ *Scherer-Leydecker* (footnote 8), p. 145; Cf. also *Lannung* (footnote 106), pp. 181.

¹⁰⁷ *Lannung* (footnote 106), pp. 181; *Modeen* (footnote 106), p. 128.

¹⁰⁸ Details cf. *Scherer-Leydecker* (footnote 8), pp. 145.

2. The European Charter on Human Rights of 1950

As already mentioned, the efforts of the Council of Europe in the field of minority protection reached back in its initial years in 1949. Following the fashion at that time of a concept of individual human rights the European Charter on Human Rights (ECHR) of November 4, 1950,¹⁰⁹ however, did not contain an explicit provision on the protection of minorities. Minorities were protected indirectly by the general prohibition of discriminations of article 14 of the ECHR. This provision contains the obligation of all Member States to provide for the enjoyment of the guaranteed rights and freedoms without any discrimination based on race, skin color, language, the national or social origin, or the belonging to a national minority. Moreover, the traditional lifestyle of a minority can fall within the scope of article 8 ECHR, which prohibits the invasion of privacy.¹¹⁰ Article 6 paragraph 3 subparagraph e ECHR provides for the right of any accused to demand the free assistance of an interpreter if he cannot understand the language of the court or cannot defend himself in that language. This provision benefits foreigners as well as persons belonging to minorities. Moreover, through its jurisprudence the European Court of Human Rights has clarified some provisions of the ECHR with regard to their protective effect for minorities. In the quite known “Belgian language case” the European Court of Human Rights decided, that no obligation for States to establish or to finance a certain educational institution follows from article 2 of the Second Additional Protocol in conjunction with article 14 ECHR.¹¹¹ That meant in particular that there was no right for parents to claim that their children were instructed in any other language than the official language of the respective country.¹¹² In sum the significance of the ECHR in the field of the effective protection of national minorities in the State parties must unfortunately be considered as very low.¹¹³

¹⁰⁹ BGBl. 1952 II p. 685, 953; latest amendment of November 1, 1994; BGBl. 1994 II pp. 3624.

¹¹⁰ Details cf.: *Hofmann* (footnote 8), pp. 33; *Hofmann* (footnote 54), pp. 12 and *Klebes*, Rechtsnormen – politische Willenserklärungen – praktische Projekte, in: Das Parlament of August 20, 1999, p. 2.

¹¹¹ EuGMRE 2, pp. 1 = EuGRZ 1975, pp. 298.

¹¹² *Blumenwitz*, Volksgruppen und Minderheiten. Politische Vertretung und Kulturautonomie (Berlin 1995), p. 157.

¹¹³ This are the conclusions of *Hofmann* (footnote 8), p. 33 and *Klebes* (footnote 113), in: Das Parlament of August 20, 1999, p. 2.

3. The European Charter on Regional or Minority Languages of 1992

In the beginning of the eighties, the Parliamentary Assembly of the Council of Europe put the issue of minority protection on the agenda once again. This time it picked the issue of the protection of regional and minority languages. By recommendation no. 928 (1981) the Parliamentary Assembly suggested that the Committee of Ministers consider action in that area.¹¹⁴ Eleven years later, on June 25, 1992 the Committee of Ministers finally passed the “European Charter on Regional or Minority Languages”, which was put up for signature on November 5, 1992.¹¹⁵ Purpose of the Charter is the protection and promotion of regional and minority languages in schools, before the administrative bodies, before the courts and in the media, but not the promotion of minorities as such. That way the Committee of Ministers hoped to make the adoption of the Charter easier for those States, that denied the existence of minorities on their territory, through omitting long and fatiguing debates about the definition of the term minority.¹¹⁶ However, through defining the object to be protected, i.e. the regional or minority languages, in article 1 paragraph a), the Charter implicitly also defined the minority groups to be protected. Article 1 paragraph a) has the following wording:

„For the purpose of this Charter:
 “regional or minority language“ means languages that are:
 traditionally used within a given territory of a State by nationals of that State who form a group numerically smaller than the rest of the State’s population; and
 different from the official language(s) of that State;
 it does not include either dialects of the official language(s) of the State or the languages of migrants;“

This definition excludes immigrant groups or sometimes so-called “new minorities” even twice from the scope of the Charter. On the one hand only languages spoken by nationals of one of the State parties are protected and on the other hand languages of migrants are explicitly excluded from protection, even if they have acquired the citizenship of their resident State in the meantime.¹¹⁷

The Charter is divided into five parts: general provisions, objectives and principles, measures to promote the use of regional or minority languages in public life, application of the Charter and final provisions.¹¹⁸

¹¹⁴ *Scherer-Leydecker* (footnote 8), pp. 146.

¹¹⁵ HRLJ 1993, pp. 148; BGBl. 1998 II pp. 1314.

¹¹⁶ *Konstantinov* (footnote 103), p. 188.

¹¹⁷ This is especially true for France and Great Britain. When the new laws on citizenship enter into force on January 1, 2000 this can also be expected for Germany. Cf.: Europäisches Parlament, Generaldirektion Wissenschaft, Doc. Nr. IV/WIP/98/10/022, Staatsangehörigkeit in den Mitgliedstaaten der EG, as of: October 30, 1998.

¹¹⁸ Cf. *Hofmann* (footnote 8), pp. 55.

Articles 2 and 3 which are the central clauses among the general provisions lay out the complicated structure of the Charter, which grants the State parties much leeway as to the intensity of protection they would like to allow under the Charter. Article 2 paragraph 1 generally obliges all States parties to apply the objectives and principles (i.e. article 7) of the Charter to all regional or minority languages which meet the criteria spelled out in article 1. Under article 3 paragraph 1 of the Charter each State party shall specify, in its instrument of ratification, each regional or minority language they would like to promote in a particular way according to the catalogue of part III. (articles 8 through 14). The reason for this complicated system is to give the State parties a wide discretion in order to gain wide acceptance of the Charter among the Member States of the Council of Europe. However, this also means that the contracting States are under no legal obligation to promote all regional or minority languages spoken within their territory according to part III. of the Charter in a particular way. The contracting parties are not even obliged to notify any of their regional or minority language for the particular protection provided for in part III. of the Charter. Moreover, the State parties have even further discretion. Even if they chose some or all of their minority languages for the special protection under part III. of the Charter, they can pick single provisions from part III. for each language. Only the obligation under article 2 paragraph 2 to at least pick out a specified minimum number of provisions from the offered catalogues to apply to their regional or minority languages limits this discretion in a certain way.¹¹⁹

Part II. of the Charter, which is codified in article 7, determines the objectives and principles, on which the State parties must base their policies, legislation and practice with respect to all regional or minority languages spoken within their territories. Article 7 hardly lays down any specific legal obligation of the State parties and confers no subjective rights to the speakers of regional or minority languages. Basically article 7 only encourages the State parties to promote the use of regional or minority languages, to facilitate their use in public life and determines that the promotion of regional or minority languages shall not be regarded as an act of discrimination against the majority language.¹²⁰

Part III. of the Charter contains in articles 8 through 14 a detailed catalogue of the substantive measures to promote the regional or minority languages notified according to article 2 paragraph 2. As mentioned before, the contracting States can pick specific promotion measures and are only obliged to pick a minimum number of such measures from the different catalogues. Article 8 provides for specific promotional measures in the educational sector. Article 9 determines the protection measures supposed to allow the use of regional or minority languages before judicial authorities.

¹¹⁹ The content of at least 35 of the substantive provisions in articles 8 through 14 has to be implemented. Among those provisions at least three have to be picked from article 8 (education) and 12 (cultural activities and institutions). At least one has to be picked from article 9 (judicial authorities), 10 (administrative authorities), 11 (media) and 13 (economic and social life).

¹²⁰ *Hofmann* (footnote 8), p. 57.

Article 10 offers promotional measures to encourage the use of regional or minority languages before national or regional administrative authorities. Article 11 intends to promote the presence of regional or minority languages in the media sector. Article 12 wants to strengthen the position of regional or minority languages in the cultural sector. Article 13 offers promotional measures for regional or minority languages in economic and social life. Article 14 intends to strengthen the contacts of speakers of the same regional or minority languages across borders. Articles 15 through 17 control the implementation and enforcement of the Charter and establish a reporting system.

As the Charter entered into force on March 1, 1998¹²¹ it is very difficult to assess it in a compulsory way.¹²² A few points can be made though at this moment. The most positive aspect about the Charter is probably its mere existence. The fact that it was possible to agree on an international treaty which could be put up for signature is a great success in itself after so many initiatives to codify rights of minorities on an international level failed.¹²³ On the other hand there are several shortcomings of the Charter that cannot be overlooked. Firstly, the Charter does not confer a single subjective right to the speakers of regional or minority languages. The structure of the Charter, which allows the different State parties to pick different promotional measures, brings on the one hand with it, that a common minimal standard will not be feasible, and enables on the other hand States generally hostile towards minorities, to pick the least possible protection standard for their minorities without being exposed to the accusation not having joined the Charter. Moreover, many of the obligations are formulated in such a cautious way that a real legal obligation under international law is hardly existing. Finally, to choose a reporting system to monitor the implementation of the Charter is the “weakest” form to control the enforcement of an international treaty.¹²⁴

¹²¹ Cf. BT.-Drucks. 14/1130, p. 5 (report of the federal government on the activities of the Council of Europe).

¹²² *Hausmann*, Die bloße Existenz der Europäischen Charta ist ihre Stärke, in: Das Parlament of August 20, 1999, p. 3.

¹²³ *Hausmann* (footnote 125), in: Das Parlament of August 20, 1999, p. 3.; *Hofmann* (footnote 8), p. 62.

¹²⁴ Cf. *Hausmann* (footnote 125), in: Das Parlament of August 20, 1999, p. 3.; *Hofmann* (footnote 8), pp. 62 and *Scherer-Leydecker* (footnote 8), pp. 148

4. (Unsuccessful) initiatives on the way to the Framework Convention of 1995

Until the Framework Convention for the protection of national minorities could be put up for signature there were many efforts by the Council of Europe and its bodies to elaborate a compulsory code of the rights of minorities. For the moment the Framework Convention marks the final point in codifying the rights of minorities and the only compulsory set of international law in force that has been enacted under the auspices of the Council of Europe. For this reason the initiatives on the way to the Framework Convention shall only be analyzed briefly.¹²⁵

In view of the aggravating minority conflicts after the collapse of the Eastern Bloc, the Council of Europe established on May 8, 1990 the European Commission for Democracy through Law, the so-called Venice Commission as a advisory body. This body, consisting of leading academics in the field of international law, presented to the Committee of Ministers on February 8, 1991 a compulsory draft convention¹²⁶ on the protection of minorities. This draft¹²⁷ contained a definition of the term minority that excluded aliens, many individual rights and some group rights. The monitoring mechanism provides for a reporting system and the possibility to file complaints both for States and individuals. On November 26, 1991 the government of Austria presented to the Committee of Ministers a draft additional protocol to the ECHR on the protection of minorities. This draft had the elegant advantage of conferring the control over the implementation of minority rights to already existing and reliable bodies within the system of the Council of Europe (the Human Rights Committee and the European Court for Human Rights).¹²⁸ Moreover, there existed a draft “Convention on Fundamental Rights of the European Ethnic Groups” (the so-called “Bozen draft”) elaborated by the Federalist Union of European Ethnic Groups (FUEV), a non-governmental organization.¹²⁹

¹²⁵ For a detailed analysis of the initiatives cf. *Hofmann* (footnote 8), pp. 38 and *Scherer-Leydecker* (footnote 8), pp. 149.

¹²⁶ Reprinted in: *Human Rights Law Journal* 1991, pp. 296.

¹²⁷ *Hofmann* (footnote 54), pp. 18; *Hofmann* (footnote 8), pp. 40 and *Scherer-Leydecker* (footnote 8), pp. 151.

¹²⁸ *Hofmann* (footnote 54), pp. 21; *Hofmann* (footnote 8), pp. 43 and *Scherer-Leydecker* (footnote 8), pp. 153.

¹²⁹ *Hillgruber*, Minderheitenschutz im Rahmen der Europäischen Menschenrechtskonvention – Stand und Entwicklung, in: *Blumenwitz/Gornig*, Minderheiten- und Volksgruppenrechte in Theorie und Praxis (Bonn 1993), p. 39, 43; *Ludwig*, Werden sie wirksam geschützt, so zücken sie den Dolch nicht – Nationale Minderheiten verlangen kollektivrechtlichen Volksgruppenschutz, in: *FAZ* of May 18, 1994, p. 8, und *Scherer-Leydecker* (footnote 8), pp. 159.

On November 23 through 27, 1992 the expert committee for the protection of national minorities met for the first time. The task of this committee was to assess the feasibility to create legal standards for the protection of national minorities in the spirit of the European Charter on Human Rights using the already existing drafts.¹³⁰ The findings of that expert committee were the decisive initiative for the discussion and finally the adoption of the additional protocol to the European Charter on Human Rights of February 1, 1993¹³¹ by the Parliamentary Assembly of the Council of Europe. The term “national minority” is defined in article 1 of the draft additional protocol like this:

“Article 1

For the purpose of this Convention the term “national minority” shall mean a group of persons in a State who

- a. settle within the territory of that State being citizens of that States,*
- b. maintain long existing and well established relations to that State,*
- c. possess specific ethnic, cultural, religious or linguistic characteristics,*
- d. are sufficiently represented, although their number is less than that of the rest of the population of that States or a region of this State,*
- e. are willing to commonly preserve the features that characterize their identity, especially their culture, their traditions, their religion or language.”*

The belonging to a national minority is a matter of personal choice, that must not entail any disadvantage. Persons belonging to national minorities have the right to freely express, to preserve and to develop their religious, ethnic, linguistic and/or cultural identity without being assimilated against their will. They can practice and enjoy their rights individually or in community with others. Persons belonging to national minorities have the right to equality before the law; any discrimination based on the affiliation with a national minority is forbidden. They have the right to found their own organizations, including political parties. Moreover, persons belonging to national minorities have the right to freely use their mother tongue. They can also use their names in their language. In regions where a significant part of a national minority settles, the persons belonging to that minority have the right to use their mother tongue before administrative authorities and before courts. Persons belonging to national minorities can demand that their language be taught as a foreign language in schools and that an adequate number of schools be established that use their mother tongue as language of instruction. Moreover, they have the right to establish and maintain cross-border contacts to people with the same minority identity. In regions, where persons belonging to national minorities form a regional majority, they shall have the right to maintain their own local or autonomous administrative bodies or shall have a special status. Measures of protection and promotion of persons belonging to national minorities are not to be considered as an act of discrimination against the rest of the population.¹³² The Parliamentary Assembly recommended, the Committee of Ministers adopt an additional protocol to the European Charter on Human Rights on the rights of minorities using their draft as a guideline. The Committee of Ministers should enable the heads of States and governments of the Council of Europe to pass a protocol on minority rights at their meeting on October 8 and 9, 1993 in Vienna and put it up for

¹³⁰ *Klebes*, Für ein gesamteuropäisches Minderheitenrecht – Zum Stand der Arbeiten des Europarates in Straßburg, in: Das Parlament of May 1, 1992, p. 4.

¹³¹ Recommendation No. 1201 (1993) concerning an additional protocol to the ECHR on minority rights reprinted in: EuGRZ 1993, pp. 151 or BT.-Drucks. 12/4572.

¹³² BT.-Drucks. 12/4572; BT.-Drucks. 12/5227; *Steiner*, Die Entwicklung des Minderheitenschutzes im Rahmen des Europarates, in: *Blumenwitz/Gornig*, Minderheiten- und Volksgruppenrechte in Theorie und Praxis (Bonn 1993), pp. 29, 36; *Wollenschläger*, Minderheitenschutz im internationalen, europäischen und nationalen Recht, in: AWR-Bulletin, No. 1-2/94, p. 9.

signature.¹³³ However, the Vienna summit¹³⁴ of heads of States and governments did not pass an additional protocol, but rather charged the Committee of Ministers with preparing a framework convention for the protection of national minorities. Moreover, an additional protocol was to be drafted, which was supposed to supplement the European Charter on Human Rights in the cultural area with provisions that would grant individual rights especially for persons belonging to national minorities.¹³⁵

¹³³ Recommendation No. 1201 (1993) concerning an additional protocol to the ECHR on minority rights reprinted in: EuGRZ 1993, pp. 151 or BT.-Drucks. 12/4572.

¹³⁴ Final act „Declaration of Vienna” reprinted in: EA 1993, D 478.

¹³⁵ EA 1993, Z 246; *Laux*, Das Gipfeltreffen des Europarates in Wien, in: EA 1993, D 478; *Ludwig* (footnote 132), in: FAZ of May 18, 1994, p. 8.

5. The Framework Convention of the Council of Europe on the Protection of National Minorities of 1995

In February 1994 the *ad-hoc*-committee that had been established by the Committee of Ministers began drafting the Framework Convention. Sensitive issues were resolved on a ministerial level in October 1994 and after the following meeting of the *ad-hoc*-committee the final draft of the Framework Convention was completed. The Committee of Ministers adopted the draft on November 10, 1994 and on February 1, 1995 the Framework Convention was put up for signature.¹³⁶

Before an in-depth analysis of the Convention it must be noted that many Member States of the Council of Europe took a very hostile position during the discussions as they were still afraid of a destabilizing spiral beginning with the granting of a cultural autonomy for minorities, continuing with the minorities' self-administration and inevitably leading to a secession of the minority. Other States are philosophically based on the assumption that granting special rights for particular groups within a society would be incompatible with the principle of the universality of human rights,¹³⁷ what made it even further difficult to find a consensus.

Subject of the Framework Convention are national minorities or persons belonging to such minorities. The objective is the protection of the minorities through granting rights for persons belonging to them.¹³⁸ The Framework Convention does not provide a definition of the term "minority", because again no consensus could be reached in that respect. On this issue the explanatory report¹³⁹ says:

"Furthermore, it must be noted that the Framework Convention does not contain a definition of the term national minority. Therefore, a pragmatic view had to be chosen based on the realization that it is currently impossible to find a definition, which would be fully acceptable to all the Member States of the Council of Europe."

This means, in other words, that the supporters of minority protection were rather ready to accept an agreement on a text without a definition, than to run the risk of having to abandon the project of a convention on the subject altogether. The Framework Convention is an international treaty laying down the principles and leaving it up to the State parties to choose the means of its implementation.

The preamble of the Framework Convention addresses worries of many Member States of the Council of Europe, which participated in drafting this treaty, by explicitly stating in its last paragraph that the Framework Convention ensures *"the effective protection of national minorities and of the rights and freedoms of persons belonging to those minorities, within the rule of law, respecting the territorial integrity and national sovereignty of States."* This clearly defines the outer boundaries of the scope within which the Member States are willing to grant minority rights.¹⁴⁰ Article 1 identifies the objective of the Framework Convention as *"the protection of national*

¹³⁶ The text is reprinted in: BGBl. 1997 II pp. 1408.

¹³⁷ This is especially true for France.

¹³⁸ An in-depth analysis of the Framework Convention was done by *Klebes*, *Rahmenübereinkommen des Europarats zum Schutz nationaler Minderheiten*, in: *EuGRZ* 1995, pp. 262. Cf. also *Scherer-Leydecker* (footnote 8), pp. 164 and *Hausmann*, *Bescheidener Einstieg in ein gesamteuropäisches Recht*, in: *Das Parlament* of August 20, 1999, p. 2.

¹³⁹ Reprinted in: *EuGRZ* 1995, pp. 271.

¹⁴⁰ Cf. *Klebes* (footnote 141), pp. 262, 265.

minorities and the rights and freedoms of persons belonging to those minorities.”¹⁴¹ In this respect paragraph 13 of the explanatory report¹⁴² emphasizes that the Framework Convention does not grant any collective rights. It is equally clear that persons belonging to such minorities will not be provided with any subjective rights. Moreover, article 1 stresses the significance of the protection of minority rights as being an integral part of the international protection of human rights and as such falling within the scope of international cooperation, what should be self-evident. Article 2 of the Framework Convention reiterates another self-evident truth, namely that the Convention shall be applied in good faith, in a spirit of understanding and tolerance and in conformity with the principles of good neighborliness, friendly relations and cooperation between States. Article 3 codifies the so-called “confession principle” bringing it in accordance with the dominant opinion¹⁴³ with regard to a minority definition, i.e. that the minority features are made up by subjective and objective criteria. Article 3 paragraph 1 says accordingly: “*every person belonging to a national minority shall have the right freely to choose to be treated or not to be treated as such (...)*” Paragraph 35 of the explanatory report clarifies in that respect that article 3 does not grant the right for any person to arbitrarily decide for himself to belong to a certain national minority, but that the subjective choice of a person in that respect must be backed by inalienable and objective criteria regarding this identity. Article 4 codifies the right of minorities to equality before the law and equal protection by the law and statutes a fundamental prohibition of any discrimination. Article 4 paragraph 2 permits affirmative action measures and paragraph 3 states that such measures are not to be considered as acts of discrimination against the majority population. Article 5 lays down the prohibition of the assimilation of minorities against their will. However, this prohibition is limited as it binds the Member States “*without prejudice to measures taken in pursuance of their general integration policy*”. Article 6 commands equally pathetic as meaningless to “*encourage a spirit of tolerance and intercultural dialogue and to promote mutual respect and understanding and cooperation*”. Just like article 11 of the ECHR, article 7 of the Framework Convention grants the freedom of peaceful assembly and the freedom of association. Contrarily to the draft of an additional protocol to the ECHR on the protection of minorities,¹⁴⁴ the Framework Convention does not explicitly grant the right of minorities to found own organizations including political parties. Article 8 protects the right to manifest a religious belief.¹⁴⁵ Article 9 regulates the freedom of speech and expression and the freedom of the press with regard to minority languages. Article 10 of the Framework Convention addresses the use of minority languages generally. The freedom to use minority languages in private and in public life must be granted. The formulation of the right to use minority languages before administrative authorities is slightly weaker. The way article 10 is formulated leaves a lot of discretion to the States as to how they want to implement the provision.¹⁴⁶ In case of an arrest a person belonging to a minority shall according to article 10 paragraph 3 have the right to be informed promptly in a language which he understands, of the reasons for his arrest and shall have the right of free assistance of an interpreter if necessary. Article 11 paragraph 1 gives the persons belonging to minorities the right to use their names in the minority language. Again

¹⁴¹ Cf. supra.

¹⁴² Reprinted in: EuGRZ 1995, pp. 271.

¹⁴³ Cf. *Niewerth* (footnote 8), pp. 39.

¹⁴⁴ Recommendation No. 1201 (1993) concerning an additional protocol to the ECHR on minority rights reprinted in: EuGRZ 1993, pp. 151 or BT.-Drucks. 12/4572.

¹⁴⁵ Cf. also the corresponding article 9 ECHR.

¹⁴⁶ An example for a vague formulation of an obligation under the Framework Convention would be article 10 paragraph 2: “*In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if those persons so request and where such a request corresponds to a real need, the Parties shall endeavour to ensure, as far as possible, the conditions which would make it possible to use the minority language in relations between those persons and the administrative authorities.*”

watered down by very vague formulations, article 11 paragraphs 2 and 3 allow the use of topographical indications in the minority language. Article 12 permits the States to take promotional measures in the fields of education and research to foster knowledge of the culture, history, language and religion of their national minorities and of the majority. Moreover, equal opportunities for access to education at all levels for persons belonging to minorities shall be promoted. Article 13 grants persons belonging to national minorities the right to set up and manage their own private educational and training establishments. This right is very limited by the additional remark that the exercise of this right shall not entail any financial obligation for the parties. Article 14 recognizes the right of every person belonging to a national minority to learn his minority language or even to have the opportunity to be instructed in the minority language. The content of article 14 is also watered down by its vague formulation. Article 15 wants to ensure the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them. This hints to the ideas of participation and integration. Article 16 wants to save minorities in their traditional settling areas from demographic measures that might pose a threat to the minority community. Finally, articles 17 and 18 want to facilitate cross-border contacts of minority groups and the international cooperation of States to improve the situation in that area. In order to control the implementation of the Framework Convention, articles 24 through 26 provide for a reporting system, one of the weakest monitoring possibilities for international treaties.¹⁴⁷

Comparing the provisions of the Framework Convention with the draft additional protocol to the ECHR on the protection of minority rights,¹⁴⁸ two provisions catch the eye which have not been included in the Framework Convention. Assessing those provisions, however, is useful for finding the current common standard of substantive European minority law. In contrast with article 11 of the draft additional protocol to the ECHR the Framework Convention does not include the right for minorities to establish their own regional or autonomous administrative authorities or get a special status in those parts of the country, where they form the majority. The reason for the non-inclusion of this provision in the Framework Convention is presumably the aforementioned fear of some Members of the Council of Europe of the spiral cultural autonomy - self-government - secession. Furthermore, the right to file an individual complaint, if a person belonging to a minority feels violated in his rights, which was codified in article 9 of the draft additional protocol to the ECHR, is also not included in the Framework Convention.¹⁴⁹

¹⁴⁷ *Niewerth* (footnote 8), pp. 205; *Weckerling*, Der Durchführungsmechanismus des Rahmenabkommens des Europarates zum Schutz nationaler Minderheiten, in: EuGRZ 1997, pp. 605.

¹⁴⁸ Recommendation No. 1201 (1993) concerning an additional protocol to the ECHR on minority rights reprinted in: EuGRZ 1993, pp. 151 or BT.-Drucks. 12/4572.

¹⁴⁹ Cf. article 9 of the draft additional protocol to the ECHR.

The Framework Convention of the Council of Europe for the Protection of National Minorities entered into force on February 1, 1998. Because practical experience is still scarce a compulsory conclusion is difficult to draw. The reporter of the Parliamentary Assembly of the Council of Europe summed up the criticism of the Framework Convention's content by saying in the framework of the putting up for signature ceremony:¹⁵⁰

“Unfortunately the wording of the Convention is quite vague. It lays down a number of not very precisely defined objectives and principles, the keeping of which is an obligation of the States, but which are not enforceable by individuals. Its implementation mechanism is ineffective and there is indeed a danger that monitoring the implementation of the Convention is fully within the discretion of the States.”

Nevertheless it must be seen as a great political success that already 26 out of the 41 Members of the Council of Europe, among them some “big”, i.e. politically powerful ones, have ratified the Framework Convention.¹⁵¹ Unfortunately countries like Turkey, Belgium or Greece could not be convinced to join the Convention so far. France is at least considering an accession to the Framework Convention.¹⁵² Despite its shortcomings, the sometimes vague and restrictive formulation of the granted rights and the lack of an effective mechanism to control its implementation, the Framework Convention could have a chance of developing into a moral authority in the field of minority protection because of the accession of many and among those some very important States. Together with the European Charter on Regional or Minority Languages the Framework Convention is the basis for the creation of a genuine European law of minority protection.¹⁵³ In a way the rights laid down in the Framework Convention can be seen as the basic arsenal of European substantial minority law.

¹⁵⁰ Cf. *Klebes* (footnote 141), p. 262, 267.

¹⁵¹ The Framework Convention has already been ratified by Armenia, Austria, Cyprus, the Czech Republic, Denmark, Estonia, Finland, Germany, Hungary, Italy, Liechtenstein, Malta, Moldavia, Norway, Romania, Russia, San Marino, Slovakia, Slovenia, Spain, Switzerland, Macedonia, the Ukraine, Great Britain, Bulgaria and Ireland; cf. *Hausmann* (footnote 141), in: *Das Parlament* of August 20, 1999, p. 2.

¹⁵² The Framework Convention has already been ratified by Armenia, Austria, Cyprus, the Czech Republic, Denmark, Estonia, Finland, Germany, Hungary, Italy, Liechtenstein, Malta, Moldavia, Norway, Romania, Russia, San Marino, Slovakia, Slovenia, Spain, Switzerland, Macedonia, the Ukraine, Great Britain, Bulgaria and Ireland; cf. *Hausmann* (footnote 141), in: *Das Parlament* of August 20, 1999, p. 2.

¹⁵³ Cf. *Klebes* (footnote 141), p. 262, 268 and *Hausmann* (footnote 141), in: *Das Parlament* of August 20, 1999, p. 2 and *Scherer-Leydecker* (footnote 8), p. 167.

V. Minority protection by the European Union

The law of minority protection can still not be found in the core provisions of substantive EC law as it is laid down in the treaties.¹⁵⁴ The few provisions that provide some indirect minority protection and the jurisprudence of the ECJ in that respect have already been analyzed *supra*.¹⁵⁵ Besides looking at some (unsuccessful) initiatives of the European Parliament to strengthen the protection of minority rights in community law, this part will briefly analyze the “foreign policy” of the European Union in the field of minority protection. As a real, genuine European foreign policy is not yet existing, the term “foreign policy” must be put in quotation marks. Instead of having means to formulate a compulsory foreign policy, the Union can take some action in that direction within the intergovernmental cooperation under the second pillar of the Union, the common foreign and security policy.¹⁵⁶ In that respect it is interesting to assess the conditions the new middle and eastern European candidates for membership in the EU must comply with in the field of minority protection, and the position of the European Union with regard to minority protection during the conflict in former Yugoslavia.

1. (Unsuccessful) initiatives of the European Parliament

The European Parliament launched several initiatives to provide the minorities in the European Community with compulsory protection. None of these initiatives, however, developed into more than a draft. On July 31, 1984 42 members of the European Parliament introduced a motion for resolution which was mainly based on a report¹⁵⁷ on the rights of ethnic groups and minorities by the Bavarian delegate *Alfons Goppel*. Subsequently, this motion became the basis for further action of the European Parliament in that direction. In February 1992 the delegate *Franz Ludwig Graf Stauffenberg* presented a draft motion¹⁵⁸ by the EPP fraction in the EP which invited the governments of the Member States to determine the rights of ethnic groups and persons belonging to them, to secure them by laying them down in a binding Charter and to permanently protect them that way. The draft Charter defines the term “ethnic group” as the totality of all those citizens of a Member State of the European Community, which live in that territory traditionally and since generations, possess common ethnic, religious and/or linguistic characteristics, which distinguish them from other parts of the population, which possess a typical cultural identity and which form a numerical minority against the rest of the population of that State. Persons belonging to one of those ethnic groups shall have the right of recognition of their existence and their identity. Compulsory resettlement and expulsion shall be prohibited under the right to the native land. Persons belonging to an ethnic group shall have the right to establish their own political parties and to administrative self-government on a regional or municipal level within the common State order. They shall have the right of protection and promotion of the cultural life of the ethnic group and to preservation of their cultural heritage. The States are obliged to promote the production and dissemination of press, audio and video productions of the ethnic groups and to use bilingual topographic indications. Moreover, the States have to provide for ways so that persons belonging to ethnic groups can enforce their rights in the courts. However, it must also be noted that the legislative bodies of the

¹⁵⁴ *Brems* (footnote 45), p. 62.

¹⁵⁵ Vgl. *Blumenwitz* (footnote 14), p. 25, 34; *Europäischen Akademie Bozen*, Paket für Europa, Arbeitsheft der Akademie No. 10 (1998).

¹⁵⁶ *Streinz* (footnote 8), p. 11, 13.

¹⁵⁷ Reprinted in: *Europa Ethnica* 1984, pp. 233.

¹⁵⁸ On the content cf. *Kimminich* (footnote 54), pp. 321, 324; *Goppel*, Die Region: Hort für Minderheiten – Plädoyer für ein europäisches Volksgruppen- und Minderheitenrecht, in: *Das Parlament* of May 1, 1992, p. 16.

European Communities are probably lacking the competence to regulate minority issues, as even the general authorization of article 308 EC Treaty will not provide the power to legislate issues in that area. Therefore, a Charter on the Rights of Ethnic Groups would have to be designed as a special international treaty or an annex to the Treaties explicitly amending the primary law of the European Communities.¹⁵⁹ After MEP *Graf Stauffenberg* had been removed from the committee for law and civil rights, MEP *Alber* (who now is Advocate General with the ECJ) had been charged with pushing the draft Charter on the Rights of Ethnic Groups ahead. On May 14, 1993 Mr. *Alber* again presented an update of the draft Charter, which unfortunately also failed.¹⁶⁰

2. The “Copenhagen criteria“ for the accession candidates of 1993

Since the changes in middle and eastern Europe the European Union has encouraged these States to introduce human and minority rights. The desire of those States to join the European Union was seen as the strongest incentive to introduce such changes. In June of 1993 the heads of States and Governments decided at the Copenhagen summit, that the European Union generally welcomes the accession of the middle and eastern European candidates.¹⁶¹ At the same time criteria for the accession were elaborated that entered the EU lingo as the “Copenhagen criteria”.¹⁶² The decisive passage of the final conclusions of the Council summit of Copenhagen reads like this:¹⁶³

„membership requires that the candidate country:
 - *has achieved stability of institutions guaranteeing democracy, the rule of law, human rights, and respect for and protection of minorities,*
 - *the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union, and*
 - *(has) the ability to take on the obligations of membership, including adherence to the aims of political, economic and monetary union.“*

Even if grave doubt existed whether the Union would be serious about the political claims against the accession candidates, these doubts were dispelled by the Commission when it published its “agenda 2000” in July 1997. Of course the EU analyzed primarily economical data within the framework of the assessment of the candidates’ progress with regard to an accession. Nevertheless also political criteria were broadly assessed and the totally unsatisfactory situation with regard to minority rights in Slovakia lead to the loss of this State’s position among the group 1 accession candidates.¹⁶⁴

¹⁵⁹ *Blumenwitz* (footnote 47), p. 60.

¹⁶⁰ *Scherer-Leydecker* (footnote 8), pp. 170; *Streinz* (footnote 8), p. 11, 14.

¹⁶¹ States in group 1 are: Poland, the Czech Republic, Hungary, Slovenia, Estonia, and Cyprus. Other candidates are: Lithuania, Bulgaria, Latvia, Romania, the Slovak Republic and Malta. Turkey is associated since 1962.

¹⁶² Cf. *Blumenwitz* (footnote 14), pp. 25, 28; *Freudenberg*, *Das diktierte Wohlverhalten für die Neuen im EU-Club*, in: *Das Parlament* of August 20, 1999, p. 5.

¹⁶³ *European Commission*, COM(97) 2000 Vol. 1, *Agenda 2000*, 1. For a stronger and wider Union, S. 41.

¹⁶⁴ *Freudenberg* (footnote 165), in: *Das Parlament* of August 20, 1999, p. 5.

Applying the “Copenhagen criteria” the Commission made it very clear that it would, in their assessment, not only consider the constitution and the statutes of a candidate but also the political practice, which would also have to be in line with western European standards.¹⁶⁵ With regard to minority rights the Agenda 2000 states:¹⁶⁶

„Respect for minorities

Many of the applicant countries have minority populations, whose satisfactory integration into society is a condition for democratic stability. Minorities account for 44% of the population in Latvia (where 34% are Russian), 38% in Estonia (30% Russian), 20% in Lithuania (9% Russian, 7% Polish), 18% in Slovakia (11% Hungarian, 5% Roma), 14% in Bulgaria (9% Turks, 5% Roma) and 13% in Romania (8% Hungarian, 4% Roma).

A number of texts governing the protection of national minorities have been adopted by the Council of Europe, in particular the Framework Convention for the Protection of National Minorities and recommendation 1201 adopted by the Parliamentary Assembly of the Council of Europe in 1993. The latter, though not binding, recommends that collective rights be recognized, while the Framework Convention safeguards the individual rights of persons belonging to minority groups. (...)

Except for the situation of the Roma minority in a number of applicants, which gives cause for concern, the integration of minorities in their societies is, in general, satisfactory.

Minority problems, if unresolved, could affect democratic stability or lead to disputes with neighboring countries. It is therefore in the interest of the Union and of the applicant countries that satisfactory progress in integrating minority populations be achieved before the accession process is completed, using all opportunities offered in this context.

Conclusion

Even though progress has still to be made in a number of applicant countries as regards actually practicing democracy and protecting minorities, only one applicant State - Slovakia - does not satisfy the political conditions laid down by the European Council in Copenhagen.“

As regards the middle and eastern European States it is thus the Commission, who determines the quite cryptic Copenhagen criterion of the “*stability of institutions guaranteeing (...) respect for and protection of minorities*”. It is noteworthy, though, that in doing so, the Commission uses two references to determine the standard of minority protection it demands on the side of the accession candidates: on the one hand it uses the Framework Convention of the Council of Europe for the Protection of National Minorities¹⁶⁷ and on the other hand it also consults recommendation no. 1201

¹⁶⁵ *Freudenberg* (footnote 165), in: Das Parlament of August 20, 1999, p. 5.

¹⁶⁶ *European Commission*, COM(97) 2000 Vol. 1, Agenda 2000, 1. For a stronger and wider Union, S. 44 f.

¹⁶⁷ The text is reprinted in: BGBl. 1997 II pp. 1408.

of the Parliamentary Assembly of the Council of Europe of February 1, 1993 concerning an additional protocol to the European Convention on Human Rights on the rights of national minorities.¹⁶⁸ The first document, though in force has not been ratified by States like Belgium, France and Greece, the latter document is not even in force but is still being negotiated.¹⁶⁹

The Commission's approach of demanding from the accession candidates not only a "smallest common denominator" with regard to the standards of minority protection must be appreciated. This approach is obviously inspired by the jurisprudence of the ECJ in the field of its fundamental rights jurisdiction, which also sets the standards for fundamental rights not to the level of a "smallest common denominator".¹⁷⁰ In sum, the standard of minority rights as it is laid down in the Framework Convention and which is almost identical with the standard of rights as it is enshrined in the draft additional protocol to the European Charter on Human Rights concerning the rights of national minorities¹⁷¹ seems to be the current standard of the body of European minority law according to the interpretation of the "Copenhagen criteria" by the Commission.

3. The position of the European Union in the conflict in Yugoslavia

Even before the "Copenhagen criteria" were formulated, the European Union had insisted on the obedience to minority rights when it set up the criteria for the diplomatic recognition of the new States that emerged after the disintegration of Yugoslavia.¹⁷² After an increasing number of States declared themselves independent,¹⁷³ the Council determined the criteria for the recognition under international law of the emerging States by the Member States of the European Community on December 16, 1991.¹⁷⁴ On the basis of a common position¹⁷⁵ the EC demanded for the recognition of the new States under international law the "*recognition of the provisions of the UN-Charter and the obligations of the final act of Helsinki and the Charter of Paris, especially regarding the rule of law, democracy and human rights*", "*the guarantee of rights of ethnic and national groups and minorities in accordance with the obligations within the framework of the CSCE*" and the "*recognition of the inviolability of all borders, which can only be changed peacefully and conjointly.*"¹⁷⁶ The recognition of Slovenia followed suit without further conditions. For the recognition of Croatia the EU demanded further guarantees regarding the protection of the Serb minority in the Krajina.¹⁷⁷

¹⁶⁸ Recommendation No. 1201 (1993) concerning an additional protocol to the ECHR on minority rights reprinted in: EuGRZ 1993, pp. 151 or BT.-Drucks. 12/4572.

¹⁶⁹ Vgl. Klebes (footnote 141), p. 262, 268, and Scherer-Leydecker (footnote 8), p. 158.

¹⁷⁰ Vgl. Streinz (footnote 12), pp. 109.

¹⁷¹ These two instruments are compared in: EuGRZ 1995, pp. 279.

¹⁷² Vgl. hierzu: Blumenwitz (footnote 14), pp. 25; Bothe/Hailbronner/Klein/Kunig/Schröder/Graf Vitzthum, Völkerrecht (Berlin New York 1997), pp. 228; Streinz (footnote 8), p. 11, 12.

¹⁷³ On October 10, 1991 Slovenia and Croatia declared themselves independent from Yugoslavia; cf. EA 1991, D 528.

¹⁷⁴ EA 1992, D 120.

¹⁷⁵ Now codified in article 12 EU Treaty.

¹⁷⁶ Cf. EA 1992, D 120.

¹⁷⁷ Bothe/Hailbronner/Klein/Kunig/Schröder/Graf Vitzthum (footnote 175), pp. 228.

Moreover, the EC demanded from the recognition candidates the obedience to the whole substantive minority law from the beginning of the CSCE in 1975 until the adoption of the “Charter of Paris for a new Europe”.¹⁷⁸ As we have seen¹⁷⁹ this is basically the complete substantive body of minority law, which could be reached within the framework of the CSCE.

Basically the obligations until the Charter of Paris do not exceed the standard of rights as it had been codified in the Framework Convention and the draft additional protocol to the ECHR. Had the EC in 1991 already been able to refer to the minority protecting documents of the Council of Europe, it would doubtlessly have done so. In sum we can thus note, that the demands on the new accession candidates rather reflect the opinion with regard to the current standard of European minority law, than do those demands that the EC formulated in 1991 for the diplomatic recognition of the emerging States after the Yugoslavia crisis. Thus, the State practice during the conflict in Yugoslavia backs the result we have found so far: the current standard of the law on the protection of minorities is quite well reflected by the set of rights as it is laid down in the Framework Convention and in the draft additional protocol to the ECHR concerning the rights of national minorities.

VI. Conclusions and draft clauses

After an assessment of the current situation under EC law for the creation of a Charter on Fundamental Rights of the European Union and an analysis of the current standard of European and international law on the protection of minorities, we are now ready to dare formulating a draft minority clause that could become part of a Fundamental Rights Charter. In doing this there are of course also some political and tactical considerations that must be taken into account.

1. Political obstacles to the inclusion of a minority protection clause in the Charter on Fundamental Rights of the European Union

Without claiming to provide a general analysis of the chances and obstacles for the inclusion of a minority protection clause in a Charter on Fundamental Rights of the European Union, some comments on the difficulties of drafting such a minority protection clause, that could be encountered by a drafting committee, shall be identified at this point. Basically, fundamental objections against introducing a minority protection provision can be expected from three countries: Belgium, Greece and France. These three States have until now neither ratified the European Charter on Regional or Minority languages nor the Framework Convention of the Council of Europe for the Protection of the Rights of National Minorities.

¹⁷⁸ *Blumenwitz* (footnote 14), pp. 25.

¹⁷⁹ Point III.1.

Few States are structured as complicated as Belgium.¹⁸⁰ The federal system of the Belgian State comprises three regions: the Flamish, the Wallonian and the Brussels region; and three communities: the Flamish (59% of the population), the Wallonian (40% of the population) and the German (1% of the population). They all have their own parliaments, governments and competence. This complicated structure makes it very difficult for Belgium to implement minority rights, which were drafted to fit States with much less complicated minority structures.

Greece¹⁸¹ recognizes within its territory only the “Muslim” (i.e. Turkish) minority in western Thracia. The Treaty of Lausanne of July 24, 1923 obliges Greece to recognize this minority. Many linguistic and religious minorities live within the Greek territory, which cannot be numbered specifically as Greece does not ascertain data on this issue. Apart from the so-called “Muslim” minority Greece denies to have further minorities and constantly takes a fundamentally hostile position when international treaties supposed to create minority rights are being negotiated.

France¹⁸² denies the existence of any minority within its territory. The reason for this is a philosophical one. The official position is that there are no ethnic or linguistic minorities in France, but only French citizens with linguistic peculiarities. Moreover, it conflicts with the French understanding of the universality of human rights to grant special rights to a specific group within its population. This position is usually based on article 2 paragraphs 1 and 2 of the Constitution of the Fifth Republic:

“(1) France is a indivisible, laicistic, democratic and social republic. It ensures the equality of all citizens before the law without regard of differences of origin, race or religion. It respects any faith.
(2) The language of the republic is French.”

France always argues this opinion emphatically even on the international level. Pointing to the cited constitutional provision France has even entered a reservation to article 27 CCPR explaining that article 27 CCPR would not be applicable to France because there were no ethnic or religious minorities in France.¹⁸³ How deeply convinced of this opinion even the highest State bodies are can be told from several decisions of the Constitutional Council (*conseil constitutionnel*). The *conseil constitutionnel* declared the Statute of Corsica unconstitutional because it used the term “Corsican people („peuple corse“).¹⁸⁴ The *conseil constitutionnel* also declared the ratification of the European Charter on Regional or Minority Rights by France unconstitutional.¹⁸⁵ In view of this

¹⁸⁰ Cf. Hofmann (footnote 8), pp. 68; Mathiak, Die rechtliche Stellung der Minderheiten in Belgien, in: Frowein/Hofmann/Oeter, Das Minderheitenrecht europäischer Staaten (Berlin u.a. 1993), Teil 1, pp. 1; Newson, Europa und das Königshaus als Kitt für die zerstrittenen Volksgruppen, in: Das Parlament of August 20, 1999, p. 8.

¹⁸¹ Cf. Hofmann (footnote 8), pp. 95; Filos, Die rechtliche Stellung der Minderheiten in Griechenland, in: Frowein/Hofmann/Oeter, Das Minderheitenrecht europäischer Staaten (Berlin u.a. 1994), Teil 2, pp. 61.

¹⁸² Vgl. Hofmann (footnote 8), pp. 91; Polakiewicz, Die rechtliche Stellung der Minderheiten in Frankreich, in: Frowein/Hofmann/Oeter, Das Minderheitenrecht europäischer Staaten (Berlin u.a. 1993), Teil 1, pp. 126; Wiegel, „Ein Grammatikbuch ist besser als eine Anleitung zur Sprengkörperherstellung !“, in: Das Parlament of August 20, 1999, p. 8; Hausmann (footnote 141), in: Das Parlament of August 20, 1999, p. 2 und Rudolf (footnote 87), p. 185, 192.

¹⁸³ Streinz (footnote 8), p. 11, 26.

¹⁸⁴ Hofmann (footnote 8), pp. 92; Streinz (footnote 8), p. 11, 26.

¹⁸⁵ Cf. Wiegel, Die Sprache der Republik, in: FAZ of June 29, 1999; Le Monde of June 25, 1999; FAZ of June 19, 1999.

background it becomes clear that France also takes a usually fundamentally hostile position towards the codification of minority rights.¹⁸⁶

The other Member States of the European Union do not seem to have specific tendencies to oppose the creation of a minority protection clause in a Charter on Fundamental Rights of the European Union.

2. Summary of the standard of the public international law and the EC law of minority protection

In sum there are four European and international legal documents that should be consulted within the framework of drafting a minority protection provision in a Charter on Fundamental Rights of the European Union: article 27 of the International Covenant on Civil and Political Rights, the Declaration of the UN General Assembly on the Rights of Persons belonging to National, Ethnic, Religious or Linguistic Minorities of 1992, the European Charter on Regional or Minority Languages of 1992 and the Framework Convention of the Council of Europe for the Protection of National Minorities of 1995.

Because of its universal character the substantive content of article 27 of the CCPR is not very compulsory. Basically persons belonging to minorities shall have a privileged right against the majority of the population to commonly cultivate their specific culture, language and religion. This provision has therefore mainly the function of prohibiting any discrimination and keeping assimilative pressure from the minority groups.

The Declaration on the rights of minorities of the UN General Assembly of 1992 is wider and more detailed in setting the standards for the legal protection of minority rights. Articles 2 and 3 provide the standard set by article 27 CCPR more detailed and add the right for persons belonging to minorities to found their own organizations. Article 4 contains tiered State obligations. First, States are permitted to take affirmative action measures in order to implement the objectives laid down in articles 2 and 3. Moreover, persons belonging to minorities shall be given the opportunity to learn their mother tongue or even to be instructed in that language. Furthermore, through increasing the mutual knowledge of the language and culture of the minority population on the one hand and the majority population on the other, an approach of the different parts of the population and an improved integration of minorities shall be achieved. This objective is also being pursued by article 5. Finally, articles 6 and 7 stress the conflict preventive character of the law of minority protection by encouraging cross-border cooperation in that area. All of these rights are sometimes formulated very vaguely and are mostly under a *ordre-public* reservation. Under no circumstances these rights can justify violations of the sovereign equality of States and the territorial and political integrity of the States.

¹⁸⁶ Rudolf (footnote 87), pp. 185, 192.

The CSCE/OSCE system of protecting minorities which came to a halt in 1991 with the Charter of Paris does not provide further substantive rights compared with the aforementioned documents. Moreover, the merely politically but not legally binding character of the obligations in the CSCE documents inflates their importance even further.

The consultation of the European Charter on Regional or Minority Languages of 1992 also entails major difficulties. The concept of the Charter giving the State parties ample possibilities to pick the rights they would like to grant their minorities, makes it almost impossible to filter out a common standard of protection which could be used for drafting a minority protection provision in a Charter on Fundamental Rights of the European Union. Article 7, describing the core of protection that any regional or minority language must be provided with, merely encourages the States in a hortatory way to generally promote the use of regional or minority languages and clarifies that taking affirmative action measures must not be considered to be an act of discrimination. Basically, under article 2 paragraph 2 the State parties are only obliged to pick at least 3 paragraphs or subparagraphs of articles 8 (education) and 12 (cultural activities and institutions), which shows at least some focus. In particular the Charter stresses only the significance to learn and cultivate regional or minority languages in order to preserve them.

The main document which should be consulted to help drafting a minority protection provision for a Charter on Fundamental Rights of the European Union is the Framework Convention of the Council of Europe for the Protection of National Minorities of 1995. The Framework Convention's content is largely identical with the content of the 1993 draft additional protocol to the ECHR concerning the protection of minorities. However, the Framework Convention should be primarily consulted as it is actually in force in contrast to the draft protocol. The substantive content of the Framework Convention is based on the subjective "principle of confession" to which some objective criteria are added. Articles 4 and 5 codify the right of persons belonging to minorities to equality before the law and equal protection of the law, the prohibition of discrimination and the prohibition to be assimilated against their will. Affirmative action measures shall not be considered to be an act of discrimination against the majority population. Articles 7 and 8 grant the freedom of peaceful assembly, the freedom to found associations and the religious freedom. Article 9 regulates the use of regional or minority languages with regard to free speech and the freedom of the press. Article 10 sets up a tiered system for the use of regional or minority languages in other areas: in private and in public life persons belonging to minorities are of course free to speak their language, a little more limited is the use of regional or minority languages before administrative and judicial authorities. Article 11 permits the use of one's name and the use of topographic indications in the minority language. Articles 12 through 14 grant rights in the educational domain: persons belonging to minorities shall be able to get information about their own culture and traditions, they shall have the right to establish and manage educational institutions and they shall be given the opportunity to learn their mother tongue or even to be instructed in that language. Article 16 intends to preserve the minority communities in their traditional settling areas and articles 17 and 18 envisage the promotion of cross-border cooperation in the field of minority protection.

The “Copenhagen criteria”, which the middle and eastern European accession candidates have to meet as current legal standard of minority protection, also ensue from the set of rights as it is codified in the Framework Convention.

In the light of these findings we can conclude that the standard of rights as it is codified in the Framework Convention of the Council of Europe for the Protection of National Minorities of 1995 should be used as a reference when drafting a minority protection provision for a Charter on Fundamental Rights of the European Union.

3. The problem of defining the term “minority“ in the light of the discussion about emergence of “new minorities”

Looking at the emergence of the current standard of the European and international law of minority protection it is astonishing that it had not been possible to agree on a binding and universally accepted definition of the term “minority”. This problem has even been aggravated by a recent debate on the protection of the so-called “new minorities”. An academic opinion that recently emerged¹⁸⁷ wants to extend the set of legal standards that has been developed in order to protect minorities to immigrant groups.¹⁸⁸ Those immigrant groups are called “new minorities”, what would consequently entail the inclusion of these groups in the definition of the term “minority”.

a) The dispute

Since the end of World War I., the high time of the international law of minority protection, both academics and diplomats tried to agree on a definition of the term “minority” that would be universally acceptable.¹⁸⁹ Despite the investment of great efforts this undertaking failed almost completely. More than 80 years have passed since the end of World War I. and it seems doubtful if it will ever be possible to find a minority definition for the area of international law that could gain world-wide acceptance. This is basically the historical background and the reason why the substantive instruments of minority protection under international law do not contain a definition of the term “minority”. Many academic writings in the field of international law¹⁹⁰ follow the definition proposed by the special rapporteur of the Sub-commission on the Prevention of Discrimination and the Protection of Minorities of the UN Human Rights Commission, *Francesco Capotorti*,¹⁹¹ which at least offers some guidance. *Capotorti*’s definition refers to article 27 of the

¹⁸⁷ *Tomuschat*, Protection of Minorities under Article 27 of the International Covenant on Civil and Political Rights, in: FS für Mosler (Berlin u.a. 1983), pp. 949.

¹⁸⁸ This opinion is supported by: *Wolfrum*, The emergence of „new minorities“ as a result of migration, in: *Brölmann/Lefeber/Zieck*, Peoples and minorities in international law (Dordrecht u.a. 1993), pp. 153; *Nowak* (footnote 55), Art. 27, note 16; *Niewerth* (footnote 8), pp. 44, und *Scherer-Leydecker* (footnote 8), pp. 270; *Brusis/Janning*, „Verhinderte Nationen“. Über den Umgang mit ethnischen Minderheiten, in: Internationale Politik, Heft 9/1999, pp. 1 and *Schulze-Fielitz*, Verfassungsrecht und neue Minderheiten, in: *Fleiner-Gerster*, Die multikulturelle und multi-ethnische Gesellschaft (Fribourg 1995), pp. 133.

¹⁸⁹ Cf.: *Blumenwitz* (footnote 47), pp. 37; *Steiner/Alston*, International Human Rights in Context (Oxford u.a. 1996), pp. 86; *Hofmann* (footnote 54), pp. 5 or *Erlar*, Das Recht der nationalen Minderheiten (Münster 1931).

¹⁹⁰ Cf. *Niewerth* (footnote 8), pp. 30 and *Scherer-Leydecker* (footnote 8), pp. 56.

¹⁹¹ *Capotorti*, Study on the rights of persons belonging to ethnic, religious and linguistic

CCPR, analyzed *supra*.¹⁹² A minority in the sense of article 27 CCPR shall thus be defined as a:

“(...) group numerically inferior to the rest of the population of a State, in a nondominant position, whose members - being nationals of the State - possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language”¹⁹³

This definition¹⁹⁴ combines subjective and objective elements. Four of those elements are relatively clear and undisputed. The first criterion is the numerical inferiority. How many individuals are exactly necessary to form a minority remains unclear.¹⁹⁵ For our considerations this is irrelevant, though. The second criterion is the inferior position of the minority against the majority.¹⁹⁶ Thirdly, the minority group must possess specific ethnic, religious or linguistic characteristics. These can be objective (language) or subjective (religion) criteria. The fourth criterion is the existence of a certain sense of solidarity within the minority group. *Capotorti* claimed this criterion as the identity of a minority would surely be doomed to disappear without the members’ will to preserve their culture and traditions.¹⁹⁷

The mentioned four criteria are rather undisputed in the pertinent literature of international law. However, there are two criteria that are highly disputed. The dispute revolves around the question whether immigrant groups or aliens must generally and legally be considered as minorities, especially in the sense of article 27 of the CCPR. On the one hand, this touches on the question, whether the element of a “proven historical consistency” is an implicit part of the minority definition. In that context, *Capotorti’s* definition simply mentions a sense of solidarity, directed towards preserving particular characteristics. In close connection to that issue is the other contested question, whether a minority must traditionally settle in a certain territory or whether it must settle within a closed area.

minorities, UN Doc. E/CN.4/Sub.2/384/Rev. 1.

¹⁹² Point II.1.

¹⁹³ *Capotorti*, Study on the rights of persons belonging to ethnic, religious and linguistic minorities, UN Doc. E/CN.4/Sub.2/384/Rev. 1 para. 568.

¹⁹⁴ An extensive analysis of the definition has been conducted by *Niewerth* (footnote 8), pp. 32 and *Scherer-Leydecker* (footnote 8), pp. 242.

¹⁹⁵ *Niewerth* proposes to decide this on a case-by-case basis (footnote 8), p. 34; for *Scherer-Leydecker* two individuals suffice (footnote 8), p. 266.

¹⁹⁶ The textbook example for a dominant minority is still the white population in South Africa: cf. *Ramaga*, Relativity of the minority concept, in: HRQ 1992, p. 104.

¹⁹⁷ This happened to the Polish people who stayed in Germany after World War II. as they were assimilated losing their minority characteristics. Cf. *Hahn*, Die rechtliche Stellung der Minderheiten in Deutschland, in: *Frowein/Hofmann/Oeter*, Das Minderheitenrecht europäischer Staaten (Berlin u.a. 1993), Teil 1, pp. 63, note 7; *Blumenwitz* (footnote 47), pp. 113.

A further point of dispute is the question, whether persons belonging to a minority must be citizens of the State from which they claim minority protection. Here, the issue is whether the scope of article 27 of the CCPR also covers immigrants and aliens. These two groups, which are excluded from the scope of article 27 of the CCPR according to the definition of Capotorti, are often referred to as “new minorities”.¹⁹⁸

According to *Wolfrum*¹⁹⁹ the rights granted by article 27 of the CCPR are integral part of the personal identity. In his opinion, article 27 CCPR codifies the minimal protection against forced integration and assimilation and therefore must also cover immigrant groups. *Niewerth*,²⁰⁰ founding his argumentation on the *travaux préparatoires* to article 27 CCPR, demands that immigrants must have lived at least for a certain period of time within the territory of a State before they can be eligible for minority protection. He sidesteps the question of how long this has to be exactly calling the issue a political one. This certain period of time is not demanded by the UN Human Rights Committee,²⁰¹ which includes immigrants in the scope of article 27 CCPR as a matter of self-evidence. The UN Human Rights Committee even includes aliens in the scope of article 27 CCPR. *Tomuschat*²⁰², *Wolfrum*²⁰³ and others²⁰⁴ share this view. The main argument here is that otherwise a State could arbitrarily deny certain groups their minority status simply by withholding citizenship from those groups.²⁰⁵ The UN Human Rights Committee representing an extensive minority definition even goes one step beyond the opinion of the aforementioned scholars.²⁰⁶ For the Human Rights Committee²⁰⁷ persons belonging to minorities do not even have to be resident aliens. Not only migrant workers but also mere visitors or tourists in a country shall have the rights of article 27 of the CCPR.²⁰⁸

¹⁹⁸ Vgl. *Tomuschat* (footnote 190), pp. 949; *Wolfrum* (footnote 191), pp. 153; *Nowak* (footnote 55), Art. 27, and *Niewerth* (footnote 8), pp. 41; for a specific view from the angle of German law cf. *Schulze-Fielitz* (footnote 191), pp. 133 and *Murawiek*, Minderheitenschutz – für welche Minderheiten?, in: *Blumenwitz/Murawiek*, Aktuelle rechtliche und praktische Fragen des Volksgruppen- und Minderheitenschutzrechts (Bonn 1994), pp. 39, 52.

¹⁹⁹ *Wolfrum* (footnote 191), pp. 153, 163.

²⁰⁰ *Niewerth* (footnote 8), p. 44.

²⁰¹ Cf. UN Doc. CCPR/C/79/Add. 73, S. 3, Ziff. 13: „*The Committee is of the view that article 27 applies to all persons belonging to minorities whether linguistic, religious, ethnic or otherwise including those who are not concentrated or settled in a particular area or a particular region or who are immigrants or who have been given asylum in Germany.*“

²⁰² *Tomuschat* (footnote 190), p. 949, 960.

²⁰³ *Wolfrum* (footnote 191), p. 153, 161.

²⁰⁴ *Nowak* (footnote 55), Art. 27, note 16; *Scherer-Leydecker* (footnote 8), pp. 270; *Niewerth* (footnote 8), pp. 44.

²⁰⁵ *Tomuschat* (footnote 190), p. 949, 961.

²⁰⁶ Cf. the draft general comment to article 27: UN Doc. CCPR/C/SR.590. Cf. also *Scherer-Leydecker* (footnote 8), pp. 100.

²⁰⁷ UN Doc. CCPR/C/21/Rev.1: General comment No. 23 (50) (art. 27) adopted by the Human Rights Committee under Art. 40, paragraph 4, of the International Covenant on Civil and Political Rights at its 1314th meeting on 6 April 1994.

²⁰⁸ „*Just as they need not be nationals of citizens, they need not be permanent residents. Thus, migrant workers or even visitors in a State party constituting such minorities are entitled not to be denied the exercise of those rights.*“ UN Doc. CCPR/C/21/Rev.1: General comment No. 23 (50) (art. 27) adopted by the Human Rights Committee under Art. 40, paragraph 4, of the International Covenant on Civil and Political Rights at its 1314th meeting on 6 April 1994.

A different view is represented by *Blumenwitz*²⁰⁹, *Hofmann*²¹⁰ and other scholars²¹¹, who base their argumentation on the fundamental differentiation that exists between citizens and aliens under international law. Citizens depend on the granting of minority protection while foreigners can claim the minimum standard of rights for aliens. According to this opinion aliens and immigrants do not have a minority status.

b) The background

The significance of the definition of the term “minority” can only be understood in the light of the underlying disputes in its context and their consequences. Logically the broader the minority definition is, the smaller the scope of minority rights must be. On the contrary, the narrower the minority definition is, the more intense a concept for the protection of minorities can be.²¹² If one agrees with the extremely broad minority definition of the UN Human Rights Committee, the set of rights for the protection of minorities cannot go way beyond the prohibition of discrimination. In view of this background it seems very plausible when the dominant opinion²¹³ denies that article 27 CCPR entails an obligation to actively promote²¹⁴ minorities.

The reasons that might have caused a reconsideration of the traditional understanding of the definition of the term “minority” are probably globalisation and modern migration movements. Globalisation has become a slogan with which the necessity to fundamentally change traditional principles in many areas seems to be justifiable. People are able and do cross national borders significantly easier than some 50 years ago to live and work in States whose citizenship they do not have, sometimes only for a short period of time, sometimes for good. Modern economy demands international mobility from the workforce in various fields. By introducing the citizenship of the Union²¹⁵ the European Union even created a new kind of citizenship.²¹⁶ All these facts lead to a change in the meaning of the concept of citizenship. To be sure, this does not mean that citizenship has become meaningless nowadays, it just means that the legal concept of citizenship experiences a shift of the center of gravity among its various implications. A modern law of minority protection cannot disregard this shift. Moreover, the migration movements at the beginning of the 21st century challenge both international law and the national legal systems in an unparalleled way.²¹⁷ Thus, a

²⁰⁹ *Blumenwitz* (footnote 47), p. 27.

²¹⁰ *Hofmann* (footnote 54), pp. 7.

²¹¹ *Modeen* (footnote 106), p. 108; *Sohn*, The right of minorities, in: *Henkin*, The International Bill of Rights - The Covenant on Civil and Political Rights (New York 1981), p. 271, 279; *Pircher*, Der vertragliche Schutz ethnischer, sprachlicher und religiöser Minderheiten im Völkerrecht (Bern 1979), p. 25.

²¹² *Niewerth* (footnote 8), p. 48; this argumentation is also used by *Murswiek* to reject an extension of the law of minority protection to the foreigners and naturalized immigrants living in Germany, cf. *Murswiek* (footnote 201), pp. 39, 52.

²¹³ Cf. *Hofmann* (footnote 54), pp. 9 and *Nowak* (footnote 55), Art. 27, note 46. A different view is supported by the UN Human Rights Committee: cf. the general comment to article 27 IPBPR, UN Doc. CCPR/C/21/Rev.1.

²¹⁴ Often referred to as „affirmative action policy“.

²¹⁵ Articles 17 through 22 of the EC Treaty with the Amsterdam amendments.

²¹⁶ Cf. *Zimmermann*, Europäisches Gemeinschaftsrecht und Staatsangehörigkeitsrecht der Mitgliedstaaten unter besonderer Berücksichtigung der Probleme mehrfacher Staatsangehörigkeit, in: *EuR* 1995, pp. 54.

²¹⁷ Cf. *Niessen*, Migrant workers, in: *Eide/Krause/Rosas*, Economic, Cultural and Social Rights (Dordrecht u.a.

modern law of minority protection cannot tackle these challenges by ignoring them.

Whether these new challenges in the field of minority protection can be dealt with by simply including the immigrants in the minority definition seems to be more than doubtful.

It cannot be denied that the traditional, the “classic” minorities are in a situation which differs enormously from the situation the immigrants, may they have the citizenship of their resident country or not, find themselves in.²¹⁸ Whereas with respect to the “classic” minorities preserving and protecting their specific cultural identity must be the primary goal, it is the full integration into society which should have priority with regard to immigrant groups. “Classic” minorities are normally integrated into society in quite a satisfactory way. Their worry is the permanent threat of losing their particular minority identity that results from a constant assimilative pressure from the majority culture. Immigrant groups worry primarily about acts of discrimination that occasionally pose obstacles to their entry in the working and social world of their resident country. For them learning or perfecting the language of the resident country and understanding the social behavior

1994), p. 323; *Wolfrum*, International law on migration reconsidered under the challenge of new population movements, in: GYIL 1995, pp. 191, *Wolfrum* (footnote 191), pp. 153; *Sieveling*, Migration und Rechtsstatus von Zuwanderern – bundesrepublikanische und europäische Aspekte, in: RuP 1992, pp. 135; *Alexy*, Minderheitenschutz und Grundgesetz – Zur Rechtsstellung von Zuwanderern, in: *Barwig/Brinkmann/Huber/Lörcher/Schumacher*, Vom Ausländer zum Bürger – FS für F. Franz und G. Müller (Baden-Baden 1994), pp. 181.

²¹⁸ Cf. *Oeter*, Überlegungen zum Minderheitenbegriff und zur Frage der „neuen Minderheiten“, in: *Matscher* (Hrsg.), Wiener Internationale Begegnung zu aktuellen Fragen nationaler Minderheiten (Kehl am Rhein 1997), pp. 229, 245. This is an important point often overlooked by many commentators.

and the functioning of the society of the majority population takes priority. Therefore, it is very clear that a protection concept that had initially been designed for minorities in the classical sense of the word simply does not suit the needs of those “new minorities”. In no way whatsoever does this mean that these “new minorities” are not worthy of being protected. It just cautions that a simple extension of the minority protection concept, a concept that had been tailored to suit the “classic” minorities, to the “new minorities” does not solve a single problem for those “new minorities”. Rather the contrary. The protection of “classic” and “new” minorities asks for differentiated approaches using different concepts.

c) Eide’s suggestion

The suggestion of UN special rapporteur *Asbjørn Eide*²¹⁹ might be a solution to the aforementioned dilemma. In contrast to the ignorant approach of the UN Human Rights Committee *Eide* sees the aforementioned dilemma and understands the underlying problems. He sees the solution to the problem in working out a protection concept for every minority group and particularly tailored to suit the individual needs of every group. The consequence would be a different protection standard for each different minority group.²²⁰ On the basis of a very broad general minority definition²²¹ including a guaranteed minimal protection standard, *Eide* wants to give the States the power to grant different sets of rights to different minority groups.

The disadvantage of *Eide’s* suggestion is that although a “framework definition” of the term “minority” would have been found, this only shifts the problem to a lower level, the different minority groups. Shifting the problem to a lower level might even aggravate the disputed connected to it. In place of a discussion about the minority definition we would provoke a discussion about the different protection standards for the different minority “classes”. One has to be very optimistic to expect better results from the latter discussion.

d) Comment

Nevertheless, it seems to me that *Asbjørn Eide’s* approach is the right one, at least considering his basic assumptions. The key to resolve the mentioned dilemma indeed seems to be the differentiation of the different minority categories.

Two observations from analyzing the standards of substantive European and international minority laws shall at this point be briefly recalled: on a political level, the suggestion to simply extend the standard of minority protection that has been reached so far to immigrant groups, seems to be totally unacceptable. To demand this seems senseless and completely futile. Suffice it to point to the explicit exclusion of the languages of immigrants from the scope of the European Charter on Regional or Minority Languages.²²² Secondly, looking at the various drafts on the law of minority protection worked out by different committees the minority definition proposed by *Capotorti* still

²¹⁹ *Eide*, Protection of Minorities – Possible ways and means of facilitating the peaceful and constructive solution of problems involving minorities, UN Doc. E/CN.4/Sub.2/1993/34.

²²⁰ *Eide* (footnote 222), para. 27 and 28.

²²¹ *Eide* (footnote 222), para. 29: „a minority is any group of persons resident within a sovereign State which constitutes less than half the population of the national society and whose members share common characteristics of an ethnic, religious or linguistic nature that distinguish them from the rest of the population.“

²²² Point IV.3.

seems to offer much guidance with regard to defining the term “minority” in its classical sense.

Therefore, should during the negotiations of a minority protection clause for a Charter on Fundamental Rights of the European Union the opportunity to codify a minority definition come up, there are two things that should be considered. First of all, a clear distinction between “classic” minorities and immigrant groups, which by the way should not even be referred to as “new minorities”, should be drawn. In other words: minority protection for (classic) minorities, integration aid for naturalized immigrants, law concerning aliens for foreigners. Secondly, the basis for a definition of minorities should be *Capotorti’s* definition. This definition, however, would have to be modified in at least one respect. Because the European Union is based on the principle of the prohibition of any discrimination on grounds of nationality, the citizenship requirement in *Capotorti’s* definition would have to be replaced with the criterion “citizenship of the Union” (articles 17 *et seq.* EC Treaty). In order to prevent migration movements within the Union caused by a new law on the protection of minorities, a new criterion which demands that minorities can only claim protection if they are “*long established settling in traditional areas*” could be introduced.²²³

The formulation of a minority definition could therefore look like this:

Article x

A minority in the sense of this charter is a group numerically inferior to the rest of the population of a State, in a nondominant position, whose members – being citizens of the Union traditionally settling in their well-defined and long-established territories – possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language.

Nevertheless, in view of the frustrating experiences of the past with regard to efforts of defining the term “minority” in international law, it seems rather improbable that a breakthrough in that respect will happen at this time. However, in the context of the codification of a Charter on Fundamental Rights of the European Union this inability will not be detrimental if only the ECJ will be given jurisdiction over the Charter to be drafted. The power of the ECJ to control the implementation of the Charter would have to be ensured at any price.²²⁴ This is another reason why the inclusion of the Charter in the Treaties would be a great advantage. In the framework of its jurisprudence the ECJ will, sooner or later, have to define the legal term “minority”. The ECJ will have to define this term looking at the substantive provisions on minority protection and if it finds there a clear distinction between “classic” minorities and immigrants, naturalized or not, it will have sufficient guidance on how to define the term in a satisfactory way.

²²³ The feature „*separate or distinct groups, well-defined and long established on the territory of a state*“ seemed to be acceptable at a very early stage when the additional protocol to the ECHR was drafted. Cf. supra point IV.1. Cf. also article 1 paragraph a) of the European Charter on Regional or Minority Languages: „*(...) traditionally used within a given territory of a State by nationals of that State (...)*.“ Cf. supra point IV.3. Cf. also article 1 paragraph a) of the draft additional protocol to the ECHR. supra point IV.4.

²²⁴ This is not self-evident as can be seen from article 46 EU Treaty.

4. Draft of a minority protection clause in the Charter on Fundamental Rights of the European Union

As already stated, the Framework Convention of the Council of Europe for the Protection of National Minorities of 1995 should be the guideline for the substantive content for a minority protection provision in a Charter on Fundamental Rights of the European Union. Of course this provision cannot be as detailed as the content of the Framework Convention, because the Charter to be drafted is thought to have some “constitutional character”. Thus, article 27 CCPR can serve as another guideline. Finally, for the reasons contemplated *supra*,²²⁵ a clear distinction between minorities and immigrant groups should in any event be included. Ideally, this could be done in two separate articles, one on the protection of “classic” minorities and one on the protection of immigrant groups.

The formulation could therefore look like this:

Article y

(1) Persons belonging to national or ethnic, religious or linguistic minorities have the right to equality before the law and equal protection of the law. Any discrimination based on belonging to a minority shall be prohibited. Every person belonging to a minority shall have the right freely to choose to be treated or not to be treated as such and no disadvantage of any kind shall result from this choice. Affirmative action policies intending to promote equality in fact between persons belonging to minorities and persons belonging to the majority in all areas of economical, social, political, and cultural life, shall not be considered to be an act of discrimination. Within the framework of their general integration policy, member States shall refrain from policies and practices aimed at assimilation of minorities against their will. This applies especially to measures of any kind in the traditional settling territories of those minorities.

(2) Persons belonging to such minorities shall have the freedom to peaceful assembly and shall have the right to found associations and organizations, including political parties.

(3) Persons belonging to such minorities shall have the right to enjoy their own culture and traditions, to profess and practice their own religion or to use their own language across frontiers and also in community with other members of their group. This shall include the right to use their names in the minority language and the right to official recognition of them.

(4) In their traditional settling areas persons belonging to such minorities shall have the right to use their minority languages in relation with administrative and judicial authorities, which shall include the right to receive answers from these authorities in their minority languages. In case of an arrest a person belonging to a minority shall have the right to be informed in a language which he understands of the nature and cause of any accusation against him, and to defend himself in this language, if necessary with the free assistance of an interpreter.

²²⁵ Cf. *supra* point VI.3.b).

(5) Persons belonging to such minorities shall have the right to learn their minority language. In their traditional settling areas they shall have the right to be instructed in their languages. These rights shall be implemented by the member States within the frameworks of their educational systems or by permitting the right to set up and manage private educational establishments. Member States contribute financially to the latter mentioned establishments an proportional amount that equals their proportional financial engagement in public educational establishments. Moreover, the member States shall take measures in fields of education and research to foster knowledge of the culture, history, language and religion of such minorities and of the majority.

Article y

The member States respect the identity and the interests of immigrant groups. Persons belonging to such groups have the right to equality before the law and equal protection of the law. Any discrimination based on belonging to such a group shall be prohibited.

This draft sums up the European standard of the law of minority protection in “clear” formulations. In a way this draft lays down the currently maximum achievable legal protection for the European minorities, without suggesting unrealistic rights. In negotiating a minority protection provision the standard of rights should be firmly defended. Compromises may perhaps be made with regard to the way these rights are formulated. The jurisdiction of the ECJ over the Charter on Fundamental Rights of the European Union, however, has to be established at any cost.

Editors' note to CHARTE 4302/00,
**Contribution avec amendments sur les propositions
du Présidium soumises par Lobby Européen
des Femmes (LEF) (datée le 09/05/00):**

The Council has no record of the English version of this document.

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE**fundamental.rights@consilium.eu.int**

Bruxelles, le 25 mai 2000**CHARTE 4302/00****CONTRIB 174****NOTE DE TRANSMISSION**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne

Veillez trouver ci-après une contribution avec amendements sur les propositions du Présidium relatives aux droits civils et politiques, droits sociaux et droits des citoyens, soumises par Lobby Européen des Femmes (LEF). ^{1 2}

¹ Ce texte existe en langues française et anglaise.

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LOBBY EUROPEEN DES FEMMES EUROPEAN WOMEN'S LOBBY

09/05/00

CONTRIBUTION DU LEF A LA REDACTION D'UNE CHARTE EUROPEENNE DES DROITS FONDAMENTAUX

Suite à ses contributions précédentes (CONTRIB 27 et 120), le LEF tient à féliciter la Convention du travail jusqu'à présent accomplit dans l'élaboration d'une Charte des Droits Fondamentaux ainsi que de l'inclusion d'un paragraphe consacré à la promotion de l'égalité entre les femmes et les hommes.

Toutefois, le LEF manifeste son accord d'ensemble envers les critiques et les amendements avancés par l'Association des Femmes d'Europe méridionale (AFEM, CONTRIB 42 et 105) et portant sur le projet de Charte déposé par la Convention : nous souhaitons rappeler que la discrimination fondée sur le sexe ne devrait pas figurer dans une clause générale de non-discrimination. En effet, une disposition de ce type n'appuie en rien l'éradication de la discrimination directe et indirecte que subissent les femmes, ni la mise en place de l'égalité des sexes.

Par conséquent, le LEF demande l'inclusion dans la Charte d'une disposition ayant un effet direct et établissant le principe inconditionnel et fondamental de l'égalité entre les femmes et les hommes, interdisant toute forme de discrimination fondée sur le sexe dans tous les domaines, et imposant des mesures positives en attendant l'instauration d'une égalité réelle. Cette disposition devrait figurer parmi les premiers articles de la Charte, dans le chapitre consacré aux droits civils et politiques, aux côtés de la déclaration du principe fondamental d'égalité et de l'interdiction de toute discrimination.

Partant, le LEF souhaite amender les propositions du Présidium de la manière suivante.

DROITS CIVILS ET POLITIQUES (CONVENT 13)

Article 1. Principe général d'égalité entre les femmes et les hommes dans tous les domaines

1. L'Union veillera au respect du principe inconditionnel et fondamental de l'égalité des sexes dans tous les domaines de sa juridiction.
2. L'égalité substantielle entre femmes et hommes doit être garantie et toute discrimination – directe ou indirecte – fondée sur le sexe doit être interdite. En outre, une perspective de genre doit être adoptée dans la lutte contre toutes les formes de discrimination afin d'éradiquer la discrimination multiple à laquelle beaucoup de femmes sont confrontées.

3. Des mesures positives doivent être mises en œuvre pour améliorer la situation des femmes en attendant l'instauration d'une égalité substantielle entre les femmes et les hommes.

COMMENTAIRES : *Aux côtés de la proclamation du principe fondamental de l'égalité devant la loi et de l'interdiction générale de toute forme de discrimination (clause dont la liste des motifs ne devrait pas mentionner le "sexe"), une disposition devrait être exclusivement consacrée à la déclaration du principe inconditionnel et fondamental de l'égalité entre les femmes et les hommes dans tous les domaines de la juridiction de l'Union, et ne pas se limiter à la fixation des conditions salariales et de travail. Ce principe pourra dans un deuxième temps être d'application dans les domaines social et économique.*

Le principe général de l'égalité entre les femmes et les hommes fait partie des droits fondamentaux de la personne humaine reconnus par la CJCE. Par conséquent, la Charte est tenue de transposer la jurisprudence de la Cour et rappellera ainsi les remarques énoncées par l'UE et les organes internationaux, à savoir qu'une clause générale de non-discrimination ne suffit pas pour établir une véritable égalité entre les femmes et les hommes. En outre, ce type de disposition constituerait une régression au niveau de l'égalité des sexes, dans la mesure où la discrimination fondée sur le sexe revêt une nature particulière, d'ordre structurel, qui affecte principalement les femmes, soit la moitié de la population, et non une minorité. Celles-ci sont exposées à différentes formes de discrimination que ce soit sur la base de la race, de la couleur ou l'origine ethnique ou sociale, du handicap, de l'orientation sexuelle, de l'âge, de la religion ou les convictions, ceci en addition de la discrimination de base fondée sur le sexe. Une clause séparée exclusivement consacrée à la discrimination fondée sur le sexe permettrait de mieux lutter contre la discrimination multiple et de protéger le droit des femmes à jouir effectivement de tous leurs droits et libertés fondamentaux, d'être des citoyennes à part entière, dans tous les domaines.

En dépit de l'existence de mesures internationales, européennes et nationales, qui encouragent l'égalité entre les femmes et les hommes, on ne peut pas dire que ce principe soit devenu une réalité. C'est pourquoi il est nécessaire d'imposer des mesures positives à titre transitoire, en attendant que les mentalités aient changé et que les préjugés soient éliminés, afin qu'une égalité réelle et effective soit en vigueur dans tous les domaines de la juridiction de l'Union. L'article 4 §1 de la Convention sur l'élimination de toutes les formes de discrimination envers les femmes (CEDEF) ainsi que l'article 141 §1 du traité de l'Union, renvoient à la nécessité pour les États membres d'adopter des actions positives ; de même, la déclaration n°28 du traité d'Amsterdam précise que ces mesures devront avant tout viser à améliorer la situation des femmes. La Charte devrait donc énoncer des mesures positives, afin d'atteindre l'objectif d'une égalité réelle et complète.

Article 3. Droit au respect de l'intégrité

Le droit au respect et à la protection de l'intégrité physiques et mentales implique l'interdiction absolue :

- des pratiques eugéniques
- du clonage d'êtres humains
- de la traite et du commerce du corps humain, ou de ses parties, que la personne concernée ait ou non donné son accord.

COMMENTAIRE : *La protection et le respect de l'intégrité ne peuvent se limiter au domaine de la médecine et de la biologie : il convient d'en élargir le champ d'action, pour y inclure l'interdiction de la traite des personnes sous toutes ses formes, et en particulier des femmes et des enfants dans un but de travail forcé ou d'exploitation sexuelle. Cette disposition reflète l'importance des traités et des conventions internationales ratifiés par la plupart des États membres, comme la "Convention pour la suppression de la traite des personnes et de l'exploitation ou de la prostitution d'autrui" (1949), qui condamne la prostitution et la traite sous toutes leurs formes en tant que violations des principes fondamentaux des droits humains. Il est indispensable de préciser que le consentement de la personne concernée est sans incidence dans la mesure où, l'expérience l'a prouvé, il est manifestement impossible de déterminer si ce consentement a été librement accordé. En outre, il est désormais indubitable que la plupart des femmes impliquées dans la prostitution n'agissent pas de leur plein gré : à ce propos, il serait opportun de reconnaître que "la liberté de choix" est un facteur relatif, situé au carrefour des options économiques, sociales, culturelles et politiques ouvertes aux femmes au sein d'une société donnée. Comme le stipule la motion adoptée par le LEF en 1988, l'inégalité des relations de pouvoir entre les femmes et les hommes entame gravement la liberté de choix.*

Article 4. Interdiction de la torture et des traitements inhumains

Nul ne peut être soumis à la torture, ni à des peines et traitements inhumains et dégradants. Ce principe renvoie à toute forme de violence physique ou morale, notamment toute violence liée au sexe comme les mutilations génitales, le viol, la violence domestique, le mariage forcé, les meurtres pour une question d'honneur, y compris quand ces actes sont perpétrés au sein de la famille.

COMMENTAIRE : *Une disposition condamnant toutes les formes de violence devrait instaurer l'interdiction absolue de la torture et des traitements inhumains ; elle devrait préciser explicitement que la violence ou la persécution fondées sur le sexe constituent une forme de torture. On sait pertinemment que les mutilations sexuelles, dont les femmes et les fillettes sont les premières victimes, sont encore d'actualité sur le territoire européen, au même titre que toutes les autres formes de violence liées au sexe. Non exhaustive, la liste énumérerait néanmoins les formes de violence les plus répandues subies principalement par les femmes.*

Article 17: Droit d'asile et expulsion

1. Les personnes qui ne sont pas ressortissantes de l'Union ont droit d'asile dans l'Union européenne (conformément aux règles de la Convention de Genève du 28 juillet 1951 et au protocole du 31 janvier 1967 relatifs au statut des réfugiés) (dans les conditions prévues par les traités).
2. L'asile doit être accordé à toute femme ou tout homme dont l'intégrité physique, psychologique ou génétique est menacée, ou qui subit des traitements inhumains ou dégradants. La persécution fondée sur le sexe, comme les mutilations sexuelles ou les autres actes de violence liées au sexe, notamment le viol, le mariage forcé, la violence domestique,

les meurtres pour une question d'honneur, constitueront des motifs suffisants pour l'examen attentif d'une demande d'asile. Ceci est applicable lorsque les autorités du pays d'origine sont responsables de la persécution, qu'elles les tolèrent ou soient incapables de s'y opposer, ainsi que lorsque la violence sexuelle se produit en temps de guerre.

3. Les conditions de la mise en pratique des droits accordés aux migrants seront formulées de manière à ce que les femmes en bénéficient au même titre que les hommes. Les besoins spécifiques des femmes demandeuses d'asile et réfugiées devront être pris en compte, et même bénéficier d'une attention particulière.
4. Les expulsions collectives d'étrangers seront interdites.

COMMENTAIRES: *La particularité des actes de persécution spécifiques au sexe dont souffrent principalement les femmes réfugiées et demandeuses d'asile doit figurer dans la Charte, et être considéré comme une violation des droits humains fondamentaux des femmes, suffisante pour envisager l'octroi de l'asile. Une liste explicite mais non exhaustive des persécutions sexuelles doit figurer dans la Charte. Les traitements qui menacent ou entament l'intégrité physique et psychologique des femmes doivent être considérés comme une forme de torture, qu'ils soient imposés par la loi, commis par des agents de l'état ou liés à des normes sociales ou religieuses.*

Il faut également protéger les femmes contre toute discrimination dans la mise en œuvre pratique des droits et des garanties conférés aux migrants, notamment en ce qui concerne les conditions de logement et de détention, ainsi que l'accès aux services juridiques et autres.

Enfin, les besoins propres aux femmes demandeuses d'asile devraient être pris en compte : leur sécurité physique et le respect de leur vie privée doivent être garantis dans les centres d'accueil et de détention. À cet effet, des logements séparés de ceux des hommes doivent être disponibles. En outre, elles doivent avoir accès à des services spéciaux en fonction de leurs besoins sanitaires, et notamment à des conseils gynécologiques et obstétricaux. On évitera la détention des femmes en fin de grossesse et des mères allaitantes.

DROITS SOCIAUX (CONVENT 18)

Article I. Un égalité substantielle entre les femmes et les hommes

1. Il est nécessaire de garantir une égalité réelle et substantielle entre les femmes et les hommes, et d'éliminer tout type d'inégalités en matière d'emploi et de protection sociale. Ceci implique principalement le même droit à un travail librement choisi ou accepté, le droit à des conditions de travail identiques, le droit à une rémunération juste et équitable pour un travail de valeur égale, et un même droit à la sécurité sociale et à l'assistance pour les personnes concernées et leur famille.
2. Toute discrimination directe ou indirecte fondée sur le sexe est interdite dans les domaines cités au paragraphe 1.
3. Des mesures positives seront mises en œuvre pour améliorer la situation des femmes jusqu'à ce qu'une égalité réelle et effective entre les femmes et les hommes soit instaurée dans le secteur de l'emploi.

COMMENTAIRES : voir les commentaires relatifs au principe général d'égalité.

Article XII. Droit au congé parental

Les travailleuses et les travailleurs ont droit à un congé parental rémunéré d'au moins trois mois suivant la naissance ou l'adoption d'un enfant.

COMMENTAIRES : Pour améliorer le niveau d'indépendance des femmes en favorisant leur présence sur le marché de l'emploi, et parvenir à une égalité des sexes effective, il est nécessaire de partager équitablement les responsabilités familiales et le congé parental entre les femmes et les hommes. C'est pourquoi les dispositions en matière de congé parental doivent explicitement s'adresser aux hommes comme aux femmes. Une protection légale ainsi qu'un congé parental plus long et rémunéré devra être instauré, favorisant ainsi un partage équitable de la garde des enfants et des responsabilités familiales entre les femmes et les hommes.

Article XIII. Protection sociale

1. Toute personne a droit, selon les modalités propres à chaque Etat, à une protection sociale comportant, notamment, des prestations sociales d'un niveau suffisant.
2. Les femmes et les hommes doivent pouvoir accéder de manière égale à une sécurité sociale individuelle.
3. Des services de garde d'enfants abordables et de qualité doivent être accessibles à toute personne qui en a besoin.

COMMENTAIRES : Les États européens qui se sont engagés à assumer leur responsabilité sociale à l'égard de tous les citoyens doivent considérer la protection sociale comme un investissement social. Or, bien des femmes ne bénéficient toujours pas d'une protection individuelle et dépendent de leur famille et/ou de leur conjoint. Il faut donc enrayer cette discrimination structurelle et garantir aux femmes un accès à la sécurité sociale individuelle. Ce principe passe par l'insertion dans la Charte d'une clause concernant la protection sociale, qui entérinera l'individualisation des droits en matière de sécurité sociale et assurera l'accès à une garde d'enfants de qualité.

Article XIV. Droit d'accès aux soins de santé

1. Toute personne doit pouvoir bénéficier de mesures de prévention sanitaire et, en cas de maladie, accéder aux soins de santé.
2. Dans le cadre du droit à des soins de santé appropriés, les besoins spécifiques des femmes devront être pris en considération et satisfaits.

COMMENTAIRES : Pour que les besoins sanitaires de la totalité de la population soient satisfaits, les demandes spécifiques des femmes en la matière doivent également être pris en compte par la mise en place de services particuliers. Notamment, chaque femme doit pouvoir s'adresser à des services de gynécologie et d'obstétrique, et bénéficier de tous les services médicaux de prévention et de dépistage des maux proprement féminins.

DROITS DES CITOYENS (CONVENT 17)

Article A. Démocratie paritaire

1. Tout citoyen de l'Union bénéficie des droits qui lui sont conférés par l'Union et la législation nationale en matière d'égalité d'accès à la candidature aux élections et d'exercice des fonctions correspondantes.
2. Une démocratie paritaire, c'est-à-dire une représentation égale des femmes et des hommes au sein de tous les organes et de toutes les institutions de l'Union, sera établie en tant que principe fondamental de l'intégration européenne comme des institutions de l'Union.
3. Des mesures positives seront mises en œuvre afin d'encourager un accès égal des femmes et des hommes aux organes gouvernementaux et communautaires, ainsi qu'au sein des partis politiques.

COMMENTAIRES: La notion de démocratie telle que figurant dans la Charte doit être entendue comme démocratie paritaire. Néanmoins, une référence explicite à l'objectif de démocratie paritaire devrait être inscrite dans la Charte pour endiguer le problème de la sous-représentation des femmes. La question de l'implication des femmes dans la prise de décisions est à considérer dans tous les secteurs de notre société, alors que nombre des mesures adoptées pour favoriser leur participation ne concerne que la prise de décision politique. Des mesures positives s'imposent pour assurer l'instauration d'une participation égale ou d'une parité effective dans tous les domaines.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

**Brussels, 30 May 2000
(version multilingual EN/DE)****CHARTE 4311/00****CONTRIB 178****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter different contributions from the Kolping Society of Europe. ¹

¹ This text has been submitted in German, French and English. (The text of the letter in German only).

Rat der Europäischen Union
Konvent zur Erarbeitung der Charta der Grundrechte
Herrn Prof. Roman Herzog
Rue de la Loi, 175

B-1048 Bruxelles

12.05.2000 GS/So

Sehr geehrter Herr Prof. Herzog,

das Kolpingwerk Europa verfolgt seit Jahren intensiv alle Schritte zur europäischen Integration und hat immer wieder das Anliegen betont, dass diese Idee der europäischen Einigung vor allem auch von den Bürgern in Europa mitgetragen werden muss.

Die Kontinentalversammlung des Kolpingwerkes Europa hat in einer Stellungnahme vom 12.09.1999 darauf verwiesen, dass das Kolpingwerk in einer Charta der Grundrechte der Europäischen Union eine gute Möglichkeit sieht für die Bürger zu erkennen, dass die Europäische Union nicht nur eine Wirtschaftsgemeinschaft ist, sondern längst zu einer Rechtsgemeinschaft wurde, die im Kern auch eine Friedensgemeinschaft ist.

Das Kolpingwerk Europa verfolgt daher mit großem Interesse die Diskussion um die Formulierung dieser Charta der Grundrechte und möchte zum aktuellen Diskussionsstand die beigefügte Stellungnahme abgeben. Gleichzeitig fügen wir diesem Schreiben auch noch einmal die mehr grundsätzliche Erklärung der Kontinentalversammlung des Kolpingwerkes Europa vom 12.09.1999 bei und würden uns freuen, wenn diese Stellungnahmen in den Diskussionsprozess mit eingebracht werden könnten.

Mit freundlichen Grüßen

Dr. Michael Hanke
Vorsitzender des Kolpingwerkes Europa

Hubert Tintelott
Europasekretär

Anlagen

Contribution to discussion from the Kolping Society of Europe on the work of the Convent on the preparation of a Basic Rights Charter of the European Union

The Kolping Society of Europe explicitly welcomed the decision of the European Council in June 1999 to prepare a Basic Rights Charter of the European Union and in an initial statement dated 12.09.1999 presented a few basic considerations for the drawing-up of this Charter. In this statement the Kolping Society undertook to actively accompany the process of discussion surrounding the formulation of the Basic Rights Charter and to incorporate its own positions in this discussion process.

It is with regret that the Kolping Society of Europe views the fact that the work of the Convent on the preparation of a Basic Rights Charter of the European Union has met with only very limited resonance from the public. This in its view is a danger to the unique opportunity for citizens of the European Union to become conscious of their basic values and recognise the fact that the EU is more than an economic community and that the future dynamism of the integration process also depends on achieving a consensus on common basic values.

A discussion conducted with inadequate publicity on a Basic Rights Charter with a view to reaching a decision during the EU summit meeting in Nice on 7 and 8 December 2000 also increases the risk of this Basic Rights Charter of the EU merely being decided in Nice as a ceremonial declaration of intent and thus of extensively restricting its legal effect.

In view of these shortcomings the Kolping Society of Europe calls upon the members of the Convent and also upon the political decision-makers at a European and national level to conduct a public and also controversial discussion on the contents of the Basic Rights Charter of the EU and to strive for an adoption of this Charter as part of the European Treaties. A Basic Rights Charter of the EU as a ceremonial declaration of intent would miss the aspired-to objective of being able to clearly recognise basic rights and thus dash hopes of strengthening the citizens' acceptance of the EU through clearly recognisable basic rights. The Kolping Society of Europe will do everything in its power to inform the public about the work of the Convent.

In addition to these more general considerations the Kolping Society of Europe would like to comment on the process of discussion up to now and on two articles of the current draft dated 8 March 2000.

1. Family life

The current draft of Article 13 (3) reads as follows: "The legal, economic and social protection of the family will be guaranteed."

This formulation overlooks the central significance of the family as a basic cell of society as described time and again in other catalogues of human rights. Throughout the history of man the family has always formed the core of society and has assumed irreplaceable responsibilities in terms of regenerating society and socialising its children. Without wishing to overlook the

change in the ways of life in our society such as marriage-like communities and the growing number of single parents, the fact should not be overlooked and neglected that still to the current day it is the family which still assumes the major share in regeneration of society and socialisation of its children.

For this reason the EU must be interested in strengthening families and ensuring the legal, economic and social protection of the family. The Kolping Society of Europe therefore calls upon the Convent to revert to the original version of Article 13 (3) which reads “The Union ensures the legal, economic and social protection of the family.”

2. Freedom of thought, conscience and religion

The Kolping Society of Europe views the current formulation of Article 14: “Every individual has the right to freedom of ideas, conscience and religion” to represent a reduction in the regulations as presented, for example, in Article 8 of the European Catalogue of Human Rights. The basic rights of the European Catalogue of Human Rights have already become a common “Bill of Rights” through the jurisdiction of the organs of the convention. In view of the level of basic rights protection already achieved, a legal uncertainty should be avoided through new or reduced formulations. The Kolping Society of Europe believes it to be absolutely necessary that the freedom of the individual to change his religion or *Weltanschauung*, as well as the freedom to practise his religion or *Weltanschauung* alone or in community with others publicly or privately is explicitly laid down in the EU Basic Rights Charter.

The Kolping Society of Europe will be also be attentively following the further course of discussion and reserves the right to comment on the economic and social rights which have not yet been formulated at a later date.

On behalf of the Kolping Society of Europe

signed

Anton Salesny
Europe Commissioner
International Kolping Society

Dr. Michael Hanke
Chairman
Kolping Society of Europe

Hubert Tintelott
International Secretary
International Kolping Society

Kolping Society Demands Further Discussion of a European Constitution and the Adoption of a Charta of Basic Rights

The depressingly low voter turnout for the elections to the European Parliament showed that the idea and goal of European unification is gradually fading in the minds of the people, and opinion polls in the EU member states have shown that they are increasingly sceptical about European unification and further steps in this direction. This mood among the people of the European Union underestimates the achieved level of European unity and the benefits of the alliance. The European Union has long become a community of law, which is fundamentally also a community of peace. For example, 80% of all economic legislation in the EU member states is effected by EU institutions.

But this focus on economic issues and the discussion of interests and balancing of interests ignores the fact that a society is constituted essentially by common values. Europe must therefore discuss the concepts it has of itself and according to which it wants to live tomorrow, its image of humankind, its norms and the ethical conditions of freedom. This discussion will show that, despite all national differences, the European people have enough in common in their way of thinking, their cultural expression, their concept of society and their attitude to life to agree on a common set of fundamental values.

The European Union has always engaged in such a debate, right from the beginning of its integration process, and it has always been tied up in the debate on a European constitution. A first draft constitution was already completed in 1953. But, unfortunately, this debate on a constitution was repeatedly abandoned, although many elements of a constitution were incorporated in the 5 treaties of the European Union. The signing of the Treaties of Rome launched a slow process of forming a constitution, which has the express support of the Kolping Society. This process needs new stimulation at present, which it could obtain through a Charta of Basic Rights.

The Treaty of Amsterdam reinforces the European Union's support for human rights and fundamental freedoms and expressly confirms the Union's commitment to social basic rights. And basic and human rights are largely enforced in the constitutional structures of the individual EU states. But the European Union as a centre of Europe's structural architecture needs an independent Charta of Basic Rights to unite the former constitution-like documents and permanently strengthen basic rights and ensure their consistent integration in current activities and political decisions of the European Union.

The Kolping Society of Europe supports all efforts to formulate and adopt a Charta of Basic Rights, because

- This debate can contribute to making the people aware of their basic rights and enabling them to exercise these rights.
- A separate Charta of Basic Rights would overcome the current European system of relegation, so that basic rights would more visibly become a basis of political decisions.

The Kolping Society of Europe is aware of the risks of formulating a genuine community-focused catalogue of basic rights and therefore demands that

- The Formulation of a Charta of Basic Rights be based on the already formulated European Convention for the Protection of Human Rights and Fundamental Freedoms, which has become a joint European bill of rights through the jurisdiction of the parties to the convention.
- The Charta should focus on formulating basic rights that are justiciable.
- The debate on basic rights be protected against an excessive focus on current but temporary social trends, as only such basic rights should be included in a catalogue of basic rights that are supported by a broad majority of the people.
- A balance be found between legal protection of the individual and a law-based system of government.
- Democracy should remain viable and not be paralysed by exaggerated participation rights.

The Kolping Society of Europe undertakes

To raise awareness of the necessity to adopt a Charta of Basic Rights in its chapters.

To inform members of the contents of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

To contribute to the debate on the discussion and adoption of a Charta of Basic Rights and to voice its position based on a Christian image of humankind.

Discussed and adopted by the Continental Assembly of the Kolping Society of Europe on 12 September 1999 in Cologne/Immenreuth.

For the International Kolping Society:

signed

Anton Salesny

Europe Commissioner

International Kolping Society

Dr. Michael Hanke

Chairman

Kolping Society of Europe

Hubert Tintelott

Secretary General

International Kolping Society

ENTWURF DER CHARTA DER GRUNDRECHTE DER EUROPÄISCHEN UNION**fundamental.rights@consilium.eu.int**

Brüssel, den 25. Mai 2000**CHARTE 4312/00****CONTRIB 179****ÜBERMITTLUNGSVERMERK**

Betr.: Entwurf der Charta der Grundrechte der Europäischen Union

Finden Sie bitte nachstehend eine Eingabe der Vereinigung zur Förderung des Petitionsrechts in der Demokratie e.V. ¹

¹ Dieser Text wurde nur in deutscher Sprache übermittelt.

Vereinigung zur Förderung des Petitionsrechts in der Demokratie e.V.

R. Bockhofer, Max-Planck-Str. 56, D-28357 Bremen, Tel.: 0049-421-256970

Bremen, den 13. Mai 2000

An die Mitglieder
des Grundrechte-Konvents
zur Erarbeitung einer EU-Charta
c/o Herrn Prof. Dr. Roman Herzog
Postfach 86 04 45
81631 München

Sehr geehrter Herr Vorsitzender Prof. Herzog,
sehr geehrte Damen, sehr geehrte Herren,

wir meinen, dass für das Zusammenwachsen der Unionsbürger/innen dem Petitionsrecht eine herausgehobene Rolle zukommen sollte.

Ihren Diskussionsprozess kennen wir nicht, wohl aber den Vorschlag für die Artikel 1 bis 12 vom 8. März 2000 (CHARTRE 4149/00), der das Petitionsrecht nicht enthält.

Unseren Entwurf, den wir Ihnen zur Prüfung übermitteln, haben wir auch dem Petitionsausschuss des Europäischen Parlaments (EP) geschickt.

Unser Text (siehe Anlage) enthält für einen entsprechenden Artikel in der Charta zu viele Einzelheiten. Aber man kann daraus leicht zwei Teile machen:

A. den Artikel, vgl. Ziffern 1 und 2, ggf. noch ergänzt um zentrale Prüfbefugnisse des EP, B. einen protokollarischen Anhang, z.B. Ziffern 3 bis 8.

Wir hoffen, dass unser Vorschlag Ihre Aufmerksamkeit findet und sachlich geprüft wird.

Über das Ergebnis Ihrer Beratung würden wir gern eine Antwort erhalten.

Für Ihre verdienstvolle Aufgabe wünschen wir Ihnen Erfolg.

Mit freundlichen Grüßen

Reinhard Bockhofer

*Eingabe zur Gestaltung des Petitionsrechts in einer Europäischen Grundrechtecharta**A. Vorbemerkung*

1. Eine Verständigung auf gemeinsame Werte und Grundrechte beschleunigt den europäischen Prozess. Die Ausarbeitung einer Grundrechtscharta wird als Einstieg der Europäischen Union in eine eigene Staatlichkeit von uns befürwortet.
2. Das Europäische Parlament ist die einzige durch allgemeine Direktwahlen legitimierte Institution des weiterhin im Aufbau und Ausbau befindlichen Europäischen Einigungswerkes. Viel spricht deshalb dafür, das Europäische Parlament als unerlässliches Bindeglied zwischen den Bürgern und der Union in seinen Rechten nachhaltig aufzuwerten.
3. Weil Bürgerrechte durch die zunehmende Übertragung von nationaler Souveränität auf die Europäische Union gefährdet sein können (sind), müssen die Bürgerinnen und Bürger der Union jetzt gemeinsam den Versuch machen, rechtliche Handlungsmöglichkeiten gegen die Europäische Union zu begründen und einzufordern. Hierzu gehört u.A. auch die Stärkung des Petitionsrechts.
4. Maßgeblicher Adressat von Petitionen muss das Europäische Parlament werden. Soll das Petitionsrecht als Grundrecht praktische Bedeutung gewinnen, sind für die Wahrheitsfindung und Tatsachenermittlung wirksame Befugnisse erforderlich, die als Minderheitenrechte ausgestaltet sind. Auf keinen Fall sollten die Befugnisse an die Mehrheit im Ausschuss gebunden sein, weil sonst den Abgeordneten kleiner Fraktionen und Länder der Handlungsspielraum beschnitten wäre. - Auf eine Klärung der Befugnisse des Petitionsausschusses z.B. gegenüber der Kommission, dem Rat sowie den Mitgliedsstaaten wurde im Vertrag von Amsterdam verzichtet. So ist die Rechtsstellung des im Jahre 1987 erstmalig eingesetzten Petitionsausschusses - im Vergleich etwa zum Petitionsausschuss des Deutschen Bundestages - ausgesprochen schwach geblieben. Die Grundrechtscharta darf diese Schwäche nicht übertünchen oder einfach fortschreiben.
5. Vom Grundsatz her sollte ein Petitionsausschuss wie ein ständiger bürgergerichteter Untersuchungsausschuss tätig sein können. Neben seinen Kontrollrechten müsste er an sich über gewisse Sanktionsmittel verfügen, wie sie wohl erst im Zuge der Entstehung einer eigenen Staatlichkeit voll verwirklicht werden können. Was sich hier schon heute sinnvoll machen lässt, ist schwer zu sagen. Zieht man hilfsweise die vom Europäischen Parlament (nach Artikel 193 EGV) eingesetzten Untersuchungsausschüsse zu Rate, finden sich eher bescheidene, kaum jedoch nachhaltig wirksame Untersuchungsrechte (vgl. Beschluss des Europäischen Parlaments, des (Minister-)Rates und der Kommission vom 19. April 1995 und Geschäftsordnung des Europäischen Parlamentes, vgl. Artikel 150, 151 ff.). Für die von uns gewünschten Regelungen geben sie leider nichts her.

B. Vorschlag für die rechtliche Ausgestaltung des parlamentarischen Petitionsrechts

- (1) Jeder hat das Recht, sich mit Petitionen (Anregungen, Anträge und Beschwerden) einzeln oder in Gemeinschaft mit anderen schriftlich an das Europäische Parlament und die zuständigen Stellen der Europäischen Union zu wenden. Der Petent hat nach der Entscheidung des Europäischen Parlaments Anspruch auf eine begründete Antwort in angemessener Zeit.
- (2) Das Europäische Parlament bestellt einen Petitionsausschuss, dem die Erarbeitung einer Beschlussempfehlung an das Europäische Parlament obliegt. Der Petitionsausschuss kann von sich aus tätig werden, wenn ihm auf andere Weise Mängel bei der Durchführung des Gemeinschaftsrechts bekannt werden, und dem Europäischen Parlament darüber berichten.
- (3) Der Petitionsausschuss hat auf Antrag eines Zehntels seiner Mitglieder das Recht
 - a. zur Erarbeitung seiner Berichte und Beschlussempfehlungen von den Organen, Gremien und Behörden der Europäischen Union
 - mündliche oder schriftliche Auskünfte und Berichte einzuholen,
 - Akten und sonstige Unterlagen einzusehen,
 - b. durch von ihm beauftragte Mitglieder jederzeit und ohne vorherige Anmeldung die von der Europäischen Union verwalteten Einrichtungen zu besuchen sowie dort Auskünfte und Gutachten einzuholen,
 - c. Petenten und beteiligte Personengruppen anzuhören,
 - d. Zeugen und Sachverständige zu vernehmen,
 - e. aufgrund von Beschwerden den Haushaltskontrollausschuss um Mithilfe zu ersuchen, juristische Personen des Privatrechts, nicht rechtsfähige Vereinigungen und natürliche Personen, soweit sie für die Europäische Union oder unter deren Aufsicht öffentlich-rechtliche Tätigkeiten ausüben, zu überprüfen, ihre Einrichtungen zu besuchen und dort Auskünfte einzuholen,
 - f. Gegenstände, die über einzelne Petitionen hinausgehen und von allgemeiner Bedeutung sind, anderen Ausschüssen zur Beratung zu überweisen und für eine Antwort in angemessener Zeit Termine zu setzen,
 - g. neben Einzelberichten über die im Ausschuss behandelten Petitionen jährlich einen Bericht über seine Tätigkeit vorzulegen.
- (4) Zutritt, Auskunft und Aktenvorlage dürfen nur verweigert werden, soweit zwingende Geheimhaltungsgründe entgegenstehen oder zu besorgen ist, dass einem Dritten ein erheblicher, nicht wieder gut zu machender Schaden entstehen würde. Die Entscheidung über die Verweigerung muss vor dem Europäischen Parlament vertreten werden.
- (5) Im Europäischen Parlament findet auf Antrag eines Zwanzigstels seiner Mitglieder eine Aussprache zu einzelnen Petitionen und zum Jahresbericht statt.
- (6) Der Petent hat Anspruch auf eine Mitteilung über den Eingang seiner Petition. Auf Antrag erhält er nähere Auskünfte über das parlamentarische Prüfverfahren und den zeitlichen Ablauf.
- (7) Wer sich in seinem Petitionsrecht verletzt sieht, kann die nochmalige Prüfung seiner Petition beantragen. Im Falle der Zurückweisung der Verfahrenskritik steht dem Petenten der Rechtsweg zum Europäischen Gerichtshof offen.
- (8) Das Nähere zum Verfahrensablauf regelt die Geschäftsordnung des Europäischen Parlaments.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 24 May 2000**CHARTE 4313/00****CONTRIB 180****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter an extract from the Press communiqué of the 106th session of the Committee of Ministers (10-11 May 2000), transmitted by the Council of Europe. ¹

¹ This text has been submitted in French and English languages.

In this context, and with regard to the proposed European Union Charter of Fundamental Rights, the Ministers underlined the need to ensure that, whatever decisions the Institutions of the Union may take concerning the Charter, it does not lead to new dividing lines in Europe. It should be fully consistent with, and not weaken, the system for the protection of human rights provided, under the European Convention, to all citizens of the Council of Europe's member States, including those of the European Union.

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE**fundamental.rights@consilium.eu.int**

Bruxelles, le 24 mai 2000**CHARTE 4314/00****CONTRIB 181****NOTE DE TRANSMISSION**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne

Veillez trouver ci-après l'intervention de l'Association des Femmes de l'Europe Méridionale (AFEM) donnée à l'audition du 27 avril 2000. ¹

¹ Ce texte a été soumis en langues anglaise et française.

AFEM

ASSOCIATION DES FEMMES DE L'EUROPE MÉRIDIONALE

AUDITION DU 27 AVRIL 2000 - INTERVENTION DE L'AFEM^{1*}

Monsieur le Président, Mesdames, Messieurs Membres de la Convention.

L'Association des Femmes de l'Europe Méridionale (AFEM), fédération d'ONG françaises, italiennes, espagnoles, portugaises et helléniques, vous remercie de lui avoir fait l'honneur de lui accorder une audition.

L'AFEM a été parmi les premières ONG à vous soumettre des propositions concrètes (CONTRIB 16, 42, 55 et 105) qui sont pleinement soutenues par:

- *le Lobby Européen des Femmes*;
- *l'Alliance Internationale des Femmes (AIF)*, la plus ancienne fédération internationale d'ONG pour l'égalité entre femmes et hommes (fondée en 1902), dotée du statut consultatif de 1ère catégorie auprès de l'ONU et de toutes les agences spécialisées de celui-ci (OIT, UNESCO etc), ainsi qu'auprès du Conseil de l'Europe;
- *la Fondation Marangopoulos pour les Droits de l'Homme*, ONG internationale dotée du statut consultatif de 1ère catégorie auprès de l'ONU, de l'UNESCO et du Conseil de l'Europe et habilitée à faire des réclamations collectives en vertu du Protocole additionnel à la Charte Sociale Européenne de 1995;
- *le Comité International de Liaison des Associations Féminines (CILAF)*, ONG dotée du statut consultatif auprès du Conseil de l'Europe;
- *la Ligue Hellénique pour les Droits des Femmes*, ONG associée au Département d'Information Publique de l'ONU.

• **CONVENT 13 - DROITS CIVILS ET POLITIQUES**

Le principe fondamental de l'égalité substantielle entre femmes et hommes dans tous les domaines

1. - L'AFEM se félicite que le Présidium ait proposé une disposition sur l'égalité entre les femmes et les hommes (CONVENT 8) et un article sur cette égalité en matière d'emploi et de protection sociale (CONVENT 18).

Cependant, d'après une jurisprudence constante de la CJCE² et selon le Traité, l'égalité entre femmes et hommes est un principe fondamental du droit communautaire - un droit fondamental de la personne humaine - une mission et un objectif de la CE³.

Le Traité impose à la CE l'obligation positive de "*promouvoir*" cette égalité - c'est à dire, de ne pas se contenter de l'égalité formelle, mais d'oeuvrer pour atteindre l'égalité substantielle entre femmes et hommes - "*pour toutes ses actions*".

^{1*} Représentée par Me Sophia SPILIOTOPOULOS, avocate au Conseil d'État et à la Cour de cassation helléniques, experte indépendante de la Commission Européenne en matière d'égalité entre femmes et hommes, vice-présidente de l'AFEM.

² CJCE 15.6.1978, *Defrenne III*, 149/77, Rec 1509; 10.2.2000, *Sievers*, C-270/97.

³ Voy. aussi Rapport annuel de l'UE sur les droits de l'homme (1999), point 5.12.

L'égalité substantielle entre femmes et hommes est un principe universel, consacré aussi par des traités ratifiés par tous les États membres, tels les Pactes de l'ONU⁴ et la Convention sur l'élimination des discriminations contre les femmes, récemment dotée d'un Protocole permettant des recours individuels, pour lequel l'UE souligne qu'elle a oeuvré⁵, ainsi que par la Charte Sociale Européenne (révisée) (article 20).

Elle est strictement exigée en tant que condition fondamentale d'adhésion (article 49 Traité UE) et activement promue par la coopération de l'UE avec les pays tiers⁶.

2. - Nous nous réjouissons de la proposition de M. Guy BRAIBANT (CONTRIB 63, Article I) de consacrer ce principe général, en raison de son importance, dans tous les domaines, par un des premiers articles de la Charte, et de l'appliquer aussi en matière économique et sociale. Cette proposition renforce la cohérence juridique de la Charte. Elle devrait servir de base et être complétée par la nôtre (CONTRIB 105).

3. - Dès lors, est nécessaire un article spécifique, parmi les premiers de la Charte, qui transpose l'acquis et les impératifs communautaires et internationaux comme suit:

“1. L'égalité substantielle entre femmes et hommes doit être garantie et appliquée dans tous les domaines; toute discrimination directe ou indirecte en raison du sexe est interdite.”

“2. Des mesures positives temporaires sont indiquées, avant tout pour améliorer la situation des femmes, jusqu'à ce que l'égalité substantielle entre femmes et hommes soit atteinte”.

Ces dispositions doivent être reprises en matière de droits sociaux (CONVENT 18, Article I) et de droits des citoyens (CONVENT 17, Article A§2), avec les adaptations nécessaires (voy. infra).

4. - Le sexe n'est pas un motif de discrimination comme les autres. Les discriminations en raison du sexe sont de nature particulière. Elles sont engendrées par des préjugés qui se sont infiltrés dans les structures sociales et affectent surtout les femmes.

Les femmes ne sont ni une minorité ni un groupe, mais une des deux formes dans lesquelles s'incarne l'être humain. Et pourtant, elles souffrent encore, dans tous les domaines, de discriminations qui atteignent leur dignité et sont souvent multiples, en raison de leur sexe et d'autres motifs.

Cette situation, que les institutions communautaires et internationales déplorent, tout en constatant que les clauses générales de non discrimination ne suffisent pas pour y remédier⁷, a rendu

⁴ Pacte des droits civils et politiques (Art. 3); Pacte des droits économiques, sociaux et culturels (Art. 3).

⁵ Voy. Rapport de l'UE sur les droits de l'homme, op.cit., point 5.12.

⁶ Voy. Commission Européenne, Rapport 1998 sur l'égalité des chance entre femmes et hommes (COM(1999)106 final), Section 5, Rapport 1999 (COM(2000)123 final), Section 5.

⁷ Voy. Rapport de l'UE sur les droits de l'homme, op.cit., point 5.12; Préambule à la Convention sur l'élimination des discriminations contre les femmes; Commission de la Condition de la Femme (ONU), Bulletin de presse WOM/1117, 12.3.1990, sur le Protocole à cette Convention permettant les recours individuels, voy. site: <http://un.org>.

nécessaires des dispositions et même des traités dont l'unique objet est l'égalité entre femmes et hommes, ainsi que d'autres mesures appropriées⁸.

Cette situation appelle des *mesures positives temporaires*. Celles-ci ne constituent pas des discriminations, mais des moyens pour atteindre l'égalité substantielle, selon la Convention sur l'élimination des discriminations contre les femmes (Art. 4§1) et le Traité CE (Art. 141). La Déclaration No 28 annexée au Traité d'Amsterdam précise que ces mesures doivent viser "*avant tout à améliorer la situation des femmes*". Elles sont aussi prévues par un nombre croissant de Constitutions nationales⁹ (une "tradition constitutionnelle commune" étant ainsi formée) et sont jugées nécessaires par les institutions communautaires¹⁰ et internationales¹¹.

La nature particulière des discriminations contre les femmes et le caractère précité des actions positives sont confirmés par la CJCE (arrêt *Badeck*, C-158/97, 26.3.2000).

5. - Notre Assemblée Générale a demandé par une Déclaration du 17 mars 2000 (CONTRIB 55) que soit consacré par un des premiers articles de la Charte "*le droit fondamental à l'égalité substantielle entre femmes et hommes dans tous les domaines*" en tant que droit absolu.

Nous remercions M. Inigo MENDEZ DE VIGO, Président de la délégation du PE et Vice-Président de la Convention et Mme Catherine LALUMIÈRE, députée européenne et membre de la Convention, ex Secrétaire générale du Conseil de l'Europe, d'avoir accueilli cette Assemblée au PE lors des "Entretiens de Strasbourg"¹² ainsi que de leur soutien à notre démarche. Nous remercions aussi les députées européennes et membres de la Convention Mmes Pervenche BERÈS, Fiorella GHILLARDOTTI, Elena PACIOTTI, les députées européennes Mmes Joke SWIEBEL, Maria-Antonia AVILES-PEREA, Sylviane AINARDI, Geneviève FRAISSE, Ilda FIGUEIREDO, Marie-Hélène GILLIG, Maria IZQUIERDO ROJO, Cristiana MUSCARDINI et Elena VALENCIANO de leur participation à ces "Entretiens" et de leur soutien.

Article 3§2: Droit au respect et à la protection de l'intégrité: (notre CONTRIB 105, Art. 3): Interdiction absolue des pratiques eugéniques, du clonage des êtres humains et de la "*traite*" de ceux-ci, transnationale ou non, et que ce soit "*avec ou sans le consentement de la personne concernée*".

⁸ Tels les programmes d'action communautaires pour l'égalité entre femmes et hommes, dont le 5ème (2001-2005) couvrira tous les domaines de compétence communautaire Voy.: <http://europa.eu.int/comm/dg05>.

⁹ Constitutions allemande, article 3§2; autrichienne, article 7§2; portugaise, article 9(h); finlandaise, article 6§4; suédoise, chapitre 2§16; française, articles 3 et 4; hellénique (projet).

¹⁰ Résolution du Conseil du 12.7.1982 sur la promotion de l'égalité des chances pour les femmes, J.O. L 20/35, 28.7.82; Recommandation du Conseil 84/635/CEE du 13.12.1984 sur la promotion des actions positives pour les femmes, J.O. L 331/34, 19.12.84.

¹¹ Commission sur l'Élimination des Discriminations contre les Femmes, Recommandations générales No 5 (7e Session 1988) [Doc.NU A/43/38] et No 8 (11e Session 1991) [Doc.NU A/46/38]; Comité des Droits de l'Homme, Commentaires généraux Nos 3 et 4 (13e Session 1981) [36 UN GAOR, Supp. No 40 (A/36/40), annexe VII].

¹² Organisés par l'AFEM, le 16 mars 2000, sous le patronage du PE, avec le soutien de la Commission Européenne et du gouvernement français, sur le thème: "du Traité d'Amsterdam à la Charte des droits fondamentaux: quels enjeux pour les droits des femmes".

La traite, surtout de femmes et d'enfants, à des fins d'exploitation sexuelle, est une préoccupation majeure de l'UE (voy. Conclusions du Conseil Européen de Tampere qui a prévu votre Convention)¹³.

Article 4: Interdiction de la torture et des peines ou traitements inhumains ou dégradants: Mentionner les *“mutilations sexuelles”* et *“toute autre forme de “violence physique ou morale, y compris celle au sein de la famille”*, dont souffrent surtout femmes et enfants - préoccupation sérieuse de l'UE¹⁴ (notre CONTRIB 105, Art. 4).

Article 8: Droit à un “procès équitable”: Titre de l'article 6 CEDH, préférable à celui de “tribunal impartial”. Il s'agit du droit à une *“protection juridictionnelle effective et efficace”*, droit fondamental selon la CJCE. Ajouter un alinéa qui cite à titre indicatif le contenu du droit, selon la jurisprudence (CourEDH et CJCE¹⁵) et le Pacte DCP (Art. 2 et 14) ou, au moins, l'inclure dans l'exposé des motifs (v. notre CONTRIB 42, Art. 4).

Ajouter le droit des ONG de porter plainte ou d'ester en justice pour le compte ou à l'appui des victimes de violations des droits (v. notre CONTRIB 42, Art. 4).

Article 13: Vie familiale: V. notre proposition (CONTRIB 42, Art. 9), fondée sur l'article 12 de la CEDH, l'article 5 de son Protocole No 7, l'article 23 du Pacte DCP et la Convention sur les droits de l'enfant.

Article 16§3: Droit des parents d'assurer l'éducation et l'enseignement de leurs enfants selon leurs convictions, “dans la mesure où celles-ci ne contreviennent pas aux valeurs et droits reconnus par la Charte; dans l'exercice de ce droit les parents doivent agir dans l'intérêt de l'enfant” (notre CONTRIB 105, CONTRIB 97 de M. Georges PAPADIMITRIOU).

CONVENT 8 - Article 17: Droit d'asile: droit de toute personne persécutée, même ressortissante de l'UE, y compris des personnes qui *“ne peuvent disposer librement d'elles-mêmes ou sont menacées dans leur liberté ou leurs droits fondamentaux ou leur intégrité physique, psychique ou génétique, que les pouvoirs publics du pays d'origine soient les auteurs de ces persécutions ou menaces, qu'ils les tolèrent, ou qu'ils soient dans l'incapacité de s'y opposer”* (notre CONTRIB 42, Art. 17).

¹³ Voy. aussi Commission Européenne, Rapport 1998, op.cit., Section 4, et Rapport 1999, op.cit., Section 1; Rapport de l'UE sur les droits de l'homme, op.cit., point 5.12.

¹⁴ Ibidem.

¹⁵ V. arrêts de la CJCE dans notre CONTRIB 42, note 11 sous Article 4.

-Nous sommes d'accord avec toutes les autres propositions de droits civils et politiques.

• **CONVENT 17 - DROITS DES CITOYENS**

Article A§2: ajouter *“l'égalité entre femmes et hommes”* (supra No 4 i.f. et notre CONTRIB 105, Art. A) et *“la solidarité”* (v. CONTRIB 144 de M. Jürgen MEYER).

- Nous sommes d'accord avec toutes les autres propositions de droits des citoyens.

• **CONVENT 18, 19 et 26 - DROITS SOCIAUX**

Rappelons les déclarations officielles et solennelles de l'UE, selon lesquelles:

- *“le succès économique ne peut être assuré que si les droits humains sont observés et garantis”*;
 - l'UE *“insiste”* sur *“l'universalité”, “l'équivalence”, “l'indivisibilité”, “l'unicité”* et *“l'interdépendance”* de tous les droits, y compris les droits économiques, sociaux et culturels, dont le respect effectif elle s'efforce de promouvoir.¹⁶

Article I. Égalité substantielle entre femmes et hommes: Voy. notre proposition (CONTRIB 105, Art. I) qui reprend le principe général (supra), et transpose aussi l'acquis communautaire en matière sociale (Art. 141 Traité CE, directives-égalité).

Article VIII: Droits des enfants: L'enfant n'est pas seulement objet de protection, mais aussi sujet de droits (v. Convention sur les droits de l'enfant). Notre proposition (CONTRIB 105, Art. VIII):
1er paragraphe: principe général (Article 6 Constitution finlandaise, proposition de M. Paavo NIKULA).

2ème paragraphe: citer les droits qui ne présupposent pas la majorité. Les paragraphes de CONVENT 18 devraient suivre.

Article XI: Droit à la protection de la maternité: Il est inhérent à la dignité humaine et d'importance capitale pour la survie même de l'Europe. Dès lors, il devrait être reconnu à toute femme et être plus large que le congé de maternité, pour tenir aussi compte de l'acquis communautaire¹⁷. Durée minimum du congé: renvoyer au droit communautaire chaque fois en vigueur. (V. notre proposition, CONTRIB 105, Art. XI).

Article XII. Droits des parents: il en va de même de ces droits, ainsi que de la durée du congé parental. Ajouter aussi que *“l'organisation du temps de travail doit garantir aux femmes et aux hommes la conciliation de la vie professionnelle et familiale”*¹⁸ (V. notre CONTRIB 42, Article 23, et notre CONTRIB 105, Article XII).

Article XIV. Droit à l'aide sociale: Il serait préférable de prévoir que *“toute personne a droit à un niveau de vie suffisant et décent pour elle-même et sa famille et à la protection contre l'exclusion sociale”* (notre CONTRIB 42, Art. 24; cf. PacteDESC, Art. 11; Ch. Sociale, Art. 30).

¹⁶ Rapport de l'UE sur les droits de l'homme, op.cit, points 5.1, 5.2; Déclaration J. Fischer à la Commission des Droits de l'Homme, op. cit.

¹⁷ Articles 137 et 152 Traité CE; Directives 92/85 et 76/207; jurisprudence de la CJCE.

¹⁸ Commission Européenne, Rapport 1998, op.cit. Section 2, Rapport 1999, op.cit. Section 2.

Article XV. Droit à l'accès aux soins de santé: *“en cas de maladie ou de grossesse”.*

- Nous sommes d'accord avec toutes les autres propositions de droits sociaux.

• **CONVENT 27. CLAUSES HORIZONTALES**

Article H.1. Champ d'application matériel: *“Les dispositions...s'adressent aux institutions et organes de l'Union et de la Communauté...ainsi qu'aux États membres, lorsque ceux-ci agissent dans le champ d'application du droit communautaire” ou “dans les domaines de compétence de l'Union et de la Communauté”. Ces expressions respectent la division de compétences et l'acquis communautaire en matière de droits fondamentaux. V. discours du Juge M. Vassilios SKOURIS, représentant de la CJCE (BODY 1, ANNEXE V) et exposé des motifs¹⁹.*

L'expression de CONVENT 27 (*“exclusivement dans le cadre de la mise en oeuvre du droit communautaire”*) peut prêter à des malentendus et conduire à une régression par rapport à l'acquis communautaire. Il doit être clair que les droits fondamentaux doivent être respectés dans les domaines que les États membres ont cédés à la CE ou l'UE, même quand ceux-ci ne mettent pas en oeuvre le droit communautaire ou le mettent en oeuvre incorrectement.

Champ d'application personnel: V. notre proposition (CONTRIB 42): *“toute personne relevant de la juridiction de l'UE, de la CE et des États membres”.*

Plusieurs intervenant(e)s et des membres de la Convention ont souligné la nécessité de prévoir des obligations des particuliers. C'est à ce souci que répond notre proposition que, au moins les droits civils et politiques, ainsi que la majorité des droits sociaux, y compris les droits à l'égalité entre femmes et hommes, à la protection de la maternité et des parents et les autres droits qui constituent l'acquis communautaire puissent être invoqués *“à l'encontre des organes et institutions de l'Union, de la Communauté et des États membres, comme à l'encontre des particuliers”.*

Article H.2. Limitations. Nous nous félicitons du 1er paragraphe, qui marque une avancée par rapport à l'article X de CONVENT 13, en prévoyant des droits absolus. Parmi ceux-ci devraient figurer, en tout état de cause, les droits à la dignité, à la vie, à l'intégrité, à l'égalité entre femmes et hommes, comme le propose M. Guy BRAIBANT (CONTRIB 153) (cf. notre CONTRIB 105, Article X).

Article H.4. Niveau de protection. Nous nous félicitons de cet article, qui marque aussi une avancée par rapport à CONVENT 13 (Article Y), puisque il précise que la Charte contient des standards minima par rapport au droit national et international et à toutes les conventions internationales ratifiées par les États membres.

Cependant, la référence au *“droit de l'Union”* peut créer des confusions, puisque le *“droit communautaire”* n'est pas mentionné, et aussi en vue de l'incorporation de la Charte dans ce droit. Par conséquent, afin de sauvegarder le niveau éventuellement plus élevé des dispositions du droit de la CE et de l'UE autres que celles de la Charte, il serait préférable de se référer à *“toute autre disposition du droit communautaire et de l'Union...”*.

- **DROIT À L'INFORMATION:** Voy. notre proposition (CONTRIB 42), inspirée des directives-égalité²⁰: *“L'Union et la Communauté européennes, ainsi que les États membres veillent à ce que les dispositions de la présente Charte soient portées à la connaissance des personnes dont elles garantissent les droits, par tout moyen approprié et efficace. Ces personnes ont le droit d'en être informées.”*

¹⁹ Voy. aussi CJCE 29.5.1997, C-299/95, *Kremzow*, Rec. I-2637.

²⁰ Article 7 Directive 75/117/CEE, article 6 Directive 76/207/CEE.

- **QUESTIONS LINGUISTIQUES:** Veuillez noter que la Charte devrait se référer **aux “droits de la personne humaine”, expression utilisée par la CJCE²¹, ou aux “droits humains”**, plutôt qu’aux “droits de l’homme”, et que les expressions qu’elle contient devraient être ou bien neutres du point de vue du genre (p. ex. “*personne*”) ou bien se référer aux deux genres (p. ex. *il/elle, ceux/celles*).
- **DÉCLARATION FINALE:** L’AFEM soutient:
 - la Déclaration Commune du Forum de la Société Civile,
 - les propositions de l’EURONET sur les droits des enfants.

Monsieur le Président, Mesdames, Messieurs Membres de la Convention.

L’AFEM vous remercie de votre attention et de vos efforts pour promouvoir et garantir les droits fondamentaux en Europe. En adoptant cette Charte que vous êtes en train d’élaborer l’UE fera preuve de son attachement aux principes universels proclamés par l’article 6§1er Traité UE et de sa détermination d’assurer que ni cette disposition ni celles des articles 7 et 49 de ce Traité ne deviendront lettre morte. Elle confirmera ainsi qu’elle se veut vraiment une communauté de droit et renforcera sa crédibilité tant envers ses citoyens qu’envers la communauté internationale

La crainte exprimée par quelques uns que cette Charte risque de créer des conflits de jurisprudence entre la Cour de Strasbourg et la Cour de Luxembourg n’est pas justifiée.

Les droits fondamentaux ont été introduits en droit communautaire, en tant que normes contraignantes, par la jurisprudence de cette dernière. Cette jurisprudence, qui n’a pas créé de problèmes de conflit, va continuer à ce développer, même en l’absence de Charte, et rien ne peut l’arrêter. C’est la visibilité des droits fondamentaux et leur lisibilité, voire leur plus grande efficacité dans notre vie de tous les jours, qui sera promue par la Charte selon le mandat du Conseil Européen que vous êtes en train de mettre en oeuvre par votre autorité.

L’AFEM vous souhaite un bon aboutissement de vos travaux.

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²¹ V. p. ex. CJCE jurisprudence citée ci-dessus, note 1. Cette expression est d’ailleurs recommandée par le Forum des ONG réuni à Vienne en juin 1993 (Recommandation No 23).

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 24 May 2000**CHARTE 4315/00****CONTRIB 182****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a letter and a statement submitted by the United Nations Committee on Economic, Social and Cultural rights.^{1 2}

¹ This text has been submitted in English language only.

² United Nations: Palais des Nations, CH-1211 Geneve 10. Tel: +41-22-917 9321.
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NATIONS UNIES

HAUT COMMISSARIAT AUX DROITS DE L'HOMME



UNITED NATIONS

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REFERENCE: G/SO 221/912

Geneva

27 April 2000

Dear Professor Herzog,

I have the honor to bring, through you as a President, to the attention of the Convention to elaborate a Draft Charter of Fundamental Rights of the European Union a self-explanatory Statement adopted by the United Nations Committee on Economic, Social and Cultural Rights with respect to the discussion by the Convention of a Draft Charter of Fundamental Rights of the European Union as far as it relates to the economic, social and cultural rights.

I would appreciate very much that due consideration be given by the Convention to the issues raised in the Committee's Statement.

Sincerely Yours,

Virginia Bonoan-Dandan
Chairperson
United Nations Committee on Economic,
Social and Cultural Rights

Professor Dr. Roman Herzog
President of the Convention to elaborate
a Draft Charter of Fundamental Rights of the European Union
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NATIONS UNIES
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1. The United Nations Committee on Economic, Social and Cultural Rights takes note of the impressive work presently devoted to the elaboration of a Draft Charter of Fundamental Rights of the European Union to be presented to the European Council and to the European Parliament by the end of this year, which endeavours to consolidate the existing human rights standards forming part of the 'acquis communautaire', as developed by the case law of the European Court of Justice, and embracing the common constitutional traditions of Member States of the European Union, as well as the human rights enunciated in the European Convention on Human Rights and Fundamental Freedoms and the European Social Charter. The Committee notes with great interest that the most recent draft articles elaborated by the Convent refer to economic and social rights as contained in the documents Convent 18, Charte 4192/00 of 27 March 2000 and Convent 19, Charter 4193/00 of 29 March 2000, and purport to entrench such rights alongside civil and political rights with the object of rendering all human rights at the European Union fully justiciable.
2. The Committee notes with satisfaction that the Convent thus endeavours to stress the indivisibility of all human rights and would like to point out that this strategy conforms with the existing international human rights obligations resting on each of the Member States of the European Union as parties to the International Covenant on Economic, Social and Cultural Rights.
3. Considering that in the context of the European Union, economic and monetary policies have been fully integrated, special attention should therefore be given to economic and social rights as a corollary to these steps of integration. So far, only the European Social Charter as revised, with Protocols, and the Declaration of the Community Charter of Social Rights of 1989, address these human rights issues, but they have not achieved the same degree of justiciability and enforceability as civil and political rights. The proposed articles on economic and social rights in the Draft Charter, therefore, mark a considerable step in the right direction.

4. The Committee, while wishing to express its fullest support for these proposals, would nevertheless like to point out that if economic and social rights were not to be integrated in the Draft Charter on an equal footing with civil and political rights, such negative regional signals would be highly detrimental to the full realization of all human rights at both the international and domestic levels, and would have to be regarded as a retrogressive step contravening the existing obligations of Member States of the European Union under the International Covenant on Economic, Social and Cultural Rights. In such a case, the Committee might have to raise this issue when examining reports by States parties, as a violation of the obligation under article 2(1) ICESCR 'to achieving progressively the full realization of the rights recognized' in that Covenant, i.e. taking measures geared to progressively realize and promote economic, social and cultural rights.
5. The Committee wishes to emphasize that only a Charter which will be fully binding on Member States of the European Union, and which would give every individual a justiciable right to complain about violations of civil and political, as well as economic and social rights, can fully secure the protection of all human rights.
6. Furthermore, the Committee, while noting that in the explanatory notes to each draft article on economic and social rights ample reference to the European law sources is provided, but no reference to the relevant economic and social rights' obligations existing under the International Bill of Human Rights, i.e. under the Universal Declaration on Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights is given. The Committee in this connection welcomes draft amendments proposed by delegates to the Convent making express reference to such treaty obligations. The Committee expresses its hope that the Convent, in drafting economic and social provisions in the Charter, will take the opportunity to remind Member States of their obligation to domestically apply the rights of the International Covenant on Economic, Social and Cultural Rights. Mentioning such international rights obligations in the explanatory notes to the Draft Charter articles will ensure their widest dissemination and encourage greater awareness of these existing international obligations. That opportunity should not be missed.
7. Finally, the Committee would like to reiterate its appreciation of the important work presently being undertaken by the Convent. Efforts to integrate all human rights and to ensure full justiciability for them, at the regional level, will be a major milestone towards the full realization of all human rights.

Virginia Bonoan-Dandan
Chairperson
United Nations Committee on Economic, Social and Cultural Rights

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 24 May 2000**CHARTE 4317/00****CONTRIB 183****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter the positionpaper submitted by the Engineering Employer's Federation (EEF).¹

¹ This text has been submitted in English language only.

EU CHARTER OF FUNDAMENTAL RIGHTS – EEF POSITION

EEF

1 The Engineering Employers' Federation (EEF) is the representative voice of the UK engineering industry. It is a nationwide federation of 13 Regional Associations and the Engineering Construction Industry Association. The EEF has a growing membership of over 5,700 companies of all sizes, employing over 900,000 people in every sector of engineering, manufacturing, engineering construction and technology-based industry.

Background

2 The decision to draw up an EU Charter of Fundamental Rights was originally taken at the Cologne European Council in June 1999. The process by which this would be done was subsequently established at the Tampere Council in October 1999 and the Helsinki Council in December 1999.

3 The EEF understood that the aim was to make existing fundamental rights more visible within the EU. Given that ratification of the Council of Europe's European Convention on Human Rights is a condition of EU membership, there appeared to be no other pressing need for a new instrument establishing such fundamental rights. On this basis the industry considered the decision to be worthy of support.

4 It was thus envisaged that the Charter would consist largely of the fundamental rights and freedoms and the basic procedural rights enshrined in:

- the European Convention for the Protection of Human Rights and Fundamental Freedoms;
- the EU Treaties; and
- traditions common to Member States.

5 These fundamental rights would therefore include:

- the right to life;
- the right to be treated with dignity;
- the right to liberty and security;
- the right to a fair trial; and
- the Treaty's four fundamental freedoms – free movement of persons, goods, services and capital – which form the business rationale for the EU.

6 However, in monitoring the work to date of the Convention charged with drafting the Charter and the contributions from the EU institutions, **it has become clear to the EEF that consideration is now being given to drawing up an extensive document containing new EU rights, possibly with legal effect, rather than a brief declaratory statement of existing fundamental rights.** This is of great concern to the industry.

EEF Concerns

7 These cover, principally:

- The expansion of the Charter to include new social and economic “fundamental rights”.
- The possibility that such rights will be legally binding.

New Social and Economic Fundamental Rights

8 The EEF has major concerns about the possible inclusion in the Charter of new social and economic ‘fundamental rights’, such as the right to vocational training.

9 The industry is also concerned at the apparent expansion of given rights into a general requirement. For example:

- the expansion of the requirement that men and women in the same employment receive equal pay for work of equal value into a general requirement for all workers to receive equal remuneration for work of equal value;
- the extension of the provisions of existing European legislation on Works Councils into a ‘fundamental’ right for all workers to be informed and consulted;
- the possible inclusion of a broad right to protection in cases of termination of employment.

10 The incorporation of such rights in the Treaty would effectively extend EU competence into new areas such as those governing pay and industrial relations. This could lead to incompatibility and inconsistency with existing Member State laws, e.g. those establishing a national Minimum Wage.

11 The EEF is also concerned at the possible inclusion of detailed and limited rights conferred by EU law, such as those specifying the minimum period of maternity leave. The Charter will become unnecessarily long and diffuse if every right provided by EU employment law is written into it, e.g. those on parental leave, rest periods and annual leave. It would also require constant revision. This would negate the aim of a clear and simple document carrying maximum public impact.

12 Similarly some of the other 'fundamental rights' currently being considered for inclusion are so broad as to be virtually meaningless, or at least susceptible to widely differing interpretations. An example is the right to health and safety at work. Such 'rights' could have a deleterious effect on the credibility and public acceptance of the document by raising expectations that cannot ultimately be fulfilled.

Incorporation of the Charter into the Treaty

13 The EEF understands that the status of the Charter will not be determined until after its terms are agreed. The concerns outlined above are therefore heightened by the possibility that such rights become legally binding and therefore justiciable through their incorporation in the Treaty.

14 The industry is of the view that the Charter should be a declaratory statement, if it is to be easily read and understood by citizens. By contrast a legal binding document:

- would not meet the aim of enhancing visibility;
- would be likely to have unintended consequences in view of its length and complexity; and
- would lead to great legal uncertainty for industry, impacting on competitiveness and therefore conflicting with the welcome recognition of the importance of enterprise and innovation at the recent Lisbon Summit.

15 The EEF has great concerns about the implications of the usurping of the Member State competence and the proper role of intergovernmental negotiations by creating new rights in this way. Indeed the Charter thus becomes little more than the pursuit of social and political objectives by the back door.

16 Even if it does not have legal effect, a Charter agreed by EU Member States and EU institutions setting out a detailed list of rights could be used as a platform for making such rights legally enforceable in the future. Having endorsed them in the Charter, no Member State would be able to deny acceptance of these rights or their 'fundamental' nature.

17 The incorporation of the Charter into the Treaty would bring into existence two parallel systems of human rights protection, thereby blurring the roles of the European Court of Human Rights and the European Court of Justice. The ECJ is already showing signs of overload. An extension of its remit in this way would have major resource implications, given the need for speedy resolution of cases.

Conclusion

18 The EEF supports a declaratory Charter clearly setting out the existing fundamental rights recognised by the EU.

19 The EEF hopes that the concerns of the industry as expressed above will be taken into account by the Convention drafting the Charter and the European Institutions.

EEF
May 2000

ENTWURF DER CHARTA DER GRUNDRECHTE DER EUROPÄISCHEN UNION**fundamental.rights@consilium.eu.int**

Brüssel, den 24. Mai 2000**CHARTE 4318/00****CONTRIB 184****ÜBERMITTLUNGSVERMERK**

Betr.: Entwurf der Charta der Grundrechte der Europäischen Union

Finden Sie bitte nachstehend eine Beitrag des Deutschen Städte- und Gemeindebundes zum Recht auf Selbstverwaltung.¹

¹ Dieser Text wurde nur in deutscher Sprache übermittelt.

Deutscher Städte- und Gemeindebund



Herrn
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Berlin, den 13. Februar 2020

G/3 050-25 zi

Erarbeitung einer EU-Charta der Grundrechte

Appell des Deutschen Städte- und Gemeindebundes nach einem Recht auf Selbstverwaltung in der EU-Charta der Grundrechte

Sehr geehrter Herr Bundespräsident a.D. Professor Dr. Herzog,

der Deutsche Städte- und Gemeindebund möchte gerne einen Vorschlag im Rahmen der Erarbeitung einer EU-Charta der Grundrechte unterbreiten.

Die Städte und Gemeinden sind in vielfältiger Weise vom europäischen Integrationsprozess betroffen. Sie legen dabei ein klares Bekenntnis zur Europäischen Union und zum europäischen Einigungsprozess ab. Wenn davon gesprochen wird, ein "Europa der Bürger und Bürgerinnen" errichten zu wollen, so möchten wir in diesem Zusammenhang darauf hinweisen, dass es die kommunale Ebene ist, die dem Bürger am nächsten steht und tagtäglich vor diesen in der Verantwortung, die Politikgestaltung der höheren politischen Ebenen zu vertreten und umzusetzen. Gleichermäßen erlaubt und gewährleistet es die kommunale Selbstverwaltung, die Identifizierung des Bürgers mit dem Staat zu stärken und Demokratie als politische Mitwirkungsmöglichkeit unmittelbar erlebbar zu machen.

Der Deutsche Städte- und Gemeindebund ist daher der Auffassung, dass der Prozess der Erarbeitung einer EU-Charta der Grundrechte auch Anlass sein sollte, über dieses Politikmodell und dessen Zukunft im europäischen Integrationsprozess nachzudenken und entsprechende Schlüsse für die Charta zu ziehen.

Bei der EU-Charta der Grundrechte geht es nicht nur darum, einen Konsens unter den nationalen (verfassungs-)rechtlichen Grundpositionen zu erzeugen. Die supranationalen Handlungsformen der EU haben Frage- und Problemstellungen auch für bürgerschaftliche Rechtspositionen erzeugt, die naturgemäß bisher von den nationalen Rechtsordnungen nicht beantwortet werden mussten. Daher muss eine EU-Charta der Grundrechte notwendigerweise über den Konsens der nationalen Ordnungen hinaus Antworten auf diese europäischen Fragen geben.

Dies betrifft insbesondere das Subsidiaritätsprinzip, das in der sowohl in der Präambel des EU-Vertrages wie auch in Art. 5 des EG-Vertrages unmittelbar im europäischen Primärrecht verankert ist. Da es sich hierbei um ein so tragendes wie grundlegendes Prinzip für die (zukünftige) Entwicklung der Europäischen Union handelt, muss das Subsidiaritätsprinzip auch als bürgerschaftliche Rechtskomponente Aufnahme in die EU-Charta der Grundrechte finden.

Wir schlagen daher vor, dies dadurch anzustreben, dass folgende Textpassage eines "Rechts auf Selbstverwaltung" zur Verwirklichung des Subsidiaritätsprinzips im Verhältnis zum Bürger in die Charta aufgenommen wird:

"Die Europäische Union gewährleistet und fördert das Recht der Bürgerinnen und Bürger, ihre örtlichen Angelegenheiten mit Hilfe kommunaler Gebietskörperschaften selbst effektiv zu gestalten, die über demokratisch legitimierte Beschlussfassungsorgane und eine große Autonomie im Hinblick auf ihre Befugnisse und Mittel verfügen."

Ein bürgerschaftliches Recht auf effektive Gestaltung der örtlichen Angelegenheiten durch demokratisch gewählte Vertretungen ist eine praktische Ausprägung des Subsidiaritätsprinzips. So wie es möglich war, die Inhalte der Europäischen Menschenrechtskonvention in Artikel 6 des EU-Vertrages aufzunehmen, muss es auch möglich sein, die für die Bürgernähe wesentlichen örtlichen Freiheits- und Gestaltungsrechte in geeigneter Form zu gewährleisten. Dies gilt umsomehr, als die lokale Gestaltung des unmittelbaren Lebensumfeldes ein wichtiger Bestandteil europäischen Kultur- und Politikverständnisses ist.

Vor der Gründung der Nationalstaaten war Europa ein Gebilde aus Städten und Gemeinden. Aus diesen selbstbewussten dezentralen Strukturen ist auch die EU gewachsen. Die in der Charta der kommunalen Selbstverwaltung des Europarates (1988) festgeschriebenen Grundsätze der kommunalen Selbstverwaltung sind allen EU-Mitgliedsstaaten gemein. Diese Charta wurde von nahezu allen EU-Mitgliedsstaaten völkerrechtlich verbindlich ratifiziert. Daher kann bereits davon gesprochen werden, dass die Grundsätze kommunaler Selbstverwaltungstätigkeit zur nationalen Identität der Mitgliedsstaaten im Sinne des Art. 6 Abs. 3 EU-Vertrag zählen.

Der beratende Ausschuss der regionalen und lokalen Gebietskörperschaften in der Europäischen Union (AdR) hat wiederholt ihre Aufnahme in die EG-Verträge gefordert. Dies ist um so notwendiger und nützlicher, als die Charta der kommunalen Selbstverwaltung die erste rechtliche Vereinbarung zwischen europäischen Staaten war, in der das Subsidiaritätsprinzip definiert wird.

Bei dem Subsidiaritätsprinzip handelt es sich um ein sozialphilosophisches Konzept. Es betrifft in grundlegender Weise die Gestaltung einer gesellschaftlichen Kompetenz- und Zuständigkeitsverteilung. Diese Verteilung lässt in erkennbarer Weise Schlüsse für die Zuweisung von Kompetenzen für die über- und untergeordneten Regierungs- und Verwaltungsebenen eines Staates zu. Es wäre somit angemessen, in der EU-Charta der Grundrechte die Grundsätze einer effektiven Gestaltung der örtlichen Lebensverhältnisse als bürgerschaftliche Rechtsposition aufzunehmen.

Der "örtliche Bezug" des Subsidiaritätsprinzips ist bereits heute im EG-Vertrag erwähnt. So gibt bspw. Art. 19 Abs. 1 EG-Vertrag jedem Unionsbürger das aktive und passive Wahlrecht bei Kommunalwahlen. Dieses durch den EG-Vertrag gewährleistete Recht unterstellt denotwendig eine effektive Gestaltung der Lebensverhältnisse vor Ort durch demokratisch gewählte Vertretungen. Es ist daher nur konsequent, diese Komponente auch in der EU-Charta der Grundrechte anzuerkennen. Schließlich bringt es das Subsidiaritätsprinzip schlechthin zum Ausdruck, dass politische Entscheidungen möglichst bürgernah getroffen werden. Mit einem modernen Grundrecht auf Selbstverwaltung und Subsidiarität betritt man also im EG-Recht nicht grundsätzlich "Neuland".

Der AdR hat in seiner Stellungnahme zur Erarbeitung einer EU-Grundrechtecharta (Dokument CdR 327/99 rev. 1) ebenfalls aufgefordert, ein bürgerschaftliches Recht aufzunehmen, nach dem die örtlichen Angelegenheiten von demokratisch gewählten Vertretungen effektiv wahrgenommen werden können. Dies wird zu dem zutreffend in der Initiativstellungnahme des Ausschusses der Regionen zu dem Thema "Unionsbürgerschaft" (Az.: CdR 226/99 rev. 2) zum Ausdruck gebracht.

Gerade im Zusammenhang mit der Erweiterung der EU nach Mittel- und Osteuropa hat dieser Zusammenhang neue Bedeutung erlangt. Die Beitrittsstaaten legen großen Wert auf die Kultivierung lokaler und regionaler Demokratie, gerade und auch im EU-Zusammenhang. Durch eine möglichst bürgernahe Politik in der EU erfolgt zudem eine Stärkung der Europäischen Integration. Der Formulierungsvorschlag des Deutschen Städte- und Gemeindebundes für ein Recht auf Selbstverwaltung als Ausprägung des Subsidiaritätsprinzips überlässt es zudem ganz im Sinne des Subsidiaritätsprinzips den Mitgliedsstaaten und Regionen selbst, wie die konkrete Ausgestaltungen örtlicher Demokratie erfolgen soll.

Mit freundlichen Grüßen

(Dr. Gerd Landsberg)

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 24 May 2000**CHARTE 4319/00****CONTRIB 185****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a contribution by the Danish Organisation of organisations of Disabled People (DSI).^{1 2}

¹ This text has been submitted in English language only.

² DSI: E-mail: hw@handicap.dk

Den 16. maj 2000

J.nr. 1401.14 [30.5.2] /abj

1. The European Union reaffirms that all persons with disabilities - men, women and children - have a right to protection against discrimination by full and equal enjoyment of the international standards on human rights which have been laid down in the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights.
2. Persons with disabilities have, individually and collectively, a right to equal opportunities and non-discrimination.
 - (a). Human rights are universal and, according to their nature, apply to all human beings, including persons with disabilities, because all people are born equal and have the same inalienable rights to life, education, work, independent living and access to active participation in all aspects of social life in the Member States. Any violation of this fundamental principle of equality and any discrimination or other negative differential treatment of persons with disabilities inconsistent with the UN Standard Rules on Equalization of Opportunities for Persons with Disabilities is therefore a violation of his or her human rights as a disabled person and citizen in the European Union.
 - (b). Reaffirming The Universal Declaration of Human Rights, The Vienna Declaration and Programme of Action, Chapter II, B, 6, article 63 and 64, and The Convention on the Rights of the Child, in particular article 23, the Member States reiterate their responsibility for and commitment to enhance equal opportunities for persons with disabilities as stipulated in the UN Standard Rules on the Equalization of Opportunities for Persons with Disabilities.
 - (c). While the obligation to implement the UN Standard Rules on Equalization of Opportunities for Persons with Disabilities lies primarily with the Member States it is also a matter of utmost importance and deep concern for the European Union. The Problems that need to be addressed in creating equal opportunities for persons with disabilities must be raised and solved at international, European, national, regional and local level and in every sector of society, be it public or private, where equal opportunities do not exist.
 - (d). The European Union and the member States are committed to combat and eliminate all socially - determined barriers, be they environmental, financial, social, cultural or psychological, which exclude or restrict disabled persons from full participation, inclusion and mainstreaming in the social life of the society where they live.

3. Persons with disabilities have individually a right to:
 - * Effective medical care and rehabilitation services so that they can reach and sustain their optimum level of independence and function.
 - * Independent living, integration and active participation in all aspects of society.
 - * Access to the physical environment as well as to information and communication.
 - * Access to shelter, infrastructure, means of public transport and all other basic services.
 - * Access to education and studies at all levels in integrated settings – taking into consideration the special needs of e.g. deaf people.
 - * Equal opportunities for productive and gainful employment in the labour market.
 - * Social security and income maintenance if they temporarily or permanently are unable to support their families and themselves.
 - * A right to full participation in the development process and inclusion in poverty eradication programmes.
4. Persons with disabilities have individually and collectively a right to:
 - * Formation and membership of organizations of disabled people and a right for such organizations to speak for and act as legitimate representatives on behalf of their members.
 - * Rehabilitation programmes
 - * Development of regional, national and local plans and programmes, concerning all the target areas for equal participation, in accordance with Rule 1 - 12 of the UN Standard Rules for Equalization of opportunities for Persons with Disabilities.
5. Persons with disabilities should be included in all strategies and plans aiming at eradication of poverty, promoting education and enhancing employment. Such strategies and plans should not only contain special components aiming at persons with disabilities, but also integrate persons with disabilities in the general measures and support offered to the poor and underprivileged parts of the population.

6. (a). Within the European Union and the Member States it is incumbent upon anyone who does not respect, comply with or acts in conformity with the UN Standard Rules on Equalization of Opportunities for Persons with Disabilities to substantiate that this treatment does not constitute discrimination against disabled persons.
 - (b). No European, national or international legal instrument must be interpreted or construed to place persons with disabilities at a disadvantage in any context or offer them less protection than other persons.
 - (c). Whenever a particular group of vulnerable, marginalized or impoverished persons are mentioned in this Charter or in any other Human Rights instrument the text shall be read to include persons with disabilities belonging to the group.
-

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE**fundamental.rights@consilium.eu.int**

Bruxelles, le 24 mai 2000**CHARTE 4320/00****CONTRIB 186****NOTE DE TRANSMISSION**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne

Veillez trouver ci-après une contribution avec la position de la COFACE. ¹

¹ Ce texte a été soumis en langue française.

COFACE

DROITS FONDAMENTAUX

La COFACE a publié, dans la perspective de la prochaine C.I.G., une déclaration commune avec deux organisations européennes qui défendent les droits des enfants : Euronet et E.F.C.W.

Il y est fait notamment référence aux droits fondamentaux, en ces termes :

"L'Union respectera les droits fondamentaux, comme garantis par la Convention européenne pour la Défense des Droits de l'Homme et des Libertés fondamentales, signée à Rome le 4.11.50 et la Convention O.N.U. sur les Droits de l'Enfant, adoptée le 20.11.89".

Au delà de cette déclaration commune, la COFACE, porte-parole des associations familiales des Etats membres de l'U.E., tient à préciser sa position relative au projet de Charte des droits fondamentaux. Sans revenir sur un certain nombre de points déjà très largement admis, elle souhaite en effet formuler des propositions spécifiquement axées sur les droits des familles.

Des principes généraux

1. L'égalité entre tous les citoyens et le rejet de toute forme de discrimination requièrent une reconnaissance explicite de la diversité des modèles familiaux dans les Etats européens.
2. L'égalité entre les enfants implique que tous bénéficient des mêmes droits, sans référence au statut matrimonial de leur(s) parents.
3. Le vieillissement des populations européennes et l'évolution des familles exigent l'organisation d'une "société tous âges" qui prenne largement en compte les besoins de chacun et notamment des personnes âgées en voie de dépendance.

Des droits concrets

1. Protection sociale

Le droit à la protection sociale doit être garanti et prévoir explicitement que :

- tous les enfants ont droit aux soins de santé et à des prestations familiales,
- toutes les personnes âgées doivent pouvoir bénéficier de revenus (retraites) et de services (soins de santé et aide à la vie journalière si nécessaire),
- enfants et adultes handicapés ont droit à un soutien - en argent et/ou en services - répondant à leurs besoins spécifiques,
- un revenu minimum garanti doit compléter les régimes de sécurité sociale, en vue d'assurer un "filet de sécurité" à ceux que les aléas de la vie ont marginalisés.

2. Education - Formation

- Tous les enfants doivent avoir accès à l'école et à une formation qui leur permette de s'insérer dans la vie économique et sociale,
- le droit à une formation "tout au long de la vie" doit permettre à chacun de trouver sa place dans notre société en évolution,
- le processus d'équivalence des diplômes entre pays de l'U.E. doit être amélioré et complété.

3. Emploi

- Dans le cadre des programmes pour l'emploi et l'intégration sociale, il faut assurer aux travailleurs (euses) de réelles possibilités de concilier emploi, vie familiale et insertion sociale,

4. Droit civil

- Dans le contexte du grand marché intérieur et du rejet des discriminations, il importe de garantir non seulement aux citoyens européens mais aussi aux ressortissants des pays tiers séjournant dans les Etats membres de l'U.E. un regroupement familial effectif, ouvert à l'ensemble de leur ménage,
- le respect des droits de l'enfant inclut un règlement équilibré des litiges entre les parents, notamment en cas de divorce ou de séparation de personnes de nationalités différentes.

5. Protection des consommateurs

- Les services d'intérêt général tels que les distributions d'eau et d'énergie, les services postaux et de téléphone, doivent être accessibles à toute la population,
- le consommateur a droit à une information objective sur les biens de consommation mis à sa disposition ; il doit notamment avoir l'assurance que sa sécurité alimentaire fait l'objet de contrôles sérieux au niveau européen,
- l'accès à des soins médicaux de bonne qualité doit être garanti à tous, ce qui suppose un financement adéquat et une bonne répartition géographique des services.

6. Le droit à la parole

- La citoyenneté européenne ne se limite pas au droit de vote ; elle s'exprime aussi par la participation organisée et continue à la construction d'une Europe démocratique. Le droit des O.N.G. à être consultées sur les questions qui concernent les groupes de population qu'elles représentent doit être garanti et assorti de conditions qui permettent à ces O.N.G. d'assumer pleinement leur rôle de porte- parole.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 25 May 2000**CHARTE 4321/00****CONTRIB 187****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a submission by the European Broadcasting Union (EBU) with the final comments.^{1 2}

¹ This text has been submitted in English and French languages.

² EBU: Ancienne Route 17 A, CH - 1218 Grand-Saconnex/Geneva. Tel: +41-22-717 2511.

EUROPEAN BROADCASTING UNION

UNION EUROPEENNE DE RADIO-TELEVISION

*Legal Department**Département juridique*

11.5.2000/4

DAJ/MW/mp

Original: English

**EBU comments
on the Charter of Fundamental Rights**

The European Broadcasting Union (EBU/UER)¹ welcomes the consultation organized by the Convention which is drawing up a Charter of Fundamental Rights, and the involvement of civil society in that process. The present contribution concentrates on freedom of expression and other issues related to the media and the information society.

Before addressing those particular issues, however, we would briefly express our general agreement with the Charter project itself and the underlying recognition it gives that the protection of fundamental rights vis-à-vis the institutions of the European Union should be improved. A catalogue of fundamental rights enshrined in a Charter can lead to a stronger commitment on the part of the European institutions to fundamental rights, and to better enforcement of such rights at the European level. It will make the guarantee of fundamental rights more transparent, and readily understandable for European citizens, than in the current wording of Article 6(2) of the EU Treaty.

To achieve these objectives, it will be necessary for the institutions of the European Union to be subject to a binding legal text on fundamental rights, just as the Member States are subject to the European Convention on Human Rights and the fundamental rights enshrined in their national constitutions. Required too will be effective enforcement, through a Court specializing in human rights, open to direct access by citizens. Such a Court already exists in the form of the European Court of Human Rights; in this context, the option of the European Union becoming a party to the European Convention on Human Rights should be considered.

1. Freedom of expression

From the outset we would express satisfaction with Article 10 of the European Convention on Human Rights as it has been interpreted and applied by the European Court of Human Rights. Article 10 has become one of the cornerstones of democracy, and of a free media system, throughout Europe.

We therefore welcome the clarification in the draft Charter that nothing in the text may be interpreted as placing restrictions on the protection afforded by the European Convention on

¹ Founded in 1950, the EBU has a total of 69 active members, mainly national public service broadcasters, in all the Member States of the European Union and throughout other countries in Europe and the Mediterranean basin. The Union also has 48 associate members in 30 countries further afield.

Human Rights. For us, this is a very important point to retain; the protection afforded by Article 10 should be regarded as untouchable.

There is no need to "reinvent" Article 10. We believe that the Convention drawing up the Charter has been wise, in formulating the right to freedom of expression in its provisional draft, to retain the wording of Article 10 (i.e. the first two sentences of Article 10, which contain the essence).

Regarding possible limitations on freedom of expression, we appreciate, in particular, the emphasis that the Strasbourg Court of Human Rights has placed on the requirement that any limitation must be "necessary in a democratic society". It is welcome that the current draft takes up, at least in its horizontal rule on limitations, the criterion that any limitations must be necessary for the protection of legitimate interests in a democratic society. This criterion must be maintained.

Our first message, therefore, is that it is important to maintain the "*acquis*", i.e. Article 10 of the European Convention on Human Rights.

2. New issues: Media freedom and pluralism, cultural diversity, access to content

On the other hand, new issues have cropped up in the past 50 years, following the adoption of the Convention, and the Charter is an opportunity to address them in a modern way. The Charter can thus provide added value if it tackles such issues as media freedom, media pluralism, cultural diversity and equal access to information and content. Many of these issues are not really new, and they have been addressed in the framework of freedom of expression, and the case law regarding Article 10. However, in view of increased awareness of their importance, it would seem appropriate to address them now in a more direct way.

A free, pluralistic media system which functions properly is essential for democracy. This applies not only to the new democracies, which now stand on the threshold of the EU, but also to the democratic foundations of the EU itself. Such a system is also a means of fulfilling the political, cultural and social needs of citizens and of society as a whole.

Freedom of expression and information as a right for individuals cannot offer its full benefits for a democratic society unless there is a framework which ensures that the media system functions properly (with sufficient financial resources, a proper legal framework, and well-trained journalists), and unless there are safeguards for media pluralism (and media conglomerates are prevented from becoming dominant and controlling public opinion), as well as safeguards for cultural identity and diversity (so that they are not brushed aside by market forces and globalization). Nor can these benefits be achieved if key political, educational and cultural content is not accessible to all citizens, or if part of the population finds itself excluded from access to the new communications networks.

Consequently, each State must be the guarantor of a free, pluralistic media system, through, in particular, the creation of an appropriate legal and financial framework. One of the greatest challenges here is probably the safeguarding of media pluralism, and digitization makes these challenges even greater. Today we see strong concentrations in digital television (with very few digital television platforms), mega-mergers (as between Time Warner and AOL), and the emergence of new gatekeeper positions (regarding set-top box technology, conditional access systems, navigation systems, electronic programme guides, APIs, etc).

It is for Member States to take the necessary measures to guarantee the freedom of the press, of broadcasting and of other media, and to safeguard media pluralism and cultural diversity, and that should remain the case². We therefore welcome the clarification in the current draft that the provisions of the Charter shall not establish any competence or any new task for the Community or the Union.

What is important is that the European institutions, within their spheres of competence, are bound by these values and objectives, by the obligation to contribute to a free and pluralistic media system and thus underpin the media and cultural policies of the Member States. Within their spheres of competence, the European institutions should contribute positively to the realization of the objectives of media pluralism and cultural diversity. This becomes relevant, for example, in the setting-up and implementation of Community support schemes (not only the MEDIA programme), in the application of internal market rules and, of course, competition rules.

One of the most sensitive areas is the funding of the media. Access to appropriate funding is a basic requirement for any media system, and for media pluralism in particular. In this area the European institutions must not only respect the competence of each Member State but must also ensure that any decisions falling within their spheres of competence and liable to have an impact on funding fully respect media freedom and contribute to media pluralism. This concerns access by the media to all kinds of advertising revenue, and access by public service broadcasters to public or mixed funding, but also taxation on revenue (e.g. reduced VAT rates for cultural or media products).

A final issue is the need to guarantee access for everyone to a diverse, comprehensive choice of content.

Nowadays, much attention is paid to the information society, or knowledge society, and to the importance of giving everyone the possibility to participate. This is not only a matter of access to the Internet. In fact, digital television will play an important role in the democratization of access to the information society, in integration and social cohesion, and in preventing a divide between the information haves and have-nots.

² The competence of the Member States has been reaffirmed, as far as public service broadcasting is concerned, by the Amsterdam Protocol on the system of public broadcasting in the Member States (Protocol No. 32 annexed to the EC Treaty).

The underlying concern is that every citizen should be entitled to participate actively in the political, cultural and social life of society. Today, participation in political or cultural life is less often through personal participation in events than indirectly through the media. It is thus essential for all individuals to have access, via communications networks, to a diverse, comprehensive choice of content relevant to their cultural and social background.

Providing varied and balanced programming for all - and not least political, educational and cultural content - has traditionally been a task for public service broadcasters. It is an example of how public services contribute to the realization of citizens' fundamental freedoms and to equality of chances, and this should be recognized in the Charter. Public service and universal service are means of achieving such equal access to key information resources.

3. Summary

To summarize, we suggest that the Charter should

- reaffirm freedom of expression as enshrined in Article 10 of the European Convention on Human Rights,
- explicitly guarantee the freedom of the press, of broadcasting and of other media,
- recognize the need to safeguard media pluralism and cultural diversity,
- grant all individuals a right of equal access, via communications networks, to impartial news and information and to a diverse, plural and comprehensive choice of content, covering the range of political, educational, social and cultural interests,

while leaving Member States free to determine, in conformity with the Treaty, which institutional arrangements may best contribute to the achievement of this right for their citizens.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 24 May 2000**CHARTE 4323/00****CONTRIB 189****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a submission by the Church and Society Commission of the Conference of European Churches with a letter to Mr. Roman Herzog, the President of the Convention, and a report from the Plenary Meeting of the Commission in Moscow on 5-9 May 2000. ¹

¹ This text has been submitted in English language only.

CONFERENCE OF EUROPEAN CHURCHES

Church and Society Commission

Director: Keith Jenkins

Direct line: 32.2.234.68.38

e-mail: eeccs@skypro.be

Mr. Roman Herzog,
President,
Convention on Fundamental Rights,
Council Secretariat,
rue de la Loi 175
1048 Bruxelles

Ref: DIR/3.3.2

Brussels, 18 May 2000

Dear Mr. President,

On behalf of the Church and Society Commission of the Conference of European Churches, I am forwarding a statement concerning the draft Charter of Fundamental Rights. This was adopted by the Commission during its meeting earlier this month. I also attach a copy of the initial comment which was submitted to the Convention in April, the points of which were endorsed by the plenary meeting of the Commission.

May I take this opportunity of thanking the Convention for the opportunity afforded to organisations from civil society to present their comments orally at the end of April. I hope that there will be further opportunities for dialogue with civil society as the process continues. Our Commission will certainly continue to follow the work of the Convention with close attention and its members would want to affirm as strongly as possible the importance of a real involvement in the process of the potential new members of the European Union.

With every best wish,
Yours sincerely,

Keith Jenkins.

CONFERENCE OF EUROPEAN CHURCHES CHURCH AND SOCIETY COMMISSION

**Plenary Meeting of the Commission
Moscow, Russian Federation
5-9 May 2000**

EU CHARTER OF FUNDAMENTAL RIGHTS

At its meeting in Moscow from 5th to 9th May, the Church and Society Commission of the Conference of European Churches, covering churches throughout the whole of Europe, was able to give consideration to the submission already made on its behalf to the Convention drafting the European Union Charter of Fundamental Rights.

The Commission wishes to endorse all the points made in that submission, of which we enclose a copy. We would like to take this opportunity to give emphasis to some of those points and to add some comments.

The churches represented on the Commission already have a record of commitment to the promotion and defence of human rights, with a special emphasis on social and cultural rights. These are all rooted in genuine Christian tradition. This commitment is expressed through the churches' engagement with European organisations – the OSCE, the Council of Europe and the EU. We therefore welcome the commitment shown by the member states of the EU in launching the process of the development of a Charter of Fundamental Rights.

The Convention has not yet determined how the Charter is to be structured. It is not yet clear what emphasis will be given to social and cultural rights, nor how the defined rights will be limited. In endorsing the view that this Charter should be legally binding, we recognise that the real test of this Charter is the enforcement of the rights contained in it, as much as their formulation. We insist that no provision of this Charter may be interpreted as restricting the scope of the rights guaranteed by European Community law, the law of the member states and international conventions, in particular the European Convention on Human Rights, as interpreted by the case law of the European Court of Human Rights.

We warmly welcome the idea that the Charter should be introduced with a preamble which lays out the common values on which the integration process is based, as outlined in Article 6 of the Treaty of Amsterdam. To this we would add the values of peace, solidarity and participation.

As people coming from the whole of Europe, and not just from the member states of the EU, we stress the importance of extending the process of consultation on this Charter to include the potential member states, beyond the hearing scheduled for June. If the fundamental rights in the Charter are to be expressions of values common to people across Europe, is it not only right that it should be drawn up with the participation of all those likely to be affected by it.

The potential member states are members of the Council of Europe and most have recently undergone the process of drafting their own constitutions. Since the Charter relies not only on European and international legal sources, but also on the national constitutions of the member states, those countries will be well placed to make a precious contribution based on their recent experience.

We look forward to the first complete draft being available soon. We will continue to monitor closely the forthcoming debate, particularly that on social and economic rights.

For the enforcement of the Charter to be successful, it is crucial there should be wide public discussion. We welcome the steps which the Convention has taken towards making this process as transparent and as open as possible. However, we note that in very few of the EU member states represented on our Commission is there adequate public awareness of this development. We therefore encourage members of the Convention to publicise their work more widely, so that their commitment should not be lost in the face of public suspicion and ignorance. We commit ourselves to promoting discussion of the Charter within our churches and beyond.

May 2000

Conference of European Churches,
Church and Society Commission,
rue Joseph II 174,
B-1000 Bruxelles.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 5 June 2000**CHARTE 4324/00****CONTRIB 190****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a common submission by several NGO's (list: see page 2).¹

¹ This text has been submitted in English and French languages.

Association des Femmes de l'Europe Méridionale (AFEM)
Association Internationale des Anciens des Communautés Européennes (AIACE)
ATD Quart Monde
Carrefour pour une Europe civique et sociale (CAFECES)
Centro Italiano di Formazione Europea
Cercle Populaire Européen
Collectif de Pratiques et de Réflexions Féministes "Ruptures"
Collectif sur la Charte des droits fondamentaux
Comité Européen de Liaison sur les Services d'Intérêt Général (CELSIG)
Commission Justice et Paix
Eurolink Age
European Anti Poverty Network (EAPN)
European Movement
European Union Migrant's Forum
Fédération européenne du Personnel des Services Publics (EUROFEDOP)
FONDA pour la vie associative
Forum Européen des Orthodoxes
Franciscans (Commission for Justice, Peace and Integration of Creation)
Gauche Européenne (section belge)
Initiative "Netzwerk Dreigliederung"
Institut Robert Schuman pour l'Europe
International Rehabilitation Council for Torture Victims
MAPP
Office catholique d'information et d'initiative pour l'Europe (OCIPE)
Permanent Forum of Civil Society
Points Cardinaux
Society for Threatened Peoples International
Terre des Hommes France
The European Region of the International Lesbian and Gay Organisation (ILGA)
Union des Fédéralistes Européens (UEF)*
Union des Fédéralistes Européens-Belgique
VIDES
Young European Federalists (JEF)*

* avec le commentaire suivant : "L'élaboration de la Charte des droits fondamentaux doit s'inscrire dans le cadre d'un processus d'élaboration d'une Constitution européenne".

"THE QUALITY TEST"

Common Statement of NGOs participating in the Hearing on the Charter of Fundamental Rights Brussels, 27 April 2000.

What the Charter needs to be What that requires

1. An EU Charter, shining beacon

across Europe on common values and objectives of peoples sharing the same aspiration to peace, development and freedom, belonging to various faiths, beliefs and civilisations and part of the first planetary generation.

2. A Charter for Women and Men

3. A Charter for all: Citizens, Residents, Migrants, Refugees, Undocumented persons

4. A Charter on essential rights

from the Council of Europe, the U.N. and I.L.O agreements

5. A Charter on Individual and Collective Rights,

6. A Charter on the Common Good

- To address the universal character of Fundamental Rights.
- To recognise equality between women and men as a founding principle of the Union
- To use inclusive language.
- To recognise the principle of non discrimination
- To protect the rights of minorities, to use their languages and to transmit their cultures and values in accordance with the Charter
- Never to fall short of agreements even if signed only by some of the EU Member States
- To supplement, strengthen, build on existing rights
- To protect collective rights such as cultural and linguistic rights, the rights of trade unions and associations
- To guarantee a right of consultation for NGOs at the European level
- To recognise access to justice at EU level for NGOs defending the common good and the rights of future generations
- To secure recognition of the common good which is the foundation of a community of persons living together in solidarity and respect
- To give everyone access to the common goods and Public Services, secure transparency in management and participation in the assessment of the management

7. A Charter on civil and political, social, cultural and ecological rights

- To declare that the Charter secures indivisible rights
- To recognise and guarantee the right to local self-government
- To guarantee the key programmatic social, environmental, cultural and education rights for all, for the implementation of which
 - (i) indicators and convergence mechanisms need to be designed
 - (ii) a multiannual implementation programme needs to be developed
 - (iii) a system of monitoring, benchmarking and assessment needs to be in place

8. A Charter on Participatory Democracy at European level

- To secure transparency and access to information
- To define participatory democracy rights at EU as well as at local level
- To recognise the right to a democracy based on equality and parity
- A Charter which defines the criteria for strategic impact assessments of EU policies on all those who find themselves affected by EU actions abroad

9. A Charter which inspires the Union in all its external actions.

10. A legally binding Charter

- The Charter should be legally binding for all the EU Institutions and the Member States.
- Infringement should be examined by the EU Court of Justice and Member State status should be suspended for any State found to be in serious infringement

11. A Charter adopted by a participatory procedure

- To be submitted to an indicative vote by the Parliamentary Assembly of the Council of Europe, involving MPs of all EU Applicant Countries
- To ask for an indicative vote of NGOs on the draft Charter

12. A Charter to be integrated in the Treaty

- To pass the above quality test successfully.

The Signatories request the opportunity to have a real debate with the Members of the Convention on 6 June 2000, at the occasion of the "open doors" day organised by the Convention in the EP.

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE**fundamental.rights@consilium.eu.int****Bruxelles, le 26 mai 2000****CHARTE 4325/00****CONTRIB 191****NOTE DE TRANSMISSION**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne
Contribution soumise par les
syndicats français (datée le
25/04/00)

Veillez trouver ci-après une proposition des syndicats français, accompagnée d'une lettre au Président Roman Herzog.^{1 2}

¹ Ce texte a été soumis en langue française seulement.

² Syndicats français:

CFDT (Confédération Française Démocratique du Travail): 4 boulevard de la Villette, 75955 PARIS CEDEX 19. Tél.: +33-1-4203 8000. Fax: +33-1-4203 8144.

CGC (Confédération Générale des Cadres): 59 rue du Rocher, 75008 PARIS.
Tél.: +33-1-5530 1212. Fax: +33-1-5530 1313.

CFTC (Confédération Française des Travailleurs Chrétiens): 13, rue des Ecluses-Saint-Martin, 75483 PARIS 10. Tél.: +33-1-4452 4900. Fax: +33-1-4452 4918.

CGT (Confédération Générale du Travail): 263 rue de Paris; 93516 MONTREUIL.
Tél.: +33-1-4818 8000.

Confédération Française Démocratique du Travail
Confédération Française de l'Encadrement /
Confédération Générale des Cadres
Confédération Française des Travailleurs Chrétiens
Confédération Générale du Travail

M. Roman HERZOG, Président de la Convention de la Charte des Droits fondamentaux.

Conseil européen
175 rue de la loi
1048 Bruxelles
Belgique

Paris, le 25 avril 2000.

Monsieur le Président,

Les syndicats français ont accueilli avec intérêt le projet de rédaction d'une Charte des Droits fondamentaux de l'Union européenne ; ils ont travaillé en commun au document que vous trouverez en annexe.

Cette Charte doit à nos yeux consacrer les droits des citoyens européens dans les domaines civils et politiques, économiques, sociaux et culturels ; ces droits devraient faire partie intégrante du futur Traité en discussion à la Conférence intergouvernementale, et ainsi constituer une référence claire pour les institutions, y compris la Cour de Justice auxquels les citoyens devraient pouvoir avoir accès en cas de besoin. Ainsi serait consacrée l'effectivité de ces droits fondamentaux.

Du point de vue des syndicats soussignés, la partie concernant les droits économiques et sociaux doit constituer la base juridique du « modèle social » européen et consacrer des droits concrets qui correspondent aux droits effectivement mis en œuvre dans la plupart des états-membres et intégrés dans leurs systèmes juridiques et sociaux, ainsi que les engagements internationaux et régionaux de ces états qui ont presque tous ratifié un nombre élevé de conventions internationales du travail et de traités, notamment au niveau du Conseil de l'Europe, de l'ONU, de l'OIT.

Nous voulons que soit fait référence à tous ces fondements juridiques dans la rédaction de la Charte, par exemple en ce qui concerne la liberté syndicale, le droit de négociation collective, les droits de participation concernant les conditions de travail, l'hygiène, la sécurité, la prévention des accidents de travail et des maladies professionnelles, et l'environnement de travail, au niveau national et transnational, ainsi que la liberté professionnelle et le droit au travail et au repos (congés hebdomadaires et congés annuels payés, durée du travail, services de l'emploi et allocations de

chômage total ou partiel), droit à la formation professionnelle initiale et permanente et à la formation tout au long de la vie, salaires minima et droits à pensions et allocations, égalité professionnelle et non discrimination dans l'emploi et la profession, droit au logement, protection de la maternité et des travailleurs handicapés et accidentés du travail, droit à la protection sociale, à la santé, pour rappeler les principaux points de notre document commun.

Sans référence explicite à tous ces droits la Charte serait sans effectivité réelle, et elle serait inférieure aux droits conquis par des décennies d'efforts du mouvement syndical et des organisations sociales des différents pays ;

En outre, la non respect des droits fondamentaux devrait entraîner des sanctions effectives, au même titre par exemple que le non respect du droit de la concurrence.

Une remise en cause du contrat social européen aurait à l'évidence des conséquences sérieuses pour le modèle social européen et constituerait un signal négatif en direction des pays de l'élargissement et également envers les pays du reste du monde, notamment en ce qui concerne les négociations commerciales internationales et l'universalité des traités internationaux relatifs aux droits humains et les conventions fondamentales de l'OIT.

Notre message est en pleine convergence avec la résolution du Comité exécutif de la Confédération Européenne des Syndicats de septembre 1999 et avec la position commune de la CES et de la plateforme des ONGs européennes du secteur social.

Nous espérons que vous transmettez nos préoccupations et nos suggestions à la Convention, et qu'elle saura les traduire dans une rédaction finale qui réponde aux attentes des travailleurs et des autres composantes de la société civile.

Veillez agréer, Monsieur le Président, nos salutations respectueuses et nos sincères vœux de succès dans votre tâche.

J.-F. Troglire
Confédération Française
Démocratique du Travail

J. Decaillon
Confédération Générale du Travail

C. Cambus
Confédération Française de
l'Encadrement
Confédération Générale des Cadres

G. Sauty
Confédération Française des Travailleurs
Chrétiens

Confédération Française Démocratique du Travail
Confédération Française de l'Encadrement /
Confédération Générale des Cadres
Confédération Française des Travailleurs Chrétiens
Confédération Générale du Travail

Droits fondamentaux

Considérations préliminaires

Les droits économiques, sociaux et culturels (DESC) sont interdépendants avec les droits civils et politiques (DCP) ; ainsi, la liberté syndicale et les libertés de pensée, d'opinion, d'expression et d'association, de réunion et de manifestation, de négociation, sont liées. Si une « distinction entre DCP et DESC est faite à des fins de clarté » (BODY 4), il ne peut s'agir d'une hiérarchie, ni d'un ordre de priorité.

La formulation des DCP et des DESC doit être aussi concrète que possible, tout en étant ramassée, afin d'en faciliter la connaissance et la compréhension par les destinataires, l'interprétation, et en assurer la justiciabilité. Elle ne peut consister en une simple « référence morale » pour le juge, mais doit constituer un ensemble de principes fondamentaux qui s'imposent à lui et que les justiciables peuvent invoquer. A cet égard, il convient de résoudre le problème de l'accès au juge communautaire.

Si l'obligation de respect des droits fondamentaux pèse sur l'Union, elle doit concerner toutes ses institutions et les trois piliers, et s'étendre à la transposition ou à l'application directe du droit dérivé dans l'ordre juridique interne. Le juge national aura donc aussi compétence pour leur mise en œuvre

Si les syndicats sont concernés au premier chef par la liberté syndicale, le droit de négociation collective et les DESC en général, ils ont aussi à faire des remarques sur la formulation de certains DCP du point de vue de leur application aux travailleurs et à leurs organisations, en particulier.

En aucun cas les droits reconnus dans la Charte ne devraient pas être inférieurs ou affaiblir les droits déjà inscrits dans les traités universels de l'ONU et les conventions des organisations internationales, comme celles de l'OIT, dont sont membres et parties les états de l'UE, et ces droits devraient faire intégralement partie de l'acquis que sont tenus de respecter les états désirant devenir membres de l'Union. Les conventions du Conseil de l'Europe relatives aux droits humains et leurs systèmes de contrôle ne devraient pas non plus être affaiblis, car ils sont indispensables à la coopération et à la stabilité dans l'ensemble du continent européen.

(propositions d'amendements en italique gras, commentaires en italique; rappel en italique des conventions pertinentes de l'OIT et de quelques dispositions universelles; les commentaires contribuent à l'interprétation des dispositions; les remarques ne figurent que pour expliquer certaines modifications et ne seront pas reproduites dans le texte final).

Préambule.

(Il faudrait, dans un préambule ou des considérants, préciser ce qui suit).

Les droits humains, en raison de leur universalité et de leur indivisibilité, doivent être applicables à toute personne. Seuls des droits directement liés à l'exercice de la citoyenneté de l'Union peuvent être réservés aux seuls citoyens communautaires.

1. Liste des 9 premiers articles (BODY 4 et CONVENT 5).Art. 1. Dignité de la personne humaine.

....

3. Nul ne peut être astreint à un travail forcé ou obligatoire, ***ni être tenu en servitude ou en esclavage.***

(remarque : il existe des formes contemporaines d'esclavage, comme la traite des êtres humains à des fins de prostitution ou de pornographie, la servitude pour dettes à l'égard de certains travailleurs migrants clandestins ; cela a aussi une importance en ce qui concerne les relations commerciales extérieures de l'UE, vis à vis de produits fabriqués par une main d'œuvre enfantine ou tenue en servitude pour dettes ; il faut aussi tenir compte de sectes qui réduisent leurs membres à une véritable servitude). [Conventions ONU de 1929, de 1954 contre les formes contemporaines d'esclavage, C. 29, 105 et 182 OIT].

4. Toutes les formes de harcèlement, de pression et de conditionnement psychologiques sont prohibées.

Art. 2. ajouter **le secret médical.**

...

Art. 8. Respect de la vie privée ~~et familiale~~ de la confidentialité des communications.

1. Toute personne a droit au respect et à la protection de sa vie privée, de son identité, ~~et de la vie familiale~~, de sa réputation, ***de son image***, de son domicile.

Commentaire : la protection de la réputation concerne la protection contre la diffamation, les injures graves.

2. Le secret des communications, quel qu'en soit le support, est garanti.

Art. 9. Vie familiale.

1. Toute personne dispose du droit de ~~fonder une famille~~ se marier ***selon les dispositions prévues par la loi du pays de résidence.***

Commentaire: il faut un double consentement pour le mariage; la polygamie pose problème car contraire aux droits de l'UE, et ne peut être regardée que comme un état de fait non légalement protégé par l'Union et qui relève, comme les PACs, les mariages homosexuels, des lois nationales.

2. Toute personne a **le droit de fonder une famille et** le droit au respect **et à la protection** de sa vie familiale ; **en particulier, tous les travailleurs migrants ont droit au rapprochement familial.**

3. **Toute personne a la faculté de divorcer.**

(Commentaire : le divorce peut se faire par consentement mutuel sous contrôle du juge ou résulter d'un jugement ; il doit comporter des garanties d'équilibre économique entre les époux séparés ; il s'effectue selon le droit du pays de résidence ; la répudiation unilatérale est prohibée sur le territoire de l'Union).

4. **Tous les enfants disposent des droits contenus dans la Convention internationale des droits de l'Enfant de l'ONU.**

5. **Les mineurs et majeurs protégés doivent bénéficier d'une protection adéquate tout en étant traités comme des personnes à part entière ; ils doivent pouvoir participer et influencer sur les questions les concernant personnellement, en fonction de leur niveau de maturité, y compris être représentés et entendus en justice.**

2. Liste des articles 10 à 19 (CONVENT 8) :

(Le principe de démocratie, qui doit être maintenu sous peine de sanctions allant jusqu'à la suspension ou l'exclusion de l'UE est en outre un préliminaire fondamental à l'adhésion, avec notamment le droit à des élections libres, art. 12 BODY 4 ainsi que le droit au respect de la démocratie et des droits humains par les gouvernements, caractérisant l'Etat de droit, devrait trouver sa place ici ; retenir aussi, y compris pour les étrangers résidents, selon les modalités prévues dans les traités :

- droit de voter et d'être élu aux élections européennes et municipales dans les pays de résidence,
- droit de pétition au Parlement européen
- droit de s'adresser au Médiateur
- égalité d'accès à la fonction publique
- droit de s'adresser à l'UE et d'obtenir une réponse dans une langue officielle
- protection diplomatique et consulaire).

Art. 10. Liberté de conscience et de religion.

...

Art. 11 Liberté d'expression: **Liberté d'opinion et d'expression**

Toute personne a droit à la liberté **aux libertés d'opinion et** d'expression. Ce droit comprend **Ces droits impliquent** la liberté de recevoir ou de communiquer des idées ou des informations sans considération de frontière **ou de support.**

Art. 12 Droit à l'éducation :

1. Toute personne a droit à **une** éducation et à une formation professionnelle **gratuites**. selon ses capacités. **L'enseignement initial (primaire, secondaire et professionnel) est obligatoire.**

Commentaire : Cela signifie qu'un service public d'enseignement doit exister et être accessible gratuitement, sans exclure d'autres modes d'enseignement ou de formation, y compris payants. Les personnes handicapées et les personnes rencontrant des difficultés scolaires doivent bénéficier des moyens spécifiques nécessaires à l'exercice de leurs droits.

- **droit à la formation tout au long de la vie, à la reconversion professionnelle**

- **droit à l'équivalence des diplômes et des formations**

2. Le choix de l'établissement **du mode** d'éducation et de formation professionnelle est libre.

3. Le droit des parents d'assurer l'éducation et l'enseignement de leurs enfants conformément à leurs convictions religieuses et philosophiques est respecté.

Commentaire : dans le respect de la dignité - art. 1- et des droits de l'enfant.

4. L'art, la science, la recherche et l'enseignement sont libres. **Les libertés académiques sont respectées; l'égalité des chances dans l'accès à l'enseignement supérieur est garantie.**

Art. 13 . Liberté de réunion et d'association.

Toute personne a droit à la liberté de réunion **et de manifestation** pacifiques, à la liberté d'association, y compris le droit de fonder des **partis politiques, des syndicats de travailleurs et d'employeurs**, de s'y affilier **et de participer à leurs activités, dans l'entreprise comme au plan national, européen et international.**

(les deux articles suivants devraient être avancés dans le texte)

Art 18. Egalité.

Toutes les personnes sont égales devant la loi **et ont droit à l'égalité de chances et de traitement dans tous les domaines de la vie et du travail .**

Art. 19. Non discrimination.

1. Toute discrimination est interdite, quel qu'en puisse être le fondement **et notamment** le sexe, la race, la couleur, **la nationalité**, l'origine ethnique, l'appartenance à un groupe minoritaire, l'origine sociale, la naissance ou la fortune, la langue, la religion, les convictions, **l'affiliation et l'activité politique ou syndicale, l'état de santé**, le handicap, l'âge, l'orientation sexuelle, **ou toute autre base.**

2. L'Union cherche à éliminer les inégalités et à promouvoir l'égalité entre les hommes et les femmes.

Art. 14. Droit d'accès aux informations.

~~Tout citoyen de l'Union ou~~ Toute personne résidant dans l'Union a **intéressée dispose** d'un droit d'accès aux documents des institutions de l'UE. Ce droit s'exerce dans les conditions prévues par ~~l'art. 255 TCE~~ **les traités.**

Art. 15. Protection des données.

Toute personne **physique** a droit à la protection de ses données à caractère personnel. **Elle dispose à leur égard d'un droit d'accès, d'actualisation et de suppression. Ces données ne peuvent être utilisées à des fins autres que la fin licite pour laquelle elles sont collectées, par des organismes légalement habilités et dans le respect de la proportionnalité. Elles ne peuvent être interconnectées à l'aide d'un identifiant unique et ne peuvent être conservées au-delà du délai strictement nécessaire à l'accomplissement de la fin pour laquelle elles ont été recueillies et enregistrées.**

(remarques : il est indispensable de préciser mieux les droits vis à vis des données personnelles, y compris celles que les employeurs détiennent sur leurs salariés ; un recours contre les listes noires doit par exemple exister ; en outre, les personnes morales, associations, partis, syndicats ou entreprises devraient aussi bénéficier de certains droits vis à vis des données les concernant ; même si la notion de protection de la vie privée - traitée par l'art. 8- ne leur est pas directement applicable, elles doivent pouvoir, dans des formes appropriées, pouvoir protéger leur réputation et bénéficier d'une inviolabilité de leur siège social équivalente à celle du domicile et, pour les associations, protéger leurs membres et vérifier l'exactitudes des données sur leurs activités, leurs orientations, etc., et pour les entreprises se voir garanties une certaine confidentialité des affaires, de leurs stratégies commerciales, etc. et être protégées contre la diffusion d'informations préjudiciables non vérifiées).

Art. 16. Droit de propriété.

...

- Ce droit peut s'exercer de manière individuelle, mutualiste, coopérative, sociétaire ou collective, et sous réserve de l'abus de droit. Il ne peut être opposé à l'exercice d'autres libertés fondamentales contenues dans la présente charte.

- Les biens communs universels et les découvertes de la recherche fondamentale ne sont pas susceptibles d'une appropriation privée ni d'être, en tant que tels, l'objet de brevets.

Commentaire: Le droit de propriété est souvent opposé à l'exercice des diverses formes de l'activité syndicale dans l'entreprise : il n'a plus de notre temps le caractère purement individuel et "inviolable et sacré" de la Déclaration de 1789, mais doit, dans un but social, s'équilibrer avec les autres libertés; il conviendrait aussi d'envisager une référence à la notion de biens communs universels, tels que l'air, l'eau, le génome humain, et les génomes animaux et végétaux, (les génomes, le séquençage des chromosomes, doivent être considérés comme des découvertes scientifiques fondamentales, non brevetables par nature, comme la relativité ou la mécanique quantique...), la mer et son rivage ou l'espace et les corps célestes, etc. qui ne peuvent faire l'objet d'une appropriation privée (mais ces découvertes et ces biens peuvent être utilisés ou exploités à des fins licites, y compris éventuellement avec une rémunération pour services, comme la fourniture d'au potable ou de moyens thérapeutiques et de médicaments dérivés de la connaissance du génome).

Art. 17. Droit d'asile et expulsion-Liberté de circulation et d'établissement.

Liberté de circulation. CONVENT 5., non repris par CONVENT 8, mais qui devrait être conservé :

- **Toute personne en situation régulière** jouit de la liberté de circulation **et d'établissement** à l'intérieur de l'Union dans les conditions fixées par les traités.

Art. 17 bis. Droit des réfugiés, apatrides et demandeurs d'asile :1. **L'Union Européenne respecte le droit d'asile et protège les réfugiés et apatrides.**

Commentaire : la persécution par un gouvernement quelconque, mais aussi par des groupes ou par des bandes armées terroristes, maffieuses, intégristes, ethniques, ou autres doit ouvrir accès au droit d'asile; le cas où, par suite de situations politiques particulières entraînant une altération du principe de démocratie, des personnes résidant dans un pays membre, y compris des citoyens de ce pays, peuvent être amenées à se réfugier ou demander asile dans un autre pays membre ne peut être écarté de manière absolue.

2. **Les demandeurs d'asile et les personnes réfugiées sur le territoire de l'Union disposent des mêmes droits que les résidents légaux de même nationalité d'origine.**

Commentaire : ces personnes doivent pouvoir notamment exercer une activité économique, jouir des droits culturels, bénéficier des prestations et droits sociaux, etc.

3. **La détention arbitraire et les expulsions collectives forcées** d'étrangers sont interdites.

Commentaire : toute expulsion sans garanties de procédure et exercice des droits de la défense doit être prohibée, de même que ne peuvent être tolérés les centres de rétention placés sous contrôle policier, sans accès pour le juge, les avocats ou les associations de défense.

3. **DESC (liste de BODY 4).**

Droits économiques, sociaux et culturels (remarque : Reformuler le titre pour reprendre le nom du pacte de l'ONU correspondant. Les indications lapidaires de la liste sont reformulées ; la notion «d'objectif politique», dont la mention dans la charte est en général exclue - référence aux "droits existants"-, doit donc être autant que possible remplacée par la formulation de droits concrets et justiciables).

DROITS ECONOMIQUES**Droit syndicaux, négociation collective, implication des salariés:**

Commentaire : ces droits concernent tous les salariés, du secteur public ou privé.

- **liberté d'association des employeurs et des travailleurs, y compris dans la fonction publique et les services publics.** [C. n° 87 de l'OIT]; cette liberté s'exerce sur le lieu de travail, l'entreprise ou

le groupe ou le service public, au niveau sectoriel, national, et transfrontière (régions transfrontières, UE, international. (*Remarque: la 2e phrase pourrait faire ici l'objet d'un commentaire, car les niveaux d'organisation et d'action ont été traités dans l'art. 13).*

- liberté de fonctionnement des syndicats sur les lieux de travail et aux autres niveaux, et protection des représentants des salariés [C. 135 de l'OIT]; facilités à leur accorder dans l'exercice de leurs mandats.

- droits d'action collective et solidaire des salariés à tous les niveaux pour leurs intérêts matériels et moraux, directs et indirects, y compris le droit de grève.

- droit de négociation collective des conditions de travail et d'emploi, des salaires et des garanties collectives. [C. 98, 151 et 154 de l'OIT]

Commentaire : ce droit s'applique éventuellement sous une forme appropriée dans la fonction publique.

- droit de conclure des accords collectifs au niveau européen ou national, interprofessionnel et sectoriel.

Commentaire : le niveau sectoriel peut être celui de l'entreprise, du groupe, d'un territoire; ce droit s'exerce par les organisations représentatives et est soumis au principe de démocratie.

- droits à l'information, à la consultation et à la participation dans l'entreprise et le groupe

Commentaire : ces droits impliquent que les avis et suggestions des travailleurs et de leurs représentants soient effectivement pris en considération - caractère préalable de la consultation, droit de recours à une expertise indépendante à la charge de l'employeur, notamment - ; ils concernent par exemple la marche ou la stratégie de l'entreprise ou du groupe, l'embauche de travailleurs intérimaires, les projets de licenciements collectifs, la formation ou la reconversion, l'amélioration du milieu de travail, en particulier l'application des règles d'hygiène et de sécurité, la prévention et la reconnaissance des maladies professionnelles, etc. Ces droits demandent la création d'institutions spécifiques formées et fonctionnant démocratiquement.

Droit au travail et liberté professionnelle :

Commentaire : l'Union reconnaît le droit au travail et prend avec les états membres les mesures destinées à rendre ce droit effectif en visant à réaliser le plein emploi.

1. Toute personne dispose du libre choix et du droit d'exercer une profession, indépendante ou salariée et de son lieu d'exercice.

Commentaire : ce droit couvre celui d'exercer une profession libérale, l'artisanat ou le commerce, de fonder une entreprise, dans le cadre des règles juridiques et fiscales applicables, y compris les règles spécifiques à l'exercice d'une profession réglementée. Le contrat à durée déterminée constitue la forme générale de la relation d'emploi entre employeurs et travailleurs; les contrats

avec de faux travailleurs indépendants doivent être requalifiés en contrats de travail normal. Le recours abusif à des formes précaires d'emploi, le recours permanent à l'intérim et la sous traitance en cascade ne doivent pas être admis. Le travail à temps partiel doit reposer sur une base volontaire.

1 bis. Tout travailleur a droit à un emploi, à une formation rémunérée ou à défaut à un revenu de remplacement.

6. 1 ter. Toute personne à la recherche d'un emploi a le droit d'accéder à un service gratuit de placement ou d'orientation professionnelle et de formation. Nul ne peut être contraint à exercer un emploi déterminé.

1 quater. Tout salarié privé d'emploi a droit à des allocations de chômage

Conditions de travail et d'emploi:

1. une inspection du travail indépendante doit être instaurée pour le contrôle du respect et pour l'application des normes de travail. [C. 81 OIT]

2. une médecine du travail indépendante doit régulièrement surveiller l'état de santé des salariés, signaler les maladies professionnelles et formuler des recommandations concernant les postes de travail.

3. Obligation de reconnaissance et de compensation des maladies professionnelles, des accidents du travail et des incapacités de travail qui peuvent en découler.

2. 4. Tout travailleur a droit à la sécurité et à l'hygiène dans le travail et à des conditions de travail respectant sa santé physique et mentale et sa vie privée, ainsi qu'à la protection contre le harcèlement dans le milieu professionnel et contre tout abus du pouvoir de contrôle et de direction de l'employeur.

Commentaire : la dernière proposition se rapporte notamment au développement des moyens technologiques de contrôle et de surveillance, au su ou à l'insu des salariés, aux déplacements géographiques abusifs, etc.

3. 5. Tout salarié a droit à une rémunération équitable et à un salaire minimal lui permettant, ainsi qu'à ses dépendants, de vivre dans des conditions dignes et d'assurer leur santé et leur bien-être. La rémunération doit évoluer régulièrement en fonction des qualifications, de l'expérience et des diplômes acquis, du niveau des prix et de la productivité du travail.

6. droit à une protection contre toute forme de discrimination dans l'emploi et la profession. Droit à un salaire égal pour un travail de valeur égale ou équivalent. [C. 111 et 100 OIT]

4. 7. Tout salarié a droit à un repos hebdomadaire et à des congés payés d'une durée suffisante, et à une limitation de la durée hebdomadaire du travail [art. 24 DUDH]. (remarque : cette durée devrait être fixée à 35 heures ou à une durée négociée équivalente; le recours à des heures supplémentaires hebdomadaires doit être limité.)

8. Tout salarié a droit à une protection contre les licenciements arbitraires, discriminatoires ou illégaux.

9. Protection du salaire et des accessoires en cas d'insolvabilité de l'employeur,

10. Protection contre le chômage total ou partiel, droit à un revenu de remplacement ou de complément.

11. Tout travailleur ayant atteint l'âge légal de la retraite a droit à une pension lui permettant, ainsi qu'à ses dépendants, de vivre dignement.

12. Le travail des enfants au-dessous de l'âge minimum légal est interdit.

13. Les adolescents en apprentissage ou au travail bénéficient de protections spécifiques contre les risques pouvant affecter leur santé et leur développement, sur le plan physique et psychique.

DROITS SOCIAUX

Protection sociale et sécurité sociale.

1. Tout travailleur et ses ayants-droit ont droit à une protection sociale adéquate et doivent bénéficier de prestations de sécurité sociale d'un niveau suffisant, notamment par rapport au salaire ; les travailleurs indépendants ont droit à une protection équivalente. (proposition FERPA)

2. Protection contre la pauvreté et l'exclusion sociale. Toute personne ne bénéficiant pas d'une source de revenu suffisante a droit à un revenu minimum lui permettant de vivre, ainsi que ses dépendants, de manière digne.

Santé :

1. Toute personne a le droit d'accéder à des services de santé et de bénéficier d'un traitement approprié.

Protection de la maternité :

1. Protection de la femme enceinte et de la mère en congé maternité contre le licenciement,

2. droit à des services de protection maternelle et infantile,

3. droit à des allocations spécifiques,

4. aménagement des conditions de travail (allaitement, horaires de travail, etc.)

Commentaire : notamment prohibition du travail de nuit, des stations debout ou pénible, de l'utilisation de matériaux ou produits nocifs, aménagement des postes de travail).

Conciliation de la vie professionnelle et familiale :

1. accès à des crèches et garderies à un prix abordable, écoles maternelles.
2. congé parental pour élever ou soigner un enfant.

Protection de l'enfance :

1. sécurité, intégrité, développement services sociaux, de santé et d'éducation.
2. allocations familiales et protection économique.
3. protection contre toutes les formes d'exploitation et les mauvais traitements.

(Compléter éventuellement avec le texte de la plate forme ONGs-CES sur les enfants)

Personnes handicapées :

1. droit à des mesures facilitant leur autonomie, leur intégration sociale et professionnelle et leur participation à la vie de la communauté :
 - accès à la formation, à des aides et supports techniques, à l'emploi.
 - pension, assistance, allocations
 - obligation d'embauche.
 - aménagement des cadres de vie et de travail, d'enseignement et de formation.

Droit au logement :

1. droit de toute personne à un logement décent pour elle et sa famille à un prix abordable.
2. droit à des aides au logement en cas d'insuffisance de ressources.

Droit à des services d'intérêt général accessibles, qui constituent des moyens essentiels d'effectivité des droits économiques sociaux et culturels, de croissance durable, de cohésion sociale et territoriale; ces services doivent être gérés de manière transparente et démocratique, et s'adapter en permanence aux évolutions des besoins et au progrès social et technologique.

DROITS CULTURELS

1. droit au respect des langues et cultures régionales et à un enseignement dans ces langues.
2. liberté et autonomie culturelles.
3. droit d'accès aux moyens modernes de communication.

4. Mise en œuvre effective des DESC :

La mise en œuvre des droits économiques, sociaux et culturels exige l'adoption de programmes, de politiques, de moyens et de législations destinés à assurer leur effectivité.

Le Conseil et le Parlement devraient établir périodiquement un plan d'action concernant les objectifs à atteindre et les moyens à mettre en œuvre en ce qui concerne les droits à caractère programmatique, et la Commission faire rapport régulièrement sur les évolutions constatées. Les ONGs compétentes représentatives devraient être associées par les institutions à l'élaboration, à la conduite et à l'évaluation de ces plans.

5. Droits évoqués succinctement dans BODY 4 non repris dans CONVENTs 5 et 8 :

Environnement :

- *droit à un environnement sain sur les lieux de vie et de travail*
- *droit d'alerte des salariés en cas de risques industriels majeurs et de risques de pollution.*

- Droits des consommateurs :

- *droit à l'information sur l'origine, la composition, la méthode de production des biens et des produits (traçabilité, étiquetage), sur la nature et le coût réel des services et du crédit, sur la portée exacte des obligations et prestations en matière de contrats.*
- *responsabilité des concepteurs, producteurs, fabricants, distributeurs et autres prestataires du fait de produits ou services défectueux.*
- *sécurité des produits, des biens et des services, garanties contre les vices cachés et les défauts de fabrication, les pannes.*
- *protection législative et juridique, droit de recours.*
- *sécurité alimentaire.*
- *usage du principe de précaution dans les politiques de gestion des risques, en cas de doute sur l'innocuité d'un produit, d'un bien, d'un processus de fabrication et de ses déchets et effluents.*

6. Universalité et indivisibilité des droits humains :

Outre leur prise en compte dans l'acquis communautaire, les droits humains doivent aussi être dûment pris en considération dans les politiques extérieures et les relations commerciales internationales de l'Union.

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE**fundamental.rights@consilium.eu.int**

Bruxelles, le 14 juin 2000**CHARTE 4325/00
COR 1****CONTRIB 191****CORRIGENDUM A LA NOTE DE TRANSMISSION**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne

Veillez trouver deux corrections de la contribution soumise par des syndicats français.

Page 4, paragraphe 5, première ligne:

"En aucun cas les droits reconnus dans la Charte ne devraient être inférieurs..."

au lieu de:

"En aucun cas les droits reconnus dans la Charte ne devraient pas être inférieurs..."

Page 10, dernier paragraphe (commentaire), deuxième phrase :

"Le contrat à durée indéterminée constitue la forme générale de la relation d'emploi entre employeurs et travailleurs..."

au lieu de:

"Le contrat à durée déterminée constitue la forme générale de la relation d'emploi entre employeurs et travailleurs..."

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 26 May 2000**CHARTE 4326/00****CONTRIB 192****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a contribution of the "Aktionsgemeinschaft Dienst für den Frieden e.V" (AGDF) with a letter to the Convention regarding the participation in a war on the basis of a decision of conscience. ¹

¹ This text exists in English language only.

Convention Secretariat
Council Legal Service
175 rue de la Loi
1048 Brüssel
BELGIEN

Bonn, 5.5.2000
uf/rh

Charter of basic rights of the European Union

Dear Madam/Sir,

We have been informed about the ongoing work on the charter of the basic rights of the European Union. By this letter we would like to ask you to incorporate the right to object to participate in a war on the basis of a decision of conscience.

These are the main reasons which we would like to be considered thoroughly:

1. Conscientious objectors symbolize the existence of people - men and women, young and old, working for peace by non-violent means. Such an attitude, based on a decision of consciousness represents a main condition for modern societies to organize their democratic life and to organize the relations to other states and people.
2. Conscientious objectors in the past have contributed considerably, in particular by their voluntary services, to foster the common good by their very strong personal convictions.
3. The right to refuse to kill in a war has been accepted in a series of European countries in basic laws and in laws and has had a good influence in these countries. We would especially quote the German example where the position of COs has been strengthened by the constitution.

Sincerely yours,

(Ulrich Frey)
Director

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE**fundamental.rights@consilium.eu.int**

Bruxelles, le 26 mai 2000**CHARTE 4327/00****CONTRIB 193****NOTE DE TRANSMISSION**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne

Veillez trouver ci-après une contribution des syndicats français avec propositions des amendements aux dernières rédactions établies par le Présidium. ¹

¹ Ce texte a été soumis en langue française seulement.

Contribution des syndicats français

CGC, CFTC, CFDT, CGT.

Paris, le 22 mai 2000.

Cette contribution propose des amendements aux dernières rédactions établies par le Presidium. Les syndicats français ayant participé à l'examen des documents soumis à la Convention rappellent d'emblée deux principes essentiels :

- **Les droits fondamentaux sont indivisibles et interdépendants.**
- **La garantie de leur effectivité devra être assurée par leur intégration dans les Traités.**

1/ Le document **CONVENT 28** du 5 mai traite de l'ensemble des droits civils et politiques et certains des droits culturels. Certains articles devraient être précisés et renforcés.

Article 19, protection des données; la rédaction actuelle semble incomplète, irréaliste, et n'offre pas de garantie de protection de la vie privée, de l'intégrité, de l'identité et des droits de la personne. Nous suggérons : "toute personne a droit à la protection de ses données à caractère personnel. Elle dispose à leur égard d'un droit d'accès, d'actualisation et de suppression. Ces données ne peuvent être utilisées à des fins autres que la fin licite pour laquelle elles ont été collectées par des organismes habilités ni être conservées au delà du délai strictement nécessaire à l'accomplissement de la fin pour laquelle elles ont été recueillies."

Article 21, droit d'asile et expulsion, devrait concerner toute personne ayant des raisons de craindre les persécutions pour les raisons exposées dans le projet de rédaction ainsi que pour d'autres raisons, qui ne figurent pas dans la Convention de Genève : persécution ou menaces de bandes ou groupes armés terroristes, criminels ou autres; ces personnes devraient bénéficier du droit d'asile dans l'un quelconque des pays membres de l'Union européenne.

La détention arbitraire et les expulsions forcées d'étrangers doivent être interdites.

Concernant le traitement des étrangers, le projet actuel se limite à la prohibition des expulsions collectives; d'autres situations, comme leur rétention arbitraire ou l'expulsion de demandeurs d'asile sans examen de leur demande, ne sont pas couvertes; c'est pourquoi nous proposons une formulation plus large.

Article 22, égalité et non discrimination ; nous suggérons d'ajouter "...les opinions et activités politiques, syndicales ou sociales".

2/ Les droits économiques et sociaux et les clauses horizontales (articles 31 à 50) font l'objet d'une nouvelle rédaction **CONVENT 34** (note du présidium, en date du 16 mai 2000).

Article 31. Droits et principes en matière sociale.

Compléter : il manque une clause de non régression.

Exposé des motifs, 5e ligne : "... les partenaires sociaux ... peuvent conclure des accords socio-économiques".

Article 33. Droit à l'information et à la consultation des travailleurs au sein de l'entreprise.

Formulation très restrictive par rapport à CONVENT 18, et qui est inférieure à l'acquis communautaire et aux articles 17 et 18 de la Charte communautaire, qui devraient être cités dans l'exposé des motifs, avec la Charte sociale européenne révisée. Nous proposons : "les travailleurs et leurs représentants ont droit à l'information, à la consultation et à la participation, régulières, effectives, préalables et en temps utile, au travail et à tous les niveaux de l'entreprise, de l'établissement et du groupe, ainsi qu'au niveau national et transnational."

Article 34. Droit de négociation et d'action collective. Remplacer par : "Les employeurs et leurs organisations et les organisations de travailleurs ont le droit de négocier et de conclure des

conventions collectives relatives aux conditions de travail et d'emploi, aux rémunérations et aux garanties collectives. Les salariés ont le droit d'agir collectivement et solidairement à tous les niveaux pour la défense et la promotion de leurs intérêts matériels et moraux, y compris de recourir à la grève.".

Article 35. Droit au repos et au congé annuel.

L'exposé des motifs devrait se référer plus impérativement à l'article 2 de la Charte sociale révisée.

Article 36. Santé et sécurité dans le travail. Il convient d'ajouter l'hygiène, et de prévoir une participation des représentants des travailleurs conformément à l'article 19.2 de la Charte communautaire et à l'article 3 de la Charte sociale révisée.

Ajouter également : "les accidents du travail et maladies professionnelles ouvrent droit à des prestations sociales et indemnités".

Article 37. Protection des jeunes..

Revenir à la rédaction de CONVENT 18.

En tout état de cause, supprimer la fin du paragraphe 1 "et sauf dérogations ... légers".

Reformuler le 2e paragraphe comme celui de CONVENT 18 : "Les jeunes en dessous de 18 ans doivent bénéficier de conditions de travail adaptées à leur âge et être protégés contre tout travail susceptible de nuire à leur sécurité, à leur santé ou à leur développement physique, psychologique, moral ou social ou de compromettre leur éducation".

Article 38. Droit à la protection en cas de licenciement.

Reformuler : "tout travailleur a droit à une protection contre tout licenciement injustifié, abusif, discriminatoire ou illégal."

Le cas du licenciement collectif économique n'est pas traité, (voir directive) non plus que le droit au préavis et à indemnités de licenciement et réparation des préjudices.

Article 39. Droit de concilier vie familiale et vie professionnelle. Le congé de maternité doit être payé. Formuler la 2e phrase autrement : "Ce droit comprend une protection spéciale de la maternité et le droit à un congé de maternité payé ...etc.".

Article 40. Droit des travailleurs migrants à l'égalité de traitement.

Changer le titre : "**Droit des travailleurs ressortissants des pays tiers à l'égalité de traitement**". L'égalité de traitement des travailleurs ressortissants de pays tiers ne peut se limiter aux conditions de travail. Elle doit concerner aussi notamment les droits à rémunération et à pension, la protection sociale, la santé, le logement, la formation, etc.

Article 41. Sécurité sociale et aide sociale. Rajouter "... de handicap...".

Article 43. Personnes handicapées. Remplacer par :

"Toute personne handicapée, quels que soient l'origine et la nature de son handicap, a le droit de bénéficier de mesures concrètes visant à favoriser son intégration sociale et professionnelle".

Questions manquantes:

- droit à l'orientation professionnelle et à la formation tout au long de la vie,
- droit à une rémunération équitable et égale pour un travail de valeur égale,
- droit au travail et droit d'accès à un service public gratuit de placement,
- droit d'accès pour tous aux services d'intérêt général, qui constituent un moyen puissant d'assurer l'effectivité de nombreux droits fondamentaux à caractère social.
- droit à la retraite et à une pension de retraite,
- absence de clause de non régression en matière sociale.

Nous espérons que ces questions feront l'objet d'une inclusion dans la version finale.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 26 May 2000**CHARTE 4328/00****CONTRIB 194****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter the intervention by Mr. James Wilson, Bass Hotels & Resorts (Bass PLC), presented at the hearing on 27 April 2000. ^{1 2}

¹ This text exists in English language only.

² Bass PLC: 101 rue Neerveld, B-1200 Brussels.

Charter on Fundamental Rights: Public Hearing 27 April
European Parliament, Brussels
Intervention by James Wilson, Bass PLC

I restrict my views to the potential impact of the Charter on multinational business and employment. Why should business have a voice in this debate? Because we represent the interests of our shareholders, our employees, our suppliers, our customers and all of the stakeholders in wider society who share the fruits of our endeavours and the benefits of the employment which we create. It is only business that can deliver anything remotely close to an aspiration towards full employment through sheer enterprise, innovation and growth.

The charter should concentrate on civil and political rights

i) We support the broad objective of seeking to protect citizens' rights against the abuse of power by the EU institutions or by national governments in implementing EU policies. We consider that this can best be delivered by concentrating on fundamental political rights and civil liberties. For business, it is essential that the Charter has as a core objective the preservation of a strong competitive environment for innovation and enterprise. Business is global and becoming increasingly more so as the 'new economy' changes the way companies and consumers interact. For the EU to maintain its relative competitive position in the world it must provide the environment in which business can innovate and flourish. This means the preservation of five basic freedoms. Firstly, freedom of thought and stemming directly from that freedom of expression; freedom of enterprise; freedom to trade; freedom to own property and the freedom of establishment. These five freedoms are fundamental to the ability of business to generate the sustainable employment essential for a prosperous society.

The Charter should be declaratory and non-binding

ii) We support the idea of a declaratory Charter, with no legally binding effect. The Charter should be clear and simple for maximum public impact and should set out clearly the fundamental rights that are currently recognised by the EU. This is the best way to add value to existing rights, instruments and systems, without prejudice to legal certainty. We consider that a legally binding Charter, effectively transferring jurisdiction over core fundamental rights from the Human Rights Court at Strasbourg and national courts to the ECJ, would undermine the existing rights system and create legal uncertainty. Such a scenario would be potentially detrimental to EU business, by imposing high litigation costs, damaging restrictions on enterprise and encouraging investment to move offshore to the detriment of EU jobs.

The Charter should not record policy aspirations

iii) The Charter should not seek to record policy aspirations. The application of the Charter should be limited to the EU's Institutions within the framework of the powers and responsibilities assigned to them by the Treaties. The obligation to respect fundamental rights should be a constraint on the Community's action and not a licence to legislate. The Charter should respect present competences of the EU and should not extend existing powers.

The Charter should not deal with aspirational social rights

iv) The Charter must not restrict enterprise. The scope of the Charter should be to deal only with fundamental issues relating to civil, political and cultural rights, the preservation of peace and a clearly stated determination never to resolve conflict by war. It is not the correct constitutional instrument to deal with questions of social rights, which necessarily require full assessment of their economic impact and a democratic analytical debate. The social and employment chapters of the Treaties have already set out the powers of the Union to act on a European level. Any proposals to change these provisions must be dealt with specifically at the level of inter-governmental debate. It is essential to the economic well-being of society that social rights should only be dealt with through the legislative and budgetary process laid down by the Treaties, because:-

- a) Social rights involve costs. The normal democratic legislative and budgetary process is required to determine what these costs are, to assess what the impact will be on job creation and the economy, to calculate how much money is involved, balance this against the desired impact on society, and then decide on the basis of this cost benefit analysis whether society can afford to pay and, if so, how to distribute the tax burden. If you attempt to short cut this process you will strangle enterprise and kill the goose that lays the golden eggs.
- b) Society can only afford social rights if business flourishes, and creates the wealth necessary to generate sufficient tax revenues to underwrite the cost. The discipline necessary to conduct a thorough financial analysis of any new proposals cannot be circumvented. Anyone seeking to restrict business by stealth through the creation of putative social rights without having considered the cost-burden and full economic impact, would sound suspiciously like the first-time home-buyer who discusses with their interior designers the colour of the bed-room carpet for the new penthouse apartment, before they have checked with the builder that they can afford to pay for the foundations of the building.

If it ain't broke don't fix it

Business respects the communities in which it operates. The shared values of our society, (namely: democracy, tolerance, respect for the individual and liberty) have developed historically, under the strong influence of religious ethics. This ethical heritage has shaped modern European society, its culture and its laws. If we attempt to enshrine these common values in a non-secular Charter, there must be respect for the diversity of Europe and its minorities, and we must also consult the applicant states for membership. We must also ensure that the charter is robust enough to cope with the impact of future enlargements – which may encompass states with very different values from the ethical model with which we are familiar. In an increasingly global society, the rights and responsibilities embodied in the Charter should be attractive and acceptable to our trading partners and avoid the tendency to be inward looking within the EU. We must remind ourselves that the ethical model which has developed in Europe over time is one which has enabled enterprise to create prosperity for our society, and which has enabled this debate to take place. It would be irresponsible to destroy such a hard won advantage by unwittingly incorporating into this Charter obstacles which might prove to be disincentives to investment in EU enterprise and employment.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 30 May 2000**CHARTE 4329/00****CONTRIB 195****COVER NOTE**

Subject : **Draft Charter of Fundamental Rights of the European Union**
Contribution submitted by the
European Council on Refugees
and Exiles (ECRE) on the right
to asylum

Please find hereafter a contribution with comments by the European Council on Refugees and Exiles (ECRE) on the right to asylum. ¹

¹ This text exists has been submitted in English language only.



EUROPEAN COUNCIL
ON REFUGEES AND EXILES

CONSEIL EUROPEEN
SUR LES REFUGIES

COMMENTS
BY THE EUROPEAN COUNCIL ON REFUGEES AND EXILES (ECRE)
ON THE RIGHT TO ASYLUM IN THE DRAFT CHARTER ON FUNDAMENTAL
RIGHTS OF THE EUROPEAN UNION

1. At Tampere, the European Council established a body to draw up the Charter of Fundamental Rights of the European Union, first mentioned at the Cologne European Council.¹ This body (the Convention) will be meeting on 5 and 6 June 2000 to discuss a draft text² of the Charter, in particular the articles relating to Civil and political rights and citizens' rights, including article 21, which posits a right to asylum.
2. ECRE welcomes the inclusion of a right to asylum in the Charter of Fundamental rights of the European Union. The draft text however refers to asylum for third country nationals only.
3. ECRE recalls that at the Tampere European Council the EU Member States promised “an open and secure European Union, fully committed to the obligations of the Geneva Refugee Convention and other relevant human rights instruments”.³ ECRE would argue that the EU Charter must accord with the Tampere European Council conclusions and reminds the Convention of the commitments made as to a Common European Asylum System. The Presidency Conclusions stated:

“The European Council reaffirms the importance the Union and Member States attach to absolute respect of the right to seek asylum. It has agreed to work towards establishing a Common European Asylum System, based on the full and inclusive application of the Geneva Convention, thus ensuring that nobody is sent back to persecution, i.e. maintaining the principle of non-refoulement.”⁴

4. ECRE is deeply concerned that the restriction of the proposed right to asylum to nationals of third countries is a violation of the 1951 Convention relating to the Status of Refugees (the Refugee Convention) and the 1967 Protocol (the Protocol).

¹ See page 65, ECRE Tampere Dossier: the Presidency Conclusions, Tampere European Council, 15-16/10/99.

² Charte 4284/00-Convent 28

³ Id 1 - page 66 - Para.4

⁴ Id 1 - page 68 - Para.13

5. ECRE reminds the Convention that by signing the Refugee Convention and the Protocol all Member States of the EU have adopted a refugee definition without any limitations as to country of origin. ⁵ Limitation of the Refugee Convention's application on grounds of national origin is inconsistent with Article 3 of the Refugee Convention.
6. The current draft introduces, in effect, a geographical reservation to the application of the Refugee Convention. This is incompatible with the Protocol and is prohibited by Article 42 of the Convention, which does not allow reservations to certain provisions, including Articles 1, 3 and 33.
7. ECRE welcomes the importance attached in the proposed draft to the Refugee Convention and Protocol. However, the principle of non-*refoulement*, as a norm of customary international law, is wider than the Refugee Convention. ECRE therefore welcomes the draft text of article 4 on prohibition of torture and inhuman treatment.
8. ECRE however wishes to stress that the prohibition of *refoulement* encompasses prohibition of indirect as well as of direct *refoulement*, and that the principle of non-*refoulement* applies to persons within the States's territory as well as to persons seeking admission at the border.
9. ECRE would therefore like to see an express provision in the Article on absolute respect for the principle of non-*refoulement*, as provided, *inter alia*, in Article 3 of the UN Convention against torture and Article 3 of the European Convention on Human Rights.
10. ECRE therefore proposes the following as the text of the right to asylum in the Charter of Fundamental Rights of the European Union :

“1. Everyone has the right to asylum in the European Union, consistent with the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and other international human rights instruments for the protection of refugees

2. No Member State shall expel or return (“*refouler*”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened.”

May 2000

⁵ The geographical and temporal restrictions in Article 1B(1) of the Refugee Convention can be lifted by a declaration under Article 1B(2) and accession to the 1967 Protocol: all EU States have acceded to the Protocol and have lifted geographical restrictions on application of the Refugee Convention.

For further information contact the European Council on Refugees and Exiles (ECRE) at:

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DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

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Brussels, 30 May 2000

CHARTE 4331/00

CONTRIB 197

COVER NOTE

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter the comments from Amnesty International - EU Association, to the proposed draft articles 1-30, civil and political rights contained in the document CHARTE 4284/00. ¹

¹ This text exists in English language only.



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**Comments by Amnesty International on the new proposal on civil and political rights
in the Draft European Charter of Fundamental Rights
(Charter 4284/00 of 5 May 2000)**

Amnesty International takes note of the new proposal on civil and political rights in the draft European Charter of Fundamental Rights, issued on 5 May 2000.

While Amnesty International welcomes the improvements made in the new text, the organisation remains concerned that the text does not use gender neutral language and some of the draft articles in their current form still do not reflect the broad framework of existing and evolving international law and standards, including the relevant jurisprudence and interpretation.

In April 2000, Amnesty International submitted a position paper on the draft European Charter which analyses the issues raised by the adoption of the European Charter as well as the draft articles in their then current form, and advances recommendations with a view to insuring that the Charter would constitute a real improvement in the human rights protection currently afforded by the EU.

In the light of the foreseen amendments to the draft articles, Amnesty International calls the attention of Convention members to its position on the European Charter as set out in the document Charter 4290/00 and calls on them to ensure that the wording of the Charter reflects the highest level of protection of fundamental human rights.

The organisation urges that its recommendations as set out in Amnesty International's document on the Charter in respect of the following draft articles be taken up:

Article 9: Presumption of innocence and rights of defence, Article 11: Right not to be tried or punished twice, Article 14: Freedom of thought, conscience and religion, Article 15: Freedom of expression and Article 17: Freedom of assembly and association.

In addition, Amnesty International urges that the following be noted in relation to the current wording proposed for the following draft articles:

Amnesty International is an independent worldwide movement working for the release of all prisoners of conscience, fair and prompt trials for political prisoners and an end to torture, extrajudicial executions, "disappearances" and the death penalty. It is funded by donations from its members and supporters throughout the world. It has formal relations with the United Nations, Unesco, the Council of Europe, the Organization of African Unity and the Organization of American States.

Article 1. Dignity of the human person

Amnesty International urges that this article include the right of everyone, without discrimination, to equal protection of law and equality before the courts, in accordance with Article 7 of the Universal Declaration of Human Rights and Article 26 of the International Covenant on Civil and Political Rights (ICCPR).

Article 2. Right to life

Amnesty International urges that this article also

1. set out the principle that the right to life shall be protected by law as well as the prohibition that no one shall be arbitrarily deprived of life, which are enshrined in Article 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention) and Article 6 of the ICCPR

2. ensure that the prohibition of the death penalty:

- Sets out in full article 1 of Protocol 6 to the European Convention "The death penalty shall be abolished. No one shall be condemned to such penalty or executed."
- Refers to the abolition of the death penalty as does Article 1 of the Second Optional Protocol to the ICCPR
- Includes a prohibition of enacting or retaining any law which provide for the death penalty as a possible punishment and the prohibition on any authority to apply the death penalty.

Article 4. Prohibition of torture and inhuman treatment

In order to fully reflect the prohibition as enshrined in Article 5 of the Universal Declaration of Human Rights and Article 7 of the ICCPR Amnesty International urges that this article should also include the prohibition of cruel treatment and punishment.

Amnesty International also urges that the second sentence of Article 4 should read as follows: "no one shall be expelled or extradited to a State where they would be at risk of being subjected to the death penalty or to other serious human rights violations, such as extrajudicial executions, torture, "disappearance", or other cruel, inhuman or degrading treatment or punishment, or unfair trial".

Article 6: Right to liberty and security

Amnesty International continues to urge that this article reflect the guarantees recognised in evolving international human rights standards and ensure that the right is non-derogable and includes at least the following safeguards:

- the right to be promptly informed of one's rights, including the right to counsel and the right to lodge complaints about one's treatment
- the right to be brought promptly before a judicial authority after being deprived of one's liberty
- the right to prompt access to a lawyer and to family or friends

- the right to have a lawyer present during questioning
- the right to challenge the lawfulness of detention
- the principles that it should not be the general rule that people are detained prior to trial and that for juveniles, detention should only be used as a measure of last resort and for the shortest appropriate time, enshrined in Article 9(3) of the ICCPR and Article 37(b) of the Convention on the Rights of the Child, respectively.
- the right to trial within a reasonable time or release from detention

Article 8: Right to a fair trial

Amnesty International urges that the provision setting out the right to legal aid state clearly that at a minimum this right pertains where the interests of justice so require and without payment if the person lacks sufficient means to pay, as set out in Article 14(3)(d) of the ICCPR.

Article 21. Right to asylum

This article should recognise the right of every person without discrimination to asylum. It should also include a reference to other human rights instruments. Such formulation would be in line with the obligations of Member States under international and EC/EU law.

Amnesty International asks for an express provision on the guarantees that assist individuals in expulsion, extradition, or any other form of forced removal procedures that they may be subjected to in accordance with due process of law. Such provision would be in line with Article 32 of the UN Refugee Convention and Article 13 of the International Covenant on Civil and Political Rights (to which all member states are parties) and with the case-law of international monitoring mechanisms, such as the European Court of Human Rights, the Human Rights Committee or the Committee against Torture

Article 22. Equality and non-discrimination

In order to ensure that the prohibition of discrimination in Article 22(1) is at least as protective as Article 26 of the ICCPR the following must be added as prohibited bases of discrimination: national origin, other opinion (inserted after belief); or other status (inserted after birth).

Article 23: Children's rights

In addition to setting out the right of children to be treated as equal individuals and to influence matters pertaining to them (which should include the opportunity to be heard in any proceedings affecting them) Amnesty International believes that this provision should set out the other guiding principles for the treatment of children enshrined in the Convention on the Rights of the Child and other international human rights standards. These principles include among others the duty to

ensure that the best interests of the child are a primary consideration in all actions concerning children including those undertaken by court, administrative or legislative bodies and the duty ensure the right of each child to the protection by family state and society as required. See also Chapter 27.3 of Amnesty International's *Fair Trial Manual*.

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE**fundamental.rights@consilium.eu.int**

Bruxelles, le 5 juin 2000**CHARTE 4334/00****CONTRIB 198****NOTE DE TRANSMISSION**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne

Veillez trouver ci-après une contribution de "European Forum for the Arts and Heritage (EFAH)" avec un texte sur les droits et libertés culturelles fondamentales. ^{1 2}

¹ Ce texte a été soumis en langue française seulement.

² EFAH: 18, rue de Suisse, 1060 Bruxelles. Tél.: +32-2-534 1150. Fax.: +32-2-537 4910.
E-mail: info@efah-feap.org

Les droits et libertés culturelles fondamentales

Proposition

Article X

Toute personne, aussi bien seule qu'en commun a droit:

- a. de choisir et de voir respecter son identité culturelle, dans la diversité de ses modes d'expression;
- b. de connaître et de voir respecter sa propre culture ainsi que les cultures qui, dans leurs diversités, contribuent au patrimoine commun de l'Europe et de l'humanité;
- c. d'accéder aux patrimoines culturels qui constituent des manifestations et expressions significatives des différentes cultures.
- d. de participer librement, sans considération de frontières, à la vie culturelle à travers les activités de son choix.

Ce droit ne peut s'exercer que dans le respect de l'ensemble des libertés et droits fondamentaux.

Exposé des motifs

1. L'identité culturelle est *propre* au sujet; elle est une expression de sa dignité. Son non-respect est une violation de l'intégrité de la personne humaine (cf. art. 1 et 3 du Projet de Charte), et rend impossible l'exercice effectif d'autres droits de l'homme.

2. La diversité culturelle des pays membres de l'Union constitue son patrimoine et sa richesse, pour autant que cette diversité soit vécue comme interactive dans le respect mutuel. Il s'agit d'un principe général d'identité de l'Union (cf. art.2, al, 2 du Traité de l'UE) qu'il convient de rappeler, ainsi que d'un ensemble de droits individuels.
3. Ce principe fondateur et les droits individuels qui lui correspondent est particulièrement pertinent dans le projet de charte, parce que:
 - les guerres en Europe centrale montrent que la sécurité démocratique passe toujours par le respect des identités individuelles et collectives et par la promotion de l'interculturalité;
 - la globalisation des marchés économiques met en danger les identités européennes, collectives et individuelles, dans les différents aspects de la vie quotidienne comme dans la production scientifique, artistique et industrielle.

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE**fundamental.rights@consilium.eu.int**

Bruxelles, le 30 juin 2000**CHARTE 4334/1/00 REV 1****CONTRIB 198****NOTE DE TRANSMISSION**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne

Veillez trouver ci-après une version révisée de la contribution de "European Forum for the Arts and Heritage (EFAH)" avec l'article modifié concernant les droits et libertés culturelles fondamentales. ¹

¹ Ce texte a été soumis en langue française seulement.

Les droits et libertés culturelles fondamentales

Proposition

Article ...

Toute personne a droit:

- a. de choisir et de voir respecter son identité culturelle;
- b. de connaître et de voir respecter sa propre culture ainsi que les cultures qui, dans leurs diversités, contribuent au patrimoine commun de l'Europe et de l'humanité;
- c. de participer librement, sans considération de frontières, à la vie culturelle à travers les activités de son choix.

Exposé des motifs

En l'état actuel le Projet de Charte ne contient aucune disposition relative aux droits culturels pourtant reconnus dans les instruments relatifs aux droits de l'homme, notamment à travers le droit de participer à la vie culturelle (Déclaration universelle, a.27; Pacte international relatif aux droits économiques, sociaux et culturels, a. 15; Convention culturelle européenne). Plusieurs raisons peuvent être invoquées pour inscrire en bonne place ces droits dans le Projet de Charte.

1. **Le principe général.** La diversité culturelle des pays membres de l'Union constitue son patrimoine et sa richesse.. L'article 151, §.1 (ex-article 128) du Traité instituant la Communauté européenne stipule que "La Communauté contribue à l'épanouissement des cultures des Etats membres dans le respect de leur diversité nationale et régionale, tout en mettant en évidence l'héritage culturel commun". L'ensemble de l'article pourrait être intégralement repris.
2. **Le principe des droits individuels.** L'identité culturelle fait partie de l'intégrité de la personne. Son non-respect est une violation de cette intégrité (cf. art. 1 et 3 du Projet de Charte), rendant impossible l'exercice effectif d'autres droits de l'homme.
3. **Les limitations.** Il n'y a pas de risque de débordement puisque ces droits et libertés ne peuvent s'exercer que dans le respect de l'ensemble des libertés et droits fondamentaux, selon les dispositions générales du Projet de Charte.

Commentaire

4. **Un choix entre deux options.** L'option minimale consiste à rappeler ce principe du respect de la diversité culturelle. Cependant la proposition faite ici est plus exigeante, puisqu'il s'agit de reconnaître des droits individuels correspondants.
 5. **Quant au fond et à l'opportunité.** Il est particulièrement pertinent et opportun d'insérer dans la Charte ce principe fondateur et les droits individuels qui lui correspondent, notamment parce que:
 - les crises dans le Sud-est de Europe on rappelé que la *sécurité démocratique* passe par le respect des identités individuelles et collectives et par la promotion de l'interculturalité;
 - la globalisation des marchés économiques met en danger les identités européennes, collectives et individuelles, dans les différents aspects de la vie quotidienne comme dans la production scientifique, artistique et industrielle.
-

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE**fundamental.rights@consilium.eu.int**

Bruxelles, le 5 mai 2000**CHARTE 4335/00****CONTRIB 199****NOTE DE TRANSMISSION**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne

Veillez trouver ci-après une contribution de la Force Ouvrière avec observations sur le projet de Charte des droits fondamentaux de l'Union européenne. ^{1 2}

¹ Ce texte a été soumis en langue française seulement.

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FORCE OUVRIERE
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Observations de Force Ouvrière à destination du Conseil

Confédération syndicale nationale française

Sur le projet de Charte des droits fondamentaux de l'Union européenne

Vers :
fundamental.rights@consilium.eu.int

Paris, le 22 mai 2000

Rien de ce qui concerne les droits fondamentaux ne peut être étranger à notre organisation qui a toujours milité pour les droits de l'Homme et pour la dignité des femmes et des hommes au travail.

Inhérents à l'individu, droits civils et politiques, et droits économiques, sociaux et culturels sont, dans cette conception, indissociables, car comment exercer son droit à la dignité quand on n'a pas de travail, pas de logement, pas de ressources, ou pas d'accès au soins de santé par impossibilité d'en assumer le coût, que ce soit dans la période active ou dans les moments d'inactivité dus au chômage, au handicap, à l'âge ?

C'est pour ces raisons que Force Ouvrière, sans confondre les rôles, et sans se prendre pour le « constituant » qu'elle n'est ni ne veut être, s'estime concernée par le projet d'élaboration d'une charte des droits fondamentaux de l'Union européenne et souhaite vous faire part de ses observations sur la rédaction de ce projet tel qu'il est connu à ce jour.

Marc Blondel

Secrétaire général
De Force Ouvrière.

OBSERVATIONS
DE FORCE OUVRIERE

A la date du 22 Mai 2000

SUR LE PROJET DE CHARTE DES DROITS FONDAMENTAUX DANS L'UNION

EUROPENNE

COMMENTAIRES SUR TEXTE « SN 2158/00 » du 23 MARS

ET TEXTE CONVENT 18 « SN 4192/00 »

SUR LE TEXTE « SN1998 /1/00 »Articles A à K

ET SUR LE TEXTE CONVENT.8 « CHARTE 4137/00 »

ET SUR LES TEXTES CONVENT 26 ET CONVENT 27.

Observations d'ordre général

Sur la forme définitive que prendra la charte :

1) La présentation « en éventail » qui est celle de la Charte Sociale Européenne nous paraît efficace :

la première partie y énonce de façon ramassée et percutante les droits , la deuxième partie en précise le contenu, les autres parties les circonstancient.

Néanmoins, sa nature de traité international lui impose des ratifications parlementaires dont la méthode à la carte très compliquée n'est heureusement pas transposable en droit communautaire.

Nous serions favorables à une telle présentation de la charte européenne des droits fondamentaux, en raison de la grande lisibilité que cela donne au texte, en raison du côté opérationnel que cela donne au texte.

Mais attention : dans le projet de la convention, nous pouvons observer que certains exposés des motifs viennent amoindrir les droits énoncés. Il ne faudrait pas, dans l'hypothèse d'un tel choix que la partie II précisant juridiquement les conditions de la pratique des droits, ne viennent amoindrir juridiquement les droits.

Il nous paraît indispensable de faire figurer dans le corps même de l'énoncé de chaque droit les articles des textes internationaux auxquels les rattachent les exposés des motifs ; il y aurait ainsi plus de clarté sur la portée des droits et moins de risques dans le cas où ce que nous appelons une clause d'amélioration ne serait pas retenue.

2) Pour ce qui concerne les droits économiques et sociaux, le texte doit placer en premier les droits basiques avant d'énoncer les droits dédiés aux conditions de travail.

Nous voulons que soient distingués le titulaire et l'exercice de ces droits. En effet le titulaire de ces droits est l'individu et doit le rester, même si l'exercice des droits est souvent collectif, ainsi le droit de grève est-il un droit individuel.

Pour l'ensemble de ces droits, il est important que l'Union travaille en complémentarité avec les organismes internationaux de normalisation et non en concurrence, afin d'éviter tant le recul des situations conquises par les travailleurs dans les pays membres, que le désintérêt qui pourrait atteindre le travail de ces institutions. La mondialisation des échanges et ses conséquences rendent leur action encore plus nécessaire que par le passé.

Il est indispensable de ne rien écrire dans la charte qui, en matière de droits économiques et sociaux, et particulièrement syndicaux n'ait été passé au crible des conventions de l'OIT.

Il existe un pont juridique possible entre la future charte et la Charte de Turin, très peu utilisé par les rédacteurs dans les projets qui nous ont été soumis jusqu'à présent alors qu'en matière des droits civils et politiques l'usage en est large (Art.136 1°al Traité CE). Cependant, la Charte de 1961 couvre un champ moins large que les conventions de l'OIT qui sont connues de tous les Etats membres .

Nous souhaitons donc que soient prises notamment en considération les conventions OIT n° 87, 135, 98, 151, 154, 14, 132, 140.

Sur le champ d'application :

Une charte pour qui ?

1) Pour tout résident sur le territoire européen, et pour les citoyens européens.

2) Pour des titulaires individuels de droits qui peuvent s'exercer, s'organiser et se gérer aussi collectivement.

Une charte pour quels droits ?

1) Pour des droits de l'Homme, droits civils, politiques, économiques et sociaux inhérents à l'individu, et à ce titre indissociables.

2) Pour des « droits », et non pour des « objectifs ».

3) Pour des droits universels, et non subsidiaires et subordonnés à des circonstances, ou à des zones, susceptibles de les rendre variables en nombre, en nature, en durée, en intensité (pas de possibilité d'y déroger, même partiellement).

4) Une charte pour faire mieux, et non une charte subsidiaire réduite à une « clause sociale » européenne.

5) Pour des droits justiciables (avec sanctions en cas de non respect).

6) Pour des droits transfrontaliers.

Une charte pour quelle utilisation ?

Pour des droits directement évocables par leurs titulaires ou leurs représentants désignés.

Une charte avec quelle force ?

Avec celle du droit communautaire par inscription des droits dans les traités en passant au crible les droits qui y figurent déjà pour ne garder que la rédaction la plus favorable aux intéressés.

Sur l'inclusion des droits dans les traités

Nous considérons qu'une déclaration politique solennelle ne répondrait pas aux besoins et objectifs fixés par le Conseil de Cologne et le processus de Tampere. Une charte des droits fondamentaux doit rassembler tout ce qui fait l'identité et la grandeur européenne et affirmer qu'une autre Europe communautaire existe bien à côté de celle des banquiers, et lui donner de la consistance.

Déjà l'article 7 du traité UE renvoyait à un système de valeurs essentielles, bien qu'elles n'y aient pas été précisées.

Commencée avec l'inclusion du pilier JAI dans le premier pilier et sa mise en œuvre sur un programme en deux étapes de deux et trois ans, la clarification se poursuit avec la charte en préparation.

Sans l'inclusion des droits reconnus par la charte dans le traité, les actes et décisions des organes communautaires ne seraient soumis à aucun contrôle international de légalité en matière de droits de l'Homme. La CJCE n'apprécie en effet que de la conformité des actes aux dispositions des traités. Il y aurait donc persistance d'un vide juridique.

Champ géographique d'application :

Tous les droits doivent être applicables en tous points du territoire de l'Union, sans que puisse être tolérée quelque dérogation géographique ou temporaire que ce soit. Il nous paraît important que cela soit spécifié au moins dans un considérant du préambule de la charte.

Pour la France, il existe encore en effet des disparités d'application de certains droits sociaux entre la métropole et certaines zones ultra-périphériques.

Nous proposons donc la rédaction d'un considérant tel qu'il suit :

« Tous les droits figurant à la Charte européenne des droits fondamentaux sont applicables sans possibilité d'y déroger en tous points du territoire communautaire ».

Sur les articles A à K concernant les citoyens et les non-citoyens :

Service public et services publics:

Pas de droits sans « bonne gouvernance », notion qui va plus loin que la « bonne administration » car elle garantit l'exercice des droits, et en premier lieu les droits à la vie, à la dignité, à l'intégrité physique, par l'organisation collective d'une fonction publique qualifiée, neutre et indépendante, et des services publics offrant à tous continuité, égalité d'accès et tarifs péréqués.

La charte doit absolument formaliser cette notion déjà acceptée par les Quinze à l'article 16 du traité d'Amsterdam, sans qu'ils en aient encore tiré tous les effets.

Nous ne méconnaissons pas la difficulté qu'il peut y avoir pour une structure comme l'Union à se doter clairement de tels principes, car comme l'énonçait la Déclaration des droits de l'Homme et du citoyen de 1789, « toute société dans laquelle la garantie des droits n'est pas assurée ni la séparation des pouvoirs déterminée, n'a point de constitution », garantie, qui bien sûr, requiert une force publique (cf. encore Déclaration des droits de l'Homme et des citoyens de 1789, art. 12, 13, 14, 15, 16). Or l'Union n'a en effet pas de constitution, pas de force publique et donc pas de vocation à prendre en charge l' « intérêt général ».

PROJET D'ARTICLES SUR LES DROITS DES CITOYENS

La synthèse de l'existant que propose la rédaction actuelle du projet de charte sur les droits du citoyen nous paraît intéressante pour la lisibilité qu'elle peut apporter au citoyen.

Par ailleurs les articles 6 et 7 du TUE font désormais obligation à l'Union de définir les valeurs dans lesquelles elle se reconnaît, et de donner forme au « modèle social européen ».

Quelques remarques :

CONCERNANT LES DROITS DES CITOYENS :

Articles A à K. Document SN/1998/1/00 du 15 mars 2000

PROJET DE LA CONVENTION :

Article A: Principe de démocratie

« 1) Toute autorité publique émane du peuple.

« 2) L'Union et ses institutions se fondent sur les principes de liberté, de la démocratie, du respect des droits de l'Homme et de l'Etat de droit, principes qui sont communs aux Etats membres.

« 3) Les représentants au parlement européen des peuples des Etats réunis dans la Communauté[l'Union] sont élus au suffrage universel direct ».

Observations :

Le principe de démocratie étant pour l'Europe le principe des principes, il serait opportun de distinguer l'essence et l'existence de la démocratie.

En effet, les alinea 1 et 3 qui font exister la démocratie dans l'Union sont de même nature, et appartiennent aux citoyens, quand l'alea 2, qui rappelle l'essence même de la démocratie (liberté, respect des droits de l'homme, Etat de droit), concerne tous les résidents des Etats de l'Union.

PROJET DE LA CONVENTION

Article B; Partis politiques:

"Tout citoyen de l'Union a le droit de fonder avec d'autres des partis politiques et des s'y affilier. Les partis politiques au niveau européen contribuent à la formation d'une conscience européenne et à l'expression de la volonté politique des citoyens de l'Union".

Article C: Droit de participer aux élections européennes;

"Tout citoyen de l'Union résidant dans un Etat membre dont il n'est pas le ressortissant a le droit de vote et d'éligibilité aux élections au Parlement européen dans l'Etat membre où il réside dans les mêmes conditions que les ressortissants de cet Etat. Ce droit s'exerce selon les modalités prévues par le traité instituant la Communauté européenne".

Article D: Droit de participer aux élections municipales.

"Tout citoyen résidant dans un Etat membre dont il n'est pas le ressortissant a le droit de vote et d'éligibilité aux élections municipales dans l'Etat membre où il réside dans les mêmes conditions que les ressortissants de cet Etat. Ce droit s'exerce selon les modalités prévues par le traité instituant la Communauté européenne".

Il convient de vérifier le libellé de cet article qui tel quel change considérablement la portée de l'article 19§1 du traité.

En effet, le traité vise "tout citoyen de l'Union", alors que la version SN/ 1998/1/00 du 15 mars 2000 mentionne le droit de participer aux élections municipales pour "tout citoyen".

Article E: Droit à une bonne administration;

1) "Tout citoyen de l'Union et toute personne résidant dans un Etat membre a le droit de voir ses affaires traitées convenablement, équitablement et dans un délai raisonnable par les institutions et organes de l'Union.

2) Ce droit comporte notamment:

n le droit de toute personne d'être entendue avant qu' une mesure individuelle qui l'affecterait personnellement soit prise à son encontre

n le droit d'accès de toute personne au dossier pour autant que cet accès soit nécessaire pour qu'elle puisse faire valoir ses arguments et dans le respect des intérêts légitimes de la confidentialité de ses affaires

n l'obligation pour l'administration d'examiner avec soin tous les aspects pertinents de l'affaire

n l'obligation pour l'administration de motiver ses décisions.

3) Tout citoyen peut s'adresser aux institutions et organes de l'Union dans une des langues officielles de l'Union et doit recevoir une réponse dans cette langue".

Article F: Droit d'accès aux documents:

Rédaction de l'Article 14 du texte Convent.8 sous la dénomination droit d'accès aux informations:

"Tout citoyen de l'Union ou toute personne résidant dans l'Union a un droit d'accès aux documents des institutions européennes. Ce droit s'exerce dans les conditions prévues par l'article 255 du traité instituant la Communauté européenne".

Nous proposons pour cet article l'amendement suivant:

"Tout citoyen de l'Union, toute personne physique intéressée, et toute personne morale intéressée ayant son siège dans un Etat membre, a un droit d'accès aux documents des institutions de l'Union européenne....(le reste sans changement)"

L'exposé des motifs évoque une référence à l'article 255 du traité. Or ce dernier accorde ce droit aux personnes morales. Pourquoi faire moins? S'il ne s'agit que d'une question de mise en forme de la charte, laquelle dans ce chapitre a tenté de regrouper les droits des "citoyens", le droit d'accès aux documents pour les personnes morales doit être inscrit ailleurs et être éventuellement réservé aux personnes morales assistant les citoyens agissant pour recouvrer la jouissance de leurs droits fondamentaux bafoués.

A l'époque du développement du dialogue avec la "société civile", cela maintiendrait de la cohérence avec la réalité de la vie des citoyens.

Par ailleurs, la condition de résidence exigée interdit à des personnes extérieures à l'Union mais concernées par son action actuelle ou future (au titre d'accords d'association ou de procédure d'adhésion par exemple) de prendre connaissance d'actes les concernant. C'est la raison pour laquelle nous ajoutons l'adjectif "intéressée".

Article G : Accès au médiateur:

"Tout citoyen de l'Union et toute personne résidant sur le territoire d'un Etat membre a le droit de saisir le médiateur de l'Union des cas de mauvaise administration des institutions et organes communautaires, à l'exception de la Cour de Justice et du Tribunal de Première Instance dans l'exercice de leurs fonctions juridictionnelles. Ce droit s'exerce dans les conditions définies par le traité instituant la Communauté européenne et les dispositions prises pour son application".

Article H: Droit de pétition:

"Tout citoyen de l'Union et toute personne résidant sur le territoire d'un Etat membre a le droit de pétition devant le Parlement européen dans les conditions définies par le traité instituant la Communauté européenne".

Article I: Liberté de mouvement:

"Tout citoyen a le droit de circuler et de séjourner librement sur le territoire des Etats membres selon les limitations et conditions définies par le traité instituant la Communauté européenne".

Article J: Liberté professionnelle:

[Sans préjudice des règles du traité relatives à la libre circulation des personnes,] toute personne a le droit de choisir librement et d'exercer librement sa profession et ses activités commerciales".

Article repris à l'article 2 du texte Convent 18 du 27 mars 2000 qui énonce les droits sociaux. Voir nos commentaires sous cet article.

Article K: Non-discrimination:

" Toute discrimination fondée sur la nationalité est interdite entre les citoyens de l'Union".

De la citoyenneté européenne et de son usage:

Les articles B,C,D,I, ne s'appliquent qu'aux citoyens, alors que les articles E, relatif à une bonne administration, et F, G,H,J,K, ne peuvent que concerner toute personne sous peine de faillir au respect des valeurs de la démocratie.

Les articles I et J, par l'application de la convention de Schengen, ont déjà une portée générale à l'égard des résidents en situation estimée régulière par les autorités du territoire de leur point d'entrée dans la Communauté.

Procéder à une classification des droits du «citoyen » européen dans la vie politique européenne, et des droits fondamentaux, apanage de toute personne, y compris du citoyen, permettrait une clarification sans que cette catégorisation n'enlève rien à quiconque ni ne crée de la "non-citoyenneté" où seraient cantonnés les non-résidents.

Aucune citoyenneté ne procède réellement de l'Union ; tout citoyen européen ne l'est que parce qu'il est citoyen d'un Etat membre. La citoyenneté en Europe vient des Etats et non d'une constitution européenne qui en aurait défini les contours par le haut. Or cette situation

conditionne l'exercice du droit d'asile, les règles sur les migrations (art.17 de la charte en projet), et même la liberté de circuler qui, au sens de la convention de Schengen veut dire se déplacer, et au sens du traité de Rome, veut dire séjourner, c'est-à-dire selon qu'on est citoyen ou résident.

Par ailleurs, comment concilier l'article B qui assure seulement à « tout citoyen de l'Union le droit de fonder avec d'autres des partis politiques et de s'y affilier », alors que par ailleurs, l'article 13 donne à « toute personne » « la liberté de réunion pacifique et la liberté d'association , y compris le droit de fonder avec d'autres des syndicats et de s'y affilier » ?

Il n'y a pas de manquement aux droits fondamentaux à énoncer dans une introduction la proposition d'amendement suivante :

«Sans préjudice des lois nationales plus favorables, tous les résidents du territoire européen bénéficient des droits fondamentaux tels que définis dans la présente charte et tous les ressortissants communautaires jouissent en outre des droits attachés à la citoyenneté européenne ».

En outre, l'alinéa 1 de l'article 1 peut poser un problème de conformité constitutionnelle aux Français , particulièrement par rapport à l' article 3 et aux Préambules de la Constitution.

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PROJET D'ARTICLES SUR LES DROITS FONDAMENTAUX

Sur le texte « CONVENT 13 »
Charte 4149/9 du 8 mars 2000

Remarque générale : nous proposons que chaque article reprenne explicitement les références aux textes européens et internationaux mentionnés dans les exposés des motifs.

Sur l'article 1 : Dignité de la personne humaine

PROJET DE LA CONVENTION :

« La dignité de la personne humaine est respectée et protégée en toutes circonstances ».

Comme aux grands textes de droit français du passé, la rédaction condensée donne de la force.

Cet article peut se limiter à cette énonciation puisque les articles et les droits qui suivent en donnent les conditions, dont l'interdiction de l'esclavage, qui fait à juste titre l'objet d'un article spécifique.

Sur l'article 2 : Droit à la vie

PROJET DE LA CONVENTION :

« 1) Toute personne a droit à la vie.

« 2) Nul ne peut être condamné à la peine de mort, ni exécuté ».

Nous approuvons le renoncement à la peine de mort.

Nous notons la divergence entre la rédaction de cet article dans son alinéa 2 et celle de l'article 2 de la CEDH. Le pont que fait entre les deux l'article 6 TUE rend-il les deux systèmes de normes compatibles entre eux, et avec les droits nationaux qui ont aboli la peine de mort ?

Ici il est patent que le dispositif accompagnant l'article est un affaiblissement ; l'amélioration pour tous consiste à proclamer que ce droit est plénier et qu'il ne souffre aucune exception. Si tel n'est pas le cas, il serait plus honnête et transparent de citer soit dans l'article la référence à l'article 2 de la CEDH, soit de faire figurer son contenu dans une partie II dotée de force juridique.

[CEDH ART.2 :« Le droit de toute personne à la vie est protégé par la loi. La mort ne peut être infligée à quiconque intentionnellement, sauf en exécution d'une sentence capitale prononcée par un tribunal au cas où le délit est puni de cette peine par la loi ».

Ceci nous porterait même à faire du droit à la vie un droit constitutionnel, au- dessus de toute loi supposée le protéger.

Sur l'article 3 : Droit au respect de l'intégrité

PROJET DE LA CONVENTION :

« 1) Toute personne à droit au respect de son intégrité physique et mentale.

« 2) Dans le cadre de la médecine et de la biologie, les principes suivants doivent notamment être respectés :

- interdiction des pratiques eugéniques
- respect du consentement éclairé du patient
- interdiction de faire du corps humain et de ses produits une source de profit
- interdiction du clonage des êtres humains ».

Nous soulignons l'attention particulière que portent les magistrats français à l'adverbe « notamment ».

Il faut impérativement ici, si cette forme de l'article est maintenue, que cet adverbe serve à maintenir grande ouverte la porte des adjonctions à cette liste. Il nous paraît cependant, dangereux de lier le principe, droit absolu et universel, avec les progrès de la médecine, par définition contingents, variables, et sujets à divergences d'interprétation.

Il vaudrait mieux ne raisonner qu' en termes de droit.

Nous aimerions mieux de toutes façons que, à l'alinéa 2, l'interdiction de faire du corps humain et de ses produits une source de profits, soit rédigée plutôt sous forme de principe que sous forme d'interdiction :

Proposition d'amendement:

« Le corps humain n'est pas une marchandise ; ni le corps, ni ses produits, comprenant l'enfant en devenir, ne peuvent être sources de profit ».

Sur l'article 4 : Interdiction de la torture et des traitements inhumains

PROJET DE LA CONVENTION :

« Nul ne peut être soumis à la torture, ni à des peines et traitements inhumains et dégradants ».

Pas d'observations à cette date, si ce n'est la remarque générale d'introduction..

Sur l'article 5 : Interdiction de l'esclavage et du travail forcé

PROJET DE LA CONVENTION :

« 1) Nul ne peut être tenu en esclavage ni en servitude.

« 2) Nul ne peut être astreint à accomplir un travail forcé ou obligatoire ».

L'exposé des motifs qui renvoie aux articles 4 et 5 de la CEDH ne pose pas de problème sous réserve de son inscription dans le corps de l'article.

Sur l'article 6 : Droit à la liberté et à la sûreté

PROJET DE LA CONVENTION :

« Toute personne a droit à la liberté et à la sûreté. Nul ne peut être privé de sa liberté, sauf dans des cas spécifiques et selon les voies légales ».

Le choix de la rédaction d'articles peu circonstanciés mais percutants et qui renvoient pour leur interprétation au contenu de la CEDH par l'article 6 du traité UE, permet probablement un meilleur pyramidage entre les deux systèmes de normes, mais fait manquer l'occasion de moderniser certains éléments, comme le paragraphe e) de l'article 5 de la CEDH alors que la Convention à propos d'un autre droit a bien su changer la référence d'un texte précédent parlant de « nations civilisées » pour « nations démocratiques »(art.10.2).

L'Union devra veiller au strict respect de ces principes dès avant la charte, lorsqu'elle mettra en ouvre de la décision d'Amsterdam d'intégrer le pilier Justice et Affaires Intérieures dans le premier pilier. (Traité d'Amsterdam titre IV).

[Cf. CEDH Art.5 e) : «... s'il s'agit de la détention régulière d'une personne susceptible de propager une maladie contagieuse, d'un aliéné, d'un alcoolique, d'un toxicomane ou d'un vagabond. »]

La remarque générale d'introduction est à faire ici aussi.

Sur l'article 7 : Droit à un recours effectif

PROJET DE LA CONVENTION :

« Toute personne dont les droits et les libertés ont été violés a droit à un recours effectif devant un tribunal ».

Pas d'observation à cette date, si ce n'est la remarque générale d'introduction..

Sur l'article 8 :Droit à un tribunal impartial :

PROJET DE LA CONVENTION :

« Toute personne a droit à ce que sa cause soit entendue équitablement, publiquement et dans un délai raisonnable, par un tribunal indépendant et impartial, établi par la loi. Une aide juridique gratuite est octroyée à ceux qui ne

disposent pas de ressources suffisantes dans la mesure où cette aide serait indispensable pour assurer l'effectivité de l'accès à la justice ».

Une référence directe à l'article 5§1 de la CEDH permettrait de faire connaître les limitations de la portée du droit de façon claire (cf. nos remarques générales).

Nous proposons d'amender l'article en lui ajoutant, après le mot « personne », les mots suivants :

« ., conformément à l'article 6 du traité sur l'Union Européenne et à l'article 5.1 de la Convention européenne des droits de l'Homme,. » (remarque générale d'introduction).

Sur l'article 9 : Droits de la défense :

PROJET DE LA CONVENTION :

« Tout accusé est présumé innocent jusqu'à ce que sa culpabilité ait été légalement établie et a droit au respect des droits de la défense . »

Nous proposons, comme précédemment, d'amender l'article en ajoutant après le mot « défense » :

« .conformément à l'article 6 du traité sur l'Union européenne et aux articles 6.2 et 6.3 de la Convention européenne des droits de l'Homme ».

(Remarque générale d'introduction).

Sur l'article 10 : Pas de peine sans loi

PROJET DE LA CONVENTION/

« 1) Nul ne peut être condamné pour une action ou une omission qui, au moment où elle a été commise, ne constituait pas une infraction d'après le droit national, le droit de l'Union ou le droit international. De même, il n'est infligé aucune peine plus forte que celle qui était applicable au moment où l'infraction a été commise. Si postérieurement à cette infraction, la loi prévoit une peine plus légère, celle-ci doit être appliquée.

2) Le présent article ne porte pas atteinte au jugement et à la punition d'une personne coupable d'une action ou d' omission qui, au moment où elle a été commise, était criminelle d'après les principes généraux du droit reconnus par les nations démocratiques ».

Pas d'observations à cette date, sauf la remarque générale d'introduction..

Sur l'article 11 : Droit à ne pas être jugé ou puni deux fois :

PROJET DE LA CONVENTION:

« Nul ne peut être poursuivi ou puni pénalement en raison d'une infraction pour laquelle il a déjà été acquitté ou condamné par un jugement définitif conformément à la loi ».

Pas d'observation à cette date, sauf la remarque générale d'introduction

Sur l'article 12 :Respect de la vie privée :

PROJET DE LA CONVENTION :

« Toute personne a droit au respect de sa vie privée, de son honneur, de son domicile et du secret de ses communications ».

Proposition d'amendement:

Nous souhaitons ajouter de façon explicite « le respect de son image » après le mot « honneur ».
Remarque générale d'introduction.

Sur l'article 13 : Vie familiale

PROJET DE LA CONVENTION:

« 1) Toute personne a droit au respect de sa vie familiale.

« 2) Toute personne a le droit de se marier et de fonder une famille selon les lois des Etats membres à l'exercice de ce droit.

« 3) La protection de la famille sur le plan juridique, économique et social est assurée ».

° Autant la notion de respect de la vie familiale et de fondation d'une famille dans le respect des lois nationales ne posent pas de problème, autant le lien qui est fait entre mariage et fondation d'une famille amène à s'interroger sur la notion de famille elle-même dans l'Europe des Quinze.

° Une autre interrogation concerne la perspective de l'adhésion d'un Etat comme la Turquie qui vient d'obtenir un statut de candidat.

Bien que l'Islam n'y soit pas une religion d'Etat, cette religion qui admet la polygamie y est très répandue.

° Par quel(s) titulaire(s) sera exercé le droit à la protection de la famille qui est repris à l'alinéa 3 de l'article 13, par quelle autorité sera-t-il garanti, et pour quelle famille ?-monoparentale, biparentale, multiparentale ?

Les familles turques devenues membres de l'Union seront titulaires du droit de circuler librement dans le territoire et devront voir leurs droits respectés.

De quel type de famille parle le texte et parleront les institutions et organes communautaires? N'y aurait-il pas un intérêt à préciser la notion ?

° Ce droit, qui ne fait pas partie des articles A à K relatifs aux citoyens de l'Union, inclut-il les résidents légaux et leur famille ayant bénéficié du rapprochement ?

° Ce qui manque à l'énoncé de ce droit et c'est paradoxal, c'est l'approche communautaire et les implications transfrontalières de la liberté de circuler.

° Alinéa 2 : la forme nous paraît devoir être reprise pour :

« .de se marier par libre consentement et de fonder une famille selon les lois des Etats membres relatives à l'exercice de ce droit ».

Remarque générale d'introduction.

Sur l'article 14 : Liberté de penser, de conscience, et de religion

PROJET DE LA CONVENTION :

« Toute personne a droit à la liberté de pensée, de conscience et de religion ».

L'article 10 du texte antérieur Convent.8 du 24 février 2000 charte 4137/00 circonvenait l'exercice du droit par inclusion dans le texte de l'alinéa 1 de l'article 9 de la CEDH

Nous proposons dans le cas où le maintien de l'ancienne rédaction redeviendrait d'actualité, de ne pas inclure les dispositions de l'article 9 al.1 CEDH sans l'alinéa 2 qui, bien que posant des restrictions au principe de liberté de manifester sa religion ou ses convictions, définit celles-ci

limitativement, et nous paraît de nature à préserver la conception française de laïcité.

[CEDH Art.9:

1) Toute personne a droit à la liberté de pensée, de conscience, et de religion; ce droit implique la liberté de changer de religion ou de conviction, ainsi que la liberté de manifester sa religion ou sa conviction individuellement ou collectivement, en public ou en privé, par le culte, l'enseignement, les pratiques et l'accomplissement des rites.

2) La liberté de manifester sa religion ou ses convictions ne peut faire l'objet d'autres restrictions que celles qui, prévues par la loi, constituent des mesures nécessaires, dans une société démocratique, à la sécurité publique, à la protection de l'ordre, de la santé ou de la morale publiques, ou à la protection des droits et libertés d'autrui.]

Sur l'article 15 : Liberté d'expression

PROJET DE LA CONVENTION :

« 1) Toute personne a droit à la liberté d'expression. Ce droit comprend la liberté d'opinion et la liberté de recevoir ou de communiquer des informations ou des idées sans qu'il puisse y avoir d'ingérence d'autorités publiques et sans considération de frontière ».

« 2) L'art, la science et la recherche sont libres »

Il nous paraît plus protecteur d'évoquer dans le texte de manière spécifique la liberté d'opinion en matière philosophique, politique et religieuse, sans restreindre le champ de ce droit à ces seuls aspects. Nous proposons l'amendement suivant:

A.15 al 1 2° phrase « Ce droit comprend tout particulièrement la

liberté d'opinion philosophique, politique, et religieuse, et plus généralement la liberté d'opinion ainsi que celle de recevoir ou de communiquer des informations ou idées sans qu'il puisse y avoir d'ingérence d'autorités publiques et sans considération de frontières. »

Par ailleurs la notion « d'ingérence d'autorités publiques » doit absolument être définie, peut-être dans une partie II. Car selon la définition, ou l'interprétation qui serait donnée par un tribunal, la limitation au droit qu'apporte ce membre de phrase pour être bénigne ou grave.

Remarque générale d'introduction sur l'inclusion nécessaire des textes de référence de l'exposé des motifs..

Sur l'article 16 : Droit à l'éducation

PROJET DE LA CONVENTION :

1. « Nul ne peut se voir refuser le droit à l'instruction qui comporte notamment la faculté de

suivre gratuitement l'enseignement obligatoire.

2. « La création d'établissements d'enseignement est libre.

3. « Le droit des parents d'assurer l'éducation et l'enseignement de leurs enfants, conformément à leurs convictions religieuses et philosophiques, est respecté ».

Nous souhaitons voir inscrite à cet article la mission de l'Etat dans le domaine de l'éducation :

Propositions d'amendement:

A.16 al. 2 : « L'Etat, dans l'exercice de ses fonctions, assume la responsabilité de l'organisation de l'enseignement.

La création d'établissements d'enseignement est libre ».

A.16 al. 3 : A la première ligne, enlever « et l'enseignement » ;

Après « est respecté. »,

ajouter : « , tant qu'il ne porte pas atteinte aux droits de l'enfant et à l'exercice futur de ses libertés ».

ARTICLES HORS CONVENT.13

NB :

Dans la rédaction dite « Convent. 13 » du 08 mars 2000 qui refond la première rédaction des articles 1 à 12 en articles 1 à 16 ne figurent pas les articles 13 à 19 énoncés par la rédaction du texte dit « Convent.8 » en date du 24 février. Nous ne doutons pas que dans sa forme définitive, la charte les mentionne, car ils sont de très grande importance. Ceux qui n'ont pas été évoqués supra sont cités ci-dessous dans leur rédaction du 24/02/2000 Doc.4137/00.

Sur l'article 13 Convent.8: la liberté de réunion et d'association:

PROJET DE LA CONVENTION :

Toute personne a droit à la liberté de réunion pacifique et à la liberté d'association, y compris le droit de fonder avec d'autres des syndicats et de s'y affilier ».

Nous proposons d'amender le texte par ajout de l' alinea suivant:

" Ce droit inclut la liberté de manifestation pacifique".

Sur l'article 14 Convent 8: le droit d'accès aux informations:

PROJET DE LA CONVENTION

"Tout citoyen de l'Union ou toute personne résidant dans l'Union a un droit d'accès aux documents des institutions de l'Union européenne. Ce droit s'exerce dans les conditions prévues par l'article 255 du traité instituant la Communauté européenne".

[Commentaires figurant sous article F supra du volet relatif aux droits des citoyens.]

Sur l'article 15 Convent.8: Protection des données:

PROJET DE LA CONVENTION

"Toute personne physique a droit à la protection de ses données à caractère personnel".

Nous proposons l'amendement suivant:

"Toute personne morale privée ou publique, assujettie au droit communautaire, a droit à la protection des données relatives à l'objet de ses activités licites dans le respect des lois relatives à l'ordre, à la sécurité, à la santé publics, et des droits et libertés individuels des personnes physiques qui concourent à la réalisation de son activité.

"Les données relatives aux personnes physiques et morales ne peuvent que:

- être collectées par des organismes légalement habilités,
- être utilisées à des fins licites et dans l'objet précis de leur collecte,
- être conservées pendant la durée limitée à la réalisation de l'objet de leur collecte.

"Toute personne physique et morale reste propriétaire de ses données, dispose d'un droit permanent d'accès, d'actualisation et de suppression".

Sur l'article 16 Convent. 8 : le droit de propriété:

PROJET DE LA CONVENTION/

"Toute personne a droit au respect de ses biens. Nul ne peut être privé de sa propriété que pour cause d'utilité publique et dans les cas et conditions prévus par une loi et moyennant une juste [et préalable] indemnité".

Nous proposons l'amendement suivant:

"Les biens communs universels naturels indispensables à la vie [tels que l'air, l'eau], et intellectuels [comme la découverte du génome humain^o] ne sont pas susceptibles d'appropriation".

Sur l'article 17 Convent 8: le droit d'asile et l'expulsion

PROJET DE LA CONVENTION:

1) "Les personnes qui ne sont pas des ressortissants de l'Union ont un droit d'asile dans l'Union européenne [conformément aux règles de la Convention de Genève du 28 juillet 1951 et au protocole du 31 janvier 1967 relatifs au statut des réfugiés] [dans les conditions prévues par les traités].

2) "Les expulsions collectives d'étrangers sont interdites".

Les visas, l'asile et l'immigration font maintenant partie des politiques communes, bien que les textes restent à finaliser (titre IV traité d'Amsterdam^o).

Le fait de mêler dans un même article l'asile et la police des étrangers ne grandit pas la proclamation du principe qui devrait plutôt citer succinctement les conditions d'accès au droit d'asile.

Nous proposons un amendement qui sépare les deux alinea en deux articles; le nouvel article s'écrirait comme suit:

"Tout étranger en situation irrégulière dans l'Union peut notamment invoquer les droits énoncés aux articles 1 à 11 [du Convent.8] de la charte communautaire des droits fondamentaux.

Les expulsions collectives d'étrangers sont interdites".

Sur l'article 18 Convent.8: L'égalité

PROJET DE LA CONVENTION:

"Toutes les personnes sont égales devant la loi".

Nous proposons l'amendement suivant pour une nouvelle rédaction de l'article de sorte qu'il couvre un large spectre en englobant des données relatives à l'égalité sur lesquelles il y a déjà consensus dans l'Union:

"1) Toutes les personnes naissent libres et égales en dignité et en droit.

2) Elles sont égales devant la loi et ont droit sans discrimination à une égale

protection de la loi".

3) Toute discrimination à raison notamment du sexe, de la race, de la couleur ou de l'origine ethnique, de la religion ou des convictions, du handicap, de l'âge, et de l'orientation sexuelle est interdite

4) L'égalité entre les hommes et les femmes doit être assurée dans tous les domaines et particulièrement en matière d'emploi et de travail et de protection sociale ».

Nous conservons le terme de "personne" parce que c'est celui qui est utilisé dans toute le projet de charte.

Sur l'article 19 Convent 8: Non discrimination

PROJET DE LA CONVENTION

"1) Est interdite toute discrimination fondée sur le sexe, la race, la couleur, ou l'origine sociale, la langue, la religion ou les convictions, l'appartenance à une minorité nationale, la fortune, la naissance, un handicap, l'âge ou l'orientation sexuelle.

2) L'Union cherche à éliminer les inégalités et à promouvoir l'égalité entre les hommes et les femmes. [L'égalité des sexes est notamment assurée dans la fixation des rémunérations et des autres conditions de travail conformément au traité et aux textes pris pour son application]".

Nous considérons que la non-discrimination, déjà garantie dans le traité, n'est qu'une facette du principe d'égalité et qu'il est plus fort de l'écrire dans l'article consacré à ce principe.

Par ailleurs, l'alinéa 2 ne doit pas figurer dans une charte des droits fondamentaux; il est programmatique et n'énonce qu'un objectif.

ARTICLES HORIZONTALS

LE CHAMP D'APPLICATION

ARTICLE H 1 CONVENT 27 DU 17.04.2000 :

Sur le champ d'application, voir nos observations générales, et celles formulées

sous l'article 1.

PROJET DE LA CONVENTION :

1. « Les dispositions de la présente Charte s'adressent aux institutions et organes de l'Union dans le cadre des attributions qui leur sont conférées par les traités ainsi qu'aux Etats membres exclusivement dans le cadre de la mise en oeuvre du droit communautaire ».

2. Elles ne créent aucune compétence ni aucune tâche nouvelle pour la Communauté et pour l'Union ».

Nous proposons que soit ajouté l'amendement suivant :

« 3) Les dispositions de la présente Charte sont mises en oeuvre par les Etats membres selon les règles et pratiques nationales, sans préjudice du caractère transnational actuel ou à venir de certains droits fondamentaux, tels, notamment, que le droit à la vie, au respect de la dignité et de l'intégrité, à la liberté de se déplacer, de penser, de s'exprimer, de choisir sa profession, celle de se réunir et de s'associer, la liberté syndicale, le droit pour les travailleurs d'être informés et consultés et de négocier collectivement, celui d'agir collectivement et de recourir à la grève, le droit à un salaire minimum, le droit d'asile, l'égalité et la non-discrimination, les droits des citoyens européens, le droit d'accès aux soins de santé et la portabilité des droits d'ouverture à prestations sociales.

« 4) Les dispositions de la présente Charte ne peuvent être modifiées que selon des procédures d'élaboration et d'adoption identiques à celles qui ont prévalu pour l'élaboration et l'adoption de son texte initial.

ARTICLE H 2(Convent 27) : LIMITATIONS DES DROITS GARANTIS :

ANCIENNE REDACTION DE CET ARTICLE :

« ARTICLE X. LIMITATIONS :

PROJET DE LA CONVENTION : première rédaction :

« Sous réserve de dispositions plus protectrices de la présente charte ou de la Convention européenne des droits de l'Homme, toute limitation au respect des droits et des libertés reconnue dans cette charte doit être prévue par la loi. Elle doit respecter le contenu essentiel desdits droits et libertés et rester, dans le respect du principe de proportionnalité, dans des limites nécessaires à la protection d'intérêts légitimes dans une société démocratique ».

PROJET DE LA CONVENTION CONVENT 27:

ARTICLE H 2 :

1. « Les droits et libertés reconnus aux articles. de la présente charte ne peuvent faire l'objet d'aucune limitation.
2. Toute limitation, aux droits et libertés garantis par la présente charte doit être prévue par le législateur. Elle doit respecter le contenu essentiel desdits droits et libertés et rester, dans le respect du principe de proportionnalité, dans des limites nécessaires à la protection d'intérêts légitimes dans une société démocratique. Les limitations prévues par la Convention européenne des droits de l'Homme sont applicables à ceux des droits et libertés contenus dans la présente Charte qui sont également garantis par ladite Convention ».

ARTICLE H 3

« Les droits garantis par les articles .s'exercent dans les conditions et limites définies par le traité instituant la Communauté européenne »

Les commentaires sous ces trois articles ne peuvent être faits que sous la réserve de connaître les droits qui seront inscrits dans H2 et H3 à la place des points de suspension.

Dans l'état actuel de la rédaction, les articles H2et H3 semblent vouloir préciser les conditions d'exercice des droits en catégorisant entre ceux qui ne subiraient aucune limitation communautaire selon H2 al.1, et ceux qui s'exerceraient dans les conditions et limites définies par le traité CE, c'est-à-dire selon des limites venant des règles économiques communautaires, sans préciser lesquelles ni dans quelles circonstances.

Par ailleurs, l'article qui évoque ceux qui ne subiraient aucune limitation communautaire écrit aussitôt dans son 2° alinea quelles limitations peuvent exister, mais des règles nationales.

Quels droits resteront-t-ils ?

On peut de toutes façons s'interroger sur une approche qui voudrait des droits plus fondamentaux que d'autres. Pour Force Ouvrière il ne peut en tous cas y avoir de limitation dans le nombre des droits fondamentaux pour lesquels aucun « opting out » ne peut être autorisé, ni de limitation dans leur exercice, sauf prévue par le législateur national.

Dans l'état connu de la rédaction du texte au 22 mai 2000, nous proposons l'amendement suivant :

« 1) Les droits et libertés reconnus par la présente charte ne peuvent faire l'objet d'aucune limitation de nature et nombre et de contenu ».

2) Les droits et libertés garantis par la présente Charte s'exercent dans les conditions et limites définies par le traité instituant la Communauté européenne et par le législateur national, sans qu'il puisse être porté atteinte à leur nature et à leur nombre et à leur contenu sous peine de nullité de la mesure.

3) Toute limitation d'exercice aux droits et libertés garantis par la présente Charte doit avoir été prévue par la loi nationale. Elle doit respecter le contenu essentiel desdits droits et libertés et rester, dans le respect du principe de proportionnalité, dans les limites nécessaires à la protection d'intérêts légitimes dans une société démocratique. Les limitations prévues par la Convention européenne des droits de l'Homme sont applicables à ceux des droits et libertés contenus dans la présente Charte qui

sont également garantis par ladite Convention, sauf loi nationale plus favorable en vigueur dans les Etats membres ».

(Cf. pour la dernière ligne, le cas du droit à la vie, et la peine de mort, art. 2 CEDH et loi française, voir supra sous « droit à la vie »).

ARTICLE H 4 : LE NIVEAU DE PROTECTION :

PROJET DE LA CONVENTION, ANCIENNE REDACTION :

ARTICLE Y LE NIVEAU DE PROTECTION :

« Aucune disposition de la présente charte ne peut être interprétée comme restreignant la protection offerte par la Convention européenne des droits de l'Homme ».

PROJET DE LA CONVENTION , CONVENT 27:

« Aucune disposition de la présente Charte ne peut être interprétée comme restreignant la portée des droits garantis par le droit de l'Union, le droit des Etats membres, le droit international et les conventions internationales ratifiées par les Etats membres, dont la Convention européenne des droits de l'Homme telle qu'interprétée par la jurisprudence de la Cour européenne des droits de l'Homme ».

Nous proposons d'amender le texte par un ajout après « Homme » :

« et par les traités internationaux relatifs aux droits de l'Homme ratifiés par les Etats membres ».

Nous annulons cette demande qui n'a plus lieu d'être si la rédaction du texte Convent 27 est retenue.

Mais nous proposons d'ajouter à toute forme de l'article qui ne comporterait pas cette précision l'alinéa suivant:

«2) Toute limitation doit s'interpréter au sens strict ».

ARTICLE H 5 :INTERDICTION DE L'ABUS DE DROIT :

PROJET DE LA CONVENTION :

« Aucune des dispositions de la présente Charte ne peut être interprétée comme impliquant un droit quelconque de se livrer à une activité ou accomplir un acte visant à la destruction des droits ou libertés reconnus dans la présente Charte ».

Pas de commentaire.

DROITS / OBJECTIFS ECONOMIQUES ET SOCIAUX

Nous préférons à ce titre, même s'il est encore provisoire, celui classique et reconnu qui ne parle que de droits, de:

« DROITS ECONOMIQUES, SOCIAUX, ET CULTURELS »

*dénomination du Pacte de l'ONU

*à reprendre telle quelle pour le titre du chapitre ;

*et s'en tenir aux droits, car les « objectifs » appartiennent aux gouvernements.

A) Droit au travail :

Ce chapitre commence par un vide car le droit au travail n'y est pas inscrit.

Or c'est en France un droit constitutionnel ainsi que celui d'obtenir un emploi. Par contre, atteindre un niveau d'emploi élevé est un objectif qui appartient au politique et ne peut s'analyser comme un droit dont le titulaire est un individu .

L'Union pourrait commencer par prendre à son compte le principe consacré par l'OIT et inscrire dans ses textes une fois pour toutes que :

« Le travail n'est pas une marchandise »

La liberté professionnelle qui est traitée à un autre endroit, viendrait en deuxième volet de ce droit au travail.

La rédaction de l'article 23 de la déclaration des droits de l'Homme qui est dans le style adopté pour les articles 1 à 16 de la charte qui nous intéresse est d'une grande force ,et peut servir ici de

modèle avec l'article 6 du Pacte international relatif aux droits économiques, sociaux et culturels.

Nous proposons la création d'un nouvel article selon la rédaction suivante:

"1) Le travail n'est pas une marchandise.

"2) Toute personne [terminologie de la Convention] a droit au travail, c'est-à-dire à la possibilité de gagner sa vie par un travail librement entrepris, à des conditions équitables et satisfaisantes de travail et à la protection contre le chômage".

Nous proposons un amendement sous forme d'une clause générale d'amélioration :

Un pyramidage sans hiérarchie des normes a été introduit dans les textes européens par le traité d'Amsterdam entre les normes sociales européennes; qu'on le veuille ou non, l'article. 136 du traité CE permet aux Quinze de puiser dans patrimoine des Quarante et un du Conseil de l'Europe pour mieux comprendre et interpréter leur propre droit.

Mais la référence ne concerne que la charte de 1961 qui ne comporte que 19 articles, pour certains déjà partie intégrante des droits nationaux; l'échange ne sera donc pas complet.

Par ailleurs la charte en préparation semble vouloir couvrir un champ plus large que ces 19 articles de 1961, englobant au passage (dans la rédaction du projet au 12 avril 2000) la plupart, mais pas tous, des droits de la Charte communautaire des droits sociaux fondamentaux des travailleurs et de la Charte révisée du Conseil de l'Europe; elle n'est, pour le moment, pas destinée à avoir une valeur contraignante pour les Etats membres, mais la plupart des droits listés sont en vigueur dans tous les Etats membres, et l'Union a elle-même rendus contraignants certains des droits de la Charte de Strasbourg.

On peut alors se demander :

1) si la charte en préparation aura de la valeur pour les institutions et organes communautaires auxquels elle est aujourd'hui destinée ;

2) s'il ne serait pas temps de simplifier l'empilage pour le rendre visible aux citoyens et opérationnel pour les praticiens.

Pourquoi ne pas mentionner explicitement dans le préambule la complémentarité de l'ensemble des normes civiles et politiques, économiques et sociales du système onusien (ONU, OIT), du Conseil de l'Europe (CEDH, Charte Sociale Européenne Révisée, et Protocoles) avec celles de l'Union (traités et chartes) ? et indiquer que, en cas de litige, c'est toujours la norme supérieure qui prévaudrait pour dire le droit, y compris si c'est la règle nationale ? Cela éviterait que ne se creusent des divergences de droit et de situation entre les membres de l'Union, et entre eux et les candidats à l'Union . Cela obligerait les Etats membres à ne pas diminuer leurs droits et leur niveau de protection (clause de non-régression de l'état des droits) .

Qui peut en effet prédire l'avenir d'une démocratie ?

Ce sera un des mérites de cette charte , si elle aboutit, que d'impliquer l'Union européenne dans la sauvegarde des droits fondamentaux presque sur l'ensemble du continent, par un auto-contrôle

multilatéral, qui serait, s'il fonctionne bien, une plus grande garantie pour les droits de l'Homme, que l'engagement unilatéral de la constitution d'un Etat vis à vis de ses citoyens.

On imagine mal, en effet, que quinze Etats deviennent fascistes en même temps .

Après, son adoption, il est possible que le texte devienne autonome et prenne le statut de référence pour tous. Il ne sert à rien pour l'Union de se livrer à un exercice de style, si ce n'est pas avec une réelle volonté de faire progresser les droits et leur respect. Ainsi l'aspect transnational de certains droits devrait être admis, comme les droits syndicaux transnationaux, les droits corollaires du principe de libre circulation, et ceux de la citoyenneté européenne .

Une clause d'amélioration de l'état et du niveau des droits aussi bien civils et politiques que économiques et sociaux est nécessaire.

Les Etats membres avaient déjà su accepter, au moment de signer la charte de Strasbourg, une clause de non-régression par rapport à leurs situations existantes.

Enoncer un texte trop basique et trop faible n'aiderait pas les nouveaux membres et menacerait les anciens. Il est inutile d'introduire ou de laisser perdurer des éléments légaux et contre productifs de dumping social entre les pays d'Europe. Il faut que les Etats acceptent de s'engager, comme les y invite le traité CE lui-même, à améliorer les conditions de vie (dont font partie les droits civils et politiques, économiques et sociaux), et de travail de leurs résidents .

Nous proposons que les considérants suivants figurent au préambule :

"...considérant que la proclamation solennelle des droits fondamentaux au niveau de la Communauté européenne ne peut justifier, lors de sa mise en oeuvre, de régression par rapport à la situation existante dans chaque Etat membre ou signataire, et qu'au contraire cette mise en oeuvre doit favoriser une égalisation dans le progrès de tous les droits en nature et en niveau dans l'ensemble des Etats membres et des Etats signataires " ; .

" considérant qu'un des moyens d'y parvenir est d'appliquer la clause de la norme la plus favorisante chaque fois qu'il y aura concomitance de normes nationales ,européennes, et internationales;

" considérant que les Etats membres restent attachés à poursuivre leurs efforts dans le sens d'une amélioration des conditions de vie et de travail au sens de l'article 136 du traité instituant la Communauté européenne;"...

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Sur les articles proposés par le texte Convent. 18:
Charte/4192/00 du 27 mars 2000

1) Sur l'article I: Egalité entre les hommes et les femmes :

PROJET DE LA CONVENTION:

"L'égalité entre les hommes et les femmes doit être assurée en matière d'emploi et de travail et de protection sociale".

Compétence communautaire, article 137 traité CE)

De plus, le principe d'égalité de traitement entre tous les hommes et toutes les femmes au plan général est inclus dans le principe de non-discrimination qui figure déjà au traité CE dans son article 13. Il doit être inscrit dans la charte :

Cependant, les discriminations qui existent toujours dans tous les aspects du travail y compris chez les fonctionnaires d'Etat en France, justifient qu'un autre article réaffirme le principe d'égalité entre les sexes dans le domaine particulier du travail et de sa rémunération.

2) Sur l'article II: Liberté professionnelle :

PROJET DE LA CONVENTION

"Toute personne a le droit de choisir et d'exercer sa profession et ses activités commerciales, sans préjudice des règles du traité relatives à la libre circulation des personnes".

Ce droit est à la fois une liberté fondamentale et un élément constitutif du droit au travail dont il doit être rendu indissociable.

Il n'y a aucune raison pour le rendre dépendant des règles communautaires de la libre circulation des personnes, ni pour l'associer expressément, et donc restrictivement à des activités commerciales, ni pour effacer du texte l'adverbe "librement" qui figurait à la rédaction de l'article J du SN.REV1 du 15 mars relatif aux droits des citoyens.

Nous proposons une nouvelle rédaction de l'article comme suit:

1.« Dans le cadre de l'exercice de son droit au travail, toute personne a le droit de choisir et d'exercer librement sa profession ».

2. « Toute personne a le droit d'accéder à un service gratuit de placement».

3) Sur l'article III: le droit à l'information-consultation des travailleurs:

PROJET DE LA CONVENTION:

"Les travailleurs et leurs représentants ont le droit à une consultation effective au sein de l'entreprise qui les emploie, notamment dans le cadre des procédures de licenciement collectif et des décisions relatives aux conditions de travail et au milieu de travail".

L'ensemble des pays de l'Union pratiquent maintenant ce droit, au moins dans les Comités d'entreprise européens. Pour une proposition d'amendement, l'écriture peut donc s'inspirer de celle de la directive :

« Les travailleurs et leurs représentants syndicaux ont le droit d'être informés et consultés par les

dirigeants de l'entreprise qui les emploie,

préalablement à toute prise de décisions susceptibles d'affecter substantiellement leurs intérêts matériels et moraux, et particulièrement celles pouvant entraîner des conséquences importantes sur la situation de l'emploi dans l'entreprise, ainsi que sur celles relatives à l'amélioration de leurs conditions de travail et de leur milieu de travail ».

4) Sur l'article IV: le droit d'association , de négociation et d'action collective :

PROJET DE LA CONVENTION:

IV.al.1) -La liberté syndicale.

"Les employeurs et les travailleurs ont le droit de s'associer librement, y compris au niveau de l'Union, en vue de constituer les organisations professionnelles de leur choix pour la défense de leurs intérêts économiques et sociaux".

Tout employeur et tout travailleur a la liberté d'adhérer ou de ne pas adhérer à ces organisations, sans qu'il puisse en résulter pour lui un dommage personnel ou professionnel".

Nous estimons que comme l'OIT l'a fait, il convient de consacrer un article plénier à la liberté syndicale. Les droits syndicaux sont des droits fondamentaux , des droits de l'Homme, qui « méritent » autant que le droit à la vie ou le droit de propriété d'être individualisés ; ils ne sont pas un magma social, et doivent bénéficier de la même lisibilité que les autres droits fondamentaux.

Nous proposons l'amendement suivant pour une nouvelle rédaction:

« Tous les travailleurs et employeurs de l'Union européenne, du secteur privé comme du secteur public, ont le droit de s'associer librement au sein d'organisations nationales et [au lieu de « ou » NDLR] internationales de leur choix pour la défense de leur intérêts matériels et moraux ».

(le « et » introduit ainsi dans le texte l'art.5 de la C°87 OIT).

« Tout employeur et tout travailleur a la liberté d'adhérer ou de ne pas adhérer à ces organisations, sans qu'il puisse en résulter pour lui un dommage personnel ou professionnel. »

Nous citons les intérêts « moraux » qui réfèrent à la dignité des travailleurs en général et en particulier à tout ce qui concerne les pressions psychologiques et morales qu'ils subissent de manière renforcée dans la période contemporaine.

Droit d'interpellation collective

Nous souhaitons que, en l'absence d'un contrôle du respect et de la bonne application des droits économiques et sociaux dans les Etats membres par une inspection du travail européenne , et par parallélisme d'idée avec ce qu'ont déjà décidé entre eux les Etats de l'Union dans l'enceinte du Conseil de l'Europe, soit institué un droit d'interpellation collective.

La pratique d'une « médiation » de type ombudsman ne suffisant pas en matière sociale, nous nous inspirons à la fois de l'article 232 du traité CE et du Protocole additionnel à la Charte sociale européenne prévoyant un système de réclamations collectives.

Le titulaire du droit serait la personne lésée ; celle-ci pourrait subroger une organisation collective syndicale nationale ou internationale (ou patronale, par parallélisme avec le Protocole) dans son droit à agir.

L'organisation collective syndicale nationale ou internationale (ou patronale) serait également titulaire d'un droit à agir au nom du groupe de personnes qu'elle représente.

L'interpellation viserait soit l'Etat membre pour non exécution de ses engagements nés de la ratification de traités internationaux, soit l'Union européenne pour non exécution de leurs obligations par les institutions.

Ce droit d'interpellation permettrait d'asseoir la reconnaissance du fait syndical, ferait entrer les droits fondamentaux dans l'acquis communautaire, les rendrait visibles pour tous, et par cette surveillance des Européens eux-mêmes, conforterait le fonctionnement de la démocratie.

Nous souhaitons donc que la Convention fasse sienne cette proposition de rédaction :

Article 4 paragraphe 1 ,ajout d'un 3°alinea :

« Les organisations européennes d'employeurs et de travailleurs ont le droit d'interpeller les institutions de l'Union européenne devant la CJCE sur le respect et l'application des droits fondamentaux contenus dans la charte communautaire des droits fondamentaux.

Les organisations nationales représentatives d'employeurs et de travailleurs ont le droit d'interpeller leurs institutions nationales ainsi que les institutions de l'Union européenne devant la CJCE sur le respect et l'application des droits fondamentaux contenus dans la charte communautaire des droits fondamentaux ».

IV.al.2)-Le droit à la négociation collective.

PROJET DE LA CONVENTION:

"2) Les employeurs ou les organisations d'employeurs, d'une part' et les organisations de travailleurs, d'autre part, ont le droit, dans les conditions prévues par les législations et pratiques nationales, de négocier et de conclure des conventions collectives, y compris au niveau de l'Union".

Nous souhaitons que l'article soit rédigé selon la proposition d'amendement suivante:

« Les employeurs ou les organisations d'employeurs d'une part, et les organisations de travailleurs, d'autre part, ont le droit de négocier et de conclure des conventions collectives, dans le respect des conditions prévues par les législations et pratiques nationales, au niveau qu'ils estiment approprié, y compris au niveau de l'Union ».

IV.al.3) -Le droit à l'action collective et le droit de grève.

PROJET DE LA CONVENTION:

"Les travailleurs et les employeurs ont le droit de recourir en cas de conflits d'intérêts, à des actions collectives, éventuellement au niveau de l'Union, y compris le droit de grève".

La rédaction suivante qui est celle du SN 2158 nous paraît meilleure car ce droit ne peut concerner que les travailleurs ; s'il existe un droit collectif au lock out, il faut l'écrire en tant que tel, ailleurs dans la charte :

« Les travailleurs peuvent recourir à des actions collectives en cas de conflits d'intérêts, y compris à la grève .»

5) Sur l'article V: le droit à une rémunération égale pour un travail égal :

PROJET DE LA CONVENTION:

"Le droit à une rémunération égale pour un travail de valeur égale est garanti à tout travailleur".

Ce droit est un des volets du principe de non-discrimination (Articles 13 et 141 du traité CE).

Il doit :

*soit lui être rattaché directement et figurer en complément de l'article 1) ci-dessus, et s'énoncer sous la forme d'un ajout à la formulation proposée ci-dessus :

« Toute discrimination, y compris concernant le travail et sa rémunération,..(le reste sans changement) » ;

*soit être englobé dans une approche plus large de la notion de salaire.

En effet le principe du salaire égal pour un travail égal ne suffit pas pour la charte. Même si la rémunération est expressément exclue des compétences de l'Union, une proclamation de droits doit au moins faire référence au fait qu'un travail librement entrepris sert d'abord à gagner sa vie décemment et à obtenir un niveau de vie satisfaisant. L'Union a par ailleurs pour objectif d'améliorer les conditions de vie (Art. 136 du traité CE). Dans ce cas, nous proposons l'amendement suivant pour une nouvelle rédaction de l'article:

1)-Tout travail doit être rémunéré.

2)-Le « salaire » est la rémunération, fixée par accord ou par la législation nationale, qui est due en vertu d'un contrat écrit ou verbal par un employeur à un travailleur, soit pour le travail effectué ou devant être effectué, soit pour les services rendus ou devant être rendus.

4)-Le droit à une rémunération décente implique que celle-ci soit suffisante pour assurer un niveau de vie satisfaisant au travailleur et à sa famille, et qu'un minimum soit fixé collectivement par la loi ou les pratiques nationales.

5)-Le droit à une rémunération égale pour un travail égal ou de même valeur est garanti à tout travailleur ».

Les éléments complémentaires que contiennent la charte du Conseil de l'Europe et la charte communautaire sont à prendre en considération (CSE Article 4, Parties I et II; article 5 de la charte de Strasbourg)) et peuvent être rappelés par une référence à l'article 136 du traité CE).

6) Sur l'article VI: le droit au repos et au congé annuel :

PROJET DE LA CONVENTION:

"Tout travailleur a droit à un repos hebdomadaire ainsi qu'à une période de congés payés".

Compétence communautaire (article 137 Traité CE).

Notre proposition d'amendement est la suivante :

« Tout travailleur a droit à deux jours consécutifs de repos hebdomadaire ainsi qu'à un congé annuel payé d'au moins quatre semaines ».

La durée légale européenne de 48 heures par semaine est un maximum qui devrait être révisé.

Le congé annuel « d'au moins » quatre semaines est déjà inscrit à la charte sociale européenne révisée depuis 1996.

Par ailleurs, il doit être tenu compte de la pratique sociale et culturelle de chaque Etat pour le choix des 2 jours consécutifs .

7) Sur l'article VII: le droit à la sécurité et à l'hygiène dans le travail :

PROJET DE LA CONVENTION:

"Tout travailleur a droit à la sécurité et à l'hygiène dans le travail".

Compétence communautaire (.article 137 traité CE).

Notre proposition d'amendement pour une nouvelle rédaction est la suivante :

1)« Tout travailleur a droit à la sécurité et à la santé dans le travail ».

2)« Tout employeur est responsable de la mise en oeuvre de tous moyens y compris préventifs pour assurer la sécurité et la santé des travailleurs dans le travail ».

8) Sur l'article VIII: la protection des enfants et des adolescents :

PROJET DE LA CONVENTION:

"L'âge minimal d'admission au travail ne doit pas être inférieur à l'âge auquel cesse la période de scolarité obligatoire ni, en tous cas, à quinze ans.

Les jeunes au-dessous de 18 ans doivent bénéficier de conditions de travail adaptées à leur âge et être spécialement protégés contre tout travail susceptible de nuire à leur sécurité, à leur santé ou à leur développement physique, psychologique, moral ou social ou de compromettre leur éducation".

Pour être en conformité avec ses ambitions en matière de valorisation des ressources humaines vers une société cognitive, de développement des formations destinées à rattraper le retard pris sur d'autres parties du monde (comme en matière de société de l'information), l'Union européenne doit accorder à l'enfance le temps le plus long possible pour parvenir au développement physique et mental complet de chacun.

Cette période correspond sensiblement à la période de minorité légale qui est généralement plus longue que celle de scolarité obligatoire .

L'exemple des pays les plus avancés doit servir de modèle en termes de scolarité obligatoire.

Tout travail effectué par un mineur serait ainsi dérogatoire et assorti de conditions spécifiques susceptibles d'être contrôlées par les autorités administratives.

Notre proposition d'amendement est la suivante :

« L'âge minimal d'admission au travail ne doit pas être inférieur à l'âge auquel cesse la période de minorité légale, ni en tous cas à quinze ans.

Les mineurs, et en tous cas les jeunes en dessous de dix huit ans, doivent bénéficier de conditions de travail adaptées à leur âge et être spécialement protégés contre tout travail susceptible de nuire à leur sécurité, à leur santé et à leur développement physique, psychologique, moral, social, ou de compromettre leur éducation ».

9) Sur le droit à la protection en cas de licenciement :

PROJET DE LA CONVENTION/

"Les travailleurs ont le droit à ne pas être licenciés sans motif valable, ainsi qu'à une indemnité adéquate ou autre réparation appropriée en cas de licenciement sans motif valable".

Notre proposition d'amendement est la suivante pour une nouvelle rédaction de l'article:

1)-« Aucun travailleur ne peut être licencié sans que lui en soit notifié le motif ; celui-ci doit être

fondé, et le cas échéant, doit être pouvoir être soumis à l'appréciation d'un juge qui peut condamner l'employeur à verser à l'intéressé une indemnité adéquate ou une autre réparation appropriée ».

2)-« Sont notamment considérés comme motifs irrecevables de licenciement, la race, l'origine ethnique, le sexe, la religion ou les convictions, le handicap, l'âge, l'orientation sexuelle, l'affiliation syndicale ou la participation à des activités syndicales, le fait de solliciter, d'exercer ou d'avoir exercé un mandat de représentation des travailleurs».

10) Sur l'article X : le droit à la formation professionnelle :

PROJET DE LA CONVENTION:

"Toute personne doit avoir accès sans discrimination à une formation et à une orientation professionnelle adéquate et en bénéficier tout au long de sa vie active".

Notre proposition de nouvelle rédaction de l'article est la suivante :

1)« Toute personne doit avoir accès sans discrimination à une formation et à une orientation professionnelle adéquate, et bénéficier de cet accès tout au long de sa vie active » .

2)« Tout travailleur peut bénéficier de formations professionnelles rémunérées».

11) Sur l'article XI: le droit des travailleuses à la protection de la maternité :

PROPOSITION DE LA CONVENTION

"Toute travailleuse a droit à un congé de maternité d'au moins quatorze semaines, avant et/ou après l'accouchement".

Notre proposition d'amendement pour une nouvelle rédaction de l'article est la suivante :

1)« Toute travailleuse a droit à un congé de maternité rémunéré d'au moins quatorze semaines, avant et/ou après l'accouchement, dont une période prénatale obligatoire d'au moins six semaines ».

2)« Le congé de maternité ne peut être un motif valable de licenciement ».

3)« L'état de grossesse justifie une protection de la travailleuse contre les travaux pénibles

et dangereux, son changement de poste avec maintien du salaire pour un poste adapté à son état, et son éviction du travail de nuit ».

12) Sur l'article XII : le droit au congé parental :

PROJET DE LA CONVENTION:

"Tout travailleur a droit à un congé parental d'au moins 3 mois à la suite de la naissance ou de

l'adoption de son enfant".

Pas d'observation à cette date.

13) Sur l'article XIII: le droit à la sécurité sociale

PROJET DE LA CONVENTION:

"Tout travailleur et ses ayants droits [toute personne] a droit, selon les modalités propres à chaque Etat, à une protection sociale comportant, notamment des prestations d'un niveau suffisant".

Les droits à la protection sociale et particulièrement à la sécurité sociale sont des droits dont les titulaires sont individuels et dont l'organisation est collective et fondée sur le principe de la solidarité nationale, et nous tenons à ce que l'Europe demeure pour le reste du monde « le » continent de la protection sociale collective.

Toute mesure qui diminue les protections collectives diminue aussi les protections individuelles, que ce soit en nature ou en niveau de droits.

Nous estimons par ailleurs que l'Union doit prendre en considération les conséquences de ses propres textes et faire un sort particulier aux droits de ses travailleurs migrants en matière de sécurité sociale, qu'il appartiennent au secteur public ou au secteur privé..

Notre proposition d'amendement est la suivante :

« Tout travailleur et ses ayants droits, selon les modalités propres à chaque Etat, a droit à une protection sociale comportant, notamment, des prestations sociales susceptibles de rétablir la capacité du travailleur à gagner sa vie, ou de compenser, pour lui-même et ses ayants droits, la perte de gains due à la maladie, à la perte d'emploi, aux charges de famille, à la vieillesse ».

Dans l'Union européenne, pour le calcul des prestations qui leur sont dues, les travailleurs migrants ont le droit de transférer d'un Etat membre d'origine vers un Etat membre d'accueil, la durée des périodes travaillées ».

14) Sur l'article XIV: le droit à l'aide sociale :

PROJET DE LA CONVENTION:

"Toute personne qui ne dispose pas de ressources suffisantes[et qui n'est pas en mesure de se les procurer ou de les recevoir d'une autre source] doit percevoir une aide sociale appropriée lui permettant de vivre dans la dignité".

Notre proposition d'amendement est la suivante :

« Toute personne qui ne dispose pas de ressources suffisantes notamment en raison du chômage, de l'âge, du handicap, doit percevoir une aide sociale appropriée lui permettant de vivre dans la dignité, et au moins équivalente à 40% du PIB par tête d'habitant pour ce qui concerne le minimum de ressources, à 50% du PIB par habitant pour ce qui concerne le minimum de pension ».».

15) Sur l'article XV: le droit à l'accès aux soins de santé :

PROJET DE LA CONVENTION:

"Toute personne doit pouvoir bénéficier des mesures de prévention sanitaire et, en cas de maladie, accéder aux soins de santé".

Notre proposition d'amendement est la suivante :

« Toute personne doit pouvoir bénéficier sans discrimination ni restriction

des mesures de prévention sanitaire et, en cas de maladie, accéder à l'ensemble des soins de santé de qualité nécessaires au recouvrement de sa santé

La France pratique déjà une discrimination par rapport à l'âge en termes de prix de la santé (au-delà de 75 ans pour les affections de longue durée, un surcoût est affecté aux actes médicaux); certains pourraient imaginer des arbitrages entre les différentes maladies ou entre les durées des affections, etc .

Cet amendement vise à protéger l'avenir de la santé de chacun.

16) Sur l'article XVI (Convent 26): le droit des personnes âgées à la protection sociale :

PROJET DE LA CONVENTION :

1. « Tout travailleur doit, au moment de sa retraite, être en mesure de jouir de ressources lui assurant un niveau de vie convenable ;
2. « Toute personne ayant atteint l'âge de la retraite sans avoir droit à une pension ou sans disposer d'autres moyens de subsistance doit avoir droit à des ressources suffisantes ainsi qu'à une aide médicale et sociale adaptée spécifiquement à ses besoins ».

Nous proposons de modifier cet article par l'amendement suivant :

« Art.XVI :

« 1) Tout travailleur, ou ses ayants-droit, au moment de la retraite, jouit, en remplacement de son revenu d'activité, d'un droit à ses pension et retraite lui assurant le maintien de son niveau de vie, et en tous cas, pas moins que 50% du PIB par habitant.

« 2) Toute personne ayant atteint l'âge de la retraite sans avoir de droit à pension ou sans disposer

de ressources personnelles, doit pouvoir bénéficier de moyens de subsistance suffisants, d'un accès aux soins de santé ainsi que de l'aide sociale.

« 3) Toute personne en situation de dépendance a droit à une prestation permettant de compenser les charges financières liées à sa perte d'autonomie et de bénéficier de l'aide d'une tierce personne».

Le deuxième alinea de cet article doit rester sous le numéro XVI car les destinataires sont différents de ceux de l'article XIV puisque ce sont spécifiquement les personnes atteintes par l'âge.

Nos références ici sont à la fois l'article 23 de la CSE.R du Conseil de l'Europe et la Convention 128 de l'OIT.

17) Sur l'article XVII (Convent 26): le droit des personnes handicapées à l'insertion sociale et professionnelle.

PROJET DE LA CONVENTION :

« Toute personne handicapée, quelles que soient l'origine et la nature de son handicap, a le droit de bénéficier de mesures concrètes supplémentaires visant à améliorer son intégration sociale et professionnelle ».

Nous proposons l'amendement suivant :

Après « a le droit », écrire l'article comme suit :

« à la protection sociale ainsi que, dans l'objectif d'accéder à la plus large autonomie possible, à bénéficier de tout système de formation de son choix et de mesures concrètes supplémentaires visant à trouver, à conserver un emploi, et à améliorer sa situation professionnelle et son intégration sociale».

Nos références sont l'article 15 de la CSE du Conseil de l'Europe et la Convention 159 de l'OIT.

18) Sur l'article XVIII (Convent 26): le droit des travailleurs migrants à l'égalité de traitement :

PROJET DE LA CONVENTION :

« Les travailleurs originaires de pays tiers qui résident légalement sur le territoire des Etats membres ont le droit à un traitement non moins favorable que celui dont bénéficient les travailleurs de l'Union européenne en matière de conditions de travail ».

Nous proposons l'amendement suivant :

« En matière de conditions de travail, les travailleurs originaires des pays tiers qui résident légalement sur le territoire des Etats membres ont droit à l'égalité de traitement avec les travailleurs de l'Union européenne ».

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DROITS MANQUANTS AU PROJET DE LA CONVENTION

Droit au travail (cf. les observations ci-dessus).

Droit a un salaire minimum "garanti";

Droit syndical: protection des représentants des salariés;

Droit au logement;

Le 22 mai 2000.

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PROYECTO DE CARTA DE LOS DERECHOS FUNDAMENTALES DE LA UNIÓN EUROPEA**fundamental.rights@consilium.eu.int**

**Bruselas, 31 de mayo de 2000 (05.06)
(OR. FR/ES)****CHARTE 4336/00****CONTRIB 200****NOTA DE TRANSMISIÓN**

Asunto: Proyecto de Carta de los Derechos Fundamentales de la Unión Europea

Adjunto se remite una contribución de la "Confederación de Asociaciones de Vecinos, Consumidores y Usuarios de España" (CAVE).¹

¹ Este texto se ha presentado únicamente en español.

CARTA DE LOS DERECHOS FUNDAMENTALES DE LA UE

En el Consejo Europeo de junio de 1999, los Jefes de Estado y de Gobierno decidieron poner en marcha la redacción de una Carta de los Derechos Fundamentales de la Unión Europea con el fin de dar visibilidad a los derechos y libertades de los ciudadanos y ciudadanas en la Unión Europea.

Posteriormente, en el Consejo de Helsinki, en diciembre de 1999, se decidió la composición del órgano que habría de redactar esta Carta al tiempo que se establecían los principios de transparencia en los trabajos y participación de otros agentes sociales.

En la actualidad, este órgano redactor, llamado no sin cierto simbolismo revolucionario, Convención, está elaborando un documento que recopila los principales derechos fundamentales existentes en las tradiciones constitucionales de los países de la UE junto con los ya recogidos en la Convención Europea de Salvaguarda de los Derechos Fundamentales del Consejo de Europa.

Los trabajos se encuentran bastante avanzados ya que los plazos así lo exigen. No en vano, el objetivo es aprobar esta Carta en el Consejo Europeo de Niza en diciembre del 2000 bajo presidencia francesa.

Las primeras dudas que asaltan al atento observador de estos trabajos son las siguientes: ¿tendrá la Carta carácter vinculante o será una mera declaración de principios?; ¿su contenido formará parte del Tratado, o será un protocolo anexo sólo vinculante para quienes la suscriban?; ¿cuáles serán los contenidos materiales de la Carta, recogerá los llamados derechos de cuarta generación?; ¿qué pasará con la Convención Europea de Salvaguarda de los Derechos Fundamentales, no corremos un riesgo de solapamiento de las garantías jurídicas transnacionales?. Estas son las principales dificultades con las que se encuentra la Convención, hasta la fecha, este órgano parece decidido a incluir la Carta en los Tratados como parte de su articulado y que ésta tenga carácter vinculante y sea oponible por parte de los ciudadanos ante los tribunales nacionales y en última instancia ante el Tribunal Europeo de Luxemburgo.

Desde la Confederación de Asociaciones de Vecinos Consumidores y Usuarios del Estado Español (CAVE), pensamos que no podemos hablar de ciudadanía europea si no hay un acervo de derechos fundamentales europeos que protejan a los ciudadanos en sus relaciones con la sociedad y con el estado. La construcción de la UE como instrumento superador o al menos como complemento de los actuales estados, requiere naturalmente, la recopilación y garantía de unos derechos fundamentales iguales para todos. En este sentido, esperamos que el silencio del gobierno español en este asunto, no implique una postura contraria a su inclusión en el futuro Tratado de Niza.

Pero si importante es el hecho de la puesta en marcha de este proceso y su inclusión en el Tratado, no menos importante es el contenido material de esta carta de derechos y sus sistema de garantías, en este sentido conviene recordar las palabras del insigne jurista Wallestein cuando afirmaba que “un derecho vale lo que valga su sistema de garantías” y es que un derecho sin posibilidades de ser oponible ante los tribunales se convierte en una declaración de intenciones.

En este sentido, desde CAVE proponemos la inclusión de una amplia batería de derechos cívicos y sociales al tiempo que se da entrada a los llamados derechos de “cuarta generación” es decir, el derecho al acceso a las nuevas tecnologías, la seguridad alimenticia, la bioética o la garantía de la privacidad en la Red. Más en concreto desde CAVE pensamos que hay que incluir el derecho de asociación europeo, el derecho a voto en las elecciones nacionales y europeas en base a un procedimiento electoral uniforme, el derecho a la salud, a la educación, a una vivienda digna, a unas prestaciones mínimas de integración, al medio ambiente, al deporte.....

Sólo una amplia gama de derechos cívicos y sociales puede dar sentido a esta iniciativa del Consejo. Si nos quedamos simplemente en los derechos procesales tipo “*Non bid in idem*” o el “*Habeas copus*” creo que se habrá avanzado muy poco y que el meritorio trabajo de la Convención caerá en saco roto.

En otro orden de cosas, pensamos que no se está cumpliendo mucho con el principio de transparencia y participación de otros agentes. La página Web habilitada por el Presidium de la Convención no contiene los últimos textos lo que dificulta las aportaciones de la sociedad civil que pueden estar ya superadas por los trabajos “no publicados” de la convención. Tampoco podemos decir que por publicar unos trabajos en una página Web que con gusto citamos (<http://europa.eu.int>) ya se cubren las necesidades informativas y de participación. Desde CAVE pensamos que hay que llegar más al fondo y trabajar también con los muchos ciudadanos que todavía no tienen acceso a Internet. Lo ideal sería abrir un gran debate social en torno a la Carta con el fin de popularizar el documento y fomentar la participación ciudadana. Esto se conseguiría si los Estados acordasen someter a referéndum el Tratado que salga de la cumbre de Niza en diciembre del 2000. Sin embargo, nos tememos que esta voluntad no esta en la mente de los actuales líderes de la UE.

PROPUESTAS DE CAVE DE CARA AL DEBATE EN TORNO A LA CARTA EUROPEA DE LOS DERECHOS FUNDAMENTALES

La Confederación de Asociaciones de Vecinos Consumidores y Usuarios de España (CAVE) se felicita por la decisión del Consejo Europeo de Colonia de comenzar la elaboración de una Carta de los Derechos Fundamentales de la UE con el fin de dar visibilidad y coherencia al conjunto de derechos de los ciudadanos de la UE.

Desde la CAVE también nos felicitamos por las conclusiones del Consejo Europeo de Tampere en donde se hizo mención a la transparencia de los trabajos y a la colaboración de los agentes sociales de cara a la elaboración de la Carta. No obstante, queremos señalar que esa transparencia no es completa, la página web habilitada no recoge los últimos documentos y tampoco son demasiado transparentes las convocatorias a las reuniones abiertas en el Parlamento Europeo.

1.- Cuestiones generales:

La CAVE defiende la inclusión de la Carta de los Derechos Fundamentales de la UE en el futuro tratado de la Unión una vez concluyan las negociaciones en torno a la Conferencia Intergubernamental. Una Carta de los Derechos Fundamentales como anexo al futuro Tratado, mandaría un mensaje muy contraproducente a la ciudadanía ya que supondría situar a los Derechos Fundamentales por debajo de las normas reguladoras del mercado único o de la Política Exterior y de Seguridad Común, lo cual tiene muy difícil explicación técnica y política.

La Carta debe implicar unos derechos oponibles ante los tribunales nacionales y en última instancia, ante el Tribunal de Justicia de Luxemburgo. Sólo así se dará contenido real, y no sólo simbólico, al concepto de ciudadanía europea.

La Carta ha de ser compatible con el Convenio Europeo de Derechos Fundamentales del Consejo de Europa, es más, éste debe ser la base material de la futura Carta. Se trataría en definitiva de extender y reforzar el sistema de garantías del Consejo de Europa a la Unión Europea.

La Carta de los Derechos Fundamentales no puede limitarse únicamente a los ciudadanos de la UE sino que debe ampliarse a los residentes legales con el fin de evitar discriminaciones y diferencias en función de la mayor o menor “generosidad” de las legislaciones nacionales.

La Carta debe recoger los derechos fundamentales de forma clara y sistemática evitando un lenguaje que hiciera difícil su interpretación. Cada uno de estos derechos debe completarse, cuando así sea necesario, por un reglamento europeo.

2.- Cuestiones materiales.

La CAVE considera imprescindible la inclusión de los siguientes derechos fundamentales en la futura Carta.

2.1 Derechos de la persona:

- Derecho a la vida
- Derecho a la dignidad de la persona
- Derecho a la libertad y a la seguridad
- Derecho a la asistencia jurídica y a un juicio justo
- Derecho al asilo

2.2 Derechos cívicos:

- Derecho al voto de los residentes legales en todos los ámbitos de decisión política incluyendo el nacional.
- Derecho de asociación y de reunión.
- Derecho a la participación política a través de partidos políticos.
- Derecho a la participación ciudadana en los medios de comunicación.

2.3 Derechos sociales:

- Derecho a la huelga y a la libre sindicación.
- Derecho al empleo y a un salario justo.
- Derecho a una pensión digna de jubilación.
- Derecho a una vivienda digna.
- Derecho a un salario mínimo de inserción.
- Derecho a la asistencia sanitaria gratuita.
- Derecho a la educación.
- Derecho de acceso a los bienes culturales.
- Derecho a un medio ambiente sostenible.
- Derecho a la participación de los consumidores.
- Derecho de acceso a los Servicios de Interés General.

2.4 Derechos de nueva generación:

- Derecho de acceso a Internet.
- Derecho a la privacidad e interdicción de la delación en la Red.
- Derecho a la seguridad alimenticia y al principio de precaución en materia de innovación biotecnológica.
- Garantía de la explotación en beneficio de la humanidad del genoma humano.

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE**fundamental.rights@consilium.eu.int****Bruxelles, le 31 mai 2000****CHARTE 4337/00****CONTRIB 201****NOTE DE TRANSMISSION**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne
Contribution avec proposition
d'amendement pour l'article sur
le droit d'asile (plusieurs ONGs)

Veillez trouver ci-après une contribution avec proposition d'amendement pour l'article sur le droit d'asile de: ¹

- Action des chrétiens pour l'abolition de la torture (ACAT),
- Association pour les professionnels de santé réfugiés (APSR),
- Service œcuménique d'entraide (CIMADE),
- Comité médical pour les exilés (COMEDE),
- Groupe accueil et solidarité (GAS),
- Groupe d'information et de soutien pour les immigrants (GISTI),
- Service social d'aide aux émigrés (SSAE),
- Amnesty International Section Française (AISF)

¹ Ce texte a été soumis en langue française uniquement.

**Adressé par e mail à Guy Braibant, Pervenche Beres,
Georges Berthu, Thierry Cornillet, Hubert Haenel, François Loncle**
Entre le 20 et le 22 mai 2000 en fonction des réponses des associations

**Projet de Charte des droits fondamentaux de l'Union européenne
Proposition d'amendement pour l'article sur le droit d'asile**

**Proposition
de plusieurs associations de la Coordination française pour le droit d'asile**

- **ACAT** **Action des chrétiens pour l'abolition de la torture**
- **APSR** **Association pour les professionnels de santé réfugiés**
- **CIMADE** **Service œcuménique d'entraide**
- **COMEDE** **Comité médical pour les exilés**
- **GAS** **Groupe accueil et solidarité**
- **GISTI** **Groupe d'information et de soutien pour les immigrés**
- **SSAE** **Service social d'aide aux émigrés**
- **AISF** **Amnesty International Section Française**

et du Collectif pour la Charte des droits fondamentaux (c/o Ligue des droits de l'homme)

Madame, Monsieur,

Lors de la réunion de la CNCDH à Paris, cette semaine, Monsieur Braibant nous a précisé qu'il reste fort peu de temps pour tenter d'orienter les travaux de la Convention et nous a conseillé de faire des suggestions d'amendements très précises. Les associations ci dessus énumérées ont bien noté les modifications déjà apportées par la Convention à l'article 21.1 (anciennement 17) de la Charte des droits fondamentaux de l'UE, intitulé « *Droit d'asile et expulsion* », depuis le début de ses travaux, mais elles cherchent encore à faire évoluer ce texte en proposant un amendement.

D'une part, sur cette question du droit d'asile, il nous paraît préférable de reprendre la formulation utilisée pour un grand nombre des articles du projet de Charte « *Toute personne a droit à ..* » ; dans la version du 11 mai dernier, cette formulation est utilisée par exemple pour les droits civils et politiques suivants :

- droit au respect de son intégrité (3), de sa vie privée (12) et de sa vie familiale (13) ;
- droit à la liberté (6), à un recours (7) et à l'éducation (16) ;
- droit à la liberté de pensée (14), d'expression (15), de réunion (17).

D'autre part, il nous paraît important de distinguer le premier alinéa de cet article relatif à l'asile du second dont le thème est tout à fait différent, en l'occurrence l'expulsion.

Pour l'article de la Charte sur le « *Droit d'asile* » ou le « *Droit à l'asile* », nous proposons la formulation suivante : « *Toute personne a droit à l'asile dans l'Union européenne conformément aux règles de la Convention de Genève du 28 juillet 1951 et du protocole du 31 janvier 1967 relatifs au statut des réfugiés et d'autres textes relatifs aux droits de l'homme* ».

Bien évidemment, je suis prêt à discuter de cette proposition si vous le souhaitez utile, vous pouvez me joindre par e mail ou par téléphone à mon domicile, au 01 46 45 98 18.

Avec nos remerciements

Pour les associations ci-dessus énumérées,

Patrick Delouvin

Responsable du Service Réfugiés, Amnesty International Section Française

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE**fundamental.rights@consilium.eu.int**

Bruxelles, le 5 juin 2000**CHARTE 4338/00****CONTRIB 202****NOTE DE TRANSMISSION**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne

Veillez trouver ci-après une contribution de la Confédération Française des Travailleurs Chrétiens (syndicat CFTC) sur la rémunération et les services d'intérêt général. ¹

¹ Ce texte a été soumis en langue française uniquement.

Objet : Projet de charte des droits fondamentaux

Contribution du syndicat CFTC (Confédération Française des Travailleurs Chrétiens) en complément de celle envoyée le 23 mai au Présidium par les syndicats CGC – CFTC – CFDT – CGT et proposant des amendements aux articles rédigés dans les documents CONVENT 28 et CONVENT 34.

La contribution CFTC ne porte que sur deux points relatifs aux droits économiques et sociaux, droit à une rémunération équitable, et accès aux services d'intérêt général.

① Droit à une rémunération égale et équitable

Proposition

- **Tout travailleur, quel que soit son sexe et son origine, a droit à une rémunération égale pour un travail de valeur égale.**
- **Tout travailleur a droit à une rémunération équitable suffisante pour lui permettre, ainsi qu'aux siens, un niveau de vie décent.**

Commentaire

Ces droits sont mentionnés à l'article 4 de la charte sociale révisée ainsi qu'aux articles 5 et 16 de la charte des droits fondamentaux des travailleurs.

② Services d'intérêt général

Proposition

- **Toute personne a droit à des services d'intérêt général de qualité.**
- **L'accès à ces services d'intérêt général participe à l'exercice réel des droits fondamentaux.**
- **Ces services, dont l'accessibilité à un prix abordable et dont la qualité et la continuité sont des impératifs essentiels, doivent pouvoir être évalués de façon continue et démocratique afin de vérifier qu'ils s'adaptent en permanence aux évolutions des besoins ainsi qu'au progrès social et technologique.**

Commentaire

L'article 16 de la version consolidée du traité instituant la charte européenne précise : « La communauté et ses Etats membres ... veillent à ce que les services (services d'intérêt économique général) fonctionnent sur la base de **principes** et dans les conditions qui leur permettent d'accomplir leurs missions.

Ces principes ont été précisés dans la **déclaration n° 13** annexée à l'article final : « Les dispositions de l'article 7d (devenu l'article 16) relatives aux services publics sont mises en œuvre dans le plein respect de la jurisprudence de la Cour de Justice, en ce qui concerne, entre autres, les principes d'égalité de traitement, ainsi que de **qualité** et de **continuité** de ces services. ».

En outre, l'article 153 de la version consolidée du traité instituant la charte européenne précise :

1. « Afin de promouvoir **les intérêts des consommateurs** ... la **communauté contribue** à la protection de la santé, de la sécurité, et des intérêts économiques des consommateurs ainsi qu'**à la promotion de leur droit à l'information**, à l'éducation et s'organise afin de préserver leurs intérêts. »
2. « Les **exigences de la protection des consommateurs** sont **prises en considération** dans la définition et la mise en œuvre des autres politiques et actions de la communauté »

Par ailleurs, un plan d'action triennal 1999-2001 pour la politique des consommateurs a été adopté à l'issue du conseil consommateur du **14 avril 1999**. Dans la **résolution** adoptée ce jour-là, le conseil, afin d'aider les consommateurs à mieux se faire entendre, invite la commission au renforcement des organisations qui les représentent au niveau européen. Il conviendra **d'assurer la diffusion des meilleures pratiques** et de consolider le rôle des représentants des consommateurs, **d'encourager le dialogue entre les organisations de consommateurs et les acteurs économiques** ... un dialogue plus approfondi entre la commission et les Etats membres ainsi que **l'évaluation régulière** des progrès réalisés dans la mise en œuvre de cette résolution devront concourir à l'efficacité accrue de la politique des consommateurs à l'échelle européenne.

A noter, par ailleurs, que lors du conseil consommateurs du 8 nov. 99, le conseil, à propos de la protection des consommateurs et des services d'intérêt général, a procédé à un débat (ouvert au public) qui a mis en évidence l'opportunité de mieux définir le concept de service d'intérêt général (qui recouvre des réalités différentes dans les Etats membres) en vue d'une approche législative globale adaptée à l'exigence des citoyens de bénéficier des **services de base de qualité** à des prix accessibles, dans un contexte de libéralisation et de globalisation des marchés et développements technologiques constants.

En outre, le conseil européen de **Lisbonne** des 23 et 24 mars 2000 « estime qu'il est **essentiel**, dans le cadre du marché intérieur et d'une économie de la connaissance, de **tenir pleinement compte des dispositions du traité relatives aux services d'intérêt économique général** et aux entreprises chargées de la gestion de ces services. Il invite la commission de mettre à jour sa communication de 1996 compte tenu des dispositions du traité » (§19 des conclusions de la présidence).

Compte tenu de ce qui précède, c'est donc « à bon droit » (puisque'il s'agit, pour l'essentiel, de textes communautaires) que les usagers des services d'intérêt général peuvent exiger un contrôle permanent et démocratique de la qualité de ces services

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 31 May 2000**CHARTE 4339/00****CONTRIB 203****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a contribution from the High Commissioner for Refugees of the United Nations with a letter and comments on the Right of Asylum.

19 May

Dear Mr. Jacque,

It has come to our attention that the Convention drawing up the EU Charter of Fundamental Rights will consider a draft of the first 30 articles of the Charter at its meeting of 5 and 6 June. These draft articles include a provision on the right to

asylum which UNHCR holds to be inconsistent with agreed principles of international refugee law. UNHCR therefore has prepared alternative wording for the relevant provision which you will find in annex to this letter.

We would very much appreciate it if UNHCR's observations could be taken into consideration in any further discussions related to the draft Charter provision on asylum and we would be happy to discuss our views on this matter with you in more detail at your earliest possible convenience.

Yours sincerely,

Raymond Hall
Regional Representative

Mr. Jean-Paul Jacque
Director
Legal Service
General Secretariat
Council of the European Union
175 rue de la Loi
1048 Brussels

**UNHCR Comments on the
Right of Asylum under the Draft Charter of
Fundamental Rights of the European Union**

1. UNHCR welcomes the proposal to include the right of asylum in the draft Charter on Fundamental Rights of the European Union. This will be consistent with the well-established European tradition of granting asylum to refugees and other persons in need of international protection, as well as with fundamental humanitarian principles that are part of the European human rights heritage.
2. All Member States of the European Union are States Parties to the 1951 Convention/1967 Protocol relating to the Status of Refugees and have thus adopted the refugee definition contained therein without restrictions on any ground. The universal and unconditional application of these international refugee instruments has repeatedly been emphasised by the international community. Most recently, the European Council, at its meeting in Tampere, reaffirmed the importance the Union and Member States attach to “absolute respect of the right to seek asylum.”
3. As currently drafted, the Charter’s provision on the right of asylum restricts access to this right in a manner which could be tantamount to discrimination on the basis of country of nationality. To avoid any inconsistency with the 1951 Convention/1967 Protocol, UNHCR wishes to propose for the consideration of the drafters of the Charter the following revision of the draft text on the right of asylum:

The absolute respect for the right of asylum will be fully ensured in the European Union, consistent with the 1951 Convention/1967 Protocol relating to the Status of Refugees and other international instruments for the protection of refugees.

Statement of reasons

- (i) Article 14(1) of the Universal Declaration of Human Rights provides that “everyone has the right to seek and to enjoy in other countries asylum from persecution”. This right is elaborated in the 1967 United Nations Declaration on Territorial Asylum and is reaffirmed in numerous other resolutions of the General Assembly of the United Nations, as well in Conclusions of the Executive Committee of UNHCR.
- (ii) The Committee of Ministers of the Council of Europe has reaffirmed the principles of asylum in several instruments, including in Resolution 14/67 on Asylum to Persons in Danger of Persecution and in the Declaration on Territorial Asylum of 18 November 1977.

- (iii) Article 63(1) of the Amsterdam Treaty provides that the Council shall adopt measures on asylum, in accordance with the 1951 Convention and 1967 Protocol relating to the Status of Refugees and other relevant treaties.
- (iv) The Conclusions adopted by the European Council at its Tampere meeting of 15-16 October 1999 reaffirmed the importance that the Union and Member States attach to “absolute respect of the right to seek asylum”.

Office of the United Nations High Commissioner for Refugees
Geneva, May 2000

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 5 June 2000**CHARTE 4340/00****CONTRIB 204****COVER NOTE**

Subject : ~~Draft Charter of Fundamental Rights of the European Union~~
~~International Rehabilitation~~
Council for Torture Victims
(IRCI)

Please find hereafter a contribution by the International Rehabilitation Council for Torture Victims (IRCT) with the statement presented at the hearing on 27 April 2000 and the proposal for an amendment to article 4. ¹

¹ This text exists in English language only.

Mr Chairman

I speak on behalf of the International Rehabilitation Council for Torture Victims (IRCT). We would like to speak on two points: the importance of prevention of torture and the rehabilitation of torture victims.

The IRCT is a medically based organisation, supporting approximately 200 centres and programmes for rehabilitation of victims of torture world-wide.

The IRCT welcomes this important initiative from the EU with regard to its Human Rights obligations. The recognition and observance of fundamental human rights such as the prohibition of torture is a cornerstone in any democratic society with an aim of sustainable development. This has to be acknowledged in the process of accepting new member states and in the relations of the European Union with third countries. A charter on fundamental rights and freedoms will provide the necessary framework in which observance of these rights and freedoms can be implemented.

The IRCT supports 47 centres in 11 member states of the European Union. These rehabilitation centres provide a vital service for those people fleeing persecution in their own country and seeking refuge in Europe. Within the European Union, rehabilitation of tortured refugees will be instrumental in their social and economic reintegration. Torture as an experience carries many consequences such as social isolation, loss of self-confidence and anger. Left untreated, these people will not be able to adapt to the new society and will not be able to provide either for themselves or for their families. On the contrary, feelings of anger and hopelessness may turn into aggressive behaviour that may ultimately create dissonance in the society in which they live.

For this reason, we are pleased to see in the latest version of the draft charter that the prohibition against torture is now placed in a separate article.

However, we would like to see the inclusion of:

1. the right to rehabilitation, similar to article 14 of the Convention against Torture
2. the prohibition against the return of asylum seekers in danger of being tortured similar to the provisions in Article 33 in the Refugee Convention and Article 3 in the UN Convention Against Torture

We would further like to see that the highest standard possible be the aim of the Convention. Thus care should be taken to include all relevant developments in regard to the prohibition of torture such as case-law not only from the European Court on Human Rights but also other regional and international bodies.

The Charter should also take care to include into the right to reparation the right to a judicial remedy, compensation and restitution. Moreover, the Charter should include an article on training of relevant personnel as in article 10 of the UN Convention Against Torture.

We hope that these recommendations will become part of this important discussion and we thank the Convention for giving us this opportunity for presenting our views.

Thank you

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**Proposed amendment to Article: 4**

Submitted by: IRCT (International Rehabilitation Council for Torture Victims)

The IRCT is a medically based organisation, supporting approximately 200 centres and programmes for rehabilitation of victims of torture world-wide.

Proposed text:

- 1. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.**
- 2. No one may be expelled or extradited to a State where he would be in danger of being subjected to the death penalty, torture or other inhuman treatment.**
- 3. The victim of an act of torture shall have an enforceable right to as full rehabilitation as possible, including the means for social reintegration.**

ARTICLE X:

Public authorities shall ensure that education and information regarding these rights and freedoms are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other public officers.

Reasons: The IRCT bases its suggestions on provisions found in other fundamental texts such as the Convention against Torture (Articles 10 and 14).

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE**fundamental.rights@consilium.eu.int**

Bruxelles, le 5 juin 2000**CHARTE 4341/00****CONTRIB 205****NOTE DE TRANSMISSION**

Objet : **Projet de Charte des droits fondamentaux de l'Union européenne**
Contribution de la Conférence
des Notariats de l'Union Eu-
ropéenne (CNUE) (datée le
19/05/00)

Veillez trouver ci-après une contribution de la Conférence des Notariats de l'Union Européenne (CNUE) avec la résolution adoptée lors de son Assemblée extraordinaire le 19 mai 2000. ^{1 2}

¹ Ce texte a été soumis en langues française et allemande.

² CNUE – Rue Coudenberg, 70, B-1000 Bruxelles. Tél (+32 2) 513.95.29
Fax (+32 2) 513.93.82 E-mail: info@cnue.be

Conférence des Notariats de l'Union Européenne

La Conférence des Notariats de l'Union Européenne a adopté lors de son Assemblée extraordinaire le 19 mai 2000 à Bruxelles la résolution suivante:

La Conférence des Notariats de l'Union Européenne

- se déclare favorable à la décision prise par le Conseil européen de Cologne, d'élaborer un projet de Charte des droits fondamentaux de l'Union européenne, d'ici le Conseil européen de décembre 2000;
- partage l'avis selon lequel un catalogue des droits fondamentaux européens à caractère contraignant peut contribuer dans une large mesure, à renforcer le processus de l'intégration européenne;
- suit avec intérêt les travaux de la convention.

Afin de réaliser le but qui vise à assurer aux citoyens d'Europe une large protection des droits fondamentaux, la Conférence des Notariats de l'Union Européenne propose à la convention d'examiner les amendements suivants, numérotés de un à trois, et de les intégrer au projet de la Charte:

1. *L'article 8 - Droit à un tribunal impartial (Convent 28; Charte 4284/00) est complété par un alinéa 3 ainsi rédigé:*

(3) Toute personne a droit de se faire conseiller et de se faire assister en matière judiciaire et extrajudiciaire par le professionnel compétent.

Le titre de l'article 8 est complété par la notion "**et à l'assistance**".

2. *L'article 8 – Droit à un tribunal impartial (Convent 28; Charte 4284/00) est complété par la disposition suivante:*

Article 8 bis - Droit à la justice et à l'administration impartiale de la justice
L'existence des institutions indépendantes et impartiales de la justice et de son administration doit être garantie.

Toute personne doit pouvoir bénéficier de services juridiques et avoir accès à la justice et à l'administration indépendante et impartiale de celle-ci.

3. *L'article 19 - Protection des données (Convent 28; Charte 4284/00) est complété par la disposition suivante:*

Article 19 bis - Droit à la discrétion

Toute personne a droit à ce que les faits confiés à un professionnel du droit, ou dont celui-ci a pris connaissance du fait de sa qualité professionnelle, ne soient pas divulgués.

ENTWURF DER CHARTA DER GRUNDRECHTE DER EUROPÄISCHEN UNION**fundamental.rights@consilium.eu.int****Brüssel, den 5. Juni 2000****CHARTE 4342/00****CONTRIB 206****ÜBERMITTLUNGSVERMERK**

Betr.: Entwurf der Charta der Grundrechte der Europäischen Union
Beitrag von Herrn. Prof. Dr. Martin Stock, Universität Bielefeld,
Fakultät für Rechtswissenschaft,

Finden Sie bitte nachstehend eine Beitrag von Herrn. Prof. Dr. Martin Stock, Universität Bielefeld, Fakultät für Rechtswissenschaft, zur Medienfreiheit. ^{1 2}

¹ Dieser Text wurde nur in deutscher Sprache übermittelt.

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Medienfreiheit in der EU-Grundrechtscharta: Art.10 EMRK ergänzen und modernisieren!

Von Martin Stock

I. Ein kühnes Projekt der Europäischen Union

Auf deutsches Drängen hat der Europäische Rat auf dem EU-Gipfel in Köln im Juni 1999 die Ausarbeitung einer „Charta der Grundrechte der Europäischen Union“ beschlossen. Ein Entwurf einer solchen Charta soll von einem Gremium erstellt werden, dessen Zusammensetzung und Arbeitsweise die Staats- und Regierungschefs der EU-Mitgliedstaaten sodann auf dem Gipfel in Tampere (Finnland) im Oktober 1999 näher geregelt haben. Es handelt sich um ein in dieser Form neuartiges Gremium (nach dessen eigenem Sprachgebrauch: „Konvent“) mit breiter nationaler und supranationaler parlamentarischer Rückkoppelung. Das Gremium ist im Dezember 1999 in Brüssel zu seiner konstituierenden Sitzung zusammengetreten und hat den früheren deutschen Bundespräsidenten und Verfassungsrechtsexperten Prof. Dr. Roman Herzog zu seinem Vorsitzenden gewählt. Im März dieses Jahres hat es mit den Beratungen über einen Grundrechtskatalog begonnen. Parallel dazu haben sich das Europäische Parlament sowie Bundesrat und Bundestag mit diesem kühnen und weitläufigen Vorhaben befaßt und es grundsätzlich positiv bewertet. Im Juni wird Herzog den Staats- und Regierungschefs über den Sachstand berichten, und bis zur Sommerpause (ca. Mitte Juli) soll der Grundrechtskonvent dem Europäischen Rat einen vorläufigen Gesamtentwurf vorlegen. Im Dezember 2000 soll die neue Charta dann auf dem EU-Gipfel in Nizza - zunächst nur im Sinn einer politischen Deklaration - feierlich verkündet werden. Anschließend soll sie eventuell mittels Vertragsänderung rechtsverbindlich gemacht werden.

Der Europäische Rat hat dem Konvent einen Arbeitsauftrag erteilt, in welchem sich ein groß angelegtes und anspruchsvolles rechtspolitisches Vorhaben der EU ankündigt. Ob daraus ein weiterer großer Schritt in Richtung auf eine veritable EU-Verfassung werden kann und auch werden sollte, wird zur Zeit unterschiedlich beurteilt. In der Grundrechtsdebatte spiegeln sich konkurrierende europapolitische Konzepte und Ideen wider, wie sie heute - nach mancherlei Brüsseler Krisen und vor neuen Herausforderungen (Osterweiterung) - auch auf organisatorisch-institutioneller Ebene eine Rolle spielen. Nach dem Kölner Mandat hat der Grundrechtskonvent wohl einen gewissen konzeptionellen Spielraum im Vorfeld möglicher all-gemeiner Verfassungsgebung. Er neigt allerdings dazu, politisch-demokratische konstitutionelle Bezüge des Grundrechtskatalogs vorerst auszuklammern, und operiert diesbezüglich sehr vorsichtig. Als hinderlich stellt sich im übrigen vor allem der enorme Zeitdruck dar, unter dem das Gremium nach den Vorgaben der Staats- und Regierungschefs und den Wünschen der jetzigen und der nächsten Präsidentschaft (Portugal, Frankreich) steht. Ob es die Hoffnungen, die von gesellschaftlichen und politischen Akteuren auf seine Arbeit gesetzt werden, tatsächlich erfüllen kann, wird sich erst noch erweisen müssen.

II. Medienfreiheit als europäisches Grundrecht - Typik und Inhalt

Das eben Gesagte gilt auch für die Medienfreiheit, die von der EU-Rechtsprechung bisher - über Art. 6 Abs. 2 des Vertrages über die Europäische Union (EUV), der gewisse richterrechtliche Freiheiten impliziert - aus Art. 10 der Europäischen Menschenrechtskonvention (EMRK) hergeleitet wird. Der Gerichtshof der Gemeinschaft (EuGH) greift dabei gern auf die Judikatur des (auf Europaratsebene angesiedelten) Europäischen Gerichtshofs für Menschenrechte (EGMR) zurück. Art.10 EMRK wird vom EuGH indes stärker ökonomisiert und in pressenspezifischer Weise

mit der Dienstleistungsfreiheit nach den Art. 49 ff. des Vertrags zur Gründung der Europäischen Gemeinschaft (EGV) kombiniert: Medienfreiheit als Gewerbe- und Tendenzfreiheit. Und im Grundrechtskonvent steht man jetzt vor der Frage:

Soll insoweit alles beim alten bleiben oder soll ein Mediengrundrecht als künftiges genuines EU-Grundrecht neu konzipiert und tunlichst auf eine supranationale konstitutionelle Weiterentwicklung der Union zugeschnitten werden? Soll sich diese neue Medienfreiheit auf Europa als nach und nach immer staatsähnlicher werdendes konföderatives Gebilde beziehen, und soll sie den Integrationsprozeß auf ihre Weise voranbringen und intensivieren? Dies ist geradezu ein exemplarisches, für das Kodifikationsprojekt insgesamt charakteristisches Grundrechtsproblem, das besondere Aufmerksamkeit verdient. Dazu noch ein paar nähere Informationen und Thesen.

III. Art.10 EMRK als veraltetes Leitbild

Wenn man bei der erstgenannten Option bleiben, also alles beim alten lassen will, muß man mit einem Menschenrechtsartikel vorlieb nehmen, der schon älteren Datums ist und aus heutiger Sicht ziemlich rückständig und simpel erscheint. Er normiert eine Medienfreiheit nicht einmal ausdrücklich, vielmehr kann sie in ihm nur im Auslegungsweg und nur in rudimentärer Form vorgefunden werden, nämlich als sogenannter Unterfall individueller Meinungsverbreitungsfreiheit derjenigen Personen, welche jeweils als Medienträger (Verleger, Veranstalter) fungieren. Dieser Ansatz geht an der Typik binnenplural-öffentlicher Medien gänzlich vorbei. Er eignet sich am ehesten für marktorientierte private Tendenzmedien geringer Größenordnung, etwa für die letzten heute noch vorhandenen Reste lokaler Richtungspressen. Faktisch drängt sich gegenwärtig jedoch ein privat-kommerzieller Typus ganz anderer Art in den Vordergrund, der zu mancherlei Fehlentwicklungen führen kann und von dem älteren regulatorischen Ansatz der EMRK nicht adäquat erfaßt wird. Im Rundfunkbereich haben wir es nunmehr typischerweise mit einer rein erwerbswirtschaftlich betätigten, für kommunikative Verarmung und massive Vermachtung anfälligen Medienunternehmerfreiheit zu tun, beispielsweise in einer transnationalen, konkreter Gebiets- und Verbandsbezüge immer mehr ermangelnden globalisierten Variante. Für ein derartiges kommerzialisiertes Menschenrecht -womöglich als einzige europaweit eingeführte Grundrechtsvariante - gibt es in der Tat ein paar machtbewußte Global Players als reale Anwärtler, und daneben zahlreiche beflissene Fürsprecher und Wegbereiter, auch in der Rechtswissenschaft und im politischen Raum. Auch die Medienpolitik der EU-Kommission litt noch unlängst an entsprechenden Simplifikationen und Einseitigkeiten. Neuerdings scheint die Kommission indes andere Wege einzuschlagen, wie sich insbesondere aus ihrer Mitteilung „Grundsätze und Leitlinien für die audiovisuelle Politik der Gemeinschaft im digitalen Zeitalter“ vom 14.12.1999, KOM (1999) 657 endg., ergibt. Darin ist jetzt auch ein anderes, differenzierteres Grundrechtskonzept angelegt.

IV. Vom kommerzialisierten Menschenrecht zum Funktionsgrundrecht

Damit sind wir auch schon bei der zweiten Option angekommen, kurz gesagt: Medienfreiheit als europäisches Funktionsgrundrecht, ungefähr nach dem Bilde des Art. 5 Abs. 1 Satz 2 GG in der (freilich auch ihrerseits erneuerungsbedürftigen) Interpretation des Bundesverfassungsgerichts. Darin hat sich die Public-Service-Idee nun auch grundrechtlich ausgeformt und in unverwechselbarer Weise konkretisiert. Die damit angesprochene konstitutionell wichtige, öffentlich-„dienende“ Medienfunktion läßt sich anhand der Karlsruher „Medium und Faktor“-Formel (etwa BVerfGE 57, S. 295, 319 ff.) verdeutlichen, was auch europäisch-integrative Adaptionen und Nutzenanwendungen zugunsten einer künftigen EU-Verfassung erlaubt. Dabei geht es hauptsächlich um den jeweiligen öffentlichen Rundfunk, daneben aber auch - mit Abstrichen - um den privat-kommerziellen, d.h. insgesamt um duale Systeme. Neben innerstaatlich-nationalen Programmen kann dabei auch an ein relativ autonomes supranationales „Europäisches Fernsehen“

gedacht werden, wie es im Europäischen Parlament - etwa von dem deutschen Abgeordneten Wilhelm Hahn - schon in den frühen achtziger Jahren gefordert worden ist. Auf dem Boden des funktionalen Ansatzes wird sich auch die künftige EU-Medienfreiheit klarer bestimmen und rechtlich konsolidieren lassen.. Auch die Regulierungsprobleme der Multimedia-Entwicklung wird man so in den Griff bekommen können.

V. Alter Wein in neuen Schläuchen?

Das Präsidium des EU-Grundrechtskonvents hat sich schon frühzeitig auf Art. 10 EMRK als Basisnorm und Ausgangspunkt der einschlägigen Beratungen festgelegt. Bei dieser Vorgabe ist es dann - anscheinend aus pragmatischen Gründen und zum Zweck der Arbeitserleichterung - bis heute geblieben. In der derzeit letzten Fassung des Präsidiumsentwurfs (Dokument CONVENT 28 vom 5.5.2000) findet sich in Art. 15 unter der verkürzenden Überschrift „Freiheit der Meinungsäußerung“ immer noch lediglich folgender Normtext:

„Jede Person hat das Recht auf freie Meinungsäußerung. Dieses Recht schließt die Meinungsfreiheit und die Freiheit ein, Informationen und Ideen ohne behördliche Eingriffe und ohne Rücksicht auf Staatsgrenzen zu empfangen und weiterzugeben.“

Dies deckt sich inhaltlich mit Art. 10 Abs. 1 Sätze 1 und 2 EMRK. Schrankenregelungen sollen einer allgemein gehaltenen, „horizontalen“ Bestimmung (derzeit Art. 47 laut Präsidiumsentwurf Dokument CONVENT 34 vom 16.5.2000) vorbehalten bleiben, die insoweit auf Art. 10 EMRK verweist. Darum sind Art. 10 Abs. 1 Satz 3 und Abs. 2 EMRK nicht in Art. 15 des Entwurfs übernommen worden. Im übrigen sind diese Gewährleistungen entsprechend dem völkerrechtlichen Charakter der (vom Europarat geschaffenen) Menschenrechtskonvention nach wie vor inter- und nicht supranational orientiert, so als ginge es nur um Free Flow innerhalb des EG-Binnenmarkts als einer Art Freihandelszone, eines politisch und publizistisch gestaltlosen „audiovisuellen Raums“ o.ä. Von Rundfunk als „Medium und Faktor“ europäischer diskursivischer Öffentlichkeit, nunmehr auch als Triebkraft fortschreitender Konstitutionalisierung und Verfassungsentwicklung, weiß der Präsidiumsentwurf noch gar nichts. So modern und verdienstvoll er sich in anderen Teilen darstellt - hier fehlt ihm jegliche Inspiration. Etwa veranlaßte Ergänzungen und Aufbesserungen des bejahrten EMRK-Artikels scheint das Präsidium nicht aktiv zu betreiben, vielmehr will es die Initiative wohl anderen überlassen.

Als erster hat der vom Deutschen Bundestag in den Konvent entsandte SPD-Abgeordnete Prof. Dr. Jürgen Meyer dieses Defizit bemerkt und darauf mit dem Vorschlag reagiert, Presse- und Rundfunkfreiheit explizit zu gewährleisten (vgl. Dokument CONTRIB 60 vom 28.3.2000). Ähnlich dann ARD und ZDF, die zu einer Brüsseler Anhörung im April dieses Jahres einen eigenen Alternativentwurf für ein „europäisches Grundrecht der Meinungs- und Informationsfreiheit“ (inklusive Medienfreiheit) vorgelegt haben (Dokument CONTRIB 103 vom 18.4.2000). Auch die deutschen Länder sehen hier neuerdings Diskussionsbedarf (vgl. Dokument CONTRIB 177 vom 17.5.2000). Dem Vernehmen nach haben sie jüngst ebenfalls vorgeschlagen, Presse- und Rundfunkfreiheit ausdrücklich in Art. 15 des Entwurfs aufzunehmen. Wie sich das Präsidium dazu stellen wird, bleibt abzuwarten. Es leitet aus dem Beschluß von Tampere für sich selbst, zumal für Herzog als Vorsitzenden, eine sehr großzügig bemessene, für eine quasi-verfassungsgebende Versammlung ganz ungewöhnliche Einschätzungsprärogative her, was die Zustimmungsfähigkeit des Entwurfs „für alle Seiten“ betrifft. Bei günstigem Verlauf mag die EU-Charta anhand der erwähnten Vorschläge textmäßig wenigstens ungefähr auf den Stand des Art. 5 Abs. 1 Satz 2 GG gebracht werden können - nur wird Karlsruhe insoweit nicht mehr die Interpretationshoheit haben, und vom EuGH weiß heute niemand, ob er fähig sein wird, seine bisherigen ökonomisch-wirtschaftsrechtlichen Prioritäten und Beengtheiten nach und nach zu überwinden. Was er kürzlich

über öffentliche Zuwendungen an das Portugiesische Fernsehen (RTP) als eventuell wettbewerbswidrige staatliche Beihilfen verlauten ließ (epd 38/2000), klingt noch recht unbeholfen und rückwärtsgerichtet.

VI. Eine bessere Alternative

Mithin ist es höchste Zeit, die Diskussion über EU-Kommunikationsgrundrechte medienpezifisch zu vertiefen und zu verbreitern, also auch mehr wissenschaftliches und öffentliches Interesse für diese Dinge zu wecken. Vielleicht könnte jemand auch einmal die Staats- und Regierungschefs dafür interessieren und sie daran erinnern, was sie 1997 in dem neunten Protokoll zum Vertrag von Amsterdam festgelegt und sodann 1999 bekräftigt haben: „daß der öffentlich-rechtliche Rundfunk mit seinen kulturellen, sozialen und demokratischen Aufgaben, die er zum Wohle der Allgemeinheit erfüllt, von entscheidender Bedeutung für Demokratie, Pluralismus, sozialen Zusammenhalt, kulturelle und sprachliche Vielfalt ist“ (so die Entschliebung des EU-Ministerrats und des Europäischen Rats über den öffentlich-rechtlichen Rundfunk vom 25.1.1999, Amtsblatt der EG Nr. C 30 vom 5.2.1999, S. 1). Daraufhin wird in dem - leider wenig bekannten - Grundsatzpapier der einhellige Wille der Mitgliedstaaten betont, unter Gesichtspunkten programmlicher Qualitätssicherung „die Rolle des öffentlich-rechtlichen Rundfunks herauszustellen“. Solche Einsichten und guten Vorsätze wären jetzt endlich einmal auch für die werdende europäische Grundrechtsdogmatik zu rezipieren und umzusetzen.

Wer das tun will, der kann nicht einfach bei Art. 10 EMRK bleiben und damit für ein schwächliches Marktmodell à la „Fernsehen ohne Grenzen“ optieren. Wenn man Art. 10 EMRK überhaupt als Ausgangspunkt beibehalten will, wird man jedenfalls nicht ohne weitreichende funktionale Ergänzungen und Modernisierungen des bisherigen Wortlauts auskommen. Mögliche Textbeispiele dafür gibt es in Europa in Hülle und Fülle, vor allem dort, wo das Public-Service-Prinzip noch geläufig ist und in Blüte steht. Eine avancierte EU-Medienfreiheit könnte in der Grundrechtscharta beispielsweise durch folgende Einfügung in Art. 15 verankert werden:

„(2) Die Freiheit der Presse, des Rundfunks, des Films sowie der sonstigen an die Allgemeinheit gerichteten Kommunikation wird gewährleistet.“

(3) Der Rundfunk dient der Information durch umfassende und wahrheitsgemäße Berichterstattung und durch die Verbreitung von Meinungen. Er trägt zur Bildung und Unterhaltung bei. Er ist Medium und Faktor des Prozesses freier Meinungsbildung. Er trägt der kulturellen Vielfalt in Europa Rechnung und fördert die europäische Integration. Er nimmt damit eine öffentliche Aufgabe wahr und ist darum unabhängig in der Programmgestaltung. Unbeschadet des Rechts, Rundfunk in privater Trägerschaft zu betreiben, werden Bestand und Entwicklung von Rundfunk in öffentlicher Trägerschaft gewährleistet.“

Abs. 2 lehnt sich an den ARD/ZDF-Vorschlag an. In Abs. 3 sind u.a. Passagen aus dem Rundfunkrecht deutscher Länder (Bayern, Nordrhein-Westfalen, Sachsen) enthalten, welche zu den für Art. 6 Abs. 2 EUV relevanten mitgliedstaatlichen Verfassungstraditionen gehören, wie sie nach dem Kölner Mandat auch der Grundrechtskonvent zu berücksichtigen hat. Die programmliche Unabhängigkeit des Rundfunks wird insbesondere im österreichischen und im Schweizer Verfassungsrecht angesprochen - beides Staaten mit einer ebenfalls hochentwickelten, dem Public-Service-Gedanken verpflichteten Medienrechtskultur. Hinzugefügt werden könnten eventuell noch strukturpolitische Richtwerte nach Art der Präambel des deutschen Rundfunkstaatsvertrags von 1991, etwa der Satz: „Anzustreben ist ein leistungsfähiges europäisches duales Rundfunksystem.“ Und wer noch ein übriges tun will, mag auch anfügen: „Auf rundfunkähnliche neue Mediendienste

sind diese Bestimmungen entsprechend anzuwenden.“ (Auch die Schrankenregelungen sollten nicht einfach aus der Menschenrechtskonvention übernommen werden.) Warum also nicht Art. 10 EMRK in dieser Weise ergänzen und modernisieren?

Hier bietet sich unversehens eine gute Gelegenheit, den europäischen Grundrechtsschutz des Rundfunks erheblich zu verbessern, gerade auch im Blick auf die Zukunft des öffentlichen Sektors unter Konvergenzbedingungen. Denn man könnte jetzt ein paar neue Pflöcke einschlagen: zugunsten einer kontinuierlichen und energischen, europaweit wirksamen programmlichen Qualitätsvorsorge, zugunsten der Bewahrung kultureller Vielfalt und Offenheit, auch zugunsten weiterer Selbstfindung und innerer Kräftigung der Union in politicis. Europa in „guter Verfassung“, auch kraft einer guten Rundfunkverfassung - warum diese Chance verschlafen?

Der EU-Grundrechtskonvent hat eine eigene Website eingerichtet, die in allen Amtssprachen angeboten wird und die Öffentlichkeit über Zeitplan und Inhalt der Beratungen des Gremiums informieren soll. Die dem Gremium vorgelegten deutschsprachigen Dokumente sind einsehbar unter http://db.consilium.eu.int/df/listall.asp?lang=en&slang=de&BTN_ALL. Dort finden sich auch die in diesem Beitrag genannten Dokumente. Der Beitrag gibt in kurzer Form Überlegungen wieder, die vom Autor weiter ausgeführt worden sind in der demnächst erscheinenden Schrift: Medienfreiheit in der EU-Grundrechtscharta: Art. 10 EMRK ergänzen und modernisieren! (Band 5 der vom Mainzer Medieninstitut herausgegebenen Studien zum deutschen und europäischen Medienrecht), Verlag Peter Lang GmbH Frankfurt a. M.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 5 June 2000**CHARTE 4343/00****CONTRIB 207****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a contribution from the European Children's Network (Euronet) regarding CONVENT 28 and 34. ¹

¹ This text has been submitted in English language only.

CHILDREN'S RIGHTS IN THE EU CHARTER OF FUNDAMENTAL RIGHTS

Briefing on EU Charter of Fundamental Rights Euronet's position with regard to Convent 28 and 34

Civil and Political Rights- Convent 28 of 5 May 2000

Article 23 – Children's Rights

Euronet, the European Children's Network welcomes the inclusion of an article on children's rights - Article 23 in Convent 28 of 5 May 2000 and is pleased that this article is based on the UN Convention on the Rights of the Child. However, Euronet believes that a clear reference to the UN Convention on the Rights of the Child within the Article is necessary, since this is the most comprehensive statement of children's rights and has almost universal recognition. In this respect we support the amendment underlined below tabled by Mrs Maij-Weggen MEP:

Existing article 23 plus amendment by Mrs Maij-Weggen MEP

Children must be treated as equal individuals, they must be allowed to influence matters pertaining to their person to a degree corresponding to their maturity. The European Union shall ensure that all EU activities are fully compatible with the principle of the best interests of the child as expressed in the UN Convention on the Rights of the Child.

The above amendment is our preferred option.

However, if this is not possible our second preference would be the amendment tabled by Mr Cornillet, Member of the Convention, since this includes the two main principles on the rights of the child as set out in the UN Convention on the rights of the Child.

Article 23 amendment by Mr Cornillet

1. In all decisions affecting children, the best interests of the child shall be a primary consideration
2. Each child who is capable of forming his or her own views, has the right to express these views freely in all matters affecting the child and the views of the child shall be given due weight in accordance with the age and maturity of the child.

Article 13- Family Life - Convent 28 of 5 May 2000

Euronet supports article 13 on family life which is drawn from the UN Convention on the Rights of the Child. However, another important principle of the Convention on the Rights of the Child is to support the family to protect and give special care to children. We therefore suggest the following additions, which are underlined:

1. Everyone has the right to respect for his or her family life.
2. Everyone has the right to marry and to found a family, according to the national laws governing the exercise of this right.
- 3.** The family shall enjoy legal economic and social protection and be supported in giving children the care and protection they need.

Economic and Social Rights- Convent 34 of 16 May 2000

Article 37- Protection of young people

Article 37 refers to the protection of young people in employment. The current title is the protection of young people we believe that in line with the European Social Charter, the title should be changed to :

The protection of children and young people.

According to the Convention on the Rights of the Child the definition of a child is all persons under 18 years.

And the following should be added to Article 37 – drawn from Article 7 of the European Social Charter.

Children and young people shall be protected against physical and moral dangers to which they are exposed and particularly those resulting directly or indirectly from their work.

Statement of reasons

We also believe that the statement of reason should contain a reference to ILO Convention 182 which aims to ban the worst forms of child labour.

Preamble to the EU Charter of Fundamental rights

Euronet believes it is important that an explicit reference is made to children as holders of rights in the Preamble of the Charter. Children are a particularly vulnerable group within the EU and are not always explicitly recognised as EU citizens.

30 May 2000

ENTWURF DER CHARTA DER GRUNDRECHTE DER EUROPÄISCHEN UNION**fundamental.rights@consilium.eu.int**

Brüssel, den 7. Juni 2000**CHARTE 4345/00****CONTRIB 209****ÜBERMITTLUNGSVERMERK**

Betr.: Entwurf der Charta der Grundrechte der Europäischen Union

Finden Sie bitte nachstehend einen Beitrag von des Paritätischen Wohlfahrtsverbands - Gesamtverband. ^{1 2}

¹ Dieser Text wurde nur in deutscher Sprache übermittelt.

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Internet <http://www.paritaet.org/>

PARITÄTISCHE Vorschläge
für eine
Charta der Grundrechte in der Europäischen Union

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Vorbemerkung

Der PARITÄTISCHE Wohlfahrtsverband ist Dachverband von über 9300 rechtlich selbständigen Mitgliedsorganisationen, die soziale Arbeit als Hilfe für andere oder als Selbsthilfe leisten. Der PARITÄTISCHE ist Dienstleister für die ihm angeschlossenen Vereine und Organisationen der sozialen Arbeit und vertritt deren Interessen und die der von ihm betreuten Menschen gegenüber Öffentlichkeit, Politik und Verwaltung.

Mit diesem Mandat setzt sich der PARITÄTISCHE gemäß seinen im Oktober 1989 verabschiedeten Grundsätzen der Verbandspolitik ein

- für die Rechte der Menschen auf soziale Hilfen, wenn sie sich in Not befinden;
- für eine Politik, die auf die Beseitigung der Ursachen sozialer Not und sozialer Benachteiligung zielt;
- für das Initiativrecht freier Vereinigungen in der Wohlfahrtspflege und den Vorrang des mitbürgerlichen Engagements und der Selbsthilfe vor staatlichen Initiativen.

Währungs-, Wirtschafts- und Sozialpolitik stehen in einem engen Zusammenhang. Eine zukunftsweisende EU-Grundrechtscharta hat daher Europa auch als Sozialraum in den Blick zu nehmen. Dabei sind aus Sicht des PARITÄTISCHEN Zielformulierungen und Schutzrechte unabdingbar, die soweit wie möglich

- die Teilhabe der Bürgerinnen und Bürger an Arbeit, Wohnen und Bildung sichern;
- die Rechte der Bürgerinnen und Bürger auf soziale Hilfen, gesundheitliche Versorgung und Betreuung sichern, sofern sie dieser bedürfen;
- die Diskriminierung von Bevölkerungsgruppen ausschließen, die historisch oder aktuell in besonderer Weise der Gefahr der Diskriminierung unterliegen;
- den Vorrang des freien Bürgerengagements gegenüber staatlichen Initiativen in der Wohlfahrtspflege sicherstellen;
- das Wunsch- und Wahlrecht auch bei der Inanspruchnahme von sozialen Diensten berücksichtigen.

Vor diesem Hintergrund und unter Berücksichtigung der zwischen den EU-Mitgliedsstaaten bereits getroffenen vertraglichen Vereinbarungen sowie der bereits vorliegenden verschiedenen Ausarbeitungen für eine EU-Charta der Grundrechte schlägt der PARITÄTISCHE folgende Formulierungen für die oben genannten Aspekte vor:

Wichtiger Hinweis: In den Fußnoten wird an vielen Stellen auf Dokumente des "Konventes" verwiesen; diese sind im Internet unter folgender Adresse abgelegt:

<http://db.consilium.eu.int/df/default.asp?lang=de>

Die Dokumente finden sich dann unter "Datenbank / Suche".

A) Nichtdiskriminierung

- 1) Diskriminierungen wegen des Geschlechts, der Rasse, der Hautfarbe, der ethnischen oder sozialen Herkunft, der Sprache, der Religion oder der Weltanschauung, der Zugehörigkeit zu einer nationalen Minderheit, des Vermögens, der Geburt, einer Behinderung, des Alters oder der sexuellen Ausrichtung sind verboten.¹
- 2) Die Union wirkt darauf hin, Chancenungleichheiten zu beseitigen und die Gleichstellung von Männern und Frauen sowie von Menschen mit und ohne Behinderung zu fördern.²

B) Familienleben³

- 1) Jede Person hat das Recht auf Gründung einer Familie und Achtung des Familienlebens.
- 2) Pflege und Erziehung der Kinder sind das natürliche Recht der Eltern und die primär ihnen obliegende Pflicht. Die staatliche Gemeinschaft schützt und fördert darüber hinaus jede Lebensgemeinschaft, in der Kinder und Jugendliche aufwachsen, bei ihrer selbstverantwortlichen Aufgabenerfüllung.
- 3) Kinder und Jugendliche haben darüber hinaus Anspruch auf besonderen Schutz der Unversehrtheit ihrer Person und ihrer Entwicklung. Sie haben insbesondere Anspruch, auf Angelegenheiten, die sie selbst betreffen, entsprechend dem Grad ihrer persönlichen Reife Einfluß zu nehmen.

C) Hilfe in Notlagen

Wer in Not gerät, hat Anspruch auf Hilfe und Betreuung und auf die Mittel, die für ein menschenwürdiges Dasein und für eine Teilhabe an der Gesellschaft unerlässlich sind ⁴.

¹ Formulierung übernommen aus Convent-Beratung 24.2.2000 Charte 4137/00 Convent 8, Art. 19 Abs. 1

² Es handelt sich um eine Erweiterung von Artikel 19 Absatz 2 der Konvent-Beratung 24.2.2000 (Charte 4137/00 Konvent 8) um die Gleichstellung von Menschen mit und ohne Behinderung vor dem Hintergrund der deutschen Diskussion um Artikel 3 Abs. 3 Satz 2 GG (Benachteiligungsverbot für behinderte Menschen)

³ Eines besonderen Schutzes in der Gemeinschaft bedürfen Kinder. Im Grundgesetz der Bundesrepublik Deutschland konfliktieren Artikel 1 Abs. 1 und Artikel 2 - aus denen sich eine stärkere Rechtsstellung des Kindes ableiten ließe - einerseits, und Artikel 6, wonach Pflege und Erziehung der Kinder das natürliche Recht der Eltern sind. Mit der Formulierung unter Abs. 3 soll klargestellt werden, daß Abs. 2 sich an dem Recht des Kindes auf Unversehrtheit seiner Person und seiner Entwicklung bricht, und darüber hinaus die zunehmende Mündigkeit des Heranwachsenden zu berücksichtigen hat.

⁴ Diese Formulierung folgt dem Vorschlag des Entwurf v. Gerald Häfner, Dr. Christoph Strawe, Dr. Robert Zuegg im Rahmen der Anhörung von Repräsentanten der Zivilgesellschaft durch den Konvent v. 16.3.2000 (Charte 4164/00 CONTRIB 48, Artikel 2)

D) Gesundheitliche Versorgung

Jede Person hat ein Recht auf gesundheitliche Versorgung⁵. Niemandem dürfen wegen seiner wirtschaftlichen Situation oder aus anderen Gründen notwendige Leistungen der gesundheitlichen Versorgung vorenthalten werden.

E) Arbeit

Die Europäische Union (und ihre Mitgliedstaaten) setzen sich im Rahmen ihrer Zuständigkeit dafür ein, dass arbeitsfähige Menschen Arbeit unter angemessenen Arbeitsbedingungen finden oder entsprechende Verhältnisse selbst schaffen können.⁶

F) Bildung

- 1) Jede Person hat das Recht auf Bildung und Ausbildung gemäß ihrer Fähigkeiten.⁷
- 2) Angehörige nationaler oder ethnischer Minderheiten haben das Recht, ihre Muttersprache zu lernen und eigene Schulen zu gründen und zu unterhalten.⁸

G) Wohnen

Jede Person hat das Recht auf eine Unterbringung, die seiner Menschenwürde entspricht.⁹

⁵ Zwar subsumiert bereits der Artikel „Recht auf Hilfe in Notlagen“ auch gesundheitliche Hilfen, doch bietet sich eine eigenständige Formulierung zur gesundheitlichen Versorgung an, da vor dem Hintergrund der demographischen Entwicklung in Europa, aber auch „hausgemachter“ Finanzierungsprobleme des Gesundheitssektors in ganz Europa auf Dauer mit einer sehr schwierigen Diskussion über Rationierungen in der gesundheitlichen Versorgung zu rechnen ist. Mit der vorgeschlagenen sehr allgemein gehaltenen Formulierung soll bereits ein Grundkonsens für die weitere Diskussion gelegt werden.

⁶ Die Formulierung folgt dem Vorschlag des Entwurf v. Gerald Häfner, Dr. Christoph Strawe, Dr. Robert Zuegg im Rahmen der Anhörung von Repräsentanten der Zivilgesellschaft durch den Konvent v. 16.3.2000 (Charte 4164/00 CONTRIB 48, Art. 3 Abs. 2)

⁷ Formulierung übernommen aus Konvent-Beratung 24.2.2000 Art. 12 Abs. 1 (Charte 4137/00, Konvent 8, Artikel 12 Abs. 1)

⁸ Formulierung folgt dem Vorschlag des Entwurf v. Gerald Häfner, Dr. Christoph Strawe, Dr. Robert Zuegg im Rahmen der Anhörung von Repräsentanten der Zivilgesellschaft durch den Konvent v. 16.3.2000 (Charte 4164/00 CONTRIB 48, Artikel 8 Abs. 5)

⁹ Zwar subsumiert bereits der Artikel „Recht auf Hilfe in Notlagen“ die Hilfe bei Wohnungsnot, doch scheint es angesichts der Tatsache, daß ein menschenwürdiges Wohnen von besonderer Bedeutung für die Abwehr von Armut und Unterversorgung sind (vgl. Walter Hanesch u.a. „Armut in Deutschland“ 1994), ein eigener Artikel in Analogie zu den anderen Lebenslagenfaktoren „Gesundheit“, „Bildung und Ausbildung“ und „Arbeit“ als angemessen.

H) Wahlrecht bei Bildung, Erziehung und sozialen Diensten

Das Wunsch- und Wahlrecht der Personen, die soziale Diensten oder Einrichtungen der Erziehung, Bildung, Ausbildung und der Gesundheitsversorgung in Anspruch nehmen, bzw. ihrer Erziehungsberechtigten ist zu achten.

I) Stellung freier Vereinigungen in Bildung, Erziehung, Versorgung mit sozialen Diensten ¹⁰

- 1) Das Initiativrecht freier Vereinigungen im Bereich der Bildung, der Erziehung und der Versorgung mit sozialen Diensten wird geachtet.¹¹
- 2) Öffentliche Schulen in freier Trägerschaft sind staatlichen Schulen unbeschadet der staatlichen Planungs- und Versorgungsverantwortung gleichgestellt.
- 3) Die Vorrangstellung der Wohlfahrtsverbände und anderer freier dem Gemeinwohl verpflichteter Träger im Bereich der Wohlfahrtspflege und der Erziehung gegenüber staatlich vorgehaltenen sozialen Diensten ist unbeschadet der staatlichen Planungs- und Versorgungsverantwortung zu achten.¹²
- 4) Die Verbände der freien Träger von Einrichtungen der Bildung, Erziehung und der Wohlfahrtspflege sind bei der politischen Gestaltung der Bereiche Bildung, Erziehung und soziale Dienste einzubeziehen.

Paritätischer Wohlfahrtsverband Gesamtverband
- Der Vorstand -

Frankfurt am Main, 13.05.2000

¹⁰ Die Frage der Verhältnisses von staatlichem Handeln und freien Initiativen ist von wesentlicher Bedeutung für eine EU, die sich konstitutiv als eine Zivilgesellschaft versteht. Die Rechte freier bürgerschaftlicher Initiativen leiten sich direkt ab aus den allgemeinen Bürgerrechten einer EU-Charta. Ein eigener Artikel zur Frage der Subsidiarität und der Einbeziehung der freien Initiativen in die Politikgestaltung auf dem Feld der Erziehung, der Bildung und der Wohlfahrtspflege erscheint daher sinnvoll.

¹¹ Formulierung in Anlehnung an die „Grundsätze der Verbandspolitik“ v. Okt. 1989

¹² Der Absatz formuliert den sog. bedingten Vorrang freier Träger in Anlehnung das Urteil des Bundesverfassungsgericht v. 18.7.1967 (AZ 1BvL 15/62)

ENTWURF DER CHARTA DER GRUNDRECHTE DER EUROPÄISCHEN UNION**fundamental.rights@consilium.eu.int**

Brüssel, den 7. Juni 2000**CHARTE 4346/00****CONTRIB 210****ÜBERMITTLUNGSVERMERK**

Betr.: Entwurf der Charta der Grundrechte der Europäischen Union

Finden Sie bitte nachstehend einen Beitrag des Bundesverbandes Deutscher Zeitungsverleger e.V. zur Pressefreiheit.^{1 2}

¹ Dieser Text wurde nur in deutscher Sprache übermittelt.

² Bundesverband Deutscher Zeitungsverleger e.V.: Riemenschneiderstrasse 10, D-53175 Bonn. Tel: +49-0228-8 10 0411.

An den
Vorsitzenden des Konvents
zur Ausarbeitung des Entwurfs
einer Charta der Grundrechte der EU
Herrn Bundespräsident a.D.
Prof. Dr. Roman Herzog
Prinzregentenstraße 89

81675 München

Vorab per Fax (089-47027168)

An das
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Rue de la Loi 175

B-1048 Brüssel

Vorab
per Fax (0032-2-2857837)
per E-mail (fundamental.rights@consilium.eu.int)

31.5.2000

Grundrecht der Pressefreiheit

Sehr geehrter Herr Vorsitzender,
sehr geehrte Damen und Herren Mitglieder des Konvents,

im Auftrag der Stiftervereinigung der Presse e.V. und der Stiftung Freiheit der Presse hat Herr Prof. Dr. Christoph Engel das beigefügte Rechtsgutachten "Die Europäische Grundrechtscharta und die Presse" erstellt.

Ausgehend von der Darstellung des Schutzbedarfs der Presse angesichts gegenwärtiger, vergangener und möglicher zukünftiger Konflikte sowie der Effekte einer Grundrechtscharta auf das Institutionsgefüge in Gemeinschaft und Mitgliedstaaten zieht Herr Prof. Dr. Engel normative Folgerungen für die Verankerung des Schutzes der Pressefreiheit in der EU-Grundrechtecharta.

In den Schlußfolgerungen der Untersuchung heißt es u.a.:

"Grundrechte sind in ihrem Kern Abwehrrechte gegen hoheitliches Handeln. Das gilt auch und gerade für die Pressefreiheit. Die schlechthin konstituierende Bedeutung der Presse für ein demokratisches Gemeinwesen führt nicht etwa zu einem anderen Verständnis dieses Grundrechts, sondern zu einer Verstärkung des Freiheitsrechts. Denn Freiheit ist die Voraussetzung dafür, daß die Presse ihre demokratische Aufgabe wahrnehmen kann.

Bislang beschränkt sich der Entwurf auf den allgemeinen Schutz der Meinungsäußerungsfreiheit. Rechtstechnisch mag das genügen, den besonderen Schutzbedarf der Presse zu erfüllen und den Schutzstandard der Grundrechtstradition der Mitgliedstaaten auch gegenüber der Europäischen Gemeinschaft zu sichern. Eine ausdrückliche Garantie der Pressefreiheit würde aber jeden Zweifel hieran ausräumen. Sie wird unverzichtbar, wenn sich der Rundfunk mit dem Wunsch nach einer separaten Garantie durchsetzt. Erwägenswert ist es, Abgrenzungsschwierigkeiten durch eine allgemeine Medienfreiheit vorzubeugen.

Der Entwurf sieht ein recht kompliziertes System der Grundrechtsschranken vor. Wie jedes Grundrecht der Charta unterläge die Pressefreiheit zunächst der allgemeinen, unbenannten Schranke aus Art. H.2 II 2. Weil sie Teil der in Art. 10 EMRK garantierten Meinungsäußerungsfreiheit ist, wären nach Art. H.2 II 3 zusätzlich die benannten Schranken aus Art. 10 II EMRK zu beachten. Schließlich darf der Grundrechtsschutz nach Art. H.4 nicht hinter dem Schutzstandard von Art. 10 EMRK zurückbleiben. Die Auslegung ist zu beachten, die der Straßburger Menschenrechtsgerichtshof dieser Norm gegeben hat. Bei richtiger Handhabung führt dieses System der Schranken nicht zu Unzuträglichkeiten. Die Grundrechtsanwendung würde aber sehr vereinfacht, wenn die Pressefreiheit unmittelbar die benannten Schranken aus Art. 10 II EMRK erhalte.

Auch empfiehlt sich die Klarstellung, daß jede Berührung dieses Grundrechts der Rechtfertigung durch die Grundrechtsschranken bedarf. Damit würde verhindert, daß ein enges Konzept des Grundrechtseingriffs dazu eingesetzt wird, den Verhältnismäßigkeitsgrundsatz zu umgehen.

Die Presse steht nicht nur in einem Spannungsfeld zum Staat, sondern auch zu anderen Grundrechtsträgern. Daß die Grundrechtscharta viele dieser Personen schützt, etwa die Ehre als Schutzgut gesondert ausweist, darf aber nicht mißdeutet werden. Auch soweit aus den europäischen Grundrechten Schutzpflichten folgen, erweitern sich die Kompetenzen der Gemeinschaft nicht. Die meisten der potentiellen Grundrechtskonflikte werden aus diesem Grunde nicht aktuell. Die Zuständigkeit zu ihrer Bewältigung bleibt bei den Mitgliedstaaten.

Vorsorglich müssen die europäischen Grundrechte gleichwohl so ausgestaltet werden, daß ein gerechter Ausgleich der widerstreitenden Belange möglich wird, sollte die Gemeinschaft für einen Teilbereich zuständig sein oder werden. Praktisch kommt es vor allem darauf an, wie die Schranken dieser Grundrechte ausgestaltet werden. Sie müssen dem Gemeinschaftsgesetzgeber gestatten, diese Grundrechte zu Gunsten der berechtigten Anliegen der Presse zu beschränken.

Nach dem augenblicklichen Stand der Entwürfe ist das im Prinzip schon deshalb gewährleistet, weil Art. H.2 II 2 ja Grundrechtseingriffe zur Verfolgung jedes legitimen Ziels zuläßt. Der genaueren Überprüfung bedürfen aber die Schranken der Europäischen Menschenrechtskonvention, auf die Art. H.2 II 3 und Art. H.4 verweisen. Daß die Presse dort nirgends ausdrücklich erwähnt ist, ist unschädlich. Es muß aber zumindest sichergestellt sein, daß überall ein Vorbehalt für die "Rechte anderer" vorhanden ist. Darauf wäre auch zu achten, wenn sich der Grundrechtskonvent doch noch entschließt, selbst allen Grundrechten benannte Schranken zuzuweisen."

Die deutschen Zeitungsverleger bitten Sie, sehr geehrter Herr Vorsitzender, und den gesamten Konvent, die Ausführungen von Herrn Prof. Dr. Engel bei den Beratungen zur EU-Grundrechtecharta und speziell der Formulierung des Grundrechts, das die Freiheit der Presse garantiert, zu berücksichtigen.

Eine in die englische Sprache übersetzte Fassung des Rechtsgutachtens werden wir alsbald nachreichen.

Mit freundlichen Grüßen

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Bonn, den 06. Juni 2000

Die Europäische Grundrechtscharta und die Presse

Rechtsgutachten

im Auftrag der
Stifternvereinigung der Presse e.V. und der
Stiftung Freiheit der Presse

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I. Fragestellung

Gute Verfassungen sind kurz und dunkel. Das erleichtert die Einigung auf den Verfassungstext. Niemand weiß so ganz genau, worauf er sich da gerade einläßt. Die Verfassungsväter ziehen vor den ohnehin schon dichten Schleier der Zukunft noch einen weiteren, künstlichen Schleier des Unwissens³. Die Römischen Verträge, auf denen die Europäische Wirtschaftsgemeinschaft ursprünglich beruhte, sind sogar noch weiter gegangen. Die Materialien sind bewußt nie veröffentlicht worden. Im Gegenteil hat der Vertrag seine Auslegung einem machtvollen internationalen Gericht überantwortet, dem Europäischen Gerichtshof.

Die Geschichte hat den Vätern der Römischen Verträge Recht gegeben. Welche Herausforderungen die Natur oder das Ausland an ein Gemeinwesen herantragen werden, ist ebensowenig vorhersehbar wie die politischen Prozesse und die Entwicklung der Mentalitäten im Inneren. Auch sind Verfassungen notwendig Kompromisse zwischen unterschiedlichen, ja fundamental unvereinbaren Blickwinkeln, von denen aus die Welt verstanden und bewertet werden kann⁴. Eine Verfassung tut gut daran, sich nicht auf einen dieser Blickwinkel festzulegen. Sie sollte stattdessen nach Instrumenten suchen, die es erlauben, die Bilder der sozialen Wirklichkeit immer neu übereinander zu legen, die aus diesen unterschiedlichen Blickwinkeln gezeichnet werden.

Die Europäische Union schickt sich an, ihrer Verfassung eine Grundrechtscharta beizufügen. Den Anstoß gab der Europäische Rat, also das Organ der Staats- und Regierungschefs⁵. Zu diesem Zweck hat der Rat einen Konvent einberufen, dem *Roman Herzog* vorsteht⁶. Das Präsidium des Konvents hat Textentwürfe vorgelegt, nach denen sich die Europäische Grundrechtscharta aus drei Teilen zusammensetzen würde: Freiheitsrechten, demokratischen Rechten, sowie wirtschaftlichen und sozialen Rechten⁷.

Diese Entwürfe halten sich an die eingangs genannten Klugheitsregeln. Das macht es für einen

³ Die Metapher hat ihre eigene Geschichte. S. zunächst *John Rawls: A Theory of Justice*, Harvard 1971, 136–142 und passim; sodann *Geoffrey Brannan/James M. Buchanan: Die Begründung von Regeln. Konstitutionelle Politische Ökonomie (Die Einheit der Gesellschaftswissenschaften 83)* Tübingen 1993, 37, 184 f., 196 und passim.

⁴ Anregend *Michael Thompson/Richard Ellis/Aaron Wildavsky: Cultural Theory*, Boulder 1990; *Guido Calabresi: Ideals, Beliefs, Attitudes and the Law. Private Law Perspectives on a Public Law Problem*. Syracuse 1985.

⁵ Zum Hintergrund und zur Entstehungsgeschichte näher *Sylvia Eickmeier: Eine europäische Charta der Grundrechte. Bericht über das gemeinsame Forum des Bundesministeriums der Justiz und der Vertretung der Europäischen Kommission in Deutschland*, in: DVBl. 1999, 1026-1029; *Jürgen Schwarze: Auf dem Wege zu einer Europäischen Verfassung. Wechselwirkungen zwischen europäischem und nationalem Verfassungsrecht*, in: DVBl. 1999, 1677-1689; *Herta Däubler-Gmelin: Eine Europäische Charta der Grundrechte – Beitrag zur gemeinsamen Identität*, in: EuZW 2000, 1; *Albrecht Weber: Die Europäische Grundrechtscharta – auf dem Weg zu einer Europäischen Verfassung*, in: NJW 2000, 537-544.

⁶ Einzelheiten <<http://db.consilium.eu.int/df/default.asp?lang=de> (12.04.2000)>.

⁷ Zu den Freiheitsrechten s. die folgenden Dokumente des Rats der Europäischen Union: 4123/1/00 REV 1 vom 15.02.2000; 4149/00 vom 08.03.2000; 4137/00 vom 24.02.2000. Zu den demokratischen Rechten s. Dokument 4170/00 vom 20.03.2000. Zu den wirtschaftlichen und sozialen Rechten s. Dokument 4192/00 vom 27.03.2000 und Dokument 4193/00 vom 29.03.2000. Weitere Textentwürfe von einzelnen Mitgliedern des Konvents und von außenstehenden Personen und Einrichtungen sind auf der in der vorigen FN genannten Website nachgewiesen.

Wirtschaftszweig wie die Presse nicht einfach, im Verfahren der Verfassungsgebung seine Interessen zu wahren. Die Aufnahme konkreter Ergebnisse, etwa des arbeitsrechtlichen Tendenzschutzes, in den Verfassungstext würde den Charakter einer Grundrechtscharta sprengen. Es muß deshalb darum gehen, die Pressefreiheit auch auf der Ebene der Europäischen Union angemessen zu verankern und den Text dadurch für die Bewältigung der schon bekannten und der vorhersehbaren Konflikte vorzubereiten.

Eine zweite Besonderheit tritt hinzu. Die Europäische Union gibt sich nur für ihre eigenen Zwecke Grundrechte⁸. Die Harmonisierung der Grundrechtskataloge in den Mitgliedstaaten ist nicht beabsichtigt. Scheinbar mindert das die Bedeutung der Grundrechtscharta für die Presse. Denn eine eigene Pressepolitik hat die Europäische Union bislang nicht entwickelt. Die Presse ist jedoch schon in der Vergangenheit immer wieder von allgemeinen Politiken der EG betroffen gewesen. Sie ist dafür regelmäßig ein ganz ungewöhnlicher Sonderfall. Gerade für die Bewältigung atypischer Konstellationen sind Grundrechte besonders gut geeignet. In der Zukunft könnte sich der Schutzbedarf noch vergrößern. Insbesondere könnte die Europäische Gemeinschaft versucht sein, ihre Politiken für andere Medien unter dem Vorwand auch auf die Presse zu erstrecken, daß die Presseinhalte nicht mehr nur auf Papier, sondern auch elektronisch dargeboten werden. Dies wird im einzelnen darzulegen sein⁹.

Eine Europäische Grundrechtscharta birgt für die Presse aber nicht nur Chancen, sondern auch Gefahren. Diese Gefahren liegen auf zwei unterschiedlichen Ebenen. Eine Grundrechtscharta schützt die Individuen nicht nur besser vor dem Zugriff des europäischen Gesetzgebers. Vielmehr verändert sie zugleich das Institutionengefüge in der Gemeinschaft und im Verhältnis zu den Mitgliedstaaten. Auch wenn es gelingen sollte, eine rechtliche Ausweitung der Kompetenzen zu verhindern, wird sich doch politisch das Gewicht von Europa zu Lasten der Mitgliedstaaten erhöhen. Dem wird sich auf Dauer auch die Pressepolitik nicht entziehen können. Sie wird sich auf andere, zumindest aber komplexere Opportunity Structures einstellen müssen. Die Grundrechtscharta muß vorbeugend so ausgestaltet werden, daß die Presse auch in diesem Institutionengefüge ihre legitimen Interessen wahrnehmen kann.

Die zweite Gefahr ergibt sich letztlich aus dem multipolaren Charakter der meisten Regelungskonflikte. Ihrem gedanklichen Ursprung nach sind die Grundrechte bipolar gedacht. Der Staat greift von hoher Hand auf Freiheit oder Eigentum der Bürger zu. Unter Berufung auf seine Grundrechte weist der Bürger den Staat in seine Schranken. Solche Konflikte gibt es nach wie vor. Ein pressenspezifisches Beispiel ist der Versuch der Strafgerichte, einen Journalisten zur Offenbarung seines Informanten zu zwingen¹⁰. Die meisten presserechtlichen Normen regeln aber Konflikte zwischen der Presse und anderen Individuen. Ein Standardbeispiel ist der Persönlichkeitsschutz¹¹. Diese Normen bleiben natürlich Staatsakte. Wenn der Staat einseitig den Dritten schützt, ohne die legitimen Interessen der Presse zu achten, kann sich die Presse dagegen

⁸ Näher unten IV 1 c).

⁷ Einzelheiten sogleich II.3. S. auch die Überblicksdarstellungen bei *Edgar Kull*: Das Europäische Recht und die Presse, in: AfP 1993, 430-435; *Christoph Engel/Sebastian Seelmann-Eggebert*: Kommunikation und Medien, in: *Manfred H. Dausen*: Handbuch des EU-Wirtschaftsrechts E.V (2. Auflage 1999) R 119-123; *Michael Schmittmann/Inge de Vries/Mariella von Loesch*: Die europäische audiovisuelle Politik. Ein Überblick zum Jahresbeginn 2000, in: AfP 2000, 37-56.

¹⁰ Näher unten II 2 h) und IV 1 e) sowie IV 2 a).

⁹ Näher unten II 3 b) sowie IV 4.

mit einem Grundrecht wehren, das als Abwehrrecht ausgestaltet ist¹². Der multipolare Charakter des zugrundeliegenden Konflikts wirkt sich dann dogmatisch auf die Bestimmung des legitimen Ziels und auf die Höhe des Schutzniveaus aus¹³. Oft können die Dritten dieselbe Norm aber auch als Eingriff in ihren grundrechtlich geschützten Freiheitsbereich erfassen. So liegt es etwa, wenn der Katalog ein Grundrecht auf Schutz der Privatsphäre enthält¹⁴. Dann kommt es für die Presse grundrechtsdogmatisch zunächst einmal darauf an, daß ihre legitimen Belange auch Schranken der konkurrierenden Grundrechte darstellen. Noch anspruchsvoller wird es dogmatisch wie rechtspolitisch, wenn der Grundrechtskatalog nicht bloß Abwehrrechte enthält, sondern einzelnen oder allen Grundrechten auch andere Funktionen zuweist¹⁵.

Aus diesen Vorüberlegungen leitet sich der Gang der Untersuchung ab. Sie bestimmt zunächst den Schutzbedarf der Presse (II), die Effekte einer Grundrechtscharta auf das Institutionengefüge in der Gemeinschaft und im Verhältnis zu den Mitgliedstaaten (III). Aus beidem zieht sie grundrechtsdogmatische Folgerungen (IV) und bedenkt schließlich, wie die offenen Flanken geschlossen werden können, die danach für einen Schutz der Presse noch verbleiben (V).

II. Schutzbedarf

Die Presse ist kein Wirtschaftszweig wie jeder andere. Sie bedarf des intensiven verfassungsrechtlichen Schutzes, um ihre Funktion für ein demokratisches Gemeinwesen erfüllen zu können (1) Die Presse braucht den Schutz der Grundrechte zuerst und vor allem dort, wo der Gemeinschaftsgesetzgeber in der Vergangenheit bereits regulierend eingegriffen hat (2). Grundrechte werden aber nicht für den Tag geschrieben. Auch wenn die Gründungsverträge der Europäischen Union häufiger und fundamentaler geändert werden als nationale Verfassungen, ist doch nicht sehr wahrscheinlich, daß ein einmal verabschiedeter Grundrechtskatalog alsbald umgeschrieben würde. Der Grundrechtskatalog sollte deshalb so gefaßt sein, daß er der Presse auch bei künftigen Interventionen des europäischen Gesetzgebers Schutz bietet. Solche Interventionen sind naturgemäß nicht mit Sicherheit vorherzusehen. Drei europapolitische Linien lassen sich aber fortdenken. Der europäische Gesetzgeber könnte Presserecht mit dem Argument harmonisieren, das erleichtere den Marktzutritt ausländischer Anbieter. Die rechtsvergleichende Umschau im Presserecht der Mitgliedstaaten verschafft einen Eindruck von der Bandbreite möglicher harmonisierter Regeln (3). Der europäische Gesetzgeber könnte sich auch auf die Konvergenz zwischen Print-Medien und elektronischen Medien berufen. Mit diesem Argument könnte er Politiken auf die Presse erstrecken, die er für die elektronischen Medien entwickelt hat (4). Schließlich könnten andere Politikfelder der Gemeinschaft auf die Presse ausgedehnt werden (5).

Eine Klarstellung ist angezeigt: die folgenden Überlegungen enthalten weder eine rechtspolitische Empfehlung noch eine rechtsdogmatische Aussage zu den Kompetenzen der Gemeinschaft. Sie sagen weder, daß die Gemeinschaft in der beschriebenen Weise tätig werden sollte, noch daß sie es nach dem EG-Vertrag überhaupt dürfte. Vielmehr gehorcht dieser Abschnitt einem Vorsichtsprinzip. Die neuen Grundrechte sollten so ausgestaltet sein, daß sie gegen alle Interventionen schützen, die wenigstens vorstellbar erscheinen. Ganz kostenlos ist diese Vorsicht

¹² Näher unten IV 1 h).

¹³ Näher unten IV 1 i).

¹⁴ Näher unten IV 4.

¹⁵ Näher unten IV 1 k) und l).

nicht. Der Text der Grundrechtscharta mag noch so deutlich herausstellen, daß daraus keine zusätzlichen Kompetenzen der Gemeinschaft abgeleitet werden können¹⁶. Politisch wird unvermeidlich die Frage aufkommen, warum die Grundrechtscharta denn gegen ein Verhalten schützen sollte, zu dem die Gemeinschaft überhaupt nicht befugt ist. Trotzdem wäre es nicht klug, auf solche Sicherungen allein deshalb zu verzichten, damit dieses Argument nicht vorgebracht werden kann. Seit sie besteht, hat die Gemeinschaft ihren Zuständigkeitsbereich beständig zu Lasten der Mitgliedstaaten erweitert. Die Verankerung des Subsidiaritätsprinzips im EG-Vertrag hat diesen Prozeß nur verlangsamt und erschwert, aber nicht aufgehalten.

1. Die Aufgabe der Presse

Die Grundrechte schützen Freiheit um ihrer selbst willen. Grundrechtsschutz ist voraussetzungslos. Der Grundrechtsträger muß nicht darlegen, warum der Gebrauch seiner Freiheit Dritten oder der Allgemeinheit nützt. All das gilt auch für die Pressefreiheit.

Daß sich Unternehmen finden, die von dieser Freiheit Gebrauch machen, ist für ein demokratisches Gemeinwesen aber von schlechthin konstituierender Bedeutung. Die Volkssouveränität bleibt ein bloßes staatstheoretisches Konstrukt, wenn nicht Intermediäre dafür sorgen, daß die Inhaber politischer Macht wirklich als Regierung für das Volk handeln. Parteien und Medien teilen sich in diese Aufgabe. Die Parteien organisieren Macht und machen dadurch die Demokratie für ein Volk von 80 Millionen Menschen überhaupt erst möglich. Parteien müssen Interessen zu diesem Zweck jedoch bündeln und zwischen unterschiedlichen Ideen ausgleichen. Zwischen Wahlen und Abstimmungen handeln die von den Parteien getragenen Organe in einer repräsentativen Demokratie gerade unabhängig von der direkten Einwirkung des Volkes. Für die repräsentative Demokratie sprechen gute Gründe. Sie birgt jedoch ein doppeltes Risiko: die Mandatsträger können die Wünsche ihrer Wähler falsch wahrnehmen. Und sie können ihre Entscheidungsfreiheit mißbrauchen. Sie können etwa ihre persönliche Ideologie als den Wählerwillen ausgeben, dem Einfluß gut organisierter Interessen nachgeben oder den Erhalt der Macht über die Richtigkeit der Entscheidung in der Sache stellen.

Eine repräsentative Demokratie bedarf deshalb der Medien. Sie sind zunächst einmal das Sprachrohr der Bürger. Weil Medien Interessen nicht bündeln und zwischen Ideen nicht ausgleichen müssen, können sie den Wählerwillen viel differenzierter abbilden als die Parteien. Sie können neuen Strömungen viel früher ein Forum bieten als der Parteienwettbewerb. Außerdem sprechen die Bürger durch die Medien beständig, nicht nur am Wahltag und bei Abstimmungen. Zugleich wäre die Kontrolle der Regierenden ohne die Medien stumpf. Die Medien informieren die Bürger über das Handeln von Staat und Politik. Weil Information immer reicher zur Verfügung steht, wird das immer mehr eine Aufgabe der Selektion und der Organisation öffentlicher Aufmerksamkeit. Wenn die Medien einen Mißstand anprangern, ist das schließlich die wirksamste Form der Sanktion, die den Bürgern zu Gebote steht. Diese Sanktion ist sogar noch wirksamer als die Wahlentscheidung. Denn Wahlentscheidungen sind Entscheidungen für die Zukunft. Vergangene schlechte Arbeit ist nicht mehr als ein Indiz für die Qualität des Regierens in der nächsten Legislaturperiode. Vor allem entscheiden die Wähler aber nicht nur über die Qualität der Mandatsträger, sondern untrennbar zugleich auch über deren ideologische Orientierung. Letzteres ist ihnen meist wichtiger. Das Wächteramt liegt deshalb zentral bei den Medien.

¹⁶ Nach dem augenblicklichen Entwurf soll die Präambel oder der Art. 1 der Charta folgenden Satz 3 enthalten: „Die Charta begründet weder neue Aufgaben oder Zuständigkeiten noch erweitert sie die bestehenden Aufgaben oder Zuständigkeiten“ Dok. 4123/1/00 REV 1 vom 15.02.2000.

Diese Einsichten sind oft mißdeutet worden. Die Medienfreiheiten sind als bloße Instrumente interpretiert worden, das demokratische Ziel zu erreichen. Umgekehrt ist es richtig: nur wenn und weil die Medien frei sind, können sie die ihnen zugeordnete Aufgabe erfüllen. Die öffentliche Aufgabe der Medien ist nicht der Schutzzweck der Mediengrundrechte, sondern ein Reflex. Auch die Medien sind um ihrer selbst willen frei. Wenn sie es vorziehen, sich den Künsten, esoterischen Gedanken oder dem Unterhaltungsbedürfnis ihrer Rezipienten zu verschreiben, ist dagegen von Verfassungen wegen nichts zu erinnern. So sehr das deutschem Sicherheitsbedürfnis widerstrebt: die demokratische Funktion der Medien erhält der Staat nur dann, wenn er sie nicht befiehlt, sondern entstehen läßt. Die Geschichte zeigt, daß dem Staat dabei nicht bang zu sein braucht. Die Bürger wollen über politisches Handeln informiert werden und darauf durch die Medien Einfluß nehmen.

Auch wenn der Staat die demokratische Funktion der Medien nicht befehlen darf, so braucht er dieser ihm nützlichen Funktion gegenüber doch auch nicht blind zu sein. Je intensiver sich ein Medium aus eigener Entscheidung an dieser Aufgabe beteiligt, desto intensiveren Schutz verdient seine Freiheit vor staatlicher Intervention. Das hat für die Presse besondere Bedeutung. Denn weder Rundfunk noch Internet haben etwas daran geändert, daß die demokratische Funktion der Medien vor allem von der Presse wahrgenommen wird.

2. Gegenwärtige und vergangene Konflikte

In den vergangenen Jahrzehnten hat es manches Scharmützel zwischen der Presse und dem Europäischen Gesetzgeber gegeben. Regelmäßig haben die Kontrahenten ihre Kräfte nicht nur in der politischen Arena gemessen, sondern auch ihre Juristen gegeneinander aufgefahren. Der Europäische Gerichtshof hat seit langem aus dem Vergleich der mitgliedstaatlichen Verfassungen europäische Grundrechte entwickelt¹⁷. Er hat sich dabei jedenfalls theoretisch auch auf die Europäische Menschenrechtskonvention gestützt¹⁸. Art. F II des Maastrichter Unionsvertrags hat diese Praxis des Gerichtshofs sanktioniert. Der Amsterdamer Vertrag hat diese Regel in Art. 6 II EUV übernommen. Die meisten Konflikte sind deshalb auch in der Vergangenheit schon als Grundrechtsfragen diskutiert worden. Entsprechend kurz können sie hier behandelt werden.

Folgende gesetzgeberische Aktivitäten der Gemeinschaft haben schon in der Vergangenheit zu Konflikten mit der Presse geführt: das Arbeitsrecht (a), Regeln über die Medienkonzentration (b), das Urheberrecht (c), der Datenschutz (d), das Werberecht (e), das Vertriebsrecht (f), Vorgaben für die nationale Presseförderung (g), die Anwendung des europäischen Kartellrechts (h) und schließlich die Frage des Informantenschutzes bei der Anwendung von europäischem Verwaltungsrecht (i).

a) Pressearbeitsrecht

Zu den Kernelementen des deutschen Pressearbeitsrechts gehört der Tendenzschutz. Weder die unternehmerische noch die betriebliche Mitbestimmung darf das Recht des Verlegers beeinträchtigen, die Ausrichtung der Zeitung oder Zeitschrift zu bestimmen¹⁹. Auf Drängen der deutschen Verleger enthält auch die Richtlinie über die Einsetzung eines Europäischen Betriebsrats

¹⁷ Umfassend *Hans-Werner Rengeling*: Grundrechtsschutz in der europäischen Gemeinschaft. Bestandsaufnahme und Analyse der Rechtsprechung des Europäischen Gerichtshofes zum Schutz der Grundrechte als allgemeine Rechtsgrundsätze, München 1993.

¹⁸ – es allerdings beharrlich unterlassen, auch die ausgefeilte Dogmatik der Straßburger Organe zu rezipieren –

¹⁹ S. nur BVerfGE 20, 162, 175; BVerfG AfP 1980, 33.

einen Vorbehalt, der es den Mitgliedstaaten erlaubt, an dem bisherigen Tendenzschutz festzuhalten²⁰. Auch die Arbeitsschutzrichtlinie der Gemeinschaft verweist wegen des Tendenzschutzes auf die jeweiligen nationalen Regeln²¹.

Auch die bis heute ergebnislosen Bemühungen der EG-Kommission um europäische Regeln über die Medienkonzentration haben eine arbeitsrechtliche Dimension. In seinen Entschlüssen aus den Jahren 1990 und 1992 wollte das Europäische Parlament die sog. „Innere Pressefreiheit“ verwirklichen. Es wollte also den Journalisten vom Verleger nicht kontrollierte publizistische Freiräume einräumen, die sie zur schleichenden Änderung der Ausrichtung hätten nutzen können²². Das Parlament greift damit einen Vorschlag aus der deutschen Diskussion der 70er Jahre auf, der sich damals nicht durchsetzen konnte, weil er gegen das Grundrecht der Pressefreiheit verstößt. Der europäische Vorschlag ist intensiv an den ungeschriebenen europäischen Grundrechten und an der Europäischen Menschenrechtskonvention gemessen worden²³.

b) Medienkonzentration

Die EG-Kommission hat zu den Vorreitern eines publizistisch konzipierten Rechts der Medienkonzentrationskontrolle gehört²⁴. Sie hat auch die deutsche Diskussion stark beeinflusst. Für den Rundfunk hat der Rundfunkstaatsvertrag das von der EG-Kommission favorisierte Zuschauermarktanteilsmodell verwirklicht²⁵. Auf europäischer Ebene ist es bislang dagegen zu keiner Regelung gekommen²⁶. Die Pläne der EG-Kommission waren von Anfang an ambitioniert.

²⁰ Art. 8 II Richtlinie 94/45 über die Einsetzung eines Europäischen Betriebsrates, ABl. 1994 L 254/84; zur Vorgeschichte *Kull* (FN 9) AfP 1993, 431 f.

²¹ Art. 11 II Richtlinie 89/391 über die Durchführung von Maßnahmen zur Verbesserung der Sicherheit und des Gesundheitsschutzes der Arbeitnehmer bei der Arbeit, ABl. 1989 L 183/1; zur Vorgeschichte *Kull* (FN 9) AfP 1993, 432 f. Dort auch zu der Auseinandersetzung über den Tendenzschutz im Statut der Societas Europea. Bekanntlich ist die einschlägige Richtlinie bis heute nicht verabschiedet.

²² Entschließung des Europäischen Parlaments zur Konzentration im Medienbereich vom 15.02.1990, ABl. 1990 C 68/137; Entschließung des Europäischen Parlaments zur Medienkonzentration und Meinungsvielfalt vom 16.09.1992, ABl. 1992 C 284/44; die einschlägigen Vorschriften sind auch abgedruckt bei *Michael Kloepfer*: „Innere Pressefreiheit“ und Tendenzschutz im Lichte des Artikels 10 der Europäischen Konvention zum Schutze der Menschenrechte und Grundfreiheiten (Schriften zum Europäischen Recht 27) Berlin 1996, 52-56.

²³ *Christoph Engel*: Einwirkungen des europäischen Menschenrechtsschutzes auf Meinungsäußerungsfreiheit und Pressefreiheit – insbes. auf die Einführung von Innerer Pressefreiheit, in: AfP 1994, 1-9; *Kloepfer* (vorige FN).

²⁴ Grünbuch Pluralismus und Medienkonzentration im Binnenmarkt – Bewertung der Notwendigkeit einer Gemeinschaftsaktion, KOM (92) 940 endg.

²⁵ §§ 25 – 37 RStV; zur Entstehungsgeschichte s. vor allem Die Sicherung der Meinungsvielfalt. Berichte, Gutachten und Vorschläge zur Fortentwicklung des Rechts der Medienkonzentrationskontrolle vom Herbst 1994 (Schriftenreihe der Landesmedienanstalten 4) Berlin 1995.

²⁶ *Schmittmann/de Vries/von Loesch* (FN 9) AfP 2000, 43.

Sie wollte sich nicht auf das Fernsehen beschränken, sondern ein medienübergreifendes Recht der Konzentrationskontrolle schaffen und dabei auch die Presse einbeziehen²⁷. Auch diese Frage hat zu einer intensiven grundrechtlichen Diskussion geführt²⁸.

c) Urheberrecht

Die Harmonisierung des Urheberrechts der Mitgliedstaaten hat erst relativ spät eingesetzt. Mittlerweile schreitet sie aber rasch voran²⁹. In der Vergangenheit hat es einmal einen Konflikt auf der Grenzlinie zwischen Arbeitsrecht und Urheberrecht gegeben. Die Verlage haben erreicht, daß die Möglichkeit erhalten bleibt, durch Manteltarifvertrag klarzustellen, daß ein Redakteur sein urheberrechtliches Nutzungsrecht durch Abschluß des Arbeitsvertrags auf den Verlag überträgt³⁰. Für die Zukunft dürften Konflikte vor allem bei der europäischen Ausgestaltung des Urheberrechts in der Informationsgesellschaft zu erwarten sein³¹. Ein Beispiel ist der in Deutschland bereits ausgebrochene Streit um elektronische Pressespiegel³².

d) Datenschutz

Das deutsche Bundesdatenschutzgesetz enthält seit jeher ein Medienprivileg³³. Die Medien sollen personenbezogene Daten sammeln dürfen, ohne daß der Betroffene zustimmen müßte, Löschung verlangen könnte oder vorab informiert werden müßte. Das soll ihnen erlauben, die Kritik von Politikern oder anderen Personen des öffentlichen Lebens sorgsam vorzubereiten. Der Betroffene soll sie nicht mit Hilfe des Datenschutzes daran hindern können. Außerdem dient das Medienprivileg dem Schutz der Presseinformanten. Die Datenschutzrichtlinie der EG enthält kein

²⁷ Vgl. auch die Resolution 1003 (1993) und die Empfehlung 1215 (1993 der Parlamentarischen Versammlung des Europarats sowie die Erwiderung des Ministerkommittees vom 24.03.1994). Näher *Dirk Uwer*: Medienkonzentration und Pluralismussicherung im Lichte des Europäischen Menschenrechts der Pressefreiheit (Berliner Juristische Universitätschriften Öffentliches Recht 10) Berlin 1998, 70-76.

²⁸ *Eckart Klein*: Einwirkungen des europäischen Menschenrechtsschutzes auf Meinungsäußerungsfreiheit und Pressefreiheit, in: AfP 1994, 9-18 (15 f.); *Thorsten Stein*: Pressefreiheit und EU-Recht, in: *Georg Röss/Thorsten Stein (Hrsg.)*: Die Pressefreiheit in Europa [unveröffentlichtes Manuskript]; *Georg Röss/Jürgen Bröhmer*: Europäische Gemeinschaft und Medienvielfalt. Die Kompetenzen der Europäischen Gemeinschaft zur Sicherung des Pluralismus im Medienbereich (Marburger Medienschriften 1) Frankfurt 1998, 72-78; *Uwer* (FN 27) 77-186 und 359-608, s. auch ebd. 187-358 zur Vergleichung der Verfassung der Mitgliedstaaten.

²⁹ Einen Überblick geben *Hanns Ullrich/Karlheinz Konrad*: Gewerblicher Rechtsschutz, in: *Manfred A. Dausen (Hrsg.)* Handbuch des EU-Wirtschaftsrechts C III (2. Auflage 2000) R 144-149.

³⁰ *Kull* (FN 9) AfP 1993, 433.

³¹ S. dazu Grünbuch der Kommission über das Urheberrecht und verwandte Schutzrechte in der Informationsgesellschaft, KOM (95) 382 sowie den Richtlinienvorschlag ABl. 1998 C 108/6.

³² *Georg Wallraf*: Elektronische Pressespiegel aus der Sicht der Verlage, in: AfP 2000, 23-29.

³³ § 41 Bundesdatenschutzgesetz.

vergleichbares Privileg³⁴. Obwohl die Umsetzungsfrist seit langem abgelaufen ist³⁵, ist die Richtlinie bislang nicht in deutsches Recht umgesetzt³⁶. Dafür ist auch das Problem des Mediendatenschutzes verantwortlich³⁷.

e) Werberecht

Eine *cause célèbre* des europäischen Grundrechtsschutzes der Presse ist das vollständige Verbot der Werbung für Tabak, das die Union verhängt hat³⁸. Es hat eine ganze Flut grundrechtlicher Untersuchungen ausgelöst³⁹. Gegen die Richtlinie schwebt eine Klage der Bundesrepublik Deutschland vor dem Europäischen Gerichtshof⁴⁰. Zwei englische Gerichte haben Vorabentscheidungsersuchen an den Gerichtshof gerichtet⁴¹. Schließlich haben Medienunternehmen Klage vor dem Gericht Erster Instanz erhoben⁴².

Die rechtspolitischen Vorstellungen der Mitgliedstaaten über Grenzen für die Zulässigkeit von Werbung weichen stark von einander ab⁴³. Gleichwohl hat die Gemeinschaft bislang nur ein kleines Segment des Werberechts harmonisiert: die irreführende Werbung⁴⁴, wozu eine Änderungsrichtlinie nun auch die vergleichende Werbung rechnet⁴⁵. Zunächst sah es so aus, als würde die

³⁴ ABl. 1995 L 281/31; zur Vorgeschichte *Kull* (FN 9) AfP 1993, 432.

³⁵ Seit dem 24.10.1998.

³⁶ Eine Ausnahme machen nur §§ 47–47 f RStV.

³⁷ Die Frage hat den Studienkreis Presserecht und Pressefreiheit auf seiner Sitzung im Mai 2000 beschäftigt. Es haben referiert: *Michael Kloepfer*: Datenschutz statt Medienfreiheit? – Medienfreiheit statt Datenschutz?; *Spiros Simitis*: Sonderregeln für die Medien – das „widerspenstige Pferd“ des Datenschutzes.

³⁸ RL 98/43/EG des Europäischen Parlaments und des Rates zur Angleichung der Rechts- und Verwaltungsvorschriften der Mitgliedstaaten über Werbung und Sponsoring zugunsten von Tabakerzeugnissen vom 06.07.1998, ABl. 1998 L 213/9.

³⁹ S. insbes. *Peter J. Tettinger*: EG-rechtliche Verbote von Werbung und Sponsoring bei Tabakerzeugnissen und deutsches Verfassungsrecht, Bonn 1998; *Udo Di Fabio*: Werbeverbote – Bewährungsprobe für europäische Grundfreiheiten und Grundrechte, in AfP 1998, 564-570; *Thomas von Danwitz*: Produktwerbung in der Europäischen Union zwischen gemeinschaftlichen Kompetenzschränken und europäischem Grundrechtsschutz. Zum Rechtsschutz gegen das vorgeschlagene Verbot direkter und indirekter Tabakwerbung in Europa (Schriften zum europäischen Recht 47) Berlin 1998; *Bruno Simma/J.H.H. Weiler/Markus C. Zökler*: Kompetenzen und Grundrechte. Beschränkungen der Tabakwerbung aus der Sicht des Europarechts (Schriften zum europäischen Recht 59) Berlin 1999; *Hans-Peter Schneider/Thorsten Stein*: The European Ban on Tobacco Advertising 1999.

⁴⁰ Rs. C-376/98.

⁴¹ Rs. C-47/99; Rs. C-243/99.

⁴² Rs. T-172/98, T-175/98, T-176/98 und T-177/98, alle Nachweise nach *Schmittmann/de Vries/von Loesch* AfP 2000, 55.

⁴³ Umfassend *Peter Schotthöfer* (Hrsg.): Handbuch des Werberechts in den EU-Staaten, Köln² 1997.

⁴⁴ RL 84/450/EWG zur Angleichung der Rechts- und Verwaltungsvorschriften der Mitgliedstaaten über irreführende Werbung, ABl. 1984 L 250/17.

⁴⁵ ABl. 1997 L 290/23.

Warenverkehrsfreiheit die restriktiven Werberechte, allen voran also das deutsche Lauterkeitsrecht, erschüttern können⁴⁶. In der berühmten Keck-Entscheidung hat der Gerichtshof nicht diskriminierende Verkaufsmodalitäten aber bekanntlich aus dem Schutzbereich der Warenverkehrsfreiheit ausgenommen⁴⁷. Das geschah gerade, um den Mitgliedstaaten bei der Ausgestaltung des Lauterkeitsrechts größere Freiräume zu belassen. Dieser Umstand ist dafür verantwortlich, daß die Diskussion über die Vereinbarkeit von Werbebeschränkungen mit Grundrechten nunmehr an den Straßburger Gerichtshof abgewandert ist⁴⁸.

f) Vertriebsrecht

Die EG hat ihre Rechtsangleichungszuständigkeiten seit langem für den Verbraucherschutz genutzt. Seit dem Maastrichter Vertrag hat sie auch eine originäre Verbraucherschutzzuständigkeit⁴⁹. In Ausnutzung dieser Zuständigkeiten hat die Gemeinschaft Richtlinien erlassen, die auch für den Vertrieb von Zeitungs- und Zeitschriftenabonnements Bedeutung haben. Das gilt vor allem für die Richtlinie über Haustürgeschäfte⁵⁰, aber auch für die AGB-Richtlinie⁵¹. Auch das Primärrecht wirkt auf den Pressevertrieb ein. So hat der Gerichtshof entschieden, daß das österreichische Verbot von Preisausschreiben in Zeitschriften gegen die Warenverkehrsfreiheit verstößt⁵².

g) Nationale Presseförderung

Alle Mitgliedstaaten haben mehr oder minder weitreichende Instrumente zur Förderung der Presse. Weitverbreitet sind Mehrwertsteuerprivilegien. In Deutschland fällt etwa nur der Mehrwertsteuersatz von 7 % an, im Vereinigten Königreich⁵³ und in Finnland⁵⁴ sind Presseerzeugnisse sogar ganz von der Umsatzsteuer befreit. Das ist nur solange möglich, wie die einschlägige europäische Richtlinie Steuerbefreiungen zuläßt⁵⁵. Traditionell förderten die

⁴⁶ EuGH 10.07.1980, Rs. 152/78, Slg. 2299; 07.03.1990, Rs. C-362/88, Slg. I 667 - GB-Inno; EuGH 25.07.1991, Rs. C-1/90, Slg. I 4151 - Aragonosa.

⁴⁷ EuGH 24.11.1993, Rs. 267 und 268/91, Slg. I 1993, 6097 – Keck und Mithouard.

⁴⁸ Dazu näher *Georg Nolte*: Werbefreiheit und Europäische Menschenrechtskonvention, in: *RabelsZ* 63 (1999) 507-519; *Rainer Kulms*: Werbung: Geschützte Meinungsäußerung oder unlauterer Wettbewerb? Zum Verhältnis von Art. 10 EMRK und UWG, in: *RabelsZ* 63 (1999) 520-536.

⁴⁹ Nunmehr enthalten in Art. 153 EGV.

⁵⁰ RL 85/577/EWG betreffend den Verbraucherschutz im Falle von außerhalb von Geschäftsräumen geschlossenen Verträgen, ABl. 1985 L 372/31.

⁵¹ RL 93/13/EWG über mißbräuchliche Klauseln in Verbraucherverträgen, ABl. 1993 L 95/29.

⁵² EuGH 26.06.1997, Rs. 368/95, Slg. I 3689 – Vereinigte Familiapress.

⁵³ *Colin Munro*: Freedom of the Press in the United Kingdom, in: *Georg Röss/Thorsten Stein (Hrsg.)*: Pressefreiheit und der Stand des Presserechts in Europa [unveröffentlichtes Manuskript] 13.

⁵⁴ *Tore Modén*: Landesbericht Finnland, in *Georg Röss/Thorsten Stein (Hrsg.)*: Pressefreiheit und der Stand des Presserechts in Europa [unveröffentlichtes Manuskript] 13.

⁵⁵ S. Art. 13 Sechste Richtlinie 77/377/EWG zur Harmonisierung der Rechtsvorschriften der Mitgliedstaaten über die Umsatzsteuern – gemeinsames Mehrwertsteuersystem: Einheitliche steuerpflichtige Bemessungsgrundlage, ABl. 1977 L 145/1 in der jeweils geltenden Fassung.

Mitgliedstaaten die Presse häufiger auch durch Vorzugskonditionen für den Postzeitungsdienst⁵⁶. Mittlerweile hat die Gemeinschaft jedoch die Privatisierung und Deregulierung der Postunternehmen erzwungen⁵⁷. Die einschlägige Richtlinie gibt den Mitgliedstaaten zwar die Möglichkeit, einen Universaldienst vorzuschreiben⁵⁸. Ein besonderer Postzeitungsdienst ist dort aber nicht genannt⁵⁹.

Andere Mitgliedstaaten fördern die Presse durch weit überhöhte Zahlungen für den Abdruck öffentlicher Bekanntmachungen⁶⁰. Solche Praktiken müssen sich an den harmonisierten europäischen Regeln für die Vergabe öffentlicher Aufträge messen lassen⁶¹. Denn harmonisiert ist auch die Vergabe öffentlicher Dienstleistungsaufträge⁶².

Andere Mitgliedstaaten fördern die Presse offen und mit erheblichen Summen aus dem öffentlichen Haushalt. So liegt es insbesondere in Frankreich⁶³, in Italien⁶⁴ und in Österreich⁶⁵. Finnland nutzt Zahlungen an die Parteipresse als ein Instrument der indirekten Parteifinanzierung⁶⁶. Schweden erhält regionale und lokale Zweitzeitungen durch öffentliche Subventionen am Leben⁶⁷. Traditionell hat sich die Kommission bei der Anwendung der europäischen Beihilferegeln auf Maßnahmen zur Förderung von Kultur und Publizistik sehr zurückgehalten. Beim Rundfunk hat sich das bekanntlich aber geändert⁶⁸. Unter dem Einfluß des Gerichts Erster Instanz könnte auch die Beihilfeaufsicht

⁵⁶ Das ist nicht nur in Deutschland so, sondern etwa auch in Frankreich (*Christian Autexier*: Landesbericht Frankreich, in: *Georg Röss/Thorsten Stein (Hrsg.)*: Pressefreiheit und der Stand des Presserechts in Europa [unveröffentlichtes Manuskript] 70 f.) und in Luxemburg (*Luc Weitzel*: Liberté de la Presse en Luxembourg, in: *Georg Röss/Thorsten Stein (Hrsg.)*: Pressefreiheit und der Stand des Presserechts in Europa [unveröffentlichtes Manuskript] 55).

⁵⁷ Einzelheiten bei *Engel/Seelmann-Eggebert* in *Dausen* (FN 9) R 130-137.

⁵⁸ Art. 3-6 RL 97/67/EG des Europäischen Parlaments und des Rates über gemeinsame Vorschriften für die Entwicklung des Binnenmarktes der Postdienste der Gemeinschaft und die Verbesserung der Dienstqualität, ABl. 1998 L 15/14.

⁵⁹ Helfen könnte höchstens die 15. Erwägung. Danach bleibt das Recht der Betreiber von Universaldiensten unberührt, Verträge mit den Kunden individuell auszuhandeln.

⁶⁰ So ist das etwa in Luxemburg (*Weitzel* [FN 56] 55); in Griechenland (*Prodomos Dagtoglou*: Pressefreiheit in Griechenland, in: *Georg Röss/Thorsten Stein (Hrsg.)*: Pressefreiheit und der Stand des Presserechts in Europa [unveröffentlichtes Manuskript] 25 sowie in Spanien (*Alejandro Munoz Alonso*: Press Freedom in Spanish Law, in: *Georg Röss/Thorsten Stein (Hrsg.)*: Pressefreiheit und der Stand des Presserechts in Europa [unveröffentlichtes Manuskript] 19).

⁶¹ Zusammenfassend *Ingelore Seidel*: Öffentliches Auftragswesen, in: *Manfred A. Dausen (Hrsg.)* Handbuch des EU-Wirtschaftsrechts H. IV.

⁶² RL 92/50/EWG des Rates über die Koordinierung der Verfahren zur Vergabe öffentlicher Dienstleistungsaufträge, ABl. 1992 L 209/1.

⁶³ *Autexier* in *Röss/Stein* (FN 28) 52-55.

⁶⁴ *Vincenzo Atripaldi*: Freedom of Press in Italy, in: *Georg Röss/Thorsten Stein (Hrsg.)*: Pressefreiheit und der Stand des Presserechts in Europa [unveröffentlichtes Manuskript] 49-55.

⁶⁵ *Heinz-Peter Rill*: Landesbericht Österreich, in: *Georg Röss/Thorsten Stein (Hrsg.)*: Pressefreiheit und der Stand des Presserechts in Europa [unveröffentlichtes Manuskript] 66-77.

⁶⁶ *Moden* in *Röss/Stein* (FN 54) 13.

⁶⁷ *Erik Holmberg*: Freedom of the Press in Sweden, in: *Georg Röss/Thorsten Stein (Hrsg.)*: Pressefreiheit und der Stand des Presserechts in Europa [unveröffentlichtes Manuskript] 27.

⁶⁸ Einzelheiten bei *Engel/Seelmann-Eggebert* in *Dausen* (FN 9) R 113.

über die Presse zunehmen. Das Gericht hat die Kommission schon gezwungen, die französische Praxis der Exportsubventionen für Bücher der Beihilfekontrolle zu unterwerfen⁶⁹.

h) Europäisches Kartellrecht

Auch die Anwendung des europäischen Kartellrechts führt immer wieder zu Konflikten mit Verlagen und der nationalen Pressepolitik. Das Gemeinschaftsrecht läßt selektive Vertriebsbindungen zwar grundsätzlich zu, achtet jedoch darauf, daß sie nicht diskriminierend ausgestaltet werden⁷⁰. Auch gegenüber der Preisbindung zweiter Hand ist die Kommission kritisch⁷¹. Zusammenschlüsse von Verlagshäusern hatte die Kommission bisher selten zu prüfen. In den untersuchten Fällen hatte sie keine Einwendungen⁷². Deshalb ist auch noch nicht abschließend geklärt, welche Freiräume der Medienvorbehalt in § 21 III Fusionskontrollverordnung den Mitgliedstaaten verschafft⁷³.

i) Informantenschutz und Europäisches Verwaltungsrecht

Das Europäische Verwaltungsrecht setzt die Akzente anders als das deutsche. Das Interesse am wirksamen Vollzug des öffentlichen Anliegens setzt sich viel häufiger gegen rechtsstaatliche Bedenken durch als im deutschen Recht⁷⁴. Dazu gehört auch, daß die Gemeinschaft umfangreiche Ermittlungsbefugnisse in Anspruch nimmt⁷⁵. Das macht wahrscheinlich, daß die Gemeinschaft auch geneigt wäre, den Schutz von Presseinformanten zurückzustellen. Das Spannungsverhältnis zwischen Verwaltungseffizienz und dem Bestreben des Europarats nach mehr Informantenschutz ist also noch nicht ausgestanden⁷⁶.

3. Mögliche Konflikte aus der Erleichterung des Marktzutritts für ausländische Anbieter

Niemand kann Sicherheit über die künftige Entwicklung des Gemeinschaftsrechts und der Gemeinschaftspolitik haben. Gleichwohl macht es Sinn, Entwicklungstrends des Gemeinschaftsrechts fortzudenken. Nach wie vor ist die Europäische Gemeinschaft vor allem eine Wirtschaftsgemeinschaft, gerichtet auf die Schaffung und Sicherung eines Binnenmarkts. Bislang hat die Gemeinschaft daraus nicht die Folgerung einer eigenen Pressepolitik gezogen. Das lag gleich aus zwei Gründen nahe: die meisten Mitgliedstaaten halten sich traditionell bei der Regulierung der Presse sehr zurück, es gibt also wenig Handelshemmnisse. Überdies werden Presseerzeugnisse nur in kleinen Stückzahlen über die Landesgrenzen hinaus gehandelt. Denn die

⁶⁹ EuG 18.09.1995, Rs. 49/95, Slg. 1995 II 2501 - SIDE.

⁷⁰ EuGH 03.07.1985, Rs. 243/83, Slg. I 1985, 2015, 2043 f. und 2046 - Binon; EuGH 26.11.1998, Rs. C-7/97, 7791; s. auch *Engel/Seelmann-Eggebert* in *Dausen* (FN 9) R 120.

⁷¹ Einzelheiten bei *Engel/Seelmann-Eggebert* in *Dausen* (FN 9) R 121 und *Schmittmann/de Vries/von Loesch* (FN 9) AfP 2000, 40.

⁷² WuW/E EV 2185 - News Paper Publishing; ABl. 1995 C 292/9; 1995 C 338/3.

⁷³ Einzelheiten bei *Engel/Seelmann-Eggebert* in *Dausen* (FN 9) R 102.

⁷⁴ S. aus der umfangreichen Literatur *Christoph Engel*: Die Einwirkungen des europäischen Gemeinschaftsrechts auf das deutsche Verwaltungsrecht, in: *Die Verwaltung 1992*, 437-476; *Hans-Werner Rengeling*: Deutsches und Europäisches Verwaltungsrecht - wechselseitige Einwirkungen, in: *VVDStRL 53* (1993) 202-239; *Stephan Kadelbach*: Allgemeines Verwaltungsrecht unter Europäischem Einfluß (Jus Publicum 36) Tübingen 1999.

⁷⁵ Die Grenzen waren Gegenstand von EuGH 21.09.1989, Rs. 46/87, Slg. 1989, 2859 - Hoechst.

⁷⁶ EGMR 27.03.1996, Reports 1996 II – Goodwin; Council of Europe Recommendation R (2000) 7 on Legal Protection of Journalist's Sources vom 08.03.2000.

Presse ist an die Sprach- und Mentalitätsgrenzen gebunden und schreibt in der Regel für ein nationales (oder sogar regionales oder lokales) Publikum. Vorsorglich soll gleichwohl unterstellt werden, daß die Gemeinschaft künftig tätig würde, um die Märkte stärker für den Zutritt ausländischer Anbieter zu öffnen (a). Nach dem Vorbild der Europäischen Fernsehrichtlinie könnte sie sich auch veranlaßt sehen, die nationalen Regeln für die Presseinhalte zu harmonisieren (b), das Vertriebsrecht zu vereinheitlichen (c) oder gar in die nationalen Verfassungspolitiken der Medien einzugreifen (d). Schließlich könnte die Gemeinschaft an den Unterschieden zwischen den Regulierungsinstitutionen der Mitgliedstaaten ansetzen (e).

a) Marktöffnung

Offen diskriminierende Regeln für den Marktzutritt ausländischer Anbieter sind so zweifelsfrei gemeinschaftsrechtswidrig, daß die Mitgliedstaaten darauf normalerweise von selbst verzichten. Immerhin sah das portugiesische Recht aber vor, daß nicht mehr als 10 % des Eigentums an einem portugiesischem Verlag in ausländischer Hand liegen dürfen und daß das Unternehmen seinen Sitz im Lande haben muß⁷⁷. Auch zeigt die Pressegesetzgebung der Beitrittsstaaten in der Mitte Europas, daß die liberale westeuropäische Tradition des Presserechts dort nicht gleichermaßen selbstverständlich ist. So hat das tschechische Pressegesetz erst unter fühlbarer Einwirkung des Europarats eine Fassung gefunden, die im wesentlichen den westeuropäischen Standards genügt⁷⁸.

b) Harmonisierung der Inhalte

Das zentrale Anliegen der Fernsehrichtlinie ist die Harmonisierung der Vorgaben für den Inhalt von Fernsehprogrammen⁷⁹. Die nationalen Vorgaben für den Inhalt von Presseerzeugnissen sind nicht weniger unterschiedlich. Das gilt etwa für den Persönlichkeitsschutz⁸⁰ und das Recht der Gegendarstellung⁸¹. Deutschland hat aufgrund seiner Geschichte nationalsozialistische Propaganda unter Strafe gestellt⁸². Irland begründet sein Verbot der Werbung für Schwangerschaftsabbrüche mit seinem katholischen Hintergrund⁸³. Das englische Recht faßt die strafrechtlich- und zivilrechtlich

⁷⁷ Manuel Antonio Lopez Rocha: Liberté de la Presse en Portugal, in: Georg Röss/ Thorsten Stein (Hrsg.): Pressefreiheit und der Stand des Presserechts in Europa [unveröffentlichtes Manuskript] 15 f.

⁷⁸ Gesetz 64/2000 vom 22.02.2000 über einige Rechten und Pflichten beim Herausgeben der periodischen Presse und über die Änderung von einigen weiteren Gesetzen.

⁷⁹ RL 89/552/EWG des Rates zur Koordinierung bestimmter Rechts- und Verwaltungsvorschriften der Mitgliedstaaten über die Ausübung der Fernsehtätigkeit vom 03.10.1989, ABl. 1989 L 298/23 in der Fassung der Änderungsrichtlinie 97/36/EG des Europäischen Parlaments und des Rates vom 30.06.1997, ABl. 1997 L 202/60.

⁸⁰ Einzelheiten bei Jürgen von Gerlach: Der Schutz der Privatsphäre von Personen des öffentlichen Lebens in rechtsvergleichender Sicht, in: JZ 1998, 741-753; die Unterschiede spiegeln sich auch in der Rechtsprechung der Straßburger Organe, dazu zusammenfassend Thomas Giegerich: Schutz der Persönlichkeit und Medienfreiheit nach Artt. 8, 10 EMRK im Vergleich mit dem Grundgesetz, in: RabelsZ 63 (1999) 471-506.

⁸¹ S. beispielhaft das von § 11 des tschechischen Privatrechtsgesetzes eingeführte zusätzliche Recht eines Angeklagten auf eine nachträgliche Mitteilung. Wenn über ein Strafverfahren berichtet worden war, dieses Verfahren aber nicht mit einem rechtskräftigen Urteil endet, kann der Betroffene solch eine Mitteilung verlangen.

⁸² §§ 86, 86 a, 130 III StGB; s. dazu auch BVerfGE 7, 198, 209 f.; 90, 241, 252.

⁸³ Näher EGMR 29.10.1992, Ser. A 246 – Open Door and Dublin Well Woman.

geschützten Staatsgeheimnisse sehr weit⁸⁴. Die Parlamentsberichterstattung bindet es an die strengen Regeln über Contempt of Parliament⁸⁵, die Gerichtsberichterstattung an die ebenso strengen Regeln über Contempt of Court⁸⁶.

c) Harmonisierung des Werbe- und Vertriebsrechts

Weniger weit streuen die Regeln der Mitgliedstaaten über den Absatz der publizistischen Leistung an Werbetreibende und Zeitungsleser. So kennt Frankreich etwa restriktive Regeln über Product Placement⁸⁷. Im niederländischen Recht sind die Regeln für ideelle Werbung viel strenger als für kommerzielle⁸⁸. Das dänische Recht unterwirft alle Verleger einem allgemeinen Kontrahierungszwang gegenüber Anzeigenkunden⁸⁹. Das französische Recht zwingt die Verleger, alle Rabatte offenzulegen, die sie einzelnen Werbekunden gewährt haben⁹⁰. Media Agenturen müssen dort die ihnen gewährten Provisionen den Werbetreibenden gegenüber offenlegen⁹¹.

Auch beim Vertrieb gegenüber den Lesern gibt es manche Unterschiede. So dürfen Presseverkäufer in Frankreich ihre Vergütung mit dem Verlag nicht frei aushandeln⁹². Das deutsche und das österreichische Lauterkeitsrecht ziehen den Marketingstrategien der Verlage enge Grenzen⁹³.

d) Harmonisierung nationaler Verfassungspolitik der Medien

Die Presse erfüllt nicht nur ein Informations- und Unterhaltungsbedürfnis ihrer Leser, sondern sie ist zugleich auch ein Intermediär zwischen Staat und Gesellschaft. Nur auf diesem hohen Abstraktionsniveau besteht aber Einigkeit zwischen den Mitgliedstaaten. In der Ausgestaltung sind die Unterschiede groß. So nutzt Italien die Pressefinanzierung etwa als Vorwand für die Parteienfinanzierung⁹⁴. Auch in Schweden haben Parteizeitungen einen großen Marktanteil⁹⁵.

⁸⁴ Illustrativ ist der Fall Spycatcher, EGMR 26.11.1991, Ser. A 216, 1 – Observer and Guardian; EGMR 26.11.1991, Ser. A 217, 1 – Sunday Times II; weitere Einzelheiten bei *Birgit Brömmekamp*: Die Pressefreiheit und ihre Grenzen in England und der Bundesrepublik Deutschland. Eine vergleichende Darstellung in verfassungsrechtlicher, zivilrechtlicher, strafrechtlicher und tatsächlicher Hinsicht (Europäische Hochschulschriften II/2142) Frankfurt 1997, 149-167.

⁸⁵ *Brömmekamp* (vorige FN) 184-189.

⁸⁶ Ebd. 190-235; zur Reaktion der Europäischen Menschenrechtskonvention s. auch *Christoph Engel*: Privater Rundfunk vor der Europäischen Menschenrechtskonvention (Law and Economics of International Telecommunications 19) Baden-Baden 1993, 306 f.

⁸⁷ *Autexier* in *Ress/Stein* (FN 28) 14.

⁸⁸ *N.H. Neerscholten*: Freedom of the Press in the Netherlands, in: *Georg Röss/Thorsten Stein* (Hrsg.): Pressefreiheit und der Stand des Presserechts in Europa [unveröffentlichtes Manuskript] 38.

⁸⁹ *Rainer Hofmann*: Pressefreiheit und der Stand des Presserechts in Europa. Landesbericht Dänemark, in: *Georg Röss/Thorsten Stein* (Hrsg.): Pressefreiheit und der Stand des Presserechts in Europa [unveröffentlichtes Manuskript] 20.

⁹⁰ *Autexier* in *Ress/Stein* (FN 28) 62.

⁹¹ Ebd. 63.

⁹² Ebd. 56.

⁹³ Das österreichische Recht verbietet etwa die vergleichende Werbung, die Spitzenstellungswerbung und erlaubt Zugaben sowie Gewinnspiele nur in engen Grenzen, Einzelheiten bei *Rill* in *Ress/Stein* (FN 65) 80-86.

⁹⁴ *Atripaldi* in *Ress/Stein* (FN 64) 50.

⁹⁵ Einzelheiten bei *Holmberg* in *Ress/Stein* (FN 67) 22 f.

Schweden legt zugleich großen Wert auf die Überwachungsfunktion der Presse. Deshalb hat jeder öffentliche Bedienstete das Recht, die Presse zu informieren, wenn er einen Mißstand vermutet. Sein Dienstherr darf daraus keine nachteiligen Folgerungen ziehen. Der Informant darf auch anonym bleiben⁹⁶. Hierher gehören aber vor allem die sehr unterschiedlichen Auffassungen der Mitgliedstaaten über die Transparenz der Eigentumsverhältnisse an Verlagen. Frankreich hat strenge Regeln⁹⁷. Griechenland verpflichtet die Verleger sogar, jährlich ihre Vermögensverhältnisse offenzulegen⁹⁸ und läßt als flankierenden Schutz bei einer Presseaktiengesellschaft nur Namensaktien zu⁹⁹. Portugal¹⁰⁰, Italien¹⁰¹ und Griechenland haben einschlägige Vorschriften in ihre Verfassungen aufgenommen¹⁰². Das deutsche Recht kennt bekanntlich keine dieser Vorschriften.

e) Angleichung der Regulierungsinstitutionen

Schließlich unterscheiden sich auch die Institutionen erheblich, denen die Mitgliedstaaten die Bildung und Anwendung des Presserechts übertragen haben. Das gilt insbesondere für Ausmaß und Befugnisse der Selbstkontrolle. In Schweden hat sie eine lange Tradition¹⁰³. Dänemark vertraut dem Selbstkontrollorgan sogar die Entscheidung von Streitigkeiten zwischen Chefredakteur und Journalisten an¹⁰⁴. In den Niederlanden ist es zum Streit darüber gekommen, ob der Presserat überhaupt strengere Maßstäbe anlegen darf als das Gesetz¹⁰⁵. In England hat die Selbstkontrolle der Presse dagegen nach wie vor eine eher schwache Stellung¹⁰⁶. In Frankreich gibt es gar keine Einrichtung nach der Art des Deutschen Presserats¹⁰⁷.

Manche Mitgliedstaaten haben auch halbstaatliche Regulierungsinstitutionen geschaffen. So hat Italien 1990 einen unabhängigen Kommissar bestellt¹⁰⁸. Und das schwedische Recht hat Entscheidungen über den Ehrschutz einer Jury vorbehalten¹⁰⁹.

4. Mögliche künftige Konflikte aus der Ausstrahlung anderer Medienpolitiken

Der letzte Abschnitt hat Unterschiede zwischen dem Presserecht der Mitgliedstaaten zusammengetragen. Diese Unterschiede mag die Kommission eines Tages als Hemmnisse für einen europäischen Pressemarkt interpretieren und deshalb Harmonisierungsvorschläge machen. Sie müßte dann aber von ihrer bisherigen Überzeugung abgehen, eine europäische Pressepolitik sei nicht erforderlich. Zudem bräuchte sie eine Gesetzgebungskompetenz. Sehr viel wahrscheinlicher ist ein europäisches Presserecht dort, wo die Presse mit anderen Medien verschmilzt. Dazu kommt es vor allem durch die elektronische Erfassung der Inhalte, ihre Digitalisierung und den Vertrieb

⁹⁶ *Holmberg in Ress/Stein* (FN 67) 9 f.

⁹⁷ *Autexier in Ress/Stein* (FN 28) 47.

⁹⁸ *Dagtolou in Ress/Stein* (FN 60) 4.

⁹⁹ Ebd.

¹⁰⁰ *Lopez Rocha in Ress/Stein* (FN 77) 2.

¹⁰¹ *Atripaldi in Ress/Stein* (FN 64) 1.

¹⁰² *Dagtolou in Ress/Stein* (FN 6028) 2.

¹⁰³ *Holmberg in Ress/Stein* (FN 67) 20 f.

¹⁰⁴ *Hofmann in Ress/Stein* (FN 89) 9, s. auch 15-18.

¹⁰⁵ Einzelheiten bei *Neerscholten in Ress/Stein* (FN 88) 25.

¹⁰⁶ *Colin Munro in Ress/Stein* (FN 53) 27-31.

¹⁰⁷ *Autexier in Ress/Stein* (FN 28) 41.

¹⁰⁸ Einzelheiten bei *Atripaldi in Ress/Stein* (FN 64) 45-48.

¹⁰⁹ *Holmberg in Ress/Stein* (FN 67) 19.

über elektronische Netze¹¹⁰. Die EG hat darauf vielfältig reagiert. Die Telekommunikationsnetze und –dienste sowie die darüber transportierten Inhalte sind eines der wichtigsten gegenwärtigen Politikfelder der Gemeinschaft¹¹¹. Viele der schon erlassenen oder geplanten Regeln gelten auch für Presse. Verwiesen sei stellvertretend nur auf das Grünbuch Konvergenz¹¹².

5. Mögliche künftige Konflikte aus der Ausstrahlung anderer Politiken

Schließlich werden auch in der Zukunft aus anderen Politiken der Gemeinschaft Konflikte mit der Presse entstehen. Ein Gegenstand sei beispielhaft herausgegriffen. Das deutsche Recht hält sich traditionell mit der Gewährung von Informationsansprüchen an den Staat oder an gesellschaftliche Akteure sehr zurück. Die wichtigste Ausnahme, das Umweltinformationsgesetz, beruht gerade auf einer Richtlinie der Europäischen Gemeinschaft¹¹³. In anderen Mitgliedstaaten ist das ganz anders. Schweden kennt solche Ansprüche schon seit Jahrhunderten¹¹⁴. In Portugal ist der Informationsanspruch in der Verfassung garantiert¹¹⁵. Art. 255 EGV in der Fassung des Amsterdamer Vertrags gibt jedem Bürger einen Informationsanspruch gegen die Gemeinschaft. Die Kommission hat ein Grünbuch über Informationen des öffentlichen Sektors in der Informationsgesellschaft verabschiedet¹¹⁶. Diese Entwicklung muß der Presse nicht nur nützen. Öffentliche Stellen könnten versucht sein, auch Journalisten auf den allgemeinen Informationsanspruch zu verweisen. Dann stünden sie sich im Ergebnis schlechter als nach den deutschen Landespressgesetzen.

¹¹⁰ Hellsichtig *Michael Hutter*: Ökonomische Eigenheiten des E-Commerce, in: AfP 2000, 30-32.

¹¹¹ Einzelheiten bei *Engel/Seelmann-Eggebert in Dausen*, R 12-75 sowie 138-140; *Schmittmann/de Vries/von Loesch* (FN 9) AfP 2000, 38-43 sowie 48-51.

¹¹² Vom 03.12.1997, KOM (97) 623; der anschließende Konsultationsprozeß hat mit den Schlußfolgerungen des Rates vom September 1999 sein vorläufiges Ende gefunden, ABl. 1999 C 283/1.

¹¹³ Näher *Joachim Wieland*: Freedom of Information, in: *Christoph Engel/Kenneth H. Keller (Ed.)*: Governance of Global Networks in the Light of Different Local Values (Law and Economics of International Telecommunications 43) Baden-Baden 2000, 83-104.

¹¹⁴ Einzelheiten bei *Holmberg* in *Ress/Stein* (FN 67) 8-11.

¹¹⁵ *Lopez Rocha* in *Ress/Stein* (FN 77) 2.

¹¹⁶ KOM (98) 585.

III. Effekte einer Grundrechtscharta auf das Institutionengefüge in Gemeinschaft und Mitgliedstaaten

1. Einführung

Der Europäische Rat hat den Auftrag des Konvents darauf beschränkt, einen Grundrechtskatalog zu entwerfen, der weder Teil des EG- oder EU-Vertrages wird noch ein unabhängiges internationales Organ zu seiner Anwendung besitzt¹¹⁷. Wenn es auf Dauer dabei bliebe, wäre die Grundrechtscharta kaum mehr als eine Bekundung guten Willens. Das macht vor allem eine Unterscheidung von *Robert Alexy* deutlich. Er verweist darauf, daß die meisten Grundrechte Prinzipien sind, nicht Regeln. Sie enthalten also ein Finalprogramm, kein Konditionalprogramm. Grundrechte machen keine Wenn-Dann-Aussagen, sondern geben dem Adressaten Ziele vor, nach denen er sich auszurichten hat¹¹⁸. Ohne ein Verfahren zu ihrer authentischen Anwendung sind Grundrechte deshalb – zumindest juristisch¹¹⁹ - wertloser Text.

Die deutschen Initiatoren der Europäischen Grundrechtscharta wollten deshalb auch von vornherein mehr¹²⁰. Auch wenn die Gemeinschaft zunächst wirklich nur eine Deklaration beschließt, könnte sie damit doch auf einem juristischen oder einem politischen Wege Erfolg haben. Der Europäische Gerichtshof entnimmt dem ungeschriebenen Primärrecht der Gemeinschaft bekanntlich seit langem Grundrechte¹²¹. Der Gerichtshof könnte aussprechen, daß die Grundrechtscharta diese ungeschriebenen Grundrechte des Gemeinschaftsrechts kodifiziert¹²². Die politische Hoffnung setzt darauf, daß die Gemeinschaft Widerstände der Mitgliedstaaten seit jeher mit einer Art Salomitaktik überwindet¹²³. Sie entlockt den Mitgliedstaaten zunächst einmal die Zustimmung zum Prinzip. Eine Weile später zieht sie daraus dann konkrete politische Folgerungen und beruft sich darauf, das Prinzip stehe ja außer Streit¹²⁴. Im Folgenden wird deshalb unterstellt, daß die Grundrechtscharta schließlich zum justitiablen Bestandteil des primären Gemeinschaftsrechts geworden ist.

Auf den ersten Blick scheint die Presse durch solch eine justitiable Charta nur zu gewinnen. Sie könnte sich künftig gegen Übergriffe des europäischen Gesetzgebers in ihre Freiheit mit einem machtvollen Instrument wehren. Das ist besonders dann wichtig, wenn der Gemeinschaftsgesetzgeber mit Mehrheit entschieden und dabei den Einwand eines Mitgliedstaats ignoriert hat, die Garantie der Pressefreiheit in seiner nationalen Verfassung lasse die Zustimmung zu dem Vorschlag der Kommission nicht zu. Justitiable Grundrechte bringen jedoch auch neue

¹¹⁷ Im Beschluß des Europäischen Rats von Köln wird das in die folgende beschönigende Formel gekleidet: „Der Europäische Rat wird dem Europäischen Parlament und der Kommission vorschlagen, gemeinsam mit dem Rat eine Charta der Grundrechte der Europäischen Union auf der Grundlage des Entwurfs feierlich zu proklamieren. Danach wird zu prüfen sein, ob und gegebenenfalls auf welche Weise die Charta in die Verträge aufgenommen werden sollte“.

¹¹⁸ *Robert Alexy*: Theorie der Grundrechte, Frankfurt³ 1996, 17-158.

¹¹⁹ Politikwissenschaftler verweisen zu Recht darauf, daß auch symbolische Politik Wirkungen haben kann. Sie verändert etwa kognitive Modelle oder Einstellungen, überwindet Tabus und bereitet den nächsten politischen Schritt vor.

¹²⁰ *Däubler-Gmelin* (FN 5) EuZW 2000, 1.

¹²¹ Zusammenfassend *Rengeling*: Grundrechtsschutz (FN 17) 179-198.

¹²² S. allerdings unten 2 c) zur Anreizstruktur des Gerichtshofs.

¹²³ Näher *Adrienne Héritier*: Policy-Making and Diversity in Europe. Escaping Deadlock, Cambridge 1999, 17.

¹²⁴ Ebd. 53 f. zur Großfeuerungsanlagenverordnung und 77 zur Sozialpolitik.

Nachteile und Gefahren für die Presse mit sich. Die Gefahren liegen auf zwei Ebenen. Personen, mit denen die Presse im Konflikt liegt, erhalten ebenfalls Grundrechte und richten sie gegen die Presse. Diese Gefahr ist rechtsdogmatischer Natur und wird deshalb im Zusammenhang mit der Dogmatik der Grundrechtscharta behandelt¹²⁵. Die zweite Gefahr ist weniger offensichtlich, aber nicht weniger erheblich. Sie wird vorab behandelt, weil zu ihrem Verständnis politikwissenschaftliche Kategorien benötigt werden.

Justitiable Grundrechte haben erhebliche Wirkungen auf das Institutionengefüge in der Gemeinschaft selbst, im Verhältnis zu ihren Mitgliedstaaten und im Innern der Mitgliedstaaten. Sie ändern auf all diesen Ebenen die Opportunity Structures (2). Die Wirkung unterscheidet sich von den Grundrechtskatalogen in nationalen Verfassungen. Denn das Gemeinschaftshandeln ist viel schwächer demokratisch legitimiert (3). Wegen des Prinzips der begrenzten Einzelermächtigung findet europäische Politik außerdem stets in einem Mehrebenensystem statt. Die europäischen Grundrechte erfassen nur einen Teil dieses Systems (4). Sie haben das Potential, die Staatlichkeit der Europäischen Union zu verändern (5).

2. Änderung der Opportunity Structure

Funktional betrachtet verändert ein justitierbarer Grundrechtskatalog die Verfassung der Gemeinschaft. Durch den veränderten institutionellen Rahmen verschieben sich die Bedingungen, unter denen im Verhältnis von Gemeinschaft und Mitgliedstaaten (a), im Verhältnis der Mitgliedstaaten zueinander (b), im Verhältnis der Organe der Gemeinschaft zueinander (c) und im Verhältnis zu den politischen Akteuren Politik gemacht wird (d).

a) EU und Mitgliedstaaten

Die verfassungspolitische Diskussion um die Europäische Grundrechtscharta ist von der Sorge um eine Ausweitung der Gemeinschaftskompetenzen beherrscht. Um dieser Besorgnis entgegenzutreten, soll Art. H.1 II den folgenden Satz enthalten:

„Die Charta begründet weder neue Aufgaben oder Zuständigkeiten noch erweitert sie bestehende Aufgaben oder Zuständigkeiten“¹²⁶.

Juristisch wäre diese Klarstellung wohl nicht einmal erforderlich. Der Grundsatz der begrenzten Einzelermächtigung würde durch die Aufnahme eines Grundrechtskatalogs in den EG- oder EU-Vertrag nicht tangiert. Im übrigen verpflichtet Art. 6 II EUV die Gemeinschaft ohnehin auf die Grundrechte¹²⁷.

Gleichwohl wird die Grundrechtscharta unvermeidlich einen unitarischen Effekt haben. Das belegt gerade die Erfahrung des Grundgesetzes. Durch immer dichtere verfassungsrechtliche Standards wird der formal nicht angetastete Kompetenzbereich der Länder zur Gesetzgebung materiell immer weiter ausgehöhlt. Das offensichtlichste Beispiel ist der Rundfunk. Die Rechtsprechung des

¹²³ S. unten IV.4.

¹²⁶ Art. H.1 II Dok. 4235/00. S. auch schon Präambel oder Art. 1, Satz 3 Entwurf des Präsidiums für Freiheitsrechte vom 15.02.2000, Dok. 4123/1/00 REV 1. NOTEREF

¹²⁷ Auf beides hat *Schwarze* (FN 5) DVBl. 1999, 1685 zurecht hingewiesen.

Bundesverfassungsgerichts zu Art. 5 I 2 GG hat von der Rundfunkgesetzgebungskompetenz der Länder nicht viel übrig gelassen¹²⁸.

Die politischen Effekte der Grundrechtscharta sind weniger eindeutig. Denn sie schaffen nicht nur für die Gemeinschaft ein neues politisches Window of Opportunity¹²⁹, sondern auch für die Mitgliedstaaten, die Unternehmen und die Bürger. Die Folgen für die Staatlichkeit der Europäischen Union werden uns im Anschluß noch näher beschäftigen¹³⁰. Daraus kann der Gemeinschaft ein größeres politisches Gewicht zuwachsen. Wenn der Gerichtshof die Grundrechte offensiv nutzt, gewinnt er ein zusätzliches Instrument zur Überwindung politischer Blockaden, so wie er das in der Vergangenheit schon häufig mit den Grundfreiheiten getan hat. Je nach dem, wie das Initiativrecht ausgestaltet wird, könnte die Kommission eine Entscheidung von Rat und Parlament mit der Begründung vor den Gerichtshof bringen, sie verstoße gegen Gemeinschaftsgrundrechte. Das würde ihr erlauben, den politischen Konflikt mit den Mitgliedstaaten vom Rat in ein Forum zu verlagern, in dem sie sich größere Chancen ausrechnet.

Das Initiativrecht würde aber sicher nicht ausschließlich der Kommission eingeräumt, sondern zumindest auch den Mitgliedstaaten. Logisch wäre es, auch eine Verfassungsbeschwerde von Unternehmen und Bürgern zuzulassen¹³¹. Sonst gäbe es im Grunde keine europäischen Grundrechte, sondern – völkerrechtlich gesprochen – bloß ein europäisches Fremdenrecht. Die Individuen wären nicht selbst geschützt, sondern bräuchten gleichsam Schutzmächte. Politisch ist die Entscheidung über das Initiativrecht bedeutsam, weil es seinen Inhabern die Möglichkeit gibt, der Gemeinschaft mit Hilfe des Gerichtshofs eine andere politische Agenda zu diktieren. Wenn der Gerichtshof mitwirkt, könnten sie auch Formelkompromisse und symbolische Politik frühzeitig entlarven¹³². Die politischen Organe der Gemeinschaft werden solche Klagen antizipieren. Auch ohne daß der Gerichtshof tatsächlich interveniert, wird sich ihr Verhalten folglich ändern.

Sollte die veränderte Opportunity Structure dazu führen, daß die Gemeinschaft eine aktivere Pressepolitik betreibt – soweit sie das nach der Kompetenzordnung überhaupt kann – hätte das voraussichtlich negative Folgen für die Presse. Denn die Gemeinschaft selbst ist bisher ja kaum regulierend tätig geworden¹³³. Auch das Recht der Mitgliedstaaten hat sich relativ stark zurückgehalten. Von einem aktiveren Gemeinschaftsgesetzgeber hätte die Presse deshalb kaum eine weitere Liberalisierung der nationalen Rechtslage zu erwarten. Auch das Interesse der Presse an einem europaweiten Level Playing Field dürfte nicht groß sein. Die Pressemärkte sind nach wie vor im wesentlichen national, wenn nicht gar regional oder lokal. Wenn Presseerzeugnisse in anderen Ländern einen namhaften Marktanteil erringen, tun sie das üblicherweise mit adaptierten Ausgaben.

b) Mitgliedstaaten zueinander

Justitiable Grundrechte verändern auch das Verhältnis der Mitgliedstaaten zueinander. Denn die

¹²⁸ *Karin Gabriel-Bräutigam*: Rundfunkkompetenz und Rundfunkfreiheit. Eine Untersuchung über das Verhältnis der Rundfunkhoheit der Länder zu den Gesetzgebungszuständigkeiten des Bundes (Law and Economics of International Telecommunications 12) Baden-Baden 1990.

¹²⁹ Zu diesem Konzept *Héritier Deadlock* (FN 123) 11 m.w.N.

¹³⁰ S. unten V.

¹²⁹ Zu den einschlägigen Überlegungen bei der Vorbereitung der deutschen Initiative für eine Europäische Grundrechtscharta näher *Eickmeier* (FN 5) DVBl. 1999, 1029; s. auch *Hans-Werner Rengeling*: Brauchen wir die Verfassungsbeschwerde auf Gemeinschaftsebene?, in: FS Everling II, Baden-Baden 1995, 1187-1212

¹³² Vgl. *Héritier Deadlock* (FN 123) 17 und 18 f.

¹³³ Näher oben II 2.

glaubhafte Drohung, einen Akt des Gemeinschaftsgesetzgebers mit Hilfe der europäischen Grundrechte anzugreifen, gibt einem Mitgliedstaat zusätzliche Verhandlungsmacht. Mit diesem Pfund kann er bei den Verhandlungen im Rat wuchern. Er kann aber auch schon im Vorwege auf die Kommission einwirken, um einen Verordnungs- oder Richtlinienentwurf zu verhindern, der seinen Interessen widerspricht. Diese Drohung eignet sich besonders in zwei Konstellationen. Beide Konstellationen sind am Beispiel des Umweltrechts gut untersucht.

In der ersten Konstellation unterscheidet sich das Umweltrecht der Mitgliedstaaten im Schutzniveau. Einige Staaten haben strenge Regeln, andere viel großzügigere. Da besserer Umweltschutz im Normalfall auch teurer ist, legen die hochregulierten Staaten Wert darauf, ihre strengen Regeln durch harmonisiertes europäisches Recht auch den Konkurrenten aus anderen Mitgliedstaaten aufzuerlegen. Lange Zeit war die deutsche Umweltpolitik mit dieser Strategie erfolgreich¹³⁴. Wettbewerbsverzerrungen sind jedoch auch dann möglich, wenn die Mitgliedstaaten sich über das Schutzanliegen und das Schutzniveau im wesentlichen einig sind, traditionell aber ganz unterschiedliche Instrumente einsetzen. Wenn die Gemeinschaft dann das Instrument eines Mitgliedstaats zum europäischen Standard erhebt, erlegt sie allen anderen Mitgliedstaaten Anpassungslasten und damit Wettbewerbsnachteile auf. Diese Erfahrung hat die Bundesrepublik in den vergangenen Jahren immer wieder gemacht. In der europäischen Umweltpolitik hat sich immer stärker das englische Denken durchgesetzt. Beispiele sind das Ökoaudit oder der integrierte Umweltschutz¹³⁵.

Grundrechte eignen sich allerdings auch in Verhandlungen besser, um eine Regelung zu verhindern, als um sie zu erzwingen. Anders ist das nur, wenn aus ihnen Schutz- oder Leistungspflichten abgeleitet werden können¹³⁶, oder wenn ein Mitgliedstaat die grundrechtliche Verhinderungsmacht an der einen Stelle als Pfand einsetzt, um ein aktives Handeln der Gemeinschaft an anderer Stelle zu erzwingen. Die Folgen der Grundrechte für das Verhältnis der Mitgliedstaaten zueinander haben für die niedrig regulierte Presse deshalb geringeres Gewicht als für andere Branchen.

c) Organe in der Europäischen Union

Welche Effekte ein Grundrechtskatalog für die politischen Organe der Gemeinschaft hat, hängt zunächst einmal von der Verteilung des Initiativrechts ab. Werden die Grundrechte in den EG- oder EU-Vertrag aufgenommen, liegt es nahe, daß auch die Kommission, das Parlament und der Rat Grundrechtsverletzungen vor den Gerichtshof bringen können. Eine Klage des Rats gegen eines der anderen Organe ist nach den bisherigen Erfahrungen wenig wahrscheinlich. Spektakuläre Klagen des Parlaments hat es dagegen gegeben, etwa in der Transportpolitik¹³⁷. Auch die Kommission hat sich dieses Instruments immer wieder bedient. Würde das Initiativrecht dagegen den Grundrechtsträgern vorbehalten, wäre der Effekt kleiner. Immerhin könnten das Parlament oder die Kommission in ihren Verhandlungen mit dem Rat aber darauf verweisen, daß eine beabsichtigte Regelung grundrechtswidrig und eine Beschwerde dagegen wahrscheinlich sei.

Vor allem hätten justitiable Grundrechte aber Folgen für die Stellung des Europäischen Gerichtshofs und des Gerichts Erster Instanz im Institutionengefüge der Gemeinschaft. Auf den

¹³⁴ Näher *Adrienne Héritier/Susanne Mingers/Christoph Knill/Martina Becka*: Die Veränderung von Staatlichkeit in Europa. Ein regulativer Wettbewerb. Deutschland, Großbritannien und Frankreich in der Europäischen Union (Gesellschaftspolitik und Staatstätigkeit 2) Opladen 1994, 195-237.

¹³⁵ Näher ebd. 238-326.

¹³⁶ Dazu unten IV 1 k).

¹³⁷ EuGH 22.05.1985, Rs. 13/83, Slg. 1985, 1513.

ersten Blick scheint es offensichtlich, daß die europäischen Gerichte durch diese zusätzliche Kompetenz gestärkt würden. Sieht man näher hin, liegen die Dinge komplizierter. Denn Gemeinschaftsgrundrechte sind dem Grundgedanken nach ja eher gegen die Gemeinschaftspolitik gerichtet. Bislang hat sich der Gerichtshof dagegen eher als Motor der Integration definiert. In seinem Selbstverständnis war er weniger ein Rechtsprechungsorgan als ein politisches Organ. Seine wichtigste Aufgabe sah er darin, institutionelle Blockaden aufzubrechen und so das Zusammenwachsen der Mitgliedstaaten zu einem einheitlichen Europa zu fördern¹³⁸. Zu diesem Selbstverständnis paßt es, daß der Gerichtshof aus den Gemeinschaftsgrundrechten bislang wenig gemacht hat. Auf die hochdifferenzierte Dogmatik des Straßburger Menschenrechtsgerichtshofs¹³⁹ hat er sich nie eingelassen. Man wird den Eindruck nicht los, daß die Grundrechte dem Gerichtshof nach wie vor als „querrelle allemande“ erscheinen, zu denen er nur pflichtschuldig ein paar folgenlose Bemerkungen einstreut. Das muß natürlich nicht auf Dauer so bleiben. Die Aufnahme der Grundrechte in den EG- oder EU-Vertrag könnte eine Signalwirkung haben, der sich schließlich auch der Gerichtshof nicht entziehen kann. Selbst das dogmatisch wenig gehaltvolle Subsidiaritätsprinzip hat den Gerichtshof ja vorsichtiger werden lassen¹⁴⁰. Das Gericht Erster Instanz hat seine Aufgabe von vornherein eher rechtsstaatlich als politisch definiert. Gewiß ist ein solcher Wandel des Selbstverständnisses aber nicht.

Selbst wenn sich der Gerichtshof dazu entschlösse, müßte er die Rückwirkungen der neuen auf die fortbestehenden älteren Aufgaben bedenken. Nach den deutschen Erfahrungen mit der Verfassungsbeschwerde würde der Gerichtshof dann mit so vielen Klagen überschwemmt, daß er ein offenes oder verstecktes Annahmeverfahren einführen müßte. Bislang konnte der Gerichtshof dem Problem ausweichen, weil der EG-Vertrag die Nichtigkeits- oder Untätigkeitsklage von Individuen an relativ enge Voraussetzungen geknüpft hat. Wenn der Gerichtshof künftig immer wieder Rechtsschutz verweigern müßte, würde er auch einen Teil seiner Legitimität verlieren. Das könnte auch Auswirkungen auf andere Aufgaben des Gerichtshofs und auf seine Reputation in der Gemeinschaft und gegenüber den Gemeinschaftsbürgern haben.

d) Politische Akteure

Schließlich geben justitiable Grundrechte den nationalen und europäischen politischen Akteuren neue Wirkungsmöglichkeiten. Das folgt wiederum vor allem aus einem Recht zur Grundrechtsbeschwerde an den EuGH. Denn die Grundrechte geben dem Gerichtshof politisch ja die Möglichkeit, Akte des Gemeinschaftsgesetzgebers aufzuheben, im Wege der grundrechtskonformen Interpretation zu verändern und die politische Agenda der Gemeinschaft umzuschreiben. All das konnte der Gerichtshof unter Berufung auf das Primärrecht schon bislang. Bislang war das Initiativrecht zum Gerichtshof aber eng limitiert. Es bestand oft deshalb die Aussicht, mißliebige Klagen im Vorfeld durch politischen Druck zu verhindern. Bei einer allgemeinen Verfassungsbeschwerde sind die Aussichten dafür gering. Das Initiativrecht ist der politischen Kontrolle praktisch entzogen. Diesen Umstand können politische Akteure nutzen, um sich mit dem Gerichtshof gegen die Mehrheit im Rat, das Parlament, die Kommission oder einzelne Mitgliedstaaten zu verbünden. Man kann es auch so sagen: die Grundrechtsbeschwerde macht den Gerichtshof zu einer subsidiären politischen Arena, in der die Gewichte anders verteilt sind¹⁴¹.

¹³⁸ S. näher *Fritz W. Scharpf*: *Regieren in Europa. Effektiv und Demokratisch?*, Frankfurt 1999, 47-80.

¹³⁹ Dazu näher unten IV 1.

¹⁴⁰ Das deutlichste Indiz ist die Einschränkung der Warenverkehrsfreiheit durch die Keck-Rechtsprechung, EuGH 24.11.1993, Rs. 267 und 268/91, Slg. 1993, 6097.

¹⁴¹ Vgl. *Héritier Deadlock* (FN 123) 20 f.

3. Grundrechte bei schwacher demokratischer Legitimation

Deutsche Beobachter beklagen nicht nur den unzureichenden Grundrechtsschutz, sondern auch die geringe demokratische Legitimation des Gemeinschaftshandelns. Das Bundesverfassungsgericht hat sich diese Sorge im Maastricht-Urteil bekanntlich zu eigen gemacht¹⁴². Durch die Direktwahl des Europäischen Parlaments und die Ausweitung der Kodezision von Rat und Parlament hat das Ausmaß der direkten demokratischen Legitimation zwar zugenommen. Nach wie vor ist die demokratische Legitimation europäischer Normsetzung aber vornehmlich eine indirekte, vermittelt über die nationalen Parlamente und die von ihnen kontrollierten Regierungen.

Hinzu kommt ein politischer Grund. Seit dem Maastrichter Vertrag spricht die EG zwar programmatisch von einer Unionsbürgerschaft¹⁴³. Gleichwohl empfinden sich die Bürger in ihrer großen Mehrheit nach wie vor nur als Angehörige ihrer Mitgliedstaaten. Es gibt bestenfalls Rudimente einer gemeineuropäischen Solidarität. Selbst wo ein formaler Legitimationsstrang bis zu den Völkern der Mitgliedstaaten führt, ist seine Legitimationskraft deshalb gering. Die Bereitschaft, eine Entscheidung allein deshalb zu akzeptieren, weil sie dem Willen der Mehrheit aller Unionsbürger entspricht, ist kaum vorhanden¹⁴⁴.

In einem politischen System mit derart schwacher demokratischer Legitimation wie der Europäischen Gemeinschaft sind die Grundrechte ein viel schneidigeres Instrument als etwa in Deutschland. Dort nimmt das Bundesverfassungsgericht in vielfältiger Weise Rücksicht auf den demokratisch gewählten Gesetzgeber. Es gesteht ihm Beurteilungs- und Prognosespielräume zu, nimmt die Kontrolldichte zurück und gesteht dem Gesetzgeber vor allem viel Freiheit bei der Bestimmung der Ziele zu, um derentwillen er in die Grundrechte der Bürger eingreift¹⁴⁵. Dann werden die Grundrechte ein ziemlich stumpfes Instrument. Ein passendes Ziel läßt sich für fast jeden Grundrechtseingriff finden. Zu solcher Selbstbeschränkung der Grundrechtsdogmatik besteht kein Anlaß, wenn der Gesetzgeber bestenfalls marginal mehr demokratische Legitimation aufbieten kann als der Richter¹⁴⁶. Auch in Europa ist der Rat als das politische Organ allerdings besser als der Gerichtshof im Stande, die normativen Erwartungen der Beteiligten zu erheben und zu bündeln. Wegen der geringen demokratischen Legitimation muß der Gemeinschaftsgesetzgeber jedoch vornehmlich mit der Sachangemessenheit der Regeln argumentieren, nicht so sehr mit dem Austarieren der widerstreitenden Kräfte im politischen Prozeß¹⁴⁷. Über die Sachangemessenheit kann sich der Gerichtshof viel eher ein abweichendes Urteil erlauben¹⁴⁸.

¹⁴² BVerfGE 89, 155, 186 ff. und passim.

¹⁴³ Die einschlägigen Vorschriften sind jetzt in Art. 17-22 EGV enthalten.

¹⁴⁴ *Scharpf* Europa (FN 138) 29 f. und passim.

¹⁴⁵ Vielen Verfassungsrechtlern geht selbst das noch nicht weit genug. Programmatisch zuletzt die Habilitationsschrift von *Matthias Jestaedt*: Grundrechtsentfaltung im Gesetz. Studien zur Interdependenz von Grundrechtsdogmatik und Rechtsgewinnungstheorie (Jus Publicum 50) Tübingen 1999.

¹⁴⁶ *Walter Pauly*: Strukturfragen des unionsrechtlichen Grundrechtsschutzes. Zur konstitutionellen Bedeutung von Art. F Abs. 2 EUV, in: EuR 1998, 242-262 (245 f., 256 f., s. auch 257 und 259).

¹⁴⁷ *Scharpf* Europa (FN 138) 30.

¹⁴⁸ *Pauly* (FN 146) EuR 1998, 259.

4. Grundrechte für ein Mehrebenensystem

Die Europäische Union ist kein Staat. Das folgt vor allem aus dem Grundsatz der begrenzten Einzelmächtigung. Der Amsterdamer Vertrag hat ihn in Art. 5 I EGV erneut bekräftigt. Diese Kompetenzen sind im Normalfall zwar keine ausschließlichen¹⁴⁹. Gleichwohl verlieren die Mitgliedstaaten dadurch ihre Allzuständigkeit. Eine ökonomische Metapher macht die Folgen deutlich. Sie begreift den Staat als einen Anbieter öffentlicher Güter. Durch die Zuständigkeiten der Gemeinschaft verlieren die Staaten ihr Angebotsmonopol. Es kommt zu einem vertikalen Institutionenwettbewerb zwischen Gemeinschaft und Mitgliedstaaten¹⁵⁰. Die politischen Wissenschaften sprechen davon, daß politische Entscheidungen nun in einem Mehrebenensystem getroffen werden¹⁵¹.

In solch einem Mehrebenensystem haben Grundrechte eine andere Wirkung als in einem einheitlichen, monopolistischen Staat. Daß politische Akteure sie dazu instrumentalisieren können, politische Konflikte von der einen auf die andere Ebene zu transponieren, haben wir gerade schon gesehen. Auch die Grundrechte selbst sind in einem solchen System aber schwächer. Dem Bürger ist nicht mehr geholfen, wenn er seine Freiheit nur noch auf einer dieser Ebenen durchsetzen kann¹⁵². An die Stelle der einen Verfassung tritt „ein Netzwerk von Verfassungselementen“¹⁵³. Deutlicher formuliert: nicht nur der Nationalstaat verliert sein Monopol, sondern auch die nationalen Grundrechte. Die dogmatischen Folgen werden uns noch beschäftigen¹⁵⁴.

5. Folgen für die Staatlichkeit der Europäischen Union

Die Europäische Union ist ein unfertiges politisches System, dessen Strukturen beständig in Bewegung sind¹⁵⁵. Die Grundrechtscharta, ihrer Aufnahme in den EG- oder EU-Vertrag und die Zuständigkeit des Europäischen Gerichtshofs zur authentischen Interpretation der Grundrechte

¹⁴⁹ Das folgt aus dem Gegenschluß zu Art. 5 II EGV.

¹⁵⁰ *Wolf Schäfer*: Globalisierung: Entmonopolisierung des Nationalen?, in: *Hartmut Berg (Hrsg.): Globalisierung der Wirtschaft. Ursachen – Formen – Konsequenzen* (Schriften des Vereins für Socialpolitik NF 263) Berlin 1999, 9-21 (10 und passim).

¹⁵¹ Programmatisch *Adrienne Héritier/Dieter Kerwer/Christoph Knill/Dirk Lehmkuhl/Michael Teutsch/Anne-Cécile Douillet*: Differential Europa. New Opportunities and Restrictions for Policy-Making in the Member States [im Erscheinen].

¹⁵² *Christian Walter*: Die Folgen der Globalisierung für die Europäische Verfassungstradition, in: DVBl. 2000, 1-13 (9 f.). Noch dramatischer klingt es bei *Konrad Hesse*, zitiert nach *Schwarze* (FN 5) DVBl. 1999, 1681: „Wir leben insoweit von dem Gedankengut einer Welt, die nicht mehr die unsere ist und, wie wir immer deutlicher sehen, in den tiefen Wandlungen des ausgehenden 20. Jahrhunderts ihren Untergang gefunden hat. Über ihre Grundlagen, bislang als gesichert geltende Bestandteile der Staats- und Verfassungslehre, ist die Geschichte hinweggegangen“.

¹⁵³ *Walter* (FN 152) DVBl. 2000, 7.

¹⁵⁴ S. unten IV 1 c), h) und k) sowie IV 6.

¹⁵⁵ *Brigid Laffan*: From Policy Entrepreneur to Policy Manager. The Challenge Facing the European Commission, in: *Journal of European Public Policy* 4 (1997) 422-438; s. auch *Weber* (FN 5) NJW 2000, 538: Die Europäische Union ist eine „sich verdichtende, supranationale Hoheitsgewalt“.

wären weitere Schritte auf dem Wege zu Staatlichkeit von Europa. Die deutschen Initiatoren¹⁵⁶ und das Europäische Parlament sprechen das auch ganz offen aus¹⁵⁷.

Die Grundrechte werden zugleich die Staatlichkeit Europas aber auch verändern. Die Organe der Gemeinschaft können künftig die politische Agenda nicht mehr unkontrolliert bestimmen¹⁵⁸. Ihre Fähigkeit, Politik unterhalb der Wahrnehmungsschwelle zu machen, wird abnehmen¹⁵⁹. Bedeutsam sind die Veränderungen aber vor allem im Lichte der Unterscheidung von Interessen und Ideen¹⁶⁰. Grundrechte etablieren neue regulative Ideen¹⁶¹. Der Streit um die Grundrechte vor dem Europäischen Gerichtshof schafft neue Gelegenheiten zur Deliberation. Solche Prozesse stärken das Gewicht regulativer Ideen und vermindern die Bedeutung des Abgleichs des widerstreitenden Interessen im politischen Prozeß der Gemeinschaft¹⁶².

Grundrechte haben das Potential, politische Konflikte in rechtliche zu verwandeln. Dann kommt es zu einem juristischen Paralleldiskurs politischer Fragen. Er zieht die teilweise Juridifizierung europäischer Politik nach sich.

Schließlich verschaffen justitiable Grundrechte der Europäischen Gemeinschaft zusätzliche Legitimation. Wiederum hilft ein politikwissenschaftliches Begriffspaar, die Wirkungen präziser zu benennen. Die politischen Wissenschaften unterscheiden zwischen Input- und Output-Legitimation¹⁶³. Input-Legitimation wird vermittelt durch das, was die Juristen eine geschlossene Kette demokratischer Legitimation nennen. Aus den schon erwähnten Gründen steht diese Form der Legitimation dem europäischen Gesetzgeber nur in sehr engen Grenzen zur Verfügung. Output-Legitimation beruht demgegenüber darauf, daß es dem Gesetzgeber gelingt, die Rechtsunterworfenen für seine Entscheidungen zu gewinnen. Dazu trägt die europäische Grundrechtscharta auf mehrfache Weise bei. Die Kontrolle von Entscheidungen des Rats, des Parlaments und der Kommission anhand der Grundrechte macht es für gut organisierte Gruppen schwerer, ihre Interessen durchzusetzen und dabei Verteilungsgewinne zu Lasten der Mehrheit zu erzielen. Die Chance steigt also, daß europäische Gesetzgebung auch wirklich dem europäischen Gemeinwohl dient. Weil das so ist, erhöht sich zugleich die Problemlösungskapazität des Gemeinschaftsrechts¹⁶⁴. Auf mittlere Frist kann vielleicht sogar die europäische Identität gestärkt werden, weil sich die Unionsbürger als Mitglieder einer Rechtsgemeinschaft empfinden, die von

¹⁵⁶ *Däubler-Gmelin* (FN 5) EuZW 2000, 1.

¹⁵⁷ Europäisches Parlament Committee on Constitutional Affairs, Dok. PE 232.397, DT\385929EN.doc, 07.12.1999, R 21 und 42.

¹⁵⁸ S. o. 2.

¹⁵⁹ Vgl. *Scharpf* Europa (FN 138) 30.

¹⁶⁰ Grundlegend *Albert S. Yee: The Causal Effects of Ideas on Policies*, in: *International Organization* 50 (1996) 69-108.

¹⁶¹ Vgl. *Héritier* Deadlock (FN 123) 14; vgl. auch einen Auszug aus der Rede von *Außenminister Fischer* zur Europäischen Grundrechtscharta, zitiert nach *Schwarze* (FN 5) 1679: „Wir sollten uns dabei von einem strikten rechtlichen Verständnis freimachen und unter ‚Verfassung‘ eher eine Zusammenstellung der Werte und der Grundprinzipien europäischen Zusammenlebens einschließlich des Funktionierens der Europäischen Union als Konstrukt sui generis begreifen“.

¹⁶² Eine ausführlichere Analyse der Bedeutung der Unterscheidung für die Grundrechte findet sich bei *Christoph Engel: Delineating the Proper Scope of Government – A Proper Task for a Constitutional Court?*, in: *Journal of Institutional and Theoretical Economics* (erscheint demnächst).

¹⁶³ *Scharpf* Europa (FN 138) 16-28.

¹⁶⁴ *Dieter Grimm: Braucht Europa eine Verfassung?*, in: *JZ* 1995, 581-591 (590).

gemeinsamen Werten zusammengehalten wird¹⁶⁵. Dann würde mehr Output-Legitimation schließlich zu mehr Input-Legitimation führen.

Zu einem Legitimationsgewinn für die Gemeinschaft führen Grundrechte aber auch deshalb, weil sie den Bürgern Klagerechte verschaffen¹⁶⁶. Schließlich erhöhen die Verfahren vor dem Gerichtshof die Transparenz der Gemeinschaftsgesetzgebung. Auch das verschafft ihr zusätzliche Legitimation.

IV. Normative Folgerungen

Wir haben nun einen Eindruck von vergangenen und möglichen künftigen pressepolitischen Konflikten und von den Effekten europäischer Grundrechte auf die Verfassung der Europäischen Union. Aus beidem können wir nun normative Folgerungen ziehen. Wir müssen dabei noch einmal prognostisch werden und die Dogmatik noch gar nicht beschlossener Grundrechte skizzieren. Das ist aber keine allzu spekulative Tätigkeit. Wir können uns dabei nicht nur auf die schon vorhandenen Textvorschläge stützen, sondern auch auf die Grundrechtsrechtsprechung des Europäischen Gerichtshofs und vor allem auf die Menschenrechtsrechtsprechung des Straßburger Gerichtshofs. Diese Vorlagen gilt es, in einer geeigneten Weise für die Kontrolle des Gemeinschaftsrechts zu adaptieren. Im Zentrum steht dabei naturgemäß die Dogmatik der Pressefreiheit (1). Die Verlage sind aber auch durch andere Grundrechte geschützt (2). Andere Grundrechtsträger flankieren den Schutz (3). Zugleich sind aber auch Konflikte zwischen der Presse und anderen Grundrechten zu erwarten (4). Schließlich gilt es, das dogmatische Verhältnis der neuen europäischen Grundrechte zu anderem Primärrecht (5) und zu anderen Grundrechtsordnungen auszuloten (6).

1. Dogmatik der Pressefreiheit

Diese Untersuchung erscheint, während die Beratungen in dem Konvent voranschreiten. Der Stand dieser Beratungen ist der Ausgangspunkt für die Überlegungen zur Pressefreiheit (a). Die Pressefreiheit ist aber auch in anderen, für das Gemeinschaftsrecht erheblichen Quellen geschützt (b). Die Dogmatik dieses Grundrechts muß die Adressaten und angreifbaren Akte bestimmen (c), den Grundrechtsträger (d), den sachlichen Schutzbereich (e), das Konzept des Eingriffs (f), die formellen (g) und die materiellen Schranken (h). Dabei wird das vom Straßburger Gerichtshof entwickelte Konzept der Margin of Appreciation Bedeutung erlangen (i). Schließlich fragt sich, ob aus dem Grundrecht auch Schutzpflichten zu entnehmen sind (k).

a) Textvorschläge

In der momentan letzten Fassung des Entwurfs lautet das einschlägige Grundrecht wie folgt:

„Art. 15. Freiheit der Meinungsäußerung
(1) Jede Person hat das Recht auf freie Meinungsäußerung. Dieses Recht schließt die Meinungsfreiheit und die Freiheit ein, Informationen ohne behördliche Eingriffe und ohne

¹⁶⁵ So die Hoffnung des Ausschusses für Citizens' Freedoms and Rights des Europäischen Parlaments, PE 232.272/Fin., AE\375756EN.doc vom 07.12.1999, 2.

¹⁶⁶ Der Gedanke ist vor allem ausgeführt worden von *Ronald Dworkin: Taking Rights Seriously*, Duckworth⁸ 1996.

Rücksicht auf Staatsgrenzen zu empfangen und weiterzugeben“¹⁶⁷.

Spezifische Schranken sind diesem Grundrecht nicht beigegeben. Die Schranken ergeben sich aus zwei Normen, die einheitlich für alle Rechte gelten sollen:

„Art. H.2 – Einschränkung der gewährleisteten Rechte

(1) Die in den Artikeln ... dieser Charta festgelegten Rechte und Freiheiten dürfen in keiner Weise eingeschränkt werden.

(2) Jedwede Einschränkung der durch diese Charta gewährleisteten Rechte und Freiheiten ist vom Gesetzgeber vorzusehen. Sie darf den Wesensgehalt dieser Rechte und Freiheiten nicht antasten und muß – unter Wahrung des Grundsatzes der Verhältnismäßigkeit – innerhalb der Grenzen bleiben, die für den Schutz legitimer Interessen in einer demokratischen Gesellschaft erforderlich sind. Die Schränkungen gemäß der Europäischen Menschenrechtskonvention finden Anwendung auf diejenigen in dieser Charta enthaltenen Rechte und Freiheiten, die auch im Rahmen der Europäischen Menschenrechtskonvention gewährleistet werden.“

„Art. H.4 – Schutzniveau

Diese Charta darf nicht als Einschränkung der Tragweite der durch das Recht der Union, das Recht der Mitgliedstaaten, das Völkerrecht und die von den Mitgliedstaaten ratifizierten internationalen Übereinkommen, darunter die Europäische Menschenrechtskonvention in ihrer Auslegung durch die Rechtsprechung des Europäischen Gerichtshofs für Menschenrechte gewährleisteten Rechte ausgelegt werden“¹⁶⁸.

Zwei deutsche Mitglieder des Konvents haben abweichende Textvorschläge vorlegt. Der Abgeordnete des Deutschen Bundestages *Meyer* möchte Art. 15 einen neuen Absatz 2 mit folgendem Wortlaut beifügen:

„Die Pressefreiheit und die Freiheit der Berichterstattung werden gewährleistet. Die Organe der Union sind ihm [!] verpflichtet, der Presse Auskünfte zu erteilen“¹⁶⁹.

Das Mitglied des Europäischen Parlaments *Sylvia Kaufmann* schlägt einen Text mit folgendem Wortlaut vor:

„Meinungs- und Informationsfreiheit

(1) Jeder Mensch hat das Recht auf freie Meinungsäußerung. Die Pressefreiheit und die Freiheit der Berichterstattung durch Hörfunk, Fernsehen und Film werden gewährleistet.

(2) Diese Rechte schließen die Freiheit ein, sich aus allgemein zugänglichen oder anderen, rechtmäßig erschließbaren Quellen ungehindert zu unterrichten.

(3) Diese Rechte finden ihre Schranken in den gesetzlichen Bestimmungen zum Schutz der Jugend, zur Wahrung der Würde der Frau und in den Persönlichkeitsrechten des Einzelnen.

(4) Kriegspropaganda ist verboten. Jedes Eintreten für nationalen und religiösen Haß sowie nationalistische, rassistische, faschistische, antisemitische, sexistische Propaganda sind verboten“¹⁷⁰.

¹⁶⁷ Entwurf der Präsidentschaft vom 08.03.2000, Dok. 4149/00.

¹⁶⁸ Dok 4235/00, s.auch Art. X und Y Dok. 4149/00.

¹⁶⁹ Dok. 5177/00 vom 28.03.2000.

¹⁷⁰ Dok. 4189/00 vom 24.03.2000.

b) Andere Quellen

Der Gerichtshof hat mehrfach ausgesprochen, daß die Meinungs-, Presse- und Informationsfreiheit zu den ungeschriebenen Grundrechten des Gemeinschaftsrechts gehören¹⁷¹. Art. 10 EMRK schützt die Äußerungs-, Empfangs- und Informationsfreiheit¹⁷². Eine Entscheidung des Straßburger Gerichtshofs für Menschenrechte hat vor kurzem die Bedeutung der Menschenrechtskonvention für das Handeln der Europäischen Gemeinschaft sogar noch vermehrt. Die Gemeinschaft hat sich nicht nur in Art. 6 II EGV autonom verpflichtet, die Rechte der Menschenrechtskonvention zu achten. Vielmehr hat der Straßburger Gerichtshof auch entschieden:

„The Court observes that acts of the EC as such cannot be challenged before the Court because the EC is not a Contracting Party. The Convention does not exclude the transfer of competencies to international organisations provided that Convention rights continue to be ‘secured’. Member States’ responsibility therefore continues even after such a transfer”¹⁷³.

Auch der Verfassungsvergleich belegt, daß die Meinungsfreiheit¹⁷⁴, die Medienfreiheiten¹⁷⁵ und insbesondere die Pressefreiheit in all den Mitgliedstaaten geschützt sind, die überhaupt entwickelte Grundrechtskataloge haben¹⁷⁶.

c) Adressaten und angreifbare Akte

Wie erwähnt will die Grundrechtscharta ausdrücklich klarstellen, daß sie keinen Prüfungsmaßstab für das autonome Handeln der Mitgliedstaaten darstellt¹⁷⁷. Entscheidend ist deshalb nicht die Bestimmung der Adressaten; dazu werden nicht nur die Organe der Gemeinschaft gehören, sondern auch die Mitgliedstaaten. Entscheidend ist vielmehr, welche Hoheitsakte angegriffen werden

¹⁷¹ EuGH 17.01.1984, Rs. 43/82, Slg. 1984, 19, 62, R 33 f. - VBVB/VBBB;
EuGH 11.07.1985, Rs. 60/84, Slg. 1985, 2605, 3627, R 25 f. - Cinéthèque;
EuGH 26.04.1988, Rs. 352/85, Slg. 1988, 2085, 2136, R 40 f. - Bond van Adverteerders;
EuGH 18.06.1991, Rs. C-260/89, Slg. 1991 I-2925, 2963 f., R 41-45 - ERT;
EuGH 25.07.1991, Rs. C-288/89, Slg. 1991 I-4007, 4043, R 23 - Stichting Collective Antennevoorziening Gouda;
EuGH 25.07.1991, Rs. C-353/89, Slg. 1991 I-4069, 4097, R 30 - Mediawet.

¹⁷² Zusammenfassend *Sabine Astheimer: Rundfunkfreiheit – ein europäisches Grundrecht. Eine Untersuchung zu Art. 10 EMRK* (Schriftenreihe UFITA 88) Baden-Baden 1990; *Engel* (FN 86); *Wolfgang Peukert: Die Kommunikationsgrundrechte im Lichte der Rechtsprechung der Organe der Europäischen Menschenrechtskonvention (EMRK)*, in: FS Mahrenholz, Baden-Baden 1994, 277-301. Speziell zur Presse *Engel* (FN 23); *Klein* (FN 28).

¹⁷³ EGMR 18.02.1999, Rs. 24833/94, R 32 - Matthews (deutsche Übersetzung in NJW 1999, 3107).

¹⁷⁴ *Rengeling Grundrechtsschutz* (FN 17) 78 f.

¹⁷⁵ Ebd. 86-90.

¹⁷⁶ Näher *Stein* in *Ress/Stein* (FN 28) 4 f.

Zur völkerrechtlichen Lage s. schließlich auch *Gilbert Hanno Gornig: Äußerungsfreiheit und Informationsfreiheit als Menschenrechte. Die Verankerung der Äußerungs-, Informations-, Presse- und Rundfunkfreiheit sowie des Zensurverbots in völkerrechtlichen Übereinkommen und in den Rechtsordnungen der KSZE-Staaten unter besonderer Berücksichtigung rechtsphilosophischer und rechtsgeschichtlicher Aspekte* (Schriften zum Völkerrecht 88) Berlin 1988.

¹⁷⁷ Präambel oder Art. 1 im Entwurf des Präsidiums vom 15.02.2000, Dok. 4123/1/00 REV 1, im Wortlaut wiedergegeben oben FN 16.

können. Das muß davon abhängen, ob das hoheitliche Handeln jedenfalls auch der Europäischen Gemeinschaft zugerechnet werden kann. Das ist nicht nur im Bereich der ausschließlichen, sondern auch der konkurrierenden Kompetenzen der Gemeinschaft möglich¹⁷⁸. Insbesondere gehört auch die Anwendung und der Vollzug von Verordnungen und Entscheidungen der Gemeinschaft durch die Mitgliedstaaten hierher¹⁷⁹. Das entspricht der bisherigen Grundrechtsrechtsprechung des Europäischen Gerichtshofs¹⁸⁰. Ebenso liegt es an sich, wenn Richtlinien nach Ablauf der Umsetzungsfrist unmittelbar anwendbar werden¹⁸¹. Dieser Fall kann allerdings nicht leicht praktisch werden, weil der Europäische Gerichtshof die horizontale Drittwirkung von Grundrechten ja gerade ausschließt¹⁸².

Im übrigen liegt es schwieriger, weil die Richtlinie den Mitgliedstaaten ja einen Freiraum zur Umsetzung läßt¹⁸³. Bei der Lösung sind die Eigenheiten von Grundrechten in einem Mehrebenensystem zu beachten¹⁸⁴. Wollte man allein den Umsetzungsakt der Mitgliedstaaten an ihren jeweiligen Grundrechtsordnungen messen, entstünde eine doppelte Schutzlücke. Zum einen könnte der nationale Gesetzgeber einwenden, er habe seine eigene Entscheidung im wesentlichen gar nicht zu verantworten. Er habe ja nur der Umsetzungspflicht des Gemeinschaftsrechts gehorcht. Selbst wenn das nationale Verfassungsrecht diesen Einwand nicht gelten ließe, würden auf die Richtlinie aber allein die Maßstäbe der nationalen Grundrechte angewendet. Sie unterscheiden sich von Mitgliedstaat zu Mitgliedstaat. Die Kommission erhielte einen Anreiz, von der Verordnung zur Richtlinie überzugehen und so die europäischen Grundrechte stumpf zu machen.

Die eleganteste Lösung liegt im Prozeßrecht. Sie würde den Unionsbürgern erlauben, gegen die Richtlinie Grundrechtsbeschwerde zum Europäischen Gerichtshof zu erheben, obwohl sie davon gar nicht selbst und unmittelbar betroffen sind. Sind solche Beschwerden bereits vor Ablauf der Umsetzungsfrist zulässig, könnte der EuGH sie allerdings nutzen, um den Umsetzungsfreiraum der Mitgliedstaaten einzuschränken. Will man das vermeiden, müßte vorgeschrieben werden, daß die Grundrechtsbeschwerde an den EuGH erst nach Ablauf der Umsetzungsfrist zulässig ist. Dieselben Grundsätze passen auch für die Grundrechtskontrolle von Entscheidungen der Gemeinschaft, die nicht an Individuen adressiert sind, sondern an die Mitgliedstaaten.

Noch etwas schwieriger wird es, wenn sich die Kommission darauf beschränkt, die Anwendung des Gemeinschaftsrechts in den Mitgliedstaaten durch Leitlinien zu lenken. So möchte sie künftig insbesondere mit dem Kartellverbot verfahren¹⁸⁵. Im deutschen Rechtsraum bestünde kein Zweifel,

¹⁷⁸ So zu Recht Europäisches Parlament Committee on Constitutional Affairs, PE 232.397, DT\385229EN.doc, 07.12.1999, R 27.

¹⁷⁹ Ebd. R 19 f.; *Eickmeier* (FN 5) DVBl. 1999, 1028; *Weber* (FN 5) NJW 2000, 542 f.

¹⁸⁰ EuGH 13.07.1989, Rs. 5/88, Slg. 1989, 2609, 2639 f. - Wachauf; EuGH 18.06.1991, Rs. C-260/89, Slg. 1991 I-2925, 2964 - ERT.

¹⁸¹ *Weber* (FN 5) NJW 2000, 542.

¹⁸² Umfassend *Martin Gellermann*: Beeinflussung des bundesdeutschen Rechts durch Richtlinien der EG, dargestellt am Beispiel des europäischen Umweltschutzes (Schriften zum deutschen und europäischen Umweltrecht 2) Köln 1994.

¹⁸³ Darauf verweist etwas *Weber* (FN 5) NJW 2000, 542 m.w.N.

¹⁸⁴ S. o. III 4.

¹⁸⁵ Weißbuch über die Modernisierung der Vorschriften zur Anwendung der Artikel 85 und 86 EG-Vertrag vom 28.04.1999; dazu kritisch Sondergutachten der *Monopolkommission*: Kartellpolitische Wende in der Europäischen Union <http://www.monopolkommission.de/sg_28/text.htm>; *Ernst-Joachim Mestmäcker*: Versuch einer kartellpolitischen Wende in der EU, in: EuZW 1999, 523-529; *Wernhard Möschel*: Systemwechsel im europäischen Wettbewerbsrecht? in: JZ 2000, 61-67.

daß Rechtsschutz gegen solche allgemeinen Verwaltungsvorschriften ausgeschlossen ist. Er könnte sich nur gegen deren Anwendung im Einzelfall richten. Im Verhältnis zwischen Gemeinschaft und Mitgliedstaaten würde das aber zu denselben Schutzlücken führen, die wir gerade für die Richtlinie herausgearbeitet haben. Nur die prozeßrechtliche Bewältigung ist schwieriger. Denn die Leitlinien sind ja nicht nur im Verhältnis zu den Bürgern unverbindlich, sondern auch im Verhältnis zu den Mitgliedstaaten. Trotzdem dürfte die bessere Lösung auch hier in der Eröffnung der Grundrechtsbeschwerde gegen die Leitlinien an den EuGH bestehen. Denn nur die Leitlinien können ja der Gemeinschaft zugerechnet werden, nicht die einzelnen Kartellrechtsentscheidungen in den Mitgliedstaaten.

Mit dem Gedanken der Zurechnung gelingt es auch, eine weitere Konstellation abzugrenzen. Verordnungen und Richtlinien der Gemeinschaft verweisen für Detailfragen manchmal auf das Recht der Mitgliedstaaten. So war das etwa bei der Richtlinie über die Durchführung von Maßnahmen zur Verbesserung der Sicherheit und des Gesundheitsschutzes der Arbeitnehmer bei der Arbeit, die auch für die Presse gilt¹⁸⁶. Insoweit übernimmt die Gemeinschaft gerade keine Verantwortung für den Inhalt der Regeln. Sie können deshalb ausschließlich an den Grundrechten der Mitgliedstaaten gemessen werden.

d) Träger

Nach den Entwürfen des Präsidiums bestimmen die einzelnen europäischen Grundrechte jeweils, welchen Personen sie zustehen. Während die politischen Rechte jeweils nur den Unionsbürgern zustehen sollen¹⁸⁷, sind die Freiheitsrechte als Jedermann-Rechte ausgestaltet. Das gilt nach der Entwurfsfassung auch für die Freiheit der Meinungsäußerung¹⁸⁸. Geschützt sind deshalb auch Anbieter aus Drittstaaten.

Die bisherigen Entwürfe sprechen nicht ausdrücklich aus, daß die europäischen Grundrechte auch juristische Personen schützen. Dies entspricht aber der bisherigen Rechtsprechung des Europäischen Gerichtshofs zu den ungeschriebenen Gemeinschaftsgrundrechten¹⁸⁹ und der Rechtsprechung der Straßburger Organe¹⁹⁰.

e) Sachlicher Schutzbereich

Der Entwurf des Präsidiums sieht eine allgemeine Meinungsäußerungsfreiheit vor¹⁹¹. Die Entwürfe der Abgeordneten Meyer und Kaufmann wollen dagegen der deutschen Tradition folgen und daneben die Pressefreiheit ausdrücklich schützen¹⁹². Beide Lösungen lassen sich vertreten, wenn sichergestellt ist, daß die Pressefreiheit umfassend geschützt ist und das Schutzniveau nicht hinter die Tradition der Verfassungen der Mitgliedstaaten zurückfällt. Getrennte Garantien für die

¹⁸⁶ Art. 11 II der Richtlinie vom 12.06.1989, ABl. 1989 L 183/1; zur Bedeutung für die Presse *Stein in Ress/Stein* (FN 28) 12.

¹⁸⁷ Dok. 4170/00.

¹⁸⁸ S. das Zitat oben a); vgl. auch Europäisches Parlament Committee on Constitutional Affairs, PE 232.397, DT\385929EN.doc vom 07.12.1999, R 28 f. und R 31.

¹⁸⁹ EuGH 05.10.1994, Rs. 23/93, Slg. 1994 I-4795, 4833; vgl. auch EuGH 14.05.1974, Rs. 4/73, Slg. 1974, 491, 507-Nold: Danach gelten die Grundrechte sogar für eine nicht rechtsfähige Gesellschaft.

¹⁹⁰ EGMR 22.05.1990, Ser. A 178, 1, 23, § 47 - Autronic; weitere Nachweise bei *Engel Privater Rundfunk* (FN 86) 71 und bei *Giegerich* (FN 80) *RabelsZ* 1999, 472.

¹⁹¹ Wortlaut oben a).

¹⁹² Einzelheiten ebd.

verschiedenen Medien führen unvermeidlich zu Abgrenzungsstreitigkeiten; davon legt das deutsche Verfassungsrecht beredtes Zeugnis ab¹⁹³. Die Europäische Menschenrechtskonvention hat mit einer einheitlichen Meinungsfreiheit nicht unbedingt schlechte Erfahrungen gemacht¹⁹⁴. Andererseits drängen die Rundfunkveranstalter, wie man hört, mit Macht auf eine separate Garantie der Rundfunkfreiheit. Dann wäre es in der Tat nicht hinnehmbar, wenn die Pressefreiheit nicht auch ausdrücklich garantiert würde. Sonst könnte schließlich sogar das Mißverständnis entstehen, nur der Rundfunk, nicht die Presse verdiene besonderen Schutz. Eine vermittelnde Lösung könnte darin bestehen, neben der allgemeinen Freiheit der Meinungsäußerung die Freiheit eigens zu erwähnen, Medien zu veranstalten. Das wäre vor allem als Fingerzeig für die Interpretation der Freiheit sinnvoll: wegen ihrer fundamentalen Bedeutung für ein demokratisches Gemeinwesen brauchen und verdienen die Medien stärkeren Schutz¹⁹⁵.

In den nationalen Grundrechtsordnungen war immer wieder umstritten, ob sich der Schutz der Pressefreiheit auch auf rein kommerzielle Inhalte und auf die finanziellen Grundlagen der Presse erstreckt¹⁹⁶. Die Rechtsprechung des Straßburger Menschenrechtsgerichtshofs tendiert in diese Richtung¹⁹⁷. Wenn der europäische Grundrechtskatalog die Form des gegenwärtigen Entwurfs behält, besteht an der Einbeziehung der finanziellen Grundlagen in den Schutzbereich der Meinungsäußerungsfreiheit erheblicher Bedarf. Denn die Berufsfreiheit soll nach den augenblicklichen Vorstellungen des Präsidiums nicht als Freiheitsrecht, sondern als bloßes soziales Recht geschützt werden¹⁹⁸. Auch wenn sich das noch ändern sollte, dürfte die Meinungsfreiheit auf höherem Niveau geschützt sein als die Berufsfreiheit. Ohne das ökonomische Substrat kann die Presse ihre publizistische Funktion nicht erfüllen¹⁹⁹. Aus diesem Grunde ist es angemessen, auch ihre ökonomischen Grundlagen auf höherem Niveau zu schützen als bei anderen Branchen. Das ist am ehesten gesichert, wenn auch das ökonomische Substrat in den Schutzbereich der Meinungsfreiheit fällt. Dazu gehört nicht nur der Absatz von Werbeflächen, sondern auch der Vertrieb an die Leser. Geschützt ist schließlich auch die zur Herstellung und Vertrieb erforderliche Technik²⁰⁰. Je stärker Presse elektronisch verbreitet wird, desto bedeutsamer wird das werden.

¹⁹³ S. aus der umfangreichen Literatur etwa *Christoph Engel*: Multimedia und das deutsche Verfassungsrecht, in: *Wolfgang Hoffmann-Riem/Thomas Vesting (Hrsg): Perspektiven der Informationsgesellschaft* (Symposien des Hans-Bredow-Instituts 16) Baden-Baden 1995, 155-171; *Martin Bullinger*: Der Rundfunkbegriff in der Differenzierung kommunikativer Dienste, in: AfP 27 (1996) 1-8; *Wolfgang Hoffmann-Riem*: Der Rundfunkbegriff in der Differenzierung kommunikativer Dienste, in: AfP 27 (1996) 9-15; *Martin Bullinger/Ernst-Joachim Mestmäcker*: Multimediadienste. Struktur und staatliche Aufgaben nach deutschem und europäischem Recht (Law and Economics of International Telecommunications 30) Baden-Baden 1997.

¹⁹⁴ S. im einzelnen *Engel* Privater Rundfunk (FN 86) 114 f.

¹⁹³ S. näher unten i).

¹⁹⁶ In Deutschland ist das seit jeher anerkannt, BVerfGE 21, 271, 278; 64, 108, 118; 85, 12. Die Werbung ist aber etwa in den Niederlanden vom Schutzbereich der Pressefreiheit ausdrücklich ausgenommen, *Neerscholten* in *Ress/Stein* (FN 88) 4.

¹⁹⁷ Zusammenfassend *Nolte* (FN 48) *RabelsZ* 1999, 508 und FN 8; weiteres Material bei *Engel* Privater Rundfunk (FN 86) 115-119.

¹⁹⁸ Näher unten 2 d).

¹⁹⁷ Näher oben II 1.

²⁰⁰ Zur Parallelfrage beim Rundfunk für Art. 10 I EMRK *Engel* Privater Rundfunk (FN 86) 285-291.

f) Eingriff

Im deutschen Verfassungsrecht ranken sich um das Konzept des Grundrechtseingriffs immer kompliziertere Überlegungen²⁰¹. Auch der Straßburger Menschenrechtsgerichtshof hat der Versuchung nicht ganz widerstanden²⁰². Sie verneinen einen Eingriff in die Meinungsäußerungsfreiheit etwa dann, wenn der Verleger die gleiche publizistische Wirkung auch auf einem anderen zumutbaren Wege erreichen kann²⁰³. In seinem Kern dient das dogmatische Konzept des Grundrechtseingriffs dazu, dem Staat und insbesondere dem Gesetzgeber im sachlichen Anwendungsbereich der Grundrechte einen Freiraum zu verschaffen, der nicht vom Verhältnismäßigkeitsgrundsatz kontrolliert ist. Das ist schon im Verfassungsrecht ein problematisches Unterfangen. Vor allem paßt dieses Anliegen aber nicht gegenüber einem Gesetzgeber, dem die demokratische Legitimation weitgehend abgeht²⁰⁴.

Praktische Bedeutung hat für die Presse vor allem die Figur des mittelbaren Eingriffs. Sie wird etwa gebraucht zur Abwehr von wettbewerbsverzerrenden Subventionen²⁰⁵. Auch staatliche Maßnahmen, die den Redakteuren eine Schere in den Kopf setzen, erfaßt man am besten als mittelbaren Eingriff²⁰⁶.

g) Formelle Schranken

Art. H.2 II 1 aus dem Entwurf des Präsidiums der Konvention lehnt sich an eine Formulierung an, die die Europäische Menschenrechtskonvention verwendet. „Jedwede Einschränkung der in dieser Charta gewährleisteten Rechte und Pflichten ist vom Gesetzgeber vorzusehen“. Aus dieser Formulierung haben die Straßburger Organe die formellen Schranken der Menschenrechte entwickelt²⁰⁷. Manche Maßstäbe des Straßburger Gerichtshofs lassen sich ohne weiteres auf die Europäische Grundrechtscharta übertragen. Auch im Gemeinschaftsrecht muß die Norm ausreichend zugänglich sein, auf die eine hoheitliche Intervention gestützt ist²⁰⁸. Da die Gemeinschaft ihr Recht nur ausnahmsweise durch eigene Organe vollzieht, hat das vor allem für den Vollzug durch die Mitgliedstaaten Bedeutung. Angesichts der großzügigen Veröffentlichungspraxis der Gemeinschaft wird daraus aber auch nur selten ein Problem entstehen. Übertragen läßt sich auch ein zweites Erfordernis, das der Straßburger Gerichtshof aus dem Erfordernis „vom Gesetz vorgesehen“ ableitet: der Eingriff muß für den Betroffenen ausreichend vorhersehbar gewesen sein²⁰⁹. In seiner späteren Rechtsprechung hat der Straßburger Gerichtshof das zu einem differenzierten Bestimmtheitsgrundsatz ausgestaltet²¹⁰.

²⁰¹ S. nur *Herbert Bethge*: Der Grundrechtseingriff, in: VVDStRL 57 (1998) 7-56.

²⁰² Einzelheiten bei *Engel Privater Rundfunk* (FN 86) 444-446.

²⁰¹ EKMR ZE 2795/66, YECHR 12, 192, 194; EKMR ZE 4517/70, YECHR 14, 548, 566 f.; EKMR ZE 4570/70, Digest III, 423 f.; EKMR B 5178/71, DR 8, 5, 13 f., §§ 85 ff.

²⁰⁴ S. o. III. 3.

²⁰⁵ Vgl. *Engel Privater Rundfunk* (FN 86) 360-373 zur Parallelfrage beim Rundfunk.

²⁰⁶ Das amerikanische Verfassungsrecht spricht dann plastisch von einem „chilling effect“, vgl. zu seiner Behandlung unter der Menschenrechtskonvention *Giegerich* (FN 80) RabelsZ 1999, 477.

²⁰⁷ Einzelheiten bei *Engel Privater Rundfunk* (FN 86) 450-452.

²⁰⁸ Leitentscheidung EGMR 26.04.1979, Ser. A 30, 1, 31, § 49 - Sunday Times; weitere Nachweise bei *Engel Privater Rundfunk* (FN 86) 63.

²⁰⁹ Leitentscheidung EGMR 26.04.1979, Ser. A 30, 1, 31, § 49 - Sunday Times; weitere Nachweise bei *Engel Privater Rundfunk* (FN 86) 63 f.

²¹⁰ Einzelheiten bei *Engel Privater Rundfunk* (FN 86) 451.

Schwerer fällt die Übertragung bei den beiden anderen Folgerungen, die der Straßburger Gerichtshof aus dem Tatbestandsmerkmal gezogen hat. Zunächst rankt sich eine differenzierte Rechtsprechung um die Frage, was denn im Sinne der Konvention überhaupt als „Gesetz“ anzusehen sei. Der Straßburger Gerichtshof sieht sich zu einem Eiertanz genötigt, damit er das englische Common Law nicht in Bausch und Bogen verwerfen muß²¹¹. Gegenüber dem Gemeinschaftsgesetzgeber besteht kein Anlaß zu solcher Zurückhaltung. Nach dem EG-Vertrag kann er nur durch Verordnung, mittelbar auch durch Richtlinie oder staatterichtete Entscheidung tätig werden. Greift er in anderen Formen oder auf anderer Grundlage in die grundrechtlich geschützte Sphäre ein, ist das mit den formellen Grundrechtsschranken nicht zu vereinbaren.

Schließlich folgern die Straßburger Organe aus dem Tatbestandsmerkmal „vom Gesetz vorgesehen“, daß die nationalen Stellen das anwendbare Recht nicht offensichtlich falsch angewendet haben dürfen²¹². An sich sind die Straßburger Organe dabei sehr zurückhaltend²¹³. Durch diese Zurückhaltung verhindert der Straßburger Gerichtshof, daß er in die Rolle einer Superrevisionsinstanz für alle Rechtsordnungen der Mitgliedstaaten gedrängt wird. Das Bundesverfassungsgericht faßt die formellen Grundrechtsschranken bekanntlich deutlich strenger. Besonders klar läßt sich das an der Rechtsprechung ablesen, die aus Art. 2 I GG ein Allgemeines Freiheitsrecht ableitet²¹⁴. Solch ein allgemeines Recht hat unvermeidlich auch sehr weite materielle Schranken. Seine praktische Wirkung besteht deshalb vor allem darin, Verletzungen objektiven Verfassungsrechts zu subjektivieren, also der Verfassungsbeschwerde zugänglich zu machen.

Diese Entscheidung ist schon unter dem Grundgesetz richtig. Im Gemeinschaftsrecht ist sie noch besser begründet. Da der Gemeinschaftsgesetzgeber nur so schwach demokratisch legitimiert ist²¹⁵, besteht auch kein Grund zu seiner Schonung. Im Gegenteil wird die Gemeinschaft als Rechtsgemeinschaft gestärkt und gewinnt zusätzliche Legitimität, wenn auch die Bürger Kompetenzüberschreitungen vor den Gerichtshof bringen können. Wegen der fundamentalen Bedeutung der Pressefreiheit für ein demokratisches Gemeinwesen gilt das erst recht für Grundrechtsbeschwerden der Verlage. Die formellen Grundrechtsschranken werden dadurch zu dem dogmatischen Instrument, um den Grundsatz der begrenzten Einzelermächtigung und das Subsidiaritätsprinzip als Maßstäbe des Grundrechtsschutzes zu etablieren.

h) Materielle Schranken

Der Entwurf des Präsidiums geht für die materiellen Grundrechtsschranken einen scheinbar eleganten, im Ergebnis aber wenig ratsamen Weg. Art. H.2 II 2 stellt zunächst alle Freiheitsrechte einheitlich unter die Garantie von Wesensgehalt und Verhältnismäßigkeit und lehnt sich dabei an eine Formulierung an, die sich vielfach in der Europäischen Menschenrechtskonvention findet. Die Gemeinschaft ist auf die Maßnahmen beschränkt, „die für den Schutz legitimer Interessen in einer demokratischen Gesellschaft erforderlich sind“²¹⁶. Art. H.2 II 3 erstreckt überdies die Schranken der parallelen Rechte aus der Europäischen Menschenrechtskonvention. Art. H.4 legt überdies fest, daß keine Vorschrift der Grundrechtscharta als Beschränkung des Schutzes interpretiert werden darf, den internationale Übereinkommen und insbesondere die Menschenrechtskonvention vermitteln.

²¹¹ Das hat dann allerdings auch Folgen für andere Rechtsordnungen, s. etwa EGMR 24.04.1990, Ser. A 176-B, 15, § 28 - Huvig.

²¹² Leitentscheidung EGMR 26.04.1979, Ser. A 30, 1, 31, § 49 - Sunday Times.

²¹³ Einzelheiten bei *Engel* Privater Rundfunk (FN 86) 271 f.; s. aber etwa EGMR 22.04.1992, Ser. A 226-B, §§ 57-64 - Rieme.

²¹⁴ Grundlegend BVerfGE 80, 137 - Reiten im Walde.

²¹⁵ S. o. III. 3.

²¹⁶ Der volle Wortlaut der Vorschrift findet sich oben a).

Für allgemeine Schranken scheint zu sprechen, daß die Straßburger Organe die materiellen Schranken der Menschenrechte in ihrer Rechtsprechung trotz unterschiedlichem Wortlaut immer stärker aneinander angenähert haben²¹⁷. Sieht man näher hin, führt der Vorschlag allerdings in einen dogmatischen Irrgarten. Schon nach ihrem Wortlaut sind die Grundrechte der Charta und die parallelen Menschenrechte nicht vollständig identisch. So läßt der Entwurf des Präsidiums etwa – in der Sache ganz zu Recht – die verwirrende Rundfunkklausel aus Art. 10 I 3 EMRK weg²¹⁸. Sobald die Auslegung der Grundrechtscharta einem europäischen Gericht überantwortet wird, werden sich selbst bei gleichem Wortlaut Unterschiede ergeben. Die Regelungstechnik des Entwurfs ist deshalb die Einladung an jeden findigen Anwalt, auf dem Klavier des doppelten Geltungsgrunds bzw. wegen Art. H.2 II 3 der doppelten Schranken zu spielen. Ganz läßt sich das ohnehin nicht verhindern. Wenn aber allein die Menschenrechtskonvention benannte Schranken kennt, wird es in nahezu jedem praktischen Fall zur doppelten Grund- und Menschenrechtsprüfung kommen. Stimmt die Umschreibung des Schutzbereichs eines Rechts in der Menschenrechtskonvention und in der Charta nicht vollständig überein, kann es überdies zu Qualifikationsstreitigkeiten kommen. Das ist auch dann zu bedenken, wenn die Pressefreiheit separat geschützt würde. Denn die Menschenrechtskonvention enthält, wie erwähnt, nur eine allgemeine Meinungsäußerungsfreiheit. Das Problem würde sich aber wohl relativ einfach lösen lassen, indem man die Pressefreiheit der Europäischen Gemeinschaft als einen Teil der Meinungsäußerungsfreiheit im Sinne von Art. 10 EMRK begreift. Dann hätte Art. H.2 II 3 zur Folge, daß der Katalog legitimer Ziele aus Art. 10 II EMRK auch für die Pressefreiheit des Gemeinschaftsrechts gilt.

Wichtiger als dieser rechtstechnische ist aber ein materieller Grund. Die praktische Bedeutung des Verhältnismäßigkeitsgrundsatzes steht und fällt mit der Definition des legitimen Ziels. Wenn die Grundrechtsdogmatik dem Gesetzgeber hier Freiheiten einräumt, ist das Verhältnismäßigkeitsprinzip wenig mehr als ein rhetorisches Exerzitium. Ein geeignetes Ziel läßt sich praktisch jeder staatlichen Intervention unterlegen. Das ist schon unter dem Grundgesetz ein Problem von Gewicht. Dort mag man gewisse Freiheiten des Gesetzgebers aber wenigstens noch mit seiner direkten demokratischen Legitimation rechtfertigen. Daran fehlt es, wie mehrfach erwähnt, beim Gemeinschaftsgesetzgeber im wesentlichen²¹⁹. Output-Legitimation für Entscheidungen des Gemeinschaftsgesetzgebers verschaffen allein benannte Grundrechtsschranken.

Aus dem rechtstechnischen und dem verfassungspolitischen Grunde sollte sich die Gemeinschaft deshalb an den benannten Schranken orientieren, die in der Europäischen Menschenrechtskonvention enthalten sind. Das würde der Grundrechtsanwendung auch bei der Konkretisierung helfen. Im Zweifel und solange der Europäische Gerichtshof keine abweichenden Maßstäbe entwickelt hat, könnte die Praxis sich an der differenzierten Rechtssprechung der Straßburger Organe orientieren²²⁰. Einen weiteren Orientierungspunkt könnten vielleicht auch die „zwingenden Erfordernisse“ bilden, die der Europäische Gerichtshof der Warenverkehrs- und der Dienstleistungsfreiheit entnommen hat²²¹.

²¹⁷ Einzelheiten zu dem Diskriminierungsverbot des Art. 14 EMRK und zur Eigentumsgarantie aus Art. 1 ZP 1 bei *Engel* Privater Rundfunk (FN 86) 461-465.

²¹⁸ Dazu näher *Engel* Privater Rundfunk (FN 86) 43-60.

²¹⁹ S. o. III. 3.

²²⁰ Zusammenfassend *Engel* Privater Rundfunk (FN 86) 452-458 und *ders.*: Der Ordnungsvorbehalt in den Schranken der Europäischen Menschenrechtskonvention, in: Schweizerisches Jahrbuch für internationales Recht 46 (1989) 41-91.

²²¹ Zusammenfassend von *der Groeben/Thiesing/Ehlermann – Müller-Graff* Art. 30 EGV, R 203-230 und ebd. – *Troberg* Art. 59 EGV, R 19-23.

Ein weiteres Problem des deutschen Verfassungsrechts ist in der Europäischen Gemeinschaft dagegen gelöst. Die Unbestimmtheit des legitimen Ziels verkürzt den Grundrechtsschutz in Deutschland deshalb zusätzlich, weil der Gesetzgeber nicht gezwungen ist, die Absichten zu definieren, die er mit seiner Intervention verfolgt²²². Art. 253 EGV verpflichtet den europäischen Gesetzgeber dagegen, seine Entscheidungen mit Gründen zu versehen. Tatsächlich sind Richtlinien und Verordnungen regelmäßig auch ausführliche Begründungen vorangestellt. An den Zielen, die der Gesetzgeber dort festlegt, muß er sich dann auch bei der Grundrechtsprüfung festhalten lassen. Ein wohlgesonnener Richter kann deshalb nicht nachträglich ein passendes Ziel unterschieben.

Bei der Bestimmung der legitimen Ziele sind schließlich die Besonderheiten von Grundrechten im Mehrebenenystem zu beachten²²³. Der bloße Wille zur Harmonisierung kann als Rechtfertigungsgrund nicht genügen²²⁴. Das wäre nämlich ein inhaltsleeres Ziel. Jede beliebige Intervention führt zu einem Level Playing Field. Auch die Sachentscheidung des europäischen Gesetzgebers muß deshalb mit dem einschlägigen Grundrecht zu vereinbaren sein. Noch weniger kann genügen, daß ein Kompromiß im Rat oder mit dem Parlament nur durch das Schnüren eines Pakets zu erzielen war. Die Grundrechte sollen ja gerade davor schützen, daß ihre Träger im politischen Prozeß unter die Räder geraten. Das Problem reicht aber noch tiefer. In der normativen ökonomischen Diskussion gilt seit langem nicht mehr als ausgemacht, daß ein Wettbewerb der Institutionen zwischen den Mitgliedstaaten von Nachteil ist²²⁵. Eine Grundrechtscharta verrechtlicht auch diese Frage. Der Institutionenwettbewerb wird künftig vor den Schranken des zuständigen europäischen Gerichts verhandelt werden müssen.

All das hat für die Presse besondere Bedeutung. Denn in den Mitgliedstaaten ist Pressepolitik zugleich immer auch Verfassungspolitik. Es läßt sich abstrakt nicht bestreiten, daß aus Unterschieden in der Verfassungspolitik der Mitgliedstaaten Handelshindernisse für einen ungehinderten europäischen Pressemarkt entstehen können. Es ist aber mehr als fraglich, ob daraus eine europäische Harmonisierung der nationalen Verfassungspolitiken abgeleitet werden dürfte. Denn den Mitgliedstaaten würde auf diese Weise ja nicht nur ein einzelnes politisches Instrument aus der Hand geschlagen, sondern sie würden zu einer Änderung ihres inneren politischen Systems gezwungen. Damit wäre die Grenze des Art. 6 III EUV überschritten. Diese Vorschrift verpflichtet die Gemeinschaft, die nationale Identität der Mitgliedstaaten zu achten. Einstweilen dürfte sich die Bewertung auch nicht mit Blick auf die Teile der Politik ändern, die in Europa gemacht werden. Richtig ist zwar, daß die Presse auch für das Verhältnis zwischen europäischen Organen und Unionsbürgern die Funktion eines Intermediärs wahrnimmt. Bisläng ist eine genuin europäische Presse aber nicht entstanden. Vielmehr wird auch diese Intermediationsaufgabe von der jeweiligen nationalen Presse wahrgenommen. Das entspricht der Erkenntnis, daß die Völker der Mitgliedstaaten noch nicht zu einem europäischen Volk mit einer einheitlichen Identität verwachsen sind²²⁶.

²²² In jüngeren Gesetzen tut er das allerdings zunehmend freiwillig, s. etwa § 1 TKG oder § 1 KrWAbfG.

²²³ Vgl. oben III. 4.

²²⁴ *Simma/Weiler/Zöckler* (FN 39) 142.

²²⁵ S. nur *Lüder Gerken* (Ed.): *Competition among Institutions*, Houndmills 1995; *Markus Müller*: *Systemwettbewerb, Harmonisierung und Wettbewerbsverzerrung. Europa zwischen einem Wettbewerb der Gesetzgeber und vollständiger Harmonisierung* (Wirtschaftsrecht und Wirtschaftspolitik 136) Baden-Baden 2000.

²²⁶ Vgl. oben III. 5.

i) Schutzniveau

Grundrechtsschutz ist eine Frage von Grad und Maß. Überziehen die Gerichte, findet Gesetzgebung und Verwaltung schließlich nur noch vor ihren Schranken statt. Wiederum hat dieses Anliegen allerdings gegenüber dem europäischen Gesetzgeber weniger Gewicht als gegenüber den nationalen Gesetzgebern. Da er nur ganz schwach demokratisch legitimiert ist, darf, ja muß der Grundrechtsschutz strikter ausgestaltet werden²²⁷. Der Straßburger Gerichtshof hat für diese Aufgabe ein elegantes dogmatisches Instrument entwickelt, die Margin of Appreciation²²⁸. Art. H.2 II 2 des Präsidiumsentwurfs der Grundrechtscharta bezieht sich ausdrücklich auf diese Rechtsprechung. Denn die Vorschrift schließt mit dem Tatbestandsmerkmal „in einer demokratischen Gesellschaft erforderlich“. Genau daraus hat der Straßburger Gerichtshof seine Doktrin entwickelt.

Die Margin of Appreciation leistet noch mehr. Sie nimmt all die Topoi auf, mit deren Hilfe das Schutzniveau eines Grundrechts differenziert werden kann. Das nutzen die Straßburger Organe etwa, um kommerziellen Äußerungen geringeren Schutz zu gewähren als ideellen²²⁹. Umgekehrt sind die Medien um so stärker geschützt, je mehr zugleich auch ihre demokratische Aufgabe der Vermittlung zwischen Staat und Gesellschaft beeinträchtigt oder gefährdet wird²³⁰.

Das Konzept der Margin of Appreciation erlaubt außerdem, das Schutzniveau nach Maßgabe der jeweiligen kulturellen Prägung und Regulierungstradition zu differenzieren²³¹. Für die Gemeinschaftsgrundrechte hat das scheinbar kaum eine Bedeutung. Denn für das autonome Handeln der Mitgliedstaaten sollen sie ja ohnehin nicht gelten. Die nationale Differenzierung des Schutzniveaus hilft aber einmal zur Rechtfertigung von Unterschieden beim Vollzug von Gemeinschaftsrecht durch die Mitgliedstaaten. Auch eine europäische Grundrechtscharta würde die Gemeinschaft also nicht dazu zwingen, den Vollzug ihres Rechts rigoros zu vereinheitlichen. Vor allem liefert die regionale Differenzierung des Schutzniveaus aber die Rechtfertigung dafür, daß die Gemeinschaft den Mitgliedstaaten Regelungsspielräume beläßt oder im Bereich ihrer ausschließlichen Zuständigkeit erst eröffnet.

Schließlich hilft die Margin of Appreciation noch zur Bewältigung eines letzten Problems. Allen Lippenbekenntnissen in den Entscheidungen des Europäischen Gerichtshofs zum Trotz spielen die Grundrechte als Grenze für den Gemeinschaftsgesetzgeber bisher praktisch keine Rolle. Eine rechtlich verbindliche und gerichtlich durchsetzbare Grundrechtscharta verlangt den Gemeinschaftsorganen deswegen eine erhebliche Veränderung ihres Verhaltens und ihrer Mentalität ab. Das wird nicht von heute auf morgen zu bewerkstelligen sein. Gegenüber den Mitgliedstaaten der Menschenrechtskonvention hat der Straßburger Gerichtshof die Margin of Appreciation deshalb als Hilfsmittel genutzt, um den Grundrechtsstandard nicht abrupt, sondern schrittweise anzuheben²³². Gegenüber den Gemeinschaftsorganen hat dieses Anliegen allerdings

²²⁷ Pauly (FN 146) EuR 1998, 243/248 und passim.

²²⁸ Christoph Engel: Die Schranken der Schranken der Europäischen Menschenrechtskonvention. Das Merkmal „notwendig in einer demokratischen Gesellschaft“ in den Schrankenvorbehalten, das Diskriminierungsverbot, und die „Margin of Appreciation“, in: ÖZöRV 1986, 261-287.

²²⁹ Näher Nolte (FN 48) RabelsZ 1999, 514 f.

²³⁰ Seit EGMR 07.12.1976, Ser. A 24, 1, 23, § 49 - Handyside; weitere Nachweise zu diesem Punkt bei Engel Privater Rundfunk (FN 86) 50; weiter Topoi, die die Straßburger Organe zur Differenzierung des Schutzniveaus der Meinungsfreiheit nutzen, ebd. 459-461.

²³¹ Einzelheiten bei Engel (FN 228) ÖZöRV 1986, 276 und passim.

²³² Näher Engel (FN 228) ÖZöRV 1986, 276 und passim.

geringeres Gewicht als gegenüber den Mitgliedstaaten der Menschenrechtskonvention. Wegen der geringen demokratischen Legitimation des europäischen Gesetzgebers geht es im wesentlichen nur um ein pragmatisches Problem. Wenn der Europäische Gerichtshof bei der Anwendung der Grundrechtscharta zu forsich vorangeht, provoziert er vielleicht Widerstand oder riskiert gar, daß der Rechtsschutz bei der nächsten Vertragsänderung wieder eingeschränkt wird.

j) Umgehungsschutz

Solche Vorsicht ist auch deshalb angeraten, weil die politischen Organe der Gemeinschaft sonst einen Anreiz erhalten, den neuen Grundrechtsschutz zu umgehen. Dazu gibt es viele Möglichkeiten. Wo das zulässig ist, können sie von der Verordnung zur Richtlinie übergehen und die grundrechtlich problematischen Entscheidungen den Mitgliedstaaten überlassen. Je geringer der Grundrechtsschutz in einem Mitgliedstaat ausgestaltet ist, desto größere Freiräume entstehen dadurch. Die Gemeinschaft könnte schließlich Politiken sogar ganz offen renationalisieren. Die zweite Ausweichstrategie setzt an den Handlungsformen an. Die Gemeinschaft kann sich darauf beschränken, rechtlich unverbindliche Guidelines zu veröffentlichen²³³. Sie kann bloß noch mit Regulierung drohen und darauf setzen, daß die Verbände ausgehandelte Regeln in ihrem Inneren durchsetzen²³⁴. Sie kann sich auch, wie beim Ökoadit oder beim Datenschutzaudit, darauf beschränken, die Unternehmen zur Selbstkontrolle anzuhalten.

Für solch einen Wechsel der Handlungsform gibt es natürlich nicht nur strategische Gründe. Auch die nationalen Grundrechtsordnungen haben noch keine wirklich befriedigenden Lösungen für den Grundrechtsschutz solcher bloß vom Staat veranlaßter gesellschaftlicher Macht gefunden. Würde sich der Grundrechtsschutz allein auf die staatliche Einwirkungshandlung erstrecken, wäre er weitgehend wirkungslos. Oft fehlt es sogar an förmlichem staatlichen Handeln. Der Staat beschränkt sich auf eine Politik der hochgezogenen Augenbraue. Auch wo er seine Versprechungen oder Drohungen formalisiert, liefe ein Grundrechtsschutz aus justizpolitischen Gründen weitgehend leer, der sich allein hierauf erstreckt. Denn er bringt das zur Grundrechtsanwendung berufene Gericht in eine unmögliche Lage. Es steht vor einer Alles oder Nichts – Entscheidung. Es muß die staatliche Einwirkung entweder passieren lassen oder dem Staat sein Lock- oder Drohmittel ganz aus der Hand schlagen.

An dieser Stelle kann die Grundrechtsdogmatik nicht stehen bleiben. Sie müßte dann zusehen, wie aus der durch Grundrechte kontrollierten staatlichen Macht vom Staat veranlaßte, durch Grundrechte aber nicht mehr kontrollierte gesellschaftliche Macht wird. Theoretisch ist Abhilfe auf drei Wegen möglich. Auf dem ersten Weg würde auch die vom Staat veranlaßte gesellschaftliche Macht für die Zwecke der Grundrechtsanwendung dem Staat zugerechnet. Dann würden die Grundrechte die Trennung zwischen Staat und Gesellschaft in diesen Fällen aber aufheben. Der zweite Weg ist ein Klassiker der Grundrechtsdiskussion: die Drittwirkung der Grundrechte. Auch das vom Staat veranlaßte gesellschaftliche Handeln wird in dieser Vorstellung nicht zu staatlichem. Es werden nur die für den Staat geltenden Maßstäbe hierauf erstreckt. Derselbe Gedanke liegt auch dem Verwaltungsprivatrecht zugrunde. Die Grundrechtsdiskussion der vergangenen Jahrzehnte war gegenüber der Drittwirkungslehre aber zurecht zurückhaltend. Sie macht zwar nicht dogmatisch, wohl aber funktionell gesellschaftliches wieder zu staatlichem Handeln. Auch dann, wenn gesellschaftliche Macht nicht aus der Gesellschaft heraus entsteht, sondern auf staatliche Veranlassung, sind Schutzpflichten deshalb die angemessene Lösung. Das gesellschaftliche

²³³ Dazu bereits oben c).

²³⁴ Zum konzeptionellen Hintergrund und zur verfassungsrechtlichen Einordnung näher *Christoph Engel: Institutionen zwischen Staat und Markt* (Preprint aus der Max-Planck Projektgruppe Recht der Gemeinschaftsgüter 1999/3).

Verhalten kommt nicht direkt in den Geltungsbereich der Grundrechte. Die Grundrechte verpflichten den Staat aber, dem Mißbrauch gesellschaftlicher Macht nicht einfach zuzusehen. Das gilt in besonderem Maße, wenn er, wie in den hier betrachteten Fällen, selbst erst für die Entstehung der gesellschaftlichen Macht gesorgt hat.

k) Schutzpflichten

Den deutschen Grundrechten entnimmt das Bundesverfassungsgericht seit langem Schutzpflichten²³⁵. Auch der Straßburger Gerichtshof geht so vor²³⁶. Dazu hat er insbesondere das Recht aus Art. 8 I EMRK auf Achtung des Privatlebens genutzt²³⁷. Art. 12 des Präsidiumsentswurfs der Grundrechtcharta enthält eine Norm, die sich eng an Art. 8 I EMRK anlehnt²³⁸. Es liegt nahe, daß der Europäische Gerichtshof an diese Tradition anknüpft, wenn ihm die Anwendung europäischer Grundrechte übertragen wird²³⁹.

In ein Mehrebenensystem sind Schutzpflichten allerdings schwerer zu integrieren als Abwehrrechte²⁴⁰. Zunächst sind auch hier die Zurechnungsregeln zu beachten²⁴¹. Folgt aus den gemeinschaftlichen Grundrechten eine Pflicht zur Gesetzgebung, ist sie von den Organen der Gemeinschaft zu erfüllen, nicht von den Mitgliedstaaten. Eine gemeinschaftsrechtliche Schutzpflicht der Mitgliedstaaten kommt nur dann in Betracht, wenn sie gerade durch den Vollzug des Gemeinschaftsrechts zu erfüllen ist. Dazu könnte es insbesondere kommen, wenn die Gemeinschaft den Vollzug ihres Kartellrechts wirklich weitgehend den Mitgliedstaaten überträgt²⁴².

Gewichtiger ist die zweite Besonderheit. Sie wird im Vergleich zu einem föderalen Staat deutlich. Nehmen wir an, daß die Bundesverfassung Grundrechte enthält, die für den gesamten Staat gelten. Entnimmt das Verfassungsgericht diesen Grundrechten eine Schutzpflicht, ändert das nichts an der föderalen Kompetenzverteilung. Fällt der Gegenstand in die Gesetzgebungs- oder Verwaltungskompetenz der Gliedstaaten, sind sie auch Adressaten der Schutzpflicht.

Auch im Verhältnis von Gemeinschaft und Mitgliedstaaten dürfen grundrechtliche Schutzpflichten die Kompetenzordnung nicht verändern. Dieser Satz hat nur viel einschneidendere Wirkungen als in einem föderalen Staat. Er entscheidet regelmäßig nicht nur darüber, wer die Schutzpflicht erfüllt, sondern ob sie überhaupt erfüllt wird. Das liegt an der Eigenart von Grundrechten im Mehrebenensystem²⁴³. Nicht nur dem Gemeinschaftsgesetzgeber fehlt das Monopol, sondern auch dem Gemeinschaftsgrundrecht. Der vollständige Grundrechtsschutz des Individuums setzt sich in diesem Mehrebenensystem erst aus den Gemeinschaftsgrundrechten und den Grundrechten der nationalen Verfassungen sowie prozessual aus der Verfassungsbeschwerde an ein europäisches Gericht und an das nationale Verfassungsgericht zusammen.

²³⁵ *Johannes Dietlein*: Die Lehre von den grundrechtlichen Schutzpflichten, Berlin 1992.

²³⁶ Seit EGMR 09.10.1970, Ser. A 32, 17, § 32 – Airey; s. auch *Claus Dieter Classen*: Die Ableitung von Schutzpflichten des Gesetzgebers aus Freiheitsrechten. Ein Vergleich von deutschem und französischem Verfassungsrecht sowie der Europäischen Menschenrechtskonvention, in: JöR 36 (1987) 29.

²³⁷ Leitentscheidung EGMR 26.03.1985, Ser. A 91, 1, § 23 - X und Y gegen Niederlande.

²³⁸ Dok. 4149/00; zu dem gerade in unserem Zusammenhang relevanten Unterschied näher unten 4.

²³⁹ S. aber kritisch *Eickmeier* (FN 5) DVBl. 1999, 1029.

²⁴⁰ S. o. III. 4.

²⁴¹ S. o. c).

²⁴² S. o. c).

²⁴³ S. o. III. 4.

Im Ergebnis kann es deshalb zu Schutzlücken kommen. Sie ergeben sich, wenn die Grundrechte oder die Möglichkeiten zu ihrer Durchsetzung in einem Mitgliedstaat weniger weit gehen oder anders ausgestaltet sind als in der Gemeinschaft. Das führt zu einer letzten Besonderheit. An sich sind die Kompetenzen zwischen Gemeinschaft und Mitgliedstaaten nach einem anderen Prinzip verteilt als die Kompetenzen von Bund und Ländern unter dem Grundgesetz. Das Grundgesetz verteilt Kompetenzen nach Materien. Die Kompetenzen der Gemeinschaft sind dagegen funktional gedacht. Die Gemeinschaft ist zuständig, wenn das erforderlich ist, um eines der Ziele zu erfüllen, die ihr der EG-Vertrag überträgt.

Dieser Gedanke darf jedoch auf die Schutzpflichten nicht übertragen werden, die den Gemeinschaftsgrundrechten entnommen werden. Denn als Abwehrrechte müssen die Gemeinschaftsgrundrechte umfassend sein. Sie müssen den Bürgern gerade auch dort helfen, wo die Gemeinschaft in Lebensbereiche eingreifen will, deren Regelung dem nationalen Gesetzgeber zusteht. Auch als Schutzpflichten sind die Gemeinschaftsgrundrechte also kein versteckter Kompetenztitel. Vielmehr beschränken sie den Handlungsfreiraum der Gemeinschaft, dort wo die Verträge ihn überhaupt eröffnet haben. Anders gewendet: aus den Gemeinschaftsgrundrechten folgen nie unbedingte Schutzpflichten. Vielmehr geht es immer nur um eine Pflicht zum Einschreiten, falls der Gemeinschaft aus einem anderen Grunde die Zuständigkeit zusteht, etwa zur Verwirklichung des Binnenmarkts.

2. Schutz der Verlage durch andere Grundrechte

Die Verlage können sich nicht nur mit Hilfe der Pressefreiheit gegen europäische Hoheitsakte zur Wehr setzen. Vielmehr steht ihnen zugleich eine ganze Liste anderer Grundrechte zu Gebote, die in den vorliegenden Entwürfen enthalten sind. Im einzelnen sind das die Informationsfreiheit (a), Informationsansprüche (b) und der Datenschutz (c), die Berufsfreiheit (d) und das Eigentum (e), der Schutz der Geschäftsräume (f) und der Vertraulichkeit (g), die strafrechtlichen Grundrechte (h), der Gleichheitssatz (i) und die demokratischen Grundrechte (j).

Wir hatten gesehen, daß ihnen die Pressefreiheit einen weit gespannten Schutz verschafft, der insbesondere auch die vorbereitenden journalistische Tätigkeit und den Absatz an Abonnenten und Werbekunden umfaßt. Letztlich führen alle im folgenden betrachteten Grundrechte deshalb dazu, daß ein und derselbe Akt der Gemeinschaft an mehreren Grundrechte zugleich gemessen werden muß. Dieser Umstand bietet der Presse aber nicht nur Sicherheit vor – unangebrachten – restriktiven Interpretationen der Pressefreiheit. Wenn der Staat in mehrere Grundrechte eines Verlages zugleich eingreift, erhöht das vielmehr auch das Schutzniveau²⁴⁴. Die Waagschale neigt sich bei der Verhältnismäßigkeitsprüfung früher zu Gunsten der Verlage.

a) Informationsfreiheit

Art. 15 des Präsidiumsentwurfs schützt nicht nur die Meinungsfreiheit, sondern auch die Freiheit, „Informationen ohne behördliche Eingriffe und ohne Rücksicht auf Staatsgrenzen zu empfangen“²⁴⁵. Dieses Recht soll jedermann zustehen, also auch den Verlagen. Es stellt ein Abwehrrecht dar, schützt also vor staatlichen Eingriffen in Kommunikationsvorgänge²⁴⁶.

²⁴² S. zu diesem dogmatischen Konzept näher oben 1 i).

²⁴⁵ S. auch den Vorschlag der Abgeordneten *Kaufmann*, Dok. 4189/00.

²⁴⁶ Näher *Christoph Engel*: Der Zusammenhang von Sende- und Empfangsfreiheit unter der Europäischen Menschenrechtskonvention, in: ZUM 1988, 511-526 und *Engel* Privater Rundfunk (FN 86) 323 f.

Die Recherchetätigkeit der Presse ist also nicht nur als Vorbereitungshandlung für spätere Meinungsäußerungen geschützt²⁴⁷, sondern auch unmittelbar.

b) Informationsansprüche

Art. 14 des Präsidiumsentswurfs lautet:

„Jeder Unionsbürger und jede Unionsbürgerin sowie jede Person mit Wohnsitz in der Union hat das Recht auf Zugang zu Dokumenten der Organe der Europäischen Union. Die Ausübung dieses Rechts erfolgt unter den in Artikel 255 des Vertrages zur Gründung der Europäischen Gemeinschaft vorgesehenen Bedingungen“²⁴⁸.

Dieses Recht schützt auch die Presse. Der Abgeordnete *Meyer* will darüber hinaus einen Auskunftsanspruch der Presse in der Grundrechtscharta verankern²⁴⁹. Das würde der Rechtslage nach den deutschen Landespressegesetzen entsprechen. Ob für solch eine Sonderregel Bedarf besteht, hängt von der Ausgestaltung der Bedingungen für den allgemeinen Informationsanspruch ab. In der Grundtendenz ist die Gemeinschaft sehr viel großzügiger als deutsche Behörden und Gerichte. Sie folgt im Grundsatz der skandinavischen und der amerikanischen Tradition²⁵⁰.

c) Datenschutz

Art. 15 des Präsidiumsentswurfs soll lauten:

„Jede natürliche Person hat Anspruch auf Schutz ihrer personenbezogenen Daten“²⁵¹.

Zur Begründung verweist der Entwurf auf Art. 286 EGV. Auch dort ist der Schutz auf natürliche Personen beschränkt. Dagegen ist solange nichts einzuwenden, wie der Schutz von Geschäftsgeheimnissen durch andere Grundrechte gesichert wird.

d) Berufsfreiheit

Sehr viel problematischer ist der ausgesprochen schwache Schutz der Berufsfreiheit. Die einschlägige Vorschrift des Präsidiumsentswurfs findet sich nicht bei den Freiheitsrechten, sondern bei den sozialen und wirtschaftlichen Rechten. Art. II lautet:

„Jede Person hat das Recht, ihren Beruf und ihr Gewerbe frei zu wählen und auszuüben, unbeschadet der die Freizügigkeit von Personen betreffenden Bestimmungen des Vertrages“²⁵².

²⁴⁷ Dazu oben 1 e).

²⁴⁸ Dok. 4137/00.

²⁴⁹ Das soll in Art. 15 II 2 geschehen: „Die Organe der Union sind ihm [!] verpflichtet, der Presse Auskünfte zu erteilen“.

²⁵⁰ Näher *Wieland* in *Engel/Keller* (FN 113).

²⁵¹ Dok. 4137/00.

²⁵² Dok. 4192/00.

Das entspricht zwar dem Recht des Europarats. Auch die Europäische Menschenrechtskonvention enthält keine Garantie der Berufs- und Gewerbefreiheit. Berufsbezogene Rechte gibt es nur in der Europäischen Sozialcharta²⁵³. Das widerspricht aber der Verfassungstradition vieler Mitgliedstaaten²⁵⁴. Vor allem würde die Europäische Grundrechtscharta damit aber hinter die ständige Rechtsprechung des Europäischen Gerichtshofs zu den ungeschriebenen Grundrechten des Gemeinschaftsrechts zurückfallen²⁵⁵.

Bislang äußert sich der Präsidiumsentswurf weder zu den Schranken der Sozialrechte noch zu den Mechanismen für ihre Durchsetzung. Anzuerkennen ist zwar das Bemühen des Präsidiums, den bestenfalls justitiablen Kern solcher Rechte herauszuschälen²⁵⁶. Trotzdem ist der Stellenwert der Berufsfreiheit viel prekärer, wenn sie nicht als Freiheits-, sondern nur als Sozialrecht garantiert ist. Die systematische Stellung könnte außerdem dazu verführen, den persönlichen Schutzbereich des Grundrechts eng zu fassen und es nur natürlichen Personen zuzugestehen.

Es kann kein Trost sein, daß die Folgen für die Presse weniger gravierend wären als für andere Branchen. Wir hatten ja schon gesehen, daß auch das ökonomische Substrat zum Schutzbereich der Pressefreiheit gehört²⁵⁷. Der Vergleich zum amerikanischen Verfassungsrecht zeigt, daß dies eine stabile dogmatische Grundlage für einen Schutz auch der ökonomischen Seite der Presse darstellen kann²⁵⁸. Gewiß ist das aber nicht. Es steht zu befürchten, daß der schwächere Schutz der Berufsfreiheit als Argument für eine restriktive Interpretation der Pressefreiheit instrumentalisiert wird.

e) Eigentum

Art. 16 des Präsidiumsentwurfs lautet:

„Jede Person hat das Recht auf Achtung ihres Eigentums. Niemandem darf sein Eigentum entzogen werden, es sei denn aus Gründen des öffentlichen Interesses und nur in Fällen und unter Bedingungen, die durch Gesetz vorgesehen sind, sowie gegen eine angemessene [„vorherige“] Entschädigung“²⁵⁹.

Das entspricht der Verfassungstradition der Mitgliedstaaten²⁶⁰, der Grundrechtsrechtsprechung des Europäischen Gerichtshofs²⁶¹ sowie Art. 1 des 1. Zusatzprotokolls zur Europäischen Menschenrechtskonvention. Wiederum wäre der Grundrechtsschutz der Verlage letztlich auch mit Hilfe einer weit interpretierten Pressefreiheit zu bewerkstelligen. Der zusätzliche Schutz des

²⁵³ Europäische Sozialcharta vom 18.10.1961, BGBl. 1964 II 1262. Art. 1 enthält ein Recht auf Arbeit, Art. 9 ein Recht auf Berufsberatung, Art. 10 ein Recht auf berufliche Ausbildung; vgl. schließlich auch das in Art. 18 enthaltene Recht auf Ausübung einer Erwerbstätigkeit im Hoheitsgebiet der anderen Vertragsparteien.

²⁵⁴ Einzelheiten bei *Rengeling Grundrechtsschutz* (FN 17) 16-29.

²⁵⁵ Einzelheiten ebd.

²⁵⁶ Das wird vor allem im Vergleich zu dem einleitend geschilderten Katalog der Rechte deutlich, die schließlich nicht aufgenommen worden sind, Dok. 4192/00, 1 f.

²⁵⁷ S. o. 1 e).

²⁵⁸ Zusammenfassend zum Schutz der Presse im amerikanischen Verfassungsrecht: *Steven H. Shiffrin/Jesse H. Choper: The First Amendment : cases, comments, questions* (American casebook series) St. Paul² 1996.

²⁵⁹ Dok. 4137/00.

²⁶⁰ Näher *Rengeling Grundrechtsschutz* (FN 17) 30-32.

²⁶¹ Näher ebd. 32-39.

Eigentums deckt aber die ökonomische Flanke. Insbesondere erschwert er Eingriffe in den Bestand des Vermögens. Richtigerweise sollte dazu auch das Unternehmen als lebende Einheit gehören²⁶². Greift ein Hoheitsakt der Gemeinschaft zugleich in die Pressefreiheit und in das Eigentumsgrundrecht ein, erhöht das das Schutzniveau der Grundrechte.

f) Schutz der Geschäftsräume

Nach Art. 8 II des Präsidiumsentwurfs ist „die Achtung [...] der Wohnung [...] gewährleistet“²⁶³. Für deutsche Ohren klingt das zureichend. Das Bundesverfassungsgericht legt den Begriff der Wohnung in Art. 13 I GG bekanntlich weit aus und rechnet auch Geschäftsräume dazu²⁶⁴. Der Europäische Gerichtshof hat den Grundrechtsschutz der Geschäftsräume im Hoechst-Urteil jedoch ausdrücklich verneint²⁶⁵. Auch die – mittlerweile aufgelöste – Europäische Menschenrechtskommission war lange Zeit zweifelnd²⁶⁶. Mittlerweile hat der Menschenrechtsgerichtshof die Büroräume eines Rechtsanwalts jedoch in den Schutz von Art. 8 EMRK einbezogen²⁶⁷. Deshalb wäre es ratsam, daß die Geschäftsräume in Art. 8 II der Konvention ausdrücklich erwähnt werden. Dann könnte sich die Presse gegen die Durchsuchung einer Redaktion nicht bloß mit Hilfe der Pressefreiheit verteidigen. Die Redaktionsräume wären also nicht bloß deshalb grundrechtlich geschützt, weil sie zur Vorbereitung der publizistischen Tätigkeit der Presse dienen²⁶⁸.

g) Vertraulichkeitsschutz

Ganz parallele Fragen stellen sich auch beim Vertraulichkeitsschutz. Nach Art. 8 II des Präsidiumsentwurfs ist auch „die Achtung der Privatsphäre [...] und der Vertraulichkeit des Post- und Fernmeldeverkehrs ungeachtet des Informationsträgers [...] gewährleistet“²⁶⁹. Ein wohlwollender Gerichtshof könnte aus diesem Wortlaut angemessene Schlüsse ziehen. Er könnte insbesondere zur „Privatsphäre“ auch die Binnensphäre eines Unternehmens rechnen und die „Vertraulichkeit“ auch für die geschäftliche Kommunikation garantieren. Ersteres hat vor allem für das Innenverhältnis zwischen Verlagsleitung und Journalisten Bedeutung, letzteres vor allem für das Verhältnis der Journalisten zu den Informanten. Letztlich ließe sich dieser Schutz wiederum auch mit Hilfe der Pressefreiheit bewerkstelligen²⁷⁰. Besser wäre es aber, wenn auch diese Punkte in dem Grundrechtskatalog ausdrücklich klargelegt würden.

²⁶² Einzelheiten zur praktischen Bedeutung dieses Grundrechts für die Medien bei *Engel Privater Rundfunk* (FN 86) 462-465.

²⁶³ Dok. 4123/1/00 REV 1; s. auch den Textvorschlag der Abgeordneten *Kaufmann*, Dok. 4189/00.

²⁶⁴ BVerfGE 32, 54, 68 f; 44, 353, 371; 76, 83, 86. Die literarische Kritik hat sich nicht durchsetzen können, zusammenfassend *von Mangoldt/Klein/Starck-Gornig*⁴ Art. 13 GG, R 21-25.

²⁶⁵ EuGH 21.09.1989, Rs. 46/87, Slg. 1989, 2859, 2929, R 17; kritisch zu dem Urteil etwa *Georg Ress/Jörg Ukrow*: Neue Aspekte des Grundrechtsschutzes in der Europäischen Gemeinschaft. Anmerkungen zum Hoechst-Urteil des EuGH, in: *EuZW* 1990, 499-504, 502 f.

²⁶⁶ Deutlich etwa *Jochen Abr. Frowein/Wolfgang Peukert*: Europäische Menschenrechtskonvention, Kiel¹ 1985, Art. 8 EMRK, R 27.

²⁶⁷ EGMR 16.12.1992, Ser. A 251-B, §§ 27-33 - Niemitz.

²⁶⁸ Dazu oben 1 e).

²⁶⁹ Dok. 4123/1/00 REV 1.

²⁷⁰ S. o. 1 e).

h) Strafrechtliche Grundrechte

Der Präsidiumsentswurf folgt der Tradition der Europäischen Menschenrechtskonvention und enthält eine Vielzahl von Rechten für das Strafverfahren²⁷¹. Ihre unmittelbare Bedeutung ist für das Gemeinschaftsrecht einstweilen gering. Denn der Gemeinschaft fehlt die eigene Strafgewalt. Auch der Einfluß des Gemeinschaftsrechts auf das nationale Strafrecht war bislang gering. Das könnte sich in der Zukunft allerdings einmal ändern. Dann möchten auch diese Garantien Bedeutung für die Presse erhalten.

i) Gleichheitssatz

In Art. 18 des Präsidiumsentswurfs heißt es: „Alle Menschen sind vor dem Recht gleich“²⁷². Das entspricht der Verfassungstradition der Mitgliedstaaten²⁷³ und der Rechtsprechung des Europäischen Gerichtshofs zu den ungeschriebenen Grundrechten des Gemeinschaftsrechts²⁷⁴. In der Europäischen Menschenrechtskonvention fehlt dagegen ein allgemeiner Gleichheitssatz. Art. 14 EMRK schützt nur vor der Ungleichbehandlung im sachlichen Anwendungsbereich benannter Freiheitsrechte²⁷⁵. An dieser abweichenden Tradition liegt es wohl, daß die vorliegenden Entwürfe ein ganzes Verwirrspiel von Gleichheitsrechten enthalten. Zunächst enthält Art. 19 I des Präsidiumsentswurfs eine Liste von (absoluten?) Diskriminierungsverboten und Art. 19 II das Gebot der positiven Diskriminierung zugunsten der Frauen²⁷⁶. Art. I des Präsidiumsentswurfs der Sozialrechte verbietet für diese Rechte die Ungleichbehandlung²⁷⁷. Schließlich heißt es in Art. J des Präsidiumsentswurfs der Bürgerrechte:

„Im Anwendungsbereich des Vertrages zur Gründung der Europäischen Gemeinschaft ist unbeschadet der Bestimmungen dieses Vertrages jede Diskriminierung aus Gründen der Staatsangehörigkeit verboten“²⁷⁸.

Wenn sich der Konvent nicht entschließen kann, einen einheitlichen, für sämtliche Grundrechtsbelange geltenden Gleichheitssatz zu schaffen, sollte er zumindest das Verhältnis dieser Gleichheitssätze zueinander klarstellen.

j) Demokratische Grundrechte

In Art. B des Präsidiumsentswurfs der Bürgerrechte heißt es zu den politischen Parteien:

„Sie tragen dazu bei, ein europäisches Bewußtsein herauszubilden und den politischen Willen der Bürger und Bürgerinnen der Union zum Ausdruck zu bringen“²⁷⁹.

²⁷¹ S. insbesondere Art. 6: Recht auf Freiheit und Sicherheit; Art. 8: Recht auf ein unparteiisches Gericht, Art. 9: Rechte der Verteidigung, Art. 10: Keine Strafe ohne Gesetz, Art. 11: Recht, wegen derselben Sache nicht zweimal vor Gericht gestellt oder bestraft zu werden, Dok. 4149/00.

²⁷² Dok. 4137/00.

²⁷³ Nachweise bei *Rengeling* Grundrechtsschutz (FN 17) 137 f.

²⁷⁴ Einzelheiten ebd. 138-142.

²⁷⁵ Näher *Engel* (FN 228) ÖZöRV 1986, 278-285.

²⁷⁶ Dok. 4137/00.

²⁷⁷ Dok. 4192/00.

²⁷⁸ Dok. 4170/00.

²⁷⁹ Dok. 4170/00.

Nicht nur die Parteien, auch die Medien sind Intermediäre zwischen Staat und Bürger. Das paßt auch für das Verhältnis zwischen den Gemeinschaftsbürgern und der europäischen Hoheitsgewalt²⁸⁰. Gleichwohl empfiehlt es sich nicht, die Presse an dieser Stelle zu erwähnen. Die Presse braucht diesen Schutz ebenso wenig wie eine ausdrückliche institutionelle Garantie. Die Gefahr ist groß, daß er ihr schließlich nicht nützen, sondern schaden würde. Die Rundfunkrechtsprechung des Bundesverfassungsgerichts belegt, daß das Individualgrundrecht schließlich nur noch nach Maßgabe seiner demokratischen Nützlichkeit gewährt werden könnte²⁸¹.

3. Schutz der Presse in der Person anderer Grundrechtsträger

Wenn die europäische Hoheitsgewalt die Presse treffen will, braucht sie den Eingriff nicht notwendig an den Verlag zu adressieren. Sie kann statt dessen auch die Freiheit von Journalisten, Nachrichtenagenturen, Lesern, Werbetreibenden oder Financiers beeinträchtigen. Da die Pressefreiheit auch vor mittelbaren Eingriffen schützt²⁸², kann sich die Presse auch dagegen zur Wehr setzen. Die genannten Personengruppen sind aber auch selbst Grundrechtsträger. Oft gilt auch der spiegelbildliche Zusammenhang: ein Eingriff, der an die Verlage adressiert ist, greift mittelbar zugleich in die Grundrechte dieser Grundrechtsträger ein²⁸³. Diese Zusammenhänge haben vor allem prozessuale Bedeutung. Wenn eine europäische Verfassungsbeschwerde geschaffen würde, könnte sie von jedem dieser Grundrechtsträger eingelegt werden. Daß nicht nur der Verleger beeinträchtigt ist, sondern weitere Klassen von Grundrechtsträgern, erhöht außerdem das Schutzniveau der Grundrechte²⁸⁴.

4. Konflikte mit anderen Grundrechten

Die Presse steht nicht nur in einem Spannungsfeld zum Staat, sondern auch zu anderen Grundrechtsträgern. Daß die Grundrechtscharta viele dieser Personen schützt, etwa die Ehre als Schutzgut gesondert ausweist, darf aber nicht mißdeutet werden. Auch soweit aus den europäischen Grundrechten Schutzpflichten folgen²⁸⁵, erweitern sich die Kompetenzen der Gemeinschaft nicht. Die meisten der potentiellen Grundrechtskonflikte werden aus diesem Grunde nicht aktuell. Die Zuständigkeit zu ihrer Bewältigung bleibt bei den Mitgliedstaaten.

Vorsorglich müssen die europäischen Grundrechte gleichwohl so ausgestaltet werden, daß ein gerechter Ausgleich der widerstreitenden Belange möglich wird, sollte die Gemeinschaft für einen Teilbereich zuständig sein oder werden. Praktisch kommt es darauf an, daß die Schranken der widerstreitenden Grundrechte so ausgestaltet sind, daß die Gemeinschaft sie grundsätzlich zu Gunsten der Presse beschränken darf.

Nach dem augenblicklichen Stand der Entwürfe ist das im Prinzip schon deshalb gewährleistet, weil Art. H.2 II 2 ja Grundrechtseingriffe zur Verfolgung jedes legitimen Ziels zuläßt. Der genaueren Überprüfung bedürfen aber die Schranken der Europäischen Menschenrechtskonvention, auf die Art. H.2 II 3 und Art. H.4 verweisen. Daß die Presse dort nirgends ausdrücklich erwähnt ist, ist

²⁷⁸ S. näher oben II 1

²⁸¹ S. erneut kritisch *Engel* (FN **Error! Bookmark not defined.**) AfP 1994, 185-191.

²⁸² S. o. 1 f).

²⁸³ Näher zum Verhältnis von Äußerungs- und Empfangsfreiheit *Engel* (FN 246) ZUM 1988, 511-526.

²⁸⁴ Vgl. zu diesem dogmatischen Konzept oben 1 i).

²⁸³ S.o. 1 k).

unschädlich. Es muß aber zumindest sichergestellt sein, daß überall ein Vorbehalt für die „Rechte anderer“ vorhanden ist. Darauf wäre auch zu achten, wenn sich der Grundrechtskonvent doch noch entschließt, selbst allen Grundrechten benannte Schranken zuzuweisen. Vorsorglich wollen wir im folgenden die vornehmlich in Betracht kommenden Rechte deshalb durchmustern.

Die eingangs geschilderten Konflikte aus dem **Pressearbeitsrecht**²⁸⁶ könnten sich am Verhältnis der Pressefreiheit zu zwei anderen Grundrechten entzünden. Der menschenrechtliche Kern des Problems ist in der Gewissensfreiheit angesprochen, die Art. 14 des Präsidiumsentswurfs schützt²⁸⁷. Im übrigen wird der Tendenzschutz gegen die Arbeitnehmerrechte abzusichern sein, die als soziale Rechte geschützt sind. Nach dem Präsidiumsentswurf gehört dazu die Pflicht zur Unterrichtung und Anhörung der Arbeitnehmer bei Entscheidungen über die Arbeitsbedingungen und die Arbeitsumwelt, Art. III; das Verbot, aus der Zugehörigkeit zu beruflichen oder gewerkschaftlichen Organisationen persönliche oder berufliche Nachteile abzuleiten, Art. IV (1) 2; das Recht, „auf Ebene der Union nach Maßgabe der einzelstaatlichen Rechtsvorschriften und Gepflogenheiten Tarifverträge auszuhandeln und zu schließen“, Art. IV (2); das Recht, gegebenenfalls auch auf Ebene der Union kollektive Maßnahmen zu ergreifen, die das Streikrecht einschließen“, Art. IV (3); das Recht auf sichere und gesunde Arbeitsbedingungen, Art. VII; das Verbot, Arbeitnehmer ohne triftigen Grund zu entlassen, Art. IX²⁸⁸. Keines dieser Rechte enthält einen Vorbehalt für den Tendenzschutz. Ohne Tendenzschutz kann die Presse ihre demokratische Funktion als Intermediär zwischen Staat und Bürger aber nicht wirksam erfüllen²⁸⁹. Das Schutzniveau der Pressefreiheit ist deshalb hoch²⁹⁰. Über den Vorbehalt der Rechte anderer kann es auch den arbeitsrechtlichen Grundrechten entgegengehalten werden.

Auch der eingangs geschilderte Streit um das Medienprivileg im **Datenschutz** läßt sich als Grundrechtskonflikt formulieren. Der Präsidiumsentswurf sieht in Art. 15 ein eigenes Grundrecht auf Datenschutz vor²⁹¹. Nach Art. 12 des Entwurfs hat jede Person überdies „Anspruch auf Achtung [...] ihrer Kommunikation“²⁹². Die Straßburger Organe rechnen unter die Parallelvorschrift des Art. 8 I EMRK auch die informationelle Selbstbestimmung²⁹³. Diese Grundrechte müssen aber so ausgestaltet werden, daß die Presse imstande bleibt, ihre publizistische Aufgabe zu erfüllen.

Der Konflikt um die **Tabakwerbung** ist nicht nur ein Streit um Grundrechte, sondern auch um die Kompetenzen der Gemeinschaft. Eine allgemeine Kompetenz zum Schutz der Volksgesundheit hat der EG-Vertrag der Gemeinschaft nicht eingeräumt²⁹⁴. Daran ändert auch die Grundrechtscharta nichts²⁹⁵. Schon aus diesem Grunde kann aus dem Recht auf körperliche und psychische Unversehrtheit, das in Art. 3 I des Präsidiumsentswurfs enthalten ist²⁹⁶, keine neue Rechtfertigung für das vollständige Verbot der Tabakwerbung abgeleitet werden.

²⁸⁶ S. o. II 2 a).

²⁸⁷ Dok. 4149/00.

²⁸⁸ Alle Entwurfsfassungen aus Dok. 4192/00.

²⁸⁷ S. näher oben II 1.

²⁹⁰ S. o. 1 i).

²⁹¹ Dok. 4137/00, s.auch den Textvorschlag der Abgeordneten *Kaufmann*, Dok. 4189/00.

²⁹² Dok. 4149/00 COR 1.

²⁹³ Einzelheiten bei *Giegerich* (FN 80) *RabelsZ* 1999, 472 f.

²⁹⁴ S. im einzelnen Art. 152 EGV und näher *Simma/Weiler/Zökler* (FN 39).

²⁹⁵ S. o. 1 k).

²⁹⁶ Dok. 4149/00.

Bei den übrigen Konflikten um das **Werberecht** der Gemeinschaft²⁹⁷, spielt das Kompetenzargument dagegen eine geringere Rolle. Die Gemeinschaft hat zwar nach Art. 153 EGV nur begrenzte Kompetenzen für den Verbraucherschutz. Die Angleichung des Verbraucherschutzrechts der Mitgliedstaaten dient regelmäßig aber zugleich der Verwirklichung des Binnenmarkts. Die einschlägigen Richtlinien sind deshalb typischerweise auch auf Art. 95²⁹⁸ oder auf Art. 47 II EGV²⁹⁹ gestützt. Bislang enthält der Präsidiumsentswurf allerdings kein ausdrückliches Recht auf Verbraucherschutz. Das Sekretariat der Konvention hat den Verbraucherschutz aber in die Liste der Fragen aufgenommen, über die noch zu reden sein wird³⁰⁰.

Wenn es zu einem Grundrecht auf **Verbraucherschutz** kommen sollte, könnte die Gemeinschaft auch versuchen, dieses Grundrecht als Rechtfertigung für ihre Harmonisierung des Vertriebsrechts einzusetzen³⁰¹.

Sollte die Gemeinschaft beabsichtigen, gegen die **nationale Presseförderung** vorzugehen³⁰², wäre zunächst einmal die Kompetenz sorgfältig zu prüfen. Die Absicht, den Wettbewerb vor Verzerrungen zu schützen, läßt sich auch als Grundrechtskonflikt zwischen dem begünstigten Unternehmen und der Berufsfreiheit aus Art. II des Präsidiumsentswurfs der sozialen Rechte³⁰³ und zu dem Gleichheitssatz formulieren³⁰⁴. Mit den gleichen Argumenten lassen sich auch Konflikte aus der Anwendung des europäischen Kartellrechts grundrechtlich reformulieren³⁰⁵.

Falls sich die Gemeinschaft in der Zukunft entschließen sollte, die nationalen Normen über **Presseinhalte** zu harmonisieren³⁰⁶, könnte sie versuchen, auch die neuen Grundrechte als Rechtfertigung zu bemühen. Eine genuine Kompetenz zu einer europäischen Pressepolitik steht ihr allerdings nicht zu. Sie könnte aber versuchen, wie schon beim Werberecht, auch dafür ihre Binnenmarktkompetenzen zu nutzen und sich zur Unterstützung auf Schutzpflichten aus der Grundrechtscharta zu berufen. Wir hatten dargelegt, warum das dogmatisch wie rechtspolitisch falsch wäre³⁰⁷. Wie sonst auch ist diese Untersuchung aber vom Vorsichtsprinzip geleitet.

Das Angebot an einschlägigen Grundrechten ist reichhaltig. Im Zentrum steht Art. 12 des Präsidiumsentswurfs:

„Jede Person hat Anspruch auf Achtung ihres Privatlebens, ihrer Ehre, ihrer Wohnung sowie ihrer Kommunikation“³⁰⁸.

Bemerkenswert ist vor allem der ausdrückliche Schutz der **Ehre**. Der Entwurf weicht insofern bewußt von Art. 8 I EMRK ab³⁰⁹. Überdies schützt Art. 1 des Präsidiumsentswurfs die Würde des

²⁹⁷ S. o. II 2 e).

²⁹⁸ Ehemals Art. 100 a EGV.

²⁹⁹ Ehemals Art. 57 II EGV.

³⁰⁰ Bulletin Quotiden Europa No.7647 vom 03.02.2000.

³⁰¹ S. o. II 2 f).

³⁰² S. o. II G g).

³⁰³ S. o. 2 d).

³⁰⁴ S. o. 2 i).

³⁰⁵ S. o. II 2 a).

³⁰⁶ S. o. II 3 b).

³⁰⁷ S. o. 1 k).

³⁰⁸ Dok. 4149/00 COR 1.

³⁰⁹ Dok. 4149/00, S. 13.

Menschen³¹⁰. Art. 3 I des Entwurfs schützt nicht nur die körperliche, sondern auch die „psychische Unversehrtheit“. All das darf nicht als Hindernis für investigativen Journalismus mißdeutet werden.

Auch die **Gerichtsberichterstattung** könnte zur Grundrechtsfrage gemacht werden. Das war beim ursprünglichen Präsidiumsentswurf der Freiheitsrechte besonders deutlich. Sein Art. 5 sollte die Überschrift tragen: „Recht auf ein gerechtes Verfahren“³¹¹. Auch im augenblicklich letzten Entwurf heißt es in Art. 8 aber:

„Jede Person hat Anspruch darauf, daß ihre Sache *in billiger Weise* öffentlich und innerhalb einer angemessenen Frist von einem unabhängigen und *unparteiischen*, auf Gesetz beruhenden Gericht verhandelt wird“³¹².

Art. 9 des Entwurfs legt außerdem die Unschuldsvermutung und den Anspruch auf Achtung der Verteidigungsrechte fest³¹³.

Schließlich könnte die Gemeinschaft versuchen, eine Harmonisierung der **Darstellung von Minderheiten** auf Art. 19 des Präsidiumsentswurfs zu stützen. Er lautet:

„(1) Diskriminierungen wegen des Geschlechts, der Rasse, der Hautfarbe oder der ethnischen oder sozialen Herkunft, der Sprache, der Religion oder der Weltanschauung, der Zugehörigkeit zu einer nationalen Minderheit, des Vermögens, der Geburt, einer Behinderung des Alters oder der sexuellen Ausrichtung sind verboten.
(2) Die Union wirkt darauf hin, Ungleichheiten zu beseitigen und die Gleichstellung von Männern und Frauen zu fördern“³¹⁴.

Würde der Presse all das zur Auflage gemacht, wäre ihr von Rechts wegen eine Art publizistisches Programm vorgegeben. Ihre publizistische Aufgabe könnte sie nicht mehr erfüllen.

Art. 15 I des Präsidiumsentswurfs schützt u.a. auch „die Freiheit [...], Informationen und Ideen ohne behördliche Eingriffe und ohne Rücksicht auf Staatsgrenzen zu empfangen und weiterzugeben“³¹⁵. Gäbe es allein diesen Wortlaut, könnte man versuchen, daraus einen **Informationsanspruch gegen Private** abzuleiten. Zu diesen Privaten könnten dann auch die Verlage gehören. Diese Interpretation liegt jedoch fern, weil Art. 14 des Entwurfs einen expliziten Informationsanspruch enthält. Er richtet sich nur an die Gemeinschaftsorgane³¹⁶. Vor allem läge ein allgemeiner Informationsanspruch gegen Private aber außerhalb des Kompetenzbereichs der Gemeinschaft. Er kann deshalb auch den Gemeinschaftsgrundrechten nicht entnommen werden³¹⁷.

Ein letztes Anliegen liegt wieder eindeutig außerhalb der Gemeinschaftskompetenzen³¹⁸. Die geplanten Bürgerrechte können nicht als Begründung genutzt werden, um die Verfassungspolitik

³¹⁰ Dok. 4149/00.

³¹¹ Dok. 4123/1/00 REV 1.

³¹² Dok. 4149/00, Hervorhebungen nicht im Original.

³¹³ Ebd.

³¹⁴ Dok. 4137/00.

³¹⁵ Dok. 4149/00.

³¹⁶ Dok. 4137/00.

³¹⁷ S. o. 1 k).

³¹⁸ Vgl. oben 1 k).

der Mitgliedstaaten zu harmonisieren³¹⁹. Das gilt auch für die Harmonisierung von Vorschriften über die **Medienkonzentration**³²⁰.

5. Verhältnis von Europäischen Grundrechten und anderem Primärrecht

Wenn die Europäische Grundrechtscharta schließlich in den EG- oder EU-Vertrag aufgenommen wird, muß auch das dogmatische Verhältnis zwischen den Grundrechten und dem übrigen Primärrecht der Gemeinschaft bewältigt werden. Die Frage hat eine materiellrechtliche und eine prozessuale Seite. Die beiden wichtigsten materiellrechtlichen Probleme haben wir bereits behandelt: Die Grundrechte erweitern die Kompetenzen der Gemeinschaft nicht³²¹. Wenn es bei der bisherigen Formulierung bleibt, können die Grundrechte für jedes „legitime Ziel“ beschränkt werden. Dazu würden dann auch die anderen Normen des Gemeinschaftsrechts gehören. Wir haben dargelegt, warum das nicht empfehlenswert ist³²². Lösungsbedürftig ist aber auch das Verhältnis zwischen Grundfreiheiten und Grundrechten. Die Grundfreiheiten sind nach der Rechtsprechung des Europäischen Gerichtshofs unmittelbar anwendbar. Sie werden von den Marktbürgern bislang aber vor allem gegen Handelsbeschränkungen durch die Mitgliedstaaten eingesetzt. Das Schrifttum fordert seit langem, den Grundfreiheiten auch Maßstäbe für das Sekundärrecht der Gemeinschaft zu entnehmen³²³. Gelegentlich hat der Gerichtshof erkennen lassen, daß er dieses Anliegen teilt³²⁴. In diesem Lichte sind Grundrechte und Grundfreiheiten dann nicht gegenläufig, sondern ergänzen einander. Schärfer gewendet: der Gemeinschaftsgesetzgeber wird künftig beide Schranken beachten müssen. Ebenso verhält es sich zwischen Grundrechten und den ebenfalls unmittelbar anwendbaren Wettbewerbsregeln.

Prozessuale Probleme könnten eintreten, wenn allein für die Grundrechte eine unbeschränkte europäische Verfassungsbeschwerde geschaffen wird³²⁵. Wenn zu den formellen Grundrechtsschranken nämlich auch die Beachtung von objektivem Gemeinschaftsrecht gehört³²⁶, dann wird die Verfassungsbeschwerde zum Instrument, auch die Begrenzungen beim Rechtsschutz wegen der Verletzung von Grundfreiheiten und von anderem objektivem Gemeinschaftsrecht zu überwinden. Die Grundrechte können allerdings immer nur gegen Hoheitshandeln der Gemeinschaft eingesetzt werden³²⁷. Der geschilderte dogmatische Umweg führt also nur zur Ausweitung des Rechtsschutzes gegen den Gemeinschaftsgesetzgeber und gegen den Vollzug des Gemeinschaftsrechts durch die Mitgliedstaaten. Eine Beschwerde an den EuGH wegen der Verletzung der Grundfreiheiten durch das autonome Handeln der Mitgliedstaaten wird dadurch nicht erschlossen.

³¹⁹ S. o. II 3 d).

³²⁰ S. o. II 2 b).

³²¹ S. o. 1 k).

³²² S. o. 1 a) und 4.

³²³ Programmatisch *Ernst-Joachim Mestmäcker*: Auf dem Wege zu einer Ordnungspolitik für Europa, in: FS von der Groeben 1987, 9-49.

³²⁴ EuGH 7.2.1985, Rs. 240/83, Slg. 1985, 531, R 9 - Altöl.

³²⁵ S. bereits oben III 2 und IV 1 c).

³²⁶ Dazu oben 1 g).

³²⁷ S. o. 1 c).

6. Verhältnis zu anderen Grundrechtsordnungen

Die Europäische Grundrechtscharta wird nicht isoliert stehen. Im Verhältnis zu anderen Grundrechtsordnungen stellen sich teils dogmatische, teils justizpolitische Fragen. Die erste Frage hat der verfassungsgebende europäische Gesetzgeber in der Hand. Auch bislang gab es ja schon Grundrechte des Gemeinschaftsrechts. Nach Art. 6 II EUV sind sie aus der Europäischen Menschenrechtskonvention und den gemeinsamen Verfassungsüberlieferungen der Mitgliedstaaten zu gewinnen. Es liegt nahe, diese Vorschrift aufzuheben, wenn die europäische Grundrechtscharta in den EG- oder EU-Vertrag aufgenommen wird. Die Gemeinschaft würde sonst für die Grundrechte „a lawyers paradise“ schaffen.

Wir haben mehrfach betont, daß die Grundrechtscharta Grundrechte ohne Monopol enthalten wird³²⁸. Sie gelten nur für solches hoheitliche Handeln, das der Gemeinschaft zugerechnet werden kann. Das ist nicht etwa ein rechtspolitischer Mangel, der durch eine Zuständigkeit der Gemeinschaft für die Menschenrechtspolitik zu beheben wäre. Vielmehr ist es nur auf diese Weise möglich, einen wirksamen Grundrechtsschutz zu gewährleisten, ohne von Supranationalität zu einem europäischen Bundesstaat überzugehen. Deshalb brauchen wir auch nicht näher zu untersuchen, wie sich die Grundrechtscharta gegenüber konkurrierenden Grundrechtsordnungen behaupten oder wie sie im Konzert mit ihnen gemeinsame Anliegen durchsetzen könnte³²⁹. Denn die Gemeinschaftsgrundrechte sind nur ein Kontrollmaßstab für hoheitliches Handeln, das der Gemeinschaft zugerechnet werden kann³³⁰.

Gleichwohl wird es einen Überschneidungsbereich zwischen der Europäischen Grundrechtscharta, den Grundrechten der nationalen Verfassungen und der Europäischen Menschenrechtskonvention geben. Er setzt sich aus zwei Elementen zusammen. Wenn die Mitgliedstaaten Gemeinschaftsrecht vollziehen oder Gesetzgebungsaufträge des Gemeinschaftsrechts erfüllen, ist das in den dargelegten Grenzen der Gemeinschaft zuzurechnen³³¹. Zugleich nehmen die Mitgliedstaaten dabei aber auch eigene Hoheitsgewalt in Anspruch. Deshalb unterliegt dieses Handeln auch den Grundrechten der nationalen Verfassungen und der Europäischen Menschenrechtskonvention. Im Maastricht-Urteil ist das Bundesverfassungsgericht bekanntlich noch weitergegangen. Es nimmt zumindest subsidiär auch die Kontrolle genuiner europäischer Hoheitsgewalt an den deutschen Grundrechten in Anspruch³³². In ähnlicher Weise unterwirft auch der Menschenrechtsgerichtshof die Öffnung des Rechts der Mitgliedstaaten für die Europäische Hoheitsgewalt seiner Kontrolle³³³.

Soweit ein und derselbe Hoheitsakt hiernach mehreren Grundrechtsordnungen unterworfen ist, muß auch das dogmatische Verhältnis dieser Ordnungen zueinander bestimmt werden. Im Kernbereich des Grundrechtsschutzes, also bei der Abwehrfunktion der Grundrechte, ist das zumindest theoretisch nicht schwierig. Die Kontrollmaßstäbe lassen sich verdoppeln. Das Hoheitshandeln muß allen Grundrechtsordnungen zugleich genügen. Daß solch eine Doppelkontrolle auch praktisch funktionieren kann, belegt das Kartellverbot. Art. 81 EGV und die Kartellverbote der nationalen

³²⁸ S. insbesondere oben III 4.

³²⁹ Ein Überblick über die Möglichkeiten findet sich bei *Christoph Engel: The Internet and the Nation State*, in: *ders./Kenneth H. Keller (Eds.): Understanding the Impact of Global Networks on Local Social, Political and Cultural Values (Law and Economics of International Telecommunications 42)* Baden-Baden 2000, 201-261 (245-258).

³³⁰ S. o. 1 c).

³³¹ S. o. 1 c).

³³² BVerfGE 89, 155.

³³³ S. näher oben 1 b).

Kartellrechte werden seit jeher nebeneinander angewendet³³⁴. Vor allem aus der Sicht des Gemeinschaftsrechts kann das allerdings zu unerwünschten Ergebnissen führen. Obwohl es mit den Gemeinschaftsgrundrechten vereinbar ist, kann der Gemeinschaft zurechenbares hoheitliches Handeln dann nämlich wirkungslos bleiben. Noch schwieriger wird es, wenn den Grundrechtsordnungen Schutzpflichten entnommen werden. Dann kann ein und derselbe Hoheitsträger einander widersprechenden Anforderungen ausgesetzt sein. Dies wird allerdings aus den bereits dargelegten Gründen nicht allzu häufig der Fall sein. Denn auch die Schutzpflichten aus Gemeinschaftsgrundrechten gelten ja nur für hoheitliches Handeln, das der Gemeinschaft zuzurechnen ist³³⁵. Soweit mehrere Grundrechtsordnungen nebeneinander anwendbar sind, erhalten die Grundrechtsträger eine Chance zum Kampf um das Forum. Sie können in strategischer Absicht versuchen, den Konflikt in ein Forum zu verlagern, von dessen Grundrechten sie sich mehr Chancen versprechen.

Tatsächlich wird der Einfluß der nationalen Grundrechte und vor allem der Europäischen Menschenrechtskonvention auf die Dogmatik der Europäischen Grundrechtscharta jedoch sehr viel größer sein, als die gerade angestellten dogmatischen Überlegungen vermuten lassen. Denn die Entwicklung einer neuen Grundrechtsdogmatik braucht viele Jahrzehnte. Der Europäische Gerichtshof wäre nicht klug beraten, wenn er damit bei der Europäischen Grundrechtscharta noch einmal vollständig von vorne begännen. Überdies lehnt sich der Entwurf des Präsidiums ja vielfach an den Wortlaut der Europäischen Menschenrechtskonvention an. Art. H.4 bindet die Europäische Gemeinschaft sogar an die Auslegung, die der Straßburger Menschenrechtsgerichtshof den parallelen Garantien der Europäischen Menschenrechtskonvention gibt. Ist der Gerichtshof wirklich gewillt, mit dem europäischen Grundrechtsschutz ernst zu machen, wird überdies von den entwickelten Grundrechtsordnungen der Mitgliedstaaten ein Sog ausgehen. Er ist zugleich das wirksamste Instrument, um die Kerngedanken der nationalen Grundrechtsdoktrin auch ins europäische Recht einzupflanzen.

V. Offene Flanken

Zwei Flanken sind noch offen. Dogmatisch ist auch die rechtsfortbildende Tätigkeit des Europäischen Gerichtshofs ein Hoheitsakt der Gemeinschaft³³⁶. Wie soll man aber erreichen, daß sich der Europäische Gerichtshof selbst durch die Grundrechte beschränkt? Außerdem haben wir deutlich gemacht, das europäische Grundrechte die Opportunity Structure zwischen Gemeinschaft und Mitgliedstaaten, im Verhältnis der Mitgliedstaaten zueinander, im Verhältnis der Organe der Gemeinschaft zueinander und für politische Akteure verändern³³⁷. Wie sollen die Väter der Grundrechtscharta verhindern, daß dieser Preis für einen wirksamen Grundrechtsschutz schließlich zu hoch ist?

Allein durch die Dogmatik der Europäischen Grundrechte lassen sich diese Flanken schlecht schließen. Denn zur Anwendung und Fortentwicklung dieser Dogmatik ist ja gerade der Europäische Gerichtshof berufen, der sich traditionell als Motor der Integration definiert hat.

³³⁴ Näher *Ulrich Immenga/Ernst-Joachim Mestmäcker: GWB Kommentar*² 1992, Einleitung, R 32-58.

³³⁵ S. o. 1 k).

³³⁶ S. o. IV 1 c).

³³⁷ S. o. III 2.

Auf das Kompetenzproblem hat das Präsidium des Konvents bereits mit dem erwähnten Art. H.1 II reagiert. Er soll ausdrücklich darauf hinweisen, daß die Charta den Zuständigkeitsbereich der Gemeinschaft nicht erweitert³³⁸. Wenn die Charta in die europäischen Verträge aufgenommen wird, könnte in gleicher Weise klargelegt werden, daß die Grundrechte auch für die rechtsfortbildende Tätigkeit des Europäischen Gerichtshofs gelten. Man sollte die Wirkung solcher Klauseln nicht unterschätzen. Würde Justizpolitik allein von Interessen bestimmt, wäre ihr Wert allerdings gering. Auch die Justizpolitik wird zugleich aber von Ideen bestimmt³³⁹. Auch das dogmatisch ähnlich hilflose Subsidiaritätsprinzip hat die Rechtsprechung des Europäischen Gerichtshofs ja wirklich verändert.

Gleichwohl macht es Sinn, ergänzend auch über die Sicherung der offenen Flanken durch Institutionen nachzudenken. An drei Elementen kann man ansetzen: am Initiativrecht, an der Zuständigkeit zur Anwendung der Grundrechtscharta sowie an der Anwendung konkurrierender Grundrechtsordnungen.

Wenn sich der Europäische Gerichtshof als Motor der Integration betätigt, ist er funktionell ein politisches, kein Justizorgan. Als politisches Organ ist er relativ schwach, weil er warten muß, bis ein geeigneter Fall zu ihm getragen wird. Je enger die Initiative ausgestaltet ist, desto geringer sind die Chancen für einen rechtspolitisch aktiven Gerichtshof. Trotzdem macht die restriktive Ausgestaltung der Grundrechtsinitiative wenig Sinn. Grundrechte ohne Befugnis zur Individualbeschwerde befrieden nicht und verschaffen der Gemeinschaft kaum zusätzliche Legitimität³⁴⁰. Eine Beschränkung des Initiativrechts für die Prüfung an anderen Maßstäben steht ohnehin nicht zur Diskussion. Daß ein weites Initiativrecht trotzdem beschränkend wirken kann, erschließt sich erst aus einer weiteren Voraussetzung für politisches Handeln des Europäischen Gerichtshofs. Er kann politische Macht nur in den Formen des Rechts ausüben. Er muß eine gemeinschaftsrechtliche Norm in einer Weise auslegen, die seinen politischen Absichten dient, und er muß jede Entscheidung kunstgerecht begründen, auch wenn sie zu seinem politischen Ziel nichts beiträgt. Schließlich müssen die Maßstäbe konsistent sein, die er in all seinen Entscheidungen anwendet. Grundrechtsbeschwerden können den Gerichtshof deshalb dazu zwingen, durch eine immer präzisere Dogmatik die eigenen Freiräume für politisches Handeln immer stärker zu beschränken.

Sobald die Gemeinschaftsbürger die Grundrechtsbeschwerde angenommen haben, wird der Europäische Gerichtshof allerdings ein offenes oder verstecktes Annahmeverfahren entwickeln müssen. Anders kann er nach den Erfahrungen der übrigen Grundrechtsordnungen seine eigene Arbeitsfähigkeit nicht bewahren. Das erlaubt ihm dann auch, solche Grundrechtsbeschwerden auszusondern, die ihn für die Zukunft allzu sehr beschränken würden. Aus diesem Grunde empfiehlt es sich, auch den Mitgliedstaaten das Initiativrecht wegen Grundrechtsverletzungen zu geben, und die Vorlagebefugnis nationaler Gerichte auch auf Grundrechtsfragen zu erstrecken.

Eine sehr viel radikalere Lösung bestünde darin, die Anwendung der Europäischen Grundrechte nicht dem Europäischen Gerichtshof zuzuweisen, sondern einem neuen Verfassungsgericht der Gemeinschaft. Dieses Gericht könnte dann auch zur Kontrolle von Entscheidungen des Europäischen Gerichtshofs am Maßstab der Europäischen Grundrechte berufen werden. Da es nur die Grundrechte als Entscheidungsmaßstab hat, wäre wahrscheinlich, daß es sich ein stärker rechtsstaatliches, nicht so sehr ein integrationspolitisches Selbstverständnis zulegt. Ob alle Mitgliedstaaten bereit wären, solch einer Änderung der Europäischen Verträge zuzustimmen,

³³⁸ Dok. 4123/1/00 REV 1, im Wortlaut oben FN 16.

³³⁹ S. erneut *Yee* (FN 160).

³⁴⁰ Vgl. oben III 5 d).

erscheint allerdings fraglich. Dogmatisch stünden die Grundrechte dann zwar nach wie vor auf ein und derselben Stufe der Normenhierarchie wie das übrige primäre Gemeinschaftsrecht. Durch den gespaltenen Gerichtsweg entstünde nach außen hin aber der Eindruck, daß die Gemeinschaft die Grundrechte dem übrigen Primärrecht überordnet. Der Europäische Gerichtshof und das Verfassungsgericht würden in einen Wettbewerb gedrängt, der sich vor allem an der Verzahnung der Grundrechte mit dem übrigen Primärrecht entzünden würde.

Eine begrenztere disziplinierende Wirkung könnte auch von einem Wettbewerb der Interpreten um die richtige Auslegung der Europäischen Grundrechtscharta ausgehen. Er ist schon deshalb schwer zu vermeiden, weil das Gemeinschaftsrecht ja im Normalfall von den Mitgliedstaaten vollzogen wird. Der Adressat kann den Vollzugsakt mit der Begründung vor die Gerichte der Mitgliedstaaten bringen, die vollzogene Norm verstoße gegen die Gemeinschaftsgrundrechte. Nach der Rechtsprechung des Gerichtshofs darf ein nationales Gericht sekundäres Gemeinschaftsrecht zwar nicht selbst für ungültig erklären, sondern muß die Frage dem Gerichtshof zur Entscheidung vorlegen³⁴¹. Das könnte bei einem behaupteten Grundrechtsverstoß nicht anders sein. Zumindest erhalten die Nationalgerichte auf diese Art aber eine eigenständige Prüfungszuständigkeit. Schließlich stehen die nationalen Verfassungsgerichte und der Europäische Gerichtshof für Menschenrechte nach wie vor im Hintergrund in Reserve. Sollte sich herausstellen, daß der Europäische Gerichtshof die Grundrechte nicht ernst nimmt oder für integrationspolitische Ziele mißbraucht, könnte das Bundesverfassungsgericht mit den Grundsätzen des Maastricht-Urteils intervenieren³⁴². Ebenso könnte der Menschenrechtsgerichtshof gegen einen Mitgliedstaat entscheiden, weil er Hoheitsgewalt an die Europäische Gemeinschaft übertragen hat, ohne für einen ausreichenden Schutz der Menschenrechte Sorge zu tragen³⁴³.

VI. **Schlußfolgerungen**

1. Grundrechte sind in ihrem Kern Abwehrrechte gegen hoheitliches Handeln. Das gilt auch und gerade für die Pressefreiheit. Die schlechthin konstituierende Bedeutung der Presse für ein demokratisches Gemeinwesen führt nicht etwa zu einem anderen Verständnis dieses Grundrechts, sondern zu einer Verstärkung des Freiheitsrechts. Denn Freiheit ist die Voraussetzung dafür, daß die Presse ihre demokratische Aufgabe wahrnehmen kann.
2. Die Europäische Gemeinschaft hat bislang keine eigene Pressepolitik entwickelt. Eine genuine Pressezuständigkeit fehlt der Gemeinschaft. Zur Nutzung ihrer Binnenmarktkompetenzen bestand kein Anlaß, weil der Pressebinnenmarkt nicht nennenswert behindert ist. Bedarf nach einem Grundrechtsschutz gegen den Gemeinschaftsgesetzgeber besteht deshalb aktuell vor allem dann, wenn die Gemeinschaft allgemeine Politiken auch auf die Presse anwendet, ohne ausreichend auf die Besonderheiten dieses Wirtschaftszweigs Rücksicht zu nehmen. Der Schutzbedarf der Presse könnte sich in der Zukunft jedoch erhöhen. Daß Presseinhalte auch elektronisch dargeboten werden, könnte die Gemeinschaft zum Vorwand nehmen, Elemente aus der Regulierung anderer Medien, besonders des Rundfunks, auf die Presse auszudehnen. Jedenfalls sollte die Europäische Grundrechtscharta so ausgestaltet werden, daß sie auch gegen einen sehr viel aktiveren europäischen Gesetzgeber Schutz böte; zugleich ist zu verhindern, daß der Gesetzgeber den weitergehenden Schutz als Kompetenzerweiterung mißdeutet.

³⁴¹ EuGH 22.10.1987, Rs. 314/85, Slg. 1987, 4199, 4232 - Foto-Frost.

³⁴² S. erneut BVerfGE 89, 155.

³⁴³ Näher oben IV 1 b).

3. Maß und Qualität des Grundrechtsschutzes ergibt sich weniger aus dem Text der Grundrechtscharta als aus der Dogmatik. Sie läßt sich nur in sehr engen Grenzen im vorhinein im Text fixieren. Die zentrale Aufgabe dieser Untersuchung bestand darin, aus den vorliegenden Entwürfen eine Dogmatik zu entwickeln, die dem Schutzbedarf der Presse gerecht wird. Dieses Unterfangen war sehr weitgehend erfolgreich. Nur geringe Textanpassungen sind erforderlich oder zumindest wünschenswert.
4. Bislang beschränkt sich der Entwurf auf den allgemeinen Schutz der Meinungsäußerungsfreiheit. Rechtstechnisch mag das genügen, den besonderen Schutzbedarf der Presse zu erfüllen und den Schutzstandard der Grundrechtstradition der Mitgliedstaaten auch gegenüber der Europäischen Gemeinschaft zu sichern. Eine ausdrückliche Garantie der Pressefreiheit würde aber jeden Zweifel hieran ausräumen. Sie wird unverzichtbar, wenn sich der Rundfunk mit dem Wunsch nach einer separaten Garantie durchsetzt. Erwägenswert ist es, Abgrenzungsschwierigkeiten durch eine allgemeine Medienfreiheit vorzubeugen.
5. Der Entwurf sieht ein recht kompliziertes System der Grundrechtsschranken vor. Wie jedes Grundrecht der Charta unterläge die Pressefreiheit zunächst der allgemeinen, unbenannten Schranke aus Art. H.2 II 2. Weil sie Teil der in Art. 10 EMRK garantierten Meinungsäußerungsfreiheit ist, wären nach Art. H.2 II 3 zusätzlich die benannten Schranken aus Art. 10 II EMRK zu beachten. Schließlich darf der Grundrechtsschutz nach Art. H.4 nicht hinter dem Schutzstandard von Art. 10 EMRK zurückbleiben. Die Auslegung ist zu beachten, die der Straßburger Menschenrechtsgerichtshof dieser Norm gegeben hat. Bei richtiger Handhabung führt dieses System der Schranken nicht zu Unzuträglichkeiten. Die Grundrechtsanwendung würde aber sehr vereinfacht, wenn die Pressefreiheit unmittelbar die benannten Schranken aus Art. 10 II EMRK erhielte.

Auch empfiehlt sich die Klarstellung, daß jede Berührung dieses Grundrechts der Rechtfertigung durch die Grundrechtsschranken bedarf. Damit würde verhindert, daß ein enges Konzept des Grundrechtseingriffs dazu eingesetzt wird, den Verhältnismäßigkeitsgrundsatz zu umgehen.

6. Der Schutz der Verlage durch andere Grundrechte hat eine empfindliche Lücke: die Berufsfreiheit ist nur als soziales Grundrecht geschützt. Sie sollte zu einem echten Freiheitsrecht gemacht werden. Außerdem wäre es ratsam, das verwirrende System der Gleichheitsrechte zu vereinfachen.
7. Die Presse steht nicht nur in einem Spannungsfeld zum Staat, sondern auch zu anderen Grundrechtsträgern. Daß die Grundrechtscharta viele dieser Personen schützt, etwa die Ehre als Schutzgut gesondert ausweist, darf aber nicht mißdeutet werden. Auch soweit aus den europäischen Grundrechten Schutzpflichten folgen, erweitern sich die Kompetenzen der Gemeinschaft nicht. Die meisten der potentiellen Grundrechtskonflikte werden aus diesem Grunde nicht aktuell. Die Zuständigkeit zu ihrer Bewältigung bleibt bei den Mitgliedstaaten.

Vorsorglich müssen die europäischen Grundrechte gleichwohl so ausgestaltet werden, daß ein gerechter Ausgleich der widerstreitenden Belange möglich wird, sollte die Gemeinschaft für einen Teilbereich zuständig sein oder werden. Praktisch kommt es vor allem darauf an, wie die Schranken dieser Grundrechte ausgestaltet werden. Sie müssen dem Gemeinschaftsgesetzgeber gestatten, diese Grundrechte zu Gunsten der berechtigten Anliegen der Presse zu beschränken.

Nach dem augenblicklichen Stand der Entwürfe ist das im Prinzip schon deshalb gewährleistet, weil Art. H.2 II 2 ja Grundrechtseingriffe zur Verfolgung jedes legitimen Ziels zuläßt. Der genaueren Überprüfung bedürfen aber die Schranken der Europäischen Menschenrechtskonvention, auf die Art. H.2 II 3 und Art. H.4 verweisen. Daß die Presse dort nirgends ausdrücklich erwähnt ist, ist unschädlich. Es muß aber zumindest sichergestellt sein, daß überall ein Vorbehalt für die „Rechte anderer“ vorhanden ist. Darauf wäre auch zu achten, wenn sich der Grundrechtskonvent doch noch entschließt, selbst allen Grundrechten benannte Schranken zuzuweisen.

8. Europäische Grundrechte werden das Verhältnis von Gemeinschaft und Mitgliedstaaten verändern. Nach aller Erfahrung mit Grundrechten in Bundesstaaten werden sie einen unitarischen Effekt haben. Außerdem gewinnt die Gemeinschaft erheblich an Legitimität und damit an politischer Handlungsfreiheit. Grundrechte werden auch das Verhältnis der Organe innerhalb der Gemeinschaft verschieben. Sie werden tendenziell den Rat als das Verhandlungsorgan der Mitgliedstaaten schwächen, die Kommission dagegen stärken. Den Gerichtshof werden sie zwingen, sich stärker als Kontrollorgan und weniger als politisches Organ zu begreifen. Der unitarische Effekt liegt eindeutig nicht im Interesse der Presse. Die beiden anderen Effekte sind ambivalent.

Mit den Mitteln des Rechts lassen sich diese Effekte nur bedingt steuern. Art. H.1 II will ausdrücklich klarstellen, daß die Grundrechtscharta die Kompetenzen der Gemeinschaft nicht erweitert. In gleicher Weise sollte klargestellt werden, daß die Grundrechte auch der rechtsfortbildenden Tätigkeit des Europäischen Gerichtshofs Grenzen setzen.

Wenn aus der Charta justitiable Rechte werden, sollte das Initiativrecht natürlich zuerst bei den Grundrechtsträgern liegen, es sollte also eine europäische Verfassungsbeschwerde geben. Die Flut der Beschwerden könnte das zuständige Gericht jedoch nur mit einem offenen oder versteckten Annahmeverfahren bewältigen. Damit daraus keine Schutzlücken entstehen, sollte parallel auch eine Nichtigkeitsklage der Mitgliedstaaten möglich sein. Auch sollten nationale Gerichte die Befugnis zur Vorlage erhalten.

Der Grundrechtsschutz gegen den Europäischen Gerichtshof wäre am wirksamsten, wenn die Anwendung der europäischen Grundrechte einem eigenen, dem Gerichtshof gegenüber autonomen Europäischen Verfassungsgericht anvertraut würde. Wenn das politisch nicht durchzusetzen ist, braucht man weiterhin das Drohpotential der nationalen Verfassungsgerichte und des Europäischen Gerichtshofs für Menschenrechte. Sie können auch am ehesten verhindern, daß der unitarische Effekt ein zu hohes Gewicht erhält.

ENTWURF DER CHARTA DER GRUNDRECHTE DER EUROPÄISCHEN UNION**fundamental.rights@consilium.eu.int**

Brüssel, den 7. Juni 2000**CHARTE 4347/00****CONTRIB 211****ÜBERMITTLUNGSVERMERK**

Betr.: Entwurf der Charta der Grundrechte der Europäischen Union

Finden Sie bitte nachstehend die Position von Verbandes Privater Rundfunk und Telekommunikation e.V. (VPRT) ¹

¹ Dieser Text wurde nur in deutscher Sprache übermittelt.

**Position des
Verbandes Privater Rundfunk und
Telekommunikation e. V. (VPRT)**

**zum Entwurf eines Europäischen Grundrechts
der Meinungs- und Informationsfreiheit
in der Europäischen Grundrechtscharta**

Der Verband Privater Rundfunk und Telekommunikation e. V. (VPRT) vertritt die Interessen von rund 170 Unternehmen aus den Bereichen Fernsehen, Hörfunk, Multimedia und Telekommunikation. Die Festschreibung eines Rechts auf Meinungs- und Informationsfreiheit innerhalb der Europäischen Grundrechtscharta ist für die privaten Rundfunkveranstalter in Deutschland von besonderer Bedeutung. Der VPRT bedankt sich daher für die Möglichkeit der Stellungnahme zum Entwurf eines Europäischen Grundrechts der Meinungs- und Informationsfreiheit in der Europäischen Grundrechtscharta.

I. Allgemeine Anmerkungen

Nach Ansicht der Mitgliedsunternehmen des VPRT ist die Meinungs- und Informationsfreiheit für freiheitlich-demokratische Staaten schlechthin konstituierend. So sichern neben Artikel 5 des Grundgesetzes der Bundesrepublik Deutschland auch Artikel 10 der Europäischen Menschenrechtskonvention (EMRK) und Artikel 19 des Internationalen Pakts über bürgerliche und politische Rechte der Vereinten Nationen (IPbürgR) die Meinungs- und Informationsfreiheit in jeweils unterschiedlicher Ausgestaltung ab. Auch der aktuelle Vorschlag des Grundrechtskonvents (Convent 28 vom 05. Mai 2000) sieht unter Artikel 15 ein solches Grundrecht auf Meinungs- und Informationsfreiheit vor.

Textvorschlag des Konvents (Convent 28 vom 05. Mai 2000):

Jede Person hat das Recht auf freie Meinungsäußerung. Dieses Recht schließt die Meinungsfreiheit und die Freiheit ein, Informationen und Ideen ohne behördliche Eingriffe und ohne Rücksicht auf Staatsgrenzen zu empfangen und weiterzugeben.

Der Begründung des Konvents kann entnommen werden, dass mit der Abfassung dieses Artikels die Übernahme der Grundsätze des Artikels 10 EMRK unter Berücksichtigung der Rechtsprechung des Europäischen Gerichtshofs für Menschenrechte (EGMR) beabsichtigt sind.

Wir erlauben uns, an dieser Stelle den Textvorschlag des VPRT, der den Vorschlag des Konvents aufgreift und auf diesem aufbaut, gegenüberzustellen. Die unterstrichenen Passagen kennzeichnen die aus unserer Sicht erforderlichen textlichen Erweiterungen bzw. Veränderungen.

Textvorschlag des VPRT:

(1) Jeder hat das Recht auf freie Meinungsäußerung. Dieses Recht schließt die Meinungsfreiheit und die Freiheit ein, Informationen und Ideen ohne behördliche Eingriffe und ohne Rücksicht auf Staatsgrenzen zu empfangen und weiterzugeben. Die Medien sind frei.

(2) In diese Rechte darf nur eingegriffen werden, soweit es zum Schutz anderer Rechtsgüter unerlässlich ist.

(3) Eine Zensur findet nicht statt.

1.

Die Mitglieder des VPRT unterstützen den Ansatz des Konvents, das in der Europäischen Grundrechtscharta vorgesehene Recht auf Meinungs- und Informationsfreiheit in Anlehnung an den Wortlaut des Artikels 10 Absatz 1 EMRK subjektiv-rechtlich auszugestalten.

Nach unserem Verständnis ist das Recht der Meinungs- und Informationsfreiheit ein klassisches Freiheitsrecht, das den privaten Medien ebenso wie anderen Trägern des Grundrechts als eigenes, subjektives Recht zuzuordnen ist. Bereits der Abfassung des Artikels 10 Absatz 1 EMRK liegt in seiner subjektiv-rechtlichen Ausgestaltung ein modernes Verständnis der Meinungs- und Informationsfreiheit zugrunde, das den Grundrechtsträgern vor dem Hintergrund aktueller technologischer Gegebenheiten in ausreichendem Maße Entwicklungsspielraum zubilligt und damit zur kulturellen Vielfaltssicherung und zur Stärkung des Binnenmarktes auf europäischer Ebene beiträgt. Aus der Sicht der privaten Rundfunkveranstalter verdeutlichen insbesondere die Entwicklung der digitalen Übertragungstechnik und die erweiterten Nutzungsmöglichkeiten des Internets die Notwendigkeit, dieses Verständnis der Meinungs- und Informationsfreiheit als klassisches, subjektives Freiheitsrecht innerhalb der Europäischen Grundrechtscharta fortzusetzen. Auch der Europäische Gerichtshof, der schon in der Rechtssache 4/73 festgestellt hat, dass die EMRK für das Gemeinschaftsrecht zumindest eine „orientierende Funktion“ besitzt (EuGH Slg. 1974, 491, 507), hat den Grundsatz der freien Meinungsäußerung mehrfach bestätigt und geht unter Berücksichtigung der Rechtsprechung des EGMR von einem subjektiven Verständnis dieses Freiheitsrechts aus (erstmalig Rs. C-260/89, EuGH Slg. 1991, I-5485). Die Festschreibung eines Ausgestaltungsvorbehalts, wie ihn beispielsweise Artikel 5 Absatz 1 Satz 2 des Grundgesetzes der Bundesrepublik auf der Grundlage einer objektiv-rechtlichen textlichen Abfassung vorsieht, ist veraltet – eine Sondersituation des Rundfunks, die einen solchen Ausgestaltungsvorbehalt rechtfertigen würde, ist schon lange nicht mehr gegeben: Bereits heute bringen die privaten Rundfunkanbieter in Deutschland und europaweit eine Vielzahl qualitativ hochwertiger Angebote hervor. Durch die Digitalisierung der Übertragungswege und der daraus resultierenden Schaffung neuer Übertragungskapazitäten wird diese Angebotsvielfalt kontinuierlich zunehmen. Diesem Umstand trägt der Konvent durch seine zeitgemäße Haltung, das Grundrecht auf Meinungs- und

Informationsfreiheit im Einklang mit den bereits existenten europarechtlichen Regelungen und deren Interpretation subjektiv-rechtlich auszugestalten, in jeder Hinsicht Rechnung.

Zu den Einzelheiten des Absatzes 1 und insbesondere zur Medienfreiheit vgl. unter II., 1. .

2.

Der Konvent hat in seinem Vorschlag vom 05. Mai 2000 zur Abfassung des hier diskutierten Artikels 15 davon abgesehen, die Schrankenregelung des Artikels 10 der EMRK zu übernehmen. Die Beschränkungen für die in der Charta vorgesehenen Freiheitsgrundrechte sollen vielmehr in einer allgemein gehaltenen, horizontalen Bestimmung niedergelegt werden, die ihrerseits jedoch wieder unmittelbar auf die Schrankenregelungen innerhalb der EMRK und damit auch auf die des Artikels 10 verweist (siehe Convent 27 vom 18. April 2000, Artikel H. 2).

Der VPRT möchte im Hinblick auf den Vorschlag des Konvents zu Artikel H. 2 im Zusammenhang mit dem Recht auf Meinungs- und Informationsfreiheit anregen, hier von einer allgemeinen, horizontalen Schrankenbestimmung mit einem Verweis auf die EMRK Abstand zu nehmen und sich statt dessen aus Gründen der gesetzgeberischen Präzision auf eine Regelung zu verständigen, welche die für die Meinungs- und Informationsfreiheit wesentlichen Schranken in einer in erheblichem Maße vereinfachten und dennoch umfassenden Weise normiert. Hierzu verweist der VPRT auf seinen Textvorschlag zu Absatz 2 des Rechts auf Meinungs- und Informationsfreiheit, der wie folgt lautet: „*In diese Rechte darf nur eingegriffen werden, soweit es zum Schutz anderer Rechtsgüter unerlässlich ist*“.

Eingangs möchte der VPRT klarstellen, dass seine Mitglieder selbstverständlich davon ausgehen, dass ein Eingriff in das Grundrecht auf Meinungs- und Informationsfreiheit wie bei allen Grundrechten nur dann zulässig sein kann, wenn dies auf der Grundlage eines Gesetzes erfolgt. Dieser Grundsatz entspricht dem bundesdeutschen Grundsatz des Vorbehalts des Gesetzes und ist im vorliegenden Fall zum Schutz des Grundrechts der Meinungs- und Informationsfreiheit unerlässlich. Der VPRT möchte anregen, diesen Grundsatz innerhalb der allgemeinen Regelungen der Europäischen Grundrechtscharta festzuschreiben. Unter dem Begriff des „Gesetzes“ ist hierbei eine legislative Handlungsform zu verstehen, die sich aus den allgemeinen Regelungen der Grundrechtscharta ergibt.

Des weiteren möchte der VPRT darauf hinweisen, dass der seinem Textvorschlag zu entnehmende Verzicht auf die Festschreibung des Kriteriums „zum Schutz anderer, höherrangiger Rechtsgüter“ rein sprachlicher, nicht jedoch inhaltlicher Natur ist. Keinesfalls soll hierdurch die Eingriffsschwelle in das Grundrecht auf Meinungs- und Informationsfreiheit herabgesenkt werden. Der hervorgehobene Bedeutungsgehalt dieses Grundrechts muss vielmehr zwingend im Rahmen einer konkreten Einzelfallabwägung zwischen den in Absatz 1 niedergelegten Rechten und dem jeweiligen anderen Rechtsgut, also innerhalb der Verhältnismäßigkeitsprüfung berücksichtigt werden. Der VPRT trägt durch diesen Ansatz dem Umstand Rechnung, dass dem Verhältnismäßigkeitsgrundsatz im Gemeinschaftsrecht überragende Bedeutung zukommt (vgl. z. B. für Maßnahmen der Gemeinschaft gegenüber den Mitgliedstaaten die Festschreibung in Artikel 5 Absatz 3 n. F. EGV). Eine Maßnahme muss also zur Erreichung des verfolgten Ziels geeignet, erforderlich und angemessen sein. Bei der Prüfung der Verhältnismäßigkeit legt der EuGH regelmäßig das Schwergewicht auf die Erforderlichkeit im Sinne des geringstmöglichen Eingriffs. Es ist also davon auszugehen, dass der Bewertung, ob ein anderes Rechtsgut gegenüber dem Grundrecht auf Meinungs- und Informationsfreiheit als höherrangig anzusehen ist, im Rahmen der Verhältnismäßigkeitsprüfung in umfassender Weise Rechnung getragen wird. Ein Eingriff in das Grundrecht ist demnach nur in sehr engen Grenzen gerechtfertigt.

Zudem möchten die Mitglieder des VPRT klarstellen, dass grundsätzlich keine Beschränkung des Rechts auf Meinungs- und Informationsfreiheit wegen eines bestimmten Meinungsinhalts erfolgen darf. Von diesem Grundsatz können insbesondere dann Ausnahmen erforderlich sein, wenn Bestimmungen zum Schutz der Jugend und zum Schutz der persönlichen Ehre betroffen sind. Auch hier ist jedoch zu berücksichtigen, dass etwa gesetzliche Bestimmungen zum Schutz der Jugend die grundlegende Bedeutung der in Absatz 1 des Textvorschlags des VPRT niedergelegten Rechte und den Grundsatz der Verhältnismäßigkeit wahren müssen. Notwendig ist demnach auch hier eine Güterabwägung zwischen der Forderung nach umfassendem Grundrechtsschutz und dem hervorgerufenen Interesse an einem effektiven Jugendschutz.

Weitere Anmerkungen zum Schrankenvorbehalt finden sich unter II., 2. .

3.

Hinsichtlich der Frage nach dem Adressatenkreis und der Trägerschaft des Europäischen Grundrechts der Meinungs- und Informationsfreiheit spricht sich der VPRT für eine Anwendbarkeit neben der jeweiligen nationalen Verfassung aus. Insoweit möchte der VPRT den in Artikel H.1 niedergelegten Ansatz des Konvents (Convent 27 vom 18. April 2000) unterstützen. Adressaten des Grundrechts auf Meinungs- und Informationsfreiheit sind demnach sowohl die Europäische Union und ihre Organe als auch die Mitgliedstaaten selbst. Ein klares Nebeneinander beider Grundrechtskataloge würde die Rechtsvereinheitlichung im Binnenmarkt fördern, die vorhandenen Grundrechtskataloge ergänzen und sich letztlich unter Gesichtspunkten des doppelten Grundrechtsschutzes keineswegs nachteilig auswirken.

4.

Da bereits angedacht wurde, die Europäische Grundrechtscharta - möglicherweise durch eine entsprechende Änderung des EG-Vertrages - rechtsverbindlich auszugestalten, möchte der VPRT zur Vermeidung von Zersplitterungen beider Regelungswerke anregen, die Grundrechtscharta in den EG-Vertrag einzubinden. Unter Anknüpfung an die bereits vorhandene Systematik innerhalb des EG-Vertrages erscheint hier die Einbindung in die in Artikel 17 ff n. F. EGV niedergelegten Unionsbürgerrechte ein sinnvoller Ansatz.

5.

Des weiteren spricht sich der VPRT dafür aus, die Justitiabilität der in der Europäischen Grundrechtscharta niedergelegten Rechte festzuschreiben. Nur so können sich die Träger der Grundrechte vor den jeweiligen Gerichten auf diese berufen und ihre Durchsetzung herbeiführen. Der Rechtsschutz auf europäischer Ebene sollte, da es sich um verfassungsrechtliche Streitigkeiten handeln würde, möglichst durch den EuGH sichergestellt werden. Hierzu könnte an die Einrichtung von entsprechenden Spezialkammern für Individualbeschwerden gedacht werden, die sich vorbereitend mit der streitgegenständlichen Materie beschäftigen. Zudem sollte eine Kooperation mit dem EGMR unter besonderer Berücksichtigung seiner subjektiv-rechtlich gefestigten Rechtsprechung zu Artikel 10 EMRK in Betracht gezogen werden.

II. Einzelerläuterungen

1. Absatz 1

(1) Jeder hat das Recht auf freie Meinungsäußerung. Dieses Recht schließt die Meinungsfreiheit und die Freiheit ein, Informationen und Ideen ohne behördliche Eingriffe und ohne Rücksicht auf Staatsgrenzen zu empfangen und weiterzugeben. Die Medien sind frei.

Die in Absatz 1 Satz 1 gewählte Formulierung „Jeder“ verdeutlicht zum einen den subjektiv-rechtlichen Charakter des Freiheitsrechts auf Meinungs- und Informationsfreiheit. Die Formulierung stellt klar, dass dieses Recht und damit auch die in Satz 3 ausdrücklich benannte Medienfreiheit (hierzu ausführlich unten) sowohl den privaten Rundfunkanbietern als auch anderen Grundrechtsträgern uneingeschränkt zusteht. Anders als der von Seiten des Konvents gewählte Ansatz „Jede Person“ lässt der Vorschlag des VPRT in Anlehnung an die Formulierung in Artikel 5 Absatz 1 Satz 1 des Grundgesetzes zudem unmissverständlich erkennen, dass Träger des Grundrechts auf Meinungs- und Informationsfreiheit nicht nur natürliche Personen, sondern beispielsweise auch juristische Personen oder andere Personenvereinigungen sein können. Die Festschreibung einer solchen Formulierung würde bereits im Vorhinein zur Rechtssicherheit im Hinblick auf mögliche Auslegungsfragen beitragen.

Unter dem in Absatz 1 Satz 1 normierten „Recht auf freie Meinungsäußerung“ ist das Grundrecht auf Äußerung und Verbreitung der Meinung zu verstehen. Hierdurch wird die nach außen gerichtete Handlung, also die Abgabe der Meinung sowie der Prozess der Informationsübertragung geschützt. In Satz 2 wird dann eingangs klargestellt, dass das Recht der freien Meinungsäußerung die Meinungsfreiheit (...) einschließt. Unter der hier separat normierten Meinungsfreiheit ist der innere Vorgang der Meinungsbildung zu verstehen. Zudem möchte der VPRT hierdurch klargestellt wissen, dass die Meinung inhaltlich frei ist („Meinungsneutralität“). Diese Auslegung findet ihre Entsprechung in den Ausführungen des VPRT zum Schrankenvorbehalt (vgl. I., 2.). Hier verdeutlicht der VPRT, dass grundsätzlich keine Beschränkung des Rechts auf Meinungs- und Informationsfreiheit wegen eines bestimmten Meinungsinhalts erfolgen darf, wobei von diesem Grundsatz insbesondere dann Ausnahmen erforderlich sein können, wenn Bestimmungen zum Schutz der Jugend und zum Schutz der persönlichen Ehre betroffen sind.

Unter der in Satz 2 normierten „Informationsfreiheit“ versteht der VPRT das Recht, sich aus allgemein zugänglichen, vielfältigen Quellen ungehindert zu informieren. Diese Interpretation der Informationsfreiheit trägt vor allem dem Gedanken der Förderung der Informationsgesellschaft auf europäischer Ebene Rechnung. Zudem entspricht sie dem gängigen Verständnis des Artikels 10 EMRK und der Auslegung des entsprechenden Kriteriums in Artikel 5 Absatz 1 Satz 1, 1. HS des Grundgesetzes.

Unter den in Satz 2 normierten Kriterien des „Empfangs und der Weitergabe“ von Informationen und Ideen ist auch und insbesondere die Veranstaltung und Verbreitung von Rundfunk zu verstehen, und zwar unabhängig von dem dieser Informationsweitergabe zugrunde liegenden technischen Übertragungsvorgang. Nach dem Verständnis des VPRT muss die Freiheit des Empfangs und der Weitergabe von Informationen alle wesensmäßig mit der Veranstaltung von Rundfunk zusammenhängenden Tätigkeiten, von der Beschaffung der Information (vgl. vorstehend) und der Produktion der Sendungen bis hin zu ihrer Verbreitung erfassen.

Die Aufnahme des als Satz 3 niedergelegten Textvorschlags des VPRT („Die Medien sind frei“) ist aus der Sicht der privaten Rundfunkanbieter von hoher Wichtigkeit. Durch diese Klarstellung lässt die Systematik des Absatzes 1 unzweifelhaft erkennen, dass das Recht der freien Meinungsäußerung (Satz 1) sowohl das Recht auf Meinungs- und Informationsfreiheit (Satz 2) als auch die Medienfreiheit (Satz 3) umfasst. Hierdurch soll zum einen verdeutlicht werden, dass den Medien das Recht auf Meinungs- und Informationsfreiheit uneingeschränkt zusteht. Dieser Gedanke steht in unmittelbarem Zusammenhang mit dem unter I., 1. und II., 1. dargelegten Ansatz des subjektiv-rechtlichen Verständnisses des Grundrechts und der daraus folgenden textlichen Klarstellung, dass „jeder“ und damit auch die privaten Medienanbieter Träger des Grundrechts auf

Meinungs- und Informationsfreiheit sind. Zum anderen ist es aus der Sicht der Mitglieder des VPRT vor dem Hintergrund der aktuellen technologischen Entwicklungen unerlässlich, dem Konvergenzgedanken dadurch Rechnung zu tragen, dass für alle Medien, die Träger dieses Grundrechts sein können, ein Oberbegriff gefunden wird, um ein in Teilbereichen schon existentes Zusammenwachsen einzelner Branchen abzusichern. Nur so kann der notwendige Entwicklungsspielraum für bereits vorhandene und in Zukunft aktuell werdende technologische Veränderungen (Internet, Digitalisierung) geschaffen werden. Hierbei sehen die Mitglieder des VPRT es als selbstverständlich an, dass unter die in Satz 3 normierte Medienfreiheit die klassischen elektronischen Medien ebenso wie die Presse und der Film zu fassen sind. Der Anwendungsbereich muss jedoch für die Medien insgesamt geöffnet werden, eine Auflistung einzelner Medienfreiheiten, wie sie etwa in Artikel 5 Absatz 1 Satz 2 des Grundgesetzes erfolgt, erscheint aus den benannten Gründen veraltet. Nur durch eine Verschmelzung der einzelnen Freiheiten zu einer Medienfreiheit, die sich für kein Medium nachteilig auswirken würde, kann das Wachstum der europäischen Informationsgesellschaft langfristig abgesichert werden. Der Gedanke der Konvergenz, der hier manifestiert werden sollte, fördert Wettbewerb und stärkt damit den europäischen Binnenmarkt.

2. Absatz 2

Wie bereits unter I., 2. dargelegt, möchte der VPRT im Hinblick auf den Vorschlag des Konvents zu Artikel H. 2 im Zusammenhang mit dem Recht auf Meinungs- und Informationsfreiheit anregen, von der Aufnahme einer allgemeinen, horizontalen Schrankenregelung mit einem Verweis auf die EMRK Abstand zu nehmen und statt dessen eine eigene Schrankenregelung in der folgenden textlichen Fassung aufzunehmen: *„In diese Rechte darf nur eingegriffen werden, soweit es zum Schutz anderer Rechtsgüter unerlässlich ist“*. Die herausragende Bedeutung des Rechts auf Meinungs- und Informationsfreiheit erfordert eine konkrete Einzelfallabwägung der in Rede stehenden Rechtsgüter im Rahmen der Verhältnismäßigkeitsprüfung. Zudem muss hier der Grundsatz des effektiven Grundrechtsschutzes berücksichtigt werden. Ein Eingriff ist deshalb nur in sehr engen Grenzen gerechtfertigt.

3. Absatz 3

Der Textvorschlag des VPRT greift in Absatz 3 das Zensurverbot auf. Bereits aus der Begründung des VPRT zum Schrankenvorbehalt (vgl. I., 2.) und der Begründung zur textlichen Fassung des Absatzes 1 (Recht auf Meinungsfreiheit, II., 1.) geht hervor, dass in keinem Fall eine Beschränkung des Rechts auf Meinungs- und Informationsfreiheit wegen eines bestimmten Meinungsinhalts erfolgen darf. Die Meinung muss also inhaltlich frei sein, was mit dem Stichwort der „Meinungsneutralität“ umschrieben werden kann. Zur Vermeidung möglicher Unklarheiten möchte der VPRT anregen, das Zensurverbot, das für die privaten Rundfunkanbieter in Deutschland eine Gewährleistung von hohem Bedeutungsgehalt darstellt, ausdrücklich zu normieren.

Bonn, 31.05.2000

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 4 July 2000**CHARTE 4348/00****CONTRIB 212****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a contribution by the working group on EU-citizenship, fundamental rights and cultural diversity of the federalist group at the European institutions (UEF-EU) concerning Safeguarding public traditions and cultural heritage. ¹

¹ This text has been submitted in English language only.

**CONCERNING
THE DRAFT CHARTER ON FUNDAMENTAL RIGHTS
ARTICLE 26 « RIGHT TO VOTE AND TO STAND IN LOCAL ELECTIONS »
ARTICLE 30 « FREEDOM TO MOVE AND TO SETTLE ...»
PROPOSED AMENDMENT**

**by the Working group
on EU citizenship, fundamental rights and cultural diversity, UEF-EU,
and the Association of former trainees of the European Communities (ADEK)**

NEED FOR AN AMENDMENT AS THERE IS A CONFLICT BETWEEN :

**THE ‘DEMOCRATIC PRINCIPLE’ AND THE ‘TERRITORIAL PRINCIPLE’
CONFLICT IN A MULTI-NATIONAL, MULTI-CULTURAL COMMUNITY
HAVING COMMON CITIZENSHIP, FREE MOVEMENT OF PEOPLE,
FREEDOM OF SETTLEMENT AND
THE RIGHT TO PARTICIPATE IN LOCAL ELECTIONS
BETWEEN
MAJORITY VOTING AND (PUBLIC) CULTURAL TRADITIONS
IN PARTICULAR AT THE LOCAL LEVEL !!!**

**INTRODUCING A NEW CATEGORY OF PUBLIC CIVIC RIGHTS
AS TO OFFICIAL TRADITIONS
IN CULTURE , LANGUAGE AND RELIGION AT A SPECIFIC PLACE**

**A SORT OF TERRITORIAL CIVIC RIGHT
AS TO CULTURE, LANGUAGE OR RELIGION**

WHICH CANNOT BE TAKEN AWAY FROM A LOCAL COMMUNITY

**BY A MAJORITY OF ‘NEW-COMMERS’
EXCEPT THE CONCERNED COMMUNITY
(HISTORIC CULTURAL MAJORITY)
WANTS TO CHANGE THE OFFICIAL TRADITION ITSELF !**

ARTICLE 26 SHOULD THEREFORE READ AS FOLLOWS :

Article 26 : Right to vote and to stand as a candidate in municipal elections

Every citizen of the Union has the right to vote and to stand as a candidate at municipal elections in the Member State in which he resides under the same conditions as nationals of that State.

(> Democratic principle)

The “official heritage and public traditions as to culture, language or religion” of a local community should be recognised by every citizen participating in the elections by means of accepting the following principles:

(> Territorial principle)

1. Concerning the “public heritage of a local Community”, like the official language in public life and administration, the official feasting or commemoration days as to culture or religion, **all rights and obligations resulting from the present legal situation in a Member State of the Union have to be respected.**
(> **Status quo principle**)
2. Any person who intends to participate as a candidate in municipal elections should have shown in practice that he or she is **ready to integrate into the existing local Community and is going to respect the “official cultural heritage”** of the place concerned.
(> **principle of good will to integrate**).
3. Any elected democratic majority having different preferences as to the “official and public traditions” **cannot change** the legally existing provisions as to the **linguistic rights and obligations or as to the official cultural traditions in public life of the municipality**, except the concerned “cultural/linguistic group” (historic majority) wants to change the provision or conditions itself.
(> **Principle of 'historic' rights/ancienty, or application of the principle: “Treat your neighbour as you want to be treated by him in the same situation!”**).

PROPOSAL FOR AMENDING THE DRAFT CHARTER ON FUNDAMENTAL RIGHTS
concerning “Safeguarding public traditions and cultural heritage”

- > reference: Article 26: “Right to vote and to stand in local elections ...”
Article 30: “Freedom to move and to settle within the Union ...”

EXPOSE DE MOTIF

The European Union constitutes a multi-national, multi-cultural and multi-lingual community. The treaty on the European Union (Maastricht, article 8) introduced the citizenship of the Union for all nationals of the Member states and the right to vote and to stand (for such nationals) as a candidate (not only in common European elections but also) in municipal elections in the Member state of residence.

Common citizenship and the free movement of people of different cultural and linguistic background within the citizenship's common political territory can not only create permanent linguistic conflicts between the different cultural groups of the political entity (Country, State, Community, Union), but also put a permanent strain on local self-government by threatening existing local majorities (ethnic, cultural or linguistic) to become minorities through the immigration of people from other parts of the Union having another cultural background and speaking other languages. (examples within Belgium, France, Spain, eastern European countries, ex-Yugoslavia, Russia etc.)

Thus, common citizenship, free movement of people and the right to participate in elections might, especially on the local level, bring, if there are different languages, cultures and traditions within this political union, two universally accepted principles into a permanent conflict, i. e.,

the territorial principle versus the democratic principle.

If the language and culture would be of uniformity all over the Union, state or Country, this conflict would not exist.

For a multinational community like the European Union it is therefore of vital interest for its long-term political cohesion that universally accepted principles and rules are applied, especially concerning - in an adequate way - the protection of languages, cultures and traditions. This is in particular true on the local level as the cultural and linguistic identity of people living since generations in a specific area or place can be more easily outvoted through democratic elections by a sufficient number of newcomers having another linguistic and cultural background or other priorities in these fields.

In the context of the EU-citizenship and mobility, everybody who lives and/or works in a commune or town of another Member state can easily join local or regional parties or even create new local or regional groupings. Thus, through mobility and immigration, **present local majorities can become new minorities.**

Multinational and multi-cultural societies therefore need a general code of conduct for treating with the problem of changing local majorities, respectively of new cultural and linguistic minorities, and this, in the first place, at the local level, i.e., the commune, municipality or town-district level, as they are the smallest democratically elected political entities covering a specifically defined territory.

Existing **problems linked to local and regional ethnic minorities can not be solved with this amendment to the Charter, but this amendment can help to avoid new conflicts between indigenous people and new-comers at the local level in the future.** Fundamental aspects of minorities at the local and regional level would have to be dealt within the framework of a general European charter on minorities. But the specific problem of a **possible switch in the local linguistic and cultural majority** in a specific municipality due to a large number of residents of other Member States who can now participate in this local balloting **must be solved within the general framework of a Charter on Fundamental Rights in the European Union.**

The Union level must show to its Member States and to all its citizens that it follows **universal principles** acceptable by everybody because it follows the ideas of the "categorical imperative" of Immanuel Kant,

'treat your neighbour as you want to be treated by him "

The target of this new article is to avoid future problems or solve them in advance before they generate linguistic, cultural or ethnic tensions within a multi-cultural society. That this is not a theoretical problem show the various national derogations or transitional provisions already foreseen (Luxemburg, Belgium, France) as to the Directive on the participation in municipal elections adopted by the Council in 1994.

The main target of this amendment should be therefore, to take away the fear and the possible negative impression that the European integration process, the mobility of people, common citizenship and the voting right of all citizens of the Union at the local level would lead in the medium and long run to a situation where a democratic elected majority decides a change in the linguistic rights and cultural traditions of the indigenous people which live since generation at that place.

Every citizen of the EU should be aware, that besides his individual and collective civic rights which he or she can enjoy everywhere in the Union, he or she also has to accept the rights and obligations coming from the idea of safeguarding public traditions and cultural heritage in an existing local community. (> idea of guaranteeing diversity within unity!)

Detailed argumentation for the amendment:

“RESPECT FOR PUBLIC TRADITIONS AND CULTURAL HERITAGE”

Objective/Targets

The common citizenship and the right of each citizen of the European Union to participate in municipal (local) elections **shall not come out as a threat to the linguistic, cultural and traditional heritage of indigenous people** living at a specific place since generations.

The guarantee of the "four freedoms" within the Union (mobility of people having different cultural and linguistic background, free exchange of goods and services as well as free movement of capital) shall be accompanied by an equivalent guarantee of the language used in public administration and of public cultural traditions at the local level.

Principles

In this context the following principles shall apply:

'The one who moves, whether for professional or for private reasons, has to adapt to the rules and public traditions of the place he or she has deliberately chosen to live.'

(General principle of a multi-national and multi-cultural Community, Union or Federation)

a) All rights and obligations resulting from the present legal situation as to the language(s) used in public administration and as to official contacts with local public authorities should be guaranteed. The same should apply to public cultural and religious events within the local community.

(Status quo principle)

b) Any person who intends to stand as a candidate in municipal elections should have shown in practice (by learning and using, for example, the language(s) in public life) that he or she is ready to integrate in the existing local Community and is going to respect the linguistic and cultural traditions which can be considered as a specific right, heritage or identity of the people living often since generations at that place.

(Principle of good will to integrate).

c) A democratically elected majority, having linguistic and cultural preferences which differ from the legally existing situation in the basic local government unit, can only change the elementary **linguistic rights and cultural traditions in public life** of that place, if the concerned former cultural majority group (historic majority of the concerned political self-governing unit) wants to change the conditions or provisions itself.

(Principle of 'historic' rights/ancienty).

Limitation and Exclusion

Existing **ethnic minorities on the local and regional level are not concerned** with this Charter article; problems in this context should be subject to a general European charter on rights and obligations of local minorities.

Change in the territorial extension of the basic local government unit

A change in the territory of the basic local government unit can have an important impact on the political, cultural and linguistic majority within this unit; therefore, any change in the territorial extension of the basic local government unit, either by means of a fusion of communes, municipalities, town-districts or through a splitting up into smaller political self-governing units, shall- not only be subject of a mutual agreement between the old and new political majority groups of the original political unit(s), especially, if they are of different cultural and linguistic background, - but also be the result of applying universal criteria to the local level and of objective indicators guaranteeing a viable local self-government such as common interests and sound financial structures of the old and new basic local government units.

A change in the territorial extension of a basic local government unit should at least take into consideration aspects like guaranteeing democratic representativity and secrecy (anonymity in voting procedures), possibility of realising common cultural and linguistic interests, equal

treatment of new minorities, average seize in population and territory of the new political unit within the larger political and administrative context (district, canton, Kreis, county, province, departement, region, Land, etc.), administrative efficiency, financial rentability, economic interdependencies, fiscal solidarity, financial perequat on mechanisms, etc.)

Protection of the local cultural and linguistic heritage

a) The protect on of **cultural traditions** shall include, in particular, the right to maintain publicly decided and/or organized cultural and religious events such as historic commemorations, special cultural and religious holidays, etc. including public subsidies for the conservation of such like traditional cultural heritage.

b) The protect on of **linguistic rights** shall cover, in particular, a language guarantee in local administration, that are **all elementary aspects of official language(s) use in local administration** like documents, announcements, public sessions, official meetings, official contacts between the local authorities and the citizens.

The language(s) used in local administration can be the national-wide spoken language, the regional or even a national-wide minority language spoken by the major ty at the concerned place.

In **a cultural and linguistic homogeneous state or country**, the language used in local administration and in official contacts with the local authorities is the language of (the majority of) the population at the concerned place which coincides with the national-wide spoken language;

In the **case of a multi-cultural and multi-linguistic state or country** specific linguistic rules on the basis of the territorial principle do already exist at the regional or local level. Mostly, the official language at the local level with the administration and local authorities is the regional or even local language, or the combination of two languages, the local-majority language and the national-wide language.

In a multi-national and multi-lingual Community like the European Union, for reasons of transparency and efficiency, the following guideline dealing with the relationship between the EU citizen and the public sector should become as a general target (as examples in Switzerland (CH) show):

Uni-lingual administration (protect on of the indigenous people and efficiency), **but a multi-lingual population** (target of integration and respect for cultural diversity within political unity)

Brussel/Bruxelles, 30.5.2000 Michael Cwik
Coordinator of the working Group 3
UEF-EU

**CONCERNING: CHARTER ON FUNDAMENTAL RIGHTS IN THE EU
EU-CITIZENSHIP AND LANGUAGE RIGHTS AND OBLIGATIONS
OF THE CITIZEN**

1. THE CITIZEN AND THE INSTITUTION OF THE EUROPEAN UNION (EU)

THE BASIC PRINCIPLES ARE:

- "All languages of Member States which have been recognized as official languages of the European Union shall be considered as equal as to their official treatment on the Union's level."
- "Local and regional languages within the EU which are recognized by the concerned member state shall be treated on an equal footing by the European institutions when specific activities or information of the Union are foreseen at the place or region concerned."
- "The acceptance of linguistic diversity is the price of democracy within a multi-ethnic community where everyone wants to keep and safeguard his/her cultural and linguistic identity."

RIGHTS AND OBLIGATIONS OF A CITIZEN AND/OR CIVIL SERVANT AS TO EU ACTIVITIES:

1.1. RELATING TO THE EXTERNAL RELATIONS OF THE UNION'S INSTITUTIONS

- CONCERNING CORRESPONDENCE OF THE CITIZEN

Any EU-citizen as the right to address his correspondence to an official body or service of the European Union in his mother tongue as far as his language is recognized as official language of the Union; correspondence in other official languages of Member States as to pass the representative bodies of the concerned Member State at the European level.

The correspondence of the institutions of the European Union is done in the official languages of the Union and in particular in the language of the correspondent if this is known. In general and if there is no specific indication the reply of a service of the Union's institution is done in the language of the previous correspondence by the concerned person.

- CONCERNING DECISIONS OF THE INSTITUTIONS AND THEIR PUBLIC INFORMATION

All official decisions taken within the framework of the European Union like regulations directives recommendations court rules etc. are published in the official languages of the Union. Important information topics shall be in all official languages of the Union; publications for a specific public can be made in the language or languages of the audience concerned.

- CONCERNING MEETINGS OF OFFICIAL POLITICAL MANDATEES AT THE EU-LEVEL:

IN OFFICIAL MEETINGS OF THE EU-PARLIAMENT AND THE UNION'S COUNCIL

As neither an elected member of Parliament nor a representative of a government was appointed on the basis of his language knowledge he must on the Union's level have at least the possibility to speak in one of the official languages of the Union and to get the documents to decide over in the official language of his choice.

This is the right and obligation of every political mandatee (directly or indirectly elected) in the European Union.

IN WORKING AND STUDY GROUPS WITH NATIONAL REPRESENTATIVES

As representatives of Member States nominated for experts meetings on the European and international level should be selected on the basis of their professional capacities their linguistic background should be in general already multi-lingual; but as long as there is no decision about a non-discriminatory inter-ethnic communication language or one official working language within the European institutions each representative must have the right to express himself in one of the official languages of the Union.

1.2. RELATING TO THE INTERNAL RELATIONS OF THE UNION'S INSTITUTIONS

- CONCERNING LINGUISTIC PRECONDITIONS TO BECOME AN EUROPEAN CIVIL SERVANT

Any person who is applying to work in the institutions of the European Union has to bring with him an adequate linguistic background; in principle he or she should besides the mother tongue be capable to understand to speak and to write two other languages of which one should be one of the official languages of the Union.

- CONCERNING THE WORKING LANGUAGES WITHIN THE EU INSTITUTIONS

In principle all official languages of the Union can be used as a working language by a staff member. For reasons of cost time and efficiency as to the need of translation in the medium term only one common working language should be foreseen for internal preparatory work within the services and institutions of the European Union; as long as a national language as to fulfill this function and until final acceptance after thorough experiments and tests by the staff and the competent bodies a non-discriminatory inter-ethnic communication language based on a language model (planned language) shall be placed alongside this national language as the second official working language within the EU institutions in order to balance the disadvantages for all those staff members who do have not the national working language as mother tongue. Thus also those speakers who can work in their mother tongue are obliged to learn and at least understand the second non-discriminatory working language.

2. THE CITIZEN AND THE PUBLIC AUTHORITIE IN MEMBER STATE

THE BASIC PRINCIPLE ARE:

- "The one who moves has to recognize the public (cultural and linguistic) traditions of the place where he or she is going to!"
- " It is in the responsibility of the traveler to make himself understood and not an obligation of a public authority or its representative to be able to understand the language of a foreigner at a specific place."
- “Persons employed in public services should get incentives to speak also other languages!”

RIGHTS AND OBLIGATIONS OF A CITIZEN AND/OR CIVIL SERVANT AS TO THE PUBLIC SECTOR:

2.1. IN RELATION TO THE PUBLIC AUTHORITIES IN MEMBER STATES

- WHEN TRAVELING WITHIN MEMBER STATES OF THE EU

Public authorities of Member States are not obliged neither to speak nor to present official documents in another language than the official language at the place concerned. In general it is in the responsibility of everyone to make himself understood in any contact with public authorities although in specific social circumstances the costs of an interpreter or translator might be covered by the public service in question.

- WHEN INVOLVED IN LEGAL PROCEDURES IN MEMBER STATES

Every EU-citizen has the right when being involved in a legal procedure within the territory of the European Union to express himself in the language of his choice; nevertheless if the language chosen by him is neither understood by a competent representative of the legal procedure nor the official language of the place or territory in question all costs of interpretation or translation are at his charge.

- WHEN SETTLING IN WITHIN THE TERRITORY OF A MEMBER STATE

Having the right to travel and to settle without discrimination to a national resident within all Member States of the European Union every citizen of the Union as nevertheless to integrate into the public life of the place of his/her choice in particular as to the official language(s) of administration; although public staff members in specific functions with frequent contacts to clients speaking other languages should in general be multi-lingual public services at the local regional or national level are not obliged for reasons of efficiency to have speakers or documents in a language which is not the official of the place concerned.

2.2. IN RELATION TO LANGUAGE INSTRUCTION WITHIN MEMBER STATES**- CONCERNING PUBLIC SCHOOLS**

On the basis of an agreement between the ministers of education within the Member States of the European Union every person leaving school within the EU shall in the medium term be able to master besides his mother tongue two other languages. The languages offered at a specific school are the result of the general educational system of the country or region of the local priorities of the school in question and of the language preferences expressed by the parents of the pupils of the school. Elementary instruction in a mother tongue which is not the official or one of the official languages of the place concerned is subject to democratic decisions in the competent political bodies in particular as to the necessary allocation of the human and financial resources.

- CONCERNING PRIVATE SCHOOLS

Language groups which are speaking other languages than that or those officially instructed in public schools can organize themselves in the framework of the constitution and the educational system of the country or region concerned in private schools on their own expenditures; in order to assure a harmonious integration of these language groups into the local cultural and linguistic environment one official language of the place concerned shall be an obligatory instruction subject of the private schools.

Version: 26.5.2000 Document of the Working Group 3 on EU citizens' fundamental rights and cultural diversity
(UEF-EU coordinator: Michael Cwik
e-mail: Michael.Cwik@cec.eu.int)

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE**fundamental.rights@consilium.eu.int**

Bruxelles, le 8 juin 2000**CHARTE 4349/00****CONTRIB 213****NOTE DE TRANSMISSION**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne

Veillez trouver ci-après l'intervention du Forum des Migrants de l'Union européenne à l'occasion de l'audition du 27 avril 2000. ¹

¹ Ce texte a été soumis en langue française seulement.

**Intervention du Forum des Migrants de l'Union européenne à l'occasion de l'audition des
ONG devant la "Convention"
Bruxelles, le 27 avril 2000**

Monsieur le Président,

Mesdames et Messieurs, membres de la "Convention",

Le Forum des Migrants de l'UE remercie la "Convention" pour la possibilité qui lui a été donnée d'exprimer son opinion par rapport au projet de Charte des droits fondamentaux de l'Union européenne. La préoccupation du Forum des Migrants de l'Union européenne, en tant qu'organisation représentant les ressortissants des pays tiers résidant dans l'Union européenne, est celle de promouvoir l'égalité de traitement entre les ressortissants des Etats membres et les ressortissants des pays tiers légalement résidant dans l'Union.

L'Union européenne est désormais une communauté bien diversifiée dans laquelle des personnes de différentes langues, cultures, religions, appartenances ethniques, nationalités vivent ensemble. La question de la participation et de la jouissance des droits fondamentaux ne concerne pas uniquement les ressortissants des pays membres de l'Union européenne, mais aussi quelques 14 millions de personnes ressortissants des pays tiers résidant dans l'Union. A tel propos, le Forum des Migrants a à plusieurs reprises mis en évidence les limites du Traité révisé. Il nous semble que le traité de Amsterdam, en introduisant un concept de citoyenneté européenne liée à la nationalité des Etats membres et non pas à la résidence sur le sol de l'Union européenne, ait établi une "discrimination institutionnalisée" entre les ressortissants communautaires et les ressortissants des pays tiers. Un exemple pratique de cette discrimination est montré par le fait que, contrairement aux ressortissants des pays membres de l'Union européenne, les ressortissants des pays tiers qui résident dans un pays de l'Union européenne dont ils n'ont pas la nationalité, ne peuvent pas bénéficier du droit de voter et d'être élus aux élections européennes et municipales (article 19 CE).

La moitié de cette population immigrée, constituée par des enfants, est naturalisée, devenue européenne, mais ne pouvant participer, pour son jeune âge, à la prise de décision concernant son avenir ni par elle-même, ni par ses parents qui ne peuvent voter. A cette occasion, nous souhaitons aussi rappeler que l'article 13 du même traité, pourvoyant à une base légale pour une action contre

les discriminations sur le sol de l'Union, ne couvre pas les discriminations fondées sur la nationalité. Donc, aucune base juridique ne saurait pour l'instant couvrir les discriminations les plus graves reposant sur une distinction de nationalité.

Le Forum des Migrants garde l'espoir de voir toutes ou certaines de ces lacunes comblées lors de la CIG 2000 et garde surtout l'espoir que le projet de rédaction d'une Charte des droits fondamentaux ainsi que le travail de la Convention puissent contribuer à avancer dans ce sens. Nous croyons que les deux processus - celui de la rédaction de la Charte et de la Conférence intergouvernementale doivent être considérés comme intimement liés l'un à l'autre et qu'une synergie devrait exister entre le travail de la CIG et celui de la "Convention". Pour cette raison, nous espérons que la Convention puisse idéalement saisir l'occasion de la rédaction de la Charte afin de contribuer à surmonter la discrimination "institutionnalisée" dans le traité de Amsterdam que nous avons dénoncée. Cela devrait être possible si l'on considère que la Convention a, par rapport à la CIG, la particularité de travailler sous l'ongle des droits de l'homme et que les droits de l'homme, entre autres, ont la caractéristique d'être universels et indivisibles.

L'universalité des droits de l'homme exige que toutes les personnes sous la juridiction des Etats membres de l'Union européenne devraient bénéficier des droits fondamentaux énoncés dans la Charte. On ne peut pas établir des catégories de bénéficiaires. La règle doit être l'octroi des droits énoncés à tous les êtres humains, seuls des exceptions très limitées pour certains droits spécifiques pourraient être prévues à caractère exceptionnel. En effet, l'art. 2 de la Déclaration Universelle des droits de l'Homme et l'art. 2,2 du Pacte international sur les droits économiques demandent une application sans distinction par rapport à l'origine nationale. Dans le même sens, la Convention européenne des droits de l'homme à l'art. 1 et le Pacte international des droits civils et politiques à l'art. 2 prévoient, comme champs d'application, toute personne relevant de la juridiction d'un Etat signataire et tous les individus se trouvant sur son territoire. Les droits de l'homme sont indivisibles, ils sont d'égale importance et leur réalisation est intimement liée, qu'il s'agisse des droits civils et politiques ou des droits économiques, sociaux et culturels. En se basant sur ces deux principes, il est difficilement concevable que la Charte des droits fondamentaux de l'Union européenne puisse prévoir des droits réservés à une seule catégorie de résidents dans l'Union européenne, ceux ayant la nationalité d'un des Etats membres.

Le Forum des Migrants se joint à la FIDH concernant l'appelle adressé à la Convention à saisir l'occasion de la rédaction de la Charte pour proposer une extension de la citoyenneté européenne aux personnes résident légalement depuis au moins cinq ans dans un Etat membre. Dans le passé, le Forum des Migrants a plusieurs fois souligné la nécessité d'intégrer une procédure unique pour l'acquisition de ce droit de citoyenneté, sans nécessiter le préalable de la naturalisation. Maintenant la rédaction de la Charte offre la chance de la construction d'une citoyenneté européenne dissociée de la nationalité, basée sur les droits de l'homme et ouverte à tous ceux qui résident et travaillent sur le même territoire.

D'ailleurs, il n'est pas sûr que l'extension des droits des ressortissants des pays tiers légalement résidant dans l'Union européenne exigerait une ultérieure révision du traité. Dans la version actuelle du Traité sur l'Union européenne, il y a, en effet, une ultérieure marge d'action qui permettraient d'avancer vers l'égalité de traitement et notamment sous le titre IV du Traité. L'article 61 précise que la construction d'un espace de liberté, sécurité et justice implique aussi l'adoption de mesures dans les domaines de l'asile, de l'immigration et de la sauvegarde des droits des ressortissants des pays tiers. Le traité de l'Union révisé donne à l'Union la compétence d'adopter des mesures relatives au séjour des ressortissants des pays tiers (art. 63, 3 a) et encore des mesures qui définissent sur la base de quels droits les ressortissants des pays tiers qui résident dans un des Etats membres peuvent résider dans un autre pays membre (libre circulation des ressortissants des pays tiers vers d'autres pays membres (art. 63, 4)).

Tout en restant confiants dans la contribution que potentiellement le projet d'une Charte des droits fondamentaux de l'Union européenne pourrait donner par rapport à la situation des ressortissants des pays tiers, nous craignons, en considération de l'état actuel des travaux de la Convention, que la Charte puisse finalement confirmer, au lieu de surmonter la discrimination établie par le traité d'Amsterdam. Nous regrettons, par exemple, dans l'exercice de la Charte l'établissement d'une catégorie de droits qui se réfèrent aux droits des citoyens. Nous craignons que cette méthodologie puisse confirmer ou renforcer la différence de traitement entre les nationaux européens et les ressortissants des pays tiers. Nous considérons le principe de l'égalité de traitement entre les ressortissants européens et les ressortissants des pays tiers sur la base de l'universalité et l'indivisibilité des droits de l'homme. Nous croyons, alors, que les droits réservés aux citoyens européens devraient avoir un caractère tout à fait exceptionnel.

Nous nous référons au document „Convent 17“ (Charte 4170/00) et saluons le projet d'octroyer le droit d'accès au médiateur européen et le droit de pétition devant le Parlement européen aux résidents (Article G et Article H). Cette extension est marquée par la formule „Tout citoyen de l'Union et toute personne résidant sur le territoire de l'Union“ contenues dans le même article.

Toutefois, nous souhaiterions voir cette démarche appliquée aussi à d'autres articles, notamment à l'article C (Droit de participer aux élections du Parlement européen après 5 ans de résidence légale) et à l'article D (Droit de participer aux élections municipales). On ne peut pas négliger, à ce propos, que le Parlement européen s'est prononcé à deux reprises dans les derniers mois (le 12 avril 1999 et le 15 février 2000) en faveur de l'extension du droit de vote aux ressortissants des pays tiers légalement résidant dans l'Union. Le Forum des Migrants a plusieurs fois appelé les institutions européenne à envisager d'introduire ce droit dans une Charte européenne des droits fondamentaux.

Nous insistons aussi sur le fait que le droit de circuler et de séjourner librement sur le territoire des Etats membres (article I du même document), actuellement réservé aux personnes possédant la nationalité d'un Etat membre, devrait être étendu aussi aux ressortissants des Etats tiers résidant depuis au moins 5 ans sur le territoire de l'Union européenne. De notre point de vue, l'extension de ce droit aux citoyens extra-communautaires devrait être considérée en tant qu'exigence résultant de la liberté de mouvement au sein des Etats, consacrée dans divers instruments internationaux de protections des droits de l'homme (art. 2 du Protocole 4 à la CEDH, art. 12 du Pacte international sur les droits civils et politiques). Par ailleurs, elle serait aussi conforme aux objectifs qui motivent la création d'un espace intérieur sans frontières.

En conclusion, nous espérons que les membres de la "Convention" voudront bien prendre en considération les remarques du Forum des Migrants de l'UE et saisir l'occasion de la rédaction de la Charte des droits fondamentaux pour contribuer à revoir le statut des ressortissants des pays tiers légalement résidant dans l'Union européenne et remédier, ainsi, aux inégalités de traitement actuelles.

Merci, Monsieur le Président,

Merci, Mesdames et Messieurs, membres de la "Convention"

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 8 June 2000**CHARTE 4350/00****CONTRIB 214****COVER NOTE**

Subject : **Draft Charter of Fundamental Rights of the European Union**
Revised contribution submitted
by the Engineering Employer's
Federation (EEF)

Please find hereafter the revised position of the Engineering Employer's Federation (EEF) on the draft EU Charter of Fundamental Rights.¹

¹ This text exists in English language only.

DRAFT EU CHARTER OF FUNDAMENTAL RIGHTS

EEF COMMENTS ON THE NEW PROPOSALS FOR THE ARTICLES ON ECONOMIC AND SOCIAL RIGHTS AND FOR HORIZONTAL CLAUSES (CHARTER 4316/2000, CONVENT 34)

The Engineering Employers' Federation (EEF) represents over 5,700 companies in the engineering sector which have some 900,000 employees. The EEF and its members have a particular interest in the economic and social provisions of the draft Charter.

General Comments

1. The EEF believes that the new draft represents some improvement on its predecessor (Convent 18 and 19). In particular we are pleased to see that some of the more problematical and ill-defined new "rights", such as that to equal remuneration for work of equal value, have been dropped. The EEF also notes that some rights previously classed as social and economic are now in the section on civil and political rights, i.e. those on vocational training and equality between men and women.
2. The EEF still has considerable difficulties with the proposed text, however. We continue to believe that the Charter should be a brief declaratory document consistent with the original intention of establishing "a Charter of fundamental rights in order to make their overriding importance and relevance more visible to the Union's citizens". The current draft Charter shows substantial "mission creep". The draft is lengthy, technical and in our view will change directly and/or indirectly the relationship between the EU and the member states.
3. The current draft contains a number of Articles that are new rights and they will be used as stepping stones to further legislation on topics not yet covered by Directives. An example is Article 38 on "unjustified or abusive" terminations of employment.
4. The current draft also contains a number of Articles which seek to create new general rights out of limited specific rights such as Article 39 about the right of workers to "reconcile their family and professional lives" and Article 33 which seem to create a general unqualified right to information and consultation.
5. The precise way in which the current draft charter and the European Convention of Human Rights will interact is unclear.
6. The current draft charter is written in a way that suggests that it will have full legal status although this issue has not yet been decided. In any event it will have to be observed and implemented by EU institutions and bodies, member states and the social partners at Community level (Article 31).

Specific Points on the Draft Articles

7. Article 31 - This Article now includes reference to "the social partners at Community level", but this is not reflected in other Articles such as Article 46. The impact of the inclusion of the social partners at Community level is unclear. For example, it could be argued that this Article requires UNICE to enter into social dialogue to reach an agreement on "unjustified and abusive" termination of employment. The Article also maintains a distinction between social rights to be observed and social principles to be implemented. The statement of reasons refers only to social rights, and the distinction remains unclear.
8. Article 33 - This Article is an attempt to create a new general right out of limited and specific Directives about consultation and information. The draft Article pre-judges, for example, the discussion about the proposed Directive on information and consultation at national level.
9. Article 34 - This Article includes not only the right to negotiate but also to conclude collective agreements. This is not required by the European Convention on Human Rights and if included in the Charter would probably require a change in UK law. The UK statutory machinery for trade union recognition, including the specified Method of Collective Bargaining Order does not require either party to conclude collective agreements.
10. Article 35 - This Article is curiously worded. It can be argued that Article 35 is not needed when there is Article 36. Article 35 is based on the Working Time Directive that was brought forward as a health and safety measure.
11. Article 38 - This Article is about dismissal and seeks to create a new general right. It is a good example of the Charter moving away from summarising existing, well-recognised EU rights to creating new rights to fill a new Charter. The Article covers both "unjustified" and "abusive" terminations. It is assumed - but not clear - that abusive covers dismissals in breach of procedure rather than merely dismissals where the worker has been reviled at the time of termination.
12. Article 39 - This Article seems to create out of limited specific rights relating to maternity and parental leave a general right that "all workers have the right to reconcile their family and professional lives". It is most unclear what this means. It might, for example, include the right to work part-time.

June 2000

ENTWURF DER CHARTA DER GRUNDRECHTE DER EUROPÄISCHEN UNION**fundamental.rights@consilium.eu.int**

Brüssel, den 8. Juni 2000**CHARTE 4351/00****CONTRIB 215****ÜBERMITTLUNGSVERMERK**

Betr.: Entwurf der Charta der Grundrechte der Europäischen Union

Finden Sie bitte nachstehend eine Stellungnahme von Herrn Karl Hermann Haack, Mitglied des deutschen Bundestags. ¹

¹ Dieser Text wurde nur in deutscher Sprache übermittelt.



Karl Hermann Haack

Mitglied der Parlamentarischen Versammlung des Europarates

Mitglied des Deutschen Bundestages

Beauftragter der Bundesregierung
für die Belange der Behinderten

An den Vorsitzenden des Konventes zur Ausarbeitung einer Europäischen Grundrechtecharta
Herrn Prof. Dr. Roman Herzog

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Berlin, den 01.06.00

Aufnahme sozialer Grundrechte in die Grundrechtecharta der Europäischen Union

Sehr geehrter Herr Professor Herzog,

am kommenden Montag wird der Konvent seine Beratungen zum Einzelkapitel soziale Grundrechte auf der Grundlage des Conventes 34 mit einer weiteren Grundsatzausprache fortsetzen. Die Parlamentarische Versammlung des Europarates und der Europarats-Sozialausschuss werden bei ihrer nächsten Sitzung Ende Juni die Frage sozialer Grundrechte in der EU-Grundrechtecharta ebenfalls beraten und eine gemeinsame Erklärung mit dem Europäischen Parlament verabschieden. Diese wird zur Zeit in einer gemeinsamen Arbeitsgruppe der beiden Sozialausschüsse vorbereitet.

Ich bitte Sie, dieses Positionspapier den Mitgliedern des Konventes frühestmöglich zur Verfügung zu stellen und auch eine Aufnahme in die im Internet abrufbaren Datenbank zu veranlassen. Eine Übersetzung in englischer und französischer Sprache wird dem Konvent in den nächsten Tagen ebenfalls zugehen.

Mit freundlichen Grüßen

Ihr

Karl-Hermann Haack



Karl Hermann Haack

Mitglied der Parlamentarischen Versammlung des Europarates

Seite 3 von 4 Seiten des Schreibens vom 01.06.2000

Mitglied des Deutschen Bundestages

Beauftragter der Bundesregierung
für die Belange der Behinderten

Stellungnahme zur Notwendigkeit der Aufnahme sozialer Grundrechte in die Grundrechtecharta der Europäischen Union

1. Die Entscheidung, eine Grundrechtecharta für die Europäische Union zu schaffen, stellt einen Meilenstein in der Geschichte der Europäischen Einigung dar. Die Charta bietet die Chance, dass die Europäische Union am Vorabend ihrer Erweiterung und institutionellen Reform deutlich als **Wertegemeinschaft** sowohl nach außen als auch gegenüber den Unionsbürgern auftritt. Damit diese auch volle Geltung beanspruchen kann, sind ausdrücklich die Pläne innerhalb des Konventes zu begrüßen, eine Aufnahme der Charta in die Verträge vorzunehmen und dadurch der Charta rechtsverbindlichen und einklagbaren Charakter zu geben.
2. Die hochrangige und kompetente Zusammensetzung des Gremiums zeigt, dass sich die EU der herausragenden Bedeutung der Arbeit und Zielsetzung des Konventes bewusst ist. Dies gilt in besonderem Maße für die Arbeit der Mitglieder des Konventes, die trotz des ehrgeizigen Zeitplanes für die Erarbeitung der Charta ihre Aufgabe mit großer Kompetenz und bewundernswerten Engagement erfüllen.
3. Angesichts des bisherigen Standes der Beratungen zur Frage der sozialen Grundrechte und der Präsidiumsvermerkes Convent 34 erscheint es allerdings notwendig, ausdrücklich auf die grundsätzliche Unteilbarkeit und Universalität der Menschenrechte hinzuweisen. Es entspricht der europäischen und internationalen Rechtsentwicklung des 20. Jahrhunderts, dass soziale Grundrechte nicht im Gegensatz zu den klassisch liberalen Grundrechten stehen, sondern sich die beiden Bereiche gegenseitig bedingen und nur als Einheit dem modernen Grundrechteverständnis entsprechen können
4. Diesem Grundrechtebegriff folgte auch der Kölner Ratsbeschluss indem er die Vorgabe machte : "Bei der Ausarbeitung der Charta sind ferner wirtschaftliche und soziale Rechte zu berücksichtigen, wie sie in der Europäischen Sozialcharta und in der Gemeinschaftscharta der sozialen Grundrechte der Arbeitnehmer enthalten sind, soweit sie nicht nur Ziele für das Handeln der Union begründen."¹
5. Die vorliegende Fassung des Conventes 34 gibt Anlass zur Sorge, dass der Konvent bei der Ausgestaltung der wirtschaftlichen und sozialen Grundrechte hinter den für die Mitgliedsstaaten bereits geltenden internationalen Standards zurückbleiben wird. Da nicht klar zwischen Rechten und Handlungszielen unterschieden wird, entspricht das Convent 34 nicht dem Kölner Mandat.
6. Diese ernsten Bedenken werden auch vom Sozialausschuss des Europarates ² und dem UN-Ausschuss für wirtschaftliche, soziale und kulturelle Rechte³ geteilt, die in ihren Eingaben darauf hingewiesen haben, dass wirtschaftliche und soziale Grundrechte gleichberechtigt neben den Bürger- und Freiheitsrechten stehen müssen. Besonders ernst sollte der Konvent die

¹ Kölner Ratsbeschuß vom 3./4. Juni 1999

² Charta 4116/00

³ Charta 4315/00



Karl Hermann Haack

Mitglied der Parlamentarischen Versammlung des Europarates

Seite 4 von 4 Seiten des Schreibens vom 01.06.2000

Mitglied des Deutschen Bundestages

Beauftragter der Bundesregierung
für die Belange der Behinderten

Warnung des UN-Ausschusses nehmen, dass alle EU-Mitgliedstaaten riskieren, ihre Verpflichtungen zu verletzen, die sie in Art. 2, Abs. 1 des Internationalen Paktes über wirtschaftliche, soziale und kulturelle Rechte (ICESCR) eingegangen sind.

7. Die regionale Rechtsentwicklung in der EU ist als Teil des international anerkannten und gültigen Rechtsregimes zu sehen. Ein Zurückbleiben hinter internationalen Standards der Grundrechte trägt die Gefahr in sich, dass die Grundrechtecharta von Anfang an mit erheblichen Legitimitätsproblemen in- und ausserhalb der Union konfrontiert sein wird. Alle bisherigen Äußerungen aus dem Europarat machen deutlich, dass dieser einer Grundrechtecharta, die nicht die Unteilbarkeit und Universalität der Menschenrechte widerspiegelt, keine Zustimmung erteilen wird.
8. Zusammenfassend bitte ich den Konvent eindringlich, seiner Verantwortung gerecht zu werden, indem er

- Den Ratsbeschluss von Köln umsetzt, und die Europäische Sozialcharta sowie die Gemeinschaftscharta der sozialen Grundrechte der Arbeitnehmer insoweit berücksichtigt, wie es den mittlerweile gültigen nationalen und internationalen Standards entspricht.

Die Revidierte Europäische Sozialcharta, die den neuesten Stand der Rechtsformulierung widerspiegelt, sollte dabei Berücksichtigung finden, um einem schnellen Veralten der Grundrechtecharta vorzubeugen.⁴

- in seinem Entwurf wirtschaftliche, soziale und kulturelle Grundrechte gleichberechtigt mit den Freiheitsrechten in die Grundrechtecharta aufnimmt, indem er die Vorschläge innerhalb des Konventes unterstützt, die von der grundsätzlichen Unteilbarkeit, Interdependenz und Universalität der Grund- und Menschenrechte ausgehen.
- dadurch dem Vorwurf vorbeugt, dass die Europäische Union beabsichtige, einen Sonderweg im Grund- und Menschenrechtsverständnis einzuschlagen und in seinem Entwurf keinen Zweifel daran aufkommen lässt, dass der Konvent die Europäische Grundrechtecharta als integralen Bestandteil des europäischen und internationalen Grund- und Menschenrechtsregimes begreift.

⁴ Der Ratifizierungsprozess für die RESC ist zur Zeit in mehreren Mitgliedsstaaten im Gange. Auch die Bundesrepublik Deutschland prüft gerade, wie noch bestehende Bedenken gegen eine Ratifizierung der RESC schnellstmöglich ausgeräumt werden können.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 8 June 2000**CHARTE 4353/00****CONTRIB 217****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a contribution by the High Commissioner for refugees of the United Nations regarding the right of asylum.¹

¹ This text exists in English language only.

NATIONS UNIESHAUT COMMISSARIAT
POUR LES REFUGIES*Délégation Régionale
pour le Benelux
et les Institutions
Européennes*Rue Van Eyck 11B
B - 1050 BruxellesTéléfax : 627.17.30
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HIGH COMMISSIONER
FOR REFUGEES***Regional Office
for the Benelux
and the European Institutions***VERENIGDE NATIES**HOOG COMMISSARIAAT
VOOR DE VLUCHTELINGEN*Regionale
Vertegenwoordiging voor de
Benelux en de Europese
Instellingen*Van Eyckstraat 11B
B – 1050 BrusselTelefax : 627.17.30
Telefoon : 649.01.53
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To: Mr. Francisco Fonseca, deputy chef de cabinet Commissioner Vitorino	Destination Fax No: 299 49 80
From: Johannes van der Klaauw	Return Fax No: 00 32 2 627 17 32 Tel: 00 32 2 649 01 53 Email: vanderkl
Date: 05 June 2000	No. Of Pages Including This Page: 2

Subject: Charter of Fundamental Rights – Article 21 a

Dear Mr. Fonseca,

UNHCR is pleased to see that the newly proposed text for Article 21 of the draft Charter of Fundamental Rights on the right of asylum follows the amendment proposed by Commissioner Vitorino. We note that an additional sentence has been included to Article 21 a which was not included in Commissioner Vitorino's original amendment. While welcoming this additional sentence, we believe the text could benefit from the inclusion of a reference to persecution for refugee-related reasons and, hence, a prohibition of direct and indirect *refoulement*.

Please find attached the text of our proposal which we hope Commissioner Vitorino can promote in tomorrow's discussions in the Convention.

Yours sincerely,

Johannes van der Klaauw

cc. Mr. Jean-Paul Jacqué (fax 285 78 37)

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Suggested Article 21a:

1. Collective expulsion of aliens is prohibited.
 2. No one shall be extradited or shall be expelled, directly or indirectly, to a State where he could be subjected to the death penalty, to torture or other inhuman treatment, or to persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion.
-

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE**fundamental.rights@consilium.eu.int**

Bruxelles, le 13 juin 2000**CHARTE 4354/00****CONTRIB 218****NOTE DE TRANSMISSION**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne

Veillez trouver ci-après une contribution de la Fédération Internationale de l'ACAT - Action Chrétienne pour l'Abolition de la Torture (FI.ACAT).¹

¹ Ce texte a été soumis en langue française seulement.

Paris, le 6 juin 2000

La **FI.ACAT - Fédération internationale de l'ACAT** (Action des Chrétiens pour l'Abolition de la Torture) - est une association œcuménique internationale avec statut consultatif auprès des Nations Unies et du Conseil de l'Europe et statut d'observateur auprès de la Commission africaine des droits de l'Homme et des peuples. Elle regroupe 19 associations ACAT nationales affiliées et 8 autres en cours d'affiliation en Europe, Afrique, Amérique et Asie.

1) Observations à propos de l'article 2 du Projet de Charte des droits fondamentaux de l'Union européenne (Charte 4284/1/00 Rev1 - Convent 28)

L'article 2 alinéa 2 du Projet de Charte des droits fondamentaux de l'Union européenne (Charte 4284/1/00 Rev1; Convent 28) s'oppose d'une façon catégorique à la peine de mort. Cependant l'exposé des motifs du même article autorise des dérogations au principe posé du droit à la vie.

La FI.ACAT considère que l'interdiction de la peine de mort ne saurait souffrir aucune exception. Les exceptions prévues à l'article 2 du protocole n° 6 à la Convention européenne des droits de l'Homme autorisant l'application de la peine de mort pour les actes commis en temps de guerre ou de danger éminent de guerre ne peuvent pas être repris dans Charte. Ce serait un retour en arrière par rapport aux avancées réalisées ces dernières années dans le domaine des normes internationales. La FI.ACAT rappelle en effet qu'en vertu du statut de la Cour Pénale Internationale, adopté en juillet 1998 à Rome, la peine de mort est exclue même pour les crimes les plus graves crime contre l'humanité, tels que le génocide et violations de la législation sur les conflits armés. Et le Conseil de Sécurité des Nations Unies n'a pas voulu retenir la peine capitale pour les crimes soumis à la compétence du TPI "ex-Yougoslavie" et le TPI "Rwanda".

2) Proposition d'amendement de l'article 4 du Projet de Charte

La FI.ACAT soutient la proposition suivante (en langue anglaise) soumise par l'IRCT (International rehabilitation Council for Torture Victims) :

Proposed amendment to Article: 4

The IRCT is a medically based organisation, supporting approximately 200 centres and programmes for rehabilitation of victims of torture world-wide.

Proposed text:

1. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.
2. No one may be expelled or extradited to a State where he would be in danger of being subjected to the death penalty, torture or other inhuman treatment.
3. The victim of an act of torture shall have an enforceable right to as full rehabilitation as possible, including the means for social reintegration.

ARTICLE X:

Public authorities shall ensure that education and information regarding these rights and freedoms are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other public officers.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 13 June 2000**CHARTE 4355/00****CONTRIB 219****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union
Contribution submitted by three
trade union organisations (LO,
TCO and SACO) in Sweden

Please find hereafter a contribution by three trade union organisations (LO, TCO and SACO) in Sweden regarding worker's right in the EU Treaty. ¹

¹ This text exists in English and Swedish languages. (The letter in Swedish only).

Till
Utrikesminister Anna Lindh
Professor Daniel Tarschys
Riksdagsman Göran Magnusson
Riksdagsman Lars Tobisson

Med hänvisning till bilagda dokument hemställer vi

- att de svenska representanterna i konventet för utarbetande av ett utkast till Europeiska unionens stadga om de grundlägganderättigheterna verkar för att stadgan utformas under fullt beaktande av dokumentet
- att den svenska regeringen inom ramen för den nu pågående regeringskonferensen (IGC 2000) verkar för att fackliga rättigheter skrivs in i EUs fördrag på det sätt som föreslås i dokumentet.

Stockholm den 5 maj 2000

Wanja Lundby-Wedin
LO

Sture Nordh
TCO

Anders Milton
SACO

The EU should protect workers' rights!

LO's, TCO's and SACO's demands for changes to the Treaty

The free and common market that has been created in Europe is based on the free movement of goods, services, labour and capital. This single market provides excellent preconditions for growth and new jobs. However, if this market is to work properly and lead to improved welfare and prosperity for all, it must be complemented with social regulations of the type that have long been in existence at the national level. Market forces must be regulated by means of political decisions at the European level.

The steady increase in international competition has in turn increased the vulnerability of companies. Nevertheless, internationalisation and the free movement of capital and companies have strengthened the position of the employers in the short term. Co-operation within the EU, however, is now providing opportunities to control developments by means of political decisions and to introduce regulations that prevent abuses of free mobility and create competition on equal terms. We wish to use this joint political strength to guarantee the civil and trade union rights of employees. By so doing, we can create a better balance between the social partners.

The fact that production and factories can be moved freely between countries entails a risk that employers will be able to play employees off against each other. The employers can move, or threaten to move, jobs to other countries where the employees have been forced to accept poorer terms and conditions. The free movement of goods, services and capital must therefore be supplemented with a "fifth freedom", the freedom of employees to take trade union action across national borders. Without such a freedom, there is a risk that the employers will gradually advance their position to the detriment of employees' living standards, working conditions and other living conditions.

Strengthening the EU system of social regulations is thus a joint challenge for all of the labour-friendly forces within the Member States.

For several years now, we have been demanding that employees' trade union rights should be more strongly protected by Community law. The ETUC Congress of 1991 supported the demand that the right to take sympathy action to support workers in other countries should be guaranteed. In February 1997, LO and TCO wrote to the Swedish government to demand that it should pursue the question of strengthening workers' rights at the then ongoing government conference.

The question now has renewed relevance, as the EU summit meeting held in Cologne in June 1999 decided that a statute on basic rights should be drawn up. A draft is to be presented prior to the summit meeting to be held in December this year. Subsequently, the question of whether the statute will be incorporated into the Treaty, and if so how, will be studied.

A special body, a Convention, with representatives of the heads of state and government, the Commission, the European Parliament and the national parliaments has been appointed to draw up this draft. The Swedish Government has appointed Daniel Tarschys as its representative. Parliament is represented by Göran Magnusson (Social Democratic Party) and Lars Tobisson (Moderate Party).

The strengthening of workers' rights within the EU must become an important part of this work.

What the trade union organisations want

- The EU Member States and the EU's institutions should be obliged to follow the Council of Europe's Convention on Human Rights and the fundamental ILO conventions on the right of association, the right to strike, the right to bargain collectively and the prohibition of child labour and enforced labour.
- An unconditional demand for membership of the EU for both present and future members should be that they ratify and comply with the conventions mentioned above.
- The conventions should continue to be interpreted by the international bodies and courts that have been given this task, i.e. the ILO and the European Court of Human Rights. We do not want duplicate systems.
- Other conventions of a more general nature that concern workers' rights, such as the UN Declaration on Human Rights of 1948 and the Council of Europe's revised Social Statute of 1996, should, due to their form and structure, be stipulated as goals for the work of the EU.
- The workers of Europe should be permitted to co-operate with each other, for example by being allowed to take trade union sympathy action across national borders.

We wish to see our demands realised in the form of binding regulations. At the same time, we wish to prevent power from being transferred from popularly-elected politicians in the Member States to judges in Brussels who cannot be dismissed. The Court of Justice of the European Communities must not therefore be given greater power over the national parliaments. This means that two methods will be required when workers' rights are incorporated into the EU's treaties.

- The institutions of the EU — the Commission, the Council, the Parliament and the Court — should be obliged to respect trade union rights in the course of their work. The Member States and, ultimately, the Court of Justice should be responsible for monitoring this. When interpreting various parts of Community law, for example, the Court should always guarantee the protection of workers' civil and trade union rights.
- On the other hand, it should not be possible to bring Member States before the Court for contravention of this part of the Treaty. It should instead be possible to exert pressure on them and, ultimately, subject them to political measures following a decision by the Council of Ministers if they fail to respect the basic rights protected by the Treaty.

More about protection at the EU level

The institutions of the EU, i.e. the Council, the Parliament, the Commission and the Court should, by means of express regulations in the Treaty, be obliged to always take into account certain basic conventions on civil and trade union rights. These conventions are the Council of Europe's Convention on Human Rights, the UN Convention on Civil and Political Rights and the fundamental ILO conventions on the right of association (including the right to strike), the right to bargain collectively and the prohibition of child and enforced labour.

The freedom of movement of goods, services, capital and labour within the Union must be complemented by a fifth freedom, the freedom of workers to defend their interests by means of trade union activities.

Human rights superordinate to economic rights

At present, the Court of Justice always pays regard to and defends the free movement of goods, services, capital and labour in its judgements. Certain other basic principles are also taken into account, above all that no-one should be discriminated against on the grounds of nationality and the preservation of free competition across national borders.

The Court of Justice has also stipulated that certain basic rights that are common to the Member States are a part of Community law, for example the prohibition of torture, guarantees concerning freedom of thought and expression and the right to a fair trial.

We feel that it is self evident that basic human rights, including the right to organise in trade unions, the right to negotiate freely with employers and the right to take industrial action, should be protected by Community law. We believe that the Court should always take the civil and trade union rights of workers into account in the course of its work. Human rights should, in our view, be superordinate to economic rights.

Such a development is also clearly underway. Particularly worthy of mention here is Council statute 2679/98, the so-called Monti Statute, which stipulates that basic rights, including the right to take industrial action, are superordinate to the free movement of goods. We can also mention directive 96/71 on the stationing of workers abroad, where point 22 of the introduction states that the right to take industrial action is superordinate to the directive. Finally, we can refer to a judgement of the Court of Justice in September 1999 in case C 67/96, the so-called Albany judgement. Here the Court stated that collective agreements that aim to improve employment and working conditions are superordinate to competition law.

It can thus be said that the principle that the civil and trade union rights of workers are superordinate to economic rights has already been established in Community law and that it is now important to clarify this by means of express regulations in the Treaty.

Technical structure etc.

Technically, these regulations should have the following form and structure. The EU's institutions should be obliged to take the trade union rights of workers (as expressed in the conventions mentioned above and as interpreted by the respective monitoring and supervisory bodies) into account in all their activities. A characteristic of these conventions is that they contain relatively specific regulations that can suitably be made legally binding. These rights are also of the type that we feel it is important to preserve and safeguard from a worker's perspective.

The obligation to observe these rights should be incorporated into the Treaty.

In concrete terms, our proposal means that the Court of Justice should be bound to respect the above mentioned conventions and the rights that they protect when the Court interprets Community law. These rights should in principle have priority over, for example, the free movement of goods, services and capital if they happen to come into conflict with each other. Similarly, the Commission should be obliged to respect the conventions when proposing new EU regulations and in the course of its other activities. Parliament and the Council should be bound by the regulations in the Treaty when, for example, they make decisions on new EU regulations.

There are other important conventions and international agreements in addition to those mentioned above. These include, above all, the UN Declaration on Human Rights of 1948, the UN Convention on Economic, Social and Cultural Rights of 1966, the UN Convention on Children's Rights of 1989 and the Council of Europe's revised Social Statute of 1996. These international declarations are of great value as documents that can be used when setting goals, but they contain regulations of a fairly general nature. We believe, therefore, that these regulations cannot suitably be made legally binding. They should, on the other hand, be respected as general goals for the work of the EU.

There are also those who believe that the EU should protect a much wider range of rights in the Treaty, such as the right to housing, support, education, culture and so on. We believe, as do most others, that such rights should not be covered by legally binding regulations but by regulations of a very general nature. Such rights should instead be stated as clear goals for the work of the EU. If legally binding regulations are introduced, then they must be very precise. Otherwise, the power of giving the regulations a concrete content will be transferred from popularly-elected politicians to court lawyers.

No duplicate systems

It is important that conflicts do not arise with regard to competence between, above all, the Court of Justice of the European Communities on the one hand and the European Court of Human Rights and the ILO system on the other. It is not tenable to have two systems for human rights with the Member States being obliged to follow both. It is important that the interpretation of the regulations is consistent and uniform. The institutions of the EU should therefore be bound by the interpretations of the respective conventions as determined by the ILO bodies and the European Court of Human Rights.

Obligations of the Member States

The Member States should also be obliged to respect the Council of Europe's Convention on Human Rights, the UN Convention on Civil and Political Rights and the fundamental ILO conventions on the right of association (including the right to strike), the right to bargain collectively and the prohibition of child labour and enforced labour. It should be an unconditional demand for all Member States that they ratify and comply with these conventions. No country that fails to comply with this demand should be granted membership of the EU.

The Member States should also be obliged to permit trade union sympathy action, particularly such action that aims to support industrial action in another country that has been decided upon in line with accepted trade union principles.

Background and technical structure

The strength of the workers lies in being able to act together. If employers are able to play us off against each other we will become weak. The strength and unity of the trade unions has been of decisive importance for the successes we have had in Sweden in promoting and defending the interests of our members. We must now work internationally in a similar way. The right of the trade unions in the EU countries to take sympathy action to support workers in other countries must therefore be extended, and this must become a real possibility. The Member States must be obliged to guarantee the right to take trade union sympathy action both nationally and internationally.

However, the question of whether a Member State is complying with the demands described above or not should not be tried or determined by the Court of Justice. An individual citizen should not, either directly or indirectly, be able to turn to the Court to try the question, for example, of whether or not the right to strike as expressed in the Member State concerned complies with the demands in the Treaty.

A Member State that does not meet its obligations should instead, following a decision by the Council, be liable to political pressure in line with Article 7 of the Treaty.

The reasons for this are as follows.

The labour legislation on the right to bargain collectively, the right to strike and so on varies greatly in the different Member States. In Sweden, for example, there is an almost absolute obligation not to take industrial action while a collective agreement is still valid, while the right to take such action is, on the other hand, very extensive when no collective agreements are in force. In some countries a collective agreement carries no such obligation, which of course does not mean that there are no other, completely different, limitations on the right to take industrial action. It is not possible to harmonise these rights at a common European level as the strength of the trade union organisations, the importance of collective agreements and so on vary greatly between the countries.

A development in which the Court of Justice formulates "an average European right to strike" on the basis of general rules and regulations would be completely unreasonable and would, in the long term, risk seriously weakening the position of our members and their trade union organisations. It would also entail a transfer of power from popularly-elected politicians to irremovable lawyers. It is a political task to resolve conflicting goals in society.

Summary

Concern that the right of association, the right to bargain collectively and the right to take industrial action would no longer be matters for national self-determination but would be transferred to the Court of Justice within a general framework of rules and regulations has previously made us doubtful about the possibility of guaranteeing these rights in the Treaty without undermining the regulations in Sweden. We have now found a technical solution to this problem.

The trade union rights described above should be incorporated into Article 6.1 of the Treaty, in which the fundamental democratic principles on which the EU is based are stipulated. If a country fails to comply with the conventions, the Council should be able to take political measures against the country concerned in line with Article 7 of the Treaty. It should not be possible, however, to have such matters tried by the Court of Justice.

20 March 2000

LO

TCO

SACO

PROYECTO DE CARTA DE LOS DERECHOS FUNDAMENTALES DE LA UNIÓN EUROPEA**fundamental.rights@consilium.eu.int**

**Bruselas, 13 de junio de 2000 (15.06)
(OR. fr/es)****CHARTE 4356/00****CONTRIB 220****NOTA DE TRANSMISIÓN**

Asunto: Proyecto de Carta de los Derechos Fundamentales de la Unión Europea

Adjunto se remite una contribución de la Sociedad General de Autores y Editores (SGAE) de España ¹.

¹ El texto se ha presentado sólo en español.

PROYECTO DE CARTA DE LOS DERECHOS FUNDAMENTALES
DE LA UNIÓN EUROPEA

Propuesta de la Sociedad General de Autores y Editores (SGAE)

Madrid, 1 de junio de 2000

El 25 aniversario de la Declaración Universal de los Derechos Humanos, celebrado en diciembre de 1998, llevó al Consejo Europeo de Colonia del 3 y 4 de junio de 1999 a proponer, para finales del año 2000, la elaboración de una Carta de los derechos fundamentales de la Unión Europea. En su Decisión, el Consejo recuerda que en el artículo 6 del TUE “consta que la Unión se basa en los principios de libertad, democracia, respeto de los derechos humanos y de las libertades fundamentales del Estado de Derecho, principios que son comunes a los Estados miembros” y que “la Unión respetará los derechos fundamentales tal y como se garantizan en el Convenio Europeo para la Protección de los Derechos Humanos y las libertades fundamentales (CEDH) y tal y como resultan de las tradiciones constitucionales comunes a los Estados miembros como principios generales del derecho comunitario”. El Consejo también considera en su decisión que al redactar la Carta deberán tenerse en cuenta “los derechos económicos y sociales, la Carta Social Europea y el Carta comunitaria de los derechos sociales fundamentales de los trabajadores”.

Por todo ello, la SGAE entiende que el derecho de autor debe de formar parte de la futura Carta de derechos fundamentales de la Unión Europea y, como representante de parte del colectivo de autores españoles y europeos, solicita a la Convención encargada de redactar dicha Carta que, en base a los argumentos que a continuación se exponen, tenga en consideración su petición.

1. El CEDH en su preámbulo:

- “Considera la Declaración Universal de los Derechos del Hombre, proclamada por la Asamblea General de las Naciones Unidas el 10 de diciembre de 1948”;
- Reconoce que el “objetivo del Consejo de Europa es alcanzar una unión más estrecha entre sus miembros y que uno de los medios para conseguirla es mediante la salvaguarda y el desarrollo de los derechos del hombre y de las libertades fundamentales”;
- **Insta a los Estados miembro a "tomar las medidas apropiadas para asegurar la garantía colectiva de algunos de los derechos enunciados e n la Declaración Universal de los Derechos del Hombre".**

La Declaración Universal de los Derechos del Hombre de 1948 hace referencia de manera explícita al derecho de autor en su artículo 27:

“Toda persona tiene derecho a participar libremente en la vida intelectual de la comunidad, a disfrutar de las artes y a participar en la vida científica y en los beneficios que de él resulten. **Toda persona tiene derecho a la protección de los intereses morales y materiales que la correspondan por razón de las producciones científicas, literarias o artísticas de que sea autora**”.

Esta Declaración no tiene la fuerza del derecho internacional, pero sí tiene un valor moral. Se considera que forma parte del derecho consuetudinario de las naciones y que vincula moralmente a todos los Estados, sobre todo a aquellos que la firmaron y que firmaron a continuación los dos Pactos de las Naciones Unidas de 16 de diciembre de 1966. De hecho, **la obligación legal de respetar el derecho de autor** proviene, de uno de esos pactos, el **Pacto de Naciones Unidas sobre los Derechos Económicos, Sociales y Culturales**, cuyo artículo 15, inciso 1) apartado c) reproduce casi literalmente el artículo 27 de la Declaración. **Este Pacto vincula** a más de 130 Estados entre los que figuran **todos los Estados de la Unión Europea**.

Es importante destacar también, como lo ha hecho la Doctrina más especializada ¹, que, si bien el articulado del CEDH no hace alusión expresa al derecho de autor, debe tenerse en cuenta que este Convenio se preocupa fundamentalmente de la protección del ciudadano frente a las intrusiones excesivas del poder público, y que se trata por lo tanto y ante todo, de un texto de “habeas corpus” ampliado. Precisamente, en el Borrador de la futura Carta ², el Consejo deja claro que los objetivos de la misma son más amplios, ya que con ella aspira a alcanzar un principio básico de la Unión Europea: “la salvaguardia de los derechos fundamentales”, para lo cual toma **como base** “un marco jurídico ya establecido y vinculante”.

2. Varias Constituciones europeas hacen referencia de manera directa o indirecta a la necesidad de salvaguardar los derechos de los creadores para garantizar así libertad de pensamiento y de expresión. La **Constitución española** reconoce en su artículo 20 el derecho a la creación literaria, artística, científica y técnica. La **Constitución Portuguesa** consagra el artículo 42 a la Libertad de creación cultural, especificando que esta libertad implica el derecho a la invención, a la producción y a la difusión de obras científicas, literarias o artísticas y que comprende la protección legal de los derechos de autor. La **Constitución alemana**, en su artículo 5, establece que serán libres el arte y la ciencia, la investigación y la enseñanza. Por último cabe destacar la joven **Constitución de la Federación Rusa**, nacida en 1993, cuyo artículo 44 garantiza el derecho de todos a la libre creación literaria, artística, científica e intelectual, y establece que la propiedad intelectual deberá estar protegida por la ley.

En Francia, la Comisión Nacional Consultiva de los Derechos del Hombre, en su Opinión de 14 de noviembre de 1996 sobre la “Carta de Internet”, recomendó a los poderes públicos, “teniendo en cuenta que la libre comunicación de pensamientos y de opiniones es uno de los derechos más preciados del hombre y que el artículo 10 de la CEDH consagra la libertad de recibir o de comunicar informaciones e ideas [...]” “que favorezcan la protección de los documentos y estudios protegidos por la propiedad intelectual y por los derechos de autor”.

3. No cabe duda de que el derecho de autor protege a los ciudadanos en la libre expresión de sus ideas y de sus pensamientos, al garantizar la creación de unas obras literarias, artísticas o

¹ André Kéréver. “El Derecho de Autor es uno de los Derechos Humanos”. Boletín de Derecho de Autor, vol. XXXII, nº3. Julio-septiembre 1998.

² Ver: <http://db.consilium.eu.int/DF/intro.asp?lang=es>

científicas sin trabas y sin interferencias de los poderes públicos y de los demás ciudadanos. En su dimensión moral, el derecho de autor asegura la libre representación de la personalidad del autor. En su dimensión patrimonial, garantiza la independencia económica indispensable para hacer efectiva esa libertad de expresión y de creación. El Derecho de autor debe de ser considerado por lo tanto como una rama de la libertad de expresión y de creación, la cual, por su carácter fundamental y universal forma parte de los Derechos humanos.

4. Tomando como base el documento del Consejo de 8 de febrero de 2000, de referencia: CHARTE 4149/00 CONVENT 13. La SGAE propone a la Convención la siguiente redacción del artículo 15:

Artículo 15. Libertad de expresión.

1. Toda persona tiene derecho a la libertad de expresión. Este derecho comprende la libertad de opinión y la libertad de recibir o de comunicar informaciones o ideas sin que pueda haber injerencia de autoridades públicas y sin consideración de fronteras.
2. El arte, la ciencia y la investigación son libres. *Esta libertad comprende el derecho a la invención a la creación literaria, artística, científica y tecnológica y a la protección legal de la propiedad intelectual.*

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 13 June 2000**CHARTE 4357/00****CONTRIB 221****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a contribution by the International FoodFirst Information and Action Network (FIAN) with proposals for amendments. ¹

¹ This text exists in English language only.

**FIAN – International
FoodFirst Information and Action Network**

**Eight proposals for changes or amendments
to Convent No. 34 (18.05.00)**

Draft of a Charter of Fundamental Rights

Heidelberg, June 2, 2000

FIAN (FoodFirst Information and Action Network) was founded in 1986 as an international human rights organisation working for the implementation of social, economic and cultural human rights (esc-rights), especially the right to adequate food. Currently, FIAN-International has sections and co-ordinating bodies in 20 countries, and members in about 60 countries. FIAN has consultative status with the United Nations, as well as with the OAU and the European human rights system.

FIAN – International - FoodFirst Information and Action Network

Eight proposals for changes or amendments to Convent No. 34 (18.05.00)

Concerning: Draft of the EU Charter of Fundamental Rights

Summary:

FIAN is proposing eight substantive changes in the wording of the articles concerning economic and social rights. Following this summary, all eight points are presented with the reasoning lying behind the proposed changes:

1. **Article 31** should be removed, because it is introducing a differentiation between different sets of human rights, contrary to the internationally recognized indivisibility of all human rights.
2. **Article 41** should be renamed as the right to an adequate standard of living. At least three changes of wordings are urgently required, which are described below.
3. The **right to work** is missing and substituted by the right to the freedom to choose an occupation.
4. The full content of the **right to health**, as it is part of the international bill of human rights, is considerably restricted to an access to medical care (**Article 42**). That would be one of the most restrictive definitions of the right to health ever made and a step back of more than 20 years in understanding economic and social rights.
5. In all Articles dealing with rights at work (**Articles 33, 34, 35, 36, 38, 39**) the Draft is only talking about the rights of workers, while in international human rights standards these rights are rights of everyone.
6. The draft is missing any substantive provision concerning non-discrimination at work. Any provision for **equal pay for equal work** is totally missing.
7. The draft has no provision for guaranteeing **the right to fair wages**, which is a basic international human rights standard
8. **Article 48** should be removed, because it restricts the scope of the charter to the existing treaties of the European Community. A fundamental rights charter cannot by principle be bound by normal legislation - otherwise its fundamental character is undermined.

1. **General Comments concerning the inclusion of ESC-Rights into the Draft:**

Concerning Article 31: FIAN is strongly in favour of deleting the whole article, which is introducing a differentiation between social rights and principles. This would be a move away from the recognition of the indivisibility of human rights. The EU would initiate a legal interpretation that would severely undermine what all EU-member countries have accepted as modern human rights understanding in the Vienna Human Rights Conference. The pure fact that the substance of ESC-Rights, which has been developed fast in the last ten years through the work of NGOs, UN-expert committees as well as many international Scholars, has not been taken fully into account.

Esc-rights do not essentially obligate states to anything different from civil-political rights:

1. The respect of existing possibilities for participation, both political and economic, meaning the respect of an individual's physical integrity as well as freedom of profession or the access to land (**obligation to respect**)

2. The protection of the individual by legal systems and the police, for example the freedom to act politically as well as the freedom to use resources for economic purposes (freedom from corruption, security of land titles, protection of the tenant etc.) (**obligation to protect**).
3. State action to create supportive frameworks for the fulfilment of human rights, this means the reduction of destructive frameworks and the creation of supportive ones (**obligation to fulfil**).

All human rights have therefore elements that can only be implemented fully progressively. The end of all forms of discrimination against women is part of the International Covenant on Civil and Political Rights. Nobody would argue that this can only be seen as a principle because implementation will need some time. The differentiation between rights and principles should not be applied to both groups of human rights, neither to civil and political rights nor to economic, social and cultural rights. FIAN has prepared a detailed background paper in which all relevant arguments, which are used to differentiate between the different sets of human rights are taken up and are discussed. Please consider the paper to rethink the misconceptions that often build up against ESC-rights being full rights.

The inclusion of esc-rights in the Charter will not extend the responsibilities of EU institutions beyond those laid down in the EU treaties. The aim of including esc-rights is firstly to ensure that all the esc-rights of those resident within the EU are not violated by decisions taken on the European level.

Especially in the field of the fulfilment of esc-rights, the EU has already far-reaching legal capabilities. The accountability of policies of all organs of the EU and the member states is very important, especially as the economic frameworks are largely determined at the European level. Esc-rights imply negative rights, protecting all residents in the EU against the possible negative implications of EU-policy on the application of these rights.

2. **Comment to Article 41: Social security and social assistance / Right to housing**

The right to a income or minimum social security given to everyone to allow a life in dignity is the central objective of all economic and social rights. Therefore article 41 is the core of the social rights part of the planned Charter. Independent from the issue, which entity (EU or national state) has to guarantee social security the intention of article 41 should be that no EU policy is hindering the full enjoyment of an adequate standard of living. Consequently the article should be renamed as the most important social right, **the right to adequate standard of living**. This right is contained in the Universal Declaration of Human Rights as well as in the International Covenant on ESC-Rights Art. 11: *“The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing ...”*.

Beside this overall change of the focus of the article the current article has several severe weaknesses. (1) It starts with a limitation of the subject, without first clearly stating the right. (2) At least the wording “in particular” must be added before the vulnerable groups are being mentioned. (“... social security benefits providing protection *in particular* in the event of maternity....”). (3) The right to housing should be mentioned in a specific article and not together with social assistance. The right to housing requires that the states, or in case of the EU the EU, must secure that all policies are not negatively affecting access to housing. At the minimum an Article should be added guaranteeing the Right to Social Assistance as it was in the Draft from 29th March 2000 (Convent 19) in the former Article XIV “Right to Social Assistance.” *“Any person who is without adequate resources (and who is unable to secure such resources by his own efforts or from other sources) must receive appropriate social assistance enabling him to live in dignity.”*

3. **Comment concerning the right to work:**

A substantial limitation is that the draft articles do not contain the right to work. Article 32 guarantees only the right to choose and to engage in an occupation. Article 6 (1) of the ICESCR states: *“The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.”* The international recognised standards of the right to work is therefore much higher than the standards in the draft of the Charter. The draft has a unnecessary restriction (it does not talk about the “right of everyone to the opportunity to gain his living by work”, which is crucial to guarantee in the long run the core of all human rights work, to guarantee a life in dignity. Also Art. 6 does not require states to give jobs to everybody immediately but to safeguard that the state is not interfering with ones’ opportunity to gain his living by work is essential. Especially when looking into the obligation of states to respect existing access to an opportunity to gain his or her living by work and to protect these opportunities, it must become clear that the right to work has to be an essential element of the Charter of Fundamental Rights.

4. **Comment concerning Article 42 and the right to health:**

Also missing in the draft of the Charter is a specific article on the right to health. Article 42 (“Everyone shall have access to medical care and prophylactic measures in accordance with each Member State’s rules”) contains only a very small part of the international recognised right to health standard. It seems that the drafters have a severe fear that the recognition of the well established international human rights standards in the Draft Charter would widen the Mandate of the EU. This is in a double sense the wrong approach. Firstly the inclusion of esc-rights in the Charter will not extend the responsibilities of EU institutions beyond those laid down in the EU treaties. Secondly it neglects the real meaning of putting ESC-Rights into the Charter, the negative protection of EU-citizens against possible outcomes of current EU-policies on their rights. The aim of including esc-rights is to ensure that all the esc-rights of those resident within the EU are not violated by decisions taken on the European level, especially concerning the right to health, the enjoyment of which is highly influenced by framework conditions, like good standard for food, water etc. The recent competence of the EU in the economic sector by setting and harmonising standards are highly relevant to an individual’s health situation. In such a situation the limitation of the right to health to the right of access to medical care is not acceptable.

Again the ICESCR provides a formulation much more adequate and it is a standard already recognised by all EU-members: “The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health”. The specification of that right in Art. 12 (2) as well as the interpretation of the right to health in the recent “General Comment” of that right, written by the UN-Committee on ESC-Rights shows, that the right to health is much broader than the current article 42 of the Draft.

5. **Comments to the articles dealing with rights at work:**

In Article 33, 34, 35, 36, 38 and 39 you are referring to the rights at work by talking about workers. All these rights are in international human rights texts and standards and are not only referred to as rights of workers but as rights of everyone, as you can see in Article 7 of the International Covenant on Economic, Social and Cultural Rights (ICESCR): *“The States Parties of the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work...”* The broader formulation is necessary to secure that these rights are also guaranteed for all people working (also in the informal sector), not only those having an official

status as workers. In all the following proposals FIAN is referring in this paper mainly to the text of the ICESCR, firstly because it is one of the two central human rights treaties, which forms together with the Covenant on civil and political rights and the Universal Declaration of Human Rights the International Bill of Rights and secondly because all EU member states have ratified the Covenant and have to guarantee these rights on the national level.

6. **Equal pay for equal work:**

All the articles concerning the rights at work are missing a non-discrimination clause. Especially the provision concerning equal remuneration for men and women is missing. Guidance for a formulation can be drawn from Art. 2 (2) of the ICESCR where the states parties to the Covenant take the obligation *“to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind”*. Similarly is Art. 7 of the ICESCR *“The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure in particular: (a) remuneration which provides all workers, as a minimum with: (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work; ...”*. Equal remuneration is also part of the European Social Clause and in the constitutional tradition of EU member states. *

7. **Minimum wages:**

Moreover, the articles in the draft of the Charter regulating rights at work are missing another central element of international recognised human rights standards, the right of everyone to the enjoyment of just and favourable condition which ensure fair wages. The above mentioned quote of Art. 7 (a) of the ICESCR shows that fair wages *“allowing a decent living for workers and their families”* (Art. 7. (a) ii) are part of international recognised human rights standards. The right to fair wages is also enshrined in one of the central conventions of the International Labour Organisation. The Draft of the Charter should be amended with a provision containing that right. In general the text of the Art. 7. ICESCR is in many respects more comprehensive than the formulations chosen in the Charter. This for example is apparent when comparing Art. 35 of Convent 34 (Right to rest periods and annual leave) with Article 7 (d) of the ICESCR. Art. 35 of Convent 34 states that *“Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave”*, while Art 7 (d) of ICESCR states: *“Rest, leisure and reasonable limitations of working hours and periodic holiday with pay, as well as remuneration for public holidays.”* The comparison shows that the very short Articles of the Draft are missing important elements of the central human rights covenant. The EU should include into its Charter of Fundamental Rights the already recognised international human rights standards and should not leave out central elements. FIAN is proposing to use the language of Art. 7 ICESCR instead of the language in the respective articles of the Draft of the Charter.

In substance the international human rights standards dealing with minimum wages are not requiring states to positively pay these wages, but to set a framework legislation guaranteeing that the respective national laws will secure that decent wages are paid giving the whole family a sufficient income.

8. Comment on Scope and Conditions: Articles 46-48:

Article 48 must be rewritten. Firstly, it refers only to the European Community. The Charter of Fundamental Rights shall cover all work of the European Union. Secondly the formulation is very unfortunate. Fundamental Rights cannot be limited by normal treaty regulations. If fundamental rights are guaranteed by the EU to the people living in the EU they must be the general guidance for the EU-policies, otherwise there is the risk that ordinary treaty provisions override the Charter of Fundamental Rights. The limitation set by article 46 (2) is enough to comply with the reasons given in article 48.

Editors' note to CHARTE 4358/00,
**Transmission: Textes relatifs à l'audition de la société
civile du 27 avril 2000 [Extract]:**

Only the first six pages of this document are included. The remaining 269 pages includes copies of the submissions listed in those pages, all of which are included in this collection. CHARTE 4359/00 is not included (the first six pages are materially identical to these six, and the remainder again consists of 269 pages of duplicate documents).

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE
fundamental.rights@consilium.eu.int

Bruxelles, le 14 juin 2000
(OR. F/DE/EN)

CHARTE 4358/00

CONTRIB 222

NOTE DE TRANSMISSION

Objet : Projet de Charte des droits fondamentaux de l'Union européenne
 – Textes relatifs à l'audition de la société civile du 27 avril 2000

Vous trouverez ci-après un recueil des textes relatifs à l'audition de la société civile, qui a eu lieu le 27 avril 2000 (**matinée**). Ces textes sont présentés dans l'ordre de passage indiqué dans le tableau joint.

Sont repris dans ce document les contributions en langue française et, à défaut de français, en langue allemande ou anglaise. Une indication quant aux langues disponibles se trouve en footnote sur la première page de chaque contribution. Veuillez vous référer, pour les autres langues existantes, au site Internet.

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPEENNE

AUDITION DU 27 AVRIL 2000 - Mise à jour le 26 avril à 18h30

Demandeur	Représenté par:	Heure
Fédération internationale des Ligues des droits de l'Homme FIDH, 91, rue de l'enseignement, B-1000 Bruxelles (Isabelle Brachet)	M. Antoine BERNARD CHARTE 4101/00 CONTRIB 1 CHARTE 4129/00 CONTRIB 24 CHARTE 4232/00 CONTRIB 106	9h15
Forum Permanent de la société civile, Place du Luxembourg 1, B-1050 Bruxelles (Pier Virgilio Dastoli)	CHARTE 4104/00 CONTRIB 4 + Add. 1	9h20
ECAS Euro Citizen Action Service (53, Rue de la Concorde, B-1050 Bruxelles (Tony Venables)	CHARTE 4294/00 CONTRIB 166	9h25
European Movement/Mouvement européen, Place du Luxembourg 1, B-1050 Bruxelles (Marie-Claude Vayssade)		9h30
Die Kommission hat Ihre Beteiligung am 19.4. zurückgezogen. International Commission of Jurists, PO Box 216, 81A av; de Châtelaine, CH-1219 Châtelaine/Genève (Nathalie Prouvez)		9h35
Union of European Federalists, Place du Luxembourg 1, B-1050 Bruxelles (Jo Leinen)	M. Bruno BOISSIERE CHARTE 4258/00 CONTRIB 131	9h40
Jeunes Européens Fédéralistes, Place du Luxembourg 1, B-1050 Bruxelles (Paolo Vacca)	Mme Laure DAVIS CHARTE 4262/00 CONTRIB 135 CHARTE 4277/00 CONTRIB 150	9h45
Collectif sur la Charte des droits fondamentaux, 12 Villa Nicolas, F-93800 Epinay-sur-seine (Jean-Pierre Dubois, Vice-président de la ligue des droits de l'homme)	M. Stephane LARIGNON M. Christian SAOUT M. Jean-Pierre DUBOIS Mme Arlette HEYMANN-DOAT CHARTE 4243/00 CONTRIB 116	9h50
Union Paneuropéenne Internationale, D-München (Dr. Walburga DOUGLAS)	Gräfin Walburga DOUGLAS (begleitet von Stephan BAIER)	10h05
Conseil des communes et régions d'Europe, F-75001 Paris (M. V. Giscard D'ESTAING)	Heinrich HOFFSCHULTE Premier Vice-Président CHARTE 4220/00 CONTRIB 95	10h10
Conférence des Régions Peripheriques Maritimes d'Europe, F-35000 Rennes (Xavier GIZARD)	M. François DESRENTES CHARTE 4264/00 CONTRIB 137	10h15
Eurocities Asbl, 18 Square de Meeûs, B-1050 Bruxelles (Eleni Marianou)	M. Bernard DELEBECQUE CHARTE 4248/00 CONTRIB 121	10h20
Diakonisches Werk der Evangelischen Kirche in Deutschland D-Berlin (M. Jürgen GOHDE)	Dr. Katharina ERDMENGER CHARTE 4230/00 CONTRIB 104 CHARTE 4254/00 CONTRIB 127	10h25
World Conference on Religion & Peace B-Bruxelles (M. Jango SAROSH)	M. AGIE de SELSATEN et M. Jehangir SAROSH CHARTE 4252/00 CONTRIB 125	10h30

Demandeur	Représenté par:	Heure
Commission des Episcopats de la Communauté européenne B-Bruxelles (Mr. Felix LEINEMANN)	Mme Anne MARCUS-HELMONS CHARTE 4128/ CHARTE 23 + Add. + 2	10h35
Frau Heidrun TEMPEL Oberkirchenrätin Evangelische Kirche in Deutschland (EKD) Bld Charlemagne 28, B-1000 Bruxelles	CHARTE 4119/00 CONTRIB 15 CHARTE 4300/00 CONTRIB 172	10h40
Conférence des Eglises européennes, Rue Joseph II 174, B-1000 Bruxelles (Keith Jenkins)	M. Keith Jenkins CHARTE 4233/00 CONTRIB 107	10h45
Communautés philosophiques non-confessionnelles de Belgique CCL, Campus de la Plaine ULB CP 236 Avenue A. Fraiteur, B-10502 Bruxelles (Michel Magits + Philippe Grolet)	M. Georges LIÉNARD CHARTE 4161/00 CONTRIB 45 CHARTE 4244/00 CONTRIB 117	10h50
Franciscans (Commission for Justice, Peace and Integration of Creation), Beersdalweg 64, NL-6412 PE Heerlen (Louis Bohte)	CHARTE 4278/00 CONTRIB 151	10h55
Office catholique d'information et d'initiative pour l'Europe OCIPE, 3 Rue des Trévires, B-1040 Bruxelles (Pierre de Charantenay)	CHARTE 4251/00 CONTRIB 124 CHARTE 4276/00 CONTRIB 149	11h00
Fédération Humaniste européenne, Campus de la Plaine ULB CP 237, 1050 Bruxelles (Claude Wachtelaer)	CHARTE 4260/00 CONTRIB 133	11h05
Justitia et Pax (Commission Justice et Paix d'Europe) Rue M. Liétart 31 Bte 6, B-1150 Bruxelles		11h10
The European Newspaper Publisher's Association - Bruxelles (Mr. Dietmar WOLFF)	CHARTE 4259/00 CONTRIB 132	11h25
ARD Radio + TV Verbindungsbüro Brüssel, 223-225 rue de la Loi, B-1040 Bruxelles (Silke Müller)	Dr. Verena WIEDEMANN ** CHARTE 4229/00 CONTRIB 103 + ADD 1	11h30
*** ARD Verbindungsbüro hat darum gebeten, die Anhörungen von ARD Radio + TV und ARD und ZDF zusammenzulegen (Siehe 11h40).		
Union européenne de Radio-Television, Case Postale 45, Ancienne Route 17A, CH-1218 Grand-Saconnex GE (Werner Rumphorst)	Mr Michael WAGNER, Senior Legal Adviser	11h35
ARD et ZDF (1ère et 2ème chaîne de télévision allemandes), D-55100 Mainz (Prof. Dr. Carl-Eugen Eberle)	*** CHARTE 4229/00 CONTRIB 103 + ADD 1	11h40
European Landowners' Organisation (ELO), B-Wavre (Mme Nathalie de CHABOT)	M. Johan NORDENFALK CHARTE 4165/1/00 CONTRIB 49 CHARTE 4190/00 CONTRIB 73 CHARTE 4291/00 CONTRIB 163	11h45
Bass-Hotels, Rue Neerveld 101, B1200 Bruxelles (James Wilson) Public Policy Executive Bass PLC)	CHARTE 4328/00 CONTRIB 194	11h50
The European Children's Network B-Bruxelles Ms. Mieke SCHUURMAN	CHARTE 4169/00 CONTRIB 53 CHARTE 4240/00 CONTRIB 113	11h55
Fédération des associations familiales catholiques en Europe, 28 Place Saint-Georges, F-75009 Paris (Georges Nothhelfer)	M Georges NOTHELPER et Mme Hilde YEN CHARTE 4162/00 CONTRIB 46 CHARTE 4263/00 CONTRIB 136 CHARTE 4274/00 CONTRIB 147	12h00

Demandeur	Représenté par:	Heure
The European Region of the International Lesbian and Gay Organisation ILGA-Europe, 81 rue Marché-au-charbon, B-1000 Bruxelles (Kurt Krickler)	CHARTE 4246/00 CONTRIB 119	12h05
Association des Femmes de l'Europe Meridionale AFEM, 48, Rue de Vaugirard, 5-75006 Paris (Micheline Galabert)	Me Sophie SPILIOTOPOULOS CHARTE 4120/00 CONTRIB 16 + Add. 1 CHARTE 4157/00 CONTRIB 42 + Add. 1 CHARTE 4172/00 CONTRIB 55 CHARTE 4231/00 CONTRIB 105 CHARTE 4314/00 CONTRIB 181	12h10
Bund der freien Waldorfschulen, Heidehofstr. 32, D-70184 Stuttgart (Eve Grothe)	Dr. Detlef HARDORP CHARTE 4296/00 CONTRIB 168	12h20
European Housing Forum, C/o EEF Bte 9, 1-2 Av. Des Arts, B-1210 Bruxelles (Laurent Ghekiere)	CHARTE 4242/00 CONTRIB 115	14h15
Eurolink Age, London Road, London SW 16 4ER (Liz Morrall)	CHARTE 4293/00 CONTRIB 165	14h20
Standing Committee of European Doctors CP, Av. De Cortenberg 66/2, 1040 Bruxelles (Dr. Markku Äärilä)		14h25
Forum des migrants de l'UE/European Union Migrant's Forum Rue Belliard 23 A, B 1040 Bruxelles (Annalisa Glückstadt)	CHARTE 4349/00 CONTRIB 213	14h30
International Rehabilitation Council for Torture Victims, 13 Borgergade, PO Box 2107, DK-1014 Copenhagen K (Dr. Inge Genefke)	CHARTE 4340/00 CONTRIB 213	14h35
Haut Commissariat pour les Réfugiés Nations Unies, Rue Van Ayèck 11B, B-1050 Bruxelles (Johannes Van der Klaauw)	M. Antonio FORTIN	14h40
Amnesty International, Rue du Commerce 70è72, B-1040 Bruxelles (Dick Oosting)	CHARTE 4173/00 CONTRIB 56 CHARTE 4290/00 CONTRIB 162	14h45
Standing Committee of experts on international immigration, refugee and criminal law, Postbus 201, NL-3500 AE Utrecht (Evelien Brouwer)	M. Arrien KRUIJT CHARTE 4163/00 CONTRIB 47	14h50
Gesellschaft für bedrohte Völker, PO-Box 2024, D-37010 Göttingen (Tilman Zülch)	M. Andreas SELMECI et M. Mateo TAIBON CHARTE 4266/00 CONTRIB 139	14h55
European Forum for Freedom in Education D-Witten Mme Nana GÖBEL	M. Ingo KRAMPEN CHARTE 4215/00 CONTRIB 91 CHARTE 4253/00 CONTRIB 126	15h00
European Bureau for Lesser Used Languages, Rue St. Josse 49, B-1210 Bruxelles (Tom Moring)	Prof. Patrick THORNBERRY (eingeführt vom Präsidenten Herrn Bojan BREZIGAR) CHARTE 4143/00 CONTRIB 33 CHARTE 4166/00 CONTRIB 50 CHARTE 4237/00 CONTRIB 110	15h05
European Blind Union, 58 Av. Bosquet, F-75007 Paris (John Wall)	M. Colin LOW (begleitet von M. Julian SMITH (sehend))	15h10

Demandeur	Représenté par:	Heure
Confédération Européenne des Syndicats B-Bruxelles (M. Emilio GABAGLIO)	CHARTE 4124/00 CONTRIB 19 CHARTE 4213/00 CONTRIB 89	15h15
European Social Action Network (ESAN), 60 Rue Ste Catherine, F-59800 Lille (Anthony Paulissen)	Mme Liliane CAROZZA (Vice-présidente)	15h20
Irish Business Bureau (Employers Confederation), Rue Montoyer 17-19 Box 3, B-1000 Bruxelles (Arthur Forbes)	M. Peter BRENNAN CHARTE 4273/00 CONTRIB 146	15h25
EUCDA Europ.Union Christlich-Demokratischer Arbeitnehmer, Parlement européen, PHS 6086 Rue Wiertz, B-1047 Bruxelles (Lux Delanghe)	M. Alexander VON SCHWERIN CHARTE 4239/00 CONTRIB 112 CHARTE 4255/00 CONTRIB 128	15h30
Confédération européenne des syndicats, Boul. Du Roi Albert II, 5, B-1210 Bruxelles (Erik Carlslund)	CHARTE 4124/00 CONTRIB 19 CHARTE 4194/1/00 CONTRIB 75 REV 1	15h35
Platform of european Social NGOs Rue de Londres 17, B-1050 Bruxelles (Sandrine Grenier)	M. Olivier GERARD CHARTE 4256/00 CONTRIB 129 CHARTE 4286/00 CONTRIB 158	15h40
Union des Confédérations de l'Industrie et des Employers d'Europe UNICE, Rue Joseph II, 40 Bte 4, B-1000 Bruxelles (Dirk F. Hudig)	M. Frank DOBERSTEIN CHARTE 4236/00 CONTRIB 109	15h45
European Anti Poverty Network EAPN, rue Belliard 205 Bte 13, B-1040 Bruxelles (Marie-Françoise Wilkinson)	M. Fintan FARELL	15h50
Fédération européenne d'associations nationales travaillant avec les sans-abri FEANTSA, 1, rue Defacqz, B-1000 Bruxelles (Catherine Parmentier)	CHARTE 4292/00 CONTRIB 164	15h55
European Disability Forum, Square Ambiorix 32 Bte 2a, B-1000 Bruxelles (Yannis Vardakkastainis)	M. Gilbert HUYBERECHTS	16h00
Terre des Hommes France ,4 Rue Franklin, F-93200 St. Denis (Alein Lejeune)	CHARTE 4245/00 CONTRIB 118	16h05
Eurochambers, Rue Archimède 5 Bte 4B, B-1000 Bruxelles (Arnaldo Abruzzini)	CHARTE 4366/00 CONTRIB 229	16h10
Fédération européenne du Personnel des Services Publics EUROFEDOP, Trierstraat 33, B-1040 Bruxelles (Bert Van Caelenberg)		16h15
Comité européen de liaison sur les Services d'intérêt général, 66, rue de Rome, F-75008 Paris (Pierre Bauby et Jean-Claude Boual) (manque Annexe)		16h20
CECODHAS (Comité européen de coordination de l'habitat social, Olympia 1, NL-1213 NS Hilversum PO Box 611 (Nico van Velzen)	CHARTE 4287/00 CONTRIB 159	16h25
Mouvement international ATD Quart Monde, Av. Victor Jacobs 12, B-1040 Bruxelles (M. Olivier Gerhardt)	M. Paul CALLOWALD CHARTE 4268/00 CONTRIB 141	16h30
Fonda pour la vie associative/CAFECs Carrefour pour une Europe civique et sociale, 18, rue de Varenne, F-75007 Paris (Frédéric Pascal)	M. Frédéric PASCAL CHARTE 4241/00 CONTRIB 114	16h35
Initiative "Netzwerk Dreigliederung", Büro Strawe, Haussmannstr. 44a, D-70188 Stuttgart (Dr. Christoph Strawe)	CHARTE 4164/00 CONTRIB 48 CHARTE 4228/00 CONTRIB 102	16h40

Demandeur	Représenté par:	Heure
Bar Council of England and Wales, 1 Av. De la Joyeuse Entrée, B-1040 Bruxelles (Evanna Fruithof)	CHARTE 4234/00 CONTRIB 108 CHARTE 4282/00 CONTRIB 155	16h45
Université de Sevilla,, Facultad de Derecho, Depart. de Derecho Constitucional Avd. Del Cid, E41004 Sevilla (Prof. Ana Carmona Contreras, Fernando Alvarez-Ossorio Micxheo, Jaquín pablo Urias Martinez)	M. Fernando Alvarez-Ossorio Micheo	16h50
Heinrich Böll Foundation, Rue le Titien 28, B-1000 Bruxelles (Silke Pillinger) Die Böll Stiftung übergibt Ihr Redemandat an das Forum Menschenrechte (fax 12.4.2000)	M. Michael Windfuhr (Forum Menschenrechte) CHARTE 4283/00 CONTRIB 156	17h00
Stichting Natuur en Milieu/The Netherlands Society for Nature and Environment, Dinkerstraat 17, NL-3511 KB Utrecht (R. Hallo)	Me Sabina VOOGD (Greenpeace Netherlands)	17h05

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 13 June 2000**CHARTE 4361/00****CONTRIB 224****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a letter and campaign paper of "Cooperativa Pangea", Rome. The collected signatures have been sent to the President of the Convention, Mr. Roman Herzog.^{1 2}

¹ This text exists in English language only.

² Cooperativa Pangea: Via Fogliano 10, 00199 Roma. Tel and fax: 06-841 6600.
E-mail: pangea@iol.it

Fair Trade: the right of being human beings

Campaign on the Charter of Fundamental Rights of the European Union

Context

The European Union is now writing a Charter of Fundamental Rights for the European Union whose higher goal is to constitute the basis on which the reformed Union will be founded. This Charter will define and protect the fundamental rights of all peoples living in the European Union and can become the ethical frame for European Union's political and commercial relations with third Countries.

For all these reasons, the Fair Trade movement - through its organisations in Italy, Spain, Portugal - believe it is important that the Economic and Social Rights, which are the basis of the Fair Trade action, are recognised and reinforced as Fundamental Human Rights, and that Fair Trade is recognised as a way for protecting and promoting these rights all over the World.

We ask you to back this action, by signing the following proposal.

Proposal

We, citizens of the European Union, aware of the importance of the European Union Charter of Fundamental Rights, wish to express our support to the Body in charge of its draft and development.

We, citizens of the European Union, require the inclusion of a reference to

- a) **Fair Trade as an important instrument of economic and social human rights defence all over the world**
- and to preview a
- b) **formal consultation of the European Fair Trade organisations to verify the implementation of economic and social rights.**

We, citizens of the European Union, support the following requests of the **Fair Trade movement**, based in the Article 23 of the Universal Declaration of Human Rights:

The Charter of Fundamental rights should include:

1. **Right to work and to choose an occupation.**
2. **Right to safety and health at work, favourable conditions of work and protection against unemployment, without any discrimination.**
3. **Right to a just remuneration, ensuring for the individual and his/her family a dignified life, supplemented, if necessary, by other means of social protection.**
4. **Right to equal pay for equal work, without any discrimination.**
5. **Right to weekly rest period, paid holidays and pensions.**
7. **Right to association and assembly, freedom to form and join trade unions and to join a political party, to collective bargaining and freedom of demonstration and to strike.**

- 8 **Right to health and social protection, social security, social and medical assistance.**
9. **Right to protection of children and young persons from any kind of exploitation.**
10. **Right to integration of disabled people, including construction of social structures and promoting equality in employment.**
11. **Right to environment and consumer protection: conservation of a healthy environment, principle of precaution and extensive information before introducing Genetically Modified Organisms.**

*The campaign “**Fair Trade: the right of being human beings**” is promoted by Pangea (Italy), Associazione delle Botteghe del Mondo (Italy), La Bottega Solidale (Italy), O’ Papepece (Italy), Setem Catalunha (Spain), Cidac (Portugal)*

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE**fundamental.rights@consilium.eu.int**

Bruxelles, le 13 juin 2000**CHARTE 4362/00****CONTRIB 225****NOTE DE TRANSMISSION**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne

Veillez trouver ci-joint une contribution de l'Institut pour la Démocratie, Paris. ¹

¹ Ce texte a été soumis en langue française seulement.

Contribution de l'Institut pour la Démocratie (Paris)

Quels droits fondamentaux européens ?

par Guy LARDEYRET
Président de l'Institut
pour la Démocratie
Conseiller général de la Sarthe

Le Conseil européen de Cologne de juin 1999 a décidé d'ajouter au traité de Maastricht une Charte des droits fondamentaux de l'Union Européenne. Il s'agit d'une initiative heureuse.

Une telle charte ferait progresser la construction européenne car elle pourrait constituer, au delà des traités, l'amorce d'une future Constitution européenne. L'objet d'une charte des droits fondamentaux est de fixer dans le marbre les principes supérieurs qui garantissent la nature d'un régime politique et auxquels se soumettent, à plus ou moins long terme, tous les pouvoirs publics. Si l'initiative est heureuse, elle est malheureusement assortie de conditions douteuses.

Le gouvernement voudrait se servir d'une telle charte pour consacrer en Europe des droits prétendument «sociaux». Si l'intention est louable, son effet pourrait être l'inverse de celui souhaité : pérenniser le nombre scandaleusement élevé des chômeurs et des jeunes qui souffrent sur le vieux continent.

Prenons le droit au travail qui faisait la fierté de la Constitution soviétique. Il ne doit pas être confondu avec la liberté du travail, qui repose sur la liberté de l'employeur et du salarié. Les revenus du travail peuvent être insuffisants pour mener une vie décente, mais le légitime complément de ressource relève du devoir d'entraide, non de la rémunération du salarié.

De même, le droit à la santé est une expression impropre pour signifier la garantie donnée à chaque citoyen qu'il sera correctement soigné quelle que soit son niveau de revenu. Le même raisonnement s'applique au droit au logement, à l'instruction, et ainsi de suite. La façon dont le devoir d'entraide s'actualise ne relève pas des droits fondamentaux mais de la loi ordinaire, car elle dépend des ressources disponibles. Or la nouvelle tendance consiste à transférer ces décisions au niveau local pour leur meilleur contrôle par les citoyens.

La France et l'Europe étant engagés dans une compétition internationale désormais sans frontières, notre prospérité future dépendra de la compétitivité de l'environnement institutionnel des gens qui travaillent et produisent la richesse. Ce sont les citoyens qui offriront les services publics au meilleur qualité/prix qui jouiront demain du meilleur niveau de vie. Un point essentiel de la charte sera donc la façon dont nous saurons mieux formuler que les autres la séparation du public et du privé, le critère principal auquel se reconnaît un régime démocratique. Les avantages sociaux sont rendus possibles par l'efficacité économique, qui dépend elle-même du respect des libertés, qui doivent être garanties par une charte et une justice constitutionnelle.

La transcription des lois non écrites de la démocratie en une matière juridique est un travail d'orfèvre en philosophie politique. On aurait pu repérer les quelques experts européens capables de préparer un tel projet. La procédure retenue à Tampere d'en appeler à des représentants des gouvernements et à des délégations parlementaires, donnera-t-elle le résultat escompté ? Plus un sujet des complexe, plus on gagne à séparer la fonction d'expertise et la fonction tribunitienne.

Il faut espérer que l'idée juste à l'origine de cette initiative ne compromettra pas demain la mise en place d'une Constitution européenne dont le besoin se fait de plus en plus sentir.

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ENTWURF DER CHARTA DER GRUNDRECHTE DER EUROPÄISCHEN UNION**fundamental.rights@consilium.eu.int**

Brüssel, den 13. Juni 2000**CHARTE 4363/00****CONTRIB 226****ÜBERMITTLUNGSVERMERK**

Betr.: Entwurf der Charta der Grundrechte der Europäischen Union

Finden Sie bitte nachstehend eine Stellungnahme des Deutschen Gewerkschaftsbundes. ¹

¹ Dieser Text wurde nur in deutscher Sprache übermittelt.

Abteilung Arbeitsmarkt- und
Internationale Sozialpolitik

Düsseldorf, 05. Juni 2000
ais-ad/krh

vertragsrev.stellungnahme soz.grundrechte
(convent 34)05.06.00

**Stellungnahme des DGB
zum
Vorschlag des Präsidiums des Konvent zur Aufnahme sozialer Rechte in die Charta der
Grundrechte der Europäischen Union (CONVENT 34)**

1. Der DGB begrüsst die Bestrebungen des Konvents zu einer umfassenden Grundrechtecharta in der EU, die soziale Grundrechte einschliesst. Soziale Grundrechte müssen aus Sicht des DGB einen gleichgewichtigen Stellenwert erhalten. Die EU ist nicht nur eine Wirtschafts-, sondern auch eine soziale Wertegemeinschaft.

2. Der aktuelle Vorschlag des Präsidiums des Konvents für wirtschaftliche und soziale Grundrechte sowie für horizontale Bestimmungen (CONVENT 34) weist aus Sicht des DGB in die richtige Richtung.

Der DGB stimmt mit dem Konvent insbesondere hinsichtlich folgender sozialer Rechte überein:

- gesunde und sichere Arbeitsbedingungen
- Schutz vor ungerechtfertigter oder missbräuchlicher Entlassung
- Schutz der Wanderarbeitnehmer auf Gleichbehandlung

Der DGB teilt gleichfalls die Auffassung, dass die Charta den Gemeinschaftsgesetzgeber, die Gesetzgebung der Mitgliedsstaaten bei der Umsetzung des Gemeinschaftsrechts sowie die Sozialpartner auf Gemeinschaftsebene, die nach Artikel 139 EGV Vereinbarungen auf Gemeinschaftsebene schliessen können, binden.

Angesichts der Dynamik des Integrationsprozesses und des Charakters der Charta als Ausdruck der Werteordnung der Union und der Mitgliedsstaaten sollten die Rechte aber nicht eng auf die gegenwärtigen Zuständigkeiten der Union und der Gemeinschaft begrenzt werden.

Es muss sichergestellt werden, dass die Gewährleistung der EU-Charta nicht nur mit der Europäischen Menschenrechtskonvention als Mindeststandard kompatibel ist, sondern ebenso das Mindestschutzniveau der revidierten ESC sowie einschlägiger völkerrechtlicher Sozialnormen einhält. Der DGB erinnert daran, dass der neue Vertrag ausdrücklich anerkennt, dass die Menschenrechte die wirtschaftlichen und sozialen Rechte, wie in der revidierten Europäischen Sozialcharta und der Gemeinschaftscharta der sozialen Grundrechte der Arbeitnehmer von 1989 festgelegt, umfassen (Art. 136 EGV).

3. Zu der vom Präsidium des Konvents vorgelegten Liste sozialer Rechte nimmt der DGB wie folgt Stellung:

Artikel 31: Rechte und Grundsätze für den Sozialbereich

Dieser Artikel gibt zu Besorgnis Anlass, da den sozialen Rechten – im Unterschied zu den bürgerlichen und politischen Rechten – ein spezieller Rahmenartikel mit „Grundsätzen“ vorangestellt wird. Missverständliche Interpretationen wären die zwangsläufige Folge. Die Unteilbarkeit der miteinander verknüpften Menschenrechte macht besondere Rahmenartikel und Grundsätze speziell zu sozialen Rechten obsolet. Auch die vom Konvent bisher erarbeiteten bürgerlichen und politischen Rechte (CONVENT 28) beinhalten vielfach elementare Sozialrechte wie die Koalitionsfreiheit, das Verbot der Diskriminierung oder das Verbot der Zwangsarbeit. Soweit Aussagen zur Bindungswirkung gemacht werden sollen, sind diese in Artikel 46 aufzunehmen, der sich mit dem Anwendungsbereich befasst. Soweit das dynamische Element sozialer Rechte betont wird, sollte dies besser in der Präambel seinen Niederschlag finden. Der Vorschlag von Prof. Jürgen Meyer, Mitglied des Konvents (CONTRIB 144), hierzu ist ein wichtiger Diskussionsbeitrag. Er schlägt vor, den Grundsatz der „Solidarität“ in die Präambel aufzunehmen.

Der DGB setzt sich nachdrücklich für die Streichung dieses Artikels ein.

Artikel 32: Berufsfreiheit

Der Vorschlag „und ihr Gewerbe frei zu wählen und auszuüben“ ist missverständlich. Der DGB schlägt vor, das Recht wie folgt zu formulieren:

„Jede Person hat das Recht, ihren Beruf und ihre berufliche Tätigkeit frei zu wählen und auszuüben.“

Artikel 33: Pflicht zur Unterrichtung und Anhörung der Arbeitnehmer im Unternehmen

Der DGB ist der Auffassung, dass das vom Konvent vorgeschlagene Recht zur Unterrichtung und Anhörung der Arbeitnehmer und ihrer Interessenvertretungen um ein Recht auf Mitwirkung erweitert werden muss. Die EU-Gemeinschaftscharta der sozialen Grundrechte der Arbeitnehmer sieht dies ausdrücklich in Artikel 17 und 18 vor. Der Text sollte daher wie folgt lauten:

„Die Arbeitnehmer und ihre Vertreter haben Anspruch auf eine rechtzeitige Unterrichtung, Anhörung und Mitwirkung gegenüber ihrem Arbeitgeber.“

Artikel 34: Recht auf Kollektivverhandlungen und Kollektivmassnahmen

Dieses zentrale Recht der Arbeitswelt zählt zweifelsfrei zu den unveräußerlichen völkerrechtlichen Menschenrechten. Es muss daher sichergestellt werden, dass die ESC und die einschlägigen Übereinkommen der IAO einschliesslich der jeweiligen Spruchpraxis der zuständigen Kontrollorgane als Mindestschutzniveau eingehalten werden.

Der Vorschlag des Präsidiums des Konvents kann dies jedoch nicht sicherstellen. In Artikel 6 Abs. 4 der ESC wird z. B. im Unterschied zum Vorschlag des Konvents das Streikrecht explizit gewährleistet. In den Vorschlägen des Präsidiums vom 27. März 2000 (Convent 18) wurde das Streikrecht in Artikel IV, Abs. 3 noch ausdrücklich genannt.

Nach Auffassung des DGB muss das Recht auf Kollektivverhandlungen zumindest folgendes sicherstellen:

„(1) Arbeitgeberverbände und Gewerkschaften haben das Recht, die wirtschaftlichen und sozialen Interessen ihrer Mitglieder zu vertreten. Sie haben das Recht, nach Maßgabe der geltenden Rechtsvorschriften und Gepflogenheiten Tarifverträge auszuhandeln und zu schließen sowie bei Interessenkonflikten auch auf der Ebene der Union kollektive Maßnahmen einschliesslich des Streiks zu ergreifen.“

(2) Arbeitnehmer dürfen wegen gewerkschaftlicher Betätigung einschließlich einer Teilnahme an einem Streik nicht benachteiligt werden.“

Artikel 35: Recht auf Ruhezeit und Jahresurlaub

Neben der Anpassung der Überschrift sollte dieses Recht wie folgt präzisiert werden:

„Jeder Arbeitnehmer hat Anspruch auf angemessene tägliche und wöchentliche Arbeits- und Ruhezeiten sowie auf bezahlten Jahresurlaub.“

Artikel 37: Schutz der Jugendlichen

Dem Vorschlag des Dokuments CONVENT 18 folgend sollte das Mindestalter von 15 Jahren in den Artikel und nicht nur in die Begründung aufgenommen werden.

Artikel 39: Recht, Familien- und Berufsleben miteinander in Einklang zu bringen

Zu diesem Recht sollte auch „ein angemessener Mutterschutz“ aufgenommen werden.

Durch eine ergänzende Regelung sollte klargestellt werden: „Arbeitnehmer mit Familienpflichten dürfen in der Arbeitswelt nicht benachteiligt werden.“

Artikel 41: Soziale Sicherheit und soziale Unterstützung

Der Katalog der aufgelisteten Leistungen der sozialen Sicherheit ist unvollständig und sollte zumindest um zentrale Elemente wie Unfallschutz, Schutz bei Berufskrankheiten sowie bei Invalidität erweitert werden. Der Text sollte lauten:

Absatz (1): „Entsprechend den jeweiligen Gegebenheiten der einzelnen Mitgliedsstaaten werden Leistungen der sozialen Sicherheit von ausreichendem Umfang vorgesehen, die insbesondere bei Arbeitsunfällen, bei Berufskrankheiten, bei Mutterschaft, bei Krankheit, bei Pflegebedürftigkeit, bei Invalidität oder im Alter sowie bei Arbeitslosigkeit Schutz gewährleisten.“

Absatz (2): zum Recht auf Sozialhilfe wurde im Dokument CONVENT 19 besser beschrieben:
„Jeder Person, die nicht über ausreichende Mittel verfügt, muss eine angemessene soziale Unterstützung gewährt werden, die es ihr ermöglicht, ein menschenwürdiges Leben zu führen.“

Ergänzt werden sollte dieser Text wie folgt:

„Es werden geeignete Massnahmen getroffen, um Armut und soziale Ausgrenzung zu verhindern bzw. zu beseitigen.“

Artikel 42: Gesundheitsschutz

Der Vorschlag in CONVENT 34 fällt gleichfalls hinter den Vorschlag in CONVENT 19 zurück.
Der ursprüngliche Vorschlag sollte wieder aufgegriffen werden:

„Jede Person muss die Massnahmen der Gesundheitsfürsorge in Anspruch nehmen können und im Falle der Erkrankung Zugang zu angemessener ärztlicher Versorgung haben.“

Artikel 43: Behinderte

Der vorgeschlagene Artikel ist weniger aussagefähig als der Text in CONVENT 26. Die Übernahme aus CONVENT 26 wird empfohlen:

„Alle Behinderten haben unabhängig von der Ursache und Art ihrer Behinderung Anspruch auf konkrete ergänzende Massnahmen, die ihre soziale und berufliche Eingliederung fördern.“

Artikel 47: Einschränkung der gewährleisteten Rechte

Es wird die Bestimmung unterstützt, dass Einschränkungen nicht über die im Rahmen der Europäischen Konvention zum Schutz der Menschenrechte und Grundfreiheiten zulässigen Einschränkungen hinausgehen. Durch Bezugnahme auf die revidierte ESC muss dies aber auch für diese Charta des Europarates gelten.

Artikel 49: Schutzniveau

Ziel dieser Bestimmung ist es, das Mindestschutzniveau von europäischen und völkerrechtlichen Konventionen sicherzustellen. In der Bestimmung selbst wird aber nur die Europäische Menschenrechtskonvention aufgenommen. Zur Präzisierung sollte der letzte Halbsatz daher wie folgt ergänzt werden:

... alle Mitgliedsstaaten gehören. „Die Charta gewährleistet jedenfalls das Schutzniveau der Europäischen Menschenrechtskonvention und der revidierten Europäischen Sozialcharta sowie der einschlägigen Pakte und Konventionen der Vereinten Nationen und Übereinkommen der Internationalen Arbeitsorganisation.“

Auch in der Begründung sollte als Mindestschutzniveau nicht nur auf die EMRK sondern ebenso auf die revidierte ESC (einschl. des Europäischen Komitees der sozialen Rechte) sowie die einschlägigen Übereinkommen der IAO und anderen Pakte und Konventionen der Vereinten Nationen sowie auf die Spruchpraxis der jeweils zuständigen Kontrollorgane Bezug genommen werden.

Zusätzliche bisher vom Konvent nicht aufgegriffene Sozialrechte.

Obwohl die revidierte ESC quasi die „EMRK“ auf sozialem Gebiet ist und auch das Präsidium selbst bei vielen seiner Vorschläge darauf Bezug nimmt, fehlen bisher wichtige Sozialnormen der revidierten ESC. Hierzu zählen insbesondere

- das **Recht auf Arbeit**. Der Text des von allen Mitgliedsstaaten ratifizierten Artikels 1 der ESC sollte aufgegriffen oder zumindest die von Prof. Meyer vorgeschlagene Bestimmung aufgenommen werden. Das Recht auf Arbeit garantiert zwar kein einklagbares Recht auf einen konkreten Arbeitsplatz, jedoch leiten sich daraus staatliche Förderungspflichten ab, beispielsweise nach einer unentgeltlichen und neutralen Arbeitsvermittlung und der Integration benachteiligter Gruppen in den Arbeitsmarkt.

- das **Recht des Arbeitnehmers auf Schutz bei Zahlungsunfähigkeit** ihres Arbeitgebers. Dieses Recht lehnt sich nicht nur an das IAO-Übereinkommen Nr. 173 (Insolvenzschutz) sondern vor allem an die Richtlinie 80/987/EWG zur Angleichung der Rechtsvorschriften der Mitgliedsstaaten über den Schutz der Forderungen der Arbeitnehmer bei Zahlungsunfähigkeit ihres Arbeitgebers an.

 - das **Recht auf Würde am Arbeitsplatz**. Mit der entsprechenden Empfehlung wurde bereits ein wichtiger Schritt zu einer Entwicklung dieses Rechts unternommen.

 - das **Recht der Arbeitnehmervertreter auf Schutz im Betrieb und Erleichterungen, die ihnen zu gewähren** sind. Hier handelt es sich um eine wichtige Absicherung der Informations-, Anhörungs- und Mitwirkungsrechte, wie sie im übrigen bereits auch im IAO-Übereinkommen Nr. 135 gewährleistet sind.
-

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 14 June 2000**CHARTE 4364/00****CONTRIB 227****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a contribution by the European Centre of the International Council of Women (ECICW).^{1 2}

¹ This text exists in English language only.

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**Founded in 1961 in Axenstein
(Switzerland)
Granted consultative status with the
Council of Europe**

The European Centre of the International Council of Women (ECICW), a non-governmental organisation, is a federation composed of the National Councils affiliated to the International Council of Women (ICW) in those countries which make up ICW's European Regional Group.

ECICW has affiliated Councils in Austria, Belgium, Bulgaria, Denmark, Finland, France, Germany, Great-Britain, Greece, Hungary, Israel, Italy, Luxembourg, Malta, Netherlands, Russia, Spain, Switzerland, Turkey.

▪ *Its aim*

To encourage and achieve equal rights and opportunities for women in all fields.

▪ *Its principal tasks*

- To increase collaboration between the affiliated organisations and the International Council of Women as well as between the National Councils themselves.

- To make the voices of women heard and to promote their participation in European decision-making institutions.

▪ *Its organisation*

- Each National Council affiliated to ECICW has the right to appoint a delegate.

- The President, Vice-Presidents, Permanent Delegates to European institutions and the Treasurer are elected by the General Assembly every two years.

- The General Assembly meets twice a year.

- ECICW's administrative address is that of the President.

▪ *Activities of ECICW*

- To study all questions relating to the situation of women in Europe and their active participation in every aspect of life and society.

- To initiate and to organise *seminars* on human rights, education and the economic, legal and social position of women in Europe. These occasions give an opportunity for ECICW's National Councils to exchange views and experiences.

- *Seminars*

During recent years the following subjects have been dealt with in seminars :

- Women and poverty
- Women in decision-making positions.
- Equal opportunities for women and men – comparison of the legislative basis and programmes in the European Union and Russia.
- Women in public domain – sustainable development in the field of habitat and the role and active participation of women on the local level.
- Women and economics.
- Democracy and the enlargement of the European Union.

<p>For further information : Lily Boeykens, President ECICW Bld. du Triomphe 109 B-1160 Brussels Tel + Fax : 32-2-648.49.76</p>

Draft Charter of Fundamental Rights of the European Union

Contribution of the European Centre of the International Council of Women (ECICW) having Consultative Status with the Council of Europe

The following document is drafted by Lily Boeykens, Dr. Iuris and L.L.M. (Master in International Law) – President of the European Centre of the International Council of Women (ECICW).

The original text is in English, a translation in French is available.

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ECICW has affiliated Councils in Austria, Belgium, Bulgaria, Denmark, Finland, France, Germany, Great-Britain, Greece, Hungary, Israel, Italy, Luxembourg, Malta, Netherlands, Russia, Spain, Switzerland, Turkey

A. Preliminary note on ECICW's Contribution.

1. The European Centre of the International Council of Women (ECICW) proposes this contribution to the Draft Charter of Fundamental Rights of the European Union to the Members of the Convention.
2. ECICW supports several paragraphs of the contribution by the Association of Women of Southern Europe (AFEM) introduced on 13 March 2000 (Charte 4157/00 contrib 42) and 18 April 2000 (Charte 4131/00 contrib 105).
3. In the following document ECICW refers to parts of the AFEM contributions, so as to manifest our agreement with these paragraphs.

B. General Remarks on the proposed Charter provisions

I. EU Charter on fundamental rights

Referring to the Vienna Declaration and Programme of Action (June 1993) ECICW wants to underline that : “All human rights are universal, indivisible, interdependent and interrelated” and that “Women’s Rights are Human Rights”.

Considering that human rights are guaranteed to every human being, this EU Charter should be adopted and implemented by every Member State. The accession to this Charter should be a *conditio sine qua non* for the entry of new member states into the EU.

ECICW insists that the EU Charter must not contain less rights than the existing International Human Rights Treaties which are already ratified by most, if not all, EU Member States. *The EU Charter cannot be regressive compared to other human rights instruments, on the contrary, it should be complementary to these.*

II. International Complaint Procedure

In the text under discussion *too little attention is paid* to the need and possibilities to *seek redress and compensation* for infringements of human rights by a State Party.

In order to inform individuals, men and women, about the implementation of their human rights, and about the possibilities to lodge a complaint for infringements of these rights against a State party, *reference must be made to several international legal instruments providing international complaint procedures.*

In order to allow for individual complaints, an Optional Protocol was added and adopted to the following UN human rights instruments :

- to the International Covenant on Civil and Political Rights (ICCPR)
- to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

The Optional Protocols to ICCPR and to CEDAW provide provisions to enable the Human Rights Commission or the CEDAW Committee to receive and consider communications from individuals, or groups of individuals, claiming to be victims of violations of any of the rights set forth in these two documents.

Other Conventions have included a complaint procedure in the text of the treaty itself :

- The European Convention on Human Rights (1950) Art. 25
- The Convention on the Elimination of all Forms of Racial Discrimination (1965) Art. 14
- The Convention against Torture and other cruel, inhuman or degrading treatment or punishment (1984) Art. 22
- The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990) Art. 77

Who can lodge a complaint with an International/EU special Commission or Court ?

Only individuals or groups of individuals claiming to be directly affected by a failure of a State Party to comply with its obligations. The communication must be introduced with the consent of the victim, unless the author(s) can justify the absence of consent.

This is the rule for every Convention mentioned above.

Why ?

During the drafting of the Optional Protocol to the CEDAW-convention (adoption in 1999) after a discussion in depth, the Assembly agreed to accept only complaints from individuals or groups of individuals instead of “groups“ or “NGOs”.

Indeed, if complaints are lodged by NGOs this can cause difficulties with regard to their representation :

- Are they national NGOs - or international or regional NGOs ?
- Do they have a Consultative Status – or not ?

Further NGOs will have to act on behalf of and/or in the interest of the victim whose human rights are violated. Conflicting interests might occur between the victim and the NGO lodging the complaint. Indeed, NGOs might have professional, religious, or ideological interests.

Also the necessary follow-up of the case and the support of the victim until the final decision can cause problems. Indeed, NGOs are living associations with periodic changes in their officers (presidents, members of the board, etc ...), even in their policies, constitution and bylaws. Consequently the question of "sufficient interest" arises.

ECICW states that :

The new EU document on Fundamental Human Rights should contain an article on a complaint procedure allowing for redress of violations of the rights laid down in this EU Charter. Complaints will be lodged by individuals or groups of individuals having sufficient interest and acting on behalf of the victim.

III. Gender equality

During recent years there have been some changes in terminology, including in UN jargon, when referring to equality. The word “sex” has been replaced by “gender”; so for example : “gender equality” instead of “sex equality”.

Moreover, provisions should be gender neutral or refer to both sexes.

IV. Family

“*The Family*” as a natural and fundamental unit of society, has never been clearly defined. The family, as a unit, cannot claim “group rights”. Only individuals, members of the family, can claim individual human rights.

The lack of a clear definition of “the family” is the major reason why the “International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families” is not yet in force, although dating from December 1990. This convention refers to *married* persons and the *members of their family*. Defining the “members of their family” the Convention refers to *their dependent children and other dependent persons*, who are recognised as members of the family by applicable legislation or applicable bilateral or multilateral agreements between the states concerned.

This may bring about a lot of confusion as in certain regions “the family” is extended and comprises mainly a large range of dependents, while in other regions “the family” is small and includes only the dependent children, the father and mother, the sister and brother of the individual.

In the international legal order a new discussion started concerning the interest of the child regarding his/her genetic material (see recommendation of the Council of Europe on Bio-ethics R(97)5 and R(92).

See further remarks on Article 13.3 of the Draft EU Charter re. “Family life”.

V. The child

Not enough attention is given to the rights of the child.

Children shall be treated as individuals and shall be permitted to influence matters affecting them. We would drop “according to their degree of maturity”. Indeed, who will define the degree of maturity ? Is it linked to age ? Intelligence ? Behaviour ?

See further comments article 23.

VI. Respect for Juridical Acquis

1. AFEM and ECICW underline the need to take into consideration the EU and the international acquis (treaties ratified by all Member States), as well as the constitutional acquis common to the Member States, as minimum standards, and to ensure an advancement in relation to these documents.

2. The EU Member States will thus prove their dedication to the universal principles proclaimed by Article 6(1) EU Treaty ¹ and their determination to ensure that neither this provision nor those of Articles 7² and 49³ of this Treaty become a dead letter. They will thus confirm that they really want to be a Community based on the rule of law and it will strengthen their credibility vis-à-vis their citizens and the international community.
3. AFEM and ECICW recall the solemn declarations of the EU according to which :
- “economic success cannot be ensured unless human rights are observed and guaranteed”;
 - the EU “insists” on the “equivalence”, the “interdependence” and “inter-relatedness” of all human rights, including economic, social and cultural rights which judicial protection they want to promote⁴.
4. **It is common knowledge that general non-discrimination clauses do not suffice to eradicate direct and indirect discrimination on the ground of sex, in particular against women, and to establish substantive equality between women and men. The acknowledgement of this fact has led :**
- a. At international level :
- To the adoption of special international instruments guaranteeing fundamental rights of women⁵.
 - To the inclusion of specific provisions prohibiting discrimination on the grounds of sex in the International Covenant on Civil and Political Rights (ICCPR) and its Optional Protocol on individual complaints and the International Covenant on Economic and Cultural Rights.
 - To the adoption and the ratification (now by all but 27 Member States of the UN) of the CEDAW Convention and the adoption of the Optional Protocol for individual complaints during the 43rd Session of the Commission on the Status of Women and the confirmation by the General Assembly in 1999.
- b. At community level :
- To the enshrinement of equality between women and men as a general principle and a specific fundamental right (well-established European Court of Justice (ECJ) case law);
 - To the proclamation of equality between women and men as a fundamental mission and objective of the Community which it undertakes to promote in all areas of its jurisdiction (Articles 2, 3(2), 137 EC Treaty);

¹ Article 6(1) EU Treaty : “The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law, principles which are common to the Member States.”

² Sanctions against Member States which violate the principles proclaimed by Article 6(1) EU Treaty.

³ The respect of these principles constitutes a fundamental condition of admission to the EU

⁴ Annual Report of the EU on human rights (1999), paras. 5.1., 5.2., Statement by Mr. J. Fisher on behalf of the EU to the Commission of Human Rights annexed to this Report.

⁵ The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Conventions on the political rights of women, on the nationality of married women etc.

- To the development of an *acquis* deriving from legislation and case law in respect of equality between women and men and of the prohibition of direct and indirect discrimination based on sex, including any kind of unfavourable treatment on the ground of pregnancy or maternity **or the responsibility of child care.**
 - To the development of an *acquis* deriving from legislation and case law and concerning judicial protection **such as the rights of individual complaint** against direct and indirect sex discrimination **by a member state.**
- c. At national level : to explicit and specific constitutional guarantees of equality between women and men.

VII. Gender equality

However, in spite of all that, **substantive equality between women and men has not been achieved as yet.** In order to remedy this situation :

- The Convention on the Elimination of all Forms of Discrimination against women (Art. (1)) provides for positive action in favour of women and the Commission which monitors the application of this Convention insists on the necessity of such action **and the ratification and implementation of the Optional Protocol to this Convention;**
- The organs which monitor the application of the two International Covenants insist on the necessity of positive action in favour of women;
- An increasing number of national constitutions guarantee substantive equality between women and men and legitimise positive action⁶, thus forming a “*constitutional tradition common to the Member States*”;
- Article 141(4) EC Treaty provides for positive action “with a view to ensuring full equality in practice between men and women in working life” and Declaration No 28 annexed to the Treaty of Amsterdam specifies that such action “*should, in the first instance, aim at improving the situation of women*”;
- Specific EU directives and Community action programmes for promoting substantive equality between women and men are being adopted and implemented;
- The EU proclaims officially and solemnly “*the need to emphasise women’s rights*”, including those of the “*girl child*”⁷ (cf. 12th Critical area of concern of the Fourth World Conference on Women in Beijing 1995).
- After the UN General Assembly had adopted the Optional Protocol to the CEDAW convention, which provides for individual complaints; the EU pledged in the EU Report on Human Rights *op. cit.*, par. 5.12 that it is “now working for the early entry into force of this new instrument” which will happen after the ratification of the 10th UN Member State.
- ***It is thus obvious that if the Charter is limited to a general non-discrimination clause, without explicitly enshrining substantive gender equality, it will constitute a regression in respect of equality between women and men which certainly nobody wishes. Discrimination on the grounds of sex is of a particular, structural nature and affects mainly women. Women are not a minority, but more than half of the European population and often suffer multiple discrimination. They have the right to enjoy effectively all fundamental rights and freedoms and be full citizens, in all areas.***

⁶ German (Article 3(2)), Austrian (Article 7(2)), Portuguese (Article 9(h)), Finnish (Article 6(4)), Swedish, French (Articles 3,4), Greek (draft) Constitutions.

⁷ EU Report on Human Rights, *op.cit.* paras. 5.12,5.13, Statement of J. Fisher, *op.cit.*

C. Amendments and comments on specific articles

The ECICW fully agrees with the introductory comments of AFEM and its comments on Article 1 and 2 of the Draft Charter :

- quote -

Article preceding proposed Article 1

The Union and the Community as well as Member States secure to everyone within their jurisdiction the effective enjoyment of the rights and freedoms defined in the following Articles, which may be relied upon as against their organs and institutions as well as against individuals, in all areas of Union and Community jurisdiction. (Art. 1 ECHR , Horizontal Questions (BODY 3), para, 8).

Comments :

We consider that, since there is a kind of dualism between the EU and the EC and since there are doubts as to whether the EU possesses a legal personality, it would be preferable that reference should be made to both. Besides, it is obvious that, without vertical and horizontal direct effect, the provisions of the Charter will be a dead letter.

Article 1. Dignity of the human person

Everyone has the right to the respect and protection of his/her dignity. The human body or any part thereof is not for trade, regardless of whether the person concerned has consented. (Art. 1 Proposal; Art. 1 EP Decl.)

Comments :

We consider that the exemption of the human body from trade, so that nobody may derive profit or any other benefit therefrom, is a way of implementing respect and protection of human dignity rather than a corollary of the right to life. Consequently, this provision should not be limited to the area of medicine and biology, but should have a more general scope which should also include the prohibition of trafficking in persons, in particular in women and children, for the purpose of forced labour or sexual exploitation, so that the well-known and constantly increasing problems of trafficking in women and children throughout Europe are dealt with. It is indispensable to specify that the consent of the person concerned is irrelevant, since it is obvious and confirmed by common experience that it is impossible to know whether this consent has been freely given. Moreover, extensive research on the matter has proved that, in the great majority of cases, women engaging in prostitution, as least at the outset, do not act with their free consent.

For the rest, we agree with para. 3 of Article 1 of the Praesidium's Proposal. As concerns para. 2 of Article 1 of this Proposal, see *infra*, Comments under Article 2.

Article 2 : Right to life

Everyone has the right to the protection of his/her life and of his/her physical, psychological and genetic integrity. Torture or inhuman or degrading punishment or treatment, such as sexual mutilations, as well as any other kind of physical or moral violence, including violence within the family, are in particular prohibited. (Art. 1 , 2 Proposal; Art. 2 , 3 ECHR; Art. 6 , 7 CCPR; Art. 2 EP Decl.)

Comments :

The prohibition of torture may be included in Article 2 or in Article 1 as in the Praesidium's Proposal. What is important is the reference to "sexual mutilations" which, as it is well-known, take place even on European territory, as well as the prohibition of "any other kind of physical or moral violence". For the rest, we agree with para 2 of Article 2 of the Praesidium's Proposal, in its alternative wording

- unquote -

Article 3 : Integrity of the person

The integrity of the person must not be protected in medicine only, but also in :

1. Violence in armed conflicts
2. Public or private sphere
3. The trade in human organs and blood.

According to ECICW it is an absolute necessity to add an additional paragraph concerning violence against women

Referring to the **UN Declaration on the Elimination of Violence against Women adopted by the General Assembly at its 85th Plenary Meeting on 20 December 1993, which provides in Article 1 for the definition of Violence against Women**

Article 1

For the purposes of this Declaration, the term « violence against women » means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.

Article 2

The United Nations Declaration on the Elimination of Violence Against Women which, in article 2, defines violence as encompassing, but not being limited to "physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women".

Referring to **Document E/CN.4/1996/53 of 5 February 1996 – Concerning the Commission of Human Rights 52th Session – Item 9 (a) of the Provisional Agenda - Concerning the Further Promotion and Encouragement of Human Rights and Fundamental Freedoms.**

Report of the Special Rapporteur on Violence against Women, its causes and consequences, Ms. Radhika Coomaraswamy in accordance with the Commission on Human Rights resolution 1995/85.

In *paragraph 23* a definition is given of *domestic violence* :

Domestic violence is violence that occurs within the private sphere, generally between individuals who are related through intimacy, blood or law.

Paragraph 26

The rhetoric of public versus private and the consequent primacy accorded to the public realm has fundamentally affected perceptions of women's rights. In distinguishing certain forms of violence as domestic violence, definitions have arisen out of the original conceptualisation of such violence as private acts within the family. However, an inflexible definition of domestic violence, focusing solely on private actors, legitimises the public/private dichotomy. This construction has continually been challenged and critiqued by women's human rights activists, not least because it neglects a gender-specific dimension. Thus, the development of a comprehensive framework clearly depicting the relation between the nature of the violence perpetrated against women and their private personae is important in an effort to move beyond a private/public distinction in addressing violence.

Paragraph 29

It is the duty of State to ensure that there exists no impunity for the perpetrators of such violence. "In the case of intimate violence, male supremacy, ideology and conditions, rather than a distinct, consciously co-ordinated military establishment, confer upon men the sense of entitlement, if not the duty, to chastise their wives. Wife-beating is, therefore, not an individual isolated, or aberrant act, but a social license, a duty or sign of masculinity, deeply ingrained in culture, widely practised, denied and completely or largely immune from legal sanction".

<6> It is, therefore, argued that the role of State in action in the perpetuation of the violence combined with the gender-specific nature of *domestic violence* require that *domestic violence* be classified and treated as a human rights concern rather than as a mere domestic criminal justice concern.

Conclusions ECICW :

ECICW was represented at the 10th UN Congress on the Prevention of Crime and the Treatment of Offenders (Vienna 10-17 April 2000).

In the statement of Antonio Costa – speaking on behalf of the European Union and Associated Countries – the EU pledged to develop legal measures to combat violence (see further in comments on paragraph 5) and to ensure the integrity of the person in the private sphere.

Article 5 – para 3 (added in Convent 36) : Traffic in human beings is prohibited

Referring to the **Statement of Antonio Costa, Minister of Justice of Portugal. Speaking on behalf of the European Union and Associated Countries at the 10th UN Congress on the Prevention of Crime and the Treatment of Offenders**, he stated that countries are threatened by criminal acts. These matters need to be urgently addressed not only by individual states, but with the maximum amount of international co-operation. In this context the European Union has adopted a mobilising goal of creating an area of freedom, security and justice. It is a requirement for membership of the Union that all its member states must respect the rule of law as a common principle. The Union has been actively seeking to develop legal and other measures to strengthen the rule of law in criminal justice.

The theme of organised crime has been receiving significant attention from the Union. At its recent meeting, the European Council has affirmed its deep commitment to reinforcing the fight against serious and transnational crime.

The need to safeguard the rights of victims has attracted increasing attention.

Many delegations have underlined the interconnection between crime and human rights. It is therefore fully justified that both the Commission on Crime Prevention and Criminal Justice and the Commission on Human Rights deal with some topics. Their co-operation and exchange of information are of vital importance.

Comments :

ECICW strongly recommends to extend article 5 para 3 :

- Stating that transnational criminal groups are a threat to humanity;
- The protection of victims is part of their human rights;
- The traffic of human beings must be punished;

ECICW urges that all efforts be made to prevent enforced involuntary disappearances in times of armed conflict and/or in times of peace perpetrated by criminals.

Therefore ECICW proposes the addition of an article to the Draft EU charter on Fundamental rights :

Referring to the UN Declaration on the Protection of All Persons of enforced disappearance (proclaimed by the General Assembly in its resolution 47/133 of 18 December 1992).

Article 2

1. No State shall practice, permit or tolerate enforced disappearances;
2. States shall act at national and regional levels to contribute by all means to the prevention and eradication of enforced disappearance.

Article 3

Each State shall take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance in any territory under its jurisdiction.

Article 12 : Respect and Protection of Privacy

ECICW wants to refer to the following threats to “the right of privacy” :

1. ***Referring to the Convention of Human Rights and Bio-Medicine (April 1997)***

In Article 5 it is mentioned that the consent of the individual does not offer not enough protection, that the person must not only give his/her free consent but also his/her informed consent. In several UN documents, such as e.g. the Programme of Action of the International Conference on Population and Development (Cairo, 1994) dealing with reproductive rights and in the follow-up to the Fourth World Conference on Women of Beijing, special attention is given to informed consent.

2. The erosion of the right of privacy is a growing global problem. Violations of this fundamental right very often occur in the media, at the workplace, in processing personal data in computer networks, etc ..
3. The right to privacy also means the right of personal liberty to self-determination. So for instance in the medical field, in bio-ethics (see recommendation of the Council of Europe R(97)5, ethical and judicial conflicts may arise with reference to the protection of genetic information in the field of employment, insurance and social security, criminal proceedings.

Attention should also be given to possible conflicting interests between the individual and society. Legal documents should be elaborated at European and national levels for a number of conflict situations such as money laundering, violence within the family, ...

Conclusion

- *With regard to the evolutions in the field of technology and science, new problems have arisen concerning the fundamental rights of privacy;*
- *Referring to the Conclusions of the 10th UN Congress on Crime Prevention and the Treatment of Offenders;*
- *Noting that in this intergovernmental meeting the urgency of combating transnational organised crime was stressed;*
- *ECICW insists that the members of the Convention prepare an innovative tekst on the Fundamental Rights of Privacy. This will prevent a situation of lawlessness in Europe and an inclination towards a society without legal security and protection against criminals.*

Article 13 concerning family life

Referring to **recommendation R (85) 4 of the Council of Europe on Violence in the Family**;

Considering that the family is the basic unit of society ;

Considering that the defence of the family involves the protection of all its members against any form of violence, which all too often occurs among them ;

Considering that there is violence in any act or omission which prejudices the life, the physical or psychological integrity or the liberty of a person or which seriously harms the development of his/her personality ;

Considering that such violence perpetrated within the family affects in particular children on the one side and women on the other, though in different ways ;

Considering that children are entitled to special protection by society against any form of discrimination or oppression and against any abuse of authority in the family and other institutions ;

Considering that the same is true for women as victims and as perpetrators ;

Considering that women insofar as they are subject to certain de facto inequalities which hamper the reporting of any violence of which they are victims ;

Referring to resolution (78) 37 of the Council of Europe on the Equality of spouses in civil law ;

Referring to the recommendation no R (79)17 of the Council of Europe concerning the protection of children against ill-treatment ;

Referring to the proceedings of the Council of Europe's 4th Criminological Colloquy on the ill-treatment of children in the family ;

Referring to recommendation 561 (1969) of the Consultative Assembly of the Council of Europe, on the protection of minors against ill-treatment ;
 Referring to recommendation R (85) 4 of the Council of Europe on Violence in the Family ;

The **Council of Europe** recommends that the governments of member states :

I. With regard to the prevention of violence in the family :

1. Considering the seriousness and the specific characteristics of violence in the family, the member states should take measures to combat this phenomenon ;
2. Promote the early detection of potentially conflict situations and the settlement of interpersonal and intra-family conflicts ;
3. Governments should help and assist the victims of violent family situations, with due respect for the privacy of others ;
4. Set up administrative departments or multidisciplinary boards with the task of looking after victims of violence in the family and with powers to deal with such cases.

Their powers might include the following :

- to receive reports of acts of violence in the family
 - to arrange for medical examinations at the victim's request
 - to help, care for and advise the various parties involved in cases of violence against the family and to that end to carry out social inquiries
 - to pass on, either to the family and children's courts to the prosecuting authorities, information which the department or board deems should be submitted to one or another of those authorities.
5. Impose strict rules on these departments or boards concerning the divulging information to which they have access in the exercise of their powers ;

II. With regard to the reporting of acts of violence in the family :

6. Calculate specific information on the advisability and feasibility for persons who become aware of cases of violence in the family of reporting them to the competent bodies, particularly those mentioned in paragraphs 4 and 5 above, or of directly intervening to assist the person in danger ;
7. Considering the possibility to *removing the obligation of secrecy from the members of certain professions* so as to enable them to disclose to the bodies mentioned paragraph 5 above any information concerning cases of violence in the family ;

III. With regard to state intervention following acts of violence in the family :

8. Take steps to ensure that, in cases of violence in the family, the appropriate measures can be quickly taken, even if only provisionally, to protect the victim and prevent similar incidents from occurring ;
9. Take measures to insure that, in any case resulting from a conflict between a couple, measures are available for the purpose of protecting the children against any violence to which the conflict exposes them and which may seriously harm the development of their personality ;

10. Take measures to ensure that the victim's interests are not prejudiced by interference between civil, administrative and criminal measures, it being understood that criminal measures should be taken only as a last resort ;
11. Review their legislation on the power to punish children in order to limit or indeed prohibit corporal punishment, even if violation of such a prohibition does not necessarily entail a criminal penalty ;
12. Study the possibility of entrusting cases of violence in the family only to specialist members of prosecuting or investigating authorities or of trial courts ;
13. Take steps to ensure that, as a general rule, a psycho-social inquiry is carried out into such cases and that, particularly on the basis of the findings of the inquiry and in accordance with criteria that take account of the interests of the victim as well as the children of the family, the prosecuting authority or the court is able to propose or take measures other than criminal ones, especially when the suspect or accused agrees to submit to the supervision of the competent social, medico-social or probation authorities;
14. Do not institute proceedings in cases of violence in the family unless the victim so requests or the public interest so requires;
15. Take measures to ensure protection against any external pressures on members of the family giving evidence in cases of violence in the family. In particular, minors should be assisted by appropriate counsel. Moreover, the weight of such evidence should not be diminished by rules relating to the oath ;
16. Consider the advisability of adopting specific incriminations for offences committed within the family.

Referring to the **UN Convention on the Consent to Marriage, Minimum Age for Marriage and Registration of Marriage (entry into force 9 December 1964)**

The Contracting States,

Desiring, in conformity with the Charter of the United Nations, to promote universal respect for, and observance of, human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion.

Recalling that Article 16 of the Universal Declaration of Human Rights states that :

1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
2. Marriage shall be entered into only with the free and full consent of the intending spouses.

Reaffirming that all States should ensure, inter alia, complete freedom in the choice of a spouse, eliminating completely child marriages and the betrothal of young girls before the age of puberty, establishing appropriate penalties where necessary and establishing a civil or other register in which all marriages will be recorded.

Comments and recommendations of ECICW :

1. **Article 13 para 2 should read : “Every person has the right to found a family being married or not.**
2. **If a marriage is concluded this will only be with the free and full consent of the spouses**
3. **Child marriage should be prohibited.**

Article 21 – Right to asylumECICW proposes :

A third subparagraph should be added concerning the protection of trafficked persons (illegal migrants, trafficked persons especially women and children for slavery, labour and prostitution).

Motivation :

Trafficked persons should receive the same treatment and legal protection as refugees. Up till now only persons fearing to be persecuted for their race, religion, nationality and political opinion can be granted the status of refugee.

Referring to the UN Convention relating to the Status of Refugees (entry into force : 22 April 1954)*Article 1* - Definition of the term “refugee”.

For the purposes of the present convention the term “refugee” shall apply to any person who owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

In the case of a person who has more than one nationality, the term “the country of his nationality” shall mean each of the countries of which he is a national, and a person shall not be deemed to be lacking the protection of the country of his nationality if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national.

Article 3 : Non-discrimination

The contracting states shall apply the provisions of this convention to refugees without discrimination as to race, religion or country of origin.

Comments and recommendations of ECICW :

1. More and more women are also falling under the definition of this Convention.
2. *Trafficked persons*, mainly women and children, should also fall under this definition. The traffic in human beings for “slavery, labour or prostitution” should be included and given attention and protection in the new European Charter of Fundamental Rights.
3. State Parties shall take appropriate measures to ensure that the child, who is seeking refugee status or who is considered a refugee, in accordance with applicable domestic law procedures shall, whether unaccompanied or accompanied by his/her parents, or by any other person, receive appropriate protection and humanitarian assistance.

Article 22 - Equality and non-discrimination

According to ECICW para 3 should read :

The Union will combat the inequalities and will realise equality between women and men. Gender equality will be assured in the employment of the remunerations and working conditions, but should also be a rule for the political participation, the power functions in economy and politics, in society and in private life.

Artikel 23 – Rights of the Child (singular as we speak of individual rights)Comments and recommendations of ECICW

National and international law have to evolve from child and youth protection to juvenile rights.

Children shall be treated as individuals and shall be permitted to influence matters affecting them. ECICW wants to drop “according to their degree of maturity”.

The Charter should not only guarantee children’s civil rights but also their economic and social rights. The treaty should also provide children with a number of guarantees in the area of criminal justice in order to combat the *lucrative international trade in children*.

The Charter should also grant children the right to preserve their identity, and to express their opinions.

In the international legal order a new discussion has started concerning the interest of the child regarding his/her genetic material (see recommendation of the Council of Europe on Bio-ethics R(97)5 and R(92).

For these reasons ECICW wants to extend article 23 with the following paragraphs :

- State Parties shall ensure the rights of the child without discrimination of any kind based on race, sex, language, religion, opinions, nationality, ethnic or social origin, property, disability, birth or other status ; and this independent of the child’s parents, legal guardians or family members;

- Referring to article 3.1 of the International Convention on the Rights of the Child;
In all actions concerning children, whether undertaken by public and private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration;
 - The child shall have the right to have a name, the right to acquire a nationality, in particular where the child would otherwise be stateless;
 - State Parties should respect the right of the child to preserve his or her identity, including nationality, name and family relations;
 - When a child is legally deprived of these rights, the State Parties shall provide appropriate assistance and protection;
 - State Parties shall take measures to combat the illicit transfer and non-return of children abroad;
 - The child shall have the right to freedom of expression in these matters;
 - State Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental menace, injury or abuse, neglect, maltreatment or exploitation, including sexual abuse (see art. 19 (1) of the Convention on the Rights of the Child);
 - State Parties shall take appropriate measures to ensure that the child, who is seeking refugee status or who is considered a refugee, in accordance with applicable domestic law procedures shall, whether unaccompanied or accompanied by his/her parents, or by any other person receive appropriate protection and humanitarian assistance.
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DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 14 June 2000**CHARTE 4365/00****CONTRIB 228****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a submission of the Church of Scientology regarding freedom of religion and belief in the European Charter of Fundamental Rights. ^{1 2}

¹ This text exists in English language only.

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The European Charter of Fundamental Rights **- and Freedom of Religion or Belief**

The Church of Scientology has several million members throughout Europe and is involved with human rights and social reform programmes in many countries around the world.

It is clearly important that European citizens see a real application of fundamental human rights principles and not just another round of grand sounding words which take months if not years to agree upon but have little practical application.

It is this concern which fires our contribution to the Charter of Fundamental Rights. Countries of Western Europe have all signed and ratified conventions, declarations and wonderfully idealistic statements on how things should be. This is of course correct as without the ideal there is nothing to head for.

However, it is, of course, but a first stage. What really counts is the application of these principles to the citizens of Europe. Our experience in the field of religious minorities is that in a number of countries members of religious and philosophical groups are seriously concerned that their survival is threatened by the very bodies who have signed these conventions and declarations but are doing nothing to enforce the duties and responsibilities they have to protect those rights.

For example, in the last two months, there has been a series of hearings where members of religious and philosophical groups have testified about discrimination in France and Belgium. Approximately 100 testimonies from 40 different groups were heard during this time and for each person who testified there are at least 10 more that were not heard. Multiply this by the number of people (family members, friends) that were affected through each individual incident and it amounts to thousands of people who are suffering simply because of their belief. Often the authorities are party to, either directly or tacitly, the discrimination.

Of course, similar experiences are found with other minorities and any discrimination which occurs on the basis of colour, sex, ethnic background or other arbitrary criteria is not acceptable. None of these are more or less important than the other but because our experience has been in the field of religion this submission is more tailored to this category. A short background summary will be helpful to understand the background to the problem and consequently why certain wordings have been proposed.

Background

There have been attempts to discredit the subject of religious minority rights from some sectors during the last five years - an attempt which has not succeeded but which has gained a certain amount of currency in some quarters. The main vehicles which have been used in the attempt to undermine religious freedom rights are analysed as follows :

a) Propaganda through assigning a derogatory meaning to a word

By assigning a derogatory meaning to the word "sect" or "cult" and equating as many religious minorities as possible with this categorization is a standard propaganda exercise which has been carried out on religious minorities before. By doing so there is an attempt to differentiate, and drive a wedge between traditional or modern, large or small and theistic or non-theistic religious groups. Nowadays, the word "sect" especially, as used in everyday language and almost constantly by the media, has a negative connotation which is broadly and freely used to categorize any minority religious group in an unfavourable light. Yet international standards on this subject emphasize quite the contrary.

The United Nations, religious experts, and UN treaty-based bodies have consistently found that the expression "religion or belief," as well as the individual terms "religion" and "belief," must be construed broadly to include non-traditional religions and all forms of belief. This was the opinion articulated in two studies prepared by the first two Special Rapporteurs on freedom of religion of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, and expressly confirmed in the Working Paper, drafted by the third Special Rapporteur.

Likewise, the Human Rights Committee, in its General Comment No. 22 on Art. 18 of the International Covenant on Civil and Political Rights, notes that:

"Article 18 protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief. The terms belief and religion are to be broadly construed. Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions. The Committee therefore views with concern any tendency to discriminate against any religion or belief for any reason, including the fact that they are newly established, or represent religious minorities that may be the subject of hostility by a predominant religious community." (Para. 2)

Moreover, the 1996 Annual Report by the Special Rapporteur on Religious Intolerance to the United Nations Human Rights Commission provides the Rapporteur's opinion on the broad scope of the term religion and the need for equal treatment of all religions, including so called "sects." The Special Rapporteur notes that:

"Religions cannot be distinguished from sects on the basis of quantitative considerations saying that a sect, unlike a religion, has a small number of followers. This is in fact not always the case. It runs absolutely counter to the principle of respect and protection of minorities, which is upheld by domestic and international law and morality. Besides, following this line of argument, what are the major religions if not successful sects?"

*** *** *** ***

"Again, one cannot say that sects should not benefit from the protection given to religion just because they have no chance to demonstrate their durability. History contains many examples of dissident movements, schisms, heresies and reforms that have suddenly given birth to religions or religious movements." As to governmental efforts to distinguish between religions and sects, the Rapporteur concludes that: "All in all, the distinction between a religion and a sect is too contrived to be acceptable. A sect that goes beyond simple belief and appeals to a divinity, or at the very least, to the supernatural the transcendent, the absolute, or the sacred, enters into the religious sphere and should enjoy the protection afforded to religions."

b) Generalization : Making the acts of a few equate to the acts of many

To emphasise and dramatize the very few but certainly horrific events that have occurred with several minority groups is quite illogical and discriminatory. These actions are truly deserving of condemnation but to generalize about all religious or philosophical minorities and create a negative climate by painting all such groups with the same brush is unacceptable and purposefully done. The inherent bias of an "Observatory" into religious minorities which was established by the French government is graphically illustrated with the sweeping and utterly unfounded conclusion in its final report that

"Sects represent a real threat for the State, the society and individuals; it is therefore the task of the Observatory to fight against this threat."

The report relies on sweeping generalizations, serious factual inaccuracies, and vague or unsupported allegations to reach a conclusion that special and drastic governmental measures should be employed against minority religious groups classified by the pejorative term "sect".

The International Helsinki Federation in its 1999 international religious intolerance report, concluded in no uncertain terms that religious intolerance has reached alarming proportions in France:

"While other reports abroad (Swedish parliamentary report and report of the canton of Tessin) recommend dialogue with so-called sects, France has chosen open confrontation. This has led to slanderous reports in the media, to professional prohibitions, to religious discrimination by the French authorities and to increasing intolerance from civil society towards ordinary people on the grounds of their personal religious beliefs."

c) Spreading outright lies or, more often, misrepresentation of events and statements from the groups.

This is exemplified by the entirely false and unscientific reports of the French and Belgian Parliaments which held hearings without allowing the possibility of any correct response by the groups concerned and itemized almost 200 groups as "dangerous" (the Belgian Parliament never formally adopted their list but by the time it was withdrawn the damage was done and it is still used today to discriminatory effect).

That parliamentary bodies would even endorse such an approach is a cause for serious concern. The parliamentary committees acted as judge and jury without even presenting specific allegations to the groups concerned and allowing them to respond. Yet there were no external checks possible of these reports due to parliamentary confidentiality and/or privilege which was invoked to "protect" their work so it could not be challenged in any direct way.

Consequently, without any serious evidence, and certainly no opportunity for the groups concerned to respond to specific allegations, the parliaments of two countries sent a biased and intolerant message to their citizens and to the world in general.

The International Helsinki Federation stated in its 1999 report :

Currently, Austrian, Belgian, French, and German policies in this regard are completely founded on the distinction between "sects" and religions. The Parliamentary Assembly [of the Council of Europe] considers this to be a "pitfall, which the authorities must avoid." Its warning is extremely clear, and calls the neutrality and secularity of the four countries into question.

d) Justifying acts of intolerance by pseudo-scientific reasoning

To justify acts of intolerance or "explain" why people remain members of religious groups is attempted by passing off the theory, as though it were a fact, that such groups are somehow able to brainwash, control or coercively manipulate the minds and wills of their followers.

This theory has no scientific substantiation yet it can often be seen in media articles (and sometimes supposedly serious studies) as "reason" for taking discriminatory actions or making derogatory statements.

As Dr. Benjamin Beit-Hallahmi stated, as part of an American Psychological Association memorandum on the subject *"The term 'brainwashing' is not a recognized theoretical concept, and is just a sensationalist 'explanation' more suitable to 'cultists' and revival preachers. It should not be used by psychologists, since it does not explain anything"* (1987)

Professors James T. Richardson and Gerald Ginsburg (University of Nevada, Reno) further explained this in a paper originally prepared for presentation at Law and Science Seminar, presented by the Faculty of Laws, University College London, June 30, July 1, 1997 and later published in Law and Science: Oxford University Press, entitled "A Critique Of 'Brainwashing' Evidence In Light Of Daubert: Science And Unpopular Religions"

"Given the problematic nature of scientific support for brainwashing based theories as they are applied to participants in new religions, it is reasonable to ask why such evidence was ever admitted, and why it is sometimes still admitted (Richardson, 1996; Anthony and Robbins, 1995). The most plausible answer has to do with the operation of biases, prejudices, and misinformation in these cases that involve controversial parties and issues or, as Kassin and Wrightsman (1988) say: cases "involving emotional topics over which public opinion is polarized.""

e) Administrative and legislative actions based on the premise that "sects are a danger to society"

Of course, religion or belief is no justification for committing a crime or abusing the good intentions of an individual. Any violations of the law should be properly dealt with by the correct authorities. There exists, certainly within European Union countries, adequate basis for prosecuting anyone who breaks the law and so prosecution should be taken regardless of the religious or other beliefs of any individual or group involved.

What is discriminatory is the trend to propose legislation directed solely at curtailing activities which are religious with the intent of making this a crime, or alternatively, creating "shortcuts" with the intent of persecuting religious groups.

One example of this occurred at the end of last year when the French Senate passed a law which would amend a 1936 law which was passed at that time to curtail the activities of armed militia groups. On December 16, 1999, the French Senate, the upper house of the French legislative system, passed legislation designed to create a means to dissolve groups which, in the opinion of the government, "cause trouble to public order." This proposal was not made public prior to the 15th December 1999, the same day that it was adopted by the Law Commission of the Senate and the day prior to it being voted by the Senate. This almost unheard of attempt to covertly slide non-urgent legislation through the legislative process without the possibility of public scrutiny did not speak well of the intentions or actions of those proposing this legislation.

Perhaps the most telling statement came from one of the Senators supporting the amendment when she said *"The dissolution, which is a political decision, also gives the advantage of not using the judicial procedures in which sects are so skillful in manoeuvring."*

The proposed law passed its first major legislative hurdle and is now sitting with the National Assembly for possible enactment. To his credit, it has been opposed by the French Interior Minister and so is currently "pending" but not specifically rejected.

Other examples of discriminatory administrative (i.e. government) "stops" are the use of discriminatory materials against religious minorities in schools (examples in Germany and France), the use of "sect filters" - demanding that a person is not a member of a specific religious group (in use in some German Lander), the use of the tax administration and other government bodies to give special attention to religious groups with the intention of harassing (France, Belgium and Germany), special "enlightenment" campaigns to "educate" magistrates, judges and other public officials about the "dangers of sects" (France and Germany). [Details available on request.]

Once the above techniques have been used and repeated often enough even supposedly responsible members of society tend to believe that there is some kind of hidden menace. When media do not allow equal space to refute the allegations, and often ignore such statements altogether, there becomes reason for serious concern. Some of the attempted legislation which has been proposed during the last few years is as follows :

Government responsibility to actively prevent discrimination

International instruments which all members of the European Union have signed make it quite clear that religious freedom is a right guaranteed to all, not to be defined, controlled or otherwise manipulated government. Government even has the active obligation to protect these freedoms and **not stand by when discrimination occurs.**

The Final Helsinki Act which is at the core of the principles supported by the OSCE states that governments should not only

"recognize and respect the freedom of the individual to profess and practise, alone or in community with others, religion or belief acting in accordance with the dictates of his own conscience" but expects that governments "recognize and respect the right of persons belonging to such minorities to equality before the law, will afford them the full opportunity for the actual enjoyment of human rights and fundamental freedoms and will, in this manner, protect their legitimate interests in this sphere."

The Concluding document from the Vienna Conference of the OSCE makes this even clearer by stating that the member states will

"take effective measures to prevent and eliminate discrimination against individuals or communities on the grounds of religion or belief in the recognition, exercise or enjoyment of human rights and fundamental freedoms in all fields of civil, political, economic, social and cultural life and ensure the effective equality between believers and non-believers."

It also calls on them to

"foster a climate of mutual tolerance and respect between believers of different communities as well as between believers and non-believers."

There have been enough warnings from various human rights bodies that these should be taken note of (and indeed have by many European governments who have refused to countenance the measures outlined above).

For example the International Helsinki Federation stated in 1999 that :

All major international human rights conventions as well as other international conventions to which Austria, Belgium, France, and Germany are signatories include a clause that prohibits discrimination on the basis of religion.

The OSCE participating states, which comprise all European countries except the Federal Republic of Yugoslavia, have pledged not only to prohibit discrimination but to "take effective measures to prevent and eliminate discrimination against individuals or communities on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, political, economic, social and cultural life, and to ensure the effective equality between believers and non-believers." (Article 16 of the Vienna Concluding Document)

The OSCE participating states also have taken upon themselves the affirmative obligation of promoting tolerance. As the 1989 Vienna Concluding Document provides, all participating states shall "foster a climate of mutual tolerance and respect between believers of different communities as well as between believers and non-believers." (Article 16.2 of the Vienna Concluding Document) Therefore, Austria, Belgium, France and Germany and the other member states of the OSCE must respect and implement the provisions of these international instruments which fully guarantee the freedom of religion and belief of their citizens.

The acclaimed University of Essex Human Rights Centre 1997 study on the subject of freedom of religion finds, after conducting extremely detailed and exhaustive research on the topic, that new religions are a recurring target of discrimination in Europe:

"Freedom of religion therefore is not to be interpreted narrowly by states, for example, to mean traditional world religions only. New religions or religious minorities are entitled to equal protection. This principle is of particular importance in light of the evidence reflected in the Country entries, including those of the European section, revealing that new religious movements are a recurring target for discrimination or repression.

* * * * *

As mentioned earlier, the above mechanisms of discrimination apply, with variations on the same theme, to all minorities and so the principles which should be built into the Charter reflect the protection that should be given to all minorities - not just religious or philosophical ones.

To its credit, the European Commission has already taken steps in this direction with the proposal of anti-discrimination directives. Whilst these are limited to the field of employment it is clearly a move in the right direction done within limitations prescribed by the current treaties. To add an all-inclusive article, which stands alone, to a Charter of Fundamental Rights would obviously be in the spirit of the above international standards which provide a obvious basis for the addition of such an article.

[N.B. Whilst certain countries have been mentioned above it is not the intention here to attempt to isolate them. It is clear that the great majority of their citizens, politicians and government administrators care to establish a real human rights environment. The points are, never-the-less, made to illustrate real problems which exist within the European Union and can be substantiated.]

Article 14 of The Charter

It has been stated that the different articles which have been proposed in the Charter have been purposely stated as concisely as possible in order to provide a relatively short and understandable Charter. Whilst this argument has some validity "conciseness" cannot be used as a justification for reducing (and whilst this is obviously not the intention it may well be the effect) fundamental rights.

It is never the majorities which need protecting but the minorities and to give the Charter more meaning and actual effect in daily life the wording should spell out the implications, duties and responsibilities enshrined in a right rather than leave these open to later interpretation - or perhaps misinterpretation. After all, what is the point of this exercise if it does not advance human rights protection but only re-states it.

It is therefore our opinion that the full range of rights should be spelt out and integrated into the Charter in order for it to have a full effect. Our proposal for a wording for article 14 supports, follows and extends the proposal made by Amnesty International and draws upon the wording of article 16 of the Concluding Document from the Vienna Conference of the Organisation for Security and Cooperation in Europe (March 1989) and the United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (November 1981). The following is therefore proposed :

"Freedom of thought, conscience and religion includes the right to conscientious objection and the right to freedom of religion. It includes the right to change one's religion or belief, the freedom, either alone or in community with others and in public or private, to manifest one's religion or beliefs in worship, teaching, practice and observance, as well as the right not to hold any religious beliefs or to practice any religion.

Furthermore Governments must take effective measures to prevent and eliminate discrimination against individuals or communities on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, political, economic, social and cultural life, and to ensure the effective equality between believers and non-believers;

Governments must foster a climate of mutual tolerance and respect between believers of different communities as well as between believers and non-believers.

OoOOoo

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Appendix I

United Nations Human Rights Committee and
Special Rapporteur on Religious Intolerance (excerpts)

The United Nations, religious experts, and UN treaty-based bodies have consistently found that the expression "religion or belief," as well as the individual terms "religion" and "belief," must be construed broadly to include non-traditional religions and all forms of belief. This was the opinion articulated in two studies prepared by the first two Special Rapporteurs on freedom of religion of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, and expressly confirmed in the Working Paper, drafted by the third Special Rapporteur.

Likewise, the Human Rights Committee, in its General Comment No. 22 on Art. 18 of the International Covenant on Civil and Political Rights, notes that:

"Article 18 protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief. The terms belief and religion are to be broadly construed. Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions. The Committee therefore views with concern any tendency to discriminate against any religion or belief for any reason, including the fact that they are newly established, or represent religious minorities that may be the subject of hostility by a predominant religious community." (Para. 2)

The Committee goes on to find that:

"The fact that a religion is recognized as a State religion or that it is established as official or traditional or that its followers comprise the majority of the population, shall not result in the impairment of the enjoyment of any of the rights under the Covenant, including articles 18 [freedom of thought, conscience and religion] and 27 [protection of minorities], nor in any discrimination against adherents of other religions or non-believers. In particular, certain measures discriminating against the latter, such as measures restricting eligibility for government service to members of the predominant religion or giving economic privileges to them or imposing special restrictions on the practice of other faiths, are not in accordance with the prohibition of non-discrimination based on religion or belief and the guarantee of equal protection under article 26" (Para. 9)

Moreover, the 1996 Annual Report by the Special Rapporteur on Religious Intolerance to the United Nations Human Rights Commission provides the Rapporteur's opinion on the broad scope of the term religion and the need for equal treatment of all religions, including so called "sects." The Special Rapporteur notes that:

"Religions cannot be distinguished from sects on the basis of quantitative considerations saying that a sect, unlike a religion, has a small number of followers. This is in fact not always the case. It runs absolutely counter to the principle of respect and protection of minorities, which is upheld by domestic and international law and morality. Besides, following this line of argument, what are the major religions if not successful sects?"

*** **

"Again, one cannot say that sects should not benefit from the protection given to religion just because they have no chance to demonstrate their durability. History contains many examples of dissident movements, schisms, heresies and reforms that have suddenly given birth to religions or religious movements." As to governmental efforts to distinguish between religions and sects, the Rapporteur concludes that: "All in all, the distinction between a religion and a sect is too contrived to be acceptable. A sect that goes beyond simple belief and appeals to a divinity, or at the very least, to the supernatural the transcendent, the absolute, or the sacred, enters into the religious sphere and should enjoy the protection afforded to religions."

Appendix II

Concluding Document from the Vienna Conference of the Organisation for Security and Cooperation in Europe, March 1989 (excerpts)

"(16) In order to ensure the freedom of the individual to profess and practise religion or belief, the participating States will, inter alia,

(16.1) - take effective measures to prevent and eliminate discrimination against individuals or communities on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, political, economic, social and cultural life, and to ensure the effective equality between believers and non-believers;

(16.2) - foster a climate of mutual tolerance and respect between believers of different communities as well as between believers and non-believers;

(16.3) - grant upon their request to communities of believers, practising or prepared to practise their faith within the constitutional framework of their States, recognition of the status provided for them in their respective countries;

*(16.4) - respect the right of these religious communities to - establish and maintain freely accessible places of worship or assembly, - organize themselves according to their own hierarchical and institutional structure,
- select, appoint and replace their personnel in accordance with their respective requirements and standards as well as with any freely accepted arrangement between them and their State,
- solicit and receive voluntary financial and other contributions;*

(16.5) - engage in consultations with religious faiths, institutions and organizations in order to achieve a better understanding of the requirements of religious freedom;

(16.6) - respect the right of everyone to give and receive religious education in the language of his choice, whether individually or in association with others;

(16.7) - in this context respect, inter alia, the liberty of parents to ensure the religious and moral education of their children in conformity with their own convictions;

(16.8) - allow the training of religious personnel in appropriate institutions;

(16.9) - respect the right of individual believers and communities of believers to acquire, possess, and use sacred books, religious publications in the language of their choice and other articles and materials related to the practice of religion or belief,

(16.10) - allow religious faiths, institutions and organizations to produce, import and disseminate religious publications and materials;

(16.11) - favourably consider the interest of religious communities to participate in public dialogue, including through the mass media.

(17) The participating States recognize that the exercise of the above-mentioned rights relating to the freedom of religion or belief may be subject only to such limitations as are provided by law and consistent with their obligations under international law and with their international commitments. They will ensure in their laws and regulations and in their application the full and effective exercise of the freedom of thought, conscience, religion or belief.

(18) The participating States will exert sustained efforts to implement the provisions of the Final Act and of the Madrid Concluding Document pertaining to national minorities. They will take all the necessary legislative, administrative, judicial and other measures and apply the relevant international instruments by which they may be bound, to ensure the protection of human rights and fundamental freedoms of persons belonging to national minorities within their territory. They will refrain from any discrimination against such persons and will contribute to the realization of their legitimate interests and aspirations in the field of human rights and fundamental freedoms.

(19) They will protect and create conditions for the promotion of the ethnic, cultural, linguistic and religious identity of national minorities on their territory. They will respect the free exercise of rights by persons belonging to such minorities and ensure their full equality with others."

Appendix III

Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief

Proclaimed by General Assembly resolution 36/55 of 25 November 1981

The General Assembly,

Considering that one of the basic principles of the Charter of the United Nations is that of the dignity and equality inherent in all human beings, and that all Member States have pledged themselves to take joint and separate action in co-operation with the Organization to promote and encourage universal respect for and observance of human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion,

Considering that the Universal Declaration of Human Rights and the International Covenants on Human Rights proclaim the principles of nondiscrimination and equality before the law and the right to freedom of thought, conscience, religion and belief,

Considering that the disregard and infringement of human rights and fundamental freedoms, in particular of the right to freedom of thought, conscience, religion or whatever belief, have brought, directly or indirectly, wars and great suffering to mankind, especially where they serve as a means of foreign interference in the internal affairs of other States and amount to kindling hatred between peoples and nations,

Considering that religion or belief, for anyone who professes either, is one of the fundamental elements in his conception of life and that freedom of religion or belief should be fully respected and guaranteed,

Considering that it is essential to promote understanding, tolerance and respect in matters relating to freedom of religion and belief and to ensure that the use of religion or belief for ends inconsistent with the Charter of the United Nations, other relevant instruments of the United Nations and the purposes and principles of the present Declaration is inadmissible,

Convinced that freedom of religion and belief should also contribute to the attainment of the goals of world peace, social justice and friendship among peoples and to the elimination of ideologies or practices of colonialism and racial discrimination,

Noting with satisfaction the adoption of several, and the coming into force of some, conventions, under the aegis of the United Nations and of the specialized agencies, for the elimination of various forms of discrimination,

Concerned by manifestations of intolerance and by the existence of discrimination in matters of religion or belief still in evidence in some areas of the world,

Resolved to adopt all necessary measures for the speedy elimination of such intolerance in all its forms and manifestations and to prevent and combat discrimination on the ground of religion or belief,

Proclaims this Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief:

Article 1

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have a religion or whatever belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have a religion or belief of his choice.
3. Freedom to manifest one's religion or belief may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.

Article 2

1. No one shall be subject to discrimination by any State, institution, group of persons, or person on the grounds of religion or other belief.

2. For the purposes of the present Declaration, the expression "intolerance and discrimination based on religion or belief" means any distinction, exclusion, restriction or preference based on religion or belief and having as its purpose or as its effect nullification or impairment of the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis.

Article 3

Discrimination between human being on the grounds of religion or belief constitutes an affront to human dignity and a disavowal of the principles of the Charter of the United Nations, and shall be condemned as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and enunciated in detail in the International Covenants on Human Rights, and as an obstacle to friendly and peaceful relations between nations.

Article 4

1. All States shall take effective measures to prevent and eliminate discrimination on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, economic, political, social and cultural life.
2. All States shall make all efforts to enact or rescind legislation where necessary to prohibit any such discrimination, and to take all appropriate measures to combat intolerance on the grounds of religion or other beliefs in this matter.

Article 5

1. The parents or, as the case may be, the legal guardians of the child have the right to organize the life within the family in accordance with their religion or belief and bearing in mind the moral education in which they believe the child should be brought up.
2. Every child shall enjoy the right to have access to education in the matter of religion or belief in accordance with the wishes of his parents or, as the case may be, legal guardians, and shall not be compelled to receive teaching on religion or belief against the wishes of his parents or legal guardians, the best interests of the child being the guiding principle.
3. The child shall be protected from any form of discrimination on the ground of religion or belief. He shall be brought up in a spirit of understanding, tolerance, friendship among peoples, peace and universal brotherhood, respect for freedom of religion or belief of others, and in full consciousness that his energy and talents should be devoted to the service of his fellow men.
4. In the case of a child who is not under the care either of his parents or of legal guardians, due account shall be taken of their expressed wishes or of any other proof of their wishes in the matter of religion or belief, the best interests of the child being the guiding principle.
5. Practices of a religion or belief in which a child is brought up must not be injurious to his physical or mental health or to his full development, taking into account article 1, paragraph 3, of the present Declaration.

Article 6

In accordance with article I of the present Declaration, and subject to the provisions of article 1, paragraph 3, the right to freedom of thought, conscience, religion or belief shall include, inter alia, the following freedoms:

- (a) To worship or assemble in connection with a religion or belief, and to establish and maintain places for these purposes;
- (b) To establish and maintain appropriate charitable or humanitarian institutions;
- (c) To make, acquire and use to an adequate extent the necessary articles and materials related to the rites or customs of a religion or belief;

- (d) To write, issue and disseminate relevant publications in these areas;
- (e) To teach a religion or belief in places suitable for these purposes;
- (f) To solicit and receive voluntary financial and other contributions from individuals and institutions;
- (g) To train, appoint, elect or designate by succession appropriate leaders called for by the requirements and standards of any religion or belief;
- (h) To observe days of rest and to celebrate holidays and ceremonies in accordance with the precepts of one's religion or belief;
- (i) To establish and maintain communications with individuals and communities in matters of religion and belief at the national and international levels.

Article 7

The rights and freedoms set forth in the present Declaration shall be accorded in national legislation in such a manner that everyone shall be able to avail himself of such rights and freedoms in practice.

Article 8

Nothing in the present Declaration shall be construed as restricting or derogating from any right defined in the Universal Declaration of Human Rights and the International Covenants on Human Rights.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 13 June 2000**CHARTE 4366/00****CONTRIB 229****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a contribution and the intervention by Eurochambres given at the hearing on 27 April 2000.¹

¹ The contribution exist in French and the intervention in English only.

CHARTRE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE

**Audition du 27 Avril 2000
Parlement Européen**

Contribution d'Eurochambres

Eurochambres, l'Association des Chambres de Commerce et d'Industrie européennes qui représente 14 millions d'entreprises, apporte tout son soutien à la décision du Conseil de Cologne de doter l'Union européenne d'une Charte des droits fondamentaux. En effet, à l'aube d'un élargissement historique et à l'heure de la globalisation de l'économie, la notion d'identité européenne reste encore, pour la majorité des citoyens, un concept flou. La Charte des droits fondamentaux en énonçant les droits des citoyens leur permettra une plus forte prise de conscience de leur appartenance à l'entité européenne.

Offrir aux citoyens les moyens de pleinement jouir de leurs droits

Les Chambres de Commerce et d'Industrie considèrent que la Charte ne devrait pas se limiter à lister ou définir les droits et devoirs des citoyens européens. Sans pour autant conférer de nouvelles compétences aux instances communautaires, la Charte devrait mentionner leurs devoirs de favoriser l'établissement d'un climat économique, social et politique permettant aux citoyens d'accéder à leurs droits et de garantir leur effectivité.

Droits économiques et sociaux : le rôle sociétal de l'entreprise

Les droits économiques et sociaux des citoyens ne pourront trouver leur pleine expression sans l'existence de l'entreprise dont le rôle sociétal doit être mis en exergue.

En effet, celui-ci a fortement évolué. D'outil de production à l'origine, l'entreprise est devenue le moteur de la croissance économique, le premier pourvoyeur d'emplois et le principal créateur d'emplois. L'entreprise participe donc directement au bien être du citoyen.

Au niveau du progrès technologique, le rôle de l'entreprise a également changé. Autrefois l'entreprise était le champ d'application des découvertes. A présent l'entreprise est devenue le laboratoire où nombre d'innovations technologiques importantes ont été réalisées.

Le rôle de l'entreprise mérite d'être encore analysé sous l'angle de la formation. La formation traditionnelle a été fortement critiquée car trop théorique et inapte à répondre aux besoins du marché. La formation en alternance entreprise/ université après avoir fait ses preuves en Allemagne est en passe de se généraliser au niveau européen.

Ainsi, l'entreprise est à présent le creuset où les intérêts économiques, sociaux et technologiques se rejoignent. L'entreprise joue un rôle sociétal primordial qu'il convient de souligner et mettre en évidence, car encore sous-estimé.

Dans ce contexte, l'entreprise doit trouver sa place dans le dialogue que les instances communautaires ont entamé avec la société civile. Les Chambres de Commerce et d'Industrie sont en faveur de l'établissement d'un dialogue structuré et institutionnel afin de renforcer la consultation démocratique dans le processus de prise de décision.

Interface entre les entreprises dont elles représentent les intérêts et les autorités publiques, les Chambres de Commerce et d'Industrie sont les interlocuteurs naturels des instances communautaires. Ce dialogue, dans la perspective de la mise en œuvre d'une « European Governance », sera d'autant plus significatif.

Droits civils et politiques en phase avec l'évolution de la société

Les droits civiques et politiques doivent pouvoir refléter les bouleversements qui ont marqué la société depuis ces dernières décennies.

Les *concepts de subsidiarité et de proximité* ont été sans nul doute les principes politiques les innovateurs et les plus marquants.

Pour les Chambres de commerce et d'industrie, ces principes doivent être repris dans l'exercice du droit des citoyens à *une bonne administration* : à savoir une administration efficace et simplifiée. En vertu du principe de subsidiarité et de proximité, l'administration doit être décentralisée et gérée au niveau le plus proche des citoyens, tenant compte de leurs besoins spécifiques et l'environnement économique et local dans lequel ils vivent.

L'administration ne doit pas nécessairement être gérée par les autorités publiques. Certaines de ses fonctions pourraient être assumées par des institutions socio-professionnelles représentatives des intérêts généraux de l'économie telles que les Chambres de Commerce, par exemple, plus aptes, compte tenu de leurs missions et de leurs connaissances du terrain, à les assumer.

Au niveau *du droit à la protection juridique*, la globalisation des échanges internationaux, le développement du commerce électronique et la mobilité accrue des citoyens auront comme conséquence inévitable l'augmentation des litiges transnationaux.

Or, compte tenu de la lenteur, la complexité des procédures judiciaires et en particulier des problèmes liés à l'exécution des sentences, des formes alternatives de règlements de litiges doivent être promues tel que l'arbitrage, la médiation ou le règlement alternatif des litiges.

Les Chambres de Commerce, en tant qu'institutions non sectorielles et représentatives des intérêts généraux de l'économie, sont idéalement placées pour les promouvoir et pour y jouer un rôle central. Ainsi au niveau européen, les Chambres de commerce sont actuellement entrain d'élaborer un projet de règlement des litiges en ligne.

Quant *au droit à l'information*, avec le développement du multi média, nous assistons à une augmentation exponentielle de l'information. Le citoyen doit faire face à trois facteurs : (i) savoir que l'information existe (ii) la trouver (iii) la comprendre. Les Chambres de commerce, compte tenu de leur réseau et de leurs compétences, sont par essence même des organes démultiplicateurs de l'information.

Une Charte indissociable du débat sur la réforme des instances institutionnelles

La décision du Conseil de Cologne de doter l'Union d'une Charte des droits fondamentaux représente pour les citoyens et pour le processus d'intégration européenne une avancée considérable.

Cependant, les Chambres de Commerce considèrent que la Charte doit être plus qu'une simple déclaration politique à valeur morale, elle doit avoir une force juridique contraignante. Les droits fondamentaux des citoyens ne doivent pas être écartés de la réflexion sur l'avenir des institutions.

Pour une plus grande sensibilisation des citoyens de l'UE sur les travaux de la Convention

Les citoyens de l'Union européenne, bien que représentés au sein de la Convention par les membres du Parlement européen et par les membres des parlements nationaux, doivent être mieux informés des travaux menés dans leurs intérêts par la Convention.

Dans cet esprit, Eurochambres propose qu'un volet du plan financier adopté par la Commission européenne, pour encourager le débat public sur la Conférence intergouvernementale, soit consacré à la Charte des droits fondamentaux de l'UE, les deux actions étant complémentaires.

Eurochambres un réseau de 1300 Chambres au service de l'intégration européenne

Eurochambres rappelle que les 1300 Chambres européennes constituent un réseau profondément enraciné aux niveaux local et régional, qui s'étend sur l'ensemble du territoire européen. C'est ce réseau qu'elle met à la disposition de la Convention pour favoriser la sensibilisation des citoyens.

Conscientes des enjeux décisifs de l'intégration européenne, les Chambres de Commerce européennes, sous l'égide d'Eurochambres, ont signé en octobre 1999, la Charte des Chambres de Commerce et d'Industrie européennes. Cette Charte réaffirme solennellement l'engagement des 1300 Chambres et des 14 millions d'entreprises qu'elles représentent à promouvoir les intérêts généraux de l'économie que ce soit au niveau local, régional, national ou européen.

Le rôle des Chambres est également d'être précurseur et d'anticiper les évolutions économiques. Ainsi, elles offrent aux entreprises des services innovants qui leur permettront de s'adapter à la nouvelle conjoncture. L'exemple le plus illustratif est l'action que mènent les Chambres pour sensibiliser leurs membres aux enjeux de la nouvelle société et plus particulièrement du commerce électronique.

* * * * *

BUSINESS ARE CITIZENS
INSIDE
THE CHARTER OF FUNDAMENTAL RIGHTS OF THE EU

Intervention of Comm. Danilo Longhi
Vice President of Eurochambres
President of Unioncamere

Audition on The Charter of Fundamental Rights of the EU

Brussels, 27th April 2000

I represent here 1300 Chambers of Commerce members of Eurochambres and 14 million businesses registered in the Chambers.

The Chambers of Commerce, defined as promoters of local development are a network of institutions which interpret the new trend emerging in economy and society in Europe and they represent a junction between the State (including the EU level) and the market /businesses, also between public and private sector.

- **The Charter for a realignment of society, economy and EU**

The objective is presenting some consideration and proposals for the Charter of Fundamental Rights of the EU.

But why are Chambers of Commerce interested in the Charter of Fundamental Rights?

Since a long time Chambers of Commerce have felt the need of a deep reform of EU Treaties characterized by a realignment between civil society, business and institution. This realignment is necessary because businesses have assumed a new role in today's reality.

Changes have occurred in the international market and in the production organization have emphasized, in a definitive way, a **new role and a new function of business**, at least under two aspects:

- It expresses not only the needs of who owns the company but is a place of synthesis of different interests (economic, social, technological and professional) of the working world, of "techné", of capital, and of entrepreneurship.
- It's the principal subject of economic and social innovation and guarantees economic growth and social cohesion.

A realignment of institutions to this new “scenario” needs overcoming the sensation of gap between EU institutions and “citizen/business “ because businesses too have to be considered as an organizational network of citizens for the execution of production activities. Filling up this gap means that the answers expected from the European institutions have to be adopted to the new request of citizens and businesses. All that requires a different approach of the European institutions, a different way of administrative management, a different transfer of public powers, a real partnership of organization of relationships between different institutions in the prospect of a new governance.

2. European Chambers of Commerce proposals

The form of our proposals is linked to what has already been said in the introduction.

2.1 Not only entrepreneurs or workers but also businesses in the Charter of fundamental rights

In our opinion it would be important that not only the right of association, negotiation and collective action of employers and workers (which the Charter already mentions¹) but also the introduction of the right of the “new business” to be represented and to hold a dialogue with the institutions of the European Union because it plays today also an institutional role.

It is suitable remembering also how business has always been one of the prime movers of the European integration. To the old threlateral relationship between State/business, citizens/businesses, there has been the substitution with the threlateral relationship between business/national State/EU. Businesses have been, until now, one of the drives of the European integration thanks to the principle of non-discrimination quoted in the Charter². The Italian jurist Cassese defines businesses as “the real spies of market disorder” because they can assert the principle of not discrimination in front of European institutions or, better, the principle of free competition.

In our opinion the Charter is important because we are moving from an idea of rights of freedom created in function of mercantile rights and of the creation of an internal market, to something different where rights do not have their particular foundation on market anymore but they found it in something else. The summit of Tampere on European space of freedom, justice and security has represented a further step in this direction: we moved from an economic space to a constitutional one.

¹ Art. IV of Convent 18.

² Art. 19 of Convent 8; art. J of Convent 17.

2.2 Not only a fair administration but a real subsidiarity and proximity

The Charter of fundamental rights states the right to a fair administration³. With regard to this it is suitable to fully supplement this right with the principle of subsidiarity and proximity as fundamental regulation of the relationships between EU and the different bodies of the European Union.

The principle of subsidiarity, already granted in the treaties of Maastricht and Amsterdam (but not enforced in real terms), has to be considered not only in a vertical direction (on the basis of an ascending progression from the smallest territorial scale to the largest one), but also in a horizontal one, as a lever to improve the autonomous ability of action of economic and social subjects.

Knotting again threads between society and European Union means also a significant simplification of relationships in order to assure a better effectiveness to the decisional process and to the administrative one.

2.3 Valorise functional autonomies and networks

We should introduce the following principle: public functions practice do not have necessarily to be reserved to the EU or national-regional institutions, but can be assured also by institutions, corporations or organisms which represent social bodies. This involves the valorisation of what the Italian legal system recognizes as *functional autonomies*, among which there are the Chambers of Commerce as representations of different interests, but always arising from citizens.

It is the awareness of this autonomy and its general function that motivated European Chambers of Commerce to adopt themselves a Charter of the European Chambers of Commerce, signed last October in Cyprus. Therefore, we have recognized ourselves as a network of local institutions able to independently understand the needs of territory, citizens and enterprises.

To the European Union this point is quite important in order to face properly a polycentric society enlarged to candidate States. And not only for this reason, but also referring to the right of information stated by the Charter that, without “legs” (that is the networks), risks to be hopeless.

3. Final remarks

These proposals and thoughts have been explained briefly and concern only few of the important issues of the Chambers of Commerce, even if they evoke such big topics. If through the EU Charter of Fundamental Rights it will be possible not only to give a contribution to the integration process and consciousness of citizen rights but also to influence the EU institutions reform (obtaining more effectiveness, simplification and an enlargement of autonomies), then we might gain approval from a new and wide public opinion towards the EU institutions and a substantial reconciliation of citizens and enterprise-citizens.

³ Art. E of Convent 17.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 15 June 2000**CHARTE 4368/00****CONTRIB 231****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a contribution by Mr. Dr. Bernhard W. Wegener, Universität Bielefeld, Juristische Fakultät, on environmental protection.^{1 2}

¹ This text exists in German and English languages.

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Bielefeld, den 9. Juni 200

Environmental protection

Concerning environmental protection, the Praesidium of the Convent has proposed the following:

„Article 44. Environmental protection

Union policies shall ensure environmental protection, which involves preserving, protecting and improving the quality of the environment, protecting human health and prudent and rational utilisation of natural resources.“

We propose the following as the text of the right to environmental protection in the Charter of Fundamental Rights of the European Union:

<p>Article X. Environmental protection Everyone has the right to the protection of his natural environment. Content and limits of this right shall be prescribed by law.</p>
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Reasons:

The proposal of the Praesidium refuses to give the citizens of the European Union a right to the protection of their natural environment. Instead, it suggests only a vague and practically hardly effective declaration of political obligations.

The present proposal gives everyone a genuine and enforceable right to the protection of his natural environment. As a citizen's right it should find its place among the Articles 1 - 30 of the Praesidium's proposal. Only then, the central importance of environmental protection for the citizens of the European Union and for the Union as such will be sufficiently acknowledged and respected.

The limitation of the right, proposed in sentence 2, will ensure, that the definition of the acceptable amount of environmental degradation and of the level of protection remains the prerogative of the legislator. The proposed right to environmental protection will be not more - and not less - than a right to protection according to law.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 15 June 2000**CHARTE 4369/00****CONTRIB 232****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a contribution (amendments) by CAF ECS as well as the intervention text given at the hearing on 27 April 2000. ¹

¹ This text has been submitted in French and English languages. (The amendments in French only).

Contribution de CAFECES à l'élaboration de la Charte des droits fondamentaux de l'Union européenne

25.05.00

I - Amendements à la Charte

Ces amendements sont extraits de la Contribution de CAFECES « Des droits fondamentaux » (avril 2000)

Droit à l'éducation (Ajouter un alinéa 4 à l'article 16)

« Tout individu a droit à l'accès aux ressources de sens, historiques, littéraires, artistiques, philosophiques et religieuses, qui constituent le patrimoine symbolique de l'humanité, en vue de se constituer comme personne et comme sujet éthique.

Les Etats-membres ont le devoir de veiller à ce que les espaces publics de transmission et d'échange culturels organisés par eux ou auxquels ils participent, qu'il s'agisse du système d'enseignement, de la formation permanente, des médias ou des aides à la production culturelle, assurent la diffusion de ce patrimoine. »

Droit à la pleine activité

« Toute personne adulte dépourvue d'emploi doit se voir offrir la possibilité de participer à une activité d'intérêt général normalement rémunérée. »

Droit au temps choisi

« Dans le cadre contractuel des relations de travail, toute personne a le droit de faire valoir tout au long de sa vie, l'harmonie des temps consacrés à sa vie professionnelle, à sa formation, à l'exercice de ses responsabilités familiales et civiques et à son épanouissement personnel. »

Droit d'asile

« Toute personne craignant une persécution, quels que soient son sexe, son origine géographique, sa nationalité, sa religion, etc... a le droit de trouver asile dans l'Union. Ce droit implique l'accès des demandeurs d'asile à une procédure juste et efficace pour l'examen de leur demande et, par voie de conséquence, l'accès au territoire des Etats membres en tenant compte de leur choix du pays en raison des attaches familiales, culturelles, linguistiques ou autres. Des conditions de vie dignes doivent être assurées dès l'entrée sur le territoire. »

II - Ajout aux traités

« La Charte des droits fondamentaux de l'Union européenne est complétée par une nouvelle réunion de la Convention pour une période de trois ans et selon une procédure analogue ».

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**Charter of Basic Rights
Speech by Frederic Pascal
on behalf of CAF ECS
at the Convention
27 April 2000**

As a member of the advisory committee which was formed in October 1995 under the chairmanship of Mrs. Pintasilgo, the former Prime Minister of Portugal, and at the initiative of the European Commission, I am pleased to see that the essential recommendation of our report regarding the collective development of basic rights for the European Union has been put into action.

As spokesman for *Carrefour pour une Europe civique et sociale* (CAF ECS), which includes figures from French associations, I would like to present four points and a proposal for this Charter.

1. The Charter must reinforce European identity by ensuring the reality of the rights which it sets forth. It is not enough for Europe to refer to basic rights, it must make them a reality. This means that these rights must be observed by politicians, institutions and in concrete behaviour, not just through texts which present goals for the future. Through **concrete application of these rights**, Europe can distinguish itself from other countries which speak of rights while allowing humanly unacceptable situations to continue.

2. The democratic model of today's Europe puts the individual at the centre of the political system. But democracy requires a population interested in public affairs, responsible and aware of their rights and responsibilities, ready to think and to debate. This requires transmission of systems of moral, spiritual and cultural values compatible with the multiple forms of secular institutional expression. Such transmission, respecting freedom of conscience, is essential for the development of diverse humanism. This transmission must be included in the media, in education and in culture **to guarantee all people the right of access to the meaning and symbolic heritage of humanity**. The article regarding the right to education should be modified to take this into account.

3. The right to work must be complemented by: the right to continuing education throughout one's life in order to adapt one's skills and goals to economic possibilities and also **a right to time choices** in order to harmonise the time devoted to professional activities, training, to family and civic responsibilities and to personal development. **A socially-useful activity, with**

a normal wage, must be offered to all people without employment. The struggle against poverty and exclusion requires that **all people have real access to these basic rights**. This access is thus, in itself, a basic right which must be expressed and declared as such.

4. The right of association must be formally recognised. It must be distinguished from the right to form unions which reflects labour rights. The right of association must apply to all people living in the European Union. It must be written so that it can later be used to establish the principle of European associations which will give new momentum to civil society on the European level.

The debate concerning the articles already examined by the Convention has revealed difficulties and questions, particularly in scientific and technical areas which are constantly changing, as well as with the current definition of European citizenship linked to nationality. A charter of rights cannot accept that things are forbidden simply because of current fears. It must define basic rights to be protected in all situations.

This debate on the Charter will not be fully resolved at the Nice Council, further work is needed. With the creation of the Convention, we are fortunate to have a new forum for public debate involving organised citizens. We therefore think that it is essential for the Convention **to be extended for three years**. That is our proposal. This would allow for supplementing some points of the Charter, and especially developing the guiding principles of EU policy and reinforcing the expression of organised civil society which today is rarely, if ever, consulted by EU decision-making bodies.

18 April 2000

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 15 June 2000**CHARTE 4370/00****CONTRIB 233****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter the report of the European Group on Ethics in Science and New Technologies (GEE), as requested by President Prodi. ¹

¹ This text exists in English language only.

**CITIZENS RIGHTS AND NEW TECHNOLOGIES:
A EUROPEAN CHALLENGE**

**Report of the European Group on Ethics in Science and New Technologies
on the Charter on Fundamental Rights related to technological innovation
as requested by President Prodi on February 3, 2000**

Brussels, May 23, 2000

EGE web site : [http:// europa.eu.int/comm/secretariat_general/sgc/ethics/en/index.htm](http://europa.eu.int/comm/secretariat_general/sgc/ethics/en/index.htm)

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PART I:
WHY A GREATER EMPHASIS ON ETHICS IS SO ESSENTIAL TO EUROPE?

Contemporary European civilisation is at the same time based on science, technology and multiculturalism. This multiculturalism, however, is moderated by the Graeco-Latin and Judeo-Christian traditions. These are the historical sources of European values, modern science and technology, and the roots of human rights, which ordains the respect of all individuals, including those of a non-European cultural background. Pluralism, tolerance, and open dialogue about cultural and moral differences constitute therefore a distinctive sign of the European idea. Its implementation requires discussion among all parties in a civil society as a primary source of legitimisation of the rules, to be followed by all.

European diversity is a wealth. European acculturation must include enlightening all citizens about multiculturalism, i.e. how vital it is to inculcate a culture that fosters the importance of many cultures getting along well together.

European education must also stress the importance of inculcating the culture of science and technology. Only then can citizens adopt an informed and balanced attitude towards advances in science and technology. Such an attitude is opposite to technophile or technophobe blindness. Science and technology must increase - and not decrease - freedom and choice for everyone.

This increase in freedom and choice not only involves new discoveries and future inventions, but also safeguards the wealth inherited from the past. Science and technology must be at the service of safeguarding human heritage. Insofar as science and technology replace nature and tradition whilst maintaining the idea of democracy and humanity, the legitimacy of this substitution depends on the capacity of this civilisation to show more active generosity than nature and tradition show.

This means that science and technology should strive to alleviate the suffering, inequality, injustice, and discrimination that tradition and nature have brought out. Moreover, science and technology should not introduce new suffering, inequality, injustice, servitude, constraints or discrimination. In this respect science, technology and multiculturalism face many challenges in the field of biotechnology and ICT. These challenges require not only recognition and the promotion of individual autonomy, but also vigilance with regard to social solidarity between all the individuals. This is to say that supporting individual rights does not mean the setting up of an egoistic society. A market economy in Europe must therefore not exclude a safety net, that is protection for all based on strong collective values.

PART II:
THE GROUP'S APPROACH OF THE RELATIONSHIP
BETWEEN CITIZENS RIGHTS AND NEW TECHNOLOGIES.

A. Background Sources.

In suggesting provisions establishing the rights of the citizen or of the person when faced with science and new technologies, the Group did not refer only to its own opinions, but also to a variety of international instruments. The first is the European Convention on Human Rights as far as it is part of the body of Community law, reflected in particular by the case law of the Court of Justice in Luxembourg. However the Group has also drawn on other international instruments - binding or declaratory - and on European law concerning its areas of competence covering information technologies and life sciences.

These instruments include for example:

International legal instruments	European legal instruments
<u>biomedicine and genetics:</u>	
- UN Universal Declaration on the Human Genome and Human Rights (1998)	- the Directive on the protection of biotechnological inventions (1998), which excludes the patenting of inventions which should be contrary to public order or morality
- Council of Europe Convention on Human Rights and Biomedicine (1997)	- the Directive on in-vitro diagnostic medical devices (1998) which refers to the protection of the integrity of human persons
<u>information technologies:</u>	
- Council of Europe Convention on Data Protection (1981).	- the Directive on the data protection (1995), which refers to the principle of respect for privacy

The Opinions of the Group are the following:

EGE opinions

- N°1.- Use of Performance-Enhancers in Agriculture and Fisheries (12/03/93);
N°2.- Products derived from Human Blood or Human Plasma (12/03/93);
N°3.- Legal Protection of Biotechnological Inventions (30/09/93)
N°4.- Gene Therapy (13/12/94)
N°5.- Labelling of Food derived from Modern Biotechnology (05/05/95)
N°6.- Prenatal Diagnosis (20/02/96)
N°7.- Genetic Modifications of Animals (21/05/96)
N°8.- Patenting of Inventions involving elements of Human Origin (25/09/96)
N°9.- Cloning Techniques (28/05/97)
N° 10 - The 5th Research Framework Programme (11/12/99)
N° 11 - Human Tissue Banks (21/07/98)
N° 12 - Human Embryo research (23/11/98)
N° 13 - Healthcare and information Society (30/07/99)
N° 14 - Doping in Sport (11/11/99)

Furthermore, the Group refers also to the opinions and reports published by the national ethics committees in the Member States or other relevant national bodies. The work carried out by these committees on a wide range of issues constitutes a useful source of inspiration for deliberations on ethics, and contributes to define ethical norms to be taken into account in national regulations or national policies. The Group urges the European Commission to make this information widely available and usable.

B. Basic ethical principles emerging from EGE Opinions

In its advisory task, the Group has identified ethical issues arising from the use of new technologies, both biotechnology and information and communication technology (ICT). It has done so with a view to helping European decision-makers both on legal and policy matters.

The Group considers the following starting points, which reflect Europe's social dimension:

1. - the Charter should highlight the two basic ideas, which are hallmarks of European society: dignity and freedom.
2. - the Charter cannot but refer explicitly to those technologies that deeply affect people's lives. In particular, ICT is increasingly pervasive, transforming people's lifestyles, identities, and choices on many levels, and contributes to changing education, health, social services, culture, etc.
3. - the Charter must not be confined, as the European Convention on Human Rights is, to stressing individual rights, rather it should include social rights according to the fundamental European value of solidarity.
4. - it is no longer enough to simply state "vertical" rights intended to protect citizens in their relations with public authorities. Therefore the Group also proposes listing "horizontal" rights to protect people's rights in their everyday life, vis-à-vis public and private bodies.

In its proposals, the Group expresses key ideas regarding the different areas in question:

Molecular genetics and biotechnology

Here the Group wishes to emphasise three particularly serious types of risk:

- "merchandising" the human body, its components and products;
- new forms of discrimination stemming from the knowledge of the genetic characteristics of humans;
- the instrumentalisation of the human beings through genetic manipulation of human beings, which the Group has deemed ethically unacceptable but which could become a reality at a time when human power over life is increasing considerably.

Information and communication technologies

These technologies are increasingly ubiquitous, permeating individual and social activities as well as objects of everyday use, influencing many aspects of daily life and work. Given the many opportunities these technologies offer, including the combination of genetic and ICT (eg. biobanks), it is vital to watch over their problematic aspects and in particular:

- to improve the protection of privacy (data protection), respecting people's right to maintain boundaries, but also to preserve privacy, autonomy, confidentiality, and solitude;
- to arm individuals against the introduction of systems likely to reduce their freedom and autonomy (video surveillance, behaviour control, and personal profiling based on Internet transactions) or likely to increase people's dependency on selection and decision mechanisms which are not transparent or understandable.

The ethics of responsibility

The Group wants to emphasise the major importance of the ethics of responsibility, which is a corollary of the risks linked to science and new technologies. Technoscience makes us more powerful but at the same time more vulnerable. This is shown by the damage recently caused in the course of new experimentation such as gene therapy or by the disastrous consequences of viruses on the web. Modern technology demands more accountability and even liability. It requires affirming for instance:

- the consumer's right to food safety, a principle which is considered by the Group as "an ethical imperative" (see the Opinion concerning "the labelling of foods derived from modern biotechnology"- 5/5/1995).
- the individual's right to information security, in the same way deemed "an ethical imperative to ensure the respect for human rights and freedoms of the individual, in particular the confidentiality of data..."(see the Opinion about "ethical issues of healthcare in the information society" 30/7/99).

Thus in the Group's view the precautionary principle commonly related to environmental law is applicable to all kind of fields, especially new technologies. It entails the moral duty of risk assessment pertaining to research and new technologies as well as the individual's right to fair reparation in case of damage. If not mentioned specifically in the Charter itself, such an approach with all its legal consequences must still be kept in mind. It is the expression of prudence as a genuine ethical virtue.

C. Towards a Charter with binding legal effect

The Group declared it was in favour of a Charter with binding legal effect. If not included in the Treaty itself, the Charter could at least be annexed to the Treaty in a declaration having the same binding legal effect. It is timely to assert legally the fundamental rights which underpin European identity. It is essential to launch a strong political message regarding the founding values of the European construction towards European citizens particularly in the context of enlargement. Furthermore, the use of new technologies, which are not confined to national borders, should be framed by binding rules based on clear common ethical values.

For the rest, the Group has bowed to the constraints of a Charter that is intended to be a permanent reference instrument. The group has limited itself to short, operational provisions. Two additional factors encouraged the Group in this approach. First, the rapidly progressing nature of the life sciences and information technology make it impossible to lay down very detailed provisions which fairly soon could become obsolete; second, the Group took account of the need to preserve the multicultural nature of European society which precludes issuing strict prohibitions.

PART III: SPECIFIC PROPOSALS AND COMMENTS

The Group has considered the Draft Charter (CHARTE 4149/00 CONVENT 13), examined the articles relevant within its mandate, and proposes the following alternatives and comments.

Article 1

Draft Charter: "*Dignity of the human person*"

The dignity of the human person shall be respected and protected in all circumstances.

EGE proposal: "Dignity and freedom of the human person"

Everyone's dignity and freedom must be respected.

Comments:

The respect of the dignity of the human person is at the root of the ethics of science and new technologies as well as of human rights. It is clear that by asserting "the inherently equal dignity of all members of the human family", the Preamble to the Universal Declaration of Human Rights is aimed at prohibiting all acts which do not conform to the ideas of humanity. Dignity, although a strong juridical and ethical concept in Europe, is a delicate idea when transposed into legal language. Indeed it states that humans have inalienable value, neither specifying who the person or the human being is, nor what the actions and situations which affect this intangible value are. "Any human being is all humanity". Jean-Paul Sartre summarised the scope of the principle of dignity, which is different from all other principles of law and rights.

Other rights and liberties are “neither general nor absolute”, as is commonly stated by European Constitutional Courts.

The right to dignity, on the other hand, is impossible to restrict in any way for the reasons above mentioned. There is nevertheless a philosophical debate about the real meaning of such a principle.

- According to some people, all rights and freedoms stem from dignity, as an inherent value of the human person. Thus ideally there should be no conflict between dignity and freedom.

- But it cannot be denied that there are conflicts between this idea in the current debate. The bioethical discussion in particular illustrates this kind of conflict in a wide range of issues such as abortion and euthanasia.

The Group believes that clearly associating the ideas of dignity and freedom is the best way to ensure that the principle of dignity does not lead to an authoritarian society. In associating dignity and freedom, the Group underlines the necessity to debate what appears contrary to dignity according to society and to the person concerned.

This does not mean of course that the Group does not recognise the unique value of dignity as a principle of law. The Group referred many times to it in its diverse opinions. (see its Opinion on the Fifth Research Program (11/12/97) which states that the dignity of the human being has to be respected by researchers; see also its Opinion on healthcare information (30/7/99) which notes that amongst the ethical principles involved “human dignity serves as a basis for requirement of privacy, confidentiality and medical secrecy”; and its Opinion on doping in sport (11/11/99) which suggests that doping can be contrary to the dignity of the athlete).

The balanced approach of the Group associating dignity and freedom in the same article of the Charter is thus aimed at supporting a European society open to the debate.

Article 2

Draft Charter: “*Right to life*”

1. *Everyone has the right to life.*
2. *No one shall be condemned to execution.*

Comments:

The Group fully agrees with this belief already mentioned in Article 2 of the ECHR.

Nevertheless, it has some remarks to make on its use in the context of bioethics.

1. The principle of the right to life is not used in international texts on bioethics such as the Council of Europe’s Convention on Human Rights and Biomedicine and the UN Declaration on the Human Genome and Human Rights. This is not by chance. It is because the recognition of the right to life in the context of bioethics raises a number of delicate questions, for instance “to whom does this right apply?” “is this right applicable to the unborn child, as seems to be the case under article 40 of the Irish Constitution?” Is this right likely to be imposed by law if the person concerned is willing to shorten his/her life for personal reasons? These questions directly refer to the difficult issues of the status of the embryo and of euthanasia.

2. As stipulated in the Group’s Opinion on human embryo research (23/11/98), “The respect for different philosophical, moral or legal approaches and for diverse national cultures is essential to the building of Europe”. In this same Opinion, the Group avoided to use the expression “the right to life” which appeared as rather ambiguous. That is why the opinion in question refers to “the respect for human life, from the embryonic stage”.

3. It should thus be pointed out that in establishing the right to life, in general, without associating it more explicitly with the prohibition of death penalty (that is to say in the same paragraph of the article concerned), the risk is that the Charter could lead to jurisprudence which might be the basis of European harmonisation on these controversial issues, which may be undesirable at the present time.

Article 3

Draft Charter: “Right to the respect of integrity”

- 1. Everyone has the right to the respect of his physical and mental integrity.**
- 2. In the fields of medicine and biology, the following principles in particular must be respected:**
 - prohibition of eugenic practices**
 - respect of the informed consent of the patient**
 - prohibiting the making of the human body and its products a source of financial gain**
 - prohibition of the cloning of human beings**

EGE proposal: “Right to the respect of integrity”

- 3.2 (a) - respect of the informed consent of the person.**

Comments:

Unlike the right to life, the principle of informed consent does not raise specific difficulties in the context of bioethics. On the contrary, this principle is at the very origin of modern biomedical ethics. It was introduced in law firstly to condemn the horrific experiments carried out during the last world war on human guinea pigs. It has been since reaffirmed in a number of later international forums, such as the World Medical Association (which published in 1964 the well-known Declaration of Helsinki). It is noticeable that the only provision, which deals with bioethics in the UN Covenant on Civil and Political Rights of December 16, 1966 (article 7) states that “ no one shall be subjected without his/her free consent to medical or scientific experimentation”.

That means that before consent is sought, information must be given specifying the alternatives, risks, and benefits for those involved in a way they understand. When such information has been given, free and informed consent must be obtained. Depending on the nature of the intervention (or research), different consent procedures may be used. When the persons informed have reduced autonomy, special rules apply. Indeed vulnerable persons deserve special consideration and protection by the law.

Several Opinions of the Group refer to the principle of informed consent in very diverse circumstances. For instance, in its Opinion on prenatal diagnosis (2/2/96), the Group states that “tests should be done only at the request of the woman or couple after they have been fully informed, namely by genetic counselling”. The Opinion on patents (25/9/96) stresses the fact that “the ethical principle of informed and free consent of the person from whom retrievals [of cells as sources of DNA] are performed, must be respected. This principle includes making the information about this person complete and specific, in particular the potential patent application on the invention, which could be made from the use of this element...”.

In the same way, the Opinion on human tissue banking (21/7/98) states that “in order to be informed, the donor’s consent must have been given on the basis of information provided in as clear and precise lay terms as possible by the doctor supervising the procurement”.

- The Group suggests using “person” instead of “patient”. Indeed there is an increasing number of persons who are not ill and who participate in scientific experimentation, for example healthy volunteers taking part in clinical trials.
- The Group recalls that consent is not sufficient, as other rights also have to be considered. For instance, the right to respect privacy and confidentiality, and to fair access to healthcare. These specific rights are guaranteed in the European Convention on Human Rights and Biomedicine as in the UN Declaration on the Human Genome and Human Rights.

3.2(b) - the individual's body and its parts cannot be traded.

Comments:

Financial gain from the use of the human body and its products is one of the most delicate questions in bioethics. The prohibition against financial gain from the human body and its products is now mentioned in the two main international instruments on bioethics:

- article 21 of the European Convention on Biomedicine and Human Rights states that "the human body and its parts shall not, as such, give rise to financial gain";
- article 4 of the UN Declaration on the Human Genome and Human Rights provides that "the human genome in its natural state shall not give rise to financial gain".

Nevertheless these provisions do not clarify the questions raised by the widespread industrial use of human body products to make pharmaceuticals or genetic tests kits.

- Does it preclude patenting human genes? Certainly not, at least according to the recent Parliament and Council Directive 98/44 on the legal Protection of Biotechnology inventions. This directive states that "an element isolated from the human body or otherwise produced by means of a technical process, including the sequence or partial sequence of a gene, may constitute a patentable invention, even if the structure of that element is identical to that of a natural element"(article 6.2.).
- Does it refer to the traditional distinction between patentable invention and simple discovery that are not patentable? Perhaps. In so doing it is in conformity with the Opinion of the Group on the ethical aspects of patenting inventions involving elements of human origin (25/9/96), which states that "this distinction...involves, in the field of biotechnology, a particular dimension. Which means that "the simple knowledge of the complete or partial structure of a gene cannot be patented". But it is doubtful that the provision in question will only be interpreted as referring to the distinction between invention and discovery which in the field of life sciences is by the way more and more flawed.

- Does it mean that the Charter reaffirms the principle of non-commercialisation of the human body? In its Opinion on products derived from human blood and human plasma (12/3/93), the Group strongly approved this principle in asserting that “ the human body in general and the human blood in particular are not marketable”. In its Opinion on human tissue banks (21/7/98), the Group noted that “all Member States of the European Union adhere to the principle that donations of human tissues must be free, following the example of blood, and this rules out any payment to the donor”. But in the same Opinion, the Group stresses the fact that “ the issue of the commercialisation of human tissues” especially those “ which have been processed and prepared for therapeutic purposes” is “ controversial”. One must be aware that, although rooted in European cultural traditions, this principle is already under challenge in USA. In the US an increasing number of patients whose cells provided genes that have been patented are asking for financial rewards. But no Court agreements have to the knowledge of the Group yet appeared.

In expressing these remarks, the Group especially wants to underline that the subject is very complex. Moreover the Group considers that the draft Charter’s wording on the prohibition of making financial gain from human body is much too vague. It is not only ambiguous with regard to patent law but it could also be interpreted as involving activities like professional sport.

Therefore the Group proposes a provision more specifically emphasising the protection of individuals from organ or tissue trafficking which would affect their dignity and rights. This prohibition of trade does not preclude the patenting of inventions derived from human elements nor the compensation for tissue bank services as far as long as legal conditions and strict limits for this in international conventions, or national laws if any, are satisfied.

3.2(c) Any discrimination based on ..., genetic characteristics, health conditions..., shall be prohibited.

Comments:

Referring to the Article 19 “Non-discrimination” of the Draft Charter (CHARTE 4137/00 CONVENT 8) the Group proposes to add the two following items: “genetic characteristics” and “health conditions”.

Although the principle of non-discrimination is already established in the Treaty itself, the Group still considers it essential to refer explicitly to it in the Charter again to reinforce the prohibition against discrimination. Non-discrimination also includes non-stigmatisation. Discrimination does not mean selection or distinction as such, but unfair discrimination unduly depriving anybody from their rights. Article 6 of the UN Declaration on the human genome and human rights states that “no one shall be subjected to discrimination based on genetic characteristics that is intended to infringe or has the effect of infringing human rights, fundamental freedoms and human dignity”. This article must be reaffirmed at the EU level.

The social dimension of Europe implies taking into account new forms of discrimination due to genetic testing and screening. Genetic tests to discover predisposition or pre-symptomatic diseases may be useful in promoting health measures. On the other hand, such tests might be tempting for employers or insurance companies who wish to exclude individuals at risk of developing a disease. Such tests are becoming available on the European market. For instance a test which can detect a woman’s predisposition to a certain type of hereditary breast cancer is now being imported from the US. Many other genetic tests will be available soon perhaps even through the internet. It would be remiss if the Charter did not deal with this topical issue.

That is why the Group proposes supplementing the article in the draft Charter on discrimination by adding discrimination based on genetic characteristics or health conditions. The prohibition to discriminate on the basis of health and disability is now found in legislation from several European countries.

The Group is presently studying the issue of the use of genetic testing in the workplace. Its Opinion is to be published in November 2000.

3.2(d) (Option 1) Human reproductive cloning is prohibited
(Option 2) No mention of cloning.

Comments:

The Group is divided on the question of cloning. In its Opinion on cloning techniques (28/5/97), the Group firmly condemned reproductive cloning, that is “cloning aimed at the birth of identical individuals”. Distinguishing reproductive and non reproductive cloning (related for instance to human cells research), the Group stated that although “ many motives have been proposed” to justify human reproductive cloning, “considerations of instrumentalization and eugenics render any such acts ethically unacceptable...”. The Group recommended “ to clearly express condemnation of human reproductive cloning in the relevant texts and regulations...”. Consequently the Decision adopting the Fifth Framework Research Programme (1998-2002) excludes funding of research aimed at reproductive cloning.

The Group has not substantially changed its Opinion, although however, some members believe that it is not appropriate to forbid cloning in the Charter itself, and one member is opposed to use of the term “reproductive cloning”, preferring a prohibition against “cloning of human beings”. Those who consider inappropriate to mention cloning in the Charter argue that:

- Other practices such as the creation of chimeras or hybrids are not mentioned although they would also violate human dignity. Not mentioning them would in turn result in reproductive cloning of individuals being considered more acceptable.

- To mention a specific technique in a rapidly moving field also risks making the provision in question obsolete. One must note for instance that national legislation which prohibits specific techniques - such as the Human Fertilisation and Embryology Act, 1990, in the UK - has been in his respect overshadowed by

scientific progress. For instance, article 3 (d) of this Act states that it is not authorised to “replace a nucleus of a cell of an embryo with a nucleus taken from a cell of any person, embryo or subsequent development of an embryo”. But yet today there are similar techniques for the replacement of a nucleus that are thus not mentioned in this legislation. Similarly the Spanish law on artificial reproduction of 1988 forbids oocyte freezing. Recent developments show that this technique may be viable and safe. Thus the Spanish National Commission on Artificial Reproduction has asked for the change of the law. These examples show why it seems wise to certain members of the Group not to mention any technique, cloning or others.

- The reference to cloning is a condemnation of a certain use for technique rather than the affirmation of the principles, which lead to this condemnation. Yet, most people would consider that dignity of the human person implicitly excludes cloning of individuals.

- Furthermore, the philosophical and scientific debate on cloning is still open and it should be stressed that prohibition of a specific technique may prevent important discussions about human genetics.

All the members of the Group agree that the dignity of the person born by cloning, would not be in question, but they consider that the act of producing such a human being might be contrary to dignity. They also agree that the debate must continue, and that informing the public about applications of genetic techniques to human beings, and the strong ethical concerns which are raised must continue as well.

Specific additional article

EGE proposal: “Prohibition of eugenics”

Eugenic practices aimed at organising the selection and the instrumentalisation of persons are prohibited.

Comments:

As said before, the Group has referred to eugenics in its Opinion on cloning techniques (28/5/97). However, it admits that eugenics has a wide and controversial meaning, which has changed across the ages. From its origin in nineteenth century the term “eugenics” was intertwined with human genetics. The original idea was that society must foster the breeding of those who possessed favourable traits and to discourage the breeding of those who did not. At the time this seemed only common sense to many scientists and politicians in Europe. But after World War II and the fall of the Third Reich, eugenics as an acceptable social theory, appeared to be dead.

One must acknowledge that now the eugenics question is today being raised again. The Group roundly condemns in particular the following eugenic practices:

- Practices which involve for instance forced sterilisation, forced pregnancies or abortions, ethnically enforced marriages, etc, all acts which are expressly regarded as international crimes by the Statute signed in Rome on July, 18, 2000 to create the permanent International Criminal Court.
- Eugenics, as the Group said about reproductive cloning, may also involve genetic manipulations on human beings such as the modification of the germ line in view of enhancement, without any therapeutic aim.

Eugenics differs from other individual practices carried out to avoid the birth of a disabled child (preimplantation or prenatal diagnosis on severe and incurable diseases for instance). But would the possibility of being able to choose the sex of the future child be condemned as eugenics? The question is at present controversial even if many national legislation excludes such practices.

Considering the difficulty in defining eugenics, some members consider inappropriate to have it in a fundamental text such as the Charter, which deals with basic principles.

Nevertheless the majority of the Group believes that the Charter would be missing the point if it did not refer to one of the main challenges of human genetics. The Group only proposes more precise wording, which is inspired by the French law on bioethics of 1994.

Article 15

Draft Charter: "*Freedom of expression*"

- 1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.***
- 2. Art, science and research shall be free of constraint.***

EGE proposal:

15.1 : to be added at the end : “as well as freedom to participate in public life.”

15.2 : to be deleted: “ of constraint.”

Comments:

About the right to participate

The Group agrees fully with the provision related to freedom of expression. Indeed in the context of the information society, everyone understands this freedom not only as a right to information but also as a right to participate. Given the far-reaching implications of new technologies, people must be given a more active role in the shaping of these technologies. Procedures have to be developed to encourage and enable participation, such as ‘consensus conferences’, which help citizens understand technological choices and to voice their interests, or ‘participatory systems design’ which gives them the chance to intervene in the development of a system or application

of direct relevance to their work or personal life. Furthermore, people must be provided with guidance on the ethical and practical implications of new technologies, and the limitations and the appropriateness of their use. The Group strongly stressed this idea of participation, which would be a landmark in European democracy, namely in its Opinion on healthcare information (30/7/99). This Opinion states that “the right to participate in the medical decision-making process is a key part of the notion of the citizen as a stakeholder”. Which means that “the citizen must not only have access to his/her electronic health record”, but that “procedures (e.g. consensus conferences...) have to be developed to encourage and support the participation of citizens’ collectives and users in the design of systems”. In this context, the Group calls attention on the notion of ‘electronic democracy’. This does not mean only to facilitate voting but also to foster public participation.

The additional phrase proposed by the Group refers to certain provisions of national Constitutions such as for example the Finnish Constitution (article 13) and the Portuguese Constitution (article 48.1).

About freedom of research

Scientific and artistic creativity have often been regarded as an expression of the human spirit. For instance, in the German Constitution of 1949 it is provided that “art and science, research and teaching shall be free”. Article 12 of the UN Declaration on the human genome and human rights proclaims in the same way that “freedom of research, which is necessary for the progress of knowledge, is part of freedom of thought”.

Nevertheless freedom of research is no more absolute than any other liberty. In the field of life sciences in particular, which involves the respect for human life and human dignity, researchers have to follow rigorous ethical principles. This balanced approach is reflected in many Opinions of the Group. For instance, the Opinion of the Group on “the Fifth Framework Research Programme” (11/12/97) calls for reconciling “the freedom to carry out research activities with the imperatives linked to the protection of the fundamental rights of European citizens...”. In the same way, the Opinion on embryo research (23/11/98) deems “that it is crucial to recall that the

progress in knowledge of life sciences, which in itself has an ethical value, cannot, in any case, prevail over fundamental human rights and the respect which is due to all the members of the human family”.

The question of setting limits to research, balancing respect of dignity with the duty to carry out research for improving knowledge, contributing to man’s understanding of the world and life, alleviating suffering and bettering the quality of life, is certainly a delicate one. But it has to be faced and it is the role of ethics to help in so doing.

In insisting on the importance of the freedom of research, the Group wishes:

- not only to point out the necessity for all the powers that be – economic, social, political – to respect the moral and intellectual independence of researchers;
- but also to encourage European authorities as well as Member States of the EU to take positive measures in support of the free pursuit of research, especially fundamental research which is not immediately financially profitable. The idea is that to foster the intellectual and material conditions favourable to the free conduct of research is a key element of democracy.

15.3 Each individual has the right to benefit from sciences and technology.

Comments:

This article refers to the principle of justice, which implies fair access of all individuals to the benefits of scientific advances. This presupposes assessment and evaluation of such scientific progress. It has also to do with the principle of equal access to health, a principle put forward in several Opinions of the Group. For instance, in its Opinion on gene therapy (13/12/94) the Group stressed that “appropriate measures should be taken to assure equal access to gene therapy in the European Union” insofar as it is safe. To assert the right to benefit from science and new technologies is also a way to shed light on the importance of scientific and technological knowledge which must be part of the basic education of every European citizen.

Such a provision is not new. It is included in the UN Covenant on Economic, Social and Cultural Rights (December 1966) and in the UN Declaration on the Human Genome and Human Rights. Even if this provision does not allow claiming subjective rights before a court, it is important that the Charter gives a positive stand on technological developments, which are crucial to the welfare of European citizens.

Article 16

Draft Charter: “Right to education”

- 1. No person shall be denied the right to education, including in particular the right to receive free compulsory education.***
- 2. The founding of educational establishments shall be free of constraint.***
- 3. The right of parents to have their children educated and taught in accordance with their religious and philosophical convictions shall be guaranteed.***

EGE proposal:

- 16.1 to be added at the end: “which shall facilitate mutual understanding between cultures”.**

Comments:

Cultural pluralism is a valuable characteristic of European society. The Group believes it important that a strong support is given to education at all levels to help the citizens from different cultures and traditions to live, communicate, and work together. Education has a fundamental role in promoting the active participation of all individuals and at all ages in awareness-raising and decision-making, thus allowing equity and social cohesion to develop. The implementation requires new working methods and modes of action, which recognise the rights, and civic responsibilities of citizenship.

This implies not only promoting knowledge of different cultures but also developing mutual understanding, which is the prerequisite for respect and tolerance.

The proposal of the Group is thus here to insist on the respect of pluralism, which the Group has mentioned, for example, in its Opinion on embryo research (23/11/98). It should be noted that many national Constitutional courts as well as the European Courts recognise pluralism as an essential condition of democracy.

The Group considered also the article 15 on data protection of the working document CHARTE 4137/00 CONVENT 8.

Article 15

Draft Charter: "*Data Protection*"

Every natural person shall have a right to protection for his personal data.

EGE proposal:

15.1. Everyone has the right to protection for their personal data.

15.2. In the field of data protection, the following principles in particular must be respected:

- respect for confidentiality of personal individual data;**
- right to determine which of one's own data are processed, by whom and for what purposes;**
- right to have access to one's own data and to correct or delete them.**

Comments:

Europe has become an information society like all developed regions of the world. Faxes, computers, the internet, mobile phones ...are common tools for everybody: public institutions, private companies, individuals. Technology has given rise to the so-called 'new economy'.

The considerable amount of personal data, which are collected, stored and spread all over the world is even more of a reason now than before to rethink the respect for privacy. Indeed through Internet, our lives are more and more in the open. That is why respect for privacy in this new context must not only reside in the respect for confidentiality. It must also involve the right to refuse to give access to one's own data or the right to refuse the collection of these data. In this sense, data protection underlines the necessity to recognise the citizen as a stakeholder. As it is said for example in the Opinion on healthcare information (30/7/99), information and communication technologies must offer to the individual the chance to enhance their choices and self-determination. The provisions above proposed by the Group are inspired by the idea of self-determination used for the first time by the German Constitutional Court in a judgement made in 1983.

Along these lines, these provisions refer to three fundamental principles:

- the principle of confidentiality reflecting the idea that personal data are part of the identity of the individual;
- the principle of autonomy linked to the principle of consent;
- the right to information which must be an 'active' right in the context of data protection. It includes the right to know what categories of information are available and the right to decide whether or not to be provided with this information.

15.3. No person shall be subject to surveillance technologies, which aim at or result in the violation of their rights or liberties.

Comments:

The Charter must take into account recent technological developments such as video surveillance in public, be it for co-ordinating traffic, for 'profiling' people's habits, or for identifying potential suspects, which may raise concerns related to the violation of rights or liberties of citizens.

The provision suggested by the Group does not define an individual right but much more a principle to be respected in a democratic society. Nevertheless it may be invoked before a court and thus reinforces individual rights.

CONCLUSION

The EGE's approach to the ethics of science and new technologies is meant to be positive with regard to scientific and technical progress, in the sense that this progress is meant to stimulate personal development without damaging social solidarity. Thus it also follows the spirit of the primary sense of the word 'bioethics' as defined in 1970 "to ensure that the biomedical and biotechnological sciences serve human development, taking into account the complexity of the international society and of nature, as well as their interactions".

The Group believes that scientific progress and technological development should match the needs and aspirations of citizens in a way, which is respectful of EU values involving a new concept of citizenship.

Citizenship traditionally has been based on political rights in public life, namely the right to vote, and to be elected. The new idea of European citizenship has a much broader sense, as it now includes not a more direct and active participation of the citizens into debate and public life.

Apart from participation, there is another prerequisite for ensuring effective protection of citizens' rights in the context of new technologies: that is education. The Group strongly insists on the eminent role of European authorities in promoting structures for education not only in direction of the youngest generations as future citizens, but to every body throughout lifetime.

Indeed citizens need to be informed and enlightened to participate fully in democracy. Information society gives entirely new possibilities to underline the social dimension of the European citizens' fundamental rights by enabling everyone to be constantly informed and thus to contribute actively to the solidarity and community spirit without which the building of Europe would be meaningless. Technical possibilities to foster participation and education must be used to promote an interactive society and a society where mutual understanding between the different national cultures and traditions is ensured.

In view of the enlargement of the European Union to countries with different civil and legal traditions, it is all the more crucial to deal with the increasing multiculturalism in a way, which strengthens cohesion among all EU states.

We must construct a Europe where everyone plays a part, where everyone is a stakeholder, and no one is excluded.

The European Group on Ethics in Science and New Technologies:

The Members:

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Ina WAGNER	Göran HERMEREN	Gilbert HOTTOIS
Dietmar MIETH	Octavi QUINTANA TRIAS	Stefano RODOTA
Egbert SCHROTEN	Peter WHITTAKER	

The Chairperson

Noëlle LENOIR

Summary of the European Group on Ethics proposals concerning the draft Charter on Fundamental Rights

(working document CHARTE 4149/00 CONVENT 13)

Article 1 Draft Charter: *"Dignity of the human person"*
The dignity of the human person shall be respected and protected in all circumstances.

EGE proposal: "Dignity and freedom of the human person"

Everyone's dignity and freedom must be respected.

Article 3 Draft Charter: *"Right to the respect of integrity"*
1. Everyone has the right to the respect of his physical and mental integrity.
2. In the fields of medicine and biology, the following principles in particular must be respected:

- prohibition of eugenic practices*
- respect of the informed consent of the patient*
- prohibiting the making of the human body and its products a source of financial gain*
- prohibition of the cloning of human beings*

EGE proposal:

3.2 (a) - respect of the informed consent of the person.

3.2 (b) - the individual's body and its parts cannot be traded.

3.2 (c) Any discrimination based on ..., genetic characteristics, health conditions..., shall be prohibited.

3.2(d)(Option 1) Human reproductive cloning is prohibited

(Option 2) No mention of cloning.

Specific additional article

EGE proposal: “Prohibition of eugenics”

Eugenic practices aimed at organising the selection and the instrumentalisation of persons are prohibited.

Article 15 Draft Charter: *"Freedom of expression"*

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.

2. Art, science and research shall be free of constraint.

EGE proposal:

15.1: to be added at the end: “as well as freedom to participate in public life.”

15.2: to be deleted: “ of constraint.”

15.3 Each individual has the right to benefit from sciences and technology.

Article 16 Draft Charter: *"Right to education"*

1. No person shall be denied the right to education, including in particular the right to receive free compulsory education.

2. The founding of educational establishments shall be free of constraint.

3. The right of parents to have their children educated and taught in accordance with their religious and philosophical convictions shall be guaranteed.

EGE proposal:

16.1 to be added at the end: “which shall facilitate mutual understanding between cultures”.

(working document CHARTE 4137/00 CONVENT 8)

Article 15 Draft Charter: "*Data Protection*"

Every natural person shall have a right to protection for his personal data.

EGE proposal:

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15.2 In the field of data protection, the following principles in particular must be respected:

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- right to determine which of one's own data are processed, by whom and for what purposes;
- right to have access to one's own data and to correct or delete them.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 21 June 2000**CHARTE 4374/00****CONTRIB 234****COVER NOTE**

Subject : Draft Charter of fundamental rights of the European Union
– Audition of the candidate countries on 19 June 2000

Please find hereafter the list of the representatives of the candidate countries and the statement by H.E. Mr. A. PIEBALGS, Ambassador of **Latvia**.

Participants at the hearing of 19 June 2000

République de Chypre/Republik Zypern:

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Malte/Malta

M. (Dr.) Michel FRENDU, membre du Parlement maltais
Mme Elena GRECH, Premier secrétaire à l'Ambassade de Malte

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Mme Éva TÖRÖK, Mission de la Hongrie auprès de CE (salle d'écoute)
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M. Jerzy KRANZ, Undersecretary of State, Ministry of Foreign Affairs
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Mme Marta CYGAN, Cousellor, Polish Mission to the EU

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Mme Brandusa PREDESCU, Directeur au Ministère des Affaires Etrangères
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M. Viorel ARDELEANU, Ministre conseiller, Mission de la Roumanie auprès de l'UE
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M. Juraj MIGAS, Ambassadeur
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M. Andris PIEBALGS, Ambassador of Latvia to EU

Mme Inese BIRZNIECE, Member of the European Affairs Committee, Parliament of Latvia

Mme Katrina KOSA, Deputy Head, EU Policy Division, Ministry of Foreign Affairs

M. Aris VIGANTS, Second Secretary, Mission of Latvia to EU

M. Eriks FLAUMANIS, Attaché, Mission of Latvia to EU

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M. Dainoras ZIUKAS, II Secretary, Lithuanian Mission to the EC

République de Bulgarie/Republik Bulgarien:

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M. Mario MILOUCHEV, Counsellor in the Bulgarian Mission to the EC

M. Peter STEFANOV }

M. Vesselin VALKANOV } Counsellors in the Bulgarian Mission (salle d'écoute)

M. Ognyan CHAMPEOV }

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M. Michael STROUHAL, Premier Secrétaire de la Mission tchèque auprès des CE

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M. Andraz ZIDAR, Counsellor, Ministry of Foreign Affairs

M. Bostjan JERMAN, Second Secretary, Mission of Slovenia to the EU

République de Turquie/Türkische Republik

M. Nihat AKYOL, Ambassadeur, Délégué permanent auprès de l'UE

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M. Ismail Hakki MUSA, Premier secrétaire à la délégation turque auprès de l'UE.

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STATEMENT**BY H.E. MR. ANDRIS PIEBALGS,****AMBASSADOR OF THE REPUBLIC OF LATVIA TO THE EUROPEAN UNION,****ON THE EU CHARTER OF FUNDAMENTAL RIGHTS****BRUSSELS, 19 JUNE 2000****HEARING OF AND EXCHANGE OF VIEWS WITH THE 13 APPLICANT STATES**

Mr. Chairman,
Ladies and Gentlemen,

First of all, I would like to thank the Convention for giving Latvia the opportunity to share our views about the EU Charter of Fundamental Rights.

We see the adoption of the Charter as a complimentary process to that of the EU enlargement. Both processes serve to establish a stable and prosperous Europe, unified on the grounds of common values and common general legal principles of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law.

The Tampere Council defined the composition of the body elaborating the Charter, confirming that also non-governmental organisations, social groups and experts would be invited to give their views on the Charter. This decision, as well as the broad representation of the European Parliament and the national parliaments of the EU Member States in the Convention represents a real increase in the transparency of the Charter's development. Such increased openness is an important step in bringing the EU closer to its citizens.

Latvia welcomes the initiative to elaborate the EU Charter of Fundamental Rights. We consider that the adoption of the Charter could achieve important objectives such as:

- to increase the visibility of the fundamental rights existing in contemporary Europe;
- to consolidate the minimum standards of human rights as enshrined in the European Convention on Human Rights and in the constitutional traditions of the EU Member States.

The Conclusions of the Cologne Council stated that the Charter should contain the fundamental rights and freedoms guaranteed by the European Convention on Human Rights and derived from the constitutional traditions common to the Member States. Latvia welcomes this approach. As a future EU Member State, Latvia also welcomes the inclusion into the Charter of those rights, which are available only to the Union's citizens.

Latvia's Constitution and existing legislation provide guarantees for the protection of fundamental rights. Latvia is a member of the Council of Europe since 1995, and a State Party to the European Convention on Human Rights since 1997. In our opinion the European Court of Human Rights in Strasbourg has established the most effective type of international institution for the real protection of human rights.

We consider that the Charter should complement the legal system established by the European Convention on Human Rights, and not compete with it. Rather than search for new procedures, we support the further development of an efficient system on the basis of the existing elements that have already proven their worth. Experience shows that a proliferation of legal texts with competing enforcement mechanisms tends to impair the effectiveness of all existing procedures. Therefore, if the Charter's scope will transcend the borders of a declaratory document, a very clear legal definition of the Charter's application mechanisms for its provisions will be necessary.

All candidate states are also State Parties to the Council of Europe and therefore also to the European Convention on Human Rights. All candidate states are also actively aligning their national laws with the EU acquis. Therefore, as future EU member state, we are most interested in actively participating in the preparation and decision-making processes pertaining to the Charter in the future.

We believe that the original purpose of the EU Charter of Fundamental Rights, as stated by the Cologne Council, should be kept in the foreground: “to establish a Charter of fundamental rights in order to make their overriding importance and relevance more visible to the Union’s citizens.” This is a very crucial and valuable task with important impacts not only on the current EU citizens of the 15 member states, but just as important for the future EU citizens of Latvia and the other candidate states.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 21 June 2000**CHARTE 4375/00****CONTRIB 235****COVER NOTE**

Subject : Draft Charter of fundamental rights of the European Union
 – Audition of the candidate countries on 19 June 2000

Please find hereafter the list of the representatives of the candidate countries and the statement by Mr. Mitja DROBNIC, State Secretary at the Ministry of Foreign Affairs of the Republic of **Slovenia**.

Participants at the hearing of 19 June 2000

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Mme Eszter ORGOVÁN, Ministère des Affaires Etrangères

Mme Zsuzsanna MÁTRAI, Ministère des Affaires Etrangères (salle d'écoute)

Mme Éva TÖRÖK, Mission de la Hongrie auprès de CE (salle d'écoute)

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INTRODUCTORY PRESENTATION

BY STATE SECRETARY MITJA DROBNIČ ON THE OCCASION OF THE HEARING ON THE CHARTER ON FUNDMENTAL RIGHTS, BRUSSELS, 19 JUNE 2000

Mr President, esteemed members of the Convention.

Allow me, at the outset, to express my deep appreciation for the significance of the work you are engaged in. Taking part in the drafting process of the main document on human rights within the European Union is certainly a responsible task. Since the main objective of this document – the Charter of Fundamental Rights – is to introduce into the European Union legislation a comprehensive document on human rights, the process bears relevance which could be compared to other noble events in history, such as the drawing up of the French *Declaration des Droits des Citoyens*, the *Universal Declaration on Human Rights* or the *European Convention on Human Rights*. Being aware of the significance of your work, it is my sincere privilege to present to you the position of the Government of the Republic of Slovenia with regard to the drafting process on the Charter on Fundamental Rights.

Slovenia fully supports the decision of the European Council to draw up the Charter of Fundamental Rights. We see the Charter as a commitment of the European Union to explicitly proclaim the respect for human rights. In this way human rights in the European Union will be more significant and visible, but what is even more important – fundamental rights will be guaranteed to everyone within the jurisdiction of the European Union. Undoubtedly this process will lead to the strengthening of the protection of human rights in Europe.

Nevertheless, we are concerned that the introduction of the Charter on Fundamental Rights could also lead to the convergence with the existing systems of the protection of human rights on the European continent, in particular regarding the system in the framework of the Council of Europe. In order to avoid the inconsistencies of such an arrangement we are in favour of the following proposals. We are of the opinion that the Charter on Fundamental Rights should be a non-binding

legal document (declaration). We also think that the content of the Charter should be based on the standards of the protection of human rights which were already developed under the auspices of the Council of Europe, in particular the European Convention on Human Rights and the European Social Charter. We would also suggest that the European Union again reconsiders a possibility of its accession to the European Convention on Human Rights by making relevant amendments to the Community treaties.

It is our view that this would be the most appropriate way to avoid the risk of the duplication of human rights standards on the European continent, one for the citizens of the Member States of the European Union and the other for the citizens of the Member States of the Council of Europe.

At the same time the drafting process on the Charter of Fundamental Rights serves as a unique opportunity to include into the Charter certain rights which are relevant currently and which will gain in their significance in the future. I would particularly like to mention that we support the inclusion of the rights concerning the *field of biomedicine and biotechnology*, the *right to privacy* and the *right to safe environment*.

We also advocate the inclusion of rights pertaining to the *protection of national minorities*, and rights *protecting vulnerable groups*, in particular *children* and *disabled persons*. We fully support the *prohibition of the death penalty* and prohibition of extradition and expulsion of a person to a state where he or she would be in danger of being subjected to *death penalty*, *torture* or other *inhuman treatment*. We also support the so-called *horizontal protection of rights*, which pertains to all individuals who are residents in the Member States of the European Union.

Slovenia is also in favour of including the special chapter on social and economic rights into the Charter. This gives a more comprehensive meaning to the Charter and provides for the better protection of human rights, which are in essence interdependent and indivisible. With regard to social and economic rights we expect that the provisions of the Charter will enable the candidate countries for the accession to the EU to *maintain* the level of protection already achieved.

We are willing to attend any possible future meetings regarding the Charter on Fundamental Rights, which could provide an opportunity to discuss the contents of the Charter in more detail.

We would like to wish the distinguished members of the Convention fruitful work in the subsequent drafting process, leading to the adoption of the Charter in autumn 2000. I would like again to underline the significance of this process which will undoubtedly find a prominent place in the history of Europe.

Allow me to conclude my presentation by expressing my willingness to remain at your disposal for any possible questions you might have regarding the position of Slovenia concerning the Charter on Fundamental Rights.

Thank you for your attention.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 21 June 2000**CHARTE 4376/00****CONTRIB 236****COVER NOTE**

Subject : **Draft Charter of fundamental rights of the European Union**
Audition of the candidate countries on 19 June 2000

Please find hereafter the list of the representatives of the candidate countries and the statement by Mrs. Antoinette PRIMATAROVA, Ambassador, Head of the **Bulgarian** Mission to the European Communities.

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STATEMENT**OF MRS. ANTOINETTE PRIMATAROVA, AMBASSADOR, HEAD OF THE
BULGARIAN MISSION TO THE EUROPEAN COMMUNITITES, BEFORE
THE CONVENTION FOR THE ELABORATION OF THE EUROPEAN UNION
CHARTER OF FUNDAMENTAL RIGHTS****(Brussels, 19 June 2000 .)**

Mr. President,

Ladies and gentlemen,

It is an honour and privilege for me to address such a highly esteemed forum as the Convention, where important personalities and distinguished specialists in the area of Human Rights have gathered together. Bulgaria highly appreciates being invited to express its opinion on the draft Charter of Fundamental Rights of the European Union.

Bulgaria welcomes the idea of EU Charter of Fundamental Rights and supports both the legal and the political reasons for its creation. Today, after the entry into force of the Maastricht and Amsterdam Treaties, the Charter is intended to provide an answer to the expectations of all people, living on the territory of the Union, with regard to their relations with the EU institutions. It should lead to a substantial improvement of the system for the protection of Human Rights and the legal certainty within the European Union. The idea of this Charter comes at a very advanced stage of the development of the Union, which is becoming more and more a political entity with new widening competencies. We are convinced that now the EU citizens need a text to which they can refer at the level of United Europe, as they do with their national constitutions at national level. It is natural, for example, that the development of the area of freedom, security and justice goes together with the improvement of the protection of Human Rights and Fundamental Freedoms of the citizens of the Union, which should become more visible and concrete. We see it as normal to respond to the

concern shared by different representatives of the European civil society about the necessity to link the overall process of European integration to clear rules for the protection of Human Rights. The European citizenship rights should also find their place in the Charter.

I would like to especially welcome the innovative method for the drawing up of the Charter. Compared to the traditional diplomatic methods of intergovernmental conferences, this is a step forward towards democratising the process of elaboration of texts in the area of human rights. Of particular interest to us are the opinions of the national and European parliaments' representatives, those of the Court of Justice and the Council of Europe. I would like to underline the importance of the full transparency of the process, which includes the hearings of different institutions, non-governmental organisations and candidate countries, as well as the possibilities of direct observation of the debates during the formal Convention meetings and the publication of all the working documents on the Internet. The interest, demonstrated by the civil society in Europe towards the work of the Convention proves the importance and the relevance of its work.

Before sharing my views on some of the questions linked to the elaboration of the future Charter, I would like to stress that Bulgaria, which is a Council of Europe member since 1992 and started at the beginning of this year accession negotiations with the European Union, fulfils the Copenhagen political criteria, including in the area of the protection of Human Rights and Fundamental Freedoms. My country is party to the main instruments in the sphere of Human Rights, including the social field – in particular the revised European Social Charter and the seven “basic” conventions of the International Labor Organisation. The Bulgarian Constitution is based on the same main principles as those of the EU Member States. The democratic institutions in the country have been established and are functioning successfully, the principle of the division of powers and independence of the judiciary is applied. On this basis the necessary guarantees for the protection of civil and political, as well as social and economic rights of the citizens are created in Bulgaria to the same degree as in the Member States, which is one of the preconditions for the country to join successfully and in reasonable time the European Union. Having this in mind, we consider that the respect of the rights as defined in the working documents of the Convention at this stage is generally achieved at national level in Bulgaria.

In our opinion, the future Charter should have an innovative character and be inspired both by the existing international texts and conventions in the human rights area and by the Community law and the case law of the Court of Justice. It has to cover not only the rights already protected by the international and European instruments, but also the new generation of rights, whose birth we witness, and which are in varying degrees enshrined in the constitutions and the legislation of the Member States and candidate countries, including Bulgaria. Here I would mention the rights, pertaining to data protection and new technologies, good governance, the media, health protection, bioethics, the environment and the contemporary aspects of equality. At the same time our position is that the rights covered by the Charter, irrespective of whether they are civil and political or social and economic, should not create new standards in the *acquis* of the Union, thus going beyond the present standards and posing new requirements in the context of accession negotiations.

The Charter should not extend the Union's legislative powers. It is extremely important, in the area of Human Rights too, to respect the subsidiarity principle, which could be applied both to the definition of some rights and to the implementation of a part of the social and economic rights.

An important aspect not only of the Convention work, but also of the ongoing Intergovernmental Conference, is the relationship and the consistency of the European Union Charter of Fundamental Rights with other international instruments in the area of Human Rights and with the European Convention for the Protection of Human Rights in particular. In this respect it would be useful to keep the clause stating that nothing in the Charter will restrict the protection offered by the European Convention on Human Rights, the common constitutional traditions and by other international instruments. Apart from that, we are of the opinion that the system for the protection of human rights provided under the European Convention to all citizens of the Council of Europe's Member States, including those of the European Union, should not be weakened. The Charter's provisions should be as close as possible to the wording of the European Convention provisions, the latter being the minimum standard, in relation to which the Charter cannot take a step backwards. At the same time we consider it possible, on some provisions, to have a more concise, clear and simple wording in order to convey the expected messages to the European citizens. It is also evident that the Charter will include categories of rights, which are not included in the ECHR – social and economic rights, rights related to the European citizenship, even some civil and political rights. The horizontal clause concerning the limitations foreseen by the European Convention of Human Rights is of the utmost importance. Finally, we are convinced, that at an

appropriate moment and in the light of the institutional reforms progress, the Member States should again have an in-depth discussion and take a stance on the possible accession of the European Communities to the European Convention for the Protection of Human Rights.

At this stage of the work of the Convention it is too early to take a stance on the question whether the Charter should have a legal or political character. The discussion on its possible incorporation in the Treaty is part of a larger discussion on the future of Europe and could continue in the medium, even in the long term. Keeping this in mind, we think that the direction taken now, namely to elaborate texts with legal character, is the right one, even if the incorporation in the Treaty is not imminent. As a realistic objective at this stage we could accept the mentioning of the Charter in the text of article 6 (2) of the Treaty of European Union. Whatever the fate of the Charter – political or legally binding document – we follow the discussions in the Convention with the understanding that it will be a substantial part of the *acquis* for the candidate countries.

The scope of the Charter is a topic, which could hardly be separated from that of its character. However it seems logical to take on the principles of the case law of the Court of Justice and to accept that the Charter may also cover the Member States authorities, only when they are acting in the field of Community law. This limitation is extremely important having in mind the possible overlapping of the Charter provisions with other legal texts from the national legislation or international law.

Concluding, I would like to wish the Convention successful work and to express the hope that it will be able to elaborate a consensual text by the Biarritz European Council. This would allow the Member States to have a productive discussion on the character and scope of the future Charter before the European Council in Nice.

Thank you for the attention.

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Brussels, 21 June 2000**CHARTE 4377/00****CONTRIB 237****COVER NOTE**

Subject : Draft Charter of fundamental rights of the European Union
 Audition of the candidate countries on 19 June 2000

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Statement by M. Eugen DIJMARESCU,
Secretary of State, Head of the Department for European Affairs
within the Ministry of Foreign Affairs of Romania

Mr. Chairman

Honourable Members of the Convention

Dear Colleagues,

Ladies and gentlemen,

I am particularly pleased to take part in this meeting today where a highly topical issue for the citizens of the community Romania wants to join - the European Union – is being considered.

I would like to start by congratulating the Convention for the substantial work accomplished so far, despite its complex and heavy agenda, providing us the opportunity to have an exchange of views on a comprehensive draft of the Charter.

It is in the interest of us all to have a strong Union where people are confident that the community they belong to is placing high on its agenda the building of a genuine area of freedom, security and justice, an area where citizens feel safe and protected.

It is along these lines that Romania as a country on the road towards accession to the EU welcomes with satisfaction the initiative of the Union to elaborate a Charter for Fundamental Rights.

I would also like to take this opportunity to express our appreciation for the initiative to invite candidate countries in the reflection exercise from the very conception phase since the Charter has the vocation of becoming part of the *acquis* of the European Union.

Ladies and gentlemen,

It is more than 50 years since the UN adopted the Universal Declaration on Human Rights. More than 150 year earlier, the Americans and French declaration on human rights had been adopted, and earlier still, other similar declarations were issued. Actually, human rights and respect for them have been a matter for philosophy and religion ever since man began to reflect on his destiny.

While major progress has been made in the area of human rights, particularly in recent years, achieving and securing general respect for human rights continue to remain one of the **most important political tasks of the 21st century.**

The elaboration of the Charter of Fundamental Rights will strengthen the latest development in this area, i.e. the fact that human rights cannot and should not be considered any longer a **national issue but our joint responsibility.**

Human rights are the expression of a global and common ethic. They are and must be the same for everyone, everywhere. ***Each and every country must accept that they are measured by the same yardstick.***

To this end, we expect the proclamation of the Charter of Fundamental Rights to represent a step forward towards a coherent system of human rights protection in Europe while taking into account all that has been accomplished in the field over the last half a century.

Ladies and Gentlemen,

Integration in the EU is not only an economic and political undertaking but a complex process of interaction among individuals, mentalities and cultures. This implies, among others, an increase in opportunities for our citizens to travel, stay and have access to jobs within the European Union.

As a general comment, we consider that the draft Charter of Fundamental Rights of the European Union meets the need to rationalize, in a single document, the relevant provisions of a, until now, scatered *acquis* on human rights. The added value brought about, in our view, by the Charter is that it attempts to incorporate, alongside the basic provisions of the European Convention for Human

Rights and the UN Pacts, also the relevant ones from the European Social Charter, placing these distinct categories of rights virtually on the same level of protection.

As common place as this may sound, it should be reminded that **fundamental rights** are, by definition, **rights vested in each individual**, meaning that criteria relating to his or her origin or geographical, economical or cultural status are not supposed to play any role in the protection of his or her fundamental rights.

However, after a preliminary reading of the text, we consider that the Charter should spell out more clearly the addressees of the rights described therein, be it institutions or categories of individuals. In this respect, we would be happy to see the spirit of the conclusions of the Tampere European Council referring to *a fair treatment of third countries nationals* be more extensively incorporated into the Charter. A clear reference to this important issue is made, in the current wording of the Charter, only in Art. 40 (Right of migrant workers to equal treatment).

The exercise we are doing here together strives to take stock of the views of all concerned, that is of candidate states included, as to certain sensitive, still unresolved items like the issue of the future character of this instrument as well as the future relation between the two Courts, the Human Rights Court in Strasbourg and the European Court of Justice in Luxembourg. As a candidate country to the EU but also a member of the Council of Europe, like all the countries around this table, we are, of course, concerned about the possibility of having divergent case law, and, by way of consequence, divergent solutions given by the two Courts with regard to own our citizens.

Although it is too early yet to speak about the Charter in terms of obligations incumbent upon candidate countries, it is nevertheless a fact that, given its constitutional provisions and common legislation in the field of human rights, Romania could, quite rapidly, adjust to the requirements of the Charter, provided it develops into something more than an inventory of rights. At any rate, without providing appropriately for effective remedies in case of infringements of the rights enumerated, the Charter is likely to contain a political message alone, even if a particularly strong one.

We are, obviously, not the only ones to note that certain inconveniences may appear due to the fact that relevant provisions from the European Convention on Human Rights were not taken up *ad literam* into the body of the draft EU Charter.

Given the fact that the terminology of the European Convention has generated and is still generating a rich and complex jurisprudence, it is likely that any new wording to be coined by the Charter may cause certain legal problems of interpretation.

In this respect, reference could be briefly made to the dispositions of art. 20 and art.21 of the draft Charter, on the right to property, the right to asylum and the expulsion.

By way of example, the second thesis of art. 20 of the Charter, regulating the “use of property”, states that the use of property "should contribute to the general interest", while art. 1 of the first Additional Protocol to the European Convention allows for **the states only the right to adopt the laws they consider necessary to regulate the use of property, according to the general interest.** We consider that the different wording on this particular item may give rise to inconsistencies from the point of view of the principles established by the European Court of Human Rights in this matter.

The same goes for art.21 of the Charter regarding the right of asylum and expulsion. Romania ratified Protocol No. 7 to the European Convention which stipulates a number of guarantees that offer far more protection than those offered by the Geneva Convention. In this respect we would welcome the inclusion of a reference to this Protocol in the wording of art. 21. Related to this issue, it deserves mentioning that the European Convention is one step ahead with regard to the freedom of movement as this right is granted to all citizens under the jurisdiction of the parties to the Convention whereas art. 30 of the draft Charter grants this right only to the citizens of the European Union.

As to the final character of the Charter, we believe that the work in progress does not provide, at this stage, sufficient ground to support the expectation that the European Council in Nice will produce, by all means, a legally binding document. The solemn proclamation of a “political document”, as initially decided by the Koln European Council, might prove to be the feasible working hypothesis for Nice, leaving open the door to move subsequently further ahead.

For ourselves, we are confident that the final text will not fail to incorporate a number of basic principles such as: *full respect for human rights and dignity; equality and the rejection of any discrimination; solidarity amongst individuals, generations and peoples; right to privacy and genuine right to freedom of movement; access to and control of the new opportunities made*

available by the scientific and technological progress; peaceful coexistence and the acceptance of diversity as founding principles and values of the European Union.

At the same time we join the views expressed by other candidate countries in encouraging the current process of drafting the Charter to act as a supportive and complementary element in the institutional reform process within the Union. We also share the views according to which the elaboration of the Charter and its practical consequences should not, in any way, delay the enlargement of the Union by affecting the already agreed calendars for accession negotiations.

By way of conclusion, I would like to inform you that it is our intention, after a more thorough examination of the contributions put forward so far, to draft and present to the Presidencies of the EU Council and of the Convention a non-paper containing Romania's views on the future Charter of Fundamental Rights.

Thank you for your attention.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 22 June 2000**CHARTE 4378/00****CONTRIB 238****COVER NOTE**

Subject : Draft Charte of fundamental rights of the European Union

Please find hereafter a letter from the "Deutschen Mennonitischen Friedenskomitee"(DMFK)/
Mennonite Peace Committee on Conscientious Objection to Military Service.^{1 2}

¹ The attached 361 signatures have been transmitted to President Roman Herzog.

² This text has been sent in French, German and English.

6/2000

Conscientious Objection to Military Service

must be a European Basic Right

A European Convention, chaired by the former German President Dr. Roman Herzog, is preparing a Charter of Human Rights for the European Union. Conscientious objection to military service is not mentioned in the charter. We commit ourselves to making conscientious objection a basic right and ask the convention to do so.

„Noone may be forced against his or her conscience to do military service. Furthermore conscientious objectors have the right to asylum.“

Name	Address	Signature
1)

Send list of signatures to

Convention Secretariat, Council Legal Service, 175 rue de la Loi, B-1048 Brüssel

*An initiative of the **European Mennonite Peace Committee**, M.B.van der Weerf, Assendorperdijk 174, NL-8012 EK Zwolle, Email: emfk1@noord.bart.nl*

ENTWURF DER CHARTA DER GRUNDRECHTE DER EUROPÄISCHEN UNION**fundamental.rights@consilium.eu.int**

Brüssel, den 22. Juni 2000**CHARTE 4379/00****CONTRIB 239****ÜBERMITTLUNGSVERMERK**

Betr.: Entwurf der Charta der Grundrechte der Europäischen Union

Finden Sie bitte nachstehend eine Stellungnahme des DGB (Deutscher Gewerkschaftsbund), die er am 5. Juni beschlossen hat. ¹

¹ Dieser Text wurde nur in deutscher Sprache übermittelt.

Berlin, 5. Juni 2000

Stellungnahme des DGB:

Europa braucht eine Charta der Grundrechte

Auf dem Kölner EU-Gipfel im Juni 1999 wurde beschlossen, eine „Charta der Grundrechte der Europäischen Union“ zu erarbeiten. Im Oktober des selben Jahres setzte der EU-Rat auf seinem Treffen im finnischen Tampere ein Gremium („Konvent“) aus Regierungsvertretern, Mitgliedern der nationalen Parlamente und des Europaparlamentes ein, das bis zum Oktober diesen Jahres den Entwurf einer Grundrechtecharta (GRC) erarbeitet. Dieser soll vom Europäischen Rat in Nizza am 7. und 8. Dezember verabschiedet werden.

Über die Inhalte und die Verbindlichkeit dieser Charta wird derzeit eine breit angelegte politische Debatte in allen Mitgliedsstaaten der Europäischen Union geführt, an der sich die deutschen Gewerkschaften beteiligen.

1. Die Zeit ist reif für eine Grundrechtecharta

In den letzten Jahren konnten Fortschritte bei der Anerkennung der Grundrechte in der EU erzielt werden. So heißt es im EU-Vertrag:

„Die Union beruht auf den Grundsätzen der Freiheit, der Demokratie, der Achtung der Menschenrechte und Grundfreiheiten sowie der Rechtsstaatlichkeit; diese Grundsätze sind allen Mitgliedsstaaten gemeinsam“

Der DGB unterstützt alle Bestrebungen, nun eine **umfassende Grundrechtecharta** (GRC) auf Ebene der Europäischen Union und Gemeinschaft zu verabschieden.

Er legt dabei großen Wert auf die **Aufnahme sozialer Grundrechte** und unterstützt entsprechende Forderungen des Europäischen Parlamentes und des Wirtschafts- und Sozialausschusses. Soziale Grundrechte müssen einen gleichgewichtigen Stellenwert in der GRC erhalten als Ausdruck der sozialen Werte, denen sich die Union und die Gemeinschaft verpflichtet fühlen. Sie sind für den DGB ein unverzichtbarer Bestandteil der GRC und bilden ein Gegenstück zur primär wirtschaftlichen Ausrichtung der Union und vor allem der Gemeinschaft. Sie würde die soziale Dimension der EU stärken und damit den Weg in eine wirkliche Sozialunion bereiten.

Der DGB fordert seit langem einen verbindlichen Katalog einklagbarer Grundrechte für die EU. Bereits 1989 hat er konkrete Vorschläge für soziale Grundrechte unterbreitet.

Damals wie heute gilt, dass eine europäische Grundrechtecharta für die **politische und soziale Legitimation der EU** von entscheidender Bedeutung ist. Sie würde nach der Vollendung des Binnenmarktes und der Einführung der einheitlichen Währung die Identifikation der Bürger mit dem europäischen Einigungsprozess erhöhen und diesem mehr Glaubwürdigkeit verleihen. Sie würde die in der EU geltenden gemeinsamen Wertvorstellungen hervorheben. Eine Grundrechtecharta hätte über die Binnengrenzen hinaus Ausstrahlungskraft, was nicht zuletzt für den Prozess der EU-Erweiterung außerordentlich wichtig ist.

2. Die sozialen Grundrechte müssen Bestandteil der Charta sein

Der DGB ist der Auffassung, dass die GRC über die in den europäischen Verträgen enthaltenen Bestimmungen hinaus einen möglichst vollständigen Katalog von Grundrechten enthalten sollte, der insbesondere auch soziale Grundrechte umfasst.

Grundsätzlich ist der DGB der Ansicht, dass die Grundrechtecharta bei den bürgerlichen und politischen Grundrechten das Schutzniveau der **Europäischen Menschenrechtskonvention** (EMRK) und deren Zusatzprotokolle sicherstellen und die Rechtsprechung des Europäischen Gerichtshofes für Menschenrechte einbeziehen muss.

Die GRC muss darüberhinaus auch sogenannte moderne Grundrechte einbeziehen, die neuere gesellschaftliche Entwicklungen aufgreifen (z. B. Umweltschutz und das Recht auf informationelle Selbstbestimmung). Hier können die Verfassungen von Mitgliedsstaaten herangezogen werden.

Bei der Umsetzung der in der Charta fixierten sozialen Grundrechte muss das Mindestschutzniveau der **revidierten Europäischen Sozialcharta** (ESC) sowie das völkerrechtliche Schutzniveau, insbesondere der einschlägigen IAO-Normen, eingehalten werden.

Aus Sicht des DGB muss die GRC die **Unteilbarkeit der Menschenrechte** betonen. Neben den klassischen individuellen und politischen Freiheitsrechten sowie dem Schutz der Menschenwürde sollten die folgenden, in den europäischen Verfassungstraditionen verwurzelten **sozialen Grundrechte** in die GRC Eingang finden:

- Recht auf Koalitionsfreiheit und Kollektivmaßnahmen einschließlich des Streikrechts
- Unterrichtung, Anhörung und Mitwirkung der Arbeitnehmer und ihrer Interessenvertretung
- Gleichbehandlung und Schutz vor Diskriminierung jeglicher Art
- Gleichstellung von Frauen und Männern
- Recht auf Freizügigkeit
- Recht auf Gesundheitsschutz und Arbeitssicherheit
- Schutz vor ungerechtfertigter, willkürlicher Entlassung
- Recht auf Bildung und freie Berufswahl

Als **politische Handlungsziele** der Union sollten insbesondere die folgenden sozialen Rechte in die GRC aufgenommen werden:

- Recht auf Arbeit im Sinne einer Verpflichtung, dem Ziel der Vollbeschäftigung Vorrang einzuräumen
- Recht auf angemessenen sozialen Schutz und Sicherung eines menschenwürdigen Existenzminimums
- Recht auf menschenwürdige Arbeitsbedingungen
- Recht auf Förderung und Schutz von Kindern, Jugendlichen und Behinderten

Dabei muss aus Sicht des DGB gewährleistet sein, dass günstigere nationale gesetzliche und kollektivvertragliche Regelungen, die zum Schutz von Arbeitnehmerinnen und Arbeitnehmern getroffen werden, erhalten und weiterhin möglich bleiben.

3. Die Grundrechte müssen einklagbar und die Charta bindend sein, sie muss für alle Menschen gelten und wirksam überwacht werden können.

Grundrechte müssen einklagbar sein. Insbesondere im Hinblick auf die garantierten sozialen Grundrechte muß ein **Klagerecht für die Gewerkschaften** zur Vertretung der Interessen ihrer Mitglieder gewährleistet sein.

Die **Bindungswirkung** der GRC sollte sich sachlich auf alle Bereiche der EU-/EG-Kompetenz erstrecken und daher alle EU/EG-Organen betreffen. Dies muss gleichermaßen für alle Ebenen der Mitgliedsstaaten bei der Umsetzung von Gemeinschaftsrecht gelten. Was den persönlichen Geltungsbereich betrifft, so sollten die Rechte aus der GRC grundsätzlich allen Personen unabhängig von ihrer Staatsangehörigkeit gewährt werden. Dies entspricht auch dem Ansatz der EMRK. Die Beschränkung auf Rechte der EU-Bürger/innen sollte nur in Ausnahmefällen, etwa bei bestimmten politischen Teilhaberechten, erfolgen.

Es ist ein **wirksamer Rechtsschutz** auf EU-Ebene zur Durchsetzung der in der Charta garantierten Grundrechte zu gewährleisten.

4. Die Charta muss auf die Tagesordnung der Regierungskonferenz

Der DGB begrüßt den politischen Willen des Konventes, die Debatte über die Charta in allen EU-Mitgliedsstaaten auf eine möglichst breite gesellschaftliche Grundlage zu stellen.

Wenn diese breite Debatte ihre politische Wirkung nicht verfehlen soll, muss die Grundrechtecharta auf die Tagesordnung der Regierungskonferenz gesetzt werden.

Rechtliche Verbindlichkeit ist nur zu erreichen, wenn die Charta in die Verträge aufgenommen wird und bindende Wirkung erhält. Eine feierliche Erklärung des Europäischen Rates zur GRC wäre aus Sicht des DGB keinesfalls ausreichend.

Die europäische Grundrechtecharta bietet eine historische Chance. Wer sie verstreichen lässt, schadet dem Europa der Bürger.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 22 June 2000**CHARTE 4380/00****CONTRIB 240****COVER NOTE**

Subject : Draft Charter of fundamental rights of the European Union

Please find hereafter a contribution submitted by the Law Society of England and Wales.^{1 2}

¹ The Law Society of England and Wales
113 Chancery Lane, London WC2A 2PL
tel. 020 7 320 5881, Fax 020 7 831 0857, mail: laura.magnus@lawsociety.org.uk .

² The document has been submitted in English language only.

The draft Charter of Fundamental Rights of the European Union

**Comments
by the Law Society
of England and Wales**

**113 Chancery Lane
London WC2A 1PL**

The draft Charter of Fundamental Rights of the European Union Comments by the Law Society of England and Wales

1. The Law Society welcomes initiatives from the European Union aimed at the better promotion and protection of human rights, both internally and externally. It has studied the proposal for a Charter of Fundamental Rights of the European Union (“the Charter”) with interest but with some concern. It hopes that these comments will contribute to an outcome that will enhance the Union’s implementation of the human rights principles to which it is committed.

2. In June 1999, the European Council decided that:

“Protection of fundamental rights is a founding principle of the Union and an indispensable prerequisite for her legitimacy. The obligation of the Union to respect fundamental rights has been confirmed and defined by the jurisprudence of the European Court of Justice. There appears to be a need, at the present stage of the Union’s development, to establish a Charter of fundamental rights in order to make their overriding importance and relevance more visible to the Union’s citizens.

The European Council believes that this Charter should contain the fundamental rights and freedoms as well as basic procedural rights guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and derived from the constitutional traditions common to the Member States, as general principles of Community law. The Charter should also include the fundamental rights that pertain only to the Union’s citizens. In drawing up such a Charter account should furthermore be taken of economic and social rights as contained in the European Social Charter and the Community Charter of the Fundamental Social Rights of Workers (Article 136 TEC), insofar as they do not merely establish objectives for action by the Union.

In the view of the European Council, a draft of such a Charter of Fundamental Rights of the European Union should be elaborated by a body composed of representatives of the heads of State and Government and of the President of the Commission as well as of members of the European Parliament and national parliaments. Representatives of the European Court of Justice should participate as observers. Representatives of the Economic and Social Committee, the Committee of the Regions and social groups as well as experts should be invited to give their views. Secretariat services should be provided by the General Secretariat of the Council.

This body should present a draft document in advance of the European Council in December 2000. The European Council will propose to the European Parliament and the Commission that, together with the Council, they should solemnly proclaim on the basis of the draft document a European Charter of Fundamental Rights. It will then have to be considered whether and, if so, how the Charter should be integrated into the treaties. The European Council mandates the General Affairs Council to take the necessary steps prior to the Tampere European Council”.¹

3. This text is reproduced in full because it contains the basic mandate for the proposed Charter some elements of which, including its content and purpose, appear to be causing a degree of confusion. Indeed, it seems that the only clarity is the date on which the Charter will be proclaimed - and that leaves a dangerously short period of time for other issues to be resolved.

¹ Presidency Conclusions Cologne European Council, 3 and 4 June 1999

4. The Union's commitment to human rights is beyond doubt. The Amsterdam Treaty states that "the Union is founded on the principles of liberty, democracy, respect for human rights and the rule of law".² It further states that "The Union shall respect fundamental rights, as guaranteed by the European Convention on the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the member states, as general principles of Community Law".³ Any member state responsible for a "serious and persistent breach" of human rights may lose their rights under the Treaty.⁴ Criteria agreed by the Council in 1993 in Copenhagen governing the accession of new members to the Union include human rights. Human rights clauses have been included in external agreements since Lomé IV (1989). There have been important initiatives on issues such as sex equality and against racism. In addition there is no shortage of statements supporting human rights, for example: "The European Union is founded on the principles of liberty, respect for human rights, fundamental freedoms and the rule of law. These principles are common to all the Member States and are enshrined in the Treaty on European Union. The EU, which is deeply committed to the universality, indivisibility and interdependence of human rights, constitutes a community of shared values which refuses to admit any exceptions to these principles".⁵

5. However, many commentators agree that there is a pressing need for the Union to formulate an overall and comprehensive human rights policy. The present position has been described: "The human rights policies of the European Union are beset by a paradox. On the one hand, the Union is a staunch defender of human rights in both its internal and external affairs. On the other hand, it lacks a comprehensive or coherent policy at either level and fundamental doubts persist whether the institutions of the Union possess adequate legal competence in relation to a wide range of rights issues arising within the framework of Community policies".⁶

The Law Society agrees that the Union needs such a policy, applicable internally and externally. Broadly it agrees with the reasons given in *Leading by Example: A Human Rights Agenda For the European Union for the Year 2000* adopted in 1998 by the Comité des Sages,⁷ particularly the following:

"A European Union which fails to promote and protect human rights consistently and effectively will betray Europe's shared values and its long-standing commitment to them. However, the Union's existing policies in this area are no longer adequate. They were made by and for the Europe of yesterday; they are not sufficient for the Europe of tomorrow. The strong rhetoric of the Union is not matched by the reality. There is an urgent need for a human rights policy which is coherent, balanced, substantive and professional.

There are many reasons why the European Union cannot remain without a comprehensive and effective internal human rights policy. They include:

- the rapid movement towards an 'ever closer Union' and towards a comprehensive single market;
- the adoption of a single currency for close to 300 million people;
- the increasing incidence of racism, xenophobia and ethnic hatred within Europe;

² Article 6 (1) TEU ³ Article 6(2) TEU

⁴ Article 7 TEU

⁵ Background information: 10-03-00 *Human Rights in the European Union* from the website of the European Parliament

⁶ "An 'Ever Closer Union' in Need of a Human Rights Policy: The European Union and Human Rights" Philip Alston and J.H.H. Weiler in *The EU and Human Rights*, ed Philip Alston with Mara Bustelo and James Heenan, OUP 1999, page 6

⁷ The Comité des Sages consisted of Judge Antonio Cassese, Mme Catherine Lalumière, Professor Peter Leuprecht and Mrs Mary Robinson

- the tendency towards a ‘fortress Europe’ which is hostile to ‘outsiders’ and discourages refugees and asylum-seekers;
- the growing cooperation in policy and security matters, which is not matched by adequate human rights safeguards;
- the increasingly complex political and administrative system that governs the Union and is supported by a bureaucracy with extensive powers; and
- the aspiration to bring at least five and perhaps as many as thirteen countries within the Union’s fold in the years ahead.

...

Similarly, human rights must be a key part of the EU’s policy towards the rest of the world. An integrated policy is essential for a European Union that:

- recognizes that respect for human rights among its neighbours and partners has an enormous impact on its own security;
- has been taught by history that respect for human rights is the only enduring foundation for building peace and harmony;
- is forging a common foreign policy, within which human rights must be a core element;
- has cooperation and other agreements with a vast number of other countries;
- plays a key role in many international organizations concerned with human rights; and
- spends well over a billion euros every year on development assistance and humanitarian aid”.⁸

6. The stated purpose of the Charter is to make the “overriding importance and relevance” of fundamental rights “more visible to the Union’s citizens”. One immediate failing of the proposal is that it is aimed only at the Union’s citizens. This makes the proposal contradictory in that sources for the Charter, notably the European Convention on Human Rights, apply to all those under the jurisdiction of the Union’s members, not just its citizens. There are difficulties of maintaining the provisions of the European Convention, as a living instrument, in the Charter. Changing the beneficiaries of the rights guaranteed by the Convention will undermine any attempt to maintain legal certainty.

7. On the other hand, we encourage any effort which tries to make people better informed of their rights. Indeed, we understand that the United Kingdom Government has proposed that the Charter should be no more than a document that publicises the Union’s existing protection of human rights. On this point, the Bar Council of England and Wales has commented:

“The utility of such a document should not be over-emphasised... we would applaud any document, officially-endorsed or otherwise, which renders the arcane world of European Union and human rights law more comprehensible to the ordinary citizen, or even to the ordinary lawyer. There are many barristers’ chambers and solicitors’ firms that could benefit from such a document, and none – we suspect – that would have no need for it.”⁹

We hope that any such document will not be too lengthy or complex. We note that introducing it at the same time as the incorporation into UK law of the European Convention could be confusing within the context of the UK.

8. The content of the Charter is described in the second paragraph of the Cologne Conclusions, as reproduced above. The scope of the Charter has recently been defined as:

“The provisions of this Charter are addressed to the institutions and bodies of the Union within the framework of the powers conferred on them by the treaties, and also to the Member States exclusively within the framework of implementing Community Law. They shall not establish any competence or any new task for the Community or the Union.”¹⁰

⁸ The text of the *Agenda* is reproduced in *The EU and Human Rights*, op cit, page 921

⁹ *Written evidence on behalf of Bar Council International Relations Committee, Bar Human Rights Committee, Bar European Group*, 9 February 2000

¹⁰ Note from the Praesidium, 18 April 2000 ¹¹ Luxembourg Presidency Conclusions, 12 and 13 December 1997, Annex 3

In this case, it appears that the Charter will serve, in either the proclaimed or integrated versions, as little more than a recital of existing rights contained in the treaties. As such, it will not advance the cause of a coherent, comprehensive and effective human rights policy.

9. Neither will it achieve the commitments made in the *Declaration by the European Council at the beginning of the year of the fiftieth anniversary of the Universal Declaration of Human Rights*.¹¹ In paragraph 2 of this *Declaration*, the European Council stressed:

“the universal nature of human rights and reiterates the obligation incumbent on all States, in accordance with the United Nations Charter, to develop and encourage respect for human rights and fundamental freedoms for all, regardless of race, gender, language or religion”.

In paragraph 6 the Council appealed to all States to step up their efforts in the field of human rights by:

- “Acceding the international instruments to which they are not yet party with a view to achieving the objective of the universal ratification of the international treaties and protocols concerning human rights;
- Ensuring more stringent implementation of those instruments;
- Strengthening the role of civil society in promoting and protecting human rights;
- Promoting activities on the ground and developing technical assistance in the area of human rights;
- Strengthening in particular training and education programmes concerning human rights”.

10. It is reasonable to assume that this *Declaration* was intended to apply to Union members as much as other states. Even at the level of accession to international human rights instruments – to take the first point from the list above – there are significant gaps in Union members’ human rights obligations. For example, it is notable that only Ireland is not a party to the International Convention on the Elimination of All Forms of Racial Discrimination, nor to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The United Kingdom is the only Union member not to be party to the Optional Protocol to the International Covenant on Civil and Political Rights, allowing individual complaints, while France is the only member not party to its Second Optional Protocol, aiming at the abolition of the death penalty. A telling gap, given the grave concerns about racism in Europe, is the fact that six Union members who are party to the International Convention on the Elimination of All Forms of Racial Discrimination - Austria, Belgium, Germany, Greece, Portugal and the United Kingdom - have not made the declaration under Article 14 allowing individual complaints.

11. On the other hand, all Union members are party to important international human rights instruments. These include the Convention relating to the Status of Refugees; the International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights; the Convention on the Elimination of Discrimination against Women; the Convention on the Rights of the Child; and core standards of the International Labour Organisation, particularly Conventions Nos 87 on Freedom of Association and the Right to Organise and 98 on the Right to Organise and Collective Bargaining. There is a need to ensure that the rights enshrined in these treaties are not just visible but “stringently” implemented as required by the *Declaration*.

12. “Visibility” is not an adequate human rights policy. There are numerous proposals for reform and the development of a coherent human rights policy, many of them well rehearsed. The Union should be giving serious attention to these proposals which include accession to the European Convention on Human Rights – still a live issue despite the 1996 decision of the European Court of Justice.¹² One of the merits of many of these proposals is that they are based on institutional reform and thus do not raise fears – which have surfaced in the context of the Charter discussions – of the Union adopting a ‘human rights constitution’.

¹¹ Luxembourg Presidency Conclusions, 12 and 13 December 1997, Annex 3

13. In our view, the Charter proposal bypasses the key issue with which the Union should be engaged: the development of a comprehensive, coherent and effective human rights policy. Instead the Charter appears as merely a vehicle for publicity and self-congratulation. In the words of *Leading by Example: A Human Rights Agenda For the European Union for the Year 2000*, the Charter belongs to the Europe of yesterday. We are concerned that it will perpetrate the impasse described by Phillip Alston and J. H. H. Weiler:

“The principle shortcoming of the EU’s human rights policy is not a lack of novelty or grand gestures. It is a consistent reluctance to come to grips with some basic home truths about the indivisibility of internal and external human rights policy, the need for a clear and ambiguous commitment at all levels, and the need for effective political and bureaucratic structures to give effect to those commitments. The various components of the recipe for achieving these objectives have been evident for a number of years. Until these indispensable building blocks are put into place by the Member States and the institutions of the Union there will be little point in creating grand new designs for their own sake”.¹³

14. In conclusion, we repeat the following key points:

- The Charter, if there must be such a document, should be proclaimed only and not integrated into the treaties;
- Union members should swallow their own medicine and implement the provisions of the *Declaration by the European Council at the beginning of the year of the fiftieth anniversary of the Universal Declaration of Human Rights* at the national level;
- The Union should develop promptly a coherent, comprehensible and effective human rights policy that supports the universality, indivisibility and interdependence of all human rights and informs both its internal and external policies, primarily through institutional reform.

23rd May 2000

¹² Opinion 2/94 of 28 March 1996

¹³ *The EU and Human Rights*, op cit, page 66

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 22 June 2000**CHARTE 4381/00****CONTRIB 241****COVER NOTE**

Subject : Draft Charter on fundamental rights of the European Union

Please find hereafter a contribution by The Danish Centre for Human Rights.^{1 2}

¹ Det Danske Center for Mennekeretigheder/Te Danish Centre for Human Rights
Stuðiestraede 38
DK-1455 Copenhagen V
Tél. 45 33 30 88 88 Fax 45 33 30 88 00

² This text has been transmitted in English only.

Dear Sir or Madam, The undersigned human rights institutes and centres welcome the formulation of an EU Charter on Fundamental Rights as an important dimension in the European development of human rights standards. In our capacity as experts in the field of human rights we believe, however, that it is imperative to raise the following issues for further consideration. The institutes and centres are primarily concerned with the fact that the rapid pace of the preparations for the drafting of the EU Charter preempts a much needed general debate on the implications of the Charter. Instead, discussions at the European level should be allowed to mature in a more steady pace, thereby creating a platform for a broad popular involvement in the issues at stake. The time frame should not be seen as an end in itself, nor as a valid justification for not securing an open and participatory public debate. The institutes recognize the use of the Internet as a means to create transparency. However, it should be borne in mind that it is still only a fragmented part of the European population who has access to this technology. The use of the Internet should therefore be complemented by other more widely accessible means of communication. It is decisive for the future legitimacy of the European Union that there is a broad awareness of and support to the Charter. The creation of an EU Charter seems to involve a risk of legal uncertainty for the individual. It should be kept in mind that the European Convention on Human Rights not only defines individual rights subject to the jurisdiction of the Court, but also forms part of national law in all EU Member States. It is thus crucial to avoid a situation where powers, if vested in the European Court of Justice, would compete with the European Court of Human Rights. The institutes and centres consider it to be of the utmost importance that the Charter reflects the interdependent and indivisible nature of all human rights. The current normative framework after the Amsterdam Treaty is not fully satisfactory in this respect. The importance attached to one regional human rights treaty, i.e. the European Convention on Human Rights, could lead to the unfounded interpretation that EU organs would not be bound by all human rights treaties ratified by its Member States. However, a promising sign of the interdependence and indivisibility not having been forgotten is the discussion of the horizontal article, tentatively referred to as article 49, which is intended to clarify that the EU Charter cannot be used to deviate from or restrict fundamental rights which have been guaranteed in international law, including existing human rights treaties. In the process of drafting the EU Charter, it has been noted that attention has been paid not only to civil and political rights but also to other human rights, including economic and social rights. However, upon studying the catalogue of proposed economic and social rights it is observed that, on the one side, the catalogue is expanded considerably in respect of the protection of rights related to the labour market, whereas, on the other side, it does not include all the traditional rights, e.g. the right to housing. In this way, the EU runs the risk of down-scaling fundamental economic and social

rights and, at the same time, upgrading detailed regulations, i.e. primarily within the realms of ILO conventions. Furthermore, in relation to economic and social rights the institutes and centres express their concern regarding proposals which would reduce economic and social rights to mere goals or policies in the EU Charter. In relation to non-discrimination it is positive that the draft Charter includes a prohibition against discrimination in all areas and not only in relation to civil and political rights as opposed to article 14 of the European Convention on Human Rights. At the same time, however, it is problematic that the provision limits the scope of this protection - unlike Article 14 - by listing an exhaustive number of grounds on which discrimination should be prohibited. Thus, the draft does not offer a general protection against discrimination on grounds of nationality - as does the ECHR. This should be changed as the charter should not restrict a fundamental right guaranteed by the ECHR, nor word it in more limited terms. Though, the draft Charter does offer a certain degree of protection against discrimination on grounds of nationality, in principle, this only relates to discrimination against citizens of other EU Member States - while human rights protection against (all) discrimination applies to “everyone”. It seems unclear why a prohibition against discrimination on grounds of nationality in the EU Charter should be limited. The inalienable right of any person not to be discriminated against on any ground ought to be included in the EU Charter on Fundamental Rights. Finally, the institutes and centres would like to point to the fact that the provision on the right to asylum as currently drafted could lead to discrimination on the basis of nationality. In general terms as well as in relation to the above mentioned draft article 49, it is crucial that there is consistency between the Charter and the 1951 Convention relating to the Status of Refugees and other international instruments regulating the protection of refugees. The institutes and centres will follow the process carefully and will, at the same time, make ourselves available for any further discussions with relevant bodies working on the draft EU Charter. It is of the utmost importance that Europe when embarking upon such an ambitious project is truly considering all aspects of the matter. This should be done in order not to divert or downgrade the human rights protection as it has developed since the adoption of the international and regional instruments in the aftermath of the Second World War. The human rights development is at a critical junction these years, and an EU Charter can, if carefully thought out, constitute an important contribution to furthering the protection of the human dignity.

On behalf of the Nordic Human Rights Institutes and Centres

Yours sincerely

Morten Kjaerum Director, The Danish Centre for Human Rights

Gudmundur Alfredsson, Director,

Raoul Wallenberg Institute Martin Scheinin, Director,

Åbo Akademi University Institute for Human Rights

Nils A. Butenschon, Director, Norwegian Institute of Human Rights

Bjarney Friðriksdóttir, Director, The Icelandic Human Rights Center.

Identical letters are sent to: Denmark's Foreign Minister, Niels Helveg Petersen Denmark's Minister of Justice, Frank Jensen Erling Olsen, the Danish Parliament Irlí Plambech, the Danish Parliament .

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PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE**fundamental.rights@consilium.eu.int****Bruxelles, le 22 juin 2000****CHARTE 4382/00****CONTRIB 242****NOTE DE TRANSMISSION**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne
Contribution de Initiativ Liewensufank, de International Baby Food Action Network

Veillez trouver ci-après une contribution de "Initiativ Liewensufank" Asbl ¹ ², Membre de ENCA (European Network of Childbirth Associations), de IBFAN (International Baby Food Action network) et de WABA (World Alliance for Breastfeeding).

¹ Initiativ Liewensufank Asbl/Institut für die Verbesserung der Bedingungen rund um die Geburt
20, rue de Contern, L-5995 Itzig
Tél. 36 05 98 ou 36 05 97-11 Fax 36 61 34

² Ce texte a été transmise en langue française uniquement.

le 16.6.2000

Mesdames, Messieurs,

Par la présente, je me permets de vous soumettre quelques propositions de l'Initiativ Liewensufank pour ajouter à la Charte des droits fondamentaux de l'Union européenne.

Nous avons constaté que le début de la vie, c.à.d. la grossesse, l'accouchement et l'allaitement ne sont pas mentionnés spécialement dans la charte comme des phases nécessitant une protection spéciale. Nous sommes d'avis que la santé de la mère, du fœtus et du bébé nécessitent une protection spéciale. Pour en tenir compte, nous vous soumettons nos propositions d'ajoutes:

Art. 3.2. Veuillez ajouter s.v.p.

- Reconsidération des événements de la vie des femmes pour qu'elles ne soient pas traitées comme des problèmes médicaux d'où des interventions chirurgicales inutiles et des thérapeutiques inadaptées.

Ceci reprend le texte du § 103 accepté à la plate-forme des femmes à Béjing.

Art. 22.3. Veuillez ajouter s.v.p.

Il n'y a pas de discriminations des femmes à cause de leur fonction reproductives.

Art. 39 Veuillez ajouter s.v.p. la mention en gras

*.....notamment le droit à un congé de maternité, avant et/ou après l'accouchement **des pauses d'allaitement maternel**.....*

Ceci pour tenir compte de la convention de l'OIT sur la protection de la maternité.

Art. 42. Veuillez ajouter s.v.p.

Pour les parturientes, les droits ancrés dans la charte de droits de la parturiente (Doc B2 712/86 du Parlement Européen) sont mis en oeuvre

Ceci pour inclure ce texte important voté par le Parlement Européen

Art. 45 Veuillez ajouter s.v.p.

Le code de commercialisation des substituts de lait maternel est respecté et mis en oeuvre.

Ceci est important pour protéger la santé des consommateurs les plus vulnérables et le choix de leurs mères. Tous les pays de la CE ont marqué leur accord par leur vote à l'Assemblée mondiale de la Santé 1981. En outre, la CEE a entrepris les premiers pas de mise en oeuvre par la directive 91/321/EEC

En espérant que nos propositions puissent être prises en considération, veuillez accepter,
Mesdames, Messieurs l'expression de notre plus haute considération.

Maryse Lehnars
Chargée de direction

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE**fundamental.rights@consilium.eu.int**

Bruxelles, le 26 juin 2000**CHARTE 4384/00****CONTRIB 243****NOTE DE TRANSMISSION**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne

Veillez trouver ci-joint une prise de position par le Bureau de l'association "Maison de l'Europe du Land Brandebourg" relative au projet actuel de la Charte des droits fondamentaux. ¹

¹ Ce texte nous a été transmis en français et allemand.



17 juin 2000

Prise de position
par le Bureau de l'association "Maison de l'Europe du Land Brandenburg"
relative au projet actuel de la Charte de droits fondamentaux

1. Au nom des membres de la "Maison de l'Europe du Land Brandenburg" le Bureau de l'association rend hommage aux efforts entrepris par la Convention visant à élaborer un projet d'une Charte de Droits Fondamentaux valable pour l'Union Européenne. Cette Charte de Droits Fondamentaux, dont l'exigibilité devrait être garantie par le Conseil de l'Union Européenne sera un aspect essentiel pour faciliter l'identification des citoyens avec cette Union Européenne. Elle sera d'après nous un premier important pas vers une Constitution européenne revendiqué aussi par nous, une constitution ressemblant tous les droits individuels valables pour toutes les personnes résidant sur le territoire de l'Union Européenne.
2. Il nous paraît indispensable que le projet de cette Charte de Droits Fondamentaux réuniras tous les droits civils, politiques, mais aussi économiques, sociaux et culturels - de manière qu'elle se présente déjà visiblement par ce projet. Il faut également que les valeurs de ces droits reflètent au moins le niveau élevé constitué déjà par les conventions internationales des droits de l'homme et par les actes juridiques internationaux et nationaux sans être dans aucun cas inférieur à ceux-ci.
 Nous nous exprimons en faveur du principe de l'universalité des droits de l'homme qui devrait nécessairement aussi le principe de tous les droits stipulés par cette Charte de Droits Fondamentaux.
 Une telle Charte de Droits Fondamentaux européenne rendrait d'après notre conviction l'Europe en modèle digne d'être imité par le reste du monde.
 Nous regrettons par contre que ce projet ne corresponde pas des nombreuses positions de ses formules à ces exigences.
 Il est d'autant plus regrettable que sa structure et plusieurs de ses stipulation reflètent sensiblement les intérêts et besoins de certaines Etats et de certaines associations-lobbys, tandis que d'autres aspects sont ou reflété de manière minimisée ou ignorés complètement, particulièrement ceux qui ont été revendiqués par des ONG.

3. Après avoir examiné ce projet du texte distribué par les websites du Conseil de l'Union Européenne à l'Internet, nous nous permettons de vous proposer seulement quelques-unes de nos remarques et amendements.

3.1 Le préambule

Parmi les principes mentionnés à alinéa (2) sur lesquels se baseront l'Union et ses institutions alors il faut aussi y ajouter les principes de la Paix et de la Solidarité.

Nous soutenons dont les propositions soumises par Mr. Jürgen Meyer en ce qui concerne le principe "la solidarité" et nous proposons d'y ajouter également en premier lieu le principe "la Paix" qui devrait être assurée par l'Union et toutes ses institutions.

3.2. Article 1 - La dignité de l'homme

L'alinéa (1) devrait comporter le supplément " ne devrait être jamais violée" et se lire:

" (1) La dignité de l'homme ne devrait être jamais violée. Il faut la respecter et la protéger."

Nous estimons qu'il faut souligner expressément cette immunité de la dignité.

3.3. Article 16 - Le droit à l'éducation

à alinéa (3) "Le droit des parents d'assurer l'éducation et l'enseignement de leurs enfants, conformément à leurs convictions religieuses et philosophiques, doit être respecté."

Est à rayer sans conditions.

- *Son esprit est déjà exprimé par l'alinéa (1). Il touche également de manière contradictoire le sens de l'article 23 - Droits des enfants.*
- *Nous estimons que le respects de ce droit des parents ne pourrait pas être garanti par l'Union et ses institutions.*

3.4. Article 22 - Egalité et non-discrimination

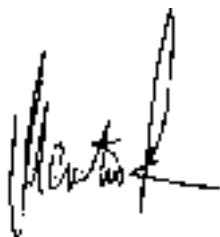
La dernière phrase de l'alinéa (3) "L'égalité des sexes est notamment assurée dans la fixations des rémunérations et des autres conditions de travail"

est à rayer sans condition.

Cette stipulation présente une forte limitation du principe de l'égalité et de non-discrimination.

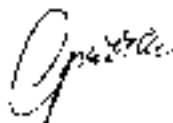
3.5. En tant compte les titres juridiques de la Charte Sociale Européenne déjà ratifiée par de nombreux Etats-membres nous proposons d'ajouter à la Charte des Droits Fondamentaux au moins deux articles reflétant le devoir à l'assistance sociale de l'Union et de ses institution voir **le droit à l'emploi et le droit à un logement convenable** de chacun.

Au nom du Bureau de la Maison de l'Europe du Land Brandebourg



Le Président:

Martin STOCK



Le Vice-président-Directeur:

Dr. Horst GRÜTZKE

ENTWURF DER CHARTA DER GRUNDRECHTE DER EUROPÄISCHEN UNION**fundamental.rights@consilium.eu.int**

Brüssel, den 26. Juni 2000**CHARTE 4386/00****CONTRIB 245****ÜBERMITTLUNGSVERMERK**

Betr.: Entwurf der Charta der Grundrechte der Europäischen Union

Finden Sie bitte nachstehend einen Vorschlag zu Artikel 15 (in der Fassung von Dokument Charta 4333/00 CONVENT 36), vorgelegt vom Initiativkreis für den öffentlichen Rundfunk Köln. ¹

¹ Dieser Text wurde uns nur in deutscher Sprache übermittelt.

A. INITIATIVKREIS FÜR DEN ÖFFENTLICHEN RUNDFUNK KÖLN

Düsseldorf, den 16.6.2000
Initia.Korresp.Herzog

An den Vorsitzenden des Konvents zur Ausarbeitung
einer Charta der Grundrechte der Europäischen Union
Herrn Professor Dr. Roman Herzog
Prinzregentenstr. 89

II. 81675 München

Sehr geehrter Herr Professor Herzog,

der Initiativkreis für den Öffentlichen Rundfunk Köln begrüßt es, dass die Charta der Grundrechte der Europäischen Union in Artikel 15 (in der Fassung von Dokument CONVENT 28) die Freiheit der Meinungsäußerung verankern will. Wir sind allerdings der Ansicht, dass diese Fassung ergänzt und präzisiert werden sollte, damit sie neben der persönlichen Meinungs- und Informationsfreiheit auch die Medienfreiheit mit ihren objektiven und subjektiven Dimensionen umfassend sichert. Letzteres ist in den Verfassungen mehrerer Mitgliedstaaten, u. a. Deutschland und Portugal, der Fall und sollte auch in der EU-Charta geschehen. Unsere Anregungen richten sich auch auf eine gedeihliche medienpolitische Kooperation von EU und Mitgliedstaaten auf dem Boden einer Klärung der jeweiligen Kompetenzen. Wir nehmen dabei auf die Amsterdamer Protokollerklärung über den öffentlich-rechtlichen Rundfunk in den Mitgliedstaaten Bezug. Der jüngste Kompromissvorschlag des Präsidiums (Art. 15 Abs. 2 laut Dokument CONVENT 36) trägt dem noch nicht ausreichend Rechnung. Wir wären Ihnen sehr dankbar, wenn Sie unsere Vorschläge in die weiteren Beratungen des Konvents einbeziehen würden.

Der 1994 gegründete Initiativkreis setzt sich für die Belange des Öffentlichen Rundfunks und seine Zukunftssicherung im Rahmen der „dualen Rundfunkordnung“ Deutschlands ein. Er wird von Persönlichkeiten aus dem kulturellen und gesellschaftlichen Leben getragen, die den Programmauftrag des Öffentlichen Rundfunks als „Rundfunk in gesellschaftlicher Verantwortung“ im Interesse unseres kulturellen Lebens und einer freien politischen Meinungsbildung für unverzichtbar ansehen. Daher wenden wir uns aus gegebenen Anlässen - wie hier - mit Eingaben und Vorschlägen an die für rundfunkpolitische Entscheidungen zuständigen Stellen.

Mit freundlichen Grüßen

Dr. h. c. Adalbert Leidinger

Sprecher: Dr. h. c. Adalbert Leidinger, 40472 Düsseldorf, Hetjensstr. 44, Tel.: 0211/651870, Fax: 6585661

III. Art. 15. Kommunikationsfreiheit

- (1) Jeder hat das Recht auf freie Meinungsäußerung.
- (2) Jeder hat das Recht, sich aus allgemein zugänglichen Quellen umfassend zu informieren und sich seine Meinung frei zu bilden. Dies schließt insbesondere den Zugang zu vielfältigen kulturellen Angeboten ein.
- (3) Die Freiheit der Presse, des Rundfunks, des Films und der sonstigen an die Allgemeinheit gerichteten Kommunikation wird gewährleistet.
- (4) Die Befugnisse der Mitgliedstaaten zur Sicherung von öffentlich-rechtlichem Rundfunk als Medium und Faktor des Prozesses freier Meinungsbildung bleiben unberührt.

Begründung:

Nach dem Vorschlag des Präsidiums des Konvents in Dokument CONVENT 28 soll sich Art. 15 eng an Art. 10 Abs. 1 Sätze 1 und 2 EMRK anlehnen. Garantiert werden soll danach zunächst die Freiheit der Meinungsäußerung. Diese schließt, wie dann hinzugefügt wird, „die Meinungsfreiheit“ ein. Damit ist anscheinend die Freiheit der Meinungsbildung gemeint, was jetzt im Normtext klargestellt werden sollte. Weiter wird in Art. 15 des Präsidiumsvorschlags gesagt, die Freiheit der Meinungsäußerung schließe auch die Informationsfreiheit ein. Demgegenüber empfiehlt es sich, die Informationsfreiheit als selbständiges, zuoberst der Meinungsbildungsfreiheit zugeordnetes Grundrecht auszuweisen. Deshalb enthält unser Vorschlag in Abs. 1 die Meinungsäußerungsfreiheit und in Abs. 2 Informations- und Meinungsbildungsfreiheit. Letztere ist von so hohem Rang, dass es angezeigt erscheint, bestimmte nähere Maßgaben („umfassend“, „vielfältig“, Zugang zu „kulturellen Angeboten“) in die Charta aufzunehmen. Damit folgen wir dem Textvorschlag von ARD und ZDF in Dokument CONTRIB 103.

Nach den jüngsten Kompromissvorschlägen des Präsidiums für Änderungen in Dokument CONVENT 36 soll Art. 15 um einen Abs. 2 mit folgendem Wortlaut ergänzt werden: „Die Presse- und Informationsfreiheit ist unter Achtung der Transparenz und des Pluralismus gewährleistet.“ Diese Formulierung könnte den Eindruck erwecken, Informations- und Pressefreiheit seien deckungsgleich, was keineswegs zutrifft. Darum sollte die Informationsfreiheit - wie oben vorgeschlagen - separat garantiert und in dem Absatz über Medienfreiheit nicht noch einmal erwähnt werden. Im übrigen sollte hier nicht nur - gewissermaßen pars pro toto - die Pressefreiheit genannt werden. Vielmehr ist davon jedenfalls die Rundfunkfreiheit zu unterscheiden, und diese ist ausdrücklich zu erwähnen, wie es auch von Prof. Meyer (Änderungsvorschlag 280) und Minister Gnauck (Änderungsvorschlag 289) gefordert wird. Einbezogen werden könnten auch die Filmfreiheit sowie die Freiheit sonstiger an die Allgemeinheit gerichteter neuer Mediendienste, wie es in dem ARD/ZDF-Vorschlag geschieht.

Mit dem von uns vorgeschlagenen Abs. 4 zielen wir auf eine explizite Bestands- und Entwicklungsgarantie für den Rundfunk in öffentlicher Trägerschaft ab. Damit wird dem Erfordernis programmlicher Qualitätssicherung Rechnung getragen, wie es in der Amsterdamer Protokollerklärung von 1997 betont wird. Eine derartige Garantie wird auch in den Änderungsvorschlägen 280 und 289 gefordert. Zur näheren Begründung weisen wir auch auf den von Prof. Stock vorgelegten Diskussionsbeitrag Dokument CONTRIB 206 hin.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 26 June 2000**CHARTE 4387/00****CONTRIB 246****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a Press Release, issued by the Platform of European Social NGOs.¹

¹ This text has been submitted in English only.

Brussels, 21 June 2000

PRESS RELEASE**EU CHARTER OF FUNDAMENTAL RIGHTS: SOCIAL NGOS DISAPPOINTED BY POSITION TAKEN BY SOME MEMBER STATES AT THE FEIRA COUNCIL, BUT LOOK TO FRENCH PRESIDENCY FOR BOLD LEADERSHIP IN ENSURING A BINDING TEXT**

The Platform of European of Social NGOs was extremely disappointed by the stance taken by several Member States, led by the UK, that the EU Charter of fundamental rights should not be legally enforceable.

Social NGOs and the European Trade Union Confederation have been campaigning together for several years for a binding Charter with a full set of rights. Since the Spring, the campaign has been taken to all the Member States with a series of national conferences, culminating in a joint European conference at the end of August, where the views expressed by citizens, social activists and trade unionists at national level will be gathered and conveyed to EU leaders.

Central to our campaign is the belief that social and economic rights must be guaranteed by the Charter. The European social model is at the core of our societies and is a major factor in Europe's success in the global marketplace. Within this perspective an enforceable Charter will prove indispensable in safeguarding and modernising our models of social protection and improving our economic performance.

In our view the key role of civil society must also be acknowledged in the Charter so that formalised consultation of NGOs is a right, not a favour. The Social Platform is disappointed that no reference was made to NGOs in the Feira conclusions, which constitutes a step backwards from the Lisbon Summit.

Responding to the events of the Feira Summit, Platform President Giampiero Alhadef said "Social NGOs firmly believe that if the EU is to achieve its stated aim of becoming closer to the citizens, then the people living in Europe must not only have rights on paper, but the opportunity to seek legal redress if those rights are violated.

We now look to the leadership of the French Presidency to be bold and give the people of Europe what they deserve: an enforceable Charter with a full, indivisible set of rights. A solemn political declaration, would fall short of what is needed now in terms of the objectives of a Europe close to its citizens; the enlargement of the Union and our global role".

Ends

For more information contact Sandrine Grenier, Co-ordinator, at the Platform of European Social NGOs. Tel: 32.2/511.37.14 Fax: 32.2/511.19.09 E-mail: sandrine.grenier@brutele.be

The Platform-ETUC joint campaign document " Fundamental Rights: the Heart of Europe" is available in all 11 EU languages at the Social Platform's web-site: www.socialplatform.org or on request from the Platform (platform@brutele.be)

The Platform of European Social NGOs was established to promote co-operation between Social NGOs and the European Union. It brings together **30** networks and federations operating in the social field representing a wide range of different groups throughout the Union, including women, lesbians and gays, older people, children & families, disabled people, unemployed people, migrants, people in poverty and homeless people.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 27 June 2000**CHARTE 4388/00****CONTRIB 247****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a contribution on Sustainable Design and Construction, submitted by Mr. C.J. Walsh.¹

¹ This text has been submitted in English only.

© Sustainable Design International Ltd. 1998

Forum on Sustainable Construction

Region of Ireland

European Charter on Sustainable Design

&

Construction

C. J. Walsh 1998-11-06

Architect, Fire Safety Engineer, and Technical Controller

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Explanatory Memorandum

1. Suggested by an idea of Mr. Gerry Walker, Dublin Institute of Technology, during preparations for the first conference in Ireland on Sustainable Design and Construction, this European Charter is a natural and logical next step following the major study project, co-ordinated by Working Commission 82 of the International Council for Building Research, Studies and Documentation (CIB), which culminated in the recent production of **CIB Publication 225 - 'Sustainable Development and the Future of Construction'** .

2. The structure of the European Charter reflects the view that, fundamentally, Sustainable Construction is a response, in built form, to the concept of 'sustainable development' and its initial formal elaboration - the **Rio Declaration** of 27 Principles, and **Agenda 21** -both agreed in 1992 at Rio de Janeiro, Brazil. It is Sustainable Design, however, which will direct the future course of this innovative approach to construction.

3. During the completion phase of CIB Publication 225, problems arose when attempts were made to synthesize contributions from many different parts of the world. Is it yet possible, at this time, to reconcile and to fuse the following examples into a single understanding of Sustainable Construction ?

- The conviction, in Japanese tradition, that buildings are temporary and are not meant to have a long life cycle ;
- The desire, amongst the countries of Central and Eastern Europe, to catch up with the 'lifestyle' of Western Europe, whatever the costs to the environment and sustainability ;
- The pressing demands of social justice in a country like South Africa, with the consequent enormous challenge of providing sufficient housing and infrastructural development for the majority population, while still conserving a strongly indigenous approach to architecture and methods of building ;
- The typical pattern of construction in the European Union (E.U.) , which typically involves a modification or alteration of the already over-developed 'built environment', within a 'natural environment' constantly under attack and straining for survival. Rather than immediately trying to formulate a bland global model for Sustainable Design, more progress might be made, in the short term, if separate regional responses were to be developed for Africa, Asia, Europe, North America, etc., in order to ensure a greater degree of suitability to local needs, cultures and economies. The E.U., because of a colonial history, its current highly evolved legal base underpinning an extensive array of policies and action programmes relating to energy, environmental and sustainable development concerns, and because of its specific commitments arising from the Kyoto Protocol of 1997, is well placed, and legally / morally obliged, to produce a first outline for one of these regional responses to the **Rio Declaration** and **Agenda 21** .

4. The European Charter on Sustainable Design and Construction, therefore, also comprises 27 Principles, which derive from a straightforward process (i) each principle of the original Rio Declaration was closely examined, re-drafted to suit an E.U. context and, on the basis of existing Union legislation and international agreements and treaties to which it is a signatory, was strengthened considerably in expression (ordinary typeface) ~ where appropriate, a clause (bold typeface) relevant to sustainable planning, design and construction was added ; (ii) unlike the Declaration, references to 'energy' were included in this document.

5. The Charter extols implementation, and the targeting / monitoring of 'real' performance.

European Charter on Sustainable Design & Construction

(Dublin, 1998-11-06)

Having met in Dublin from 5th.- 6th. November, 1998 ;

In co-operation with the Commission of the European Union, and the International Council for Building Research, Studies and Documentation (**CIB**) ;

Recognizing the integral and interdependent nature of the natural and built environments on this Earth, our home ;

Re-affirming the Declaration of the United Nations Conference on Environment and Development (**Agenda 21**), adopted at Rio de Janeiro on 14th. June 1992, and striving to respond to it on matters directly concerning the design and construction of a sustainable built environment, capable of providing for responsible and environment-conscious human, social, cultural and economic progress ;

Mindful of the recent inclusions and amendments to the European Union (**E.U.**) treaties and certain other acts (see relevant extracts from the Amsterdam Treaty in Appendix I to this document) ;

Working towards the achievement of equality of opportunity for every person in the European Union, which in turn must lead to full social inclusion (see Guideline Framework in Appendix II to this document) ;

Understanding the importance of harmonizing language, concepts and terminology, in order to communicate more effectively with one another (see Vocabulary in Appendix III to this document);

Confirming that direct and meaningful consultation with people, partnership between all sectors of society, consensus, transparency and openness are essential elements in '**social wellbeing**' ;

Proclaiming that Sustainable Design, Construction / De-Construction and Maintenance is the necessary, suitable and practicable response, in built form, to Sustainable Energy-efficient Environment-friendly Development (**SEED**) ;

the following principles should be actively considered by the Institutions of the European Union and relevant authorities in each Member State, implemented, and monitored by means of benchmarking and the application of appropriate sustainability performance indicators

Principle 1

Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature.

Movement towards a 'person-centred' and 'socially inclusive' approach in the planning / design/ construction of a built environment, i.e. placing real people, their needs and responsible desires at the centre of creative endeavours, should be encouraged and fostered by every keysector in society. The method of work in the various processes of planning / design / construction should be widely multi-disciplinary. An active dialogue between practitioners, researchers and end-users, based on meaningful consultation, partnership, and consensus should become the standard.

Principle 2

Member States of the European Union have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources, pursuant to shared E.U. energy, environment and sustainable development policy goals - and the obligation to ensure that activities within their own jurisdiction, or control, do not cause damage to the environment of other Member States or countries / areas beyond the limits of E.U. jurisdiction.

Principle 3

A responsibility is attached to the right of development - it must be achieved in such a manner as to equitably meet the energy, environment and development requirements of present and future generations.

Sustainability of the 'built environment' can only be understood in relation to that of the 'natural environment' ; it involves, with precision and accuracy,

(i) establishing limits on the capacity of the natural environment to sustain itself ;

(ii) stopping short of those limits, by a controlled factor of safety, in any further future modification or extension to the built environment ;

(iii) transforming the nature and course of human / social progress to become responsible and environment-conscious, i.e. sustainable development.

Life cycle management should be fully integrated into the processes of planning / design / construction of the built environment. Life cycle assessment / analysis / appraisal of product and service systems used or consumed should involve an evaluation of 'energy cycle' costs, 'environmental impact', and 'sustainability' performance.

Principle 4

In order to achieve sustainable development, environmental protection and energy efficiency should constitute integral parts of the development process, and should not be considered in isolation.

Environmental protection and energy efficiency requirements should be integrated into the definition of all European Union policies and activities, and implemented at all levels of the E.U. - most particularly at local level.

Principle 5

Member States of the European Union should co-operate in the tasks of protecting human rights, eradicating poverty, and removing social inequality, as indispensable and necessary prerequisite steps to achieving sustainable development, in order to decrease disparities in standards of living and better meet the needs of all peoples in Europe. **The shared goal of Member States should be full social inclusion for every citizen of the E.U.**

Principle 6

The special situation and needs of developing countries, particularly the least developed and those most environmentally vulnerable, should be given special priority. E.U. policies and activities in the fields of energy, environment and sustainable development should address the interests and needs of all peoples in the world.

Principle 7

Member States of the European Union should co-operate in a spirit of global partnership to conserve, protect, heal and restore the health and integrity of the Earth's ecosystem. In view of the different contributions to global environmental degradation, countries have common but differentiated obligations. Europe acknowledges the responsibility that it bears, in the international pursuit of sustainable development, as a result of the pressures its society has placed on the global environment over past centuries, and of the technologies and financial resources it now commands. **Understanding the fragility of the natural environment, and observing the vast expanse of existing development and waste already generated in the built environment, every alternative should be exhausted before intruding further into the natural environment. All opportunities should be taken to heal previous injury to the natural environment ; initial damage repair by human intervention, sufficient only to promote natural self-healing, is a recommended course of action. Adequate resources should be allocated by the European Union towards the proper disposal of nuclear wastes.**

Principle 8

To achieve sustainable development and a higher quality of life for all peoples, Member States of the European Union should reduce and eliminate unsustainable patterns of production and consumption, and promote appropriate demographic policies. **With concern for the protection of indigenous architecture and methods of building, sustainable patterns of planning / design / construction of the built environment should be encouraged by means of (i) concerted programmes of awareness raising and education at all levels of the construction, agriculture, marine, transport and energy industries in Europe; (ii) harmonized financial mechanisms and incentives in each Member State.**

Principle 9

Member States of the European Union should co-operate to strengthen capacity-building for sustainable development by improving scientific understanding through the exchange of information, and by enhancing the development, adaptation, diffusion and transfer of technologies, including new and innovative technologies. **Acknowledging our incomplete understanding of sustainable development, each Member State should establish a high level, cross-sectoral research group to examine the concept, and to suggest clear alternatives and make concise proposals with regard to implementation and monitoring strategies. Each Member State should establish a 'Forum on Sustainable Construction' - to articulate the necessary, suitable and practicable response, in built form, to the concept of sustainable development. As our understanding of sustainable development evolves, so also should the nature of our response. The smallest viable unit, with regard to concerted action in any of the above policy areas, is the 'region'.**

Principle 10

Environmental issues are best handled with the participation of all interested citizens, at the relevant level. At European Union and Member State levels, each individual should have access to complete relevant information concerning the environment which is held by public authorities and institutions, including information on hazardous materials and processes in their communities. Each individual has the right to participate in decision-making. Member States should facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings at all levels of the E.U., including redress and remedy, should be provided.

Principle 11

The European Union should properly enact, operate, monitor and control effective energy, environment and sustainable development related legislation. Standards, codes of good practice, and management objectives, priorities and systems should reflect the regional context to which they apply. E.U. standards, codes and systems may be entirely inappropriate, and of unwarranted economic and social cost in other regions of the world, particularly developing countries. **The E.U. should properly enact, operate, monitor and control effective health, safety and welfare related legislation ; the base concerning human health and safety, environmental protection and consumer protection, should be set at a high level, and should take account of any new developments verified by scientific fact.**

Principle 12

Member States of the European Union should co-operate to promote a supportive and open international economic system which must lead to economic growth and sustainable development in all countries, in order to better address the problems of environmental degradation. Trade policy measures for environmental purposes should not constitute a means of arbitrary or unjustifiable discrimination, or a disguised restriction on international trade. Unilateral actions to deal with environmental challenges outside the jurisdiction of the E.U. should be avoided. Environmental measures addressing transboundary or global environmental problems should, as far as possible, be based on an international consensus.

Principle 13

The European Union should develop law regarding liability and compensation for the victims of pollution and other environmental damage. The E.U. should also co-operate in an expeditious and more determined manner to elaborate further international law regarding liability and compensation for harm to human health and the adverse effects of environmental damage caused by activities within its jurisdiction, or control, to countries / areas beyond the limits of its jurisdiction.

Principle 14

Member States of the European Union should co-operate effectively to prevent the relocation or transfer outside an individual Member State, or the importation into any part of the E.U., of an activity or substance which causes environmental degradation or is found to be harmful to human health.

Principle 15

The precautionary approach should be widely applied by the Member States of the European Union. Where there is a potential for harm to human health, or serious or irreversible damage to the environment, lack of full scientific certainty should not be used as a reason for postponing practicable prevention measures or countermeasures.

Principle 16

Member States of the European Union should promote the internationalization of environmental costs and the use of economic instruments, taking into account that the polluter should, in principle, bear the cost of pollution, with due regard to public interest and health, and without excessive distortion to international trade and investment.

Principle 17

An environmental impact assessment should be undertaken for any proposed activity which is likely to have a significant adverse impact on the environment ; such an assessment should be subject to proper monitoring and control by competent authorities and institutions in the European Union. **All practicable means for an improvement in sustainability and energy efficiency, and the reduction and elimination of adverse effects on the environment, should be shown in an Environmental Impact Statement.**

Principle 18

Member States of the European Union should immediately notify other Member States of any natural disasters or other emergencies which are likely to produce sudden harmful effects on human health, or on the environment of those States. A co-ordinated E.U. effort should be made to help States so afflicted. **E.U. resources should be directed towards effective management, monitoring, prevention and warning systems, particularly in the case of the fire safety of hazardous materials storage and processing.**

Principle 19

Member States of the European Union should provide prior and timely notification, with complete relevant information, to other potentially affected Member States or to countries outside the E.U., on activities which may have a significant adverse transboundary environmental impact. Notifications should be at the earliest possible stage of an incident, and in good faith.

Principle 20

Women have a vital role in environmental management and development. Their full participation is essential to achieve sustainable development. The experience and wisdom of the elderly should be valued ; the abilities of every person should be cherished ; and the creativity, ideals and courage of youth should be mobilized to forge a European partnership in order to ensure a better future for all.

Principle 21

Local communities, and especially indigenous peoples and their communities, have a vital role in environmental management and development because of their knowledge and traditional practices. Member States of the European Union should recognize, duly support and celebrate their separate identities, cultures and interests, and enable their effective participation in the achievement of sustainable development.

Principle 22

The environment and natural resources of peoples under oppression, domination and occupation should be protected.

Principle 23

Warfare is inherently destructive of sustainable development. Member States of the European Union should respect international law providing protection for the environment in times of armed conflict, and co-operate in its further elaboration, as necessary. **The production, use, and supply of landmines or landmine technology should be prohibited by E.U. legislation. Appropriate resources should be allocated by the E.U. towards the clearance and proper disposal of existing landmines in the world. The further spread of strategic / tactical nuclear weapons and weapons technology should be prevented under E.U. legislation. Appropriate resources should be devoted to the elimination and proper disposal of existing nuclear, biological and chemical weapons of mass destruction in the E.U.**

Principle 24

Peace, responsible human / social development, environmental protection and energy efficiency are interdependent and indivisible.

Principle 25

Member States of the European Union should resolve their internal or external environmental or energy disputes peacefully, and by appropriate means, in accordance with E.U. law and the Charter of the United Nations.

Principle 26

Harmonized short, medium and long-term strategies in the policy areas of energy efficiency, environmental protection and sustainable development should be planned for implementation in the European Union over the following time frames :- (i) up to 2010 ; (ii) between 2011 and 2040 ; (iii) between 2041 and 2100. Such is the threat to quality of life and human progress caused by current environmental degradation, and such is the great timelag between implementation of corrective actions and resulting beneficial environmental impacts, that sustainability performance should be benchmarked at year 1990 in the Member States of the E.U. Detailed performance indicators for all stages of design, construction / de-construction, maintenance and disposal should be used to target improvements in sustainability performance, verify target attainment, and continually re-adjust targets at appropriate intervals thereafter.

Principle 27

The European Union and its Institutions, relevant authorities of the Member States, and the peoples of Europe should co-operate, in a spirit of partnership and good faith, to fulfil the principles embodied in this Charter, and to further elaborate E.U. and international laws - in pursuit of Sustainable Energy-efficient Environment-friendly Development (**SEED**) .

Appendix I

Extracts from the E.U. Amsterdam Treaty

(97 / C 340 / 01)

Sustainable Development

Environment

Human Health

Statistics

Personal Data Protection

Anti-Discrimination

Amsterdam Treaty

Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts, signed at Amsterdam, 2nd. October 1997. (97 / C 340 / 01)

1. Sustainable Development

Replaced Article 2 of the TEC (Treaty establishing the European Community)

' The Community shall have as its task, by establishing a common market and an economic and monetary union and by implementing common policies or activities referred to in Articles 3 and 3a, to promote throughout the Community a harmonious, balanced and sustainable development of economic activities, a high level of employment and of social protection, equality between men and women, sustainable and non-inflationary growth, a high degree of competitiveness and convergence of economic performance, a high level of protection and improvement of the quality of the environment, the raising of the standard of living and quality of life, and economic and social cohesion and solidarity among Member States. '

Replaced 7th. Recital of the Preamble to the TEU (Treaty on European Union)

' Determined to promote economic and social progress for their peoples, taking into account the principle of sustainable development and within the context of the accomplishment of the internal market and of reinforced cohesion and environmental protection, and to implement policies ensuring that advances in economic integration are accompanied by parallel progress in other fields.'

2. Environment

New Article 3c in the TEC

' Environmental protection requirements must be integrated into the definition and implementation of the Community policies and activities referred to in Article 3, in particular with a view to promoting sustainable development. '

Declaration No. 12 to the Final Act

' The Conference notes that the Commission undertakes to prepare environmental impact assessment studies when making proposals which may have significant environmental implications. '

Replaced Paragraph 3 of Article 100a of the TEC

' The Commission, in its proposals envisaged in paragraph 1 concerning health, safety, environmental protection and consumer protection, will take as a base a high level of protection, taking account in particular of any new development based on scientific facts. Within their respective powers, the European Parliament and the Council will also seek to achieve this objective.'

3. Human Health

Replaced Article 129 of the TEC

' 1. A high level of human health protection shall be ensured in the definition and implementation of all Community policies and activities. '

4. Statistics

New Article 213a in the TEC

' 1. Without prejudice to Article 5 of the Protocol on the Statute of the European System of Central Banks and of the European Central Bank, the Council, acting in accordance with the procedure referred to in Article 189b, shall adopt measures for the production of statistics where necessary for the performance of the activities of the Community.

2. The production of Community statistics shall conform to impartiality, reliability, objectivity, scientific independence, cost-effectiveness and statistical confidentiality ; it shall not entail excessive burdens on economic operators. '

5. Personal Data Protection

New Article 213b in the TEC

' 1. From 1st. January 1999, Community acts on the protection of individuals with regard to the processing of personal data and the free movement of such data shall apply to the institutions and bodies set up by, or on the basis of, this Treaty. 2. Before the date referred to in paragraph 1, the Council, acting in accordance with the procedure referred to in Article 189b, shall establish an independent supervisory body responsible for monitoring the application of such Community acts to Community institutions and bodies and shall adopt any other relevant provisions as appropriate. '

6. Anti-Discrimination

New Article 6a in the TEC

' Without prejudice to the other provisions of this Treaty and within the limits of the powers conferred by it upon the Community, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. '

1997-11-26

Appendix II

Guideline Framework

Achievement of Equality of Opportunity & Social Inclusion
For Every Person in the European Union (E.U.)

Guideline Framework

Achievement of Equality of Opportunity & Social Inclusion
For Every Person in the European Union (E.U.)

Direct and meaningful consultation with people, partnership between all sectors of society, consensus, transparency and openness are essential elements in '**social wellbeing**'. Set out below are a number of areas which should be actively considered by the Institutions of the E.U. and relevant authorities in each Member State, implemented, and effectively monitored through the informed application of sustainability performance indicators

1. Empowering People for Participation in Society

- respecting autonomy and independence
- re-adjusting education and training programmes to facilitate participation
- re-adjusting welfare and other supports to facilitate participation
- moving towards a 'person-centred' approach in the design / implementation of support services
- mainstreaming
- ensuring seamless provision of services
- ensuring the principle of participation

2. Removing Physical Barriers to Participation

- viewing access / egress / evacuation and health / safety / welfare issues in the light of equality of opportunity and the right to participate
- developing effective legislation, standards (nationally transposed EN's) , and technical guidance in order to eliminate all forms of barrier
- monitoring and controlling compliance with legislation
- moving towards a 'person-centred' approach in the planning / design / construction of a sustainable built environment

3. Opening Up Various Spheres of Society

- upholding the equal civic status of every person - promoting employment for people as a key to social inclusion

4. Nurturing Opinion of the Public, Government Administrators, and Design Professions to be Receptive to 'Person-Centredness' of the Built Environment awareness raising and education

1998-06-10

Appendix III

Vocabulary

Useful Terms & Definitions

Adaptability : The extent to which a building, or a building component, is designed when new, or capable of being easily modified at any later stage, to meet the changing living or working needs of the broad average of potential occupants, who may be disabled or able-bodied.

Buildability : The extent to which the design of a building facilitates ease of CIRIA-GB) construction, subject to the overall requirements for the completed building.

Built Environment : Anywhere there is, or has been, an intrusion or intervention by a human being in the natural environment.

Construction Works : Any building or civil engineering works. (EU Directive 89/106/EEC)

Cost Effectiveness : To achieve a defined objective at the lowest cost, or to achieve (IEC Treaty, 1994*) the greatest benefit at a given cost.

Dimensional Co-Ordination : A convention on related sizes for the co-ordinating dimensions of (ISO 1791) building components and the buildings incorporating them, for their design, manufacture, assembly and/or installation. **Disabled** : Those people, of all ages, who are unable to perform, independently and without aid, basic human tasks or functions because of physical, mental or psychological impairment, whether of a permanent or temporary nature. This definition is derived from / based on the World Health Organization's definitions (1980) of 'impairment' and 'disability' only. The term **disabled** includes

- wheelchair users ;
- people who experience difficulty in walking, with or without aid, e.g. stick, crutch, calliper or walking frame ;
- the elderly (people over the age of 60 years) ;
- the very young (people under the age of 5 years) ;
- pregnant women ;
- people who suffer from arthritis ;
- the visually impaired ;
- the hearing impaired ; and
- people who panic in a fire situation or other emergency ;
- people who suffer incapacitation as a result of exposure, during a fire, to poisonous or toxic substances, and/or elevated temperatures.

Economically Reasonable Working Life :

(EU Directive 89/106/EEC) (i) The working life is the period of time during which the performance of the works will be maintained at a level compatible with the fulfilment of the Essential Requirements.

(ii) An economically reasonable working life presumes that all relevant aspects are taken into account, such as

- costs of design, construction and use ;
- costs arising from hindrance of use ;
- risks and consequences of failure of the works during its working life and costs of insurance covering these risks ;
- planned partial renewal ;
- costs of inspections, maintenance, care and repair ;
- costs of operation and administration ;
- disposal ;
- environmental aspects.

Energy Cycle : The entire energy chain, including activities related to prospecting (IEC Treaty, 1994) for, exploration, production, conversion, storage, transport, distribution and consumption of the various forms of energy, and the treatment and disposal of wastes, as well as the decommissioning, cessation or closure of these activities, minimizing harmful environmental impacts.

Environmental Impact :

(IEC Treaty, 1994) Any effect caused by a given activity on the environment, including human health and safety, flora, fauna, soil, air, water, climate, landscape and historical monuments or other physical structures or the interactions among these factors ; it also includes effects on cultural heritage or socio-economic conditions resulting from alterations to those factors. **Human Health :** A state of physical, mental, psychological, social, cultural and economic wellbeing.

Improving Energy Efficiency :

(IEC Treaty, 1994) Acting to maintain the same unit of output (of a good or service) without reducing the quality or performance of the output, while reducing the amount of energy required to produce that output.

Life Cycle : Consecutive and interlinked stages of a product (and/or service) (EN ISO 14040) system from raw material acquisition or generation of natural resources to the final disposal.

Life Cycle Assessment :

(EN ISO 14040) Compilation and evaluation of the inputs, outputs and the potential environmental impacts of a product (and/or service) system throughout its life cycle.

Life Cycle Impact Assessment :

(EN ISO 14040) Phase of life cycle assessment aimed at understanding and evaluating the magnitude and significance of the potential environmental impacts of a product (and/or service) system.

Life Cycle Interpretation :

(EN ISO 14040) Phase of life cycle assessment in which the findings of either the inventory analysis or the impact assessment, or both, are combined consistent with a defined goal and scope in order to reach conclusions and recommendations.

Life Cycle Inventory Analysis :

(EN ISO 14040) Phase of life cycle assessment involving the compilation and quantification of inputs and outputs, for a given product (and/or service) system throughout its life cycle.

Performance : Performance is a quantitative expression (value, grade, class or (EU Directive 89/106/EEC) level) of the behaviour of a works, part of the works or product, for an action to which it is subject or which it generates under the intended service conditions (for the works or part of the works) or intended use conditions (for products) .

Safety : Freedom from unacceptable risk of harm.(ISO/IEC Guides 2 & 51)

SEED : Sustainable , Energy-efficient , Environment-friendly Development.

Sustainable Development : Development which meets the needs of the present without (Brundtland Report, 1987) compromising the ability of future generations to meet their own needs. An improved definition of 'sustainable development' must also embody the following concepts

- the place of human beings in the environment, and the relationship between both ;
- the nature of human, social, cultural and economic development, their current imbalances and inequities, and their future course ;
- the healing of existing injury to the natural environment.

Sustainable Construction : The creation and responsible maintenance of a healthy built (CIB/W82 & TG16) environment based on resource efficient and ecological principles.

Sustainable Design : The art and science of the design, supervision of related construction / de-construction, and maintenance of sustainability in the built environment. The definition of 'sustainable design' embodies the following concept

- 'person-centred' design , i.e. that design process which places real people at the centre of creative endeavours and gives due consideration to their health, safety and welfare in the built environment - it includes such specific performance criteria as a sensory rich and accessible (mobility, usability, communications and information) environment, fire safety, air, light and visual quality, protection from ionizing and electromagnetic radiation, thermal comfort (EN ISO 7730) , unwanted or nuisance noise abatement, etc. an important 'person-centred' design **aid** is the questionnaire survey, carried out by an independent, competent, non- threatening individual, and which comprises both open and closed format questions.

Sustainable Engineering : The application of scientific principles to relevant aspects of sustainable design.

Welfare : A general feeling of health and happiness.

Standards & Additional Reference Documents :

ISO 6707-1 : 1989

Building and civil engineering - Vocabulary. Part 1 : General terms.

ISO 6707-2 : 1993

Building and civil engineering - Vocabulary. Part 2 : Contract terms.

EN ISO 14040 : 1997

Environmental management - Life cycle assessment - Principles and framework.

E.U. Council Directive 85/337/EEC , of 2nd. June 1985, on the assessment of the effects of certain public and private projects on the environment.

E.U. Council Directive 89/106/EEC , of 21st. December 1988, on the approximation of laws, regulations and administrative provisions of the Member States relating to construction products.

E.U. Council Directive 89/391/EEC , of 12th. June 1989, on the introduction of measures to encourage improvements in the safety and health of workers at work.

E.U. Council Directive 92/43/EEC , of 21st. May 1992, on the conservation of natural habitats and of wild fauna and flora.

E.U. Council Regulation (EEC) No. 1836/93 , of 29th. June 1993, allowing voluntary participation by companies in the industrial sector in a Community eco-management and audit scheme.

E.U. Council Directive 96/29/Euratom , of 13th. May 1996, laying down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionizing radiation.

Sustainable Development and the Future of Construction - CIB Publication 225

International Council for Building Research, Studies and Documentation (**CIB**) . Report. CIB Working Commission 82 : Futures Studies in Construction. The Netherlands. May, 1998.

UNFCCC - The Kyoto Protocol : 1997

Agreed at the 3rd. meeting of the Conference of the Parties (COP 3) to the United Nations Framework Convention on Climate Change. Kyoto, Japan. December, 1997. This Protocol sets legally binding targets for different regions of the 'developed world' to limit emissions of an aggregate of six more greenhouse gases : C₀₂ , C_{H4} , N₂O, PFC's , HFC's , and S_{F6}.

Helsinki Declaration on Action for Environment and Health in Europe

World Health Organization, Regional Office for Europe. 2nd. European Conference on Environment and Health. Helsinki, Finland. 20th.- 22nd. June, 1994.

International Charter for the Conservation and Restoration of Monuments and Sites

International Council of Monuments and Sites (**ICOMOS**) . Venice, Italy. May, 1964.

International Charter for the Protection of Indigenous Architecture and Methods of Building

Conscious of the meaning of 'environmental impact' , it was agreed at a meeting of **CIB/TG16** in Paris, on 11th. June 1997, that work should commence on this proposed Charter. Possible sponsorship of the document by the United Nations will be explored.

*** International Energy Charter Treaty**

Lisbon, Portugal ; December, 1994. Official Journal of the European Communities (**No. L 380**).
Office for Official Publications of the European Communities. Luxembourg. 1994.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 27 June 2000**CHARTE 4389/00****CONTRIB 248****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union
– Audition of the candidate countries on 19 June 2000

Please find hereafter the list of the representatives of the candidate countries and the statement by the Permanent Secretary of the Ministry of Foreign Affairs of the **Republic of Cyprus**.

Participants à l'audition des pays candidats le 19 juin 2000

République de Chypre/Republik Zypern:

M. Theophilos V. THEOPHILOU, Ambassadeur, Délégué Permanent de la République Chypre auprès de l'UE

Mme Maro CLERIDES-TSIAPPA, Senior Attorney of the Republic

M. Marios LYSIOTIS, Counsellor at the Permanent délégation of Cyprus to the EU

Malte/Malta

M. (Dr.) Michel FRENDU, membre du Parlement maltais

Mme Elena GRECH, Premier secrétaire à l'Ambassade de Malte

République de Hongrie/Republik Ungarn:

M. Béla SZOMBATI, Chef adjoint du Secrétariat d'Etat d'Intégration, Ministère des Affaires étrangères

Mme Eszter ORGOVÁN, Ministère des Affaires Etrangères

Mme Zsuzsanna MÁTRAI, Ministère des Affaires Etrangères (salle d'écoute)

Mme Éva TÖRÖK, Mission de la Hongrie auprès de CE (salle d'écoute)

m. Tamas SZÜCS, Mission de la Hongrie auprès de CE (salle d'écoute)

République de Pologne/Polnische Republik

M. Jerzy KRANZ, Undersecretary of State, Ministry of Foreign Affairs

M. Jan BARCZ, Directeur, European Union Department, Ministry of Foreign Affairs

M. Jerzy JASKIERNIA, Member of Parliament

M. Michael CZYZ, Minister Counsellor, Polish Mission to the EU

Mme Marta CYGAN, Cousellor, Polish Mission to the EU

Roumanie/Rumänien:

M. Eugen DIJMARESCU, Secrétaire d'Etat, Ministère des Affaires Etrangères

Mme Cristina TARCEA, Directeur au Ministère de la Justice

Mme Brandusa PREDESCU, Directeur au Ministère des Affaires Etrangères

M. Ion JINGA, Ministre-conseiller, Mission de la Roumanie auprès de l'UE

M. Viorel ARDELEANU, Ministre conseiller, Mission de la Roumanie auprès de l'UE

Mme Maria CIUCA-LIGOR, Troisième Secrétaire, Mission de la Roumanie auprès de l'UE

République Slovaque/Slowakische Republik

M. Daniel LIPSIC, Chef de l'office du Ministère de la Justice

Mme Jarmila BADIKOVA, Deuxième secrétaire de la mission slovaque auprès de l'UE

M. Juraj MIGAS, Ambassadeur

Mlle Andrea MATIZOVA, deuxième secrétaire.

République d'Estonie/Republik Estland

M. Meelis TIGIMÄE, Mission d'Estonie auprès de l'EU

Mme Kai KAARELSON, Ministère des Affaires Etrangères

République de Lettonie/Republik Lettland

M. Andris PIEBALGS, Ambassador of Latvia to EU

Mme Inese BIRZNIECE, Member of the European Affairs Committee, Parliament of Latvia

Mme Katrina KOSA, Deputy Head, EU Policy Division, Ministry of Foreign Affairs

M. Aris VIGANTS, Second Secretary, Mission of Latvia to EU

M. Eriks FLAUMANIS, Attaché, Mission of Latvia to EU

République de Lituanie/Republik Litauen:

M. Vilenas VADAPALAS, Director of the European Law Department under the Gouvernement of Lithuania

M. Dainoras ZIUKAS, II Secretary, Lithuanian Mission to the EC

République de Bulgarie/Republik Bulgarien:

Mme Antoinetta PRIMATAROVA, Ambassador

M. Mario MILOUCHEV, Counsellor in the Bulgarian Mission to the EC

M. Peter STEFANOV }

M. Vesselin VALKANOV } Counsellors in the Bulgarian Mission (salle d'écoute)

M. Ognyan CHAMPEOV }

République tchèque/Tschechische Republik

M. Martin PALOUS, Ministre-adjoint des Affaires Etrangères

M. Karel HEJC, Directeur, Département des droits de l'homme, Ministère Affaires Etrangères

Mlle Veronika STROMSIKOVÁ, Département des droits de l'homme, Min. Affaires Etrangères

M. Ludek STAVINOHA, Conseiller-Ambassadeur de la Mission tchèque auprès des CE

M. Michael STROUHAL, Premier Secrétaire de la Mission tchèque auprès des CE

République de Slovénie/Slowenische Republik

M. Mitja DROBNIC, State Secretary, Ministry of Foreign Affairs

M. Marcel KOPROL, Minister Plenipotentiary, Deputy Head of Mission of Slovenia to the EU

M. Andraz ZIDAR, Counsellor, Ministry of Foreign Affairs

M. Bostjan JERMAN, Second Secretary, Mission of Slovenia to the EU

République de Turquie/Türkische Republik

M. Nihat AKYOL, Ambassadeur, Délégué permanent auprès de l'UE

M. (Prof.) Haluk KABAALIOGLU, Conseiller à la délégation turque auprès de l'UE

M. Ismail Hakki MUSA, Premier secrétaire à la délégation turque auprès de l'UE.

Statement by the Permanent Secretary of the Ministry of Foreign Affairs
of the Republic of Cyprus to the Audition with Candidate Countries
of the Convention for the Charter of Fundamental Rights of the European Union

The decision of the Cologne European Council to draw up a Charter of Fundamental Rights of the European Union was an important and timely decision which will have positive and beneficial effects in the process of European integration. The provisions of the Charter and their underlying message are addressed both to the member states and their citizens, the European citizens, as well as to the candidate countries and their peoples.

When the Republic of Cyprus submitted its application for membership in 1990, we knew that we were not applying to join just a common market, or a broader economic union, however important such a union might be. We were conscious, in fact we aspired, to join a community of shared values and principles, based on the rule of law, the protection and respect of human rights, and the promotion of peace and security in our continent and beyond, a community moving towards an ever closer union.

Certain important elements of this closer union were at the time not yet fully developed. Ever since the pace of European Integration was accelerated, the Economic and Monetary Union has taken form and life, the Common Foreign and Security Policy has been strengthened, the defence dimension is gradually being introduced. At the same time, the social dimension is gaining importance at the community level, as exemplified by the special summit in Lisbon this year. Furthermore, the Intergovernmental Conference on institutional reforms, is opening the way for the enlargement of the Union which is of extreme importance for the future of our continent.

The Cologne European Council decision for drawing up a Charter of Fundamental Rights of the European Union is the logical outcome and consequence of this evolution. It will fill an obvious gap in the already broad spectrum of the activities of the Union.

Drawing from our common European heritage for the protection of human rights, the different constitutional traditions of member states and reflecting the evolution in the field of protection of Human Rights, the Charter will strengthen the legitimacy of the Union in the eyes of its citizens. It can become a focal point of identification, giving to the ordinary citizen a source of meaning and understanding of the drive towards European Integration.

In order, however, to reach this goal, the Charter must be drafted in clear, simple and concise terms, so that it will be comprehensible to the ordinary citizen of the Union. The work done thus far by the Convention, satisfies, we believe, this criterion and we wish to congratulate the participants for what has already been achieved.

Mr. President and members of the Convention,

The Republic of Cyprus, has since its establishment 40 years ago, placed the protection of human rights at the center of its polity. The Treaty of Establishment of the Republic of Cyprus, the act of birth of the Republic, states in article 5:

“The Republic of Cyprus shall ensure to everyone within its jurisdiction human rights and fundamental freedoms comparable to those set out in section I of the European Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on the 4th of November, 1950, and the Protocol of that Convention signed at Paris on 20th of March 1952.”

Part II of the Constitution of the Republic of Cyprus, entitled “Fundamental Rights and Liberties” reproduces by and large the provisions of the Convention in the body of the Constitution.

These constitutional provisions are respected by the administration and are fully and directly enforceable before the courts of the Republic. Indeed under the Constitution the legislative, executive and judicial authorities of the Republic are bound to secure the effective application of the said provisions.

Furthermore, Cyprus has ratified not only the European Convention of Human Rights and the Protocols thereof but almost all international legal instruments appertaining to human and social rights, including the European Social Charter, the I.L.O. Convention and the Covenant for Civil and Political Rights.

Our own historical experience has demonstrated and still demonstrates the great importance and usefulness of the regional and universal instruments for the protection of Human Rights. Over the course of years the Republic of Cyprus and its citizens benefited considerably from the provisions of these instruments and the mechanisms established thereby.

In this regard allow me to mention in all humility that the record of compliance of the Republic of Cyprus with the obligations arising from these instruments is impeccable.

It is abundantly clear from the above that the Republic of Cyprus shares the objectives of the Charter of Fundamental Rights of the Union and it is our intention to adopt it in the form it will take, following the relevant decision of the European Council. We will do so not only because it will be part of the *acquis communautaire* with which we will have to harmonize but also because we fully comprehend its overall beneficial effects for Cyprus.

Mr. President,

We have been following closely the proceedings of this Convention and we are aware of the important debates taking place in this body as well as of the different approaches on certain aspects of the Charter. We believe, however, that in the few months of its existence and operation the Convention has already produced very positive and commendable results.

Of particular importance in the context of the deliberations of the Convention is, in our view, the issue of the overall system of the protection of human rights in Europe. We have in our continent, an important and effective system for the protection of Human Rights. We firmly believe that this system should be safeguarded and further strengthened.

We therefore share the position expressed by the Parliamentary Assembly of the Council of Europe in its resolution of 25 January 2000 (res. 1210) that “It is of vital importance to ensure consistency in the protection afforded to civil and political rights in Europe”.

We trust that this consideration will weigh heavily in the decisions of the Convention. For, we believe that the two instruments could and should be consistent and complementary.

We take stock of the impressive results achieved thus far by the Convention: the identification of the fundamental rights, the way these are formulated and presented, as well as the introduction of a new set of rights, resulting from developments in the fields of science and technology and the general evolution of our societies. We also consider the Convention’s work on social rights, as a solid basis for further development. The inclusion of such rights will be an important move, reflecting the general evolution of the Union in recent years.

12.6.2000

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE**fundamental.rights@consilium.eu.int**

Bruxelles, le 27 juin 2000**CHARTE 4390/00****CONTRIB 249****NOTE DE TRANSMISSION**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne
 – Audition des pays candidats du 19 juin 2000

Veillez trouver ci-après la liste des représentants des pays candidats et l'intervention de M. Nihat AKYOL, Ambassadeur, Délégué permanent de la Mission de **Turquie**.

Participants à l'audition des pays candidats le 19 juin 2000

République de Chypre/Republik Zypern:

M. Theophilos V. THEOPHILOU, Ambassadeur, Délégué Permanent de la République Chypre auprès de l'UE

Mme Maro CLERIDES-TSIAPPA, Senior Attorney of the Republic

M. Marios LYSIOTIS, Counsellor at the Permanent délégation of Cyprus to the EU

Malte/Malta

M. (Dr.) Michel FRENDU, membre du Parlement maltais

Mme Elena GRECH, Premier secrétaire à l'Ambassade de Malte

République de Hongrie/Republik Ungarn:

M. Béla SZOMBATI, Chef adjoint du Secrétariat d'Etat d'Intégration, Ministère des Affaires étrangères

Mme Eszter ORGOVÁN, Ministère des Affaires Etrangères

Mme Zsuzsanna MÁTRAI, Ministère des Affaires Etrangères (salle d'écoute)

Mme Éva TÖRÖK, Mission de la Hongrie auprès de CE (salle d'écoute)

m. Tamas SZÜCS, Mission de la Hongrie auprès de CE (salle d'écoute)

République de Pologne/Polnische Republik

M. Jerzy KRANZ, Undersecretary of State, Ministry of Foreign Affairs

M. Jan BARCZ, Directeur, European Union Department, Ministry of Foreign Affairs

M. Jerzy JASKIERNIA, Member of Parliament

M. Michael CZYZ, Minister Counsellor, Polish Mission to the EU

Mme Marta CYGAN, Cousellor, Polish Mission to the EU

Roumanie/Rumänien:

M. Eugen DIJMARESCU, Secrétaire d'Etat, Ministère des Affaires Etrangères

Mme Cristina TARCEA, Directeur au Ministère de la Justice

Mme Brandusa PREDESCU, Directeur au Ministère des Affaires Etrangères

M. Ion JINGA, Ministre-conseiller, Mission de la Roumanie auprès de l'UE

M. Viorel ARDELEANU, Ministre conseiller, Mission de la Roumanie auprès de l'UE

Mme Maria CIUCA-LIGOR, Troisième Secrétaire, Mission de la Roumanie auprès de l'UE

République Slovaque/Slowakische Republik

M. Daniel LIPSIC, Chef de l'office du Ministère de la Justice

Mme Jarmila BADIKOVA, Deuxième secrétaire de la mission slovaque auprès de l'UE

M. Juraj MIGAS, Ambassadeur

Mlle Andrea MATIZOVA, deuxième secrétaire.

République d'Estonie/Republik Estland

M. Meelis TIGIMÄE, Mission d'Estonie auprès de l'EU
Mme Kai KAARELSON, Ministère des Affaires Etrangères

Republique de Lettonie/Republik Lettland

M. Andris PIEBALGS, Ambassador of Latvia to EU
Mme Inese BIRZNIECE, Member of the European Affairs Committee, Parliament of Latvia
Mme Katrina KOSA, Deputy Head, EU Policy Division, Ministry of Foreign Affairs
M. Aris VIGANTS, Second Secretary, Mission of Latvia to EU
M. Eriks FLAUMANIS, Attaché, Mission of Latvia to EU

République de Lituanie/Republik Litauen:

M. Vilenas VADAPALAS, Director of the European Law Department under the Gouvernement of
Lituania
M. Dainoras ZIUKAS, II Secretary, Lithuanian Mission to the EC

République de Bulgarie/Republik Bulgarien:

Mme Antoinetta PRIMATAROVA, Ambassador
M. Mario MILOUCHEV, Counsellor in the Bulgarian Mission to the EC
M. Peter STEFANOV }
M. Vesselin VALKANOV } Counsellors in the Bulgarian Mission (salle d'écoute)
M. Ognyan CHAMPEOV }

République tchèque/Tschechische Republik

M. Martin PALOUS, Ministre-adjoint des Affaires Etrangères
M. Karel HEJC, Directeur, Département des droits de l'homme, Ministère Affaires Etrangères
Mlle Veronika STROMSIKOVÁ, Département des droits de l'homme, Min. Affaires Etrangères
M. Ludek STAVINOHA, Conseiller-Ambassadeur de la Mission tchèque auprès des CE
M. Michael STROUHAL, Premier Secrétaire de la Mission tchèque auprès des CE

République de Slovénie/Slowenische Republik

M. Mitja DROBNIC, State Secretary, Ministry of Foreign Affairs
M. Marcel KOPROL, Minister Plenipotentiary, Deputy Head of Mission of Slovenia to the EU
M. Andraz ZIDAR, Counsellor, Ministry of Foreign Affairs
M. Bostjan JERMAN, Second Secretary, Mission of Slovenia to the EU

République de Turquie/Türkische Republik

M. Nihat AKYOL, Ambassadeur, Délégué permanent auprès de l'UE
M. (Prof.) Haluk KABAALIOGLU, Conseiller à la délégation turque auprès de l'UE
M. Ismail Hakki MUSA, Premier secrétaire à la délégation turque auprès de l'UE.

Bruxelles, le 19 juin 2000

POSITION DE LA TURQUIE

- La Turquie se joint à tous les autres candidats pour partager l'objectif d'une Union qui reposera sur les principes de liberté, de démocratie et de respect des droits de l'Homme et des libertés fondamentales, ainsi que sur la notion d'Etat de droit. Les décisions du Sommet d'Helsinki par lesquelles la candidature de la Turquie a été officialisée ont renforcé entre mon pays et l'Union la communauté de destin dont un des piliers est justement la protection et le développement des droits de l'Homme en général.

Nous pensons ainsi que la réalisation d'une Union sans cesse plus étroite entre les peuples de l'Europe, ainsi que le maintien et le développement de l'Union en tant qu'espace de liberté, de sécurité et de justice, devrait avoir comme principe de base le respect, général et non restrictif, de la dignité humaine unique, universelle et inviolable. Dans ce cadre, la Turquie accepte le respect des critères politiques de Copenhague ainsi que la substance de l'Article 6 du Traité de l'Union.

Alors que le volet économique de l'intégration européenne est désormais de plus en plus complété par un volet politique, nous comprenons fort bien les nécessités qui sont à la base de l'élaboration par l'Union européenne d'une Charte des Droits fondamentaux. Pour la même raison, nous soutenons les efforts de l'Union d'améliorer par ce biais les normes liées à la protection et au développement des droits de l'Homme. En effet, cette initiative offre l'occasion d'améliorer la protection des droits de l'Homme dans le cadre même de l'Union.

- Candidate à l'adhésion, la Turquie se réjouit de participer aux réunions successives qui sont organisées pour informer l'ensemble des pays candidats sur les travaux préparatoires à cette Charte. Nous souscrivons par ailleurs à l'appel du Parlement européen du 16 mars dernier, par lequel il propose que l'on accorde aux pays candidats un statut d'observateurs dans le cadre de la Convention chargée de l'élaboration de cette Charte.

Nous avons toutefois certaines préoccupations en ce qui concerne cette initiative de l'Union européenne, que nous soutenons dans l'ensemble. Nous observons d'ailleurs que ces préoccupations sont partagées par certains pays membres de l'Union comme par certains pays candidats. Nous voulons cependant souligner que ces préoccupations ne concernent nullement la nature des droits et libertés qui font l'objet de la Charte, que nous considérons comme une manifestation de la volonté d'intégration politique et juridique au sein de l'Union.

- Il apparaît d'ores et déjà, bien que l'examen des très nombreux amendements à la cinquantaine d'articles définis par la Convention n'ait pas encore abouti, que les droits et libertés fondamentaux énumérés dans la Charte, quoique rédigés d'une manière un peu différente, ressemblent dans une grande mesure aux droits et libertés consignés dans la Convention européenne des Droits de l'Homme.

- Les préoccupations qui sont les nôtres à cette étape de la Charte sont : d'une part, l'éventuel affaiblissement du système de la Convention européenne des Droits de l'Homme qui fonctionne de manière très efficace à l'heure actuelle, en créant un système différent. Et d'autre part, l'idée que, de la sorte, on pourrait être amené à penser qu'il existe une volonté de créer en Europe un système qui ait le pas sur un autre système existant. Ceci risquerait de susciter la réapparition des lignes de partage que nous voulons voir disparaître en Europe.

- Cette préoccupation quant à la formation d'une hiérarchie dans le système judiciaire européen a d'ailleurs été évoquée à diverses reprises ces derniers mois devant l'Assemblée parlementaire et au Comité ministériel du Conseil de l'Europe dont la Turquie est membre.

Le Comité ministériel du Conseil de l'Europe a adopté en date du 31 mai dernier le texte de sa réponse à la Recommandation 1439 (2000) de l'Assemblée parlementaire sur la Charte des Droits fondamentaux de l'Union européenne.

- En fait, les préoccupations de la Turquie ont déjà été exprimées par les institutions de l'Union européenne. Ainsi, la Résolution adoptée par le Parlement européen en date du 16 mars 2000 « a souligné que la Charte des Droits fondamentaux de l'Union européenne ne devrait entrer en aucune manière en concurrence avec la Convention européenne des droits de l'Homme ».

Ce souhait se trouve également à l'origine de l'invitation à l'Union à adhérer à la Convention européenne des droits de l'Homme qui constituerait, d'après le Parlement européen, un pas important vers le renforcement de la protection des droits fondamentaux au sein de l'Union.

Membre du Conseil de l'Europe, la Turquie épouse totalement cette recommandation. Nous estimons en effet que l'Union devrait non seulement adhérer à la Convention européenne, mais également renforcer avec le Conseil de l'Europe sa coopération déjà très étroite, afin d'éviter, par des moyens appropriés, d'éventuels conflits et confusions entre la Cour de Justice des CE et la Cour européenne des droits de l'Homme. Pour l'instant, nous constatons que la question des relations dans ces domaines entre la Convention européenne des droits de l'Homme et la Charte des Droits fondamentaux de l'Union européenne n'est pas encore réglée.

- L'examen du projet de la Charte nous semble indiquer que le texte consisterait en une déclaration non contraignante. Le débat au sein de la Convention sur ce point n'étant pas clair, la Turquie continuera à porter un vif intérêt au déroulement des travaux sur ce point précis.

- Enfin, on remarque qu'il n'est fait aucune mention dans le projet de Charte de la position accordée à la Convention européenne et à la Cour européenne des droits de l'Homme. Cependant existe le danger de l'apparition d'importantes divergences de vues quant au mécanisme de contrôle auxquels seront soumis dans l'avenir les pays qui sont à la fois membres de l'Union européenne et du Conseil de l'Europe.

PROGETTO DI CARTA DEI DIRITTI FONDAMENTALI DELL'UNIONE EUROPEA**fundamental.rights@consilium.eu.int**

**Bruxelles, 27 giugno 2000 (29.06)
(OR. FR/IT)****CHARTE 4391/00****CONTRIB 250****NOTA DI TRASMISSIONE**

Oggetto: Progetto di Carta dei diritti fondamentali dell'Unione europea

Si allega un contributo della Consulta per la Giustizia Europea dei Diritti dell'Uomo (presso il Consiglio dell'Ordine degli Avvocati di Roma).¹

¹ Il testo è stato trasmesso unicamente in lingua italiana (l'articolo proposto è redatto in francese).

Consulta per la Giustizia Europea dei Diritti dell'Uomo

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Roma 15 giugno 2000

Il Presidente dell'Organo preposto all'elaborazione di un Progetto di Carta dei Diritti Fondamentali
dell'Unione Europea

fundamental.rights@consilium.eu.int

Bruxelles

OGGETTO: Progetto di Carta dei Diritti Fondamentali dell'Unione Europea

**<<Toute atteinte aux droits énoncés dans la présente Charte est susceptible de recours devant
les juridictions appropriées nationales et européennes et si nécessaire avec un aide juridique
et financière adaptée>>**

La scrivente Associazione denominata Consulta per la Giustizia Europea dei Diritti dell'Uomo si è costituita il **13 giugno 1986**, con lo scopo di far conoscere alle Associazioni culturali e sindacali degli Avvocati e dei Magistrati italiani gli strumenti di tutela dei Diritti dell'Uomo, garantiti da norme internazionali. Hanno aderito alla Consulta per la Giustizia Europea dei Diritti dell'Uomo 24 ASSOCIAZIONI tra le più rappresentative del mondo forense in Italia: sezione di Roma dell'ASSOCIAZIONE NAZIONALE FORENSE (già SINDACATO ROMANO AVVOCATI E PROCURATORI), CAMERA PENALE DI ROMA, UNIONE FORENSE PER LA TUTELA DEI DIRITTI DELL'UOMO, ASSOCIAZIONE ITALIANA GIOVANI AVVOCATI (A.I.G.A.), , CIRCOLO GIURIDICO ITALIANO, , UNIONE GIURISTI CATTOLICI ITALIANI (U.G.C.I.), UNIONE DELLE CAMERE PENALI ITALIANE , UNIONE NAZIONALE AVVOCATI LAICO-SOCIALISTI , ASSOCIAZIONE NAZIONALE FORENSE, UNIONE DELLE CAMERE CIVILI , ASSOCIAZIONE GIURISTE ITALIANE (A.G.I.), SOCIETA' ITALIANA DEGLI AVVOCATI AMMINISTRATIVISTI , CENTRO STUDI GIURIDICI ROMA, UNIONE DEGLI AVVOCATI D'ITALIA (U.D.A.I.), COMITATO GIURISTI ROTARIANI, ASSOCIAZIONE NAZIONALE AVVOCATI PENSIONATI (A.N.A.P.), ASSOCIAZIONE NAZIONALE AVVOCATI ITALIANI (A.N.A.I.), INIZIATIVA FORENSE , ASSOCIAZIONE NAZIONALE DIRITTO INFORMATICA E

TELEMATICA (ANDITEL) , UNIONE ITALIANA FORENSE (U.I.F.), ASSOCIAZIONE GIOVANILE FORENSE (A.GI.FOR.) , ASSOCIAZIONE ITALIANA DEGLI AVVOCATI PER LA FAMIGLIA E PER I MINORI (A.I.A.F.) , ASSOCIAZIONE PER LA TUTELA DELLE PROPRIETÀ' COLLETTIVE E DEI DIRITTI DI USO CIVICO (A.PRO.D.U.C.) , ASSOCIAZIONE AVVOCATI DEL LAVORO, ASSOCIAZIONE INTERNAZIONALE GIURISTI ITALIA-U.S.A., ASSOCIAZIONE VALORE UOMO.

Tutto ciò premesso, la scrivente Associazione, intende fornire il proprio contributo all'elaborazione del Progetto di Carta dei Diritti Fondamentali dell'Unione Europea.

Visto il documento (CHARTE 4352/00 CONTRIB 216, pubblicato il giorno 8 giugno 2000) sottoposto dal Comitato delle Regioni dell'Unione Europea, dove si propone in calce l'aggiunta di un nuovo articolo dopo l'attuale 50 (cinquanta), che recita testualmente : <<**Toute atteinte aux droits énoncés dans la présente Charte est susceptible de recours devant les juridictions appropriées nationales et européennes et si nécessaire avec un aide juridique et financière adaptée**>>.

La scrivente Associazione, nell'esprimere la propria totale ed incondizionata adesione ad una siffatta proposta di emendamento sottoposta dal Comitato delle Regioni, ritiene doveroso richiamare l'attenzione di Codesto Ecc.mo Organo sulla constatazione che, qualsivoglia catalogo di diritti fondamentali, per quanto completo ed avanzato, non ha alcun valore senza una effettiva **giustiziabilità**.

Con la massima osservanza

Il Segretario

avv. Maurizio de Stefano

ENTWURF DER CHARTA DER GRUNDRECHTE DER EUROPÄISCHEN UNION**fundamental.rights@consilium.eu.int**

Brüssel, den 30. Juni 2000**CHARTE 4394/00****CONTRIB 253****ÜBERMITTLUNGSVERMERK**

Betr.: Entwurf der Charta der Grundrechte der Europäischen Union

Finden Sie bitte nachstehend einen Beitrag betreffend den Schutz der Privatsphäre, vorgelegt von Herrn Gerhard SCHMID, Mitglied des Europäischen Parlaments. ¹

¹ Dieser Text wurde uns nur in deutscher Sprache übermittelt.

An den Präsidenten
des Konvents für den Entwurf
einer Grundrechtscharta der EU
Herrn Prof. Dr. Roman Herzog
Sécretariat Général du Conseil
Rue de la Loi 175
1048 Bruxelles

Brüssel, den 22. Februar 2000

Betrifft: Schutz der Privatsphäre vor Eingriffen durch die EU-Mitgliedstaaten

Sehr geehrter Herr Präsident,

die Verfassungen oder zumindest die abgeleiteten Rechtsordnungen der Mitgliedstaaten schützen ihre Bürger vor einer willkürlichen Verletzung ihrer Privatsphäre durch den Staat. Mitlesen des Briefverkehrs, Abhören von Telefongesprächen sowie das Mitschneiden von Telefax oder e-mail dürfen deshalb nur auf richterliche Anordnung hin vorgenommen werden.

Dieser Schutz entfaltet sich aber für einen Staatsbürger nur gegenüber dem **eigenen Staat**. Es gibt bisher weder in den Verträgen noch im Sekundärrecht der Europäischen Union Schutzgarantien für den Bürger eines EU-Mitgliedstaates gegen die Verletzung seiner Privatsphäre durch Behörden eines anderen Mitgliedstaates. Der Artikel 6 EU-Vertrag führt jedenfalls nach Auffassung der Europäischen Kommission zu keinem entsprechenden Schutz (siehe Anlage).

Bei dem angesprochenen Problem handelt es sich keineswegs um eine theoretische Überlegung. Nach den dem Europäischen Parlament vorliegenden Informationen beteiligen sich Mitgliedstaaten systematisch durch "Anzapfen" von Fernmeldesatelliten an der Verletzung der Privatsphäre von Staatsangehörigen anderer EU-Staaten.

Unter diesen Umständen möchte ich Sie bitten zu prüfen, ob bei den Arbeiten zur Entwicklung einer Grundrechtscharta der EU das Problem eines Grundrechtsschutzes gegenüber dem Handeln eines anderen EU-Staates, dessen Staatsbürgerschaft man nicht besitzt, mit aufgenommen werden kann.

Dies geht über die Idee eines Grundrechtsschutzes hinsichtlich von Handlungen oder Rechtsakten der Europäischen Union hinaus. Mir erscheint es aber nicht nur wegen des angesprochenen Beispiels notwendig, die Bindungswirkung einer Grundrechtscharta für das Handeln der Mitgliedstaaten zu thematisieren. Auch bisher leiten sich aus den Verträgen schon einige Rechte eines Bürgers gegenüber **allen** Mitgliedstaaten ab (z.B. kommunales Wahlrecht, Recht auf konsularische Vertretung). Dieser Ansatz sollte ausgeweitet werden.

Es würde mich freuen, wenn Sie meine Anregung aufnehmen könnten.

Mit freundlichen Grüßen
Ihr

Anlage

SCHRIFTLICHE ANFRAGE E-2167/99

Von Gerhard Schmid (PSE)
An die Kommission
(29.11.1999)

Betrifft: Schutz der Privatsphäre durch Art. 6 EU-Vertrag

Die Verfassungen der Mitgliedstaaten schützen die Bürger vor einer Verletzung ihrer Privatsphäre durch den Staat (Mitlesen des Briefverkehrs, Abhören des Telefons). Eingriffe in die Privatsphäre dürfen deshalb nur unter den strengen Voraussetzungen eines Gesetzes vorgenommen werden.

Schützt die Grundrechtsgarantie in Art. 6 des EU-Vertrages einen Bürger der EU vor einem Eingriff in seine Privatsphäre durch einen anderen Mitgliedstaat als den, dessen Staatsbürger er ist?

E-2167/99DE

Antwort des Herrn Bolkestein
Im Namen der Kommission
(6. Januar 2000)

Artikel 6 des Vertrags über die Europäische Union verlangt von der Union, bei Ausübung ihrer Zuständigkeiten die Grundrechte zu achten.

Dem Schutz der Privatsphäre der Unionsbürger dienen folgende Gemeinschaftsrechtsvorschriften, die sich an die Mitgliedstaaten richten: Richtlinie 95/46/EG des Europäischen Parlaments und des Rates vom 24. Oktober 1995 zum Schutz natürlicher Personen bei der Verarbeitung personenbezogener Daten und zum freien Datenverkehr und Richtlinie 97/66/EG des Europäischen Parlaments und des Rates vom 15. Dezember 1997 über die Verarbeitung personenbezogener Daten und den Schutz der Privatsphäre im Bereich der Telekommunikation.

Ziel dieser Richtlinien ist es, die Rechte und Freiheiten natürlicher Personen bei der Verarbeitung personenbezogener Daten zu schützen. Sie sind daher von Bedeutung für die vom Herrn Abgeordneten angesprochenen Bereiche. Sie gelten grundsätzlich auch für die Verarbeitung personenbezogener Daten durch einen Mitgliedsstaat, wenn die betroffene Person nicht Bürger/in dieses Mitgliedstaats ist. Es ist allerdings zu beachten, dass der Geltungsbereich der Richtlinien auf die Verarbeitung personenbezogener Daten beschränkt ist, die im Rahmen von Tätigkeiten erfolgt, die unter das Gemeinschaftsrecht fallen. Zudem legen beide Richtlinien zur Wahrung bestimmter Interessen Ausnahmen und Einschränkungen fest (vgl. Artikel 13 der Richtlinie 95/46/EG und Artikel 14 der Richtlinie 97/66/EG).

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 30 June 2000**CHARTE 4395/00****CONTRIB 254****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union
– Audition of the candidate countries on 19 June 2000

Please find hereafter the list of the representatives of the candidate countries and the statement by the **Slovak Republic**.

Participants à l'audition des pays candidats le 19 juin 2000

République de Chypre/Republik Zypern:

M. Theophilos V. THEOPHILOU, Ambassadeur, Délégué Permanent de la République Chypre auprès de l'UE

Mme Maro CLERIDES-TSIAPPA, Senior Attorney of the Republic

M. Marios LYSIOTIS, Counsellor at the Permanent délégation of Cyprus to the EU

Malte/Malta

M. (Dr.) Michel FRENDO, membre du Parlement maltais

Mme Elena GRECH, Premier secrétaire à l'Ambassade de Malte

République de Hongrie/Republik Ungarn:

M. Béla SZOMBATI, Chef adjoint du Secrétariat d'Etat d'Intégration, Ministère des Affaires étrangères

Mme Eszter ORGOVÁN, Ministère des Affaires Etrangères

Mme Zsuzsanna MÁTRAI, Ministère des Affaires Etrangères (salle d'écoute)

Mme Éva TÖRÖK, Mission de la Hongrie auprès de CE (salle d'écoute)

m. Tamas SZÜCS, Mission de la Hongrie auprès de CE (salle d'écoute)

République de Pologne/Polnische Republik

M. Jerzy KRANZ, Undersecretary of State, Ministry of Foreign Affairs

M. Jan BARCZ, Directeur, European Union Department, Ministry of Foreign Affairs

M. Jerzy JASKIERNIA, Member of Parliament

M. Michael CZYZ, Minister Counsellor, Polish Mission to the EU

Mme Marta CYGAN, Cousellor, Polish Mission to the EU

Roumanie/Rumänien:

M. Eugen DIJMARESCU, Secrétaire d'Etat, Ministère des Affaires Etrangères

Mme Cristina TARCEA, Directeur au Ministère de la Justice

Mme Brandusa PREDESCU, Directeur au Ministère des Affaires Etrangères

M. Ion JINGA, Ministre-conseiller, Mission de la Roumanie auprès de l'UE

M. Viorel ARDELEANU, Ministre conseiller, Mission de la Roumanie auprès de l'UE

Mme Maria CIUCA-LIGOR, Troisième Secrétaire, Mission de la Roumanie auprès de l'UE

République Slovaque/Slowakische Republik

M. Daniel LIPSIC, Chef de l'office du Ministère de la Justice

Mme Jarmila BADIKOVA, Deuxième secrétaire de la mission slovaque auprès de l'UE

M. Juraj MIGAS, Ambassadeur

Mlle Andrea MATIZOVA, deuxième secrétaire.

République d'Estonie/Republik Estland

M. Meelis TIGIMÄE, Mission d'Estonie auprès de l'EU

Mme Kai KAARELSON, Ministère des Affaires Etrangères

République de Lettonie/Republik Lettland

M. Andris PIEBALGS, Ambassador of Latvia to EU

Mme Inese BIRZNIECE, Member of the European Affairs Committee, Parliament of Latvia

Mme Katrina KOSA, Deputy Head, EU Policy Division, Ministry of Foreign Affairs

M. Aris VIGANTS, Second Secretary, Mission of Latvia to EU

M. Eriks FLAUMANIS, Attaché, Mission of Latvia to EU

République de Lituanie/Republik Litauen:

M. Vilenas VADAPALAS, Director of the European Law Department under the Gouvernement of Lithuania

M. Dainoras ZIUKAS, II Secretary, Lithuanian Mission to the EC

République de Bulgarie/Republik Bulgarien:

Mme Antoinetta PRIMATAROVA, Ambassador

M. Mario MILOUCHEV, Counsellor in the Bulgarian Mission to the EC

M. Peter STEFANOV }

M. Vesselin VALKANOV } Counsellors in the Bulgarian Mission (salle d'écoute)

M. Ognyan CHAMPEOV }

République tchèque/Tschechische Republik

M. Martin PALOUS, Ministre-adjoint des Affaires Etrangères

M. Karel HEJC, Directeur, Département des droits de l'homme, Ministère Affaires Etrangères

Mlle Veronika STROMSIKOVÁ, Département des droits de l'homme, Min. Affaires Etrangères

M. Ludek STAVINOHA, Conseiller-Ambassadeur de la Mission tchèque auprès des CE

M. Michael STROUHAL, Premier Secrétaire de la Mission tchèque auprès des CE

République de Slovénie/Slowenische Republik

M. Mitja DROBNIC, State Secretary, Ministry of Foreign Affairs

M. Marcel KOPROL, Minister Plenipotentiary, Deputy Head of Mission of Slovenia to the EU

M. Andraz ZIDAR, Counsellor, Ministry of Foreign Affairs

M. Bostjan JERMAN, Second Secretary, Mission of Slovenia to the EU

République de Turquie/Türkische Republik

M. Nihat AKYOL, Ambassadeur, Délégué permanent auprès de l'UE

M. (Prof.) Haluk KABAALIOGLU, Conseiller à la délégation turque auprès de l'UE

M. Ismail Hakki MUSA, Premier secrétaire à la délégation turque auprès de l'UE.

European Charter of Human Rights

The endeavour to achieve respect and protection of fundamental human rights is a never-ending process. Our recent tragic experience with the communist totalitarian system and the continuing struggle with the remnants imprinted by the communist ideology in the minds of people enhance this need in the Slovak Republic. The possibility of participating in the drafting of a new European Charter of Human Rights is a significant appreciation of the progress our country achieved in its preparation for the accession to the European Union.

However, we hold that regardless of the accession date of the Slovak Republic to the European Union the Charter will either directly or indirectly affect the overall atmosphere of the political and civic life and also the quality of inter-personal relations in general. Despite the fact that in the pre-accession period the Charter will be a fundamental political document having a declaratory nature in the associated countries we consider the clear resolution of its legally binding status and its enforceability very important and paramount. It is equally important to clearly define the relation between the Charter and other international instruments on human rights, in particular the European Convention for the Protection of Human Rights including its protocols and other instruments adopted by the Council of Europe. These features of the Charter should be clearly declared in its Preamble so that the European Union citizens, whom this Charter should serve, get a clear message of its scope and field of action.

First of all, the Preamble of the Charter should contain a commitment to the natural law origin of human rights by emphasising the perpetuity of equality of people in their dignity and rights, a commitment to the principles of justice, natural justice and fairness. The reasons for this are that the application of strict law without equity law could result in an unfair process and unfair decision-making. The approach taken could be similar to the one in the Preamble to the International Covenant on Civil and Political Rights:

“...recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.”

The subsequent declarations in the draft of the European Charter Preamble concerning the principles of democracy continue the idea of the recognition of natural dignity of people in a logic way

- “ 1. All public power comes from the people.
2. The union and its bodies are built on the principles of freedom, democracy, respect for human rights, rule of law, principles which are shared by all Member States.”

and they are also reflected in Article 1 of the draft Charter:

“1. Dignity of a human being shall be respected and protected.”

Following this line of thinking, we would also like to recommend that in the provisions on the right to life, the text of Article 2 of the draft Charter be added a paragraph 2 reading “*Human life should be protected already before birth.*”

Proposals

1.

Article 24. Political Parties

“ Every citizen of the European Union shall have the right to establish a political party at the level of the Union and every person shall have the right to join such party. These political parties shall respect the rights and freedoms guaranteed in and by this Charter.”

shall be added another paragraph banning political parties advocating any form of intolerance, hatred, discrimination or violence.

2.

Article 41 Social Security and Social Assistance

“ 1. Conditions shall be created, in compliance with national regulations of each Member State, for social security providing protection in maternity, sickness, need or old age and in unemployment.”

We suggest to remove the category of “old age” from this provision and to elaborate it in a separate provision in a similar way to e.g. Article 43, which stipulates measures for the integration of disabled people.

3.

We propose to consider the addition of an Article 45 (protection of the environment)

The policy of the Union will be in the direction of preservation and protection of cultural and historic monuments of its Member States.

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE**fundamental.rights@consilium.eu.int**

Bruxelles, le 3 juillet 2000**CHARTE 4396/00****CONTRIB 255****NOTE DE TRANSMISSION**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne
 – Audition des pays candidats du 19 juin 2000

Veillez trouver ci-après la liste des représentants des pays candidats et l'intervention de M. Jerzy KRANZ, Sous-secrétaire d'Etat au ministère des Affaires Etrangères de la **République de Pologne**.

Participants à l'audition des pays candidats le 19 juin 2000

République de Chypre/Republik Zypern:

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Mme Zsuzsanna MÁTRAI, Ministère des Affaires Etrangères (salle d'écoute)

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m. Tamas SZÜCS, Mission de la Hongrie auprès de CE (salle d'écoute)

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République Slovaque/Slowakische Republik

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 Mme Kai KAARELSON, Ministère des Affaires Etrangères

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 Mme Katrina KOSA, Deputy Head, EU Policy Division, Ministry of Foreign Affairs
 M. Aris VIGANTS, Second Secretary, Mission of Latvia to EU
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 M. Ismail Hakki MUSA, Premier secrétaire à la délégation turque auprès de l'UE.

**Observations préliminaires au sujet
d'une charte des droits fondamentaux
de l'Union européenne**

**Intervention de M. Jerzy Kranz
sous-secrétaire d'Etat au ministère des Affaires étrangères
de la République de Pologne**

Bruxelles, le 19 juin 2000

1. La Pologne suit avec grand intérêt les travaux sur l'élaboration de la Charte des droits fondamentaux de l'Union européenne. L'initiative en question résulte de façon naturelle du développement de l'Union. En effet, le respect des droits fondamentaux constitue l'un des principes sur lesquels est assise l'Union européenne.

2. La Pologne note avec satisfaction l'initiative d'inviter les candidats à l'adhésion à l'UE à la discussion sur la Charte et elle apprécie la possibilité de présenter à la Convention sa position à ce sujet. Il importe en effet que les pays candidats puissent se prononcer sur certains documents avant qu'ils deviennent membres de l'Union et qu'ils sachent vers quelle Union ils s'orientent.

3. L'initiative de l'Union de créer un catalogue de droits fondamentaux éveille en Pologne un grand intérêt et notamment dans les milieux parlementaires. Il y a quelques semaines que la Commission des affaires étrangères et de l'intégration européenne et la Commission des droits de l'homme et du respect du droit du Sénat polonais a tenu une session consacrée à la Charte des droits fondamentaux de l'UE. Plusieurs membres du Parlement ainsi que les représentants du gouvernement, des organisations non gouvernementales et de nombreux experts ont participé à cette réunion.

4. Le besoin de renforcer la protection des droits de l'individu résulte de façon naturelle de l'évolution de l'Union qui, par les arrêts de la Cour de Justice et les amendements aux Traités constitutifs, se réfère aux droits de l'homme, y compris à la Convention

européenne des droits de l'homme. Ce développement témoigne de l'importance de plus en plus grande du respect des droits fondamentaux dans le système communautaire.

La position de l'Union européenne dans le monde dépend non seulement de sa force économique, mais aussi de son rôle dans la promotion du modèle européen de l'Etat démocratique de droit. La Pologne est profondément attachée à une telle conception de l'intégration européenne.

5. Pour des raisons résultant de son expérience historique, la Pologne soutient l'initiative de créer un catalogue des droits fondamentaux qui exposerait mieux à l'opinion publique cet important aspect du processus d'intégration européenne.

Il est à noter dans ce contexte que la plupart des dispositions prévues par le projet de la Charte figurent dans la nouvelle Constitution de la République de Pologne de 1997. Notre Constitution contient en effet un grand catalogue des droits fondamentaux et libertés (politiques, civils, économiques et sociaux) et, à certains égards, elle assure une protection plus large que celle de la Convention européenne des droits de l'homme.

6. La Convention européenne des droits de l'homme et sa jurisprudence constituent - comme standard minimum - le fondement de la Charte. Il est néanmoins important que la Charte reflète un standard plus large des droits fondamentaux qui traduirait l'évolution récente dans ce domaine du droit international et du droit constitutionnel des pays européens.

La Pologne soutient l'élargissement - par rapport à la Convention européenne - de la protection de certains droits qui émergent tels que le droit de l'individu à la protection de son identité nationale, ethnique, religieuse ou culturelle; le droit de chacun aux chances égales dans le domaine de l'éducation et de la formation professionnelle; le droit d'accès aux documents; le droit de chaque enfant à être écouté. Bien entendu, le catalogue proposé nécessite encore une discussion approfondie.

Le projet d'article 46 de la Charte prévoit que:

"1. Les dispositions de la présente Charte s'adressent aux institutions et organes de l'Union dans le cadre des attributions qui leur sont conférées par les Traités ainsi qu'aux Etats membres exclusivement dans le champ d'application du droit de l'Union.

2. La présente Charte ne crée aucune compétence ni aucune tâche nouvelle pour la Communauté et pour l'Union ni ne modifie les compétences et tâches définies par les Traités".

Le passage précité témoigne qu'il s'agit en l'occurrence d'une étape transitoire dont le but consiste à prendre en compte certains droits dans la formation et dans l'application du droit communautaire, mais non à octroyer directement des droits individuels.

Pour ce qui est des droits sociaux, ils sont en partie garantis par la Convention européenne ou par les principes (parfois des directives) du droit communautaire. Il reste néanmoins qu'il s'agit en l'occurrence des domaines soumis en principe à la législation nationale. Par conséquent, des modifications importantes en la matière nécessiterait entre autres un nouveau partage des compétences entre l'Union et ses Etat membres (p. ex. en matière de sécurité sociale ou de droit du travail).

Dans ce contexte, il semble pour l'instant préférable de se limiter en matière de droits sociaux aux principes communautaires résultant des Traités et de la jurisprudence de la Cour de Justice, aux principes fondamentaux garantis par les Constitutions des Etats membres (ce qui ne s'assimile pas à l'ensemble des normes nationales) et à certains accords internationaux auxquels ont adhésés les Etats membres.

Il convient cependant de distinguer à cet égard entre les droits - qui peuvent être revendiqués devant les tribunaux - et objectifs à atteindre (y compris leurs coûts financiers), car autrement on risque d'aboutir à un catalogue de vœux pieux.

7. La Charte doit renforcer dans les esprits des citoyens aussi bien les droits de l'homme en vigueur au sein de l'Union européenne que les valeurs sur lesquelles se fondent les droits en question.

A l'heure actuelle, les organes de l'Union ainsi que les organes nationaux agissant dans le cadre du droit communautaire sont obligés de respecter les droit fondamentaux qui découlent de la Convention européenne, du droit communautaire (y compris ses principes généraux) et des principes fondamentaux communs du droit national des Etats membres (art. 6 du Traité de l'UE).

Etant donné plusieurs problèmes d'envergure qu'affronte actuellement l'Union européenne (et notamment la Conférence intergouvernementale), il semble pour l'instant préférable d'élaborer une charte de caractère politique. Une telle charte pourrait constituer une incitation à l'ajustement de la législation communautaire ou nationale. L'application - directe ou indirecte - de la Charte par les organes communautaires permettra d'évaluer avec le temps la valeur de ses dispositions et servirait ainsi d'instrument de vérification. On peut également espérer que l'adoption de la Charte conduise à réduire d'éventuelles différences en matière de standards de protection.

Cette approche politique préliminaire n'exclut pas qu'à l'avenir l'application de la Charte aboutisse dans le cadre du droit communautaire à la naissance des droits ou libertés nouveaux (dont le caractère juridique serait confirmé par la jurisprudence de la Cour de Justice) ou conduise à la révision des Traités. Il ne semble cependant pas que l'Union soit aujourd'hui prête à une telle révision qui supposerait un aménagement de ses compétences et la ratification par les Etats membres.

8. Le fonctionnement des deux systèmes de protection - celui de l'Union et celui de la Convention européenne - s'effectue jusqu'à présent sans difficultés majeures. Le danger de conflit existe, mais il se réduit en partie en raison de la reconnaissance de la Convention européenne comme standard minimum que l'Union européenne est obligée de respecter. L'adoption d'une charte politique des droits fondamentaux ne doit pas être considérée comme un instrument de compétition, mais plutôt comme un élément complémentaire.

Il n'en reste pas moins que des controverses puissent subsister en raison de l'activité des deux cours indépendantes, compétentes pour juger des affaires semblables. Rien n'indique que cette situation change rapidement. Par conséquent; l'application et l'interprétation du droit par la Cour de Luxembourg et par la Cour de Strasbourg exigent une étroite coopération entre les deux instances.

Conclusions:

La Pologne soutient les travaux sur la Charte des droits fondamentaux en tant qu'instrument d'application progressive du droit communautaire. Notre pays désire également être engagé dans le débat approfondi concernant le contenu de la Charte.

La Charte, dont l'adoption est prévue au cours du Conseil européen de Nice, devrait constituer un document qui systématise le droit en vigueur et témoigne en même temps de l'évolution du droit communautaire, de la Convention européenne et de certains autres instruments internationaux auxquels ont adhéré les pays membres.

Le caractère politique de la Charte ne doit pas exclure la transformation, à un stade ultérieur, de certaines de ses dispositions en normes communautaires conventionnelles (introduites dans les Traités).

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 3 July 2000**CHARTE 4398/00****CONTRIB 257****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a statement of the Executive Committee of the Leuenberg Church Fellowship (LCF).^{1 2}

¹ This text has been submitted French, German and English languages.

² LCF: Lebensstrasse 3, 10623 G-Berlin. Tel.:+ 49-30-310 01 317. Fax: +49-30-310 01 200.
E-mail: sekretariat@leuenberg.net

Leuenberg Church Fellowship (LCF)
Leuenberger Kirchengemeinschaft (LKG)
Communione ecclésiale de Leuenberg (CEL)



Executive Committee
 Exekutivausschuss
 Comité exécutif

**Statement of the Executive Committee of the Leuenberg Church Fellowship
 on the Draft Charter of Fundamental Rights of the European Union**

The Executive Committee of the Leuenberg Church Fellowship, to which 96 Protestant churches in Europe belong on the basis of the Leuenberg Agreement of 1973, dealt with the Draft Charter of Fundamental Rights of the European Union (Convent 28) at its meeting held in Belfast from 15 to 18 June 2000. From this place where the task of reconciliation in Europe between humans and confessions is of particular significance, we welcome and support expressly the intention of the European Union to strengthen the protection of fundamental rights by means of a charter. Such a charter will contribute to making tangible a common basis of fundamental human rights.

As representatives of the Leuenberg Church Fellowship we would like to comment on Article 14 (freedom of thought, conscience and religion). We are of the opinion that the freedom of religion should be guaranteed not only at an individual but also at a corporate level. With this in mind, we would like to suggest the following wording:

“Everyone has the right to freedom of thought, conscience and religion. The freedom of religion includes the freedom to bear witness in public or private, individually or collectively as well as the right of churches and religious communities to set out their own order and administration within the framework of the laws of the member states”

This wording insures the insertion of the collective freedom of religion and the inclusion of not only individuals but also communities and corporations in the range of influence of the European Union. In addition, it draws upon the decisions of the Human Rights Commission of the Council of Europe, in which churches and religious communities, on their own right, have increasingly been granted the resort to Article 9 of the European Convention on Human Rights.

On account of many different regulations regarding the State-Church relations, Article 14 would also have to refer to an inner-state right.

This statement has been made in a close partnership with the statements of the Conference of European Churches (CEC) whose Protestant members also belong to the Leuenberg Church Fellowship, and the Evangelical Church in Germany (EKD), a signatory member of the Leuenberg Agreement.

Belfast, 18 June 2000

signed Heinrich Rusterholz
 President of the Leuenberg Church Fellowship

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 5 July 2000**CHARTE 4403/00****CONTRIB 260****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a submission by the European Study Group.^{1 2}

¹ This text has been submitted in English language only.

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**The draft Charter
Of Fundamental Rights
Of the European Union**

**Comments by the
Member Companies
of the
European Study Group**

London, 30th June 2000

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

COMMENTS BY MEMBER COMPANIES OF THE EUROPEAN STUDY GROUP

The European Study Group is an Association of private sector employers, all of whom are substantial employers in the Member States of the European Union and who, in total, employ over two million people worldwide. The majority, but by no means all, of the Member Companies are FTSE 100 companies based in the United Kingdom.

As leading EU based employers, we are conscious of our social responsibilities. We are also aware that we must operate in a highly competitive global economy. If we fail to continue to act competitively, we put at risk the interests of our employees, our suppliers, our customers and our shareholders.

The Member Companies of the European Study Group welcome the notion of a Charter in principle as it would:–

- raise the status, profile and visibility of human rights within the EU.
- present an opportunity for more open and positive communication between the EU institutions and the ‘ordinary’ people of Europe.
- help strengthen the culture of rights and responsibilities, if properly constructed and presented. make a positive contribution to the citizens of Europe’s understanding of the purpose and values inherent in EU citizenship.
- provide clear indicators to citizens of candidate Member States of their rights and responsibilities as EU citizens.

Ideally the structure and the content would be:

- | | |
|------------|--|
| Structure: | <ul style="list-style-type: none"> - clear and simple - consistent and compatible with existing constitutions and legislative frameworks - practical - present a clear statement of common values and responsibilities |
| Content: | <ul style="list-style-type: none"> - based on established rights and not political aspirations - robust and acceptable to all EU countries - properly balanced and representative of all groups across the spectrum of society within the EU - respectful of existing cultures - encouraging and not restrictive - able to deliver trust - reasonably deliverable within the overall constraints of other EU objectives |

From the documentation available, the subject of a Charter appears to have generated much controversial debate. Whilst the legal, political and social significance is clearly great, **it is felt that the process of the evolution of the Charter is almost as important as the end product.**

Because of the expectations that appear to have been raised and because of issues like the relationship of the European Union and its institutions, (particularly with regard to the European Convention of Human Rights) clearly being put back onto the political agenda, we have a number of observations to make and some concerns about which we would welcome clarity. These are outlined below under the headings of purpose, legal certainty, content, implementation plan and detailed observations.

Purpose

The Cologne European Council in June 1999 adopted the decision that:-‘

the protection of fundamental rights is a founding principle of the Union and an indispensable pre-requisite for her legitimacy. The obligation of the Union to respect fundamental rights has been confirmed and defined by the jurisprudence of the European Court of Justice. There appears to be a need at the present stage of the Union’s development to establish a Charter of fundamental rights in order to make their overriding importance and relevance more visible to the Union’s citizens.

The European Council believes that this Charter should contain the fundamental rights and freedoms as well as basic procedural rights guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and derived from the constitutional traditions common to the Member States, as general principles of community law ...’

We support these basic principles, as defined at the Cologne European Council. However, the present draft Charter still begs confusion despite:

- the Council proposing that the Charter should be a political declaration or a proclamation of existing rights enjoyed by EU citizens under current Treaties, rather than a Legal Charter;

and

- the drafting committee being given a mandate to restate present rights with no authority to fill any loopholes or gaps.

Legal Certainty

The European Court of Human Rights (in Strasbourg) was set up by the Council of Europe, under the European Convention of Human Rights in 1950, for jurisdiction over the European Convention of Human Rights (ECHR). All Member States recognise the jurisdiction of this court in human rights cases but are not bound by its decisions.

The ECJ in Luxembourg is the supreme custodian of EU enacted laws and its decisions take precedence over laws or judicial decisions made in Member States. Respect for fundamental rights forms an integral part of the general principles of Community law. For some time now the ECJ has

played a key role in identifying and articulating these rights. It has begun to take into account case law from the Strasbourg Court.

Taking this into account, before there is any further debate on content and interpretation of the Charter, it is suggested that its actual purpose and scope should be categorically and explicitly stated, i.e.

is it to be:

- a) a ‘showcase of existing rights’ materialising the governing principles of the Union?

or, is it to be:

- b) an opportunity to rewrite or update existing laws or indeed produce a whole new set of rights that are justiciable in the European Court of Justice (ECJ) and which confer direct and tangible rights/benefits for individuals?

Many would question the purpose of legislating twice for the same objective, even if that is thought acceptable as a legal matter. The avowed intention of the Cologne declaration is that this exercise does not unintentionally result in new laws which all the stakeholders in the EU have not had an opportunity to scrutinise properly. The Member Companies of the European Study Group are firmly of the view that the Charter should be a ‘showcase of existing rights’.

Rights have no value without remedies and the clearer and simpler the processes that accompany those remedies, that avoid duplication of jurisdiction and improve the fairness and efficiency of the system, the greater the impact will be. In practical terms, individuals will measure the success of the Charter by what it actually does for them, so clarity is essential.

Content

The Cologne Council indicated that the Charter would include:-

- rights guaranteed by the ECHR
- rights derived from the constitutional traditions of Member States and reflected in case law
- rights exclusive to Union citizens under the Treaties
- economic and social rights, as contained in the European Social Charter, etc.

The present draft Charter goes a long way towards achieving these aims by creating a broad spectrum of rights and freedoms but the list as it stands calls into question EU competence in certain areas.

Under the Social Chapter subjects such as pay, the right of association, the right to strike and the right to impose lock-out, are formally excluded from legislative procedures. These, along with educational and welfare provision, currently remain the firm responsibility of the Member States.

The Charter will lose its legitimacy if it is used to bypass the existing decision-making processes to give additional competencies and create new rights in these areas. It will also prove to be more difficult to gain consensus on content if policy objectives or political aspirations are translated into rights.

The position of the Member Companies of the European Study Group is that the Charter should be a clear statement of standards that EU citizens enjoy, which would not impose any new legal obligations on Member States. 5

Implementation Plan

The Charter requires a detailed implementation plan to effectively convey the importance of fundamental rights for the citizens of the European Union, and to emphasise the democratic legitimacy of the Charter to the EU's citizens. The debate so far has been somewhat anodyne and is far removed from the awareness of the general public; unless the Charter is properly explained, it can easily be misrepresented by the malicious or hijacked by the mischievous for ulterior political purposes. In either circumstance, the Charter would run the risk of failing in its mission.

Critical to the execution of a successful plan for the Charter's implementation, is that its objectives should be clearly defined, it should be easily understood, and it should deal only with truly fundamental issues; non-core messages will only serve to over-burden the Charter, complicate the objectives, detract from the accurate communication of the Charter's purpose and confuse the focus of the exercise. Whether or not the document should be put to the citizens of all individual Member States for ratification by national vote, conducted by popular referendum,¹ should be considered as part of the overall plan to gain full democratic legitimacy for the Charter at Member State level.

This is a key consideration, given the fact that some Member States intend to put the matter to referendum, and that the absence of a common EU line might become divisive. The sensitivity of properly communicating the importance of EU citizenship and awareness of its purpose and values should not be underestimated. We refer especially to the poor electoral turn-out to the 1999 European Parliament elections, and the question mark which this has posed concerning the democratic deficit which exists between the institutions of the EU and its citizens. In this connection, a proper implementation and communications plan should be budgeted for, as a quintessential element of the strategy for this exercise.

¹ Ireland and Denmark have indicated that a national referendum might be sought. It is important that the Citizens of the EU all feel that they have ownership, and buy into the exercise. The citizens of Member State "X" (which is to the contrary not planning any referendum) might very well feel aggrieved and question the democratic legitimacy of such a document if they know that the citizens of Member State "Y" are going to hold a referendum, whilst they (the citizens of state "X") are being denied this opportunity. This could detract from the whole purpose and value of the exercise, by undermining its perceived democratic legitimacy. However, this does call into question why a referendum is being called by some Member States if the Charter is merely a restatement of rights which are already in existence.

Detailed Observations

Articles 1 to 30

These proposals cover Civil, Political and Citizens' Rights matters on which we offer no specific comment at this time. We consider that as employers, generators of wealth and creators of jobs, our primary area of expertise, in which we are likely to be of most assistance to the work of the Præsidium, is in respect of the proposals for Articles 31 to 50 contained in Convent 34.

Article 31. Social rights and principles

It is important to carry out a full economic impact assessment of the implications of this Article and the subsequent articles dealing with Social and Economic issues. The economic impact assessment should consider the impact of this Article and the following Articles 32-50 (whether legally binding or declaratory) on job creation in the European Union, the impact on Member State public expenditure to implement these requirements, anticipated fiscal measures to pay for these costs, and the consequent impact on the competitiveness of European business in the global market, benchmarked against international companies of other jurisdictions.

Article 32. Freedom to chose an occupation

Should this Article not be balanced by the right of the individual to choose not to engage in an occupation, and also the right of the employer to refuse or to terminate employment in accordance with the national law of the relevant Member State jurisdiction?

Article 33. Workers' right to information and consultation within the undertaking

The Cologne principles state that "In drawing up the Charter, account should be taken of economic and social rights as contained in the European Social Charter and the Community Charter of the Fundamental Social Rights of Workers (Article 136 TEC), insofar as they do not merely establish objectives for action by the Union". Does not the proposal to include this Article conflict with the Cologne principles? This Article deals with a policy proposal that is already under consideration for action by the EU's institutions. The question of employee communications is under discussion by the Council in the context of the Commission's Proposal for a Council Directive establishing a general framework for informing and consulting employees in the European Community, (COM (1998) 612 final). In this context, it should be noted that the questions of subsidiarity, proportionality and economic impact of the Commission's proposal have yet to be examined in detail by the Council.

Article 34. Rights of collective bargaining and action

Does not the proposal to include this Article conflict with the Cologne principles, in that it is a statement of aspirational policy? This is a subject that should be dealt with in accordance with the principle of subsidiarity and is not a matter for determination at EU level. The Charter will be promoted as being something of real significance to the citizens of the EU; it would therefore be counter-productive to attempt to cover political aspirations or statements concerning areas of policy in this document which are already adequately dealt with by alternative processes which respect the principle of subsidiarity where this is appropriate. Would the EU's citizens understand or respect the Charter if it contained promises upon which the EU's institutions cannot deliver?

Article 35. Right to rest periods and annual leave**Article 36. Safe and healthy working conditions****Article 37. Protection of young people**

There are alternative processes in the EU Treaties available to examine the merits of these various propositions and to seek to achieve these objectives, if found to be justified having regard to their economic impact. In accordance with the Cologne principles, these subjects should accordingly be dealt with separately under the Commission's respective action programmes for the policy areas concerned, and not by the Charter.

Article 38. Right to protection in cases of termination of employment

Whilst the Member Companies of the European Study Group are sympathetic to the notion of protection against unfair or wrongful termination of employment, we are clear that there is currently no right at European Union level to such protection. Such protection that exists at national level should remain at national level. In addition, it should be noted that all employers have a right to refuse or terminate employment in accordance with the national law of the Member State concerned.

Article 39. Right to reconcile family and professional life

Although important, this is not a fundamental right. Member State competence is established already in this area. In accordance with the principle of subsidiarity and the Cologne principles, this subject should be dealt with under the respective national social programmes and not by the Charter. At the level of the workplace, the influence of the new economy is in any case already promoting company-based programmes that support work/life balance for employees. The indications are that the number and influence of these programmes will grow in the coming years, particularly in the context of growth in part-time employment and the rise in the number of women at work.

Article 40. Right of migrant workers to equal treatment

This subject is properly a matter for public policy within the Member States. It is not a fundamental right and as such is inappropriate for inclusion in the Charter. Also, the Cologne principles point to national action programmes and not the Charter as the correct context for this issue.

Article 41. Social security and social assistance

The sentiments and aspirations expressed in this article command wide support, but they are misplaced in a Charter of fundamental rights. The accompanying 'statement of reasons' acknowledges that social security and social assistance are implemented in national legislation. As economic and social issues they fall within the policy of each Member State under the principle of subsidiarity.

Article 42. Health protection

Health protection is a matter of public policy and not of fundamental rights under the Charter. To confuse the two, amounts to setting aside the Cologne principles, under which this subject is exclusively linked to public policy at the national level.

Article 43. The disabled

We note the Community has taken on new competence in this sphere under Article 13 of the Treaty, which has our full support. But we are unclear why it is necessary to repeat this as a fundamental right as it would appear to be already adequately provided for.

Article 44. Environmental protection

This provision describes an existing Community obligation. Whilst the objective is admirable, why does it have to be repeated as a fundamental right?

Article 45. Consumer protection

This is not a fundamental right. This is a statement of aspirational policy. It addresses important but non-fundamental areas of public policy relating to consumer affairs. There are alternative processes in the EU Treaties available to examine the merits of these various propositions and to seek to achieve these objectives, if found to be justified having regard to their respective economic impacts. In accordance with the Cologne principles, these subjects should accordingly be dealt with separately under the Commission's respective EU level action programmes for the policy areas concerned, and not by the Charter. Indeed, the competence to legislate under the Treaty in relation to health and safety matters lies exclusively with the Member States. Article 153 is a coordinating measure only. We doubt that it is necessary to repeat existing Treaty law, but if this is to be done, the repetition should be accurate.

Article 46. Scope

This Article states two admirable objectives which the Member Companies of the European Study Group fully support. The draft text of the Charter, as written, appears to contradict the provisions of Article 46 in a number and manner of ways. We hope the final text of the Charter will be in accordance with both Article 46 and the Cologne European Council mandate.

Article 47. Limitation of guaranteed rights

No specific comments.

Article 48. Conditions and limits defined by the Treaty

We support wholeheartedly the comments made in Article 48. (Also, see our comments on Article 46, above.)

Article 49. Level of protection

No specific comment.

Article 50. Prohibition of abuse of rights

No specific comment.

Summary

The Member Companies of the European Study Group welcome and endorse the notion of a Charter which delivers the benefits of visibility, good communications and positive ways of contributing to a strengthening of the culture of rights and responsibilities to be enjoyed by the present and future citizens of the European Union. However, we have certain important questions and concerns:

- **Clarity is required about the Charter's purpose and any enforcement measures that may be put in place to deliver the benefits that derive from it. Until these are clarified, employers cannot effectively consider the full implications of the draft Charter and therefore offer fully meaningful feedback.**
- **We need to know what the status of the Charter is to be. Is it to be a declaratory document or is it to be a legally binding Charter? Either way, we need to know what obligations and responsibilities will be placed on employers to conform and what remedies will it make available to individuals.**
- **Whatever status the final Charter has, Member Companies of the European Study Group would expect, at the very least, the usual intergovernmental procedures to be followed in adopting the Charter, but with the timescales for adoption extended to allow for detailed consideration of the issues and for effective consultation in the Member States.**
- **Once adopted, how is the Charter to be implemented and what opportunity will be given to the citizens of the European Union to have a say in its content and status? Will all Member States be encouraged or even required to hold a national referendum on its implementation?**
- **Finally, with regard to the proposals so far, the Member Companies of the European Study Group seriously question the legitimacy of including Articles 31–45 as these appear to extend the subject areas falling within the competency of the European Union. Therefore we would not expect these particular Articles to appear in the final draft of the Charter that is put forward for adoption.**

European Study Group
London, 30th June 2000

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 5 July 2000**CHARTE 4404/00****CONTRIB 261****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a contribution by "Groupement Européen des Sociétés d'Auteurs et Compositeurs" (GESAC) regarding copyright.^{1 2}

¹ This text has been submitted in English and French languages.

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G E S A C

GRUPEMENT
EUROPÉEN
DES SOCIÉTÉS
D'AUTEURS
ET COMPOSITEURS

Brussels, 13 June 2000
CDF2000EN

**DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN
UNION**

COMMENTS AND PROPOSALS BY GESAC

GESAC, a European grouping of authors' and composers' societies in the European Union, Norway and Switzerland, supports the initiative proposed at the European Council in Cologne on 3 and 4 June 1999 concerning the formulation of a Charter of Fundamental Rights of the European Union. According to the actual conclusions of the Cologne and Tampere Councils, the aim of the Charter is to enshrine, on the basis of the existing Community legal framework, the exceptional importance and scope of fundamental rights in a visible manner for European Union citizens.

Copyright shares the characteristics of a fundamental right, and must be enshrined in the European Charter.

Copyright protects freedom of expression and of thought of citizens, and guarantees the creation of literary, artistic and scientific works. Emanating from the personality of its author, a work gives rise to a right which has all the attributes of a human right: it is a moral right, inalienable and indefeasible. From the moral point of view, copyright ensures the freedom of representation of the personality of its author.

Copyright is also a property right. A property of a special nature since it is intangible, but it has the same nature and must have the same fate as all other kinds of property. In terms of its pecuniary dimension, copyright guarantees the economic independence that is essential to ensure freedom of expression and of creativity. Copyright is one of the « branches » of freedom of expression and creativity which, through its fundamental and universal dimension, forms part of human rights.

The vocation of copyright is to increase the cultural heritage of the community as a whole. At a time when the wealth of content and of cultural diversity are assets for the European Union and its citizens, and when protecting and promoting them is a major challenge, notably for the harmonious development of the information society, GESAC considers that it is vital to recognise the importance and justification of copyright in a Charter of fundamental rights.

In expressly referring to the European Convention for the Protection of Human Rights and Fundamental Freedoms, and the constitutional traditions common to the Member States, the Treaty on European Union contains the bases for such recognition:

- The European Convention for the Protection of Human Rights and Fundamental Freedoms :

This Convention refers in its preamble to the United Nations Universal Declaration of Human Rights of December 1948, and asks the Member States to « take the first steps for the collective enforcement” of the rights set down in this Declaration.

The Universal Declaration of Human Rights explicitly mentions copyright: « Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author” (Article 27). This Declaration has no binding legal force, but it indisputably has moral value, which is indirectly binding on the Union since it is one of the texts to which the Treaty refers.

- The common constitutional traditions of the Member States :

Several European Constitutions refer directly or indirectly to the need to protect the rights of artists in order to guarantee freedom of thought and expression. For instance the Constitutions of Spain (Article 20), Portugal (Article 42) and Germany (Article 5). In France the National Advisory Commission on Human Rights issued an opinion on 14 November 1996 on the Internet Charter, in which it expressly referred to the protection conferred by copyright.

GESAC proposes to the Convention that the following provision¹ be included in the text of the Charter:

Article 20: right to property

1. Everyone person has the right to own, use and dispose of lawfully acquired possessions. No one may be deprived of his possessions except in the public interest and in the cases and subject to the conditions provided for by law and subject to a prior guarantee of fair compensation.
2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

¹ Basis: document of 11 May 2000 ref. Charter 4284/1/00 Rev.1 Convent. 28.

ENTWURF DER CHARTA DER GRUNDRECHTE DER EUROPÄISCHEN UNION**fundamental.rights@consilium.eu.int**

Brüssel, den 10. Juli 2000**CHARTE 4407/00****CONTRIB 264****ÜBERMITTLUNGSVERMERK**

Betr.: Entwurf der Charta der Grundrechte der Europäischen Union

Finden Sie bitte nachstehend eine Stellungnahme vorgelegt von der Armutskonferenz
(Österreichisches Netzwerk gegen Armut und Soziale Ausgrenzung).^{1 2}

¹ Dieser Text wurde uns nur in deutscher Sprache übermittelt.

² Die Armutskonferenz: Postfach 318, 1070 Wien. E-mail: armutskonferenz@akis.at

An den Europäischen Rat
Konvent zur Erarbeitung einer Charta der Grundrechte der Europäischen Union

**Stellungnahme durch „Die Armutskonferenz.“
Österreichisches Netzwerk gegen Armut und soziale Ausgrenzung“ (3.Juli 2000)**

Die „Armutskonferenz“ ist eine NGO für Armutspolitik, in der sich 26 gesamtösterreichische bzw. bundesweit agierende Organisationen seit 1996 zusammengeschlossen haben. Zusammen mit den lokalen und regionalen Netzwerken, die in Österreich mit der „Armutskonferenz“ kooperieren, umfaßt das Netzwerk über 100 Organisationen in ganz Österreich.

Aktionsgemeinschaft der autonomen österreichischen Frauenhäuser/ Arbeitsgemeinschaft Schuldnerberatungen/ Bildungshaus St. Virgil/ Bundesarbeitsgemeinschaft Wohnungslosenhilfe/ Bundesdachverband soziale Unternehmen/ Caritas Österreich/ Diakonie Österreich/ Europäisches Zentrum für Wohlfahrtspolitik und Sozialforschung/ Evangelische Akademie Wien/ Forum Kirche und Arbeitswelt/ Internationaler Versöhnungsbund/ Katholischer Familienverband/ Katholische Frauenbewegung Österreichs/ Katholische Sozialakademie Österreichs/ Mieterschutzverband Österreichs/ Netzwerk österreichischer Frauen- und Mädchenberatungsstellen/ Österreichische Hochschülerschaft/ Österreichische Plattform der Alleinerziehenden/ Österreichischer Berufsverband Diplomierter SozialarbeiterInnen/ Österreichisches Kolpingwerk/ SOS Mitmensch/ Verein für Bewährungshilfe und soziale Arbeit/ Vereinigte Arbeitsloseninitiativen/ Volkshilfe Österreich

1. Der Rechtstext sollte innovativen Charakter erhalten, u.a. indem er ein **Recht auf soziale Grundsicherung unabhängig von Erwerbstätigkeit bzw. Versicherungsleistungen** aufnimmt. Dadurch würde die Charta im Rahmen der Europäischen Gemeinschaft zur Fortentwicklung des Rechts der sozialen Sicherheit beitragen. Bereits der *„Schlußbericht der Kommission an den Rat über das Erste Programm von Modellvorhaben und Modellstudien zur Bekämpfung der Armut“* (1983) nennt ja unter den Schritten zur Beseitigung von Armut die Gewährleistung eines effektiven Mindesteinkommens, um die Haushalte in der Gemeinschaft über der Armutsschwelle zu halten.
Vor allem mit Blick auf neue Technologien und Organisationsformen (Rationalisierung, wachsende Arbeitsproduktivität) und die damit einhergehende Erwerbsarbeitslosigkeit ist ein „Recht auf Arbeit“ nicht ausreichend, sondern müßte durch ein Recht auf soziale Sicherung unabhängig vom Erwerbseinkommen ergänzt werden, um allen Bürgerinnen und Bürgern ein Leben zu ermöglichen, das ihrer Menschenwürde entspricht.
2. Die Erarbeitung einer europäischen Grundrechts-Charta für alle würde die Gelegenheit bieten, daß die Bürgerinnen und Bürger „Europa“ nicht bloß als Wirtschaftsunion, vielmehr als eminent politisches Projekt erfahren – als Gemeinschaft, die für Demokratie, Rechtsstaatlichkeit und Menschenrechte steht. Um einen breiten Diskussionsprozeß über Ziel, Inhalte und Richtung der Charta zu ermöglichen, die das Entstehen einer europäischen Öffentlichkeit fördern würde, sollte die **Arbeitszeit an der Charta verlängert** werden. Zugleich sollte der Europäische Rat nach Möglichkeiten suchen, wie eine breitere Diskussion in allen Mitgliedsländer unterstützt werden könnte.

3. Weiters unterstützen wir die Forderung des Europäischen Parlaments vom 14. März 2000 nach **voller Rechtsverbindlichkeit** der Charta durch Aufnahme in die reformierten EU-Verträge.
Ebenso schließen wir uns der Ansicht des Parlaments an, daß die **Unteilbarkeit von Grundrechten** anerkannt werden muß – der Geltungsbereich der Grundrechte muß sämtliche Institutionen, Organe der Europäischen Union und alle Politikfelder umfassen.
4. Entsprechend des Mandats des Konvents, das der Europäische Rat in den Schlußfolgerungen von Köln am 4. Juni 1999 ausdrücklich erwähnt hat, sollen (über das im Punkt 1 genannte Recht) **soziale Rechte** in die Charta aufgenommen werden, wie sie in der Europäischen Sozialcharta und der Gemeinschaftscharta der sozialen Grundrechte der Arbeitnehmer enthalten sind. Dies wäre eine Konsequenz aus der Absichtserklärung der EU im Amsterdamer Vertrag, den sozialen Grundrechten mehr Augenmerk zu schenken (Präambel, vierter Erwähnungsgrund).

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PROYECTO DE CARTA DE LOS DERECHOS FUNDAMENTALES DE LA UNIÓN EUROPEA
fundamental.rights@consilium.eu.int

Bruselas, 10 de julio de 2000 (11.07)
(OR. fr/es)

CHARTE 4409/00

CONTRIB 266

NOTA DE TRANSMISIÓN

Asunto: Proyecto de Carta de los Derechos Fundamentales de la Unión Europea

Se adjunta una nueva versión de la propuesta de la “Sociedad General de Autores y Editores” (SGAE).¹

¹ Este texto ha sido presentado sólo en lengua española.

PROYECTO DE CARTA DE LOS DERECHOS FUNDAMENTALES DE LA UNIÓN EUROPEA

Propuesta de la Sociedad General de Autores y Editores (SGAE)

El 25 aniversario de la Declaración Universal de los Derechos Humanos, celebrado en diciembre de 1998, llevó al Consejo Europeo de Colonia del 3 y 4 de junio de 1999 a proponer, para finales del año 2000, la elaboración de una Carta de los derechos fundamentales de la Unión Europea. En su Decisión, el Consejo recuerda que en el artículo 6 del TUE “consta que la Unión se basa en los principios de libertad, democracia, respeto de los derechos humanos y de las libertades fundamentales del Estado de Derecho, principios que son comunes a los Estados miembros” y que “la Unión respetará los derechos fundamentales tal y como se garantizan en el Convenio Europeo para la Protección de los Derechos Humanos y las libertades fundamentales (CEDH) y tal y como resultan de las tradiciones constitucionales comunes a los Estados miembros como principios generales del derecho comunitario”. El Consejo también considera en su decisión que al redactar la Carta deberán tenerse en cuenta “los derechos económicos y sociales, la Carta Social Europea y la Carta comunitaria de los derechos sociales fundamentales de los trabajadores”.

Por todo ello, la SGAE entiende que el derecho de autor debe de formar parte de la futura Carta de derechos fundamentales de la Unión Europea y, como representante de parte del colectivo de autores españoles y europeos, solicita a la Convención encargada de redactar dicha Carta que, en base a los argumentos que a continuación se exponen, tenga en consideración su petición.

1. El CEDH en su preámbulo:
 - “Considera la Declaración Universal de los Derechos del Hombre, proclamada por la Asamblea General de las Naciones Unidas el 10 de diciembre de 1948”,
 - Reconoce que el “objetivo del Consejo de Europa es alcanzar una unión más estrecha entre sus miembros y que uno de los medios para conseguirla es mediante la salvaguarda y el desarrollo de los derechos del hombre y de las libertades fundamentales”;
 - **Insta a los Estados miembro a "tomar las medidas apropiadas para asegurar la garantía colectiva de algunos de los derechos enunciados en la Declaración Universal de los Derechos del Hombre".**

La Declaración Universal de los Derechos del Hombre de 1948 hace referencia de manera explícita al derecho de autor en su artículo 27:

“Toda persona tiene derecho a participar libremente en la vida intelectual de la comunidad, a disfrutar de las artes y a participar en la vida científica y en los beneficios que de él resulten. **Toda persona tiene derecho a la protección de los intereses morales y materiales que le correspondan por razón de las producciones científicas, literarias o artísticas de que sea autora**”.

Esta Declaración no tiene la fuerza del derecho internacional, pero sí tiene un valor moral. Se considera que forma parte del derecho consuetudinario de las naciones y que vincula moralmente a todos los Estados, sobre todo a aquellos que la firmaron y que firmaron a continuación los dos Pactos de las Naciones Unidas de 16 de diciembre de 1966. De hecho, **la obligación legal de respetar el derecho de autor**

proviene, de uno de esos pactos, el **Pacto de Naciones Unidas sobre los Derechos Económicos, Sociales y Culturales**, cuyo artículo 15, inciso 1) apartado c) reproduce casi literalmente el artículo 27 de la Declaración. **Este Pacto vincula** a más de 130 Estados entre los que figuran **todos los Estados de la Unión Europea**.

Es importante destacar también, como lo ha hecho la Doctrina más especializada ¹, que, si bien el articulado del CEDH no hace alusión expresa al derecho de autor, debe tenerse en cuenta que este Convenio se preocupa fundamentalmente de la protección del ciudadano frente a las intrusiones excesivas del poder público, y que se trata por lo tanto y ante todo, de un texto de “habeas corpus” ampliado. Precisamente en el Borrador de la futura Carta ², el Consejo deja claro que los objetivos de la misma son más amplios, ya que con ella aspira a alcanzar un principio básico de la Unión Europea: “la salvaguardia de los derechos fundamentales”, para lo cual toma **como base** “un marco jurídico ya establecido y vinculante”.

2. Varias Constituciones europeas hacen referencia de manera directa o indirecta a la necesidad de salvaguardar los derechos de los creadores para garantizar así libertad de pensamiento y de expresión. La **Constitución española** (artículo 20), la **Portuguesa**(artículo 42), la **alemana** (artículo 5) y el artículo 44 de la joven **Constitución de la Federación Rusa**, nacida en 1993. **En Francia**, la Comisión Nacional Consultiva de los Derechos del Hombre, en su Opinión de 14 de noviembre de 1996 sobre la “Carta de Internet”, recomendó a los poderes públicos “que favorezcan la protección de los documentos y estudios protegidos por la propiedad intelectual y por los derechos de autor”.
3. Por estos motivos, la SGAE propone a la Convención integrar en en artículo 20 de la Carta la siguiente disposición:

Artículo 20. Derecho de propiedad

1. Toda persona tiene derecho a poseer bienes adquiridos legalmente, a usarlos y a disponer de ellos. Nadie puede ser privado de su propiedad, salvo por causa de utilidad pública y en los casos y condiciones previstos por la Ley y a cambio de una justa indemnización previa.
2. Toda persona tiene derecho a la protección legal de sus intereses morales y materiales en razón de las producciones científicas, literarias o artísticas de las que es autor.

1 André Kéréver. “El Derecho de Autor es uno de los Derechos Humanos”. Boletín de Derecho de Autor, vol. XXXII, nº3. Julio-septiembre 1998.

2 Ver: <http://db.consilium.eu.int/DF/intro.asp?lang=es>

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 11 July 2000**CHARTE 4410/00****CONTRIB 267****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a motion of the Liaison Committee of the Non-Governmental Organisations (NGOs).¹

¹ This text has been submitted in English and French languages.

LIAISON COMMITTEE OF THE
NON-GOVERNMENTAL ORGANISATIONS (NGO:)
enjoying consultative status
with the COUNCIL OF EUROPE
COMMISSION DE LIAISON DES
ORGANISATIONS NON GOUVERNEMENTALES (ONG)
dotées du statut consultatif
auprès du CONSEIL DE L'EUROPE



27 June 2000

Motion of INGOs having consultative status with the Council of Europe

407 international non-governmental organisations representing,
in the 41-nation Council of Europe, all aspects of life and tens of millions of people

The international non-governmental organisations meeting on 27 June at the Palais d'Europe in Strasbourg unanimously call on the Convention drawing up the draft Charter of Fundamental Rights of the European Union and the member states which shall be deciding upon it, to ensure that:

1. the principle of solidarity be included at the beginning of the Charter on a par with the principle of equality and the affirmation of the dignity of the human being;
2. the indivisibility of human rights be confirmed by the contents of the Charter and expressed in its structure, and that the universality of these economic, social, cultural, civil and political rights be acknowledged;
3. the European Union accede to the two Council of Europe instruments which implement the Universal Declaration of Human Rights, namely the European Convention on Human Rights and the revised European Social Charter, including their additional protocols;
4. the Charter of Fundamental Rights be incorporated into the treaties of the European Union, thereby acquiring a binding force;
5. the new risks and needs concerning protection of citizens in our society be covered by the Charter, including in the field of bioethics, the environment and information technology;
6. the principle of participatory democracy be strengthened in the Charter by including recognition of the right to civil dialogue granting organised civil society the right to information, communication and consultation in order to participate, propose, negotiate and verify political processes.

The INGOs having consultative status with the Council of Europe call for the opening of a transparent, democratic and participatory process on the future constitution of the European Union, independently of the drafting of the Charter of Fundamental Rights.

Council of Europe
Conseil de l'Europe
F – 67075 STRASBOURG cedex

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<http://www.coe.fr>

ENTWURF DER CHARTA DER GRUNDRECHTE DER EUROPÄISCHEN UNION**fundamental.rights@consilium.eu.int**

Brüssel, den 13. Juli 2000**CHARTE 4415/00****CONTRIB 271****ÜBERMITTLUNGSVERMERK**

Betr.: Entwurf der Charta der Grundrechte der Europäischen Union

Finden Sie bitte nachstehend eine Stellungnahme, vorgelegt von IG Medien, zu Artikel 15. ¹

¹ Dieser Text wurde uns nur in deutscher Sprache übermittelt.

IG-Medien-Vorschlag
für ein
Europäisches Grundrecht der
Medien-, Meinungs- und Informationsfreiheit
in der
Charta der Grundrechte der Europäischen Union

Die IG Medien – Druck und Papier, Publizistik und Kunst (IG Medien) ist eine Organisation für Medienschaffende sowie Künstlerinnen und Künstler aller Sparten. Seit ihrer Gründung setzt sie sich, wie bereits ihre Vorläuferorganisationen, nicht nur für die unmittelbaren wirtschaftlichen und sozialen Rechte ihrer Mitglieder ein, sondern darüber hinaus auch für die Medien-, Informations- und Meinungsfreiheit als unverzichtbare Grundlage demokratischer Verfassungsstrukturen.

In der Diskussion um den Vorschlag des Grundrechtskonvents um ein Grundrecht auf Meinungs- und Informationsfreiheit sieht die IG Medien die Chance „ein Mediengrundrecht als künftiges genuines EU-Grundrecht“ neu zu konzipieren und „auf eine supranationale konstitutionelle Weiterentwicklung der Union“ zuzuschneiden.

Die IG Medien ist der Auffassung, dass es höchste Zeit ist, die Diskussion über EU-Kommunikationsgrundrechte medienpezifisch zu vertiefen und zu verbreitern. Dies kann letztlich auch dazu dienen, den europäischen Integrationsprozeß voranzubringen und zu intensivieren.

Den Medien und insbesondere dem öffentlich-rechtlichen Rundfunk kommt hierbei im Sinne eines wirklichen „public service“ eine besondere Bedeutung zu. Nachdrücklich ist auf das Protokoll zum Vertrag von Amsterdam und die Position des Ministerrates zu verweisen. Dort wird zu Recht festgestellt, „daß der öffentlichrechtliche Rundfunk mit seinen kulturellen, sozialen und demokratischen Aufgaben, die er zum Wohle der Allgemeinheit erfüllt, von entscheidender Bedeutung für Demokratie, Pluralismus, sozialen Zusammenhalt, kulturelle und sprachliche Vielfalt ist“ (Entschließung des EU-Ministerrats und des Europäischen Rats über den öffentlich-rechtlichen Rundfunk vom 25.1.1999, Amtsblatt der EG Nr. C 30 vom 5.2.1999, S. 1).

Die IG Medien bezieht sich in diesem Zusammenhang auf Positionen und Stellungnahmen namhafter Medienwissenschaftler und Verfassungsrechtler (u.a. Professor Martin Stock), dass ein Grundrechtsverständnis, das gemäß Art. 10 der Europäischen Menschenrechtskonvention (EMRK) argumentiert, den Anforderungen an ein zukunftsfähiges Rundfunk- und Medienrecht nicht gerecht wird.

Die IG Medien schlägt daher folgende Fassung für den Art. 15 der Grundrechtscharta vor:

- (1) Das Recht der freien Meinungsäußerung wird gewährleistet. Ebenso wird das Recht gewährleistet, sich aus allgemein zugänglichen Quellen umfassend zu informieren. Dies schließt insbesondere den Zugang zu kulturellen Angeboten und Angeboten der Bildung ein.
- (2) Die Freiheit der Presse, des Rundfunks, des Films sowie der sonstigen an die Allgemeinheit gerichteten Kommunikation wird gewährleistet.
- (3) Der Rundfunk dient der Information durch umfassende und wahrheitsgemäße Berichterstattung und durch die Verbreitung von Meinungen. Er trägt zur Bildung und Unterhaltung bei. Er ist Medium und Faktor des Prozesses freier Meinungsbildung. Er trägt der kulturellen Vielfalt in Europa Rechnung und fördert die europäische Integration. Er nimmt damit eine öffentliche Aufgabe wahr und ist darum unabhängig in der Programmgestaltung. Unbeschadet des Angebots privatwirtschaftlichen Rundfunks, werden Bestand und Entwicklung von Rundfunk in öffentlicher Trägerschaft gewährleistet.“
- (4) Auf rundfunkähnliche Mediendienste sind diese Bestimmungen entsprechend anzuwenden.
- (5) Eine Zensur findet nicht statt.“

Stuttgart, 30. Juni 2000

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

fundamental.rights@consilium.eu.int

Brussels, 13 July 2000

CHARTE 4416/00

CONTRIB 272

COVER NOTE

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a letter to Mr. Roman HERZOG, the President of the Convention, sent by the "Comité des Organisations Professionnelles Agricoles de l'Union Européenne (COPA)", regarding the document CHARTE 4360/00 CONVENT 37.¹

¹ This text has been submitted in German, French and English languages.



Comité des Organisations Professionnelles Agricoles de l'Union Européenne

CC(00)132L1

Brussels, 7 July 2000

Mr Roman HERZOG
 President of the Convention Charter of
 Fundamental Rights of the European Union
 Council of the European Union
 175, rue de la Loi
 B-1048 Brussels

Re: Draft Charter of Fundamental Rights of the European Union (Doc. 4360/00)

Dear Mr President,

COPA follows with great interest the work of the Convention on the Charter of Fundamental Rights of the European Union.

The Charter will create an undeniable basis for the further development of the European Union.

It is evident that the Charter is of fundamental importance for those citizens working in European agriculture. Of special importance is the protection of property of the most important means of production, i.e. the land.

However, we would like to express basic reservations on the current draft of Article 20.

1. „Lawfully acquired possessions“.

COPA considers that the words “lawfully acquired” should be deleted.

We are of the opinion that property is basically lawfully acquired. The wording “lawfully acquired” possessions means that the Convention assumes that property is usually not “lawfully” acquired. In any case, the wording “lawfully acquired” substantially restricts the protection of property. The fulfilment of this condition could only be evidenced with much difficulty (e.g. long dated acquisitions).

Therefore, COPA considers that the protection of property shall not be subject to this restriction.

2. Restriction of possession, use and disposal

COPA requests to add after the word „deprived“ in sentence 2, 1 the words „**or restricted**“.

Restricting the possession, use of property and disposal thereof will affect the core area of property.
This kind of restriction must be fully compensated.

3. Bequeathing

COPA supports the proposal of the Praesidium of the Convention to add the right to bequeath to Article 20.

The right to bequeath is an essential part of property in all legal systems.

4. „Fair compensation “

COPA considers that the word “fair” in the second sentence should be replaced by the words “prior and full”.

The withdrawal of property can only be operated in return for prior and full compensation. The wording “fair” gives cause to concern that possibly a lower compensation could be sufficient. Prior payment of compensation at the time of withdrawal of property is indispensable.

Therefore, COPA proposes the following text:

Article 20: Right to property

“Every person has the right to own, use, dispose of and bequeath possessions. No one may be deprived or restricted of his possessions, except in the public interest in the cases and subject to the conditions provided for by law and subject to prior and full compensation.”

COPA trusts that you will take due account of the these considerations

Yours sincerely,

Noël DEVISCH
President of COPA

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

fundamental.rights@consilium.eu.int

**Brussels, 18 July 2000
(OR.En/Sw)**

CHARTE 4418/00

CONTRIB 274

COVER NOTE

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a contribution from the boards of the Swedish Association of Local Authorities and the Federation of Swedish County Councils.¹

¹ This text has been submitted in English and Swedish.



ASSOCIATION OF LOCAL AUTHORITIES



2000-05-19 SK dnr: 2000/1204

Lf dnr: 591/00

The EU Charter on Fundamental Rights

At the meeting in Cologne, the European Council resolved to draw up a Charter on fundamental rights for EU citizens. Work on drawing up a proposition is in progress within the so called Convention framework, comprising representatives of the governments and parliaments of the member states and from the European Parliament and the European Commission. The regulations are designed to apply to EU authorities and to official decisions based on European Community law.

The decision to draw up the Charter has generated intensive discussion, both within EU institutions and other European and national bodies. Common to most are far-reaching demands to create EU level guarantees for both basic human rights and cultural and individual rights, social rights e.g. rights to housing, social security, medical support and health protection, labour legislation and civil and political rights. Guarantees to be implemented by citizens being able to uphold their rights in the European Court of Justice.

The Boards of the two associations take note of the wide unity prevailing amongst EU member states over the need to clarify how the European Community protects and watches over fundamental rights. In efforts to establish more solid foundations for the Community it is necessary to explain to citizens the added value the Community can give them at this fundamental level.

It is both natural and urgently necessary for the EU to codify and clarify the human and civil rights pertaining to EU legislation in the Charter. According to the instructions issued for this work, it shall be established how the Charter is to relate to the Council of Europe Convention on human and social rights.

The conviction of the two Boards is that a EU Charter on fundamental rights must respect and take into consideration the division of competence reigning between member states and the EU but also the part played by municipalities and regions in national political systems. The rights that should be granted all EU citizens are already law in most member states, either by national constitution or via Council of Europe treaties on human and social rights.

In Sweden, local self-government is firmly established in the political system. In the other EU countries, a high level of self-government at sub-national level is also a central component in the democratic system.

The two Boards find that the draft texts now being promoted and proposed to the Convention include proposals for providing detailed determination of individual rights in e.g. the social sphere to which EU citizens are to be entitled at EU level. As representatives for local and regional authorities we strongly advocate a restrictive policy against opening up opportunities for the European Court of Justice to review in detail political decisions taken within the framework of local self-government and complying with the laws of a member state.

An important principle in regard to individual rights over and above fundamental civil rights enshrined in the Swedish Constitution is that those who decide over rights carry responsibility for the financing of the execution of such rights. In Sweden, most of this responsibility lies with the municipalities and / or county councils. Another requirement is that decisions on the modalities of service provision rests with those who decide upon rights. In Sweden this obligation usually falls upon municipalities or county councils. A third requirement in our country is for judicial reviews of decisions on beneficial rights to be restricted to legal requirements whereas issues within the discretion of local authorities cannot be challenged in the Courts. A fourth principle is that it must be possible to insist on elected decision makers assuming their political responsibilities.

It is important to make clear that the Charter on fundamental rights which is finally adopted is subject to EU authority and, to the extent that it is relevant to the area with shared competence between the EU and its member states. It is also made clear that the subsidiarity principle is to dictate the division of authority between different levels - that authority is to be placed at the lowest effective level. This principle should apply to both division of authority between the EU and member countries and to national division on executive levels. It will accordingly be the national delegation of responsibility which applies and which determines where and how citizens are to be able to demand their more exact political, economic and social rights - alongside the fundamental rights written into the EU treaties.

The value of municipal and regional self-government through communes and county councils is recognised and established throughout Europe, as can be seen from the fact that the Council of Europe Charter on local self-government has been ratified by the great majority of EU member states. Principally, local self-government is of very real importance to the private individual, providing opportunities to exert political influence in close dialogue with elected representatives. In order to emphasise that local self-government contains its own status as a civil right, this should be written into a future treaty.

To sum up the two Boards recognise the value of civil and human rights being codified and written into the Charter now in preparation, but do not consider that this text should open up for an extension of EU authority by judicial interpretation of the Court within the social areas as described in this memorandum.

Swedish Association
of Local Authorities

Federation of Swedish
County Councils

Ilmar Reepalu

Lars Isaksson

PROYECTO DE CARTA DE DERECHOS FUNDAMENTALES DE LA UNIÓN EUROPEA**fundamental.rights@consilium.eu.int**

Bruselas, 17 de julio de 2000**CHARTE 4419/00****CONTRIB 275****NOTA DE TRANSMISIÓN**

Asunto: Proyecto de Carta de derechos fundamentales de la Unión Europea

Adjunta se remite una contribución de D. Isaac IBÁÑEZ GARCÍA.¹

¹ Este texto se ha presentado únicamente en español.

EL DERECHO DE PETICIÓN EN LA UNION EUROPEA. LOS SUJETOS PASIVOS DEL MISMO: PROBLEMA MAL RESUELTO Y AUN ABIERTO.

Isaac Ibáñez García

I.- INTRODUCCION. CONSIDERACIONES PRELIMINARES.

En el Consejo Europeo de Colonia (3 y 4 de junio de 1.999) los Jefes de Estado o de Gobierno, se pusieron de acuerdo sobre la idea de que, en el actual estado de evolución de la Unión, era necesario establecer una Carta de los derechos fundamentales con el fin de poner de manifiesto la importancia sobresaliente y el alcance de los mismos ante los ciudadanos de la Unión.

La Carta se adoptaría mediante una declaración solemne y conjunta del Consejo Europeo, el Parlamento Europeo y la Comisión. El antecedente a esta declaración es la Declaración conjunta del Parlamento Europeo, del Consejo y de la Comisión, de 5 de abril de 1.977 (recogida en la obra: Derecho Comunitario Europeo. Libertades económicas y derechos fundamentales. LOPEZ GARRIDO, MARTINEZ HIGUERAS y HERNÁNDEZ F. DEL VALLE. Tecnos, 1986. Donde también se recogen otros textos y trabajos relativos al devenir del tema de los derechos fundamentales en las Comunidades Europeas). El breve texto de la Declaración fue el siguiente:

“1) El Parlamento Europeo, el Consejo y la Comisión subrayan la esencial importancia que atribuyen al respeto de los derechos fundamentales, que resultan en concreto de las Constituciones de los Estados miembros, así como del Convenio Europeo de Protección de los Derechos del Hombre y de las Libertades Fundamentales.

2) En el ejercicio de sus poderes y persiguiendo los objetivos de la Comunidad Europea, respetan y continuarán respetando tales derechos”.

En una fase posterior a este proceso el Consejo manifiesta que se examinaría si la Carta debe incorporarse a los Tratados y, en caso afirmativo, de qué modo ha de hacerse. En su Resolución adoptada el 16 de marzo de 2000 (Informe de los Sres. Duff y Voggenhuber), el Parlamento Europeo pide a la Conferencia Intergubernamental que:

“a) incluya en su orden del día la incorporación al Tratado de la Unión Europea de la Carta de los Derechos Fundamentales, teniendo en cuenta el papel fundamental que juega en la realización de una Unión cada vez más estrecha entre los pueblos de Europa”.

El Consejo ha estimado que dicha Carta deberá incluir los derechos de libertad e igualdad y los principios procesales fundamentales. **La carta deberá contener asimismo los derechos básicos que corresponden únicamente a los ciudadanos de la Unión.**

Para MENDEZ DE VIGO (Presidente de la Delegación del Parlamento Europeo en la Convención encargada de redactar la Carta de los Derechos Fundamentales), “la elaboración de una Carta de esta naturaleza supone el reconocimiento del carácter político de la Unión”. En su discurso en la primera reunión de la Convención para la elaboración de la Carta, celebrada el 17 de diciembre de 1999, manifestó el deseo de que “la Carta de los Derechos Fundamentales debe tener carácter vinculante y debe ser incorporada al Tratado. En la medida en que los Tratados constituyen la Carta Constitucional de la Unión Europea, según reiterada jurisprudencia del Tribunal de Justicia, la Carta de Derechos Fundamentales debe formar parte de la misma. Y pienso que la coincidencia temporal entre el final de nuestros trabajos y de la Conferencia Intergubernamental es una buena ocasión para cumplir con ese objetivo”.

Esta opinión es coincidente con la manifestada en el Informe del grupo de expertos sobre derechos fundamentales (Afirmación de los derechos fundamentales en la Unión Europea. Ha llegado el momento de actuar. Febrero 1.999), donde puede leerse: “El texto con la enumeración de los derechos debería introducirse en una parte especial o en un título particular de los Tratados. El lugar elegido deberá ilustrar claramente la importancia capital que se concede a los derechos fundamentales”.

El representante único de la Comisión en la Convención, ANTONIO VITORINO, en su discurso en la primera reunión de la Convención, manifestó que “La Comisión se felicita por la transparencia conferida a los trabajos de este órgano: la redacción de un acto de tal importancia práctica e incluso simbólica no estaría en consonancia con el secretismo y la confidencialidad; la transmisión de los debates y, en especial, la disponibilidad de todos los documentos de trabajo en el sitio Internet dedicado a este órgano son ejemplos loables que deberían seguirse en otras ocasiones”.

II.- EL DERECHO DE PETICIÓN EN LA UNION EUROPEA.

En mi opinión, el artículo 21 del Tratado CE, en su redacción dada por el Tratado de Ámsterdam, supone un avance sobre su regulación anterior, pero tiene una redacción confusa, que puede llegar a ser interpretada como que el Derecho de petición únicamente puede ejercitarse ante el Parlamento Europeo y no ante el resto de las instituciones u organismos de la Unión. De hecho así ha llegado a interpretarse por alguna.

Así, ante una petición formulada en el año 2.000 ante el Consejo de la Unión Europea, un funcionario del mismo contestó lo siguiente: “El artículo 21 TCE reconoce el derecho de petición ante el Parlamento Europeo **y no ante el Consejo**”. Planteada esta cuestión al Defensor del Pueblo Europeo como un caso de mala administración, este contestó que no se trata de un caso de mala administración, “sino de una actuación de carácter político del Consejo de la Unión Europea”, por lo que el Defensor dice no tener competencia para tramitar la reclamación. A nuestro juicio, el Defensor debería haberse planteado el estudio de la reclamación en otros términos. En efecto, primero debería haber analizado si el artículo 21 del TCE reconoce el ejercicio del derecho de petición ante el Consejo. De ser así es claro que estaríamos ante un caso de mala administración. La actuación del Consejo sería de carácter político en lo relativo a la decisión sobre el fondo de la petición, pero no sobre la negativa de tramitarla, en caso de que estuviera obligado a ello. La simple negativa de la Comisión de peticiones del Parlamento Europeo a examinar una petición relativa a un ámbito de actuación de la Unión Europea ¿sería un acto político no fiscalizable por el Defensor?.

El Defensor del Pueblo contesta posteriormente que:

“... No se recoge en el Tratado de la Unión Europea la obligación por parte del Consejo de la Unión Europea de aceptar a trámite una petición proveniente de un particular.

En este sentido, el artículo 21 del TUE, habla del derecho de petición ante el Parlamento Europeo de todo ciudadano. Además, en su tercer párrafo: “*Todo ciudadano de la Unión podrá dirigirse por escrito a cualquiera de las instituciones (...) y recibir una contestación en esa misma lengua*”. En tanto que usted recibió respuesta del Consejo de la Unión Europea, no considero que se haya violado la letra del Tratado en ningún sentido”.

No acabamos de entender si la reforma operada en el artículo 21 del TUE se refiere únicamente –y para ello es necesario reconocer lo obvio a nivel de todo un Tratado- a que si algún ciudadano cursa un escrito a alguna de las instituciones de la Unión Europea, **relativo a algún asunto de la competencia de las mismas**, tiene garantizado que se le contestará en alguna de las lenguas oficiales, aunque sea para decirle, simplemente, que le saludan muy atentamente y que, en el derecho comunitario actual, esta es contestación más que suficiente.

En el Glosario incluido en la página *web* de la Comisión Europea (sitio: Europa en directo, diálogo con los ciudadanos y las empresas), puede leerse lo siguiente acerca del Derecho de Petición:

“Por derecho de petición se entiende el derecho de todo ciudadano de la Unión Europea y de toda persona física o moral residente o con su sede estatutaria en un Estado miembro de presentar ante el Parlamento una queja o demanda sobre un asunto de la competencia de la Comunidad que le afecte directamente (artículos 21 y 194, ex artículos 8 D y 138 D del Tratado CE).

La Comisión parlamentaria de peticiones estudia la admisibilidad de la demanda y, si lo juzga necesario, puede someter la cuestión al Defensor del Pueblo. Para emitir un dictamen sobre una petición admisible, dicha Comisión puede solicitar a la Comisión Europea que le remita los documentos o la información necesarios.

El Tratado de Ámsterdam ha completado el artículo 21. Un nuevo párrafo precisa que todo ciudadano de la Unión puede escribir a cualquier Institución europea, al Comité de las Regiones, al Comité Económico y Social o al Defensor del Pueblo europeo, en cualquiera de las lenguas oficiales de la Unión, incluido el gaélico, y recibir una respuesta en la misma lengua”.

No se desprende gran claridad de ideas, *sobre este tema*, en la siguiente opinión de una Dirección General de la Comisión Europea, manifestada en abril de 2.000:

“Me permito indicarle que el derecho de petición al que usted alude en reiteradas ocasiones, (art. 21.1 TCE) **se refiere únicamente a las relaciones entre los ciudadanos europeos y el Parlamento**

Europeo, institución europea que, a estos efectos, cuenta con una Comisión de Peticiones ad hoc. Igualmente, me permito señalarle que según el art. 21.3 del TCE, la obligación de la Comisión con relación a las preguntas o ruegos de sus ciudadanos, **se limita**, tal y como recoge el citado precepto, a dar respuesta al escrito recibido en la misma lengua, siempre que ésta se encuentre dentro de las mencionadas en el art. 314 TCE”.

A mi juicio, restringir el ejercicio de petición al Parlamento Europeo no tiene sentido jurídico, pues las peticiones deben poder dirigirse a todas aquellas instituciones que tienen poder de iniciativa en los ámbitos de actuación de la Unión.

ALVAREZ CARREÑO (El Derecho de petición. Estudio de los sistemas español, italiano, alemán, comunitario y estadounidense. Ed. Comares, 1999) señala, con gran acierto, que “un elemento esencial del derecho de petición lo constituye, por tanto, **el acceso del individuo a todas las instancias del poder público sin obstáculos**, de forma directa y sin limitaciones temáticas”. Refiriéndose al caso alemán, este autor subraya que “el artículo 17 de la Constitución establece que serán destinatarios del derecho de petición, aparte de la representación popular, “los órganos competentes”. De este modo, **el constituyente alemán se apartó conscientemente de una concepción exclusivamente parlamentaria del derecho** para entender que éste también promueve y garantiza el acceso directo del ciudadano a las instancias de otros poderes públicos”.

Es obvio que esto debe de ser así y que no tiene más vuelta de hoja. Sería incongruente que un peticionario debiera dirigirse a una cámara parlamentaria para solicitar que se adoptara una medida a través de un reglamento, pareciendo a todas luces más conveniente que pueda dirigirse desde un primer momento a quien tiene la potestad reglamentaria, el Gobierno.

En el documento de trabajo “nuevos derechos que hay que incluir en una lista de Derechos Fundamentales”, de fecha 23 de agosto de 1.988, redactado por el eurodiputado VALVERDE LOPEZ, se preguntaba: **¿habría que plantearse una fórmula más amplia que englobe al resto de las instituciones?**. Y se proponía la siguiente redacción del derecho:

[“Todo ciudadano de la Comunidad] [y cualquier otra persona física o jurídica que actúe en el territorio de la Comunidad Europea] tendrá derecho a presentar bien a título individual o bien en

asociación con otros ciudadanos, solicitudes o quejas [a las instituciones] de la Comunidad. Las peticiones se habrán de dirigir al Parlamento Europeo. [Los peticionarios tendrán derecho a respuesta en un plazo máximo de tres meses”].

En dicho documento, en el apartado de derecho comparado, se observa que en los Estados integrantes de la Comunidad Europea, el derecho de petición no se ejercita exclusivamente ante el Parlamento nacional, sino que también puede ejercitarse ante la Corona, autoridades públicas, órganos constitucionales, etc.

En la resolución de 10 de octubre de 1.986, el Parlamento Europeo “desea una “legislación comunitaria efectiva y obligatoria” para “reforzar el derecho de los ciudadanos y demás personas físicas y jurídicas que actúan en el territorio de la Comunidad, a presentar peticiones a las Instituciones Comunitarias **a través del Parlamento Europeo**”.

A mi juicio, la petición ha de poder presentarse directamente ante la Institución que tenga competencia y poder de iniciativa sobre el asunto planteado.

En el proyecto de Constitución Europea (Resolución del Pleno del Parlamento Europeo de 10 de febrero de 1.994) se incluye un catálogo de derechos humanos, que según el artículo 7 del proyecto se respetarán en los ámbitos en los que se aplique el Derecho de la Unión. La redacción del derecho nº 20 es la siguiente:

“Toda persona tiene derecho a presentar peticiones o reclamaciones por escrito **a los poderes públicos**, que están obligados a dar respuesta a las mismas”.

Asimismo, el inciso “**que le afecte directamente**” incluido en el artículo 194 del Tratado CE, supone desconocer el Derecho de petición como un derecho de carácter fundamentalmente político (vid. Derecho de petición y derecho de queja. I. Ibáñez García. Ed. Dykinson. Madrid, 1993). De hecho, la Comisión de peticiones del Parlamento Europeo ha llegado a interpretar este inciso de forma contraria a su interpretación literal, con el fin de no restringir la utilización del propio Derecho. CHUECA SANCHO (Derecho de petición al Parlamento Europeo y déficit democrático de la Unión Europea. Noticias de la Unión Europea, nº 137, junio 1996), ha escrito que el Parlamento Europeo examina las peticiones *ratione materiae* y no *ratione personae*.

El artículo 8 D del Tratado CE, en su redacción dada por el Tratado de Maastricht, era del siguiente tenor:

“Todo ciudadano de la Unión tendrá el derecho de petición ante el Parlamento Europeo, de conformidad con lo dispuesto en el artículo 138 D.

Todo ciudadano de la Unión podrá dirigirse al Defensor del Pueblo instituido en virtud de lo dispuesto en el artículo 138 E”.

Al antiguo artículo 8 D del Tratado CE (ahora artículo 21), el Tratado de Amsterdam ha añadido un importante tercer párrafo:

“Todo ciudadano de la Unión podrá dirigirse por escrito a cualquiera de las instituciones u organismos contemplados en el presente artículo o en el artículo 7 en una de las lenguas mencionadas en el artículo 314 y recibir una contestación en esa misma lengua”.

Se amplía así el derecho de petición originariamente reconocido ante el Parlamento Europeo y el Defensor del Pueblo (en este caso, *rectius*, derecho de queja o reclamación), al resto de las instituciones y organismos de la Unión, es decir, puede ejercitarse tal derecho, además, ante el Consejo, la Comisión, el Tribunal de Justicia, el Tribunal de Cuentas, el Comité Económico y Social y el Comité de las Regiones.

De la Resolución del Parlamento Europeo sobre las deliberaciones de la Comisión de Peticiones durante el año parlamentario 1998-1.999 y del Informe de dicha Comisión sobre sus deliberaciones en citado año parlamentario, pueden destacarse las siguientes apreciaciones:

- Considerando que el derecho de petición impone al Parlamento Europeo la correspondiente obligación de tramitar las peticiones de la forma más efectiva posible, con la asistencia de la Comisión y de los órganos competentes del Parlamento.
- Subraya que el derecho de petición aumenta las posibilidades de los ciudadanos de la Unión en cuanto a la participación e información democráticas...

- Destaca que es el Parlamento en su conjunto quien, debido a su propia función y responsabilidad política, garantiza en una respuesta directa al ciudadano el derecho de petición reconocido en el Tratado de la Unión Europea.
- Las cifras demuestran que los ciudadanos recurren con frecuencia a su derecho de petición, gratuito para ellos y que puede referirse a todos los asuntos comunitarios que incidan en el ámbito de actividades de la Unión Europea.
- Las peticiones tienen una importante función en la detección y tramitación de casos de infracción.
- Las peticiones se pueden transmitir (por la Comisión de Peticiones) a otra comisión o delegación de acuerdo con los procedimientos establecidos, “para información”, “para actuación”, para que se tengan en cuenta en el examen de cualquier propuesta legislativa relacionada, o “para opinión”, único caso en que cabe exigir una respuesta escrita de la comisión de que se trate.

El Informe de 6 de mayo de 1.988 de la Dirección General de Estudios del Parlamento Europeo, concluye:

“El derecho de petición se considera en todos los países europeos como una característica esencial del Estado de Derecho. Con frecuencia, este derecho tiene un efecto preventivo. En los países en los que desempeña un papel más importante, este hecho tiene como consecuencia que el parlamento sea informado más detalladamente de las preocupaciones y de las opiniones de los ciudadanos y que, de este modo, pueda satisfacer de forma más eficaz su misión de órgano de control del ejecutivo. **De la función del derecho de petición como instrumento político podrían derivarse consecuencias para un parlamento en forma de la aprobación o la modificación de leyes**”.

La Comisión Europea, en su segundo informe sobre la ciudadanía de la Unión, de 27 de mayo de 1.997, considera que las peticiones constituyen una medida extrajudicial de protección de los

derechos individuales y colectivos, a disposición de toda persona residente en la Unión; señalando que a través de las peticiones la Comisión ha abierto diversos procedimientos de infracción contra Estados miembros por violación del Derecho comunitario.

De las palabras de BENJAMIN CONSTANT, en su famosa conferencia de 1819 *De la liberté de les modernes comparée avec celle des anciens* (recogidas por el profesor GARCIA DE ENTERRIA en su obra: Justicia y seguridad jurídica en un mundo de leyes desbocadas. Civitas, 1999) se ve como el derecho de petición es un instrumento al servicio de la libertad:

“Preguntaos primero, señores, lo que en nuestros días un inglés, un francés, un habitante de los Estados Unidos de América entienden por la palabra libertad. Es para cada uno el derecho de no estar sometido más que a leyes, de no poder ser detenido, ni llevado a prisión, ni condenado a muerte ni maltratado de ninguna manera por el efecto de la voluntad arbitraria de uno o varios individuos. Es para cada uno el derecho de decir su opinión, de escoger su trabajo y de ejercerlo; de disponer de su propiedad, incluso de abusar de ella; de ir y venir sin necesidad de obtener un permiso y sin tener que dar cuenta de sus motivos o de sus pasos. Es, para cada uno, el derecho de reunirse con otros individuos, sea para tratar de sus propios intereses, sea para profesar el culto que él y sus asociados prefieran, sea, simplemente, para llenar sus días y sus horas de la manera más conforme a sus inclinaciones, a sus fantasías. **En fin, es el derecho para cada uno de influir sobre la administración del gobierno, bien por el nombramiento de todos o de ciertos funcionarios, bien por exposiciones, peticiones, demandas que la autoridad esté más o menos obligada a tomar en consideración**”.

III.- PROPUESTA A LA CONVENCION.

A continuación se transcribe la propuesta que formulamos con fecha 31 de marzo de 2.000 a la Convención encargada de elaborar la Carta de los Derechos fundamentales (CHARTE 4217/00. CONTRIB 93. Página web del Consejo):

“”A nuestro juicio, el Derecho de Petición debe ser incorporado a la Carta de derechos fundamentales de la Unión Europea; con una redacción que posibilitara una recta interpretación del Derecho reconocido en el Tratado y que, en su momento –si decide incorporarse el contenido de la Carta a los Tratados- mejorara la redacción de los mismos.

Una posible redacción a incorporar a la Carta sería la siguiente:

“Cualquier ciudadano de la Unión, así como cualquier persona física o jurídica que resida o tenga su domicilio social en un Estado miembro, tendrá derecho a presentar ante las instituciones u organismos contemplados en los Tratados, individualmente o asociado con otros ciudadanos o personas, una petición sobre un asunto propio de los ámbitos de actuación de la Unión Europea. El peticionario tiene derecho a recibir una contestación motivada sobre el fondo del asunto planteado en el más breve plazo posible”.

Asimismo, considero que debería recogerse en la Carta el derecho a presentar quejas ante el Defensor del Pueblo Europeo.””

IV.- AVATARES DE LA CONCRECIÓN DEL DERECHO DE PETICIÓN EN LA CARTA DE LOS DERECHOS FUNDAMENTALES.

En la propuesta de artículos sobre los derechos del ciudadano, de 20 de marzo de 2.000, el artículo que reconoce el Derecho de petición se redacta como sigue:

“Todo ciudadano de la Unión y toda persona que resida en el territorio de un Estado miembro tiene derecho de petición ante el Parlamento Europeo, en las condiciones definidas por el Tratado constitutivo de la Comunidad Europea”.

Se limita, por tanto, a reenviar el reconocimiento del Derecho a lo dispuesto en el Tratado. Esta técnica de reenvío es la tónica en buena parte de los artículos que se redactan en dicha propuesta.

De forma errónea, a mi juicio, dentro del reconocimiento del “derecho a una buena administración (relaciones con la Administración)”, se incluye el siguiente párrafo:

“Todo ciudadano podrá dirigirse a las instituciones y órganos de la Unión en una de las lenguas oficiales de la Unión, y deberá recibir una respuesta en la misma lengua”.

En el comentario a esta redacción se dice que este apartado “reproduce el artículo 21 del Tratado CE”. Como hemos visto al principio, dicho artículo es el que reconoce el Derecho de petición.

El último documento publicado por la Convención al terminar estas apretadas páginas es la Nota del *Praesidium* (CHARTE 4360/00, de 14 de junio de 2.000. Síntesis de las enmiendas presentadas por el *Praesidium*), cuya introducción recoge lo siguiente:

“La Secretaría ha elaborado este documento a petición de la Convención para reagrupar por temas las enmiendas a los artículos 1 a 30 (doc. Charte 4332/00). No se han tenido en cuenta en este análisis las enmiendas de carácter redaccional o lingüístico, que se estudiarán de forma específica. Se comprobará que determinadas propuestas transaccionales del *Praesidium* se basan en enmiendas

que no están contempladas en el presente análisis; esto se debe a que el Praesidium ha recogido ya algunas enmiendas lingüísticas o redaccionales”.

En lo referente al Derecho de petición, dicho documento contempla lo siguiente:

“Artículo 29. Derecho de petición.

Todo ciudadano y toda persona física o jurídica que resida o tenga su domicilio social en un Estado miembro tiene el derecho de petición ante el Parlamento Europeo.

Propuestas de enmiendas

- 1) Tres enmiendas tienen por objetivo que toda persona tenga el derecho de petición: enmiendas 574 (Hirsch Ballin/Patijn), 575 (Buitenweg) y 582 (Korthals Altes). Una enmienda propone, por el contrario, excluir a las personas jurídicas: enmienda 579 (Cisneros); otras dos sugieren añadir una disposición horizontal relativa a las personas jurídicas: enmiendas 576 (Friedrich) y 577 (Gnauck).
- 2) Tres enmiendas proponen limitar el derecho petición a los asuntos propios de los ámbitos de actuación de la Unión y que afecten directa o individualmente al que pretende ejercer dicho derecho: enmiendas 573 (Olsen), 576 (Friedrich) y 577 (Gnauck).
- 3) Dos enmiendas proponen establecer un derecho de petición ante todas las Instituciones u órganos: enmiendas 574 (Hirsch Ballin/Patijn) y 582 (Korthals Altes).**
- 4) Una enmienda tiene por objetivo añadir que este derecho se ejercita en las circunstancias y con los límites establecidos en el artículo 194 del TCE: enmienda 573 (Olsen).

Propuesta del Praesidium:

Añadir “de la Unión” después de “ciudadano”.

Se basa en la enmienda 581 (Dehaene).

A estas alturas de redacción de la Carta de los derechos fundamentales de la Unión Europea, puede observarse como la misma no supone ninguna aportación nueva a la regulación del Derecho de petición, que coadyuvaría a su fortalecimiento y a paliar en cierta medida el déficit democrático de las instituciones y órganos de la Unión distintos al Parlamento Europeo.

V.- EL DERECHO DE PETICIÓN EN ESPAÑA

El artículo 29 de la Constitución parece ser uno de los preceptos constitucionales de difícil desarrollo legal. Resulta paradójico que a los pocos años de vigencia de la Constitución de 1.978 se regulara el ejercicio de la iniciativa legislativa popular (art. 87.3 CE), mediante la Ley Orgánica 3/1.984, de 28 de marzo, y aún hoy se encuentre falto de desarrollo un derecho, como el de petición, mucho más accesible y utilizado por los españoles.

El artículo 23.1 de la Constitución consagra el derecho fundamental de los ciudadanos a participar en los asuntos públicos, directamente o por medio de representante libremente elegido. Como ha expuesto recientemente nuestro Tribunal Constitucional en su Sentencia 76/1.994, de 14 de marzo (relativa a la iniciativa legislativa popular) "nuestra Constitución en su artículo 1.3 proclama la Monarquía parlamentaria como forma de gobierno o forma política del Estado español y, acorde con esta premisa, diseña un sistema de participación política de los ciudadanos EN EL QUE PRIMAN LOS MECANISMOS DE DEMOCRACIA REPRESENTATIVA SOBRE LOS DE PARTICIPACION DIRECTA".

Ello, no obstante, no debe ser óbice para que el legislador descuide la regulación de instrumentos fundamentales diseñados para la participación política de los ciudadanos y de los grupos en que se integra -la denominada sociedad civil-. Instrumentos tales como el Derecho de petición y la participación en el procedimiento de elaboración de los reglamentos contemplado en el artículo 105 de la Constitución.

Según el Informe de 6 de mayo de 1.988 de la Dirección General de Estudios del Parlamento Europeo, "El derecho de petición puede considerarse como uno de los más antiguos derechos de los ciudadanos. De la función del derecho de petición como instrumento político podrían derivarse consecuencias para un parlamento en forma de la aprobación o la modificación de leyes".

Un ejemplo histórico de petición lo protagonizó en 1.827 el mercantilista Pedro Sainz de Andino, que presentó al Rey una exposición donde se ofrecía para "...aplicar a la formación de un Código mercantil, o sean Ordenanzas Generales del Comercio terrestre y marítimo, sus conocimientos que adquirió en esta parte de la legislación preparando materiales y ordenando un trabajo que pudiera ser después examinado y rectificado por una Junta". Esta fue la raíz del Código de Comercio de

1.829. Por Real Orden de 9 de enero de 1.828 se le encarga el proyecto de Ordenanzas que había sugerido. (EL DERECHO HISTORICO DE LOS PUEBLOS DE ESPAÑA. Gacto Fernández, Alejandro García y García Marín. 1.988).

En su sesión del 15 de abril de 1.994, la Comisión Constitucional del Congreso de los Diputados aprobó, por unanimidad y sin ninguna enmienda, la PROPOSICION NO DE LEY presentada el 23 de septiembre de 1.993 por el Grupo Parlamentario Catalán (Convergència i Unió), por la que se insta al Gobierno a la regulación del Derecho de Petición previsto en el artículo 29 de la Constitución.

El texto de la proposición no de ley

Exposición de motivos.

El Pleno del Congreso de los Diputados aprobó, el 22 de marzo de 1.988, una Proposición no de Ley del Grupo Parlamentario de la Minoría Catalana en la que se instaba al Gobierno a "remitir a esta Cámara, a la mayor brevedad posible, la propuesta de los proyectos de Ley que desarrollan aquellos preceptos constitucionales que, a su juicio, así lo requieren para su completa efectividad".

Transcurridos ya más de cinco años desde la aprobación de la mencionada Proposición, el Gobierno todavía no ha presentado un Proyecto de Ley Orgánica que desarrolle el derecho de petición individual y colectivo, previsto en el artículo 29 de la Constitución.

Concretamente, en el mencionado artículo de nuestra Carta Magna proclama que: "Todos los españoles tendrán el derecho de petición individual y colectivo, por escrito, en la forma y con los efectos que determine la Ley". Asimismo, este importante reconocimiento se produce en el marco de la sección primera del Capítulo Segundo de la Constitución, en donde se enumeran los derechos que tienen la consideración de "fundamentales" en nuestro ordenamiento jurídico.

Esta omisión en el desarrollo legislativo del Derecho de Petición no puede justificarse por la existencia de una normativa preconstitucional que lo regulaba, concretamente la Ley 92/1.960, dado que la misma no recoge todos los aspectos que el mismo comporta (ni tan siquiera contempla el derecho de petición colectivo) destacándose, por parte del propio Tribunal Constitucional, que la mencionada Ley el año 1.960 precisa de las inevitables adaptaciones que exige su aplicación en un

marco de libertades muy distinto del existente en la época de su promulgación" (STC 242/1.993, de 14 de julio).

Por todo ello, y atendiendo a la naturaleza del derecho de petición como derecho de participación ciudadana en el marco de nuestro Estado Social y Democrático de derecho, y a la utilización que del mismo se realiza por parte de los ciudadanos, el Grupo Parlamentario Catalán (Convergència y Unió) presenta la siguiente:

Proposición no de Ley.

"El Congreso de los Diputados insta al Gobierno a presentar ante las Cortes Generales, en el plazo de seis meses desde la aprobación de esta Proposición no de Ley, un Proyecto de Ley Orgánica reguladora del Derecho de petición reconocido en el artículo 29 de la Constitución".

Génesis de la proposición no de ley.

Esta loable iniciativa parlamentaria tiene su génesis en la petición que con fecha 30 de agosto de 1.993 realicé al que fue uno de los ponentes de nuestra Constitución y entonces Presidente del Grupo Parlamentario Catalán en el Congreso de los Diputados, Miquel Roca Junyent.

Petición fundamentada en:

"La Sentencia (242/1.993, de 14 de julio -BOE del 12 de agosto) del Tribunal Constitucional estima un recurso de amparo interpuesto por un ciudadano canario y reconoce la vulneración del artículo 29.1 de la Constitución provocada por la omisión de toda respuesta por parte del Parlamento canario a una petición dirigida por el recurrente.

La Sentencia, en su primer fundamento jurídico reconoce que la Ley 92/1.960, de 22 de diciembre, reguladora del derecho de petición fue promulgada en un marco de libertades muy distinto del actual, lo que exige inevitables adaptaciones en su aplicación.

Es obvio que citada ley reguladora de un derecho fundamental que recibe la más intensa protección -como dice el Tribunal Constitucional- debería haber sido, a mi juicio derogada y sustituida por otra que se adapte al marco de libertades vigente y se acerque a las que rigen en los países de nuestro entorno democrático.

Asimismo, el Tribunal Supremo, en su Sentencia de 10 de abril de 1.987, reconoció que mientras no se desarrolle por ley el artículo 29 de la Constitución, la ley 92/1.960 es el contenido "mínimo y provisional" del derecho.

Ambas consideraciones jurisprudenciales son una muestra de lo devaluado de la legislación reguladora de este derecho fundamental.

Por ello, me dirijo a Vd. -dada su sensibilidad hacia los asuntos constitucionales- con el ruego de que su Grupo Parlamentario estudie la posibilidad de presentar en el Congreso una proposición de ley orgánica que desarrolle el artículo 29 de la Constitución; o, en su defecto, una proposición no de ley por la que se inste al Gobierno a presentar el correspondiente proyecto de ley orgánica".

La Sentencia 242/1.993 del Tribunal Constitucional.

Esta Sentencia (ponente. de Mendizábal Allende), junto con el Auto del Tribunal 46/1.980 y la Sentencia 161/1.988, conforman la doctrina constitucional sobre el derecho de petición que recoge el artículo 29 de la Constitución.

La trayectoria del derecho de petición, según el ponente, puede rastrearse hasta los albores de nuestro constitucionalismo y aun más allá, prolongado sin desmayo alguno hasta nuestros días a través de los sucesivos textos donde se les reconoce a los españoles ese derecho de petición "en la forma y con los efectos que determine la Ley".

El núcleo de la doctrina constitucional sobre el artículo 29 es el siguiente:

- Este derecho recibe la más intensa protección.

- El derecho tiene un mucho de instrumento para la participación ciudadana, aun cuando lo sea por la VIA DE SUGERENCIA, y algo del ejercicio de la libertad de expresión como posibilidad de opinar.
- La petición, en suma, vista ahora desde su anverso, puede incorporar una sugerencia o una información, una iniciativa, "expresando súplicas o quejas", pero en cualquier caso ha de referirse a decisiones discrecionales o graciabiles, SIRVIENDO A VECES PARA PONER EN MARCHA CIERTAS ACTUACIONES INSTITUCIONALES, como la del Defensor del Pueblo o el recurso de inconstitucionalidad de las leyes.
- El derecho no incorpora una exigencia vinculante para el destinatario.
- Se trata de un derecho uti cives, del que disfrutan por igual todos los españoles en su condición de tales, que les permite dirigirse a los poderes públicos.
- Las Cámaras legislativas han estado siempre entre las instituciones receptoras: las Cortes y el Rey, señalaban las Constituciones de 1.837 y 1.845, a quienes desde 1.969 se añaden "las autoridades" o éstas y los Poderes Públicos en la de 1.931.
- La petición cumple también con la singular exigencia formal, su formulación escrita, característica de este derecho que exige una vestidura documental.
- El contenido de este derecho como tal es mínimo y se agota en la mera posibilidad de ejercitarlo, formulando la solicitud sin que de ello pueda derivarse perjuicio alguno para el interesado, garantía o cautela que está en el origen histórico de este derecho y ha llegado a nuestros días.
- Pero hoy el contenido del derecho comprende algo más, aun cuando no mucho más, e incluye la EXIGENCIA de que el escrito al cual se incorpore la petición sea admitido, le dé el curso debido o se reexpida al órgano competente si no lo fuera el receptor y se tome en consideración.
- Las obligaciones del destinatario son: Exteriorizar el hecho de la recepción y comunicar al interesado la resolución que se adopte.

- El derecho no incluye obtener una respuesta favorable a lo solicitado.

Notas para la regulación del Derecho.

Como acertadamente expone la doctrina constitucional, el derecho de petición "excluye cualquier pretensión con fundamento en la alegación de un derecho subjetivo o un interés legítimo especialmente protegido, incluso mediante la acción popular en el proceso penal o la acción pública en el contencioso-contable o en el ámbito del urbanismo. La petición en el sentido estricto que aquí interesa no es una reclamación en la vía administrativa, ni una demanda o un recurso en la judicial, como tampoco una denuncia, en la acepción criminal o las reguladoras de la potestad sancionadora de la Administración en sus diversos sectores".

Por tanto, a mi juicio, el objeto del derecho de petición que regule la futura ley orgánica ha de versar sobre propuestas para el mejoramiento de los servicios públicos; para el mejoramiento del ordenamiento legislativo; denuncias de contradicciones, defectos o insuficiencias del ordenamiento legislativo; o propuestas genéricas de carácter social, económico o político.

No deberán estar amparadas por la ley, en cuanto existan procedimientos legales específicos para ello:

- Las reclamaciones de derechos subjetivos.
- Las peticiones en defensa de un interés directo en el asunto de que se trate.
- las denuncias de infracciones penales, fiscales, civiles o de cualquier otra índole, cometidas por particulares o funcionarios.

Tampoco han de ser objeto de la ley reguladora las quejas subjetivas sobre el anormal funcionamiento de los servicios públicos, pues para ello está diseñada la institución del Defensor del Pueblo.

La iniciativa parlamentaria más reciente sobre este asunto es la proposición de ley orgánica reguladora del derecho de petición, presentada por el Grupo Parlamentario Federal de Izquierda Unida-Iniciativa per Catalunya (Boletín Oficial de las Cortes Generales. Congreso de los Diputados. VI Legislatura. 28 de abril de 1997).

En el programa electoral presentado por el Partido Popular a las Elecciones Generales del año 2.000, dentro del apartado “fortalecer el Estado de Derecho y las instituciones democráticas”, puede leerse:

“Promoveremos la regulación del derecho de petición, de acuerdo con el artículo 29 de la Constitución”.

VI.- EL DERECHO DE PETICIÓN EN LAS CONSTITUCIONES DE LOS ESTADOS MIEMBRO DE LA UNION EUROPEA.

Según recogemos de los textos constitucionales incluidos en la obra: *Constituciones de los Estados de la Unión Europea* (RUBIO LLORENTE y DARANAS PELAEZ. Ariel Derecho, 1997), el derecho de petición está reconocido de la siguiente forma.

Ley fundamental para la República Federal de Alemania, de 23 de mayo de 1.949:

Artículo 17: “Todos tendrán derecho a dirigir individual o colectivamente peticiones o quejas por escrito a las autoridades competentes y a las asambleas representativas”.

El artículo 17a permite a las leyes sobre el servicio militar limitar el ejercicio del derecho.

Texto Refundido de la Constitución de Bélgica, de 17 de febrero de 1.994:

Artículo 28: “Todos tendrán derecho a dirigir a las autoridades públicas peticiones firmadas por una o más personas.

Sólo las autoridades constituidas podrán dirigir peticiones en nombre colectivo”.

Artículo 57: “Queda prohibido presentar peticiones en persona a las Cámaras.

Cada una de las Cámaras tendrá la facultad de remitir a los Ministros las peticiones que se le dirijan. Los Ministros darán explicaciones sobre el contenido de aquéllas cuantas veces lo exigiere la Cámara”.

Constitución del Reino de Dinamarca, de 5 de junio de 1.953:

Artículo 54: “No se podrán presentar peticiones al Parlamento más que por uno de sus miembros”.

Constitución española de 31 de octubre de 1.978:

Artículo 29: “1. Todos los españoles tendrán el derecho de petición individual y colectiva por escrito, en la forma y con los efectos que determine la ley.
2. Los miembros de las Fuerzas o Institutos armados o de los Cuerpos sometidos a disciplina militar podrán ejercer este derecho sólo individualmente y con arreglo a lo dispuesto en su legislación específica”.

No obstante lo dispuesto en su apartado segundo, se han producido peticiones colectivas en dicho ámbito. Así, en el diario La Ley (11-02-99), puede leerse: “La Asociación de Militares Españoles ha remitido una carta al presidente del Gobierno, avalada por 500 firmas de militares pertenecientes a dicha entidad, en la que se solicita al jefe del Ejecutivo y al ministro de Defensa, según informó el diario La Razón, de que hagan valer su influencia ante el Grupo Popular para que se incluya el derecho de asociación de los militares en el proyecto de Ley de Régimen del Personal de las Fuerzas Armadas, actualmente en tramitación en el Congreso de los Diputados”.

Artículo 77: “1. Las Cámaras pueden recibir peticiones individuales y colectivas, siempre por escrito, quedando prohibida la presentación directa por manifestaciones ciudadanas.
2. Las Cámaras pueden remitir al Gobierno las peticiones que reciban. El Gobierno está obligado a explicarse sobre su contenido, siempre que las Cámaras lo exijan”.

Constitución de Grecia:

Artículo 10: “1. Toda persona, o varias actuando en común, tendrán derecho, siempre que se ajusten a las leyes del Estado, a dirigir peticiones por escrito a las autoridades, las cuales deberán obrar lo más rápidamente posible conforme a las disposiciones vigentes y dar al peticionario una contestación por escrito y motivada, conforme a lo que la ley disponga.
2. No se autorizará la persecución del peticionario por infracciones eventualmente contenidas en la acusación, sino después de acuerdo definitivo de la autoridad a la cual iba dirigida la petición y con autorización de la misma.
3. Toda solicitud de información obliga a la autoridad competente a contestar en la medida en que la ley lo prevea”.

Artículo 69: “Nadie podrá, sin haber sido invitado a ello, presentarse ante la Cámara para formular en ella una petición verbal o por escrito.

Las peticiones se presentarán por medio de algún diputado o serán entregadas al Presidente de la

Cámara, la cual tendrá derecho a dar traslado de ellas a los Ministros y Secretarios de Estado, quienes estarán obligados a facilitar aclaraciones cuantas veces se les solicite”.

Sobre el primer párrafo de este artículo, RUBIO LLORENTE y DARANAS PELAEZ señalan que es un “precepto poco frecuente en los textos constitucionales. Cfr., sin embargo, a título precedente, artículo 57, párrafo primero, de la Constitución belga y artículo 67, también párrafo primero, de la luxemburguesa (tomado del primero)”.

Constitución de la República Italiana, de 27 de diciembre de 1.947:

Artículo 50: “Todos los ciudadanos podrán dirigir peticiones a las Cámaras para solicitar se dicten disposiciones legislativas o exponer necesidades de índole común”.

Constitución del Gran Ducado de Luxemburgo, texto refundido:

Artículo 27: “Todos tendrán derecho a dirigir a las autoridades públicas peticiones firmadas por una o varias personas. Sólo las autoridades constituidas tendrán derecho a dirigir peticiones en nombre colectivo”.

Artículo 67: “Se prohíbe presentar en persona peticiones a la Cámara.

La Cámara tendrá derecho a trasladar a los miembros del Gobierno las peticiones que le fueren dirigidas. Los miembros del Gobierno deberán dar explicaciones sobre el contenido de aquéllas cuantas veces la Cámara lo solicite.

La Cámara no se ocupará de petición alguna que tenga por objeto intereses individuales, a menos que pretenda la reparación de agravios resultantes de actos ilegales cometidos por el Gobierno o las autoridades o que la decisión procedente sea de competencia de la Cámara”.

Ley Fundamental del Reino de los Países Bajos:

Artículo 5: “Todos tendrán derecho a presentar peticiones por escrito al órgano competente”.

Constitución de la República Portuguesa:

Artículo 52: “(Derecho de petición y derecho de acción popular). 1. Todos los ciudadanos tendrán derecho a presentar individual o colectivamente a los órganos de soberanía o cualesquiera autoridades peticiones, representaciones, reclamaciones o quejas para la defensa de sus derechos, de la Constitución, de las leyes y del interés general.

2. La ley determinará las condiciones en que las peticiones presentadas colectivamente a la Asamblea de la República deberán ser examinadas por el Pleno.

3. (dedicado a la acción popular)”.

VII.- CONCLUSION.

GOMEZ-FERRER MORANT (prólogo a la obra de COLOM PASTOR: El Derecho de Petición. Marcial Pons, 1997) señala que “el derecho de petición se presenta como una **vía de comunicación entre el Poder y la Sociedad**”. “El derecho de petición es por tanto una vía que cobra especial relevancia pública cuando se utiliza por entes de relevancia constitucional como los sindicatos de trabajadores y las asociaciones empresariales, a los que se refiere el art. 7 de la Constitución Española”.

Para este autor, “la importancia del derecho de petición se encuentra en conexión con el sistema vigente en cada época. De gran importancia política en la Edad Media, va a perder relevancia a medida que se avanza hacia el reconocimiento de la soberanía popular. En este sentido, como indica COLOM, en el sistema de sufragio censitario propio de la Revolución liberal, el derecho de petición se configura como un mecanismo de corrección del sufragio político restringido –así en la Constitución Francesa de 1791-, como un instrumento de legitimidad democrática. Precisamente por ello, cuando se produce la Revolución democrática, y el sufragio universal, **podemos preguntarnos qué sentido tiene el mantenimiento del derecho de petición, que no figura ni en la Declaración Universal de los Derechos del Hombre y del Ciudadano, de 10 de diciembre de 1948, ni en el Pacto Internacional de Derechos Civiles y Políticos, de 19 de diciembre de 1966, ni en el Convenio Europeo para la Protección de los Derechos Humanos y de las Libertades, de 4 de noviembre de 1.950.**

A mi juicio esta pregunta, en esta época, tiene fácil respuesta. El reconocimiento y desarrollo del derecho de petición significa reconocer el legítimo derecho a la participación política –la participación en los asuntos públicos, individual o colectivamente- más allá del llamamiento a las urnas cada cierto tiempo. Significa, asimismo, una mayor legitimación de las instituciones democráticas receptoras y tramitadoras de las peticiones ciudadanas. En este sentido, hoy se están dando pasos desde las instituciones europeas. Así, en la Comunicación de la Comisión Europea al Parlamento Europeo, al Consejo, al Comité Económico y Social y al Comité de las Regiones. Revisión de la Estrategia para el mercado interior europeo(2000), de 3 de mayo de 2000, puede leerse: “Profundizar el Diálogo con los ciudadanos y las empresas. La informática no sólo se presta a una nueva gama de aplicaciones para las empresas, sino que sirve también de base para un planteamiento más abierto e interactivo del desarrollo de políticas. El Diálogo con los ciudadanos y

las empresas utiliza Internet no solamente para canalizar información hacia los ciudadanos y recoger sus puntos de vista y experiencias, lo que proporciona una imagen del funcionamiento (y los puntos débiles) del mercado interior mucho más completa que la que era posible obtener anteriormente. La importancia del Diálogo a este respecto ha sido reconocida por todas las instituciones.”.

COLOM PASTOR (ob. cit) escribe que “con este derecho fundamental se produce una interesante paradoja. A medida que se profundiza y avanza en el Estado de Derecho pierde virtualidad”, citando a MORODO: “la formalización del Estado de Derecho hará escasamente necesario el ejercicio de este derecho”. Este último planteamiento supone, a mi juicio desconocer el derecho de petición como un derecho de participación política. Cosa distinta es la inexistente, en muchas ocasiones, actitud positiva de las instituciones receptoras de las peticiones en cuanto al estudio y tramitación de las mismas. Quizá por esta actitud, algunos ciudadanos utilizan un cauce distinto al normal para hacer sus propuestas. Así, el Catedrático emérito de Derecho Procesal, FAIREN GUILLÉN, escribió en el Diario La Ley (11-02-1998) un artículo titulado: “La formación de la voluntad del sujeto en las declaraciones de conformidad en el proceso penal. **Sugerencia al Ministerio de Justicia**”. Otros, como TOMAS Y VALIENTE, ex presidente del Tribunal Constitucional, utilizan la prensa para hacer partícipe a los demás de sus peticiones. Así, en su artículo “Por si acaso” (El País, 10-12-94): “cuatro juristas, hemos enviado al ministro de Justicia, también él jurista y amigo, una petición de enmienda al texto del artículo 143 del proyecto de Código Penal para que, mejorando su redacción actual, que ya va por ahí, reconozca validez a las peticiones expresas, serias e inequívocas de ciertos enfermos, de modo tal que sirvan para eximir de responsabilidad penal a quienes, atendiendo aquellas peticiones, causen o cooperen activamente en la muerte del enfermo”.

Las peticiones sirven para promover iniciativas legislativas. Así, en el preámbulo del Real Decreto 2191/1995, de 28 de diciembre, por el que se crea la Academia Aragonesa de Jurisprudencia y Legislación y se aprueban sus Estatutos; puede leerse:

“Con objeto de propiciar, estimular y difundir estudios e investigaciones de carácter jurídico, un grupo de profesionales del Derecho, residentes en Aragón, ha interesado la creación de una entidad que desempeñe con carácter autonómico una función relevante en el indicado campo, manteniendo una estrecha colaboración con la Real Academia de Jurisprudencia y Legislación, iniciativa que esta Corporación ha valorado de forma positiva”.

Sirve también, este Derecho, para proponer a los órganos con posibilidad de efectuar propuestas de modificaciones legislativas, la reforma del Derecho vigente. Así, en la Resolución del Tribunal de Defensa de la Competencia, de 23 de octubre de 1995, puede leerse:

“Segundo: Solicita la recurrente, con carácter subsidiario, que el Tribunal ejercite la facultad que le concede el art. 2.2 de la Ley de Defensa de la Competencia y proponga al Gobierno que suprima o modifique situaciones, como la presente, que provocan restricciones de la competencia.

1. Es de advertir que el art. 2.2 habilita al Tribunal para proponer al Gobierno la modificación de aquellas normas legales que amparen o propicien la creación de restricciones a la competencia, facultad que el Tribunal puede ejercitar, bien con ocasión de un expediente específico o bien con carácter general, sin necesidad de que la restricción a la competencia haya sido advertida al resolver un caso concreto. La habilitación al Tribunal constituye la finalidad del precepto y en ella se agota su contenido: el art. 2.2 no concede un derecho subjetivo a los administrados para exigir al Tribunal que haga las propuestas que ellos crean convenientes. **Su petición en este sentido no es más que ejercicio del genérico derecho de petición y no el ejercicio de una acción.**

2. Esto supuesto, en el caso presente el Tribunal estima conveniente adelantar que dirigirá una propuesta al Gobierno que versará sobre dos aspectos”.

Ejemplo de petición sobre asuntos europeos, de la que se hizo eco la prensa, fue la presentada ante la Comisión y el Parlamento Europeo por ECAS (Euro Citizen Action Service), de la que informó el diario El País (25-03-95) bajo el siguiente titular: “Grupos ciudadanos piden que las libertades de Schengen se extiendan a toda la UE”.

En la segunda fase del Plan de Modernización de la Administración del Estado –español-, publicado por el Ministerio para las Administraciones Públicas (Madrid, 1994), se propone, para mejorar la atención al ciudadano “la elaboración de una nueva Ley que desarrolle el artículo 29 de la Constitución relativo al derecho de petición y el establecimiento de un procedimiento acorde a la Ley 30/92 sobre Procedimiento Administrativo”.

Como he mantenido en este trabajo, los destinatarios naturales de las peticiones, en el ámbito de la Unión Europea, han de ser, sin limitaciones, todas las instituciones con poder de iniciativa respecto de la materia objeto de la petición.

Como mucho, si el Parlamento Europeo desea estar informado sobre las peticiones ciudadanas, podría establecerse el requisito de que la institución receptora de la petición enviara una copia de la misma a la Comisión de Peticiones, así como una copia de la ulterior resolución de la misma. Lo cual podría ser incluso hasta conveniente para el control político por parte del Parlamento.

A mi juicio, no debe molestar al Parlamento que se abra el abanico de las instituciones receptoras de peticiones. Con fecha 13 de septiembre de 1.986, el eurodiputado español LAFUENTE LOPEZ presentó una propuesta de resolución relativa a la creación de la institución del Defensor del ciudadano europeo, basada principalmente en la consideración de “que a pesar de que la investigación parlamentaria se ha venido realizando con toda dedicación, interés y cuidado por la Comisión de Reglamento y Peticiones, es evidente que la Cámara, a pesar de lo que declara la Resolución de 14 de julio de 1.985, no puede fiscalizar la actuación diaria de la Administración comunitaria, ni mucho menos investigar y corregir todas o la mayoría de las irregularidades de que tengan conocimiento, en lo referente a la tutela de los derechos de los ciudadanos europeos, máxime cuando en su estudio y vigilancia, se precisa la conexión con las autoridades de los Estados miembros, no siempre proclives a colaborar con la Comisión Parlamentaria y a suministrar con toda transparencia los datos que el Parlamento les solicita”. El Parlamento, en aquella época, acordó que no era pertinente crear dicha institución. No obstante, hemos visto como después, el Tratado de Maastricht creó la Institución del Defensor del Pueblo Europeo; lo que ha servido, entre otras cosas para distinguir las quejas por casos de mala Administración de lo que son las peticiones políticas. MOLINA DEL POZO y otros (Comentarios al proyecto de Constitución europea. Ed. Comares, 1996), subraya que “el Parlamento no había pedido la creación del Defensor Europeo por temor a que se superpusiera al derecho existente, antes del TUE, de presentar peticiones. Se preveía el riesgo de confusión y debilitamiento mutuo de las dos vías posibles. Las disposiciones del Tratado de la Unión, como hemos visto, refuerzan los papeles respectivos de ambas instancias”.

Conviene no olvidar que el derecho de petición se puede ejercitar individual o colectivamente y que en cualquier caso es un instrumento al servicio de la llamada sociedad civil. Por ello, no se entiende cómo en el Dictamen del Comité Económico y Social de la UE sobre “El papel y la contribución de

la sociedad civil organizada en la construcción europea”, de 22 de septiembre de 1999, después de señalar que “La sociedad civil: tentativa de descripción”. La sociedad civil es un concepto colectivo que designa todas las formas de acción social (**de individuos** o grupos) que no emanan del Estado y que no son dirigidas por él”; no trata en ningún momento del derecho de petición reconocido en el Tratado como instrumento de dicha sociedad civil.

El Tribunal Supremo norteamericano, en su sentencia *Eastern Railroad President’s Conference v. Noerr Motor Freight* (1961), dijo que en una democracia representativa, el concepto de representación depende de la capacidad de los ciudadanos para hacer que sus representantes conozcan sus deseos y que el derecho de petición está reconocido constitucionalmente, por lo que no puede ser suprimido por una Ley del Congreso como la *Sherman Act*. Esto lo pronuncia el Tribunal en el siguiente caso (vid. Derecho de los Negocios, nº 39, diciembre 1993, pag. 65): En los años cincuenta, las compañías de ferrocarriles comenzaron a sufrir la competencia de los conductores de camiones en el mercado de transporte de mercancías a larga distancia. Por este motivo, la *Eastern Railroad Presidents Conference* decidió promover la adopción de leyes estatales que limitaran el peso de los camiones que circularan por las carreteras y gravaran fiscalmente a los camiones pesados, y contrató los servicios de una compañía de relaciones públicas para que dirigiera una campaña dirigida a fomentar la desconfianza de la opinión pública en los conductores de camiones, por lo que éstos interpusieron una demanda por conspiración contraria a las normas *antitrust*.

Plasencia, 30 de junio de 2.000.

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE**fundamental.rights@consilium.eu.int**

Bruxelles, le 19 juillet 2000**CHARTE 4420/00****CONTRIB 276****NOTE DE TRANSMISSION**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne

Veillez trouver ci-après une contribution du Comité des Régions, concernant des propositions d'amendements au préambule, l'article 22 (Égalité et non discrimination) et l'article 44 (Clause horizontale), ainsi qu'une lettre au Président Herzog et la résolution 140/2000 REV 1. ¹

¹ Ce texte à été soumis en langue française seulement.

PROPOSITION DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPENNE.

Proposition d'amendement : au préambule

Auteur : Le Comité des Régions

Texte proposé :

L'Union respecte le principe de l'autonomie locale tel qu'il est mis en œuvre par les Etats-membres.

Justificatif :

Cet ajout se fonde d'une part sur l'article 6 concernant l'application des Droits démocratiques du Traité sur l'Union Européenne et sur l'application du principe de subsidiarité tel qu'il ressort du premier paragraphe de l'article 1 du Traité sur l'Union Européenne.

PROPOSITION DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPENNE.

Proposition d'amendement à l'article : Proposition d'amendement à l'article 44 (clause horizontale)

Auteur : Le Comité des Régions

Texte proposé :

Les dispositions de la présente Charte s'adressent dans le respect du principe de subsidiarité aux institutions et organes de l'Union ainsi qu'aux Etats-membres et aux autorités régionales et locales exclusivement dans la mise en œuvre du droit de l'Union.

Justificatif :

Cet ajout se fonde sur le fait que certaines autorités régionales et locales sont des organes d'application du droit de l'Union.

PROPOSITION DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPEENNE

Proposition d'amendement à l'article : 22 - Egalité et non discrimination ou d'un nouvel article après l'article 22.

Auteur : Le Comité des Régions

Texte proposé :

Si amendement, nouveau paragraphe 3 : les minorités ont droit au respect de leur religion, de leur langue et de leur culture.

Si nouvel article : Droit des minorités

Les minorités ont droit au respect de leur religion, de leur langue et de leur culture.

Justificatif :

Référence à l'article 27 du Pacte international relatif aux droits civils et politiques.

Les articles 12, 14 15 et 22 s'appliquent à des personnes et non à des groupes.

Le concept de minorité mérite d'être intégré à la Charte des Droits Fondamentaux.

Cette insertion s'avère indispensable dès lors que l'Union sera élargie à des Etats comportant des minorités importantes.

Bruxelles, le

Monsieur le Président,

A la suite de l'audition des associations nationales et européennes de pouvoirs régionaux et locaux organisée le 4 juillet 2000 par le Comité des régions et à laquelle participait M. JACQUE, il est apparu que bien que l'ensemble des associations approuvaient la teneur de la rédaction de la Charte telle que présentée par ce dernier, il leur paraissait indispensable que le Préambule sur le principe de démocratie comporte un article sur le principe de l'autonomie locale et que les collectivités régionales et locales soient mentionnées parmi les collectivités chargées du respect des droits et libertés inscrits, dès lors qu'il leur incombe d'appliquer le droit communautaire.

Ces deux demandes sont reprises dans le projet de résolution du Comité des régions qui a été approuvé le 5 juillet par sa commission "Affaires institutionnelles" que vous voudrez bien trouver en annexe.

Parmi les autres suggestions du Comité des régions figure le respect du droit des minorités qui pourrait faire l'objet d'un article spécifique de la Charte.

Vous trouverez ci-joint les propositions d'amendements concernant ces différents points.

Pour les 1^e et 2^e amendements, le Comité des régions s'est appuyé sur un texte suggéré par notre collègue, M. GNAUCK, membre de la Convention.

Pour le 3^e amendement relatif au droit des minorités, il a semblé opportun au Comité des régions de répondre par avance aux attentes des pays candidats à l'adhésion à l'Union européenne dans la mesure où ceux-ci comptent des groupes minoritaires importants.

J'ajoute que lors de l'audition des associations, celles-ci se sont déclarées prêtes à participer à une campagne de communication de la Charte auprès des citoyens de l'Union.

Je vous remercie par avance de l'accueil que vous réserverez à ces propositions d'amendements et vous prie de croire, Monsieur le Président, à l'expression de ma considération distinguée.

J. CHABERT

Monsieur Roman HERZOG
Président de la Convention pour la
rédaction de la Charte des droits fondamentaux
de l'Union européenne
CONSEIL DE L'UNION EUROPEENNE
Rue de la Loi 170
1048 Bruxelles

BT/ij/4302000

COM-Aff.Inst/ 011

Bruxelles, le 6 juillet 2000

PROJET DE RESOLUTION
du Comité des régions
sur

"La Charte des droits fondamentaux de l'Union européenne"

(Rapporteurs : M. BORE (RU, PSE) et Mme du GRANRUT (F, PPE))

Le présent document sera examiné lors de la session plénière des **20 et 21 septembre 2000**. L'article 23 du Règlement intérieur stipule que les amendements doivent parvenir au secrétariat au plus tard le septième jour ouvrable avant l'ouverture de la session plénière, c'est-à-dire, au plus tard le lundi 11 septembre à 14 heures 30 (heure de Bruxelles). Toutefois, en raison de la particularité de cette session qui se tiendra parallèlement à celle du Parlement européen et qui, de ce fait, aura lieu en même temps que celle du Comité économique et social, le Bureau a décidé le 13 juin de suggérer aux membres de faire parvenir les amendements au secrétariat **exceptionnellement le lundi 4 septembre 2000 à 14 heures 30** (heure de Bruxelles) **au plus tard**. Ils doivent être présentés par écrit par au moins six membres et indiquer leurs noms (*E-mail* : isabella.jacobs@cor.eu.int).

La présente résolution a été élaborée sur la base du nouveau Règlement intérieur. En conséquence, conformément à l'article 51, aucun amendement ne peut être déposé concernant l'exposé des motifs.

Le Comité des régions,

- VU** la décision du Conseil européen concernant l'élaboration d'une Charte des droits fondamentaux de l'Union européenne;
- VU** les conclusions du Conseil européen de Cologne et celles du Conseil européen de Tampere;
- VU** la création de la Convention chargée de l'élaboration d'une Charte des droits fondamentaux de l'Union européenne constituée le 17 décembre 1999;
- VU** son avis du 16 février 2000 sur le processus d'élaboration d'une Charte des droits fondamentaux de l'Union européenne;
- VU** la décision du Bureau du 11 avril 2000, conformément à l'article 265 paragraphe 5 du Traité instituant la Communauté européenne, d'élaborer une résolution sur la Charte des droits fondamentaux de l'Union européenne et de charger la commission "Affaires institutionnelles" de l'élaboration des travaux en la matière;
- VU** le projet de résolution adopté par la commission "Affaires institutionnelles" lors de sa réunion du 5 juillet 2000 (rapporteurs : M. BORE (RU, PSE) et Mme du GRANRUT (F, PPE));
- CONSIDERANT** l'état d'avancement des travaux de la Convention chargée d'élaborer une Charte des droits fondamentaux de l'Union européenne;
- CONSIDERANT** que le Comité des régions s'est déjà prononcé fermement en faveur de l'élaboration d'une telle Charte, dotée d'un caractère juridique contraignant et de son inclusion dans les Traités;
- CONSIDERANT** qu'à la suite de l'avis du Comité des régions sur la Charte des droits fondamentaux de l'Union européenne adopté le 16 février 2000 et de l'audition du Président du Comité des régions, M. CHABERT, par la Convention chargée de rédiger ladite Charte, le Comité des régions a été invité à suivre les travaux de la Convention et à assister à ses réunions informelles;
- CONSIDERANT** que l'élaboration du projet de Charte proposé par le Presidium et en discussion au sein de la Convention a donné lieu à des prises de position diversifiées concernant son statut juridique, son rôle et sa finalité;
- CONSIDERANT** que pour certains membres de la Convention, la Charte devrait s'inscrire dans le cadre strict de l'Union européenne et de ses compétences, et que dès lors elle devrait se limiter à préciser les libertés fondamentales dont peuvent se prévaloir les citoyens européens et leur application dans le cadre des compétences qui relèvent de l'Union, et qu'ainsi elle n'aurait pas à énoncer les droits qui sont reconnus par les Etats et dont l'application relève d'eux seuls et qu'enfin, pour ce faire, elle se bornerait à reprendre à son compte une partie de la Convention européenne des Droits de l'Homme (CEDH);
- CONSIDERANT** que pour d'autres membres de la Convention, qui sont apparus majoritaires, la Charte des droits fondamentaux de l'Union européenne doit certes s'inspirer des droits inscrits dans la Convention européenne des Droits de l'Homme (CEDH) mais que sa mission consiste à les reformuler et à les compléter et ce, d'une part, en couvrant les domaines qui ne posaient pas de problèmes juridiques lors de sa rédaction et, d'autre part, par les autres sources d'inspiration que sont notamment le texte du Traité sur l'Union européenne, la Jurisprudence de la Cour de Justice européenne et la Charte sociale européenne;
- CONSIDERANT** que pour les tenants de cette position, il ne s'agit pas d'augmenter les compétences de l'Union européenne ni de s'ingérer dans la capacité normative et juridique des Etats membres;

CONSIDERANT que l'inscription des Droits économiques et sociaux dans la Charte a été l'occasion de préciser cette option et de la faire prévaloir;

CONSIDERANT que le Comité des régions ne peut que se réjouir de cette solution qui correspond aux recommandations de son avis;

a adopté la résolution suivante lors de sa ... session plénière des ... (séance du ...).

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Le Comité des régions,

1. insiste sur le caractère politique de la Charte et sur son apport prépondérant comme fondement de la citoyenneté européenne. A cet effet, il suggère que la structure de la Charte prévoie que les droits du citoyen figurent à la suite du principe de démocratie;
2. propose de compléter, dans le préambule, le principe de démocratie par le principe d'autonomie communale et régionale, étant donné que cette dernière garantit également l'application pratique des droits démocratiques, il conviendrait, en outre, de mentionner le principe de subsidiarité et l'article 6 du Traité C.E. à un endroit approprié de la Charte; deuxièmement, il estime que tous les citoyens résidant en Europe depuis longtemps doivent disposer du droit de vote aux élections municipales ainsi qu'aux élections du Parlement européen;
3. réitère sa conviction selon laquelle la Charte doit couvrir trois aspects essentiels : les droits des personnes, les droits économiques, sociaux et culturels et, enfin, les droits civils et politiques. Les droits contribuent à l'expression des valeurs caractéristiques du modèle social européen. Regroupés dans un seul document, ils mettent en lumière les valeurs fondamentales de l'Union européenne; la Charte devrait également accorder une attention particulière à la protection de ces droits face aux abus dérivant de l'utilisation illégale des nouvelles technologies de l'information, de la dégradation de l'environnement ou du contrôle des concentrations des moyens de communication dans le cadre de la liberté d'expression ;
4. souligne la nécessité d'une formulation claire et lisible de la Charte qui apportera ainsi une plus-value aux droits fondamentaux et libertés garanties aux citoyens européens et les rende accessibles à tous ceux qui peuvent s'en prévaloir. A cet égard, il rappelle son souci de voir garantis juridiquement l'ensemble des droits inscrits dans la Charte et de permettre à tous l'accès aux services d'intérêt général;
5. exprime sa satisfaction que soient inscrits dans la Charte les droits économiques et sociaux qui permettent de répondre aux défis technologiques de la société européenne et d'en être des acteurs responsables, à condition qu'ils ne représentent pas uniquement des objectifs pour l'action de l'Union. Le Comité insiste également sur le droit des travailleurs à la formation professionnelle permanente indispensable à leur adaptabilité à l'emploi dans le contexte du progrès scientifique et technique de la société européenne et sur sa mise en oeuvre de manière harmonisée dans tous les Etats de l'Union et ce, afin de faciliter la libre circulation des travailleurs à l'intérieur de l'Union européenne.
6. recommande d'inscrire expressément dans la Charte la protection des minorités en tant que droit à part entière, pour déterminer ainsi un principe fondamental, notamment en ce qui concerne le traitement de la diversité ethnique au sein de l'Union européenne.
7. reconnaît la nécessité, dans le cadre des clauses horizontales, de préciser les limites des droits fondamentaux inscrits dans la Charte tout en leur donnant clairement comme objectif principal d'explicitier le champ de protection des droits fondamentaux et de refléter fidèlement leur niveau de protection ;

8. considère comme indispensable de dire clairement que les droits contenus dans la Charte ne justifient aucune nouvelle compétence de l'Union européenne ;
9. attire l'attention de la Convention sur le caractère indivisible des droits qui y sont inscrits, leur force découlant de cette indivisibilité;
10. considère que la Charte constitue un apport considérable à ce qu'il est convenu d'appeler l'acquis communautaire et que cet apport est majeur dans la perspective de l'élargissement aux pays candidats et à leurs ressortissants. Ceux-ci connaîtront d'emblée les droits et protections qui leur seront garantis ainsi que les obligations qu'ils devront assumer et ce, éventuellement par le truchement de modifications dans leur législation et dans leur système de gouvernement;
11. souligne que les élus locaux et régionaux peuvent jouer un rôle significatif dans la sensibilisation et la médiatisation de l'existence, du contenu et de la portée de la Charte auprès des citoyens;
12. propose que soit mis en oeuvre dès l'entrée en vigueur de la Charte un programme de communication qui s'appuie sur le Comité des régions et l'ensemble des élus locaux et régionaux. L'adhésion des citoyens à l'éthique et aux valeurs promues par la Charte ne pourra que renforcer leur sentiment d'appartenance à l'Union européenne et confèrera à celle-ci un réel fondement démocratique;
13. rappelle que la position du Comité a toujours été de souhaiter que le Conseil européen décide de son intégration dans les Traités, et qu'ainsi la Charte acquiert une valeur juridique, réponde à l'attente des citoyens et confère un contenu à l'identité européenne et insiste enfin sur le progrès substantiel qu'elle représente pour les citoyens de l'Union européenne en faisant de celle-ci un instrument majeur de la solidarité communautaire et de sa capacité d'élargissement.

Bruxelles, le ...

Le Président
du Comité des régions

Le Secrétaire général f.f.
du Comité des régions

Jos CHABERT

Vincenzo FALCONE

Exposé des motifs

- En l'état actuel des discussions au sein de la Convention, il semblerait que la Charte des droits fondamentaux de l'Union européenne doive comporter :
 - un préambule qui énonce le principe de démocratie
 - des articles qui précisent les droits fondamentaux reconnus aux européens :
 - a) Droits civils et politiques et droits du citoyen
 - b) Droits économiques et sociaux;
 - des clauses horizontales concernant les modalités d'application de ces droits.
- Le principe de démocratie s'énonce ainsi :
 1. Toute autorité publique émane du peuple;
 2. L'Union et ses institutions se fondent sur les principes de la Liberté de la démocratie, du respect des droits de l'homme ainsi que de l'état de droit, principes qui sont communs aux Etats membres.

Pour le Comité des régions, il apparaît impératif que la Charte décline ce principe de démocratie

jusqu'à la reconnaissance de l'autonomie locale et, à cet effet, il a proposé à la Convention un amendement en ce sens. L'autonomie des collectivités régionales et locales élues est reconnue même à des degrés divers dans tous les Etats membres. C'est par l'application du principe de subsidiarité le socle du pouvoir du citoyen sur l'organisation de sa vie quotidienne.

- Les droits civils et politiques (23 articles) traitent des droits de la personne humaine : dignité, droit à la vie, droit au respect de son intégrité par l'interdiction de la torture, de l'esclavage et de traitements dégradants; droit à la liberté et à la sûreté, droit de recours et à un tribunal impartial en cas d'atteinte à ces droits, respect des droits de la défense et présomption d'innocence - nécessité d'avoir commis une infraction à une loi pour être condamné; droit à ne pas être jugé ou puni deux fois pour la même infraction.
- Sur le droit de recours, le Comité des régions souhaite que l'article qui le prévoit se traduise par une garantie juridique fondamentale pour l'ensemble des droits inscrits dans la Charte.

Viennent ensuite les droits de la personne dans sa vie privée et sociale : respect de la vie privée, du domicile, du secret de la correspondance et des communications, vie familiale et protection de la famille et droits des enfants, respect de la liberté de pensée, de conscience et de religion, liberté d'expression et d'opinion, droit à l'éducation, droit des parents du choix de l'établissement d'enseignement, liberté de réunion et d'association, protection des données personnelles, du droit de propriété, droit d'asile et interdiction des expulsions collectives, et enfin, interdiction de toute discrimination.

A cet égard, le Comité des régions a proposé de renforcer la promotion de l'égalité entre les hommes et les femmes. Par ailleurs, il souhaite voir consacrer un article spécifique aux droits des minorités. Enfin, il s'associe à la proposition d'amendement concernant l'accès aux services d'intérêt général.

Les droits du citoyen (7 articles) traitent du droit de fonder un parti politique, du droit de vote et d'éligibilité au Parlement européen et aux élections municipales pour les résidents européens dans les mêmes conditions que les ressortissants d'un Etat membre, des obligations des administrations et des institutions européennes à l'égard des citoyens de l'Union, du rôle du médiateur, du droit de pétition, du droit de circuler et de séjourner librement sur le territoire des Etats membres.

La plupart de ces droits figurent dans différents articles du Traité sur l'Union européenne. Leur réunion les rend plus lisibles pour les citoyens. Le Comité des régions suggère que les droits du citoyen soient inscrits en tête de la Charte après l'énoncé du principe de démocratie.

- Les droits économiques et sociaux (13 articles) commencent par un article qui cherche à tenir compte de la spécificité des droits sociaux, du caractère de principe de certains d'entre eux et des modalités de leur application par les différents niveaux de collectivités responsables. C'est pourquoi, le Comité des régions demande, si cet article devait être maintenu, que les collectivités régionales et locales qui ont à mettre en œuvre certains de ces droits soient mentionnées dans cet article.

Les autres articles précisent les différents droits de la personne dans son travail : droit à l'information dans l'entreprise, droit de négociation et d'action collective, droit au repos et au congé annuel, droit à la santé et la sécurité dans son travail, droit à la protection en cas de licenciement, droit de concilier vie professionnelle et vie familiale, droit à la sécurité sociale et l'aide sociale, droits spécifiques des personnes handicapées, des personnes âgées et des jeunes.

- Les Clauses horizontales (5 articles) traitent du champ d'application des droits inscrits dans la Charte, de leur interprétation et de leur éventuelle limitation. Ces articles que l'on pourrait qualifier "de précaution" mériteraient d'être simplifiés et regroupés afin de ne pas paraître limitatifs et en retrait par rapport au reste de la Charte : le respect des droits fondamentaux s'impose aux Etats membres lorsqu'ils agissent dans le cadre du droit communautaire. Ceci est valable également pour les collectivités régionales et locales et doit être mentionné dans cette partie de la Charte.

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE**fundamental.rights@consilium.eu.int**

Bruxelles, le 17 juillet 2000**CHARTE 4424/00****CONTRIB 278****NOTE DE TRANSMISSION**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne

Veuillez trouver ci-après une contribution des organisations suivantes:

- ATD-Quart Monde
- Confédération des Organisations Familiales de l'Union Européenne (COFACE)
- European Forum for Child Welfare (EFCW)
- Union nationale interfederale des Ouvres et organismes prives sanitaires et sociaux (UNIOPSS).

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¹ Ce texte à été soumis en langue française seulement.

- **ATD-Quart Monde**
- **Confederation des Organisations Familiales de l'Union Europeenne (COFACE)**
- **European Forum for Child Welfare (EFCW)**
- **Union nationale interfederale des Ouvres et organismes prives sanitaires et sociaux (UNIOPSS)**

Conseil de l'Union européenne
Secrétariat général
Charte des droits fondamentaux

**Aux membres de la
Convention chargée d'élaborer un projet de
charte des droits fondamentaux de l'Union
européenne.**

Bruxelles, le 22 juin 2000

Mesdames, Messieurs,

Dans le cadre d'un projet portant le titre "La protection sociale, facteur de lutte contre l'exclusion sociale et la discrimination et instrument de cohésion sociale - Recommandations aux institutions européennes", la Confédération des Organisations Familiales de l'Union Européenne ^ laquelle se sont associées ATD-Quart Monde, European Forum for Child Welfare et l'Union nationale interfederale des Ouvres et organismes prives sanitaires et sociaux (France), a organise plusieurs réunions pour étudier différentes questions relatives ^ la protection sociale.

Les représentants de ces associations se sont réunis le 19 juin 2000. Au terme d'une journée de travail centrée sur les droits sociaux fondamentaux et la protection sociale, ils ont estime nécessaire de vous faire parvenir sans retard leurs conclusions : elles portent sur une liste minimale de droits sociaux fondamentaux et de principes transversaux dont l'inscription et la mise en ouvre leur paraissent urgentes et indispensables.

Ces droits sociaux fondamentaux sont les suivants :

- Droit ^ un revenu minimum permettant de vivre dans la dignité ;
- Droit aux soins de santé pour tous ;
- Droit aux prestations familiales pour tous et d'un montant suffisant pour couvrir les frais réels directs et indirects que représentent les charges familiales ;
- Droit ^ un logement décent ;
- Droit pour tous ^ des services sociaux de qualité.

Ces droits devraient être mis œuvre dans le respect des principes transversaux suivants :

- Non-discrimination et égalité des chances et de traitement, notamment entre les nationalités, races, sexes et entre les différentes structures familiales ;
- Prestations indexées et d'un niveau suffisant ;
- Une information effective des bénéficiaires ;
- Effectivité des droits directs par une définition suffisamment précise et par la mise en place de procédures assurant l'effectivité des recours individuels.
- Pour tous les droits (directs et programmatiques), élaboration de procédures destinées à favoriser la convergence des systèmes (Évaluations comparatives).

Les organisations espèrent que la Convention saura accorder toute l'attention requise cette revendication et l'en remercier.

Signatures des représentants des organisations

Editors' note to CHARTE 4425/1/00 REV 1,
**Contribution from the Fondation Marangopoulos
submitted by Mrs. Alice Yotopoulos-Marangopoulos,
President of the Greek Commission on Human
Rights:**

The INIT version was dated 18 July and was essentially identical save that (i) it lacked the header and (ii) the list on p.3 lacked lettering ((a), b), c) etc)).

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 1 September 2000**CHARTE 4425/1/00 REV 1****CONTRIB 279****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a contribution from the Hellenic Republic, National Commission for Human Rights, submitted by Mrs. Alice YOTOPOULOS-MARANGOPOULOS, President of the Greek Commission on Human Rights, with summary proposals for submission to the Convention.¹

¹ This text has been submitted in English only.

HELLENIC REPUBLIC

NATIONAL COMMISSION FOR HUMAN RIGHTS

Consultative to the Prime Minister

THE CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

SUMMARY PROPOSALS FOR SUBMISSION TO THE CONVENTION

A. GENERAL COMMENTS

1. The Greek National Commission on Human Rights supports in principle the decision of the European Union to adopt its own Charter of Fundamental Rights.

This decision is indicative of the Union's intention to emphasize the importance of human rights, but also of the further development of the unification process, covering areas much wider than the management of strictly economic issues, as was originally the case with the EEC.

2. However, in order for the new Charter to take on substantive importance, not only should it not lag behind the international, and particularly the European, *acquis* in the area of human rights, but it should also contribute to further progress in mentalities and trends arising from practice at the international and, especially, the European level, for a more effective and full protection of human rights. Otherwise, this Charter may prove essentially useless, if not harmful.

2. We also consider it purposeful to emphasize the well-known fact that all member States of the European Union are also members of the Council of Europe which is already equipped with a remarkable legal arsenal for the protection of human rights, that is civil, political, as well as economic and social rights (after the recent codification and consolidation with the adoption of additional protocols to the European Social Charter). The inclusion in the Charter of the European Union of principles and provisions ensuring lower standards of protection as compared to the relevant provisions of the instruments of the Council of Europe which encompasses 41 members - namely all the members of the Union, but also countries which are in a phase of transition towards democracy and the rule of law -, would constitute a regression to be avoided.

Furthermore, the trends that emerge from the more recent Constitutions of the member States of the European Union should not be ignored, since they are also part of the European *acquis*.

3. The Charter, in accordance with the above principles, should not only introduce expressly some new rights, but also reformulate certain longstanding rights on the basis of a new approach. We will refer below to certain particular provisions based on this general guideline.

B. SPECIFIC PROVISIONS

1. We believe, first of all, that the Charter should establish a more substantive concept of equality. Practice has shown, as highlighted in a series of historical decisions of the Greek Council of State (decisions 1917- 1929/1998 and 1933/1998), that the mere establishment of formal equality of all before the law, is an hypocrisy and, in fact, perpetuates injustices to the detriment of disadvantaged and marginalized socio-economic groups, categories etc. Women form the largest of these groups (half of the world's population).

For this reason, the adoption of positive measures does not constitute 'discrimination' on the basis of gender, colour, religion, etc., in other words a restriction or negation of equality, but, on the contrary, a means to attain effective equality and to cast aside social injustice, i.e. effective discrimination.

Allow us to recall the relevant formulations of the provisions on equality contained in the following European Constitutions:*

- a) the German Constitution: article 3, para.2;
- b) the Portuguese Constitution: articles 29, paras. (d) and (h) and 109;
- c) the Austrian Constitution: article 7, para. 2;
- d) the French Constitution: article 3, as recently amended;
- e) the Italian Constitution: article 3;
- f) the Constitutions of various German Länder.

It is up to the Convention to choose to follow one of these formulations or to use a different wording, as deemed appropriate.

As regards in particular gender equality, experience has proved the importance of including in the Charter an explicit provision following the general provision on equality. The former should draw its inspiration from the relevant provisions of the UN Convention on the Elimination of All Forms of Discrimination Against Women, which has been incorporated into the domestic legal order of all member States of the Union, since they have all ratified it.

More specifically, we believe that the following text should be included in article 1 of document CONVEN 36, as a necessary addition in conformity with the spirit prevailing at both the international and European levels and reflected in relevant instruments of the European Union (especially article 2, para. 4 of Directive 76/207 of 9 February 1976, as further interpreted in a recent decision of the European Court of Justice (*Badeck* case, C- 158/1997, decision of 28 March 2000)):

1. Substantive equality between women and men shall be ensured and promoted in all areas. Any direct or indirect discrimination on the ground of gender is prohibited.
2. *In order to improve, in the first instance, the position of women, it is recommended to adopt positive measures which shall remain valid until such time as substantive equality between women and men is achieved.*

2. We also think it useful to expressly refer to the principle that any transaction concerning the human body or part thereof is prohibited as an affront to human dignity, and as endangering physical, spiritual and mental health or integrity - in many cases, even life itself. Any such activity must be punished, since the human body is an *extra commercium* good. Consequently, new forms of slavery, in particular sexual exploitation of women and children as a transnational organized crime which nowadays buffets Europe, as well as the traffic in organs for transplants - often

* For further details see A. Yotopoulos-Marangopoulos, *Affirmative Action: Towards Effective Gender Equality* (Athens/Brussels, Sakkoulas/Bruylant, 1998), at 44 ff.

connected to very serious crimes -, must be curbed by radical means by the cooperation of all States. Such a program of cooperation should comprise measures aiming at the punishment of offenders and the social reintegration of and solidarity with the victims. A provision to that effect should be included in article 1.

3. As experience has shown, an end should be put to human rights violations perpetrated under the veil of religious, cultural or historic customs which are bolstered today primarily by political or religious authorities inspired by religious extremism (fundamentalism). This often consists in the denial of all human rights to large sectors of the population, especially women.

The situation in the world today, even in Europe which is home to numerous supporters of such movements (particularly Islamic, but also of the Vatican) who insist on following practices contrary to human rights renders imperative the inclusion in the Charter of provisions along the lines of paras. I.5 and II. B. 3. 38 of the 1993 Vienna Declaration and Programme of Action of the World Conference on Human Rights.

4. It is time for the Charter to expressly prohibit the death penalty in the member States of the Union.

5. Last but not least, we believe it essential that the Charter strengthen economic and social rights in general. The Council of Europe has already done so by expanding and reinforcing the Turin Charter in 1991 (adoption of the Protocol amending the European Social Charter, ETS No. 142), and particularly by adopting the Additional Protocol of 1995 (ETS No. 158) which recognizes for the first time the right to collective complaints for violations of social rights.

The Geneva World Summit for Social Development (Copenhagen + 5) of 24-26 June 2000 brought to light and proclaimed the pressing need to strengthen social rights as much as possible at a time when economic globalisation becomes increasingly inhuman and deepens the gap between individuals as well as between countries (the few rich, individuals and States, become constantly richer while the popular masses and Third World countries become poorer). Moreover, globalisation undermines democracy itself (as fewer and fewer individuals in every country become owners of the wealth and the mass media). Thus, the ultimate power belongs to a limited number of persons, without recognition by democratic constitutions, without being elected by the people and essentially under no control (since politicians stand in fear of this power and not the reverse).

It is to everybody's interest - even the few rich - that a check be put on this development, which can be achieved, at least in part, by a more effective protection of social rights, thus preventing social conflicts and wars.

Developments in Europe over the last few years are blatant evidence of the above-mentioned facts and demonstrate that the policy of restricting social rights is unjust, antidemocratic and unwise.

From: Prof. Alice Yotopoulos – Marangopoulos, President of the Greek Commission on Human Rights

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE**fundamental.rights@consilium.eu.int**

Bruxelles, le 17 juillet 2000**CHARTE 4426/00****CONTRIB 280****NOTE DE TRANSMISSION**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne

Veillez trouver ci-après une contribution de Mme Juliette LELIEUR, concernant l'article 11 (règle "non bis in idem").¹

¹ Ce texte à été soumis en langue française seulement.

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Strasbourg, le 4 juillet 2000

Objet : rédaction de l'article 11 (règle *non bis in idem*) du projet de Charte des droits fondamentaux de l'Union européenne

Mesdames et Messieurs les membres de la Convention,

Préparant une thèse de doctorat en droit sur le thème de la règle *non bis in idem*, (à l'Université de Paris I Panthéon-Sorbonne, sous la direction de Mme le Professeur Mireille Delmas-Marty), je me suis intéressée à la formulation de l'article 11 du Projet de Charte des droits fondamentaux de l'Union européenne. Par la présente, je souhaite vous transmettre quelques observations au sujet de cet article et vous suggérer une légère modification rédactionnelle qui, à mon sens, permettrait d'élargir la protection des citoyens de l'Union.

Pour mémoire, je retranscris ci-dessous la formulation de la règle *non bis in idem* de l'article 4 du protocole 7 additionnel à la Convention européenne des droits de l'homme, dont est directement inspiré le projet de Charte des droits fondamentaux de l'Union européenne, ainsi que celle de l'article 11 dudit projet. Je me permets de souligner les termes sur lesquels je désire attirer votre attention.

Article 4 Protocole 7 additionnel à la CEDH :

Al. 1 : Nul ne peut être poursuivi ou puni pénalement par les juridictions du même Etat en raison **d'une infraction** pour laquelle il a déjà été acquitté ou condamné par un jugement définitif conformément à la loi et à la procédure pénale de cet Etat.

Article 11 du projet de Charte des droits fondamentaux de l'Union européenne :

Nul ne peut être poursuivi ou puni pénalement en raison **d'une infraction** pour laquelle il a déjà été acquitté ou condamné par un jugement définitif conformément à la loi.

L'inconvénient de la rédaction actuelle des article 4 protocole 7 additionnel à la CEDH et 11 du projet de Charte des droits fondamentaux de l'UE

L'interdiction d'engager une seconde poursuite -et de prononcer éventuellement une seconde sanction- ne s'applique, selon les termes de ces deux articles, que lorsque la seconde poursuite est entamée pour « une infraction pour laquelle [un individu] a déjà été acquitté ou condamné... », c'est-à-dire pour la même infraction que lors de la première poursuite. En revanche, si un individu est poursuivi une seconde fois pour les mêmes faits, pour un même comportement délictueux, mais sous une qualification différente, c'est-à-dire pour une autre infraction, la règle *non bis in idem* n'est plus applicable et l'interdiction de la double poursuite ne s'impose plus.

En pratique, cela signifie qu'une personne ayant eu un comportement incriminé par deux lois distinctes (concours idéal d'infractions), cas de figure extrêmement courant en raison de l'inflation normative constatée dans la plupart des Etats de l'Union européenne, peut tout à fait être poursuivie du chef de la première loi, puis de la seconde puisqu'il s'agit de deux infractions différentes. Ce peut être le cas lorsque les deux infractions relèvent du droit interne. Par exemple, en France, un contribuable qui omet de déclarer dûment ses revenus peut être poursuivi et pénalisé à la fois par l'Administration fiscale pour absence de déclaration fiscale (article 1728 Code général des impôts) et par le tribunal correctionnel pour fraude fiscale (article 1741 du Code général des impôts). Mais le problème se pose également à l'échelle communautaire et relève ainsi directement du champ d'application de la future Charte. En effet, une entente anticoncurrentielle peut porter atteinte à la fois aux prescriptions d'un Etat membre et à celles du droit communautaire, et donner lieu en conséquence à deux poursuites, l'une nationale, l'autre communautaire. Bien loin de constituer des hypothèses d'école, ces cas de figure ont donné lieu à une jurisprudence abondante, dont on ne citera que quelques exemples (Cass. crim. fr., 20 juin 1996 ; Cass. Crim. fr., 6 nov. 1997 ; CJCE 13 fév. 1969, Walt Wilhem, aff. 14-68 : Rec. 1 ; CJCE, 14 déc. 1972 ; Boehringer, aff. 7-72 : Rec. 1181). Dans toutes ces affaires, la règle *non bis in idem* a été écartée par les juridictions saisies et la double poursuite validée. Pour éviter d'être trop longue, je ne m'attarderai pas davantage sur ces décisions. En revanche, il s'avère particulièrement opportun d'analyser, ne serait-ce que brièvement, la jurisprudence de la Cour européenne des droits de l'homme, puisque cette dernière a été confrontée à la règle *non bis in idem* telle que formulée à l'article 4 protocole 7 additionnel CEDH, dont est inspiré l'article 11 du projet de Charte.

2. La Cour européenne des droits de l'homme confrontée à l'article 4 protocole 7 additionnel à la CEDH.

Pour se persuader de l'insuffisance de la rédaction de la règle *non bis in idem* dans les deux textes susvisés, il suffit d'observer la jurisprudence de la Cour européenne des droits de l'homme, qui a été confrontée au problème lors des affaires Gradinger contre Autriche (23 octobre 1995) et Oliveira contre Suisse (30 juillet 1998). Par souci de concision, je ne m'attarderai qu'à la seconde d'entre elles.

Mme Oliveira avait provoqué un accident de la circulation entraînant la blessure grave d'une personne. Elle a été condamnée une première fois par le tribunal de police (*Polizeirichteramt*) pour défaut de maîtrise du véhicule en raison de la non-adaptation de la vitesse aux conditions de circulation (article 31 et 32 de la loi sur la circulation routière). Puis un an et demi plus tard, elle a été poursuivie de nouveau devant le tribunal cantonal (*Bezirksgericht*), cette fois pour lésions corporelles par négligence (article 125 du Code pénal), et a été une seconde fois condamnée. Alors que la Commission, s'appuyant sur la jurisprudence Gradinger de 1995, avait conclu par 24 voix contre 8 à la violation de l'article 4 du protocole 7, la Cour a estimé par 8 voix contre 1 que ladite disposition n'avait pas été violée. Les juges ont motivé leur décision de la manière suivante : « Il s'agit là d'un cas typique de concours idéal d'infractions, caractérisé par la circonstance qu'un fait pénal unique se décompose en deux infractions distinctes, en l'occurrence l'absence de maîtrise du véhicule et le fait de provoquer par négligence des lésions corporelles (...). Il n'y a là rien qui contrevienne à l'article 4 protocole 7, dès lors que celui-ci prohibe de juger deux fois une même infraction, alors que dans le concours idéal d'infractions, un même fait pénal s'analyse en deux infractions distinctes » (§ 26). On observe ici une illustration très éclairante sur les lacunes de l'article 4 protocole 7 : en interdisant le cumul de poursuites et de sanctions dans le seul cas où la qualification lors de la seconde procédure est strictement identique à la première, cette disposition ne permet pas d'éviter *toutes* les doubles poursuites ni *toutes* les doubles condamnations.

Les juges de Strasbourg n'ont d'ailleurs pas manqué de relever expressément dans le corps de l'arrêt les inconvénients liés à ce système : « Il aurait certes été plus conforme aux principes d'une bonne administration de la justice que, les deux infractions provenant d'un même fait pénal, elle fussent sanctionnées par une seule juridiction, dans une procédure unique » (§ 27). En outre, dans son opinion dissidente, M. le juge Repik insiste sur le souci « d'assurer au prévenu que son sort ne sera pas remis en question, c'est-à-dire de lui assurer qu'il ne sera pas deux ou plusieurs fois exposé aux contraintes des poursuites pénales et condamné pour la même cause » (voir aussi R. Merle et A. Vitu : *Traité de droit criminel. Procédure pénale*, Cujas, 4^{ème} édition, 1989, p. 878). Ces différentes observations invitent à s'interroger sur les valeurs profondes que tend à protéger la règle *non bis in idem*. Immanquablement, cette réflexion laisse bien vite apparaître des arguments de fond en faveur de la révision de la rédaction actuelle de la règle qui, en l'état, n'assure pas pleinement la sauvegarde des valeurs qu'elle est censée protéger.

3. Les arguments de fond en faveur de la révision de la formulation de la règle *non bis in idem*.

Si elle contribue assurément à la réalisation d'une bonne administration de la justice, ainsi que le mentionnent les juges de la Cour européenne des droits de l'homme dans l'arrêt Oliveira, la règle *non bis in idem* tend avant tout à protéger l'individu contre la menace permanente d'être à nouveau poursuivi alors qu'il a déjà répondu de ses actes devant la justice : c'est cet élément essentiel que souligne M. le juge Repik dans son opinion dissidente. En effet, la suspension d'une véritable épée de Damoclès au-dessus de la tête des justiciables est insupportable car elle porte assurément atteinte à leur sécurité juridique. Or, comme l'explique la doctrine juridique allemande, la sécurité juridique des justiciables est l'un des éléments fondamentaux de l'Etat de droit. En outre, en ce qu'elle le réduit à un simple objet de la justice, la menace permanente d'être poursuivi à nouveau n'est pas compatible avec le respect de la dignité humaine. Enfin, elle limite nécessairement la liberté, au sens non pas physique mais psychologique, du justiciable (pour plus de détails sur ces divers arguments, voir notamment Schmidt-Assmann, in *Grundgesetz Kommentar*, von Theodor Maunz / Günter Dürig / Roman Herzog, Art. 103 III, n° 258 à 260).

En considération de l'aspect fondamental de ces valeurs que se doit de protéger la règle *non bis in idem*, il serait bien regrettable de reprendre telle quelle la rédaction insatisfaisante de l'article 4 protocole 7 additionnel à la CEDH pour la future Charte, alors que la correction de cette rédaction n'est pas si délicate ni aventureuse qu'on peut l'imaginer.

4. Proposition d'une nouvelle rédaction pour l'article 11 de la Charte des droits fondamentaux de l'Union européenne

Afin d'être efficace, la règle *non bis in idem* doit, à mon sens, interdire non seulement le cumul de poursuites et de sanctions pour une même infraction, mais également le cumul de poursuites en cas de concours idéal d'infraction. Pour lui permettre d'attendre ce but, une légère modification par rapport à la rédaction actuelle suffit : il s'agit du remplacement des termes « d'une infraction » par les termes « de faits ». On obtient ainsi la formulation suivante :

« Nul ne peut être poursuivi ou puni pénalement en raison **de faits** pour lesquels il a déjà été acquitté ou condamné par un jugement définitif conformément à la loi ».

Le recours aux termes « des faits » permet de gommer la limitation de la règle au seul cas (bien rare) où la seconde poursuite est formulée de manière exactement identique à la première en termes de qualification juridique. Cette rédaction de l'article 11 rend possible l'interdiction d'une seconde poursuite pour un même fait alors même que celle-ci serait fondée sur une qualification différente. Elle pourra donc être à l'origine d'un progrès significatif en termes de protection de l'individu contre les excès du pouvoir répressif. Mais que les partisans des cumuls de poursuites et de sanctions en cas d'atteinte par un seul fait matériel à plusieurs valeurs sociales juridiquement protégées se rassurent : si cette rédaction permet une évolution par rapport à la jurisprudence Oliveira, elle ne l'impose pas. Comme je tenterai de le démontrer ci-après à la lumière de la jurisprudence française, le recours aux termes « de faits » à la place de « d'une infraction » laisse une grande marge de manœuvre aux potentiels interprètes de la Charte.

4. Une rédaction souple.

Pour expliquer la souplesse de la rédaction proposée, un détour par l'évolution de la jurisprudence française et des textes du Code de procédure pénale s'avère très utile. Dans l'ancien Code d'instruction criminelle, l'article 359 consacrait l'interdiction de reprendre des poursuites « à raison des mêmes faits » (en matière criminelle seulement, ce qui explique les possibilités de cumul en droit français pour tout ce qui relève des autres infractions, ce système étant encore en vigueur aujourd'hui). Aussi surprenant cela puisse-il paraître, deux interprétations radicalement différentes peuvent être données à cette formulation. Le législateur avait probablement voulu exclure l'éventualité d'une seconde poursuite quelle que soit la qualification (Huguency, note sous CA d'Amiens, 12 juillet 1954, Dalloz 1955, p. 317). Il entendait sans doute interdire une seconde poursuite pour les mêmes « faits matériels ». Pourtant, la Cour de cassation française estima dans un premier temps qu'il fallait considérer les faits « juridiquement qualifiés » et non les faits « matériels ». Cette compréhension des termes de l'article 359 engendra une jurisprudence semblable à celle de la Cour européenne des droits de l'homme dans l'arrêt Oliveira. Ce n'est qu'en 1956 que la Cour de cassation fit évoluer sa jurisprudence, pour s'attacher désormais aux faits « matériels ». Ainsi, la double poursuite en matière criminelle devenait impossible même sous une autre qualification. Lors de l'instauration du Code de procédure pénale, le législateur a estimé bon de consolider cette dernière solution en prohibant, à l'article 368 dudit Code, une seconde poursuite « à raison des mêmes faits, même sous une qualification différente ».

L'évolution de la jurisprudence française est, me semble-t-il, très révélatrice de la souplesse de la rédaction que je propose pour l'article 11. Cette dernière ne contraint pas les interprètes à accepter tout type de cumul dès lors que la qualification varie, comme c'est le cas de l'article 4 protocole 7 additionnel à la CEDH, mais elle ne les oblige pas non plus à un refus systématique de tout cumul, qui nécessiterait sans doute des adaptations – certes souhaitables mais non bénignes – de l'articulation entre les ordres juridiques internes et l'ordre juridique communautaire. Remettons-en nous donc à la sagesse des juges, en leur donnant des instruments à la fois ouverts à l'amélioration de la protection des droits de l'homme et suffisamment souples afin qu'ils puissent apprécier le moment opportun pour engager le changement.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 31 August 2000**CHARTE 4431/00****CONTRIB 285****COVER NOTE**

Subject : Draft Charter of fundamental rights of the European Union

Please find hereafter a contribution by the European Women's Lobby (EWL).¹

¹ This text has been submitted in French and English languages.



LOBBY EUROPEEN DES FEMMES EUROPEAN WOMEN'S LOBBY

POSITION OF THE EWL ON THE NEW DRAFT CHARTER OF FUNDAMENTAL RIGHTS

At the 1995 World Conference on women, 189 countries agree, "Governments must not only refrain from violating human rights of all women, but must work actively to promote and protect these rights. (...) The gap between the existence of rights and their effective enjoyment derives from a lack of commitment by governments to promoting and protecting these rights" (Beijing Platform for action, 215 & 217).
Women in Europe would consider it a disgrace if European decision-makers fail to comply with this international commitment by simply ignoring them

Having read through the new draft Charter proposed by the Praesidium (Convent 28 issued the 5th of May and Convent 34 from the 16th of May), the European Women's Lobby notices once more the lack of consideration of women's concerns by the authors of the Charter.

The EWL reiterates the fundamental demands formulated in its written contribution of May 2000, urging members of the Convention to integrate women's perspective in the Charter in order to ensure the protection of half the population's interests, meaning women's, and to promote equality between women and men.

1. The principle of equality between women and men in all fields

A provision exclusively dedicated to the unconditional principle of gender equality must be introduced in the first articles of the Charter. It must prohibit direct and indirect discrimination and provide explicitly and precisely for the adoption of positive measures by Member States.

The general principle of non discrimination as proposed in article 22 doesn't lead to a substantial equality between women and men. This general provision constitutes a backlash, since *gender discrimination is of a particular and structural nature, affecting women who represent half of the population and not a minority*. Women are likely to face different forms of discriminations, on the

ground of ethnic origin or disability for example, added to the structural discrimination on the ground of sex. The inclusion of a separate provision prohibiting exclusively gender discrimination would enable a better prevention of multiple discriminations and would allow women to enjoy effectively all fundamental rights and freedoms and to be full citizens in all areas.

The EWL therefore welcomes the amendment n° 470 tabled by **MM Einem** and **Holoubek** aiming at dedicating an exclusive and separate provision to equality between women and men, although it has reservations on the terminology used in the amendment.

The Lobby supports also the proposal of amendment n°436 submitted by **Mr Fayot** aiming at introducing a provision that states «the unconditional and fundamental principle of equality between women and men in all areas», the prohibition of «any discrimination on grounds of sex» as well as the introduction of «positive measures».

Proposal of the EWL:

Article 2. General principle of equality between women and men in all areas

1. The Union shall promote respect for the unconditional and fundamental principle of equality between women and men in all areas of its jurisdiction.
2. Substantive equality between women and men must be established and direct or indirect discrimination on the grounds of sex must be prohibited. Moreover, a gender dimension should be adopted while combating all forms of discrimination in order to eradicate multiple discrimination that many women face.
3. Positive measures should be implemented to improve women's situation until substantive and effective equality between women and men is achieved.

At this stage, it is not appropriate to specify that this provision should be applicable to the area of work, since the principle of equality between women and men in the area of working conditions and salaries must constitute a separate provision in the chapter on economic and social rights.

2. Prohibition of gender related violence and persecutions

The provision condemning torture and inhuman treatment should explicitly state that gender related violence or persecution is a form of torture.

Sexual mutilation, whose first victims are women and the girl child, still take place on European territory. This inhuman treatment is a form of torture and should thus be considered as such, as well as other kinds of gender related violence such as rape, domestic violence, forced marriage, “honour” killing, including those which take place within the family.

Proposal of the EWL :

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#### **Article 4. Prohibition of torture and inhuman treatment**

*No one shall be subjected to torture or to inhuman and degrading treatment. This refers to any kind of physical or moral violence, including any kind of gender related violence such as among others female genital mutilations, rape, violence in the home, forced marriage, "honour" killing, also when executed within the family.*

### **3. Principle of PARITY democracy**

|                                                                                                                                                        |
|--------------------------------------------------------------------------------------------------------------------------------------------------------|
| <i>A provision on parity democracy in the Charter is essential to achieve a balanced representation of women and men in decision-making positions.</i> |
|--------------------------------------------------------------------------------------------------------------------------------------------------------|

The problem of under representation of women in decision-making positions persists and must be tackled with concrete measures such as the ones already adopted in some Member States. This principle must be integrated in the Charter through a clear and separate provision.

Proposal of the EWL :

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New article- Parity Democracy

1. Every citizen of the Union, without any discrimination, has the rights provided by the law of the Union and national law, of an equal access to candidacy for elections and the exercise of the corresponding functions.
 2. A parity democracy, meaning an equal representation of women and men in all the organs and institutions of the Union, should be established as a fundamental principle for both the European integration and the institutions of the Union.
 3. Positive measures should be taken in order to favour equal access of women and men in the governmental and EU bodies as well as in political parties.
- ~~~~~

4. Equality between women and men in the areas of working conditions and salaries

<i>The fundamental principle of equality between women and men in the areas of working conditions and salaries and social protection must be recalled in the part dedicated to economic and social rights, as was the case in the first draft of the Presidium (Convent 18 - article I).</i>
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A general provision on non-discrimination does not constitute a sufficient measure to fight against the *de facto* inequality between women and men in the area of working conditions.

Conscious of this gap, European legislators introduced already in 1957 a provision stating clearly the principle of equality between women and men in the area of salaries. The possibility for Member states to adopt positive measures in order to achieve a *de facto* equality has been included in the Treaty later on – although not in a comprehensive way (Amsterdam 1997, article 141 § 4). The fact that a Charter codifying common values for European countries does not include the principle of equality in the areas of working conditions and salaries constitute an unacceptable backlash in comparison with the progress accomplished by national and European legislations in this field. Integrating the aim of equality in the field of work in the last paragraph of a general provision on non-discrimination in the chapter on civil and political rights cannot legitimately fill this gap.

The Lobby welcomes therefore the amendments submitted by several members of the Convention with the aim of reintroducing the principle of gender equality as stated in the 1st draft. The EWL supports in particular the amendments of A. Rodriguez Berejo (n°0088) and P. Berès (n°0185) that introduce the principle of equal pay for work of equal value as well as the concept of positive measures in an unambiguous way.

Proposal of the EWL:

New article (article31bis) : Equal treatment between women and men

1. *Substantial equality between women and men must be ensured and any kind of inequalities must be eliminated with regard to work, employment and social protection. This mainly includes the equal right to freely chose or accept to work, the right to the same working conditions, the right to fair and equal pay for work of equal value, and the equal right to social security and assistance for themselves and their family.*
2. *Any direct or indirect discrimination on the ground of sex is prohibited in the fields quoted in paragraph 1.*
3. *Positive measures should be implemented to improve women's situation until substantive and effective equality between women and men is achieved in this particular field of employment.*

ENTWURF DER CHARTA DER GRUNDRECHTE DER EUROPÄISCHEN UNION**fundamental.rights@consilium.eu.int**

Brüssel, den 31. August 2000**CHARTE 4432/00****CONTRIB 286****ÜBERMITTLUNGSVERMERK**

Betr.: Entwurf der Charta der Grundrechte der Europäischen Union

Finden Sie bitte nachstehend eine Stellungnahme von Arbeitsgemeinschaft Freier Schulen (AGFS).¹

¹ Dieser Text wurde uns nur in deutscher Sprache übermittelt.

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Hamburg,
14. Juli 2000

Stellungnahme zu den bisherigen Vorschlägen für einen Artikel
„Recht auf Bildung“ (z.Zt. Art. 16)
der Charta der Grundrechte der Europäischen Union

In der Arbeitsgemeinschaft Freier Schulen (AGFS) arbeiten die Verbände der Schulen in freier Trägerschaft in der Bundesrepublik Deutschland zusammen (vergl. Fußzeile).

Zu dem aktuellen Entwurf eines Art. 16 „Recht auf Bildung“ gemäß dem Vermerk des Präsidiums vom 5. Mai 2000 (Dokument: CHARTE 4284/00, Convent 28) sowie zu weiteren vorgelegten Vorschlägen nimmt die AGFS wie folgt stellung:

Die AGFS unterstützt die Vorschläge des Europäischen Forum für Freiheit im Bildungswesen (EFFE) vom 10. und 25. April 2000(CHARTE 4215/00, Version multilingue und CHARTE 4253/00, überarbeitete Version nur in deutscher Sprache) mit den beiden zentralen Anliegen,

Mitglieder der AGFS: Arbeitskreis katholischer Schulen in freier Trägerschaft
Arbeitsgemeinschaft Evangelischer Schulbünde e.V.
Bund der Freien Waldorfschulen e.V.
Vereinigung Deutscher Landerziehungsheime
Bundesverband Deutscher Privatschulen, Bildungseinrichtungen in freier Trägerschaft e.V. (VDP)

1. das Elternwahlrecht in Übereinstimmung mit der pädagogischen Überzeugung nicht nur zu respektieren sondern zu gewährleisten und
2. durch gleichberechtigte Förderung aller Schulen - gleich ob in freier oder staatlicher Trägerschaft – auch praktisch zu ermöglichen.

Eine Begründung für diese Forderungen hat das Europäische Parlament bereits in seiner EntschlieÙung zur Freiheit der Erziehung in der Europäischen Gemeinschaft vom 14.3.1984 unter Ziffer I 9 formuliert:

„Aus dem Recht der Freiheit der Erziehung folgt wesensnotwendig die Verpflichtung der Mitgliedsstaaten, die praktische Wahrnehmung dieses Rechtes auch finanziell zu ermöglichen und den Schulen die zur Durchführung ihrer Aufgaben und zur Erfüllung ihrer Pflichten erforderlichen öffentlichen Zuschüsse ohne Diskriminierung der Organisatoren, der Eltern, der Schüler oder des Personals zu den gleichen Bedingungen zu gewähren, wie sie die entsprechenden öffentlichen Unterrichtsanstalten genießen; dem steht nicht entgegen, dass von den frei gegründeten Schulen ein gewisser Eigenbeitrag als Ausdruck der Eigenverantwortlichkeit und zur Unterstützung ihrer Unabhängigkeit zu fordern ist.“

Auch der von der Initiative „Netzwerk Dreigliederung“ vorgelegte Vorschlag für einen Artikel „Recht auf Bildung“ (CHARTE 4164/00) stimmt mit diesen Forderungen inhaltlich überein. Der Formulierungsvorschlag des EFFE wurde mit anderen Europäischen Organisationen des Bildungswesens wie ECNAIS (The European Council of National Associations of Independent Schools), OIDEL (Organisation internationale pour le développement de la liberté), ECSWS (European Council of Steiner Waldorf Schools), die zusammen mehr als 10 Millionen Schüler an Europäischen Schulen in freier Trägerschaft repräsentieren, abgestimmt. Er lautet in der letzten Fassung gem. Dokument CHARTE 4253/00 wie folgt:

Artikel 16: Recht auf Bildung

- (1) **Jeder hat das Recht auf Bildung. Dazu gehört der unentgeltliche Zugang zum allgemeinbildenden Unterricht bei gleichen finanziellen Bedingungen für alle allgemeinbildenden Schulen.**
- (2) **Bildung und Erziehung sind frei. Sie sind auf die volle Entfaltung der Fähigkeiten und Begabungen gerichtet.**
- (3) **Das Recht der Eltern, Erziehung und Bildung ihrer Kinder entsprechend ihren religiösen, weltanschaulichen und pädagogischen Überzeugungen sicherzustellen, wird garantiert.**
- (4) **Jeder hat das Recht zur Errichtung und zum Betrieb von Bildungseinrichtungen unter Beachtung der Menschenrechte und Grundfreiheiten. Die freie Wahl der Schule wird garantiert.**

Auf die ausführlichen Begründungen zu diesem Vorschlag in den genannten Dokumenten des EFFE wird verwiesen.

Die Arbeitsgemeinschaft richtet an das Konvent die dringende Bitte, diesen Vorschlag wohlwollend zu prüfen und es bei der Formulierung eines Artikels „Recht auf Bildung“ nicht bei einem Minimalkonsens der Mitgliedsstaaten zu belassen sondern sich an den Staaten zu orientieren, in denen die Menschen- und Grundrechte vorbildlich verwirklicht wurden.

Für die Arbeitsgemeinschaft

Stephan May
Geschäftsführer

Joachim Böttcher
Vorsitzender

ENTWURF DER CHARTA DER GRUNDRECHTE DER EUROPÄISCHEN UNION**fundamental.rights@consilium.eu.int**

Brüssel, den 31. August 2000**CHARTE 4433/00****CONTRIB 287****ÜBERMITTLUNGSVERMERK**

Betr.: Entwurf der Charta der Grundrechte der Europäischen Union

Finden Sie bitte nachstehend einen Beitrag, vorgelegt von der Arbeitsgemeinschaft der öffentlich-rechtlichen Rundfunkanstalten der Bundesrepublik Deutschland (ARD).¹

¹ Dieser Text wurde uns nur in deutscher Sprache übermittelt.

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Mitglieder des Konvents zur Erarbeitung
einer europäischen Charta der Grundrechte

17. Juli 2000

Europäisches Grundrecht der Meinungs- und Informationsfreiheit

Sehr geehrte Damen und Herren,

den Landesrundfunkanstalten der ARD, dem Zweiten Deutschen Fernsehen ZDF sowie dem Bundesverband Deutscher Zeitungsverleger BDZV ist zur Kenntnis gelangt, dass Art. 15 der Europäischen Grundrechtscharta eine Überarbeitung erfahren hat. Demnach soll ein Absatz 2 eingefügt werden, nach dem die Presse- und Informationsfreiheit unter Achtung der Transparenz und des Pluralismus gewährleistet wird. Gegenüber dieser Neufassung des Grundrechts bestehen aus der Sicht von ARD, ZDF und BDZV durchgreifende inhaltliche Bedenken.

Die ausdrückliche Erwähnung der Pressefreiheit ohne gleichzeitige Erwähnung der Rundfunkfreiheit sowie der Freiheit der übrigen an die Allgemeinheit gerichteten Kommunikation erweckt den irreführenden Eindruck, als würde nur die Freiheit der Printmedien grundrechtlichen Schutz genießen. Die Aufnahme der Informationsfreiheit vermag dieses Defizit nicht zu kompensieren, da sie nur die Mediennutzer, nicht aber die Anbieter der genannten Massenmedien schützt. Die Rundfunkfreiheit hat sich heute, ebenso wie die Pressefreiheit, wegen ihrer Bedeutung für die freie Meinungsbildung als unerlässlicher Garant für Demokratie und gesellschaftlichen Zusammenhalt erwiesen. In einer modernen, zukunftsweisenden Grundrechtscharta sollte dies ebenso gewürdigt werden wie die neuen Kommunikations- und Informationsmedien, die im Hinblick auf ihre zunehmende Bedeutung als Instrumente auch der Massenkommunikation gleichermaßen ausdrücklich in das Grundrecht mit aufgenommen werden sollten.

Soweit die Überarbeitung des Art. 15 nunmehr den Begriff der Transparenz in den Grundrechtswortlaut eingefügt hat, ist dies nicht sachdienlich. Ist schon der gemeinhin bekannte Begriff des Pluralismus oder der Vielfalt im jeweiligen Kontext unterschiedlich zu werten, so spricht hingegen die Formulierung „Transparenz“ ein diffuses Inhaltsspektrum an. Weder den Verantwortlichen in Presse, Rundfunk und sonstigen Mediendiensten noch den Mediennutzern wird mit diesem Begriff ein klarer Aussagegehalt vermittelt. Entgegen dem Grundanliegen der Charta, den Betroffenen Klarheit und Rechtssicherheit zu verschaffen, werden Auslegungsfragen aufgeworfen und Rechtsunsicherheit geschaffen. Deshalb sollte auf den Begriff der Transparenz in Art. 15 ersatzlos verzichtet werden.

Wir wären den Mitgliedern des Konvents sehr verbunden, wenn sie diesem gemeinsamen Anliegen des öffentlich-rechtlichen Rundfunks und des Verbandes der Zeitungsverleger in Deutschland Rechnung tragen könnten.

Mit freundlichem Gruß

Eva-Maria Michel
Justiziarin des WDR Köln
für die ARD

Dr. Holger Paesler
Leiter Medienpolitik
BDZV

Prof. Dr. Carl-Eugen Eberle
Justitiar des ZDF

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 31 August 2000**CHARTE 4434/00****CONTRIB 288****COVER NOTE**

Subject : Draft Charter of fundamental rights of the European Union

Please find hereafter a contribution by the Working Group of the Platform of European Social NGOs, regarding proposed amendments to the social rights and horizontal clauses.¹

¹ This text has been submitted in English language only.

Charter of Fundamental Rights in the European Union

31 May 2000

Proposed Amendments to CONVENT 34 (Social Rights and Horizontal Clauses)

From

The Working Group of the Platform of European Social NGOs

Article 31 Delete – partial incorporation in Article 46

Article 32 Freedom to choose an occupation

Everyone has the right to freely choose and engage in an occupation.

New Article 32A Right to equal remuneration for equal work

Every worker has the right to equal remuneration for work of equal value.

Article 33 Workers' right to information and consultation within the undertaking

Workers and their representatives have the right to information and consultation in good time and in any case before a decision is taken by the central management and/or the management of the undertaking which employs them and this in all situations of company reorganisation and restructuring, including transnational situations, which affect their working conditions and interests.

Article 34 Rights of collective bargaining and action

Employers and workers have the right to negotiate and conclude collective agreements, including at European Union level and to take collective action, in cases of conflicts of interest, to defend their economic and social interests, including at European Union level. *[words deleted]* The right to take collective action includes the right to strike and to organise sympathy strikes, including at European level.

Article 35. Right to rest periods and annual leave

Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave of at least 4 weeks.

Article 36. Safe and healthy working conditions

Every worker has the right to safe and healthy working conditions.

Workers' representatives have the right, in co-operation with management, to evaluate and where necessary to improve the safety and health situation in the enterprise.

Work accidents or professional diseases must create the right to adequate social security benefits.

Article 37. Protection of children and young people at work

The minimum age of admission to employment must not be lower than the minimum school-leaving age without prejudice to such rules as may be more favourable to young people, in particular those ensuring their preparation for work through vocational training and subject to derogations limited to certain light work.

Children and young people admitted to work must have working conditions which suit their age and protect their safety, health or physical, mental, moral or social development and do not jeopardise their education.

Article 38. Right to protection in cases of termination of employment

All workers have a right to protection against discriminatory, unjustified or abusive termination of employment. In these situations the workers will have an unlimited right of access to independent justice to contest the termination as well as the right to adequate financial compensation and/or reinstatement.

Member States will define for certain groups of workers, such as pregnant women, trade union and workers' representatives a temporary prohibition for termination of their employment.

Article 39. Right to reconcile family and professional life

All workers have the right to reconcile their family and professional lives. This right includes in particular the right to paid maternity leave of at least 14 weeks before and/or after childbirth and the right to paid parental leave of at least three months following the birth or adoption of a child.

Article 40. Right of migrant workers to equal treatment

Third-country nationals working lawfully in the territory of the Member States are entitled to treatment not less favourable than that of European Union workers in respect of all working conditions, including pay as well as in respect of social security and social assistance.

Article 41. Social security and social assistance

1. Everyone has the right to social protection, including an adequate level of social security benefits in the event of maternity, illness, dependence or old age, and in the event of unemployment in accordance with each Member State's own procedures.

2. Every person must, from the age of retirement, be able to enjoy resources affording him or her a decent standard of living.

3. Any person who is without adequate resources must receive appropriate social assistance, including a minimum income enabling him/her to live in dignity.

4. Everyone has the right of access to quality social services.

New Article 41A Right to Housing

Provision shall be made for ensuring access to decent housing for everyone.

Article 43. Rights of disabled persons to social and professional integration

All disabled persons, whatever the origin and nature of their disability, are entitled to additional specific measures aimed at guaranteeing their full social and professional integration. These specific measures must include areas such as employment and vocational training, education, transport, culture, housing and public buildings and information.

New Article 43A Right to Protection Against Vulnerability

Provision shall be made to guarantee that vulnerable persons, notably disabled people, impoverished people, socially excluded people, and migrants, shall benefit fully and equally from all rights set down in this Charter of Fundamental Rights.

New Article 45A Access to services of general interest

1. Everyone has the right to services of general interest of guaranteed quality in all sectors which contribute to the quality of life, to life-long development, and more generally to the guarantee of fundamental rights. The provision of services of general interest is based on the principles of equality of access, universality, continuous provision, democratic accountability, and transparency.

2. The exercise of the right to free provision of services, and thus the right to competition, the right to insurance and the right to free access to public-sector markets can be limited in favour of the general interest.

Article 46. Scope

1. The provisions of this Charter are addressed to the institutions and bodies of the Union and to the social partners within the framework of the powers conferred on them by the Treaties, and to the Member States exclusively within the scope of Union law.
2. This Charter does not establish any competence or any new task for the Community or the Union or modify competences *[four words deleted]* defined by the Treaties.

ENTWURF DER CHARTA DER GRUNDRECHTE DER EUROPÄISCHEN UNION**fundamental.rights@consilium.eu.int**

Brüssel, den 31. August 2000**CHARTE 4435/00****CONTRIB 289****ÜBERMITTLUNGSVERMERK**

Betr.: Entwurf der Charta der Grundrechte der Europäischen Union

Finden Sie bitte nachstehend einen Beitrag vorgelegt von die Jungen Europäischen Föderalisten (JEF), mit einen Beschluss des Bundesausschusses vom 09.07.2000. ¹

¹ Dieser Text wurde uns nur in deutscher Sprache übermittelt.

Politische Beschlüsse des Bundesausschusses 02-00 der JEF Deutschland 08-09/07/2000 in München

Anbei die beiden zentralen politischen Beschlüsse des BA München:

BESCHLUSS 1

EU-Grundrechtscharta als Grundstein für eine Europäische Verfassung

Die Jungen Europäischen Föderalisten Deutschland (JEF-D) begrüßen die Einsetzung und transparente Arbeit des Konvents zur Schaffung einer europäischen Charta der Grundrechte.

Die JEF-D bedauern es sehr, dass sich auf dem Europäischen Rat in Feira angezeichnet hat, dass es den Staats- und Regierungschefs sehr schwer fallen wird, einstimmig dafür zu stimmen, der Grundrechtscharta schon in Nizza rechtsverbindlichen Charakter zu verleihen.

Die JEF-D fordern:

1. Die Schaffung der Grundrechtscharta darf nur erster Schritt hin zu einer echten Europäischen Verfassung sein, die einem Grundrechtskatalog eine klare Kompetenzabgrenzung zwischen Mitgliedstaaten und EU hinzufügt und grundlegende institutionelle Änderungen vornimmt.
2. Eine Europäische Verfassung darf nicht im Sinne des traditionellen Verständnisses einer nationalstaatlichen Verfassung, sondern muss als gesellschaftlicher Grundlagenvertrag der europäischen Bürgerinnen und Bürger verstanden werden.
3. Dementsprechend muss die Ausarbeitung einer weitergehenden Verfassung einem Konvent überantwortet werden, der nach dem Vorbild des derzeitigen Grundrechtskonvents aus Vertreterinnen und Vertretern des Europäischen Parlaments und der Europäischen Kommission sowie der Parlamente und der Regierungen der Mitgliedstaaten zusammengesetzt ist, ebenso transparent arbeitet und zivilgesellschaftlichen Organisationen die Möglichkeiten der Partizipation eröffnet.
4. Die EU-Grundrechtscharta muss ungeachtet der Diskussionen des Europäischen Rates von Feira bindenden Charakter erhalten, so dass sich die Bürgerinnen und Bürger unmittelbar vor den Gerichten auf die Charta berufen können.
5. Als erster Schritt muss die Charta daher bereits in Nizza in die Europäischen Gründungsverträge integriert werden. Mittelfristig müssen wir aber von der Vertrags- zur Verfassungslogik gelangen.
6. Die Bindung der europäischen Recht anwendenden hoheitlichen Einrichtungen an die Charta muss sichergestellt werden; aber auch der objektiven Werteordnung, die eine solche Charta normieren wird, muss ausreichend Rechnung getragen werden.

Begründung:

Seit Ende 1999 arbeitet der EU-Grundrechtskonvent aufgrund der Schlussfolgerungen der Europäischen Räte von Köln und Tampere 1999 an der Schaffung einer EU- Grundrechtscharta. Eine solche Charta wird die Identifikation der Bürgerinnen und Bürger der Europäischen Union erheblich erhöhen können.

Die besondere Bedeutung der Grundrechtscharta ergibt sich daraus, dass sie die EU auf dem Weg zu einer europäischen Verfassung einen wichtigen Schritt voranbringen könnte.

Das vom Europäischen Rat dem Konvent übertragene Mandat ist zwar auf die Erarbeitung der Grundrechtscharta beschränkt. Wir appellieren jedoch an alle europäischen Politikerinnen und Politiker, den Grundrechtschartaprozess zu einem umfassenden europäischen Verfassungsprozess auszubauen.

Verfassung heißt dabei für uns nicht Staat. Das Verfassungsverständnis des 19. Jahrhunderts hat sich überlebt, für Europa, wie auch für seine Gliederungen. Verfassung heißt vielmehr Selbstorganisation der Bürgerinnen und Bürger mittels einer rechtlichen Grundlage. Das heutige Europa der Nationalstaaten muss daher durch ein Europa der Bürgerinnen und Bürger abgelöst werden, die bisherige Vertragslogik einer Verfassungslogik weichen.

Eine solche Bürgerverfassung müssen sich die Bürgerinnen und Bürger selbst geben. Verfassungsgebendes Organ muss daher ein Konvent sein, der aus gewählten Bürgervertreterinnen und Bürgervertretern besteht und zivilgesellschaftliche Gruppierungen einbezieht.

Es reicht nicht aus, dass der aktuelle Grundrechtskonvent eine weitere Deklaration schafft, die den Bürgerinnen und Bürgern viel verspricht, aber keine einklagbaren Rechte an die Hand gibt.

Zwar wird eine verbindliche EU-Grundrechtscharta grundsätzlich nur die EU-Recht anwendenden Organe der EU und der Mitgliedstaaten binden. Dennoch wird, ähnlich wie in einigen Verfassungen der Mitgliedstaaten, dieser Katalog von Grundrechten nicht nur Individualrechte schaffen, sondern darüber hinaus eine objektive Werteordnung normieren.

BESCHLUSS 2:

Bis 2010 eine gesamteuropäische Föderation schaffen!

- Erweiterungsprozess voranbringen -

Die Jungen Europäischen Föderalisten Deutschland (JEF-D) fordern die europäischen Institutionen und die Parlamente und Regierungen der Mitgliedstaaten und der Kandidatenstaaten auf, das Jahr 2000 zu nutzen, um konkrete Fortschritte bei der Vertiefung und Erweiterung Europas zu erreichen. Die Europäische Union muss sich zum einen selbst aufnehmenfähig machen. Zugleich muss mit vereinten Kräften daran gearbeitet werden, die Kandidatenstaaten beitragsfähig zu machen und die Beitrittsverhandlungen zügig voranzubringen.

Spätestens im Jahr 2010 sollten folgende Ziele erreicht werden:

1. Alle zwölf Staaten, mit denen heute verhandelt wird, sollten Mitglied der EU sein.
2. Die Annäherung der Türkei und der anderen Staaten Südosteuropas an die EU sollte beschleunigt worden sein.
3. Umfassende Reformen der EU-Institutionen und der Entscheidungsverfahren, eine rechtsverbindliche Grundrechtscharta, eine bessere Kompetenzabgrenzung und eine Reform der Finanzverfassung und der ausgaben-trächtigen Politiken sollten uns auf dem Weg zu einer demokratischen, bürgernahen, solidarischen und nachhaltigen gesamteuropäischen Föderation entscheidend vorangebracht haben.

I. Konstitutionelle Reformen der EU: In 2000 große Fortschritte nötig, bald mehr!

Eine ausreichende Reform der EU-Institutionen ist unabdingbare Voraussetzung für die Aufnahme neuer Mitgliedstaaten: Die Regierungskonferenz zur Überarbeitung der EU-Verträge, die bis zum Europäischen Rat in Nizza im Dezember 2000 zu Ergebnissen kommen soll, darf bei den institutionellen Reformen nicht zu einer „kleinen Lösung“ kommen. Die Bewältigung allein der sogenannten „left-overs“ von Amsterdam, d.h. die Stimmengewichtung im Ministerrat, die Erweiterung der Anwendung von Mehrheitsentscheidungen im Rat und die Zahl der Mitglieder der Europäischen Kommission, wird nicht zu einem effektiven politischen System führen, welches die beinahe Verdopplung der Mitgliedsländer verkraften kann. Eine bloße technische Anpassung ist nicht ausreichend, umfassendere Reformen der Institutionen sind nötig: Es müssen große Schritte hin zum Ziel eines Zwei-Kammer-Parlaments bestehend aus einer Bürger- und einer Staatenkammer (hervorgehend aus dem heutigen Europäischen Parlament und dem heutigen Rat) und der Weiterentwicklung der Europäischen Kommission zur Europäischen Regierung gemacht werden.

Besonders wichtig ist, dass die Einstimmigkeitsregel im Ministerrat mit der Ausnahme von Vertragsänderungen vollständig aufgehoben wird. Es sollte darüber hinaus im Vertrag von Nizza ein konkretes Datum festgelegt werden, zu dem Verhandlungen über weitere grundlegende Reformen der EU beginnen sollen. Vorgeschlagen wird diese Verhandlungen Anfang 2003 und damit bald nach dem voraussichtlichen Inkrafttreten des Vertrages von Nizza zu beginnen. Die künftigen Vertragsänderungen dürfen nicht mehr allein von einer Regierungskonferenz ausgehandelt werden. Die JEF-D fordert, dass zur Vorbereitung der nächsten Reformen nach dem Vorbild des Grundrechtskonventes ein inter-institutioneller Konvent bestehend aus Vertretern des Europäischen Parlaments, der Europäischen Kommission sowie der Parlamente und Regierungen der jetzigen und zukünftigen Mitgliedstaaten eingesetzt wird. Dies wäre ein wichtiger Schritt hin zu einer wahren Verfassung der europäischen Bürgerinnen und Bürger.

II. Erweiterungsprozess beschleunigen!

Die Europäische Union hat mit der Aufnahme von Beitrittsverhandlungen mit weiteren sechs Staaten Mittel- und Osteuropas im Februar 2000 einen wichtigen Beitrag zur Stabilisierung der politischen und wirtschaftlichen Situation in diesen Ländern geleistet. Beitrittsverhandlungen mit nun insgesamt zwölf Staaten sind zwar für beide Seiten schwierig, doch müssen die Verhandlungen wegen ihrer historischen Bedeutung nun mit noch größerer Energie voran gebracht werden.

Die JEF-D sieht dabei folgende zentrale Grundprinzipien.

Die Beitrittsverhandlungen mit den Staaten der ersten Runde, Estland, Polen, Slowenien, Tschechien, Ungarn und Zypern, müssen beschleunigt werden; auch in den sensiblen Kapiteln wie Freizügigkeit, Umwelt, Agrar und Bodenerwerb müssen bald erste Ergebnisse erreicht werden. In den Beitrittsverhandlungen mit Bulgarien, Lettland, Litauen, Malta, Rumänien und der Slowakei sollte es für die weit fortgeschrittenen Staaten möglich sein, zur ersten Gruppe aufzuschließen.

Auf dem Europäischen Rat in Nizza sollte ein Zieldatum für den Abschluss der Beitrittsverhandlungen mit den ersten Staaten gesetzt werden, um die beiderseitigen Anstrengungen zur Lösung der auftauchenden Fragen nach der bewährten Manier des Starttermins für den

Binnenmarkt und die Währungsunion zu verstärken. Als Zieldatum wird der 31. Dezember 2001 vorgeschlagen. Ausnahme- und Übergangsregeln für die neuen und die alten Mitgliedstaaten sollten nur in geringem Umfang und für maximal 10 Jahre zugelassen werden, um die neuen Mitglieder nicht zu Mitgliedern zweiter Klasse werden zu lassen.

Die Vorbereitung der Erweiterung in den Kandidatenstaaten darf sich nicht auf die (technische) Anpassung der Gesetzgebung, Verwaltung und Wirtschaft erschöpfen. Hinzukommen muss eine Aufklärung aller Bürgerinnen und Bürger über die EU und die mit einem Beitritt verbundenen positiven und negativen Konsequenzen. Die bis vor zwei Jahren euphorisch positive Haltung der meisten Bürgerinnen und Bürger in den Beitrittsstaaten unterliegt jetzt, wo zum Teil schmerzhaften Anpassungsmaßnahmen in Angriff genommen werden, einem nicht zu unterschätzenden Wandel. Der Transformationsprozess in den Beitrittsstaaten wird auch weiterhin zu einem radikalen Umbau der wirtschaftlichen und sozialen Verhältnissen führen. Es gilt, die Bürgerinnen und Bürger darauf vorzubereiten und die größten sozialen Härten abzufedern. Auch in den derzeitigen EU-Mitgliedstaaten werden die Beitritte zu Veränderungen führen. Auch hier werden für besondere Härten Ausgleichsmaßnahmen nötig werden. Eine umfassende Information und Diskussion aller politischen und gesellschaftlichen Gruppen in den Mitglied- und den Beitrittsstaaten über die Auswirkungen der EU-Erweiterung kann die Chancen der Erweiterung herausstellen und die Gefahren der Erweiterung entmystifizieren.

III. Weitere interne Reformen der EU nötig

Die EU muss mit Blick auf die Erweiterung neben institutionellen Reformen auch Reformen verschiedener Politikbereiche voranbringen: Insbesondere in der Agrar- und Strukturpolitik wird es zu umfassenden Reformen kommen müssen. Die beim Europäischen Rat in Berlin im März 1999 im Rahmen der Agenda 2000 beschlossenen Reformen sind mittelfristig nicht ausreichend. Um die neuen Mitglieder in die Gemeinsame Agrarpolitik integrieren zu können, sollte es noch vor den ersten Beitritten und damit vor 2006 zu einer weiteren Senkung der Garantiepreise und im Gegenzug zu einer am allgemeinen Einkommensniveau der jeweiligen Staaten orientierten angemessenen Erhöhung der direkten Einkommensbeihilfen kommen. Eine umfassende Politik für die Integration zwischen ländlichem und städtischem Raum muss den auch für die Zukunft zu erwartenden Arbeitsplatzabbau in der Landwirtschaft in Mittel- und Osteuropa durch Alternivarbeitsplätze vor Ort abfedern. Auch die EU-Strukturpolitik und das System der EU-Eigenmittel bedürfen vor Aufnahme der ersten Neumitglieder einer weiteren Revision.

IV. Partnerschaft mit allen anderen Europäerinnen und Europäern intensivieren!

Durch Assoziierungsverträge neuen Typs, die unter anderem eine Unterstützung beim Aufbau von demokratischen und rechtsstaatlichen Institutionen und bürgergesellschaftlichen Strukturen und eine Marktöffnung vorsehen müssen, sollten auch alle anderen Staaten Südosteuropas (Albanien, Bosnien-Herzegowina, Kroatien, Mazedonien, Moldawien), nach einem Übergang zur Demokratie auch die Bundesrepublik Jugoslawien bzw. Serbien, Montenegro und das Kosovo stärker an den Integrationsprozess herangeführt werden. Mittelfristig erscheint eine Aufnahmeperspektive möglich.

Für die Türkei müssen im Beitrittsprozess dieselben Kriterien wie für die Staaten Mittel- und Osteuropas gelten. Sollte die Einhaltung der fundamentalen Menschen- und Minderheitenrechte sowie die Stabilisierung der Demokratie in der Türkei erreicht sein, können konkrete Beitrittsverhandlungen begonnen werden. Die EU sollte die Türkei aktiv dabei unterstützen, die Aufnahmekriterien zu erfüllen.

Die politischen und wirtschaftlichen Beziehungen zwischen der EU und Russland, der Ukraine, Weißrussland und den kaukasischen Republiken sollten ausgebaut werden. Diese Zusammenarbeit mit dem Ziel der Stärkung von Wohlstand, Nachhaltigkeit und Frieden kann für die Ukraine, Weißrussland und die kaukasischen Republiken bei Erfüllung der Demokratie und Menschenrechtsstandards mit einer Beitrittsperspektive verbunden werden, sollte jedoch im Hinblick auf Russland nicht durch eine derzeit unrealistisch erscheinende Beitrittsperspektive belastet werden.

Sollten die Schweiz, Norwegen und Island beitreten wollen, wäre dies sehr zu begrüßen.

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DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 31 August 2000**CHARTE 4436/00****CONTRIB 290****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a contribution by the International Federation of Human Rights (FIDH), on the inclusion of economic and social rights.^{1 2}

¹ This text has been submitted in English language only.

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fidh

Fédération Internationale des Ligues des Droits de l'Homme

ORGANISATION INTERNATIONALE NON GOUVERNEMENTALE AYANT STATUT CONSULTATIF AUPRES DES NATIONS UNIES, DE L'UNESCO, ET DU CONSEIL DE L'EUROPE ET D'OBSERVATEUR AUPRES DE LA COMMISSION AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES

INTERNATIONAL FEDERATION
OF HUMAN RIGHTS

FEDERACION INTERNACIONAL
DE LOS DERECHOS HUMANOS

الفدرالية الدولية لحقوق الانسان

Charter of Fundamental Rights of the EU : for the inclusion of economic and social rights

Since the Convention began its work on a draft of the Charter of Fundamental Rights of the EU, the FIDH has, along with numerous other non-governmental and labour organisations, requested the inclusion of economic and social rights in the Charter. In the absence of such rights, the added value of the Charter would be weak, or even, nil.

Today, the works of the Convention are well ahead regarding civic and political rights. On the other hand, economic and social rights are still subject to vivid discussions . That is the reason why the FIDH wishes to take advantage of this opportunity to stress the weaknesses of the EU's protection of economic and social rights, and to examine why, from this point of view, it is essential for the Charter to unequivocally sanction such rights and recognise them as legally binding.

Until now, the EU has not endowed itself with an effective European social policy. Although the new Charter is not supposed to be a substitute for such a policy, it has nevertheless three main advantages : it will (1) **avoid a regression in that field**, (2) **guide the future Community legislation** and (3) **guide the Statute law of the European Court of Justice (ECJ)**.

è It must be noted that the future Charter will have a restricted field of application : Indeed, the **project of article 49** states that the Charter will be directed to the institutions and the agencies of the Union, as well as to the Member States, when implementing Community Law¹. It specifies that the Charter neither creates any power or new tasks for the Community and the Union, nor modifies the powers and tasks defined by the treaties.

Therefore , it will be possible for the rights sanctioned in the Charter to be put forward on the one hand, in relation to the acts of the institutions of the European Community and Union, and on the other hand, in relation to the acts of the Member States situated within the jurisdiction of Community law². These rights are therefore conceived as *limitations* brought to the use that the institutions of the Union can make of their powers, or to that of the Member States, when the use of these powers is situated in the field of application of Community law.

Thus, the new Charter will oblige neither Member States to guarantee economic and social rights in their national legislation, nor the EU to legislate in that field. However, it will have the effect of **impeding Member States, while adopting Community law, to reduce the existing social guarantees to a level lower than the one established by the Charter**. As a consequence, it is important that the Charter establish the highest level of protection possible, in order for it to constitute a real guarantee against such an evolution. By doing so, the EU will be able to exercise its powers in the economic and social fields, with no risk of diminishing social guarantees.

è Furthermore, the Charter will sanction social principles that should afterwards **guide the action of the European Union in the social field, fixing goals to be attained**. It is desirable for the Commission to **make use of its power of initiative in the social field, in order to harmonise the obligations of the Member States upwards**³: the future Community rules will have to aim at realising social principles that will be established within the Charter. It will be the same for the legislation adopted by Member States when acting in the field of application of Community law. The Charter will therefore have a real added value in this respect.

¹ Charter 4422/00, CONVENT45, July 28, 2000.

² It means that either they implement Community law, or they claim to bring a restriction to a freedom recognised by Community law, in the respect of the conditions fixed by Community law itself.

³ The principle of subsidiarity allows a Community intervention in a field which is not exclusively of Community jurisdiction « only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community », cf. article 5, al. 2, EC.

è Furthermore, the Charter will constitute a **reference for the European Court of Justice (ECJ)**. If it has a constraining power, the Court will have to verify the conformity of Community legislation (or of the national legislation implementing it) to the Charter. As far as possible, it will confer on the Community legislation an interpretation congruent with the Charter. Even if the Charter is not binding, the Court will probably refer to it in order to interpret Community law.

A thorough analysis of the jurisprudence of the ECJ demonstrates that the Court allows Member States to adopt certain measures liable to hinder exchanges in order to maintain a high level of social protection⁴. Given that the ECJ will find that the Community law conforms with the economic and social rights that will be established in the Charter, the risk that the ECJ would require from the Member States to reduce the social guarantees in order to conform with Community law would be even more limited than now.

In the case where a Member State offers social guarantees executing international conventions that came into force in its respect before its accession to the European Community, art. 307 of the Treaty instituting the European Community provides in its paragraph 1 that the rights and obligations arising from conventions concluded by a Member State with one or more third countries before its accession to the EC are not affected by the Treaty. Paragraph 2 specifies that « To the extent that such agreements are not compatible with this Treaty, the Member State or States concerned shall take all appropriate steps to eliminate the incompatibilities established ».

It is possible to fear that this second line of the paragraph would compel the considered Member State to denounce the international convention in question in the case when it would stand in the way of the integral respect of this State's obligations resulting from Community law . In this case also, while consecrating economic and social rights, the Charter would provide the Court with a reference allowing it to interpret art 307.2 of the EC Treaty in conformity with the social objectives of the EU.

Given the potential added value of the Charter in the social field, FIDH regrets that some social

⁴ CJCE, 14 juill. 1981, Procédure relative à des amendes contre S. Oebel, 155/80, Rec., p. 1993, pt 12. CJCE, 17 déc. 1981, Procédure pénale contre A.J. Webb, 279/80, Rec., p. 3305. CJCE, 17 déc. 1981, Procédure pénale contre A.J. Webb, 279/80, Rec., p. 3305 ; CJCE, 3 févr. 1982, Seco et Desquenne & Giral, aff. Jtes 62/81 et 63/81, Rec., p. 223, pt 14 ; CJCE, 27 mars 1990, Rush Portuguesa, C-113/89, Rec., p 1-1417, pt 17 ; CJCE, 28 mars 1996, Guiot, C-272/94, Rec., p I-1905, pt 16.

rights - as standing now in the projects of articles of the future Charter - are worded in a less precise manner than social rights established in the revised European Social Charter and in the Community Charter of fundamental social rights of the workers (1989).

The definition that the project of the Charter provides of the right to social security and social assistance⁵ is far less explicit than article 12 of the Revised European Social Charter - which resumes, except for one modification, article 12 of the European Social Charter of October 18, 1961 ; the article devoted to « health care » in the Charter⁶ gathers, in a sole disposition, the far more developed dispositions of articles 11 and 13 of the Revised European Social Charter, devoted respectively to « the right to health protection » and to « the right to social and medical assistance » (informal translation)⁷..

In addition, with regard to the social rights established in the international human rights instruments, the Charter has some loop-holes. Indeed, it does not mention the rights of workers' representatives to protection within the company, against acts that could cause them prejudice because of their specific quality and their right to « appropriate facilities in order to allow them to function rapidly and effectively» (informal translation), when the Revised European Social Charter provides this guarantee (art. 28). It is silent on the right of the elderly to « continue as long as possible as members of society », to « freely choose their way of life and to lead an independent life in their usual environment as long as they wish and as is possible », and, finally, regarding the elderly living in institutions, to enjoy a private life and to have the possibility of participating in the determination of the living conditions in the institution (art. 23 - informal translation).

These omissions are even more astonishing in that sometimes, subsidiary Community law has already intervened in order to recognise these rights. Thus, although the project of Charter of Fundamental Rights of the European Union does not mention the right of the worker to dignity at work, which means, more particularly, the protection against harassment (art. 26 of the Revised European Charter), two instruments already exist at the Community level aiming at harassment, considered as a form of discrimination regarding employment⁸. Also, workers rights to the

⁵ Project of article 32

⁶ Project of article 33.

⁷ The right to social and medical assistance, as defined by the Revised European Social Charter, is nevertheless partly recognised by article 32, § 3, of the project CHARTE 4422/00, CONVENT 45, July 28 2000 («The Union recognises and respects the right to social assistance and housing benefit in order to ensure a decent existence for persons lacking sufficient resources, in accordance with the rules laid down by Community law and national law and practices»).

⁸ Voy. Protection de la dignité de la femme et de l'homme au travail. Code de pratique visant à combattre le harcèlement

protection of their credit in the case of insolvency of their employer has been the object of a Community directive⁹, and nevertheless - although it is a right protected by article 25 of the Revised European Social Charter - does not appear in the Charter of fundamental rights of the European Union.

What is more, the horizontal clause headed « level of protection » does not fill this gap ; following the terms of this disposition, the Charter will neither be interpreted as limitative of, or interfering with, the rights recognised by international law and international conventions to which the Union, the Community or ALL Member States are party, nor by the Constitutions of the Member States¹⁰.

NOW, the Revised European Charter, whose terms are more protective than the projects of articles of the new Charter, does not bind all Member States. This means that the Community judge will not be able to make it prevail over the new Charter, even if its dispositions are more protective¹¹.

This is why the FIDH appeals to the drafters of the Charter to introduce, in the horizontal clause related to the level of protection, a reference to the more protective dispositions, even if these bind only one Member State ; this seems even more justified given that this clause does refer to the Constitutions of Member States when these, by definition, only bind one Member State !

Recommendations :

- The FIDH appeals to the Convention to **reinforce and complete the wording of economic and social rights now presented in the projects of articles on economic and social rights**, taking its inspiration more particularly from the Revised European Social Charter.

sexuel, arrêté conformément à la résolution du Conseil concernant la protection de la dignité de la femme et de l'homme au travail (J.O.C.E., n°C 157, 27.6.1990), annexé à la Recommandation de la Commission du 27 novembre 1991 sur la protection de la dignité des femmes et des hommes au travail (J.O.C.E., n°C 27, 4.2.1992); ainsi que l'assimilation qu'opèrent les directives proposées sur la base de l'article 13 CE entre le harcèlement et la discrimination. Il existe également un projet de directive amendant la directive 76/207/CE interdisant le harcèlement sexuel sur le lieu de travail, proposé sur la base de l'article 13 CE.

⁹ Directive 80/987/CEE of Octobre 20, 1980 (*O.J.E.C.*, n°L 283, 20.10.1980).

¹⁰ Project of article 51.

¹¹ It will be the same for some conventions of the ILO.

- The FIDH also appeals to the drafters of the Charter **to modify the horizontal clause related to the level of protection in order to include in it a reference to any international convention more protective binding for at least one Member State.**
- Finally, the FIDH appeal to Member States to decide in favour of a **constraining Charter** whose respect could be ensured by the ECJ.

Brussels, August 4, 2000

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 31 August 2000**CHARTE 4437/00****CONTRIB 291****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a contribution by the European Newspaper Publishers' Association (ENPA) .¹

¹ This text has been submitted in English language only.

Dear Madam,

Dear Sir,

the European Newspaper Publishers' Association (ENPA) presented a statement on Article 15 of the Draft Charter (Doc 4149/00) at the public hearing of the Convention on 27 April 2000.

The Convention has recently published an amended proposal (Doc 4360/00) that suggests alteration of Article 15, by means of adding a second paragraph. This new provision reads as follows :

« Freedom of press and information shall be guaranteed with due respect for transparency and pluralism. »

We urge the Convention to delete the last part of the provision (« ...with due respect for transparency and pluralism. »). The European Publishers are strongly opposed to this kind of restriction.

By principle, the fundamental right of the Freedom of the Press should not be devalued by such restrictions that would go beyond the ones already established in Article 10 Paragraph 2 of the European Convention on Human Rights. ENPA has given a detailed argumentation to this opinion in its above mentioned statement.

ENPA is very much concerned that the very words « transparency » and « pluralism » will cause confusion. These terms can have different meanings. They lack clarity and certainty. They are open to differing interpretations and applications that could result in unnecessary and unjustified restrictions on freedom of expression and press freedom. The whole of the new paragraph and concepts that it introduces could lead not only to uncertainty but also to potentially detrimental curbs on freedom of expression.

We therefore hope that the Convention reconsiders its proposal so far as the restrictive part of Article 15 Paragraph 2 is concerned.

We also hope that the Convention ensures that exercise of the rights set out in Articles 15 and 18 could not be unnecessarily curtailed by Articles 12 and 19, so that rights to freedom of expression, press freedom and freedom of information will not be unduly restricted.

Further more we seize the opportunity to briefly comment on the published statement by GESAC (Doc : 4404/00). ENPA takes clear opposition to the view of GESAC on the issue of moral rights of authors. Apart from that we see no need for regulating this field in the envisaged Charter. The European Commission (DG Markt) is currently looking into the issue and has in public indicated that there is no reason for harmonisation so far.

Yours sincerely,

Dietmar Wolff

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE**fundamental.rights@consilium.eu.int**

**Bruxelles, le 1 septembre 2000
(version multilingue)****CHARTE 4438/00****CONTRIB 292****NOTE DE TRANSMISSION**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne

Veillez trouver ci-après une contribution de l'Union Internationale de la Propriété Immobilière (UIPI).^{1 2}

¹ UIPI: 7 Sofokleus Street, Athènes 105.59, Greece. Tél.: +301-32 57 846.

Fax: +301-32 18 055. E-mail: pomida@otenet.gr

² Ce texte nous a été transmis dans une version multilingue français/anglais.



UNION INTERNATIONALE DE LA PROPRIÉTÉ IMMOBILIÈRE (UIPI)

SECRETARIAT DE LA CHARTE

Att. Mr. J. Jacqué
175 rue de la Loi
1048 Bruxelles

Secrétariat Général:
7 Sofokleous Street, Athens 105.59, GREECE
Tel: Office 00301-3257846 Home 00301-9858746 Mob.0030 944-597700
Fax 00301-3218055 & 00301-9858746 e-mail: pomida@otenet.gr

Objet: Charte des Droits Fondamentaux.

Bruxelles, le 25 Juillet 2000

Monsieur,

L'Union Internationale de la Propriété Immobilière (UIPI) est une organisation non gouvernementale fondée dès 1923 regroupant la plupart des organisations nationales européennes de défense de la propriété immobilière.

A ce titre elle représente directement ou indirectement plusieurs dizaines de millions de citoyens possédant quelque propriété immobilière à usage d'habitation ou commerciale, représentant le plus souvent le fruit de leur épargne.

Il est inutile d'insister sur l'importance économique que revêt le secteur de la construction aussi bien pour l'emploi qu'il procure directement ou indirectement que pour la fonction de logement qu'il remplit pour les personnes non propriétaires de leur logement ou de leur bien.

Il est dès lors évident qu'il est essentiel de disposer en Europe d'un secteur immobilier sain offrant logements, commerces et bureaux en suffisance.

Dans cette optique et compte tenu des raisons exposées plus haut, l'UIPI est particulièrement attentive à la protection de la propriété immobilière aussi bien sur le plan juridique que politique.

C'est seulement en offrant une large protection efficace de la notion de propriété privée et en la respectant que l'on rétablira une confiance nécessaire au développement de ce secteur.

Dans ce cadre, nous nous félicitons tout d'abord de la présence de l'article 16 dans le projet de Charte Européenne des Droits Fondamentaux et nous souhaiterions apporter notre contribution à la rédaction de ce texte pour le rendre aussi précis que possible afin qu'il offre une protection effective du droit de propriété.

L'article 16 est actuellement ainsi formulé :

*« Every natural or legal person is entitled to the **peaceful enjoyment** of his **possessions**. No one shall be **deprived** of his possessions except in the public interest **and subject to the conditions provided for by the law and by the general principles of international law.** »*

Nous nous permettons de suggérer les modifications suivantes afin de protéger au mieux les détenteurs d'un titre de propriété.

Remarques préalables :

- 1) Les termes « peaceful enjoyment (paisible jouissance) » sont abstraits. Il est nécessaire d'ajouter « **free disposition (libre disposition)** » afin de couvrir les besoins actuels.
- 2) Le mot « **possessions (possessions)** » n'est pas suffisant. Nous proposons d'employer le terme « **propriété** » qui est plus spécifique.
- 3) Le terme « **deprivation (dépossédé/depossession)** » ne correspond plus aux besoins actuels de protection du citoyen. De nos jours, les Etats et les autorités de l'Etat ne dépossèdent plus officiellement les citoyens européens de leur propriété immobilière . En lieu et place, ils VIDENT LA PROPRIETE DE TOUTE SA SUBSTANCE ôtant ainsi la signification même de propriété et éliminant de la sorte toute valeur financière, en limitant son usage à l'excès, en imposant une législation environnementale (trop) stricte ou en prolongeant les baux à loyers à l'infini, le plus souvent sans réelle nécessité sociale.

- 4) L'expression « **subject to the conditions provided by the law (soumis aux conditions prévues par la loi)** » est abstrait et ne protège pas les citoyens européens parce qu'il ne spécifie pas quelle est la protection minimale que chaque législation nationale devrait garantir en pratique aux citoyens européens. Ce qui est manquant dans la phraséologie est la garantie expresse aux détenteurs d'un titre de propriété d'une compensation **entière et préalable**, dans tous les cas d'une telle violation de ses droits.

NOUVELLE PROPOSITION DE TEXTE

« *Every natural or legal person is entitled to the peaceful enjoyment **and free disposition** of his **property**. No one shall be **deprived** of his property **or restricted in its use** except in the public interest and subject to the conditions provided for by the law and by the general principles of international law, **and entitled to a full and prior compensation of his damage.**”*

Nous nous tenons à votre disposition pour toute discussion ou collaboration à ce sujet et vous remercions de l'attention bienveillante que vous porterez à nos propositions.

Pour l'UIPI

S. PARADIAS

A. VIZIANO

Secrétaire Général

Président

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 1 September 2000**CHARTE 4439/00****CONTRIB 293****COVER NOTE**

Subject : Draft Charter of fundamental rights of the European Union

Please find hereafter a contribution by the European Women's Lobby (EWL), with a press release regarding women excluded from the EU Charter of Fundamental Rights. ¹

¹ This text has been submitted in French and English languages.



**LOBBY EUROPEEN DES FEMMES
EUROPEAN WOMEN'S LOBBY**

3rd of August 2000

PRESS RELEASE

**WOMEN EXCLUDED FROM THE EU CHARTER OF
FUNDAMENTAL RIGHTS:
GENDER GAP AND SEXIST LANGUAGE**

“The EWL very much regrets that despite our numerous proposals and recommendations, the draft Charter of Fundamental rights of the EU does not introduce the concept of gender equality as a basic unconditional and fundamental principle of the Union. To compound the omission, the Charter in the English, German, Spanish and French versions that we have read, uses sexist language in several articles. The Charter, as presently drafted, constitutes a devastating step backwards in the fight against the persistent structural discrimination faced by women all over Europe” said Denise Fuchs, President of the European Women’s Lobby, adding “This exclusively male Presidium once again has failed to integrate women’s perspective into the Charter.”

The EWL notes that the general principle of non-discrimination as proposed by the text of the Charter does not take into consideration the structural discrimination faced by women in all areas. In order to allow women to fully enjoy their fundamental rights and freedoms, to be full citizens in all areas, a provision exclusively dedicated to the unconditional principle of gender equality must be introduced in the first articles of the Charter and must provide explicitly for the adoption of positive measures by Member States. “The sole references to gender equality in the charter are in article 21 where sex is grouped alongside other grounds of discrimination, by implication this positions women as a vulnerable group in society, whereas we represent half of the population, and in article 22 which limits gender equality to the area of employment and work. This is just not acceptable” said Mary Mc Phail, Secretary general of the EWL.

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Website: <http://www.womenlobby.org>

Furthermore, the Charter in its English version uses sexist languages several times, for example in article 3(1) “Everyone has the right to respect for *his* physical and mental integrity”. The EWL stresses that **one form of gender discrimination is the use of sexist language**. “The use of sexist language, though sometimes unintentional, is nonetheless damaging in excluding women and in rendering our reality and our experience invisible. In the case of the Charter, the political mistake is very serious. The EWL will mobilise women’s organisations all over Europe to fight against this intentionally regressive text” added the President of the EWL.

Other key demands of the EWL are the inclusion of a provision on parity democracy in the Charter; a provision on gender related violence or persecution as a form of torture (Sexual mutilation still take place on European territory, as well as other kinds of gender related violence such as rape, domestic violence, prostitution, forced marriage, “honour” killing, including those which take place within the family).

ENTWURF DER CHARTA DER GRUNDRECHTE DER EUROPÄISCHEN UNION**fundamental.rights@consilium.eu.int**

Brüssel, den 1. September 2000**CHARTE 4440/00****CONTRIB 294****ÜBERMITTLUNGSVERMERK**

Betr.: Entwurf der Charta der Grundrechte der Europäischen Union

Finden Sie bitte nachstehend eine Stellungnahme vorgelegt von der Kommission Europa des Deutschen Juristinnenbundes (DJB). ¹

¹ Dieser Text wurde uns nur in deutscher Sprache übermittelt.



Deutscher
Juristinnenbund

Vereinigung der
Juristinnen,
Volkswirtinnen und
Betriebswirtinnen e.V.
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S t e l l u n g n a h m e

der Kommission Europa des djB zur

Charta der Grundrechte der Europäischen Union

Stand: 15. August 2000

Das Präsidium hat Ende Juli einen vollständigen Text der Charta vorgelegt. Der djB begrüßt den Text. Der Grundrechtsstandard ist im wesentlichen sachgerecht formuliert. Für folgende Artikel schlägt der djB Änderungen vor:

1. Recht auf freie Entwicklung der Persönlichkeit

Der djB schlägt vor, nach Art. 3 folgenden neuen Artikel einzufügen:

Artikel 3a Recht auf freie Entwicklung der Persönlichkeit

Alle Menschen haben das Recht, sich frei in ihrer Persönlichkeit zu entwickeln, soweit sie nicht gegen die Rechte anderer oder das Recht der Union verstoßen. Der Kern ihrer Persönlichkeit ist frei von hoheitlicher Einmischung

Begründung:

Eine allgemeine Handlungsfreiheit ist mehreren europäischen Verfassungen bekannt. Ihre Auffangfunktion macht eine Überprüfung der Rechtmäßigkeit jeglicher belastender Eingriffe möglich, insbesondere des auch europarechtlich anerkannten Grundsatzes der Verhältnismäßigkeit.

Als besonders wichtige Ausprägung der Menschenwürde bedarf es eines ausdrücklichen absoluten Schutzes des Persönlichkeitskerns, der auch über den Schutz des Privatlebens im Sinne des Art. 7 hinausgeht.

Der nunmehr in Art. 8 aufgenommene Schutz personenbezogener Daten ist zu begrüßen, aber nicht ausreichend

Die Menschenwürde stellt eine absolute Tabugrenze dar, die klassisch mit Bereichen wie Menschenhandel, Folter, Todesstrafe oder Euthanasie verbunden wird.

Die neuere Rechtsentwicklung und die durch sie reflektierte rasante Entwicklung im technologischen Bereich haben jedoch gezeigt, dass auch Fälle wie die Verwendbarkeit von Tagebucheinträgen, der Schutz des Namens, das Recht auf Kenntnis der eigenen Abstammung etc. den Kernbereich sowohl der allgemeinen Handlungsfreiheit als auch der Menschenwürde berühren. Eine ausdrückliche grundrechtliche Absicherung ist deshalb geboten.

Die Formulierung „Achtung ihres Familienlebens“ in Art. 7 dagegen deutet auf eine Begrenzung des Persönlichkeitsschutzes auf den Bereich außerhalb des Berufs, des öffentlichen Lebens, kurz innerhalb der eigenen vier Wände hin, der zwar notwendig, aber nicht ausreichend ist.

2. Recht, eine Ehe einzugehen und eine Familie zu gründen (Artikel 9)

Der djb schlägt vor, an den bisher einzigen Satz folgenden Satz 2 anzufügen:

Artikel 9 Recht, eine Ehe einzugehen und eine Familie zu gründen

Das Recht, eine Ehe einzugehen, und das Recht, eine Familie zu gründen, werden nach den einzelstaatlichen Gesetzen gewährleistet, welche die Ausübung dieser Rechte regeln. *Niemand darf zur Eheschließung gezwungen werden.*

Begründung:

Das Recht, eine Ehe einzugehen, ist unvollständig, wenn nicht ausdrücklich der Zwang zur Eheschließung ausgeschlossen wird. Dieser Aspekt ist im Präsidiumsvorschlag nicht berücksichtigt und sollte ergänzt werden.

3. Asylrecht (Artikel 18)

Der djb schlägt vor, den Asylartikel wie folgt neu zu fassen:

Artikel 18 Asylrecht

(1) *Jede nicht der Union angehörende Person, die politisch, aus religiösen oder rassistischen Gründen verfolgt wird oder unmenschlicher oder erniedrigender Bestrafung oder Behandlung ausgesetzt ist, hat ein Recht auf Asyl in der Union. Sie hat das Bleiberecht bis zum Abschluss des Verfahrens.*

(2) *Kollektivabschiebungen von Ausländerinnen und Ausländern sind nicht zulässig.*

Begründung:

Das Asylrecht im Präsidiumsvorschlag ist differenzierter zu fassen. Die vorgeschlagene Formulierung ermöglicht die Anerkennung religiöser, rassistischer und frauenspezifischer Fluchtgründe. Der notwendige Abschiebungsschutz ist als Absatz 2 angefügt.

Die Grundrechtscharta hat die Rahmenbedingungen konkret zu formulieren, um dem Erfordernis der Transparenz zu genügen. Es sollte deshalb keine Verweisung auf geltende internationale Abkommen und Verträge im übrigen erfolgen.

4. Gleichheit und Nichtdiskriminierung (Artikel 21)

Der djb schlägt vor, Absatz 1 des Nichtdiskriminierungsartikels wie folgt neu zu fassen:

Artikel 21 Gleichheit und Nichtdiskriminierung

- (1) Unterscheidungen nach der ethnischen oder sozialen Herkunft, der Hautfarbe, der Religion, der politischen Anschauung, der sexuellen Identität oder der Behinderung sind untersagt, sofern sie nicht zum Ausgleich bestehender Nachteile erforderlich sind.*

Begründung:

Der hier vorgeschlagene Abs. 1 entspricht im Kern dem vom Präsidium vorgeschlagenen Art. 21 Abs. 1. Die Rechtsgleichheit wird hier im Sinne genereller rechtlicher Differenzierungsverbote konkretisiert. Kompensatorische Maßnahmen sind ausdrücklich zulässig. Allerdings müssen diese auch erforderlich sein. Die vorgeschlagene Umschreibung des Benachteiligungsverbot ist klarer und juristisch eindeutiger als ein Diskriminierungsverbot. Es sind wesentliche Merkmale ausgewählt worden, die elementaren Unrechtserfahrungen entsprechen. Das vom Präsidium auf der Grundlage der EMRK vorgeschlagene Unterscheidungsverbot nach dem Alter oder dem Vermögen wird abgelehnt. In beiden Fällen existieren vielfältige und allgemein akzeptierte gesetzliche Differenzierungen (Altersgrenzen; Steuer- und Leistungsgesetze), die ein generelles Differenzierungsverbot nicht sachgerecht erscheinen lassen. Der in Artikel 20 verankerte allgemeine Gleichheitssatz bietet hier einen ausreichenden Schutz.

5. Gleichheit von Männern und Frauen (Artikel 22)

Der djb begrüßt die Verankerung der Gleichstellung von Frauen und Männern in einem eigenständigen Artikel. Mehr als die Hälfte der Bevölkerung in den Mitgliedstaaten sind Frauen. Die Rechte von Frauen sind deshalb nicht als ein Aspekt des Minderheitenschutzes zu betrachten.

Der djb schlägt wegen der zu engen Fassung des Präsidiumsvorschlages folgende Neufassung von Artikel 22 vor:

Artikel 22 Gleichstellung von Frauen und Männern

- (1) Die Union ist verpflichtet, die Bedingungen für die Gleichstellung von Frauen und Männern in allen Bereichen zu schaffen und bei allen ihren Maßnahmen die Geschlechtergleichstellung mit einzubeziehen.*
- (2) Neben der Ungleichbehandlung nach dem Geschlecht ist die Verwendung von Kriterien untersagt, die formal geschlechtsneutral sind, jedoch einen erheblich höheren Anteil der Angehörigen eines Geschlechtes betreffen, ohne dass sie durch wichtige Gründe, die nicht auf das Geschlecht bezogen sind, gerechtfertigt werden können.*
- (3) Zur Herstellung tatsächlicher Gleichberechtigung sind Maßnahmen zur Förderung des benachteiligten Geschlechts zulässig.*

Begründung:

Artikelbezeichnung:

Der gebräuchliche Terminus im vorliegenden Politikbereich ist „Gleichstellung“. „Frauen“ sollten vor „Männern“ aufgeführt werden, um der alphabetischen Reihenfolge zu genügen.

Abs. 1:

Die Voraussetzungen der tatsächlichen Gleichberechtigung können von der Union in ihren Zuständigkeitsbereichen verwirklicht werden. Das Ergebnis selbst, wie z.B. die gleiche Teilhabe auf allen Ebenen des Erwerbslebens kann nicht von der Union hergestellt werden. Im zweiten Teilsatz ist der gender-mainstreaming-Ansatz formuliert. Die Union muss die Geschlechtergleichstellung überall mit einbeziehen. Das ergibt sich bereits jetzt aus Artikel 2, 3 Abs. 2 EG-Vertrag. Der Präsidiumsvorschlag engt die Geschlechtergleichstellung auf den Beschäftigungsbereich ein. Eine wie hier vorgeschlagene umfassende Formulierung ist vorzuziehen.

Abs. 2:

Das unmittelbare Diskriminierungsverbot ist in einer Grundrechtscharta festzuschreiben. Dazu gehören auch verdeckte Benachteiligungen, die nur ein Geschlecht betreffen. Die Verankerung eines qualifizierten mittelbaren Diskriminierungsverbotes ist gleichfalls notwendig. Das entspricht der bisherigen Rechtslage.

Abs. 3:

Die Wirklichkeit zeigt deutlich notwendigen Handlungsbedarf, nicht nur im Beschäftigungsbereich. Frauen nehmen anders als Männer am öffentlichen Leben und am Erwerbsarbeitsleben teil. Sie sind in Entscheidungspositionen im wirtschaftlichen und politischen Bereich deutlich unterrepräsentiert, wenn überhaupt vertreten. Im Hinblick auf die effektive Gewährleistung der vollen Gleichberechtigung von Frauen und Männern sind deshalb spezifische Vergünstigungen des benachteiligten Geschlechts beizubehalten oder zu beschließen. Eine Kompensationsklausel, wie hier vorgeschlagen, ist deshalb in die Grundrechtscharta aufzunehmen.

6. Einklang von Familien- und Berufsleben (Artikel 31)

Der djb begrüßt grundsätzlich die Einbeziehung und Weiterentwicklung des Aspektes der Vereinbarkeit des Familien- und Berufslebens und die Überarbeitung der anfänglich vorgeschlagenen Regelungen zu Mutterschutz und Elternurlaub.

Der djb schlägt aber wegen der zu engen Fassung des Präsidiumsvorschlages folgende Neufassung von Artikel 31 vor:

Artikel 31 Vereinbarkeit von Familien- und Berufsleben

- (1) Jede Person hat das Recht auf rechtlichen, wirtschaftlichen und sozialen Schutz ihres Familienlebens.*
- (2) Die Vereinbarkeit von Familien- und Berufsleben ist zu gewährleisten.*
- (3) Arbeitnehmerinnen und Arbeitnehmer genießen als Eltern besonderen Schutz. Den Belangen von schwangeren Arbeitnehmerinnen ist besonders Rechnung zu tragen.*

Begründung:Artikelbezeichnung:

Der gebräuchliche Terminus im vorliegenden Politikbereich ist „Vereinbarkeit“.

Abs. 1:

Die Formulierung eines subjektiven Rechts ist gegenüber dem vom Präsidium vorgeschlagenen Gewährleistungsrecht vorzuziehen.

Abs. 2:

Die Vereinbarkeit von Familien- und Berufsleben ist von besonderer Bedeutung und sollte deshalb in einem eigenständigen Absatz als Gewährleistungsrecht formuliert werden, denn Frauen und Männer sind in der Regel Erwerbstätige und tragen zugleich Familienverantwortung.

Abs. 3:

Elternschaft ist Aufgabe von Müttern und Vätern, die in der Regel gleichzeitig Arbeitnehmerinnen und Arbeitnehmer sind. Um ihren gesellschaftlich wichtigen Betreuungs- und Erziehungsaufgaben nachkommen zu können, benötigen sie einen besonderen Schutz. Um die gemeinsame Verantwortung herauszustellen, wird in Abs. 3 S. 2 ein Elternschutz formuliert.

Dieser notwendige besondere Schutz beschränkt sich nicht auf Mutterschutz und Elternurlaub. Dies kommt in der vom Präsidium vorgeschlagenen Formulierung in Abs. 2 Satz 2 „umfasst insbesondere“ zwar zum Ausdruck. Die hier vorgeschlagene Formulierung in Abs. 3 S. 1 ist allerdings offener für jedwede Weiterentwicklung. In einer Grundrechtscharta sollten nicht beispielhaft Maßnahmen aufgezählt werden, die beschränkend wirken können.

7. Sprache

Der djb begrüßt, dass der vom Präsidium vorgeschlagene Text der Charta überwiegend geschlechtsneutral formuliert ist. Soweit dies nicht möglich ist, wird allerdings auf das generische Maskulinum zurückgegriffen, wie z.B. „Unionsbürger“¹. Frauen stehen der Union oft kritisch gegenüber. Sie sollten als „Unionsbürgerinnen“ direkt angesprochen werden. Der djb empfiehlt die sprachliche Überarbeitung des deutschen Textes mit dem Ziel, in den Fällen, in denen eine geschlechtsneutrale Formulierung nicht möglich ist, eine geschlechtsdifferenzierte Formulierung einzufügen.

gez. Sabine Overkämping
Vorsitzende der Kommission Europa des djb

¹ „Unionsbürger“ in Art. 12 II; 15 II, III; 37 I; 38; 40; 41; 42; 43 I; 44 und „Arbeitnehmer“/„Arbeitnehmer“/„Vertreter“ in Art. 25; 26; 28; 29 I, II; 32 II sowie „Verbraucher“ in Art. 36; im übrigen: Streichung von „ihm“ in Art. 19 II; „Bürgerbeauftragter“ in Art. 41

ENTWURF DER CHARTA DER GRUNDRECHTE DER EUROPÄISCHEN UNION**fundamental.rights@consilium.eu.int**

Brüssel, den 1. September 2000**CHARTE 4441/00****CONTRIB 295****ÜBERMITTLUNGSVERMERK**

Betr.: Entwurf der Charta der Grundrechte der Europäischen Union

Finden Sie bitte nachstehend zwei Beiträge von der österreichischen Gewerkschaft Bau-Holz. ¹

¹ Dieser Text wurde uns nur in deutscher Sprache übermittelt.

Sehr geehrte Damen und Herren!

Die Gewerkschaft Bau-Holz erlaubt sich im Namen der österreichischen Bau- und HolzarbeiterInnen zum Entwurf der Charta der Grundrechte der Europäischen Union Stellung zu nehmen. Die Gewerkschaft Bau-Holz begrüßt es, dass die Art der Charta der Grundrechte zu den zentralen Anliegen der französischen EU-Präsidentschaft zählen.

Wir teilen die Hoffnung Frankreichs, dass diese Charta bereits in Nizza angenommen wird, weil es sich bei diesem Thema um eine der zentralen Fragen für die Entwicklung der Europäischen Union handelt.

Wir halten es für äußerst wichtig, dass der deutsche Außenminister Joschka Fischer diese Diskussion wesentlich in Gang gesetzt hat und können ihm auch bei seiner Anregung anlässlich seiner Rede am 12. Mai 2000 in der Humboldt-Universität in Berlin folgen, wenn er dort meinte, dass die Föderation sich auf einen Verfassungsvertrag zu gründen habe.

Aus Sicht der Gewerkschaft Bau-Holz ist es die konsequente Fortentwicklung einer Diskussion über die Grundrechte auch über eine Verfassung der Europäischen Union zu diskutieren. Insoweit wird der Beschluss des Europäischen Rates von Köln im Juni 1999 über die Erarbeitung einer Grundrechtscharta und die Fixierung der Zusammensetzung und des Verfahrens anlässlich des Europäischen Rates von Tampere im Oktober 1999 von uns positiv bewertet.

Für sehr wesentlich halten wir auch den Beitrag, den der deutsche Alt-Bundespräsident und Alt-Bundesverfassungsgerichtshofpräsident, Roman Herzog, durch seine Vorsitzarbeit und die Kombination der politischen und juristischen Aspekte geleistet hat.

Es ist bedauerlich, dass dieses wesentliche Thema in Österreich mit Ausnahme von einigen wenigen Politikern, wie etwa Minister a.D. Caspar Einem kaum behandelt wird. So findet sich etwa in den österreichischen Grundsatzpositionen betreffend der Regierungskonferenz zu den institutionellen Fragen nur ein knapper Hinweis darauf, dass die Charta der Grundrechte der Europäischen Union Vertragsänderungen erfordern könnte.

Wir bedauern es, dass sich die österreichische Außenministerin beim Europäischen Rat von Santa Maria da Feira am 19. und 20. Juni 2000 darauf beschränkt hat, zu fordern, an die Frage der Aufnahme sozialer Grundrechte kreativ heranzugehen; aber diese Kreativität gleich damit kontakariert hat, dass sie ebenfalls forderte, dass durch die Charta nicht neue Unionskompetenzen "durch die Hintertür" begründet werden dürfen. Aus Sicht der Gewerkschaft Bau-Holz ist die Forderung nach Kreativität durchaus zu unterstützen, wesentlich für uns ist jedoch, dass eine insgesamt zweckmäßige Grundrechtscharta erstellt wird, die auch die Positionen der arbeitenden Menschen und insbesondere die sozialen Grundrechte ausreichend berücksichtigt.

Innerösterreichisch hat, wie oben erwähnt bis jetzt noch keine fundierte Debatte die Charta der Grundrechte der Europäischen Union oder gar über die Verfassungsfrage zustande gekommen. Alle die Europäische Union betreffende Fragen, aber leider auch wesentliche innenpolitische Themen, wie etwa die Verschlechterungen im Pensions-, Urlaubs- und Arbeitsrecht werden von der sogenannten Sanktionenfrage überschattet.

Die Bundesregierung nutzt die sogenannten Sanktionen geschickt, um jede Verärgerung gegen die europäische Union und die anderen Mitgliedsstaaten umzulenken. Artikel 6 EUV ist ein wesentlicher Ansatz für Grundrechte in der Europäischen Union. Die Union beruht auf den

Grundsätzen der Freiheit, der Demokratie, der Achtung der Menschenrechte und Grundfreiheiten sowie der Rechtsstaatlichkeit; diese Grundsätze sind allen Mitgliedsstaaten gemeinsam.

In Übereinstimmung mit dem österreichischen Abgeordneten der Grünen zum Europäischen Parlament, Johann Voggenhuber (vgl. die Zeitschrift: Die Presse vom 3.3.2000) sehen auch wir einen gewissen Zusammenhang der Situation in Österreich und der Arbeit an der Charta.

Klarzustellen ist jedenfalls, dass die Sanktionen der anderen 14 EU Staaten nicht auf Artikel 7 EUV gestützt wurden, und dass unserer Meinung nach keine Sanktionen gegen Österreich vorliegen, sondern nur eine grobe Verletzung der Courtoisie ("comitas gentium") gegenüber den Regierungsverantwortlichen vorliegt. Klarzustellen ist jedoch auch, dass selbst diese Maßnahmen von der Regierung zur Überdeckung ihres Sozialabbauprogrammes und zum Schüren der Ablehnung gegen die EU genützt werden, und daher kontraproduktiv sind.

Verschärft wird diese problematische Situation noch dadurch, dass die Bundesregierung durch ihre angedrohte Volksbefragung Millionen Schillinge beim Fenster hinauswirft und gleichzeitig bei den ArbeitnehmerInnen und sozial Schwachen Kürzungen vornimmt.

Für die Gewerkschaft Bau-Holz sind nicht zuletzt deshalb die Fragen der sozialen Rechte in einer solchen Charta von eminenter Bedeutung. Wir erinnern an den vor einigen Monaten unter anderem von ÖGB- und GB Präsidenten, Fritz Verzetnitsch, in seiner Eigenschaft als österreichischer Nationalratsabgeordneter eingebrachte Entwurf von sozialen Rechten für das österreichische Bundesverfassungsrecht. Es ist uns durchaus bewusst, dass nicht zuletzt in Österreich große Teile der Lehre gegenüber sozialen Grundrechten Bedenken hat, weil schwankende wirtschaftliche Verhältnisse, deren Einhaltung vor Probleme stellen könnten. Dennoch sind unserer Meinung nach soziale Grundrechte zumindest in der Form von Mindeststandards jener Teil der Grundrechte, der in Österreich äußerst unterentwickelt ist. Die Gewerkschaft Bau-Holz fordert daher mit entsprechendem Nachdruck die Einführung und die Einhaltung von sozialen Grundrechten. Aufgrund des Binnenmarktes und der damit verbundenen Grundfreiheiten innerhalb der Europäischen Union ist es aus unserer Sicht geradezu unerlässlich, auch entsprechende soziale Grundrechte im gesamten Raum der Europäischen Union vorzusehen, damit das Schlagwort von der Sozialen Union nicht ein Schlagwort bleibt, sondern Realität werden kann.

Wir sehen uns in dieser Position auch durch die Forderungen von Chirac und Kok beim Europäischen Rat von Santa Maria de Feira bestätigt, die gefordert haben, so wichtige Themen wie wirtschaftliche und soziale Rechte, Umweltschutz oder Bioethik jedenfalls in die Charta aufzunehmen.

Abgesehen von der hier zur Diskussion stehenden Angelegenheit der Charta der Grundrechte der Europäischen Union, ist auch noch immer die Frage des Beitritts der EU zur EMRK ungeklärt. Uns ist durchaus bewusst, dass es Bedenken hinsichtlich der Rechtsnatur der Europäischen Union gibt, diese dürfen jedoch nicht dazu führen, dass deshalb dieser wichtige, auch symbolische Schritt noch länger verzögert wird. Auch wir vertreten die Meinung, dass die Charta der Grundrechte der Europäischen Union, wenngleich sie in weiten Passagen mit der EMRK deckungsgleich sein wird, diese nicht ersetzen soll, aber auch nicht die Rechte der Bürger schmälern darf, oder die EMRK untergraben darf; diese Diskussion wird regelmäßig unter dem Schlagwort "Achtung des Besitzstandes". In diesem Punkt verweisen wir auf die Ausführungen des Berichts von Andrew Duff und Johannes Voggenhuber an das Europäische Parlament, dem wir uns in diesem Punkt anschließen. Wir sind jedoch auch der Meinung, dass wie in demselben Bericht festgehalten, die Gerichtsbarkeit des EuGH für Menschenrechtsfragen flexibler ausgelegt werden muss, um den individuellen Zugang der EU Bürger zu verbessern.

Im Einzelnen erscheinen uns folgende Punkte diskussionsfähig:

- Zu Artikel 1 des Entwurfes der Charta der Grundrechte der Europäischen Union

Die ausdrückliche Aufnahme eines Gleichheitsgrundsatzes in Absatz 2 dieses Artikels ist positiv zu bewerten. Es ist für uns wesentlich, dass diese Bestimmung im Unterschied zu Artikel 7 des österreichischen B-VG und Artikel 2 StGG auf alle Menschen und nicht nur auf Unionsbürger abstellt. In diesem Zusammenhang verweisen wir darauf, dass es für uns wesentlich ist, dass die Charta nicht nur die Europäische Union selbst, sondern auch ihre Mitglieder bindet.

- Zu Artikel 2 des Entwurfes der Charta der Grundrechte der Europäischen Union

Die Gewerkschaft Bau-Holz unterstützt prinzipiell die gewählte Formulierung. Wir regen jedoch an, auch diesen Artikel nach Muster seines Vorbildes dem Artikel 2 EMRK wesentlich konkreter zu gestalten. Der nun vorliegende Text ist unserer Meinung nach zu sehr deklaratorisch formuliert und bietet daher zu wenig konkreten Schutz.

Die Umwandlung des Absatzes 2 in einen eigenen Artikel erscheint uns wegen dessen Bedeutung gerechtfertigt, er sollte jedoch nicht in Form einer Zwischennummer (1a) gekennzeichnet werden, sondern die gesamte Charta sollte nach ihrer Fertigstellung durchlaufend nummeriert werden.

- Zu Artikel 3 des Entwurfes der Charta der Grundrechte der Europäischen Union

Es wird von uns positiv bewertet, dass in die Neufassung dieses Artikels auch die genetische Unversehrtheit als ein aktueller Themenbereich aufgenommen wird, Äußerst positiv bewerten wir auch das ausdrückliche Verbot, den menschlichen Körper und Teile davon zur Erzielung von Gewinnen zu nützen. Wir erinnern in diesem Zusammenhang daran, dass es noch immer Staaten gibt, die systematisch die Organe von Hingerichteten für die Organspende exportieren. Diese Praktiken sind zu verurteilen

- Zu Artikel 4 des Entwurfes der Charta der Grundrechte der Europäischen Union

Positiv bewerten wir vor allem den der Rechtsprechung folgenden zweiten Satz dieses Artikels, die neue Ergänzung wird ebenfalls positiv bewertet.

- Zu Artikel 5 des Entwurfes der Charta der Grundrechte der Europäischen Union

Die Neufassung von Absatz 2 erscheint uns prinzipiell akzeptabel, die Formulierung, dass nicht als Zwangsarbeit oder Pflichtarbeit Leistungen zählen, die von einer Person verlangt wird, der die Freiheit entzogen worden ist, erscheint uns zu unkonkret.

- Zu Artikel 6 des Entwurfes der Charta der Grundrechte der Europäischen Union

Das zu Artikel 2 Ausgeführte, gilt auch hier sinngemäß, wir regen eine konkretere Ausgestaltung nach dem Vorbild des Artikel 5 EMRK an.

- Zu Artikel 8 des Entwurfes der Charta der Grundrechte der Europäischen Union

Die Forderung nach einem unabhängigen und unparteiischen auf Gesetz beruhenden Gericht, im Sinne des Artikel 6, Abs. 1, EMRK vor dem ein Verfahren stattzufinden hat, hat gerade in den letzten Jahren in Österreich zu einer deutlichen Verbesserung des Rechtsschutzes etwa durch die Einführung der unabhängigen Verwaltungssenate geführt. Die Übernahme dieser Bestimmung ist daher aus österreichischer Sicht wesentlich.

Wir unterstützen die Überlegungen, die zur Anfügung eines Abs. 2 geführt haben. Prozesskostenhilfe ist eine wesentliche Voraussetzung, damit ein faires Verfahren überhaupt genutzt werden kann. Das Ersetzen des Wortes unerlässlich durch erforderlich ist aus unserer Sicht positiv.

- Zu Artikel 9 des Entwurfes der Charta der Grundrechte der Europäischen Union
Entgegen den Überlegungen, die zu der äußerst knappen Formulierung des Abs. 2 geführt haben, treten wir aus Gründen der Rechtssicherheit für eine ausführliche Formulierung nach dem Muster des Artikel 6, Abs. 3, EMRK ein.
- Zu Artikel 10 des Entwurfes der Charta der Grundrechte der Europäischen Union
Das Rückwirkungsverbot insbesondere im Bereich des Strafrechts ist ein wichtiges Grundrecht. Die gewählte Formulierung wird von uns akzeptiert, auch der neue Abs. 3.
- Zu Artikel 11 des Entwurfes der Charta der Grundrechte der Europäischen Union
Diese Bestimmung wird von uns prinzipiell positiv bewertet, es liegt die Vermutung nahe, dass damit ein im angloamerikanischen Recht geltender Grundsatz auch bei uns übernommen wird. Dies wäre prinzipiell positiv.
- Zu Artikel 12 des Entwurfes der Charta der Grundrechte der Europäischen Union
Diese im wesentlichen dem Artikel 8 EMRK entsprechende Bestimmung ist in seiner neuen Ausformulierung unserer Meinung nach auch auf die neuen Kommunikationsmittel wie Internet anzuwenden. Der Begriff Korrespondenz wird daher von uns in diesem Sinne positiv bewertet.
- Zu Artikel 13 des Entwurfes der Charta der Grundrechte der Europäischen Union
Die vorgeschlagene Streichung des Abs. 1 erscheint uns nicht akzeptabel. Wir sehen hierfür keine Begründung.
Der Verweis auf die innerstaatlichen Gesetze in Abs. 2 ist unserer Meinung nach nicht erforderlich, da die in der Begründung angeführten unterschiedlichen Verhältnisse in den Mitgliedsstaaten mittelfristig zu einer Annäherung kommen sollen.
- Zu Artikel 14 des Entwurfes der Charta der Grundrechte der Europäischen Union
Das zu Artikel 2 Ausgeführte, gilt auch hier sinngemäß, wir regen eine konkretere Ausgestaltung nach dem Vorbild des Artikel 9 EMRK an. Die neu vorgeschlagene Formulierung ist jedoch deutlich besser als die zuletzt vorgeschlagene, die nur aus 10 Worten bestanden hat.
- Zu Artikel 15 des Entwurfes der Charta der Grundrechte der Europäischen Union
Auch hier gilt das zu Artikel 2 ausgeführte sinngemäß. Eine konkretere Formulierung wäre wünschenswert. Positiv ist jedenfalls der neu angefügte Abs. 2, und hier besonders der Aspekt der Pluralismus
- Zu Artikel 17 des Entwurfes der Charta der Grundrechte der Europäischen Union
Auch hier gilt das zu Artikel 2 ausgeführte sinngemäß, eine konkrete Ausgestaltung nach dem Vorbild des Artikel 11 EMRK wird vorgeschlagen. Nicht akzeptabel ist für uns, dass das Recht, Gewerkschaften oder politische Parteien zu gründen oder diesen beizutreten, nicht mehr in der neuen Textierung vorkommt. Es ist für uns nicht eindeutig klargestellt, dass dies vom Begriff zusammenschließen ausreichend mitumfasst wird.
- Zu Artikel 19 des Entwurfes der Charta der Grundrechte der Europäischen Union
Das Recht auf Datenschutz ist für uns wesentlich, wir regen jedoch an, nach dem Vorbild des österreichischen Datenschutzgesetzes jedermann auch ein Recht auf Auskunft darüber, wer welche Daten über ihn verarbeitet, woher die Daten stammen und wozu sie verwendet werden, insbesondere auch, an wen sie übermittelt werden; ein Recht auf Richtigstellung unrichtiger Daten und das Recht auf Löschung unzulässigerweise verarbeiteter Daten zu geben.

- Zu Artikel 21 des Entwurfes der Charta der Grundrechte der Europäischen Union
Die gewählte Formulierung ist aus Sicht der GBH prinzipiell in Ordnung. Der Verweis auf andere einschlägige Verträge jedoch zu unkonkret.
- Zu Artikel 21a des Entwurfes der Charta der Grundrechte der Europäischen Union
Wie schon zu Artikel 1a ausgeführt wird, plädieren wir für eine durchgehende Numerierung. Wie sehen in der uns übermittelten Textfassung einen gewissen Widerspruch zu Artikel 4. Die gewählte Formulierung des Artikel 21a wird von uns positiv gewertet, um aber wie bei der uns übermittelten Fassung eine Wiederholung zu vermeiden, sollten die Artikel 4 und 21a wie offensichtlich in einer früheren Fassung vorgesehen, wieder zu einem Artikel zusammengeführt werden.
- Zu Artikel 22 des Entwurfes der Charta der Grundrechte der Europäischen Union
Gleichstellung und Nichtdiskriminierung gehören zu den wesentlichen Forderungen der GBH. Dieser Artikel ist für uns nicht nur wegen dem Recht auf Festsetzung gleicher Arbeitsentgelte und sonstiger Arbeitsbedingungen für die Geschlechter, sondern auch wegen dem Verbot von Diskriminierungen, dass wie vorschlagen, ihn unmittelbar in Artikel 1 nach dem Gleichheitsgrundsatz zu integrieren, oder doch zumindest an vorderer Stelle auszunehmen.
- Zu Artikel 23 des Entwurfes der Charta der Grundrechte der Europäischen Union
Die Aufnahme von Kinderrechten wird von uns äußerst positiv bewertet.
- Zu Artikel 24 des Entwurfes der Charta der Grundrechte der Europäischen Union
Die in diesem Artikel gewährleisteten Rechte sollten insgesamt jeder Person zustehen, das heißt, auch das Recht eine Partei zu gründen, sollte nicht Unionsbürgern gewährleistet werden. Die Differenzierung zwischen Staatsbürger und Nichtstaatsbürger, Unionsbürger und Nichtunionsbürger erscheint in diesem Bereich nicht erforderlich.
- Zu Artikel 25 des Entwurfes der Charta der Grundrechte der Europäischen Union
Die neu vorgeschlagene Einschränkung des Abs. 2 auf Wahlen zum Europäischen Parlament erscheint uns zumindest diskussionswürdig. Es ist zu überlegen, hier im Zuge der verstärkten Integration großzügiger zu sein.
- Zu Artikel 26 des Entwurfes der Charta der Grundrechte der Europäischen Union
Diese Bestimmung erscheint uns in engem Zusammenhang mit der des Artikel 25. Es ist mittelfristig zu überlegen, die Differenzierung des Wahlrechts zwischen Kommunalwahlen, Wahlen auf nationaler Ebene und Wahlen auf europäischer Ebene zu vereinheitlichen.
- Zu Artikel 29 des Entwurfes der Charta der Grundrechte der Europäischen Union
Es ist zu überlegen, dieses Petitionsrecht nicht nur auf das Europäische Parlament zu beschränken, sondern auch auf andere Organe der Europäischen Union auszudehnen und dieses Recht auch für nationale Organe in der Charta festzuschreiben.
- Zu Artikel 31 des Entwurfes der Charta der Grundrechte der Europäischen Union
Aus Sicht der GBH ist eine Drittwirkung der sozialen Grundrechte auch auf die Sozialpartner prinzipiell eine wesentliche Frage, die unserer Meinung nach auch innerhalb der Gewerkschaftsbewegung noch nicht ausreichend diskutiert wurde. Nach unseren bisherigen Überlegungen sind wir jedoch zum Schluss gekommen, die gewählte Formulierung zu unterstützen und auch die Sozialpartner zur Einhaltung der sozialen Grundrechte zu verpflichten.

Insoweit haben wir zwar nach der österreichischen Rechtstradition Verständnis für den Vorschlag Neissers, den Verweis auf die Sozialpartner zu streichen, kommen jedoch nach unseren bisherigen Beratungen zum gegenteiligen Ergebnis. Auch die Sozialpartner sollen mittels Drittwirkung wie im vorliegenden Entwurf vorgesehen zur Einhaltung des Sozialbereiches dieser Charta verpflichtet werden.

- Zu Artikel 31a des Entwurfes der Charta der Grundrechte der Europäischen Union
Wie schon zu Artikel 22 ausgeführt, ist für uns die Gleichheit von Männern und Frauen wesentlich. Wir treten jedoch dafür ein, diese Bestimmung umfassender auszugestalten und mit der konkreter formulierten Bestimmung des Artikels 22 ohne diesen zu verwässern, zu verschmelzen.
- Zu Artikel 32 des Entwurfes der Charta der Grundrechte der Europäischen Union
Wir unterstützen einerseits die hier vorliegende Formulierung, treten jedoch gleichzeitig dafür ein, auch ein Recht auf Arbeit in die Charta einzufügen und dieses auch ausreichen, das heißt zumindest mit Mindeststandards auszugestalten. Der neue Vorschlag des Präsidiums ist deutlich besser als die ursprünglich Formulierung, jedoch unserer Meinung noch nicht ausreichend.
- Zu Artikel 32a des Entwurfes der Charta der Grundrechte der Europäischen Union
Der neu vorgeschlagene Artikel wird von uns insgesamt unterstützt, alle Unterpunkte sollten aufgenommen werden. Wie jedoch schon zu Artikel 1a ausgeführt treten wir jedoch dafür ein, keine Zwischennummern bei den Artikeln vorzusehen.
- Zu Artikel 33 des Entwurfes der Charta der Grundrechte der Europäischen Union
Wir unterstützen die Vorschläge nach Präzisierung des Wortlautes und nach Hinzufügung eines verstärkten Anhörungsrechts im Fall von Umstrukturierungen, wie dies vom Abg. Voggenhuber eingebracht wurde. Eine Reduzierung oder Streichung wird von uns abgelehnt.
- Zu Artikel 33a des Entwurfes der Charta der Grundrechte der Europäischen Union
Dieser neue Artikel wird von uns prinzipiell positiv bewertet, sollte jedoch unserer Meinung nach noch näher ausgestaltet werden, und mit dem ebenfalls neuen Artikel 32a verschmolzen werden.
- Zu Artikel 34 des Entwurfes der Charta der Grundrechte der Europäischen Union
Die Ausweitung und vor allem die ausdrückliche Anführung des Streikrechts wird von uns unterstützt, wir sprechen uns gegen eine Streichung aus, weil gerade das Recht auf KV Verhandlungen zu den wesentlichen Gewerkschaftsrechten zählt.
- Zu Artikel 34a des Entwurfes der Charta der Grundrechte der Europäischen Union
Auch diese Vorschläge werden von uns positiv bewertet, aber auch hier schlagen wir eine Integration in den Artikel 32a vor.
- Zu Artikel 35 des Entwurfes der Charta der Grundrechte der Europäischen Union
Wir sehen auch in der Festschreibung des Rechts auf Ruhezeit und Jahresurlaub einen wesentlichen Aspekt und fordern im Sinne des Vorschlages von Voggenhuber die Festsetzung einer Mindestdauer des Jahresurlaubes. Diese sollte jedoch mit 5 Wochen festgesetzt werden. Der neue Vorschlag des Präsidiums erscheint uns hier nicht ausreichend.
- Zu Artikel 36 des Entwurfes der Charta der Grundrechte der Europäischen Union
Der Gesundheitsschutz und sichere Arbeitsbedingungen ist gerade für Bau- und Holzarbeiter von eminenter Bedeutung. Diese Berufsgruppen sind enormen gesundheitlichen Risiken ausgesetzt.

Es ist für uns unverständlich, wie Abgeordnete die Streichung oder auch nur die Reduzierung eines solchen Rechtes fordern können. Im Gegenteil: Wir fordern eine bessere Ausgestaltung dieses Artikels.

- Zu Artikel 36a des Entwurfes der Charta der Grundrechte der Europäischen Union
Wir regen die Integration dieses positiven Vorschlages in Artikel 32a an.
- Zu Artikel 37 des Entwurfes der Charta der Grundrechte der Europäischen Union
Jugendschutz gehört für die GBH ebenfalls zu den zentralen Forderungen, wir unterstützen die Forderung nach Präzisierung dieses Vorschlages. Der Vorschlag des Präsidiums erscheint uns akzeptabel.
- Zu Artikel 37a des Entwurfes der Charta der Grundrechte der Europäischen Union
Wir regen hier eine Integration des Abs. 1 in Artikel 22 und eine Integration des Abs. 2 in Artikel 32a an.
- Zu Artikel 38 des Entwurfes der Charta der Grundrechte der Europäischen Union
Wir unterstützen den vorliegenden Textvorschlag, sind jedoch gegen die Einschränkung im Titel auf Fälle mißbräuchliche Entlassung.
- Zu Artikel 38a des Entwurfes der Charta der Grundrechte der Europäischen Union
Wir regen auch hier eine Integration dieses positiven Vorschlages in Artikel 32a an.
- Zu Artikel 39 des Entwurfes der Charta der Grundrechte der Europäischen Union
Die Vereinbarkeit von Familie und Beruf ist gerade für die Gewerkschaft Bau-Holz ein besonderes Anliegen. Wir versuchen durch Arbeitszeitregelungen, die sowohl den Bedürfnissen der Firmen gerecht werden, aber vor allem die Bedürfnisse der Arbeitnehmer nach Familienleben und Teilnahme am gesellschaftlichen Leben gerecht werden.
- Zu Artikel 40 des Entwurfes der Charta der Grundrechte der Europäischen Union
Der Änderungsvorschlag des Präsidiums wird von uns prinzipiell positiv bewertet, erscheint jedoch noch nicht ausreichend. Eine Harmonisierung mit der Entsenderichtlinie ist anzustreben.
- Zu Artikel 41 des Entwurfes der Charta der Grundrechte der Europäischen Union
Die Gewährleistung einer ausreichenden sozialen Sicherheit ist wesentlich, die vorgeschlagene Formulierung regelt jedoch weder in der ursprünglichen Variante, noch in dem neuen Vorschlag des Präsidiums ausreichende Mindeststandards dafür. In der gegebenen politischen Situation erscheint der vorgeschlagene Text, auch wenn er vorwiegend deklaratorisch ist, zunächst akzeptabel.
- Zu Artikel 41a des Entwurfes der Charta der Grundrechte der Europäischen Union
Wir bewerten diese Ergänzungen prinzipiell äußerst positiv, treten jedoch dafür ein, dass Absatz 1 in Artikel 32a integriert wird. Absatz 4 sollte in Artikel 22 integriert werden, die Absätze 2 und 3 sollten ausgebaut und in einem eigenen Artikel zusammengefasst werden.
- Zu Artikel 42 des Entwurfes der Charta der Grundrechte der Europäischen Union
Wir unterstützen in der Frage des Gesundheitsschutzes den Vorschlag auf Streichung des Verweises auf die Gegebenheiten der einzelnen Mitgliedstaaten. Wir erinnern in diesem Zusammenhang daran, dass die Österreichische Regierungsmehrheit erst vor kurzem eine Ambulanzgebühr von bis zu S 1000.- jährlich eingeführt hat, eine Maßnahme, die gerade für sozial Schwächere den

Zugang zur ärztlichen Versorgung deutlich erschwert. Eine Verschärfung solcher Regelungen stellt für uns eines der Problemfelder dar, die durch eine solches Grundrecht verhindert werden müßten.

- Zu Artikel 42a des Entwurfes der Charta der Grundrechte der Europäischen Union
Dieser Vorschlag sollte gemeinsam mit Absatz 2 und 3 des Artikel 41a ausgebaut und zu einem eigenen Artikel ausgestaltet werden.

- Zu Artikel 43 des Entwurfes der Charta der Grundrechte der Europäischen Union
Wir unterstützen die Forderung nach Ausgestaltung dieses Rechts zu einem subjektiven Recht, sehen jedoch im Vorschlag des Präsidiums zumindest einen Schritt in die richtige Richtung. Da für uns die Benachteiligung von Menschen mit Handicap oder wie hier formuliert "Behinderten" vor allem eine Frage der Diskriminierung ist, treten wir für den Ausbau dieser Bestimmung und die Integration in Artikel 22 ein.

- Zu Artikel 43a des Entwurfes der Charta der Grundrechte der Europäischen Union
Absatz 1 sollte in Artikel 22 integriert werden, es sollte auch versucht werden Absatz 2 in entsprechenden anderen Bestimmungen zu integrieren.

- Zu Artikel 44 des Entwurfes der Charta der Grundrechte der Europäischen Union
Wir unterstützen die Forderung nach einer nachdrücklicheren Formulierung im Sinne eines Rechtsanspruches, sind jedoch der Meinung, eine Verhältnismäßigkeitsklausel im Hinblick auf die Rechte der ArbeitnehmerInnen vorzusehen, das heißt, es muss sichergestellt werden, dass notwendige Verbesserungen im Bereich des Umweltschutzes nicht dazu führen, dass die Arbeitsbedingungen für ArbeitnehmerInnen gefährlicher oder gesundheitsschädlicher werden.
Wir bewerten im neuen Vorschlag des Präsidiums positiv, dass der Begriff der nachhaltigen Entwicklung aufgenommen wurde, bemängeln jedoch, dass die rationelle Verwendung der natürlichen Ressourcen nunmehr fehlt. Dies deckt sich unserer Meinung nach nur zum Teil mit dem Begriff der Nachhaltigkeit.

- Zu Artikel 45 des Entwurfes der Charta der Grundrechte der Europäischen Union
Es ist uns unverständlich, wie hier die völlige Streichung einer so wichtigen Bestimmung gefordert werden kann.

- Zu Artikel 45a des Entwurfes der Charta der Grundrechte der Europäischen Union
Absatz 1 sollte wie Absatz 2 des Artikel 43a behandelt werden. Absatz 2 sollte ausgebaut und mit den Absätzen 2 und 3 des Artikel 41a zusammengefaßt werden. Die restlichen Absätze könnten eventuell in Artikel 22 integriert werden.

- Zu Artikel 46 des Entwurfes der Charta der Grundrechte der Europäischen Union
Wir treten gegen eine zu enge Fassung des Anwendungsbereiches dieser Charta ein und sind deshalb etwa für die Streichung des vorgeschlagenen Absatz 2, also des Absatz 3 nach Vorschlag des Präsidiums. Absatz 2 des Präsidiumsvorschlags scheint uns ebenfalls nicht ausgereift genug.

- Zu Artikel 47 des Entwurfes der Charta der Grundrechte der Europäischen Union
Die Einschränkung, der in dieser Charta anerkannten Rechte und Freiheiten sollte möglichst gering gehalten werden, dabei sollte auf die in der EMRK gewährleisteten Rechte Bedacht genommen werden, wie dies im Absatz 2 des Vorschlags des Präsidiums vorgesehen ist. Der Begriff des Wesensgehaltes im letzten Satz des Absatz 1 des Vorschlags des Präsidiums, erscheint uns für eine so zentrale Bestimmung zu ungenau.

- Zu Artikel 48 des Entwurfes der Charta der Grundrechte der Europäischen Union
Die Integration dieser Bestimmung in Artikel 45 ist prinzipiell positiv, wir treten jedoch dafür ein, dass klargestellt werden sollte, dass es keine Verschlechterung der einmal festgelegten Grundrechte geben darf.
- Zu Artikel 49 des Entwurfes der Charta der Grundrechte der Europäischen Union
Diese Klarstellung des 1. Halbsatzes ist für die Gewerkschaft Bau-Holz wesentlich.
- Zu Artikel 50 des Entwurfes der Charta der Grundrechte der Europäischen Union
Das zu Artikel 49, 1. Halbsatz ausgeführte gilt auch hier. Eine solche Missbrauchsregelung muss in einem Grundrechtskatalog selbstverständlich sein.
- Zu Artikel 50a des Entwurfes der Charta der Grundrechte der Europäischen Union
Absatz 1 ist unserer Meinung nach durch Artikel 8 der Charta abgedeckt, wenn unsere Vorschläge berücksichtigt werden, Absatz 2 sollte wie Artikel 43a Absatz 2 behandelt werden.

Insgesamt unterstützt die Gewerkschaft Bau-Holz daher die Bemühungen, mit einer Charta der Grundrechte der Europäischen Union erstmals in der Geschichte des internationalen Organisationsrechtes einen nicht-staatlichen Organismus mit Grundrechten auszustatten. Wir sehen darin, wie schon eingangs ausgeführt, einen ersten Schritt in Richtung Europäische Verfassung. Prinzipiell bewerten wir diese Entwicklung positiv, fordern jedoch eine ausreichende Berücksichtigung der Interessen der ArbeitnehmerInnen und der sozial Schwächeren.

Mir freundlichen Grüßen

Johann Driemer
Bundesvorsitzender

Stefan Mann
Sekretär

Sehr geehrte Damen und Herren!

Die Gewerkschaft Bau-Holz hat nunmehr im Zuge des innerösterreichischen Begutachtungsverfahrens einen aktuellen Gesamtentwurf der Charta der Grundrechte der Europäischen Union übermittelt erhalten.

Wir bedauern, dass die Diskussion zu diesem wichtigen Thema – ohne ausreichender innerösterreichischer Diskussion – bereits so weit fortgeschritten ist, dass nunmehr eine substantielle Stellungnahme nicht mehr erwünscht ist. Wir verweisen daher auf unsere Stellungnahme vom 28.07. d.J.

Zur Information übermitteln wir Ihnen jedoch auch unsere neue Stellungnahme.

Es ist uns durchaus bewusst, dass nicht zuletzt in Österreich große Teile der Lehre gegenüber sozialen Grundrechten Bedenken hat, weil schwankende wirtschaftliche Verhältnisse, deren Einhaltung vor Probleme stellen könnten. Dennoch sind unserer Meinung nach soziale Grundrechte zumindest in der Form von Mindeststandards jener Zwei an Grundrechten, der in Österreich äußerst unterentwickelt ist. Die Gewerkschaft Bau-Holz fordert daher mit entsprechendem Nachdruck die Einführung und die Einhaltung von sozialen Grundrechten. Aufgrund des Binnenmarktes und der damit verbundenen Grundfreiheiten innerhalb der Europäischen Union ist es aus unserer Sicht geradezu unerlässlich, auch entsprechende soziale Grundrechte im gesamten Raum der Europäischen Union vorzusehen, damit das Schlagwort von der Sozialen Union nicht ein Schlagwort bleibt, sondern Realität werden kann.

Abgesehen von der hier zur Diskussion stehenden Angelegenheit der Charta der Grundrechte der Europäischen Union, ist auch noch immer die Frage des Beitritts der EU zur EMRK ungeklärt. Uns ist durchaus bewusst, dass es Bedenken hinsichtlich der Rechtsnatur der Europäischen Union gibt, diese dürfen jedoch nicht dazu führen, dass deshalb dieser wichtige, auch symbolische Schritt noch länger verzögert wird. Auch wir vertreten die Meinung, dass die Charta der Grundrechte der Europäischen Union, wenngleich sie in weiten Passagen mit der EMRK deckungsgleich sein wird, diese nicht ersetzen soll, aber auch nicht die Rechte der Bürger schmälern darf, oder die EMRK untergraben darf; diese Diskussion wird regelmäßig unter dem Schlagwort "Achtung des Besitzstandes".

Wir kritisieren, dass die im Artikel 1 des Vorentwurfes vorgesehene Drittwirkung der sozialen Grundrechte auch auf die Sozialpartner – obwohl diese Bestimmung durchaus diskussionswürdig war – nunmehr gestrichen wurde. Dies bedeutet für uns einen wesentlichen Rückschritt und eine wesentliche Verwässerung des nunmehr vorliegenden Entwurfs.

Auch bei den einzelnen Textentwürfen für die Artikel beschränken wir uns wie gewünscht auf Änderungsvorschläge, wir bedauern jedoch die mangelnde Diskussionsmöglichkeit über die anderen Punkte:

- Zu Artikel 1 des Entwurfes der Charta der Grundrechte der Europäischen Union:

Wir fordern die Wiederaufnahme des Textes "*Alle Menschen sind vor dem Gesetz gleich.*" an dieser Stelle. Artikel 20 sollte also wieder vorverlagert werden.

- Zu Artikel 4 des Entwurfes der Charta der Grundrechte der Europäischen Union:

Wir fordern erneut die Ergänzung eines 2. Absatzes mit dem Text "*Niemand darf in einen Staat ausgewiesen oder abgeschoben werden, in dem er durch die Todesstrafe, durch Folter oder durch andere unmenschliche Behandlung bedroht ist.*".

- Zu Artikel 6 des Entwurfes der Charta der Grundrechte der Europäischen Union:
Wir fordern die Ergänzung des restlichen Textes des Artikel 5 EMRK. Das heißt der Text soll nunmehr lauten: "(1) *Jeder Person hat das Recht auf Freiheit und Sicherheit. Die Freiheit darf einem Menschen nur in den folgenden Fällen ... Anspruch auf Schadenersatz.*"
- Zu Artikel 6 bis 7 des Entwurfes der Charta der Grundrechte der Europäischen Union:
Wir kritisieren den Entfall der im Vorentwurf enthaltenen Bestimmungen bis zum Artikel 12 der dem nunmehrigen Artikel 7 entspricht und fordern die Wiederaufnahme dieser Bestimmungen am Beginn der Charta. Wenngleich Teile – wie etwa das Rückwirkungsverbot, das nunmehr im Artikel 47 aufgenommen wurde – in Kapitel 6 wieder aufgenommen wurde.
- Zu Artikel 12 des Entwurfes der Charta der Grundrechte der Europäischen Union:
Wir fordern folgende Ergänzung in Absatz 1: "*Dies umfasst auch das Recht zum Schutz ihrer Interessen Gewerkschaften zu bilden und diesen beizutreten.*"
- Zu Artikel 16 des Entwurfes der Charta der Grundrechte der Europäischen Union:
Die Neuaufnahme des Rechts auf unternehmerische Freiheit erscheint für uns so lange nicht akzeptabel, so lange nicht auch ein Recht auf Arbeit aufgenommen wird.
- Zu Artikel 25 des Entwurfes der Charta der Grundrechte der Europäischen Union:
Wir fordern die Streichung der Worte "*...nach dem Gemeinschaftsrecht und nach den einzelstaatlichen Rechtsvorschriften und Gepflogenheiten...*" und die Ergänzung der Worte "*...nsbesondere bei allen Arten der Umstrukturierungen...*".
- Zu Artikel 29 des Entwurfes der Charta der Grundrechte der Europäischen Union:
Wir fordern zumindest die Ergänzung in Absatz 2 (letzter Halbsatz) "*... sowie auf bezahlten Jahresurlaub im Ausmaß von mindestens 5 Wochen.*"
- Zu Artikel 31 bis 32 des Entwurfes der Charta der Grundrechte der Europäischen Union:
Wir fordern die Wiederaufnahme des im Vorentwurf enthaltenen Artikel 40 "*Recht der Wanderarbeiter auf Gleichbehandlung*", wie vom Präsidium im letzten Entwurf vorgeschlagen. Der Text sollte also lauten: "*Arbeitnehmer, die nicht die Staatsangehörigkeit der Europäischen Union besitzen und rechtmäßig im Hoheitsgebiet der Mitgliedsstaaten arbeiten, haben Anspruch auf Arbeitsbedingungen, die nicht weniger günstig sind als die Bedingungen unter denen die Arbeitnehmer der Europäischen Union arbeiten.*" Dies ist deshalb notwendig um die WanderarbeiterInnen vor Ausbeutung und die lokal beschäftigten ArbeitnehmerInnen vor Sozialdumping zu schützen.

Abschließend verweisen wir nochmals auf unsere wesentlich ausführlichere Stellungnahme vom 28.07. d.J. Wenngleich sich der Aufbau der Charta nunmehr gravierend verändert hat, bleiben unsere, zu den einzelnen Themen geäußerten, Bedenken und Anregungen sinngemäß bestehen.

Insgesamt ist in vielen neuen Bestimmungen eine rückschrittliche Tendenz gegenüber dem Vorentwurf zu erkennen.

Mit freundlichen Grüßen

LAbg.Johann Driemer
Bundesvorsitzender

Stefan Mann
Sekretär

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 1 September 2000**CHARTE 4442/00****CONTRIB 296****COVER NOTE**

Subject : Draft Charter of fundamental rights of the European Union

Please find hereafter a contribution by the European Children's Network (Euronet), with a letter to Mr. Roman Herzog, the President of the Convention, including comments on the rights of the child. (Reference document: CHARTE 4422/00 CONVENT 45). ¹

¹ This text has been submitted in English language only.

**EURONET****The European Children's Network**

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30 August 2000

To: The Convention to draft the EU Charter of Fundamental Rights
Mr Roman Herzog, Chair of the Convention
C/o European Council of Ministers
175 Rue de la Loi
1048 Bruxelles

Dear Mr Herzog,

**Re: Presidency Note, complete text of the Charter proposed by the Praesidium:
CONVENT 45**

The members of Euronet, the European Children's Network, attach great importance to the work of the Convention on the EU Charter of Fundamental Rights and have actively contributed to the drafting process. We understand that at the next meeting of the Convention on 11-13 September, members will consider general comments on Convent 45 of 28 July 2000. It is in this spirit that Euronet is submitting the following comments on points of principle.

Articles on children

Europe's children are Europe's future. Children are vulnerable, have specific needs different from adults and are unable to protect themselves. For these reasons, Euronet welcomes the inclusion in the latest version of the Charter on Fundamental Rights (Convent 45 of 28 July 2000) of a specific article on children - Article 23 (the protection of children). This would help ensure that the EU is in line with international commitments made by member states when ratifying the UN Convention on the Rights of the Child 1989. Euronet believes that the guiding principles of this Article must be the **UN Convention on the Rights of the Child**, with particular emphasis on the following :

- the primary consideration shall be the best interests of the child
- children's rights shall be respected and ensured without discrimination of any kind
- children must be allowed to express their views freely in all matters affecting them
- children shall be afforded the protection and care necessary for their well-being

In order to make that the article on children's rights is not only focussing on the protection of children we would prefer to change the title of the Article.

Moreover, to underline the primacy of the best interests of the child, we would prefer to see the order of the paragraphs in Article 23 reversed.

In addition, we would like to have a stronger expression of children's rights to express their views freely than the word may, according to Article 12 of the UN Convention on the Rights of the Child.

With these considerations taken into account Article 23 would be changed to:

Article 23 – Rights of children

1. In all actions relating to children, whether taken by public or private institutions, the child's best interests must be a primary consideration. The rights of the child shall be respected and ensured without discrimination of any kind.
2. Children shall have the right to such protection and care as is necessary for their well-being. They shall be assured the right to express their views freely in all matters affecting the child. Such views shall be given due weight in accordance with their age and maturity.

Article 14 - Right to Education

Euronet believes that every child has the right to education. Euronet believes that the following text, based on Articles 28, 29 and 30 of the UN Convention on the Rights of the Child should be added to this Article:

"Children of minority communities and indigenous populations have the right to enjoy their own culture and to practise their own religion and language".

Article 18 - Right to Asylum

Euronet believes that this Article should include the right of the child to claim its own asylum reasons.

Article 30 - Protection of young people at work

Euronet believes that this Article should include a reference to ILO Convention 182 which aims to ban the worst forms of child labour.

Chapter VII: General Provisions

Euronet is concerned that the current text of the Charter does not contain an explicit reference to the *UN Convention on the Rights of the Child* which is the fullest expression of children's rights and to which all EU Member States are signatories.

This could be remedied by reference to the **UN Convention on the Rights of the Child** in Article 51.

Article 51

Article 51 (Level of Protection) cites “ international law and international agreements to which the UN, the Community or all the Member States are party.” **The UN Convention of the Rights of the Child** should be included in this list as all EU Member States are party to it.

Euronet recognises the difficult but invaluable task with which the members of the drafting Convention have been entrusted. Euronet remains at the disposal of the members of the Convention to provide further information or clarification.

Yours sincerely,

Mieke Schuurman
Euronet Co-ordinator

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE**fundamental.rights@consilium.eu.int**

Bruxelles, le 4 septembre 2000**CHARTE 4443/00****CONTRIB 297****NOTE DE TRANSMISSION**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne

Veillez trouver ci-après une contribution du Secrétariat Général d'Action Extérieure du
Gouvernement Basque. ¹

¹ Ce texte à été soumis en langues française et espagnole.

A l'attention des Membres de la Convention

Vitoria-Gasteiz, le 27 juillet 2000

Concerne: **Contribution du Secrétariat Général d'Action Extérieure du Gouvernement Basque, à l'élaboration de la Charte de Droits Fondamentaux.**

Aux Membres de la Convention,

Le Gouvernement Basque, concrètement, son Secrétariat Général d'Action Extérieure, considère de grande transcendance pour le processus de construction européenne, l'élaboration de la Charte de Droits Fondamentaux. Pour cette raison, nous suivons avec le plus grand intérêt les travaux de la Convention.

Le Gouvernement Basque représente une des régions d'Europe, qui de par son origine historique, a le plus de compétences législatives, avec une langue et culture différenciées, comme ils en existent d'autres dans l'Union. Sachant que nos inquiétudes sont partagées par beaucoup de peuples et régions d'Europe, nous vous faisons parvenir notre contribution au projet de Charte des Droits Fondamentaux :

- Substitution de l'actuel point 2 du Préambule par le paragraphe suivant :

“L'Union Européenne et ses Institutions se fondent sur les principes de liberté, de démocratie, d'État de Droit, de respect des Droits de l'Homme et des Droits fondamentaux, tant individuels que collectifs, des peuples de l'Union Européenne, principes tous communs aux Etats membres”

Arguments: Nous considérons que le Préambule de la Charte des Droits Fondamentaux de l'Union Européenne doit constater de la façon la plus compréhensive possible l'acquis des Droits Fondamentaux et principes directeurs que tant les Etats Membres comme les Institutions européennes ont reconnus. De là, la nécessité d'inclure dans le Préambule la mention aux droits tant individuels que collectifs des peuples de l'Union Européenne.

- Modification de l'article 42: Protection de l'Environnement

“Les politiques de l'Union garantiront le droit des générations futures à un environnement sain et écologiquement équilibré, moyennant la conservation, protection et amélioration de la qualité et diversité de l'environnement, l'utilisation rationnelle des ressources naturelles et l'éducation et sensibilisation sur l'environnement”.

Arguments: Nous considérons que la protection de l'environnement se fonde notamment sur le droit des générations futures à un environnement sain et équilibré dont il garantit la durabilité. Les moyens pour protéger l'environnement doivent tenir compte, notamment, de l'éducation et sensibilisation des citoyens pour le protéger, ainsi que le reste des mesures mentionnés dans cet article.

-Insérer un nouvel article relatif aux : Droits Linguistiques

«Toute personne a le droit de disposer d'une liberté d'action suffisante pour utiliser et promouvoir, seul ou avec d'autres, une langue même non officielle au sein des Institutions de l'Union Européenne, mais officielle dans tout ou partie du territoire d'un des États membre en se servant à cette fin des libertés définies dans la présente Charte.

L'Union respecte ce droit, notamment en tenant compte, dans l'élaboration et l'exercice des politiques communautaires, de l'existence de ces langues.

Tout citoyen de l'Union qui réside dans un État membre autre que celui dont il a la nationalité, a droit à la promotion de l'enseignement de la langue maternelle de ses enfants».

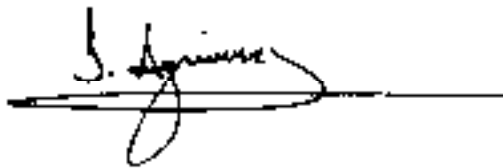
Arguments: Si tous les États membres se font un devoir de respecter les droits de leurs citoyens parlant une langue autre que la langue officielle, les situations concrètes varient beaucoup, chaque Etat ayant ses propres sensibilités en la matière. Il n'est donc pas question de rejeter telle ou telle restriction concrète, mais d'éviter que la superposition de nombreuses restrictions n'ait pour conséquence un effet d'étranglement.

Le deuxième alinéa précise l'obligation de l'Union à l'égard des langues non officielles.

Le troisième alinéa découle de la directive 77/486/CEE visant à la scolarisation des enfants des travailleurs migrants

Pour conclure, nous voudrions féliciter les membres de la Convention pour leur travail consciencieux et fécond. Nous espérons que nos contributions seront utiles et qu'elles seront examinées par les membres avec la plus grande attention puisque nous considérons qu'elles recueillent ou complètent des aspects nécessaires à tenir en compte dans la future Charte des Droits Fondamentaux.

Veillez agréer, Cher Membres de la Convention, l'expression de mes sentiments les plus distingués.



Iñaki Aguirre
Secrétaire Général d'Action Extérieure

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE**fundamental.rights@consilium.eu.int**

Bruxelles, le 4 septembre 2000**CHARTE 4444/00****CONTRIB 298****NOTE DE TRANSMISSION**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne

Veillez trouver ci-après une contribution de l'Association pour le Développement de l'Économie et du Droit de l'Environnement (ADEDE), avec un bref commentaire sur le projet de Charte. ¹

¹ Ce texte à été soumis en langue française seulement.

ASSOCIATION POUR LE DÉVELOPPEMENT DE L'ÉCONOMIE ET DU DROIT DE L'ENVIRONNEMENT (ADEDE)

Association de la loi de 1901

Le 15 août 2000

Monsieur,

Projet de Charte des droits fondamentaux de l'Union Européenne

Au nom de l'ADEDE, j'ai l'honneur de porter à votre attention un bref commentaire sur le projet de Charte.

L'ADEDE est très satisfaite de l'introduction d'un Art. 35 sur la protection de l'environnement. Toutefois il nous paraît que la rédaction actuelle de cet article est trop programmatoire et reflète trop le texte du Traité. Selon nous, il manque une référence à un "droit" ou à ce qu'une "personne" peut attendre dans le domaine de l'environnement puisqu'il s'agit d'une charte des droits fondamentaux.

Une manière plus appropriée d'aborder ce sujet pourrait consister à aligner la rédaction de l'art.35 sur celle de l'art.32.3 et d'ajouter dans l'art.35 la phrase introductive suivante:

"L'Union reconnaît et respecte le droit à la protection d'un environnement sain."

Monsieur J.P Jacque
Conseil
Union européenne
Bruxelles

de la même manière que l'Union reconnaît et respecte le droit à une aide au logement.

Un texte semblable se trouve dans la Constitution belge (art.23).

Veillez agréer, Monsieur, l'assurance de ma plus parfaite considération.

Henri Smets
Directeur

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DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 4 September 2000**CHARTE 4445/00****CONTRIB 299****COVER NOTE**

Subject : Draft Charter of fundamental rights of the European Union

Please find hereafter the position by the Association of Finnish Local and Regional Authorities on the Charter of Fundamental Rights of the European Union, unanimously adopted by the Board on the 7 June 2000.¹

¹ This text has been submitted in English, Finnish and Swedish languages.

POSITION

Unanimously adopted by the Board of
the Association of Finnish Local and
Regional Authorities
7 June 2000

**POSITION OF THE ASSOCIATION OF FINNISH LOCAL AND REGIONAL
AUTHORITIES ON THE CHARTER OF FUNDAMENTAL RIGHTS OF THE
EUROPEAN UNION**

The drafting of a Charter of Fundamental Rights of the European Union is an extremely important reform project. The views of the Finnish government, parliament and of the Finnish representatives participating in the drafting of the Charter about a document legally binding the Member States have been reserved.

The adoption of the Charter does not pose a problem to the municipalities as far as it concerns traditional liberties or other rights guaranteed by the European Convention on Human Rights. However, the Charter of Fundamental Rights of the European Union is to include such economic, social and cultural rights (so called ESC rights), whose implementation falls under the competence of the Member States and is the responsibility of the municipalities in Finland.

A so-called law reservation applies to most ESC rights in Finland; *i.e.* parliament enacts a detailed law on the contents and scope of the right. In addition, for Finland it centrally is a question about taking the Finnish welfare society model into account and about the protection of municipal self-government. Therefore the Association of Finnish Local and Regional Authorities is extremely reserved as regards the adoption of a legally binding Charter of Fundamental Rights, and would like to draw attention to some issues that have come up during the drafting of the Charter.

A key factor in the assessment of the provisions of the Charter is the partial flexibility of EU competence in *e.g.* the regulation of welfare services. The competence pursuant to the treaties possesses both a legal and a political dimension. The provision and financing of social, health care and education services for instance fall outside EU competence, whereas the coordination of social security and some issues within social policy and education do not (*e.g.* the coordination regulation 1408/71 and Articles 136 – 152 of the Treaty of Amsterdam).

Characteristic of the Finnish welfare society model is to finance basic services mainly with tax revenues and to offer these services to everybody (universalism). The municipalities provide and finance most welfare services. In several other Member States social security benefits are insurance based. Thus the social security of for instance a family member of an employee is based on the insurance of the employee.

A uniform European regulation of fundamental rights and the interpretation of legal and political norms of the European Court of Justice might not pay attention to the characteristics of the Finnish and other Nordic welfare systems. Therefore, the reactions have often been reserved as regards the extension of EU competence to include the regulation of basic social, health care and education services. As far as the municipality as an employer is concerned, the draft Charter also contains some problematic provisions. If the Charter of Fundamental Rights includes economic, social and cultural fundamental rights within fields that at present do not fall under EU competence or in which it mostly is political, Union competence is expanded using a so to say roundabout method.

The Association of Finnish Local and Regional Authorities particularly regards the following points as important:

The Association supports measures to strengthen fundamental rights in the European Union. These rights should not be laid down in a legally binding document – they should be included in a Charter of Fundamental Rights with the character of a political declaration. The basis should be the fundamental and human rights of the European Human Rights Convention, which already are observed as general principles within the EU. Moreover, a parallel goal could be that the European Union accedes to the Human Rights Convention.

The provisions on the fundamental rights and their reasons should be written thus that the level of protection of fundamental rights in the legislations of the Member States is not lowered in consequence of the provisions or their interpretation. Neither should the Charter of Fundamental Rights lead to that Finnish fundamental rights provisions are interpreted in a foreign way in Finland.

The final Charter of Fundamental Rights should include the law reservation of the draft, according to which the legislator of a Member State may restrict the rights guaranteed by the Charter. The Charter should take the protection of municipal self-government into account in accordance with the Charter of Local Self-Government adopted by the Council of Europe.

EU competence should not be expanded through the adoption of the Charter. The provision and maintenance of welfare services should remain within national competence. The Charter of Fundamental Rights and through it EU competence should not include such economic, social and cultural rights whose regulation currently belongs to the Member States. The Member States themselves should have the right to decide on their social security, health care and educational systems as well as on which activities are publicly financed. The supply, sufficiency and financing of vocational training should fall under national competence in the future too.

The Charter articles on the regulation of working life include factors, which especially require that the differences between the Member States be taken into account, including the varying national practices and the technical regulation in force in each Member State. Additionally, it has to be noted that *e.g.* industrial actions cannot be

regarded as part of community legislative competence. As provisions on the protection of property are drafted it has to be remembered that if these are not clearly formulated they may complicate the application of the Finnish land-use and redemption legislation.

The Charter of Fundamental Rights should include an as comprehensive principle as possible emphasising the right to information and transparency. The Charter should expressly provide that its objective or consequence is not to amend the Member State provisions on access to official documents, and that the loyalty principle may not be interpreted thus that access to documents is restricted in the activities of the national authorities.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 4 September 2000**CHARTE 4446/00****CONTRIB 300****COVER NOTE**

Subject : Draft Charter of fundamental rights of the European Union

Please find hereafter a contribution by Amnesty International, with some further comments and recommendations in the light of the forthcoming discussions on the complete text of the Charter.¹

¹ This text has been submitted in English language only.



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Brussels, 22 August 2000

B152

Dear Convention Members,

In light of the forthcoming discussions on the complete text of the Charter proposed by the Presidium on 28 July (document CHARTE 4422/00), Amnesty International would like to recall its position on the European Charter of Fundamental Rights and ask the Members of the Convention drafting the Charter to take the necessary action in order to ensure that this instrument achieves the goal set out in paragraph 4 of the Preamble, namely to “enhance the protection of fundamental rights”.

Amnesty International is concerned that despite the contributions presented by the organisation¹ and by other international organisations, as well as the debates held by the Convention and the amendments presented by its members to previous drafts, the current wording of the Charter still falls short of international law and standards as it does not reflect the broad framework of existing and evolving international law and standards, including the relevant jurisprudence and interpretation.

Amnesty International is an independent worldwide movement working for the release of all prisoners of conscience, fair and prompt trials for political prisoners and an end to torture, extrajudicial executions, “disappearances” and the death penalty. It is funded by donations from its members and supporters throughout the world. It has formal relations with the United Nations, Unesco, the Council of Europe, the Organization of African Unity and the Organization of American States.

¹ The organisation presented its contributions on the European Charter in March (document CHARTE 4173/00), April (document CHARTE 4290/00) and May 2000 (document CHARTE 4331/00).

Horizontal clauses have been the subject of much debate by the Convention. Although they aim at, *inter alia*, ensuring that at least the current level of protection of fundamental rights is guaranteed, they do not achieve this goal in their current form¹. This is the reason for Amnesty International to reiterate below a number of recommendations made in its earlier contributions.

Amnesty International calls for the following changes in the text of the European Charter.

Paragraph 2 of the Preamble: the importance of the principle of non-discrimination warrants inclusion in the Preamble

Paragraph 5 of the Preamble: in cataloguing the origins of the rights as they are to be reaffirmed in the Charter, this paragraph should also make reference to international law generally, and specifically include the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights.

Article 2: this provision should include express wording on the principles that the right to life shall be protected by law and that no one shall be arbitrarily deprived of life; it should affirm the abolition of the death penalty and include the prohibition of enacting or retaining any law which provides for the death penalty as a possible punishment.

Article 4: this article should read “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”, and so be brought in line with Article 5 of the Universal Declaration of Human Rights and Article 7 of the ICCPR. A European Charter which fails to prohibit “cruel treatment or punishment” would be ensuring a lower level of protection than the ICCPR, to which all Member States are parties.

Article 6: this article no longer contains even a general reference to safeguards necessary in case of deprivation of liberty. Amnesty International strongly reiterates its call for this article to prohibit arbitrary arrest and detention, and to include at least the following safeguards:

- the right to be promptly informed of one’s rights, including the right to counsel and the right to lodge complaints about one’s treatment;
- the right to be brought promptly before a judicial authority after being deprived of one’s liberty;
- the right to prompt access to a lawyer and to family or friends;
- the right to have a lawyer present during questioning;
- the right to challenge or have challenged the lawfulness of detention;
- the principle that it should not be the general rule that people are detained prior to trial;
- the principle that for juveniles, detention should only be used as a measure of last resort and for the shortest appropriate time, as enshrined in Article 9(3) of the ICCPR and Article 37(b) of the Convention on the Rights of the Child, respectively;
- the right to trial within a reasonable time or release from detention.

Article 10: this article should include the right to conscientious objection and the right not to hold any religious beliefs or to practice any religion.

¹ On this issue, please see the text of the intervention made by M. Marc Fischbach, observer of the Council of Europe, in the debate on the horizontal provisions (document CHARTE 4411/00).

Article 18: this right should be expressly recognized to everyone. It should not only refer to the UN Refugee Convention, but also to other international human rights treaties, as the treatment of asylum-seekers and refugees is also ruled by international human rights law.

Article 19: this provision should be brought in line with Article 4 (“... torture or cruel, inhuman or degrading treatment or punishment”). It should also include unfair trial.

Amnesty International calls for an express provision on the guarantees for a fair procedure and due process for any person facing expulsion, extradition or any other form of forced removal procedures that they may be subjected to. Such provision would be in line with Article 32 of the UN Refugee Convention and Article 13 of the International Covenant on Civil and Political Rights.

Article 21: the non-discrimination provision should include an affirmative action clause to the effect that prohibition of discrimination does not prevent taking measures designed to promote full and effective equality. Such provision would be in line with Article 1(4) of the International Convention on the Elimination of All Forms of Racial Discrimination and Article 4 (1) of the Convention on the Elimination of All Forms of Discrimination against Women.

It should also reflect the positive obligations of the EU to the effect that all Union policies should ensure equality and the equal enjoyment of the rights enshrined in the Charter by taking all appropriate measures to eliminate discrimination by any person, organization or enterprise.

Article 22: this provision should not be limited to gender only, and should be extended also to other relevant spheres of life.

Article 23: this provision should make reference to the Convention on the Rights of the Child.

Article 45: this provision should include the right to a fair and public hearing within a reasonable time by a competent tribunal, the right not to be compelled to testify or admit guilt, the right to remain silent without such silence being a consideration in the determination of guilt or innocence, the right not to be questioned in the absence of counsel unless the person has voluntarily waived his or her right to counsel, the right to equality of arms, and the right to a reasoned and public judgment.

Paragraph 3 should provide that legal aid be made available in any case where the interests of justice so require and without payment for those who lack sufficient resources, as set out in Article 14(3)(d) of the ICCPR.

Article 46: this provision should include the right to defend oneself in person and/or through legal counsel of one’s own choosing.

Article 48: this provision should be limited to the jurisdiction of the same state, in line with Article 4(1) of Protocol 7 to the European Convention on Human Rights.

Article 50: the current wording of this article fails to recognize that certain rights, notably the right to life and freedom from torture, are not derogable under any circumstances. Furthermore, by providing a general limitation clause, Article 50 is in fact allowing for the limitation of rights included in the European Charter which are not derogable under international law.

Paragraph 3 should use wording to establish that the meaning and scope of the rights in question shall be “no lower than” those conferred on them by the Convention.

As a final comment Amnesty International notes with concern that the current wording of the Charter still is not gender-neutral, and insists that this be remedied throughout the text and carried through in all language versions.

We hope that these observations will be taken into account in the final phase of drafting the Charter.

Yours sincerely,

Dick Oosting
Director

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE**fundamental.rights@consilium.eu.int**

Bruxelles, le 5 septembre 2000**CHARTE 4447/00****CONTRIB 301****NOTE DE TRANSMISSION**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne

Veillez trouver ci-après une contribution du Syndicat Libre du Danemark et Mouvement Populaire pour les Syndicats Libres, concernant la liberté syndicale. ¹

¹ Ce texte à été soumis en français, allemand et danois. (l'annexe existe en anglais seulement).

Herr Roman Herzog
President of the Convention Charter of Fundamental Rights of European Union
Council of the European Union
175, rue de la Loi
B-1048 Brussels

Århus, Danemark, 17. August 2000

Lettre adressée à la convention qui travaille avec la charte sur les droits fondamentaux des citoyens de l'UE

Liberté syndicale

”Les employeurs et les employés ont le droit de se syndiquer, entre autres dans le domaine de l’UE, afin d’établir des confédérations patronales et des confédérations syndicats de leur propre choix pour s’occuper des intérêts économiques et sociaux.

Tout employeur et tout employé a la liberté d’adhérer ou de non adhérer à des organisations de ce genre, sans que cela cause des préjudices à celui-ci, ni à titre personnel, ni à titre professionnel.”

Ainsi était conçu l’article 4, alinéa 1 de l’esquisse du 27 mars 2000 pour les droits économiques et sociaux de la charte de l’UE. Le paragraphe est d’ailleurs une copie de la charte de l’UE sur ”the Fundamental Social Rights of Workers (1989), article 5.

Nous avons appris que le paragraphe ci-dessus a disparu de l’esquisse globale de la charte. En même temps nous avons appris que le représentant du gouvernement danois, le social-démocrate Erling Olsen, dans les réunions de la convention du 3 et du 4 avril s’est prononcé contre cet article. A la lueur de cela nous voudrions vous informer sur la situation du marché du travail danois.

Au Danemark les accords exclusifs sont permis. Un accord exclusif veut dire que l’appartenance à un certain syndicat est obligatoire pour obtenir un travail dans une entreprise. Puisque les syndicats socialistes au Danemark, les syndicats LO, ont un objectif clairement politique, cela implique que beaucoup d’employés danois sont obligés – contre leur conviction – de subventionner un certain mouvement politique. On estime que plus de 200.000 employés danois travaillent dans le cadre d’un accord exclusif.

Si un employé se retire d’un syndicat, non seulement il risque d’être licencié, mais il risque aussi d’être condamné à une suspension des indemnités journalières de chômage pendant 5 semaines, puisque les caisses de chômage considèrent le licenciement comme un licenciement mérité.

Les conséquences sont considérables. En 1998 durant la période précédant les élections législatives au Danemark, la Confédération des syndicats LO a dépensé des millions de couronnes pour des campagnes publicitaires figurant dans tous les journaux du pays en faveur du gouvernement social-

démocrate actuel. Les observateurs des élections sont d'accord sur le fait que c'est grâce à cette campagne publicitaire que le gouvernement et ses partis de soutien ont gardé de justesse la majorité (90 contre 89). Pour protester contre cela, un grand nombre de syndiqués de LO n'a pas eu la possibilité de se retirer du syndicat, puisque cela leur aurait coûté leur travail et les indemnités journalières de chômage.

Au Danemark, les accords exclusifs sont souvent établis contre la volonté des employés et à l'aide des blocus. Plusieurs blocus de grande envergure ont été amorcés au Danemark ces dernières années parce que les syndicats de LO n'ont pas voulu accepter que les salariés adhèrent à des syndicats alternatifs.

La sujétion syndicale est bien renforcée par le système des caisses de chômage au Danemark. L'Etat a donné aux syndicats de LO le monopole de gérer les caisses de chômage, et ce monopole est utilisé – souvent illégalement – pour amener des membres au syndicat. Les syndicats interprofessionnels ne peuvent pas obtenir le droit d'établir des Caisses de chômage – exception faite à un unique syndicat chrétien interprofessionnel.

Des études danoises démontrent que la plupart des salariés danois adhèrent à un syndicat pour être membre d'une caisse de chômage; ainsi le gouvernement – par la voie législative des caisses de chômage – contribue à réprimer les syndicats interprofessionnels.

Le Syndicat Libre du Danemark et Le Mouvement Populaire pour les Syndicats Libres trouvent que la situation du marché du travail danois constitue une violation des droits de l'homme internationaux, entre autres la déclaration mondiale de l'O.N.U., article 10, alinéa 2, qui dit: "Personne ne peut être obligé d'adhérer à une association".

De notre point de vue, la sujétion syndicale est à l'opposition de la Convention Européenne des Droits de l'Homme, et par conséquent le Syndicat Libre du Danemark a déféré le Danemark devant le tribunal de Strasbourg (voir pièce jointe).

Nous insistons pour que la convention – malgré les protestations du gouvernement danois – maintienne la Charte de l'UE "of the Fundamental Social Rights of Workers"(1989), article 5, comme une partie de la charte.

Si vous souhaitez obtenir des informations supplémentaires sur la situation au Danemark ou sur le procès au Tribunal Européen des Droits de l'Homme, nous vous prions de contacter les soussignés..

Je vous prie d'agréer mes sincères salutations

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Le Syndicat Libre du Danemark, DFF, a été fondé le 3 septembre 1983 comme un syndicat apolitique et indépendant. Dès le début DFF a été au centre des grands conflits où les syndicats socialistes ont tout fait pour lutter contre l'organisation. Pour des renseignements supplémentaires: www.dff.net.

Le Mouvement Populaire pour les Syndicats Libres, 4F, est un groupement interpolitique qui travaille pour la liberté syndicale au Danemark. 4F essaie d'arriver à ses fins, en informant le public et les hommes politiques. Pour des renseignements supplémentaires: www.ffff.dk.

See Explanatory Note

EUROPEAN COURT OF HUMAN RIGHTS

Strasbourg, France

APPLICATION

under article 34 of the European Convention on Human Rights and Rules 45 and 47 of the Rules of Court

IMPORTANT: This application is a formal legal document and may effect your rights and obligations.

I- THE PARTIES

A. THE APPLICANT

1. Surname: Sørensen 2. First name(s): Morten

Sex: male/~~female~~

3. Nationality: Danish 4. Occupation: Stud. scient

5. Date and place of Birth: January, 3, 1975, Horsens, Denmark

6. Permanent address:

7. Tel. N°:

8. Present address (if different from 6.):

9. Name of representative*: Carsten Munk-Hansen

10. Occupation of representative: Afvocate

11. Address of representative: Kaj Munks Vej 4, DK-7400 Herning, Denmark

12. Tel. N°: ++ 45 9712 6699

B. THE HIGH CONTRACTING PARTY

(Fill in the name of the State(s) against which the application is directed)

13. Denmark

* A form of authority signed by the applicant should be submitted if a representative is appointed.

II- *Statement of the facts*

14.

The Danish company „FDB distribution" employed the applicant from May 10, 1996. As a condition for his employment, he had to sign a statement which bound him to be a member of a trade union under the Danish „LO" (= the central Danish organisation of trade unions). Also, in his letter of employment it was stated that there exists an agreement between his employer, FDB, and the Danish trade union SID (a Danish trade union of unskilled workers) under the „LO" - obliging his employer FDB only to employ persons being members of the SID.

On his first pay slip, the applicant could see that he was now a member of the SID, although he had never personally registered as such. In a letter of June 23, 1996, he wrote to his shop steward that he had been registered without knowing so, and that he did not want membership of the SID. The fact was that he had to pay subscription to the SID without being accepted as a full member of the SID, because he was only on holiday relief. Consequently, he had to pay for a membership of the trade union, without being able to benefit from the normal rights as a member of the SID. He protested against this, and stated that he did not at all want to be a member of this trade union.

His employer, FDB, immediately dismissed him. In a letter dated June 24, 1996, his employer, FDB, stated that he was sacked because he did not want to be a member of a trade union under the Danish LO.

On December 17, 1996, the applicant filed a claim against his former employer, FDB, demanding a compensation of DKK 20,000, which is the amount that the applicant would have received for the rest of his period as holiday relief, had he not been sacked by the FDB.

The case was brought before Vestre Landsret (The Western Appeal Court of Denmark). The applicant Morten Sørensen argued that article 11 of the Convention of Human Rights guarantees him both positive and negative freedom of association. It must be interpreted in the following way: It constituted a breach of Convention that he was sacked due to the fact that he was not a member of a trade union (or of a certain trade union). He admits that Danish law allowed his employer FDB to sack him for this reason, but he argued that the Danish legislation on this point was contrary to article 11. He also argued that the Convention at least on this point must have *Drittwirkung* on the horizontal level between him and his employer.

In its judgement of November 18, 1998, Vestre Landsret ruled that the judgements in cases *Sigurjónsson* (1993) and *Gústafsson* (1996) could not with certainty be interpreted in such a way that the present state of law in Denmark is contrary to article 11 of the Convention. Consequently, the employer, FDB, was acquitted.

The applicant appealed the judgement to Denmark's Højesteret (Supreme Court), where he repeated his arguments, but on June 8, 1999, Højesteret confirmed the judgement of Vestre Landsret. Højesteret ruled that the present Danish state of law was introduced in 1982 in order to respect the judgement in „British rail" (1981), and that judgements pronounced by the European Court of Human Rights since then do not give sufficient grounds to assume that article 11 guarantees a negative freedom of associations in a case like the present.

III- *Statement of alleged violation(s) of the convention and/or protocols and of relevant arguments*

(See part III of the Explanatory Note)

15.

The applicant argues - just as he did before Vestre Landsret and Højesteret in Denmark - that article 11 of the Convention guarantees him both his positive and his negative freedom of association, and that it is contrary to the Convention to force him to pay contributions to a trade union (or to a certain trade union), although he signed a statement on this behalf as a condition for his employment with the FDB.

He argues that such a written statement - signed by a job applicant as a condition to get the job - is signed under circumstances where he cannot with binding force renounce on his right under the Convention. Consequently, the Court should disregard the legal relevance of such a „forced" statement.

Furthermore, he argues that the positive right of association - i.e. the right to be member of a trade union - can be seriously circumvented, if one allows employers to disregard the negative right of association, i.e. the right of an employee not to be member of a trade union. If one did not accept the existence of a negative right of association, the employer could demand membership of a certain trade union which was „friendly" and slack towards this employer. Thus, the freedom to organise could be seriously undermined. Also, the personal freedom of speech under article 10 of the Convention would be endangered. Any statement from the employee contrary to the internal rules of the trade union where he was forced to be a member, could cause his exclusion from the trade union, and thus cause the loss of his job. Consequently, his freedom of speech would be seriously endangered, if one demanded his membership of a certain trade union as a condition for his employment with this employer.

The applicant reads the development in the judgements of the Court - especially the judgement in the cases Sigurjónsson and Gustafsson - as sign of a dynamic development in article 11, giving justified reason to assume that the negative aspect of the freedom of association is sufficiently guaranteed by article 11 today.

The absurdity of the applicant's dismissal is emphasised by the fact that he was not even accepted as a full member of the trade union, SID. He had to pay contributions to the trade union - and he was fired for refusing to do so - but he was not allowed a full membership, because he was only a holiday relief in the company, and thus he was not offered full protection and full rights under the SiD-membership. This fact emphasises the violation of article 11.

IV- *Statement relative to article 35 § 1 of the convention*

(See Part IV of the Explanatory Note. If necessary give the details mentioned below under points 16 to 18 on a separate sheet for each separate complainant)

16. *Final decision (date, court or authority and nature of decision).*

Judgement of June 8, 1999, from Højesteret (Supreme Court) of Denmark, case number 524/1998,

17. *Other decisions (list in chronological order, giving date, court or authority and nature of decision for each of them)*

Judgement of November 18, 1998, from Vestre Landsret (Western Appeal court), which judgement was confirmed by Højesteret. The facts of the case are mostly contained in Vestre Landsrets judgement.

18. *Is there or was there other appeal or other remedy available to you which you have not used? If so, explain why you have used it.*

NO. Højesteret is the ultimate and final appeal or remedy in Danish legal system.

V- STATEMENT OF THE OBJECT OF APPLICATION AND PROVISIONAL CLAIMS FOR JUST SATISFACTION

(See Part V of the Explanatory Note)

19.

The object of the application is (1) that the Court rules that a violation of the Convention has taken place, and (2) that the applicant is awarded a just satisfaction under article 41 of the Convention. The provisional claim for just satisfaction amounts to DKK 100,000,, including the DKK 20,000, which the applicant has lost because he was sacked before expiration of his period as holiday relief.

VI- STATEMENT CONCERNING OTHER INTERNATIONAL PROCEEDINGS

(See Part VI of the Explanatory Note)

20. *Have you submitted the above complains to any other procedure of international investigation or settlement? If so, give full details.*

NO.

VII- LIST OF DOCUMENTS - (NO ORIGINAL DOCUMENTS; ONLY PHOTOCOPIES)

(See Part VII of the Explanatory Note. Include copies of all decisions referred ti in Parts IV and VI above. If you do not have copies, you do not have copies, you should obtain them. If you cannot obtain them, explain why not. No documents will be returned to you.)

21.

a) Judgement by the Danish Højesteret (Supreme Court) dated June 8, 1999, case number 524/1998, consisting of 2 pages.

b) Judgement of November 18, 1998, by the Danish Vestre Landsret (Western Appeal Court, first chamber) case B-1022/97, consisting 9 pages.

c) Power of Attorney for the applicant to his legal representative, advocate Carsten Munk-Hansen

VIII- DECLARATION AND SIGNATURE

(See Part VIII of the Explanatory Note)

22. I hereby declare that to the best and belief the information I have given in the present application form is correct.

Place: DK-7400 Herning, Denmark

Date: October 1999

Carsten Munk-Hansen, advocate

Please see document C, which is a power of Attorney form the applicant Morten Sørensen to his legal representativ, advocate Carsten Munk-Hansen, authorising the latter to represent the applicant before the Court of Human Rights in Strasbourg.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 4 September 2000**CHARTE 4448/00****CONTRIB 302****COVER NOTE**

Subject : Draft Charter of fundamental rights of the European Union

Please find hereafter a contribution by the UK Engineering Employers' Federation, with comments on the document CHARTE 4422/00 CONVENT 45.¹

¹ This text has been submitted in English language only.

DRAFT EU CHARTER OF FUNDAMENTAL RIGHTS**EEF COMMENTS ON THE LATEST TEXT OF THE CHARTER PROPOSED BY THE PRAESIDIUM (CHARTER 4422/00, CONVENT 34)**

1. This paper responds to the latest text of the draft EU Charter of Fundamental Rights. It is the third position paper on the Charter submitted by the Engineering Employers' Federation (EEF), which represents over 5,700 companies in the United Kingdom engineering sector employing some 900,000 people.
2. The EEF and its members have a particular interest in the economic and social provisions of the draft Charter.

General Comments

3. The EEF believes that the new draft again represents some improvement on its predecessor (Convent 34). We welcome in particular the inclusion of new provisions reflecting existing rights on:
 - a) the freedom to conduct a business (Article 16),
 - b) the protection of intellectual property (Article 17.2)and
 - c) the strengthening of the provision on the right to work in any Member State (Article 15.2).
4. In addition Article 25 represents some improvement on the previous version in that it qualifies the right to information and consultation by referring to the need for such a right to be "in accordance with Community law and national laws and practices."
5. **Nonetheless the proposed Charter continues to cause the EEF considerable difficulty.** Rather than fulfilling its express aim of making existing rights more visible to citizens, the text still:
 - a) creates new rights (eg Article 28 on protection from unjustified dismissal),
 - b) maintains the expansionist technique of seeking to create new general rights out of more limited and specific rights (eg Article 25 on information and consultation, Article 31 on reconciling family and professional life)and
 - c) pre-empts negotiations currently taking place on draft Directives, (eg Article 21 on equal treatment and Article 25 on information and consultation.).
6. This undermining of existing decision-making procedures is extremely worrying.

7. In addition, it is easy to foresee these new and expanded rights being used by the Commission to justify the development of further legislation, even where they are reined in by explicit reference to Community and national laws and practices. Indeed organisations such as the International Federation of Human Rights see one of the advantages of the Charter as the fact that it will effectively provide guidance on the content of future Community legislation.
8. The EEF would suggest that the word "*existing*" should be added before "Community and national laws and practices" if the statement buried in Article 49.2 to the effect that the Charter "does not establish any new power or task for the Community" is to be at all convincing. As it stands, the wording could be read as extending rather than limiting EU intervention.
9. In addition the EEF would welcome greater clarification of certain rights where the meaning is currently unclear (eg Articles 27 and 34).
10. The EEF would also reiterate its concerns regarding:
 - a) the way in which the Charter will interact with the European Convention of Human Rightsand
 - b) its eventual status.
11. The Charter is currently written in a way that suggests that it will have full legal status, although the EEF understands that this issue will be decided subsequent to agreement on the content. If it was written in a way that did not assume full legal status, the Charter could be drafted so as to be more intelligible to the EU citizen.
12. The EEF's detailed comments on the new text are attached in the Annex.

August 2000

DRAFT EU CHARTER OF FUNDAMENTAL RIGHTS**EEF COMMENTS ON THE LATEST TEXT OF THE CHARTER PROPOSED BY THE
PRAESIDIUM (CHARTER 4422/00, CONVENT 34)****Detailed comments****Preamble**

1. "Solidarity" (paragraph 2) sounds rather strange in English. If another word cannot be found then it should at least be explained.
2. The words "in the light ofdevelopments" in paragraph 4 seem superfluous and only serve to detract from the clarity of the sentence.
3. Presumably paragraph 5 will depend on the eventual legal status of the Charter.
4. The words "to the human community and to future generations" in paragraph 6 raise questions as to who has rights and who has duties. They should perhaps be left out. Alternatively the issue should be dealt with in greater detail, clarifying which rights are owed to living individuals and which to others including companies.
5. Paragraph 7 should state who is guaranteeing the rights - presumably the EU.

Article 14 - Right to education

6. Whilst we welcome this right in general terms, it is unclear whether the word "access" narrows or extends the right to vocational training. The EEF could not accept any universal requirement for employers to pay for vocational training for their employees, for example, particularly where such training is not related to the job being undertaken. This must remain voluntary.
7. The EEF is also concerned that the inclusion of the right of access to vocational training may be used to justify the extension of Commission competence to this area, which the EEF believes should be the preserve of national law and practice.

Article 15 - Freedom to choose an occupation

8. The previous text referred only to the freedom to move and reside in any Member State. The extension of Article 15.2 to cover freedom to work etc reaffirms freedom of movement within the EU and recognises the importance of mobility of labour. This is an improvement.

Article 16 - Freedom to conduct a business

9. This is a new and welcome reaffirmation of the freedom of establishment.

Article 17 - Right to property

10. The recognition of existing rights regarding the protection of intellectual property is welcome.

Article 21 - Equality and non-discrimination

11. This pre-empts agreement on, and extends the scope of, the draft Directive on equal treatment in employment. Discrimination in employment matters on grounds such as religion, belief, disability, age or sexual orientation is not yet illegal in an EU context, although there are national provisions in this area (eg the UK Disability Discrimination Act). Furthermore the existing text of the draft Directive makes no mention of discrimination on grounds of genetic features, language, political belief, membership of a national minority, property or birth.

12. In addition the right is unqualified, whereas Community and national law on discrimination is often subject to qualification or subject to derogations where justification can be made. The words "such as" should be deleted

Article 22 - Equality between men and women

13. The loosely worded phrase "equal pay forwork of equal value" has re-appeared. This should be tightened up by adding "in the same employment".

14. The second paragraph seems to allow positive discrimination such as quota systems, which goes beyond existing UK and EU law. The existence of this clause could provide the justification for future EU legislation in this area.

Article 24 - Integration of persons with disabilities

15. As far as occupational integration is concerned, this should be qualified by reference to practicality and cost.

Article 25 - Workers' right to information and consultation within the undertaking

16. This inclusion of "in accordance with Community law and national laws and practices" represents an improvement, but this Article still seeks to make a general right out of a limited and qualified right. It thus pre-empts the outcome of discussions on national information and consultation. This is unacceptable.

17. In addition, the phrase "on matters which concern them" is susceptible to widely differing interpretations and thus likely to be a source of litigation. It could be said that raising a subject in the first place is evidence of concern.

Article 26 - Right of collective bargaining and action

18. This Article still includes the right not only to negotiate but also to conclude collective agreements, thus going beyond the European Convention on Human Rights and UK law. This is of concern, despite the inclusion of "in accordance with Community law and national laws and practices", which could be read as extending rather than limiting EU intervention in this area.

Article 27 - Right of access to placement services

19. The meaning of this new provision is unclear.

Article 28 - Protection in the event of unjustified dismissal

20. This right does not currently exist under EU law. The inclusion of this new general right is unacceptable. Even under existing UK law on unfair dismissal, there is, in most cases, a qualifying period of service. This is not reflected in the Charter proposal.

Article 29 - Fair and just working conditions

21. The former title of "Safe and healthy working conditions" (old article 36) was clearer. Reference to "just" working conditions could imply an interest in, for example, remuneration, which would clearly exceed the scope of Community competence. Presumably the reference to workers' dignity in Article 29.1 is intended to cover harassment etc, though again this is not clear.

22. We suggested in our previous submission that the Article on working time be subsumed under this broader Article as the Working Time Directive was brought forward as a health and safety measure. We note that this has now been done via Article 29.2. As drafted, however, this could be used to justify removing the opt-out with regard to working time. We would prefer the right to be qualified by reference to the need to be in accordance with Community and national law.

Article 31 - Reconciling family and professional life

23. The unqualified right for everyone "to reconcile their family and professional lives" potentially goes much further than existing agreed rights and is unacceptable as it stands.

Article 34 - Access to services of general economic interest

24. This has no meaning in English. "Services of general economic interest" requires definition or illustration.

Article 35 - Environmental Protection

25. Reference should also be made to the need for proportionality, ie the avoidance of excessive cost for minimal environmental gain.

26. The EEF would argue that "sustainable development" is a process rather than a principle.

27. The Article is drafted without any mention of rights, although we assume they are implied by what is said about "a good quality living environment" etc. If this is the case, it is noteworthy that the Praesidium believes that all existing rights pertaining to the environment can be dealt with in two sentences, while the Charter's social provisions are much lengthier. Does this really reflect the balance of public concern within the EU?

Article 49 - Scope

28. Whilst on the face of it the limitation of the Charter's scope represented by Article 49.2 is welcome, the EEF finds it hard to believe that the Charter will not provide a springboard or justification for further Community activity in the fields it covers.

August 2000

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 4 September 2000**CHARTE 4449/00****CONTRIB 303****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a contribution by the European Centre of the International Council of Women (ECICW).¹

¹ This text exists in English language only.

AMENDMENTS ON THE DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Brussels, 24 August 2000

Subject: Draft Charter of Fundamental Rights of the European Union

Please find hereafter the amendments made by the European Centre of the International Council of Women (ECICW)¹.

In my capacity of president of the European Council of Women I am forwarding to the Praesidium the comments of this organisation fully aware of the fact that because of the shortage of time to introduce comments, this document will be far from perfect and incomplete².

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² We refer at the first comments the ECICW made: CONTRIB 227, CHARTE 4364/00, Brussels, 14th of June, 2000.

AMENDMENTS

PREAMBLE

5. *Comments:* As the term ‘the principle of subsidiarity’ is rather new, we would like to know what exactly is meant in this paragraph. Does it mean that the decisions are taken on different levels, in other words, ‘decentralisation’.
6. “Enjoyment of these rights entails responsibilities and duties...”
Comments: Responsibilities and duties for whom? For the member states of the union, for the European Commission...?
7. “Each person is therefore guaranteed the rights and freedoms set out hereafter.”
Comments: We would like to drop the word ‘*therefore*’. If this document is really a defence of fundamental rights, there must be no complementary reason to grant these rights to each person.

CHAPTER I: DIGNITY

Article 3: Right to the integrity of the person

1. “Everyone has the right to respect for his ‘*physical and mental integrity*’.
Comments: Does the word ‘integrity’ cover the intentions of the drafters of this text? Does it mean the attempts of attacks by third persons, organisations or state authorities? Or should we add integrity and *self-determination*?
The Charter rightly speaks of *the person*, which is neutral. However in several articles the text speaks of *his* or *him* (see also e.g. art. 17, art. 19, art. 39 and others). This is of course not in conformity with the articles on *gender equality*. Therefore we propose a neutral phraseology.
Proposal: “*Everyone has the right to respect for the person’s physical and mental integrity and self-determination*”.

2. *Comments:* We fear that this article is in contradiction with article 13 or at least it shows limitations of article 13.
What for example about medical treatment, intervention or tests on children? Very often the parents and/or the guardians, take the decisions. Are these decisions always in the interest of the child? With informed consent? From what age on does the child respond to article 3.1. See also article 23.

CHAPTER II. FREEDOMS

Article 7. Respect for private and family life.

Comments: Seems to be conceived for men only?

Proposal: Drop the gender definition and to keep the text neutral:
“Everyone has the right to respect for private and family life, home and confidentiality of communications”.

Article 8. Protection of personal data

Comments: Same remarks as on article 7.

Article 9. Right to marry and right to found a family

Comments: The right to marry is independent and different from the right to found a family.
 We read *“shall be guaranteed in accordance with the national laws governing the exercise of these rights”*. What if the national laws are infringing the fundamental rights?

Proposal: is to stop the phrase after *“shall be guaranteed”* and to drop the rest.

Article 10. Freedom of thought, conscience and religion

Comments: The title of this article is not so complete as the text of this article. Indeed, the title dropped the word *“believe”*. This is also the case in the first phrase of this article. The rest of the text is ok.

Proposal: for the title of article 10 is: *“Freedom of thought, conscience, religion and belief”*. The same remark for the first sentence.

Proposal: to add to the last phrase: *“to manifest religion or belief, in worship, teaching, practice and observance, **with due respect for pluralism**”* (see article 11.2).

Article 11. Freedom of expression and information

1. *“... to receive and impart information and ideas without interference by *public authority* and regardless of frontiers”.*

Comments: The interference is not always coming from public authorities, but also from persons in authority (members of the family, religious people etc.)

Proposal: Interference by public authority or private persons in authority.

Article 12. Freedom of assembly and of association

Comments: What does *‘peaceful assembly’* mean? Fear for physical violence? For moral pressure?

“... and to freedom of association, in particular in political, trade union and civic matters”.

Comments: We want to stop the phrase after *“freedom of association”* as the rest of the phrase is too restrictive in the view of numerous conflicts based on racial, national or philosophical ideas.

“Political parties at European level contribute to expressing the political will of the citizens of the Union”

Comments: We are disappointed that the political parties only *contribute* to expressing the political will of citizens. At least they *should* contribute to expressing that. Several inter-governmental bodies like the UN, the Council of Europe ... are recommending and pleading for actions to pay attention to the will of civil society. What was the cause of the clash in Seattle?

Article 13. Freedom of research

Comments: We feel that this is in contradiction with article 3.2.

Article 14. Right to education

1. “... This right includes the right to receive *free compulsory education*”.

Comments: Is this not a contradictio in terminis?

2. “... to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be guaranteed, in accordance with the national laws governing the exercise of such freedom and right”.

Comments: Same remarks as on article 10: with due respect for pluralism.

“... in accordance with the national laws governing the exercise of such freedom and right”.

Comments: Again: as long as they respect the universal human rights.

Proposal: The phrase should stop after ‘shall be guaranteed’.

Article 17. Right to property

1. *Comments:* See remarks on article 3. We are pleading for a gender neutral text.

Proposal: “Every person has the right to own, use, dispose of and bequeath **personal** lawfully acquired possessions. No one may be deprived of **these** possessions ...”

Article 19. Protection in the event of removal, expulsion or extradition

2. “No one may be removed, expelled, or extradited to a State where **he** could be subjected to the death penalty, torture or other inhuman or degrading treatment”.

Comments: This sentence is really shocking. What about rape, can **he** be raped?

Indeed he can be sexually abused and maltreated but women are more often subject of rape. So this situation should be considered and added to the violence enumerated in this paragraph. Moreover it is recognised by the UN and other intergovernmental bodies that in armed conflicts the ‘rape of women’ became a **weapon of war**.

Proposal: In this sentence it should be clearly stated that “**he and she could be subjected to ...**”

CHAPTER III. EQUALITY

Article 22. Equality between men and women

“Equal opportunities and equal treatment for men and women as regards employment and work, including equal pay for equal work or for work of equal value, must be ensured”.

Comments: “Equality between men and women” is here only defended in the framework of work and employment.

Proposal: The title of article 22 should be “*Equality between men and women in employment and work*”.

Moreover, in juridical texts we do not use the word “equality” but “*equal rights*”.

Here again I regret not to have the time to explain why it is necessary to change the wording.

“The principle of equal treatment shall not prevent the maintenance or adoption of measures providing for specific advantages in order to make it easier for the under-represented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers”.

Comments: This paragraph needs a long text to explain to those who created this draft charter, what the correct language is, normally used by the UN and the Council of Europe for juridical texts. The World Conferences of the last decade prove a totally different attitude towards the promotion of equal rights between men and women. In 1993 the final declaration of the Vienna Conference on Human Rights, was adopted by the member states, and only a small number of states formulated reservations, mainly based on religious convictions. In the Declaration of Vienna we find the famous statement: “*Women’s rights are human rights and human rights are women’s rights*”.

Comments: The authors of this Draft Charter only mention “*equal treatment*” and further “*specific advantages*”. Again only speaking of vocational activities ... in professional careers. The fundamental human rights are dealing with many situations in life, not only with “vocational activities” and “compensation in professional careers”. Quid with family, education, nutrition, medical care etc.?

Over the last decade there has been a great deal of change in the promotion of equal rights for all human beings. Another proof of this is that we no longer speak about ‘positive discrimination’ but about ‘positive action’. How can we repair discrimination of certain groups by discriminating others? In order to obtain equal rights? Therefore we also protest against the wording of “specific advantages”!!!

The human race and all individuals are not identical not only regarding physical constitution, but in many other ways too. For this reason, referring to the paragraph in article 22, “specific measures”, not “advantages!”, should be used and be inserted for pregnancy, giving birth, breastfeeding, etc. This will not be specific advantages ‘for women’, but also for the child to be born and for society.

Article 23. Protection of children

1. *Comment:* This paragraph should state that the children are entitled to claim the same human rights as all human beings in the world. However we are fully aware that children need protection. In doing so, we should be more precise in defining this protection.
According to article 1 of the Convention of Children’s Rights every human being, younger than eighteen years old is considered as a child.
- Comment:* The wording of this paragraph is open not only to many points of view, but also for a lot of misunderstanding.
“Children may express their views freely”. Thus no longer ‘SHUT UP’?.
“Such views shall be taken into consideration on matters which concern them ...” Of course not something which concerns their teachers, their parents, their friends.
“... in accordance with their age and maturity”. Ok, but who and on what basis will ‘maturity’ be defined? So e.g. when they are sexually mature, this does not mean that they are mature enough to judge about the situations and consequences of having sex.
2. *Comment:* The only request we have is a definition and an indication of what is considered as ‘private institutions’? What is considered as an institution? Schools, religious or philosophical institutions ...? Do they have to conform to laws in order to be considered and accepted as institutions? And what about the family? In 1994 during the International Year of the Family, there was a huge discussion about ‘The Rights of the Family as a Unit’. The Human Rights Conventions and Treaties are dealing with rights of individuals, not of groups. For this reason the idea of the ‘family as a unit’ was rejected. Is it possible to have, within article 23, a paragraph about the relation between child and family?

CHAPTER IV. SOLIDARITY**Article 25 to Article 32**

- Comments:* These articles are only dealing with the professional life of workers. A similar chapter is probably needed for solidarity in Civil Society. Every citizen within the Community has rights and obligations “to promote social and territorial cohesion”.
- Proposal:* Chapter four should be entitled “Solidarity in Labour Force or Labour Organisations”.

Article 33 Health care

- Comments:* In our opinion the following part should be dropped: “under the conditions established by national laws and practices”. Reason: everyone also includes migrants, refugees, persons in need ...

Proposal: Every human being in Europe has the right to access to preventive health care and the right to benefit from medical treatment.

Article 36. Consumer protection

“Union policies shall ensure a high level of protection as regards the health, safety and interest of consumers”.

Proposal: Add at the end of the sentence: “... consumers *living in Europe*”.

Article 39. Right to good administration

1. *Comments:* We repeat our remarks about the use of *his* and *him* in this text.
Proposal: “*Every person has the right to have personal/individual affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union*”. Indeed this right is granted to every person.

 2. “This right includes:”
 - “the right of every person to be heard before any individual measure which would affect him adversely is taken in relation to him”
Comment: We would like to drop “*of every person*” and again the use of “*him*”.
Proposal: “*The right to be heard before any individual measure which would affect a **person** adversely is taken in relation to this individual person*”
-

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 4 September 2000**CHARTE 4450/00****CONTRIB 304****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a contribution from the European Landowner's Organisation (ELO), regarding Article 17 on ownership rights. ¹

¹ This text exists in English language only.

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O/Ref. JN-767/00

To the Presidium of the Convention

Re Article 17 on ownership rights

The ELO (European Landowners' Organisation), the GEFI (Groupement Européen des Fédérations Immobilières) and the CEPF (Propriété Forestière), have with great interest studied the new draft of the Article on ownership rights (now Article 17).

A. We note with great satisfaction that the Article now clarifies that it also protects intellectual property. As can be seen from our previous interventions we have of course anticipated that all property, including intellectual property, should be protected, but as one of the purposes of the Charter is to make the rights more clear to the citizens it is good that it is now explicitly mentioned.

B. It is regrettable, however, that in the latest (July 28) draft Article has been added a new sentence (p 1, sentence number 3) which rather makes the legal situation for ownership rights unclear. Does this sentence overtake sentence number 1 and 2? Or is it only an explanation of these other sentences? As far as we understand the new wording will invite to innumerable legal interpretation problems, and of course also to uncertainty for the citizens.

In our opinion the previous wordings of the article presented by the Presidium were considerably more clear and understandable.

Our basic standpoint is thus, that the Convention should revert to the previous wordings (although we still maintain our suggestions for a change of a couple of the words; see C below).

If, however, the Convention finds it necessary to include elements of sentence number 3 in the article, we suggest a compromise where those elements are instead incorporated in sentence number 2 , which would to a great extent eliminate the risk for an unclear legal situation. We suggest that the article p 1 then be given the following wording:

1. Every person has the right to own, use, dispose of and bequeath his lawfully acquired possessions. No one may be deprived of his possessions or regulated in their use, except insofar as it is necessary for the general interest and in the cases and under the conditions provided for by law, subject to prior guarantee of fair compensation.

C. We maintain our previous suggestion to use the word "full" instead of "fair" compensation. "Fair" could invite to too much subjective interpretations and could give the citizens a feeling of not being objectively protected - "full" would give the citizens a far better sense of real protection of their rights.

We have understood that there is, however, some objection to the word "full". It has been pointed out, for instance, that there could well be anticipated situations where government intervention do not lead to losses for the owner or could even lead to economic gains for him.

In order to find a solution we suggest a compromise where the wording instead of "fair compensation" should be only "compensation for his loss".

Johan Nordenfalk
President

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 4 September 2000**CHARTE 4451/00****CONTRIB 305****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter enclosed a contribution from The Advisory Council on International Affairs (AIV) ¹, with an advisory report on the developments in the context of the Convention. ²

¹ Independent advisory body to the Dutch Government and Parliament.

² This text has been submitted in English language only.

A EUROPEAN CHARTER OF FUNDAMENTAL RIGHTS?

No. 15, May 2000

Advisory Council on International Affairs

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Foreword

In its meeting on 3-4 June 1999 the Cologne European Council decided to draft a Charter of Fundamental Rights for the European Union following an initiative of the German EU presidency in 1999. The conclusions of the Cologne Council stated that the EU had reached a stage in its development at which it was desirable to formulate the rights that applied in the Union in a Charter, the primary aim being to make them more visible to the Union's citizens. The Council also stated that the new Charter should in no way detract from the fundamental rights that already applied within the Union, as set forth e.g. in the European Convention on Human Rights.

The Tampere European Council, meeting on 15 and 16 October 1999, reached agreement on the composition, working methods and practical arrangements of the Forum responsible for drafting a Charter of Fundamental Rights. This Forum (known since February 2000 as the Convention) consists of Members of the European Parliament, the legislative bodies of Member States, authorised government representatives and representatives of the European Commission. It has undertaken to complete an interim report before the European Council in June 2000 and to submit a draft Charter to the Council in Paris/Nice on 7-8 December 2000.

On 14 January 2000 the Minister of Foreign Affairs asked the Advisory Council on International Affairs (AIV) to prepare an advisory report on the proposed Charter. In its request for advice, which was formulated at the request of the General Committee on European Affairs of the Lower House of Parliament, the Minister emphasised that the AIV was not being asked to supply a blueprint for a Charter. What he wanted was an answer to questions concerning the legal status of such a Charter, its relationship to existing conventions and other agreements under international law, the consequences for members of the public and possible appeal proceedings that should be attached to it. These are the so-called 'horizontal' questions (see Annexe I for the text of the request for advice). In the light of the rapid developments surrounding the Charter, the Government found itself obliged to adopt a position while the advisory report was still under preparation. The AIV briefly considered responding to this position, but decided against it, as the advisory report and the Government position paper would be appearing at roughly the same time.

In preparing this advisory report, the AIV studied many reports and documents written about the proposed Charter, and had several discussions with experts responsible for drafting it (a list of persons consulted appears in Annexe II). The AIV is grateful to all persons and bodies consulted for their assistance, and wishes to express its special appreciation for the support it received from J.H.M. van Bonzel and I. Henneken of the Permanent Mission in Brussels for arranging the programme for the visit to the Convention meeting in Brussels on 27 April 2000. While the advisory report was being prepared, good ties were maintained at secretarial level with the Ad Hoc group on the EU Charter of the International Economic and Social Affairs Committee of the Dutch Socio-Economic Council (SER).

The advisory report was prepared in a special AIV Committee on the Charter of Fundamental Rights (CHV), comprising the following persons: Professor F.H.J.J. Andriessen* (CEI), Dr A. Bloed* (CVV), T. Etty (CMR), Professor C. Flinterman (CMR), Professor W.J.M. van Genugten (Chairman/CMR), C. Hak (CMR), F. Kuitenbrouwer (CMR), H.C. Posthumus Meyjes (CEI), Professor N.J. Schrijver* (COS) and M.G. Wezenbeek-Geuke (CEI). The members whose names are marked with an asterisk took part primarily by correspondence.

The preparation of the advisory report benefited from the special advice and support of A.R. Westerink (European Integration Affairs Department, Ministry of Foreign Affairs). The CHV's secretariat was in the hands of T.D.J. Oostenbrink (secretary of the CMR) and trainees A. Schueler and E. van Zimmeren.

The advisory report was discussed during the plenary session of the Human Rights Committee on 18 May 2000 and subsequently adopted by the AIV on 29 May 2000.

I Long-term perspective

Since the Maastricht Treaty (1992), the European Union (EU) has had three ‘pillars’.¹ The first and most comprehensive pillar, which has existed for many decades, is the European Community (EC). In the EC, the protection of human rights has acquired form and content largely in the case law of the European Court of Justice (ECJ). This case law is largely based on the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) of 1950, to which all Member States are party, and on the common constitutional traditions of the Member States.² Sometimes, however, the Court will allow an appeal to other human rights conventions, such as the International Covenant on Civil and Political Rights (ICCPR, 1966).³ The EC Treaty itself, though several times revised, contains few provisions in the realm of human rights.

The Treaties on European Union (Maastricht, 7 February 1992 and Amsterdam, 2 October 1997) build on the established case law of the ECJ. Article F, paragraph 2 of the Maastricht Treaty (Article 6, paragraph 2 of the Treaty of Amsterdam) provides that the European Union shall respect human rights as guaranteed by the ECHR, including the *acquis*, and as they result from the constitutional traditions common to the Member States. Furthermore, the Treaty of Amsterdam contains the additional provision, in Article 6, paragraph 1, that the EU is founded on the principles of freedom, democracy, respect for human rights and fundamental freedoms and the rule of law, principles which the Member States have in common. Article 7 has a sanction/suspension clause. Article 46 provides for the exercise of judicial control over respect for human rights.

As already noted in the request for advice, the former Advisory Committee on Human Rights and Foreign Policy (ACM), in its 1996 advisory report on the European Union and Human Rights,⁴ elaborated three suggestions relating to the protection of human rights within the framework of the Union, viz.:

- the accession of the EC or possibly the EU to the ECHR;
- the EU’s adoption of its own ‘Bill of Rights’;
- a gradual increase in the number of specific human rights provisions in the EU Treaties.

¹ These pillars are the European Community (EC), the Common Foreign and Security Policy (CFSP) and cooperation in the area of Justice and Home Affairs (JHA). See e.g. ECJ Stauder judgment (29/69) of 12 November 1969; ECJ 2nd Nold judgment (4/73) of 14 May 1974; ECJ Hoechst judgment (46/87) of 26 March 1987 and ECJ Orkem judgment (374/87) of 18 October 1989.

³ The ECJ Orkem judgment (374/87) of 18 October 1989 refers explicitly to the ICCPR.

⁴ See Advisory Committee on Human Rights and Foreign Policy, ‘The European Union and Human Rights’, advisory report no. 21, The Hague, 1996.

The ACM concluded that a ‘step-by-step’, ‘one right at a time’ approach was the most realistic in the short term. In the longer term, however, efforts should be made to achieve the accession of the EC or EU to the ECHR or the drafting of the EU's own Bill of Rights.

Now it has been decided to draft an EU Charter and the situation described above has completely changed, the AIV has deliberated at length, as the ACM did before, on the human rights protection that should ultimately be realised within the Union. The AIV sees ‘Operation Drafting a Charter’ as an intermediate stage, whose direction can best be determined once it is clear what the long-term perspective is. This is even more to the point if it emerges in the course of 2000 that no satisfactory consensus can be achieved on the text of a Charter.

Before answering the Minister's questions at length, the AIV wishes to set out the points of departure adopted in this advisory report. The AIV envisages a Europe characterised by:

1. the realisation of civil and political rights within the meaning of the ECHR, but also the ICCPR, and of economic, social and cultural rights within the meaning of the European Social Charter (Revised) (ESC, 1961; ESC (Revised), 1996), the International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966) and the ‘human rights conventions’ of the ILO;⁵
2. the explicit commitment of administrators and officials, both at national level and in Brussels, to respect for fundamental human rights;
3. the visibility and clarity of the rights referred to in point 1 to the citizens of the Union and third-country nationals,⁶ as well as members of the legal profession;
4. a system of controllability and legal protection, that provides *inter alia* for the possibility of taking legal action against EU institutions whose actions violate fundamental human rights.

Taking these basic principles as its points of departure, the AIV would stress that where it comes to the protection of civil and political rights, the accession of the EU to the ECHR is by far the most preferable option. The AIV is unconvinced by the argument, frequently voiced, that it is already too late for such accession. The following comments may serve to explain this position.

As already noted, the European Court of Justice (ECJ) has incorporated the rights enshrined in the ECHR into the general principles of Community law, which law has been ratified by all Member States of the EC/EU through the inclusion of relevant Articles in the EU Treaties (see above). It is therefore still a logical sequel for the EU itself to accede to the ECHR. In this way the ECHR would acquire significance for all three pillars of the EU, which the AIV believes to be the most desirable outcome. It would also prevent the ECJ interpreting fundamental rights in a manner that would either provide less protection than Strasbourg case law or diverge from it significantly in some other way. At the same time it would mean that the ECHR would become the common human rights

⁵ Viz. ILO conventions nos. 87 and 98; 29 and 105; 100 and 111; 138 and 182.

⁶ The phrase derives from the Treaty of Amsterdam.

basis for the whole of Europe, including EU institutions, thus warding off the threat of a divided Europe. Furthermore, such accession would make it possible for the actions of EU institutions in specific situations to be examined by the Strasbourg Court in response to complaints about human rights violations.

The AIV is well aware that accession to the ECHR – and the same would apply *mutatis mutandis* to acceptance of the obligations following from the ESC (Revised), in relation to which it should be borne in mind that not all the obligations following from it could be declared equally applicable to the EU – would not be easy to achieve. Differences of opinion exist between the Member States; nor do all parties agree, whether in political or in legal circles, on the possible legal obstacles. It will be recalled that as long ago as 1979 the European Commission proposed that the EC should accede to the ECHR, with a view to reinforcing human rights protection within the Community. This proposal elicited the ECJ's advisory ruling of 28 March 1996, which stated that the Community did not possess the competence to accede to the ECHR. According to the ECJ, such accession could not take place without an amendment to the EC Treaty. Moreover, the question of whether the ECHR itself and its Protocols would have to be amended in this case would also have to be looked at. The question to be answered is whether new reasons may now be advanced for urging reconsideration of the ECJ's advice.

The request issued to the ECJ to advise on the accession of the EC to the ECHR was to a large extent inspired, at the time, by the political opposition of some EU Member States to an extensive interpretation of Article 235 (old) of the EC Treaty ('If action by the Community should prove necessary to attain, in the course of the operation of the common market, one of the objectives of the Community and this Treaty has not provided the necessary powers, the Council shall, acting unanimously on a proposal from the Commission and after consulting the European Parliament, take the appropriate measures'). Since the entry into force of the Treaty of Amsterdam, with the new Title IV included in the first pillar, the protection of human rights has moved closer towards definition as one of the Union's core objectives. The provisions to this end formulated in Article 6, paragraph 1 transform the comment that systems of government should be based on democratic principles into an absolute condition.⁷ This is clear, for instance, from the fact that Article O (old) of the EU Treaty (now Article 49) has been amended such that any European state which respects the said principles may apply to become a member of the Union. Furthermore, Article 6, paragraph 4 of the EU Treaty states that the Union 'shall provide itself with the means necessary' to pursue the principles of the rule of law on which the Union is based. Basically, Article 6, paragraph 1 encapsulates the obligation that any state wishing to accede to the EU must be party to the ECHR. As far as fundamental rights are concerned, the Treaty of Amsterdam clearly states that the Union possesses certain qualities of constitutional law. The principles concerned are no longer the

⁷ This is a quotation from Professor R. Barents in *Het Verdrag van Amsterdam*, Kluwer, Deventer, 1997, pp. 24-27.

exclusive prerogative of Member States, but now also affect the Union as a whole.⁸ Furthermore, the Strasbourg Court has made it clear in a number of recent judgments that it too wishes to step up the pressure to make Union institutions accountable for the implementation of decisions – as far as the consequences of the application of Community law within the national legal orders of Member States are concerned, in any case.⁹ In addition, we may cite the decision-making during the Tampere summit of 15 and 16 October 1999. The Presidency's conclusions dwelt at length in the chapter 'Towards a Union of freedom, security and justice', on the common values that are of essential importance to the EU, and the procedure for drafting a Charter on fundamental rights was further elaborated.¹⁰

As matters now stand, the EU does not possess the competence to conclude international human rights conventions or to accede to any such conventions. This is often explained by stating that the EU lacks the legal personality that would be necessary for such actions. In the AIV's view, however, there is nothing to stop the Member States deciding, for instance within the framework of the current IGC negotiations, to have the EC/EU accede to the ECHR. All that is needed is the will to do it, and for this will to be expressed: if all fifteen EU Member States decide that such accession is desirable and affirm their support for it, the process can be set in motion.¹¹ There is no need to create a separate, absolute legal personality for the Union, by analogy with Article 281 of the EC Treaty, which affirms that the Community possesses legal personality. The general debate on legal personality should be separated from the actual willingness to effect accession to the ECHR. According to the AIV, this willingness is in itself the decisive factor. All this applies to the Union side of the equation. On the ECHR side, separate problems present themselves, such as the necessary amendment of the Statute of the Council of Europe and of the ECHR itself. These too can be resolved, however, provided there is the political will to do so. It should be borne in mind, however, that the Council of Europe consists of another 26 Member States besides the fifteen partners in the Union, each with its own views on these matters.

Another possibility, where accession to the ECHR is concerned, is the application of the doctrine of

⁸ Ibid.

⁹ See e.g. European Court of Human Rights, 19 February 1999, Matthews – United Kingdom, in R.A. Lawson & H. Schermers, *Leading cases of the Court of Human Rights* (2nd ed., Ars Aequi, 1999, p. 671), and European Court of Human Rights, 17 March 2000, T.I. – United Kingdom, (*Nederlands Juristenblad*, no. 19, 12 May 2000, pp. 981-982).

¹⁰ On this subject, see e.g. the letter from the Minister of Foreign Affairs to the Speaker of the Lower House, of 26 October 1999, concerning a Forum to prepare an EU Charter of Fundamental Rights (DIE/676/99).

¹¹ By way of comparison: the legal personality of the United Nations under international law is also not explicitly regulated; see however the Reparations for Injuries in the Service of the United Nations, Advisory Opinion of the ICJ, 11 April 1949, p. 174 ff.

‘implied powers’. This doctrine deals in general terms with the question of whether an organisation in which competence has been vested internally within a particular area may also take on external responsibilities that are necessary for the adequate fulfilment of that competence. Although the doctrine of ‘implied powers’ is also acknowledged within the framework of the Union – see e.g. the 1956 *Fédéchar* ruling – it plays a minor role in the EU, because many of the Union's powers have been explicitly regulated by the Member States, for the sake of caution. One exception, however, is the power to conclude external conventions. In this area the doctrine is invoked with some regularity, one example being the Community's accession to the WTO Treaty. The AIV would recommend that, now that the Union's powers in the realm of human rights and related matters are to be gradually expanded (cf. Title IV of the Treaty of Amsterdam), the government investigate whether the situation has changed sufficiently, or will have changed sufficiently after the adoption of the Charter, for the doctrine of implied powers to be deemed applicable.

Taking all these considerations and trends into account, the AIV recommends that the government explore the climate of opinion among the present Member States in the near future, or that it endeavour to procure a fresh ruling from the ECJ on the question of accession, in the light of the latest developments and on the basis of specific questions.¹²

The AIV has also reflected on what action should be taken if neither of the above recommendations is followed. In this event, a number of possible approaches still remain, as described above. The least dramatic approach would be to try to bring about a political declaration. Such a declaration, however, runs a great risk of becoming ‘all things to all Member States’, given the way the Convention is working. After all, the compilers would be at liberty to add new rights (for more on this point see below) without states being bound by the declaration and without citizens acquiring any added legal protection. The AIV would view this latter situation as undesirable. It would arouse false expectations among the general public. It is clear from the developments thus far within the Convention, however, and from the talks that the CHV has conducted in this context, that the Convention appears to be aiming for a formulation of the Charter that would make it legally binding, either now or in the long term. This can be achieved in various ways. One option would be to integrate the Charter into the EU Treaty or a Protocol to the Treaty, according to the preference of the European Council. In this regard the AIV has a mild preference for the former option, as it would emphasise the fundamental importance of the EU Treaty to the further integration of Europe. The AIV favours the adoption of a binding Charter as the best alternative to the EU's accession to the ECHR, and will therefore now turn to a detailed discussion of this option.

¹² See e.g. Professor E.M.H. Hirsch Ballin: ‘Commentaar bij Advies 2/94 van het Hof van Justitie van 28 maart 1996 inzake de toetreding van de Gemeenschap tot het EVRM’, in *SEW, Tijdschrift voor Europees en economisch recht*, vol. 45, no. 1, January 1997, pp. 21-23.

II Essential criteria

Given the long-term perspective already outlined by the AIV, and taking into account that no objective goal appears to have been defined as to what the Charter must achieve, the AIV believes that the following factors should be taken into account in shaping the Charter.

Interrelationship and indivisibility of classical and social human rights

The AIV is aware that the Convention is giving serious consideration to the possibility of including only civil and political rights, with a view to arriving ultimately at a binding Charter. This approach is based on the argument that economic, social and cultural rights, given that these are in the nature of ‘normative instructions’, cannot be included in a binding text. The AIV believes that to act on this basis is to adopt an approach that is wrong in principle.

The EU too has constantly emphasised the interrelationship and indivisibility of civil and political rights on the one hand, and economic, social and cultural rights on the other, in its human rights policy. This point of departure, that finds its origins partly in President Roosevelt's Four Freedoms Speech of 1941, was confirmed during the Second World Conference on Human Rights in 1993, with the full support of the Member States of the EU. It should be added that terms such as interrelationship and indivisibility (or ‘interdependence’ or another equivalent) have since become common currency internationally. To separate the two kinds of rights again would send the wrong message to large parts of the world community of states and the non-governmental world. Mary Robinson, UN High Commissioner for Human Rights, also recently defined the interrelationship and indivisibility of human rights as an important point requiring action.¹³ Moreover, it is clear from developments on the international legal front that the classic distinction between legally enforceable and legally non-enforceable does not correspond to the distinction between civil and political rights on the one hand and economic, social and cultural rights on the other. To uphold an absolute distinction of this kind is no longer tenable.¹⁴

The Convention should therefore assert that in Europe too, human rights constitute an indivisible package of rights, consisting of specific claims in each of the two areas. The AIV would therefore strongly urge that the proposed Charter make no distinction between the way classical and social human rights are presented. The mere fact of grouping the two kinds of rights together does not automatically imply, however, that all rights have the same legal force. But that they are all binding – about that there should be no doubt. Even those rights, for instance, that are now enshrined in the ESC (Revised) are binding on states that have ratified it. The significance of these rights in legal

¹³ See also e.g.: Advisory Council on International Affairs, ‘The functioning of the United Nations Commission on Human Rights’, report no. 11, The Hague, 1999, section IIb.

¹⁴ Reference may also be made to the collective complaints procedure that has since entered into force – and that is used – under the ESC (Revised).

proceedings instituted by individual members of the public, however, may differ.¹⁵ In some cases, legislation and the decisions of government and public authorities may be subject to direct scrutiny for compatibility with these rights, and perhaps declared non-binding. In other cases these rights can help in the interpretation of vaguely formulated national norms. In the Netherlands, for instance, courts are under an obligation to interpret and apply domestic legislation in the light of international obligations. This applies not only in the realm of civil and political rights, but also to economic, social and cultural rights such as equal treatment for women and men, the protection of children from economic and social exploitation, parents' right to choose their children's schools freely, and the right to form trade unions.

This said, some economic, social and cultural rights lend themselves less than others to judicial scrutiny or enforcement through the courts. People complaining of an infringement of these rights, or an aspect of such, would have to resort primarily to other mechanisms, such as appeals to governments and political parties and public campaigns. The AIV is aware that many Member States are not yet willing to go any further down the path of invoking economic, social and cultural rights before courts of law than can be done at present. Though this is regrettable, the AIV does not consider the Convention to be the appropriate forum for promoting further developments in that area. Any radical proposal would deal a sure deathblow to the entire Charter operation. The point is that the adoption of the Charter should send out a clear message to the citizens of the Union that they possess a number of human rights, by which the Union too is bound, but that these rights may not all have equal status in a court of law.

New rights

This brings the AIV to the issue of whether it would be wise to include a number of new rights in the Charter, as some members (of the Convention) and several non-governmental organisations have suggested. Possible examples include the right to a clean environment and the right to good governance. Understandable though such impulses may be, trying to impart the desired added value to the Charter in that way would be fraught with danger. Instead the AIV believes, as it indicates in its basic points of departure, that it would be better to achieve this added value by strengthening the legal accountability of the Union's institutions in respect of fundamental rights that are already recognised within Europe (see the section below on expanding existing legal remedies). In the light of this key objective, it could be hazardous to add new rights to the Charter, for the simple reason that some states could view them as a reason for rejecting the Charter, either when the Convention is finalising its draft or in the subsequent stage of formal adoption by the IGC and European Council. It could be a case of 'biting off more than one can chew' and spell death for the whole project. The AIV therefore advocates that any new rights be dealt with in separate treaty

¹⁵ It is indeed a situation that may also differ from one country to the next; cf. developments in national legal practices in South Africa and India.

negotiations, possibly – though not necessarily – culminating in a separate Protocol to the ECHR, the ESC (Revised) or the Treaty on European Union.

Visibility and clarity

As already noted, one of the objectives of the Charter project is to enhance the visibility of rights. In this regard, a distinction is often made between lawyers and ordinary citizens: the former are supposedly fully abreast of existing rights, while the latter have no clear picture of them. However, this distinction is flawed in several respects. The AIV would mention just two. First, 'even' lawyers often lack detailed knowledge of the human rights situation within the Union – that is, of the Treaty component supplemented by a series of judgments handed down by the Luxembourg Court. A degree of specialisation is needed that is certainly not possessed by the entire legal profession. Only recently, complaints emanated from 'Luxembourg' (the ECJ) that many European lawyers were unfamiliar with European law, and the same complaint would be applicable here.

As far as ordinary citizens are concerned, not all people are ignorant of their rights, although it would certainly be wrong to generalise from the proverbial exceptions such as specialised non-governmental organisations (including, in the Netherlands, the Dutch section of the International Commission of Jurists). Both Strasbourg and Brussels are in many respects remote, and this affects issues of fundamental rights. There is much room for improvement, on the part of both national authorities and the institutions themselves. A well-formulated Charter could help a great deal, by improving visibility and clarity. In this connection it is important to give a wide interpretation to the concept of 'citizens': at issue are not only ordinary members of the public and non-governmental organisations, but also companies and other private actors such as the media, which operate within and from Europe.

EU citizens and third-country nationals

An important point in the debate, and a separate area of concern for the AIV, concerns the fundamental rights of third-country nationals, people from countries outside the EU. The AIV would begin by commenting in general that human rights apply to everyone within the territory of the EU, including third-country nationals. The nature of human rights is such that they are not dependent on being a national of an EU Member State, but apply to everyone. This is true not only of internationally recognised human rights such as the right to freedom of expression and the right of association and peaceful assembly, but also to the right to health care and to education.

In practice, however, the legal status of third-country nationals within the EU is highly complex. This is mainly because their rights derive from different legal sources. Aside from rights based on the EC Treaty (as revised several times), they also have rights based on guidelines on discrimination, equal treatment, part-time work, family reunification and anti-racism measures. In other cases, rights accorded third-country nationals are largely determined by their nationality and/or country of residence. Rights that third-country nationals enjoy on the basis of their

nationality may even derive, for instance, from Association Agreements, which are limited in scope to the nationals of Contracting States. The same applies, in another context, to the distinction between EU citizens and third-country nationals on the basis of the Schengen Agreements, where the Member State of residence is the decisive factor.¹⁶

When the rights of third-country nationals are compared with those of the nationals of a Member State, several differences emerge. The main differences relate not so much to civil rights but to political, social and economic rights, though in political rights too, the division between EU citizens and third-country nationals is growing less strict. This applies, for instance, to the right of petition and the right to submit a complaint to the European Ombudsman.¹⁷ Although states are allowed under the terms of Article 16 of the ECHR to impose restrictions on the activities of aliens, this provision has seen little application.¹⁸ The general point of departure should be that third-country nationals enjoy the same rights as EU citizens, unless there are objective and reasonable grounds for departing from this general rule, as is done in practice regarding the right to vote and to be elected.¹⁹ The same applies to the right to diplomatic and consular protection and eligibility for positions in EU institutions.

As the protection of human rights of all those who find themselves within the EU should be of paramount importance, the narrower problem of European citizenship should also be approached in that light. Article 8 (old) of the EC Treaty provides that every person holding the nationality of a Member State is a citizen of the Union, and that the citizens of the Union enjoy the rights conferred by the EC Treaty and are subject to the duties it imposes. Some of these rights are enshrined in Articles 8a-d (old), while others occur in various places in the EC Treaty. Even so, it is clear that European citizenship, which is supplementary to citizenship of a Member State (and hence does not replace it), is as yet of very limited scope. Thus in a number of cases regulations that apply in one country (e.g. relating to discrimination on the grounds of race or the legal status of partnerships) do not apply elsewhere. Furthermore, in some cases the ways and means of using existing rights effectively are inadequate – the right to publication of all European decision-making and access to

¹⁶ See esp. the doctoral dissertation by Helen Staples, ‘The Legal Status of Third Country Nationals Resident in the European Union’, Utrecht, 13 October 1999, pp. 422-429.

¹⁷ See the article by the National Ombudsman, ‘Memorandum ten behoeve van de Europese Ombudsman’, 12 April 2000.

¹⁸ See European Court of Human Rights, 27 April 1995, *Piermont-France* (Series A, vol. 314), section 64.

¹⁹ See also European Court of Human Rights, 16 September 1996, *Gaygusuz-Austria* (Reports 1996, p. 1129), section 42.

documents being a case in point.²⁰ The AIV considers that the government, proceeding on the assumption of the basic equality of EU citizens and third-country nationals who have resided in the Union for more than five years, should flesh out the concept of EU citizenship unless there are ‘objective and reasonable grounds’ for making a distinction.

Tensions between the ECJ and the European Court of Human Rights

In the discussions on the Charter, the question frequently arises of the tensions that the new Charter might generate between the Strasbourg and Luxembourg Courts.

The Strasbourg Court currently dispenses justice in cases brought before it by citizens of any of the 41 States that are party to the ECHR, while the Luxembourg Court will in future be competent to rule, extrapolating from existing procedures, in cases in which one of the EU’s institutions has violated a human right as formulated in the Charter. This raises a number of questions.

First, the question may be asked of how great the risk is of the Luxembourg Court adopting a different, substantially divergent interpretation of a particular human right compared to Strasbourg. A clause will probably be included in the Charter to the effect that the Luxembourg Court should consider itself bound by the Strasbourg *acquis*, but this ignores the fact that as an independent tribunal, the Luxembourg Court is within its rights to ignore such a provision. More generally, it may be assumed that the Luxembourg Court will have little inclination to accept as a foregone conclusion the interpretation of rights as agreed in Strasbourg. Furthermore, the law is not a static phenomenon, and substantially different ideas may arise concerning the development of new law. The crucial point is whether or not this would have an adverse effect. Would it in general be a problem if the two courts were to arrive at different interpretations of certain provisions? From the present vantage-point the AIV sees a certain risk, but feels, especially in view of the independence of the judges in the two Courts, that it can and should be accepted. However, mindful of this risk, the AIV would add the express proviso that within at most ten years of adopting a Charter, a serious review should determine whether significant differences of interpretation have indeed arisen. If such be the case, the EU and the Council of Europe would be obliged to make further conventional agreements or to decide after all to accede to the ECHR and to accept the corresponding obligations deriving from the ESC (Revised).

In the short term, one option already suggested would be to create the possibility of appealing to Strasbourg from judgments handed down by Luxembourg, provided these lie within the scope of the ECHR. The AIV believes that despite the benefits to be gained, in maximising the scope for action for citizens whose rights have been undermined – and in strengthening legal certainty – this is undesirable from the vantage-point of process economy. After first exhausting domestic remedies

²⁰ Although Art. 255 of the EU Treaty provides for the right to inspect documents of the European Parliament, the Commission and the Council, the number of grounds on which this inspection may be refused are so numerous that the right has little substance.

the petitioner could take his or her case to two international courts, which, partly in light of both Courts' present workload, would appear to be 'too much of a good thing'. In this connection the AIV would point to the parallel that exists in that millions of European citizens may choose, in the event of a violation of their rights, to take their cases to both Strasbourg and the UN Human Rights Committee in Geneva. Although this possibility exists on paper, many countries have restricted it by entering reservations to either the ECHR or the ICCPR at the time of accession or ratification.

A different point is the division of labour between the two Courts. The misapprehension appears to be abroad that citizens will be entirely free in future to decide whether to take their cases to Strasbourg or Luxembourg, depending on where they believe their best chances lie. The AIV believes this would be undesirable. To prevent it, it should be emphasised that the Strasbourg Court should in essence carry on doing what it is doing now, whereas bringing a case before 'Luxembourg' will be possible only in relation to violations resulting from the actions of the EU's institutions. Examples would include the EU's promulgation of a Regulation undermining the right of ownership, or a decision made without respecting the elementary right to have both sides of a case heard. Only in such cases would the Luxembourg Court be the proper tribunal to apply to, though where a case lends itself in terms of substance to being heard by either Court, the choice would be up to the petitioner. This is in accordance with international legal practice.

Expansion of existing legal remedies

As noted in Chapter I of this report, the AIV believes that one of the most important principles in the Charter operation should be that it should clarify and strengthen the existing system of controllability and legal protection. Citizens are entitled not to be on the receiving end of empty promises on the part of their governments. In this context it is important to acknowledge that as things now stand, it is difficult for individual members of the public to gain access to the Court in Luxembourg. The classical criteria of an action taken by one of the EU's institutions being of 'direct and individual concern'²¹ in practice throws up a considerable obstacle and seriously impedes the controllability of decision-making.²² The AIV therefore believes that citizens should be given wider – and more realistic – opportunities to complain about violations of their rights by one of the EU's institutions. It is counter-productive to place too many obstacles in their path. In this connection the AIV advises taking existing procedures as the point of departure and adjusting them. Where admissibility is concerned, the criteria of the ECHR could be used, as recently reaffirmed (in

²¹ Art. 230 of the EC Treaty provides for a similar qualified right of appeal for natural and legal persons.

²² See e.g. ECJ Plaumann judgment (25/62) of 15 July 1963; ECJ Toepfer judgment (joined cases 106 and 107/63) of 1 July 1965; ECJ Eridania judgment (joined cases 10 and 18/68) of 10 December 1969; ECJ International Fruit Company I judgment (joined cases 41-44/70) of 13 May 1971; and ECJ Kwekerij Gebroeders Van der Kooy BV et al. judgment (joined cases 67, 68 and 70/85) of 2 February 1988.

the context of the 11th Protocol, which embodied fundamental revisions of the Strasbourg system) and honed by the Strasbourg monitoring bodies. These requirements of admissibility, varying from the time limit for submitting a complaint to the requirement that a petitioner must claim to be the victim of a violation himself, have by now proven their worth. It is also clear that they do indeed function as obstacles, but not as insuperable ones.

As far as defining who is entitled to submit a complaint is concerned, the ECHR again provides useful criteria. It refers to ‘any person, non-governmental organisation or group of individuals claiming to be the victim of a violation’. It would be appropriate for the Charter to include such a formula, again under the caveat that any change to the admissibility criteria or the use of two different systems is more likely to raise new questions than to help produce a clear and coherent whole. In the discussions on the Charter it has been acknowledged that it would be wrong for the Charter to send a message that there is a Strasbourg ‘speed’ and a higher or different ‘speed’, applicable to EU Member States. Adding new rights to the Charter (see above) and introducing a complaints system that differed from Strasbourg in terms of admissibility criteria would also send out the wrong message in that respect.

At the same time it is of great importance to include a provision in the Charter forbidding the invocation of the Charter to give a restrictive interpretation or application to existing national and international provisions and obligations in the area of human rights. A provision of this kind could be formulated by analogy with Article 53 of the ECHR and Article 5, paragraph 2 of the ICCPR.²³

Concluding remarks

Should it turn out, after careful examination of the text of a Charter as agreed by the Convention for compatibility with the *acquis* of Strasbourg and Luxembourg,²⁴ that the efforts to arrive at a well-formulated and legally binding Charter have not produced the desired outcome, there is still the option of a ‘political’ declaration, which could be made legally binding in due course. In that case the ‘step-by-step’, ‘one right at a time’ approach described above would be applicable, as the IGC could emphasise. If the most significant steps forward, such as accession to the ECHR and *mutatis mutandis* to the ESC (Revised), or the drafting of a legally binding Charter, prove impossible or unfeasible, this should not be seized upon as an excuse to do nothing. In the past a piecemeal approach has often produced positive results, even generating a certain dynamism in the integration process. On balance, human rights already enjoy a considerable degree of protection in the EU,

²³ See e.g. the opinion of L.F.M. Besselink in *Nederlands Juristenblad*, vol. 17, 28 April 2000, pp. 887-888.

²⁴ In this report the AIV proceeds on the assumption that the Convention will succeed in presenting a text of the Charter during the Lisbon summit in June 2000. In the ensuing months, but before the Nice summit, the text could undergo the examination referred to here.

although this protection is not always sufficiently clear. Carrying on along this path would be the last option in attempting to strengthen the legal protection of the citizens of the EU.

A final word. The AIV wishes to emphasise the close relationship that must exist between the standards that are imposed internally and those that are urged upon other countries in the framework of external policy. Although this report primarily focuses on internal policy, it is of great importance to recognise that internal and external human rights policy cannot be viewed in isolation from each other. The EU cannot urge norms upon others in the context of external policy unless it has already achieved them itself.

III Recommendations

On the basis of the above considerations, the AIV makes the following recommendations to the Government of the Netherlands:

1. The AIV emphasises that the EU's accession to the ECHR is by far the most preferable option. The government should therefore give serious consideration to investigating whether such accession may not be feasible in the changed political circumstances. The same applies *mutatis mutandis* to accession to the ESC (Revised) and the ILO 'human rights' conventions.
2. If accession appears not to be feasible in the short term, efforts should be made to achieve a legally binding Charter of Fundamental Rights, incorporating economic, social and cultural rights as well as civil and political rights. The inclusion of these two types of rights in the same text does not automatically mean that they would all have the same legal force in all cases. Their significance in legal proceedings instituted by members of the public may differ.
3. The Government should try to make the rights included in a Charter both visible and clear, both for members of the public and even (!) for members of the legal profession.
4. The added value of the Charter should lie in the increased legal protection it affords citizens in the area of human rights, including access to the courts, in the application of European legislation. Its added value should not lie in the inclusion of new rights.
5. The AIV notes that great differences remain between the fundamental rights enjoyed by EU citizens and by third-country nationals. The AIV urges the government to introduce distinctions only in cases in which it is reasonable and objectively justified, and in other cases to proceed on the basis that EU citizens and third-country nationals who have been resident for five years or longer within the territory of the EU possess equal rights.
6. The AIV recognises the risk that the Courts in Strasbourg and Luxembourg may in some cases arrive at different interpretations of human rights norms. It considers that in the present circumstances this is an acceptable and inevitable risk, and recommends that in the event of significant differences, further conventional agreements be made within the framework of the EU and the Council of Europe, or alternatively that the decision be made for the EU to accede to the ECHR. In this connection, the AIV proposes that within ten years at most, a review be conducted to examine to what extent significant differences have arisen. In the AIV's view, it would be undesirable to create a possibility of appeal in Strasbourg against judgments handed down by the Court in Luxembourg.
7. In order to make it easier for members of the public to submit complaints about human rights violations by EU institutions and to prevent the growth of two divergent systems of admissibility, the admissibility requirements set forth and standardised in the context of the ECHR should be used as the basis. The question of who is entitled to submit a complaint should likewise be decided by reference to the ECHR criteria. Steps must be taken to ensure

that existing national and international provisions of fundamental rights cannot be interpreted restrictively.

8. As soon as an initial draft of the Charter is finished, a meticulous examination of the text should follow to check compatibility with the *acquis* of Strasbourg and Luxembourg.
9. If the efforts to bring about a Charter do not lead to a well-formulated and legally binding result, the strengthening of the protection of human rights within the EU should proceed by way of a 'step-by-step', 'one right at a time' approach.
10. In conclusion, the AIV emphasises once again that the EU cannot urge norms upon others in its external policy that it has not achieved internally.

Annexe I

Chairman of the Advisory Council
on International Affairs
Prof. R.F.M. Lubbers
P.O. Box 20061
2500 EB The Hague

The Hague, 14 January 2000

Dear Professor Lubbers,

Mr Michiel Patijn has asked me, on behalf of the General Committee on European Affairs of the Lower House, to request from your Advisory Committee a report on the Charter of Fundamental Rights, or Bill of Rights, for the European Union. Mr Patijn chairs this Committee, and he also represents the Lower House in the Forum* that will be drafting the Charter. Professor Ernst Hirsch Ballin has been appointed to represent the Upper House. The Government is represented by Mr Frederik Korthals Altes.

The decision to draft a Bill of Rights for the European Union was taken by the European Council meeting in Cologne on 3-4 June 1999. A Forum consisting of members of the European Parliament and the parliaments of the member states and authorised representatives of governments and of the European Commission will prepare the Charter. This Forum must submit a draft of the proposed Charter to the Council before the European Council in December 2000. The Forum met on 17 December 1999 for the first time.

The General Committee on European Affairs of the Lower House indicated that it would like the Committee's advisory report to deal with the following points:

- What relationship will the new Bill of Rights have with existing national legislation (in particular the Constitution), European Conventions (in particular the European Convention for the Protection of Human Rights and Fundamental Freedoms and the European Social

Charter) and international conventions (Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights)?

- What subjects should this Bill of Rights address that are not already included in existing legislation and regulations?
- How would such a Bill of Rights affect members of the public?
- How should this Bill of Rights be arrived at procedurally?
- What appeal proceedings should be applicable to the Bill of Rights? What legal institutions play a role here? How should the relations between these institutions be regulated?

The General Committee on European Affairs has pointed out that the subject of the Bill of Rights is already included in the Advisory Committee's programme, and has therefore expressed the hope that the report might be made available within three months.

As you are no doubt aware, the Interministerial Committee on European Law issued a report to the State Secretary for Foreign Affairs on 10 September 1999, which dealt with some of the points raised above. This report is enclosed for your information. Also enclosed is a memorandum on the Charter that I sent to the Speaker of the Lower House on 3 December 1999.

I am familiar with the report 'The European Union and Human Rights', published by the Advisory Committee on Human Rights and Foreign Policy on 25 September 1996. The report now requested could perhaps build on this.

I share the hope expressed by the General Committee on European Affairs that the Advisory Committee's advisory report can be made available within three months, and I am convinced that it will be of great benefit to those representing both Parliament and the Government in helping to formulate their contributions to the Forum.

Yours sincerely,

Jozias van Aartsen,
Minister of Foreign Affairs

* In February 2000 the name 'Forum' was changed in 'Convention'.

Annexe II**List of persons consulted**

P. Altmeyer (Member of German *Bundestag*)

G. Braibant (representative of the French Government in the Convention)

K.M. Buitenweg (Group of Greens, European Parliament)

I. van den Burg (Group of European Social Democrats, European Parliament)

R. van Dam (Group of Democracies and Diversities, European Parliament)

R. Fernhout (National Ombudsman)

Lord Goldsmith QC (representative of the British Government in the Convention)

R. Herzog (chair of the Convention)

F. Korthals Altes (Speaker of the Upper House of Parliament)

J.R.H. Maij-Weggen (Group of European People's Party and European Democrats, European Parliament)

M. Patijn (chair of the General Committee on European Affairs of the Lower House)

Mr Rodriguez Berejo (representative of the Spanish Government in the Convention)

P.B.C.D.F. van Sasse van Ysselt (Chairperson of the Dutch section of the International Commission of Jurists)

Also consulted was Professor E.M.H. Hirsch Ballin (member of the Upper House and Professor of International Law, Tilburg University); and

official advisors:

R.A.A. Böcker (International Law Division, Ministry of Foreign Affairs)

I. van der Steen (European Law Division, Ministry of Foreign Affairs)

Annexe III**List of abbreviations**

ACM	Advisory Committee on Human Rights and Foreign Policy
AIV	Advisory Council on International Affairs
CEI	European Integration Committee
CFSP	Common Foreign and Security Policy
Charter	EU Charter of Fundamental Rights
CHV	Committee on the Charter of Fundamental Rights of the AIV
CMR	Human Rights Committee
Commission	European Commission
Convention	Forum responsible for drafting a Charter of Fundamental Rights
COS	Development Cooperation Committee
CVV	Peace and Security Committee
EC	European Community
ECHR	European Court of Human Rights
ECJ	European Court of Justice in Luxembourg
ESC	European Social Charter
EU	European Union
ICCPR	International Covenant on Civil and Political Rights
ICESC	International Covenant on Economic, Social and Cultural Rights
IGC	Intergovernmental conference
ILO	International Labour Organisation
JHA	Justice and Home Affairs
NJCM	Dutch section of the International Commission of Jurists
SER	Socio-Economic Council
UN	United Nations
Union	European Union
WTO	World Trade Organisation

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- 2 *Conventional arms control: urgent need, limited opportunities*, April 1998
- 3 *Capital punishment and human rights; recent developments*, April 1998
- 4 *Universality of human rights and cultural diversity*, June 1998
- 5 *An inclusive Europe II*, November 1998
- 6 *Humanitarian aid: redefining the limits*, November 1998
- 7 *Comments on the criteria for structural bilateral aid*, November 1998
- 8 *Asylum information and the European Union*, July 1999
- 9 *Towards calmer waters: a report on relations between Turkey and the European Union*, July 1999
- 10 *Developments in the international security situation in the 1990s: from unsafe security to insecure safety*, September 1999
- 11 *The functioning of the United Nations Commission on Human Rights*, September 1999
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- 13 *Humanitarian intervention*, April 2000*
- 14 *Key lessons from the financial crises of 1997 and 1998*, May 2000

* Issued jointly by the Advisory Council on International Affairs (AIV) and the Advisory Committee on Issues of Public International Law (CAVV)

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 4 September 2000**CHARTE 4452/00****CONTRIB 306****COVER NOTE**

Subject : Draft Charter of fundamental rights of the European Union

Please find hereafter a statement by Mr. Karl Hermann HAACK, member of the German Bundestag, regarding the document CHARTE 4422/00 CONVENT 45.¹

¹ This text has been submitted in German, French and English languages.

Statement concerning Convent 45

Dear Professor Herzog,

As Federal Government Commissioner for the Disabled, I would like to supplement my letter of 26 July 2000 by making the following statement concerning the Presidium draft now presented.

I would ask you to forward this statement to the members of the Convent and also make it accessible to the public.

Kind regards,

Karl-Hermann Haack

Statement of the Federal Government Commissioner for the Disabled concerning Convent 45

Article 32 Social security and social support

(1) The Union recognises and respects the right of access to the benefits of social security and to the social services that guarantee protection in the event of maternity, sickness, **disability**, an occupational accident, a need for long-term care or in old age, as well as after becoming unemployed, in accordance with Community law and the legal provisions and customs of the individual Member States.

Reasons:

Disability is an independent criterion that is not covered by the above-mentioned categories of "sickness" and "need for long-term care".

An addition to this article would strengthen Articles 21 and 24 and give them the necessary support in terms of social policy.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 5 September 2000**CHARTE 4453/00****CONTRIB 307****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a contribution from The Union of Professional Engineers in Finland,
"Insinööriliitto IL ry".¹

¹ This text has been submitted in English language only.



1st September 2000

Jean-Paul Jacque

Dear Sir,

FUNDAMENTAL RIGHTS IN THE EUROPEAN UNION

The Union of Professional Engineers in Finland, Insinööriiliitto IL ry, is the interest group representing professional engineers. Its objective is to contribute to the professional development of engineers and to enhance their opportunities to pursue their profession and utilize their skills.

Insinööriiliitto has followed the discussion concerning the Charter of Fundamental Rights of the European Union with a positive mind and wishes to communicate its view of their contents. As it is the aim to create a document which makes clear the rights of the individual, social responsibility and issues of justice, it is appropriate to set forth a few issues related to the engineering profession.

As the right of free movement of labour, capital, services and goods has been defined in the Treaty of the European Union, the possibility for the free movement of labour should be genuinely ensured.

This should apply to all citizens regardless of their education and employment.

Comparability of diplomas

The right to education is a citizen's fundamental right. This should also include a qualitative dimension where the central factors are the scope of education and the comparability of diplomas. Through this the minimum standards of skills of people with a certain diploma can be defined from the viewpoint of a member state. The level of diplomas can be considered, among other things, as

an issue of safety in services and trade between individuals and corporations. Suitable examples in the technical field include design, production and inspection procedures for electrical appliances, lifts and pressure vessels. There are many other examples.

Consumer protection should also be taken into account when considering fundamental rights. The consumer must be able to rely on the quality and safety of products and services and on the fact that those selling products and offering services have the necessary knowledge.

Irrespective of the fact that the freedom to move, work, offer services, and trade have been recognized within the EU, there have been numerous obstacles in practice. It has, for instance, proved impossible or almost impossible for Finnish engineers to work in certain European countries (e.g. Italy, Portugal, and Greece).

The level classification of engineering education covering the whole EU area and almost the whole rest of Europe has already been carried through by FEANI (Fédération Européenne d'Associations Nationales d'Ingeénierus). This European umbrella organization of engineers defines the education in the technical field which is to be classified as engineering education. We suggest that this completed basic work be used as the starting point for mapping out the comparability of engineering diplomas.

We propose that the following amendment concerning the comparability of diplomas be made to article 14 (Right to Education), section 2 (Liberties) of the Charter of Fundamental Rights:

“Education must be of high quality and it shall be possible to compare diplomas obtained in various countries.”

Further, we propose that the Amendment of the Charter of Fundamental Rights concerning directions for maintaining the rights would include a definition of the diplomas which have an important impact on the rights, equality, and safety of citizens.

Agreements on prohibition of competition

The rights of professional freedom and freedom of trade should be genuinely ensured for people who earn a living. Companies increasingly demand that their employees sign so-called agreements on prohibition of competition in order to prevent the employee from taking up employment in a competing company within a certain period of time after the termination of employment. National legislation generally allows these kinds of agreements. The sanctions for breaking the agreement are usually undue and in many cases prevent the individual from pursuing his/her profession freely. Agreements on prohibition of competition are required of employees the in metal and electronics industry, particularly in design and product development and in marketing and sales, not only of people in management positions. The period for prohibition of competition can last several years after the termination of employment and the contractual penalty can amount to hundreds of thousands of Finnish marks. These kinds of agreements are an obstacle to the free movement of employees from one company to another and also from one country to another and are therefore against the EU principles of free movement of labour.

National legislation should not allow undue restrictions and liabilities for damages from the viewpoint of an individual in conjunction with the freedom of utilizing skills, the right to work and change his/her employer. Undue restrictions will result in a new type of slave labour if the sanctions

applied to an individual exceed reasonable time limits or other limitations or if they completely prohibit one from working and utilizing one's skills.

We propose that articles 15 and 16, section 2 of the Charter be amended to include the following limitation for concluding an agreement on prohibition of competition:

“The right of an individual to pursue his/her profession may not be limited by unreasonable agreements.”

Also the Amendment clarifying this point should define what may be considered a reasonable restriction for prohibition of competition. This would create a framework for definitions in national legislation of maximum measures prohibiting competition.

Social security

Free movement of labour as defined in the Treaty of the EU also requires practical measures concerning the transferability of social security. When an individual takes employment in one member state, he must be able to trust that his rights to social security will be transferable to other member states. For instance, she/he must have the right to pension security and to enjoy it in his/her home country or place of residence anywhere within the EU area. In addition to pensions, also the rights to unemployment compensation, health care, and other social benefits should be ensured equally for all.

At the moment directive 1408/71 determines the principle for applying the social security systems to employees moving within the Community. However, compliance with the directive has turned out to be difficult. The basic principle is that an employee is insured in the country of employment. In certain cases the person can still remain insured in the country where she/he works normally, e.g. if employment in another country is temporary. The benefits earned in another country can be maintained. Pensions, for instance, are paid to a person residing in another member state. Also periods of work or pension insurance in another member state can be taken into consideration when calculating the benefits.

Forms standardized by the EU are used for transferring social benefits. Acquiring the necessary forms is bureaucratic and systems vary from country to country. It is difficult to acquire information on the systems of various member states. Unawareness of a minor detail of a regulation or filling in the wrong form may result in losing the entire benefit. Pension payments to a bank account in another country may be impossible according to the national legislation. This has also often caused additional costs for the pensioner, e.g. in the form of bank transfer costs.

Insinööriliitto is of the opinion that in order to secure the rights of the individual, the contents of the social security directive should be clarified and simplified in connection with the revision of the Treaty. National procedures should be standardized, but without harmonizing the social security systems themselves.

Further we propose that the importance of the above issues be emphasized in section 4 of the Treaty concerning social responsibility.

ENTWURF DER CHARTA DER GRUNDRECHTE DER EUROPÄISCHEN UNION**fundamental.rights@consilium.eu.int**

Brüssel, den 5. September 2000**CHARTE 4454/00****CONTRIB 308****ÜBERMITTLUNGSVERMERK**

Betr.: Entwurf der Charta der Grundrechte der Europäischen Union

Finden Sie bitte nachstehend einen Beitrag des Europabüros der deutschen kommunalen Selbstverwaltung, mit einer Stellungnahme des Deutschen Städtetags (DST).¹

¹ Dieser Text wurde uns nur in deutscher Sprache übermittelt.

Europabüro der deutschen
Brüssel, den 01.09.00
kommunalen Selbstverwaltung
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An den
Rat der Europäischen Union
M. Jean-Paul Jacqué
Convention Secretariat
Council Legal service
175 Rue de la loi
B – 1048 Brüssel

Per E-Mail

Sehr geehrter Herr Jacqué,

nachfolgend übermittle ich Ihnen im Auftrag des DST seine Stellungnahme zum Entwurf der Charta der Grundrechte in Form eines Beschlussvorschlages für das Präsidium des Deutschen Städtetages, über den dieses in Kürze beschließen wird.

Beschlussvorschlag:

- 1 Das Präsidium begrüßt im Grundsatz den Entwurf der Charta der Grundrechte der Europäischen Union, der am 28. Juli 2000 vom Präsidium des Konvents zur Festlegung eines Grundrechtskataloges vorgeschlagen worden ist.
- 2 Das Präsidium teilt ausdrücklich die in Art. 49 Abs. 2 des Entwurfes niedergelegte Position, dass durch diese Grundrechte-Charta keine neuen Zuständigkeiten der Europäischen Union oder der Gemeinschaft begründet werden sollen. Es bekräftigt darüber hinaus, dass auch bestehende Zuständigkeiten nicht erweitert werden dürfen.
- 3 Das Präsidium hält dennoch eine Veränderung der Grundrechte-Charta in erster Linie in zwei Punkten im deutschen kommunalen Interesse für erforderlich:
 - 3.1 In der Präambel sollte in Ziffer 3, in der von der Achtung der nationalen Identität der Mitgliedstaaten und der Organisation ihrer staatlichen Gewalt auf nationaler, regionaler und lokaler Ebene die Rede ist, auch die lokale Selbstverwaltung abgesichert werden.
Deshalb sollte Ziffer 3 der Präambel durch folgenden Satz erweitert werden:

„Die bestehenden Entscheidungsrechte demokratisch gewählter Vertretungskörperschaften auf regionaler und lokaler Ebene werden bei der Setzung und Umsetzung europäischen Rechts gewährleistet.“

3.2 Art. 34 des Entwurfes (Zugang zu Diensten von allgemeinem wirtschaftlichen Interesse) sollte folgenden Nachsatz erhalten:

„Dieser (soziale und territoriale) Zusammenhalt der Union wird besonders durch Entscheidungsrechte der demokratisch legitimierten regionalen und lokalen Gebietskörperschaften im Bereich der Dienste von allgemeinem wirtschaftlichen und bürgerschaftlichen Interesse gewährleistet.“ Die Union hält diese Rechte mit dem gemeinsamen Markt für vereinbar.“

Insbesondere erlauben wir uns zu **Ziff. 3.2.** des oben stehenden Beschlussvorschlages folgendes auszuführen:

In Art. 34 des Entwurfes ist im Kontext mit dem Zugang der Bürger zu den Diensten von allgemeinem wirtschaftlichen Interesse der soziale und territoriale Zusammenhalt der Union genannt, den es zu schützen und zu wahren gilt.

Der Wortlaut des Textes bezieht sich auf den ausschließlich in Art. 16 EGV verwendeten Begriff "sozialer und territorialer Zusammenhalt." Der Zusammenhalt der Union erfordert zunächst Stabilität in den einzelnen Mitgliedstaaten. In Deutschland wiederum ist Voraussetzung für die Wahrung dieser sozialen und territorialen Stabilität der Erhalt der Städte und Gemeinden sowohl in Bezug auf ihr Gebiet als auch hinsichtlich ihrer Funktion als Garanten für die Grundsicherung der elementaren Lebensbedürfnisse der Einwohner. Dienste von allgemeinem wirtschaftlichen Interesse dienen in der Regel der Grundsicherung der Lebensbedürfnisse der Bürger. Deshalb sind sie nicht nur von allgemeinem wirtschaftlichen, sondern ebenso auch von allgemeinem bürgerschaftlichen Interesse. Der Erhalt von Entscheidungsrechten bei den Anforderungen an diese Dienste im Rahmen der lokalen Demokratie ist damit als eine essentielle Voraussetzung anzusehen. Denn Selbsterwaltung bedeutet auch die Möglichkeit eigenverantwortlicher Wahrnehmung und Erfüllung eigener öffentlicher Angelegenheiten durch eigene Organe in eigenem Namen und auf eigene Kosten. Diese Organisationshoheit lokaler Gebietskörperschaften ist durch die Politik der Europäischen Union in Frage gestellt, insbesondere hinsichtlich der Dienste von allgemeinem wirtschaftlichen Interesse, die zugleich im bürgerschaftlichem Interesse liegen. Es bedarf daher einer Ergänzung des Art. 34 der Charta.

Im übrigen regen wir folgende zusätzliche Änderungsvorschläge an:

Zu Art. 14:

In Art. 14 Recht auf Bildung Abs. 1 sollte der zweite Satz gestrichen werden.

Die Forderung, unentgeltlich am Pflichtschulunterricht teilnehmen zu können, stellt einen Eingriff in die Hoheit der Mitgliedstaaten dar und widerspricht u. E. Art. 149 Abs. 1 des EG-Vertrages.

Der Begriff der Unentgeltlichkeit des Pflichtschulunterrichts ist interpretationsbedürftig bzw. kann unterschiedlich interpretiert werden. Neben einer Befreiung der Zahlung von Schulgeld könnte dazu auch die kostenlose Bereitstellung von Unterrichtsmitteln und von Beförderungskosten zur Schule fallen. Regelungen hierzu müssen den Mitgliedstaaten vorbehalten bleiben.

Zu Art. 13:

Darauf hinzuweisen wäre noch, dass die Europäische Union im Forschungsbereich ebenso wenig Kompetenzen wie im Bereich von Kunst und Wissenschaft hat (außer einem begrenzten, die Hoheit der Mitgliedstaaten achtenden Förderauftrag). Wenn dennoch in Art. 13 die Freiheit der Forschung in den Entwurf aufgenommen werden soll, erschiene es richtig, diesen Artikel analog zu Art. 5 Abs. 3 Grundgesetz um Kunst, Wissenschaft und Lehre zu erweitern.

Entgegen der Auffassung einiger Kulturorganisationen und Kulturverbände unterstützt nach dem gegenwärtigen Stand der Diskussion die Hauptgeschäftsstelle nicht die Forderung, in einem eigenen Artikel ein Recht auf Kultur in die Charta aufzunehmen. Es würde vollkommen genügen, wenn Art. 13 im Sinne von Art. 5 Grundgesetz um die "Kunst" erweitert würde. Jedenfalls nach gängiger deutscher Auffassung und Rechtsprechung würde dies auch den Auftrag zur Förderung der Kunst beinhalten.

Wir würden es im Interesse der vom Deutschen Städtetag vertretenen deutschen Städte begrüßen, wenn die oben angeführten Anregungen Berücksichtigung finden könnten.

Selbstverständlich stehen Ihnen der Unterzeichner sowie die Geschäftsstelle des DST bei Rückfragen jederzeit zur Verfügung.

Mit freundlichem Gruß

Dr. Ralf von Ameln
Direktor

ENTWURF DER CHARTA DER GRUNDRECHTE DER EUROPÄISCHEN UNION**fundamental.rights@consilium.eu.int**

Brüssel, den 8. September 2000**CHARTE 4455/00****CONTRIB 309****ÜBERMITTLUNGSVERMERK**

Betr.: Entwurf der Charta der Grundrechte der Europäischen Union

Finden Sie bitte nachstehend einen Alternativvorschlag von der IG Eurovision, zur vorliegenden Präambel des Entwurfs der Grundrechtscharta. ^{1 2}

¹ Dieser Text wurde uns nur in deutscher Sprache übermittelt.

² Text vorgelegt von Dr. Christoph Strawe, Initiative "Netzwerk Dreigliederung",
Haußstr. 44a, D-70188 Stuttgart. Tel. +49-0711-23 68 950. Fax: +49-0711-23 60218.
Email: BueroStrawe@t-online.de

PRÄAMBEL**Entwurf des Konvents (28. 7. 2000)**

1. Die Völker Europas haben untereinander eine immer engere Union begründet und beschlossen, auf der Grundlage gemeinsamer Werte eine friedliche Zukunft zu teilen.

2. Die Union gründet sich auf die unteilbaren und universellen Grundsätze der Würde der Männer und der Frauen, der Freiheit, der Gleichheit und der Solidarität; sie beruht auf dem Grundsatz der Demokratie und der Rechtsstaatlichkeit.

3. Die Union trägt zur Entwicklung dieser gemeinsamen Werte unter Achtung der Vielfalt der Kulturen und Traditionen der Völker Europas sowie der nationalen Identität der Mitgliedstaaten und der Organisation ihrer staatlichen Gewalt auf nationaler, regionaler und lokaler Ebene bei; sie stellt durch den freien Personen-, Waren-, Kapital- und Dienstleistungsverkehr eine ausgewogene und nachhaltige Entwicklung sicher.

4. Mit der Annahme dieser Charta möchte die Union die Grundrechte sichtbar machen und dadurch ihren Schutz angesichts der Entwicklung der Gesellschaft, des sozialen Fortschritts und der wissenschaftlichen und technologischen Entwicklungen verstärken.

5. Diese Charta bekräftigt unter Achtung der Befugnisse und Aufgaben der Gemeinschaft und der Union und des Subsidiaritätsprinzips die Rechte, die sich vor allem aus den gemeinsamen Verfassungstraditionen der Mitgliedstaaten, aus dem Vertrag über die Europäische Union und aus den Gemeinschaftsverträgen, aus der Europäischen Konvention zum Schutz der Menschenrechte und Grundfreiheiten, aus den von der Gemeinschaft und dem Europarat beschlossenen Sozialchartas sowie aus der Rechtsprechung des Gerichtshofs der Europäischen Gemeinschaften und des Europäischen Gerichtshofs für Menschenrechte ergeben.

6. Die Inanspruchnahme dieser Rechte ist mit Verantwortlichkeiten und Pflichten sowohl gegenüber den Mitmenschen als auch gegenüber der menschlichen Gemeinschaft und den künftigen Generationen verbunden.

7. Daher sind jeder Person die nachstehend aufgeführten Rechte und Freiheiten garantiert.

PRÄAMBEL**Alternativentwurf der IG-EuroVision**

1. Die Europäische Union ist eine Gemeinschaft der Völker Europas, die auf der Grundlage gemeinsamer Werte eine friedliche soziale Zukunft gestalten wollen.

2. Die Union gründet auf der Achtung vor der Würde des Menschen. Sie orientiert ihre Aufgaben und Ziele an den unteilbaren und universellen Idealen der Freiheit, Gleichheit und Solidarität und gestaltet ihre Rechtsordnungen nach demokratischen und rechtsstaatlichen Prinzipien.

3. Die Union trägt zur Entfaltung dieser gemeinsamen Werte unter Achtung der Vielfalt der Kulturen und Traditionen der Völker Europas sowie der nationalen Identität der Mitgliedstaaten und der Organisation ihrer staatlichen Gewalt auf nationaler, regionaler und lokaler Ebene bei; sie will durch freien Personen-, Informations-, Kultur-, Kapital-, Waren- und Dienstleistungsverkehr einer ausgewogenen und nachhaltigen Entwicklung dienen.

4. Mit der Annahme dieser Charta möchte die Union die Grundrechte der Menschen, der Bürger und der Völker bewußter machen und dadurch ihren Schutz angesichts der gesellschaftlichen Veränderungen, des sozialen Wandels und des wissenschaftlichen und technologischen Fortschritts verstärken.

5. (unverändert)

6. (unverändert)

7. Die nachstehend aufgeführten Grundrechte sind für die Europäische Union und ihre Mitglieder Grundlage aller rechtlich-politischen Entscheidungen und bei Verstößen einklagbar.

ENTWURF DER CHARTA DER GRUNDRECHTE DER EUROPÄISCHEN UNION**fundamental.rights@consilium.eu.int**

Brüssel, den 7. September 2000**CHARTE 4456/00****CONTRIB 310****ÜBERMITTLUNGSVERMERK**

Betr.: Entwurf der Charta der Grundrechte der Europäischen Union

Finden Sie bitte nachstehend einen Beitrag des Deutschen Paritätischen Wohlfahrtsverbandes Gesamtverband.^{1 2}

¹ Dieser Text wurde uns nur in deutscher Sprache übermittelt.

² Deutschen Paritätischen Wohlfahrtsverbandes Gesamtverband: Heinrich-Hoffmann-Str. 3
60528 Frankfurt am Main. Tel: 069-6706-0. Fax: 069-67-06204.

Rat der Europäischen Union
Generalsekretariat
175, rue de la Loi
Herrn Jean-Paul Jacqué

B-1048 Brüssel

31.08.00
sekretariat: doris.winkowski@paritaet.org

Sehr geehrter Herr Jacqué,

am 28. Juli 2000 hat das Präsidium des Konvents zur Erarbeitung der geplanten Charta der Grundrechte der Europäischen Union einen vollständigen Entwurf für eine solche Charta veröffentlicht.

Als deutscher Spitzenverband der Freien Wohlfahrtspflege, dem an die 10.000 rechtlich selbständige Organisationen und Vereine angeschlossen sind, möchten wir zu diesem Entwurf Stellung nehmen und insbesondere konstruktive Anregungen geben.

Aus unserer Sicht enthält der Entwurf bereits viel Begrüßenswertes und stellt vor dem Hintergrund der unterschiedlichen Interessen im Konvent eine beachtliche Zwischenleistung dar.

An folgenden Punkten ist der Entwurf aus unserer Sicht jedoch noch nachbesserungsbedürftig:

- Zu Artikel 9 (Recht, eine Ehe einzugehen und eine Familie zu gründen) schlagen wir vor, einen zweiten Absatz wie folgt einzufügen: “Pflege und Erziehung der Kinder sind das natürliche Recht der Eltern und die primär ihnen obliegende Pflicht. Die staatliche Gemeinschaft schützt und fördert darüber hinaus jede Lebensgemeinschaft, in der Kinder und Jugendliche aufwachsen, bei ihrer selbstverantwortlichen Aufgabenerfüllung”.

Aus unserer Sicht gebietet sich ein solcher zweiter Absatz, um der derzeitigen Diskussion um einen modernen Familienbegriff mit seinen sozialpolitischen Implikationen in zukunftsgerichteter Weise gerecht zu werden.

- Zu Artikel 14 (Recht auf Bildung) halten wir die Aussage, wonach eine jede Person das Recht hat, unentgeltlich am Pflichtschulunterricht teilzunehmen, für unzulänglich. Im Interesse der Chancengleichheit der Bürgerinnen und Bürger in Europa, aber auch im Interesse der wirtschaftlichen Entwicklung in Europa halten wir vielmehr eine Formulierung für notwendig, wonach eine jede Person das Recht auf Bildung und Ausbildung gemäß ihrer Fähigkeiten hat.
- Zu Artikel 32 (Soziale Sicherheit und soziale Unterstützung) Satz 1 ist aus unserer Sicht der Lebensumstand der Behinderung zwingend mit aufzuführen, da er durch den Begriff der Krankheit nicht mit abgedeckt wird. Die Formulierung “die Union anerkennt und achtet das Recht...” ist aus unserer Sicht zudem zu defensiv formuliert, da sie Interpretationsmöglichkeiten offenläßt, ob damit ein Grundrecht tatsächlich formuliert ist.

- Artikel 32 (Soziale Sicherheit und soziale Unterstützung) Satz 2: Auch hierbei handelt es sich um keine klare Formulierung eines Grundrechtes. Aus unserer Sicht muß es heißen: “Wer in Not gerät, hat Anspruch auf Hilfe und Betreuung und auf die Mittel, die für ein menschenwürdiges Dasein und für eine Teilhabe an der Gesellschaft unerlässlich sind.”
- Die Formulierung in Artikel 33 (Gesundheitsschutz) halten wir mit Blick auf in der Zukunft nicht auszuschließende Diskussion über Rationierungen in der gesundheitlichen Versorgung für unzulänglich. Der Verweis auf die einzelstaatlichen Vorschriften wirft die Frage auf, wie weit ein solcher Passus in einer EU-Charta der sozialen Grundrechte überhaupt noch Sinn macht. Wir schlagen statt dessen folgende Formulierung vor: “Jede Person hat ein Recht auf gesundheitliche Versorgung. Niemandem dürfen wegen seiner wirtschaftlichen Situation oder aus anderen Gründen notwendige Leistungen der gesundheitlichen Versorgung vorenthalten werden.”
- Eine EU-Charta der sozialen Grundrechte hat aus unserer Sicht in besonderer Weise das Verhältnis von Staat und Bürgerinnen und Bürgern in diesem Sektor zu definieren. Ein Europa als ein Bündnis von lebendigen Zivilgesellschaften, getragen durch aktives Bürgerengagement, muß sich insoweit auch in einer EU-Charta der sozialen Grundrechte wiederfinden, in dem dem bürgerlichen Engagement ein Vorrecht vor staatlichem Engagement definitiv eingeräumt wird. Für den Sozialbereich trifft der vorgelegte Entwurf dazu jedoch keinerlei Aussage.

Ergänzend schlagen wir daher folgende Formulierung vor:

- Stellung freier Vereinigungen in Bildung, Erziehung, Versorgung mit sozialen Diensten
 1. Das Initiativrecht freier Vereinigungen im Bereich der Bildung, der Erziehung und Versorgung mit sozialen Diensten wird geachtet.
 2. Öffentliche Schulen in freier Trägerschaft sind staatlichen Schulen unbeschadet der staatlichen Planungs- und Versorgungsverantwortung gleichgestellt.
 3. Die Vorrangstellung der Wohlfahrtsverbände und anderer freier dem Gemeinwohl verpflichteter Träger im Bereich der Wohlfahrtspflege und der Erziehung gegenüber staatlich vorgehaltenen sozialen Diensten ist unbeschadet der staatlichen Planungs- und Versorgungsverantwortung zu achten.
 4. Die Verbände der freien Träger von Einrichtungen der Bildung, Erziehung und der Wohlfahrtspflege sind bei der politischen Gestaltung der Bereiche Bildung, Erziehung und soziale Dienste einzubeziehen.”

Wir würden uns sehr freuen, könnten unsere Anregungen in die weiteren Beratungen mit einfließen und verbleiben

mit freundlichen Grüßen

Dr. Ulrich Schneider
Hauptgeschäftsführer

Anlage

ENTWURF DER CHARTA DER GRUNDRECHTE DER EUROPÄISCHEN UNION**fundamental.rights@consilium.eu.int**

Brüssel, den 7. September 2000**CHARTE 4457/00****CONTRIB 311****ÜBERMITTLUNGSVERMERK**

Betr.: Entwurf der Charta der Grundrechte der Europäischen Union

Finden Sie bitte nachstehend eine Stellungnahme des Österreichischen Gewerkschaftsbundes, zur Grundrechtscharta. ¹

¹ Dieser Text wurde uns nur in deutscher Sprache übermittelt.

Bundeskanzleramt
zHd. Dr. Harald DOSSI

Ballhausplatz 2
1014 Wien

30.08.2000

EU-Grundrechte-Charta

Auf dem EU-Gipfel im Jahr 1999 wurde beschlossen, eine Charta der Grundrechte der Europäischen Union zu erarbeiten. Dazu wurde ein Gremium (Konvent) aus Regierungsvertretern, Mitgliedern der nationalen Parlamente und des Europaparlamentes eingesetzt, um bis zum Oktober dieses Jahres einen Entwurf zu erarbeiten. Dieser Entwurf soll von der Europäischen Union im Dezember verabschiedet werden.

1. Grundsätzliches

Der Österreichische Gewerkschaftsbund begrüßt die Bestrebungen eine umfassende Grundrechtscharta auf Europäischer Ebene zu schaffen. Zwischen der zunehmenden wirtschaftlichen Liberalisierung sowie den Zielen der wirtschaftlichen Wettbewerbsfähigkeit einerseits und den sozialpolitischen sowie anderen gesellschaftlichen Zielsetzungen andererseits muss ein Gleichgewicht in der Europäischen Union hergestellt werden. Aus unserer Sicht muss dabei insbesondere der lohnabhängigen Bevölkerung der Zugang zu grundlegenden sozialen Rechten und zu Wohlstand ermöglicht und garantiert werden. In der Schaffung einer Charta der Grundrechte der Europäischen Union ist dabei ein wesentliches Element zu sehen. Die alleinige Existenz der Europäischen Menschenrechtskonvention und der Europäischen Sozialcharta ist nicht ausreichend, denn diese bieten zum Beispiel keinen Schutz gegen Maßnahmen im Rahmen des Tätigkeitsfeldes der Europäischen Union, weil die Europäische Union selbst nicht der Menschenrechtskonvention oder Sozialcharta beigetreten ist.

- Die sozialen Grundrechte müssen Bestandteil der Charta werden

Die sozialen Grundrechte sind dabei ein unverzichtbarer Bestandteil des Aufbaues einer Sozialunion. Insbesondere die sozialen Auswirkungen der Vollendung der Wirtschafts- und Währungsunion, vor allem im Hinblick auf die Erweiterung, macht die Aufnahme der sozialen Grundrechte dringend notwendig, denn sonst droht mit der Erweiterung eine Entwicklung in Richtung Freihandelszone. Es ist nicht länger zu tolerieren, dass es strenge einklagbare Regeln für Waren, aber keine sozialen Grundrechte für die Arbeitnehmer in der Europäischen Union gibt. Die Aufnahme von sozialen Grundrechten in den Vertrag ist ausschlaggebend, damit die Europäische Union auch Realität für die Arbeitnehmer wird.

- Die Grundrechte müssen rechtsverbindlich und einklagbar werden

Aus unserer Sicht ist die fehlende Rechtsverbindlichkeit, insbesondere bei den sozialen Grundrechten, nicht länger tolerierbar. Die Grundrechte müssen einklagbar werden. Für die garantierten sozialen Grundrechte muss dabei ein Klagerecht für die Gewerkschaften zur Vertretung der Arbeitnehmerinteressen gewährleistet werden.

Die Schaffung eines Kataloges von Grundrechten, wie es zurzeit in der Form einer EU-Grundrechtscharta diskutiert wird, ist nicht zielführend, weil diese Charta rechtlich gesehen weiterhin unverbindlich bleibt. Die Grundrechte müssen einschließlich der sozialen Grundrechte und Gewerkschaftsrechte in den EU-Vertrag verankert werden, damit sichergestellt wird, dass sie einklagbares Recht werden. Ein Abschluss der Regierungskonferenz kann daher für die Gewerkschaften nur dann akzeptabel werden, wenn die Grundrechte einschließlich der sozialen Rechte in den Vertrag verankert werden. Dabei muss auch ein entsprechendes Verfahren zur Umsetzung und Durchsetzung geschaffen werden.

2. Folgende Rechte müssen in der Charta umfasst werden

Neben den allgemeinen politischen Rechten - die in der Allgemeine Erklärung über Menschenrechte (UN, 1948), Europäische Konvention zum Schutze der Menschenrechte und Grundfreiheiten (Europarat, 1950), UN-Übereinkommen zur Beseitigung der Diskriminierung der Frau, UN-Übereinkommen über die Rechte des Kindes und im Abkommen über die Rechtsstellung der Flüchtlinge verankert sind - müssen die sozialen und wirtschaftlichen Rechte sowie Rechte der Arbeitswelt, festgelegt in der Gemeinschaftscharta der sozialen Grundrechte der Arbeitnehmer, der Europäischen Sozialcharta und die einschlägigen IAO-Normen in die Charta aufgenommen werden.

Zu den Bestimmungen im Einzelnen:

Artikel 6

Der ÖGB fordert die Ergänzung des restlichen Textes des Artikel 5 EMRK, um den Personen, die entgegen des Artikel 5 EMRK von einer Festnahme oder Haft betroffen waren, einen Anspruch auf Schadenersatz zu gewährleisten. Das heißt, der Text soll nunmehr lauten „(1) Jede Person hat das Recht auf Freiheit und Sicherheit. Die Freiheit darf einem Menschen nur in den folgenden Fällen ... Anspruch auf Schadenersatz.“

Artikel 22

Da die Chancengleichheit von Männern und Frauen ohne flächendeckende Kinderbetreuungseinrichtungen nicht erreicht werden kann, fordert der ÖGB die Hinzufügung eines Absatzes 3 zu Artikel 22: Die Mitgliedsstaaten fördern die Errichtung von flächendeckenden Kinderbetreuungseinrichtungen.

Der ÖGB begrüßt die Klarstellung des Absatzes 2 bezüglich der Möglichkeit der positiven Diskriminierung.

Artikel 25

Für den ÖGB ist es unerlässlich, dass die Arbeitnehmer und ihre Vertreter, in Bezug auf sie betreffende Fragen, auch Mitwirkungsmöglichkeiten haben. Weiters müssen die Unterrichts-,

Anhörungs- und Mitwirkungsmöglichkeiten auf allen Ebenen, sowie auf nationaler und grenzüberschreitender Ebene gegeben sein. Weiters fordert der ÖGB die Streichung der Worte „... nach dem Gemeinschaftsrecht und nach den einzelstaatlichen Rechtsvorschriften und Gepflogenheiten...“. Der neu gefasste Artikel sollte nach Ansicht des ÖGB somit lauten: Für die Arbeitnehmer und ihre Vertreter muss eine rechtzeitige Unterrichtung, Anhörung und Mitwirkung auf allen Ebenen zu den sie betreffenden Fragen, sowohl national als auch grenzüberschreitend, gewährleistet sein.

Artikel 26

Arbeitgeber und Arbeitnehmer haben das Recht Tarifverträge auszuhandeln und zu schließen sowie bei Interessenskonflikten kollektive Maßnahmen einschließlich des Rechts grenzübergreifender Solidaritätsaktionen und Streiks zur Verteidigung ihrer Interessen zu ergreifen.

Artikel 27

Der ÖGB tritt für eine Ergänzung des betreffenden Artikels ein, um Unklarheiten zu vermeiden: Jede Person hat das Recht auf Zugang zu einem unentgeltlichen Arbeitsvermittlungsdienst.

Artikel 28

Der ÖGB tritt auch bei diesem Artikel für eine Ergänzung ein. Satz 2 sollte lauten: Im Falle einer ungerechtfertigten Entlassung, hat der Arbeitnehmer Anspruch auf eine angemessene Entschädigung oder einen anderen zweckmäßigen Ausgleich.

Artikel 29

Da unter „gerechten und angemessenen Arbeitsbedingungen“ auch ein angemessener Lohn zu verstehen ist, tritt der ÖGB – in Anlehnung an Artikel 4 der Europäischen Sozialcharta – für die Hinzufügung eines neuen Absatzes ein: Jeder Arbeitnehmer hat einen Anspruch auf einen gerechten Lohn, der ihm und seiner Familie einen angemessenen Lebensstandard sichert. Wie bereits oben erwähnt, fordert der ÖGB, dass die Europäische Sozialcharta in die Grundrechtscharta aufgenommen wird. Sollte dies jedoch nicht geschehen, fordert der ÖGB, dass zumindest die vorgeschlagene Ergänzung in die Grundrechtscharta aufgenommen wird. Weiters fordert der ÖGB eine Ergänzung in Absatz 2 (letzter Halbsatz) „... sowie auf bezahlten Jahresurlaub im Ausmass von mindestens 5 Wochen.“

Artikel 30

Nach Ansicht des ÖGB sind die begrenzten Ausnahmen näher zu definieren, um Unklarheiten zu vermeiden. Der ÖGB schlägt vor, dass die begrenzten Ausnahmen laut § 5a KJBG definiert werden: Begrenzte Ausnahmen dürfen nur Kinder betreffen, die das 12. Lebensjahr vollendet haben

Artikel 31

Der ÖGB tritt für die Ergänzung „Schutz vor Entlassung und Kündigung“ ein. Die derzeit gewählte Formulierung steht im Widerspruch zur Mutterschutzrichtlinie 92/85/EWG.

Art 39

Das Wort „behandelt“ sollte durch „abgehandelt“ ersetzt werden, da es dem Einzelnen nichts hilft, wenn seine Angelegenheiten in angemessener Frist nur behandelt, jedoch nicht entschieden wird.

Ehemaliger Artikel 40

Der ÖGB fordert die Wiederaufnahme des im Vorentwurf enthaltenen Artikel 40 „Recht der Wanderarbeiter auf Gleichbehandlung“, wie vom Präsidium im letzten Entwurf vorgeschlagen. Der Text sollte also lauten: Arbeitnehmer, die nicht die Staatsangehörigkeit der Europäischen Union besitzen und rechtmäßig im Hoheitsgebiet der Mitgliedsstaaten arbeiten, haben Anspruch auf Arbeitsbedingungen, die nicht weniger günstig sind als die Bedingungen unter denen die Arbeitnehmer der Europäischen Union arbeiten. Dies ist deshalb notwendig um die Wanderarbeiter vor Ausbeutung und die lokal beschäftigten Arbeitnehmer vor Sozialdumping zu schützen.

Artikel 45

In (2) sollte das Wort „verhandelt“ durch „abgeschlossen“ geändert werden.

Artikel 49

Da der ÖGB dafür eintritt, dass die Grundrechte im EU-Vertrag verankert werden, um einklagbares Recht zu werden, treten wir für die komplette Streichung des Absatzes 1 ein.

Wie bereits oben erwähnt ist der ÖGB der Ansicht, dass für die garantierten sozialen Grundrechte ein Klagerecht für die Gewerkschaften zur Vertretung der Arbeitnehmerinteressen gewährleistet sein muss. Der neue Absatz sollte lauten: „Bezüglich der Rechte in der Charta, die die Interessen der Arbeitnehmer betreffen, haben die Gewerkschaften mit Einverständnis der betreffenden Person ein Klags- und Vertretungsrecht.“

Artikel 51

Der ÖGB tritt für eine Ergänzung des Artikel 51 ein, da gewährleistet sein muss, dass strengere nationale gesetzliche und kollektivvertragliche Regelungen unbedingt erhalten bleiben und auch zu jedem Zeitpunkt neu eingeführt werden können. Absatz 2 des Artikel 51 sollte daher lauten: „Die Grundrechtscharta steht nicht im Widerspruch zu strengeren nationalen gesetzlichen und kollektivvertraglichen Regelungen und verhindert auch nicht deren Einführung zu einem späteren Zeitpunkt.“

Zusätzlich fordert der Österreichische Gewerkschaftsbund die Verankerung der folgenden zentralen politischen Handlungsziele:

- Verankerung der Vollbeschäftigung im EU-Vertrag als vorrangige Zielsetzung
- Recht auf gleichen Lohn für gleiche Arbeit
- Schutz der Gesundheit und Sicherheit am Arbeitsplatz
- Recht der Unterrichtung und Anhörung der Arbeitnehmer
- Recht der Mitbestimmung der Arbeitnehmer
- Recht auf Förderung von Jugendlichen, Frauen, älteren Arbeitnehmern und Behinderten
- Errichtung von flächendeckenden Kinderbetreuungseinrichtungen

- Förderung der beruflichen Eingliederung aller aus dem Arbeitsmarkt ausgegrenzten Personen
- Recht auf Bildung und lebenslanges Lernen
- Recht auf Zugang zu Diensten von allgemeinen Interesse

Der Österreichische Gewerkschaftsbund ersucht um Berücksichtigung seiner Stellungnahme.

Fritz Verzetnitsch
Präsident

Karl Drochter
Leitender Sekretär

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 7 September 2000**CHARTE 4458/00****CONTRIB 312****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a contribution by the Permanent Forum of Civil Society, with its position regarding the Draft Charter. ¹

¹ This text has been submitted in English and French languages.

An uncompleted charter, a minimalist approach, an unsatisfied debate :

The Permanent Forum of Civil Society says "No !" to the draft Charter and suggest to the french Presidency a process to let the "Europe for citizens" make progress.

The draft Charter of fundamental Rights proposed by the Presidium of the Convention ("Convent 45"- 28 July 2000) is a necessary but not sufficient basis to contribute to the progress of the European Union and to the essential readjustment of its political, economic and social model. This draft is still not a reply to the XXIst century' stakes.

If we examine the draft Charter from the " common good " point of view, we are obliged to note that it does not put the "human person" in the heart of the european building and of its project of development, it does not commit itself in a readjustment "institutions/market/civil society" in favour of the citizens, it is not opening up to the outside world, it is not a motor of changes, it does not contribute to a lasting development and, in this, is not conform to the Amsterdam's Treaty targets.

The draft Charter suggests clauses that, at constant right, would like to be pictures of a selection of rights having a double characteristic : on one hand, to exist at the XXth century and on the other hand to be common to all the member States.

To be worthy to propose a new vision at the beginning of the third millenium, such a Charter should be a motor of a real progress and should take in consideration the new developments that reply to the following requirements :

- * to assert the place of the " common good" in the context of a world economy marked by the growing importance of global groups : firms, financial market, civil society ;
- * to contribute to hinder the four threats hanging over the european project: the extreme right, the ethnic withdrawal, the islamism and the merchandising ;
- * to want to build an economic and social development with the human person at its center;
- * to guarantee the parity man/woman ;
- * to contribute to the elimination of poverty and social exclusion ;
- * to give a place to the migrants;
- * to let the Europe being the avant-garde of the future without frontiers' democracy that will exist in the XXIst century.

The European Council in Biarritz, and just after in Nice, will deal with the Charter of fundamental Rights elaborated by the Convention. For the Permanent Forum of Civil Society, this text should play a "re-founding" role in:

- * reconciliating the citizens with the european project that gave, till now, the market and not the human person its priority;
- * fixing the values that, in application of the criteriums established by the European Council of Copenhagen, will be imposed to all the member States and to all the applicant Countries ;
- * defining a "pluriannual programme" for the realization and the progress of rights within the Union.

The Forum thinks that, in its version of 28 July 2000, the draft Charter doesn't meet yet these goals in an adequate manner.

Some whole chapters are poor (the european citizenship) or completely missing (the participatory democracy, the local democracy, the democracy based on parity, the collective rights, the right to culture...).

Some retreats about Treaties and Conventions are even noted in the social field (right of striking, right to housing, right to a preliminary consultation ...) and in the environmental field.

The goal of the project - indeed asserted in the preamble - seems limited to guarantee the visibility of certain rights and not to guarantee their progress.

Moreover, neither the Convention nor the intergovernmental Conference treated those crucial questions like:

- the constraining character of the future charter ;
- its relationship with the future european constitution ;
- the necessary community procedures to guarantee the justiciability of the there-written rights,
- the relations between the Charter, the Convention of Rome and the other european and international instruments protecting the fundamental rights;
- the responsibility of member States in the respect of fundamental rights within the Union.

If, as proposed by a member of the Convention, this draft Charter should be submitted to referendum (a method of participatory democracy asked by an important number of NGOs), the Permanent Forum of Civil Society would be obliged to claim for a "NO".

That's why we suggest an approach in which the french Presidency of the Council would be required to play an important role for an historic progress towards an "Europe of citizenship".

The European Council of Nice would welcome the text presented by the Convention as a "draft" and would decide to submit it to a " public poll" in all the countries of the Union - and this for a period of six months - to testify its willing to associate the citizens and to build an "Europe of citizenship". Citizens, national parliaments, trade unions and firms, non governmental organizations and associations, local and regional authorities would be invited to have a debate about this text and to submit proposals:

* The European Council of Nice would entrust the Convention with the task of collecting those proposals and of submitting to its attention a final text, in december 2001, at the latest.

* The European Council of Nice would decide to ask the member States to take the necessary constitutional dispositions in order to make possible the convocation of a referendum/consultation of peoples of the Union on the final text during the year 2002.

* The European Council of Nice would express that the text of the Charter, if approved in codecision by the European Parlement and the Council, would come into force as a integral part of the treaties. The Charter would be, this way, an essential step on the way to the European Constitution.

We think that this agenda could :

- make the reflexion more mature on themes like civic, political, economic and social rights;
- resolve the question of the competence of the Court of Human Rights in Strasbourg;
- complete the Charter after the debates held in the member States;
- rally the public opinion in order to make that the adoption of this Charter becomes "its" own affair.

The Forum will ask to the french Presidency to meet a representative delegation of the european civil society in order to propose the above expressed requirements.

Bruxelles, 30 August 2000.

PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE**fundamental.rights@consilium.eu.int**

Bruxelles, le 13 septembre 2000**CHARTE 4459/00****CONTRIB 313****NOTE DE TRANSMISSION**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne

Veillez trouver ci-après une contribution de "Stichting Living Together in a New Europe". ¹

¹ Ce texte à été soumis comme un document multilingue F/NL.

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STICHTING LIVING TOGETHER IN A NEW EUROPE
66 Chemin des Nielles 06600 Cap d'ANTIBES FRANCE
Tel 33 4 93 61.55.24 FAX 33 4 9 3 6 1 11 20

Chère Madame,

À la suite de notre conversation téléphonique de ce matin je me présente chez vous comme le Président de la Fondation LIVING TOGETHER in a NEW EUROPE.

Au nom de notre Comité je vous présente la lettre suivante concernant la Charte Européenne en préparation pour la Conférence Intergouvernementale à Nice les 7 et 8 décembre prochain.

Nous vous présentons dans le courant de la semaine prochaine un commentaire approfondi, pour mieux comprendre le but de notre proposition.

Nous vous remercions d'avance de votre coopération et nous vous prions d'agréer, Chère Madame, l'expression de nos sentiments les meilleurs.

STICHTING "LIVING TOGETHER"**In a new Europe**

30-8-2000

Aan het secretariaat Ontwerp - Handvest van de Grondrechten van
de EUROPESE UNIE

BRUSSEL

Ter attentie van de heer Jean Paul Jacque

Geachte heer,

De bovengenoemde Stichting is bijzonder geïnteresseerd in het Ontwerp waarover U het
secretariaat voert.

Uit Uw brief van 28 juli 2000 (OR. fr) CHARTE 4422/00 hebben wij begrepen dat opmerkingen
over dit onderwerp voor 1 september a.s. bij U moeten worden ingeleverd. Wij behoren niet tot de
vertegenwoordigers van de nationale parlementen of tot de delegatie van het Europees Parlement,
maar hopen dat wij als persoonlijke vertegenwoordigers onze stem kunnen laten horen. T.a.t. de
heer Braibant.

Daartoe laten wij hieronder een voorstel tot aanvulling van de tekst van het EG-Verdrag
d.d. 25-3-1957 Rome, tweede deel: "Het burgerschap van de Unie", artikel 17, volgen.
De par. 1 en 2 blijven ongewijzigd. Toegevoegd wordt een par. 3.

Iedere Burger van de Unie verkrijgt ter identificatie, een door de lidstaat op haar voorwaarden uit te
geven, EURO PASPOORT.

Door de ondertekening van dit Paspoort verklaart de Burger dat hij bekend is met de rechten die hij
geniet en de plichten waaraan hij zich onderwerpt.

STICHTING LIVING TOGETHER

p.a. de Jong, Voorzitter.

DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 8 September 2000**CHARTE 4460/00****CONTRIB 314****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find enclosed a contribution of the European Trade Union Confederation and the Platform of European Social NGOs, with comments and a working paper to the document CHARTE 4422/00 CONVENT 45.¹

¹ These texts has been submitted in English language only.



Platform of European Social NGOs CES
Plate-forme des ONG européennes du secteur social

Dr Roman Herzog
President
Convention on the Charter of Fundamental Rights

1st September 2000

Re: Comments on Convention document 45

Dear Dr Herzog,

The European Trade Union Confederation and the Platform of European Social NGOs are jointly campaigning for the inclusion of fundamental rights in the EU Treaty.

Following national meetings in the EU Member States and many candidate countries in the period from March to August, a final European-level conference bringing together around 140 participants from across Europe took place in Brussels on 31st August and 1st September.

Both the Social Platform and the ETUC have already forwarded you their official positions and contributions to the Convention, including their joint campaign paper: “Fundamental Rights - the Heart of Europe”.

At this time, we would also like to bring the analysis and general conclusions of our European conference to the attention of the members of the Convention. These reflect the discussions and concerns expressed at the conference. Although these conclusions are not statutory positions of the ETUC and the Social Platform as such, they do however highlight the clear need to improve the draft Charter text of Convention document n°45 in order to make it acceptable for the trade unions and the social NGOs.

We hope that the conclusions of our conference will lend support to initiatives to improve and strengthen the present Charter text.

Given the vital importance of the outcome of the Convention's work for European citizens, we should like to recommend that the spirit of transparency practiced by the Convention will also be applied when deciding on the final draft, i.e. that the voting of the individual Convention members is registered and made public.

Yours sincerely,

Emilio Gabaglio
General Secretary, ETUC

Giampiero Alhadeff
President, Platform of European Social NGOs



Platform of European Social NGOs ETUC CES
Plate-forme des ONG européennes du secteur social

Working paper on the draft of the
EU Charter of Fundamental Rights (Convent n° 45)

Preliminary analysis carried out during the Conference organised by the ETUC and
the Platform on 31st August and 1st September 2000

Although it is important to recognise the importance of the work carried out by the Convention and the fact that many fundamental rights can already be found in the text of Convent 45, the text does not meet the expectations of a significant part of organised civil society represented by members of the European Trade Union Confederation and the Platform of European Social NGOs. If this text is not improved, it must be rejected because of **its deficiencies, its regressions and its ambiguities**:

- deficiencies: some fundamental rights are missing from this text
- regressions: some of the rights set out are a step back as compared to national or international norms (especially those of the Council of Europe and the European Union)
- ambiguities: some of the rights are formulated in a weak or ambiguous manner.

1. Important rights missing from the text of Convent 45

- 1.1 Article 12 does not include:
- *the recognition of the social partners at European level in the framework of a system of European industrial relations*
 - *the right of consultation of European NGOs in the framework of a structured civil dialogue.*
- 1.2 Article 15 (freedom to choose an occupation) does not include the *right to work and engage in a freely chosen occupation* (which is found in the Revised European Social Charter and the Community Charter of Workers Fundamental Social Rights).
- 1.3 Missing from Chapter III (Equality) is:
- *an article on the rights to equal opportunity and treatment in all fields of life and work between men and women*
 - *an article on the right to the respect of cultural diversity.*
- 1.4 Art. 21.1 (Equality and non-discrimination) must include a second paragraph providing for the adoption of positive measures, as in art. 22 (Equality between men and women).

- 1.5 The Articles 25 (Workers' rights to information and consultation within the undertaking) and 26 (Right of collective bargaining and action) do not include trade union rights such as:
- *national and transnational rights of association, collective bargaining, trade union action including cross-border sympathy action and the right to strike*
 - *national and transnational rights of workers in enterprises to information and consultation and participation, prior to decision-making.*
- 1.6 Chapter IV (Solidarity) and in particular Article 32 (Social security and social assistance) do not include:
- *the right of all individuals, regardless of status, to a decent minimum income, enabling them and their family to live in dignity, to ensure their health and well-being* (which is found in the Community Charter of Workers Fundamental Social Rights, 1989)
 - *the right to housing* (Revised European Social Charter)
 - *the right to retirement* (Revised European Social Charter)
 - *the right of older people to a decent income enabling them to live a dignified life* (which is found in several social Charters)
 - *the right to protection against poverty and social exclusion* (which is found in the Revised European Social Charter)
 - *the right to social services of a high quality* (Revised European Social Charter)
 - *the right of all third country nationals (men, women and children) finding themselves on the territory of the European Union, without being legally resident, to a basic level of protection as set out in the Geneva Convention of 1951 and its protocol of 1967.*
 - *the right to social security for people with a disability.*
- 1.7 Article 43 does not include *the right to family regrouping for third country nationals working in the European Union* (which is found in the Revised European Social Charter).
- 1.8 Chapter VII (JUSTICE) does not include an article on the enforceability of the Charter nor on the means of guaranteeing the right to rights.
- 1.9 This draft text does not refer to the responsibilities of the European Union to promote human rights and the ILO's basic international norms vis-à-vis third countries, and to the international institutions covered by the European Union. These requirements should also apply to European enterprises based in third countries.

2. Convent 45 is a step backwards on several grounds

Here are some examples:

- 2.1 In general, several articles state that the rights mentioned are guaranteed "in accordance with Community law and national laws". This is the case for numerous social rights (articles 25, 26, 32, 33, 34). This represents a step backwards, going against the momentum established in the Treaty for upward social harmonisation.

- 2.2 Paragraph 5 of the Preamble must have an explicit reference to the Revised European Social Charter, to its Protocols and to the Community Charter of Workers Fundamental Social Rights.
- 2.3 Article 14 (Right to education) does not take into account the *right to lifelong learning* (which is found in the Treaty of the European Community).
- 2.4 Article 27 (Right of access to placement services) must guarantee that this right is free of charge (as in the Revised European Social Charter).
- 2.5 Article 28 (Protection in the event of unjustified dismissal) must be entitled: “Protection in the event of dismissal” and provide protection against all forms of dismissal.
- 2.6 Article 51 (Level of protection) must include a clause of non-regression in relation to rights recognised at national level, in such a way as to ensure that this Charter cannot be used to justify a step backwards as regards these rights. In addition this article must explicitly refer to the Revised European Social Charter, the Community Charter of Workers Fundamental Social Rights, the Declaration on Fundamental Principles and Rights at Work (ILO, 1998), the Convention on the Elimination of All Forms of Discrimination Against Women (UN, 1979), the Convention on the Rights of the Child (UN, 1989).

3. Convent 45 is weak and ambiguous on a number of points

Here are some examples:

- 3.1 Point 2 of the Preamble should refer not only to men and women, but also to children.
- 3.2 Point 7 of the Preamble guarantees “the rights and freedoms set out hereafter are guaranteed to each person”. Does this guarantee include third country nationals whether legally resident or not?
- 3.3 Articles 13 (Freedom of research) and 17.2 (Intellectual property) should include, as is the case for Article 17.1 (the Right to Property), an explicit reference to the public interest as well as the respect of dignity. Likewise, Article 16 (Freedom to conduct a business) should include a reference to the social responsibilities of businesses.
- 3.4 Article 29 should refer to *the rights to health and safety protection in the workplace* (as does the Treaty of the European Community).
- 3.5 The formulation of Articles 32 (Social security and social assistance) and 34 (Access to services of general economic interest) is weak. Instead of setting out that “Everyone has access to...” like for example Article 33 (Healthcare), these two Articles state “The Union recognises and respects the entitlement to...” (Art. 32) or “The Union respects the access to...”(Art. 34).

- 3.6 Article 43.2 is drafted as follows, “Freedom of movement may be granted to...third country nationals”. The word “may” is very ambiguous.
- 3.7 Article 49 (Scope) should make a reference to the social partners in the bodies to which the Charter is addressed, given that the Treaty of the European Community has conferred powers upon them in the framework of Social policy.
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PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE**fundamental.rights@consilium.eu.int**

Bruxelles, le 18 septembre 2000**CHARTE 4460/00 ADD 1****CONTRIB 314****ADDENDUM 1 A LA
NOTE DE TRANSMISSION**

Objet : Projet de Charte des droits fondamentaux de l'Union européenne

Veillez trouver ci-après la version française d'une contribution de la Confédération européenne des Syndicats et de la Plate-forme des ONGs, sur le document CHARTE 4422/00 CONVENT 45. ¹

¹ Ce texte à été soumis en langues anglaise et française.



Platform of European Social NGOs

Plate-forme des ONG européennes du secteur social

ETUC CES

Document de travail sur le projet de Charte des Droits
fondamentaux de l'Union européenne (Convent n°45)

première analyse réalisée lors de la Conférence organisée
par la CES et la Plate-forme les 31 août et 1^{er} septembre 2000

Bien qu'il convienne de **reconnaître l'importance du travail effectué par la Convention et le fait qu'un grand nombre de droits fondamentaux soient déjà inclus dans le texte Convent 45**, celui-ci ne répond pas aux attentes d'une partie importante de la société civile organisée représentée par les membres de la Confédération européenne des syndicats et la Plate-forme des ONG européennes du secteur social. Si le texte n'est pas modifié, il doit être rejeté à cause de **ses lacunes, de ses régressions et de ses ambiguïtés** :

- lacunes : des droits fondamentaux manquent dans ce texte
- régressions : des droits sont en retrait par rapport aux normes existantes au niveau national ou international (notamment de l'Union européenne ou du Conseil de l'Europe)
- ambiguïtés : des droits sont formulés de façon faible ou ambiguë.

1. Des droits importants manquent dans le texte Convent 45

- 1.1 L'article 12 (Liberté de réunion et d'association) ne comprend pas :
 - la *reconnaissance des partenaires sociaux à un niveau européen dans le cadre d'un véritable système européen de relations collectives de travail*
 - le *droit de consultation des ONG européennes dans le cadre d'un dialogue civil structuré.*
- 1.2 L'article 15 (Liberté professionnelle) ne comprend pas le *droit au travail librement choisi* (qui figure dans la Charte sociale européenne (révisée) et la Charte communautaire des droits fondamentaux des travailleurs).
- 1.3 Dans le chapitre III (Egalité), manquent :
 - *un article sur le droit à l'égalité des chances et de traitement entre les femmes et les hommes dans tous les domaines de la vie*
 - *un article sur le droit au respect à la diversité culturelle.*
- 1.4 L'article 21.1 (Egalité et non-discrimination) doit comporter un deuxième paragraphe permettant de prévoir, comme à l'article 22 (Egalité hommes et femmes) l'adoption de mesures positives.

- 1.5 Les articles 25 (droit à l'information et à la consultation des travailleurs dans l'entreprise) et 26 (droit de négociation et actions collectives) ne comprennent pas les droits syndicaux tels que :
- *les droits nationaux et transnationaux d'association, de négociation collective, d'action syndicale, y compris les actions de solidarité transfrontalières et la grève*
 - *les droits nationaux et transnationaux préalables d'information, de consultation et de participation des travailleurs dans les entreprises.*
- 1.6 Le chapitre IV (Solidarité) et notamment l'article 32 (Sécurité sociale et aide sociale) ne comprennent pas :
- *le droit pour toute personne, quel que soit son statut, à un revenu minimum décent lui permettant de vivre dans la dignité (qui se trouve dans la Charte communautaire des droits fondamentaux des travailleurs)*
 - *le droit au logement (qui se trouve dans la Charte sociale européenne révisée)*
 - *le droit à la retraite (qui se trouve dans la Charte sociale européenne révisée)*
 - *le droit des personnes âgées à une vie et un revenu dignes et décents (qui se trouve dans plusieurs Chartes sociales)*
 - *le droit à la protection contre la pauvreté et l'exclusion sociale (qui se trouve dans la Charte sociale européenne révisée)*
 - *le droit à des services sociaux de qualité (Charte sociale européenne révisée)*
 - *le droit des ressortissants des pays tiers (femmes, hommes, enfants) se trouvant sur le territoire de l'Union européenne sans y résider légalement à une protection de base prévue par la Convention de Genève de 1951 et son Protocole de 1967*
 - *le droit à la sécurité sociale pour les personnes ayant un handicap.*
- 1.7 L'article 43 ne comprend pas le droit au regroupement familial pour les ressortissants de pays tiers travaillant dans l'Union européenne (qui se trouve dans la Charte sociale européenne révisée).
- 1.8 Le chapitre VII (Justice) ne comprend aucun article sur la justiciabilité de la Charte et sur sa façon de prévoir le droit aux droits.
- 1.9 Ce projet de Charte ne traite pas des responsabilités de l'Union dans la promotion des droits humains et des normes internationales fondamentales de l'OIT vis-à-vis de pays tiers, comme au sein des institutions internationales où l'Union européenne a des compétences. Ces exigences devraient s'étendre aux entreprises européennes installées dans des pays tiers.

2. Convent 45 constitue une régression sur de nombreux points

En voici quelques exemples :

2.1 De façon générale, de nombreux articles prévoient que les droits énoncés sont garantis « conformément aux législations nationales et au droit communautaire ». C'est notamment le cas pour de nombreux droits sociaux (articles 25, 26, 32, 33, 34). Ceci constitue une régression par rapport à la dynamique inscrite dans le Traité et visant à une harmonisation sociale vers le haut.

- 2.2 Le Préambule, paragraphe 5, doit contenir une référence explicite à la Charte sociale européenne révisée, à ses Protocoles et à la Charte communautaire des droits fondamentaux des travailleurs.
- 2.3 L'article 14 (droit à l'éducation) ne prend pas en compte le droit à la formation tout au long de la vie (qui se trouve dans le Traité de la Communauté européenne).
- 2.4 L'article 27 (droit d'accès au service de placement) doit prévoir (comme la Charte sociale européenne révisée) que ce droit est gratuit.
- 2.5 L'article 28 (Protection en cas de licenciement injustifié) doit avoir comme titre : « Protection en cas de licenciements » et prévoir une protection contre tout licenciement.
- 2.6 L'article 51 (Niveau de protection) doit prévoir une clause de non régression par rapport aux droits reconnus à un niveau national, de façon à assurer que cette Charte ne puisse être utilisée pour justifier un recul de ces droits. Cet article doit également mentionner explicitement la Charte sociale européenne révisée, la Charte communautaire des droits sociaux fondamentaux des travailleurs, la Déclaration relative aux principes et droits fondamentaux du travail (OIT, 1998), la Convention sur l'élimination de toutes les formes de discriminations à l'encontre des femmes (ONU, 1979), la Convention relative aux droits de l'enfant (ONU, 1989).

3. Le Convent 45 est faible et ambigu sur de nombreux points

En voici quelques exemples :

- 3.1 Le Préambule, point 2, pourrait utilement mentionner non seulement les hommes et les femmes, mais aussi les enfants.
- 3.2 Le Préambule, point 7 prévoit que « les droits et libertés énoncés ci-après sont garantis à chacun ». Cela concerne-t-il également les ressortissants de pays tiers, qu'ils aient ou non un statut de résident légal ?
- 3.3 Les articles 13 (Liberté de la recherche), 17.2 (Propriété intellectuelle) devraient comporter comme l'article 17.1 (Droit de propriété) une référence explicite à l'intérêt général, ainsi qu'au respect de la dignité. De même l'article 16 (Liberté d'entreprendre) devrait prévoir une référence aux responsabilités sociales des entreprises.
- 3.4 L'article 29 doit prévoir (comme le fait le Traité de la Communauté européenne) *le droit à la protection de la santé et de la sécurité sur les lieux de travail*.
- 3.5 Les articles 32 (Sécurité sociale et aide sociale) et 34 (Accès aux services d'intérêt économique général) sont rédigés de façon faible. A la place de prévoir, comme par exemple l'article 33 (Protection de la santé), « Toute personne a le droit de ... », ces deux articles prévoient que « l'Union reconnaît et respecte le droit d'accès à ... » (art. 32) ou « l'Union respecte l'accès à ... » (art. 34).

- 3.6 L'article 43.2 est ainsi rédigé : « La liberté de circulation peut être accordée ... aux ressortissants de pays tiers ». Le mot « peut » est tout à fait ambigu.
- 3.7 L'article 49 (Champ d'application) devrait inclure les partenaires sociaux dans les organisations auxquelles s'adresse la Charte, puisque le Traité de la Communauté européenne leur confère des compétences dans le cadre de la Politique sociale.
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DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**fundamental.rights@consilium.eu.int**

Brussels, 8 September 2000**CHARTE 4461/00****CONTRIB 315****COVER NOTE**

Subject : Draft Charter of Fundamental Rights of the European Union

Please find hereafter a contribution of the European Women's Lobby (EWL), with the position paper to the document CHARTE 4422/00 CONVENT 45. ¹

¹ This text has been submitted in English and French languages.



**LOBBY EUROPEEN DES FEMMES
EUROPEAN WOMEN'S LOBBY**

August 2000

**POSITION PAPER OF
THE EUROPEAN WOMEN'S LOBBY
ON THE DRAFT EUROPEAN CHARTER OF FUNDAMENTAL
RIGHTS**

At the 1995 World Conference on women, 189 countries agree, "Governments must not only refrain from violating human rights of all women, but must work actively to promote and protect these rights. (...) The gap between the existence of rights and their effective enjoyment derives from a lack of commitment by governments to promoting and protecting these rights" (Beijing Platform for action, 215 & 217). Women in Europe would consider it a disgrace if European decision-makers fail to comply with this international commitment by simply ignoring them

Having read through the text of the draft Charter proposed by the Praesidium at the end of July (Convent 45), the European Women's Lobby notes once again the lack of consideration of gender equality by the authors of the Charter.

The EWL reiterates the demands formulated in its previous written contributions, urging political leaders to integrate gender equality in the Charter in order to ensure the protection of half the population's interests. The EWL would like to stress that this contribution constitutes the absolute minimum platform of rights of a Charter respectful of women's rights and integrating a gender perspective.

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Furthermore, the Charter in some linguistic versions uses sexist languages, for example in article 3(1) “Everyone has the right to respect for *his* physical and mental integrity”. The EWL stresses that one form of gender discrimination is the use of sexist language. The use of sexist language, though sometimes unintentional, is nonetheless damaging in excluding women and in rendering our reality and our experience invisible. **The EWL demands therefore that all linguistic versions of the EU Charter are checked carefully and sexist language removed and replaced by gender neutral terms.**

CHAPTER I DIGNITY

Prohibition of gender related violence and persecutions:

The provision condemning torture and inhuman treatment should explicitly state that gender related violence or persecution is a form of torture.

Sexual mutilation, whose first victims are women and girls, still take place on European territory. This inhuman treatment is a form of torture and should thus be considered as such, as well as other kinds of gender related violence such as rape, domestic violence, forced marriage, prostitution, “honour” killing, including those which take place within the family.

Proposal of the EWL :

Chapter I ‘Dignity’, amend article 4: Prohibition of torture and inhuman treatment

No one shall be subjected to torture or to inhuman and degrading treatment. This refers to any kind of physical or moral violence, including any kind of gender related violence such as among others female genital mutilations, rape, violence in the home, forced marriage, prostitution, “honour” killings, also when executed within the family.

CHAPTER II FREEDOMS

Gender-sensitive asylum policy:

The particular kind of gender related violence mostly suffered by women refugees and asylum seekers must be referred to clearly and considered as a violation of women’s fundamental human rights on the ground of which asylum can be granted.

Treatments threatening or harming women’s physical or psychological integrity must be considered as a form of torture whether they are enforced by legal norms, committed by state agents or imposed by social or religious norms.

Proposal of the EWL:

Article 18 ‘Right to asylum’, add the following paragraph:

“Gender persecution including sexual mutilations or other gender related violence such as rape, forced marriage, violence in the home, honour killing, shall be given particular attention within the grounds for seeking asylum.

CHAPTER III EQUALITY

The principle of equality between women and men in *all* fields:

A provision exclusively dedicated to the unconditional principle of gender equality must be introduced in the Charter. It must prohibit direct and indirect discrimination and provide explicitly and precisely for the adoption of positive measures by Member States.

The general principle of non discrimination as proposed in article 21 does not lead to substantive equality between women and men, as *gender discrimination is of a particular and structural nature, affecting women who represent half of the population and not a minority*. Women are likely to face different forms of discriminations, on the ground of ethnic origin or disability for example, added to the structural discrimination on the ground of sex. The inclusion of a separate provision prohibiting gender discrimination would also enable a clear focus on the issue of multiple discriminations and would indicate a commitment to ensuring that women enjoy effectively all fundamental rights and freedoms and to be full citizens in all areas.

Proposal of the EWL:

Chapter III “Equality”, new article after article 20: General principle of equality between women and men in all areas

1. The Union shall promote respect for the unconditional and fundamental principle of equality between women and men in all areas of its jurisdiction.
2. Substantive equality between women and men must be established and direct or indirect discrimination on the grounds of sex must be prohibited. Moreover, a gender dimension should be adopted while combating all forms of discrimination in order to eradicate multiple discrimination that many women face.
3. Positive measures should be implemented to improve women’s situation until substantive and effective equality between women and men is achieved.

Amend article 21 Para. 1 : delete the word “sex”

At this stage, it is not appropriate to specify that this provision should be applicable to the area of work, since the principle of equality between women and men in the area of working conditions and salaries must constitute a separate provision in the chapter on solidarity.

CHAPTER IV SOLIDARITY

Equality between women and men in the areas of working conditions and salaries:

The fundamental principle of equality between women and men in the areas of working conditions, salaries and social protection must be stated in the part dedicated to workers' rights.

The general provision on non-discrimination must be completed by a more specific article tackling the *de facto* inequality between women and men in the area of work.

The current article 22 should be reformulated as below (in particular stating clearly the concept of positive measures aimed at improving women's situation in the field of work).

Proposal of the EWL:

Chapter IV "Solidarity", new article (replacing article 22) : Equal treatment between women and men

1. Equal treatment between women and men must be ensured and any kind of inequalities must be eliminated with regard to work, employment, social protection and social services. This mainly includes the equal right to freely chose or accept to work, the right to the same working conditions, the right to fair and equal pay for work of equal value, and the equal right to social security and assistance for themselves and their family.
2. Any direct or indirect discrimination on the ground of sex is prohibited in the fields quoted in paragraph 1.
3. Positive measures should be implemented to improve women's situation until substantive and effective equality between women and men is achieved in this particular field of employment.

Reconciling family and professional life:

Women and men workers have the right to paid parental leave following the birth or adoption of a child.

In order to increase women's independence through their labour market participation and to achieve effective gender equality, family responsibilities and parental leave should be equally distributed between women and men. Legal protection and paid parental leave should be provided for in order to achieve an equal sharing of child caring responsibilities between women and men.

Proposal of the EWL:

Article 31, amend as follow:

- add 'paid' before parental leave.
- Add the following paragraph: "Quality and affordable child care should be made available to anyone in need of such services"

Social security and social assistance:

A provision on social protection should be inserted in the Charter, providing for individualisation of the rights to social security.

Social protection should be regarded as a social investment for the European states that made a commitment to societal responsibility for all citizens. Nevertheless, a large number of women lack individual security and are dependant on their family and/or spouse. Therefore, women's access to individual social security rights must be ensured.

Proposal of the EWL:

Article 32, amend paragraph 1 as follows:

1. The Union recognises and respects the entitlement to an adequate level of individual social security benefits and social services providing protection to all, in the event of maternity, paternity, illness, (*remove industrial*) accidents, dependency or old age and in the event of loss employment, in accordance with the rules laid down by Community law and national laws and practices.

Health care:

In order to ensure that the health needs of the entire population are tackled, specific care that responds to women's special health needs should be taken into account

Reproductive health, gynaecological and obstetrical services must be kept accessible for every woman, as well as all preventive and screening services which meet the needs of women as patients and consumers.

Proposal of the EWL:

Article 33, add the following paragraph:

'Within the right to appropriate health care, women's specific needs must be taken into consideration and provided for'.

CHAPTER V CITIZENSHIP

Principle of PARITY democracy:

A provision on parity democracy in the Charter is essential to achieve a balanced representation of women and men in decision-making positions.

The problem of under representation of women in decision-making positions persists and must be tackled with concrete measures such as the ones already adopted in some Member States. This principle must be integrated in the Charter through a clear and separate provision.

Proposal of the EWL :

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**Chapter V “Citizenship”, new article: “Parity Democracy”**

1. Every citizen of the Union, without any discrimination, has the right provided by the law of the Union and national law, of an equal access to candidacy for elections and the exercise of the corresponding functions.
2. A parity democracy, meaning an equal representation of women and men in all the organs and institutions of the Union, constitutes a fundamental principle for both the European integration and the institutions of the Union.
3. Positive measures should be taken in order to favour equal access of women and men in the governmental and EU bodies as well as in political parties.

**ENTWURF DER CHARTA DER GRUNDRECHTE DER EUROPÄISCHEN UNION****fundamental.rights@consilium.eu.int**

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**Brüssel, den 8. September 2000****CHARTE 4462/00****CONTRIB 316****ÜBERMITTLUNGSVERMERK**

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**Betr.:** Entwurf der Charta der Grundrechte der Europäischen Union

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Finden Sie bitte nachstehend eine Stellungnahme der Österreichischen Bundeskammer für Arbeiter und Angestellte (BAK).<sup>1</sup>

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<sup>1</sup> Dieser Text wurde uns nur in deutscher Sprache übermittelt.

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Stellungnahme  
der Bundesarbeitskammer zur EU-Grundrechte-Charta

Die Bundeskammer für Arbeiter und Angestellte (Bundesarbeitskammer/BAK) ist eine gesetzliche Interessenvertretung österreichischen Rechts. Sie ist als Körperschaft öffentlichen Rechts organisiert und gesetzlich berufen, die sozialen, wirtschaftlichen, beruflichen und kulturellen Interessen der österreichischen Arbeitnehmerinnen und Arbeitnehmer zu vertreten und zu fördern. Dies geschieht insbesondere durch Stellungnahmen zu Gesetzesvorhaben, auch auf der Ebene der Europäischen Union.

Die Bundesarbeitskammer erlaubt sich daher, zum Vorhaben, eine Charta der Grundrechte der Europäischen Union zu schaffen, Stellung zu nehmen, und ersucht, ihre Ausführungen im weiteren Entstehungsprozeß der Charta zu berücksichtigen.

Das Vorhaben, einen Grundrechtskatalog der Europäischen Union zu schaffen, wird nachdrücklich begrüßt und unterstützt. Gerade angesichts der bevorstehenden Vertiefung und Erweiterung der Europäischen Union und der damit in Zusammenhang stehenden Strukturreformen ist die Schaffung zusätzlicher Angebote an die Bevölkerungen in den Mitgliedsstaaten, sich mit dieser vertieften und erweiterten Europäischen Union zu identifizieren, unerlässlich. Ein solches positives Identifikationsangebot stellt aus unserer Sicht eine europäische Grundrechts-Charta dar. Wenn

einige der wichtigsten Ansprüche, die Menschen an Staat und Gesellschaft richten können – Schutz der persönlichen Integrität und Freiheit vor staatlichen Übergriffen, Garantie der sozialen Existenzgrundlagen – auf europäischer Ebene erlebbar verbrieft werden, ist dies ein entscheidender Beitrag zur Ausbildung des Bewußtseins der Bürgerinnen und Bürger in den Mitgliedsstaaten, gleichzeitig auch Bürgerinnen und Bürger der Europäischen Union zu sein und sich mit dieser zu identifizieren.

Voraussetzung dafür ist allerdings zweierlei:

- Die Grundrechts-Charta darf sich nicht auf eine bloße feierliche Proklamation ohne jede Rechtswirkung beschränken, sondern muß im Rahmen des Primärrechts der Europäischen Union Normwirkung entfalten. Eine bloße feierliche Proklamation stünde aus unserer Sicht auch im Widerspruch zu dem in den Schlußfolgerungen des Europäischen Rates von Köln enthaltenen Bekenntnis, dass „die Wahrung der Grundrechte (...) ein Gründungsprinzip der EU und unerläßliche Voraussetzung für ihre Legitimität“ (sei). Die Normwirkung wird bedauerlicherweise nicht bei allen Grundrechten in Form subjektiver Rechte der europäischen Bürgerinnen und Bürger erreicht werden können. Es wäre jedoch jedenfalls darauf zu drängen, daß in den Fällen, bei denen keine subjektiven Rechte der EU-BürgerInnen durchsetzbar sind, zumindest die normative Wirkung dieser Grundrechte durch Programmsätze und Staatszielbestimmungen sichergestellt wird, die sich an die Organe der Europäischen Union, aber auch an Gesetzgeber und Verwaltung in den Mitgliedsstaaten richten. Ein für die Bürgerinnen und Bürger erlebbarer Rechtsschutz gegenüber europäischen Organen oder Mitgliedsstaaten, die in ihrer Tätigkeit den grundrechtlichen Rahmen nicht ausreichend beachten, könnte über die innerstaatliche Verfassungsgerichtsbarkeit und den Europäischen Gerichtshof geboten werden.
- Ein zweiter wesentlicher Punkt, der gerade aus Sicht der Österreichischen Bundesarbeitskammer für die Fähigkeit eines europäischen Grundrechtskataloges, das europäische Bewußtsein zu stärken und zu vertiefen, wesentlich wäre, ist die Aufnahme eines Kataloges sozialer Grundrechte in die Grundrechts-Charta, wie dies nach den bisherigen Entwürfen des Konvents ohnehin intendiert ist. Österreich hat hier Nachholbedarf, denn es ist einer der wenigen Mitgliedsstaaten der Europäischen Union, in dessen Verfassung die



bürgerlichen Freiheitsrechte nicht durch soziale Grundrechte ergänzt werden. Es wäre äußerst begrüßenswert, wenn diese verfassungspolitische Schiefelage, zu deren Beseitigung die Bundesarbeitskammer wiederholt große Anstrengungen unternommen hat, durch eine gemeinsame europäische Entwicklung bereinigt würde.

Dafür, daß ein gewisses Ausmaß an Rechtsverbindlichkeit einer neuen europäischen Grundrechts-Charta absolut sinnvoll und wichtig wäre, spricht auch noch folgendes Argument: Schon jetzt existieren sowohl feierliche Proklamationen (die Gemeinschaftscharta der sozialen Grundrechte) also auch etliche Verweise in den EU-Verträgen auf andere Grundrechtskataloge (insbesondere die Europäische Menschenrechtskonvention und die Europäische Sozialcharta, beides im Rahmen des Europarates). Die bloße Schaffung einer feierlichen Deklaration würde erstens diesen Bekenntnissen – insbesondere im Bereich der sozialen Grundrechte – keinen entscheidenden Mehrwert hinzufügen, sodaß die Sinnhaftigkeit des gesamten Vorhabens einer EU-Grundrechtscharta in einer Weise hinterfragt werden könnte, die mehr Schaden als Nutzen bringen würde, und zweitens wäre das Verhältnis der verschiedenen feierlichen, aber nicht rechtsverbindlichen Grundrechtskataloge und der diversen Verweise auf andere Grundrechtskataloge zueinander so unklar, dass eher Rechtsunsicherheit gefördert, als das Vertrauen in die Rechtsstaatlichkeit der Europäischen Union, ihrer Institutionen und der Mitgliedstaaten gefestigt würde.

Zu den bisher im Konvent diskutierten sozialen Grundrechten möchte die Bundesarbeitskammer noch folgendes ergänzen: Die im Artikel 46 vorgeschlagene Einschränkung der Wirksamkeit der sozialen Grundrechte auf den „Geltungsbereich des Gemeinschaftsrechts“ ist nicht unproblematisch. Grundrechte werden an sich von den Rechtsadressaten als unteilbar empfunden. Wenn nun zB ein Bürger eines Mitgliedsstaats geltend macht, die Gesetzgebung seines Staates sehe keine Wohnungsbeihilfe vor, und er betrachte dies – auch unter Berücksichtigung seiner individuellen Einkommensverhältnisse und der auf dem Markt herrschenden Miethöhen – als Nichterfüllung des Auftrages gemäß Artikel 41 der Europäischen Grundrechtscharta durch seinen Mitgliedsstaat, wäre trotz des besagten Artikels 41 wegen des Artikel 46 wohl keine Kompetenz der Europäischen Union gegeben. So aber werden Erwartungshaltungen an einen Europäischen Grundrechtskatalog massiv enttäuscht. Über weite Strecken wird zwischen dem Grundrechtskatalog

und dem bisherigen Gemeinschaftsrecht keine unmittelbare Verbindung herstellbar sein. Es sollte daher zumindest mittel- und langfristig sehr wohl eine Kompetenz der Verfassungsgerichte in den Mitgliedsstaaten sowie des Europäischen Gerichtshofes zur Kontrolle der Einhaltung des Grundrechtskataloges angestrebt werden, auch wenn ein Grundrecht nicht im Zusammenhang mit sonstigem EU-Recht – wie zB der Ausübung einer der Grundfreiheiten des Binnenmarktes – relevant wird. Die Europäische Union würde dabei freilich in eine gewisse Konkurrenz mit dem Europarat – dessen Grundrechtssystem einen vergleichbaren Rechtsschutz bietet – treten. Dieses Konkurrenzverhältnis müßte geklärt werden.

Was den Inhalt des Kataloges sozialer Grundrechte betrifft, unterstützt die Bundesarbeitskammer den im Verlauf der Tätigkeit des Konvents gegenüber den Anfängen deutlich erweiterten Katalog, wie er etwa aus dem Vermerk des Präsidiums des Konvents vom 3. Juli 2000 („Convent 41“) hervorgeht.

Die Österreichische Bundesarbeitskammer wünscht dem Konvent ein gutes Gelingen bei seiner für die europäischen Bürgerinnen und Bürger und die Weiterentwicklung der Europäischen Union so eminent wichtigen Aufgabe.

Der Präsident:  
iV

Der Direktor:  
iV

VP der BAK Josef Quantschnig

Mag Georg Ziniel

**ENTWURF DER CHARTA DER GRUNDRECHTE DER EUROPÄISCHEN UNION****fundamental.rights@consilium.eu.int**

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**Brüssel, den 8. September 2000****CHARTE 4463/00****CONTRIB 317****ÜBERMITTLUNGSVERMERK**

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**Betr.:** Entwurf der Charta der Grundrechte der Europäischen Union

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Bitte finden Sie nachstehend eine Stellungnahme des Deutschen Gewerkschaftsbundes (DGB), zu Dokument CHARTE 4422/00 CONVENT 45. <sup>1</sup>

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<sup>1</sup> Dieser Text wurde uns nur in deutscher Sprache übermittelt.

Abteilung  
**Arbeitsmarktpolitik und  
Internationale Sozialpolitik**

**Deutscher  
Gewerkschaftsbund**

**Bundesvorstand**

Berlin, 29.08.2000

## **Stellungnahme des Deutschen Gewerkschaftsbundes**

### **zum Entwurf der Charta der Grundrechte der Europäischen Union (CONVENT 45) vom 28.07.2000**

#### **1. Grundsätzliche Bemerkungen**

Der DGB bewertet den nunmehr vom Präsidium vorgelegten vollständigen Entwurf einer Grundrechtecharta der Europäischen Union grundsätzlich positiv. Die sozialen Grundrechte bleiben jedoch hinter dem Mandat von Köln zurück. Insbesondere einige der geplanten zentralen Normen zu den sozialen Grundrechten geben Anlass zu großer Sorge.

Gegenüber dem Entwurf des Präsidiums zur Aufnahme sozialer Rechte (CONVENT 34) wurden zwar erkennbar Änderungsvorschläge aufgegriffen; bezüglich einiger zentraler Artikel muss der DGB jedoch seine grundsätzliche Kritik aufrechterhalten und bittet hier nachdrücklich um Änderungen bzw. inhaltliche Präzisierungen entsprechend seinen früheren Vorschlägen und dieser Stellungnahme.

#### **1.1 Grundsätzliche Fragen zentraler Artikel**

In **Artikel 12** ist das Betätigungsrecht der Gewerkschaften auch auf europäischer Ebene abzusichern. Auch bei anderen Rechten wird der grenzüberschreitenden Dimension nicht ausreichend Rechnung getragen, z.B. im Datenschutz.

In **Artikel 25** geht es um den grundlegenden Anspruch der Arbeitnehmer und ihrer Interessenvertretungen auf Unterrichtung und Anhörung. Der DGB bekräftigt seine

Forderung, dieses Recht um die **Mitwirkung** zu erweitern. Bereits die EU-Gemeinschaftscharta der sozialen Grundrechte der Arbeitnehmer, eine wesentliche Grundlage für die Arbeiten des Konvents, sieht das Recht auf Mitwirkung in den Artikeln 17 und 18 ausdrücklich vor.

**Artikel 26** enthält das Recht auf Kollektivverhandlungen und Kollektivmaßnahmen. Auch hier unterstreicht der DGB erneut seine Forderung nach ausdrücklicher Anerkennung des **Streikrechts** wie es sowohl in der Europäischen Sozialcharta (ESC) als auch in den einschlägigen internationalen Konventionen und Übereinkommen enthalten ist, sowie nach einem Benachteiligungsverbot bei gewerkschaftlicher Betätigung. Die ausdrückliche Garantie des Streikrechts ist fundamentale Voraussetzung für die Wahrnehmung anderer sozialer Grundrechte.

In bezug auf das **Schutzniveau**, das die EU-Grundrechtecharta gewährt, ist es für den DGB unerlässlich, dass dieses nicht nur der Europäischen Menschenrechtskonvention (EMRK), sondern gleichermaßen der Revidierten Europäischen Sozialcharta (RESC) entspricht. Für den DGB ist nicht nachvollziehbar, dass die Bezugnahme auf die RESC in **Artikel 50 (Tragweite der garantierten Rechte)** und in **Artikel 51 (Schutzniveau)** fehlt. Gleichwertigkeit zwischen EMRK und der RESC ist bisher nicht zweifelsfrei sichergestellt. Bisher gilt jedoch der Grundsatz der Unteilbarkeit der Grundrechte; bürgerliche, politische und soziale Grundrechte sind als unteilbare Einheit anzusehen.

Der DGB hält daher einen ausdrücklichen Verweis auch auf die RESC in Artikel 50 und 51 für erforderlich. Dies würde die Gleichwertigkeit der EMRK mit der RESC für das Schutzniveau und die Tragweite der garantierten sozialen Rechte klar zum Ausdruck bringen.

In **Artikel 16** wird erstmals in internationalen und europäischen Rechtsnormen die unternehmerische Freiheit über die Berufsfreiheit und das Eigentumsrecht hinaus anerkannt. Dies wirft große Interpretationsfragen auf. Dieser Artikel sollte daher gestrichen oder es sollte zumindest klargestellt werden, dass diese Norm nicht gegen soziale Grundrechte als grundsätzliches Einschränkungspotential verwendet werden kann. Der DGB tritt nachdrücklich dafür ein, die **Nichtdiskriminierung in Artikel 21** auf den Gebrauch der Rechte aus dieser Charta auszudehnen; die Wahrnehmung der in der Charta garantierten bürgerlichen, politischen und sozialen Rechte darf nicht zu Benachteiligungen führen.

## 1.2 Zur Rechtsverbindlichkeit und Rechtsdurchsetzung

Die Grundrechtecharta kann nur dann Rechtsverbindlichkeit erlangen, wenn sie unmittelbarer Bestandteil sowohl des Unions- als auch des Gemeinschaftsrechts ist. Um Zweifel auszuschließen, ist die Charta in die **Gründungsverträge aufzunehmen**. Auch der EuGH muss – nach Erfüllung besonderer Voraussetzungen – direkt angerufen werden können, um die einheitliche und wirksame Anwendung der Grundrechte sicherzustellen.

Auch ein **Verschlechterungsverbot** sollte für das innerstaatliche Recht zumindest sicherstellen, dass ein einmal garantiertes Recht nur unter eng gefassten Bedingungen eingeschränkt werden kann.

### 1.3 Fehlende soziale Normen

Einen **Mangel** sieht der DGB darin, dass ein Recht auf Arbeit im Sinne einer Verpflichtung, dem Ziel der Vollbeschäftigung, Vorrang einzuräumen fehlt. Dieses aus Artikel 1 ESC entnommene Recht war in der ersten „Liste“ noch enthalten und wurde in CONVENT 40 noch einmal aufgegriffen. Jetzt fehlt es – mit Ausnahme des Elements der Berufsfreiheit. Das Recht auf unternehmerische Freiheit fand sich nicht in den Vorentwürfen, soll jetzt aber garantiert werden. Auch das Recht der Beschäftigten auf Schutz bei Zahlungsunfähigkeit ihres Arbeitgebers fehlt. Dieses in Artikel 25 der revidierten ESC enthaltene Recht lehnt sich nicht nur an IAO-Normen an, sondern vor allem an die Richtlinie 80/987/EWG. Es sollte daher aufgenommen werden. Ebenso sollte das Recht auf gerechtes Arbeitsentgelt aufgenommen werden. Aus dem in der ESC enthaltenen Recht war noch im CONVENT 18 ein gewisses Element aufgenommen worden.

## 2. Bemerkungen zu einzelnen Artikeln

### Artikel 12: Versammlungs- und Vereinigungsfreiheit

Nach Absatz 2 sollte eingefügt werden: *„Gewerkschaften haben auch auf europäischer Ebene das Recht, sich frei zu betätigen.“* Die Ergänzung um das europäische Element erscheint im Hinblick auf den Gleichklang zu Absatz 2 dieser Vorschrift sowie zur Absicherung europäischer Gewerkschaften notwendig.

### Artikel 16: Unternehmerische Freiheit

Die unternehmerische Freiheit wird über die Berufsfreiheit und das Eigentumsrecht explizit anerkannt. Um Fehlinterpretationen und eine weitere Rechtsgrundlage zur Einschränkung sozialer Rechte zu vermeiden, sollte der Artikel möglichst gestrichen werden.

### Artikel 21: Gleichheit und Nichtdiskriminierung

Um Benachteiligungen wegen der Wahrnehmung der in der Charta garantierten bürgerlichen, politischen und sozialen Rechten zu verhindern, sollte Artikel 21 Absatz 1 wie folgt lauten: *„Diskriminierungen insbesondere wegen .... des Alters, der sexuellen Ausrichtung oder wegen des Gebrauchs der Rechte aus dieser Charta sind verboten.“*

## Artikel 22: Gleichheit von Männern und Frauen

Bisher kommt die Pflicht zur positiven Diskriminierung nicht ausreichend zum Ausdruck. Absatz 2 sollte möglichst wie folgt ergänzt werden: „*Er beinhaltet die Pflicht zur Förderung der Gleichstellung.*“

## Artikel 24: Integration von behinderten Menschen

Der DGB sieht die vorliegende Formulierung als erhebliche Verbesserung an, da der Förder- und Integrationsaspekt nun klar zum Ausdruck kommt.

## Artikel 25: Recht auf Unterrichtung und Anhörung der Arbeitnehmer im Unternehmen

Der DGB fordert nachhaltig, dieses Recht um die **Mitwirkung** zu erweitern. Mitwirkung beinhaltet, dass beide Seiten ihren jeweiligen Standpunkt nicht nur austauschen, sondern soll gewährleisten, dass bestimmte unternehmerische Maßnahmen nicht ohne vorherige Information der und Beratung mit der Arbeitnehmerseite getroffen werden können. Eine solche Form der Beteiligung, die sich unterhalb der Ebene der echten Mitbestimmung und Zustimmungspflicht der betrieblichen Interessenvertretung bewegt, erlangt gerade im Zusammenhang mit der fortschreitenden Internationalisierung der Unternehmen und der zunehmenden Zahl von Unternehmenszusammenschlüssen wachsende Bedeutung. Bereits die EU-Gemeinschaftscharta der sozialen Grundrechte der Arbeitnehmer, eine wesentliche Grundlage für die Arbeiten des Konvents, sieht das Recht auf Mitwirkung in den Artikeln 17 und 18 ausdrücklich vor.

## Artikel 26: Recht auf Kollektivverhandlungen und Kollektivmaßnahmen

Der DGB sieht in den vorgenommenen Änderungen eine gravierende Verschlechterung früherer Vorschläge (CONVENT 34). Die Herausnahme des Zusatzes „*auch auf der Ebene der Union*“ im Zusammenhang mit kollektiven Maßnahmen zur Interessenwahrnehmung stellt eine aus Arbeitnehmersicht nicht hinnehmbare Einschränkung der Ausübung dieses Rechtes auf grenzüberschreitender Ebene dar. Die neu aufgenommene Bezugnahme auf das Gemeinschaftsrecht neben den einzelstaatlichen Rechtsvorschriften kann diesen Mangel aus Sicht des DGB nicht ausgleichen, sondern vielmehr als zusätzliche Einschränkung ausgelegt werden.

Auch die Streichung des Zusatzes „*wirtschaftliche und soziale*“ bei Interessen ist nicht nachvollziehbar, präzisiert sie doch gerade die Rolle der Wirtschafts- und Sozialpartner in angemessener Weise. Der DGB plädiert daher nachdrücklich dafür, die frühere Formulierung (CONVENT 34) wiederherzustellen und zusätzlich ein **ausdrückliches Recht auf Streik** sowie ein **Verbot von Benachteiligungen** wegen gewerkschaftlicher Betätigung aufzunehmen. Die ausdrückliche Erwähnung des Streikrechts entspricht den europäischen (Kölner Mandat: ESC Art. 6 Abs. 4) und internationalen Vorgaben (Internationaler Pakt über wirtschaftliche, soziale und kulturelle Rechte, Art. 8 d. (Eine

Erwähnung der Aussperrung ist in den genannten Instrumenten nicht erfolgt und insoweit – will man nicht die derzeitigen Standards verschlechtern – auch nicht möglich; s. auch Begründung unter 1.1.)

Er erneuert daher seinen früheren Vorschlag, dieses Grundrecht wie folgt zu formulieren:

„(1) *Arbeitgeberverbände und Gewerkschaften haben das Recht, die wirtschaftlichen und sozialen Interessen ihrer Mitglieder zu vertreten. Sie haben das Recht, nach Maßgabe der geltenden Rechtsvorschriften und Gepflogenheiten Tarifverträge auszuhandeln und zu schließen sowie bei Interessenkonflikten auch auf der Ebene der Union kollektive Maßnahmen einschließlich des Streiks zu ergreifen.*

(2) *Arbeitnehmer dürfen wegen gewerkschaftlicher Betätigung einschließlich einer Teilnahme an einem Streik nicht benachteiligt werden.“*

### **Artikel 27: Recht auf Zugang zu einem Arbeitsvermittlungsdienst**

Die Aufnahme eines solchen Grundrechtes wird vom DGB ausdrücklich befürwortet. Es muss jedoch präziser gefasst werden. Das Fehlen der in den Vorentwürfen enthaltenen „Unentgeltlichkeit“ beruht wohl auf einem Redaktionsversehen.

Der DGB schlägt daher folgende Formulierung vor: *„Jede Person hat das Recht auf Zugang zu einem unentgeltlichen öffentlichen Berufsberatungs- und Arbeitsvermittlungsdienst.“*

### **Artikel 28: Schutz bei ungerechtfertigter Entlassung**

Der DGB unterstützt die vorgeschlagene Formulierung.

### **Artikel 29: Gerechte und angemessene Arbeitsbedingungen**

Die Würde des Menschen wird in Artikel 1 des Entwurfs der Grundrechtecharta geschützt. Sie sollte gleichermaßen im Zusammenhang mit den Arbeitsbedingungen ausdrücklich aufgeführt werden. Der DGB schlägt daher folgende Formulierung vor: *„Jeder Arbeitnehmer hat das Recht auf angemessene, insbesondere gesunde, sichere und würdige Arbeitsbedingungen.“*

In Abs. 2 erscheint eine Begrenzung der Höchstarbeitszeit nicht ausreichend. Wenn schon keine Verpflichtung zur Verkürzung der Arbeitszeit (vgl. Art. 2 Abs. 1 ESC) aufgenommen wird, sollte zumindest deutlich gemacht werden, dass nicht nur Höchstgrenzen, sondern „angemessene“ Arbeitszeiten der Maßstab sein sollten. Abs. 2 dieses Artikels sollte daher lauten: *„Jeder Arbeitnehmer hat das Recht auf gerechte Arbeitsbedingungen, das insbesondere das Recht auf angemessene tägliche und wöchentliche Arbeits- und Ruhezeiten sowie auf bezahlten Jahresurlaub umfasst.“*



### Artikel 30: Schutz der Jugendlichen am Arbeitsplatz

Der DGB unterstützt nachdrücklich das ausdrückliche Verbot der Kinderarbeit. Allerdings sollte die 15-Jahre-Mindestgrenze wieder aufgenommen werden, ebenso wie die Ergänzung der „eng begrenzten Ausnahmen für leichte Arbeit“, die sich aus den Formulierungen internationaler und europäischer Standards ergibt. Der 2. Satz sollte daher lauten: „*Abgesehen von eng begrenzten Ausnahmen für leichte Arbeit darf das Mindestalter für den Eintritt in das Arbeitsleben das Alter, in dem die Schulpflicht endet, auf jeden Fall aber 15 Jahre nicht unterschreiten.*“

### Artikel 31: Einklang von Familien- und Berufsleben

Der DGB befürwortet die vorgenommenen Ergänzungen in diesem Artikel, insbesondere den ausdrücklichen Kündigungsschutz von Schwangeren. Ergänzend sollte jedoch ein Benachteiligungsverbot vorgesehen werden. Der DGB schlägt hierfür vor: „*Arbeitnehmer mit Familienpflichten dürfen in der Arbeitswelt nicht benachteiligt werden.*“ Diese spezielle Nichtdiskriminierungsregel kann bei Umsetzung der Forderung zu Art. 21 (Gleichheit und Nichtdiskriminierung) entfallen.

### Artikel 32: Soziale Sicherheit und soziale Unterstützung

Der DGB unterstützt den vorliegenden Vorschlag grundsätzlich, möchte jedoch durch entsprechende Präzisierungen den Umfang und die Dynamik bei der Weiterentwicklung sozialer Leistungen stärker berücksichtigt sehen. Durch den Zusatz „Zugang zu *angemessenen* Leistungen“ sollte ein Bezug zum jeweiligen Lebensstandard hergestellt werden. Durch die Einleitung der Aufzählung durch das Wort „*insbesondere*“ sollte der Dynamik sozialer Leistungen im Hinblick auf die zukünftige Entwicklung Rechnung getragen werden.

Zwar sind in der Neuformulierung Leistungen bei Arbeitsunfällen aufgenommen worden, es fehlen jedoch nach wie vor die Elemente: **Schutz bei Berufskrankheiten und bei Berufs- und Erwerbsunfähigkeit**. Diese Elemente sollten nach Auffassung des DGB in die Aufzählung im ersten Absatz aufgenommen werden. Der DGB befürwortet ausdrücklich die Aufnahme des Rechts der Wanderarbeitnehmer auf gleiche Leistungen der sozialen Sicherheit.

### Artikel 50: Tragweite der garantierten Rechte und Artikel 51 Schutzniveau

Der Grundgedanke, dass Einschränkungen und Schutzniveau der in der Charta garantierten Rechte nicht über diejenigen Einschränkungen hinausgehen können, die in der EMRK vorgesehen sind, ist entsprechend auch auf die Revidierte ESC anzuwenden.

**DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION****fundamental.rights@consilium.eu.int**

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**Brussels, 13 September 2000****CHARTE 4464/00****CONTRIB 318****COVER NOTE**

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Subject : Draft Charter of Fundamental Rights of the European Union

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Please find hereafter a contribution by the Country Landowner's Association of England and Wales, with comments on Article 17 in document CHARTE 4422/00 CONVENT 45. <sup>1</sup>

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<sup>1</sup> This text has been submitted in English language only.

**Comments of the CLA on Article 17 of the draft  
Charter of Fundamental Rights for the European Union**

**Article 17: Ownership Rights – need for changes**

On behalf of the CLA, may I refer you to **Article 17** (of the 28 July draft, Charte 4422/00, Convent 45), which defines rights of ownership. In our view the current draft needs some amendments. These are not extensive, but would make a significant and beneficial difference to the way the institutions of the EU – and the member states – operate their rural policies.

**Reasons**

As an organisation representing 50,000 farming and other rural businesses, the CLA is concerned that a secure framework of ownership rights is essential for long term investment in agriculture, forestry and non land based rural businesses, for these businesses to be able to manage their assets effectively, to enter into contracts with public bodies and others to deliver environmental and other land management services and to grow for the benefit of local employment and the wider rural economy. The CLA fully supported the submission of the European Landowning Organisation (ELO) to the Convention (on the basis of an earlier draft) which set out these arguments more fully (copy attached for ease of reference).

**Current text**

Whilst some of draft **Article 17** provides such a framework other provisions then weaken it. As a result, the development of agriculture and of positive rural development policy will, in the CLA's view, be held back in those countries aspiring to join the EU (and aligning their practices with the Charter) and the development throughout the EU of a positive relationship between enterprising rural businesses, employment and incomes on the one hand, and the health of the rural economy and environment on the other, will be impeded.

The current text (Charte 4422/00) reads:

1. Every person has the right to own, use, dispose of and bequeath his lawfully acquired possessions. No one may be deprived of his possessions except in the public interest and in the cases and under the conditions provided by law, subject to fair compensation. The use of property may be regulated insofar as it is necessary for the general interest.
2. Intellectual property shall be protected.

There is no problem with the first sentence of Paragraph 1 or with Paragraph 2.

The CLA believes the following amendments should be made:

**(i) In the second line, after “possessions”, add: “or regulated in their use”**

**(ii) Delete the third sentence: “The use...interest”.**

Ownership includes not only holding property but also management of its use. Regulations that restrict the economically viable uses of say, land, may amount to partial deprivation. Such restrictions should not be made without their need being justified, and without the other protections for ownership, including compensation, being applicable.

**(i) Accordingly, we urge the Convention to add these suggested words to the text**, which would not prevent governments or the EU from imposing restrictions on the use of property, but would apply the same disciplines to potential restrictions as apply to other forms of deprivation.

If this change were made, there would be no need for the inclusion – which is new – of the third sentence of Paragraph 1, “The use...interest”, because the possibility to regulate use would be explicitly provided for in the body of the Article.

Furthermore, this new third sentence, which was not in earlier drafts, contains two undesirable provisions. The first is to exempt regulation of use from the disciplines applying to deprivation in the rest of the Article, in particular in relation to the provision of compensation. The second is to apply a weaker test, “general interest”, rather than “public interest”, in respect of regulation of use. Neither of these can be justified, in view of the higher level of protection for ownership in the rest of the Article, and given that regulations of use can amount, in effect, to deprivation of ownership.

**(ii) We urge the Convention to delete this sentence.**

**(iii) After “except in”, add: “sofar as it is necessary for”**

The draft includes no test of the scale of the public interest. Deprivation of possessions should be the last resort, and wherever possible the public interest should be met by negotiated, agreed initiatives that also protect the position of private individuals and businesses. **(iii) Accordingly, we urge the Convention to add these words**, as this would require the authority depriving the person of his possessions to justify the scale of the public interest and the impracticality of it being met in any other way.

**(iv) After “subject to”, delete “fair compensation.”, and insert: “compensation (for his loss) to be paid without undue delay.”**

Whereas “fair” is capable of wide interpretation, “compensation (for his loss)” defines the level of compensation more objectively, and may reduce the amount of time consuming and costly dispute that surrounds the award of compensation.

In addition, however certain or accurately calculated the level of compensation may be, it will not serve its objective if its payment is unreasonably delayed. It is not unknown for individual householders or businesses to be made to wait ten years or more for compensation. In the meantime such compensation is not available to them for the adjustment of their lives or businesses to respond to the deprivation of their possessions.

**(iv) Accordingly, we urge the Convention to make this amendment to text.**

Nick Way  
Chief Political Adviser, CLA

Nick Way  
Chief Political Adviser

Enc.

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**DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION****fundamental.rights@consilium.eu.int**

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**Brussels, 14 September 2000****CHARTE 4465/00****CONTRIB 319****COVER NOTE**

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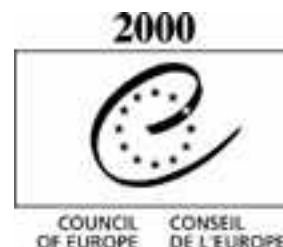
Subject : Draft Charter of Fundamental Rights of the European Union

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Please find hereafter a report from the Committee on Legal Affairs and Human Rights Council in the Parliamentary Assembly of the Council of Europe. <sup>1</sup>

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<sup>1</sup> This text has been submitted in English and French languages.



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**Doc. 8819**  
11 September 2000

## **Charter of Fundamental Rights of the European Union**

Report\*  
Committee on Legal Affairs and Human Rights  
Rapporteur: Mr Göran Magnusson, Sweden, Socialist Group

### *Summary*

The preparatory work on the Charter of Fundamental Rights of the European Union is now entering its final stage. Both the Parliamentary Assembly and the Committee of Ministers have drawn attention to the risks posed by having two sets of fundamental rights in Europe, and have pointed out that the Charter should be fully consistent with, and not weaken, the system for the protection of human rights provided, under the European Convention of Human Rights (ECHR), to all citizens of the Council of Europe's member States, including those of the European Union.

The Assembly, together with the European Parliament, the European Commission and the European Court of Human Rights, continues to believe that the aim of the draft Charter can only be reached if institutions and bodies of the European Union are bound not only by the draft Charter, but also by the European Convention on Human Rights.

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\* The Committee on Legal Affairs and Human Rights adopted this report on 7 September 2000, on the basis of the information available that day. The Committee will have to revise the text to take into account new developments after the meetings of the "Convention" in charge of drafting the Charter which are scheduled between the adoption of this report and the debate in the Assembly. Members of the Assembly are therefore kindly requested to wait with the tabling of amendments until the revised version of this report is available.

The Assembly should thus invite the European Union and its member states to extend the protection afforded by the ECHR and the Strasbourg Court to acts of the European Union and its institutions, by making the necessary amendments to the treaties in question and accede to the ECHR at the same time as deciding upon the proposed Charter. The Assembly should also strongly recommend that the Committee of Ministers support this accession and prepare the appropriate amendments to the ECHR without further delay.

## I. Draft resolution

1. Following the adoption of Resolution 1210 (2000) on the Charter of Fundamental Rights of the European Union on 25 January 2000, the Assembly has continued to follow with great interest the preparatory work on the Charter, which is now entering its final stage.
2. Already in January, the Assembly had drawn attention to the risks posed by having two sets of fundamental rights in Europe, and thus called upon the European Union to do its utmost to safeguard the consistency of the protection of human rights in Europe and to avoid diverging interpretations of those rights. In particular, it invited the European Union to pronounce itself in favour of accession to the European Convention on Human Rights of the Council of Europe (ECHR) and to make the necessary amendments to the Community treaties.
3. The Assembly regrets that there is apparently not yet a consensus concerning the accession of the Union to the ECHR, an approach which, despite the technical objections of the Court of Justice in Luxembourg some years ago (which can easily be solved), has repeatedly received the backing of the other institutions concerned: the European Parliament, the European Commission and the European Court of Human Rights. The Assembly maintains that only through this accession can new dividing lines in Europe be avoided, as well as a weakening of human rights protection across the continent.
4. In this connection, the Assembly welcomes the Resolution of the European Parliament, adopted on 16 March 2000, in which the Parliament invites the Intergovernmental Conference (IGC) to enable the Union to become a party to the European Convention on Human Rights.
5. The Assembly realises that it is not within the powers of the “Convention” which has been entrusted with the drafting of the Charter to decide upon accession to the ECHR, or even upon the legal nature of the Charter (a legally binding and justiciable text or one of declaratory character). The Assembly congratulates the “Convention” on the vast work it has undertaken, and, subject to the observations in paragraphs 7 to 10, expresses its satisfaction with the provisional text of the Charter proposed by the Praesidium (Convent 45).
6. The draft Charter as proposed by the Praesidium reaffirms *inter alia* the ECHR, the Social Charter of the Council of Europe and the case-law of the European Court of Human Rights. Laudably, the draft also includes some new rights and freedoms, such as the right to respect for physical and mental integrity - including the prohibition of eugenic practices and of reproductive cloning of human beings – (draft Article 3), the prohibition of trafficking in human beings (draft Article 5.3.), the protection of personal data (draft Article 8), the right to asylum (draft Article 18), and the right to good administration (draft Article 39).



7. Nevertheless, the Assembly is concerned that not all guarantees afforded by the ECHR have been included in the draft text. In particular, Article 1 of the ECHR, which secures to everyone within the jurisdiction of the High Contracting Parties the rights and freedoms defined in the ECHR, is not reflected in the same way in the draft Charter: Indeed, at times the draft seems to be striking an uneasy compromise between rights guaranteed to everyone, and rights guaranteed only to European Union citizens. Similarly, there is no obligation in the draft Charter to protect everyone's right to life by law; and draft Article 46 on the presumption of innocence and right of defence does not explicitly make reference to all the guarantees afforded by Article 6 of the ECHR.

8. The Assembly supports the proposal to introduce an Article 21 bis in the Charter, to guarantee the rights of persons belonging to ethnic, religious or linguistic minorities.

9. The Assembly is also concerned that some provisions are drafted too widely, such as draft Article 13, which liberates scientific research from any constraint – by implication also from restraint of an ethical nature - and draft Article 50.1., which allows for a wide range of limitations on the exercise of the rights and freedoms recognised by the Charter as long as they are provided for by the competent legislative authority and “genuinely meet objectives of general interest being pursued by the Union”.

10. Other articles might turn out to be difficult to enforce judicially, such as the right to have access to vocational and continuing training (draft Article 14), the right to engage in a freely chosen occupation (draft Article 15.1.), and the freedom to conduct a business (draft Article 16). Draft Article 32 on social security and social assistance might pose similar problems in this area. One might also ask whether some newly introduced rights, such as the right of access to placement services (draft Article 27) and to services of general economic interest (draft Article 34) are as fundamental as some more “traditional”, universally recognised human rights (such as the right to be protected from torture, the freedom of expression and assembly, etc.), and should stand side by side with these, implying equal weight and importance.

11. In the interest of avoiding differing interpretations of the same human rights, it is also important that the meaning and scope of those rights contained in the draft charter which correspond to rights guaranteed by the ECHR shall be the same as those conferred on them by the ECHR, including the case-law of the Court in Strasbourg.

12. The Assembly is convinced that the aim of the draft Charter, which is to enhance and make more visible the protection of fundamental rights in EU member states, can only be reached if institutions and bodies of the European Union are bound not only by the draft Charter, but also by the European Convention on Human Rights. In a democratic society, a system of checks and balances is essential. All member states of the European Union, honouring this democratic principle, have submitted themselves to the external supervision of the European Court of Human Rights under this Convention, without endangering national sovereignty or the principle of subsidiarity. There is no legitimate reason why acts carried out on behalf of the European Union should be exempt from this fundamental external control mechanism, thus in effect withdrawing the protection of the ECHR from persons adversely affected in their fundamental rights and freedoms by Community law.

13. The Assembly therefore reiterates its appeal to the European Union do its utmost to safeguard the consistency of human rights protection in Europe. It thus invites the European Union and its member states to:

- i. ensure that both the text of the proposed Charter and its ultimate application fully reflect and preserve the protection extended by the European Convention on Human Rights and the European Court of Human Rights to every person within the jurisdiction of European Union member States;
- ii. extend the protection afforded by the ECHR and the Strasbourg Court to acts of the European Union and its institutions, by making the necessary amendments to the treaties in question and accede to the European Convention on Human Rights at the same time as deciding upon the proposed Charter.

## II. Draft recommendation

1. The Assembly draws attention to its Recommendation 1439 (2000) on the Charter of Fundamental Rights of the European Union, adopted on 25 January 2000, in which it recommended that the Committee of Ministers of the Council of Europe support the accession of the European Union to the European Convention on Human Rights and prepare the appropriate amendments to this treaty.

2. It notes that, at its 106th session (10-11 May 2000), the Committee of Ministers stressed the need to ensure that, whatever decision the Institutions of the Union might take concerning the Charter, it did not lead to new dividing lines in Europe. The Charter should be fully consistent with, and not weaken, the system for the protection of human rights provided, under the European Convention, to all citizens of the Council of Europe's member States, including those of the European Union.

3. Although the Assembly welcomes the fact that the Committee of Ministers shares its concern that there should be no rivalry between the two systems of human rights protection in Europe, it regrets that it has not yet reached a consensus concerning the accession of the Union to the European Convention on Human Rights, an approach which, despite the technical objections of the Court of Justice in Luxembourg a few years ago (which can easily be solved), has repeatedly received the backing of the other institutions concerned: the European Parliament, the European Commission and the European Court of Human Rights.

4. The Assembly is not aware of any factor opposing accession from a legal point of view. It thus fervently hopes that the political will which, up to now, has prevented the process from going ahead, can be mustered soon.

5. In addition, the Assembly draws the attention of the Committee of Ministers to the necessity to support the proposal to introduce an Article 21 bis in the Charter, to guarantee the rights of persons belonging to ethnic, religious or linguistic minorities.

6. With reference to Resolution ... (2000) on the Charter of Fundamental Rights of the European Union, the Assembly therefore once again strongly recommends that the Committee of Ministers support the accession of the European Union to the European Convention on Human Rights and prepare the appropriate amendments to this Convention without further delay.

### III. Draft order

The Assembly draws attention to its Resolution ... (2000) and Recommendation ... (2000) on the Charter of Fundamental Rights of the European Union and instructs its Committee on Legal Affairs and Human Rights, in co-operation with the Political Affairs Committee and the Social, Health and Family Affairs Committee, to closely follow the preparatory work on the Charter and the results of that work, and to report to it in due course.

#### **IV. Explanatory memorandum by Mr Magnusson, Rapporteur**

##### **A. THE COUNCIL OF EUROPE AND THE EU CHARTER: NEW DEVELOPMENTS**

1. On 25 January 2000 the Assembly adopted Resolution 1210 (2000) on the Charter of Fundamental Rights of the European Union, in which it invited the European Union:

i. to incorporate the rights guaranteed in the European Convention on Human Rights and the protocols to it into the Charter of Fundamental Rights and to do its utmost to safeguard the consistency of the protection of human rights in Europe and to avoid diverging interpretations of those rights;

ii. to decide in favour of accession to the European Convention on Human Rights of the Council of Europe and to make the necessary amendments to the Community treaties;

iii. to make sure that when social rights are referred to the revised European Social Charter of the Council of Europe is taken into account.

2. At the same time it adopted Recommendation 1439 (2000), in which it recommended that the Committee of Ministers of the Council of Europe support the accession of the European Union to the European Convention on Human Rights and prepare the appropriate amendments to this treaty.

3. Finally, in Order No. 561 (2000), it instructed its Committee on Legal Affairs and Human Rights, and its Social, Health and Family Affairs Committee, which was asked for an opinion, to carefully follow and monitor the outcome of the drafting work on the Charter of Fundamental Rights of the European Union, and to report back to it in due course.

4. The time has now come to take stock of the action taken on these texts. Since, by late May 2000, the Committee of Ministers of the Council of Europe had not replied to Recommendation 1439, I submitted a written question, No. 387, to the Committee of Ministers on behalf of the Committee on Legal Affairs and Human Rights, asking what follow-up the Committee of Ministers intended to give to Recommendation 1439 before the adoption of the Charter.

5. On 31 May 2000, the Committee of Ministers adopted a reply in which it referred to the Communiqué which it had adopted at the end of its 106th Session (Strasbourg, 10-11 May 2000):

“With regard to the proposed European Charter of Fundamental Rights, the Ministers underlined the need to ensure that, whatever decision the Institutions of the Union may take concerning the Charter, it does not lead to new dividing lines in Europe. The Charter should be fully consistent with, and not weaken, the system for the protection of human rights provided, under the European Convention, to all citizens of the Council of Europe's member States, including those of the European Union.”

6. It appended to its reply the statement made before the Ministers' Deputies on 7 March 2000 by Mr Wildhaber, President of the European Court of Human Rights, in which he set forth the

arguments in favour of the European Union's accession to the Convention, pointing out that the debate on the Charter offered an excellent opportunity to reopen the whole question of the Community's accession to the Convention and that the Council of Europe ought to have no misgivings about seizing this opportunity without hesitation.

7. I nevertheless regretted that the Committee of Ministers had not replied to the main question addressed to it in Recommendation 1439, and so once again put a question to the Chair of the Committee of Ministers on 27 June 2000, asking him to state clearly whether the Committee of Ministers intended to come out in favour of accession.

8. The Chair of the Committee of Ministers replied that if there was no consensus among the fifteen member states of the European Union, there could be no consensus on this question within the Committee of Ministers either.

9. It should be noted, however, that the European Parliament adopted a resolution on 16 March 2000, in which it invited the Intergovernmental Conference (IGC) to enable the Union to become a party to the European Convention on Human Rights (ECHR). With the exception of the Court of Justice in Luxembourg, which raised some technical objections a few years ago (that can easily be solved), the proposal that the Union accedes to the ECHR has thus repeatedly received the backing of all the other institutions concerned: the European Parliament, the European Commission, the European Court of Human Rights and, of course, the Assembly. I would indeed maintain that only through this accession can new dividing lines in Europe be avoided, as well as a weakening of human rights protection across the continent.

## **B. Developments within the European Union**

10. Within the European Union, the “Convention”, the name adopted by the body set up at the European Council meeting in Tampere, has nearly finished drafting the Charter. The “Convention” is made up of fifteen representatives of the Heads of State or Government, one representative of the European Commission, sixteen members of the European Parliament and thirty representatives of national parliaments. Two representatives of the Court of Justice of the European Communities and two representatives of the Council of Europe, one of whom is a judge at the European Court of Human Rights, have observer status.

11. The “Convention” worked very intensively, with several meetings per month, and invited the Economic and Social Committee, the Committee of the Regions and the European Ombudsman to give their views. Countries applying for accession to the Union were also invited to a hearing and NGOs had the opportunity to make their views known. This shows that there is, within the “Convention”, a determination to ensure the transparency of the discussions.

12. The “Convention” is chaired by Mr Roman Herzog, former President of the Federal Republic of Germany. As Vice-Chair, the group of representatives of Heads of State or Government elected the representative of the rotating presidency of the Council of the European Union. The group of representatives of the European Parliament elected Mr Mendes de Vigo and the Group of National Parliaments elected Mr Gunnar Jansson, Chair of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly.

13. The Praesidium of the “Convention” has proposed a draft Charter (Convent 45) and an explanatory memorandum (Convent 46), which will be examined by the plenary “Convention” at its next meeting on 11-13 September 2000 in Brussels.

14. The draft Charter is composed of a Preamble, and seven Chapters: Chapter I “Dignity”, Chapter II “Freedoms”, Chapter III “Equality”, Chapter IV “Solidarity”, Chapter V “Citizenship”, Chapter VI “Justice”, and Chapter VII “General Provisions”. Not counting the preamble, there are 52 articles all in all.

15. The draft Charter does reaffirm *inter alia* the ECHR, the Social Charter of the Council of Europe and the case-law of the European Court of Human Rights. Laudably, the draft also includes some new rights and freedoms, such as the right to respect for physical and mental integrity - including the prohibition of eugenic practices and of reproductive cloning of human beings - (draft Article 3), the prohibition of trafficking in human beings (draft Article 5.3.), the protection of personal data (draft Article 8), the right to asylum (draft Article 18), and the right to good administration (draft Article 39).

16. In fact, there seems to be a general consensus in the “Convention” on what constitutes civil and political rights (rightly, the provisions of the ECHR are often taken as a basis for the most “traditional” human rights). However, it is much more difficult to reach agreement on the exact substance of economic and social rights. This is hardly surprising if one considers that the International Covenant on Economic, Social and Cultural Rights, adopted in 1966 at the same time as the Covenant on Civil and Political Rights, never came into force and that not even the Council of Europe gives economic and social rights the same level of protection as civil and political rights.

17. The draft of the Praesidium does confer a number of social and economic rights on the citizens of the European Union. Some of the articles concerned might turn out to be difficult to enforce judicially, such as the right to have access to vocational and continuing training (draft Article 14), the right to engage in a freely chosen occupation (draft Article 15.1.), the freedom to conduct a business (draft Article 16), as well as the whole of draft Article 32 on social security and social assistance. However, this is not a reason not to include them. I am more reticent as concerns some other newly introduced rights, such as the right of access to placement services (draft Article 27) and to services of general economic interest (draft Article 34). Are these rights really so fundamental that they should stand side by side with such universally recognised human rights as the right to be protected from torture and the freedom of expression and assembly, implying their equal weight and importance?

18. In fact, the inclusion of these rights in this manner has led to an uneasy balance between “traditional” fundamental human rights, which must apply to every person within the jurisdiction of the European Union, and these social and economic rights, which, in many cases, are only conferred upon citizens of the Union. Worryingly, the outcome is that, for example Article 1 of the ECHR, which secures to everyone within the jurisdiction of the High Contracting Parties the rights and freedoms defined in the ECHR, is not reflected in the same way in the draft Charter. Indeed, some economic and social rights are elaborated at more length in the Charter than “traditional” human rights. Thus, to take two more examples, the draft Charter contains no obligation to protect everyone’s right to life by law, nor does draft Article 46 of the Charter on the presumption of innocence and right of defence explicitly make reference to all the guarantees afforded by Article 6 of the ECHR.

19. In a way, this is quite surprising, since other provisions are drafted exceedingly widely. Draft Article 13, which liberates scientific research from any constraint – by implication also from restraint of an ethical nature – could serve as a random example. More far-reaching and potentially dangerous is the wide and inexact drafting of the general provisions in the last chapter, the so-called “horizontal clauses”. Article 50.1., for example, allows for any limitations on even the most fundamental human rights, as long as they are provided for by the competent legislative authority, and “are necessary and genuinely meet objectives of general interest being pursued by the Union, other legitimate interests in a democratic society or the need to protect the rights and freedoms of others”. Considering that the ECHR allows for no derogations, even in wartime, from the right to life, the protection from torture, the prohibition of slavery and servitude, and the principle of no punishment without law, and allows for only very limited derogations for many other rights, the legitimacy of limitations on the grounds of them “genuinely meeting objectives of general interest being pursued by the Union” must be called into question.

20. The potential danger posed by Article 50.1. is only partly assuaged by Article 50.3., which reads “Insofar as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be similar to those conferred on them by the said Convention unless this Charter affords greater or more extensive protection.” First, since the meaning and scope must be only “similar”, and not “the same”, this Article contains no guard against differing interpretations of these rights, which could fall below even the ECHR standard if this clause is not amended. Second, even if this amendment should be made, it would only restrict limitations on rights covered by the ECHR (and, possibly, the case-law of the Strasbourg Court). New rights not contained in the ECHR – some of them very important, such as the protection of the dignity of the person, or the right to asylum, or even data protection – could be limited practically at will in accordance with Article 50.1. (in the interest of “objectives of general interest” being pursued by the Union), making them almost meaningless.

21. There is also a discussion in the “Convention” on whether the draft Charter should confer new rights, or only reaffirm existing ones. Personally, I would interpret the mandate of the Cologne decision as the latter, but there are diverging views in the “Convention” on this matter. I think that the ECHR should not only be the “floor” of human rights protection in Europe, but also the “ceiling”.

22. Of course, this text is not yet final, as it will continue to be discussed during the upcoming meetings of the “Convention”. After the European Parliament has given its opinion on the final version, it will then be the task of the Nice Intergovernmental Conference (IGC) to solemnly proclaim the Charter in December 2000, and to decide upon its legal nature. However, without anticipating the ICG's decision, the Chair of the “Convention” has opted for a form of wording which makes it possible for the Charter to become a binding instrument.

### **C. Accession of the European Union to the ECHR**

23. It has always been the Council of Europe's – and this Assembly's – stance that the best way to guarantee universal and comprehensive human rights' protection across Europe would be the accession of the European Union to the European Convention on Human Rights.

24. The European Parliament, for its part, came out in favour of accession to the European Convention on Human Rights in a Resolution adopted as recently as on 16 March 2000, in which it invited the IGC to:

- a. put the incorporation into the Treaty of the Charter of Fundamental Rights on its agenda;
- b. enable the Union to become a party to the ECHR so as to establish close co-operation with the Council of Europe, whilst ensuring that appropriate action is taken to avoid possible conflicts or overlapping between the Court of Justice of the European Communities and the European Court of Human Rights;
- c. add a reference to the European Social Charter and to the appropriate ILO and UN conventions to the reference to the European Convention on Human Rights in Article 6 of the Treaty on European Union.

25. It is now up to the IGC to give its opinion on accession to the European Convention on Human Rights, whether the Charter is adopted or not and irrespective of whether it is binding. It should be pointed out that there is nothing to prevent the European Union from adopting stricter standards than those set by the Convention. What applies to the member States can apply to the Community.

26. There is no need at this point to repeat all the reasons for acceding, which were examined in the previous report (Doc. 8611), and there has been absolutely nothing to show that this is not the right approach. Suffice it to say that I am convinced that the aim of the draft Charter, which is to enhance and make more visible the protection of fundamental rights in Europe, can only be reached if institutions and bodies of the European Union are bound not only by the draft Charter, but also by the European Convention on Human Rights. In a democratic society, a system of checks and balances is essential. All member states of the European Union, honouring this democratic principle, have submitted themselves to the external supervision of the European Court of Human Rights under this Convention, without endangering national sovereignty or the principle of subsidiarity. There is no legitimate reason why acts carried out on behalf of the European Union should be exempt from this fundamental external control mechanism, thus in effect withdrawing the protection of the ECHR from persons adversely affected in their fundamental rights and freedoms by Community law.

27. The two official observers of the Council of Europe to the “Convention”, Deputy Secretary General Krüger and Judge Fischbach, have also emphasised that accession to the ECHR would have the advantage of ensuring consistency in the protection of fundamental rights in Europe without lessening the Charter’s usefulness. Firstly, the Charter would be seen as complementing, not being an alternative, to the ECHR, in keeping with Article 53 of the ECHR. That would underscore the fact that the Charter did not affect the universality of human rights or uniformity of standards in Europe. Secondly, the European Court of Human Rights would be able to review the interpretation of those provisions of the Charter that were borrowed from the ECHR, thus ensuring perfect consonance between the two instruments in the interests of the clarity and legal certainty to which European citizens aspire. Lastly, it would enable Community institutions to be a party to proceedings before the European Court of Human Rights that concerned the effects of Community provisions in the legal orders of member States.



28. In short, I would find it difficult to accept the European Union's claims that it wishes to improve the protection of European citizens' rights while it refuses to submit its own institutions to scrutiny and opens up the possibility of diverging interpretations of human rights by two different Courts. In fact, only the decision of the Court of Justice of Luxembourg in 1996 continues to be used as an argument for not ratifying the Convention. Yet there is nothing to prevent the European Council from remedying the situation by deciding to amend the Treaty on European Union to enable ratification to take place.

29. That is what the Assembly proposes, for the sole purpose of ensuring that Europe does not have two systems of human rights protection and to avoid the inconsistency which would inevitably ensue.

*Reporting committee:* Committee on Legal Affairs and Human Rights

*Budgetary implications for the Assembly:* none

*Reference to committee:* Order No. 561 (2000)

*Draft resolution, draft recommendation and draft order* unanimously adopted by the committee on 7 September 2000

*Members of the committee:* MM Jansson (*Chairperson*), Bindig, Frunda, Mrs Err (*Vice-Chairpersons*), Mrs Aguiar, MM Akçali (alternate: Mrs Gülek), de Aristegui, Arzilli, Attard Montalto (alternate: Mr Asciak), Bal, Bartumeu Cassany, Bruce (alternate: Mr Lloyd), Bulavinov, Clerfayt, Contestabile, Demetriou, Derycke, Dimas, Enright, Floros, Mrs Frimansdóttir, MM Fyodorov (alternate: Mr Shishlov), Gustafsson (alternate: Mr von der Esch), Holovaty, Mrs Hren-Vencelj, Mrs Imbrasiene, MM Jaskiernia, Jurgens, Kelemen, Lord Kirkhill, MM S. Kovalev (alternate: Mr N. Kovalev), Kresák, Mrs Krzyzanowska, Mr Le Guen, Mrs Libane, MM Lintner, Lippelt, Loutfi, Magnusson, Mrs Markovic-Dimova, MM Marty, McNamara, Moeller (alternate: Mrs Auken), Nastase (alternate: Mrs Ionescu), Mrs Ninoshvili, MM Pavlov, Pollo, Mrs Pourtaud, MM Rodeghiero (alternate: Mr Provera), Mrs Roudy, Mrs Serafini (alternate: Mr Lauricella), MM Simonsen, Skrabalo, Solé Tura (alternate: Mrs Lopez Gonzalez), Solonari, Spindelegger, Svoboda, Symonenko, Tabajdi, Tallo, Vera Jardim, Verhagen, Mrs Vermot-Mangold (alternate: Mrs Nabholz-Haidegger), Mr Vyvadil, Mrs Wohlwend, Mrs Wurm (alternate: Mrs Stoisits)

*N.B. The names of those members who were present at the meeting are printed in italics.*

*Secretaries to the committee:* Mr Plate, Ms Coin and Ms Kleinsorge

**ENTWURF DER CHARTA DER GRUNDRECHTE DER EUROPÄISCHEN UNION****fundamental.rights@consilium.eu.int**

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**Brüssel, den 13. September 2000****CHARTE 4466/00****CONTRIB 320****ÜBERMITTLUNGSVERMERK**

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**Betr.:** Entwurf der Charta der Grundrechte der Europäischen Union

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Bitte finden Sie nachstehend drei Beiträge von Herrn Horst PREM, Vizepräsident des Dachverbandes Freier Weltanschauungsgemeinschaften. <sup>1</sup>

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<sup>1</sup> Dieser Text wurde uns nur in deutscher Sprache übermittelt.

Horst Prem, Prinz-Otto-Str.9, 85521 Ottobrunn

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Ottobrunn, den 22.02.2000

## **Menschenrechte sind Souveränitätsrechten der Staaten übergeordnet**

- Der DFW appelliert an die Bundesregierung das Statut des permanenten “Internationalen Strafgerichtshofes” (IStGH) in Den Haag ohne Einschränkungen (Artikel 124) zu ratifizieren.
- Die Errichtung des IStGH, der die Straftatbestände  
Völkermord  
Verbrechen gegen die Menschlichkeit  
Kriegsverbrechen  
Aggressionskrieg  
ahnden kann, schließt die Lücke einer derzeit nicht existierenden globalen Judikative und trägt dazu bei, Menschenrechte über die Souveränitätsrechte der Staaten zu stellen.
- Dies erscheint um so dringender notwendig zu sein, da heute 90 Prozent der Leidtragenden kriegerischer Auseinandersetzungen Zivilisten sind, weil Kriege nur noch selten zwischen Staaten und ihren Armeen auf dem Schlachtfeld geführt werden. Heute handelt es sich zunehmend um blutige Konflikte innerhalb einzelner Staaten.
- Insofern muß das Völkerrecht in ein Weltrecht auf demokratischer Basis weiterentwickelt werden. Diesem Ziel dient auch das Statut des IStGH. Da Frieden und Stabilität eines Landes entscheidend für seine ökonomische und ökologische Entwicklung sind und die Nicht-Ratifizierung des IStGH-Statutes mit Nichtanerkennung globaler rechtsstaatlicher Prinzipien gleichzusetzen ist, sollte die Bundesregierung ihren Einfluß bei den internationalen Finanzinstitutionen (World Bank, International Monetary Fund etc.) geltend machen, nur noch Länder zu unterstützen, die das Statut ratifiziert haben.
- Aufgrund der Erfahrungen der vergangenen Jahre (z.B. Kosovo-Konflikt) erwarten wir von der Bundesregierung, Waffenproduktion und Waffenexport grundsätzlich zu überdenken. Auf keinen Fall sollen zukünftig Waffen in Länder exportiert werden, die das Statut des IStGH nicht ratifiziert haben.

- Darüberhinaus wird empfohlen, einen Dialog zwischen Regierung, Wirtschaft und Zivilgesellschaften zu den Grundprinzipien einer Weltdemokratie zu beginnen, der Basis für eine weitere Demokratisierung der UNO werden kann. Zumindest sollten die nachfolgend aufgeführten Prinzipien enthalten sein:

Rechtsstaatlichkeit

Souveränität des Volkes durch direkte oder repräsentative Demokratie

Souveränität des Einzelnen

Institutionelle Transparenz

Subsidiarität

Nichtdiskriminierung nach Artikel 2 der Allgemeinen Erklärung der Menschenrechte

Friedliche Konfliktlösung

Diesem Ziel dient die im Mai 1999 in Den Haag ins Leben gerufene “Globale Koalition für Weltdemokratie 2010”, die für die Mitwirkung von Zivilgesellschaften, Regierungen, Unternehmen und Einzelnen offen ist.

gez. Dr. Volker Mueller)  
Präsident des Dachverbandes  
Freier Weltanschauungsgemeinschaften

gez. Horst Prem  
Vizepräsident des Dachverbandes  
Freier  
Weltanschauungsgemeinschaften

gez. Helge Frank  
Präsident des Bundes Freireligiöser  
Gemeinden Deutschlands

gez. Adi Meister  
Vorsitzender des Bundes für  
Geistesfreiheit Bayern

gez. Eike Möller)  
Präsident der Deutschen  
Unitarier

gez. Fritz Bode  
Vorsitzender der Gesellschaft  
für freigeistige Kultur

gez. Wolfgang Fleischer  
Vorsitzender des Fach-  
verbandes für weltliche  
Bestattungs- und  
Trauerkultur

gez. Dr. Peter Jäckel  
Vorsitzender des Freigeistigen  
Lebenshilfswerkes

gez. Dr. Volker Mueller  
Vorsitzender des Humanistischen  
Freidenkerbundes Brandenburg

gez. Ernst Mohnike  
Vorsitzender des Verbandes  
freier Weltanschauungs-  
gemeinschaften Hamburg

gez. Stephan Mögle-Stadel  
Vorsitzender der Weltföderalisten in Deutschland

gez. Troy Davis  
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Ottobrunn, den 26.6.2000

## **Grundrechtscharta für Europa - Minimalforderungen**

Um Bürgernähe für eine Grundrechtscharta zu erreichen, fordert der DFW von Politikern in der Bundesrepublik und in der EU, folgende Minimalforderungen einzuhalten:

- 1.** Eine Grundrechtscharta zum heutigen Zeitpunkt darf nicht nur die Freiheits- und Demokratiewerte enthalten, die im Nachgang zur Aufklärung in die Verfassungen aufgenommen wurden.
- 2.** Sie muß endlich den Zustand überwinden helfen, die Menschenrechte nur als moralische Werte im Völkerrecht zu betrachten, die im Falle innerstaatlicher Konflikte nicht durchsetzbar sind, da die Souveränitätsrechte eines Staates verletzt werden müssen.
- 3.** Eine Grundrechtscharta für die Bürger Europas muß die Menschenrechte über die Souveränitätsrechte der Staaten stellen. Nur dann kann sie auch entscheidend zur Friedenssicherung beitragen. Dies sind die Lehren aus den blutigen Bürgerkriegskonflikten in Ruanda, Kosovo und Tschetschenien. (Siehe hierzu die entsprechende DFW-Erklärung vom 22.02.2000)
- 4.** Eine derartige Charta kommt daher nicht umhin, Bezug zu nehmen auf das UN-Statut zur Errichtung eines "Internationalen Strafgerichtshofes" in Den Haag. (Rome Statute of the International Criminal Court, 12 July 1999, UNO Document).
- 5.** Sie muß sich außerdem beziehen auf die Erklärung von Rio 1992 und die Nachfolgekongressen, die alle eine nachhaltige Entwicklung unserer Erde angemahnt haben.
- 6.** Die Grundrechtscharta für die Bürger Europas soll per Volksentscheid in allen EU-Mitgliedsländern in Kraft gesetzt werden.

Horst Prem

Horst Prem, Prinz-Otto-Str.9, 85521 Ottobrunn

Herrn  
Jean-Paul Jacques  
EU Fundamental Rights  
Rue de la Loi  
Brüssel

Vizepräsident  
Horst Prem  
Prinz-Otto-Str. 9  
85521 Ottobrunn  
Tel. 089 6096255/Fax 089 6090177  
Email: horst.prem@web.de  
<http://www.dfw-dachverband.de>

Ottobrunn, den 25.8.2000

## **Internationaler Strafgerichtshof / Grundrechtscharta für Europa**

Sehr geehrter Herr Jacques,

wir beobachten mit Sorge wie die Diskussion um die Grundrechtscharta für Europa ohne Bezug auf das Statut des geplanten Internationalen Strafgerichtshofes in Den Haag geführt wird.

U.E. hätten die Mitgliedsstaaten der EU die Möglichkeit innerhalb ihres Hoheitsbereiches die Menschenrechte völkerrechtsverbindlich über die Souveränitätsrechte der Nationalstaaten zu stellen. Wenn dies in der Grundrechtscharta für Europa festgeschrieben würde, dann würde diese Charta aus der Diskussion um Kompetenzenabgrenzung auf der Ebene EU und Mitgliedsstaaten herausführen. Sie würde dann zu einem Instrument der innovativen Weiterentwicklung des Völkerrechtes und würde auch Maßstäbe für den Beitritt neuer Mitglieder setzen, die über die vor 200 Jahren erkämpften Freiheitswerte hinausgehen.

Wir haben als Dachverband Freier Weltanschauungsgemeinschaften diese Kommentare an die Fraktionen des Deutschen Bundestages gegeben, da NGO's offensichtlich keine Möglichkeit mehr haben Kommentare einzureichen. Wir haben uns erlaubt zwei Positionspapiere anzufügen, die unsere Minimalforderungen zusammenfassen.

Mit freundlichen Grüßen

(Horst Prem)

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**PROGETTO DI CARTA DEI DIRITTI FONDAMENTALI DELL'UNIONE EUROPEA****fundamental.rights@consilium.eu.int**

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**Bruxelles, 13 settembre 2000 (18.09)****CHARTE 4467/00****CONTRIB 321****NOTA DI TRASMISSIONE**

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**Oggetto: Progetto di Carta dei diritti fondamentali dell'Unione europea**

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Si trasmette in allegato un contributo della "Lega italiana dei Diritti dell'Animale" (LIDA) <sup>1</sup>.

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<sup>1</sup> Questo testo è stato presentato unicamente in italiano.



L I D A  
LEGA ITALIANA  
DEI DIRITTI DELL'ANIMALE



ASSOCIAZIONE  
DI PROTEZIONE AMBIENTALE  
INDIVIDUATA CON D M 26/5/

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Tel. e FAX di C. L. I. C.: 0761612075

## Carta dei diritti fondamentali dell'Unione Europea

### # **Emendamento della LIDA = Art. 5 (nuovo punto 4)**

#### Capo I. Dignità

##### *Articolo 1. Dignità della persona*

La dignità della persona deve essere rispettata e tutelata.

##### *Articolo 2. Diritto alla vita*

1. Ogni individuo ha diritto alla vita.
2. Nessuno può essere condannato alla pena di morte, né giustiziato.

##### *Articolo 3. Diritto all'integrità della persona*

1. Ogni individuo ha diritto alla propria integrità fisica e psichica.
2. Nell'ambito della medicina e della biologia devono essere in particolare rispettati i seguenti principi :
  - consenso libero e informato della persona interessata
  - divieto delle pratiche eugenetiche, in particolare di quelle aventi come scopo la selezione delle persone
  - divieto di fare del corpo umano e delle sue parti una fonte di lucro
  - divieto della clonazione riproduttiva degli esseri umani.

##### *Articolo 4. Proibizione della tortura e delle pene o trattamenti inumani o degradanti*

Nessuno può essere sottoposto a tortura, né a pene o trattamenti inumani o degradanti.

##### *Articolo 5. Proibizione della schiavitù e del lavoro forzato*

1. Nessuno può essere tenuto in condizioni di schiavitù o di servitù;
2. Nessuno può essere costretto a compiere un lavoro forzato o obbligatorio.
3. E' proibita la tratta degli esseri umani.

# **4. I non umani (gli animali) non debbono essere considerati e usati come schiavi.**

Carta dei diritti fondamentali dell'Unione Europea  
**# Emendamento della LIDA = Artt. 10, 13, 15, 17**

## Capo II. Libertà

### *Articolo 6. Diritto alla libertà e alla sicurezza*

Ogni individuo ha diritto alla libertà e alla sicurezza

### *Articolo 7. Rispetto della vita privata e della vita familiare*

Ogni individuo ha diritto al rispetto della propria vita privata e familiare, del proprio domicilio e della riservatezza delle sue comunicazioni.

### *Articolo 8. Protezione dei dati di carattere personale*

Ogni individuo ha diritto alla protezione dei dati di carattere personale che lo riguardano. Tali dati devono essere trattati secondo il principio di lealtà, per finalità determinate e in base al consenso della persona interessata o ad un altro fondamento legittimo previsto dalla legge. Ogni individuo ha il diritto di accedere ai dati raccolti che lo riguardano e di ottenerne la rettifica. Il rispetto di tali regole è soggetto al controllo di un'autorità indipendente.

### *Articolo 9. Diritto di sposarsi e di costituire una famiglia*

Il diritto di sposarsi e il diritto di costituire una famiglia sono garantiti secondo le leggi nazionali che ne disciplinano l'esercizio.

### *# Articolo 10. Libertà di pensiero, di coscienza e di religione*

Ogni individuo ha diritto alla libertà di pensiero, di coscienza e di religione. Tale diritto include la libertà di cambiare religione o credo, così come la libertà di manifestare la propria religione o il proprio credo individualmente o collettivamente, in pubblico o in privato, mediante il culto, l'insegnamento, le pratiche e l'osservanza dei riti **purché non siano lesivi dell'integrità e della dignità di umani e non umani.**

### *Articolo 11. Libertà di espressione e d'informazione*

1. Ogni individuo ha diritto alla libertà di espressione. Tale diritto include la libertà di opinione e la libertà di ricevere o di comunicare informazioni o idee senza che vi possa essere ingerenza da parte delle autorità pubbliche e senza limiti di frontiera

2. La libertà dei media e la libertà d'informazione sono garantite nel rispetto del pluralismo e della trasparenza.

### *Articolo 12. Libertà di riunione e di associazione*

Ogni individuo ha diritto alla libertà di riunione pacifica e alla libertà di associazione, in particolare nei settori politico, sindacale e civico.

I partiti politici a livello europeo contribuiscono a esprimere la volontà politica dei cittadini dell'Unione.

### *# Articolo 13. Libertà della ricerca*

La ricerca scientifica è libera.

**La ricerca nel campo biologico è controllata da un comitato etico.**

### *Articolo 14. Diritto all'istruzione*

Ogni individuo ha diritto all'istruzione e all'accesso alla formazione professionale e continua. Questo diritto comporta la facoltà di accedere gratuitamente all'istruzione obbligatoria. La libertà di creare istituti di insegnamento nel rispetto dei principi democratici, così come il diritto dei genitori di provvedere all'educazione e all'istruzione dei loro figli secondo le loro convinzioni religiose, filosofiche e pedagogiche, sono garantiti secondo le norme nazionali che ne disciplinano l'esercizio.

#### *Articolo 15. Libertà professionale*

1. Per guadagnarsi di che vivere, ogni individuo ha il diritto di esercitare una professione liberamente scelta.

# 2. Ogni cittadino dell'Unione ha la libertà di cercare un lavoro, di lavorare, di stabilirsi o di prestare o ricevere servizi in qualunque Stato membro e di poter esercitare l'obiezione di coscienza in ogni settore lavorativo.

3. I cittadini dei paesi terzi che soggiornano regolarmente nel territorio degli Stati membri hanno diritto a condizioni di lavoro equivalenti a quelle di cui godono i cittadini dell'Unione.

#### *Articolo 16. Libertà d'impresa*

E' riconosciuta la libertà d'impresa.

#### *Articolo 17. Diritto di proprietà*

1. Ogni individuo ha il diritto di godere della proprietà dei beni che ha acquistato legalmente, di usarli, di disporne e di lasciarli in eredità. Nessuno può essere privato della proprietà se non per causa di pubblico interesse, nei casi e nei modi previsti dalla legge e contro il pagamento di una giusta indennità. L'uso dei beni può essere regolamentato nei limiti imposti dall'interesse generale.

# 1bis. Sia a livello individuale che industriale gli animali non sono considerati proprietà assoluta, beni o/e merce e deve essere rispettato il loro diritto a non soffrire.

2. La proprietà intellettuale è protetta.

#### *Articolo 18. Diritto di asilo*

Il diritto di asilo è garantito nel rispetto delle norme stabilite dalla convenzione di Ginevra del 28 luglio 1951 e dal protocollo del 31 gennaio 1967, relativi allo status dei rifugiati, e a norma del trattato che istituisce la Comunità europea.

#### *Articolo 19. Protezione in caso di allontanamento, di espulsione e di estradizione*

1. Le espulsioni collettive sono vietate.

2. Nessuno può essere allontanato, espulso o estradato verso uno Stato in cui rischia di essere sottoposto alla pena di morte, alla tortura o ad altre pene o trattamenti inumani o degradanti.

## Carta dei diritti fondamentali dell'Unione Europea

**# Emendamento della LIDA = Articolo nuovo (dopo art. 24)****Capo III. Uguaglianza***Articolo 20. Uguaglianza davanti alla legge*

Tutti, uomini e donne, sono uguali davanti alla legge.

*Articolo 21. Uguaglianza e non discriminazione*

1. E' vietata qualsiasi forma di discriminazione fondata, in particolare, sul sesso, la razza, il colore della pelle o l'origine etnica o sociale, le caratteristiche genetiche, la lingua, la religione o le convinzioni personali, le opinioni politiche o di qualsiasi altra natura, l'appartenenza ad una minoranza nazionale, il patrimonio, la nascita, gli handicap, l'età o le tendenze sessuali.

2. Nell'ambito d'applicazione del trattato che istituisce la Comunità europea e del trattato sull'Unione europea è vietata qualsiasi discriminazione fondata sulla cittadinanza, fatte salve le disposizioni particolari contenute nei trattati stessi.

*Articolo 22. Parità tra uomini e donne*

Devono essere garantite le pari opportunità e la parità di trattamento tra uomini e donne in materia di occupazione e impiego, ivi compresa la parità delle retribuzioni per uno stesso lavoro o per un lavoro di pari valore.

Il principio della parità di trattamento non osta al mantenimento o all'adozione di misure che prevedano vantaggi specifici diretti a facilitare l'esercizio di un'attività professionale da parte del sesso sottorappresentato oppure a evitare o compensare svantaggi nelle carriere professionali.

*Articolo 23. Protezione dei minori*

1. I minori hanno diritto alla protezione ed alle cure necessarie per il loro benessere. Essi possono esprimere liberamente la propria opinione; questa viene presa in considerazione sulle questioni che li riguardano in funzione della loro età e della loro maturità

2. In tutti gli atti relativi ai minori, siano essi compiuti da autorità pubbliche o da istituzioni private, l'interesse superiore del minore deve essere considerato preminente.

*Articolo 24. Inserimento dei disabili*

I disabili hanno il diritto di beneficiare di misure intese a garantirne l'autonomia, l'inserimento sociale e professionale e la partecipazione alla vita della comunità

**# Articolo nuovo. Tutela ecologica**

**Cittadini e associazioni hanno diritto ad essere tutori di esseri viventi che non sono soggetti di diritto.**

## Carta dei diritti fondamentali dell'Unione Europea

### # **Emendamento della LIDA = Artt. 26, 29, 33, 35**

#### Capo IV. Solidarietà

Articolo 25. Diritto dei lavoratori all'informazione e alla consultazione nell'ambito dell'impresa  
Ai lavoratori e ai loro rappresentanti devono essere garantite l'informazione e la consultazione in tempo utile sulle questioni che li riguardano nell'ambito dell'impresa, conformemente al diritto comunitario e alle legislazioni e prassi nazionali.

*Articolo 26. Diritto di negoziazione e di azioni collettive*

# I datori di lavoro e i lavoratori **nonché le associazioni per i diritti dell'ambiente e degli animali** hanno il diritto di negoziare e di concludere contratti collettivi e di ricorrere, in caso di conflitti di interessi, ad azioni collettive per la difesa dei loro interessi, conformemente al diritto comunitario e alle legislazioni e prassi nazionali.

*Articolo 27. Diritto di accesso ai servizi di collocamento*

Ogni individuo ha il diritto di accedere ad un servizio di collocamento.

*Articolo 28. Tutela in caso di licenziamento ingiustificato*

Ogni lavoratore ha il diritto alla tutela contro ogni licenziamento ingiustificato.

*Articolo 29. Condizioni di lavoro giuste ed eque*

1. Ogni lavoratore ha diritto a condizioni di lavoro sane, sicure e dignitose.  
2. Ogni lavoratore ha diritto a una limitazione della durata massima del lavoro e a periodi di riposo giornalieri e settimanali e a ferie annuali retribuite.

# **3. L'animale che lavora ha diritto a ragionevoli limitazioni di durata e intensità di lavoro, ad un'alimentazione adeguata e al riposo.**

*Articolo 30. Protezione dei giovani sul luogo di lavoro*

Il lavoro minorile è vietato. L'età minima per l'ammissione al lavoro non deve essere inferiore all'età in cui termina la scuola dell'obbligo, fatte salve le norme più favorevoli ai giovani ed eccettuate deroghe limitate.

I giovani ammessi al lavoro devono beneficiare di condizioni di lavoro appropriate alla loro età ed essere protetti contro lo sfruttamento economico o contro ogni lavoro che possa minarne la sicurezza, la salute, lo sviluppo fisico, mentale, morale o sociale o che possa mettere a rischio la loro istruzione.

*Articolo 31. Conciliazione della vita familiare e della vita professionale*

E' garantita la protezione della famiglia sul piano giuridico, economico e sociale.

Ogni individuo deve poter conciliare vita familiare e vita professionale; ciò comporta in particolare il diritto di essere tutelato contro il licenziamento in occasione di una maternità ed il diritto a un congedo di maternità retribuito e a un congedo parentale dopo la nascita o l'adozione di un figlio.

*Articolo 32. Sicurezza sociale e assistenza sociale*

L'Unione riconosce e rispetta il diritto di accesso alle prestazioni di sicurezza sociale e ai servizi sociali che assicurano protezione in caso di maternità, malattia, infortunio sul lavoro, dipendenzavecchiaia, oltre che in caso di perdita del posto di lavoro, secondo le modalità stabilite dal diritto comunitario e le legislazioni e prassi nazionali.

2. I lavoratori cittadini di uno Stato membro e residenti in un altro Stato membro e i loro familiari hanno diritto alle stesse prestazioni di sicurezza sociale, agli stessi benefici sociali e allo stesso accesso all'assistenza sanitaria dei cittadini dello Stato in questione.

**3. L'Unione riconosce e rispetta il diritto all'assistenza sociale e all'assistenza abitativa volte a garantire un'esistenza dignitosa a chiunque non disponga di risorse sufficienti, secondo le modalità stabilite dal diritto comunitario e le legislazioni e prassi nazionali.**

*# Articolo 33. Protezione della salute*

**Ogni individuo ha diritto a vivere in un ambiente in cui si prevengano i fattori nocivi alla salute individuale e collettiva (prevenzione primaria), alla prevenzione sanitaria (prevenzione secondaria) e ad ottenere cure mediche alle condizioni stabilite dalle legislazioni e prassi nazionali**

*Articolo 34. Accesso ai servizi d'interesse economico generale*

L'Unione rispetta l'accesso ai servizi d'interesse economico generale quale previsto dalle legislazioni e prassi nazionali, ai sensi delle disposizioni del trattato che istituisce la Comunità europea, al fine di promuovere la coesione sociale e territoriale dell'Unione.

*# Articolo 35. Tutela dell'ambiente*

In tutte le politiche dell'Unione sono garantiti **dunque** la tutela e la salvaguardia di un ambiente di vita di buona qualità ed il miglioramento della qualità dell'ambiente nel rispetto del principio dello sviluppo sostenibile **e delle diversità biologiche.**

*Articolo 36. Protezione dei consumatori*

Nelle politiche dell'Unione è garantito un livello elevato di protezione della salute, della sicurezza e degli interessi dei consumatori.

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**DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION****fundamental.rights@consilium.eu.int**

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**Brussels, 18 September 2000****CHARTE 4468/00****CONTRIB 322****COVER NOTE**

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Subject : ~~Draft Charter of Fundamental Rights of the European Union~~  
~~World Union of Catholic Women's Organisations~~

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Please find hereafter a contribution by the World Union of Catholic Women's Organisations (WUCWO), with a letter to Mr. Roman HERZOG, the President of the Convention. <sup>1</sup>

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<sup>1</sup> This text has been submitted in French, German and English languages.

**WUCWO**

**Union Mondiale des Organisations Féminines Catholiques**  
**World Union of Catholic Women's Organisations**  
**Unión Mundial de las Organizaciones Femeninas Católicas**  
**Weltunion der Katholischen Frauenverbände**

*Regional President for Europe: Drs. M.-L. van Wijk-van de Ven*  
*Burg. s' Jacoblaan 63, 1401 BP Bussum, Netherlands*  
*Tel./Fax: +31.35.6931532 • E-Mail: wucwo@wxs.nl*

**UMOFC**

To the President of the Convention for the Elaboration of the Charter of Fundamental Rights of the European Union,  
 Mr. Prof. Dr. Dr. hc.mult Roman Herzog,  
 ex President of the German Federal Republic  
 Council of the European Union  
 Secretariat of the Convention  
 175 rue de la Loi  
 B - 1048 Brussels

5 September, 2000

Dear Mr. Herzog,

We write to you on behalf of the representatives of Catholic women's organizations from 24 countries of Europe and the European members of the World Union of Catholic Women's Organizations (WUCWO), who have just assembled in Prague at a Conference on "*Equal opportunities for women and men*".

We discussed with great interest the Draft "*Charter of Fundamental Rights of the European Union*". We welcome the Charter and we are hopeful that it might serve as the basis of a better understanding of the common values and unalienable fundamental rights which should shape Europe.

*Positive aspect: equal opportunities*

It is highly positive that equal opportunities and the equal treatment of women and men are explicitly mentioned as fundamental rights in Article 22. Other positive aspects could also be quoted.

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*Tel.: +33.1.45442765 • Fax: +33.1.42840480 • E-Mail: WUCWOPARIS@wanadoo.fr*  
*Member of: Conference of International Catholic Organizations; Conference of Non-Governmental Organizations*  
*Consultative Status: ECOSOC (Cat. II) • FAO • UNESCO (Cat. B) • ILO (Special List) • Council of Europe*



*Negative aspects*

We feel it necessary, however, to draw your attention particularly to two shortcomings which need to be amended:

*No reference to God*

In view of the spiritual and historical roots of Europe and given the significance of the Christian faith in the development of our system of values, we regard as unacceptable that in the Preamble of the standing Draft any explicit reference to God is missing. Whatever the system of values set by the European Community, it would lack its appropriate foundation if it were not related to God. This recognition is reflected in many European Constitutions.

*No support for families*

Also we worried that in the existing Draft the position of the family is further weakened. The importance of the family for the development of children and for the future of our society is not appreciated and there is no explicit mention of the need of special support for families.

We earnestly ask you, Mr. Herzog, that during the subsequent work on the Charter you ensure that the discussion on the above mentioned issues is reopened and that our concerns are taken into consideration.

Yours sincerely,

On behalf of the World Union of Catholic Women's Organizations - Region Europe

(signed)

drs. Marie-Louise van Wijk-van de Ven  
Regional President for WUCWO Europe

On behalf of the organizers and participants of the Conference

(signed)

Dr. Markéta Koronthályová  
President of the Union of Catholic Women  
in the Czech Republic

**DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION****fundamental.rights@consilium.eu.int**

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**Brussels, 13 September 2000****CHARTE 4469/00****CONTRIB 323****COVER NOTE**

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Subject : Draft Charter of Fundamental Rights of the European Union  
– Audition of the candidate countries on 19 June 2000

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Please find hereafter the list of the representatives of the candidate countries and the statement by the **Republic of Hungary**.

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## Participants à l'audition des pays candidats le 19 juin 2000

### République de Chypre/Republik Zypern:

M. Theophilos V. THEOPHILOU, Ambassadeur, Délégué Permanent de la République Chypre auprès de l'UE

Mme Maro CLERIDES-TSIAPPA, Senior Attorney of the Republic

M. Marios LYSIOTIS, Counsellor at the Permanent délégation of Cyprus to the EU

### Malte/Malta

M. (Dr.) Michel FRENDU, membre du Parlement maltais

Mme Elena GRECH, Premier secrétaire à l'Ambassade de Malte

### République de Hongrie/Republik Ungarn:

M. Béla SZOMBATI, Chef adjoint du Secrétariat d'Etat d'Intégration, Ministère des Affaires étrangères

Mme Eszter ORGOVÁN, Ministère des Affaires Etrangères

Mme Zsuzsanna MÁTRAI, Ministère des Affaires Etrangères (salle d'écoute)

Mme Éva TÖRÖK, Mission de la Hongrie auprès de CE (salle d'écoute)

m. Tamas SZÜCS, Mission de la Hongrie auprès de CE (salle d'écoute)

### République de Pologne/Polnische Republik

M. Jerzy KRANZ, Undersecretary of State, Ministry of Foreign Affairs

M. Jan BARCZ, Directeur, European Union Department, Ministry of Foreign Affairs

M. Jerzy JASKIERNIA, Member of Parliament

M. Michael CZYZ, Minister Counsellor, Polish Mission to the EU

Mme Marta CYGAN, Cousellor, Polish Mission to the EU

### Roumanie/Rumänien:

M. Eugen DIJMARESCU, Secrétaire d'Etat, Ministère des Affaires Etrangères

Mme Cristina TARCEA, Directeur au Ministère de la Justice

Mme Brandusa PREDESCU, Directeur au Ministère des Affaires Etrangères

M. Ion JINGA, Ministre-conseiller, Mission de la Roumanie auprès de l'UE

M. Viorel ARDELEANU, Ministre conseiller, Mission de la Roumanie auprès de l'UE

Mme Maria CIUCA-LIGOR, Troisième Secrétaire, Mission de la Roumanie auprès de l'UE

### République Slovaque/Slowakische Republik

M. Daniel LIPSIC, Chef de l'office du Ministère de la Justice

Mme Jarmila BADIKOVA, Deuxième secrétaire de la mission slovaque auprès de l'UE

M. Juraj MIGAS, Ambassadeur

Mlle Andrea MATIZOVA, deuxième secrétaire.

### République d'Estonie/Republik Estland

M. Meelis TIGIMÄE, Mission d'Estonie auprès de l'EU

Mme Kai KAARELSON, Ministère des Affaires Etrangères

**Republique de Lettonie/Republik Lettland**

M. Andris PIEBALGS, Ambassador of Latvia to EU

Mme Inese BIRZNIECE, Member of the European Affairs Committee, Parliament of Latvia

Mme Katrina KOSA, Deputy Head, EU Policy Division, Ministry of Foreign Affairs

M. Aris VIGANTS, Second Secretary, Mission of Latvia to EU

M. Eriks FLAUMANIS, Attaché, Mission of Latvia to EU

**République de Lituanie/Republik Litauen:**

M. Vilenas VADAPALAS, Director of the European Law Department under the Gouvernement of Lithuania

M. Dainoras ZIUKAS, II Secretary, Lithuanian Mission to the EC

**République de Bulgarie/Republik Bulgarien:**

Mme Antoinetta PRIMATAROVA, Ambassador

M. Mario MILOUCHEV, Counsellor in the Bulgarian Mission to the EC

M. Peter STEFANOV }

M. Vesselin VALKANOV } Counsellors in the Bulgarian Mission (salle d'écoute)

M. Ognyan CHAMPEOV }

**République tchèque/Tschechische Republik**

M. Martin PALOUS, Ministre-adjoint des Affaires Etrangères

M. Karel HEJC, Directeur, Département des droits de l'homme, Ministère Affaires Etrangères

Mlle Veronika STROMSIKOVÁ, Département des droits de l'homme, Min. Affaires Etrangères

M. Ludek STAVINOHA, Conseiller-Ambassadeur de la Mission tchèque auprès des CE

M. Michael STROUHAL, Premier Secrétaire de la Mission tchèque auprès des CE

**République de Slovénie/Slowenische Republik**

M. Mitja DROBNIC, State Secretary, Ministry of Foreign Affairs

M. Marcel KOPROL, Minister Plenipotentiary, Deputy Head of Mission of Slovenia to the EU

M. Andraz ZIDAR, Counsellor, Ministry of Foreign Affairs

M. Bostjan JERMAN, Second Secretary, Mission of Slovenia to the EU

**République de Turquie/Türkische Republik**

M. Nihat AKYOL, Ambassadeur, Délégué permanent auprès de l'UE

M. (Prof.) Haluk KABAALIOGLU, Conseiller à la délégation turque auprès de l'UE

M. Ismail Hakki MUSA, Premier secrétaire à la délégation turque auprès de l'UE.

**Statement on the Charter of Fundamental Rights by Béla Szombati, Deputy Head of  
the State Secretariat for Integration of the Ministry for Foreign Affairs of the  
Republic of Hungary**

**Brussels, 19 June, 2000**

Mr Chairman, Ladies and Gentlemen,

Hungary welcomes this opportunity to express its opinion on the Charter of Fundamental Rights of the European Union. We would like to stress the importance of consulting the candidate countries and hope to have further opportunities to exchange views with the members of the Convention as well as the representatives of member states and other candidate countries.

Hungary, like any other democratic country based on the rule of law, pays particular attention to the assertion and protection of human rights and fundamental freedoms.

We attach great importance that efficiently functioning institutions ensure the protection of human rights and fundamental freedoms in Europe.

Being a candidate country and imminent member of the European Union, Hungary agrees to strengthening the Union's role in the protection of human rights and fundamental freedoms, therefore we support the elaboration of the EU Charter of Fundamental Rights.

Concerning the status of the Charter, Hungary is ready to accept the document in its form as elaborated and adopted by the Member States, whether as a political declaration or a legally binding document included in the Treaties.

Hungary appreciates the intention of establishing a "catalogue" of rights, including the exploring of several new notions, in the Charter. We would also appreciate the inclusion of provisions for the protection of minority rights into the document, their being part of the Copenhagen criteria for accession to the EU, demonstrating perfectly well the significance of these rights for the Union, its current and future members.

We also deem it necessary to maintain the existing and efficiently functioning systems of protection of human rights and acknowledge the 50-year jurisprudence of the Council of Europe. Our wish is to see institutions interested and active in this field in Europe to complement and assist, not to compete with each other.

To avoid any inconsistency between the European Court of Justice and the European Court of Human Rights their respective powers and competencies are to be arranged during the period of the elaboration of the Charter.

As a candidate country, Hungary follows with great interest the ongoing institutional reforms of the European Union, wishing to see the intergovernmental Conference conclude its work by the end of this year as planned. We would of course welcome a political decision in Nice on this Charter if its concept and contents are elaborated and enjoy the support of the Member States, and we would, of course, rather not see highly controversial issues over burdening the work of the Conference to an extent endangering its termination and the entry into force of its decision.

To conclude, may I once again reiterate my country's willingness to participate in consultations on the Charter.

Thank you for your attention.

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**DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION****fundamental.rights@consilium.eu.int**

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**Brussels, 18 September 2000****CHARTE 4472/00****CONTRIB 324****COVER NOTE**

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Subject : Draft Charter of Fundamental Rights of the European Union

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Please find hereafter a contribution by the Association of Women of Southern Europe (AFEM), with comments regarding document CHARTE 4422/00 CONVENT 45. <sup>1</sup>

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<sup>1</sup> This text has been submitted in French and English languages.

**AFEM**  
*ASSOCIATION DES FEMMES DE L' EUROPE MÉRIDIONALE*  
*ASSOCIATION OF WOMEN OF SOUTHERN EUROPE*

**COMMENTS ON THE DRAFT CHARTER (CONVENT 45)**

To the President Mr. Roman HERZOG, to the Vice-Presidents Mr. Guy BRAIBANT, Mr. Gunnar JANSSON, Mr. Inigo MENDES DE VIGO and to the members of the Convention.

Mr President, Messrs Vice-Presidents, Ladies and Gentlemen,

AFEM, which has been among the first NGOs to submit to you concrete proposals<sup>1</sup>, wishes to thank you for your efforts to guarantee fundamental rights and is glad to see some advances in CONVENT 45, particularly in respect of the prohibition of trafficking in human beings (Article 5), the extension to EU citizens of the right to asylum (Article 18), the proclamation that “everyone, man or woman, is equal before the law” (article 20), and certain social rights. However, AFEM allows itself to point out several serious insufficiencies of this draft on fundamental questions, such as equality between women and men, social rights, citizens’ rights and certain general provisions. It thus considers it necessary to recall some of its proposals (the additions and modifications proposed are underlined):

**PREAMBLE**

- **Point 2:** « The Union is founded on the indivisible, universal principles of the dignity **and equality** of men and women, freedom, and solidarity; [...]».

**Explanation:** *Equality between men and women constitutes, according to the EC Treaty [Articles 2 et 3(2)], a fundamental principle, task and objective of the Community. It should thus be proclaimed by the Preamble.*

- **Point 5:** Add: « **international law and international agreements to which the Union, the Community or all the Member States are party** ».

**Explanation:** *This addition is necessary in order that coherence with Article 51 of the Draft be ensured.*

**CHAPTER I. DIGNITY**

**Article 4. Prohibition of torture and inhuman or degrading treatment and punishment**

« No one shall be subjected to torture or to inhuman or degrading treatment or punishment, **such as sexual mutilation, or any other kind of physical or moral violence, including domestic violence**».

<sup>1</sup> See in particular CONTRIB 42, 105 and 181.



**Explanation:** *The treatment, which we propose to add and whose victims are mostly women and children, is a major concern of the EU<sup>2</sup>.*

## **CHAPTER II. FREEDOMS**

### **Article 14. Right to education**

2. «[...] and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be guaranteed, **to the extent that the latter do not contravene the principles and rights recognised by this Charter**, in accordance with the national laws governing the exercise of such freedom and right; **in exercising this right parents shall act in the child's best interest**». (see A. BENAKI-PSAROUDA, CONTRIB 251, G. PAPADIMITRIOU CONTRIB 97).

**Explanation:** *The duty of parents to respect and demand the respect of fundamental rights, within the framework of the education and teaching of their children, as well as their duty to teach their children these rights are more than obvious and are among the «duties» proclaimed by the Preamble (point 6). Moreover, the guarantee of the child's best interest is required by the Convention on the Rights of the Child, which is ratified by all member States.*

### **Article 18. Right to asylum**

Add at the end: **«This right belongs also to any person who is unable to freely dispose of him/herself or whose freedom or fundamental rights or physical or psychological or genetic integrity are threatened»**.

**Explanation:** *Asylum cannot be refused in the above cases (which are not covered by the Geneva Convention and the Protocol of 31.1.1967) without fundamental principles and rights guaranteed by the Charter to everyone (dignity, integrity, solidarity etc.) being infringed.*

## **CHAPTER III. EQUALITY**

**Article 22. Equality between men and women**. Text proposed:

1. **“Substantive equality between women and men is ensured in all fields. Any direct or indirect discrimination on the ground of sex is prohibited in any field.”**

**Explanation:** Substantive equality between women and men is a fundamental principle of Community law and a fundamental human right, according to well-established ECJ case-law and Articles 2 and 3(2) EC Treaty. The latter provisions make it a **task** and an **objective** of the Union to **promote this equality in all fields**<sup>3</sup>.

<sup>2</sup> See the impressive and well-documented speech of Commissioner Ms Anna Diamantopoulou to the International Conference “Violence against women: zero tolerance”, Lisbon 4-6, May 2000. See also European Commission, Report 1998 on Equal Opportunities for Women and Men (COM(1999)106 final), Section 4, Report 1999 (COM(2000)123 final), Section 1; EU Annual Report on Human Rights (1999), point 5.12.

<sup>3</sup> See ECJ Case 149/77 *Defrenne III* [1978] ECR 1509; Case C-270/97 *Sievers* (10.2.2000). See also EU Annual Report on Human Rights (1999), point 5.12.

*A special Article is indispensable and we are glad for that. However, in spite of the fact that several members of the Convention made proposals in the above direction (see CONTRIB 90 and 188 by Mr. BRAIBANT, CONTRIB 72 by Ms KAUFMANN, CONTRIB 252 by Ms BENAKI-PSAROUDA, Amendments 436 by Mr. FAYOT, 434 by Mr. DUFF, 466 by Mr. GNAUCK, 470 by Messrs. EINEM and HOLOUBEK), Article 22 does not guarantee substantive equality in all fields and constitutes a regression in relation to the “acquis communautaire” and even in relation to previous drafts. This provision disregards the above “acquis” and imperatives and is limited to only a part of the equality rights that Community law guarantees.*

*See the Proposals relating to CONVENT 45, which were submitted by 16 women members of the Convention and by Ms A. BENAKI-PSAROUDA.*

**2. “With a view to ensuring full equality in practice between women and men, temporary positive measures are indicated, in order to improve, in the first instance, the position of women.”**

**Explanation:** *A provision on positive action is indispensable. However, Article 22(2) constitutes a regression in relation to the “acquis communautaire”, and in particular in relation to:*

- *Articles 2 and 3(2) EC Treaty, which make it a positive obligation for the Union to “promote” equality between women and men in all fields and not only in the field of employment and work.*
- *Article 141(4) EC Treaty, in conjunction with Declaration No 28 annexed to the Treaty of Amsterdam: the 1<sup>st</sup> sentence of Article 141(4), which specifies the aim of positive action (“With a view to ensuring full equality in practice between women and men”) is omitted by Article 22(2). Furthermore, Declaration No 28 specifies that positive action should «improve, in the first instance, the position of women».*

*The wording we propose is in accordance with the Community “acquis” and imperatives as well as with the international obligations of member States (article 4(1) UN Convention on the Elimination of Discrimination against Women, Covenant on Civil and Political Rights, Covenant on Economic, Social and Cultural Rights).*

See aforementioned Proposal of 16 women members of the Convention, as complemented by the aforementioned Proposal of Ms BENAKI-PSAROUDA on CONVENT 45.

**Article 23. Protection of children**

**2. “In all actions relating to children, whether taken by public authorities or private institutions or individuals the child's best interests must be a primary consideration.”**

**CHAPTER IV. SOLIDARITY**

**Article 31. Reconciling family and professional life**

The right to maternity protection should be guaranteed by a special Article as follows:

**Maternity protection**

**“Every woman, without distinction, has a right to protection of pregnancy and maternity, including the rights to paid maternity leave, not to be refused access to employment and not to be treated unfavourably during this period and when she returns to work, as well as to be**

**guaranteed protection against employment conditions that may harm her and/or her child and against ailments, which have their origin in pregnancy, confinement or breast-feeding. She has also the right to family planning.”**

**Explanation:** *The 2<sup>nd</sup> paragraph of Article 31 constitutes a regression in relation to the Community and international “acquis” (Directives 76/207, 92/85, Articles 137 and 152(1) EC Treaty; ECJ case-law, Article 8 European Social Charter, Article 10 Covenant on Economic, Social and Cultural Rights). See CONTRIB 143 by Mr. G. BRAIBANT and aforementioned Proposal of Ms A. BENAKI-PSAROUDA on CONVENT 45.*

*The right to maternity protection is, according to Community and international law, an autonomous right, which does not belong only to women workers and is not limited to the rights mentioned in Article 31(2). It is an expression not only of Article 137 EC Treaty (protection of workers’ health and safety), but also of Article 152 EC Treaty (high level of human health protection) as well as of the principles of dignity and integrity of the person.*

## **CHAPTER V. CITIZENSHIP**

The first Article of this Chapter must proclaim that: **“The Union is based on the parity of women and men citizens”**.

## **CHAPTER VI. GENERAL PROVISIONS**

### **Article 49. Scope**

We do not understand why the expression “*within the scope of Union law*”, which appeared in CONVENT 34 (article 46 i.f.) and was conform to the “*acquis*” of the Union, has been replaced, without any justification, by the expression “*when they are implementing Union law*”, which is restrictive and not conform to this “*acquis*”, will create dangerous confusion and will affect legal certainty. See the Proposal of Mr. C. EINEM on CONVENT 45.

The expression that has been replaced is constantly used by ECJ case-law. See e.g. the judgments in *ERT* and *Karlsson* mentioned in the Explanation of Article 49 (the latter judgment refers to the judgment in *Bostock*, which contains the expression that has been replaced), as well as those in *Demirel* (C-12/86), *Kremzow* (C-299/95), *Annibaldi* (C-309/96). Moreover, the Explanation of Article 49 is also in favour of the replaced expression.

### **Article 51. Level of protection.**

We do not understand why “*Union law*”, which appeared in CONVENT 27 (Article H.4) and which ensured the respect of the Community and Union “*acquis*” in all fields, has been omitted, without any justificaion, the more so as the expression that has been omitted appears in the Preamble (point 5) and in the Explanation of Article 51. This is a serious regression in relation to Community and Union law, which nobody must have wished. Is it a typing error?

**LANGUAGE**

All expressions and terms used should be gender-neutral or refer to both genders. See CONTRIB 262 by Ms KAUFMANN and the aforementioned Proposal of 16 women members of the Convention on CONVENT 45.

Mr. President, Messrs Vice-Presidents, Ladies and Gentlemen,  
AFEM thanks you for your kind attention and wishes you successful completion of your task.

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**DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION****fundamental.rights@consilium.eu.int**

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**Brussels, 18 September 2000****CHARTE 4474/00****CONTRIB 325****COVER NOTE**

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Subject : Draft Charter of Fundamental Rights of the European Union

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Please find enclosed a contribution by the European Round Table of Charitable Social Welfare Associations (ETWelfare), with a proposal regarding Article 32 - Social Security and Social Assistance.<sup>1</sup>

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<sup>1</sup> These texts has been submitted in English language only.

# European Round Table of **Charitable SOCIAL WELFARE ASSOCIATIONS** **E.E.I.G.**



MAASTRICHT TREATY  
DECLARATION NR: 23

CO-OPERATION WITH CHARITABLE SOCIAL  
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Website:  
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Proposal by the ETWelfare for amending the draft Charter of Fundamental Rights of the EU  
(version of 28 July 2000)

## Article 32 Social Security and Social Assistance

1. The Union recognises and respects the entitlement to social security benefits and social services providing protection **in particular** in the event of maternity, illness, industrial accidents, dependency or old age and in the event of loss of employment, in accordance with the rules laid down by Community law and national laws and practices. **The services may also be provided by voluntary welfare organisations.**
2. [unchanged]
3. [unchanged]

Reasons :

We welcome the inclusion of social rights in the Charter. This refers especially to Article 32 and the entitlement to social security benefits and social services enshrined therein.

But there is no reason why the right to benefit from social services should be linked to certain situations alone and thus limited in scope without any need to do so. Including social rights will guarantee the future of the Charter of Fundamental Rights. For this reason the Charter must be worded in such a way that it allows for possible additions to and developments of Community law and national laws and practices in the field of social rights and access to corresponding social services. This is the only way to avoid any necessity for amending the Charter again and again.

The aforementioned request could be met by choosing an appropriate legal wording that gives entitlement to all social services and highlights the urgency in selected cases by the expression “in particular”.

This should be accompanied by the clarification that social services may be provided by charitable welfare organisations. In principle, this reflects Article 14 of the European Social Charter, which remains the most important legal source for numerous social rights in the Charter of Fundamental Rights anyway. Article 14 stipulates the right to benefit from social services and adds a clarification in the matter. The Social Charter speaks of “voluntary [...] organisations” and this wording should be maintained in conjunction with the expression “welfare” so that the use of this additional word can be understood as an updated version of what the Social Charter says.

Brussels, 24 August 2000  
Bernd-Otto Kuper

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**ENTWURF DER CHARTA DER GRUNDRECHTE DER EUROPÄISCHEN UNION****fundamental.rights@consilium.eu.int**

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**Brüssel, den 19. September 2000****CHARTE 4476/00****CONTRIB 327****ÜBERMITTLUNGSVERMERK**

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**Betr.:** Entwurf der Charta der Grundrechte der Europäischen Union

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Bitte finden Sie nachstehend eine Stellungnahme der Wirtschaftskammer Österreich zu Dokument CHARTE 4422/00 CONVENT 45. <sup>1</sup>

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<sup>1</sup> Dieser Text wurde uns nur in deutscher Sprache übermittelt.



Wirtschaftskammer Österreich, 1045 Wien, PF 108

**Abteilung für Bildungspolitik  
und Wissenschaft**

An den  
Rat der Europäischen Union  
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zHd Herrn Jean Paul Jacqué

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Ihr Zeichen, Ihre Nachricht vom

Unser Zeichen, Sachbearbeiter

Durchwahl

Datum

Wiss 296/00/DrRo/SM

3215

15.9.2000

Dr Claudia Rosenmayr-Klemenz

## **Stellungnahme der Wirtschaftskammer Österreich zum Entwurf der Charta der Grundrechte der Europäischen Union (Konvent 45)**

Sehr geehrte Damen und Herren!

Die Wirtschaftskammer Österreich teilt zum aktuellen Gesamtentwurf der EU-Grundrechte-Charta folgendes mit:

1. Allgemeine Problembereiche:
  - 1.1. Die Grundrechte-Charta soll sich nach ihrem Konzept und ihren eigenen Bestimmungen über den Anwendungsbereich (Art 49) im Rahmen der gegebenen Kompetenzen der EU bewegen. Diesen Vorgaben und Zielen bleibt der Entwurf jedoch in mancherlei Bereichen nicht treu, was insbesondere die Art 2, 47 und 48 aber auch manche Formulierungen im Kapitel IV (Solidarität) zeigen.
  - 1.2. Da die Arbeiten des Konvents davon getragen sind, rechtliche Formulierungen zu schaffen, scheint jedenfalls die Verbindlichkeit der Charta angestrebt zu werden. Nicht nur in diesem Fall stellt sich jedoch die Frage des Verhältnisses der Grundrechte-Charta zur EMRK. Die textlichen Variationen im Vergleich zur EMRK und die Tatsache, dass in manchen Bereichen (die aber im Einzelnen nicht näher bezeichnet sind) ein höherer und umfassenderer Schutz gewährleistet werden soll, müssen ungeachtet des Art 50 Abs 3 im Hinblick auf die Rechtsprechung und Rechtsentwicklung als sehr problematisch betrachtet werden.
  - 1.3. Im Zusammenhang mit diesen genannten Erwägungen steht auch die zu befürchtende unterschiedliche Rechtsprechung zwischen EGMR und EuGH. Auch das Verhältnis dieser beiden Gerichtshöfe untereinander wird einer eingehenden Klärung bedürfen.

- 1.4. Klärungsbedürftig ist nicht zuletzt auch das Verhältnis der (allenfalls verbindlichen) Grundrechte-Charta zu innerstaatlichen Grundrechten und ihre Einordnung in das österreichische Rechtssystem. Nicht nur ihre Stellung im Stufenbau der Rechtsordnung, sondern auch die Frage welches innerstaatliche (Höchst-)Gericht die in der Grundrechte-Charta verbürgten Rechte zu judizieren haben wird, sind bislang nicht beantwortet.
  - 1.5. Erhebliche Auslegungsschwierigkeiten könnten sich durch die Formulierung des allgemeinen Gesetzesvorbehalts in Art 50 ergeben. Jeweils definierte Einschränkungsvorbehalte der Grundrechte nach dem Vorbild der EMRK würden die Rechtsklarheit fördern.
  - 1.6. Die allgemeine Problematik der Aufnahme sozialer Grundrechte in die Grundrechte-Charta kann auch durch den vorliegenden Entwurf nicht vollständig entschärft werden. Die vorliegenden Formulierungen schließen es vielmehr in manchen Bereichen nicht aus, dass der Rahmen der gegebenen Kompetenzen der EU gesprengt wird; jedenfalls haben soziale Grundrechte stets eine vorgeprägte Tendenz zum Erfordernis vermehrter hoheitlicher Tätigkeit und damit eine Einengung der gesellschaftlichen Freiheit zur Folge. Diese Bedenken werden auch durch die vorgeschlagenen Regelungen über den Anwendungsbereich der Charta (Art 49) nicht zur Gänze beseitigt und betreffen insb auch weite Bereiche des Wirtschaftslebens.
  - 1.7. Das Fehlen von Erläuterungen im aktuellen Gesamtentwurf erschwert die Beurteilung einzelner vorliegender Grundrechte, soweit erwartet werden kann, dass zu einzelnen Detailfragen klärende Feststellungen in entsprechenden Erläuterungen getroffen werden. Es wird daher großer Wert darauf gelegt, dass iS der Aussagen beim informellen Treffen des Konvents vom 17. - 19. Juli 2000 jedenfalls Erläuterungen mit indikativem Charakter ausgearbeitet werden.
2. Zu den Bestimmungen im Einzelnen:

Zu Art 3 (Recht auf Unversehrtheit):

Das Verbot in Abs 2, "den menschlichen Körper und Teile davon zur Erzielung von Gewinnen zu nutzen" bringt weiterhin nicht zum Ausdruck, dass dieses Verbot nicht auf "Produkte" des Körpers, wie etwa Blut, bezogen ist. Zwar betonte der Vorsitzende Jansson beim informellen Treffen des Konvents am 18. und 19. Juni 2000, dass diese "Produkte" des Körpers vom Gewinnerzielungsverbot ausgenommen seien (so etwa die Blutplasma-Industrie), die zitierte Bestimmung lässt dies jedoch nicht eindeutig ableiten. Eine entsprechende Klarstellung, möglichst im Text selbst, jedenfalls aber in den Erläuterungen ist daher unbedingt notwendig.

Zu Art 15 (Berufsfreiheit) und Art 16 (Unternehmerische Freiheit):

Es wird begrüßt, dass auch die "unternehmerische Freiheit" in der Grundrechte-Charta ausdrücklich Erwähnung findet. Die knappe Formulierung ("Die unternehmerische Freiheit wird anerkannt.") scheint jedoch inhaltsleer und wenig aussagekräftig. Sollte eine nähere inhaltliche Umschreibung der "unternehmerischen Freiheit" aus Zeitgründen nicht mehr möglich sein, wird angeregt, die Art 15 und 16 zusammenzufassen. In Art 15 wird nämlich "Beruf" nicht nur als unselbständige Tätigkeit verstanden, sondern umfasst - was insbesondere Abs 2 deutlich macht - auch die selbständige Tätigkeit. Es wäre daher denkbar, Art 15 als "Berufsfreiheit und unternehmerische Freiheit" zu übertiteln und einen eigenen Abs 4 mit dem Wortlaut des vorgeschlagenen Art 16 anzufügen.

Zu Art 21 (Gleichheit und Nichtdiskriminierung):

Das Verständnis der "genetischen Merkmale" sollte in Erläuterungen dargelegt werden.

Zu Art 22 (Gleichheit von Männern und Frauen):

Die Überschrift dieses Art müsste auf ihr Verhältnis zu Art 20 nochmals überdacht werden und könnte etwa lauten "Gleichheit von Männern und Frauen in den Bereichen Arbeit und Beschäftigung".

Zu Art 25 (Recht auf Unterrichtung und Anhörung der Arbeitnehmer im Unternehmen):

Der österreichischen Arbeitsrechtssituation entsprechend wäre es angemessen, dieses Recht nur den "Vertretern der Arbeitnehmer" zukommen zu lassen. Jedenfalls muss sichergestellt sein, dass die in österreichischen Rechtsvorschriften diesbezüglich enthaltenen Regelungen (vgl insbesondere §§ 98, 108 ArbVG) der Erfüllung dieses Rechts Genüge tun.

Zu Art 26 (Recht auf Kollektivverhandlungen und Kollektivmaßnahmen):

Es muss klargestellt werden, dass nicht nur "Arbeitgeber und Arbeitnehmer" das Recht haben, Tarifverträge auszuhandeln und zu schließen, sondern dass von dieser Bestimmung auch deren Interessenvertretungen umfasst sind.

Der letzte Halbsatz dieser Bestimmung "sowie bei Interessenkonflikten kollektive Maßnahmen zur Verteidigung ihrer Interessen zu ergreifen" wird abgelehnt, sofern damit mehr als die Tätigkeiten der Betriebsversammlung gem §§ 41 ff ArbVG angesprochen ist. Gegenstand eines Grundrechts sollte nicht sein, was einen Rechtsbruch - und sei es auch einen kollektiven Rechtsbruch - darstellen könnte. Die Wirtschaftskammer Österreich lehnt die Schaffung eines europarechtlichen Streikrechts nachdrücklich ab.

Zu Art 27 (Recht auf Zugang zu einem Arbeitsvermittlungsdienst):

In den Erläuterungen müsste dargelegt werden, was unter "Zugang zu einem Arbeitsvermittlungsdienst" zu verstehen ist. Jedenfalls kann damit kein Anspruch auf Vermittlung gewährleistet werden.

Zu Art 28 (Schutz bei ungerechtfertigter Entlassung):

Dieser Bestimmung kann nur zugestimmt werden, wenn "Entlassung" in der österreichischen innerstaatlichen Terminologie zu verstehen ist. Ein Schutz vor ungerechtfertigter "Kündigung", der umfassendere Regelungen als den geltenden § 105 ArbVG erfordern würde, darf in dieser grundrechtlichen Gewährleistung nicht enthalten sein.

Hingewiesen sei auf die unterschiedliche Textierung der Überschrift ("Schutz bei ungerechtfertigter Entlassung") und im Text ("Schutz vor ungerechtfertigter Entlassung").

Zu Art 29 (Gerechte und angemessene Arbeitsbedingungen):

Da unserem arbeitsrechtlichen Verständnis der Begriff "würdige Arbeitsbedingungen" unbekannt ist und die Aufnahme von derart unbestimmten Begriffen in die Grundrechte-Charta als sehr problematisch erachtet wird, schlagen wir vor, Abs 1 wie folgt zu formulieren: "Jeder Arbeitnehmer hat das Recht auf gesunde und sichere Arbeitsbedingungen".

Zu Art 30 (Schutz der Jugendlichen am Arbeitsplatz):

Es müsste klargestellt werden, dass das österreichische Mindestlohnsystem und das System der Lehrlingsentschädigungen dem Gebot des Schutzes "vor wirtschaftlicher Ausbeutung" Genüge tut. Andernfalls treten wir für den Entfall dieser Formulierung ein.

Zu Art 31 (Einklang von Familien- und Berufsleben):

Als problematisch wird nach wie vor der 1. Satz des Abs 2 angesehen. Die Problematik könnte dadurch entschärft werden, dass das Wort "insbesondere" im zweiten Satz der Bestimmung entfällt.

Zu Art 34 (Zugang zu Diensten von allgemeinem wirtschaftlichen Interesse):

Abgesehen davon, dass bei einem Leser der Grundrechte-Charta nicht automatisch die Kenntnis des Art 16 EGV vorausgesetzt werden kann und daher die Bedeutung dieser Bestimmung größte Unklarheiten hervorrufen dürfte, ist darauf hinzuweisen, dass Art 16 EGV selbst jedenfalls kein subjektives Recht der EG-Bürger auf Versorgung mit einem Mindeststandard an Leistungen begründet. Er wird vor allem als politische Absichtserklärung und Handlungsaufforderung mit geringen rechtlichen Auswirkungen verstanden (vgl zB Calliess/Ruffert (Hrsg.), Kommentar zu EU-Vertrag und EG-Vertrag, RZ 11 ff zu Art 16). Zumal, wie auch die Diskussion im Konvent gezeigt hat, keine gemeinsame Verfassungstradition in diesem Bereich besteht, die Mitgliedsstaaten vielmehr sehr unterschiedliche Regelungen zu diesen Diensten aufweisen und die Regelung daher erhebliche Rechtsunsicherheit und auch Eingriffe in private Wirtschaftsbereiche mit sich bringen könnte, wird die ersatzlose Streichung dieses Art angeregt.

Zu Art 40 (Recht auf Zugang zu Dokumenten):

In Erläuterungen sollte dargelegt werden, dass dieses Recht auf Zugang zu den Dokumenten des europäischen Parlaments, des Rates und der Kommission auch im Wege des Internets erfüllt werden kann.

Zu Art 49 (Anwendungsbereich):

Auf die allgemeinen Bemerkungen unter Pkt 1.1. wird hingewiesen.

Mit freundlichen Grüßen

Dr. Christoph Leitl  
Präsident

Dr. Reinhold Mitterlehner  
Generalsekretär-Stv.

**DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION****fundamental.rights@consilium.eu.int**

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**Brussels, 21 September 2000****CHARTE 4478/00****CONTRIB 329****COVER NOTE**

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**Subject : Draft Charter of Fundamental Rights of the European Union**

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Please find enclosed a contribution by the Minority Rights Group International (MRG).<sup>1</sup>

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<sup>1</sup> This text has been submitted in English language only.

## MINORITY RIGHTS GROUP INTERNATIONAL

### The European Union Charter of Fundamental Rights and Ethnic, Religious and Linguistic Minorities

Minority Rights Group International (MRG) is an international non-governmental organisation, which works to secure the rights of ethnic, religious and linguistic minorities and acts as an advocate of the rights of minorities worldwide. MRG has consultative status with the UN (ECOSOC). Its International Secretariat is based in London.

With regard to the content of the draft Charter, in the version issued on 28<sup>th</sup> July 2000, MRG has a number of concerns, both of a structural nature and specifically concerning the rights of ethnic, religious and linguistic minorities.

As you will be aware, the European Parliament has stated that “the future EU Charter of Fundamental Rights must as a matter of course include binding protection of minorities and their languages” (Annual Report on Respect for Human Rights in the EU 1998-99).

MRG is concerned to see that the EUCFR does not mark a regressive step in international standards for the protection and the promotion of minority rights, standards which have in most cases positively evolved globally and at regional level in the past few years.

The following are areas in which we feel that adjustments could be made to the Draft Charter; in each case we have proposed an adapted version, in italics, of the clause in question, or an additional clause.

#### **The rights of minorities**

MRG is concerned that the Draft Charter contains virtually no reference to the rights of minorities, either individual or collective. Considering that national, ethnic or linguistic minorities in any country may be in a vulnerable position and are often subject to prejudice and discrimination, both from sectors of the public or the State, MRG feels that it is important to place *positive* obligations upon States and the Union to *actively* protect the rights of minorities. We also feel that it is important to guarantee the right of individuals to exercise rights in community, as has long been recognised within the international legal framework. We therefore propose that the following texts (adapted to suit the context of the EU) from the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities (Art. 4 (2), (3) and (4), and Art. 3 (1)) be incorporated into the Draft Charter as a new article, in between Articles 22 and 23, under the heading “Protection of Minorities”:

#### **Protection of Minorities**

*1. The Union and Member States shall enable persons belonging to minorities to express their characteristics and to enjoy and develop their culture, language, religion, traditions and customs, except where specific practices are in violation of national law and contrary to international standards.*

2. *The Union and Member States should take appropriate measures so that, wherever possible, persons belonging to minorities may have adequate opportunities to learn their mother tongue or to have instruction through the medium of their mother tongue.*

3. *The Union and Member States should, where appropriate, take measures in the field of education, in order to encourage knowledge of the history, traditions, language and culture of the minorities existing within the territory concerned. Persons belonging to minorities should have adequate opportunities to gain knowledge of the society in which they live.*

4. *Persons belonging to minorities may exercise their rights, including those set forth in the present Charter, individually as well as in community with other members of their group, without any discrimination.*

MRG also proposes that an ‘affirmative action’ clause, similar to that relating to gender in Article 22 of the Draft Charter of Fundamental Rights, be included with regard to minorities:

5. *The principle of equal treatment shall not prevent the maintenance or adoption of measures providing for specific advantages in order to facilitate the enjoyment by persons belonging to minorities of the rights enshrined in this Charter.*

### **Level of Protection**

While welcoming the drafting of an EU Charter of Fundamental Rights in principle, MRG is concerned that the Charter, when finally agreed, will be a ‘lowest common denominator’ document. As such, it may set a new benchmark in international human rights protection at a *lower* level than that currently enshrined in existing instruments. For example, Article 51 of the draft mentions that the Charter cannot be used to lower existing international standards to which all member states are party. There is a danger then that Article 51 could be used to reduce the level of protection offered by, for example, the Framework Convention on National Minorities, which has not been ratified by all States, in the States which have ratified it. MRG proposes that the wording of article 51 be changed as follows, to include agreements or treaties to which member States are Parties:

*Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognized, in their respective fields of application, by international law and standards to which the Union, the Community or Member States are Parties, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States’ constitutions.*

### **The right to non-discrimination and third country nationals**

The right to non-discrimination is a cornerstone in the protection of all human rights, not just minority rights. MRG therefore expresses a reservation about draft Article 21, which fails to outlaw discrimination on the grounds of nationality.

We therefore propose that Art. 21 (1) be amended as follows:

*Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, language, religion or belief, political or any other opinion, nationality, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.*

MRG trusts that Members of the Convention drafting the European Union Charter of Fundamental Rights will take note of its concerns.

30<sup>th</sup> August 2000

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**DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION****fundamental.rights@consilium.eu.int**

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**Brussels, 25 September 2000****CHARTE 4480/00****CONTRIB 331****COVER NOTE**

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Subject : Draft Charter of Fundamental Rights of the European Union

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Please find enclosed a contribution by the Young European Federalists (JEF).<sup>1</sup>  
  

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<sup>1</sup> This text has been submitted English language only.



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## JEF position on the Draft of the Charter of Fundamental Rights of the European Union

# Still A Long Way to Go on the Front of the Rights of the European Citizens

At the beginning of this year, the Young European Federalists (JEF) welcomed enthusiastically the initiative of the establishment of a Charter of the Fundamental Rights of the European citizens. JEF stressed that this initiative, aside being a crucial and novel achievement, was the first step on the way to a real European Constitution. Moreover, the establishment of the Charter could have marked for JEF the start of a new Europe focussed on the citizens and moving forward to a real Political Union.

The Convention, as a result of seven months of intensive work, made public the Draft of "Charter of Fundamental Rights of the European Union" on 28 July. **JEF welcomes this Draft of the Charter of Fundamental Rights of the European Union and stresses the following points:**

1. The Draft provides the existing jurisdiction on the fundamental rights both of the European Union's institutions and that of its Member States with a clearer orientation. It also tackles the issues of modern fundamental rights. JEF considers work done on this document highly important, especially keeping in mind intensive work over a period of seven months and modest support from the Council of the European Union. This Draft is a further evidence of the strength and effectiveness of the "new democratic method" that the Convention implemented in its distinctly open and transparent proceedings. This feature is manifest in the fact that the Convention involved the representatives of the citizens in the European Parliament and in the national parliaments, on the foot of parity with the representatives of the Member States, as well as civil society organisations.

2. **However, the Draft is still very far from being sufficient to mark the start of a new Union focussed on the European citizens and not only on the economic dimension of the Union.** This document does not yet provide the Union with a vision for the new challenges facing European democracy, economy, society and culture in the new millennium. It is not sufficient to win back the lost trust and passion of the European citizens for the European Union.
3. Moreover, it is highly regrettable that despite the extensive part dedicated to political and civil rights and citizens' rights, the Draft Charter ignores that the "European citizenship" is unfortunately condemned to remain an empty word as long as the citizens are deprived of the fundamental right of citizenship: the power to decide the Government and the policies of the Union. The historic fundamental principle that states that "**sovereignty lies in the people**" is today not implemented in the European Union. Therefore, the Union - even with the Charter - is not yet a democracy.

**JEF comments also on the following important specific provisions of the Draft Charter:**

1. JEF states that if the Charter were integrated in the Treaties, **it should not be granted a separate preamble**, which would mainly echo existing Treaty provisions or provisions of the Charter text itself. Instead, JEF proposes to delete the preamble completely or avoid at least superfluous provisions.
2. JEF insists on the provisions on **European political parties** to be strengthened, as these political parties can play an important role in the democratisation of the European Union and the creation of real political life on the European level.
3. JEF welcomes the important **new right of good administration**.
4. JEF stresses the importance of the idea of subsidiarity, but the meaning of this principle in the context of the Draft Charter is unambiguous.
5. JEF wants to see the **role of the European Parliament** in deciding on limitations of the Charter rights laid down more clearly than it is done in the Draft Charter.
6. JEF would like to see the **right to an alternative from a military service** to be included expressively in the Charter.

JEF also believes that the two principal problems concerning the Charter are still the question of its **legally binding character** for the European Union's institutions and the Member States, and its role in **paving a way to establishing a real European Constitution** :

1. A Charter of Fundamental Rights which does not give the European citizens the right to claim for the respect of their fundamental rights in courts will widen the gap between the citizens and the European Union and would be a betrayal of expectations raised with the establishment of the Charter. Likewise, a Charter that applies only to the institutions of the Union but not to the Member States would result in disillusion of the citizens. Therefore JEF still presses for the **inclusion of the Charter in the Treaties as integral part of the Treaties, binding for the European Union's institutions and Member States** in applying EU legislation. The Treaties should be modified so as to allow the citizens of the Union access to the European Court of Justice in the issues tackled by the Charter.

2. The Charter can unfold all its potential only if the Union is given a real Government and democratic institutions, i.e. the capacity to pursue effectively the values and goals that the Charter will solemnly enshrine. The Charter should become an important **part of a European federal Constitution**, which should be the result of the next round of reforms starting after the Nice Treaty.

**JEF urges the European Council to welcome the Draft of Charter of Fundamental Rights but at the same time to decide to continue work on the Draft and launch a public debate on the issue among the European citizens.**

**In particular, JEF calls upon the European Council in Nice to launch a real “constituent initiative” and therefore mandate an inter-institutional Convention similar to the Fundamental Rights Convention, and not an Intergovernmental Conference, to prepare a comprehensive proposal for a European federal Constitution including a Charter of Fundamental Rights of the European citizens.**

Editors' note to CHARTE 4481/1/00 REV 1,  
**Projet de Résolution sur la Charte de la Commission  
Parlementaire des Affaires Européennes du Parlement  
Portugais (daté 07/09/2000):**

REV 1 identical to initial version.

**PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE****fundamental.rights@consilium.eu.int**

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**Bruxelles, le 29 septembre 2000****CHARTE 4481/1/00 REV 1****CONTRIB 332****NOTE DE TRANSMISSION**

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Objet :           Projet de Charte des droits fondamentaux de l'Union européenne

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Veillez trouver ci-après un projet de Résolution sur la Charte, de la Commission Parlementaire des Affaires européennes du Parlement portugais. <sup>1</sup>

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<sup>1</sup> Ce texte à été soumis en langue française seulement.

**Projet de Résolution**  
**sur la Charte des Droits Fondamentaux de l'Union Européenne**  
(à l'abri de l'article 5, alinéa 5 de la Loi. 20/94)

La Commission Parlementaire des Affaires Européennes, en réunion conjointe avec les Commissions des Droits, Libertés et Garanties et de la Parité, Egalité des Chances et Famille, sans porter préjudice à une appréciation ultérieure du projet final de la Charte des Droits Fondamentaux élaboré par Convention, et à l'abri de l'article 5, alinéa 5 de la Loi 20/94, présente le projet de résolution suivant:

Considérant que l'Assemblée de la République a participé activement, par le biais des deux députés qui la représentent, à la Convention chargée d'élaborer le projet de la Charte des Droits Fondamentaux de l'Union Européenne;

Considérant que, par l'initiative des Commissions des Affaires Européennes et des Droits, Libertés et Garanties, l'Assemblée de la République a promu un débat ouvert à toute la société, avec une vaste participation d'organisations économiques, sociales et culturelles, alimenté par les avis de la communauté scientifique et dont le point culminant sera une grande séance publique qui se tiendra le 21 septembre à Coimbra;

Considérant que la Convention discutera, à partir du 11 septembre, le projet qui correspond à l'accord du Praesidium en se basant sur les résultats des débats réalisés et que la décision finale sera, en principe, prise le 25 septembre de manière à permettre la présentation du Projet de Charte au Conseil Européen de Biarritz;

1. Prennent note des contributions, propositions et observations générales de leurs représentants à la Convention et approuvent le sens fondamental de cette intervention;
2. Croient que la tendance à conditionner les travaux de la Convention au calendrier de la Présidence française doit être contrariée car cela porte préjudice à un travail approfondi dans le délai établi par les Conseils Européens de Colonne et de Tempere qui ne terminera qu'à la fin de cette année.
3. Se déclarent pour une Charte des Droits Fondamentaux qui puisse être approuvée par les Gouvernements et les Parlementaires des Etats membres comme instrument d'engagement, ayant une valeur de droit originaire, dont les normes sont garanties moyennant une tutelle juridictionnelle.
4. Considèrent que la fonction principale de la Charte devra être de donner aux droits fondamentaux, découlants de l'ordre juridique communautaire dans le respect du principe de l'indivisibilité et de l'importance des droits civils et politiques et des droits économiques, sociaux et culturels - la dignité formelle et matérielle correspondante, densifiant et actualisant, par le biais de normes, la protection des droits fondamentaux consacrée à l'article 6 du Traité de l'UE, par référence aux principes généraux de droit définis à la lumière de la Convention Européenne de Sauvegarde des Droits de l'Homme et des Libertés Fondamentales (CEDH) et

des traditions constitutionnelles communes aux Etats membres, bien comme de la Charte Sociale Européenne et du droit international en général. Donc, la Charte renforcera la légitimité politique et morale d'une organisation singulière telle que l'Union Européenne qui, par attribution des Traités constitutifs, exerce déjà de vastes pouvoirs à caractère politique qui se répercutent sur la sphère juridique des personnes.

5. Considèrent que la Charte devrait également définir les devoirs et les responsabilités des citoyens face à l'Union Européenne.
6. Défendent que cette révision des Traités viabilise l'adhésion de l'Union à la Convention Européenne de Sauvegarde des Droits de l'Homme et des Libertés Fondamentales;
7. Manifestent leur engagement afin de poursuivre et d'approfondir le débat sur la Charte - expérience innovante avec des leçons importantes - appelant à l'intervention active des citoyens et de leurs organisations représentatives.

Palácio de São Bento, le 7 septembre 2000

Le Président

(Manuel dos Santos)

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**PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE****fundamental.rights@consilium.eu.int**

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**Bruxelles, le 25 septembre 2000****CHARTE 4482/00****CONTRIB 333****NOTE DE TRANSMISSION**

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Objet :           Projet de Charte des droits fondamentaux de l'Union européenne

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Veillez trouver ci-après une contribution du Congrès des Pouvoirs Locaux et Régionaux de l'Europe (CPLRE), avec une lettre à M. Roman HERZOG, le Président de la Convention. <sup>1 2</sup>

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<sup>1</sup> Ce texte a été soumis en langue française seulement.

<sup>2</sup> CPLRE: F-67075 Strasbourg Cedex - Tél.: + 33 (0)3 88 41 20 00 - Fax: + 33 (0)3 88 41 27 51 / 37 47 - Internet: <http://www.coe.fr/cplre>

## CONGRES DES POUVOIRS LOCAUX ET REGIONAUX DE L'EUROPE

Référence à rappeler : CPLRE/as

*Le Président*

Strasbourg, le 15 septembre 2000

Monsieur le Président,

Le Congrès des pouvoirs locaux et régionaux du Conseil de l'Europe, organe représentant les collectivités territoriales des 41 Etats membres de l'Organisation, suit avec beaucoup d'intérêt les activités préparatoires de la Charte des Droits Fondamentaux de l'Union Européenne.

Compte tenu de cet intérêt, je souhaite soumettre à votre attention, au nom du Congrès, quelques observations concernant le projet de Charte afin que la Convention que vous présidez puisse en tenir compte dans la phase conclusive de ses travaux.

Le Congrès souhaite en particulier que la partie du projet de Charte concernant les droits politiques puisse inclure *le droit à l'autonomie locale et régionale, le droit de vote des citoyens concernés aux élections aux niveaux local et régional* ainsi que le principe de subsidiarité.

La prise en compte de ces droits par la future Charte a d'ailleurs déjà fait l'objet de recommandations du Comité des Régions de l'Union Européenne.

Le souhait du Congrès est fondé sur les principes contenus dans la Charte européenne de l'autonomie locale du Conseil de l'Europe, qui définit également le principe de subsidiarité. D'ailleurs, ce principe a été clairement établi dans la Recommandation 19 (1995) du Comité des Ministres du Conseil de l'Europe.

Par ailleurs, le Congrès espère qu'également les principes contenus dans d'autres importants traités adoptés au sein du Conseil de l'Europe dans ce domaine - tels que la Charte européenne des langues régionales ou minoritaires - puissent inspirer les travaux de la Convention.

Le Secrétariat Général du Conseil de l'Europe - et plus particulièrement le Secrétariat du Congrès - se tiennent à la disposition de votre Administration pour tout renseignement complémentaire à cet égard (M. Rinaldo Locatelli, Chef du Secrétariat du Congrès, tél. +33 3 88 41 22 39, fax +33 3 88 41 37 47 ou 27 51, email : [rinaldo.locatelli@coe.int](mailto:rinaldo.locatelli@coe.int)).

Espérant vivement que la Convention sera en mesure de tenir compte des souhaits du Congrès, je vous prie d'agréer, Monsieur le Président, l'expression de ma considération très distinguée.

Llibert CUATRECASAS

M. Roman HERZOG  
Président de la Convention pour l'élaboration  
De la Charte de Droits Fondamentaux de  
L'Union Européenne  
C/o Conseil de l'Union Européenne  
Secrétariat de la Convention  
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B-1048 BRUXELLES

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**DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION****fundamental.rights@consilium.eu.int**

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**Brussels, 26 September 2000****CHARTE 4483/00****CONTRIB 334****COVER NOTE**

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Subject : Draft Charter of Fundamental Rights of the European Union

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Please find enclosed a contribution by the Social, Health and Family Affairs Committee of the Council of Europe, with a letter to Mr. Roman HERZOG, the President of the Convention, and the Resolution 1210.<sup>1</sup>

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<sup>1</sup> This text has been submitted in English language only.



**PARLIAMENTARY ASSEMBLY**  
**ASSEMBLÉE PARLEMENTAIRE**

**Social, Health and Family Affairs Committee**

*The Chairman*

Strasbourg, 20 September 2000

Dear Chairman,

It has come to my attention that the report on the Charter of Fundamental Rights of the European Union, adopted on 7 September 2000 by the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe (Rapporteur: Mr Magnusson), has been circulated to members of the Convention.

The Committee on Legal Affairs and Human Rights will revise its report in the light of the discussions to take place in Brussels on Monday and Tuesday next and then present a revised version to the Parliamentary Assembly which will debate this report, but also the opinions of the Political Affairs Committee (Rapporteur: Mr Clerfayt) and of the Social, Health and Family Affairs Committee (Rapporteur: Mr Evin), on Friday 29 September 2000.

At this juncture, and without prejudice to the outcome of the debate next week, I would like to emphasise that in its Resolution 1210 on the Charter of Fundamental Rights of the European Union adopted following the debate it held in January 2000 (cf. copy enclosed), the Parliamentary Assembly invited the European Union, *inter alia*, "to make sure that when referring to social rights the revised European Social Charter of the Council of Europe will be taken into account".

I would be grateful if you would kindly bring this letter to the attention of the Convention.

Yours sincerely,

Tom Cox

Dr Roman HERZOG  
Bundespräsident a. D.  
Chairman of the Convention on the Charter of  
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## Resolution 1210 (2000)

### Charter of fundamental rights of the European Union

1. The Assembly considers it necessary to make a number of observations following the decision by the EU European Council in Cologne, on 3 and 4 June, 1999 to draw up a charter of fundamental rights of the European Union, to be submitted to the European Council in December 2000.
2. At this stage, without knowing the charter's content, the Assembly wishes to bring a number of matters to the attention of those responsible for drafting this instrument, that is to say the "body" established to that end in Tampere, and may have occasion to make observations on the substance of the charter in due course.
3. The European institutions, first the Communities and then the European Union, have for some time past shown an interest in human rights, in particular the European Convention on Human Rights, and have mentioned those rights as the foundation of democracy in their successive treaties. The European Parliament and the Commission have on a number of occasions come out in favour of the Union's accession to the Convention. The Parliamentary Assembly has itself welcomed this proposal. However, it has not yet been translated into action, following an opinion by the Court of Justice in Luxembourg on whether accession to the European Convention on Human Rights was compatible with the Community treaties, in which the Court found that, as Community law stood at the time, the Community had no competence to accede.
4. At a time when it is reinforcing its powers, the Union wishes to make the importance of human rights more visible to its citizens, as stated in the decision taken in Cologne, and to bring these currently scattered rights together in a single text. The Assembly welcomes this initiative as a sign of a resolve to strengthen further the cause of human rights in Europe.
5. The Assembly nonetheless considers that, in adopting a charter of fundamental rights, the achievements of the European Convention on Human Rights and the body of its case-law established over almost fifty years, which has had far-reaching effects on the law of the member states of the Council of Europe, and therefore of the European Union, cannot be disregarded. It further draws attention to the risks of having two sets of fundamental rights which would weaken the European Court of Human Rights.
6. In this connection, the Assembly recalls the communication of 19 November 1990 issued by the Commission of the European Communities on accession to the European Convention on Human Rights, in which it stated that accession did not rule out the option of a set of fundamental rights specific to the Community. The opposite inference can therefore be made, namely that adoption of a charter does not rule out accession to the European Convention on Human Rights.
7. The European Union and the Council of Europe undeniably guarantee a number of rights which are not contained in the European Convention on Human Rights, particularly economic and social rights, and the charter should therefore include these rights, adding to them others now accepted as fundamental rights. The Assembly draws attention to the other instruments for the protection of

human rights on which the charter could draw, in particular the revised European Social Charter, which guarantees economic and social rights and is an instrument to which the Assembly has invited the Union to accede. It recalls that, following the Treaty of Amsterdam, a reference to the Social Charter of the Council of Europe was included in the Treaty on European Union.

8. The Assembly refers to the European Union report, prepared in February 1999 by an expert group chaired by Professor Simitis, which recommends that Article 2 to Article 13 of the European Convention on Human Rights be incorporated into Community law, together with the rights secured in the protocols to the Convention. The inclusion of rights guaranteed by the Convention would be a means of avoiding having two different sets of rights in Europe, thus creating two categories of citizens enjoying different rights.

9. The Assembly believes that there can be no discrimination in the application of fundamental rights and that everyone coming under the jurisdiction of a Council of Europe member state must enjoy the protection of such rights, as provided for in Article 1 and Article 14 of the European Convention on Human Rights.

10. In conclusion, in the light of the above, the Assembly invites the European Union:

- i. to incorporate the rights guaranteed in the European Convention on Human Rights and its protocols into the charter of fundamental rights and to do its utmost to safeguard the consistency of the protection of human rights in Europe and to avoid diverging interpretations of those rights;
- ii. to pronounce itself in favour of accession to the European Convention on Human Rights of the Council of Europe and to make the necessary amendments to the Community treaties;
- iii. to make sure that when referring to social rights the revised European Social Charter of the Council of Europe will be taken into account.

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1. Assembly debate on 25 January 2000 (3rd Sitting) (see Doc. 8611, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Magnusson; Doc. 8615, opinion of the Political Affairs Committee, rapporteur: Mr Clerfayt; and Doc. 8627, opinion of the Social, Health and Family Affairs Committee, rapporteur: Mr Evin).

Text adopted by the Assembly on 25 January 2000 (3rd Sitting).

**DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION****fundamental.rights@consilium.eu.int**

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**Brussels, 26 September 2000****CHARTE 4484/00****CONTRIB 335****COVER NOTE**

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Subject : Draft Charter of Fundamental Rights of the European Union

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Please find enclosed a contribution by the "Universität der Bundeswehr", Germany, submitted by Mr. Nikolaus SCHULTZ, regarding Article 51 in document CHARTE 4470 CONVENT 47. <sup>1</sup>

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<sup>1</sup> This text has been submitted in English language only.



Nikolaus Schultz, LL.M. (*Stellenbosch*)  
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Hamburg, 20<sup>th</sup> September 2000

### **Essential content of rights and freedoms**

Dear President of the Convention Prof. Herzog, Dear Members,

With great interest I have studied the latest draft of a Charter of Fundamental Rights of the European Union (CHARTE 4470/00), hereinafter "the Draft Charter", and I deem it appropriate to make one comment concerning draft Art. 51 (1).

I submit to **omit** the phrase "**and respect the essential content of those rights and freedoms**" completely from this article.

#### Reasons:

In contrast to corresponding articles in earlier drafts, notably Art. 50 (1) of CHARTE 4422/00 and Art. 47 (1) (45 (1)) of CHARTE SN 3340/00, and, however, in lieu with Art. 47 cl. 2 of CHARTE 4383, Art. 47 cl. 2 of CHARTE 4316/00, Art. H.2 (2) cl. 2 of CHARTE 4235/00 and Art. Y of CHARTE 4123/1/00 REV 1 the doctrine of the prohibition of negating the "essential content of a basic right and freedom" has found its way back into the Draft Charter.

We all know that this doctrine draws on Art. 19 (2) of the German Basic Law (hereinafter "the GG") with its so-called "*Wesensgehaltsgarantie*". However, this principle has not served any fruitful purpose in the history of German constitutional jurisprudence. To my knowledge, the

German Federal Constitutional Court (hereinafter "the BVerfG"), has struck down law or declared unconstitutional other state conduct, *inter alia*, on the grounds of a violation of Art. 19 (2) GG only on one early occasion (Decisions of the German Federal Constitutional Court [hereinafter BVerfGE] Vol. 22, p. 180, 220; *cf.* BVerfGE 2, 266, 285; 7, 377, 411; 15, 126, 144; 16, 194, 201; 30, 47, 53; 58, 300, 348; 61, 82, 113; 80, 367, 373), however, it has attempted to circumvent a definite answer and largely solved appropriate cases by applying the principle of proportionality. After all, neither the BVerfG nor German scholars have managed to give this clause substantial meaning. In case one considers the essential content of a right as what is left of the respective right after it has been limited in accordance with the principle of proportionality the provision is superfluous. If one tries to determine the essential content of each right independently one has great difficulties to do so. Both observations apply to the opinion that Art. 19 (2) GG entrenches the inviolable core of dignity of each right. The right to human dignity is already protected elsewhere in the GG (Art. (1) GG) and its actual scope of protection still gives rise to disputes. In any event, the GG allows for a deprivation of life (see Art. 2 (2) cl. 3 GG) and the affected person feels challenged to question what is left from the right to life if s/he is deprived of it. Or must one follow an objective approach? That means if a person's life is taken away the right to life itself still serves to protect others.

The German experience also caused our South African friends to omit the doctrine of the essential content of a right in South Africa's so-called Final Constitution, Act 108 of 1996 as amended, whereas it had been provided for in Section 33 (1) (b) of the so-called Interim Constitution, Act 200 of 1993 as amended. The South African Constitutional Assembly, the body entrusted with drafting the Republic's Final Constitution, in full consideration of German constitutional law in general and Art. 19 (2) GG in particular, followed the approach of the South African Constitutional Court, which, from the outset, had been hesitant to apply this concept and had been troubled to canvass on a thorough evaluation (see for example<sup>1</sup> *S v Makwanyane and another* 1995 (6) BCLR 665 (CC) paras 132- 134 [per Chaskalson P], 167 [per Ackermann J], 175 [per Didcott J], 193, 195 [per Kentridge AJ], 283, 298 [per Mahomed J], 313 [per Mokgoro J] and 343 [per O'Regan J]); *Coetzee v Government of the Republic of South Africa and others* 1995 (10)

<sup>1</sup> The decisions of the Constitutional Court of South Africa are available on the homepage of the University of the Witwatersrand, Johannesburg, R.S.A., under <http://www.law.wits.ac.za/lawrepal.html>.

BCLR 1382 (CC) paras 20 [per Didcott J] and 47-8 [per Sachs J]; *Ferreira and Levin NO and others* 1996 (1) BCLR 1 (CC) paras 127 and 153 [per Ackermann J] and *S v Mbatha* 1996 (3) BCLR 293 (CC) para 27 [per Langa J].

Most strikingly, criticism was expressed by the late Didcott J in the decision of the *Azanian Peoples Organization (AZAPO) and others v President of the Republic of South Africa and others* 1996 (8) BCLR 1015 (CC). His legacy certainly warrants quotation (*ibid.*, at para 66): “[...] But for one problem posed by section 33(1) [of the Interim Constitution], which strikes me as wellnigh intractable ... **Negating the essential content of a constitutional right is, however, a concept that I have never understood.** Nor can I fathom how one applies it to a host of imaginable situations. Baffled as I am by both conundrums, I would have been at a loss to hold that the denial of the right in question either had or had not negated its essential content. It is therefore with a sigh of relief that I find myself free to say, as I end this judgment, that my reliance on sub-section (2) of section 33 [of the Interim Constitution] dispenses altogether with the need for me to bother about sub-section (1).”

With all due respect, for these reasons, I believe, the Convent is invited to avoid similar difficulties by omitting the abovementioned provision from Art. 51 (1) of the Draft Charter.

Thank you.

Sincerely Yours

Nikolaus Schultz<sup>2</sup>

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<sup>2</sup> The author had the privilege of working in the Chambers of Justice Ackermann at the Constitutional Court of South Africa in 1999 and followed up the debates in the Convention while being *Stagiaire* at the European Commission in the year 2000.

**DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION****fundamental.rights@consilium.eu.int**

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**Brussels, 26 September 2000****CHARTE 4485/00****CONTRIB 336****COVER NOTE**

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Subject : Draft Charter of Fundamental Rights of the European Union

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Please find enclosed a contribution by the European Union of House Builders and Developers (UEPC), with comments on document CHARTE 4470 CONVENT 47. <sup>1</sup>

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<sup>1</sup> This text has been submitted in English and French languages.



**POSITION OF THE UEPC ON THE DRAFT EUROPEAN  
CHARTER ON FUNDAMENTAL RIGHTS  
(CHARTE 4470/00 - CONVENT 47)**

The UEPC has examined the text of the draft European Charter of fundamental Rights and in particular article 17 relating to the right to ownership of property.

It wishes to draw attention to the universality of the right to ownership of property affirmed in the Universal Declaration on Human Rights proclaimed 10<sup>th</sup> December 1948 and included in article 1 of the Additional Protocol to the European Convention on Human Rights and in the national laws of the majority of the member states of the European Union.

Furthermore it wishes to draw attention to the fact that the right to ownership of property is at the basis of democratic societies and that the strong social aspirations to property ownership of the vast majority of the members of the Union are a driving force in economic activity and social progress.

The UEPC affirms that any infringement of this right and its use must be based on a legal measure and will legally require a fair and pre-paid compensation. It estimates that any abusive taxation must be regarded as an infringement of the right to ownership of property.

September 2000

*UEPC (European Union of House Builders and Developers) represents more than 30,000 developers or firms involved in house building and development which are members of federations from the 15 constituent countries. Either directly or indirectly the activities of the house builders and developers affect 10% of the gross national product and of the total European employment. Together they annually build and develop around 700.000 new homes and several millions m<sup>2</sup> of offices and shopping centres.*

UNION EUROPEENNE DES PROMOTEURS-CONSTRUCTEURS  
EUROPEAN UNION OF DEVELOPERS AND HOUSE BUILDERS  
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**Brussels, 27 September 2000****CHARTE 4486/00****CONTRIB 337****COVER NOTE**

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Subject : Draft Charter of Fundamental Rights of the European Union

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Please find hereafter a contribution by the Association of Women of Southern Europe (AFEM), with comments regarding document CHARTE 4470/00 CONVENT 47. <sup>1</sup>

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<sup>1</sup> This text has been submitted in French and English languages.

**AFEM: ASSOCIATION DES FEMMES DE L' EUROPE MÉRIDIONALE  
ASSOCIATION OF WOMEN OF SOUTHERN EUROPE**

**COMMENTS ON CONVENT 47**

To the President Mr. Roman HERZOG, to the Vice-Presidents Mr. Guy BRAIBANT, Mr. Gunnar JANSSON, Mr. Inigo MENDES DE VIGO and to the members of the Convention.

Mr President, Messrs Vice-Presidents, Ladies and Gentlemen members of the Convention,

afem welcomes and rejoices at the advances realised in CONVENT 47, and in particular rejoices to see that, at last, **gender equality is ensured in all areas** (Article 23). AFEM thanks all those who have contributed thereto, and more particularly the 16 women members of the Convention whose amendment has been adopted, the members who had opened the way to this important development, and in particular Mr. G. Braibant, Ms S. Kaufmann, Ms A.Benaki-Psarouda, Ms C.Lalumière, Messrs. B.Fayot, A.Duff, J.Gnauck, C.Einem, M. Holoubek, those members who have supported these amendments, as well as Mr. J.-P. Jacqué whose contribution to the work of the Convention is widely known and appreciated.

**Explanation of Article 23:** We propose the following explanation, which clarifies the nature and purpose of “positive action”, for the benefit of national courts more particularly:

*“This Article takes into account the Community “acquis” and imperatives relating to gender equality, and more particularly Articles 2 et 3§2 ECTreaty, which impose on the Union as a task and an objective to promote this equality in all areas. The second paragraph concerns the so-called “positive action” or “positive measures”, which, according to the Treaty and ECJ case law (in particular judgment of 28 March 2000, C-158/97, Badeck), as well as according to the Convention on the elimination of discrimination against women, ratified by all member States, do not constitute discrimination or derogations to the principle of gender equality, but means which are necessary for achieving real and effective gender equality. Article 141§4 ECTreaty should also be recalled, as well as Declaration No 28 annexed to the Treaty which specifies that these measures “in the first instance aim at improving the situation of women”.*

**Explanation of Article 3.** In order to clarify the 1<sup>st</sup> paragraph and remind that sexual mutilation is practiced even on our territory, as it is shown by cases before courts (which, of course, show only the tip of the iceberg), add: *“The 1<sup>st</sup> paragraph aims at prohibiting any form of physical or mental violence, including sexual mutilation.”*

**Explanation of Article 14.** Add: *«It is obvious that the parents’ convictions are respected in so far as they do not conflict with the principles and rights recognised by this Charter and that parents should always act in the child’s best interest».*

**Article 24. The rights of the child.**

**2.** “In all actions relating to children, whether taken by public authorities or private institutions **or individuals** the child’s best interests must be a primary consideration.”

**Explanation:** The necessity of this addition is so obvious that it does not need any explanation.

### **THE DUTY TO SAGEGUARD THE «ACQUIS COMMUNAUTAIRE»**

AFEM realises the big difficulty of the task entrusted to the Convention and the necessity of compromise in order to reach a complete text. It welcomes the originality of the incorporation of social right in the draft. However, **there can be no compromise on the «acquis communautaire»**, the more so as **it is a fundamental objective of the Union «to maintain in full and build on» this acquis** (article 2 Traité UE). Examples:

#### **Article 32. Family and professional life**

Paragraph 2 constitutes a regression in relation to the acquis communautaire. Proposal:

**«2. Men and women, without discrimination on the ground of sex, have a right to reconcile family and working life.»**

**Explanation:** *This provision repeats the 5<sup>th</sup> Consideration of Council Resolution of 29.7. 2000 on the balanced participation of women and men of women and men in family and working life (OJ C218/5 of 31.7.2000). This right is much larger than the tights to maternity protection and parental leave, as it results from the Resolution.*

**«3. Every woman has the right to pregnancy and maternity protection, including the rights not to be treated unfavourably on the ground of these situations in respect of access to and conditions of employment, to paid maternity leave, to protection against conditions of employment that may harm her and/or her child and against ailments which have their source in pregnancy, confinement or breast-feeding. She has also the right to family planning.»**

**Explanation:** *This is an autonomous right recognised and protcted by binding norms (Directives 92/85, 76/207, articles 137 and 152§1 EC; ECJ case law). See CONTRIB 143 by Mr. Braibant and Proposal by Ms BENAki-PSAROUDA on CONVENT 47. See also Article 8 European Social Charter, Article 10 Covenant on Economic, Social and Cultural Rights. This protection aims at guaranteeing not only reconciliation of family and working life, but also the physical and mental health of the mother and the child.*

**«4. Every father and mother has the right to parental leave following the birth or adoption of a child and to the maintenance of rights relating to employment during this leave.»**

**Explanation:** *This is also an autonomous right, recognised and protected by binding norms (Directives 96/34, 76/207, ECJ case law).*

#### **Article 50. Scope**

Why has the standard expression of ECJ case law “**in the field of application**”<sup>1</sup> been replaced by the restrictive expression “*implementing*”?

<sup>1</sup> See e.g. *ERT*, mentioned in the explanation; 24.3. 1994, C-2/92, *Bostock*, [1994] ECR. I-955; 29.5.1997, C-299/95, *Kremzow*, [1995] ECR I-2629; 18.12.1997, C-309/96, *Annibaldi*, [1997] ECR I-7493.



It is an “**acquis**” that member States have the duty to **respect fundamental rights not only when they implement community or Union law, but also when they act within the field of application of this right, i.e. in the fields of Community and Union jurisdiction**. A typical example of the latter situation is to be found in the case ERT mentioned in the explanation. The expression used in CONVENT 47 will prejudice legal certainty. See also Mr. EINEM’s Proposal on convent 45.

**Article 52. Level of protection.**

Why has “**Union law**”, which appeared in CONVENT 27 (Article H.4) and which ensured the respect of the “**acquis**” been deleted? Point 5 of the Preamble is insufficient, since it refers only to the Treaties, omitting secondary and unwritten (case-law) Community law, which are important sources of fundamental rights. In any event, the Preamble cannot fill the gaps of the Charter provisions. This constitutes a serious regression, which cannot have been wished by anybody. Is it a typing error?

**LANGUAGE**. AFEM rejoices at the considerable advances in respect of the language of the draft, but wishes to recall that the use of neutral expressions or expressions referring to both genders should be ensured in all languages.

Mr. President, Messrs Vice-Presidents, Ladies and Gentlemen members of the Convention, AFEM thanks you for your attention and for your efforts to guarantee fundamental rights and wishes you successful completion of your task..

AFEM: 5, rue Villaret de Joyeuse - 75017 Paris. Tel: 33-1-45 72 12 03. Fax: 33-1-45 72 15 03.  
E-mail: [assafem@aol.com](mailto:assafem@aol.com)

**DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION****fundamental.rights@consilium.eu.int**

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**Brussels, 29 September 2000****CHARTE 4488/00****CONTRIB 338****COVER NOTE**

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Subject : Draft Charter of Fundamental Rights of the European Union

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Please find hereafter the opinion of the Economic and Social Committee, "Towards an EU Charter of Fundamental Rights".<sup>1</sup>

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<sup>1</sup> This text has been submitted in English, German and French languages.

**SOC/013**

**"Towards an EU Charter of  
Fundamental Rights"**

Brussels, 20 September 2000

**OPINION**  
of the  
Economic and Social Committee  
on  
**"Towards an EU Charter of Fundamental Rights"**

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On 25 February 1999 the Economic and Social Committee, acting under Rule 23(3) of its Rules of Procedure, decided to draw up an opinion on:

*"Towards an EU Charter of Fundamental Rights".*

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 25 July 2000. The rapporteur was **Mrs Sigmund** and the co-rapporteur was **Mr Briesch**.

At its 375<sup>th</sup> plenary session held on 20 and 21 September 2000 (meeting of 20 September), the Economic and Social Committee adopted the following opinion by 122 votes to 19, with nine abstentions.

## 1. Introduction

At the European Council held in Cologne on 3 and 4 June 1999, it was decided to draw up an **EU Charter of Fundamental Rights**. In its conclusions, the Council justified this by the need *"to make their overriding importance and relevance more visible to the Union's citizens"*.

The European Council of Cologne felt that *"this Charter should*

1. *contain the fundamental rights and freedoms, as well as the basic procedural rights guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms"* and
2. *"... also include the fundamental rights that pertain only to the Union's citizens"*
3. and finally that *"account should ... be taken of economic and social rights as contained in the European Social Charter and the Community Charter of the Fundamental Social Rights of Workers ..., insofar as they do not merely establish objectives for action by the Union."*

The European Council also decided that this Charter should be drawn up by *"a body composed of representatives of the Heads of State and Government and of the President of the Commission as well as of members of the European Parliament and national parliaments"*.

1.2 The European Council in Tampere held on 15 and 16 October 1999 laid down the definitive composition of the body and its working methods. The European Council called for the working methods to be based on the principle of consensus, authorising the chairman to forward the draft to the European Council only on condition that the *"draft Charter ... can eventually be subscribed to by all the parties"*.

1.3 Both the German and the Finnish presidencies emphasised repeatedly that this Charter of Fundamental Rights should also be an instrument that enables Europe's citizens to be more clearly involved in Europe and makes them more aware of their rights. The Committee naturally

welcomes the practice of civil society organisations being consulted by the drafting body, which has now been named a Convention. As the European institution whose members are called upon in the Treaty to represent the interests of Europe's citizens, the Committee thinks it should have been involved to a greater extent<sup>1</sup>.

1.4 The **tasks of the Convention** are defined by the mandates of Cologne and Tampere, four points being of particular importance:

- The Convention is not an intergovernmental conference within the meaning of the EU Treaty.
- This means that it is not authorised to change the remit of the European Union.
- Its task is to draw up a draft Charter of Fundamental Rights within the terms of reference of the Union. When drawing up the Charter it must therefore bear in mind that it will be applied both in the framework of the European Union Treaty and in the framework of the Treaties establishing the European Communities. In other words, the Charter must also apply to Title V (CFSP) and Title VI (JHA) of the European Union Treaty. The ESC sees this comprehensive application of the Charter as very important because not only the EC Treaty affects citizens' interests with regard to their freedom and equality.
- The Charter of Fundamental Rights is thus addressed to the institutions of the EU and not to the Member States in the context of their own powers. But the Member States are of course bound by the Charter when they apply, implement or transpose Community law.

1.5 **Whether or not the Charter should be legally binding** was not made clear by the European Council in Cologne. The conclusions state only that *"will propose to the European Parliament and the Commission that, together with the Council, they should solemnly proclaim on the basis of the draft document a European Charter of Fundamental Rights. It will then have to be considered whether and, if so, how the Charter should be integrated into the treaties."*

1.5.1 The chairman of the Convention, **Roman Herzog**, made it clear that the Convention would draw up the Charter on the assumption that it will be legally binding. Since the Spinelli draft, the European Parliament advocated such a binding document and it was even more explicit on this point in its resolution of 16 March where it said that its endorsement of the Charter would be dependent on such a charter being legally binding.

1.6 As far as **the content of the Charter of Fundamental Rights** is concerned, the European Council in Cologne set only minimum standards, though it went explicitly beyond the European Convention on Human Rights (ECHR) in its mandate. In his introductory address to the Convention, **Roman Herzog** said that it was time to stipulate that the obligations of the European Union towards its citizens must not be any less rigorous than those recognised by the Member States under their own constitutional law.

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<sup>1</sup> Cf. Article 257 of the EC Treaty: "The Committee shall consist of representatives of the various categories of economic and social activity, in particular, representatives of producers, farmers, carriers, workers, dealers, craftsmen, professional occupations and representatives of the general public."

1.6.1 The "breakdown" of the list of fundamental rights to be drawn up by the Convention is based on the consensus on three key individual rights Europe-wide (human dignity, self-determination and equality) on the one hand and on the principle of indivisibility of fundamental rights on the other. The draft Charter is divided into:

- dignity
- freedoms
- equality
- solidarity
- citizenship
- justice
- general provisions.<sup>1</sup>

## 2. General comments

2.1 The process of European integration was launched by **Robert Schuman** 50 years ago as a peace initiative; at first this naturally spawned mainly economic measures, but later a social dimension developed. The European Union is also described today as "*an area of freedom, security and justice*", centred on people or citizens. In this connection, the drawing-up of an EU Charter of Fundamental Rights is a milestone in the European integration process. It formalises the pact founding an original and new political entity, and is also an expression of an identity based on free will, cooperation, democracy and non-violence. Individuals with the same rights and duties will develop a feeling of belonging, a common identity. If, moreover, civil society is also involved as much as possible in drafting such a catalogue of rights, this contact with grassroots opinion will also help to ensure that individuals do not perceive such legal provisions as being imposed from above, with penalties applied for non-compliance, but that they accept the need to respect them as a personal duty.

2.2 A Charter of Fundamental Rights based on ethics, moral standards and solidarity does not merely codify rights and duties, it also represents a common set of values. It thus supports the European Union as it moves from being a "Community of law" to a "Community of values" within which a European identity also has a chance to develop. In this way, the Charter can help ensure that Union citizenship is no longer perceived only in an abstract sense as the sum of all national citizenships, but is felt to provide practical "added value". The Charter also implies that every citizen should exercise his or her rights in a spirit of responsibility within the framework of organised civil society based on dialogue and mutual respect for rights and freedoms.

## 3. Specific comments

### 3.1 Content of the Charter

As a matter of principle, the Committee considers that civil and political rights, on the one hand, and fundamental social, economic and cultural rights, on the other hand, cannot be dealt with in isolation from each other. The common understanding in Europe is that fundamental rights

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<sup>1</sup> Convent 47, CHARTE 4470/00 of 14/9/2000

are indivisible, related and interdependent; they may be the right to be defended, the right to be protected or entitlements. The Committee believes at all events that in a modern charter of fundamental rights it would be inconceivable to omit social, economic and cultural rights and that this would contradict the Cologne mandate.

3.1.2 However, the brief of the Convention for drawing up the Charter precludes any altering of the current division of responsibilities between the European Communities or the Union and the Member States.

3.1.3 For another thing, the affirmation of fundamental social rights in the EU Charter of Fundamental Rights does not prejudice the identity of the issuer of the act - whether European Union institution or State authority - against which claims for enjoyment of a right or respect of a principle may be lodged. The inclusion of social rights and principles in the European Union Charter of Fundamental Rights - in accordance with the Cologne mandate - does not in any way invest the European Community or the European Union with responsibilities which it did not already hold. It simply signifies that acts issued by the EU institutions or State acts adopted within the scope of Community law must :

- respect the social rights set out in the Charter;
- not constitute measures which would lessen the degree to which principles have already been put into effect;
- and in particular respect the requirement for non-discrimination, particularly with regard to the implementation of social rights.

3.1.4 The Committee warns that people's expectations will be disappointed if they are given a Charter of Fundamental Rights that cannot be enforced and which they would therefore have to see as pure rhetoric. However, the declaration that a right is justiciable, under the conditions suggested above, does not in any way presuppose at which level - Community or State - the right to benefit from that right may be invoked by the persons who enjoy it. In particular, where the Community and the Member States have rival powers, these powers must be exercised with due regard for the principle of subsidiarity (Article 5 TEC), without the adoption of the EU Charter of Fundamental Rights creating an exception to this principle.

3.2 **Legal nature of the Charter of Fundamental Rights:** such a charter can only be fully effective if it is clearly formulated and if procedures exist for applying it. The Committee believes that for political and legal reasons the Charter should be incorporated into the EU Treaty subject to the following conditions:

- in accordance with the Cologne mandate, the Charter may not change the Community's remit;

- the distinction must be maintained between directly applicable rights and rights that can be invoked by individuals, on the one hand, and programmatic rights on the other, in order to preserve the legal nature of existing competences<sup>1</sup>;
- it must therefore be made clear that certain principles require the adoption of implementing measures.

It will depend very much on the final content of the Charter, which must be consistent with the Cologne mandate, the Charter or parts of it, and if so which parts, are to be incorporated into the Treaty. The Charter must be more than a solemn declaration; it must constitute a genuine political, social and civic commitment.

3.2.1 The announcement of an EU Charter of Fundamental Rights raised expectations and hopes; these must not be disappointed. People in Europe will better understand and accept a "Citizens' Europe" if they know that, within that Europe, they have enforceable rights, and that duties also exist with which they have to comply. Apart from its legal significance, therefore, the Charter is also highly relevant in political and cultural terms.

3.2.2 A binding Charter of Fundamental Rights adds a further dimension to the European Union as "an area of freedom, security and justice" in that the Union is formally committed to a clear "Community of values". Such a formal commitment is all the more significant against the backdrop of forthcoming enlargement and in the context of globalisation.

### 3.3.3 Application of the Charter

3.3.1 The Committee sees another possibility as far as applying the Charter is concerned, namely that those fundamental rights which the Convention agrees can be integrated become legally binding as part of the EU Treaty (cf. Article 6). The Council could then take measures under Article 7 against a Member State that seriously violates the principles listed in Article 6 (1). A ruling by the European Court of Justice would not be required in such cases. A binding procedural provision in the form of a monitoring system could be established to integrate the remaining rights. Such an approach is not incompatible with the principle of indivisibility of fundamental rights, since the Committee believes that the process of defining and revising fundamental rights at European level must anyway remain open-ended in order to allow for relevant developments. This applies for example to "new" fundamental rights (in gene technology, bioethics, data protection, etc.), which in some cases are already covered in the EU Treaties (e.g. right to the protection of personal data).

3.3.2 The Committee therefore feels it would be vital to provide for an open-ended revision procedure for the future processing of the catalogue of fundamental rights. This procedure would

<sup>1</sup> The Committee refers here to its opinion of 22/2/1989, in which it notes: "In the Committee's view, the instruments and procedures specified in the Treaty are the ones to be deployed to ensure that basic social rights are protected under the Member States' legal systems ... ."



exist alongside the integration procedure ("monitoring" system), as described in point 3.3.1. It would make sense to give the Convention the task of mapping out such an integration and revision procedure for submission to the Council. The revision procedure could also provide for evaluation programmes to be carried out at specific intervals.

3.3.3 Since it has not yet been finally decided how the Charter of Fundamental Rights is to be applied, the Committee cannot at the moment give its views on the issue of effective legal protection. This would involve discussion of any need for additional legal redress options (e.g. legal redress in respect of fundamental rights, action in the general interest, class action, and the right to express an opinion). The Committee reserves the right to present an additional opinion on this matter at the appropriate point.

### 3.4 The Charter and civil society organisations

3.4.1 The development of fundamental rights reflects changing social, economic and scientific trends. Hence, the Committee also expressly welcomes the fact that the Convention proposal includes so-called "new" fundamental rights and goes beyond the wording of the ECHR, which would not have been the case had the Union simply signed the ECHR, as has been proposed on many occasions. The European Court of Justice has also pointed out that ratifying the ECHR would require revision of the EU Treaty.

3.4.2 In this context and with reference to the Cologne mandate, the Committee particularly welcomes the fact that the Convention has included in the Charter the concept of human dignity, which is not yet in the ECHR. In so doing it is not just following the complex approach adopted in the UN Universal Declaration of Human Rights, but is also giving a signal that the Committee considers to be imperative, i.e. that as well as having a legal function the Charter should provide a shared scale of values for the EU.

3.4.3 For the emergence of civil society structures in particular it is fundamentally important that as well as establishing joint objectives, basic existing values are recognised as worthy of protection and adoption in a spirit of dialogue and responsibility by civil society players.

3.4.4 The Committee believes that the existing Charter concept therefore presents a highly appropriate framework, in terms of its legal philosophy and legal order, for the development of civil society organisations.

3.4.5 In 1996, the Comité des Sages report entitled *For a Europe of civic and social rights*<sup>1</sup> stressed that a Europe close to its citizens required that a "wide spectrum" of expertise (political, economic and social) to be involved in the European Union project.

The fact that the fifth paragraph of the preamble of Convent 47 refers to the Social Charters adopted by the Community and the Council of Europe as well as the ECHR is to be welcomed in this context.

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<sup>1</sup> European Commission, DG V, ISBN 92-827-7697-2

3.4.6 Representatives of civil society organisations were involved on a very informal, ad hoc basis in drawing up the Charter of Fundamental Rights. Their opinions - some of which were extremely constructive - lacked any coordination, with the result that both clarity and potential synergy suffered. In the interests of developing a European "model of democracy", civil society organisations must be included in this process - both formally and at an institutional level. It must be emphasised that the basic democratic challenge is to reconcile unity and diversity. Among the institutions, the ESC represents civil society organisations at European level. Its members are in direct and constant touch with civil society organisations<sup>1</sup>, and are thus able to provide added value by bringing their expertise to bear in a way that is wholly consistent with participatory democracy. The Committee comprises representatives of the various economic and social interest groups in civil society and should therefore be formally accorded advisory status in line with its remit - in such an integration and revision procedure.

Brussels, 20 September 2000

The President  
of the  
Economic and Social Committee

The Secretary-General  
of the  
Economic and Social Committee

**Beatrice Rangoni Machiavelli**

**Patrick Venturini**

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**N.B.:** Appendix overleaf.

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<sup>1</sup> see the ESC Opinion of 22 September 1999, CES 851/99

## APPENDIX

The paper currently under discussion in the Convention has the following titles<sup>1</sup>:

- Article 1: Human dignity
- Article 2: Right to life
- Article 3: Right to the integrity of the person
- Article 4: Prohibition of torture and inhuman or degrading treatment and punishment
- Article 5: Prohibition of slavery and forced labour
- Article 6: Right to liberty and security
- Article 7: Respect for private and family life
- Article 8: Protection of personal data
- Article 9: Right to marry and right to found a family
- Article 10: Freedom of thought, conscience and religion
- Article 11: Freedom of expression and information
- Article 12: Freedom of assembly and association
- Article 13: Freedom of the arts and sciences
- Article 14: Right to education
- Article 15: Freedom to choose an occupation
- Article 16: Freedom to conduct a business
- Article 17: Right to property
- Article 18: Right to asylum
- Article 19: Protection in the event of removal, expulsion, or extradition
- Article 20: Equality before the law
- Article 21: Non-discrimination
- Article 22: Cultural, religious and linguistic diversity
- Article 23: Equality between men and women
- Article 24: The rights of the child
- Article 25: Integration of persons with disabilities
- Article 26: Workers' right to information and consultation within the undertaking
- Article 27: Rights of collective bargaining and action
- Article 28: Right of access to placement services
- Article 29: Protection in the event of unjustified dismissal
- Article 30: Fair and just working conditions
- Article 31: Prohibition of child labour and protection of young people at work
- Article 32: Family and professional life
- Article 33: Social security and social assistance
- Article 34: Health care
- Article 35: Access to services of general economic interest
- Article 36: Environmental protection
- Article 37: Consumer protection
- Article 38: Right to vote and to stand as a candidate in elections to the European Parliament
- Article 39: Right to vote and to stand as a candidate at municipal elections
- Article 40: Right to good administration

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<sup>1</sup> Convent 47 op.cit.

- Article 41: Right of access to documents  
Article 42: Ombudsman  
Article 43: Right to petition  
Article 44: Freedom of movement and of residence  
Article 45: Diplomatic and consular protection  
Article 46: Right to effective remedy and to a fair trial  
Article 47: Presumption of innocence and right of defence  
Article 48: Principles of legality and proportionality of criminal offences and penalties  
Article 49: Right not to be tried or punished twice in criminal proceedings for the same criminal offence  
Article 50: Scope  
Article 51: Scope of guaranteed rights  
Article 52: Level of protection  
Article 53: Prohibition of abuse of rights
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**DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION****fundamental.rights@consilium.eu.int**

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**Brussels, 29 September 2000****CHARTE 4489/00****CONTRIB 339****COVER NOTE**

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**Subject : Draft Charter of Fundamental Rights of the European Union**

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Please find hereafter a contribution by the Federation of German Industries (BDI) and the Confederation of German Employers' Associations (BDA).<sup>1</sup>

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<sup>1</sup> This text has been submitted in English and German languages.



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**Bundesverband der Deutschen Industrie (BDI)  
Federation of German Industries**

**Bundesvereinigung der Deutschen Arbeitgeberverbände (BDA)  
Confederation of German Employers' Associations**

**Draft Charter of Fundamental Rights of the European Union**

**Position of German business and industry**

In their first position (March 2000), the German business community welcomed the EU Charter of fundamental rights as a recognition of a shared European system of values and as a step towards a Europe of Citizens.

After decades of the European Court of Justice guarantees a standard of protection which does not take second place behind the provisions of the German Constitution ('Grundgesetz'). Nevertheless, the German business community unreservedly supports the goal of further strengthening the idea of integration in the European Union through greater transparency and a clear commitment among the European bodies to an EU-wide standard of fundamental rights.

The drafting of the Charter of fundamental rights is one of the most important legislative initiatives for many years. The Charter will be one of the cornerstones of the European Union. In addition, even as a mere declaration by the Member States, it will be binding in law because, as a shared view, it will be used by the European Court of Justice as a yardstick for its future jurisprudence.

For that reason, the draft Charter should not be assessed against the same criteria that apply for European secondary law. Rather, great care must be taken to ensure that, with all the necessary openness of a constitutional text and expression of the will of the creators of the Charter, it won't be possible to reach interpretations which could substantially alter the traditional balance of freedoms and civic obligations.

## A. General comments

### 1. Beneficiaries of the Charter

Point 7 of the preamble states that each “person” is guaranteed the rights and freedoms set out thereafter. This raises the question about the beneficiaries of the Charter.

In the version currently available, the draft differentiates at various points between “citizens of the Union”, “nationals of third countries” and “persons” (e.g. in article 15). All the articles should be checked again carefully to establish who exactly should benefit from the protection of the Charter. Similarly, point 7 of the preamble should be made more explicit.

It still needs to be clarified whether legal persons also enjoy the protection of the Charter. Only article 40 explicitly refers to legal persons as beneficiaries of the Charter. Yet, this must also apply for those fundamental rights which are applicable to legal persons by virtue of their substance. An example of this is freedom of expression in article 11.

The same applies for article 13, freedom of research. Companies which carry out research must be able to fall back on this fundamental right. Lastly, at least the right to property (article 17) and the right to good administration should also be mentioned. Appeals to the bodies and institutions of the European Union are made not only by natural persons but also precisely by legal persons, so that they must also be eligible for the protection of fundamental rights.

Hence, the beneficiaries of the Charter should be expressly defined in the preamble.

### 2. Limitations

Most fundamental rights are not guaranteed without limitation in the constitutions of the Member States. The Charter also makes provisions for limitations: first a general limitation applicable to all fundamental rights in article 50 and second a partial limitation for individual fundamental rights, as for instance in article 9 (right to marry) and in article 17 (right to property). In addition, article 51 sets a lower limit: fundamental rights may not be restricted to such an extent that they fall below the level of protection provided by the European Convention of Human Rights and Fundamental Freedoms (ECHR).

The German Constitution maintains that at least one fundamental right – human dignity – may not in any way be restricted by state intervention, a fundamental right which also underlies the immutability guarantee of article 79.3 of the German Constitution.

However, article 50 of the present draft creates the possibility of allowing the protection of the Charter to be subordinated to “objectives of general interest” or “legitimate interests in a democratic society”. In practice, that means that fundamental rights are in the hands of the state, which determines what these objectives and interests will be. Such a sweeping right to interfere, which has no counterpart in either the German constitution or in ECHR, is a striking weakness of the Charter which may also be unhelpful for gaining citizen acceptance.

### 3. Extension of competences

German business and industry welcomes the fact that the Charter neither establishes “any new power or task for the Community or the Union” nor modifies “powers and tasks defined by the Treaties”, as explicitly stipulated in article 49. According to the draft, the principle of subsidiarity should by all means be taken into account in the application of the Charter. Compliance with this principle must be a decisive element for policy-making and application of law in a European Union which in future could be enlarged to include up to thirty Member States.

However, the present draft also makes provision for rights which could be used to justify claims which go far beyond the present competences of the EU/EC. These include the fundamental right of collective bargaining and collective action formulated in article 26. Article 137 of the EC Treaty excludes legislative competence for the EU in these areas. The danger cannot be ruled out that, with the Charter, even more competences will ultimately be transferred to the EU with the inclusion of a series of other vaguely worded articles. Hence, the present draft is not consistent with the provisions of article 49.

### 4. Horizontal effects

Also unclear is the question of horizontal effects (e.g. applicability between employers and employees) in a whole series of articles in the present draft. Although, according to article 49, the Charter is binding only upon the institutions and bodies of the EU and the Member States when applying Community law, it cannot be ruled out that the European Court of Justice, as an EU institution, may also apply the Charter to private legal relationships, e.g. work relationships. Clarity is urgently needed on this point.

### B. Individual articles

By taking over individual articles of ECHR word for word, the authors of the Charter have failed to create a simplified Charter of fundamental rights which is comprehensible to every EU citizen. In many cases, the wording could be more precise and easier to understand.

The structure and balance of rights contained in the Charter should also be re-examined. Furthermore, some of the provisions at the end of the Charter ought to be at the beginning because of their fundamental importance. These include the whole of chapter V, citizenship. Citizenship should be placed before the rights linked to the theme of work (chapter IV, solidarity) since EU citizens define themselves as such in the first place through their citizenship rights.

It is equally important to place EU citizens' freedom of movement and residence (article 43) earlier in the text, and mention it in chapter II – freedoms – in order to emphasise the importance of this right.



### **Article 3 – Right to the integrity of the person**

Article 3.2 third indent places an unrestricted prohibition on “making the human body and its parts a source of financial gain”. Under this expansive wording, the marketing of many pharmaceuticals and also the patenting of human biological material could be affected. Thus, this wording goes well beyond the Bioethics Convention and the Biotechnology Patent Directive.

The note on article 3 explains that the prohibition is included in the Convention on Human Rights and Biomedicine and that the Charter does not wish to depart from this provision. Article 21 of the Convention on Human Rights and Biomedicine specifies that only the human body and its parts “as such” may not be used as a source of financial gain. Article 3 should not go further than this provision.

### **Article 8 – Protection of personal data**

Every person should have the right to the protection of personal data concerning him. These data may only be “processed” under certain conditions. The type of data processing referred to here remains open. This cannot cover all types of data processing. In that case, even such things as record cards or private deeds would be included. This can only refer to electronic data processing, as is the case in the EU Directive on Data Protection. This should be made clear. In addition, with a view to self-determination regarding information, the fundamental right should be extended to make it possible to have personal data deleted. The level at which the “independent authority” is to be located also needs to be clarified.

### **Article 16 – Freedom to conduct a business**

Business and industry appreciates the fact that freedom to conduct a business is included in the Charter as a separate right and does not merely have to be deduced from other fundamental rights. However, the wording raises doubts as to whether a fundamental right is genuinely guaranteed here. Rather, all that is recognised is the freedom to conduct a business, as stated in the title, without any further elaboration. However, this is a long way from being a positive guarantee of this freedom, which business and industry expressly endorses. This needs improvement.

### **Chapter IV – Solidarity: general comments**

Social fundamental rights, too, should primarily provide the right of protection, and under no circumstances the entitlement of an individual to a specific social benefit.

In this context, one area that is in particular need of clarification is the possibility of individual fundamental rights being applicable between private parties (horizontal effect). On the basis of the draft as it currently stands, it cannot be ruled out that the European Court of Justice will also apply the Charter to private legal relationships, e.g. work relationships, even though this should not be possible by virtue of article 49.

Some articles comprise provisions or rights similar to goals and principles of the state which, while generally acknowledged, should not be given this status since this will contribute to a downgrading of the notion of fundamental rights (e.g. article 32 – social security and social assistance and article 33 – health care). Whether and how the bodies of the European Union and the Member States can live up to these guarantees depends on individual economic performance. Not every social achievement of the EU Member States can or should be raised to the quality of an inalienable right which can continue to exist independently of the economic performance of the Member States.

Furthermore, chapter IV contains rights for whose application the EU has no competence. This is in contradiction with article 49 which rules out any extension of competences. The impression cannot be avoided that extensions of competences could be introduced through the back door here. An example is article 26 which contains the right of collective bargaining and action also at EU level. EU legislative competence in this area is ruled out in article 137 of the EC Treaty.

Lastly, the Charter contains rights which, although generally accepted as political goals, are wrongly given the status of fundamental rights. This results in inflation and subsequent devaluation of the concept of fundamental rights (e.g. article 24 – integration of persons with disabilities, article 25 – workers' rights to information and consultation within the undertaking, article 26 – right of collective action and bargaining, article 28 – protection in the event of unjustified dismissal, article 29 – fair and just working conditions).

In addition, the formulation of such general principles as fundamental rights means that the differences between the legislation of individual Member States (e.g. article 15 – freedom to choose an occupation/working conditions for nationals of third countries) are not taken into account. If the Convention were to insist on including this article, the Charter would have to be supplemented with an explicit reference to the applicability of national legislation.

### **Article 21 – Equality and non-discrimination**

Discrimination is unequal treatment which is not objectively justified. It is right that it should be prohibited. Alongside other types of discrimination set out in article 21 is unequal treatment on the ground of “property” which is open to a wide range of interpretations. In the event of article 21 becoming applicable to relations between third parties, its application could be extended to include private legal relationships (horizontal effect). The scope of this passage should be carefully rethought. On this point, article 14 of ECHR is more precise since it states that the rights are guaranteed, *inter alia*, without distinction of property, which is right and self-evident.

### **Article 25 – Workers' right to information and consultation within the undertaking**

Article 25 postulates a fundamental right to worker information and consultation. This right is generally accepted in EU Member States and is also enshrined in article 137.2 of the EC Treaty. However, aside from the question of whether a classical fundamental right can be derived from this aspect, the wording chosen is too far-reaching and opens up the way for rights to have secondary effects.

### **Article 28 – Protection in the event of unjustified dismissal**

This article completely fails to take account of different national protection mechanisms in civil and labour law. Its application could lead to the introduction of arrangements regardless of the size of the undertaking. This would place start-ups and smaller businesses in particular at a disadvantage. Accordingly, article 28 should be worded as follows: “Every worker has the right to protection against unjustified dismissal, in accordance with the applicable national law”.

### **Article 29 – Fair and just working conditions**

Article 29 stipulates the right of every worker “to working conditions which respect his or her health, safety and dignity”. The question of how the concept of “dignity” is to be understood at this point remains open and is an invitation to a wide range of interpretations. Since the Charter early on places particular emphasis on protection of human dignity, it is sufficient to take the wording that has already been discussed: “Every worker has the right to working conditions which respect his or her health and safety”.

### **Article 34 – Access to services of general economic interest**

Against the background of the recent debate on services of general economic interest, the provisions of article 34 are also questionable. This article, which expressly guarantees “access to services of general interest” in the form of a fundamental right, could undermine efforts to achieve greater liberalisation of service and infrastructure markets. There is no definition of the services to which this fundamental right refers, nor is any account taken of the consumer’s justified interest in receiving these services as cost-effectively as possible through good economic performance and competition. Article 34 is clearly a political statement and not a classical fundamental right for citizens of the EU.

### **Article 49 – Scope**

According to article 49, the Charter - with due regard for the principle of subsidiarity - is addressed exclusively to the institutions and bodies of the EU and to the Member States only when they are engaged in implementing Community law. Business and industry expressly welcomes this objective. Experience in the past has shown that the concept of subsidiarity can be implemented only with difficulty even in article 5 of the EC Treaty. Even greater attention will have to be paid to this concept if the applicability of national or European catalogues of fundamental rights is involved.

Hence, the Charter of fundamental rights should be seen as an opportunity to define and delimit the concept of subsidiarity in such a precise manner that it can be a guideline for the actions of European bodies. The present draft does not achieve this.

**Article 52 – Prohibition of abuse of rights**

Article 52 does not help to make the Charter transparent for and comprehensible to the citizen. When can it be possible to interpret anything in the Charter as implying the right to destroy rights of freedom through deliberate acts? It cannot be the case that this article can only be understood by reference to material underlying article 17 ECHR if the aim of moving closer to the citizen and transparency is to be achieved.

Berlin, August 2000

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**DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION****fundamental.rights@consilium.eu.int**

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**Brussels, 29 September 2000****CHARTE 4490/00****CONTRIB 340****COVER NOTE**

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Subject : Draft Charter of Fundamental Rights of the European Union

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Please find hereafter a contribution by the Church and Society Commission of the Conference of European Churches, with a letter to Mr. Roman HERZOG, the President of the Convention. <sup>1</sup>

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<sup>1</sup> This text has been submitted in English language only.

**CONFERENCE OF EUROPEAN CHURCHES****Church and Society Commission**

Director: Keith Jenkins  
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rue Joseph II 174  
B-1000 Bruxelles

Ref: DIR/3.3.2

25 September 2000

Mr. Roman Herzog,  
President,  
Convention on Human Rights,  
Council Secretariat,  
rue de la Loi 175,  
1048 Bruxelles

Dear Mr. President,

Various working groups of the Church and Society Commission of the Conference of European Churches have examined the latest drafts of the EU Charter on Fundamental Rights and, although our Executive Committee has not yet had the chance to examine the results of these discussions, I am sending you the following comments as the Convention is about to hold what will probably be its last meeting before the European Council meets in Biarritz next month. This letter follows on from the statement which I forwarded to you on 18 May 2000 and which appears on the Convention web site. The references to specific articles relate to the numbering in the document Charter 47.

I would first of all like to congratulate the Convention on the achievement of a considerable amount of work which will, I am sure, be of great importance to people in Member States of the European Union. It is particularly important that a text exists which brings together a range of rights relating to politics, economics, the social and environmental and cultural dimensions in one document. It is an important expression of the search to express common values on which the process of European integration is built and will continue.

May I also say that participants in our working groups welcomed the various references to religion which appear in the current text both the important reference in the Preamble to the Acultural, humanist and religious inheritance@ which give inspiration to the Union and the more specific references to freedom of religion (article 10), education in accordance with the religious convictions of parents (article 14) and respect for religious diversity (article 22). I would, however, want to make some more specific comments on some of these and some other articles later.

It seems important that the Convention has taken up the idea of a preamble, which our Commission supported in its submission of May 2000. It gives scope for a wider public discussion on the objectives of European integration in coming years and will be a valuable aid to that debate which is necessary if people are to identify with the European integration process. I believe that many of us would also, however, have welcomed the use of the word *Apeace@* in among the values mentioned in the Preamble.

The Preamble is also helpful in the technical way in which it gives prominence to the horizontal clauses of the Charter at an early stage. Given though that the Charter comprises a variety of rights, it might be useful to a wider understanding, especially in European countries beyond the European Union, if the Preamble made explicit reference to defining the civil rights of citizens of the European Union so that it is clear and explicit that this is not an attempt to provide a different standard of fundamental rights in one part of Europe.

Turning to specific articles, I would want to say that while it is good that the main wording of article 9 of the European Convention on Human Rights on freedom of thought, conscience and religion has been taken up in preference to the truncated version of earlier drafts, there is disappointment that the corporate dimension of religious freedom has not been expressly addressed as our earlier submission requested. A statement that *AThe right of freedom of religion includes the right of churches and religious communities to organise and administer their own affairs according to the laws of Member States@* would have been helpful or, if this was felt not totally to reflect the precise situation in all Member States *AThe right of freedom of religion includes the rights of churches and religious communities according to the laws of Member States@*.

The draft Charter now includes recognition of the right to conscientious objection (article 10(2)). The Conference of European Churches has long supported the right of conscientious objection to military service and, if this is what is intended by this addition, it is very welcome and a specific mention of military service would be welcomed. If, however, it is meant to be something wider, questions have been raised as to where the limits to recognising conscientious objection lie and to what extent, if the right was recognised within national laws regarding its implementation, it differs from freedom of conscience.

There is also concern about the first part of article 13. On theological grounds, churches value creativity and the search for truth. There is however a problem about the potential licence resulting from such matters being *Aunrestrained@* and it is not clear how far the limitations provisions of article 51(1) would deal with this.

On the question of discrimination (article 21), there is concern that, whereas article 14 of the European Convention on Human Rights relates to the fact that the rights and freedoms granted by that Convention are to be enjoyed without discrimination and article 13 of the European Community Treaty empowers but does not oblige the European Community to take measures to combat discrimination, article 21 is a sweeping provision which, so far as religious discrimination is concerned, could bring the anti-discrimination principle into conflict with religious freedom. It has, therefore, a potentially different effect from the two sources from which it is drawn.

Migration into the Member States and the prospect of the adhesion of new members of the European Union mean that ethnic and national minorities will be an important component of the European Union in the future. The Council of Europe has done substantial work towards defining rights of national minorities in its Framework Convention. In this respect, there is no reference to minorities in the draft Charter and only the reference to the Union respecting Acultural, religious and linguistic diversity@ which can, of course, serve as a starting point for further development of an effective minorities policy. Nevertheless, extra strength could be given if the article had the words Aand seek to maintain@ after the word Arespect@.

The Conference of European Churches thanks the Convention for the continued attention which it gives to voices from civil society and will follow with great attention the future development of the draft Charter.

Yours sincerely

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**ENTWURF DER CHARTA DER GRUNDRECHTE DER EUROPÄISCHEN UNION****fundamental.rights@consilium.eu.int**

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**Brüssel, den 29. September 2000****CHARTE 4491/00****CONTRIB 341****ÜBERMITTLUNGSVERMERK**

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**Betr.:** Entwurf der Charta der Grundrechte der Europäischen Union

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Bitte finden Sie nachstehend einen Beitrag der Evangelischen Kirche A.B. in Österreich. <sup>1</sup>  
  

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<sup>1</sup> Dieser Text wurde uns nur in deutscher Sprache übermittelt.

# Επικοινωνιακή Κιρχη εν Αστέρρεια

## Οβερκιρχηνρατ Α. υνδ Η.Β.

An den  
Konvent zur Erarbeitung einer  
Grundrechts-Charta der Europäischen Union  
zu Händen des Vorsitzenden

Wien, 12.02.2020

Zahl: **EU 001; 7294/2000**  
Bitte auf allen Schreiben immer die  
Geschäftszahl des Kirchenamtes  
anführen.

Betr: **Charta der Grundrechte der Europäischen Union**

Sehr geehrter Herr Präsident Prof. Dr. Herzog !  
Sehr geehrte Damen und Herren !

Namens der Evangelischen Kirche A.u.H.B. in Österreich erlaubt sich der Evangelische Oberkirchenrat A.u.H.B., Ihnen folgende Anliegen nochmals zur Kenntnis zu bringen, mit dem höflichen Ersuchen und der dringenden Bitte, diese bei der Fertigstellung der Grundrechts-Charta der Europäischen Union allenfalls zu berücksichtigen:

1. Nach den uns bislang bekannten Entwürfen der Grundrechts-Charta der Europäischen Union enthält der Artikel 10 der Charta der Grundrechte der EU (Gedanken-, Gewissens- und Religionsfreiheit) entgegen den offiziellen Stellungnahmen der Konferenz Europäischer Kirchen und der Römisch-katholischen Kommission der Bischofskonferenzen der Europäischen Gemeinschaften – sohin aller christlichen Kirchen Europas – **k e i n e** Bestimmung, wonach die Kirchen und Religionsgesellschaften ihre inneren (eigenen) Angelegenheiten gemäß dem Recht der Mitgliedsstaaten selbst regeln können. Die Aufnahme einer solchen Bestimmung ist zur Wahrung des Staatskirchenrechtssystems in jedem Mitgliedsstaat und zur Wahrung der inneren Autonomie der Kirchen und Religionsgesellschaften unbedingt notwendig, weil andernfalls das vorrangige Gemeinschaftsrecht, vor allem Arbeitsrecht, in die inneren Belange der Kirchen und Religionsgemeinschaften eingreift. Unserer Meinung nach sollte daher der Artikel 10 der Charta um den folgenden Satz ergänzt werden:

**„Das Recht auf Religionsfreiheit beinhaltet das Recht der Kirchen und Religionsgesellschaften, sich selbst zu organisieren und ihre eigenen, inneren Angelegenheiten in Übereinstimmung mit dem Recht der Mitgliedsstaaten selbst zu regeln.“**

2. In der Charta der Grundrechte der EU fehlen in den bisherigen Bestimmungen grundrechtliche Bestimmungen zum Schutz von Volksgruppen und Minderheiten (ethnische, religiöse und sprachliche) in Richtung deren Rechte, wie Gebrauch der Muttersprache und dergleichen, obwohl solche Bestimmungen gemäß dem Staatsvertrag von St. Germain und dem Staatsvertrag von Wien zum Verfassungs-rechtsbestand gehören und szt. von Frankreich und Großbritannien begehrt worden waren. Nicht zuletzt im Zusammenhang mit den Beitrittsverhandlungen mittel- und osteuropäischer Staaten sollte daher folgende Grundrechtsbestimmung in die Charta der Grundrechte aufgenommen werden:

**„Die Erhaltung von Volksgruppen und ethnischer, religiöser und sprachlicher Minderheiten und die Sicherung ihres Bestandes wird gewährleistet. Ihnen steht das Recht auf Wahrung ihrer Sprache, Volkstum und Religion zu.“**

Der Evangelischen Kirche in Österreich als einer Minderheit, die mehr als hundert Jahre der Gegenreformation erleiden mußte, erscheinen diese Schutzbestimmungen für Minderheiten unverzichtbar wichtig.

3. Bislang war in den Entwürfen einer Grundrechts-Charta der EU das Recht auf Wehrdienst-(Kriegsdienst-)verweigerung aus Gewissensgründen bei Leistung eines Ersatzdienstes (Zivildienstes) nicht vorgesehen. Nach Mitteilung des österreichischen Regierungsbeauftragten, Univ.Prof. Dr. Heinrich Neisser, soll eine solche Bestimmung noch in die Grundrechtscharta der Europäischen Union aufgenommen werden. Die Aufnahme einer solchen Bestimmung wird ausdrücklich begrüßt.

Wir danken Ihnen, sehr geehrter Herr Präsident, für Ihre Bemühungen betreffend der Erarbeitung einer Charta der Grundrechte der Europäischen Union und wünschen Ihnen für Ihre weitere Tätigkeit, aber auch Ihr persönliches Leben Gottes reichen Segen.

Mit vorzüglicher Hochachtung

Bischof Mag. Herwig Sturm  
Vorsitzender

Landessuperintendent HR Mag. Peter Karner  
Vorsitzenderstellvertreter

F.d.R.d.A.:

Oberkirchenrat MMag. Robert Kauer

**PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE****fundamental.rights@consilium.eu.int**

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**Bruxelles, le 29 septembre 2000****CHARTE 4492/00****CONTRIB 342****NOTE DE TRANSMISSION**

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Objet :           Projet de Charte des droits fondamentaux de l'Union européenne

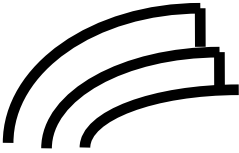
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Veillez trouver ci-après une contribution de la Plate-forme des ONG européennes du secteur social, avec une lettre ouverte aux membres de la Convention. <sup>1</sup>

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<sup>1</sup> Ce texte à été soumis en langue française seulement.



**Platform of European Social NGOs**  
*Plate-forme des ONG européennes du secteur social*

Lettre ouverte aux membres de la Convention chargée de l'élaboration d'une Charte des droits fondamentaux dans l'Union européenne.

Bruxelles le 23 septembre 2000

Monsieur le Président, Mesdames et Messieurs,

Au nom de la Plate-forme des ONG européennes du secteur social, je tiens à vous remercier de nous avoir consultés à plusieurs reprises lors de l'élaboration de la Charte et de l'attention que vous avez accordée à nos préoccupations. Comme vous le savez, les organisations membres de la Plate-forme sociale ont joint leur forces à celles de la Confédération européenne des Syndicats depuis plusieurs années et mènent campagne dans les quinze Etats membres de l'Union européenne pour l'obtention d'une Charte des droits fondamentaux juridiquement contraignante et garantissant un niveau élevé de protection des droits, notamment économiques et sociaux, pour tous.

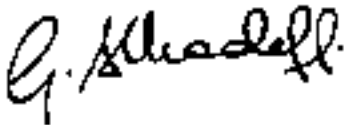
La Plate-forme sociale observe que le projet Convent 47 en date du 14 septembre a apporté plusieurs améliorations au texte précédent, mais considère que des droits essentiels (qui se trouvent pour la plupart dans la Charte sociale européenne révisée) devraient y être ajoutés. Il s'agit :

- du droit de **consultation des ONG** au niveau de l'Union européenne (à ajouter à l'article 12 sur la liberté de réunion et d'association)
- du **droit au travail** (à ajouter à l'article 15 sur la liberté professionnelle)
- du droit des **personnes âgées** à une existence décente et indépendante, et à une pleine participation à la vie publique, sociale et culturelle (à ajouter dans un nouvel article)
- du droit au **logement** et du droit à **un revenu minimum** permettant de vivre dans la dignité, ainsi que d'une référence à la **lutte contre la pauvreté et l'exclusion sociale** (à ajouter à l'article 33 sur la sécurité sociale et aide sociale)

- de l'introduction d'une référence explicite dans l'article 52 (Niveau de protection) aux **Chartes sociales du Conseil de l'Europe**.

J'ai toute confiance en le fait que vous prendrez ces remarques en considération afin de répondre à l'attente des millions de personnes qui, en Europe, sont membres de nos associations et demandent à l'Union de placer les droits fondamentaux au coeur de sa construction.

Je vous prie d'agréer, Monsieur le Président, Mesdames, Messieurs, l'assurance de ma haute considération.



Giampiero Alhadeff  
Président de la Plate-forme sociale

*La Plate-forme des ONG européennes du secteur social regroupe 30 organisations non-gouvernementales, fédérations ou réseaux européens qui travaillent dans le secteur social et défendent les intérêts d'un large éventail de la société civile européenne. On y retrouve notamment des organisations de femmes, de personnes âgées, de personnes handicapées, sans emploi, de migrants, de personnes en situation de pauvreté et sans abri, d'homosexuels et de lesbiennes, de jeunes, d'enfants et de familles. Les organisations membres incluent aussi des ONG travaillant sur des questions sociales, telles que la justice sociale, la santé et le racisme.*

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**PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE****fundamental.rights@consilium.eu.int**

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**Bruxelles, le 29 septembre 2000****CHARTE 4493/00****CONTRIB 343****NOTE DE TRANSMISSION**

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Objet :           Projet de Charte des droits fondamentaux de l'Union européenne

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Veillez trouver ci-après une contribution du Carrefour pour une Europe civique et sociale (CAFECS), avec observations sur le préambule. <sup>1</sup>

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<sup>1</sup> Ce texte à été soumis en langue française seulement.

# Carrefour pour une Europe civique et sociale

## CAFECS

### Observations sur le préambule de la Charte des droits fondamentaux

Les membres de CAFECS réunis ce jour saluent les progrès du texte de la Charte des droits fondamentaux entre la rédaction du Convent 45 et celle du Convent 47. Toutefois ils souhaitent attirer l'attention des membres de la Convention sur la rédaction du deuxième paragraphe du préambule de la Charte.

Il est positif que la question des fondements des valeurs européennes soit abordée dans le préambule. Mais la formulation du Convent 47, qui met en parallèle les mots « humanistes » et « religieux », peut porter à malentendu, ne permettant pas de situer suffisamment qu'il s'agit d'une mention des sources « laïques » ou « philosophiques » d'une part, et « religieuses » d'autre part, mais toutes « humanistes ».

CAFECS propose plusieurs rédactions possibles :

- 1 – Puisant dans la diversité de ses sources humanistes, l'Union se fonde .....
- 2 – Puisant dans la diversité de ses sources spirituelles, l'Union se fonde .....
- 3 – Riche d'un humanisme pluriel issu de ses différentes traditions spirituelles, l'Union se fonde.....

25.09.00

Secrétariat CAFECS : Fonda - 18, rue de Varenne - 75007 Paris  
Tel. :+33 (0)1 45 49 06 58 - Fax : +33 (0)1 42 84 04 84 - e mail : fonda@wanadoo.fr



**ENTWURF DER CHARTA DER GRUNDRECHTE DER EUROPÄISCHEN UNION****fundamental.rights@consilium.eu.int**

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**Brüssel, den 3. Oktober 2000****CHARTE 4494/00****CONTRIB 344****ÜBERMITTLUNGSVERMERK**

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**Betr.:** Entwurf der Charta der Grundrechte der Europäischen Union

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Bitte finden Sie nachstehend einen Beitrag von Herrn Dr. Marten BRAUER. <sup>1</sup>  
  

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<sup>1</sup> Dieser Text wurde uns nur in deutscher Sprache übermittelt.

Dr. Marten Brauer  
Wissenschaftlicher Mitarbeiter  
Lehrstuhl Prof. Dr. Dieter Blumenwitz  
Universität Würzburg

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Dr. Marten Brauer - Domerschulstraße 16 - 97070 Würzburg

Würzburg, den 25.09.2000

Sehr geehrte Damen und Herren,

da ich mir nicht im klaren darüber bin, ob mein an Bundespräsident a.D. Roman Herzog gerichtetes Schreiben vom 3. August dieses Jahres Sie erreicht hat, wende ich mich heute direkt an Sie. Bezugnehmend auf den Entwurf der Charta der Grundrechte der Europäischen Union vom 21. September dieses Jahres (CHARTE 4470/1/00), erlauben Sie mir eine kurze Stellungnahme:

Art. 38 des Entwurfs hat den folgenden Wortlaut:

„Aktives und passives Wahlrecht bei den Wahlen zum Europäischen Parlament

(1) Die Unionsbürgerinnen und Unionsbürger besitzen in dem Mitgliedstaat, in dem sie ihren Wohnsitz haben, das aktive und passive Wahlrecht bei den Wahlen zum Europäischen Parlament, wobei für sie dieselben Bedingungen gelten wie für die Angehörigen des betreffenden Mitgliedstaats.

(2) Die Mitglieder des Europäischen Parlaments werden in allgemeiner, unmittelbarer, freier und geheimer Wahl gewählt.“

Diese Regelung würde, sollte sie in dieser Form verwirklicht werden, zu Konsequenzen führen, die m.E. so nicht beabsichtigt sein können. Denn der Wortlaut des Absatzes 1 erweckt den Eindruck, als solle das Wahlrecht zum Europäischen Parlament *nur* den in den Mitgliedstaaten der EU ansässigen Unionsbürgern zustehen, nicht aber denjenigen Unionsbürgern, die in einem Staat außerhalb der Europäischen Union leben.

Ein solches Ergebnis stünde jedoch bereits im Widerspruch zur derzeitigen einfachen Rechtslage: Nicht nur nach dem deutschen Europawahlgesetz (i.d.F. vom 8. März 1994, BGBl. I S. 419), auch nach den Wahlrechtsbestimmungen nahezu aller übrigen EG-Mitgliedstaaten steht das Wahlrecht zum Europäischen Parlament neben den im Inland ansässigen Unionsbürgern auch den eigenen Staatsangehörigen zu, die zum Zeitpunkt der Wahl im Ausland leben, und zwar unabhängig davon, ob es sich dabei um europäisches oder außereuropäisches Ausland handelt (vgl. Haag/Bieber, in: von der Groeben/Thiesing/Ehlermann [Hrsg.], Kommentar zum EU-/EG-Vertrag, Band 4, 5. Aufl., Baden-Baden 1997, Art. 138, Anhang Rn. 44).

Um die dargestellten Probleme zu vermeiden, bieten sich aus meiner Sicht zwei Möglichkeiten an:

1. die Ergänzung des Absatzes 1 um einen Satz 2, wonach das Wahlrecht für Unionsbürger mit Wohnsitz im Ausland außerhalb der Europäischen Union *vorbehalten bzw. unberührt bleibt*. Vorbilder hierfür finden sich z.B. in Art. 54 Abs. 1 der niederländischen Verfassung oder Art. 50 Abs. 2 der norwegischen Verfassung.

2. die Ergänzung des Absatzes 1 um einen Satz 2, der das Wahlrecht für Unionsbürger mit Wohnsitz im Ausland außerhalb der Europäischen Union *garantiert*. Eine vergleichbare Regelung enthält z.B. Art. 68 Abs. 5 Satz 2 der spanischen Verfassung, indem dort die „Ausübung des Wahlrechts durch Spanier, die sich außerhalb des spanischen Hoheitsgebietes befinden, [...] vom Gesetz anerkannt und vom Staat ermöglicht“ wird. Ob eine derartige „Garantieklausel“ auf europäischer Ebene konsensfähig wäre, erscheint zwar fraglich, angesichts der nahezu allseitigen Verbreitung des Wahlrechts für Auslandsstaatsbürger aber auch nicht ausgeschlossen. Insbesondere wäre in diesem Zusammenhang zu berücksichtigen, daß Auslandsstaatsbürger zwar nach der Rechtsprechung des Europäischen Gerichtshofs für Menschenrechte aus der EMRK bzw. ihren Zusatzprotokollen keinen Anspruch auf Teilnahme an Parlamentswahlen ihres Heimatstaats herleiten können (vgl. *Hilbe* ./ Liechtenstein, Entscheidung des EGMR vom 7. September 1999, Az. 31981/96), andererseits aber die Parlamentarische Versammlung des Europarats erst kürzlich erneut eine Wahlbeteiligung von Auslandsstaatsbürgern gerade auch auf europäischer Ebene gefordert hat (vgl. [Recommendation 1410 \(1999\)](#) „Links between Europeans living abroad and their countries of origin“ vom 26. Mai 1999, insbes. Ziff. 5 V d vi). Durch die Aufnahme einer „Garantieklausel“ in die europäische Grundrechte-Charta könnte dieser Forderung für den Bereich der Europäischen Union zusätzliches Gewicht verliehen werden.

Ich wäre Ihnen sehr verbunden, wenn Sie die von mir angeregten Änderungen einer näheren Prüfung unterziehen würden.

Hochachtungsvoll

Dr. Marten Brauer, wiss. Mitarbeiter

**DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION****fundamental.rights@consilium.eu.int**

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**Brussels, 3 October 2000****CHARTE 4495/00****CONTRIB 345****COVER NOTE**

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Subject : Draft Charter of Fundamental Rights of the European Union

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Please find hereafter a contribution by the Quaker Council for European Affairs. <sup>1</sup>

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<sup>1</sup> This text has been submitted in English language only.

Quaker Council For European Affairs (23/09/00 15:50):

Dear Friends

I feel apologetic about offering a commentary on the Charter so late, but CONVENT 47 raises textual problems which I hope Convention Members will consider.

Our standpoint at the Quaker Council for European Affairs is that (1) the EU owes a duty of respect to ALL persons legally or illegally within its boundaries, and also to those outside affected by its aid, trade, JHA and CFSP policies. The Charter will presumably govern the behaviour of officials and decision makers regardless of whether or not it becomes binding; and (2) the EU with enlargement facing it, will risk causing damage to 'civility' among its populations if it loses their confidence and fails to protect the basic workings of the EU from (a) separatists and (b) racists. I mention this second issue because of the risk of dissension or confusion that could be engendered by a defective Charter or failure to agree a Charter.

1. Article 50(1) says that the Charter applies only to Union bodies and to member states implementing EU law. What then is the implication of including rights such as 2(2), no death penalty, and 10(2), conscientious objection, where there is no likelihood of EU legislation? Is it to ensure that the EU's external policies promote these in the rest of the world? If so, this should be stated in the preamble. It may be that 2(1), the right to life, implies that the EU cannot authorise acts of war. This would please Quakers, but see below.
2. Article 51(3) says that where the Charter follows articles in the 1950 Council of Europe Convention, the meaning and scope are the same as these, unless the new Charter offers more protection. But the 1950 articles go on to include exceptions. For example, under 2(2) life may be taken to stop crime; under 4(3) certain activities do not count as forced labour; and in particular under 15(2) death may result from 'lawful acts of war'. If these apply to the present Charter, they should appear on its face as in the 1950 Convention. Otherwise it may be claimed (and I hope it is) that the present Charter offers more protection. How is the citizen reader to know, and who decides? The explanations in CONVENT 46 do not look as if they are being offered for formal adoption by Convention members.
3. As for the non-horizontal articles of CONVENT 47, our main concern is for undocumented migrants, both known to the authorities and clandestine. Article 4 (torture) seems to cover them, as indeed it should. Article 5(1) on slavery seems also to protect them, which is necessary to avoid trafficking. But Article 15(3) on conditions of work seems rather to protect those who exploit illegal immigrants. Is Article 31 on child labour universal? Article 19 as amended seems to breach the non-refoulement language of the 1951 UN Convention. Finally, the English words of 33(2) 'residing and moving legally' look bizarre. Is it envisaged that someone may be permitted to reside but not move - or vice versa?

The Council of Europe invites new member states to implement its human rights legislation with a better grace than has been shown by some of the existing ones. I wish we could adopt a similar stance with the EU candidate countries. The fact that the Social Charter (Revised) is more than some EU member states can swallow is no reason for not recognising it as a target for the EU of the incoming century.

In peace

Richard Seebohm  
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**DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION****fundamental.rights@consilium.eu.int**

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**Brussels, 4 October 2000****CHARTE 4496/00****CONTRIB 346****COVER NOTE**

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Subject : Draft Charter of Fundamental Rights of the European Union

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Please find hereafter two motions by the Non-Governmental Organisations (NGOs) enjoying consultative status with the Council of Europe. <sup>1</sup>

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<sup>1</sup> This text has been submitted in English and French languages.

LIAISON COMMITTEE OF THE  
NON-GOVERNMENTAL ORGANISATIONS (NGOs)  
enjoying consultative status  
with the COUNCIL OF EUROPE  
COMMISSION DE LIAISON DES  
ORGANISATIONS NON GOUVERNEMENTALES (ONG)  
dotées du statut consultatif  
auprès du CONSEIL DE L'EUROPE



27 June 2000

### **Motion of INGOs having consultative status with the Council of Europe**

407 international non-governmental organisations representing,  
in the 41-nation Council of Europe, all aspects of life and tens of millions of people

The international non-governmental organisations meeting on 27 June at the Palais d'Europe in Strasbourg unanimously call on the Convention drawing up the draft Charter of Fundamental Rights of the European Union and the member states which shall be deciding upon it, to ensure that:

1. the principle of solidarity be included at the beginning of the Charter on a par with the principle of equality and the affirmation of the dignity of the human being;
2. the indivisibility of human rights be confirmed by the contents of the Charter and expressed in its structure, and that the universality of these economic, social, cultural, civil and political rights be acknowledged;
3. the European Union accede to the two Council of Europe instruments which implement the Universal Declaration of Human Rights, namely the European Convention on Human Rights and the revised European Social Charter, including their additional protocols;
4. the Charter of Fundamental Rights be incorporated into the treaties of the European Union, thereby acquiring a binding force;
5. the new risks and needs concerning protection of citizens in our society be covered by the Charter, including in the field of bioethics, the environment and information technology;
6. the principle of participatory democracy be strengthened in the Charter by including recognition of the right to civil dialogue granting organised civil society the right to information, communication and consultation in order to participate, propose, negotiate and verify political processes.

The INGOs having consultative status with the Council of Europe call for the opening of a transparent, democratic and participatory process on the future constitution of the European Union, independently of the drafting of the Charter of Fundamental Rights.



LIAISON COMMITTEE OF THE  
NON-GOVERNMENTAL ORGANISATIONS (NGOs)  
enjoying consultative status  
with the COUNCIL OF EUROPE  
COMMISSION DE LIAISON DES  
ORGANISATIONS NON GOUVERNEMENTALES (ONG)  
dotées du statut consultatif  
auprès du CONSEIL DE L'EUROPE



26 September 2000

## VERY URGENT

### Motion of INGOs having consultative status with the Council of Europe

407 international non-governmental organisations representing,  
in the 41-nation Council of Europe, tens of millions of people

The international non-governmental organisations meeting on 26 September 2000 in the Palais d'Europe in Strasbourg **most urgently** call on the Convention drawing up the draft Charter of Fundamental Rights of the European Union and the member states which shall be deciding upon it, to ensure that:

- **the principle of participatory democracy be strengthened in the Charter by including in Article 12, as new paragraph 3 (Convent 47), recognition of the right to civil dialogue granting organised civil society the right to information, communication and consultation in order to participate, propose, negotiate and verify political processes, as already requested in our motion of 27 June 2000 (enclosed).**

This insistent demand is strongly shared by organised civil society at large in Europe as a fundamental expression of citizens' commitment, will, needs and hopes.

- Furthermore, the above mentioned INGOs demand that the word "**religious**" in line 2 of paragraph 2 in the Preamble (Convent 47) be replaced by "**spiritual**".

**DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION****fundamental.rights@consilium.eu.int**

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**Brussels, 3 October 2000****CHARTE 4497/00****CONTRIB 347****COVER NOTE**

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Subject : Draft Charter of Fundamental Rights of the European Union

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Please find hereafter the observations of the British Medical Association (BMA), on document CHARTE 4420/00 CONVENT 45. <sup>1</sup>

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<sup>1</sup> This text has been submitted in English language only.

## DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION BMA RESPONSE

The British Medical Association is a voluntary professional association and trade union for doctors. It speaks on behalf of doctors both at home and abroad and actively promotes the profession's views on health policy in the United Kingdom.

The BMA's response to this document is inevitably dependent upon its legal status – on whether it is merely a 'wish list' or it is intended to be binding on member states. If it is not intended to be binding then this raises questions about the aim of the exercise. It states in the introduction that it brings together a number of existing rights set out in various Conventions and Declarations. However, it does so in a less than comprehensive way by summarising rights that are elaborated more fully elsewhere (see comments on Article 6 for example). If it is to be binding it needs additional work to make it useful.

Without further guidance and explanation, serious problems of interpretation might arise. The potential for such problems has been illustrated recently by the introduction of the Human Rights Act incorporating the European Convention on Human Rights into UK law. Even with a large body of case law from the European Court there is considerable uncertainty about how the Articles will be applied.

Some of the difficulties that could arise are set out below:

### Article 3 para 2

How are 'eugenic practices' to be defined? Some people say that all prenatal diagnosis is 'eugenic' because it is aimed at avoiding the birth of people with disabilities. Does this mean that all prenatal diagnosis must be stopped?

The prohibition on making the human body and its parts a source of financial gain could outlaw the offer of payments for gametes (ovum and spermatozoon). The BMA's view is that payment for gametes should be phased out and replaced by reimbursement of expenses, so this would not cause problems for us but it would require a change in practice and policy for the Human Fertilisation and Embryology Authority in the UK.

The prohibition of cloning is subject to questions of interpretation. It may be unhelpful to have a blanket ban without considering the arguments. In our comments on the UNESCO Declaration on the Human Genome, which also sought a blanket ban on reproductive cloning, we said:

'Whilst some forms of cloning would certainly be considered contrary to human dignity, this is not necessarily the case with all techniques which could come within the definition of 'reproductive cloning of human beings'. Although the BMA is currently opposed to the deliberate creation of genetically identical individuals, it recognises the potential benefits of embryo splitting in *in vitro* fertilisation and it is possible that this limited use of the technology might, with certain safeguards, be regarded as acceptable practice at some time in the future.'

In our understanding, ‘reproductive cloning’ refers to those techniques that involve the deliberate creation of genetically identical individuals, which would include embryo splitting but would not include techniques used to create compatible tissue for transplantation. Are others using the same definition?

#### **Article 6 – Right to liberty and security of person**

Without qualification this could prove difficult to uphold. The same right is given in the European Convention on Human Rights but it is qualified to permit the lawful detention of a person convicted of an offence, to prevent the spread of infectious disease or those suffering from mental disorders. Without these qualifications it appears that nobody must ever be detained. Is this the intention?

#### **Article 7 – Respect for private and family life**

The statement regarding the confidentiality of communications is not in consistent with the Regulation of Investigatory Powers Bill 2000 (UK) which deals with the interception and decryption of communications.

#### **Article 11 – Freedom of expression and information**

Paragraph 1 refers to the ‘right to hold opinions and to receive and impart information and ideas without interference by public authority’. Given the resurgence of far-right politics in some parts of Europe such a right might come into conflict with other undeniable social goods, such as the respect for persons and the maintenance of public order.

#### **Article 13 – Freedom of research**

This simply states that ‘scientific research shall be free of constraint’. Such a bold statement is unhelpful. Presumably it will still be necessary to seek ethical approval and informed consent for scientific research yet these could be considered ‘constraint’. The Council of Europe’s Convention on Human Rights and Biomedicine states that ‘scientific research in the field of biology and medicine shall be carried out freely *subject to the provisions of this Convention and the other legal provisions ensuring the protection of the human being*’ (emphasis added). Such qualifications are necessary for this to provide meaningful guidance.

#### **Article 14**

Paragraph 1 refers to the right of ‘access to vocational and continuing training’. Such a blanket statement requires qualification. Access to training in medicine can depend on a variety of factors including qualifications, resources and individual merit. It therefore needs to be set in the context of national educational and training systems.

#### **Article 21 – Equality and non-discrimination**

The BMA recognises the importance of the rights outlined in this article. However, in the context of the practice of medicine certain practical questions need to be addressed. Certain disabilities may affect a doctor’s capacity to perform essential tasks. Furthermore it is generally understood that

communication skills are vital to the therapeutic relationship. If employers request that doctors have an adequate command of the national language, are they being discriminatory? Recent comments in the UK by Dr Liam Fox, Opposition health spokesman have highlighted this issue. In the United Kingdom there is also a statutory retirement age. Is this also a discrimination issue?

### **Article 27 – Right of access to placement services**

It would be useful to have some explanation about what this means, practically and in the abstract.

In light of these concerns the status of this document is crucial. If it is intended to be an amalgamation of existing rights, then they should be set out in full in the same terms as the original document. If it is more than this and new ‘rights’ are being added then these need to be highlighted and properly debated. There also needs to be an explanatory note that clarifies issues of interpretation, again using the exact text of existing documents.

**PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE****fundamental.rights@consilium.eu.int****Bruxelles, le 4 octobre 2000****CHARTE 4498/00****CONTRIB 348****NOTE DE TRANSMISSION**


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Objet :           Projet de Charte des droits fondamentaux de l'Union européenne  
                                  Position du Carrefour pour  
                                  une Europe civique et sociale  
                                  (CAFECS):

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Veillez trouver ci-après la prise de position du Carrefour pour une Europe civique et sociale (CAFECS): "Un point de départ". <sup>1</sup>

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<sup>1</sup> Ce texte à été soumis en langue française seulement.

# Carrefour pour une Europe civique et sociale

## CAFECS

29.09.00

### Le projet de Charte des droits fondamentaux de l'Union européenne : un point de départ

*La Convention de soixante-deux membres, mise en place à la demande du Conseil européen pour élaborer un projet de Charte des droits fondamentaux de l'Union européenne, est parvenue à élaborer un texte (" Convent 45 " puis, après d'incontestables améliorations, " Convent 47 " du 21.09.00) qui sera soumis au Conseil européen de Biarritz, puis de Nice. Que faut-il en penser ? Quelle attitude adopter ?*

#### Des points positifs peuvent être soulignés :

**1 - Une méthode d'élaboration nouvelle** a été mise en place avec cette Convention, composée de trente représentants des parlements nationaux, de seize parlementaires européens, de quinze représentants des chefs d'Etat ou de gouvernements et d'un représentant du président de la Commission : on est enfin sorti de la méthode intergouvernementale dans laquelle la construction européenne ne cesse de s'engluer, et on a associé les parlements nationaux. La société civile a été consultée, certes dans des délais trop courts. La transparence de l'élaboration a été assurée, grâce au site internet de la Convention. Il y a là un changement novateur qui peut et doit s'avérer porteur d'avenir.

**2 - Un compromis entre des positions très différentes**, qui reflète l'état réel de l'Europe, que l'on a trop tendance, nous Français, à oublier, a pu être trouvé. Pour la première fois, les droits politiques, économiques et sociaux sont regroupés dans un même texte pour exprimer leur complémentarité et leur indivisibilité.

**3 - La Charte n'est pas utilisée pour construire l'Europe à la sauvette**, par un processus de centralisation rampante et opaque qui entraînerait un rejet immédiat de ceux qui sont attachés à la souveraineté de l'État : elle ne modifie pas les compétences actuelles de l'Union, ne lui transfère aucun pouvoir nouveau, reconnaît - la chose est nouvelle - la diversité (article 22). Elle s'impose aux actes communautaires et aux actes pris par les États en application de ceux-ci.

*Ces éléments positifs suffisent pour que le projet, malgré ses prudenances, ne soit pas purement et simplement rejeté, dans une attitude maximaliste qui, finalement, desservirait une Europe qui se construit pas à pas.*

Ce n'est pas, pour autant, que le projet actuel ne soit pas critiquable en raison de **plusieurs insuffisances graves**.

**1 - Il ne fait que rassembler des droits et responsabilités déjà affirmés**, sans véritablement progresser, ni faire face aux nouveaux défis, sauf sur un nombre limité de points. Il est vrai que le mandat de la Convention avait été strictement limité à un “rassemblement” des textes existants. Mais cela laisse insatisfait, notamment par rapport aux propositions que CAFECS s’était efforcé de faire en liaison avec les associations qui y participent 1 .

**2 - Les droits sociaux sont insuffisamment affirmés si on les compare à la Charte sociale européenne révisée du Conseil de l’Europe.** D’une part, l’Union se contente de reconnaître le droit au travail et à la sécurité sociale, à l’aide sociale, alors qu’elle devrait les promouvoir. D’autre part, il n’est pas suffisamment tenu compte des problèmes sociaux nouveaux, comme le chômage ou l’exclusion, tandis que le droit à un revenu décent n’est pas mentionné en tant que tel. Le droit des personnes âgées à une existence décente n’est pas évoqué. Enfin, le texte passe à côté de beaucoup d’innovations qu’il eût été possible de faire apparaître, par exemple le droit à l’accès aux droits ou, dans un autre domaine, le droit au temps choisi pour concilier vie familiale et professionnelle.

**3 - Le projet de Charte est également beaucoup trop timide en matière de participation de la société civile, de dialogue civil** et de droit d’association au niveau européen. Le droit de consultation des ONG au niveau de l’Union européenne n’a pas été proclamé.

**4 - Enfin, le texte actuel laisse insatisfait, en ce sens qu’il ne débouche pas vraiment sur un projet de société européen, et qu’il est timide en matière de droits programmatiques** qui ont besoin du support de politiques actives, par exemple en matière de droit au logement ou du droit au développement durable. En un mot, il correspond bien à l’état actuel de la construction européenne qu’il contribue à rééquilibrer. Il rassure ceux qui craignent les effets de la centralisation et de l’uniformité, aussi bien que ceux qui craignent un nivellement progressif des droits sociaux selon la pente du moins disant social. Mais il a un faible pouvoir anticipateur et est loin des progrès qu’il faut faire réaliser à l’Union européenne pour qu’elle émerge comme acteur nouveau dans la mondialisation, avec son propre modèle socio-économique. Face aux puissantes entreprises multinationales, l’Union européenne continue à offrir des droits sociaux nationaux inégaux qui risquent de conduire le modèle social européen vers le bas.

*Il faut donc considérer le projet actuel non comme un point d’arrivée, mais comme un point de départ et une étape dans un processus à poursuivre.*

**Dans ces conditions, CAFECS :**

**1 - souhaite que le travail d’amélioration ponctuelle** mené efficacement ces tous derniers jours, pour remédier aux insuffisances constatées par les représentants de la société civile, **soit activement poursuivi.**

**2 - demande au Conseil européen d’adopter cette Charte**, sans l’intégrer à ce stade aux Traités existants, (donc sans avoir à la faire ratifier par chacun des États membres) mais **d’y faire référence à l’article 6 des Traités actuels** qui seront modifiés par l’actuelle CIG et soumis à ratification par les États membres. Ainsi le juge européen sera très logiquement amené à prendre la Charte en considération, de façon éminente, pour arrêter ses décisions au même titre qu’il prend en considération la convention européenne des droits de l’homme.



**3 – demande que l'action engagée ne s'arrête pas là** et que dans une démarche de citoyenneté active, la société civile puisse s'exprimer à partir de cette Charte en prenant le temps et les méthodes appropriées. Le débat à ouvrir devra se situer dans le cadre du processus constituant qui devra être mis en place par le Conseil européen de Nice afin de renforcer la dimension politique de l'Union. Le moment venu, l'ensemble de ces débats publics pourra être repris par les parlements nationaux et les institutions européennes pour être intégré aux Traités ou à la future Constitution de l'Union en ayant bénéficié de la participation active des citoyens. Il faut que cette Charte joue un rôle fondateur pour le lancement de la démocratie participative européenne avec les peuples de l'Union et les peuples candidats à l'Union.✿

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**DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION****fundamental.rights@consilium.eu.int**

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**Brussels, 4 October 2000****CHARTE 4499/00****CONTRIB 349****COVER NOTE**

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Subject : Draft Charter of Fundamental Rights of the European Union

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Please find hereafter a report from the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe. <sup>1</sup>

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<sup>1</sup> This text has been submitted in English and French languages.



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**Doc. 8819 revised**  
27 September 2000

## **Charter of Fundamental Rights of the European Union**

Revised report\*  
Committee on Legal Affairs and Human Rights  
Rapporteur: Mr Göran Magnusson, Sweden, Socialist Group

### *Summary*

The preparatory work on the Charter of Fundamental Rights of the European Union is now entering its final stage. Led by its wish to ensure the full enjoyment of human rights and fundamental freedoms for all persons within the jurisdiction of European Union member States, the Assembly should encourage progress in this field made by the European Union. Its main concern must, however, be to avoid the emergence of new dividing lines in Europe by defending the consistency of human rights protection across the continent and avoiding diverging interpretations of these rights.

The Assembly, together with the European Parliament, the European Commission and the European Court of Human Rights, continues to believe that the aim of the draft Charter, which is to enhance and make more visible the protection of fundamental rights in EU member states, can only be reached if institutions and bodies of the European Union are bound not only by the draft Charter, but also by the European Convention on Human Rights.

The Assembly should thus invite the European Union and its member states to ensure that both the text of the proposed Charter and its ultimate application fully reflect and preserve the protection extended by the European Convention on Human Rights and the European Court of Human Rights to every person within the jurisdiction of European Union member states. It should further propose the beginning of negotiations between the European Union and the Council of Europe without delay in order to enable the European Union to accede to the ECHR.

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\* This report replaces the report adopted on 7 September 2000 (Doc 8819).

## I. (Revised) Draft resolution

1. Following the adoption of Resolution 1210 (2000) on the Charter of Fundamental Rights of the European Union on 25 January 2000, the Assembly has continued to follow with great interest the preparatory work on the Charter, which is now entering its final stage.
2. The Assembly is led by its concern to ensure the full enjoyment of human rights and fundamental freedoms for all persons within the jurisdiction of European Union member States. The Assembly wants to encourage progress in this field made by the European Union. Its main concern is to avoid the emergence of new dividing lines in Europe by defending the consistency of human rights protection across the continent and avoiding diverging interpretations of these rights.
3. The Assembly welcomes the efforts undertaken by the European Union to enhance and make more visible the protection of human rights through the Charter. The draft Charter proposed by the Praesidium at the meeting of the "Convention" on 25 and 26 September 2000 reaffirms *inter alia* the European Convention on Human Rights (ECHR), the Social Charter of the Council of Europe, and the case-law of the European Court of Human Rights. Insofar as the draft Charter contains rights which correspond to rights guaranteed by the ECHR, their meaning and scope shall be the same as those laid down by the said Convention, thus guaranteeing that the draft Charter's level of protection will not fall below that of the ECHR.
4. The Assembly further welcomes the fact that the draft Charter recognises a number of rights and freedoms not included *expressis verbis* in the ECHR, such as the right to respect for physical and mental integrity, the prohibition of trafficking in human beings, the right to asylum, and a number of important social and economic rights. However, the Assembly regrets that the level of protection recognised by the draft Charter does not always reach the level of protection afforded by the corresponding Council of Europe instruments, in particular the Revised Social Charter and the Convention on Human Rights and Biomedicine.
5. The Assembly also regrets that the draft Charter makes no express reference to the rights of persons belonging to ethnic, religious or linguistic minorities, or indeed to the right to local and regional self-government – rights which are protected by Council of Europe instruments such as the Framework Convention for the Protection of National Minorities and the European Charter of Local Self-Government.
6. The Assembly is convinced that the aim of the draft Charter, which is to enhance and make more visible the protection of fundamental rights in EU member states, can only be reached if institutions and bodies of the European Union are bound not only by the draft Charter, but also by the European Convention on Human Rights. In a democratic society, a system of checks and balances is essential. All member states of the European Union, honouring this democratic principle, have submitted themselves to the external supervision of the European Court of Human Rights under this Convention, without endangering national sovereignty or the principle of subsidiarity. There is no legitimate reason why acts carried out on behalf of the European Union should be exempt from this fundamental external control mechanism, thus in effect withdrawing the protection of the ECHR from persons adversely affected in their fundamental rights and freedoms by Community law. As the European Commission has pointed out, the existence of a Charter does not diminish the interest in acceding to the ECHR for exactly these reasons.

7. In this connection, the Assembly welcomes the Resolution of the European Parliament, adopted on 16 March 2000, in which the European Parliament invites the Intergovernmental Conference (IGC) to enable the European Union to become a party to the European Convention on Human Rights. The Assembly further agrees with the European Commission that the drafting of the Charter does not preclude the accession of the European Union to the ECHR, and that, indeed, this accession would in no way lessen the importance of the Charter.

8. The Assembly therefore reiterates its appeal to the European Union do its utmost to safeguard the consistency of human rights protection in Europe. It thus invites the European Union and its member states to:

- i. ensure that both the text of the proposed Charter and its ultimate application fully reflect and preserve the protection extended by the European Convention on Human Rights and the European Court of Human Rights to every person within the jurisdiction of European Union member states;
- ii. enter into negotiations with the Council of Europe without delay in order to enable the European Union to accede to the ECHR as soon as possible by drawing up the necessary amendments to both the European Union treaties and the European Convention on Human Rights.

## **II. (Revised) Draft recommendation**

1. The Assembly draws attention to its Recommendation 1439 (2000) on the Charter of Fundamental Rights of the European Union, adopted on 25 January 2000, in which it recommended that the Committee of Ministers of the Council of Europe support the accession of the European Union to the European Convention on Human Rights and prepare the appropriate amendments to this treaty.

2. It notes that, at its 106th session (10-11 May 2000), the Committee of Ministers stressed the need to ensure that, whatever decision the Institutions of the Union might take concerning the Charter, it did not lead to new dividing lines in Europe. The Charter should be fully consistent with, and not weaken, the system for the protection of human rights provided, under the European Convention, to all citizens of the Council of Europe's member States, including those of the European Union.

3. Although the Assembly welcomes the fact that the Committee of Ministers shares its concern that there should be no rivalry between the two systems of human rights protection in Europe, it regrets that it has not yet reached a consensus concerning the accession of the Union to the European Convention on Human Rights, an approach which, despite the technical objections of the Court of Justice in Luxembourg a few years ago (which can easily be solved), has repeatedly received the backing of the other institutions concerned: the European Parliament, the European Commission and the European Court of Human Rights.

4. The Assembly is not aware of any factor opposing accession from a legal point of view. It thus fervently hopes that the political will which, up to now, has prevented the process from going ahead, can be mustered soon.

5. With reference to Resolution ... (2000) on the Charter of Fundamental Rights of the European Union the Assembly therefore recommends that the Committee of Ministers enter into negotiations with the European Union without delay in order to enable the Union to accede to the ECHR as soon as possible by drawing up the necessary amendments to both the European Union treaties and the European Convention on Human Rights.

### III. (Revised) Draft order

The Assembly draws attention to its Resolution ... (2000) and Recommendation ... (2000) on the Charter of Fundamental Rights of the European Union and instructs its Committee on Legal Affairs and Human Rights, in co-operation with the Political Affairs Committee and the Social, Health and Family Affairs Committee, to closely follow developments regarding the Charter, and to report to it in due course.

#### IV. Explanatory memorandum by Mr Magnusson, Rapporteur

##### A. The Council of Europe and the EU Charter: new developments

1. On 25 January 2000 the Assembly adopted Resolution 1210 (2000) on the Charter of Fundamental Rights of the European Union, in which it invited the European Union:

- i. to incorporate the rights guaranteed in the European Convention on Human Rights and the protocols to it into the Charter of Fundamental Rights and to do its utmost to safeguard the consistency of the protection of human rights in Europe and to avoid diverging interpretations of those rights;
- ii. to decide in favour of accession to the European Convention on Human Rights of the Council of Europe and to make the necessary amendments to the Community treaties;
- iii. to make sure that when social rights are referred to the revised European Social Charter of the Council of Europe is taken into account.

2. At the same time it adopted Recommendation 1439 (2000), in which it recommended that the Committee of Ministers of the Council of Europe support the accession of the European Union to the European Convention on Human Rights and prepare the appropriate amendments to this treaty.

3. Finally, in Order No. 561 (2000), it instructed its Committee on Legal Affairs and Human Rights, and its Social, Health and Family Affairs Committee, which was asked for an opinion, to carefully follow and monitor the outcome of the drafting work on the Charter of Fundamental Rights of the European Union, and to report back to it in due course.

4. The time has now come to take stock of the action taken on these texts. Since, by late May 2000, the Committee of Ministers of the Council of Europe had not replied to Recommendation 1439, I submitted a written question, No. 387, to the Committee of Ministers on behalf of the Committee on Legal Affairs and Human Rights, asking what follow-up the Committee of Ministers intended to give to Recommendation 1439 before the adoption of the Charter.

5. On 31 May 2000, the Committee of Ministers adopted a reply in which it referred to the Communiqué which it had adopted at the end of its 106th Session (Strasbourg, 10-11 May 2000):

“With regard to the proposed European Charter of Fundamental Rights, the Ministers underlined the need to ensure that, whatever decision the Institutions of the Union may take concerning the Charter, it does not lead to new dividing lines in Europe. The Charter should be fully consistent with, and not weaken, the system for the protection of human rights provided, under the European Convention, to all citizens of the Council of Europe's member States, including those of the European Union.”

6. It appended to its reply the statement made before the Ministers' Deputies on 7 March 2000 by Mr Wildhaber, President of the European Court of Human Rights, in which he set forth the arguments in favour of the European Union's accession to the Convention, pointing out that the debate on the Charter offered an excellent opportunity to reopen the whole question of the Community's accession to the Convention and that the Council of Europe ought to have no misgivings about seizing this opportunity without hesitation.



7. I nevertheless regretted that the Committee of Ministers had not replied to the main question addressed to it in Recommendation 1439, and so once again put a question to the Chair of the Committee of Ministers on 27 June 2000, asking him to state clearly whether the Committee of Ministers intended to come out in favour of accession.
8. The Chair of the Committee of Ministers replied that if there was no consensus among the fifteen member states of the European Union, there could be no consensus on this question within the Committee of Ministers either.
9. It should be noted, however, that the European Parliament adopted a resolution on 16 March 2000, in which it invited the Intergovernmental Conference (IGC) to enable the Union to become a party to the European Convention on Human Rights (ECHR). With the exception of the Court of Justice in Luxembourg, which raised some technical objections a few years ago (that can easily be solved), the proposal that the Union accedes to the ECHR has thus repeatedly received the backing of all the other institutions concerned: the European Parliament, the European Commission, the European Court of Human Rights and, of course, the Assembly. I would indeed maintain that only through this accession can new dividing lines in Europe be avoided, as well as a weakening of human rights protection across the continent.

## **B. Developments within the European Union**

10. Within the European Union, the “Convention”, the name adopted by the body set up at the European Council meeting in Tampere, has nearly finished drafting the Charter. The “Convention” is made up of fifteen representatives of the Heads of State or Government, one representative of the European Commission, sixteen members of the European Parliament and thirty representatives of national parliaments. Two representatives of the Court of Justice of the European Communities and two representatives of the Council of Europe, one of whom is a judge at the European Court of Human Rights, have observer status.
11. The “Convention” worked very intensively, with several meetings per month, and invited the Economic and Social Committee, the Committee of the Regions and the European Ombudsman to give their views. Countries applying for accession to the Union were also invited to a hearing and NGOs had the opportunity to make their views known. This shows that there is, within the “Convention”, a determination to ensure the transparency of the discussions.
12. The “Convention” is chaired by Mr Roman Herzog, former President of the Federal Republic of Germany. As Vice-Chair, the group of representatives of Heads of State or Government elected the representative of the rotating presidency of the Council of the European Union. The group of representatives of the European Parliament elected Mr Mendes de Vigo and the Group of National Parliaments elected Mr Gunnar Jansson, Chair of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly.
13. The Praesidium of the “Convention” proposed a draft Charter (Convent 47) with an addendum and an explanatory memorandum (Convent 48)<sup>1</sup>, which was discussed by the plenary “Convention” at its last meeting on 25-26 September 2000 in Brussels, and is due to be formally approved at its final meeting on 2 October 2000 in Brussels.

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<sup>1</sup> The explanatory memorandum will probably not be formally approved by the Convention.

14. The draft Charter is composed of a Preamble, and seven Chapters: Chapter I “Dignity”, Chapter II “Freedoms”, Chapter III “Equality”, Chapter IV “Solidarity”, Chapter V “Citizenship”, Chapter VI “Justice”, and Chapter VII “General Provisions”. Not counting the preamble, there are 53 articles all in all.

15. The draft Charter reaffirms *inter alia* the ECHR, the Social Charter of the Council of Europe and the case-law of the European Court of Human Rights. Laudably, the draft Charter recognises a number of rights and freedoms which are not included *expressis verbis* in the ECHR, such as the right to respect for physical and mental integrity, the prohibition of trafficking in human beings, the right to asylum, and a number of important social and economic rights. However, it is regrettable that the level of protection recognised by the draft Charter does not always reach the level of protection afforded by the corresponding Council of Europe instruments, in particular the Revised Social Charter and the Convention on Human Rights and Biomedicine.

16. I also find it very regrettable that the draft Charter makes no express reference to the rights of persons belonging to ethnic, religious or linguistic minorities, or indeed to the right to local and regional self-government – rights which are protected by Council of Europe instruments such as the Framework Convention for the Protection of National Minorities and the European Charter of Local Self-Government.

17. Indeed, while I would support the draft Charter as a whole – and I think that consecutive drafts have improved considerably - I am still somewhat reticent on the balance struck between “traditional” human rights and more modern, social and economic rights. The latter are often elaborated at great length and detail in the draft Charter, while such important “traditional” human rights as the right to life, the presumption of innocence and the right of defence are kept extremely short, with all detail relegated to the explanatory memorandum. With certain rights, such as the right of access to free placement services and to services of general economic interest, I do ask myself if they are really so fundamental that they should stand side by side with such universally recognised human rights as the right to be protected from torture and the freedom of expression and assembly, implying their equal weight and importance.

18. In my first version of this report, I severely criticised the general provisions in the last chapter, the so-called “horizontal clauses” for having been drafted exceedingly widely. In fact, I still harbour some doubts on the exact meaning of “objectives of general interest being pursued by the Union” in draft Article 51.1. However, the potential danger posed by this very wide formulation is now fully assuaged by draft Article 51.3., which reads “Insofar as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. ...”. Draft Article 52 plays an equally important role in this respect. I think it is fair to say that the level of protection recognised by the draft Charter as it currently stands should not fall below the standards of the ECHR.

19. Of course, this text is not yet final, as it remains to be formally approved by the “Convention”. After the European Parliament has given its opinion on the final version, it will then be the task of the European Council, Parliament and Commission to solemnly proclaim the Charter in December 2000 in Nice, and to decide upon its legal nature. However, without anticipating the ICG's decision, the Chair of the “Convention” has opted for a form of wording which makes it possible for the Charter to become a binding instrument.

### C. Accession of the European Union to the ECHR

20. It has always been the Council of Europe's – and this Assembly's – stance that the best way to guarantee universal and comprehensive human rights' protection across Europe would be the accession of the European Union to the European Convention on Human Rights<sup>2</sup>.

21. The European Parliament, for its part, came out in favour of accession to the European Convention on Human Rights in a Resolution adopted as recently as on 16 March 2000, in which it invited the IGC to:

- a. put the incorporation into the Treaty of the Charter of Fundamental Rights on its agenda;
- b. enable the Union to become a party to the ECHR so as to establish close co-operation with the Council of Europe, whilst ensuring that appropriate action is taken to avoid possible conflicts or overlapping between the Court of Justice of the European Communities and the European Court of Human Rights;
- c. add a reference to the European Social Charter and to the appropriate ILO and UN conventions to the reference to the European Convention on Human Rights in Article 6 of the Treaty on European Union.

22. On 13 September 2000, the European Commission issued a communication on the Charter of Fundamental Rights, in which it stated that the Charter neither required nor precluded accession to the European Convention on Human Rights. It noted that the existence of a Charter did not diminish the interest in joining, as accession would effectively establish external supervision of fundamental rights at Union level. Moreover, accession to the ECHR would in no way lessen the importance of drawing up a European Union Charter. The question of the Union's accession to the ECHR not being covered by the mandate of the "Convention", most recently the government of Finland made an official proposal to the Intergovernmental Conference (IGC) to amend the European Community Treaty to grant the Community the competence to accede.

23. It is now up to the European Union to give its opinion on accession to the European Convention on Human Rights, whether the Charter is adopted or not and irrespective of whether it is binding.

24. There is no need at this point to repeat all the reasons for acceding, which were examined in the previous report (Doc 8611), and there has been absolutely nothing to show that this is not the right approach. Suffice it to say that I am convinced that the aim of the draft Charter, which is to enhance and make more visible the protection of fundamental rights in Europe, can only be reached if institutions and bodies of the European Union are bound not only by the draft Charter, but also by the European Convention on Human Rights. In a democratic society, a system of checks and

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<sup>2</sup> I have deliberately chosen the word "European Union" and not "European Community" or "European Communities". While I am aware of the debate on the powers and the legal identity (or non-identity) of the Union, personally I am convinced that if the European Union does not already have a legal identity, it will acquire it sooner or later. I thus see no reason why the process of negotiating and adopting the necessary amendments to European treaties should be gone through twice, only to make it possible for first the "Community/ties" and then the "Union" to accede. If, however, this is the Union's wish, so be it. In that case, "European Union" should be read to encompass "European Community/ties" in this text.

balances is essential. All member states of the European Union, honouring this democratic principle, have submitted themselves to the external supervision of the European Court of Human Rights under this Convention, without endangering national sovereignty or the principle of subsidiarity. There is no legitimate reason why acts carried out on behalf of the European Union should be exempt from this fundamental external control mechanism, thus in effect withdrawing the protection of the ECHR from persons adversely affected in their fundamental rights and freedoms by Community law.

25. The two official observers of the Council of Europe to the “Convention”, Deputy Secretary General Krüger and Judge Fischbach, have also emphasised that accession to the ECHR would have the advantage of ensuring consistency in the protection of fundamental rights in Europe without lessening the Charter’s usefulness. Firstly, the Charter would be seen as complementing, not being an alternative, to the ECHR, in keeping with Article 53 of the ECHR. That would underscore the fact that the Charter did not affect the universality of human rights or uniformity of standards in Europe. Secondly, the European Court of Human Rights would be able to review the interpretation of those provisions of the Charter that were based on the ECHR, thus ensuring perfect consonance between the two instruments in the interests of the clarity and legal certainty to which European citizens aspire. Lastly, it would enable Community institutions to be a party to proceedings before the European Court of Human Rights that concerned the effects of Community provisions in the legal orders of member States.

26. Some people argue that the Charter of the European Union as an autonomous legal text will make the accession of the European Union to the ECHR superfluous. I do not think that is the case. Many national constitutions also recognise human rights and fundamental freedoms, but their existence has not made it meaningless for the member States to become parties to the ECHR.

27. In short, I would find it difficult to accept the European Union’s claims that it wishes to improve the protection of European citizens’ rights while it refuses to submit its own institutions to scrutiny and opens up the possibility of diverging interpretations of human rights by two different Courts. In fact, only the decision of the Court of Justice of Luxembourg in 1996 continues to be used as an argument for not ratifying the Convention. Yet there is nothing to prevent the European Council from remedying the situation by deciding to amend the Treaty on European Union to enable ratification to take place.

28. This is why the Assembly should propose, for the sole purpose of ensuring that Europe does not have two systems of human rights protection and to avoid the inconsistency which would inevitably ensue, that the European Union and its member states be invited to:

- i. ensure that both the text of the proposed Charter and its ultimate application fully reflect and preserve the protection extended by the European Convention on Human Rights and the European Court of Human Rights to every person within the jurisdiction of European Union member states;
- ii. enter into negotiations with the Council of Europe without delay in order to enable the European Union to accede to the ECHR as soon as possible by drawing up the necessary amendments to both the European Union treaties and the European Convention on Human Rights.

*Reporting committee:* Committee on Legal Affairs and Human Rights

*Budgetary implications for the Assembly:* none

*Reference to committee:* Order No 561 (2000)

*Draft resolution, draft recommendation and draft order* adopted unanimously by the Committee on 27 September 2000

*Members of the committee:* MM Jansson (Chairperson), Bindig, Frunda, Mrs Err (Vice-Chairpersons), Mrs Aguiar, MM Akçali, Mrs van Ardenne-van der Hoeven, MM de Aristegui, Arzilli, Attard Montalto, Bal, Bartumeu Cassany, Bruce, Bulavinov, Clerfayt, Contestabile, Demetriou, Derycke (alternate: Vanoost), Dimas, Enright, Floros, Mrs Frimansdóttir, MM Fyodorov, Gustafsson, Holovaty, Mrs Hren-Vencelj, Mrs Imbrasiene, MM Jaskiernia, Jurgens, Kelemen, Lord Kirkhill, MM S. Kovalev, Kresák, Mrs Krzyzanowska, Mr Le Guen, Mrs Libane (alternate: Mr Cilevics), MM Lintner, Lippelt, Loutfi, Magnusson, Mrs Markovic-Dimova, MM Marty (alternate: Mrs Nabholz-Haidegger), McNamara, Moeller, Nastase, Mrs Ninoshvili, MM Pavlov, Pollo, Mrs Pourtaud (alternate: Mr Bordas), MM Rodeghiero, Mrs Roudy, Mrs Serafini, MM Simonsen, Skrabalo, Solé Tura (alternate: Mrs Lopez Gonzalez), Solonari, Spindelegger, Svoboda, Symonenko (alternate: Mr Khunov), Tabajdi, Tallo, Vera Jardim, Mrs Vermot-Mangold, Mr Vyvadil, Mrs Wohlwend, Mrs Wurm

*N.B. The names of those members who were present at the meeting are printed in italics.*

*Secretaries to the committee:* Mr Plate, Ms Coin and Ms Kleinsorge

**DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION****fundamental.rights@consilium.eu.int**

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**Brussels, 4 October 2000****CHARTE 4500/00****CONTRIB 350****COVER NOTE**

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Subject : Draft Charter of Fundamental Rights of the European Union

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Please find hereafter the texts adopted by the Parliamentary Assembly of the Council of Europe the 29 September 2000. <sup>1</sup>

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<sup>1</sup> This text has been submitted in English and French languages.



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Provisional edition

## **Charter of Fundamental Rights of the European Union**

### **Resolution 1228 (2000)<sup>1</sup>**

1. Following the adoption of Resolution 1210 (2000) on the Charter of Fundamental Rights of the European Union on 25 January 2000, the Assembly has continued to follow with great interest the preparatory work on the charter, which is now entering its final stage.
2. The Assembly is led by its concern to ensure the full enjoyment of human rights and fundamental freedoms for all persons within the jurisdiction of European Union member states. The Assembly wants to encourage progress in this field made by the European Union. Its main concern is to avoid the emergence of new dividing lines in Europe by defending the consistency of human rights protection across the continent and avoiding diverging interpretations of these rights.
3. The Assembly recalls Recommendation 1415 (1999), according to which “economic and social rights are inherent aspects of human dignity and are clearly human rights, in the same way as are civil and political rights. These two categories of rights are interdependent and cannot be dealt with differently”.
4. The Assembly welcomes the efforts undertaken by the European Union to enhance and make more visible the protection of human rights through the charter. The draft charter proposed by the Praesidium at the meeting of the “Convention” on 25 and 26 September 2000 reaffirms *inter*

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1. Assembly debate on 29 September 2000 (32nd Sitting). See Doc. 8819, report of the Committee on Legal Affairs and Human Rights (rapporteur: Mr Magnusson), Doc. 8846, opinion of the Political Affairs Committee (rapporteur: Mr Clerfayt) and Doc. 8847, opinion of the Social, Health and Family Affairs Committee (rapporteur: Mr Evin). Text adopted by the Assembly on 29 September 2000 (32nd Sitting).

*alia* the European Convention on Human Rights (ECHR), the Social Charter of the Council of Europe, and the case-law of the European Court of Human Rights. Insofar as the draft charter contains rights which correspond to rights guaranteed by the ECHR, their meaning and scope shall be the same as those laid down by the said Convention, thus guaranteeing that the draft charter's level of protection will not fall below that of the ECHR.

5. The Assembly further welcomes the fact that the draft charter recognises a number of rights and freedoms not included *expressis verbis* in the ECHR, such as the right to respect for physical and mental integrity, the prohibition of trafficking in human beings, the right to asylum, and a number of important social and economic rights. However, the Assembly considers that the level of protection recognised by the draft charter should fully correspond to the level of protection afforded by the corresponding Council of Europe instruments, in particular the Revised Social Charter and the Convention on Human Rights and Biomedicine.

6. The Assembly also regrets that the draft charter makes no express reference to the rights of persons belonging to ethnic, religious or linguistic minorities, or indeed to the right to local and regional self-government – rights which are protected by Council of Europe instruments such as the Framework Convention for the Protection of National Minorities and the European Charter of Local Self-Government.

7. The Assembly is convinced that the aim of the draft charter, which is to enhance and make more visible the protection of fundamental rights in EU member states, can only be reached if institutions and bodies of the European Union are bound not only by the draft charter, but also by the European Convention on Human Rights. In a democratic society, a system of checks and balances is essential. All member states of the European Union, honouring this democratic principle, have submitted themselves to the external supervision of the European Court of Human Rights under this Convention, without endangering national sovereignty or the principle of subsidiarity. There is no legitimate reason why acts carried out on behalf of the European Union should be exempt from this fundamental external control mechanism, thus in effect withdrawing the protection of the ECHR from persons adversely affected in their fundamental rights and freedoms by Community law. As the European Commission has pointed out, the existence of a charter does not diminish the interest in acceding to the ECHR for exactly these reasons.

8. The new internal legal system that the Union wishes to create should reflect its global role. It must help to offset trends towards a “fortress Europe” and be at the forefront of combating racism, xenophobia and ethnic violence. In this context, consideration ought to be given to the question of the political rights of nationals of third parties established in the Union.

9. In this connection, the Assembly welcomes the resolution of the European Parliament, adopted on 16 March 2000, in which the European Parliament invites the Intergovernmental Conference (IGC) to enable the European Union to become a party to the European Convention on Human Rights. The Assembly further agrees with the European Commission that the drafting of the charter does not preclude the accession of the European Union to the ECHR, and that, indeed, this accession would in no way lessen the importance of the charter.

10. The Assembly therefore reiterates its appeal to the European Union do its utmost to safeguard the consistency of human rights protection in Europe. It thus invites the European Union and its member states to:



- i. ensure that both the text of the proposed charter and its ultimate application fully reflect and preserve the protection extended by the European Convention on Human Rights and the European Court of Human Rights to every person within the jurisdiction of European Union member states;
- ii. ensure that the social rights guaranteed by the charter correspond to those set forth in the Revised European Social Charter;
- iii. enter into negotiations with the Council of Europe without delay in order to enable the European Union to accede to the ECHR as soon as possible by drawing up the necessary amendments to both the European Union treaties and the European Convention on Human Rights.

Provisional edition

# Charter of Fundamental Rights of the European Union

## Recommendation 1479 (2000)<sup>2</sup>

1. The Assembly draws attention to its Recommendation 1439 (2000) on the Charter of Fundamental Rights of the European Union, adopted on 25 January 2000, in which it recommended that the Committee of Ministers of the Council of Europe support the accession of the European Union to the European Convention on Human Rights and prepare the appropriate amendments to this treaty.

2. It notes that, at its 106th Session (10-11 May 2000), the Committee of Ministers stressed the need to ensure that, whatever decision the institutions of the Union might take concerning the charter, it did not lead to new dividing lines in Europe. The charter should be fully consistent with, and not weaken, the system for the protection of human rights provided, under the European Convention, to all citizens of the Council of Europe's member states, including those of the European Union.

3. Although the Assembly welcomes the fact that the Committee of Ministers shares its concern that there should be no rivalry between the two systems of human rights protection in Europe, it regrets that it has not yet reached a consensus concerning the accession of the Union to the European Convention on Human Rights, an approach which, despite the technical objections of the Court of Justice in Luxembourg a few years ago (which can easily be solved), has repeatedly received the backing of the other institutions concerned: the European Parliament, the European Commission and the European Court of Human Rights.

4. The Assembly is not aware of any factor opposing accession from a legal point of view. It thus fervently hopes that the political will which, up to now, has prevented the process from going ahead, can be mustered soon.

5. The Assembly also recommends that the Committee of Ministers bear in mind that Europe will always be larger than the Union and will always include a certain number of non-member states of the Union. There is therefore a need for practical, organic relations between the Council of Europe and the European Union, based on complementarity and co-operation, which take account of the Council of Europe's role and distinctive features.

6. The Assembly urges the Committee of Ministers to support the principle whereby the social rights guaranteed by the charter as adopted by the European Council must correspond to those set forth in

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1. Assembly debate on 29 September 2000 (32nd Sitting). See Doc. 8819, report of the Committee on Legal Affairs and Human Rights (rapporteur: Mr Magnusson), Doc. 8846, opinion of the Political Affairs Committee (rapporteur: Mr Clerfayt) and Doc. 8847, opinion of the Social, Health and Family Affairs Committee (rapporteur: Mr Evin). Text adopted by the Assembly on 29 September 2000 (32nd Sitting).

the Revised European Social Charter, the Council of Europe instrument which sets the standard where fundamental social rights are concerned and is one of the pillars of the European social model.

7. With reference to Resolution 1228 (2000) on the Charter of Fundamental Rights of the European Union the Assembly therefore recommends that the Committee of Ministers enter into negotiations with the European Union without delay in order to enable the Union to accede to the ECHR as soon as possible by drawing up the necessary amendments to both the European Union treaties and the European Convention on Human Rights.

Provisional edition

# Charter of Fundamental Rights of the European Union

## Order No. 567 (2000)<sup>3</sup>

The Assembly draws attention to its Resolution 1228 (2000) and Recommendation 1479 (2000) on the Charter of Fundamental Rights of the European Union and instructs its Committee on Legal Affairs and Human Rights, in co-operation with the Political Affairs Committee and the Social, Health and Family Affairs Committee, to closely follow developments regarding the charter, and to report to it in due course.

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1. Assembly debate on 29 September 2000 (32nd Sitting). See Doc. 8819, report of the Committee on Legal Affairs and Human Rights (rapporteur: Mr Magnusson), Doc. 8846, opinion of the Political Affairs Committee (rapporteur: Mr Clerfayt) and Doc. 8847, opinion of the Social, Health and Family Affairs Committee (rapporteur: Mr Evin). Text adopted by the Assembly on 29 September 2000 (32nd Sitting).

**DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION****fundamental.rights@consilium.eu.int**

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**Brussels, 4 October 2000 (05.10)  
(OR. fr)****CHARTE 4951/00****CONTRIB 351****COVER NOTE**

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Subject : Draft Charter of Fundamental Rights of the European Union

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Please find attached the European Parliament Resolution on the Charter of Fundamental Rights of the European Union.<sup>1</sup>

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<sup>1</sup> Submitted in all languages.

## 10. Charter of fundamental rights

**B5-0767/2000-10-05**

### **European Parliament Resolution on the European Union Charter of Fundamental Rights**

*The European Parliament*

- having regard to its Resolution of 16 March 2000 on the drafting of a European Union Charter of Fundamental Rights <sup>1</sup>,
- A. whereas the Convention retains sole responsibility for drafting the Charter up until the moment when it is proclaimed,
  - 1. proposes, in line with the position it expounded when the Convention began its work, that, at its meeting in Biarritz, the European Council call on the Intergovernmental Conference to consider the text of the Charter adopted by the Convention and ways of incorporating it into the Treaty with a view to a decision being taken at the European Council meeting in Nice;
  - 2. instructs its President to forward this Resolution to the Council, the governments and parliaments of the Member States, the Commission, the Convention and the other Community institutions.

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<sup>1</sup> Texts adopted, Item 4.

**DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION****fundamental.rights@consilium.eu.int**

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**Brussels, 17 October 2000****CHARTE 4954/00****CONTRIB 354****COVER NOTE**

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Subject : Draft Charter of Fundamental Rights of the European Union

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Please find hereafter a contribution by the European Council on Environmental Law, with the Resolution on the Right to the Protection of Environment, adopted on 22 September 2000 and submitted on 26 September 2000. <sup>1</sup>

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<sup>1</sup> This text has been submitted in English and French languages.

**Conseil européen du droit de l'environnement**  
**European Council on Environmental Law**

**Secrétariat : CEDE / AREAM**

*Madeira Tecnopolo*

*9000 Funchal*

*P - Madeira*

Tel.: + 351 291 72 33 00

Fax : + 351 291 72 00 33

**Président : Alexandre Kiss**

*29, rue du Conseil des Quinze*

*F - 67000 Strasbourg*

Tél. : (33) 3 88 61 36 39

Fax : (33) 3 88 83 43 97

**Resolution on the Right to the Protection of Environment**

adopted on 22.9.2000

The European Council on Environmental Law

Having considered the draft of the Charter of Fundamental Rights of the European Union (September 2000);

Noting that Article 36 of the draft dealing with “Environmental protection”<sup>1</sup> does not impose any direct obligation on the member States of the Union which must ensure its implementation but deals only with programmatic requirements concerning the environmental policy of the European Union;

Considering that other articles of the draft Charter guarantee rights which States must recognise in relation to every person within the territory of the European Union and that this is particularly the case in relation to other economic and social rights such as the right to health, the right to social assistance and housing assistance;

Recalling Resolution 45/94(1990) of the General Assembly of the United Nations according to which “all individuals are entitled to live in an environment adequate for their health and well-being”;

Recalling that all States of the Union have recognised in many international fora the right to a clean environment or to the protection of a clean environment and that they have introduced this right explicitly or implicitly in their legal system;

Recalling that all States of the Union as well as the European Community itself have signed the Aarhus Convention (1998) which recognises “the right of every person to live in an environment adequate to his or her health and well-being”;

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<sup>1</sup> Art. 36 : Protection de l'environnement. Un niveau élevé de protection de l'environnement et l'amélioration de sa qualité doivent être intégrées dans les politiques de l'Union, et assurées conformément au principe du développement durable.  
Art. 36 : Environmental protection. A high level of environmental protection and the improvement of the quality of the environment shall be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.



CONCLUDES that the present formulation of Article 36 on the protection of the environment which places no obligation upon States and which does not recognise any individual right, is an unjustifiable step backwards from the commitments undertaken by States of the Union at national and international levels and does not reflect the evolution of law during the last decade;

PROPOSES to the Presidium of the Convention that the text of Article 36 of the Charter be drafted in terms that ensure that the Union recognises and respects the right of every person to protection of the environment in order to secure the right of each person to live in an environment adequate for maintenance of their physical and mental health, the enhancement of their dignity and their personal achievement.

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**DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**  
**fundamental.rights@consilium.eu.int**

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**Brussels, 18 October 2000 (23.10)**

**CHARTE 4956/00**

**CONTRIB 355**

**COVER NOTE**

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Subject : Draft Charter of Fundamental Rights of the European Union

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Please find attached a communication (COM(2000) 644 final) from the Commission of the European Communities entitled "On the Legal Nature of the Charter of Fundamental Rights of the European Union".<sup>1</sup>

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<sup>1</sup> This communication was submitted in all the languages.



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 11.10.2000  
COM(2000) 644 final

**COMMUNICATION FROM THE COMMISSION**

**ON THE LEGAL NATURE OF THE CHARTER OF FUNDAMENTAL RIGHTS OF THE  
EUROPEAN UNION**

## COMMUNICATION FROM THE COMMISSION

### ON THE LEGAL NATURE OF THE CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

#### THE CHARACTERISTICS OF THE DRAFT CHARTER

1. The challenge of preparing the draft Charter has been taken up: at the formal session of the Convention on 2 October 2000, the President of the Convention responsible for preparing it recorded that there was broad consensus on the draft and sent it to the President of the European Council.<sup>2</sup>

The draft Charter offers great potential value added. By bringing together in a single instrument the rights hitherto scattered over a range of national and international instruments, it enshrines the very essence of the European *acquis* regarding fundamental rights.

2. This is a balanced text that makes ambitious innovations:
  - all personal rights – civil, political, economic and social rights and the rights of citizens of the European Union – are brought together in a single instrument. It thus throws into the sharpest relief the principle of the indivisibility of rights. The draft Charter breaks with the distinction hitherto made in both European and international documents between civil and political rights on the one side and economic and social rights on the other, enumerating all rights around a few major principles: human dignity, fundamental freedoms, equality, solidarity, citizenship and justice;
  - in respect for the principle of universalism, the rights set forth in the draft are generally given to all persons, irrespective of their nationality or residence. The position is different for the rights that are most directly bound up with citizenship of the Union, which are given only to citizens (such as participation in elections to the European Parliament or in local elections), and for certain rights that are related to a particular status (rights of children, certain social rights of workers, for example);
  - the draft is decidedly contemporary in that it sets forth rights which, without being strictly new, such as data protection and rights linked to bioethics, are designed to meet the challenges of current and future development of information technologies and genetic engineering;
  - the draft also meets the strong and legitimate contemporary demand for transparency and impartiality in the operation of the Community administration, incorporating the rights of access to administrative documents of the Community institutions and the right to sound administration that sum up the tenor of the decisions of the Court of Justice;

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<sup>2</sup> Document CHARTE 4487/00 (CONVENT 50), 28 September 2000.

- the gender-neutral language used in the text also deserves highlighting. The draft is addressed to everybody, with no predominance of one gender over the other;
  - in formal terms, it is drafted clearly and concisely and it will be easy for all those to whom it is addressed to understand. This was the first condition that had to be met in order to satisfy the demand from the Cologne European Council for "a Charter of fundamental rights ... to make their overriding importance and relevance more visible to the Union's citizens". It is also a condition for the enjoyment of all the benefits of certainty as to the law that the Charter must offer in areas where Union law applies.
3. In the light of the characteristics of the draft – which satisfies the requests made by the Commission in its Communication of 13 September<sup>3</sup> – the Commission representative was able to indicate his full approval of the draft Charter.

The Commission is convinced that the value added by the draft is real and that this value added is the basis for the future success of the Charter, irrespective of its ultimate legal nature.

### THE NATURE AND EFFECTS OF THE CHARTER

4. The question of the nature of the Charter has been at the centre of the debate ever since the Cologne European Council decided to prepare a draft Charter. The Heads of State or Government decided to answer this question in two stages:
- first, the Charter should be solemnly proclaimed by the European Parliament, the Commission and the Council,
  - then, *"It will then have to be considered whether and, if so, how the Charter should be integrated into the treaties"*<sup>4</sup>
5. There have been a number of expressions of opinion on the question.

The European Parliament, in two resolutions passed on 16 March<sup>5</sup> and 2 October 2000,<sup>6</sup> resolutely supported a mandatory Charter incorporated in the Treaties. So did the Economic and Social Committee<sup>7</sup> and the Committee of the Regions<sup>8</sup> in opinions given at their September 2000 sessions.

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<sup>3</sup> Document COM (2000) 559.

<sup>4</sup> Conclusions of the Presidency of the Cologne European Council, 3 and 4 June 1999, Annex IV.

<sup>5</sup> Resolution A5-0064/2000 of the European Parliament on the elaboration of a Charter of Fundamental Rights of the European Union: minutes of the plenary session of 16 March 2000.

<sup>6</sup> Resolution B5-767/2000 of the European Parliament on the Charter of Fundamental Rights: minutes of the plenary session of 3 October 2000.

<sup>7</sup> Economic and Social Committee Resolution 1005/2000, adopted on 20 September 2000.

<sup>8</sup> Committee of the Regions Resolution 140/2000, adopted on 20 September 2000.

The same call was made virtually unanimously by the representatives of civil society at the hearings organised by the Convention. It is unlikely that the expectations aroused in public opinion by the decision to prepare the Charter could be satisfied by mere proclamation by the Community institutions without incorporation of the Charter in the Treaties.

Many members of the Convention, belonging to different component groups and political trends, supported a Charter incorporated in the Treaties.

Lastly, the Commission, in its Communication of 13 September, undertook to present a Communication on the nature of the Charter.

6. The Commission had an opportunity to express an opinion on the nature of the Charter when answering an oral question in the European Parliament last December.<sup>9</sup> It stated that the Convention, both during its proceedings and in its final outcome, should leave open the two options as to the Charter's final status, as envisaged by the Heads of State or Government – a legally mandatory instrument incorporated in the Treaties or a solemn political declaration.

The Commission also stated that the draft Charter should meet two fundamental objectives: visibility for the citizen and the certainty as to the law that the Charter must offer in areas where Union law applies.

7. It is in this spirit, notably at the instigation of the President of the Convention, Mr Herzog, that from the very outset the Convention's proceedings were directed towards producing a text "as if" it were to be incorporated in the Treaties, thus leaving the final choice to the European Council.
8. This "as if" doctrine clearly inspired the Convention. If a Charter had been prepared solely for presentation as a political declaration, the general provisions of the draft, which are the most important and the most difficult ones (Chapter VII), would have been superfluous.

The importance of these clauses must be emphasised: they are the guarantee of the Charter's future success.

They are the place where it is specified just what the Charter is – an instrument to verify respect for fundamental rights by the institutions and the Member States when they act under Union law. This is made clear by Article 51(?), which provides that the Charter is addressed to the Union institutions and bodies and to the Member States, when they give effect to Union law.

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<sup>9</sup> Oral question 0-0698/99 by Mr David Martin.

9. But these provisions also seek to offer an appropriate response to the highly important questions that will arise in the event of incorporation of the Charter in the Treaties.

The Commission considers that the draft Charter offers an acceptable response:

- **respect for the autonomy of Union law:** it is also important that the Charter be incorporated harmoniously into the Union legal system and that its underlying legal principles be respected. This applies in particular to the autonomy of the Community legal order in relation to international law and the national law of the Member States; the Charter is drafted in such a way as to respect that autonomy. In particular, the explicit recognition by the last sentence of Article 52(3) is perfectly satisfactory: there is nothing to preclude Union law from giving more extensive protection than the European Convention;
- **the relationship between the Charter and the European Convention for the Protection of Human Rights and Fundamental Freedoms:** the risk of disparity between the rights and freedoms secured by the European Convention and those set forth in the Charter, and the risk of the case-law of the Luxembourg and Strasbourg courts diverging, was carefully analysed while the draft Charter was being prepared. The solutions adopted by Article 52(3) of the draft are entirely satisfactory; there was the same broad consensus on them as on the other provisions of the draft, and the Council of Europe observers in the Convention also supported them: the rights set forth in the Charter correspond in their meaning and scope to rights already secured by the European Convention, without prejudice to the principle of the autonomy of Union law. The risk of the case-law of the European Court of Human Rights diverging from that of the Court of Justice of the European Communities should thereby be removed. If the draft Charter is silent on the question of Union accession to the European Convention, of course, it must be acknowledged that the question remains open. The existence of the Charter will not render the question of accession any less interesting, the effect being to introduce external monitoring of fundamental rights at Union level; by the same token accession to the Convention would not make the preparation of the Union Charter any less valuable;
- **the relationship between the Charter and the Union's powers, and respect for the principle of subsidiarity:** in no case will the Charter be a means of extending the Community's powers and the Union's tasks. And the subsidiarity principle must be respected. Article 51 of the draft is perfectly clear; this is borne out by paragraph 5 of the Preamble, stating, "just in case", how attentive the authors of the draft were to these points;
- **the relationship between the Charter and the national Constitutions:** it might have been feared that the Charter would make it necessary for Member States to amend their constitutions. This will manifestly not be the case, not just because of one of the general provisions of the draft but also because of the definition of the rights it sets forth. In any event, proper account has been taken of observations on the need to attain this objective, made throughout the Convention's proceedings, in particular by government representatives. At the end of the day it is clear that the Charter will not replace national Constitutions in the area

within its scope – respect for fundamental rights at national level. And it is clear that the relationship between Union primary law, which would include the Charter if it is incorporated in the Treaties, and national law will remain unchanged;

– **a major advance in certainty as to the law:** at this time it seems clear to the Commission that the Charter will not endanger certainty as to the law relating to fundamental rights. Quite the contrary: it will increase it in no small measure. The Charter will offer a clear guide for the interpretation of fundamental rights by the Court of Justice which in the current situation has to use disparate, sometimes uncertain, sources of inspiration. It must also be stressed that the Charter makes no change to the redress procedures and court architecture provided for by the Treaties, since it opens up no new procedures for seeking redress in the Community courts.

10. Consequently, given the foregoing considerations, it is reasonable to assume that the Charter will produce all its effects, legal and others, whatever its nature. As the Commission said in the European Parliament on 3 October 2000,<sup>10</sup> it is clear that it would be difficult for the Council and the Commission, who are to proclaim it solemnly, to ignore in the future, in their legislative function, an instrument prepared at the request of the European Council by the full range of sources of national and European legitimacy acting in concert.

Likewise, it is highly likely that the Court of Justice will seek inspiration in it, as it already does in other fundamental rights instruments. *It can reasonably be expected that the Charter will become mandatory through the Court's interpretation of it as belonging to the general principles of Community law.*

- 11 The Commission considers that the Charter, by reason of its content, its tight drafting and its high political and symbolic value, ought properly to be incorporated in the Treaties sooner or later. For the Commission, this incorporation is not a question to be addressed in theoretical or doctrinal terms. It must be addressed in terms of legal effectiveness and common sense. *It is therefore preferable, for the sake of visibility and certainty as to the law, for the Charter to be made mandatory in its own right and not just through its judicial interpretation. In practice, the real question is when and how it should be incorporated in the Treaties.*

## WHAT SHOULD BE DECIDED TODAY?

12. The Commission is aware of the importance attached to the Charter being able to have full effect in the future. It does not wish to overload an already heavy political agenda. It will be for the Heads of State or Government to take up that challenge. But the Commission's political assessment is that any decision on the matter must be based on clear criteria that have already been put forward:
- evaluation of the content of the Charter,
  - greater certainty as to the law,

<sup>10</sup> Oral question 0-0115/00 by Mr Giorgio Napolitano.



- visibility of rights for citizens,
- a firm foundation for the European venture in the values protected by fundamental rights.

Irrespective of all this, the Commission emphasises that the Heads of State or Government have a number of options regarding both the technicalities of incorporation in the Treaties and the timing.

Regarding timing, the European Council might consider entering the question on the agenda for the current Intergovernmental Conference. It could take a decision to that effect at the Biarritz meeting. But this question cannot be considered without regard for the scope of the proceedings as already defined by the European Council for the present Intergovernmental Conference or for the prospect of reorganising the Treaties as proposed by the Commission at that conference in its communication of 12 July 2000, "A Basic Treaty for the European Union".<sup>11</sup>

As the Commission sees it, there is a very close link between reorganisation of the Treaties and incorporation of the Charter in them. Consequently the Heads of State or Government should at the very least decide at Nice to launch some kind of process in this direction, clearly setting objectives and procedural and other details.

This is the only way forward that provided a basis for an effort to educate the citizen and give practical form to the technical details that will bring a sound result within reach.

Regarding the technical details, the European Council might in due course envisage, for example, straightforward incorporation of the articles of the Charter in the Treaty on European Union in a Title headed "Fundamental Rights", or incorporation of the Charter in a Protocol annexed to the Treaties.

In any event, the question arises whether Article 6(2) of the Treaty on European Union can be kept in its present form. At the very least it must be generally obvious that, while leaving open the possibility of future developments, there can be no question of pretending to ignore the Charter as a solemn political declaration, in the light of Article 6(2). The Commission considers that this question should be discussed by the Intergovernmental Conference after the Biarritz European Council. The point would be to consider the possibility of amending this provision of the Treaty on European Union, bearing in mind the sequence determined by the conclusions of the Cologne European Council: proclamation of the Charter by the European Council at Nice, then incorporation in the Treaties.

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<sup>11</sup> Document COM (2000) 434.

## ***III.5. Miscellaneous Documents – Member Lists, Agendas and Work Plans, and European Parliament Delegation Documents***

## **III.5.a. Member Lists and Curricula Vitae**

## PROJET DE CHARTE DES DROITS FONDAMENTAUX


### Liste des nominations avec adresses etc.

État au 15 décembre 1999

| Institution/État                                              | Nom<br>(« T » = titulaire/ « S » = Suppléant) |
|---------------------------------------------------------------|-----------------------------------------------|
| Parlement européen<br><i>Président délégation PE : --&gt;</i> | M. Inigo MÉNDEZ DE VIGO (T)                   |
|                                                               | Mme Charlotte CEDERSCHIÖLD (T)                |
|                                                               | M. Thierry CORNILLET (T)                      |
|                                                               | M. Ingo FRIEDRICH (T)                         |
|                                                               | M. Timothy KIRKHOPE (T)                       |
|                                                               | Mme Johanna MAIJ-WEGGEN (T)                   |
|                                                               | M. David MARTIN (T)                           |
|                                                               | Mme Pervenche BÉRÉS (T)                       |
|                                                               | M. Hans-Peter MARTIN (T)                      |
|                                                               | M. Martin SCHULZ (T)                          |
|                                                               | Mme Elena PACIOTTI (T)                        |
|                                                               | M. Andrew DUFF (T)                            |
|                                                               | M. Johannes VOGGENHUBER (T)                   |
|                                                               | Mme Sylvia-Yvonne KAUFMANN (T)                |
|                                                               | M. Georges BERTHU (T)                         |
|                                                               | M. Jens-Peter BONDE (T)                       |
|                                                               | Mme Teresa ALMEIDA GARRETT (S)                |
|                                                               | M. Rocco BUTTIGLIONE (S)                      |
|                                                               | M. Konstantinos HATZIDAKIS (S)                |
|                                                               | Mme Marie-Thérèse HERMANGE (S)                |
|                                                               | M. Peter Michael MOMBAUR (S)                  |
|                                                               | M. Reinhard RACK (S)                          |
|                                                               | Mme Ieke van den BURG (S)                     |
|                                                               | Mme Catherine LALUMIERE (S)                   |
|                                                               | Mme Ulpu IIVARI (S)                           |
|                                                               | M. Phillip WHITEHEAD (S)                      |
|                                                               | M. Jean-Maurice DEHOUSSE (S)                  |
|                                                               | M. Graham WATSON (S)                          |
|                                                               | Mme Kathalijne BUITENWEG (S)                  |
|                                                               | Mme Pernille FRAHM (S)                        |
|                                                               | M. Mauro NOBILIA (S)                          |
|                                                               | M. Rijk van DAM (S)                           |

| Institution/Etat                                                                                                                                                                                                                                               | Nom<br>(« T » = titulaire/ »S » = Suppléant)                                                                                                                                                                                                                                              |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Cour de Justice</b><br>Plateau du Kirchberg<br>L-2925 Luxembourg<br>Greffier : M. Grass                                                                                                                                                                     | M. SKOURIS (Juge)<br>Secr. Mme Epidexiou tél. 352-4303-2210<br>M. ALBER (Avocat général)                                                                                                                                                                                                  |
| <b>Conseil de l'Europe</b><br>Résidence Palace,<br>155 Rue de la Loi Bte 3<br>1040 Bruxelles<br>Thomas Ouchterlony<br>Tél ; 230 41 70/230 47 21<br>Fax 230 94 62<br>e-mail<br><a href="mailto:thomas.ouchterlony@euronet.be">thomas.ouchterlony@euronet.be</a> | M. KRUGER (Secrétaire général adjoint)<br>M. FISCHBACH (Juge)                                                                                                                                                                                                                             |
| <b>Commission</b><br>200, rue de la Loi (N-9, 07/3A)<br>1049 Bruxelles<br>tél ; 299 11 11                                                                                                                                                                      | M. António VITORINO (Commissaire)<br>Tél 322 2981 900 +2981 901<br>Fax 322 2981 999<br>Respons. Cabinet : Francisco Fonseca Morillo<br>N-9, 7/11, tél. 322 2956845 + 2950712 ; fax 2994980                                                                                                |
| <b>Finlande (Présidence)</b><br><br>Parlement finlandais                                                                                                                                                                                                       | M. Paavo NIKULA (Chancelier de la justice)<br>Bureau du Chancelier de la Justice<br>BP 310, 00171 Helsinki<br>Tél. 358-9-160-3930 Fax 160-3975<br>e-mail Paavo <a href="mailto:Nikula@okv.vn.fi">Nikula@okv.vn.fi</a><br>M. Gunnar JANSSON<br>Mme Tuija BRAX<br>Tél. Parlement 358-9-4321 |
| <b>Allemagne</b><br><br>Parlement :                                                                                                                                                                                                                            | M. Roman HERZOG<br>Prinzregentenstr. 89<br>81675 89 München<br>tél. 49 89 470 37160 ; fax 470 27 168<br>M. Jurgen MEYER (T) (Bundestag/SPD)<br>M. Jürgen GNAUCK (T)<br>M. Peter ALTMAIER (S) (Bundestag/CDU/CSU)<br>M. Wolf WEBER (S)                                                     |
| <b>Belgique</b><br>Parlement :                                                                                                                                                                                                                                 | M. Jean-Luc DEHAENE<br>M. Roger LALLEMAND (T) (Prés.honor.Sénat)<br>Av. Emile Demot 19, 1000 Bruxelles<br>Tél. 322-629 88 60 ou 80 ; fax 648 78 41<br>M. Karel de GUCHT (T)                                                                                                               |

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|---------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>France</b></p> <p>Parlement</p>       | <p>M. BRAIBANT (T) (Président Comm.supérieure de codification)<br/>         Commission supérieure de codification<br/>         72, rue de Varenne<br/>         F75700 Paris<br/>         Tél. 331-42 75 85 83, fax 331-42 75 72 06</p> <p>M. François LONCLE (T) (Député Ass.nationale)<br/>         M. Hubert HAENEL (T) (Sénat)<br/>         Mme Marie-Madeleine DIEULANGARD (S)</p> |
| <p><b>Espagne</b></p> <p>Parlement</p>      | <p>M. RODRIGUEZ-BEREIJO<br/>         Tél ; 34 91 5444 508 ; fax : 5432 792</p> <p>M. Gabriel CISNEROS (T)<br/>         M. Jordi SOLÉ TURA(T)</p>                                                                                                                                                                                                                                       |
| <p><b>Grèce</b></p> <p>Parlement</p>        | <p>M. George PAPADIMITRIOU<br/>         Legal Advisor to the Prime Minister<br/>         Parliament Building<br/>         GR-10671 Athènes<br/>         Tél 30-1-331 09 78 + 331 09 79<br/>         Fax 30-1-364 03 44</p> <p>M. Georgios ROMEOS (T)<br/>         M. Michael LIAPIS (T)</p>                                                                                            |
| <p><b>Pays-Bas</b></p> <p>Parlement :</p>   | <p>M. Frits KORTHALS ALTES (Président Sénat, 1ère chambre, VVD)<br/>         M. Michiel PATIJN (T) (Sénat, 2ème chambre)<br/>         M. Ernst HIRSCH BALLIN (T) (Sénat, 1ère chambre)<br/>         M. Erik JURGENS (S) (Sénat, 1ère chambre)<br/>         M. Gerritjan van OVEN (S) (Sénat, 2ème chambre)</p>                                                                         |
| <p><b>Luxembourg</b></p> <p>Parlement :</p> | <p>M. Paul-Henri MEYERS (Député)<br/>         1 Rue Auguste Trémont<br/>         L2624 Luxembourg<br/>         tél. 352 479 62 664 . [REDACTED]</p> <p>M. Ben Fayot (T) (Chambre des députés)<br/>         Mme Simone BEISSEL (T) (Chambre des députés)</p>                                                                                                                            |
| <p><b>Royaume-Uni</b></p> <p>Parlement</p>  | <p>Lord GOLDSMITH QC<br/>         [REDACTED]</p> <p>M. Wyn GRIFFITHS (T) (MP)<br/>         Lord BOWNESS (T)<br/>         Both : House of Commons/House of Lords<br/>         Parliament Square, London SW 1</p>                                                                                                                                                                        |
| <p><b>Suède</b></p> <p>Parlement :</p>      | <p>M. Daniel TARCHYS<br/>         M. Goran MAGNUSSON (T) (Soc.Democ.Party)<br/>         M. Lars F. TOBISSON (T) (Moderate Party)</p>                                                                                                                                                                                                                                                   |

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|-----------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>Danemark</b></p> <p>Parlement</p> | <p>M. Erling OLSEN (T) (Former Minister Justice/<br/>Speaker of the Danish Parliament)<br/>Søbredden 14<br/>DK-2820 Gentofte<br/>Tél ; 45-3965-5838 ; Fax : 3965 8743<br/>E-mail <a href="mailto:eoaul@post.11.tele.dk">eoaul@post.11.tele.dk</a></p> <p>Mr. Tyge LEHMANN (S) (Ambassadeur/Chief Advisor)<br/>Danish Ministry of Foreign Affairs<br/>Asiasisk Plads 2<br/>DK 1448 København K<br/>Tél ; 45-3392 1866 ; Fax 3392 1865<br/>E-mail <a href="mailto:tygleh@um.dk">tygleh@um.dk</a></p> <p>M. Jacob BUKSTI (T) (MP, Soc.Democr.Party)<br/>Mme Ulla Tørnaes (T) (MP, Denmark's Liberal Party)<br/>M. Knud Erik HANSEN (S) (MP, Soc.Peoples Party)<br/>Mme Pia CHRISTMAS-MØLLER (S) (MP,<br/>Conservative Party)<br/>Courrier Parlement au Folketinget's représentation<br/>Bruxelles à Morten Knudsen: <a href="mailto:iamokn@ft.dk">iamokn@ft.dk</a> ou à Bjørn<br/>Einesen <a href="mailto:iabjei@ft.dk">iabjei@ft.dk</a></p> |
| <p><b>Portugal</b></p> <p>Parlement</p> | <p>M. Pedro BACELAR DE VASCOINCELLOS</p>  <p>M. José BARROS MOURA (T)<br/>Mme Maria Eduarda AZEVEDO (T)</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <p><b>Italie</b></p> <p>Parlement :</p> | <p>M. Giovanni Maria FLICK (ex-Ministre Justice)<br/>M. Andrea MANZELLA (T) (Sénat)<br/>M. Piero MELOGRANI (T) (Chambre Députés)<br/>M. Furio BOSELLA (S) (Sénat)<br/>Mme Maria Pia VALETTO BITELLI (S) (Chambre Dép.)</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| <p><b>Irlande</b></p> <p>Parlement</p>  | <p>M. Michael O'KENNEDY<br/>Houses of the Oireachtas, Room 550<br/>Leinster House, Kildare Street<br/>Dublin 2<br/>Tél. 353 1 516 3082 ; fax : 618 4533<br/>e-mail <a href="mailto:m.o'kennedy@oireachtas.irlgov.ie">m.o'kennedy@oireachtas.irlgov.ie</a></p> <p>M. Desmond O'MALLEY (T) (Chairman Joint Ctee on<br/>Foreign Affairs)<br/>M. Bernard DURKAN (T) (Chairman Joint Ctee on<br/>European Affairs)<br/>(Brian Cahalane - Adviser)<br/>tél. 353-1-618 3924, fax: 618 4124</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                   |

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|------------------|---------------------------------------------------------------------------------------------------------------------------------|
| <b>Autriche</b>  | <b>Franz Vranitzky (Former Federal Chancellor)</b><br>Führichg. 8/11<br>1010 Vienne<br>tél. 431-512 04 00, fax 431-512 04 00/20 |
| <b>Parlement</b> | <b>Heinrich Neisser (T)</b><br>Parlamentsdirektion<br>1017 Vienne<br>tél. 00431-40 110/0, fax 431-40 110/2537                   |
|                  | <b>Harald Ofner (T)</b><br>Parlamentsdirektion<br>1017 Vienne<br>tél. 431-40 110 0, fax 431-40 110/2537                         |



| Autres instances                                                                                           | Nom                   |
|------------------------------------------------------------------------------------------------------------|-----------------------|
| <b>Comité économique et social</b><br>2, rue Ravenstein<br>1000 Bruxelles<br>tél. 546 38 02; fax 546081029 | M. Alan HICK          |
| <b>Comité des Régions</b><br>79 Rue Belliard, 1040 Bruxelles<br>tél. 282 21 75 ; fax 282 23 26             | Mme Béatrice TAULÉGNE |
| <b>Le Médiateur</b>                                                                                        |                       |
|                                                                                                            |                       |
|                                                                                                            |                       |

## PROJET DE CHARTE DES DROITS FONDAMENTAUX


### Liste des nominations avec adresses etc.

État au 3 janvier 2000

| Institution/État                                              | Nom<br>(« T » = titulaire/ « S » = Suppléant) |
|---------------------------------------------------------------|-----------------------------------------------|
| Parlement européen<br><i>Président délégation PE : --&gt;</i> | M. Inigo MÉNDEZ DE VIGO (T)                   |
|                                                               | Mme Charlotte CEDERSCHIÖLD (T)                |
|                                                               | M. Thierry CORNILLET (T)                      |
|                                                               | M. Ingo FRIEDRICH (T)                         |
|                                                               | M. Timothy KIRKHOPE (T)                       |
|                                                               | Mme Johanna MAIJ-WEGGEN (T)                   |
|                                                               | M. David MARTIN (T)                           |
|                                                               | Mme Pervenche BÉRÈS (T)                       |
|                                                               | M. Hans-Peter MARTIN (T)                      |
|                                                               | M. Martin SCHULZ (T)                          |
|                                                               | Mme Elena PACIOTTI (T)                        |
|                                                               | M. Andrew DUFF (T)                            |
|                                                               | M. Johannes VOGGENHUBER (T)                   |
|                                                               | Mme Sylvia-Yvonne KAUFMANN (T)                |
|                                                               | M. Georges BERTHU (T)                         |
|                                                               | M. Jens-Peter BONDE (T)                       |
|                                                               | Mme Teresa ALMEIDA GARRETT (S)                |
|                                                               | M. Rocco BUTTIGLIONE (S)                      |
|                                                               | M. Konstantinos HATZIDAKIS (S)                |
|                                                               | Mme Marie-Thérèse HERMANGE (S)                |
|                                                               | M. Peter Michael MOMBAUR (S)                  |
|                                                               | M. Reinhard RACK (S)                          |
|                                                               | Mme Ieke van den BURG (S)                     |
|                                                               | Mme Catherine LALUMIERE (S)                   |
|                                                               | Mme Ulpu IIVARI (S)                           |
|                                                               | M. Phillip WHITEHEAD (S)                      |
|                                                               | M. Jean-Maurice DEHOUSSE (S)                  |
|                                                               | M. Graham WATSON (S)                          |
|                                                               | Mme Kathalijne BUITENWEG (S)                  |
|                                                               | Mme Pernille FRAHM (S)                        |
| M. Mauro NOBILIA (S)                                          |                                               |
| M. Rijk van DAM (S)                                           |                                               |

| Institution/Etat                                                                                                                                                                                                                                               | Nom<br>(« T » = titulaire/ »S » = Suppléant)                                                                                                                                                                                                                                              |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Cour de Justice</b><br>Plateau du Kirchberg<br>L-2925 Luxembourg<br>Greffier : M. Grass                                                                                                                                                                     | M. SKOURAS (Juge)<br>Secr. Mme Epidexiou tél. 352-4303-2210<br>M. ALBER (Avocat général)                                                                                                                                                                                                  |
| <b>Conseil de l'Europe</b><br>Résidence Palace,<br>155 Rue de la Loi Bte 3<br>1040 Bruxelles<br>Thomas Ouchterlony<br>Tél ; 230 41 70/230 47 21<br>Fax 230 94 62<br>e-mail<br><a href="mailto:thomas.ouchterlony@euronet.be">thomas.ouchterlony@euronet.be</a> | M. KRUGER (Secrétaire général adjoint)<br>M. FISCHBACH (Juge)                                                                                                                                                                                                                             |
| <b>Commission</b><br>200, rue de la Loi (N-9, 07/3A)<br>1049 Bruxelles<br>tél ; 299 11 11                                                                                                                                                                      | M. António VITORINO (Commissaire)<br>Tél 322 2981 900 +2981 901<br>Fax 322 2981 999<br>Respons.Cabinet : Francisco Fonseca Morillo<br>N-9, 7/11, tél. 322 2956845 + 2950712 ; fax 2994980                                                                                                 |
| <b>Finlande</b> (Présidence)<br><br>Parlement finlandais :                                                                                                                                                                                                     | M. Paavo NIKULA (Chancelier de la justice)<br>Bureau du Chancelier de la Justice<br>BP 310, 00171 Hølsinki<br>Tél. 358-9-160-3930 Fax 160-3975<br>e-mail Paavo <a href="mailto:Nikula@okv.vn.fi">Nikula@okv.vn.fi</a><br>M. Gunnar JANSSON<br>Mme Tuija BRAX<br>Tél. Parlement 358-9-4321 |
| <b>Allemagne</b><br><br>Parlement :                                                                                                                                                                                                                            | M. Roman HERZOG<br>Prinzregentenstr. 89<br>81675 89 München<br>tél. 49 89 470 37160 ; fax 470 27 168<br>M. Jurgen MEYER (T) (Bundestag/SPD)<br>M. Jürgen GNAUCK (T)<br>M. Peter ALTMAIER (S) (Bundestag/CDU/CSU)<br>M. Wolf WEBER (S)                                                     |
| <b>Belgique</b><br>Parlement :                                                                                                                                                                                                                                 | M. Jean-Luc DEHAENE<br>M. Roger LALLEMAND (T) (Prés.honor.Sénat)<br>Av. Emile Demot 19, 1000 Bruxelles<br>Tél. 322-629 88 60 ou 80 ; fax 648 78 41<br>M. Karel de GUCHT (T)                                                                                                               |

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|---------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>France</b></p> <p>Parlement</p>       | <p>M. BRAIBANT (T) (Président Comm.supérieure de codification)<br/>         Commission supérieure de codification<br/>         72, rue de Varenne<br/>         F75700 Paris<br/>         Tél. 331-42 75 85 83, fax 331-42 75 72 06<br/>         M. François LONCLE (T) (Député Ass.nationale)<br/>         M. Hubert HAENEL (T) (Sénat)<br/>         Mme Marie-Madeleine DIEULANGARD (S)</p> |
| <p><b>Espagne</b></p> <p>Parlement</p>      | <p>M. RODRIGUEZ-BEREIJO<br/>         Tél ; 34 91 5444 508 ; fax : 5432 792<br/>         M. Gabriel CISNEROS (T)<br/>         M. Jordi SOLÉ TURA (T)</p>                                                                                                                                                                                                                                      |
| <p><b>Grèce</b></p> <p>Parlement</p>        | <p>M. George PAPADIMITRIOU<br/>         Legal Advisor to the Prime Minister<br/>         Parliament Building<br/>         GR-10671 Athènes<br/>         Tél 30-1-331 09 78 + 331 09 79<br/>         Fax 30-1-364 03 44<br/>         M. Georgios ROMEOS (T)<br/>         M. Michael LIAPIS (T)</p>                                                                                            |
| <p><b>Pays-Bas</b></p> <p>Parlement :</p>   | <p>M. Frits KORTHALS ALTES (Président Sénat, 1ère chambre, VVD)<br/>         M. Michiel PATIJN (T) (Sénat, 2ème chambre)<br/>         M. Ernst HIRSCH BALLIN (T) (Sénat, 1ère chambre)<br/>         M. Erik JURGENS (S) (Sénat, 1ère chambre)<br/>         M. Gerritjan van OVEN (S) (Sénat, 2ème chambre)</p>                                                                               |
| <p><b>Luxembourg</b></p> <p>Parlement :</p> | <p>M. Paul-Henri MEYERS (Député)<br/>         1 Rue Auguste Trémont<br/>         L2624 Luxembourg<br/>         tél. 352 479 62 664 . [REDACTED]<br/>         M. Ben Fayot (T) (Chambre des députés)<br/>         Mme Simone BEISSEL (T) (Chambre des députés)</p>                                                                                                                            |
| <p><b>Royaume-Uni</b></p> <p>Parlement</p>  | <p>Lord GOLDSMITH QC<br/>         [REDACTED]<br/>         M. Wyn GRIFFITHS (T) (MP)<br/>         Lord BOWNESS (T)<br/>         Both : House of Commons/House of Lords<br/>         Parliament Square, London SW 1</p>                                                                                                                                                                        |
| <p><b>Suède</b></p> <p>Parlement :</p>      | <p>M. Daniel TARCHYS<br/>         M. Goran MAGNUSSON (T) (Soc.Democ.Party)<br/>         M. Lars F. TOBISSON (T) (Moderate Party)</p>                                                                                                                                                                                                                                                         |

|                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|-----------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>Danemark</b></p> <p>Parlement</p> | <p>M. Erling OLSEN (T) (Former Minister Justice/<br/>Speaker of the Danish Parliament)<br/>Søbredden 14<br/>DK-2820 Gentofte<br/>Tél ; 45-3965-5838 ; Fax : 3965 8743<br/>E-mail <a href="mailto:eoaul@post.11.tele.dk">eoaul@post.11.tele.dk</a><br/>Mr. Tyge LEHMANN (S) (Ambassadeur/Chief Advisor)<br/>Danish Ministry of Foreign Affairs<br/>Asiasisk Plads 2<br/>DK 1448 København K<br/>Tél ; 45-3392 1866 ; Fax 3392 1865<br/>E-mail <a href="mailto:tygleh@um.dk">tygleh@um.dk</a><br/>M. Jacob BUKSTI (T) (MP, Soc.Democr.Party)<br/>Mme Ulla Tørnaes (T) (MP, Denmark's Liberal Party)<br/>M. Knud Erik HANSEN (S) (MP, Soc.Peoples Party)<br/>Mme Pia CHRISTMAS-MØLLER (S) (MP,<br/>Conservative Party)<br/>Courrier Parlement au Folketinget's représentation<br/>Bruxelles à Morten Knudsen: <a href="mailto:iamokn@ft.dk">iamokn@ft.dk</a> ou à Bjørn<br/>Einesen <a href="mailto:iabjei@ft.dk">iabjei@ft.dk</a></p> |
| <p><b>Portugal</b></p> <p>Parlement</p> | <p>M. Pedro BACELAR DE VASCONCELLOS</p>  <p>M. José BARROS MOURA (T)<br/>Mme Maria Eduarda AZEVEDO (T)</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| <p><b>Italie</b></p> <p>Parlement :</p> | <p>M. Giovanni Maria FLICK (ex-Ministre Justice)<br/>M. Andrea MANZELLA (T) (Sénat)<br/>M. Piero MELOGRANI (T) (Chambre Députés)<br/>M. Furio BOSELLA (S) (Sénat)<br/>Mme Maria Pia VALETTO BITELLI (S)(Chambre Dép.)</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <p><b>Irlande</b></p> <p>Parlement</p>  | <p>M. Michael O'KENNEDY<br/>Houses of the Oireachtas, Room 550<br/>Leinster House, Kildare Street<br/>Dublin 2<br/>Tél. 353 1 516 3082 ; fax : 618 4533<br/>e-mail <a href="mailto:m.o'kennedy@oireachtas.irlgov.ie">m.o'kennedy@oireachtas.irlgov.ie</a><br/>M. Desmond O'MALLEY (T) (Chaiman Joint Ctee on<br/>Foreign Affairs)<br/>M. Bernard DURKAN (T) (Chairman Joint Ctee on<br/>European Affairs)<br/>(Brian Cahalane - Adviser)<br/>tél. 353-1-618 3924, fax: 618 4124</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                 |

|                 |                                                                                                                          |
|-----------------|--------------------------------------------------------------------------------------------------------------------------|
| <b>Autriche</b> | Franz Vranitzky (Former Federal Chancellor)<br>Führichg. 8/11<br>1010 Vienne<br>tél. 431-512 04 00, fax 431-512 04 00/20 |
| Parlement       | Heinrich Neisser (T)<br>Parlamentsdirektion<br>1017 Vienne<br>tél. 00431-40 110/0, fax 431-40 110/2537                   |
|                 | Harald Ofner (T)<br>Parlamentsdirektion<br>1017 Vienne<br>tél. 431-40 110 0, fax 431-40 110/2537                         |

| <b>Autres instances</b>                                                                                    | <b>Nom</b>            |
|------------------------------------------------------------------------------------------------------------|-----------------------|
| <b>Comité économique et social</b><br>2, rue Ravenstein<br>1000 Bruxelles<br>tél. 546 38 02; fax 546081029 | M. Alan HICK          |
| <b>Comité des Régions</b><br>79 Rue Belliard, 1040 Bruxelles<br>tél. 282 21 75 ; fax 282 23 26             | Mme Béatrice TAULÉGNE |
| <b>Le Médiateur</b>                                                                                        |                       |
|                                                                                                            |                       |
|                                                                                                            |                       |

## PROJET DE CHARTE DES DROITS FONDAMENTAUX

### Liste des nominations

État au 9 février 2000

| Institution/État                                              | Nom<br>(« T » = titulaire/ « S » = Suppléant) |
|---------------------------------------------------------------|-----------------------------------------------|
| Parlement européen<br><i>Président délégation PE : --&gt;</i> | M. Inigo MÉNDEZ DE VIGO (T)                   |
|                                                               | Mme Charlotte CEDERSCHIÖLD (T)                |
|                                                               | M. Thierry CORNILLET (T)                      |
|                                                               | M. Ingo FRIEDRICH (T)                         |
|                                                               | M. Timothy KIRKHOPE (T)                       |
|                                                               | Mme Johanna MAIJ-WEGGEN (T)                   |
|                                                               | M. David MARTIN (T)                           |
|                                                               | Mme Pervenche BERES (T)                       |
|                                                               | M. Hans-Peter MARTIN (T)                      |
|                                                               | M. Martin SCHULZ (T)                          |
|                                                               | Mme Elena PACIOTTI (T)                        |
|                                                               | M. Andrew DUFF (T)                            |
|                                                               | M. Johannes VOGGENHUBER (T)                   |
|                                                               | Mme Sylvia-Yvonne KAUFMANN (T)                |
|                                                               | M. Georges BERTHU (T)                         |
|                                                               | M. Jens-Peter BONDE (T)                       |
|                                                               | Mme Teresa ALMEIDA GARRETT (S)                |
|                                                               | M. Rocco BUTTIGLIONE (S)                      |
|                                                               | M. Konstantinos HATZIDAKIS (S)                |
|                                                               | Mme Marie-Thérèse HERMANGE (S)                |
|                                                               | M. Peter Michael MOMBAUR (S)                  |
|                                                               | M. Reinhard RACK (S)                          |
|                                                               | Mme Ieke van den BURG (S)                     |
|                                                               | Mme Catherine LALUMIERE (S)                   |
|                                                               | Mme Ulpu IIVARI (S)                           |
|                                                               | M. Phillip WHITEHEAD (S)                      |
|                                                               | M. Jean-Maurice DEHOUSSE (S)                  |
|                                                               | M. Graham WATSON (S)                          |
|                                                               | Mme Kathalijne BUITENWEG (S)                  |
|                                                               | Mme Pernille FRAHM (S)                        |
|                                                               | M. Mauro NOBILIA (S)                          |
|                                                               | M. Rijk van DAM (S)                           |



| Institution/État                   | Nom<br>(« T » = titulaire/ »S » = Suppléant)                                                                                                                                   |
|------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Cour de Justice                    | M. SKOURIS (Juge)<br>M. ALBER (Avocat général)                                                                                                                                 |
| Conseil de l'Europe                | M. KRUGER (Secrétaire général adjoint)<br>M. FISCHBACH (Juge)                                                                                                                  |
| Commission                         | M. António VITORINO (Commissaire)                                                                                                                                              |
| Finlande<br>Parlement finlandais : | M. Paavo NIKULA (Chancelier de la justice) (T)<br>M. Holger Rotkirch (S)<br>M. Gunnar JANSSON<br>Mme Tuija BRAX                                                                |
| Allemagne<br>Parlement :           | M. Roman HERZOG<br>M. Jurgen MEYER (T)<br>M. Jürgen GNAUCK (T)<br>M. Peter ALTMAIER (S)<br>M. Wolf WEBER (S)                                                                   |
| Belgique<br>Parlement :            | M. Jean-Luc DEHAENE<br>M. Roger LALLEMAND (T)<br>M. Karel de GUCHT (T)                                                                                                         |
| France<br>Parlement                | M. BRAIBANT (T)<br>Mme Jacqueline Dutheil de la Rochère (S)<br>M. François LONCLE (T)<br>Mme Nicole Ameline (S)<br>M. Hubert HAENEL (T)<br>Mme Marie-Madeleine DIEULANGARD (S) |
| Espagne<br>Parlement               | M. RODRIGUEZ-BEREIJO<br>M. Gabriel CISNEROS (T)<br>M. Jordi SOLÉ TURA (T)                                                                                                      |
| Grèce<br>Parlement                 | M. George PAPADIMITRIOU<br>M. Georgios ROMEOS<br>M. Michael LIAPIS                                                                                                             |
| Pays-Bas<br>Parlement :            | M. Frits KORTHALS ALTES<br>M. Michiel PATIJN (T)<br>M. Ernst HIRSCH BALLIN (T)<br>M. Erik JURGENS (S)<br>M. Gerritjan van OVEN (S)                                             |
| Luxembourg<br>Parlement :          | M. Paul-Henri MEYERS<br>M. Ben FAYOT (T)<br>Mme Simone BEISSEL (T)                                                                                                             |
| Royaume-Uni<br>Parlement :         | Lord GOLDSMITH QC<br>M. David MORAN (S)<br>M. Wyn GRIFFITHS (T)<br>Lord BOWNESS (T)                                                                                            |
| Suède<br>Parlement :               | M. Daniel TARSCHYS<br>M. Göran MAGNUSSON (T)<br>M. Lars F. TOBISSON (T)<br>M. Ingvar SVENSSON (S)<br>Mr. Kenneth KVIST (S)                                                     |

|                       |                                                                                                                                                      |
|-----------------------|------------------------------------------------------------------------------------------------------------------------------------------------------|
| Danemark<br>Parlement | M. Erling OLSEN (T)<br>M. Tyge LEHMANN (S)<br>M. Jacob BUKSTI (T)<br>Mme Ulla TØRNAES (T)<br>M. Knud Erik HANSEN (S)<br>Mme Pia CHRISTMAS-MØLLER (S) |
| Portugal<br>Parlement | M. Pedro BACELAR DE VASCONCELLOS<br>M. José BARROS MOURA (T)<br>Mme Maria Eduarda AZEVEDO (T)                                                        |
| Italie<br>Parlement : | M. Giovanni Maria FLICK<br>M. Andrea MANZELLA (T)<br>M. Piero MELOGRANI (T)<br>M. Furio BOSELLO (S)<br>Mme Maria Pia VALETTO BITELLI (S)             |
| Irlande<br>Parlement  | M. Michael O'KENNEDY (T)<br>M. Mahon HAYES (S)<br>M. Desmond O'MALLEY (T)<br>Mme Madeline TAYLOR QUINN (S)<br>M. Bernard DURKAN (T)                  |
| Autriche<br>Parlement | M. Franz Vranitzky (T)<br>M. Harald Dossi (S)<br>M. Heinrich Neisser (T)<br>M. Harald Ofner (T)                                                      |

| Autres instances                   | Nom                                                                                          |
|------------------------------------|----------------------------------------------------------------------------------------------|
| <b>Comité économique et social</b> | Madame Anne-Marie SIGMUND<br>M. Roger BRIESCH<br>M. Manuel CAVALEIRO BRANDAO<br>M. Alan HICK |
| <b>Comité des Régions</b>          | M. Jozef CHABERT<br>M. Manfred DAMMEYER<br>Mme Béatrice TAULÈGNE                             |
| <b>Le Médiateur</b>                | M. Jacob SÖDERMANN                                                                           |

## PROJET DE CHARTE DES DROITS FONDAMENTAUX

### Liste des nominations

**État au 16 février 2000**

| Institution/État                                              | Nom<br>(« T » = titulaire/ « S » = Suppléant) |
|---------------------------------------------------------------|-----------------------------------------------|
| Parlement européen<br><i>Président délégation PE : --&gt;</i> | M. Inigo MÉNDEZ DE VIGO (T)                   |
|                                                               | Mme Charlotte CEDERSCHIÖLD (T)                |
|                                                               | M. Thierry CORNILLET (T)                      |
|                                                               | M. Ingo FRIEDRICH (T)                         |
|                                                               | M. Timothy KIRKHOPE (T)                       |
|                                                               | Mme Johanna MAIJ-WEGGEN (T)                   |
|                                                               | M. David MARTIN (T)                           |
|                                                               | Mme Pervenche BERÈS (T)                       |
|                                                               | M. Hans-Peter MARTIN (T)                      |
|                                                               | M. Martin SCHULZ (T)                          |
|                                                               | Mme Elena PACIOTTI (T)                        |
|                                                               | M. Andrew DUFF (T)                            |
|                                                               | M. Johannes VOGGENHUBER (T)                   |
|                                                               | Mme Sylvia-Yvonne KAUFMANN (T)                |
|                                                               | M. Georges BERTHU (T)                         |
|                                                               | M. Jens-Peter BONDE (T)                       |
|                                                               | Mme Teresa ALMEIDA GARRETT (S)                |
|                                                               | M. Rocco BUTTIGLIONE (S)                      |
|                                                               | M. Konstantinos HATZIDAKIS (S)                |
|                                                               | Mme Marie-Thérèse HERMANGE (S)                |
|                                                               | M. Peter Michael MOMBAUR (S)                  |
|                                                               | M. Reinhard RACK (S)                          |
|                                                               | Mme Ieke van den BURG (S)                     |
|                                                               | Mme Catherine LALUMIERE (S)                   |
|                                                               | Mme Ulpu IIVARI (S)                           |
|                                                               | M. Phillip WHITEHEAD (S)                      |
|                                                               | M. Jean-Maurice DEHOUSSE (S)                  |
|                                                               | M. Graham WATSON (S)                          |
|                                                               | Mme Kathalijne BUITENWEG (S)                  |
|                                                               | Mme Pernille FRAHM (S)                        |
|                                                               | M. Mauro NOBILIA (S)                          |
| M. Rijk van DAM (S)                                           |                                               |

| Institution/Etat                   | Nom<br>(« T » = titulaire/ « S » = Suppléant)                                                                                                                                  |
|------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Cour de Justice                    | M. SKOURIS (Juge)<br>M. ALBER (Avocat général)                                                                                                                                 |
| Conseil de l'Europe                | M. KRUGER (Secrétaire général adjoint)<br>M. FISCHBACH (Juge)                                                                                                                  |
| Commission                         | M. António VITORINO (Commissaire)                                                                                                                                              |
| Finlande<br>Parlement finlandais : | M. Paavo NIKULA (Chancelier de la justice) (T)<br>M. Holger Rotkirch (S)<br>M. Gunnar JANSSON<br>Mme Tuija BRAX                                                                |
| Allemagne<br>Parlement :           | M. Roman HERZOG<br>M. Jurgen MEYER (T)<br>M. Jürgen GNAUCK (T)<br>M. Peter ALTMAIER (S)<br>M. Wolf WEBER (S)                                                                   |
| Belgique<br>Parlement :            | M. Jean-Luc DEHAENE<br>M. Roger LALLEMAND (T)<br>M. Karel de GUCHT (T)                                                                                                         |
| France<br>Parlement                | M. BRAIBANT (T)<br>Mme Jacqueline Dutheil de la Rochère (S)<br>M. François LONCLE (T)<br>Mme Nicole Ameline (S)<br>M. Hubert HAENEL (T)<br>Mme Marie-Madeleine DIEULANGARD (S) |
| Espagne<br>Parlement               | M. Alvaro RODRIGUEZ-BEREIJO (T)<br>M. Francisco de ASIS SANZ GANDASEGUI (S)<br>M. Gabriel CISNEROS (T)<br>M. Jordi SOLÉ TURA (T)                                               |
| Grèce<br>Parlement                 | M. George PAPADIMITRIOU<br>M. Georgios ROMEOS<br>M. Michael LIAPIS                                                                                                             |
| Pays-Bas<br>Parlement :            | M. Frits KORTHALS ALTES<br>M. Michiel PATIJN (T)<br>M. Ernst HIRSCH BALLIN (T)<br>M. Erik JURGENS (S)<br>M. Gerritjan van OVEN (S)                                             |
| Luxembourg<br>Parlement :          | M. Paul-Henri MEYERS<br>M. Ben FAYOT (T)<br>Mme Simone BEISSEL (T)                                                                                                             |
| Royaume-Uni<br>Parlement :         | Lord GOLDSMITH QC<br>M. David MORAN (S)<br>M. Wyn GRIFFITHS (T)<br>Lord BOWNESS (T)                                                                                            |
| Suède<br>Parlement :               | M. Daniel TARSCHYS<br>M. Göran MAGNUSSON (T)<br>M. Lars F. TOBISSON (T)<br>M. Ingvar SVENSSON (S)<br>Mr. Kenneth KVIST (S)                                                     |

|                       |                                                                                                                                                      |
|-----------------------|------------------------------------------------------------------------------------------------------------------------------------------------------|
| Danemark<br>Parlement | M. Erling OLSEN (T)<br>M. Tyge LEHMANN (S)<br>M. Jacob BUKSTI (T)<br>Mme Ulla TØRNAES (T)<br>M. Knud Erik HANSEN (S)<br>Mme Pia CHRISTMAS-MØLLER (S) |
| Portugal<br>Parlement | M. Pedro BACELAR DE VASCONCELLOS<br>M. José BARROS MOURA (T)<br>Mme Maria Eduarda AZEVEDO (T)                                                        |
| Italie<br>Parlement : | ..... (à nommer)<br>M. Andrea MANZELLA (T)<br>M. Piero MELOGRANI (T)<br>M. Furio BOSELLO (S)<br>Mme Maria Pia VALETTO BITELLI (S)                    |
| Irlande<br>Parlement  | M. Michael O'KENNEDY (T)<br>M. Mahon HAYES (S)<br>M. Desmond O'MALLEY (T)<br>Mme Madeline TAYLOR QUINN (S)<br>M. Bernard DURKAN (T)                  |
| Autriche<br>Parlement | .... à nommer<br>M. Harald Dossi (S)<br>M. Heinrich Neisser (T)<br>M. Harald Ofner (T)<br>M. Michael Spindelegger (S)<br>M. Willi Brauneder (S)      |

| Autres instances                   | Nom                                                                                          |
|------------------------------------|----------------------------------------------------------------------------------------------|
| <b>Comité économique et social</b> | Madame Anne-Marie SIGMUND<br>M. Roger BRIESCH<br>M. Manuel CAVALEIRO BRANDAO<br>M. Alan HICK |
| <b>Comité des Régions</b>          | M. Jozef CHABERT<br>M. Manfred DAMMEYER<br>Mme Béatrice TAULÈGNE                             |
| <b>Le Médiateur</b>                | M. Jacob SÖDERMANN                                                                           |

## PROJET DE CHARTE DES DROITS FONDAMENTAUX

### Liste des nominations

État au 9 mars 2000

| Institution/État                                              | Nom<br>(« T » = titulaire/ « S » = Suppléant) |
|---------------------------------------------------------------|-----------------------------------------------|
| Parlement européen<br><i>Président délégation PE : --&gt;</i> | M. Inigo MÉNDEZ DE VIGO (T)                   |
|                                                               | Mme Charlotte CEDERSCHIÖLD (T)                |
|                                                               | M. Thierry CORNILLET (T)                      |
|                                                               | M. Ingo FRIEDRICH (T)                         |
|                                                               | M. Timothy KIRKHOPE (T)                       |
|                                                               | Mme Johanna MAIJ-WEGGEN (T)                   |
|                                                               | M. David MARTIN (T)                           |
|                                                               | Mme Pervenche BERÈS (T)                       |
|                                                               | M. Hans-Peter MARTIN (T)                      |
|                                                               | M. Martin SCHULZ (T)                          |
|                                                               | Mme Elena PACIOTTI (T)                        |
|                                                               | M. Andrew DUFF (T)                            |
|                                                               | M. Johannes VOGGENHUBER (T)                   |
|                                                               | Mme Sylvia-Yvonne KAUFMANN (T)                |
|                                                               | M. Georges BERTHU (T)                         |
|                                                               | M. Jens-Peter BONDE (T)                       |
|                                                               | Mme Teresa ALMEIDA GARRETT (S)                |
|                                                               | M. Rocco BUTTIGLIONE (S)                      |
|                                                               | M. Konstantinos HATZIDAKIS (S)                |
|                                                               | Mme Marie-Thérèse HERMANGE (S)                |
|                                                               | M. Peter Michael MOMBAUR (S)                  |
|                                                               | M. Reinhard RACK (S)                          |
|                                                               | Mme Ieke van den BURG (S)                     |
|                                                               | Mme Catherine LALUMIERE (S)                   |
|                                                               | Mme Ulpu IIVARI (S)                           |
|                                                               | M. Phillip WHITEHEAD (S)                      |
|                                                               | M. Jean-Maurice DEHOUSSE (S)                  |
|                                                               | M. Graham WATSON (S)                          |
|                                                               | Mme Kathalijne BUITENWEG (S)                  |
|                                                               | Mme Pernille FRAHM (S)                        |
|                                                               | M. Mauro NOBILIA (S)                          |
|                                                               | M. Rijk van DAM (S)                           |

| Institution/Etat                   | Nom<br>(« T » = titulaire/ »S » = Suppléant)                                                                                                                                   |
|------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Cour de Justice                    | M. SKOURIS (Juge)<br>M. ALBER (Avocat général)                                                                                                                                 |
| Conseil de l'Europe                | M. KRUGER (Secrétaire général adjoint)<br>M. FISCHBACH (Juge)                                                                                                                  |
| Commission                         | M. António VITORINO (Commissaire)<br>M. Carlo TROJAN (Secrétaire général) (S)                                                                                                  |
| Finlande<br>Parlement finlandais : | M. Paavo NIKULA (Chancelier de la justice) (T)<br>M. Holger Rotkirch (S)<br>M. Gunnar JANSSON (T)<br>Mme Tuija BRAX (T)<br>M. Johannes LEPPÄNEN(S)<br>Mme Riitta PRUSTI (S)    |
| Allemagne<br>Parlement :           | M. Roman HERZOG<br>M. Jurgen MEYER (T)<br>M. Jürgen GNAUCK (T)<br>M. Peter ALTMAIER (S)<br>M. Wolf WEBER (S)                                                                   |
| Belgique<br>Parlement :            | M. Jean-Luc DEHAENE (T)<br>M. Erik DERYCKE (S)<br>M. Roger LALLEMAND (T)<br>M. Karel de GUCHT (T)                                                                              |
| France<br>Parlement                | M. BRAIBANT (T)<br>Mme Jacqueline Dutheil de la Rochère (S)<br>M. François LONCLE (T)<br>Mme Nicole Ameline (S)<br>M. Hubert HAENEL (T)<br>Mme Marie-Madeleine DIEULANGARD (S) |
| Espagne<br>Parlement               | M. Alvaro RODRIGUEZ-BEREIJO (T)<br>M. Francisco de ASIS SANZ GANDASEGUI (S)<br>M. Gabriel CISNEROS (T)<br>M. Jorge TRIAS SAGNIER<br>M. Jordi SOLÉ TURA (T)                     |
| Grèce<br>Parlement                 | M. George PAPADIMITRIOU<br>M. Georgios ROMEOS<br>M. Michael LIAPIS                                                                                                             |
| Pays-Bas<br>Parlement :            | M. Frits KORTHALS ALTES<br>M. Michiel PATIJN (T)<br>M. Ernst HIRSCH BALLIN (T)<br>M. Erik JURGENS (S)<br>M. Gerritjan van OVEN (S)                                             |
| Luxembourg<br>Parlement :          | M. Paul-Henri MEYERS<br>M. Ben FAYOT (T)<br>Mme Simone BEISSEL (T)                                                                                                             |

|                            |                                                                                                                                                             |
|----------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Royaume-Uni<br>Parlement : | Lord GOLDSMITH QC<br>M. Martin EATON (S)<br>M. Wyn GRIFFITHS (T)<br>Lord BOWNESS (T)<br>M. David CHIDGEY (S)<br>The Baroness HOWELLS of St. Davids (S)      |
| Suède<br>Parlement :       | M. Daniel TARSCHYS<br>M. Göran MAGNUSSON (T)<br>M. Lars F. TOBISSON (T)<br>M. Ingvar SVENSSON (S)<br>Mr. Kenneth KVIST (S)                                  |
| Danemark<br>Parlement      | M. Erling OLSEN (T)<br>M. Tyge LEHMANN (S)<br>M. Claus Larsen JENSEN (T)<br>Mme Ulla TØRNAES (T)<br>M. Knud Erik HANSEN (S)<br>Mme Pia CHRISTMAS-MØLLER (S) |
| Portugal<br>Parlement      | M. Pedro BACELAR DE VASCONCELLOS<br>M. José BARROS MOURA (T)<br>Mme Maria Eduarda AZEVEDO (T)                                                               |
| Italie<br>Parlement :      | M. Stefano RODOTA<br>M. Andrea MANZELLA (T)<br>M. Piero MELOGRANI (T)<br>M. Furio BOSELLO (S)<br>Mme Maria Pia VALETTO BITELLI (S)                          |
| Irlande<br>Parlement       | M. Michael O'KENNEDY (T)<br>M. Mahon HAYES (S)<br>M. Desmond O'MALLEY (T)<br>Mme Madeline TAYLOR QUINN (S)<br>M. Bernard DURKAN (T)                         |
| Autriche<br>Parlement      | .... à nommer<br>M. Harald Dossi (S)<br>M. Heinrich Neisser (T)<br>M. Harald Ofner (T)<br>M. Michael Spindelegger (S)<br>M. Willi Brauner (S)               |

| Autres instances                   | Nom                                                                                          |
|------------------------------------|----------------------------------------------------------------------------------------------|
| <b>Comité économique et social</b> | Madame Anne-Marie SIGMUND<br>M. Roger BRIESCH<br>M. Manuel CAVALEIRO BRANDAO<br>M. Alan HICK |
| <b>Comité des Régions</b>          | M. Jozef CHABERT<br>M. Manfred DAMMEYER<br>Mme Béatrice TAULÈGNE                             |
| <b>Le Médiateur</b>                | M. Jacob SÖDERMANN                                                                           |



**PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE****fundamental.rights@consilium.eu.int**

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**Bruxelles, le 15 mars 2000**DOCUMENT PARTIELLEMENT  
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(12.10.2020)**CHARTE 4158/00****CONVENT 16****NOTE D'INFORMATION**

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**Objet :       Projet de Charte des droits fondamentaux de l'Union européenne**  
**— Curricula vitae des membres de la Convention**

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Veillez trouver ci-après la liste des nominations ainsi que les curricula vitae des membres de la Convention (état au 15 mars 2000).

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**Liste des nominations****Etat au 9 mars 2000**

| <b>Institution/Etat</b>                                              | <b>Nom</b><br><b>(« T » = titulaire/ »S » = Suppléant)</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|----------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Parlement européen</b><br><i>Président délégation PE : --&gt;</i> | M. Inigo MÉNDEZ DE VIGO (T)<br>Mme Charlotte CEDERSCHIÖLD (T)<br>M. Thierry CORNILLET (T)<br>M. Ingo FRIEDRICH (T)<br>M. Timothy KIRKHOPE (T)<br>Mme Hanja MAIJ-WEGGEN (T)<br>M. David MARTIN (T)<br>Mme Pervenche BERÈS (T)<br>M. Hans-Peter MARTIN (T)<br>M. Martin SCHULZ (T)<br>Mme Elena PACIOTTI (T)<br>M. Andrew DUFF (T)<br>M. Johannes VOGGENHUBER (T)<br>Mme Sylvia-Yvonne KAUFMANN (T)<br>M. Georges BERTHU (T)<br>M. Jens-Peter BONDE (T)<br>Mme Teresa ALMEIDA GARRETT (S)<br>M. Rocco BUTTIGLIONE (S)<br>M. Konstantinos HATZIDAKIS (S)<br>Mme Marie-Thérèse HERMANGE (S)<br>M. Peter Michael MOMBAUR (S)<br>M. Reinhard RACK (S)<br>Mme Ieke van den BURG (S)<br>Mme Catherine LALUMIERE (S)<br>Mme Ulpu IIVARI (S)<br>M. Phillip WHITEHEAD (S)<br>M. Jean-Maurice DEHOUSSE (S)<br>M. Graham WATSON (S)<br>Mme Kathalijne BUITENWEG (S)<br>Mme Pemille FRAHM (S)<br>M. Mauro NOBILIA (S)<br>M. Rijk van DAM (S) |

| Institution/Etat                   | Nom<br>(« T » = titulaire/ »S » = Suppléant)                                                                                                                                   |
|------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Cour de Justice                    | M. SKOURIS (Juge)<br>M. ALBER (Avocat général)                                                                                                                                 |
| Conseil de l'Europe                | M. KRUGER (Secrétaire général adjoint)<br>M. FISCHBACH (Juge)                                                                                                                  |
| Commission                         | M. António VITORINO (Commissaire)<br>M. Carlo TROJAN (Secrétaire général) (S)                                                                                                  |
| Finlande<br>Parlement finlandais : | M. Paavo NIKULA (Chancelier de la justice) (T)<br>M. Holger Rotkirch (S)<br>M. Gunnar JANSSON (T)<br>Mme Tuija BRAX (T)<br>M. Johannes LEPPÄNEN(S)<br>Mme Riitta PRUSTI (S)    |
| Allemagne<br>Parlement :           | M. Roman HERZOG<br>M. Jürgen MEYER (T)<br>M. Jürgen GNAUCK (T)<br>M. Peter ALTMAIER (S)<br>M. Wolf WEBER (S)                                                                   |
| Belgique<br>Parlement :            | M. Jean-Luc DEHAENE (T)<br>M. Erik DERYCKE (S)<br>M. Roger LALLEMAND (T)<br>M. Karel de GUCHT (T)                                                                              |
| France<br>Parlement                | M. BRAIBANT (T)<br>Mme Jacqueline Dutheil de la Rochère (S)<br>M. François LONCLE (T)<br>Mme Nicole Ameline (S)<br>M. Hubert HAENEL (T)<br>Mme Marie-Madeleine DIEULANGARD (S) |
| Espagne<br>Parlement               | M. Alvaro RODRIGUEZ-BEREJO (T)<br>M. Francisco de ASIS SANZ GANDASEGUI (S)<br>M. Gabriel CISNEROS (T)<br>M. Jorge TRIAS SAGNIER<br>M. Jordi SOLÉ TURA (T)                      |
| Grèce<br>Parlement                 | M. George PAPADIMITRIOU<br>M. Georgios ROMEOS<br>M. Michael LIAPIS                                                                                                             |
| Pays-Bas<br>Parlement :            | M. Frits KORTHALS ALTES<br>M. Michiel PATIJN (T)<br>M. Ernst HIRSCH BALLIN (T)<br>M. Erik JURGENS (S)<br>M. Gerritjan van OVEN (S)                                             |
| Luxembourg<br>Parlement :          | M. Paul-Henri MEYERS<br>M. Ben FAYOT (T)<br>Mme Simone BEISSEL (T)                                                                                                             |

|                            |                                                                                                                                                             |
|----------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Royaume-Uni<br>Parlement : | Lord GOLDSMITH QC<br>M. Martin EATON (S)<br>M. Wyn GRIFFITHS (T)<br>Lord BOWNESS (T)<br>M. David CHIDGEY (S)<br>The Baroness HOWELLS of St. Davids (S)      |
| Suède<br>Parlement :       | M. Daniel TARSCHYS<br>M. Göran MAGNUSSON (T)<br>M. Lars F. TOBISSON (T)<br>M. Ingvar SVENSSON (S)<br>Mr. Kenneth KVIST (S)                                  |
| Danemark<br>Parlement      | M. Erling OLSEN (T)<br>M. Tyge LEHMANN (S)<br>M. Claus Larsen JENSEN (T)<br>Mme Ulla TØRNAES (T)<br>M. Knud Erik HANSEN (S)<br>Mme Pia CHRISTMAS-MØLLER (S) |
| Portugal<br>Parlement      | M. Pedro BACELAR DE VASCONCELLOS<br>M. José BARROS MOURA (T)<br>Mme Maria Eduarda AZEVEDO (T)                                                               |
| Italie<br>Parlement :      | M. Stefano RODOTA<br>M. Andrea MANZELLA (T)<br>M. Piero MELOGRANI (T)<br>M. Furio BOSELLO (S)<br>Mme Maria Pia VALETTO BITELLI (S)                          |
| Irlande<br>Parlement       | M. Michael O'KENNEDY (T)<br>M. Mahon HAYES (S)<br>M. Desmond O'MALLEY (T)<br>Mme Madeline TAYLOR QUINN (S)<br>M. Bernard DURKAN (T)                         |
| Autriche<br>Parlement      | .... à nommer<br>M. Harald Dossi (S)<br>M. Heinrich Neisser (T)<br>M. Harald Ofner (T)<br>M. Michael Spindelegger (S)<br>M. Willi Brauner (S)               |

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\*

\* \*



## Roman Herzog

geboren 1934 in Landshut, war von 1994 bis 1999 Bundespräsident der Bundesrepublik Deutschland und davor von 1987 bis 1994 Präsident des Bundesverfassungsgerichts.

Herzog ist promovierter Rechts- und Staatswissenschaftler. Vor der Übernahme dieser hohen Staatsämter der Bundesrepublik Deutschland war er Professor für Staatswissenschaften, Rektor der renommierten Hochschule für Verwaltungswissenschaften in Speyer, Staatssekretär und Bevollmächtigter des Bundeslandes Rheinland-Pfalz beim Bund, Kultus- und Innenminister in Baden-Württemberg und Vizepräsident des Bundesverfassungsgerichts. Er ist bis heute Mitherausgeber der bedeutenden Kommentarsammlung zum deutschen Grundgesetz, dem Maunz-Dürig. Sein Buch „Staaten der Frühzeit“ ist in zahlreichen Sprachen, unter anderem im Chinesischen, erschienen. Seine wissenschaftlichen Arbeiten sind Standardwerke für die Juristenausbildung. Er hat eine Reihe von Staaten, insbesondere im MOE-Raum, bei der Ausarbeitung ihrer Verfassung beraten.

Internationales Renommee genießt Roman Herzog auch wegen seiner maßgeblichen Beiträge zum Kulturdialog zwischen dem Westen und dem Islam. 1999 erschien im Verlag St. Martin's Press New York „Roman Herzog – Preventing the Clash of Civilization's – A Peace-Strategy for the 21<sup>st</sup> Century“: Ein Plädoyer für den Dialog und eine Strategie gegen den von Samuel Huntington prophezeiten Zusammenprall der Kulturen. Gemeinsam mit acht anderen Staatsoberhäuptern startete er im gleichen Jahr eine internationale Initiative im Sinne des Dialogs und des Zusammenlebens der Weltkulturen: Eine Strategie für den Frieden.

Das ehemalige Staatsoberhaupt gilt als ein Motor des Wandels und der Erneuerung in Deutschland. Die renommierte Financial Times titelte „A Man with a mission“. Als Bundespräsident wurde er nicht müde, unliebsame Reformen, Abstand von alten Besitzständen und vor allem mehr Begeisterung für die großen Chancen der Zukunft bei seinen Landsleuten anzunehmen und einzufordern. Sein Engagement galt in besonderer Weise der Förderung von Wissenschaft und Forschung sowie einschneidenden Reformen des Bildungswesens, Existenzgründungen und modernen Technologien. Seine „Berliner Rede“ an die Nation hat bis heute Bestand: „Es muß ein Ruck durch Deutschland gehen.“ Roman Herzog setzt dabei großes Vertrauen in die Jugend. Er galt als überaus politischer Präsident, der den Spielraum seines Amtes aktiv genutzt hat, ohne dabei die gebotene Überparteilichkeit zu verletzen. Daß er sich den entscheidenden Zukunftsfragen auch ohne das Präsidentenamt widmen wird, daran läßt er keinen Zweifel: „Ich scheidet ja nur aus dem Amt, nicht aus dem Leben“, sagte er mit dem ihm eigenen Humor am Tag des Amtswechsels im Deutschen Bundestag.

Roman Herzog wurde 1997 gemeinsam mit seinem Freund, dem tschechischen Staatspräsidenten Vaclav Havel, als „Staatsmann Europas“ vom Institute for East-West-Studies in New York ausgezeichnet. Für sein Eintreten für die europäische Idee erhielt er im gleichen Jahr den Internationalen Karlspreis zu Aachen. Er ist Mitglied der Russischen Akademie der Wissenschaften sowie der Juristenvereinigung Grey's Inn in London. Der deutsche Bundeskanzler hat ihn nach dem Ausscheiden aus dem höchsten Staatsamt gebeten, Deutschland als Beauftragter der Bundesregierung bei der Ausarbeitung einer europäischen Grundrechtscharta zu vertreten.

## Roman Herzog,

né à Landshut en 1934, a été Président de la République fédérale d'Allemagne de 1994 à 1999 après avoir été Président de la Cour constitutionnelle fédérale de 1987 à 1994.

M. Herzog est docteur en droit et en sciences politiques. Avant d'accéder à ces hautes fonctions au service de la République fédérale d'Allemagne, il a été professeur de sciences politiques, Directeur de la célèbre École supérieure des sciences administratives de Spire, Secrétaire d'État et Plénipotentiaire du Land de Rhénanie-Palatinat au siège du gouvernement fédéral, Ministre des Affaires culturelles et Ministre de l'Intérieur du Land de Bade-Wurtemberg et Vice-président de la Cour constitutionnelle fédérale. Il est l'un des trois éditeurs du "Maunz-Dürig-Herzog", le recueil réputé de commentaires juridiques de la Loi fédérale allemande. Son livre "Staaten der Frühzeit" a été traduit dans de nombreuses langues et même en chinois. Ses travaux scientifiques sont considérés comme des ouvrages de base pour les études de droit. Il a prodigué ses conseils à toute une série d'États, notamment en Europe centrale et orientale, dans l'élaboration de leur constitution.

Les contributions remarquables que Roman Herzog a apportées au dialogue culturel entre l'Occident et l'Islam lui ont valu une renommée internationale. En 1999 est paru aux Editions St. Martin's Press New York son livre "Preventing the Clash of Civilizations - A Peace Strategy for the 21<sup>st</sup> Century", plaidoyer en faveur du dialogue et stratégie de lutte contre le choc des civilisations annoncé par Samuel Huntington. Aux côtés de huit autres chefs d'État il lança cette année-là une initiative internationale en faveur du dialogue et de la vie en commun des civilisations du monde, une stratégie pour la paix.

Cet ancien homme d'État est considéré comme l'un des moteurs du changement et du renouveau en Allemagne. Le célèbre Financial Times l'a qualifié de "A Man with a mission". Président de la République fédérale d'Allemagne, il n'a cessé d'en appeler à ses compatriotes pour qu'ils engagent des réformes, même impopulaires, qu'ils abandonnent les anciens acquis et qu'ils fassent surtout preuve de plus d'enthousiasme face aux grandes chances qu'offre l'avenir. Il s'est attaché en particulier à la promotion des sciences et de la recherche ainsi qu'à des réformes décisives de l'éducation nationale, à la création de nouvelles entreprises et aux technologies nouvelles. Son "Discours de Berlin" adressé à la nation n'a rien perdu de son actualité: "L'Allemagne doit se réveiller". Pour cela, Roman Herzog mise beaucoup sur la jeunesse. Il a été considéré comme un président à profil politique marqué, qui a su exploiter la marge de manoeuvre que lui donnaient ses fonctions sans pour cela manquer à son devoir

- 2 -

d'impartialité. Il n'a laissé planer aucun doute sur le fait qu'il continuerait de se consacrer aux grandes questions de l'avenir même après l'échéance de son mandat en disant, avec son humour particulier, au Bundestag, le jour de l'entrée en fonctions de son successeur, "je quitte mes fonctions certes, mais je ne quitte pas la vie".

Au même titre que son ami Vaclav Havel, Président de la République tchèque, il a été fait "homme d'État européen" par le Institute for East-West Studies de New York. Pour son engagement en faveur de la cause européenne, il s'est vu décerner la même année le Prix international Charlemagne de la Ville d'Aix-la-Chapelle. Il est membre de l'Académie russe des sciences et de l'Association des juristes Gray's Inn de Londres. À son départ de la Présidence de la République, le Chancelier fédéral l'a prié de bien vouloir représenter l'Allemagne en tant que Délégué du gouvernement fédéral participant à l'élaboration d'une charte européenne des droits fondamentaux.

## Roman Herzog

Roman Herzog, born in Landshut (Bavaria) in 1934, was President of the Federal Republic of Germany from 1994 to 1999 and before that President of the Federal Constitutional Court from 1987 to 1994.

Herzog is a doctor of law and political science. Before assuming these high offices in the Federal Republic of Germany he was a Professor of Political Science, Vice-Chancellor of the renowned College of Administrative Sciences in Speyer, State Secretary and Commissioner of Land Rhineland-Palatinate to the Federation, Minister of Culture and the Interior of Land Baden-Württemberg and Vice-President of the Federal Constitutional Court. He remains a co-editor of the major collection of commentaries on the German Basic Law, Maunz-Dürig-Herzog. His book "Staaten der Frühzeit" (Ancient Civilizations) has appeared in several languages, including Chinese. His academic treatises are standard works for the study of law. He has advised a number of states, particularly in Central and Eastern Europe, on the elaboration of their constitutions.

Roman Herzog enjoys an international reputation not least as a result of his key contributions to the cultural dialogue between the West and Islam. In 1999 St. Martin's Press New York published his "Preventing the Clash of Civilizations - A Peace Strategy for the 21st Century", which calls for dialogue and presents a strategy against the clash of civilizations prophesied by Samuel Huntington. That same year, together with eight other heads of state, he launched an international initiative to promote dialogue and the co-existence of world cultures - a strategy for peace.

The former head of state is regarded as a proponent of change and renewal in Germany. The Financial Times titled him "A man with a mission". As Federal President, he never shirked from calling upon his compatriots to accept unpopular reforms, to loosen themselves from their old ways and particularly to show greater enthusiasm for the tremendous opportunities the future offered. He was especially committed to promoting science and research, to decisive educational reform, to entrepreneurship and to modern technologies. His "Berlin speech" to the nation on emergence into the 21st century remains valid: "Germany must give itself a shake." Roman Herzog places great confidence in the young generation. He was regarded as an entirely political President, who made active use of the scope offered by his office without infringing the requirements of impartiality. He leaves no doubt but that he intends to devote his attention to the decisive issues of the future even after his term as President: on the day his

- 2 -

successor assumed office he said in the Bundestag, with his own typical brand of humour, "I am just departing office, not life."

In 1997, along with his friend the Czech President Vaclav Havel, Roman Herzog received the European Statesman Award of the Institute for East-West Studies in New York. In the same year he was awarded the International Charlemagne Prize of the City of Aachen for his commitment to the European ideal. He is a member of the Russian Academy of Science and of Gray's Inn in London. Following his departure from the country's highest office, the Federal Chancellor has asked him to represent Germany as the Federal Government Commissioner for the elaboration of a European Basic Rights Charter.





**Jean-Luc DEHAENE**

Ministre D'Etat

Sénateur

Né à Montpellier, le 7 août 1940

**Études**

. Licence en Droit et en Sciences économiques, Université de Namur et K.U.L.

**Activités professionnelles**

- . Commissaire du "Vlaams Verbond van Katholieke Scouts" (successeur de F. Nedée et P. Van Remoortere - 1963-1967)
- . Attaché au Service d'Étude de l'A.C.W. (1965-1972)

**Activités politiques**

- . Vice-Président national des Jeunes C.V.P. (1967-1971)
- . Membre du Bureau national du C.V.P. (depuis 1972)
- . Président du C.V.P. de l'arrondissement de Bruxelles-Hal-Vilvorde (1977-1981)
- . Collaborateur auprès de divers Cabinets ministériels (1971-1981)
- . Conseil l er au Cabinet des Travaux publics (Ministre J. de Saeger -1972-1973)
- . Conseiller au Cabinet de la Santé publique (Ministre J. De Saeger -1973-1974)
- . Conseiller et ensuite Chef de Cabinet du Ministre des Affaires économiques (Ministres Oleffe et Herman - 1974-1977)
- . Chef de Cabinet du Ministre des Affaires flamandes (Madame R. De Backer- Van Ocken -1977-1978)
- . Chef de Cabinet du Premier Ministre (W. Martens - 1979-1981)
- . Chef de Cabinet du Ministre des Réformes institutionnelles (J. Chabert - 1981)

**Fonctions gouvernementales**

- . Ministre des Affaires sociales et des Réformes institutionnelles (1981-1988)
- . Vice-Premier Ministre et Ministre des Communications et des Réformes institutionnelles (1988-1992)
- . Premier Ministre (1992-1995)
- . Premier Ministre (1995-1999)
- . Ministre d'Etat (1999)
- . Sénateur (1999)

**Jean-Luc DEHAENE****Minister of State****Senator****Born in Montpellier. August 7, 1940****Studies**

- . **Master's degree of Law and Economics, University of Namur and K.U.L.**

**Professional activities**

- . **Commissioner of the "Vlaams Verbond van katholieke Scouts" (successor off. Nedée and P. Van Remoortere) (1963-1967)**
- . **Attaché to the Study Department . of the A.C.W. (1965-1972)**

**Political activities**

- . **Vice-President of the C.V.P.-youth (1967-1971)**
- . **Member of the National Bureau of the C.V.P. (since 1972)**
- . **President of the C.V.P. for Brussels-Halle- Vilvoorde (1977-1981)**
- . **Member of different ministerial Cabinets (1971-1981)**
- . **Advisor to the Cabinet of Public Works (Minister J. De Saeger) (1972-1973)**
- . **Advisor to the Cabinet of Public Health (Minister J. De Saeger) (1973-1974)**
- . **Advisor and later Head of Cabinet of the Minister for Economic Affairs (Ministers Oleffe and Herman) (1974-1977)**
- . **Head of Cabinet to the Minister for Flemish Affairs (R.De Backer-Van Ocken)(1977-1978)**
- . **Head of Cabinet to the Prime Minister (W. Martens) (1979-1981)**
- . **Head of Cabinet to the Minister of Institutional Reforms (Minister J. Chabert) (1981)**
- . **Minister for Social Affairs and for Institutional Reforms (N) (1981-1988)**
- . **Deputy Prime Minister and Minister for Communications and for Institutional Reforms (1988-1992)**
- . **Prime Minister ( 1992-1995)**
- . **Prime Minister (1995-1999)**
- . **Minister of State (1999)**
- . **Senator (1999)**

**- 1999 -**

- **Member of the Board of directors – Union Minière**
- **Member of the Board of directors – Telinfo**
- **Chairman of the Board of directors – S.A.I.L Trust**



**LALLEMAND Roger**

**PS**

**Sénateur élu par  
le collège électoral français.**

**Senator gekozen door  
het Franse kiescollege.**

**Né à Quevaucamps,  
le 17 janvier 1932.**

**Geboren te Quevaucamps,  
op 17 januari 1932.**

**Domicilié à [REDACTED]**

**Wonende te [REDACTED]**

[REDACTED]

[REDACTED]

**Docteur en droit (ULB).**

**Licencié en philologie romane (ULB).**

**Avocat.**

**Depuis 1965 : administrateur de la Ligue belge pour la défense des  
droits de l'homme.**

**Depuis 1970 : directeur du Centre de sociologie de la littérature  
(ULB).**

**1970-1973 et depuis 1994 : membre du conseil d'administration de  
l'Université libre de Bruxelles (ULB).**

1971-1972 : président de la Conférence du Jeune Barreau de Bruxelles.

1979-1985 : sénateur coopté.

1979-1981 : vice-président du groupe linguistique français du Sénat.

1979-1981 : président du Comité paritaire pour la coexistence harmonieuse des communautés.

Depuis 1981 : président du groupe linguistique français du Sénat.

1981-1990 : président du Conseil consultatif pour étrangers.

Depuis 1983 : conseiller communal (Ixelles).

Depuis 1984 : membre du Haut Conseil de la francophonie présidé par le président de la République française.

1985-1995 : sénateur de l'arrondissement de Bruxelles.

1985-1995 : membre du Conseil de la Communauté française.

1985-10 mars 1988 et depuis le 9 mai 1988 : président du groupe PS.

Depuis 1985 : vice-président du Conseil de la langue française.

10 mars-9 mai 1988 : président du Sénat.

Depuis le 21 mai 1995 : sénateur élu par le collège électoral français.

Président de la Commission de la Justice (depuis 1985).

Membre de la Commission des Affaires institutionnelles et de la Commission parlementaire de concertation.

Ancien président des Commissions de la Révision de la Constitution et des Réformes des Institutions, et du Règlement et du Travail parlementaire (mars-mai 1988).

Ancien président de la Commission d'enquête chargée d'examiner les révélations récentes quant à l'existence en Belgique d'un réseau de renseignements clandestin international connu sous le nom de *Gladio* (1990-1991).

Grand Officier de l'ordre de Léopold (14 novembre 1991).

**Auteur des propositions devenues loi sous le titre suivant :**

- modifiant l'article 764, 12°, du Code judiciaire.  
(N° 75-1, 1985-1986).  
Loi du 26 novembre 1986.
  
- relative à l'interruption de grossesse, tendant à modifier les articles 348, 350 et 351 du Code pénal et à abroger les articles 352 et 353 du même Code.  
(N° 189-1, 1985-1986).  
Loi du 3 avril 1990.
  
- modifiant le Code judiciaire en ce qui concerne le statut des huissiers de justice.  
(N° 489-1, 1988-1989).  
Loi du 6 avril 1992.
  
- révision de l'article 117 de la Constitution en y ajoutant un alinéa 2 élargissant éventuellement aux conseillers laïques les dispositions de l'alinéa 1°. (N° 100-3/1°, SE 1991-1992).  
Modification de la Constitution du 5 mai 1993.
  
- modifiant la loi du 11 septembre 1933 sur la protection des titres d'enseignement supérieur.  
(N° 75-1, SE 1991-1992).  
Loi du 2 octobre 1992.
  
- relative au droit d'auteur, aux droits voisins et à la copie privée d'œuvres sonores et audio-visuelles.  
(N° 145-1, SE 1991-1992).  
Loi du 30 juin 1994.
  
- complétant l'article 21, § 1°, de la loi du 18 juillet 1991 modifiant les règles du Code judiciaire relatives à la formation et au recrutement des magistrats.  
(N° 659-1, 1992-1993).  
Loi du 6 août 1993.
  
- prise en application de l'article 41, § 5 de la Constitution.  
(N° 941-1, 1993-1994).  
Loi du 6 avril 1995.
  
- relative aux mines anti-personnel et pièges ou dispositifs de même nature.  
(N° 1009-1, 1993-1994).  
Loi du 9 mars 1995.





De Voorzitter

*CURRICULUM VITAE*  
*Karel De Gucht*



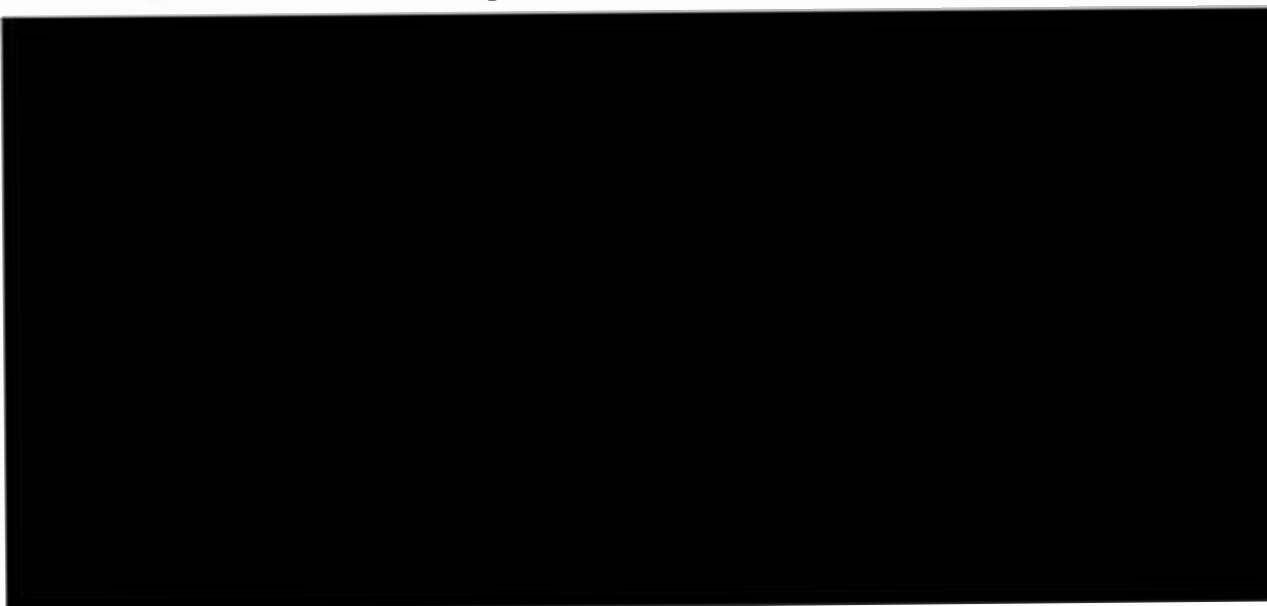
Membre du Parlement Européen de 1980 à 1994

Conseiller Communal à Berlare (1989-)

Sénateur de 1994 à 1995

Membre du Parlement Flamand (1995-)

Membre du Comité des Régions de l'Union Européenne



30 January 2000

## CURRICULUM VITAE

Name: OLSEN.

First name: Erling Heymann.

Nationality: Danish.

Born: 18 April 1927 in Copenhagen, Denmark.

Education: Cand. polit. (M. A. in Economics), University of Copenhagen 1953.  
Dr. polit., University of Copenhagen 1971, (Dissertation: International Trade Theory and Regional Income Differences – United States 1880-1950, published as no. 70 in the Series Contributions to Economic Analysis, North-Holland Publishing Company, Amsterdam and London.



-2-

Studies abroad: International Fellow of the American Council of Learned Societies 1962-63. Fall semester 1962 at the Department of Economics, University of Pennsylvania, Winter and Spring semesters 1963 at the Department of Economics, University of Chicago and the Summer semester 1963 at the Department of Geography, University of Washington.  
Research Staff Member 1966-1967 at Gunnar Myrdal's Institute for International Economic Studies, Stockholm, Sweden.

Teaching and Research jobs: Part time Lecturer, University of Copenhagen 1954-1959, Full time Lecturer 1959-1962, 1963-1966 and 1967-1970.  
Professor of International Economics, University of Copenhagen 1970 and University of Roskilde 1974-1978.

Visiting Professorships: London School of Economics, January 1970.  
Whittier College, California, and Grinnell College, Iowa, February 1993.

Administrative jobs: Staff Member, Det økonomiske Sekretariat, Ministry of Finance 1954-1959.  
Rektor (Vice Chancellor), University of Roskilde 1970-1973.  
Chairman, Trafikrådet, ( the Copenhagen Metropolitan Area Council of Public Transportation) 1973-1978.

Political jobs: Member of the Folketing (the Danish Parliament) elected by Socialdemokratiet 1964-1966, 1971-1973 and 1975-1998.  
Minister for Housing 1978-1982.  
Minister for Justice 1993-1994.  
Formand (Speaker), Folketinget, 1994-1998.

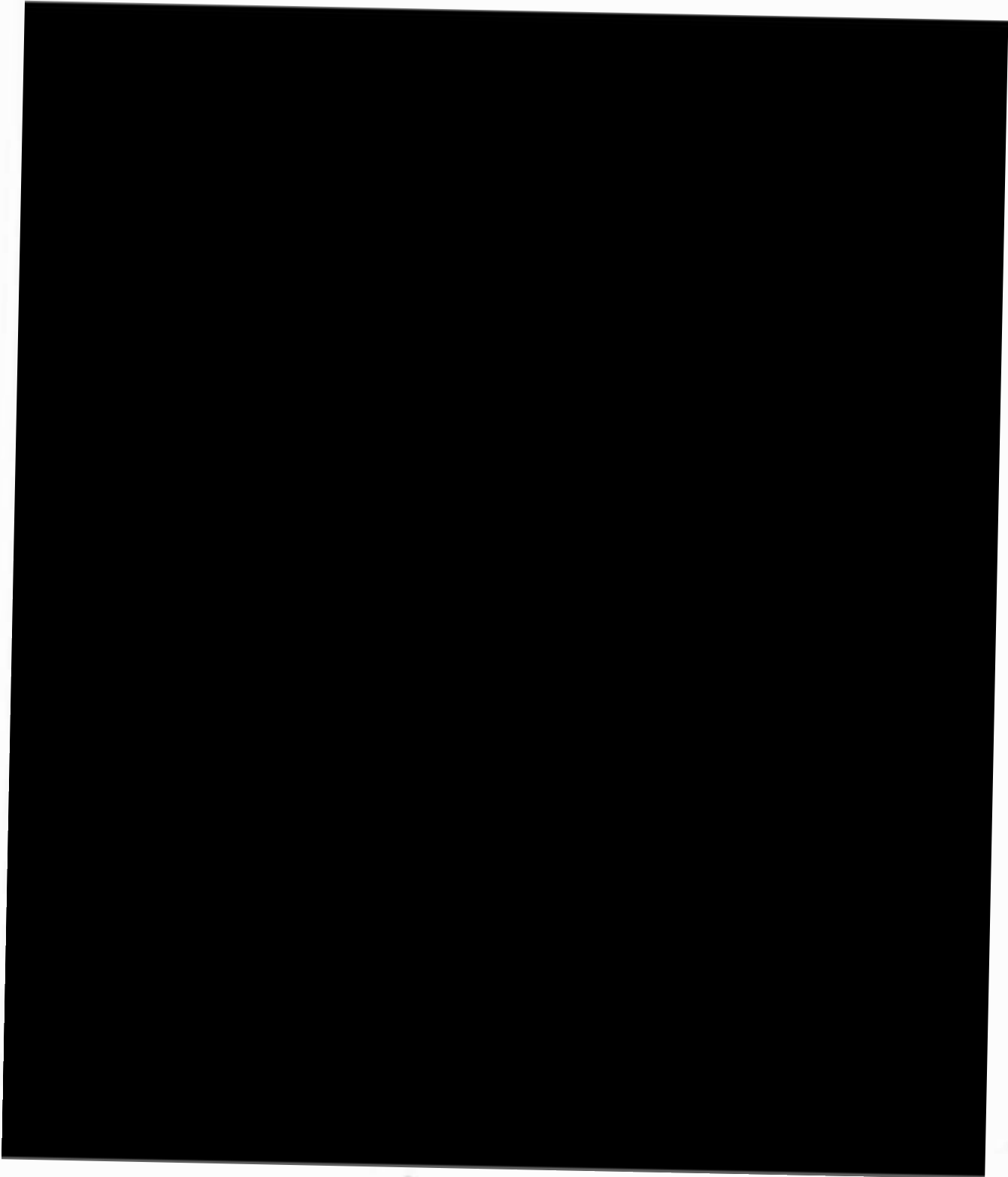
Publications: 12 books and numerous articles on economics, history and politics.

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**CURRICULUM VITAE**

**for**

**TYGE LEHMANN**  
**Ambassador, Legal Advisor**  
**Danish Ministry of Foreign Affairs**

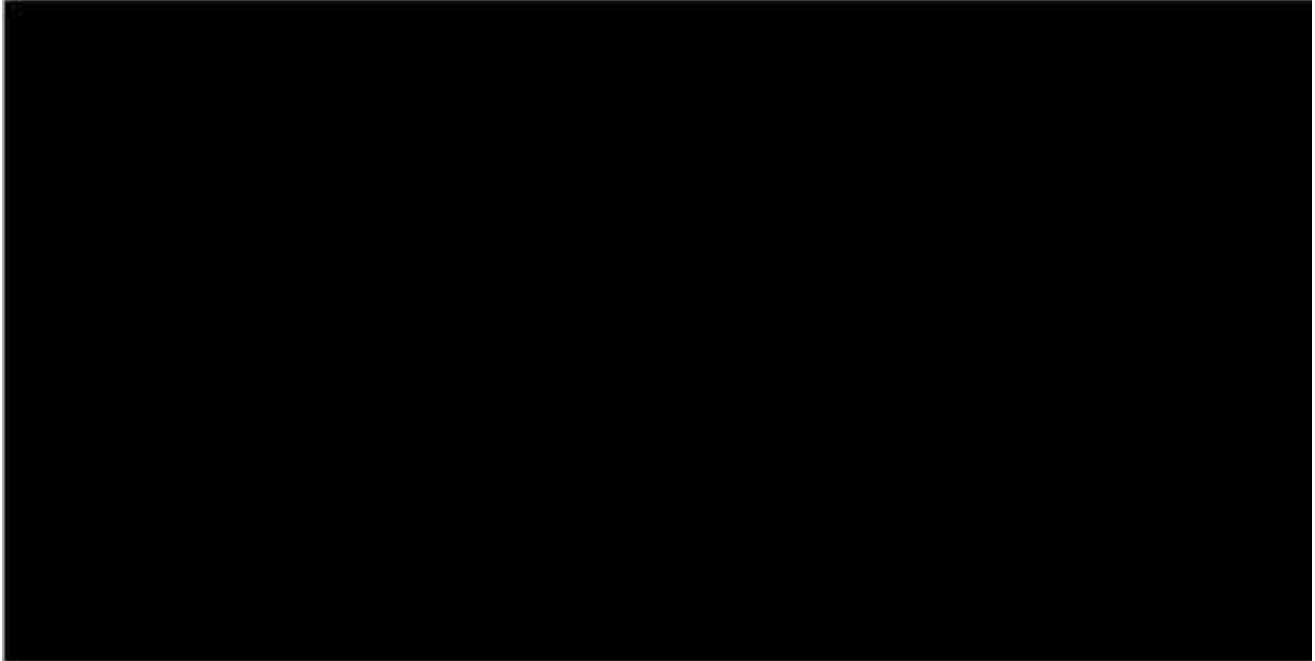


Ulla Tørnæs

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Tørnæs, Ulla Pedersen, [REDACTED]

Venstre. - Folketingsmedlem for Ribe Amtskreds fra 21. sept. 1994.

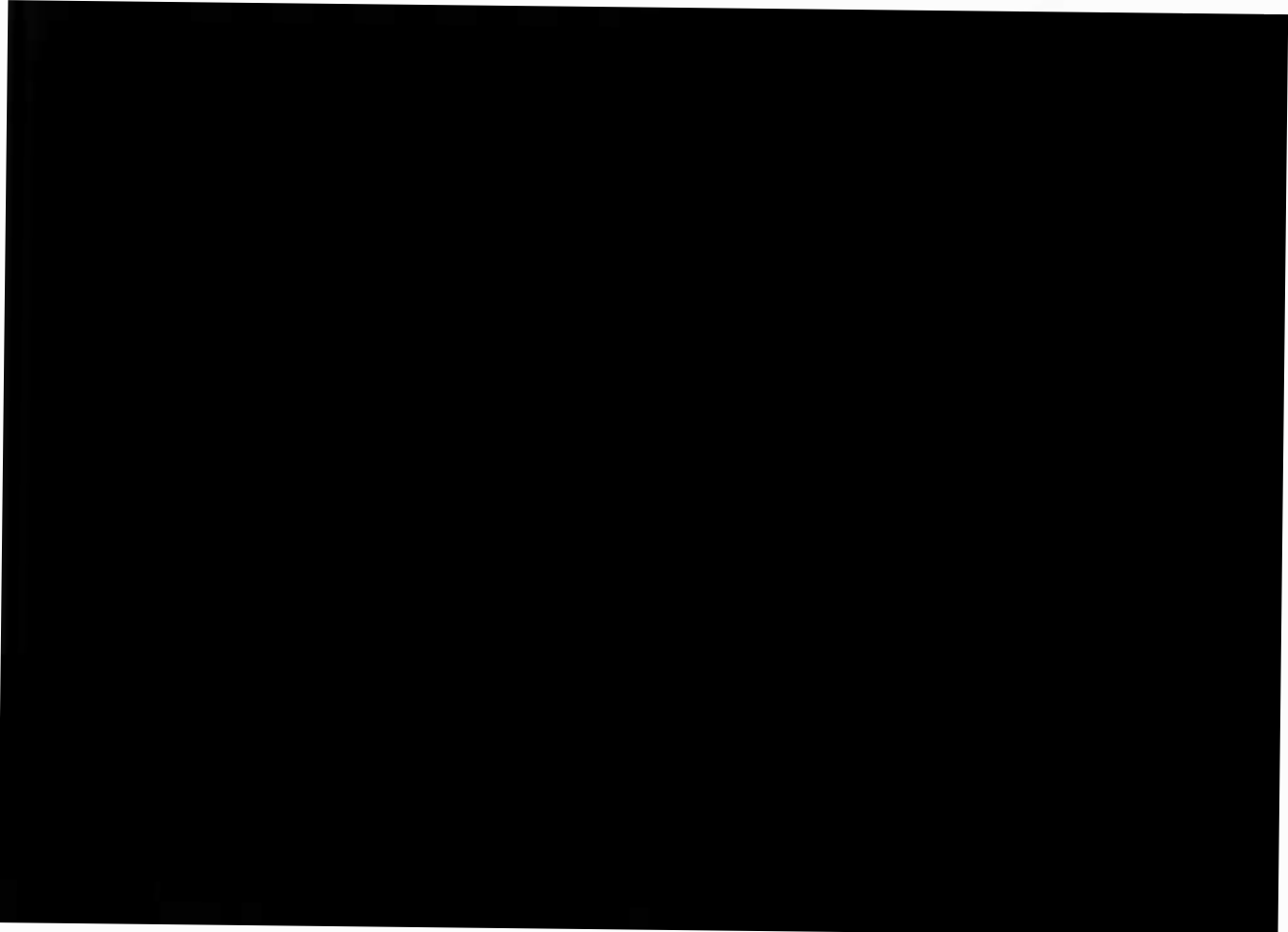


**Knud Erik Hansen**

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**Hansen, Knud Erik,** 

Socialistisk Folkeparti. Folketingsmedlem for Vestre Storkreds fra 20. juli 1999.



Christmas-Møller, Pia, 

Det Konservative Folkeparti. - Folketingsmedlem for Vejle Amtskreds fra 8. sept. 1987 og for Københavns Amtskreds fra 1998.





## Deutscher Bundestag - Abgeordnete 14. Wahlperiode

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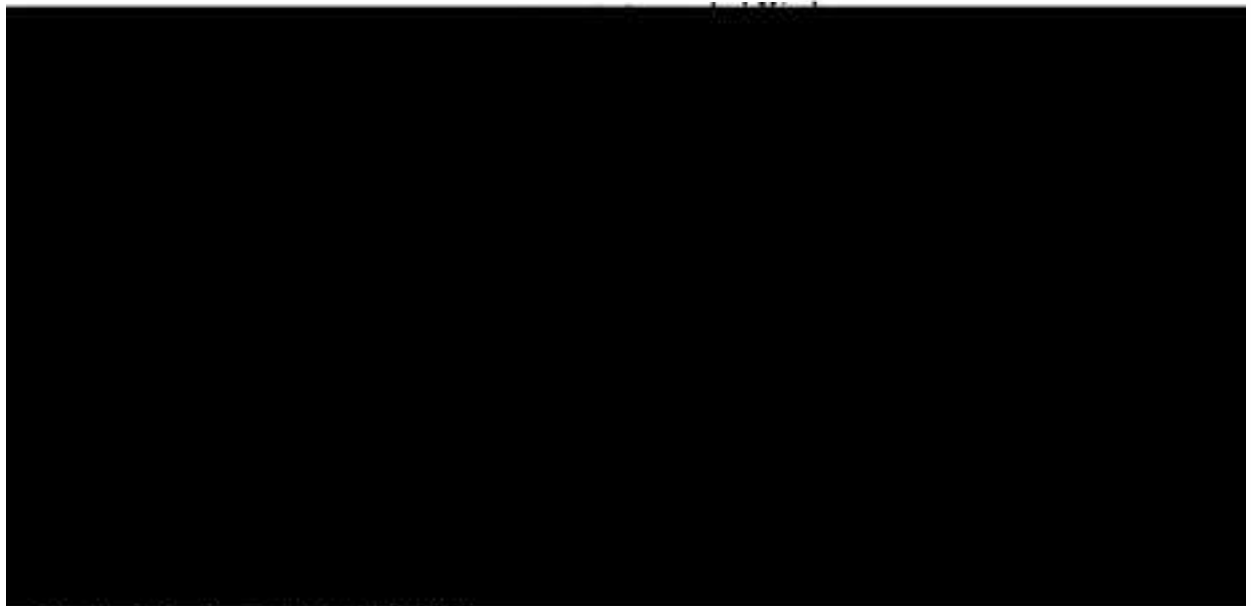


**Dr. Jürgen Meyer (Ulm)**



Platz der Republik 1  
11011 Berlin

Baden-Württemberg, Landesliste

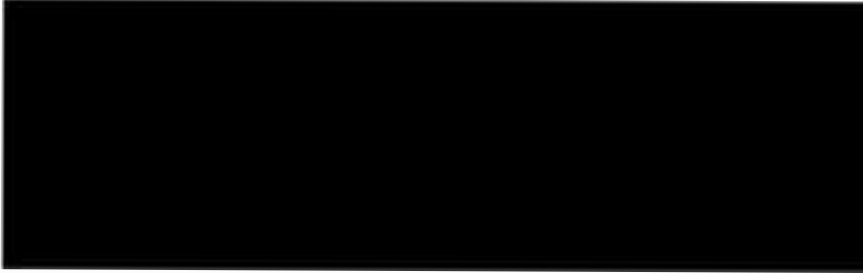


Mitglied des Bundestages seit 1990.

**Mitgliedschaft in Gremien:**

**Deutscher Bundestag**

- **Stellvertretender Vorsitzender**  
Ausschuss für Angelegenheiten der Europäischen Union
  - **Ordentliches Mitglied**  
Rechtsausschuss
- 



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**Dr. Jürgen Meyer (Ulm)**

**S P D**



**Platz der Republik 1  
11011 Berlin**

**Bade-Wurtemberg, Liste de Land**



**Membre du Bundestag depuis 1990.**

**Membre des organes suivants :**

**Bundestag allemand**

**Vice-président**

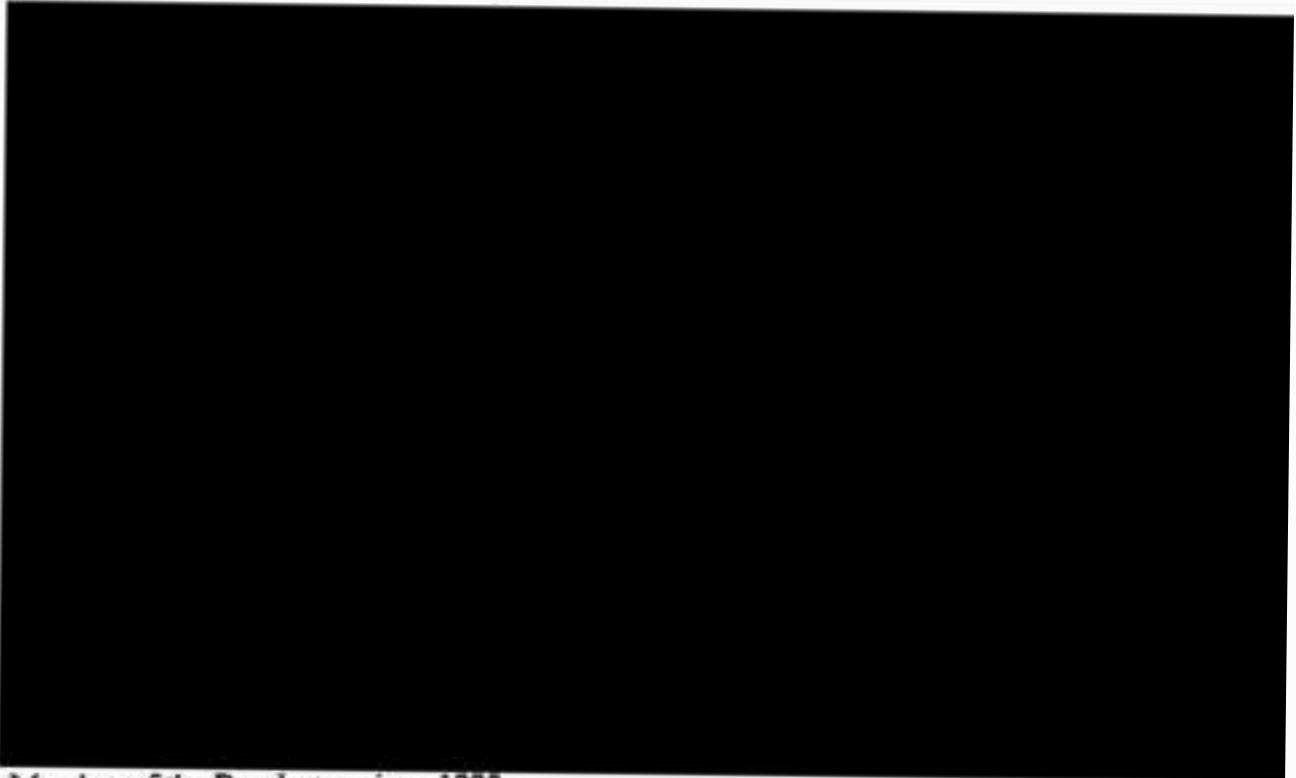
**Commission des affaires de l'Union européenne**

**Membre titulaire**

**Commission juridique**



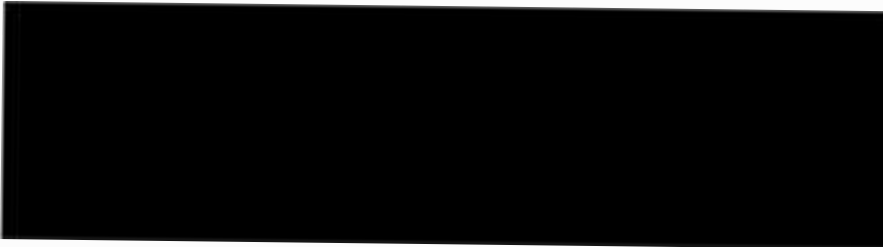


**Dr. Jürgen Meyer**

Member of the Bundestag since 1990.

**Memberships:****German Bundestag**

- **Deputy chairman**  
Committee on the Affairs of the European Union
- **Titular member**  
Committee on Legal Affairs

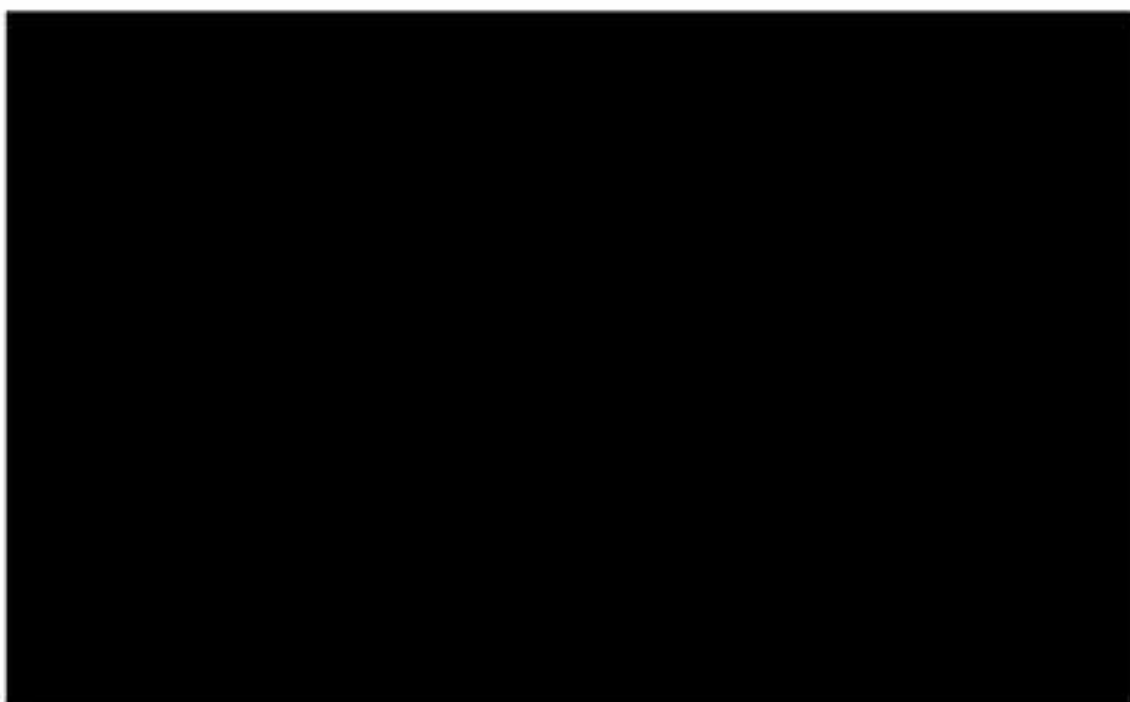


# Jürgen Gnauck

Thüringer Minister für  
Bundes- und  
Europaangelegenheiten und  
Chef der Staatskanzlei



## LEBENS LAUF



1. Oktober 1999 Ernennung zum Thüringer Minister für Bundes- und  
Europaangelegenheiten und Chef der Staatskanzlei



## Deutscher Bundestag - Abgeordnete 14. Wahlperiode

[Homepage](#) [Aktuelles](#) [Abgeordnete](#) [Gremien](#) [Europa](#) [Infothek](#) [Datenbanken](#) [Berlin](#) [Suche](#)

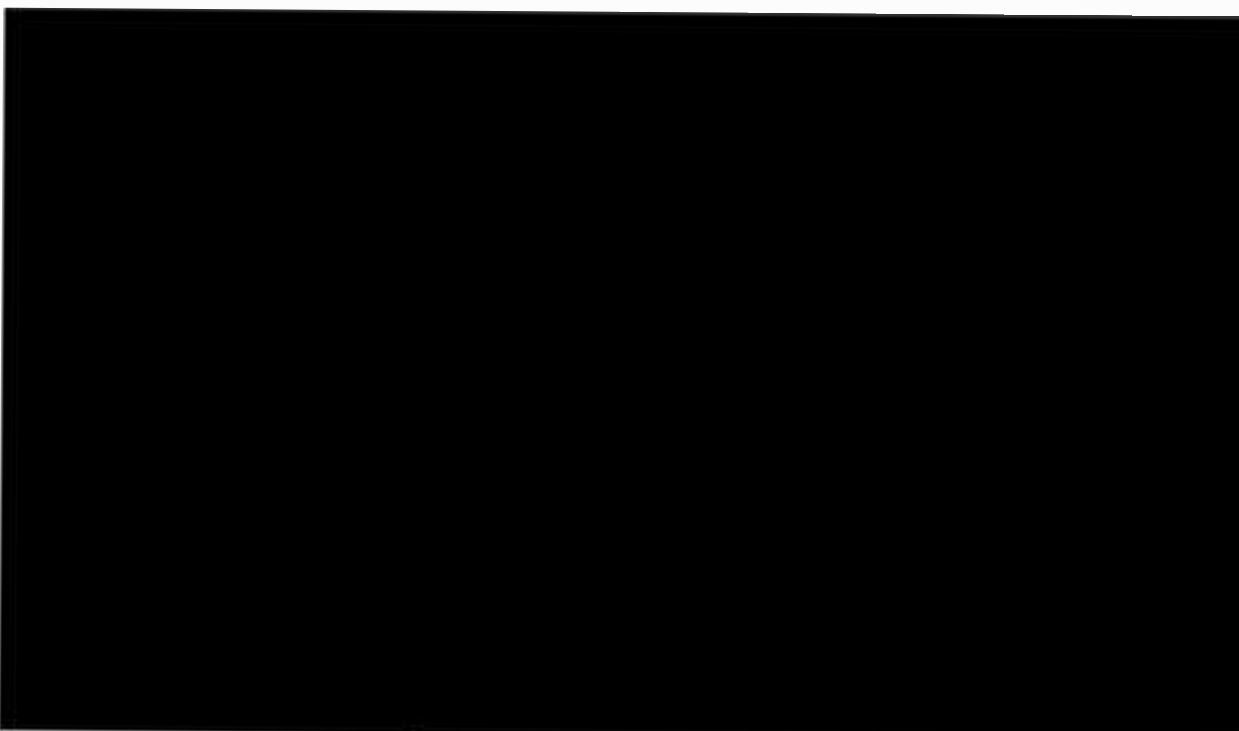


**Peter Altmaier**

**CDU**

Platz der Republik 1  
11011 Berlin

Saarland, Landesliste

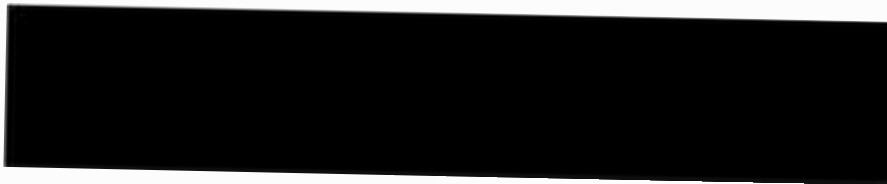


Mitglied des Bundestages seit 1994.

### Mitgliedschaft in Gremien:

#### Deutscher Bundestag

- **Ordentliches Mitglied**  
Ausschuss für Angelegenheiten der Europäischen Union
- **Stellvertretendes Mitglied**  
Rechtsausschuss



[Homepage](#) [Aktuelles](#) [Abgeordnete](#) [Gremien](#) [Europa](#) [Infothek](#) [Datenbanken](#) [Berlin](#) [Suche](#)



**Peter Altmaier**

**CDU**

  
**Platz der Republik 1  
11011 Berlin**

**Sarre, liste de Land**

  
**Membre du Bundestag depuis 1994.**

**Membre des organes suivants:**

**Bundestag allemand**

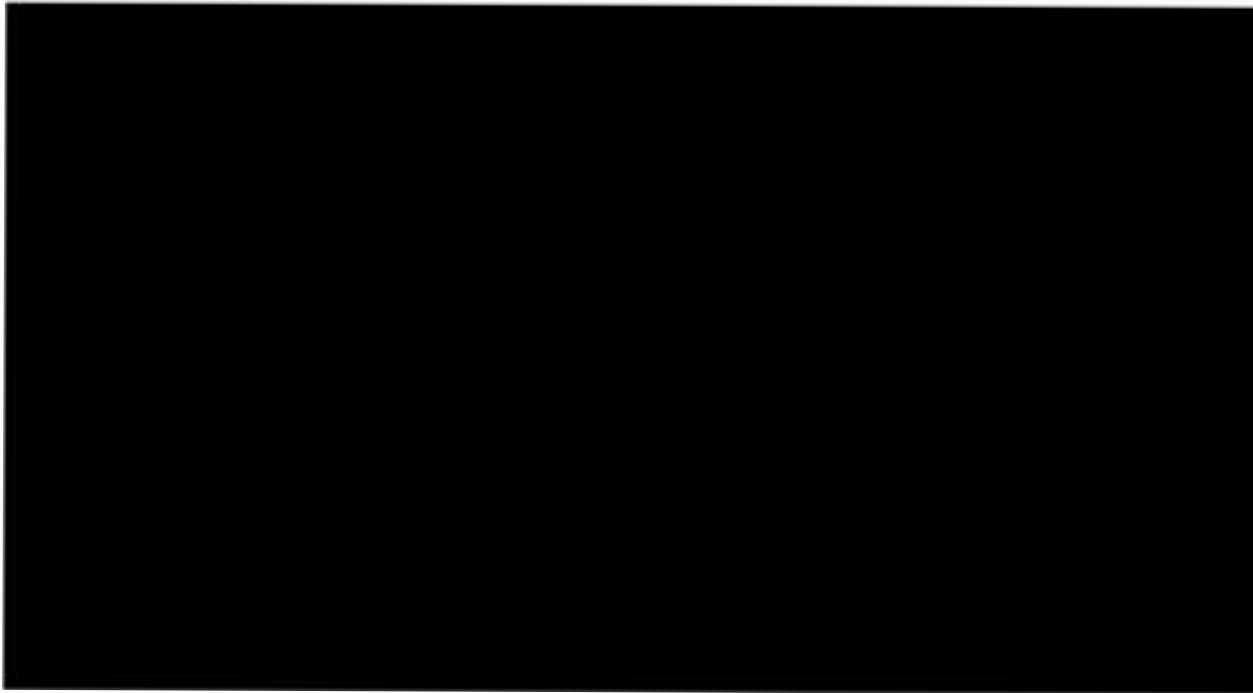
**Membre titulaire**

**Commission des Affaires de l'Union européenne**

**Membre suppléant**

**Commission juridique**



**Peter Altmaier**

Member of the Bundestag since 1994.

**Memberships:****German Bundestag**

- **Titular member**  
Committee on the Affairs of the European Union
- **Substitute member**  
Committee on Legal Affairs



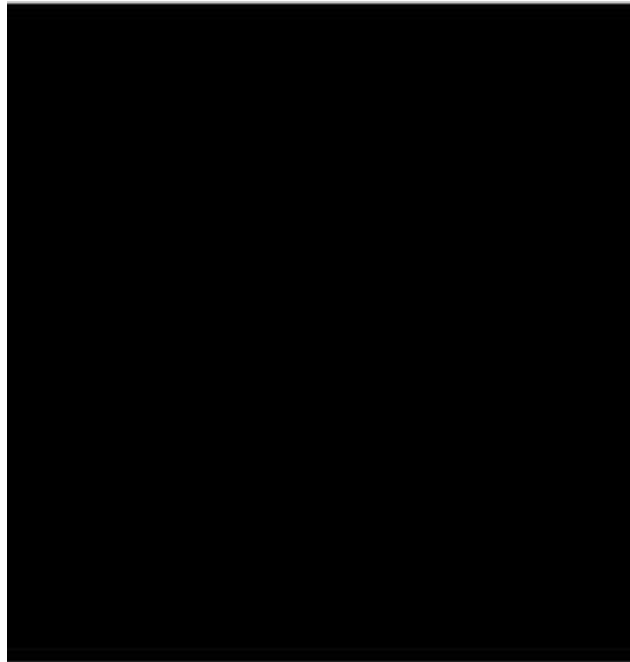
## Members

### ■ Kurzbiographien



**WEBER, Dr. Wolf**

Minister für Justiz und  
für  
Europaangelegenheiten  
Niedersachsen



Seit 15. 10. 1996 Sozialminister des Landes  
Niedersachsen.

Seit 30. 03. 1998 Minister für Justiz und für  
Europaangelegenheiten des Landes  
Niedersachsen.

MdBR seit 22. 10. 1996.

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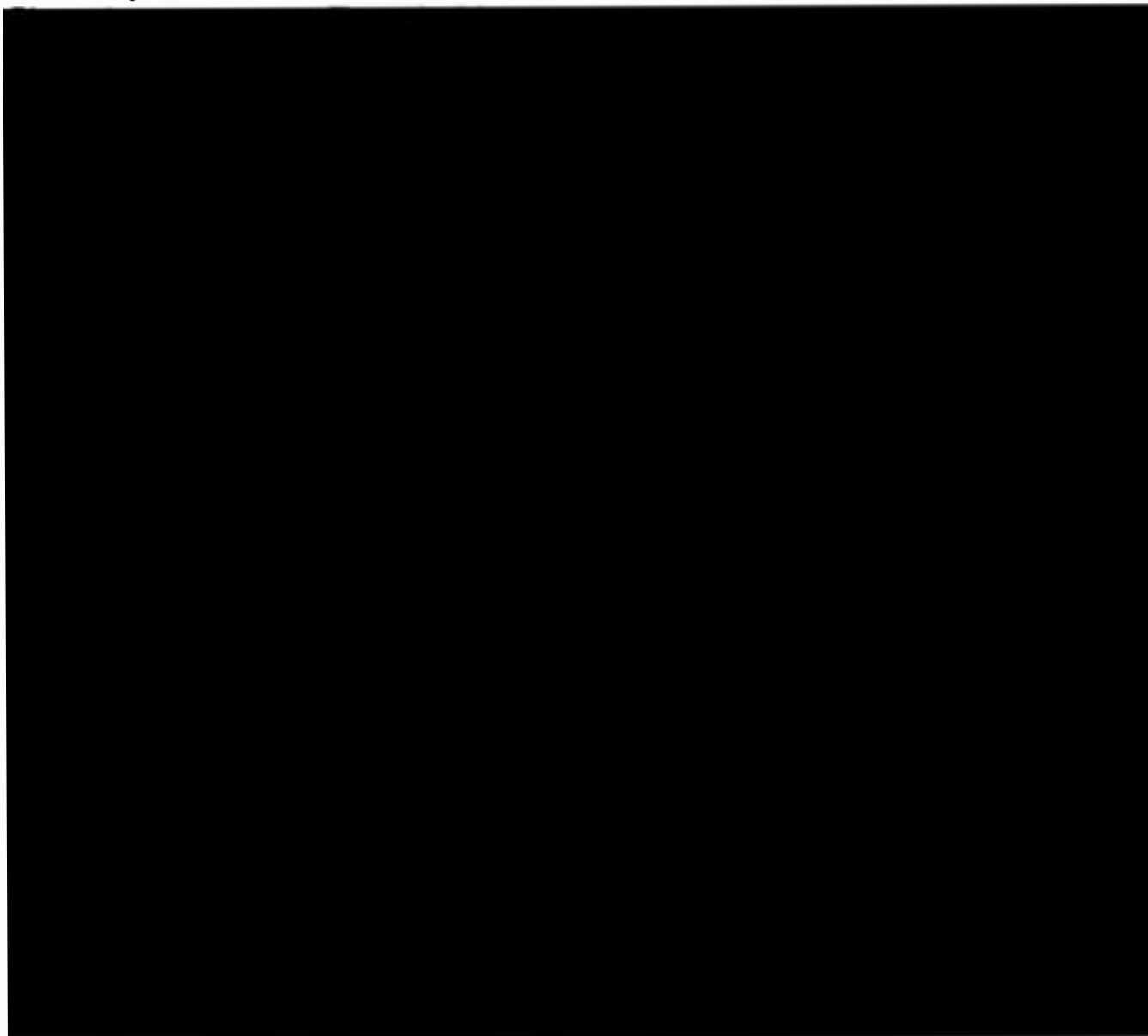
**Prof. Dr. George Papadimitriou**

Curriculum Vitae

Name : Papadimitriou

Vorname : George

Nationality : Greek



**George Papadimitriou :**





**Romeos T. Georgios**  
**MP Athens A, PASOK**



**PARLIAMENTARY ACTIVITIES:**

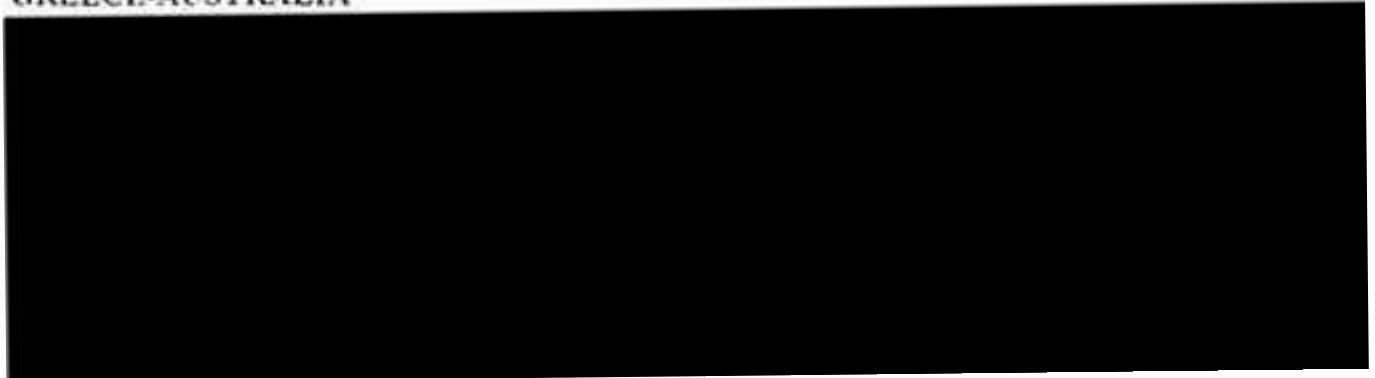
He was elected MP (PASOK) to Athens A constituency in the general election of 1996. He was also elected MEP with PASOK in 1984 and 1989.



From 1987 to 1989 he was deputy speaker of the European Parliament. On 25.7.89 he was re-elected deputy speaker of the European Parliament. On 14.1.92 he was elected anew to the post of deputy speaker of the European Parliament.

**FRIENDSHIP COMMITTEES:**

**GREECE-AUSTRALIA**



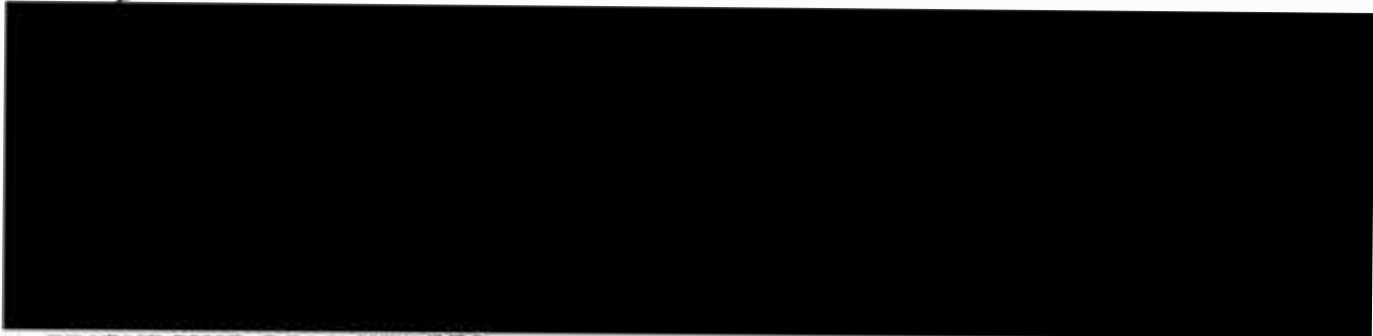


**Liapis K. Michael-Georgios**  
**MP Athens B, ND**



**PARLIAMENTARY ACTIVITIES:**

He was elected MP (ND) to Athens B constituency in the general elections of 1985, 1989 (June and November), 1990, 1993 and 1996. He is a member of the Parliamentary Convention of the Council of Europe, and of the Parliamentary Convention of the Western European Union.

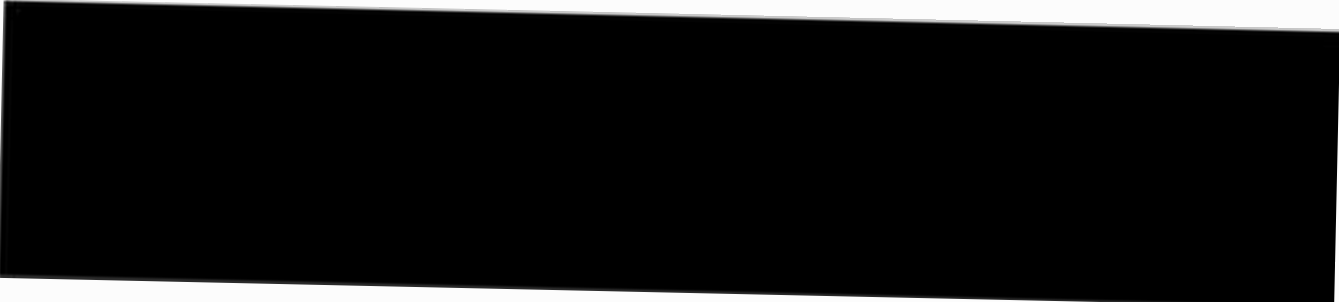


**FRIENDSHIP COMMITTEES:**

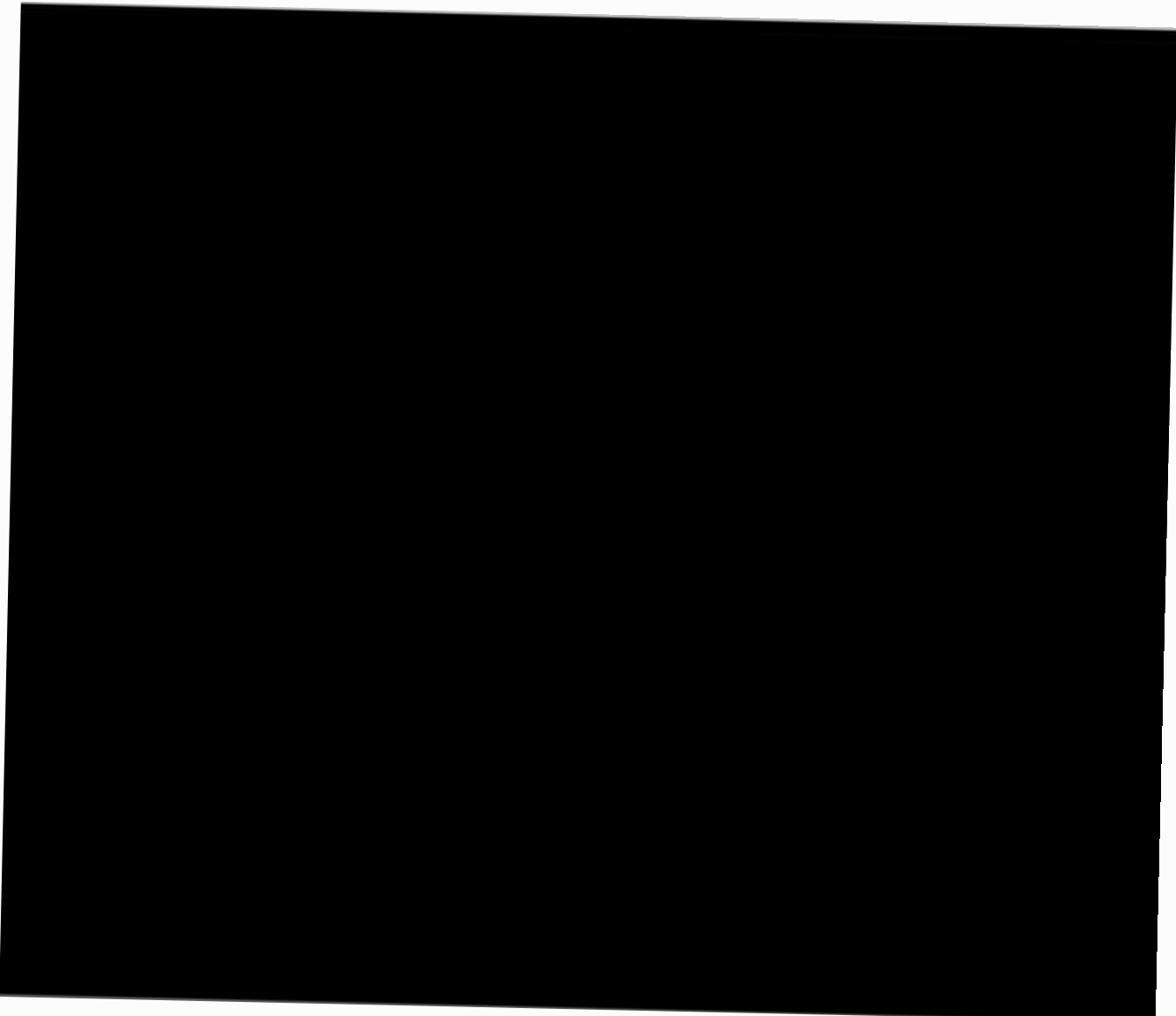
- GREECE-ARABIAN COUNTRIES
- GREECE-SPAIN-PORTUGAL



**CURRICULUM VITAE DEL PROF. DR. ALVARO RODRIGUEZ BERELIO  
CATEDRÁTICO DE DERECHO FINANCIERO Y TRIBUTARIO Y  
PRESIDENTE EMÉRITO DEL TRIBUNAL CONSTITUCIONAL**



Ha sido **MAGISTRADO DEL TRIBUNAL CONSTITUCIONAL** (desde el 27 de febrero de 1989) y **PRESIDENTE** del mismo (desde el 22 de abril de 1995 hasta el 18 de diciembre de 1998). Ha sido **CONSEJERO DEL TRIBUNAL DE CUENTAS**, elegido por el Senado (1986-1989). **DECANO** de la Facultad de Derecho de la Universidad Autónoma de Madrid y **Director** del Departamento de Derecho Financiero y Tributario de dicha Universidad.



#### **IV.- INVESTIGACIONES Y PUBLICACIONES CIENTIFICAS**

De ellas destacaríamos las que constituyen toda una línea de investigación sobre los fundamentos jurídicos y constitucionales del Derecho Financiero y Tributario y en particular sobre el Derecho Presupuestario y del Gasto Público y que ha venido desarrollando de modo coherente desde hace tiempo, así como los trabajos sobre Constitución, Derechos Fundamentales y los problemas de la Justicia Constitucional:

1. "El Presupuesto del Estado. Introducción al Derecho presupuestario". Edit. Tecnos, Madrid, 1970 (317 págs).
2. "La limitación de la iniciativa parlamentaria en materia presupuestaria en el Derecho positivo Español", Rev. Fac. de Der. Univ. Madrid, núm. 33, 1968 (54 págs.).
3. "Deliberación del Proyecto de Ley General Presupuestaria", en Crónica Tributaria, núm. 17, 1976.
4. "Introducción al estudio del Derecho Financiero", Instituto de Estudios Fiscales. Ministerio de Hacienda, Madrid, 1976, (439 págs.).
5. "Derecho Financiero, Gasto Público y Tutela de los Intereses Comunitarios en la Constitución", en Estudios sobre el Proyecto de Constitución, C.E.C., Madrid, 1978 (17 págs.).
6. Presentación y Traducción castellana de la obra de V.E. Orlando "Principios de Derecho Administrativo. I.N.A.P.", Madrid 1978. (XXI + 298 págs.).
7. "La Ley de Presupuestos en la Constitución Española de 1978", en la obra Hacienda y Constitución, I.E.F., Madrid, 1979 (86 págs.).
8. "Laband y el Derecho Presupuestario del Imperio Alemán", Estudio preliminar a la traducción castellana de la obra de P. Laband, "Derecho Presupuestario", I.E.F., Madrid, 1979 (73 págs).
9. "El Sector Público Español: su Déficit Sistemático", en Presupuesto y Gasto Público, núm. 3, 1979 (10 págs.).
10. "La Constitución Española de 1978 y el modelo de Estado: consideraciones sobre la función de la Hacienda Pública", en Sistema, núm. 53, 1983 (20 págs.).

11. "Política presupuestaria", en el Diccionario del Sistema Político Español, dirigida por José Juan González Encinar, Edit. Akal, Madrid, 1984 (págs. 741-755).
12. "Una reflexión sobre el sistema general de la financiación de las Comunidades Autónomas", en Revista Española de Derecho Constitucional, núm. 15, septiembre-diciembre, 1985, (págs. 65-78).
13. "El control parlamentario de la política económica", en Hacienda Pública Española, núm. 97, 1985 (págs. 127-138).
14. "Sobre Técnica Jurídica y Leyes del Presupuestos", en la obra "Estudios de Derecho y Hacienda", Homenaje a César Albiñana, Vol. I, Instituto de Estudios Fiscales, Madrid, 1987 (págs. 643-666).
15. "La eficacia temporal y el carácter normativo de la Ley de Presupuestos Generales del Estado", Centro de Estudios Constitucionales, Madrid, 1989, (en colaboración con L. Martín-Retortillo), (96 págs).
16. "Orçamento", I, II, III (extraído do libro inédito "Gobierno y Parlamento en la formación del Derecho Presupuestario"), publicado en los núms. 94, 95 y 96 de la Revista de Direito Publico de Brasil, 1990, (75 páginas).
17. "Los Fundamentos Constitucionales del control interno de la actividad financiera del Estado", en "Eficacia y legalidad en la Gestión pública", X Jornadas de control interno en el Sector Público, Intervención General de la Administración del Estado, Madrid, 1993 (págs. 21 a 32). Publicado también en la Revista de Direito Público de Brasil, 1994.
18. La jurisprudencia del Tribunal Constitucional sobre las Leyes de Presupuestos" en el libro "10 anys de Jurisprudencia Constitucional", Parlamento de les Illes Balears, 1993, (Edic. bilingüe) págs. 169-191 y 193-222.
19. "El sistema tributario en la Constitución (Los límites del Poder tributario en la Jurisprudencia del Tribunal Constitucional)", en el núm. 36 de la Revista Española de Derecho Constitucional, septiembre-diciembre 1992, (págs. 9-69).  
Publicado también en "El Sistema económico en la Constitución Española", XV Jornadas de Estudio de la Dirección General del Servicio Jurídico del Estado, Madrid, 1994, Vol. II (págs. 1281-1348).
20. "Jurisprudencia constitucional y Derecho Presupuestario. Cuestiones resueltas y temas pendientes", en Revista Española de Derecho Constitucional, núm. 44,

mayo-agosto 1995, págs. 9 a 64.

Publicado también en los "Estudios Jurídicos en Homenaje al Profesor Aurelio Menéndez", Editorial Cívitas, Madrid 1996 (págs 4419-4461).

21. "Constitución y Tribunal Constitucional". Revista Española de Derecho Administrativo, núm. 91, julio-septiembre 1996, págs. 367-384.
22. "Los Derechos fundamentales: derechos subjetivos y derecho objetivo", en La Ley, año XVII, núm. 4000. Marzo 1996.
23. "Derecho Penal Tributario y Derecho Tributario Sancionador en España". Revista Iberoamericana de Derecho Tributario, núm. 4, enero-abril 1997, págs. 61-90.
24. "Tutela Constitucional de los Derechos Fundamentales" en "Deliberación". Revista de la Asociación Profesional de la Magistratura, n.º. 17, segundo trimestre 1997 (págs. 12-16).
25. Entrevista por Prof. Pierre Bon sobre "Le Tribunal Constitutionnel espagnol", en "Les Cahiers du Conseil Constitutionnel", n.º. 2, 1997, págs. 54-63.
26. "La libertad de información en la jurisprudencia constitucional". Claves de la Razón Práctica. Madrid, 1997 (págs. 2-10).
27. "Las Leyes de Presupuestos en la Jurisprudencia Constitucional". Actas de las Jornadas sobre la Función Consultiva. Consejo Consultivo de Andalucía. Granada, 1998, (págs. 17 a 53).
28. "La libertad religiosa en el Tribunal Constitucional español", en J. Martínez Torrón (Ed.). "La libertad religiosa y de conciencia ante la justicia constitucional". Actas del VIII Congreso Internacional de Derecho Eclesiástico del Estado, Editorial Pomares, Granada 1998, págs. 41-49.
29. "Las Garantías Constitucionales" en la Revista Temas, n.º. 49. Diciembre. 1998 (pág. 28).
30. "Una reflexión tras veinte años de Constitución", en el número monográfico de OTROSÍ, núm. 143. Diciembre, 1998.
31. "I principi della imposizione nella Giurisprudenza Costituzionale spagnola" en Scritti in Onore del Prof. Abbamonte. Nápoli, 1999.



- Y con el título "Los principios de la imposición en la jurisprudencia constitucional", en Cívitas, en Revista Española de Derecho Financiero. Núm. 100, octubre-diciembre 1998, págs. 593-626.
32. "El papel del Tribunal Constitucional en la transformación del Estado de Derecho", en Aula de Ciencia y Cultura. Ciclo Aranguren, noviembre-diciembre 1998. Fundación Caixa de Sabadell, junio 1999, págs. 21-31.

Otra de las líneas de investigación se ha centrado en estudios de Teoría de la Hacienda Pública, los sistemas fiscales y los problemas de la Reforma Fiscal y la llamada Crisis Fiscal del Estado así como sobre los límites constitucionales del sistema tributario, entre ellos se citan:

1. "La teoría de la ilusión financiera de Puviani; una contribución al estudio psicológico y sociológico de la Hacienda Pública", Estudio preliminar a la traducción castellana de la obra de A. Puviani, "Teoría de la ilusión financiera", Instituto de Estudios Fiscales, Madrid, 1972 (76 págs.)
2. "La Reforma Fiscal", en Revista de la Facultad de Derecho de la Universidad Complutense de Madrid, núm. 53, 1978 (26 págs.).
3. "Lecturas sobre Sistema Tributario Español", Madrid, Curso académico 1978-79 (642 págs.).
4. "La Crisis Fiscal del Estado en España", en el volumen "Estado y Sector Público en España", Symposium organizado por la Fundación Hogar del Empleado, Madrid, 1981, (págs. 101-121).
5. "La Hacienda Pública y el modelo de Estado en la Constitución española: Una reflexión sobre la dimensión constitucional del gasto público en el Estado social de Derecho", en Revista de Direito Tributario, núm. 34, octubre-diciembre, 1985 (págs. 57-76).

Ha desarrollado también estudios dedicados a la vertiente de los ingresos públicos y orientados en particular a la teoría jurídica de la obligación tributaria, entre ellos citamos:

1. "La successione nell'obbligazione tributaria". Tesis Doctoral dirigida por el

- Profesor Antonio Berliri. Bologna, Università degli Studi, Anno academico 1966-67 (379 págs.).
2. "La sucesión en las relaciones tributarias" en Revista de Derecho Financiero y de Hacienda Pública, núm. 57, 1965.
  3. "Las garantías del crédito tributario", en Civitas, Revista Española de Derecho Financiero, núm. 30, 1981 (39 págs.).
  4. "Comentarios a la Ley General Tributaria", Tomo I, Edersa, Madrid, 1982 (con otros autores), art. 41 (págs. 360-363) y art. 71 a 76 (págs. 626 a 671).
  5. "Notas de Derecho Financiero", Tomo I, Vols. 2º y 3º, Madrid, 1972 (2ª edic.) (en colaboración con otros autores y dirigidos por el Profesor Fernando Sainz de Bujanda).



**CISNEROS LABORDA,  
Gabriel.**

Diputado por Burgos

Grupo Parlamentario Popular en el Congreso (GP)

Nacido el 14 de agosto de 1940 en Tarazona (Zaragoza). Diputado en las Legislaturas Constituyente, I, II, IV y V. [REDACTED] Licenciado en

Derecho. Funcionario del Cuerpo Superior de Administradores Civiles del Estado. Fundador de UCD. Ponente de la Constitución española. Ha desempeñado altos cargos en relación con la juventud, la educación, la asistencia social y la administración periférica. Ha sido Subsecretario y Secretario de Estado de Relaciones con las Cortes. Dilatada dedicación periodística. Miembro del CEN del PP. Secretario de Estudios y Programas del PP.

Vocal de la Diputación Permanente

Portavoz Sustituto de la Junta de Portavoces

Presidente de la Comisión Constitucional

Vocal de la Comisión de Reglamento

**SOLÉ TURA,  
Jordi.**

Diputado por Barcelona  
Grupo Socialista del Congreso (GS)

Nacido el 23 de mayo de 1930 en Mollet de Vallés (Barcelona). Diputado en las Legislaturas Constituyente, I, II, III, IV y V. **[REDACTED]** Doctor en Derecho. Doctor "Honoris Causa" UNED. Catedrático de Derecho Constitucional. Miembro del Consejo Federal del PSOE, de la Comisión Ejecutiva y del Consejo Nacional del PSC. Escritor y colaborador-columnista en diversos periódicos, especialmente El País, El Periódico de Catalunya y La Vanguardia.



PSC-PSOE

**Vocal Suplente** de la Diputación Permanente

**Portavoz** de la Comisión Constitucional

**Vocal** de la Comisión de Asuntos Exteriores

**GUY BRAIBANT**

Né le 5 septembre 1927

**DIPLÔMES**

Licence ès Lettres  
Licence en Droit  
Diplôme de l'Institut d'Etudes Politiques de Paris  
Diplôme d'études supérieures de Sciences économiques  
Ancien élève de l'École Nationale d'Administration

**CARRIÈRE****Conseil d'Etat (1953-1995)**

Président de la Section du rapport et des études du Conseil d'Etat (1984-1992)

**Institut International des Sciences Administratives**

Collaborateur du Président René Cassin, Président de l'I.I.S.A. (1953-1958)  
Secrétaire général adjoint de la section nationale française (1953-1966)  
Secrétaire général de la section nationale française (1966-1979)  
Directeur général (1979-1981) et Président (1992-1995)

**Activités actuelles**

Vice-Président de la Commission supérieure de codification (depuis 1988)

Membre de la Commission nationale consultative des droits de l'homme (depuis 1989)

Président du Groupe européen de droit public (depuis 1995)

Président de la Commission spécialisée de terminologie et de néologie au ministère de l'équipement (depuis 1998)

Représentant du Président de la République et du Premier ministre au sein de l'Instance chargée d'élaborer la Charte des droits fondamentaux de l'Union européenne (1999-2000)

**ENSEIGNEMENTS**

**Cours sur le droit administratif et les institutions administratives à l'Institut d'Etudes Politiques de Paris de 1971 à 1996**

**Cours sur les institutions administratives comparées à l'Institut d'Etudes Politiques de Paris de 1975 à 1986**

**Cours de droit administratif, de science administrative et d'administration comparée à :**

- l'Université de Paris I
- l'Institut International d'Administration Publique
- aux Ecoles Nationales d'Administration de Paris, Alger, Rabat et Tunis

**TRAVAUX**

- . **Les grands arrêts de la Jurisprudence Administrative (12<sup>ème</sup> édition en 1999 en collaboration avec M. Long, P. Weil, P. Delvolvé et B. Genevois)**
- . **Le contrôle de l'administration et la protection des citoyens (en collaboration avec N. Questiaux et C. Wiener, 1973)**
- . **Le droit administratif français 5<sup>ème</sup> édition en 1999 en collaboration avec B. Stirn)**
- . **Les institutions administratives comparées (cours polycopié, dernière édition en 1986)**
- . **Les archives en France (La Documentation française, 1996)**
- . **Données personnelles et société de l'information (La Documentation française, 1998)**

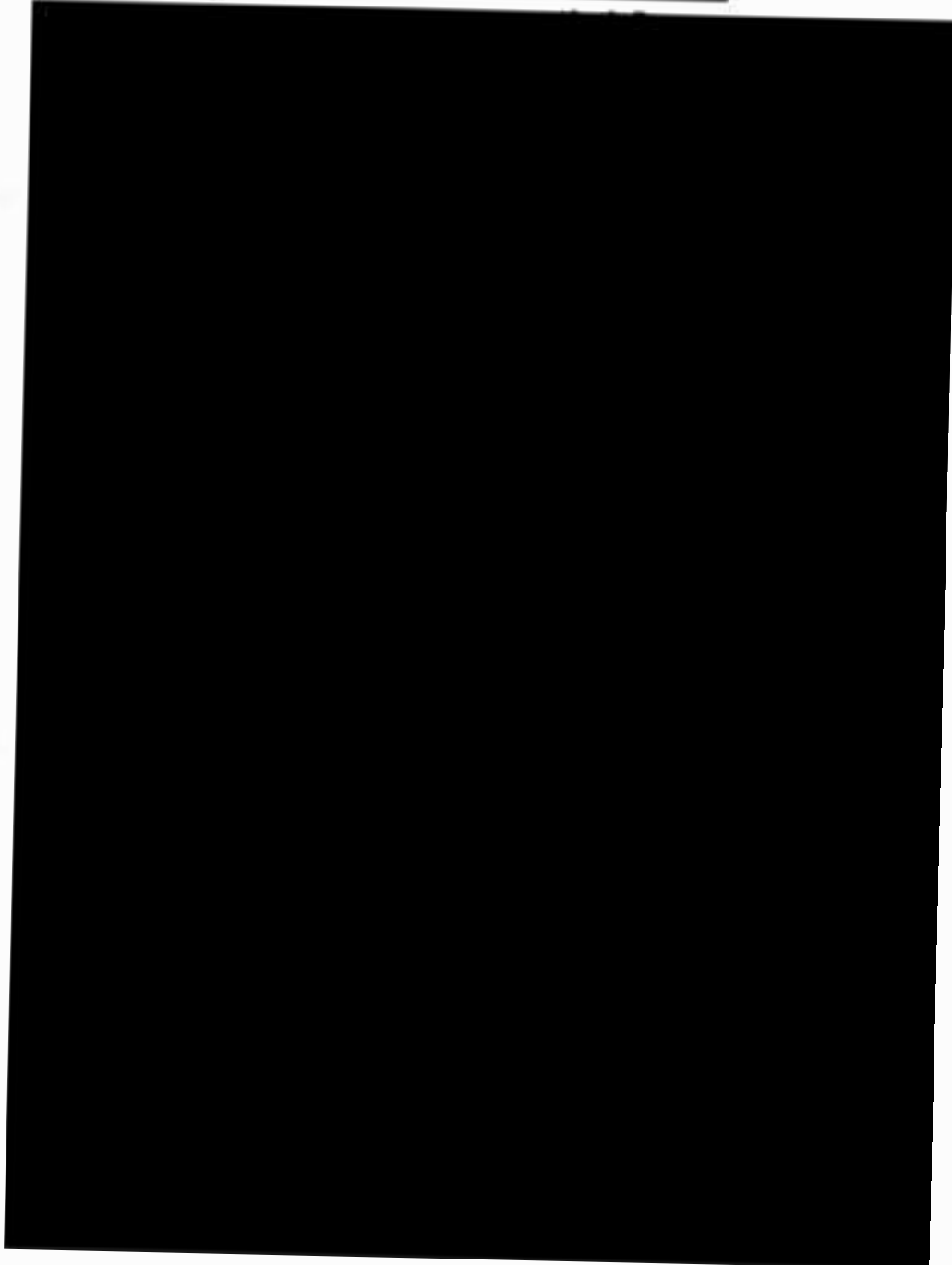
**DISTINCTIONS**

**Grand officier de la légion d'honneur  
Commandeur de l'ordre du mérite**

Janvier 2000

**CURRICULUM VITAE**

Noni : CHATEL de BRANCION, Jacqueline



**M. François Loncle****ÉTAT CIVIL****ADRESSE(S)****INFORMATIONS GÉNÉRALES****MANDATS ET FONCTIONS À L'ASSEMBLÉE  
NATIONALE****ANCIENS MANDATS ET FONCTIONS A  
L'ASSEMBLÉE NATIONALE****ANCIENS MANDATS NATIONAUX OU  
FONCTIONS MINISTERIELLES****MANDATS LOCAUX EN COURS****ANCIENS MANDATS LOCAUX****SUPPLÉANT****ÉTAT CIVIL**

M. François Loncle

**ADRESSE(S)****INFORMATIONS GÉNÉRALES**Circonscription d'élection : Eure (4<sup>ème</sup>)

Groupe politique : SOC





## MANDATS ET FONCTIONS À L'ASSEMBLÉE NATIONALE

**RÉÉLU** le 01/06/1997 ( élections générales )

Date de début de mandat : 12/06/1997

Membre de la commission des affaires étrangères depuis le : 01/10/1999

Secrétaire de la commission des affaires étrangères depuis le : 01/10/1999

Membre de la délégation de l'Assemblée nationale pour l'Union européenne depuis le : 20/06/1997

Membre de la mission d'information commune sur les obstacles au contrôle et à la répression de la délinquance financière et du blanchiment de capitaux en Europe depuis le : 09/06/1999

Secrétaire du Groupe d'amitié France îles Maldives depuis le : 03/02/1998

Secrétaire du Groupe d'amitié France République Togolaise depuis le : 01/12/1997

Secrétaire du Groupe d'amitié France République fédérale de Yougoslavie depuis le : 03/12/1997

Vice-Président du Groupe d'amitié France Canada depuis le : 12/11/1997

Vice-Président du Groupe d'amitié France République de Chypre depuis le : 12/11/1997

Vice-Président du Groupe d'amitié France République arabe d'Égypte depuis le : 12/11/1997

## ANCIENS MANDATS ET FONCTIONS A L'ASSEMBLÉE NATIONALE

**ÉLU** le 21/06/1981 ( élections générales )

Mandat du 02/07/1981 au 01/04/1986

**RÉÉLU** le 16/03/1986 ( élections générales )

Mandat du 02/04/1986 au 14/05/1988

**RÉÉLU** le 12/06/1988 ( élections générales )

Mandat du 13/06/1988 au 03/07/1992

## ANCIENS MANDATS NATIONAUX OU FONCTIONS MINISTERIELLES

Secrétaire d'Etat à la ville

Du 04/06/1992 au 26/12/1992

Secrétaire d'Etat au plan

Du 26/12/1992 au 29/03/1993

**MANDATS LOCAUX EN COURS**

Maire adjoint de Louviers, Eure ( 18348 habitants )

Depuis le 25/06/1995

**ANCIENS MANDATS LOCAUX**

Maire de Brionne ,Eure

Du 14/03/1983 au 12/03/1989

Du 24/03/1989 au 18/06/1995

Conseiller général (Eure)

Du 07/10/1988 au 26/05/1989

**SUPPLÉANT**

[REDACTED]

Numéro de la place occupée dans l'hémicycle : 526

La zone en rouge situe le banc





## Hubert HAENEL

Accédez aux pages personnelles du sénateur : [Cliquez ici](#)



Sénateur du Haut-Rhin (Alsace)

Né le 20 mai 1942

Secrétaire du Sénat

Membre de la Commission des finances, du contrôle budgétaire et des comptes économiques de la nation

Membre du Groupe du Rassemblement pour la République

**Profession :**

Maître des Requêtes au Conseil d'Etat

**Mandats Locaux :**

Maire de Lapoutroie

Vice-Président du conseil régional d' Alsace

**Election :**

Élu le 28 septembre 1986 ; Réélu le 24 septembre 1995

**Autres Fonctions :**

Président de la Délégation parlementaire pour l'Union européenne

Membre du Conseil supérieur de l'administration pénitentiaire

Membre du Conseil supérieur du service public ferroviaire

Membre de la Haute Cour de Justice

Mis à jour le 15 décembre 1999



Mme Nicole Ameline

Page 1 of 3

**Mme Nicole Ameline****ÉTAT CIVIL****ADRESSE(S)****INFORMATIONS GÉNÉRALES****MANDATS ET FONCTIONS À L'ASSEMBLÉE NATIONALE****ANCIENS MANDATS ET FONCTIONS A L'ASSEMBLÉE NATIONALE****ANCIENS MANDATS NATIONAUX OU FONCTIONS MINISTERIELLES****MANDATS LOCAUX EN COURS****SUPPLÉANT****ÉTAT CIVIL**

Mme Nicole Ameline

**ADRESSE(S)****INFORMATIONS GÉNÉRALES**Circonscription d'élection : Calvados (4<sup>ème</sup>)

Groupe politique : DL

**MANDATS ET FONCTIONS À L'ASSEMBLÉE NATIONALE**

RÉÉLUE le 01/06/1997 ( élections générales )

Date de début de mandat : 12/06/1997

Membre de la commission des affaires étrangères depuis le : 01/10/1998

Membre de la délégation de l'Assemblée nationale pour l'Union européenne depuis le : 20/06/1997

Membre de la délégation de l'Assemblée nationale aux droits des femmes et à l'égalité des chances entre les hommes et les femmes depuis le : 15/10/1999

### ANCIENS MANDATS ET FONCTIONS A L'ASSEMBLÉE NATIONALE

ÉLUE le 05/06/1988 ( remplacement d'un député décédé )

Mandat du 09/03/1991 au 01/04/1993

RÉÉLUE le 28/03/1993 ( élections générales )

Mandat du 02/04/1993 au 18/06/1995

RÉÉLUE le 17/12/1995 ( élection partielle, remplacement d'un député démissionnaire )

Mandat du 17/12/1995 au 21/04/1997

### ANCIENS MANDATS NATIONAUX OU FONCTIONS MINISTERIELLES

Secrétaire d'Etat auprès du ministre de la réforme de l'état, de la décentralisation et de la citoyenneté. à la décentralisation

Du 18/05/1995 au 07/11/1995

### MANDATS LOCAUX EN COURS

Vice-Présidente (Basse Normandie)

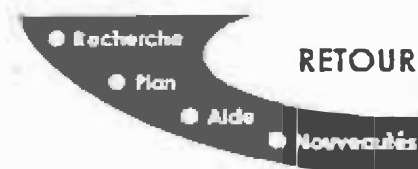
Depuis le 23/03/1998

### SUPPLÉANT



Numéro de la place occupée dans l'hémicycle : 188

La zone en rouge situe le banc



## Marie-Madeleine DIEULANGARD



Sénateur de la Loire-Atlantique (Pays de la Loire)

Secrétaire du Sénat

Vice-Présidente de la Commission des affaires sociales

Membre du Groupe Socialiste

**Mandats Locaux :**

Adjoint au maire de Saint-Nazaire

**Election :**

Elue le 27 septembre 1992

**Autres Fonctions :**

Membre de la Délégation parlementaire pour l'Union européenne

Membre de la Délégation parlementaire pour les problèmes démographiques

**Anciennes Fonctions :**

Ancien député

Marie-Madeleine DIEULANGARD

Page 2 of 2



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Mis à jour le 15 décembre 1999

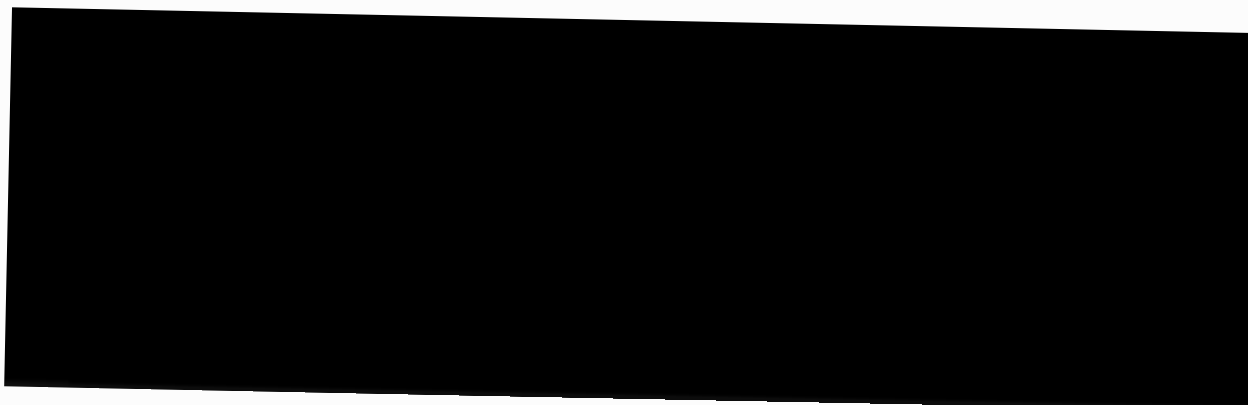
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haut



DÁIL ÉIREANN  
BAILE ÁTHA CLIATH, 2.  
(Dublin, 2).

CURRICULUM VITAE.

MICHAEL O'KENNEDY, S.C., T.D.,



POLITICAL:  
(National)



*Minister of State, Education 1970 - '72.*  
*Minister for Transport & Power 1972-'73.*  
*Opposition Spokesman, Foreign Affairs 1973 - '77.*  
*Minister for Foreign Affairs 1977 - '79.*  
*Minister for Finance 1979 - '80.*  
*Opposition Spokesman for Finance 1983 - '87.*  
*Minister for Agriculture & Food 1987 - '92.*  
*Minister for Labour 1992.*  
*Elected to Senate 1993 - Government Spokesman on Northern Ireland and Finance.*  
*Re-Elected to Dail Eireann June 1997.*  
*Co-Chairman British-Irish Parliamentary Body, September '97.*



-2-

**European Communities:**

***Council of Ministers - Energy 1972-'73.  
Council of Ministers (Foreign Affairs) 1977 - '79 (President - 1979)  
Council of Ministers (Economic, Finance) 1979-1980.  
President, Board of Governors, European Investment Bank 1979.  
Member of Commission of European Community 1981-'82.***

***Commissioner for General Policy, Administration - Personnel.***

***Council of Ministers (Agriculture) 1987-'92 (President 1989).  
Council of Ministers (Social Affairs) 1992.***

\*\*\*\*\*

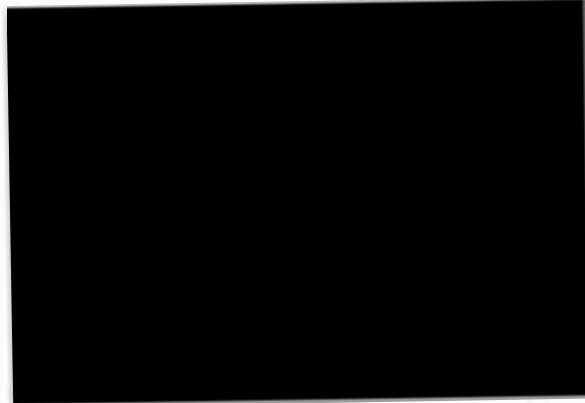
*Tithe an Oireachtais*

## HOUSES OF THE OIREACHTAS

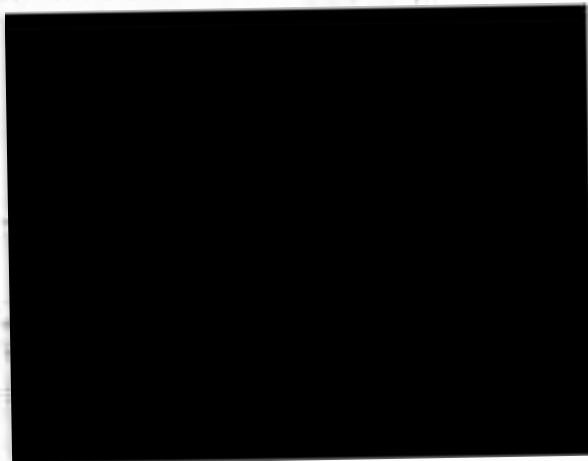
## PARLIAMENT OF IRELAND



Desmond J. O'Malley



Des O'Malley was Minister for Industry and Commerce from July 1989 to November 1992, when he resigned. He was Minister for Trade, Commerce and Tourism March-October 1982. Minister for Industry, Commerce and Tourism December 1978-June 1981; Minister for Industry, Commerce and Energy November 1977-December 1979. Minister for Industry and Commerce July-November 1977; Minister for Justice 1970-73. Parliamentary Secretary to the Taoiseach and to the Minister for Defence and Government Chief Whip 1969-70. Progressive Democrats spokesperson on Foreign Affairs and Northern Ireland 1993-97. Member, numerous Dáil Committees.



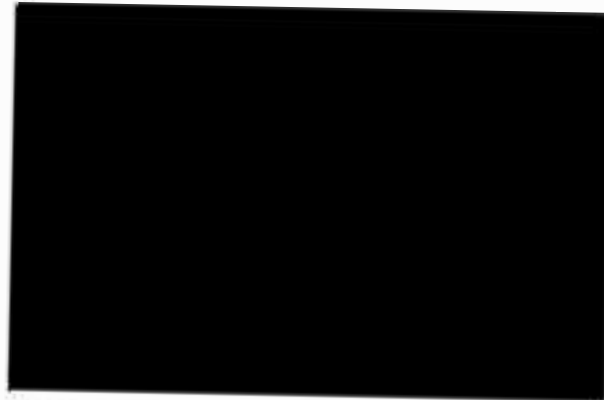
*Tithe an Oireachtais*

## HOUSES OF THE OIREACHTAS

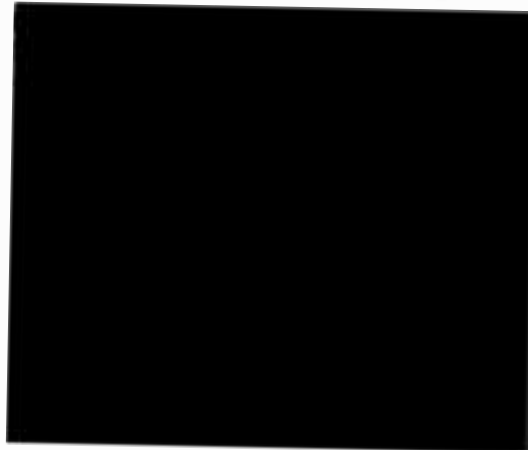
## PARLIAMENT OF IRELAND



Bernard J. Durkan



Bernard Durkan was Minister of State at the Department of Social Welfare, with special responsibility for Information and Customer Services and the Integration of the Tax and Social Welfare Codes, 1994-97. He was first elected to the Dáil in 1981. He was unsuccessful in the February 1982 general election but regained his seat in the November 1982 general election. Senator, April-November 1982, Agricultural Panel.



05 6818663

**PROF. STEFANO RODOTÀ**

Stefano Rodotà. È professore ordinario di Diritto civile presso la Facoltà di Giurisprudenza dell'Università di Roma "La Sapienza".

Presidente dell'Autorità Garante per la protezione dei dati personali.

Ha insegnato in diverse università straniere. È stato Visiting Scholar, Stanford School of Law e Visiting Fellow, All Souls College, Oxford.

Deputato al Parlamento italiano (1979-1994), eletto al Parlamento europeo, membro dell'Assemblea parlamentare del Consiglio d'Europa (1983-1994). È stato Vice Presidente della Camera dei deputati.

È stato tra gli autori delle linee direttive dell'OCSE del 1980, sulla privacy.

È membro del Legal Advisory Board for Market Information della Commissione Europea.

È Vice Presidente del Gruppo Europeo per la tutela della persona con riguardo al trattamento dei dati personali.

È membro dell'European Group on Ethics in Science and New Technologies.

Ha sempre dedicato particolare attenzione al tema dei diritti. Tra i suoi libri più recenti:

"Il terribile diritto. Studi sulla proprietà privata" (1990), "Questioni di bioetica" (1993),

"Tecnologie e diritti" (1995), "Tecnopolitica" (1997), "Libertà e diritti in Italia" (1997),

"Repertorio di fine secolo" (1999).

*Senato della Repubblica*

## Andrea MANZELLA

**Regione di elezione :** Emilia Romagna - Collegio: 1 (Forlì)



[REDACTED]

Gruppo Dem.Sin.-Ulivo  
Eletto il 9 Maggio 1999  
Proclamato in data 9 Maggio 1999  
Convalida in data 2 Dicembre 1999

[REDACTED]

Membro della 1° Commissione permanente (Affari Costituzionali)  
Membro della Giunta affari Comunità Europee



Scheda riepilogativa dell'attività svolta in Senato

---

Senato della Repubblica

URL: <http://www.senato.it/bd/senatori/12835.htm>

Ultimo aggiornamento: Thursday, 16-Dec-99 05:11:55

**Dati Personali****MELOGRANI Piero**

**Nato a Roma il 15 novembre 1930**

**Laurea in giurisprudenza; docente universitario di storia contemporanea**

**Eletto con il sistema proporzionale nella circoscrizione | PIEMONTE 1**

**Lista di elezione: FORZA ITALIA**

**Proclamato il 6 maggio 1996**

**Elezione convalidata il 16 aprile 1997**

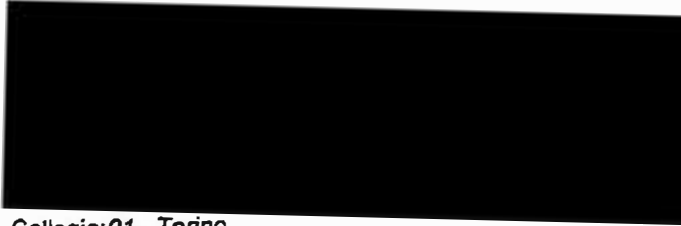
**Iscritto al gruppo parlamentare Forza Italia**

**Indirizzo di posta elettronica |**

◆ **Componente della VII Commissione permanente *Cultura* dal 28 luglio 1998**



**MELOGRANI Piero**

*Dati Personali***VALETTO BITELLI Maria Pia**

Collegio: 01 - Torino  
 Liste collegate: P-S-P-U-P

**Proclamata** il 25 aprile 1996  
**Elezione convalidata** il 22 gennaio 1997

**Iscritta al gruppo parlamentare** Popolari Democratici - Ulivo



VALETTO BITELLI Maria Pia

*Azienda Legislativa*

**proposte di legge presentate come primo firmatario**

- 5823 Istituzione del marchio etico dei prodotti e dei servizi realizzati e forniti senza l'impiego di lavoro minorile
- 5824 Norme concernenti la vigenza triennale dei contratti collettivi nazionali di lavoro stipulati per il personale delle Ferrovie dello Stato

*Senato della Repubblica*

## Furio BOSELLO

Regione di elezione : Emilia Romagna



Gruppo AN

Eletto il 30 Aprile 1996

Proclamato in data 9 Maggio 1996

Convalida in data 20 Novembre 1997

Membro della 6<sup>a</sup> Commissione permanente (Finanze e tesoro)

Membro della Giunta affari Comunita' Europee

Membro della Commissione consultiva in materia di riforma fiscale



Scheda riepilogativa dell'attività svolta in Senato

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Senato della Repubblica

URL: <http://www.senato.it/bd/senator/5889.htm>

Ultimo aggiornamento: Thursday, 16-Dec-99 05:09:58



## Curriculum Vitae

**MEYERS Paul-Henri**

[REDACTED]

Député de la Chambre des Députés depuis 1999, il assume les fonctions de président de la Commission des Institutions et de la Révision Constitutionnelle.  
Avant d'accéder à ces fonctions, [REDACTED]

[REDACTED]

# Chambre des Députés



## Liste des Députés



**FAYOT Ben**

(LSAP/Centre)

Membre de la Commission des Comptes

Membre de la Commission des Affaires étrangères et européennes

Membre de la Commission du Contrôle de l'Exécution budgétaire

Membre de la Commission de l'Enseignement supérieur, de la Recherche et de la Culture

Membre de la Commission de l'Environnement

# Chambre des Députés



## Liste des Députés



**BEISSEL Simone**

(DP/Centre)

████████████████████████████████████████████████████████████████████████████████  
 Membre de la Chambre des Députés

depuis le 12 août 1999



Vice-Présidente de la Commission juridique

Vice-Présidente de la Commission des Media et des Communications

Membre de la Commission des Classes moyennes, du Tourisme et du Logement

Membre de la Commission de l'Enseignement supérieur, de la Recherche et de la Culture

Membre de la Commission des Institutions et de la Révision constitutionnelle

Membre suppléant de l'Assemblée parlementaire de l'OSCE



Conseiller communal de la Ville de Luxembourg

## CURRICULUM VITAE

Frederik (Frits) KORTHALS ALTES.

[REDACTED]

Op 9 juni 1981 werd hij lid van de Eerste Kamer der Staten-Generaal.

Frits Korthals Altes maakte deel uit van de regering als Minister van Justitie van 4 november 1982 tot 7 november 1989 gedurende twee kabinetsperioden (kabinetten-Lubbers I en II). Van september 1989 tot 11 juni 1991 was hij lid van de Tweede Kamer der Staten-Generaal.

[REDACTED]

Op 11 juni 1991 werd hij opnieuw lid van de Eerste Kamer der Staten-Generaal.

[REDACTED]

De regering benoemde hem op 26 november 1999 tot haar vertegenwoordiger in de Conventie belast met de opstelling van een ontwerp van een handvest van de grondrechten van de Europese Unie.

's-Gravenhage, 31 januari 2000

**CURRICULUM VITAE****Frederik (Frits) KORTHALS ALTES,**

[REDACTED]

On 9 June 1981 he became a member of the Upper House of the Dutch Parliament, the First Chamber of the States General.

Frits Korthals Altes served the government as Minister of Justice from 4 November 1982 to 7 November 1989 during two terms of office (Lubbers governments I and II). From September 1989 to June 1991 he was a member of the House of Representatives of the Dutch Parliament, the Second Chamber of the States General. [REDACTED]

[REDACTED]

On 11 June 1991, he again became a member of the Upper House. [REDACTED]

[REDACTED]

The Dutch government appointed him on 15 November 1999 as its personal representative to the Convention to draw up a Draft Charter of Fundamental Rights of the European Union.

The Hague, 31 January 2000

**Kamerlid Results**

Page 1 of 2

**Patijn, mr. M. (Michiel)****Algemeen****Adres****Postadres**

Tweede Kamer VVD-Fractie  
Postbus 20018, 2500 EA  
's-Gravenhage

**Beschrijving****Geboortedatum**

| <b>Periode</b>               | <b>Fractie</b> | <b>Functie</b> |
|------------------------------|----------------|----------------|
| 22-08-1994 t/m<br>03-08-1999 | VVD            | St.secr. BUZA  |
| 19-05-1998 t/m<br>heden      | VVD            | 2e Kamer       |



## Prof.Dr. E.M.H. Hirsch Ballin



In de Eerste Kamer houdt hij zich onder meer bezig met Buitenlandse Zaken, Justitie en Defensie. Hij is voorzitter van de commissie voor Justitie.

- ◆ biografie
- ◆ lid van commissie...

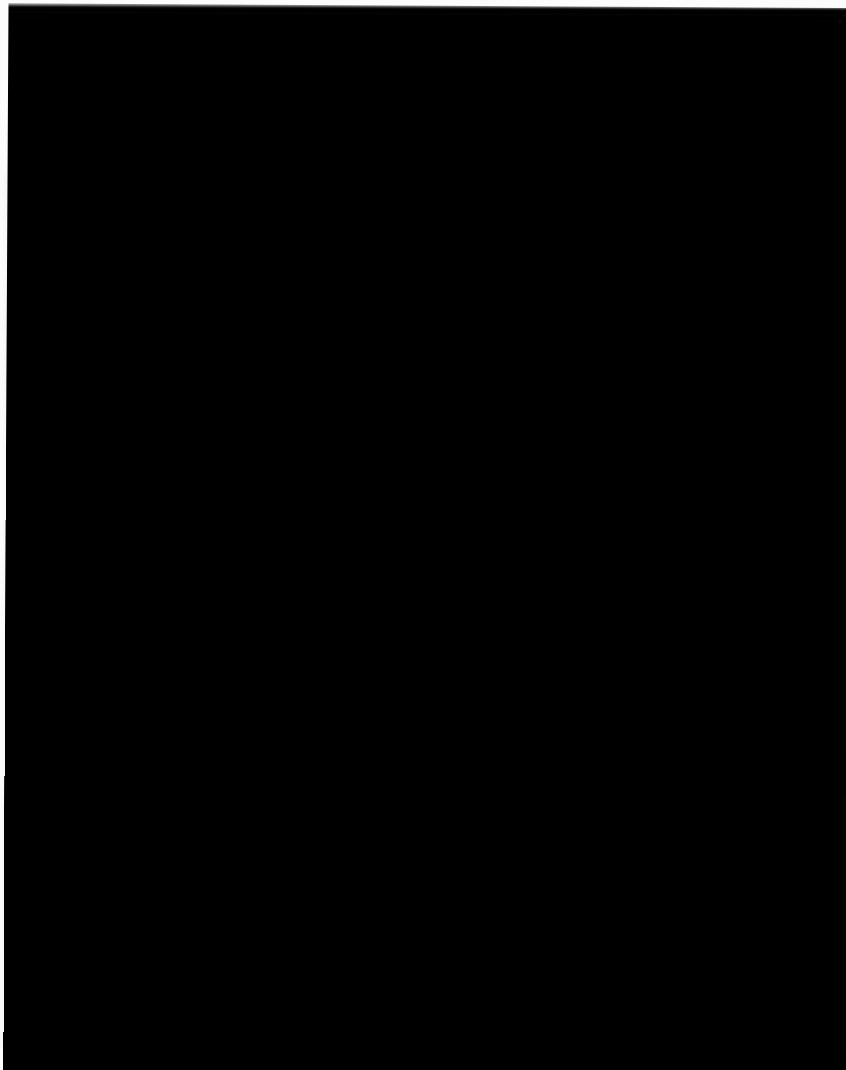
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[nieuws Eerste Kamer](#)  
[verkiezing Eerste Kamer](#) | [taken](#) | [werkwijze](#) | [geschiedenis](#)  
[personen zoeken op naam](#) | [leden per fractie](#) | [de organisatie](#) | [overige personen](#)  
[kamerstukken zoeken op trefwoord](#) | [zoeken op nummer](#) | [per commissie](#) | [wetgevingsprocedure](#)  
[plenaire agenda](#) | [agenda overige vergaderingen](#) | [planning](#) | [meeluisteren](#)  
[geïllustreerde rondleiding](#) | [virtuele rondleiding \(plugin nodig\)](#) | [bezoekersinformatie](#)

Aan de informatie op deze site kunnen geen rechten worden ontleend



### Prof.Dr. E.M.H. Hirsch Ballin (Ernst)



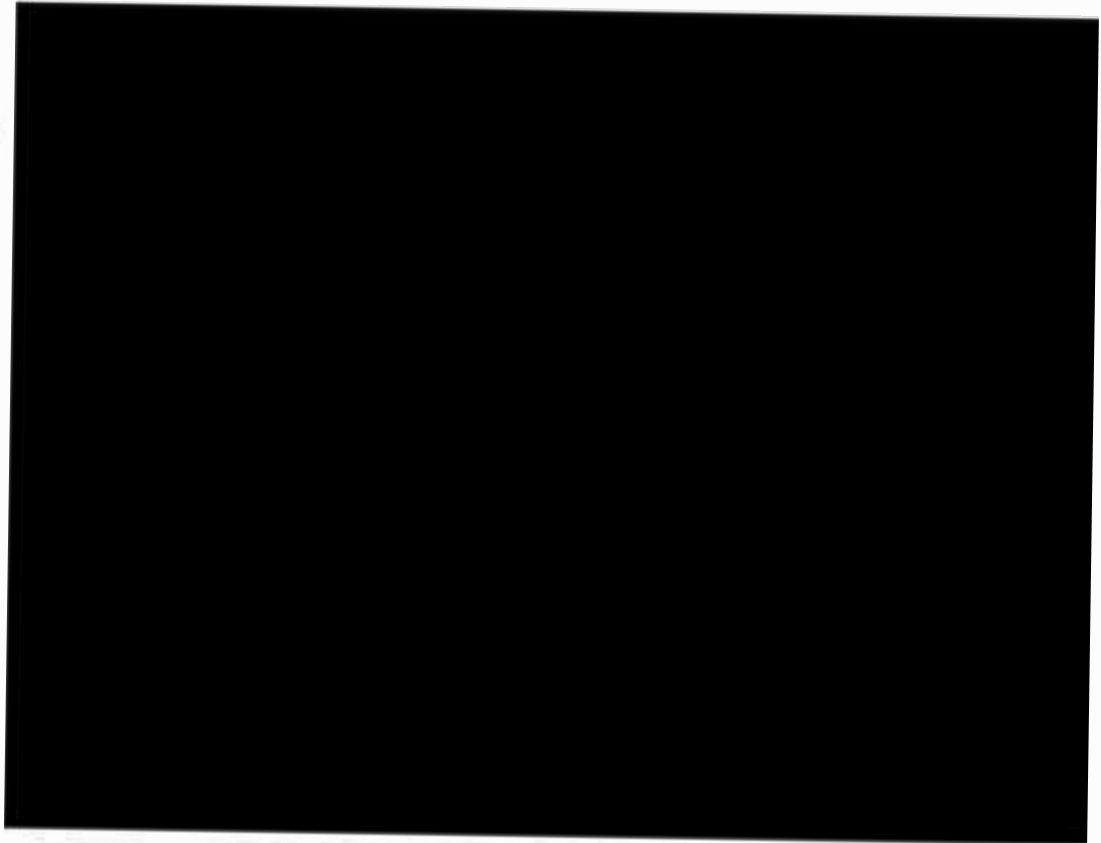
- lid Eerste Kamer der Staten-Generaal, vanaf 13 juni 1995
- lid Tweede Kamer der Staten-Generaal, van 17 mei 1994 tot 1 juni 1995
- minister van Binnenlandse Zaken, van 10 jan 1994 tot 18 jan 1994
- minister belast met coördinatie van aangelegenheden de Nederlandse Antillen en Aruba betreffend en met de zorg voor aan de Nederlandse Antillen en Aruba te verlenen hulp en bijstand, van 14 nov 1989 tot 27 mei 1994
- minister van Justitie, van 7 nov 1989 tot 27 mei 1994





-Prof.Dr. E.M.H. Hirsch Ballin (Ernst)





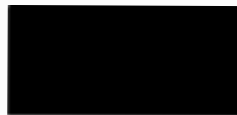
[nieuws Eerste Kamer](#)  
[verkiezing Eerste Kamer](#) | [taken](#) | [werkwijze](#) | [geschiedenis](#)  
[personen zoeken op naam](#) | [leden per fractie](#) | [de organisatie](#) | [overige personen](#)  
[kamerstukken zoeken op trefwoord](#) | [zoeken op nummer](#) | [per commissie](#) | [wettgevingsprocedure](#)  
[plenaire agenda](#) | [agenda overige vergaderingen](#) | [planning](#) | [meeluisteren](#)  
[geïllustreerde rondleiding](#) | [virtuele rondleiding \(plug-in nodig\)](#) | [bezoekerinformatie](#)

Aan de informatie op deze site kunnen geen rechten worden ontleend

**Oven, G.J.W. (Gerrit Jan) van****Algemeen****Adres****Postadres**

*Alle correspondentie te richten aan:*

Tweede Kamer PvdA-Fractie  
Postbus 20018, 2500 EA  
's-Gravenhage

**Beschrijving****Geboortedatum****Periode****Fractie****Functie**

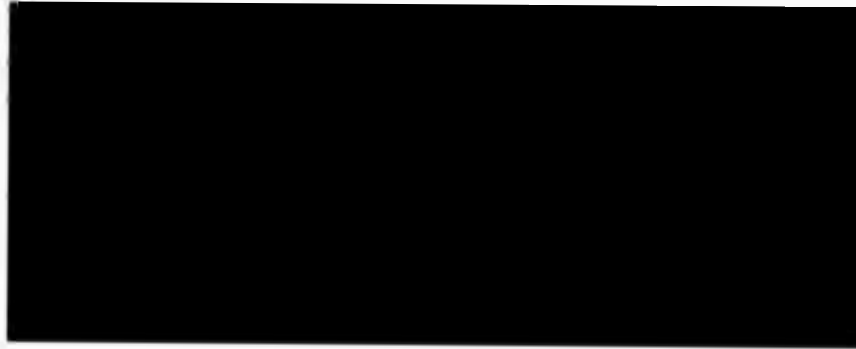
17-05-1994 t/m  
heden

PvdA

2e Kamer



## Prof.Mr. E.C.M. Jurgens



In de Eerste Kamer houdt hij zich onder meer bezig met Justitie en Europese Samenwerking. Sinds 15 juni 1999 is de heer Jurgens tweede ondervoorzitter van de Kamer.

- ◆ biografie
- ◆ lid van commissie...

---

[Inzake Eerste Kamer](#)  
[Verkiezing Eerste Kamer](#) | [Leden](#) | [Wetwijze](#) | [Geschiedenis](#)  
[Personen zoeken op naam](#) | [Leden per fractie](#) | [De organisatie](#) | [Overige personen](#)  
[Kamerstukken zoeken op](#) | [Tafel van de Kamer](#) | [Commissie van Orde](#) | [Par. Samenwerk.](#) | [Jubileum](#) | [Ledenlijst](#)  
[Nieuwste agenda](#) | [Agenda overige](#) | [Ergeledingen](#) | [Planning](#) | [Media](#) | [Ledenlijst](#)  
[Penlijst](#) | [Ronde van de Kamer](#) | [Virtuele Rondleiding](#) | [Spreken](#) | [Bezoekersinformatie](#)

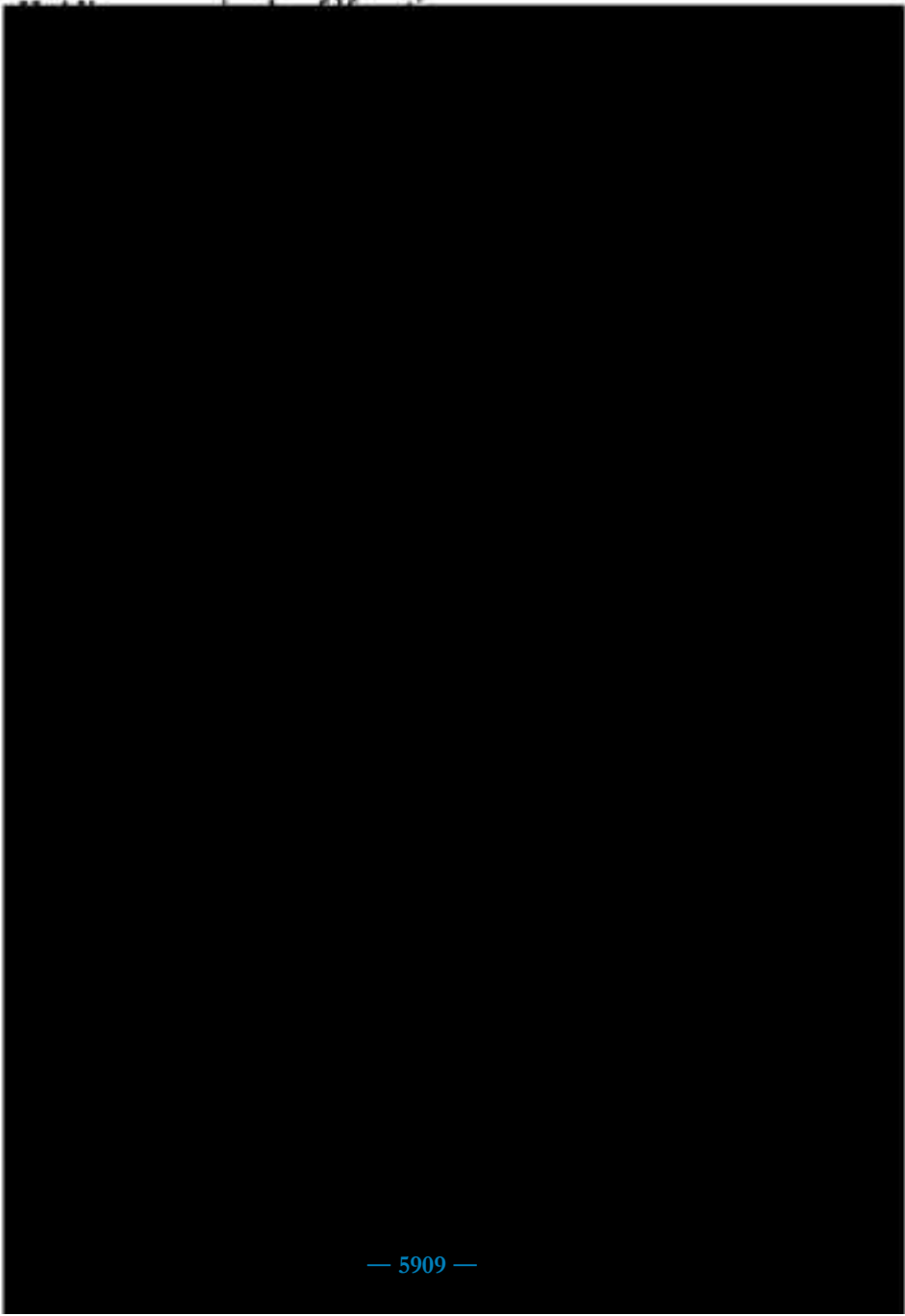
Aan de informatie op deze site kunnen geen rechten worden ontleend

Prof.Mr. E.C.M. Jurgens (Erik)

Page 1 of 4

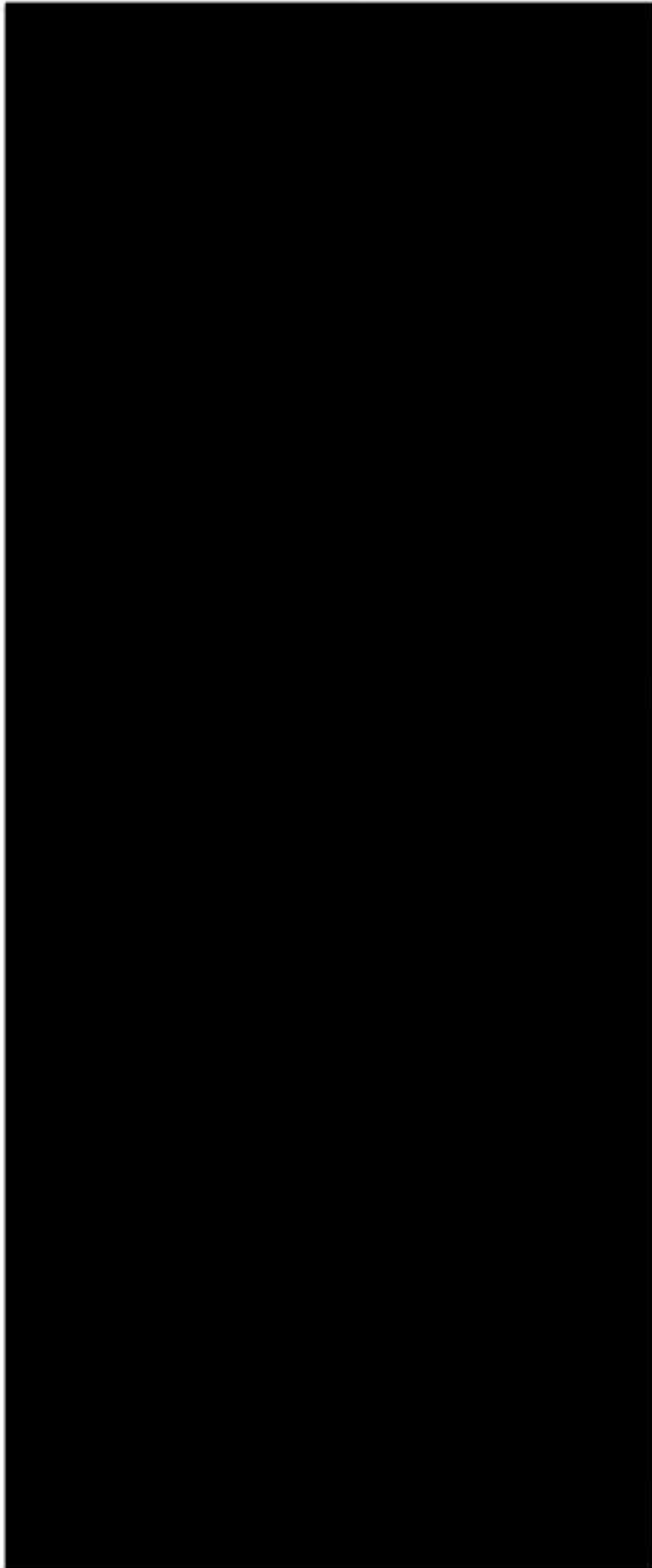


Prof.Mr. E.C.M. Jurgens (Erik)



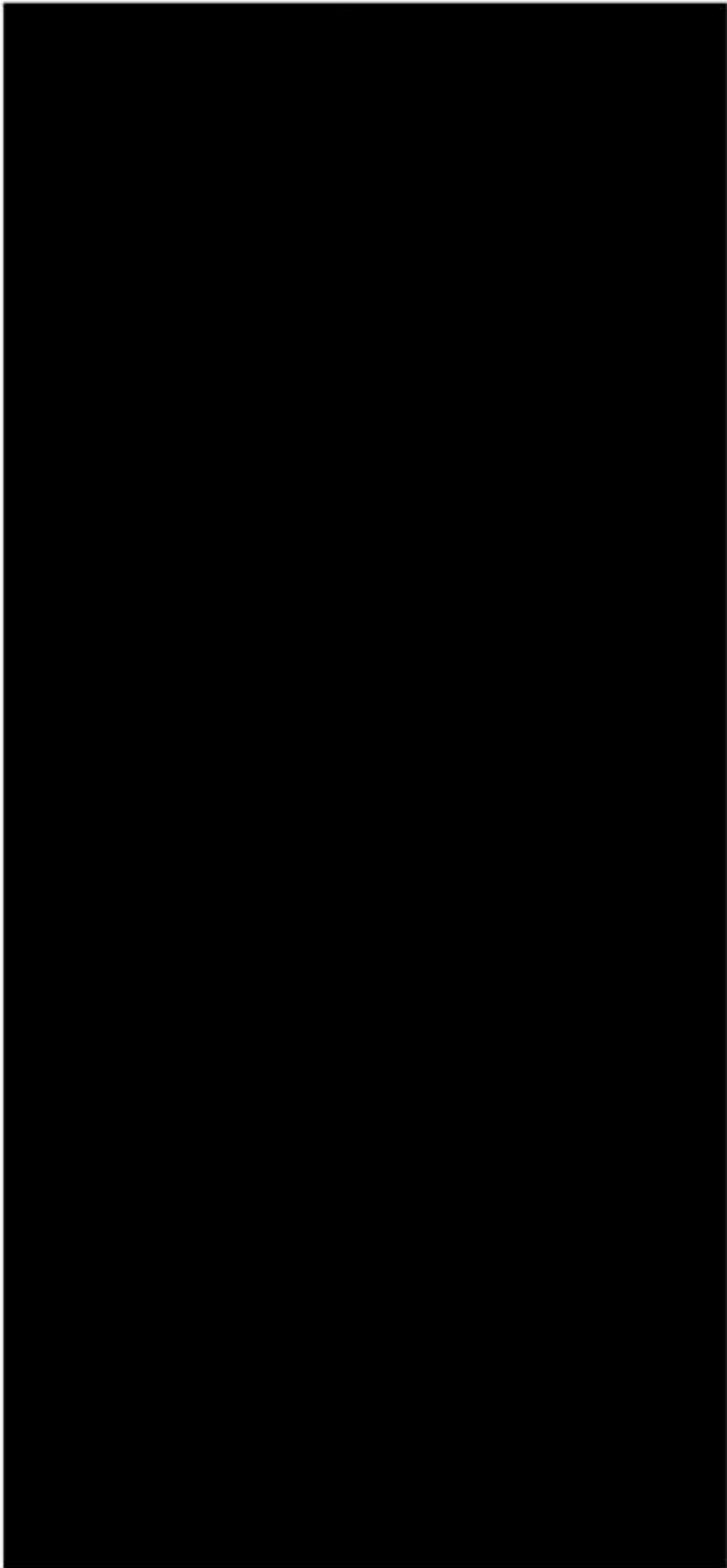
• Prof.Mr. E.C.M. Jurgens (Erik)

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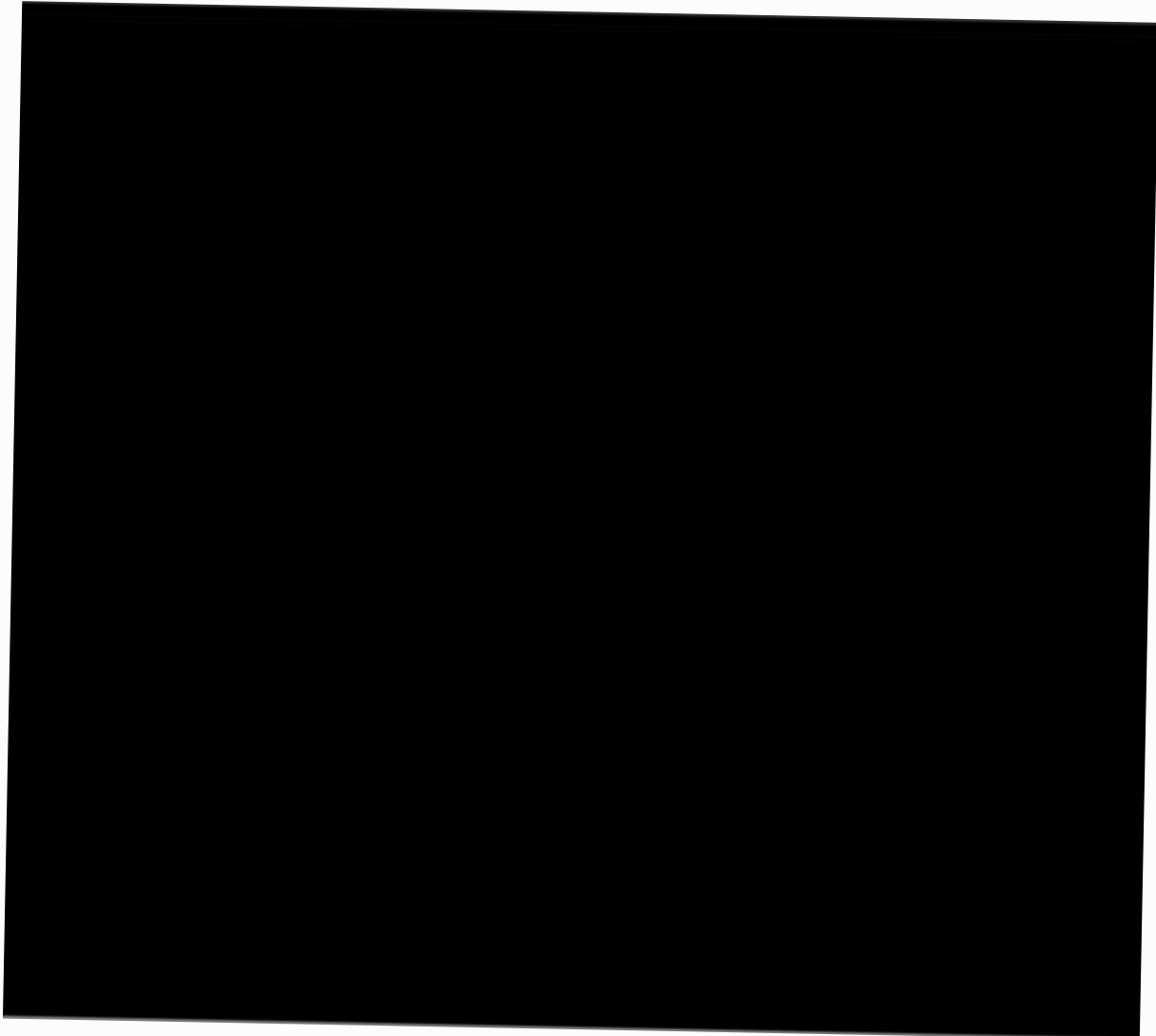
Prof. Mr. E.C.M. Jurgens (Erik)

Page 3 of 4

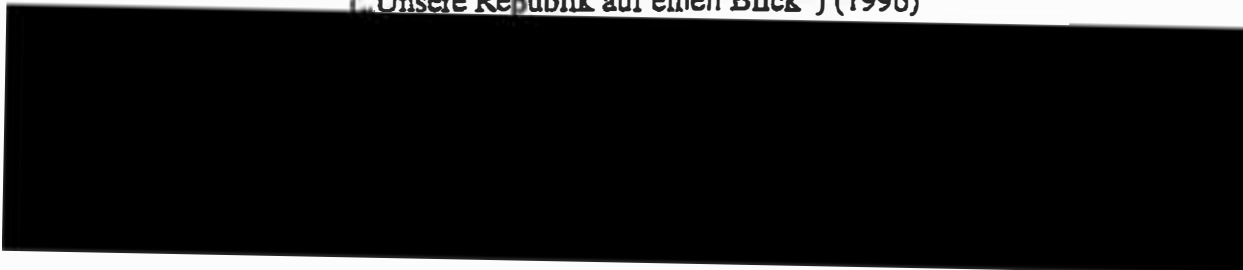


**Heinrich NEISSER**

---

**Publications:**

- Books:**
- \* Reform of political parties and of the parliament (1971)
  - \* Reform of the electoral system (1971)
  - \* The role of the Federal Chancellor in the Austrian Constitutional System (1971)
  - \* Opposition in the Parliament (1972)
  - \* The Federal electoral System in Austria (1990)
  - \* The Political System of the EC (1993)
  - \* The Republic of Austria – How does it work („Unsere Republik auf einen Blick“) (1996)





**Wahlkreis: 3F - Wien Umgebung**

**Dr. Harald Ofner**

**Freiheitliche Partei Österreichs**



Abg. zum Nationalrat (XV.-XVI. GP)

FPO 01.01.1986-31.12.1988

Abg. zum Nationalrat (XVII.-XXI. GP)

FPO 17.12.1986-

Bundesminister für Justiz

24.05.1993-21.12.1997

Ausschussmitgliedschaften  
Debattenbeiträge in Plenarsitzungen

## Nota biográfica

**José Aurélio da Silva Barros Moura,** [REDACTED]

É jurista e docente universitário. Especialista em Direito do Trabalho e Sindicalismo. Rege actualmente Direito Comunitário (Universidade Autónoma de Lisboa) e Integração Europeia (Mestrado em Relações Interculturais - Universidade Aberta).

Colaboração frequente na imprensa e em vários livros colectivos, revistas e colectâneas sobre temas da sua especialidade ou da sua intervenção cívica, sindical e política.

Principais obras: *Direito do Trabalho - Notas de Estudo*, Lisboa, 1978/82; *Compilação de Direito do Trabalho Sistematizada e Anotada*, Coimbra, 1980; *A Convenção Colectiva entre as Fontes de Direito do Trabalho*, Coimbra, 1984; *La Constitución Portuguesa y los Trabajadores. De la Revolución a la Integración en la CEE*, Madrid, 1988; *Tratados da União Europeia revistos pelo Tratado de Amsterdão*, Lisboa, 1ª edição, 1997, 2ª edição revista e aumentada, 1999; *Cidadania Europeia: Uma Construção Política Racional*, Lisboa, 1999.

Participante e dirigente do movimento estudantil de Coimbra e nacional nas "crises académicas" de 1965 e 1969

Militante e técnico sindical (Consultor Jurídico e Director do Contencioso do Sindicato dos Bancários do Sul e Ilhas -1970/73; Consultor Jurídico da Intersindical e Director do Gabinete de Estudos da CGTP -1976/1986).

Membro do MFA e do seu Secretariado na Guiné - Bissau (1973/74). Exerceu cargos de direcção superior da Administração do Trabalho (Director do Instituto

do Trabalho, Previdência e Acção Social, Guiné - Bissau, depois de Abril, 1974; Director-Geral das Relações Colectivas de Trabalho, Lisboa, 1975).

Foi Deputado ao Parlamento Europeu desde 1986 , tendo renunciado ao mandato em Dezembro de 1991, ao consumir-se, com a expulsão, a sua ruptura com o PCP a que pertenceu desde 1964.

Foi fundador e dirigente da Plataforma de Esquerda e organizou o Movimento Pró - Referendo ao Tratado de Maastricht.

Eleito para o Parlamento Europeu como independente pelo PS para a Legislatura 1994 - 1999. Exerceu vários cargos no Parlamento Europeu (Vice-Presidente da Comissão dos Assuntos Sociais; Vice-Presidente da Assembleia Paritária ACP-CEE; Observador para as questões de Macau) e foi autor de relatórios importantes (Abonos de Família dos trabalhadores comunitários em França; Convergência dos sistemas de protecção social na Comunidade Europeia; Liberdade, Segurança e Justiça no Tratado de União Europeia; Capítulo sobre Emprego do Tratado de Amsterdão; Implicações Constitucionais da União Económica e Monetária; Direitos do Homem no Mundo -1997/98).

Vice-Presidente do Conselho Português do Movimento Europeu (1998/99).

Presidente da Assembleia Municipal de Felgueiras pelo PS (1998 - ...).

Aderiu individualmente ao PS em Janeiro de 1999.

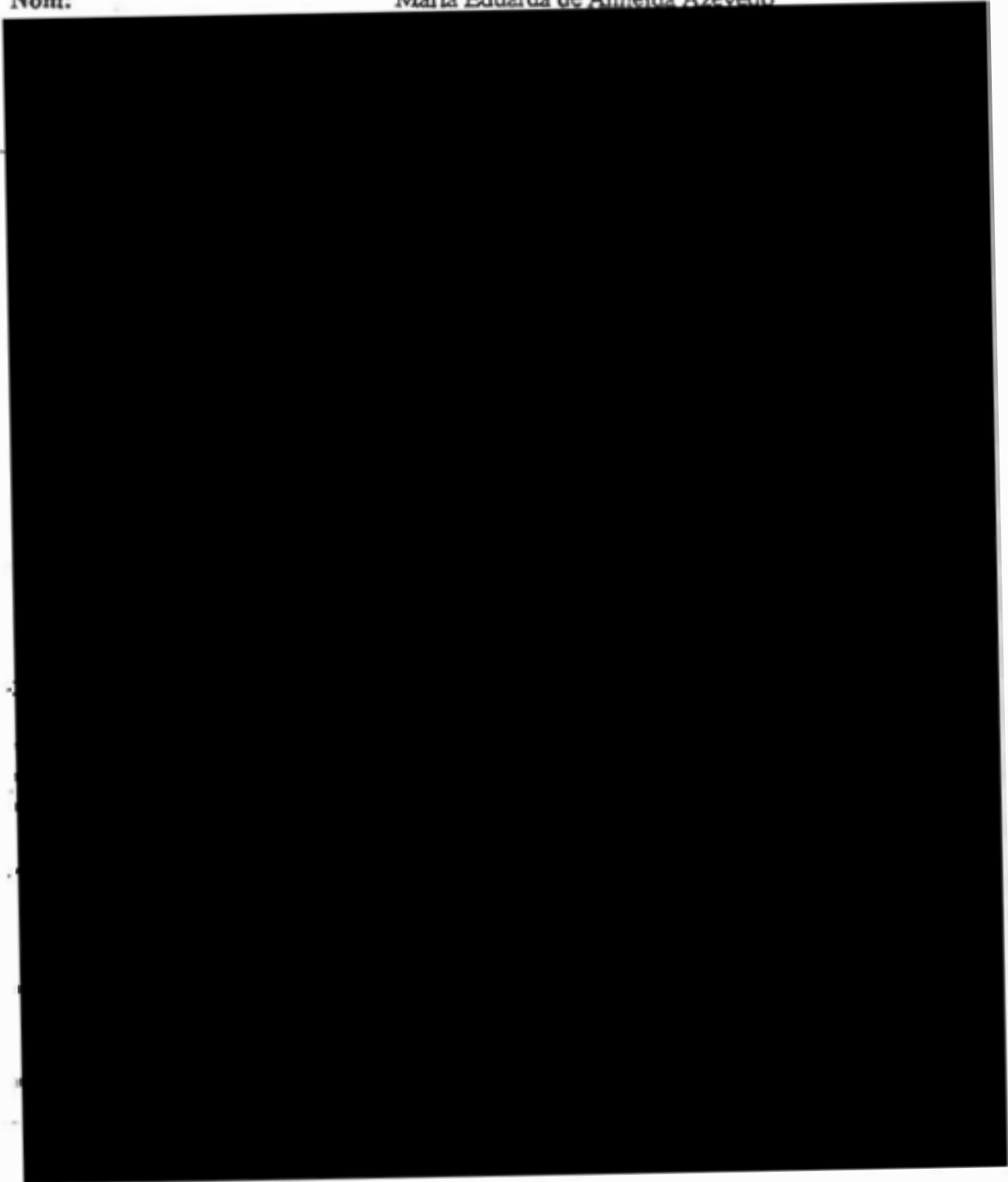
Deputado à Assembleia da República pelo círculo do Porto na VIII Legislatura (1999-...).

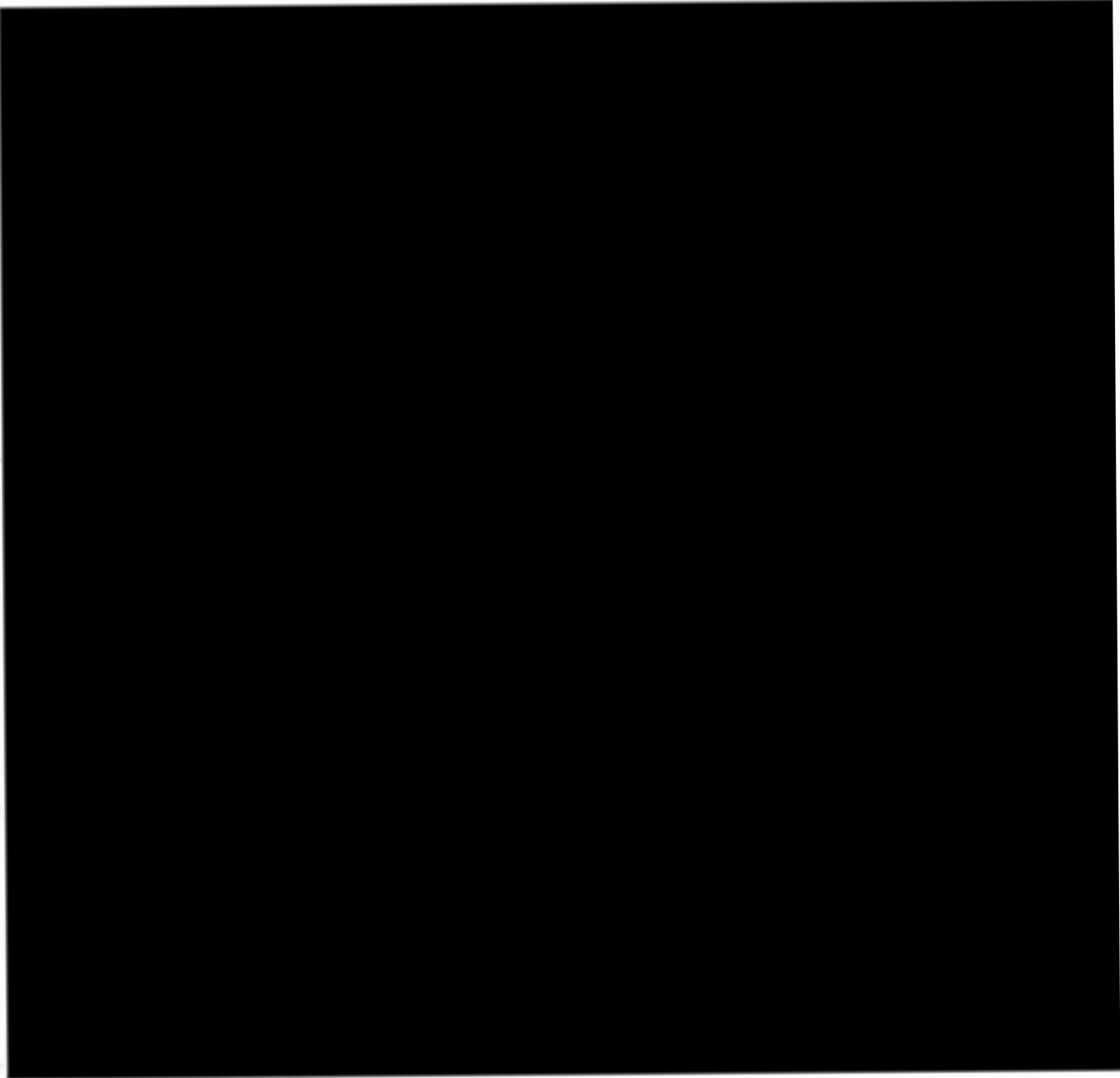
**Curriculum Vitae**

**Maria Eduarda Azevedo**


**Nom:**

**Maria Eduarda de Almeida Azevedo**

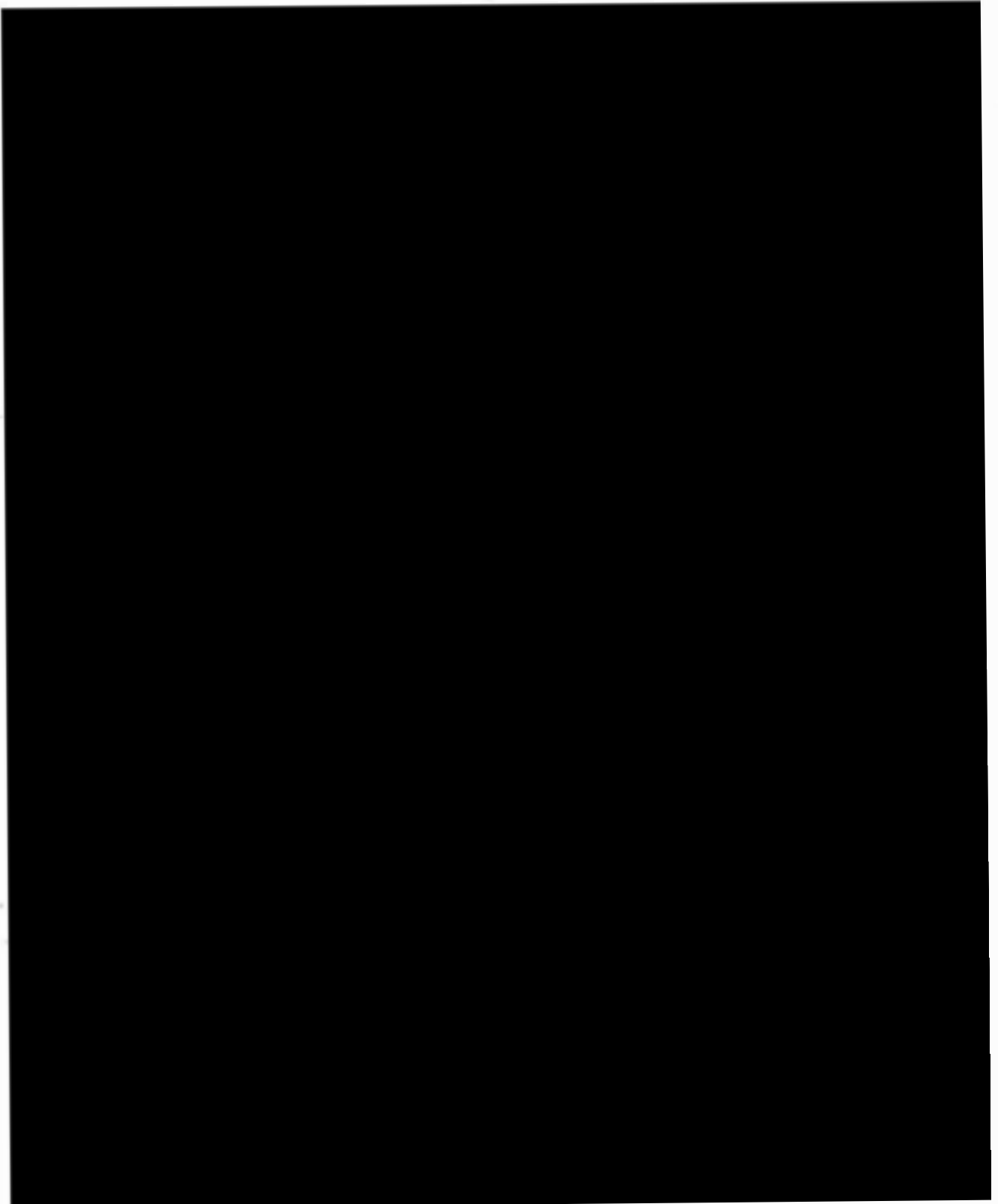




1995-1999 Députée à l'Assemblée de la République Portugaise

- Membre des Commissions Parlementaires des Affaires Européennes, de la Réforme de la Constitution Portugaise et de la Famille et de l'Égalité des Chances
  - Députée à l'Assemblée Parlementaire de l'OSCE
  - Membre de la Délégation Portugaise aux COSAC
- 

1991-1995 Secrétaire d'État à la Justice du XII Gouvernement Constitutionnel



#### **7. Livres et Travaux Scientifiques Publiés**

- “Renouveler le P̄ari Europ̄een”, Editora Quetzal, Lisboa, édition portugaise 1999
- “L’Europe en Mouvement – Enjeux et D̄éfis à l’Aube du XXI Siècle”, Editorial Notícias, Lisboa, édition portugaise 1998

- “La Politique Agricole Commune en Mutation”, Editora Almedina, Coimbra, édition portugaise 1997
- “Le Pillier Trois de l’Union Européenne”, Editora Almedina, Coimbra, co-édition portugaise, 1996
- “La Politique Agricole Commune et la Réforme des Organisations Nationales de Marché Portugaises” (Thèse de Maîtrise), édition portugaise du Centre d’Études Fiscales, Lisbonne, 1987
- “Les Finances Publiques Régionales au Portugal”, Editora Danúbio, 1981
- Plusieurs Travaux et Articles Scientifiques Publiés dans les domaines suivants:
  - Questions Européennes, Politique Agricole Commune, Fiscalité, Questions Économiques et Commerciales au niveau national et international

**PAAVO NIKULA**

**CHANCELLOR OF JUSTICE**

**3. PUBLIC OFFICE:**

\*Ministry of Justice: Legislative Counsellor (1973-1984)

\*Justice, Court of Appeal (1985-)

\*Equality Ombudsman (1987-1991)

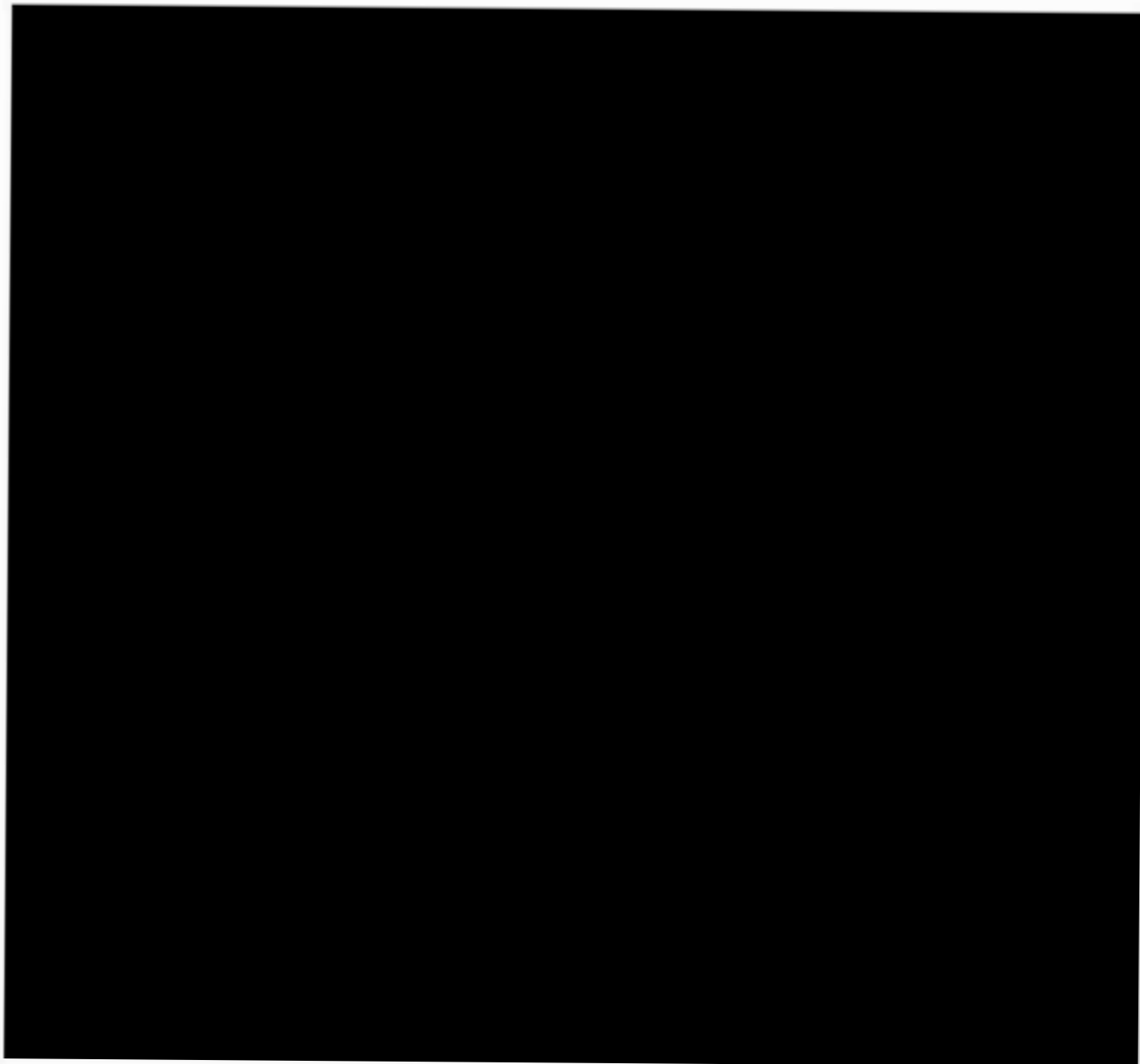
**4. SOCIAL ACTIVITY:**

\*Minister of Justice (1978-1979)

\*Member of Parliament (1991-1998)

**5. APPOINTED TO THE CHANCELLOR OF JUSTICE: 1st April, 1998**



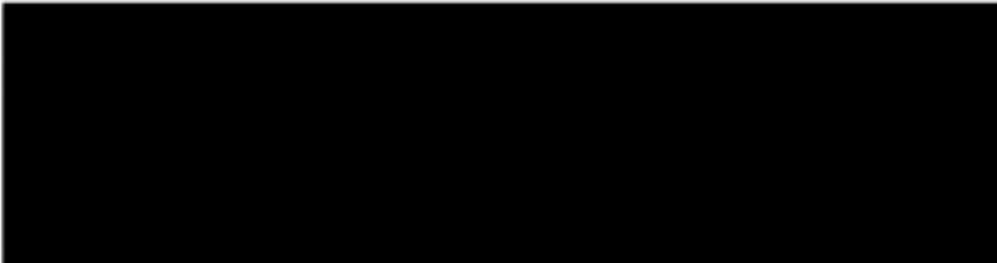
**CURRICULUM VITAE****Ambassador Holger Bertil ROTKIRCH**

**1999** Chairman of the Fundamental Rights Charter ad hoc Working Group  
**2000** Alternate representative of the Government of Finland to the Body to elaborate a draft EU Charter of Fundamental Rights

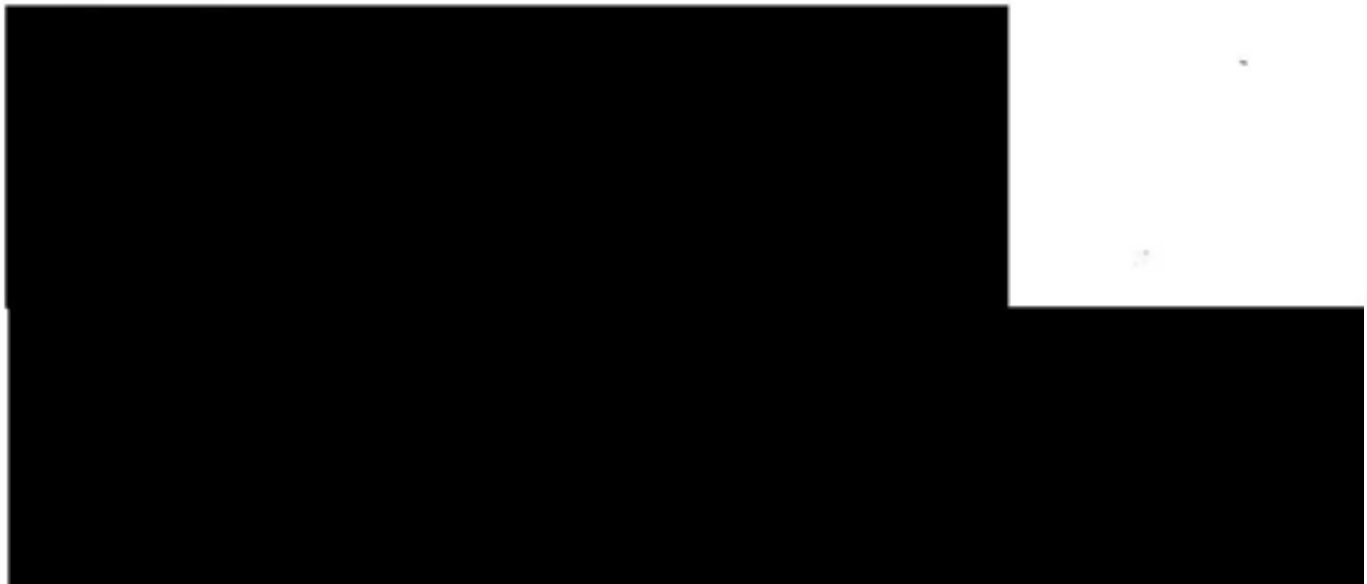
**Published articles in books, professional journals and newspapers concerning various international legal questions (Law of the Sea, International Environmental Law, Antarctic Treaty System, Human Rights, Equal Rights)**

## CURRICULUM VITAE

Mr Frej Gunnar Erkki Jansson



Parliamentary constituency of land, Swedish People's Party



Publications: "Ahvenanmaan itsehallinto" [the Autonomy of land] (1983), "Homesteadright in the land Islands" [i.e. right of domicile -tr.] (1990). "New Autonomy Act of land" (1992). Member of Parliament since 1983.

Elector 1983-1991, Member of the Committee for Constitutional Law 1983-, Member of the Committee for Ordinary Law 1984-1986, Deputy Chair of the Committee for Foreign Affairs 1999-, Member of the Committee for Foreign Affairs 1999-, Member of the Committee for Law and Economy 1988-1991, Deputy Member of the Committee for Agriculture and Forestry 1995-1999, Member of the Banking Committee 1983-1985, Member of the Economy Committee 1991-1995, Deputy Chair of the Second Committee for Ordinary Law 1987-1988, Member of the Second Committee for Ordinary Law 1987-1988, Deputy Member of the Grand Committee 1983-1986, Member of the Parliamentary Salaries Delegation 1983-1986, Deputy Member of the Finnish Delegation to the Council of Europe 1989-, Deputy Member of the Finnish Delegation to the Conference on Security and Co-operation in Europe 1993-1995, Member of the Finnish Delegation to the Organisation for Security and Co-operation in Europe 1995-, Deputy Member of the Finnish Delegation to the Organisation for Security and Co-operation in Europe 1995-1995.

## CURRICULUM VITAE

Ms Tuija Kaarina Brax



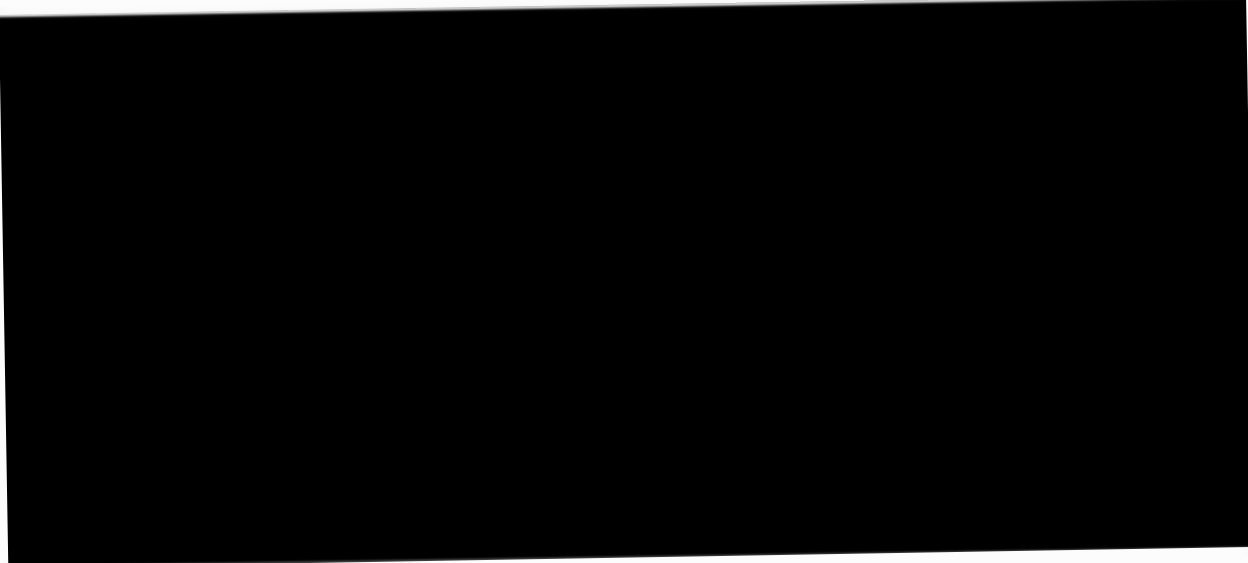
Parliamentary constituency of the City of Helsinki, Green Party



Member of Parliament since 1995.

Elector 1995-, Member of the Committee for Constitutional Law 1998-, Member of the Committee for Ordinary Law 1995-1995, Member of the Committee for the Environment 1998, Member of the Grand Committee 1995-1997, Member of the Grand Committee Deputy Member of the Grand Committee 1997-1997.

## **Daniel Tarschys**



**Member of the Swedish Parliament, 1976-82 and 1985-1994;  
Chairman of its Committee on Social Affairs, 1985-91; Chairman  
of its Committee on Foreign Affairs, 1991-94.**

**Secretary of State in the Prime Minister's Office, 1978-79.  
Adviser to the Minister of the Budget, 1976-78 and 1979-83.**

**Member of the Parliamentary Assembly of the Council of Europe,  
1981-83 (alternate) and 1986-94.**



**Secretary General of the Council of Europe, 1994-99.**

**Publications on political philosophy, comparative government,  
budgeting and public administration.**

## Members of Parliament

SVERIGES   
RIKSDAG 

[ABOUT](#) [SEARCH](#) [E-MAIL](#) [GLOSSARY](#) [SWEDISH](#)

THE SWEDISH PARLIAMENT

[Home](#) [Alphabetical order](#) [Ragnwi Marcelind](#)

### Göran Magnusson (s)

Västmanland County, seat 283

**Address:** Riksdagen, S-100 12 Stockholm, Sweden

[REDACTED]

[REDACTED]

[Homepage](#)



#### Parliamentary missions:

Deputy chairman of [Committee on The Constitution](#)

Deputy member of [The Swedish Delegation to the Parliamentary Assembly of the Council of Europe](#)

Deputy member of [Advisory Committee on EU Affairs](#)

Deputy member of [Speaker's Conference](#)

**Title:** f.d. kommunalråd

[REDACTED]

More information is available in Rixlex.

Updated 1999-12-14

[Home](#) [Alphabetical order](#) [Ragnwi Marcelind](#)

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## Members of Parliament

SVERIGES   
RIKSDAG 

[ABOUT](#) [SEARCH](#) [E-MAIL](#) [GLOSSARY](#) [SWEDISH](#)

THE SWEDISH PARLIAMENT

[Home](#) [Alphabetical order](#) [Sten Tolgfors](#)

### Lars Tobisson (m)

Stockholm County, seat 29

**Address:** Riksdagen, S-100 12 Stockholm, Sweden

[REDACTED]

[REDACTED]

Homepage



#### Parliamentary missions:

Deputy member of Committee on Finance

Deputy member of Committee on Foreign Affairs

Deputy chairman of Advisory Committee on EU Affairs

Member of parliament/MP of Advisory Council on Foreign Affairs

**Title:** fil.dr

[REDACTED]

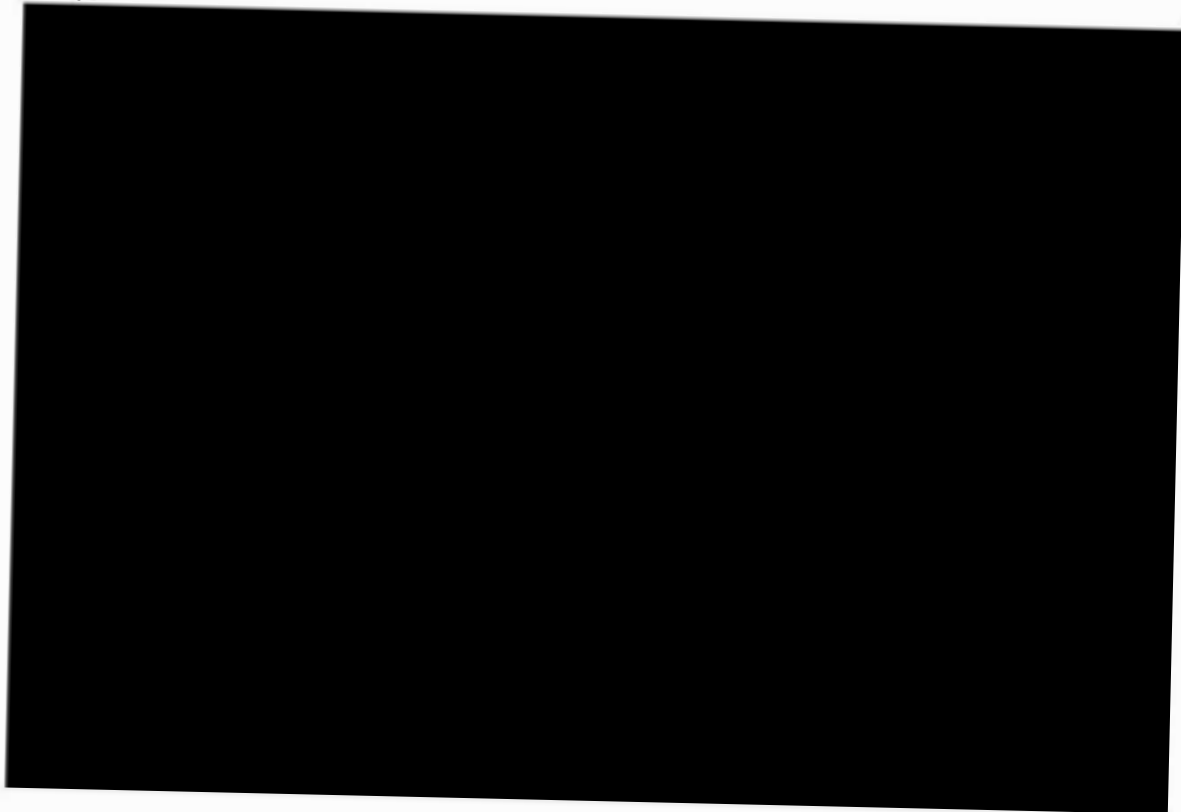
More information is available in Rixlex.

Updated 1996-12-14

[Home](#) [Alphabetical order](#) [Sten Tolgfors](#)

[Back to the top of the page](#)

Please find below the CV of Lord Goldsmith - the UK Government's representative on the Charter body. As discussed on the telephone - I would be most grateful for sight of the draft charter the secretariat is putting together.



**Win Griffiths Esq, MP - Labour****HOUSE OF COMMONS**

Parliamentary Under-Secretary of State, Welsh Office 1997-98

**COUNCILS, PUBLIC BODIES**

Vale of Glamorgan Borough Council:

Councillor (Chairman, Leisure Services Committee) 1973-76

Member, St Andrew's Major Community Council 1974-79

**BACKBENCH COMMITTEES**

Chairperson, Parliamentary Labour Party, Education, Arts and Science Committee 1988-90

**ALL-PARTY COMMITTEES**

Former Secretary:

East African Country Group

Tanzania Country Group

Member:

Objective One Group 1999-

Kidney Group 1999-

**SPOKESMAN**

Opposition Spokesman on:

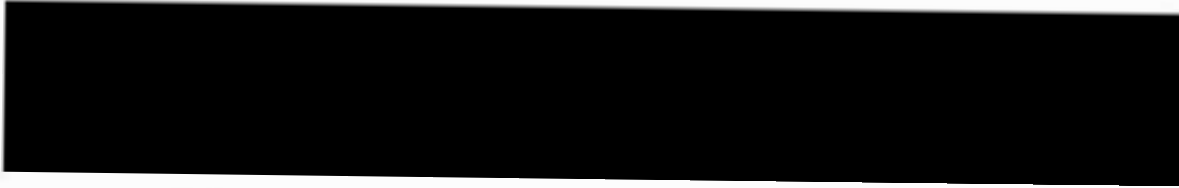
The Environment 1990-92

Education 1992-94


Welsh Affairs 1994-97

**INTERNATIONAL BODIES**

Vice-President, European Parliament 1984-87

**ELECTORAL NOTES**

MEP for South Wales 1979-89; Member for Bridgend since June 1987

**REGION (Col)**

Wales



## The Lord Bowness, CBE, DL - Conservative

### COUNCILS, PUBLIC BODIES

Councillor, London Borough of Croydon 1968-, Leader 1976-94, Mayor 1979-80

Deputy Chairman, Association of Metropolitan Authorities 1978-80

Chairman, London Boroughs Association 1978-94

DL, Greater London 1981-

Member:

Audit Commission 1983-95

London Residuary Body 1985-93

National Training Task Force 1989-92

### LORDS ALL-PARTY COMMITTEES

Member, All-Party:

London Group

Consumer Affairs and Trading Standards Group

### LORDS SPOKESMAN

An Opposition Spokesman on Environment, Transport and the Regions (Local Government) 1997-98

### INTERNATIONAL BODIES

Member:

UK Delegation to Congress of Regional and Local Authorities of Europe (Council of Europe) 1990-98

UK Delegation to the Committee of the Regions of the EU (COR) 1994-

Member of the Bureau and of Transport and Telecommunications Commission and of Institutional Affairs Commission (COR) 1994-98



### PARTY AFFILIATION

Conservative

## David Chidgey Esq, MP - Liberal Democrat

### COUNCILS, PUBLIC BODIES

Winchester City Council:  
Councillor, Alresford 1987-91  
Spokesman for:  
Health and Works 1987-90  
Amenities 1987-89  
Director, Direct Works Organisation 1990-91

### SELECT COMMITTEES, ETC

(Current): Member:  
Accommodation and Works 1998-  
Foreign Affairs 1999-

### ALL-PARTY COMMITTEES

Founder and Former Chairman, Hampshire Central Branch, European Movement, now Vice-President  
Secretary:  
The Built Environment Group  
Engineering Development Group 1997-  
Passenger Transport Group 1997-99  
Non-Profit Making Clubs Group 1997-  
Town Centre Management Issues Group 1998-  
Road Passenger Transport Group 1997-  
Joint Vice-Chairman, Aerospace Group 1997-

### PARTY GROUPS

Regional Chairman, Hampshire and Wight Liberal Democrats 1992-94


### SPOKESMAN

Spokesman for:  
Employment 1994-95  
Transport 1995-97  
Trade and Industry 1997-99



### ELECTORAL NOTES

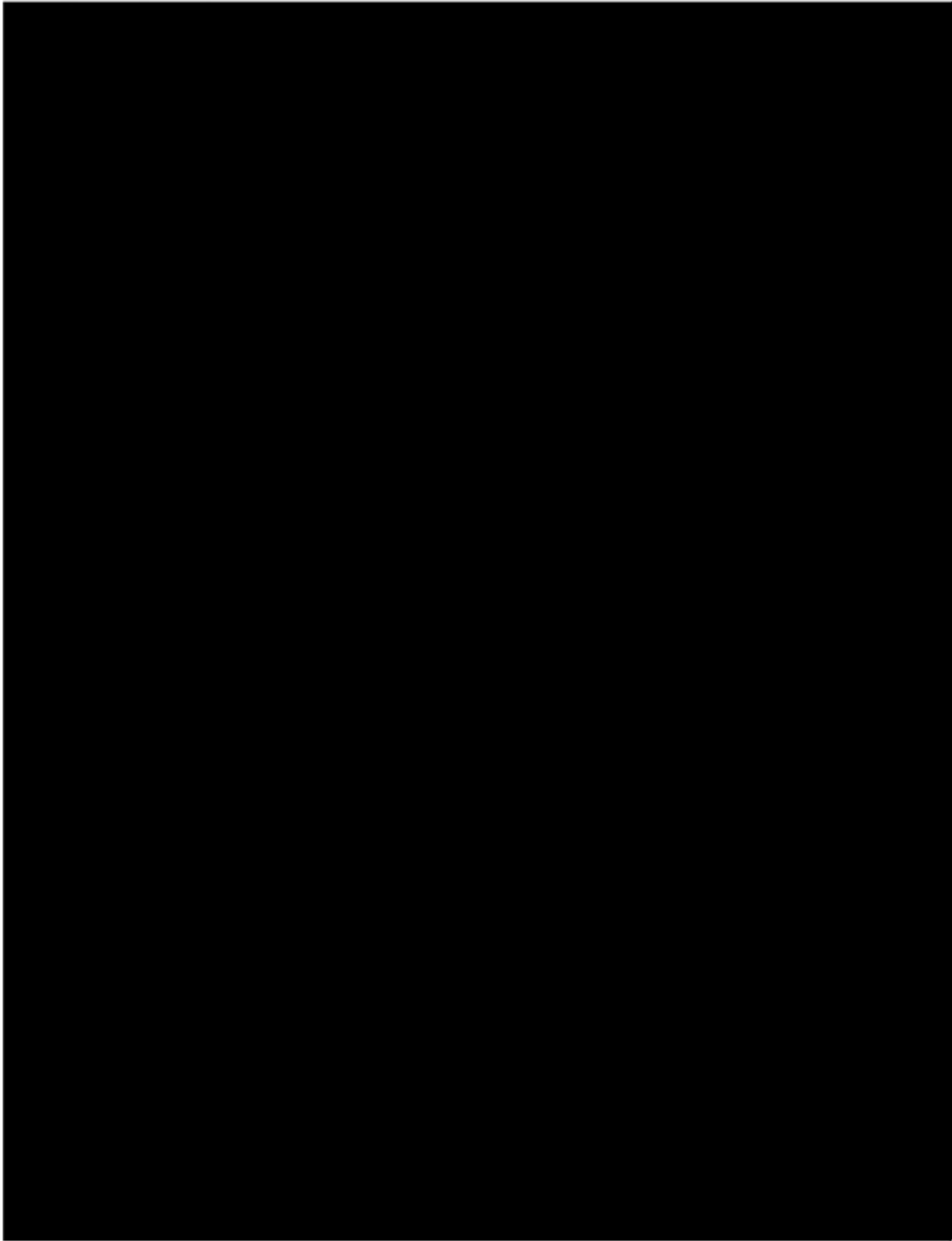
Contested Hampshire Central European Parliamentary Constituency (SLD) 1988 By-Election and 1991  
Election: Contested Eastleigh (Lib Dem) 1992 General Election. Member for Eastleigh since June 4,  
Election



### REGION (CoI)

South East

**The Baroness Howells of St Davids, OBE - Labour**



**Profil et attributions - António Vitorino**

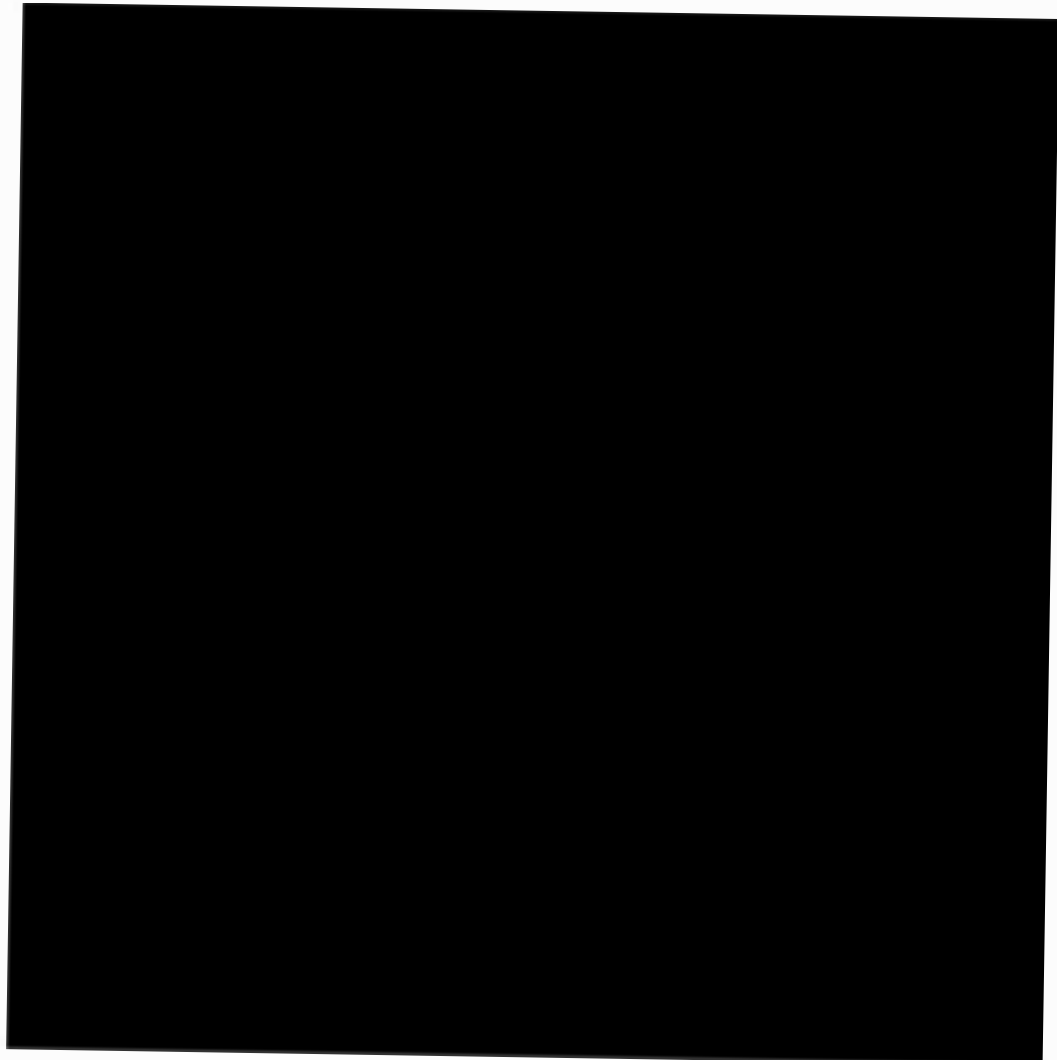
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Europa

La Commission  
européenne

es da -da el en fr it nl pt fi sv

**António Vitorino****Nationalité:** Portugaise**Carrière politique**

**Profil et attributions - António Vitorino**

1980 - Député

1980-1984 Membre de la commission mixte du Parlement européen et du Parlement portugais sur l'intégration européenne

1984 - 1985 Secrétaire d'Etat aux affaires parlementaires

1985 - 1986 Président de la commission parlementaire des affaires constitutionnelles et des droits civils

1986 - 1987 Secrétaire d'Etat à l'administration et à la justice du gouvernement de Macao

1987 - 1989 Représentant du Président Mario Soares, Groupe de liaison sino-portugais sur Macao

1994 Député européen

Président de la commission des libertés publiques et des affaires intérieures

1995 - 1997 Vice-premier ministre et ministre de la défense

#### Divers

Auteur de plusieurs ouvrages sur les affaires européennes, le droit constitutionnel et les sciences politiques.

▲  
[ Les 20 commissaires ]

 DOSSIERS CLÉS

 QUOT DE NEUF ?

 BOITE POSTALE

 RECHERCHE

 INFORMATION

 ENQUETE

MÉNDEZ DE VIGO Y MONTOJO, Íñigo

[REDACTED]

España

PP

DipPE: 19.10.1992

PPE/DE

[REDACTED]

[REDACTED] Coautor de "Una reforma fiscal para España"; "Financiación autonómica y corresponsabilidad fiscal"; "La apuesta europea: de la moneda a la Unión Política". [REDACTED]

MÉNDEZ DE VIGO Y MONTOJO, Íñigo

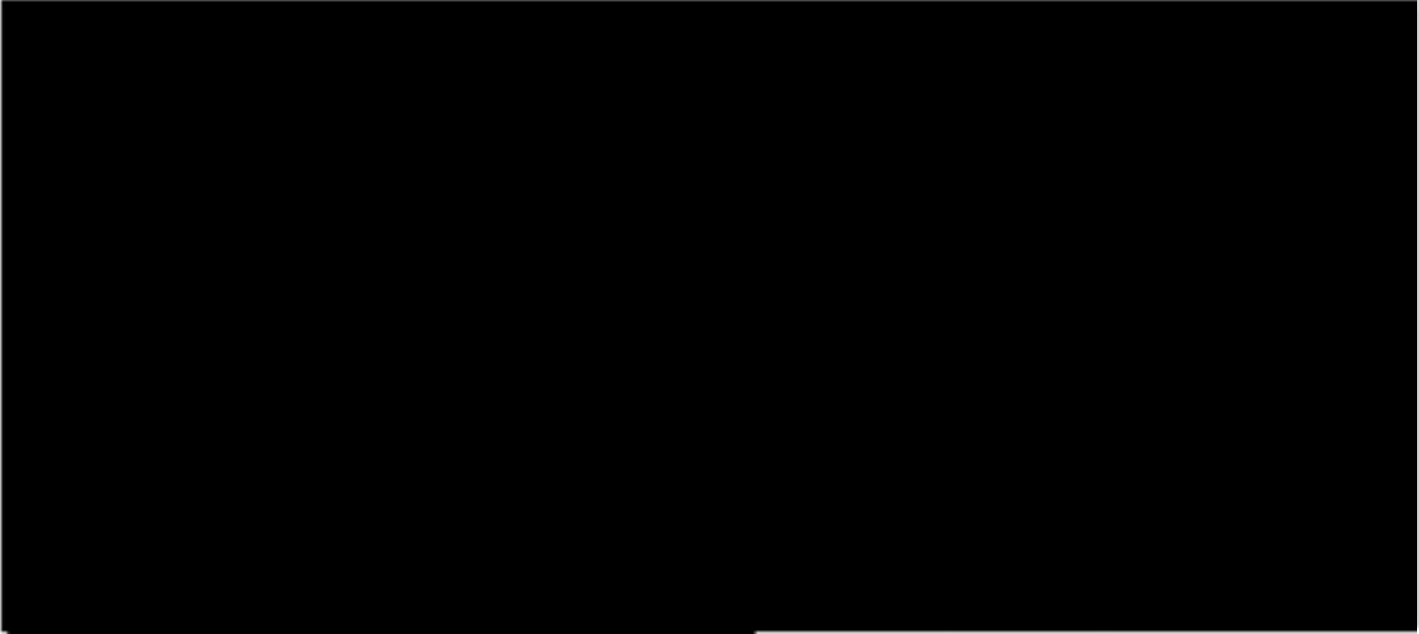


Spain

PP

MEP: 19.10.1992

PPE-DE



Co-author of "Una reforma fiscal para España"; "Financiación autonómica y corresponsabilidad fiscal"; "La apuesta europea: de la moneda a la Unión Política".

**CEDERSCHIÖLD, Charlotte**



**Sverige**

**M**

**LEP: 01.01.1995**

**PPE-DE**





**CEDERSCHIÖLD, Charlotte**

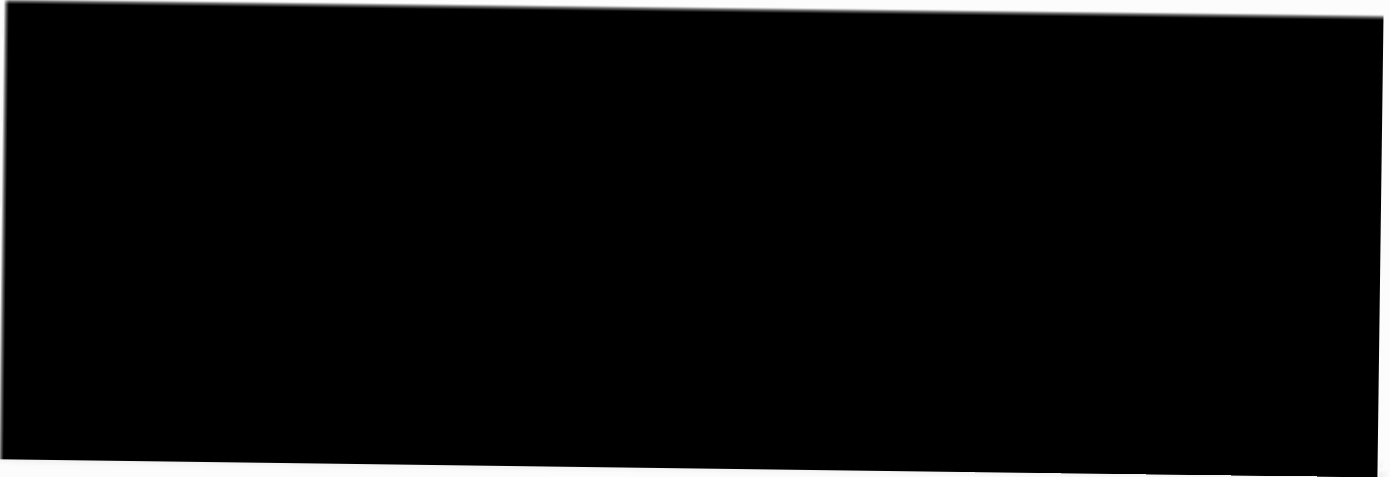


**Sweden**

**M**

**MEP: 01.01.1995**

**PPE-DE**



**CORNILLET, Thierry**

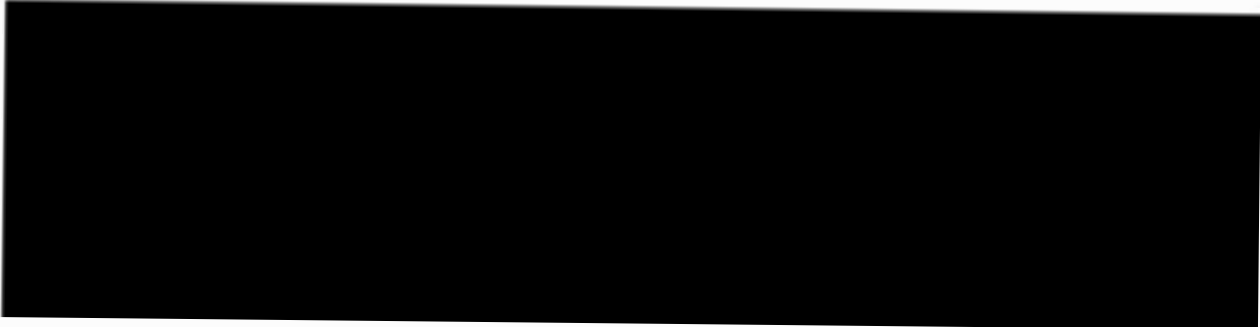


**France**

**UDF**

**MdPE: 20.07.1999**

**PPE-DE**



**Maire de Montélimar et conseiller général de la Drôme (1985-1993). Député de la Drôme (1993-1997). Vice-président de la région Rhône-Alpes (depuis 1999).**

CORNILLET, Thierry

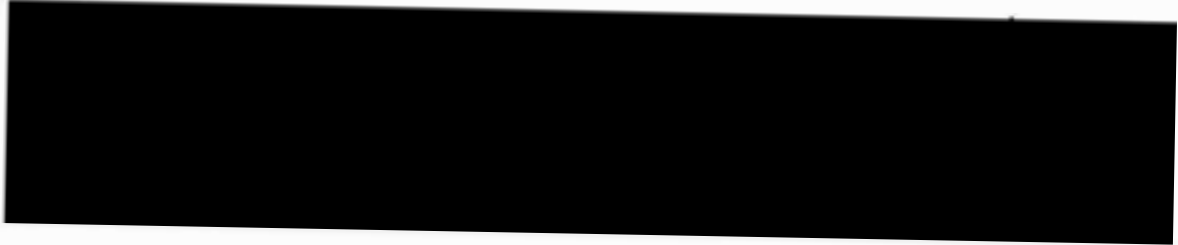


France

UDF

MEP: 20.07.1999

PPE-DE



Mayor of Montélimar and Member of the Drôme Departmental Council (1985-1993). Member of the National Assembly for the Drôme (1993-1997). Vice-Chairman of the Rhône-Alpes Regional Council (since 1999).



**FRIEDRICH, Ingo**



Deutschland

CSU

MdEP: 17.07.1979

PPE-DE



Delegationsleiter der CSU im EP (seit 1992). Präsidiumsmitglied der EVP (seit 1996).  
Vizepräsident des EP.



FRIEDRICH, Ingo

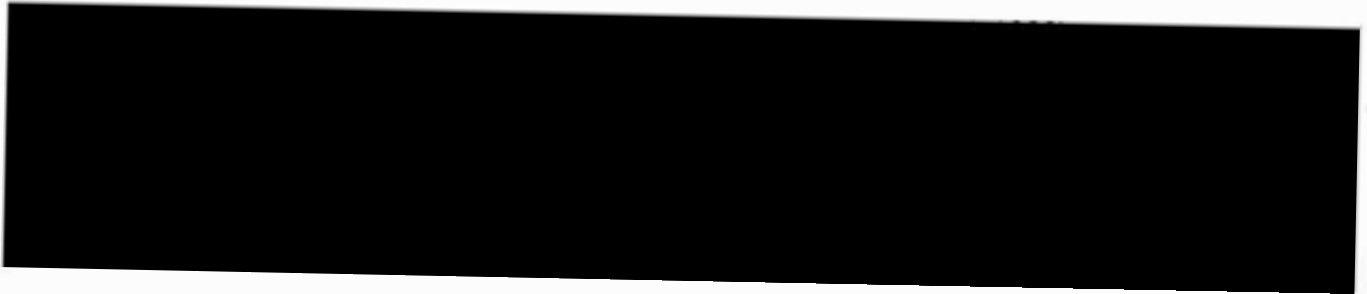


Germany

CSU

MEP: 17.07.1979

PPE-DE



Head of the CSU delegation to the European Parliament (since 1992). Member of the bureau of the EPP (since 1996). President of the European Parliament.



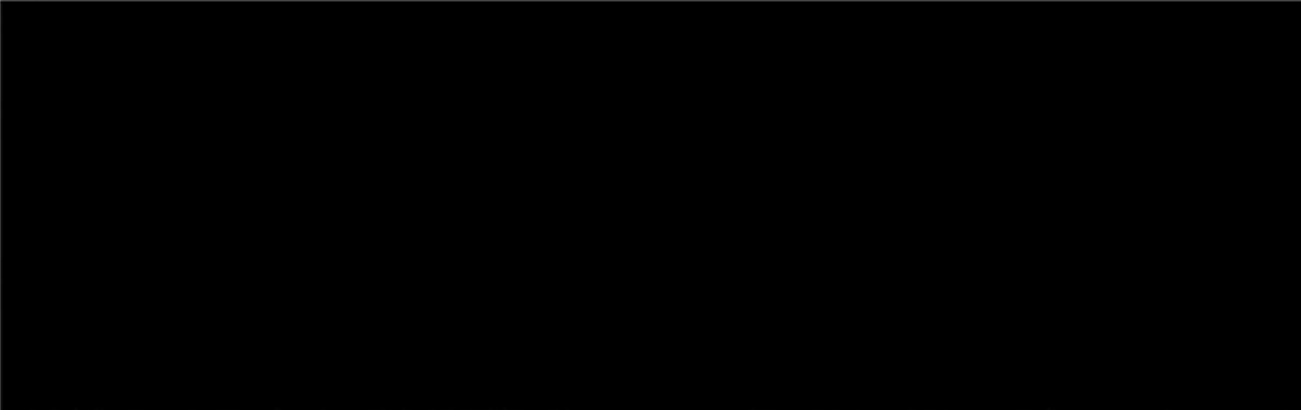
**KIRKHOPE, Timothy**

  
**United Kingdom**

**Cons.**

**MEP: 20.07.1999**

**PPE-DE**

  
**MP for Leeds North-East (1987-1997). Government whip and Lord Commissioner to the Treasury (1990-1995). Vice-Chamberlain to H.M. Queen Elizabeth II (1995). Under-Secretary of State at the Home Office (immigration, international police cooperation) (1995-1997).**

**Represented the UK as Member of the Council of Ministers (1995-1997).**   


KIRKHOPE, Timothy

[REDACTED]  
Royaume-Uni

Cons.

MdPE: 20.07.1999

PPE-DE

[REDACTED]  
Député de Leeds nord-est (1987-1997). Chef de file de la majorité et lord commissaire du ministère des finances (1990-1995). Vice-chambellan de Sa Majesté la Reine Elizabeth II (1995). Secrétaire d'État au ministère de l'intérieur (immigration, coopération policière internationale) (1995-1997).

A représenté le Royaume-Uni en qualité de membre du Conseil de ministres (1995-1997).  
[REDACTED]

**MAU-WEGGEN, Hanja**



**Nederland**

**CDA**

**Lid EP: 17.07.1979-07.11.1989**

**19.07.1994**

**PPE-DE**



**Minister Verkeer en waterstaat (1989-1994).**

**Vice-voorzitter EVP-Fractie (1986-1989). Voorzitter CDA-delegatie in EVP-Fractie (1994- ).**





**MAIJ-WEGGEN, Hanja**



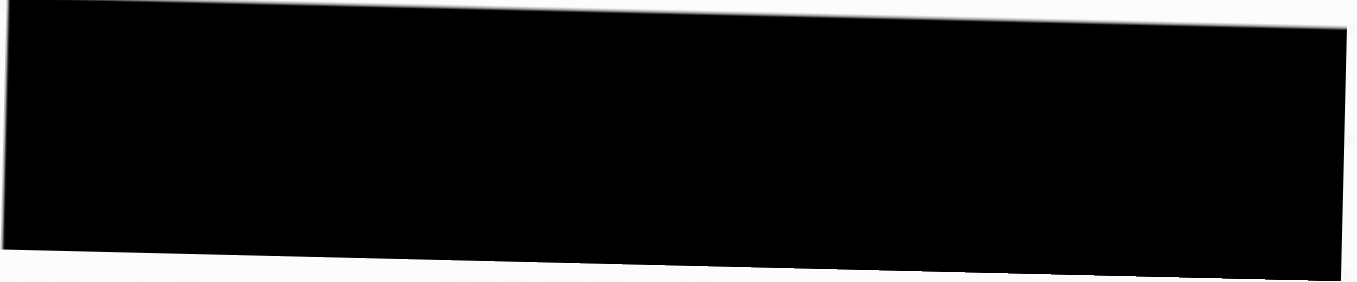
**Netherlands**

**CDA**

**MEP: 17.07.1979-07.11.1989**

**19.07.1994**

**PPE-DE**



**Minister for Transport and Public Works (1989-1994).**

**Vice-Chairman of the PPE Group (1986-1994). Chairman of the CDA delegation in the PPE Group (1994- ).**



**MARTIN, David W.**




**United Kingdom**

**Lab.**

**MEP: 24.07.1984**


**PSE**



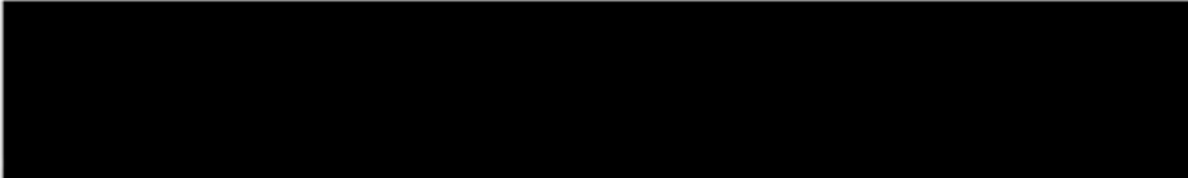
**Councillor, Lothian Regional Council (1982-1984).**

**In the European Parliament: Vice-Chair, Socialist Group (1987-1988). Vice-President of the European Parliament (since 1989).**

MARTIN, David W.



Royaume-Uni  
Lab.  
MdPE: 24.07.1984  
PSE



Membre du conseil régional du Lothian (1982-1984).

Au Parlement européen: vice-président du groupe socialiste (1987-1988). Vice-président du Parlement européen (depuis 1989).

**BERÈS, Pervenche**

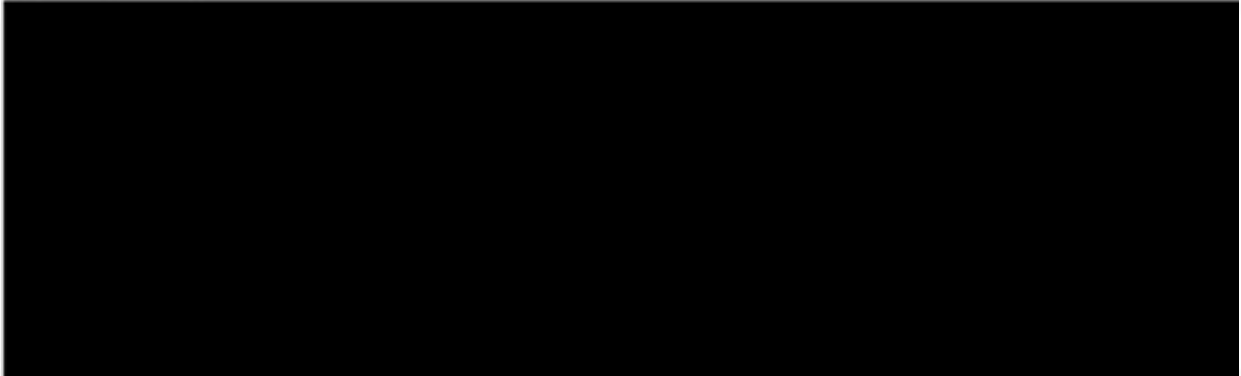


**France**

**PS**

**MdPE: 19.07.1994**

**PSE**



**BERÈS, Pervenche**

  
France

PS

MEP: 19.07.1994

PSE



**MARTIN, Hans-Peter**



**Österreich**

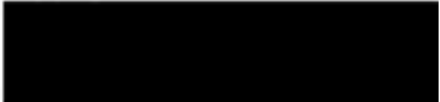
**SPÖ**

**MdEP: 20.07.1999**

**PSE**



MARTIN, Hans-Peter



Austria

SPÖ

MEP: 20.07.1999

PSE



**SCHULZ, Martin**



**Deutschland**

**SPD**

**MdEP: 19.07.1994**

**PSE**



**Mitglied des Rates der Stadt Würselen (seit 1984). Bürgermeister von Würselen (1987-1998).**



SCHULZ, Martin

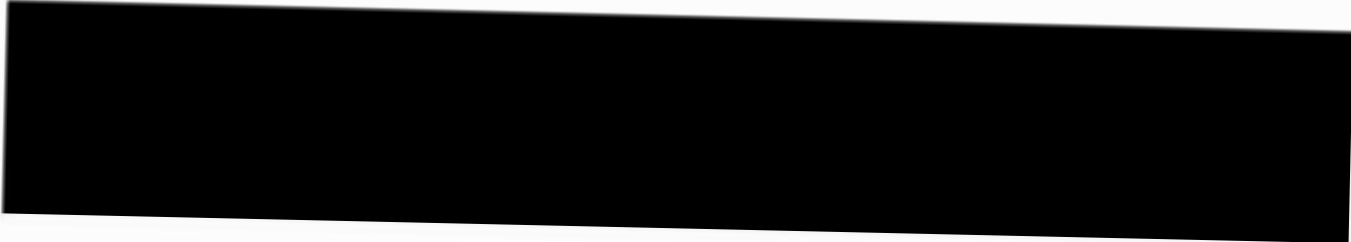


Germany

SPD

MEP: 19.07.1994

PSE



Municipal councillor in Würselen (since 1984). Mayor of Würselen (1987-1998).

DUFF, Andrew Nicholas



United Kingdom  
LDP  
MEP: 20.07.1999  
ELDR



Councillor, City of Cambridge (1982-1990).

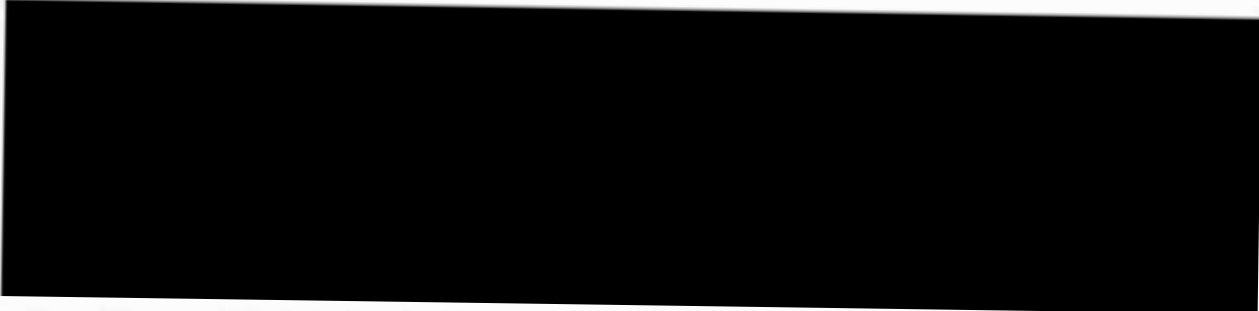


I

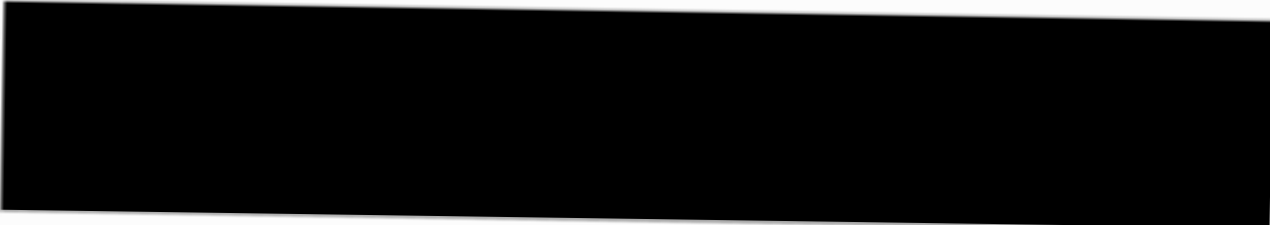
DUFF, Andrew Nicholas



Royaume-Uni  
LDP  
MdPE: 20.07.1999  
ELDR



Conseiller municipal de Cambridge (1982-1990).



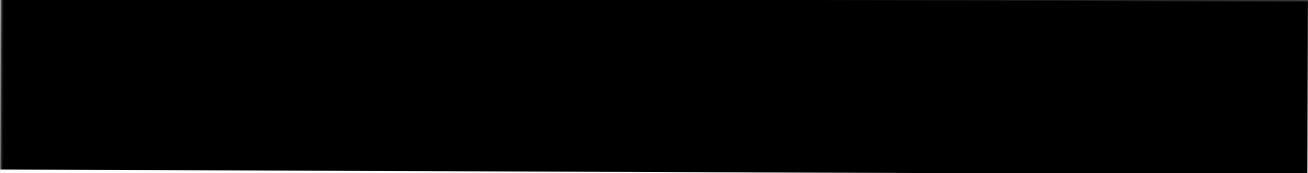
**VOGGENHUBER, Johannes**

  
Österreich

GRÜNE


MdEP: 01.01.1995

Verts/ALE

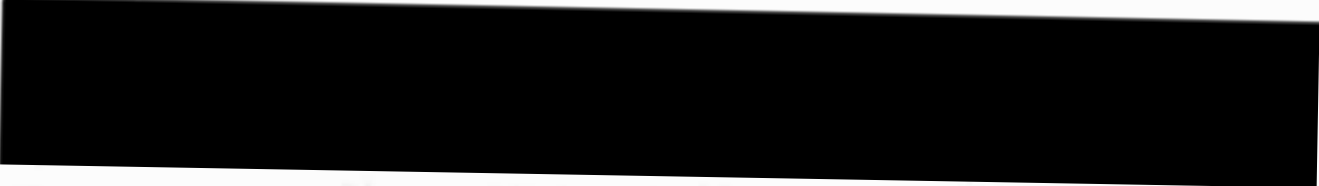
  
Stadtrat von Salzburg (1982-1987), zuständig für Stadtplanung, Bauen, Verkehr u. Umwelt und Altstadtsanierung. Abgeordneter zum Nationalrat (1990-1996).

Zahlreiche Veröffentlichungen zu den Themen Europäische Integration, Stadtplanung, Urbanistik und Demokratietheorie.

VOGGENHUBER, Johannes



Austria  
Die Grünen  
MEP: 01.01.1995  
Verts/ALE



Executive member of Salzburg municipal council (1982-1987), responsible for town planning, building, transport and the environment and restoration of the old town. Member of the Nationalrat (1990-1996).

Numerous publications on European integration, town planning and democratic theory


**KAUFMANN, Sylvia-Yvonne**

  
Deutschland

PDS

MdEP: 20.07.1999

GUE/NGL

  
Abgeordnete der DDR-Volkskammer (1990). Mitglied des Deutschen Bundestages (1990).

Beobachterin im EP (1991-1994).

**KAUFMANN, Sylvia-Yvonne**

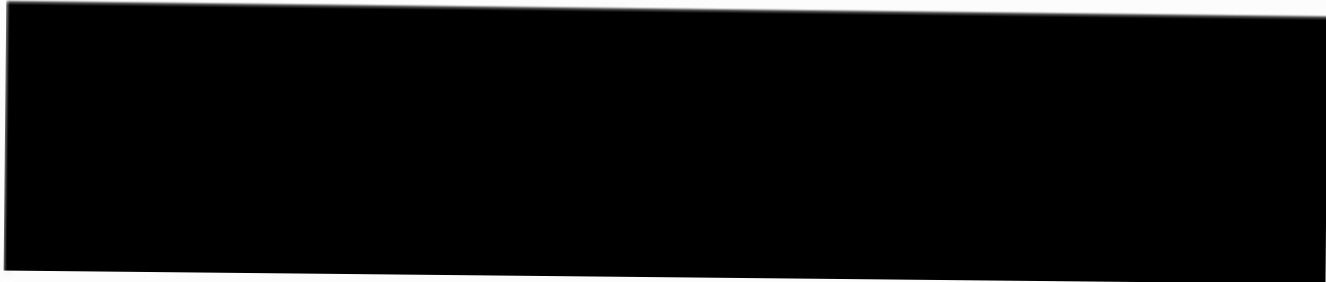


Germany

PDS

MEP: 20.07.1999

GUE/NGL



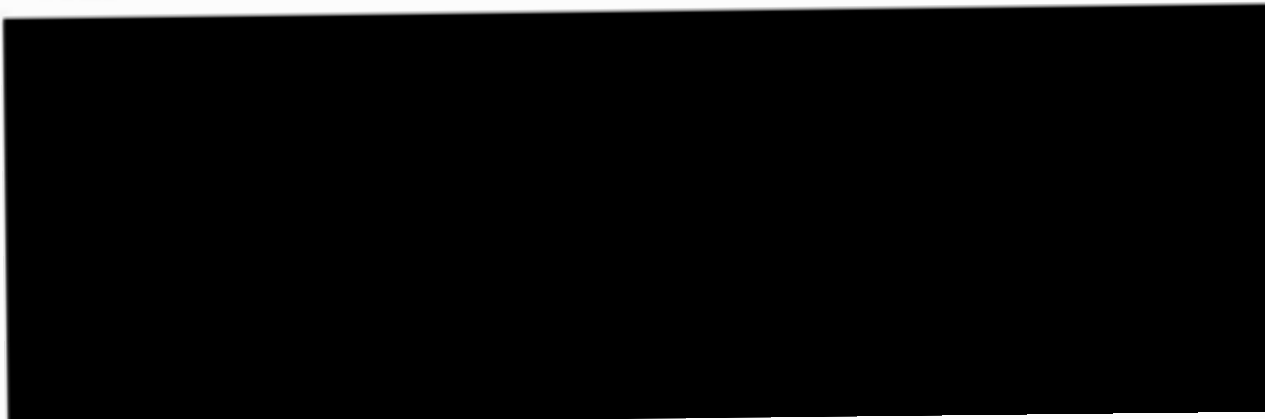
Member of the Volkskammer of the GDR (1990). Member of the German Bundestag (1990).

Observer in the European Parliament (1991-1994).

**BERTHU, Georges**



France  
RPF  
MdPE: 19.07.1994  
UEN



Conseiller municipal de Congr  (depuis 1995).



**BERTHU, Georges**

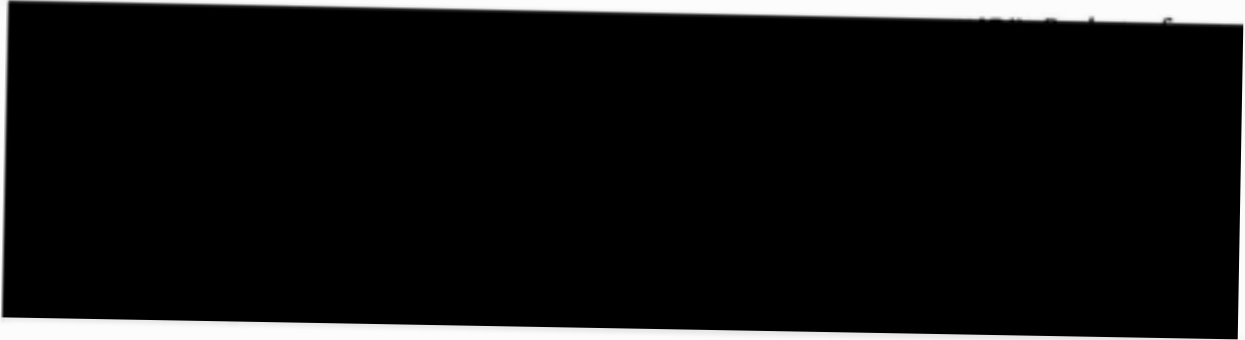


France

RPF

MEP: 19.07.1994

UEN



Member of Congr  municipal council (since 1995).


**BONDE, Jens-Peter**

  
**Danmark**

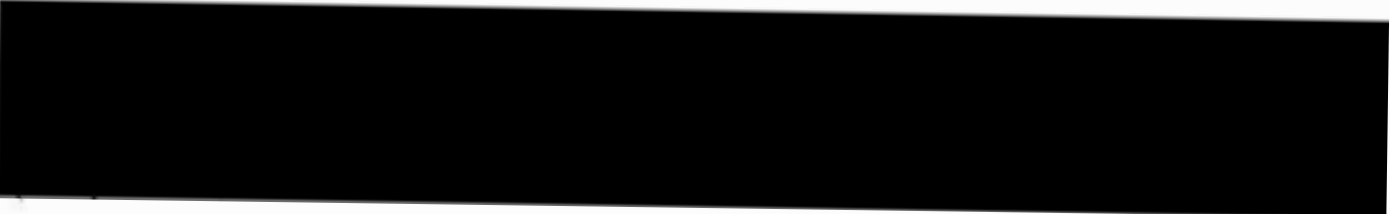
**J**

**MEP:** 17.07.1979

**EDD**

  
Medformand (1994-1997) og formand (1997-1999) for Nationernes Europa. Medformand for EDD.

Publikationer: 31 bøger, bl.a. EU's nye grundlov (1997), Et minuts taletid (1999), ØMU – hvad betyder den for mig (1999).

**BONDE, Jens-Peter****Denmark****J****MEP 17.07.1979****EDD**

**Co-Chairman (1994-1997) and Chairman (1997-1999) of the EDN Group. Co-Chairman of the EDD Group**

**Works published: 31 books, including "EU's nye grundlov" (1997), "Et minuts taletid" (1999), "ØMU - hvad betyder den for mig" (1999)**

**ALMEIDA GARRETT, Teresa**

**Portugal**

**PSD, ind.**

**DPE: 20.07.1999**

**PPE-DE**

**ALMEIDA GARRETT, Teresa**



Portugal  
PSD, ind.  
MdPE: 20.07.1999  
PPE-DE



**ALMEIDA GARRETT, Teresa**



Portugal

PSD, ind.

MEP: 20.07.1999

PPE-DE



**ALMEIDA GARRETT, Teresa**



Portugal  
PSD, ind.  
DPE: 20.07.1999  
PPE-DE



**BUTTIGLIONE, Rocco**

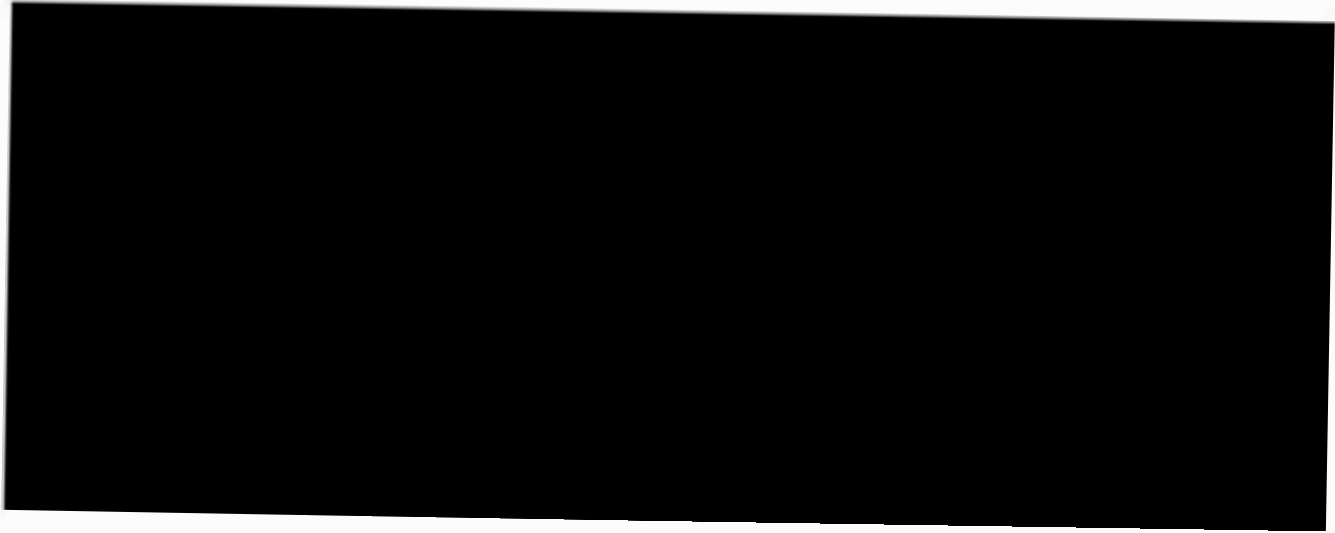


**Italie**

**CDU**

**MdPE: 20.07.1999**

**PPE-DE**





**BUTTIGLIONE, Rocco**

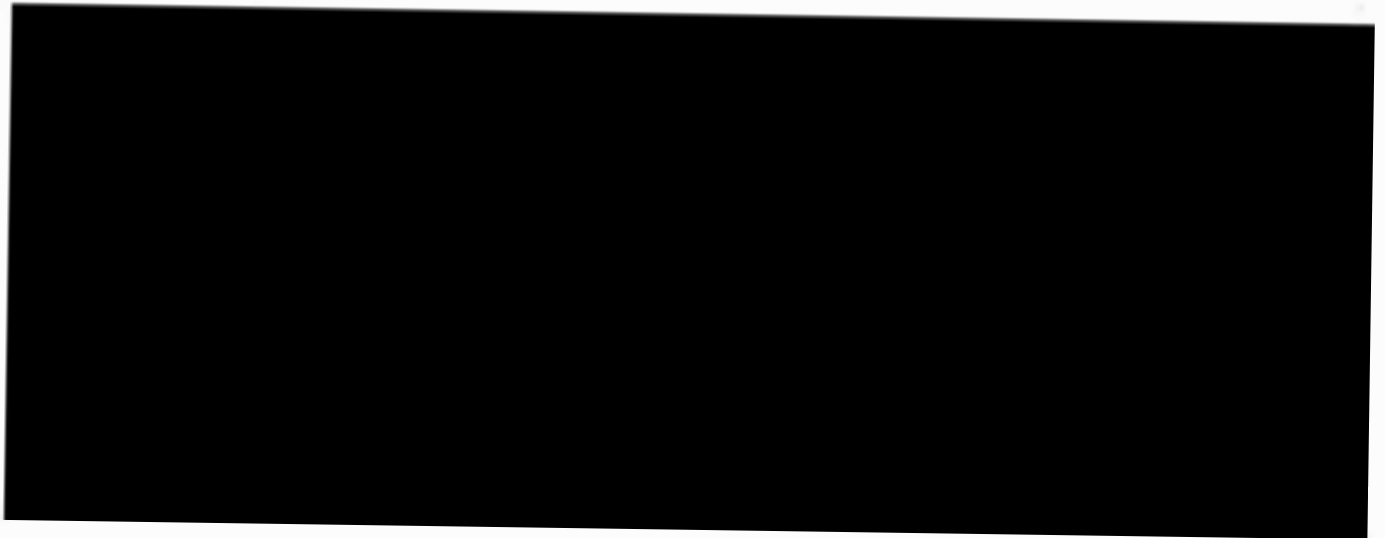


Italy

CDU

MEP: 20.07.1999

PPE-DE



**HATZIDAKIS, Konstantinos**



**Grèce**

**N.D.**

**MdPE: 19.07.1994**

**PPE-DE**



**Coordinateur du groupe du PPE au sein de la commission de la politique régionale (1997-1999).**

**HATZIDAKIS, Konstantinos**

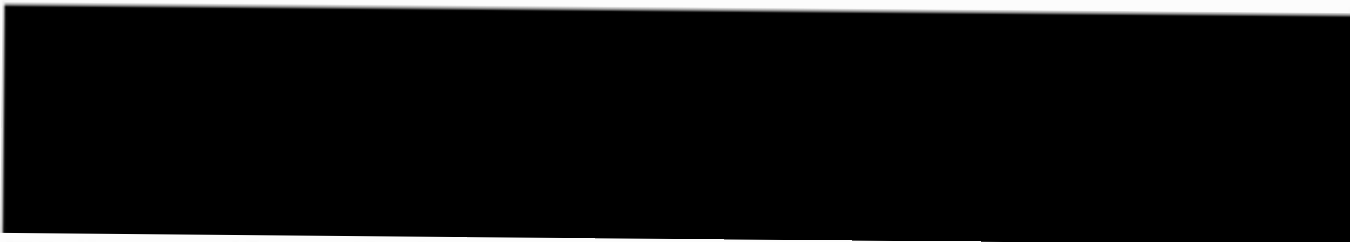


**Greece**

**ND**

**MEP:19.07.1994**

**PPE**



**PPE Group Coordinator in the Committee on Regional Policy (1997-1999).**

**ΧΑΤΖΗΔΑΚΗΣ, Κωνσταντίνος**



**Ελλάς**

**Ν.Δ.**

**ΒΕΚ: 19.07.1994**

**PPE**



**Συντονιστής της Ομάδας του PPE στην Επιτροπή Περιφερειακής Πολιτικής (1997-1999).**

**HERMANGE, Marie-Thérèse**

[REDACTED]  
France

RPR

MdPE: 19.07.1994

PPE-DE

[REDACTED]  
maire de Paris (depuis 1989).

[REDACTED] #jointe au


**HERMANGE, Marie-Thérèse**

  
France


RPR

MEP: 19.07.1994

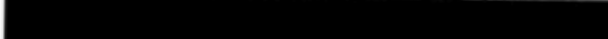

PPE-DE

  
Paris (since 1989).

Deputy mayor of

**MOMBAUR Peter Michael**

◇ Conseiller municipal de Solingen (1964-1969) et de Haan (1989-1994). ◇ Membre suppléant de la Cour constitutionnelle de Rhénanie du Nord-Westphalie. ◇ Auteur de nombreuses monographies et commentaires. Coéditeur de revues scientifiques.



**MOMBAUR Peter Michael**

[REDACTED]

◇ Municipal councillor in Solingen (1964-1969) and in Haan (1989-1994). ◇ Deputy member of the North Rhine-Westphalia Land Constitutional Court. ◇ Author of many monographs and commentaries. Co-publisher of academic journals. [REDACTED]


[REDACTED]



**RACK Reinhard**

 Député au Nationalrat (nov. 1994 - mars 1995 et déc. 1995 - jan. 1996).

**RACK Reinhard**

 Member of Parliament (November 1994 -  
March 1995 and December 1995 - January 1996).

van den BURG, Ieke (H.C.J.)

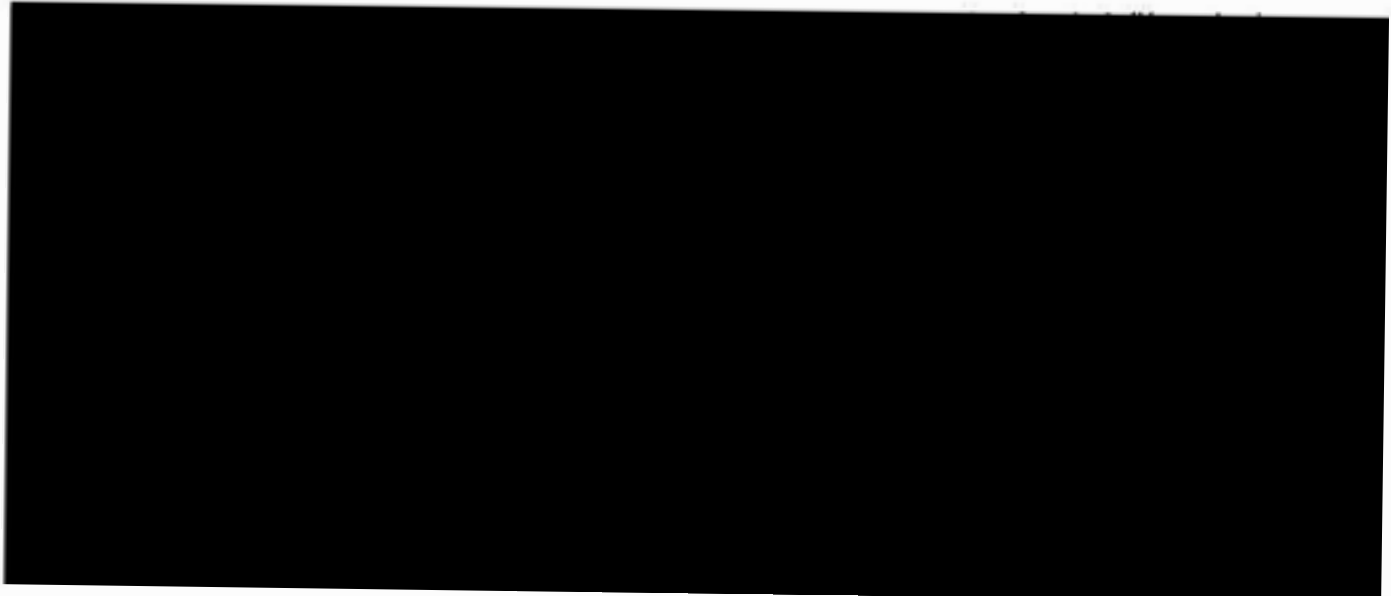


Pays-Bas

PvdA

MdPE: 20.07.1999

PSE



**van den BURG, Ieke (H.C.J.)**

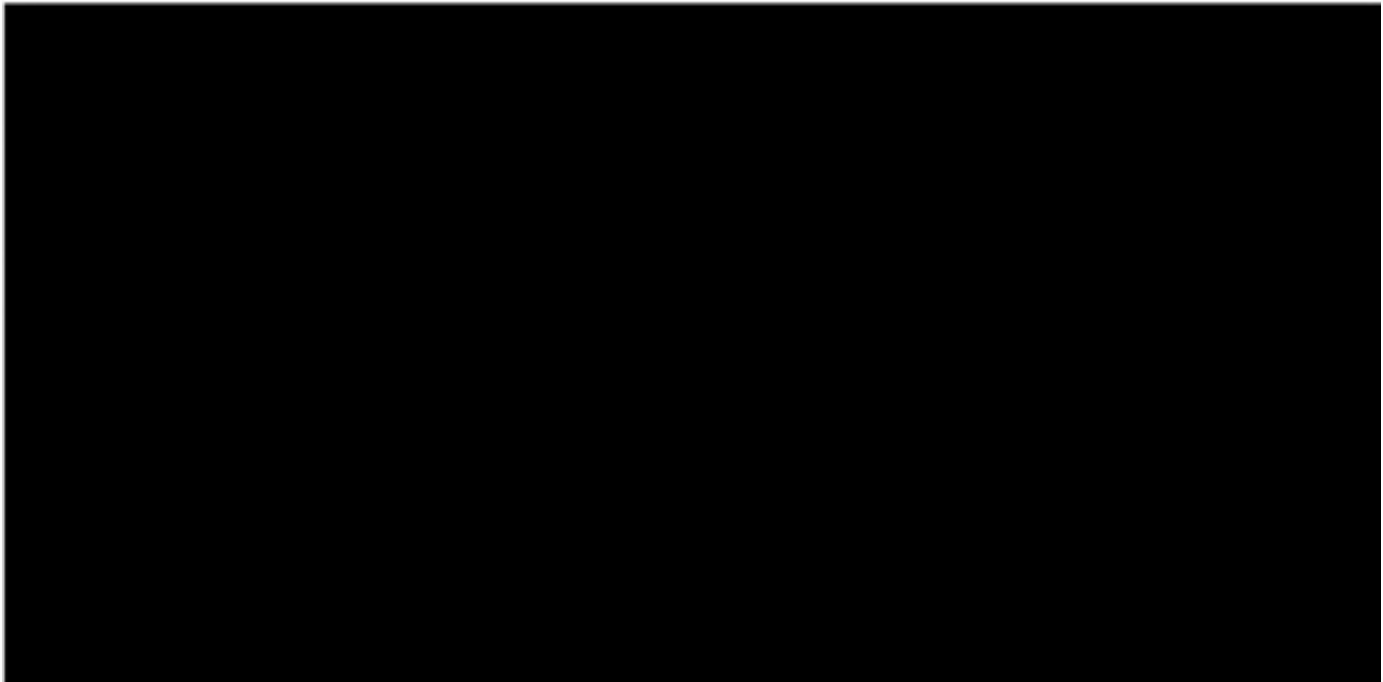


**Netherlands**

**PvdA**

**MEP: 20.07.1999**

**PSE**



**LALUMIÈRE, Catherine**

**France**

**PRG**

**MdPE: 19.07.1994**

**PSE**

**Conseillère régionale d'Île-de-France (1998). Députée à l'Assemblée nationale (1986-1989).  
Secrétaire d'État à la fonction publique (1981). Ministre de la consommation (1981-1984).  
Secrétaire d'État aux affaires européennes (1984-1986).**

**Secrétaire générale du Conseil de l'Europe (1989-1994).**

**LALUMIÈRE, Catherine**

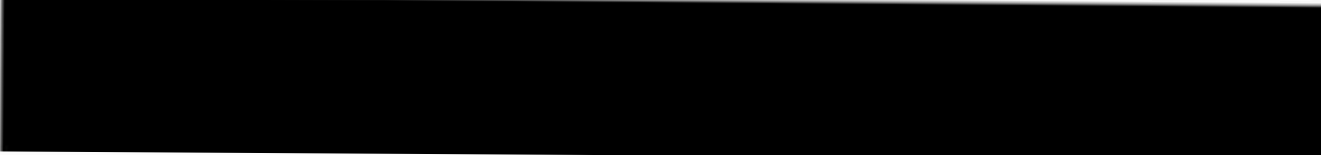


**France**

**PRG**

**MEP:** 19.07.1994

**PSE**



**Member of the Île-de-France Regional Council (1998). Member of the National Assembly (1986-1989). State Secretary for the Civil Service (1981). Minister for Consumer Affairs (1981-1984). State Secretary for European Affairs (1984-1986).**

**Secretary-General of the Council of Europe (1989-1994).**

**IIVARI, Ulpu**

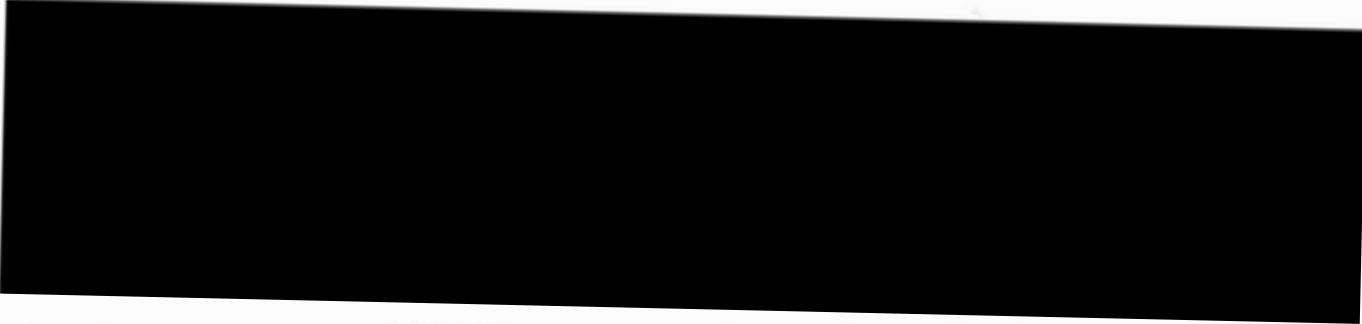
  
**Finlande**

**SDP**

**MdPE: 01.01.1995-10.11.1996**

**20.07.1999**

**PSE**

  
**Conseillère municipale d'Helsinki (1992-1996). Députée au parlement finlandais (1991-1995).  
Vice-présidente de la commission de l'agriculture et de la forêt (1991-1995).**

**IVARI, Uipu**

**Finland**

**SDP**

**MEP:** 01.01.1995-10.11.1996  
20.07.1999

**PSE**

**Member, Helsinki City Council (1992-1996). Member of Parliament (1991-1995). Vice-chairman of the Committee on Agriculture and Forestry (1991-1995).**



**IIVARI, Ulpu**



**Suomi**

**SDP**

**EPJ: 01.01.1995–10.11.1996**

**20.07.1999**

**PSE**



**Helsingin kaupunginvaltuuston jäsen (1992–1996). Kansanedustaja (1991–1995). Maa- ja metsätalousvaliokunnan varapuheenjohtaja (1991– 1995).**

**WHITEHEAD, Philip**



**Royaume-Uni**

**Lab.**

**MdPE: 19.07.1994**

**PSE**



**Au Parlement européen: Président du groupe du Parti travailliste au Parlement européen (depuis 1999). Président de l'intergroupe "Politique des consommateurs" (depuis 1994).**

**Membre de l'Assemblée du Conseil de l'Europe (1974-1979).**



**WHITEHEAD, Phillip**



**United Kingdom**

**Lab.**

**MEP:** 19.07.1994

**PSE**



**In the European Parliament: Chair of the European Parliamentary Labour Party (since 1999).  
Chair, Consumer Policy Intergroup (since 1994).**

**Member, Council of Europe Assembly (1974-1979).**

**Phillip Whitehead (1985)**



**DEHOUSSE, Jean-Maurice**

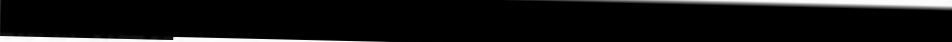

**Belgique**

**PS**

**MdPE: 16.09.1999**

**PSE**

**Conseiller communal (1976) et bourgmestre à Liège (1995-1999). Membre du conseil de la communauté française (1971-1995). Membre du conseil régional wallon (1980-1995). Ministre de la région wallonne chargé des affaires économiques (1981-1982). Ministre-président de la région wallonne (1982-1985). Membre de la Chambre des représentants (1971-1981). Sénateur (1981-1991). Député régional (1991-1995). Chef de cabinet adjoint (1970) et chef de cabinet du ministre des relations communautaires (1971). Ministre de la culture française puis ministre de la région wallonne (1977-1981). Ministre de la politique scientifique (1992-1995).**

**DEHOUSSE, Jean-Maurice**  
**Belgium****PS****MEP:** 16.09.1999**PSE**  
  
Member of municipal council (1976) and mayor of Liège (1995-1999). Member of the French Community Council (1971-1995). Member of the Walloon Regional Council (1980-1995). Walloon Region Minister for Economic Affairs (1981-1982). Prime Minister of the Walloon Region (1982-1985). Member of the House of Representatives (1971-1981). Senator (1981-1991). Member of regional parliament (1991-1995). Deputy head (1970) and head of the office of the Minister for Community Relations (1971). Minister for French Culture, then Minister for the Walloon Region (1977-1981). Minister for Science Policy (1992-1995).  


**WATSON, Graham R.**



**Royaume-Uni**

**LDP**

**MdPE: 19.07.1994**

**ELDR**



**Au Parlement européen: chef de file du groupe ELDR (1994-1996).**

**WATSON, Graham R.**



**United Kingdom**

**LDP**

**MEP: 19.07.1994**

**ELDR**



**In the European Parliament: whip, ELDR Group (1994-1996).**

**BUIYENWEG, Kathalijne Maria**

  
**Pays-Bas**

**Gauche verte**

**MdPE: 20.07.1999**

**Verts/ALE**




**BUITENWEG, Kathalijne Maria**

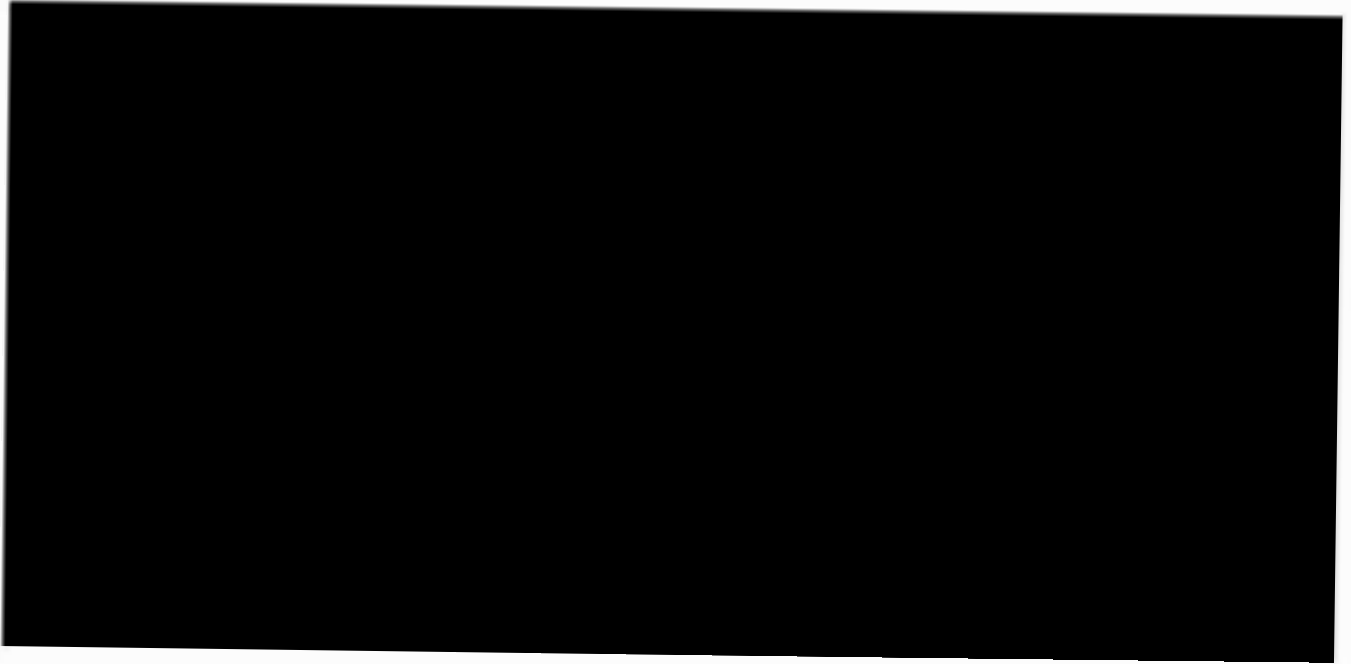


**Netherlands**

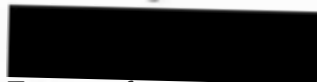
**Green Left**

**MEP: 20.07.1999**

**Verts/ALE**



**FRAHM, Pernille**



**Danemark**

**F**

**MdPE: 20.07.1999**

**GUE/NGL**



**Membre du**

**Folketing (1990-1994 et 1998-1999).**

**Vice-présidente du GUE/NGL.**


**FRAHM, Pernille**

  
Denmark

F

MEP 20.07.1999

GUE/NGL

  
Member of the Folketing (1990-1994 and 1998-1999).

Vice-chair of the GUE/NGL Group.

**NOBILIA, Mauro**



**Italie**

**AN**

**MdPE: 20.07.1999**

**UEN**



**NOBILIA, Mauro**

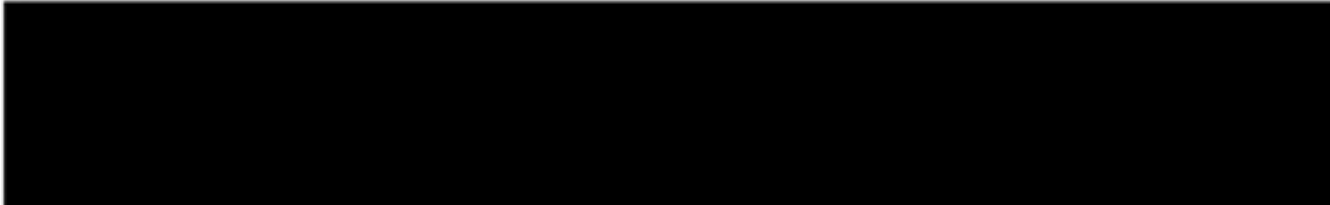


Italy

AN

MEP: 20.07.1999

UEN



van DAM, Rijk

[REDACTED]

Pays-Bas

RPF

MdPE: 02.09.1997

EDD

[REDACTED]

Membré des États provinciaux de la Gueldre (1989-1997). Conseiller municipal de Barneveld (1994-1998).


van DAM, Rijk

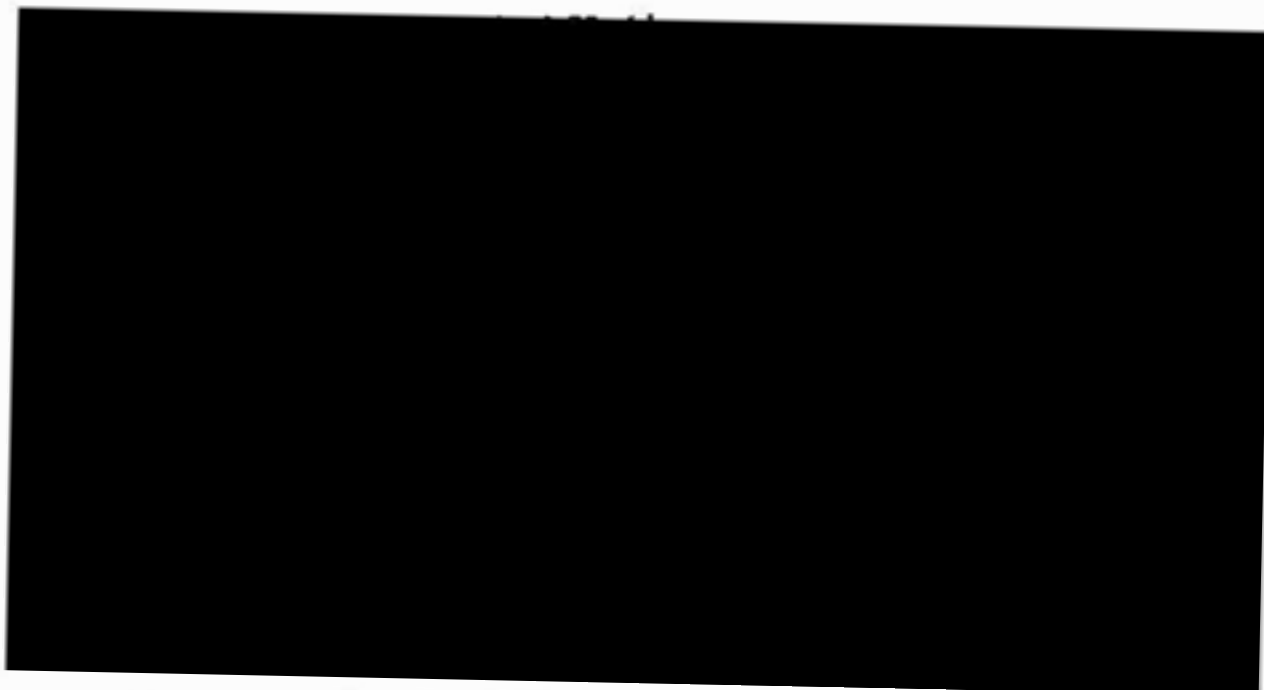
  
Netherlands

RPF

MEP: 02.09.1997

EDD

  
Member of the Gelderland Provincial States (1989-1997). Member of Barneveld Municipal Council (1994-1998).

*Curriculum vitae***Siegbert Alber**

- 1969-1980            Membre du Bundestag
- 1970-1980            Membre de l'Assemblée parlementaire du Conseil de l'Europe et de l'Assemblée de l'Union de l'Europe occidentale (dans les deux instances, plusieurs années en qualité de président de la commission budgétaire)
- Janvier 1977-  
Octobre 1997            Membre du Parlement européen

Fonctions parlementaires:

- 1979-1982            Vice-président de la commission de l'Environnement,
- 1982-1984            Vice-président du groupe PPE,
- 1984-1992            Vice-président du Parlement européen,
- 1993-1994            Président de la commission juridique,



- 2 -

jusqu'en 1997      Porte-parole de politique juridique  
et coordinateur du groupe PPE au  
sein de la commission juridique.

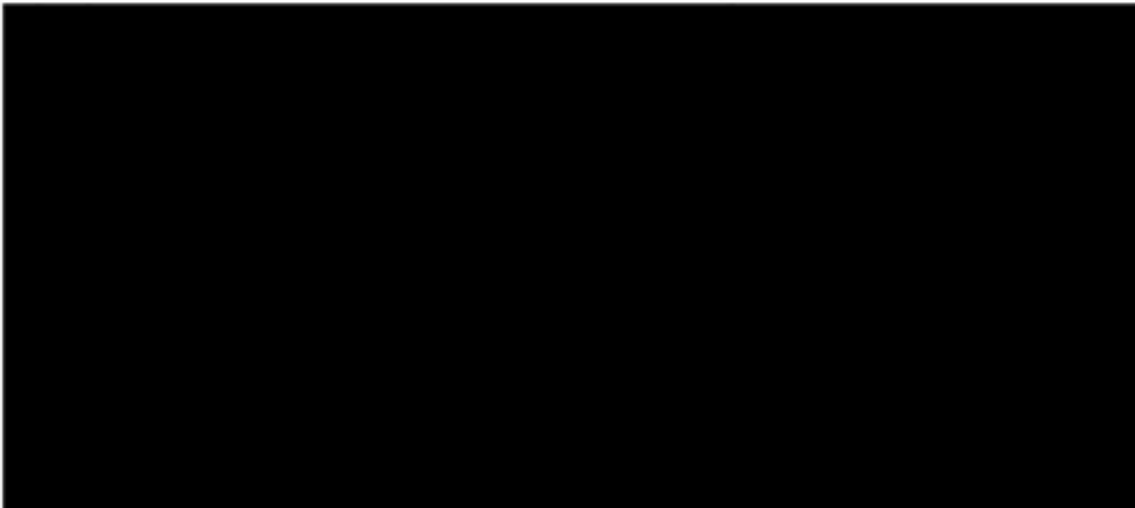
Président – pendant la durée d'exercice – de la sous-  
commission "protection des données" et de la  
Commission d'Enquête "substances toxiques et  
dangereuses" (Commission SEVESO)

Autres fonctions (en tant que membre du Parlement  
européen):

- Président du groupe de travail intergroupe  
"Amici Poloniae",
- Vice-président de l'Intergroupe "Israel",
- Vice-président de l'intergroupe "Animal  
Welfare".
- Président de l'Association Parlementaire  
Européenne (Strasbourg, Bruxelles)

Fonctions actuelles:

Depuis le 7.10.1997      Avocat général à la Cour de justice des  
Communautés européennes



Wfa

Vassilios Skouris

**CURRICULUM VITAE**

**Ministre des Affaires Intérieures, chargé de l'organisation des élections législatives du 5 novembre 1989.**

**Ministre des Affaires Intérieures, second mandat, pour les élections législatives du 22 septembre 1996.**

Depuis juin 1999 Juge à la Cour de justice des Communautés européennes.

Il a publié quinze livres et un nombre important d'études (plus de 90) en matière de droit administratif, constitutionnel et communautaire, en grec, allemand, français et anglais.



Council of Europe  
Conseil de l'Europe



## Briefing de Presse

**Hans Christian KRÜGER**  
**Secrétaire Général adjoint**

40 Membres

Albanie  
Allemagne  
Andorre  
Autriche  
Belgique  
Bulgarie  
Chypre  
Croatie  
Danemark  
Espagne  
Estonie  
Finlande  
France  
Grèce  
Hongrie  
Irlande  
Islande  
Italie  
Lettonie  
l'ex-République  
yougoslave de  
Macédoine  
Liechtenstein  
Lituanie  
Luxembourg  
Malte  
Moldova  
Norvège  
Pays Bas  
Pologne  
Portugal  
République Tchèque  
Roumanie  
Royaume Uni  
Russie  
Saint Marin  
Slovaquie  
Slovénie  
Suède  
Suisse  
Turquie  
Ukraine

### ***Carrière au Conseil de l'Europe***

Juriste au Secrétariat de la Commission européenne des Droits de l'Homme (septembre 1966-67)

Administrateur (juriste) au Secrétariat de la Commission européenne des Droits de l'Homme (1967-73)

Administrateur Principal au Secrétariat de la Commission européenne des Droits de l'Homme (1973-76)

Secrétaire de la Commission européenne des Droits de l'Homme (1976-97)

Elu Secrétaire Général adjoint par l'Assemblée parlementaire (septembre 1997)

CONSEIL DE L'EUROPE  
SERVICE DE PRESSE  
F- 67075 Strasbourg  
France.

Tel: +33/3 88 41 25 60

Fax: +33/3 88 41 27 09

Email: [Pressunit@coe.fr](mailto:Pressunit@coe.fr)

Internet: [www.coe.fr](http://www.coe.fr)

Council of Europe  
 Conseil de l'Europe

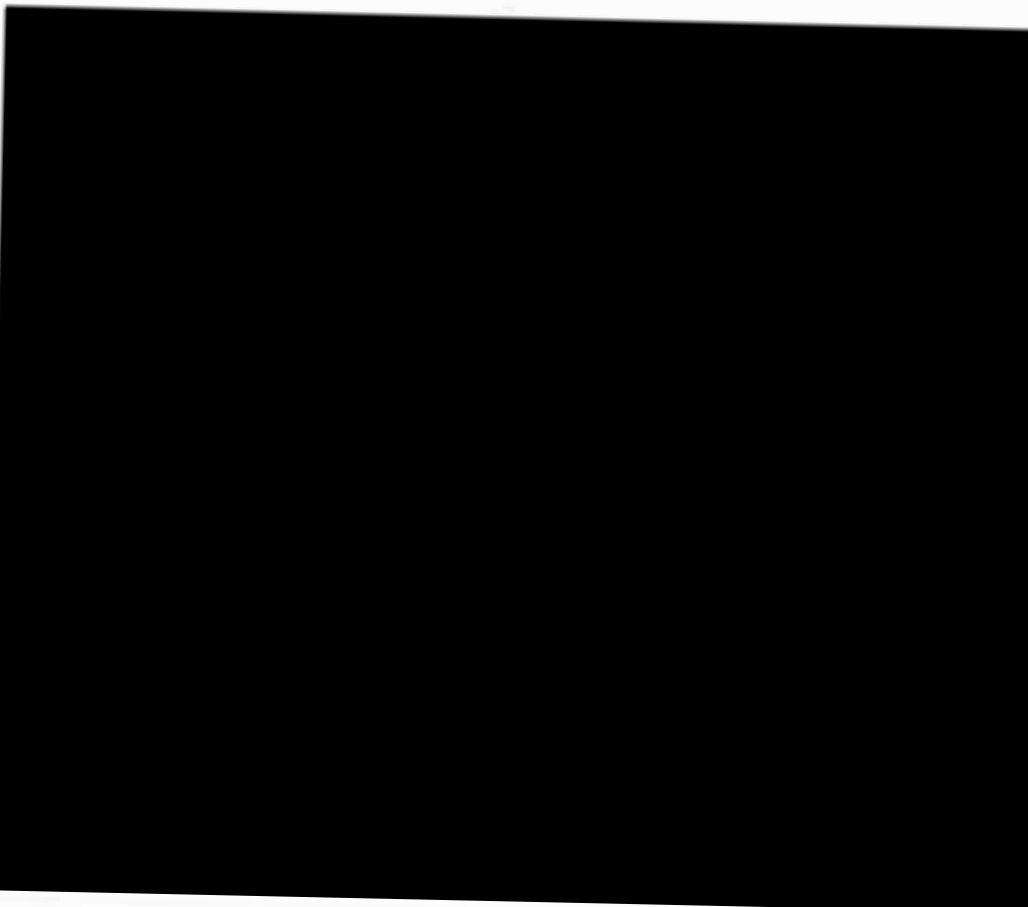


## Media Briefing

**Hans Christian KRÜGER**  
 Deputy Secretary General

40 Members

Albania  
 Andorra  
 Austria  
 Belgium  
 Bulgaria  
 Croatia  
 Cyprus  
 Czech Republic  
 Denmark  
 Estonia  
 Finland  
 France  
 Germany  
 Greece  
 Hungary  
 Iceland  
 Ireland  
 Italy  
 Latvia  
 Liechtenstein  
 Lithuania  
 Luxembourg  
 Malta  
 Moldova  
 Netherlands  
 Norway  
 Poland  
 Portugal  
 Romania  
 Russia  
 San Marino  
 Slovakia  
 Slovenia  
 Spain  
 Sweden  
 Switzerland  
 "the former Yugoslav  
 Republic of Macedonia"  
 Turkey  
 Ukraine  
 United Kingdom



### ***Council of Europe***

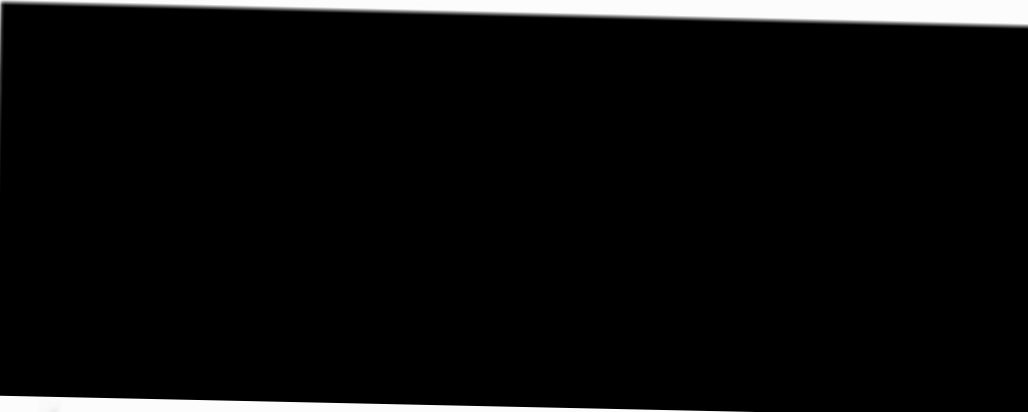
Legal officer in the Secretariat of the European Commission of Human Rights (September 1966-1967)

Administrative Officer in the Secretariat of the European Commission of Human Rights (1967-73)

Principal Administrative Officer in the Secretariat of the European Commission of Human Rights (1973-76)

Secretary to the European Commission of Human Rights (1976-1997)

Elected Deputy Secretary General by the Parliamentary Assembly (September 1997)



**COUNCIL OF EUROPE**  
**PRESS SERVICE**  
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 France  
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 Fax: +33/3 88 41 27 89  
 Email: [Pressmit@coe.fr](mailto:Pressmit@coe.fr)  
 Internet: [www.coe.fr](http://www.coe.fr)

**Mr Marc FISCHBACH**

Member of the Law Commission of European Parliament Committee on Legal Affairs, member of the Law Commission of the Chamber of Deputies, 1979-1984

Deputy Burgomaster of the City of Luxembourg, 1982

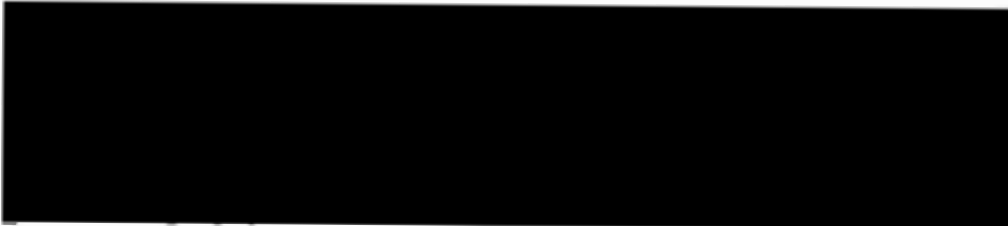


Minister of Public Force and of Agriculture, 1984-1989

Minister of Justice and of National Education, 1989-1995

Minister of Justice and Budget, 1995-1998

Judge at the European Court of Human Rights, 1998

**M. Marc FISCHBACH  
(Luxembourgeois)**

Membre de la Commission juridique du Parlement européen, membre de la Commission juridique de la Chambre des députés, 1979-1984

Echevin de la ville de Luxembourg, 1982



Ministre de la Force publique et de l'Agriculture, 1984-1989

Ministre de la Justice et de l'Education nationale, 1989-1995

Ministre de la Justice et du Budget, 1995-1998

Juge à la Cour européenne des Droits de l'Homme, 1998

## PROJET DE CHARTE DES DROITS FONDAMENTAUX

### Liste des nominations

État au 23 mars 2000

| Institution/État                                              | Nom<br>(« T » = titulaire/ »S » = Suppléant) |
|---------------------------------------------------------------|----------------------------------------------|
| Parlement européen<br><i>Président délégation PE : --&gt;</i> | M. Inigo MÉNDEZ DE VIGO (T)                  |
|                                                               | Mme Charlotte CEDERSCHIÖLD (T)               |
|                                                               | M. Thierry CORNILLET (T)                     |
|                                                               | M. Ingo FRIEDRICH (T)                        |
|                                                               | M. Timothy KIRKHOPE (T)                      |
|                                                               | Mme Johanna MAIJ-WEGGEN (T)                  |
|                                                               | M. David MARTIN (T)                          |
|                                                               | Mme Pervenche BERÈS (T)                      |
|                                                               | M. Hans-Peter MARTIN (T)                     |
|                                                               | M. Martin SCHULZ (T)                         |
|                                                               | Mme Elena PACIOTTI (T)                       |
|                                                               | M. Andrew DUFF (T)                           |
|                                                               | M. Johannes VOGGENHUBER (T)                  |
|                                                               | Mme Sylvia-Yvonne KAUFMANN (T)               |
|                                                               | M. Georges BERTHU (T)                        |
|                                                               | M. Jens-Peter BONDE (T)                      |
|                                                               | Mme Teresa ALMEIDA GARRETT (S)               |
|                                                               | M. Rocco BUTTIGLIONE (S)                     |
|                                                               | M. Konstantinos HATZIDAKIS (S)               |
|                                                               | Mme Marie-Thérèse HERMANGE (S)               |
|                                                               | M. Peter Michael MOMBAUR (S)                 |
|                                                               | M. Reinhard RACK (S)                         |
|                                                               | Mme Ieke van den BURG (S)                    |
|                                                               | Mme Catherine LALUMIERE (S)                  |
|                                                               | Mme Ulpu IIVARI (S)                          |
|                                                               | M. Phillip WHITEHEAD (S)                     |
|                                                               | M. Jean-Maurice DEHOUSSE (S)                 |
|                                                               | M. Graham WATSON (S)                         |
|                                                               | Mme Kathalijne BUITENWEG (S)                 |
|                                                               | Mme Pernille FRAHM (S)                       |
|                                                               | M. Mauro NOBILIA (S)                         |
|                                                               | M. Rijk van DAM (S)                          |

| Institution/Etat                   | Nom<br>(« T » = titulaire/ »S » = Suppléant)                                                                                                                                   |
|------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Cour de Justice                    | M. SKOURIS (Juge)<br>M. ALBER (Avocat général)                                                                                                                                 |
| Conseil de l'Europe                | M. KRUGER (Secrétaire général adjoint)<br>M. Johan CALLEWAERT (S)<br>M. FISCHBACH (Juge)                                                                                       |
| Commission                         | M. António VITORINO (Commissaire)<br>M. Carlo TROJAN (Secrétaire général) (S)                                                                                                  |
| Finlande<br>Parlement finlandais : | M. Paavo NIKULA (Chancelier de la justice) (T)<br>M. Holger Rotkirch (S)<br>M. Gunnar JANSSON (T)<br>Mme Tuija BRAX (T)<br>M. Johannes LEPPÄNEN(S)<br>Mme Riitta PRUSTI (S)    |
| Allemagne<br>Parlement :           | M. Roman HERZOG<br>M. Jurgen MEYER (T)<br>M. Jürgen GNAUCK (T)<br>M. Peter ALTMAIER (S)<br>M. Wolf WEBER (S)                                                                   |
| Belgique<br>Parlement :            | M. Jean-Luc DEHAENE (T)<br>M. Erik DERYCKE (S)<br>M. Roger LALLEMAND (T)<br>M. Karel de GUCHT (T)<br>M. Jacky MORAEL (S Lallemand)                                             |
| France<br>Parlement                | M. BRAIBANT (T)<br>Mme Jacqueline Dutheil de la Rochère (S)<br>M. François LONCLE (T)<br>Mme Nicole Ameline (S)<br>M. Hubert HAENEL (T)<br>Mme Marie-Madeleine DIEULANGARD (S) |
| Espagne<br>Parlement               | M. Alvaro RODRIGUEZ-BEREIJO (T)<br>M. Francisco de ASÍS SANZ GANDASEGUI (S)<br>M. Gabriel CISNEROS (T)<br>M. Jordi SOLÉ TURA (T)                                               |
| Grèce<br>Parlement                 | M. George PAPADIMITRIOU<br>M. Georgios ROMEOS<br>M. Michael LIAPIS                                                                                                             |
| Pays-Bas<br>Parlement :            | M. Frits KORTHALS ALTES<br>M. Michiel PATIJN (T)<br>M. Ernst HIRSCH BALLIN (T)<br>M. Erik JURGENS (S)<br>M. Gerritjan van OVEN (S)                                             |
| Luxembourg<br>Parlement :          | M. Paul-Henri MEYERS<br>M. Ben FAYOT (T)<br>Mme Simone BEISSEL (T)                                                                                                             |



|                            |                                                                                                                                                             |
|----------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Royaume-Uni<br>Parlement : | Lord GOLDSMITH QC<br>M. Martin EATON (S)<br>M. Wyn GRIFFITHS (T)<br>Lord BOWNESS (T)<br>M. David CHIDGEY (S)<br>The Baroness HOWELLS of St. Davids (S)      |
| Suède<br>Parlement :       | M. Daniel TARSchYS<br>M. Göran MAGNUSSON (T)<br>M. Lars F. TOBISSON (T)<br>M. Ingvar SVENSSON (S)<br>Mr. Kenneth KVIST (S)                                  |
| Danemark<br>Parlement      | M. Erling OLSEN (T)<br>M. Tyge LEHMANN (S)<br>M. Claus Larsen JENSEN (T)<br>Mme Ulla TØRNAES (T)<br>M. Knud Erik HANSEN (S)<br>Mme Pia CHRISTMAS-MØLLER (S) |
| Portugal<br>Parlement      | M. Pedro BACELAR DE VASCONCELLOS<br>M. Miguel DE SERPA SOARES (S)<br>M. José BARROS MOURA (T)<br>Mme Maria Eduarda AZEVEDO (T)                              |
| Italie<br>Parlement :      | M. Stefano RODOTÀ<br>M. Andrea MANZELLA (T)<br>M. Piero MELOGRANI (T)<br>M. Furio BOSELLO (S)<br>Mme Maria Pia VALETTO BITELLI (S)                          |
| Irlande<br>Parlement       | M. Michael O'KENNEDY (T)<br>M. Mahon HAYES (S)<br>M. Desmond O'MALLEY (T)<br>Mme Madeline TAYLOR QUINN (S)<br>M. Bernard DURKAN (T)                         |
| Autriche<br>Parlement      | M. Heinrich NEISSER (T)<br>M. Harald Dossi (S)<br>M. .... à nommer (T)<br>M. Harald OFNER (T)<br>M. Michael SPINDELEGGER (S)<br>M. Willi BRAUNEDER (S)      |

| Autres instances                   | Nom                                                                                          |
|------------------------------------|----------------------------------------------------------------------------------------------|
| <b>Comité économique et social</b> | Madame Anne-Marie SIGMUND<br>M. Roger BRIESCH<br>M. Manuel CAVALEIRO BRANDAO<br>M. Alan HICK |
| <b>Comité des Régions</b>          | M. Jozef CHABERT<br>M. Manfred DAMMEYER<br>Mme Béatrice TAULÈGNE                             |
| <b>Le Médiateur</b>                | M. Jacob SÖDERMANN                                                                           |

## PROJET DE CHARTE DES DROITS FONDAMENTAUX

### Liste des nominations

État au 24 mars 2000

| Institution/État                                              | Nom<br>(« T » = titulaire/ »S » = Suppléant) |
|---------------------------------------------------------------|----------------------------------------------|
| Parlement européen<br><i>Président délégation PE : --&gt;</i> | M. Inigo MÉNDEZ DE VIGO (T)                  |
|                                                               | Mme Charlotte CEDERSCHIÖLD (T)               |
|                                                               | M. Thierry CORNILLET (T)                     |
|                                                               | M. Ingo FRIEDRICH (T)                        |
|                                                               | M. Timothy KIRKHOPE (T)                      |
|                                                               | Mme Johanna MAIJ-WEGGEN (T)                  |
|                                                               | M. David MARTIN (T)                          |
|                                                               | Mme Pervenche BERÈS (T)                      |
|                                                               | M. Hans-Peter MARTIN (T)                     |
|                                                               | M. Martin SCHULZ (T)                         |
|                                                               | Mme Elena PACIOTTI (T)                       |
|                                                               | M. Andrew DUFF (T)                           |
|                                                               | M. Johannes VOGGENHUBER (T)                  |
|                                                               | Mme Sylvia-Yvonne KAUFMANN (T)               |
|                                                               | M. Georges BERTHU (T)                        |
|                                                               | M. Jens-Peter BONDE (T)                      |
|                                                               | Mme Teresa ALMEIDA GARRETT (S)               |
|                                                               | M. Rocco BUTTIGLIONE (S)                     |
|                                                               | M. Konstantinos HATZIDAKIS (S)               |
|                                                               | Mme Marie-Thérèse HERMANGE (S)               |
|                                                               | M. Peter Michael MOMBAUR (S)                 |
|                                                               | M. Reinhard RACK (S)                         |
|                                                               | Mme Ieke van den BURG (S)                    |
|                                                               | Mme Catherine LALUMIERE (S)                  |
|                                                               | Mme Ulpu IIVARI (S)                          |
|                                                               | M. Phillip WHITEHEAD (S)                     |
|                                                               | M. Jean-Maurice DEHOUSSE (S)                 |
|                                                               | M. Graham WATSON (S)                         |
|                                                               | Mme Kathalijne BUITENWEG (S)                 |
|                                                               | Mme Pernille FRAHM (S)                       |
|                                                               | M. Mauro NOBILIA (S)                         |
|                                                               | M. Rijk van DAM (S)                          |

| Institution/Etat                   | Nom<br>(« T » = titulaire/ »S » = Suppléant)                                                                                                                                   |
|------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Cour de Justice                    | M. SKOURIS (Juge)<br>M. ALBER (Avocat général)                                                                                                                                 |
| Conseil de l'Europe                | M. KRUGER (Secrétaire général adjoint)<br>M. Johan CALLEWAERT (S)<br>M. FISCHBACH (Juge)                                                                                       |
| Commission                         | M. António VITORINO (Commissaire)<br>M. Carlo TROJAN (Secrétaire général) (S)                                                                                                  |
| Finlande<br>Parlement finlandais : | M. Paavo NIKULA (Chancelier de la justice) (T)<br>M. Holger Rotkirch (S)<br>M. Gunnar JANSSON (T)<br>Mme Tuija BRAX (T)<br>M. Johannes LEPPÄNEN(S)<br>Mme Riitta PRUSTI (S)    |
| Allemagne<br>Parlement :           | M. Roman HERZOG<br>M. Jurgen MEYER (T)<br>M. Jürgen GNAUCK (T)<br>M. Peter ALTMAIER (S)<br>M. Wolf WEBER (S)                                                                   |
| Belgique<br>Parlement :            | M. Jean-Luc DEHAENE (T)<br>M. Erik DERYCKE (S)<br>M. Roger LALLEMAND (T)<br>M. Karel de GUCHT (T)<br>M. Jacky MORAEL (S Lailemand)                                             |
| France<br>Parlement                | M. BRAIBANT (T)<br>Mme Jacqueline Dutheil de la Rochère (S)<br>M. François LONCLE (T)<br>Mme Nicole Ameline (S)<br>M. Hubert HAENEL (T)<br>Mme Marie-Madeleine DIEULANGARD (S) |
| Espagne<br>Parlement               | M. Alvaro RODRIGUEZ-BEREIJO (T)<br>M. Francisco SANZ GANDASEGUI (S)<br>M. Gabriel CISNEROS (T)<br>M. Jordi SOLÉ TURA (T)                                                       |
| Grèce<br>Parlement                 | M. George PAPADIMITRIOU<br>M. Georgios ROMEOS<br>M. Michael LIAPIS                                                                                                             |
| Pays-Bas<br>Parlement :            | M. Frits KORTHALS ALTES<br>M. Michiel PATIJN (T)<br>M. Ernst HIRSCH BALLIN (T)<br>M. Erik JURGENS (S)<br>M. Gerritjan van OVEN (S)                                             |
| Luxembourg<br>Parlement :          | M. Paul-Henri MEYERS<br>M. Ben FAYOT (T)<br>Mme Simone BEISSEL (T)                                                                                                             |

|                            |                                                                                                                                                             |
|----------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Royaume-Uni<br>Parlement : | Lord GOLDSMITH QC<br>M. Martin EATON (S)<br>M. Wyn GRIFFITHS (T)<br>Lord BOWNESS (T)<br>M. David CHIDGEY (S)<br>The Baroness HOWELLS of St. Davids (S)      |
| Suède<br>Parlement :       | M. Daniel TARSchYS<br>M. Göran MAGNUSSON (T)<br>M. Lars F. TOBISSON (T)<br>M. Ingvar SVENSSON (S)<br>Mr. Kenneth KVIST (S)                                  |
| Danemark<br>Parlement      | M. Erling OLSEN (T)<br>M. Tyge LEHMANN (S)<br>M. Claus Larsen JENSEN (T)<br>Mme Ulla TØRNAES (T)<br>M. Knud Erik HANSEN (S)<br>Mme Pia CHRISTMAS-MØLLER (S) |
| Portugal<br>Parlement      | M. Pedro BACELAR DE VASCONCELLOS<br>M. Miguel DE SERPA SOARES (S)<br>M. José BARROS MOURA (T)<br>Mme Maria Eduarda AZEVEDO (T)                              |
| Italie<br>Parlement :      | M. Stefano RODOTÀ<br>M. Andrea MANZELLA (T)<br>M. Piero MELOGRANI (T)<br>M. Furio BOSELLO (S)<br>Mme Maria Pia VALETTO BITELLI (S)                          |
| Irlande<br>Parlement       | M. Michael O'KENNEDY (T)<br>M. Mahon HAYES (S)<br>M. Desmond O'MALLEY (T)<br>Mme Madeline TAYLOR QUINN (S)<br>M. Bernard DURKAN (T)                         |
| Autriche<br>Parlement      | M. Heinrich NEISSER (T)<br>M. Harald Dossi (S)<br>M. Caspar EINEM (T)<br>M. Harald OFNER (T)<br>... à nommer (S)<br>M. Willi BRAUNEDER (S)                  |

| Autres instances                   | Nom                                                                                          |
|------------------------------------|----------------------------------------------------------------------------------------------|
| <b>Comité économique et social</b> | Madame Anne-Marie SIGMUND<br>M. Roger BRIESCH<br>M. Manuel CAVALEIRO BRANDAO<br>M. Alan HICK |
| <b>Comité des Régions</b>          | M. Jozef CHABERT<br>M. Manfred DAMMEYER<br>Mme Béatrice TAULÈGNE                             |
| <b>Le Médiateur</b>                | M. Jacob SÖDERMANN                                                                           |

## PROJET DE CHARTE DES DROITS FONDAMENTAUX

### Liste des nominations

État au 5 avril 2000

| Institution/État                                              | Nom<br>(« T » = titulaire/ »S » = Suppléant) |
|---------------------------------------------------------------|----------------------------------------------|
| Parlement européen<br><u>Président délégation PE : --&gt;</u> | M. Inigo MÉNDEZ DE VIGO (T)                  |
|                                                               | Mme Charlotte CEDERSCHIÖLD (T)               |
|                                                               | M. Thierry CORNILLET (T)                     |
|                                                               | M. Ingo FRIEDRICH (T)                        |
|                                                               | M. Timothy KIRKHOPE (T)                      |
|                                                               | Mme Johanna MAIJ-WEGGEN (T)                  |
|                                                               | M. David MARTIN (T)                          |
|                                                               | Mme Pervenche BERÈS (T)                      |
|                                                               | M. Hans-Peter MARTIN (T)                     |
|                                                               | M. Martin SCHULZ (T)                         |
|                                                               | Mme Elena PACIOTTI (T)                       |
|                                                               | M. Andrew DUFF (T)                           |
|                                                               | M. Johannes VOGGENHUBER (T)                  |
|                                                               | Mme Sylvia-Yvonne KAUFMANN (T)               |
|                                                               | M. Georges BERTHU (T)                        |
|                                                               | M. Jens-Peter BONDE (T)                      |
|                                                               | Mme Teresa ALMEIDA GARRETT (S)               |
|                                                               | M. Rocco BUTTIGLIONE (S)                     |
|                                                               | M. Konstantinos HATZIDAKIS (S)               |
|                                                               | Mme Marie-Thérèse HERMANGE (S)               |
|                                                               | M. Peter Michael MOMBAUR (S)                 |
|                                                               | M. Reinhard RACK (S)                         |
|                                                               | Mme Ieke van den BURG (S)                    |
|                                                               | Mme Catherine LALUMIERE (S)                  |
|                                                               | Mme Ulpu IIVARI (S)                          |
|                                                               | M. Phillip WHITEHEAD (S)                     |
|                                                               | M. Jean-Maurice DEHOUSSE (S)                 |
|                                                               | M. Graham WATSON (S)                         |
|                                                               | Mme Kathalijne BUITENWEG (S)                 |
|                                                               | Mme Pernille FRAHM (S)                       |
|                                                               | M. Mauro NOBILIA (S)                         |
|                                                               | M. Rijk van DAM (S)                          |

| Institution/Etat                   | Nom<br>(« T » = titulaire/ »S » = Suppléant)                                                                                                                                  |
|------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Cour de Justice                    | M. SKOURIS (Juge)<br>M. ALBER (Avocat général)                                                                                                                                |
| Conseil de l'Europe                | M. KRUGER (Secrétaire général adjoint)<br>M. Alexander Bartling (S)<br>M. FISCHBACH (Juge)<br>M. Johan CALLEWAERT (S)                                                         |
| Commission                         | M. António VITORINO (Commissaire)<br>M. Carlo TROJAN (Secrétaire général) (S)                                                                                                 |
| Finlande<br>Parlement finlandais : | M. Paavo NIKULA (Chancelier de la justice) (T)<br>M. Holger Rotkirch (S)<br>M. Gunnar JANSSON (T)<br>Mme Tuija BRAX (T)<br>M. Johannes LEPPÄNEN(S)<br>Mme Riitta PRUSTI (S)   |
| Allemagne<br>Parlement :           | M. Roman HERZOG<br>M. Jurgen MEYER (T)<br>M. Jürgen GNAUCK (T)<br>M. Peter ALTMAIER (S)<br>M. Wolf WEBER (S)                                                                  |
| Belgique<br>Parlement :            | M. Jean-Luc DEHAENE (T)<br>M. Erik DERYCKE (S)<br>M. Roger LALLEMAND (T)<br>M. Karel de GUCHT (T)<br>M. Jacky MORAEL (S Lallemand)                                            |
| France<br>Parlement                | M. BRAIBANT (T)<br>Mme Jacqueline Duheil de la Rochère (S)<br>M. François LONCLE (T)<br>Mme Nicole Ameline (S)<br>M. Hubert HAENEL (T)<br>Mme Marie-Madeleine DIEULANGARD (S) |
| Espagne<br>Parlement               | M. Alvaro RODRIGUEZ-BEREIJO (T)<br>M. Francisco SANZ GANDASEGUI (S)<br>M. Gabriel CISNEROS (T)<br>M. Jordi SOLÉ TURA (T)                                                      |
| Grèce<br>Parlement                 | M. George PAPADIMITRIOU<br>M. Georgios ROMEOS<br>M. Michael LIAPIS                                                                                                            |
| Pays-Bas<br>Parlement :            | M. Frits KORTHALS ALTES (T)<br>M. Bernard BOT (S)<br>M. Michiel PATIJN (T)<br>M. Ernst HIRSCH BALLIN (T)<br>M. Erik JURGENS (S)<br>M. Gerritjan van OVEN (S)                  |
| Luxembourg<br>Parlement :          | M. Paul-Henri MEYERS<br>M. Ben FAYOT (T)<br>Mme Simone BEISSEL (T)                                                                                                            |

|                            |                                                                                                                                                              |
|----------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Royaume-Uni<br>Parlement : | Lord GOLDSMITH QC<br>M. Martin EATON (S)<br>M. Wyn GRIFFITHS (T)<br>Lord BOWNESS (T)<br>M. David CHIDGEY (S)<br>The Baroness HOWELLS of St. Davids (S)       |
| Suède<br>Parlement :       | M. Daniel TARSCHYS<br>M. Göran MAGNUSSON (T)<br>M. Lars F. TOBISSON (T)<br>M. Ingvar SVENSSON (S)<br>Mr. Kenneth KVIST (S)                                   |
| Danemark<br>Parlement      | M. Erling OLSEN (T)<br>M. Tyge LEHMANN (S)<br>M. Claus Larsen JENSEN (T)<br>Mme Ulla TØRNAES (T)<br>M. Knud Erik HANSEN (S)<br>Mme Pia CHRISTMAS-MØLLER (S)  |
| Portugal<br>Parlement      | M. Pedro BACELAR DE VASCONCELLOS (T)<br>M. Miguel DE SERPA SOARES (S)<br>M. José BARROS MOURA (T)<br>Mme Maria Eduarda AZEVEDO (T)                           |
| Italie<br>Parlement :      | M. Stefano RODOTÀ<br>M. Andrea MANZELLA (T)<br>M. Piero MELOGRANI (T)<br>M. Furio BOSELLO (S)<br>Mme Maria Pia VALETTO BITELLI (S)                           |
| Irlande<br>Parlement       | M. Michael O'KENNEDY (T)<br>M. Mahon HAYES (S)<br>M. Desmond O'MALLEY (T)<br>Mme Madeline TAYLOR QUINN (S)<br>M. Bernard DURKAN (T)<br>M. Paschal MOONEY (S) |
| Autriche<br>Parlement      | M. Heinrich NEISSER (T)<br>M. Harald Dossi (S)<br>M. Caspar EINEM (T)<br>M. Harald OFNER (T)<br>... à nommer (S)<br>M. Willi BRAUNEDER (S)                   |

| <b>Autres instances</b>            | <b>Nom</b>                                                                                   |
|------------------------------------|----------------------------------------------------------------------------------------------|
| <b>Comité économique et social</b> | Madame Anne-Marie SIGMUND<br>M. Roger BRIESCH<br>M. Manuel CAVALEIRO BRANDAO<br>M. Alan HICK |
| <b>Comité des Régions</b>          | M. Jozef CHABERT<br>M. Manfred DAMMEYER<br>Mme Béatrice TAULÈGNE                             |
| <b>Le Médiateur</b>                | M. Jacob SÖDERMANN                                                                           |

## PROJET DE CHARTE DES DROITS FONDAMENTAUX

### Liste des nominations

État au 19 avril 2000

| Institution/État                                              | Nom<br>(« T » = titulaire/ »S » = Suppléant) |
|---------------------------------------------------------------|----------------------------------------------|
| Parlement européen<br><u>Président délégation PE : --&gt;</u> | M. Inigo MÉNDEZ DE VIGO (T)                  |
|                                                               | Mme Charlotte CEDERSCHIÖLD (T)               |
|                                                               | M. Thierry CORNILLET (T)                     |
|                                                               | M. Ingo FRIEDRICH (T)                        |
|                                                               | M. Timothy KIRKHOPE (T)                      |
|                                                               | Mme Johanna MAIJ-WEGGEN (T)                  |
|                                                               | M. David MARTIN (T)                          |
|                                                               | Mme Pervenche BERÈS (T)                      |
|                                                               | M. Hans-Peter MARTIN (T)                     |
|                                                               | M. Martin SCHULZ (T)                         |
|                                                               | Mme Elena PACIOTTI (T)                       |
|                                                               | M. Andrew DUFF (T)                           |
|                                                               | M. Johannes VOGGENHUBER (T)                  |
|                                                               | Mme Sylvia-Yvonne KAUFMANN (T)               |
|                                                               | M. Georges BERTHU (T)                        |
|                                                               | M. Jens-Peter BONDE (T)                      |
|                                                               | Mme Teresa ALMEIDA GARRETT (S)               |
|                                                               | M. Rocco BUTTIGLIONE (S)                     |
|                                                               | M. Konstantinos HATZIDAKIS (S)               |
|                                                               | Mme Marie-Thérèse HERMANGE (S)               |
|                                                               | M. Peter Michael MOMBAUR (S)                 |
|                                                               | M. Reinhard RACK (S)                         |
|                                                               | Mme Ieke van den BURG (S)                    |
|                                                               | Mme Catherine LALUMIERE (S)                  |
|                                                               | Mme Ulpu IIVARI (S)                          |
|                                                               | M. Phillip WHITEHEAD (S)                     |
|                                                               | M. Jean-Maurice DEHOUSSE (S)                 |
|                                                               | M. Graham WATSON (S)                         |
|                                                               | Mme Kathalijne BUITENWEG (S)                 |
|                                                               | Mme Pernille FRAHM (S)                       |
|                                                               | M. Mauro NOBILIA (S)                         |
|                                                               | M. Rijk van DAM (S)                          |



| Institution/Etat                   | Nom<br>(« T » = titulaire/ »S » = Suppléant)                                                                                                                                   |
|------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Cour de Justice                    | M. SKOURIS (Juge)<br>M. ALBER (Avocat général)                                                                                                                                 |
| Conseil de l'Europe                | M. KRUGER (Secrétaire général adjoint)<br>M. Alexander Bartling (S)<br>M. FISCHBACH (Juge)<br>M. Johan CALLEWAERT (S)                                                          |
| Commission                         | M. António VITORINO (Commissaire)<br>M. Carlo TROJAN (Secrétaire général) (S)                                                                                                  |
| Finlande<br>Parlement finlandais : | M. Paavo NIKULA (Chancelier de la justice) (T)<br>M. Holger Rotkirch (S)<br>M. Gunnar JANSSON (T)<br>Mme Tuija BRAX (T)<br>M. Johannes LEPPÄNEN(S)<br>Mme Riitta PRUSTI (S)    |
| Allemagne<br>Parlement :           | M. Roman HERZOG<br>M. Jurgen MEYER (T)<br>M. Jürgen GNAUCK (T)<br>M. Peter ALTMAIER (S)<br>M. Wolf WEBER (S)                                                                   |
| Belgique<br>Parlement :            | M. Jean-Luc DEHAENE (T)<br>M. Erik DERYCKE (S)<br>M. Roger LALLEMAND (T)<br>M. Karel de GUCHT (T)<br>M. Jacky MORAEL (S Lallemand)<br>M. Fred ERDMAN (S. De Gucht)             |
| France<br>Parlement                | M. BRAIBANT (T)<br>Mme Jacqueline Dutheil de la Rochère (S)<br>M. François LONCLE (T)<br>Mme Nicole Ameline (S)<br>M. Hubert HAENEL (T)<br>Mme Marie-Madeleine DIEULANGARD (S) |
| Espagne<br>Parlement               | M. Alvaro RODRIGUEZ-BEREIJO (T)<br>M. Francisco SANZ GANDASEGUI (S)<br>M. Gabriel CISNEROS (T)<br>M. Jordi SOLÉ TURA (T)                                                       |
| Grèce<br>Parlement                 | M. George PAPANIMITRIOU<br>... à nommer<br>... à nommer                                                                                                                        |
| Pays-Bas<br>Parlement :            | M. Frits KORTHALS ALTES (T)<br>M. Bernard BOT (S)<br>M. Michiel PATIJN (T)<br>M. Ernst HIRSCH BALLIN (T)<br>M. Erik JURGENS (S)<br>M. Gerritjan van OVEN (S)                   |
| Luxembourg<br>Parlement :          | M. Paul-Henri MEYERS<br>M. Ben FAYOT (T)<br>Mme Simone BEISSEL (T)                                                                                                             |

|                            |                                                                                                                                                              |
|----------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Royaume-Uni<br>Parlement : | Lord GOLDSMITH QC<br>M. Martin EATON (S)<br>M. Wyn GRIFFITHS (T)<br>Lord BOWNESS (T)<br>M. David CHIDGEY (S)<br>The Baroness HOWELLS of St. Davids (S)       |
| Suède<br>Parlement :       | M. Daniel TARSCHYS (T)<br>M. Lars MAGNUSON (S)<br>M. Göran MAGNUSSON (T)<br>M. Lars F. TOBISSON (T)<br>M. Ingvar SVENSSON (S)<br>Mr. Kenneth KVIST (S)       |
| Danemark<br>Parlement      | M. Erling OLSEN (T)<br>M. Tyge LEHMANN (S)<br>M. Claus Larsen JENSEN (T)<br>Mme Ulla TØRNAES (T)<br>M. Knud Erik HANSEN (S)<br>Mme Pia CHRISTMAS-MØLLER (S)  |
| Portugal<br>Parlement      | M. Pedro BACELAR DE VASCONCELLOS (T)<br>M. Miguel DE SERPA SOARES (S)<br>M. José BARROS MOURA (T)<br>Mme Maria Eduarda AZEVEDO (T)                           |
| Italie<br>Parlement :      | M. Stefano RODOTÀ<br>M. Andrea MANZELLA (T)<br>M. Piero MELOGRANI (T)<br>M. Furio BOSELLO (S)<br>Mme Maria Pia VALETTO BITELLI (S)                           |
| Irlande<br>Parlement       | M. Michael O'KENNEDY (T)<br>M. Mahon HAYES (S)<br>M. Desmond O'MALLEY (T)<br>Mme Madeline TAYLOR QUINN (S)<br>M. Bernard DURKAN (T)<br>M. Paschal MOONEY (S) |
| Autriche<br>Parlement      | M. Heinrich NEISSER (T)<br>M. Harald Dossi (S)<br>M. Caspar EINEM (T)<br>M. Harald OFNER (T)<br>... à nommer (S)<br>M. Willi BRAUNEDER (S)                   |

| Autres instances                   | Nom                                                                                                     |
|------------------------------------|---------------------------------------------------------------------------------------------------------|
| <b>Comité économique et social</b> | Madame Anne-Marie SIGMUND<br>M. Roger BRIESCH<br>M. Manuel CAVALEIRO BRANDAO<br>M. Alan HICK            |
| <b>Comité des Régions</b>          | M. Jozef CHABERT, M. Manfred DAMMEYER<br>M. Albert BORE, Mme Claude du GRANRUT<br>Mme Béatrice TAULÈGNE |
| <b>Le Médiateur</b>                | M. Jacob SÖDERMANN                                                                                      |

## PROJET DE CHARTE DES DROITS FONDAMENTAUX

### Liste des nominations

État au 29 mai 2000

| Institution/État                                              | Nom<br>(« T » = titulaire/ »S » = Suppléant) |
|---------------------------------------------------------------|----------------------------------------------|
| Parlement européen<br><i>Président délégation PE : --&gt;</i> | M. Inigo MÉNDEZ DE VIGO (T)                  |
|                                                               | Mme Charlotte CEDERSCHIÖLD (T)               |
|                                                               | M. Thierry CORNILLET (T)                     |
|                                                               | M. Ingo FRIEDRICH (T)                        |
|                                                               | M. Timothy KIRKHOPE (T)                      |
|                                                               | Mme Johanna MAIJ-WEGGEN (T)                  |
|                                                               | M. David MARTIN (T)                          |
|                                                               | Mme Pervenche BERÈS (T)                      |
|                                                               | M. Hans-Peter MARTIN (T)                     |
|                                                               | M. Jo LEINEN (T)                             |
|                                                               | Mme Elena PACIOTTI (T)                       |
|                                                               | M. Andrew DUFF (T)                           |
|                                                               | M. Johannes VOGGENHUBER (T)                  |
|                                                               | Mme Sylvia-Yvonne KAUFMANN (T)               |
|                                                               | M. Georges BERTHU (T)                        |
|                                                               | M. Jens-Peter BONDE (T)                      |
|                                                               | Mme Teresa ALMEIDA GARRETT (S)               |
|                                                               | M. Rocco BUTTIGLIONE (S)                     |
|                                                               | M. Konstantinos HATZIDAKIS (S)               |
|                                                               | Mme Marie-Thérèse HERMANGE (S)               |
|                                                               | M. Peter Michael MOMBAUR (S)                 |
|                                                               | M. Reinhard RACK (S)                         |
|                                                               | Mme Ieke van den BURG (S)                    |
|                                                               | Mme Catherine LALUMIERE (S)                  |
|                                                               | Mme Ulpu IIVARI (S)                          |
|                                                               | M. Phillip WHITEHEAD (S)                     |
|                                                               | M. Jean-Maurice DEHOUSSE (S)                 |
|                                                               | M. Graham WATSON (S)                         |
|                                                               | Mme Kathalijne BUITENWEG (S)                 |
|                                                               | Mme Pernille FRAHM (S)                       |
|                                                               | M. Mauro NOBILIA (S)                         |
|                                                               | M. Rijk van DAM (S)                          |

| Institution/Etat                   | Nom<br>(« T » = titulaire/ »S » = Suppléant)                                                                                                                                   |
|------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Cour de Justice                    | M. SKOURIS (Juge)<br>M. ALBER (Avocat général)                                                                                                                                 |
| Conseil de l'Europe                | M. KRUGER (Secrétaire général adjoint)<br>M. Alexander Bartling (S)<br>M. FISCHBACH (Juge)<br>M. Johan CALLEWAERT (S)                                                          |
| Commission                         | M. António VITORINO (Commissaire)<br>M. Carlo TROJAN (Secrétaire général) (S)                                                                                                  |
| Finlande<br>Parlement finlandais : | M. Paavo NIKULA (Chancelier de la justice) (T)<br>M. Holger Rotkirch (S)<br>M. Gunnar JANSSON (T)<br>Mme Tuija BRAX (T)<br>M. Johannes LEPPÄNEN(S)<br>Mme Riitta PRUSTI (S)    |
| Allemagne<br>Parlement :           | M. Roman HERZOG<br>M. Jurgen MEYER (T)<br>M. Jürgen GNAUCK (T)<br>M. Peter ALTMAIER (S)<br>M. Wolf WEBER (S)                                                                   |
| Belgique<br>Parlement :            | M. Jean-Luc DEHAENE (T)<br>M. Erik DERYCKE (S)<br>M. Roger LALLEMAND (T)<br>M. Karel de GUCHT (T)<br>M. Jacky MORael (S Lallemand)<br>M. Fred ERDMAN (S. De Gucht)             |
| France<br>Parlement                | M. BRAIBANT (T)<br>Mme Jacqueline Dutheil de la Rochère (S)<br>M. François LONCLE (T)<br>Mme Nicole Ameline (S)<br>M. Hubert HAENEL (T)<br>Mme Marie-Madeleine DIEULANGARD (S) |
| Espagne<br>Parlement               | M. Alvaro RODRIGUEZ-BEREIJO (T)<br>M. Francisco SANZ GANDASEGUI (S)<br>M. Gabriel CISNEROS (T)<br>Mme Alicia DE CASTRO MASAVEU (S)<br>M. Jordi SOLÉ TURA (T)                   |
| Grèce<br>Parlement                 | M. George PAPANIMITRIOU<br>... à nommer<br>... à nommer                                                                                                                        |
| Pays-Bas<br>Parlement :            | M. Frits KORTHALS ALTES (T)<br>M. Bernard BOT (S)<br>M. Michiel PATIJN (T)<br>M. Ernst HIRSCH BALLIN (T)<br>M. Erik JURGENS (S)<br>M. Gerritjan van OVEN (S)                   |
| Luxembourg<br>Parlement :          | M. Paul-Henri MEYERS<br>M. Ben FAYOT (T)<br>Mme Simone BEISSEL (T)                                                                                                             |

|                            |                                                                                                                                                              |
|----------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Royaume-Uni<br>Parlement : | Lord GOLDSMITH QC<br>M. Martin EATON (S)<br>M. Wyn GRIFFITHS (T)<br>Lord BOWNESS (T)<br>M. David CHIDGEY (S)<br>The Baroness HOWELLS of St. Davids (S)       |
| Suède<br>Parlement :       | M. Daniel TARSCHYS (T)<br>M. Lars MAGNUSON (S)<br>M. Göran MAGNUSSON (T)<br>M. Lars F. TOBISSON (T)<br>M. Ingvar SVENSSON (S)<br>Mr. Kenneth KVIST (S)       |
| Danemark<br>Parlement      | M. Erling OLSEN (T)<br>M. Tyge LEHMANN (S)<br>M. Claus Larsen JENSEN (T)<br>Mme Ulla TØRNAES (T)<br>M. Knud Erik HANSEN (S)<br>Mme Pia CHRISTMAS-MØLLER (S)  |
| Portugal<br>Parlement      | M. Pedro BACELAR DE VASCONCELLOS (T)<br>M. Miguel DE SERPA SOARES (S)<br>M. José BARROS MOURA (T)<br>Mme Maria Eduarda AZEVEDO (T)                           |
| Italie<br>Parlement :      | M. Stefano RODOTÀ<br>M. Andrea MANZELLA (T)<br>M. Piero MELOGRANI (T)<br>M. Furio BOSELLO (S)<br>Mme Maria Pia VALETTO BITELLI (S)                           |
| Irlande<br>Parlement       | M. Michael O'KENNEDY (T)<br>M. Mahon HAYES (S)<br>M. Desmond O'MALLEY (T)<br>Mme Madeline TAYLOR QUINN (S)<br>M. Bernard DURKAN (T)<br>M. Paschal MOONEY (S) |
| Autriche<br>Parlement      | M. Heinrich NEISSER (T)<br>M. Harald Dossi (S)<br>M. Caspar EINEM (T)<br>M. Harald OFNER (T)<br>M. Michael Holoubek (S)<br>M. Willi BRAUNEDER (S)            |

| <b>Autres instances</b>            | <b>Nom</b>                                                                                              |
|------------------------------------|---------------------------------------------------------------------------------------------------------|
| <b>Comité économique et social</b> | Madame Anne-Marie SIGMUND<br>M. Roger BRIESCH<br>M. Manuel CAVALEIRO BRANDAO<br>M. Alan HICK            |
| <b>Comité des Régions</b>          | M. Jozef CHABERT, M. Manfred DAMMEYER<br>M. Albert BORE, Mme Claude du GRANRUT<br>Mme Béatrice TAULÈGNE |
| <b>Le Médiateur</b>                | M. Jacob SÖDERMANN                                                                                      |

## PROJET DE CHARTE DES DROITS FONDAMENTAUX

### Liste des nominations

État au 7 juin 2000

| Institution/État                                              | Nom<br>(« T » = titulaire/ »S » = Suppléant) |
|---------------------------------------------------------------|----------------------------------------------|
| Parlement européen<br><u>Président délégation PE : --&gt;</u> | M. Inigo MÉNDEZ DE VIGO (T)                  |
|                                                               | Mme Charlotte CEDERSCHIÖLD (T)               |
|                                                               | M. Thierry CORNILLET (T)                     |
|                                                               | M. Ingo FRIEDRICH (T)                        |
|                                                               | M. Timothy KIRKHOPE (T)                      |
|                                                               | Mme Johanna MAIJ-WEGGEN (T)                  |
|                                                               | M. David MARTIN (T)                          |
|                                                               | Mme Pervenche BERÈS (T)                      |
|                                                               | M. Hans-Peter MARTIN (T)                     |
|                                                               | M. Jo LEINEN (T)                             |
|                                                               | Mme Elena PACIOTTI (T)                       |
|                                                               | M. Andrew DUFF (T)                           |
|                                                               | M. Johannes VOGGENHUBER (T)                  |
|                                                               | Mme Sylvia-Yvonne KAUFMANN (T)               |
|                                                               | M. Georges BERTHU (T)                        |
|                                                               | M. Jens-Peter BONDE (T)                      |
|                                                               | Mme Teresa ALMEIDA GARRETT (S)               |
|                                                               | M. Rocco BUTTIGLIONE (S)                     |
|                                                               | M. Konstantinos HATZIDAKIS (S)               |
|                                                               | Mme Marie-Thérèse HERMANGE (S)               |
|                                                               | M. Peter Michael MOMBAUR (S)                 |
|                                                               | M. Reinhard RACK (S)                         |
|                                                               | Mme Ieke van den BURG (S)                    |
|                                                               | Mme Catherine LALUMIERE (S)                  |
|                                                               | Mme Ulpu IIVARI (S)                          |
|                                                               | M. Phillip WHITEHEAD (S)                     |
|                                                               | M. Jean-Maurice DEHOUSSE (S)                 |
|                                                               | M. Graham WATSON (S)                         |
|                                                               | Mme Alima BOUMEDIENNE-THIERY (S)             |
|                                                               | Mme Pernille FRAHM (S)                       |
|                                                               | M. Mauro NOBILIA (S)                         |
|                                                               | M. Rijk van DAM (S)                          |

| Institution/Etat                   | Nom<br>(« T » = titulaire/ »S » = Suppléant)                                                                                                                                   |
|------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Cour de Justice                    | M. SKOURIS (Juge)<br>M. ALBER (Avocat général)                                                                                                                                 |
| Conseil de l'Europe                | M. KRUGER (Secrétaire général adjoint)<br>M. Alexander Bartling (S)<br>M. FISCHBACH (Juge)<br>M. Johan CALLEWAERT (S)                                                          |
| Commission                         | M. António VITORINO (Commissaire)<br>M. Carlo TROJAN (Secrétaire général) (S)                                                                                                  |
| Finlande<br>Parlement finlandais : | M. Paavo NIKULA (Chancelier de la justice) (T)<br>M. Holger Rotkirch (S)<br>M. Gunnar JANSSON (T)<br>Mme Tuija BRAX (T)<br>M. Johannes LEPPÄNEN(S)<br>Mme Riitta PRUSTI (S)    |
| Allemagne<br>Parlement :           | M. Roman HERZOG<br>M. Jurgen MEYER (T)<br>M. Jürgen GNAUCK (T)<br>M. Peter ALTMAIER (S)<br>M. Wolf WEBER (S)                                                                   |
| Belgique<br>Parlement :            | M. Jean-Luc DEHAENE (T)<br>M. Erik DERYCKE (S)<br>M. Roger LALLEMAND (T)<br>M. Karel de GUCHT (T)<br>M. Jacky MORAEL (S Lallemand)<br>M. Fred ERDMAN (S. De Gucht)             |
| France<br>Parlement                | M. BRAIBANT (T)<br>Mme Jacqueline Dutheil de la Rochère (S)<br>M. François LONCLE (T)<br>Mme Nicole Ameline (S)<br>M. Hubert HAENEL (T)<br>Mme Marie-Madeleine DIEULANGARD (S) |
| Espagne<br>Parlement               | M. Alvaro RODRIGUEZ-BEREIJO (T)<br>M. Francisco SANZ GANDASEGUI (S)<br>M. Gabriel CISNEROS (T)<br>Mme Alicia DE CASTRO MASAVEU (S)<br>M. Jordi SOLÉ TURA (T)                   |
| Grèce<br>Parlement                 | M. George PAPADIMITRIOU<br>M. Loukas APOSTOLIDIS (T)<br>Mme Anna BENAKI-PSAROUDA (T)                                                                                           |
| Pays-Bas<br>Parlement :            | M. Frits KORTHALS ALTES (T)<br>M. Bernard BOT (S)<br>M. Michiel PATIJN (T)<br>M. Ernst HIRSCH BALLIN (T)<br>M. Erik JURGENS (S)<br>M. Gerritjan van OVEN (S)                   |
| Luxembourg<br>Parlement :          | M. Paul-Henri MEYERS<br>M. Ben FAYOT (T)<br>Mme Simone BEISSEL (T)                                                                                                             |

|                            |                                                                                                                                                              |
|----------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Royaume-Uni<br>Parlement : | Lord GOLDSMITH QC<br>M. Martin EATON (S)<br>M. Wyn GRIFFITHS (T)<br>Lord BOWNESS (T)<br>M. David CHIDGEY (S)<br>The Baroness HOWELLS of St. Davids (S)       |
| Suède<br>Parlement :       | M. Daniel TARSCHYS (T)<br>M. Lars MAGNUSON (S)<br>M. Göran MAGNUSSON (T)<br>M. Lars F. TOBISSON (T)<br>M. Ingvar SVENSSON (S)<br>Mr. Kenneth KVIIST (S)      |
| Danemark<br>Parlement      | M. Erling OLSEN (T)<br>M. Tyge LEHMANN (S)<br>M. Claus Larsen JENSEN (T)<br>Mme Ulla TØRNAES (T)<br>M. Knud Erik HANSEN (S)<br>Mme Pia CHRISTMAS-MØLLER (S)  |
| Portugal<br>Parlement      | M. Pedro BACELAR DE VASCONCELLOS (T)<br>M. Miguel DE SERPA SOARES (S)<br>M. José BARROS MOURA (T)<br>Mme Maria Eduarda AZEVEDO (T)                           |
| Italie<br>Parlement :      | M. Stefano RODOTÀ<br>M. Andrea MANZELLA (T)<br>M. Piero MELOGRANI (T)<br>M. Furio BOSELLO (S)<br>Mme Maria Pia VALETTO BITELLI (S)                           |
| Irlande<br>Parlement       | M. Michael O'KENNEDY (T)<br>M. Mahon HAYES (S)<br>M. Desmond O'MALLEY (T)<br>Mme Madeline TAYLOR QUINN (S)<br>M. Bernard DURKAN (T)<br>M. Paschal MOONEY (S) |
| Autriche<br>Parlement      | M. Heinrich NEISSER (T)<br>M. Harald Dossi (S)<br>M. Caspar EINEM (T)<br>M. Harald OFNER (T)<br>M. Michael Holoubek (S)<br>M. Willi BRAUNEDER (S)            |

| <b>Autres instances</b>            | <b>Nom</b>                                                                                              |
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| <b>Comité économique et social</b> | Madame Anne-Marie SIGMUND<br>M. Roger BRIESCH<br>M. Manuel CAVALEIRO BRANDAO<br>M. Alan HICK            |
| <b>Comité des Régions</b>          | M. Jozef CHABERT, M. Manfred DAMMEYER<br>M. Albert BORE, Mme Claude du GRANRUT<br>Mme Béatrice TAULÈGNE |
| <b>Le Médiateur</b>                | M. Jacob SÖDERMANN                                                                                      |



## **III.5.b. Agendas and Timetables of the Charter Convention**

**PROJET DE CHARTE DES DROITS FONDAMENTAUX DE L'UNION EUROPEENNE****fundamental.rights@consilium.eu.int****Bruxelles, le 1er février 2000****Programmation des travaux**

| <b>Enceinte (plénière)<br/>*</b> | <b>Comité de rédaction</b>    | <b>Enceinte informelle *<br/>(en groupe de travail)<br/>PE=Parlement/C=Conseil</b> |
|----------------------------------|-------------------------------|------------------------------------------------------------------------------------|
| 1er février<br>2 février         |                               |                                                                                    |
|                                  | 24 février matin              | 24 février <b>PE</b><br>25 février <b>PE</b>                                       |
|                                  | 2 mars matin                  | 2 mars <b>PE</b><br>3 mars <b>PE</b>                                               |
|                                  | semaine du 6 au 10 mars       |                                                                                    |
| 20 mars<br>21 mars               |                               |                                                                                    |
|                                  | 27 mars matin                 | 27 mars <b>PE</b><br>28 mars <b>PE</b>                                             |
|                                  | 3 avril matin                 | 3 avril <b>PE</b><br>4 avril <b>PE</b>                                             |
|                                  | semaine du 17 au 20 avril     |                                                                                    |
|                                  |                               | 27 avril <b>PE</b><br>28 avril <b>PE</b>                                           |
|                                  | semaine du 2 au 5 mai         |                                                                                    |
|                                  | 11 mai matin                  | 11 mai <b>C</b><br>12 mai <b>C</b>                                                 |
|                                  | 22 mai matin                  | 22 mai <b>C</b><br>23 mai <b>C</b>                                                 |
|                                  | semaine entre le 29 et 31 mai |                                                                                    |

\* Les réunions de l'enceinte commenceront généralement à 14h00 et se poursuivront, sauf nécessité particulière, jusqu'au lendemain à 12h30.

| <b>Enceinte (plénière)</b>   | <b>Comité de rédaction</b> | <b>Enceinte informelle<br/>(en groupe de travail)<br/>PE=Parlement/C=Conseil</b> |
|------------------------------|----------------------------|----------------------------------------------------------------------------------|
| 5 juin<br>6 juin             | 5 juin matin               |                                                                                  |
|                              | 19 juin matin              | 19 juin C<br>20 juin C                                                           |
|                              | 29 juin matin              | 29 juin C<br>30 juin C                                                           |
|                              | 17 juillet matin           | 17 juillet C<br>18 juillet C                                                     |
|                              | 19 juillet                 |                                                                                  |
| 11 septembre<br>12 septembre |                            |                                                                                  |
|                              |                            | 25 septembre PE<br>26 septembre PE                                               |
|                              |                            | [9 octobre] PE éventuellement<br>[10 octobre] PE éventuellem.                    |
| 18 octobre<br>19 octobre     |                            |                                                                                  |
|                              |                            |                                                                                  |
|                              |                            |                                                                                  |

**DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**[fundamental.rights@consilium.eu.int](mailto:fundamental.rights@consilium.eu.int)

Brussels, 22 February 2000 (23.02)

SN 1743/00  
(OR. fr)**Work programme for the Convention**

|                                                 |                                                                                                                                           |
|-------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------|
| 24 – 25 February                                | (informal meeting)<br>Consideration of the first section of civil and political rights (Articles 1 to 9)                                  |
| 2 – 3 March                                     | (informal meeting)<br>Consideration of the second section of civil and political rights (Articles 10 to 20)                               |
| week beginning 6 March<br>(date to be decided)  | Praesidium:<br>Drawing up of a text on civil and political rights in the light of discussions                                             |
| 20 – 21 March                                   | (formal meeting)<br>Examination of the text and its preliminary approval                                                                  |
| 27 – 28 March                                   | (informal meeting)<br>Consideration of the rights of the citizen                                                                          |
| 3 – 4 April                                     | (informal meeting)<br>Further consideration of the rights of the citizen and if possible social rights<br>+ on 4 April, all day: hearings |
| week beginning 17 April<br>(date to be decided) | Praesidium:<br>Drawing up of a text on the rights of the citizen and on certain social rights                                             |
| 27 – 28 April                                   | (informal meeting)<br>Further consideration of social rights                                                                              |
| week beginning 2 May<br>(date to be decided)    | Praesidium:<br>Continuation of work on drawing up a text, in the light of discussions                                                     |
| 11 – 12 May                                     | (informal meeting)<br>Social rights continued                                                                                             |
| 22 – 23 May                                     | (informal meeting)<br>Continuation and completion of social rights                                                                        |
| week 29 – 31 May<br>(date to be decided)        | Praesidium:<br>Finalisation of the text to be submitted to the formal meeting                                                             |
| 5 – 6 June                                      | (formal meeting)<br>Discussion of the text submitted by the Praesidium                                                                    |
| 19 – 20 June                                    | (informal meeting)<br>Examination of the text as a whole (architecture, horizontal clauses, etc.)<br>+ hearings of applicant countries    |

|                   |                                                                                                         |
|-------------------|---------------------------------------------------------------------------------------------------------|
| 29 – 30 June      | (informal meeting)<br>Continued examination of whole text                                               |
| 17 – 18 July      | (informal meeting)<br>End of examination of whole text                                                  |
| 19 July           | Praesidium:<br>Drawing up of definitive text                                                            |
| 11 –12 September  | (formal meeting)<br>Examination of definitive text                                                      |
| 25 – 26 September | (informal meeting)<br>Examination of text revised on the basis of discussions on<br>11 and 12 September |
| 18 – 19 October   | (formal meeting)<br>Adoption of definitive text                                                         |

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**DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION****fundamental.rights@consilium.eu.int****Brussels, 24 February 2000****SN 2225/00****(OR. fr)****Work programme for the Convention****Update**

|                                                                                                            |                                                                                                                                                                                   |
|------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 3 April: 14.00-18.00<br>4 April: 9.00-12.30<br><b>at the Parliament</b>                                    | (informal meeting)<br>economic and social rights                                                                                                                                  |
| 17 April: 11.30-17.00<br><b>at the Council</b>                                                             | Praesidium/Drafting Committee<br>Drawing up of draft Charter<br>Meeting with Council of Europe                                                                                    |
| 27 April: 9.00-12.30 and<br>14.00-18.00<br>28 April: 9.00-12.30<br>14.00-18.00<br><b>at the Parliament</b> | (informal meeting)<br>Hearing of civil society (27 April all day)<br>Further consideration of social rights                                                                       |
| 3 May: 11.00-12.30<br>3 May: 14.00-18.00<br>4 May: 9.00-12.30<br><b>at the Parliament</b>                  | Praesidium<br>(informal meeting)<br>Further consideration of social rights                                                                                                        |
| 11 May: 10.00-12.30<br>11 May: 14.00-18.00<br>12 May: 9.00-12.00<br><b>at the Council</b>                  | Praesidium<br>(informal meeting)<br>Social rights continued                                                                                                                       |
| 22 May: 10.00<br>22 May: 14.00-18.00<br>23 May: 9.00-12.00<br><b>at the Council</b>                        | Praesidium<br>(informal meeting)<br>Examination of the text as a whole                                                                                                            |
| 31 May: 14.30-17.00<br><b>at the Council</b>                                                               | Praesidium/Drafting Committee<br>Finalisation of the text to be submitted to the formal meeting                                                                                   |
| 5 June: morning<br><br>5 June: 14.00-18.00<br>6 June: 9.00-12.00<br><b>at the Parliament</b>               | Coordination of Personal Representatives<br>Coordination of national Parliamentary Representatives<br>poss. Praesidium<br>(formal meeting)<br>Examination of final list of rights |

|                                                |                                                                                                                                        |
|------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------|
| <b>19 – 20 June<br/>at the Council</b>         | (informal meeting)<br>Examination of the text as a whole (architecture, horizontal clauses, etc.)<br>+ hearings of applicant countries |
| <b>29 – 30 June<br/>at the Council</b>         | (informal meeting)<br>Continued examination of whole text                                                                              |
| <b>17 – 18 July<br/>at the Council</b>         | (informal meeting)<br>End of examination of whole text                                                                                 |
| <b>19 July (all day)<br/>at the Council</b>    | Praesidium/Drafting Committee<br>Drawing up of definitive text                                                                         |
| <b>11 – 12 September<br/>at the Council</b>    | (formal meeting)<br>Examination of definitive text                                                                                     |
| <b>25 – 26 September<br/>at the Parliament</b> | (informal meeting)<br>Examination of text revised on the basis of discussions on 11 and 12 September                                   |
| <b>18 – 19 October<br/>at the Parliament</b>   | (formal meeting)<br>Adoption of definitive text                                                                                        |

# DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

[fundamental.rights@consilium.eu.int](mailto:fundamental.rights@consilium.eu.int)

Brussels, 15 May 2000 (16.05)  
(OR. fr)

SN 2785/00

**Timetable and  
work programme for the Convention  
Updated on 12 May 2000**

|                                                                                                                                                    |                                                                                                                                                                                                                                                                                                             |
|----------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <i>12 May: Forwarding of the list of civil and political rights and citizens' rights to the members of the Convention</i>                          |                                                                                                                                                                                                                                                                                                             |
| <i>from 12 to 23 May: Period for members of the Convention to submit amendments to the list of civil and political rights and citizens' rights</i> |                                                                                                                                                                                                                                                                                                             |
| <i>19 May: Forwarding of the list of social rights and horizontal clauses to the members of the Convention</i>                                     |                                                                                                                                                                                                                                                                                                             |
| <i>from 19 May to 5 June: Period for members of the Convention to submit amendments to the list of social rights and horizontal clauses</i>        |                                                                                                                                                                                                                                                                                                             |
| 22 May: 10.00 – 12.30 and<br>14.00 – 17.00<br><b>at the Parliament</b>                                                                             | Praesidium<br><br><b><u>Informal plenary meeting cancelled</u></b>                                                                                                                                                                                                                                          |
| 25 May: 9.00 – 12.00<br><b>at the Council</b>                                                                                                      | Praesidium/Drafting Committee                                                                                                                                                                                                                                                                               |
| 31 May: 10.15 – 17.00<br><b>at the Council</b>                                                                                                     | Praesidium/Drafting Committee                                                                                                                                                                                                                                                                               |
| 5 June: morning<br><br>5 June: 14.00 – 18.00<br>6 June: 9.00 – 12.00<br><b>at the Parliament</b>                                                   | Coordination by Personal Representatives<br>Coordination by national Parliamentary Representatives<br>poss. Praesidium<br>(formal meeting)<br>General discussion on social rights + amendments to civil and political rights<br><b>6 June: Convention "Open Day" (organised by the European Parliament)</b> |
| 19 June: 10.00 – 12.30<br>14.00 – 18.00<br><br>20 June: 9.00 – 12.30:<br><b>at the Council</b>                                                     | Praesidium<br>(informal meeting): Hearing of applicant countries<br>Amendments to civil and political rights (poss. continuation) and<br>Amendments to social rights and horizontal clauses                                                                                                                 |
| 29 and 30 June<br><b>at the Council</b>                                                                                                            | (informal meeting)<br>continuation of the meeting on 20 June                                                                                                                                                                                                                                                |



|                                                 |                                                                                                         |
|-------------------------------------------------|---------------------------------------------------------------------------------------------------------|
| 17-18 July<br><b>at the Parliament</b>          | (informal meeting)<br>end of examination as a whole                                                     |
| 19 July: 10.00 – 17.00<br><b>at the Council</b> | Praesidium/Drafting Committee<br>Drawing up of definitive text                                          |
| 11-12 September<br><b>at the Parliament</b>     | (formal meeting)<br>Examination of definitive text                                                      |
| 25-26 September<br><b>at the Parliament</b>     | (informal meeting)<br>Examination of text revised on the basis of<br>discussions on 11 and 12 September |
| 18-19 October<br><b>at the Parliament</b>       | (formal meeting)<br>Adoption of definitive text                                                         |



**DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION****fundamental.rights@consilium.eu.int****Brussels, 21 June 2000 (21.06)  
(OR. fr)****SN 3295/00****Timetable and  
work programme for the Convention  
updated as at 20 June 2000**

|                                                                                                                                                                                            |                                                                                                                                                                                                     |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 28 June: 09.00-12.30<br>28 June: 14.00-18.00<br>28 June: 19.00-24.00<br>29 June: 09.00-12.00 and<br>14.00-18.00<br>30 June: 09.00-12.00 and<br>14.00-16.00<br><b>at Parliament/Chamber</b> | Praesidium<br>Informal meeting<br>Praesidium<br>Informal meeting<br><br>Discussion of horizontal clauses and statement of reasons<br>Continuation and completion of examination of Articles 1 to 30 |
| 10 July: 09.00-12.00<br>10 July: 14.00-18.00<br>11 July: 09.00-12.00 and<br>14.00-18.00<br><b>at Parliament/Chamber</b>                                                                    | Praesidium<br>Informal meeting<br>Examination of Articles 31 to 50                                                                                                                                  |
| 17 July: 09.00-12.30 and<br>17 July: 14.00-18.00<br>18 July: 09.00-12.00 and<br>14.00-18.00<br>19 July: 09.00-12.00 and<br>14.00-18.00<br><b>at Parliament/P1A002</b>                      | Praesidium/Drafting Committee<br>Informal meeting:<br>Completion of examination of Articles 31 to 50<br>Structure – Preamble                                                                        |
| 11-12 September<br><b>at Parliament</b>                                                                                                                                                    | Formal meeting<br>Examination of final text                                                                                                                                                         |
| 25-26 September<br><b>at Parliament</b>                                                                                                                                                    | Formal meeting<br>Consideration of a revised version based on discussions on 11 and<br>12 September                                                                                                 |

13-4111

**Draft European Charter of Fundamental Rights****Brussels, 13 December 1999 (16.12)****SN 5133/1/99 REV 1  
(OR. f)****DRAFT****WORK PROGRAMME**

The body's terms of reference cover three main areas:

- civil and political rights;
- citizens' rights;
- social and economic rights.

Work should be shaped by that distinction. The body's first three plenary meetings could provide an opportunity for in-depth discussion of the three areas. On the basis of such discussion, committees could be set up to map out the broad lines of the final document to be drawn up by the body's officers and submitted to the body for consideration.

The body will also have to hear the Committee of the Regions, the Economic and Social Committee and the Ombudsman. It will invite interest groups to put forward their views.

In view of the above, the work programme could take the following form:

- 1 (afternoon) and 2 (morning) February: meeting of the body, at the European Parliament: general matters; civil and political rights; possible hearing of the Economic and Social Committee, Committee of the Regions and Ombudsman;

- during February: meeting of the committees;
- March: second meeting of the body, at the Council;
- during March: NGO forum;
- late April to early June: third meeting of the body;
- July: fourth meeting of the body: consideration of drafts;
- September: fifth meeting of the body: consideration of a combined draft;
- October: finalisation of the wording;
- November: meeting, if necessary, for any last adjustments.

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**fundamental.rights@consilium.eu.int**

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**Brussels, 18 January 2000**

**SN 1169/00**  
**(OR.f)**

**For the attention of members of the Body**

I enclose herewith the agenda for the next meeting of the Body which will be held **at 16.00 on 1 February 2000 in the amphitheatre of the Paul Henri Spaak Building at the headquarters of the European Parliament, 43 rue Wiertz, 1040 Brussels.** It will go on until **the end of the morning of 2 February.**

1. Adoption of the agenda
2. Name of the Body
3. Participation of alternate members in meetings
4. Timetable
5. Working method and functioning of the Body
6. Hearings of representatives of the Economic and Social Committee, the Committee of the Regions and the Ombudsman
7. General discussion on the horizontal issues
8. Other business.

Please note that the hearings will be held on 2 February, beginning at 9.00.

Roman Herzog  
Bundespräsident a.D.  
President of the Body

**DRAFT CHARTER OF FUNDAMENTAL HUMAN RIGHTS OF THE  
EUROPEAN UNION**

[fundamental.rights@consilium.eu.int](mailto:fundamental.rights@consilium.eu.int)

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Brussels, 9 February 2000 (10.02)

SN 1538/00  
(OR. f)

**For the attention of members of the Convention**

For your information, the next meeting of the Convention will be held on

**Thursday 24 and Friday 25 February 2000**

at the seat of the European Parliament in Brussels. An informal group/working party will discuss the initial draft of the Articles, which will be circulated in good time with the reference CHARTE 4123/00 CONVENT 5.

Below is the work programme for the two days:

**Thursday 24 February 2000:**

- 09.00-11.00: Meeting of personal representatives, Altiero Spinelli building, room A3 G-2**
- 09.00-11.00: Meeting of representatives of national parliaments, Altiero Spinelli building, room A5 E-2**
- 11.00-12.30: Praesidium meeting, Paul Henri Spaak building, room P1 C051 (followed by working lunch)**
- 14.00-18.00: Meeting of informal plenary/working group, Paul Henri Spaak building, room P1 A 002  
(overflow room for the public: P4 B 001)**

**Friday 25 February 2000:**

**09.00-12.30: Follow-up to plenary, room P 1 A 002  
(overflow room for the public: P 4 B 001).**

Roman Herzog  
Bundespräsident a. D.  
Convention President

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**Brussels, 22 February 2000 (23.02)**

**SN 1745/00  
(OR. fr)**

**For the attention of members of the Convention**

For your information, the next meeting of the Convention will be held on

**Thursday 2 and Friday 3 March 2000**

at the seat of the European Parliament in Brussels. The meeting will be on an informal/working group basis, and will discuss the draft of Articles 10 to 20, which will be circulated in good time.

Below is the work programme for the two days:

**Thursday 2 March 2000:**

**09.00-11.00: Meeting of personal representatives, Altiero Spinelli building, room A3 E-2**

**09.00-11.00: Meeting of representatives of national parliaments, Altiero Spinelli building, room A5 E-2**

**11.00-12.30: Praesidium meeting, Paul Henri Spaak building, room P1 C051 (followed by working lunch)**

**14.00-18.00: Plenary informal/working group meeting, Paul Henri Spaak building, room P1 A 002  
(overflow room for the public: P5 B 001)**

**Friday 3 March 2000:**

**09.00-12.30: Continuation of plenary, room P 1 A 002  
(overflow room for the public: P 5 B 001).**

Roman Herzog  
Bundespräsident a. D.  
Convention Chairman



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**Brussels, 9 March 2000 (13.03)  
(OR. fr)****SN 1949/00****For the attention of members of the Convention**

For your information, the next formal meeting of the Convention will be held on

**Monday 20 and Tuesday 21 March 2000**

at the headquarters of the Council of the European Union in Brussels (175 Rue de la Loi). The Convention will discuss the draft of Articles 1 to 15, submitted to the Convention by the Praesidium in **CHARTE 4149/00 CONVENT 13**. The procedure for submitting requests for amendments is explained in **CHARTE 4156/00 CONVENT 15**.

The meeting will be preceded by coordination meetings for representatives of national parliaments and for personal representatives.

Below is the work programme for the two days:

**Monday 20 March 2000:**

**9.00 – 10.00: Meeting of representatives of national parliaments, Room 50.1**

**10.00 – 11.00: Meeting of personal representatives, Room 50.1**

**11.00 – 12.00: Praesidium meeting, Room 50.4**

**14.00 – 18.00: Formal plenary meeting, Room 50.1**

**Tuesday 21 March 2000:**

**09.00 – 12.00: Continuation of plenary meeting, Room 50.1**

**An overflow room will be available for the plenary meeting: Room 20.1.**

Please note that only Convention members and their alternatives are allowed into the formal plenary meeting in Room 50.1. All other assistants and the public can follow the discussions from the overflow facility in Room 20.1.

Roman Herzog  
Bundespräsident a.D.  
Chairman of the Convention

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**Brussels, 17 March 2000  
(OR. fr)****SN 2057/00****For the attention of members of the Convention**

For your information, the next informal meeting of the Convention (meeting as a working group) will be held on

**Monday 27 and Tuesday 28 March 2000  
at the seat of the European Parliament, Rue Wiertz, Brussels  
Paul Henri Spaak Building, Room P 3 CO50**

Agenda:

- Possible discussion of draft Articles 10 to 19 (Note from the Praesidium of 24 February 2000, CHARTE 4137/00 **CONVENT 8**)
- Discussion of the draft rights of the citizen (Note from the Praesidium to be distributed shortly, CHARTE 4170/00 **CONVENT 17**)

**There will be no coordination meetings.**

Below is the work programme for the two days:

**Monday 27 March 2000:**

**10.00 – 12.30: Praesidium meeting, Paul Henri Spaak Building, Room P1 C051**

**14.00 – 18.00: Informal plenary meeting, Room P3 C050**

**Tuesday 28 March 2000:**

**9.00 – 12.30: Continuation of plenary meeting, Room P3 C050**

During the informal plenary meeting, the public will be admitted to the meeting room.

Roman Herzog  
Bundespräsident a.D.  
Chairman of the Convention

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# DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

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Brussels, 27 March 2000 (28.03)  
(OR. fr)

SN 2195/00

## For the attention of members of the Convention

For your information, the next informal meeting of the Convention (meeting as a working group) will be held on

**Monday 3 and Tuesday 4 April 2000**  
**at the seat of the European Parliament, Rue Wiertz, Brussels**  
**Paul Henri Spaak Building, Room P 1 A 002.**

The Convention will discuss an initial draft of Articles on social rights, which will be distributed shortly as **CHARTE 4192/00 CONVENT 18**.

**Please note that there will be no coordination meetings.**

Below is the work programme for the two days:

### **Monday 3 April 2000:**

**10.00 – 12.30: Praesidium meeting, Paul Henri Spaak Building, Room P 1 C051**

**14.00 – 18.00: Informal plenary meeting, Room P 1 A 002**

### **Tuesday 4 April 2000:**

**9.00 – 12.30: Continuation of plenary meeting, Room P 1 A 002.**

During the informal plenary meeting, the public will be admitted to the meeting room.

Roman Herzog  
Bundespräsident a.D.  
Chairman of the Convention

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**Brussels, 17 April 2000 (18.04)  
(OR. fr)****SN 2536/00****For the attention of members of the Convention**

For your information, the next informal meeting of the Convention (meeting as a working group) will be held on

**Thursday 27 and Friday 28 April 2000  
at the seat of the European Parliament, Rue Wiertz, Brussels  
Paul Henri Spaak Building, Room P 1 A 002.**

**All day on 27 April will be devoted to hearing civil society (see timetable distributed separately).** The Convention will then continue discussions on a first set of draft Articles on social rights:

Reference documents:

**CHARTE 4192/00 CONVENT 18 + CHARTE 4193/00 CONVENT 19 (already distributed).  
CHARTE 4227/00 CONVENT 26 (document to be distributed shortly).**

**Please note that there will be no coordination meetings.**

Below is the work programme for the two days:

**Thursday 27 April 2000:**

**9.00 – 12.30 and 14.00 – 18.00: Hearings of civil society, Room P 1 A 002**

**Friday 28 April 2000:**

**9.00 – 12.30 and 14.00 to 18.00: Plenary meeting, Room P 1 A 002.**

During both days, there will be a listening room for the public: **P 4 B 001.**

Roman Herzog  
Bundespräsident a.D.  
Chairman of the Convention

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**Brussels, 26 April 2000 (27.04)  
(OR. fr)****SN 2595/00****For the attention of members of the Convention**

For your information, the next informal meeting of the Convention (meeting as a working group) will be held on

**Wednesday 3 and Thursday 4 May 2000  
at the seat of the European Parliament, Rue Wiertz, Brussels  
Paul Henri Spaak Building, Room P 1 A 002.**

The Convention will continue discussions on social rights and commence discussions on horizontal clauses.

Reference documents:

**CHARTE 4192/00 CONVENT 18 + CHARTE 4193/00 CONVENT 19 + CHARTE 4227/00  
CONVENT 26 (Social rights, already distributed).**

**CHARTE 4235/00 CONVENT 27 (Horizontal clauses: already distributed).**

**Please note that there will be no coordination meetings.**

Below is the work programme for the two days:

**Wednesday 3 May 2000:**

**11.00 – 12.30: Praesidium meeting, Room P 1 C 051**

**14.00 - 18.00: Informal plenary meeting, Room P 1 A 002**

**Thursday 4 May 2000:**

**9.00 – 12.30: Continuation of plenary meeting, Room P 1 A 002.**

Roman Herzog  
Bundespräsident a.D.  
Chairman of the Convention

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**Brussels, 4 May 2000 (05.05)  
(OR. fr)****SN 2665/00****For the attention of members of the Convention**

For your information, the next informal meeting of the Convention (meeting as a working group) will be held on

**Thursday 11 and Friday 12 May 2000  
at the seat of the Council, 175 rue de la Loi, Brussels  
Justus Lipsius Building, Room 50.1**

**Draft agenda:**

1. Further rights (Reference document: CHARTE 4112/2/00 BODY 4 REV 2)
2. Exchange of views on
  - the preamble to the Charter
  - the structure of the Charter

**Please note that there will be no coordination meetings.**

The work programme for the two days is as follows:

**Thursday 11 May 2000:****10.00 – 13.00 and 14.30 – 16.00 : Praesidium meeting, Room 50.1****16.00 - 18.00 : Informal plenary meeting, Room 50.1****Friday 12 May 2000:****9.00 – 12.00 : Continuation of plenary meeting, Room 50.1**



**Please note that only Convention members and their alternates will be admitted to Room 50.1.  
All other assistants can follow the discussions from the overflow facility in Room 50.2.**

**Members of the public can follow the proceedings in the Council Press Room.**

Roman Herzog  
Bundespräsident a.D.  
Chairman of the Convention

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**Brussels, 26 May 2000 (29.05)  
(OR. fr)****SN 3021/00****For the attention of members of the Convention**

For your information, the next informal meeting of the Convention (meeting as a working group) will be held on

**Monday 5 June 2000 (14.00 – 18.00) and Tuesday 6 June 2000 (9.00 – 12.00)****at the seat of the European Parliament, Rue Wiertz, Brussels****Paul Henri Spaak Building, hemicycle****Draft agenda:**

- 5 June: discussion of social rights  
Reference document: CHARTE 4316/00 CONVENT 34, already distributed
- 6 June: Discussion of amendments on civil and political rights  
Reference documents:
  - = Draft Articles: CHARTE 4284/00 CONVENT 28, already distributed
  - = Amendments received: CHARTE 4332/00 CONVENT 32; this document will be distributed at the meeting
  - = Compromise proposals submitted by the Praesidium: CHARTE 4333/00 CONVENT 36; this document will be distributed at the meeting.

The work programme for the two days is as follows:

**Monday 5 June 2000:****11.00 – 12.30: Coordination meeting for representatives of the national parliaments:  
Spinelli building, Room A3 E-2****14.00 – 18.00: Informal plenary meeting, hemicycle****Tuesday 6 June 2000:****9.00 – 12.00: Continuation of plenary meeting, hemicycle**

**Tuesday 6 June 2000:****9.00 – 13.00: OPEN DAY, Paul Henri Spaak Building, Room P5 B 001****13.00 – 18.00: OPEN DAY, Spinelli Building, Room A1 E-2.****Please note that there will be no coordination meeting of personal representatives.**

Roman Herzog  
Bundespräsident a.D.  
Chairman of the Convention

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**Brussels, 9 June 2000 (13.06)  
(OR. fr)****SN 3160/00****For the attention of members of the Convention**

For your information, the next informal meeting of the Convention (meeting as a working group) will be held on

**Monday 19 June 2000 (16.00-20.00) and Tuesday 20 June 2000 (9.00-13.00)  
at the seat of the Council of the European Union, 175 Rue de la Loi, Brussels,  
Justus Lipsius building, Room 50.1.**

**Please note that there will be no coordination meetings.**

The work programme for the two days is as follows:

**Monday 19 June 2000:**

**16.00-20.00: Hearing of and exchange of views with the 13 applicant states, Room 50.1**

**Tuesday 20 June 2000:**

**9.00-13.00: Informal plenary meeting, Room 50.1**

The Convention will continue its examination of amendments relating to civil and political rights and citizens' rights.

## Reference documents:

- Amendments: CHARTE 4332/00 CONVENT 35 + ADD 1 + ADD 2
- Compromise proposals from the Praesidium: CHARTE 4333/00 CONVENT 36;
- Summary of amendments submitted by the Praesidium: CHARTE 4360/00 CONVENT 37 (this document will be distributed in due course).
  
- The compilation of contributions from and speeches made by civil society at the hearing on 27 April 2000 will also be made available to the Convention:  
CHARTE 4358/00 CONTRIB 222 (morning) and CHARTE 4359/00 CONTRIB 223 (afternoon).

**I would draw your attention to the fact that, given the high number of participants, the arrangements for use of Room 50.1 will be different during the hearings on 19 June.**

**Please note that only Convention members and their alternates will be admitted to Room 50.1. All other assistants can follow the discussions from the overflow facility in Room 50.2.**

**Members of the public can follow the proceedings in the Press Room (ground floor).**

Roman Herzog  
Bundespräsident a.D.  
Chairman of the Convention

# DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

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**Brussels, 21 June 2000  
(OR. fr)**

**SN 3294/00**

## **For the attention of members of the Convention**

For your information, the next informal meeting of the Convention (meeting as a working group) will be held on

**Wednesday 28 June, Thursday 29 June and Friday 30 June 2000  
at the seat of the European Parliament, Rue Wiertz, Brussels, hemicycle.**

**Please note that there will be no coordination meetings.**

The work programme for the three days is as follows:

|                                |                                         |
|--------------------------------|-----------------------------------------|
| <b>Wednesday 28 June 2000:</b> | <b>14.00 to 18.00</b>                   |
| <b>Thursday 29 June 2000:</b>  | <b>9.00 to 12.00 and 14.00 to 18.00</b> |
| <b>Friday 30 June 2000:</b>    | <b>9.00 to 12.00 and 14.00 to 16.00</b> |

The Convention will hold an exchange of views on the horizontal clauses and on the statement of reasons. It will then continue its examination of Articles 1 to 30.

Reference documents:

- Amendments: CHARTE 4332/00 CONVENT 35 + ADD 1 + ADD 2 (**already distributed**)
- Praesidium compromise proposal: CHARTE 4333/00 CONVENT 36 (**already distributed**)
- Summary of amendments presented by the Praesidium: CHARTE 4360/00 CONVENT 37 (**distributed in FR, EN, DE; the other language versions will be sent out on 23 June**).

Roman Herzog  
Bundespräsident a.D.  
Chairman of the Convention

# DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

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**Brussels, 4 July 2000 (04.07)**  
**(OR. fr)**

**SN 3501/00**

## **For the attention of members of the Convention**

For your information, the next informal meeting of the Convention (meeting as a working group) will be held on

**Monday 10 July and Tuesday 11 July 2000**  
**at the seat of the European Parliament, Rue Wiertz, Brussels, hemicycle.**

**Please note that there will be no coordination meetings.**

The work programme for the two days is as follows:

|                              |                                         |
|------------------------------|-----------------------------------------|
| <b>Monday 10 July 2000:</b>  | <b>14.00 to 18.00</b>                   |
| <b>Tuesday 11 July 2000:</b> | <b>9.00 to 12.00 and 14.00 to 18.00</b> |

The Convention will complete its examination of Articles 1 to 30 (civil and political rights and citizens' rights) and will begin its examination of Articles 31 to 50 (social rights).

Reference documents:

Articles 1 to 30:

- Amendments: CHARTE 4332/00 CONVENT 35 + ADD 1 + ADD 2 + ADD 3 (**already distributed**)
- Praesidium compromise proposal: CHARTE 4333/00 CONVENT 36 (**already distributed**)
- Summary of amendments presented by the Praesidium: CHARTE 4360/00 CONVENT 37 (**already distributed**).

Articles 31 to 50:

- Amendments: CHARTE 4372/00 CONVENT 39 (**already distributed**)
- Praesidium compromise proposal I: CHARTE 4373/00 CONVENT 40 (**already distributed**)
- Praesidium compromise proposal II: SN/3340/00 (**already distributed**)
- Praesidium compromise proposal III: CHARTE 4399/00 CONVENT 42 (**distributed in FR; translations will be available in due course**)
- Summary of amendments presented by the Praesidium: CHARTE 4383/00 CONVENT 41 (**distributed in FR; translations will be available in due course**).

Roman Herzog  
Bundespräsident a.D.  
Chairman of the Convention

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**Brussels, 5 July 2000 (07.07)**  
**(OR. fr)**

**SN 3502/00**

**For the attention of members of the Convention**

For your information, the next informal meeting of the Convention (meeting as a working group) will be held on:

**Monday 17, Tuesday 18 and Wednesday 19 July 2000**  
**at the seat of the European Parliament, rue Wiertz, Brussels,**  
**Paul Henri Spaak building, room P1 A 002.**

**Please note that there will be a coordination meeting of representatives of national parliaments.**

The work programme for the three days is as follows:

**Monday 17 July 2000: from 14.00 to 18.00: informal plenary meeting, room P1 A 002**  
**Monday 17 July 2000: from 18.00 to 20.00: coordination meeting of representatives of national parliaments, room P1 A 002**  
**Tuesday 18 July 2000: from 9.00 to 12.00 and from 14.00 to 18.00: plenary meeting, P1 A 002**  
**Wednesday 19 July 2000: from 9.00 to 12.00 and from 14.00 to 18.00: plenary meeting, P1 A 002**

The Convention will complete examination of Articles 31 to 50 and of the structure and preamble.

## Reference documents:

- Amendments: CHARTE 4372/00 CONVENT 39 **(already circulated)**
- Praesidium compromise proposal I: CHARTE 4373/00 CONVENT 40 **(already circulated)**
- Praesidium compromise proposal II: SN 3340/00 **(already circulated)**
- Praesidium compromise proposal III: CHARTE 4399/00 CONVENT 42 **(circulated)**
- Summary of amendments submitted by the Praesidium: CHARTE 4383/00 CONVENT 41 **(circulated)**.

Roman Herzog  
Bundespräsident a.D.  
Chairman of the Convention

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**Brussels, 31 August 2000 (01.09)  
(OR. fr)****SN 3995/00****For the attention of members of the Convention**

For your information, the next **formal** meeting of the Convention will be held on:

**Monday 11, Tuesday 12 and Wednesday 13 September 2000  
at the seat of the European Parliament, rue Wiertz, Brussels,  
Paul Henri Spaak building, Hemicycle.**

**Please note that there will be a coordination meeting of personal representatives, representatives of national parliaments and the European Parliament delegation.**

The work programme for the three days is as follows:

**Monday 11 September, 14.00 to 18.00, and Tuesday 12 September, 9.00 to 12.00:**

**Coordination meeting of representatives of national parliaments:  
Hemicycle**

**Monday 11 September, 14.00 to 18.00, and Tuesday 12 September, 9.00 to 12.00:**

**Meeting of personal representatives of the Heads of State or Government:  
Room A 5 E 02**

**Monday 11 September, 14.00 to 18.00, and Tuesday 12 September, 9.00 to 12.00:**

**Meeting of the European Parliament delegation:  
Room P 5 B 001.**

**Monday 11 September, after 18.00: Invitation by the President of the Commission to members, alternates, observers and Task Forces. Invitation cards will be distributed in the meeting room.**

**Tuesday 12 September, 14.00 to 18.00 and Wednesday 13 September, 9.00 to 12.00 and 14.00 to 18.00:**

**Formal plenary meeting of the Convention:  
Hemicycle.**

The Convention will examine the complete text of the Charter proposed by the Praesidium, as set out in CHARTE 4422/00 CONVENT 45 (**already circulated**).

The text of the explanations relating to the complete text of the Charter (CHARTE 4423/00 CONVENT 46) (**already circulated**) will also be available in the meeting room.

Roman Herzog  
Bundespräsident a.D.  
Chairman of the Convention

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**DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION****fundamental.rights@consilium.eu.int**

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**Brussels, 18 September 2000 (19.09)  
(OR. fr)****SN 4236/1/00 REV 1****For the attention of members of the Convention**

For your information, the next **formal** meeting of the Convention will be held on:

**Monday 25 and Tuesday 26 September 2000  
at the seat of the European Parliament, rue Wiertz, Brussels,  
Paul Henri Spaak building, Room P 3 C 50.**

**Please note that there will be a coordination meeting of personal representatives, representatives of national parliaments and the European Parliament delegation.**

The work programme for the two days is as follows:

**Monday 25 September, 14.30 to 18.00, and Tuesday 26 September, 9.00 to 12.30:**

**Coordination meeting of representatives of national parliaments:  
Hemicycle**

**Monday 25 September, 14.30 to 18.00, and Tuesday 26 September, 9.00 to 12.30:**

**Meeting of personal representatives of the Heads of State or Government:  
Room P 3 C 50**

**Monday 25 September, 14.30 to 18.00, and Tuesday 26 September, 9.00 to 12.30:**

**Meeting of the European Parliament delegation:  
Room A 3 E 2**

**Tuesday 26 September, 14.30 to 17.00:**

**Formal plenary meeting of the Convention:  
Room P 3 C 50**

The Convention will examine the complete text of the Charter proposed by the Praesidium following the proceedings on 11 and 12 September, as set out in CHARTE 4470/00 CONVENT 47 (**already circulated**). That text will be revised by Legal/Linguistic Experts on 21 September with a view to settling any linguistic questions and making the Charter's language "gender-neutral".

Roman Herzog  
Bundespräsident a.D.  
Chairman of the Convention

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**Brussels, 20 September 2000 (21.09)  
(OR. de)****SN 4291/00****Letter from Roman Herzog, former President of the Federal Republic of Germany,  
to the Members of the Convention**

Given the intensive and comprehensive discussions within the Convention and its four constituent Working Groups, I have the impression that we should be able to conclude our proceedings on the draft Charter of Fundamental Rights of the European Union at the forthcoming meeting on 25 and 26 September. We will thereby be able to meet the wish expressed by the President of the European Council of receiving the draft in time for the European Council meeting in Biarritz.

I therefore suggest the following procedure for the forthcoming meeting:

The four Working Groups should meet from 14.30 to 18.00 on **25 September** to express their opinions on Charte 4470/00 CONVENT 47. Afterwards the Praesidium will discuss in my absence the amendments to CONVENT 47 which it will recommend to the Chairman of the Convention.

The Members of the Convention will subsequently have the opportunity to express their opinions on those recommendations at the plenary session from 11.00 to 17.00 on **26 September**.

As Chairman of the Convention, in accordance with the conclusions of the Tampere European Council, I therefore intend to forward to the President of the European Council on **2 October** the version of the draft Charter of Fundamental Rights which, in my opinion, in consultation with the Vice-Chairs, is acceptable to all sides.

A formal concluding meeting of the Convention is scheduled from **11.00 to 12.30 on 2 October**.

I hope you will all be able to attend that meeting.

Roman Herzog  
Bundespräsident a.D.  
Chairman of the Convention



**DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION****fundamental.rights@consilium.eu.int**

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**Brussels, 27 September 2000  
(OR. fr)****CHARTE SN 4376/00****For the Attention of members of the Convention**

For your information, the next formal meeting of the Convention will be held on

**Monday 2 October 2000, from 11.00 to 12.30,  
at the seat of the European Parliament, rue Wiertz, Brussels,  
Paul Henri Spaak building, Hemicycle.**

The work programme is as follows:

- 11.00 to 12.30: formal closing ceremony, Hemicycle**
- 12.30: Press Conference (the room will be communicated in situ)**
- 12.30: Reception given by the French Presidency (to members of the Convention, alternates, observers, task forces) in the Parliament Members' reception rooms, Spinelli building.**

The final text of the draft Charter will be circulated at the meeting (CHARTE 4487/00  
CONVENT 50)

Roman Herzog  
Bundespräsident a.D.  
Chairman of the Convention

## **III.5.c. European Parliament Delegation Documents relating to the Charter Convention**

DE/OJ/001  
22.11.1999

**DELEGATION DU PARLEMENT EUROPÉEN  
AUPRES DE L'ENCEINTE  
CHARGÉE DE L'ELABORATION DE  
LA « CHARTE DES DROITS FONDAMENTAUX  
DE L'UNION EUROPEENNE »**

**REUNION CONSTITUTIVE**

**24 novembre 1999 – 11 heures  
Salle P 7 C 050 – Bât. Paul-Henri Spaak  
Bruxelles**

**Projet d'ordre du jour**

- 1. Election du Président de la délégation (sous la présidence du doyen d'âge)**
  - 2. Communications du Président**
  - 3. Echange de vues : préparation de la première réunion de l'enceinte (fixée au 17.12.1999)**
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**EUROPEAN PARLIAMENT DELEGATION  
IN THE BODY  
IN CHARGE OF ELABORATING  
A « CHARTER OF FUNDAMENTAL RIGHTS »**

**CONSTITUTIVE MEETING  
November 24, 1999 - 11.00 a.m.  
Room P 7 C 050 – Paul-Henri Spaak  
BRUSSELS**

**Draft agenda**

- 1. Election of the Chair of the delegation (chaired by the senior member)**
- 2. Communications of the Chair**
- 3. Exchange of views : preparation of the first meeting of the body (scheduled on 17.12.1999)**

# EUROPEAN PARLIAMENT

PV\01\99

## European Parliament delegation to the body responsible for drafting the European Union's Charter of Fundamental Rights

### MINUTES

of the meeting

of 24 November 1999

BRUSSELS

The meeting opened at 11 a.m. with the oldest member, Mrs Paciotti, in the chair.

1. Adoption of agenda.

The agenda was adopted.

2. Election of the delegation chairman.

Mr Mendez de Vigo was proposed by Mr Freidrich and Mr Martin, and elected delegation chairman by acclamation, duly replacing Mrs Paciotti in the chair.

3. General exchange of views on drafting the European Union Charter of Fundamental Rights.

The chairman briefly introduced the delegation's work and asked for members' observations with regard to the working methods envisaged for drafting the Charter.

The following spoke: Beres, Friedrich, D.Martin, van den Berg, Maij-Weggen, Frahm, Bonde, Cederschiöld, H.P. Martin, Cornillet, Rack, Buttiglione, Schulz, Mr Duff and Mr Voggenhuber, the Constitutional Affairs Committee draftsman, wound up the exchange of views.

4. Date and place of next meeting.

The next meeting was scheduled for Tuesday, 14 December in Strasbourg, time to be established.

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3 December 1999

# PARLEMENT EUROPÉEN

7 décembre 1999

## DOCUMENT DE TRAVAIL

sur l'élaboration d'une charte des droits fondamentaux de l'Union européenne

Commission des affaires constitutionnelles

Rapporteur: Andrew Duff et Johannes Voggenhuber

## VERS UNE CHARTE DES DROITS FONDAMENTAUX

1. Le Conseil européen de Cologne a décidé que les "droits fondamentaux applicables à l'échelle de l'Union devaient être ancrés dans une charte afin d'en accroître, par là même, la visibilité". Un projet de charte des droits fondamentaux doit être soumis d'ici la fin de l'an 2000. Le Parlement européen s'est félicité de cette décision, que le Conseil de Tampere a confirmée à une large majorité. Nous ne devons toutefois avoir aucun doute sur la complexité de la tâche qui nous attend, ni sur l'importance de ses implications pour l'avenir de l'Union européenne.

2. Le présent document de travail envisage certains des points qui devront être abordés par la délégation du Parlement européen auprès de l'enceinte chargée d'élaborer le projet de charte. Si certaines des questions évoquées ici ne pourront être résolues que par l'enceinte dans son ensemble, la délégation du Parlement n'en devra pas moins, en tout état de cause, arrêter sans tarder ses positions en la matière.

3. La première réunion de l'enceinte doit se réunir à Bruxelles le 17 décembre. À l'issue de cette réunion, les corapporteurs de la commission des affaires constitutionnelles seront chargés d'élaborer un premier rapport, qui sera mis aux voix lors de la période de session de mars et qui aura pour objectif de conférer un mandat à la délégation du Parlement européen.

4. Il apparaît d'ores et déjà clairement que d'éventuelles divergences pourraient entraver les travaux de l'enceinte, concernant les cinq points suivants:

- i) la procédure décisionnelle,
- ii) le caractère juridique de la charte,
- iii) son champ d'application,
- iv) son contenu,
- v) les relations avec la CIG.

### **I. La procédure décisionnelle**

5. Le Parlement européen reconnaît que les critiques qu'il a de bonne heure formulées sur la procédure envisagée ont été prises en considération par le Conseil européen. Nous nous félicitons de la décision visant à garantir une représentation paritaire du Conseil européen et du Parlement, l'élection de son président par l'enceinte et l'accès du public aux réunions et à la documentation.

6. Nous insistons sur la nécessité d'instaurer une coopération aussi étroite que possible entre l'enceinte et la CIG, afin que la charte puisse, au stade final, être dûment intégrée au traité.

7. Il convient de prévoir les voies et moyens nécessaires pour associer les pays candidats aux travaux de l'enceinte.

8. Les modalités de fonctionnement de l'enceinte elle-même soulèvent certaines ambiguïtés. Le Conseil européen a proposé que le projet final soit "adopté par toutes les parties". Nous en déduisons donc que ce ne sont pas seulement les 16 députés au Parlement qui devront se prononcer en ce sens (au besoin, par un vote à la majorité qualifiée), mais que l'ensemble du Parlement devra également donner son avis conforme.

9. Les 62 membres de l'enceinte devront faire preuve d'une certaine flexibilité afin que, non seulement les questions importantes soient dûment prises en considération, mais aussi que l'enceinte fasse montre d'une certaine détermination. Il est probable que les délégations les plus cohérentes seront les plus influentes, et nous souhaitons voir la délégation composée des 16 membres du Parlement européen parvenir à un solide consensus. M. Iñigo Mendez de Vigo a été élu président de cette délégation et vice-président de l'enceinte, lors de la première réunion du 24 novembre. D'autres postes, parmi lesquels ceux de vice-présidents et de rapporteurs doivent encore être pourvus.

#### Propositions des rapporteurs sur la procédure

10. Les corapporteurs soumettront au mois de janvier un projet de premier rapport qui aura pour objectif de mandater la délégation du Parlement européen auprès de l'enceinte.

11. Nous proposons que le terme d'"enceinte" soit dorénavant remplacé par celui de "convention".

12. En ce qui concerne les travaux de la convention, nous proposons que les décisions portant sur le contenu soient adoptées sur la base d'une voix par membre, mais que les décisions sur la procédure soient prises moyennant un accord entre les quatre parties (Parlement européen, Conseil européen, Commission européenne, membres des parlements nationaux).

13. L'élaboration d'un projet de charte des droits fondamentaux étant, par excellence, une tâche parlementaire, nous proposons que le président de la convention soit un parlementaire.

14. La délégation du Parlement à la convention devra envisager l'éventualité de proposer l'un de ses membres à la présidence de la convention.

15. Nous proposons l'organisation, dans les plus brefs délais, d'une réunion d'experts qui seront chargés de conseiller le Parlement.

16. Nous demandons, en outre, l'organisation d'une audition publique de représentants de la société civile. Cette audition et cette réunion devront avoir eu lieu avant les consultations officielles envisagées par le Conseil européen de Tampere.

17. Nous proposons que la Conférence européenne fasse office de plate-forme de consultation des pays candidats afin de comparer leurs régimes respectifs et celui de l'UE au chapitre des droits fondamentaux.

18. Nous devons encourager une collaboration aussi étroite que possible avec le Conseil de l'Europe, pour qui la charte devrait offrir une occasion unique de combler les lacunes constatées dans le régime actuel des droits fondamentaux.

## **II. Caractère juridique**

19. Bien que la plupart des dispositions de la charte doivent être arrêtées lors des négociations relatives à sa rédaction, la procédure ne pourra progresser de façon substantielle aussi longtemps que la question - fondamentale - de son caractère juridique n'aura pas été réglée. Les différentes options seraient classées par ordre d'importance croissante les suivantes :

A. Une charte qui ne serait qu'une simple "proclamation" approuvée par toutes les parties

afin de sensibiliser l'opinion publique sur le "visage humain" de l'Union européenne.

- B. Une charte qui s'efforcerait de rendre compte de la situation actuelle en matière de droits fondamentaux et d'informer les institutions européennes des obligations qui leur sont dévolues pour les respecter. Un tel document pourrait être annexé au traité sur l'Union européenne à titre de déclaration.
- C. Une charte qui se proposerait de définir le concept de citoyenneté européenne en élargissant la définition des droits qui en découlent, non seulement pour les institutions de l'UE et ses agences, mais aussi pour les gouvernements des États membres (y inclus les autorités locales et régionales) quant à la mise en œuvre de la législation et des politiques de l'Union. Ce type de charte pourrait être joint en annexe au traité en tant que protocole, ce qui contraindrait à notifier ses dispositions à la Cour de justice des Communautés européennes (CCJCE) et aux juridictions nationales.
- D. Une charte dont les dispositions seraient immédiatement impératives pour toutes les institutions et agences de l'UE, y inclus les États membres, au chapitre de la législation et des politiques communautaires (questions relevant des deuxième et troisième piliers comprises). Cette charte serait consacrée par le traité lui-même (et dans sa partie constitutionnelle, à supposer que les traités soient réformés conformément aux propositions du Parlement et de la Commission). Son application relèverait de la compétence des tribunaux nationaux et, en dernier ressort, de la CJCE, auxquels les citoyens auraient directement accès.

20. Les options A et B ne contribueraient guère à remédier à la situation peu satisfaisante qui règne actuellement, et qui se caractérise par le fait que les institutions ne sont pas directement assujetties à un éventail de droits fondamentaux spécifiques. Les options C et D auraient des incidences concrètes et, nous en sommes persuadés, bénéfiques sur les relations entre les institutions de l'UE et les citoyens.

21. Il convient d'observer que, après le Conseil de Tampere, le Parlement a indiqué qu'il serait souhaitable que la charte ait valeur contraignante pour les instances communautaires relevant de la législation de l'UE et ayant un impact direct sur les citoyens de l'Union. Dans sa récente résolution (Dimitrakopoulos/Leinen) sur la CIG, le Parlement a indiqué que la charte fait "partie intégrante" d'un "processus constitutionnel qui consolidera les droits des États membres et la citoyenneté de l'Union européenne". Il a également évoqué la nécessité pour la CIG de "... renforcer les procédures, en vue d'améliorer notamment l'accès des citoyens à la CJCE".

#### Propositions des rapporteurs sur le caractère juridique

22. Nous proposons donc que la convention décide d'emblée de rendre la charte obligatoire, et d'inviter la CIG à habiliter la Cour de justice des Communautés européennes à définir une jurisprudence dans ce domaine sur la base des demandes soumises individuellement par des citoyens de l'Union.

23. Nous proposons que le Parlement précise d'emblée que son avis conforme à la charte dépendra dans une très large mesure du caractère obligatoire de celle-ci et de l'accès des citoyens à la Cour de justice.



### III. Champ d'application

24. Les droits fondamentaux sont indissolubles. La charte étant proposée à l'échelle de l'*Union européenne*, nous en déduisons donc qu'elle couvrira également les secteurs de la politique étrangère et de sécurité commune et la coopération en matière criminelle et juridique, y compris la mise en œuvre de l'accord de Schengen et les agences communautaires comme Europol. Ces secteurs relevant, par nature, de la compétence de plusieurs gouvernements, ils sont particulièrement exposés aux controverses touchant aux libertés civiles.

25. La question de la subsidiarité se posera avec une acuité particulière lorsqu'il s'agira de définir le champ d'application de la charte. Cette dernière n'est pas censée se substituer aux régimes nationaux en vigueur au chapitre des libertés civiles, mais les compléter au contraire, en ne portant que sur les actes adoptés par les institutions communautaires elles-mêmes et ceux adoptés par les gouvernements des États membres pour se conformer aux décisions de l'UE. La mesure dans laquelle la charte pourrait, le cas échéant, empiéter sur les préférences culturelles nationales – et la jurisprudence – demeure toutefois à déterminer.

26. Le Parlement doit admettre que l'intégration européenne n'a pas cessé d'apparaître comme un processus controversé, y compris dans les États membres où l'adhésion à l'UE n'est plus sérieusement contestée. En Allemagne, par exemple, une série d'arrêts de la Cour constitutionnelle ont ainsi remis en cause la légitimité de l'Union. La question des droits pose indirectement celle de la légitimité, et il ne fait aucun doute que l'élaboration d'une charte européenne provoquera des réactions hostiles dans certains milieux politiques.

27. Aux yeux des rapporteurs, il ne serait toutefois guère rationnel de restreindre le champ d'application de la charte en se bornant aux domaines (de fait, très peu nombreux) relevant de la compétence exclusive de l'UE. Si l'on veut que la charte ait un sens, elle doit nécessairement concerner les questions sociales, économiques et culturelles pour lesquelles l'UE dispose de compétences substantielles mais partagées avec les gouvernements des États membres, ainsi que les questions relatives à la sécurité.

28. Le champ d'application de la charte aux particuliers n'est pas non plus sans soulever certaines interrogations. Il est clair qu'elle aura un impact pour les citoyens de l'Union européenne (c'est-à-dire les ressortissants des États membres). Mais s'efforcera-t-on également d'étendre son champ d'application à certains ressortissants de pays tiers qui se trouvent sur le territoire de l'Union? Et, dans l'affirmative, lesquels : les résidents permanents, les travailleurs migrants, les touristes, les immigrants clandestins?

29. Cette charte aura également d'importantes implications internationales dans la mesure où elle est appelée à s'intéresser aux activités des sociétés étrangères opérant sur le territoire de l'Union. Il n'est pas non plus exclu qu'elle ait des incidences sur les activités d'entreprises implantées dans l'UE, y compris les firmes étrangères, opérant dans d'autres pays du monde.

#### Propositions des rapporteurs sur la mise en œuvre

30. Nous devons, sans tarder, tirer au clair les intentions du Conseil européen au regard des deuxième et troisième piliers, et faire pression pour que ceux-ci soient également couverts par la charte. Obtenir satisfaction sur ce point devrait constituer la seconde condition indispensable pour que le Parlement donne son avis conforme au projet final.

31. La délégation du Parlement devrait également insister pour que le champ d'application de la charte soit, dans la plus large mesure possible, étendu aux citoyens à l'intérieur des frontières de l'UE même si, conformément au statut, différentes catégories de droits et d'obligations peuvent être envisagées. Les rapporteurs estiment que la charte devrait, en l'occurrence, comporter les trois chapitres suivantes:

- \* les droits de l'homme consacrés par le droit international et qui sont d'application universelle;
- \* les droits fondamentaux applicables à l'espace judiciaire européen;
- \* les droits civils applicables aux seuls citoyens de l'Union européenne.

32. Nous devons être pleinement informés des implications de la charte sur le fonctionnement du marché intérieur et la politique commerciale de l'Union.

#### IV. Contenu

33. Le Parlement européen a souligné, dans la première résolution qu'il a adoptée sur la charte, en septembre 1999, que celle-ci devait témoigner d'une approche ouverte et novatrice, et ne pas apparaître d'emblée comme un simple descriptif des dispositions légales en vigueur.

34. La charte devra néanmoins faire référence au corpus actuel des droits en vigueur dans l'UE et dans ses États membres. Outre les traités communautaires et l'accord de Schengen, on compte près de 14 conventions signées par un ou tous les États membres pendant la période de l'après-guerre. Ces conventions émanent des Nations unies, du Conseil de l'Europe, de l'Organisation internationale du travail et de l'Organisation pour la sécurité et la coopération en Europe.

35. Dans la mesure où la charte doit surpasser la Convention européenne des droits de l'homme et des libertés fondamentales (1950), elle constituera un témoignage actualisé des relations entre les citoyens et le nouveau système de gouvernement supranational ou transnational qui prévaut actuellement dans la plupart des pays d'Europe.

36. La mesure dans laquelle la charte doit s'employer à réactualiser ou à affiner le corpus existant des droits afin que ceux-ci soient davantage à l'unisson des préoccupations et aspirations actuelles donnera lieu à un vaste débat. Ce dernier pourra, entre autres, porter sur les droits liés aux polémiques qui agitent actuellement l'opinion : technologies de l'information ou modifications génétiques, par exemple.

#### Propositions des rapporteurs sur le contenu

37. Les rapporteurs estiment que la convention devrait s'employer à rechercher un vaste consensus européen sur les droits fondamentaux. Si la CEDH et toutes les autres conventions internationales visées dans ce domaine doivent en constituer la base, les autres catégories de droits à inclure devraient relever des catégories suivantes :

- \* droits communs à tous les États membres;
- \* droits sociaux et économiques;
- \* droits dérivés des clauses du traité sur l'UE sur la citoyenneté;
- \* droits "modernes" (société de l'information, identité génétique, par exemple);
- \* droits spécifiques à une catégorie de la population (femmes, enfants, par exemple).

38. La convention devrait instituer des comités de rédaction chargés de couvrir chacun de ces éventails de questions.
39. Il importe de clarifier aussi tôt que possible le point de savoir si le Conseil européen préconise de se référer à la Charte sociale européenne signée à Turin en 1961, ou à sa version profondément remaniée de 1996, qui n'a pas encore été signée ou ratifiée par tous les États membres.

## V. Relations avec la CIG

40. Les rapporteurs estiment qu'il convient d'établir la plus étroite corrélation possible entre la charte et la CIG. Certaines questions importantes se posent en effet, dont celle de savoir si l'Union doit être dotée d'une personnalité juridique pour pouvoir signer la CEDH n'est pas la moindre.
41. Si les droits prescrits dans la charte sont susceptibles d'un recours judiciaire, la Cour européenne de justice de Luxembourg sera tôt ou tard amenée à développer une jurisprudence dans ce domaine. D'où une concurrence éventuelle – et, en tout état de cause, une coordination indispensable – avec l'ordre juridique et judiciaire de la Cour européenne des droits de l'homme. Nul doute que des divergences d'opinion se feront jour dans les milieux spécialisés ou judiciaires quant à la mesure dans laquelle une telle situation peut être gérable.
42. Comme toujours lorsqu'il s'agit de questions constitutionnelles, l'un des problèmes les plus fondamentaux, mais généralement guère pris en considération, a trait à la conception des voies et moyens qui permettront à l'avenir d'amender la charte pour tenir compte d'une conjoncture politique changeante et de l'évolution du partage des pouvoirs entre les institutions de l'Union européenne et les États membres.
43. Compte tenu de la complexité de la tâche qui nous attend, et dont le présent document n'offre qu'un aperçu, il apparaît clairement que l'élaboration de cette charte aura un impact significatif sur l'issue de la CIG – ne fût-ce que pour ce qui est du rôle, des ressources et des pratiques de la CJCE, de la personnalité juridique de l'Union, de la définition du principe de subsidiarité et des modalités de la future révision du traité.

## REMARQUE FINALE

*La commission des affaires constitutionnelles a saisi du présent document de travail les autres commissions parlementaires concernées (LIBE, AFET, EMPL, FEMM, JURI, PETI) ainsi que la délégation du Parlement à la convention.*

DE/OJ/002  
30.11.1999

**DELEGATION DU PARLEMENT EUROPÉEN  
AUPRES DE L'ENCEINTE  
CHARGÉE DE L'ÉLABORATION DE  
LA « CHARTE DES DROITS FONDAMENTAUX  
DE L'UNION EUROPÉENNE »**

**2ème Réunion**

**14 décembre 1999 – 16 h 30  
Salle LOW R 3.1  
Strasbourg**

**Projet d'ordre du jour**

- 1. Election des Vice-Présidents de la délégation**
  - 2. Préparation de la réunion constitutive de l'enceinte (17.12.1999)**
- 

**EUROPEAN PARLIAMENT DELEGATION  
IN THE BODY  
IN CHARGE OF ELABORATING  
A « CHARTER OF FUNDAMENTAL RIGHTS »**

**Second meeting  
December 14, 1999 - 16.30  
Room LOW R 3.1  
Strasbourg**

**Draft agenda**

- 1. Election of Vice Chairpersons of the delegation**
- 2. Preparation of the constitutive meeting of the body (17.12.1999)**

PE 168.628

# EUROPEAN PARLIAMENT

PV/02/99

## DELEGATION OF THE BODY DEALING WITH THE CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

### MINUTES

of the meeting

of 14 December 1999

### STRASBOURG

### SUMMARY

#### 1. Opening statement by the Chairman of the Delegation

**Mr Mendez de Vigo**, Chairman of the Delegation, opened the meeting. He first announced that the Delegation's decision on the election of Vice-Presidents would be postponed until the next meeting, to permit the Socialist Group to choose its candidate. He then outlined the outcome of his discussions with the Council presidency on the organisation of the constituent meeting of the Charter Body on Friday 17 December in Brussels on the Council's premises. There had been a number of positive developments (for instance the acceptance of the Delegation's idea that Members of the Body should sit in alphabetical order), but one negative development, that the Council would only allow full members of the Body into the main meeting room, with substitute members being relegated to a "salle d'écoute".

Mr Mendez de Vigo went on to describe the proposed order of business of the constituent meeting. The Finnish Presidency representative (Mr Nikula) would chair the beginning of the meeting, until the Body had elected its new President. The next step would consist of the election of the Body's Bureau. If a Member State representative were chosen (e.g. Mr Herzog) there would be a Vice-President from the European Parliament delegation, and a further Vice-President from among the national parliament representatives. If a Member State representative were chosen, the Council would also be seeking a representative, who would be a Portuguese national for the first six months, and a French national for the rest of the year.

Mr Mendez de Vigo concluded his opening remarks by outlining the proposed future timetable for the work of the Body. The month of January would be used for the preparation of the necessary organisational decisions. The next meeting of the full Body would take place on 1-2 February 2000 on the Parliament's premises. From February to June the proposed three Working Groups (on civil and political rights, economic and social rights, and the rights linked with European citizenship) would establish their initial lists of rights. A member of the Body could sit in any or all of these Working Groups. From July to October there would be more detailed examination of the

outstanding legal problems, such as the issue of the binding nature of the Charter, insertion into the Treaty, jurisdictional control and links with the Council of Europe Convention.

In the subsequent discussion the following spoke: **Mr Watson, Ms Maij-Weggen, Mr Schulz, Mr Bonde, Mr Berthu, Mr Voggenhuber, Ms Paciotti, Ms Frahm, Mr Duff, Ms Cederschiöld, Mr Friedrich, Ms Iivari, Mr Rack, Ms Kaufmann, Ms van den Burg, Mr Dehousse and Ms Beres.** The following main issues were raised.

## **2. Name of the Body**

Most of those who spoke supported the use of the name “Convention” (and its different transcriptions into other languages), rather than the “Body” or the “Enceinte”. The suggested use of the term “Grand Committee” in English was strongly opposed by Graham Watson and Andrew Duff. The only member who dissented was Mr Berthu, who supported use of the term “Délégation Conjointe”.

## **3. Composition of the Body**

It was considered to be positive that there were so many former MEPs among the national parliament representatives, and that two of the drafters of the current Spanish Constitution were among the Spanish representatives. On the other hand, a negative factor was that there were too few women. A couple of speakers thus suggested that it would be appropriate for a woman to be one of the Vice-Presidents of the Body.

## **4. The need for autonomy of the Body**

Mr Schulz, Ms Beres and a number of other speakers emphasised the central need for the Body, once constituted, to see itself as independent, and not to be bound by decisions of third parties. It should thus have autonomy in establishing its own rules and procedures.

## **5. The issue of substitutes/alternates**

Practically all who spoke objected strongly to the decision to exclude substitutes from the main meeting room at the constituent meeting of the Body. Mr Mendez de Vigo pointed out that this would not be the case at the next meeting of the Body on the Parliament’s premises, but undertook to make further efforts as regards the Council decision on attendance at the constituent meeting.

## **6. The President of the Body**

Support was expressed by many members for the candidacy of Mr Herzog as President of the Body.

## **7. Composition of the Bureau of the Body**

Concern was expressed at the proposal that there be an additional Council representative on the Bureau, besides the representative of the Member States, of the European Parliament, of the national parliaments and of the Commission.

## **8. Feedback from the Bureau**

The importance of the European Parliament Delegation being regularly and properly notified of the results of the Bureau's deliberations was emphasised, notably by Mr Rack.

#### **9. Number and subject matter of the Working Groups**

Dissatisfaction was expressed (notably by Ms Paciotti) at the third of the three proposed Working Groups, that concerning rights linked to citizenship, which was considered to totally overlap the first two proposed Working Groups. In addition, Mr Bonde and others supported the creation of an additional Working Group on collective rights. The issue of the working method of these groups was also raised, such as whether they should each have their own rapporteur.

#### **10. Proposed timetable**

Concern was expressed that time had already been lost, and that scheduling the second meeting of the full Body at the beginning of February meant that too much time would elapse before the proper work would begin, and that the rhythm of subsequent meetings of the full Body was also too leisurely.

#### **11. The issue of the Body's secretariat**

The nature of the relationship between the Council secretariat and that of the Parliament's responsible services was raised, in particular, by Ms Maij-Weggen and Mr Schulz.

#### **12. Language regime**

Ms Kaufmann called for there to be full linguistic coverage of the various documents at subsequent meetings.

#### **13. Media/information strategy**

Several speakers raised the issue of the nature of relations with the press, and of information strategy in general.

#### **14. Openness of proceedings**

The need for openness of the proceedings to NGOs and to civil society was emphasised by certain participants. It was pointed out that the meetings of the Body would, as a matter of principle, be open to the public.

#### **15. Overall method for the work of the Body**

Should it be evolutionary rather than revolutionary, or should "audace" prevail over "prudence"?

#### **16. Next meetings**

It was proposed that there be further meetings of Parliament's Delegation to the Body on 18 January 2000 in Strasbourg (at 11 a.m.), and on 26 January in Brussels (at 9 a.m.).

BILAG/ANLAGE/ILVA/ΠΡΩΤΗΛΟ/ANNEX/  
ANNEXE/ALLEGATO/BIJLAGE/ANEXO/BILAGA

**DELTAGERLISTE/ANWESENHEITSLISTE/ΚΑΤΑΣΤΑΣΗ ΠΑΡΟΥΣΙΑΣ/LITE RECORD  
OF ATTENDANCE/LISTA DE ASISTENCIA/LISTE DE PRESENCE/ELENCO DEI  
PRESENTI/PRESENTIELIJST/LISTA DE PRESENÇAS/LÄSNÄOLOLISTA/DELTAGARLISTA**

|            |                                                                                                                                                              |
|------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Til stede  | Formandskabet/Vorstand/Πρόεδρος/Bureau/Ufficio di Presidenza/Mesa/Puhemiesistö/J.L. Presidium: (*)<br><br>Mendez de Vigo                                     |
| Anwesend   | Medlemmer/Mitglieder/Μέλη/Members/Diputados/Députés/Deputati/Leden/Deputados/jäsenet/<br>Ledamöter:                                                          |
| Παρόντες   | Beres, Berthu, Bonde, Cederschiöld, Cornillet, Duff, Friedrich, Kaufmann, Maij-Weggen, Martin, D., Martin, H-P.,<br>Paciotti, Schulz, Voggenhuber            |
| Present    | Stedfortrædere/Stellvertreter/Υπερστηθιστες/Substitutes/Suplentes/Suppléants/<br>Membri supplenti/Plaatsvervangers/Membros suplentes/Varjäsenet/Suppleanter: |
| Presentes  | van den Burg, van Dam, Dehousse, Frahm, Iivari, Lalumiere, Mombaue, Rack, Watson                                                                             |
| Présents   |                                                                                                                                                              |
| Presenti   |                                                                                                                                                              |
| Aanwezig   |                                                                                                                                                              |
| Lasna      |                                                                                                                                                              |
| Närvarande |                                                                                                                                                              |

|                                                                                                                                                                                                                                                                                                                                                                                                                                 |  |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
| Art. 166,3                                                                                                                                                                                                                                                                                                                                                                                                                      |  |
| Endv. Deltog/Weitere Teiln./<br>Συμμετέχω/Also present<br>Participaron igualmente/<br>Participaient également/<br>Hanno partecipato altresì /<br>Andere deelnemers/<br>Outros participantes/<br>Muut osallistujat/ Dessutom deltog<br>(Dagsorden/Tagesordnung Pkt/Πρόγραμμα Ημερησίου Έργου<br>Σημείο/Point OJ/Punto OG/Agenda Punt/Ordem do dia-<br>punto/punto orden del dia/<br>Esityslista Kohta/Föredragningslista punkt): |  |

\* (P) = Formand/Vorsitzen der/Πρόεδρος/Chairman/Président/Presidente/Voorzitter/Presidente/Puhemies/Ordförande  
(VP) = Næstform./Stellv. Vorsitz./Υπερστηθιστες/Vice-Chairman/Vice-Président/Vicepresidente/Varapuhemies  
Ondervoorz./Vice-Pres./Vicepres/Vice ordförande.

Til stede den/Anwesend am/Παρόντες/Present on/Présent le/Presente il/Aanwezig op/Presente em/Presente el/Läsnä/Närvarande den.





# EUROPEAN PARLIAMENT

PE/PV/2000-01

**EUROPEAN PARLIAMENT DELEGATION**  
**TO THE BODY RESPONSIBLE FOR DRAFTING**  
**THE EUROPEAN UNION'S CHARTER OF FUNDAMENTAL RIGHTS**

**MINUTES**

of the meeting

of Tuesday, 8 January 2000

**STRASBOURG**

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| 3. Chairman's announcements .....                                                                         | 2           |
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| 5. Date and place of next meeting .....                                                                   | 2           |

Annex: Record of attendance

---

18 January 2000

The meeting opened at 9.15 a.m. with Mr Mendez de Vigo in the chair.

1. The draft agenda was adopted.
2. The minutes of the delegation meeting of 14 December 1999 were approved, no remarks having been made by the end of the meeting.
3. The chairman reported on the meeting of the body's drafting committee of 17 January 2000.
4. The chairman's announcements were followed by a general discussion, in which the following took part: the chairman, Berès, Duff, Friedrich, Rack, van den Burg, Schulz, Voggenhuber, Watson, Mombaur, Kirkhope, Paciotti, Hermange, Buitenweg, Berthu, Bonde, Kaufmann and Frahm.
5. The next meeting would be held on 26 January 2000 from 9 a.m. to 12 noon in Brussels.

\* \* \*

The meeting closed at 10.45 a.m.

\* \* \*

BILAG/ANLAGE/ΠΑΡΑΡΤΗΜΑ/ANNEX/  
ANNEXE/ALLEGATO/BIJLAGE/ANEXO/BILAGA

**DELTAGERLISTE/ANWESENHEITSLISTE/ΚΑΤΑΣΤΑΣΗ ΠΑΡΟΥΣΙΑΣ/LIITE RECORD  
OF ATTENDANCE/LISTA DE ASISTENCIA/LISTE DE PRESENCE/ELENCO DEI  
PRESENTI/PRESENTIELIJST/LISTA DE PRESENÇAS/LÁSNÁOLOLISTA/DELTAGARLISTA**

|            |                                                                                                                                                                                                                                                                            |
|------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Til stede  | Formandskabet/Vorstand/Πρόεδρος/Bureau/Ufficio di Presidenza/Mesa/Puhemiesistw/J.L. Presidium: (*)<br><br>Méndez de Vigo (P)                                                                                                                                               |
| Anwesend   | Medlemmer/Mitglieder/Ἐπίτροποι/Members/Diputados/Diputs/Deputati/Leden/Deputados/jósenet/<br>Ledamöter:                                                                                                                                                                    |
| Παρόντες   | Beres, Berthu, Bonde, Duff, Friedrich, Kaufmann, Kirkhope, H.-P. Martin, Paciotti, Schulz, Voggenhuber<br><br>Stedfortrædere/Stellvertreter/Ἀντιπρόσωποι/Substitutes/Suplentes/Suppliants/<br>Membri supplenti/Plaatsvervangers/Membros suplentes/Varajäsenet/Suppleanter: |
| Present    | Almeida Garrett, van den Burg, Buitenweg, Buttiglione, van Dam, Dehousse, Frahm, Hermange, Iivari, Lalumiere, Mombaur, Rack,<br>Watson                                                                                                                                     |
| Presentes  |                                                                                                                                                                                                                                                                            |
| Présents   |                                                                                                                                                                                                                                                                            |
| Presenti   |                                                                                                                                                                                                                                                                            |
| Aanwezig   |                                                                                                                                                                                                                                                                            |
| Lasna      |                                                                                                                                                                                                                                                                            |
| Närvarande |                                                                                                                                                                                                                                                                            |

|                                                                                                                                                                                                                                         |  |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
| Art. 151,4                                                                                                                                                                                                                              |  |
| Endv. deltog/Weitere Teiln./<br>Ἐπίσης παρόντες/Also present<br>Participaron igualmente/<br>Participaient également/<br>Hanno partecipato altresì/<br>Andere deelnemers/<br>Outros participantes/<br>Muut osallistujat/ Dessutom deltog |  |
| (Dagsorden/Tagesordnung Pkt/Πρόγραμμα ἑργῶν<br>Ἐπισημ. /Point OJ/Punto OG/Agenda Punt/Ordem do dia-<br>punto/punto orden del dia/<br>Esityslista Kohta/Föredragningslista punkt):                                                       |  |

\* (P) =Formand/Vorsitzender/Πρόεδρος/Chairman/Präsident/Presidente/Voorzitter/Presidente/Puhemies/Ordförande  
(VP) =Næstform./Stellv. Vorsitz./Ἀντιπρόεδρος/Vice-Chairman/Vice-Präsident/Vicepresidente/Varapuhemies  
Ondervoorz./Vice-Pres./Vicepres/Vice ordförande.

Til stede den/Anwesend am/Παρόντες επί/Present on/Prisnt le/Presente il/Aanwezig op/Presente em/Presente el/Lásná/Närvarande den.

- (1) 18.01.2000  
(2)  
(3)

Efter indbydelse fra formanden/Auf Einladung d. Vorsitzenden/À invitation du présidente/À l'invitation de la présidente/At the invitation of the Chairman/Por invitación del presidente/Sur l'invitation du président/Su invito del presidente/Op uitnodiging van de voorzitter/A convite do presidente/Puhemiehen kutsusta/På ordförandens inbjudan:

Radet/Rat/ᐃᐅᐅᐅᐅᐅᐅ/Council/Consejo/Conseil/Consiglio/Raad/Conselho/Neuvosto/Radet: (\*)

Kommissionen/Kommission/ᐅᐅᐅᐅᐅᐅ/Commission/Comisión/Commissione/Commissie/Commissão/Komissio/Kommissionen: (\*)

Arenshond

Cour des comptes:

C.E.S.: Kowalsky

C.D.R.:

|                                                                                                                                                                                                                                                                                                            |                                                               |                                                                                                                              |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------|
| Andre deltagere/Andere Teilnehmer<br>ᐃᐅᐅᐅᐅᐅᐅᐅ/Also present<br>Otros participantes/Autres participants/Altri partecipanti<br>Andere aanwezigen/Outros participantes                                                                                                                                         |                                                               |                                                                                                                              |
| Gruppernes sekretariat<br>Sekretariat der Fraktionen<br>ᐅᐅᐅᐅᐅᐅᐅᐅᐅᐅ<br>Secretariat political groups<br>Secr. de los grupos politicos<br>Secr. groupes politiques<br>Segr. dei gruppi politici<br>Secr. van de fracties<br>Secr. dos grupos politicos<br>Puolueryhmien sihteeristö<br>Gruppernas sekretariat | PPE<br>PSE<br>ELDR<br>Verts/ALE<br>GUE/NG<br>UEN<br>EDD<br>NI | Artis, Salafranca, Scarascia-Mugnozza<br>Henriques, Triacca<br>Trauffer<br><br>Pichot                                        |
| Cab. du Président                                                                                                                                                                                                                                                                                          |                                                               |                                                                                                                              |
| Cab. du Secrétaire Général                                                                                                                                                                                                                                                                                 |                                                               |                                                                                                                              |
| Generaldirektorat<br>Generaldirektion<br>ᐅᐅᐅᐅᐅᐅᐅᐅᐅᐅ<br>Directorate-General<br>Dirección general<br>Direction générale<br>Direzioe generale<br>Directoraat-generaal<br>Direcção general<br>Generaldirektorat<br>Pääosasto<br>Contrôle financier<br>Service juridique<br>Suivi des actes                     | I<br>II<br>III<br>IV<br>V<br>VI<br>VI                         | Brulant, Dastoli, De Capitani, Du Rietz, Nickel, Perillo<br>Duch Guillot<br>Baviera<br><br>Caiola, Passos, Schoo<br>Delahaye |
|                                                                                                                                                                                                                                                                                                            |                                                               |                                                                                                                              |

\* (P) =Formand/Pres./ᐅᐅᐅᐅᐅᐅᐅᐅ/Chairman/Prsident/Voorzitter/Puhemies/Ordförande  
 (VP) =Næstform./Vize-Pres./ᐅᐅᐅᐅᐅᐅᐅᐅᐅ/Vice-Chairman/Vice-Prsident/On dervoorz./Vice-pres/V arapuhemies/Vice ordförande.  
 (M) =Medlem./Mitglied/ᐅᐅᐅᐅᐅᐅᐅᐅ/Member/Miembro/Membre/Membro/Lid/Membro/Íðsen/Ledamot  
 (F) =Tjenestemand/Beamter/ᐅᐅᐅᐅᐅᐅᐅᐅ/Official/Funcionario/Fonctionnaire/Funzionario/Ambtenaar/ Functionario/V irkamies/Tjénsteman

|                                                                                                                                                                                                                                                                                                    |         |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------|
| Udvalgssekretariatet<br>Ausschubsekretariat<br>Γραμματεία Επιτροπών<br>Committee secretariat<br>Secretaria de la comisión<br>Secrétariat de la commission<br>Segretariato della commissione<br>Commissiesecretariaat<br>Secretaria de comissão<br>Valiokunnan sihteeristö<br>Utskottssekretariatet | Réchar  |
| Assist./Assistent                                                                                                                                                                                                                                                                                  | Schmidt |

DE/OJ/04  
19 January 2000

**EUROPEAN PARLIAMENT DELEGATION  
TO THE BODY RESPONSIBLE FOR DRAFTING  
THE EUROPEAN UNION'S CHARTER  
OF FUNDAMENTAL HUMAN RIGHTS**

**Fourth meeting**

**26 January 2000  
Room A5E-2  
Brussels**

**Draft agenda**

1. Adoption of draft agenda
2. Approval of minutes of meeting of 18 January 2000
3. Election of vice-chairmen of the delegation
4. Preparation for meeting of the body (1-2 February 2000)
5. Date and place of next meeting

# EUROPEAN PARLIAMENT

PE/XV/PV/2000-2

## EUROPEAN PARLIAMENT DELEGATION TO THE BODY RESPONSIBLE FOR DRAFTING THE EUROPEAN UNION'S CHARTER OF FUNDAMENTAL HUMAN RIGHTS

### MINUTES

of the meeting of  
Tuesday, 26 January 2000

### BRUSSELS

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| 3. Exchange of views on the preparation for the meeting of the body<br>on 1 and 2 February 2000 ..... | 2           |
| 3. Date and place of next meeting .....                                                               | 2           |

Annex: Record of attendance

---

31 January 2000



The meeting opened at 9.15 a.m., with Mr Méndez de Vigo in the chair.

1. Mr Dehousse spoke on a point of order, concerning the political situation in Austria. The chairman decided to include this in the minutes, and that the matter should be referred to Parliament's authorities.

The draft agenda, thus amended (the item concerning the election of vice-chairmen of the delegation was held over), was then adopted.

2. The minutes of the meeting of 18 January 2000 were approved.

3. The chairman announced the arrangements for 1 and 2 February, when the body would hold its second meeting, this time at the European Parliament.

The following spoke: Kirkhope, Berès, Paciotti, Duff, Voggenhuber, Friedrich, Mombaur, Bonde, Voggenhuber, Schulz, Berthu, Maij-Weggen, Cornillet, Cederschiöld, Frahm and Lalumière.

The chairman replied to a number of the points raised and closed the debate.

4. It was decided to wait until the meeting on 1 and 2 February to set the date for the next meeting, although 9 a.m. on Tuesday, 15 February in Strasbourg was suggested.

The meeting closed at 10.50 a.m.

BILAG/ANLAGE/IL ȚIP ȚIPTILĂ/ANNEX/

ANNEXE/ALLEGATO/BIJLAGE/ANEXO/BILAGA

**DELTAGERLISTE/ANWESENHEITSLISTE/ΚΑΤΑΣΤΑΣΗ ΠΑΡΟΥΣΙΑΣ/ΛΙΣΤΗ ΚΑΤΑΧΩΡΗΣΕΩΝ/LIITE RECORD  
OF ATTENDANCE/LISTA DE ASISTENCIA/LISTE DE PRESENCE/ELENCO DEI  
PRESENTI/PRESENTIELIJST/LISTA DE PRESENÇAS/LĀSNĀOLOLISTA/DELTAGARLISTA**

|            |                                                                                                                                                                                                                                                                                                 |
|------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Til stede  | Formandskabet/Vorstand/Πρόεδρος/ Bureau/Ufficio di Presidenza/Mesa/Puhemieshist./J.L. Presidium: (*)<br>Méndez de Vigo (P)                                                                                                                                                                      |
| Anwesend   | Medlemmer/Mitglieder/Άπόστολοι/Members/Diputados/Diputs/Deputati/Leden/Deputados/j'äsenet/<br>Ledamöter:                                                                                                                                                                                        |
| Παρόντες   | Berès, Berthu, Bonde, Cederschiöld, Cornillet, Duff, Friedrich, Kaufmann, Kirkhope, Maij-Weggen, Paciotti, Schulz, Voggenhuber<br>Stedfortrædere/Stellvertreter/ Αντιπρόσωποι/Substitutes/Suplentes/Suppliants/<br>Membri supplenti/Plaatsvervangers/Membros suplentes/Varajäsenet/Suppleanter: |
| Present    | van den Burg, Buitenweg, Dehousse, Frahm, Iivari, Lalumière, Mombaur, Watson                                                                                                                                                                                                                    |
| Presentes  |                                                                                                                                                                                                                                                                                                 |
| Présents   |                                                                                                                                                                                                                                                                                                 |
| Presenti   |                                                                                                                                                                                                                                                                                                 |
| Aanwezig   |                                                                                                                                                                                                                                                                                                 |
| Lasna      |                                                                                                                                                                                                                                                                                                 |
| Närvarande |                                                                                                                                                                                                                                                                                                 |

|                                                                                                                                                                                                                                              |  |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
| Art. 151,4                                                                                                                                                                                                                                   |  |
| Endv. deltog/Weitere Teiln./<br>Συμμετείχεσαν επίσης/Also present<br>Participaron igualmente/<br>Participaient également/<br>Hanno partecipato altresì/<br>Andere deelnemers/<br>Outros participantes/<br>Muut osallistujat/ Dessutom deltog |  |
| (Dagsorden/Tagesordnung Pkt/Πρόγραμμα Ημερήσιας<br>Συνεδρίασης/Point OJ/Punto OG/Agenda Punt/Ordem do dia-<br>punto/punto orden del dia/<br>Esityslista Kohta/Föredragningslista punkt):                                                     |  |

\* (P) =Formand/Vorsitzender/Πρόεδρος/Chairman/Präsident/Presidente/Voorzitter/Presidente/Puhemies/Ordförande  
(VP) =Næstform./Stellv. Vorsitz./ Αντιπρόεδρος/Vice-Chairman/Vice-Präsident/Vicepresidente/Varapuhemies  
Ondervoorz./Vice-Pres./Vicepres/Vice ordförande.

Til stede den/Anwesend am/Παρόντες την/ Present on/Prisent le/Presente il/Aanwezig op/Presente em/Presente el/Lasna/Närvarande den.

- (1) 26.01.2000
- (2)
- (3)

Efter indbydelse fra formanden/Auf Einladung d. Vorsitzenden/באמצעות הזמנת היו"ר/At the invitation of the Chairman/Por invitación del presidente/Sur l'invitation du président/Su invito del presidente/Op uitnodiging van de voorzitter/A convite do presidente/Puhemieshen kutsusta/På ordförandens inbjudan:

Radet/Rat/מועצה/Conseil/Consejo/Conseil/Consiglio/Raad/Conselho/Neuvosto/R.:det: (\*)

Kommissionen/Kommission/מועצה/Commission/Comisión/Commissione/Commissie/Comissão/Komissio/Kommissionen: (\*)

Cour des comptes:

C.E.S.: Kowalsky

C.D.R.:

|                                                                                                                                                                                                                                                                                                               |                                                               |                                                                                                                   |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------|
| Andre deltagere/Andere Teilnehmer<br>אנשי המועצה הנוכחית/Also present<br>Otros participantes/Autres participants/Altri partecipanti<br>Andere aanwezigen/Outros participantes                                                                                                                                 |                                                               |                                                                                                                   |
| Gruppernes sekretariat<br>Sekretariat der Fraktionen<br>מועצות המועצות<br>Secretariat political groups<br>Secr. de los grupos politicos<br>Secr. groupes politiques<br>Segr. dei gruppi politici<br>Secr. van de fracties<br>Secr. dos grupos politicos<br>Puolueryhmien sihteeristö<br>Gruppemas sekretariat | PPE<br>PSE<br>ELDR<br>Verts/ALE<br>GUE/NG<br>UEN<br>EDD<br>NI | Salafranca, Scarascia-Mugnozza<br>Henriques<br><br>Prossliner                                                     |
| Cab. du Président                                                                                                                                                                                                                                                                                             |                                                               |                                                                                                                   |
| Cab. du Secrétaire Général                                                                                                                                                                                                                                                                                    |                                                               |                                                                                                                   |
| Generaldirektorat<br>Generaldirektion<br>מועצה הכללית<br>Directorate-General<br>Dirección general<br>Direction générale<br>Direzione generale<br>Directoraat-generaal<br>Direcção general<br>Generaldirektorat<br>Pääosasto<br>Contrôle financier<br>Service juridique<br>Suivi des actes                     | I<br>II<br>III<br>IV<br>V<br>VI<br>VI                         | Brulant, Gomez Martos, Dastoli, Nickel<br>Duch Guillot<br><br>Garzón Clariana (Jurisconsulte), Passos<br>Delahaye |
| Udvalgssekretariatet<br>Ausschubsekretariat<br>מועצות המועצה<br>Committee secretariat<br>Secretaria de la comisión<br>Secrétariat de la commission<br>Segretariato della commissione<br>Commissiesecretariaat<br>Secretaria de comissão<br>Valiokunnan sihteeristö<br>Utskottssekretariatet                   |                                                               | Giraud, Réchard                                                                                                   |
| Assist./מועצה                                                                                                                                                                                                                                                                                                 |                                                               | J. Schmidt                                                                                                        |

\* (P) =Formand/Pres./יו"ר/Chairman/Präsident/Voorzitter/Puhemies/Ordförande  
 (VP) =Næstform./Vize-Pres./בכיר/מועצה/Vice-Chairman/Vice-Präsident/Ondervoorz./Vice-pres/Varapuhemies/Vice ordförande.  
 (M) =Medlem./Mitglied/חבר/מועצה/Member/Miembro/Membre/Membro/Lid/Membro/Visen/Ledamot  
 (F) =Tjenestemand/Beamter/מועצה/Official/Funcionario/Fonctionnaire/Funzionario/Ambtenaar/Virkamies/Tjänsteman

DE/OJ/05  
3.2.2000

**EUROPEAN PARLIAMENT DELEGATION  
TO THE BODY RESPONSIBLE FOR DRAFTING  
THE EUROPEAN UNION'S CHARTER OF  
FUNDAMENTAL RIGHTS**

**5<sup>th</sup> Meeting**

**15 February 2000  
from 9.30 a.m. to 10.30 a.m.  
Room SDM-S7  
STRASBOURG**

**Draft agenda**

- 1. Adoption of draft agenda (PE 288.130)**
- 2. Approval of minutes of meeting of 26 January 2000 (PE 288.134)**
- 3. Further deliberations in the light of the discussions at the meeting of the body (1 and 2 February 2000)**
- 4. Date and place of next meeting**

# EUROPEAN PARLIAMENT

PE/ XV/PV/2000-03

## EUROPEAN PARLIAMENT DELEGATION TO THE CONVENTION RESPONSIBLE FOR DRAFTING A EUROPEAN UNION CHARTER OF FUNDAMENTAL RIGHTS

### MINUTES

of the meeting of

Monday, 15 February 2000

### STRASBOURG

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| 1. Adoption of draft agenda .....                                                                                                 | 2           |
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| 3. Exchange of views on future work in the light of the discussions at the<br>Convention's meeting of 1 and 2 February 2000 ..... | 2           |
| 4. Date and place of next meeting .....                                                                                           | 2           |

Annex: Record of attendance

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2 March 2000

PV\407236EN.doc

PE 288.590

The meeting opened at 9.40 a.m. with Mr Méndez de Vigo in the chair.

1. First of all, the chairman answered a question from Mr Mombaur about the availability of documents. The draft agenda was then adopted.
2. The minutes of the delegation meeting of 26 January 2000 were approved, no remarks having been made by the end of the meeting.
3. The chairman first of all reminded the members of the delegation who were not also members of the Constitutional Affairs Committee that the deadline for tabling amendments to the draft report by Mr Duff and Mr Voggenhuber on the drafting of a European Union Charter of Fundamental Rights was noon on the following day, 16 February 2000.

The chairman then introduced the exchange of views by reminding those present of the decisions taken at the convention's last plenary meeting concerning its working methods.

The following spoke: Voggenhuber, Schulz, Frahm, Cedershiöld, Paciotti, Friedrich, Kaufmann, Cornillet, Mombaur, Lalumière and Duff.

Mr Méndez de Vigo concluded the exchange of views.

4. No date was set for the next meeting. This would be decided on in accordance with the date of availability in all languages of the convention's working documents.

\* \* \*

The meeting closed at 11 a.m.

BILAG/ANLAGE/ΠΑΡΑΡΤΗΤΑ/ANNEX/

ANNEXE/ALLEGATO/BILAGE/ANEXO/BILAGA

**DELTAGERLISTE/ANWESENHEITSLISTE/ΚΑΤΑΣΤΑΣΗ ΠΑΡΟΥΣΙΑΣ/LIITE RECORD  
OF ATTENDANCE/LISTA DE ASISTENCIA/LISTE DE PRESENCE/ELENCO DEI  
PRESENTI/PRESENTIELIJST/LISTA DE PRESENÇAS/LÄSNÄOLOLISTA/DELTAGARLISTA**

|            |                                                                                                                                                               |
|------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Til stede  | Formandskabet/Vorstand/Πρόεδρος/Bureau/Ufficio di Presidenza/Mesa/Puhemieshisto/J.L. Presidium: (*)<br>Méndez de Vigo (P)                                     |
| Anwesend   | Medlemmer/Mitglieder/Μέλη/Members/Diputados/Diputus/Deputati/Leden/Deputados/Íðósenet/<br>Ledamöter:                                                          |
| Πρόεδροι   | Berthu, Cederschiöld, Cornillet, Duff, Friedrich, Kaufmann, H.-P. Martin, Paciotti, Schulz, Voggenhuber                                                       |
| Πρόεδροι   | Stedfortrædere/Stellvertreter/ Αντιπρόεδμοι/Substitutes/Suplentes/Suppliants/<br>Membri supplenti/Plaatsvervangers/Membros suplentes/Varajäsenet/Suppleanter: |
| Present    | Buitenweg, Buttiglione, Dehousse, Frahm, Iivari, Lalumiere, Mombaur, Watson                                                                                   |
| Presentes  |                                                                                                                                                               |
| Présents   |                                                                                                                                                               |
| Presenti   |                                                                                                                                                               |
| Aanwezig   |                                                                                                                                                               |
| Lasna      |                                                                                                                                                               |
| Närvarande |                                                                                                                                                               |

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| Art. 151,4                                                                                                                                                                                                                                 |  |
| Endv. deltog/Weitere Teiln./<br>Συμμετείχαν επίσης/Also present<br>Participaron igualmente/<br>Participaient également/<br>Hanno partecipato altresì/<br>Andere deelnemers/<br>Outros participantes/<br>Muut osallistujat/ Dessutom deltog |  |
| (Dagsorden/Tagesordnung Pkt/Προτάσεις Ημερήσιας<br>Συνόδου/Point OJ/Punto OG/Agenda Punt/Ordem do dia-<br>punto/punto orden del dia/<br>Esityslista Kohta/Föredragningslista punkt):                                                       |  |

\* (P) =Formand/Vorsitzender/Πρόεδρος/Chairman/Präsident/Presidente/Voorzitter/Presidente/Puhemies/Ordförande  
(VP) =Næstform./Stellv. Vorsitz./ Αντιπρόεδρος/Vice-Chairman/Vice-Präsident/Vicepresidente/Varapuhemies  
Ondervoorz./Vice-Pres./Vicepres/Vice ordförande.

Til stede den/Anwesend am/Παρουσίαση/Present on/Prisent le/Presente il/Aanwezig op/Presente em/Presente el/Läsna/Närvarande den.

- (1) 15.02.2000  
(2)  
(3)





Editors' note to PE 232.648,  
**Committee on Constitutional Affairs:**  
**Report on the drafting of a European Union Charter**  
**of Fundamental Rights:**

For the resulting resolution, see CHARTE 4199/00.

# EUROPEAN PARLIAMENT

1999



2004

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*Session document*

3 March 2000

FINAL  
A5-0064/2000

## REPORT

on the drafting of a European Union Charter of Fundamental Rights  
(C5-0058/1999 – 1999/2064(COS))

Committee on Constitutional Affairs

Rapporteurs: Andrew Duff and Johannes Voggenhuber

| <b><i>Symbols for procedures</i></b>                                                                                                                                                            | <b><i>Abbreviations for committees</i></b>                                                |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------|
| * Consultation procedure<br><i>majority of the votes cast</i>                                                                                                                                   | I. AFET Committee on Foreign Affairs, Human Rights,<br>Common Security and Defence Policy |
| **I Cooperation procedure (first reading)<br><i>majority of the votes cast</i>                                                                                                                  | II. BUDG Committee on Budgets                                                             |
| **II Cooperation procedure (second reading)<br><i>majority of the votes cast, to approve the<br/>common position</i>                                                                            | III. CONT Committee on Budgetary Control                                                  |
| <i>majority of Parliament's component Members,<br/>to reject or amend the common position</i>                                                                                                   | IV. LIBE Committee on Citizens' Freedoms and Rights,<br>Justice and Home Affairs          |
| *** Assent procedure<br><i>majority of Parliament's component Members<br/>except in cases covered by Articles 105, 107,<br/>161 and 300 of the EC Treaty and Article 7 of<br/>the EU Treaty</i> | V. ECON Committee on Economic and Monetary Affairs                                        |
| ***I Codecision procedure (first reading)<br><i>majority of the votes cast</i>                                                                                                                  | VI. JURI Committee on Legal Affairs and the Internal<br>Market                            |
| ***II Codecision procedure (second reading)<br><i>majority of the votes cast, to approve the<br/>common position</i>                                                                            | VII. INDU Committee on Industry, External Trade,<br>Research and Energy                   |
| <i>majority of Parliament's component Members,<br/>to reject or amend the common position</i>                                                                                                   | VIII. EMPL Committee on Employment and Social Affairs                                     |
| ***III Codecision procedure (third reading)<br><i>majority of the votes cast, to approve the joint<br/>text</i>                                                                                 | IX. ENVI Committee on the Environment, Public Health<br>and Consumer Policy               |
| (The type of procedure depends on the legal basis<br>proposed by the Commission)                                                                                                                | X. AGRI Committee on Agriculture and Rural<br>Development                                 |
|                                                                                                                                                                                                 | XI. PECH Committee on Fisheries                                                           |
|                                                                                                                                                                                                 | XII. REGI Committee on Regional Policy, Transport and<br>Tourism                          |
|                                                                                                                                                                                                 | XIII. CULT Committee on Culture, Youth, Education, the<br>Media and Sport                 |
|                                                                                                                                                                                                 | XIV. DEVE Committee on Development and Cooperation                                        |
|                                                                                                                                                                                                 | XV. AFCO Committee on Constitutional Affairs                                              |
|                                                                                                                                                                                                 | XVI. FEMM Committee on Women's Rights and Equal<br>Opportunities                          |
|                                                                                                                                                                                                 | XVII. PETI Committee on Petitions                                                         |

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At the sitting of 13 September 1999 the President of Parliament announced that she had referred the Council decision on the drafting of a European Union Charter of Fundamental Rights to the Committee on Constitutional Affairs as the committee responsible and to the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy, the Committee on Legal Affairs and the Internal Market and the Committee on Employment and Social Affairs for their opinions.

At the sitting of 1 March 2000 the President announced that she had also referred this decision to the Committee on Women's Rights and Equal Opportunities and the Committee on Petitions for their opinions.

The Committee on Constitutional Affairs appointed Mr Duff and Mr Voggenhuber rapporteurs at its meeting of 22 September 1999.

It considered the draft report at its meetings of 23 September 1999, 14 October 1999, 8 November 1999, 22 November 1999, 29 November 1999, 10 January 2000, 14 February 2000 and 29 February 2000.

At the last meeting it adopted the motion for a resolution by 18 votes to 2, with 4 abstentions.

The following were present for the vote: Giorgio Napolitano, chairman; Johannes Voggenhuber, vice-chairman and co-rapporteur; Ursula Schleicher, Christopher J.P. Beazley, vice-chairmen; Andrew Nicholas Duff, co-rapporteur; Teresa Almeida Garrett, Pervenche Berès (for Dimitrios Tsatsos), Georges Berthu, Carlos Carnero González, Richard Graham Corbett, José María Gil-Robles Gil-Delgado, Michel Hansenne (for Ciriaco De Mita), Sylvia-Yvonne Kaufmann, Jo Leinen, Hanja Maij-Weggen, Inigo Méndez de Vigo, Gérard Onesta (for Monica Frassoni), Jacques F. Poos (for Hans-Peter Martin), Reinhard Rack (for Francois Bayrou), Lennart Sacrédeus, Konrad K. Schwaiger (for Giorgos Dimitrakopoulos), The Earl of Stockton, Rijk van Dam (for Jens-Peter Bonde) and Margrietus J. van den Berg (for Enrique Barón Crespo).

The opinions of the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy, the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, the Committee on Legal Affairs and the Internal Market, the Committee on Women's Rights and Equal Opportunities, the Committee on Petitions and the Committee on Employment and Social Affairs are attached.

The report was tabled on 3 March 2000.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

**A**  
**MOTION FOR A RESOLUTION**

**European Parliament resolution on the drafting of a European Union Charter of Fundamental Rights (C5-0058/1999 – 1999/2064 (COS))**

The European Parliament,

- having regard to the decision of the European Council on the drafting of a European Union Charter of Fundamental Rights (C5-0058/1999),
- having regard to its position as representative of the peoples of the European Union,
- considering that the Union should strengthen the protection of the rights and interests of the nationals of its Member States through the introduction of a citizenship of the Union (Article 2 of the EU Treaty),
- having regard to the fact that the Union must respect fundamental rights 'as they result from the constitutional traditions common to the Member States, as general principles of Community law' (Article 6 of the EU Treaty),
- having regard to the Preamble of the *United Nations Charter* and the '*Universal Declaration on Human Rights*' adopted by the UN General Assembly in its resolution 217 A (III), on 10 December 1948 in Paris,
- having regard to its numerous initiatives in the matter of fundamental and citizens' rights, in particular to its Declaration of Fundamental Rights and Freedoms of 12 April 1989<sup>1</sup>,
- having regard to its initiatives in the matter of a constitution for the European Union, in particular its resolution of 12 December 1990 on the constitutional basis of European Union<sup>2</sup> and its resolution of 10 February 1994 on the Constitution of the European Union<sup>3</sup>,
- having regard to the conclusions of the Cologne European Council and the conclusions of the Tampere European Council,
- having regard to its resolution of 16 September 1999 on the drawing up of a Charter of Fundamental Rights<sup>4</sup>,
- having regard to its resolution of 27 October 1999 on the European Council meeting in Tampere<sup>5</sup>,

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<sup>1</sup> OJ C 120, 16.5.1989, p. 51.

<sup>2</sup> OJ C 19, 28.1.1991, p. 65.

<sup>3</sup> OJ C 61, 28.2.1994, p. 155.

<sup>4</sup> OJ C 54, 25.2.2000, p.93

<sup>5</sup> Minutes of the sitting of 27 October 1999, point 15

- having regard to the outstanding importance of the forthcoming enlargement of the Union and the Intergovernmental Conference,
  - having regard to the setting-up on 17 December 1999 in Brussels of the Convention to draft a European Union Charter of Fundamental Rights,
  - having regard to Rule 47(1) of its Rules of Procedure,
  - having regard to the report of the Committee on Constitutional Affairs and the opinions of the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy, the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, the Committee on Legal Affairs and the Internal Market, the Committee on Women's Rights and Equal Opportunities, the Committee on Petitions and the Committee on Employment and Social Affairs (A5-0064/2000),
- A. whereas the Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law (Article 6 of the EU Treaty),
- B. whereas the creation of an ever closer Union among the peoples of Europe (Article 1 of the EU Treaty) and the maintenance and development of the Union as an area of freedom, security and justice (Article 2 of the EU Treaty) are based on general and absolute respect for human dignity, which is unique to each person, yet common to all, and inviolable,
- C. whereas the Union must respect 'fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law' (Article 6 of the EU Treaty),
- D. whereas some specific rights are already enshrined in the Treaties,
- E. whereas the fundamental freedoms, rights and obligations unavoidably stemming from the recognition of human dignity require genuine, comprehensive legal protection and effective legal guarantees,
- F. whereas the primacy of Union law and significant powers of its institutions, which affect individuals make it necessary to strengthen the protection of fundamental rights at European Union level,
- G. whereas the increase in the powers of the Union and the European Community, especially in the sensitive field of internal security, together with the limits on parliamentary or judicial controls in that field, make it obvious that there is an urgent need for a European Charter of Fundamental Rights,
- H. whereas as the Union develops an imbalance must not be created between the objective of security and the principles of freedom and law,
- I. whereas fundamental freedoms can be restricted without parliamentary approval, both in the framework of the Union Treaty and of Community law, despite the fact that this is incompatible with the common constitutional traditions of Member States,

- J. whereas, even in the case of legitimate restrictions of fundamental rights, the inherent nature of such rights may in no case be infringed,
- K. whereas fundamental social freedoms ought to be strengthened and developed at European Union level,
- L. whereas the Union's common foreign and security policy, which will in future include defence, must be developed in compliance with fundamental rights,
- M. whereas new conflicts with fundamental freedoms can arise from developments in, for example, biotechnology or information technology, which can better be dealt with by means of a European consensus on fundamental rights,
- N. whereas there are serious indications of a rise in racism and xenophobia,
- O. whereas the human right to asylum must be maintained according to the provisions of the Amsterdam Treaty,
- P. whereas a European Union Charter of Fundamental Rights, in the same way as the existing provisions concerning fundamental rights in the Member States, should not in any way conflict with the European Convention on Human Rights,
- Q. whereas the Union's accession to the European Convention on Human Rights following the necessary amendments to the EU Treaty would represent an important step towards the strengthening of the protection of fundamental rights in the Union,
- R. whereas the creation of an ever closer union among the peoples of Europe is inseparably linked with the task of increasing, in addition to fundamental rights, citizens' rights, namely the political, economic and social rights associated with Union citizenship,
- S. whereas a charter of fundamental rights constituting merely a non-binding declaration and, in addition, doing no more than merely listing existing rights, would disappoint citizens' legitimate expectations,
- T. whereas the Charter of Fundamental Rights should be regarded as a basic component of the necessary process of equipping the European Union with a constitution,
1. Welcomes the drafting of a European Union Charter of Fundamental Rights, which will contribute to defining a collective patrimony of values and principles and a shared system of fundamental rights which bind citizens together and underpin the Union's internal policies and its policies involving third countries; welcomes therefore the progress made in this connection since the European Council meeting in Tampere, in particular the successful establishment of the joint Convention composed of representatives of the Heads of State and Government, the European Parliament, the parliaments of the Member States and the Commission;
  2. Offers its full support and cooperation in drafting the Charter of Fundamental Rights of the European Union;



3. Notes that the recognition and shaping of fundamental and citizens' rights is one of the primary tasks of parliaments;
4. Calls on its delegation to the Convention drafting the charter vigorously to defend the position set out in this resolution;
5. Intends to vote in plenary on the adoption of the Charter at the appropriate time and deems it advisable to publish in advance its objectives regarding the Charter of Fundamental Rights as set out hereunder;
6. Points out that its final assent to a Charter of Fundamental Rights depends to a large extent upon whether the charter:
  - a. has fully binding legal status by being incorporated into the EU Treaty;
  - b. subjects any amendment of the Charter to the same procedure as its original drafting, including the formal right of assent for the European Parliament;
  - c. contains a clause, requiring the consent of the European Parliament whenever fundamental rights are to be affected;
  - d. contains a clause stipulating that none of its provisions may be interpreted in a restrictive manner with regard to the protection guaranteed by Article 6(2) of the Treaty on European Union;
  - e. recognises that fundamental rights are indivisible by making the charter applicable to all the European Union's institutions and bodies and all its policies, including those contained in the second and third pillars in the context of the powers and functions conferred upon it by the Treaties;
  - f. is binding upon the Member States when applying or transposing provisions of Community law;
  - g. is innovative in nature by also giving legal protection to the peoples of the European Union in respect of new threats to fundamental rights, for example from the fields of information technology and biotechnologies, and establishes new agreements on fundamental rights, in relation for example to equal treatment for women, the general non-discrimination clause and environmental protection;
7. Resolves to hold a scientific colloquium to advise Parliament and to carry out public hearings of representatives of society in general;
8. Will strongly support initiatives for a broad societal discussion in the Member States, involving social partners, NGOs and other representatives of civil society.
9. Calls for recognition of the contribution that can be made by organisations representing civil society to the drafting of the Charter;

10. Proposes to grant the States applying for accession observer status in the Convention drafting the Charter and to begin a continuous exchange of opinions with them in the context of the European Conference;
11. Emphasises that the charter should not replace or encroach upon the Member States' provisions concerning fundamental rights;
12. Supports the agreement reached by the Convention that the charter should be drafted on the presumption that it will have full legal force;
13. Emphasises the need to incorporate in the charter, in addition to the rights already enshrined in the EU Treaty, the standards applicable to the Union that are set out in the international conventions signed by the Member States within the context of the United Nations, the Council of Europe, the International Labour Organisation and the Organisation for Security and Cooperation in Europe;
14. Calls upon the IGC to:
  - (a) put the incorporation into the Treaty of the Charter of Fundamental Rights on its agenda and to give it at that conference the position which it deserves in view of its paramount importance for an ever closer union among the peoples of Europe;
  - (b) enable the Union to become a party to the ECHR so as to establish close cooperation with the Council of Europe and to avoid possible conflicts or overlapping between the Court of Justice of the European Communities and the European Court of Human Rights;
  - (c) give all persons under its protection access to the Court of Justice of the European Communities by supplementing existing mechanisms for judicial review;
16. Calls on its President to forward this resolution to the Commission, the Council, the Court of Justice, the European Court of Human Rights, the IGC, the Convention responsible for drafting the European Union Charter of Fundamental Rights and the parliaments of the Member States..

## EXPLANATORY STATEMENT

### *Purposes of the Union*

1. The European Union is ‘founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law’ (Article 6(1) TEU). It aims to promote universal respect and observance of human rights and fundamental freedoms as proclaimed by the General Assembly of the United Nations in 1948. **By entrenching the duty to solidarity, the Union has enshrined the right of its citizens to peace.** One of the Union’s main political and economic objectives is to enable the free movement of people between its Member States. Discrimination on the grounds of nationality is prohibited (Article 12 TEC), and the Union ‘may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation’ (Article 13 TEC).

### *Shortcomings in present rights regimes*

2. However, **the current situation is unsatisfactory in at least three respects.** First, the rights regime of the European Union is inconsistent in terms of content as well as variable in terms of implementation and levels of enforcement between Member States. For example, although one feature common to all Member States is the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) of 1950, not all its subsequent protocols have been signed or ratified by all Member States. The variation in the field of social policy conventions of the Council of Europe and the International Labour Organisation is yet more marked.

3. Second, although the European Union ‘shall respect fundamental rights, as guaranteed by the ECHR and as they result from the constitutional traditions common to the Member States, as general principles of Community law’ (Article 6(2) TEU), it is in an anomalous situation with respect to its Member States because it is not itself a signatory of the Convention. Arguments about Union competence, however, should not be allowed to get in the way of action to prevent the further deterioration of human rights in Europe. The European Union needs a human rights policy to combat racism and xenophobia, to improve the treatment of refugees, and to eliminate vicarious discrimination.

4. Third, the steady but complex development of European integration over fifty years has left the relationship between the citizen and the European Union authorities somewhat lacking in clarity and precision. Behind the question of citizens’ rights lies the problem of democratic legitimacy. The European Parliament believes that a consolidation of the one will enhance the other.

### *European Union citizenship*

5. Within the Treaties of the European Union that bind the Union institutions and Member States together, and in the jurisprudence of the European Court of Justice (ECJ), the recognition of the need to define and ensure observance of fundamental rights for the citizen of the European Union has developed gradually. The Treaty of Amsterdam even goes so far as to allow membership of the Union to be suspended in the case of a ‘serious and persistent breach’ of human rights (Article 7 TEU).

6. The Treaty of Maastricht established citizenship of the Union, which it defined as having the

nationality of a member state. ‘Citizenship of the Union shall complement and not replace national citizenship’ (Article 17(1) TEC); but Article 18 opens up the prospect of further enhancement of the concept of EU citizenship in order to facilitate freedom of movement. This underscores the importance of the principle of subsidiarity in developing EU citizenship.

### *Subsidiarity*

7. The application of the principle of subsidiarity to the EU Charter implies non-interference in the relationship between national citizens and their own state authorities in matters that do not concern the implementation of EU law and policy. However, in the European Union such rigid distinctions are difficult to draw. Powers and responsibilities are more often shared between the EU level and member state governments than they are delegated exclusively to the EU institutions. There is no right of general competence for the EU, and all efforts to establish a definitive catalogue of competences in the classical federal sense are likely to be in vain.

8. The fact is that the federalist principle of subsidiarity does not sit easily alongside the concept of fundamental rights. Whereas, on the one hand, it is legitimate for the drafters of the Charter to take cognisance of subsidiarity, it is also legitimate to argue that subsidiarity should take its place only as one of several general principles that guide the Union. **Subsidiarity should not be regarded as an overriding constraint on the central powers of the Union; nor should it be elevated beyond its station to become an impediment to the fundamental nature of a European Union rights regime.**

### *The Charter as means of reform*

9. Indeed, the fundamental nature of the rights enshrined in the Charter is destined to become another driving force behind the European Union. To some extent, the introduction of binding rights alters the paradigm of European integration. The Charter is a dynamic project, which will redefine where power lies. The Charter will have consequences for the share out of competency within the Union. The Charter is a means towards the further political reform of the Union.

10. The Union has still not absorbed all the changes wrought by the last Treaty revision at Amsterdam, in particular the advances being made towards creating an area of freedom, security and justice. But the prospect of imminent further enlargement as well as the failure of Amsterdam to solve all the outstanding constitutional problems of the Union has made a new Intergovernmental Conference (IGC) both inevitable and desirable. The European Parliament confirms its belief that it is in the interests of all its present and future citizens that **the Union should now collect, review, distil and then write down in simple and elegant language a set of European fundamental rights in the form of a Charter.**

11. The June 1999 decision of the European Council at Cologne, which the Parliament welcomes, to draft a **Charter of Fundamental Rights should not be seen as an attempt to subvert the existing constitutional order of Member States, but, rather, to strengthen the identity of the European Union.** The Charter will contribute to the definition of the collective patrimony of values and rights which bind Europeans together and underpin all the Union’s policies.

12. The prospect of imminent enlargement of the Union to countries whose democratic history is shorter than that of the current Member States accentuates the need to **sharpen the profile of the Union in terms of democracy, social justice, ecology and human rights.** The Charter will do

that, even if it effectively raises the eventual threshold of membership. It is part of the process of preparing the Union for enlargement.

#### *Mandatory effect*

13. The European Union is not a state but a powerful union of states exercising authority over people whose rights deserve credible and comprehensive protection. For this reason, the Parliament insists that **the Charter should be included eventually within the Treaty on European Union so that it should have legal effect upon the institutions and agencies of the European Union**. There are various ways in which incorporation in the Treaty could be achieved, and each would have a different legal effect. The Parliament will wish to return to this issue as the Convention and the IGC begin to make headway in their work.

14. But we can see no real benefit in a Charter of Rights which merely proclaims an existing set of rights. Indeed, we fear that the public may be rather cynical about the publication of yet another piece of Euro-rhetoric, however stylish and well-meaning.

15. A non-binding Charter would also have no relevance at all for third countries in informing their relations with the Union.

16. Furthermore, **a Charter that was a non-binding declaration would fail to resolve one of the existing serious contradictions in the constitutional development of the European Union**. The Union would be laying claim to the existence of fundamental rights at Union level, yet in striking breach of the constitutional traditions of Member States that it is pledged to uphold, it would not be installing a concomitant legal remedy. Due process of judicial review and the capacity to seek redress is an integral part of the rights regimes of Member States. Do we really want the Union to be less than the sum of its parts in respect of citizens' rights?

17. That is why we propose that, notwithstanding a final decision about the legal character of the Charter, **the Convention should proceed on the presumption that it will have a mandatory character**.

18. The Parliament is also anxious to ensure **the closest possible collaboration between the work of the Convention and the IGC**. A mandatory Charter will require several adjustments to be made to the Treaty as well as other, sub-Treaty, reforms.

#### *Respect for the acquis*

19. **The European Union Charter must not reduce the rights of any existing citizen. Nor should it undermine the ECHR**. On the contrary, it should expressly safeguard the existing human rights acquis of each member state, after the manner of Article 53 of the ECHR, while not undermining the important general principle of European Community law concerning uniformity of application. The Charter must maximise legal certainty in all cases.

#### *Community or Union?*

20. With regard to the question of the demarcation between the European Community and the European Union, the European Council has proposed a Charter of the *Union*. As referred to above, citizenship of the *Union* is established under the provisions of the Treaty establishing the European *Community*, and it is only the European Community at present that enjoys legal

personality in international law.

21. As the Treaty of Amsterdam is brought into effect, and as the international profile of the Union continues to grow, **the distinction between the three pillars of Maastricht becomes increasingly academic**. Convergence between the three would be the natural consequence of a more comprehensive and coordinated approach to integration by all concerned. The distinction of the pillars is not, at any rate, appreciated by the citizen, for whom, no doubt, a single Charter of Rights covering the whole spectrum of EU activity would make sense. This is also true for foreign companies operating inside the EU, for whom the Charter may have some profound implications.

22. Moreover, **many of the most sensitive questions concerning fundamental rights lie in the second and third pillars**. The effective incarnation of a common foreign and security policy poses new challenges for the Union in the field of ethics, in the behaviour of EU representatives abroad, and in the treatment of foreign nationals. Progress towards common asylum and immigration policies promotes new categories of legitimate minorities within the Union. And developments in cooperation between member state police and judicial authorities, such as the creation of Europol and the incorporation of the Schengen Agreement within the Treaty on European Union, have a potentially dramatic impact on the relationship between the EU institutions and its agencies on the one hand and the citizen on the other. We are also mindful of the likelihood that the IGC will further extend the competence of the Union to cover defence policy.

23. The European Parliament believes that all fundamental rights are interdependent, and that it would be crazy to connive in allowing two competing legal systems to develop for the protection of fundamental rights according to whether the measures at issue were covered by the EEC Treaty (crossing external borders, asylum, immigration, legal cooperation in civil matters) or by the Treaty on European Union (criminal matters). Therefore, **notwithstanding the different mix of competences between Member States and institutions according to policy area and legal base, we are reinforced in our view that the Charter must embrace the whole work of the Union**. This implies that the Union itself must obtain legal personality.

#### *Relationship with the Council of Europe*

24. It is clear that the European Convention is to be the foundation document of the Charter. The accession of the European Community to the Convention has been under discussion for many years. The launching of the project of the Charter adds new urgency to that debate. In order to guarantee scrupulous respect of the ECHR and to overcome the current anomalous position of the EU institutions, the European Parliament believes that **the Union itself should sign up to and ratify the ECHR and all its protocols. As the Court of Justice has proposed (Opinion 2/94), this requires Treaty amendment in order to obtain full legal personality for the European Union**.

25. The Union should not seek to become a 'Member State' of the Council of Europe but, merely, a 'High Contracting Party' to the ECHR. In this way problems of dual representation and the participation of the Union in the political organs of the Council could be avoided.

26. There are, however, legitimate fears that for the Union to become a High Contracting Party of the ECHR would threaten conflict and duplication between the European Court of Justice in Luxembourg and the European Court of Human Rights in Strasbourg. However, under Article 32.2 of the ECHR in the event of any dispute as to whether the Strasbourg Court has jurisdiction, it is that Court that shall decide. Article 55 (ECHR) precludes other means of dispute settlement except by special agreement. Such an arrangement would be required to square the obligations of signing the ECHR with Article 292 of the Treaty establishing the European Community, in which Member States undertake not to submit a dispute concerning the interpretation or application of the Treaty to any third party method of settlement. A special protocol could be arranged to manage the transverse relationship between the Court of Justice and their colleagues down the road in the Court of Human Rights.

27. The Treaty of Amsterdam has already granted the ECJ competence over human rights issues (Article 46 TEU). **The Luxembourg Court would certainly be capable of developing its own jurisprudence in human rights issues, as national courts have done, while recognising the supremacy of Strasbourg in the last resort.** The risk of duplication with Strasbourg can be minimised by respecting Article 35.2(b) of the ECHR, which states that the Strasbourg Court will decline the admissibility of applications that have ‘already been submitted to another procedure of international investigation or settlement and contains no relevant new information’.

28. The role of the Council of Europe’s Court of Human Rights is to hear cases that concern breaches of the ECHR. The role of the EU’s Court of Justice is to hear cases that concern breaches of the EU Treaties. Both Courts are supreme in their own field of application. To date, both Courts have shown mutual respect for the other’s jurisdiction, and they can be expected to continue to use common sense in this regard. The ECJ will be able to accept the supremacy of Strasbourg in the human rights field in just the same way as it has accepted the arbitration of the WTO in trade disputes.

29. **The ECHR, while universal in its application to individuals, is likely to remain more restricted in substantive terms than that of the EU Charter.** Not only will the latter bear upon special categories of rights for EU citizens and resident foreigners, but it is also likely to be more egalitarian and progressive in its formulation of certain rights in civic, social, environmental and other fields. In that the ties that bind Member States of the European Union are much tighter than those that commit Member States of the Council of Europe, the EU Charter is bound to have a wider scope than that of the ECHR. For example, whereas Protocol No. 4 of the ECHR lays down the right to move freely *within* and to leave its signatory states, the EU Charter will seek to give effect to the right to freedom of movement and residence *between* its Member States.<sup>6</sup>

#### *Reform of the Court of Justice*

30. That the ECJ will become competent in human rights issues offers the prospect of speedier and cheaper form of judgments than that which is possible under current procedures at the European Court of Human Rights. **If the Charter is to be justiciable by the Court of Justice, Article 230 TEC will need to be given a more flexible interpretation in order to improve the individual access of the EU citizen.** It may even need Treaty amendment to reclassify the EU citizen as a privileged litigant: Article 34 ECHR concerning individual applications may be a

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<sup>6</sup> Another example: whereas the EU Charter is likely to insist on a general prohibition of discrimination on the grounds of gender, Article 14 ECHR only pertains to sex discrimination in relation to the other rights of the Convention.

model. In any case, changes to the working methods of the Court and an increase in its resources will be necessary to ensure the smooth and speedy administration of justice in more case-work over a wider field.

### *Field of application*

31. In the Roman tradition, **rights exist only by virtue of law**. Rights can be permissive (by granting liberties), immunity (by offering protection), prohibitive (by imposing duties and impediments) or procedural (by regulating the legal system). The Charter will need to establish coherence and interdependence between these all these types of rights, and consistency between the internal and external stance of the Union.

32. The Parliament wants the Charter to be ambitious, and to write down in Treaty form modern fundamental civil and social rights as well as to reiterate rights well established elsewhere. This does not mean that the Union would be thereby granting itself new competences directly by virtue of the Charter. EU competences, after all, can only be extended by precise Treaty provision (constrained by the twin principles of subsidiarity and proportionality). **The main purpose of the Charter is to establish for the sake of the citizen that the Union fully respects and guarantees modern standards of fundamental rights in those areas where it is competent to do so. Its purpose is not to compensate for legislative shortcomings in all and sundry policy areas.** But the Charter can point the way towards future changes in the dispersal of competency between the supranational and national authorities.

33. To whom, then, is the Charter to be addressed? Broadly speaking, bearers of rights are either individuals or groups. They will enjoy one or more of three broad categories of rights, as follows:

- **human rights** as enshrined in international law claiming universal application;
- **fundamental rights** applicable to all those within the judicial area of the European Union;
- **civil rights** applying only to citizens of the European Union.

### *Human rights content*

34. **Once the Union has ascribed to the European Convention, the Charter should reaffirm the fundamental human rights contained therein**, along with the prescribed procedures. The principal conditions of the ECHR are as follows:<sup>7</sup>

Right to life  
 Abolition of the death penalty  
 Prohibition of torture  
 Prohibition of slavery and forced labour  
 Right to liberty and security  
 Prohibition of discrimination  
 Right to a fair trial  
 No punishment without law  
 Right to an effective remedy  
 Right of appeal in criminal matters  
 Compensation for wrongful conviction

<sup>7</sup> The headings listed were added to the original Convention and subsequent Protocols by the provisions of Protocol No. 11 of 1994.



Right not to be tried or punished twice  
 Prohibition of imprisonment for debt  
 Right to respect for private and family life  
 Protection of property  
 Freedom of thought, conscience and religion  
 Freedom of expression  
 Freedom of assembly and association  
 Right to marry  
 Equality between spouses  
 Right to education  
 Right to free elections  
 Freedom of movement  
 Prohibition of expulsion of nationals  
 Prohibition of collective expulsion of aliens  
 Procedural safeguards relating to expulsion of aliens

Obligation to respect human rights  
 Derogation in time of emergency  
 Restrictions on political activity of aliens  
 Prohibition of abuse of rights  
 Limitation on use of restrictions on rights  
 Safeguard for existing human rights

### *Social rights content*

35. In June 1999 the European Council at Cologne already proposed that in addition to containing the ‘fundamental rights and freedoms as well as basic procedural rights guaranteed by the ECHR and derived from the constitutional traditions common to the Member States’, the EU’s Charter should also include the ‘fundamental rights that pertain only to the Union’s citizens’. In addition, account should be taken of ‘economic and social rights as contained in the European Social Charter and the Community Charter of the Fundamental Social Rights of Workers (Article 136 TEC), insofar as they do not merely establish objectives for action by the Union’<sup>8</sup>.

36. Controversy over the application of the principle of subsidiarity is likely to be greatest in the social field. Many, for example, have argued for a complete integration of social and civic rights; some have argued for specific demands for social progress, such as good housing, to become a fundamental right. As the Treaty stands at present, however, such a ‘right’ would not be a matter for the European Union but for Member States. The Union is not yet competent in housing policy and cannot offer legal remedies to the homeless. The same would apply to the jobless, where the Union currently only has the power to encourage high levels of employment. The Union has no existing competence in pay, freedom of association or the right to strike.

37. The Parliament believes, nevertheless, that **the Charter should fully reflect the importance of the social dimension of the activities of the Union**, including the centrality of social cohesion to its economic policy orientations. The single market has implications for social policy that are not yet legislated for at the EU level. Special emphasis should be given to equality

<sup>8</sup> The Preamble of the Treaty on European Union (third recital) also confirms the Union’s ‘attachment’ to the 1961 Turin European Social Charter of the Council of Europe and the 1989 Community Charter.

between men and women, to the rights of the disabled and of children. The core texts on which to draw are Articles 13 and 136 TEC, the Council of Europe's European Social Charter of 1996 and the Community Charter of the Fundamental Social Rights of Workers adopted by eleven members of the European Council in Strasbourg in December 1989.

38. The Treaty recognises that sex equality is not restricted to employment policy. Article 3.2 TEC should form the basis of a fundamental individual civil right of a generalised prohibition against discrimination on the grounds of gender.

39. Similar general anti-discrimination clauses should be included to address the issues of race, belief, disability, age and sexual orientation.

#### *Other content*

40. Existing Union competences that may engender legitimate proposals for the inclusion of individual or collective rights in the Charter are as follows:

- i. the refinement, consolidation and development of European Union citizenship;
- ii. the treatment of third country nationals;
- iii. the position of regional and ethnic minorities;
- iv. the operation of the single market, including commercial policy;
- v. the operation of the common policies on money, agriculture, fisheries, transport and environment;
- vi. the operation of programmes to foster employment, economic and social cohesion, research and technological development, vocational training, consumer protection, public health protection and cultural activity;
- vii. overseas aid and development cooperation.

41. Relevant parts of the formal or informal *acquis communautaire* include the following:

- 1) Joint Declaration by the European Parliament, the Council and the Commission on Human Rights and Fundamental Freedoms, 1977
- 2) Joint Declaration by the European Parliament, the Council and the Commission against Racism and Xenophobia, 1979
- 3) European Parliament Declaration of fundamental rights and freedoms, 1989

The Parliament would wish to draw special attention to No. (3), the De Gucht Report.

42. Member States may wish to elevate some elements drawn from their common constitutional traditions into the Charter. Apart from those established within the ECHR, relevant international treaties (and their subsequent protocols) would include:

- 4) Universal Declaration of Human Rights, 1948
- 5) UN Convention on the Prevention and Punishment of the Crime of Genocide, 1948
- 6) UN Convention relating to the Status of Refugees, 1951
- 7) UN Convention relating to the Status of Stateless Persons, 1954
- 8) UN International Convention on the Elimination of All Forms of Racial Discrimination, 1965
- 9) UN International Covenant on Economics, Social and Cultural Rights, 1966
- 10) UN International Covenant on Civil and Political Rights, 1966
- 11) UN Convention on the Elimination of all Forms of Discrimination against Women, 1979

- 12) UN Convention against Torture and Other Cruel, Inhuman Degrading Treatment or Punishment, 1984
- 13) UN Convention on the Rights of the Child, 1989
- 14) UN Basic principles for the Treatment of Prisoners, 1990
- 15) UN Statute of the International Criminal Court 1998
- 16) Council of Europe European Convention on the legal status of migrant workers, 1977
- 17) Council of Europe Convention for the protection of individuals with regard to automatic processing of personal data, 1981
- 18) Council of Europe Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 1987
- 19) Council of Europe European Charter for Regional and Minority Languages, 1992
- 20) Council of Europe Framework Convention for the Protection of National Minorities, 1995
- 21) Council of Europe European Convention on the exercise of children's rights, 1996
- 22) Council of Europe Additional protocol to the Convention for the protection of human rights and dignity of the human being with regard to the application of biology and medicine, on the prohibition of the cloning of human beings, 1998
- 23) UNESCO Universal Declaration on the Human Genome and Human Rights, 1997
- 24) ILO Convention concerning Freedom of Association and Protection of the Right to Organise, 1948
- 25) ILO Convention concerning the Application of the Principles of the Right to Organise and to Bargain Collectively, 1949
- 26) ILO Convention concerning Employment Promotion and Protection against Unemployment, 1988
- 27) ILO Declaration on Fundamental principles and Rights at Work, 1988
- 28) OSCE Charter of Paris for a New Europe, 1990

#### *Amendment and derogation*

43. Writing constitutions is usually easier than amending them afterwards. The IGC will need to adopt a provision to revise the Charter. The Parliament has welcomed the innovation of the Convention as a superior method of working to that of the IGC itself. We would support - but insist upon - a repeat of this exercise to supplement or limit the Charter in the future. Similarly, no act of the Commission or Council to derogate from the Charter will be admissible without the Parliament's agreement.

44. If the Convention were to draft a Charter along these lines it would be making a profound contribution towards the constitutionalisation of the European Union. Citizens, candidate countries and the world at large would have a clearer definition of the purpose of the European Union. The concept of a 'people's Europe' would be translated from rhetorical device into political reality.

### **Minority opinion**

#### **By Mr Georges Berthu (Union for Europe of the Nations Group)**

The only purported aim of the decision by the Cologne European Council which launched the process of drafting a European Union Charter of Fundamental Rights was to bring together the rights existing at European level in order to give them a higher profile. Unfortunately, this ill-prepared, ambiguous and - from some points of view – even inconsistent decision was bound to open the way for abuses. Indeed, perhaps that is what it was meant to do.

The Duff-Voggenhuber report is the first example. It wants to give the charter an innovative character by adding numerous new rights; it wants to give it independent European status, with the assent of the European Parliament (the Cologne European Council having already ‘forgotten’ the role of the national parliaments in the proclamation of the charter); lastly, it wants to give it binding force and make its application subject to the jurisdiction of the Court of Justice.

To accept this report would be to move towards the adoption of a detailed charter, binding on and common to the whole of Europe, imposing rigid rules on the different peoples defining their rights. In particular, each people could in future alter these rights only with the agreement of the other fourteen. This would be a stifling system, ill-suited to the nature and interests of Europe.

In a Europe of nations, however, each national democracy must retain control over the definition of the rights of its citizens, in accordance with its own culture and evolution. This Europe has no need of some kind of rigid legal coverall. It needs respect for its national democracies and for the identity of its peoples. It needs freedom and diversity.

That is why we are proposing on the one hand a joint declaration setting out the main values shared by the countries of Europe and, on the other, a charter laying down the rules which should govern relations between national democracies, to ensure that they respect each other. This is the thrust of the proposal submitted by Mr Georges Berthu to the body responsible for drafting the Charter of Fundamental Rights.

7 December 1999

## **OPINION**

(Rule 162)

for the Committee on Constitutional Affairs

on the drafting of a European Union Charter of Fundamental Rights (C5-0058/1999 – 1999/2064(COS))

Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

Draftsman: Mrs Elena Paciotti

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## **PROCEDURE**

At its meeting of 29 July 1999 the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs appointed Mrs Elena Paciotti draftsman.

It considered the draft opinion at its meetings of 22 November and 6 December 1999.

At the last meeting it adopted the following conclusions by 18 votes to 8, with 2 abstentions.

The following were present for the vote: Watson, chairman; Evans, vice-chairman; Paciotti, draftsman; von Bötticher, Boumediene-Thiery, Cashman, Cederschiöld, Cerdeira Morterero (for Sousa Pinto), Ceyhun, Coelho, Deprez, Di Lello Finuoli, Dupuis (for Vanhecke pursuant to Rule 153(2)), Giannakou-Koutsikou (for Ferri), Hazan (for Vattimo), Karamanou, Kessler, Krivine (for Frahm), Lehne (for Hannan), Ludford, Nassauer, Newton Dunn (for Kirkhope), Oostlander (for Klamt), Pirker, Schmid, Sörensen, Swiebel, Sylla, Turco (for Cappato), Van Lancker (for Terrón i Cusi) and Wiebenga.

## **Drawing up the Charter of Fundamental Rights: principles and criteria**

A vast amount of material has been produced on the subject of human rights in Europe and the legal and political issues under discussion are very complex. Nevertheless, it is important for the European Parliament to adopt an initial broad position as soon as possible since, following the decision taken by the Tampere European Council to set up the body responsible for drawing up the draft Charter, Parliament has appointed its 16 representatives and will have to provide them with guidelines within which to work.

The following should be borne in mind:

- On several occasions in recent years Parliament has proposed the adoption of a declaration of fundamental rights as part of a 'Constitution' for the European Union (resolutions of 12 April 1989 and of 10 February 1994);
- In its most recent resolutions, it welcomed 'the decision taken at the Cologne European Council to proceed with drawing up a draft European Union Charter of Fundamental Rights in good time for the December 2000 European Council' (resolution of 16

September 1999); and following the Tampere European Council it welcomed ‘the composition and method of work agreed upon for the body set up to draw up a draft EU Charter of Fundamental Rights’, and declared that it ‘will participate wholeheartedly in this task’ (resolution of 27 October 1999).

The specific task of the Committee on Citizens’ Freedoms and Rights should be to address the issue of what the future Charter should contain. This discussion should in future accompany the work on preparing the draft and contribute to defining the rights which the Charter will enshrine.

In the meantime, however, Parliament may adopt a resolution of a general nature setting out the basic reasoning underlying the definition of the fundamental rights to be enshrined in the Charter in order to provide an initial response to the least controversial problems it raises.

The aim is not to create a new constitutional order designed to take precedence over the constitutional law of the Member States but to:

- strengthen the protection of fundamental rights in relation to the Union’s new tasks and powers, in particular with regard to the gradual establishment of an ‘area of freedom, security and justice’ based on the principles of freedom, equality, solidarity, security and respect for diversity;
- contribute to defining a set of principles capable of providing Europe with an identity as a community of citizens bound together by shared values and of underpinning the Union’s internal policies and its policies involving third countries.

It is important therefore to bear in mind the values and principles - of freedom, democracy and the rule of law – which are already part of the European Union’s shared patrimony and which are specific characteristics of Europe. It has been on the strength of these principles that Europe has been able to build not only an area of economic freedom but an organisation based on solidarity between Member States which, above all else, has ensured peace in Europe, following the disastrous wars of the first half of the century. The creation of the European Union on the basis of the shared values of democracy and the rule of law has not merely resulted in peace now, but has produced a system which ensures peace in the future: in this sense it could perhaps be said that European citizens have won the right to peace.

Clearly, as part of the process that has been outlined, the aim is not merely for the Charter to lay down the rights specific to European citizens, but also the fundamental rights the European Union intends everyone to enjoy.

Although it is the body appointed in line with the Tampere decision which is responsible for identifying the rights to be enshrined in the Charter, Parliament may at this stage point out that the body’s task is not to produce something entirely new but rather to rely on the common legal culture of the countries of Europe as a source of fundamental principles and rights, including the binding international treaties to which the Member States are signatories and their common constitutional traditions. The search for a European identity will thus focus less on territorial or ethnic allegiances and more on ideas of cultural allegiance, based on shared aims. This is the reasoning behind the following conclusions forwarded to the committee responsible for its consideration.

N.B.: *The main international conventions referred to have been ratified by all the Member*

*States with the following exceptions: Luxembourg has not ratified ILO Convention No 111 concerning Discrimination in Respect of Employment and Occupation; Council of Europe Convention No 126 for the Protection of National Minorities has not been signed by Belgium or France and has not been ratified by Greece, Luxembourg, the Netherlands, Portugal or Sweden; the Rome Statute of the International Criminal Court has been ratified only by Italy.*

## **CONCLUSIONS**

In the context of the appointment by Parliament of its representatives in the body responsible for drawing up the text of the Charter of Fundamental Rights it is important to spell out the fundamental principles and criteria which must guide the drawing up of the Charter. With this in mind, the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs calls on the Committee on Constitutional Affairs, as the committee responsible, to incorporate the following principles and criteria in its proposal:

1. The drawing up of the Charter of Fundamental Rights of the European Union should have a dual aim:
  - (a) to lay down the principles and safeguards which underpin the establishment of the European Union as an 'area of freedom, security and justice' (Article 2(4) of the Treaty on European Union) and therefore the establishment of the Union as a system founded on the principles of the constitutions and legal systems of the Member States (Article 6(1) of the Treaty on European Union);
  - (b) to contribute to defining a collective patrimony of values and principles and a shared system of fundamental rights which bind citizens together and underpin the Union's internal policies and its policies involving third countries;
2. It is essential, in this connection, to bear in mind that the Union is based on the principles of freedom, democracy, the rule of law, and respect for human rights and fundamental freedoms; that on the strength of these principles the Union is able to operate on the basis of cooperation and solidarity between the Member States and the peoples of Europe; and that on the strength of these principles the Union has implicitly enshrined its citizens' right to peace.
3. It is also essential for the fundamental rights recognised by the Union to include the rights of Union citizens, the rights of residents of the Union and the rights of all human beings, in accordance with the universal value attached to the dignity of every individual.
4. The fundamental rights recognised by the Union must be drawn from:
  - (a) the rights under the Treaties and secondary legislation: including the traditional freedoms of movement, the principle of non-discrimination, social and political rights and rights relating to the protection of personal data;
  - (b) the rights expressly referred to by the Treaty or the Protocols to the Treaty, such as, primarily, the rights enshrined by the European Convention for the Protection of

Human Rights and Fundamental Freedoms, with particular emphasis on judicial safeguards.

- (c) the rights under the common constitutional traditions of the Member States, in so far as they constitute general legal principles of the Union, in accordance with the methods of the Court of Justice;
- (d) the rights recognised by international acts and covenants entered into by the Member States, including those agreed within the framework of organisations to which all the Member States belong, such as:

### UN

- Convention on the Prevention and Punishment of the Crime of Genocide (UN, 9 December 1948)
- Universal Declaration of Human Rights (UN, 10 December 1999)
- Convention relating to the Status of Refugees (UN, 28 July 1951, with a subsequent protocol of 1967)
- International Convention on the Elimination of All Forms of Racial Discrimination (UN, 1965)
- International Covenant on Economics, Social and Cultural Rights (UN, 1966)
- International Covenant on Civil and Political Rights (UN, 1966)
- Convention on the Elimination of All Forms of Discrimination against Women (UN, 1979)
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UN, 1984)
- Convention on the Rights of the Child (UN, 1989)
- Basic principles for the Treatment of Prisoners (UN, 1990)
- Rome Statute of the International Criminal Court (UN, 1998)

### Council of Europe

- European Social Charter (Council of Europe, 1961, with subsequent protocols)
- European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (Council of Europe, 1987)
- Framework Convention for the Protection of National Minorities (Council of Europe, 1995, with subsequent protocols)

### UNESCO

- Universal Declaration on the Human Genome and Human Rights (UNESCO, 1997)

### ILO

- Convention concerning Freedom of Association and Protection of the Right to Organise (No 87, 1948)
- Convention concerning the Application of the Principles of the Right to Organise and to Bargain Collectively (No 98, 1949)
- Declaration on Fundamental Principles and Rights at Work (ILO, 1988)



5. The Charter must be incorporated into the Treaty and the proclamation of the Charter must be followed by whatever changes to international treaties and conventions are needed in order to ensure that:
- the Charter is genuinely binding on the bodies and institutions of the Union and that it serves as a guideline for the policies thereof;
  - all natural and legal persons present within the Union can seek to ensure through the courts that the fundamental rights recognised by the Union are upheld.

15 December 1999

## **OPINION**

(Rule 162)

for the Committee on Constitutional Affairs

on the drafting of a Charter of Fundamental Rights of the European Union (C5-0058/99 – 1999/2064(COS))

Committee on Women's Rights and Equal Opportunities

Draftsperson: Joke Swiebel

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## **PROCEDURE**

At its meeting of 21 September 1999 the Committee on Women's Rights and Equal Opportunities appointed Joke Swiebel draftsperson.

It considered the draft opinion at its meetings of 24 November 1999 and 14 December 1999.

At the latter meeting it adopted the following conclusions by 19 votes to 12, with 1 abstention.

The following were present for the vote: Theorin, chairperson; Eriksson, Van Lancker and Evans, vice-chairpersons; Swiebel, draftsperson; Auroi (for Sørensen), Aviles Perea, Berger (for Ghilardotti), Gröner, Gutiérrez-Cortines (for Costa Neves pursuant to Rule 153(2)), Hautala, Hieronymi (for Müller, pursuant to Rule 153(2)), Karamanou, Klass, Korhola (for De Sarnez pursuant to Rule 153(2)), Kratsa, Lulling, McNally, Mann, Martens, Napolitano (for Torres Marques), Paciotti, Plooij-van Gorsel (for Dybkjær), Prets, Rodríguez Ramos, Schmidt (for Sanders-Ten Holte), Smet, Sudre, Thomas-Mauro, Valenciano Martínez-Orozco and Zissener.

## **GENERAL COMMENTS**

### Drafting the Charter of Fundamental Rights :some general principles from a gender perspective

The European Parliament has to mandate its delegation to the Body that is being formed with a view to the drafting of the Charter of Fundamental Rights. Many complex questions of both a political and legal nature have to be answered. Given the terms of reference of the Parliament's Committee for Women's Rights and Equal Opportunities the following principles should be taken into account:

1. Since the seventies women's equality in Europe has received an enormous impetus from legally binding instruments developed at the European Community level. Although symbolic politics made by solemn declarations and resolutions are not without meaning, real equality can only be supported by binding instruments. Women as a politically relevant group of European citizens will not be served by more lip-service. In the discussion on the legal character and the scope of application of the envisaged Charter, it is important to bear in

mind the people in Europe, women and men, who would like to know the rights concerned and understand the practical relevance.

2. The actual provisions in EU law concerning equal treatment of women and men are accepted as part of the *acquis communautaire*. They are rooted in the forming of the internal market; this explains their restriction to the labour market. In a Charter of fundamental rights such a limitation of the scope of the sex discrimination clause is no longer justified. The right to equal treatment without distinction based on sex should be extended to all relevant areas of society. The new ‘mainstreaming’ article of the TEC - article 3(2)<sup>9</sup> – also points in that direction.
3. Such an extension of the sex discrimination clause should not be too difficult to accept for the EU Member States, as they have included such clauses in their national constitutions and/or legislation, and/or have accepted such clauses by their ratification of the relevant UN conventions (International Covenant on Civil and Political Rights - ICCPR, art 26<sup>10</sup>; Convention on the Elimination of all forms of Discrimination against Women - CEDAW, art. 2<sup>11</sup>).
4. Accession of the EU to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) – discussed as a possible alternative strategy in relation to the drafting of the new EU-Charter of fundamental rights – has, as far as the mandate of the Women’s Rights Committee is concerned - one serious flaw. The ECHR (article 14<sup>12</sup>) does not directly rule out sex discrimination, but only pertains to sex discrimination in relation to other rights incorporated in that Convention. The drafting process within the Council of Europe of an additional protocol to the Convention with a general anti-discrimination clause is not yet concluded. Regardless of other problems

<sup>9</sup> “In all the activities referred to in this Article, the Community shall aim to eliminate inequalities, and to promote equality, between men and women.”

<sup>10</sup> “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

<sup>11</sup> “States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

- (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realisation of this principle;
- (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
- (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
- (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
- (e) To take all appropriate measures to eliminate discrimination against women by any person, organisation or enterprise;
- (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
- (g) To repeal all national penal provisions which constitute discrimination against women.”

<sup>12</sup> “The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

concerning such an accession – from the perspective of sex equality policy such a step could therefore only build a partial solution.

5. Serious attention has to be paid to the issue of positive action. The sex-neutral formulation agreed to in the Treaty of Amsterdam (TEC, art. 141(4)<sup>13</sup>) will have to be reconsidered; it contradicts the political will to advance the position of women expressed in EU policy to promote the equality of women and men (articles 2 and 3 of the TEC). Theory building and policy discussion at the global level are far ahead. Art. 4(1) of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) states that ‘... *temporary special measures* aimed at accelerating de facto equality between men and women shall not be considered discrimination...’, but rules out the maintenance of unequal or separate standards. More attention has to be paid to the growing body of international literature and jurisprudence on women’s human rights, in particular to the recommendations and conclusions of the CEDAW-Committee.
6. Discrimination on the ground of sexual orientation (or: sexual preference) has a special link to sex discrimination. Both phenomena are rooted in a vision of a society where men and women have to play fixed and complementary roles; and where the expression of personal choices outside that given order is felt a threat. The emancipation of women cannot come about without changing that order. Therefore – looking at the Charter of fundamental rights from a gender perspective – the right to equal treatment without distinction based on sexual orientation has to be included.
7. Any suggestion that women’s human rights should come under a heading such as ‘special’ or ‘group’ rights, should be firmly rejected. Women are not a minority or a special kind of human being, let alone a species that has to be protected as such. Women’s rights are an integral part of universal human rights. This principle should not only be recognised at the global level (UN World Conference on Human Rights, Vienna, 1993; Fourth UN World Conference on Women, Beijing, 1995), but also in the EU.
8. Mainstreaming a gender perspective in the field of fundamental rights would also mean looking critically at some concepts included in previous draft texts, resolutions etc. Some clearly outdated notions have to be modernised. In particular, clauses concerning the so-called rights of the family are debatable; human rights are individual rights and not rights of institutions. Moreover, different members of a family often will have different interests and internal power relations within the family may determine the outcome. Likewise, texts that restrict the meaning of ‘work’ to paid employment have to be revised to include – where relevant - unpaid work. The trap of ‘wages for housework’ has to be avoided, however.

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<sup>13</sup> “With a view to ensuring full equality in practice between men and women in working life, the principle of equal treatment shall not prevent any Member State from maintaining or adopting measures providing for specific advantages in order to make it easier for the under-represented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers.”

## **CONCLUSIONS**

The Committee on Women's Rights and Equal Opportunities calls on the Committee on Constitutional Affairs, as the committee responsible, to incorporate the following conclusions in its report:

1. The Charter of Fundamental Rights should contain a general anti-sex discrimination clause that is mandatory and which can be invoked before the ECJ by individual citizens/ residents.
2. As long as the European Convention for the Protection of Human Rights and Fundamental Freedoms does not include a general anti-discrimination clause, a possible accession to this Convention by the EU will not solve the issue.
3. An anti-discrimination clause and a provision concerning positive action are two sides of the same coin. Both have to be considered in the political perspective of the promotion of the advancement of women, a long standing priority of the European Union.
4. Women's rights are not 'special' rights, but an integral part of universal human rights. In this respect attention should be paid to the right to physical integrity, which is not adequately guaranteed by the Universal Declaration.
5. The Charter of Fundamental Rights should contain an anti-discrimination clause on the grounds of sexual orientation.
6. More attention has to be paid to the growing body of international literature and jurisprudence on women's human rights, in particular to the conclusions and recommendations of the Committee on the Elimination of Discrimination against Women.
7. Gender mainstreaming in the drafting process of the Charter would comprise, *inter alia*, a critical revision of concepts in "other" parts of the text. Rights of the family as such do not exist, there are only rights of individual women, men and children.

27 January 2000

**OPINION**  
(Rule 162)

for the Committee on Constitutional Affairs

on the drafting of a Charter of Fundamental Rights of the European Union (C5-0058/99 – 1999/2064(COS))

Committee on Petitions

Draftsperson: Janelly Fourtou

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**PROCEDURE**

The Committee on Petitions appointed Janelly Fourtou draftsman at its meeting of 18 November 1999.

It considered the draft opinion at its meeting of 24 January 2000.

At its meeting of 25 January 2000 it adopted the following conclusions unanimously.

The following were present for the vote: Gemelli, chairman; De Rossa, vice-chairman; Fourtou, draftsman; Gonzalez Álvarez, Lambert, H-P. Mayer, Sornosa Martínez and Wyn.

## I. Petitions to the European Parliament and fundamental rights

1. 'I am a European citizen and hence entitled to rights which no-one can ignore or deny me without the European Union intervening'. This is the underlying message behind many of the petitions which European citizens submit to the European Parliament when complaining that their rights have been infringed. People petitioning us demonstrate an obstinate and unflinching conviction that they are entitled to a variety of rights, either recently acquired or the legacy of a culture whose richness and diversity appeal to a number of shared values: for Europeans, what being a citizen of the Union means is sharing in a common destiny.

2. The conviction that these fundamental rights are 'necessary and obligatory' suggests that European citizens are persuaded that there already exists a 'written European constitution' in which all these rights are enshrined. Moreover, these rights should, in their opinion, 'keep pace with' advances in new information technologies (protection of personal data) and genetic engineering, preserve the biosphere and biological diversity, or take account of new lifestyles and do justice to equality between the sexes and, finally, respect the diverse wealth and cultural identities of Europe.

3. Non-Community residents have the same right as European Union citizens to petition the European Parliament. Persons who have found asylum in the European Union are particularly anxious to have these fundamental rights upheld if they are flouted in their country of origin.

4. This is an aspect which the Committee on Petitions should take into consideration when it examines the requests submitted to it in petitions concerning fundamental rights. We set out below the rights most frequently invoked by petitioners complaining to the Committee on Petitions. The list is not intended to be exhaustive; nor does it present the points in any order of importance.

## II. List of rights most frequently invoked by petitioners

- a) the right to equality of treatment (non-discrimination);
- b) freedom of thought, conscience and religion;
- c) respect for private life (data-protection);
- d) the right to work and non-discrimination between pay for men and women;
- e) the right to education;
- f) the right to health protection;
- g) the right to the protection of the environment, fauna and flora;
- h) consumer protection;
- i) freedom of movement and right of residence;
- j) the right of asylum and the protection of minorities;
- k) protection of private property;
- l) protection by social security schemes.

## III. Final considerations

1. The Committee on Petitions believes it should be fully involved in drawing up the Charter, since it falls within its remit. The fundamental civil right to petition is quite clearly one of the fundamental rights which European citizens wish to exert and which are recognised by the Member States, the Community Institutions, in their own countries and wherever they choose to

go in the Union or elsewhere, thanks to diplomatic protection abroad.

2. Furthermore, there is no doubt in the mind of the petitioner that the 'fundamental' nature of these fundamental rights should include protection at law before the courts of the Union, i.e. the acknowledgement that petitioners have the right to appear, as individuals, before the Court of Justice to defend their rights.

3. The body responsible for drawing up the Charter of Fundamental Rights should list, in a single text, the rights recognised as fundamental in the European Union. Once adopted in plenary the draft report should serve as a mandate for Parliament's representatives since it will express the views of Parliament as a whole.

4. The body's work should be guided by two important points:

a) Firstly, it should rectify the fact that provisions on fundamental rights are scattered throughout the Treaties, conventions and protocols. They should be set out in a single, unified text which has the highest possible profile for every citizen of the Union.

b) Fundamental rights must be enforceable at law in view of the fact that the Charter will be binding on the European Institutions, the Member States and citizens of the Union.

This second exchange of views is intended to enable our committee's expectations to be made known to the committee responsible and also to Parliament's delegation to the body drawing up the Charter of Fundamental Rights.

#### IV. CONCLUSIONS

The Committee on Petitions calls on the Committee on Constitutional Affairs, as the committee responsible, to incorporate the following points in its draft resolution:

1. whereas it should be recognised that citizens of the Member States have the right to exercise and defend a set of fundamental rights, as basic elements of European citizenship and - through the values they express - of the very cultural identity of the Union,
2. whereas the numerous petitions submitted to the European Parliament make it possible to define the perception which people have of the Union and the rights which it has to protect,
3. whereas European citizens regard fundamental rights as being in a state of evolution, having to protect them from dangers which might arise from new information technologies, genetic engineering and pollution of the environment etc.,
4. whereas there is a need to ensure as high a profile as possible for the fundamental rights enjoyed by each citizen of the Union, and whereas maximum protection of such rights should be guaranteed by different instruments ranging from the right to petition to individual recourse to the Court of Justice of the European Communities.



15 February 2000

**OPINION**  
(Rule 162)

for the Committee on Constitutional Affairs

on drafting of a Charter of Fundamental Rights of the European Union (C5-0058/1999 – 1999/2064(COS))

Committee on Employment and Social Affairs

Draftsperson: Ieke van den Burg

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**PROCEDURE**

At its meeting of 14 October 1999 the Committee on Employment and Social Affairs appointed Ieke van den Burg draftsperson.

It considered the draft opinion at its meetings of 30 November 1999, 31 January and 15 February 2000.

At the last meeting it adopted the following conclusions by 24 votes to 1, with 11 abstentions.

The following took part in the vote: Michel Rocard, chairman; Winfried Menrad, vice-chairman; Ieke van den Burg, draftsman; Sylviane H. Ainaridi, Jan Andersson, María Antonia Avilés Perea, Theodorus J.J. Bouwman (for Jillian Evans), Alejandro Cercas Alonso, Luigi Cocilovo, Brian Crowley, Elisa Maria Damião, Proinsias De Rossa, Harald Ettl, Ilda Figueiredo, Hélène Flautre, Fiorella Ghilardotti, Marie-Hélène Gillig, Richard Howitt (for Helle Thorning-Schmidt), Stephen Hughes, Anne Elisabet Jensen (for Massimo Cacciari), Karin Jöns, Piia-Noora Kauppi (for Ilkka Suominen), Ioannis Koukiadis, Rodi Kratsa, Arlette Laguiller, Jean Lambert, Elizabeth Lynne, Toine Manders (for Daniel G.L.E.G. Ducarme), Thomas Mann, Manuel Pérez Álvarez, Bartho Pronk, Herman Schmid, Peter William Skinner, Miet Smet, Gabriele Stauner (for Anne-Karin Glase), Ursula Stenzel (for Mario Mantovani), Anne E.M. Van Lancker, Barbara Weiler and Sabine Zissener (for James L.C. Provan).

**BACKGROUND/GENERAL COMMENTS**

1. When in March 1996, the Comité des Sages, appointed by the Commission and chaired by Mrs Lourdes de Pintasilgo, presented its report at the first Social Policy Forum, the debate on the question of fundamental (social) rights as a constitutional element of the European Union was finally given a place on the political agenda. The Comité pleaded for the recognition of a series of fundamental civil and social rights and for the incorporation of those rights into the Amsterdam Treaty, based on a two-phase approach. In the short term the European Union should include in the Treaty a minimum set of core fundamental rights and, for the medium term set in motion a broad consultation process. This broad debate in society should update and complete the list of civil, political and social rights and duties, including rights that reflect technological change, the growing awareness of the environment, and the demographic developments. The result of the debate should be an updated "bill of rights" to be incorporated in the EU Treaty.

2. In order to look more deeply into this matter, DG V established an independent group of experts, chaired by Professor Simitis. The expert group's report "Affirming Fundamental Rights in the European Union: Time to Act", published in February 1999, stresses the indivisibility of civil and social rights and pleads for an integrative approach in the European debate. The experts suggest an incorporation of the complete European Convention on Human Rights (ECHR) and the Protocols to the ECHR as a "common European Bill of Rights", and, as far as social rights are concerned, ask for special attention to be given to the conventions of the ILO. Just like the Comité des Sages, the Simitis-group sees the recognition of fundamental rights as an open process that should lead, in its first phase, to the enumeration of a set of rights incorporating and expanding the ECHR, which, in particular against the background of the decisions of the ECJ and the European Court of Human Rights, should ultimately result in a reformulation of fundamental rights adapted to the experiences and exigencies of the European Union.
3. The Amsterdam Treaty does not contain a basic set of fundamental civil and social rights in the form of a Bill of Rights. Only the principle of equal pay for men and women has been codified in Art. 141 of the EC Treaty. Furthermore, the Treaty explicitly confirms the Union's attachment to fundamental social rights (preamble, fourth recital) without changing the previously adopted system of references. This means that the EU's commitment to the Community Charter is, in fact, rather weak. Also, both the Preamble and Art. 136 of the EC Treaty refer to fundamental social rights by pointing to the 1961 European Social Charter (Council of Europe) and the 1989 Community Charter.
4. Art. 13 of the EC Treaty empowers the Council to take appropriate action to combat discrimination, after consultation of the European Parliament. The possible grounds of intervention are explicitly indicated in Art. 13 and range from discrimination concerning sex, racial or ethnic origin to discrimination regarding religion, belief, disability, age or sexual orientation. Moreover, provisions such as Art. 3 (2) and 141 (4) of the EC Treaty lay the grounds for measures designed to achieve an effective equality of men and women including positive action. The European Commission has recently adopted a communication based on Art. 13, two proposals for legislation and an action programme. The inclusion of equal treatment as a fundamental right in the Treaty as a basic guarantee against discrimination on the grounds mentioned in Art. 13 would help to provide a sounder legal basis for the decision and legislation process in this area.
5. Art. 136 qualifies fundamental social rights, as determined by the European Social Charter and the Community Charter. Both documents are only seen as a basis for Community policies. Art. 137, however, explicitly excludes the right of association, as well as the right to strike and the right to impose lock-outs, from the duty to support and complete the efforts of the Member States designed to implement the social policy aims defined in Art. 136. This means that the European Union is prevented from acting to protect rights that traditionally belong to the core of social rights, and that have been affirmed over and over again by both national laws and international treaties.
6. The Cologne European Council re-launched the debate on fundamental rights, and decided that they should be consolidated in a Charter, to be drafted by a specific body before the European Council in December 2000. The Council stated in particular that, at the drawing up stage of the European Charter of Fundamental Rights, economic and social rights as set out in the European Social Charter and in the Community Charter on Social Rights of Workers should be

taken into consideration. The Charter could represent a genuine milestone in the building of a Citizens' Europe.

7. Fundamental social and socio-economic rights have also been formulated in several widely ratified and acknowledged international standards, to which EU Member States have committed themselves, such as:

- The Council of Europe's Convention for the Protection of Human Rights and Fundamental freedoms (ECHR) (1951)
- The Council of Europe's revised European Social Charter (1960/1996)
- The Community Charter of Fundamental Social Rights of Workers (1989)
- The core Conventions of the International Labour Organisation, summarised and referred to in the recent ILO Declaration on Fundamental Social Rights of Workers (1998)
- The UN Convention on the Rights of the Child (1989)
- The UN convention on the Elimination of all forms of Discrimination against Women (1979).

8. The reason for explicitly committing the European Union to fundamental civil and social rights is the present imbalance in its legal system. The more competencies the EU gets throughout the three pillars, the more it should be made clear to Europe's citizens that the EU fully respects and guarantees fundamental rights and standards. This does not automatically imply an extension of its competencies, as these are defined by precise Treaty provisions and policy chapters and restricted by the principles of subsidiarity and proportionality.

9. The fundamental rights and freedoms to be enshrined in the European legal system should at least conform to the international standards to which most of the Member States are bound.

10. Accession of the EU as a legal entity to these international standards (after solving the current legal problems) would be one method of incorporating fundamental rights and the accompanying procedures for infringement and complaints; explicitly committing the EU and its institutions to the content (including the relevant jurisprudence) of these standards by an explicit formulation and reference in the Treaty would be another.

11. From the perspective of visibility and transparency the inclusion of a well-defined package of rights, inspired by the standards listed under 8, and formulated on the basis of a broad societal debate as promoted by the Comité des Sages (Pintasilgo), would be the optimal final outcome.

12. Fundamental social, and particularly socio-economic, rights often have the characteristics of instruction norms that oblige governments or authorities at lower levels to develop and implement policies that bring these rights within reach for all persons under their jurisdiction. Whereas classical fundamental human rights and freedoms imply an obligation to respect and protect, these social rights merely include the obligation to ensure and promote. Commitment to rights such as the right to work or decent housing thus asks for an active programme of action by the authorities, and not just for passive custody. On the other hand, such rights are less easy for individual persons to seek to uphold in court.

13. Some important fundamental social rights, though, do not differ in nature from the other fundamental (individual or collective) human rights and freedoms. The rights contained in the core ILO conventions for instance, protect against forced labour, child labour and discrimination,

and guarantee the right to organise, to bargain collectively and to take recourse to forms of collective action. They contain an obligation to respect and protect. These social rights should thus give individual persons or organisations full access to the courts.

14. The drafting process of the Charter and the parallel discussion on the aims of the Intergovernmental Conference, that should decide to make the Charter a major binding element of the revised Treaty, should be open and transparent. The Tampere mandate provides for hearings and special meetings; the European Parliament should try to be a good host for European NGO's and trade unions, and other organisations, that are likely to have an input into the discussion, and - together with the representatives of the national parliaments - be an intermediary to the general public and stimulate public debate. A working group consisting of members of the Committee on Employment and Social Affairs of the European Parliament and of the Committee on Social Affairs of the Council of Europe has been established in order to discuss how to avoid overlaps and complications, and how to learn from the experiences of implementation and jurisdiction in the Council of Europe's procedures.

## CONCLUSIONS

The Committee on Employment and Social Affairs calls on the Committee on Constitutional Affairs, as the committee responsible, to incorporate the following conclusions in its resolution:

1. Advocates simultaneously accession of the EU as a legal entity to international standards, including the accompanying procedures for infringements and complaints, and urges the IGC to extend the reference in Article 6 of the Treaty to the ECHR with references to the European Social Charter, the Community Charter and the core ILO and UN Conventions;
2. Believes that fundamental human and social rights are indivisible and, therefore, stresses the importance of incorporating fundamental social rights in the new EU Treaty with as main objectives:
  - to make them a condition for membership of the EU as is now the case with the reference to the ECHR in Art. 6 and 7 TEU
  - to commit the EU and its institutions to comply with these rights not only in the Social Chapter but in all policy fields
  - to commit EU Member States to comply with these rights in the implementation of EU legislation
  - to provide a legal basis for initiatives of the EU and its institutions
  - to give individual (natural and legal) persons and/or their organisations in the EU (directly or indirectly via national court) access to the European Court of Justice with complaints about infringement by the EU (either the EU institutions or Member States executing EU legislation) on these fundamental rights
  - to make the social dimension of the European Union visible, and enhance the legitimacy and relevance of the EU institutions to public opinion as recommended recently by the Dehaene report;
3. Believes that the content of the set of fundamental social and socio-economic rights should be derived from, and based on, already existing widely ratified and acknowledged international standards, to which EU Member States have committed themselves, such as:

- The Council of Europe's Convention for the Protection of Human Rights and Fundamental freedoms (ECHR) (1951)
  - The Council of Europe's revised European Social Charter (1960/1996)
  - The Community Charter of Fundamental Social Rights of Workers (1989)
  - The core Conventions of the International Labour Organisation, summarised and referred to in the recent ILO Declaration on Fundamental Social Rights of Workers (1998)
  - The UN Convention on the Rights of the Child (1989)
  - The UN convention on the Elimination of all forms of Discrimination against Women (1979);
4. Asks for due attention for the differences in character of fundamental rights in the social and economic field: some have a more programmatic character and require for action by the authorities, but may be less easily enforceable and justiciable; others are comparable to, and may be integrated in the set of classical fundamental human rights;
  5. Stresses that it is necessary to ensure compliance with such standards and that these standards might need "upgrading" based on new insights and new developments as referred to in the Simitis report and in Art. 13 of the Amsterdam Treaty which contains an extension of the grounds on which discrimination should be fought and, therefore, should also explicitly be included in the formulation of the fundamental equal treatment provision;
  6. Believes that the explicit incorporation of fundamental rights in the EU Treaty should be accompanied by a non-regression-clause ensuring that better or farther reaching provisions in other Member States' (constitutional) legislation and jurisprudence and in international law and jurisdiction, to which Member States are bound, will prevail;
  7. Stresses that it would be logical to revise the present Treaty provisions (Art. 137, 6 TEC) which explicitly exclude EU competence with respect to such fundamental rights such as the freedom of association;
  8. Asks the Convention to take account in the Charter both of the substantive and of the procedural recommendations made by the Pintasilgo Comite and the Simitis group, inter alia regarding the recommendation to incorporate the right to a minimum income, and as to the working method: to launch a broad debate on fundamental rights and to consult and involve civil society, especially non-governmental organisations, in the debate;
  9. Is, however, of the opinion that the Charter of Fundamental Rights, unlike the recommendations made in the Simitis report, must also incorporate the contents of Article 1 of the ECHR, which guarantee persons from third countries the same fundamental rights and freedoms as those enjoyed by the citizens of the signatory states, with the exception of rights granted exclusively to citizens of those states, such as the right to stand for election and the right to vote in elections;
  10. Calls for a good co-operation with the Council of Europe's respective bodies, including also those dealing with the (revised) European Social Charter, throughout the process of dealing with the Charter;

11. Stresses the need to have a further opportunity at a later phase of the proceedings in the Convention to evaluate the development of the draft Charter on Fundamental rights, and to present a more detailed report with recommendations considering its final text;
12. Calls on the European Union, in view of the International Convention on the Rights of the Child, to include a reference in its Charter to the special rights of children;
13. Considers that recognition of social rights as fundamental rights, and therefore their inclusion in the European Union Charter of Fundamental Rights, will, once economic and political union has been achieved, constitute the social and economic dimension of European integration.

22 February 2000

**OPINION**  
(Rule 162)

for the Committee on Constitutional Affairs

on the drafting of a Charter of Fundamental Rights of the European Union  
(C5-0058/1999 – 1999/2064 (COS))

Committee on Legal Affairs and the Internal Market

Draftsperson: Charlotte Cederschiöld

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**PROCEDURE**

At its meeting of 30 November 1999 the Committee on Legal Affairs and the Internal Market appointed Charlotte Cederschiöld draftsperson.

It considered the draft opinion at its meetings of 31 January 2000 and 22 February 2000.

At the last meeting it adopted the following conclusions by 12 votes to 8, with 4 abstentions.

The following were present for the vote: Ana Palacio Vallelersundi, chairman; Willi Rothley and Eduard Beysen, vice-chairmen; Charlotte Cederschiöld, draftsperson; Maria Berger, Rolf Berend, (for Joachim Wuermeling, pursuant to Rule 153(2)), Enrico Boselli, Jean-Maurice Dehousse, Enrico Ferri, Janelly Fourtou, Evelyne Gebhardt, Françoise D. Grossetête, Malcolm Harbour, Heidi Anneli Hautala, Ioannis Koukiadis, Kurt Lechner, Donald Neil MacCormick, Toine Manders, Hans-Peter Mayer, Manuel Medina Ortega, Ria G.H.C. Oomen-Ruijten, Carlos Ripoll i Martínez Bedoya, Francesco Enrico Speroni, Antonio Tajani, Felekna Uca, Diana Paulette Wallis, Stefano Zappalà and François Zimeray.

**1. Introduction to the legal problem**

In all Member States fundamental rights serve mainly in order to *protect individuals* against possible abuses of public authority and to safeguard the civil society.

Fundamental rights may be used to determine the lawfulness of both individual acts and ordinary laws only if they rank as *constitutional law*.

The practical value of fundamental rights thus depends on their legal value, in other words on their place in the *hierarchy of norms*.

According to one possible classification, three sorts of fundamental rights may be distinguished:

- a) *'protective rights'* which protect the individual against possible abuse of public authority (e.g. freedom of expression) (*'status negativus'*).

- b) ***‘political rights’*** which enable the individual to participate in the exercise of public authority (e.g. the right to participate in elections) (*‘status activus’*).
- c) ***economic rights***.
- d) ***social rights*** (which are difficult to guarantee).

The European Union, however, has no text explicitly stating the fundamental rights enjoyed by its citizens. Since 1969 the *Court of Justice* has developed a rich fundamental rights *case-law* inspired by the following principles:

“Fundamental rights form an integral part of the general principles of the law, the observance of which is ensured by the Court. In safeguarding those rights, the latter is bound to draw inspiration from constitutional traditions common to the Member States, so that measures which are incompatible with the fundamental rights recognised by the constitutions of those States are unacceptable in the Community. International treaties for the protection of human rights on which the Member States have all collaborated or of which they are signatories, can also supply guidelines which should be followed within the framework of Community law.”

The Court has considered in turn rights such as the right to property, the right to privacy, the right to a fair trial, freedom of expression, the principle of equal treatment, protection of family life, the right to free exercise of professional activities, and many other, mainly procedural, rights.

It may be regretted that the Court’s case law resulted in effective protection on rare occasions only. This means that there is good reason for a more elaborate protection of fundamental rights at EU level.

## **2. Introduction to the political problem**

Fundamental rights have symbolic value. The European Union would be the first international organisation to apply fundamental rights to its internal sphere.

Some objections to the idea of fundamental rights might be based on a misunderstanding. The European Union will not order Member States which fundamental rights to apply in *their* internal sphere. The purpose of fundamental rights in the EU is to control the acts of its bodies and institutions which might be found to be excessive and to codify and secure the individual rights within the jurisdiction of the EU.

Indeed, some national constitutional courts, such as the German Bundesverfassungsgericht, are experiencing some difficulties in applying certain EU directives on the ground that they are conflict with national fundamental rights. This is the case e.g. in the context of the EU banana regime, the EU anti-tobacco-advertising directive and the EU laying-hens directive. If German courts and authorities no longer applied parts of EU law or German legislation passed to implement directives, the unity of the EU legal order would be threatened.

The only viable solution to this problem would be to introduce a high-profile set of EU fundamental rights which would allow EU acts to be reviewed at European level, thus maintaining the unity of the EU legal order. It should also be stressed how important enforceable procedural rights are for the rule of law.

Besides this protective aspect, fundamental rights could contribute to developing a *citizenship of*



*the European Union* which does not compete with national citizenships – it would merely supplement them at the EU level. The Charter could thus contribute to the development of a European identity. The forthcoming enlargement of the EU stresses the importance of well-functioning fundamental-rights protection on EU level. This would be an important measure to secure the full respect of fundamental rights in the newcoming Member States. It should be stressed how important enforceable procedural rights are for the rule of law. The introduction of a European code of due process could become the instrument to guarantee these rights of the individuals.

### 3. **Binding instrument vs. non binding instrument**

According to the Cologne conclusions the European Council “propose[s] to the European Parliament and the Commission that, together with the Council, they should solemnly proclaim on the basis of the draft document a European Charter of Fundamental Rights.”

At its first meeting on 17 December 1999 the Chair of the ‘Convention’ responsible for drawing up the FRC seemed to assume that the FRC would not be binding immediately, but that it should be framed as if it were to become binding.

From a strictly legal point of view, only a legally binding instrument forming part of primary EU law (i.e. an amendment or protocol to the Treaties) and susceptible of interpretation and application by the Court of Justice (justiciability) makes sense. Only in this way would it be possible for the EU to secure the full respect of fundamental rights in all Member States, including the newcoming Member States.

The legal control of political decisions is weaker in a system based on soft law. The possibilities for the individual citizen to uphold and safeguard his/her rights against authorities are weaker with soft law.

### 4. **How would fundamental rights operate in the EU?**

The European Union is not a State. Accordingly, the contents and function of its fundamental rights will not be the same as in a State.

The main function of EU fundamental rights should be to **protect individuals** in the EU against abusive action by EU institutions and bodies. Such action might consist of decisions applying to individual persons (e.g. a subsidy granted in one case but not granted in an identical case; an undertaking is condemned after an irregular procedure for anti-competitive behaviour), regulations or directives applying to a restricted number of or all individuals (e.g. a regulation prescribes that certain personal data are to be collected), or physical action (e.g. an illegal search of company’s premises by OLAF agents; Europol storing wrong and prejudicial data relating to an individual).

Should a **legal act** violate an EU fundamental right, the Court of Justice could annul it. Individuals may institute proceedings against decisions and regulations provided that they are directly and individually concerned by them (Article 230 EC). The Court could under certain circumstances also order that a compensation for the damages caused has to be paid to the victim.

In case of illegal *physical action*, the Court award *damages* be paid to the victim and/or that the result of the illegal action has to be *remedied* (e.g. the data unlawfully stored by Europol) and *may not be used* in other proceedings. The latter mechanisms would have to be put in place by means of an adaptation of the EC Treaty.

Were the FRC to grant *positive rights* the EU should possess the competences necessary to effectuate them.

All fundamental rights must be seen in relation to EU competences. E.g.: A right of objection to military service would make sense only if there were a European army governed by EU law. It should be noted that EU competences are evolving *dynamically*. Growing EU competences should thus go hand in hand with the development of corresponding fundamental rights protection.

## 5. Limits to fundamental rights

In the interest of other right holders and the general public, fundamental rights can obviously not remain without limits.

The Court of Justice has restricted their application in the following way:<sup>14</sup>

„As regards the infringement of the right to property, the Court has consistently held that, while the right to property forms part of the general principles of Community law, it *is not an absolute right* and must be viewed in relation to its social function. Consequently, *its exercise may be restricted*, provided that those restrictions in fact correspond to objectives of *general interest* pursued by the Community and do not constitute a disproportionate and intolerable interference, impairing *the very substance* of the rights guaranteed [...]“

Article 8(2) of the European Human Rights Convention reads as follows:

“There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

The right to pursue a professional activity is another important fundamental right. However, also in this case it will be necessary to allow certain limits in the interest of public security, the well-being of consumers etc.

Another issue to be addressed is *the relationship of certain new fundamental rights to the four freedoms and other rights enshrined in the EC Treaty* (e.g. the right of assembly (strike) and the free movement of goods).

## 6. Implementing provisions

Wherever a fundamental right is not just of protective nature it must be implemented by

<sup>14</sup> Cf. Case C-293/97, Standley, para. 54.

secondary legislation. EU legislation passed as implementing legislation to EU fundamental rights must be proportionate and should avoid any violation of rights of Member States or individuals.

## **7. Accession to the European Human Rights Convention – role of the European Human Rights Court**

In Opinion 2/94 of 28 March 1996, the Court of Justice has ruled out an EC accession to the EHRC as Community law stood at that date for lack of competence of the EC to legislate in the field of human rights. One crucial underlying reason may have been the Court's unwillingness to submit to the rulings of a court where judges from the (presently) 41 Council of Europe Member States would be ruling in Chambers (7 judges) and in a Grand Chamber (17 judges) on the lawfulness of the actions of the European Union, including judges from systems for a long time substantially differing from EU Member States, such as i.e. Albania, Moldavia, Ukraine and Russia.

On the other hand the ECJ indirectly implements the European Convention through general principles of law.

Already in the 70s the ECJ brought attention to the question of fundamental rights application. It is now time to decide if parallel instances in co-operation could better safeguard the rights of present and future citizens, and to create a pan-European fundamental rights protection.

## **CONCLUSIONS**

The Committee on Legal Affairs and the Internal Market calls upon the Committee on Constitutional Affairs to incorporate the following conclusions into its report:

*The European Parliament,*

1. Underlines the need for developed, codified and secured rights in the European Union;
2. Stresses that the Charter should strive to make existing fundamental rights more visible and deepen and strengthen the culture of rights and responsibilities at all levels across the EU expressing our underlying unity of moral purpose, reinforcing in the minds of administrators, governments, legislators, judges, lawyers and all other citizens the rights they possess and the need to respect them.
3. Takes the view that a Charter of Fundamental Rights should guarantee a comprehensive and effective legal protection of individuals and defined groups of individuals; is of the opinion that the scope of fundamental rights has to cover all the activities of the EU institutions, bodies and agencies, including the second and third pillar and actions of national authorities when they apply EU law and that they should be considered as a complement and not as a substitute to the existing legal systems and traditions of the Member States;
4. Is of the opinion that, from a legal point of view, only a binding fundamental rights charter with the highest legal rank as have the founding Treaties would result in an

effective fundamental rights protection;

5. Considers it vitally important to consider the Charter's relationship with other international human rights' instruments and, in particular recalls the unequal value of the European Social Charter in Member States, which does not coincide with the scope of rights contained in Articles 137 et seq. of the TEC;

In the same context, the question of incorporation into the Charter of the public policy clause, which appears in the ECHR, must be given due consideration.

6. Insists that the rights contained in the Charter must be made justiciable by the Court of Justice of the European Communities, subject to careful consideration concerning, and adequate legislative provision forestalling, the risk of multiple, and potentially conflicting, jurisdictions as between the European Court of Human Rights, the Court of Justice, and the highest Constitutional Courts of the Member States;
7. Believes that the issue of balancing fundamental rights in the interest of the general public and other right holders and the issue of legal bases for provisions to implement fundamental rights require in-depth analysis;
8. Believes that the problem of the scope of the Charter which should protect all individuals and the list of rights reserved for European Union citizens require in-depth analysis; the issue of legal bases for implementing provisions for fundamental rights should also be looked at;
9. Considers that the present mechanisms for judicial review (Articles 230, 232, 234, 235, 243 ECT) should be supplemented so as to afford effective fundamental rights protection in the case of illegal physical and other actions performed by institutions and bodies of the EU or actions of national authorities when they apply EU law;
10. Is of the opinion that, from a legal point of view, every effort should be made to ensure that provision is made for an adequate protection procedure in respect of each right recognised by the Charter;

11. Calls upon the General Affairs Council and the Presidency in office of the Council to put the Charter of Fundamental Rights on the agenda for the Intergovernmental Conference;
12. Believes that the adoption of an EU Fundamental Rights Charter will be to the advantage of high-profile pan-European fundamental rights protection;
13. Believes that the European Court of Justice must continue to be the supreme court in the judicial system of the European Union;
14. Asks that the question of some form of co-operation between the ECJ and the European Human Rights Court be studied in order to avoid incongruities arising in the development of European fundamental rights protection;
15. Takes the position that it is one matter to decide on a Fundamental Rights Charter, and another to incorporate it into the Treaty;
16. The Fundamental Rights Charter can lead to a more consistent interpretation of the rule of law, and foster European Identity and European Citizenship;
17. Believes that a charter proposal concentrating on the most fundamental rights which are justiciable in a court would favour the quality of these rights in the Union;

28 February 2000

## **OPINION**

for the Committee on Constitutional Affairs

on the drafting of a Charter of Fundamental Rights of the European Union (C5-0058/99 – 1999/2064(COS))

Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy

Draftsman: Mrs Catherine Lalumière

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## **PROCEDURE**

At its meeting of 23 September 1999 the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy appointed Mrs Catherine Lalumière draftsman.

It considered the draft opinion at its meetings of 25 November 1999, 24 January 2000, 22, 23 and 24 February 2000.

At the latter meeting it adopted the following conclusions by 36 votes to 2, with 1 abstention.

The following took part in the vote Gary Titley (chairman); Andre Brie, Carlos Carnero González (for Emilio Menéndez del Valle), Gérard Caudron (for Sami Naïr), John Walls Cushnahan, Giorgos Dimitrakopoulos (for Franco Marini), Juan Manuel Fabra Vallés, Giovanni Claudio Fava (for Claudio Martelli), Monica Frassoni (for Daniel Marc Cohn-Bendit), Michael Gahler, Per Gahrton, Vitalino Gemelli (for Jas Gawronski), Marietta Giannakou.Koutsikou, Alfred Gomolka, Klaus Hänsch, Magdalene Hoff, Georg Jarzembowski (for Ingo Friedrich), Giorgos Katiforis (for Petro Efthymiou), Efstratios Korakas, Jan Joost Lagendijk, Cecilia Malmström (for Francesco Rutelli), Pedro Maset Campos, Patricia McKenna (for Elisabeth Schroedter), Philippe Morillon, Pasqualina Napoletano, Arie M. Oostlander, Jacques F. Poos, Luís Queiró, Lennart Sacrédeus (for Gunilla Carlsson), Jannis Sakellariou, Jacques Santer, Pierre Schori, Mariotto Segni (for Cristiana Muscardini), Ioannis Souladakis, Hannes Swoboda, Freddy Thielemans, Johan Van Hecke, Jan Marinus Wiersma and Matti Wuori.

## SHORT JUSTIFICATION

### **I. General remarks on the Charter's features**

The Committee on Foreign Affairs wishes to highlight the following points:

1. Should the Charter apply solely to EU citizens within the meaning of Article 8 of the Maastricht Treaty or also cover anyone in the territory of the Union, which includes foreigners and, in particular, immigrants?

The Committee on Foreign Affairs is clearly in favour of the second option because human rights should not be reserved for a category of persons in a given territory. On the other hand, there is nothing to prevent the inclusion in the Charter of a section dealing with citizenship and the specific rights of EU citizens; but such provisions would only concern the right to vote, the right to free movement in the Union, the right to a passport and to diplomatic protection and a few other rights of similar nature. The rights that are truly fundamental must apply to everyone, both citizens and non-citizens.

2. What should be the status and force of the Charter?

Some seem to believe that the Charter should simply be a political statement, albeit highly symbolic, but without any legal force.

The rapporteurs, Mr Duff and Mr Voggenhuber, on the other hand, have clearly indicated that they wish the Charter to have an unchallengeable legal force and the Committee on Foreign Affairs supports this point of view. Given the texts we already have in Europe (in particular the Council of Europe's European Convention on Human Rights) and the fact that the European Union is seeking to be the region where human rights standards are highest, it could hardly be content with a declaration that would not only fail to add anything to the existing provisions but would actually constitute a step backwards.

This leads us to another consideration, namely the connection between the Charter and the Treaties. In our view, the European Parliament should firmly advocate the incorporation of the Charter into the Treaties. At the very least, the principles of the Charter should be clearly set out in the Treaties, possibly by including the most detailed provisions in an annex.

3. As regards its actual substance, Committee on Foreign Affairs wishes to stress that the Charter should not compete or clash with legal instruments that are already binding on the Member States, e.g. the Council of Europe's European Convention on Human Rights and the European Social Charter. It would be most inappropriate, in terms of the Union's credibility, especially in the eyes of the rest of the world, for the EU Charter to have less legal force than existing instruments. It is also important to avoid the risk of introducing contradictions between the different texts. Such contradictions would not only create internal difficulties, but would also undermine Europe's message in the field of human rights.

The Committee on Foreign Affairs is therefore in favour of further consideration being given to the prospect of European Union accession to the European Convention on Human Rights, which would contribute to more unified standards and greater consistency in case-law. This would mean that, charter provisions on rights covered by the Convention would simply refer to the Convention.

4. As regards the categories of rights to be included in the Charter, our committee has considered the issue of minority rights or, to be more precise, the rights of persons belonging to minority groups. The draftsman considers that this issue is of such importance, especially in the applicant countries, that it would be inconceivable for the subject to be left out of the Charter. However, committee members are divided on this issue, some believing that the Charter should not deal with such a controversial matter.

5. Lastly, the future Charter, whether or not it takes the form of a legally binding commitment, will be part of the EU 'acquis'. The applicant countries must therefore be involved in the drafting of the Charter. Discussions with representatives of those countries should be held as a matter of urgency.

Moreover, the proposed instruments are so important in terms of consolidating the high level of human rights protection in Europe that it would seem inconceivable for the Council of Europe not to be involved, as an organisation, in the drafting of the Charter.

## ***II. The Charter and the EU's external relations***

In the many texts which call for a European Union Charter of fundamental rights to be drawn up, the question of links with the Union's external relations or, where appropriate, the CFSP, is scarcely mentioned. However, there are in fact interactions between them, which must be taken into account before adopting the Charter.

### ***1. What can be the significance for third countries of a text adopted by and for the European Union?***

First of all, we should note a rather remarkable feature of the European Union. Since Maastricht, the Treaty on European Union stipulates not only that the EU must respect human rights within its borders but also that one of the objectives of its foreign and security policy is 'to develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms'. This is obviously a laudable objective and every effort must be made to achieve it. However, it is an unusual provision in the context of international relations which are traditionally based on power and influence rather than values.

In any case, in terms of standard international law, the European Union Charter of Fundamental Rights has absolutely no legal value in third countries! States are only bound by agreements which they have signed (or ratified). What is more, under the traditional rule of state sovereignty, countries have no right to pass judgement on the way in which other governments treat their own populations.

However, we are currently experiencing a period of change in which state sovereignty is increasingly being challenged in the name of principles deemed to be universal and the emergence of a right, or even a duty, of intervention.

Where the Charter simply refers to United Nations texts (United Nations Charter, Universal Declaration of Human Rights and the various protocols thereto, Declaration on Women's Rights, Declaration on the Rights of the Child, Declaration on the Rights of Migrant Workers, etc.), it will be possible to invoke such provisions even though, in practice, many signatory states show little respect for them.



However, where the European Charter goes beyond these texts – and this is likely to be often the case – it will be more difficult to enforce its provisions in third countries. This is already a problem in the absence of a European Union Charter. It will continue to be a problem after its adoption.

The objections of third countries are based not only on legal arguments (no legally binding texts) but also on cultural and philosophical grounds. These concern, in particular, the fundamental question of the universality of human rights, which is more difficult to deal with when seeking to enforce a text originally drawn up for a limited geographical area (European Union).

## 2. *What are the means available to the European Union?*

Direct intervention by the European Union is only possible on the basis of contractual clauses that are included in bilateral agreements with the relevant country. This is the case with regard to the clause on democracy and human rights which is now part of association, partnership and cooperation agreements. However, to ensure that such clauses are actually implemented, the Union is obliged to use indirect measures which can actually be applied even where there is no such clause. The democracy clause has therefore very little practical impact.

The European Union can resort to measures which are all forms of indirect pressure.

### - *Economic pressure*

As a prosperous and powerful partner, the European Union can exert economic pressure. However, there are limits to what can be achieved in this area. First of all, economic sanctions tend to penalise poor populations more than their leaders, which is obviously not the aim of the exercise. The European Union may also have to deal with conflicting interests: applying an economic embargo may adversely affect EU exporters or investors. In this case, defending human rights clashes with defending one's own economic interests, which can create a difficult situation.

It is also important to mention humanitarian aid. Theoretically, such aid should not be made conditional upon respect for human rights in the recipient country. In actual practice, however, it can be used as an instrument by the country granting the aid just as it can be used for its own benefit by the government of the recipient country.

### - *Diplomatic and political pressure*

The European Union institutions, and the European Parliament in particular, have often used such methods in different ways:

- adoption of resolutions and recommendations on human rights as part of the topical and urgent procedure;
- debates and hearings on the situation in specific countries or regions;
- pressure brought to bear during negotiations on bilateral agreements or treaties;
- pressure brought to bear during negotiations in international fora to draft multilateral texts or agreements;
- sending observers or mediators;
- the Council of Ministers may also decide to send official negotiators;

- threats of military intervention and military sanctions;
- use of force. Recent conflicts involving widespread violations of human rights in certain countries have shown the need for the use of force. However, they have also highlighted the serious problems this raises, including the obvious legal and political issues arising from intervention in a sovereign state.

### 3. *Need for a general political framework to justify European Union human rights activities worldwide*

There is therefore a danger that the European Union's action in support of human rights around the world may lead to a potentially chaotic proliferation of denunciations or interventions, thereby devaluing the notion of human rights and undermining the credibility of such action. The European Union is not an NGO. It is a political organisation which is expected to take political decisions and to show a sense of political responsibility. While it is extremely desirable for the EU to uphold the highest values, this is only possible subject to the following:

- First, a genuine common foreign and security policy which can define strategies vis-à-vis the Union's principal partners and promote coherent human rights action.
- A clear understanding of what fundamental rights we expect our partners to respect. This will not necessarily coincide with the content of the European Union Charter even though the latter may be used as a guide. This clarification is needed to ensure that the Union does not treat its partners differently and in a discriminatory manner according to its preferences.
- Information that is as accurate as possible on the human rights situation in the partner country. This implies that the Union should set up reliable means of investigation.
- Effective coordination between the three EU institutions (even though the European Parliament should continue to play a pioneering role) and within each of the institutions to avoid conflicting statements. The same applies to relations between the European Union, the Council of Europe and the OSCE. If they wish to defend human rights around the world, Europeans must seek to adopt positions that are as close and consistent as possible.
- The determination to avoid any temptation to adopt a post-colonialist or imperialistic attitude, in order to ensure that human rights action is never seen as being motivated by economic or power considerations.

## **CONCLUSIONS**

The Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy calls on the Committee on Constitutional Affairs, as the committee responsible, to incorporate the following paragraphs in its report:

1. Stresses that the adoption of the EU Charter must not in any way reduce the existing level of protection of human rights within the European Union;
2. Calls on the Member States in that connection to sign and ratify all Council of Europe conventions on human rights;
3. Urges all Member States to ensure that the Charter is given binding legal force, for example by incorporating it into the Treaty or in the form of an annex to the Treaty to which explicit reference is made in the body of the Treaty;
4. Considers that the Charter should apply to everyone in the European Union, and not be reserved exclusively for citizens, even though a section may be devoted to the rights specific to European citizenship;
5. Insists that the Charter should incorporate new concepts in the field of human rights, in response to the rapid pace of change in many fields of human endeavour in recent decades, most notably in relation to economic, social, technological, cultural and environmental factors;
6. Considers that a modern approach to fundamental rights also embraces the problems associated with the Internet, which require both internal regulation in the Union and, above all, Union initiatives at international level to promote financial regulation;
7. Recommends that the countries negotiating for accession to the European Union be associated with the drafting process, and proposes that hearings with representatives of the governments, parliaments, and the people of these countries be arranged as a matter of urgency, to enable them not only to adhere to the Charter, but also to apply it in their day-to-day affairs. Under no circumstances may association with the drafting process of a country negotiating for accession lead to negotiations for special treatment of that country in terms of the obligations and the level of human rights protection entailed by the Charter;
8. Reiterates its support for the accession of the European Union to the European Convention on Human Rights;

# EUROPEAN PARLIAMENT

## EUROPEAN PARLIAMENT DELEGATION TO THE CONVENTION RESPONSIBLE FOR DRAFTING THE EUROPEAN UNION CHARTER OF FUNDAMENTAL RIGHTS

### MINUTES of the meeting of 14 march 2000 Strasbourg

The meeting opened at 9.15 a.m. on Tuesday 14 march 2000 with Mr Mendez de Vigo in the chair.

**1. Adoption of draft agenda** PE 288.592

The agenda was adopted, with the addition of an item on the election of vice chairmen.

**2. Election of delegation vice chairmen**

Mrs Beres (PSE group) and Mrs Kaufman (GUE group) were elected by acclamation first and second vice chairmen respectively.

**3. Approval of minutes of meeting of:**

15 February 2000 PE 288.590

**4. Chairman's announcements**

The chairman provided the following information;:

(a) An account of the lunch with Mr Moscovici, French Minister for European Affairs, on 7 March in Paris;

(b) The need to bring forward the conventions work programme by one month to ensure that a text can be drafted by mid october for the Biarritz European Council;

(c) The convention will meet with NGOs on 27 April 2000 and with representatives of the applicant states on 18 July 2000.

**5. Further deliberations in the light of the convention meetings of the convention meetings of 24/25 February and 2/3 March 2000)**

The deliberations in the light of the previous meetings gave rise to a discussion, in which the following took part: the chairman, MENDEZ DE VIGO, DUFF, KIRKHOPE, FRIERICH, VOGGENHUBER, CEDERSCHIÖLD, MAIJ-WEGGEN, BERES, WATSON, MOMBAUR, PACIOTTI and LALUMIERE.

**6. Date and place of next meeting**

This would depend on the progress of the Convention's work.

\* \* \*

The meeting closed at 11.00 a.m.

\* \* \*

# PARLEMENT EUROPÉEN

## Délégation du Parlement Européen au sein de la Convention chargée de l'élaboration de la Charte des droits fondamentaux de l'Union Européenne

### COMMUNICATION AUX MEMBRES

04/2000

Les membres de la délégation trouveront ci-après un résumé succinct des débats de la 6<sup>ème</sup> réunion de la délégation qui a eu lieu à Strasbourg le 14 mars 2000.

\* \* \*

La délégation a tout d'abord élu par acclamation Mmes BERES et KAUFMANN respectivement 1<sup>ère</sup> et 2<sup>ème</sup> vice-présidentes.

Monsieur MENDEZ DE VIGO, rendant compte du déjeuner du Bureau de la Convention le 7 mars à Paris avec le Ministre français des affaires européennes, a mentionné la nécessité d'avancer d'un mois la fin des travaux de la Convention, dans le but de pouvoir disposer d'un texte prêt dès la mi-octobre, pour le Conseil européen informel de Biarritz. Cette accélération a donné lieu à différentes appréciations de la part des membres, certains craignant qu'elle ne rende plus difficile la réunion du consensus nécessaire, d'autres soulignant qu'en revanche elle laisse plus favorablement augurer d'une incorporation de la Charte dans le Traité.

La méthode de travail de la Convention a suscité quelques questions, auxquelles M. MENDEZ DE VIGO a répondu que les membres étaient invités, en vue de la réunion plénière de la Convention des 20/21 mars 2000, à présenter avant le 17 mars 2000 leurs observations écrites sur la première série de droits soumis à l'examen de la Convention (articles 1 à 12 initialement, devenus 1 à 16, document CONVENT 13), sans préjudice bien entendu de leurs interventions orales au cours de la séance elle-même. Quant à la présentation éventuelle de la Charte en deux parties (partie A et partie B), M. MENDEZ DE VIGO a remarqué qu'elle équivalait à la méthode, adoptée d'emblée par le Présidium, de l'adjonction d'un commentaire juridique en italiques sous chaque article.

La difficulté de trouver un équilibre entre, d'une part, la nécessité que la Charte soit compréhensible pour le "simple citoyen", et, d'autre part, celle de tenir compte très précisément des dispositions de la CEDH (et de la jurisprudence que la Cour des droits de l'homme a élaborée sur la base de celle-ci) a fréquemment été relevée.

Sur le fond, les débats se sont concentrés sur la portée du droit à la vie, les implications des avancées scientifiques dans le contexte du respect de l'intégrité de l'être humain et de la liberté de la recherche, la définition de la famille et la gratuité de l'enseignement.

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Bruxelles, 30 mars 2000

**DELEGATION DU PARLEMENT EUROPEEN  
AUPRES DE LA CONVENTION  
CHARGÉE DE L'ÉLABORATION DE LA CHARTE  
DES DROITS FONDAMENTAUX DE L'UNION EUROPEENNE**

**7ème REUNION  
11 avril 2000  
9 h à 11 h  
salle SDM-S5  
STRASBOURG**

**PROJET D'ORDRE DU JOUR**

1. Adoption du projet d'ordre du jour (PE 288.597)
2. Adoption du procès-verbal de la réunion du 14 mars 2000 (PE 288.595)
3. Poursuite des travaux à la lumière des débats des réunions de la Convention des 20/21 mars et 27/28 mars
4. Date et lieu de la prochaine réunion

27.03.2000

PE 288.597

# EUROPEAN PARLIAMENT

## EUROPEAN PARLIAMENT DELEGATION TO THE CONVENTION RESPONSIBLE FOR DRAFTING THE EUROPEAN UNION CHARTER OF FUNDAMENTAL RIGHTS

### MINUTES

of the meeting of 11 April 2000  
STRASBOURG

The meeting opened at 9 a.m. on Tuesday 11 April 2000 with Mr MENDEZ DE VIGO, chairman, in the chair.

**1. Adoption of draft agenda** PE 288.597

The agenda was adopted.

**2. Approval of minutes of meeting of:**

14 March 2000 PE 288.595

**3. Further deliberations in the light of the convention meetings of 20/21 March and 27/28 March 2000**

Mr MENDEZ DE VIGO outlined the projected programme of work for forthcoming meetings of the convention.

The following Members spoke: FRIEDRICH, CEDERSCHIÖLD, PACIOTTI, DUFF, MAIJ-WEGGEN, VOGGENHUBER, VAN DEN BERG and KIRKHOPE.

Mr MENDEZ DE VIGO replied to Members' questions about the further deliberations.

**4. Date and place of next meeting**

This would depend on the progress of the convention's work.

\* \* \*

The meeting closed at 10.45 a.m.



BILAG/ANLAGE/ILVAJAPTILOJA/ANNEX/

ANNEXE/ALLEGATO/BIJLAGE/ANEXO/LIITE/BILAGA

**DELTAGERLISTE/ANWESENHEITSLISTE/ΚΑΤΑΣΤΑΣΗ ΠΑΡΟΥΣΙΑΣ/RECORD  
OF ATTENDANCE/LISTA DE ASISTENCIA/LISTE DE PRESENCE/ELENCO DEI  
PRESENTI/PRESENTIELIJST/LISTA DE PRESENÇAS/LÄSNÄOLOLISTA/DELTAGARLISTA**

|               |                                                                                                                                                                                                                          |
|---------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Til stede     | Formandskabet/Vorstand/Πρόεδρος/Bureau/Ufficio di Presidenza/Mesa/Puheenjohtajisto/J.L. Presidium: (*)<br>Méndez de Vigo (P). Berès (VP)                                                                                 |
| Anwesend      | Medlemmer/Mitglieder/Άνταρτοί/Members/Diputados/Diputs/Deputati/Leden/Deputados/Jäsenet/<br>Ledamöter:<br>Berthu, Cederschiöld, Cornillet, Duff, Friedrich, Kirkhope, Maij-Weggen, Martin, H.-P., Paciotti, Voggenhuber  |
| ILVAJAPTILOJA | Stedfortrædere/Stellvertreter/Αντιπρόεδμοί/Substitutes/Suplentes/Suppliants/<br>Membri supplenti/Plaatsvervangers/Membros suplentes/Varajäsenet/Suppleanter:<br>van den Burg, Buitenweg, Frahm, Lalumière, Mombaur, Rack |
| Present       |                                                                                                                                                                                                                          |
| Presentes     |                                                                                                                                                                                                                          |
| Présents      |                                                                                                                                                                                                                          |
| Presenti      |                                                                                                                                                                                                                          |
| Aanwezig      |                                                                                                                                                                                                                          |
| Läsna         |                                                                                                                                                                                                                          |
| Närvarande    |                                                                                                                                                                                                                          |

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| Art. 151,4                                                                                                                                                                                                                            |  |
| Endv. deltog/Weitere Teiln./<br>Συμμετείχεσαν/Also present<br>Participaron igualmente/<br>Participaient également/<br>Hanno partecipato altresì/<br>Andere deelnemers/<br>Outros participantes/<br>Muut osallistujat/ Dessutom deltog |  |
| (Dagsorden/Tagesordnung Pkt/Πρόγραμμα Ημερήσιων Έργων/Point OJ/Punto OG/Agenda Punt/Ordem do dia-punto/punto orden del dia/<br>Esityslistan kohta/Föredragningslista punkt):                                                          |  |

\* (P) =Formand/Vorsitzender/Πρόεδρος/Chairman/Präsident/Presidente/Voorzitter/Presidente/Puheenjohtaja/Ordförande  
(VP) =Næstform./Stellv. Vorsitz./Αντιπρόεδρος/Vice-Chairman/Vice-Präsident/Vicepresidente/Varapuheenjohtaja  
Ondervoorz./Vice-Pres./Vicepres/Vice ordförande.

Til stede den/Anwesend am/ILVAJAPTILOJA/Present on/Prisent le/Presente il/Aanwezig op/Presente em/Presente el/Läsna/Närvarande den.

- (1) 11.04.2000  
(2)  
(3)

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|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Efter indbydelse fra formanden/Auf Einladung d. Vorsitzenden/Αφ' επικοινωνίας του Προέδρου/At the invitation of the Chairman/Por invitación del presidente/Sur l'invitation du président/Su invito del presidente/Op uitnodiging van de voorzitter/A convite do presidente/Puheenjohtajan kutsusta/På ordförandens inbjudan:</p> <p>Radet/Rat/Συμβούλιο/Council/Consejo/Conseil/Consiglio/Raad/Conselho/Neuvosto/Rådset: (*)</p> <p>Kommissionen/Kommission/Λειτουργία/Commission/Comisión/Commissione/Commissie/Comissão/Komissio/Kommissionen: (*)</p> <p>Cour des comptes:</p> <p>C.E.S.:</p> |
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|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------|----------------------------------------------------------------------|
| <p>Andre deltagere/Andere Teilnehmer<br/>Λειτουργοί Παραβρισμένοι/Also present<br/>Otros participantes/Autres participants/Altri partecipanti<br/>Andere aanwezigen/Outros participantes</p>                                                                                                                                                         |                                                                              |                                                                      |
| <p>Gruppernes sekretariat<br/>Sekretariat der Fraktionen<br/>Γραφεία των Ομάδων Πολιτικών<br/>Secretariat political groups<br/>Secr. de los grupos políticos<br/>Secr. Groupes politiques<br/>Segr. dei gruppi politici<br/>Secr. van de fracties<br/>Secr. dos grupos políticos<br/>Poliittisten ryhmien sihteeristö<br/>Gruppernas sekretariat</p> | <p>PPE<br/>PSE<br/>ELDR<br/>Verts/ALE<br/>GUE/NGL<br/>UEN<br/>EDD<br/>NI</p> | <p>Salafranca<br/>Henriques<br/>Trauffer</p>                         |
| <p>Cab. du Président</p>                                                                                                                                                                                                                                                                                                                             |                                                                              |                                                                      |
| <p>Cab. du Secrétaire Général</p>                                                                                                                                                                                                                                                                                                                    |                                                                              |                                                                      |
| <p>Generaldirektorat<br/>Generaldirektion<br/>Γενική Διεύθυνση<br/>Directorate-General<br/>Dirección general<br/>Direction générale<br/>Direzione generale<br/>Directoraat-generaal<br/>Direcção general<br/>Contrôle financier<br/>Service juridique<br/>Pääosasto<br/>Generaldirektorat</p>                                                        | <p>I<br/>II<br/>III<br/>IV<br/>V<br/>VI<br/>VII<br/>VIII</p>                 | <p>Brulant, Dean, Du Rietz, Reich<br/>Duch Guillot</p> <p>Caiola</p> |
| <p>Udvalgssekretariatet<br/>Ausschubsekretariat<br/>Γραφείο της Επιτροπής<br/>Committee secretariat<br/>Secretaria de la comisión<br/>Secrétariat de la commission<br/>Segretariato della commissione<br/>Commissiesecretariaat<br/>Secretaria de comissão<br/>Valiokunnan sihteeristö<br/>Utskottssekretariatet</p>                                 |                                                                              | <p>Giraud, Réchard</p>                                               |
| <p>Assist./Βοηθός</p>                                                                                                                                                                                                                                                                                                                                |                                                                              | <p>Schmidt</p>                                                       |

\* (P) =Formand/Pres./Πρόεδρος/Chairman/Prsident/Voorzitter/Puheenjohtaja/Ordførande

(VP) =Næstform./Vize-Pres./Αντιπρόεδρος/Vice-Chairman/Vice-Prsident/Ondervoorz./Vice-pres/V arapuheenjohtaja/Vice ordførande.

(M) =Medlem./Mitglied/Μέλος/Member/Miembro/Membre/Membro/Lid/Membro/Jäsen/Ledamot

(F) =Tjenestemand/Beamter/Υπάλληλος/Official/Funcionario/Fonctionnaire/Funzionario/Ambtenaar/ Functionário/Virkamies/Tjänsteman

# PARLEMENT EUROPÉEN

## Délégation du Parlement européen au sein de la Convention chargée de l'élaboration de la Charte des droits fondamentaux de l'Union européenne

### COMMUNICATION AUX MEMBRES

05/2000

Les membres de la délégation trouveront ci-après un résumé succinct des débats de la 7<sup>ème</sup> réunion de la délégation qui a eu lieu le 11 avril 2000.

\* \* \*

M. MENDEZ DE VIGO a introduit la réunion en faisant le point sur le programme des travaux de la Convention, ainsi que sur leur calendrier prévisionnel : la Convention doit achever l'examen de la suite des droits sociaux et aborder celui des clauses horizontales ; un avant-projet de Charte devrait être adopté les 5/6 juin sur la base des amendements déposés par les membres de la Convention et d'un compromis présenté par le Praesidium ; quant à la poursuite ultérieure des travaux, la question du meilleur moment, pour le Parlement, pour prendre position sur la Charte constitue un point stratégique difficile à trancher, sur lequel il importe de réfléchir assez tôt ; des invitations en direction des ONG sont programmées (audition les 27/28 avril ; journées portes ouvertes le 6 juin) ; un colloque universitaire est envisagé d'ici à la fin du mois de juin ; enfin la Convention recevra les représentants d'Etats candidats le 20 juin.

Au cours du débat qui a suivi, des doutes se sont exprimés quant à la possibilité pour la Convention, compte tenu de l'absence de consensus en particulier sur les droits sociaux, de parvenir à un résultat dans un délai si bref ; à l'encontre de cette opinion, une charte *a minima* peut paraître inopportune, au regard notamment du mandat fixé à Cologne : la Charte, selon cette opinion, devrait en particulier expressément consacrer les droits sociaux et le droit à l'environnement.

Plusieurs voix ont mis en garde contre une expression trop précoce du Parlement sur la Charte, qui donnerait "trop" de temps au Conseil européen : novembre pourrait suffire.

La rédaction de l'exposé des motifs soulève certaines inquiétudes : il a été peu discuté ; et présente encore de nombreuses insuffisances. De plus il y a lieu de s'interroger sur l'éventuelle rédaction d'une partie pédagogique sur les compétences des institutions.

Tous ces débats, cependant, ne manquent-ils pas de réalisme, demande un membre ? Il convient en effet de ne pas oublier que le sort de la Charte dépend des Parlements nationaux et des gouvernements.

En ce qui concerne l'organisation d'un colloque universitaire, une décision rapide est désormais nécessaire ; de nombreux noms, au demeurant, peuvent être évoqués.

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Bruxelles, 2 mai 2000

**EUROPEAN PARLIAMENT DELEGATION  
TO THE CONVENTION RESPONSIBLE FOR DRAFTING  
THE EUROPEAN UNION CHARTER OF  
FUNDAMENTAL RIGHTS**

DE/OJ/008  
2.5.2000

**8<sup>th</sup> Meeting**

**16 May 2000  
from 9 a.m. to 11 a.m.  
Room 5 SDM  
STRASBOURG**

**DRAFT AGENDA**

- 1. Adoption of draft agenda (PE 290.395)**
- 2. Approval of minutes of meeting of 1 April 2000 (PE 290.393)**
- 3. Further deliberations in the light of the discussions at the Convention meetings of 27/28 April, 3/4 May (and 11/12 May)**
- 4. Date and place of next meeting**

# EUROPEAN PARLIAMENT

## EUROPEAN PARLIAMENT DELEGATION TO THE CONVENTION RESPONSIBLE FOR DRAFTING A EUROPEAN UNION CHARTER OF FUNDAMENTAL RIGHTS

### MINUTES

of the meeting of  
17 May 2000

### STRASBOURG

The meeting opened at 9.15 a.m. on Wednesday, 17 May 2000, with Mr Méndez de Vigo, chairman, in the chair.

**1. Adoption of draft agenda** PE 290.395

The agenda was adopted.

**2. Approval of minutes of meeting of:**

11 April 2000 PE 290.393  
The minutes of the Delegation meeting of 11 April were approved.

**3. Further work in the light of discussions at the Convention's meetings of 27/28 April and 3/4 May (and 11/12 May) 2000**

The chairman announced several items of information to the Members.

In the ensuing general exchange of views, the following spoke:  
Kirkhope, Cederschiöld, Friedrich, Duff, Berès, Voggenhuber, Leinen, Mombaur, Kaufmann, van Dam, Buttiglione, van den Berg and Paciotti.

Mr Méndez de Vigo concluded the meeting.

**4. Date and place of next meeting:**

The date and place of the next meeting would be set on the basis of progress made in the Convention's work.

The meeting closed at 10.45 a.m.

\* \* \*

BILAG/ANLAGE/ΠΡΩΤΟΚΟΛΛΑ/ANNEX/  
ANNEXE/ALLEGATO/BIJLAGE/ANEXO/LIITE/BILAGA

**DELTAGERLISTE/ANWESENHEITSLISTE/ΚΑΤΑΣΤΗΛΙΣΤΗΛΟΓΙΟ/RECORD  
OF ATTENDANCE/LISTA DE ASISTENCIA/LISTE DE PRESENCE/ELENCO DEI  
PRESENTI/PRESENTIELIJST/LISTA DE PRESENÇAS/LÄSNÄOLOLISTA/DELTAGARLISTA**

|            |                                                                                                                                                                                                                               |
|------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Til stede  | Formandskabet/Vorstand/Πρόεδρος/Bureau/Ufficio di Presidenza/Mesa/Puheenjohtajisto/J.L. Presidium: (*)<br>Méndez de Vigo (P). Berès (VP)                                                                                      |
| Anwesend   | Medlemmer/Mitglieder/Μέλη/Members/Diputados/Diputis/Deputati/Leden/Deputados/Jäsenet/<br>Ledamöter:<br>Berthu, Cederschiöld, Duff, Friedrich, Kaufmann, Kirkhope, Leinen, Martin, H.-P., Paciotti, Voggenhuber                |
| Πρόεδροι   | Stedfortrædere/Stellvertreter/Αντιπρόεδμοί/Substitutes/Suplentes/Suppliants/<br>Membri supplenti/Plaatsvervangers/Membros suplentes/Varajäsenet/Suppleanter:<br>van den Burg, Buttiglione, van Dam, Dehousse, Iivari, Mombaur |
| Present    |                                                                                                                                                                                                                               |
| Presentes  |                                                                                                                                                                                                                               |
| Présents   |                                                                                                                                                                                                                               |
| Presenti   |                                                                                                                                                                                                                               |
| Aanwezig   |                                                                                                                                                                                                                               |
| Läsnä      |                                                                                                                                                                                                                               |
| Närvarande |                                                                                                                                                                                                                               |

|                                                                                                                                                                                                                                       |  |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
| Art. 151,4                                                                                                                                                                                                                            |  |
| Endv. deltog/Weitere Teiln./<br>Συμμετέχοντες/Also present<br>Participaron igualmente/<br>Participaient également/<br>Hanno partecipato altresì/<br>Andere deelnemers/<br>Outros participantes/<br>Muut osallistujat/ Dessutom deltog |  |
| (Dagsorden/Tagesordnung Pkt/Πρόγραμμα Ημερήσιων Έργων/<br>Σημείο ΟΓ/Punto OG/Punto OG/Agenda Punt/Ordem do dia-<br>punto/punto orden del dia/<br>Esityslistan kohta/Föredragningslista punkt):                                        |  |

\* (P) =Formand/Vorsitzender/Πρόεδρος/Chairman/Präsident/Presidente/Voorzitter/Presidente/Puheenjohtaja/Ordförande  
(VP) =Næstform./Stellv. Vorsitz./Αντιπρόεδρος/Vice-Chairman/Vice-Präsident/Vicepresidente/Varapuheenjohtaja  
Ondervoorz./Vice-Pres./Vicepres/Vice ordförande.

Til stede den/Anwesend am/Πρόεδρος/Present on/Prisnt le/Presente el/Aanwezig op/Presente em/Presente el/Läsnä/Närvarande den.

- (1) 17.05.2000
- (2)
- (3)

Efter indbydelse fra formanden/Auf Einladung d. Vorsitzenden/Νέ: πρόεδρος ηγή του Πρωσβήτου/At the invitation of the Chairman/Por invitación del presidente/Sur l'invitation du président/Su invito del presidente/Op uitnodiging van de voorzitter/A convite do presidente/Puheenjohtajan kutsusta/På ordförandens inbjudan:

Radet/Rat/Συμβούλιο/Council/Consejo/Conseil/Consiglio/Raad/Conselho/Neuvosto/R.adet: (\*)

CUNHA  
Kommissionen/Kommission/Λειτουργείο/Commission/Comisión/Commissione/Commissie/Comissão/Komissio/  
Kommissionen: (\*)

Cour des comptes:

C.E.S.:

|                                                                                                                                                                                                                                                                                                                                  |                                                                |                                                                                              |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------|----------------------------------------------------------------------------------------------|
| Andre deltagere/Andere Teilnehmer<br>Λειτουργοί Παρόντες/Also present<br>Otros participantes/Autres participants/Altri partecipanti<br>Andere aanwezigen/Outros participantes                                                                                                                                                    |                                                                |                                                                                              |
| Gruppernes sekretariat<br>Sekretariat der Fraktionen<br>Γραφεία των Πολιτ. Ομάδων<br>Secretariat political groups<br>Secr. de los grupos politicos<br>Secr. Groupes politiques<br>Segr. dei gruppi politici<br>Secr. van de fracties<br>Secr. dos grupos politicos<br>Poliittisten ryhmien sihteeristö<br>Gruppernas sekretariat | PPE<br>PSE<br>ELDR<br>Verts/ALE<br>GUE/NGL<br>UEN<br>EDD<br>NI | Salafranca<br>Geuthner, Henriques<br>Trauffer<br>Prossliner<br><br>Rizza                     |
| Cab. du Président                                                                                                                                                                                                                                                                                                                |                                                                |                                                                                              |
| Cab. du Secrétaire Général                                                                                                                                                                                                                                                                                                       |                                                                |                                                                                              |
| Generaldirektorat<br>Generaldirektion<br>Γενική Διεύθυνση<br>Directorate-General<br>Dirección general<br>Direction générale<br>Direzione generale<br>Directoraat-generaal<br>Direcção general<br>Contrôle financier<br>Service juridique<br>Pääosasto<br>Generaldirektorat                                                       | I<br>II<br>III<br>IV<br>V<br>VI<br>VII<br>VIII                 | Brulant, Dastoli, du Rietz, Gomez Martos, Leonhardt, Noonan<br><br>Lehmann<br><br><br>Caiola |
| Udvalgssekretariatet<br>Ausschußsekretariat<br>Γραφείο της Επιτροπής<br>Committee secretariat<br>Secretaria de la comisión<br>Secrétariat de la commission<br>Segretariato della commissione<br>Commissiesecretariaat<br>Secretaria de comissão<br>Valiokunnan sihteeristö<br>Utskottssekretariatet                              |                                                                | Giraud, Réchard                                                                              |
| Assist./Βοηθός                                                                                                                                                                                                                                                                                                                   |                                                                | Schmidt                                                                                      |

\* (P) =Formand/Pres./Πρόεδρος/Chairman/President/Voorzitter/Puheenjohtaja/Ordførande  
 (VP) =Næstform./Vize-Pres./Αντιπρόεδρος/Vice-Chairman/Vice-President/Ondervoorz./Vice-pres/V arapuheenjohtaja/Vice ordførande.  
 (M) =Medlem./Mitglied/Μέλος/Member/Miembro/Membre/Membro/Lid/Membro/Jäsen/Ledamot  
 (F) =Tjenestemand/Beamter/Υπάλληλος/Official/Funcionario/Fonctionnaire/Funzionario/Ambtenaar/ Fonctionnaire/Virkamies/Tjønsteman

**EUROPEAN PARLIAMENT DELEGATION  
TO THE CONVENTION FOR THE DRAWING UP OF A DRAFT CHARTER OF  
FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**

DE/OJ/009  
26 May 2000

**Ninth meeting**

**8 June 2000  
10 a.m. – 1 p.m.  
Room P5B001  
Brussels**

**Draft agenda**

1. Adoption of draft agenda (PE 290.396)
2. Approval of minutes of meeting of 16 May 2000 (PE 290.397)
3. Continuation of work in the light of discussions at the Presidium and Convention meetings on 5-6 June
4. Date and place of next meeting



# EUROPEAN PARLIAMENT

## EUROPEAN PARLIAMENT DELEGATION TO THE CONVENTION RESPONSIBLE FOR DRAFTING A EUROPEAN UNION CHARTER OF FUNDAMENTAL RIGHTS

### MINUTES

of the meeting of  
8 June 2000

### BRUSSELS

The meeting opened at 10.20 a.m. on Thursday, 8 June 2000, with Mr Méndez de Vigo in the chair.

**1. Adoption of draft agenda** PE 290.396

The agenda was adopted.

**2. Approval of minutes of meeting of:**

17 May 2000

PE 290.397

Since the minutes of the meeting of 17 May 2000 were unavailable, approval was postponed.

**3. Further work in the light of discussions at the Convention's meetings of 5/6 June 2000**

The Chairman introduced the debate.

The following spoke: Voggenhuber, Cederschiöld, Duff, Friedrich, Kaufmann, Leinen, Paciotti, Berès, Berthu and Dehousse.

Following this discussion it was decided that Mr Méndez de Vigo, the chairman, would send President Herzog a letter summarising the Delegation's proposals for the procedure.

**4. Date and place of next meeting:**

The date and place of the next meeting would be set on the basis of progress made in the Convention's work.

The meeting closed at 12.04 p.m.

\* \* \*

BILAG/ANLAGE/ΠΑΡΑΡΤΗΡΙΑ/ANNEX/  
ANNEXE/ALLEGATO/BIJLAGE/ANEXO/LIITE/BILAGA

**DELTAGERLISTE/ANWESENHEITSLISTE/ΚΑΤΑΣΤΑΣΗ ΠΡΟΣΗΥΣΗΣ/RECORD  
OF ATTENDANCE/LISTA DE ASISTENCIA/LISTE DE PRESENCE/ELENCO DEI  
PRESENTI/PRESENTIELIJST/LISTA DE PRESENÇAS/LÁSÑÄOLOLISTA/DELTAGARLISTA**

|            |                                                                                                                                                                                                          |
|------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Til stede  | Formandskabet/Vorstand/Πρόεδρος/Bureau/Ufficio di Presidenza/Mesa/Puheenjohtajisto/J.L. Presidium: (*)<br>Méndez de Vigo (P). Berès (VP)                                                                 |
| Anwesend   | Medlemmer/Mitglieder/Μέλη/Members/Diputados/Diputts/Deputati/Leden/Deputados/Jäsenet/<br>Ledamöter:<br><br>Berthu, Cederschiöld, Duff, Friedrich, Kaufmann, Leinen, Martin, H.-P., Paciotti, Voggenhuber |
| Παρόντες   | Stedfortrædere/Stellvertreter/Αντιπρόεδμοί/Substitutes/Suplentes/Suppliants/<br>Membri supplenti/Plaatsvervangers/Membros suplentes/Varajäsenet/Suppleanter:                                             |
| Present    | van den Burg, Dehousse, Iivari, Whitehead                                                                                                                                                                |
| Presentes  |                                                                                                                                                                                                          |
| Présents   |                                                                                                                                                                                                          |
| Presenti   |                                                                                                                                                                                                          |
| Aanwezig   |                                                                                                                                                                                                          |
| Läsna      |                                                                                                                                                                                                          |
| Närvarande |                                                                                                                                                                                                          |

|                                                                                                                                                                                                                                            |  |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
| Art. 151.4                                                                                                                                                                                                                                 |  |
| Endv. deltog/Weitere Teiln./<br>Συμμετείχαν επίσης/Also present<br>Participaron igualmente/<br>Participaient également/<br>Hanno partecipato altresì/<br>Andere deelnemers/<br>Outros participantes/<br>Muut osallistujat/ Dessutom deltog |  |
| (Dagsorden/Tagesordnung Pkt/Πρόγραμμα Ημερήσιων Έργων/<br>Σημείο/Point d'Ordre/Punto OG/Agenda Punt/Ordem do dia-<br>punto/punto orden del dia/<br>Esityslistan kohta/Föredragningslista punkt):                                           |  |

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(VP) =Næstform./Stellv. Vorsitz./Αντιπρόεδρος/Vice-Chairman/Vice-Präsident/Vicepresidente/Varapuheenjohtaja  
Ondervoorz./Vice-Pres./Vicepres/Vice ordförande.

Til stede den/Anwesend am/Παρόντες/Present on/Prisente il/Presente el/Aanwezig op/Presente em/Presente el/Läsna/Närvarande den.

- (1) 08.06.2000  
(2)  
(3)

Efter indbydelse fra formanden/Auf Einladung d. Vorsitzenden/Αντιπρόεδρος/Πρόεδρος/Πρόεδρος/At the invitation of the Chairman/Por invitación del presidente/Sur l'invitation du président/Su invito del presidente/Op uitnodiging van de voorzitter/A convite do presidente/Puheenjohtajan kutsusta/

|                                                                                                                                                                                                                                                                                                     |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>På ordförandens inbjudan:</p> <p>Radet/Rat/Συμβούλιο/Council/Consejo/Conseil/Consiglio/Raad/Conselho/Neuvosto/R.adet: (*)</p> <p>Kommissionen/Kommission/Likvidatsiya/Commission/Comisión/Commissione/Commissie/Commissão/Komissio/Kommissionen: (*)</p> <p>Cour des comptes:</p> <p>C.E.S.:</p> |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

|                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                             |                                                                                                                     |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------|
| <p>Andre deltagere/Andere Teilnehmer<br/>         Συμμετέχοντες/Also present<br/>         Otros participantes/Autres participants/Altri partecipanti<br/>         Andere aanwezigen/Outros participantes</p>                                                                                                                                                                                                                                   |                                                                                                                                             |                                                                                                                     |
| <p>Gruppernes sekretariat<br/>         Sekretariat der Fraktionen<br/>         Γραφεία των Ομάδων Πολιτικών<br/>         Secretariat political groups<br/>         Secr. de los grupos políticos<br/>         Secr. Groupes politiques<br/>         Segr. dei gruppi politici<br/>         Secr. van de fracties<br/>         Secr. dos grupos políticos<br/>         Poliittisten ryhmien sihteeristö<br/>         Gruppernas sekretariat</p> | <p>PPE<br/>         PSE<br/>         ELDR<br/>         Verts/ALE<br/>         GUE/NGL<br/>         UEN<br/>         EDD<br/>         NI</p> | <p>Salafranca<br/>         Geuthner, Henriques<br/> <br/>         Prossliner<br/> <br/>         Soibinet</p>        |
| <p>Cab. du Président</p>                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                             |                                                                                                                     |
| <p>Cab. du Secrétaire Général</p>                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                             |                                                                                                                     |
| <p>Generaldirektorat<br/>         Generaldirektion<br/>         Γενική Διεύθυνση<br/>         Directorate-General<br/>         Dirección general<br/>         Direction générale<br/>         Direzione generale<br/>         Directoraat-generaal<br/>         Direcção general<br/>         Contrôle financier<br/>         Service juridique<br/>         Pääosasto<br/>         Generaldirektorat</p>                                      | <p>I<br/>         II<br/>         III<br/>         IV<br/>         V<br/>         VI<br/>         VII<br/>         VIII</p>                 | <p>Dastoli<br/>         Duch<br/>         Lehmann<br/> <br/> <br/> <br/> <br/> <br/> <br/> <br/>         Caiola</p> |
| <p>Udvalgssekretariatet<br/>         Ausschußsekretariat<br/>         Γραφείο της Επιτροπής<br/>         Committee secretariat<br/>         Secretaria de la comisión<br/>         Secrétariat de la commission<br/>         Segretariato della commissione<br/>         Commissiesecretariaat<br/>         Secretaria de comissão<br/>         Valiokunnan sihteeristö<br/>         Utskottssekretariatet</p>                                 |                                                                                                                                             | <p>Giraud, Réchard</p>                                                                                              |
| <p>Assist./Βοηθός</p>                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                             | <p>Schmidt</p>                                                                                                      |

- \* (P) =Formand/Pres./Πρόεδρος/Chairman/Präsident/Voorzitter/Puheenjohtaja/Ordförande  
 (VP) =Næstform./Vize-Pres./Βιτσιπρόεδρος/Vice-Chairman/Vice-Präsident/Ondervoorz./Vice-pres/Varapuheenjohtaja/Vice ordförande.  
 (M) =Medlem./Mitglied/Μέλος/Member/Miembro/Membre/Membro/Lid/Membro/Jäsen/Ledamot  
 (F) =Tjenestemand/Beamter/Υπάλληλος/Official/Funcionario/Fonctionnaire/Funzionario/Ambtenaar/ Functionario/Virkamies/Tjänsteman

# EUROPEAN PARLIAMENT

## European Parliament Delegation to the Convention for the drawing up of a draft Charter of fundamental rights of the European Union

### NOTICE TO MEMBERS

09/2000

Please find attached a summary of the discussions held at the 9<sup>th</sup> meeting of the delegation on 8 June 2000.

\* \* \*

The chairman proposed that the delegation should consider the procedure for the provisional approval of articles in the Charter, in the light of, on the one hand, the very large number of amendments and, on the other, the pressure generated by the desire to produce a text approved by consensus in time for the Biarritz European Council.

As one member pointed out, a crucial point had been reached in the drawing up of the Charter, at which the divide between the two cultures within the Convention – the diplomatic and the parliamentary – had become patent.

Although it did embody a risk, the confrontation between these two cultures provided a precedent to illustrate the richness of the process involved in drawing up the Charter. There was therefore a compelling need to succeed so that the experiment might be used in future in other contexts. Early solutions were therefore needed to the problems which had recently held up progress.

The Convention therefore needed a real decision-making procedure; while a consensus could always be found when it was simply a question of negotiating a compromise between different expressions of the same approach, it became impossible when there were fundamental divergences on questions of principle. Could a vote really be avoided in such cases? It had to be realised that, failing that, the field was left to those who were monopolising debate as they did not want the Charter. In any case, as one member pointed out, while the conclusions of the Tampere European Council required the *final* adoption to be by consensus among the four parts, they in no way rule out simple majority voting on the articles.

Some members suggested that, if there were not to be a formal vote on each amendment, the authors of amendments falling completely outside the compromises tabled by the Presidium should have one minute's speaking time and should then have their amendments voted on. Mr Méndez de Vigo replied that that was precisely the procedure being considered by the Presidium.

One partial solution might be to give the chairman of the sitting formal authorisation to cut off any speech relating to a matter outside the terms of reference of the Convention or that had been

dealt with in a previous debate. Debates might also be facilitated if the Presidium were to produce a summary of the amendments and an explanatory statement to justify the compromise being proposed.

After the meeting it was decided that Mr Méndez de Vigo should write on behalf of the delegation to the Chairman of the Convention describing these procedural proposals.

The delegation also touched on the question of what might be put forward at Feira, in view of the present state of progress. There could be no talk of a text. On the other hand, it would certainly be worth letting the Heads of State or Government know that the Convention was working, and working with a view to incorporation in the Treaty.

In reply to one member who appeared to cast doubt on the cohesion of the European Parliament delegation and hence its authority in its dealings with the representatives of the national governments, there were several references to the existence of a clear European Parliament position which could provide guidance for the members of the delegation.

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Brussels, 21 June 2000

**EUROPEAN PARLIAMENT DELEGATION TO THE CONVENTION FOR THE  
DRAWING UP OF A DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE  
EUROPEAN UNION**

DE/OJ/0010

27 June 2000

**Tenth meeting**

**4 July 2000, 9 – 10.30 a.m.**

**SDM - Room I  
Strasbourg**

**Draft agenda**

1. Adoption of draft agenda
2. Approval of minutes of meeting of 17 May 2000 (PE 290.397) and 8 June 2000 (PE 290.399)
3. Further deliberations in the light of the Presidium and Convention meetings on 28, 29 and 30 June
4. Date and place of next meeting

# EUROPEAN PARLIAMENT

## EUROPEAN PARLIAMENT DELEGATION TO THE CONVENTION FOR THE DRAWING UP OF A DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

### MINUTES of the meeting of 4 July 2000 STRASBOURG

On Tuesday 4 July, the meeting opened at 9.10 a.m. with Mr Méndez de Vigo in the chair.

**1. Adoption of draft agenda** PE 290.401

The agenda was adopted.

**2. Approval of minutes of meetings of:**

|             |            |
|-------------|------------|
| 17 May 2000 | PE 290.397 |
| 8 June 2000 | PE 290.399 |

The minutes of the delegation meetings of 17 May and 8 June 2000 were adopted.

**3. Further deliberations in the light of the Convention meetings on 28, 29 and June 2000**

The chairman reported on progress to date and the Convention's projected programme of work.

The following spoke in the ensuing general discussion: Voggenhuber, Duff, Cederschiöld, Friedrich, van den Burg, Maij-Weggen, Beres, Paciotti and van Dam.

Mr Méndez de Vigo wound up the debate.

#### 4. **Date and place of next meeting**

The date and place of the next meeting would be decided in the light of developments in the Convention's work.

The meeting closed at 10.20 a.m.

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BILAG/ANLAGE/ΠΑΡΑΡΤΗΜΑ/ANNEX/  
ANNEXE/ALLEGATO/BIJLAGE/ANEXO/LIITE/BILAGA**DELTAGERLISTE/ANWESENHEITSLISTE/KATAΣΤΑΣΗ ΠΑΡΟΝΤΩΝ/RECORD  
OF ATTENDANCE/LISTA DE ASISTENCIA/LISTE DE PRESENCE/ELENCO DEI  
PRESENTI/PRESENTIELIJST/LISTA DE PRESENÇAS/LÄSNÄOLOLISTA/DELTAGARLISTA**

|            |                                                                                                                                                                                                       |
|------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Til stede  | Formandskabet/Vorstand/Προεδρείο/Bureau/Ufficio di Presidenza/Mesa/Puheenjohtajisto/J.L. Presidium: (*)<br>Méndez de Vigo (P), Berès (VP), Kaufmann (VP)                                              |
| Anwesend   | Medlemmer/Mitglieder/Μέλη/Members/Diputados/Diputs/Deputati/Leden/Deputados/Jäsenet/<br>Ledamöter:<br><br>Cederschiöld, Cornillet, Duff, Friedrich, Maij-Weggen, Martin, H.-P., Paciotti, Voggenhuber |
| Παρόντες   | Stedfortrædere/Stellvertreter/Αναπληρωτές/Substitutes/Suplentes/Suppliants/<br>Membri supplenti/Plaatsvervangers/Membros suplentes/Varajäsenet/Suppleanter:                                           |
| Present    | van den Burg, Boumedienne-Thiery, van Dam, Dehousse, Lalumière, Rack                                                                                                                                  |
| Presentes  |                                                                                                                                                                                                       |
| Présents   |                                                                                                                                                                                                       |
| Presenti   |                                                                                                                                                                                                       |
| Aanwezig   |                                                                                                                                                                                                       |
| Läsnä      |                                                                                                                                                                                                       |
| Närvarande |                                                                                                                                                                                                       |

|                                                                                                                                                                                                                                            |  |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
| Art. 151,4                                                                                                                                                                                                                                 |  |
| Endv. deltog/Weitere Teiln./<br>Συμμετείχαν επίσης/Also present<br>Participaron igualmente/<br>Participaient également/<br>Hanno partecipato altresì/<br>Andere deelnemers/<br>Outros participantes/<br>Muut osallistujat/ Dessutom deltog |  |
| (Dagsorden/Tagesordnung Pkt/Ημερήσια Διάταξη<br>Σημεί/Point OJ/Punto OG/Agenda Punt/Ordem do dia-<br>punto/punto orden del dia/<br>Esityslistan kohta/Föredragningslista punkt):                                                           |  |

\* (P) =Formand/Vorsitzender/Πρόεδρος/Chairman/Prsident/Presidente/Voorzitter/Presidente/Puheenjohtaja/Ordförande  
(VP) =Næstform./Stellv. Vorsitz./Αντιπρόεδρος/Vice-Chairman/Vice-Prsident/Vicepresidente/Varapuheenjohtaja  
Ondervoorz./Vice-Pres./Vicepres/Vice ordförande.

Til stede den/Anwesend am/Παρόν στις/Present on/Prsient le/Presente il/Aanwezig op/Presente em/Presente el/Läsnä/Nδrvarande den.

- (1) 04.07.2000  
(2)  
(3)

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Efter indbydelse fra formanden/Auf Einladung d. Vorsitzenden/Με πρόσκληση του Προέδρου/At the invitation of the Chairman/Por invitación del presidente/Sur l'invitation du président/Su invito del presidente/Op uitnodiging van de voorzitter/A convite do presidente/Puheenjohtajan kutsusta/På ordförandens inbjudan:

Radet/Rat/Συμβούλιο/Council/Consejo/Conseil/Consiglio/Raad/Conselho/Neuvosto/Rædet: (\*)

Kommissionen/Kommission/Επιτροπή/Commission/Comisión/Commissione/Commissie/Comissão/Komissio/  
Kommissionen: (\*)

Cour des comptes:

C.E.S.:

|                                                                                                                                                                                                                                                                                                                                   |                                                                   |                                                             |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------|-------------------------------------------------------------|
| Andre deltagere/Andere Teilnehmer<br>Επίσης Παρόντες/Also present<br>Otros participantes/Autres participants/Altri partecipanti<br>Andere aanwezigen/Outros participantes                                                                                                                                                         |                                                                   |                                                             |
| Gruppernes sekretariat<br>Sekretariat der Fraktionen<br>Γραμματεία των Πολ. Ομάδων<br>Secretariat political groups<br>Secr. De los grupos politicos<br>Secr. Groupes politiques<br>Segr. Dei gruppi politici<br>Secr. Van de fracties<br>Secr. Dos grupos politicos<br>Poliittisten ryhmien sihteeristö<br>Gruppernas sekretariat | PPE-DE<br>PSE<br>ELDR<br>Verts/ALE<br>GUE/NGL<br>UEN<br>EDD<br>NI | Scarascia Mugnozza<br>Geuthner, Henriques<br><br>Prossliner |
| Cab. du Président                                                                                                                                                                                                                                                                                                                 |                                                                   |                                                             |
| Cab. du Secrétaire Général                                                                                                                                                                                                                                                                                                        |                                                                   |                                                             |
| Generaldirektorat<br>Generaldirektion<br>Γενική Διεύθυνση<br>Directorate-General<br>Dirección general<br>Direction générale<br>Direzione generale<br>Directoraat-generaal<br>Direcção general<br>Contrôle financier<br>Service juridique<br>Pääosasto<br>Generaldirektorat                                                        | I<br>II<br>III<br>IV<br>V<br>VI<br>VII<br>VIII                    | Brulant, Dean, Reich<br><br>Lehmann                         |
| Udvalgssekretariatet<br>Ausschubsekretariat<br>Γραμματεία επιτροπής<br>Committee secretariat<br>Secretaria de la comisión<br>Secrétariat de la commission<br>Segretariato della commissione<br>Commissiesecretariaat<br>Secretaria de comissão<br>Valiokunnan sihteeristö<br>Utskottssekretariatet                                |                                                                   | Giraud, Réchard                                             |
| Assist./Βοηθός                                                                                                                                                                                                                                                                                                                    |                                                                   | Schmidt                                                     |

\* (P) =Formand/Pres./Πρόεδρος/Chairman/President/Voorzitter/Puheenjohtaja/Ordførande

(VP) =Næstform./Vize-Pres./Αντιπρόεδρος/Vice-Chairman/Vice-President/Ondervoorz./Vice-pres/Varapuheenjohtaja/Vice ordførande.

(M) =Medlem./Mitglied/Μέλος/Member/Miembro/Membre/Membro/Lid/Membro/Jäsen/Ledamot

(F) =Tjenestemand/Beamter/Υπάλληλος/Official/Funcionario/Fonctionnaire/Funzionario/Ambtenaar/ Functionario/Virkamies/Tjønsteman

**EUROPEAN PARLIAMENT DELEGATION  
TO THE CONVENTION FOR THE DRAWING UP  
OF A DRAFT CHARTER OF FUNDAMENTAL RIGHTS  
OF THE EUROPEAN UNION**

DE/OJ/0011  
5 July 2000

**11<sup>th</sup> meeting**

**31 August 2000, 10 a.m. – 1 p.m.  
Room P5B001  
Brussels**

**Draft agenda**

1. Adoption of draft agenda (PE 294.229)
2. Approval of minutes of meeting of 4 July 2000 (PE 290.402)
3. **The delegation's position on the full preliminary draft of the Charter as drawn up by the Convention**
4. Date and place of next meeting

**EUROPEAN PARLIAMENT DELEGATION  
TO THE CONVENTION RESPONSIBLE FOR DRAWING UP THE  
CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**

DE/OJ/012  
31 August 2000

**Twelfth meeting**

**6 September 2000  
9 a.m. to 11.30 a.m.  
Room SDM 5  
Strasbourg**

**Draft agenda**

1. Adoption of draft agenda (PE 294.236)
2. Opinion of the Delegation regarding the preliminary draft Charter
3. Date and place of next meeting

OJ419917EN.doc

PE 294.236

**EN**

**EN**

**EUROPEAN PARLIAMENT DELEGATION  
TO THE CONVENTION  
FOR THE DRAWING UP  
OF A DRAFT CHARTER OF FUNDAMENTAL RIGHTS  
OF THE EUROPEAN UNION**

DE/OJ/014  
21.9.2000

**14<sup>th</sup> meeting**

**21 September 2000  
9.30 a.m. to 11 a.m.  
Room P7C50  
Brussels**

**Draft Agenda**

1. Adoption of draft agenda (PE 295.792)
2. Delegation's position on draft Charter.
3. Date and place of next meeting.

### Consideration given to the position of the European Parliament delegation by document CONVENT 47

| CONVENT 45                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | POSITION PE                                                                                                                                                                                                                                                              | CONVENT 47                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. The peoples of Europe have established an ever closer union between them and are resolved to share a peaceful future based on common values.                                                                                                                                                                                                                                                                                                                                                                                                                                      | idem                                                                                                                                                                                                                                                                     | The peoples of Europe, <b>in developing</b> an ever closer union between them, are resolved to share a peaceful future based on common values.                                                                                                                                                                                                                                                                                                                                     |
| 2. The Union is founded on the indivisible, universal principles of the dignity of men and women, freedom, equality and solidarity; it is based on the principle of democracy and the rule of law.                                                                                                                                                                                                                                                                                                                                                                                   | 2. <b>Drawing upon its cultural, humanistic and religious heritage</b> , the Union is founded on the indivisible, universal principles of the dignity of men and women, freedom, equality and solidarity; it is based on the principle of democracy and the rule of law. | <b>Taking inspiration from its cultural, humanist and religious heritage</b> , the Union is founded on the indivisible, universal principles of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law. <b>It places the individual at the heart of its activities, establishing the citizenship of the Union and creating an area of freedom, security and justice.</b>                                                  |
| 3. The Union contributes to the development of these common values while respecting the diversity of the cultures and traditions of the peoples of Europe as well as the national identities of the Member States and the organisation of their public authorities at national, regional and local levels; it ensures balanced and sustainable development through the free movement of persons, goods, capital and services.                                                                                                                                                        | idem<br><i>Though an amendment has not been tabled, this paragraph has been criticized within the EP delegation..</i>                                                                                                                                                    | The Union contributes to the development of these common values while respecting the diversity of the cultures and traditions of the peoples of Europe as well as the national identities of the Member States and the organisation of their public authorities at national, regional and local levels; it <b>aims to promote balanced and sustainable development and ensures</b> free movement of persons, goods, capital and services, <b>and the freedom of establishment.</b> |
| 4. In adopting this Charter the Union intends to enhance the protection of fundamental rights in the light of changes in society, social progress and scientific and technological developments by making those rights more visible.                                                                                                                                                                                                                                                                                                                                                 | idem                                                                                                                                                                                                                                                                     | idem                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| 5. This Charter reaffirms, with due regard for the powers and tasks of the Community and the Union and the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions common to the Member States, the Treaty on European Union, the Community Treaties, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Community and by the Council of Europe and the case law of the Court of Justice of the European Communities and of the European Court of Human Rights. | idem                                                                                                                                                                                                                                                                     | idem                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| 6. Enjoyment of these rights entails responsibilities and duties with regard to other persons, to the human community and to future generations.                                                                                                                                                                                                                                                                                                                                                                                                                                     | idem                                                                                                                                                                                                                                                                     | idem                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| 7. Each person is therefore guaranteed the rights and freedoms set out hereafter.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | idem                                                                                                                                                                                                                                                                     | Each person is therefore <b>recognised as having</b> the rights and freedoms set out hereafter.                                                                                                                                                                                                                                                                                                                                                                                    |

| CONVENT 45                                                                                          | POSITION PE                                                                                                                                 | CONVENT 47                                                                                                                                                                                                                                           |
|-----------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b><u>CHAPTER I. DIGNITY</u></b>                                                                    |                                                                                                                                             |                                                                                                                                                                                                                                                      |
| <b><u>Article 1. Dignity of the person</u></b>                                                      |                                                                                                                                             |                                                                                                                                                                                                                                                      |
| The dignity of the person must be respected and protected.                                          | <b>Human dignity is inviolable; it must be respected and protected.</b>                                                                     | <b>Human dignity is inviolable. It must be respected and protected.</b>                                                                                                                                                                              |
| <b><u>Article 2. Right to life</u></b>                                                              |                                                                                                                                             |                                                                                                                                                                                                                                                      |
| 1. Everyone has the right to life.                                                                  | idem                                                                                                                                        | idem                                                                                                                                                                                                                                                 |
| 2. No one shall be condemned to the death penalty, or executed.                                     | idem                                                                                                                                        | idem                                                                                                                                                                                                                                                 |
| <b><u>Article 3. Right to the integrity of the person</u></b>                                       |                                                                                                                                             |                                                                                                                                                                                                                                                      |
| 1. Everyone has the right to respect for his physical and mental integrity.                         | idem                                                                                                                                        | idem                                                                                                                                                                                                                                                 |
| 2. In the fields of medicine and biology, the following principles must be respected in particular: | idem                                                                                                                                        | idem                                                                                                                                                                                                                                                 |
| – free and informed consent of the person concerned,                                                | idem                                                                                                                                        | - <b>the free and informed consent of the person concerned, according to the procedures laid down by law,</b>                                                                                                                                        |
| – prohibition of eugenic practices, in particular those concerned with the selection of persons,    | – prohibition of eugenic practices, in particular those concerned with the selection of persons, <b>and of the cloning of human beings,</b> | - <b>the prohibition of eugenic practices, in particular those aiming at the selection of persons,</b>                                                                                                                                               |
| – prohibition on making the human body and its parts a source of financial gain,                    | idem                                                                                                                                        | - <b>the prohibition on making the human body and its parts as such a source of financial gain,</b>                                                                                                                                                  |
| – prohibition of the reproductive cloning of human beings.                                          | (delete)                                                                                                                                    | - <b>the prohibition of the reproductive cloning of human beings.</b><br><i>The explanations emphasizes that it remains up to the legislator to forbid other forms of cloning, even if the Charter itself only forbids the reproductive cloning.</i> |
| <b><u>Article 4. Prohibition of torture and inhuman or degrading treatment and punishment</u></b>   |                                                                                                                                             |                                                                                                                                                                                                                                                      |
| No one shall be subjected to torture or to inhuman or degrading treatment or punishment.            | idem                                                                                                                                        | idem                                                                                                                                                                                                                                                 |
| <b><u>Article 5. Prohibition of slavery and forced labour</u></b>                                   |                                                                                                                                             |                                                                                                                                                                                                                                                      |
| 1. No one shall be held in slavery or servitude.                                                    | idem                                                                                                                                        | idem                                                                                                                                                                                                                                                 |
| 2. No one shall be required to perform forced or compulsory labour.                                 | idem                                                                                                                                        | idem                                                                                                                                                                                                                                                 |
| 3. Trafficking in human beings is prohibited.                                                       | idem                                                                                                                                        | idem                                                                                                                                                                                                                                                 |
| <b><u>CHAPTER II. FREEDOMS</u></b>                                                                  |                                                                                                                                             |                                                                                                                                                                                                                                                      |

| CONVENT 45                                                                                                                                                                                                                                                                                                                                                                                                                                          | POSITION PE                                                                                                                                                 | CONVENT 47                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Article 6. Right to liberty and security</b>                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| Everyone has the right to liberty and security of person.                                                                                                                                                                                                                                                                                                                                                                                           | idem                                                                                                                                                        | idem                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <b>Article 7. Respect for private and family life</b>                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| Everyone has the right to respect for his private and family life, his home and the confidentiality of his communications.                                                                                                                                                                                                                                                                                                                          | idem                                                                                                                                                        | Everyone has the right to respect for his private and family life, his home <b>and [...]</b> his communications.                                                                                                                                                                                                                                                                                                                                                                  |
| <b>Article 8. Protection of personal data</b>                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| Everyone has the right to the protection of personal data concerning him. Such data must be processed fairly for specified purposes on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him, and the right to have it rectified. Compliance with these rules shall be subject to control by an independent authority. | idem                                                                                                                                                        | <p>1. Everyone has the right to the protection of personal data concerning him.</p> <p>2. Such data must be processed fairly for specified purposes on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him, and the right to have it rectified.</p> <p>3. Compliance with these rules shall be subject to control by an independent authority.</p> |
| <b>Article 9. Right to marry and right to found a family</b>                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| The right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights.                                                                                                                                                                                                                                                                                                 | idem                                                                                                                                                        | idem                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <b>Article 10. Freedom of thought, conscience and religion</b>                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.                                                                                                                                                   | 1.                                                                                                                                                          | 1.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                     | 2. The right to conscientious objection is acknowledged.                                                                                                    | 2. The right to conscientious objection is recognised, in accordance with the national laws regulating its implementation.                                                                                                                                                                                                                                                                                                                                                        |
| <b>Article 11. Freedom of expression and information</b>                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| 1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.                                                                                                                                                                                                                         | idem                                                                                                                                                        | idem                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| 2. Freedom of the media and freedom of information shall be guaranteed with due respect for pluralism and transparency.                                                                                                                                                                                                                                                                                                                             | <i>Though an amendment has not been tabled, this paragraph has been criticised within the EP delegation, especially because of the word "transparency".</i> | Freedom of the media <b>and of its pluralism shall be guaranteed.</b>                                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>Article 12. Freedom of assembly and of association</b>                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| Everyone has the right to freedom of peaceful assembly and                                                                                                                                                                                                                                                                                                                                                                                          | Everyone has the right to freedom of peaceful assembly and                                                                                                  | 1. Everyone has the right to freedom of peaceful                                                                                                                                                                                                                                                                                                                                                                                                                                  |



| CONVENT 45                                                                                                                                                                                                                                                                                                                                                              | POSITION PE                                                                                                                | CONVENT 47                                                                                                                                                                                                                                                                                                                                                                    |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| to freedom of association, in particular in political, trade union and civic matters.                                                                                                                                                                                                                                                                                   | to freedom of association, <b>including at European level</b> , in particular in political, trade union and civic matters. | assembly and to freedom of association <b>at all levels</b> , in particular in political, trade union and civic matters. <b>In particular, everyone has the right to form and to join trade unions for the protection of his interests.</b>                                                                                                                                   |
| Political parties at European level contribute to expressing the political will of the citizens of the Union.                                                                                                                                                                                                                                                           | idem                                                                                                                       | idem                                                                                                                                                                                                                                                                                                                                                                          |
| <b>Article 13.</b>                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                               |
| <b><u>Freedom of research</u></b>                                                                                                                                                                                                                                                                                                                                       | <b><u>Freedom of arts and sciences</u></b>                                                                                 | <b><u>Freedom of the arts and sciences</u></b>                                                                                                                                                                                                                                                                                                                                |
| Scientific research shall be free of constraint.                                                                                                                                                                                                                                                                                                                        | Arts and scientific research shall be free of constraint. Academic freedom is respected.                                   | The arts and scientific research shall be free of constraint. Academic freedom shall be respected.                                                                                                                                                                                                                                                                            |
| <b>Article 14.      <u>Right to education</u></b>                                                                                                                                                                                                                                                                                                                       |                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                               |
| 1. Everyone has the right to education and to have access to vocational and continuing training. This right includes the right to receive free compulsory education.                                                                                                                                                                                                    | idem                                                                                                                       | idem                                                                                                                                                                                                                                                                                                                                                                          |
|                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                            | <b>2. This right includes the right to receive free compulsory education.</b>                                                                                                                                                                                                                                                                                                 |
| 2. The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be guaranteed, in accordance with the national laws governing the exercise of such freedom and right. | idem                                                                                                                       | 3. The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical <b>and pedagogical</b> convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right. |
| <b>Article 15.</b>                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                               |
| <b><u>Freedom to choose an occupation</u></b>                                                                                                                                                                                                                                                                                                                           | <b><u>Right to work and freedom to choose an occupation</u></b>                                                            | <b><u>Freedom to choose an occupation</u></b>                                                                                                                                                                                                                                                                                                                                 |
| 1. To earn a living, everyone has the right to engage in a freely chosen occupation.                                                                                                                                                                                                                                                                                    | 1. [...] Everyone has the right <b>to work and</b> to engage in a freely chosen <b>or accepted</b> occupation.             | 1. Everyone has the right to <b>work for his living and</b> to engage in a freely chosen <b>or accepted</b> occupation.                                                                                                                                                                                                                                                       |
| 2. Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide or receive services in any Member State.                                                                                                                                                                                               | idem                                                                                                                       | idem                                                                                                                                                                                                                                                                                                                                                                          |
| 3. Nationals of third countries who are authorised to reside in the territories of the Member States are entitled to working conditions equivalent to those of citizens of the Union.                                                                                                                                                                                   | idem                                                                                                                       | 3. Nationals of third countries <b>who are authorised to work</b> in the territories of the Member States are entitled to working conditions equivalent to those of citizens of the Union.                                                                                                                                                                                    |
| <b>Article 16.      <u>Freedom to conduct a business</u></b>                                                                                                                                                                                                                                                                                                            |                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                               |
| The freedom to conduct a business is recognised.                                                                                                                                                                                                                                                                                                                        | idem                                                                                                                       | idem                                                                                                                                                                                                                                                                                                                                                                          |
| <b>Article 17.      <u>Right to property</u></b>                                                                                                                                                                                                                                                                                                                        |                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                               |
| 1. Every person has the right to own, use, dispose of and bequeath his lawfully acquired possessions. No one                                                                                                                                                                                                                                                            | 1. Every person has the right to own, use, dispose of and bequeath his lawfully acquired possessions. No one               | 1. <b>Everyone</b> has the right to own, use, dispose of and bequeath his lawfully acquired possessions. No one may be                                                                                                                                                                                                                                                        |

| CONVENT 45                                                                                                                                                                                                                                                                                   | POSITION PE                                                                                                                                                                                                                                                                               | CONVENT 47                                                                                                                                                                                                                                                                                                 |
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| may be deprived of his possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation. The use of property may be regulated insofar as is necessary for the general interest.                                        | may be deprived of his possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation <b>for his/her loss in due time.</b> The use of property may be regulated insofar as is necessary for the general interest. | deprived of his possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation <b>being paid within a reasonable period for their loss.</b> The use of property may be regulated insofar as is necessary for the general interest. |
| 2. Intellectual property shall be protected.                                                                                                                                                                                                                                                 | idem                                                                                                                                                                                                                                                                                      | idem                                                                                                                                                                                                                                                                                                       |
| <b>Article 18. Right to asylum</b>                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                            |
| The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty establishing the European Community.                                | idem                                                                                                                                                                                                                                                                                      | idem                                                                                                                                                                                                                                                                                                       |
| <b>Article 19. Protection in the event of removal, expulsion or extradition</b>                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                            |
| 1. Collective expulsions are prohibited.                                                                                                                                                                                                                                                     | idem                                                                                                                                                                                                                                                                                      | idem                                                                                                                                                                                                                                                                                                       |
| 2. No one may be removed, expelled or extradited to a State where he could be subjected to the death penalty, torture or other inhuman or degrading treatment.                                                                                                                               | idem                                                                                                                                                                                                                                                                                      | 2. No one may be removed, expelled or extradited to a State where <b>there is a serious risk that</b> he may be subjected to the death penalty, torture or other inhuman or degrading treatment.                                                                                                           |
| <b>CHAPTER III. EQUALITY</b>                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                            |
| <b>Article 20. Equality before the law</b>                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                            |
| Everyone, man or woman, is equal before the law.                                                                                                                                                                                                                                             | Everyone [,,] is equal before the law.                                                                                                                                                                                                                                                    | Everyone [,,] is equal before the law.                                                                                                                                                                                                                                                                     |
| <b>Article 21. Equality and non-discrimination</b>                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                            |
|                                                                                                                                                                                                                                                                                              | <b>1. The Union respects the cultural, religious, ethnic and linguistic diversity.</b>                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                            |
| 1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited. | 2. idem                                                                                                                                                                                                                                                                                   | idem                                                                                                                                                                                                                                                                                                       |
| 2. Within the scope of application of the Treaty establishing the European Community and of the Treaty on European Union, and without prejudice to the special provisions of those Treaties, any discrimination on grounds of nationality shall be prohibited.                               | 3. idem                                                                                                                                                                                                                                                                                   | idem                                                                                                                                                                                                                                                                                                       |
| <b>Article 22 (new) Cultural, religious and linguistic diversity</b>                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                            |
|                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                           | <b>The Union shall respect cultural, religious and linguistic diversity.</b>                                                                                                                                                                                                                               |

| CONVENT 45                                                                                                                                                                                                                                                                                   | POSITION PE                                                                                                                                                                                                                                                  | CONVENT 47                                                                                                                                                                                                                                                                                  |
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| <b>Article 22 (new 23). Equality between men and women</b>                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                             |
| Equal opportunities and equal treatment for men and women as regards employment and work, including equal pay for equal work or for work of equal value, must be ensured.                                                                                                                    | <b>Equality between men and women must be ensured in all fields, including</b> employment, work and remuneration.                                                                                                                                            | <b>Equality between men and women must be ensured in all areas, including</b> employment, work and pay.                                                                                                                                                                                     |
| The principle of equal treatment shall not prevent the maintenance or adoption of measures providing for specific advantages in order to make it easier for the under-represented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers. | The principle of equality shall not prevent the maintenance or adoption of measures <b>in favour of</b> the under-represented sex.                                                                                                                           | The principle of equality shall not prevent the maintenance or adoption of measures <b>in favour of</b> the under-represented sex.                                                                                                                                                          |
| <b>Article 23 (new 24).</b>                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                             |
| <b>Protection of children</b>                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                              | <b>The rights of the child</b>                                                                                                                                                                                                                                                              |
| 1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.                                | idem                                                                                                                                                                                                                                                         | idem                                                                                                                                                                                                                                                                                        |
| 2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.                                                                                                                             | idem                                                                                                                                                                                                                                                         | idem                                                                                                                                                                                                                                                                                        |
|                                                                                                                                                                                                                                                                                              | <b>3. Every child has the right to maintain personal relations and direct contact with both parents on a regular basis unless it is contrary to his/her interest.</b>                                                                                        | <b>3. Every child shall have the right to maintain a personal relationship and direct contact with both his parents, unless that is contrary to his interests.</b>                                                                                                                          |
| <b>Article 24 (new 25). Integration of persons with disabilities</b>                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                             |
| Persons with disabilities have the right to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.                                                                                                 | idem                                                                                                                                                                                                                                                         | <b>The Union recognises and respects the right of</b> persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.                                                         |
| <b><u>CHAPTER IV. SOLIDARITY</u></b>                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                             |
| <b>Article 25 (new 26). Workers' right to information and consultation within the undertaking</b>                                                                                                                                                                                            |                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                             |
| Workers and their representatives must be guaranteed information and consultation in good time on matters which concern them within the undertaking, in accordance with Community law and national laws and practices.                                                                       | Workers and their representatives must be guaranteed, <b>including at European level</b> , information and consultation in good time on matters which concern them within the undertaking, in accordance with Community law and national laws and practices. | Workers <b>or</b> their representatives must <b>at all levels</b> be guaranteed information and consultation in good time on matters which concern them within the undertaking, <b>in the cases and under the conditions provided for by</b> Community law and national laws and practices. |
| <b>Article 26 (new 27). Right of collective bargaining and action</b>                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                             |

| CONVENT 45                                                                                                                                                                                                                                                                       | POSITION PE                                                                                                                                                                                                                                                                                                                                                                                 | CONVENT 47                                                                                                                                                                                                                                                                                                                                               |
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| Employers and workers have the right to negotiate and conclude collective agreements and, in cases of conflicts of interest, to take collective action to defend their interests, in accordance with Community law and national laws and practices.                              | <b>Organisations of workers</b> have the right, <b>including at European level</b> , to negotiate and conclude collective agreements <b>with employers or their organisations</b> and, in cases of conflicts of interest, to take collective action to defend their interests, <b>in particular the right to strike</b> , in accordance with Community law and national laws and practices. | <b>Workers and employers, or their respective organisations</b> , have, <b>at all levels</b> , the right to negotiate and conclude collective agreements and, in cases of conflicts of interest, to take collective action to defend their interests, <b>including strike action</b> , in accordance with Community law and national laws and practices. |
| <b>Article 27 (new 28). Right of access to placement services</b>                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                          |
| Everyone has the right of access to a placement service.                                                                                                                                                                                                                         | idem                                                                                                                                                                                                                                                                                                                                                                                        | Everyone has the right of access to a <b>free</b> placement service.                                                                                                                                                                                                                                                                                     |
| <b>Article 28 (new 29). Protection in the event of unjustified dismissal</b>                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                          |
| Every worker has the right to protection against unjustified dismissal.                                                                                                                                                                                                          | idem                                                                                                                                                                                                                                                                                                                                                                                        | <b>idem</b>                                                                                                                                                                                                                                                                                                                                              |
| <b>Article 29 (new 30). Fair and just working conditions</b>                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                          |
| 1. Every worker has the right to working conditions which respect his or her health, safety and dignity.                                                                                                                                                                         | idem                                                                                                                                                                                                                                                                                                                                                                                        | idem                                                                                                                                                                                                                                                                                                                                                     |
| 2. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.                                                                                                                                    | idem                                                                                                                                                                                                                                                                                                                                                                                        | idem                                                                                                                                                                                                                                                                                                                                                     |
| <b>Article 30 (new 31).</b>                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                          |
| <b>Protection of young people at work</b>                                                                                                                                                                                                                                        | idem                                                                                                                                                                                                                                                                                                                                                                                        | <b>Prohibition of child labour and protection of young people at work</b>                                                                                                                                                                                                                                                                                |
| The employment of children is prohibited. The minimum age of admission to employment must not be lower than the minimum school-leaving age without prejudice to such rules as may be more favourable to young people and except for limited derogations.                         | idem                                                                                                                                                                                                                                                                                                                                                                                        | The employment of children is prohibited. The minimum age of admission to employment <b>may</b> not be lower than the minimum school-leaving age without prejudice to such rules as may be more favourable to young people and except for limited derogations.                                                                                           |
| Young people admitted to work must have working conditions appropriate to their age and be protected against economic exploitation and any work likely to harm their safety, health or physical, mental, moral or social development or to interfere with their education.       | idem                                                                                                                                                                                                                                                                                                                                                                                        | idem                                                                                                                                                                                                                                                                                                                                                     |
| <b>Article 31 (new 32).</b>                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                          |
| <b>Reconciling family and professional life</b>                                                                                                                                                                                                                                  | idem                                                                                                                                                                                                                                                                                                                                                                                        | <b>Family and professional life</b>                                                                                                                                                                                                                                                                                                                      |
| The family shall enjoy legal, economic and social protection.                                                                                                                                                                                                                    | idem                                                                                                                                                                                                                                                                                                                                                                                        | idem                                                                                                                                                                                                                                                                                                                                                     |
| Everyone shall have the right to reconcile their family and professional lives, which includes in particular the right to protection from dismissal because of pregnancy and the right to paid maternity leave and to parental leave following the birth or adoption of a child. | idem                                                                                                                                                                                                                                                                                                                                                                                        | 2. <b>To</b> reconcile their family and professional lives, <b>everyone shall have</b> the right to protection from dismissal for a reason connected with pregnancy and the right to paid maternity leave and to parental leave following the birth or adoption of a child.                                                                              |

| CONVENT 45                                                                                                                                                                                                                                                                                                                                 | POSITION PE                                                                                                                                                                                                                                                                                           | CONVENT 47                                                                                                                                                                                                                                                                                                                                          |
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| <b>Article 32 (new 33). Social security and social assistance</b>                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                     |
| 1. The Union recognises and respects the entitlement to social security benefits and social services providing protection in the event of maternity, illness, industrial accidents, dependency or old age and in the event of loss of employment, in accordance with the rules laid down by Community law and national laws and practices. | idem                                                                                                                                                                                                                                                                                                  | 1. The Union recognises and respects the entitlement to social security benefits and social services providing protection in such events as pregnancy, illness, industrial accidents, dependency or old age, <b>and in the case of</b> loss of employment, in accordance with the rules laid down by Community law and national laws and practices. |
| 2. Workers who are nationals of a Member State residing in another Member State, and members of their families, have the right to the same social security benefits, social advantages and access to health care as nationals of that State.                                                                                               | idem                                                                                                                                                                                                                                                                                                  | <b>2. Every person residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with Community law and national laws and practices.</b><br><i>This modification avoids the limitation of applying § 2 only to Community citizens.</i>                                          |
| 3. The Union recognises and respects the right to social assistance and housing benefit in order to ensure a decent existence for persons lacking sufficient resources, in accordance with the rules laid down by Community law and national laws and practices.                                                                           | idem                                                                                                                                                                                                                                                                                                  | 3. The Union recognises and respects the right to social assistance and housing <b>assistance</b> in order to ensure a decent existence <b>for all those who lack</b> sufficient resources, in accordance with the rules laid down by Community law and national laws and practices.                                                                |
| <b>Article 33 (new 34). Health care</b>                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                     |
| Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices.                                                                                                                                                                | idem                                                                                                                                                                                                                                                                                                  | Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. <b>A high level of human health protection shall be ensured in the definition and implementation of all Community policies and activities.</b>                          |
| <b>Article 34 (new 35). Access to services of general economic interest</b>                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                     |
| The Union respects the access to services of general economic interest as provided for in national laws and practices in accordance with the provisions of the Treaty establishing the European Community in order to promote the social and territorial cohesion of the Union.                                                            | The Union <b>recognises and</b> respects the access to services of general economic interest as provided for in national laws and practices in accordance with the provisions of the Treaty establishing the European Community in order to promote the social and territorial cohesion of the Union. | The Union <b>recognises and</b> respects the access to services of general economic interest as provided for in national laws and practices in accordance with the provisions of the Treaty establishing the European Community in order to promote the social and territorial cohesion of the Union.                                               |
| <b>Article 35 (new 36). Environmental protection</b>                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                     |
| All Union policies shall ensure the protection and preservation of a good quality living environment and the improvement of the quality of the environment, taking into account the principle of sustainable development.                                                                                                                  | All Union policies shall ensure the protection and preservation of a good quality living environment and the improvement of the quality of the environment, <b>in conformity with</b> the principle of sustainable development.                                                                       | <b>A high level of environmental protection and the improvement of the quality of the environment shall be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.</b>                                                                                                                   |
| <b>Article 36 (new 37). Consumer Protection</b>                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                     |
| Union policies shall ensure a high level of protection as                                                                                                                                                                                                                                                                                  | idem                                                                                                                                                                                                                                                                                                  | Union policies shall ensure a high level of <b>consumer</b>                                                                                                                                                                                                                                                                                         |

| CONVENT 45                                                                                                                                                                                                                                    | POSITION PE                                                                                                                                                                                                               | CONVENT 47                                                                                                                                                                                                                                     |
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| regards the health, safety and interests of consumers.                                                                                                                                                                                        |                                                                                                                                                                                                                           | protection.                                                                                                                                                                                                                                    |
| <b><u>CHAPTER V. CITIZENSHIP</u></b>                                                                                                                                                                                                          |                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                |
| <b><u>Article 37 (new 38). Right to vote and to stand as a candidate in elections to the European Parliament</u></b>                                                                                                                          |                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                |
| 1. Every citizen of the Union has the right to vote and to stand as a candidate in elections to the European Parliament in the Member State in which he resides, under the same conditions as nationals of that State.                        | idem                                                                                                                                                                                                                      | idem                                                                                                                                                                                                                                           |
| 2. Members of the European Parliament shall be elected by direct universal suffrage by free and secret ballot.                                                                                                                                | idem                                                                                                                                                                                                                      | idem                                                                                                                                                                                                                                           |
| <b><u>Article 38 (new 39). Right to vote and to stand as a candidate at municipal elections</u></b>                                                                                                                                           |                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                |
| Every citizen of the Union has the right to vote and to stand as a candidate at municipal elections in the Member State in which he resides under the same conditions as nationals of that State.                                             | idem                                                                                                                                                                                                                      | idem                                                                                                                                                                                                                                           |
| <b><u>Article 39 (new 40). Right to good administration</u></b>                                                                                                                                                                               |                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                |
| 1. Every person has the right to have his affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union.                                                                                       | 1. Every person has the right to have his affairs handled impartially, fairly, <b>according to the principle of neutrality of public action</b> and within a reasonable time by the institutions and bodies of the Union. | 1. Every person has the right to have his affairs handled impartially fairly, <b>in accordance with the principle of the neutrality of public action (policy?)</b> , and within a reasonable time by the institutions and bodies of the Union. |
| 2. This right includes:                                                                                                                                                                                                                       | idem                                                                                                                                                                                                                      | idem                                                                                                                                                                                                                                           |
| – the right of every person to be heard before any individual measure which would affect him adversely is taken in relation to him;                                                                                                           | idem                                                                                                                                                                                                                      | idem                                                                                                                                                                                                                                           |
| – the right of every person to have access to his file, while respecting the legitimate interests of confidentiality and of business secrecy;                                                                                                 | idem                                                                                                                                                                                                                      | – the right of every person to have access to his file, while respecting the legitimate interests of confidentiality <b>and</b> of business secrecy;                                                                                           |
| – the obligation of the administration to give reasons for its decisions.                                                                                                                                                                     | idem                                                                                                                                                                                                                      | idem                                                                                                                                                                                                                                           |
| 3. Every person has the right to have the Community make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States. | idem                                                                                                                                                                                                                      | idem                                                                                                                                                                                                                                           |
| 4. Every person may write to the institutions of the Union in one of the official languages of such institutions and have an answer in the same language.                                                                                     | idem                                                                                                                                                                                                                      | 4. Every person may write to the institutions of the Union in one of the official languages of such institutions and <b>must</b> have an answer in the same language.                                                                          |
| <b><u>Article 40 (new 41). Right of access to documents</u></b>                                                                                                                                                                               |                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                |

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| Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to European Parliament, Council and Commission documents.                                                                                                                                               | idem        | idem                                                                                                                                                                                                                |
| <b>Article 41 (new 42). Ombudsman</b>                                                                                                                                                                                                                                                                                                               |             |                                                                                                                                                                                                                     |
| Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to refer to the Ombudsman of the Union cases of maladministration by Community institutions and bodies, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role. | idem        | idem                                                                                                                                                                                                                |
| <b>Article 42 (new 43). Right to petition</b>                                                                                                                                                                                                                                                                                                       |             |                                                                                                                                                                                                                     |
| Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to petition the European Parliament.                                                                                                                                                                              | idem        | idem                                                                                                                                                                                                                |
| <b>Article 43 (new 44). Freedom of movement and of residence</b>                                                                                                                                                                                                                                                                                    |             |                                                                                                                                                                                                                     |
| 1. Every citizen of the Union has the right to move and reside freely within the territory of the Member States.                                                                                                                                                                                                                                    | idem        | idem                                                                                                                                                                                                                |
| 2. Freedom of movement may be granted, in accordance with the Treaty establishing the European Community, to nationals of third countries legally resident in the territory of a Member State.                                                                                                                                                      | idem        | 2. Freedom of movement <b>and residence</b> may be granted, in accordance with the Treaty establishing the European Community, to nationals of third countries legally resident in the territory of a Member State. |
| <b>Article 44 (new 45) Diplomatic and consular protection</b>                                                                                                                                                                                                                                                                                       |             |                                                                                                                                                                                                                     |
| Every citizen of the Union shall, in the territory of a third country in which the Member State of which he is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that Member State.                                                | idem        | idem                                                                                                                                                                                                                |
| <b><u>CHAPTER VI. JUSTICE</u></b>                                                                                                                                                                                                                                                                                                                   |             |                                                                                                                                                                                                                     |
| <b>Article 45 (new 46). Right to an effective remedy and to a fair trial</b>                                                                                                                                                                                                                                                                        |             |                                                                                                                                                                                                                     |
| 1. Everyone whose rights and freedoms are violated has the right to an effective remedy before a court.                                                                                                                                                                                                                                             |             | 1. Everyone whose rights and freedoms <b>guaranteed by the law of the Union</b> are violated has the right to an effective remedy before a court.                                                                   |
| 2. Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.                                                                                                               | idem        | idem                                                                                                                                                                                                                |

| CONVENT 45                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | POSITION PE | CONVENT 47                                                                                                                                                                                                                      |
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| 3. Legal aid shall be made available to those who lack sufficient resources insofar as such aid is necessary to ensure effective access to justice.                                                                                                                                                                                                                                                                                                                         | idem        | idem                                                                                                                                                                                                                            |
| <b>Article 46 (new 47). Presumption of innocence and right of defence</b>                                                                                                                                                                                                                                                                                                                                                                                                   |             |                                                                                                                                                                                                                                 |
| 1. Everyone who has been charged shall be presumed innocent until proved guilty according to law.                                                                                                                                                                                                                                                                                                                                                                           | idem        | idem                                                                                                                                                                                                                            |
| 2. Respect for the right of defence of anyone who has been charged shall be guaranteed.                                                                                                                                                                                                                                                                                                                                                                                     | idem        | idem                                                                                                                                                                                                                            |
| <b>Article 47 (new 48). Principles of legality and proportionality of criminal offences and penalties</b>                                                                                                                                                                                                                                                                                                                                                                   |             |                                                                                                                                                                                                                                 |
| 1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national law or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed. If, subsequent to the commission of the criminal offence, the law provides for a lighter penalty, that penalty shall be applicable. | idem        | idem                                                                                                                                                                                                                            |
| 2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to international law.                                                                                                                                                                                                                                                                                   | idem        | 2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to <b>the general principles recognised by all nations.</b> |
| 3. The severity of penalties shall be proportional to the gravity of the criminal offence.                                                                                                                                                                                                                                                                                                                                                                                  | idem        | 3. The severity of penalties <b>must not be disproportionate</b> to the criminal offence.                                                                                                                                       |
| <b>Article 48 (new 49). Right not to be tried or punished twice in criminal proceedings for the same criminal offence</b>                                                                                                                                                                                                                                                                                                                                                   |             |                                                                                                                                                                                                                                 |
| No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he has already been finally acquitted or convicted in accordance with the law.                                                                                                                                                                                                                                                                                        | idem        | No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he has already been finally acquitted or convicted <b>within the European Union</b> in accordance with the law.           |
| <b><u>CHAPTER VII. GENERAL PROVISIONS</u></b>                                                                                                                                                                                                                                                                                                                                                                                                                               |             |                                                                                                                                                                                                                                 |
| <b>Article 49(new 50). Scope</b>                                                                                                                                                                                                                                                                                                                                                                                                                                            |             |                                                                                                                                                                                                                                 |
| 1. The provisions of this Charter are addressed to the institutions and bodies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers.                                                                                                           | idem        | idem                                                                                                                                                                                                                            |



| CONVENT 45                                                                                                                                                                                                                                                                                                                                                                                                                                         | POSITION PE                                                                                                                                                                                                                                                                                                                                                                                                                                                         | CONVENT 47                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2. This Charter does not establish any new power or task for the Community or the Union, or modify powers and tasks defined by the Treaties.                                                                                                                                                                                                                                                                                                       | idem                                                                                                                                                                                                                                                                                                                                                                                                                                                                | idem                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <b>Article 50 (new 51). Scope of guaranteed rights</b>                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| 1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by the competent legislative authority. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest being pursued by the Union, other legitimate interests in a democratic society or the need to protect the rights and freedoms of others.    | 1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by the competent legislative authority <b>and respect the essential content of those rights and liberties.</b> Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest being pursued by the Union, or the need to protect the rights and freedoms of others. | 1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by <b>law and respect the essential content of those rights and freedoms.</b> Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest being pursued by the Union, other legitimate interests in a democratic society or the need to protect the rights and freedoms of others. |
| 2. Rights recognised by this Charter which are based on the Community Treaties or the Treaty on European Union shall be exercised under the conditions and within the limits defined by those Treaties.                                                                                                                                                                                                                                            | idem                                                                                                                                                                                                                                                                                                                                                                                                                                                                | idem                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| 3. Insofar as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be similar to those conferred on them by the said Convention unless this Charter affords greater or more extensive protection.                                                                                                         | 3. Insofar as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be <b>the same than</b> those conferred on them by the said Convention unless this Charter affords greater or more extensive protection.                                                                                                                | 3. Insofar as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be <b>the same as</b> those laid down by the said Convention unless this Charter affords greater or more extensive protection.                                                                                                                                            |
| <b>Article 51 (new 52). Level of protection</b>                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by international law and international agreements to which the Union, the Community or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' constitutions. | idem                                                                                                                                                                                                                                                                                                                                                                                                                                                                | idem                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <b>Article 52 (new 53). Prohibition of abuse of rights</b>                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| Nothing in this Charter shall be interpreted as implying any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms recognised in this Charter or at their limitation to a greater extent than is provided for herein.                                                                                                                                                                   | idem                                                                                                                                                                                                                                                                                                                                                                                                                                                                | idem                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |

# EUROPEAN PARLIAMENT

1999



2004

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*Session document*

8 November 2000

FINAL  
A5-0325/2000

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## **RECOMMENDATION**

on approval of the draft Charter of Fundamental Rights of the European Union  
(C5-0570/2000)

Committee on Constitutional Affairs

Rapporteurs: Andrew Nicholas Duff and Johannes Voggenhuber



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## PROCEDURAL PAGE

By letter of 6 November 2000 the Presidency of the Council forwarded to Parliament the draft Charter of Fundamental Rights of the European Union (C5-0570/2000).

At its meeting of 28 September 2000 the Conference of Presidents had decided that the Parliament report on the draft Charter of Fundamental Rights of the European Union would take the form of an "assent" report.

At the sitting of 13 November 2000 the President of Parliament will announce that she had asked the Committee on Constitutional Affairs to submit a recommendation on the draft Charter of Fundamental Rights of the European Union.

The committee had appointed Andrew Nicholas Duff and Johannes Voggenhuber rapporteurs at its meeting of 16 October 2000.

It considered the draft Charter of Fundamental Rights of the European Union and the draft recommendation at its meeting of 7 November 2000.

At the latter meeting it adopted the draft decision by 18 votes to 5.

The following were present for the vote: Giorgio Napolitano, chairman; Christopher J.P. Beazley, vice-chairman; Andrew Nicholas Duff, rapporteur; Margrietus J. van den Berg (for Enrique Barón Crespo), Georges Berthu, Jens-Peter Bonde, Marielle de Sarnez (for François Bayrou), Carlos Carnero González, Richard Graham Corbett, Giorgos Dimitrakopoulos, Olivier Duhamel, Monica Frassoni, José María Gil-Robles Gil-Delgado, Sylvia-Yvonne Kaufmann, Alain Lamassoure (for Hanja Maij-Weggen), Jo Leinen, Cecilia Malmström, Hans-Peter Martin, Iñigo Méndez de Vigo, Jacques F. Poos (for Dimitrios Tsatsos), Mariotto Segni, António José Seguro and The Earl of Stockton.

The recommendation was tabled on 8 November 2000.

**DRAFT DECISION****European Parliament decision on approval of the draft Charter of Fundamental Rights of the European Union  
(C5-0570/2000)**

*The European Parliament,*

- having regard to the draft Charter of Fundamental Rights of the European Union (C5-0570/2000),
  - having regard to its resolution of 16 March 2000 on the drafting of a European Union Charter of Fundamental Rights<sup>1</sup>,
  - having regard to its resolution of 13 April 2000 on the Intergovernmental Conference<sup>2</sup>,
  - having regard to its resolution of 3 October 2000 on the draft Charter of Fundamental Rights of the European Union<sup>3</sup>,
  - having regard to articles 54 and 86 of its Rules of Procedure,
  - having regard to the recommendation of the Committee on Constitutional Affairs (A5-0325/2000),
- A. whereas the European Council at Cologne in June 1999 decided ‘to establish a Charter of Fundamental Rights in order to make their overriding importance and relevance more visible to the Union's citizens’,
- B. whereas the European Council resolved that the Charter ‘should contain the fundamental rights and freedoms as well as basic procedural rights guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and derived from the constitutional traditions common to the Member States, as general principles of Community law; the charter should also include the fundamental rights that pertain only to the Union's citizens; In drawing up such a Charter account should furthermore be taken of economic and social rights as contained in the European Social Charter and the Community Charter of the Fundamental Social Rights of Workers (Article 136 TEC), in so far as they do not merely establish objectives for action by the Union’,
- C. whereas the European Council decided that the Convention established to draft the Charter should present a draft document in advance of the European Council of December 2000, and that the European Council ‘will propose to the European Parliament and the Commission that, together with the Council, they should solemnly proclaim on the basis of the draft document a European Charter of Fundamental Rights’,

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<sup>1</sup> Text adopted on that date, Item 4

<sup>2</sup> Text adopted on that date, Item 7

<sup>3</sup> Texte adopted on that date, Item 10

- D. whereas the European Parliament will address itself in its second November session to the question of the Charter's legal character,
- E. whereas on 2 October the Convention achieved a wide consensus on a final draft of the Charter of Fundamental Rights of the European Union (Convent 50),
- F. whereas the informal European Council at Biarritz on 13-14 October 2000 accepted as definitive the Convention's final draft of the Charter and invited the Parliament to join with it and the Commission in a solemn proclamation of the Charter,
  - 1. Considers that the Convention has fulfilled its mandate from the European Council;
  - 2. Approves the draft Charter of Fundamental Rights of the European Union as appended hereto;
  - 3. Instructs its President to proclaim the Charter at Nice jointly with the President of the European Council and the President of the European Commission;
  - 4. Instructs its President to forward this decision to the President of the Council, the President of the European Commission and the President of the Convention.

Tuesday 14 November 2000

### 3. Charter of Fundamental Rights \*\*\*

A5-0325/2000

#### European Parliament decision approving the draft Charter of Fundamental Rights of the European Union (C5-0570/2000)

*The European Parliament,*

- having regard to the draft Charter of Fundamental Rights of the European Union (C5-0570/2000),
  - having regard to its resolution of 16 March 2000 on the drafting of a European Union Charter of Fundamental Rights <sup>(1)</sup>,
  - having regard to its resolution of 13 April 2000 containing its proposals for the Intergovernmental Conference <sup>(2)</sup>,
  - having regard to its resolution of 3 October 2000 on the draft Charter of Fundamental Rights of the European Union <sup>(3)</sup>,
  - having regard to Rules 54 and 86 of its Rules of Procedure,
  - having regard to the recommendation of the Committee on Constitutional Affairs (A5-0325/2000),
- A. whereas the European Council of Cologne of 3/4 June 1999 decided 'to establish a Charter of Fundamental Rights in order to make their overriding importance and relevance more visible to the Union's citizens',
- B. whereas the European Council resolved that the Charter 'should contain the fundamental rights and freedoms as well as basic procedural rights guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and derived from the constitutional traditions common to the Member States, as general principles of Community law; the Charter should also include the fundamental rights that pertain only to the Union's citizens; In drawing up such a Charter account should furthermore be taken of economic and social rights as contained in the European Social Charter and the Community Charter of the Fundamental Social Rights of Workers (Article 136 TEC), in so far as they do not merely establish objectives for action by the Union',
- C. whereas the European Council decided that the Convention established to draft the Charter should present a draft document in advance of the European Council of December 2000, and that the European Council 'will propose to the European Parliament and the Commission that, together with the Council, they should solemnly proclaim on the basis of the draft document a European Charter of Fundamental Rights',
- D. whereas the European Parliament will address the question of the Charter's legal character at its part-session of 29/30 November 2000,
- E. whereas on 2 October 2000 the Convention achieved a wide consensus on a final draft of the Charter of Fundamental Rights of the European Union (Convent 50),
- F. whereas the informal European Council at Biarritz on 13/14 October 2000 accepted as definitive the Convention's final draft of the Charter and invited the Parliament to join with it and the Commission in a solemn proclamation of the Charter,
1. Considers that the Convention has fulfilled its mandate from the European Council;
  2. Approves the draft Charter of Fundamental Rights of the European Union as appended hereto;

<sup>(1)</sup> 'Text Adopted', Item 4.

<sup>(2)</sup> 'Text Adopted', Item 7.

<sup>(3)</sup> 'Text Adopted', Item 10.



Tuesday 14 November 2000

3. Instructs its President to proclaim the Charter at the Nice European Council jointly with the President of the Council and the President of the Commission;
4. Instructs its President to forward this decision to the President of the European Council, the President of the Council, the President of the Commission and the President of the Convention.

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ANNEX

**DRAFT CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION**

**PREAMBLE**

The peoples of Europe, in creating an ever closer union among them, are resolved to share a peaceful future based on common values.

Conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law. It places the individual at the heart of its activities, by establishing the citizenship of the Union and by creating an area of freedom, security and justice.

The Union contributes to the preservation and to the development of these common values while respecting the diversity of the cultures and traditions of the peoples of Europe as well as the national identities of the Member States and the organisation of their public authorities at national, regional and local levels; it seeks to promote balanced and sustainable development and ensures free movement of persons, goods, services and capital, and the freedom of establishment.

To this end, it is necessary to strengthen the protection of fundamental rights in the light of changes in society, social progress and scientific and technological developments by making those rights more visible in a Charter.

This Charter reaffirms, with due regard for the powers and tasks of the Community and the Union and the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the Treaty on European Union, the Community Treaties, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Community and by the Council of Europe and the case law of the Court of Justice of the European Communities and of the European Court of Human Rights.

Enjoyment of these rights entails responsibilities and duties with regard to other persons, to the human community and to future generations.

The Union therefore recognises the rights, freedoms and principles set out hereafter.

**CHAPTER I – DIGNITY**

*Article 1*

**Human dignity**

Human dignity is inviolable. It must be respected and protected.

*Article 2*

**Right to life**

1. Everyone has the right to life.
2. No one shall be condemned to the death penalty, or executed.

## **III.5.d. Council Press Releases Concerning the Charter Convention**

**CHARTER OF FUNDAMENTAL RIGHTS**

Brussels, 25 February 2000

6451/00 (Presse 50)

(OR. fr)

**First informal  
working-party meeting  
of the Convention**

**entrusted with drawing up a draft Charter of Fundamental Rights of the European Union**

**Brussels, 24 and 25 February 2000**

1. In accordance with its agenda, this first informal working-party meeting of the Convention considered an initial set of rights in the category of civil and political rights. A detailed discussion of these rights also broached the more general questions of how to use existing sources, present the results of work and structure debates by swiftly defining a complete though modifiable framework for all the work facing the Convention in the coming months.
2. The Convention decided, in line with the agreed timetable, to meet again as a working party on 2 and 3 March 2000.

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Fundamental.rights@consilium.eu.int

**CHARTER OF FUNDAMENTAL RIGHTS**

Brussels, 6 March 2000

6593/00 (Presse 59)

(OR. fr)

**Second informal meeting  
as a working party  
of the Convention  
to draw up a draft Charter of Fundamental Rights of the European Union**

**Brussels, 2 and 3 March 2000**

1. The second informal meeting of the Convention as a working party provided an opportunity to continue the examination of rights falling under the category of civil and political rights. Accordingly, the working party dealt with the proposals for Articles 4 to 12, respectively covering:
  - a number of procedural rights;
  - respect for private and family life;
  - family life;
  - freedom of thought, conscience and religion;
  - freedom of expression;
  - right to education.

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2. The examination led to proposals for amendments which will be embodied in a revised wording of these articles. At its next meeting - 7 March 2000 in Paris - the Praesidium will review a revised draft document before sending it to members with a view to a second reading.
  3. Alongside this meeting, the Praesidium held another meeting during which it heard the views of NGOs with an input into the Forum of Civil Society. It also clarified some conditions related to the internal functioning of the Convention, notably the time limit for interventions. The Convention, meeting as a working party, approved the conditions, with effect from that date.
  4. Winding up the meeting, the Chairman, Mr Roman HERZOG, invited members to reconvene at the plenary session on 20 and 21 March 2000 in Brussels.
-

**CHARTER OF FUNDAMENTAL RIGHTS**

Brussels, 21 March 2000 (24.03)

7095/00 (Presse 76)

**Third plenary meeting of the  
Convention for the drawing up of a draft  
Charter of Fundamental Rights of the European Union**

**(Brussels, 20 and 21 March 2000)**

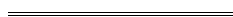
1. During its third plenary meeting chaired by Mr MENDES de VIGO and Mr Gunnard JANSONN, the Convention held the second reading of certain civil and political rights as reformulated by the Praesidium to take account of the discussions held at informal meetings. That meeting enabled the first fifteen articles under this category of rights to be reviewed. The discussions were held on the basis of CHARTE 4149/00 CONVENT 13 and the list of written proposals for amendments sent to the Convention secretariat.
2. At the meeting, the Presidency announced that on 22 March the members of the Convention would receive electronically a new document recapitulating the proposed articles concerning citizens' rights. That document will be examined initially by the Convention's next meeting in the form of a working party on 27 and 28 March 2000.

**Internet: <http://ue.eu.int/Newsroom>  
E-mail: [press.office@consilium.eu.int](mailto:press.office@consilium.eu.int)**

7095/00 (Presse 76 - G)

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**EN**

3. At the next meeting, in addition to that initial examination, discussions will be resumed on Articles 13 to 19 (see CHARTE 4137/00 CONVENT 8) which will bring to a conclusion the first reading of all the civil and political rights. To allow the Convention sufficient time to cover its agenda, it has been decided that its proceedings will resume in the afternoon of 28 March at 14.15.
4. An important aspect of the Convention's timetable of work was highlighted at the beginning of the meeting by Mr MENDES de VIGO following the meeting on 7 March in Paris between the members of the Praesidium and the French Minister with responsibility for European Affairs. In view of the future Presidency of the Union, the need to terminate the proceedings in time for the informal European Council meeting in Biarritz was put forward. That deadline, combined with that of the European Council meeting in June 2000 under the Portuguese Presidency, at which the submission of a first preliminary draft of the complete text is planned, leads the Convention to abide strictly by its advance timetable.
5. At the end of its meeting, the Convention agreed to meet again in plenary session on 5 and 6 June 2000.



**CHARTER OF FUNDAMENTAL RIGHTS**

Brussels, 6 April 2000

7531/00 (Presse 99)

(OR. fr)

**Fourth informal meeting as a working party  
of the Convention  
to draw up a draft Charter of Fundamental Rights  
of the European Union**

**Brussels, 3 and 4 April 2000**

1. At its fourth informal meeting as a working party, the Convention, chaired by Mr Gunnard JANSSON and then by Mr Inigo MENDES de VIGO tackled for the first time the issue of social rights on the basis of documents CHARTE 4192/00 CONVENT 18 and CHARTE 4193 CONVENT 19.
2. The Convention successfully concluded the first reading of eight of the twelve proposed texts for articles submitted by the Praesidium. Examination of the remaining articles together with the three texts proposed by the Commission (see CONVENT 19) was postponed until the next meeting.
3. Commenting on the revised provisional timetable for the Convention's discussions, the Chairman Mr Gunnard JANSSON said that the meetings normally reserved for further examination of social rights could, if necessary, be devoted to an examination of horizontal questions. He also confirmed the additional meeting scheduled for 8 May 2000.

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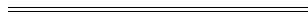
7531/00 (Presse 99 - G)

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**EN**



Regarding the work of the Praesidium, he informed the Convention that it would be submitting a preliminary draft Charter for mid-May to give members time to submit written amendments. The June European Council would be given a progress report on the basis of this preliminary draft text as it stood following the Convention's examination. He also said that the Praesidium would shortly be submitting draft horizontal articles.

4. The Convention's next meeting as a working party will be held on 27 April 2000 and the first working day will be devoted to hearing the views of NGOs dealing with fundamental rights.



**CHARTER OF FUNDAMENTAL RIGHTS**

Brussels, 2 May 2000

8059/00 (Presse 128)

(OR. fr)

**Fifth informal meeting as a working party  
of the Convention  
to draw up a draft Charter of Fundamental Rights  
of the European Union**

**(Brussels, 27 and 28 April 2000)**

1. At its fifth informal meeting as a working party, the Convention, chaired by Mr Roman HERZOG, devoted its first working day to a public hearing of the NGOs representing civil society.
2. This hearing, which was in response to the wish expressed by the European Council in Cologne that all the bodies involved in preparing the draft Charter should give their views, was held in a climate of mutual receptivity which enabled the Convention to be directly apprised, by the organisations present, of the general or sectoral aspects deemed essential for the draft Charter under preparation. The 66 NGOs, all representative at European level and each of them grouping together in this capacity a series of associations, federations or other NGOs, having made a request to this effect, had an opportunity to present verbally the main points of positions which were very often expressed in greater detail in written documents that were either distributed in the meeting-room or had already been posted on the Convention's internet site.  
A list of these NGOs is annexed to this communiqué.

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E-mail: [press.office@consilium.eu.int](mailto:press.office@consilium.eu.int)

8059/00 (Presse 128 - G)

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**EN**

3. On the second day the Convention began the examination of social rights, on the basis of CHARTE 4192/00 CONVENT 18, CHARTE 4193/00 CONVENT 19 and CHARTE 4227/00 CONVENT 26. This gave rise to a detailed discussion on the place that such rights should be given in the draft Charter and on the most appropriate way of including them. The Convention reviewed Articles 9 to 15 and XIII to XVIII as set out in the documents mentioned.
  
  4. At the end of the second working day, the Convention agreed to meet again on 3 and 4 May 2000 for another working session.
-

**CHARTER OF FUNDAMENTAL RIGHTS**

Brussels, 10 May 2000 (11.05)  
8388/00 (Presse 148)  
(OR. fr)

**Sixth informal meeting, at Working Party level,  
of the Convention  
responsible for drawing up a draft Charter of Fundamental Rights  
of the European Union**

**(Brussels, 3 and 4 May 2000)**

1. At its sixth informal meeting, at Working Party level, the Convention, chaired by Mr Roman HERZOG and Mr Gunnar JANSSON, addressed the horizontal clauses, on the basis of proposals for texts drawn up by the Praesidium (CHARTE 4235/00 CONVENT 27).
2. The Convention completed the first reading of the five proposals for the texts of Articles. However, the general discussion highlighted certain differences of opinion within the Convention. During the discussion, Mr Fischbach, in his capacity as the Council of Europe's observer at the Convention, took the floor at the invitation of the Presidency to talk about all the horizontal clauses under discussion. He agreed overall with the draft proposed.
3. The Presidency specified the future timetable for meetings and confirmed that, at that stage, all the scheduled meetings were due to go ahead. However, bearing in mind the need to make progress on the revised draft of the Articles that had already been examined by the Convention, it announced that the meeting on 11 and 12 May 2000 would begin only at 16.00 on the first day, to enable the Praesidium to meet for longer.
4. The next meeting of the Convention will therefore take place at Working Party level on 11 and 12 May 2000.

**CHARTER OF FUNDAMENTAL RIGHTS**

Brussels, 8 June 2000

9272/00 (Presse 203)

(OR. fr)

**Fourth plenary meeting of the Convention  
to draw up a draft Charter of Fundamental Rights  
of the European Union**

**(Brussels, 5 and 6 June 2000)**

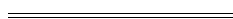
1. At its fourth plenary meeting, the Convention to draw up a draft Charter of Fundamental Rights of the European Union, chaired by Mr Roman HERZOG and Mr Inigo MENDES de VIGO, worked for the first time on a full version of the forthcoming draft Charter.
2. Work began with a reminder of the latest occurrences in Spain and a minute's silence in memory of the victims of terrorism.
3. The agenda of the meeting was divided into two parts. On 5 June 2000, the members of the Convention conducted a general debate on the question of social rights and the horizontal clauses, on the basis of CHARTE 4316/00 CONVENT 34. This discussion, which allowed positions to be clarified, certainly brought out some divergence among members regarding ways to include the social rights in the Charter, but also allowed the Praesidium to note that of the members who expressed a point of view, a fairly large majority supported its approach.

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9272/00 (Presse 203 - G)

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**EN**

4. On 6 June 2000, the members of the Convention met with a programme to examine the 600 or so amendments submitted on the Articles concerning civil and political rights and the rights of citizens. These amendments were assembled and arranged in a master document with the reference CHARTE 4332/00. At its earlier meetings, the Praesidium had looked at each of these amendments and attempted wherever possible to formulate compromise amendments that would take account of the essence of the submissions formulated, with the twofold aim of lightening the workload of the Convention and approaching a possible consensual formulation while not depriving any members of the Convention of the right to bring up at a meeting any of the amendments filed. These compromise amendments were distributed the day before the meeting, with the reference 4333/00 CONVENT 36. The proposed procedure gave rise to a general discussion which led Chairman Roman Herzog to sketch, for the future, outlines for submission of amendments to the Convention to meet the objections raised.
  
5. In conclusion, the Chairman noted that the discussions that had taken place in the Convention proved above all that the Convention had reached a crucial stage in the accomplishment of its mandate. He announced that at its next meeting on 19 June 2000, the Convention would be meeting representatives of the countries applying for accession. On 20 June 2000, the meeting would continue according to the planned schedule and programme. That meeting would take place at the premises of the Council of Ministers.



**CHARTER OF FUNDAMENTAL RIGHTS**

Brussels, 27 June 2000 (29.06)

9550/00 (Presse 227)

(OR. fr)

**Eighth informal meeting, in working group formation, of the Convention to draw up a draft  
Charter of Fundamental Rights of the European Union**

**(Brussels, 19 and 20 June 2000)**

1. At its eighth informal meeting, in working group formation, the Convention, chaired by Mr Gunnar JANSSON and Mr Inigo MENDES de VIGO, began proceedings by observing a minute's silence as a mark of deepest sympathy for the bereavement suffered by its Chairman, Mr Roman Herzog. Speaking on behalf of the Convention, Mr Gunnar JANSSON expressed the hope that, in its work, the Convention might continue to benefit from Mr Herzog's remarkable contribution to the draft Charter.
2. The Convention divided its work into two phases. Firstly, as provided for in the timetable, and pursuant to the brief given by the European Council, the Convention heard representatives of the countries which have applied for accession. Secondly, the next morning, the Convention continued to examine the amendments previously lodged to the draft Articles concerning civil and political rights, and citizens' rights.
3. The contributions of the representatives of the applicant countries made it clear to what extent the latter were aware of the issues on which debate in the Convention focused, and the considerable importance they attached to ensuring that they fully understood the texts being prepared. No differences regarding the substance or the objectives emerged during the discussion which followed the short statement by each national delegation. The open nature of the discussion was welcomed by both sides. The list of participants from the applicant countries is annexed.
4. On Tuesday 21 June, the Convention continued its work, concentrating on three major aspects:

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- it resumed the discussions begun on 6 June on the amendments to the Articles on civil and political rights. It worked on the basis of CHARTE 4332/00 CONVENT 35 + ADD 1 + ADD 2 (compendium of all amendments lodged), CHARTE 4333/00 CONVENT 36 (compromise proposed by the Praesidium) and CHARTE 4360/00 CONVENT 37 (summary of amendments presented by the Praesidium). The discussions enabled progress to be made; the remainder of the Articles will be submitted to the next meeting of the Convention;
  - it heard an oral report by Mr Inigo MENDES de VIGO on the Feira European Council's discussions on the draft Charter. Mr Inigo MENDES de VIGO had had to replace Mr Roman Herzog, in view of the circumstances;
  - it adopted a new meeting timetable which took account of the need to allow enough discussion time to enable the work to be completed in time for the Biarritz European Council in October 2000.
5. The next meeting of the Convention would take place on 28, 29 and 30 June 2000 in working group formation.
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**CHARTER OF FUNDAMENTAL RIGHTS**

Brussels, 5 July 2000

10076/00 (Presse 240)  
(OR. fr)

**Ninth informal meeting, in working group formation, of the Convention to draw up a draft Charter of Fundamental Rights of the European Union**

**(Brussels, 28, 29 and 30 June 2000)**

1. At its ninth informal meeting, in working group formation, the Convention was chaired by Mr Gunnar JANSSON and Mr Inigo MENDES de VIGO.
2. The Convention divided its work into two phases:
  - Firstly, the Convention continued its second reading of the draft Articles on civil and political rights, starting with draft Article 9 (Presumption of innocence and right of defence) concluding with draft Article 22 (Equality and non-discrimination). The discussion was based on CHARTE 4284/1/00 REV 1 CONVENT 28, CHARTE 4333/00 CONVENT 36 (Compromise proposals made by the Praesidium) and CHARTE 4360/00 CONVENT 37 (summary of amendments presented by the Praesidium).
  - Secondly, the Convention inserted a discussion that had been much awaited by its members into its second day of work, on 29 June, on the horizontal clauses. This discussion, based on a meeting document (SN 3340/00) that had been prepared by the Praesidium and distributed at the meeting itself, mainly enabled the members to express their individual views on the substance of the clauses. The members all agreed that this was one of the most difficult and crucial subjects of the draft being drawn up. Mr Inigo MENDES de VIGO and Mr Braibant were asked to conclude this discussion. Mr Inigo MENDES de VIGO thought that the reactions had been positive and constructive, thus confirming that the large majority of members of the Convention shared a common objective.
3. The next meeting of the Convention will be held on 10 and 11 July 2000 in working group formation.

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**CHARTER OF FUNDAMENTAL RIGHTS**

Brussels 24 July 2000  
10576/00 (Presse 270)  
(OR. fr)

**Eleventh informal meeting as a working party of the Convention to draw up a draft Charter of Fundamental Rights of the European Union****(Brussels, 17 to 19 July 2000)**

1. The Convention to draw up a draft Charter of Fundamental Rights of the European Union held its eleventh meeting as a working party from 17 to 19 July 2000, under the chairmanship of Mr Guy BRAIBANT and Mr Gunnard JANSSON.
2. The Convention greeted the news that Chairman Roman Herzog would return on 20 August with great satisfaction.
3. Mr Inigo MENDES de VIGO announced that, acting on behalf of the Convention, the Praesidium would send a letter of condolences to the family of the victim of the latest attack in Spain.
4. The Convention had a particularly full agenda at this meeting, the last before the summer, to allow the Praesidium to finalise a text following an agreed structure, and with all its articles and a preamble, before the end of August.
5. The Convention:
  - completed the second reading of Articles 31 to 45, including the final social rights and the horizontal articles, on the basis of CHARTE 4372/00 CONVENT 39, CHARTE 4373/00 CONCENT 40, SN 3340/00, CHARTE 4399/00 CONVENT 42 and CHARTE 4383/00 CONVENT 41,

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10576/00 (Presse 270 - G)

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- held a thorough and fruitful discussion of the draft preamble. All the contributions illustrated how the Convention's work over recent months, despite the emergence of different options, has forged a common spirit and a common desire to complete this task. Discussion was based on a draft presented by the Praesidium (CHARTE 4400/00 CONVENT 43) and alternative versions drafted by some members; it also included consideration of a proposed overall structure for the draft Charter (CHARTE 4412/00 CONVENT 44). The Praesidium's proposals were accepted by a majority of members of the Convention as a basis to work on, subject to modifications, amendments and borrowings from the alternative versions which had been submitted.,
- finalised the timetable for forthcoming work and the procedure which it would use to consider the complete draft of the Charter as it emerged from its second reading.

In summary:

- the text resulting from the Praesidium's current work will be sent to members during the last week of July;
- members will have until 1 September to formulate their comments on the whole text and to hold consultations within their component groups with a view to the meetings in September, it being understood that from now on no further article-by-article discussion is planned;
- the Convention will meet again on 11 and 12 September 2000 to examine any action to be taken following consultations within its various component groups;
- on 26 and 27 September 2000, the Convention will be asked to give its agreement on a draft Charter of Fundamental Rights of the European Union, with a view to the meeting of the Biarritz European Council on 18 and 19 October 2000.

6. In conclusion, the Convention agreed to meet again on 11 and 12 September 2000 in Brussels.

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**CHARTER OF FUNDAMENTAL RIGHTS**

Brussels, 15 September 2000

11242/00 (Presse 313)

(OR. fr)

**Fifth plenary meeting of the Convention  
to draw up a draft Charter of Fundamental Rights  
of the European Union**

**(Brussels, 11 and 12 September 2000)**

1. At its fifth meeting, the Convention to draft a Charter of Fundamental Rights of the European Union supplied each of its component parts with the text of the preliminary draft Charter set out in CHARTE 4422/00 CONVENT 45 (already distributed) and in CHARTE 4423/00 CONVENT 46 (already distributed). The text had been sent to the Members of the Convention for comments at the end of July.
2. The discussions by each of the component parts, chaired by the Vice-Chairpersons with Roman HERZOG making up the Praesidium, continued until 12 noon and identified the terms of a possible compromise. In its capacity as the fourth component part, the European Commission, represented in the Convention by Mr Vittorino, had entered the item on the agenda for its meeting on 13 September 2000.

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3. On 13 September, instead of a plenary meeting of the Convention, the Praesidium met to establish this compromise thanks to a revised preliminary draft Charter. It will be distributed to Members as soon as possible.
  4. A further meeting of the Convention is scheduled for 25 and 26 September 2000 in order to finalise, both at the level of the component parts and in the plenary, this revised text, and to note that, in keeping with the terms used by the Tampere European Council, "the text of the draft Charter can eventually be subscribed to by all the parties". Under the terms of these same Conclusions, it is for the Chairperson, Mr Roman HERZOG, in close concert with the Vice-Chairpersons, to note that this is the case.
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## CHARTER OF FUNDAMENTAL RIGHTS

Brussels, 27 September 2000 (28.09)  
(OR. fr)  
11561/00 (Presse 331)

### **Sixth meeting of the Convention for the drawing up of a draft Charter of Fundamental Rights of the European Union**

**(Brussels, 25 and 26 September 2000)**

1. At its sixth meeting, in accordance with its timetable, the Convention for the drawing up of a draft Charter of Fundamental Rights of the European Union was scheduled to give its opinion on the draft Charter to be sent to the European Council. To that end, it agreed to proceed in two stages:
2. Firstly, during the afternoon of 25 September, the text of the preliminary draft Charter as set out in CHARTE 4470/00 CONVENT 47 (already distributed) was discussed by each of the component parts of the Convention, with its respective Vice-Chairperson in the chair. The Praesidium then met in order to reflect the wishes expressed by each of the component parts in a document intended to be consensual. The amendments thus made to CONVENT 47 were made available to Members on the morning of 26 September in the form of 4470/1 REV 1 ADD 1 CONVENT 47.
3. Secondly, on 26 September the Convention meeting in plenary, chaired in turn by Mr Gunnar JANSSON and Mr Inigo MENDES DE VIGO, held a general debate on the draft Charter thus amended, on which it then unanimously expressed its very broad agreement. In addition, it asked the Praesidium to forward the text to Mr Roman HERZOG, who was absent for health reasons, so that he could formally note the existence of the necessary consensus. The Convention accompanied its request with its most cordial wishes for a speedy recovery.
4. A further plenary meeting of the Convention is scheduled for 2 October 2000, in order to declare formally the existence of a consensus meeting the requirements set out in the mandate given by the Tampere European Council and the decision to present the consolidated text to the European Council to be held in Biarritz later that month.

**CHARTER OF FUNDAMENTAL RIGHTS**

Brussels, 3 October 2000

11824/00 (Presse 352)

(OR. fr)

**Seventh plenary meeting of the Convention to draw up a  
draft Charter of Fundamental Rights of the European Union**

**(Brussels, 2 October 2000)**

1. At its seventh plenary meeting, held on 2 October 2000, the Convention to draw up a draft Charter of Fundamental Rights of the European Union, chaired by Mr Guy BRAIBANT, noted the agreement of its component parts to the draft Charter as set out in CHARTE 4487/00 CONVENT 50.
2. During this final meeting, the Convention listened to speeches by each of its Vice-Presidents, Mr Antonio VITTORINO, Mr Inigo MENDES de VIGO, Mr Gunnar JANSSON and Mr Guy BRAIBANT. Besides their support for the draft on behalf of the components chaired by them, the twelve key words used by Mr BRAIBANT to describe the text should also be remembered: originality, transparency, consultation and consensus, which he said were the salient features of the drafting process; and balance, dignity, liberty, equality, solidarity, citizenship, justice and horizontal clauses, the foundations supporting the draft. At the beginning of the meeting Mr Alber, President of the Court of Justice of the European Communities, also spoke as an observer, stating his support for the outcome of the Convention's deliberations.
3. Mr Inigo MENDES de VIGO then read the letter from Mr Roman HERZOG by which Mr HERZOG intends to announce to Mr Jacques CHIRAC, President of the European Council, that he is able to confirm in close collaboration with the members of the Praesidium that consensus has been achieved on the text mentioned above, meeting the requirements set out in the mandate from the Tampere European Council. The text will accordingly be submitted to Mr CHIRAC at the European Council in Biarritz in October 2000. Sustained and unanimous praise for Mr Roman HERZOG, who has unfortunately been prevented by health problems from attending the Convention in the last few weeks, followed.
4. At the end of their proceedings and before they parted, the members of the Convention once again listened together to the European hymn.

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**CHARTER OF FUNDAMENTAL RIGHTS**

Brussels, 5 October 2000

11824/00 (Presse 352)

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(OR. fr)

**Seventh plenary meeting of the Convention**  
**to draw up a draft Charter of Fundamental Rights of the European Union**

**(Brussels, 2 October 2000)**

**The second paragraph should read as follows (amendment in bold):**

2. During this final meeting, the Convention listened to speeches by each of its Vice-Presidents, Mr Antonio VITTORINO, Mr Inigo MENDES de VIGO, Mr Gunnar JANSSON and Mr Guy BRAIBANT. Besides their support for the draft on behalf of the components which they chaired, the twelve key words used by Mr BRAIBANT to describe the text should also be remembered: originality, transparency, consultation and consensus, which he said were the salient features of the drafting process; and balance, dignity, liberty, equality, solidarity, citizenship, justice and horizontal clauses, the foundations supporting the draft. At the beginning of the meeting Mr ALBER, **Advocate-General** at the Court of Justice of the European Communities spoke as an observer, stating his support for the outcome of the Convention's deliberations.



# **IV. Key Post-Charter Convention Documents**

***IV.1. Selected travaux préparatoires from the 2002-2003 Convention on the Future of Europe and 2003-2004 Inter-Governmental Conference ('IGC')***

## **IV.1.a. The Mandate of the Convention on the Future of Europe**

## **PRESIDENCY CONCLUSIONS**

### **EUROPEAN COUNCIL MEETING IN LAEKEN**

**14 AND 15 DECEMBER 2001**

*Presidency conclusions - Laeken, 14 and 15 December 2001*

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1. Just when the European Union is introducing its single currency, its enlargement is becoming irreversible and it is initiating an important debate on its future, the European Council meeting in Laeken on 14 and 15 December 2001 has provided fresh impetus to increase the momentum of its integration.
2. The European Council's discussions were preceded by an exchange of views with the President of the European Parliament, Mrs Nicole Fontaine, on the principal items on the agenda.

## **I. THE FUTURE OF THE UNION**

### **The Laeken declaration**

3. Following the conclusions adopted in Nice, the European Council adopted the declaration set out in Annex I. That declaration and the prospects it opens mark a decisive step for the citizen towards a simpler Union, one that is stronger in the pursuit of its essential objectives and more present in the world. In order to ensure that preparation for the forthcoming Intergovernmental Conference is as broadly-based and transparent as possible, the European Council has decided to convene a Convention, with Mr V. Giscard d'Estaing as Chairman and Mr G. Amato and Mr J.L. Dehaene as Vice-Chairmen. All the candidate countries will take part in the Convention. In parallel with the proceedings of the Convention, a Forum will make it possible to give structure to and broaden the public debate on the future of the Union that has already begun.
4. In parallel with the proceedings of the Convention, a certain number of measures can already be taken without amending the Treaties. In this context, the European Council welcomes the Commission's white paper on governance and the Council Secretary-General's intention of submitting, before the European Council meeting in Barcelona, proposals for adapting the Council's structures and functioning to enlargement. The European Council will draw the operational conclusions from it at its meeting in Seville. Finally, the European Council welcomes the final report by the High-Level Advisory Group ("Mandelkern Group") on the quality of regulatory arrangements and the Commission communication on regulatory simplification, which should lead to a practical plan of action in the first half of 2002.

**Transition to the euro**

5. The introduction of euro notes and coins on 1 January 2002 will be the culmination of a historic process of decisive importance for the construction of Europe. Every measure has been taken to ensure that the physical introduction of the euro is a success. The use of the euro on international financial markets should be easier as a result. The euro area now represents a pole of stability for those countries participating in it by protecting them from speculation and financial turmoil. It is strengthening the internal market and contributing to the maintenance of healthy fundamental figures, fostering sustainable growth. The euro is also helping to bring the citizens of the Union closer together by giving visible, concrete expression to the European design. In that regard, the European Council welcomes the recent adoption by the Council and the European Parliament of a Regulation intended to reduce substantially the cost of cross-border payments in euro.

**The European security and defence policy**

6. The European Council has adopted the declaration on the operational capability of the European security and defence policy set out in Annex II, as well as the Presidency report. Through the continuing development of the ESDP, the strengthening of its capabilities, both civil and military, and the creation of appropriate structures within it and following the military and police Capability Improvement Conferences held in Brussels on 19 November 2001, the Union is now capable of conducting some crisis-management operations. The Union is determined to finalise swiftly arrangements with NATO. These will enhance the European Union's capabilities to carry out crisis-management operations over the whole range of Petersberg tasks. In the same way, the implementation of the Nice arrangements with the Union's partners will augment its means of conducting crisis-management operations. Development of the means and capabilities at its disposal will enable the Union progressively to take on more demanding operations.

**Enlargement**

7. The Commission document entitled "Making a success of enlargement", the regular reports and the revised partnerships for accession are a solid framework for the success of the accession process, which is now irreversible. The Berlin European Council established the financial framework permitting enlargement.

*Presidency conclusions - Laeken, 14 and 15 December 2001*

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8. In recent months considerable progress has been made in the negotiations and certain delays have been made good. The European Union is determined to bring the accession negotiations with the candidate countries that are ready to a successful conclusion by the end of 2002, so that those countries can take part in the European Parliament elections in 2004 as members. Candidacies will continue to be assessed on their own merits, in accordance with the principle of differentiation. The European Council agrees with the report of the Commission, which considers that, if the present rate of progress of the negotiations and reforms in the candidate States is maintained, Cyprus, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, the Slovak Republic, the Czech Republic and Slovenia could be ready. It appreciates the efforts made by Bulgaria and Romania and would encourage them to continue on that course. If those countries are to receive specific support, there must be a precise framework with a timetable and an appropriate roadmap, the objective being to open negotiations with those countries on all chapters in 2002.
9. The candidate countries must continue their efforts energetically, in particular to bring their administrative and judicial capabilities up to the required level. The Commission will submit a report on the implementation of the plan of action for strengthening institutions to the Seville European Council in June 2002.
10. The roadmap drawn up by the Nice European Council remains fully applicable. At the beginning of 2002 the Commission will propose common positions on the agriculture, regional policy and budgetary chapters on the basis of the present *acquis* and of the principles decided on in Berlin. Proceedings on the drafting of the accession treaties will begin in the first half of 2002.
11. The European Council welcomes the recent meetings between the leaders of the Greek and Turkish Cypriot communities and would encourage them to continue their discussions with a view to an overall solution under the auspices of the United Nations consistent with the relevant resolutions of the United Nations Security Council.
12. Turkey has made progress towards complying with the political criteria established for accession, in particular through the recent amendment of its constitution. This has brought forward the prospect of the opening of accession negotiations with Turkey. Turkey is encouraged to continue its progress towards complying with both economic and political criteria, notably with regard to human rights. The pre-accession strategy for Turkey should mark a new stage in analysing its preparedness for alignment on the *acquis*.

## **II. THE UNION'S ACTION FOLLOWING THE ATTACKS IN THE USA ON 11 SEPTEMBER**

### **The Union's action in Afghanistan**

13. The European Council welcomes the signing in Bonn on 5 December of the agreement defining the provisional arrangements applicable in Afghanistan pending the re-establishment of permanent State institutions. It urges all Afghan groups to implement that agreement.
  
14. The European Council has undertaken to participate in the efforts of the international community with a view to restoring stability in Afghanistan on the basis of the outcome of the Bonn Conference and the relevant resolutions of the United Nations Security Council. In that context, it encourages the deployment of an international security force, which would be mandated, on the basis of a resolution of the United Nations Security Council, to contribute to the security of the Afghan and international administrations established in Kabul and the surrounding areas and to the establishment and training of new Afghan security and armed forces. The Member States of the Union are examining their contributions to such a force. The participation of the Member States of the Union in that international force will provide a strong signal of their resolve to better assume their crisis-management responsibilities and hence help stabilise Afghanistan.
  
15. The urgent needs of the Afghan people mean that humanitarian aid continues to be an absolute priority. The delivery of such aid, inter alia for refugees and displaced persons, must be adapted to changes in the situation and must take place in as efficient and well-coordinated a manner as possible. The Union has already pledged or is ready to pledge a total of EUR 360 million for humanitarian aid, of which EUR 106 million will come from the Community budget.



*Presidency conclusions - Laeken, 14 and 15 December 2001*

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16. More than twenty years of war and political instability have destroyed the structures of Afghan society, completely disrupted the functioning of the public institutions and authorities and caused immense human suffering. The European Union will help the Afghan people and its new leaders rebuild the country and encourage as swift a return to democracy as possible. The situation of women will merit particular attention. Rehabilitation and reconstruction will require strong international cooperation and coordination. The European Union has appointed Mr Klaus-Peter Klaiber Special Representative in Afghanistan under the authority of the High Representative for the CFSP. On 21 December in Brussels, the Union will co-chair the first meeting of the steering group to support political renewal in Afghanistan and better coordinate donors' efforts with a view to the ministerial conference scheduled for January 2002 in Tokyo. At those meetings, the Union will undertake to help to cover the requirements, alongside the USA, the Arab countries and Japan, inter alia.

**Combating terrorism**

17. The European Union reaffirms its total solidarity with the American people and the international community in combating terrorism with full regard for individual rights and freedoms. The plan of action adopted on 21 September is being implemented in accordance with the timetable set. The progress which has been achieved indicates that the objectives will be met. Agreement on the European arrest warrant constitutes a decisive step forward. The common definition of terrorist crimes, the drawing up of lists of terrorists and terrorist organisations, groups and bodies, the cooperation between specialist services and the provisions concerning the freezing of assets which have been adopted following Resolution 1373 of the United Nations Security Council all constitute practical responses in the campaign against terrorism. The European Council invites the Council and the Commission to move swiftly towards finalising the programme to improve cooperation between Member States with regard to threats of the use of biological and chemical means; the work of the European Civil Protection Agency will provide the framework for such cooperation.
18. The European Union is committed to alleviating the consequences of the attacks of 11 September for the aviation sector with a view to ensuring a rapid and coordinated response from all Member States. The European Council welcomes the adoption of a common position of the Council on the Regulation on aviation security.

### **III. TRENDS IN THE ECONOMIC AND SOCIAL SPHERES AND IN SUSTAINABLE DEVELOPMENT**

#### **General economic situation and prospects**

19. The Union's economy is experiencing a period of slower growth and uncertainty under the combined impact of a global slowdown and a reduction in demand. Yet, present expectations are for a gradual recovery in the course of 2002. Disposable incomes are improving owing to diminishing inflation and tax cuts in several countries. Budgetary policy is geared to maintaining sound public finances. It has resulted in a reduction in long-term interest rates, which will help support demand. The progress already made in budgetary consolidation within the framework of the Stability and Growth Pact will enable budgetary policy to play a positive part in combating the slowdown with automatic stabilisers working while staying on the medium-term path of consolidation. Confidence must be based on the consistent implementation of the economic policy strategy as defined in the Broad Economic Policy Guidelines (BEPGs), the main axes of which are macroeconomic stability and structural reforms to enhance job creation and the Union's potential for growth. The European Council endorsed the report of the ECOFIN Council on the taxation of savings.
  
20. The European Council welcomes the outcome of the Ministerial Conference in Doha, which launched a new round of global trade negotiations based on an approach balanced equally between liberalisation and regulation, taking account of the interests of developing countries and promoting their capacity for development. The Union is determined to promote the social and environmental dimension of that round of negotiations.

*Presidency conclusions - Laeken, 14 and 15 December 2001*

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**The Lisbon strategy**

21. At the Barcelona European Council on 15 and 16 March 2002 we will take stock of our progress towards the Lisbon strategic goal of becoming the most dynamic knowledge-based economy in the world, with full employment and increased levels of social cohesion, by 2010, and agree concrete steps on the priority actions we must take to deliver this strategy. The slowdown in growth makes it more important than ever to deliver the structural reforms agreed at Lisbon and Stockholm, and to demonstrate the continued relevance of our agenda for economic and social issues and sustainable development to Europe's citizens and businesses. We should use the structural indicators we have agreed to assess our progress and focus our activity. In order to give the European Council a full picture of the situation and to ensure that its decisions are coherent, the various preparatory processes will have to converge on the spring European Council.
  
22. Progress has been made following the Stockholm European Council on the various aspects of the Lisbon strategy. After thirty years of discussion, agreement has been reached on the European Company. There have been agreements on the liberalisation of postal services and on the package of Directives concerning telecommunications. The adoption of a series of economic and social structural indicators, including as regards quality in work and the fight against poverty and social exclusion as well as key indicators for sustainable development, will make it possible to see more clearly how each Member State is performing. The Commission will use them as a basis when drawing up its summary report to be submitted in January 2002.

**Employment**

23. The aim of the Lisbon strategy is to enable the Union to regain the conditions for full employment. We must accelerate our efforts to achieve by 2010 the 70% employment rate agreed in Lisbon. That must be the first objective of the European Employment Strategy. At the social summit on 13 December 2001 the social partners expressed their willingness to develop social dialogue by jointly drawing up a multiannual work programme before the European Council at the end of 2002. They also stressed the need to develop and improve coordination of tripartite consultation on the various aspects of the Lisbon strategy. It was agreed that a social affairs summit of this kind would in future be held before each spring European Council.

*Presidency conclusions - Laeken, 14 and 15 December 2001*

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24. The European Council endorses the agreement reached in the Council concerning the 2002 employment guidelines, the individual recommendations to the Member States and the joint report on the employment situation. These decisions bear witness to the Union's desire, despite the world economic slowdown, to persist in its efforts to reform the structure of the labour market and continue to pursue its objectives concerning full employment and quality in work.

**Fleshing out the European social model**

25. In the field of social legislation, the European Council welcomes the political agreement between the Council and the European Parliament on the Directive on informing and consulting workers and the political agreement by the Council on a common position on the Directive on the protection of workers in the event of the insolvency of their employer. It stresses the importance of preventing and resolving social conflicts, and especially trans-national social conflicts, by means of voluntary mediation mechanisms concerning which the Commission is requested to submit a discussion paper.
26. The European Council welcomes the Council's conclusions and the joint Council and Commission report concerning services of general interest, which will be the subject of an assessment, at Community level, as to their performance and their effects on competition. The European Council encourages the Commission to set up a policy framework for State aid to undertakings entrusted with the provision of services of general interest.
27. The European Council notes with interest the consideration given to the principle of equality between men and women in the broad economic policy guidelines and in the Euro-Mediterranean partnership, and also the list of indicators of gender pay inequalities.
28. The first joint report on social inclusion and the establishment of a set of common indicators constitute important elements in the policy defined at Lisbon for eradicating poverty and promoting social inclusion, taking in health and housing. The European Council stresses the need to reinforce the statistical machinery and calls on the Commission gradually to involve the candidate countries in this process.

*Presidency conclusions - Laeken, 14 and 15 December 2001*

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29. The European Council notes the political agreement on extending the coordination of social security systems to third-country nationals and calls on the Council to adopt the necessary provisions as soon as possible.
30. The European Council has noted the Joint Report on pensions drawn up by the Social Protection Committee and the Economic Policy Committee. The adequacy of pensions, the sustainability and modernisation of pension systems and the improvement of access to occupational pension schemes are all of particular importance for dealing with the increasing needs. The European Council calls on the Council to take a similar approach when preparing the report on health care and care for the elderly, in the light of the Commission communication. Particular attention will have to be given to the impact of European integration on Member States' health care systems.

**Research and development**

31. The Lisbon European Council drew attention to the importance of encouraging innovation, especially through the introduction of a Community patent, which should have been available at the end of 2001. The European Council asks the Internal Market Council to hold a meeting on 20 December 2001 in order to reach, in particular in the light of the Presidency document and of the other contributions of the Member States, agreement on a flexible instrument involving the least possible cost while complying with the principle of non-discrimination between Member States' undertakings and ensuring a high level of quality.
32. The European Council welcomes the adoption by the Council of a common position on the 6th Framework Programme for research and development, aimed at reinforcing the European Research Area.
33. The European Council reaffirms the strategic importance it attaches to the Galileo project and welcomes the decision of the European Space Agency taken in Edinburgh to grant finance to the amount of EUR 550 m. The European Council calls on the Council to continue its work with a view to taking a decision on the funding of the development phase by March 2002 and to decide on the Regulation by June 2002, taking account of the audit report by Price Waterhouse Coopers.

**Sustainable development and quality of life**

34. The European Council welcomes the adoption by the Council of the key environmental indicators which supplement the social and economic structural indicators with a view to the forthcoming summary report by the Commission. The European Council will assess – on this basis, and for the first time – the implementation of the Sustainable Development Strategy at its next meeting in the spring in Barcelona.
35. The European Council welcomes the outcome of the Marrakesh Conference on Climate Change. The Union is determined to honour its commitments under the Kyoto Protocol and confirms its desire that the Protocol should come into force before the Johannesburg World Summit on Sustainable Development, where the European Union intends to be represented at the highest political level.
36. The European Union has sought to respond to people's expectations regarding health, consumer protection, safety and quality of life. The European Council especially welcomes the setting up of the European Food Safety Authority, the European Air Safety Agency and the European Maritime Safety Agency. The Commission will very shortly be submitting a proposal for setting up a European Railway Safety Agency. The European Council notes the adoption of a number of texts seeking to increase consumer protection in the areas of product safety, indebtedness, the standards applicable to blood products and the prudent use of antimicrobial agents in human medicine.

**IV. STRENGTHENING THE AREA OF FREEDOM, SECURITY AND JUSTICE**

37. The European Council reaffirms its commitment to the policy guidelines and objectives defined at Tampere and notes that while some progress has been made, there is a need for new impetus and guidelines to make good delays in some areas. Holding Justice and Home Affairs sessions at shorter intervals will help speed work up. It is also important that decisions taken by the Union be transposed speedily into national legal systems and that conventions concluded since the Maastricht Treaty came into force be ratified as soon as possible.

**A true common asylum and immigration policy**

38. Despite some achievements such as the European Refugee Fund, the Eurodac Regulation and the Directive on temporary protection, progress has been slower and less substantial than expected. A new approach is therefore needed.
39. The European Council undertakes to adopt, on the basis of the Tampere conclusions and as soon as possible, a common policy on asylum and immigration, which will maintain the necessary balance between protection of refugees, in accordance with the principles of the 1951 Geneva Convention, the legitimate aspiration to a better life and the reception capacities of the Union and its Member States.
40. A true common asylum and immigration policy implies the establishment of the following instruments:
- the integration of the policy on migratory flows into the European Union's foreign policy. In particular, European readmission agreements must be concluded with the countries concerned on the basis of a new list of priorities and a clear action plan. The European Council calls for an action plan to be developed on the basis of the Commission communication on illegal immigration and the smuggling of human beings;
  - the development of a European system for exchanging information on asylum, migration and countries of origin; the implementation of Eurodac and a Regulation for the more efficient application of the Dublin Convention, with rapid and efficient procedures;
  - the establishment of common standards on procedures for asylum, reception and family reunification, including accelerated procedures where justified. These standards should take account of the need to offer help to asylum applicants;
  - the establishment of specific programmes to combat discrimination and racism.
41. The European Council asks the Commission to submit, by 30 April 2002 at the latest, amended proposals concerning asylum procedures, family reunification and the "Dublin II" Regulation. In addition, the Council is asked to expedite its proceedings on other drafts concerning reception standards, the definition of the term "refugee" and forms of subsidiary protection.

**More effective control of external borders**

42. Better management of the Union's external border controls will help in the fight against terrorism, illegal immigration networks and the traffic in human beings. The European Council asks the Council and the Commission to work out arrangements for cooperation between services responsible for external border control and to examine the conditions in which a mechanism or common services to control external borders could be created. It asks the Council and the Member States to take steps to set up a common visa identification system and to examine the possibility of setting up common consular offices.

**Eurojust and judicial and police cooperation in criminal matters**

43. The Decision setting up Eurojust and the setting up of the instruments needed for police cooperation – Europol, whose powers have been increased, the European Police College and the Police Chiefs Task Force – constitute significant progress. The Council is urged swiftly to examine the Commission Green Paper on the European Public Prosecutor, taking account of the diversity of legal systems and traditions. The European Council calls for a European network to encourage the training of magistrates to be set up swiftly; this will help develop trust between those involved in judicial cooperation.

**Combating drug trafficking**

44. The European Council notes the importance of intensifying the fight against drug trafficking and the urgency of adopting the Commission proposal on the subject by the end of May 2002. It reserves the right to take fresh initiatives in the light of the Commission's midterm report on the implementation of the European Union's Action Plan on Drugs.



**Harmonisation of laws, mutual recognition of judgments and the European arrest warrant**

45. The Framework Decision on combating trafficking in human beings, the European arrest warrant and the common definition of terrorist offences and of minimum sentences constitute important progress. Efforts to surmount the problems arising from differences between legal systems should continue, particularly by encouragement of recognition of judicial decisions, both civil and criminal. For example, the harmonisation of family law took a decisive step forward with the suspension of intermediate procedures for the recognition of certain judgements and especially for cross-border rights of access to children.

**V. EXTERNAL RELATIONS****The Middle East**

46. The European Council adopted the Declaration set out in Annex III.

**The Western Balkans**

47. The European Union has taken a full role in encouraging and assisting the countries of the region to continue their efforts in the framework of the Stabilisation and Association Process. The prospect of accession and the assistance provided by the European Union are key elements in promoting that process, respecting human rights, democratic principles and internationally recognised frontiers. The European Council welcomes the appointment of Dr Erhard Busek as Special Coordinator of the Stability Pact and thanks his predecessor, Mr Bodo Hombach, for his major contribution to the stability of the region.
48. The Union will continue to contribute to the recovery and stability of the Former Yugoslav Republic of Macedonia, particularly by insisting on full implementation of the Ohrid Agreement. The European Council welcomes the elections held in Kosovo on 17 November which launched the process of provisional self-government for the benefit of all communities and of stability in accordance with Resolution 1244 of the UN Security Council. It mandates the High Representative for the CFSP to encourage the dialogue between Belgrade and Podgorica with a view to reaching a negotiated solution for the status of a democratic Montenegro in a democratic Federal Republic of Yugoslavia.

**LAEKEN DECLARATION  
ON THE FUTURE OF THE EUROPEAN UNION**

**I. EUROPE AT A CROSSROADS**

For centuries, peoples and states have taken up arms and waged war to win control of the European continent. The debilitating effects of two bloody wars and the weakening of Europe's position in the world brought a growing realisation that only peace and concerted action could make the dream of a strong, unified Europe come true. In order to banish once and for all the demons of the past, a start was made with a coal and steel community. Other economic activities, such as agriculture, were subsequently added in. A genuine single market was eventually established for goods, persons, services and capital, and a single currency was added in 1999. On 1 January 2002 the euro is to become a day-to-day reality for 300 million European citizens.

The European Union has thus gradually come into being. In the beginning, it was more of an economic and technical collaboration. Twenty years ago, with the first direct elections to the European Parliament, the Community's democratic legitimacy, which until then had lain with the Council alone, was considerably strengthened. Over the last ten years, construction of a political union has begun and cooperation been established on social policy, employment, asylum, immigration, police, justice, foreign policy and a common security and defence policy.

The European Union is a success story. For over half a century now, Europe has been at peace. Along with North America and Japan, the Union forms one of the three most prosperous parts of the world. As a result of mutual solidarity and fair distribution of the benefits of economic development, moreover, the standard of living in the Union's weaker regions has increased enormously and they have made good much of the disadvantage they were at.

Fifty years on, however, the Union stands at a crossroads, a defining moment in its existence. The unification of Europe is near. The Union is about to expand to bring in more than ten new Member States, predominantly Central and Eastern European, thereby finally closing one of the darkest chapters in European history: the Second World War and the ensuing artificial division of Europe. At long last, Europe is on its way to becoming one big family, without bloodshed, a real transformation clearly calling for a different approach from fifty years ago, when six countries first took the lead.

**The democratic challenge facing Europe**

At the same time, the Union faces twin challenges, one within and the other beyond its borders.

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Within the Union, the European institutions must be brought closer to its citizens. Citizens undoubtedly support the Union's broad aims, but they do not always see a connection between those goals and the Union's everyday action. They want the European institutions to be less unwieldy and rigid and, above all, more efficient and open. Many also feel that the Union should involve itself more with their particular concerns, instead of intervening, in every detail, in matters by their nature better left to Member States' and regions' elected representatives. This is even perceived by some as a threat to their identity. More importantly, however, they feel that deals are all too often cut out of their sight and they want better democratic scrutiny.

### **Europe's new role in a globalised world**

Beyond its borders, in turn, the European Union is confronted with a fast-changing, globalised world. Following the fall of the Berlin Wall, it looked briefly as though we would for a long while be living in a stable world order, free from conflict, founded upon human rights. Just a few years later, however, there is no such certainty. The eleventh of September has brought a rude awakening. The opposing forces have not gone away: religious fanaticism, ethnic nationalism, racism and terrorism are on the increase, and regional conflicts, poverty and underdevelopment still provide a constant seedbed for them.

What is Europe's role in this changed world? Does Europe not, now that it is finally unified, have a leading role to play in a new world order, that of a power able both to play a stabilising role worldwide and to point the way ahead for many countries and peoples? Europe as the continent of humane values, the Magna Carta, the Bill of Rights, the French Revolution and the fall of the Berlin Wall; the continent of liberty, solidarity and above all diversity, meaning respect for others' languages, cultures and traditions. The European Union's one boundary is democracy and human rights. The Union is open only to countries which uphold basic values such as free elections, respect for minorities and respect for the rule of law.

Now that the Cold War is over and we are living in a globalised, yet also highly fragmented world, Europe needs to shoulder its responsibilities in the governance of globalisation. The role it has to play is that of a power resolutely doing battle against all violence, all terror and all fanaticism, but which also does not turn a blind eye to the world's heartrending injustices. In short, a power wanting to change the course of world affairs in such a way as to benefit not just the rich countries but also the poorest. A power seeking to set globalisation within a moral framework, in other words to anchor it in solidarity and sustainable development.

### **The expectations of Europe's citizens**

The image of a democratic and globally engaged Europe admirably matches citizens' wishes. There have been frequent public calls for a greater EU role in justice and security, action against cross-border crime, control of migration flows and reception of asylum seekers and refugees from far-flung war zones. Citizens also want results in the fields of employment and combating poverty and social exclusion, as well as in the field of economic and social cohesion. They want a common

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approach on environmental pollution, climate change and food safety, in short, all transnational issues which they instinctively sense can only be tackled by working together. Just as they also want to see Europe more involved in foreign affairs, security and defence, in other words, greater and better coordinated action to deal with trouble spots in and around Europe and in the rest of the world.

At the same time, citizens also feel that the Union is behaving too bureaucratically in numerous other areas. In coordinating the economic, financial and fiscal environment, the basic issue should continue to be proper operation of the internal market and the single currency, without this jeopardising Member States' individuality. National and regional differences frequently stem from history or tradition. They can be enriching. In other words, what citizens understand by "good governance" is opening up fresh opportunities, not imposing further red tape. What they expect is more results, better responses to practical issues and not a European superstate or European institutions inveigling their way into every nook and cranny of life.

In short, citizens are calling for a clear, open, effective, democratically controlled Community approach, developing a Europe which points the way ahead for the world. An approach that provides concrete results in terms of more jobs, better quality of life, less crime, decent education and better health care. There can be no doubt that this will require Europe to undergo renewal and reform.

## **II. CHALLENGES AND REFORMS IN A RENEWED UNION**

The Union needs to become more democratic, more transparent and more efficient. It also has to resolve three basic challenges: how to bring citizens, and primarily the young, closer to the European design and the European institutions, how to organise politics and the European political area in an enlarged Union and how to develop the Union into a stabilising factor and a model in the new, multipolar world. In order to address them a number of specific questions need to be put.

### **A better division and definition of competence in the European Union**

Citizens often hold expectations of the European Union that are not always fulfilled.

And vice versa – they sometimes have the impression that the Union takes on too much in areas where its involvement is not always essential. Thus the important thing is to clarify, simplify and adjust the division of competence between the Union and the Member States in the light of the new challenges facing the Union. This can lead both to restoring tasks to the Member States and to assigning new missions to the Union, or to the extension of existing powers, while constantly bearing in mind the equality of the Member States and their mutual solidarity.

A first series of questions that needs to be put concerns how the division of competence can be made more transparent. Can we thus make a clearer distinction between three types of competence: the exclusive competence of the Union, the competence of the Member States and the shared competence of the Union and the Member States? At what level is competence exercised in the

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most efficient way? How is the principle of subsidiarity to be applied here? And should we not make it clear that any powers not assigned by the Treaties to the Union fall within the exclusive sphere of competence of the Member States? And what would be the consequences of this?

The next series of questions should aim, within this new framework and while respecting the "acquis communautaire", to determine whether there needs to be any reorganisation of competence. How can citizens' expectations be taken as a guide here? What missions would this produce for the Union? And, vice versa, what tasks could better be left to the Member States? What amendments should be made to the Treaty on the various policies? How, for example, should a more coherent common foreign policy and defence policy be developed? Should the Petersberg tasks be updated? Do we want to adopt a more integrated approach to police and criminal law cooperation? How can economic-policy coordination be stepped up? How can we intensify cooperation in the field of social inclusion, the environment, health and food safety? But then, should not the day-to-day administration and implementation of the Union's policy be left more emphatically to the Member States and, where their constitutions so provide, to the regions? Should they not be provided with guarantees that their spheres of competence will not be affected?

Lastly, there is the question of how to ensure that a redefined division of competence does not lead to a creeping expansion of the competence of the Union or to encroachment upon the exclusive areas of competence of the Member States and, where there is provision for this, regions. How are we to ensure at the same time that the European dynamic does not come to a halt? In the future as well the Union must continue to be able to react to fresh challenges and developments and must be able to explore new policy areas. Should Articles 95 and 308 of the Treaty be reviewed for this purpose in the light of the "acquis jurisprudentiel"?

### **Simplification of the Union's instruments**

Who does what is not the only important question; the nature of the Union's action and what instruments it should use are equally important. Successive amendments to the Treaty have on each occasion resulted in a proliferation of instruments, and directives have gradually evolved towards more and more detailed legislation. The key question is therefore whether the Union's various instruments should not be better defined and whether their number should not be reduced.

In other words, should a distinction be introduced between legislative and executive measures? Should the number of legislative instruments be reduced: directly applicable rules, framework legislation and non-enforceable instruments (opinions, recommendations, open coordination)? Is it or is it not desirable to have more frequent recourse to framework legislation, which affords the Member States more room for manoeuvre in achieving policy objectives? For which areas of competence are open coordination and mutual recognition the most appropriate instruments? Is the principle of proportionality to remain the point of departure?

### **More democracy, transparency and efficiency in the European Union**

The European Union derives its legitimacy from the democratic values it projects, the aims it pursues and the powers and instruments it possesses. However, the European project also derives

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its legitimacy from democratic, transparent and efficient institutions. The national parliaments also contribute towards the legitimacy of the European project. The declaration on the future of the Union, annexed to the Treaty of Nice, stressed the need to examine their role in European integration. More generally, the question arises as to what initiatives we can take to develop a European public area.

The first question is thus how we can increase the democratic legitimacy and transparency of the present institutions, a question which is valid for the three institutions.

How can the authority and efficiency of the European Commission be enhanced? How should the President of the Commission be appointed: by the European Council, by the European Parliament or should he be directly elected by the citizens? Should the role of the European Parliament be strengthened? Should we extend the right of co-decision or not? Should the way in which we elect the members of the European Parliament be reviewed? Should a European electoral constituency be created, or should constituencies continue to be determined nationally? Can the two systems be combined? Should the role of the Council be strengthened? Should the Council act in the same manner in its legislative and its executive capacities? With a view to greater transparency, should the meetings of the Council, at least in its legislative capacity, be public? Should citizens have more access to Council documents? How, finally, should the balance and reciprocal control between the institutions be ensured?

A second question, which also relates to democratic legitimacy, involves the role of national parliaments. Should they be represented in a new institution, alongside the Council and the European Parliament? Should they have a role in areas of European action in which the European Parliament has no competence? Should they focus on the division of competence between Union and Member States, for example through preliminary checking of compliance with the principle of subsidiarity?

The third question concerns how we can improve the efficiency of decision-making and the workings of the institutions in a Union of some thirty Member States. How could the Union set its objectives and priorities more effectively and ensure better implementation? Is there a need for more decisions by a qualified majority? How is the co-decision procedure between the Council and the European Parliament to be simplified and speeded up? What of the six-monthly rotation of the Presidency of the Union? What is the future role of the European Parliament? What of the future role and structure of the various Council formations? How should the coherence of European foreign policy be enhanced? How is synergy between the High Representative and the competent Commissioner to be reinforced? Should the external representation of the Union in international fora be extended further?

### **Towards a Constitution for European citizens**

The European Union currently has four Treaties. The objectives, powers and policy instruments of the Union are currently spread across those Treaties. If we are to have greater transparency, simplification is essential.

Four sets of questions arise in this connection. The first concerns simplifying the existing Treaties without changing their content. Should the distinction between the Union and the Communities be reviewed? What of the division into three pillars?

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Questions then arise as to the possible reorganisation of the Treaties. Should a distinction be made between a basic treaty and the other treaty provisions? Should this distinction involve separating the texts? Could this lead to a distinction between the amendment and ratification procedures for the basic treaty and for the other treaty provisions?

Thought would also have to be given to whether the Charter of Fundamental Rights should be included in the basic treaty and to whether the European Community should accede to the European Convention on Human Rights.

The question ultimately arises as to whether this simplification and reorganisation might not lead in the long run to the adoption of a constitutional text in the Union. What might the basic features of such a constitution be? The values which the Union cherishes, the fundamental rights and obligations of its citizens, the relationship between Member States in the Union?

### **III. CONVENING OF A CONVENTION ON THE FUTURE OF EUROPE**

In order to pave the way for the next Intergovernmental Conference as broadly and openly as possible, the European Council has decided to convene a Convention composed of the main parties involved in the debate on the future of the Union. In the light of the foregoing, it will be the task of that Convention to consider the key issues arising for the Union's future development and try to identify the various possible responses.

The European Council has appointed Mr V. Giscard d'Estaing as Chairman of the Convention and Mr G. Amato and Mr J.L. Dehaene as Vice-Chairmen.

#### **Composition**

In addition to its Chairman and Vice-Chairmen, the Convention will be composed of 15 representatives of the Heads of State or Government of the Member States (one from each Member State), 30 members of national parliaments (two from each Member State), 16 members of the European Parliament and two Commission representatives. The accession candidate countries will be fully involved in the Convention's proceedings. They will be represented in the same way as the current Member States (one government representative and two national parliament members) and will be able to take part in the proceedings without, however, being able to prevent any consensus which may emerge among the Member States.

The members of the Convention may only be replaced by alternate members if they are not present. The alternate members will be designated in the same way as full members.

The Praesidium of the Convention will be composed of the Convention Chairman and Vice-Chairmen and nine members drawn from the Convention (the representatives of all the governments holding the Council Presidency during the Convention, two national parliament representatives, two European Parliament representatives and two Commission representatives).

Three representatives of the Economic and Social Committee with three representatives of the European social partners; from the Committee of the Regions: six representatives (to be appointed by the Committee of the Regions from the regions, cities and regions with legislative powers), and

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the European Ombudsman will be invited to attend as observers. The Presidents of the Court of Justice and of the Court of Auditors may be invited by the Praesidium to address the Convention.

**Length of proceedings**

The Convention will hold its inaugural meeting on 1 March 2002, when it will appoint its Praesidium and adopt its rules of procedure. Proceedings will be completed after a year, that is to say in time for the Chairman of the Convention to present its outcome to the European Council.

**Working methods**

The Chairman will pave the way for the opening of the Convention's proceedings by drawing conclusions from the public debate. The Praesidium will serve to lend impetus and will provide the Convention with an initial working basis.

The Praesidium may consult Commission officials and experts of its choice on any technical aspect which it sees fit to look into. It may set up ad hoc working parties.

The Council will be kept informed of the progress of the Convention's proceedings. The Convention Chairman will give an oral progress report at each European Council meeting, thus enabling Heads of State or Government to give their views at the same time.

The Convention will meet in Brussels. The Convention's discussions and all official documents will be in the public domain. The Convention will work in the Union's eleven working languages.

**Final document**

The Convention will consider the various issues. It will draw up a final document which may comprise either different options, indicating the degree of support which they received, or recommendations if consensus is achieved.

Together with the outcome of national debates on the future of the Union, the final document will provide a starting point for discussions in the Intergovernmental Conference, which will take the ultimate decisions.

**Forum**

In order for the debate to be broadly based and involve all citizens, a Forum will be opened for organisations representing civil society (the social partners, the business world, non-governmental organisations, academia, etc.). It will take the form of a structured network of organisations receiving regular information on the Convention's proceedings. Their contributions will serve as input into the debate. Such organisations may be heard or consulted on specific topics in accordance with arrangements to be established by the Praesidium.



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**Secretariat**

The Praesidium will be assisted by a Convention Secretariat, to be provided by the General Secretariat of the Council, which may incorporate Commission and European Parliament experts.

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## **IV.1.b. Meeting Records – Plenary, Praesidium and Working Group II**

**THE EUROPEAN CONVENTION**  
THE SECRETARIAT

**Brussels, 25 March 2002 (05.04)**  
**(OR. fr)**

**CONV 14/02**

**NOTE**

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Subject : **Note on the plenary meeting**  
**– Brussels, 21 and 22 March 2002**

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**Opening of the plenary meeting**

The Convention Chairman, Mr Valéry Giscard d'Estaing, opened the meeting, assisted by the two Vice-Chairmen, Mr Jean-Luc Dehaene and Mr Giuliano Amato.

**I. General debate: "What do you expect of the European Union?"**

**Introduction.** Mr Giscard d'Estaing opened the first substantive debate of the Convention by emphasising the size of the task at hand. He said that the citizens of Europe felt that their voice was not being heard on the future of Europe and that the first phase of the Convention should therefore be a listening phase.

He invited the members of the Convention to begin the debate. They were to speak freely and at a personal level, addressing first and foremost the other members of the Convention. The Chairman wanted the members of the Convention to identify what, in their view, should be Europe's priorities for the next twenty-five to fifty years.

Over eighty members of the Convention took part in the debate. The nature and the content of the contributions varied widely. Some members concentrated on a couple of priorities or even on just one. Others embraced the whole gamut of European affairs. Many contributions began with an analysis of the current situation within the Union. Notwithstanding the wealth and diversity of contributions, the following general themes recurred:

**Assessment of the current situation.** Very many members of the Convention commended the considerable progress made in the last fifty years, which had surpassed even the most optimistic forecasts conceivable at the outset. The results were taken for granted, especially the most important one, namely peace in Europe.

Among the successes of European integration, particular mention was made of the single market, the four freedoms (free movement of persons, goods, services and capital), the introduction of the euro for twelve Member States and the removal of controls on persons at borders within the Schengen area. Today, if Community nationals decided to leave one Member State to go and live in another, they did so by choice and because they had been afforded that opportunity, not because the move had been imposed upon them by fear or by force.

Many members of the Convention welcomed the enlargement process under way. Upon its completion, the scission of Europe in two, which had resulted from the Second World War, would disappear forever.

Nevertheless, many speakers also pointed to the weaknesses and shortcomings of present-day Europe. Europe did not listen to its citizens enough. Citizens did not feel they could hold to account those in positions of power who took decisions on Europe's behalf. The fact that the European Parliament was elected by universal suffrage, that the ministers sitting around the Council table represented their governments and that the European Commissioners were appointed by the Member States' governments and accountable to the European Parliament did not dispel the view that Europe was not democratic enough. Europe's citizens had to be directly able to choose and remove those at the helm of its affairs.

Public opinion often regarded the institutional mechanisms of the Union as laborious, complex and difficult to understand. Inside the Union, Europe was perceived as abstract and distant. Outside, it was perceived as not effective enough, failing, for instance, to respond rapidly and adequately to the challenges posed by globalisation and cross-border developments.

A number of speakers thought that Europe tended to be too prominent at the expense of the independence and freedom of nation states.

**Expectations of Europe.** A large number of Convention members thought that their fellow citizens expected greater involvement by Europe. Europe would have to be able to meet that expectation. Greater European presence was mentioned in the following areas in particular:

- an area of security and justice aimed, in particular, at enabling Europe to react to terrorist threats or migration pressure at its borders;
- European action on the international stage, enabling the Union to assume its full responsibilities and champion its values.

Others pointed to the need to build a credible and efficient economic and social nucleus and to step up coordination of fiscal and budgetary policies, especially between the twelve states sharing the same currency – the euro.

Defence policy, internal cohesion, food safety, the environment and solidarity with developing countries were also mentioned as areas in which Europe should play a greater role.

A number of members expressed a wish that the Union respect and protect the Member States' cultural identities. They wanted less European intervention and a willingness to scale down European action in certain fields. Reducing Europe's powers and limiting the *acquis communautaire* to areas where it could bring real added value would lend Europe greater legitimacy.

**Principles which Europe must respect.** All the members of the Convention stressed the shared values which unite our continent, citing *inter alia* democracy, the rule of law and the protection and promotion of human rights. Some mentioned the Charter of Fundamental Rights and asked that it be incorporated into the treaties. Others called on the Union to accede to the European Convention on Human Rights.

The theme of equality between Member States was mentioned several times, especially by the Convention members from the candidate countries. Each state, whatever its population, should feel at ease and respected in an enlarged Europe. Solidarity between Member States and the mechanisms underpinning it were also raised by a number of speakers.

The majority of Convention members called for a simpler division of powers and responsibilities, under which it would be clear to all what was the domain of the Union and what was covered at national, regional or even local level. The division of responsibilities should be one of the main topics to be addressed by the Convention. Europe's citizens were expecting clarity in this area above all.

A very large number of Convention members signalled their attachment to the principle of subsidiarity. They wanted effective arrangements put in place to ensure compliance with that principle.

A significant proportion of Convention members touched on the subject of democratic legitimacy and wanted the European Union to take account of citizens' expectations and give citizens a greater say in and fuller scrutiny of European decision-making. Transparency and accountability should improve the way Europe worked.

**Institutional aspects.** Some Convention members wanted the Union to have a treaty with constitutional status in some shape or form. A hierarchy of rules ought to be introduced. Several members reiterated their attachment to the Community method. Others emphasised the intergovernmental method. Tried and tested, it had shown that it worked. Extension of the qualified-majority rule and of the codecision procedure with the European Parliament was raised as well. Several members also referred to the role of the Presidency and the rotating Presidency system.

**Convention.** Several speakers addressed the work of the Convention itself. The vast majority stressed their determination to succeed in the task they had been given and warned their colleagues of the consequences if the Convention were to fail.

Some advocated that the Convention aim for a consensual text which could guarantee the success of the next intergovernmental conference (IGC).

Many Convention members stressed the importance of consulting civil society and, in particular, young people. Their proposals would have to be heard. A few members also wanted the churches to be given a hearing. One member proposed that a questionnaire be sent to every citizen, based on the model used in Switzerland for constitutional reforms.

## **II. Requests by representatives of the candidate countries**

The Convention discussed the proposal presented by the Praesidium in response to the requests by the candidate countries at the inaugural meeting (CONV 10/2).

A few speakers wanted it amended so that two representatives (and not just one) from the candidate countries were invited to attend the Praesidium's proceedings as observers. Some representatives from the candidate countries also pressed for the right to be able to speak in their own language during the Convention's discussions.

The Chairman and some members of the Praesidium pointed out that not all Member States were represented within the Praesidium, nor should the candidate countries be as such. The possibility for Convention members from candidate countries to speak in their own language, at their request, would be re-examined at the technical level in consultation with the European Parliament.

The Chairman found that there was broad agreement on the proposals submitted to the Convention.

### III. Working methods

The Convention held an exchange of views on the Praesidium's proposal on working methods (CONV 9/2).

The majority of speakers called for a flexible and pragmatic approach so that the Convention could quickly get down to the substance, given its limited time frame. Some speakers requested amendments. Others gave their agreement, while making a number of points.

The Chairman answered the questions raised, explained the reasons for the amendments made to the initial text and assured the members that the working methods would be applied flexibly, in a pragmatic manner and with an open mind. He also pointed out that a review procedure (Article 16) had been included in order to adapt working methods in future, should this prove necessary.

Winding up the discussions, the Chairman found a consensus within the Convention on the adoption of the working methods as they stood.

### IV. Forum

Further to the note on the Forum (CONV 8/02), the recommendations of which were agreed to, Mr Dehaene mentioned the following points:

- the organisation of an online Internet chat with civil society would be considered;
- the open letter on the Convention and the Forum would be sent to the editors of the major European newspapers in the coming days;
- it was important to organise forums with civil society in the states represented within the Convention;
- the Economic and Social Committee would hold regular meetings with representatives of civil society after the meetings of the Convention; Mr Dehaene proposed that a member of the Praesidium and a member of the Secretariat be present at those meetings;
- a "Eurobarometer" of public opinion on the issues addressed by the Laeken Declaration, as proposed by a member of the Convention, would be worth carrying out.



The representative of the Committee of the Regions provided some information on the dialogue initiated with the regions on the issues being debated within the Convention.

## V. Youth Convention

The Chairman recalled the proposal to hold a "Youth Convention", modelled on the Convention itself. He provided some explanations on the organisational aspects. The Youth Convention would be held in Brussels in July, either immediately before or immediately after the meeting of the Convention, scheduled for 11 and 12 July 2002. The Youth Convention would be organised along the same lines as the Convention. The young people should be briefed on the work initiated by their seniors. The members of the Convention would be responsible for choosing the young people, 168 being designated by Convention members from the Member States and the candidate countries, 32 by the European Parliament and 10 by the Commission. They would be aged between 18 and 25.

The Chairman stressed the importance of balanced representation as regards age, level of education, gender, etc. The Youth Convention would largely be funded by the Commission, with the support of the Secretariat and the European Parliament.

A note on the organisation of the Youth Convention would soon be sent to members of the Convention.

## VI. Forthcoming meetings

The Chairman said that after this meeting, intended as a general discussion, the Convention should move on to more specific issues. The Praesidium proposed that the next two meetings focus on:

- Europe's tasks (what powers should be exercised at European level?);
- performance of those tasks (from the viewpoint of both democratic legitimacy and effectiveness).

In order to improve preparations for the first debate, members of the Convention would receive a document describing the current division of powers within the Union.

The hearing of civil society would take place after the meetings in April and May 2002 so that its representatives could state their views on those two main topics, having been briefed on the first Convention's initial discussions.

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**ANNEX****List of speakers in order of speaking  
Plenary meeting, 21 and 22 March 2002****General debate: "What do you expect of the European Union?"**

1. Ms Sylvia-Yvonne KAUFMANN
2. Mr Alojz PETERLE
3. Mr Alain BARRAU
4. Ms Cristiana MUSCARDINI
5. Mr Jürgen MEYER
6. Mr Josep BORRELL FONTELLES
7. Mr Andrew DUFF
8. Mr Pierre CHEVALIER \* Alternate member: Mr Louis MICHEL
9. Mr Erwin TEUFEL
10. Mr Paraskevas AVGERINOS
11. Mr Proinsias DE ROSSA
12. Mr Jens-Peter BONDE
13. Mr Michael ATTALIDES
14. Mr Josef ZIELENIEC
15. Mr António VITORINO
16. Mr Ray McSHARRY
17. Mr Gianfranco FINI
18. Mr Mesut YILMAZ
19. Mr Elio DI RUPO
20. Mr Alain LAMASSOURE
21. Mr Peter HAIN
22. Mr Jozef OLEKSY
23. Mr Slavko GABER
24. Mr Hans van MIERLO
25. Mr Eduardo ZAPLANA
26. Mr Pavol HAMZIK
27. Ms Ana PALACIO
28. Mr Sören LEKBERG
29. Mr Matjaz NAHTIGAL
30. Mr Peter GLOTZ
31. Mr Klaus HÄNSCH
32. Mr Michael FRENDÓ
33. Mr Iñigo MENDEZ DE VIGO
34. Ms Lena HJELM-WALLEN
35. Mr Georges KATIFORIS
36. Mr Reinhard Eugen BÖSCH
37. Mr Lamberto DINI
38. Mr Edvins INKENS
39. Mr Antonio TAJANI

40. Ms Meglena KUNEVA
41. Mr David HEATHCOAT-AMORY
42. Ms Maria Eduarda AZEVEDO
43. Mr Marco FOLLINI
44. Mr Rihards PIKS
45. Mr Hubert HAENEL
46. Mr Goran LENNMARKER
47. Ms Danuta HUBNER
48. Mr Jozsef SZÁJER
49. Mr Matti VANHANEN
50. Mr João de VALLERA
51. Mr Timothy KIRKHOPE
52. Mr Rolandas PAVILIONIS \* Alternate member: Mr Vytenis ANDRIUKAITIS
53. Ms Linda McAVAN
54. Mr Pál VASTAGH
55. Mr Hannes FARNLEITNER
56. Mr Peter SERRACINO-INGLOTT
57. Mr Alberto COSTA
58. Mr Ben FAYOT
59. Ms Ritta KORHONEN \* Alternate member: Mr Kimmo KILJUNEN
60. Mr Jan FIGEL
61. Mr Carlos CARNERO GONZALEZ \* Alternate member: Ms Anne VAN LANCKER
62. Ms Ayfer YILMAZ
63. Mr Jacques SANTER
64. Ms Teija TIILIKAINEN
65. Mr Johannes VOGGENHUBER
66. Mr René van der LINDEN
67. Ms Marietta YANNAKOU-KOUTSIKOU
68. Mr Henning CHRISTOPHERSEN
69. Mr Peter KREITZBERG
70. Mr Michel BARNIER
71. Mr Ali TEKIN
72. Mr Alvydas MEDALINSKAS
73. Mr John BRUTON
74. Ms Gisela STUART
75. Mr Karel DE GUCHT
76. Ms Piia-Noora KAUPPI \* Alternate member: Ms Hanja MAIJ-WEGGEN
77. Ms Pervenche BERÈS \* Alternate member: Mr Olivier DUHAMEL
78. Mr Henrik DAM KRISTENSEN
79. Ms Evelin LICHTENBERGER \* Alternate member: Mr Caspar EINEM
80. Mr Nickolay MLADENOV
81. Mr Paul HELMINGER
82. Mr Gabriel CISNEROS
83. Mr Livin MAIOR

**Requests by representatives of the candidate countries**

84. Mr Aloiz PETERLE  
85. Mr Matjaz NAHTIGAL  
86. Mr Gundars KRATS \* Alternate member: Mr Roberts ZILE  
87. Mr Janos MARTONYI  
88. Mr Jens-Peter BONDE  
89. Ms Ana PALACIO

**Working methods**

90. Mr Elmar BROK  
91. Mr Ben FAYOT  
92. Mr Alvydas MEDALINSKAS  
93. Mr Hannes FARNLEITNER  
94. Mr Peter ALTMAIER \* Alternate member: Mr Erwin TEUFEL  
95. Mr Andrew DUFF  
96. Mr Panayiotis DEMETRIOU  
97. Mr Jens-Peter BONDE  
98. The Earl of STOCKTON \* Alternate member: Mr Timothy KIRKHOPE  
99. Ms Ana PALACIO  
100. Mr Klaus HÄNSCH

**Forum**

101. Mr Eduardo ZAPLANA
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**THE EUROPEAN CONVENTION**

THE SECRETARIAT

**Brussels, 25 April 2002 (02.05)  
(OR. fr)****CONV 40/02****NOTE**

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Subject : **Note on the plenary meeting**  
**- Brussels, 15 and 16 April 2002**<sup>1</sup>

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**I. Opening of the plenary meeting**

The Convention Chairman, Mr Valéry Giscard d'Estaing, opened the meeting, assisted by the Vice-Chairman, Mr Giuliano Amato.

He congratulated Mr PETERLE for having been chosen by the representatives of the national parliaments of the applicant countries as a guest to the Praesidium.

He reminded members of the Convention that, as announced in CONV 18/02, the Praesidium had decided that members of the Convention from applicant countries could express themselves in their own languages. He explained the interpretation arrangements.

He pointed out to members of the Convention that in order to make for more lively debate, at the end of each set of five interventions according to the speakers' list, members could react by asking the Chairman of the meeting for the floor by raising a blue card. Those arrangements would be tried out as an experiment for one or two meetings, and their operation assessed thereafter.

The Chairman reminded the meeting that the Commission had distributed a note to the Convention which contained elements of the latest Eurobarometer regarding the future of the European Union. That note made very clear citizens' expectations of Europe.

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<sup>1</sup> A verbatim record of the plenary meeting is given on the website [www.european-convention.eu.int](http://www.european-convention.eu.int).

## II. **General debate: the missions of the European Union**

### **Introduction**

Mr Giscard d'Estaing opened the debate by reminding the meeting that several documents dealing with this subject had been communicated to the Convention, on the one hand by members of the Convention, and on the other hand by the Praesidium, which had forwarded two documents: the first attempted to organise the debate by raising specific questions on the missions of the European Union (CONV 16/02) and the second (CONV 17/02) contained a description of how the competence of the European Union is made up.

Members of the Convention made 86 interventions.

### **First question: Scope of the missions of the Union**

The first question for the Convention was whether, taking into account the new dimension of the Union, the present international environment, its present remit, and the aspirations of its citizens, the Union should be given more tasks and if so, what should be added, or on the contrary, it should be given fewer tasks, and if so which tasks should be given back to Member States?

#### *1. General questions*

A broad trend had emerged within the Convention on the need to avoid calling into question the present remit of the Union, with only two members wishing certain competences to be given back to Member States.

Certain speakers raised the difficulties of delimiting competence in terms of subjects and the need to establish instead a delimitation according to the intensity of the action according to areas by means of establishing policy instruments.

In this respect, several members stressed the need to consider the question of the Union's missions together with the question of the division of competences and instruments. To that

end, a desire was expressed for the Treaty to indicate clearly who did what by indicating the degree of Union competence for each policy.

Several members wanted the three-pillar structure to be replaced by a single institutional structure.

### *2. The Union's missions which received the support of a large number of speakers*

The majority of speakers mentioned the need to strengthen the Union's missions in two areas while conferring on it the necessary competences to carry out those missions:

- The common foreign policy, in order to enhance the presence and action of the Union on the international scene, particularly in crisis management. The Union should be capable of reacting effectively to the new challenges of international politics.
- The liberty, security and justice policy to enable the Union to act more effectively, in particular against terrorism, organised crime, illegal immigration, drugs and trafficking in human beings. In this context, certain members called for the introduction of a common border protection service.

Many members also wanted:

- an economic government as a corollary of Monetary Union,
- a reference to human rights by inserting the Fundamental Rights Charter into the Treaties. The question of the Union having a legal personality and its accession to the European Convention on Human Rights was raised,
- a link between external policy and development aid policy.

### *3. Other missions of the Union mentioned*

Certain members wanted the Union also to take more action in the following areas:

- the environment,
- research and innovation,
- food security,
- security of supply.



#### 4. *Missions on which differences emerged*

Several members called for European action in the following areas:

- economic and social cohesion and the development of a European social model, requiring a European social treaty taking into account the differences between Member States,
- combating poverty and social exclusion,
- combating unemployment,

and certain members wanted the Union to have its own tax arrangements. Other speakers considered that unnecessary.

As regards education, vocational training and teaching, some members called for the implementation of a European education system, whereas others wanted those issues to fall within the competence of Member States.

#### 5. *Member States' missions*

As regards missions that should continue to be the responsibility of Member States, the majority of speakers who touched on the question referred to the following areas:

- the internal organisation of Member States,
- public services,
- culture,
- social security.

Some of those speakers pointed out that these were examples and not a complete list.

However, it was observed that the fact that the Union did not intervene directly in those areas should not prevent it from encouraging cooperation between Member States in those areas and/or supporting the coordination of the action of Member States.

**Second question: The criteria used for deciding which missions should be carried out at Union level**

The second question for the Convention was to determine the criteria used to decide which missions should be carried out at Union level and the principles on which the Convention should base such decisions.

The aspirations of citizens should, according to the members of the Convention, inform the division of competence between the Union and Member States.

A large majority of speakers reminded the meeting of the following criteria:

- the criterion of subsidiarity: the Union should only take action in the areas where it alone could do so given the cross-border elements of the action, or in areas where the Union could act more effectively than Member States individually. Certain speakers stressed the need to reinforce the application of the principle of subsidiarity;
- the criterion of proportionality: any action by the Union should not go beyond what was necessary to achieve the objectives pursued.

Certain speakers also mentioned the solidarity principle.

**Third question: Member States' competence**

The third question for the Convention aimed in particular to ascertain whether the Treaties should explicitly decide that responsibilities not covered by the missions of the Union should remain with Member States or whether they should be spelt out in the Treaties and, if that is the case, on the basis of what criteria. It was also asked what the principles should be on which the Convention might base such a decision.

Most speakers stressed the need to clarify in the Treaties the principle whereby missions not allocated to the Union by the Treaties continue to be the responsibility of Member States, but without drawing up in the Treaty an enumerative list of Member States' competence. The majority of the members of the Convention considered that drawing up such a list would risk setting in stone Member States' competence and be detrimental to the requisite flexibility to adapt to new realities. Certain speakers pointed out that given that competence remained under Member States except where allocated to the Union, it was difficult to draw up an enumerative list of Member States' competence.

#### **Fourth question: Evolution of competence**

The final question for the Convention was whether the missions of the Union should be settled now, for all time, or whether the possibility of further evolution should be foreseen.

#### Flexibility of the system for the delimitation of competence

The large majority of speakers supported a flexible system for the delimitation of competence allowing for some adaptation of the Union's missions to the new challenges and for citizens' expectations to be met optimally. Several speakers indicated that in this respect, the flexibility and dynamism at the heart of the Union's past development, and which was one of its strong points, should be preserved. A system of lists, whether of the competence of the Union or of Member States, would run counter to that flexibility. In that respect, it was pointed out by way of example that it was the current flexibility that enabled the Community to deal with problems relating to asylum and to adopt the Directive on electronic commerce.

Certain speakers emphasised the importance of having clear and democratic decision-making principles rather than a rigid system for the delimitation of competence. The need to preserve Article 95 and Article 308 of the TEC was also mentioned in this context.

### Checks to ensure compliance with the principle of delimitation of competence and the subsidiarity principle

According to the large majority of speakers, the flexible system of delimitation should be accompanied by the implementation of effective means of checking compliance with the principle of delimitation of competence and the subsidiarity principle, as they considered that controlling the effective application of those principles was the best guarantee of their compliance. For most speakers, those controls should imply the participation of national parliaments. In this context it was pointed out that national Parliaments could already check compliance with the principle of delimitation of competence and the subsidiarity principle in certain areas insofar as there were debates on those matters at national level.

There was a discussion on whether the controls should include a new mechanism and whether such a mechanism should be political or judicial. Most speakers were in favour of an a priori or a posteriori mechanism composed of representatives of national parliaments, some being in favour of including representatives of the European Parliament. Certain speakers supported a judicial mechanism, putting forward the idea of a court composed of members of national constitutional courts or of a mechanism of cooperation between the Court of Justice and national constitutional courts.

Some speakers supported the participation of the regions in such a control, in particular those with legislative powers, while indicating that the allocation of competence between federal States and their federated entities should continue to be organised by the Member States concerned.

Finally, the need to establish varying arrangements for the amendments of the Treaties was mentioned: more rigid arrangements for the basic provisions and more flexible arrangements for the others.

### **III. Youth Session of the Convention**

The Convention approved the document presented to it containing proposals for the organisation of a "Convention for the Young People of Europe" on the model of the Convention itself (CONV 15/02).

In discussing the document, more in-depth consideration was given to a number of problems, in particular the selection procedure for young people participating in the Convention. Several speakers stressed the need to establish transparent and objective selection procedures and to have a balance in the representation of the various sectors of society and the various viewpoints on European integration.

The Chairman stressed that the chosen selection procedure guaranteed such a balance and that the debate between the young people should be as free as possible. As regards the organisation of the debate within the Youth Convention, he indicated that there would be a Praesidium and a rapporteur appointed by the "Youth Convention" and that the rapporteur would report to the Convention. The question of establishing contact with the young people after the Youth Convention was over should be examined at a later stage.

#### IV. **Other business**

##### Setting up working parties

As regards the requests by members of the Convention for working parties to be set up as soon as possible, the Chairman of the meeting pointed out that the Praesidium was currently considering the matter and in particular was giving thought to topics that might usefully be examined by such working parties.

##### The next session

Winding up, Chairman said that the session of the Convention on 23 and 24 May 2002 would be devoted to the execution of the European Union's missions in the light of both legitimacy and efficiency. The session would consider in depth the matter of Union competence and the instruments to implement it.

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**ANNEX**

List of speakers following order of intervention.

**Plenary meeting 15 and 16 April 2002**

**LIST OF SPEAKERS**

**Monday 15 April**

1. Mr Andrew DUFF - United Kingdom (European Parliament)
2. Ms Ayfer YILMAZ - Turkey (Parliament)
3. Mr Pierre MOSCOVICI - France (Government)
4. Mr John BRUTON - Ireland (Parliament)
5. Mr Rytis MARTIKONIS - Lithuania (Government)

*Blue cards: Duhamel, Fayot, Van der Linden, McAvan, MacCormick*

6. Mr Alain LAMASSOURE - France (European Parliament)
7. Mr Hans van MIERLO - Netherlands (Government)
8. Mr Erwin TEUFEL - Germany (Parliament)
9. Mr Peter SKAARUP - Denmark (Parliament)
10. Mr Alfred SANT - Malta (Parliament)

*Blue cards: Voggenhuber, Maij-Weggen Stuart, Belohorská, Muscardini*

11. Mr Peter HAIN - United Kingdom (Government)
12. Mr Edmund WITTBRODT - Poland (Parliament)
13. Mr Alain BARRAU - France (Parliament)
14. Mr Jürgen MEYER - Germany (Parliament)
15. Mr Jozef OLESKY - Poland (Parliament)

*Blue cards: Borrell Fontelles, Spini, Bonde*

16. Ms Danuta HÜBNER - Poland (Government)
17. Mr Soren LEKBERG - Sweden (Parliament)
18. Mr Michel BARNIER - Commission
19. Ms Inese BIRZNIECE - Latvia (Parliament) \* Alternate for Mr INKENS
20. Mr Ben FAYOT - Luxembourg (Parliament)
21. Mr Mesut YILMAZ - Turkey (Government)
22. Mr Vytenis ANDRIUKAITIS - Lithuania (Parliament)

23. Mr Gianfranco FINI - Italy (Government)
24. Mr Olivier DUHAMEL - France (European Parliament)
25. Ms Eleni MAVROU - Cyprus (Parliament)
- Blue cards: Barrau, Tajani, MacCormick, Giscard d'Estaing, Palacio.*
26. Mr Henrik Dam KRISTENSEN - Denmark (Parliament)
27. Mr Michael FREUDO - Cyprus (Parliament)
28. Mr Joao de VALLERA - Portugal (Government)
29. Ms Renée WAGENER - Luxembourg (Parliament) \*Alternate for Mr HELMINGER
30. Mr Reinhard Eugen BÖSCH - Austria (Parliament)
31. Mr Roberts ZILE - Latvia (Government)
- Blue cards: Muscardini, Rack, Palacio, Medalinskas, Katiforis.*
32. Mr Mimmo KILJUNEN - Finland (Parliament)
33. Ms Nelly KUTSKOVA - Bulgaria (Government)\* Alternate for Ms Meglena KUNEVA
34. Mr Georges JACOBS - UNICE (European social partners, observer)
35. Ms Marietta GIANNAKOU - Greece (Parliament)
36. Mr René van der LINDEN - Netherlands (Parliament)
37. Mr Jacques SANTER - Luxembourg (Government)
- Blue cards: Wuermeling, Katiforis, Palacio*
38. Mr Alvydas MEDALINSKAS - Lithuania (Parliament)
39. Mr Göran LENNMARKER - Sweden (Parliament)
40. Mr Michael ATTALIDES – Cyprus (Government)
41. Mr Han van BAALEN - Netherlands (Parliament) \* Alternate for Mr Frans TIMMERMANS
42. Mr Puis HASOTTI - Romania (Parliament)
43. Mr Peter SERRACINO-INGLOTT - Malta (Government)
44. Mr Paraskevas AVGERINOS - Greece (Parliament)
45. Ms Hanja MAIJ-WEGGEN - European Parliament
46. Mr Peter GLOTZ - Germany (Government)
47. Mr William ABITBOL - European Parliament \* Alternate for Mr BONDE
- Blue cards: Muscardini, Carnero Gonzalez, Borrell Fontelles, Van der Linden, Leenmarker, Palacio.*
48. Mr David HEATHCOAT-AMORY - United Kingdom (Parliament)
49. Mr Panayotis DEMETRIOU – Cyprus (Parliament)
50. Mr Matjaz NAHTIGAL - Slovenia (Government)
- Blue cards: Birzniece, Duff, Van Lancker, Duhamel, Heathcoat-Amory.*

**Plenary meeting 16 April 2002****LIST OF SPEAKERS****Tuesday 16 April**

1. Mr Adrian SEVERIN - Romania (Parliament) \* Alternate for Mr MAIOR
2. Mr Ray McSHARRY - Ireland (Government)
3. Mr Lamberto DINI - Italy (Parliament)
4. Mr Neil MacCORMICK - European Parliament \* Alternate for Mr VOGGENHUBER
5. Mr Proinsias DE ROSSA - Ireland (Parliament)

*Blue cards: Wuermeling, Katiforis*

6. Mr Valdo SPINI - Italy (Parliament) \* Alternate for Mr FOLLINI
7. Mr Hannes FARNLEITNER - Austria (Government)
8. Mr Matti VANHANEN - Finland (Parliament)
9. Ms. Evelin LICHTENBERGER -Austria (Parliament)
10. Mr Huber HAENEL - France (Parliament)
11. Mr Pavol HAMZIK - Slovakia (Parliament)

*Blue cards: Heathcoat-Amory, Fayot, Rack, Bonde*

12. Ms Cristiana MUSCARDINI - European Parliament
13. Mr Peter GOTTFRIED – Hungary (Government) \* Alternate for Mr MARTONYI
14. Ms Eduarda AZEVEDO - Portugal (Parliament)
15. Mr Klaus HAENSCH - European Parliament
16. Mr Henning CHRISTOPHERSEN - Denmark (Government)
17. Ms Anne VAN LANCKER - European Parliament
18. Mr Caspar EINEM - Austria (Parliament)
19. Mr Louis MICHEL - Belgium (Government)
20. Ms Elena PACIOTTI - European Parliament \* Alternate for McAVAN
21. Mr Antonio VITORINO - Commission
22. Ms Sylvia-Yvonne KAUFMANN - European Parliament

*Blue cards: Palacio, Duff, Thorning-Schmidt*

23. Mr Ali TEKIN - Turkey (Parliament)
24. Ms Hildegard PUWAK - Romania (Government)
25. Mr Elio DI RUPO - Belgium (Parliament)
26. Ms Ana PALACIO - Spain (Government)



27. Mr Jan KAVAN – Czech Republic (Government)
28. Mr Josep BORRELL FONTELLES – Spain (Parliament)
29. Mr Alberto COSTA - Portugal (Parliament)
30. Mr Johannes VOGGENHUBER - European Parliament
31. Ms Teija TIILIKAINEN - Finland (Government)
32. Mr Tunne KELAM - Estonia (Parliament)
33. Mr Joachim WUERMEILING- Germany (European Parliament) \* Alternate for Mr E. BROK

### **Item 2 of the agenda**

Mr Jens-Peter BONDE - European Parliament

Ms Lena HALLENGREN - Sweden (Government) \* Alternate for HJELM-WALLÉN

Mr Timothy KIRKHOPE - European Parliament

Mr Valdo SPINI - Italy (Parliament) \* Alternate for Mr FOLLINI

Ms Helle THORNING-SCHMIDT - European Parliament \* Alternate for Mr MARINHO

Mr Alvydas MEDALINSKAS - Lithuania (Parliament)

*Blue cards: Martikonis, Palacio, Maij-Weggen, Tomlinson, Carnero Gonzalez, Farnleitner, MacCormick, Bonde.*

### **Item 3 of the agenda**

Mr Andrew Nicholas DUFF - European Parliament

Ms Irena BELOHORSKÁ - Slovakia (Parliament)

Mr Jens-Peter BONDE - European Parliament

Mr Alvydas MEDALINSKAS - Lithuania (Parliament)

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**THE EUROPEAN CONVENTION**

Brussels, 6 May 2002

THE SECRETARIAT

**SUMMARY OF CONCLUSIONS**

**Subject: Meeting of the Praesidium  
Brussels, 25 April 2002**

**I. POINTS SETTLED**1. Autumn calendar

The Praesidium, taking into account both the wish of members designated by national parliaments to have Convention sessions on Monday and Tuesday and the need underlined by the other members of having sufficient time for prior co-ordination meetings of components and political groups, reached agreement on the attached calendar.

2. Handling of Plenary sessions

It was agreed that the introduction of blue card interventions at the April session had worked well. Further to increase the spontaneity of debate ,speakers whose contributions had been the subject of blue card comments should in future be given a (green card) right of brief reply.

**II. OUTSTANDING ISSUES**3. Working groups

The Praesidium considered the Secretariat document SN 2103/2/02 REV 2.

Following an exchange of views, in particular on the scope of the mandate of the working groups and on suggestions for the setting up of other working groups, the Chairman concluded that at the May session the Praesidium would announce the setting up of 6 working

groups. Five of them would correspond to those suggested in the above mentioned paper, with slight amendments to their mandate, and a sixth one would consider improved economic co-ordination mechanisms in the context of monetary union. The Praesidium agreed to finalise the mandate of the 6 working groups at its next meeting on the basis of a new Secretariat draft.

As to the idea, put forward by the "invitee", of a working group on minorities and cultural identities, it was concluded that rather than creating a specific working group, these questions could be dealt with in the working groups on the "Charter" and on "Complementary competences".

As to the Presidency on the working groups, the Praesidium agreed the following :

- Subsidiarity : Ms Palacio
- Charter : Mendez de Vigo or Vitorino
- Legal personality : Amato
- National parliaments : Stuart or Bruton
- Complementary competences : Christophersen
- Economic governance : Hänsch.

It was further agreed that each working group Chairman would prepare for the Praesidium a short paper describing the approach to be followed in the group.

Topics for other working groups, notably in the field of foreign policy and JAI, would be identified following the debate in the plenary in June.

#### 4. The Forum and the Convention session devoted to civil society

On the basis of the note by the Vice-Chairman Dehaene and of its oral presentation, the Praesidium took stock of the activities carried out within the Forum and was informed about the modalities for the June session devoted to civil society. It was agreed that the designated Convention Observers have a specific position in relation to the dialogue with civil society and would therefore be given the possibility to address the Convention. Vice-Chairman Dehaene also referred to the meetings of NGOs and other organisation representing civil

society organised by ECOSOC, which could also allow participants to identify spokesmen to address the Convention.

The Praesidium stressed the need to ensure that the session devoted to civil society be lively and interesting. It was agreed that the members of the Convention could intervene in the debate with the blue card.

#### 4. Consultation of students on the future of Europe

The Praesidium noted with interest the proposal put forward by four members of the Convention.

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The next Praesidium Meeting will take place on 8 May, at 10h30.

**THE EUROPEAN CONVENTION**

Brussels, 8 May 2002

THE SECRETARIAT

**SUMMARY OF CONCLUSIONS**

**Subject: Meeting of the Praesidium  
Brussels, 8 May 2002**

**I. POINTS SETTLED****1. Convention session of 23-24 May**

The Praesidium agreed that two papers would be forwarded to the Convention with a view to preparing the debate : one on "Competences" (new expanded version of the CONV 17/02, taking into account elements emerging from the April session), and a second one on "Instruments" (the Secretariat draft, amended on the basis of the Praesidium discussion).

The paper on National Parliaments would need further elaboration and would then be circulated later.

**2. Convention session devoted to civil society**

In order to allow for more time for preparation, the session devoted to civil society would be the entire second session of June (24-25.06.02). The Praesidium agreed that the session would be organised according to the modalities set out in the Secretary General's paper dated 7 May. It decided however to add a seventh contact group on culture. The contact groups would be chaired as follows :

|                              |                      |
|------------------------------|----------------------|
| Social                       | Mr Hänsch            |
| Environmental                | Ms Katiforis         |
| Human Rights                 | Mr Vitorino          |
| Development                  | Mr Christophersen    |
| Academia                     | Vice-President Amato |
| Regional/Sub-Regional groups | Ms Palacio           |
| Culture                      | Mr Peterle           |

One or two other members of the Convention would be invited to play a part; all the other members would of course be welcome to attend these hearings.

### 3. Working groups

The Praesidium agreed the mandate of the six working groups (attached). As to the presidency and to the deadlines, it agreed the following :

- Subsidiarity : Mendez de Vigo (September)
- Charter : Vitorino (November)
- Legal personality : Amato (November)
- National parliaments : Stuart (November)
- Complementary competences : Christophersen (October)
- Economic governance : Hänsch (October).

This information would be given to the Convention on 23 May. The working groups would be established on 6-7 June. The Secretariat would issue a document containing the mandates, specifying the deadlines and indicating how members of the Convention could volunteer. They could indicate in order of priority their (two or three) preferences for working groups in order to allow the Praesidium to decide of the composition of each working group, with a view to achieving a balance between the different components and nationalities.

The Praesidium was informed of the names of the members of the Secretariat who will assist the working groups :

- Subsidiarity : *Arpio (02-285.6183), De Poncins (02-285.5112)*
- Charter: *Ladenburger (02-285.5057), Bartol (02-285.6694)*
- Legal personality : *Passos (02-285.5049), Bribosia (02-285.5047)*
- National Parliaments : *van den Heuvel (02-285.8503), de Peyron (02-285.9816)*
- Complementary competences : *Martinez (02-285.5061), Schiavo (02-285.5972)*
- Economic governance : *Pilette (02-285.8989), Milton (02-285.8519).*

The Chairpersons of the working groups will prepare, with their assistance, the papers aimed at introducing the debate in the working groups.

The Praesidium agreed that other working groups (notably on foreign and defence policy and JAI) would be set up in July.

4. The note of the Secretariat on "Contributions" was endorsed, and the Budget report noted.

## II. OUTSTANDING ISSUES

5. Note on the missions of the Union by Mr Katiforis

The Praesidium had a first exchange of views on this note, for which the President thanked Mr Katiforis.

6. Consultation of students on the future of Europe

This proposal will be discussed at a future meeting of the Praesidium.

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The next Praesidium meeting will take place on 22 May, at 16h00.

**THE EUROPEAN CONVENTION**  
DEPUTY SECRETARY-GENERAL

**Brussels, 30 April 2002 (02.05)**  
**(OR. fr)**

**SN 2252/02**

**Draft mandates for working groups**

- (i) How can compliance with the principle of subsidiarity be monitored in the most effective manner possible? Should a monitoring mechanism or procedure be established? Should this procedure be of a political and/or legal nature?
- (ii) If it is decided to incorporate the Charter of Fundamental Rights in the Treaty: how should this be done and what would be the consequences? What would be the implications of accession by the Community/Union to the European Convention on Human Rights?
- (iii) What would be the consequences of explicit recognition of the EU's legal personality? And of a merger of the Union's legal personality with that of the European Community? Could these contribute to the simplification of the Treaties?
- (iv) How is the role of national Parliaments exercised in the current architecture of the European Union? What national arrangements function best? Is there a need to consider new mechanisms/procedures at national level or at European level?
- (v) How should "complementary" competences be dealt with in future: should Member States be given back full competence in respect of those matters for which the Union currently has complementary competence, or should the limits of the Union's complementary competence be clearly set out?
- (vi) The introduction of the single currency implies more thorough-going economic and financial cooperation. What forms might such cooperation take?

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**LA CONVENTION EUROPEENNE**

Bruxelles, le 30 avril 2002

L'ADJOINTE AU SECRÉTAIRE GÉNÉRAL

**SN 2252/02****Projet de mandats des groupes de travail**

- i) Comment assurer de la manière la plus efficace le contrôle du respect du principe de subsidiarité ? Faut-il créer un mécanisme ou une procédure de contrôle ? Cette procédure doit-elle être de nature politique et/ou judiciaire?
- ii) Si l'on décide d'insérer la Charte des droits fondamentaux dans le Traité : par quelles modalités convient-il de le faire et quelles en seraient les conséquences? Quelles seraient les conséquences d'une adhésion de la Communauté/Union à la Convention européenne des Droits de l'Homme ?
- iii) Quelles seraient les conséquences d'une reconnaissance explicite de la personnalité juridique de l'UE? Et celles d'une fusion de la personnalité juridique de l'Union et celle de la Communauté européenne ? Peuvent-elles contribuer à la simplification des traités ?
- iv) De quelle façon est exercé le rôle des Parlements nationaux dans l'actuelle architecture de l'Union européenne ? Quels sont les arrangements nationaux qui fonctionnent le mieux ? Est-il nécessaire d'envisager de nouveaux mécanismes/procédures au niveau national ou au niveau européen ?
- v) Comment traiter à l'avenir les compétences dites « complémentaires »: convient-il de rendre aux Etats membres toute compétence pour les matières dans lesquelles actuellement l'Union a une compétence complémentaire, ou faut-il expliciter les limites de la compétence complémentaire de l'Union ?
- vi) La mise en place de la monnaie unique implique une coopération économique et financière plus poussée. Quelles formes une telle coopération pourrait-elle prendre ?

**THE EUROPEAN CONVENTION**  
THE SECRETARIAT

**Brussels, 17 May 2002 (21.05)**  
**(OR. fr)**

**CONV 52/02**

**NOTE**

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from : Praesidium  
to : Convention

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**Subject: Working Groups**

1. As discussion has begun within the Convention on matters of substance, the need has emerged to set up working groups to meet the twin aims of investigating a number of specific questions in greater depth and involving the members of the Convention in fundamental work which cannot be done in plenary session.
2. Article 15 of the Working Methods lays down that:  
*"In the light of views expressed in the Convention, the Chairman or a significant number of the members of the Convention may recommend that the Praesidium set up Convention Working Groups. The Praesidium will determine their mandate, working arrangements and composition, taking into account the specific expertise of members, alternates and observers in relation to the subject under discussion. Every member of the Convention may attend all such meetings. The Secretariat establishes a summary note after each meeting of the working groups."*

3. The discussion in plenary meeting, in particular that of 15 and 16 April, yielded a number of indications in the light of which the Chairman recommended to the Praesidium that working groups should be set up. The Praesidium has agreed to set up six working groups at this stage with the following mandates:

- Group 1: How can verification of compliance with the principle of subsidiarity be ensured? Should a verification mechanism or procedure be introduced? Should such a procedure be political and/or judicial in character?
- Group 2: If it is decided to include the Charter of Fundamental Rights in the Treaty: how should this be done, and what would be the consequences thereof? What would the consequences be of accession by the Community/Union to the European Convention on Human Rights?
- Group 3: What would the consequences be of explicit recognition of the legal personality of the EU, and of a fusion of the legal personalities of the EU and the European Community? Might they contribute to simplification of the Treaties?
- Group 4: How is the role of national Parliaments carried out in the present architecture of the European Union? What are the national arrangements which function best? Should new mechanisms/procedures be envisaged at national or European level?
- Group 5: How should "complementary" competence be treated in future? Should Member States be accorded full competence for matters in which the Union at present has complementary competence, or should the limits of the Union's complementary competence be spelled out?
- Group 6: The introduction of the single currency implies closer economic and financial cooperation. What forms might such cooperation take?

4. Concerning the chairmanship of the working groups, the deadline by which each group should reach conclusions to be submitted to the plenary session and the assistance provided by the Secretariat to the working groups' chairmen, the following has been decided. The deadlines set are intended to give further substance to the plenary meetings of the Convention scheduled for September, October and November. For this reason the deadlines differ as shown:

|          |              |                           |
|----------|--------------|---------------------------|
| Group 1: | Chairman:    | Mendez de Vigo            |
|          | Deadline:    | September                 |
|          | Secretariat: | Arpio, De Poncins         |
| Group 2: | Chairman:    | Vitorino                  |
|          | Deadline:    | November                  |
|          | Secretariat: | Ladenburger, Bartol       |
| Group 3: | Chairman:    | Amato                     |
|          | Deadline:    | November                  |
|          | Secretariat: | Passos, Bribosia          |
| Group 4: | Chairman:    | Stuart                    |
|          | Deadline:    | September                 |
|          | Secretariat: | van den Heuvel, de Peyron |
| Group 5: | Chairman:    | Christophersen            |
|          | Deadline:    | October                   |
|          | Secretariat: | Martinez, Schiavo         |
| Group 6: | Chairman:    | Hänsch                    |
|          | Deadline:    | October                   |
|          | Secretariat: | Pilette, Milton           |

5. For the working groups to work effectively, the number of their members should ideally be about 20 to 25, to allow for representation of the different constituent elements and for the fact that any other member of the Convention may attend meetings as laid down in Article 15 of the Working Methods.
6. The guiding criterion for the composition of the working groups, in accordance with Article 15 of the Working Methods, is that of specific expertise, and that criterion applies to members, alternates and observers.

The Praesidium invites Convention members, alternates and observers to express their interest in taking part in any of the working groups, listing them in order of preference where interested in more than one group. This information must be communicated to the Convention Secretariat by Thursday 30 May 2002, for the attention of Ms Martinez Iglesias:

e-mail: [maria-jose.martinez-iglesias@consilium.eu.int](mailto:maria-jose.martinez-iglesias@consilium.eu.int)

Fax: + 32 2 285 5060

7. The composition of the working groups will be determined by the Praesidium on the above basis in order to ensure the necessary balance between constituent elements, and the working groups will be formally established at the plenary meeting on 6 June 2002.

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**THE EUROPEAN CONVENTION**

THE SECRETARIAT

**Brussels, 31 May 2002 (03.05)  
(OR. fr)****CONV 72/02****NOTE**

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from : Mr António Vitorino  
to : Members of the Convention

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Subject : **Mandate of the Working Group on the Charter**

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Please find attached a note on the above subject as an aid to the discussions of the Working Group on the Charter.

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## Working Group II: "Charter/ECHR"

**Chairman: António Vitorino**

*If it is decided to incorporate the Charter of Fundamental Rights in the Treaty: how should this be done and what would be the consequences? What would be the implications of accession by the Community/Union to the European Convention on Human Rights?*

### **Introduction**

The purpose of this note is to give an initial summary of the substantive questions which should be dealt with by the Working Group on "Incorporation of the Charter/Accession to the European Convention on Human Rights (ECHR)". On the basis of this summary, I shall in due course put forward a detailed analysis of the questions mentioned in order to guide discussions within the Working Group.

There are two aspects to the Working Group's mandate:

- The procedures for and consequences of any incorporation of the Charter into the Treaties
- The consequences of any accession by the Community/Union to the European Convention on Human Rights (ECHR).

These aspects need to be addressed by the Working Group separately and in turn. I wish to state from the outset that the two aspects are complementary and not alternatives, since incorporation of the Charter in no way lessens the importance of any accession to the ECHR or vice versa.

Finally, in the case of both aspects, one point should be borne in mind regarding discussion in the Working Group: as it is the general wisdom that working groups should concentrate on more targeted matters and not duplicate the political debates of plenary meetings, the Working Group should not get involved in discussion of the major political questions (*whether* the Charter should be incorporated or *whether* there should be accession to the ECHR). It should rather focus on examining the more specific matters outlined below, on the assumption that the two questions will meet with a positive political response.

## **I. Procedures for and consequences of any incorporation of the Charter into the Treaties**

### **1. Preliminary remark: the content of the Charter as an *acquis***

In my view, a wise initial position would be that the *content* of the Charter as negotiated by the earlier Convention constitutes a common *acquis* which should be maintained.

However, should the Convention advocate changing the current structure or designation of the Treaties, it might prove necessary to make certain adjustments to the Charter of a purely drafting nature or to hold a discussion on maintaining Article 52(2)<sup>1</sup> of the Charter if the Convention wished to establish a hierarchical distinction between a new basic Treaty and the rest of existing primary law.

### **2. Examination of possible techniques for incorporation and certain related questions**

One of the Working Group's key tasks will be to examine the various possible techniques for incorporating the Charter (incorporation of the Charter's articles into the EU Treaty or a new basic Treaty, Protocol annexed thereto, reference in an article such as the present Article 6(2) of the TEU, etc.). That examination will have to consider various aspects such as the precise legal effect and the political profile which are to be conferred on the Charter. It will also have to consider the general question of the future structure of the Treaties. The Working Group will also have to look at certain questions relating to the technique of incorporation, in particular what is to happen to the preamble to the Charter, whether to keep a reference – of the kind currently in Article 6(2) of the TEU – to common constitutional traditions and the ECHR – and the relationship between some of the Charter's articles and the provisions of the present EC Treaty which they repeat (in particular concerning citizens' rights).

### **3. The question of appeals to the Court of Justice**

The Working Group may also have to address two topics which, although not arising directly from possible incorporation of the Charter, are nevertheless often raised in connection with the protection of fundamental rights within the Union:

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<sup>1</sup> Article 52(2) reads as follows: "Rights recognised by this Charter which are based on the Community Treaties or the Treaty on European Union shall be exercised under the conditions and within the limits defined by those Treaties."



- firstly, the Working Group will have to decide whether to amend the fourth paragraph of Article 230 of the EC Treaty in order to extend the scope of direct appeals by individuals to the Court of Justice, or indeed to introduce a new form of appeal for the protection of fundamental rights, or whether it considers it preferable to maintain the existing system and leave it to case-law to refine it.
- secondly, the Working Group will have to take note of the question of a possible extension of the Court of Justice's competence in JHA matters. It should be pointed out that problems in this area go beyond the issue of fundamental rights and affect the more general debate to be conducted in plenary on the future development of this policy. The Working Group should therefore avoid prejudging that debate; it could nevertheless usefully make a limited contribution by examining criticisms to the effect that the current provisions should be revised with regard to the protection of human rights.

## II. Implications of any accession by the Community/Union to the ECHR

The Working Group's discussion of this aspect will depend to a greater extent on the questions raised by its members. I shall not, for my part, encourage the Working Group to rehearse again in detail all the familiar arguments *for* and *against* accession by the Community/Union to the ECHR. I shall concentrate rather on a technical examination of the extent to which accession can be reconciled with the principle of autonomy of Community law. If, however, members of the Working Group wish to raise other points sometimes made against accession, I am prepared to see that it looks for satisfactory answers.

Moreover, the Working Group should consider the form which might be taken by any legal basis for accession to the ECHR in the Treaties. It could also address the question of whether that legal basis could also explicitly enable accession to other international human-rights agreements.

In addition, the Working Group will be informed of ongoing discussions within the Council of Europe on the technical consequences of any accession by the EU/EC for the Strasbourg system. I will, however, recommend the Working Group not to deal with those issues – which would be a matter for possible negotiations between the Union and the Council of Europe – unless the latter regards some of them as important for accession.

Finally, if members of the Working Group so request, it may also examine the advantages and disadvantages of approaches sometimes suggested as alternatives to accession in order to ensure consistency between Union law and that of the ECHR, e.g. the introduction of a procedure whereby the Court of Justice can refer to or consult the European Court of Human Rights.

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**THE EUROPEAN CONVENTION**

THE SECRETARIAT

**Brussels, 14 June 2002 (26.06)  
(OR. fr)****CONV 77/1/02  
REV 1****REVISED COVER NOTE**

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|          |                                   |
|----------|-----------------------------------|
| from :   | Praesidium                        |
| to :     | Convention                        |
| Subject: | Composition of the Working Groups |

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Members of the Convention will find attached the definitive composition of the Working Groups.

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**Working Group 1 "SUBSIDIARITY"****Chair: Iñigo MENDEZ DE VIGO**

AVGERINOS Paraskevas  
BONDE Jens-Peter  
BÖSCH Reinhard  
BROK Elmar  
CHABERT Josef  
CHEVALIER Pierre  
COSTA Alberto  
DALGAARD Per  
DAMMEYER Manfred  
DINI Lamberto  
FIGEL Jan  
FOGLER Marta  
FRERICHS Göke  
GABER Slavko  
GIBERYEN Gast  
HAIN Peter  
HALLENGREN Lena  
HAMZIK Pavol  
KREITZBERG Peeter  
KROUPA Frantisek  
LOPES Ernani  
MARINHO Luis  
MEYER Jürgen  
PAVILIONIS Rolandas  
SERRACINO-INGLOTT Peter  
SEVERIN Adrian  
SPRINDZUKS Maris  
TEUFEL Erwin  
TIMMERMANS Frans  
VANHANEN Matti  
VALTCHEV Daniel  
VITORINO Antonio  
WALLS-CUSHNAHAN John  
ZAPLANA Eduardo

**Working Group 2 "CHARTER"****Chair: Antonio VITORINO**

ANDRIUKAITIS Vytenis Povilas  
ARABADJIEV Alexander  
BADINTER Robert  
BIRZNIECE Inese  
CISNEROS Gabriel  
CRAVINHO João  
DI RUPO Elio  
ECKSTEIN-KOVACS Peter  
FAYOT Ben  
FINI Gianfranco  
HASOTTI Puiu  
HELLE Esko  
HELVEG PETERSEN Niels  
KAVAN Jan  
KELEMEN Andras  
KOCAOGLU Emre  
KUTSKOVA Neli  
LOBO ANTUNES Manuel  
LOPEZ GARRIDO Diego  
MacCORMICK Neil  
MARTINI Claudio  
MATSAKIS Marios  
MAVROU Eleni  
McDONAGH Bobby  
PACIOTTI Elena  
RACK Reinhard  
SCOTLAND OF ASTHAL Baroness  
SEBEJ Frantisek  
SIMSIC Danica  
SVENSSON Ingvar  
TRZCINSKI Janusz  
van der LINDEN René

**Working Group 3 "LEGAL PERSONALITY"****Chair: Giuliano AMATO**

ABITBOL William  
ALMEIDA GARRETT Teresa  
CARNERO Carlos  
DU GRANRUT Claude  
EINEM Caspar  
GRABOWSKA Genowefa  
IOAKIMIDIS Panayotis  
JINGA Ion  
KOHOUT Jan  
KRASTS Gundars  
KUNEVA Meglena  
KVIST Kenneth  
MACLENNAN OF ROGART Robert Adam Ross (Lord)  
MIGAŠ Juraj  
MUSCARDINI Cristiana  
NAGY Marie  
NAHTIGAL Matjaz  
PALACIO Ana  
PLEUGER Gunter  
PONZANO Paolo  
SCHMIT Nicolas  
SZÁJER József  
TAJANI Antonio  
TÄRNO Ülo  
TIILIKAINEN Teija  
UZUN Nezrin  
van EEKELEN Wim  
VIMONT Pierre  
VOGGENHUBER Johannes

**Working Group 4 "NATIONAL PARLIAMENTS"****Chair: Gisela STUART**

AZEVEDO Eduarda  
BARNIER Michel  
BARRAU Alain  
BASILE Filadelfio  
BELOHORSKÁ Irena  
BERGER Maria  
CRISTINA Dolores  
DE ROSSA Proinsias  
DEMETRIOU Panayotis  
DUFF Andrew  
DYBKJAER Lone  
ESER Kürsat  
HAENEL Hubert  
INGUANEZ John  
KELAM Tunne  
KILJUNEN Kimmo  
KRISTENSEN Henrik dam  
KUTRAITE-GIEDRAITIENE Dalia  
KURZMANN Gerhard  
LEKBERG Sören  
MAIJ-WEGGEN Hanja  
MAIOR Liviu  
MICHEL Louis  
MLADENOV Nikolai  
OLEKSY Jozef  
PETERLE Aloiz  
QUEIRO Luis  
SIGMUND Anne-Maria  
STILIANIDIS Evripidis  
TEKIN Ali  
van BAALEN Hans  
VASTAGH Pál  
WAGENER Renée  
ZAHRADIL Jan

**Working Group 5 "COMPLEMENTARY COMPETENCE"****Chair: Henning CHRISTOPHERSEN**

ALTMAIER Peter  
ATTALIDES Michael  
BREJC Michael  
de CASTRO Osvaldo  
DUHAMEL Olivier  
FARNLEITNER Hannes  
FREDO Michael  
GIANNAKOU Marietta  
HÄNNI Liia  
HEATHCOAT-AMORY David  
HELMINGER Paul  
HJELM-WALLEN Lena  
JUSYS Oskaras  
KELTOSOVA Olga  
KIRKHOPE Timothy  
LAMASSOURE Alain  
LICHTENBERGER Evelin  
MARTIKONIS Rytis  
MARTONYI Janos  
MEDALINSKAS Alvydas  
PELTOMÄKI Antti  
PIETERS Danny  
PONZANO Paolo  
SEFFF Wolfgang  
SKAARUP Peter  
SPERONI Francesco  
SZENT-IVÁNY István  
THORNING-SCHMIDT Helle  
TOMLINSON John Edward (Lord)  
VASSILIOU Androula  
WITTBRODT Edmund  
WUERMELING Joachim



**Working Group 6 "ECONOMIC GOVERNANCE"****Chair: Klaus HÄNSCH**

BARNIER Michel  
BASTARRECHE Carlos  
BERÈS Pervenche  
BORRELL Josep  
BRIESCH Roger  
BRUTON John  
de BRUIJN Thom  
DE GUCHT Karel  
FOLLINI Marco  
GABAGLIO Emilio  
GLOTZ Peter  
GOTTFRIED Péter  
HOLOLEI Henrik  
HÜBNER Danuta  
IDRAC Anne-Marie  
JACOBS Georges  
KATIFORIS Georges  
KAUFMANN Sylvia-Yvonne  
KAUPPI Pia-Noora  
KORHONEN Riitta  
LENARČIČ Janez  
LENNMARKER Göran  
McAVAN Linda  
McSHARRY Ray  
MOSCOVICI Pierre  
NAZARÉ PEREIRA Antonio  
PUWAK Hildegard  
SANTER Jacques  
SPINI Valdo  
STOCKTON Alexander (The Earl of)  
TUSEK Gerhard  
van LANCKER Anne  
YILMAZ Ayfer  
ZIELENIEC Josef  
ZILE Roberts

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**THE EUROPEAN CONVENTION**  
THE SECRETARIAT

**Brussels, 19 June 2002 (21.06)**  
**(OR. fr)**

**CONV 124/02**

**INFORMATION NOTE**

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from : Secretariat  
to : Convention  
Subject : **Working Groups**

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Members of the Convention will find below a table summarising information on the work of the working groups.

### Working Groups

|    |                     | Mandate                                                                                                                                                                                                                                                                              | Deadline  | Chairman<br>(Secretariat)                    | Dates/Times                                                                                                                                                                                                                                                                                      | Venue                                                                                                                     |
|----|---------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------|----------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------|
| I  | <b>Subsidiarity</b> | How can verification of compliance with the principle of <b>subsidiarity</b> best be ensured? Should a verification mechanism or procedure be introduced? Should such a procedure be political and/or judicial in character? (CONV 71/02)                                            | September | Mendez de Vigo<br><br>(Arpio,<br>de Poncins) | 7 June 2002 / 13.00 - 17.00<br>17 June 2002 / 10.00 - 18.30<br>25 June 2002 / 15.00 - 18.30<br>10 July 2002 / 10.00 - 12.30<br>22 July 2002 / 10.00 - 18.30<br>29 July 2002 / 10.00 - 18.30 PHS 7C50<br>6 September 2002 / 10.00 - 18.30<br>19 September 2002 / 10.00 - 18.30<br>(with Group IV) | <b>European Parliament</b><br><br>PHS 7650<br>ASP 1G2<br>PHS 7C50<br>PHS 7C50<br>(TBA) <sup>1</sup><br>(TBA) <sup>1</sup> |
| II | <b>Charter</b>      | If it is decided to include the <b>Charter</b> of Fundamental Rights in the Treaty: how should this be done, and what would be the consequences thereof? What would the consequences be of accession by the Community/Union to the European Convention on Human Rights? (CONV 72/02) | November  | Vitorino<br><br>(Ladenburger, Bartol)        | 25 June 2002 / 14.30 - 17.00<br>12 July 2002 / 14.30 - 18.30<br>23 July 2002 / 10.00 - 18.30<br>16 September 2002 / 11.00 - 18.30<br>17 September 2002 / 09.30 - 18.30<br>(poss. 7 or 8 September)<br>4 October 2002 / 14.30 - 18.30                                                             | <b>Commission</b><br><br>CCAB - 1D<br>CHAR S/4<br>CHAR-S/4<br>CHAR S/4<br>(TBA) <sup>1</sup><br><br>CHAR S/4              |

|     |                             | Mandate                                                                                                                                                                                                                                                                                 | Deadline | Chairman<br>(Secretariat)                 | Dates/Times                                                                                                                                                                                                                                                                                                                            | Venue                                                                                                                                          |
|-----|-----------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|-------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------|
| III | Legal<br>personality        | What would the consequences be of explicit recognition of the <b>legal personality</b> of the EU, and of a fusion of the legal personalities of the EU and the European Community? Might they contribute to simplification of the Treaties ? (CONV 73/02)                               | November | Amato<br><br>(Passos,<br>Bribosia)        | 18 June 2002 / 15.00 - 18.30<br>25 June 2002 / 18.00 - 19.30<br>10 July 2002 / 10.00 - 13.00<br>18 July 2002 / 10.00 - 13.00<br>5 September 2002 / 10.00 - 13.00<br>11 September 2002 / 10.00 - 13.00<br>26 September 2002 / 10.00 - 13.00<br>17 October 2002 / 14.30 - 18.00                                                          | <b>Council</b><br><br>J.L.<br>J.L.<br>J.L.<br>J.L.<br>J.L.<br>J.L.<br>J.L.                                                                     |
| IV  | National<br>Parliaments     | How is the role of <b>national Parliaments</b> carried out in the present architecture of the European Union? What are the national arrangements which function best? Should new mechanisms/procedures be envisaged at national or European level? (CONV 74/02)                         | November | Stuart<br><br>(Van den Heuvel,<br>Peyron) | 26 June 2002 / 09.00 - 12.00<br>10 July 2002 / 09.30 - 16.00<br>18 July 2002 / 09.30 - 16.00<br>11 September 2002 / 09.30 - 13.00<br>19 September 2002 / 10.00 - 18.00<br>(with Group I)<br>26 September 2002 / 09.30 - 13.00<br>10 October 2002 / 14.30 - 18.00<br>17 October 2002 / 14.30 - 18.00<br>22 October 2002 / 14.30 - 18.00 | <b>Commission</b><br><br>CCAB 1A<br>CHAR S/4<br>CHAR S/4<br>CHAR S/4<br>(TBA) <sup>1</sup><br><br>CHAR S/4<br>CHAR S/2<br>CHAR S/4<br>CCAB/-1D |
| V   | Complementary<br>competence | How should " <b>complementary</b> " competence be treated in future? Should Member States be accorded full competence for matters in which the Union at present has complementary competence, or should the limits of the Union's complementary competence be spelled out? (CONV 75/02) | October  | Christophersen<br><br>(Martinez, Schiavo) | 17 June 2002 / 11.00 - 18.00<br>9 July 2002 / 11.00 - 18.00<br>17 July 2002 / 11.00 - 18.00<br>6 September 2002 / 11.00 - 18.00<br>7 October 2002 / 11.00 - 18.00<br>30 October 2002 / 11.00 - 18.00                                                                                                                                   | <b>Council</b><br><br>J.L.<br>J.L.<br>J.L.<br>J.L.<br>J.L.<br>J.L.                                                                             |

|    |                                   | Mandate                                                                                                                                                       | Deadline | Chairman<br>(Secretariat)          | Dates/Times                                                                                                                                                                                                                                                                                                  | Venue                                                                                                                    |
|----|-----------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------|
| VI | Coordination of economic policies | The introduction of the single currency implies closer <b>economic and financial cooperation</b> .<br>What forms might such cooperation take?<br>(CONV 76/02) | October  | Hänsch<br><i>(Pilette, Milton)</i> | 7 June 2002 / 13.00 - 17.00<br>19 June 2002 / 15.00 - 18.00<br>24 June 2002 / 20.30 - 22.00<br>10 July 2002 / 10.00 - 13.00<br>17 July 2002 / 10.00 - 17.00<br>29 August 2002 / 10.00 - 17.00<br>13 September 2002 / 13.00 - 16.00<br>18 September 2002 / 15.00 - 18.00<br>27 September 2002 / 10.00 - 13.00 | European Parliament<br><br>ASP IEZ<br>PHS 7C50<br>PHS 7C50<br>PHS 7C50<br>PHS 7C50<br>PHS 7C50<br>PHS 7 C50<br>PHS 7 C50 |

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<sup>1</sup> TBA = to be announced

**THE EUROPEAN CONVENTION****Brussels, 19 June 2002 (21.06)**

THE SECRETARIAT

**CONV 121/02****WG II 2****AGENDA**

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for : meeting of the Working Group on Incorporation of the Charter/Accession to the ECHR  
on : Tuesday 25 June 2002

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I. AGENDA

1. Work programme and timetable
  2. Procedures for and consequences of any incorporation of the Charter into the Treaties  
– initial discussion (CONV 72/02 and CONV 116 WG II 1)
  3. Other business
- II. The meeting will take place in CCAB (Albert Borschette Centre): Room CCAB 1/A, 36 rue Froissart, 1040 Brussels, from 14.30 to 17.00.
- III. Members of the Working Group are asked to inform Ms Amelia Fernandez Navarro ([amelia.fernandez-navarro@consilium.eu.int](mailto:amelia.fernandez-navarro@consilium.eu.int)) of the name of the person accompanying them as their assistant.

**THE EUROPEAN CONVENTION**

THE SECRETARIAT

**Brussels, 28 June 2002 (05.07)  
(OR. fr)****CONV 164/02****WG II 4****NOTE**

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|                  |                                           |
|------------------|-------------------------------------------|
| from:            | Secretariat                               |
| to:              | Working Group II                          |
| <b>Subject :</b> | <b>Summary of meeting on 25 June 2002</b> |

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The first meeting of Working Group II (Charter) was held on 25 June 2002 from 14.30 to 16.30 with Commissioner Antonio Vitorino as Chairman.

*I. Work programme and timetable*

1. The work **timetable** was approved:

|                   |               |
|-------------------|---------------|
| 12 July 2002      | 14.30 – 18.30 |
| 23 July 2002      | 10.00 – 18.30 |
| 17 September 2002 | 10.00 – 18.30 |
| 4 October 2002    | 14.30 – 18.30 |
| 29 October 2002   | 14.30 – 18.30 |

7 or 8 or 18 October (reserve dates)

2. **Work programme:** The Chairman mentioned the Group's two main topics (incorporation of the Charter and accession to the ECHR), as covered in the discussion paper CONV 116/02, which he intended to submit for examination by the Group later on. Towards the end of its discussions, the Group would also cover access to the Court of Justice and the Court's competences, a question linked to the two aforementioned main topics and also covered in the discussion paper.

3. **Hearings.** Given the nature of the subjects to be covered, the Group agreed that it would hear representatives of the Court of Justice of the European Communities and of the European Court of Human Rights. At the request of a member of the Group, the Chairman undertook also to make arrangements with a view to hearing the Directors-General of the Legal Services of the Commission, Council and European Parliament.

Furthermore, the Chairman announced that he would convene an additional meeting of the "human rights" contact group, a meeting in which all the members of the Working Group would be invited to take part, so that they could hear representatives of civil society.

4. **Working languages.** It was agreed that, purely as a result of technical constraints, interpreting could only be provided in French and English for working groups. If a group member indicated an imperative need to speak in another language, the Secretariat would explore the practical possibilities.
5. **Access to meetings.** The Chairman announced that, in the interests of conducting proceedings efficiently, access to the Group's meetings would for the time being be restricted to members of the Convention (members of the Group and others) and to collaborators designated by the members. It remained possible that access might be extended to the public at a later stage.

## *II. Procedures for and consequences of any incorporation of the Charter into the Treaties – initial discussion*

6. The Group held an initial exchange of views on the above subject. The following points in particular were mentioned:
  - The positions of certain governments on the political issue of incorporating the Charter were still hesitant, irrespective of the Group's technical examination of the procedures for this.



- By general agreement, it had to be acknowledged that the Charter's content had been drafted by the previous Convention and that it would not now be appropriate to rewrite it.
  - In that context, several members referred to the legitimacy and representative nature of this prior Convention and felt that what was needed now was to concentrate on examining the procedures for integrating the Charter into a basic treaty or a Constitution. Others, however, maintained that there were differences between adopting the Charter as a political declaration and the idea of giving such a text the force of law. In the latter case certain questions would arise, such as, in particular, whether it might give rise to new rights for individuals, or to new competences for the EU, or again what the relations would be between the Charter, the Treaty and the ECHR. In that connection, some wondered whether the present horizontal clauses were sufficient; others were doubtful of the value of debating those clauses again.
  - One difference between the earlier Convention and the present one was that the candidate countries had not taken part, even if they had been consulted in a hearing. From that point of view, it was suggested that it might be appropriate to examine or explain the solutions reached in the earlier Convention.
  - The Group could examine whether it was possible to provide a mechanism for review of the Charter in the future.
  - The role of the Court of Justice and its relationship to national courts if the Charter were incorporated should be examined.
7. The Chairman concluded by stressing that this first debate had confirmed that henceforth, taking a pragmatic approach, the various technical points addressed in CONV 116/02 should be examined, as should certain additional questions that had been raised, which would be discussed in connection with those technical points as the work of the Group progressed.

**THE EUROPEAN CONVENTION**

THE SECRETARIAT

**Brussels, 3 July 2002 (05.07)  
(OR. fr)****CONV 172/02****WG II 5****AGENDA**

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for : meeting of the Working Group on Incorporation of the Charter/Accession to the ECHR  
on : Friday 12 July 2002

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**I. AGENDA**

1. Procedures for and consequences of any incorporation of the Charter into the Treaties:

- Possible techniques for incorporation of the Charter;
- The question of the current Article 6(2) of the EU Treaty (relationship between the Charter and the ECHR on the one hand and the common constitutional traditions on the other);

*(on the above points see CONV 116/02 WG II 1, Part II, Sections 1 and 2)*

- The Charter and the competences of the Union  
*(on this point see working document from the Chairman of the Working Group, to come)*

2. Other business

II. The meeting will take place in the CHAR building, Room S4, 170 rue de la Loi, 1040 Brussels, from 14.30 to 18.30.

III. Members of the Working Group are asked to inform Ms Amelia Fernandez Navarro ([amelia.fernandez-navarro@consilium.eu.int](mailto:amelia.fernandez-navarro@consilium.eu.int)) of the name of the person accompanying them as their assistant.

**THE EUROPEAN CONVENTION**

Brussels, 12 July 2002

THE SECRETARIAT

**SUMMARY OF CONCLUSIONS**

**Subject: Meeting of the Praesidium  
Brussels, 10 July 2002**

**POINTS SETTLED****1. Preparation of the Convention session of 11-12 July and Working groups****- External Action and Defence**

The Praesidium noted that the descriptive document on EU External Action had been circulated to members of the Convention (CONV 161/02) and that the questions contained in it should assist in structuring the debate.

**- Working groups**

As to working groups, the Praesidium confirmed its agreement on the setting up of four new working groups, the first on 'security and justice' (for which the mandate had already been circulated in doc 179/02), the second on 'external relations', the third on 'defence policy' and the fourth on 'simplification of legislative procedures'. Two suggestions for further working groups were put forward by members of the Praesidium : one on 'culture and linguistic differences' and the other one on 'good governance' : it was concluded that the former, and perhaps the latter, subject would be covered in working group V, chaired by Mr. Christophersen.

**- Introductory statement**

The Praesidium agreed that the Chairman should make an introductory statement before the start of the debate on External Action. The purpose of this statement would be to ensure that the Convention understood the Praesidium's thinking on working groups, and the Praesidium's "building block" approach, together with their plan to prepare, in the light of reports from the working groups on legal personality and the Charter, a framework for a constitutional Treaty, which would be put forward at the end of October.

This framework would then be fleshed out with the contributions emerging from the second wave of working groups and would then constitute the basis for the work on the Convention from the beginning of next year.

- Proposal by certain members of the Convention

As to the proposal put forward by certain members of the Convention to invite the Commission to prepare a draft constitutional treaty (item 4 of the session's agenda), the Praesidium unanimously agreed that the proposal was unacceptable since it would imply that the Convention would shirk its own responsibilities.

**2. Mr. Avgerinos' letter to the Chairman and revised draft reply**

The Praesidium approved the draft reply (circulated then in doc. 185/02).

**3. Autumn Plenary Debates**

The Praesidium agreed that the subjects for the first autumn Convention Plenary debates should be "simplification" (of the legislative procedure) on 12-13 September, and "subsidiarity" on 3-4 October. Mr Mendez de Vigo agreed to give the Convention on 12-13 September an oral preview of the likely recommendations of the subsidiarity working group, and confirmed that the groups report would be available before 3-4 October. In addition, Vice-president Amato agreed to give a similar oral preview on the issue of legal personality on 12-13 September, and Mr Vitorino agreed to give a similar presentation on the Charter on 3-4 October.

**II. OUTSTANDING ISSUES**

**4. Working groups Chairs**

Since Ms Palacio was not present, the Praesidium agreed to postpone to its next meeting decisions on the chairs of the four new working groups.

**5. Strategy discussion**

The Praesidium had a preliminary exchange of views on the implications of the various options for the simplification of Treaties. It agreed to revert to this issue; some members mentioned the usefulness of hearing legal opinion on this subject.

## 6. Secretariat paper on public relations and visibility

The Praesidium agreed to discuss this issue at its next meeting.

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The next Praesidium meeting will take place on 18 July, at 15h00  
in Palais d'Egmont and will last until 22h00.

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**THE EUROPEAN CONVENTION****Brussels, 15 July 2002**

THE SECRETARIAT

**CONV 196/02****WG II 6****PROVISIONAL AGENDA**

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for : Meeting of the Working Group on Incorporation of the Charter/Accession to  
the ECHR  
on : Tuesday 23 July 2002

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**I. AGENDA**

1. Modalities and consequences of possible incorporation of the Charter into the Treaties
  - The question of "replication" ("dédouplements") in the Charter
  - Examination of certain technical adjustments in the provisions of the Charter

*(see, on these points, doc. CONV 116/02 WG II 1, part II, sections 4 and 5, as well as a working document by the President of the Group, to be distributed)*

2. Hearings of:
  - Mr. Johann Schoo, Director, Legal Service of the European Parliament
  - Mr. Jean-Claude Piris, Jurisconsult, Director-General of the Legal Service of the Council
  - Mr. Michel Petite, Director-General of the Legal Service of the European Commission.
3. Any other business

- II. The meeting will take place at the CHAR building, room S4, rue de la Loi 170, 1040 Brussels, from 10:00 h to 18:00 h (with a break from 13:00 h to 15:00 h). Item 1 of the agenda will be taken up in the morning, and items 2 and 3 in the afternoon.
- III. In view of the wide variety of issues that may be addressed during the hearings (item 2) and that may include *all* topics covered by the mandate of the Group, Members of the Group who wish to do so have the possibility to communicate to the Secretariat ([clemens.ladenburger@consilium.eu.int](mailto:clemens.ladenburger@consilium.eu.int)), preferably by Thursday evening (18 July), questions which they intend to raise during the hearings; these questions will be forwarded to the three experts.
- IV. Members are kindly requested to communicate to the Secretariat ([amelia.fernandez-navarro@consilium.eu.int](mailto:amelia.fernandez-navarro@consilium.eu.int)) the name of the assisant who will accompany them to the meeting.
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**THE EUROPEAN CONVENTION**

THE SECRETARIAT

**Brussels, 18 July 2002 (23.07)****(OR. fr)****CONV 203/02****WG II 7****NOTE**

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|                  |                                                                                             |
|------------------|---------------------------------------------------------------------------------------------|
| from :           | Secretariat                                                                                 |
| to :             | Working Group II                                                                            |
| <b>Subject :</b> | <b>Summary of the meeting held on 12 July 2002 chaired by Commissioner Antonio VITORINO</b> |

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The second meeting of Working Group II (Charter) was held on 12 July 2002 between 14.30 and 17.30 under the chairmanship of Commissioner Antonio Vitorino.

I. *Timetable of meetings*

1. The following dates for forthcoming meetings were confirmed:

- 23 July (all day)
- 17 September (all day)
- 4 October (afternoon)
- 7/8 October (dates in reserve)
- 21 October as the date of the final meeting – instead of 29 October as originally planned; this would enable the Group to conclude its proceedings before the plenary session of the Convention at the end of October, with a view to the presentation of an initial architecture for the Treaty as announced by the Chairman of the Convention, Mr Valéry Giscard d'Estaing.



## II. Procedures for and consequences of any incorporation of the Charter into the Treaties

### – Possible techniques for incorporation of the Charter

2. The Chairman opened a preliminary discussion on the subject, stressing that the Group would return to this crucial issue during its proceedings. He also highlighted:

- the relationship between the idea of a basic treaty and its length, and the choice of options (as presented in CONV 116/02), none of them being *a priori* incompatible with this idea;
- the various possibilities for combining the options presented;
- the question of the preamble, which had to be borne in mind in this context.

3. A majority of speakers favoured the insertion of the full body of the Articles of the Charter in a new basic treaty (option (f)), particularly because of expectations concerning the visibility and transparency of the fundamental rights of the Union, as expressed in particular by civil society and by the Youth Convention; the fundamental importance of a catalogue of such rights at the beginning of a basic treaty or constitution; and the "normative" character of the Charter, drafted "as though" it were destined to appear in the treaty.

4. Other speakers variously pointed out that:

- the concern to abide by the fundamental rights which were already in existence and to preserve the position of the Member States were (given the Group's approach of not modifying the Charter) arguments in favour of options (a) or (b), and that the benefits of this text as a declaration should not be under-estimated;
- the final choice between these options would be a political decision to be taken later, but depending on the answers to certain technical questions to be examined by the Group;

- there might be possibilities for an intermediate solution, as for example a protocol (option (e)), combined with a reference to the Charter in an article of the basic Treaty;
- that the choice of technique should also respect the desire not to weaken the pan-European ECHR system.

5. A number of speakers stressed that the preamble to the Charter, which was an essential part of it, had been drafted in such a way that, besides fundamental rights, it more generally encompassed the values and foundations of the Union. In the opinion of these members, the preamble could therefore be used (possibly with additions) as the preamble to a new basic treaty.

6. The Chairman concluded by stressing that, when the choice of technique for incorporating the Charter was made, several concerns had to be addressed including the political visibility and importance of fundamental rights, and also legal certainty. He also reminded members of the two facets of the compromise concerning the Charter, pointing out that at the time of its adoption, consensus was reached on a political declaration, but that the text had a legal profile as it had been drafted "as though" it was to be incorporated into the Treaties.

- The question of the current Article 6(2) of the EU Treaty (relationship between the Charter and the ECHR on the one hand, and the common constitutional traditions on the other).

7. Some members of the Group were in favour of deleting of Article 6(2) of the EU Treaty if the Charter were incorporated as a fully binding text, given that the Charter included the rights in the ECHR and was already considered by the Court of First Instance as an interpretation of the common constitutional traditions; in any case it contained references to both these sources in its preamble. However, others were in favour of maintaining Article 6(2) of the EU Treaty or a similar provision. Those members pointed out that the Charter did not contain all the rights guaranteed in the ECHR and its protocols, and that a provision such as Article 6(2) could favour an interpretation of the Charter in the light of common constitutional traditions. What is more, it would make the system open to future developments, enabling the Court of Justice to take account of new constitutional features which might emerge amongst the Member States.

8. The idea was also put forward that since common constitutional traditions had served as a third major source for the Charter (besides the rights in the ECHR and the EC Treaty), the desire to establish harmony between these three sources argued in favour either of the addition of a horizontal provision on constitutional traditions similar to those relating to the other two sources, or of the addition in Article 6(2) of the Treaty of an element which met this concern. If such an addition were not made, there would be a risk that the incorporation of the Charter would give too much political power to the Community court. However, others remarked that the Court of Justice's margin of discretion was greater nowadays, in the context of a definition of Community fundamental rights purely through case-law. They added that it was very difficult to define common constitutional traditions and the Court would not necessarily be able to deduce rights identical to those existing in all the constitutions of the Member States, nor only retain the lowest common denominator.

9. Some members commented that the question of Article 6(2) of the EU Treaty should be revisited after the Group had discussed accession to the ECHR. The Chairman confirmed this approach, stating that he saw scope for maintaining the references in Article 6(2), but that in any case the impact of any decision on accession to the ECHR on their wording would have to be examined.

– *The Charter and the competences of the Union*

The Chairman introduced the debate, presenting his working document, and stated that he himself saw no contradiction between the Charter and the limited competences of the Union.

10. All speakers stressed the importance, already highlighted by the previous Convention, of the principle that the incorporation of the Charter should not affect the distribution of competences between the Union and the Member States, and welcomed the significant clarification contained in the Chairman's working document (WD 03) in this respect. It was noted that the previous Convention wanted to draft a complete list, in the desire to give visibility to all the common values of the Union, particularly in the context of its international relations.

11. Several speakers felt that editorial amendment to Article 51(2) of the Charter would be useful if option (f) were chosen, as suggested in the Chairman's working document (clarifying that the Charter, incorporated into the Treaties, did not modify the competences and tasks defined by *the other* provisions of the Treaties).

12. Following requests from the Group, the Chairman Mr Vitorino undertook to submit a working document on possible editorial amendments to Articles 51(2) and 52(2) of the Charter, and to the "replications" in the Charter.

**THE EUROPEAN CONVENTION**

THE SECRETARIAT

**Brussels, 31 July 2002 (05.08)****(OR. fr)****CONV 223/02****WG II 8****NOTE**

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|           |                                                                                                 |
|-----------|-------------------------------------------------------------------------------------------------|
| from :    | Secretariat                                                                                     |
| to :      | Working Group II                                                                                |
| Subject : | <b>Summary of the meeting held on 23 July 2002 chaired by<br/>Commissioner Antonio VITORINO</b> |

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The third meeting of Working Group II (Charter) was held on 23 July 2002 between 10.00 and 12.15 and between 15.00 and 18.00 under the chairmanship of Commissioner Antonio Vitorino.

*I. Modalities and consequences of incorporation into the Treaties of the Charter*

- *The question of "replication" in the Charter*
- *The examination of certain technical adjustments in the provisions of the Charter*

1. The Chairman presented the agenda, explaining that the subjects to be discussed were covered by CONV 116/02 and explored further in the working document (WD 09). He said it was evident from those documents that if the Group opted for the incorporation of the full body of the articles of the Charter into a new basic Treaty (option (f)), then at this stage two technical adjustments would be necessary, concerning Articles 51(2) and 52(2) of the Charter, as explained in working document No 9. The aim of those adjustments would be not to change but to safeguard and clarify the meaning and scope of those Articles.

2. Regarding the question of the "replication" of the rights which already appeared in the EC Treaty and were repeated by the Charter, the Chairman raised two issues: the concern for legal certainty which had led to the drafting of Article 52(2) of the Charter, and which had to be guaranteed whatever option the Group chose; and the presentation and intelligibility of the new Treaty, which was a question which would notably arise in relation to the combination in any new basic Treaty of the articles of the Charter and those of the EC Treaty on the citizenship of the Union.
3. All the members of the Group welcomed the Chairman's working document No 9 and were particularly pleased with the proposal for the editorial clarification of Article 51(2). There was consensus on the principle that the incorporation of the Charter should not lead to any "inadvertent" extension of the competences of the Union; if the Convention wanted to propose extensions of competences it should do so by means of clear provisions in other parts of the Treaty.
4. So as to be certain of achieving this aim, several members asked that the Group should also examine the possible clarification of the second sentence of Article 51(1) of the Charter, concerning the obligation on those to whom the Charter was addressed to "promote the application thereof"; other members felt that the current wording of this clause already indicated sufficiently precisely that this obligation existed for the Union only within the framework of its competences.
5. Regarding the "replication" of rights which already appeared in the EC Treaty and were repeated in the Charter, all the members of the Group stressed the need for proper coordination in the interests of legal certainty, so that none of the current legal aspects of those rights, including any limitations on them, would be lost if the Charter were to be incorporated. It was generally recognised that Article 52(2) of the Charter would serve to guarantee this principle of legal coordination, but it was difficult at this stage to foresee what precise form any editorial adjustments to the clause might take, since this would depend on the future structure of the Treaties.

6. In this context it was argued that it would be difficult to incorporate the Charter by means of option (f), while retaining a referral clause such as the current Article 52(2), since this clause would result in the subordination of the Charter to the EC Treaty. However, this argument was challenged by several other members, who proposed that the relationship between the Charter and the EC Treaty should be characterised rather by a principle of "compatibility" or "specification" or "explanation" (of the rights of the Charter by the articles of the EC Treaty); appropriate legal solutions to ensure those principles could be designed, once the future structure of the Treaties was known.
7. For some members, an essential question in this area was whether a hierarchy would be established between a new basic Treaty and the rest of current primary law. The Chairman remarked that the idea of a basic Treaty did not necessarily presuppose the establishment of such a hierarchy, and the Group did not have a mandate to prejudge the Convention's approach to this question.
8. Members of the Group generally recognised that the "replication" between the Charter and the current EC Treaty should be accepted, given that the provisions of that Treaty also included legal bases which had to be preserved, and that a number of rights, particularly the freedom of establishment or of movement, which were enshrined in the EC Treaty in a very detailed fashion, could not be reproduced in full in the Charter.
9. Several members of the Group commented that the definition of citizenship (Article 17 of the TEC) and a provision on its future development (Article 22 of the TEC) should be incorporated into a future basic treaty, whereas the details of the rights of citizens could continue to appear in the second part of primary law. These members felt that this approach, and the combination of those articles with the articles of the Charter (incorporated into the basic treaty in accordance with option (f)) would not raise problems of a political nature. Various possibilities were suggested regarding the place to be set aside for the above two provisions in a basic treaty: either in a chapter of the treaty on democracy or the democratic system, or in the framework of the Charter's articles on citizenship.

10. Concluding this discussion, the Chairman invited members of the Group to submit written suggestions, if they so wished, concerning possible drafting adjustments to the horizontal articles of the Charter.
- II. Hearings of Mr Schoo, Director, Legal Service of the European Parliament, Mr Piris, Jurisconsult, Director-General of the Council Legal Service, and Mr Petite, Director-General of the Legal Service of the European Commission
11. The introductory presentations by the three experts<sup>1</sup>, which will be distributed to members of the Group as working documents, dealt *inter alia*, with the following main themes:
- The Charter and the competences of the Union: The three experts confirmed the existing distinction between the limited competences of the Union on the one hand, and the fundamental rights to be respected by its institutions on the other. However, according to Mr Piris, the current wording of the second sentence of Article 51(1) of the Charter, which stipulated an obligation to "promote..", could give rise to ambiguities of interpretation as regards the rights in the Charter relating to areas in which the Union did not have legislative competence. Mr Piris therefore recommended that certain minimal technical amendments should be made to Article 51 of the Charter so as to avoid any uncertainty about the principle that the Charter did not extend the competences of the Union. Mr Schoo and Mr Petite believed that this principle emerged sufficiently clearly from the current Article 51, but that a technical adjustment would be necessary to Article 51(2) of the Charter, if the Charter were to be incorporated using option (f). Mr Petite explained that in practice the Commission was already careful to ensure that the Charter was not used to justify competences for the Union.
  - The Charter and the EC Treaty: According to Mr Piris, the fact that articles in the Charter repeated rights already enshrined in the EC Treaty but without expressly reproducing all the conditions and limits laid down in the Treaty would jeopardise the full understanding of those rights by citizens. He therefore recommended that either all the conditions and limits in the current EC Treaty should be copied over into the Charter, or that the Charter should include references to the relevant articles of the EC Treaty.

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<sup>1</sup> Mr Piris indicated that he was speaking purely in his personal capacity.



Mr Petite explained that the previous Convention had had to make an "aesthetic" choice between two possible courses, either repeating the limits on the rights in each of the articles of the Charter, or stipulating them once and for all by means of the referral to the conditions and limits of the Treaty found in Article 52(2) of the Charter. Legally, the result – namely to make applicable the conditions and limits of the Treaty – was identical either way. Mr Petite concluded, as did Mr Schoo, that Article 52(2) satisfactorily regulated relations between the Charter and the EC Treaty. However he recognised that, if the Charter were to be incorporated by means of option (f), and depending on the new structure for the Treaties, a technical adjustment to Article 52(2) might be necessary to clarify to which legal text the clause referred. Mr Piris also recognised the necessity for Article 52(2), because in its absence the Charter would lead to a drastic modification to the EC Treaty on certain points; he then remarked that, if the Charter were to be incorporated into the Treaty, legal certainty and clarity would argue either for its deletion, provided that the conditions and limits laid down by the EC Treaty were included in the Charter, or for its clarification by an explicit reference to compliance with the conditions and limits laid down by the provisions of other parts of the Treaties.

- The Charter and the European Convention on Human Rights (ECHR): Mr Petite and Mr Schoo said that the Charter had found a satisfactory compromise by reconciling several premises, given that the ECHR was only a minimum standard and that there was a need to reflect and preserve in the Charter those advances which had already been made in Community law and case-law (these two points were also mentioned by Mr Piris), but also that the harmonious development of the two European legal systems and their two Courts should be ensured, while respecting the principle of the autonomy of Community law.

While recognising that there was no legal necessity to amend the Charter if incorporated, if it was understood that the Charter offered more protection on some points than the ECHR, Mr Piris felt that legal uncertainty could result from the fact that the articles of the Charter had not reproduced the limits laid down in the ECHR, and that since Article 52(3) was not completely clear on this subject it would be for the Court of Justice to say whether those limits were applicable. According to Mr Petite, it was evident that the reference in Article 52(3) to the "meaning and scope" as conferred by the ECHR also included the ECHR's clauses on limits, and that the Court of Justice could not mistake this. With Mr Schoo, he did not see any legal uncertainty here.

- The importance of the horizontal clauses of the Charter: The three experts agreed on the essential role of the horizontal clauses of the Charter and on the need to retain them. Mr Piris and Mr Petite indicated that (in the case of incorporation according to option (f)), some adjustments which were purely a matter of legal form should be made to those clauses, but would in no way modify the substantive contents of the Charter.
  
- Accession by the EC/EU to the ECHR: The three experts were in favour of accession by the EC/EU to the ECHR, from a legal point of view. They all said that this would be the ideal solution to guarantee the harmonious development of the case-law of the two European Courts. In particular, the absence of a means for citizens to appeal to the Strasbourg Court against acts by the institutions constituted an anomaly (Mr Piris); accession would be of benefit even after the incorporation of the Charter, since it would establish an external control to which all the Member States were already subject (Mr Schoo and Mr Piris); the principle of the autonomy of Community law did not present an obstacle to accession (Mr Schoo and Mr Petite); and legal problems were currently posed for the EC/EU since the Court of Strasbourg was called on to take decisions on Union law without the Union being able to defend itself (Mr Petite). Mr Piris raised the possibility of "functional accession" if accession pure and simple would lead to political problems. Mr Petite stressed that one risk, feared by some, namely that accession could lead to an increase in the Union's competences as regards human rights, could easily be countered by technical clauses clarifying that accession would not have this concomitant effect.

12. Other issues explored in one or other of the individual contributions included the following:
- Mr Petite explained the degree to which the Charter, when incorporated into the Treaties, would bind the Member States. He stressed that the wording of Article 51(1) of the Charter on this point would only reproduce current case-law on the application of Community fundamental rights to the acts of the Member States, and that the very cautious line followed to date by the Commission and the Court would therefore continue to apply after the Charter had been incorporated. As a result, the Charter would only cover a very narrow area amongst the vast range of legislative or administrative acts by the Member States. This also meant that the provisions of the Charter would only be invoked very exceptionally with "direct effect" before the national courts.
  - Regarding the rights of the Charter found in sources other than the ECHR and the EC Treaty, Mr Petite observed that it would be difficult to draft a "referral clause" similar to those in Articles 52(2) and (3) of the Charter, as there was no single written reference text; in relation to those rights the Court had used a multitude of sources of inspiration which left it with a wide margin of discretion. It would be illusory to believe that the Court could define those rights with a meaning identical to that enshrined in each of the fifteen national constitutions. Mr Piris noted that some rights in the Charter had not yet been enshrined in the constitutions of all the Member States. On the other hand, Mr Petite commented that the Court of Justice had already in the past taken inspiration from international conventions, notwithstanding the fact that some Member States had entered reservations regarding them, and the fact that the Charter had been inspired by such instruments did not mean that it incorporated them as such into Union law.
  - Mr Piris commented that some provisions of the Charter lacked precision, since although the Charter explicitly contained "rights", "freedoms" and "principles", it did not state which provisions of the Charter fell into each of these three categories, which could lead to risks of legal uncertainty and the creation of legitimate expectations.

- Mr Schoo explored the consequences of the incorporation of the Charter for legal remedies before the Court of Justice, proposing an adjustment to Article 46(d) of the current TEU concerning the Court's control – as already exercised – over the acts of the Member States when they are implementing Union law. In principle, the Court of Justice should exercise its role as constitutional court in relation to justice and home affairs in the same way as it does for classic Community law. Mr Schoo also wondered whether it would be necessary to amend the conditions for direct appeal by individuals (fourth paragraph of Article 230 of the TEC) to allow them easier access to the courts, without this leading to open public recourse.

13. In the Group's discussions with the experts, the following points were raised:

- The three experts confirmed that the reference in Article 52(2) of the Charter to the conditions and limits defined by the Treaties included the implementing provisions of secondary law, without these needing to be expressly mentioned.
- When questioned about the usefulness of retaining Article 6(2) of the current EU Treaty in the case of incorporation of the Charter and accession to the ECHR, the three experts stated that this was a political question; Mr Piris and Mr Petite felt that a reference to constitutional traditions common to the Member States could remain useful, while Mr Schoo commented that there would be some ambiguity in the system if Article 6(2) of the TEU was retained.
- Regarding the idea of a hierarchy between the basic treaty and the rest of primary law, the three experts pointed out that such a hierarchy had never been established amongst the elements currently making up primary law, that it did not arise automatically from the idea of a basic treaty, and that it could only result from a political choice which would have to be clearly expressed.
- Mr Petite and Mr Piris confirmed that if the Charter were to be incorporated, then the national reservations entered by the Member States with regard to international human rights conventions would remain applicable, as they had done to date, as regards the autonomous action of those States.

- Asked – as an example of the consequences of the Charter – about its effects on the recognition of single sex unions, Mr Schoo pointed out that this question had already arisen in Community law independently of the Charter, but said that Article 9 of the Charter confirmed the competence of the national legislator on this subject. The Chairman of the Group referred on the one hand to the judgment by the Court of Justice last year, handed down after the Charter had been proclaimed, and following the conclusions of the Advocate-General who had examined the Charter, in which the Court confirmed the different situation of marriages and such unions; and on the other hand to a very recent judgment by the European Court on Human Rights which contained a liberal reading of the right to marry concerning transsexual persons.

*III. Other business:*

14. One member of the Group wondered if it would perhaps be useful to have a Working Group on the judicial architecture of the Union. The Chairman indicated that this subject had been noted in his document setting out the mandate for the current Group and in CONV 116/02, but said that he would also bear it in mind in future discussions in the Praesidium.



**THE EUROPEAN CONVENTION  
THE SECRETARIAT**

Brussels 5 September 2002

Working Group II

Working document 13

## **Working group II "Incorporation of the Charter/accession to the ECHR"**

**from :** Secretariat  
**to :** Working Group II  
**Subject:** Auditions of MM. Schoo, Piris and Petite, on 23 juillet 2002

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Members of the Working Group will find enclosed the speaking notes of the interventions of Mr Schoo, Director-General of the Legal Service of the European Parliament, Mr Piris, legal consultant and Director-General of the Council's Legal Service, and Mr Petite, Director-General of the European Commission's Legal Service, during the audition of 23 July

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## **THE CHARTER OF FUNDAMENTAL RIGHTS**

### **Comments**

by Mr Johann SCHOO  
Director in the Legal Service  
of the European Parliament

Brussels, 23 July 2002

## I. Introduction

Your working party's task is to deal with the following two issues:

- the ways in which the Charter might be incorporated into the treaties and the implications of such a step, **and**
- the implications of any accession by the EU to the European Convention on Human Rights (ECHR).

I am certainly not going to deal with the political issue, i.e. **whether** the Charter should be incorporated; Parliament's views on the matter were clear before, during and after the proceedings of the first Convention. Furthermore, that Convention drew up its text **as though** the Charter were to be incorporated wholesale.

## II. Ways in which the Charter might be incorporated into the treaties and the implications of such a step

The question which concerns us here is that of deciding whether or not the Charter – with its existing substance and structure – is suitable for incorporation.

**Arguing against** such incorporation is a whole series of reservations which may be grouped under three main criticisms:

- (1) the Charter contains fundamental rights which do not fall within the EU's area of competence;
- (2) the Charter contains provisions which appear in a different form in the treaty or in the ECHR;
- (3) the general clauses of the Charter are not sufficient to enable the latter to be incorporated into the treaties.



### **First criticism**

- (1) As regards the fundamental rights which lie outside the EU's area of competence, the following three points may be made:

Firstly:

- (a) The task of the Convention on the Charter was to bring fundamental rights together in a single text, drawing on various sources, in particular the constitutional traditions common to the Member States and their common general principles. That text therefore reflects the wealth of the fundamental rights recognised by the Member States, irrespective of the current applicability thereof.
- (b) Although some of those rights are not applicable at first sight and as things currently stand, this does not mean that they will not be so in future (particularly in view of the way in which Union law is evolving within the third pillar and under Title IV of the EC Treaty **and** Articles 54 to 58 of the Schengen Agreement). In any event the inclusion of virtual (or dormant) fundamental rights is not a problem, since Article 51(2) stipulates that the Charter does not establish any new power or task and, pursuant to Article 52(2), the fundamental rights recognised are based on the treaties, i.e. they are exercised solely within the context of Community law.
- (c) It is still difficult to define exactly which fundamental rights lie outside the EU's area of competence. To give an example: no-one would have thought that the right to freedom of religion would be a fundamental right falling within that area. However, Case 130/75, PRAIS (ECR 1976, 1589) - a staff case - teaches us quite the opposite. It is not therefore impossible that other fundamental rights which do not currently appear to be a matter for the EU may in future be taken into consideration by the Court of Justice.

### **Second criticism**

- (2) The Charter contains provisions which appear in a different form in the treaty or in the ECHR

As regards consistency of the Charter provisions with the EC Treaty, there are a number of issues to be discussed:

- (a) the scope of the general cross-reference contained in Article 52(2) of the Charter,
- (b) duplication of those provisions, and
- (c) the specific case of the relationship between Article 21(1) of the Charter and Article 13 of the EC Treaty.

*re (a)* In our opinion the cross-reference clause contained in Article 52(2) of the Charter adequately clarifies the relationship between the fundamental rights detailed in the Charter and the treaty provisions concerned with the same subject, by stating that rights recognised by the Charter shall be exercised under the conditions and within the limits defined by the Treaties. At one and the same time this clause elegantly acts as an inherent limit on each fundamental right and thereby avoids constant repetition of the limits in each article.

*re (b)* As regards the duplication of provisions, it should first of all be pointed out that the number of provisions involved is very small (the freedoms laid down in the EC Treaty, the rights stemming from citizenship, and non-discrimination).

The cross-reference clause contained in Article 52(2) of the Charter also removes any ambiguity which may arise as a result of there being two identical provisions.

However, it must not be forgotten that the treaty provisions to which the Charter refers often serve a purpose which goes beyond that of creating a right: they contain legal bases and objectives to be achieved, and they should therefore remain in force.

*re (c)* As regards the specific case of non-discrimination referred to in Article 21(1) of the Charter and Article 13 of the Treaty, there is - in our opinion - no incompatibility, given that the two provisions pursue different aims:

- Article 13 of the EC Treaty is primarily a legal basis authorising the EC to combat discrimination by means of legislative measures applicable to individuals. Article 21 of the Charter, on the other hand, is a fundamental right directly applicable and binding on the Community bodies and institutions and, to a certain extent, on the Member States (Article 51(1) of the Charter).
- Furthermore, the rather unusual two-paragraph structure of Article 21 is the result of the fact that the drafters of the Charter had to abide by and incorporate the principle of non-discrimination between EU citizens, as laid down in Article 12 of the EC Treaty. For this reason, discrimination based on nationality is no longer mentioned in the first paragraph of Article 21 of the Charter. The Member States and the EU are therefore free to practise a degree of differential treatment in favour of EU citizens.

*To conclude as regards these points*

- There is no uncertainty, therefore, regarding the way in which the Charter provisions are to be interpreted by comparison with the Treaty articles on the same topic. The cross-reference clauses contained in Article 52 of the Charter have enabled relationships to be clarified.
- The same approach has been adopted in the case of the Charter articles which incorporate the guarantees contained in the ECHR: Article 52(3) serves to ensure that the rights laid down in both texts are applied in the same way, whilst allowing the EU to provide more extensive protection.

*Third criticism*

- (3) The general clauses (Articles 51 to 54) are not sufficient to enable the Charter to be incorporated into the Treaty

It is considered in certain quarters that the general clauses - Articles 51 to 54 of the Charter - are not sufficient to enable the Charter to be incorporated into the Treaty, either because they constitute a source of ambiguity at a time when the articles of the Charter have the same legal value as those of the Treaty, or because they would

undermine legal certainty in so far as they are designed to prevent conflicts between the Charter and the corresponding provisions of the ECHR.

- (a) In our opinion, there would be no fear of either ambiguity or legal uncertainty if the Charter were to be incorporated into the Treaty - quite the contrary. As has already been said, the cross-reference clauses serve to clarify the relationship between the Charter and the Treaty and the ECHR, with a view to making that relationship binding. Such clauses would be superfluous in the case of a Charter with mere political value but they are, on the other hand, essential to the proper application of fundamental rights which are part of primary legislation.

*At the risk of repeating myself:*

- Although the Charter and the Treaty are on an equal footing, the cross-reference clause contained in Article 52(2) of the Charter states unequivocally that the fundamental rights concerned are exercised under the conditions and within the limits defined by the Treaties. The only editorial change to be made would be to replace the reference to 'Community Treaties' and to the 'Treaty on European Union' by a wording which takes into account the way in which the Charter would be incorporated into the Treaty.
  - It should also be pointed out that the current Treaty also contains cross-references to provisions of equal status, and that this has not created any ambiguities (e.g. Articles 19 and 21 of the EC Treaty on citizenship which refer to Articles 190, 194 and 195 on participation in elections to the European Parliament and on the right to petition to the European Parliament or to apply to the Ombudsman).
- (b) As regards the alleged legal uncertainty stemming from the relationship between the Charter and the ECHR which - according to some authors - has not been resolved by means of the cross-reference clause contained in Article 52(3) of the Charter, suffice it to say that the purpose of that clause is to ensure that the corresponding rights are applied and interpreted identically. Since the ECHR lays down only a minimum standard, the clause takes account of the fact that, as applied by the Court of Justice,

Community law has already gone well beyond this minimum standard and will certainly continue to do so.

There are several examples of higher levels of protection under Community law than are provided by means of the ECHR:

- Article 47 of the Charter - right of access to justice - extends to all the rights guaranteed under EU law and is not restricted solely to civil or criminal-law rights as provided for in Article 6 of the ECHR.
- Article 50 of the Charter - the principle of *non bis in idem* - is not restricted to a single State - (as in the case of the ECHR) but covers the entire territory of the EU.

In this connection there is a second ground for criticism: the risk of differing interpretations by the EU Court of Justice and the Court of Human Rights. However, Article 52(3) of the Charter does not affect current relations between the two courts, which remain quite separate as they interpret the law which is placed before them for their examination.

Any differences of interpretation will be excluded if the EU acceded to the ECHR. This would be an ideal arrangement leading to perfect harmony between the two bodies.

But even as the relationship between the two courts currently stands, any difference of opinion is largely theoretical since the Court of Justice, when referring to Court of Human Rights case law, has never refused to apply that law.

What is more, the relationships between the Member States' constitutional courts and the Court of Justice are not based on subordination either, but rather - as stated by the German Federal Constitutional Court in its 'Maastricht' judgment of 12 October 1993 - on cooperation. This same relationship should provide a framework for the Court of Justice and the Court of Human Rights as they seek to interpret the fundamental rights which fall within their area of competence.

□□□

I should also like to deal briefly with other issues which are included within your working party's terms of reference and which, if need be, may subsequently be considered in greater detail at the hearing. These issues are:

(III) The technical arrangements for the incorporation of the Charter into the Treaty,

(IV) The effects which such incorporation would have on appeals procedure, and

(V) The value of accession to the ECHR following incorporation of the Charter.

□□□

### III. Technical arrangements for the incorporation of the Charter into the Treaty

In the basic document drawn up by your working party you have already listed the six technical options for incorporation of the Charter, ranging from appending it to the treaties in the form of a Solemn Declaration to including the full text in a title or chapter of the EU Treaty or even of a constitutional treaty.

The choice between these various options is undoubtedly a political one.

What is important from the legal point of view is that the rights should be binding. This would be achieved only if the Charter were to be incorporated into the Treaty, either in a Protocol appended to the Treaty or, at least, by means of a direct reference in the Treaty to the Charter as something incumbent upon the various bodies and institutions and, to a certain extent, upon the Member States.

If we opt for wholesale incorporation of the Charter into the EU Treaty or into a constitutional treaty (which is the best option as regards visibility and the one which is most in accordance with most of the Member States' constitutional traditions), a number of legal problems will arise.

1. The question of deleting Article 6(2) of the EU Treaty which refers to the external sources of fundamental rights, namely the constitutional traditions common to the Member States and the ECHR.

There is nothing to prevent this provision from being deleted, since the rights laid down in the ECHR have already been incorporated into the Charter, which is already recognised (by the Court of First Instance and the Advocates-General of the Court) as being the best distillation of the Member States' common constitutional traditions as regards fundamental rights (Case T-54/99, Court of First Instance judgment of 31 January 2002, max-mobil).

2. Another problem concerns the preamble to the Charter, which could be kept in its existing form if the Charter became a Protocol, but which would have to be incorporated into the preamble of a new treaty and constitute the first part thereof if the Charter were to be incorporated.
3. There is still the issue of the 'duplication' of treaty articles in the Charter. This issue has already been dealt with briefly in connection with the cross-reference clauses.

If we examine this aspect more closely, we could draw a distinction between two types of duplication:

- on the one hand, the treaty articles which are not just fundamental rights but which also provide a legal basis upon which the legislator is authorised to act (e.g. Articles 12, 13, 141, 39 and 40 of the EC Treaty). The two bodies of text should therefore continue to coexist.
- on the other hand, the treaty articles which contain only citizens' rights (such as Articles 18 and 19 of the EC Treaty) and which are a mere repetition of the rights contained in the Charter, could be deleted.

#### **IV. The effects of Charter incorporation on appeals procedures**

Should the Charter be incorporated into primary law and be made binding, this would have a number of effects as regards the powers of the Court of Justice.

1. Article 46(d) of the EU Treaty

First of all, I entirely agree with the idea contained in your first working memo, in which it is suggested that Article 46(d) of the EU Treaty should be amended in order to enable the Court of Justice to carry out judicial review for the purpose of ensuring that actions by EU bodies and institutions are in accordance with the Charter, as are those of the Member States when the latter implement EU law. This minimal adjustment is needed in order to bring the Treaty into line with the case law established by the Court which, since the Amsterdam Treaty came into force, has included the Member States in monitoring observance of fundamental rights when they act within the scope of Community law.

2. Extending the Court's powers to the third pillar

Consideration should likewise be given to whether and how the Court of Justice should play its role as a constitutional court in respect of justice and internal affairs (third pillar) and in Title IV of the EC Treaty. This should in principle be done in the same way as under traditional Community law.

This concerns the amendment to Article 35 of the EU Treaty and Article 68 of the EC Treaty.

I shall merely point this out, since the details of such a revision should be considered in the context of the general design of the new treaty and within the working party on justice and home affairs.

3. Improvements to the procedure for appeals by individuals

To round off this chapter, consideration should be given to the ways in which those who enjoy fundamental rights (i.e. private individuals or legal persons) are able to assert their rights before the courts.

There are at least two possibilities:



- either through the creation of a new appeals procedure based on the German model of a constitutional appeal ('Verfassungsbeschwerde')
  - or by means of an amendment to the terms and conditions of the existing Article 230(4) of the EC Treaty.
- (a) Given the current state of Community law and taking into account existing appeals procedures, the first option strikes me as excessively ambitious. A constitutional appeal (which would require other means of redress to be exhausted) would further prolong the duration of procedures. Furthermore, matters relating to fundamental rights may usefully be dealt with in appeals to national courts with the possibility of a reference for a preliminary ruling or in direct appeals lodged by individuals.
- (b) As regards Article 230(4) and the Court's highly restrictive interpretation of the criterion '*of direct and individual concern*', it may usefully be considered whether or not the terms and conditions should be amended so as to allow private individuals and legal persons easier access to a judge, although without opening the door too wide and thereby allowing mass appeals.

This question is of topical interest: in his conclusions of 21 March 2002, Advocate-General Jacobs called for a degree of openness and acknowledged that an individual had a right of appeal '*where, to a significant extent, a measure is, or may be, damaging to his interests*'.

We still need to wait until the day after tomorrow (until 25 July, when the Court is to issue its judgment in the above-mentioned case) in order to know whether or not there has been any development in case law or whether a revision of Article 230(4) of the EC Treaty will have to be envisaged.

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## V. Accession to the ECHR

The final question is that of deciding whether or not, once the Charter has been incorporated into Community primary law, there will still be a need for accession to the ECHR. A reply in the affirmative has been received from the recognised authorities (such as the Presidents of the two Courts concerned) and also from the European Parliament.

It is broadly agreed that the two options – the adoption of a binding Charter **and** accession to the ECHR – are complementary to one another and are not alternatives.

A number of legal questions need to be answered before such a statement can be made.

1. First of all, what is the point of accession if more extensive protection is available under EU law?

Answer: even if that is the case, the Court of Justice could arrive at a restrictive interpretation which would require a means of external review (to which, incidentally, all the Member States and their constitutional or supreme Courts are already subject).

2. Secondly, would accession to the ECHR not be incompatible with the autonomy of Community law and, in particular, with that of the Court of Justice (which is the highest body entitled to interpret EU law)?

Answer: the Court of Justice's monopoly on interpretation is not affected by accession to the ECHR. In its opinion 1/94 on conformity between the EEA and the EC Treaty, the Court was in favour of setting up another court whose task would be to interpret and apply the rules drawn up under the agreement.

EU accession to the ECHR is a comparable situation and, therefore, does not therefore undermine the Court's autonomy.

In any case, following EU accession the Court of Human Rights will not become a supreme court vis-à-vis the Court of Justice, just as it has not become so vis-à-vis the Member States' supreme courts. Its area of competence will continue to be restricted

to monitoring observance of the fundamental rights laid down in the ECHR. It will not be allocated any other power. The Court of Justice will retain sole responsibility for settling disputes both between the Member States and between the Member States and the institutions.

The advantages of accession are obvious: the EU will subject itself to the same external judicial review as its Member States whilst, at the same time, there will be uniform interpretation of the ECHR provisions (which is already envisaged in Article 52(3) of the Charter).

3. As regards the technical arrangements for accession, it is clear that the Treaty should provide a specific legal basis for that purpose in the wake of Opinion 2/94 of the Court of Justice (which took the view that Article 235 [now 308] is not adequate as a legal basis for accession).

The alternative arrangements imaginable (ranging from a referral mechanism to a right of appeal to the Court of Human Rights without accession) strike me as neither appropriate nor in accordance with Community law.

## VI. Conclusion

The first Convention on the Charter was a success: it provided a complete text of the fundamental rights derived from the constitutional traditions and the international obligations common to the Member States.

It was designed – thanks in particular to the general and final provisions – as though it were to be incorporated into a constitutional treaty.

From Parliament's point of view there is nothing to prevent it from being incorporated as it stands, subject to a few purely technical adjustments to the cross-reference clauses, depending on the way in which the Charter is to be incorporated into a constitutional treaty.

## **SPEAKING NOTE**

### **Speech by Jean-Claude PIRIS <sup>1</sup> to the Convention Working Group on the Charter of Fundamental Rights of the EU (23 July 2002)**

Taking account of the mandate of the Working Group <sup>2</sup>, and of the Note from the Praesidium <sup>3</sup>, I shall mainly address the question of the procedures required for integrating the Charter into the Treaties. My comments will be based on the political hypothesis of the Charter being incorporated either into the TEC, or into a unified TEU ("constitutional Treaty") embracing the current TEC. I will also address the question of possible EU/EC accession to the European Convention on Human Rights.

#### **INTRODUCTORY COMMENTS:**

The aim of the Charter, as laid down by the European Council <sup>4</sup>, is neither to create new fundamental rights, nor to free existing rights from the conditions and limits imposed on them by legal texts currently in force, nor to address the Member States directly. As the preamble to the Charter points out, its aim is to make fundamental rights "*more visible*" and to "*reaffirm*" those rights "*with due regard for the powers and tasks of the Community and the Union*".

The "*Text of the explanations*" relating to the Charter <sup>5</sup>, which played a decisive role in making it possible for certain Member States to adopt the Charter, and which was approved by the Praesidium

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<sup>1</sup> Mr PIRIS, Legal Adviser to the Council of the European Union, Director-General of the Council Legal Service, stated that he was speaking in a purely personal capacity.

<sup>2</sup> CONV 72/02 of 31 May 2002.

<sup>3</sup> SN 2565/02 of 10 June 2002.

<sup>4</sup> Presidency conclusions of the European Council held on 3 and 4 June 1999, paragraph 44: "*The European Council takes the view that, at the present stage of development of the European Union, the fundamental rights applicable at Union level should be consolidated in a Charter and thereby made more evident*".

<sup>5</sup> CHARTE 4473/00 CONVENT 49 of 11 October 2000.

of the previous Convention, sets out the origin of each of the rights reaffirmed by the Charter. It also recalls the conditions and limits attached to those rights by the TEC, the ECHR or by case-law<sup>6</sup>.

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My comments will be divided into two main parts:

**I. Would straightforward incorporation of the Charter into the Treaties, without any modification, give rise to risks of legal uncertainty and a lack of clarity?**

II. Are Articles 51 to 53 of the Charter sufficient to overcome those risks and, if not, what technical arrangements would it be appropriate to make to ensure greater clarity and legal certainty, while fully respecting the substantive content of the Charter?

I will then say a few words on the legal implications of options other than incorporation of the Charter into the Treaties, and I will end by considering the question of possible EU (EC) accession to the ECHR on the same basis as a State, or its functional accession.

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<sup>6</sup> Given the clarifications which it contains, it would be sensible to examine the possibility of taking over this text in an appropriate fashion, for example as a declaration annexed to the final act of the IGC which decides to incorporate the Charter into the Treaty.

**I. WOULD INCORPORATION INTO THE TREATY OF THE CHARTER AS CURRENTLY FORMULATED GIVE RISE TO RISKS OF LEGAL UNCERTAINTY AND INSUFFICIENT CLARITY?**

As stated in the mandate of the Working Group and the Note by the Praesidium, the Charter should be considered as adopted, without amendment to its substantive content. The final provisions of the Charter, particularly Articles 51 and 52, are an essential part of that substantive content:

under **Article 51(1)**<sup>7</sup>, the Charter is not addressed to the Member States acting in the framework of their national competences. It is addressed exclusively to the Union's institutions. It is only addressed to the Member States when they are implementing the law adopted by those institutions of the Union.

under **Article 52(2)**<sup>8</sup>, the rights enshrined in the Treaty and reflected by the Charter shall be exercised under the conditions and within the limits defined by the Treaty.

under **Article 52(3)**<sup>9</sup>, the meaning and scope of the rights guaranteed by the ECHR and reproduced in the Charter shall be the same as those conferred by the ECHR.

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<sup>7</sup> *"The provisions of this Charter are addressed to the institutions and bodies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers".*

<sup>8</sup> *"Rights recognised by this Charter which are based on the Community Treaties or the Treaty on European Union shall be exercised under the conditions and within the limits defined by those Treaties".*

<sup>9</sup> *"Insofar as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection".*

These provisions constituted a condition for the approval of the Charter. To be certain of complying with them when incorporating the Charter into the Treaty, there is a need for a thorough legal scrutiny of the Charter. This examination shows that the Charter contains some differences in relation to the provisions of the TEC and the ECHR<sup>10</sup>.

I would like to make four comments on this subject:

***(1) Some provisions of the Charter relate to areas in which the Treaties have not conferred competence on the EC***

Some provisions of the Charter relate to areas where the Community does not have competence, which is reserved to Member States by virtue of the principle of the allocation of competence (see first paragraph of Article 5 of the TEC). In this respect one might mention Article 28 of the Charter on the right of collective bargaining and action, which includes the right to strike, whereas this right is expressly excluded from the Community's competence by Article 137(6) of the TEC. Article 2(2) of the Charter on the death penalty, Article 4 prohibiting torture, Article 14 on the right to education, Article 34 on the entitlement to social security benefits and social assistance, and indeed Articles 48, 49 and 50 on criminal law, might also be cited.

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<sup>10</sup> On this subject, see the matching results of the studies presented by Mr Rodriguez Bereijo on "The protection of fundamental rights" during the seminar on the "Present and future of the Court of Justice of the European Communities" held in Madrid on 25 October 2001, and the studies presented at the colloquy organised by the Commission on 15 and 16 October 2001, as below:

Professor Grainne De Burca: "Human Rights: the Charter and beyond"

Professor Jacqueline Dutheil de la Rochère: "Droits de l'homme : la Charte des droits fondamentaux et au-delà" ("Human Rights: the Charter of Fundamental Rights and beyond").

Professor Christopher McCrudden: "The future of the EU Charter of Fundamental Rights".

The obligation to respect fundamental rights is not to be placed on the same level as competence to legislate, since the latter depends on the existence of a legal basis in the Treaty. That said, Article 51(1) imposes an obligation on the institutions and bodies of the Union not only to respect the provisions of the Charter but also to promote its application. The text states that they should do so "in accordance with their respective powers". But how? Could they promote the application of rules relating to matters where they have no competence? How can an article prohibiting torture be justified in a text which is only addressed to the institutions of the EU/EC and not to the Member States except when they are implementing Union law? There is a constant ambiguity in the text in that it appears to be addressed directly to the Member States, or to enlarge the existing competences of the European institutions, or to do both of these, when in fact each of these three hypotheses has in principle been ruled out.

(2) **Some provisions of the Charter draw on provisions in the TEC or the ECHR, but modify them**

Some articles of the Charter, which deal with an area covered by the TEC and the ECHR, contain provisions which differ from those texts. This is the case with the principle of non-discrimination<sup>11</sup>: drawing on Article 13 of the TEC and Article 14 of the ECHR, Article 21(1) of the Charter<sup>12</sup> provides for the prohibition of any discrimination based "on any ground such as " a range of examples, whereas Article 13 of the TEC<sup>13</sup> confers competence on the Community to take appropriate action to combat discrimination based on a smaller number of matters, which are not just quoted as examples (sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation).

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<sup>11</sup> This also applies to the right to marry: compare Article 9 of the Charter with Article 12 of the ECHR.

<sup>12</sup> In the "Text of the explanations" of the Charter (4473/1/00 REV 1), Article 21 of the Charter is not mentioned either amongst those articles of the Charter whose meaning and scope are the same as the corresponding articles of the ECHR, or amongst those where the meaning is the same but the scope wider.

<sup>13</sup> The text of Article 14 of the ECHR, supplemented in 2000 by Protocol No 12 to the ECHR, differs from the other two. However, it should be remembered that the ECHR is a "minimal" instrument: one can do more or better, but not less or worse. Hence, the fact that the Charter offers more protection than the ECHR is not a legal obstacle to its incorporation into the Treaties.



However, it might be queried whether the differences between Article 21(1) of the Charter and Article 13 of the TEC could give rise to uncertainty over the interpretation to be given to Article 13 of the TEC: in the cases of non-discrimination referred to in Article 21 of the Charter but not recognised by Article 13 of the TEC, such as colour, language, or membership of a national minority, would the Council be able to intervene on the basis of Article 13?

(3) **Some provisions of the Charter reproduce the wording of a right recognised by the TEC or the ECHR, but without reproducing the conditions and limits**

**In the case of the TEC**, this applies to the provisions on citizenship, for example Articles 39 and 40 of the Charter on the right to vote and to stand as a candidate at elections to the European Parliament and municipal elections respectively. Article 39 of the Charter lays down in a brief and apparently clear manner that: "*Every citizen of the Union has the right to vote and to stand as a candidate at elections to the European Parliament in the Member State in which he or she resides, under the same conditions as nationals of that State*". Although this article corresponds to the right guaranteed by Article 19(2) of the TEC, it does not reproduce the limits to the exercise of that right which are expressly laid down in the latter: "*This right shall be exercised subject to detailed arrangements adopted by the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament; these arrangements may provide for derogations where warranted by problems specific to a Member State*". These arrangements have been adopted by the Council in a Directive which will obviously have to be taken into account in determining the scope of the right referred to in Article 39 of the Charter, as would the national laws adopted to implement the Directive.

Thus, after becoming aware of his right by reading Article 39 of the Charter, the citizen would then have to refer to Article 51(2) of the Charter, then to Article 19(2) of the TEC, then to the Directive and finally to the national law relating to it, to discover that the extent of his right was not that apparently conferred by Article 39.

The same problem arises for other articles of the Charter, such as Article 40 on the right to vote and to stand as a candidate at municipal elections (see Article 19(1) of the TEC), Article 42 on the right of access to documents (Article 255 of the TEC), Article 43 on the Ombudsman (Article 195 of the TEC), Article 44 on the right to petition (Article 194 of the TEC), and Article 46 on diplomatic and consular protection (Article 20 of the TEC), which do not contain the limits and conditions laid down in the corresponding articles of the TEC, and which do not refer to them.

The reading of the articles of the Charter could therefore risk giving rise to legitimate expectations and infringing the principle of legal clarity: citizens are given to understand that they have some right, the possibility to obtain some benefit, or the power to exercise some competence or other, without specifying in a clear and utterly transparent fashion that that right, benefit or competence is subject to conditions and limits.

**In the case of the ECHR**, one might cite as an example the short Article 6 of the Charter on the right to liberty and security ("*Everyone has the right to liberty and security of person*"). The rights laid down in this Article correspond to those guaranteed by Article 5 of the ECHR, but Article 6 of the Charter does not reproduce the exceptions listed in Article 5 of the ECHR. The same applies to other articles of the Charter, which simply replicate the wording of the rights stated in the ECHR, without mentioning the exceptions and limits given there: Article 5(2) on forced labour (Article 4(3) of the ECHR), Article 7 on respect for private and family life (Article 8(2) of the ECHR), Article 10 on freedom of thought, conscience and religion (Article 9(2) of the ECHR), Article 11 on freedom of expression and information (Articles 10(1) and (2) of the ECHR) and Article 12 on freedom of assembly and of association (Article 11(2) of the ECHR). Article 15 of the ECHR, on the possibility of taking measures derogating from obligations under that Convention in time of war or other public emergency, is not reproduced in the Charter. Is the political choice that the exceptions, limits and derogations provided for in the ECHR will not apply within the EU, which is legally possible? But Article 52(3) of the Charter is ambiguous in this respect. It begins by stating that the meaning and scope of the rights contained in the Charter which correspond to rights guaranteed by the ECHR shall be the same as those laid down by the Convention, but adds that "*this provision shall not prevent Union law providing more extensive protection*". If the Charter were to be incorporated into the Treaty, it would therefore be difficult to determine what the legal situation would be.

(4) **Some provisions of the Charter reproduce rights which stem neither from the TEC nor the ECHR and have not yet been recognised in all the Member States**

This applies for example to Article 3 (origin: Council of Europe Convention on Human Rights and Biomedicine, not yet ratified by all the Member States; the fourth indent of Article 3(2) goes beyond that Convention, with the prohibition on the reproductive cloning of human beings); Article 10 (conscientious objection: origin – the constitutions of certain Member States); Article 24 (origin: United Nations Convention on the Rights of the Child; some Member States entered reservations when they concluded it).

(5) **Some provisions of the Charter lack precision**

Although, according to its preamble, the Charter contains "*rights*", "*freedoms*" and "*principles*", it does not state which provisions of the Charter contain respectively "*rights*", "*freedoms*" or "*principles*", nor what are the consequences of this division into three categories. With the incorporation of the Charter into the Treaty, this lack of distinction between those provisions of the Charter which contain "*rights*" and those which contain "*freedoms*" or "*principles*" could lead to risks of legal uncertainty and the creation of legitimate expectations. This might be the case, for example, with Article 25 ("*the Union recognises and respects the rights<sup>14</sup> of the elderly to lead a life of dignity and independence and to participate in social and cultural life*") and Article 33(1) ("*the family shall<sup>14</sup> enjoy legal, economic and social protection*"), where the wording seems to indicate that this is a question of rights and not of principles.

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<sup>14</sup> My underlining.

I now come to the second stage of my analysis, in which I will endeavour to answer the following question:

**II. ARE THE GENERAL PROVISIONS OF THE CHARTER (ARTICLES 51 TO 53) SUFFICIENT TO OVERCOME THESE RISKS AND, IF NOT, WHAT MINIMAL TECHNICAL ARRANGEMENTS COULD BE MADE TO ENSURE GREATER LEGAL CLARITY AND CERTAINTY, WHILE FULLY RESPECTING THE CONTENT OF THE CHARTER?**

**(1) Articles 51 and 52 of the Charter are intended to avoid conflicts between the provisions of the Charter and those of the TEC, but are insufficient to guarantee that:**

Article 51(2) of the Charter states that *"This Charter does not establish any new power or task for the Community or the Union, or modify powers and tasks defined by the Treaties"*.

Article 52(2) states that *"Rights recognised by this Charter which are based on the Community Treaties or the Treaty on European Union shall be exercised under the conditions and within the limits defined by those Treaties"*. These two provisions appear to be necessary since, in their absence, the Charter would result in drastic modification to the Treaty on a number of points. It ensues that each article of the Charter containing rights stemming from the TEC should be read and interpreted as "**subordinate**" to the latter: the "substantive" provisions of the Treaty would prevail over those of the Charter. However, Articles 51(2) and 52(2) would risk lacking clarity if the Charter were to be incorporated into the Treaty, since the substantive articles of the Charter would have legal force equivalent to that of the other articles of the Treaty.

With legal certainty and clarity in mind therefore, a case could be argued either for clarification of these two articles (by an explicit reference to compliance with the conditions and limits laid down in other provisions of the Treaties, i.e. those which confer competence on the EC), or for the deletion of those articles, on the express condition, however, that:

every provision of the Charter is examined;

the minimal technical amendments are introduced which are necessary to ensure that none of

the provisions implies a modification to the competence conferred by the TEC; and

the conditions and limits provided by the TEC are included for those rights (e.g. Articles 39 and 40 of the Charter and Article 19 of the TEC).

Neither of these options, which are purely a matter of legal form, would modify the substantive content of the Charter. One would achieve exactly the result sought by the previous Convention, but with more clarity and legal certainty.

**(2) Articles 52(3) and 53 of the Charter are intended among other things to avoid conflicts between the provisions of the Charter and of the ECHR, but their content is not clear**

Article 52(3) states that: *"Insofar as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection"*.<sup>15</sup>

Article 53 states that: *"Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by Union law and international law and by international agreements to which the Union, the Community or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' constitutions"*.<sup>16</sup>

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<sup>15</sup> In connection with this provision, the text of the explanations contains a list of articles of the Charter whose meaning and scope are the same as the corresponding articles of the ECHR, and another list of articles whose meaning or scope are not the same as the corresponding articles of the ECHR.

<sup>16</sup> This provision deals in an identical fashion with categories of law (international law and national laws) which do not have identical relations with Community law, which leads some people to believe that this article could be interpreted as going against the principle of the primacy of Community law as developed by the Court of Justice of the European Communities (judgment of 17.12.1970 in Case 11/70 *Internationale Handelsgesellschaft* [1970] ECR p. 1125, and judgment of 11.1.2001 in Case C-285/98 *Kreil*), and implicitly recognised by paragraph 2 of the Protocol on the application of the principles of

The apparent intention of these provisions is that, insofar as the rights of the Charter "correspond" to those guaranteed by the ECHR, their meaning and scope (including, a priori, their conditions and limits), should be the same as those provided by the ECHR. However, the same article provides that this provision "*shall not prevent Union law providing more extensive protection*", which corresponds to the fact that the ECHR constitutes a minimum standard. Since all the articles of the Charter would effectively, by dint of being incorporated into the Treaty, constitute "*Union law*", there would be an ambiguity: would the conditions and limits laid down by the ECHR apply or would they not? The Court of Justice in Luxembourg would have to decide on the matter. Insofar as the rights listed in the Charter correspond to rights guaranteed by the ECHR but are not identical, there would be a risk of divergent interpretations emerging from the two Courts.

**(3) Since Articles 51 to 53 prove insufficient, minimal technical amendments to the Charter would therefore seem appropriate**

It emerges from the legal analysis which I have just set out that Articles 51 to 53 of the Charter would only be sufficient if the Charter maintained its current status, or if the status conferred on it were subordinate to the other provisions of the Treaties; but they would not be sufficient to establish full legal clarity and certainty if the Charter were to be incorporated as currently worded into the Treaty, thus giving all its articles a binding legal force identical to that of all the other articles of the Treaty. This incorporation would infringe the principle of legal certainty and the objectives of simplification and visibility<sup>17</sup>. Minimal technical

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subsidiarity and proportionality which provides that "*the application of the principles of subsidiarity and proportionality...shall not affect the principles developed by the Court of Justice regarding the relationship between national and Community law..*". Some feel that if the last part of Article 53 of the Charter were to be incorporated into the Treaties it would highlight the significance of the differences between the wording relating to fundamental rights in Union law and the constitutions of the Member States, thus increasing the risk of conflict between the Court of Justice of the EC and national supreme courts (see Ms Dutheil de la Rochère, 15.10.2001).

<sup>17</sup> The incorporation of the Charter into the Treaty would have the effect of rendering applicable the provisions of the TEC relating to the Court of Justice. The Court could have violations of the Charter referred to it, either in the form of requests for a preliminary ruling from national courts (depending on which provisions of the TEU or TEC applied) or directly from the institutions, the Member States or

amendments to the Charter or to the Treaty would therefore seem appropriate if the Charter were to be incorporated into the Treaty.

**As regards the ECHR**, there would be no legal necessity to amend the Charter if the Convention and the future IGC were to decide that the Treaty (including the Charter) would offer even more protection than the ECHR than it does already in certain areas. In any case, reproducing in the Charter the full provisions of the corresponding articles in the ECHR would pose political difficulties in relation to those provisions of the Charter which represent a "step forward" in certain areas: see Article 3(2) (cloning), Article 8 (data protection), Article 9 (right for persons of the same sex to marry), Article 10(2) (right to conscientious objection), etc. If the Convention and then the Member States (at the IGC) were to confirm their desire to go further than the ECHR on these points, clear provisions to this end would have to be included in the Treaty.

**As regards the EC Treaty**, two avenues might theoretically be considered:

- Amendment to the Treaty: this possibility has been set aside by Article 51(2) of the Charter, according to which the Charter does not establish any new power or tasks for the Community or the Union, and does not modify the powers and tasks defined by the Treaties. This was, moreover, excluded by the Cologne European Council.
- Amendment to the Charter: if this path is followed, the Convention might wish to avoid any substantial amendment which risked calling into question the delicate compromise achieved when the Charter was being drawn up<sup>18</sup>. If this is the case, some minimal technical amendments would have to be envisaged:

Article 51(1): after "*promote the application thereof in accordance with their respective*

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individuals under the conditions laid down by the Treaty. Since fundamental rights form part of the principles of law with which the Court must ensure compliance, the Court already verifies compliance with fundamental rights by the Communities and by the Member States when they are implementing Community law.

<sup>18</sup> It would remain the case that some provisions, such as those quoted on page 4 above as well as the ambiguity mentioned on page 5, would contradict the fundamental principle stated in Article 51(1) of the Charter.

*powers" add "and respecting the limits of the competences of the EC as conferred on it by other parts of this Treaty";*

Articles 39, 40, 42, 43 and 44: the proposal which I made a moment ago would be the clearest, namely to include the conditions and limits laid down in the TEC when addressing the rights concerned. Otherwise, in each article, one could add "*under the conditions and limits set by Article (19), (20), (255), (194), (195) of (this Treaty/the TEC) [respectively]*". Another solution would be to replicate the conditions and limits and to delete the corresponding articles of the current TEC.

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### **III. WHAT WOULD BE THE LEGAL EFFECT OF OPTIONS OTHER THAN THE INCORPORATION OF THE CHARTER INTO THE TREATIES?**

It might prove politically impossible to amend the text of the Charter, even in a limited fashion. If so, and as always when two different texts deal with the same question, the only reliable solution to ensure legal certainty would be to stipulate a hierarchy between the two texts, i.e. to make one have legal force **subordinate** to that of the other. At least five options are possible.

#### **(1) The Charter could be included in the preamble to the Treaty**

The text of the Charter would be reproduced, either in the preamble to the TEU, or in that of the "constitutional treaty" (in the case of a merger of the Treaties and the establishment of a "constitutional treaty"). However, according to case-law, the preamble to a Community act cannot be contrary to its enacting terms, at the risk of infringing the principle of legal certainty<sup>19</sup>. The basic principles on which this case-law is founded are equally valid for texts of primary law. The observations made earlier are therefore also applicable in this

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<sup>19</sup> See the judgment of 24.1.1995 (Case T-5/93 [1995] ECR p. II-0185), in which the Court of First Instance judged that: "*A contradiction in the statement of the reasons on which a decision is based constitutes a breach of the obligation laid down in Article 190 of the Treaty such as to affect the validity of the measure in question if it is established that, as a result of that contradiction, the addressee of the measure is not in a position to ascertain, wholly or in part, the real reasons for the decision and, as a*



case, to ensure legal clarity. Furthermore, the current form of the Charter, which is drafted in binding form (use of "shall" and wording expressing compulsion) is not appropriate for the text of a preamble.

(2) **The Charter could be "attached" <sup>20</sup> to the Treaty in the form of a solemn declaration**

Attaching the Charter in this way would present no legal difficulty. It would reinforce the status of the Charter and its high symbolic and political value. The development of its legal force would probably be encouraged and accelerated.

(3) **Article 6(2) of the TEU could refer to the Charter**

In this case it would not be necessary to amend the text of the Charter, if it were mentioned in Article 6(2) of the TEU in terms which avoided conferring binding legal force on it. The European Parliament suggested (in 4804/00) to the IGC 2000 that reference should be made to the Charter in Article 6(2) of the TEU, using the following wording: "2. *The Union shall respect the Charter of Fundamental Rights of the European Union and fundamental rights.....*". Since this wording would confer binding legal force on the provisions of the Charter ("*The Union shall respect..*"), it would present the same difficulties as those raised by straightforward incorporation of the Charter into the Treaties. It would be possible to imagine appropriate wording by using the right vocabulary ("reflection", "confirmation", etc.).

(4) **The Charter could be both reproduced in a solemn declaration attached to the Treaty and mentioned in Article 6(2) of the TEU**

This option, which would combine the two possibilities described above, would strengthen the status of the Charter. Its status as a declaration attached to the Treaties would be reinforced by the explicit reference to it in Article 6(2) of the Treaty. Politically, one would be very close to "incorporation" into the Treaties. Legally, the development in the status and

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*result, the operative part of the decision is, wholly or in part, devoid of any legal justification". See also the judgment of 30.3.2000 (Case T-65/96 [2000] ECR p. II-1885).*

<sup>20</sup> It would be preferable to use the verb "attach" rather than "annex" in order to avoid any ambiguity with the terms of Article 311 of the TEC.

value of the Charter would be facilitated, making it possible in future for all those involved, including the Court of Justice, to take account of the Charter, without actually conferring the force of positive law on those of its provisions which went beyond the conditions and limits provided by the TEC and the ECHR.

(5) **The Charter could maintain its current status**

What would be the consequences of maintaining its status? It would be inaccurate to say that the Charter currently lacks any legal significance, and that maintaining the status quo would deprive it of any legal force. The Charter already has great political value and a certain legal status which is likely to develop.

Firstly, the Charter already constitutes a political reference point for the implementation of Article 6 of the TEU <sup>21</sup>.

Secondly, it is a highly symbolic text which is invested with definite legitimacy. The institutions are politically bound by the Charter, as their practice demonstrates. The President of the European Parliament has declared that "*.. the Charter will be the law of the assembly*". The Commission has decided <sup>22</sup> that any proposal for a legislative act will be scrutinised for compatibility with the Charter, and that any proposal for an act which has a specific link with fundamental rights will contain a recital specifying that the act complies with the Charter. The Council and the Parliament, as co-legislators, adopt such recitals <sup>23</sup>.

Thirdly, Advocates-General at the Court of Justice have already invoked the Charter, as has the Court of First Instance <sup>24</sup>.

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<sup>21</sup> See the Three Wise Men's report on Austria, which refers to Article 21 of the draft Charter: "*In the new Draft Charter of Fundamental Rights of 28 July 2000, Art. 21 prohibits any discrimination based on sex, race.....*"

<sup>22</sup> SEC (2001) 380/3.

<sup>23</sup> There is an example of such a recital in Regulation No 1049/2001 of 30 May 2001 of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents.

<sup>24</sup> See the conclusions of Advocate-General Tizzano in Case C-173/99, Advocate-General Léger in Case C-353/99, and Advocate-General Jacobs in Case C-377/98. See also paragraph 48 of the judgment of the

In its communication of 11 October 2000 on the Charter, the Commission considers that *"it can reasonably be expected that the Charter will become mandatory through the Court's interpretation of it as belonging to the general principles of Community law"*.<sup>25</sup> Without going that far, it ensues in any event from the above that the Charter can already be regarded as constituting a sort of "soft law" which is likely to acquire more authority in future, even if its status is not explicitly altered.

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### CONCLUSION

The incorporation of the Charter of Fundamental Rights into the Treaty will be an essential step in European construction. This incorporation should be carried out in such a way as to respect the imperatives of legal clarity and certainty so as to avoid any ambiguity or divergence in interpretation.

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Court of First Instance of 30 January 2002 in Case T-54/99 *MaxmobilTelekommunikation Service GmbH v. Commission*, not yet published, and paragraphs 41 and 42 of the judgment of the Court of First Instance of 3 May 2002 in Case T-177/01 *Jégo-Quéré et Cie SA v. Commission*, not yet published.

<sup>25</sup> Commission communication of 11 October 2000 (COM(2000) 644 final).

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**ANNEX****ACCESSION OF THE EU TO THE ECHR**

The question of possible EU accession to the ECHR has been on the table for over twenty years, since the first Commission proposal to that effect. It has hitherto encountered obstacles of a legal nature (the present TEC does not permit accession: see Opinion 2/94 of the ECJ, of 28 March 1996<sup>1</sup>) and a political nature (ensuring increase in EC competence, fears regarding the autonomy of its judicial system, problems posed by the arrangements for full EC participation in an institutional system designed for States, etc).

The fact that no solution has been found to this problem has so far been of limited practical significance, given the protection afforded to the rights of Union citizens (through the case-law of the ECJ or indirectly through that of the European Court of Human Rights). The potential for conflict between the two European courts in Luxembourg and Strasbourg is at present low-level. However, it would increase if the Charter were to be incorporated into the Treaty. In addition, the question has considerable symbolic importance in the political terms. It is anomalous that citizens cannot complain to the European Court of Human Rights regarding a possible breach of the European Convention on Human Rights by an EC institution. This anomaly will become painfully obvious and will increase the risks of disparities between the case-law of the two European Courts of Justice if it is decided to incorporate the Charter into the Treaty.

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<sup>1</sup> [1996] ECRI-1759.

There are two main ways of putting an end to this anomaly<sup>2</sup>. The solution has so far been sought in the form of straightforward EU accession, on the same basis and hence with the same rights as a State Party to the European Convention on Human Rights. Consideration could be given to another option, involving functional accession of the EC or the EU to the Convention. In accordance with the principle of subsidiarity, provision would be made for accession to be merely functional, i.e. only insofar as it proves necessary in order to deal with the questions I have just raised, avoiding some of the political obstacles mentioned above which would ensue if the EU were to accede on the same basis as a State.

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<sup>2</sup> The reasons why the other options that have sometimes been mentioned would be inappropriate (requests for preliminary rulings from the ECJ to the European Court of Human Rights, creation of a special EU court or special chamber at the ECJ, etc.) would exceed the bounds of this brief summary.

**A. FIRST OPTION: ACCESSION OF THE EC/EU TO THE ECHR ON THE SAME BASIS AS A STATE**

**MEANS**

- Would require a revision of the Treaty (ECJ Opinion 2/94, 28.3.1996) and a revision of the European Convention on Human Rights, followed by negotiation of an agreement between the EU/EC and the Council of Europe.

**MAIN CONSEQUENCES**

- (1) Would permit citizens to seize the European Court of Human Rights in Strasbourg if they considered that an act of an EU (EC) institution had been adopted in breach of the provisions of the European Convention on Human Rights (under conditions similar to those existing at present for the States Parties: exhaustion of domestic remedies including appeals to the Court of Justice or the Court of First Instance etc.),
- (2) Would permit the EU (EC) institutions whose acts have been called into question to defend their legality before the European Court of Human Rights in Strasbourg.
- (3) Would resolve the problem posed by possible incompatibilities between the text of the Charter and that of the European Convention on Human Rights, as well as the problem of conflicts possibly arising between the case law of the two Courts, the ECJ in Luxembourg and the ECHR in Strasbourg, the risk of which could well increase if the EU Charter of Fundamental Rights were to be given binding legal force.

**RELATED CONSEQUENCES**

- (4) Would put the EU (or the EC) on the same level as the States Parties to the ECHR and therefore give them the same rights and obligations vis-à-vis the ECHR; thus the effect of revising the EU (EC) Treaty to allow accession to the ECHR on the same basis as a State would be to extend EU (EC) competence to all areas of fundamental rights, as it would be able to participate in revising the European Convention on Human Rights on the same basis as a State.
- (5) By aligning the EU-EC with the States Parties, the effect of revising the European Convention on Human Rights would be to enable the EU (EC) institutions to participate on an equal footing in the Strasbourg institutional system: participation in the Council of Ministers, voting rights, election of judges, etc.

**B. SECOND OPTION: FUNCTIONAL ACCESSION OF THE EU/EC TO THE ECHR****MEANS**

- After the introduction of an enabling article into the EU or EC Treaty and appropriate revision of the ECHR, would involve the conclusion of a Protocol annexed to the European Convention on Human Rights which would have effects identical to those of a straightforward accession for points 1, 2 and 3 above.

**MAIN IDENTICAL CONSEQUENCES**

- (1) EU citizens would be entitled to seize the European Court of Human Rights in Strasbourg if they considered that an act of an EU (EC) institution had been adopted in breach of the European Convention on Human Rights.
- (2) The EU (EC) institutions whose acts have been called into question would be able to defend their legality before the European Court of Human Rights in Strasbourg.
- (3) The questions raised above (possible incompatibilities between the Charter and the ECHR and possible conflicts between the case-law of the ECJ and that of the ECHR), would be settled in the same way.



**LACK OF RELATED CONSEQUENCES**

- (4) Functional accession would not in itself<sup>3</sup> have any effect on EU (EC) competence.
- (5) Functional accession would not involve the EU (EC) institutions participating on an equal footing with the States Parties in the Strasbourg institutional system (participation in the Council of Ministers, voting rights under the same conditions as a State Party, election of a judge, having the same competences as the other judges<sup>4</sup>, participation in proceedings before the Strasbourg Court even when those institutions were not involved in a case, etc.).

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<sup>3</sup> Naturally, extension of EU (EC) competence could perfectly well be provided for by the Convention/IGC, although as a separate issue and not as a natural consequence of the solution to the problem that concerns us here.

<sup>4</sup> Article 29 of the Rules of Procedure of the ECHR, which provides for the possibility of designating "ad hoc judges" could be amended if deemed necessary, to allow the appointment of a judge for cases concerning Community/EU law. The possibility of a full-time EC/EU judge would not necessarily be excluded by functional accession.

**Hearing of Michel Petite <sup>1</sup>**  
**Convention Working Party**  
**on the Charter of Fundamental Rights of the EU**  
**and accession to the ECHR**  
**(Brussels, 23 July 2002)**

Your Convention Working Party has discussed all the aspects of the Charter in depth. I should like to return simply to the core questions that you have already gone into at length:

1. Would the Charter extend the powers of the Union?
2. The question of the application of the Charter to measures taken by the Member States;
3. The "direct effect" of rights under the Charter;
4. The relation between the Charter and its "three main sources":
  - the Charter and the rights already enshrined in the EC Treaty;
  - the Charter and the European Convention of Human Rights;
  - the Charter and the constitutional traditions common to the Member States.

My conclusion is that, if the Charter is incorporated in the Treaty, it is vital to preserve its "horizontal" provisions, with very minor drafting amendments.

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<sup>1</sup> Director-General, Legal Service, European Commission.

## 1. Would the Charter extend the powers of the Union?

- The importing thing here is to bear in mind the distinction between the powers of the Union (which are limited) and the duty of the institutions to respect fundamental rights when they act. This duty applies equally to rights such as the right to strike or the freedom of religion that the institutions could well affect indirectly by their measures, even if they cannot legislate on them.<sup>2</sup>
- This traditional distinction is recognised in the Court of Justice Opinion 2/94 (on accession to the European Convention)<sup>3</sup> and in the practice of the institutions;<sup>4</sup> it is particularly clear in working paper No 3 by your Working Party's Chairman. On this basis, it seems perfectly suitable that the Charter was designed as a *full* catalogue of all the fundamental rights that the Union must respect in its action, and Article 51(2) of the Charter seems to me to state beyond a shadow of a doubt that the Charter creates no new powers and amends none of the powers conferred by the Treaties.<sup>5</sup>

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<sup>2</sup> And there have been certain more recent extensions to the powers of the Union, in particular in the field of criminal law, introduced by the Union Treaty ("third pillar"). In particular, the double jeopardy rule in Article 50 of the Charter is already laid down in Articles 54 to 58 of the Schengen Convention, Article 7 of the Convention on the protection of the financial interests of the Communities and Article 10 of the Convention on the fight against corruption (Council Conventions under the EU Treaty). This example clearly illustrates how useful it was to include the essential guarantees in criminal matters which must be respected in third-pillar law in Articles 48–50 of the Charter.

<sup>3</sup> See paras 27–35 of the Opinion.

<sup>4</sup> See, for example, Case 130/75 *Vivien Prais v Council* [1976] ECR 1589, concerning a Council recruitment competition organised on a Jewish holiday, where the Court of Justice recognised freedom of religion as a Community fundamental right; Council Regulation (EC) No 2679/98 on the functioning of the internal market in relation to the free movement of goods among the Member States (Article 2: "This Regulation may not be interpreted as affecting in any way the exercise of fundamental rights as recognised in Member States, including the right or freedom to strike...", and 4th recital: "Whereas such measures [i.e. those that Member States are obliged to take with a view to facilitating free movement of goods on their territory] must not affect the exercise of fundamental rights, including the right or freedom to strike"); and the mandate for the current negotiation of an agreement with the United States on legal judicial assistance in criminal matters which excludes extradition of persons running a serious risk of the death penalty.

<sup>5</sup> See also J.-P. Jacqué, *La démarche initiée par le Conseil européen de Cologne*, *Revue universelle des droits de l'homme*, 2000, No 1/2, p. 6; J. Dutheil de la Rochère, "La Charte des droits fondamentaux et au-delà", conference organised by the Commission on 15 and 16 October 2001, pp. 15/16.

- If the Charter itself were incorporated into one of these Treaties (your option "f"), a drafting amendment could make clear that the Charter does not affect the system of powers as defined elsewhere in the Treaty.
- The Commission already interprets the Charter in this way: it systematically vets legislative proposals for conformity with the Charter, and in appropriate cases it mentions this in a recital and in the explanatory memorandum to the proposal.<sup>6</sup> But we ensure that these references to the Charter in the recital and the explanatory memorandum do not specifically support a power to legislate but merely give an assurance that the proposed measure respects fundamental rights.
- Is this result contradicted by the famous formula of Article 51(1) of the Charter, which requires the institutions and the Member States, when they implement Union law, to "respect the rights, observe the principles and *promote* the application thereof"? The answer is clearly no; in particular because the full text goes on to say "... promote the application thereof in accordance with their respective powers". The Charter shows therefore clearly here that the Union is under an obligation to "promote" only where it has powers to act in the first place.

## 2. Application of the Charter to measures taken by the Member States

- Article 51(1) of the Charter provides that it is addressed to the institutions and bodies of the Union, "*and to the Member States, only when they are implementing Union law*". The excellent "Explanations" of the Presidium of the Charter specify that this Article merely reproduces the case-law of the Court on this point.<sup>7</sup>

The legitimate question here is how far a Charter, integrated into the Treaties, *would bind the Member States?*

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<sup>6</sup> Cf. SEC (2001) 380/3.

<sup>7</sup> The "Explanations" established by the Presidium of the Charter Convention (Document CONVENT 49, Charter 4473/00, 11 October 2000), to which this statement refers several times, give useful and important indications for a good understanding of the Charter, even if they do have no legal value. The Advocates-General at the Court of Justice already quote them when interpreting the Charter. See, for example, the opinion of the Advocate-General Mischo of 21 February 2001 in Case C-122/99 P, *D v Council*, quoting the point made in the "Explanations" that Article 9 of the Charter neither prohibits nor imposes the granting of marriage status to unions between persons of the same sex and concluding that this confirms the difference between a marriage and a same-sex union and that the Community legislature (acting in this case under the Staff Regulations of Officials) would not therefore be bound by the Charter to treat the two situations on the same footing.

- The Commission, as guardian of the Treaties, is well placed to answer this, because it is already regularly confronted with these problems in handling answers to citizens' complaints, infringement proceedings and requests for preliminary rulings in the Court of Justice.
- The existing case-law of the Court has acknowledged that Community fundamental rights are applicable to measures taken by the Member States – and its review of respect for these rights – in two cases only:
  - 1) when the Member State *applies or implements* Community law (examples: administrative measures implementing a EC agricultural Regulation; transposing a Directive) – the "*Wachauf*" rule;<sup>8</sup>
  - 2) when the Member State acts on the basis of a provision of derogation of the EC Treaty (such as Articles 46 and 55) allowing it to restrict the *fundamental freedoms* of establishment and services on grounds of public policy, public security or public health – the rule in "*ERT*".<sup>9</sup> The philosophy is that these derogations must themselves respect fundamental rights.
- To designate these two situations, the Court of Justice has sometimes used the admittedly rather general formula that the Member States must respect Community fundamental rights when they act "within the scope of Community law". But in practice, the Court does limit the application of this to the two situations. In particular, in *Annibaldi* (1997),<sup>10</sup> it held that, to make Community fundamental rights applicable, it is not enough for a Member State to act in a field, like agriculture or the environment, where the Community has powers or which are connected in one way or another with Community law; the decisive element was that the measure in question was not a specific measure transposing or implementing a Community provision.

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<sup>8</sup> Judgment of 13 July 1989 in Case 5/88 [1989] ECR 2609.

<sup>9</sup> Judgment of 18 June 1991 in Case C-260/89 [1991] ECR I-2925; also see judgment of 26 June 1997 in Case C-368/95 *Familiapress* [1997] ECR I-3689, concerning restrictions on free movement of goods (Article 30 of the EC Treaty).

<sup>10</sup> Judgment of 18 December 1997 in Case C-309/96 [1997] ECR I-7493.

- It is therefore important to understand that in practice the two situations referred to in the case law cover a very narrow field within the wide range of legislative and administrative measures taken by the Member States.
- This limitation is confirmed by the Charter itself, which in Article 51(1) uses the formula "when Member States implement Community law", sometimes also used by the Court of Justice,<sup>11</sup> and is more comprehensible and especially less susceptible of a broad interpretation.
- In the past the Commission has often been faced with requests to apply Community fundamental rights to the Member States. In most cases, it could immediately deny its power because it was obvious that the problem did not constitute any form of implementation of Community law (examples: the law on sects in France, the alleged violations of freedom of press in Austria or Italy, the religious freedom of Buddhist communities in Greece, the law of a Spanish autonomous Community concerning the use of a regional language).
- Some more recent cases were more delicate, because there was a certain link with Community law:
  - the alleged violation of fundamental rights by projects part-financed by the Structural Funds;
  - the issue of broadcasting licences to radio or television channels;
  - data recorded on a national identity card.

But in these cases the Commission took a very cautious line and concluded that Community scrutiny *did not apply*, the protection of the rights being therefore a matter to be governed by national powers. If the Charter is incorporated into the Treaties, therefore, one must think that the Commission and the Court of Justice will interpret Article 51(1) in the same way, applying it only in clear and specific cases of implementation of Community law by the Member States.

- The fear that the Charter could have an impact on broad fields of the Member States' national legislation and that the slightest indirect link with Community law or powers would suffice to make it applicable therefore strikes me as unfounded.

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<sup>11</sup> For example in the judgment of 13 April 2000 in Case C-292/97 *Karlsson* [2000] ECR I-2737, para 37.

### 3. The question of "direct effect" of the Charter rights

- Certain members of the group have asked whether Charter rights, several of which are formulated as "positive duties", could have "direct effect" and be capable of being pleaded directly in the national courts. This concern relates particularly to the social Articles. I can understand their concern, but I do not believe it is warranted, for the same reasons as I mentioned a moment ago in connection with the application of the Charter to the Member States.
- The concept of "direct effect" in Community law refers to Treaty provisions which can be pleaded directly in the national courts, against national administrative authorities or even private individuals, without the need for secondary legislation to give effect to them (e.g. Article 141 of the EC Treaty on equal pay for men and women, or the four fundamental freedoms).
- But the fundamental rights under the Charter, according to Article 51(1), have limited scope: they are binding on the *institutions*, but they cannot normally be relied on in a national dispute against an administrative authority or against a private individual. The Charter, and particularly the social Articles, quite apart from the fact that it often provides for principles which are "to be observed" by the Community legislature without conferring subjective rights,<sup>12</sup> can therefore apply only *exceptionally* in the national context, namely when, as previously, there is a piece of Community legislation and a specific national measure implementing it.

### 4. The relationship between the Charter and its "three main sources"

#### a) The relationship between the Charter and the rights already enshrined in the EC Treaty

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<sup>12</sup> It is clear from the Charter that a distinction is made between rights and principles [see last sentence of the preamble, and Article 51(1)]. It was also a major element for the compromise on the "social" chapter of the Charter. The approach followed in the Charter was to reflect this distinction when drafting the individual Articles. But the Convention instructed to write the Charter consciously chose not to formulate a horizontal clause distributing the Articles of the Charter into the two categories of "rights" and "principles", because it considered that the courts would be better placed to determine this case by case, having regard to developments in the academic writings. If it is now suggested that this decision should be reviewed, that is a political matter, and probably a very delicate one, rather than a legal matter.

- As you have already observed, the horizontal clause of Article 52(2) of the Charter is clear: those rights which are already enshrined in the EC Treaty and were simply reproduced in the Charter, such as citizens' rights (right to vote, to petition, to movement, etc), are governed legally by the relevant provisions of the EC Treaty. Article 52(2) is therefore a conventional referral clause.
- Admittedly, it would have been possible to restate that each of the relevant rights in the Charter applies "subject to the conditions and limits" laid down by the EC Treaty; to tell the truth, one could even have added "and the provisions for their implementation". That goes without saying, and the point is basically an aesthetic one. I quite understand the authors of the Charter, who wanted to avoid tedious repetitions. Legally, it boils down to exactly the same thing if we say it once and for all in Article 52(2).

Moreover, it is the technique used by numerous catalogues of fundamental rights in our national constitutions: the simplicity of the statement comes at a price, which is that the reader does not immediately see the full extent of the rights, including their conditions and limitations, without referring to other provisions of primary law.

- Nor do I see any *legal* incompatibility between the Articles of the Charter and the rights conferred by the Treaty. I will take the most commonly cited example of the relationship between Article 21(1) of the Charter and Article 13 of the Treaty, both relating to non-discrimination but formulated in different ways. The fact is that these two provisions have a very different scope and purpose: Article 13 of the Treaty creates a legal basis for legislative "anti-discrimination" measures applying as between private individuals. Article 21(1) of the Charter contains a directly applicable ban on discrimination, comparable with Article 14 of the Convention and with Protocol No 12 to it, but binding only on the Union institutions and bodies (and, of course, the Member States when they implement Union law). It is therefore logical that the Charter set forth all the non-discrimination criteria registered in Article 14 of the European Convention in order to fully respect the *acquis*. It is also understandable that, in the hope of providing total protection, the Charter added the criteria of Article 13 of the Treaty that are not in the European Convention.<sup>13</sup>

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<sup>13</sup> See also J. Dutheil de la Rochère, *op cit.*, p. 15.



For example, the institutions are banned from discriminating on the basis of language (Article 21 of the Charter), as they are under the current law,<sup>14</sup> even though the Union has no power under Article 13 of the Treaty to legislate in these matters. It is difficult to see how this extremely simple situation could raise doubts as to the interpretation to be given to the legal basis of Article 13 of the EC Treaty.

- At the end of the day, I think it is very important for certainty as to the law to keep such a referral clause in Article 52(2), even if "full" incorporation of the Articles of the Charter in a new Basic Treaty (option "f") could entail a drafting change to make it clear to *which* legal text(s) the clause refers. The question whether or not the Charter, following incorporation into the Treaties, would have the same legal status as the Treaties is of no importance here as long as the "direction" of the referral is sufficiently clear.<sup>15</sup>

### **b) The Charter and the European Human Rights Convention**

- Here the picture is a little more complex, as several premises have to be reconciled by the Charter:
  - first, since the Convention is a minimum standard (see Article 53), the Charter was free, like any national Constitution, to formulate rights differently, to grant better protection, in particular because of the developments in society since 1950;
  - second, there was the concern to ensure harmonious development between the two European legal orders and their two Courts;

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<sup>14</sup> If it is accepted as a starting point that the Union institutions are already required by the case law of the Court of Justice to adhere to ECHR standards *de facto* as if it formed part of Union law, then the institutions could not practise language-based discrimination, for example, without violating Article 14 of the ECHR. This does not, of course, preclude differences in treatment which are "justified on objective grounds" for the purposes of the case-law of the Strasbourg Court, such as the organisation of a recruitment competition for officials of a specific language to meet a specific need.

<sup>15</sup> In relation both to Article 52(2) and to Article 51(2) of the Charter, the argument according that such referral clauses could not function if the Charter had a legal status equal to the Treaties (options "e" or "f") is erroneous. This point is illustrated by the fact that in the existing Treaties, there are already numerous referrals made by a part of the Treaties to others, even if all the Articles of the Treaties have identical legal status: thus, although Articles 21 and 194 and 195 of the EC Treaty on the right to petition and the right to refer a matter to the mediator are of identical legal status, it is clear that Article 21 is merely a referral clause and that the contents of the rights are actually defined by Articles 194 and 195.

- then, the importance of the principle of the autonomy of Community law;
  - and finally, the aim of reflecting and preserving in the Charter the "progress" already made in Community legislation and case law in relation to the standard of protection offered by the European Convention.
- The compromise found by the previous Convention met with a broad consensus and was also considered satisfactory by the representatives of the Council of Europe. This compromise is reflected in Article 52(3) of the Charter, which puts forward three principles:
    - first: the European Convention represents in any case a minimum standard which must be respected in the interpretation of all the Articles of the Charter;
    - second: those Articles of the Charter which were taken over from the Convention and therefore "correspond" to it have the same meaning and scope as in the European Convention. As the Explanations of the Presidium stress, the word "meaning" also naturally includes the limitations included in the various specific clauses of the Convention. Here again, out of a concern to avoid making the catalogue of rights difficult to read, the Charter preferred not to repeat all these individual clauses but to include them by reference in the horizontal clause of Article 52(3).<sup>16</sup> To me it is unthinkable that the Court of Justice might be misled on this point and deduce from the Charter, for example, that no limitation of the freedom of expression was possible in the interest of preventing crime or protecting the rights of others;
    - third: Union law can go further than the European Convention. It goes without saying for the legislature. But it also applies to certain rights of the Charter itself, which go beyond the standard of the Convention because Community law is already ahead of it. Examples include: the right to a fair trial (Article 47 Charter),<sup>17</sup> the double jeopardy rule (Article 50),<sup>18</sup> or Article

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<sup>16</sup> The fact that Article 15 of the ECHR, allowing derogations from rights in the event of war or of other public dangers threatening the life of the nation, does not appear in the Charter is not problematic. The Charter does not bind the Member States in their autonomous action, and the ECHR does not therefore limit their possibilities of using the Article 15 derogation. A corresponding clause in the Charter might be thought superfluous, because national defence in the event of war and the maintenance of law and order are the responsibility of the Member States, and the Union institutions, to which the Charter is primarily addressed, have no power to take such measures or to prevent the Member States from doing so (Article 297 of the EC Treaty).

<sup>17</sup> See the judgments of the Court of Justice in Case 222/84 *Johnston* [1986] ECR 1651, para 18 Case 222/86 *Heylens* [1987] ECR 4097, para 14 and C-97/91 *Borelli* [1992] ECR I-6313, para 14, which recognise the "right to a fair trial" whether the case is at civil law (Article 6 of the ECHR) or public law (as the opinion of Advocate General Ruiz-Jarobo Colomer stresses in Cases C-65 and 111/95 *The Queen v Secretary of State for the Home Department, ex parte Shingara and Radiom* [1997] ECR I-3343, para 75).

21 of the Charter, which combines the non-discrimination catalogues of both the Convention and Article 13 of the Treaty.

- Finally, the Presidium Explanations list the Charter rights which correspond, at the present time, to the European Convention. The Charter did not include this list in Article 52 itself, in order to avoid solidifying the situation and prejudging future developments in the Treaties, the secondary legislation and the case law. That seems reasonable to me; who, after all, wishes to anticipate the development of the European Convention and Union law 30 years hence?
- In light of all these elements, I really do not see how Article 52(3) could be repealed or how parts of it could be withdrawn or amended without calling into question the overall balanced solution that I have just described.

But then, of course, the question arises whether incorporating the Charter might lead to differences of case law between Strasbourg and Luxembourg: but it must be admitted that Luxembourg judgments, like judgments given by national constitutional courts, can already be contradicted by a judgment given in Strasbourg; historical instances already exist. On the other hand I know of no case where the Court of Justice disregarded an earlier judgment from Strasbourg. Having read Article 52(3) and the reference to the two Courts in the Preamble to the Charter, I think it unlikely that the Court of Justice will change its mind in the future, and the two Courts will feel that their cooperative approach has been upheld.

- Of course, Union accession to the Convention would be the ideal way of securing perfect consistency, because an applicant who felt that a Luxembourg judgment was not compatible with a Strasbourg decision could have the point checked directly; but that applies whether or not the Charter exists.

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<sup>18</sup> See the references to the Schengen Convention and other Conventions, *supra*.

### **c) The Charter and common constitutional traditions**

- You have also considered the status of the rights of the Charter which are not based on the Treaty or the European Convention but on the common constitutional traditions of the Member States: is the Charter sufficiently clear on those rights, bearing in mind that it contains no referral provision comparable with those concerning the Articles coming from the Treaty and from the European Convention?<sup>19</sup>
- Could we also imagine a clause referring to the "common constitutional traditions" in the horizontal clauses of the Charter?
- We could think about it. But this clause would not be easy to draft, since there is no single written text of reference for the "common constitutional traditions" but a variety of sources of inspiration. The Court of Justice has admittedly used these sources, but with a wide margin of discretion; it is illusory to believe that it could define these rights with an identical meaning and scope to those of the Constitutions of the 15, one day 27, Member States; if it tried to do so, all it could produce would be a rather mediocre lowest common denominator.
- One last point: the Court of Justice regularly refers not only to the European Human Rights Convention and the common constitutional traditions but also to other sources, and in particular to other international conventions such as the European Social Charter,<sup>20</sup> the UN International Covenant on Civil and Political Rights<sup>21</sup> and International Labour Organisation Conventions.<sup>22</sup> According to its traditional formula, it "*draws inspiration from ... the guidelines supplied by*

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<sup>19</sup> But note that Article 52(1) of the Charter contains a rule concerning *limitations* of fundamental rights which accurately restates the formula used in the case law of the Court of Justice. In particular, the requirement in Article 52(1) that "the meaning and scope of those rights" should always be respected is not a "Strasbourg import" but a longstanding feature of Luxembourg case law; cf., for recent confirmation, the judgment given on 13 April 2000 in Case C-292/97 *Karlsson* [2000] ECR I-2737, para 45 (judgment mentioned in the Presidium Explanations).

<sup>20</sup> Case 149/77 *Defrenne* [1978] ECR 1365, para 20; Case 24/86 *Blaizont* [1988] ECR 379, para 20.

<sup>21</sup> Among numerous examples, see Case 374/87 *Orkem* [1989] ECR 3283, para 18; C-249/96 *Grant* [1998] ECR I-621, paras. 43-47.

<sup>22</sup> Among numerous examples, Case 149/77 *Defrenne* [1978] ECR 1365, para 20; Case C-158/91 *Levy* [1993] ECR I-4287.

*international treaties for the protection of human rights on which the Member States have collaborated or to which they are signatories"* (Opinion 2/94, para. 33).

- What matters here is that the Court of Justice does not feel inhibited from seeking inspiration in such agreements solely because certain Member States expressed reservations against them. This is normal because its case law concerns only the fundamental rights to be respected in the application of Community law and therefore leaves intact the autonomous action of the Member States. The line of the Court of Justice is in addition without alternative, since certain Member States even expressed reservations with regard to the European Convention and its protocols; the Court of Justice never agreed to implement a version of the Convention "reduced" by the amount of all the national reservations made by all the Member States to this text, which would considerably reduce the protection offered by Community fundamental rights.
- The Charter proceeded in the same way as the Court of Justice: it was inspired for example by the Convention on the Rights of the Child or Article 2 of the Protocol to the European Convention on the Right to Education, despite the reservations entered by certain Member States against them. In taking over the rights of the European Convention, it certainly could not have incorporated all the national reservations expressed by each of the fifteen Member States with regard to each Article of the Convention. However, this means neither that the Charter incorporates all these instruments as they stand in Union law<sup>23</sup> nor that it impacts on existing national reservations; these preserve their current scope, which results from the autonomous action of the individual States.

##### **5. Summary: essential to keep the horizontal provisions**

- To summarise, I have set out to show that it is very important, not to say essential, to preserve the Charter's horizontal provisions, because they are central to its comprehension and its smooth incorporation into the primary legislation. And our experience at the Commission already shows us that without these clauses it would be difficult for us to explain to citizens who write to us why the Charter does not apply in their dispute with a national authority, or why it does not

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<sup>23</sup> The New York Convention on the rights of the child contains 46 Articles, but Article 24 of the Charter is merely inspired by it to formulate, in three short paragraphs, the few most fundamental elements on which there was a consensus in the "Charter" Convention, without making any reference to the New York Convention, which could have been interpreted as incorporating the Convention in the Charter without more. The same applies to the relationship between Article 3(2) of the Charter and the Oviedo Convention on human rights and biomedicine.

replace their own Constitution.<sup>24</sup> These clauses could in theory remain the same under any mode of incorporation of the Charter which preserved it as a technically separate instrument (i.e. reference or protocol). If the Articles of the Charter were incorporated in a new Treaty or the Union Treaty, minor drafting changes would be needed in Article 51(2) and (2).

## **6. Accession to the European Convention**

- Lastly, by way of codicil, I would like to add a few legal points on the subject of Union accession to the European Convention, without of course giving an opinion on the political question for or against accession.
- In my opinion, the principle of the autonomy of Community law is no legal obstacle to accession. The various arguments were well presented in CONV 116/02; in particular, review by the Strasbourg Court covers only respect for international law obligations, which the Court of Justice already admitted in Opinion 1/91 on the draft EEA agreement<sup>25</sup> (para 40: "The Community's competence in the field of international relations and its capacity to conclude international agreements necessarily entails the power to submit to the decisions of a court which is created by such an agreement as regards the interpretation and application of its provisions").
- Here I would like rather to stress the problems which arise currently from the fact that the Union is not involved in the Strasbourg system. The Member States are increasingly frequently held indirectly liable in Strasbourg in cases which really concern the Union institutions. The argument is that States could not, by transferring sovereign powers to Brussels, escape their obligations under the Convention.

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<sup>24</sup> It seems that it is especially for this kind of political and symbolic reasons that Article 53 of the Charter stresses that it neither limits nor affects human rights recognised, in their respective fields of application, by international conventions and the Member States' constitutions. At the same time, the formula "in their respective fields of application" in Article 53 of the Charter makes it possible to exclude any interpretation of this clause jeopardising the principle of the primacy of Community law, because it follows precisely from the case-law of the Court relating to this principle that provisions of national law which conflict with a provision of Community law (including the Charter incorporated in the Treaties) in a given case in point *cannot be applied*. See J.-P. Jacqué, in *Revue universelle des droits de l'homme*, 2000, No 1/2, p. 49.

- This reasoning is already recognised by the Strasbourg Court for provisions of primary law<sup>26</sup> and for the indirect control of Directives.<sup>27</sup> Currently, in *Senator Lines*, a case pending in Strasbourg, the 15 Member States are required to defend themselves against an application which concerns exclusively a Commission competition Decision upheld by the Court of Justice.<sup>28</sup> Admittedly the Member States, and the Commission as "third party"(!), pleaded that the application was inadmissible, but it is not certain that the Strasbourg Court will in future refrain from any form of review. In all these cases, it is problematic that the Strasbourg Court has to rule indirectly on Union measures without the Union being able to defend itself and without its legal system being represented by a judge in the Court.
- Finally, some have expressed concern that accession to the European Convention might create new Union powers as regards fundamental rights, as the EC or the Union would be a contracting party and could therefore take part in negotiations for amendments to the Convention. This question is easily settled: the status of contracting party to the Convention does not inevitably mean that the Union would acquire general power as regards fundamental rights, including for legislation at internal level. The aim of EC or Union accession being only to submit the institutions to the fundamental rights of the Convention and to external review by the Strasbourg Court, it is not obvious how a legal basis in the Treaty confined to this end would create such a general power. In any case, techniques to clarify that a legal basis in the Treaties allowing accession does not have this side-effect are easy to devise. An example might be a statement – similar to that made in the context of the Convention on the Law of the Sea – clarifying that the powers of the EC/EU are limited.
- In any case, straightforward EU/EC accession to the Convention appears by far preferable to the alternatives that have sometimes been put forward.<sup>29</sup> In particular, only accession by the EU/EC as a contracting party to the Convention would give it the same rights as the other parties to participate in the legal system in Strasbourg (in particular to elect a full-time rather than just an

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<sup>25</sup> [1991] ECR I-6079.

<sup>26</sup> See the judgment of the Strasbourg Court of 18.2.1999 in case 24833/94 *Matthews v The United Kingdom*, concerning the Act of 1976 concerning the elections to the European Parliament, from which Annex II excluded Gibraltar.

<sup>27</sup> See the judgment of the Strasbourg Court of 15.11.1996 in case 17862/91 *Cantoni v France*.

<sup>28</sup> Case 56672/00 *DSR Senator Lines v the 15 Member States*.

<sup>29</sup> Without being able to study the subject in greater detail here, it will be noted that the proposal to set up a procedure for reference or consultation of the Strasbourg Court of Justice by the Luxembourg Court is

ad hoc judge representing Community law, full rights of participation in procedures in the Court, participation in the Ministerial Committee when it supervises execution of judgments). This would reflect the fact that the Community (or the Union in future) has separate legal personality from the Member States and that it has developed its own legal order which must be represented in the judicial system of Strasbourg.<sup>30</sup> On the other hand, the hypothesis of a special status, with the EC/EU institutions subject to review by the Strasbourg Court without the Community or the Union acceding formally to the Convention as a contracting party, is questionable: would a such regime guarantee adequate representation and participation of the EU/EC in the Strasbourg system? And would it even be compatible with the nature of the review by the Strasbourg Court, which extends only to respect for international law obligations by the contracting parties?<sup>31</sup>

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problematic for a number of reasons, in particular because it would considerably delay the resolution of disputes.

<sup>30</sup> It should be noted that recommendations in the recent study by the Council of Europe Human Rights Steering Committee (see working 08 paper of Mr Vitorino) follow the same lines.

<sup>31</sup> Cf. Article 19 ECHR.



**THE EUROPEAN CONVENTION**

THE SECRETARIAT

**Brussels, 9 September 2002****(OR. EN)****CONV 244/02****WG II 9****AGENDA**

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for : meeting of the Working Group on Incorporation of the Charter/Accession to the ECHR  
on : Tuesday 17 September 2002

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**I. AGENDA**

1. Modalities and consequences of possible accession of the EC/EU to the ECHR  
- First debate (*see doc. CONV 116/02, part III*)
  2. Hearing of Mr. Marc Fischbach, Judge, European Court of Human Rights
  3. Modalities and consequences of possible incorporation of the Charter into the Treaties  
- examination of certain technical adjustments in the horizontal provisions of the Charter (continued)
  4. Hearing of Mr. Vassilios Skouris, Judge, European Court of Justice
  5. Any other business
- II. The meeting will take place at the CHAR building, room S4, rue de la Loi 170, 1040 Brussels, from 10:00 h to 18:30 h (with a break from 13:00 h to 14:30 h). Items 1 and 2 of the agenda will be taken up in the morning, and items 3 and 4 in the afternoon.
- III. The attention of Members is drawn to the fact that, as decided by the group, the meeting originally foreseen for 16 September is cancelled, and that, in addition to the meeting scheduled for 4 October, a supplementary meeting will be held on 7 October (all day). The final meeting of the group is scheduled for 21 October, 9:30 h to 13:00 h.
- IV. Members are kindly requested to communicate to the Secretariat ([amelia.fernandez-navarro@consilium.eu.int](mailto:amelia.fernandez-navarro@consilium.eu.int)) the name of the assisant who will accompany them to the meeting.

**THE EUROPEAN CONVENTION****Brussels, 13 September 2002**

THE SECRETARIAT

**SUMMARY OF CONCLUSIONS**

**Subject: Meeting of the Praesidium  
Brussels, 11 September 2002**

**I. POINTS SETTLED****1. Handling of the Plenary session of 12-13 September**

The President informed the Praesidium of the opening statement that he intended to make stressing that there are two parallel exercises, simplification of treaties and simplification of instruments and procedures, recalling the working method with the building blocks emerging from the Working Groups' reports, and confirming that the Praesidium would put forward at the end of October a first draft for a Treaty framework.

In this perspective and given the advanced stage of the work of the Amato Working Group on Legal Personality, it was agreed that Mr. Amato would give at this session an oral presentation, after the presentation by M. Mendez de Vigo of the likely report of his Working Group on Subsidiarity, and that both Working Groups' reports would be debated in the Plenary session on 3-4 October.

**2. Work programme and calendar for 2003**

The Praesidium approved the work programme for the Autumn as set out in Annex, Mrs Stuart having agreed that her Working Group on National Parliaments could complete its work on the new, accelerated timing. There would thus be two one-day Plenary debates on Working Group reports at each remaining session this year. The Praesidium however thought it best not to circulate the work programme to the Convention at this stage: the President would instead describe it, up to end October in his opening remarks.

The Praesidium approved the revised calendar for 2003, which was then circulated to the Convention (doc. CONV 262/02).

### **3. Working Groups**

#### **a) Composition**

The lists of members of the four new Working Groups were approved and then circulated to the Convention (see doc. CONV 243/02).

#### **b) “Final product” of Working Groups**

It was agreed that Working Groups should produce synthetic reports containing recommendations or options, as precise as possible, but should refrain from drafting Treaty articles, since, in order to ensure consistency, those should only be drafted by the Praesidium in the light of the outcome of Plenary debates on all the building blocks, as well as on the Treaty framework.

## **II. OUTSTANDING QUESTIONS**

### **4. Treaty simplification**

The Praesidium continued its discussion about Treaty simplification. It agreed to pursue this issue at its next meetings with a view to the establishment of its first draft of a Treaty framework. The meeting of 17 October would start at 9 a.m. and end around 2 p.m., and would be held at Val Duchesse.

◦  
◦ ◦

Next meeting will take place on 26 September at 15h00.

## AUTUMN PROGRAMME OF WORK

### *September 12-13 :*

- Simplification of Procedures and Instruments
- Oral presentation by Mendez de Vigo on Subsidiarity
- Oral presentation by Amato on Legal Personality

### *October 3-4 :*

- Debate on Legal Personality on the basis of working group report
- Debate on Subsidiarity on the basis of the working group report
- Oral presentation by Vitorino on the Charter
- Oral presentation by Ms Stuart on National Parliaments

### *October 28-29 :*

- Presentation by Praesidium of first outline Treaty framework
- Debate on the Charter on the basis of the working group report
- Debate on National Parliaments on the basis of the WG report
- Oral presentations by Christophersen on Complementary competences and Hänsch on Economic Governance

### *November 7-8 :*

- Debate on Complementary competences on the basis of the working group report
- Debate on Economic Governance on the basis of the working group report
- Oral presentation by Amato on Simplification of procedures and instruments
- Oral presentation by Bruton on Security and Justice

### *December 5-6 :*

- Debate on Security and Justice on the basis of the working group report
- Debate on Simplification of procedures and instruments on the basis of the working group report
- Oral presentation by Dehaene on External Action
- Oral presentation by Barnier on Defence

### *December 20-21 :*

- Debate on External Action on the basis of the working group report
- Debate on Defence on the basis of the working group report

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### Deadlines for Working Groups

|                    |                                                         |
|--------------------|---------------------------------------------------------|
| Working Group I    | Subsidiarity : September                                |
| Working Group II   | Charter : October                                       |
| Working Group III  | Legal personality: end September                        |
| Working Group IV   | National Parliaments: November                          |
| Working Group V    | Complementary competences : October                     |
| Working Group VI   | Economic Governance : October                           |
| Working Group VII  | External Action : early December                        |
| Working Group VIII | Defence : early December                                |
| Working Group IX   | Simplification of instruments and procedures : November |
| Working Group X    | Security and Justice : November                         |

**THE EUROPEAN CONVENTION**

THE SECRETARIAT

**Brussels, 18 September 2002 (19.09)  
(OR. fr)****CONV 163/02****WG II 3****NOTE**


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from : Secretariat  
to : Working Group on the Charter

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**Subject : Timetable of meetings**

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**Timetable of meetings – Working Group on the Charter****Chairman: António VITORINO**

| Date                | Time          | Place        |
|---------------------|---------------|--------------|
| 4 October (Friday)  | 14.30 – 18.30 | CHAR S4      |
| 7 October (Monday)  | 10.00 – 18.30 | CCAB Room 1D |
| 21 October (Monday) | 09.30 – 13.00 | CHAR S4      |

**Meeting rooms:**

CCAB: Centre Albert Borchette, rue Froissart 36

CHAR: Charlemagne building, rue de la Loi 170

**LA CONVENTION EUROPÉENNE**  
LE SECRÉTARIAT

Brussels, 27 September 2002

Working Group II

Working document 19

**"Working group II "Incorporation of the Charter/ accession to the ECHR"**

**du :** The Secretariat

**au :** Working Group II

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**Objet:** Hearing of Judge Mr. Vassilios Skouris - 17 September 2002

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The members of the Group will find attached speaking points of Judge V. Skouris for the hearing of 17 September 2002.

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## SPEAKING NOTE

of Judge Vassilios Skouris

Hearing of 17 September 2002

### INTRODUCTION

1. The Court of Justice attaches great importance to respect for fundamental rights within the Community legal order and follows the work of your Group with great interest. That is why I am happy to have an opportunity of answering your questions today.

2. However, I have to point out that, even though there have been some discussions within the Court on certain questions covered by your Group in its work, those discussions have not yet given rise to an official position on the part of the Court. Consequently my replies to your questions must be taken as representing my own views, not necessarily those of the Court.

3. In dealing with the written questions that have been submitted to me, I have decided to arrange them in the following three groups:

- a first group concerns the impact of the integration of the Charter of fundamental rights of the European Union into the (future) Treaty;

- a second group concerns the consequences if the EC (i.e. the EU) decides to accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) or, on the other hand, decides not to accede;

- a third group concerns a possible improvement in judicial protection so as to give full respect for fundamental rights within the Community legal order irrespective of the outcome of the discussions on integrating the Charter into the Treaty or whether the EU accedes to the ECHR.

## I. THE EFFECTS OF INTEGRATING THE CHARTER INTO THE (FUTURE) TREATY

The written questions in this area that have been submitted to me concern the following three points:

(a) the impact of the integration of the Charter into the Treaty on the allocation of powers between the EU and the Member States (Mr van der Linde, first part of the second question);

(b) the impact of the integration of the Charter on the current wording of Article 230. Should a right of action be provided for individuals (natural persons or NGOs) against a regulatory act that infringes a fundamental right? (Mr Ben Fayot, second question);

(c) the impact of the integration of the Charter on court rulings in the context of the third pillar in cases brought by individuals (Mr Ben Fayot, third question).

(a) I do not believe that the integration of the Charter into the Treaty will alter the allocation of powers between the EU and the Member States if an appropriate amendment is also introduced into the horizontal clauses in Articles 51(2) and 52 (2) of the Charter.

On this point I refer to the views put forward by Mr Vitorino in Working Document No 9 of 18 July 2002 (see Working Document No 9, 1-3 and 5-6).

(b) My observations on this point break down into the following two classes:

- regarding the law as it stands: the Court of Justice in its judgment of 25 July 2002 in Case C-50/00 P *Unión de Pequeños Agricultores* ruled that the current arrangements for judicial review of the lawfulness of the acts of the institutions are in accordance with the general principles of law, which include fundamental rights. However, it also indicated that, while it is admittedly possible to envisage a system of judicial review of the legality of Community measures different



from that established by the founding Treaty, it is for the legislature to introduce any reform of this nature;

-regarding the reforms that might be introduced: I have to observe that, as our legal cultures and traditions show, historically all recognition and embodiment of a substantive right has always been accompanied by a procedural counterpart, i.e. a remedy to protect that right. It is therefore reasonable to foresee that the integration of the Charter into the Treaty will produce the same effect and bring about a change in the current rules. The risk of increasing the number of cases brought before the Court cannot form a criterion for determining whether to change those rules. In any event this risk would exist even if the current rules were maintained despite the integration of the Charter into the Treaty. If individuals do not enjoy a direct right of action against acts of the Community, it is very likely that there will be a considerable increase in the number of references made for preliminary rulings on the validity of those acts.

I will now consider the approach we should take here.

It has often been suggested that a Community *Verfassungsbeschwerde* should be introduced. I do not feel this is the best solution. First, in practice it is difficult to draw a clear distinction between grounds of action relating to the protection of fundamental rights and other grounds of action for challenging the lawfulness of a Community act. Second, determining the court with jurisdiction to take cognisance of a Community *Verfassungsbeschwerde* would remain an issue. With any jurisdiction other than the Court of Justice, there would be reason to fear a conflict of jurisdiction. If the Court of Justice were to have jurisdiction, the introduction of a new remedy would complicate and lengthen the procedure before it.

Nor do I feel it is desirable to resolve this difficulty by granting individuals the right to challenge rules simply because there is no appropriate remedy at national level. As the Court of Justice has pointed out in its judgment in *Unión de Pequeños Agricultores*, at paragraph 43, a major stumbling block with that approach is that it requires the Court to be judge and interpreter of national procedural rules, which would go beyond its jurisdiction when reviewing the legality of Community measures.

Lastly, I would like to point out (and here I am replying more or less directly to the second question put by Mr Ben Fayot) that, if Article 230 were to be amended to allow individuals a direct right of action to challenge a Community rule, it would be impossible to restrict the initiation of actions

solely to cases where there has been an infringement of a fundamental right. This is so because, as I have already pointed out, the experience with Germany has shown that it is impossible in practice to distinguish the grounds for that action for annulment from the other grounds available under Article 230. It follows that any amendment to Article 230 would have to allow individuals a direct right of action before the Court of Justice to challenge a provision on all of the grounds made available in Article 230, obviously including the ground of infringement of a fundamental right.

(c) I can be relatively brief regarding the last point, the impact the integration of the Charter would have on the review by the Court of Justice of decisions adopted within the context of the third pillar. Although it is desirable that there should be uniform conditions for the Court in carrying out a judicial review of the acts of the institutions irrespective of the field in which they have been adopted, it is not appropriate for a Member of the Court to put forward suggestions to the constituent on this issue. In any event, it is difficult to accept that, if the Charter becomes binding law or if the EU accedes to the ECHR, it will be possible to maintain the restricted judicial review provided for within the context of the third pillar.

## II. THE CONSEQUENCES IF THE EU DECIDES TO ACCEDE TO THE ECHR OR OTHERWISE

The questions that have been put to me on this issue involve the following four points:

(a) the impact of an accession to the ECHR on the allocation of powers between the EU and the Member States (Mr van der Linden, first part of the second question);

(b) whether the accession would involve a conflict with the autonomy of Community law (Mr Vitorino, third question) and what its consequences would be for the current role of the Court of Justice (Mr van der Linden, first and third questions, Mr Ben Fayot, first question);

(c) whether a "functional accession" would create difficulties (Mr van der Linden, fourth question);

(d) whether a problem would be created by double standards of protection of fundamental rights if the EU did not accede to the ECHR (Mr van der Linden, fifth question).

(a) In keeping with what I have already said on the integration of the Charter into the Treaty, I do not think that the allocation of powers between the EU and the Member States will be affected if the EU accedes to the ECHR provided that the legal basis to be introduced into the Treaty is restricted solely to resolving the issue of the accession to the ECHR, for example by amending Article 303 of the EC Treaty.

(b) There will not in general be a conflict involving the autonomy of the Community legal order if the EU accedes to the ECHR. All the rules of Community law, with the exception of those of the ECHR, will continue to be adopted by the Community institutions and applied by the EU administration or the authorities of the Member States. Moreover, the application and interpretation of those rules will remain within the jurisdiction of the national courts and the Court of Justice, as is laid down in the Treaty as it stands. However, with respect to the matters covered by the ECHR, accession will represent a limitation to the autonomy of Community law. Regarding the Court of Justice in particular, it will effectively lose its sole right to deliver a final ruling on the legality of Community acts where a violation of a right guaranteed by the ECHR is at issue. In my view, there is nothing shocking in this: the position is the same when the constitutional courts or supreme courts of Member States test the constitutionality or legality of acts within their domestic legal systems.

Moreover, I do not feel that, as has been argued in some quarters, settling disputes involving the validity of a Community act for infringement of a fundamental right would allow the European Court of Human Rights to determine other issues of Community law, particularly those involving the allocation of powers between the Union and the Member States. In any case, technical solutions have been proposed (see CONV 116/02 of 18 June 2002, p. 22, footnote 2) to avoid such a situation, if fears exist that this might be the outcome (a mechanism allowing the EU to intervene on behalf of a Member State and vice versa, acting as joint defendant with joint and several liability, and a declaration to be lodged emphasising that only the EU and the Member States are entitled to determine the allocation of powers in accordance with their own internal procedures).

I should point out that the prospects of an external control, carried out by the European Court of Human Rights in cases where national and Community remedies have been exhausted, can only intensify the European Court of Justice's own control of fundamental rights. The risk of conflicts between decisions of the Court of Justice and of the European Court of Human Rights must not be over-estimated. The Court of Justice has always paid close attention to the decisions of the European Court of Human Rights and will naturally continue to do so; my view is that this makes

the risk very small. When new issues arise that are not covered by the case-law of the European Court of Human Rights, the Court of Justice will have to settle them appropriately itself.

For those reasons I think that if the EU becomes a party to the ECHR it will be unnecessary to determine the respective roles of the Court of Justice and of the European Court of Human Rights or to regulate relations between the two courts, even if the Charter becomes binding law. The suggestion that the Court of Justice should refer such cases to the European Court of Human Rights would involve an unreasonable complication and slow down the procedure for the former court, the more so if the reference to the European Court of Human Rights were made in the context of a reference for a preliminary ruling to the Court of Justice.

*(c)* The remarks I have made concerning a pure and simple accession to the ECHR also apply to the hypothesis of a "functional accession" as advocated by Mr Piris in his intervention in your Group (Working document No 13, p. 37).

*(d)* Lastly, if the EU does not become a party to the ECHR, it is impossible to exclude that a double standard of protection will develop as a result of the different, or even conflicting, rulings given by the Court of Justice and the European Court of Human Rights. Even though such an occurrence will be relatively rare because, as I have explained, the Court of Justice follows the rulings of the European Court of Human Rights closely, it is impossible to exclude it entirely given the absence of an external control by the Court of Strasbourg.

### III. IMPROVEMENT OF THE SYSTEM OF JUDICIAL PROTECTION

In this section I shall discuss the following two points:

*(a)* the approach of the Court of Justice to the constitutional traditions common to the Member States (Mr Vitorino, first question) and the issues that will arise if the Charter is integrated (amendment of Article 6(2) of the Treaty on European Union; introduction of a horizontal clause into the Charter for rights that are not based on the EC Treaty or the ECHR);

(b) the improvements that could be introduced into the judicial review to provide greater protection for fundamental rights in the context of the current three pillars of the European Union (Mr Vitorino, second question).

(a) According to the settled case-law of the Court of Justice, as most recently embodied in its judgment in Case C-50/00 P *Unión de Pequeños Agricultores* (paragraphs 38 and 39), fundamental rights form an integral part of the general principles of law that are upheld by the Court of Justice. In discerning those general principles of law, the Court is guided by the constitutional traditions that are common to the Member States. It should be borne in mind that common constitutional traditions do not form a direct source of Community law and the Court of Justice is not bound by them as such; they constitute a source of inspiration for it in discerning and defining the scope of the general principles of law that apply in the Community legal order. It follows that it is not the Court's duty to discern, and, as it were, mechanically transpose into the Community legal order, the lowest common denominator of constitutional traditions common to the Member States. The Court draws inspiration from those traditions in order to determine the level of protection appropriate within the Community legal order and for that very reason appreciates them more freely.

This approach has enabled the Court of Justice to provide a high level of protection for fundamental rights. It suffices to indicate at this point that, if the Court had determined to adopt the common denominator of the constitutional traditions common to all Member States, it could not have recognised and protected within the Community legal order the right to pursue a trade or business,<sup>1</sup> which, I understand, is recognised and protected only by the German Constitution.

However, the issue arises whether, if the Charter is integrated into the Treaty, it will still be necessary to refer to the common constitutional traditions and to the ECHR in order to discern the general principles of law, as is laid down in Article 6(2) of the Treaty on European Union.

My feeling is that, from the point when the EU develops a binding set of fundamental rights, it will no longer be necessary to refer to the general principles of law and consequently to the common constitutional traditions and the ECHR as a parallel or "concurrent and equivalent" source for fundamental rights; these will merely form a subsidiary and complementary source. Accordingly,

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<sup>1</sup> See Case C-280/93 *Germany v Council* [1994] ECR I-4973, paragraph 78 and Case C-200/96 *Metronome Musik* [1998] ECR I-1953, paragraph 21.

the Court of Justice would have recourse to the general principles of law only in order to make good any lacunae in the text of the Charter. In my view, a consequential amendment would have to be introduced into Article 6(2) of the Treaty on European Union.

*(b)* Regarding the improvements that might be desirable for the arrangements on judicial review for the full protection of legal protection of fundamental rights within the context of the current three pillars of the Union, I would refer, with regard to consideration of any amendment to Article 230, to the observations I have set out on this point in the first section of my talk.

In conclusion, I can only repeat my point that, although it is desirable to attain uniformity in the protection provided by the Court within the context of the current three pillars, it is not appropriate for a Member of the Court to put forward suggestions on this matter to the constituent .

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**THE EUROPEAN CONVENTION**

THE SECRETARIAT

**Brussels, 26 September 2002 (02.10)  
(OR. fr)****CONV 295/02****WG II 10****NOTE**

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|           |                                                                                             |
|-----------|---------------------------------------------------------------------------------------------|
| from :    | Secretariat                                                                                 |
| to :      | Working Group II                                                                            |
| Subject : | <b>Summary of the meeting held on 17.09.02 chaired by<br/>Commissioner António VITORINO</b> |

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The fourth meeting of Working Group II (Charter/ECHR) was held on 17 September 2002 between 10.00 and 13.00 and between 14.30 and 18.30, and was chaired by Commissioner António Vitorino.

- I. Modalities and consequences of possible accession by the EC/EU to the ECHR  
– First debate (*see CONV 116/02, Part III*)

All speakers expressed their support for accession by the European Union (given the Convention's general approach of enshrining a single legal personality for the Union) to the European Convention on Human Rights (ECHR) or, at the very least, emphasised the arguments in favour of such an accession. In particular, it was said that accession would guarantee citizens the same degree of protection of fundamental rights as they enjoy already vis-à-vis Member States, that the arguments for accession could be even stronger in the case of a binding Charter, as it would help to ensure the harmonious development of the case-law of the two European Courts, and that it would serve as a link between the "core" and the "wider" Europe by preserving the political importance of the Council of Europe in this area.

A majority of speakers stressed the fact that accession to the ECHR should not be an alternative to incorporation of the Charter into the Treaties, but rather a complementary step, adding to the protection afforded by the Charter and the Court of Justice, with the external control provided by the European Court. The situation would then be similar to that of the law of all the Member States, which guarantee fundamental rights on the one hand by their Constitutions, and which have subscribed, on the other, to the international minimum standard set by the ECHR.

Two matters which require particular attention in this respect were, however, raised. On the one hand, several members emphasised that accession to the ECHR should not lead to an extension in Union competence in the area of human rights. In this respect, a number of speakers were satisfied that a legal basis in the Treaty confined to authorising the Union to accede to the ECHR could not have this effect; others felt that thought should in any case be given to technical solutions to rule out such an effect entirely. On the other hand, it was emphasised that accession should be without prejudice to national positions arising from the fact that certain Member States had not ratified all the Protocols annexed to the ECHR or had entered reservations on it.

At the end of the general discussion (which continued after the hearing of Mr Fischbach – see below – at the beginning of the afternoon), the Chairman concluded by pointing out the need to see the several layers to the issue: the Convention's task would be confined to examining the incorporation into the Treaty of a constitutional authorisation for the Union to accede to the ECHR. At this stage, it should be clarified that that would not lead to an extension of competence. Furthermore, there was a need to ensure compatibility between accession and incorporation of the Charter as a binding text; for that purpose, it seemed necessary to maintain Article 52(3) in the Charter. However, the question of to which Additional Protocols to the ECHR the Union should accede and what possible reservations it would enter upon accession to the ECHR, would not be of a constitutional nature and should not be addressed by the Convention; it would instead be the Council which could take a decision by unanimity at the appropriate time on the basis of the authorisation. The national reservations entered by Member States would in any case remain intact in the event of accession, as they concerned the implementation of national law, while the effect of accession was confined to the field of Union law.



In this context, the Chairman was sceptical with regard to the "functional accession" model, which was mentioned by a Group member but rejected by others (such a model would involve the negotiation, between Member States and the States of the Council of Europe, of special protocols to the ECHR and to the EC/EU Treaty under which the Union institutions would be subject to control by the European Court without the EC/EU itself acceding to the ECHR with its own legal personality (see explanation in CONV 116/02, pp. 25 and 26). The Chairman emphasised that he saw no advantage in the model, which was not envisaged by the Member States' legal experts meeting in the Council of Europe's CDDH (Steering Committee for Human Rights). Such a model instead presented disadvantages, as highlighted by Judge Fischbach, resulting in particular from the Union's absence from the Strasbourg system.

## 2. Hearing of Mr March Fischbach, Judge, European Court of Human Rights

The Group heard Mr Marc Fischbach, Judge at the European Court of Human Rights, who spoke in a personal capacity. In response to questions put by Group members, Mr Fischbach made, *inter alia*, the following comments:

Mr Fischbach felt that EC/EU accession to the ECHR would not affect the autonomy of Union law. The European Court's remit was confined to giving rulings on compliance with obligations arising from the ECHR. The Court did not interpret the national law of the contracting States; neither, therefore, would it intervene in the interpretation of Union law, for which the Court of Justice would remain the supreme arbiter. As for acts of contracting States, in the event of infringement of the ECHR, the Court would neither have the competence to annul Union acts, nor to prescribe or suggest specific measures to remedy the infringement observed, as the choice of remedy should only be for the institutions of the Union. Furthermore, in accordance with the subsidiarity principle, the European Court took care, in the application of the ECHR to specific cases, to leave Contracting Parties appropriate leeway, which would also enable them to take into account the specific nature of Union law.

The relationship between the European Court of Human Rights and the Court of Justice of the EC could not therefore in the case of accession be qualified in terms of a "hierarchy" between the two European Courts, as each of the two Courts would only give rulings within its own jurisdiction, without impinging on that of the other; the European Court would simply act as a more specialised jurisdiction exercising additional external control only with regard to compliance with the ECHR. Its role would leave the authority and importance of the Court of Justice fully intact, just as it did not reduce those of the national constitutional and supreme courts, which were very respectful of fundamental rights and were also free to exceed the minimum standard set by the ECHR.

Mr Fischbach believed that Union accession to the ECHR, which would enable the Court of Justice to apply the ECHR directly, could also reinforce the Court of Justice's role in developing the protection of fundamental rights in Europe and lead to increased influence for the Court over the case-law of the European Court of Human Rights.

While it seemed important to define the role of the Court of Justice in a future constitutional treaty of the Union, Mr Fischbach saw no reason, even in the case of accession to the ECHR, to reserve an express place for the European Court in the treaty, since the European Court is an institution outside Union law.

Mr Fischbach was satisfied with the current wording of Article 52(3) of the Charter and emphasised the importance of the wording, on the basis of which the Council of Europe observers were able to express their satisfaction with the text of the Charter in the previous Convention. He confirmed his view that the legal principles arising from this clause were sufficiently clear. Implementation would not for all that be without some difficulties, but these were inherent in any effort to ensure harmonious development of the case-law of the two Courts and therefore existed before the Charter. They could, however, increase further with the gradual extension of Union competence to areas which were especially sensitive in terms of fundamental rights, particularly under the third pillar. In

the face of such difficulties, which could arise now, in particular when the Court of Justice had to give a ruling before European Court case-law was formed on a particular matter, Union accession to the ECHR would work as a "safety net", making it possible to minimise possible case-law discrepancies and correct the effects. This solution seemed all the more advisable since incorporation of the Charter into the Treaties would mean that the number of cases brought before the Court of Justice and affecting fundamental rights was likely to increase following accession, as would the number of cases brought before the European Court. Mr Fischbach felt, however, that this increase, and the practical difficulties it could create, should not make us lose sight of the fact that they were merely the consequence of strengthened protection of fundamental rights. This strengthening would – because it took place under external control – help lend greater credibility to the Union system.

Mr Fischbach believed that Union accession to the ECHR would not in any way alter the allocation of competence between the Union and its Member States. Considering the competences to be a fact, the Strasbourg system would accept that allocation as it stood, as an internal matter for the Union and its Member States; the European Court would not intervene, as it was exclusively a matter of Union law. To resolve specific cases brought before the European Court and in which it was not certain whether the Union or one of its Member States was responsible for an alleged infringement of the ECHR, Mr Fischbach referred to a "co-defender" mechanism developed by the Council of Europe's Steering Committee for Human Rights (CDDH) (see working document No 8 by Mr Vitorino). By virtue of this mechanism, a defendant Member State would be able to invite the Union to join the proceedings as "co-defendant" if it felt that the case involved the Union's responsibility, and *vice versa*. In the case of infringement of the ECHR, the European Court's ruling would be given in respect of the two defendants taken together, without ruling on the allocation of responsibility between the two. Similarly, when complying with the judgment, it would be for the Union and the Member States alone to determine the allocation of responsibility between the Union and the defendant State.

Mr Fischbach had reservations concerning suggestions to introduce a referral or consultation procedure between the European Court and the Court of Justice, either in the case of accession or as an alternative to it. Among the disadvantages of such approaches, he mentioned in particular the considerable extension of deadlines for rulings in pending cases and the resulting imbalance which would be created between the Union and Member States, where supreme courts were not able to consult the European Court. Mr Fischbach also confirmed that informal information meetings were also held regularly between the European Court and the Court of Justice, but that he felt it was neither necessary nor appropriate to introduce consultation between the Courts with the aim of enabling the two Courts to agree on or influence each other on the rulings to be given on pending cases.

Mr Fischbach was asked about the suggestion to consider a "functional" accession (i.e. the negotiation, between the Member States and the States of the Council of Europe, of special protocols to the ECHR and to the EC/EU Treaty under which the Union institutions would be subject to control by the European Court *without the EC/EU itself acceding to the ECHR with its own legal personality*). He was unsure as to the advantages of the idea, feeling that it would be the source of disadvantages and complications, since it seemed so difficult to reconcile with the principles governing the Strasbourg system, particularly that of the collective guarantee. If the Union as such were not part of the system, there would be no Court judge elected on behalf of the Union and as a "representative" of Union law. However, in the Convention system, the presence of a "national" judge was essential, as it provided Court proceedings with expertise in the law challenged by the action. Such expertise was all the more crucial in the case of Union accession, in view of the specific nature of Community/Union law and the need to ensure harmonious development of this law with the ECHR. The absence in the Court of a judge elected on behalf of the Union could, therefore, cause a problem with regard to the authority and legitimacy of rulings against the Union. By the same token, in the case of "functional" accession, there would be no Union representation in the Committee of Ministers when it monitored compliance with rulings, even though such representation was necessary in order to exercise this function and, in the particular case of the Union, should also serve to inform the Committee on the Union's limited competences (see previous point).

3. Incorporation of the Charter into the Treaties:

– examination of certain technical adjustments to the horizontal provisions of the Charter

With regard to possible adjustments to Article 51(1) and (2), a consensus emerged in favour of recommending slight adjustments along the lines given in working document No 14 by Mr MacCormick and in the hearing of Mr Piris (see document No 13), in order to clarify beyond the slightest doubt that a Charter incorporated into the Treaties would not alter the allocation of competences between the Union and Member States.

By the same token, there was a consensus to keep a referral clause governing all Charter rights taken from the EC Treaty. The definitive wording of the referral clause, currently found in Article 52(2) of the Charter, could not be determined at this stage as it would depend on the architecture of the constitutional treaty to be drawn up by the Convention.

With regard to Article 52(3) of the Charter, it was requested that the meaning to be given to this provision and in particular the relationship between the first and second sentences be clarified in the final report. In this respect, some members of the Group, as well as the Chairman in his conclusion, indicated that if, in accordance with Article 52(3) of the Charter, the meaning and scope of the rights of the Charter corresponding to the rights of the ECHR were the same as those provided for in the Convention, the addition of the second sentence of Article 52(3) of the Charter was necessary to clarify that this Article did not prevent higher protection being afforded by Union legislation, as well as by the provisions of the Charter, which, although based on the ECHR, went further than it because the Union *acquis* was already an improvement on the ECHR (examples: Articles 47 and 50 of the Charter).

Lastly, it was requested that the Group seek to formulate an additional clause in Article 52 of the Charter which was currently lacking and which would govern those Articles of the Charter not taken from the Treaties or from the ECHR. It was thought that such a clause could be based on Court of Justice case-law relating to the constitutional traditions of Member States and also accentuate the distinction made in the Charter between rights and principles.

While, in response to that request, some members were generally prepared to examine ways of finding a formula concerning the relationship between the Charter and the constitutional traditions common to the Member States, a number of other speakers were not convinced of the existence of a lacuna in the horizontal provisions, pointing out in particular that the Charter was clearer than the source of constitutional traditions could ever be, that a referral clause would not be possible since there was no reference text, other than the Charter, which would summarise common constitutional traditions, and that it would be inadmissible to wish to change the meaning of the Charter by inserting an additional horizontal clause. The Chairman, concluding on this point, was open to seeking a solution. He stressed, however, that there was no room for conflict with the current practice of the Court, described by Judge Skouris, of basing itself freely on common constitutional traditions by rejecting the approach of the lowest common denominator. He added that it was also necessary to bear in mind fundamental rights based on other sources such as other legal instruments and that, while the difference between rights and principles was well established in the Charter, the previous Convention had decided not to stipulate in detail the legal consequences of the distinction but rather to leave it to case-law.

Some members requested that the Group's report also give a position on the usefulness of emphasising the importance of the explanations of the Praesidium in relation to the text of the Charter when it was incorporated.

#### 4. Hearing of Mr Vassilios Skouris, Judge, Court of Justice of the EC

In his introductory presentation (see working document No 19) and in response to the questions put by the members of the Group, Mr Skouris – who spoke in a personal capacity, explaining that the Court had held some discussions on the matters concerning the Group but that no official position had yet been adopted – made, inter alia, the following comments:

Mr Skouris felt that incorporation of the Charter could not alter the allocation of competences between the Union and the Member States if care were taken to adjust properly the horizontal clauses of Articles 51(2) and 52(2) of the Charter as proposed in the Group.

Mr Skouris said that *de lege lata* the Court had recently ruled that the current system of appeals procedures for scrutinising the legality of acts of the institutions complied with the general principles of law. He added that *de lege ferenda* a modification of the current system could be envisaged. Judge Skouris felt that the establishment of a Community "Verfassungsbeschwerde" (special constitutional appeal) would not be the most suitable solution; neither would it be desirable to allow individuals to challenge a regulatory act only when there was no appropriate appeals procedure at national level. If an amendment were to be considered, it would be in Article 230(4) TEC, the strictness of which had been criticised, rather than in Article 234 TEC, as the preliminary referral procedure was working satisfactorily. Judge Skouris also specified that while the European Ombudsman fulfilled an extremely respected role, he was not a judicial body and could hardly therefore take on a role of "filtering" by submitting individual cases to the Court of Justice. Lastly, Mr Skouris considered it desirable that the conditions for Court control be uniform with regard to acts of the institutions, irrespective of the subject concerned, and that it would not be easy to accept that, in the case of either a binding Charter or accession to the ECHR, the restricted judicial control provided for under the third pillar be maintained, while emphasising that it was not for him as a judge to give the constituent authority suggestions on the matter.

Mr Skouris confirmed that accession to the ECHR did not, generally speaking, conflict with the autonomy of Community law. It would come as no shock to him if, following accession, the Court of Justice lost its monopoly over ruling on infringement of the ECHR by a Community act. Mr Skouris regarded the interpretation sometimes given of Court Opinion No 2/94 as a misunderstanding; in reality, the Court would have no problem with the external control which accession to the ECHR would establish.

Mr Skouris did not believe that EC/EU accession to the ECHR would affect the allocation of competences between the EC/EU and its Member States if the legal basis established for that purpose was confined to governing only the problem of accession. He felt that the Strasbourg Court would not, following accession, be asked to rule on other matters of Community law such as those affecting the allocation of competences; he referred to the technical solutions proposed to avoid such a situation.

Mr Skouris considered it necessary not to overestimate the risk of possible contradiction between the decisions of the two European Courts, given that the Court of Justice had always been, and would continue to be, very watchful of the Strasbourg Court's case-law. For that reason, Mr Skouris would not advocate setting out the respective roles of the two Courts in the treaty nor regulating the relations between them, even in the case of incorporation of the Charter; in this connection, Mr Skouris was opposed to introducing a referral by the Court of Justice to the Strasbourg Court, as it would make the procedure before the Court disproportionately complicated and cumbersome.

Mr Skouris confirmed that the Court based itself on the constitutional traditions common to the Member States in order to identify the general principles of law with regard to fundamental rights. He emphasised that common constitutional traditions did not constitute a direct source of Community law and so did not bind the Court as such; they were more a source of inspiration. It was not, therefore, a question of the Court identifying and mechanically transposing the lowest common denominator of the constitutional traditions common to the Member States into Community law, but rather of it drawing inspiration from them in a broader sense to establish the level of protection appropriate to the Community's legal order. In the case of incorporation of the Charter, Mr Skouris felt that there should no longer be recourse to general principles, and consequently the common constitutional traditions, as a "concurrent and equivalent" source of fundamental rights, but rather purely as a subsidiary and complementary source, enabling the Court to use it solely for the purposes of making good any lacunae in the text of the Charter.

Mr Skouris felt that Article 52(3) of the Charter, incorporated into the Treaty, would confirm the current Court of Justice practice of following the interpretation given to the ECHR by the European Court of Human Rights, and should not lead to a change in that satisfactory practice of the Court of Justice. With regard to Article 52(2) of the Charter, Mr Skouris believed that it identified the principle according to which rights already enshrined in the EC Treaty and taken up by the Charter would be governed by the EC Treaty as *lex specialis* and that existing case-law concerning those rights would remain in force. When questioned in general terms about whether the Charter was clearly enough worded, Mr Skouris replied that while there was always room for improvement, he could live with the current text of the Charter and that, while the current situation would undoubtedly give the Court of Justice greater freedom, he personally would feel more comfortable working with a written regulatory framework of fundamental rights as provided by the Charter.



**THE EUROPEAN CONVENTION****Brussels, 30 September 2002**

THE SECRETARIAT

**CONV 306/02****WG II 11****AGENDA**

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from: The Secretariat

for: Working Group II

Subject: Agenda for the meeting on 4 October 2002 14h30 - 18h30

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**I AGENDA****1. Effective judicial remedies and access of individuals to the European Court of Justice**

*see document CONV 116/02, Section II 6 (pp. 13 - 17), and a Working Document by the Chairman, to be distributed*

**2. (if time permits): Modalities and consequences of possible accession of the EC / EU to the ECHR**

- in particular: Consequences of possible accession for the system of allocation of competences between the EC/EU and the Member States
- any remaining questions

*see document CONV 116/02, Section III, in particular III 4 (pages 22 - 23)*

**3. Any other business****II. Members are kindly requested to communicate to the Secretariat ([amelia.fernandez-navarro@consilium.eu.int](mailto:amelia.fernandez-navarro@consilium.eu.int)) the name of the assisant who will accompany them to the meeting.**

**THE EUROPEAN CONVENTION****Brussels, 1 October 2002**

THE SECRETARIAT

**CONV 309/02****WG II 12****AGENDA**

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from: The Secretariat  
for: Working Group II

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Subject: Agenda for the meeting meeting on 7 October 2002 10h00 to 18h30

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**I AGENDA**

1. *(unless treated on 4th October)*: Modalities and consequences of possible accession of the EC / EU to the ECHR
  - in particular: Consequences of possible accession for the system of allocation of competences between the EC/EU and the Member States
  - any remaining questions*see document CONV 116/02, Section III, in particular III 4 (pages 22 - 23)*
2. Modalities and consequences of possible incorporation of the Charter into the Treaties
  - examination of certain technical adjustments in the horizontal provisions of the Charter (continued)
  - the question of current Article 6 § 2 of the EU Treaty  
*(see, on the latter, document CONV 116/02, Section II 2 (pages 9 - 10))*
  - any remaining questions
3. Possible elements of the Group's final report
4. Any other business

II. Members are kindly requested to communicate to the Secretariat ([amelia.fernandez-navarro@consilium.eu.int](mailto:amelia.fernandez-navarro@consilium.eu.int)) the name of the assisant who will accompany them to the meeting.

III. Members are reminded of the meeting of the "Contact Group Human Rights" with non Gouvernamental Organisations on 8 October 9.00-12.00, CCAB-1D, at which occasion Mr. Victorino would welcome their presence.

**THE EUROPEAN CONVENTION****Brussels, 16 October 20021**

THE SECRETARIAT

**CONV 348/02****WG II 13****AGENDA**

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from: The Secretariat

for: Working Group II

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**Subject:** Agenda for the meeting on 21 October 2002 9h30 to 13h00

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**I AGENDA**

1. Adoption of the Group's final report

*(see WD 25 of the Chairman)*

2. Any other business

II. The meeting will take place at the CHAR building, room S4, rue de la Loi 170, 1040 Brussels, from 9:30 h to 13:00 h.

III. Members are kindly requested to communicate to the Secretariat ([amelia.fernandez-navarro@consilium.eu.int](mailto:amelia.fernandez-navarro@consilium.eu.int)) the name of the assisant who will accompany them to the meeting.

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**THE EUROPEAN CONVENTION**

THE SECRETARIAT

**Brussels, 17 October 2002 (21.10)**  
**(OR. fr)****CONV 350/02****WG II 14****NOTE**

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|           |                                                                                                  |
|-----------|--------------------------------------------------------------------------------------------------|
| from :    | Secretariat                                                                                      |
| to :      | Working Group II                                                                                 |
| Subject : | Summary of the meeting held on Friday 4 October 2002 chaired by<br>Commissioner Antonio VITORINO |

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The fifth meeting of Working Group II (Charter/ECHR) was held on 4 October 2002 between 14.30 and 17.30 under the chairmanship of Commissioner Antonio Vitorino.

1. Effective judicial remedies and access to the Court of Justice of the European Communities for individuals

The Chairman drew the Group's attention to working document No 21, which summarised the question of judicial remedies and access to the Court of Justice for individuals on the basis of a number of proposals by members of the Working Group and other members of the Convention, in the context of the fundamental right to effective judicial protection. He pointed out that although the subject was linked to the general topic of fundamental rights, it was a separate issue from incorporation of the Charter into the Treaties or Union accession to the ECHR.

First of all the Group heard a presentation by the European Ombudsman, Mr Jacob Söderman, a Convention Observer, on his proposals for articles on remedies (judicial and other) for inclusion in the constitutional treaty (see CONV 221/02 CONTRIB 76). Mr Söderman suggested, amongst other things, that the treaty should place a duty on Member States – such as that which the Court of Justice had already deduced from Article 10 TEC – to ensure that their national courts provided effective protection for rights guaranteed by Union law. In addition, he proposed that the Ombudsman be empowered to bring proceedings concerning fundamental rights in the Court of Justice, and that a legal basis be established for harmonising common European principles of administrative law.

The Group's discussions focussed on the three options set out in the Chairman's working document No 21.

The vast majority of speakers were against creating a new judicial procedure specially for the protection of fundamental rights (along the lines of the "Verfassungsbeschwerde" or the "recurso de amparo", option "A" in working document No 21). It was pointed out that if the Charter were incorporated into the constitutional treaty, the legal remedies currently offered by the Union system through the fourth paragraph of Article 230 and through Article 234 TEC would also become available to Union citizens in respect of their rights under the Charter, which would be of great benefit in the protection of fundamental rights.

Some members commented that there were gaps in judicial protection, resulting in particular from the condition laid down in the fourth paragraph of Article 230 TEC that the disputed act had to be not only of direct but also individual concern to the applicant. These members therefore proposed limited redrafting of the fourth paragraph of Article 230 TEC in order to rectify these omissions (option "B" in working document No 21). Criticism was also levelled at the limitations on the jurisdiction of the Court of Justice in the current "3rd pillar" and the lack of protection against the acts of Union bodies such as Europol.

There were on the other hand a number of speakers who, while not denying that the current system did have a few shortcomings, were generally satisfied with the way it was working and warned against any major overhaul, in particular of the current "division of labour"

between national and Community courts. In particular, major changes might mean a substantially increased caseload for the Court of Justice, which would probably lead to longer procedural delays and thus prejudice the effective protection of citizens' rights. In a spirit of subsidiarity, some speakers expressed interest in the possibility that the Treaty might place a duty on Member States to provide effective legal remedies at national level in defence of rights guaranteed by Union law (option "C" in document No 21).

In conclusion, the Chairman felt that the question of revision of the fourth paragraph of Article 230 TEC and its institutional implications needed to be considered at the same time as other issues such as the limits on the Court's jurisdiction in matters affecting justice and home affairs or judicial review of subsidiarity. The Chairman's view was that the Group should not make any specific recommendations but should draw the Convention's attention to the issue and to the various contributions which members had made, for consideration in an appropriate context.

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**THE EUROPEAN CONVENTION**

THE SECRETARIAT

**Brussels, 17 October 2002 (22.10)  
(OR. fr)****CONV 351/02****WG II 15****NOTE**

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|           |                                                                                          |
|-----------|------------------------------------------------------------------------------------------|
| from :    | Secretariat                                                                              |
| to :      | Working Group II                                                                         |
| Subject : | Summary of the meeting on Monday 7 October 2002 chaired by Commissioner Antonio VITORINO |

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The sixth meeting of Working Group II (Charter/ECHR) was held on 7 October 2002 between 10.00 and 16.30, and was chaired by Commissioner Antonio Vitorino.

1. Modalities and consequences of possible accession by the EC/EU to the ECHR

The Chairman introduced this item by stating that his draft of the Group's report would follow the lines given in his oral statement to the plenary on 3 October. In particular, he proposed underscoring in the report the following two points:

- Accession to the ECHR would not result in any change to the allocation of competences between the Union and the Member States. The Group might recommend the use of certain tools to ensure this result, such as the insertion of clarification along these lines in the legal basis authorising accession and a provision or declaration on the limited competences of the Union to be included in the accession treaty. The result would be that the "scope" of accession would be confined to the sphere of the Union's current competences, and that any "positive obligations" could stem from the ECHR only within those limits.

- Accession would not affect Member States' national positions within the Strasbourg system. This would be guaranteed by a "step", whereby the Convention would discuss only the constitutional authorisation for accession, while leaving it to the Council, acting unanimously, to decide on the modalities of accession, on the moment in time for acceding to additional protocols and on any reservations by the Union. Reservations by Member States would continue to be unaffected by the Union's accession, as the latter would take effect only within the framework of Union law.

The Group expressed its agreement with the approach outlined by the Chairman.

2. Modalities and consequences of possible incorporation of the Charter into the Treaties

– examination of certain technical adjustments to the horizontal provisions of the Charter

The Chairman submitted to the Group his compromise proposals (see WD 23) concerning technical adjustments to the horizontal articles (Articles 51 and 52) of the Charter, on the assumption that the Charter would be incorporated as a binding text.

A large majority of speakers congratulated the Chairman on his compromise proposals. These speakers noted the great clarity and precision of the technical adjustments proposed, which would be such as to remove the legal ambiguities of the Charter hitherto criticised by some. At the same time, they pointed out that these adjustments would involve no change to the substance of the Charter. Several members pointed out that it would be much easier for them on this basis to convince their respective national governments and parliaments about incorporation of the Charter into the Treaties. Some members stressed that, from the viewpoint of the candidate countries which had not participated in the previous Convention, the proposed amendments would be of great assistance to those countries' national courts for future interpretation of the provisions of the Charter, should the latter become legally binding.

One member of the Group was opposed to the adjustments proposed by the Chairman, on the grounds that they would not respect the working method approved by the Group not to touch the text of the Charter, that they would not really add any useful legal points and that some of the clauses proposed, notably rules of interpretation, would not have their place in a constitutional text. The Chairman pointed out here that the examination of technical amendments to the horizontal provisions of the Charter had been understood from the outset as indeed being included in the Group's mandate.



Following some drafting work, based in particular on certain proposals for amendments made by one member, the members of the Group attending the meeting, with the exception of one member who upheld a reservation, agreed on a slightly amended version of the drafting adjustments to Articles 51 and 52 of the Charter as well as on some explanations of those adjustments to be included in the report. These adjustments would be recommended to the plenary in the form of an Annex to the Group's report.

The members of the Group also agreed that the explanations given in the Group's report concerning these adjustments should be added to the "Explanations" of the Praesidium of the previous Convention in order to have available "preparatory work" for the Charter as a whole.

– *The question of Article 6(2) of the EU Treaty in its present version*

Most of the speakers emphasised that at this stage, before having further details of the future structure of the Treaty, it was premature to give a final assessment of whether or not it was useful to retain the references to the two sources of inspiration as currently made in Article 6(2) TEU. The discussion showed that opinions, as already voiced at the Group's second meeting (see CONV 203/02 WG II 07), differed over this matter. The Group decided to refrain from making concrete recommendations on this matter, but to point this out to the plenary, which should discuss the matter together with the concrete form of incorporating the Charter.

3. Possible points for the Group's draft final report

The Chairman gave a detailed oral presentation of the points which he intended to include in his final report. The Group held a discussion during which members expressed their agreement to the inclusion of the points, provided some clarification of them and raised further points to be added to the report.

It was agreed that the Chairman would circulate his draft report to the Group by 16 October at the latest (but would do his best to do so by 15 October), and that members could forward their written reactions until 17 October. On the basis of those reactions, the Chairman would revise his draft and submit it for adoption at the meeting on 21 October.

**THE EUROPEAN CONVENTION****Brussels, 23 October 2002**

THE SECRETARIAT

**CONV 360/02****WG II 17****NOTE**

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|          |                                                |
|----------|------------------------------------------------|
| from:    | The Secretariat                                |
| to:      | Working Group                                  |
| Subject: | Summary of the meeting held on 21 October 2002 |

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The seventh and last meeting of the working group II (Charter/ECHR) was held on the 21<sup>st</sup> of October 2002 between 09h30 and 12h30 under the chairmanship of Commissioner Antonio Vitorino.

I. Adoption of the Group's final report

The Chairman introduced the subject by giving an overview of members' written reactions to the draft report distributed to the members of the group on the 14<sup>th</sup> of October (working document n°26).

The Chairman expressed his gratitude to the members for their support expressed by most of them as well as for their spirit of cooperation that allowed working in the perspective of a highly consensual report. The Chairman then presented a revised version of the report drawn up in order to take account of the written observations made by several members .

After thorough discussion all the members of the group agreed on the final version of the report (CONV 354/02) to be presented to the Plenary session of the European Convention in view of its next meeting on the 28-29 October 2002.

The Chairman reiterated his thanks to the members of the group, as well as to the secretariat, for their hard work and involvement in fulfilling the group's mandate.

**THE EUROPEAN CONVENTION**

THE SECRETARIAT

**Brussels, 31 October 2002 (05.11)  
(OR. en,fr)****CONV 378/02****NOTE**

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Subject : **Summary report of the plenary session  
– Brussels, 28 and 29 October 2002<sup>1</sup>**

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**I. OPENING OF THE SESSION****1. Presentation of the preliminary draft of the Constitutional Treaty by the Chairman**

The Chairman presented the draft structure of the future Treaty drawn up by the Praesidium. He emphasised that this was a draft of a Constitutional Treaty, thus reflecting the wish of well-nigh the entire Convention. The approach adopted was based on the broad consensus which emerged during the debate at the last plenary in favour of the principle of a single legal personality, which paved the way for merger of the Treaties on the European Community and on the European Union. This single text would consist of three parts:

- Part One, containing provisions laying down the institutional architecture;
- Part Two, dealing with the Union's policies and action;
- Part Three, containing the final clauses and provisions on legal continuity usually found in this kind of constitutional act.

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<sup>1</sup> The verbatim record of the plenary session may be found on the following website:  
<http://european-convention.eu.int>

- (a) Part One, consisting of the fundamental provisions and which would therefore need to be particularly clear and sharply defined, would open with a preamble and then set down:
- what the Union is (its definition and legal nature);
  - why the Member States decided to come together (the values and goals bringing them together);
  - what it means to be a citizen of the Union and the fundamental rights of the Union;
  - the competences of the Union, specifying that the Union has only such competences as are conferred upon it. The principles of subsidiarity and proportionality would be set forth in detailed manner;
  - the institutions of the Union;
  - how the implementation of Union action is organised in an endeavour to achieve simplicity, transparency and efficiency;
  - the principles of the democratic life of the Union,
  - Union finances;
  - Union action in the world;
  - relations between the Union and its immediate environment;
  - the concept that the Union is open to all European States which respect its values and fundamental rights and accept its rules.
- (b) Part Two of the Treaty, on the Union's policies and action, would contain a large number of clauses from the existing treaties. Technical amendments would be made to the articles relating to Union policies – a necessary operation to ensure that Part Two was in line with Part One.
- (c) Part Three would consist of the final provisions and those on legal continuity. In the light of the overall draft – which meets the desire for a simplification of treaty structure – it would be logical and virtually inevitable to see the new Constitutional Treaty as supplanting the existing Treaties. Working on that assumption, the final provisions should include clauses guaranteeing legal continuity in relation to the Community and the European Union.

The second section of the document containing the draft Treaty (Convention 369/02) aims to outline the content of the provisions of the basic part of the Treaty. The outline sets out to illustrate the articulation of the draft Constitutional Treaty and to show where the various sections would appear in the text.

The Chairman remarked that some of these indications reflected tendencies beginning to emerge from the Convention's work; others embodied proposals which had been put forward on various sides but had yet to be discussed or developed. The matter of whether certain articles would be retained and their exact content would be addressed in future proceedings of the Convention.

The Chairman said that, in the first few months of 2003 and depending on the results of the plenary discussions on the recommendations in the Working Group reports, the Praesidium intended to present sections of the draft Treaty produced on the basis of elements put forward. That is how the building blocks would take their place in the constitutional structure and the Convention could attain its goal.

## **2. The role of national parliaments**

- debate on the report of Working Group IV on the role of national parliaments, chaired by Ms Stuart (CONV 353/02)

The Chair of the Working Group, Ms Gisela Stuart, presented the conclusions reached by the Group, as set out in its final report (CONV 323/02). The Group had considered the role of national parliaments with respect to three main issues: oversight of the action of their governments in the Council, monitoring of the application of the principle of subsidiarity, and the role and function of multilateral interparliamentary networks or mechanisms.

The Chair recalled that the Group had concluded that the duty of national parliaments was first and foremost to hold their governments to account when they take decisions at a European level. It was generally agreed in the Group that an exchange of best practice on scrutiny models would be useful to improve national systems. The Group further considered that openness of the Council when it

legislates was crucial to allowing effective scrutiny by national parliaments. The Group had made a number of recommendations for enabling measures, including the strengthening of provisions in the protocol on the role of national parliaments annexed to the Amsterdam Treaty. On Subsidiarity the Group in general terms endorsed the conclusions of the Working Group chaired by Mr Mendez de Vigo. Finally, the Group made several recommendations regarding the structuring of relations between national parliaments and the European Parliament. The Chair underlined that the overall aim of the recommendations of the Group was to enhance the involvement of national parliaments in the EU, to encourage a sense of ownership, and to give them a real voice in a constructive way, without delaying the legislative process at the European level. The Chair stressed that while the Group had reached consensus on many issues, its members were of the view that a Plenary debate on institutional questions would be necessary before they could take firm positions on proposals for a new forum bringing together national parliaments and the European Parliament to debate, for example, the larger political orientations and strategy of the EU.

The general debate following the presentation revealed broad support among members of the Convention for the Working Group's report and recommendations. The following can be noted from the debate with regard to particular elements of the report:

There was widespread recognition of the importance of greater involvement of national parliaments in the activities of the Union: several members argued for specific recognition of their role in the future Constitutional Treaty. The role of national parliaments in bringing the Union closer to its citizens was underlined.

The recommended measures to facilitate improved national parliamentary scrutiny, while leaving the organisation of actual national scrutiny to each Member State in line with their Constitutional requirements and parameters arrangements, received broad support: permitting rapid access to both consultative documents and legislative proposals through their direct transmission to national parliaments were seen as an important step. The fact that the recommendations in the report were concrete and could rapidly be made operational was highlighted. A large number of speakers underlined the fact that full openness of the Council when exercising its legislative functions was essential to efficient parliamentary scrutiny of the action of governments in the Council, and expressed their support for the recommendations of the Working Group in this respect.

The Group's endorsement of the conclusions of the Working Group on Subsidiarity was welcomed by a large number of members, many of whom underlined the importance of involving national parliaments at an early stage of the legislative procedure. Several members welcomed the suggestions in the Working Group report to further enhance the subsidiarity mechanism. They referred in particular to the link between subsidiarity and proportionality and to the proposal not to restrict the right of appeal to those national parliaments which had issued a reasoned opinion at the early stage. Some members repeated their view that regions with legislative powers should have a right of appeal in areas within their scope of competence. One member recalled his doubts about an early-warning mechanism.

The importance of networking and exchange of good practice between national parliaments was underlined by several members, who saw this as a further means of increasing awareness in national parliaments of European Union activities and to enhance their capacity for efficient scrutiny. They considered that COSAC, possibly reformed and strengthened, could play an important role in this respect. Some advocated the creation of a small COSAC secretariat.

The recommendation of the Working Group to formalise, in the Treaty, the Convention method as a prior mechanism to consider future treaty changes met with a favourable response. Some suggested that Conventions need not necessarily be restricted to the preparation of future treaty changes and Intergovernmental Conferences, but could potentially have a wider remit.

Much of the debate was devoted to a discussion of ideas for involving national parliaments in EU debate on major strategic and policy issues. Ideas in this field included - in addition to the model of the Convention - the organisation of European weeks each year, as a common window for European debate in each Member State, the organisation of interparliamentary conferences on specific issues, and the creation of a Congress.

A considerable number of speakers were reluctant to envisage the creation of new institutions or bodies, because this could further complicate the institutional architecture, and in this context questioned the role of a Congress that would periodically bring together national and European parliamentarians. Several speakers thought that the Convention should defer consideration of the issue to the broader institutional debate that would take place at a later stage. Some thought it important to have a clear and precise idea of the objectives and the functions of any new mechanism or body: some thought that the possibility of convening a Convention, together with other existing means of networking between national and European parliamentarians, would be sufficient.

A number of speakers nevertheless supported the idea of a Congress, provided that it would not have any legislative powers. Some suggestions for its possible functions were advanced. It was argued that such a forum might provide increased democratic control of the European Council and it should be seen as complementary to the European Parliament. Those expressing an interest in the idea of a Congress were divided on whether it should have a role in appointments.

The President, closing the debate, drew the following conclusions:

- A large consensus could be noted regarding the importance of a stronger involvement of national parliaments in the activities of the Union, and the recognition of their role in the context of the future Constitutional Treaty.
- Their involvement should primarily lie in efficient control of the action of national governments: the Working Group's proposals for the direct transmission of texts and other practical measures were therefore welcome, and supported by the Plenary.
- Support for the recommendations of the Working Group on Subsidiarity, and the creation of an early-warning mechanism, was reconfirmed.
- The need to strengthen the possibilities for consultation and exchange of best practice between national parliaments was recognised.
- Several ideas had been advanced on how better to involve national parliaments in debates on the large orientations of the European Union, including the formalisation of the method of the Convention in the Constitutional Treaty, the organisation of European weeks, interparliamentary conferences on specific issues, and the creation of a Congress in which national and European parliamentarians would periodically meet. The Convention would need to explore the potential role and functions of a Congress further: in the view of the Chairman, such a Congress could play an important role in involving senior national parliamentarians, together with the European Parliament, in bringing debates on major issues (e.g. Enlargements) to the attention of wider public opinion. The Convention would revert to these issues.



3. **Progress report by Mr Hänsch on the proceedings of Group VI on economic governance**
4. **Progress report by Mr Christopherson on the proceedings of Group V on complementary competence**

The Convention heard oral presentations on the proceedings of each of these two Groups, which will present their reports at the next meeting (7-8 November).

### 5. **The Charter of Fundamental Rights**

- debate on the report by Group II chaired by Mr Vitorino (CONV 354/02)

The Working Group chaired by Commissioner Antonio Vitorino had been asked to examine:

- Modalities and consequences of possible incorporation of the Charter into the Treaties
- Modalities and consequences of possible accession of the EC/EU to the European Convention on Human Rights ("ECHR")
- In addition, the Group has also examined the question of effective judicial remedies and access of individuals to the European Court of Justice.

In introducing the debate, the President congratulated all members of the Group and its Chairman on having succeeded in producing a highly consensual report. The main features of the report as presented by Mr Antonio Vitorino were as follows:

The Group underlined that the political decision concerning the incorporation of the Charter into the Treaties was for the Convention. All members of the Group however either strongly supported incorporation in a form which would make the Charter legally binding and give it constitutional status or did not rule out giving favourable consideration to such incorporation.

As to the modalities of possible incorporation the basic options were: **either** insertion of the text of the Charter articles at the beginning of the Constitutional Treaty, in a Title or Chapter of that Treaty; **or** insertion of an appropriate reference to the Charter in one article of the Constitutional Treaty; such a reference could be combined with annexing or attaching the Charter to the Constitutional Treaty, either as a specific part of the Constitutional Treaty containing only the Charter or as a separate legal text (e.g., in form of a Protocol). According to one member of the Group, an "indirect reference" to the Charter could be used in order to make the Charter legally binding without giving it constitutional status.

In the Group's view the content of the Charter in its substance was a consensus crafted by the previous Convention: the Group did not recommend any substantive modifications. In order to render it absolutely clear and watertight, they had however drafted and submitted proposed adjustments of certain horizontal clauses included in the Charter. They had also discussed other questions such as: the preamble of the Charter, the role of the Praesidium Explanations, and the question of Article 6(2).

Concerning the modalities and consequences of possible accession of the EC/EU to the ECHR, all members of the Group either strongly supported or were ready to give favourable consideration to the creation of a constitutional authorisation enabling the Union to accede to the ECHR. Within this question the Group insisted on two points: preservation of the autonomy of Union law and the Luxembourg Court, and the introduction of technical safeguards in order to make clear that accession would not modify the division of competences between the Union and the Member States.

The Group also discussed the Union's current system of remedies available to individuals, notably in the light of the fundamental right to effective judicial protection. In this context, the Group drew the Convention's attention notably to the question whether or not the conditions of direct access by individuals to the Court (Article 230, fourth paragraph, TEC) need to be reformed in the interest of ensuring effective judicial protection. The Group refrained from making concrete recommendations: instead they commended the question of possible reform of Article 230, fourth paragraph, TEC for further examination by the Convention in an appropriate context.

In the general debate, speakers across the board welcomed the conclusions of the Working Group and congratulated it and its Chairman for having succeeded in producing such a highly consensual report on a complex matter which had in the past given rise to concerns and disagreement.

A very large majority of speakers supported incorporation of the Charter into the Constitutional Treaty thereby making the Charter a legally binding text with constitutional status, or stated that - on the basis of the common understanding reached and of the conditions defined by the Group - they were now ready to consider such an incorporation favourably, leaving behind the disagreements of the past. It was stated that fundamental rights are a key building block which would, through incorporation of the Charter, find their rightful place in the Union's future Constitution, and that such incorporation would follow the logic of the evolution from an economic Community to a political Union of common values.

One member welcomed the useful and solid technical work done by the Working Group which teased out many of the difficult issues raised by the Charter, and stated that the political decision on incorporation should be taken by the Plenary in due course. Another member referred to continuing concern about the Charter and particularly about its provisions touching on employment and social matters.

As to the concrete form of incorporation of the Charter, a series of speakers favoured the option of insertion of the text of the Charter articles in the Constitutional Treaty (option "a" in the Group's report). According to these speakers, this would enhance the visibility of fundamental rights in the Constitutional Treaty and express their high symbolic value clearly to the citizens.

Several other Convention members expressed a preference for the second basic option set out in the Group's report, i.e. incorporating the Charter through an appropriate reference made to it in an article of the Constitutional Treaty and, as some added, annexing or attaching it to the Treaty as a separate legal document. These speakers argued that this technique would best serve the interest of a short and legible Treaty, better preserve the integrity of the Charter, and avoid certain technical complications arising in the case of direct insertion of the Charter text into the Treaty.

A much smaller number of speakers preferred to make an "indirect" reference in an article of the Treaty to the Charter as a source for interpreting fundamental rights as general principles of Union law, arguing that not all articles of the Charter could in the same way entail justiciable rights for the citizens, or that some Charter rights would need more precise formulation.

Most speakers stated their support for the drafting adjustments in the horizontal provisions of the Charter as proposed by the Group, and were satisfied that these adjustments did not constitute changes of substance to the Charter. A number of speakers welcomed the adjustments as enhancing legal certainty and clarity and allowing different legal traditions to find themselves in the Charter, thereby paving the way for the Charter to become a legally binding text. Other speakers expressed the view that the amended horizontal clauses as proposed by the Group were not necessary and simply stated the obvious, but would not do any harm and could therefore be accepted if they helped to bring about consensus on incorporation of the Charter as a legally binding text.

Certain members, however, expressed reservations about the amendments to the horizontal articles proposed by the Group, seeing them as unnecessary or potentially diluting the standard of protection foreseen by the Charter and contrary to the basic line of respecting the content of the Charter. In particular, it was argued that proposed Article 52 (5) on the effect of "principles" of the Charter could be understood as contradicting the obligation, enshrined in Article 51 (1), to observe these principles and to promote their application, and that it unduly restricted the legal force of these principles which, according to these members, should be justiciable generally and not merely as regards acts specifically taken in implementation of the principles. One member saw ambiguities in the formula "with due regard to the principle of subsidiarity" in Article 51 (1) of the Charter, expressed doubts about the enforceability of certain Charter provisions, and stressed the need to know which Charter articles were, respectively, rights or principles.

A number of speakers stressed the need to preserve the preamble of the Charter which contained important statements on the fundamental nature of the Union and represented a delicate political consensus reached by the previous Convention. These members therefore called for that preamble to be incorporated into, or used as, the preamble of the Constitutional Treaty.

Several speakers underlined the importance of the Explanations which had been prepared at the instigation of the Praesidium of the previous Convention. Although, as stressed by some speakers, these Explanations have no legal value, they were seen as an extremely useful aid to interpretation - *inter alia* for the courts and authorities of the candidate countries which had not participated in the drafting of the Charter - or as a vital part of the overall political package on the Charter. In this perspective, speakers welcomed the Group's recommendation to incorporate the explanations given

by the Working Group on the technical amendments on the Charter with the original Explanations. It was, however, recalled by one member that the Explanations were drawn up under the sole responsibility of the Praesidium and did not engage the previous Convention which had decided not to discuss them.

A vast majority of speakers supported the insertion in the Constitutional Treaty of a constitutional authorisation enabling the Union to accede to the ECHR. Several speakers welcomed in this context the common understanding reached by the Group on key issues raised by accession to the ECHR; it was notably stressed that the autonomy of Union law and the position of the Court of Justice will not be undermined by accession; that, through the use of certain safeguards, it will be clear that the legal "scope" of accession will be limited to the Union's competencies without leading to any extension of these competencies; and that the national positions expressed with respect to the ECHR and its protocols will remain unaffected. A further point frequently made was that incorporation of the Charter and accession by the Union to the ECHR should be considered not as alternatives but as complementary initiatives, leading together to a situation analogous of that in national legal systems.

In this context, a number of speakers stressed the primary importance which they attribute to accession by the Union to the ECHR and recalled the main arguments for accession as developed in the Group's report. Some qualified accession by the Union to the ECHR as a necessity if the Charter became legally binding, in order to ensure that the relationship between the two European Courts was properly resolved; a call was also made for a political declaration in favour of accession to accompany the Constitutional Treaty.

Other members took the view that the Convention should limit itself to creating a legal base authorising the Union to accede to the ECHR and leave the decision on opening accession negotiations, and the modalities, to the Union institutions (on the basis of unanimity in the Council); one of these members specified that, prior to such a decision, it should be examined whether such an accession would be possible without encroaching on the autonomy of Union law, affecting the individual positions of Member States with respect to the ECHR or extending the Union's competence.

A small number of members expressed reservations about the idea of accession by the Union to the ECHR, calling for further reflection on whether such a step would not lead to an undue prolongation of judicial procedures or risk extending the Union's competencies or undermining the Court of Justice.

Several speakers underlined the importance of effective judicial remedies and called for an extension of the rights of action of individuals before the European Court of Justice, or requested further consideration on this issue. It was argued that lacunae of protection exist currently, given the strict conditions set out in Article 230, fourth paragraph, TEC, the fact that this Article mentions actions against institutions only, but not against bodies of the Union, and the current limitations on jurisdiction in Justice and Home Affairs. One member called for a stronger European Ombudsman with a view to reinforcing the protection of citizens' complaints.

In a final statement replying to points made during the discussion, the Chairman of the Working Group stressed that the Working Group's consensual report represented a compromise. He explained that the proposed text of Article 52 (4) would enshrine in the Charter the approach already followed by the Court of Justice, according to which the common constitutional traditions did not oblige the Court to stick to a common minimum denominator but instead to designate the common values of the Member States, which may not necessarily be stated with the same scope and meaning in all constitutions. He furthermore stressed that the Charter already makes a clear and undeniable distinction between subjective rights and principles that do not grant self-executing rights to concrete benefits but call for acts of implementation, a distinction which would only be spelt out in clearer terms in the new clause. As to the "Explanations" on the Charter, he confirmed that the Group's explanations would need to be added to the original Explanations in the further course of the Convention's work; he would be ready to take on this work of editing a consolidated version in close consultation with the members of the Working Group, and to submit it to the Praesidium. Finally, the Chairman of the Working Group argued that accession to the ECHR would not lead to significant extra delays in judicial proceedings, given that citizens can already today, in national proceedings relating to Union law, invoke the ECHR and go to the Strasbourg Court; accession would, however, permit, in such cases, the Union, as the author of the alleged human rights violation, itself to defend its acts rather than force Member States to assume the defence. He also argued that it would be strange if the Union, which required adherence to the ECHR from candidate countries as a condition of membership, were not ready to take the same step itself.

The President again congratulated Mr Vitorino, and expressed full endorsement of his summary of, and reactions to, the debate.

## 6. Preliminary debate on the preliminary draft Constitutional Treaty

Members of the Convention gave their preliminary views on the preliminary draft Treaty submitted by the Chairman on behalf of the Praesidium.

The architecture of the future Treaty was favourably received; the structure of the Treaty was deemed good while its essential features, namely its constitutional nature, the fact that it was a single Treaty, the explicit conferral of a single legal personality and the clarity and readability of the "backbone" of the draft were commended by the members as a bold approach which met the expectations of both the Convention and Union citizens.

More specific comments were also made:

- several members stressed the importance of the substantive elements, particularly concerning institutional matters, which would enhance the structure; some already saw in the draft architecture a balanced compromise; others made their backing for the structure subject to agreement on the solution finally adopted for institutional matters;
- some members stressed with satisfaction that the preliminary draft would be able finally to give citizens a sense of being part of a political union and not just of a single market;
- some members suggested that Article 1 should refer to peoples and not just to States; it was also suggested that an addition be made to the effect that the Union's citizens were united by the same values;
- a number of members expressed doubts about the second indent of Article 14, (as they feared that joint activity by Member States was a step backwards in the case of certain common policies);
- a number of members pointed out that the new policies reflected the Union's real priorities but differed in nature from "Community" policies and should therefore be covered by specific procedures;
- the importance of the Treaty emphasising the multicultural nature of the Union was stressed by several members, while some mentioned the need to refer to gender equality;
- the debate on finding a new name for the new Europe was regarded as pointless by a number of members, as the term European Union had already become part and parcel of the language of citizens;

- some members wanted a reference to national parliaments in the basic part of the Treaty;
- questions were raised about citizenship, competences, the existence in the draft of a "defence" title and of other articles concerning the Congress and the Presidency of the Council, the final clauses and the procedures for revising the Treaty.

Replying to the comments and questions, the Chairman:

- stressed the considerable progress represented by the single Treaty with the disappearance of the pillars, although this did not automatically mean that procedures and modalities would be made uniform, since specific procedures could be necessary depending on the nature of certain policies;
- confirmed that decision-making procedures and in particular the legislative procedure would be included in the basic part of the Treaty;
- stressed that national parliaments could not be cited as European institutions, but would, however, be referred to in the context of those procedures in which they were involved (subsidiarity);
- pointed out that competences were already defined in the existing Treaties but would be covered more systematically in the new Treaty;
- noted that common defence was already envisaged in the existing provisions of the TEU (Article 17);
- reiterated that the existence of certain articles and their content would depend on the Convention's debates; they were, however, referred to in order to show where they might fit into into the structure.

The Chairman concluded that from the beginning of 2003 the Praesidium could, on the basis of the substantive points which emerged from the debate on the Working Groups' conclusions, start drawing up more detailed proposals. The institutional questions, which needed to be seen from an overall viewpoint, would not be entrusted to Working Groups but would be debated in plenary.



## II. NEXT SESSION OF THE CONVENTION

The Chairman announced that the Convention's next meeting would take place starting at 15.00 on Thursday 7 and 9.30 on Friday 8 November. It would be devoted to examination of the reports by the Working Groups on economic governance and complementary competence and a debate on Social Europe.

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**THE EUROPEAN CONVENTION**  
**Plenary session 28 and 29 October 2002**

**LIST OF SPEAKERS**

**following order of intervention**

Monday 28 October

2. **The role of national Parliaments (CONV 353/02)**

– **debate on the report by Group IV on the role of national parliaments chaired by Ms Stuart**

1. Mr Erwin TEUFEL – Germany (Parliament)
2. Mr Dick ROCHE – Ireland (Government)
3. Mr Joschka FISCHER – Germany (Government)
4. Mr Sören LEKBERG – Sweden (Parliament)
5. Mr Michel BARNIER – Commission
6. Mr Elmar BROK – European Parliament
7. Mr Pierre LEQUILLER France (Parliament)
8. Mr Henrik HOLOLEI – Estonia (Government)
9. Mr Kimmo KILJUNEN – Finland (Parliament)

*(Blue card: Caspar EINEM)*

10. Mr Jürgen MEYER – Germany (Parliament)
11. Mr Andrew DUFF – European Parliament
12. Mr Alfonso DASTIS – Spain (Government)
13. Mr Tunne KELAM – Estonia (Parliament)
14. Mr Aloiz PETERLE – Slovenia (Parliament)
15. Mr Henrk Dam KRISTENSEN – Denmark (Parliament)
16. Mr Mesut YILMAZ – Turkey – (Government)

*(Blue card: G. AMATO)*

17. Ms Eduarda AZEVEDO – Portugal (Parliament)
18. Mr Hubert HAENEL – France (Parliament)
19. Ms Pervenche BERES – European Parliament

*(Blue cards:*

*HAIN, Mac CORMICK, PIETERS, MCLENNAN, FAYOT, DI RUPO, VOGGENHÛBER)*

20. M. Proinsias DE ROSSA – Ireland (Parliament)

21. Mr Josep BORRELL FONTELLES – Spain (Parliament)
  22. Mr Matti VANHANEN – Finland (Parliament)
  23. Mr Inigo MENDEZ de VIGO – European Parliament
  24. Ms Hanja MAIJ-WEGGEN – European Parliament
  25. Ms Dalia KUTRAITE-GIEDRAITIENE – Lithuania (Parliament)
  26. Mr Gianfranco FINI – Italy (Government)
  27. Mr Pierre MOSCOVICI – France (Government)
  28. Ali TEKIN – Turkey (Parliament)
  29. Mr William ABITBOL – European Parliament
  30. Mr David HEATHCOAT-AMORY – United Kingdom (Parliament)
- (Blue cards: BRUTON, TOMLINSON, MENDEZ DE VIGO)*
31. Mr Pierre CHEVALIER – Belgium (Government)
  32. Mr Alberto COSTA – Portugal (Parliament)
  33. Mr Lamberto DINI – Italy (Parliament)
  34. Mr Hannes FARNLEITNER – Austria (Government)
  35. Mr Frans TIMMERMANS – Holland (Parliament)
  36. Mr Edvins INKENS – Latvia (Parliament)
  37. Mr Panayotis DEMETRIOU – Cyprus (Parliament)

**Plenary session 29 October 2002****LIST OF SPEAKERS**  
**following order of intervention****5. The Charter of Fundamental Rights (CONV 354/02)**  
**– debate on the report by Group II chaired by Mr Vitorino**

1. Mr Ernâni LOPES – Portugal (Government)
2. Mr Inigo MENDEZ de VIGO – European Parliament
3. Mr Alexander ARABADJIEV – Bulgaria (Parliament)
4. Mr Andrew DUFF – European Parliament
5. Mr René van der LINDEN – Netherlands (Parliament)
6. Mr Peter HAIN – United Kingdom (Government)
7. Mr Ben FAYOT – Luxembourg (Parliament)
8. Mr Olivier DUHAMEL – European Parliament
9. Mr Jürgen MEYER – Germany (Parliament)
10. Mr Alfonso DASTIS (Spain) Government
11. Mr Dick ROCHE – Ireland (Government)
- (Blue cards: Caspar EINEM, S. KAUFFMANN)*
12. Mr Diego LOPEZ GARRIDO – Spain (Parliament)
13. Ms Neli KUTSKOVA – Bulgaria (Government)
14. Mr Neil Mac CORMICK – European Parliament
15. [Mr A. Emre KOCAOĞLU](#) – Turkey (Parliament)
16. Mr Hubert HAENEL – France (Parliament)
17. Mr Reinhard RACK – European Parliament
18. Mr Jozef OLEKSY – Poland (Parliament)
19. Mr Timothy KIRKHOPE – European Parliament
20. Mr Peter SERRACINO-INGLOTT – Malta (Government)
21. Mr Mihael BREJC – Slovenia (Parliament)
22. Mr Gianfranco FINI – Italy (Government)
23. Ms Anne VAN LANCKER – European Parliament
24. Mr Gabriel CISNEROS LABORDA – Spain (Parliament)
25. Ms Elena PACIOTTI – European Parliament

26. Mr Ingvar SVENSSON – Sweden (Parliament)
  27. Ms Cristiana MUSCARDINI – European Parliament
  28. Mr Pierre MOSCOVICI – France (Government)
  29. Ms Lena HJELM-WALLEN – Sweden (Government)
  30. Mr Niels PETERSEN – Denmark (Parliament)
- (Blue cards: Peter HAIN, HELLE)*
31. Mr Alberto COSTA – Portugal (Parliament)
  32. Mr Gijs de VRIES – Netherlands (Government)
  33. Mr Henning CHRISTOPHERSEN – Denmark (Government)
  34. Ms Hanja MAIJ-WEGGEN – European Parliament
  35. Mr John BRUTON – Ireland (Parliament)
  36. Ms Eleni MAVROU – Cyprus (Parliament)

**Preliminary debate on the preliminary draft Constitutional Treaty**

Chairman Valéry Giscard d'Estaing

1. Mr Klaus HÄNSCH – European Parliament
2. Ms Ana PALACIO – Spain (Government)
3. Mr Andrew DUFF – European Parliament
4. Mr Michel BARNIER Commission
5. Mr Rytis MARTIKONIS – Lithuania (Government)
6. Mr Hubert HAENEL – France (Parliament)
7. Mr Josep BORRELL FONTELLES – Spain (Parliament)
8. Mr Ernâni LOPES – Portugal (Government)
9. Mr Gijs de VRIES – Netherlands (Government)
10. Mr Alan LAMASSOURE – European Parliament
11. Mr Peter HAIN – United Kingdom (Government)
12. Mr Rihards PIKS – Latvia (Parliament)
13. Ms Danuta HÛBNER – Poland (Government)
14. Mr Marco FOLLINI – Italy (Parliament)
15. Mr Dick ROCHE – Ireland (Government)
16. Ms Teija TIILIKAINEN – Finland (Government)
17. Ms Marietta GIANNAKOU – Greece (Parliament)
18. Ms Hanja MAIJ-WEGGEN – European Parliament
19. Mr Elmar BROK – European Parliament
20. Mr Ben FAYOT – Luxembourg (Parliament)
21. Ms Michael FRENDÓ – Malta (Parliament)
22. Ms Linda McAVAN – European Parliament
23. Ms Lena HJELM-WALLEN – Sweden (Government)
24. Mr Elio DI RUPO – Belgium (Parliament)
25. Mr Jens-Peter BONDE – European Parliament
26. Mr Pierre MOSCOVICI – France (Government)

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1-001

DA

**DET EUROPÆISKE KONVENT  
MANDAG DEN 28. OKTOBER 2002**

DE

**EUROPÄISCHER KONVENT  
MONTAG, 28. OKTOBER 2002**

EL

**ΕΥΡΩΠΑΪΚΗ ΣΥΝΕΛΕΥΣΗ  
ΔΕΥΤΕΡΑ 28 ΟΚΤΩΒΡΙΟΥ 2002**

EN

**EUROPEAN CONVENTION  
MONDAY, 28 OCTOBER 2002**

ES

**CONVENCIÓN EUROPEA  
LUNES, 28 DE OCTUBRE DE 2002**

FR

**CONVENTION EUROPÉENNE  
LUNDI 28 OCTOBRE 2002**

IT

**CONVENZIONE EUROPEA  
LUNEDÌ 28 OTTOBRE 2002**

NL

**EUROPESE CONVENTIE  
VERGADERING VAN MAANDAG 28 OKTOBER 2002**

PT

**CONVENÇÃO EUROPEIA  
SEGUNDA-FEIRA, 28 DE OUTUBRO DE 2002**

FI

**EUROOPPA-VALMISTELUKUNTA  
MAANANTAINA 28. LOKAKUUTA 2002**

SV

**EUROPEISKA KONVENTET  
MÅNDAGEN DEN 28 OKTOBER 2002**

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1-002

FR

**PRÉSIDENCE DE M. GISCARD D'ESTAING***(La séance est ouverte à 15h06)*

**Le Président.-** Mes chers Collègues, vous avez dû tous recevoir une correspondance. Ce texte étant destiné à chacune et à chacun d'entre vous, il est distribuée ici aux Conventionnels, leurs suppléants et les observateurs. Si quelqu'un n'avait pas cette correspondance, qu'il le signale ici devant. Je vais vous présenter ce texte en quelques mots. <BRK>

1-003

DA

**Redegørelse fra formanden om det foreløbige udkast til en forfatningstraktat**

DE

**Vorstellung eines Vorentwurfs eines Verfassungsvertrags durch den Vorsitzenden**

EL

**Παρουσίαση από τον Πρόεδρο του προσχεδίου Συνταγματικής Συνθήκης**

EN

**Presentation by the President of the preliminary draft constitutional treaty**

ES

**Presentación por parte del Presidente del Anteproyecto de Tratado Constitucional**

FR

**Présentation par le Président de l'avant-projet d'un traité constitutionnel**

IT

**Presentazione da parte del Presidente del progetto preliminare di Trattato costituzionale**

NL

**Presentatie door de voorzitter van het voorontwerp****van constitutioneel verdrag**

PT

**Apresentação do anteprojecto de tratado constitucional pelo Presidente**

FI

**Puheenjohtaja esittelee alustavan ehdotuksen perustuslain luonteiseksi sopimukseksi**

SV

**Ordföranden lägger fram ett preliminärt utkast till konstitutionellt fördrag**

1-004

FR

**Le Président.** – Voilà, mes chers Collègues, la Convention européenne avance. Aujourd'hui, elle va franchir une étape significative.



28 février - 28 octobre. 8 mois exactement après l'ouverture de la Convention, je vous présente, aujourd'hui, l'architecture de la future Constitution européenne. Dès le départ, nous savions que nous devrions aboutir à un texte unique, un projet de Traité Constitutionnel. D'ailleurs, vous avez bien voulu m'applaudir quand je l'ai proposé dans mon discours d'ouverture de la Convention.

Les discussions que nous avons eues jusqu'ici ont paru à certains parfois trop générales, parfois trop techniques. Elles étaient pourtant indispensables avant de pouvoir définir les contours d'un premier projet. Un document a été remis personnellement à chacune et à chacun d'entre vous. Je souhaitais, en effet, que ce soit une remise personnelle et non pas la simple distribution d'un document.

Sur la base des discussions que nous avons tenues jusqu'ici, nous avons élaboré, avec le Praesidium, le projet d'architecture du futur Traité constitutionnel. Ainsi, j'honore devant vous l'engagement pris avant l'été. Au mois de juin et de juillet, certains d'entre vous étaient impatients de voir apparaître ce projet d'architecture pour pouvoir mettre davantage d'ordre dans nos débats et dans nos réflexions. Vous constaterez que ce projet est celui d'un Traité constitutionnel car il nous est apparu que cela reflète la volonté de la quasi-totalité de la Convention.

Un Traité Constitutionnel s'impose pour marquer l'étape de la fondation d'une Europe rénovée, acceptant nos frères des pays candidats, une Europe dans laquelle tous les citoyens doivent se reconnaître comme Européens et à laquelle toutes les institutions nationales, régionales et locales doivent pouvoir participer, chacune à son niveau de responsabilité.

Le point de départ de ce texte est le large consensus dégagé lors de notre débat de la dernière session en faveur du principe d'une personnalité juridique unique. En effet, ceci ouvre la voie, jusqu'ici fermée, à la fusion des Traités de la Communauté et de l'Union européenne. Cette fusion constitue un pas fondamental en direction de la simplification et répond ainsi à l'attente, et même à l'impatience, de l'opinion publique.

Ce texte unique comporterait trois parties. La première partie contiendrait les dispositions définissant l'architecture constitutionnelle et institutionnelle. La deuxième partie porterait sur les politiques et les actions de l'Union. La troisième partie contiendrait les clauses finales et les clauses de continuité juridique habituelles dans ce type d'acte constitutionnel. L'ensemble, enfin, serait complété par un petit nombre de protocoles.

La première partie, celle qui reprend les dispositions fondamentales, doit être particulièrement claire et percutante. Il faut savoir qu'un texte constitutionnel est un texte qui doit avoir une certaine force, par lui-même et à la limite, un certain lyrisme, afin de définir de manière accessible à tous, jeunes étudiants, jeunes lycéens, travailleurs de tous âges et de tous milieux, les bases et les fonctionnements de l'Union. La première qualité de notre Traité constitutionnel doit être celle d'être lisible par tous.

Cette partie comporterait un préambule et définirait ensuite un certain nombre de points. J'y reviendrai tout à l'heure. Je vous donne la liste des chapitres essentiels : ce qu'est l'Union, sa définition et sa nature juridique, pourquoi les Etats Membres ont décidé de se réunir, autrement dit les objectifs de l'Union, quelles sont les valeurs et les objectifs qui les rassemblent, ce que signifie être un citoyen de l'Union, et quels sont les droits fondamentaux des citoyens de l'Union. On y traiterait également des compétences de l'Union en spécifiant que l'Union n'a que les compétences qui lui sont attribuées, les principes de subsidiarité et de proportionnalité étant affirmés de manière précise. Figureraient aussi dans cette partie la question des institutions de l'Union, la façon dont est mise en oeuvre l'action de l'Union, comment elle est organisée dans un souci de simplicité, de transparence et d'efficacité, la nature des principes de la vie démocratique de l'Union, le problème des finances de l'Union (monnaie et budget), l'action extérieure de l'Union, les relations entre l'Union et son environnement proche et enfin, un article de principe indiquant que l'Union est ouverte à tous les Etats européens, qui respectent ses valeurs et ses droits fondamentaux et qui acceptent ses règles.

La deuxième partie du Traité sur les politiques et les actions de l'Union reprendrait, de façon naturelle, un nombre important de clauses des Traités actuels. Nous ne voulons pas, en effet, modifier les articles pour la satisfaction de donner une écriture nouvelle à ces articles. Donc, nous ne proposerons de changements qu'aux articles relatifs aux politiques de l'Union, qui découleront de notre travail sur la première partie, c'est-à-dire sur la simplification des procédures et sur la mise en oeuvre des actions de l'Union.

Enfin, la troisième partie comporterait des dispositions finales et de continuité juridique puisque nous partons de deux Traités de nature et d'objectifs différents, le Traité de Rome et le Traité de Maastricht, et que nous voulons aboutir à un texte unique.

Je vais vous donner une indication quant au contenu du travail à effectuer. Les articles actuels, sur lesquels nous travaillons, sont au nombre de 414. Une lecture rapide, ce n'est pas une précision définitive, montrerait que, la moite environ, à savoir 205 articles resteraient inchangés. 136 articles seraient légèrement modifiés, c'est-à-dire adaptés aux dispositifs nouveaux et 73 devraient être substantiellement réécrits ou regroupés. A la lumière de l'ensemble du projet, qui répond à une demande d'une simplification de l'architecture des Traités, qui figure d'ailleurs dans les textes d'origine de Nice et de Laeken, cette voie semble logique et pratiquement inévitable. Nous avons étudié les différentes hypothèses possibles, sauf à entrer dans de véritables contorsions rédactionnelles, qui nous permettent de penser que le nouveau Traité constitutionnel se substituera au Traité existant. Dans cette hypothèse, les dispositions finales devront comprendre des clauses assurant la continuité juridique par rapport aux Communautés et par rapport à l'Union européenne.

Le document qui vous a été remis comporte une seconde partie destinée à vous apporter certaines indications contenant les dispositions de la partie fondamentale du Traité. Nous avons pensé que si l'on vous donnait simplement la table des matières sans donner quelques indications, vous risqueriez de trouver cette approche un peu limitée. Et donc, ces indications de la deuxième partie que je vais vous commenter rapidement se proposent d'illustrer l'articulation de ce projet de Traité constitutionnel et

d'indiquer la place que chacun des différents éléments viendra prendre dans le texte. Ainsi, certaines de ces indications correspondent à des orientations qui émergent déjà de nos travaux, notamment des conclusions du premier groupe de travail tandis que d'autres reflètent des propositions qui ont été avancées par les uns et par les autres, notamment dans vos très nombreuses contributions, mais qui doivent encore faire l'objet d'un débat ou d'un approfondissement.

Je voudrais que nous soyons très clairs vis-à-vis de vous-même bien entendu, mais aussi de la presse et des media. Il s'agit, aujourd'hui, d'une architecture, en d'autres termes, de la place des articles et des sujets traités dans l'ensemble du texte. La question de savoir si certains articles seront finalement retenus et quel sera précisément leur contenu, trouvera sa réponse dans les travaux futurs de la Convention.

Je vais maintenant vous commenter brièvement ce texte. Je commence à la page 8 du document que vous avez devant vous.

Première partie: architecture constitutionnelle

Il faudra sans doute un préambule. En effet, tous les textes constitutionnels de l'histoire politique comportent un préambule plus ou moins long, bien que nous ayons d'autres éléments tels que la Charte, qui contiendront des dispositions de nature voisine.

L'article 1 correspondrait à la décision de mettre en place une entité nommée à laquelle il faudra donner un nom puisque, à l'heure actuelle, deux noms qui sont en vigueur: d'une part Communauté européenne pour la partie venant du Traité de Rome, et d'autre part, Union européenne pour la partie venant du Traité de Maastricht. Il faudra de toute façon choisir. On peut également songer à d'autres appellations: soit l'appellation lancée au début de la construction européenne, à la fois par Jean Monnet et par Winston Churchill, qui était celle des Etats-Unis d'Europe soit une appellation qui décrirait l'état d'avancement de la construction européenne, et qui serait Europe Unie, appellation se traduisant simplement et fortement dans les différents langues de l'Union.

On donnerait ensuite la définition de cette Union. J'utiliserai le mot Union pour simplifier et ne pas reprendre chaque fois les différentes appellations possibles. Nous avons une définition. Cette définition donnera lieu à un débat. Toutefois, j'invite les Conventionnels à eux-mêmes rechercher un texte décrivant bien ce qu'est cette Union. Le texte que nous proposons est une Union d'Etats européens conservant leur identité nationale, coordonnant étroitement leur politique au niveau européen et gérant, sur le mode fédéral, certaines compétences communes Il s'agit donc d'une définition compréhensible et courte de la nature de cette Union.

Ensuite, il y aurait la reconnaissance du caractère pluriel de l'Union, c'est-à-dire les éléments de diversité qui font partie de l'Union et enfin, la mention d'une Union ouverte à tous les Etats européens qui partagent les mêmes valeurs et qui s'engagent à les promouvoir en commun.

L'article 2 énumérerait les valeurs de l'Union. Vous objecterez qu'il y a déjà la Charte des droits fondamentaux dont nous parlerons tout à l'heure et vous vous demanderez s'il n'y a pas là une redite. Pas exactement parce que la Charte est une Charte de droits. Les valeurs ne se limitent pas à l'exercice de certains droits. Il y a la dignité humaine, la démocratie, l'Etat de droit, la tolérance et enfin, le respect des obligations et du droit international. Par conséquent, il faudra préciser ce qui va dans la Charte, qui est déjà écrite et ce qui doit figurer parmi les valeurs de l'Union.

L'article 3 énoncerait les objectifs de l'Union. C'est d'ailleurs un sujet qui a été un sujet de réflexion. Vous savez que la caractéristique de notre texte par rapport à une Constitution nationale est son existence en fonction des objectifs de l'Union. Une Constitution nationale existe en fonction de l'existence de l'Etat et décrit comment l'Etat doit fonctionner. Dans la construction européenne, ce sont les objectifs qui déterminent la construction. Nous indiquons ces objectifs : sauvegarde des valeurs communes, intérêts et indépendance de l'Union, promotion de la cohésion économique et sociale, renforcement du Marché intérieur ainsi que de l'Union économique et monétaire, promotion d'un haut niveau d'emploi et d'un niveau élevé de protection sociale, niveau élevé de protection de l'environnement, encouragement au progrès technologique et scientifique, création d'un espace de liberté, de sécurité et de justice et, enfin, développement d'une politique étrangère et de sécurité commune et d'une politique de défense visant à défendre et promouvoir les valeurs de l'Union dans le monde extérieur.

Il serait précisé ensuite que ces objectifs sont poursuivis selon des modalités adaptées au fait que les compétences sont attribuées en toute ou en partie à l'Union, ou ils sont au contraire exercés conjointement par les Etats membres. Ce dernier passage se terminerait par l'article 4 qui est la reconnaissance explicite de la personnalité juridique à de nouvelles entités internationales.

Pour le titre 2, on a repris des éléments qui figurent dans les Traités. On y a ajouté des éléments qui viennent de vos propres travaux (citoyenneté de l'Union et les droits fondamentaux).

Dans l'article 5, on instituerait et définirait la citoyenneté de l'Union. Tout national d'un Etat-membre et citoyen de l'Union disposerait d'une double citoyenneté de niveau égal: la citoyenneté nationale et la citoyenneté européenne. Nous n'avons pas mis nationalité mais bien citoyenneté. C'est d'ailleurs là une proposition que l'Espagne avait faite voici quelques années. Et il utilise librement l'une ou l'autre à sa convenance, avec les droits et les devoirs attachés à chacune d'elle. Précisément, l'article énumère les droits attachés à la citoyenneté européenne – la libre circulation, le séjour, le vote et l'éligibilité aux élections municipales et au Parlement européen, la protection diplomatique de l'ensemble de l'Union dans les pays tiers, le droit de pétition, le droit d'écrire et d'obtenir une réponse des institutions européennes dans sa propre langue. Enfin, cet article établit le principe de non-discrimination entre les citoyens de l'Union en fonction de la nationalité.

Viendrait ensuite l'article concernant la Charte des droits fondamentaux. M. Vitorino exposera diverses possibilités pour la rédaction de cet article. Il pourra s'inspirer de l'article 6 du Traité sur l'Union européenne, où il y a déjà une référence à ce sujet, et M. Vitorino vous donnera les trois solutions possibles.

Le titre 3 prévoirait les compétences et les actions de l'Union. Cet article énoncerait d'abord les principes de l'action de l'Union. Ceci a été demandé par de nombreux conventionnels. Celle-ci s'exerce conformément aux dispositions du traité, dans la limite des compétences conférées par le traité et dans le respect des principes de subsidiarité et de proportionnalité solennellement annoncés dans le texte.

L'article 8 est en fait un complément. Il établirait le respect du principe selon lequel toute compétence non attribuée par la constitution à l'Union demeure de la compétence des Etats membres. C'est la conclusion d'un débat qui a eu lieu ici sur la nécessité d'avoir deux listes ou une seule. C'est donc une seule liste, avec cet article prévoyant la non-compétence lorsque les compétences ne sont pas attribuées à l'Union. Il établirait la primauté du droit de l'Union dans l'exercice des compétences qui lui ont été attribuées. Il fixerait les règles du contrôle effectif de la subsidiarité et de la proportionnalité et le rôle des parlements nationaux à cet effet serait mentionné. Enfin, il déterminerait les règles qui établissent l'adaptabilité du système. Nous en avons parlé, sans entrer dans une réflexion approfondie, c'est-à-dire le sort de l'ancien article 308 et des articles antérieurs du Traité de Rome. Enfin, il établit l'obligation de coopération loyale des Etats membres vis-à-vis de l'Union ainsi que le principe de mise en oeuvre par ceux-ci des actes des institutions.

Les articles suivants – on ne donne que le titre des articles; ils sont évidemment beaucoup plus détaillés –: l'article 9 concernerait les catégories de compétences de l'Union, qui seraient simplifiées après les travaux du groupe de travail; l'article 10 indiquerait les domaines de compétences exclusives de l'Union et reprendrait d'ailleurs dans ce domaine les textes des traités sur les Communautés, qui, semble-t-il, n'ont pas besoin d'être modifiés; l'article 11 indiquerait les domaines de compétences partagées entre l'Union et les Etats membres, et il établirait le principe selon lequel, au fur et à mesure que l'Union agit dans ces domaines, les Etats membres ne peuvent agir que dans les limites définies par la législation de l'Union. Enfin, l'article 12 indiquerait les domaines où l'Union appuie ou coordonne l'action des Etats membres mais n'a pas la compétence pour légiférer. Et enfin l'article 13 répondrait à la question suivante: dans quels domaines les Etats membres définissent-ils et mettent-ils en oeuvre, dans le cadre de l'Union, une politique commune selon des modalités spécifiques? Cet article indiquerait de quels domaines il s'agirait.

Le titre 4 fera l'objet de beaucoup d'attention et de débats à venir dans notre Convention: ce sont les institutions de l'Union.

L'article 14 indiquerait que l'Union dispose d'un cadre institutionnel unique; nous sortirions donc de l'ancien concept des piliers. Il disposerait que ce cadre assure la cohérence et la continuité des politiques et des actions menées en vue d'atteindre les objectifs de l'Union, tant s'agissant des actions dans les domaines de compétences attribuées à l'Union que s'agissant des domaines où les compétences appartiennent aux Etats membres et sont exercées par eux de façon conjointe. Cet article énumérerait les institutions de l'Union et il établirait le principe selon lequel chaque institution agit dans les limites des attributions qui lui sont conférées par les traités, conformément aux procédures prévues par ceux-ci. Il énoncerait une obligation pour les institutions européennes d'assurer et de promouvoir une administration ouverte, efficace et sobre. Il établirait le principe de coopération loyale dans les relations entre les institutions.

Ensuite, vous auriez les articles consacrés à chacune des institutions. Nous avons repris l'ordre du Traité de Rome, c'est-à-dire avec simplement l'article 15 qui, lui, est issu du Traité de Maastricht, qui définit le Conseil européen, sa composition et ses missions. Il y aurait ensuite un article 15 bis, après que la Convention en aura débattu, article qui pourrait établir la durée du mandat et le mode de désignation de la présidence du Conseil européen, son rôle et ses responsabilités.

L'article 16 établit la composition du Parlement européen dont les membres sont élus au suffrage universel direct. Il prévoira d'une manière ou d'une autre la création de moyens d'aboutir à un mode d'élection homogène sur l'ensemble du territoire de l'Union et il énumérera les attributions du Parlement européen; il prévoira la possibilité pour celui-ci d'introduire une motion de censure sur la gestion de la Commission et sa procédure et les conséquences d'une telle motion.

L'article suivant énumère la composition et les attributions du Conseil. Il ferait référence aux différentes formations du Conseil: le Conseil dans sa formation d'Affaires générales, le Conseil dans sa formation législative, et le Conseil dans sa formation de Conseil des ministres des affaires étrangères.

L'article 17 bis, par symétrie avec ce qui est dit pour le Conseil européen, établirait la règle pour la désignation de la présidence du Conseil, son rôle et ses responsabilités, ainsi que la durée de son mandat.

Ensuite, nous en viendrions à la Commission, dans l'article 18. Cet article contiendrait les dispositions relatives à la composition et aux attributions de la Commission, y compris le monopole d'initiative. Le texte, vraisemblablement, serait repris des articles du Traité de Rome. Selon les travaux à venir de la Convention, il reviendrait à la culture initiale, c'est-à-dire un collège restreint, soit une Commission plus nombreuse, et dans ce cas-là, il préciserait alors les règles de délibération.

L'article 18 bis, sur lequel beaucoup d'entre vous se sont déjà exprimés, établirait le rôle et le mode de désignation du président de la Commission.

L'article 19 évoquerait la possibilité d'instituer le Congrès des peuples d'Europe. Il déterminerait sa composition et la procédure pour la désignation de ses membres et définirait ses attributions. Il serait évidemment rédigé en fonction des travaux de la

Convention.

L'article 20 porterait sur la composition et les attributions de la Cour de justice et du Tribunal de Première instance; l'article 21, sur la composition et les attributions de la Cour des comptes; l'article 22, sur la composition et les missions de la Banque centrale européenne. Pour ce qui est de l'article 23, on prévoirait que le Parlement européen, le Conseil et la Commission seraient assistés d'un Conseil économique et social et d'un Comité des régions.

On passerait ensuite, après avoir défini les compétences et les institutions, à la mise en oeuvre des actions de l'Union. L'article 24 énumérerait les différents instruments dont disposeraient les institutions de l'Union pour exercer leurs compétences. La demande concernant la réduction et la lisibilité de cette liste par rapport à la liste actuelle est actuellement examinée par le groupe de travail de M. Giuliano Amato. L'article 25 décrirait la procédure législative de l'Union, en termes classiques, c'est-à-dire procédure d'adoption des lois et des lois-cadres. L'article 26 décrirait clairement les procédures d'adoption des décisions et l'article 27 décrirait les procédures de mise en oeuvre par l'Union des actes qui relèvent de sa compétence ainsi que les moyens de surveillance de leur exécution, puisqu'il a souvent été souligné qu'il y avait une lacune institutionnelle à cet égard. Enfin, l'article 28 décrirait les procédures de mise en oeuvre par l'Union des actions d'appui, y compris des programmes, ainsi que les moyens de surveillance de leur exécution.

Les trois articles suivants, 29, 30 et 31, décriraient les procédures d'application dans le domaine de la politique étrangère et de sécurité commune, dans le domaine de la politique de défense commune, ainsi que les procédures d'application en matière de police et de justice dans le domaine pénal.

Je passe sur l'article 32, parce qu'il correspond à des dispositions déjà débattues dans des traités antérieurs. Il concernerait les conditions pour l'instauration d'une coopération renforcée dans le cadre du traité, et donc les domaines exclus de cette coopération, comme le principe de l'application des obligations des Etats participants.

Un titre nouveau, qui ne figure pas dans les traités, serait le titre 6: la vie démocratique de l'Union. Beaucoup d'entre vous ont exprimé le souci d'une mise en lumière de la vie démocratique de l'Union.

L'article 33 établirait le principe selon lequel les citoyens de l'Union sont égaux vis-à-vis de toutes ses institutions.

L'article 34 énonce le principe d'une démocratie participative. Nous n'intervenons pas dans l'architecture institutionnelle des Etats membres, mais nous indiquons que les institutions assurent un degré élevé de transparence permettant aux différentes formes d'associations des citoyens de participer à la vie de l'Union.

L'article 35 reprendrait l'idée que l'élément central de l'expression démocratique est le Parlement européen. Un protocole assurerait l'élection du Parlement européen selon une procédure uniforme, ou plutôt homogène, dans tous les Etats membres.

L'article 36 établit la règle de la publicité des délibérations législatives du Parlement européen et du Conseil lorsque celui-ci siège dans sa forme législative.

L'article 37 établirait les règles de vote applicables aux délibérations des institutions de l'Union, y compris la définition des majorités qualifiées, ou éventuellement super qualifiées, et la mise en oeuvre de la possibilité de l'abstention constructive et de ses conséquences.

Il y aurait un titre 7 – beaucoup d'entre vous l'ont souhaité – sur les finances de l'Union. Cet article prévoirait que le budget de l'Union soit intégralement financé par des ressources propres, et prévoirait une procédure à suivre pour l'établissement du système de ressources propres.

L'article 39 poserait le principe de l'équilibre budgétaire ainsi que les dispositions concernant la discipline budgétaire.

Enfin, l'article 40 serait un article technique sur le budget, décrivant la procédure d'adoption du budget.

Ensuite, vous avez différents titres. L'action de l'Union dans le monde: titre 9. L'article 41 devrait établir qui représente l'Union dans les relations internationales, en tenant compte des compétences déjà exercées au titre de la Communauté. En fonction des travaux de la Convention, cet article devrait définir le rôle et le rang futur du haut représentant pour la politique étrangère et de sécurité commune. Le titre 9 serait original, puisqu'il n'existe pas dans les traités. Ce serait un article-cadre pouvant contenir les dispositions définissant une relation privilégiée entre l'Union et les Etats de son voisinage s'il était décidé de créer une telle relation.

Le titre 10, qui a donné lieu à des commentaires ou à des traductions un peu déformantes, porte sur l'appartenance à l'Union. On y rappelle d'abord que l'Union est ouverte à tous les Etats d'Europe qui partagent ses valeurs, etc. L'article 44 établirait la procédure pour l'adhésion de nouveaux Etats à l'union européenne. M. Duff a d'ailleurs fait des propositions originales dans ce domaine. L'article 45 reprendrait un article qui a été introduit dans le Traité sur l'Union européenne pour la suspension des droits d'appartenance à l'Union en cas de constatation d'une violation des principes et des valeurs de l'Union de la part d'un Etat membre. L'article 46 mentionnerait ce que l'on appelle *the right to secession* dans le droit constitutionnel anglo-saxon, et notamment américain, c'est-à-dire la possibilité d'établir une procédure de retrait volontaire de l'Union sur décision d'un Etat membre, ainsi que les conséquences institutionnelles d'un tel retrait. Comme le traité lui-même sera vraisemblablement établi pour une durée illimitée, que ce n'est pas un traité avec une échéance, il est normal, sur la longue durée, de réserver la possibilité pour un Etat, s'il le souhaite, de se retirer de l'Union.

La deuxième partie, que je ne commenterai pas, comprendra tous les chapitres des politiques et indiquera le type de compétence et les actes et procédures qui seront applicables. Il sera nécessaire d'introduire des amendements techniques aux textes antérieurs, c'est-à-dire principalement aux textes du Traité de Rome, pour mettre en conformité cette deuxième partie.

Il y aurait enfin les dispositions générales et finales, qui seraient l'abrogation des traités antérieurs, inévitable en raison de la procédure suivie, la continuité juridique par rapport aux Communautés européennes et à l'Union européenne, et ensuite des questions techniques et juridiques, le champ d'application du traité, l'indication que les protocoles annexés au traité en font partie intégrante; un point important, la procédure de révision du traité constitutionnel; l'adoption, la ratification et l'entrée en vigueur de ce traité, et la durée: il serait conclu pour une durée illimitée; enfin, on énumérerait les langues dans lesquelles le traité serait rédigé et qui feraient foi.

Voilà donc cette architecture. Comme je n'ai pas voulu qu'elle vous parvienne par morceaux, on vous a remis tout à l'heure ce texte. Mais, naturellement, vous avez besoin d'un certain délai pour l'examiner et pour y réfléchir. Aussi, nous vous proposons de travailler de la manière suivante: le débat sur l'architecture n'est pas un débat sur le contenu des différents articles, nous essayons en fait de savoir si cette architecture est convenable, adaptée ou devrait être améliorée ou amendée. Nous pourrions, demain matin, aménager notre emploi du temps afin de consacrer environ une heure et demie à vos premières réactions. Le débat sera plus approfondi par la suite. Nous aurons en effet d'autres occasions d'en débattre en profondeur au fur et à mesure du retour des rapports des groupes de travail qui vont porter sur telle ou telle partie de cette architecture. L'idée serait que le praesidium puisse présenter, au cours des premiers mois de l'année 2003, et en fonction des résultats de nos débats, des sections du projet de traité qui auront été nourries grâce aux éléments dégagés sur la base des rapports des groupes de travail et de vos débats en séance. Il faudra aussi, à un moment ou à un autre, insérer dans cette procédure de réflexion une réflexion plus précise sur l'aspect institutionnel, mais l'aspect institutionnel viendra à partir de cette démarche, précisément, sur les compétences et leur exercice. C'est ainsi que les éléments de construction viendront prendre leur place dans la structure constitutionnelle et que nous allons, lentement mais sûrement, atteindre notre but. Ainsi, la tortue sera présente au rendez-vous de l'été 2003.

Voilà, mes chers conventionnels, ce que je voulais vous dire aujourd'hui en ouvrant cette séance et en vous remettant ce document à propos duquel vous pourrez, si vous le souhaitez, faire part demain matin d'un premier ensemble de réactions.

Nous allons maintenant poursuivre nos travaux tels qu'ils ont été organisés et donc écouter les rapports de deux de nos groupes de travail. D'abord, concernant les horaires, nous travaillerons jusque 20 h, avec une pause de 17 h 30 à 18 h. Nous aurons maintenant les conclusions du groupe de travail sur les parlements nationaux, le groupe présidé par Mme Gisela Stuart, et demain matin les conclusions du groupe de travail sur la Charte des droits fondamentaux, présentées par M. Vitorino. Ce seront les débats finaux sur ces deux questions: rôle des parlements nationaux et Charte. Par contre, nous entendrons en fin d'après-midi M. Hänsch qui nous présentera en avant-première les résultats de son groupe de travail, et M. Christophersen, sur l'état d'avancement des travaux de son groupe. Demain matin, la réunion commencera à 9 h 30 par le débat sur le rapport Vitorino, et à partir de 11 h 30 aura lieu le débat préliminaire sur l'architecture du projet de traité constitutionnel. Voilà donc deux journées très chargées qui vous imposent un grand effort d'attention et de réflexion. <BRK>

1-005

DA

**De nationale parlmenters rolle**

DE

**Die Rolle der nationalen Parlamente**

EL

**Ρόλος των εθνικών κοινοβουλίων**

EN

**The role of national parliaments**

ES

**El papel de los Parlamentos nacionales**

FR

**Le rôle des parlements nationaux**

IT

**Il ruolo dei parlamenti nazionali**

NL

**De rol van de nationale parlementen**

PT

**O papel dos parlamentos nacionais**

FI

**Kansalliset parlamentit**

SV

**De nationella parlamentens roll**

2-001

DA

**DET EUROPÆISKE KONVENT  
TIRSDAG DEN 29. OKTOBER 2002**

DE

**EUROPÄISCHER KONVENT  
DIENSTAG, 29. OKTOBER 2002**

EL

**ΕΥΡΩΠΑΪΚΗ ΣΥΝΕΛΕΥΣΗ  
ΤΡΙΤΗ 29 ΟΚΤΩΒΡΙΟΥ 2002**

EN

**EUROPEAN CONVENTION  
TUESDAY, 29 OCTOBER 2002**

ES

**CONVENCIÓN EUROPEA  
MARTES, 29 DE OCTUBRE DE 2002**

FR

**CONVENTION EUROPÉENNE  
MARDI 29 OCTOBRE 2002**

IT

**CONVENZIONE EUROPEA  
MARTEDI' 29 OTTOBRE 2002**

NL

**EUROPESE CONVENTIE  
VERGADERING VAN DINSDAG 29 OKTOBER 2002**

PT

**CONVENÇÃO EUROPEIA  
TERÇA-FEIRA, 29 DE OUTUBRO DE 2002**

FI

**EUROOPPA-VALMISTELUKUNTA  
TIISTAINA 29. LOKAKUUTA 2002**

SV

**EUROPEISKA KONVENTET  
TISDAGEN DEN 29 OKTOBER 2002**

2-002

FR

**PRÉSIDENCE DE M. GISCARD D'ESTAING***(La séance est ouverte à 9h35) <BRK>*

2-003

DA

**Chartret om Grundlæggende Rettigheder**

DE

**Charta der Grundrechte**

EL

**Χάρτης των Θεμελιωδών Δικαιωμάτων**

EN

**Charter of Fundamental Rights**

ES

**La Carta de los Derechos Fundamentales**

FR

**La Charte des droits fondamentaux**

IT

**Carta dei diritti fondamentali**

NL

**Handvest van de grondrechten**

PT

**Carta dos Direitos Fundamentais**

FI

**Perusoikeuskirja**

SV

**Stadgan om de grundläggande rättigheterna**

2-004

FR

**Le Président.** – Mes chers Collègues, nous allons commencer nos travaux. Vous savez que nous allons écouter le rapport du groupe de travail numéro 2, présidé par Monsieur António Vitorino, sur la Charte des droits fondamentaux.

Vous avez tous reçu le rapport de ce groupe de travail concernant l'intégration de la Charte des droits fondamentaux ainsi que sur l'adhésion de l'Union à la Convention européenne des droits de l'homme.

Avant de donner la parole à Monsieur Vitorino, je voudrais le féliciter, ainsi que tous les membres de son groupe de travail, pour avoir réussi à produire un rapport très consensuel. En effet, c'était là un sujet qui méritait, peut-être plus encore que d'autres, de bénéficier d'un large consensus parmi les Européens, mais qui a soulevé au départ, un certain nombre de questions difficiles et controversées, notamment de nature juridique.



Comme le dit le rapport, ce n'était pas au groupe de travail d'anticiper sur les décisions à caractère politique, qui reviendront à la Convention elle-même et aux Institutions européennes. Vous avez, grâce à un travail très vigoureux et très minutieux, dégagé une position commune sur toutes les questions essentielles soulevées par la Charte. On peut espérer que, grâce à cet excellent travail préparatoire, un groupe de texte ou "building block" concernant les Droits fondamentaux est désormais modelé d'une façon qui rendra possible son intégration, vous le direz, sous une forme ou une autre, dans le futur Traité. Je crois que cela constituerait un progrès énorme sur notre chemin vers une Constitution jouissant de la confiance des citoyens européens. <BRK>

2-005

EN

**Vitorino (CE).** – Mr President, as you have emphasised yourself, the political decision on both integrating the Charter into the Treaties and having the Union acceding to the Convention on Human Rights is for the plenary of the Convention. But for the group we can say that there is an overall consensus in orientation, thanks to a common understanding in the group on several key legal and technical issues relating both to the Charter and to accession to the European Convention on Human Rights.

I would like to emphasise, as you have done Mr President, that these results were achieved thanks to the expertise commitment of all members of the group, and of the very skillful and well-prepared work by the secretariat of the Convention, whom I would like to thank personally.

As far as the Charter is concerned, all members of the group either support it strongly and see it being incorporated in a form which would make the Charter legally binding and give it constitutional status, or they would not rule out giving favourable consideration to such incorporation.

As for the concrete form of incorporation, the group is well aware that it depends on the overall Treaty architecture. But the group would submit two basic options to this plenary, either of which would serve to make the Charter binding, and give it constitutional status:

1. The insertion of the text of the Charter articles at the beginning of the Constitutional treaty,

or

2. The insertion of an appropriate reference to the Charter in one article of the Treaty combined with annexing the Charter as a specific part of the Treaty or as a separate instrument, such as a protocol.

As the report emphasises, a large majority of the group is in favour of the first option. Some members prefer the second option, and one member of the group has submitted a third option, which, in his view, could be used to make the Charter legally binding, but without giving it constitutional status.

I would say that the basic starting point of the group's work is that the Charter, and the contents of the Charter, represent a consensus that has been reached by the previous Convention, and that consensus should be respected by the current Convention. Therefore, the group did not wish to reopen the discussion on the content of the Charter. The rights and principles of the Charter have thus remained untouched. Nevertheless, the group, with reservations from two of its members, proposes certain drafting adjustments in the so-called "horizontal provisions" of the Charter. These do not change the substance of the horizontal provisions which were enshrined in the Charter by the previous Convention, but on the contrary, these new horizontal provisions serve to confirm, or even to render clear and legally watertight, certain key elements on which, in substance, the previous Convention has already agreed.

These drafting adjustments meet some members' concerns about legal certainty, and they are inserted in our report to ensure a smooth incorporation of the Charter as a legally binding document.

I would just like to call your attention to the three main aspects of these horizontal clauses:

First of all, we wish to put forward for your consideration a strengthened clause in the Charter, rendering it absolutely clear that integrating the Charter in the Treaty will not lead to an extension of the Union's competencies. This is a principle that was adopted by the previous Convention; we are just re-emphasising it.

A second element is a clause clarifying that Charter rights that are based on the common constitutional tradition of Member States will be interpreted in harmony with those traditions.

The third clause clarifies the distinction between rights and principles in the Charter: a distinction which was already an important element of the overall consensus found in the previous Convention, but which is now spelled out in more detail. These are the three key elements of the new horizontal clauses.

Of course, there are other elements of the Charter that the group wants to submit for discussion. Firstly, regarding the Charter preamble. We believe this to be a crucial element of the Charter, and therefore it should be preserved in the future Constitutional Treaty framework.

Secondly, the explanations of the Charter, which were drawn up by the Presidium of the old Convention, are not part of the Charter as such, but could be considered as an *exposé de motifs* of the Charter. We however believe that those explanations are very important for

the interpretation of the Charter, and therefore they should be taken into consideration, and be publicised more widely.

Finally, the report also signals the question to the Convention whether upon incorporation of the Charter the Treaty should still retain a reference to external sources of fundamental rights as currently found in Article 6.2 of the Treaty of the European Union - I mean the reference to the common constitutional tradition of Member States, and reference to the European Convention on Human Rights.

Now turning to the second part of our work, the accession of the Union to the European Convention on Human Rights. All members of the group either strongly support, or are ready to give favourable consideration to, the creation of a constitutional authorisation in the Treaty, to enable the Union to accede to the European Convention on Human Rights. I would like, once again, to emphasise that the Convention now only has to decide upon a possible insertion of such a constitution habitation in the Treaty. It will then be up to the Union's institutions, later on, notably for the Council taking the decision by unanimity, to decide when and how to open negotiations on such an accession, according to which technical modalities, and also to deal with the question of which additional protocols to the European Convention on Human Rights the Union should accede to. Those elements are simply subsequent elements of the major decision that we are supposed to discuss and take which is the constitutional habilitation to allow the Union to accede to the European Convention on Human Rights.

What are the main arguments that the group emphasises in favour of accession of the Union to the European Convention on Human Rights? First of all, it is a strong political signal for coherence between the Union and the greater Europe based on the Council of Europe, and the Strasbourg system of protection of fundamental rights.

Secondly, the fact that the Union accedes to the European Convention on Human Rights gives the citizens an analogous protection *vis-à-vis* Acts of the Union, as they already enjoy *vis-à-vis* legal Acts of Member States.

Thirdly, such an accession would ensure harmony in the case law of the two European Courts in human rights matters: the Luxembourg Court, and the Strasbourg Court.

We have also tried to dispel some of the fears that this option might raise. First of all, we believe in the group that such an accession does not threaten the principle of autonomy of Union law, or even the authority of the European Court of Justice. This is the opinion of the judges of both those Courts, and we believe that, at the end of the day, the autonomy of the Community legal system and the autonomy of the judicial /legal system of the European Union should be kept on the same basis as the autonomy of national law and the autonomy of national constitutional law courts and the autonomy of national supreme courts in regard to the European Convention on Human Rights. In our opinion, there is no difference between the two cases.

The group also stresses that the incorporation of the Charter and the accession to the European Convention are not alternatives but should be considered as complementary steps. The two steps together are, we believe, worthy of a constitution of the European Union.

The group's consensus was in favour of the clarification of certain key elements in this accession. First of all, we want to emphasise that accession to the Convention like the incorporation of the Charter in the Treaties, will not modify the division of competencies between the Union and the Member States. Therefore, we recommend the use of certain technical safeguards in order to make this point totally clear. There is no enlargement of the scope of competencies of the Union from the fact that the Union accedes to the European Convention on Human Rights.

Lastly, there is one final issue that has been discussed in the group, and to some extent this issue is independent from the integration of the Charter of Fundamental Rights into the Treaties, but nevertheless, we want to emphasise that if the Charter becomes legally binding, and gains constitutional status, this question of access to courts at European level may become a more relevant issue. Several members of the group have raised the issue of the possible reform of the conditions under which individuals may refer matters to the European Court of Justice on the basis of the current Article 230(4). A certain number of group members and some experts have pointed out during our discussions certain *lacunae* of judicial protection that might well exist in the current system of remedies. I would call your attention to some proposals that the European Ombudsman has put forward in this respect. On the other hand some members of the group felt that any possible reform of such a system of access to courts should be examined with great care, and that the current system of remedies should not be profoundly altered.

The group recommends this topic for further examination by the Convention in an appropriate context, together with other issues touching the statutes of the Courts, such as for instance, the present limits to the Court's jurisdiction in matters of justice and home affairs.

Finally, Mr President, I think we have achieved a conclusion that allows us to be optimistic about the final outcome of these two operations; enshrining the Charter in the Treaties and at the same time for the Union acceding to European Convention on Human Rights But it is ultimately up to you, Members of the Convention, to decide on that.

(Applause) <BRK>

2-006

FR

**Le Président.** – Nous remercions Monsieur Vitorino de cette présentation des conclusions du rapport émis par le groupe. Nous allons maintenant en débattre en commençant par Monsieur Lopes. <BRK>

2-007

PT

**Lopes (Ch.E/G.-PT).** - Senhor Presidente, caros colegas, gostaria em primeiro lugar de felicitar o senhor comissário António Vitorino pela forma como dirigiu as reuniões do grupo de trabalho sobre a Carta dos Direitos Fundamentais. Recebi testemunho directo de que as conclusões que agora nos apresentou são naturalmente, e em primeiro lugar, o resultado de um esforço do compromisso entre os seus membros, mas que esse compromisso dificilmente teria sido possível sem a sua reconhecida competência técnica na matéria, o seu profissionalismo na condução das reuniões e a sua habilidade na procura dos consensos. Apoio as recomendações submetidas pelo grupo de trabalho tais como constam do respectivo relatório. A incorporação da Carta dos Direitos Fundamentais nos Tratados de forma a conferir-lhe um carácter vinculativo e a possibilidade de lhe ser, além disso, concedido estatuto constitucional marcarão, do meu ponto de vista, um progresso assinalável para a nossa União. O ser humano passa a ser indiscutivelmente o cerne da acção da União, tal como proclama o preâmbulo da Carta, que reafirma sem margem para dúvidas os valores indivisíveis e universais da dignidade do ser humano, da liberdade, da igualdade e da solidariedade.

As propostas de adaptação técnica dos chamados artigos horizontais necessárias à incorporação da Carta nos Tratados parecem-me soluções felizes. Não lhe introduzem alterações de substância e permitem responder às diferentes culturas, tradições constitucionais e jurídicas dos vários Estados-Membros. O grupo de trabalho recomenda também que seja incluída no novo Tratado uma autorização constitucional que possibilitará a adesão da União à Convenção Europeia dos Direitos Humanos. Dado o significado constitucional dessa possível adesão, caberá, porém, às instituições, nomeadamente ao Conselho, decidindo por unanimidade, iniciar as negociações para o efeito. É também uma recomendação que me parece política e juridicamente bem fundamentada. Essa adesão não modificará a divisão de competências entre os Estados-Membros e a União. A posição individual destes perante a Convenção de Estrasburgo também não será alterada. Mas, ao mesmo tempo, será dado um importante sinal político aos países europeus da chamada "grande Europa" do verdadeiro comprometimento da União com a promoção e a defesa dos Direitos humanos. Em resumo, congratulo-me com a qualidade do relatório apresentado a este plenário pelo grupo de trabalho da Carta e com o equilíbrio e o alcance das recomendações apresentadas. <BRK>

2-008

ES

**Méndez de Vigo (PE).** - Señor Presidente, hace casi dos años, un día como hoy, en el salón plenario de aquí enfrente, la primera Convención aprobó la Carta de los Derechos Fundamentales de la Unión Europea, y veo a muchos amigos convencionales que estaban entonces allí.

Aquella Carta fue redactada como si fuera a integrarse en los Tratados, según la expresión del Presidente Hähnsh, pero esa decisión política pertenecía a una Conferencia Intergubernamental que decidió hacer de esa Carta una declaración política.

La delegación del Parlamento Europeo, que tuve el honor de presidir entonces, quería la integración de la Carta en los Tratados. Quería darle un valor jurídico constitucional, y ello porque la Carta es una garantía para la gente; es una garantía de que la Unión -y los Estados miembros-, cuando apliquen el Derecho comunitario, respetarán los derechos y libertades contenidos en la misma.

El Parlamento Europeo, en un informe que ha hecho Andrew Duff y que les hemos remitido a ustedes, aprobó la semana pasada en el Pleno de Estrasburgo una Resolución pidiendo nuevamente la integración de la Carta en la Constitución europea.

Por lo tanto, no podemos sino saludar y aprobar la propuesta que hoy nos hace el Comisario Vitorino, que ha dirigido, con el talento que todos conocemos, este Grupo de trabajo, al que quiero felicitar de corazón por el espléndido resultado de sus magníficas conclusiones. Estoy absolutamente de acuerdo con todo lo que dice en ellas y con los acuerdos que ha encontrado para las cláusulas horizontales.

Me gustaría obtener del Comisario, si es tan amable, alguna tranquilidad de espíritu en el sentido de que la referencia en el artículo 52.4 a las tradiciones constitucionales de los Estados miembros no supone, en la práctica, que se tengan que tener en cuenta todas las tradiciones constitucionales de los Estados miembros, como una referencia, como un mínimo común denominador indispensable.

Finalmente, en lo que respecta al armazón constitucional que ayer presentamos, en el artículo 6 de la Carta se contempla su integración en la Constitución con varias posibilidades. A título personal, creo que la Carta debe integrarse en su totalidad en una parte segunda de la Constitución europea.

Nada más, señor Presidente. He hablado menos de tres minutos porque el trabajo del Grupo Vitorino ha sido tan bueno que sólo merece nuestro agradecimiento. <BRK>

2-009

EN

**Arabadjiev (Parl.-BG).** - Mr President, let me start by thanking chairman Vitorino and the other members of the working group for the opportunity of participating in the working group's discussions which resulted in this excellent report.

It is not at all my idea to confuse the debate on the Charter, with the preliminary debate on the preliminary direct constitutional treaty that is to take place later this morning. For this reason, though it may appear as a first reaction to Article 6 of the preliminary constitutional treaty, it is rather as a member of the working group on the Charter that I would like to note that I do not agree that the overall picture of the future Treaty should, in itself, prejudice the decision on the concrete form of incorporation.

I therefore firmly state at the outset that I confidently, and not as a mere conformist, belong to the large majority of the group, that would prefer the first option indicated in the report; that is insertion of the text of the Charter Articles at the beginning of the Constitutional Treaty in a title or chapter of that treaty. It is by virtue of this option, that the Charter would acquire to the greatest extent, the power of a fully binding text, and would make a decisive step towards a constitution for European citizens in line with the Laeken Declaration.

It is my understanding, that the present debate has the purpose of influencing the political decision about possible incorporation, and not go into the details about incorporation techniques. It is not simply a matter of technical adjustments however to have the drafting adjustments in the horizontal articles of the Charter, as proposed by the working group, especially with a view to the distinction between rights and principles.

In my view, the Charter articles do not explicitly distinguish between provisions which contain rights, and those which contain principles. It would therefore be a responsible approach to seek clarity by means of the proposed amendments, were the Charter to be incorporated in the future Constitutional Treaty.

Without necessarily sharing the concerns of those who would prefer to have the Charter out of the Treaty, and not merely for the sake of commanding a broad consensus, it is for the sake of legal clarity that the impact of provisions of a problematic character need to be clearly determined if the Charter is to have the status of positive law.

Finally, coming from a country which has so positively experienced the effect of the Strasbourg jurisprudence, and having some personal experience in the application of the ECHR, I would prefer not to put forward here any new arguments in favour of accession to that Convention.

I think, however, that it is legally important to introduce instruments that would ensure legal certainty and coherence, and avoid situations where EU Member States are held responsible before the European Court of Human Rights for acts performed pursuant to obligations imposed on those states by EU law.

I believe that it is possible to address and find solutions to these issues in the context of the accession of the EU to the European Convention. The scope of the accession would, by virtue of the very nature of the Union, be limited to areas in which the Union already has competence under the EU Treaties. <BRK>

2-010

EN

**Duff (PE).** - Mr President, as Mr Mendez de Vigo has said, the European Parliament at Strasbourg last week passed with a great majority, a report that has contributed as CONV 368 to the Convention.

The purpose of this was to refresh the political story behind the drafting of the Charter, and to affirm with greater clarity than before, the Parliament's belief that the Charter carries great authority and legitimacy, and that it should now become mandatory with full constitutional status.

I think that the Parliament's resolution fully complements the excellent work of Mr Vitorino's working group, and I congratulate Commissioner Vitorino for having brokered what was clearly a complex agreement. He seems to have tolerated protracted semantic arguments with little legal effect. It seems that some of the proposed revised clauses are simply statements of the obvious, but if the revision of those clauses is the price we have to pay for the installation of the Charter at the centre of the integration process, then I and my colleagues from the Parliament will be prepared to accept them.

I would however have to say that we would greatly appreciate at the present stage of the debate, a clear commitment from the British government that they are also now prepared to accept the confirmation of a mandatory status for the Charter. <BRK>

2-011

NL

**Van der Linden (Parl.-NL).** - Voorzitter, ik zou graag willen beginnen met een groot compliment aan commissaris Vitorino die deze werkgroep zo zorgvuldig, deskundig en standvastig heeft voorgezeten en die een resultaat op tafel heeft gelegd dat een afspiegeling vormt van de discussies. En met collega Duff zou ik aan de Britse regering willen zeggen: hier ligt een resultaat dat rekening houdt met de wensen van de Britse regering en dat ons dus machtigt ook haar te vragen om een inspanning te doen om dit resultaat mee te onderschrijven.

Het gaat om de plaats van de grondrechten in de toekomstige Unie. Voor de legitimiteit van de Europese Unie en voor het vertrouwen van de Europese burger in de handelingen van die Unie is het respect voor de mensenrechten door de instellingen van de Europese Unie van groot belang. De Europese Unie is van een economische gemeenschap, een kolen- en staalgemeenschap, na de Top van

Rome in 1989 gegroeid naar een politieke unie, en gaat nu in de richting van een waardengemeenschap. De kern van die waardengemeenschap is juist het Handvest, dat zijn de mensenrechten. Dat is de ziel en het hart van het nieuwe Verdrag. Daarom hoort het mijns inziens ook thuis in een constituerend verdrag: hoe kunnen wij de burgers uitleggen dat een kernstuk - een "building block", zoals Vitorino het noemt - als bijlage aan een verdrag zou worden gehecht? Juist omdat het een kernstuk is, hoort het thuis in het Verdrag, ook omdat wij de burgers duidelijk willen maken welke de belangrijkste gegevens zijn van die Europese Unie. Ik ben dus een voorstander van integrale opname in het Verdrag zelf.

Met betrekking tot de toetreding tot het EVRM-Verdrag committeert de Europese Unie zich nu aan de mensenrechtenstandaards waaraan ook de lidstaten gebonden zijn. Het voorkomt dubbele standaards en selectief winkelen. Het Handvest moet niet gezien worden als een alternatief voor het EVRM-Verdrag maar als een aanvullend instrument. Het bevordert - en dat vind ik eigenlijk het belangrijkste - een rechtsruimte voor Europa in de ruimere zin des woords, met een consistent mensenrechtenbeschermingssysteem in Europa als geheel. Het is dus een natuurlijke en logische stap.

Toetreding maakt een einde aan de rechtsonduidelijkheid dat de lidstaten wel lid zijn van het EVRM-Verdrag, maar de Europese Unie niet. De burgers krijgen dezelfde mate van rechtsbescherming jegens de Unie als die welke ze nu reeds hebben jegens haar lidstaten. Toetreding zal ook de harmonieuze ontwikkeling van de rechtspraak van de beide hoven bevorderen en, wat ik heel belangrijk vind, geeft een politiek belangrijk signaal dat mensenrechten binnen en buiten de Europese Unie hetzelfde betekenen. Bovendien voldoen wij hiermee aan de resoluties van het Europees Parlement - collega Duff heeft daarover gesproken - en van de Raad van Europa. Bij dat laatste zou ik nog willen zeggen dat de Raad van Europa, met volksvertegenwoordigers uit 44 landen van Europa als geheel, zich bij meerdere gelegenheden uitgesproken heeft voor toetreding van de Europese Unie tot het EVRM-Verdrag, juist om te zorgen dat er sprake is van één rechtsruimte op het punt van de mensenrechten in Europa als geheel.

Voorzitter, het is evident dat ik er voorstander van ben dat de Europese Unie tot het EVRM-Verdrag toetreedt en dat het Handvest op die manier juridisch bindend wordt en een constitutionele status krijgt. <BRK>

2-012

EN

**Hain (Ch.E/G.-GB).** - Mr President, can I thank you first of all for your warm congratulations on my promotion to the British Cabinet, and if I could give you the bad news, I intend to stay on as the Government representative in the Convention, to the end.

I want to congratulate Antonio Vitorino and the group on the work they have done. There is a consensus that the Charter has never been easy to achieve, and I believe we should welcome the Working Group's achievement. I want to thank Antonio, particularly, for his own hard work, his ingenuity, and his flexibility in achieving this consensus. Their excellent report will be a key building block as we begin to look at the shape of a new constitution for Europe.

That constitution must refer to the rights of our citizens and it must be firmly rooted in the Member States' democracies, so no extension of legal competencies, as the Commissioner said himself. I am clear that without this, we cannot have a constitution that meets the need of Europe and its people.

My government has always made clear that we support the Charter as an excellent way of enshrining important values across Europe. Equally, we have made clear that there are issues of what Antonio Vitorino called "legal certainty" that would need to be resolved before we could consider its incorporation into the Treaty. We are ready now to give favourable consideration to the recommendations on this in the report.

In particular, we support the very important technical amendments to the so-called "horizontal provisions" recommended by the group, and we are grateful for them. Crucially, they help clarify its legal intentions. A legal Charter, which is unclear in meaning, would be bad for the citizens and bad for the Member States. It would be counterproductive for the European Union too. The Working Group report also speaks of further work to enrich and publicise the detailed technical explanations that are associated with the Charter. The explanations are a vital part of the overall Charter package. The Commissioner referred to this, and I hope that he may be able to say a little more today about how he proposes to take that vital work forward.

The Working Group has wisely left to the plenary the major political question about an appropriate form of incorporation. Although I agree that the final decision requires us to be clearer about the future architecture of the Treaties, I believe that we can now see the great merit in preserving the integrity of the Charter as a complete and self-contained statement of rights, freedoms and principles. This can be achieved by constructing a simple bridge between the new constitutional Treaty and the Charter, perhaps by the inclusion of an Article in the new Constitution, specifically referring to the Charter, which would then remain a separate document. This would give appropriate weight and status to the Charter, without compromising the simplicity and clarity of the Constitutional Treaty. So in that sense, we do not support the first option; we support the second one.

The rights and freedoms of our citizens, and the principles that inspire the Union, should have prominence in the new constitution we are devising. This report allows us to see how that might be achieved. To put the disagreements we have had behind us, it is to be warmly welcomed, and in specific answer to the question asked by Andrew Duff and others, provided we stick firmly to the approach here, and provided we pursue the second option, yes, we are ready to work towards incorporation. <BRK>

2-013

FR

**Fayot (Parl.-LU).** – Oui, Monsieur le Président, la Charte des droits fondamentaux est un signal important en vue d'une Constitution européenne. Celle-ci doit mettre le citoyen européen au centre de la construction européenne. Elle doit se préoccuper d'énoncer clairement ses droits et devoirs et les moyens pour y arriver pour autant que cela soit de la compétence de l'Europe. En incorporant, comme je le souhaite, la totalité de la Charte dans une Constitution européenne, nous en faisons un texte contraignant qui donne des droits effectifs aux citoyens communautaires. Je voudrais, pour ma part, insister tout particulièrement sur le chapitre social. Certes, nous savons qu'il y a de multiples restrictions et limitations dans le texte de la Charte lui-même.

Il n'en reste pas moins que ce chapitre est une indication importante pour le respect du modèle social européen et des principes essentiels de l'Etat social. Que nous ayons atteint cela, je voudrais le souligner également, est le grand mérite du Commissaire Vitorino, qui a déployé d'importants efforts afin d'atteindre le consensus, tâche moins facile qu'il n'y paraissait de prime abord.

Monsieur le Président, le groupe de travail a renvoyé une décision importante à la Convention elle-même. C'est, comme le prévoit la Charte elle-même dans son article 47, le droit à la protection juridictionnelle effective des citoyens. Je pense que le groupe de travail a eu raison de le faire parce que la question ne se limite pas à la protection juridique relative aux droits fondamentaux. Elle concerne également les actes communautaires en général.

On sait qu'à l'heure actuelle, il incombe aux Etats membres de prévoir des voies de recours et des procédures permettant d'assurer le respect du droit des individus à une protection juridictionnelle effective en matière européenne. L'article 230, paragraphe 4, ne permet le recours direct d'un citoyen devant la Cour de justice européenne que de façon très restrictive. Or, nous voulons rapprocher l'Union du citoyen. Dans un tel système, la protection juridique des citoyens face à la machine institutionnelle est une pièce maîtresse. A cet égard, trois réformes sont essentielles selon moi. En premier lieu, il n'est pas acceptable que la loi communautaire n'offre pas de protection juridictionnelle à des individus qui voudraient contester des mesures communautaires directement applicables. En deuxième lieu, la juridiction de la Cour de justice européenne doit être étendue à toutes les Institutions et à tous les organes de l'Union, comme le dit la Charte, d'ailleurs, expressément à l'article 51.1. Or l'article 230 ne parle que de la légalité des actes des Institutions, qui n'est qu'une partie de ce qui se passe dans l'Union européenne. Et, en troisième lieu, la juridiction doit être étendue à toutes les mesures de l'Union alors, qu'à l'heure actuelle, l'activité de la Cour est limitée. Je pense que la question se pose même si dans l'état actuel de la législation européenne, dans le domaine juridictionnel, cette législation est en accord avec les exigences de la Charte et de la Convention européenne des droits de l'homme. Je pense donc Monsieur le Président, que dans la Constitution que nous allons rédiger, devra figurer le droit du citoyen à une protection juridictionnelle effective et sans lacunes. <BRK>

2-014

FR

**Duhamel (PE).** – Monsieur le Président, je ne voudrais pas briser le consensus, je voudrais aider à bien l'identifier, ce qui implique une franchise nécessaire.

Un très large consensus existe pour incorporer la Charte des droits fondamentaux dans notre Union. Ce consensus existe au sein de la Convention et nos débats l'ont amplement démontré. Mais il existe peut-être encore plus dans la société civile. Impossible de ne pas l'avoir entendu. Certes, un petit nombre de gouvernements sont plus ou moins réticents. On peut comprendre que le groupe de travail ait voulu les apaiser. On ne comprendrait pas tous en tout cas que la Convention en vienne à leur céder. Ne décevons pas les citoyens européens, ne touchons pas inutilement à la Charte. Les adjonctions proposées me paraissent parfois inutiles, parfois rétrogrades, et toujours très fâcheuses.

Par exemple, sont inutiles les adjonctions des articles 52.4 et 52.5 sur les traditions constitutionnelles nationales, les législations nationales, les pratiques nationales. Rien n'y figure qui ne soit déjà dans la Charte. Inutiles sont les incantations qu'on veut ajouter aux articles 51.1 et 51.2 sur le champ d'application limité aux compétences de l'Union. L'article 51.2 dans le texte de la Charte est déjà redondant par rapport à l'article 51.1. Cette répétition avait été faite pour rassurer. A ce rythme-là, on finira par écrire 10 fois de suite que la Charte ne crée aucune compétence nouvelle, que la Charte ne crée aucune compétence nouvelle, que la Charte ne crée aucune compétence nouvelle ou, pourquoi pas dix, quinze, vingt fois.

Lorsque les propositions ne sont pas inutiles, elles peuvent devenir rétrogrades. C'est le cas de l'article 52.5 nouveau qui est proposé. Il s'agit ici de la distinction entre les droits et les principes consacrés par la Charte. Cette question est déjà traitée par l'article 51.1. Il dispose que l'Union et les Etats membres, lorsqu'ils mettent en oeuvre le droit de l'Union, respectent les droits fondamentaux tandis qu'ils en observent les principes et en promeuvent l'application. Avec le nouveau texte proposé, il serait désormais affirmé que les principes peuvent être mis en oeuvre. A première vue, on exprime une évidence. En effet, on imagine mal que les principes ne puissent pas être mis en oeuvre. Après examen, on mesure le recul et d'ailleurs la contradiction. L'article 51 inchangé affirme que l'Union et les Etats promeuvent l'application. Dans le texte anglais "they shall promote", le nouvel article 52.5 suggère de faire marche arrière, les principes peuvent être mis en oeuvre. En anglais "may be implemented". Il est évident qu'ils ne seront mis en oeuvre que lorsqu'on voudra les mettre en oeuvre. Mais voyez la portée symbolique d'un tel recul. On passe de l'affirmation de valeurs et de principes que la politique s'efforcera de mettre en oeuvre à l'énoncé étriqué d'éventualités limitées. Est-ce là le message que nous voulons envoyer sur l'avenir de l'Europe?

A sans arrêt rassurer quelque gouvernement, d'ailleurs très minoritaire, vous risquez de désespérer la société civile. Par conséquent, je propose qu'on ne le fasse pas. Ne touchons pas à la Charte. <BRK>

2-015

DE

**Meyer (Parl.-DE).** - Herr Präsident, liebe Kolleginnen und Kollegen! Ich habe zweimal als Gast an der Arbeitsgruppe, die Kommissar Vitorino geleitet hat, teilgenommen und dabei ist meine Bewunderung für seinen Sachverstand und sein diplomatisches Geschick - soweit das noch überhaupt möglich war - noch gestiegen! Durch die Rechtsverbindlichkeit der Charta wird ein großer Schritt gemacht, der deutlich werden lässt: Die Europäische Union ist nicht nur eine Wirtschaftsgemeinschaft und Währungsunion, sie ist auch eine Wertegemeinschaft. Mit den Worten von Romano Prodi kann man sagen: Sie ist die künftige Seele der Europäischen Union.

Was nun die Klarstellungen angeht, zu denen der Kollege Duhamel sich geäußert hat, ist meine Auffassung, dass diese Klarstellungen unnötig sind, aber ich betone auch, sie sind unschädlich, und sie waren eine Bedingung dafür, dass in der Arbeitsgruppe Konsens erreicht werden konnte; aus diesem Grunde wurde diese Klarstellung an drei Stellen, die keine inhaltliche Veränderung ist - das betone ich noch einmal -, vereinbart. Ich will aber auch eindeutig betonen, hinsichtlich der Aufnahme der Charta in die Verfassung bin ich für die erste Option. Eine Verfassung, die in ihrem Text keine Grundrechte enthält, sondern nur auf diese verweist, verdient nicht den Namen Verfassung!

Was die Präambel angeht, unterstütze ich mit Nachdruck den Vorschlag der Arbeitsgruppe, diese auch zur Präambel der künftigen Verfassung zu machen. Im Strukturvorschlag, den Präsident Giscard d'Estaing gestern vorgestellt hat, ist unter der Überschrift Präambel kein Text. Ich möchte das so verstehen, dass es bisher jedenfalls inhaltlich nichts Besseres gibt als diese Präambel. Ich erinnere daran, dass wir im ersten Konvent lange über den Inhalt der Präambel debattiert haben, die auch Gegenstand von Kompromissen war, und dieses sollten wir in diesem Konvent nicht wiederholen.

Was den Beitritt zur europäischen Menschenrechtskonvention angeht, sollten wir uns keine unnötigen Probleme bereiten. Über den Beitritt selbst entscheiden die neue Verfassung und dieser Konvent nicht, sondern es geht nur um die Möglichkeit des Beitritts. Diese Möglichkeit kann in der Verfassung sichergestellt werden, und wie Kommissar Vitorino eben gesagt hat, bedarf es dann zur Aufnahme von Verhandlungen nach geltendem Recht eines einstimmigen Ratsbeschlusses.

Diese Grundrechtecharta als rechtsverbindliches Dokument ist ein wichtiges Signal an die neuen Mitgliedsländer. Dort gibt es viele Menschen, die fürchten, was aus Brüssel an Machtausübung auf sie zukommt, und denen können wir gemeinsam sagen: Ihr kommt in eine Gemeinschaft, die unter der Herrschaft der Menschenrechte steht, und wenn aus Brüssel eure Rechte verletzt werden, dann werdet ihr dagegen geschützt durch die Grundrechtecharta! Ihr könnt Vertrauen haben, wenn ihr in die Europäische Union kommt!  
<BRK>

2-016

ES

**Dastis (Ch.E./G.-ES).** - Señor Presidente, quisiera, en primer lugar, felicitar al Comisario Vitorino por la excelente labor que ha desarrollado presidiendo el Grupo de trabajo y apoyar resueltamente la conclusión de incorporar la Carta a nuestro futuro Tratado constitucional.

En cuanto a la modalidad concreta de esa incorporación, creo, a la vista de la arquitectura de Tratado Constitucional que nos fue presentada ayer, que la que mejor se adapta es la modalidad segunda: la de un artículo en dicho Tratado y la inclusión de la Carta como documento anejo.

Quisiera también apoyar el esfuerzo de compromiso realizado en la modificación de la redacción de las cláusulas horizontales. Creo que es un esfuerzo que vale la pena para lograr el consenso que todos deseamos. En este contexto, quisiera resaltar la importancia de las explicaciones para suministrar una interpretación auténtica de la Carta y la necesidad de reforzar la seguridad jurídica, evitando que su contenido quede afectado de manera indirecta por políticas comunitarias en el futuro.

En cuanto a la adhesión de la Unión al Convenio Europeo de Derechos Humanos, creemos apropiado que se incluya una cláusula permitiendo, habilitando para que se tome esa decisión en el futuro, pero esa decisión deberá ser tomada por la Unión en el futuro, una vez que se estudie si es posible hacerla sin menoscabar la autonomía del Derecho comunitario, sin modificar el reparto de competencias entre la Unión y los Estados miembros y sin afectar a la posición de los Estados miembros en dicho Convenio. <BRK>

2-017

EN

**Roche (Ch.E./G.-IE).** - Thanks first of all to Commissioner Vitorino and to his colleagues for a very constructive, careful and thoughtful piece of work.

The protection and promotion of human rights must be at the very heart of the European project. As a past human rights fellow of the United Nations, this is particularly significant to me. The Charter remains a clear and comprehensive statement of where we stand collectively. It is an important and an accessible listing of the values, principles which underpin the Union's identity and its purpose. This is particularly important at a period of change.

The Charter's future status is a central part of the work of the Convention. It is a question that gives rise to complex issues. We need to ensure that not only are human rights fully protected and respected, but that this is done in a way that is clear and effective. Many of

these difficult issues are identified and teased out in the excellent work of the working group. I welcome, in particular, the progress that has been made in relation to the Charter's horizontal provisions which define its scope and application. In my view, the Working Group took the right approach, by not reopening questions of substance in the Charter, while producing or proposing amendments to further confirm key elements of the overall consensus on which the Convention has agreed.

This is very useful and solid work, and will give enormous benefit to the wider Convention when it comes to drawing up the final recommendations.

The working group's mandate made it clear that it was not to get involved in the question of whether the Charter should be incorporated. Rather it was to assume a political decision to move towards incorporation, and to examine the specific matters that would then arise. The political decision on the Charter's place, in any new Treaty remains to be taken and clearly, depends crucially on the nature and the scope of the Treaty itself. There is no need to rush to judgement at this stage. The report has set out proposals that merit careful and thoughtful consideration.

There is also some further technical work to be done, including the status of the explanatory notes, on the articles sources, produced by the Charter Convention Presidium. My immediate preference, as regard to the techniques of incorporation, would be for further explanation of the approach set out at Option B. This would involve insertion of an appropriate reference to the Charter in an Article of the Treaty. This, I believe would be the most fruitful approach.

The group, of course, also studied the question of accession to the European Convention on Human Rights. Again, I welcome the very careful, and thoughtful work that has been done on this issue. Broadly, I can support, in principle, and subject to further detailed work, the concept of the European Union accession to the Convention, as set out in the report.

Finally, I would like to reiterate my strong support for the Charter, as an expression of the rights and values which underpin this Union, and to which we are all committed. The question this Convention must address, is not whether we are for or against Human Rights, there can be absolute no ambiguity in that regard, but rather how it can best be rendered effectively and meaningfully for our citizens. <BRK>

2-018

FR

**Le Président.** – Merci beaucoup Monsieur Roche. Vous avez réussi un tour de force et vous avez arrêté la pendule. Je signale au service de la séance qu'il peut la remettre en marche puisque vous avez parlé 2 minutes 34 mais qu'ensuite ça s'est arrêté. Evidemment, il ne faudrait pas que cela serve de précédent aux orateurs suivants. <BRK>

2-019

DE

**Einem (Parl.-AT).** - Herr Präsident! Vier kurze Anmerkungen. Erstens, ich war Mitglied der ersten Charta-Konvention, also des ersten Konvents zur Arbeit an der Charta, und nach dem Verständnis, das wir dort hatten, ist die Charta der Ausdruck der gemeinsamen Verfassungstraditionen der Mitgliedstaaten in einer aktualisierten und im Text zusammengefassten Weise. Daher verstehe ich den Artikel 52 Absatz 4 der neu formulierten Übergangsbestimmungen nicht wirklich, denn er könnte eine Einschränkung auf nationale Besonderheiten nach sich ziehen.

Zweitens, Artikel 52 Absatz 5 wie von der Arbeitsgruppe vorgeschlagen, ist für mich entweder eine dramatische Einschränkung der Charta und ihrer Anwendbarkeit oder überflüssig. Ich glaube, darüber muss man noch einmal reden. Drittens, nach unserer Auffassung muss die Charta ein Bestandteil der europäischen Verfassung sein, das heißt, der Text muss in der Verfassung sein. Viertens, ich möchte durchaus anerkennen, dass die Regierung des Vereinigten Königreichs ihre Haltung weiter entwickelt hat. <BRK>

2-020

DE

**Kaufmann (PE).** - Herr Präsident! Ich möchte zu den Erläuterungen und zu den horizontalen Artikeln etwas sagen. Ich selbst war damals Mitglied im Grundrechtekonvent, und ich habe in Bezug auf die Erläuterungen die Verwirrung miterlebt, die damals die Präsentation dieses Dokuments ausgelöst hat. Der Grundrechtekonvent selbst hat damals ausdrücklich abgelehnt, sich diese Erläuterung als Dokument zu eigen zu machen. Deshalb steht auch in dem Dokument mit der Nummer Konvent 49 ausdrücklich: "Die vorliegenden Erläuterungen sind vom Präsidium in eigener Verantwortung formuliert worden." Das heißt, die Erläuterungen sind kein Arbeitsdokument des Grundrechtekonvents, und sie gehen auch nicht auf einen Beschluss des Grundrechtekonvents selbst zurück. Insofern muss ich sagen, dass für mich nicht akzeptabel ist, wenn jetzt diese Erläuterungen in einer besonderen Weise hervorgehoben werden und aus meiner Sicht damit nachträglich durch die Hintertür die Erläuterungen eine Legitimation erhalten sollen, die der damalige Konvent ihnen nicht gegeben hat.

Zur horizontalen Bestimmung, vor allen Dingen zum Artikel 52: Wir haben im damaligen Grundrechtekonvent heftig darüber gestritten, ob die Charta zwischen subjektiven Rechten und objektiven Grundsätzen unterscheiden solle. Damals war allen Beteiligten klar, dass Grundrechte als objektive Grundsätze zwar gleichfalls verbindlich sind, dass aber Einzelne ihre Einhaltung nicht selbst



einklagen können würden. Im Grundrechtekonvent wurde damals ein sehr wichtiger Kompromiss erzielt. Die große Mehrheit des Konvents, die keinesfalls bloß objektive Grundsätze in der Charta sehen wollte, stimmte damals zu. Im Gegenzug erklärten sich aber andere Konventsmitglieder damit einverstanden, dass man in den horizontalen Bestimmungen darauf verzichtet, zwischen Rechten und Grundsätzen zu unterscheiden. Deshalb muss ich sagen, habe ich mich sehr gewundert über den Vorschlag, der jetzt von der Arbeitsgruppe ausgearbeitet wurde. Ich teile die Meinung von Herrn Duhamel, dass es hier um einen Rückschritt handelt und nicht, wie Herr Meyer sagt, nur um eine Klarstellung der horizontalen Bestimmung. <BRK>

2-021

ES

**López Garrido (Parl.-ES).** - Señor Presidente, quiero destacar que en el Grupo de trabajo al que he tenido el honor de pertenecer ha habido un amplísimo consenso sobre tres elementos esenciales de la Carta de los Derechos Fundamentales.

Primero, que su contenido es el que se acordó hace dos años y que tiene el apoyo unánime de esta Convención. Segundo, que se trata de una Carta que va a tener un carácter legalmente vinculante, jurídicamente vinculante, e invocable ante los Tribunales. Tercero, que tiene un estatus constitucional.

Sobre esto ha habido un amplísimo consenso, una amplísima mayoría en el Grupo de trabajo y -es importante destacarlo- porque, sin duda, la Carta de los Derechos Fundamentales constituye el mayor elemento de vinculación, de contacto con los ciudadanos que va a haber a lo largo de los trabajos de esta Convención. El mayor elemento seguramente de legitimación y de acercamiento de Europa, de la construcción europea, a los ciudadanos. Por cierto, una construcción europea que en estos momentos coincide con una ampliación a países, que en algunos casos no han tenido una larga tradición democrática. Va a ser importantísimo para ellos entrar en una construcción que tiene esa base de consolidación democrática y de defensa de derechos fundamentales.

Y además, la Carta de los Derechos Fundamentales es un pilar básico de la futura Constitución Europea. Desde la Revolución francesa sabemos que una Constitución, básicamente, proclama dos cosas: derechos fundamentales y división de poderes. Los derechos fundamentales están en esta Carta, que recibirá sin duda un espaldarazo de este Pleno, y falta un elemento básico, sin duda importante, que es la división de poderes. Pero forma parte de los valores de Europa una Carta de los Derechos Fundamentales, en la cual, por cierto, se incluye un capítulo esencial que es la solidaridad, que no he visto reflejado en el esqueleto de Tratado Constitucional que ayer se presentó a esta Convención. La solidaridad debe formar parte de los valores de la Unión Europea y no he visto reflejado esto en los primeros artículos del proyecto de Tratado Constitucional.

Creemos que el preámbulo de la Carta debe insertarse como parte del preámbulo de la Constitución Europea y que, además, la Constitución Europea debe tener una parte visible, una primera parte muy visible, que es la Carta de los Derechos Fundamentales. Creo que debe ser la parte primera de la Constitución y no ser relegada a un Protocolo, como si quisiéramos ocultarla, hacerla difícil de ver para los ciudadanos. Los ciudadanos tienen que ver, al leer la Constitución, que lo primero que hay es una Carta de los Derechos Fundamentales; por eso, claramente apoyo la primera opción: que forme parte de la Constitución Europea y que no sea relegada, como si fuera algo inconfesable, algo que queremos ocultar, a una parte secundaria.

Por último, en cuanto al debate sobre las cláusulas horizontales, yo creo que son innecesarias las modificaciones que se han hecho, pero me parece que no alteran esencialmente el texto. Debemos firmar el Convenio Europeo de los Derechos Humanos -es una forma de homogeneizar la protección de los derechos humanos en Europa- y el control judicial de los derechos humanos de la Carta de los Derechos Fundamentales tiene que ser explicado, detallado y precisado, y en ese sentido apoyo la propuesta que ha hecho Ben Fayot anteriormente.

Por último, quiero decir que todo esto me lleva a apoyar el informe final, elaborado en ese Grupo de trabajo, que ha requerido un alto grado de consenso, en el que ha habido concesiones de todas las partes, y en donde hay, sin duda, un trabajo importante de fondo del Comisario Vitorino, al que quiero agradecer su trabajo eficiente y lúcido. Estoy convencido de que este Pleno va a dar el espaldarazo a la Carta de los Derechos Fundamentales, que convertirá definitivamente a esta Convención en una asamblea constituyente. <BRK>

2-022

FR

**Le Président.** – Je voudrais simplement signaler à Monsieur López Garrido qu'on parle de solidarité dans le titre de l'article 4 et que dans les articles article 2 ou 3, la référence à la solidarité sera explicite. Donc, il n'y a pas de lacune à cet égard. Nous n'avons pas tout mis dans le détail. Mais naturellement, cette notion fondamentale ne sera pas oubliée. <BRK>

2-023

EN

**Kutskova (Gouv.-BG).** - Mr President, dear colleagues, I am glad to express my support for the final report, as member of the working group on the Charter of Fundamental Rights. I am glad that we succeeded in producing a document of normal majority and minority opinions. This now makes the consensual decision of the incorporation of the Charter possible. Finding such a balance was not an easy task. Therefore, let me congratulate all the members of the working group for their constructive attitudes, and especially Mr Vitorino, for his excellent and diplomatic chairmanship.

As already stated by the Bulgarian Government, we favour the incorporation of the Charter of Fundamental Rights into the future Constitutional Treaty, thus giving it a legally binding character. The European citizens will support a constitution where the protection of fundamental rights is given a central place.

As for the technique for the incorporation of the Charter, both suggested options have comparative advantages. We would, however, prefer the B option, which would provide a more balanced and concise institutional text. Let me emphasise the role of the drafting adjustments to the Charter's general provisions, should it be incorporated. Without touching on the substance of the Charter's provisions, these adjustments could be very important for the legal certainty in the area of human rights. Strengthening the horizontal clauses might prove to be an essential consensus-building element. These provisions guarantee the application of subsidiarity.

Another point concerns the explanations of the Presidium of the previous Convention, as well as those of the working group itself. On the one hand, these are very helpful to candidate countries, who did not participate in the previous Convention. On the other hand, although having no legal value, they do have particular importance for the interpretation of the Charter provisions and, in particular, for the distinction between rights and principles.

The Group left the question open, as to whether the Constitutional Treaty should refer to the external sources of inspiration for fundamental rights - in particular, the constitutional traditions, and the European Convention on Human Rights. In my view, we should bear in mind that the Union exists in a dynamic environment, in which human rights will continue to develop. Therefore, referring to external sources would help enrich Union law, and give additional protection to its citizens.

Finally, endowing the Union with a single legal personality will almost mean that it will have the constitutional right to accede to the European Convention on Human Rights. The modalities of accession should be discussed only as a complementary step to the Charter's incorporation. <BRK>

2-024

EN

**MacCormick (PE).** - Mr President, since I am somebody who does not spend all his time praising the works of the Government of his own country, I would particularly like to express my gratitude to Peter Hain, for saying so clearly today, that he, on behalf of the United Kingdom government, would be willing to accept this text, with the adjustments that have been suggested.

That really is an important step forward, and if I may say so, in her presence, it is also important to pay respect to Baroness Scotland, who in the working group was very good-natured and persuaded us, including sceptics like myself, that some adjustments of this kind were necessary. That really was a very important step forward.

After all, we have spent quite a lot of time discussing how important it is for the institutions of the Union to be limited in respect of the principles of subsidiarity and the principle of proportionality. It is, of course, important to have these limits on the institutions of the Union. But how absurd it would be, if we had them, but did not at the same time require the institutions of the Union, under binding force of law, to respect the fundamental rights of the citizens of the Union. That is absolutely critical to constituting a new European Union in a proper manner. Now that we have taken the steps that the working group under Commissioner Vitorino has recommended, we are in a position to do just that.

Secondly, the greatest fear, and I think, the best founded one, of those who were doubtful about the idea of a Charter of Rights as a binding part of the constitution, was that it could undermine the Court at Strasbourg, and the valuable tradition of the European Convention on Human Rights, and as Commissioner Vitorino said, the greater Europe that has subscribed, all along, to the Convention on Human Rights. I think that this document guarantees that the incorporation of our own Charter, internal to Union law will not externally undermine the European Convention on Human Rights, or the Court at Strasbourg. This is also something that many of us hold absolutely vital and fundamental.

In that respect, the proposal that having recognised the personality of the Union, we should encourage the Council to accede to the Convention is all-important, and in all these respects I would like to give my full-hearted support to the proposals of the working group, and thank Mr Vitorino for the work he did in chairing it. <BRK>

2-025

EN

**Kocaoglu (Parl.-TR).** - Mr President, effective protection of fundamental rights is not only the main moral obligation at the EU, but also one of the most important sources of its legitimacy.

However, unlike the situation in its Member States, the protection of fundamental human rights within the EU, has so far been an issue which has lagged behind developments in other fields, for example the completion of the internal market. As the EU is increasingly becoming part of the day-to-day lives of the millions of people living in Europe, the protection of fundamental rights of individuals against its acts is highly relevant in the debate on EU legitimacy.

There are two components for a better protection of fundamental rights within the EU. Firstly, a clear-cut catalogue of fundamental rights of a constitutional nature and secondly, an external control of its implementation. The former involves the incorporation of the

Charter of Fundamental Rights into the Constitutional Treaty, whereas the latter entails the accession of the EU to the European Convention on Human Rights.

For this reason, I welcome the report of the working group, and the recommendations made therein. The members of this Convention must now discharge their historic responsibilities, by expressing a strong political will to make it happen.

Once a political consensus to this end is reached among the members of the Convention, the remaining legal and technical issues, as successfully addressed by this report, are I believe, surmountable. In order to reduce potential legal complexities, I would suggest the incorporation of the Charter by way of a reference in an Article of the Constitutional Treaty, to which the Charter itself, is attached.

I generally support the idea behind the proposed drafting adjustments in the horizontal articles of the Charter. However, given their highly technical nature, I think they should be revisited, particularly after the final decision of the Convention regarding the exact form of incorporation. I am in favour of the continuation of the reference to external sources of inspiration for fundamental rights, currently made in Article 6, paragraph 2 of the EU Treaty.

I understand the approach of the report, but I think the contents of the Charter should be left intact, as it was endorsed by the Nice European Council. However, when we talk about fundamental rights, we cannot ignore the reality of the 10 million long-term residents of third country nationals within the EU. This issue should also be addressed by the Commission.

As for the accession of the EU to the European Convention on Human Rights, I believe that the first bold step must be taken by this Convention. The Union must open itself to the control of the pan-European human rights system of the Council of Europe, as has long been done by the Member States themselves. I support all the arguments in favour listed within the report. <BRK>

2-026

FR

**Haenel (Parl.-FR).** – Merci, Monsieur le Président. Concernant la Charte tout d'abord, je ne peux qu'applaudir aux conclusions du groupe pour avoir moi-même participé aux travaux de la première Convention. Je ne pourrais pas imaginer que notre Convention ne se prononce pas en faveur d'une intégration de ces dispositions sous une forme qui les rendent juridiquement obligatoires. Nous le disions à l'époque. La Charte rappelle les fondations de l'Europe, les fondamentaux du pourquoi on est ensemble. Elle était considérée comme le préalable à la démarche constitutionnelle. Pour ma part, je tiens à le souligner auprès de mon ami Monsieur Vitorino, je tiens beaucoup à ce que tout le préambule soit incorporé dans un article premier pimpant de la Constitution avec la même valeur que l'ensemble des articles. En ce qui concerne le statut des explications, je me souviens que dans cette première Convention, j'étais le voisin de Lord Goldsmith et que ce dernier avait considéré qu'il ne donnerait son accord que s'il y avait des explications qui, par la suite, devaient éclairer la lecture des articles de la Charte et, notamment, en faciliter l'interprétation. Par conséquent, il est très important qu'on rementionne aujourd'hui ces explications qui font, en quelque sorte, partie intégrante de l'ensemble du dispositif.

Pour ce qui est de l'adhésion à la Convention européenne des droits de l'homme, en revanche, le rapport du groupe de travail me laisse dans l'incertitude. En effet, je suis réservé. En matière de protection des droits, nous avons tous tendance à penser que deux garanties valent mieux qu'une. La Charte constitue une première garantie, l'adhésion à la Convention européenne en ajouterait une seconde. De ce fait, quel est celui d'entre nous qui ne serait pas tenté dans un premier mouvement, un mouvement d'ensemble bannière au vent, de répondre qu'il faut ajouter cette deuxième protection à la première. Etant juriste de formation, je sais par expérience que dans les matières juridiques, le mieux est parfois l'ennemi du bien. Ce qu'il faut avant tout, c'est que le citoyen comprenne les voies de recours qui lui sont offertes et qu'il puisse obtenir assez rapidement la réponse du juge. Je m'interroge à ce sujet sur les effets que pourrait avoir l'adhésion à la Convention européenne des droits de l'homme. Je me pose deux questions. Premièrement, a-t-on bien mesuré les conséquences de cette adhésion sur l'allongement des délais de procédure? J'ai fait mes calculs. En moyenne, on arrive à une dizaine d'années. Le problème est de savoir si on y adhère pour les juristes et les avocats ou pour les citoyens. Deuxièmement, dès lors que les dispositions de la Charte deviennent contraignantes, l'adhésion à la Convention apporte-t-elle une protection nouvelle réelle et cela compense-t-il le surcroît de complexité du système puisque toute la Convention est dans la Charte. Les explications orales que nous a données tout à l'heure sur cette deuxième partie le Commissaire Vitorino ont bien montré la complexité du sujet et les interrogations qui persistent. A mon avis, le travail n'est donc pas fini et ce n'est qu'après un examen approfondi de ces questions que nous pourrions nous prononcer sur l'adhésion à la Convention qui n'est pas faite, je le répète, pour les juristes mais pour les citoyens. <BRK>

2-027

DE

**Rack (PE).** - Herr Präsident! Fast alles, was zum wichtigen Thema europäische Grundrechte zu sagen ist, hat Kommissar Vitorino bereits gesagt, nachzulesen auch im ausgezeichneten Schlussdokument. Er hat sich in Form und Inhalt als ein würdiger Nachfolger von Roman Herzog erwiesen. Der verdiente Applaus im Haus hat gezeigt, dass auch in unserem Konvent schon jetzt insgesamt Konsens besteht, die Charta *telle quelle* als verbindlichen Teil unserer künftigen Verfassung zu verlangen. Ich möchte in diesem Zusammenhang anmerken, dass die Variante A jedenfalls für die Mitglieder der Arbeitsgruppe die eindeutig optimale war und alles andere nur *second best*-Lösungen sein können.

Ein zweiter, aus unserer Sicht wichtiger Punkt ist das harmonische Miteinander der beiden Gerichtshöfe in Straßburg und Luxemburg und das, was Kollege Haenel gerade jetzt angesprochen hat, werden wir dabei berücksichtigen müssen. Ein paar wenige zusätzliche

Bemerkungen erscheinen mir angebracht. Zunächst eine positive: Erstmals hat der Grundrechtechartatext eine starke Unterstützung auch durch die Vertreter der Beitrittsländer gefunden. Seinerzeit hat es nur eine Anhörung in unserer Arbeitsgruppe gegeben, und auch jetzt, in allen Wortmeldungen hier im Konvent, hat es einen ausdrücklichen Konsens gegeben, und ich glaube, das ist wichtig und gut so.

Eine kritische Anmerkung zur Arbeit der Arbeitsgruppe: In vielem hat sich bei einigen von unseren Kollegen gezeigt, dass sie die Funktion als Regierungsvertreter vielleicht ein wenig missverstehen. Selbst wenn und wo jemand Regierungsvertreter ist, kann er in diesem Konvent keine Vetomöglichkeit haben, und er soll sie auch nicht nutzen, um taktische Vorteile zu verlangen. Ich bin sehr froh, dass Minister Hain jetzt wenigstens der vollen Verbindlicherklärung zugestimmt hat. Ich sage nochmals Variante I oder Variante A ist die bessere, und die Artikel 52, Absatz 4 und 5 wären eigentlich auch entbehrlich.

Eine Schlussbemerkung: Wir werden die Zugänglichkeit zu den Gerichten in Luxemburg verbessern müssen. Artikel 203 Absatz 4 ist zu wenig. Hier brauchen wir mehr. <BRK>

2-028

EN

**Oleksy (Parl.-PL).** - Mr President, we agree that the question of the incorporation of the Charter of Fundamental Rights, and the accession by the European Union to the European Convention on Human Rights is not a technical one. It should be perceived as a key element of the constitutional process of the Union. It concerns the philosophy of the Union seen as a Community of values.

I strongly welcome the remarkable work carried out by the working group, chaired by Commissioner Vitorino. This report is undoubtedly a well-balanced document. I am in favour of the incorporation of the Charter into the future single Constitutional Treaty in a form that would make the Charter legally binding.

The incorporation of the Charter will bring the Union closer to its citizens and allow them to better identify with the goals of the Union. I also support the working group recommendation to enable the Union to accede to the European Convention on Human Rights. It will make the European Human Rights protection system more credible and coherent. The level on which Union's citizens' fundamental rights are protected cannot be lower than the system of protection guaranteed by the European Convention on Human Rights.

Similarly, the proposal to amend Article 52 of the Charter is a step in the right direction, as it takes into account the constitutional traditions of the Member States. It is especially worth mentioning that the incorporation of the Charter, and the possible accession by the EU to the European Convention on Human Rights, does not modify the current division of competencies between the Union and the Member States, and will not lead to the extension of the Union's competencies.

I also agree with the need to refrain from any further discussion regarding the contents of the Charter as agreed by the previous Convention. Certain technical adjustments will however have to be made.

Finally, let me stress how important it is for Poland, as Mr Meyer also stressed, that the fundamental rights of the Union, of which it will soon be a member, be guaranteed and protected in a coherent and effective manner. <BRK>

2-029

EN

**Kirkhope (PE).** - Mr President, there is no doubt, that this Charter is a significant document. But as a member of the previous Convention, I had concerns then, as I still have now, both in terms of its content, and the use to which it may be put, that is the legal status it might find itself in.

I was particularly concerned about some of the contents regarding the continuing powers of national governments and national parliaments in employment and social areas, for instance. I worry that some people here are talking as if it were the easiest thing in the world to incorporate this document. I think the British government owes us an explanation. I know we have already had one this morning from their minister. But, it is far from clear whether they are now saying that they agree that legal status should be given to this within a Treaty. This is completely unclear, and I would like to know their position.

Personally, I feel that this is a significant and important document. Parts of it, in particular those relating to specific human rights already covered by the European Convention, should be confirmed. All Member States, and Accession States have signed the Convention, and therefore we are entering into negotiation areas of considerable complexity. In order to get the support of the people of Europe, the ultimate Treaty we are looking for needs to be as straightforward as possible.

My final point, is as follows: it is important that the individual citizens of Europe have the ability to deal with their complaints, in a more hands-on way, whether it be through the Court of Justice, or the Court of Human Rights. The Court of Human Rights cannot deal with this, as they are Council of Europe based. But the Court of Justice, if it is to have further capacities, must allow for the establishment of a proper Ombudsman in Europe, who would have the powers, and ability to deal with the direct complaints of the citizens of Europe. <BRK>

2-030

EN

**Serracino-Inglott (Gouv.-MT).** - Mr. President, I would simply like to suggest the addition of some vision for the future formulation of the Constitution Treaty, which I must say, is a brilliant intellectual *tour de force* achieved by Mr Vitorino's working group.

I suggest that in the article in the Treaty referring to the Nice codification, that Europe explicitly commits itself to an on-going process, aimed at going well beyond what is now being agreed. I support this option as being the most acceptable form for the same reasons as previously stated by Mr Meyer. In fact, at this point, due to a paradox in the Nice text, we really cannot improve on what the group is proposing.

On the one hand, the Nice text provides the most extensive coverage of human rights, especially in the field of socio-economics. On the other hand, it often expresses this in terms that are not practically enforceable by any court. It would be an obvious folly to try to sort out this paradox at this time.

I would like to ask, at this point of the constitution-making process, whether Europe should only commit itself to going beyond Mr Vitorino proposals at some later date? Surely, European citizens are entitled to all of the rights recognised by the European constitutions, including socio-economic rights, which are not protected in Strasbourg. These rights should not only be guaranteed vis-à-vis the European institutions, or national states implementing European law, but in general. This would of course, depend on the overly generic phraseology currently used in the Nice text being revised in due course. <BRK>

2-031

EN

**Brejc (Parl.-SI).** - Mr President, Mr Vitorino and his group have prepared an excellent report. In part B, the members of the working group either strongly support, or are ready to give favourable consideration to a constitutional authorisation, enabling the European Union to accede to the European Charter on Human Rights. I am not a member of this group, yet I strongly support this suggestion. I would like to mention some political and legal arguments in favour of accession.

Accession would strengthen the protection of European citizens who are presently denied the right to bring complaints against the EU institutions before the Strasbourg Court. It would avoid the situation where there are alternative, competing and conflicting human rights protection systems, within the European Union and in Europe in general. Dual protection systems would weaken the overall protection offered and undermine legal certainty in the field of human rights in Europe.

For the new Member States, it should be very important, at least at a symbolic level, to see the Charter as part of the Constitutional Treaty. Mr President, I hope the Convention will support the idea of accession to the European Charter on Human Rights<BRK>

2-032

IT

**Fini (Ch.E/G.-IT).** - Signor Presidente, innanzitutto ringrazio anch'io il Commissario Vitorino per le conclusioni del suo gruppo di lavoro. Sappiamo che non era facile raggiungere un consenso su una soluzione che rafforzasse la Carta come *building block* centrale nel sistema delle regole europee, senza però alterare il riparto di competenze tra l'Unione e gli Stati membri.

Mi sembra che sia stata molto opportuna la precisazione degli articoli 51 e 52 rafforzati, secondo cui il campo di applicazione della Carta è quello relativo al diritto e alle competenze dell'Unione. Credo che in questo modo possano, per il futuro, evitarsi delle contraddizioni tra le disposizioni della Carta e le legislazioni nazionali degli Stati membri.

Per quello che riguarda le modalità dell'incorporazione, il gruppo di lavoro ci indica due strade: o l'incorporazione della Carta nel preambolo o in un titolo del nuovo Trattato, oppure l'inserimento di un riferimento alla Carta in un articolo. Mi sembra che questa scelta non vada drammatizzata e che si possa ragionare in termini di opportunità.

La prima opzione presenterebbe, a mio giudizio, delle questioni e dei problemi tecnici. Basti pensare al fatto che inserire nel Trattato costituzionale 54 articoli - tanti ne contiene la Carta - determinerebbe certamente un notevole appesantimento del nostro lavoro. In secondo luogo, mi sembra difficile contestare che inserire 54 articoli significherebbe, per forza di cose, modificare o abrogare quegli articoli della Carta o del Trattato che in qualche modo sanciscono gli stessi principi.

E' questa la ragione per la quale la mia preferenza va alla seconda opzione, cioè all'integrazione, attraverso un riferimento in un articolo del Trattato, proprio perché questo comporterebbe, tra l'altro, la possibilità di non modificare il testo della Carta, così come ha auspicato il gruppo di lavoro.

Questa è la ragione, in sintesi, per cui il governo italiano ritiene preferibile all'incorporazione testuale quella opzione che il gruppo di lavoro definisce come riferimento appropriato. <BRK>

2-033

NL

**Van Lancker (PE).** - Voorzitter, graag vijf puntjes. Eerste punt, ik zou graag de werkgroep en de heer Vitorino feliciteren voor de consensus die ze gevonden hebben om het Handvest op te nemen in de grondwet en de toetreding tot het Europees Verdrag voor de rechten van de mens mogelijk te maken. Eerlijk gezegd zou ik het ongelooflijk vinden als we erin zouden slagen een grondwet te maken zonder te verwijzen naar de grondrechten. Persoonlijk vind ik, zoals de meerderheid van de werkgroep en de meerderheid van de collega's die zich hier hebben uitgesproken, dat het Handvest het best integraal in de grondwet opgenomen kan worden en niet in een bijlage of in een protocol. Ik begrijp eigenlijk niet goed de bezwaren van Peter Hain, die als voorwaarde stelt dat de Britse regering akkoord moet gaan. Het zou qua juridische afdwingbaarheid geen verschil maken, maar qua zichtbaarheid des te meer.

Ten tweede, een grondwet heeft een preambule nodig die de waarden expliciteert. De preambule van het Handvest doet dat en ik zou echt willen aanbevelen om die preambule dan ook op te nemen in de ontwerpgrondwet die wij gaan maken. Ik wou trouwens ook de voorzitter danken voor het feit dat hij nu al gezien heeft dat we dan consequent moeten zijn en ook artikel 2 van het ontwerp dat we gisteren gekregen hebben, moeten aanvullen met de notie solidariteit.

Ten derde, ik vind het juist dat het Handvest de bevoegdheden van de Unie niet impliciet moet uitbreiden. Maar het moet wel een dynamisch document blijven, dus moeten we vermijden dat horizontale artikelen het Handvest gaan betonnen. Ik heb één groot probleem met de technische aanpassing van namelijk artikel 52, paragraaf 5 maar op een ander punt dat collega Duhamel. Rechten en principes van het Handvest moeten de toetssteen zijn voor alle optreden, niet alleen daar waar de Unie de principes implementeert, maar in alle handelingen van de Unie en de lidstaten in het kader van het recht van de Unie. Ik denk dat de tekst die nu in zin 2 staat daar haaks op staat en de beperking van het Handvest op zich inhoudt.

Tot slot, voorzitter, het Handvest heeft de grote verdienste dat het rechten formuleert die niet alleen gelden voor de burgers die de nationaliteit hebben van de lidstaten, maar voor alle mensen die duurzaam verblijf hebben in de Unie. Ik denk dat wij daar ook onze conclusies moeten uit trekken en de moed hebben om in artikel 5 van het ontwerp dat u ons gisteren overhandigd hebt, het burgerschap te definiëren op basis van residentie, van verblijf, van bijdrage tot de samenleving en niet uitsluitend op het bekrompen concept van nationaliteit of lidmaatschap van een van de lidstaten. <BRK>

2-034

ES

**Cisneros Laborda (Parl.-ES).** - Señor Presidente, estoy seguro de atenerme a los términos de "jibarización" de la palabra que nos ha indicado.

Yo querría unirme al coro de felicitaciones de que ha sido objeto nuestro Presidente, el Comisario Sr. Vitorino, por su excelente labor en el seno del Grupo de trabajo y por el excelente fruto representado por el documento que nos aporta. Él ha sido un auténtico constructor de consensos. Éste es un texto que básicamente goza de un amplísimo consenso, pero no es un consenso de mínimos -no se ha obtenido a base de limitar o reducir las posiciones extremas-, ni tampoco es un consenso apócrifo -no se ha obtenido a base de alcanzar un acuerdo sobre las palabras a costa de atribuirles significados ambiguos a sus contenidos-, sino que se ha obtenido profundizando en la materia objeto de examen; el Comisario Vitorino ha hecho un auténtico ejercicio de persuasión, de suerte que hemos alcanzado un documento del más alto nivel técnico, susceptible de incorporarse al Tratado Constitucional o de suministrar los criterios para hacerlo, que atribuye a los derechos y a las libertades fundamentales el papel nuclear que deben tener.

Se ha invocado por parte de algunos compañeros predecesores en el uso de la palabra su condición de intervinientes en la anterior Convención, en la Convención redactora de la Carta, para denunciar un supuesto carácter regresivo que podría tener la nueva redacción de las cláusulas horizontales o también el valor interpretativo que se atribuye a las explicaciones. Debo decir que no coincido en absoluto con ese diagnóstico. Creo, por el contrario, que hay que invocar la suerte corrida por la Carta de los Derechos Fundamentales, relegada a una mera declaración institucional solemne. Es decir, creo que una consideración de eficacia debería ser muy tenida en cuenta para respaldar el contenido de esas cláusulas horizontales.

Francamente, yo optaría -digo optaría en términos condicionales porque, después de algunas posiciones por parte del Sr. Representante del Gobierno británico que hemos oído aquí, debo quedarme en esos términos condicionales-, yo optaría por la solución A, es decir, por la inclusión de los cuarenta y tantos artículos de la Carta, tal cual están, en lo que sería la parte dogmática de la Constitución. Veo que la arquitectura del Tratado, con su referencia en el artículo 6, ya claramente insinúa o sugiere otra solución, bien sea la remisión, bien sea el protocolo. Es claro que, desde el punto de vista de su carácter vinculante, estas otras fórmulas no afectan ni disminuyen en nada dicho carácter, pero, desde un punto de vista pedagógico, desde un punto de vista de visibilidad, de comprensión, de divulgación de los valores fundamentales de la Carta y de la Constitución entre los ciudadanos, yo creo que estas otras fórmulas son menos deseables. Al final, no vamos a hacer un Tratado que quepa en el bolsillo o que se pueda estudiar en los institutos de enseñanza media y, si lo hacemos, desde luego, no van a tener en él los derechos ni las libertades fundamentales el papel que hubiéramos querido.

Respecto a la adhesión al Convenio -y termino-, no tenemos que decidirlo, ni en el Grupo de trabajo ni en el Pleno. Basta con la habilitación que supone la atribución de la personalidad jurídica, pero yo comparto las reservas manifestadas por el Sr. Haenel. <BRK>

2-035

IT

**Paciotti (PE).** - Signor Presidente, mi limito ad esprimere il mio dissenso su un solo punto delle proposte dell'eccellente relazione del Commissario Vitorino, che per il resto condivido. Si tratta della proposta di aggiungere tre nuove clausole alla Carta dei diritti. Nonostante la benevola interpretazione che ne dà il Commissario Vitorino, l'aggiunta di tre nuove clausole mette in discussione, a mio giudizio, il compromesso raggiunto nella prima Convenzione e crea incertezza giuridica.

L'articolo 51 della Carta dice che le Istituzioni e gli organi dell'Unione rispettano i diritti, osservano i principi, ne promuovono l'applicazione, *shall observe the principles, promote the application*. Si vuole aggiungere una clausola che dice che le disposizioni che contengono i principi possono essere attuate da atti legislativi o esecutivi, *may be implemented*. Questa clausola crea ambiguità e incertezza: o è inutile ovvero è dannosa, e, data l'insistenza per ottenerla, dubito che si voglia una cosa inutile.

Altre norme della Carta prevedono che i diritti spettino secondo le norme del diritto comunitario, le legislazioni e le prassi degli Stati membri. Ora si chiede di tener conto soltanto delle legislazioni e delle pratiche nazionali. Insomma, le tre clausole danno un messaggio politico di minimizzazione della Carta dei diritti, l'esatto contrario di quello che ci chiede la società civile, che vorrebbe vedere la Carta potenziata. <BRK>

2-036

SV

**Svensson (Parl.-SE).** - Herr ordförande! Jag vill inleda med att tacka herr Vitorino för hans utmärkta insats som ordförande i vår arbetsgrupp. Resultatet har blivit mycket bra. Förslagen om EU:s anslutning till Europakonventionen om skydd för de mänskliga rättigheterna samt införlivande av EU-stadgan i fördraget måste ses som kompletterande lösningar på EU:s skydd av mänskliga rättigheter. För mig är det viktigt att konstatera följande: att göra stadgan juridiskt bindande förutsätter för min del en anslutning till Europakonventionen.

Sverige har i sin grundlag ett fri- och rättighetskapitel och har dessutom införlivat Europakonventionen. Det är således naturligt att ha ett rättighetskydd i ett konstitutionellt fördrag, samtidigt som EU ansluter sig till Europakonventionen. Mot denna bakgrund finner jag det mycket glädjande att en helt enig arbetsgrupp ställer sig positiv till en anslutning av EU till Europakonventionen. En av de främsta vinsterna med en sådan anslutning är att vi åstadkommer ett närmande mellan EU-stater och stater utanför EU och därmed förstärker skyddet för de grundläggande rättigheterna i hela Europa.

Att EU har underkastat sig den externa granskningen ökar vår trovärdighet, inte minst på den internationella arenan. I slutrapporten noteras att det i fördragen skall ges ett konstitutionellt bemyndigande som ger unionen möjlighet att ansluta sig till Europakonventionen. Jag noterade att detta inte fanns omnämnt i utkastet till konstitutionellt fördrag, men det bör göras. Jag föreslår dessutom att det i samband med antagandet av ett nytt konstitutionellt fördrag borde göras en politisk deklaration om anslutningen till Europakonventionen. Anslutningen har många fördelar. Jag kan inte nämna alla, men jag måste nämna den klara och positiva signal som vi sänder ut till medborgarna om att unionen tar mänskliga rättigheter på allvar. Samma signal sänder vi ut genom att införliva EU-stadgan i fördraget och göra den rättsligt bindande.

Arbetsgruppen har haft en gemensam strävan och har också lyckats finna lösningar på de tekniska problemen som är förknippade med att göra stadgan rättsligt bindande. Enligt min uppfattning är det bästa sättet att tydliggöra rättigheterna för EU-medborgarna att föra in stadgan i dess helhet i fördraget. Den kan då utgöra en naturlig del i ett nytt grundfördrag för EU. <BRK>

2-037

IT

**Muscardini (PE).** - Signor Presidente, mi dolgo che il tempo sia più tiranno con alcuni rispetto ad altri: farò pervenire il mio intervento per iscritto. Rimarco comunque la necessità che la politica torni a riconquistare quegli spazi che in questi anni ha lasciato scoperti. Non ci sembra utopia ritenere che la politica non debba essere solo ragion di Stato ma anche strumento etico per avvicinare i cittadini e costruire una società europea, nella quale la libertà, principio ispiratore degli Stati moderni, intesa come libertà sia individuale che associativa, sia anche la libertà e la capacità di affrontare le sfide future tenendo conto delle diversità che esistono tra gli individui come tra gli Stati, e sia perciò una libertà garantita da regole che, difendendo la democrazia, impediscano la nascita di oligarchie e sappiano coniugare i diritti e i doveri sia dei singoli che degli Stati. E' per questo che riteniamo che la Carta ampliata - non è infatti sufficiente così com'è - e resa contenuto vivo per le esigenze della società, dovrebbe rimanere un testo autonomo, mentre il nuovo Trattato, in uno specifico articolo, dovrebbe enunciare valori e principi comuni per gli Stati membri facendo alla Carta specifico riferimento. <BRK>

2-038

FR

**Moscovici (Ch.E/G.-FR).** - Monsieur le Président, je formulerais cinq remarques en style télégraphique après avoir félicité Monsieur Vitorino et le groupe de travail.

Premièrement, je me réjouis que le groupe se soit prononcé unanimement en faveur de l'intégration de la Charte dans le Traité et ensuite, pour dire que l'option consistant à l'incorporer dans les tout premiers chapitres de notre future Constitution semble cohérente avec la nature même de la Charte et cela lui donnerait une visibilité maximale.

Deuxièmement, je souscris aussi tout à fait au sage principe retenu par le groupe selon lequel il ne faut pas chercher à renégocier le contenu de la Charte, y compris son préambule. Ce n'est pas contradictoire bien sûr avec la vocation de la Charte à être enrichie à l'avenir du nouveau droit.

Troisièmement, ce principe même me conduit cependant à m'interroger sur l'opportunité des modifications proposées aux articles horizontaux de la Charte et, en toute hypothèse, le nouveau paragraphe 5 de l'article 52 ne me semble pas acceptable car il tend à limiter fortement la portée juridique de ce que la Charte appelle les principes.

Quatrièmement, s'agissant de l'adhésion éventuelle de l'Union à la Convention européenne des droits de l'homme, chacun sait que la France y est jusqu'à présent toujours opposée. Toutefois, nous partageons tout à fait l'objectif d'améliorer encore davantage la protection juridictionnelle des citoyens. Mais il convient de bien réfléchir afin de savoir si une adhésion à la Convention est le meilleur moyen d'y parvenir.

Dernière observation, il me semble que l'extension des possibilité de recours des particuliers devant les juridictions communautaires constituerait une réelle amélioration de la protection des droits des citoyens. Il faudra y réfléchir tout comme il faudra peut-être réfléchir aux moyens qu'il faudrait donner pour y parvenir, à la Cour de justice et au Tribunal de première instance. <BRK>

2-039

SV

**Hjelm-Wallén (Ch.E/G.-SE).** - Herr ordförande, kära kolleger! Jag vill börja med att berömma arbetsgruppen för förslaget att EU skall ansluta sig Europakonventionen om skydd för de mänskliga rättigheterna. Arbetsgruppen har på ett utmärkt sätt behandlat denna fråga, och det gläder mig att gruppen står så enig bakom rekommendationen.

Det är en trovärdighetsfråga för unionen att vi tar de mänskliga rättigheterna på allvar, inte bara i högtidstal utan även när vi fattar politiska beslut. Europakonventionen är ett väl etablerat juridiskt dokument med en utvecklad praxis som garanterar en hög grad av rättssäkerhet. Genom att ansluta sig till konventionen stärker EU väsentligt det breda alleuropeiska samarbetet kring mänskliga rättigheter. Som arbetsgruppen själv konstaterar, är det också av stor vikt att medborgarna tillförsäkras samma grad av skydd för mänskliga rättigheter gentemot Europeiska unionen som de har gentemot sina respektive länder.

Vad gäller stadgan om grundläggande rättigheter har den svenska regeringen, liksom i stort sett hela den svenska riksdagen, uttalat att införlivandet av stadgan förutsätter att förhållandet till Europakonventionen regleras på ett tillfredsställande sätt. Skälet till detta har för oss varit att det inte får finnas oklarheter och olika praxis mellan Europadomstolen och EG-domstolen; det är naturligtvis *inte* för att vi ifrågasätter innehållet i stadgan. Vi är nu glada för att stadgan kommer att kunna införlivas i fördraget. Min sista kommentar är dock att ju mer framträdande plats stadgan får i fördraget, desto viktigare är det att de horisontella artiklarna är så heltäckande som möjligt.

Arbetsgruppen har i sin rapport visat på flera möjligheter att införliva stadgan i fördraget och lämnar förslag om hur de horisontella artiklarna kan förtydligas ytterligare. Jag menar att det är viktigt att det arbetet fortsätter, och jag utgår från att presidiet nu arbetar vidare med frågan i syfte att finna en bred lösning som hela konventet kan ställa sig bakom. <BRK>

2-040

EN

**Petersen (Parl.-DA).** - Mr President, I would firstly like to align myself with the words of praise for the work of Commissioner Vitorino.

The European Union makes legislation and decisions on matters of vital importance for its citizens and businesses. It is therefore crucial that the EU respects fundamental rights when it acts.

The Charter on Fundamental Rights, which has been drafted in a political context, is an important statement. I fully believe that now is the time to make the Charter legally binding. To make a political text legally binding is a major step, and we must not pull the wool over the eyes of our citizens, by making them believe that all the provisions in the Charter can be invoked in the European or national courts.

I therefore favour that we make the Charter legally binding by introducing a reference in the Treaty, stating that the EU respects the Charter on Fundamental Rights as general principles in EU law. We all know that model already. It is the same model that was used when we made the European Convention on Human Rights legally binding in the EU.

The European Court of Justice has taken the responsibility of ensuring that the EU complies with human rights, including the European Convention on Human Rights. And it has done this very well.

For the reasons I have just mentioned, I welcome the Working Group's proposal to add to the Charter some "horizontal provisions". Making the Charter legally binding will indeed, Mr President, be a big step forward for the protection of the citizens' legal position within the EU. <BRK>

2-041



EN

**Hain (Ch.E/G.-GB).** - Mr President, could I say to my comrades Olivier Duhamel and Anne Van Lancker that it is very important to recognise that we have here at least four governments: the U.K., Italy, Spain and Ireland, who have spoken in the same terms. They all want to see the legal accession of the Charter.

But, we have to have the second option, and we need legal certainty. I would also point out, that inserting it straight into the Treaty would mean that the Charter would in fact be longer than the Draft Constitution. The Charter has 54 articles, while the Draft Constitution only has 46. You need to ask yourselves some serious questions here.

For the first time, we can see way forward. Let us move together on this agenda, and let us find a result we can all be united on. I know the Convention does not want to be bored by internal political squabbling from Britain, but the Conservatives, in my view, have consistently been an anti-European party, and I am standing with the Convention in building a consensus. <BRK>

2-042

FR

**Le Président.** – Nous prenons note de cette distinction.

*(Rires)* <BRK>

2-043

FI

**Helle (Parl.-FI).** - Arvoisa puheenjohtaja, kuulun siihen työryhmän suureen enemmistöön, jonka mielestä perusoikeuskirja johdantoineen ja selityksineen tulee liittää uuden perussopimuksen alkuun. Mielestäni se lisäisi EU:n uskottavuutta kansalaisten silmissä. Lisäykset horisontaalisiin artikloihin ovat mielestäni osin turhia, mutta jos ne auttavat eräitä hallituksia myönteiseen ratkaisuun, olkoot olemassa. Sen sijaan olin pettynyt siihen, että eilen jaetussa luonnoksessa ei ollut sellaista artiklaa, joka sallisi EU:n liittymisen Euroopan ihmisoikeussopimukseen. Sellainen sinne tulisi mielestäni ehdottomasti lisätä.

Suomalaiset eivät yleensä kiitä, mutta nyt minun on pakko liittyä siihen kuoroon, joka kiittää puheenjohtaja Vitorinoa työryhmän erittäin hyvästä ja taitavasta johtamisesta. <BRK>

2-044

FR

**Le Président.** – Merci Monsieur Helle. Nous donnons la parole pour une minute aux orateurs suivants, de façon à ce que Monsieur Vitorino puisse apporter quelques éléments de réponse. <BRK>

2-045

PT

**Costa (Parl.-PT).** - Senhor Presidente, no minuto que me concede apenas queria, de forma sentida mas reflectida, protestar contra a desigualdade na atribuição dos tempos aos vários oradores e também à ordenação das inscrições para intervir. Ficaria mal comigo próprio se não aproveitasse este minuto para transmitir de forma muito sincera este estado de espírito. <BRK>

2-046

NL

**De Vries (Regering - NL).** - Voorzitter, Nederland deelt de wens van deze Conventie en de werkgroep om de waarborgen van grondrechten van de Europese burger een plaats te geven in het Verdrag. Het was immers de Unie die in Maastricht en Amsterdam heeft uitgesproken dat respect voor de mensenrechten de grondslag vormt voor de identiteit van de Unie en een belangrijk onderdeel van ons extern beleid. Daar moeten wij voorzien in de lacune dat er geen rechtsbescherming is van de burger tegen handelingen van de instellingen van de Unie zelf.

De materiële bepalingen van het Handvest staan hier niet ter discussie. Maar toch zijn er wel enkele bepalingen die nauwkeuriger geformuleerd zouden moeten worden omdat ze, als ze juridisch bindend zouden zijn, wellicht te ruime rechten zouden toekennen. Ik denk daarbij aan het recht op kosteloos onderwijs.

De Nederlandse regering heeft daarom een voorkeur voor verwijzing naar het Handvest in artikel 6, lid 2 van het Verdrag, zodat het Handvest een bron van interpretatie kan zijn voor het Hof van Justitie. Ik merk op dat ook Peter Hain en Gianfranco Fini zich zojuist in vergelijkbare zin hebben uitgelaten.

De voorgestelde aanpassingen van de horizontale bepalingen zijn een belangrijke vooruitgang. Ik pleit ervoor dat we duidelijkheid scheppen tussen de beginselen van het Handvest en de bepalingen die stammen uit de constitutionele tradities die een lidstaat gemeen

hebben. Door een dergelijk onderscheid is glashelder aan te geven welke beginselen nieuw zijn en welke voortkomen uit de reeds bestaande tradities van de lidstaten. Dat zou het Handvest kunnen vereenvoudigen.

Tenslotte, voorzitter, kan ik u melden dat het Nederlandse parlement een motie heeft aangenomen die uitspreekt dat wij vóór toetreding van de Unie tot het EVRM zijn, maar er zal nog wel een oplossing gevonden moeten worden voor de mogelijke conflicterende rechtsgangen in Luxemburg en Straatsburg. <BRK>

2-047

EN

**Christophersen (Ch.E/G.-DK).** -Mr. President, I would like firstly to thank the working group and Mr Vitorino, for a very well-drafted and comprehensive report, concerning the incorporation of the Charter, and the accession to the European Convention on Human Rights. The report is an excellent basis for the discussion in the Convention, on whether and how the Charter can be made legally binding, as foreseen in the Laeken declaration. The Chairman of the working group and the members have shown a remarkable willingness to create the necessary basis for reaching consensus.

From my point of view, we are in favour of making the Charter legally binding in order to emphasise that the European Union is a community of nations which attaches great importance to the protection of its citizens. We would prefer the incorporation of the Charter into the Constitution Treaty following the so-called indirect reference model. For example, it is stated in the Treaty that the Union respects the Charter on Fundamental Rights as outlined in EU law. This model corresponds with the approach in the existing Union Treaty, (Article 6, paragraph 2), by which the European Convention on Human Rights has become legally binding as a general principle in EU law.

Let me add, Mr President, that I fully agree with the working group when it stresses the importance of explaining the Charter. The explanations of the new horizontal positions should be incorporated into the existing ones. This would create clarity, and safeguard the rule of law. We believe it important that the Convention decides whether these explanations should have judicial value at a later stage.

Finally, I welcome the proposal of introducing a Constitutional authorisation enabling the Union to accede to the European Charter of Human Rights into the new Treaty. The accession of the Union will imply that the EU institutions will be under the same external jurisdiction of the Court of European Human Rights as the Member States and candidate countries. <BRK>

2-048

NL

**Maij-Weggen (PE).** - Voorzitter, veel dank aan de heer Vitorino voor het uitstekende werk dat is geleverd. Drie punten, kort, omwille van de tijd.

In de eerste plaats een compliment voor de wijze waarop de aanvankelijke controverse tussen het EVRM en het Handvest is opgelost. Dank ook aan de rechters en deskundigen van de Europese hoven die daar hele constructieve artikelen over hebben geschreven en handreikingen hebben gedaan. Ook dank voor het feit dat uit de kring van de Raad van Europa - ik denk aan de heer Van der Linden - handreikingen zijn gedaan om EVRM en Handvest met elkaar in overeenstemming te brengen.

Tweede punt, ik heb twijfel over het idee om nog wijzigingen aan te brengen in het Handvest. Als het gaat om technische wijzigingen, vind ik dat geen probleem, maar ik denk dat we inhoudelijk niets meer moeten veranderen. Ik ben het op dat punt eens met de heer Duhamel en mevrouw Paciotti.

Ten slotte, ik ben blij dat het stuk opgenomen kan worden in het constitutioneel gedeelte van het Verdrag. Er is dan de discussie over de vraag of dat direct of via een verwijzing moet gebeuren. Voor mij is doorslaggevend wat de juridische achtergrond daarvan is: als het zwakker is om het met een verwijzing te doen, ben ik daar tegen, als het geen verschil uitmaakt, dan wil ik daar niet dogmatisch over zijn. <BRK>

2-049

EN

**Bruton (Parl.-IE).** - Mr President, I congratulate Antonio.

Once the Union had moved into the area of Justice and Home Affairs, the incorporation of fundamental rights into the Treaty became essential. But there is no room for ambiguity in a Charter for which people will have to vote in a referendum, where the "yes" advocates would not only face persuasive but destructive questions. Some questions now require answers.

Against whom are the rights in the Charter to be enforced? If the Charter does not extend the scope of application of Union law beyond the powers of the Union, against whom, and how, are the rights outside the scope of Union law in the Charter to be enforced?

Obviously the articles on marriage, academic freedom, education, free placement services, and social security cannot be enforced against a Union which is confined to spend 1.2% of GDP, and which is bound by subsidiarity. Article 51 of the Charter is actually

ambiguous. It says that "due regard to the principle of subsidiarity". What does "due regard" mean? It all depends on who is doing the "regarding".

Paragraph 6 of the report stresses the distinction between rights and principles. These rights, I presume, are the only rights enforceable in court. But there is no list in existence of which articles are "rights" and which articles are "principles".

To sum up, if this is to pass in a referendum, we must be able to answer questions about what we are actually promising. I remind colleagues of the words of La Rochefoucauld: "We promise according to our hopes, we perform according to our fears." <BRK>

2-050

EL

**Μαύρου (Parl.-CY).** – Κύριε Πρόεδρε, μετά από 35 ομιλητές δεν μένουν πολλά να πεις μέσα σε ένα λεπτό. Θα αναφερθώ σε τρία σημεία μόνο.

Το ένα είναι ότι αναγνωρίζουμε πως το περιεχόμενο του Χάρτη δεν είναι σήμερα αντικείμενο συζήτησης. Γι' αυτό δεν στεκόμαστε σε επιφυλάξεις ή ακόμα σε διαφορετικές προσεγγίσεις που έχουν αρκετοί από εμάς σε ότι αφορά συγκεκριμένα άρθρα του Χάρτη. Είμαστε έτοιμοι να δούμε θετικά την ενσωμάτωσή του στο συνταγματικό πλαίσιο της Ένωσης και δεν θα σταθώ στην τεχνική της ενσωμάτωσης, από την στιγμή που διασφαλίζεται η δεσμευτικότητα του Χάρτη.

Το δεύτερο σημείο αφορά τα οριζόντια άρθρα, ιδιαίτερα το άρθρο 52. Συμμερίζομαι τις ανησυχίες που έχουν εκφρασθεί από τον κ. Duhamel, την κ. Kaufmann, αλλά και άλλους ομιλητές για την συμπερίληψη αυτών των νέων προνοιών. Έχω την εντύπωση ότι δημιουργούν αβεβαιότητα και σύγχυση που είναι δυνατόν να αναιρέσουν αρχές του Χάρτη.

Το τρίτο σημείο αφορά την προσχώρηση στην Ευρωπαϊκή Σύμβαση Ανθρωπίνων Δικαιωμάτων. Πιστεύω ότι είναι ανάγκη να δούμε πραγματικά με εποικοδομητική διάθεση τη θέσπιση μιας συνταγματικής εξουσιοδότησης που θα επιτρέπει στην Ένωση να προχωρήσει στην Ευρωπαϊκή Σύμβαση για πολλούς λόγους, που αναλύονται στην έκθεση, γιατί διασφαλίζει την προστασία των πολιτών έναντι της Ένωσης. <BRK>

2-051

FR

**Le Président.** – Il est important que Monsieur Vitorino puisse répondre à ce qui a été dit, donc je lui donne la parole. <BRK>

2-052

FR

**Vitorino (CE).** – Merci, Monsieur le Président. Je vais être très bref. Tout d'abord, je souhaiterais remercier les références personnelles que je tiens à partager avec tous les membres du groupe de travail. Ce groupe de travail n'est pas une exception. Sans volonté de compromis, la Convention n'aboutira pas à un résultat positif. C'est le principe que nous avons suivi dans notre travail. Il s'agit donc d'une solution de compromis. Et habituellement, les solutions de compromis sont orphelines à la fin si elles échouent tandis que si elles ont du succès, il y a une multiplication de parents. J'espère que ce sera un cas de multiplication des parrains du compromis.

En ce qui concerne les trois questions essentielles qui ont été soulevées par Monsieur Méndez de Vigo, je dois dire que ce qui est écrit là-bas, c'est que les droits de la Charte qui ne découlent ni d'autres articles des Traités ni de la Convention européenne des droits de l'homme et qui donc, n'ont comme source que la tradition constitutionnelle commune des Etats membres, doivent être interprétés en harmonie avec cette tradition constitutionnelle commune. Ce qui peut être d'une certaine façon considéré comme tautologique, c'est la répétition du savoir acquis sans doute, mais également la consécration dans la Charte de la jurisprudence de la Cour de justice. Celle-ci est claire, dans le sens où tradition constitutionnelle commune ne veut pas dire moindre dénominateur commun. Cela signifie interprétation des valeurs qui sont communes à tous les Etats membres mais qui n'ont pas la même portée dans chacune des Constitutions de ces Etats membres. Je crois que c'est dans cette ligne qu'il convient d'interpréter l'article 52.4.

La question de l'adhésion à la Convention européenne des droits de l'homme est un problème à la fois politique et juridique. Du point de vue politique, je vous rappelle que le Conseil européen de Copenhague a dit à tous les Etats candidats qu'ils devraient adhérer à la Convention européenne des droits de l'homme comme préalable à la garantie du plein respect des droits fondamentaux dans leur ordre juridique national afin de pouvoir adhérer à l'Union européenne. Il est un peu étrange que nous puissions nous permettre de demander aux pays candidats d'adhérer à la Convention européenne des droits de l'homme et que nous-mêmes ne soyons pas prêts d'en faire autant, pour nous soumettre à un contrôle extérieur de la conformité des statuts des droits fondamentaux dans le droit de l'Union vis-à-vis de la Convention européenne des droits de l'homme.

Je comprends l'observation de Monsieur Haenel car en effet, on ne peut pas conclure que l'adhésion conduirait de façon incontournable à un allègement des procédures judiciaires dans les Etats membres. En effet, aujourd'hui, il est déjà possible qu'un citoyen d'un Etat-membre, qui est l'objet d'une norme juridique d'un Etat-membre en application du droit communautaire puisse soulever auprès des tribunaux nationaux la question de la violation de la Convention européenne des droits de l'homme, y compris

l'accès à Strasbourg. La seule différence est qu'aujourd'hui, l'auteur moral de la règle, à savoir l'organe ou l'Institution de l'Union, n'est pas là pour répondre de son activité. Celui qui est là est le pauvre Etat-membre qui ne peut qu'opposer cette réponse "que puis-je y faire ? Je ne fais qu'accomplir mes obligations dans le cadre de l'Union européenne". Je ne pense pas que ce soit une révolution mais plutôt, une petite réforme qui a quand même une valeur symbolique du point de vue politique.

Avant de parler des droits et les principes, je voudrais simplement dire à Peter Hain que je pense que l'on devrait ajouter les explications de nos débats de cette Convention aux explications du Praesidium de la précédente Convention. Dans ce cadre-là, je me propose de mener cette opération d'addition en consultation étroite avec les membres du groupe de travail et les soumettre à la fin, au Praesidium de cette Convention. Les explications n'ont pas une valeur juridique, on le sait, mais sont un élément important d'interprétation des textes de la Convention.

En ce qui concerne les remarques sur la question la plus controversée sans doute, à savoir l'article 52.5 et en d'autres termes, la distinction entre droits et principes, il convient d'être clairs. Je crois que la distinction entre droits et principes existe déjà dans la Charte. La question est de savoir si on bouleverse ou non cette distinction. Très franchement, je ne crois pas. Je pense que ce qu'on dit avec cet article 52.5, c'est qu'il est évident que les droits objectifs et les droits subjectifs sont des droits à des prestations. C'est une évidence. Les principes n'ont pas la même portée que les droits subjectifs. Les principes ne sont pas "self executing", ce qui signifie que les principes requièrent des actions explicites d'exécution pour devenir contraignants. Mais en plus, ce que nous faisons dans cet ajout, c'est clarifier que quand l'Union adopte des règles juridiques ou prend des actions pour appliquer les principes, elles doivent bien sûr respecter ces principes-là. Ces principes sont justiciables mais ils ne le sont pas directement. Ils le sont d'un point de vue normatif. C'est ce que le professeur Braibant appelait à la Convention précédente "justiciabilité normative". C'est l'explication de l'article 52.5 qui n'est pas en contradiction avec l'article 51.1. Pour certains, ça peut être une répétition. Je suis d'accord. Mais à l'école, j'ai appris une expression latine qui disait "quod abundat non nocet", que l'on peut traduire par ce qui est abondant n'est pas nuisible. Et selon moi, cet ajout n'est pas nuisible. Si vous voulez, on peut la discuter juridiquement. Je prends d'ailleurs beaucoup de plaisir à discuter juridiquement des choses. Toutefois, si on voit cette question politiquement, un peu plus au-delà de cette discussion qui fait le bonheur des juristes, on se rendra compte, selon moi, que du point de vue historique, cette discussion sur l'article 52.5 ne méritera même pas une note de fin de page dans l'histoire de la Charte des droits fondamentaux. Par contre, une vision trop pessimiste de l'interprétation d'un article de la Charte peut jeter la Charte dans une querelle dès son début, ce qui serait très nuisible à la fin, dans le cadre de son application. Je crois qu'aujourd'hui, on fait un grand pas en avant pour consacrer la Charte des droits fondamentaux dans le statut d'un texte constitutionnel et juridiquement contraignant au-delà des notes de fin de page. Personnellement, j'ai une grande confiance en la Charte afin de surmonter toute difficulté d'interprétation juridique.

*(Applaudissements)* <BRK>

2-053

FR

**Le Président.** – Je vous remercie. Je ferai deux propositions. Tout d'abord, vous savez que le budget de la Convention est assez réduit. Mais je vous demanderais néanmoins de prélever sur les crédits un montant nécessaire pour offrir une couronne de lauriers à Antonio Vitorino qui l'a bien mérité. Ensuite, je renonce moi-même à la parole. En effet, je devais faire la synthèse de ce qui a été dit ici de façon à préparer la poursuite de nos travaux de la Convention et du Traité constitutionnel mais le temps est passé et je ne voudrais priver les orateurs du débat suivant de leur temps de parole. Ainsi, personnellement, je m'en tiendrai au résumé ou aux arguments présentés par Antonio Vitorino. <BRK>

2-054

DA

**Indledende debat om det foreløbige udkast til en forfatningstraktat**

DE

**Erste Aussprache über den Vorentwurf eines Verfassungsvertrags**

EL

**Προκαταρκτική συζήτηση για το προσχέδιο Συνταγματικής Συνθήκης**

EN

**Preliminary debate on the preliminary draft constitutional treaty**

ES

**Debate preliminar sobre el Anteproyecto de arquitectura de un Tratado Constitucional**

FR

**Débat préliminaire sur l'avant-projet d'architecture d'un Traité constitutionnel**

IT

**Discussione iniziale sul progetto preliminare di struttura per un Trattato costituzionale**

NL

**Vorbereidend debat over het voorontwerp van architectuur voor een constitutioneel verdrag**

PT

**Debate preliminar sobre o anteprojecto de arquitectura de um Tratado Constitucional**

FI

**Alustava keskustelu ehdotuksesta perustuslain luonteiseksi sopimukseksi**

SV

**Inledande debatt om det preliminära utkastet till konstitutionellt fördrag**

2-055

FR

**Le Président.** – Nous abordons le débat sur l'avant-projet d'architecture du Traité constitutionnel. Je voudrais naturellement ne pas le détourner de son objet qui n'est pas un débat sur la substance qui est de savoir si l'architecture telle qu'elle est proposée, telle qu'elle est présentée permet d'avancer sur la voie de la préparation de ce futur Traité.

En raison des demandes de temps de parole qui ont été présentées, nous sommes contraints de limiter à deux minutes le temps de parole des orateurs jusqu'à 12h30 et ensuite de le ramener à une minute. Le premier orateur est Monsieur Hänsch. <BRK>

2-056

DE

**Hänsch (PE).** - Herr Präsident, Kolleginnen und Kollegen! Der Konvent hat das Präsidium aufgefordert, bis spätestens im Herbst dieses Jahres die Architektur für einen neuen Vertrag der Europäischen Union vorzulegen. Sie, Herr Präsident, haben das mit Unterstützung des Präsidiums getan. Die Architektur liegt vor. Das ist auch ein Erfolg des gesamten Konvents. Ich sage: Der Entwurf ist das Dokument eines mutigen Realismus. Natürlich wissen wir, da gibt es noch eine ganze Reihe blinder Stellen. Wir wissen auch, es ist noch Unausgegrenztes und Unakzeptables in diesem Entwurf, vor allem im Teil Institutionen. Darüber wird es noch intensive und sicherlich auch kontroverse Debatten hier in diesem Plenum geben.

Wir wissen, dass wir einen noch schwierigen Weg vor uns haben. Wir werden noch vielen Schlaglöchern und Stolpersteinen ausweichen müssen. Wir werden aufpassen müssen, dass wir nicht in eine Regouvernementalisierung der Europäischen Union hineingleiten, aber mit dem gestern vorgelegten Verfassungsentwurf wissen wir, dass da ein Weg ist, den wir gemeinsam gehen können. Die Architektur lässt die tragenden Strukturen der künftigen Europäischen Union deutlich erkennen, jedenfalls die wichtigen unter ihnen.

Erstens, wir werden den Entwurf einer Verfassung für die Europäische Union ausarbeiten. Vor acht Monaten war das durchaus noch eine sehr umstrittene Frage. Dass wir uns darauf geeinigt haben, ist ein Erfolg der Arbeit, die wir in den vergangenen acht Monaten gemacht haben. Zweitens, wir werden einen einheitlichen Vertrag haben, und ich unterstreiche nur einen einheitlichen Vertrag mit einem Verfassungsteil und einem operativen Teil. Das ist ein klares Bekenntnis zur Rechtssicherheit und zur Kontinuität. Vor acht Monaten lag das alles noch in weiter Ferne.

Wir werden die Grundrechtscharta in die Verfassung aufnehmen und verbindlich machen. Jeder weiß - und wir haben das ja gerade noch einmal in der Diskussion bemerkt -, welche rechtlichen und politisch-kulturellen Probleme damit aufgeworfen sind, aber wir zeigen auch, dass wir über Nizza ein großes Stück hinausgehen werden.

Viertens, wir werden der Union die Rechtspersönlichkeit zuerkennen. Das wird ihr erlauben, nach außen einheitlich vertreten zu sein und geschlossen aufzutreten. Vor acht Monaten war das noch außerhalb jeden Konsenses. Dass wir das geschafft haben, ist auch ein Erfolg der bisherigen Arbeit.

Fünftens, wir lösen die unsinnige und hinderliche Pfeilerstruktur der heutigen Verträge auf. Damit wird eine Forderung des Europäischen Parlaments, die wir seit Maastricht und Amsterdam immer wieder erhoben haben, erfüllt. Sechstens, wir nähern uns mit dem Entwurf dem Ziel einen großen Schritt, nämlich der Union eine neue, straffere, einfachere und transparentere Grundlage zu geben. Das ist der Auftrag von Laeken, den wir zu erfüllen haben. Gewiss, noch ist nichts gewonnen. Nichts ist festgezurr, nichts zementiert, aber die Architektur für das neue Haus ist konzipiert. Jetzt muss sich der Konvent auf die Baustelle begeben. Aus der Form, die dieser Entwurf für die neue Union vorsieht, kann sie weltpolitisches Format gewinnen und die Kraft für eine Politik zum gemeinsamen Wohl der Völker Europas. Das Notwendige möglich zu machen, diesem Auftrag haben wir uns mit dem Entwurf für die Architektur einer neuen Verfassung ein großes Stück genähert. <BRK>

2-057

FR

**Le Président.** – Je remercie Monsieur Hänsch de sa présentation à la fois brillante et chaleureuse. <BRK>

2-058

ES

**Palacio Valleresundi (Ch.E/G.-ES).** - Señor Presidente, en aras de la brevedad, puedo decir que suscribo lo que acaba de decir Klaus Hänsch, que creo que, con brío, ha descrito perfectamente cuáles son los principales puntos de esta importante etapa que estamos a punto de iniciar.

En efecto, la Convención vuelve a demostrar que cumple. Hemos terminado la fase de escucha y hemos puesto sobre la mesa un esqueleto de Tratado Constitucional. Y la Convención, además, ya tiene resultados: el primero, señor Presidente, se le debe en gran medida a usted, y es que la palabra Convención, la idea de que Europa tenga una Convención, ya ha pasado a ser razonable y confortablemente asumida por las opiniones públicas.

Pero hoy damos un paso más. Con este esqueleto de Constitución sobre la mesa de la Convención, los ciudadanos europeos ya no van a asociar Europa a un mercado, van a asociar Europa a esa Constitución, que ven cómo llega.

Tres observaciones sobre el contenido, suscribiendo lo que ha dicho Klaus Hänsch. Sobre la estructura: me parece importante que tengamos sólo un Tratado y que simplifiquemos, y me parece importante que ese Tratado tenga dos partes, porque la parte de las políticas tiene naturaleza constitucional; Europa no es un Estado, Europa no puede tener una Constitución de tipo clásico; las regiones ultraperiféricas, por citar un artículo que nada tiene que ver con el constitucionalismo clásico, tienen naturaleza y trascendencia constitucional para Europa.

En segundo lugar, la solución sobre las categorías de competencias. Es buena. No perdamos de vista el funcionalismo que tanto nos ha servido. No caigamos en listas de competencias, pero clarifiquemos esas competencias.

Y en tercer lugar, de las instituciones debatiremos, pero todos tenemos claro que queremos más Europa, que queremos una Europa más integrada y que queremos la prevalencia del método comunitario allí donde pueda haber lugar a él. A partir de aquí, debatamos y pongamos como tercera fase esa Constitución que los ciudadanos están esperando. <BRK>

2-059

EN

**Duff (PE).** - Mr President, I, too welcome the publication of this draft. I believe it will serve as a splendid basis for our future work.

But can I ask by what type of process are we going to agree the structure and architecture of the Treaty? Clearly, we are not able to complete the debate this morning, but it is important that a strong consensus forms upon the structural format.

I would have preferred a clearer definition of who the Union's legislature is, and who is its executive. I do not think that the citizen will be satisfied if all we deliver is a series of procedures. A clearer commitment to explaining our law-making and executive processes will be essential.

I question the necessity of a clause on reinforced co-operation. Amsterdam has proven there is no need for such a luxury, and I would prefer an associate membership for Member States who are unable to accept the political objectives of the EU.

I would also like to see in the first article, a reference to the people. "We, the people" is perhaps going too far, but a complete absence of a reference to popular sovereignty to complement state sovereignty seems to be a mistake.

I will have to stop there, but I have 44 more points that I could have made.

*(Laughter)* <BRK>

2-060

FR

**Le Président.** – Monsieur Duff, dans ma première rédaction, je parlais des peuples. Le Praesidium, plus raisonnable, a enlevé cette proposition que je reprendrai dans la suite des débats. Et je vous invoquerai comme parrain. <BRK>

2-061

FR

**Barnier (CE).** – Monsieur le Président, je voudrais effectivement faire deux ou trois observations rapides. La première, comme Karl Hänsch et d'autres l'ont dit, vise à faire remarquer que le travail proposé sous votre impulsion par le Praesidium a débouché sur un document clair, cohérent, une sorte de colonne vertébrale, terme que je préfère à squelette, sur lequel maintenant, à partir des groupes de travail, nous allons devoir mettre des muscles, de la chair, en d'autres mots créer cette Constitution.

Je veux dire aussi que c'est un document qui exprime une démarche courageuse puisque nous nous proposons à nous-mêmes de refonder, de restructurer l'ensemble des Traités, en quelque sorte dans un moment historique où l'Union s'élargit, où l'Europe se réunifie. Nous faisons une mise à plat, nous refaisons le point ensemble et nous nous proposons de réaffirmer l'engagement de tous les peuples.

Je me permettrai une observation en faisant une relecture précise de l'article 14 afin d'éviter un malentendu. Dans cet article, Monsieur le Président, on peut lire entre le premier alinéa et le deuxième, que, s'agissant des Institutions de l'Union dont nous parlerons dans quelques temps, il faut éviter une inquiétude ou un risque. Nous réaffirmons dans le premier alinéa que l'Union dispose d'un cadre institutionnel unique et, dans le second, il est proposé une distinction entre l'exercice des compétences qui appartiennent, dans leur totalité ou en partie, à l'Union et l'exercice de compétence exercé conjointement par les Etats membres. Depuis Maastricht, il me semble que cette distinction-là, qui a été très prononcée à une certaine époque entre la Communauté d'un côté et les Etats membres de l'autre a été abandonnée. Quand Javier Solana s'exprime devant le Conseil de sécurité, il ne le fait pas au nom des Etats membres conjoints, il le fait au nom de l'Union. Quand Monsieur Moratinos représente l'Europe au Proche-Orient, il le fait au nom de l'Union et non pas au nom des Etats membres conjoints. Je voulais simplement vous dire la lecture que je fais de ce passage en souhaitant qu'on ne revienne pas en arrière, à un vocabulaire qui appartient à une autre époque de l'Union et de la construction européenne mais que l'on aille bien de l'avant comme vous nous y avez invité hier. <BRK>

2-062

EN

**Martikonis (Gouv.-LT).** - Mr President, at the start of the Convention in the spring, you called upon us to work upon the Constitutional Treaty. I think, as I thought then, that this is a great objective.

I must confess that in Lithuania at the moment, the enlargement debate is taking precedence over the debate on the future. I can however assure you that we will do our best to make an appropriate contribution to this debate and I can only welcome, as previous speakers have, the fact that we were able to stick to the goals foreseen at the beginning of the Convention.

We will continue our discussion by putting flesh on the draft project which you presented to us, and strive to improve and increase its clarity by consolidating its content. This is a real requirement. Some gaps need filling in. But it is my understanding that the reshaping of the architecture of the Union will not change its political and legal nature. If I understand it correctly, the draft does not imply this.

The reason I say this is because there will soon be ten countries who will be subscribing and ratifying the existing Treaties and the architecture of the Union, perhaps even by referendums. To some of us, it is an historical and important political act. I would ask for the assurance that none of our discussions or decisions give the impression that the present architecture, principles or institutions are unimportant or indeed obsolete. This is very important to my country, and we will make every effort to ensure that the transition is consistent and coherent. I count on your support. <BRK>

2-063

FR

**Haenel (Parl.-FR).** – Merci Monsieur le Président. Au stade où nous en étions dans les débats de la Convention, nous avons besoin d'un cadre général de travail. L'avant-projet de Constitution répond tout à fait à cette nécessité. Il vient à point nommé.. C'est un document de travail indispensable à ce stade de nos travaux.

Cependant, j'aimerais faire deux remarques. La première est que dans le projet de Constitution, on distingue une première et une deuxième partie. Mais tant qu'on ne précise pas les mécanismes de révision entre la première et la deuxième partie, il n'est pas possible, selon moi, de se prononcer sur la pertinence de la répartition des différents sujets entre la première et la deuxième partie.

La deuxième est qu'il n'y a pas de disposition relative aux Parlements nationaux. Or, je rappelle, que dans le Traité d'Amsterdam, il y avait un protocole sur le rôle des Parlements nationaux. Il me paraît assez logique qu'après Nice et Laeken, il y ait des dispositions spécifiques aux Parlements nationaux incluses dans la Constitution. Je crois que les débats que nous avons eus hier sur le rapport de Gisela Stuart ont bien démontré la nécessité, quelque part dans la Constitution, d'une référence au rôle des Parlements nationaux. <BRK>

2-064

ES

**Borrell Fontelles (Parl.-ES).** - Señor Presidente, ciertamente necesitábamos un marco y lo tenemos. Hay que felicitar por ello, porque la Convención va avanzando y demuestra que es posible pasar del Tratado a la Constitución. Que es posible pasar, de los acuerdos entre Estados, a la voluntad de un pueblo europeo que emerge.

Habr  mucho que discutir todav a, pero tenemos un marco de referencia y la opini n p blica saluda positivamente que lo tengamos.

En mi opini n, hay que hacer sitio a los Parlamentos nacionales. Quiero secundar las palabras del representante del Parlamento franc s. Hay que hacer m s sitio a la dimensi n social de Europa, en este esqueleto no hay suficiente. Me congratulo que se hable de cohesi n econ mica, social y territorial. Pero los aspectos de la Europa social deben ser m s desarrollados. Quien haya hecho el esqueleto no les ha dado la importancia que, en mi opini n, tienen las materias sociales y de empleo. Y una de las caracter sticas fundamentales de la Europa que hemos hecho y queremos hacer es precisamente su dimensi n social. Los ciudadanos esperan de la construcci n europea que contribuya a resolver sus problemas cotidianos, que contribuya a aportar soluciones a sus problemas existenciales: la protecci n frente a la vejez y a la enfermedad, el empleo, la formaci n, el acceso al saber y al bienestar. Saben que los pa ses solos no pueden ya aportar respuestas eficientes a estos problemas.

Si la Constituci n Europea no los recoge plenamente, a nivel de los valores, de los principios que la sustentan y las pol ticas que debe desarrollar, los ciudadanos echar n algo en falta.

Entre los valores hay que hacer lugar tambi n al valor de la solidaridad -que no est  presente-, y al de la igualdad de oportunidades entre hombres y mujeres -que tampoco lo est -, y al desarrollo sostenible -que no lo est  suficientemente. Europa no puede ser s lo un mercado, es lo que ha servido para construirla, pero, de cara a ma ana, los valores de la solidaridad, del desarrollo sostenible, de la igualdad entre g neros, tienen que ocupar un lugar m s claro del que tienen.

Hay que insistir en que los procedimientos de toma de decisiones deben permitir una Uni n m s eficiente. S  que ese tema todav a no ha sido objeto de la discusi n necesaria. Me permito simplemente se alarlo.

En su conjunto, pues, se or Presidente, satisfacci n por el paso que hemos dado en este Pleno de la Convenci n y buen  nimo para acabar de rellenar, como dec a el Comisario Barnier, con carne, con m sculo, con fuerza, la estructura que hoy conocemos. <BRK>

2-065

PT

**Lopes (Ch.E/G.-PT).** - Senhor Presidente, caros colegas, quanto ao esquema geral da arquitectura constitucional, parece-me de uma forma geral bem estruturado; com alguns ajustamentos, constitu i uma boa base de trabalho. Gostaria de acrescentar alguns pontos de refer ncia:

- o nome da entidade que somos todos n s, Estados e povos, e que esperamos ver dotada de personalidade jur dica. De entre as quatro hip teses apresentadas, inequivocamente "Uni o Europeia"   o que n s somos e o que queremos ser;

- quanto a compet ncias, considero prejudicial ao desenvolvimento futuro da Uni o a elabora o de um cat logo expl cito ou impl cito de compet ncias; seria um factor de rigidez no processo de integra o;

- no que toca   composi o da Comiss o, devemos assegurar um comiss rio por cada Estado-Membro;

- quanto   presid ncia do Conselho, devemos manter conscientemente o sistema de rota o semestral;

- referindo-me ao congresso dos povos da Europa, n o encontro raz o substantiva para a sua cria o;

- no que toca ao equil brio institucional, importa preservar e aprofundar o tri ngulo Comiss o-Conselho-Parlamento e fortalecer o m todo comunit rio. Consequentemente, deveremos assegurar o desenvolvimento adequado do papel da Comiss o. <BRK>

2-066

EN

**De Vries (Gov.-NL).** -Mr President, colleagues, we are about to embrace ten new Member States in the European Union. That is a very positive thing. It will make the Union more European. But at the same time, it entails certain risks, and we should be aware of them: risks of greater complexity, and greater difficulty in reaching decisions.

We will see more centrifugal forces in the Union. We therefore need to counterbalance those forces with forces that help the Union to act effectively. We do not need, I believe, a more inter-governmental Union. We need a more integrated Union, a Union that is at the same time more effective, and more democratic.

For the Netherlands, there are two essential points that we would like this Convention to agree upon. Firstly, to maintain the balance among the institutions of the Union, and secondly, to strengthen each of these institutions. Let me be more explicit. The secret of the success of the Union has been firstly, the right of initiative of the European Commission, secondly, qualified majority voting in the Council, thirdly, co-decision of the European Parliament in legislative matters, and finally, the role of the Court of Justice as a final arbiter.

In the end, power must be subject to the law. So I will judge our proceedings on the basis of whether these four principles can be maintained and further strengthened.



It is difficult to say whether the draft we have in front of us will end up doing that. That will very much depend on our further discussions about substance. At the end of the day we have to agree about substance first and then form will follow. We should not agree the form, before we have had a full debate about the substance, including the institutions.

Two questions at this stage: first, and I echo Mr Lopes here, is it really necessary for the Union to have a fixed catalogue of competencies or should we perhaps retain the current system in the Treaty, which talks about the instruments of the Union, without fixing competencies concretely?

Secondly, do we really need new institutions, such as a fixed Presidency of the European Council and a new Assembly? I am doubtful about that. It seems to me the Luxembourg Prime Minister, Mr Juncker, was right, when he remarked that perhaps our Union does not need more institutions, it needs more ambition, it needs more effectiveness and more democracy.

So I welcome this draft, President, but I would like to reserve my final judgement until we have had the debate about substance, and about the strengthening of the four institutions, that make up the success of our Union. <BRK>

2-067

FR

**Le Président.** – Je vous rappelle qu'il n'y a pas de débat sur le fond. Nous ne pouvons pas aborder le débat sur le fond par quelques remarques sur une Institution ou sur une autre. Il s'agit là de l'architecture, c'est-à-dire de l'ordre dans lequel les problèmes seront traités. Cette demande d'architecture a été formulée par la Convention en mai et en juin. Nous avons répondu à sa demande. Il va de soi que les questions de fond feront l'objet de débats ultérieurs. La parole est à Monsieur Lamassoure. <BRK>

2-068

FR

**Lamassoure (PE).** – Je vous remercie Monsieur le Président. Pour ma part, je fais partie de ceux qui trouvent que c'est une bonne architecture. Et je tiens à vous en féliciter ainsi que le Praesidium. Je voudrais insister sur la méthode de travail qui va être la nôtre maintenant. Parce qu'au fond, quand on fait le bilan de la première génération des groupes de travail, on se rend compte que ce bilan est globalement assez décevant. Pourquoi? Parce que les groupes de travail n'avaient pas de grandes orientations. Puisque maintenant nous avons une architecture qui fait l'objet d'un large consensus, il est souhaitable que nous engagions maintenant le débat de fond, le débat sur les Institutions que nous souhaitons, en le faisant précéder d'un débat sur ce que nous attendons de l'Union, en reprenant, en approfondissant le débat du printemps.

En effet, on se rend compte, à partir des travaux de la première génération de groupe de travail, que par rapport à une fédération classique, nous attendons de l'Union européenne deux choses de caractère complètement différent. D'une part, nous lui attribuons des compétences, complètes ou partagées avec l'Union. Ce sont là des problèmes que nous avons traité, nous avons quarante ans d'expérience et nous voyons comment nous pouvons améliorer le triangle institutionnel. Mais d'autre part, et c'est là la particularité de l'Union européenne, nous voulons aussi coordonner ensemble des politiques qui restent fondamentalement des politiques de compétence nationale, et je dirais même de compétence nationale à cent pour cent. C'est le cas des politiques budgétaires depuis l'Union monétaire et ce sera vraisemblablement le cas d'autres politiques comme la politique de défense. Or, l'exemple du budget montre que nous sommes incapables de coordonner des politiques nationales. Cela ne se passe pas bien aujourd'hui pour le budget et il est à craindre que cela ne se passe pas bien non plus pour d'autres politiques demain. Ce sont des problèmes nouveaux par rapport aux problèmes communautaires. Je citerai deux exemples. Premièrement, peut-on prétendre coordonner des politiques nationales qui sont au coeur des pouvoirs des Parlements nationaux sans y associer, d'une manière ou d'une autre, les Parlementaires nationaux ? Selon moi, la réponse est non. Deuxièmement, s'il y a des Etats en infraction par rapport à une règle de coordination, qui va les condamner? Si c'est le Conseil, comment éviter que les grands pays n'aient plus d'influence que les petits. Le Conseil osera-t-il condamner un grand Etat ? On voit bien que ce n'est pas le cas aujourd'hui. Et si c'est la Commission, quelle légitimité démocratique ou politique donner à la Commission pour qu'elle ait ce pouvoir véritable et éviter ainsi qu'un Parlement national qui vient d'être élu, par exemple, ne rejette d'un revers de la main les critiques de la Commission en demandant ce que sont ces avis de technocrate apatride. Ces exemples démontrent que pour ces fonctions-là, que nous attendons de l'Union, nous avons des problèmes très différents de l'exercice des compétences, encore une fois qu'elles soient exclusives ou partagées. Je propose donc, Monsieur le Président, que nous commençons à débattre de cela. Le squelette est beau. Avons-nous besoin, à partir de là, de créer une femme, un homme ou un couple? On a besoin de le savoir pour y mettre la chair. Je vous remercie. <BRK>

2-070

EN

**Hain (Ch.E/G.-GB).** - Mr President, I agree with Mr Peter De Vries of the Netherlands, that we need to maintain the institutional balance, and strengthen each institution. This text is a good start. I welcome it as an important step towards settling our constitution for a generation or more.

Some comments: firstly, I would like to see an inspirational preamble to this Treaty. However, I would like it to be as short a text as possible, setting up what the European Union is, what its objectives and values are, and who does what.

The EU will only reconnect with its citizens if we have a concise constitution that people can read and really understand. Secondly, the draft adopts the technique of including the common foreign and security policy provisions throughout the text, rather than as a freestanding chapter. This could work, but our citizens will want to be absolutely clear that different ways of working apply to the common foreign and security policy.

Thirdly, I do not favour this Convention debating a name change. I agree with Mr Lopes from Portugal. The European Union is a successful brand name, a name we are all proud of. Let us not open an unnecessary debate. Frankly, The United States of Europe, or indeed United Europe are not acceptable names. United States of Europe implies a super-state. United Europe looks to me like a football team.

Nor are the words about citizenship acceptable in the draft. We are already citizens of the European Union. We do not have to choose between national and European identity: we can, and do, have both. To create a separate, freestanding European citizenship, as implied, is an unnecessary confusion. As we try to find agreement on a final text, our watchwords must be clarity, democracy and efficiency, in a New Europe that is a union of sovereign states. Well done, and let us keep at it! <BRK>

2-071

EN

**Piks (Parl.-LV).** - Mr President, dear colleagues, the discussion on the EU basic treaty has just started.

Yesterday, the President of the Convention presented the first draft for the basic Treaty, which marks the beginning of a new stage in the Convention's work, and I would like to congratulate the Presidium. The basic structures have now been created. These must now be completed with formulations and details.

It is my strong belief that the basic content of the Treaty will be rooted in the outcome of the discussions at the Convention plenary sessions and working groups. What the basic Treaty must do is place the individual at the heart of its activities. It should also contribute to the preservation and development of European common values, while also respecting the diversity of cultures, traditions and language. The uniqueness of the nation states, and identities of the regions should continue to be respected.

The Charter of the EU institutions should envisage the maintenance of the current division of competencies, between the Commission, the Council and Parliament in the legislative process. A gradual transition from unanimity to qualified majority is necessary to preserve the efficiency of the decision-making process in an enlarged EU. However, unanimity should continue to be used in highly sensitive areas, such as defence policy.

The general arrangement of the European Union institutions and their role should be maintained. The working practices of the institutions must fully respect the principle of transparency. The Community method has ensured success in establishing a common EU market, economic and monetary union. By strengthening the Commission's role in the EU policies, the Commission's capacity to define common EU policies and act as a guardian of the common interest could be extended.

In the light of enlargement, the importance of the question of co-operation with neighbouring countries will become even more important. We are therefore in favour of creating a framework of privileged licensing between the Union and its neighbouring states. The remaining question is whether these provisions will be included in the basic Treaty. <BRK>

2-072

EN

**Hübner (Gouv.-PL).** - Mr President, I agree with those colleagues who said that the real challenge would be to fill this otherwise excellent draft with more substance. Today, I would like to raise an important issue.

The subject of the session is the "Preliminary Draft Constitutional Treaty", but then in the text, the word "Constitution" appears, and I am strongly in favour of calling our efforts the "Convention work on the Constitution", not the "Constitutional Treaty".

I believe, Mr President, that aiming for a constitution has already had a positive impact on the contents. Selecting a constitutional path, due to the very nature of the constitution, is also an excellent way of simplifying the Treaty. It is also very positive for the citizens as the word "Constitution" has a solid value. I also believe that "Constitution" builds what I would call the "citizens' identity", something we all care about. From the legal point of view, I believe that the EU deserves a solid document, and the Constitution lives up to this requirement.

Last but not least, we have had several Treaties, so far, and I believe that the time has come, for something of greater significance. We should move from the idea of just the Treaty to something we could call a Constitution. <BRK>

2-073

IT

**Follini (Parl.-IT).** - Signor Presidente, gli antichi filosofi greci ci hanno spiegato che la tartaruga arrivava prima del velocissimo Achille e quindi io, memore di questo, desidero rivolgere a lei e alla sua tartaruga gli apprezzamenti per il lavoro che ci ha presentato.

Mi permetto tre osservazioni telegrafiche. La prima: abbiamo intrapreso la strada della semplificazione e credo che su questa strada dobbiamo proseguire, anche a costo di qualche difetto di immaginazione. Con questo spirito io ritengo che l'articolo 19 - quello riguardante il Congresso dei popoli d'Europa - possa essere essere tralasciato.

La seconda: c'è una sequenza per la quale il Consiglio precede il Parlamento e il Parlamento precede la Commissione. Io non so se si tratti di una priorità logica, di una priorità politica; se però non si tratta, come mi pare di capire, di una priorità casuale, credo che questo equilibrio, questo assetto dei poteri si giustifichi se, d'altro canto, sugli articoli 29 e 30 e sull'articolo 41 - quelli che riguardano la politica internazionale e l'azione dell'Unione nel mondo - siamo in condizioni di tracciare delle soluzioni molto forti e molto chiare.

Terza e ultima osservazione: la vita democratica dell'Unione richiede che vi sia un elettorato europeo, che si esprima in quanto tale e non come somma dei diversi elettorati nazionali. Definire questo elettorato europeo mi sembra appropriato. Se riuscissimo a farlo già a partire dalla convalida di questo Trattato, la tartaruga avrebbe fatto un passo da giaguaro. <BRK>

2-074

EN

**Roche (Ch.E./G.-IE).** - Mr President, first of all I would like to congratulate and compliment you on the excellent work you have done. This is a draft that everyone can welcome. The idea of a single, simplified Treaty will make the whole Union more intelligible to the citizens, and that must be welcome. I very much agree with you that a single, institutional structure, as envisaged in the draft, does not imply uniformity of procedural arrangements across the policy areas.

I share some concerns that have already been voiced here about the institutional arrangements. We have a shared interest, I believe, in strengthening all the institutions: the Commission, the Council, and the Parliament. We also have a shared interest, I believe, in maintaining the balance.

One concern that I would mention, even at this very early stage, is a concern that I have about the concept of a President of the European Council, distinct from the Presidency of the Council of Ministers. I fear that this would create a source of potential tension.

I agree with Mr Lopes, and others, regarding the name of the Union. The idea of a United States of Europe is not attractive. "The European Union" is a name we have learned to live with and to accept. The rotation of the Presidency is going to be very important in the future, again Mr Lopes has raised this, and we can deal with it another day.

I would like, Mr President, at this stage to thank you and compliment you for the work. In the period ahead, we now have a framework within which we can operate - a framework that will produce a more coherent Europe, and a Europe that will be closer to the citizens. <BRK>

2-075

EN

**Tiilikainen (Ch.E./G.-FI).** - Mr President, I also would like to thank the Presidium for having the courage to put the draft treaty on the table at this stage. So far the Convention has not taken decisions on many issues and that is why I do not think there can be much content in the Treaty.

On some points however the strategy goes too far. I refer to the previous statements made here today. In some cases, it even undermines the role of the Convention, particularly in the field of the institutional issues. I refer to the fact that, whereas we have not been debating institutional issues, the whole debate has not been open for the Convention. There is very little in the Treaty that will guide our future deliberations in this field. In this respect there are statements concerning various presidencies' references to possible amendments to the structure of the Commission that should not be there.

Even the idea of a People's Congress did not gain any remarkable support here yesterday, so I share the view of Mr Lopes and Mr de Vries that instead of creating new institutions, we should strengthen the present ones that have proved successful. I refer to the Community method and to the Commission as a promoter of the common interest.

Another arrangement that should not be included in the new Treaty as it currently stands is the way the common foreign and security policy is placed in terms of the categories of competencies implementation and instruments. Mr Dehaene's group on External Affairs is currently discussing the best means of increasing the coherence of external relations. I think the result of this working group should define the place of the whole range of external relations in this new Treaty.

Lastly, I would like to repeat the question of Mr Duff, concerning the way in which we are to take decisions on this new structure. <BRK>

2-076

EL

**Γιαννάκου-Κουτσίκου (Parl.-GR).** - Κύριε Πρόεδρε, θα είμαι επιγραμματική. Μπράβο στο Προεδρείο για το σχέδιο αυτό που θα διευκολύνει και τους αναγκαίους συμβιβασμούς, γιατί πρέπει να υπάρξει μία πρόταση προς το Ευρωπαϊκό Συμβούλιο. Η Ευρωπαϊκή

Ένωση, νομίζω, θα μπορούσε να ονομαστεί Ηνωμένη Ευρώπη, να έχει ενιαία νομική προσωπικότητα και να έχει ένα σύνταγμα κατανοητό στους πολίτες, χωρίς σύγχυση αρμοδιοτήτων.

Πρέπει να περιλαμβάνεται ένα προοίμιο που θα αφορά στις αξίες και τις αρχές. Γιατί οι αξίες και οι αρχές δημιουργούν κοινό συμφέρον για τους ευρωπαίους πολίτες, αλλά και για τις ηγεσίες τους. Η ιθαγένεια και ο Χάρτης των Θεμελιωδών Δικαιωμάτων είναι εκ των ων ουκ άνευ για το στόχο αυτό. Είναι απόλυτη ανάγκη να αποκτήσουμε ενιαία πολιτική δικαιοσύνης, ασφάλειας, εξωτερικών σχέσεων και άμυνας, γιατί μόνο έτσι θα ενισχύσουμε τη διεθνή μας παρουσία.

Το Ευρωπαϊκό Συμβούλιο, κύριε Πρόεδρε, δεν χρειάζεται ένα μη οργανικό μέλος του ως Πρόεδρο, διότι θα δημιουργηθούν νέοι γραφειοκρατικοί μηχανισμοί. Ούτε πρέπει να αποδυναμωθεί η Ευρωπαϊκή Επιτροπή. Ούτε τα εθνικά Κοινοβούλια πρέπει να παρεμβαίνουν ex ante στο ρόλο των υπερεθνικών αρχών. Τα εθνικά κοινοβούλια ως πάρουν εξουσίες από τις κυβερνήσεις τους, που δεν τους παραχωρούν τις πραγματικές εξουσίες που έπρεπε να τους έχουν παραχωρηθεί.

Το άρθρο 42 είναι σημαντικό. Η Ευρώπη δεν μπορεί να επεκτείνεται συνεχώς άκριτα προς πάσαν κατεύθυνση. Πρέπει να αποκτήσει ειδικές σχέσεις με τρίτες χώρες.

Τέλος, κύριε Πρόεδρε, το σημαντικότερο από όλα είναι το εξής: εκεί που μπορούμε να ασκήσουμε πολιτικές είναι η καθημερινότητα των πολιτών, δηλαδή τα ζητήματα της απασχόλησης, τα προβλήματα του περιθωρίου, της εκπαίδευσης, της υγείας, του πολιτισμού. Εκεί είναι οι εστίες κινδύνου για την Ευρώπη, εκεί όπου κατά τα άλλα η ευημερούσα Ευρώπη μπορεί να αναπτύξει, δυστυχώς, περιθώριο και πολιτικά άκρα. <BRK>

2-077

NL

**Maij-Weggen (PE).** - Voorzitter, in de eerste plaats mijn waardering voor deze globale opzet. Ik denk dat deze goed beantwoordt aan wat de Conventie heeft gevraagd en ik denk dat we er ook allemaal heel blij mee kunnen zijn. Ik ben erg blij dat er een constitutioneel gedeelte zit in het ontwerp en dat wordt voorzien in opname van het Handvest. Ik ben ook positief over de federale inslag en de bevoegdheidsverdeling, een beetje in lijn met de heer Lamassoure. Ik ben heel blij dat de pijlers opzij geschoven worden, dat lijkt me een goede zaak. Het is ook goed dat er wordt voorzien in eigen middelen - ik denk dat we daar nog een goede discussie over moeten hebben -, dat het lidmaatschap nader wordt beschreven en dat er sprake kan zijn van schorsing, maar ook van de mogelijkheid om uit te treden.

Er zijn ook een paar punten waar ik niet tevreden over ben. Ik denk dat we de naam van de Europese Unie niet ter discussie moeten stellen. Het woord Europese Unie is prima. Ik denk ook dat we niet de suggestie moeten wekken dat er nu plotseling een Europees burgerschap ontstaat: dat stond al in artikel 8 van het Verdrag van Maastricht.

Derde punt, ik vind dat het accent te veel ligt op de Europese Raad en de Europese ministerraad. Verder lijkt het mij geen goed idee om het permanent voorzitterschap voor de Europese Raad te creëren, en ook niet om de Hoge Vertegenwoordiger te institutionaliseren: die moet mijns inziens samenvallen met de commissaris voor de externe betrekkingen in de Europese Commissie. Zo ontstaat namelijk bij mij het ongemakkelijke gevoel dat de intergouvernementele inslag in dit ontwerp te groot is ten koste van het communautaire. Als dat zo is, dan zullen we daar corrigerend moeten optreden.

Tenslotte, voorzitter, ik ben ook geen voorstander van instelling van een congres. Ik zou het wel goed vinden als de Conventie verankerd werd in het VEU. Maar globaal gesproken ben ik positief over het ontwerp en over de rest zullen we zeker nog in het komend half jaar met elkaar te spreken komen. <BRK>

2-078

DE

**Brok (PE).** - Herr Präsident! Ich möchte Ihnen als Präsidium meinen Glückwunsch zu diesem Entwurf aussprechen. Ich glaube, dass es das entsprechende Gerüst liefert, auf dessen Grundlage wir die Arbeiten der nächsten Wochen und Monate in Angriff nehmen können, und ich glaube, dass es nicht notwendig ist zu streiten, ob etwas in Artikel 7 oder Artikel 12 steht, sondern ich glaube, dass dies eine Grundlage ist, die einen fairen Kompromiss darstellt. Wir wollen eine Europäische Union aus unserer politischen Familie heraus, ein integriertes Europa, kein intergouvernementales. Deswegen sollte die Möglichkeit des Intergouvernementalismus, die ja optional in diesen Vorschlägen noch enthalten ist, sorgfältig beachtet und möglichst umschifft werden. Das wird natürlich die Aufgabe sein, die wir im Rahmen dieses Konvents weiter zu erörtern haben.

Ich hätte noch einige wenige Vorschläge zu machen, die man vielleicht hinzufügen könnte, wenn man von den Ausgangspositionen ausgeht. Sie sprechen in Artikel 1 von den Staaten Europas. Wir sollten betonen, dass es eine Union der Staaten und der Völker Europas ist. Ich glaube, beides zusammen macht die Europäische Union aus, und ich glaube, dass wir uns auch auf dieser Ebene finden könnten. Auch die Austrittsklausel ist ein Problem. Wenn ein Staat wirklich ernsthaft austreten will - das zeigt das Beispiel Grönland - gibt es keine Schwierigkeit damit -, aber dieses als ständiges Angebot zu haben, ist eine Verführung für manche innenpolitischen Diskussionen, und ich glaube, dass man das unter solchen psychologischen Gesichtspunkten noch einmal nüchtern untersuchen sollte. Wichtig scheint mir zu sein, dass die Grundrechtecharta vielleicht nicht erst in Artikel 6 oder 7 auftaucht, sondern dass dies als Beispiel für das Europa der Bürger an der Spitze steht.

Wir müssen natürlich großen Wert darauf legen, dass bei der Zweiteilung, die hier vorgenommen wurde, die wesentlichen Bestimmungen, die Beantwortung der Machtfrage der Europäischen Union, in dem ersten Teil beinhaltet ist. Ich glaube, auch darüber müssen wir uns, wenn es um die Detailaufteilung geht, im Einzelnen noch unterhalten. Es ist eine ganz entscheidende Frage, ob uns dies gelingen könnte.

Ich möchte das gerne so zusammenfassen: Sie haben einen Vorschlag unterbreitet, in dem sie von einer bundesstaatlichen Struktur ausgehen. Der Vorschlag enthält aber immer noch einige intergouvernementale Fallstricke, und diese Fallstricke sind offengelegt, so dass wir sie leicht umgehen können, wenn wir es denn wollen. <BRK>

2-079

FR

**Fayot (Parl.-LU).** – Monsieur le Président, il est significatif que vous nous ayez présenté cette architecture d'une Constitution à peu près au même moment où le Conseil européen décidait de l'élargissement de 15 à 25. Je trouve que c'est une coïncidence sinon historique, en tout cas fort significative. Cela va nous forcer à pousser l'intégration de l'Union européenne afin d'éviter que cette Union européenne ne devienne une zone de libre-échange.

Nous avons donc l'obligation dans ce travail sur la Constitution européenne de pousser à l'approfondissement de la construction européenne.

L'architecture que vous nous proposez présente de nombreux aspects intéressants. Je pensais effectivement que c'est maintenant que commence véritablement le travail de notre Convention sur des textes. Il sera important de voir exactement comment se fera ce travail, si nous constituerons des groupes de travail, si nous travaillerons en plénière par des amendements, si nous aurons la possibilité de discuter à fond de ce texte que je n'appellerai par un texte martyre, Monsieur le Président, par respect pour vous. En effet, je pense que c'est tout de même un texte par rapport auquel nous allons garder toute notre liberté, surtout en ce qui concerne les différents points un peu plus controversés.

Je souhaiterais apporter une dernière remarque. Personnellement, je trouve que les titres 1 et 2 pourraient être plus centrés sur les citoyens européens. Je pense que nous rédiger une Constitution dans laquelle devrait apparaître, comme l'a dit Monsieur Brok, en premier lieu la Charte. Ce premier titre centré sur le citoyen européen "L'Union conçue comme une communauté de citoyens réunis par les mêmes valeurs et des objectifs communs" pourrait rapprocher une nouvelle fois la Constitution de nos citoyens. C'est l'objectif essentiel que nous devons essayer d'atteindre. Merci. <BRK>

2-080

EN

**Frendo (Parl.-MT).** – Mr President, I warmly welcome this document, as I believe it to be an important basis for our discussion. It is crucial for our Convention that such a document be adopted, both for the credibility of the Convention, and to show that the Convention itself has been a success.

I have a few points to make. The first one relates to fundamental rights. I think that fundamental rights should, in fact, be in a chapter of their own. Fundamental rights refer to rights that are applicable throughout Europe, and therefore are something that should be treated separately in the document.

I also think it important that in the structure of the constitutional document itself there should be a clear distinction between those legislative processes which are binding and those which are not. I am sure the citizens of Europe would like to understand this distinction as well.

Thirdly, it seems to me that the principle of solidarity is missing from the text. The issue of solidarity was raised in this Convention a number of times, and you, Mr President, also embraced it at one of the earlier meetings. I truly think we need a specific clause on the concept of solidarity. This has been one of the fundamental reasons for the success of the Union. It should, in my view, be a principle of governance. We could discuss later whether this should be a principle of justice. <BRK>

2-081

EN

**McAvan (PE).** – Mr President, I think the document shows that we are now on the home strait of our work, and we will deliver what we set out to do. It is a skeleton and I would now like to add my own pound of flesh to it.

Yes, of course we need solidarity. It is a very important principle of the Union's work. We also need equality between men and women. That cannot be omitted. There are very few women here, and we must not overlook half the population.

Thirdly, something people have not mentioned - Europe is a multicultural society. We already have a declaration against racism and xenophobia. Let us now add something about that in the values of the European Union. Never has this been more relevant than at this period of time, when the far right and xenophobia are growing on our continent.

There were, however, a couple of surprises, Mr President. For example, the big debate on the name. I do not think we need to re-brand the Union at the moment, as people know what it is. As for the concept of dual citizenship, I am not sure where that idea comes from. It is not one we have discussed here before, and I am unsure how helpful these two items have been in the context of debating these things with the public.

Peter Hain mentioned a preamble. He spoke about an inspirational text, and he is right. We need something which explains the whys and wherefores of the European Union, which can be talked about in schools, colleges, and pensioners' groups, so that people understand what the European Union is about.

As Mr Fayot has just said, timing is important. It is another piece in the jigsaw, which will bring us towards the enlarged Union. It is another piece that will result in a Union based on democracy. <BRK>

2-082

SV

**Hjelm-Wallén (Ch.E/G.-SE).** - Herr ordförande! Jag vill också säga att jag anser att strukturen är god på det upplägg som vi har fått. Jag hoppas att vi under resans gång skall komma ihåg att det allra viktigaste är att vi gör hela dokumentet begripligt för en allmänhet. Att allmänheten förstår vad EU är till för och hur besluten i huvudsak går till är utomordentligt viktigt.

Mycket återstår naturligtvis att göra vad gäller innehållet. En del saker saknas. Linda McAvan nämnde just jämställdhetsfrågan, dvs. jämställdhet mellan kvinnor och män, och även det multikulturella Europa. En annan fråga som inte tas upp är ombudsmannen. Jag tycker också att innehållet ibland kan vara för omfattande. När det skapas en särskild rubrik i andra delen som heter försvarsfrågor, så ifrågasätter jag det. Det kan nämligen inte jämföras med externa åtgärder eller den inre politiken, utan det blir en ojämnhet som jag tycker måste ses över.

Slutligen vill jag säga att jag beklagar att den utåtriktade debatten i flera av våra länder har startat med rubriker som egentligen handlar om ett enda begrepp, nämligen "Europas förenta stater". Så vitt jag vet, har benämningen på vårt framtida samarbete överhuvudtaget inte diskuterats i konventet. Jag tycker därför att det är väldigt olyckligt att vi nu genom denna benämningsfråga har startat en pseudodebatt som inte har någonting med innehållet att göra. Jag hoppas att det skall kunna rättas till så snart som möjligt. <BRK>

2-083

DA

**Bonde (PE).** - Hr. formand, jeg har for mange dage siden indskrevet mig på talerlisten til debatten om charteret og til dette punkt. Jeg har omhyggeligt forberedt to taler og får nu alt i alt et minut. Må jeg ikke opfordre til, at man næste gang tilrettelægger møderne noget bedre.

Jeg vil rejse et punkt, og det er Giscard's forslag om kun at lave en føderation for dem, der godtager det nye. Hvis et land spørger sine borgere, om de stemmer nej, så er det ud af EU. Giscard stillede sit forslag i "Der Spiegel", uden at det var diskuteret i Konventet. Kan vi ikke få punktet sat på dagsordenen til en særlig debat, så vi kan få en fornemmelse af, om vi skal deltage i et retskaffent Konvent eller en fransk revolution. Og så er jeg enig i, at vi skal have Ombudsmanden med ind i teksten. <BRK>

2-084

FR

**Moscovici (Ch.E/G.-FR).** – Monsieur le Président, je voudrais d'abord vous féliciter, ainsi que le Praesidium, pour la qualité du travail effectué et que vous avez présenté hier. C'est un moment important et je crois que le squelette ou la colonne vertébrale répond effectivement à nos attentes sur trois angles : tout d'abord, en répondant à la préoccupation que nous partageons tous d'un texte simple, lisible et facile d'accès afin de permettre aux citoyens européens de mieux s'approprier de l'Europe et de son projet; deuxièmement, c'est tout à votre honneur, en prenant fidèlement en considération les réflexions et les contributions qui ont été apportées à la Convention depuis plusieurs mois tout en laissant ouvertes de très nombreuses possibilités institutionnelles prometteuses; et troisièmement, en mettant, selon moi, la Convention face à ses responsabilités à partir d'une approche ambitieuse. Il y a là un dessein de rénovation de la méthode communautaire et c'est tout à fait fondamental. Nous disposons donc maintenant d'une base de travail incontestable et je l'entends ici, tout à fait incontestée.

Vous avez dit vous-même, Monsieur le Président, qu'il ne s'agissait pas aujourd'hui de se pencher sur le fond. Je me contenterai donc de deux réflexions. La première vise à répondre à Peter Hain au sujet de l'Europe Unie. Car le fait que cela fasse penser à un club de football tel que Manchester United, Leeds United, etc. devrait plutôt le conforter dans ce choix parce que ceci est très britannique au fond. Il faudrait donc qu'il y réfléchisse. Ma deuxième réflexion est plus sérieuse. Elle porte sur ce que nous devons ajouter, à savoir la chair. Il y a un squelette, il y a une architecture institutionnelle bien pensée mais il faudra aussi penser au contenu, c'est-à-dire aux politiques communes, dont il me semble que nous pourrions encore davantage développer la place dans la première partie du Traité. <BRK>

2-085

FR

**Le Président.** – Voilà, il nous reste maintenant dix orateurs. Nous avons regardé les possibilités et je crois que la meilleure solution, c'est de les inscrire en tête de notre débat de la prochaine session, le vendredi matin. Nous garderions une heure, cela leur permettra d'avoir suffisamment de temps pour s'exprimer. Si, en effet, nous continuions, je ne pourrais pas vous répondre, ce qui serait quelque peu regrettable pour les interventions puisque nous devons interrompre nos travaux à 13 h. Donc, à partir de M. Lekberg, et je m'en excuse auprès de lui, jusqu'au trentième qui est M. Farnleitner, ce serait le vendredi de la prochaine session à 9h30, on garderait une heure pour vos interventions, si vous en étiez d'accord.

Je voudrais essayer de répondre à vos observations très pertinentes et parfois même bienveillantes qui ont été faites au cours de ce débat.

Je commencerai par le début, à savoir les remarques de M. Hänsch et de Mme Palacio, lesquels siègent au praesidium et ont donc été associés naturellement à l'élaboration de ce document qu'ils connaissent fort bien. M. Duff a posé comme question principale, la question sur la suite. Et si vous me le permettez, je la garderai pour la fin de mes réponses. Cette question est, en effet, évidemment fondamentale.

M. Barnier a salué le progrès que constitue le passage à un système institutionnel unique. Je ne voudrais pas, tout de même, que dans la Convention, et je crois que ce serait une erreur psychologique, quand nous faisons des avancées importantes, nous les sous-estimions. Voilà des années qu'on parle des trois piliers. Nous ferions disparaître les trois piliers. Nombreux sont ceux d'entre vous qui, ici ou là, ont dit: sera-t-on jamais débarrassés de ces trois piliers? Nous le proposons. Donc, on créerait un système institutionnel unique. C'est une avancée importante de l'organisation de l'Union européenne. Naturellement, les modes d'emploi des Institutions, et M. Lamassoure le disait tout à l'heure, seront adaptés au système de compétence, comme dans toute Constitution où il y a, en effet, des procédures particulières en fonction des questions traitées ou des systèmes de compétences. Il ne faut pas avoir l'idée simpliste – et je ne pense pas qu'ici, qui que ce soit ait des idées simplistes – que parce qu'il y a un système institutionnel unique, il y a une seule procédure. Non! Il y a des procédures adaptées à la nature des compétences puisque nous savons, nous l'avons répété, vous l'avez dit vous-mêmes, qu'il y aurait plusieurs systèmes de compétences.

Je crois que c'est M. Lopes qui a posé la question des procédures de révision. Nous n'avons pas abordé ce sujet, la question de savoir s'il devait y avoir ou non des procédures de révision différentes, c'est-à-dire pour la première partie et les parties suivantes. C'est une idée qui avait été avancée à certains moments du débat, à l'extérieur de notre Convention, mais que nous avons entendue. C'est assez complexe, parce qu'il n'y a pas une partie noble et une partie moins noble dans une Constitution. Tout est important. Et, d'ailleurs, on rappelait tout à l'heure qu'il faut mettre dans la partie constitutionnelle, par exemple, les procédures essentielles de décision. La procédure législative fait partie du dispositif constitutionnel. Et s'il y a des procédures nouvelles adaptées à l'Union européenne, comme la coopération ouverte, c'est à mettre aussi dans la partie constitutionnelle.

D'autre part, on risque d'avoir, chez certains membres de l'Union, un doute s'ils ont le sentiment qu'il y a une partie plus souple, plus incertaine du dispositif qui pourrait être modifiée de façon plus facile. On a souffert, dans le passé, du fonctionnement de certains articles dans lesquels il y avait bien une procédure de modification des compétences, d'élargissement des compétences, mais qui a été interprétée avec le temps de telle manière que le processus était insuffisamment transparent et se terminait finalement par une décision au Conseil qui n'était pas d'ailleurs une décision toujours du niveau des dirigeants véritables du Conseil. Je crois qu'il faut regarder ce point, nous ne l'avons pas traité. Nous verrons s'il faut une seule procédure de révision ou plusieurs.

Il a posé la question de la référence dans la Constitution, et je reviendrai tout à l'heure sur les Institutions, aux Parlements nationaux. Je vous dirai franchement qu'on ne peut pas considérer les Parlements nationaux comme une Institution de l'Union. Pas plus que les gouvernements ne sont d'ailleurs des Institutions de l'Union. Par contre, puisque l'on va donner des rôles aux Parlements nationaux, et notamment vous paraissez être d'accord sur un rôle concernant le système d'alerte précoce s'agissant de la subsidiarité, il y aura bien dans le texte des références aux Parlements nationaux. Et il faudra que ces références soient telles que l'implication de ces Parlements apparaisse clairement. Cela peut d'ailleurs intervenir à propos d'autres sujets ou d'autres Institutions.

Alors, Monsieur Lopes, c'est difficile pour nous. On nous dit, à Nice, "précisez les compétences". Et vous nous dites: "pas de catalogue de compétences". Que faire? Nous avons parlé de ce problème des compétences au début des travaux de la Convention. D'abord, il faut savoir qu'il y a un catalogue de compétences, que ce n'est pas une invention. L'article 3 du Traité de Rome est une énumération de compétences. On ne va pas le supprimer. Et d'ailleurs, s'il doit y avoir des compétences exclusives, il faut bien qu'elles soient dénommées. On ne peut pas dire qu'il existe des compétences exclusives et ne pas les citer.

La position qui a été prise par la Convention – ce n'était pas la mienne, mais je l'ai acceptée bien volontiers – est de dire qu'on ne fait pas deux catalogues de compétences, un catalogue pour l'Union, un catalogue pour les États, ce qui était la position de certains pays au départ de nos travaux. Mais il est bien évident que les compétences exclusives et partagées devront être énumérées comme elles le sont dans les traités actuels. Et donc, sur ce point, ce n'est pas du tout un recul, c'est simplement la confirmation des traités actuels.

Monsieur De Vries a dit: "il faudrait se mettre d'accord sur le fond avant de parler d'architecture". Je veux bien, mais, en fait, aux mois de mai et de juin, beaucoup d'entre vous ont dit: "c'est très difficile d'avancer si on n'a pas une carte de la route", c'est-à-dire si l'on ignore où les différentes questions trouveront leur place dans l'architecture. Nous en avons beaucoup parlé au sein de praesidium, nous avons travaillé sur ce texte et, par ce texte, nous avons répondu à une demande. Il ne s'agit pas là d'une initiative arbitraire du praesidium ou de la présidence.

La question centrale, en effet, qui a été posée par certains, est: "Est-ce une bonne architecture?". Et le véritable point, qui d'ailleurs curieusement n'a pas été évoqué, est la question de savoir: "fallait-il mettre les Institutions avant les compétences ou les compétences avant les Institutions?" Dans toutes les Constitutions, dans la plupart, en tout cas dans celles que je connais, on met les Institutions d'abord, et on met les compétences après. On a pensé que la construction européenne, compte tenu de sa nature, plusieurs d'entre vous l'ont dit, ne peut pas se doter d'une constitution qui serait celle d'un Etat existant qui organise ses pouvoirs. Il s'agit de la Constitution d'un ensemble de peuples et d'Etats – je dis volontiers de peuples et d'Etats – qui veulent organiser leur démarche et leur avenir. Le système est donc déterminé, en réalité, par les objectifs et par les compétences. C'est pourquoi nous avons pensé qu'il fallait mettre les objectifs – on en dira un mot – en tête, les compétences ensuite, et après les éléments plus institutionnels.

M. Folini, avec malice, s'est interrogé sur l'ordre dans lequel nous avons évoqué les institutions. Il n'y a aucune malice. C'est l'ordre qui résulte de la combinaison des traités de Maastricht et du traité de Rome. Dans le traité de Rome, qu'il faut relire, l'ordre est: Parlement, Conseil, Commission. Le Parlement, c'est un salut à la légitimité démocratique. Où fallait-il mettre le Conseil européen? Nous nous sommes reportés au traité de Maastricht, qui le met en tête, parce que c'est une institution qui doit donner une impulsion à l'ensemble. Il est donc normal qu'il figure en tête. C'est pour cela que nous avons pris comme ordre: Conseil européen, Parlement, Conseil, Commission.

Mme Tiilikainen nous a dit: "Mais il faut attendre pour la PESC les travaux qui sont en cours, les travaux du groupe de Michel Barnier". Bien entendu. Nous disons simplement que si on arrive à des propositions, voilà où ces propositions figureront dans le traité constitutionnel. D'ailleurs le traité de Maastricht prévoit qu'il doit y avoir une politique commune de défense et qu'elle doit aller vers un système européen. Ce n'est donc pas non plus quelque chose qu'on introduit, mais quelque chose qu'on met en mouvement. Nous attendons de voir où il conviendra de le faire figurer.

M. Brok avait insisté pour que les questions de pouvoir figurent dans la partie constitutionnelle. Il a tout à fait raison. Nous sommes de cet avis. Il peut y avoir des points de procédure, de procédure pure. Et il faudra voir où les inscrire. Mais je crois d'abord que les procédures peuvent être simplifiées. Je pense aux deux grands articles qui décrivent la "navette" au sein de la procédure de codécision, articles qui sont d'une rédaction compliquée, ce qui avait d'ailleurs été signalé par Giuliano Amato. Mais je crois que ces articles pouvant être simplifiés, ils auraient leur place, eux aussi, dans la première partie. Parce que la procédure législative, dans la plupart des grandes démocraties, c'est un ensemble de la vie institutionnelle du pays.

M. Fayot a posé la question des titres 1 et 2, demandant s'ils ne pourraient pas être plus centrés sur les citoyens. Nous avons, en fait, des complications concernant ce passage, parce qu'on nous a demandé qu'il y ait un préambule à la constitution. Il y a toujours un préambule à la constitution. C'est en général un texte assez court, de l'ordre d'une page, une page et demie. Mais il y a également le préambule de la Charte. Ensuite, il y a deux définitions possibles des droits. Il y a la définition dans la constitution et il y a la définition donnée par la Charte. Il faut arriver à ce que tout ceci soit assez clair, qu'il n'y ait pas de redite, et il faut donc qu'il y ait un préambule pour la constitution, un article intitulé "création du système politique, de l'entité politique", et ensuite, vous avez raison, des titres centrés sur les citoyens, mais en essayant de faire une synthèse, ou en tout cas de regrouper les dispositions concernant les droits des citoyens.

M. Frenco a salué la référence au principe de solidarité. Je n'ai pas voulu vous proposer trop de choses, parce qu'il faut laisser la spontanéité de la Convention, et lui laisser le temps, le loisir de s'épanouir elle-même. Mais j'avais réfléchi à une devise pour l'Union et je l'avais proposée au praesidium, qui avait répondu: "pas de devise, on verra plus tard". La devise à laquelle j'avais pensé était: "liberté, justice et solidarité". Parce que je crois que si on prend le système tel qu'on l'imagine, et ne peut pas mettre beaucoup plus de mots dans une devise. Je pense que la solidarité est un des points centraux, à la fois de la société européenne et en même temps des relations possibles de l'Union européenne avec le reste du monde.

Mme McAvan s'est préoccupée de la citoyenneté, mais elle existe déjà. Elle est dans les traités. Je crois que nous devons la mettre à un endroit qui est important pour l'opinion publique, parce que la citoyenneté est un droit, elle est porteur de droits, ces droits doivent être énumérés dans la constitution, comme c'est le cas dans toutes les constitutions. En réalité, on ne propose pas de droits nouveaux, puisqu'ils sont déjà énumérés dans les différents traités, mais on les regroupe avec une certaine solennité, de façon à ce que les citoyens européens, qui restent des citoyens nationaux, sachent quelle est la panoplie de droits qu'ils peuvent exercer à ce titre.

Mme Hjelm-Wallén a posé la question de la défense et de savoir s'il fallait mettre en place un dispositif spécial pour les affaires étrangères, pour la diplomatie et pour la défense. Je pose une question très simple à tous les représentants nommés par les gouvernements, qui sont ici, les 28: Y a-t-il un seul pays dans lequel c'est la même personne qui est chargée des politiques étrangère et de la défense? Je n'en connais pas, parce que ce sont des problèmes spécifiques. Le problème de la défense, et on attendra les rapports du groupe de M. Barnier, porteront très vraisemblablement sur des problèmes assez techniques de la défense, c'est-à-dire une agence pour l'acquisition et la normalisation des armements, la mise en place de certaines structures communes. Je crois qu'il est normal, au moins à ce stade de nos travaux, que nous ayons une rubrique pour les Affaires étrangères et une rubrique pour la défense.

Monsieur Moscovici, vous avez eu le courage rare de vous amuser sur l'appellation de l'Union. Cela veut dire deux choses: la première est que, à partir du moment où nous fusionnons les traités, il n'y a plus de nom, puisque nous avons à la fois la Communauté européenne et l'Union. De toute façon, il faut choisir. On ne va pas l'appeler la Communauté-Union européenne. Il n'y a plus de nom. Il faut en choisir un. S'il faut en choisir un, il faut le faire librement, ouvertement. Il faut consulter les citoyens. Il faut regarder de quoi les mots seront porteurs, non pas actuellement, mais dans dix ans, dans vingt ans. Quand, dans vingt ans, les jeunes parleront de l'Europe dans une réunion internationale, préféreront-ils dire l'Union, ou l'Europe? Il faut regarder, écouter. La Convention n'a pas été consultée, donc on ne tranche rien. Mais je vous demande de vous mettre à l'écoute des citoyens et des citoyennes et de vous dire: quand on choisit un nom – c'est vrai pour une compagnie, pour un produit – il faut choisir un nom qui soit porteur d'images pour le système. Quel est le nom qui sera porteur d'images pour l'Europe? Non pas aujourd'hui, bien sûr, mais dans dix ou vingt ans.



Vous avez fait quelques remarques sur le contenu, mais vous avez dit vous-même que nous renvoyons la discussion, sur le contenu, aux différents retours de nos groupes de travail.

J'en viens à la question de M. Duff. Nous en avons parlé et je voudrais que vous vous imprégniez de l'idée que notre convention est une structure libérale. On ne cherche pas à imposer des méthodes, des contraintes. Un débat prolongé sur l'architecture ne serait probablement pas très productif actuellement. Vous avez fait vos remarques, il reste d'autres remarques à faire. Elles seront donc faites le 8 novembre au matin, et nous aurons vos réactions sur l'architecture. Ce qui sera important, comme d'autres l'ont dit, c'est ensuite la relation entre l'architecture et la substance. Et quand on verra arriver la substance à la suite du retour des travaux des groupes de travail – j'en cite quelques-uns: le groupe de travail sur la simplification, qui va apporter des éléments très importants sur le fonctionnement institutionnel, le groupe de travail de Jean-Luc Dehaene sur la présence internationale de l'Union, qui va aussi apporter des éléments importants –, c'est à ce moment-là qu'on verra si l'architecture proposée est la bonne ou s'il y a des modifications, des améliorations à apporter.

Il me semble – mais ceci n'est pas dogmatique et on en reparlera – que nous allons terminer ce débat le 8 novembre. Ensuite, dans nos sessions suivantes, nous allons avoir le retour des travaux des groupes de travail. Il faudra accueillir ces travaux, y compris ceux, très importants, sur la gouvernance économique et sociale qui, du point de vue du fonctionnement de l'Union, a une importance considérable. Ayant reçu ces travaux, en ayant débattu, nous serons amenés probablement à vous présenter un nouveau schéma. Ce schéma pourra-t-il être beaucoup plus détaillé? Se contentera-t-il d'incorporer les éléments qui auront été décidés jusqu'ici, comme par exemple la subsidiarité, la Charte, l'unicité juridique? Nous le verrons. Mais je pense que c'est au début de l'année 2003 qu'on devrait passer de l'avant-projet d'architecture à un projet d'architecture, à quelque chose de plus descriptif. Et ensuite nous aborderons bien sûr les différents sujets que vous avez déjà évoqués vous-mêmes. Je pense que pour les questions institutionnelles, je vous le dis franchement, il faudra les débattre en séance plénière. Je crois que c'est difficile de faire des groupes de travail, parce que les groupes de travail ne seront pas nécessairement représentatifs. D'autre part, ils peuvent céder à la tentation qu'iront dans les groupes de travail ceux qui sont en faveur du rôle particulier d'une institution ou d'une autre, et donc il me semble que les grandes questions institutionnelles devront être débattues en séance plénière. Par contre, il y aura certainement ensuite des points techniques, c'est-à-dire que lorsqu'on aura à trancher, vu un certain nombre de problèmes institutionnels, certaines modalités particulières concernant des désignations, certains fonctionnements, qui devront faire l'objet de travaux plus fouillés. Mais il ne s'agira pas de mettre en place des groupes de travail au sens global du terme. Ce seront plutôt des groupes d'expertise composés des membres de la Convention qui s'intéresseront à un problème particulier.

Voilà, Monsieur Duff – je ne sais pas si j'ai bien répondu à votre demande –, comment nous imaginons à l'heure actuelle la poursuite de nos travaux.

Je vous remercie.

*(Applaudissements)*

Nous nous retrouverons donc les jeudi 7 et vendredi 8 novembre. Pour ce qui est du jeudi 7: groupe de travail sur les compétences complémentaires, M. Christophersen, et sur la gouvernance économique et sociale, M. Hänsch. Le lendemain, poursuite des travaux sur l'architecture pour ceux auxquels nous n'avons pas pu donner la parole.

*(La séance est levée à 13 h 10) <BRK>*

**THE EUROPEAN CONVENTION**

THE SECRETARIAT

**Brussels, 11 March 2003 (12.03)****(OR. en,fr)****CONV 601/03****NOTE**

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**Subject : Summary report on the plenary session <sup>1</sup>  
– Brussels, 27 and 28 February 2003**

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**I. Debate on the amendments to Articles 1 to 4 of the draft Constitution****Article 1**

1. Chairman Giscard d'Estaing presented the amendments received, pointing out that, unsurprisingly, Article 1 and Article 2 had given rise to many amendment proposals. Article 1 is the article which defines the Union and is the foundation of the whole construction. The Chairman reminded the meeting that the Treaty is establishing a constitution. The substance of the text under discussion is a constitution, but one which takes the legal form of a treaty since, in contrast to a national constitution, the powers conferred on the Union derive from the States which conclude the Treaty. The Chairman stated that the Praesidium was willing to clarify this point by means of more appropriate wording if the Convention so wished. However, given that Article 1 was already an integral part of the constitution, it was not necessary to mention the High Contracting Parties again in that article, since they would appear in the preamble.
2. As regards the actual definition of the nature of the Union, the Chairman pointed out that a large number of Convention members found it too weak, while an equal if not larger number were opposed to the term "federal".

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<sup>1</sup> The verbatim record of the plenary session is available on the website:  
<http://european-convention.eu.int>

## **Article 4**

8. The debate confirmed that there was broad consensus on this provision giving legal personality to the Union.

## **II. Debate on the amendments to Articles 5 to 7 of the draft Constitution**

### **Article 5**

9. Vice-Chairman Dehaene introduced the debate on this article by underlining that the Praesidium had attempted to express, in a single provision, the two elements of the consensus that had been reached, i.e. the integration of the Charter into the Constitution and a clause allowing the Union to accede to the European Convention on Human Rights.
10. The debate confirmed that there was broad agreement on these two elements. Moreover, a large number of speakers expressed their preference for either inserting the Charter into the first part of the Constitution (which they argued would facilitate the wording of Articles 2 and 3 or – and this second alternative was acceptable only as a compromise solution to some members - establishing that the Charter constituted a second part of the Constitution, to be inserted between the first part and the part on the Union's policies. Some members supported including the text of the Charter as a protocol. Others emphasised the importance of the amendments to the wording of the Charter suggested by Working Group II and of completing the "Explanations" on the Charter drawn up by the Praesidium of the previous Convention.
11. Various speakers wanted paragraph 2 strengthened by laying down an obligation for the Union to apply for accession to the ECHR, with a view to minimising the risk of accession being blocked under the unanimity rule. Some speakers also called for mention to be made in this paragraph of possible accession to other international conventions on human rights.

## Articles 6 and 7

12. In presenting the amendments made to the draft wording of Article 6, and also in relation to Article 7, Vice-Chairman Dehaene highlighted the major question of whether – and to what extent – these provisions overlapped with those of the Charter. He explained that the Praesidium had nonetheless considered it appropriate to include these provisions on non-discrimination and citizens' rights in the first part, in view of their overriding importance. He also pointed out that, with its draft Article 6, the Praesidium wished to confirm exactly how the law stood at present.
13. The question of overlapping was at the heart of the debate, and a number of speakers argued that if the Charter was integrated into the first part or into a new part 2, then the current Article 6 could be deleted and Article 7 could be considerably shortened since it would no longer have to list citizens' rights. Others favoured keeping such a list. Some speakers observed that, in addition to the articles in the Charter, it would be necessary in any event to establish the necessary legal bases by incorporating those of Articles 12, 13 and 18 to 22 TEC, which could be done in the part of the Constitution on policies.
14. In relation to Article 6, a number of speakers called for the prohibition to be extended to other forms of discrimination.

### **III. Presentation of draft Articles 24 et seq. on the instruments**

15. The President underlined that in drawing up its draft for Title V, the Praesidium had kept in view the important objective of simplification as set out in the Laeken declaration. It had based its drafting on the results of the Working Group, as well as the debate in plenary on this issue.

4-001

DA

**DET EUROPÆISKE KONVENT  
TORS DAG DEN 27. FEBRUAR 2003**

DE

**EUROPÄISCHER KONVENT  
DONNERSTAG, 27. FEBRUAR 2003**

EL

**ΕΥΡΩΠΑΪΚΗ ΣΥΝΕΛΕΥΣΗ  
ΠΕΜΠΤΗ 27 ΦΕΒΡΟΥΑΡΙΟΥ 2003**

EN

**EUROPEAN CONVENTION  
THURSDAY, 27 FEBRUARY 2003**

ES

**CONVENCIÓN EUROPEA,  
JUEVES, 27 DE FEBRERO DE 2003**

FR

**CONVENTION EUROPÉENNE  
JEUDI 27 FÉVRIER 2003**

IT

**CONVENZIONE EUROPEA  
GIOVEDÌ 27 FEBBRAIO 2003**

NL

**EUROPESE CONVENTIE  
DONDERDAG 27 FEBRUARI 2003**

PT

**CONVENÇÃO EUROPEIA  
QUINTA-FEIRA, 27 DE FEVEREIRO DE 2003**

FI

**EUROOPPA-VALMISTELUKUNTA  
TORSTAINA 27. HELMIKUUTA 2003**

SV

**EUROPEISKA KONVENTET  
TORS DAGEN DEN 27 FEBRUARI 2003**

4-002

FR

**PRÉSIDENCE DE M. V. GISCARD D'ESTAING***Vice-président**(La séance est ouverte à 15h10) <BRK>*

4-003

DA

**Indledning og arbejdsplan**

DE

**Einführung und Arbeitsplan**

EL

**Εισαγωγή και διάταξη των εργασιών**

EN

**Introduction and order of business**

ES

**Introducción y orden de los trabajos**

FR

**Introduction et Ordre des travaux**

IT

**Introduzione e ordine dei lavori**

NL

**Inleiding en regeling van de werkzaamheden**

PT

**Introdução e Ordem dos trabalhos**

FI

**Käsittelyjärjestys**

SV

**Inledning och arbetsplan**

4-004

FR

**Le Président.**- Chers conventionnels, personne ne comprendrait, je crois, que nous reprenions les délibérations de la Convention sur l'avenir de l'Europe sans prendre en compte l'aggravation de la situation internationale et les divisions qu'elle provoque au sein de l'Union européenne.

La crise concernant l'Irak et les débats au Conseil européen ainsi qu'au Conseil de sécurité font peser une ombre et une angoisse sur nos travaux. Aussi loin que l'on remonte en arrière, jusqu'à la période autrement périlleuse de la guerre froide, on ne trouve l'exemple d'une Europe qui affiche aussi ouvertement ses désaccords sur la scène internationale. Quelle est la responsabilité qui nous incombe en tant que membres de cette Convention?

D'abord, me semble-t-il, nous devons demeurer l'enceinte où se retrouvent celles et ceux qui entendent répondre à l'aspiration majoritaire des peuples d'Europe qui demandent à ce qu'un jour l'Europe réussisse à s'exprimer d'une seule voix. Ensuite, la

responsabilité est de constater que les textes et les structures institutionnelles, même les mieux conçus, ne sont pas utiles s'il n'existe pas la détermination de les utiliser. Les engagements de Maastricht en matière de politique étrangère et de sécurité commune ont été pris de bonne foi. Or, nous sommes aujourd'hui, treize ans plus tard, bien en arrière des engagements du Traité de l'Union européenne. Si ces engagements avaient été respectés, si des discussions approfondies s'étaient déroulées avant que des positions ne soient prises en public, s'il avait existé une volonté de tous de rechercher des positions communes, bref, si le réflexe européen avait joué, peut-être l'Europe aurait-elle pu exercer un rôle décisif. Le résultat n'était pas certain car il existait de réelles divergences de vues enracinées dans des souvenirs historiques mais cet effort valait la peine d'être tenté.

Ne nous faisons donc pas d'illusions. Améliorer les structures mises en place à Maastricht ne sera pas suffisant pour donner à l'Union européenne une voix plus forte et plus unie sur la scène internationale. Sans la volonté politique de tous, sans la réaction instinctive de consulter d'abord ses partenaires européens, sans le rétablissement de la confiance mutuelle aujourd'hui ébranlée, les structures n'auront guère d'efficacité. Mais notre responsabilité à nous, les conventionnels de l'an 2003, c'est d'accomplir la mission pour laquelle la Convention a été créée. Nous ne devons pas nous permettre de nous distraire de notre travail ou, au pire, de nous laisser aller à la résignation. Avec les neuf articles nouveaux et les deux protocoles que nous présenterons demain, nous avons déjà beaucoup accompli. En ce qui concerne la personnalité juridique unique de l'Union, la Charte, la clarification des compétences et la simplification des procédures, le rôle plus étendu, reconnu aux Parlements nationaux, les demandes du Traité de Nice sont pratiquement déjà réalisées. Maintenons donc le rythme de notre travail et augmentons-le si nécessaire, pour traduire, dans une langue simple et vigoureuse, les points d'accord explicites ou implicites qui ont émergé de vos débats et de vos contributions. Souvenons-nous également qu'une crise peut avoir un effet salutaire. Le Conseil européen est né dans la décennie 70 de la secousse créée par le premier choc pétrolier avec le Moyen-Orient en flammes et le terrorisme qui secouait les rues de nos villes d'Europe. Peut-être les événements qui risquent de se dérouler bientôt vont-ils déclencher une prise de conscience positive de l'intérêt commun des Européens. C'est pourquoi nous devons étudier et proposer le schéma institutionnel qui devrait permettre un jour, qui n'est pas aujourd'hui, de mettre en place un mécanisme d'incitation permettant aux dirigeants européens de progresser en direction d'une diplomatie commune. Et, après tout, ne nous laissons pas abattre si la montée devient plus rude, car c'est toujours l'Europe qui nous attend au bout du chemin.

Je vous suggère donc que nous en venions à notre travail d'aujourd'hui. Nous franchissons, en effet, une nouvelle étape d'élaboration du Traité constitutionnel. Nous allons débattre d'un premier groupe d'articles : ceux qui définissent l'Union, ses valeurs, ses objectifs et ses compétences. Nous n'avons pas été surpris, et vous ne l'avez pas été non plus j'imagine, par le grand nombre de propositions, de commentaires et d'amendements que les membres de la Convention ont transmis au sujet de ces articles. 1187 amendements au total, donc 435 sur les trois premiers articles, ce qui ne laisse même pas la place à cette tribune à ma tortue favorite. Ces articles constituent la première fondation de notre construction. Et je vous dirai franchement que je ne suis pas du tout choqué par le nombre d'amendements et de propositions d'autant plus, d'ailleurs, que beaucoup d'entre eux se recoupent ou se contredisent. Et il est normal que chacun souhaite contribuer. C'est dans cet esprit et pour assurer la pleine transparence de notre débat, que toutes les propositions à tous les commentaires ont été diffusés sur le site Internet. Le secrétariat, que je remercie, a établi une note d'analyse et de synthèse de ces propositions, parfois incomplète ou incorrecte à cause du nombre important de commentaires reçus et du délai imparti pour ce travail.

Comment allons-nous procéder ? Le *praesidium* souhaite que vous puissiez vous exprimer sur le projet d'articles. Mais vous êtes très nombreux à vouloir le faire. En outre, ce type d'expression n'est pas celui d'un discours mais celui d'un commentaire d'une proposition ou d'un amendement. C'est pour cette raison que nous vous demandons de réduire la durée de vos interventions d'aujourd'hui et de demain à deux minutes pour défendre un point de vue ou expliciter une proposition. En même temps, cela nous permettra d'accorder beaucoup plus souvent la parole à un carton bleu de façon à avoir un débat plus animé. Vous avez constaté que les propositions ne vont pas toutes dans le même sens. Peut-être que l'instinct, au départ, est de s'imaginer qu'il s'agit d'un dialogue entre le *praesidium* et les conventionnels. En réalité, les idées que vous exprimez sont souvent en contradiction avec les idées des autres. Ce qui est parfaitement normal. Il faut donc que vous expliquiez vos positions et que chacun écoute les explications des autres. La présidence vous écouterait mais il faut aussi vous écouter les uns et les autres.

Etant donné le nombre d'interventions et de documents, il est difficile d'épuiser l'examen d'un projet de texte uniquement lors des sessions actuellement prévues. C'est pourquoi nous vous proposons de poursuivre et d'approfondir cet examen par des sessions supplémentaires qui viendront s'intercaler entre les sessions plénières. Les deux premières se tiendront l'une le 5 mars et l'autre le 26 mars, toujours dans les locaux du Parlement européen que je remercie pour son hospitalité. Ces deux sessions prolongeront, comme il est vraisemblable, nos débats d'aujourd'hui et de demain.

On vous a annoncé que nous allions débattre d'abord des questions liées aux articles 1 à 4. J'introduirai cette partie. Ensuite, nous discuterons des questions relatives aux articles 4 à 7. Le vice-président Jean-Luc Dehaene introduira cette discussion. Demain matin, nous discuterons des articles sur les compétences. Le vice-président Amato conduira ce débat. Au début de chaque discussion, nous vous ferons une intervention, aussi brève que possible, qui vous donnera les arguments qui ont conduit le *praesidium* dans l'élaboration de son projet et qui, en même temps, identifiera les points essentiels, les questions principales qui ressortent de vos amendements et qu'il conviendrait d'approfondir.

Demain matin, avant le débat sur les articles concernant les compétences, je vous présenterai une deuxième section de textes. Il s'agit du projet d'article 24 et suivants sur les instruments, ainsi que deux protocoles importants, dans leur forme désormais achevée ou en tout cas proche de l'achèvement, sur la subsidiarité et sur le rôle des parlements nationaux. Le *praesidium* entend, comme je vous l'avais annoncé au mois de décembre, remplir son engagement, à savoir vous permettre de disposer d'un avant-projet complet de textes pour la fin du mois d'avril.

Comment vont se passer nos prochaines réunions? La session des 17 et 18 mars serait consacrée à l'examen des textes que je vais vous présenter demain matin. En outre, vous auriez à cette même session, la présentation des textes concernant le titre 7 sur les finances de l'Union, les articles tant de la partie 1 que de la partie 2 sur l'espace de liberté, de sécurité et de justice ainsi que le document de base, pour la deuxième partie - politiques de l'Union-, résultant du travail des experts des services juridiques, document très important et évidemment lourd à manier. Lors de la session des 3 et 4 avril, vous auriez la présentation de l'article du titre 9 qui concerne les rapports de l'Union et de son environnement proche. Vous auriez de nouvelles dispositions pour l'insertion dans le Traité de la méthode ouverte de coordination et, enfin, une première proposition de la partie 3 du Traité contenant les dispositions générales et finales. Pour ce qui est des institutions et de la vie démocratique de l'Union, les projets de texte pour les titres 4 et 6 de la partie 1 seront diffusés avant la session des 24 et 25 avril, entre le 10 et cette période, de façon à ce que vous puissiez avoir un premier échange de vues sur les institutions et la vie démocratique de l'Union au cours de la session des 24 et 25 avril. La deuxième partie, qui aura fait l'objet d'une première présentation - présentation des politiques de l'Union -, ainsi que la première partie révisée, c'est-à-dire dans son état de quasi-achèvement, vous seront présentées dans la première quinzaine du mois de mai. Il faut, en effet, nous assurer que nous aurons suffisamment de temps entre cette présentation et le Conseil européen de juin. En effet, vous ne pourrez porter de jugement sur l'ensemble du projet que lorsque vous verrez les rapports, les relations des parties entre elles. Vous ne pouvez pas porter ce jugement section par section. Il faudra donc que chaque conventionnel puisse avoir une vue d'ensemble du projet avant d'en faire une évaluation définitive.

J'espère vous avoir apporté, avec ces indications, une réponse à votre attente légitime et normale de connaître à l'avance l'organisation de nos travaux et votre envie de vous engager à fond dans notre projet commun. Toutes ces indications figurent d'ailleurs dans un document qui sera diffusé dans notre salle.

J'ai une demande de parole de M. Bonde. Je vous en prie. <BRK>

4-005

EN

**Bonde (PE).** – The deadlines for amendments are too short. We cannot prepare them with those who support us. Two minutes is not enough time to discuss the entire first part of the draft constitution. We need to discuss the details in working groups and to have more meetings, as you have already suggested. Why not move the June deadline and schedule meetings until Christmas? It is not practical for us to receive the new dates so late. The four non-represented political families have a special problem. We asked for access to documents but have not yet received an answer. That is in breach of Community rules. The Community rules on transparency also cover the Praesidium. We insist on equality among Members in regard to access to information from the Praesidium. This will also help us to prepare the amendments. <BRK>

4-006

FR

**Le Président.** – Sur toute cette affaire, nous sommes pris entre deux demandes contraires et il faudrait que les uns s'adressent aux autres. Nous avons les demandes du Conseil européen, c'est-à-dire des gouvernements, qui nous demandent avec insistance de terminer pour la fin du mois de juin. Et ils le répètent, je prends à témoin ceux d'entre vous qui siègent au Conseil européen. En sens inverse, naturellement, il y a le désir, que je comprends très bien, de disposer de délais plus longs. Mais il faut choisir. D'une part, nous avançons, comme vous l'avez vu, la publication de nos textes. Nous essaierons que vous ayez entre la publication des textes et le dépôt final des amendements un délai de l'ordre de deux semaines. Si l'on pense qu'il va y avoir plusieurs sessions répétitives, nous ne pouvons pas aller plus loin dans cette durée. Ou alors, adressez-vous aux gouvernements afin qu'au Conseil européen du mois de mars, ils modifient éventuellement le calendrier qu'ils proposent. Mais, à l'intérieur de ce calendrier, nous faisons le maximum, je prends à témoin les membres du secrétariat, pour que vous disposiez du délai nécessaire pour déposer vos amendements. D'ailleurs, la pile qui est là montre malgré tout, que nos pratiques n'ont pas été, semble-t-il, très restrictives. On essaiera de faire en sorte que vous ayez au total deux semaines. Mais nous ne pouvons pas aller plus loin ou alors il faudrait reporter officiellement la date d'achèvement de nos travaux.

Je m'excuse, je ne voudrais pas vous donner le sentiment que je monopolise la parole. On va aborder maintenant les premiers articles. Je voudrais vous dire le contenu des amendements et comment on va les discuter. On les a regroupés parce qu'en fait, il y a des parentés entre ces articles 1 à 3 -définition de l'Union, valeur de l'Union et objectifs de l'Union-. Et d'ailleurs, certains amendements portent tantôt sur l'un, tantôt sur l'autre, mais avec la même optique.

Je vous rappelle que le texte que nous préparons est un Traité qui institue une Constitution. Cela veut donc dire que le contenu de notre texte est une Constitution mais que cette Constitution prend la forme d'un Traité. En effet, les pouvoirs que nous voulons attribuer à l'Union dérivent des Etats qui concluent le Traité. C'est ce qui apparaît déjà au premier article. Dans le premier article, nous sommes déjà dans la Constitution. Certains d'entre vous disent dans leurs amendements qu'il faudrait mentionner les hautes parties contractantes. Non. On les mentionnera au préalable, dans le préambule.

Un autre point qui a provoqué beaucoup d'amendements que certains d'entre vous vont défendre, qui sont d'ailleurs contradictoires, est la définition même de la nature de l'Union. Certains considèrent que notre définition est trop timide, d'autres s'opposent au terme fédéral. Il faut savoir de toutes façons que l'entité de l'Union européenne est une entité unique. Elle n'est pas décrite dans les manuels de droit public par une définition classique. Pour certains, on voudrait y voir une enceinte de coordination et de concertation, mais ce n'est pas seulement cela. Elle est caractérisée par le fait que le transfert des compétences des Etats membres à l'Union se traduit dans



une gestion de ses compétences qui est en fait du mode fédéral. Et il n'y a pas de différence, par exemple, entre la gestion de l'euro et la gestion du dollar si vous prenez le système de gestion de l'une ou de l'autre, ces deux systèmes de gestion étant du mode fédéral. C'est donc le mode de gestion qui est fédéral, sans que l'Union soit pour autant une fédération accomplie. Vous avez une série d'amendements qui disent une chose ou qui, au contraire, préfèrent l'écarter. Le mode fédéral, et je l'indique à ceux qui s'alarment de ce mot, ne se réfère qu'à certaines des compétences attribuées à l'Union. Et par contre, qu'on le dise ou non, ces compétences sont exercées sur le mode fédéral.

Un autre point important dans vos amendements concerne le fait que dans notre Constitution, les compétences attribuées à l'Union ne puissent dériver que des Etats membres. Nous le disons clairement mais plusieurs amendements montrent que sans doute, notre texte n'est pas suffisamment explicite et qu'on peut le rendre plus explicite.

Il y a une question qui est de savoir si nous bâtissons une Union stable, c'est-à-dire un système qui aura son propre équilibre et naturellement qui évoluera dans le temps ou si nous restons dans une démarche. C'est la question soulevée par les amendements qui portent sur l'expression "Union sans cesse plus étroite". C'était une conception d'origine de la construction européenne, quand il n'y avait pas d'Union et qu'on voulait donc qu'elle devienne sans cesse plus étroite. A partir du moment où nous définissons l'Union, ses compétences, son mode de fonctionnement, il faut savoir si nous souhaitons un ensemble stable, au moins pendant une certaine période, ou un ensemble qui soit en évolution. C'est là un point sur lequel il y a des amendements.

Enfin, il y a des propositions concernant le respect de l'identité nationale. Il faut voir aussi que dans notre article 1, on trouve simplement une affirmation très courte: le respect de l'identité nationale. C'est plus tard, dans les compétences etc., qu'on indiquera ou qu'on indique la manière ou les objets de l'identité nationale qui doivent faire l'objet de ce respect. Dans certains amendements, on propose de le mettre dès le premier article. Cela ferait un premier article assez lourd. Nous, nous l'avons mis dans l'article 9, paragraphe 6, point qui devra être discuté.

Certains d'entre vous se sont exprimés à propos du nom à donner à l'Union européenne. Nous n'interviendrons pas sur ce sujet. Nous le laisserons ouvert jusqu'à la fin de nos travaux en essayant de savoir si l'opinion publique, dans ce domaine, exprime ou non une préférence.

Je vais dire quelques mots sur l'article 2 et sur l'article 3. Il faut bien comprendre ce qu'est l'article 2. Notre membre du praesidium, Monsieur António Vitorino, qui est là, aurait pu donner cette indication mais je vais la donner à sa place. L'article 2 est la définition et le contenu des valeurs de l'Union. On peut faire un catalogue plus ou moins long de ces valeurs. Il faut savoir que plus on l'allonge dans une certaine mesure, plus on l'affaiblit parce que l'addition, l'énumération affaiblissent un peu la portée du texte. Mais surtout, cet article, doit être lu en association avec l'article 45 de la Constitution qui établit la procédure pour la suspension des droits d'appartenir à l'Union en cas de violation des principes et des valeurs de l'Union de la part d'un Etat membre. Vous vous rappelez qu'un article avait été introduit dans le Traité antérieur, à la suite des incertitudes politiques dans tel ou tel Etat membre. Il portait le numéro 7 à l'époque. Donc, on ne peut mettre dans cet article 2 que des valeurs qui sont définies juridiquement de façon suffisamment solide pour pouvoir permettre l'engagement de procédures contre les Etats membres qui ne les respecteraient pas. On ne peut donc pas mettre des valeurs indicatives ou respectables mais de caractère plus émotif que juridique telles que, par exemple, l'égalité ou la solidarité. En effet, on ne voit pas bien une action juridique déclenchée vis-à-vis d'un Etat de l'Union à propos de la violation de telle ou telle de ces valeurs. Si on les mettait dans cette partie, on fragiliserait en tout cas, l'article 45 de la Constitution, parce qu'on le rendrait en réalité peu applicable. Néanmoins, certaines valeurs ont été proposées par vous comme on va l'entendre. Il y a la notion d'égalité, égalité qui est tantôt toute seule, tantôt l'égalité entre hommes et femmes, la transparence, la référence ou non à des identités nationales et régionales.

Un second type de débat concerne l'éventuelle introduction d'une référence au fait religieux ou au patrimoine religieux, qualifié par les uns de patrimoine religieux, par les autres de référence chrétienne ou de patrimoine chrétien. Il convient que vous en discutiez. C'est un sujet parmi les sujets importants de la Convention et il doit donc être traité au grand jour. Il y a des amendements sur ce point. Ces amendements devront faire normalement l'objet d'un débat. Je vous indique simplement pourquoi nous ne l'avons pas mis au départ dans notre texte. C'est parce qu'il y a trois sujets à traiter sous cet angle. Il y a un sujet qui est la déclaration sur le respect du statut des Eglises et des associations religieuses et non conventionnelles qui figure dans le Traité d'Amsterdam et que nous reprendrons dans notre propre Traité. Ce n'est donc pas dans les premiers articles que cette proposition vous sera faite. Il y a ensuite la question de savoir si dans le préambule de la Constitution, comme on l'avait envisagé à l'époque dans le préambule de la Charte des droits fondamentaux, il y a une référence, et laquelle, au patrimoine religieux de l'Union européenne. Nous vous proposerons une disposition dans ce texte, c'est-à-dire dans le préambule. Par contre, nous n'avons pas pensé que cette référence était à sa place dans l'article 2 pour les raisons que j'ai données tout à l'heure. Il était difficile d'en faire éventuellement le sujet d'un contentieux politique ou juridique dans l'Union. Mais, là aussi, je souhaite vivement que vous vous exprimiez et que vous donniez vos opinions. D'ailleurs, il y a eu des amendements assez nombreux à ce sujet et même encore tout à fait récemment.

Concernant l'article 3, il ne faut pas se tromper. C'est un article sur les grands objectifs de l'Union, en termes généraux et de manière horizontale. Ce n'est pas la description des politiques de l'Union, qui sont décrites dans la deuxième partie de la Constitution. C'est pour permettre au citoyen de répondre à la question qu'il se pose sûrement, et qui est "l'Europe, pourquoi la fait-on, pourquoi la crée-t-on, pourquoi faire?". C'est donc la définition, l'indication des objectifs poursuivis par l'Union. Et donc, lorsque vous aurez à examiner les politiques de l'Union avec la deuxième partie, vous verrez s'il y a lieu de compléter ou non ces objectifs. En tout cas, il faut avoir les deux en tête. Dans vos amendements, on a l'impression que vous avez bien accepté cette notion. Vous ne cherchez pas à mettre dans cet article la description des politiques de l'Union. Et il y a seulement quelques amendements qui veulent aller plus loin et d'autres d'ailleurs, qui veulent supprimer le premier paragraphe de cet article, de façon assez singulière, parce qu'il s'agit de la proposition que l'Union assure la promotion dans le monde des valeurs de paix, de bien-être etc. Nous ne pourrions pas mettre dans cet

article tous les éléments envisagés par les uns ou par les autres. D'ailleurs, ils se recouvrent souvent. Je vous cite simplement les groupes de questions sur lesquelles il est probable que vous allez vous exprimer. Il y a, par exemple, l'objectif de la protection de l'environnement. Dans notre texte, nous parlons déjà de développement durable. Certains d'entre vous pensent que ce n'est pas suffisant. Il y a également deux groupes qui ne disent pas tout à fait la même chose. D'un côté, on trouve ceux qui voudraient qu'on se réfère à l'économie sociale de marché et de l'autre, ceux qui voudraient qu'on se réfère au modèle social européen. Il y a également une série d'amendements qui rouvrent un débat sur la question de savoir ce qu'on met concernant l'emploi. Certains amendements souhaitent que l'on mette une notion de plein emploi et d'autres souhaitent que ce soit un haut niveau d'emploi pour tenir compte de certaines critiques qui se sont exprimées à propos du réalisme éventuel de nos ambitions. Il y a également une demande sur ce qu'on peut dire ou non en matière de cohésion territoriale afin de savoir si celle-ci est couverte par la cohésion économique et sociale ou s'il faut ajouter une notion différente de la cohésion territoriale. Il y a, enfin, des demandes concernant la diversité linguistique qui s'expriment de façon différente. En effet, la diversité linguistique n'est pas en soi un objectif de l'Union. Il s'agit plutôt de savoir comment l'Union traite la diversité linguistique et quelle est son attitude à cet égard.

Je crois que c'est l'essentiel. A la fin, certains amendements, ceux qui sont sous le bas de la pile, visent à ce que ces valeurs soient avancées dans le monde. Toutefois, la Constitution est la Constitution de l'Union européenne. L'Union européenne manifeste ses valeurs. Elle peut ensuite, et ce sera là un sujet d'intérêt, voir comment elle peut assurer leur promotion dans le monde. Toutefois, elle n'est pas en situation, naturellement, d'imposer ou même de proposer en tant que telles, ses valeurs dans le monde.

Ce sont là les points forts de vos amendements. Ils se regroupent dans cette pile. Nous allons essayer de vous écouter dans l'ordre où vous vous êtes inscrits.

Il y a eu un changement d'ordre. Nous nous occupons des articles 1 à 3. Le temps de parole est de deux minutes. Vous pouvez vous exprimer sur les trois articles ou sur l'un d'entre eux, suivant votre préférence personnelle. <BRK>

4-007

DA

**Debat om udkastet til artikel 1 - 3**

DE

**Aussprache über den Entwurf der Artikel 1 bis 3**

EL

**Συζήτηση επί του σχεδίου άρθρων 1 έως 3**

EN

**Debate on draft articles 1 to 3**

ES

**Debate sobre el proyecto de artículos 1 a 3**

FR

**Débat sur le projet d'articles 1 à 3**

IT

**Discussione sul progetto degli articoli 1 - 3**

NL

**Debat over het ontwerp van artikelen 1 tot 3**

PT

**Debate sobre os projectos de artigos 1º a 3º**

FI

**Keskustelu luonnoksesta artikloiksi 1, 2 ja 3**

SV

**Debatt om utkastet till artiklarna 1-3**

4-008

FR

**Le Président.** – L'ordre du jour appelle le débat sur le projet des articles 1 à 3. Le premier orateur est Monsieur Zieleniec. <BRK>

4-009

EN

**Zieleniec (Parl.-CZ).** – As you mentioned, we have now entered the crucial stage of the Convention. After a long discussion we are starting to prepare the final text of the constitution. How we approach this task is very important. We look for consensus, a common view. We can describe the consensus and common view in two ways. First, we can put together all the various views and arguments to create a text which reflects everyone's views. Secondly, we can work by reduction, and look for more general views and texts that are simple and transparent. I am convinced that we should choose the second option.

Looking at the hundreds of pages we have here, we see a great number of proposals for additional words, for additional formulations. I should like to stress that if we adopt those proposals we will end up with a constitution made up of hundreds of pages and one that is difficult to understand and not transparent.

The first articles are extremely important from this point of view - articles about various end objectives. Taking the example of the discovery of space, why do we not also mention research in the fields of cancer or Aids? Why mention the rights of children, but not the rights of women or religious minorities? This is not the way to create the final text. I encourage the Praesidium to prepare the second draft by the method of reduction, rather than by making further additions. The shortest and simplest method is the best. <BRK>

4-010

FR

**Le Président.** – Je vous remercie Monsieur Zieleniec. Vos remarques vont dans le sens du souhait que je forme moi-même sur la qualité et la concision du texte. L'orateur suivant est Monsieur Fayot, mais je crois qu'il a regroupé des temps de parole. Est-ce que je me trompe? Il faut une certaine souplesse dans nos débats. On peut donc envisager que plusieurs d'entre vous se groupent pour donner la parole à quelqu'un qui s'exprimerait un peu plus longtemps. Mais il faut naturellement qu'on le sache. Monsieur Fayot, vous avez donc la parole pour six minutes. <BRK>

4-011

FR

**Fayot (Parl.-LU).** – Monsieur le Président, les conventionnels socialistes et sociaux-démocrates m'ont demandé de vous présenter une synthèse de certains éléments fondamentaux qui trouvent leur accord sur la base des nombreux amendements introduits. Je voudrais expliquer notre démarche. Il est certain que chaque grande famille politique a ses convergences et ses divergences, qui tiennent à la situation politique et historique de ses composantes. Il serait vain de les nier et de faire comme s'il y avait unanimité sur tout. Notre effort doit aller vers la synthèse pour autant que faire se peut. C'est ce que nous avons tenté de faire ensemble et c'est ce dont je vous fait rapport ici.

En ce qui concerne l'article 1, ce qui pose problème à certains d'entre nous, socialistes, c'est le terme de fédéral. Suivant les situations nationales et linguistiques, le mot comporte des connotations qui sont difficiles pour eux d'accepter. D'autres n'y voient pas de problème parce qu'en fait, cet adjectif recouvre la réalité actuelle. C'est donc avant tout une question de vocabulaire. Mais nous voyons aussi que la formulation du praesidium est descriptive par rapport à ce qu'est l'Union à l'heure actuelle. Dans ce qu'elle fait dès maintenant, il y a des éléments supranationaux, et nous parlons à ce propos de méthode communautaire. C'est ce qui fait l'originalité de l'Union européenne par rapport aux institutions internationales courantes. Les socialistes sont attachés à cette méthode communautaire dans les domaines que les traités ont définis jusqu'ici. Quant à savoir s'il faut étendre cette méthode communautaire, la question sera traitée ailleurs. Par conséquent, sur ce point, je pense qu'il convient d'exprimer dans ce premier article, le constat, sans plus.

Dans ce même article, se pose la question de savoir d'où viennent les compétences de l'Union. En d'autres termes, quel est le souverain? On comprend facilement le débat entre les tenants d'une coopération intergouvernementale et ceux qui voudraient aller plus loin dans l'intégration communautaire. Là encore, la Constitution fait un constat de ce qu'il y a à l'heure actuelle. Les compétences de l'Union viennent évidemment des Etats. Il est donc légitime de marquer cela dans cet article, comme on le fait. Mais nous savons aussi que nos citoyens et nos peuples constituent le fondement de la construction européenne. Nous voulons les impliquer dans cette construction. Nous leur demandons leur accord par référendum ou à travers le représentant élu. Contre eux, non plus, rien n'est possible. Il faut donc mentionner aussi la volonté des peuples d'Europe et des citoyens dans ce premier article pour légitimer notre Constitution.

Nous pensons aussi qu'il faut introduire une référence à la Charte des Nations Unies pour bien marquer que l'Union européenne s'inscrit dans les efforts d'une gouvernance mondiale, essentielle pour assurer la paix et la sécurité de tous les peuples.

Un point central de nos discussions a concerné les articles 2 et 3 sur les valeurs et les objectifs de l'Union. Beaucoup d'entre nous pensent que l'accord sur ce qu'il faut mettre dans ces deux articles serait plus facile à trouver s'il était clair que nous mettons la Charte des droits fondamentaux en tête de la Constitution. En effet, un grand nombre d'éléments de la Charte se retrouvent dans les deux articles comme dans les multiples amendements apportés - la dignité humaine, la solidarité, le respect des diversités, la justice etc -. Nous parlons bien sûr de la Charte avec les articles horizontaux tels qu'ils ont été élaborés, par consensus, dans le groupe de travail afférent et que la plénière a largement approuvés, tel qu'amendés. Ces articles horizontaux précisent clairement la portée de la Charte et confirment que celle-ci ne crée pas de nouvelles compétences pour l'Union. Toutefois, cela ne l'empêche pas d'exprimer le fondement de valeurs pour les activités de l'Union dans ses différents domaines de compétences, définis par ailleurs.

Les socialistes et les sociaux-démocrates considèrent comme essentiel que dans l'article 2 apparaisse également et clairement le principe de l'égalité des femmes et des hommes.

Nous considérons évidemment aussi la justice sociale comme une valeur fondamentale de nos sociétés européennes. L'article 3, paragraphe 2, dans la version proposée par le praesidium constitue une formulation intéressante qui marque l'équilibre général entre l'économique et le social dans le cadre du développement durable. On peut certes améliorer la formulation mais, l'essentiel est cet équilibre. Le texte est clair sur la nécessité de croissance et de compétitivité économique pour atteindre un niveau de vie élevé. Suite à l'accord obtenu au sein du groupe de travail sur la dimension sociale, nous voulons encore y introduire la notion d'économie sociale de marché. Nous saluons la notion de plein emploi retenue suite à l'accord obtenu au sein de ce groupe de travail. Il est bien de marquer clairement qu'il s'agit d'un but à atteindre. Il nous tient également à cœur de bien marquer dans cet article qu'il s'agit non seulement de protéger l'environnement mais encore de l'améliorer. Nous insistons aussi sur l'importance d'affirmer la cohésion territoriale des Etats membres.

Enfin, si nous saluons que le paragraphe 4 de l'article 3 marque bien notre responsabilité face au reste du monde, il est important d'insister sur la lutte contre la pauvreté et l'exclusion sociale dans l'Union européenne même. La même chose vaut pour la protection des droits des enfants. Nous soulignons aussi qu'au paragraphe 3, on parle de respect de la diversité culturelle. La culture est un élément important de l'identité de chaque Etat comme de chaque région. Nous savons qu'elle est, de ce fait, une compétence complémentaire et que personne ne veut aller au-delà. Mais la culture est aussi un élément qui permet d'unir au-delà des frontières et les socialistes sont en faveur de confirmer cela dans notre Constitution.

Voilà, Monsieur le Président, quelques lignes de force que les socialistes européens entendent poursuivre de façon offensive dans la rédaction de ces articles. <BRK>

4-012

FR

**Le Président.** – Très franchement, Monsieur Fayot, je vous remercie du travail qui a été fait par vous-même et par vos amis parce que vous avez, en effet, regroupé un certain nombre d'éléments. Cela permet d'avoir une vue plus globale, plus synthétique de vos demandes. Quand vous dites que vous allez combattre, ce ne sera pas combattre. On va vous écouter sur beaucoup de points et je crois qu'il y a des éléments qui pourront, en effet, faire l'objet d'un dialogue constructif. Vous avez évoqué la question des rapports entre ce que nous disons là et le contenu de la Charte. Evidemment, ce n'est pas la peine de dire les choses deux fois. Vous dites que cela dépend de l'endroit où l'on mettra la Charte. C'est un peu vrai. Mais l'endroit où l'on mettra la Charte dépend aussi de l'architecture de lecture du texte. On dit que la Charte figure dans la deuxième partie. Lorsqu'on examinera l'article 5 sur les Droits fondamentaux, et je le dis à Jean-Luc puisque c'est lui qui présidera, je recommanderai de dire que la Charte constitue la deuxième partie. Elle en fait partie en sa substance. Faut-il, au point de vue de la présentation, la mettre en tête et donc faire que le lecteur soit obligé de parcourir toute la Charte avant d'arriver à l'examen des institutions et des compétences de l'Union ? C'est le seul problème. Mais il est évident qu'il faut avoir en tête le fait que la Charte constitue une partie du texte et que donc, il n'y a pas lieu de redire des choses qui sont bien formulées dans celle-ci.

Le prochain orateur est Monsieur Fini. <BRK>

4-013

IT

**Fini (Ch.E/G.-IT).** - Signor Presidente, cercherò di essere rapidissimo - se riusciamo in due minuti a dire qualcosa di sensato su tre articoli entriamo quasi nel *Guinness* dei primati - perché mi rendo conto che abbiamo dei doveri di rispetto del nostro lavoro. Con molta rapidità dunque sui primi tre articoli: il governo italiano ha presentato degli emendamenti che hanno l'obiettivo di rafforzare, innanzitutto, dei concetti che ci sembrano emersi nei gruppi di lavoro e che sono quindi condivisi, in qualche modo, da buona parte dei membri della Convenzione. E' la ragione per la quale, nell'articolo 1, pensiamo che vada messo in evidenza che l'Unione ha la doppia legittimità, degli Stati e dei popoli: un'Unione di Stati nazionali, quindi, che esercitano in modo congiunto la sovranità in determinati settori. Questa è la ragione per la quale pensiamo che sia opportuno inserire di nuovo il riferimento all'Unione più stretta tra popoli e Stati, secondo quella dizione che è presente fin dai primi documenti della costruzione europea. Questa è anche la ragione per la quale pensiamo che vada superata la logica di conflitto che sussiste tra chi dice che occorre ribadire che il metodo è federale e chi, al contrario, pensa che occorra un'espressione diversa, quale può essere confederale. E' la ragione per la quale noi pensiamo che non sia opportuno usare né l'una né l'altra espressione, soprattutto perché poi tutta l'architettura istituzionale ha certamente un aspetto comunitario.

Rapidissimamente ora sull'articolo 2: condividiamo i valori e invitiamo a distinguere bene i valori dagli obiettivi. E' la ragione per la quale crediamo che l'ultimo capoverso dell'articolo 2 sia più opportuno inserirlo nell'articolo 3. Sui valori abbiamo presentato un emendamento che invita la Convenzione a rendere esplicito il riconoscimento delle radici di quella identità europea che, secondo noi, è anche nei valori della religione cristiana, nella sua tradizione giudaico-cristiana. Questo non vuol dire attentare alla laicità delle istituzioni; è la fotografia, secondo noi, di un'identità, di un dato di verità. I laici autentici credo che debbano innanzitutto saper riconoscere le identità profonde, e l'identità europea è un'identità - penso ad alcuni valori quali il primato della persona - che difficilmente può essere considerata scissa dalla tradizione religiosa. Questa è la ragione per la quale il mio governo ha presentato un emendamento in questo senso all'articolo 2.

Mi fermo qui perché ho già impiegato due minuti e cinquantadue secondi: non entro nel *Guinness* dei primati, mi dispiace. <BRK>

4-014

DE

**Teufel (Parl.-DE).** - Herr Präsident, liebe Kolleginnen und Kollegen! Die vom Präsidium vorgelegten Artikelentwürfe sind eine bemerkenswerte Grundlage für unsere Arbeit. Lassen Sie mich zunächst zwei Bemerkungen zur Gesamtheit der Artikel machen. Erstens, das Sekretariat hat uns die Fülle der eingereichten Änderungsvorschläge vorgelegt. Wir dürfen aber nicht übersehen, dass es zugleich viel Zustimmung gibt. Wenn zu einem Artikel zehn Änderungsvorschläge vorgelegt werden, hat gleichzeitig die große Mehrheit unserer Mitglieder, die sich nicht geäußert hat, zum Ausdruck gebracht, dass sie mit dem Text leben kann.

Zweitens, wir müssen bei der weiteren Arbeit das Mandat beachten, welches die Nizza-Konferenz uns auf den Weg gegeben hat. Wir sollen die Verträge vereinfachen, ohne sie inhaltlich zu verändern. Für die Zuständigkeiten der Union kann das nur bedeuten, dass wir den heutigen gemeinschaftlichen Besitzstand respektieren, ohne an ihm wesentliche Veränderungen vorzunehmen.

Drittens, aus meinen Vorschlägen zu Artikel 1 bis 7 hebe ich zweierlei hervor: Die europäische Verfassung muss die Werte und die geistigen Grundlagen zum Ausdruck bringen, auf denen Europa beruht. Ein früherer deutscher Bundespräsident hat gesagt: Es gibt drei Hügel, von denen das Abendland seinen Ausgang genommen hat: die Akropolis in Athen, das Kapitol in Rom und Golgatha in Jerusalem. In diesem Sinne sollte die europäische Verfassung für die Gläubigen einen Bezug zu Gott als Quelle universeller Werte enthalten. Gleichzeitig sollte sie zum Ausdruck bringen, dass viele Menschen diese Wertvorstellungen aus anderen Quellen ableiten. Wir sollten uns hierfür an die polnische Verfassung anlehnen. Ferner sollte in Artikel 3 als Unionsziel auch der Schutz von Ehe und Familie aufgenommen werden.

Sowohl Artikel 1 Absatz 2 als auch Artikel 9 Absatz 6 bringen den Respekt der Union vor der nationalen Identität der Mitgliedstaaten zum Ausdruck. Ich plädiere dafür, dass in diesem Zusammenhang das Prinzip der lokalen Selbstverwaltung und die rechtliche Stellung der Kirchen als Teil der nationalen Identität klar zum Ausdruck gebracht wird. In welchem Artikel dies geschieht, ist dem gegenüber zweitrangig. <BRK>

4-015

EN

**Andriukaitis (Parl.-LT).** – The European Union has made up its mind about the anthem of the Union: Beethoven's *Ode to Joy*. Presently we are drafting an EU constitution. We do this primarily to bring the Union closer to its people. Therefore we should draft a constitution that would match Beethoven's *Ode* in its resonance. In my view, the Charter of Fundamental Rights has the resonance of the Union's anthem and should therefore constitute Part 1 of the constitution that we are drafting. It is regrettable that we are not discussing the structure of the constitutional treaty. In this respect Jo Leinen's draft is a good example of a clearer constitution.

Let me say a few words on the first draft articles. I find the title of the Treaty itself – the "Treaty establishing a Constitution for Europe" – not precise enough. I suggest that we insert the word "Union" so that it reads: the Treaty establishing a Constitution for the European Union. I also suggest that the words "on a federal basis" be omitted in Article 1(1) and transferred to Article 8(1). In Article 1 of the draft it is important to emphasise that we are not establishing a new Union; we are only drafting a new constitutional treaty which consolidates and expands on the principles and provisions of the existing Treaties. It is especially important that this treaty is being drafted not only for people and states, but also for citizens.

In the list of the Union's values I missed one of the principal ones: equality. This mistake should be rectified. The same is true concerning respect for national identity. We should not refer only to national identity but also to the sovereignty of Member States. <BRK>

4-016

EN

**Vitorino (CE).** – Our task is to rewrite the Treaties in order to simplify them. However, at the same time we should avoid moving back from current European Union law. We are rewriting, not receding. Therefore the possible inclusion of the principle of the primacy of Community law in Article 1 would be welcome. It is a long-standing principle that has been applied without interruption since the founding of the European Community. Therefore it is worth mentioning in the first article of the draft constitution, immediately after respect for the Member States' national identity, which is equally important.

I strongly support the maintenance of the principle of the double legitimacy of the Union. We are writing a new treaty endorsed by Member States; but the source of legitimisation of the new treaty establishing a constitution is that it makes the Union a union of states and of peoples. This is the starting point of the exercise. It should also be the starting point of the constitution.

On specific amendments, I welcome the amendment that clarifies that the Union administers certain common competencies on a federal basis, but at the same time the Union contributes to and ensures the coordination of the policies of Member States. This is the way I would recommend clarifying and improving the current drafting, without diverging from the original spirit of the Praesidium.

I welcome other amendments, such as those that emphasise the protection and improvement of the environment; those on establishing a balance between a market economy open to free competition and access to services of general interest; and those making a specific reference not only to a common external and security policy but also to a common defence policy, along the lines suggested by Mr Barnier.

The first articles could be improved but I hope that the Convention will recognise that the Praesidium is moving in the right direction. With your support and your improvements we can succeed. <BRK>

4-017

FR

**Kalniete (Gouv.-LV).** – Merci Monsieur le Président. Tout d'abord, je voudrais faire une observation de caractère général. La création de l'Union européenne s'appuie sur plusieurs Traités fondateurs. La décision de modification de ces Traités s'effectue par le biais de nouveaux Traités avec l'accord de tous les pays membres. Pour cette raison, je préfère le terme "Traité constitutionnel" qui m'apparaît plus approprié que celui de "Constitution" car il désigne une union d'Etats souverains. La notion de Traité constitutionnel doit également être incorporée dans le corps du texte même de façon à insister sur l'accord volontaire des pays membres.

Ensuite, je considère que l'appellation actuelle d'Union européenne doit être préservée. Elle reflète la forme de coopération des Etats dans la perspective d'objectifs communs. Les citoyens d'Europe s'y sont accoutumés et s'y reconnaissent.

Enfin, je voudrais insister sur toute l'importance aux yeux de la Lettonie, d'une Union européenne signifiant une union d'Etats souverains. Et, en conséquence, permettez-moi de souligner la confusion que pourrait créer auprès des citoyens la référence dans le Traité constitutionnel au mot "fédéral". En réalité, le message à faire passer auprès de nos populations est celui de la réalisation d'une Union sans cesse plus étroite entre les Etats membres.

En conclusion, je voudrais vous dire toute l'importance que nous attachons à la préparation du Traité constitutionnel. Gardons-nous de toute précipitation car ce document fera l'identité des citoyens européens au regard du monde dans les décennies à venir. Merci Monsieur le Président. <BRK>

4-018

DE

**Einem (Parl.-AT).** - Herr Präsident! Im Sinne dessen, was auch schon Ben Fayot gesagt hat, treten wir erstens dafür ein, dass man die Charta voll inhaltlich samt den horizontalen Artikeln als Teil I verwendet, weil uns das die Formulierung der Artikel 2 und 3 deutlich erleichtern soll. Zweitens, wir sind der Überzeugung, dass die Bürger mit in den Artikel 1 aufgenommen werden sollen. Drittens, wir glauben, dass die Gleichheit von Frau und Mann als Grundsatz aufgenommen werden sollte, und wir treten dafür ein, lieber von Grundsätzen - *principles* - statt von Werten - *valeurs* - zu sprechen. Viertens, die soziale Dimension der Europäischen Union muss in den Artikeln 2 und 3 Ausdruck finden. Dazu zählen beispielsweise auch die Dienste von allgemeinem Interesse und ihre Zugänglichkeit oder das Prinzip der Vollbeschäftigung, das wir anstreben.

Fünftens, wir denken, dass Nachhaltigkeit und Umweltschutz zu den Zielen zählen, Nachhaltigkeit allerdings auch zu den Grundsätzen, die wir verfolgen und beachten wollen. Sechstens, um es kurz zu machen, von einem Gottesbezug in der Verfassung oder von der Religion in der Präambel halte ich nichts. Ich denke allerdings, dass es sinnvoll ist, das Minimum an liberalen Rechten für die Kirchen und Religionsgemeinschaften zu sichern. <BRK>

4-019

FR

**Lamassoure (PE).** – Merci Monsieur le Président, je vais essayer. Je traiterai de deux points avec le souci de vous faciliter la tâche pour trouver un compromis.

Premièrement, vous l'avez dit Monsieur le Président, l'Union est une construction politique originale mêlant caractère confédéral et fédéral. Il est utile, dès l'article premier, de décrire ce modèle, et je crois que nous avons besoin selon moi à l'article premier, de préciser les droits et devoirs respectifs de l'Union et des Etats membres. D'un côté, nous disons, l'Union respecte l'identité des Etats membres. Précisons, y compris la nature et le fondement de leur régime politique. Pourquoi? Il y a parmi nous des monarchies et des républiques, des Etats unitaires et des Etats fédéraux. Certains sont laïques, d'autres se réfèrent à un fondement religieux, vous en avez parlé. La formule permet de prendre en compte ces différences, Dieu est juste en filigrane. Ajoutons qu'un Etat doit avoir le droit de quitter l'Union. C'est la manière la plus forte de garantir le respect de la souveraineté nationale. Naturellement, cela devra être

exceptionnel. Il faudra des procédures exceptionnelles mais c'est un point important. Vous avez dit, à juste titre, que la formule historique d'une Union sans cesse plus étroite gêne certains collègues. En même temps, personne ne conteste l'intérêt d'un rapprochement entre les peuples eux-mêmes. Je propose d'écrire: "Les Etats membres s'engagent entre eux à une solidarité sans cesse plus étroite, au sein de l'Union comme en dehors d'elle".

Deuxièmement, les citoyens sont évidemment attentifs aux symboles extérieurs de l'Union. Un des tout premiers articles pourrait rappeler, comme le propose notre collègue, le drapeau, l'hymne, la fête du 9 mai. N'oublions pas les villes capitales, le triangle historique Bruxelles-Luxembourg-Strasbourg. N'oublions pas la monnaie qui est une des caractéristiques communes de l'Union. Il faudrait, enfin, ajouter une devise. Sur ce point, pourquoi ne pas lancer une consultation beaucoup plus large qu'au sein de notre seule Convention car il faut trouver une formule qui parle au cœur de toutes et de tous. Je vous remercie. <BRK>

4-020

FR

**Le Président.** – Je dirai un seul mot simplement sur un des points que vous avez traité. Vous m'avez écrit, d'ailleurs. J'ai reçu vos amendements et j'en ai pris connaissance.

Sur la question du droit de sortie éventuel, je crois qu'il s'agit d'une question très importante et qui a des conséquences politiques et de perception du système. Nous avons plutôt envisagé de le mettre dans les dispositions finales. En effet, il est un peu difficile de dire dès le départ "si vous voulez partir", plutôt que dans les dispositions finales. Dans ce cas-là, on pourrait dire que ce n'est pas la peine d'entrer. Mais l'idée sera traitée à un moment ou à un autre.

Ce que vous dites au sujet des symboles est repris par d'autres amendements sur l'article 3. Nous les retrouverons probablement tout à l'heure.

La parole est à Monsieur Farnleitner. Ensuite, nous prendrons quelques cartons bleus. <BRK>

4-021

DE

**Farnleitner (Ch.E/G.-AT).** - Herr Präsident! Sie haben der geringen Anzahl der Änderungsanträge, die ich eingereicht habe, entnommen, wie hoch meine Achtung vor der klaren Sprache dieser ersten Artikel ist, und ich habe mich daher möglichst wenig an den Wettbewerben beteiligt. Es kann doch nicht wahr sein, dass man so einfach Dinge sagen kann, wo so viele Juristen darauf warten, damit Geld zu verdienen!

Zweite Bemerkung, ich persönlich habe mit dem Wort "föederal" nach mehrmaligem Lesen gerade in den unterschiedlichen Sprachen Probleme. Ich bitte sie daher, darüber nachzudenken, ob man nicht formulieren sollte, dass die EU gemeinschaftlich bestimmte Kompetenzen wahrnimmt, weil die Gemeinschaftsmethode den Transfer von Kompetenzen sicher stellt. Meine zweite Anregung betrifft die Zielsetzungen. Ich möchte sehr dafür plädieren, dass wir die soziale Marktwirtschaft, den sozialen Frieden und die Achtung und Entwicklung der regionalen, sprachlichen und kulturellen Vielfalt als Zielsetzung verankern. Drittens sollte man der Charta wirklich einen hervorragenden Rang in den ersten Artikeln einräumen, dann erspart man sich spätere Artikel. <BRK>

4-022

FR

**Le Président.** – Je vous remercie. Je reviens, si vous me le permettez, puisqu'il faut animer un peu ce débat, sur la question du mot "fédéral". Il y a beaucoup d'amendements de suppression. Mais il y a aussi une culture fédérale ou fédéraliste qui existe en Europe ou qui existe dans la jeunesse, ou qui existe dans certains cercles. Donc, il faut voir si nous avons intérêt ou non à faire de notre texte un texte qui exprime une synthèse européenne. Si vous retirez le mot "fédéral", ce qui est possible vu que ce terme n'est pas vital, et le remplacez par "communautaire", vous écarterez cette synthèse. Vous aurez une série de gens qui diront qu'on ne veut pas aller dans la direction d'un modèle classique, connu depuis Montesquieu et qui a alimenté beaucoup de systèmes de pensée. C'est pourquoi ce sujet est important. A cet effet, j'aimerais que les uns et les autres s'expriment car nous tiendrons compte de ces que vous allez nous dire.

Nous allons prendre quatre cartons bleus : Monsieur Spini, Monsieur MacCormick, Madame Dybkjær et Monsieur Wuermeling. La parole est à Monsieur Spini. <BRK>

4-023

IT

**Spini (Parl.-IT).** - Signor Presidente, il caso vuole che le possa venire immediatamente in aiuto, nel senso che lo scopo principale del mio *carton bleu* è di precisare che, per quanto riguarda l'emendamento che ho presentato insieme all'onorevole Paciotti, rappresentante supplente del Parlamento europeo - emendamento che mira a inserire nella parte prima dell'articolo 1 il ruolo dei cittadini - per un errore tecnico, nella prima stesura non era stata inserita l'espressione "sul modello federale", mentre, nella prima pagina dell'*addendum* che è stato distribuito, il modello federale figura. Questo, proprio perché condiviso con tutto il cuore le sue

parole, cioè che cancellare questa parola avrebbe oggi un significato estremamente negativo, che in particolare le giovani generazioni europee non ci perdonerebbero. <BRK>

4-024

EN

**MacCormick (PE).** – In introducing Article 3 you said that those of us who had suggested a reference to linguistic diversity were mistaken because that is not, in itself, an objective of the Union. I should like to I remind you that the phrase we are looking at says: "the richness of its cultural diversity is respected". The suggestion is to say: "the richness of its cultural and linguistic diversity is respected". The point, therefore, is not to promote diversity of languages but to promote respect for the diversity that we already have. That is important, as it is, in Article 1(2), to insert respect for regional and local autonomy within the states, as this looks forward to the issue of the democratic life of the Union later on. After all, the text by the Praesidium was drafted before the debate on 7 February 2003, in which many people spoke about the importance of this dimension of Europe. There needs to be some response by the Praesidium to that debate, which was held after its draft was published. <BRK>

4-025

EN

**Dybkjær (PE).** – Can you guarantee that when we finish with the first paragraphs, we will not be in a situation where we have taken a step backwards? Will he consider the wording in relation to that? Can we guarantee that we will have the words "equality", "disability" and "sustainability" in the first paragraphs? If we do not, we will have taken a step backwards.

In relation to the further work, it is important that we discuss not only the present Treaties but how we could improve on them. That would make our work easier and we would not have so many amendments. <BRK>

4-026

FR

**Le Président.** – Nous ne ferons pas un pas en arrière sur ce sujet. Vous étiez intervenue d'ailleurs la fois dernière. Vous aviez posé cette question et je vous avais répondu. Le seul point est de savoir où on le met dans les articles. C'est un point pratique. Il faut que les notions soient groupées. Ce n'est pas dans l'article 1, qui est un article de droit public. Alors, est-ce dans les objectifs, est-ce dans les valeurs? Se limite-t-on à l'égalité entre les hommes et les femmes ou dit-on l'égalité de tous les êtres dans l'Union européenne parce qu'il y a un système plus global d'égalité? En tout cas, il n'y aura pas de recul et cette mention figurera dans les premiers articles. <BRK>

4-027

DE

**Wuermeling (PE).** - Herr Präsident! Um mich zu finden, brauchen Sie nur in die Mitte zu schauen; dort findet man mich, und hier fühle ich mich auch wohl! Es kann wohl nicht darum gehen, den Begriff "föederal" ersatzlos zu streichen, aber er hat zwei Schwächen. Die erste Schwäche dieses Begriffes ist, dass er zwei völlig unterschiedliche Bedeutungen hat, die gegensätzlich sind. Es könnte auch ein Vorteil sein. Ich sehe es aber als eine Schwäche an. Das zweite ist, dass er nicht offen ist. Es ist ein Begriff, der auf bestehende Modelle von Zusammenschlüssen verweist. Wir aber müssen die Europäische Union in einer völligen Offenheit im Hinblick auf das Modell konstruieren. Es wäre, glaube ich, für die Entwicklung eines so einzigartigen Zusammenschlusses, der am Ende 500 Millionen Einwohner umfasst, fatal, wenn wir uns an bestehenden, hergebrachten traditionellen Begriffen orientieren würden. Deswegen haben wir auch nicht vorgeschlagen, den Begriff zu streichen, sondern wir haben - ähnlich wie Herr Farnleitner - vorgeschlagen, einfach auf die Gemeinschaftsmethode, auf das gemeinschaftliche Handeln zu verweisen, damit wir uns so organisieren können, wie wir das in unserer Union tun müssen. <BRK>

4-028

FR

**Le Président.** – Il y a encore d'autres cartons bleus mais nous les prendrons après une nouvelle série d'orateurs pour respecter l'équilibre. Nous les inscrivons au fur et à mesure. La parole est à Monsieur Costa. <BRK>

4-029

PT

**Costa (Parl.-PT).** - Senhor Presidente, a única razão realmente séria que temos para agora deixar de falar de Tratado e passar a falar de Tratado Constitucional ou de Constituição reside no novo lugar que damos aos direitos dos europeus. É aí que está a diferença adquirida neste momento. Se assim é, um princípio de transparência mandaria que se rejeitasse totalmente a ideia de retirar o teor da Carta para os fundos da Constituição e militar a favor de que o teor da Carta abrisse a nossa Constituição. Essa é de momento a nossa matéria constitucional.



Confesso, Senhor Presidente, que não estou satisfeito com o recurso à ideia da gestão em moldes federais de certas competências para elaborar o conceito constitucional da nossa União. Aliás, os que gostam de transparência perguntariam de seguida onde está a delimitação entre as competências a gerir em moldes federais, as competências a não gerir em moldes federais, os mecanismos de federalização e eventuais cláusulas de flexibilidade. Ninguém pensa nisto e, portanto, não se está a pensar com clareza.

Julgo que o caminho para definir o conceito seria estabelecer os grandes fins, que são conhecidos, fixar o modo de exercício dos poderes necessários provenientes dos Estados soberanos e fixar as regras de relação com a realidade democrática circundante. Estou a pensar no princípio da igualdade dos Estados, estou a pensar no princípio da proximidade e estou a pensar no respeito pela diversidade, a famosa eurodiversidade que tem que integrar o núcleo conceptual da nossa União.

Seria muito desagradável que incorporássemos uma espécie de federalismo mínimo ou de federalismo sectorial e, em contrapartida, não tivéssemos sequer o princípio da igualdade dos Estados, que costuma acompanhar em tão alto lugar a consagração do princípio federal. Eis por que razão, Senhor Presidente, proponho uma rescrita deste conceito. Para terminar, apoio a ideia da coesão territorial; no caso de se consagrar um alto nível de segurança como objectivo para a União deve consagrar-se igualmente uma alta qualidade na prestação da justiça, sob pena de distorção do modelo europeu do Estado de direito. E, por último, no âmbito da acção externa, julgo que se justificava consagrar a promoção de soluções multilaterais para expressar uma opção metodológica diferente da opção do império, o que me parece ressaltar da história europeia, de um continente que já conheceu democracias e impérios. <BRK>

4-030

DE

**Meyer (Parl.-DE).** - Herr Präsident! Drei Anmerkungen in zwei Minuten, die erste betrifft das Verfahren. Ich begrüße Ihre Zusage sehr, die Sie eingangs der Sitzung gemacht haben, dass die Frist für die Einreichung von Änderungsvorschlägen zu den Formulierungen des Präsidiums künftig in etwa zwei Wochen betragen soll. Ich möchte dem einen Wunsch der Europapolitiker des Deutschen Bundestages hinzufügen, der heute Vormittag von den Delegierten vieler nationaler Parlamente geteilt wurde. Ich möchte um die Zusage bitten, dass auch Änderungsanträge, die aufgrund der Debatten in den nationalen Parlamenten etwas später - also sagen wir nach drei Wochen - kommen, dokumentiert und allen Delegierten zugänglich gemacht werden. Wir brauchen die Hilfe der Parlamente, und am Ende auch ihre Zustimmung. Das sollten wir nie vergessen.

Zweite Anmerkung: Zur Grundrechtecharta ist einiges gesagt worden, und ich finde, die Struktur der Verfassung kann nicht mehr so offen sein, wie es vorhin in Ihrer Anmerkung noch ein bisschen den Anschein hatte, denn es ist eine Frage der Bedeutung der Grundrechte, eine Frage des Respekts vor der Arbeit des ersten Konvents, aber auch eine Frage der Methodik, die Charta an den Anfang zu stellen. Nur so können wir Wiederholungen vermeiden, und ich will das mit ein paar Hinweisen belegen. Die geistig-religiöse Debatte über das europäische Erbe müssen wir nicht neu aufrollen. Wir haben dazu eine Formulierung in der Präambel der Grundrechtecharta gefunden. Das Zusammenwachsen Europas in Artikel 1 aufzunehmen ist dann unnötig, wenn wir die Präambel der Grundrechtecharta entsprechend den Vorschlägen der Arbeitsgruppe Vitorino übernehmen. In Artikel 2 müssen wir Solidarität und Gleichheit nicht im Einzelnen ausdifferenzieren, das ist in den Kapiteln 3 und 4 der Grundrechtecharta schon geschehen. Wir müssen nicht die Arbeit des ersten Konvents wiederholen.

Dritte Anmerkung: die Arbeitsgruppe "Soziales Europa" hat wichtige Vorschläge gemacht und viele Delegierte haben den Vorschlag übernommen, sozialen Zusammenhalt und Wettbewerbswirtschaft im Ziel "soziale Marktwirtschaft" zusammenzuführen. Ich bitte herzlich, mit diesem Beispiel die Arbeit der Arbeitsgruppen und ihre Schlussberichte vor allem dann, wenn sie hier im Plenum große Zustimmung gefunden haben, zu respektieren. Das sollte eine Richtschnur für die Arbeit des Präsidiums sein. <BRK>

4-031

FR

**Le Président.** – Monsieur Meyer, nous verrons avec le secrétariat et le praesidium comment traiter cette affaire de place dans le texte. Probablement, pour le rendre plus concret il faudrait qu'on imprime les deux formules. Il est vrai que du point de vue de la démarche, c'est plus commode que la Charte soit avant. Vous avez raison. Du point de vue de la lecture par les citoyens, c'est le contraire. Il y a un choix à faire et, par conséquent, nous proposerons sans doute les deux formules pour voir quels sont leurs avantages et leurs inconvénients respectifs, ce qui ne change rien au fond, bien entendu.

La parole est à Monsieur De Villepin. <BRK>

4-032

FR

**De Villepin (Ch.E/G.-FR).** – Monsieur le Président, chers collègues, avant même d'aborder les articles que nous examinons aujourd'hui, je voudrais dire que nous devons faire face avec exigence aux difficultés qui résultent de la situation internationale comme vous l'avez dit en introduction, Monsieur le Président. Elles doivent nous inciter à engager une réflexion approfondie sur la place qui doit être celle de l'Union européenne dans le monde. Et je sais que nous y reviendrons plus tard, comme vous l'avez proposé d'ailleurs Monsieur le Président.

Je remercie le praesidium pour ces premiers articles. Nous avons conscience de la difficulté et de la lourdeur de la tâche qui vous incombe. Pour nos travaux, nous devons convenir d'une méthode qui garantisse le caractère collectif et rigoureux de notre travail. Les

membres de la Convention doivent notamment disposer d'un délai suffisant pour procéder à l'examen des articles et déposer des amendements. Je sais que le praesidium s'y emploie.

Sur le fond, je souhaite insister sur quelques points concernant les articles 1 à 3. L'article 1 doit conserver la référence emblématique à une Union sans cesse plus étroite entre les peuples de l'Europe. C'est un acquis essentiel et une garantie de la poursuite de l'intégration européenne. Par ailleurs, je propose d'introduire dans cet article la notion de fédération d'Etat-nation, qui témoigne bien de la synthèse que constitue le projet européen entre une Union des peuples et une Union d'Etats souverains.

L'article 2 sur les valeurs me convient et je salue la sagesse du praesidium. Ne rouvrons pas les débats difficiles qui ont déjà été tranchés par la précédente Convention sur la Charte des Droits fondamentaux.

L'article 3 sur les objectifs appelle plusieurs observations. Il doit être complété par la mention d'objectifs sociaux tels que définis par le groupe de travail sur l'Europe sociale, y compris ceux relatifs au service d'intérêt général. C'est à cette condition que nous pourrions concrétiser la volonté que nous partageons tous d'un renforcement du modèle social européen fondé sur l'équilibre entre progrès économique et justice sociale.

Ensuite, je propose de renforcer la mention du développement durable en le citant parmi les buts de l'Union, énoncé dès le premier paragraphe de l'article 3. Je propose, en outre, d'ajouter dans cet article que l'Union vise à promouvoir un niveau élevé de protection et d'amélioration de l'environnement. Je crois également que l'intégration des exigences environnementales dans les autres politiques devrait figurer parmi les principes sur lesquels l'Union est fondée. Il me paraît enfin important de mentionner qu'un des buts de l'Union est de préserver l'acquis de la construction européenne. Je pense notamment au domaine du marché intérieur et de la concurrence.

En conclusion, Monsieur le Président, nous constatons aujourd'hui, à travers la crise irakienne, les divisions de l'Europe. Plus que jamais, nous devons réaffirmer notre ambition commune. Je vous remercie.

(Applaudissements) <BRK>

4-033

EN

**McAvan (PE).** – Article 1 of the new constitution should try to capture in a nutshell the essence of the European Union. The draft from the Praesidium starts off well - but then loses it after the first phrase. Why? Because it talks about a Union within which "the policies of the Member States shall be coordinated". Does that mean all of them or some of them? We need to be clear about defining what we mean by "the European Union". We should say "the Union of Member States which have freely chosen to work together in certain areas". It would add something to the *lisibilité* of the constitution if we said a word or two about the why. The answer is quite simple: because they feel they can achieve more by working together than by working alone. That might be covered in the preamble, but it is important that when people read it they understand why we want the European Union.

You also spoke of the need to mention that powers derive from the Member States. It should be said more explicitly under Article 1(2). This is a democratic guarantee for our citizens and can stop this mistaken notion that somehow the Union exists and has powers that come from nowhere. It is very important that people understand how it was founded, where its powers come from. They come from the will of the peoples of Europe.

Mr Fayot very kindly said all that needs to be said on Articles 2 and 3 on behalf of the Socialist family, except that I feel there is a case for including equality between men and women among the values under Article 2.

You invited us to say something about the place of religion. It would be very divisive if we started talking about Christian traditions etc. at this time. It would offend the many millions of people from different faiths and indeed those of no faith at all. We should leave those things alone. We should talk about an inclusive Europe. If we follow along the lines suggested by Mr Fayot we will have that. <BRK>

4-034

EN

**Lenmarker (Parl.-SE).** – I should like to focus on Article 3(4). Outside Europe the general idea is that Europe is inward-looking. We even speak about a fortress Europe. Certainly it is true that the European Union is too protectionist in some respects. This weakens our ability to act in the outside world. Therefore it is important to include in Article 3(4) the principle and objective of openness to the outside world, so that we can see that Europe really is open, and that Europe is not only concerned with itself or defending its own interests, but also takes on a wider responsibility.

The good values of Europe are not only European, but universal. That should also be reflected in Article 3(4).

The name of the Union should be "the European Union". I also underline – and this comes into a joint Swedish amendment – that we need a definition of who the contracting partners – the Member States – in this constitution are. It must be clear.

I support the PPE-DE amendments on Articles 1 and 3. <BRK>

4-035

FR

**Le Président.** – Merci, Monsieur Lennmarker. Sur ce dernier point, qui est un point à la fois juridique et de courtoisie, il y a les deux. Les hautes parties contractantes, elles, figureront dans la présentation du texte, comme d'ailleurs dans les Traités où les hautes parties contractantes ne sont pas dans les articles. Elles sont en général dans une déclaration initiale. On reprendra cette formule qui est, je crois, la formule adaptée. Je voudrais dire à Monsieur Meyer qui m'écoute avec attention je vois, je le comprends, un mot à propos des amendements tardifs. Nous essayons d'avoir une discussion commune des amendements. Donc, il vaut mieux qu'ils puissent être déposés en même temps afin de permettre aux uns et aux autres de les défendre et de les comparer. Mais vous gardez en permanence le droit de déposer des textes. Donc, si un parlementaire national, à la suite des travaux de son parlement, veut déposer une nouvelle proposition d'article ou autre, il peut naturellement le faire. Cela facilite notre tâche si on joint ces amendements à la discussion des articles. Mais si ce n'est pas possible, il garde le droit, bien sûr, de déposer son projet.

La parole est à Monsieur Fischer. <BRK>

4-036

DE

**Fischer (Ch.E/G.-DE).** - Herr Präsident! Der Entwurf des Präsidiums ist unseres Erachtens eine sehr gute Grundlage für eine transparente Kompetenzordnung, die der Union gleichzeitig die notwendigen Spielräume für eine flexible Fortentwicklung belässt. Natürlich sind zahlreiche Einzelfragen noch zu klären, siehe die schriftlichen Beiträge. Aber darauf will ich jetzt nicht im Einzelnen eingehen. Was mich beschäftigt, ist die Sorge um die Zukunft des Konvents, die angesichts der aktuellen Situation an Bedeutungskraft für die Zukunft der Union noch erheblich gewonnen hat. Wir befinden uns jetzt an der entscheidenden Wegkreuzung. Die Art und Weise, wie wir in den kommenden Wochen mit der vor uns stehenden Herausforderung fertig werden, wird über Erfolg oder Misserfolg unseres Projekts entscheiden. Dabei meine ich nicht in erster Linie die über tausend Änderungsanträge - hier setzen wir voll auf die Weisheit und auf die Erfahrung des Präsidiums -, Sorge machen mir vielmehr die Stimmen, die einer Verlängerung des Konvents das Wort reden. Richtig ist, entscheidend ist der politische Wille, zu einem ehrgeizigen Ergebnis zu kommen. Meines Erachtens ist das wichtiger denn je.

Die aktuellen Ereignisse sollten uns nicht entmutigen, sondern im Gegenteil, sie sollten uns beflügeln und anspornen. Sie führen uns überdeutlich vor Augen, dass jeder einzelne europäische Staat - auch der größte - für sich allein genommen oder in wechselnden Allianzen seine Interessen in der Welt des 21. Jahrhunderts nicht mehr wirksam verteidigen können. Nur gemeinsam, als Europäische Union, haben wir Europäer eine Chance, uns im 21. Jahrhundert zu behaupten. Die aktuelle Krise zeigt, dass das bittere machtpolitische Wirklichkeit ist. Für den Konvent muss das heißen: Wir sollten unseren Ehrgeiz auch - aber nicht nur - in der gemeinsamen Außen- und Sicherheitspolitik nicht dämpfen, sondern steigern. Es ist meines Erachtens falsch zu sagen, weil die letzten Tage gezeigt haben, dass der Wille zu gemeinsamem politischen Handeln noch nicht vorhanden ist, brauchen wir auch keine europäischen Institutionen. Ich glaube, das Gegenteil ist vielmehr der Fall. Wir brauchen wesentlich stärkere europäische Institutionen als bisher, um in diesem Rahmen unseren gemeinsamen politischen Willen bilden zu können.

Natürlich geht so etwas nicht von heute auf morgen. Ein solcher politischer Prozess braucht Zeit, vielleicht sogar lange Zeit. Umso dringender ist es, diesen institutionellen Rahmen so rasch wie möglich zu schaffen. Wichtig ist hier vor allem die Stärkung der supranationalen Elemente, wie etwa der Kommission. Deshalb müssen wir jetzt alle unsere politische Energie daran setzen, den Zeitplan einzuhalten. Eine Verzögerung hätte meines Erachtens eine völlig negative Signalwirkung. Der Konvent darf sich nicht in technischen Einzelheiten verlieren, sondern muss sich auf die politische Substanz und auf die große historische Herausforderung, vor der wir stehen, konzentrieren. Wir müssen unser Ziel erreichen, die europäische Verfassung im Entwurf bis zum Sommer vorzulegen, damit sie bis zum Ende dieses Jahres von der Regierungskonferenz gebilligt werden kann. Dies, Herr Präsident, ist wichtiger denn je!

(Beifall) <BRK>

4-037

IT

**Dini (Parl.-IT).** - Signor Presidente, esprimo un giudizio complessivamente positivo sull'articolato che il *Praesidium* ci ha presentato, e ciò per la sua chiarezza e linearità. Esso contiene l'affermazione di principi essenziali per l'avanzamento dell'Unione: per esempio, l'affermazione che le competenze comuni vanno gestite, come lei ci ha ricordato, sul modello federale, secondo la formula, che tutti abbiamo condiviso, di federazione di Stati nazione, ciò che dovrebbe essere all'articolo 1; l'attribuzione all'Unione della personalità giuridica, all'articolo 4; la codificazione del primato del diritto comunitario su quello degli Stati membri, che viene poi, all'articolo 9.

Gli obiettivi e le competenze dell'Unione vanno rafforzati, mai indeboliti: questa è, secondo me, la stella polare con cui il *Praesidium* dovrebbe procedere nella scrittura della Costituzione per l'Europa. Questo non mi sembra essere stato sempre il caso nel testo dei primi sedici articoli, che oggi discutiamo, dove ci sono alcune omissioni che potrebbero apparire un indebolimento dei Trattati esistenti. Manca, tra gli obiettivi dell'Unione, all'articolo 3, quello della difesa dell'indipendenza e dell'integrità dell'Unione stessa, prevista all'articolo 11 del Trattato sull'Unione europea, che è intesa a rafforzare in prospettiva il carattere politico dell'Unione; manca anche il richiamo alle Nazioni Unite come istituzione universale, fulcro della legalità internazionale. Un riferimento alle Nazioni Unite è, invece, presente nell'articolo 11 del Trattato sull'Unione europea che, oggi più che mai, credo debba essere riaffermato. Arretrata, rispetto ai Trattati vigenti, è anche la formulazione del comma 4 dell'articolo 10, che parla di progressiva realizzazione di

una politica di difesa comune; ora, l'articolo 17 del Trattato sull'Unione già parla di una difesa comune, raggiungibile senza una revisione dei Trattati, con una semplice decisione del Consiglio europeo; il concetto deve essere elaborato da qualche parte. Sulla politica estera, di sicurezza e difesa bisogna essere più ambiziosi di quanto proposto, superando radicalmente la struttura a pilastri, e affermare che queste materie, pur con la loro peculiarità e procedure particolari, debbono essere incluse fra le competenze dell'Unione.

Occorre andare avanti partendo dalle acquisizioni fissate nei Trattati, che vanno codificate nella nuova Costituzione, come, ad esempio, l'obiettivo della libera concorrenza - che è stato sottolineato anche da Monsieur de Villepin - che va con chiarezza incluso nell'articolo sulle competenze esclusive dell'Unione.

Ripeto, signor Presidente: è importante che il *Praesidium*, nel linguaggio che usa nella bozza degli articoli, non dia l'impressione di fare passi indietro rispetto ai Trattati esistenti. Questa è una raccomandazione forte che intendo fare. <BRK>

4-038

FR

**Di Rupo (Parl.-BE).** – Monsieur le Président, je partage le point de vue exprimé par bon nombre de collègues notamment sur notre responsabilité historique. Il nous faut de l'ambition non seulement pour nous-mêmes mais pour les générations futures.

Par rapport aux trois premiers articles, dans l'article 2, je pense que, comme vous l'indiquiez tout à l'heure, c'est davantage l'égalité de tous les êtres qu'il faut indiquer et non pas uniquement l'égalité entre les femmes et les hommes. On ne doit pas se laisser distraire par une absence de définition juridique claire à cet égard. Il s'agit bien de valeurs et on peut d'ailleurs se référer à l'actuel article 7 du Traité de l'Union en la matière.

En ce qui concerne les objectifs sociaux, il me semble que nous manquerions à nos responsabilités si nous n'indiquions pas quelques objectifs tels que l'accès de tous à l'éducation, l'accès de tous à la formation, à des services d'intérêt général de qualité ou encore le fait que nous voulons lutter contre toutes les formes de discrimination ou d'inégalité.

En ce qui concerne, comme l'a indiqué Monsieur Lamassoure, la souveraineté des Etats, vous avez dit que ce serait peut-être dans les dispositions finales plutôt que dans les premières dispositions, ce que je peux comprendre. Mais il faut une disposition qui permette à un Etat de quitter l'Union. Je pense que c'est une manière assez élégante non pas de freiner l'ensemble des Etats membres de l'Union mais plutôt de marquer son désaccord profond et puis de faire son destin seul.

En ce qui concerne le caractère fédéral, je pense que supprimer le mot "fédéral" serait interprété par une très large partie de l'opinion, et singulièrement par les jeunes, comme un recul. Et permettez-moi de dire ceci, si c'est pour avoir un Traité qui institue la Constitution ou la Constitution avec des conditions et des clauses qui seraient inférieures à ce que l'on trouve dans les Traités actuels, Monsieur le Président, ce serait triste. Et je voudrais quitter cette Convention en ayant eu le sentiment d'avoir contribué à quelque chose d'utile.

En ce qui concerne d'éventuelles références aux valeurs religieuses à l'article 2, je dis non. Vous avez vous-même d'ailleurs, clairement indiqué que les références présentes dans le préambule de la Charte et le respect des Eglises qu'on pourrait indiquer dans l'annexe de la future Constitution, paraissent suffisants. Nous devons garder ce principe fondamental sans brouiller les images, en restant clairs par rapport à nos opinions. L'Etat est une chose, les Eglises en sont une autre. L'Etat se doit d'être impartial et de garantir la diversité et l'exercice de toutes les religions bien entendu. <BRK>

4-039

EN

**Rovna (Gouv.-CZ).** – Unlike the draft presented by the Commission in early December 2002, the present draft lacks the distinctive dimension of a multi-level constitutionality on which the future Union is to be founded. It reflects the multi-level identity of its citizens – local, state and Union – and unites the individual constitution levels in a single consistent entity.

This concept of constitutional complementarity corresponds to the established practice of the European Court of Justice. This makes Community law an integral part of the legal orders of Member States, both by means of direct effect and by virtue of the supremacy of Community law. Also, in terms of clarity of wording and legal economy, the present draft has not fully exploited its potential.

As to Article 1(1), the opening sentence starts with a correct reference to two sources of the democratic legitimacy of the constitution: the peoples and the states of Europe. However, the phrase "reflecting the will" would be more appropriate in a preamble.

As to the functions, we propose to begin with common policies, as the supranational function defining the Union; secondly, common competences as a policy tool; thirdly, coordination as an expression of inter-state function. We propose replacing the term "federal" with "on the basis of ever closer union" and retaining the name "European Union". <BRK>

4-040

FR

**Duhamel (PE).** – Monsieur le Président, une Constitution doit être courte et obscure, disait Napoléon. Cela a été dit par Sieyès mais aussi par Napoléon. Ils se sont accordés sur ce point d'ailleurs. Et nous, nous nous accordons contre. Pourquoi contre? Notre Constitution ne peut qu'être longue. Elle le sera forcément du fait des contraintes que nous subissons. Essayons qu'elle soit claire et qu'elle s'adresse aussi au citoyen. Or, dans nombre de nos articles, ce qui est l'objectif sera hors d'atteinte. Quand on attribue des pouvoirs, fixe des relations, précise des compétences, règle des procédures, on ne peut pas s'adresser au citoyen en tous ces points. Et, précisément parce qu'on ne peut pas échapper à ces tâches ingrates d'écriture complexe, nous devons aussi incorporer les dispositions constitutionnelles qui ont quelque chance d'intéresser les citoyens européens. Voilà pourquoi je voudrais insister sur trois points.

Premièrement, définir l'Union. L'article 1, qui le fait, contient l'essentiel. Mais on peut le dire plus fortement et mieux. C'est-à-dire qu'on peut partir de la volonté des peuples sur laquelle repose et nos Etats et l'Union, puis affirmer clairement la double légitimité de l'Union, celle des citoyens européens et des Etats membres. Quant à la fin de la phrase, n'ayons pas peur des mots lorsqu'ils confirment la réalité des choses. 15 % des conventionnels ont déposé des amendements pour supprimer le terme "fédéral". Mais le mot "fédéral" existe et la très grande majorité des conventionnels a donc raison de l'accepter.

Deuxièmement, symboliser l'Europe. Le projet de rédaction a oublié les symboles de l'Europe, ceux qui existent - le drapeau étoilé, l'hymne - et ceux qui méritent de s'y ajouter - une devise, un jour férié, fête de l'Europe -. Je ne comprends pas pourquoi le praesidium y a renoncé et comprendrai encore moins qu'il s'y oppose.

Enfin, consacrer la Charte. J'avais peur que vous ne persistiez dans l'idée de quelques uns de la reléguer dans je ne sais quel protocole. A vous entendre, vous avez compris son importance pour les citoyens. Vous l'avez sûrement relue et vous en avez apprécié la qualité.

Bien définir l'Union, la doter de symboles consacrés, incorporer la Charte. Voilà qui nous évitera d'avoir peur de notre ombre et donnera un peu de lumière à notre Constitution. <BRK>

4-041

FR

**Le Président.** – Je voudrais vous répondre sur les symboles. Il faudra mettre quelque chose sur les symboles. Effectivement, notre texte est un peu aride et manque de chaleur à cet égard. Il faudra donc mettre le drapeau, bien sûr. Il faudra mettre l'hymne mais pour cela il faut que l'hymne existe. Parce qu'actuellement, on joue comme hymne européen un extrait pas très défini de la Neuvième symphonie de Beethoven. Mais il faudrait savoir quand on le commence et quand on le finit. En outre, un hymne a des paroles. Et donc, nous avons, dans le milieu culturel européen, à faire travailler sur deux sujets, non pas la réécriture, mais la question du début et de la fin. En effet, quand on écoute l'hymne européen, on attend la fin mais on ne sait pas si ça va être maintenant ou quatre ou dix mesures plus tard. Il faudra également, d'ailleurs, réfléchir à un texte que l'on pourrait chanter lorsqu'on exécute l'hymne européen. Et si les crédits de la Convention ne sont pas épuisés, à la fin, on pourrait faire un concours modeste à cet égard.

Nous allons prendre quelques cartons bleus. Madame Maij-Weggen, vous êtes inscrites aussi comme orateur. On vous écouterait donc dans deux minutes. Nous entendrons Monsieur Kiljunen, Monsieur Roche, Monsieur MacLennan et Monsieur Borrell. La parole est à Monsieur Kiljunen. <BRK>

4-042

EN

**Kiljunen (Parl.-FI).** – Mr President, you underlined in your statement that the European Union is unique, representing a new type of decision-making. I agree. In essence it is supranational and goes beyond the states, although legitimated by the sovereign states. That is exactly why I hesitate using the words "federal" or "confederal". Both references tend in the wrong direction; both are related to forms of states. The European Union is not and will not be a state with full sovereignty. It represents a new type of power format reflecting shared sovereignty. In using the word "federal" we are making a reference to the Philadelphia Convention, which created a model for the federal state. We, however, are not creating a constitution for the United States of Europe.

Nevertheless, the Brussels Convention has the same historic potential as the Philadelphia Convention had to create something new – a model for a new type of power structure that is supranational, democratic, efficient and transparent. That is why we should not, in face of our historical challenge, use obsolete terms such as "federal" or "confederal". <BRK>

4-043

FR

**Le Président.** – Je vous remercie. Il y avait une remarque de Monsieur Duhamel qui était très juste. Elle concernait un point qui rend d'ailleurs un peu difficile la gestion de nos travaux. C'est que, par exemple, il y a beaucoup d'amendements qui proposent la suppression du mot "fédéral". Mais il y a tout ceux qui n'ont pas déposé d'amendement. Il faut rechercher où est l'équilibre. La parole est à Monsieur Roche. <BRK>

4-044

EN

**Roche (Ch.E./G.-IE).** – Those in favour may not have just been silent. The reality of it has been expressed by the last speaker. The word "federal" has a specific connotation. The European Union is a fundamentally different type of device. It has a fundamentally different way of doing business. It is a supranational organisation brought together by equal states pooling sovereignty, but it is not a super-state and decidedly is not a federal super-state.

Article 1 is of fundamental importance. At one stage you spoke of a certain lyrical introduction to the Union. I believe that Article 1 should be very precise. I have suggested that in Article 1(1) we remove the second half of the second clause. This is where you use the word "federal".

You made the point that the use of the word "federal" in this particular context is a description of process, not necessarily a description of the Union itself. It is a fundamental mistake to introduce the word "federal", which has a specific historical connotation which is not an accurate reflection of what this Union is about.

The nature of this Union is not going to be described by a word. It will be prescribed by the treaty. We should be happy to leave it to be prescribed by the treaty rather than using words that are appropriate for a different type of arrangement. <BRK>

4-045

EN

**MacLennan of Rogart (Parl.-GB).** – Mr President, you have specifically invited us to comment upon the inclusion of the word "federal". I wish to say that it is an appropriate description of how the Union reaches many of its decisions. It is about process, as you have said. I adopt the reasoning advanced by Mr De Villepin in his speech. However, where I part company with him is in what he had to say about the use of the words "ever closer union". They have a historical resonance within the Union because they describe how we have got to where we are, from quite small beginnings. However, we must ask ourselves, at this stage, whether they are appropriate when we are seeking an establishment, an embracing constitution, that we wish to be long-lasting. We do not want to create uncertainties about its purposes or its processes. That historically resonant phrase of "ever closer union" is neither precise nor lacking in anxiety-creation. Therefore, if it is to be included at all – and there is some support for it – it would be appropriate for the preamble of the constitution, but not for the body.

On the issue of the individual characteristic of the Union, its diversity, I hope that its cultural diversity will be reflected both in the statement of values and in the statement of objectives in Articles 2 and 3. <BRK>

4-046

ES

**Borrell Fontelles (Parl.-ES).** – Señor Presidente, creo que entre los valores de la Unión es imprescindible colocar el de la igualdad. La igualdad es una característica fundamental de la historia de Europa, no sólo la igualdad entre hombre y mujer, que es una de las dimensiones de la igualdad, pero que no agota su múltiple sentido. No me parece posible que los europeos hagamos una Constitución y que entre sus valores no proclamemos el de la igualdad, que al mismo título que la libertad, está profundamente anclada en nuestra historia colectiva. Igualdad, en particular, entre hombre y mujer, pero igualdad. Que no nos falte esta palabra en el artículo 2.

La dimensión social de Europa debe quedar reforzada, muchos lo han dicho, entre sus objetivos. Los objetivos de la Unión no son sólo crear una economía competitiva y próspera, sino también crear una sociedad cohesionada. Hay que dar a esta palabra todo su significado en el artículo 3.

En el artículo 1, la palabra federal. Nos guste o no -ya hemos chocado con la magia de las palabras- tanto si figura como si no figura, esta palabra será un elemento mediático, característico de nuestro trabajo. Federar quiere decir unir en la libertad y eso es lo que es Europa, una unión en la libertad. De cuando en cuando conviene enterrar los fantasmas, los fantasmas que anidan en el subconsciente colectivo de los pueblos, y proclamar que Europa, para muchas de las cosas que queremos hacer juntos, tiene que trabajar de un modo federal. Il faut appeler un chat un chat. No hay que tener miedo a que las palabras reflejen la realidad, y una parte de la realidad europea es federal. Si esa palabra se cae y no figura en nuestra Constitución, para mucha gente habrá significado un importante paso atrás. <BRK>

4-047

FR

**Berès (PE).** – Merci, Monsieur le Président. Je veux revenir aussi sur ce mot "fédéral". Je crois que nous en avons besoin dans la Constitution. Il correspond à la réalité de l'exercice de certains pouvoirs au sein de l'Union européenne et une grande majorité de nos concitoyens attendent de nous la capacité de mettre en œuvre une vraie fédération. Alors, à tout le moins, ne supprimons pas cette référence au terme "fédéral".

A l'article 2, je crains que nous ouvrons à nouveau deux débats qui ont été tranchés par la Charte. Le premier lorsque vous faites référence à la notion de droits de l'homme. Nous avons eu ce débat dans la Charte et le terme "droits de l'homme" ne figure pas dans la Charte à juste titre. Nous avons simplement utilisé l'expression "dignité humaine" et "droits fondamentaux". Je vous en prie, au nom de beaucoup de femmes, mais aussi d'hommes, d'en rester à cet équilibre atteint dans la Charte.

A propos de Dieu, vous nous interrogez, et là aussi, Monsieur le Président, je veux vous dire que ce débat, nous l'avons eu de façon très approfondie à l'occasion de la rédaction de la Charte. Il me semble que l'équilibre auquel nous sommes parvenus est le bon équilibre. Nous devons garantir la liberté des Eglises, la liberté de conscience, la non-discrimination. Mais ce n'est pas l'objet de cet article 2. L'article 2 est celui qui définit nos valeurs. Il a vocation à installer l'organisation de la démocratie européenne, de l'organisation du pouvoir temporel et non pas la place du pouvoir spirituel.

Dernier mot, à propos de l'article 3, Monsieur le Président, vous n'avez pas fait référence à certains amendements qui, à l'article 3.5, proposent que le respect des objectifs de l'Union soit une obligation pour l'ensemble des institutions de l'Union. Je crois que ce serait une contribution très importante et j'espère que le praesidium pourra réexaminer ce point. Merci Monsieur le Président. <BRK>

4-048

FR

**Le Président.** – Nous avons hésité à mettre, en effet, l'expression "respect des droits de l'homme". Et nous connaissons les arguments que vous venez de développer et ce n'est pas, en effet, le texte qui figure dans la Charte des Droits fondamentaux. Mais c'est une expression du langage courant mondial. Par exemple, lorsque vous avez dans tel ou tel grand pays asiatique des situations de ce type, on invoque le respect des Droits de l'homme. On retombe sur le problème que soulevait Monsieur Borrell, à savoir l'expression verbale des choses. On peut ne pas le mettre mais c'est une expression qui dans la conscience internationale a une signification par elle-même. Et naturellement, ce n'est pas incompatible avec les autres valeurs dont vous parlez. Nous nous interrogerons à nouveau et nous notons cette remarque ainsi d'ailleurs que la dernière.

Nous reprenons la liste des orateurs. La parole est à Monsieur Demiralp et à Madame Maij-Weggen ensuite. <BRK>

4-049

FR

**Demiralp (Gouv.-TR).** – Merci Monsieur le Président. Nous avons proposé des amendements concernant les projets d'article 1,2,3, et 5. Je me permets de faire quelques remarques supplémentaires.

Depuis longtemps, on s'interroge sur la pertinence des notions de fédération et de confédération pour qualifier l'Union européenne. En réalité, elle est plus qu'une confédération mais pas tout à fait une entité fédérale. Tout au plus, comme vous le dites, elle gère sur le modèle fédéral certaines compétences communes. Mais elle gère d'autres compétences sur le modèle intergouvernemental. Je pense qu'au stade actuel de nos travaux, il faut dépasser cette opposition conceptuelle. Il serait judicieux de réajuster ces mêmes catégories afin de leur faire acquérir la plasticité nécessaire. C'est ainsi que l'on pourrait procéder à une solution d'amalgame entre ces deux notions. L'Union européenne, à l'avenir, serait appelée une fédération des Etats-nations, ce qui équivaldrait à admettre la coexistence de deux niveaux de souveraineté, européenne et nationale, ce qui correspond mieux à la réalité de l'Union européenne.

Par ailleurs, Monsieur le Président, la lecture parallèle de l'article 1 alinéa 3 et de l'article 2 est de nature à prêter confusion quant à la signification de la notion de valeur. Je pense qu'il est essentiel qu'il ressorte de la lecture de ces articles qu'il s'agit bien des mêmes valeurs. Afin de mieux souligner cet aspect, j'ai proposé qu'on fasse une référence explicite à l'article 2, dans l'article 1 alinéa 3.

Monsieur le Président, la liberté de conscience et le principe de non-discrimination sont parmi les piliers de l'Europe moderne, créés comme modèle universel. Réintroduire la religion dans le texte de la Constitution, qui sera d'ailleurs un texte justiciable, comme un aspect de l'identité européenne, serait en contradiction non seulement avec la liberté de conscience et le principe de non-discrimination, mais aussi avec le progrès enregistré par l'Europe depuis le siècle des Lumières. C'est la laïcité qui fut la force motrice de ce progrès. Merci Monsieur le Président. <BRK>

4-050

NL

**Maij-Weggen (PE).** - Voorzitter, in de eerste plaats wil ik u steunen daar waar u gepleit hebt voor een intensivering van onze werkzaamheden en niet voor een verlenging van de werkzaamheden. Ik denk dat een intensivering ons helpt om op tijd ons werk af te leveren.

Dan, Voorzitter, een opmerking over het begrip federaal. Er zijn veel mensen die hier zeggen dat je dat begrip niet zou moeten opnemen. Ik hoor dat u daarover een stuk of tien, vijftien amendementen hebt gekregen. Maar dat betekent altijd nog dat er zo'n 80 mensen hier vinden dat het wèl opgenomen zou moeten worden. In de twee voorvergaderingen die ik heb bijgewoond, heb ik vastgesteld dat een meerderheid eigenlijk vond dat het moest blijven. Wij steunen dus die benadering om het federaal aspect in artikel 1 onder te brengen.

Dan, Voorzitter, artikel 2. Daar hebben ook wij een amendement ingediend om die gelijke behandeling op te nemen. Ik denk dat het erg belangrijk is omdat die gelijke behandeling dan ook verwijst naar de gelijke behandeling van mannen en vrouwen, en dat wordt door meer dan de helft van onze burgers als een heel belangrijke waarde gezien van de Europese Unie. Dus, Voorzitter, ik zou graag willen dat dat zou blijven.

Voorzitter, het aspect religie. Ik behoor tot de indieners van dat amendement maar ik vind het niet onverstandig om dit onder te brengen in de *preamble*. Als we daarover een consensus kunnen vinden, dan is dat wat mij betreft een goede oplossing.

Dan artikel 3. Ik behoor ook tot degenen die het aspect sociale markteconomie hebben ingebracht. Dat is toch wel een heel centrale Europese waarde die door de twee grootste politieke partijen ook warm wordt ondersteund. De Verenigde Staten staan altijd voor een vrije markteconomie. De oude Sovjetunie was een geleide markteconomie maar Europa heeft vanouds een sociale markteconomie, en laten we dat ook maar opnemen. Verder steunen we ook diegenen die hebben gezegd dat het aspect milieubescherming en duurzaamheid moet worden ingebracht. Misschien kun je het allemaal wel samenvatten onder de term sociaal-ecologische markteconomie. Dan heb je in een hele korte bewoording precies gezegd waar het hier om gaat.

Ten slotte, Voorzitter, behoor ik tot diegenen die absoluut vinden dat het Handvest ondergebracht moet worden in het constitutionele gedeelte van het Verdrag. Ik denk dat dat heel belangrijk is. Ik heb begrepen dat u er misschien een hoofdstuk 2 van wilt maken. Voorzitter, dat heeft mijn warme ondersteuning. Ik zie dat ik maar 1 minuut heb gesproken maar dat klopt niet want de klok ging niet aan aan het begin van mijn spreektijd. Dus ik heb echt mijn twee minuten wel vol gemaakt. <BRK>

4-051

PT

**Lobo Antunes (Ch.E/G.-PT).** - Senhor Presidente, quanto aos artigos referentes ao estabelecimento e objectivos da União, as nossas propostas de alteração baseiam-se nos seguintes princípios que consideramos fundamentais:

- manutenção da referência a uma União cada vez mais estreita entre os Estados e os povos da Europa, que consideramos traduzir o objectivo principal da União;
- preservação integral do actual acervo comunitário que constitui a base jurídica da União e que não poderá ser desmembrado sob pena de incorrerem num sério risco de retrocesso do processo de integração;
- respeito pela igualdade entre Estados e pelas suas identidades nacionais, que deverão ser preservadas inclusive no tocante à diversidade linguística da União;
- defesa da solidariedade entre Estados e entre povos enquanto princípio orientador da acção da União, que deverá permanecer no centro da construção europeia;
- defesa do princípio da suficiência de meios pelos quais a União se deverá dotar dos meios necessários para atingir os objectivos e desempenhar as tarefas previstas na Constituição;
- integração da Carta dos Direitos Fundamentais no corpo do futuro Tratado com valor jurídico vinculativo;
- finalmente, concordamos com a consolidação da jurisprudência do Tribunal de Justiça, nomeadamente no tocante ao primado do Direito da União. <BRK>

4-052

IT

**Follini (Parl.-IT).** - Signor Presidente, era inevitabile che i primi articoli portassero con sé anche le prime critiche, e ad alcune di queste mi associo anch'io, convinto che qualche dissenso leale aiuti di più che non un'adesione svogliata e poco convinta. Vorrei però, prima di tutto, segnalare un punto di consenso. Credo sia giusto il richiamo al carattere federale dell'Unione europea: la costruzione europea è la conseguenza di diverse architetture, ha aspetti federali e aspetti confederali, combina i diritti dei popoli e degli Stati, la sovranità comune dell'Unione e quella propria dei singoli paesi, ma la preminenza della caratteristica federale è il pilastro principale di questa costruzione.

Vengo ora al punto più difficile: molti di noi hanno richiamato l'esigenza che l'Europa non dimentichi le sue radici, il suo retaggio. Io sono tra questi. Questa esigenza può essere sottolineata nell'articolo 2 - quello relativo ai valori - o, forse in modo più appropriato, nel preambolo, e potrà essere ancora più concretamente ribadita quando si dovrà affrontare la questione, finora irrisolta, del rapporto istituzionale, del dialogo strutturale con le confessioni religiose. Non possiamo dimenticare il valore anche civile di questa spiritualità e, nello stesso tempo, non possiamo opporre questo valore al principio della laicità delle istituzioni. Io milito, nel mio paese, in un partito che nasce da un'ispirazione religiosa e che, nello stesso tempo, riconosce il confine che divide sfera politica e sfera spirituale. Da cattolico so bene che la laicità dello Stato è un'idea tipicamente cristiana, nasce dalla distinzione tra quanto è dovuto a Dio e quanto è dovuto a Cesare. Quello che appartiene alla mia coscienza non sempre coincide con quello che appartiene allo Stato o, in questo caso, alla federazione degli Stati. E' ovvio anche che questo confine non può nascondere il grande debito che tutto il nostro continente ha verso la tradizione religiosa e, tanto più, nell'aver propiziato le condizioni che hanno portato alla riunificazione.

Da parte mia confido che i molti emendamenti presentati su questo punto e la saggezza con cui se ne terrà conto ci aiuteranno a trovare il giusto equilibrio tra questi valori spirituali e la doverosa autonomia delle istituzioni pubbliche. <BRK>

4-053



EN

**Carey (Parl.-IE).** – Mr President, you said that the document that will be produced at the end of this process should be understandable even to school-going students. While it might be legible, it will be interpreted by lawyers. Therefore it is important that we spend a good deal of time getting the early part of it right.

I agree with what Commissioner Vitorino said earlier: that in simplifying these treaties we should not in any way be tempted to roll back on values and rights that were strongly established in previous Treaties.

I see no compelling reason for not agreeing at an early stage that the title of the Union will be "the European Union". It is a brand name that has been broadly accepted. It is a consumer-friendly name. We should stick with it.

You invited us to have a debate on the heritage of the Union. It is important that we find a formulation that reflects the different cultural traditions that have underpinned the states of Europe over the years. I would like to contribute to finding that formulation.

I support the amendments offered in writing by my colleague Mr Roche. I want to raise a number of points. In relation to Article 1, I suggest that the Union should not only respect the national identities but also the sovereignty of Member States. I support the deletion of the word "federal" because of its connotations and its lack of agreed meaning.

In relation to values, they need to be very precise in Article 2. I suggest the values should include fundamental freedoms, which is the language used in the current Treaty. In relation to Article 3(4), we should spell out the Union's objectives in the wider world, using the language agreed in the External Action Working Group.

We should be guided by the working groups' reports on what is agreed or not agreed, particularly by the Economic Governance Working Group, for example, where there was not agreement on issues such as taxation, or the document on Social Europe, on which there was significant consensus. <BRK>

4-054

FR

**Lequiller (Parl.-FR).** – Monsieur le Président, sur la crise internationale, je voudrais souligner mon total accord avec votre déclaration liminaire. Devant la division de l'Europe, les conventionnels doivent et peuvent tirer d'un mal un bien. Nous devons non pas baisser les bras, mais au contraire redoubler d'efforts pour donner une voix unique, un bras armé commun, une volonté commune à l'Europe.

L'opinion européenne jamais aussi sensibilisée qu'aujourd'hui sur le contexte international, ne comprendrait pas que l'on ne fasse pas ici le choix de l'ambition et ce, avant juin prochain. Prenons garde sinon de la sévérité avec laquelle l'opinion jugerait notre travail, qui s'ajouterait à la sévérité avec laquelle elle juge aujourd'hui la désunion européenne.

Sur notre sujet d'aujourd'hui, je voudrais vous dire, Monsieur le Président, mon soutien d'une part, aux éléments clés proposés par le praesidium que constituent les dispositions de l'article 1, relatives à la double souveraineté des Etats et des peuples d'Europe et à la gestion, sur le mode fédéral, de certaines compétences communes et d'autre part, sur la personnalité juridique unique.

Je proposerai quelques amendements. Il me paraît indispensable, comme l'a dit Dominique De Villepin, de maintenir dans le texte de la Constitution à l'article 1, les termes d'Union sans cesse plus étroite. Il me semble que revenir sur cette disposition, qui figurait dans le Traité de Rome, constituerait un signal négatif. Dans le même esprit, il me semble nécessaire d'inscrire à l'article 1, le principe de solidarité entre les Etats membres, qui constitue le fondement des politiques communes.

En second lieu, plusieurs de mes amendements visent à renforcer dans le texte les bases du projet de société. Je propose ainsi d'insérer le texte de la Charte au début de la Constitution pour plus de portée politique et symbolique. Je propose de renforcer les objectifs de l'Union en matière culturelle, en indiquant que l'Union favorise la diversité culturelle et linguistique.

Enfin, il convient de compléter les dispositions relatives aux objectifs de l'Union dans le monde en faisant expressément référence aux Droits de l'homme, à la diversité culturelle, à la préservation de l'environnement et des ressources naturelles. Je vous remercie Monsieur le Président. <BRK>

4-055

EN

**Baroness Scotland of Asthal (Ch.E/G.-GB).** – I agree with Mr Roche that the first articles of this constitution will tell the reader about the kind of European Union we are creating. I applaud the efforts of the Secretariat to communicate this in plain language that we can all understand. But as a lawyer and government minister, I need to go a step further and say that we need not only clarity; we also need to know that our constitution is written in a way that gives us legal certainty. This might mean that we need to do further work on these provisions in a different forum. I welcome the suggestion that we have two further meetings. I look forward to the further proposals from the Praesidium and others as to how we might do this.

The tone of the opening articles should tell the citizens about the genesis of the Union, that its powers come from the Member States, and why they have decided to pool sovereignty. For some, the word "federal" will do that, but it is a politically charged word. I hope we might find a better formula. I suggest we simply explain what we mean. We should coordinate certain policies at a European level to achieve goals that Member States cannot achieve alone.

On values and objectives, these articles will be used by the courts to interpret the treaty and must, therefore, reflect the competences of the Union. Higher-level aspirations might find their place in a political preamble. Personally, I would very much welcome that. Values and objectives should be easily distinguishable from each other. Values should be those on which our Union is founded: human dignity, liberty, democracy, the rule of law and respect for human rights. Objectives should be grouped in a way that reflects the substance of the current pillars. This will give coherence and help the general reader. These objectives will then need to be re-examined in the light of specific policy divisions in part 2. The objectives must reflect competences rather than aspirations.

The objectives should also note the Union's respect for the diversity of Member States – I was very pleased to hear a number of people say that – and the richness this brings to the Union.

This will give a flavour of the unique nature of the Union, the result of freely given cooperation and integration in pursuit of clearly-defined aims against a background of shared values. <BRK>

4-056

FR

**Athanasίου (Parl.-RO).** – Monsieur le Président, chers collègues, je voudrais premièrement faire deux remarques générales. La première, que cette masse significative des amendements me rend optimiste. Parce que je suis convaincu que nous finirons nos travaux dans le délai prévu.

En second lieu, je voudrais dire que je soutiens pleinement toutes les observations du groupe social-démocrate et socialiste qui ont déjà été faites.

En troisième lieu, je voudrais m'arrêter sur des questions très concrètes. Premièrement, je souhaiterais parler du fédéralisme, de la méthode fédérale. Je vais expédier le problème parce qu'il s'agit d'un sujet extrêmement délicat comme on dit dans les milieux français, mais qui doit être abordé avec sagesse et froidement. Et je crois, comme disait Paul Valéry, que nous parlons de supprimer l'expression "fédéral" au moment où l'Europe communautaire, l'Union européenne agit sur le mode fédéral dans beaucoup de domaines. C'est pour cela que je crois qu'on peut emprunter l'expression de Paul Valéry qui disait que le loup est fait de mouton assimilé. Donc, je crois qu'à cet égard, nous devons être extrêmement rigoureux en nous prononçant sur les institutions, sur les compétences parce que ça c'est le problème de la méthode fédérale. Je crois qu'on ne peut pas, en supprimant un mot ici, ne pas voir une réalité quotidienne de l'action européenne de l'Union en ce moment.

En ce qui concerne l'article 1.2, je crois qu'on ne peut modifier le mot respect que par le mot garantie. Je crois que c'est plus juridique. L'Union garantit l'identité nationale des Etats membres parce que le respect est toujours un mot familier.

En ce qui concerne l'article 2, je soutiens la formule d'introduire le principe d'égalité entre les femmes et les hommes et je crois que nous pouvons dire aussi que l'Union vise non seulement à pratiquer la tolérance, la justice, la solidarité sociale, mais aussi le progrès qui a caractérisé toute l'histoire de l'Europe - progrès à travers l'éducation permanente et la recherche scientifique.

Enfin, je voudrais que l'Europe ne joue jamais en défensive. C'est pour cela que je veux vous suggérer à l'article 3.4 de remplacer "défendre son indépendance et ses intérêts" qui me paraît très défensif par "faire valoir son indépendance et ses intérêts". Le texte coule dans le sens où il est rédigé.

Enfin, je conclus en disant que, comme disait Monsieur Fischer, je crois que notre Convention a réussi à faire le parcours que l'Europe a fait afin de donner l'équilibre des pouvoirs à la démocratie, à la tolérance en une voix politique unitaire. C'est là notre démarche et notre avenir. <BRK>

4-057

FR

**Le Président.** – Il nous reste beaucoup d'orateurs. Il faut voir le sort de ces orateurs. Ils seront dans la session suivante. Donc, chaque fois que vous prolongez un peu, vous renvoyez un de vos collègues à la session suivante. Ce n'est pas moi qui suis en cause et c'est la raison pour laquelle j'essaie de faire respecter votre temps de parole. La parole est à Monsieur Balázs. <BRK>

4-058

FR

**Balázs (Gouv.-HU).** – Merci Monsieur le Président. La coïncidence heureuse des débuts des travaux de la Convention avec la fin des négociations sur l'élargissement de l'Union offrent une possibilité unique pour relier le renouveau de l'Union avec son extension. A la formulation des principes de base, nous devrions donc prendre en considération certaines normes dont l'application avait fait preuve d'utilité lors du long processus d'élargissement.

Premièrement, les critères d'adhésion définis à Copenhague en 93 devraient trouver leur place au début du Traité constitutionnel en relation étroite avec la possibilité d'adhésion d'autres Etats européens, article 1.3, et aussi avec les valeurs fondamentales.

Deuxièmement, les identités multicolores en Europe sont chères à ses citoyens et le Traité garantit le respect de ces identités. N'oublions pas que, surtout dans la partie est de notre continent, Etats et nations ne sont pas nécessairement et toujours identiques. Des centaines de milliers, voire des millions, de Polonais, Serbes, Russes, Roumains, Hongrois et autres vivent comme minorité nationale en dehors des frontières des Etats qui portent leur nom. Pour cette raison, l'identité nationale appartient aux peuples et personnes, et non seulement aux Etats comme il est formulé sous le point 2 de l'article 1.

Troisièmement, plus l'unité de l'Union est manifestée par l'application de la méthode communautaire, par l'extension du vote à la majorité qualifiée ou par le renforcement de sa personnalité juridique, plus il faut rassurer ceux qui ont des craintes, ouvertes ou cachées, au sujet de la limitation de l'exercice de leur souveraineté nationale. Cette constatation est valable en particulier chez ceux qui ont regagné leur souveraineté nationale au cours des dix dernières années. C'est une raison supplémentaire pour considérer la participation égale des nouveaux Etats membres à la Convention à partir de la signature du Traité d'adhésion le 16 avril prochain. Merci Monsieur le Président. <BRK>

4-059

NL

**Van der Linden (Parl.-NL).** - Voorzitter, ik zou mij allereerst graag willen aansluiten bij diegenen die gepleit hebben voor een steeds hechtere samenwerking, omdat het een *acquis* is van de Europese Unie en het zou een verkeerd signaal zijn als dat niet het geval zou zijn.

Op de tweede plaats zou ik willen spreken van "burgers" in plaats van "volkeren" omdat de nationale staten eigenlijk de volkeren representeren, en het gaat hier toch meer om de burgers.

Op de derde plaats wil ik me graag aansluiten bij diegenen die ervoor gepleit hebben om het woord "federaal" te handhaven. Mijn hoofdpunt is eigenlijk dat wij het Handvest moeten zien als het hart en de ziel van de nieuwe grondwet. Dat is ook het geval bij de nationale grondwetten. Ik zou tegen die achtergrond er nog een keer aan willen herinneren dat Laken zowel het opnemen van het Charter in het basisverdrag alsook het toetreden tot EVRM als twee aan elkaar gekoppelde zaken heeft neergezet. En ook de werkgroep-Vitorino heeft op dat punt geen misverstand laten bestaan.

Nu deze tekst de kernformule bevat, betekent dat dat er grote risico's bestaan. Immers, er is unanimité noodzakelijk voor enige toekomstige beslissing van de Europese Raad met betrekking tot onderhandelingen over de modaliteiten van de toetreding. Dat betekent dat één enkele lidstaat in de toekomst dat proces zou kunnen blokkeren cq., zou kunnen vertragen en daarmee zou de koppeling van de twee, namelijk aan de ene kant het integraal onderdeel van de constitutie en aan de andere kant de toetreding tot EVRM, geblokkeerd kunnen worden. Daarom sluit ik me graag aan bij al diegenen die een amendement hebben ingediend om daar meer zekerheid over te geven en het woord "*can*" ofwel door "*shall*" ofwel door "*commits itself to*" ofwel "*shall request to accede*" te vervangen omdat er nu naar mijn oordeel zekerheid moet bestaan met betrekking tot de toetreding tot het EVRM-Verdrag. Het kan niet zo zijn dat wij in het Europa dat wij dichter bij de burgers willen brengen, het hart en de ziel, namelijk de plichten en de rechten van de burgers, want daar gaat het in belangrijk mate om, ergens via een *bypass* aan het Verdrag hechten. Daarom pleit ik ervoor om dat een integraal onderdeel te laten zijn van de constitutie en eventueel als compromis hoofdstuk 2 te reserveren voor het integrale Charter.

Tot slot, artikel 3, lid 4. Daar zou ik graag, zeker na de interventie van minister van buitenlandse zaken van Duitsland de heer Fischer, toegevoegd willen zien dat de Europese Unie ook een bijdrage levert aan de internationale rechtsorde. In de huidige actualiteit lijkt het mij geen overbodige luxe dat de Europese Unie ook een bijdrage levert aan het handhaven van de spelregels van de internationale rechtsorde. <BRK>

4-060

FR

**Le Président.** – Je voudrais faire une remarque concernant le mot "peuple" et le mot "citoyen". Le mot "citoyen" est une expression politique à laquelle s'attachent des droits, généralement civiques ou électoraux. Il faut penser que la population, c'est autre chose. Dans la population, il y a les enfants, il y a des gens qui ne sont pas organisés ou qui n'ont pas de droits reconnus. Par conséquent, ce n'est pas neutre de dire "peuple" ou de dire "citoyen". Si vous prenez "citoyen", vous prenez ceux qui ont une expression politique, des droits politiques. Si vous prenez "peuple", vous prenez tout le monde, la communauté humaine européenne. Dès lors, il faudra voir quelle est l'expression la plus adéquate pour un sujet de ce type. Nous tiendrons compte, bien entendu, de votre avis. Le prochain orateur est Monsieur Michel. Ensuite, nous prendrons des cartons bleus. <BRK>

4-061

FR

**Michel (Ch.E/G.-BE).** – Monsieur le Président, pour commencer je voudrais, parlant des événements internationaux actuels, y voir, comme vous, un motif très puissant pour nourrir une ambition commune très forte. Ainsi, nos conclusions doivent, de mon point de

vue, refléter cette ambition. Sur le fond, je me bornerai à quelques points, en référence aux amendements que j'ai déposés avec d'autres conventionnels belges.

Premièrement, sur le premier article, il me paraît essentiel que le caractère dynamique de la construction européenne soit consacré. La référence à la perspective d'une Union sans cesse plus étroite doit, dans ces conditions, y figurer. Par ailleurs, en adoptant la Constitution, les Etats membres conféreront des compétences à l'Union. C'est toutefois l'Union qui exercera les compétences qui lui sont ainsi attribuées et c'est donc l'Union qui doit, par l'intermédiaire de ses institutions, coordonner les politiques et non comme l'indique le projet d'article 1, les Etats membres. Il va de soi que la suppression du mot "fédéral" n'a guère de sens. Ce serait, de mon point-de-vue, un pas en arrière.

*(L'orateur poursuit en néerlandais)*

Ten tweede, met betrekking tot de artikelen 2 en 3: de waarden en de doelstellingen van de Europese Unie moeten duidelijk van elkaar worden onderscheiden. De eerste vormen de grondslag voor het optreden van de Unie, de tweede betreffen de doelstellingen ervan. Gelijkheid, gerechtigheid, verdraagzaamheid en solidariteit moeten tot deze waarden behoren. Daarentegen moeten de veiligheid van de Unie, de bescherming van het leefmilieu, de strijd tegen maatschappelijke uitsluiting en tegen discriminatie, het bevorderen van gelijkheid tussen man en vrouw en de toegang voor allen tot kwalitatieve diensten van algemeen belang tot de doelstellingen behoren.

*(L'orateur poursuit en français)*

Je suis heureux que le praesidium n'ait pas inscrit de référence à un héritage religieux au titre des valeurs. Nous devons, bien entendu, assurer les libertés religieuses mais l'Europe n'est ni monoreligieuse ni monoculturelle et son modèle est fondé sur l'impartialité de l'Etat. Il ne serait ni sage ni juste d'introduire un élément qui donnerait à penser que l'on a une lecture partielle de l'histoire européenne.

Troisièmement, la Charte ne peut être reléguée dans un document annexe. J'opte donc résolument pour son intégration dans une seconde partie de la Constitution. Il conviendra, dès lors, d'éviter que la première partie de la Constitution, s'agissant de la citoyenneté ou de la non-discrimination, ne répète des droits qui figurent déjà dans la Charte. C'est précisément l'objet de nos amendements.

Quatrièmement, je suis évidemment favorable à ce que l'Union adhère à la Convention européenne des droits de l'homme. J'ajoute qu'il faudra aussi prévoir dans la Constitution une base juridique permettant d'adhérer à d'autres instruments de protection des droits fondamentaux. Je vous remercie. <BRK>

4-062

FR

**Abitbol (PE).** – Monsieur le Président, de temps en temps, en écoutant les débats d'aujourd'hui, notamment les interventions du ministre allemand, du ministre français et encore du ministre belge des Affaires étrangères, je me dis qu'il faudra peut-être remplacer méthode communautaire par méthode Coué. Je ne sais pas comment cela se traduit dans les autres langues, mais en français, il me semble que la méthode Coué a fait aujourd'hui de grands progrès. A l'évidence, nos débats ont quelque chose d'assez surréaliste dans le climat actuel. Je vous rappelle quand même que le 17 de ce mois, une décision a été prise au Conseil européen. Une semaine plus tard, lundi dernier, au Conseil des ministres, on a eu une décision contraire ou une absence de décision et la division a été manifeste.

Pour en revenir à la Constitution, il y a un mot qui me choque beaucoup dans le projet. Il se trouvait déjà d'ailleurs dans les Traités précédents et j'ai entendu avec plaisir de nombreux orateurs, venant d'ailleurs d'horizons différents, proposer de le supprimer et de le remplacer par "souveraineté". Il s'agit du mot "identité nationale". Vous disiez vous-même, Monsieur le Président, que nous faisons un texte de droit public. Mais l'identité nationale n'est pas un terme de droit public. Elle n'existe, à ma connaissance, dans aucune Constitution, pas dans la française. Qu'est ce que l'identité nationale des Etats membres? Est-ce la baguette pour les uns, le chapeau tyrolien pour les autres? Il me semble qu'il y a un concept juridique qui est la souveraineté. Cette souveraineté restera en toute hypothèse pour l'ensemble des domaines politiques propres aux Etats membres. Il me semble que remplacer "identité", qui en outre, est un mot, en tout cas dans le vocabulaire politique français, assez connoté ethnique, par le mot "souveraineté" ne devrait choquer aucun des conventionnels. <BRK>

4-063

EN

**Duff (PE).** – I was anxious to respond to those who say that they wish to insist that we make it clear that Member States confer the power that the Union enjoys. That is quite correct and we should say that, but it is not the end of the story. The fact is that the Union is greater than the sum of its parts and that the genius that we have created for ourselves over the last fifty years has established a federal authority that finds and articulates the common interest of all the Member States. That is why, feeling more self-assured about the exercise of power at a federal level, we are changing from a treaty system to a proper constitution. We should not be shy of what we have achieved. I can see no reason for being defensive, and absolutely every reason for speaking the truth in the clearest possible way. That includes the use of the word "federal". <BRK>

4-064

FR

**Barnier (CE).** – Merci Monsieur le Président. A propos de l'ambiance dans laquelle nous travaillons et les bruits de guerre qui nous entourent, je trouve comme vous, tout comme beaucoup de ceux qui se sont exprimés, qu'il est très important que le signal qui sort aujourd'hui de cette Convention soit un signal de volontarisme et non pas de résignation ou de fatalisme. Et c'est bien l'ambiance que j'entends et que j'écoute avec beaucoup de satisfaction. Le volontarisme vaut pour les délais dans lesquels nous travaillons et qu'il nous faut respecter. Il vaut aussi sur le fond du projet auquel nous travaillons, y compris dans les aspects qui sont aujourd'hui, dans les Traités, les plus incertains ou les plus imparfaits. Je pense à la politique étrangère de sécurité commune qui est interpellée par la crise irakienne et l'aspect de la défense qui a justifié l'amendement que je me suis permis de présenter.

Il faut aller plus loin, tirer les leçons de cette crise, mais tout d'abord, ne pas revenir en arrière. Et voilà pourquoi j'accueille avec beaucoup de faveur de nombreux amendements qui préservent l'acquis et le modèle communautaires dans les valeurs, les principes et les politiques. Cette réflexion rejoint celle que plusieurs ont faite de réécrire peut-être cette belle phrase qui figure dans le Traité et selon laquelle nous sommes dans une Union sans cesse plus étroite. En effet, quand on est dans une Union sans cesse plus étroite, c'est qu'on n'accepte pas de revenir en arrière.

Je terminerai en parlant du mot "fédéral" qui suscite beaucoup de débats, Monsieur Anthanasiou en a parlé avec beaucoup de sagesse tout à l'heure. Je veux simplement dire qu'il ne faut pas confondre ce mot avec un autre mot qui est celui de "centralisation". Nous avons des pratiques fédérales. Nous avons certaines compétences exercées de manière fédérale et c'est naturellement pour moi le principe de subsidiarité, dont le contrôle fait partie intégralement du modèle fédéral, qui sera au cœur de notre Constitution. <BRK>

4-065

FR

**Van Lancker (PE).** – Merci Monsieur le Président. J'ai levé mon carton bleu à l'occasion de l'intervention de Dominique de Villepin parce qu'il a plaidé pour l'intégration du respect des objectifs environnementaux dans toutes les politiques de l'Union. Je voudrais ajouter qu'il existe un article comparable, horizontal aussi, en matière d'égalité entre hommes et femmes dans l'article 3 paragraphe 2 de l'actuel Traité et dans le groupe de travail social, un grand nombre de Conventionnels a plaidé pour un caractère transversal de certains objectifs sociaux. C'est pour cela que je rejoins les propos qu'a déjà tenus Pervenche Berès et qui consistent à dire qu'il nous faut ajouter, dans l'article 3, un article transversal horizontal.

J'attire aussi votre attention sur les amendements introduits par les conventionnels belges où l'on lit par exemple que l'Union veille dans la définition et la mise en œuvre de ses politiques et actions à ce qu'elles soit compatibles entre elles et prennent en considération l'ensemble des objectifs de l'Union. Je crois qu'en défendant cette formulation, nous avons assuré la transversalité de certains objectifs de l'Union. Je vous remercie. <BRK>

4-066

EN

**Heathcoat-Amory (Parl.-GB).** – On this federal business I disagree with Mr De Villepin and others who have asked for the phrase "federation of nation states" to be included, simply because it is a contradiction in terms. If one transfers powers to the centre, one is left with states in the American sense but not nation states as understood by the public. If we are trying to write something that is understandable by the public, let us use words in a way it will understand. It is a complete confusion. That phrase should certainly not find its way into the final product.

You, Mr President, used the phrase "high contracting parties". Again, this is not a phrase we should ever use in public. Nevertheless it is in Article 1 of both the existing Treaties - not in the preamble, but in Article 1 - to express an important truth that what we have created so far is a Union of Member States. It derives its powers from the Member States.

By contrast, Article 1 of the new treaty derives its powers not from Member States but from a constitution. That is a very big change, not described properly in the explanatory notes. It is a regrettable change. We therefore need to re-establish the existing relationship even if we avoid that rather awful phrase "high contracting parties". <BRK>

4-067

FR

**Le Président.** – Nous allons suspendre nos travaux et les reprendre à 18h15. Nous avons un problème: nous pouvons encore avancer un peu sur les articles 1,2 et 3 mais cela signifie que nous aurons du mal à aborder les articles suivants. Il y a encore vingt orateurs, il y en a encore pour une heure de débat. On s'arrêtera à 19h pour que Jean-Luc Dehaene aie quand même le temps d'ouvrir son débat sur les articles suivants. Je m'en excuse auprès des orateurs. Ils seront inscrits en tête de la session supplémentaire suivante. Nous reprenons à 18h15.

*(La séance, suspendue à 17h50, est reprise à 18h25)* <BRK>

4-068

FR

## PRÉSIDENCE DE M. J.-L. DEHAENE

*Vice-président*

**Le Président.**- Nous allons reprendre notre séance. Je donne la parole à M. Brok. <BRK>

4-069

DE

**Brok (PE).** - Herr Präsident! Herzlichen Dank für die Gelegenheit, hier einige Anmerkungen zu machen. Ich glaube, dass die Uneinigkeit, die Europa in den letzten Tagen und Wochen in der großen Frage von Krieg und Frieden gezeigt hat, kein Anlass für uns sein sollte, jetzt größere Schwierigkeiten zu sehen, sondern wir sollten sie als eine Chance begreifen. Ich habe den Eindruck, dass unsere Bürger schon sehr viel mehr über die Notwendigkeit europäischer Einigung verstanden haben, nämlich, dass Europa nur dann einen wirklichen Einfluss hat, wenn wir zusammenstehen, und dass das auch von den Regierungen langsam akzeptiert werden muss.

Aus diesem Grund möchte ich gleich auf einen Punkt in Artikel 1 zu sprechen kommen. Bisher ist die Union auf der Grundlage der Mitgliedstaaten aufgebaut. Jetzt wird gesagt, "der Mitgliedstaaten und der Völker". Ich würde sehr viel eher sagen, dass die Union auch auf der Grundlage der Bürger gegründet ist, der Staaten und der einzelnen Bürger. Ich glaube, dass das dem entsprechenden Anspruch näher kommt, zumal wir die Charta der Grundrechte in die Verfassung einarbeiten möchten, wo ja gerade der einzelne Bürger - das Individuum - eine Rolle spielt. Übrigens ist das aus unserer Sicht, der EVP, ein wichtiger Punkt. Wir hätten gerne, wenn diese Rechte des Bürgers und die Charta der Grundrechte am Anfang der Verfassung stünden. Ich glaube, darüber werden wir im Laufe der nächsten Wochen noch intensiv zu diskutieren haben.

In diesem Zusammenhang sind natürlich auch Fragen, die hier erörtert werden müssen, wie das Gleichheitsprinzip insgesamt und die Frage der Gleichheit der Geschlechter von großer Bedeutung, denn sie müssen in dieser Verfassung vorgesehen werden, aber es stellt sich aufgrund dieser Zuordnung natürlich die Frage, an welcher Stelle.

Herr Präsident, wir haben heute eine intensive Diskussion gehabt über den Begriff "föderal". Ich weiss, dass dieser Begriff in unseren Ländern eine unterschiedliche Bedeutung hat. Wir sollten darauf achten, dass wir uns nicht an Begriffen festbeißen und auf diese Art und Weise in der Sache womöglich nicht vorankommen. Aus meinem Verständnis - einem konföderal-europäischen Verständnis - von föderal heraus, das ja dezentral bedeutet, möchte ich deutlich machen, dass wir die Europäische Union auf einer föderalen Ordnung begründen möchten, in der es eine wirkliche Balance zwischen dem Gemeinschaftseuropa und den Gliedern gibt, um auf dieser Grundlage entsprechend voranzukommen, aber eben im Sinne dessen, was heute im Vertrag steht, nämlich einer immer engeren Union. Wir können feststellen, das ist ja auch ein Indiz dafür, dass die Europäische Union überall dort erfolgreich ist, wo sie als Gemeinschaftseuropa auftritt und überall da nicht erfolgreich ist, wo sie als intergouvernementales Europa auftritt. Das zeigt sich jetzt gerade auch im Bereich der Außen- und Sicherheitspolitik.

Wichtig für uns als Europäische Volkspartei ist es zweifellos, dass das religiöse und humanistische Erbe der Europäischen Union und der Gottesbezug einbezogen werden, und dass wir die Frage des Staat-Kirche-Verhältnisses wie auch die Beteiligung der Kirchen wie anderer Organisationen am strukturellen Dialog festgemacht wissen möchten.

Herr Präsident, in Artikel 3 sind eine Reihe von wichtigen Begriffen festgeschrieben. Wir möchten gern, dass die soziale Marktwirtschaft als eine tragende Formel in diese Verfassung aufgenommen wird. Die soziale Marktwirtschaft bringt die Balance zwischen den Notwendigkeiten sozialer Gerechtigkeit und den Entwicklungsfähigkeiten des Marktes mit sich. Der Markt muss die Leistungen erbringen, aus denen das Soziale finanziert wird. Auf der anderen Seite muss es auch Rahmenbedingungen geben, in denen der Markt stattfinden kann. Ich meine, dass der Begriff der sozialen Marktwirtschaft - verbunden natürlich mit Preisstabilität, inflationsfreiem Wachstum und Anderem - eine wesentliche Rolle spielt.

Lassen Sie mich noch zur Außen- und Sicherheitspolitik eine Bemerkung machen, zu den entsprechenden Artikeln 4 und 10. Ich meine, dass die Solidaritätsklausel in den Vertrag eingefügt werden sollte, aber als eine Option für die Glieder. Warum machen wir es nicht so, dass wir den Artikel 5 des WEU-Vertrages beispielsweise hinzufügen, es aber jedem einzelnen Mitgliedsland freigestellt wird, ihn zu unterzeichnen? Ich glaube, damit kommen wir in der Solidaritätsklausel einen entscheidenden Schritt weiter, aber wir überlassen es immer noch den Staaten, die sich bisher als nicht bündnisgebunden und neutral verstehen, diesem schrittweise zu folgen. Ich glaube, dass das für den Ratifikationsprozess auch den entsprechenden Ansatz darstellt. Dass wir allerdings eine solche Solidaritätsklausel anstreben müssen, dass wir im Bereich der Außen-, Sicherheits- und Verteidigungspolitik vorankommen müssen, zeigt nicht nur die gegenwärtige Krise, sondern auch eine langfristige Sicht.

Wir haben eine Europäische Union, die eine gemeinsame Währung hat, einen gemeinsamen Binnenmarkt, eine gemeinsame Rechtsordnung, die im Bereich der Rechts- und Innenpolitik zu gemeinsamen Positionen kommt und gemeinsam zu offenen Grenzen kommt.

Das heißt, wir haben eine Europäische Union, in der Angriffe auf einen Teil gegen die Interessen des Gesamten gerichtet sind, so wie wir dies früher von der Definition nur von einem Staat her kannten. Ich glaube, dass es von daher nicht akzeptabel ist, dass wir in Zukunft Regionen mit unterschiedlicher Qualität von Sicherheit in der Europäischen Union haben. Dass dies komplementär und in Zusammenarbeit mit der NATO zu geschehen hat - all das werden wir später noch intensiver zu erörtern haben -, versteht sich von selbst, das darf kein Widerspruch sein, denn es ist nicht finanzierbar und auch von der Sache her nicht sinnvoll. Es sollte gerade in diesen Tagen deutlich sein, dass wir durch eigene Fähigkeiten, schnelle Entscheidungsprozesse, die Einführung von

Mehrheitsentscheidungen im Bereich der Außenpolitik - damit ein Vakuum gefüllt werden kann - vorankommen können, weil dies die einzige Chance ist, Stärke zu beweisen, und diese allein macht uns fähig, wirklicher Partner der Vereinigten Staaten von Amerika zu sein. Wenn das transatlantische Bündnis eine Chance hat, dann nur, wenn es auf einer partnerschaftlichen Basis fußt, aber dies liegt allein hier an uns in diesem Konvent! <BRK>

4-070

FR

**Le Président.** – Nous revenons maintenant aux interventions d'une durée de deux minutes. La parole est à Monsieur Kirkhope. <BRK>

4-071

EN

**Kirkhope (PE).** – The Laeken Declaration rightly stated that the EU should not intervene in matters by their nature best left to Member States. The reason for that is clear. If the Union intervenes in such areas people feel that their national identities are under threat. Therefore respect for national identity should be at the forefront of our minds when we consider the various drafts of the texts over the coming weeks.

I am extremely pleased at the Praesidium's draft of Article 1(2), which states that "the Union shall respect the national identities of its Member States". I have asked that this Article be amended to make it crystal clear that the Union will also respect their national sovereignties, however defined. If the Union does not respect the sovereignties, it cannot respect national identities and the future of the Union could be threatened.

The embodiment of national sovereignty is, in my view, the will of the people. That is why, through the convention process, I have gone to great lengths to stress the importance of elected institutions in the Union. The supremacy of national parliaments should be protected, both from unelected European institutions and also from over-zealous governments with too much executive power, as is the case in the UK at present. The European Parliament should play a bigger role in the European decision-making process.

For the same reason, I would urge fellow convention members to support my proposal for an additional Article 1(4), specifying that the people of each Member State shall be consulted by referenda, where permitted by national constitutions, before ratification of the final text of the convention by Member States' governments.

If the people, consulted in separate national referenda, unanimously support the final text of the convention, they will have no reason to feel that their national identities have been threatened.

Winston Churchill said: "Trust the people." That is terribly important in the work we are carrying out and the conclusions we reach. If we do not trust the people we risk losing their trust in us. <BRK>

4-072

FI

**Vanhanen (Parl.-FI).** - Arvoisa puheenjohtaja, onnittelut puheenjohtajistolle siitä, että se on saanut ensimmäiset artikkelit hyvin tiiviiseen muotoon. Ensimmäiseen ja tärkeimpään artiklaan teen useita periaatteellisesti tärkeitä muutosehdotuksia. Ensimmäiseksi en halua käyttää uudesta sopimuksesta nimeä perustuslaki vaan perustuslain sopimus, jossa sana sopimus kuvaa asiakirjan luonnetta jäsenvaltioiden välisenä sopimuksena. Toiseksi on haettava muotoilu, jossa ei sanota, että unioni perustetaan nyt uudelleen, ja kolmanneksi en hyväksy mainintaa liittovaltion tapaan käytettävästä toimivallasta. Nykyisissä sopimuksissa ei ole tätä liittovaltioluonnehdintaa. Miksi se esitettäisiin nyt? Jos se otetaan mukaan, kertoisi se pyrkimyksestä muutokseen, joka herättäisi suuria ristiriitoja. Lisäksi haluan, että unionin arvoissa mainitaan tasa-arvo, vähemmistöjen oikeudet ja avoimuus. Unionin tavoiteartikla on määriteltävä siten, että se ei luettele sellaisia liian yleisiä tavoitteita, joihin unionin toimivalta ei ulotu. Tavoitteiden on oltava supusoinnussa toimivallan kanssa. <BRK>

4-073

ES

**Palacio Vallelersundi (Ch.E/G.-ES).** -Señor Presidente, hoy la Convención entra en una nueva etapa, la etapa de redacción. Es una etapa importante y es un momento difícil. La imagen de Europa es sombría, pero como decía el Sr. Barnier hace un momento, nosotros no somos fotógrafos, somos visionarios, somos diseñadores, somos convencionales. Recordando las palabras del Presidente Giscard al comienzo de esta sesión, es verdad que se ciernen dudas y angustias sobre nuestra tarea, pero también decía el Presidente Giscard, que las situaciones complejas han servido de espoleta para fortalecer la construcción europea y daba el ejemplo de cómo nace el Consejo Europeo.

Hoy más que nunca la Convención es necesaria, hoy más que nunca la Convención es la respuesta, hoy más que nunca tenemos que estar a la altura y trabajar sin desmayo, con tenacidad, con esperanza; la tenacidad y la esperanza son el resultado del optimismo,

atemperado por el conocimiento. La Convención tiene que servir de catalizador de las energías de nuestra Europa de 27 más 1, de esa Europa que queremos diseñar para los próximos decenios, una Europa ambiciosa y realista.

Y permítanme hablar de los fundamentos, de los valores; nuestra Europa tiene muy claras y muy fuertes señas de identidad: la democracia, la separación de la Iglesia y del Estado, el respeto de los derechos humanos, el imperio de la ley, la economía social de mercado. Eso es lo que se refleja de forma principal en estos primeros artículos y en la Carta que vamos a incorporar.

Estos principios y valores, los tenemos que combinar en una doble dirección: por una parte, la Convención tiene que dar un mensaje político, claro y fuerte, a la ciudadanía, y por lo tanto, tener una redacción asequible y una redacción clara, límpida; por otra parte, el resultado último de la Convención es un texto jurídico, justiciable ante los tribunales y por lo tanto habremos de incorporar el rigor jurídico.

Señor Presidente, hoy más que nunca son válidas las palabras del Presidente Giscard d'Estaing en una entrevista: la tarea de la Convención es conjugar lo imposible y lo necesario. <BRK>

4-074

FR

**Le Président.** – Merci beaucoup. Le débat sur le projet des articles 1 à 3 est terminé. Nous passons au point suivant de l'ordre du jour. <BRK>

4-075

DA

**Debat om udkastet til artikel 5, 6 og 7**

DE

**Aussprache über den Entwurf der Artikel 5, 6 und 7**

EL

**Συζήτηση επί του σχεδίου άρθρων 5, 6 και 7**

EN

**Debate on draft articles 5, 6 and 7**

ES

**Debate sobre los proyectos de artículos 5, 6 y 7**

FR

**Débat sur le projet d'articles 5, 6 et 7**

IT

**Discussione sul progetto degli articoli 5, 6 e 7**

NL

**Debat over het ontwerp van artikelen 5, 6 en 7**

PT

**Debate sobre os projectos de artigos 5º, 6º e 7º**

FI

**Keskustelu luonnoksesta artikloiksi 5, 6 ja 7**

SV

**Debatt om utkastet till artikel 5, 6 och 7**

4-076

FR



**Le Président.** – Comme le président l'avait annoncé avant l'interruption et comme il n'y a pas de liste séparée d'orateurs sur les articles 5, 6 et 7, je vais, avant de donner la parole à l'orateur suivant, vous donner quelques indications sur la façon dont le praesidium a rédigé ces articles et voit les amendements tels qu'ils ont été déposés.

L'article 5 est l'article qui intègre la Charte dans la Constitution. Je pense que le praesidium a ici essayé de suivre très clairement le consensus qui s'était dégagé dans le groupe présidé par Antonio Vitorino en intégrant la Charte et l'adhésion de l'Union à la Charte des droits de l'homme de Strasbourg. En fait, quand nous voyons la plupart des amendements sur cet article 5, le point principal est de savoir à quel endroit nous mettrons la Charte dans le Traité. A la lumière des interventions entendues en séance publique, nous devons faire une proposition. Le praesidium a ouvert deux options mais il est clair que dans les interventions, il y en a aussi une troisième qui est celle de mettre la Charte au début du Traité constitutionnel. C'est donc un des points qu'il faudra trancher.

Dans les articles 6 et 7, je pense qu'il y a un point important à trancher. Il s'agit du fait que certains trouvent que ces articles font double emploi avec la Charte. Et donc, il y aura un choix à faire. Le praesidium les a maintenus du fait de leur très grande importance. Mais je pense effectivement qu'il faut prendre en considération la question de savoir si l'intégration de la Charte fait qu'on ne répète pas un certain nombre de choses dans d'autres parties du Traité constitutionnel. C'est donc un point sur lequel il sera important que vous vous exprimiez, ce que vous avez d'ailleurs déjà fait partiellement par voie d'amendements.

A l'article 6, nous nous sommes limités strictement au texte du Traité actuel. Dans les amendements se pose la question de savoir si cet article 6 est limité aux citoyens de l'Union ou bien s'il faut lui donner une portée plus large. Dans le Traité actuel, c'est clairement limité aux citoyens de l'Union. La question est également de savoir s'il faut étendre l'article à d'autres discriminations. C'est la voie qu'indiquent certains des amendements.

Le point sur le double emploi avec la Charte ou non se pose clairement, encore plus, dans l'article 7 sur la citoyenneté où il faut bien reconnaître que les points que nous avons cités sont effectivement redondants avec ceux de la Charte. Par conséquent, après avoir entendu l'assemblée plénière, il faudra que nous tranchions. C'est là un principe général qu'il faudra fixer. Il faudra voir si nous nous limitons à ce qu'il y a dans la Charte en ne répétant pas ailleurs ce qu'on y trouve déjà ou bien si nous croyons qu'au vu de leur importance, il faut répéter certains articles.

Voilà les éléments que je voulais vous présenter suite aux réflexions du praesidium. Je donne la parole à Monsieur Duff. <BRK>

4-077

EN

**Duff (PE).** – I agree with all those who say that whatever we do, we should not retreat from the present state of integration. Article 2 of the Maastricht Treaty refers to the necessity of sustaining the *acquis communautaire* in full. This is dropped from the Praesidium's draft. I wonder if that is prudent.

We need to filter into Articles 3(2) and 3(3) the non-discrimination clause presently found in Article 13, and to insert in Article 3(5) the principle of transparency and good governance, which will appear with more precision further on. I should like us to refer also to culture in both Articles 2 and 3.

As far as the Charter is concerned, a second chapter, part 1, would be a visible and appropriate way of inserting it. Then, as Mr Dehaene has intimated, Article 7 could be radically shortened, simply referring to the existence of this concept of citizenship.

Concerning religion and Almighty God, he is responsible for bringing Christendom, Judaism and Islam graces, faith and duties, but he is not responsible for the flowering of liberal democracy and fundamental rights and therefore he should not appear in our constitution.

Amen.

(Laughter and applause) <BRK>

4-078

SV

**Hjelm-Wallén (Ch.E/G.-SE).** - Herr ordförande! Jag anser att det är nödvändigt att inledningsvis slå fast att det är medlemsstaterna som är fördragets herrar. Detta måste tydliggöras genom att vi talar om höga fördragslutande parter och om ett konstitutionellt fördrag. Fördraget kan naturligtvis kallas för konstitution i dagligt tal, men inledningsvis måste vi använda korrekta benämningar, som jag tycker bör återfinnas i artikel 1.

I denna diskussion har många använt beteckningen "federal". Det verkar dock som om det begreppet förvirrar mer än det klagör. Jag hoppas också att det nu är tydligt att vi står fast vid benämningen på vår union, nämligen att den skall heta Europeiska unionen och ingenting annat.

I artikel 1 vill jag också ha in skrivningar om öppenheten. Detta finns idag med i unionsfördraget i artikel 1 och med tanke på vad som sades i Laekendeklarationen om behovet av öppenhet, vore det illa om vi tog ett steg tillbaka i det avseendet. Jag utgår ifrån, som även Duff nämnde, att öppenheten kommer med och då redan i den första artikeln.

När det gäller artikel 2 tillhör jag dem som vill ha en skrivning om jämställdhet mellan kvinnor och män. Däremot vill jag inte ha in något om religion och Gud i fördraget - inte i denna artikel och ingen annanstans heller.

I artikel 3 tycker jag att miljön har fått en väl undanskymd plats. Det måste uttryckas tydligare vad vi vill när det gäller miljön, och vi har lämnat in skrivningar om det. Jag saknar vidare en del goda förslag som den sociala arbetsgruppen lämnade in, t.ex. rätten till gott arbete, lika möjligheter för minoriteter och barnens rättigheter. Jag tycker att det vore viktigt att få in detta i artikel 3. Genom artikel 3 hoppas jag också att vi skall kunna vara litet bredare ut mot världen och slå fast unionens öppenhet mot omvärlden, att vi skall vara aktiva i arbetet att bygga en bättre värld. <BRK>

4-079

FR

**Barnier (CE).** – Monsieur le Président, comme vous nous y avez invité sur les articles suivants, je voudrais faire deux observations sur l'article 5 et l'article 6 et la question de la Charte. Nous avons sur cette question un problème politique et un problème juridique qu'il nous faut régler. Il nous faut les régler tous ensemble et en même temps.

Le problème politique est de, à partir du travail considérable qui a été fait pour la Charte, donner dans la Constitution à laquelle nous travaillons de la force et de la lisibilité à cette Charte vis-à-vis des citoyens. Ce serait un signe tangible pour démontrer, par un premier grand signal, que nous confirmons la Communauté de valeurs à laquelle nous appartenons ensemble. Voilà pourquoi, comme d'autres, comme le groupe de travail qu'a présidé Antonio Vitorino, je souhaite que cette Charte figure intégralement dans la Constitution et qu'elle ait une force contraignante. La meilleure place serait probablement, comme certains le souhaitent et comme je le souhaite moi-même, de la placer en partie 2 de la Constitution. Il faudrait que cette partie 2 soit spécifiquement toute la Charte.

Si on règle ainsi le problème politique vis-à-vis des citoyens, on ne règle pas pour autant le problème juridique qui est celui de la lutte contre la discrimination. Nous visons cette affaire à l'article 6. Je pense qu'il faut quand même, dans la première partie de la Constitution, avoir une base juridique que ne donne pas la Charte. En effet, précisément, cette Charte, telle qu'elle est rédigée, ne crée pas de compétences. Elle ne permet pas d'adopter des actes juridiques ou législatifs pour, si le cas se présente, et il se présentera, empêcher ou lutter contre les discriminations sur la base du sexe, de la race, de l'origine ethnique, de la religion, des convictions, du handicap ou de l'orientation sexuelle.

Par conséquent, ma recommandation serait d'intégrer la Charte dans la partie 2 de la Constitution, et régler de ce fait le problème politique, et de préserver la base juridique dont nous avons besoin, par l'article 6. Si nous ne le faisons pas, nous retombons sur un autre problème politique qui serait un recul par rapport à l'acquis communautaire qui, lui, permet, à l'article 12 et 13 du Traité de la Communauté, d'avoir des actes juridiques pour lutter contre la discrimination. <BRK>

4-080

IT

**Paciotti (PE).** - Signor Presidente, forse abbiamo fatto un errore a intitolare l'articolo 2 ai valori dell'Unione. Come ci ha detto il *Praesidium*, in realtà si tratta di principi fondamentali la cui violazione può comportare le sanzioni previste dall'articolo 45. E' dunque del tutto fuori luogo inserire in questa sede la menzione di tradizioni religiose, di radici greco-romane, di Dio come fonte di verità, bontà o bellezza, perché i valori e i principi che vengono indicati in una Costituzione devono poi ispirare obbligatoriamente l'azione delle istituzioni pubbliche; e dunque, se vi fossero richiami alle tradizioni religiose, le istituzioni non sarebbero più laiche. Né si può dire che in queste tradizioni c'è la storia dell'Europa: se si dovesse fissare l'identità europea sul passato, l'Europa assomiglierebbe a un fiume di sangue. Piuttosto, fra i principi fondamentali dell'articolo 2 dovrebbero essere ripresi i classici principi di *liberté, égalité, fraternité*, cioè vanno aggiunti alla libertà anche l'uguaglianza e la solidarietà, perché l'Unione europea non ammetterebbe fra i suoi membri uno Stato che violasse il principio di uguaglianza o che lasciasse morire di fame i suoi membri più deboli, i suoi cittadini più deboli.

Concordo con quanto hanno detto, per esempio, Ben Fayot e Jürgen Meyer, e quindi aggiungo poche cose. I diritti fondamentali dei cittadini, secondo me, devono figurare come prima parte della Costituzione e non essere ripetuti in altri singoli articoli; le basi giuridiche per le singole politiche possono trovare posto nella seconda parte della Costituzione. Io credo che sia incomprensibile, come ha detto il Presidente Giscard, che si possa proporre di cancellare il primo comma dell'articolo 3; credo, anzi, che nell'articolo 3, al punto 4, dobbiamo rispecchiare la volontà comune dei nostri popoli i quali ci chiedono, e con molta evidenza in questi giorni, che l'azione esterna dell'Unione si ispiri piuttosto al rifiuto della guerra come mezzo di risoluzione delle controversie internazionali. <BRK>

4-081

IT

**Musccardini (PE).** - Presidente, anche recenti avvenimenti internazionali dimostrano la necessità di un Trattato che rispecchi al massimo le istanze delle diverse realtà nazionali. Dobbiamo procedere tenendo conto delle realtà che ci circondano, delle culture che rappresentiamo e degli obiettivi che possiamo raggiungere. La politica è l'arte di saper coniugare le aspirazioni a lungo termine con le contingenze e le condizioni obiettive. Il dibattito in corso ha dimostrato la volontà di molti di riconoscere gli Stati e le identità nazionali, e per questo la proposta di un'Europa federale contrasta con la realtà, che è più vicina ad un'unione di Stati europei capaci di

lavorare insieme per obiettivi comuni: unione di Stati nei quali il rispetto dei diritti umani significhi la difesa della dignità della vita e il diritto ad una vita dignitosa, e perciò la tutela dell'infanzia, degli anziani e delle categorie più deboli.

L'Europa che prenderà vita col Trattato deve avere il coraggio della propria indipendenza e l'orgoglio della propria appartenenza. Per questo riteniamo che far riferimento alla tradizione greco-romana, giudaico-cristiana e laico-liberale non sia fuorviante o un riconoscimento formale, bensì un'affermazione di ciò che è la realtà. Nel bene e nel male, noi non saremmo qui, oggi, se Sparta ed Atene non avessero avuto la capacità di sedare i loro conflitti alle Termopili, se i greci e i romani non avessero tracciato la storia della filosofia e del diritto, se non ci fossero state Poitiers o la *Magna Charta*, che ha aperto il cammino per la definizione dei diritti dell'uomo. Oggi l'Europa non è vecchia, come qualcuno ci definisce, ma è radice delle grandi espressioni culturali che dai nostri popoli si sono profuse nel mondo. Sono sorte cattedrali e ardite concezioni architettoniche; ci sono stati roghi, libri bruciati, guerre fratricide, sangue e disperazione, ma anche continua crescita, ricerca di comprensione e di un nuovo modello di Stato sociale, nel rispetto di una tradizione cristiana che invita alla pace e al rispetto degli uomini e degli Stati, perché sia dato a Cesare quel che è di Cesare e a Dio quel che è di Dio. E quest'Europa, che noi lo scriviamo o meno, esiste e chiede di essere ascoltata e riconosciuta. <BRK>

4-082

DA

**Skaarup (Parl.-DK).** - Hr. formand, jeg er et af de mange medlemmer, der har indsendt ændringsforslag til forfatningsudkastet fra formanden. Jeg synes imidlertid, at det er stærkt utilfredsstillende, at der går så lang tid, før sådanne ændringsforslag - det gælder ikke kun mine, men også mere generelt - kommer på Internettet. Det er også irriterende, at fristerne for at lave den slags ændringsforslag er så korte. Det har betydet, at det har været svært at koordinere udarbejdelsen af ændringsforslagene, som således ofte kun har én underskriver. Det havde nok været en fordel, hvis man havde bredt tingene lidt mere ud, således at vi kunne være gået sammen om nogle forslag. Så jeg synes bestemt, at Præsidiets skal genoverveje fastsættelsen af så korte frister fremover. Det duer ikke.

Nogle af de ændringsforslag, som jeg selv har været medvirkende til, er forslag vedrørende natur og miljø, men også vedrørende kristendom. Jeg mener grundlæggende, at det er vigtigt, at vi i forfatningen - hvis der skal være en forfatning - har noget med om kristendommen. Det er noget flere medlemmer af Konventet har talt for også i dag, og det hænger sammen med medlemsstater. Jeg mener ikke, at vi skal optage f.eks. Tyrkiet i EU. Tyrkiet er ikke en del af Europa, men et islamisk land, som har helt andre forudsætninger for det europæiske, end vi har her blandt de nuværende medlemsstater. Jeg vil også gerne vende mig kraftigt imod, at der indføres en ikke-diskriminationsklausul i forfatningen. Jeg mener, at det er fuldstændig uacceptabelt, at nogle grupper skal behandles anderledes end andre. I det danske folketing har vi netop behandlet direktivet vedrørende omvendt bevisbyrde i sager om diskrimination på baggrund af bl.a. etnisk oprindelse. Og det er efter min mening fuldstændig absurd, at man skal nyde en særlig beskyttelse, fordi man er af anden etnisk oprindelse. Skal vi også til at lave særlig beskyttelse for buttede mennesker, eller mennesker med blå øjne? Det duer ikke. Efter vores opfattelse skal det ikke med i en forfatning.

Til slut vil jeg sige, at hele forfatningsudkastet grundlæggende bygger på føderalisme, og det anser jeg for at være et meget, meget stort problem. Jeg opfatter den sunde skepsis, der er i mange befolkninger i Europa, som netop en modstand mod føderalisme men en tilgang og en positiv holdning til nationalstaterne. Altså at vi selv kan bestemme i vort eget hus. <BRK>

4-083

EN

**Kutskova (Gouv.-BG).** - Let me start by making a general remark on the idea behind the amendments to draft Articles 1 to 16 of the constitutional treaty, submitted by the Bulgarian Government. The amendments are based on the following.

Firstly, we should keep in mind the text of the existing Treaties as well as the text agreed by consensus within the Convention. Secondly, we should make the formulations more concise, clear and understandable. We are of the opinion that it is essential to preserve the formula of ever closer union, here or in the preamble. This formula has, for the last fifty years, proven its vitality and inspired many Europeans in their efforts to create a more coherent and efficient Union. There is no reason to change the core objective of ever closer union as defined by the founding fathers. Our view is that this formula reflects the present reality as well as the vision for the future development of the Union.

As for Article 1(2), concerning respect for national identities, we should make the text more precise and clear by including the provision of Article 9(6) and, in addition, evoke the coexistence of different regimes as well as their fundamentals, religious or civic.

Concerning Article 2, we consider it preferable to keep the notion of principles typical of the *acquis*. In addition we suggest the inclusion of a reference to fundamental freedoms as presently found in Article 6(1) of the Treaty of the EU.

Our amendments to Article 3 are based on the list of objectives provided in both the present Treaties and the conclusions of the Convention's Working Groups on Social Europe and on Defence. The objective of promoting a high degree of social protection should be underlined by introducing the fight against poverty, social exclusion and any form of discrimination. Solidarity, as well as Member States' mutual assistance in the face of common threats to security, deserve a special place among the objectives of the European Union.

Concerning the Charter of Human Rights, I should like to reconfirm our position that the Charter should be set out in a protocol annexed to the constitution. <BRK>

4-084

SV

**Lekberg (Parl.-SE).** - Herr ordförande! Först och främst vill jag säga att jag stöder grunderna i presidiets förslag när det gäller de första artiklarna. Låt mig sedan gå in och kommentera några av de ändringsförslag som jag önskar. Flera av dessa ändringsförslag har också stöd från samtliga svenska konventsledamöter och representerar således en samlad svensk uppfattning i dessa frågor.

Vi är eniga om att det klart bör framgå av konstitutionen att det är ett konstitutionellt fördrag och att medlemsländerna på frivillig basis överläter kompetens till unionen. Medborgarna skall veta att unionen i sig inte har kompetens att påföra sig ytterligare kompetens, utan att detta alltid måste godkännas av de nationella parlamenten.

Vidare vore det allvarligt om öppenhetsfrågorna fick en mindre framträdande plats i den nya konstitutionen i förhållande till nuvarande fördrag. Därför bör nuvarande unionsfördrags inledande skrivningar om öppenhet också finnas med i artikel 1 i det nya konstitutionella fördraget.

Jag satt med i den sociala arbetsgruppen. Där hade vi en mycket konstruktiv diskussion om unionens värden och mål och kunde enas kring ett antal bra förslag. Tyvärr har inte presidiet utgått från arbetsgruppens resultat när man har formulerat sina förslag, vilket jag beklagar.

Låt mig kortfattat peka på några viktiga förbättringar som skulle kunna göras: Jämställdhet mellan män och kvinnor, som är ett grundläggande värde i våra samhällen, borde också vara det för unionen och finnas med i artikel 2. I artikel 3 skulle jag vilja skriva in att också god arbetsmiljö, en förbättrad folkhälsa, skydd för barnens rättigheter samt lika möjligheter för alla oberoende av etnisk härkomst, religion, handikapp, ålder eller sexuell läggning, skall vara mål för unionen. Dessutom borde miljöfrågorna, såsom många har påpekat här, ges en betydligt starkare ställning i artikel 3. Här får vi inte ta steg tillbaka. <BRK>

4-085

EN

**Szájer (Parl.-HU).** – I should like to speak on the spiritual reference. I have submitted amendments, together with 16 other EPP-DE Members and others, to include some reference to spiritual heritage.

Pope John Paul II indicated in a message to our President, Giscard d'Estaing, how important it is to include a reference to the spiritual roots of our common Europe. We Europeans know very well that the Judaeo-Christian culture is at the very foundation of our idea of a common Europe. Without this, presently we would not be able to speak about European integration and an ever closer union of the peoples of our continent.

The text we propose has been borrowed from the preamble to the Polish constitution: "The Union's values include the values of those who believe in God as a source of truth, justice, good and beauty, as well as those who do not share such a belief but respect these universal values arising from other sources."

It is conscious that it does not speak about any specific religion. This is not a protest about Catholic, Muslim or Jewish faiths. It speaks about God – which could be the God of various beliefs. In opposition to those who criticise it in this Convention, it is a tolerant, non-discriminative and inclusive concept, giving equal respect to those who do not believe in God and those of different beliefs. At the same time this formulation invokes an evident spiritual source for the present common Europe. For many of the candidate countries this is a very important message.

God may not be responsible for inventing or creating liberal democracy but, for many people under communist rule, religion has been one of the few remaining links to the common European heritage behind the Iron Curtain. These people now expect Europe to openly stand up for its principles. <BRK>

4-086

EN

**Rupel (Gouv.-SI).** – I should like to draw your attention to some emphasis in the amendments I tabled on the first draft articles of the treaty.

I proposed an amendment to Article 3(3), which defines the Union's objectives. The purpose was to extend respect for cultural diversity in the Union to respect for linguistic diversity. The Slovene language is of the utmost importance for the Slovenes. It is a means of expression and the key to the very existence of the Slovene nation. A language can be interpreted as a field and means of expression, in which case the language is linked with human rights, democracy and freedom. Language is a symbol and value in itself. Many European nations have founded their right to independence, autonomy and sovereignty on the right to their freedom to use their mother or national tongue. One of the definitions of freedom involves freedom of expression. People are free when they can express themselves freely and thus realise themselves. Many states are based on nations, while the state of Slovenia is based on its special culture and unique language.

The Slovene language is the official and working language of Slovenia. Once we become a full member of the EU the Slovene language will become an official language of the Union; but we are aware that in all probability it will not become a working language of the Union. It is precisely because of this extraordinary importance of our language and the identification of the Slovenes with their language that I propose that linguistic diversity be included in the objectives. I am glad that many other fellow Convention members share the same view.

The existence of diversity in Europe will be further promoted if the treaty contains clear definitions, among the objectives, of non-discrimination on the basis of racial or ethnic origin, religion, sexual and other orientation. <BRK>

4-087

DE

**Voggenhuber (PE).** - Herr Präsident! Erlauben Sie mir eine Vorbemerkung. Sie haben heute zwei Rednern als Sprecher ihrer Fraktionen eine verlängerte Redezeit zugestanden. Ich darf Sie darauf hinweisen, dass es im Konvent keine Fraktionen gibt und daher auch keine Sprecher! Wenn Sie diese Übung allerdings einführen, bitte ich Sie, alle Fraktionen und nicht nur zwei zu berücksichtigen, um so mehr, als die Zusammensetzung dieses Konvents die großen Fraktionen ohnehin außerordentlich bevorzugt, allein schon durch die Tatsache, dass zwei Delegierte pro nationales Parlament im Wesentlichen nur die großen Fraktionen vertreten können. Ich bitte um Fairness und auch um Einhaltung der Geschäftsordnung!

Nun zu Ihrem Vorschlag. Seit 1957 gibt es ein zentrales Ziel der europäischen Integration, ich betone, seit 1957, nämlich den immer engeren Zusammenschluss, der nach Maastricht zur immer engeren Union wurde. Es ist das Gründungsziel dieser Europäischen Union. Niemand im Konvent hat verlangt, es fallen zu lassen. Es fehlt in Ihrem Vorschlag. Eine einzige Legitimation könnte ich mir dafür vorstellen, dass wir die Finalität der europäischen Integration verwirklichen, dass wir die engstmögliche politische Einheit Europas herstellen. Tut das diese Verfassung? Nein, das tut sie mit Sicherheit nicht. Wir bleiben im Prozess der Annäherung an die politische Einheit Europas. Daher ist es meines Erachtens nach eine völlig unzulässige Aufgabe des Gründungsgedankens der Union, den immer engeren Zusammenschluss Europas fallen zu lassen. Die Regierungszusammenarbeit, die hier von vielen beschworen wird - ich darf Sie an die Geschichte erinnern -, ist eine Erfindung von Maastricht, 35 Jahre nach der föderalen Ordnung als Ziel der europäischen Integration. Europa war als Gemeinschaft gedacht, als föderale Ordnung von Anfang an, und erst 35 Jahre später als Regierungszusammenarbeit in einigen Bereichen, und ich darf Sie daran erinnern, dass es nur als Zwischenstufe der Integration gedacht war, niemals aber als zentrales Architekturelement Europas. Es ist Zeit, sich daran zu erinnern.

Ich wünsche mir, wenn Sie mir noch ein paar Stichworte erlauben, eine hohe Sprache der Verfassung und nicht eine technokratische Sprache der Rechtstexte. Ich wünsche mir, dass die Bürgerinnen und Bürger deshalb als Gründer dieser Union anerkannt werden, weil sie - Kinder gründen ja keine Union - der höchste Souverän sowohl des Nationalstaates als auch der Europäischen Union sind. Ich wünsche mir, dass in den Werten kein Rückfall hinter die Verträge stattfindet. Das betrifft vor allem die Umweltdimension, das betrifft die Nachhaltigkeit, das betrifft die Gleichstellung der Frauen. Die soziale Marktwirtschaft war ...

*(Der Präsident unterbricht den Redner.)*

Ja, wenn Sie nur anderen Fraktionssprechern die verlängerte Redezeit zugestehen! <BRK>

4-088

EN

**President.** – We have to take into account that we still have 30 speakers. <BRK>

4-089

EN

**Serracino-Ingloft (Gouv.-MT).** – The aim of this intervention is to stress the importance – which is more than is immediately apparent – of the explicit mention of spatial considerations, in the second part of Article 3 dealing with the Union's objectives. In the most general sense it is important that at this historic moment, when we are witnessing the birth of global virtual space, we declare that we, in Europe, are constituting a space that while intensely transactional is also a common heritage.

The affirmation that territorial, as well as economic and social, cohesion is a primary objective of the Union is necessary, not only because geographical disadvantage, unlike social and economic inequalities, is not remedied by merely transitory measures. It requires structural provisions. This would also help to highlight the perspective of European territory as a common heritage.

For a similar reason we are in favour of the proposed explicit allusion to the exploration – not discovery – of outer space among European objectives. I suggest that outer space should be coupled with ocean space. Surely the constitution needs to show a greater awareness of European maritime space. Our coastal zones and islands are not a mere economic periphery; they are our crucial interface with the rest of the world. <BRK>

4-090

EN

**Figel, Jan (Parl.-SK).** – I should like to express my consensus with the President who mentioned, at the beginning of his remarks, the situation concerning the Iraqi and European lack of unity.

The quality of results is more important than time limits, so we should not exclude the possibility that we will need more time in order to achieve good results for the future IGC.

I should like to briefly mention three articles. I believe that a constitutional treaty is a more appropriate name than a constitution. The Union is a unique body, but not so in a classical understanding. "The European Union" is a better name than any alternative ones. There were disputes as to whether to use the federal basis or a confederal reference, as one speaker said. "The Union shall administer certain competences on a communitarian basis" could be a solution for this understanding.

Concerning the values in Article 2, I support the inclusion of a new clause, Article 2(2), with invoking of God. It was explained by Mr Szájer. We believe that a tolerant, acceptable and inclusive reference is possible and positive for the understanding in future, not only in present Member States but also in future Member States. A uniting reference for different cultures could be helpful, especially for Christian, Jewish and Islamic cultures in Europe. A transcendent authority in regard to political structures can help us understand the limits of power, giving human dignity its highest meaning. Yesterday, an absolute majority of the Slovak Parliament voted in favour of a reference to God in the European constitutional treaty.

Concerning Article 3, because of the current experience of Europe, which does not play a decisive role in seeking a solution to the Iraq crisis, we should be more explicit about the role of Europe in the world and more outward- than inward-looking in domestic or European matters. Therefore Article 3(4) could be broadened in this way. "The Union shall seek to advance its values in the wider world through a common external relations policy, in particular a common foreign and security policy based on solidarity and mutual loyalty." <BRK>

4-091

EN

**Roche (Ch.E./G.-IE).** – I have already made reference to the use of the word "federal". I will not repeat the same points. However, Mr Brok touched on a very sensible proposition. There is no point in getting ourselves hung up on words if, in fact, we know that the treaty itself would prescribe the nature of the Union.

To take up a point made by the last speaker, the title "the European Union" is familiar to our citizens. I see no basis whatsoever for changing that.

With regard to Articles 2 and 3, language that is clear, crisp and legible is an absolute requirement. We need to do further work on the text. I appreciate the pressure that the Secretariat is under. I draw specific reference, however, to Article 3(4)(1). The concept of "defending the Union's independence" is inappropriate in the context in which we are discussing the Union. It is an inappropriate set of words, which could be struck down.

With regard to legal personality, I very firmly believe that the Union should have a legal personality but we should be clear that in imparting a legal personality we do not eradicate the need for a distinctive approach in policy areas.

With regard to Article 5, which has excited a degree of specific reference here today, on the question of the Charter, it is very important that we incorporate the amendments proposed by the working group. Other Members have said that it makes good sense to incorporate the Charter by way of protocol. It does not give any less legal status but it would make the whole treaty a more legible document.

I have already submitted a series of comments on Articles 8 and 9. There is a reference to the primacy of Union law. It overstates the position and needs clarification.

I make a similar point with regard to economic policy. I proposed an amendment which would make it clear that the primary role rests with the Member States in coordinating their economic policies.

In the area of CFSP there is a need to stick more closely to Article 17 of the TEU. <BRK>

4-092

EN

**Severin (Parl.-RO).** – On Article 1(1), the Union's legitimacy should be based on the will of the citizens, peoples and states. Citizenship is a legal concept. Peoples is a vague concept and recognised in law mainly when it is about the right to self-determination.

Point 2, the Union should administer common competences and also coordinate national policies. The two formulations must be kept as such.

Point 3, when it is a question of common competences the Union acts on a federal basis. This is very clear. Either we have to say it is a federation of nation states or we have to say something else. However, a mere deletion of these words would be misleading and give

the wrong signals.

Point 4, the dynamic character of the Union should be also reflected in Article 1.

On Article 2, the Union respects national identities – this is excellent, but we need to add something about European cultural diversity. The non-discrimination clause should also be put in this part of the constitution.

On Article 3, I would like to see included there the fight against exclusion, environmental protection, the social market economy and territorial cohesion, along with social and economic cohesion. A horizontal clause to link all our values, objectives and policies should also be included. There are various amendments to that effect. We should adopt one of them.

On Article 5, the Charter should be clearly included in the constitution. We should not use the formula of a separate protocol. <BRK>

4-093

EN

**President.** – I will now take four or five *cartons bleus* for one minute. <BRK>

4-094

EN

**Baroness Scotland of Asthal (Ch.E/G.-GB).** – I too would urge the Praesidium to reconsider the drafting of Article 5 so that it reflects the spirit and substance of the compromise and the recommendations for further work reached by Working Group II.

The United Kingdom's position has always been – and we are clearly not alone in this – that the Charter we welcome as a political declaration was not drafted in a form suitable for incorporation in the treaties. That remains the case. However, we have not been afraid of looking at ideas on how to give the Charter legal status. The challenge is to find ways to give our citizens legal security and certainty in relation to the Charter's ambiguous and conflicting text.

The working group came forward with some amendments to the so-called horizontal articles in the Charter, plus the prospect of satisfactory, official, legal explanations to accompany it. This was endorsed in plenary. I proposed that we give Commissioner Vitorino the time he needs to complete his valuable work on these explanations. It would seem sensible to pause briefly, to wait for this work to be finished, before we hold further substantive discussions on Article 5.

I hope and believe that a completed package from Working Group II may help us to find an answer to the Charter status on which we can all soon agree. <BRK>

4-095

EN

**President.** – It is the understanding that we will integrate the elements of the group of Commissioner Vitorino. That is also the spirit in which we write Article 5. <BRK>

4-096

EN

**Tiilikainen (Ch.E/G.-FI).** – I very much appreciate the draft treaty in the sense that it both integrates the Charter of Fundamental Rights and creates an obligation for the European Union to accede to the European Convention on Human Rights. Both instruments are needed in order to enhance citizens' rights.

Citizens' rights and freedoms form the starting point for a constitution. This Charter will consequently have a corresponding position in this constitutional treaty. It must be included in the second title of the first part of this treaty, otherwise we undermine the role it should have.

As far as accession to the European Convention on Human Rights is concerned, the treaty should include a stronger obligation to reach that goal than it currently does. <BRK>

4-097

FR

**Van Lancker (PE).** – Merci Monsieur le Président. Je voudrais faire une remarque sur l'intervention du Commissaire Barnier concernant la relation entre l'article 5 et l'article 6 - article 5 sur l'insertion de la Charte et article 6 sur la non-discrimination, éventuellement étendue à d'autres formes de discrimination -. Je suis complètement d'accord avec ce qu'a dit le Commissaire Barnier sur le fait que la Charte en elle-même ne constitue pas une base juridique d'action pour l'Union et que, pour cela, il faut établir

clairement la compétence. Vous allez voir, dans le débat de demain, que plusieurs conventionnels ont introduit un amendement dans l'article 12 pour inscrire la compétence de l'Union, pour prendre des mesures.

Il a raison aussi sur le fait que nous avons besoin d'une base légale, l'actuel article 13 éventuellement élargi. Mais là, nous avons cru que les bases légales pour les mesures concrètes seraient plutôt établies dans la partie 3 de la Constitution, où on décrit les politiques et établit les bases légales concrètes. Je comprends que, ne connaissant pas encore le contenu de la partie 3, il est peut-être utile de prendre des précautions. Mais je crois que le message essentiel à adresser au praesidium est qu'il faut conserver la capacité d'agir de l'Union européenne en matière de discrimination et qu'il faut trouver une bonne solution que ce soit dans la partie 1 ou dans la partie 3. <BRK>

4-098

FR

**Nagy (Parl.-BE).** – Merci Monsieur le Président. Je m'associe tout à fait à l'intervention de ma collègue Van Lancker. Je pense aussi que la question de l'incorporation de la Charte a un lien avec la visibilité qu'on pourra lui donner vis-à-vis des citoyens et que c'est là que réside un petit peu la difficulté par rapport aux différentes propositions.

Je pense que l'idée d'une clause horizontale est essentielle pour assurer la cohérence des différentes politiques.

Je voulais réagir vis-à-vis des collègues qui insistent sur le fait de faire référence à Dieu dans la Constitution. Je pense que c'est vraiment une erreur et qu'il ne faut pas le faire. En effet, l'histoire de l'Europe, c'est aussi l'histoire de la philosophie grecque, ce sont aussi des choses qui n'ont justement rien à voir avec cette référence à Dieu et c'est surtout une conception de l'Etat qui fait que celui-ci est neutre par rapport aux conceptions philosophiques et religieuses. Par conséquent, rouvrir ce débat équivaut, vis-à-vis de la Convention, à commettre une très très grande erreur. <BRK>

4-099

EN

**Kiljunen (Parl.-FI).** – I have already expressed my doubts about using the term "federal" or "confederal". It leads us to the wrong associations about our aspirations.

Mr Severin said that there will be a vacuum if we leave out altogether the words "federal basis". He said that something should be put in. Perhaps then we could add the words "and which shall administer certain common competences on a supranational basis", or alternatively, "administer certain common competences on a Community basis" at the end of Article 1(1). That would fill the vacuum that Mr Severin was afraid would exist.

On values, I stress equality. It is one of the key values of the Union and most definitely should be in Article 2. By equality I mean gender equality. I also mean social equality. That is why it is so important to add that word.

We should also add minority rights to the values. This concerns a significant part of the Union's population and so should be specifically mentioned in our new constitutional treaty, alongside human rights. Minority rights are a key issue for European states today.

To my mind, the key concept is solidarity. I am very satisfied that it has been included in the Praesidium's draft as a key value. <BRK>

4-100

EN

**Bonde (PE).** – The first 16 articles mention the word "constitution" 32 times. Thank you for this clarity. The Democracy Forum proposes to change that word to "treaty established according to international law".

Article 1 refers to respect for the national identities of Member States. We should add, more importantly, their national constitutions, their legislative assemblies and national sovereignty. Drop Article 2 or add, in particular, transparent democracy. Do we need values in an international treaty? Insert "not" in Article 4; the EU shall not only negotiate treaties; the EU shall only negotiate treaties after a mandate from the Member States.

Article 5 moves the primacy of fundamental rights from the Member States' high courts and the European Court of Human Rights in Strasbourg, to the EU court in Luxembourg. Instead, let the EU institutions be bound by the European Convention on Human Rights and the basic rights in the national constitutions.

Article 6 prohibits national discrimination. We should drop this general clause and be more precise. This article could dissolve the nations if it is not limited to a part of economic activity in the common market. Will the article, for instance, overrule the Danish protocol on second homes?

Article 7 looks like more EU citizens' rights. If there is a conflict between national and EU citizenship, the EU rules will prevail, as in Germany with the citizenship of Bavaria. Free movement has to respect the legislation of the Member States.



Articles 8 and 9 insist on primacy. For all EU law we propose the primacy of national constitutions and the Convention on Human Rights.

The first 16 articles claim to organise Europe on a federal basis, but there is no clear division of powers between the federal level and the nations. It looks more like a unitary state than the American federation. The federal authorities decide what is left to the nations. We propose to turn the power pyramid and leave it to the voters and the national parliaments to decide what must be decided at EU level. Let the national parliaments elect the Commissioners, decide the annual law catalogue and administer the principle of solidarity. Give the national parliaments the right of veto on very vital issues, so that parliamentary democracy will always prevail. Democracy was born in 508 BC. We are not here to bury it. <BRK>

4-101

EL

**Γιαννάκου-Κουτσίκου (Parl.-GR).** – Κύριε Πρόεδρε, οφείλω να σημειώσω ευθύς αμέσως ότι τα πρώτα δεκαέξι άρθρα του Συντάγματος κινούνται στη σωστή κατεύθυνση. Επιτρέψτε μου, βέβαια, να κάνω ορισμένες παρατηρήσεις σε σχέση με τροπολογίες που έχουν κατατεθεί.

Η Συνταγματική Συνθήκη χρειάζεται ασφαλώς σαφείς και συγκεκριμένες αναφορές σε ζητήματα αρχών, αξιών, πνευματικής παράδοσης, πολιτιστικής κληρονομιάς, αιεφόρου ανάπτυξης και πλήρους απασχόλησης. Γιατί εδώ δεν έχουμε να κάνουμε με σύνταγμα κράτους μέλους. Οι αναφορές αυτές περιλαμβάνονται στο προοίμιο που έχει καταθέσει το Ευρωπαϊκό Λαϊκό Κόμμα, αλλά και στο άρθρο 2 της προτεινόμενης Συνθήκης.

Στο άρθρο 3 πρέπει να γίνει οπωσδήποτε αναφορά στην παρουσία της Ένωσης στη διεθνή σκηνή, αλλά και σε μια εξωτερική πολιτική και πολιτική ασφάλειας που διακρίνεται από αλληλεγγύη και αμοιβαία πίστη. Εδώ νομίζω ότι πρέπει να σημειωθεί ότι η ισχύς της Ένωσης προέρχεται και από την κοινωνική συνοχή. Αυτό σημαίνει ότι η καταπολέμηση της μεγάλης φτώχειας και η κοινωνική ενσωμάτωση είναι αρχές που πρέπει να υποστηριχθούν στο ίδιο άρθρο.

Στο άρθρο 4, κύριε Πρόεδρε, πρέπει να υπάρξουν ειδικές αναφορές για τις σχέσεις της Ένωσης και των κρατών μελών στη βάση των ιδίων αρχών. Και εδώ προτείνουμε να προστεθεί μια ρήτρα αλληλεγγύης σε δύο θέματα. Πρώτον, σε τρομοκρατική επίθεση εναντίον κράτους μέλους και, δεύτερον, σε περίπτωση ένοπλης κλασικής επίθεσης εναντίον κράτους μέλους, απ' οπουδήποτε και αν προέρχεται αυτή, η Ένωση πρέπει να εκφράζει αμέσως την αλληλεγγύη της, όπως και στην πρώτη περίπτωση, διαθέτοντας στρατιωτικές δυνάμεις και λαμβάνοντας αστυνομικά και δικαστικά μέτρα, αλλά και διαθέτοντας κάθε αναγκαίο μέσο για την προστασία των πολιτών.

Κύριε Πρόεδρε, με την ευκαιρία της αναφοράς αυτής, είμαι υποχρεωμένη να σημειώσω ότι είναι μοναδική ευκαιρία να επανέλθουμε όσοι πιστεύουμε σε μια ενιαία εξωτερική δράση της Ένωσης. Το κενό που υπάρχει στην εξωτερική πολιτική και την πολιτική άμυνας φάνηκε το τελευταίο διάστημα. Πρέπει να κάνουμε το μεγάλο βήμα προς μια ενιαία εξωτερική έκφραση, αλλά και πιο ειλικρινείς διατλαντικές σχέσεις. Αν συνεχιστεί η προσπάθεια ορισμένων, αντί να διαλέγονται και να συγκλίνουν μεταξύ τους, με την παραμικρή ευκαιρία να παραμερίζουν το καλώς νοούμενο ευρωπαϊκό συμφέρον, θα υπάρξει κρίση ταυτότητας στην Ένωση.

Στόχος αυτής της Συνταγματικής Συνθήκης πρέπει να είναι μια Ένωση επιθυμητή για τους λαούς και τους πολίτες και έτσι η Χάρτα Θεμελιωδών Δικαιωμάτων πρέπει να ενσωματωθεί στη Συνθήκη. <BRK>

4-102

FR

**Giscard d'Estaing (Président).** – Je voudrais dire un mot à Madame Giannakou. Dans le préambule, puisqu'on en a beaucoup parlé, je pense qu'on parlera de l'apport de la civilisation hellénique à la civilisation européenne. <BRK>

4-103

EN

**Kacin (Parl.-SI).** – By definition, Europe is an association of individuals. This is in the preamble of the charter. It says that "the Union places the individual at the heart of its activities". I therefore propose that a future description of the European Union be "a union of citizens, peoples and states". I believe that the European Union as a union of prosperity, economic opportunities and the rule of law is primarily designed for the individual.

It was already explained what "people" means in various languages. There are many languages in Europe. Every language has its own definition, so I believe that definitions are crucial to our mutual understanding. I come from a country that has both positive and a lot of negative experiences with living in a multicultural state. In my opinion, the formulation "on a federal basis" could also generate an unfavourable attitude towards membership among citizens of those candidate countries that have had, or still have, practical experience with the federal model of state integration.

To speak about different federal concepts is difficult since there is no single definition of the term. On the contrary, federal ideas are numerous and each of them is different, at least in nuance and specific historic practice. Federations are complex formations and the rules of the game are very complicated. Anyone can create their own model of a federal state, which does not necessarily reflect reality. Because of that, the use of this term is best avoided and the wording chosen should be that "the competences shall be exercised in accordance with this constitution".

Regarding Article 3, we should emphasise that the Union is primarily designed for the individual. Integration in the European Union also means the integration of regions. That is why I propose that the constitutional treaty should also promote solidarity between regions. <BRK>

4-104

IT

**Tajani (PE).** - Signor Presidente, ho apprezzato il lavoro del *Praesidium* e ho altresì ascoltato con grande attenzione, direi con non poca soddisfazione, anche le parole del Presidente Giscard a proposito dello stato giuridico delle chiese, delle radici religiose dell'Europa. Io credo che la Costituzione che fonderà la nuova Unione dovrà prevedere un riferimento alla dimensione religiosa; se non riconosciamo questo prezioso retaggio, dimenticheremo la tragica lezione dei totalitarismi del Novecento che, negando Dio e la religione, negavano la dignità dell'uomo e gettavano le basi per il suo annientamento, e dimenticheremo che furono proprio i valori dell'umanesimo cristiano ad ispirare i grandi statisti che nel dopoguerra fecero l'Europa politica. In questo quadro, in molti abbiamo proposto che sia fatto riferimento all'eredità religiosa nel preambolo del nuovo Trattato e che si affermi, nell'articolo 2, che i valori dell'Unione includono i valori di coloro che credono in Dio quale fonte di verità, giustizia, bene e bellezza, come pure di coloro che, pur non condividendo questa fede, osservano questi universali valori sulla base di altre ispirazioni. Queste proposte non hanno nulla di confessionale né vogliono mettere in discussione la separazione tra Stato e chiesa, cosa che peraltro non accade nei paesi dove pure c'è un qualche riferimento costituzionale alla dimensione religiosa, come in Germania, Irlanda, Svizzera, Polonia e Stati Uniti.

In questo quadro io credo che si debba anche dare, fra gli attori sociali, un ruolo di primaria ed originale importanza alle chiese delle altre comunità religiose, che sono soggetti che giocano una parte fondamentale nella coesione delle società europee. Le chiese svolgono infatti, per non dir altro, un insostituibile lavoro di aggregazione, formazione ed assistenza, ad ogni livello e in ogni ambiente, spesso supplendo alla lacunosa presenza delle istituzioni. In riferimento allo *status* giuridico delle chiese, noi abbiamo presentato un emendamento, ma ho ascoltato con grande attenzione quanto ha detto il Presidente Giscard riguardo alla dichiarazione 11, allegata al Trattato di Amsterdam.

Concludo, signor Presidente, con un riferimento: ho presentato un emendamento all'articolo 6 perché vengano tutelati dal Trattato costituzionale i più deboli, e soprattutto i trentasette milioni di cittadini europei che sono disabili. Credo che un riferimento esplicito, nel Trattato costituzionale, debba essere inserito. <BRK>

4-105

EN

**Wittbrodt (Parl.-PL).** – The first draft articles of the treaty are crucial for the European construction as they describe the basis and fundamental values of our continent.

First of all, the Union should manage rather than administer common competences. Besides, at this early stage of the constitution-building process it is difficult to assume that competences are governed on a federal basis.

Secondly, the European Union was always based on the principle of solidarity. This was understood as elimination of disparities among the countries in terms of economic and social cohesion. In the draft articles the solidarity principle does not touch on cohesion but rather, solidarity is understood as loyalty in international relations. This makes solidarity a tool, not a principle, in order to achieve a peaceful Europe. Therefore I suggest we introduce a new article on solidarity, which is needed in order to carry out the Union's mission. It seems essential, especially for the new Member States.

Thirdly, in Article 2, which introduces the Union's values, we should point to our European roots and traditions. As our fundamental values were shaken up by other beliefs, we have to write this in the constitution. In order to find agreement on this issue, I support the proposals of the PPE-DE group. In particular, I suggest a new article, which links up with the Polish constitution, but perhaps this might be moved to the preamble.

In Article 1 it is suggested that the Union should respect not only the national identities of its Member States but also their constitutional and political structures, including government, their choices regarding language, and the legal status of churches and religious societies. The last part of the sentence responds to COMECE postulates. <BRK>

4-106

EN

**Brejc (Parl.-SI).** – The Praesidium produced a good basis for the first 16 articles of the constitutional treaty. Perhaps the members of the Convention rightly expect their greater inclusion in the creation of this treaty. This must, in my opinion, lay a foundation for a Europe of human rights, solidarity, loyalty and respect for different identities.

That is why I am in favour of including the Charter of Fundamental Rights at the beginning of the treaty, since this charter is of great symbolic importance to all Member States and not only to acceding countries. I also believe that the Union should be based on loyalty among the Member States in all areas, since such loyalty, which should be included in the treaty as a general principle, is a precondition for the efficient functioning of the Union. I therefore fully support Amendment 4(b) tabled by my colleagues from the PPE-DE group.

Loyalty and solidarity are connected. The Union should also be based on solidarity among the Member States. The events of 11 September showed how vulnerable we are and how important it is to hold together at such times. Therefore I support Amendment 4 (c) proposed by my colleagues.

I am in favour of including linguistic diversity in Article 3(3) because I believe that language is an important element of the identity of every nation, and a small nation in particular. In my opinion this is a good amendment since it supplements and more clearly defines Article 1(2), which says that "the Union shall respect the national identities of its Member States". In the Member States, in addition to these identities, there are also various national minorities which need to be protected. <BRK>

4-107

FR

**Haenel (Parl.-FR).** – Merci Monsieur le Président. Quelle place pour la question religieuse dans la Constitution? Premièrement, l'Union ne doit pas intervenir dans le statut des Eglises et communautés religieuses dans les Etats membres. Il y a, dans nos Etats, des solutions différentes. L'Union doit les respecter, l'Union n'a pas à s'en mêler. Ces différences sont liées à l'histoire de chacun de nos pays. Par conséquent, le respect du statut national des Eglises et communautés religieuses doit figurer explicitement dans le domaine de ce qu'on appelle la clause Christophersen.

Deuxièmement, de même que la Convention européenne des droits de l'homme, la Charte garantit la liberté de conscience et de religion. Nous n'avons pas à revenir sur ce sujet. Je souhaite donc que la Charte et son préambule soient intégrés tels quels à la future Constitution de l'Union.

Troisièmement, à propos des références religieuses. Le vrai problème est celui de l'identité européenne. L'identité européenne, nous ne pouvons pas la trouver seulement dans ses valeurs communes qui ont une vocation universelle. En effet, les droits de l'homme, la solidarité sociale, le respect de l'environnement sont des valeurs pour l'ensemble du monde, par seulement pour l'Europe. L'identité européenne réside donc en grande partie dans les héritages que nous avons en commun et que nous devons assumer. Or, qu'on le veuille ou non, ces héritages ont une dimension religieuse. Cette dimension religieuse est en quelque sorte consubstantielle à l'héritage commun. On ne peut pas comprendre la culture européenne en ignorant ou en niant le christianisme, le judaïsme, l'islam, pas plus qu'on ne peut la comprendre en ignorant l'humanisme laïque. Donc, si nous voulons une Europe qui ait une identité, nous devons accepter et reconnaître l'influence des héritages culturels, humanistes et religieux de l'Europe sur son identité profonde sans que cela entraîne en quoi que ce soit une position privilégiée pour telle ou telle croyance. Cette reconnaissance devrait se faire dans le préambule de la future Constitution car on est là dans le domaine du symbole et non dans celui des règles de droit. Si nous ne voulons pas aborder sereinement et objectivement cette question, elle resurgira à l'occasion des ratifications référendaires ou parlementaires quand nous aurons à nous prononcer. <BRK>

4-108

EN

**Hololei (Gouv.-EE).** – I will come back to Article 1 later. I wanted to intervene earlier but due to lack of time, that had to be postponed.

The original idea of Laeken was to make Europe more understandable to the citizens. It has been claimed that the wording of Article 1(1) also intends to improve clarity, stating in a matter of fact manner that the Union shall administer certain common competences on a federal basis. This is supposed to acknowledge the existing state of the art. I am not convinced that the wording will explain the functioning of the Union to some of the citizens of the Union, notably those living in a federal state. For them it might ring a bell, but there are other countries where this word will not help to explain the functioning of the Union but rather, complicate things and confirm the fears they have held for a while that Europe is developing into a superstate.

The first part of Article 1(1) reads well, but the second part that Mr Roche proposed could be deleted or perhaps changed as follows: "within which Member States can coordinate certain policies at European level to achieve common goals. In order to achieve that, Member States will delegate certain of their competences to the Union, which shall administer those competences in common."

Some speakers have mentioned that the younger generation would not forgive us if we deleted the word "federal". Please be careful about that. As one of the youngest members of the Convention, I have the right to say that the younger generation would not forgive us if we could not find more appropriate wording, acceptable to all generations across Europe.

I fully support Mr Hjelm-Wallén, who intervened on the use of the word "treaty" as a shorthand for the constitutional treaty throughout the text. We already have a treaty that is going to be signed by the Member States, if I remember correctly. This was a preferred option decided at the beginning of the work of the Convention. Our tabled comments have also underlined that controversy. <BRK>

4-109

PT

**Azevedo (Parl.-PT).** - Senhor Presidente, quanto à análise dos primeiros artigos, gostaria de sublinhar que, em meu entender, eles devem ser particularmente claros e pedagógicos. O artigo 1º, que tem quase tudo o que é nuclear para enquadrar a essência da União, deve ainda consagrar a igualdade entre os Estados-Membros mostrando que este princípio continua a ser regra de ouro da construção europeia. Quanto à referência federal, identifique-se e debata-se primeiro o modelo federal europeu. Será mais transparente e sobretudo mais compreensível para os cidadãos, evitar-se-iam mal-entendidos e populismos. Quanto ao artigo 2º, será a sede ideal, na minha opinião, para consagrar a igualdade entre homens e mulheres, porque princípio fundamental. Quanto ao artigo 3º, entre os objectivos da União deve ainda contar-se a valência territorial da coesão. E, num mundo consciente da importância da segurança alimentar e ambiental para a saúde colectiva, devemos também contar com a promoção de elevados níveis da protecção de saúde humana.

Por fim, quanto à Carta, regozijo-me vivamente com a sua inclusão em parte nobre da Constituição. Salvaguardado o seu valor jurídico, ficarão assim garantidos o seu peso e força política, e a União afirmar-se-á inequivocamente como uma comunidade de valores.

Senhor Presidente, esta volumosa resma de papel ao lado de cada um de nós mostra estarmos todos inequivocamente empenhados em construir uma constituição que desafie o tempo. <BRK>

4-110

EN

**Arabadjiev (Parl.-BG).** – It is my understanding that the direct articles should reflect the work of the working groups and the conclusions reached by them. In the case of Article 5, whose ambit corresponds to the work of Working Group II, I find that the suggestion of having the Charter set out in the second part of the constitution or in a protocol annexed to it does not follow and does not respect the order of the basic options recommended by the working group and the significance attributed to each of these options.

It is also my understanding that one of the objectives of having the Charter was to make human rights more visible. Now it is proposed to hide the Charter in a separate protocol.

In Article 5(2), which deals with the issue of accession to the European Convention on Human Rights, I have tabled the amendment that seems to be the most compelling alternative wording with the imperative "shall", instead of the enabling "may" accede. Being strongly in favour of accession, I have proposed the most radical version, which I hope is not the most inadequate. I realise that this strong formula may have problems in terms of its legal correctness. For this reason I am prepared to make a concession and accept a milder version, which will, however, still contain a clear commitment to accession and will create a legal obligation and not only a possibility of accession.

Finally, in strictly legal terms, accession would entail – to use the language of the relevant opinion of the European Court of Justice – due entry into a distinct international institutional system. Such a modification would be of constitutional significance.

I believe that if the Charter became binding upon the entry into force of the constitutional treaty, without any federal decision being taken by the Convention on accession, this would break the link between these two complementary steps and the Convention would miss the existing opportunity to achieve a coherent system for the protection of human rights ...

*(The President cut the speaker off)* <BRK>

4-111

DE

**Kaufmann (PE).** - Herr Präsident! Die Vorschläge, einen Gottesbezug in die europäische Verfassung aufzunehmen, sollte der Konvent klar zurückweisen. Wir können doch nicht, wie es die vorgeschlagene Formel tut, die Menschen in der Union in zwei Kategorien teilen, in Gläubige und Ungläubige! Artikel 10 der Grundrechtecharta garantiert Gedanken-, Gewissens- und Religionsfreiheit für alle Menschen in Europa, und das ist gut so. Ich bin aber strikt dagegen, Europa auf religiöse Glaubensformeln zu verpflichten. In dieser Frage, Herr Präsident, unterstütze ich Ihre Position ausdrücklich.

Europa hat in der jüngsten Vergangenheit ein Erbe, auf das es sich zu berufen lohnt. Sie alle kennen dieses Bild enthusiastischer Aktivisten der ersten Stunde, die über die Grenzen fuhren, um zu demonstrieren, wir wollen ein Europa ohne Nationalismus, Krieg und Faschismus. Persönlichkeiten wie Henri Frensy, Chef der französischen Widerstandsbewegung Combat, der deutsche Buchenwald-Überlebende Eugen Kogon oder der Italiener Altiero Spinelli, der Mussolinis Gefängnisse durchlitt, sie gründeten unmittelbar nach dem Zweiten Weltkrieg zusammen die europäische Bewegung. Eben weil sie gemeinsam gelitten hatten, engagierten sie sich im Sinne einer gemeinsamen Verantwortung für die freiheitliche, demokratische und friedliche Entwicklung Europas. Das Europa des 21. Jahrhunderts sollte dieses antifaschistische Erbe seiner Gründer immer im Gedächtnis behalten, es in der Verfassung für die Zukunft bewahren.

Übrigens nicht nur nach Spinelli, sondern auch nach Bertha von Suttner ist hier ein Gebäude benannt. Damit wird zu Recht das Andenken an eine Frau bewahrt, deren Appell "die Waffen nieder" mit zum wichtigsten Erbe Europas gehört. Eingedenk dessen halte ich es für unverzichtbar, eine klare Friedensverpflichtung der Europäischen Union in der Verfassung zu verankern, und ich denke, all dies sind wir den Vorkämpferinnen und Vorkämpfern der europäischen Integration beim Verfassen der Verfassung verpflichtet. <BRK>

4-112

EN

**De Rossa (Parl.-IE).** – A strong statement of social objectives needs to be incorporated in Article 3: full employment, rather than a high level of employment; social inclusion, which implies tackling poverty both inside and outside the Union; services of general interest, a fundamental part of Europe's unique social market economy. The Charter needs to be incorporated in the body of the constitution, not relegated to a protocol. Arguments about the legality and so on are unimportant. What is important is the perception of how importantly we regard the rights of citizens.

On the question of federalism we have to be ambitious. Dropping the word "federal" will not convince Mr Bonde or any of his followers that what we are about is creating a federation of nation states. We have to be ambitious. People are urging us to give them leadership. They have marched in their millions in the last few weeks demanding that leadership. We should give it to them.

On the question of God, I happen to be a retired Irish catholic. I know a bit about God and the good and the bad he or she can do. I suggest that the Charter already provides adequately for the concerns of believers. I fundamentally object to the proposal that the values of religious believers should be additional to the values already outlined in the constitution. Some sects of religious believers' values are repugnant to equality, freedom and bodily integrity. I will not accept them being incorporated into the European constitution. <BRK>

4-113

EN

**Attalidis (Gouv.-CY).** – I would like to touch on four points relating to Articles 1 and 3.

First, I believe that, for reasons of historical continuity, the name of the Union should continue to be "the European Union". This is the name that citizens of Member States know and it is the entity which citizens of candidate countries are aware that their governments have applied to join.

Secondly, in Article 1(3) we should refer to the Union being open to European states whose peoples share the same objectives, as well as values. This corresponds to the actual practice of the Union. The Copenhagen criteria can be described more accurately as objectives, rather than values.

Thirdly, I agree with Mr de Villepin and others who have proposed that we maintain the reference to an ever closer union. It is a historic phrase expressing the aspiration of the founders and the nations of Europe to a step-by-step enhancement of the Union. It does not necessarily carry the connotation of a continuous transfer of competences from the Member States to the Union. In Article 3(4) there should be more specification of the objectives of the European Union's external action along the lines elaborated by Working Group VII so that along with the objectives outlined in the text, we should also refer to the aim of advancing in the wider world democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, the principles of human dignity, equality and solidarity, and respect for international law, in accordance with the principles of the Charter of the United Nations. <BRK>

4-114

NL

**Pieters (Parl.-BE).** - Voorzitter, collega's, er wordt hier veel gesproken over en gestreden voor de grote principes en de grote doelstellingen. Wellicht moet dat ook zo wanneer we het over een constitutioneel verdrag hebben. Maar laten we dan toch ook leven naar die principes die niet betwist zijn en we allemaal voorstaan. Laat er geen al te grote kloof ontstaan tussen woord en daad, tussen beginsel en concreet recht van de Europese burger. Zo belijden we allemaal dat de rijkdom van de Unie onder meer bestaat uit haar culturele en dus ook taalkundige verscheidenheid. Zo belijden wij ook de fundamentele gelijkheid van alle lidstaten, van alle burgers en dus ook van alle talen van de Unie. Nu, hier knelt het schoentje.

Ik verwijs voor de huidige toestand naar mijn eerder verspreide studie over de talen van de Unie, die u allemaal ter hand is gesteld. In mijn amendement 7, bij artikel 7, lid 2, pleit ik er concreet voor het recht van de burger van de Unie te erkennen om in al zijn communicatie met de Unie een officiële taal van de Unie van zijn keuze te gebruiken en ook gelijktijdig de wetten, de besluiten en andere informatie waar hij belang bij heeft, in zijn eigen taal van keuze te kunnen verkrijgen.

Voor vele, zonet al onze volkeren, behoort een taal tot de ruggegraat van onze eigen identiteit. De burger van de Unie het recht te ontzeggen om in al zijn contacten met de Unie de officiële taal van zijn keuze te gebruiken, is kiezen voor een cultureel en taalkundig opgedeeld Europa met eerste klas en tweede klas talen, en eerste klas en tweede klas burgers. Het is ook kiezen voor een sociale opdeling tussen enerzijds Engelstaligen of veeltaligen, en anderzijds de anderstaligen. Deze keuze kan de Conventie niet maken. Het

gaat om een belangrijke keuze. Daarom moet dit artikel, dit recht, toegevoegd worden. Het staat niet in het Charter van de fundamentele rechten van de burger, dus dat kan geen argument zijn om het niet op te nemen in artikel 7, lid 2. <BRK>

4-115

EN

**Thorning-Schmidt (PE).** – I should like to make a few remarks in appreciation of this document. I am delighted that for the first time, in the objectives of the Union, we have children's rights. If this reference remains all through the Convention, that will mean that 90 million children and young people will no longer be invisible in our treaties. That is a very good thing. I have some constructive criticisms as well.

One of the fundamental things we have to agree on today, and in our future work, is a common understanding of the work we are doing. That understanding should be that it is unacceptable to go back on the *acquis* - not only on the legislation that is part of the *acquis*, but also on the policies that are established by the Union. It is quite surreal that some of our time today has been spent on establishing what are already our policies and making sure that they are part of the new treaty that we write. It should be obvious that we cannot go back on the *acquis*, but I am worried that is not the case.

I should therefore like to ask the President a question. As he has left, I will address it to the Praesidium. How will we make sure that it is still the case, for example, in the new treaty that one of our goals is to ensure a high level of consumer protection? How will we make sure that – as Mrs Van Lancker said earlier – equal rights between men and women are a horizontal objective? How will we make sure that these things are still the case? I cannot see it in this document. You have to tell us at some stage whether we have to keep arguing about this or whether we can go for new ground and start arguing about the more ambitious goals of the Union. It is not right that we keep talking about all the things that are already part of the treaty. <BRK>

4-116

EN

**President.** – To be clear, that is the reason why we chose to show you, first, all the different texts and only come back with an amended text when we have seen them all and come up with a global text, so that you can then see the whole treaty and see if your concerns are met.

The point where the Praesidium started was to maintain the *acquis* and so we will have to verify, when we have the whole treaty, if you find it there. Some of these points will be in the second part, and so on. <BRK>

4-117

EN

**Söderman, Ombudsman.** – I have worked seven-and-a-half years with the grievances of European citizens about the Community institutions and bodies. I am happy that I can share some concerns with you and make some very practical proposals.

First, in Article 5, it is a very good idea to make the Charter binding. It could be given a clearer position, but this is enough. This is a very positive step forward because the Union could accede to the European Convention on Human Rights. But as the article is currently drafted, it does not include the possibility to accede to other international human rights conventions, as the Member States can do. The Council of Europe has the Convention for the Prevention of Torture and Inhuman or Degrading Treatment. It has a social charter. The United Nations has two international covenants on human rights. The international aid organisations also have human rights instruments to which it would be very important for the Union to accede. So this should be reverted.

Concerning Article 7, it is very good that you have explicitly written in citizens' rights. I would be glad if good administration could be included here, because citizens feel that the Union is very bureaucratic.

Finally, I support the idea to include in the principles from the Amsterdam Treaty: that the European Union must take its decisions as openly as possible and as close to the citizens as possible. This is very important for the citizens. <BRK>

4-118

DE

**Dammeyer, Ausschuss der Regionen.** - Herr Präsident! Ein wichtiges Prinzip der Europäischen Union ist, und das ist hier auch wiederholt betont worden, dass die Europäische Union Respekt vor den Strukturen der Mitgliedstaaten hat. Das kann sich auf unterschiedliche Weise äußern; dazu zählt sprachliche Vielfalt, die respektiert werden soll, dazu zählt, dass das Prinzip der lokalen und regionalen Autonomie beachtet werden soll. Es wäre gut, wenn die Charta des Europarates von der Europäischen Union berücksichtigt wird. Sicher ist das möglich, sobald die Europäische Union ihrerseits Rechtspersönlichkeit geworden ist, wenn wir es schon nicht in die Verfassung selber aufnehmen.

Dazu gehört auch, dass die Regionen, wenn sie entsprechende Kompetenzen haben, auch von der Europäischen Union als zuständige und legitimerweise handelnde Partner, als Mithandelnde im Kontext ihrer Mitgliedstaaten respektiert werden sollen. Das hat auch Laeken verlangt, und deshalb sollte auf jeden Fall die Region in Artikel 2 erwähnt werden. Wenn davon die Rede ist, dass die

Kompetenzen der Mitgliedstaaten im Vergleich zur Europäischen Union beachtet werden, dann ist auch anzufügen, dass gegebenenfalls diese Kompetenzen in Übereinstimmung mit verfassungsrechtlichen Bestimmungen der Mitgliedstaaten auch von Regionen wahrgenommen werden. Das ist als erstes und vor allem eine innerstaatliche Angelegenheit, das ist wahr, aber es ist auch nötig, dass die Europäische Union das in ihrer Verfassung respektiert.

Für den Ausschuss der Regionen muss ich bedauern, dass nicht alle unsere Änderungsanträge, die wir vorgelegt haben, allen Mitgliedern vorgelegt und verteilt wurden. Ich glaube schon, dass das nützlich und richtig wäre, damit alle Kolleginnen und Kollegen wissen, welches unsere Änderungsanträge sind. Ich möchte das Sekretariat dringend darum bitten, Artikel 4 Absatz 1 und Absatz 2 der Geschäftsordnung künftig zu beachten, und ich bitte das Präsidium, unsere Änderungsanträge auch zu respektieren. Das ist auch deshalb wichtig, weil zu den Themen unserer Anträge eine Vielzahl von parallelen Änderungsanträgen anderer Mitglieder vorgelegt wurden, die in die gleiche Richtung gehen wie unsere und die wir auch deshalb berücksichtigt wissen möchten. Wir sehen uns damit in Übereinstimmung mit einer Mehrzahl dieser Mitglieder des Konvents, und wir möchten das auch gerne aufrecht erhalten. <BRK>

4-119

EN

**President.** – Your amendments are included in the revised version of the amendments distributed today.

The debate is closed.

The next sitting will be tomorrow at 9.30 a.m., when we will start with the presentation of the new articles – which the Praesidium will distribute – as well as the two protocols, and Articles 8 to 16.

*(The sitting was closed at 8.12 p.m.)* <BRK>

**THE EUROPEAN CONVENTION**

THE SECRETARIAT

**Brussels, 8 April 2003 (15.04)****(OR. fr)****CONV 674/03****COVER NOTE**

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Subject : Summary report of the additional plenary session  
– Brussels, 26 March 2003

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**DISCUSSION ON THE AMENDMENTS RELATING TO ARTICLES 1 TO 7 OF THE  
DRAFT CONSTITUTION**

Following the plenary session of 27 February dealing with Articles 1 to 7 of the draft Constitution and the amendments tabled by Convention members, the Convention continued its discussions at an additional session chaired by Mr Jean-Luc Dehaene, Vice-Chairman of the Convention.

**Article 1**

The Vice-Chairman briefly introduced the discussion by referring to the progress of proceedings at the plenary session at which these articles had been discussed and in particular recalling the main topics on which members of the Convention had submitted amendments. He also stated that the Praesidium would in any event seek to produce a revised version more clearly reflecting some of the concerns expressed; in particular, he cited the fact that the Union's competences were conferred by the Member States and not by the Constitution. This suggestion was welcomed by several Convention members.



## Article 1(1)

### *"Peoples" or "citizens"*

Many speakers indicated their preference for the term "citizens" rather than "peoples" in this paragraph, arguing that it was the more modern term, having been sanctioned by the Maastricht Treaty. By the same token, some speakers stressed the fact that the term "citizen" had a real legal sense, whereas the same could not be said for "peoples". However, others pointed out that the term "peoples" more accurately reflected the fundamental nature of the Union to which this Article referred. Finally, some speakers proposed rewording this paragraph to reconcile the two concepts of "peoples" and "citizens".

### *"Constitution" v "Constitutional Treaty"*

Some speakers voiced a preference for avoiding the word "Constitution" and replacing it by "Constitutional Treaty", which more accurately reflected the idea of an agreement reached between States.

### *Establishment of the Union*

Some speakers wondered whether legal continuity was guaranteed if the Constitution provided for "establishment" of the Union. In their view, it was not a case of establishing a Union because the Union already exists, but rather of marking a new stage in its development. The Vice-Chairman explained, firstly, that the Union established by the Constitution would in any event succeed the Community and the current Union and, secondly, that provisions guaranteeing legal continuity would be found in the last part of the Constitution, under the Title "Final provisions". One speaker emphasised the importance of reflecting legal continuity from Article 1 onwards, so as to avoid any ambiguity.

### *"Federal basis"*

Some speakers were in favour of deleting the word "federal" in this paragraph.

These speakers expressed the view that the word "federal" had a different legal meaning in different languages and that it was therefore best avoided so as not to open up the possibility of divergent interpretations. One speaker proposed deleting the second part of the sentence (which reads: "*within which the policies of the Member States shall be coordinated, and which shall administer certain common competences on a federal basis*"), on the grounds that it was superfluous and devoid of substance. Others were in favour of maintaining this provision and the term "federal", believing that this term expressed more precisely and concisely than others the very specific way in which the Union operates in terms of some of its competences. Some speakers proposed replacing the word "federal" by "Community" or "supranational".

#### *"Ever closer union"*

Some Convention members advocating incorporating into this paragraph the concept of the ever closer Union which appears in the current Article 1 of the Treaty. One speaker suggested that an appropriate place for this concept was the Preamble to the Constitution, since it was intended to look towards the future. One Convention member said she saw a link between this issue and the question of the term "federal basis": she would be able to accept that expression provided the Constitution no longer included the expression "ever closer union".

#### *Drafting points*

Some members described the opening formula of Article 1 as "banal" and made alternative suggestions such as "...determined to build their future together". Moreover, the verb "administer" was criticised as being too bureaucratic.

#### *Structure of the paragraph*

Some speakers proposed inverting the order of the second part of the sentence so that the competences conferred on the Union came first, before the coordination of Member States' policies.

### Article 1(2)

Several Convention members stressed the need to define more clearly the expression "national identity" in paragraph 2 of this Article and expressed doubts as to the advisability of mentioning national identity in two places in the Constitution. These members in particular proposed to make this concept more specific by adding various aspects such as cultural or linguistic diversity, autonomy and regional and other characteristics. Some speakers proposed amplifying the concept by adding the provisions of Article 9(6) or drawing up a new article on the basis of Article 1(2), supplemented by Article 9(6). However, one speaker expressed misgivings about incorporating elements of Article 9(6), fearing that the new paragraph would be overloaded.

### Article 1(3)

One speaker pointed out that Article 1(3) relating to the Union's openness to other States was more mandatory in its wording of the conditions for membership than the provisions laid down for existing Member States in Article 2 on the Union's values.

At the end of the discussion on draft Article 1, the Vice-Chairman of the Convention summed up by noting, first of all, that there was a large body of opinion in favour of merging the existing drafts on national identity (Articles 1(2) and 9(6)) in a separate new article which would incorporate the various aspects of national identity set out in current Article 9(6). He said again that the Praesidium intended to draw up a formula which would express, without ambiguity, that the Union's competences came from the States and would make it clear that the Union's coordinating function was restricted to certain policies on the basis of the competences conferred on it. For the rest, he said that the Praesidium would look more closely at certain points which were still controversial, such as:

- use of the term "citizens" or "peoples" in Article 1(1);
- whether or not to use the term "federal basis" in Article 1(1).

## Article 2

The Vice-Chairman introduced the discussion by explaining the logic which the Praesidium had followed in drafting this article, which was intended to be limited to a short list of the most essential values, accepted by all, and of sufficient legal clarity that serious breaches by a Member State could be sanctioned. He pointed out that a very large number of amendments set out to add equality and/or equality between men and women to the values. He also explained the Praesidium's approach to mentioning religion, referring back to Chairman Giscard d'Estaing's conclusions at the end of the last plenary session. Lastly, the Vice-Chairman noted that many amendments had raised the question of the relevance of the second sentence of this article, which was worded more as an aim than a value.

Many speakers requested that either the concept of equality in general (or in the case of some, equality before the law), or of equality between men and women, or both be added to the list of values. Several speakers argued that the term "equality" was no more general than "liberty" or "democracy" and should therefore be in line with the Praesidium's approach.

One member proposed speaking of "the inviolability" of human dignity, rather than simply respect, in line with the terminology of the Charter of Fundamental Rights. Some members also preferred the expression "fundamental rights" rather than "human rights".

Some members advocated enshrining cultural and linguistic diversity in Article 2, on the grounds that it was a true value of the Union; they did acknowledge, however, that drafting considerations could militate in favour of its inclusion in Article 3.

Several speakers took the point raised by the Vice-Chairman relating to the current wording of the second sentence and asked that it be either merged with the first sentence or moved to the Preamble or Article 3.

As regards references to religion, some Convention members wanted to go further than the Praesidium's approach as sketched out by the Chairman and Vice-Chairman, by making a reference to God in the Constitution; several other Convention members, on the other hand, expressed their satisfaction with the Praesidium's line.

The Vice-Chairman's argument that any reference to religious and spiritual values or heritage could in any event be included only in the Preamble and not in Article 2 was generally accepted.

In conclusion, the Vice-Chairman noted that a body of opinion had emerged in favour of including equality among the values and for some this also meant a reference to equality between men and women. He also said that the Praesidium would draw up a better formula for linking the two sentences in current draft Article 2.

### **Article 3**

The Vice-Chairman briefly introduced the discussion on this article, reminding members of the state of play on the subject, as expressed both at the plenary session and by means of the amendments submitted by Convention members. He raised certain points on which there already seemed to be a degree of consensus, such as the need to express more fully the aims of environmental protection and improvement and of sustainable development and the need for a more open and less "Euro-centric" wording of paragraph 4 on the Union's role in the world, aligning it on the wording arrived at by Working Group VII. He also pointed out that the wording of the article should allay both the concerns of those who wanted to express the characteristics of the social market economy and of those who advocated an open market and free competition. Moreover, the Vice-Chairman indicated that a "mainstreaming" clause (taking into account in all the Union's policies the requirements of equality between the sexes and environmental protection) would in any event be included in the Constitution, but that there was room for discussion on the appropriate place for

such a clause (Part One or Part Two of the Constitution). Finally, he stressed that, despite all the suggested additions, the article should be kept fairly concise.

Some speakers made the general point that the objectives set out in Article 3 would be used by the Court of Justice, and consequently needed to be worded more clearly. It was commented that there should be a direct link between the Union's competences and its objectives and that objectives should not be mentioned if the Union did not have the competence to achieve them. Several Convention members endorsed the appeal by the Vice-Chairman to keep the wording of the article concise.

Some Convention members felt it was superfluous to include in Article 3(1) concepts such as peace and other values already covered in Article 2.

Others regretted the failure to adopt the principles that the Union's action should be as open as possible and as close as possible to its citizens, and proposed that a separate paragraph be added including those principles.

Finally, several Convention members asked for a "mainstreaming" or consistency clause, as also mentioned by the Vice-Chairman, to be inserted either in this article or in Part Two.

#### Article 3(2)

Many speakers welcomed the indication given by the Vice-Chairman that environmental protection and improvement and sustainable development in its various aspects might be more forcibly expressed, and submitted concrete drafting proposals to that effect.

- Several speakers called for a reference to both an "open market economy with free competition", as enshrined in current Article 4 TEC and a reference to the "social market economy", and the Convention members pointed out that the two concepts were not mutually exclusive. Moreover, referring to the conclusions of Working Group XI, some Convention members mentioned various aspects of the social market economy such as public health protection, combating social exclusion, promoting the quality of work and/or access to education and training, and high-quality services of general interest.

Several speakers wanted to add the idea of territorial cohesion. In that context, the point was made that such an addition would inevitably have consequences for the definition, in Part Two, of the structural funds policy, currently intended to promote economic and social cohesion only.

Lastly, some speakers suggested including a reference to the promotion of non-discrimination, especially in the fields currently covered by Article 13 TEC.

### Article 3(3)

A series of speakers pointed out that since cultural diversity was not specifically linked to the area of freedom, security and justice, it should be mentioned separately. Others, in contrast, suggested enhancing the enshrinement of the area of freedom, security and justice by mentioning some of its constituent elements, notably the fight against racism and xenophobia which they thought should be included either here or in Part Two of the Treaty.

Some Convention members stressed the importance of adding the concept of linguistic diversity to that of cultural diversity; in this context, one speaker also added the idea of respect for the rights of minorities. The proposal to add the concept of a common cultural heritage in order to maintain the balance of Article 151(1) TEC was positively received.

### Article 3(4)

Several speakers called for a more open and less defensive wording of this paragraph, based on the drafts suggested by Working Group VII. One Convention member questioned the concept of "the Union's independence". Those Convention members thought that reference should be made to respect for international law, the principles of the United Nations Charter and to fundamental rights in general, which some members thought should cover the reference to children's rights. The Vice-Chairman accepted that this paragraph ought to be redrafted along those lines, as already revised by the Working Group. Some speakers did not want objectives such as the protection of children's rights or the eradication of poverty to be linked to the defence of the Union's independence and interests in the world, so that account could also be taken of them internally.

Some Convention members explicitly wanted Article 3(4) to contain the definition and implementation by the Union of a common foreign and security policy and a common defence policy. Others pressed for a reference to the promotion of free trade.

One speaker proposed that, in this article, the Union reject war as a means of resolving international disputes.

### Article 4

The Vice-Chairman opened the debate by saying that a relatively broad consensus had been reached on the draft article at the Convention plenary session. A very brief discussion on this point ensued.

One speaker emphasised the fact that approval of this article did not preclude the existence of special arrangements concerning the common foreign and security policy and certain aspects of Justice and Home Affairs.

Another speaker also insisted that the legal personality of the Union could not, in his view, turn the Union into a federation.



### Article 5 to 7

In his introduction, the Vice-Chairman said that although several Convention members had called for the legal basis of Article 5(2) to be extended to include accession to other international conventions in the field of human rights, the Praesidium took the view that the current draft, which mentioned only the ECHR, should not be understood *a contrario* as ruling out accession to other conventions. This clause was necessary for the ECHR, in the light of the opinion of the Court of 1996, which rejected competence to accede to the ECHR on the ground that such accession "would be of constitutional significance"; on the other hand, in the case of other conventions in the field of human rights which did not have such "significance" and with linkage to the Union's competences, the existing legal bases in the Treaty (and included in Part Two) should suffice.

Moreover, as regards the calls to add other forms of discrimination to the current draft Article 6 on non-discrimination on grounds of nationality, the Vice-Chairman called for caution, considering that such an addition could have much wider legal consequences than the prohibition of discrimination contained in Article 21(1) of the Charter, the scope of which is clearly limited by Article 51 of the Charter.

Lastly, the Vice-Chairman raised the matter of potential duplication between Articles 6 and 7(2) (list of citizens' rights), on the one hand, and the text of the Charter, on the other, inviting the members to take a position on the choice of principle that had to be made in that respect.

During the discussion on Articles 5 to 7, the following points were covered:

- A suggestion was made to incorporate, in Title II, a new article devoted to the four fundamental freedoms on the grounds that the vital importance of those freedoms to European integration would justify their inclusion in the initial articles of the Constitution; this importance had more to do with the nature of fundamental rights having direct effect than the nature of the Union's competence. This proposal was welcomed by the Vice-Chairman and other Convention members.

- A number of Convention members favoured including the Charter in the actual text of the Constitution, rather than in a protocol; most of them expressed a preference either for inserting it in Part One or for the Charter to constitute Part Two. One Convention member added that in that case the preamble to the Charter could not be incorporated as such, since the Constitution could not have two preambles.
- One Convention member said that, were the Charter incorporated, the "Explanations" on the Charter should be strengthened and attached to the text of the Charter. However, the other Convention members and the Vice-Chairman, while supporting the conclusions of the Working Group on the publication of the updated Explanations, rejected the idea of attaching the Explanations to the text of the Charter in the Constitution, as that would give them the same legal value as the Charter itself. Instead, the Explanations should retain their current value, i.e. as preparatory work which could serve as a valuable instrument for interpreting the Charter.
- As regards Article 5(2), several Convention members remarked that it would be dangerous to confine it to one optional legal basis, to be used by the Council acting unanimously, which might result in accession to the ECHR being blocked. On the other hand, it was acknowledged that the Constitution could not lay down a firm obligation to accede, given that such accession would still depend on negotiations to be conducted with the Member States of the Council of Europe, and on their agreement. Support emerged and was accepted by the Vice-Chairman for wording to the effect that "the Union shall seek ..." accession to the ECHR.
- Several Convention members pointed out that the current Article 6 could be deleted if the Charter, which contains an identical provision in its Article 21(2), were included in the actual text of the Constitution. The Vice-Chairman returned to this point in his conclusions and stressed the need to examine the possibilities for avoiding duplication between Part One and the Charter.

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**ANNEX****EUROPEAN CONVENTION****Additional session on Wednesday 26 March 2003****LIST OF SPEAKERS****Further discussion on the draft of Articles 1 to 7 (CONV 528/03)**

Mr Andrew Nicholas DUFF - European Parliament  
Mr Esko Olavi SEPPÄNEN - European Parliament  
Mr Inigo MENDEZ DE VIGO - European Parliament  
Mr Neil Nicholas MACCORMICK - European Parliament  
Mr Manfred DAMMEYER - Observer  
Ms Riitta KORHONEN - Finland (Parliament)  
Ms Teija TIILIKAINEN - Finland (Government)  
Mr Paraskevas AVGERINOS - Greece (Parliament)  
Mr Tunne KELAM - Estonia (Parliament)  
Mr Gerhard TUSEK - Austria (Government)  
Mr Jens-Peter BONDE - European Parliament  
Mr Bobby McDONAGH - Ireland (Government)  
Mr Gijs DE VRIES - Netherlands (Government)  
Mr Adrian SEVERIN - Romania (Parliament)  
Ms Anne VAN LANCKER - European Parliament  
Ms Lone DYBKJAER - European Parliament  
Mr Henrik HOLOLEI - Estonia (Government)  
Mr Manuel LOBO ANTUNES - Portugal (Government)  
Mr Peter HAIN - United Kingdom (Government)  
Mr Rytis MARTIKONIS - Lithuania (Government)  
Ms Helle THORNING-SCHMIDT - European Parliament  
Ms Elena PACIOTTI - European Parliament  
Mr Peter SERRACINO-INGLOTT - Malta (Government)  
Mr Peter ECKSTEIN KOVACS - Romania (Parliament)  
Mr Michel BARNIER - Commission  
Lord MACLENNAN of Rogart - United Kingdom (Parliament)

Mr Ben FAYOT - Luxembourg (Parliament)  
Ms Maria BERGER - European Parliament  
Mr Franc HORVAT - Slovenia (Parliament)  
Mr Caspar EINEM - Austria (Parliament)  
Mr Johannes VOGGENHUBER - European Parliament  
Ms Lenka ROVNA - Czech Republic (Government)  
Mr Alojz PETERLE - Slovenia (Parliament)  
Mr Filadelfio BASILE - Italy (Parliament)  
Mr Tunne KELAM - Estonia (Parliament)  
Mr. Paolo PONZANO - Commission  
Ms Claude Du GRANRUT - Observer  
Mr. Vytenis ANDRIUKAITIS - Lithuania (Parliament)  
Ms Sylvia-Yvonne KAUFMANN - European Parliament  
Mr Jens-Peter BONDE - European Parliament  
Mr Peter ECKSTEIN KOVACS - Romania (Parliament)  
Mr Peter HAIN - United Kingdom (Government)  
Mr Franc HORVAT - Slovenia (Parliament)  
Ms Lone DYBKJAER - European Parliament  
Mr Esko Olavi SEPPÄNEN - European Parliament  
Mr Gijs DE VRIES - Netherlands (Government)  
Mr Proinsias DE ROSSA - Ireland (Parliament)  
Mr Elmar BROK - European Parliament  
Ms Maria BERGER - European Parliament  
Ms Anne VAN LANCKER - European Parliament  
Mr Neil Nicholas MACCORMICK - European Parliament  
Ms Riitta KORHONEN - Finland (Parliament)  
Lord MACLENNAN of Rogart - United Kingdom (Parliament)  
Mr Peter SERRACINO-INGLOTT - Malta (Government)  
Mr Paraskevas AVGERINOS - Greece (Parliament)  
Mr Carlos CARNERO GONZALES - European Parliament  
Mr Joachim WUERMELING - European Parliament  
Mr Bobby McDONAGH - Ireland (Government)  
Mr Andrew Nicholas DUFF - European Parliament  
Ms Helle THORNING-SCHMIDT - European Parliament

M. Vytenis ANDRIUKAITIS - Lithuania (Parliament)  
Mr Adrian SEVERIN - Romania (Parliament)  
Mr Manuel LOBO ANTUNES - Portugal (Government)  
Mr Proinsias DE ROSSA - Ireland (Parliament)  
Mr Josef ZIELENIC - Czech Republic (Parliament)  
Mr Peter HAIN - United Kingdom (Government)  
Mr Paolo PONZANO - Commission  
Ms Anne VAN LANCKER - European Parliament  
Mr Carlos CARNERO GONZALES - European Parliament  
Ms Teija TIILIKAINEN - Finland (Government)  
Mr Neil Nicholas MACCORMICK - European Parliament  
Ms Lone DYBKJAER - European Parliament  
Ms Pia-Noora KAUPPI - European Parliament  
Mr Peter HAIN - United Kingdom (Government)  
Mr Jens-Peter BONDE - European Parliament  
Ms Anne VAN LANCKER - European Parliament  
M. Vytenis ANDRIUKAITIS - Lithuania (Parliament)  
Mr Paraskevas AVGERINOS - Greece (Parliament)  
Mr René VAN DER LINDEN - Netherlands (Parliament)  
Mr Andrew Nicholas DUFF - European Parliament  
Mr Neil Nicholas MACCORMICK - European Parliament  
Mr Paolo PONZANO - Commission  
Mr Jens-Peter BONDE - European Parliament

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**THE EUROPEAN CONVENTION****Brussels, 26 May 2003**

THE SECRETARIAT

**SUMMARY OF PROCEEDINGS**

**Subject: Meeting of the Praesidium  
Brussels, 21-23 May 2003**

**21 May****1. Economic governance - revised Articles 3, 8 and 21 of text discussed on 14 May**

The Praesidium reached agreement on the texts of revised articles on the Broad Economic Policy Guidelines, the Excessive Deficit Procedure, and on the decision-making procedures for those Member States outside the euro-zone. It was agreed that these would be submitted to the Convention as part of the consolidated Part III articles.

**2. Budget**

The Praesidium reached agreement on the texts of revised articles on the budget for Part I and Part III of the Constitution, and agreed that these would be circulated to the Convention as part of the consolidated sets of articles.

**3. Implementation of Union action (Part I, Articles 24 to 32a, with the exception of Articles 29 and 30 of Title V) - revised**

The Praesidium reached agreement on the texts of revised articles on the implementation of Union action (articles 24 to 32a of Part I), and agreed that these would be circulated to the Convention as part of the consolidated Part I articles.

**4. Social Europe**

The Praesidium reviewed follow-up to the conclusions of the Social Europe Working Group, noting where they had been reflected in new or amended articles.

**5. Area of freedom, security and justice (Part III) - revised**

The Praesidium reached agreement on the texts of revised articles on freedom, security and justice for Part III of the Constitution, and agreed that these would be circulated to the Convention as part of the consolidated Part III articles.

## **22 May**

### **1. Definition and objectives of the Union (Part I, Articles 1 to 7)**

The Praesidium reached agreement on the texts of revised articles on the definition and objectives of Union action (articles 1 to 7 of Part I), and agreed that these would be circulated to the Convention as part of the consolidated Part I articles.

### **2. General and Final Provisions (Part IV)**

The Praesidium reached agreement on the texts of revised articles on the General and Final Provisions for Part IV of the Constitution, and agreed that these would be circulated to the Convention with the consolidated Part III articles.

### **3. Institutions (Part I - Articles 14 to 23 and Part III)**

The Praesidium agreed to resubmit the existing Part I texts on institutions unamended at this stage as part of the consolidated Part I texts with a covering explanatory note. It also agreed on a set of Part III institutions articles, excluding those directly linked to the Part I provisions, for inclusion in the consolidated Part III articles.

### **4. External action (Part I articles 29 and 30 and Part II)**

The Praesidium reached agreement on the texts of revised articles on external action for Part I and Part III of the Constitution, and agreed that these would be circulated to the Convention as part of the consolidated sets of articles.

## **23 May**

### **1. Charter**

The Praesidium reached agreement, on the basis of a paper from the Secretariat, on how the Charter on Fundamental Rights should be incorporated into the Constitution as its Part II. It agreed in particular that the preamble to the Charter should be included as an introduction to Part II, and that the numbering system for the articles of the Constitution should be separate for each of the four Parts.

### **2. Preamble**

The Praesidium had a brief discussion on the preamble to the Constitution on the basis of several texts. It agreed to return to this issue at its next meeting.

**3. The Union and its immediate environment; and Union membership (Titles IX and X of Part I)**

The Praesidium reached agreement on the texts of revised articles on the Union and its immediate environment (Title IX) and Union membership (Title X) and agreed that these would be circulated to the Convention as part of the consolidated Part I articles.

**4. Part III (including new legal bases).**

The Praesidium reached agreement on the texts of draft articles for new legal bases on energy, civil protection, intellectual property, civil administration, space and sport. It agreed that these would be submitted to the Convention together with the consolidated Part III articles for discussion at its meeting on 30-31 May.

The Praesidium also received a first edition of the first two volumes of texts (covering the whole new Constitution) before the end of its meeting. It agreed that the Secretariat would circulate these to the Convention as early as possible the following week. (Volume I was accordingly circulated on 26 May, and Volume II on 27 May, with new commentaries explaining how the Praesidium had reacted to the amendments suggested, and comments made, by Convention members.)

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The next meeting will take place on 28 May 2003 in the Justus Lipsius building. It will begin at 10h.30.

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**THE EUROPEAN CONVENTION**  
THE SECRETARIAT

**Brussels, 16 June 2003 (18.06)**  
**(OR. en,fr)**

**CONV 783/03**

**NOTE**

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Subject : **Summary report on the plenary session**  
**– Brussels, 30 and 31 May 2003**

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**I. INTRODUCTION**

The Chairman briefly presented the documents which had been submitted to Convention members during the days preceding the plenary session. For the first time, Convention members had an overview of the draft Constitution with its Parts I, II, III and IV and the Preamble.

The Chairman stated that the Praesidium had given a thorough reading to the texts initially submitted and made a number of amendments to them in order to take account of the amendments tabled by Convention members. The Chairman described the main changes made to the texts of the Articles.

As regards the Institutions, the text had not been amended, the Praesidium having considered that, given the number and above all the nature of the comments made by Convention members on the text, further time for reflection on this matter was required.

The Chairman then presented the Convention work programme for the next few weeks. In order to obtain maximum data for the evaluation of institutional issues, the Praesidium agreed that the Chairman and the two Vice-Chairmen would consult each of the component groups of the Convention on Wednesday 4 June. The plenary session on 5 and 6 June would be devoted to the debate on Part I of the Constitution (with the exception of institutional issues) so as to provide the Praesidium with the necessary pointers for any subsequent amendments.

Some speakers wanted provision to be made for specific procedural arrangements with regard to common foreign and security policy.

## V. DEBATE ON DRAFT PART II OF THE CONSTITUTION

The incorporation of the Charter of Fundamental Rights and its Preamble into Part II of the Constitution was largely endorsed by Convention members, although some would have preferred the Charter to constitute Part I, and others that it should be incorporated into a protocol annexed to the Treaty.

For several Convention members, the adaptations of the final horizontal clauses of the Charter made by Working Group II and the updating of the Praesidium's explanations are an essential condition for being able to agree on conferring a legal value upon it. Some would also like to confer a legal value on the explanations themselves, or at the very least to refer explicitly to them in the text of the Constitution. Mr Vitorino, the Chairman of the Working Group on the Charter, stated that work on updating the explanations of the Charter was under way.

## VI. DEBATE ON THE DRAFT ARTICLES IN PART III OF THE CONSTITUTION

Several Convention members said they would like to be able to examine in greater depth certain questions in Part III, especially from a more technical point of view. The main questions raised at this preliminary debate were as follows:

### **Extension of qualified majority voting**

One of the main themes discussed was the extension of qualified majority voting. A great many Convention members thought that the extension to date was not sufficient, and some said that cases subject to unanimity should be strictly limited to exceptional instances. Others pointed to the need

31. Mme Linda McAVAN - Parlement européen
  32. Mme Hildegard PUWAK - Roumanie (Gouvernement)
  33. M. Jan FIGEL - Rép. Slovaque (Parlement)
  34. Mme Anne VAN LANCKER - Parlement européen
  35. Mme Danuta HÜBNER - Pologne (Gouvernement)
  36. M. Alberto COSTA - Portugal (Parlement)
  37. M. Jari VILÉN - Finlande (Parlement)
  38. M. John BRUTON - Irlande (Parlement)
- Cartons bleus : Duff, Roche, Van Lancker, MacCormick, Barnier)*

### SUPLÉANTS

- |                                                            |                             |
|------------------------------------------------------------|-----------------------------|
| 39. M. David O'SULLIVAN - Commission                       | * suppléant M. Vitorino     |
| 40. M. Hans-Martin BURY - Allemagne (Gouvernement)         | * suppléant M. Fischer      |
| 41. Lord TOMLISON - Royaume Uni (Parlement)                | * suppléant Mme Stuart      |
| <i>(Cartons bleus : Christophersen, de Vries, Duhamel)</i> |                             |
| 42. M. Pierre CHEVALIER - Belgique (Gouvernement)          | * suppléant M. Michel       |
| 43. M. Carlos CARNERO - Parlement européen                 | * suppléant M. Marinho      |
| 44. Mme Lenka ROVNA - Rép. Tchèque (Gouvernement)          | * suppléante M. Kohout      |
| 45. Mme Pervenche BERÈS - Parlement européen               | * suppléante M. Duhamel     |
| 46. M. Adrian SEVERIN - Roumanie (Parlement)               | * suppléant M. Hasotti      |
| 47. Mme Pascale ANDREANI - France (Gouvernement)           | * suppléante M. De Villepin |
| 48. M. Valdo SPINI - Italie (Parlement)                    | * suppléant M. Follini      |
| 49. M. Henrik HOLOLEI - Estonie (Gouvernement)             | * suppléant M. Meri         |
| 50. M. Antonio NAZARÉ PEREIRA - Portugal (Parlement)       | * suppléant Mme Azevedo     |
- (Cartons bleus : Barnier, Fayot, Kiljunen, Lenmarker, Van Lancker)*

### OBSERVATEURS

M. Emilio GABAGLIO - Partenaires sociaux

### *Samedi 31 mai*

#### **3. Débat sur le projet des parties II et III de la Constitution (CONV 725/03, CONV 726/03, CONV 727/03)**

1. M. Hannes FARNLEITNER - Autriche (Gouvernement)
  2. M. Jan FIGEL - Rép. Slovaque (Parlement)
  3. Mme Anne VAN LANCKER - Parlement européen
  4. M. Göran LENNMARKER - Suède (Parlement)
  5. M. Ernani LOPES - Portugal (Gouvernement)
  6. M. Kimmo KILJUNEN - Finlande (Parlement)
  7. M. Antonio TAJANI - Parlement européen
  8. M. Antonio VITORINO - Commission
  9. M. Sören LEKBERG - Suède (Parlement)
  10. Mme Teija TIILIKAINEN - Finlande (Gouvernement)
  11. M. Pierre LEQUILLER - France (Parlement)
  12. M. Dick ROCHE - Irlande (Gouvernement)
  13. M. Hubert HAENEL - France (Parlement)
- (Cartons bleus : Voggenhuber, Fayot, Hain, Rack, Paciotti, Vitorino)*
14. M. Andrew DUFF - Parlement européen
  15. M. Pierre CHEVALIER – Belgique (Gouvernement)

16. M. Jürgen MEYER - Allemagne (Parlement)
  17. M. Peter HAIN - Royaume Uni (Gouvernement)
  18. M. Olivier DUHAMEL - Parlement européen
  19. M. Michel BARNIER - Commission
  20. M. Aloiz PETERLE - Slovénie (Parlement)
  21. Mme Hanja MAIJ-WEGGEN - Parlement européen
  22. M. Proinsias DE ROSSA - Irlande (Parlement)
  23. M. Gianfranco FINI - Italie (Gouvernement)
  24. M. Caspar EINEM - Autriche (Parlement)
  25. M. Jelko KACIN - Slovénie (Parlement)
  26. M. Elmar BROK - Parlement européen
  27. Mme Sandra KALNIETE - Lettonie (Gouvernement)
- (Cartons bleus : Berès, Kvist, Carey, Lenmarker, Van der Linden, Barnier, Maij-Weggen, Roche, Van Lancker, Thorning Schmidt, Gormley, Bruton)*
28. M. Vytenis ANDRIUKAITIS - Lituanie (Parlement)
  29. M. Erwin TEUFEL - Allemagne (Parlement)
  30. M. Alain LAMASSOURE - Parlement européen
  31. M. Peter SERRACINO-INGLOTT - Malte (Gouvernement)
  32. M. Panayiotis DEMETRIOU - Chypre (Parlement)
  33. M. Lamberto DINI - Italie (Parlement)
  34. M. Ben FAYOT - Luxembourg (Parlement)
  35. M. Jan ZHRADIL - Rép. Tchèque (Parlement)
  36. M. Gijs DE VRIES - Pays Bas (Gouvernement)
  37. Mme Eduarda AZEVEDO - Portugal (Parlement)
  38. Mme Hildegard PUWAK - Roumanie (Gouvernement)
  39. Mme Sylvia-Yvonne KAUFMANN - Parlement européen

#### SUPPLEANTS

- |                                                    |                             |
|----------------------------------------------------|-----------------------------|
| 40. M. Adrian SEVERIN - Roumanie (Parlement)       | * suppléant M. Hasotti      |
| 41. M. Diego LOPEZ GARRIDO - Espagne (Parlement)   | * suppléant M. Borrell      |
| 42. Mme Pascale ANDREANI - France (Gouvernement)   | * suppléante M. De Villepin |
| 43. M. Hans-Martin BURY - Allemagne (Gouvernement) | * suppléant M. Fischer      |
| 44. Mme Elena PACIOTTI - Parlement européen        | * suppléante Mme McAvan     |
| 45. Mme Maria BERGER - Parlement européen          | * suppléante M. Hänsch      |
| 46. M. Valdo SPINI - Italie (Parlement)            | * suppléant M. Follini      |
| 47. M. Joachim WUERMELING - Parlement européen     | * suppléant de M. Kirkhope  |
| 48. M. Eduard MAINONI - Autriche (Parlement)       | * suppléant M. Bösch        |
| 49. Mme. Marta FOGLER - Pologne (Parlement)        | * suppléante M. Oleksy      |
| 50. M. William ABITBOL - Parlement européen        | * suppléant M. Bonde        |
| 51. M. Istvan SZENT-IVANY - Hongrie (Parlement)    | * suppléant M. Vastagh      |
| 52. M. Esko HELLE - Finlande (Parlement)           | * suppléant M. Vilén        |
- (Carton bleu : Lenmarker, De Rossa, Cisneros, Vilen)*

#### OBSERVATEURS

- M. Emilio GABAGLIO - Partenaires sociaux  
 M. Josef CHABERT - Comité des régions  
*(Carton bleu : McLennan, Dybkjaer, Wagener, Bonde)*

**THE EUROPEAN CONVENTION**  
THE SECRETARIAT

**Brussels, 19 June 2003 (25.06)**  
**(OR. fr,en)**

**CONV 814/03**

**NOTE**

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Subject : Summary report of the Plenary Session  
– Brussels, 11 and 13 June 2003

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**Reaching consensus**

1. On 13 June the Convention reached broad consensus on texts to be presented by the President of the Convention on its behalf to the European Council of Thessaloniki, of the Preamble, Part I on the constitutional provisions, Part II on the Charter of fundamental rights, and the Protocols on the role of national parliaments and the application of the subsidiarity and proportionality principles (CONV 797/1/03). The President recalled the mandate from the Laeken European Council and commended members of the Convention for reaching "un résultat inespéré" (a result unhoped-for).
2. After two days of debates in plenary, as well as intense negotiations within and between the different components of the Convention and political groups, the President of the Convention presented on 13 June the text as revised by the Praesidium in the light of the outcome of these discussions, introducing changes to the Preamble, to the chapter on institutions in Part I, and to Part II on the Charter; and including a new provision for a "citizens initiative" (CONV 811/03). The President highlighted that the text was the result of a collective effort to progressively identify a balance between the different expectations and sensibilities of Convention members.

3. In their interventions, members of the Convention expressed their appreciation for the final outcome and considered that it represented a fair and balanced result. Many spoke of a historic achievement. While maintaining the balance between Member States and between the Institutions, the Convention has succeeded in re-designing the Union to be more transparent and closer to the citizens, with clearer competences, and more effective and democratic decision-making. All welcomed the fact that the Convention method had succeeded in producing a single text, without options, and that improvements had been made in areas where successive IGCs had failed to produce results. Among the achievements of the Convention, speakers praised in particular the abolition of the pillar structure, the attribution of a single legal personality, the integration of the Charter, the simplification of instruments and procedures, the major strengthening of the roles of the European Parliament and national Parliaments, the extension of decision-making by QMV and lawmaking by codecision, and the creation of the post of EU Minister of Foreign Affairs.
4. Members of the Convention called on Member States not to reopen the text in the IGC as this could undermine the delicate balance reached by the Convention.
5. Notwithstanding the positive assessment of the general outcome, some speakers felt that the Convention should have reduced further the use of unanimity, in particular on taxes and CFSP issues, or were disappointed that Part I failed to mention services of general interest. Others considered that on some issues the Convention went too far, for example on structural cooperation in defence or trade in cultural services, while some expressed reservations on the definition of qualified majority.

#### **Issues raised during the discussions**

6. In addition to the issues covered above, a number of other issues were raised during the discussions in the plenary.

7. Some members felt that a clear reference to Christianity or Christian values should be included in the preamble. Others opposed this, saying that the current wording on "religious heritage" was sufficient and that they could not accept a reference to a specific religion.
8. Some considered the "passerelle" transition on QMV an infringement of the rights of national parliaments as use of it would not require ratification by Member States. Others feared that in practice it would never be used, and that continuing national vetoes would reduce the Union's capacity to act effectively. In general, members agreed on the usefulness of such a clause, given that the time was not ripe for abolition of the right of veto.
9. With regard to the Charter, a number of members expressed their surprise and reservations as to the sentence on the explanations relating to the Charter which the Praesidium had decided to insert into the Preamble to the Charter (at the beginning of Part II). The Chairman of Working Group II nevertheless defended this as a solution, which he termed a reasonable compromise, and which would not mean that the explanations as such would be accorded full legal status. Other members rallied round this position, pointing out that it was a compromise which was needed by at least five Member States so that inclusion of the Charter in the Constitution as proposed by the Praesidium could be ratified. Other members commented that, although it was a very painful concession, they were prepared to put up with this wording in the Preamble if it enabled inclusion of the Charter, but that they would nonetheless be opposed to the drafting of an article in the Constitution referring to the explanations.
10. A number of speakers argued that the Union needed a lighter treaty revision procedure which moved away from unanimity and national ratification. While highlighting the sensitivity of this issue and the need of maintaining a role for national parliaments, the President indicated that this issue could be further discussed in the context of Part IV.

11. The President finally informed the Convention that his report to the European Council would mention "areas of disagreement" where these had been expressed collectively, as was the case for the "minority report" by five members of the Convention. He would deliver their text to the President of the European Council.

#### **Further examination of Part III and Part IV**

12. The President confirmed that he would ask the European Council to extend the mandate of the Convention to allow it to finalise Parts III and IV. Members of the Convention could send amendments on these parts to the Secretariat up to Monday 23 June 13h00. Without prejudging European Council decisions, the President announced provisional plans for Plenary meetings of the Convention on 4 July and on 9-10 July.
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**ANNEX**

List of speakers following order of intervention.

**Plenary meeting 11, 12 and 13 June 2003****LIST OF SPEAKERS****Wednesday 11 June**

1. Mr Andrew DUFF - European Parliament
2. Mr Elmar BROK - European Parliament
3. Mr Jens-Peter BONDE - European Parliament
4. Ms Hildegard PUWAK - Romania (Government)
5. Mr Michel BARNIER - Commission
6. Mr René van der LINDEN - Netherlands (Parliament)
7. Mr Jürgen MEYER - Germany (Parliament)
8. Mr Dick ROCHE - Ireland (Government)
9. Mr Antonio TAJANI - European Parliament
10. Mr Josep BORRELL FONTELLES - Spain (Parliament)
11. Ms Pascale ANDREANI - France (Government)
12. Ms Marietta GIANNAKOU - Greece (Parliament)
13. Mr Gijs de VRIES - Netherlands (Government)
14. Mr Hubert HAENEL - France (Parliament)
15. Mr Erwin TEUFEL - Germany (Parliament)
16. Mr Alain LAMASSOURE - European Parliament
17. Mr Proinsias de ROSSA - Ireland (Parliament)
18. Mr Pierre LEQUILLER - France (Parliament)
19. Mr Joschka FISCHER - Germany (Government)
20. Ms Lena HJELM-WALLÉN - Sweden (Government)
21. Mr Peter HAIN - United Kingdom (Government)
22. Mr Alojz PETERLE - Slovenia (Parliament)
23. Ms Ana PALACIO - Spain (Government)
- \*\*\*\*\*
24. Mr Iñigo MENDEZ DE VIGO - European Parliament
25. Ms Marietta GIANNAKOU - Greece (Parliament)
26. Mr Johannes VOGGENHUBER - European Parliament
27. Mr Jacques SANTER - Luxembourg (Government)
28. Mr Tunne KELAM - Estonia (Parliament)
29. Mr Georgios KATIFORIS - Greece (Government)
30. Mr Elmar BROK - European Parliament
31. Mr Michel BARNIER - Commission
32. Mr Paraskevas AVGERINOS - Greece (Parliament)
33. Mr Vytenis ANDRIUKAITIS - Lithuania (Parliament)
34. Mr Adrian SEVERIN - Romania (Parliament)
35. Ms Hanja MAIJ-WEGGEN - European Parliament
36. Mr Kimmo KILJUNEN - Finland (Parliament)
37. Mr Andrew DUFF - European Parliament
38. Mr Olivier DUHAMEL - European Parliament
39. Mr Peter HAIN - United Kingdom (Government)
40. Mr Jan ZHRADIL - Czech Republic (Parliament)
41. Mr Valdo SPINI - Italy (Parliament)

42. Ms Cristiana MUSCARDINI - European Parliament
43. Mr Josep BORRELL FONTELLES - Spain (Parliament)
44. Mr René van der LINDEN - Netherlands (Parliament)
45. Mr Göran LENNMARKER - Sweden (Parliament)
46. Mr Panayotis DEMETRIOU - Cyprus (Parliament)
47. Ms Sylvia-Yvonne KAUFMANN - European Parliament
48. Mr Pierre LEQUILLER - France (Parliament)
49. Mr Ben FAYOT - Luxembourg (Parliament)
50. Mr Gijds de VRIES - Netherlands (Government)
51. Lord TOMLINSON - United Kingdom (Parliament)
52. Mr William ABITBOL - European Parliament
53. Ms Renée WAGENER - Luxembourg (Parliament)
54. Lord MACLENNAN OF ROGART - United Kingdom (Parliament)
55. Ms. Elena PACIOTTI - European Parliament
56. Mr Manfred DAMMEYER - (Committee of the Regions) Observer
57. Ms Claude DU GRANDRUT - (Committee of the Regions) Observer
58. Mr Elmar BROK - European Parliament
59. Mr Iñigo MENDEZ DE VIGO - European Parliament

#### **Thursday 12 June**

1. Mr Elmar BROK - European Parliament
2. Mr Andrew DUFF - European Parliament
3. Ms Marietta GIANNAKOU - Greece (Parliament)
4. Mr Johannes VOGGENHUBER - European Parliament
5. Mr Jens-Peter BONDE - European Parliament
6. Mr Antonio VITORINO - Commission
7. Ms Hildegard PUWAK - Romania (Government)
8. Mr Josep BORRELL FONTELLES - Spain (Parliament)
9. Mr Dick ROCHE - Ireland (Government)
10. Mr René van der LINDEN - Netherlands (Parliament)
11. Mr Peter SKAARUP - Denmark (Parliament)
12. Mr Joschka FISCHER - Germany (Government)
13. Mr Jan FIGEL - Slovakia (Parliament)
14. Mr Ben FAYOT - Luxembourg (Parliament)
15. Ms Sylvia-Yvonne KAUFMANN - European Parliament
16. Mr Peter HAIN - United Kingdom (Government)
17. Mr Kimmo KILJUNEN - Finland (Parliament)
18. Mr Jürgen MEYER - Germany (Parliament)
19. Mr Caspar EINEM - Austria (Parliament)
20. Mr Michel BARNIER - Commission
21. Mr Lamberto DINI - Italy (Parliament)
22. Ms Hanja MAIJ-WEGGEN - European Parliament
23. Mr Edmund WITTBRODT - Poland (Parliament)
24. Ms Lena HJELM-WALLÉN - Sweden (Government)
25. Mr Robert BADINTER - France (Parliament)

**Friday 13 June**

1. Mr Iñigo MENDEZ DE VIGO - European Parliament
  2. Mr René van der LINDEN - Netherlands (Parliament)
  3. Ms Ana PALACIO - Spain (Government)
  4. Mr Michel BARNIER - Commission
  5. Mr Henning CHRISTOPHERSEN - Denmark (Government)
  6. Ms Hildegard PUWAK - Romania (Government)
  7. Mr Elmar BROK - European Parliament
  8. Mr Alojz PETERLE - Slovenia (Parliament)
  9. Mr Andrew DUFF - European Parliament
  10. Mr Johannes VOGGENHUBER - European Parliament
  11. Ms Sylvia-Yvonne KAUFMANN - European Parliament
  12. Mr Gianfranco FINI - Italy (Government)
  13. Mr Josef ZIELENIEC - Czech Republic (Parliament)
  14. Mr Erwin TEUFEL - Germany (Parliament)
  15. Mr Jens-Peter BONDE - European Parliament
  16. Ms Anne VAN LANCKER - European Parliament
  17. Mr Olivier DUHAMEL - European Parliament
  18. Ms Danuta HÜBNER - Poland (Government)
  19. Mr Antonio VITORINO - Commission
  20. Mr Dominique de VILLEPIN - France (Government)
  21. Mr Péter BALAZS - Hungary (Government)
  22. Mr Gijs de VRIES - Netherlands (Government)
  23. Mr Joschka FISCHER - Germany (Government)
  24. Mr Louis MICHEL - Belgium (Government)
  25. Mr Rytis MARTIKONIS - Lithuania (Government)
  26. Ms Hanja MAIJ-WEGGEN - European Parliament
  27. Mr Kimmo KILJUNEN - Finland (Parliament)
  28. Mr Alain LAMASSOURE - European Parliament
  29. Mr Frans TIMMERMANS - Netherlands (Parliament)
  30. Mr Hannes FARNLEITNER - Austria (Government)
  31. Mr Göran LENNMARKER - Sweden (Parliament)
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## **IV.1.c. Drafts, and Members’ Amendments and Contributions**

**THE EUROPEAN CONVENTION**

THE SECRETARIAT

**Brussels, 18 June 2002 (20.06)  
(OR. fr)****CONV 116/02****WG II 1****NOTE**

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|                  |                                                                                                                                                             |
|------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>from :</b>    | <b>Secretariat</b>                                                                                                                                          |
| <b>to :</b>      | <b>Working Group on "Incorporation of the Charter/Accession to the ECHR"</b>                                                                                |
| <b>Subject :</b> | <b>Modalities and consequences of incorporation into the Treaties of the Charter of Fundamental Rights and accession of the Community/Union to the ECHR</b> |

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As requested by the Chairman of the Working Group on "Incorporation of the Charter/Accession to the ECHR", the Secretariat is forwarding herewith a discussion paper examining in detail the various issues already raised in CONV 72/02, which the Group will be required to consider.

The paper is divided into three sections:

- The first section gives a brief description of the background and current legal situation with regard to the protection of fundamental rights in the Community legal system, the current status of the Charter and the question of Community accession to the European Convention on Human Rights (ECHR).
- The second section presents an analysis, together with questions to guide the Working Group's discussions, of the various options and modalities for possible incorporation of the Charter into the Treaties and of the consequences thereof. In this context it also addresses the question of actions before the Community courts.
- The third section contains an analysis and questions relating to the modalities and consequences of possible accession of the Community or the Union to the ECHR.

## Discussion paper

**Subject: Modalities and consequences of incorporation into the Treaties of the Charter of Fundamental Rights and accession of the Community/Union to the ECHR**

### **I. Background and current situation**

#### 1. Fundamental rights in the Community legal system

For some 30 years the case-law of the Court of Justice has acknowledged that fundamental rights form part of Community law as general principles of this law <sup>1</sup>. In the absence of a written catalogue specific to the Union, the Court has derived the content of these laws through case-law, taking as a basis various sources, especially the constitutional traditions common to the Member States and the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), which has been ratified by all the Member States. For several years, the Court of Justice has noted that the ECHR has "special significance" in this respect, and refers explicitly to the case-law of the European Court of Human Rights <sup>2</sup>. It has also stated that not only the institutions of the Union but also the States, where they act within the scope of Community law, are required to respect fundamental rights under the supervision of the Court <sup>3</sup>.

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<sup>1</sup> The first references are in Case 29/69, *Stauder*, ECR 1969, 419, and Case 11/70, ECR 1970, 1125.

<sup>2</sup> See, for example, Judgments C-309/96, *Annibaldi*, ECR 1997, I-7493; C-185/95 *P Baustahlgewebe*, ECR 1998, I-8417; and for references to Strasbourg case-law, Judgments C-74/95 et al, X, ECR 1996, I-6609; C-368/95, *Familiapress*, ECR 1997, I-3689; C-7/98, *Krombach*, ECR 2000, I-1935.

<sup>3</sup> Judgments of 13 July 1989, Case 5/88, *Wachauf*, ECR 1989, 2609, and of 18 June 1991, C-260/89, *ERT*, ECR 1991, I-2925; for recent confirmation see Judgment of 13 April 2000, C-292/97, *Karsson*, ECR 2000, I-2737, para. 37. See also, testifying to the Court's effort to restrict the scope of Community fundamental rights to the Member States, the judgments in Case C-299/95, *Kremzow*, ECR 1997, I-2629; C-309/96, *Annibaldi*, ECR 1997, I-7493.

The Treaty of Maastricht included a provision in the Treaty on European Union – current Article 6(2) of that Treaty – which confirmed this case-law *acquis*. The Treaty of Amsterdam adds to it the provision of Article 6(1) enshrining the founding principles of the Union, including respect for human rights and fundamental freedoms; it also stipulates that respect for such principles is a condition for accession to the Union (Article 49 TEU) and establishes the possibility for the Union to impose sanctions on one of its Member States in the event of a serious and persistent breach of those principles (Article 7 TEU).

## 2. The current status of the Charter of Fundamental Rights of the European Union

Following the conclusions of the Cologne and Tampere Councils in 1999, the Charter of Fundamental Rights of the European Union (hereinafter "Charter") was drawn up during 2000 by a Convention and then approved by the Biarritz European Council. It should also be pointed out that explanations regarding the text of the Charter were drawn up by the Praesidium of that Convention; it was specified that these explanations had no legal value but were intended to clarify the provisions of the Charter <sup>1</sup>. The Charter was signed and solemnly proclaimed by the Council, the European Parliament and the Commission on 7 December 2000 and published in the Official Journal <sup>2</sup>.

The Nice IGC did not give a ruling on its incorporation into the Treaties. Nice Declaration No 23 states that the debate on the future of the Union and the new IGC to be convened in 2004 will relate inter alia to "the status of the Charter of Fundamental Rights of the European Union, proclaimed in Nice, in accordance with the conclusions of the European Council in Cologne". The Laeken Declaration states that "thought would [also] have to be given to whether the Charter of Fundamental Rights should be included in the basic treaty."

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<sup>1</sup> See CHARTE 4473/00 CONVENT 49 of 11 October 2000, accessible via <http://ue.eu.int/df>.

<sup>2</sup> C 364 of 18 December 2000.

Since the solemn declaration, a series of Advocates-General at the Court of Justice have referred to the Charter, using it – despite its lack of any formally binding force, which they take care to note – as a source for identifying Community fundamental rights <sup>1</sup>. More recently, the Court of First Instance invoked on two occasions articles of the Charter as "confirmation" of the constitutional traditions common to the Member States <sup>2</sup>. On the other hand, the Court of Justice has refrained to date from mentioning the Charter.

Furthermore, the Commission decided in March 2001 that any proposal for a legislative act and any regulatory act that it was preparing to adopt would be the subject, at the time of its drafting according to the usual procedures, of a prior compatibility check with the Charter; in addition, a new "model recital", testifying to this compatibility check, is now inserted into its legislative proposals or regulatory acts which have a specific connection with fundamental rights. Such recitals referring to the Charter have in the meantime been included in certain acts adopted by the legislator <sup>3</sup>.

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<sup>1</sup> See conclusions of Advocate-General Alber in C-340/99, *TNT Traco*, Advocate-General Tizzano in C-173/99, *BECTU*, Advocate-General Mischo in C-122 and 125/99 P, *D v. Council*, and in C-20/00 and 64/00, *Booker and Hydro v. the Scottish Ministers*, Advocate-General Stix-Hackl in C-49/00 *Commission v. Italy*, in C-131/00, *Nilsson*, and in C-459/99, *MRAX*; Advocate-General Jacobs in C-377/98, *Netherlands v. Parliament and Council*, in C-270/99 P, *Z v. Parliament* and in C-50/00 P, *Union de Pequeños Agricultores*, Advocate-General Geelhoed in C-413/99, *Baumbast and R*, and in C-313/99, *Mulligan et al*, Advocate-General Léger in C-353/99 P, *Council v. Hautala et al*, and in C-309/99, *Wouters* – all not yet published in the ECR. The wording of Advocate-General Léger in the abovementioned Hautala case should be noted "As the solemnity of its form and the procedure which led to its adoption would give one to assume, the Charter was intended to constitute a privileged instrument for identifying fundamental rights. It is a source of guidance as to the true nature of the Community rules of positive law."

<sup>2</sup> See Judgments of 30 January 2002, T-54/99, *max-mobil*, and of 3 May 2002, T-177/01, *Jégo-Quéré*, neither of which has yet been published in the ECR.

<sup>3</sup> See recital No 2 of Regulation 1049/2002 on access to documents of the institutions, and recital No 18 of Council Decision 2002/187 setting up Eurojust [OJ references].



3. The question of accession of the Community to the ECHR:

The Commission had already proposed in 1979 that the Community should accede to the ECHR; it reiterated this proposal in 1990 and in 1993<sup>1</sup>. The European Parliament endorsed this on several occasions<sup>2</sup>. Having received from the Council a request for an Opinion pursuant to Article 300(6) of the EC Treaty, the Court of Justice, in its Opinion 2/94 delivered in 1996<sup>3</sup>, noted that the Community was not competent to accede to the ECHR, since no Treaty provision conferred upon the institutions, in general, the power to lay down rules or to conclude international conventions on human rights, and that accession to the ECHR, which "would be of constitutional significance", would go beyond the limits of Article 235 (now Article 308) of the EC Treaty. According to this Opinion of the Court – which does not comment on whether accession to the ECHR would be compatible with the Treaty and in particular with the principle of the autonomy of Community law and the powers of the Court – such accession could be effected only by way of Treaty amendment.

The Amsterdam and Nice IGCs, to which initiatives along these lines were referred, did not insert a provision into the Treaty which would allow for the Community's accession to the ECHR.

The Laeken Declaration states that "thought would ... have to be given ... to whether the European Community should accede to the European Convention on Human Rights".

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<sup>1</sup> See Supplement 2/79 to the Bulletin of the EC; SEC(90)2087 final, and SEC(1993) 1679 final.

<sup>2</sup> See for example the Resolution of 18 January 1994, OJ C 44, p. 32 and also that of 16 March 2000 (A5-0064/2000).

<sup>3</sup> Opinion of the Court of 28 March 1996, ECR 1996, I-1759.

## II. Modalities and consequences of possible incorporation of the Charter into the Treaties

*Preliminary remark: The content of the Charter*

In line with the Working Group's mandate the present paper, when referring to the "Charter", takes as a basis the Charter as adopted by the earlier Convention and solemnly proclaimed by the three institutions. Consequently, the proposals put forward since then for amending the Charter by deleting certain rights or by adding others are not examined here; this does not, of course, rule out the possibility of such proposals being made later, during the political debate by the Plenary of the Convention. Likewise, the "technical" criticisms or proposals for "drafting improvements" made by certain legal experts, referring for example to the lack of precision of certain articles of the Charter, will not be discussed either.

As regards the content of the Charter, here reflections will instead be limited to examining whether discussions conducted since 2000 on the technique of incorporation and, in particular, the future structure of the Treaties, have revealed any need for a technical amendment of the text of the Charter which does not affect its substance. With this in mind, three points should be noted:

- the question of what is to happen to the preamble to the Charter, if it were decided to incorporate the body of the Charter into the EU Treaty or into a new basic Treaty (see 3 below);
- the question if and to what extent certain purely technical adjustments need to be made in the provisions of the Charter in order to ensure consistency between the Charter and the existing Treaties (see 5 below);

- without looking at it in detail here, the possible need for an adjustment of a purely drafting nature to the references in the Charter to "Treaties" or to "Community Treaties", to the "Treaty on European Union", "Treaty establishing the European Community" or to "Community law", in the event of the current structure and/or title of these Treaties being modified in the course of their simplification <sup>1</sup>.

#### 1. Possible techniques for incorporation of the Charter

If the Convention inclines towards incorporation <sup>2</sup> of the Charter into the Treaties, several options arise as regards the technique for such incorporation:

- (a) The Charter could be "attached" to the Treaties in the form of a "Solemn Declaration".
- (b) The EU Treaty or a new basic Treaty could refer to the Charter according to the model of Article 6(2) of the existing EU Treaty. It would therefore be merely an *indirect* <sup>3</sup> reference to the Charter as a source of inspiration for the case-law definition of fundamental rights.
- (c) The EU Treaty or a new basic Treaty could make a *direct* reference to the Charter <sup>4</sup>.
- (d) A direct or indirect reference to the Charter could be made in the preamble to a new basic Treaty.

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<sup>1</sup> These references are to be found in the preamble to the Charter and in Articles 16, 18, 21(2), 27, 28, 30, 34, 36, 45, 51 and 52. Similarly, only where the body of the articles of the Charter were inserted into the EU Treaty itself or in a new basic Treaty (option (f) below), could a drafting adjustment of Article 51(2) of the Charter become necessary in order to make it clear that the Charter does not alter the powers and tasks as defined by *the other provisions* of the Treaties (and Article 52(2) of the Charter could be subject to a similar adjustment to make it clear that this Article relates to the rights of the Charter which are based on other provisions of the Treaties).

<sup>2</sup> The term "incorporation" is used here in the broad sense covering several forms and degrees of acknowledgement of the legal value of the Charter in the Treaties or in connection with them.

<sup>3</sup> The indirect nature is currently expressed in the text of Article 6(2) TEU by the terms "... fundamental rights, *as guaranteed ... as general principles ...*"). As to whether the reference to the Charter should be added to or replace the two current references, see section 2 below.

<sup>4</sup> Example: "The Union respects the rights, freedoms and principles enshrined in the Charter of Fundamental Rights of the European Union".

- (e) The Charter could become a new Protocol annexed to the Treaties or to a new basic Treaty.
- (f) The full body of the 54 articles of the Charter could be inserted into a title or chapter of the EU Treaty, or into a new basic Treaty, of which it would for example form the first title or chapter.

There are also various possibilities for combining options (a) to (e) (for example, "attaching" the Charter as a solemn declaration *and* reference in current Article 6(2) of the EU Treaty; Protocol annexed to the Treaties or to the new basic Treaty *and* direct reference to this Protocol in an article of the TEU/the new basic Treaty).

Several factors will influence the choice made from the techniques referred to above. Firstly, the general question whether the Convention prefers to retain the current structure of the Treaties or propose a new basic Treaty will obviously play a major role, even if each of the above techniques is in principle conceivable in both scenarios <sup>1</sup>.

Secondly, the precise legal value of the Charter would also vary according to the option chosen: It would be least pronounced under option (a), which would admittedly increase the symbolic and political value of the Charter without, however, clarifying or reinforcing its current legal status. Option (b) would go a little further than the previous option but nevertheless would merely formally acknowledge the Charter's status as a source of inspiration – although undoubtedly a distinguished source – for the case-law definition of fundamental rights as general principles of law. Such status appears already to be accepted in practice (see above). It is only by virtue of options (c), (e) and (f) that the Charter would acquire the status of a fully binding text, following the example of the catalogues of fundamental rights in national constitutions. On the other hand, the legal effect of a reference in a new preamble (option (d)) would seem rather uncertain, particularly in the light of Court of Justice case-law which grants preambles and recitals of Community acts a legal value

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<sup>1</sup> Consideration is not given here to whether, if the Convention were to propose a new basic Treaty (into which the Charter would be incorporated), there should or should not be a hierarchical distinction between this Treaty and a "Part Two" of the existing primary law. This question goes beyond the subject of the Charter and should be examined by the Convention in the general context of the future structure of the Treaties.

which is only very limited and subordinate to that of the enacting terms of the act. Furthermore, if the technique of merely referring to the Charter (options (b), (c) or (d)) without incorporating the latter into a Protocol were preferred, this should lead to consideration of how the Charter could be amended in future (whereas under options (e) and (f) it would be the common arrangements for revision of the Treaties which would automatically apply).

Finally, the choice between the abovementioned options could also be informed by the preferences of the Convention members regarding the political presentation and legibility of the rights of the Charter, and of the outcome of the Convention as a whole, in the eyes of the citizen.

*Which of the techniques mentioned above is (are) deemed preferable?*

## 2. The question of the current Article 6(2) of the EU Treaty

If the Charter is incorporated into the Treaties (irrespective of the technique chosen) the question arises whether or not a reference should be kept, as currently in Article 6(2) of the EU Treaty, to the two outside sources of legal inspiration – the constitutional traditions common to the Member States and the ECHR. There are valid arguments on both sides here. For example, retaining such a clause – even if it were worded differently –<sup>1</sup> could be justified on the grounds that it makes it clear that the Charter will not prevent the Court of Justice from continuing to draw on these additional sources, which may also develop over time. The argument is also put forward that to retain a reference to the ECHR in the Treaty would be a desirable addition, from the point of view of legal certainty, to the reference to the ECHR in Article 52(3) of the Charter. Furthermore, deletion of current Article 6(2) TEU could be defended on the grounds that the Charter now constitutes the most

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<sup>1</sup> In the case of options (a) and (b), the expression "and as they are recognised in the Charter ..." could be added to Article 6(2). In the case of option (c), (d) or (e), a second sentence reading as follows could be added to the sentence suggested in footnote 4 on page 7 above: "The Union shall also observe fundamental rights as guaranteed ..." (followed by the current content of Article 6(2) TEU). While option (f) sits less easily with retaining a provision such as Article 6(2) TEU, it would not be out of the question, for example, to add such a provision to the new heading, just after the last article of the Charter, or to insert a reference of the type "notwithstanding ...." in the latter's horizontal provisions.

authentic expression of the body of acquired fundamental rights specific to the European Union. According to that view, a "concurrent" reference to the other two sources would scarcely be comprehensible, since the Charter has already incorporated the rights in the ECHR and crystallises most fully the traditions common to the Member States<sup>1</sup>; nor would such a reference be necessary since, as in other constitutional legal systems, a written catalogue of fundamental rights would not be understood as "exhaustive" and preventing the development, through case-law, of new rights when the times so demand.

*Should incorporation of the Charter into the Treaties lead to deletion of the reference to the two outside sources represented by the constitutional traditions common to the Member States and the ECHR (see the current Article 6(2) of the EU Treaty)? Or should such a reference be kept? In the affirmative, how should it be reworded in the light of incorporation of the Charter?*

### 3. The question of the preamble to the Charter

The articles of the Charter are preceded by a preamble, certain aspects of which played an important role in achieving the final compromise in the previous Convention. If the European Convention were to choose option (e) above, the question would arise of what should become of the preamble. It would then be conceivable to use the preamble to the Charter as the basis for drafting the preamble to a new basic Treaty or, alternatively, to incorporate its different aspects into a reformulated preamble to the EU Treaty. This question does not arise in relation to the other options, which would leave the preamble to the Charter attached to the Charter text.

*What should be done with the preamble to the Charter if the Charter is incorporated into the Treaties?*

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<sup>1</sup> For this view, see judgment of the CFI of 31 January 2002, *max. mobil*, mentioned above.

#### 4. The question of "replication" in the Charter

In order to draw up a full catalogue of the fundamental rights of the Union, the Charter, in a number of its articles, simply restates rights already expressly enshrined in the EC Treaty, often, however, in the interests of readability, shortening the wording as compared with the corresponding articles of the Treaty. These relate to rights to freedom of movement <sup>1</sup>, almost all the rights in the "citizenship" section of the Charter (right to vote, access to documents, right of petition, etc.) <sup>2</sup> and the clauses relating to non-discrimination on grounds of nationality and equality between the sexes <sup>3</sup>. Since the previous Convention had no brief to amend the Treaties, but only to draft a Charter which could be added to them, it formulated a referral clause (Article 52(2) of the Charter <sup>4</sup>) to make it clear that, with regard to those rights, the legal situation as defined in the Treaties was unaffected by the Charter. That clause also made it possible to avoid the repetition, in each Charter article in question, of formulae to the effect that these rights are exercised under the conditions and within the limits provided for in the corresponding article of the Treaty and of secondary legislation <sup>5</sup>.

If the option of integrating the body of the Charter into a new basic Treaty or a protocol annexed thereto (options (e) and (f)) were to be considered, some have suggested that the question would then arise whether the "replications" mentioned above between some of the Charter articles and the same rights recognised in the Treaties should be eliminated, either by deleting either the Charter articles in question or the corresponding articles from the current Treaties (which would then become the "second part" of primary legislation). However, others have commented that this

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<sup>1</sup> Articles 15(2) and 45 of the Charter.

<sup>2</sup> Articles 39, 40, 41(4), 42 – 46 of the Charter.

<sup>3</sup> Articles 21(2) and 23 of the Charter.

<sup>4</sup> Article 52(2) reads as follows: "Rights recognised by this Charter which are based on the Community Treaties or the Treaty on European Union shall be exercised under the conditions and within the limits defined by those Treaties."

<sup>5</sup> On this point, see also the explanations of the Praesidium (cited in footnote 1 on page 3) relating to this Article ("Paragraph 2 specifies that where a right results from the Treaties it is subject to the conditions and limits laid down by them. The Charter does not alter the system of rights conferred by the Treaties.")

problem is more apparent than real or that in any event it would arise only in relation to a very limited number of rights<sup>1</sup>. This question will have to be examined in greater detail if the occasion arises.

*If the corpus of the articles of the Charter were to be incorporated into the new basic treaty or a protocol annexed thereto (option e), how should the "replication" arising from the fact that some articles of the Charter repeat rights already enshrined in the EC Treaty be dealt with?*

#### 5. Examination of certain technical adjustments in the provisions of the Charter

Some observers have suggested that, if the Charter is incorporated, certain technical adjustments to its wording would be needed. Other observers have challenged the need for these changes, taking the view that the general provisions of the Charter (Articles 51 to 54) are sufficient to clarify the points dealt with.

On the one hand, the criticism has been levelled that some articles of the Charter repeat rights enshrined in the EC Treaty without specifying in each article that those rights are exercised under the conditions and within the limits laid down by the Treaty, which would lead to legal uncertainty<sup>2</sup>. Others hold that the horizontal provision of Article 52(2) of the Charter was designed to clarify this issue for all the articles of the Charter, while avoiding the cumbersome repetition, in each article in question, of references to the Treaty. On the other hand, it has been held that some provisions of the Charter took over those of the TEC, but with changes to them. In this connection

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<sup>1</sup> We are thinking here in particular of the following Charter articles: Articles 39 and 40 (Right to vote and to stand as a candidate at municipal elections and elections to the European Parliament) – see Articles 19 and 190(1) TEC); 42 (access to documents – see Article 255 TEC); 43 (Ombudsman – see Articles 21 and 195 TEC), 44 (petition – Articles 21 and 194 TEC), 45(1) (freedom of movement for citizens – Article 18 TEC) and 46 (diplomatic protection – Article 20 TEC). On the other hand, in the context of equality between the sexes and freedom of movement for workers and the self-employed, it seems perfectly appropriate for the more succinct Charter text and the more detailed text in the current Treaties to exist side by side.

<sup>2</sup> In this connection mention has been made of Articles 39, 40, 42, 43 and 44 of the Charter.



reference is made to Article 21(1) of the Charter, on non-discrimination, which some claim modifies Article 13 of the EC Treaty; others point out, however, that there is no incompatibility between these two provisions, as they are different in nature and scope <sup>1</sup>.

*In the event of incorporation of the Charter being integrated into the Treaties, would certain technical adjustments to some of its provisions be necessary? Would Article 52(2) of the Charter be sufficient or would it be necessary to make repeated reference to the conditions and limits laid down in the Treaty in each Article concerned in the Charter?*

#### 6. Treaty provisions concerning the Court of Justice

In this connection, there are three distinct issues, only the first of which arises directly as a consequence of the possible incorporation of the Charter, while the other two exist independently of it in principle even though a link has often been established:

##### (a) Amendment of Article 46(d) of the TEU

Depending on the option chosen for the incorporation of the Charter into the Treaties (see above), a change to the wording of Article 46(d) of the EU Treaty could prove necessary in order to ensure that the Charter is included among the provisions over which the Court has jurisdiction.

At the same time, it appears that the words "with regard to action of the institutions" in the current Article 46(d) should be deleted. As noted earlier, since the 1980s the Court of Justice has monitored compliance with fundamental rights not only by the action of the institutions, but also by that of the authorities of the Member States where they act within the scope of Community law. The significance of inserting the above terms into Article 46 of the EU Treaty by means of the

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<sup>1</sup> Thus, while Article 13 TEC creates a legal basis to combat discrimination by adopting legislative provisions applying between individuals, Article 21(1) of the Charter contains a directly applicable ban on discrimination comparable to Article 14 ECHR and Protocol No 12 thereto, but binding only on the institutions and bodies of the Union and on the Member States solely when implementing Union law.

Amsterdam Treaty in relation to that well established case-law was never very clear; nevertheless, the Court confirmed its established case-law following the entry into force of the Amsterdam Treaty. In any event, the earlier Convention was at pains to define its scope explicitly, in Article 51(1) of the Charter <sup>1</sup>, by codifying earlier case-law; the current wording of Article 46(d), which could be interpreted differently with the Charter, should then give way to this definition.

*Should the reference to action of the institutions alone in Article 46 of the EU Treaty be deleted in the event of that article being adapted to a Charter incorporated into the Treaties?*

(b) competences of the Court in the field of justice and home affairs

While the provisions of the Treaty of Amsterdam introducing jurisdiction for the Court of Justice with regard to justice and home affairs reflect progress, many criticise the remaining limitations and the complexity of these rules in relation to the common arrangements of the EC Treaty <sup>2</sup>. Thus, Article 35 of the EU Treaty has led to extremely complex "variable geometry" arrangements with regard to the preliminary ruling procedure under the 3rd pillar. Article 35(5) of the EU Treaty completely rules out any jurisdiction of the Court over 3rd pillar matters in respect of national police or law and order measures. Provision is made for a similar exclusion, in accordance with Article 68(2) of the EC Treaty, even under the Community pillar, in respect of acts of the Community institutions against which national courts can offer no protection. Finally, the limitation of the right of preliminary referral provided for in Article 68(1) of the EC Treaty seems hard to justify since it obliges those concerned to go through all the national courts before they can be heard by the Community judge.

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<sup>1</sup> Article 51(1) of the Charter reads as follows: "The provisions of this Charter are addressed to the institutions and bodies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect these rights, observe the principles and promote the application thereof *in accordance with their respective powers.*" (Our italics).

<sup>2</sup> On these points, see also discussion paper CONV 69/02 on "Justice and Home Affairs".

It is clear that this problem goes beyond the issue of incorporating the Charter <sup>1</sup>. However, effective protection of fundamental rights is considered to be an essential aspect of the "area of freedom, security and justice", especially insofar as many actions of the Union in this area are particularly sensitive with regard to those rights. Moreover, any exemption from control by the Court of Justice would expose Union law and the acts of the institutions to appeal before the European Court of Human Rights.

*Could concern for the protection of fundamental rights give rise to a review of the current provisions relating to the Court of Justice in matters relating to justice and home affairs ?*

- (c) The question of liberalising the conditions for direct action before the Court or even introducing a "constitutional appeal" (Verfassungsbeschwerde", "recurso de amparo")

For some time, some legal scholars have criticised the conditions for direct appeal by individuals to the Community jurisdiction, as defined in Article 230(4) of the EC Treaty and interpreted by case-law <sup>2</sup>, as being too narrow or inadequate for guaranteeing the fundamental right to effective judicial protection (or: "right to seise a judge") against acts of the institutions. While this criticism was voiced independently of the Charter and prior to its drafting – the latter does not codify the right to appear before a judge, as developed by the Court of Justice on the basis of the ECHR since the 1980s <sup>3</sup> – it has been reiterated in connection with it. Some have even gone so far as to call for the introduction of a new special form of legal action enabling any individual to challenge directly any Community act, including those of a legislative nature, for violation of his or her fundamental rights, along the lines of procedures that exist in some Member States (Verfassungsbeschwerde", "recurso de amparo").

<sup>1</sup> See the discussion paper on " Justice and Home Affairs".

<sup>2</sup> Article 230(4) TEC restricts actions for annulment to persons to whom a Community act is addressed and to persons to whom it is "of direct and individual" concern. Since the *Plaumann* judgment, Case 25/62, ECR 197, case-law has interpreted this phrase as ruling out, in principle, action against acts that are general in scope, even where they directly affect individuals, since the person bringing a case would not be individually concerned unless they are affected "by reason of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons, and by virtue of these factors distinguishes them individually just as in the case of the person addressed."

<sup>3</sup> See in particular the judgments of the Court of Justice in Case 222/84 – *Johnston* –, ECR 1986, 1651, No 18; Case 222/86 – *Heylens* –, ECR 1987, 4097, No 14; C-97/91 – *Borelli* –, ECR 1992, I-6313, No 14.

Others claim that Community law possesses a comprehensive appeal system providing effective judicial protection, including for fundamental rights: individuals may, according to circumstances, either challenge a Community act directly, in accordance with Article 230(4) of the EC Treaty, or bring an action before a national court against measures implementing the Community act, the national court being in a position – or under an obligation, in the latter case – to make a preliminary referral to the Court (Article 234 of the EC Treaty) in order to check the validity of the Community act. It then lies with the Member States, under Article 10 of the EC Treaty, to contribute to this dual system of protection by making provision for legal remedies at national level that leave no gaps in this indirect control of the acts of the institutions<sup>1</sup>. It has also been observed that a new form of legal action based on the violation of fundamental rights would be difficult to distinguish from other legal actions since these rights may be adduced in nearly every dispute. Critics retort that the "detour" via the national court and the preliminary ruling procedure do not always provide sufficient guarantees, partly because referral to the Court of Justice may be slow and it is not in the hands of the applicant.

A specific case which has in the meantime been very broadly recognised as problematic is where Community law introduces a ban that is directly applicable without the need for a national implementing act. The only option for an individual wishing to assert his or her rights against such a ban is to appeal against the sanction which might be applied by national authorities in the event of violation of Community law. Many believe that it is unreasonable for an individual to be induced to commit an infringement in order to have a right of appeal because he has no right of direct legal action against the Community instrument in question. In a recent judgment<sup>2</sup> concerning precisely such a case, the Court of First Instance, departing from previous case-law, which it deemed too restrictive, admitted an action by an individual, invoking the right to seise a judge. Recent conclusions by Advocate-General Jacobs in case C-50/00 P<sup>3</sup> criticised in more general terms the interpretation of Article 230(4) of the EC Treaty by traditional case-law. It is therefore possible that a significant change may be in the making in case-law relating to the admissibility of direct legal actions by individuals.

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<sup>1</sup> See CFI judgment of 27 June 2000, T-172/98 et a., *Salamander et a.*, ECR 2000, II-2487, par. 74.

<sup>2</sup> Judgment of 3 May 2002, T-177/01, *Jégo-Quéré v. Commission*.

<sup>3</sup> Conclusions of 21 March 2002 in C-50/00 P, *Unión de Pequeños Agricultores v. Council*; the conclusions also give a very full picture of discussions on this issue. The judgment of the Court is expected in the next few months.

*Should Article 230(4) of the EC Treaty be amended to extend the conditions of admissibility for direct actions by individuals? If so, how? Or would it be better to allow case-law to define the conditions of admissibility, taking into account the right to effective judicial protection?*

*Would it be appropriate to establish a new direct form of legal action to protect the fundamental rights of individuals, along the lines of certain national constitutional procedures? What consequences would an amendment to the Treaty on this issue have for the organisation and operation of the Community's judicial system?*

### **III. Modalities and consequences of possible accession by the Community/Union to the ECHR**

*Preliminary remark: complementarity between the Charter and the idea of accession to the ECHR*

Firstly, an observation made by many institutions and prominent persons must be borne in mind, namely that the elaboration of the Charter and the proposal for accession to the ECHR by the Community (or in future by the Union, once its legal personality has been recognised) are complementary and not alternative initiatives<sup>1</sup>: on the one hand, the existence of the Charter does not in any way detract from the assumed benefits of making the external control mechanism established by the ECHR applicable to the Union; and on the other, accession to the ECHR would not reduce the usefulness to the Union of having its own catalogue of fundamental rights, all the more so since the ECHR allows the contracting parties to go beyond the rights which it ensures (Article 53 of the ECHR), and since the manner in which the relationship between the ECHR and the Charter is expressed in the text of the latter has been judged satisfactory<sup>2</sup>.

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<sup>1</sup> On this subject, see the Commission communication of 11 October 2000 (COM(2000)644 final, paragraph 9); the speeches by Mr Wildhaber, President of the European Court of Human Rights ("The Council of Europe has always regarded those two options as complementary rather than as alternatives.") and by Mr Rodríguez Iglesias, President of the Court of Justice, on 31 January 2002; and the speech by Mr Krüger, Secretary-General of the Council of Europe, on 18 March 2002.

<sup>2</sup> See Mr Wildhaber in his speech mentioned above; also Mr Rodríguez Iglesias as above ("Thus, rather than competing with each other and creating a schism in the protection of fundamental rights in Europe, the Convention and the Charter should serve to enrich one another"), and the comments by the Council of Europe observers on the final draft of the Charter, CHARTE 4961/00 CONTRIB 356 of 13 November 2000, and by the Commission in the communication mentioned above.

## 1. The arguments for and against accession

Rather than rehearsing in detail the arguments exchanged in the course of a debate which has been going on for more than twenty years, this document will merely very briefly recall the main arguments<sup>1</sup>. The advocates of accession stress above all that it would increase the protection of fundamental rights, by extending to the actions of the Union's institutions the same external judicial control mechanism to which all the Member States are already subject. In their view, filling this gap in protection seems increasingly urgent given the steady transfer of competences from the Member States to the Union, and also to avoid contradictions as regards the commitments required from the candidate countries by the Union. The Union's accession would also be the best way to avoid "new divides in Europe" between two systems of protecting fundamental rights, by ensuring the harmonious development of the case-law of the two European Courts.

The main concern of the opponents of accession to the ECHR is that it would be incompatible with the principle of the autonomy of Community law, including the position of the Court of Justice as the sole arbiter of that law. This question will be examined in more detail below. Another argument which is sometimes put forward is that it would not be appropriate for the Union to be subject to control by judges who are not nationals of the Union, and who might lack comprehension of the special nature of European integration.

*In the light of the arguments on both sides, would accession to the ECHR have the effect of strengthening the authority and credibility of Union law and its jurisdiction, or of weakening it?*

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<sup>1</sup> See the arguments put forward by the various parties before the Court of Justice during the proceedings leading to Opinion 2/94, ECR [1996] I-1772 et seq.; see also the report on the Charter of Fundamental Rights by the House of Lords Select Committee on the European Union dated 24 May 2000, paragraphs 104 to 112 (summary of the evidence given on this subject to the Committee).

## 2. Modalities of accession

### (a) At Union level

In accordance with Opinion 2/94 of the Court of Justice, the Community's accession to the ECHR would require the insertion of a specific legal basis in the EC Treaty; this could be inserted, for example, in Article 303 of the EC Treaty. If the Convention were to recommend that the legal personality of the Union should be formally recognised and merged with that of the Community, this legal basis should allow accession by the Union <sup>1</sup>.

### (b) At Council of Europe level

Accession by the Community/Union to the ECHR would in any case also require an amendment to the ECHR, necessarily to its Article 59 which currently restricts the circle of contracting parties to the members of the Council of Europe (which may only be European *States*). It would also raise a number of other technical questions which could lead to adaptations of the Strasbourg system <sup>2</sup>.

## 3. The implications of accession for the principle of the autonomy of the Community legal order

Some believe that the Community's accession to the ECHR would jeopardise the principle of the autonomy of Community law. This is said to be so partly because the Court of Justice would then lose its monopoly in ruling on the validity of acts of Community law – which would from then on

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<sup>1</sup> In formulating the legal basis, one would need to determine whether this provision should mention only the case of accession to the ECHR or whether it should also cover the possibility of acceding to other international human rights conventions. Rules should also be laid down concerning the decision-making procedure to be applied to the signing and conclusion of the accession agreement.

<sup>2</sup> These questions have recently been examined by an ad hoc working group within the Steering Committee for Human Rights of the Council of Europe; see the activity report by this group dated 2 April 2002 (GT-DH-EU (2002) 012).

also be monitored by the European Court of Human Rights. Also, the Court of Human Rights could also be called on to give an opinion on questions of the interpretation of Community law, for example in connection with checking the proportionality of Community acts, but also in the allocation of competences between the Union and the Member States or the exhaustion of domestic remedies. The Court of Justice would also lose its role as the sole arbiter in disputes amongst the Member States and between the Member States and the institutions, as such disputes could be brought before the Strasbourg Court by virtue of Article 33 of the ECHR. At the same time, all this would significantly weaken the political authority of the Court of Justice vis-à-vis the authorities of the Member States, including their supreme courts.

However, others contest this analysis and contend that accession would be perfectly compatible with the autonomy of Community law. They point out that the Strasbourg Court has no power to reverse or declare invalid the instruments of the contracting parties or judgments by their supreme courts, but can only note violations of the ECHR, the practical consequences of this for their domestic legal systems remaining within the competence of the institutions of the contracting parties. They also point out that domestic law is not taken into account by the Strasbourg Court except as a question of fact, and that in judging the proportionality of national acts the Court allows some leeway which would also make it possible to take account of the specific nature of Community law. The Strasbourg Court cannot therefore be described as a "superior" court in relation to the supreme courts of the contracting parties, but simply as a more specialised body which exercises subsidiary external control, with the Court of Justice having already admitted the possibility of subjecting the Union to such external control <sup>1</sup>. As for the risk of appeals between the Community and the Member States, or amongst the Member States, being taken to the Strasbourg Court, one might suppose that this would in any case be prohibited by Community law <sup>2</sup>; but a

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<sup>1</sup> See Opinion 1/91 of the Court of 14 December 1991, ECR [1991] I-6079, point 40: "The Community's competence in the field of international relations ..... necessarily entails the power to submit to the decisions of a court which is created or designated by such an agreement as regards the interpretation and application of its provisions".

<sup>2</sup> Taking appeals between Member States to the Strasbourg Court would be contrary to Article 292 of the EC Treaty as regards the application of Community law (appeals concerning acts not related to Community law would of course remain possible). In the same way, it could be assumed that taking disputes between the Community/Union and the Member States before that Court would violate Article 10 of the EC Treaty, as this would diverge from the procedures laid down in Articles 226 and 230 of the EC Treaty respectively.



specific clarification at the time of any accession agreement, for example by means of a declaration in which the Community/Union and the Member States would renounce their right to bring appeals between the States to the Strasbourg Court, might seem desirable.

Finally, some suggest that the continuing non-participation of the Community/Union in the Strasbourg system would itself produce risks for the Community legal order in future. It does in fact happen that Member States are held indirectly responsible before the Strasbourg Court for claimed violations of the ECHR which result in reality from acts by the institutions of the Union. This responsibility is already recognised for acts of primary legislation not subject to the control of the Court of Justice<sup>1</sup> and for applications contesting a national act which only transposes a Community Directive word for word<sup>2</sup>; an application against the 15 Member States is currently pending before the Strasbourg Court alleging that a Commission Decision on competition, confirmed by the Court of Justice, violates the ECHR<sup>3</sup>. If accession does not take place, these observers fear that increasingly often the Strasbourg Court will rule indirectly on acts of the Community/Union, without the latter being able to defend itself and without its legal system being represented by a judge within the Court, and that the Member States, responsible for this defence in the place of the Community, might argue with the latter and amongst themselves about the conformity of Community acts in relation to the ECHR.

*Would accession to the ECHR harm the principle of the autonomy of the Community legal order and the role of the Court of Justice as the ultimate arbiter of that legal order? Or would it rather have positive consequences for that legal order?*

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<sup>1</sup> See judgment of the Strasbourg Court of 18 February 1999, *Matthews v. United Kingdom*, application 24833/94 concerning the 1976 Act on elections to the European Parliament, Annex II of which excludes Gibraltar from those elections.

<sup>2</sup> See judgment of the Strasbourg Court of 15 November 1996, *Cantoni v. France*, application 17862/91. See also judgment of 7 March 2000, *T. I. v. United Kingdom*, application 43844/98, concerning the Dublin Convention.

<sup>3</sup> *DSR Senator Lines v. the 15 Member States*, application 56672/00. The Court has not yet ruled on the admissibility of the application, which is contested by the 15 Member States who refer to the case-law of the former Commission of Human Rights (decision of 9 February 1990, *M & Co v. Germany*).

#### 4. Consequences for the system of allocating competences between the Community and the Member States

In this area, two issues need to be distinguished:

Firstly, since in accordance with Opinion 2/94 of the Court of Justice, accession to the ECHR would require the inclusion in the Treaty of a specific legal basis (on its form, see below), some have said that this could have the effect of recognising a general competence<sup>1</sup> for the Community/Union in the area of fundamental rights, including at internal level. This analysis is disputed by others: since the aim and effect of accession would only be to make the institutions subject to the fundamental rights of the ECHR and to external control by the Strasbourg Court, it is difficult to see why a legal basis in the Treaty restricted to this end would give rise to a general Union competence to legislate at internal level by prescribing fundamental rights binding the Member States in their own actions. However, one might consider clarifying this point in the legal basis permitting accession, if the need was felt. Others have suggested that this question be resolved by subjecting the action of the institutions to the Strasbourg system without providing for accession (this model is presented below).

Secondly, some have pointed out that accession could lead the Strasbourg Court to rule on the Union's system of allocating competences, since it could sometimes be difficult to decide whether an issue fell under the "jurisdiction" (Article 1 of the ECHR) of the Community/Union or that of a Member State. However technical solutions, to be determined when any accession agreement was drawn up, have been suggested to avoid this situation<sup>2</sup>.

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<sup>1</sup> It should be noted that while such general competence is lacking, the Community does in some areas adopt specific measures relating to fundamental rights, either on the basis of particular Articles of the Treaty (see, for example Articles 13 and 141 of the EC Treaty) or "annexed" to the exercise of the competences attributed to it (see, for example, Article 2 of Regulation No 2679/98 mentioned above (right to strike), or Regulations Nos 975/99 and 976/99 in connection with Community cooperation measures in third countries.

<sup>2</sup> In particular, following the example of the solution found in the case of the Convention on the Law of the Sea, a mechanism is proposed allowing the Community/Union to attach itself to a Member State as a co-defendant, being jointly and severally liable, and *vice versa*, with the addition of a declaration underlining that it would be a matter solely for the Community/Union and the Member States to decide how to allocate competences according to their internal procedures.

*Would accession to the ECHR be neutral as regards the allocation of internal competences between the Union and its Member States? Would it be appropriate to devise a provision of the Treaty to clarify this neutrality, following the example of Article 51(2) of the Charter?*

*Is there a real risk that the Strasbourg Court would be caused to rule on the allocation of competences between the Union and the Member States? Would the proposed mechanisms make it possible to exclude this risk?*

**5. Alternative ways of ensuring consistency between the law of the Union and that of the ECHR**

It is generally admitted that the informal contacts and exchanges existing between the two European Courts are very positive and considerably facilitate the harmonious development of their case-law. However, while many observers insist on the accession of the Community/Union as the ideal solution to ensure consistency, some have suggested developing alternative mechanisms for this purpose, of which the following are most frequently discussed:

(a) A mechanism for referral or consultation

One suggestion is to set up a mechanism for referral or consultation, making it possible for the Luxembourg Court to put to the Strasbourg Court a question of interpretation of the ECHR.

Such proposals have been made both as a measure to accompany accession to the ECHR, and as an alternative to it. In the latter case, some have suggested that the reply or opinion delivered by the Strasbourg Court could be qualified as "non-binding" on the Court of Justice. Some also assert that this mechanism would be the best way to ensure consistency between the two sets of case-law, particularly in cases where the Court of Justice is called on to rule on human rights questions in the absence of any Strasbourg case-law, and might subsequently be contradicted by Strasbourg. For those who advocate combining a referral mechanism with accession, this would also make it possible to reduce the number of individual applications to the Strasbourg Court relating to the law of the Union.

However, several objections have been raised to these proposals. Above all, it has been pointed out that such a referral mechanism would, contrary to the right to effective judicial protection, considerably delay the resolution of the main proceedings (particularly in cases where this procedure was additional to a reference for a preliminary ruling to the Court of Justice by a national court). Also, the Court of Justice would risk being placed in uncomfortable situations in which no national constitutional court ever finds itself: since it could most probably only make use of this procedure in carefully selected cases, its choice *not to* make a referral for a preliminary ruling to the Strasbourg Court in any particular case might always be criticised later, particularly if the Strasbourg Court then took a different line from that taken in Luxembourg. If, as an alternative to accession, Strasbourg's opinions were to be made "non-binding", the Court of Justice would still hardly be able to deviate openly from such opinions, and yet its judgments would risk being subject to discussion of the extent to which the Strasbourg opinion had actually faithfully been followed.

Finally, some suggest that an opinion or referral procedure would mix the legal systems unduly, and would have more significant effects on the autonomy of Community law than "pure and simple" accession: the Strasbourg Court would intervene directly in pending disputes by giving interpretations which would be authoritative for the Court of Justice – either *de jure* or at least *de facto*; whereas any other national constitutional court may freely assess the fundamental rights of its own legal system, with the role of the Strasbourg Court being limited to controlling *ex post* compliance with obligations under international law stemming from the ECHR.

Technically, the establishment of such a procedure for referral or consultation would require not only a special protocol annexed to the EC/EU Treaties but also amendments to the ECHR, as it would constitute a derogation from the normal function of the Strasbourg Court.

(b) A joint chamber

Mention should also be made of an idea which is sometimes put forward, namely that if there is no accession, the Court of Justice and the Strasbourg Court could form a "joint chamber" or "panel" which could have cases referred to it by either jurisdiction when a need was felt to ensure a uniform interpretation of fundamental rights, and especially when one Court wanted to depart from the case-law of the other. Supporters of this idea point out that it would reflect a strict equality between the two Courts and would do least damage to their current operation. However, one might wonder whether this proposal does not conflict with the rule established by the Court of Justice, stemming from the principle of the autonomy of Community law, that judges at the Court of Justice must not sit simultaneously in other jurisdictions where they would have to interpret provisions identical to those of Community law but using different approaches, methods and concepts<sup>1</sup>.

(c) Creating a right of appeal to the Strasbourg Court without acceding to the ECHR

Finally, the suggestion has been made of submitting the actions of the institutions of the Union to the individual application mechanism of the Strasbourg Court, by means of a special protocol to the EC and EU Treaties and a protocol to the ECHR, without providing for the accession of the Community/Union to the ECHR. While this model aims to create a situation which is broadly similar to that of accession as regards the position of the two Courts and the protection of individuals, the main difference would be that the Community/Union would not participate in negotiations on amendments to the ECHR or its additional protocols. Some have commented that this model would raise problems of principle for the autonomy of Community law, as well as practical complications: in effect, the institutions would be subject to the Strasbourg appeal

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<sup>1</sup> See Opinion 1/91 of the Court of Justice of 14 December 1991, paragraph 52, concerning the first draft agreement on the European Economic Area and the "EEA Court" system proposed therein.

system, without Strasbourg law formally being part of Community law (even if it may be said that the material standards of the ECHR are *de facto* applied in the case-law of the Court of Justice mentioned above), and that the Community/Union and its law would not, within the Strasbourg system, be treated on an equal footing with the other signatories to the ECHR.

*Are the alternatives proposed to accession to the ECHR satisfactory? In particular, would it be appropriate to establish a mechanism for referral by the Court of Justice to the Strasbourg Court, either as an alternative or as a complementary measure to accession by the Community/Union to the ECHR? Or would it be preferable, if accession were to take place, to stick to the joint system (individual application to the Strasbourg Court following exhaustion of domestic remedies)?*

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**THE EUROPEAN CONVENTION**

Brussels, 24 June 2002

THE SECRETARIAT

Working Group II

Working document 1

**Working group II - "Incorporation of the Charter/  
accession to the ECHR"**

**Subject: Modalities and consequences of incorporation into the Treaties of the Charter of  
Fundamental Rights and accession of the Community/Union to the ECHR**

Please find attached a contribution by Mr. Bobby McDonagh to the working group.

## The European Convention: Working Group on the Charter

### Contribution by Bobby McDonagh (alternate representative of Irish Government)

The decision of the Praesidium to establish Working Groups is an important step in the work of the Convention. It is clear that their role should be to *assist* the Convention by setting out the full range of options for consideration by the Convention as a whole. It would be inappropriate for a Working Group, necessarily comprising a small cross-section of the Convention's membership, to *limit* the deliberations of the Convention by presenting only a single preferred option.

The Working Group on the Charter should therefore identify the full range of options as regards both the Charter on Fundamental Rights and the accession of the Community/Union to the European Convention on Human Rights (ECHR). It should explore these options including their advantages, the problems which they may give rise to and ways of addressing those problems.

3. As regards the Charter, it seems important as a first step to consider certain key questions. It will be possible to begin to assess coherently the merits of the various options- including as regards the basic political choices to be made in due course, which ought not to be pre-judged - in the light of the answers to those questions. The questions include:

**(A) Could the incorporation of the Charter into the EU Treaties lead to the unintended extension of Union/Community competence, either in areas where it already has some competence or possibly across a wide range of new areas?** Articles 51.2 and 52.2 of the Charter appear designed to preclude this but it is not clear that they would achieve this in the event of incorporation of the Charter into the EU Treaties. The stipulation in the Charter that the institutions and bodies of the Union should “promote the application” of its provisions- would need to be reconciled with a view that its incorporation would not involve an extension of competence. Also could the Charter impact on the exercise by EU institutions of their existing competences in areas that indirectly affected rights set out in the Charter?

**(B) What is to be understood by the provision in Article 51.1 that the Charter is addressed to the Member States “only when they are implementing European law”?** Given the strong emphasis on subsidiarity which has emerged at the Convention, it is important to clarify this point.



**C) How is consistency to be ensured between the provisions of the Charter and (a) the existing EU/EC Treaty provisions and (b) the ECHR?** Articles 52.2 and 53 of the Charter appear insufficient on their own to achieve this consistency if the Charter were incorporated in the EU/EC Treaties. The fact that similar rights are expressed in different terms in the various instruments is a significant consideration. If there are inconsistencies - for example in relation to socio-economic rights - is the judiciary to play an important role in determining policy and expenditure? As regards consistency with the ECHR, important considerations include the margin of appreciation allowed by it as well as the reservations and derogations entered by individual States. The question of defining what are to be deemed respectively “rights”, “freedoms” or “principles” under the Charter also arises.

**(D) How is the potential for a conflict of jurisdiction between the Courts in Strasbourg and Luxembourg to be resolved?**

**(E) What would be the implications for the 2<sup>nd</sup> and 3<sup>rd</sup> Pillars of incorporation of the Charter into the Treaties?**

4. It is precisely because of the importance of the rights enunciated in the Charter, as well as in the Treaties and other relevant instruments, that the Charter Working Group should address the questions identified above from the outset of its work so as to identify the most coherent and appropriate options for giving effect to those rights.
5. It will be important to draw on the expertise available in addressing these complex questions. Consideration should therefore be given to inviting the Head of the Council Legal Service, Mr Piris, as well as experts from the Council of Europe/Court of Human Rights to make known their views and to assist the Working Group in carrying out its mandate.

Dublin

16 June 2002

**THE EUROPEAN CONVENTION**

THE SECRETARIAT

**Brussels, 25 June 2002 (28.06)****CONV 157/02****COVER NOTE**

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from : Secretariat

to : Convention

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Subject : **Note from the Council of Europe, forwarded by Mr Jacques Santer, member  
of the Convention**

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The Secretary-General of the Convention has received from Mr Jacques Santer, member of the Convention, the attached note from the Council of Europe, to which Mr Santer wishes to draw the attention of the members of the Convention.

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**ANNEX****Convention on the Future of Europe**

Contribution from  
the Secretary General of the Council of Europe,  
Mr Walter Schwimmer

**800 MILLION EUROPEANS****Involving the Greater Europe  
in responding to key Laeken questions**

The purpose of this memorandum is to propose to the members of the Convention at an early stage of their work ways in which the Council of Europe can contribute to addressing certain key questions in the Laeken Declaration:

- ❶ by building the future European Union on the solid foundations of the Council of Europe's existing instruments and institutions;
- ❷ by the accession of the EC/EU to the European Convention on Human Rights as part of a coherent approach to the effective protection of human rights in Europe;
- ❸ by developing pan-European responses to major challenges (terrorism, organised crime, drug and human trafficking, etc.);
- ❹ by providing the forum for EU foreign policy towards its immediate neighbours.



## **Building Europe on solid foundations of freedom and equal partnership**

### **1.1 Shared values and principles**

Created in 1949 to "achieve a greater unity between its Members for the purpose of safeguarding and realising the ideals and principles which are their common heritage", the Council of Europe now unites 44 European states in a common adherence to the values and principles of pluralist democracy, human rights and the rule of law. These include all EU member and candidate countries, as well as all other European states which have committed themselves to the same concept of a democratic society.

### **1.2 SHARED OBJECTIVE**

The Council of Europe shares with the European Union the objective of building a peaceful, stable, democratic and prosperous Europe.

### **1.3 Pan-european enlargement**

The European Union is preparing itself for the most far-reaching enlargement in its history and, rightly, all the candidate states are full partners in the discussions on the future of the Union of which they will be members. The Council of Europe has practically achieved its own enlargement to become a truly pan-European organisation. By next year, all European states, except Belarus – where democratic reform is still needed – will be members.

### **1.4 Partnership with the European Union**

The political criteria laid down by the European Council in 1993 in Copenhagen were modeled on those developed by the Council of Europe in the course of its enlargement process. Furthermore, in recent years, the partnership between the Council of Europe and the European Commission has developed considerably, to providing joint assistance to candidates on the path to EU accession, in particular in the fields of institution building, justice and home affairs.

### **1.5 All European States on an equal footing**

Even after completion of the enlargement process currently under way, almost half of the states of Europe will remain outside the European Union. Therefore, the Council of Europe will continue to be the only truly European organisation in which all European states cooperate on an equal footing.

### **1.6 Best use of existing structures**

Building the future enlarged EU is best done on solid foundations, on existing legal frameworks and institutions. With Laeken, there is a unique opportunity to ensure a coherent architecture of interlocking European institutions. To consider how the European Union – which is the centrepiece in the European construction – may best make use of existing structures should be one of the challenging tasks of the Convention.

## ②

## The accession of the EC/EU to the European Convention on Human Rights as part of a coherent approach to the effective protection of human rights in Europe

### 2.1 Protection for 800 Million Europeans

The Council of Europe is the home of Europe's main human rights conventions, the European Convention on Human Rights (ECHR) being the prime example. Its rights and freedoms are common to all European states and its international control mechanism offers protection for 800 Million Europeans. It is significant that the ECHR was the principal reference point for the preparation of the EU Charter of Fundamental Rights as regards the human rights provisions. Social and economic rights developed within the Union were influenced by the Council of Europe's European Social Charter and the revised Social Charter.

### 2.2 Accession to the European Convention on Human Rights

I therefore welcome the fact that the Laeken Declaration has put the question of accession by the EC/EU to the ECHR on the agenda of this Convention. It is very appropriate that this is compared with the question of integration of the EU Charter of Fundamental Rights into the Treaties, because these issues go hand in hand. Accession to the ECHR has been repeatedly advocated by the European Commission<sup>1</sup> and the European Parliament<sup>2</sup>. Therefore Laeken has provided the Convention with a unique opportunity to achieve a coherent mechanism for the protection of fundamental rights in the whole of Europe.

### 2.3 Why is accession so important?

First of all, it is vital if we are to ensure coherence and legal certainty between the legal systems of both the EU and the Council of Europe in the field of fundamental rights. In applying Community law, member states are indeed bound by both Community law *and* the ECHR. However, this may lead to genuine problems if the Community itself is not also legally bound by the ECHR and if its action is not subject to the same review by the European Court of Human Rights, as is applicable to the action of individual EU member states. Avoiding divergence between the interpretation of fundamental rights in Europe is therefore essential for the legislatures, governments and courts of Union member states, as it is, evidently, for the individual citizen. This can best be achieved by accession.

### 2.4 Increase legal accountability

In addition, by extending to the EU the *external* control mechanism of the ECHR to which the member states are already subject, accession would confer upon the action of the EU institutions the same level of legitimacy, credibility and legal accountability now enjoyed by the member states' authorities.

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<sup>1</sup> Communication on the accession of the Community to the ECHR and the Community legal order, Commission Communication of 19.10.1990, SEC(90)2087 final; Memorandum on the Accession of the European Communities to the Convention for the Protection of Human Rights and Fundamental Freedoms, adopted by the Commission on 4 April 1979, *Bulletin of the EC*, supp. 2/79.

<sup>2</sup> Most recently in European Parliament Resolution A5-0064/2000 on the drafting of a European Union Charter of Fundamental Rights (Plenary Session, 16 March 2000).

## 2.5 No subordination between Courts

The Presidents of both the European Court of Human Rights and the Court of Justice of the European Communities, at the opening of the judicial year in Strasbourg on 31 January 2002, expressed support for the idea of accession to the ECHR. They concluded that there was no question of perceived or real “subordination” between the two courts <sup>1</sup>.

## 2.6 No major obstacles to accession

The Committee of Ministers of the Council of Europe has asked governmental experts to undertake a technical examination of the changes to the ECHR required to make EC/EU accession possible. Preliminary results indicate that there are no major obstacles to accession that cannot be overcome by the necessary political will. A full report is expected by the end of June this year.

## 2.7 A common legal area for the Greater Europe

How fundamental rights in the European Union should best be protected in the future is undoubtedly one of the most important questions that the Convention will have to examine. I trust that the Convention will conclude that accession to the ECHR is essential for the effective protection of fundamental rights in the Union. This will also be a significant step in bringing the Union closer to its citizens by providing them with the same means of redress as the ECHR gives them at national level. However, accession of the EU/EC to the ECHR would be a major step forward in the construction of a common legal area for the Greater Europe.

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<sup>1</sup> The text of the speech can be found on the website of the Strasbourg Court (<http://www.echr.coe.int>).

## 3

## Developing pan-European responses to major challenges

### 3.1 All-European challenge

Many treaties concluded within the Council of Europe have contributed to the creation of an area of freedom, security and justice which is a common goal of our institutions. They are part of the European Union's *acquis* on the basis of which closer cooperation within the Union has been developed. Meeting the challenges to our democratic societies cannot stop at the borders of the European Union. These include:

- fighting against terrorism;
- combating corruption, organised crime and human trafficking;
- preventing drug abuse and drug trafficking;
- responding to violence;
- fighting against racism and xenophobia.

### 3.2 Multilateral solutions

The best way of taking effective action in these areas is not by a series of bilateral agreements with each of the Union's immediate neighbours, but by the adoption of pan-European multilateral solutions which are coherent with the European Union's own internal measures. The conclusions of the European Council in Tampere rightly foresee cooperation with the Council of Europe in this area. We have already created an effective interface between Council of Europe and European Union activities, in particular through the presence of the European Commission in all intergovernmental structures, including ministerial sessions. An increasing number of Council of Europe conventions and agreements are open to accession by the European Community<sup>1</sup>. We should develop this further.

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<sup>1</sup> See my annual reports on relations and co-operation between the Council of Europe and the EU: [www.coe.int/sg/e](http://www.coe.int/sg/e) (Documents SG/Inf(2002)7 and SG/Inf(2002)12)

## ④

## A forum for EU foreign policy towards its immediate neighbours

### 4.1 A Europe without dividing lines

This steadily developing common legal area for the 800 million Europeans within the Council of Europe's borders, from Reykjavik to Vladivostok, presents a solid basis for our joint vision of building a Europe without dividing lines and consolidating it through a network of interlocking institutions.

### 4.2 Extending Article 303 of the EC Treaty

The Convention could give its political support to this joint task by recommending in its review of the present Treaties that the European Union make full use of the structures of the Council of Europe. To this end, it would seem desirable not only to preserve Art. 303 of the EC Treaty, which stipulates that the *Community* shall establish all appropriate forms of cooperation with the Council of Europe, but also to extend its scope of application to include all matters falling within the competence of the European *Union*, notably those dealt with under the present second and third pillars.

### 4.3 Discuss questions of common concern on an equal footing

The Laeken Declaration underlines that the relations between the Union and the other European states which are its immediate neighbours are of particular importance, both for the Union itself and for those states. The European Union, with its common external borders, its internal market and freedom of movement, runs the risk of creating a sense of exclusion among those states which will remain for the time being outside the Union. There is therefore a legitimate common interest in having a meeting place where representatives from the whole of Europe at parliamentary, government, local or regional level can come together to discuss questions of common concern on an equal footing - a Europe without dividing lines<sup>1</sup>. The Council of Europe provides such a framework. The European Union is already an important actor in the Council of Europe. There is nonetheless scope for a much more active participation of the EU institutions in the various bodies of the Council of Europe in order to reinforce the dialogue and cooperation between representatives of the whole of Europe.

### 4.4 EU accession to the Council of Europe?

I therefore invite the European Commission to step up its participation in the Council of Europe at the level of the Committee of Ministers and its subsidiary bodies. This will be of mutual benefit to both partners. The same applies to committees of governmental experts. This would enable the European Union to pursue further the recent experience of extending rules in Community legislation to the whole of Europe by transposing such provisions into Council of Europe conventions or agreements. The political option of the Union's future membership of the Council of Europe merits closer consideration.

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<sup>1</sup> For a greater Europe without dividing lines – The Budapest Declaration of the Committee of Ministers (7 May 1999) on the occasion of the Council of Europe's 50<sup>th</sup> anniversary



#### 4.5 Develop parliamentary cooperation

The Parliamentary Assembly with its representatives of 44 national parliaments offers a unique framework for promoting the common European project. Existing cooperation with the European Parliament can be developed further. Members of the European Commission could address the Assembly much more frequently than is at present the case.

#### 4.6 Develop CFSP within the Council of Europe

The High Representative/Secretary General of the EU Council could at regular intervals address the Assembly and the Committee of Ministers. This would be one way to promote synergies between the Common Foreign and Security Policy of the EU and the enlarged political dialogue amongst all European democracies. The Council of Europe thus provides a platform on which to develop the European Union's foreign policy with regard to its immediate neighbours.

## 5

### In conclusion

I am convinced that:

- The instruments and activities of the Council of Europe assist the EU enlargement process
- Together we need a coherent approach to the protection of human rights in Europe
- The Council of Europe provides a forum for the Greater democratic Europe

The Council of Europe is following with the greatest interest the ambitious plans for the future of the Union expressed in the Laeken Declaration and is keen to contribute, at both intergovernmental and parliamentary level, to the discussions in the Convention, as appropriate, during the completion of its important mandate.

I wish the Convention every success in its historic task.

Strasbourg, 31 May 2002.



**Walter Schwimmer**



## Council of Europe Key Dates

- 5 May 1949, London  
Ten States (Belgium, Denmark, France, Ireland, Italy, Luxembourg, the Netherlands, Norway, Sweden and the United Kingdom) sign the Treaty of London, setting up the Council of Europe
- 4 November 1950, Rome  
Signature of the Council's Convention for the Protection of Human Rights and Fundamental Freedoms – the first international legal instrument safeguarding human rights. Signature of the European Cultural Convention, forming the framework for the Council's work in education, culture, youth and sport
- 19 March 1958, Strasbourg  
The European Communities meet for the first time at the headquarters of the Council of Europe, in Strasbourg
- 18 October 1961, Turin  
The Council's European Social Charter is signed as the economic and social counterpart of the European Convention on Human Rights
- 5 May 1972, Strasbourg  
The Committee of Ministers adopts, as the European Anthem, the prelude to the Ode to Joy from Beethoven's Ninth Symphony
- 29 May 1986  
The European Community adopts the flag of the Council of Europe
- 8 June 1989  
The Parliamentary Assembly introduces the Special guest status to forge closer links with the parliaments of new member states moving towards democracy
- 6 November 1990, Rome  
A year after the fall of the Berlin Wall, Hungary is the first former communist country to join the Council of Europe.
- 8-9 October 1993, Vienna  
First Council of Europe summit of heads of State and government. Adoption of a declaration confirming the Organisation's pan-European vocation and setting new political priorities in protecting national minorities and combating all forms of racism, xenophobia and intolerance.
- 17 January 1994, Strasbourg  
The Congress of Local and Regional Authorities of Europe (CLRAE) is set up by the Committee of Ministers to replace the Standing Conference of Local and Regional Authorities of Europe.
- 10 – 11 October 1997, Strasbourg  
Second Summit of the Heads of State and Government of the Council of Europe member States. Adoption of a declaration and plan of action "to strengthen democratic stability in the member States". Creation of the Office of the Commissioner for Human Rights.
- 1 November 1998  
Single permanent European Court of Human Rights established in Strasbourg under Protocol No. 11 to the Council's European Convention on Human Rights.
- 4 November 2000  
50th Anniversary of the European Convention on Human Rights
- 24 April 2002  
Bosnia & Herzegovina becomes the 44<sup>th</sup> member State of the Council of Europe.

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THE EUROPEAN CONVENTION

Brussels, 28 juin 2002

THE SECRETARIAT

Working Group II

Working document 02

**Working group II " Incorporation of the Charter/accession to the ECHR"****Subject** : Contribution of Elena PACIOTTI - MEP

During the first exchange of views of 25 June 2002 inside the Working Group "Charter" some observations and questions were made to which I deem appropriate to react:

1. *The Charter of fundamental rights of the European Union (from now on called "the Charter") is a political document, not a juridical one.*

No, the Charter was explicitly drafted *as if* it should be integrated in the Treaties; the aim was to leave it to the IGC in Nice to decide about whether or not it should be integrated in the Treaties. The fact that at the time no agreement was reached on the integration of the Charter in the Treaties - despite the request of several member States and of the European Parliament - doesn't change the intrinsic characteristics of the document. Indeed it is and remains formulated so as to potentially constitute the first part of a "constitutional" text, similar to the first parts of the constitutions of many Nation-States.

2. *The Charter lacks precision in many articles and this could cause judges several problems as to its implementation.*

No, it couldn't. In the first parts of many modern constitutions there are articles affirming general principles and others affirming specific rights. This has never prevented national Constitutional Courts from enforcing both. Besides, up to now fundamental rights - apart from those stated in the European Convention for Human Rights now included in the Charter - have been granted by the European Court of Justice on the sole basis of a much more generic mention to "constitutional traditions common to the Member States" in article 6 of the TEU.

3. *The Charter includes principles and rights which do not concern the European Union competencies:*

a) *Why? b) If the Charter is integrated in the Treaties, will this give rise to new competencies of the Union?*

a) The Charter was drafted to render the whole of the fundamental rights already into force in the European Union more evident, following the principle of the indivisibility of fundamental rights. It would have been absurd to try and highlight only those rights involving present competencies of the Union and of the Community: firstly because it would have meant redrafting the Charter with every change in the framework of the Union's competencies; secondly because, above all, the meaning of every single article of the Charter must be interpreted in the context of all the others and the scope of a fundamental right is in relation to the need to guarantee other rights (quite evidently, affirming the freedom principle alone is different from affirming the freedom, equality and solidarity principles together).

b) The need to draft an exhaustive list of fundamental rights and principles in force in the EU has nothing to do with the attribution of competencies. The powers of the EU and EC institutions are foreseen in the Treaties and their exercise is limited by the obligation to respect the fundamental rights and principles included in the Charter.

In the framework of their specific competencies, the institutions also have the right to promote the respect of those rights and principles.

4. *Is the Charter, with its 54 articles, too long to be part of a simplified "constitutional" Treaty?*

No, it isn't. All contemporary constitutions are "long" constitutions because the catalogue of fundamental rights that citizens want to be granted has widened and the complexity of procedures concerning the exercise of public powers in modern States has grown. This is all the more so for such a complex supranational entity like the European Union.

For example, while the Swedish constitution of 1809 has 13 articles, the Italian one of 1948 has 139 articles (54 of which constituting its first part), the German one of 1949 has 146 articles, the Portuguese one of 1976 has 299 articles and the Polish one of 1997 has 243 articles (57 of which constituting the Chapter "Freedom, rights and duties of man and citizen").

Brussels, 26 June 2002

**THE EUROPEAN CONVENTION**

THE SECRETARIAT

**Brussels, 5 July 2002**

**(OR. En)**

**Working Group II**

**Working document 03**

**Working group II "Incorporation of the Charter/ accession to the ECHR"**

**From: António Vitorino, President**

**To: Working Group II**

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**Subject : The relationship between the Charter and the Union's competencies**

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1. It has been observed that some articles set out in the Charter concern areas in which the Community or the Union have little or no competence to act. This point has notably been made for the right to strike or to education, freedom of religion, the prohibition of the death penalty and of torture, the articles of the Charter on criminal law, as well as the articles on social security and social assistance and on access to healthcare<sup>1</sup>. The concern has been expressed that integration of the Charter into the Treaties could lead to an extension of Community / Union competencies in such areas, despite the provision in Article 51 § 2 of the Charter that "this Charter does not establish any new power or task for the Community or the Union, or modify powers and tasks defined by the Treaties".
2. This issue was extensively discussed in the preceding Convention which established the Charter. It might be worthwhile to recall some considerations which had helped to build consensus, within that Convention, on inclusion of the above-mentioned articles in the text of the Charter.

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<sup>1</sup> Articles 2, § 2, 4, 10, 14, 19 - § 2, 28, 34, 35, 48 - 50 of the Charter.

3. The preceding Convention was guided by the idea that a distinction should be made between the extent of the Union's legislative competencies, on the one hand, and respect by the Union of all fundamental rights wherever it acts, on the other hand. Indeed, several examples drawn from the institutions' practice appear to illustrate that the Union's action may well have important impacts even on such fundamental rights that concern areas where the Union would have no or little competence to legislate:
- Council Regulation No 2679/98 on the functioning of the internal market in relation to the free movement of goods among the Member States, in which it was deemed necessary to include an article ensuring that the regulation is without prejudice to respect notably for the right to strike <sup>1</sup>;
  - the exclusion, in agreements with third countries on mutual legal assistance in criminal matters, of extradition of persons facing a serious risk of being subjected to the death penalty;
  - the current draft Directive on minimum standards for the reception of asylum seekers in the Member States, on which the Council has reached political agreement, and which includes provisions guaranteeing asylum seekers access to school education and to health care;
  - convocation of a staff competition by a Community institution on a Jewish holiday which may impinge on freedom of religion of the participants; it was in this situation that the European Court of Justice recognised freedom of religion as part of the fundamental rights of Community law <sup>2</sup>.
  - Community agriculture legislation which could have impacts on freedom of religion by limiting ritual slaughtering as practised by certain religions.

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<sup>1</sup> See Article 2: "This Regulation may not be interpreted as affecting in any way the exercise of fundamental rights as recognised in Member States, including the right or freedom to strike. These rights may also include the right or freedom to take other actions covered by the specific industrial relations systems in Member States." See also recital N° 4: "Whereas such measures [i.e. measures which the Member States are obliged to take under the regulation with a view to facilitating the free movement of goods in their territory] must not affect the exercise of fundamental rights, including the right or freedom to strike."

<sup>2</sup> Case 130/75, *Vivien Prais v. Council*, ECR 1976, 1589.

4. This distinction is already reflected in the opinion 2/94 of the Court of Justice, points 27 - 35, where the Court found no general power of the Community to enact rules on fundamental rights<sup>1</sup> but at the same time recalled that respect for fundamental rights, as general principles of Community law, is a condition of the lawfulness of Community acts. Furthermore, it appears that in Regulation 2679/98, the Council has recognised explicitly the point that its acts, as well as Member States' action implementing them, must *respect* even such fundamental rights as the right to strike on which it would not have *competence to legislate*.
5. It is in the light of this distinction that the preceding Convention opted for a complete catalogue of all fundamental rights which the Union is to respect, including the above-mentioned articles, while at the same time stipulating in Article 51 § 2 that the Charter does not establish new Community / Union powers, or modify the existing ones.
6. In addition, some more recent extensions of the Union's competencies should be noted, notably in the field of criminal law, as created by the Treaty on the European Union ("3rd pillar"), which informed inclusion in the Charter of the fundamental safeguards set out in its Articles 48 through 50.<sup>2</sup>
7. It has however been argued that Article 51 § 1, second sentence, of the Charter, stipulating that the institutions of the Union not only respect the rights and observe the principles of the Charter, but also "promote the application thereof", could be interpreted as creating new competencies insofar as the above-mentioned Charter articles are concerned, and that this wording could be regarded as contradicting Article 51 § 2 of the Charter. However, in full the provision at issue reads: "They [i.e. the institutions and bodies of the Union *and* Member States when implementing Union law] shall respect the rights, observe the principles and promote the application thereof *in accordance with their respective powers*." (emphasis added). It appears that this wording can be read as clarifying that obligations to promote the

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<sup>1</sup> It should be noted that while such general power is lacking, the Community does in some areas adopt specific measures relating to fundamental rights, either on the basis of particular Articles of the Treaty (see, for example Articles 13 and 141 of the EC Treaty) or "annexed" to the exercise of the competences attributed to it, see on this point doc. CONV 116/02, page 22, footnote 1.

<sup>2</sup> In particular, as noted in the Praesidium's Explanations to Article 50 of the Charter, the right not to be tried or punished twice is already enshrined in Articles 54 to 58 of the Schengen Convention, as well as in Article 7 of the Convention of the Communities's Financial Interests and in Article 10 of the Convention on the fight against corruption (conventions established by the Council in accordance with the EU Treaty).

application of Charter rights and principles arise only within the limits of the existing division of competencies between the Union and the Member States, thus confirming the principle of Article 51 § 2 of the Charter, and that the extent to which competencies for such "promotion" exist may vary, depending on the different Charter articles and on whether Union institutions or Member States authorities (implementing Union law) are concerned.

*In the light of the above elements, can it be assumed that the Charter, if integrated into the Treaties, would not create new powers of the Community / the Union, or modify its existing powers, as it states in its Article 51 § 2?*

*If the body of the articles of the Charter were to be inserted into the EU Treaty itself or in a new basic Treaty (option f), would then a possible drafting adjustment of Article 51(2) of the Charter, clarifying that the Charter articles do not alter the powers and tasks as defined by the other provisions of the Treaties, be necessary or useful?<sup>1</sup>*

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<sup>1</sup> On this point, see already doc. CONV 116/02 WG II 1, page 7, footnote 1.



**THE EUROPEAN CONVENTION**

Brussels, 9 July 2002

THE SECRETARIAT

Working Group II

Working document 04

**Working group II "Incorporation of the Charter / accession to the  
ECHR"**

**Working document by Baroness Scotland of Asthal**

**Subject: The “missing” horizontal article in the Charter of Rights**

*1. Introduction*

At the Working Group’s first meeting, I made reference to Charter articles based neither on the ECHR nor on the EC Treaty. I attach a table showing examples of these. My particular concern is that there appears to be no horizontal article governing these articles.

*2. Existing horizontal articles*

Of course, Charter articles corresponding to the ECHR are clarified by Article 52(3); and Charter articles based on the Treaties are clarified by Article 52(2). These so-called “horizontal” articles are of great importance - and their significance would be even greater were the Charter to be incorporated into the Treaties. But they do not help us with the other Charter provisions. These other provisions have no clarification other than the Praesidium Commentary (which is not part of the Charter) and perhaps Article 51(2), which confirms that the Charter is not intended to establish any new power or task for the Community or Union<sup>1</sup>.

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<sup>1</sup> For some Articles, this qualification is reinforced by Treaty provisions, which forbid the EC to legislate in certain areas (e.g. Education and vocational training [TEC Art 149(4) and c.f. Charter Art 14]; or Employment [TEC Art 129 and c.f. Charter Arts 15, 23, 29, 30, 31, 32, 33]); and reserve other areas to the Member States (e.g.

### 3. *Implications*

I believe that this absence of clarification (for articles not based on the ECHR or Treaties) would be a serious problem were the Charter to be given greater legal status than it currently enjoys. The third column of the attached table identifies some practical implications which, I believe, the Group should have in mind when it considers this legal problem. Citizens and Member State Governments would not be clear precisely which rights and responsibilities are entailed by the Charter. There would be some major questions:

- Definition: what is the agreed basis for the article concerned? Is it a principle? Or a fundamental right or freedom, perhaps with some irreducible minimum “essence” such as is found with the rights in the ECHR?
- Scope: what is the extent and enforceability of the article concerned?
- Limitation: what are the circumstances in which the right may be curtailed and balanced, if any?

If the Charter were to be incorporated in its current form, the task of answering these questions would fall to the ECJ. But the questions involve important political considerations. Would it be right to delegate these from democratically elected politicians?

### 4. *Common constitutional traditions?*

It is relevant to note that some of the Articles in the attachment may be part of the constitutional traditions common to the Member States (this is indicated in the Charter Preamble paragraph 5). But is that true in every case:

- Charter Article 3: according to the Commentary, this is based on the Council of Europe Convention on Biomedicine. But the Convention appears not to have been ratified by all the Member States.
- Charter Article 10(2): according to the Commentary, this is based on the common constitutional traditions. But is this right currently guaranteed by all the Member States?
- Charter Article 14: according to the Commentary, this is based on the common constitutional traditions and on Article 2 of the First Protocol to the ECHR. Have all Member States legal provision for parental “pedagogical convictions”? And Germany, Ireland, the Netherlands and the UK have reservations against Article 2 of the First Protocol to the ECHR.
- Charter Article 24: according to the Commentary, this is based on the UN Convention on the Rights of the Child. All Member States have accepted this Convention but Austria, Denmark, France, the Netherlands and the

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Health services [TEC Art 152(5) and c.f. Charter Art 1, 3, 25, 31, 34, 35]; or Public order and public security [TEC Art 64(1) and c.f. Charter Art 6, 10, 47]). *See also CONV 47/02 (Brussels, 15 May 2002).*

UK have entered reservations. The Charter has no provision to respect those reservations.

- All the Charter articles entirely or partly based on the European Social Charter or the Revised European Social Charter (Articles 14, 15, 23 and from 25 to 35) which are not accepted by all the Member States.

### ***5. Recommendations***

**I believe the Working Group should consider the need for a supplementary horizontal article or alternatively an appropriate provision in any proposed article of incorporation.**

### ***Baroness Scotland of Asthal***

*UK Government Alternate Representative to the Convention on the Future of the European Union*

## Attachment to UK paper: “The “missing” horizontal article in the Charter of Rights”

## TABLE

| Charter Article                                                                                    | Existing legal base (according to the “informal” Praesidium commentary from 1999/2000)                                                                                                                                                                                                                                                                                                   | Practical implications                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|----------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><i>Article 3</i><br/>Right to the integrity of the person</p>                                   | <p>The Commentary states that the "principles" are included in the Council of Europe Convention on Human Rights and Biomedicine. But 3(1) appears not to be; and the provisions in 3(2) have not yet been ratified by all Member States.<br/>Not clear which if any horizontal Article governs the interpretation of this Charter Article and its limitations.</p>                       | <p>"Integrity" in 3(1) is very wide in scope, and could interfere with e.g. national penal laws and policies, as well as health policies, such as compulsory AIDs screening and immunisation programmes. In Canada, “integrity” has been used to campaign against infant male circumcision. 3(2) has no qualifications at all and may outlaw Member State arrangements for e.g. genetic and pre-natal testing.<br/>3(2) addresses matters reserved to the Member States (organisation and supply of medical care) – see final section below</p> |
| <p><i>Article 9</i><br/>Right to marry and right to found a family</p>                             | <p>The Commentary states that this is based on ECHR Article 12, but the scope is wider, embracing "same-sex" marriages – which a court might find is part of the essence of the right, which cannot therefore be curtailed by the laws and practices of Member States.. Though Charter Article 52 may apply, 52(3) does not "prevent Union law providing more extensive protection".</p> | <p>Despite the reference to national laws, Article 9 may lead to new national obligations e.g. to grant EC free movement rights to partners in same sex and transsexual marriages, including third country nationals, as well as an extension of asylum rights and family reunification rules.<br/>It might also have implications regarding adoption by homosexual couples ("right to found a family") which may cause problems for some MSs.</p>                                                                                              |
| <p><i>Article 10</i><br/>Freedom of thought, conscience and religion (conscientious objection)</p> | <p>The Commentary states that paragraph 2 (conscientious objection) corresponds to national constitutional traditions.<br/>Not clear which if any horizontal Article governs the interpretation of this Charter Article and its limitations.</p>                                                                                                                                         | <p>On its face, 10(2) defers to national legislation, but the Court could find an irreducible minimum right, drawing upon ECtHR jurisprudence on fundamental rights and the first sentence of Charter Article 52(1). This would reduce the scope for national limitations and may lead to new States obligations.</p>                                                                                                                                                                                                                           |
| <p><i>Article 13</i><br/>Freedom of the arts and sciences</p>                                      | <p>The Commentary states that this Article is "deduced" from the right to freedom of thought and expression. Not clear which if any horizontal Article governs the interpretation of this Charter Article and its limitations.</p>                                                                                                                                                       | <p>Article 13 claims to be deduced from the principles in ECHR Article 10, but the wording, and its separation from Charter Article 10, seems apt to create a new right and new positive duties. State controls on some forms of scientific research may not survive challenge under this Article. “Free of constraint” is as odd for the arts as for scientific research – some expression needs to be constrained in the public interest – obscenity laws?</p>                                                                                |

## Attachment to UK paper: “The “missing” horizontal article in the Charter of Rights”

## TABLE

|                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|----------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><i>Article 14</i><br/>Right to education</p>                                                          | <p>The Commentary states that Article 14(1) and (3) is based on the common Constitutional traditions and on Article 2 of the First Protocol to the ECHR, but with a wider scope.<br/>Article 14(2): Unclear. The Commentary states that this is a "principle" which was necessary to <u>add</u> to this provision. Article 14(2) is not based on the Treaties or ECHR. Unclear which if any horizontal Article governs the interpretation of this Charter Article and its limitations.</p> | <p>Article 14 goes beyond the ECHR provisions regarding access to <u>vocational and continuing training, parents pedagogical convictions and free compulsory education</u>.<br/>On its face, 14(3) defers to national legislation, but it may be argued that there is an irreducible minimum right, drawing upon ECtHR jurisprudence on fundamental rights and the first sentence of Charter Article 52(1) (in which case the scope for national limitations may be limited). New positive duties (e.g. an access to vocational training) are implied in an area where the EU is precluded from legislation.<br/>Germany, Ireland, the Netherlands and the UK have entered reservations against Article 2 of First Protocol to the ECHR. It is unclear that these would be respected.</p> |
| <p><i>Article 19</i><br/>Protection in the event of removal, expulsion or extradition</p>                | <p>The Commentary states that paragraph 1 is based on Article 4 of the Fourth Protocol to the ECHR (which not all Member States have accepted) and on ECHR Article 3 (same scope).</p>                                                                                                                                                                                                                                                                                                     | <p>The national positions of Member States which have chosen not to accept the Fourth Protocol to the ECHR on which 19(1) is based (Greece, Spain, UK) is not respected.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <p><i>Article 21</i><br/>Non-discrimination</p>                                                          | <p>The Commentary states that this draws partly on Article 13 EC, but it contains a prohibition whereas Article 13 provides a power to legislate; and partly on Article 14 ECHR, but it is not mentioned in the list given for Article 52(3). Not clear which if any horizontal Article governs the interpretation of this Charter Article and its limitations.</p>                                                                                                                        | <p>Article 21(1) is close to ECHR Protocol 12 (which <u>no</u> Member State has yet ratified and several have not signed at all).<br/>Making the Charter legally binding could affect existing national derogations, including those expressly permitted in existing Community secondary legislation.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <p><i>Article 24</i><br/>The rights of the child</p>                                                     | <p>The Commentary states that this is based on the UN Convention on the Rights of the Child, against which some Member States have entered reservations.<br/>Not clear which if any horizontal Article governs the interpretation of this Charter Article and its limitations.</p>                                                                                                                                                                                                         | <p>All Member States have ratified the UN Convention, but not all have incorporated the provisions in domestic law.<br/>There are implications for national laws and policies (e.g. immigration, family reunification and social services).<br/>Article 24(1) provides no qualifying phrases such as "under conditions provided for by national laws and practices".</p>                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <p><i>Articles 25 and 26</i><br/>The rights of the elderly; Integration of persons with disabilities</p> | <p>Mainly based on the Revised European Social Charter.<br/>Not clear which if any horizontal Article governs the interpretation of these Charter Articles and their limitations.</p>                                                                                                                                                                                                                                                                                                      | <p>The Court could find new positive duties and States obligations here regarding special measures interfering with national arrangements and budgets.<br/>Note that Article 26 appears to include third country nationals.<br/>This could well have financial implications.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |

## Attachment to UK paper: “The “missing” horizontal article in the Charter of Rights”

## TABLE

|                                                                                                                    |                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|--------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                                                                    |                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <i>Article 28</i><br>Right of collective bargaining and action                                                     | As for Article 25.                                                                                                                                                    | Could entail a positive duty to prohibit dismissal of striking workers. This topic is outwith EU competence (see below).                                                                                                                                                                                                                                                                                                                                |
| <i>Article 29</i><br>Right of access to placement services                                                         | As for Article 25.                                                                                                                                                    | Article 29 implies an irreducible minimum right not to be denied access to free placement services. Who is to define and limit that – and to pay for it?                                                                                                                                                                                                                                                                                                |
| <i>Article 30</i><br>Protection in the event of unjustified dismissal                                              | As for Article 25.                                                                                                                                                    | The language is apt for a wide-ranging constitutional statement of rights, allowing a wide measure of judicial discretion and interference in national employment laws and practices. Does "every worker" include those unlawfully employed? And what is the scope of "unjustified dismissal"? Who is to decide and to pick up any bill?                                                                                                                |
| <i>Article 31</i><br>Fair and just working conditions                                                              | Mainly based on the European Social Charter.<br>Not clear which if any horizontal Article governs the interpretation of these Charter Articles and their limitations. | Do unlawful workers have a right to annual paid leave? Note absence of reference to "national laws and practices".<br>Implies Community power to legislate on health and safety matters and positive duties.                                                                                                                                                                                                                                            |
| <i>Article 32</i><br>Prohibition of child labour and protection of young people at work                            | As for Article 31.                                                                                                                                                    | Implications for national policies and finances (working hours, fair wages, paid holidays etc).                                                                                                                                                                                                                                                                                                                                                         |
| <i>Article 33</i><br>Family and professional life                                                                  | As for Article 31.                                                                                                                                                    | Implications for laws and policies concerning paternity leave, depending on the approach taken by the Court. Implies positive duties to promote the economic, legal and social protection of family life by all appropriate means?                                                                                                                                                                                                                      |
| <i>Article 50</i><br>Right not to be tried or punished twice in criminal proceedings for the same criminal offence | The Commentary states that this is based on Article 4 of Protocol 7 to the ECHR which not all Member States have ratified. Horizontal article 52(3) applies.          | Article 50 goes beyond Protocol 7 to the ECHR by protecting freedom from double jeopardy <u>between the jurisdiction of the Member States</u> , and not just within the same jurisdiction. The implication is that the EU constitutes a single criminal jurisdiction concerning the finality of the criminal process. Not all Member States have accepted Protocol 7 to the ECHR (i.e. Belgium, Germany, Ireland, Netherlands, Portugal, Spain and UK). |

THE EUROPEAN CONVENTION

Brussels, 9 July 2002

THE SECRETARIAT

Working Group II

Working document 05

## Working group II "Incorporation of the Charter/accession to the ECHR"

Working document by Mr. Vytenis Povilas Andriukaitis

Subject : Legal status of the Charter of Fundamental Rights of the European Union

Taking into account that the Charter of Fundamental Rights of the European Union (hereinafter "Charter") was adopted with a view to strengthening the protection of fundamental rights in the European Union, systematising all fundamental rights stipulated in different legal acts of the European Communities and international instruments and setting them out in a single text, making these rights more visible and explicit to the EU citizens, and ensuring the confidence of the European people in the process of further European integration as well as considering that the declarative nature of the Charter creates obstacles for the effective implementation of the rights foreseen in it, a conclusion may be drawn that the Charter should have a binding effect. This effect can be granted by incorporating the Charter into the Treaty on the European Union or the future EU Constitution.

The modality of the incorporation of the Charter into the Treaty (Constitution) should be determined on the basis of the requirements of legal certainty and clarity. As the Charter might be seen as a compromise in itself, the most appropriate way of its incorporation would be by introducing the least possible modifications in the contents of the Charter and the EU/EC legal system.

### **Modalities and consequences of the incorporation of the Charter into the Treaty on the EU (EU Constitution):**

#### ***1. The incorporation of the Charter into the Treaty on the European Union or a new basic treaty***

*This alternative is supported by the Commission of the European Union, the European Parliament and a number of member states.*

The preamble of the Charter, with minor changes, could be incorporated into the preamble of the Treaty on the European Union; the text of the Charter, excluding the general provisions, could be added as a separate chapter of the Treaty. Within the Treaty, the provisions of the Charter would have the status of the primary EU legislation (the legal status of the Charter would be similar to that of the EC/EU Treaties). Direct applicability of the provisions of the Charter could be guided by the general terms of the direct applicability of the EC law. A point should be made that the wording of some of the provisions of the Charter does not meet the terms of direct applicability set by the European Court of Justice. Therefore, problems could be avoided by applying the community method for the regulation of fundamental rights.

Some of the provisions in the Charter replicate the provisions of the Treaty establishing the European Communities, therefore, while integrating the Charter into the Treaty, the problem of the replication of rights should be addressed. This is primarily relevant to the rights of the citizens' of the European Union, principle of non-discrimination, and equal opportunities between men and women. Thus, the citizens' rights could be either deleted from the EC Treaty or only the provisions specifying these rights could be retained which establish additional obligations to institutions, certain procedures of their discharge, etc. Other rights envisaged in the Treaty could be modified. If some of the rights foreseen in the Charter were further regulated under the same or other Treaties, the wording "it shall be exercised within the limits and under conditions set in the treaties" should be added to every right stipulated in the Charter.

Major problems would be created by the need to change the general provisions of the Charter. If these provisions were left out, the meaning and effectiveness of the Charter as a whole could be jeopardised. Therefore, it would be expedient to consider the necessity of retaining (or modifying) each of the general provisions of the Charter in the new Treaty. Already now, it is possible to foresee that Article 51(1) would lose its sense if the Charter was included into the Treaty, while the necessity of Article 51(2) of the Charter will have to be assessed after the final solution of the issues of the status and competencies of the EC and EU. Article 52(2) and the provisions concerning the relationship between the Charter and the European Convention on Human Rights listed in Article 52(3) should be specified. There is some uncertainty about Article 53 of the Charter dealing with the relationship between the Charter and the national constitutions of the member states regarding its compliance with the principle of the supremacy of the EC law. The problem could be solved by indicating (like in the case of the definition of the EU citizenship) that the Charter shall not replace the human rights stipulated in national constitutions but rather supplement them. This could be laid down in Article 6 of the EU Treaty or in an article of the Constitution.

## ***2. Incorporation of the Charter in the form of a separate Protocol annexed to the Treaty***

In this case, incorporation of the Charter would have the same legal value and consequences as in the first case as under both international and EU law protocols are construed as an integral part of a Treaty. Such an option would be in line with the wishes of some EU member states to see the Charter as a separate document and would provide a solution if no EU Constitution is adopted. This option would be simpler in technical terms in comparison with the first option and would require fewer amendments to the Charter and the Treaties. In this case, however, the general provisions of



the Charter would have to be modified. A reference to the Charter could be made in Article 6(2) of the EU Treaty.

### ***3. Reference to the Charter in Article 6(2) of the EU Treaty***

This possibility was foreseen already before the Nice conference. The reference could be direct, in a separate additional part of the article, or indirect – by expanding Article 6(2) and making a reference to the Charter as to yet another source on which the European Court of Justice draws in protecting human rights as the general principles of the EC law. Although this option would be technically simpler than the first ones, a problem would arise with the reference to ECHR made in Article 6(2) because the greater part of the rights stipulated in the Charter are based on the Convention. An indirect reference to the Charter without changing its status would merely mean a formal statement of recognition of the rights stipulated in the Charter as general principles. It is doubtful whether such a reference would be expedient.

#### **The control mechanism over the protection of the rights enshrined in the Charter.**

In connection with incorporation of the Charter into the Treaties, the question arises whether paragraph 4 of Article 230 of the EC Treaty should be amended to extend the conditions of admissibility for direct action by individuals in the European Court of Justice or whether a new form of legal action should be introduced for the purposes of protection of fundamental rights. An introduction of a new form of legal action would not be expedient because violations of fundamental rights are usually related to a specific form of already existing actions. If the European Court of Justice is given the competence to apply and interpret the provisions of the Charter, it would become the last instance in cases related to the violation of rights stipulated in the ECHR and the Charter. Such a situation could lead to a conflicting case-law of the European Court of Human Rights and the European Court of Justice; besides, the Charter provisions with regard to actions by member states would not have equal legal value and consequences. It should also be noted that all the rulings by the European Court of Justice are passed unanimously. Such a method of handing down decisions could create obstacles for a dynamic interpretation of human rights provisions. As the European Court of Justice itself falls within the Charter's sphere of control, a question arises whether an external control mechanism should be introduced. That is why it may be worthwhile to discuss an option of establishing a judicial or legal institution with a competence to ensure the compliance with the standards enshrined in the Charter. In view of the problems mentioned above and of the possible extension of the competencies of the European Court of Justice in the field of justice and home affairs, some of the Lithuanian experts believe that it would be expedient to establish a new permanent judicial institution to ensure the implementation of the rights under the Charter. Initially, a Fundamental Rights Commission could be established which would also be able to supervise the compliance with the provisions of the Charter by EU institutions.

After an analysis of the modalities and consequences of incorporation of the Charter into the Treaty, it must be emphasised that this issue is closely linked with other issues being discussed at the Convention, such as division of competencies, accession by the Community/Union to the ECHR, simplification of the Treaties. It is therefore necessary to take into account the results of work of other working groups and their proposals.

**THE EUROPEAN CONVENTION**

Brussels, 12 July 2002

THE SECRETARIAT

Working Group II

Working document 06

**Working group II -"Incorporation of the Charter/accession to the ECHR"****Working document by Elena Paciotti****Subject:       Answers to questions in chapter II of doc. CONV 116/02**

Referring to the Secretariat's discussion paper CONV 116/02 of 18 June 2002 concerning "Modalities and consequences of incorporation into the Treaties of the Charter of Fundamental Rights and accession of the Community/Union to the ECHR", I will try to answer the questions raised in chapter II:

**1. Possible techniques for incorporation of the Charter**

The problem of the incorporation of the Charter of fundamental rights of the European Union in a Treaty having the contents and the value of a European constitution can be easily solved looking at the only distinguished precedent of a constitution written shortly after the declaration of fundamental rights. I am referring to the French Constitution of 1791 that incorporated the Declaration of human rights of 1789 simply by inserting it before the text of the other constitutional norms.

I enclose this document for better information.

As highlighted in the meeting of 25 June, every modern constitution includes a catalogue of fundamental rights and principles: in the European Union this catalogue was recently drafted and adopted by an ad hoc Convention and subsequently signed and proclaimed by the three European institutions. It is difficult to imagine a European "constitution" without the Charter of fundamental rights constituting its first part (see indent f of point 1 of the Secretariat's

discussion paper). This solution would further allow the Charter to be amended or updated with the same modalities as those for "constitutional" revision.

2. The question of current Article 6(2) of the EU Treaty

If the Charter is incorporated into the "constitutional" Treaty, it would neither be necessary or useful to maintain current art. 6.2 of the TEU mentioning common constitutional traditions of Member states and the European Convention for Human Rights.

It would not be necessary because the ECHR is already included in the Charter and reference is made in its preamble to the common constitutional traditions of Member states. Another reason is that in European constitutional systems the catalogue of fundamental rights is not exhaustive and does not avoid adjustment and evolution of jurisprudence, without any need to mention external sources. It would not be useful because the mention of plurality of juridical sources would seem incomprehensible and could create uncertainty and confusion.

3. The question of the preamble to the Charter

The incorporation of the Charter includes its preamble (that played a relevant role in the acceptance of the final compromise leading to the adoption of the Charter) as in the above-mentioned precedent of the French Constitution of 1791.

Instead, a part of the Treaties' preamble might be redrafted so to be integrated into the "constitutional" Treaty, but probably this will not be necessary because all the essential references to the Union's objectives and principles are already included in the preamble to the Charter .

4. The question of "replication" in the Charter

The rights included in the Charter and already stated in the ECT will not have to be replicated through articles of the "constitutional" treaty; they can nonetheless be specified and clarified in the text in order to group systematically all the non "constitutional" provisions present in the treaties currently in force.

5. Examination of certain technical adjustments in the provisions of the Charter

The Charter as a whole must not be modified in order to become the first part of a European constitution; nevertheless some limited technical adjustments will be useful concerning the final clauses such as those contained in articles 51.2 and 52.2.

## 6. Treaty provisions concerning the Court of Justice

a) In the event of the incorporation of the Charter in the "constitutional" Treaty, the provision concerning the jurisdiction of the Court of Justice (current article 46 TEU) will have to be changed extending its scope to the Charter without limiting it to the activity of the institutions. In fact, article 51.1 of the Charter, in compliance with the jurisprudence of the Court of Justice, already states that it applies to the institutions and bodies of the Union and to Member States when implementing the Union's law.

### b) Competencies of the Court on subjects related to Justice and Home affairs

The incorporation of the Charter in the "constitutional" Treaty (i.e. the need to guarantee fundamental rights) implies that some of the current limitations to the competencies of the Court of Justice are eliminated, such as those foreseen by current articles 35.5 EUT and 68.2 and 3 ECT.

### c) The question of the liberalisation of conditions for direct referral to the Court

To establish a balance between the need to protect fundamental rights of citizens and the need for efficiency of the Court of Justice, the following might be sufficient:

- the incorporation of the Charter in the "constitutional" Treaty allowing for the exercise of the control of legitimacy, even from the point of view of the respect of all the fundamental rights included in the Charter.
- The redrafting of current article 230.4 ECT following the extensive interpretation adopted by the Court of First Instance in the case *Jégo-Quéré*. In this case the Court stated that everyone can bring referral against decisions affecting him/her and against decisions that, while appearing as regulations or decisions affecting other persons, de facto concern him/her directly and individually or touch at his/her juridical position by restricting his/her right or imposing additional obligations.

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**ANNEX****Texte de la Constitution française de 1791 ( dont la Déclaration des droits de l'homme de 1789 constitue le préambule)**

Les représentants du peuple français, constitués en Assemblée nationale, considérant que l'ignorance, l'oubli ou le mépris des droits de l'homme sont les seules causes des malheurs publics et de la corruption des gouvernements, ont résolu d'exposer, dans une déclaration solennelle, les droits naturels, inaliénables et sacrés de l'homme, afin que cette déclaration, constamment présente à tous les membres du corps social, leur rappelle sans cesse leurs droits et leurs devoirs ; afin que les actes du pouvoir législatif et ceux du pouvoir exécutif, pouvant être à chaque instant comparés avec le but de toute institution politique, en soient plus respectés ; afin que les réclamations des citoyens, fondées désormais sur des principes simples et incontestables, tournent toujours au maintien de la Constitution et au bonheur de tous.

En conséquence, l'Assemblée nationale reconnaît et déclare, en présence et sous les auspices de l'Être Suprême, les droits suivants de l'homme et du citoyen.

**Article premier.** - Les hommes naissent et demeurent libres et égaux en droits. Les distinctions sociales ne peuvent être fondées que sur l'utilité commune.

**Article 2.** - Le but de toute association politique est la conservation des droits naturels et imprescriptibles de l'homme. Ces droits sont la liberté, la propriété, la sûreté et la résistance à l'oppression.

**Article 3.** - Le principe de toute souveraineté réside essentiellement dans la Nation. Nul corps, nul individu ne peut exercer d'autorité qui n'en émane expressément.

**Article 4.** - La liberté consiste à pouvoir faire tout ce qui ne nuit pas à autrui : ainsi, l'exercice des droits naturels de chaque homme n'a de bornes que celles qui assurent aux autres membres de la société la jouissance de ces mêmes droits. Ces bornes ne peuvent être déterminées que par la loi.

**Article 5.** - La loi n'a le droit de défendre que les actions nuisibles à la société. Tout ce qui n'est pas défendu par la loi ne peut être empêché, et nul ne peut être contraint à faire ce qu'elle n'ordonne pas.

**Article 6.** - La loi est l'expression de la volonté générale. Tous les citoyens ont droit de concourir personnellement ou par leurs représentants à sa formation. Elle doit être la même pour tous, soit qu'elle protège, soit qu'elle punisse. Tous les citoyens, étant égaux à ses yeux, sont également admissibles à toutes dignités, places et emplois publics, selon leur capacité et sans autre distinction que celle de leurs vertus et de leurs talents.

**Article 7.** - Nul homme ne peut être accusé, arrêté ou détenu que dans les cas déterminés par la loi et selon les formes qu'elle a prescrites. Ceux qui sollicitent, expédient, exécutent ou font exécuter des ordres arbitraires doivent être punis ; mais tout citoyen appelé ou saisi en vertu de la loi doit obéir à l'instant ; il se rend coupable par la résistance.

**Article 8.** - La loi ne doit établir que des peines strictement et évidemment nécessaires, et nul ne peut être puni qu'en vertu d'une loi établie et promulguée antérieurement au délit, et légalement appliquée.

**Article 9.** - Tout homme étant présumé innocent jusqu'à ce qu'il ait été déclaré coupable, s'il est jugé indispensable de l'arrêter, toute rigueur qui ne serait pas nécessaire pour s'assurer de sa personne doit être sévèrement réprimée par la loi.

**Article 10.** - Nul ne doit être inquiété pour ses opinions, même religieuses, pourvu que leur manifestation ne trouble pas l'ordre public établi par la loi.

**Article 11.** - La libre communication des pensées et des opinions est un des droits les plus précieux de l'homme ; tout citoyen peut donc parler, écrire, imprimer librement, sauf à répondre de l'abus de cette liberté dans les cas déterminés par la loi.

**Article 12.** - La garantie des droits de l'homme et du citoyen nécessite une force publique ; cette force est donc instituée pour l'avantage de tous, et non pour l'utilité particulière de ceux à qui elle est confiée.

**Article 13.** - Pour l'entretien de la force publique, et pour les dépenses d'administration, une contribution commune est indispensable ; elle doit être également répartie entre les citoyens, en raison de leurs facultés.

**Article 14.** - Les citoyens ont le droit de constater, par eux-mêmes ou par leurs représentants, la nécessité de la contribution publique, de la consentir librement, d'en suivre l'emploi, et d'en déterminer la quotité, l'assiette, le recouvrement et la durée.

**Article 15.** - La société a le droit de demander compte à tout agent public de son administration.

**Article 16.** - Toute société dans laquelle la garantie des droits n'est pas assurée ni la séparation des pouvoirs déterminée, n'a point de Constitution.

**Article 17.** - La propriété étant un droit inviolable et sacré, nul ne peut en être privé, si ce n'est lorsque la nécessité publique, légalement constatée, l'exige évidemment, et sous la condition d'une juste et préalable indemnité.

L'Assemblée nationale voulant établir la Constitution française sur les principes qu'elle vient de reconnaître et de déclarer, abolit irrévocablement les institutions qui blessaient la liberté et l'égalité des droits.

- Il n'y a plus ni noblesse, ni pairie, ni distinctions héréditaires, ni distinctions d'ordres, ni régime féodal, ni justices patrimoniales, ni aucun des titres, dénominations et prérogatives qui en dériveraient, ni aucun ordre de chevalerie, ni aucune des corporations ou décorations, pour lesquelles on exigeait des preuves de noblesse, ou qui supposaient des distinctions de naissance, ni aucune autre supériorité, que celle des fonctionnaires publics dans l'exercice de leurs fonctions.

- Il n'y a plus ni vénalité, ni hérédité d'aucun office public.

- Il n'y a plus, pour aucune partie de la Nation, ni pour aucun individu, aucun privilège, ni exception au droit commun de tous les Français.

- Il n'y a plus ni jurandes, ni corporations de professions, arts et métiers.

- La loi ne reconnaît plus ni voeux religieux, ni aucun autre engagement qui serait contraire aux droits naturels ou à la Constitution.

## TITRE PREMIER

### Dispositions fondamentales garanties par la Constitution

La Constitution garantit, comme droits naturels et civils :

1° Que tous les citoyens sont admissibles aux places et emplois, sans autre distinction que celle des vertus et des talents ;

2° Que toutes les contributions seront réparties entre tous les citoyens également en proportion de leurs facultés ;

3° Que les mêmes délits seront punis des mêmes peines, sans aucune distinction des personnes.

La Constitution garantit pareillement, comme droits naturels et civils :

- La liberté à tout homme d'aller, de rester, de partir, sans pouvoir être arrêté, ni détenu, que selon les formes déterminées par la Constitution ;

- La liberté à tout homme de parler, d'écrire, d'imprimer et publier ses pensées, sans que les écrits puissent être soumis à aucune censure ni inspection avant leur publication, et d'exercer le culte religieux auquel il est attaché ;

- La liberté aux citoyens de s'assembler paisiblement et sans armes, en satisfaisant aux lois de police ;

- La liberté d'adresser aux autorités constituées des pétitions signées individuellement.

Le Pouvoir législatif ne pourra faire aucunes lois qui portent atteinte et mettent obstacle à l'exercice des droits naturels et civils consignés dans le présent titre, et garantis par la Constitution ; mais comme la liberté ne consiste qu'à pouvoir faire tout ce qui ne nuit ni aux droits d'autrui, ni à la sûreté publique, la loi peut établir des peines contre les actes qui, attaquant ou la sûreté publique ou les droits d'autrui, seraient nuisibles à la société.



La Constitution garantit l'inviolabilité des propriétés ou la juste et préalable indemnité de celles dont la nécessité publique, légalement constatée, exigerait le sacrifice. - Les biens destinés aux dépenses du culte et à tous services d'utilité publique, appartiennent à la Nation, et sont dans tous les temps à sa disposition.

La Constitution garantit les aliénations qui ont été ou qui seront faites suivant les formes établies par la loi.

Les citoyens ont le droit d'élire ou choisir les ministres de leurs cultes.

Il sera créé et organisé un établissement général de Secours publics, pour élever les enfants abandonnés, soulager les pauvres infirmes, et fournir du travail aux pauvres valides qui n'auraient pu s'en procurer.

Il sera créé et organisé une Instruction publique commune à tous les citoyens, gratuite à l'égard des parties d'enseignement indispensables pour tous les hommes et dont les établissements seront distribués graduellement, dans un rapport combiné avec la division du royaume. - Il sera établi des fêtes nationales pour conserver le souvenir de la Révolution française, entretenir la fraternité entre les citoyens, et les attacher à la Constitution, à la Patrie et aux lois.

Il sera fait un Code de lois civiles communes à tout le Royaume.

## **TITRE II**

### **De la division du royaume, et de l'état des citoyens**

ARTICLE PREMIER. - Le Royaume est un et indivisible : son territoire est distribué en quatre-vingt-trois départements, chaque département en districts, chaque district en cantons.

ART. 2. - Sont citoyens français : - Ceux qui sont nés en France d'un père français ; - Ceux qui, nés en France d'un père étranger, ont fixé leur résidence dans le Royaume ; - Ceux qui, nés en pays étranger d'un père français, sont venus s'établir en France et ont prêté le serment civique ; - Enfin

ceux qui, nés en pays étranger, et descendant, à quelque degré que ce soit, d'un Français ou d'une Française expatriés pour cause de religion, viennent demeurer en France et prêtent le serment civique.

ART. 3. - Ceux qui, nés hors du Royaume de parents étrangers, résident en France, deviennent citoyens français, après cinq ans de domicile continu dans le Royaume, s'ils y ont, en outre, acquis des immeubles ou épousé une Française, ou formé un établissement d'agriculture ou de commerce, et s'ils ont prêté le serment civique.

ART. 4. - Le Pouvoir législatif pourra, pour des considérations importantes, donner à un étranger un acte de naturalisation, sans autres conditions que de fixer son domicile en France et d'y prêter le serment civique.

ART. 5. - Le serment civique est : Je jure d'être fidèle à la Nation à la loi et au roi et de maintenir de tout mon pouvoir la Constitution du Royaume, décrétée par l'Assemblée nationale constituante aux années 1789, 1790 et 1791.

ART. 6. - La qualité de citoyen français se perd : 1° Par la naturalisation en pays étranger ; 2° Par la condamnation aux peines qui emportent la dégradation civique, tant que le condamné n'est pas réhabilité ; 3° Par un jugement de contumace, tant que le jugement n'est pas anéanti ; 4° Par l'affiliation à tout ordre de chevalerie étranger ou à toute corporation étrangère qui supposerait, soit des preuves de noblesse, soit des distinctions de naissance, ou qui exigerait des vœux religieux.

ART. 7. - La loi ne considère le mariage que comme contrat civil. - Le Pouvoir législatif établira pour tous les habitants, sans distinction, le mode par lequel les naissances, mariages et décès seront constatés ; et il désignera les officiers publics qui en recevront et conserveront les actes.

ART. 8. - Les citoyens français considérés sous le rapport des relations locales qui naissent de leurs réunions dans les villes et dans de certains arrondissements du territoire des campagnes, forment les Communes. - Le Pouvoir législatif pourra fixer l'étendue de l'arrondissement de chaque commune.

ART. 9. - Les citoyens qui composent chaque commune, ont le droit d'élire à temps, suivant les formes déterminées par la loi, ceux d'entre eux qui, sous le titre d'Officiers municipaux, sont chargés de gérer les affaires particulières de la commune. - Il pourra être délégué aux officiers

municipaux quelques fonctions relatives à l'intérêt général de l'Etat.

ART. 10. - Les règles que les officiers municipaux seront tenus de suivre dans l'exercice des fonctions, tant municipales que de celles qui leur auront été déléguées pour l'intérêt général, seront fixées par les lois.

### **TITRE III**

#### **Des pouvoirs publics**

ARTICLE PREMIER. - La Souveraineté est une, indivisible, inaliénable et imprescriptible. Elle appartient à la Nation ; aucune section du peuple, ni aucun individu, ne peut s'en attribuer l'exercice.

ART. 2. - La Nation, de qui seule émanent tous les Pouvoirs, ne peut les exercer que par délégation.  
- La Constitution française est représentative : les représentants sont le Corps législatif et le roi.

ART. 3. - Le Pouvoir législatif est délégué à une Assemblée nationale composée de représentants temporaires, librement élus par le peuple, pour être exercé par elle, avec la sanction du roi, de la manière qui sera déterminée ci-après.

ART. 4. - Le Gouvernement est monarchique : le Pouvoir exécutif est délégué au roi, pour être exercé sous son autorité, par des ministres et autres agents responsables, de la manière qui sera déterminée ci-après.

ART. 5. - Le Pouvoir Judiciaire est délégué à des juges élus à temps par le peuple.

### **CHAPITRE PREMIER**

#### **DE L'ASSEMBLÉE NATIONALE LÉGISLATIVE**

ARTICLE PREMIER. - L'Assemblée nationale formant le corps législatif est permanente, et n'est composée que d'une Chambre.

ART. 2. - Elle sera formée tous les deux ans par de nouvelles élections. - Chaque période de deux

années formera une législature.

ART. 3. - Les dispositions de l'article précédent n'auront pas lieu à l'égard du prochain Corps législatif, dont les pouvoirs cesseront le dernier jour d'avril 1793.

ART. 4. - Le renouvellement du Corps législatif se fera de plein droit.

ART. 5. - Le Corps législatif ne pourra être dissous par le roi.

### **Section première. - Nombre des représentants. Bases de la représentation.**

ARTICLE PREMIER. Le nombre des représentants au Corps législatif est de sept cent quarante-cinq à raison des quatre-vingt-trois départements dont le Royaume est composé et indépendamment de ceux qui pourraient être accordés aux Colonies.

ART. 2. - Les représentants seront distribués entre les quatre-vingt-trois départements, selon les trois proportions du territoire, de la population, et de la contribution directe.

ART. 3. - Des sept cent quarante-cinq représentants, deux cent quarante-sept sont attachés au territoire. - Chaque département en nommera trois, à l'exception du département de Paris, qui n'en nommera qu'un.

ART. 4. - Deux cent quarante-neuf représentants sont attribués à la population. - La masse totale de la population active du Royaume est divisée en deux cent quarante-neuf parts, et chaque département nomme autant de députés qu'il a de parts de population.

ART. 5. - Deux cent quarante-neuf représentants sont attachés à la contribution directe. - La somme totale de la contribution directe du Royaume est de même divisée en deux cent quarante-neuf parts, et chaque département nomme autant de députés qu'il paie de parts de contribution.

## Section II. - Assemblées primaires. Nomination des électeurs.

ARTICLE PREMIER. - Pour former l'Assemblée nationale législative, les citoyens actifs se réuniront tous les deux ans en Assemblées primaires dans les villes et dans les cantons. - Les Assemblées primaires se formeront de plein droit le second dimanche de mars, si elles n'ont pas été convoquées plus tôt par les fonctionnaires publics déterminés par la loi.

ART. 2. - Pour être citoyen actif, il faut : - Etre né ou devenu Français ; - Etre âgé de vingt-cinq ans accomplis ; - Etre domicilié dans la ville ou dans le canton depuis le temps déterminé par la loi ; - Payer, dans un lieu quelconque du Royaume, une contribution directe au moins égale à la valeur de trois journées de travail, et en représenter la quittance ; - N'être pas dans un état de domesticité, c'est-à-dire de serviteur à gages ; - Etre inscrit dans la municipalité de son domicile au rôle des gardes nationales ; - Avoir prêté le serment civique.

ART. 3. - Tous les six ans, le Corps législatif fixera le minimum et le maximum de la valeur de la journée de travail, et les administrateurs des départements en feront la détermination locale pour chaque district.

ART. 4. - Nul ne pourra exercer les droits de citoyen actif dans plus d'un endroit, ni se faire représenter par un autre.

ART. 5. - Sont exclus de l'exercice des droits de citoyen actif : - Ceux qui sont en état d'accusation ; - Ceux qui, après avoir été constitués en état de faillite ou d'insolvabilité, prouvé par pièces authentiques, ne rapportent pas un acquit général de leurs créanciers.

ART. 6. - Les Assemblées primaires nommeront des électeurs en proportion du nombre des citoyens actifs domiciliés dans la ville ou le canton. - Il sera nommé un électeur à raison de cent citoyens actifs présents, ou non, à l'Assemblée. - Il en sera nommé deux depuis cent cinquante et un jusqu'à deux cent cinquante, et ainsi de suite.

ART. 7. - Nul ne pourra être nommé électeur, s'il ne réunit aux conditions nécessaires pour être citoyen actif, savoir : - Dans les villes au-dessus de six mille âmes, celle d'être propriétaire ou usufruitier d'un bien évalué sur les rôles de contribution à un revenu égal à la valeur locale de deux cents journées de travail, ou d'être locataire d'une habitation évaluée sur les mêmes rôles, à un

revenu égal à la valeur de cent cinquante journées de travail ; - Dans les villes au-dessous de six mille âmes, celle d'être propriétaire ou usufruitier d'un bien évalué sur les rôles de contribution à un revenu égal à la valeur locale de cent cinquante journées de travail, ou d'être locataire d'une habitation évaluée sur les mêmes rôles à un revenu égal à la valeur de cent journées de travail ; - Et dans les campagnes, celle d'être propriétaire ou usufruitier d'un bien évalué sur les rôles de contribution à un revenu égal à la valeur locale de cent cinquante journées de travail, ou d'être fermier ou métayer de biens évalués sur les mêmes rôles à la valeur de quatre cents journées de travail ; - A l'égard de ceux qui seront en même temps propriétaires ou usufruitiers d'une part, et locataires, fermiers ou métayers de l'autre, leurs facultés à ces divers titres seront cumulées jusqu'au taux nécessaire pour établir leur éligibilité.

### **Section III. - Assemblées électorales. Nomination des représentants.**

ARTICLE PREMIER. - Les électeurs nommés en chaque département se réuniront pour élire le nombre des représentants dont la nomination sera attribuée à leur département, et un nombre de suppléants égal au tiers de celui des représentants. - Les Assemblées électorales se formeront de plein droit le dernier dimanche de mars, si elles n'ont pas été convoquées plus tôt par les fonctionnaires publics déterminés par la loi.

ART. 2. - Les représentants et les suppléants seront élus à la pluralité absolue des suffrages, et ne pourront être choisis que parmi les citoyens actifs du département.

ART. 3. - Tous les citoyens actifs, quel que soit leur état, profession ou contribution, pourront être élus représentants de la Nation.

ART. 4. - Seront néanmoins obligés d'opter, les ministres et les autres agents du Pouvoir exécutif révocables à volonté, les commissaires de la Trésorerie nationale, les percepteurs et receveurs des contributions directes, les préposés à la perception et aux régies des contributions indirectes et des domaines nationaux, et ceux qui, sous quelque dénomination que ce soit, sont attachés à des emplois de la maison militaire et civile du roi. - Seront également tenus d'opter les administrateurs, sous-administrateurs, officiers municipaux, et commandants des gardes nationales.

ART. 5. - L'exercice des fonctions judiciaires sera incompatible avec celles de représentant de la

Nation, pendant toute la durée de la législature. - Les juges seront remplacés par leurs suppléants et le roi pourvoira par des brevets de commission au remplacement de ses commissaires auprès des tribunaux.

ART. 6. - Les membres du Corps législatif pourront être réélus à la législature suivante, et ne pourront l'être ensuite qu'après l'intervalle d'une législature.

ART. 7. - Les représentants nommés dans les départements, ne seront pas représentants d'un département particulier, mais de la Nation entière, et il ne pourra leur être donné aucun mandat.

#### **Section IV. - Tenue et régime des Assemblées primaires et électorales.**

ARTICLE PREMIER. - Les fonctions des Assemblées primaires et électorales se bornent à élire ; elles se sépareront aussitôt après les élections faites, et ne pourront se former de nouveau que lorsqu'elles seront convoquées, si ce n'est au cas de l'article premier de la Section II et de l'article premier de la Section III ci-dessus.

ART. 2. - Nul citoyen actif ne peut entrer ni donner son suffrage dans une assemblée, s'il est armé.

ART. 3. - La force armée ne pourra être introduite dans l'intérieur sans le voeu exprès de l'Assemblée, si ce n'est qu'on y commît des violences ; auquel cas, l'ordre du président suffira pour appeler la force publique.

ART. 4. - Tous les deux ans, il sera dressé, dans chaque district, des listes, par cantons, des citoyens actifs, et la liste de chaque canton y sera publiée et affichée deux mois avant l'époque de l'Assemblée primaire. - Les réclamations qui pourront avoir lieu, soit pour contester la qualité des citoyens employés sur la liste, soit de la part de ceux qui se prétendront omis injustement, seront portées aux tribunaux pour y être jugées sommairement. - La liste servira de règle pour l'admission des citoyens dans la prochaine Assemblée primaire, en tout ce qui n'aura pas été rectifié par des jugements rendus avant la tenue de l'Assemblée.

ART. 5. - Les Assemblées électorales ont le droit de vérifier la qualité et les pouvoirs de ceux qui s'y présenteront, et leurs décisions seront exécutées provisoirement, sauf le jugement du Corps

législatif lors de la vérification des pouvoirs des députés.

ART. 6. - Dans aucun cas et sous aucun prétexte, le roi, ni aucun des agents nommés par lui, ne pourront prendre connaissance des questions relatives à la régularité des convocations, à la tenue des Assemblées, à la forme des élections, ni aux droits politiques des citoyens, sans préjudice des fonctions des commissaires du roi dans les cas déterminés par la loi, où les questions relatives aux droits politiques des citoyens doivent être portées dans les tribunaux.

## **Section V. - Réunion des représentants en Assemblée nationale législative.**

ARTICLE PREMIER. - Les représentants se réuniront le premier lundi du mois de mai, au lieu des séances de la dernière législature.

ART. 2. - Ils se formeront provisoirement en Assemblée, sous la présidence du doyen d'âge, pour vérifier les pouvoirs des représentants présents.

ART. 3. - Dès qu'ils seront au nombre de trois cent soixante-treize membres vérifiés, ils se constitueront sous le titre d'Assemblée nationale législative : elle nommera un président, un vice-président et des secrétaires, et commencera l'exercice de ses fonctions.

ART. 4. - Pendant tout le cours du mois de mai, si le nombre des représentants présents est au-dessous de trois cent soixante-treize, l'Assemblée ne pourra faire aucun acte législatif. - Elle pourra prendre un arrêté pour enjoindre aux membres absents de se rendre à leurs fonctions dans le délai de quinzaine au plus tard, à peine de trois mille livres d'amende, s'ils ne proposent pas une excuse qui soit jugée légitime par l'Assemblée.

ART. 5. - Au dernier jour de mai, quel que soit le nombre des membres présents, ils se constitueront en Assemblée nationale législative.

ART. 6. - Les représentants prononceront tous ensemble, au nom du peuple français, le serment de vivre libres ou mourir. - Ils prêteront ensuite individuellement le serment de maintenir de tout leur pouvoir la Constitution du royaume, décrétée par l'Assemblée nationale constituante, aux années 1789, 1790 et 1791, de ne rien proposer ni consentir, dans le cours de la Législature, qui puisse y porter atteinte, et d'être en tout fidèles à la Nation, à la loi et au roi.



ART. 7. - Les représentants de la Nation sont inviolables : ils ne pourront être recherchés, accusés ni jugés en aucun temps pour ce qu'ils auront dit, écrit ou fait dans l'exercice de leurs fonctions de représentants.

ART. 8. - Ils pourront, pour faits criminels, être saisis en flagrant délit, ou en vertu d'un mandat d'arrêt ; mais il en sera donné avis, sans délai, au Corps législatif ; et la poursuite ne pourra être continuée qu'après que le Corps législatif aura décidé qu'il y a lieu à accusation.

## **CHAPITRE II**

### **DE LA ROYAUTÉ, DE LA RÉGENCE ET DES MINISTRES**

#### **Section première. - De la Royauté et du roi.**

ARTICLE PREMIER. - La Royauté est indivisible, et déléguée héréditairement à la race régnante de mâle en mâle, par ordre de primogéniture, à l'exclusion perpétuelle des femmes et de leur descendance. - (Rien n'est préjugé sur l'effet des renonciations, dans la race actuellement régnante.)

ART. 2. - La personne du roi est inviolable et sacrée ; son seul titre est Roi des Français.

ART. 3. - Il n'y a point en France d'autorité supérieure à celle de la loi. Le roi ne règne que par elle, et ce n'est qu'au nom de la loi qu'il peut exiger l'obéissance.

ART. 4. - Le roi, à son avènement au trône, ou dès qu'il aura atteint sa majorité, prêtera à la Nation, en présence du Corps législatif, le serment d'être fidèle à la Nation et à la loi, d'employer tout le pouvoir qui lui est délégué, à maintenir la Constitution décrétée par l'Assemblée nationale constituante, aux années 1789, 1790 et 1791, et à faire exécuter les lois. - Si le Corps législatif n'est pas assemblée, le roi fera publier une proclamation, dans laquelle seront exprimés ce serment et la promesse de la réitérer aussitôt que le Corps législatif sera réuni.

ART. 5. - Si, un mois après l'invitation du Corps législatif, le roi n'a pas prêté ce serment, ou si, après l'avoir prêté, il le rétracte, il sera censé avoir abdicqué la royauté.

ART. 6. - Si le roi se met à la tête d'une armée et en dirige les forces contre la Nation, ou s'il ne s'oppose pas par un acte formel à une telle entreprise, qui s'exécuterait en son nom, il sera censé avoir abdiqué la royauté.

ART. 7. - Si le roi, étant sorti du royaume, n'y rentrait pas après l'invitation qui lui en serait faite par le Corps législatif, et dans le délai qui sera fixé par la proclamation, lequel ne pourra être moindre de deux mois, il serait censé avoir abdiqué la royauté. - Le délai commencera à courir du jour où la proclamation du Corps législatif aura été publiée dans le lieu de ses séances ; et les ministres seront tenus, sous leur responsabilité, de faire tous les actes du Pouvoir exécutif, dont l'exercice sera suspendu dans la main du roi absent.

ART. 8. - Après l'abdication expresse ou légale, le roi sera dans la classe des citoyens, et pourra être accusé et jugé comme eux pour les actes postérieurs à son abdication.

ART. 9. - Les biens particuliers que le roi possède à son avènement au trône, sont réunis irrévocablement au domaine de la Nation ; il a la disposition de ceux qu'il acquiert à titre singulier ; s'il n'en a pas disposé, ils sont pareillement réunis à la fin du règne.

ART. 10. - La Nation pourvoit à la splendeur du trône par une liste civile, dont le Corps législatif déterminera la somme à chaque changement de règne pour toute la durée du règne.

ART. 11. - Le roi nommera un administrateur de la liste civile, qui exercera les actions judiciaires du roi, et contre lequel toutes les actions à la charge du roi seront dirigées et les jugements prononcés. Les condamnations obtenues par les créanciers de la liste civile, seront exécutoires contre l'administrateur personnellement et sur ses propres biens.

ART. 12. - Le roi aura, indépendamment de la garde d'honneur qui lui sera fournie par les citoyens gardes nationales du lieu de sa résidence, une garde payée sur les fonds de la liste civile ; elle ne pourra excéder le nombre de douze cents hommes à pied et de six cents hommes à cheval. - Les grades et les règles d'avancement y seront les mêmes que dans les troupes de ligne ; mais ceux qui composeront la garde du roi rouleront pour tous les grades exclusivement sur eux-mêmes, et ne pourront en obtenir aucun dans l'armée de ligne. - Le roi ne pourra choisir les hommes de sa garde que parmi ceux qui sont actuellement en activité de service dans les troupes de ligne, ou parmi les

citoyens qui ont fait depuis un an le service de gardes nationales, pourvu qu'ils soient résidents dans le royaume, et qu'ils aient précédemment prêté le serment civique. - La garde du roi ne pourra être commandée ni requise pour aucun autre service public.

## **Section II. - De la Régence.**

ARTICLE PREMIER. - Le roi est mineur jusqu'à l'âge de dix-huit ans accomplis ; - et pendant sa minorité, il y a un régent du royaume.

ART. 2. - La régence appartient au parent du roi, le plus proche en degré, suivant l'ordre de l'hérédité au trône, et âgé de vingt-cinq ans accomplis, pourvu qu'il soit Français et regnicole, qu'il ne soit pas héritier présomptif d'une autre couronne, et qu'il ait précédemment prêté le serment civique. - Les femmes sont exclues de la régence.

ART. 3. - Si un roi mineur n'avait aucun parent réunissant les qualités ci-dessus exprimées, le régent du royaume sera élu ainsi qu'il va être dit aux articles suivants :

ART. 4. - Le Corps législatif ne pourra élire le régent.

ART. 5. - Les électeurs de chaque district se réuniront au chef-lieu de district, d'après une proclamation qui sera faite dans la première semaine du nouveau règne, par le Corps législatif, s'il est réuni ; et s'il était séparé, le ministre de la justice sera tenu de faire cette proclamation dans la même semaine.

ART. 6. - Les électeurs nommeront en chaque district, au scrutin individuel, et à la pluralité absolue des suffrages, un citoyen éligible et domicilié dans le district, auquel ils donneront, par le procès-verbal de l'élection, un mandat spécial borné à la seule fonction d'élire le citoyen qu'il jugera en son âme et conscience le plus digne d'être régent du royaume.

ART 7. - Les citoyens mandataires nommés dans les districts, seront tenus de se rassembler dans la ville où le Corps législatif tiendra sa séance, le quarantième jour, au plus tard, à partir de celui de l'avènement du roi mineur au trône ; et ils y formeront l'assemblée électorale, qui procédera à la nomination du régent.

ART. 8. - L'élection du régent sera faite au scrutin individuel, et à la pluralité absolue des suffrages.

ART. 9. - L'assemblée électorale ne pourra s'occuper que de l'élection, et se séparera aussitôt que l'élection sera terminée ; tout autre acte qu'elle entreprendrait de faire est déclaré inconstitutionnel et de nul effet.

ART. 10. - L'assemblée électorale fera présenter, par son président, le procès-verbal de l'élection au Corps législatif, qui, après avoir vérifié la régularité de l'élection, la fera publier dans tout le royaume par une proclamation.

ART. 11. - Le régent exerce, jusqu'à la majorité du roi, toutes les fonctions de la royauté, et n'est pas personnellement responsable des actes de son administration.

ART. 12. - Le régent ne peut commencer l'exercice de ses fonctions qu'après avoir prêté à la Nation, en présence du Corps législatif, le serment d'être fidèle à la Nation, à la loi et au roi, d'employer tout le pouvoir délégué au roi, et dont l'exercice lui est confié pendant la minorité du roi, à maintenir la Constitution décrétée par l'Assemblée nationale constituante, aux années 1789, 1790 et 1791, et à faire exécuter les lois. - Si le Corps législatif n'est pas assemblé, le régent fera publier une proclamation, dans laquelle seront exprimés ce serment et la promesse de les réitérer aussitôt que le Corps législatif sera réuni.

ART. 13. - Tant que le régent n'est pas entré en exercice de ses fonctions, la sanction des lois demeure suspendue ; les ministres continuent de faire, sous leur responsabilité, tous les actes du Pouvoir exécutif.

ART. 14. - Aussitôt que le régent aura prêté le serment, le Corps législatif déterminera son traitement, lequel ne pourra être changé pendant la durée de la régence.

ART. 15. - Si, à raison de la minorité d'âge du parent appelé à la régence, elle a été dévolue à un parent plus éloigné, ou déférée par élection, le régent qui sera entré en exercice continuera ses fonctions jusqu'à la majorité du roi.

ART. 16. - La régence du royaume ne confère aucun droit sur la personne du roi mineur.

ART. 17. - La garde du roi mineur sera confiée à sa mère ; et s'il n'a pas de mère, ou si elle est remariée au temps de l'avènement de son fils au trône, ou si elle se remarie pendant la minorité, la garde sera déferée par le Corps législatif. - Ne peuvent être élus pour la garde du roi mineur, ni le régent et ses descendants, ni les femmes.

ART. 18. - En cas de démence du roi, notoirement reconnue, légalement constatée, et déclarée par le Corps législatif après trois délibérations successivement prises de mois en mois, il y a lieu à la régence, tant que la démence dure.

### **Section III. - De la famille du roi.**

ARTICLE PREMIER. - L'héritier présomptif portera le nom de Prince royal. - Il ne peut sortir du royaume sans un décret du Corps législatif et le consentement du roi. - S'il en est sorti, et si, étant parvenu à l'âge de dix-huit ans, il ne rentre pas en France après avoir été requis par une proclamation du Corps législatif, il est censé avoir abdicqué le droit de succession au trône.

ART. 2. - Si l'héritier présomptif est mineur, le parent majeur, premier appelé à la régence, est tenu de résider dans le royaume. - Dans le cas où il en serait sorti et n'y rentrerait pas sur la réquisition du Corps législatif, il sera censé avoir abdicqué son droit à la régence.

ART. 3. - La mère du roi mineur ayant sa garde, ou le gardien élu, s'ils sortent du royaume, sont déchus de la garde. - Si la mère de l'héritier présomptif mineur sortait du royaume, elle ne pourrait, même après son retour, avoir la garde de son fils mineur devenu roi, que par un décret du Corps législatif.

ART. 4. - Il sera fait une loi pour régler l'éducation du roi mineur, et celle de l'héritier présomptif mineur.

ART. 5. - Les membres de la famille du roi appelés à la succession éventuelle au trône, jouissent des droits de citoyen actif, mais ne sont éligibles à aucune des places, emplois ou fonctions qui sont à la nomination du peuple. - A l'exception des départements du ministère, ils sont susceptibles des places et emplois à la nomination du roi : néanmoins, ils ne pourront commander en chef aucune

armée de terre ou de mer, ni remplir les fonctions d'ambassadeurs, qu'avec le consentement du Corps législatif, accordé sur la proposition du roi.

ART. 6. - Les membres de la famille du roi, appelés à la succession éventuelle au trône, ajouteront la dénomination de prince français, au nom qui leur aura été donné dans l'acte civil constatant leur naissance et ce nom ne pourra être ni patronymique, ni formé d'aucune des qualifications abolies par la présente Constitution. - La dénomination de prince ne pourra être donnée à aucun autre individu, et n'emportera aucun privilège, ni aucune exception au droit commun de tous les Français.

ART. 7. - Les actes par lesquels seront légalement constatés les naissances, mariages et décès des princes français, seront présentés au Corps législatif, qui en ordonnera le dépôt dans ses archives.

ART. 8. - Il ne sera accordé aux membres de la famille du roi aucun apanage réel. - Les fils puînés du roi recevront à l'âge de vingt-cinq ans accomplis, ou lors de leur mariage, une rente apanagère, laquelle sera fixée par le Corps législatif, et finira à l'extinction de leur postérité masculine.

#### **Section IV. - Des ministres.**

ARTICLE PREMIER. - Au roi seul appartiennent le choix et la révocation des ministres.

ART. 2. - Les membres de l'Assemblée nationale actuelle et des législatures suivantes, les membres du Tribunal de cassation, et ceux qui serviront dans le haut-juré, ne pourront être promus au ministère, ni recevoir aucunes places, dons, pensions, traitements, ou commissions du Pouvoir exécutif ou de ses agents, pendant la durée de leurs fonctions, ni pendant deux ans après en avoir cessé l'exercice. - Il en sera de même de ceux qui seront seulement inscrits sur la liste du haut-juré, pendant tout le temps que durera leur inscription.

ART. 3. - Nul ne peut entrer en exercice d'aucun emploi, soit dans les bureaux du ministère, soit dans ceux des régies ou administrations des revenus publics, ni en général d'aucun emploi à la nomination du Pouvoir exécutif, sans prêter le serment civique, ou sans justifier qu'il l'a prêté.

ART. 4. - Aucun ordre du roi ne pourra être exécuté, s'il n'est signé par lui et contresigné par le ministre ou l'ordonnateur du département.

ART. 5. - Les ministres sont responsables de tous les délits par eux commis contre la sûreté nationale et la Constitution ; - De tout attentat à la propriété et à la liberté individuelle ; - De toute dissipation des deniers destinés aux dépenses de leur département.

ART. 6. - En aucun cas, l'ordre du roi, verbal ou par écrit, ne peut soustraire un ministre à la responsabilité.

ART. 7. - Les ministres sont tenus de présenter chaque année au Corps législatif, à l'ouverture de la session, l'aperçu des dépenses à faire dans leur département, de rendre compte de l'emploi des sommes qui y étaient destinées, et d'indiquer les abus qui auraient pu s'introduire dans les différentes parties du gouvernement.

ART. 8. - Aucun ministre en place, ou hors de place, ne peut être poursuivi en matière criminelle pour fait de son administration, sans un décret du Corps législatif

### CHAPITRE III

#### DE L'EXERCICE DU POUVOIR LÉGISLATIF

##### Section première. - Pouvoirs et fonctions de l'Assemblée nationale législative.

ARTICLE PREMIER. - La Constitution délègue exclusivement au Corps législatif les pouvoirs et fonctions ci-après : 1° De proposer et décréter les lois : le roi peut seulement inviter le Corps législatif à prendre un objet en considération ; 2° De fixer les dépenses publiques ; 3° D'établir les contributions publiques, d'en déterminer la nature, la quotité, la durée et le mode de perception ; 4° De faire la répartition de la contribution directe entre les départements du royaume, de surveiller l'emploi de tous les revenus publics, et de s'en faire rendre compte ; 5° De décréter la création ou la suppression des offices publics ; 6° De déterminer le titre, le poids, l'empreinte et la dénomination des monnaies ; 7° De permettre ou de défendre l'introduction des troupes étrangères sur le territoire français, et des forces navales étrangères dans les ports du royaume ; 8° De statuer annuellement, après la proposition du roi, sur le nombre d'hommes et de vaisseaux dont les armées de terre et de mer seront composées ; sur la solde et le nombre d'individus de chaque grade ; sur les règles

d'admission et d'avancement, les formes de l'enrôlement et du dégagement, la formation des équipages de mer ; sur l'admission des troupes ou des forces navales étrangères au service de France, et sur le traitement des troupes en cas de licenciement ; 9° De statuer sur l'administration, et d'ordonner l'aliénation des domaines nationaux ; 10° De poursuivre devant la haute Cour nationale la responsabilité des ministres et des agents principaux du Pouvoir exécutif ; - D'accuser et de poursuivre devant la même Cour, ceux qui seront prévenus d'attentat et de complot contre la sûreté générale de l'Etat ou contre la Constitution ; 11° D'établir les lois d'après lesquelles les marques d'honneurs ou décorations purement personnelles seront accordées à ceux qui ont rendu des services à l'Etat ; 12° Le Corps législatif a seul le droit de décerner les honneurs publics à la mémoire des grands hommes.

ART. 2. - La guerre ne peut être décidée que par un décret du Corps législatif, rendu sur la proposition formelle et nécessaire du roi, et sanctionné par lui. - Dans le cas d'hostilités imminentes ou commencées, d'un allié à soutenir, ou d'un droit à conserver par la force des armes, le roi en donnera, sans aucun délai, la notification au Corps législatif, et en fera connaître les motifs. Si le Corps législatif est en vacances, le roi le convoquera aussitôt. - Si le Corps législatif décide que la guerre ne doit pas être faite, le roi prendra sur-le-champ des mesures pour faire cesser ou prévenir toutes hostilités, les ministres demeurant responsables des délais. - Si le Corps législatif trouve que les hostilités commencées soient une agression coupable de la part des ministres ou de quelque autre agent du Pouvoir exécutif, l'auteur de l'agression sera poursuivi criminellement. - Pendant tout le cours de la guerre, le Corps législatif peut requérir le roi de négocier la paix ; et le roi est tenu de déférer à cette réquisition. - A l'instant où la guerre cessera, le Corps législatif fixera le délai dans lequel les troupes élevées au-dessus du pied de paix seront congédiées, et l'armée réduite à son état ordinaire.

ART. 3. - Il appartient au Corps législatif de ratifier les traités de paix, d'alliance et de commerce ; et aucun traité n'aura d'effet que par cette ratification

ART. 4. - Le Corps législatif a le droit de déterminer le lieu de ses séances, de les continuer autant qu'il le jugera nécessaire, et de s'ajourner. Au commencement de chaque règne, s'il n'est pas réuni, il sera tenu de se rassembler sans délai. - Il a le droit de police dans le lieu de ses séances, et dans l'enceinte extérieure qu'il aura déterminée. - Il a le droit de discipline sur ses membres ; mais il ne peut prononcer de punition plus forte que la censure, les arrêts pour huit jours, ou la prison pour trois jours. - Il a le droit de disposer, pour sa sûreté et pour le maintien du respect qui lui est dû, des



forces qui, de son consentement, seront établies dans la ville où il tiendra ses séances.

ART. 5. - Le Pouvoir exécutif ne peut faire passer ou séjourner aucun corps de troupes de ligne, dans la distance de trente mille toises du Corps législatif ; si ce n'est sur sa réquisition ou avec son autorisation.

## **Section II. - Tenue des séances et forme de délibérer.**

ARTICLE PREMIER. - Les délibérations du Corps législatif seront publiques, et les procès-verbaux de ses séances seront imprimés.

ART. 2. - Le Corps législatif pourra cependant, en toute occasion, se former en Comité général. - Cinquante membres auront le droit de l'exiger. - Pendant la durée du Comité général, les assistants se retireront, le fauteuil du président sera vacant, l'ordre sera maintenu par le vice-président.

ART. 3. - Aucun acte législatif ne pourra être délibéré et décrété que dans la forme suivante.

ART. 4. - Il sera fait trois lectures du projet de décret, à trois intervalles, dont chacun ne pourra être moindre de huit jours.

ART. 5. - La discussion sera ouverte après chaque lecture ; et néanmoins, après la première ou seconde lecture, le Corps législatif pourra déclarer qu'il y a lieu à l'ajournement ou qu'il n'y a pas lieu à délibérer ; dans ce dernier cas le projet de décret pourra être représenté dans la même session. - Tout projet de décret sera imprimé et distribué avant que la seconde lecture puisse en être faite.

ART. 6. - Après la troisième lecture, le président sera tenu de mettre en délibération, et le Corps législatif décidera s'il se trouve en état de rendre un décret définitif, ou s'il veut renvoyer la décision à un autre temps, pour recueillir de plus amples éclaircissements.

ART. 7. - Le Corps législatif ne peut délibérer, si la séance n'est composée de deux cents membres au moins, et aucun décret ne sera formé que par la pluralité absolue des suffrages.

ART. 8. - Tout projet de loi qui, soumis à la discussion, aura été rejeté après la troisième lecture, ne pourra être représenté dans la même session.

ART. 9. - Le préambule de tout décret définitif énoncera : 1° Les dates des séances auxquelles les trois lectures du projet auront été faites ; 2° Le décret par lequel il aura été arrêté, après la troisième lecture, de décider définitivement.

ART. 10. - Le roi refusera sa sanction au décret dont le préambule n'attestera pas l'observation des formes ci-dessus : si quelqu'un de ces décrets était sanctionné, les ministres ne pourront le sceller ni le promulguer, et leur responsabilité à cet égard durera six années.

ART. 11. - Sont exceptés des dispositions ci-dessus, les décrets reconnus et déclarés urgents par une délibération préalable du Corps législatif ; mais ils peuvent être modifiés ou révoqués dans le cours de la même session. - Le décret par lequel la matière aura été déclarée urgente en énoncera les motifs, et il sera fait mention de ce décret préalable dans le préambule du décret définitif.

### **Section III. - De la sanction royale.**

ARTICLE PREMIER. - Les décrets du Corps législatif sont présentés au roi, qui peut leur refuser son consentement.

ART. 2. - Dans le cas où le roi refuse son consentement, ce refus n'est que suspensif. - Lorsque les deux législatures qui suivront celle qui aura présenté le décret, auront successivement représenté le même décret dans les mêmes termes, le roi sera censé avoir donné la sanction.

ART. 3. - Le consentement du roi est exprimé sur chaque décret par cette formule signée du roi : Le roi consent et fera exécuter. - Le refus suspensif est exprimé par celle-ci : Le roi examinera.

ART. 4. - Le roi est tenu d'exprimer son consentement ou son refus sur chaque décret, dans les deux mois de la présentation.

ART. 5. - Tout décret auquel le roi a refusé son consentement, ne peut lui être présenté par la même législature.

ART. 6. - Les décrets sanctionnés par le roi, et ceux qui lui auront été présentés par trois législatures

consécutives, ont force de loi, et portent le nom et l'intitulé de lois.

ART. 7. - Seront néanmoins exécutés comme lois, sans être sujets à la sanction, les actes du Corps législatif concernant sa constitution en Assemblée délibérante ; - Sa police intérieure, et celle qu'il pourra exercer dans l'enceinte extérieure qu'il aura déterminée ; - La vérification des pouvoirs de ses membres présents ; - Les injonctions aux membres absents ; - La convocation des Assemblées primaires en retard ; - L'exercice de la police constitutionnelle sur les administrateurs et sur les officiers municipaux ; - Les questions soit d'éligibilité, soit de validité des élections. - Ne sont pareillement sujets à la sanction, les actes relatifs à la responsabilité des ministres ni les décrets portant qu'il y a lieu à accusation.

ART. 8. - Les décrets du Corps législatif concernant l'établissement, la prorogation et la perception des contributions publiques, porteront le nom et l'intitulé de lois. Ils seront promulgués et exécutés sans être sujets à la sanction, si ce n'est pour les dispositions qui établiraient des peines autres que des amendes et contraintes pécuniaires. - Ces décrets ne pourront être rendus qu'après l'observation des formalités prescrites par les articles 4, 5, 6, 7, 8, et 9 de la section II du présent chapitre ; et le Corps législatif ne pourra y insérer aucunes dispositions étrangères à leur objet.

#### **Section IV. - Relations du Corps législatif avec le roi.**

ARTICLE PREMIER. - Lorsque le Corps législatif est définitivement constitué, il envoie au roi une députation pour l'en instruire. Le roi peut chaque année faire l'ouverture de la session, et proposer les objets qu'il croit devoir être pris en considération pendant le cours de cette session, sans néanmoins que cette formalité puisse être considérée comme nécessaire à l'activité du Corps législatif.

ART. 2. - Lorsque le Corps législatif veut s'ajourner au-delà de quinze jours, il est tenu d'en prévenir le roi par une députation, au moins huit jours d'avance.

ART. 3. - Huitaine au moins avant la fin de chaque session, le Corps législatif envoie au roi une députation, pour lui annoncer le jour où il se propose de terminer ses séances : le roi peut venir faire la clôture de la session.

ART. 4. - Si le roi trouve important au bien de l'Etat que la session soit continuée, ou que

l'ajournement n'ait pas lieu, ou qu'il n'ait lieu que pour un temps moins long, il peut à cet effet envoyer un message, sur lequel le Corps législatif est tenu de délibérer.

ART. 5. - Le roi convoquera le Corps législatif, dans l'intervalle de ses sessions, toutes les fois que l'intérêt de l'Etat lui paraîtra l'exiger, ainsi que dans les cas qui auront été prévus et déterminés par le Corps législatif avant de s'ajourner.

ART. 6. - Toutes les fois que le roi se rendra au lieu des séances du Corps législatif, il sera reçu et reconduit par une députation ; il ne pourra être accompagné dans l'intérieur de la salle que par le prince royal et par les ministres.

ART. 7. - Dans aucun cas, le président ne pourra faire partie d'une députation.

ART. 8. - Le Corps législatif cessera d'être corps délibérant, tant que le roi sera présent.

ART. 9. - Les actes de la correspondance du roi avec le Corps législatif seront toujours contre signés par un ministre.

ART. 10. - Les ministres du roi auront entrée dans l'Assemblée nationale législative ; ils y auront une place marquée. - Ils seront entendus, toutes les fois qu'ils le demanderont sur les objets relatifs à leur administration, ou lorsqu'ils seront requis de donner des éclaircissements. - Ils seront également entendus sur les objets étrangers à leur administration, quand l'Assemblée nationale leur accordera la parole.

## **CHAPITRE IV**

### **DE L'EXERCICE DU POUVOIR EXÉCUTIF**

ARTICLE PREMIER. - Le Pouvoir exécutif suprême réside exclusivement dans la main du roi. - Le roi est le chef suprême de l'administration générale du royaume : le soin de veiller au maintien de l'ordre et de la tranquillité publique lui est confiée. - Le roi est le chef suprême de l'armée de terre et de l'armée navale. - Au roi est délégué le soin de veiller à la sûreté extérieure du royaume, d'en maintenir les droits et les possessions.

ART. 2. - Le roi nomme les ambassadeurs, et les autres agents des négociations politiques. - Il confère le commandement des armées et des flottes, et les grades de maréchal de France et d'amiral. - Il nomme les deux tiers des contre-amiraux, la moitié des lieutenants-généraux, maréchaux de camp, capitaines de vaisseau, et colonels de la gendarmerie nationale. - Il nomme le tiers des colonels et des lieutenants-colonels, et le sixième des lieutenants de vaisseau : - Le tout en se conformant aux lois sur l'avancement. - Il nomme, dans l'administration civile de la marine, les ordonnateurs, les contrôleurs, les trésoriers des arsenaux, les chefs des travaux, sous-chefs des bâtiments civils, la moitié des chefs d'administration et des sous-chefs de constructions. - Il nomme les commissaires auprès des tribunaux. - Il nomme les préposés en chef aux régies des contributions indirectes, et à l'administration des domaines nationaux. - Il surveille la fabrication des monnaies, et nomme les officiers chargés d'exercer cette surveillance dans la commission générale et dans les hôtels des monnaies. - L'effigie du roi est empreinte sur toutes les monnaies du royaume.

ART. 3. - Le roi fait délivrer les lettres-patentes, brevets et commissions aux fonctionnaires publics ou autres qui doivent en recevoir.

ART. 4. - Le roi fait dresser la liste des pensions et gratifications, pour être présentée au Corps législatif à chacune de ses sessions, et décrétée, s'il y a lieu.

### **Section première. - De la promulgation des lois.**

ARTICLE PREMIER. - Le Pouvoir exécutif est chargé de faire sceller les lois du sceau de l'Etat, et de les faire promulguer. - Il est chargé également de faire promulguer et exécuter les actes du Corps législatif qui n'ont pas besoin de la sanction du roi.

ART. 2. - Il sera fait deux expéditions originales de chaque loi, toutes deux signées du roi, contresignées par le ministre de la justice, et scellées du sceau de l'Etat. - L'une restera déposée aux archives du sceau et l'autre sera remise aux archives du Corps législatif.

ART. 3. - La promulgation sera ainsi conçue - " N. (le nom du roi) par la grâce de Dieu, et par la loi constitutionnelle de l'Etat, roi des Français, A tous présents et à venir, Salut. L'Assemblée nationale a décrété, et Nous voulons et ordonnons ce qui suit : " - (La copie littérale du décret sera insérée sans aucun changement.) - " Mandons et ordonnons à tous les corps administratifs et tribunaux, que

les présentes ils fassent consigner dans leurs registres, lire, publier et afficher dans leurs départements et

ressorts respectifs, et exécuter comme loi du royaume : en foi de quoi nous avons signé ces présentes, auxquelles nous avons fait apposer le sceau de l'Etat. "

ART. 4. - Si le roi est mineur, les lois, proclamations et autres actes émanés de l'autorité royale, pendant la régence, seront conçus ainsi qu'il suit : - " N. (le nom du régent) régent du royaume, au nom de N. (le nom du roi) par la grâce de Dieu et par la loi constitutionnelle de l'Etat, roi des Français, etc. "

ART. 5. - Le Pouvoir exécutif est tenu d'envoyer les lois aux corps administratifs et aux tribunaux, de faire certifier cet envoi, et d'en justifier au Corps législatif.

ART. 6. - Le Pouvoir exécutif ne peut faire aucune loi, même provisoire, mais seulement des proclamations conformes aux lois, pour en ordonner ou en rappeler l'exécution.

## **Section II. - De l'administration intérieure.**

ARTICLE PREMIER. - Il y a dans chaque département une administration supérieure, et dans chaque district une administration subordonnée.

ART. 2. - Les administrateurs n'ont aucun caractère de représentation. - Ils sont des agents élus à temps par le peuple, pour exercer, sous la surveillance et l'autorité du roi, les fonctions administratives.

ART. 3. - Ils ne peuvent, ni s'immiscer dans l'exercice du Pouvoir législatif, ou suspendre l'exécution des lois, ni rien entreprendre sur l'ordre judiciaire, ni sur les dispositions ou opérations militaires.

ART. 4. - Les administrateurs sont essentiellement chargés de répartir les contributions directes, et de surveiller les deniers provenant de toutes les contributions et revenus publics dans leur territoire. - Il appartient au Pouvoir législatif de déterminer les règles et le mode de leurs fonctions, tant sur les objets ci-dessus exprimés, que sur toutes les autres parties de l'administration intérieure.

ART. 5. - Le roi a le droit d'annuler les actes des administrateurs de département, contraires aux lois ou aux ordres qu'il leur aura adressés. - Il peut, dans le cas d'une désobéissance persévérante, ou s'ils compromettent par leurs actes la sûreté ou la tranquillité publique, les suspendre de leurs fonctions.

ART. 6. - Les administrateurs de département ont de même le droit d'annuler les actes des sous-administrateurs de district, contraires aux lois ou aux arrêtés des administrateurs de département, ou aux ordres que ces derniers leur auront donnés ou transmis. - Ils peuvent également, dans le cas d'une désobéissance persévérante des sous-administrateurs, ou si ces derniers compromettent par leurs actes la sûreté ou la tranquillité publique, les suspendre de leurs fonctions, à la charge d'en instruire le roi, qui pourra lever ou confirmer la suspension.

ART. 7. - Le roi peut, lorsque les administrateurs de département n'auront pas usé du pouvoir qui leur est délégué dans l'article ci-dessus, annuler directement les actes des sous-administrateurs, et les suspendre dans les mêmes cas.

ART. 8. - Toutes les fois que le roi aura prononcé ou confirmé la suspension des administrateurs ou sous-administrateurs, il en instruira le Corps législatif. - Celui-ci pourra lever la suspension, ou la confirmer, ou même dissoudre l'administration coupable, et s'il y a lieu, renvoyer tous les administrateurs ou quelques-uns d'eux aux tribunaux criminels, ou porter contre eux le décret d'accusation.

### **Section III. - Des relations extérieures.**

ARTICLE PREMIER. - Le roi seul peut entretenir des relations politiques au dehors, conduire les négociations, faire des préparatifs de guerre proportionnés à ceux des Etats voisins, distribuer les forces de terre et de mer ainsi qu'il le jugera convenable, et en régler la direction en cas de guerre.

ART. 2. - Toute déclaration de guerre sera faite en ces termes : De la part du roi des Français, au nom de la Nation.

ART. 3. - Il appartient au roi d'arrêter et de signer avec toutes les puissances étrangères, tous les traités de paix, d'alliance et de commerce, et autres conventions qu'il jugera nécessaire au bien de l'Etat, sauf la ratification du Corps législatif.



## CHAPITRE V

### DU POUVOIR JUDICIAIRE

ARTICLE PREMIER. - Le Pouvoir judiciaire ne peut, en aucun cas, être exercé par le Corps législatif ni par le roi.

ART. 2. - La justice sera rendue gratuitement par des juges élus à temps par le peuple, et institués par des lettres-patentes du roi qui ne pourra les refuser. - Ils ne pourront être, ni destitués que pour forfaiture dûment jugée, ni suspendus que pour une accusation admise. - L'Accusateur public sera nommé par le Peuple.

ART. 3. - Les tribunaux ne peuvent, ni s'immiscer dans l'exercice du Pouvoir législatif, ou suspendre l'exécution des lois, ni entreprendre sur les fonctions administratives, ou citer devant eux les administrateurs pour raison de leurs fonctions.

ART. 4. - Les citoyens ne peuvent être distraits des juges que la loi leur assigne, par aucune commission, ni par d'autres attributions et évocations que celles qui sont déterminées par les lois.

ART. 5. - Le droit des citoyens, de terminer définitivement leurs contestations par la voie de l'arbitrage, ne peut recevoir aucune atteinte par les actes du Pouvoir législatif.

ART. 6. - Les tribunaux ordinaires ne peuvent recevoir aucune action au civil, sans qu'il leur soit justifié que les parties ont comparu, ou que le demandeur a cité sa partie adverse devant des médiateurs pour parvenir à une conciliation.

ART. 7. - Il y aura un ou plusieurs juges de paix dans les cantons et dans les villes. Le nombre en sera déterminé par le Pouvoir législatif.

ART. 8. - Il appartient au Pouvoir législatif de régler le nombre et les arrondissements des tribunaux, et le nombre des juges dont chaque tribunal sera composé.

ART. 9. - En matière criminelle, nul citoyen ne peut être jugé que sur une accusation reçue par des jurés, ou décrétée par le Corps législatif, dans les cas où il lui appartient de poursuivre l'accusation.

- Après l'accusation admise, le fait sera reconnu et déclaré par des jurés. - L'accusé aura la faculté d'en récuser jusqu'à vingt, sans donner des motifs. - Les jurés qui déclareront le fait, ne pourront être au-dessous du nombre de douze. - L'application de la loi sera faite par des juges. - L'instruction sera publique, et l'on ne pourra refuser aux accusés le secours d'un conseil. - Tout homme acquitté par un juré légal, ne peut plus être repris ni accusé à raison du même fait.

ART. 10. - Nul homme ne peut être saisi que pour être conduit devant l'officier de police ; et nul ne peut être mis en état d'arrestation ou détenu, qu'en vertu d'un mandat des officiers de police, d'une ordonnance de prise de corps d'un tribunal, d'un décret d'accusation du Corps législatif dans le cas où il lui appartient de le prononcer, ou d'un jugement de condamnation à prison ou détention correctionnelle.

ART. 11. - Tout homme saisi et conduit devant l'officier de police, sera examiné sur-le-champ, ou au plus tard dans les vingt-quatre heures. - S'il résulte de l'examen qu'il n'y a aucun sujet d'inculpation contre lui, il sera remis aussitôt en liberté ; ou s'il y a lieu de l'envoyer à la maison d'arrêt, il y sera conduit dans le plus bref délai, qui, en aucun cas ne pourra excéder trois jours.

ART. 12. - Nul homme arrêté ne peut être retenu s'il donne caution suffisante, dans tous les cas où la loi permet de rester libre sous cautionnement.

ART. 13. - Nul homme, dans le cas où sa détention est autorisée par la loi, ne peut être conduit et détenu que dans les lieux légalement et publiquement désignés pour servir de maison d'arrêt, de maison de justice ou de prison.

ART. 14. - Nul gardien ou geôlier ne peut recevoir ni retenir aucun homme qu'en vertu d'un mandat ou ordonnance de prise de corps, décret d'accusation, ou jugement mentionnés dans l'article 10 ci-dessus, et sans que la transcription en ait été faite sur son registre.

ART. 15. - Tout gardien ou geôlier est tenu sans qu'aucun ordre puisse l'en dispenser, de représenter la personne du détenu à l'officier civil ayant la police de la maison de détention, toutes les fois qu'il en sera requis par lui. - La représentation de la personne du détenu ne pourra de même être refusée à ses parents et amis, porteurs de l'ordre de l'officier civil, qui sera toujours tenu de l'accorder, à moins que le gardien ou geôlier ne représente une ordonnance du juge, transcrite sur son registre pour tenir l'arrêté au secret.

ART. 16. - Tout homme, quelle que soit sa place ou son emploi, autre que ceux à qui la loi donne le droit d'arrestation, qui donnera, signera, exécutera ou fera exécuter l'ordre d'arrêter un citoyen, ou quiconque, même dans les cas d'arrestation autorisée par la loi, conduira, recevra ou retiendra un citoyen dans un lieu de détention non publiquement et légalement désigné, et tout gardien ou geôlier qui contreviendra aux dispositions des articles 14 et 15 ci-dessus, seront coupables du crime de détention arbitraire.

ART. 17. - Nul homme ne peut être recherché ni poursuivi pour raison des écrits qu'il aura fait imprimer ou publier sur quelque matière que ce soit, si ce n'est qu'il ait provoqué à dessein la désobéissance à la loi, l'avilissement des pouvoirs constitués, la résistance à leurs actes, ou quelques-unes des actions déclarées crimes ou délits par la loi. - La censure sur les actes des Pouvoirs constitués est permise ; mais les calomnies volontaires contre la probité des fonctionnaires publics et la droiture de leurs intentions dans l'exercice de leurs fonctions, pourront être poursuivies par ceux qui en sont l'objet. - Les calomnies et injures contre quelques personnes que ce soit relatives aux actions de leur vie privée, seront punies sur leur poursuite.

ART. 18. - Nul ne peut être jugé, soit par la voie civile, soit par la voie criminelle, pour fait d'écrits imprimés ou publiés, sans qu'il ait été reconnu et déclaré par un juré : 1° S'il y a délit dans l'écrit dénoncé ; 2° Si la personne poursuivie en est coupable.

ART. 19. - Il y aura pour tout le royaume un seul tribunal de cassation, établi auprès du Corps législatif. Il aura pour fonctions de prononcer - Sur les demandes en cassation contre les jugements rendus en derniers ressort par les tribunaux ; - Sur les demandes en renvoi d'un tribunal à un autre, pour cause de suspicion légitime ; - Sur les règlements de juges et les prises à partie contre un tribunal entier.

ART. 20. - En matière de cassation, le tribunal de cassation ne pourra jamais connaître du fond des affaires ; mais après avoir cassé le jugement qui aura été rendu sur une procédure dans laquelle les formes auront été violées, ou qui contiendra une contravention expresse à la loi, il renverra le fond du procès au tribunal qui doit en connaître.

ART. 21. - Lorsque après deux cassations le jugement du troisième tribunal sera attaqué par les mêmes moyens que les deux premiers, la question ne pourra plus être agitée au tribunal de cassation sans avoir été soumise au Corps législatif, qui portera un décret déclaratoire de la loi, auquel le tribunal de cassation sera tenu de se conformer.

ART. 22. - Chaque année, le tribunal de cassation sera tenu d'envoyer à la barre du Corps législatif une députation de huit de ses membres, qui lui présenteront l'état des jugements rendus, à côté de chacun desquels seront la notice abrégée de l'affaire et le texte de la loi qui aura déterminé la décision.

ART. 23. - Une haute Cour nationale, formée des membres du tribunal de cassation et de hauts-jurés, connaîtra des délits des ministres et agents principaux du Pouvoir exécutif, et des crimes qui attaqueront la sûreté générale de l'Etat, lorsque le Corps législatif aura rendu un décret d'accusation. - Elle ne se rassemblera que sur la proclamation du Corps législatif, et à une distance de trente mille toises au moins du lieu où la législature tiendra ses séances.

ART. 24. - Les expéditions exécutoires des jugements des tribunaux seront conçues ainsi qu'il suit: - " N. (le nom du roi) par la grâce de Dieu et par la loi constitutionnelle de l'Etat, roi des Français. A tous présents et à venir, Salut. Le tribunal de... a rendu le jugement suivant : - (Ici sera copié le jugement dans lequel il sera fait mention du nom des juges.) - Mandons et ordonnons à tous huissiers sur ce requis, de mettre ledit jugement à exécution, à nos commissaires auprès des tribunaux, d'y tenir la main, et à tous commandants et officiers de la force publique, de prêter main-forte, lorsqu'ils en seront légalement requis. En foi de quoi, le présent jugement a été signé par le président du tribunal et par le greffier. "

ART. 25. - Les fonctions des commissaires du roi auprès des tribunaux, seront de requérir l'observation des lois dans les jugements à rendre, et de faire exécuter les jugements rendus. - Ils ne seront point accusateurs publics mais ils seront entendus sur toutes les accusations, et requerront pendant le cours de l'instruction pour la régularité des formes, et avant le jugement pour l'application de la loi.

ART. 26. - Les commissaires du roi auprès des tribunaux dénonceront au directeur du juré, soit d'office, soit d'après les ordres qui leur seront donnés par le roi ; - Les attentats contre la liberté individuelle des citoyens, contre la libre circulation des subsistances et autres objets de commerce,

et contre la perception des contributions ; - Les délits par lesquels l'exécution des ordres donnés par le roi dans l'exercice des fonctions qui lui sont déléguées, serait troublée ou empêchée ; - Les attentats contre le droit des gens ; - Et les rébellions à l'exécution des jugements et de tous les actes exécutoires émanés des pouvoirs constitués.

ART. 27. - Le ministre de la justice dénoncera au tribunal de cassation, par la voie du commissaire du roi, et sans préjudice du droit des parties intéressées, les actes par lesquels les juges auraient excédé les bornes de leur pouvoir. - Le tribunal les annulera ; et s'ils donnent lieu à la forfaiture, le fait sera dénoncé au Corps législatif, qui rendra le décret d'accusation, s'il y a lieu, et renverra les prévenus devant la haute Cour nationale.

## **TITRE IV**

### **De la force publique**

ARTICLE PREMIER. - La force publique est instituée pour défendre l'Etat contre les ennemis du dehors, et assurer au dedans le maintien de l'ordre et de l'exécution des lois.

ART. 2. - Elle est composée - De l'armée de terre et de mer ; - De la troupe spécialement destinée au service de l'intérieur ; - Et subsidiairement des citoyens actifs, et de leurs enfants en état de porter les armes, inscrits sur le rôle de la garde nationale.

ART. 3. - Les gardes nationales ne forment ni un corps militaire, ni une institution dans l'Etat ; ce sont les citoyens eux-mêmes appelés au service de la force publique.

ART. 4. - Les citoyens ne pourront jamais se former ni agir comme gardes nationales, qu'en vertu d'une réquisition ou d'une autorisation légale.

ART. 5. - Ils sont soumis en cette qualité, à une organisation déterminée par la loi. - Ils ne peuvent avoir dans tout le royaume qu'une même discipline et un même uniforme. - Les distinctions de grade et la subordination ne subsistent que relativement au service et pendant sa durée.

ART. 6. - Les officiers sont élus à temps, et ne peuvent être réélus qu'après un intervalle de service comme soldats. - Nul ne commandera la garde nationale de plus d'un district.

ART. 7. - Toutes les parties de la force publique, employées pour la sûreté de l'Etat contre les ennemis du dehors, agiront sous les ordres du roi.

ART. 8. - Aucun corps ou détachement de troupes de ligne ne peut agir dans l'intérieur du royaume sans une réquisition légale.

ART. 9. - Aucun agent de la force publique ne peut entrer dans la maison d'un citoyen, si ce n'est pour l'exécution des mandements de police et de justice, ou dans les cas formellement prévus par la loi.

ART. 10. - La réquisition de la force publique dans l'intérieur du royaume appartient aux officiers civils, suivant les règles déterminées par le Pouvoir législatif.

ART. 11. - Si les troubles agitent tout un département, le roi donnera, sous la responsabilité de ses ministres, les ordres nécessaires pour l'exécution des lois et le rétablissement de l'ordre, mais à la charge d'en informer le Corps législatif, s'il est assemblé, et de le convoquer s'il est en vacance.

ART. 12. - La force publique est essentiellement obéissante ; nul corps armé ne peut délibérer.

ART. 13. - L'armée de terre et de mer, et la troupe destinée à la sûreté intérieure, sont soumises à des lois particulières, soit pour le maintien de la discipline, soit pour la forme des jugements et la nature des peines en matière de délits militaires.

## **TITRE V**

### **Des contributions publiques**

ARTICLE PREMIER. - Les contributions publiques seront délibérées et fixées chaque année par le Corps législatif, et ne pourront subsister au-delà du dernier jour de la session suivante, si elles n'ont pas été expressément renouvelées.

ART. 2. - Sous aucun prétexte, les fonds nécessaires à l'acquittement de la dette nationale et au paiement de la liste civile, ne pourront être ni refusés ni suspendus. — Le traitement des ministres du culte catholique pensionnés conservés, élus ou nommés en vertu des décrets de l'Assemblée nationale constituante, fait partie de la dette nationale. — Le Corps législatif ne pourra, en aucun cas, charger la Nation du paiement des dettes d'aucun individu.

ART. 3. - Les comptes détaillés de la dépense des départements ministériels, signés et certifiés par les ministres ou ordonnateurs généraux, seront rendus publics par la voie de l'impression, au commencement des sessions de chaque législature. — Il en sera de même des états de recette des diverses contributions, et de tous les revenus publics. — Les états de ces dépenses et recettes seront distingués suivant leur nature, et exprimeront les sommes touchées et dépensées année par année dans chaque district. — Les dépenses particulières à chaque département, et relatives aux tribunaux, aux corps administratifs et autres établissements, seront également rendues publiques.

ART. 4. - Les administrateurs de département et sous-administrateurs ne pourront ni établir aucune contribution publique, ni faire aucune répartition au-delà du temps et des sommes fixées par le Corps législatif, ni délibérer ou permettre, sans y être autorisés par lui, aucun emprunt local à la charge des citoyens du département.

ART. 5. - Le Pouvoir exécutif dirige et surveille la perception et le versement des contributions, et donne tous les ordres nécessaires à cet effet.

## TITRE VI

### **Des rapports de la Nation française avec les Nations étrangères**

La Nation française renonce à entreprendre aucune guerre dans la vue de faire des conquêtes, et n'emploiera jamais ses forces contre la liberté d'aucun peuple. — La Constitution n'admet point de droit d'aubaine. — Les étrangers établis ou non en France succèdent à leurs parents étrangers ou Français. — Ils peuvent contracter, acquérir et recevoir des biens situés en France, et en disposer, de même que tout citoyen français, par tous les moyens autorisés par les lois. — Les étrangers qui se trouvent en France sont soumis aux mêmes lois criminelles et de police que les citoyens français, sauf les conventions arrêtées par les Puissances étrangères ; leur personne, leurs biens, leur industrie, leur culte sont également protégés, par la loi.

## TITRE VII

### De la révision des décrets constitutionnels

ARTICLE PREMIER. - L'Assemblée nationale constituante déclare que la Nation a le droit imprescriptible de changer sa Constitution ; et néanmoins, considérant qu'il est plus conforme à l'intérêt national d'user seulement, par les moyens pris dans la Constitution même, du droit d'en réformer les articles dont l'expérience aurait fait sentir les inconvénients, décrète qu'il y sera procédé par une Assemblée de révision en la forme suivante :

ART. 2. - Lorsque trois législatures consécutives auront émis un vœu uniforme pour le changement de quelque article constitutionnel, il y aura lieu à la révision demandée.

ART. 3. - La prochaine législature et la suivante ne pourront proposer la réforme d'aucun article constitutionnel.

ART. 4. - Des trois législatures qui pourront par la suite proposer quelques changements, les deux premières ne s'occuperont de cet objet que dans les deux derniers mois de leur dernière session, et la troisième à la fin de sa première session annuelle, ou au commencement de la seconde. — Leurs délibérations sur cette matière seront soumises aux mêmes formes que les actes législatifs ; mais les décrets par lesquels elles auront émis leur vœu ne seront pas sujets à la sanction du roi.

ART. 5. - La quatrième législature, augmentée de deux cent quarante-neuf membres élus en chaque département, par doublement du nombre ordinaire qu'il fournit pour sa population, formera l'Assemblée de révision. — Ces deux cent quarante-neuf membres seront élus après que la nomination des représentants au Corps législatif aura été terminée, et il en sera fait un procès-verbal séparé. — L'Assemblée de révision ne sera composée que d'une chambre.

ART. 6. - Les membres de la troisième législature qui aura demandé le changement, ne pourront être élus à l'Assemblée de révision.

ART. 7. - Les membres de l'Assemblée de révision, après avoir prononcé tous ensemble le serment de vivre libres ou mourir, prêteront individuellement celui de se borner à statuer sur les objets qui leur auront été soumis par le vœu uniforme des trois législatures précédentes ; de maintenir, au



surplus, de tout leur pouvoir la Constitution du royaume, décrétée par l'Assemblée nationale constituante, aux années 1789, 1790 et 1791, et d'être en tout fidèles à la Nation, à la loi et au roi.

ART. 8. - L'Assemblée de révision sera tenue de s'occuper ensuite, et sans délai, des objets qui auront été soumis à son examen : aussitôt que son travail sera terminé, les deux cent quarante-neuf membres nommés en augmentation, se retireront sans pouvoir prendre part, en aucun cas, aux actes législatifs. Les colonies et possessions françaises dans l'Asie, l'Afrique et l'Amérique, quoiqu'elles fassent partie de l'Empire français, ne sont pas comprises dans la présente Constitution.

Aucun des pouvoirs institués par la Constitution n'a le droit de la changer dans son ensemble ni dans ses parties, sauf les réformes qui pourront y être faites par la voie de la révision, conformément aux dispositions du titre VII ci-dessus.

L'Assemblée nationale constituante en remet le dépôt à la fidélité du Corps législatif, du roi et des juges, à la vigilance des pères de famille, aux épouses et aux mères, à l'affection des jeunes citoyens, au courage de tous les Français.

Les décrets rendus par l'Assemblée nationale constituante, qui ne sont pas compris dans l'Acte de Constitution, seront exécutés comme lois ; et les lois antérieures auxquelles elle n'a pas dérogé, seront également observées, tant que les uns ou les autres n'auront pas été révoqués ou modifiés par le Pouvoir législatif.

L'Assemblée nationale, ayant entendu la lecture de l'Acte constitutionnel ci-dessus, et après l'avoir approuvé, déclare que la Constitution est terminée, et qu'elle ne peut y rien changer. — Il sera nommé à l'instant une députation de soixante membres pour offrir, dans le jour, l'Acte constitutionnel au roi.

THE EUROPEAN CONVENTION

Brussels, 12 July 2002

THE SECRETARIAT

Working Group II

Working document 07

## **Working group II " Incorporation of the Charter/accession to the ECHR"**

**Working document by Vytenis Andriukaitis**

**Subject: ANSWERS TO SOME OF THE QUESTIONS RAISED DURING THE FIRST MEETING OF THE WORKING GROUP**

With reference to the discussion during the first meeting of the Working Group on the EU Charter on Fundamental Rights devoted to the modalities and possible consequences of incorporation of the Charter into the EU Treaty (Constitution), I would like to suggest answers to some of the questions raised in the course of the meeting, i.e.

**1. What would be the consequences of**

- a) "attaching" the Charter to the Treaties in the form of a "Solemn Declaration";**
- b) making a direct reference to the Charter in the EU Treaty or a new basic Treaty;**
- c) the Charter becoming a new Protocol annexed to the Treaties or to a new basic Treaty;**
- d) inserting the full body of the Charter into a title or chapter of the EU Treaty or into a new basic Treaty, of which it would for example form the first title or chapter?**

**2. What would be the relationship of the Charter vis-à-vis the ECHR should options a), b) or c), d) be chosen?**

**3. What would the competencies of the Court of Justice be under one or another option?**

**A. “Attaching” the Charter to the Treaty in the form of a “Solemn Declaration”** would not change the Charter’s status (it would further remain declarative in character). The difference from the present situation would be negligible. It would only acquire a greater political value. The institutions would have to further comply with the provisions of the Charter in the law-making and implementation process. The European Court of Justice would be able to make references to rights enshrined in the Charter as to general principles of Community law. Some believe, however, that the Charter’s declarative status would produce an opposite effect: it would symbolise Europe’s inability and refusal to take the rights seriously. It could be discussed whether retention of the declarative status is possible because this would go counter to the position of the Institutions that initiated and drafted the Charter and of some of the member states. It would also be hard to explain the reluctance to recognise the legal status of a document which merely integrates the rights already established in Community and international legal acts to which all the members states are parties.

**B. Direct Reference to the Charter in Article 6 of the EU Treaty.** This possibility had already been foreseen before the Nice conference. The consequences would depend on whether the Charter is annexed to the EU Treaty or to a new Treaty in the form of a Protocol. In the first case, the Charter would acquire a binding character, whereas in the second case its status would not change. A problem, however, would arise as to the existing reference in Article 6(2) to the rights enshrined in ECHR because the majority of rights stipulated in the Charter are based on the Convention. A reference to the Charter without changing its status would mean a mere formal acknowledgement of the rights enshrined in the Charter as general principles, an approach emerging in the case law of the Court of Justice. The rights enshrined in the Charter could be interpreted and applied by the Court of Justice on the basis of the structure and goals of the Community in the same way as it presently interprets the ECHR or the rights stipulated in the constitutions of the member states. In this case, the rights enshrined in Charter would serve as a basis for the repeal of acts of Community institutions if the Court of Justice establishes that the latter are in conflict with these rights. The provisions of the Charter would be binding on the member states as general principles of Community law with all the consequences thereof: they would have to comply with them in implementing the Community law, the national courts would have to refrain from applying provisions of national law that go counter to them, and in cases of non-compliance, member states would be liable for breach of Treaty obligations.

**C. Incorporation of the Charter in the Form of a Separate Protocol annexed to the Treaty.**

Since both international and Community law treats protocols as an integral part of a Treaty, the Charter would acquire the same legal value as the Treaty. This option would be in line with the wishes of some member states to see the Charter as a separate document and would provide a solution if no EU Constitution were adopted.

**D. Incorporation of the Charter into the EU Treaty or into a new basic Treaty.** If the provisions of the Charter are inserted into the Treaty, they would acquire a binding status, like in option C. The difference from option C would be purely technical (option C would be technically simpler). I believe that effective implementation of human rights is only possible when the document is binding.

**Relationship between the Charter and the ECHR**

If the Charter remains declarative in character, its relationship with the Convention would not change. According to Article 52(3) of the Charter, the rights (their content and scope, including limitations) which correspond to rights guaranteed by the ECHR are to be interpreted in the same way as the rights laid down by the Convention. The official commentary of the Charter contains a list of correspondence between the rights stipulated by the Charter and the Convention. The rights are broken down into three groups in the list: the rights that correspond to the ones enshrined in the ECHR; the rights the application of which is broader; and the rights not stipulated by the Convention. Since this commentary has no binding legal force, some authors believe that Article 52(3) does not rule out the possibility of conflicting interpretation of the rights by the Court of Justice and the European Court of Human Rights because the problem of identification of these rights remains open. Advocates of the Charter claim that provisions of Article 52(3) and 53 eliminate this problem because, in the case of collision, the Convention would have precedence over the Charter except the cases when Community legislation offers a more effective protection of rights. An analysis of rights enshrined in the Charter shows that a considerable number of them correspond to those in the Convention. One is justified in thinking that the drafters of the Charter tried to avoid a collision between the two documents. It is important to note that even prior to the adoption of the Charter there existed two independent mechanisms for the protection of fundamental rights (one to be found in Community law and the other in the form of Convention). Thus already before the Charter was adopted there were cases of courts interpreting the provisions of the Convention differently. I would think that problems would only arise in cases if the Charter

offers a lower level of protection than that established by the Convention. This variant would hardly be acceptable because it would call for the application of different standards of protection of rights. Articles 52(3) and 53 of the Charter rule such a situation out by stating: “Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised by ... the European Convention for the Protection of Human Rights and Fundamental Freedoms” (Art. 53). I believe, therefore, that the opinion by some of the authors that the Charter poses a threat to the protection of rights enshrined in the ECHR has no grounds.

Compared with the Convention, the Charter has some advantages. The Charter’s scope of application is broader. Alongside political and civil rights of the EU citizen it also embraces social, economic and the “new” rights: the right to good administration, the right to environmental protection, and the right of access to documents. Some of the rights had been modified to take into account the developments after the adoption of the Convention and the case law of the European Court of Human Rights.

If the Charter is granted a legal character, member states would be bound by the same obligations vis-à-vis the Charter as vis-à-vis any other act of EU primary legislation. Depending on the character of amendments introduced to Article 6 of the EU Treaty, adjustments would have to be made to the provisions of Article 52(3) with regard to the relationship between the Charter and the ECHR.

### **Competencies of the ECJ**

If the Charter were incorporated into the EU Treaty, the European Court of Justice would play the key role in the protection of rights enshrined in it (if decision is not made to set up a new institution for this purpose). It is therefore important to ensure that Article 46 or another similar article is changed accordingly, in order to grant the Court jurisdiction in this field.

In case such a decision is adopted, another issue would arise, i.e. who would have the right of legal action in cases related to the implementation of rights enshrined in the Charter. First of all, the standard forms of actions would have to be used:

- Actions by the Commission against member states for violations of the Charter’s provisions;
- Actions by the Institutions, member states, and individuals aimed at repealing EU legal acts, also actions in relation to institutions’ failure to act and to compensation for damage caused by institutions when the basis for the action is a violation of the Charter.

- Preliminary ruling procedure (ECJ, when requested by national courts of member states, could offer an opinion on the compliance of national measures or acts of EU institutions with the Charter).

The possibilities for individuals to take direct action before the ECJ against violations of the Charter by a member state or an EU Institution deserve to be considered separately (presently, the possibilities of direct appeal by individuals to the ECJ are very limited). In order to enable individuals to protect their rights enshrined in the Charter, either the grounds for taking the various existing forms of action have to be expanded or a new special form of action in relation to violations of human rights, and requirements for such an action, have to be introduced. The latter variant, in the opinion of Lithuanian experts, would not be expedient because this type of violation usually interrelates with a specific form of existing actions.

It must be noted that in case the EC/EU does not accede to the ECHR, the ECJ will be the last instance both in cases related to the violation of rights enshrined in the ECHR and stipulated in the Charter and those related to other fundamental rights. At the same time, the compliance with the Charter in member states will have to be ensured by national authorities and national courts. Individuals would be able to seek protection against violations of rights enshrined in the ECHR before the European Court of Human Rights, while this Court would not offer protection against the other rights which are stipulated in the Charter. Thus the Charter provisions would not have equal legal value and consequences vis-à-vis acts of member states. On all the rights stipulated in the Charter, the ECJ would be able to offer its opinion through the preliminary ruling procedure.

If the Charter is not granted legal character, the ECJ would be able to make references to and interpret the rights stipulated in the Charter; but in this case, too, the question of collision of jurisdictions of the ECJ and the European Court of Human Rights remains open.

**Some authors believe that the only way to avoid this collision is accession by the EC/EU to the ECHR. It is important to underline that the Charter is not an alternative to the accession by the EC/EU to the ECHR. The accession of the EC/EU to the ECHR poses a number of problems. Adequate attention, therefore**

Brussels, 26 June 2002

THE EUROPEAN CONVENTION

Brussels, 12 July 2002

THE SECRETARIAT

Working Group II

Working document 08

## Working group II "Incorporation of the Charter/ accession to the ECHR"

**From: António Vitorino, President**

**To: Working Group II**

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**Subject :** Study carried out within the Council of Europe of technical and legal issues of a possible EC/EU accession to the European Convention on Human Rights

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Following a request by the Secretary-General of the Council of Europe, the Chairman of the Group has the honour to bring to the attention of members a report, adopted by the Steering Committee on Human Rights (CDDH) of the Committee of Ministers of the Council of Europe, containing a study of technical and legal issues of a possible EC/EU accession to the European Convention on Human Rights. A reference to that study had already been made in document CONV 116/02 WG II 1 (page 19, footnote n°2).

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ANNEX

Strasbourg, 28 June 2002

DG-II(2002)006

[CDDH(2002)010 Addendum 2]

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**STUDY OF TECHNICAL AND LEGAL ISSUES  
OF A POSSIBLE EC/EU ACCESSION TO THE EUROPEAN  
CONVENTION ON HUMAN RIGHTS**

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**Report adopted by the Steering Committee for Human Rights (CDDH)  
at its 53<sup>rd</sup> meeting (25-28 June 2002)**

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## GENERAL INTRODUCTION

It is recalled that, at their 747<sup>th</sup> meeting (28 March 2001, item 2.3b), the Ministers' Deputies decided to give ad hoc terms of reference to the Steering Committee for Human Rights (CDDH) to carry out "a study of the legal and technical issues that would have to be addressed by the Council of Europe in the event of possible accession by the European Communities/European Union to the European Convention on Human Rights, as well as of the other means to avoid any contradiction between the legal system of the European Communities/Union and the system of the European Convention on Human Rights".

At its 52<sup>nd</sup> meeting the CDDH decided to this end to set up a working group on legal and technical issues of possible EC/EU accession to the European Convention on Human Rights (GT-DH-EU). The Group, which was chaired by Mr Jan LATHOUWERS (Belgium), held two meetings in Strasbourg (Human Rights Building), on 30 January-1 February 2002 and on 11-13 March 2002. At the end of its second meeting, it adopted an activity report (GT-DH-EU(2002)012). This report was examined and approved by the CDDH at its 53<sup>rd</sup> meeting (25-28 June 2002). The present document contains the activity report as adopted by the CDDH.

At the outset, the CDDH wishes to stress that, in accordance with its terms of reference, it has refrained from addressing political issues concerning the advisability of such accession. It also avoided to examine questions which are really for the EC/EU to decide upon. It has limited its work to considering what legal and technical adjustments would be necessary in the context of the Council of Europe, particularly in terms of amendments to the ECHR, to make accession possible. The purpose of this Activity Report is merely to identify and clarify those legal and technical issues, which might be useful in the context of any future decisions on the question of accession.

For clarification purposes, some drafting examples are included in Appendix I to this report. They are not to be regarded as proposals of the CDDH.

## **CHAPTER I – MODALITIES OF ACCESSION FROM THE POINT OF VIEW OF TREATY LAW**

### **I. Introduction**

1. Accession must be distinguished from signature and ratification as means of expressing consent to be bound by a treaty (Article 11 of the Vienna Convention on the Law of Treaties). In accordance with Article 59, paragraph 1 of the Convention the member States of the Council of Europe become parties to the Convention through signature followed by ratification. However, when existing Council of Europe treaties have been opened to the participation of the EC/EU, it was usually provided that the latter expresses its consent to be bound by means of accession (eg. the Protocol to the Convention on the Elaboration of a European Pharmacopoeia, ETS 134). The CDDH has taken accession as its working hypothesis.

2. The CDDH has identified three broad categories of provisions that may be necessary or desirable in the event of accession by the EC/EU to the European Convention on Human Rights (ECHR) and its Protocols:

- a) amendments to the text of provisions already contained in the ECHR and its Protocols;
- b) supplementary provisions e.g. provisions clarifying the scope of terms used in the ECHR; adapting them to the special case of the EC/EU, etc. (e.g. terms with a “national” connotation; see Chapter II, point B.1 and A2 option 2);
- c) any technical and administrative issues not pertaining to the text of the Convention but for which a legal basis would be useful, such as the conditions of the budgetary contribution of the EC/EU.

3. In addition, some accommodation in respect of two ancillary agreements would be necessary to accompany EC/EU accession to the ECHR (see under point IV below).

## **II. Option 1: An amending protocol to the ECHR**

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4. All provisions of the type mentioned under a) could be included in an amending protocol. Protocol No. 11 to the ECHR (ETS 155) amended provisions of the Convention itself and of all additional protocols existing at that time (Protocols No. 1, 4, 6 and 7).

5. An amending protocol may also contain supplementary and/or transitional provisions that do not amend the text of the original treaty itself, but remain in force even after the entry into force of the amended text of the Convention. A good example is again Protocol No. 11 to the ECHR. Its Article 5 provided the necessary transitional provisions for the treatment of applications lodged before its entry into force. Article 6 made clear that temporal restrictions made with respect to declarations under former Articles 25 and 46 of the ECHR (which were both abrogated by Protocol No. 11) remained valid for the jurisdiction of the new Court.

6. Inclusion of provisions of the type mentioned under b) in an amending protocol could therefore also be envisaged. There is an advantage in doing so. If these provisions were not included in the amended version of the Convention, the EC/EU would not give its formal consent to be bound by them, because the amending protocol would only be signed and ratified by the current States Parties to the ECHR.<sup>1</sup>

7. Provisions of the type mentioned under c) are perhaps less suitable for inclusion in an amending protocol. They could be included in a separate agreement to be concluded directly between the Council of Europe and the EC/EU. Since it would only contain provisions of a technical character, it would not be necessary that all States Parties become Parties to such an agreement. However, it would be useful if a general legal basis for such an agreement be included in the Convention, as amended, at least as far as the EC/EU's financial contribution is concerned (cf. *mutatis mutandis*, Article 50 of the Convention). Such a legal basis could be provided in a supplementary provision of the type mentioned under b).

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<sup>1</sup> Unless, of course, a provision were made to append b)-type provisions to the amended Convention (ie. making them part of the Convention as amended).

### ***Modalities for the entry into force of an amending protocol***

8. Every amending Protocol to the ECHR concluded to date has provided for entry into force after signature and ratification or acceptance by all the States Parties to the Convention, which typically takes a few years.<sup>2</sup> For a drafting example see below in Appendix I (Part V. - Entry into force of the amending protocol/accession treaty).

9. In theory, in order to speed up the entry into force of an Amending Protocol, a “tacit acceptance clause” might be envisaged. Such a clause has for example been introduced into the Protocol amending the European Convention on Transfrontier Television (ETS 171, 1998) providing for automatic entry into force following the expiration of a period of two years, in the absence of any objection. The use of such a clause does not prevent States from using their traditional domestic procedures and from depositing an instrument of ratification or acceptance. However, after a fixed period of time (e.g. two years), the Protocol would enter into force automatically unless a Party to the Convention notifies the Secretary General of the Council of Europe of an objection to its entry into force.

10. On the other hand, such tacit acceptance procedures have only been used in the Council of Europe, and more generally in international treaty practice, for relatively technical instruments raising few or minor issues of policy. That is far from the situation here. EC/EU accession would on any view, be a major innovation with important consequences for the Convention control mechanism and it clearly raises many significant policy issues. For such an instrument to enter into force without the positive consent to be bound of all the parties would be unprecedented, and accordingly unlikely to be considered appropriate or acceptable by the High Contracting Parties to the Convention.

### **III. Option 2: An accession treaty**

11. Instead of concluding an amending protocol between the current States Parties to the ECHR, it could be envisaged to conclude an accession treaty between all States Parties to the ECHR and the

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<sup>2</sup> E.g. *Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms* (ETS 155) was opened for signature on 11 May 1994 and, having obtained all necessary ratifications in October 1997, entered into force on 1 November 1998.

EC/EU. Such a procedure is used within the European Union for the admission of new member States. Article 49 paragraph 2 of the EU Treaty provides that the conditions of admission and the adjustments to the EU Treaties “shall be the subject of an agreement between the member States and the applicant State”. The accession agreement usually consists of a rather short text and – annexed – an Act concerning the conditions and adjustments to the Treaties, forming an integral part of the accession agreement. Furthermore, the Act contains single and joint Declarations made by the Contracting States when signing the agreement. All States concerned, i.e. the EU member States and the candidate countries, ratify the accession agreement in accordance with their respective constitutional requirements. They do not sign or ratify the EU Treaties as such, but are considered automatically Parties to them upon entry into force of the accession agreement.

**12. The main differences between the use of the traditional procedure of an amending protocol and the use of an accession treaty are that:**

- ❑ the EC/EU as such would be directly bound by all the provisions of the accession treaty, including those that do not amend the original Convention or its Protocols;
- ❑ instead of having a two-tier procedure (first adoption and ratification of the amending protocol by all States Parties to the ECHR, then accession by the EC/EU to the amended Convention), there would be a single procedure which would result in the EC/EU being a Party to the revised ECHR upon entry into force of the accession treaty<sup>3</sup>. Provision could be made for EC/EU accession to the additional protocols simultaneously or at a later date.
- ❑ an accession treaty could more easily contain all the different types of provisions a), b) and c) mentioned in the introduction above. It could also contain the necessary amending and other clauses concerning the ancillary treaties (See Chapter III below and Appendix I Part VI – Amendments to ancillary agreements).

*Contents*

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<sup>3</sup> In other words, the EC/EU would not have to wait for the entry into force of an amending protocol before starting the procedures required under Union law to accede to the Convention. According to Opinion 2/94 of the ECJ, accession would require amendments to the Treaty. Such amendments would have to be adopted in accordance with the procedure laid down in Article 48 of the EU Treaty before accession (Article 300 paragraph 5 of the EC Treaty).

13. An accession treaty could contain all the different types of provisions mentioned in the introduction. It could contain separate chapters for each type:

- a) Chapter I: Amendments to the ECHR;
- b) Chapter II: Amendments to the Protocols;
- c) Chapter III: Supplementary provisions;
- d) Chapter IV: Technical and administrative issues;
- e) Chapter V – Clause relating to ancillary agreements;
- f) Chapter VI – Entry into force of the accession treaty.

*Entry into force of an accession treaty*

14. See paragraphs 8-10 above. In addition, entry into force of an accession treaty would also require that the EC/EU expresses its consent to be bound by the treaty, by way of ratification.

15. For a drafting example see below in Appendix I (Part V - Entry into force of the amending protocol/accession treaty)

**IV. Ancillary treaties**

16. The ancillary agreements that would need to be amended are: (i) the European Agreement relating to Persons Participating in Proceedings of the European Court of Human Rights (ETS No. 161) and (ii) the Sixth Protocol to the General Agreement on Privileges and Immunities of the Council of Europe (ETS No. 162).

17. With respect of the first of these treaties the changes could be included either in an amending protocol containing also the amendments suggested for the Convention and its Protocols or in an accession treaty. The solution indicated below for the Sixth Protocol could also be used.

18. The situation is different with respect to the Sixth Protocol to the General Agreement on Privileges and Immunities, which can only be ratified by member States to the Council of Europe which are also Parties to the General Agreement. This Protocol would therefore need to be amended

in a separate text or, alternatively, which would be the simplest solution, a clause could be included in an accession treaty to the effect that the European Communities (European Union) shall respect the provisions contained in the Protocol. That solution could also be used in respect of the European Agreement relating to Persons Participating in Proceedings of the European Court of Human Rights.

19. A drafting example for the latter alternative is contained in Appendix I (Part VI – Accommodations in respect of ancillary agreements).

## **V. Final remarks**

20. The CDDH noted that both solutions mentioned above are technically feasible as modalities of accession from the point of view of treaty law. It also noted several advantages in opting for an accession treaty. It considered that which option to choose was a matter that extended beyond the remit of the current terms of reference given to the CDDH.

## CHAPTER II – OVERVIEW OF LEGAL AND TECHNICAL ISSUES AND CORRESPONDING POSSIBLE AMENDMENTS SOLUTIONS

### **A. Points on which amendment of the ECHR would be required:**

#### **1. Article 59, paragraphs 1 and 4 ECHR (including the question of who should be allowed to accede: the European Communities or the European Union)**

21. According to Article 59 only member States of the Council of Europe may sign and ratify the ECHR. This provision would have to be amended in order to enable the EC/EU to accede.

22. It is recalled that of the three pillars that constitute the European Union, for the time being, only the first pillar, the European Communities, undoubtedly enjoys legal personality and can conclude international agreements with States or international organisations. However, there is a



debate within the EU on the question of legal personality of the EU (second and third pillars: Common Foreign and Security Policy; Police and Judicial Cooperation in Criminal Matters) and as to whether or not the distinction between EC and EU should be reviewed (cf. *inter alia*, the Laeken Declaration).

23. Since the situation is uncertain in this respect, three different solutions could be envisaged all of which would allow for the necessary flexibility in case the EU would be authorised to accede to the Convention. These are:

(i) to amend Article 59, paragraph 1 by adding a phrase to the effect that the European Communities<sup>4</sup>/Union may accede to the Convention;<sup>5</sup>

(ii) to amend Article 59, paragraph 1 by adding a phrase to the effect that the European Communities may accede to the Convention. In a separate paragraph, or in a separate provision in the amending protocol, to provide that the European Union may accede in the event of it having been authorised to do so;

(iii) to include a reference in Article 59, paragraph 1 to the possibility for international organisations to accede to the Convention. Under this solution, it would probably be advisable to provide that such accession would be open only to organisations so invited by the Committee of Ministers (cf., *mutatis mutandis*, e.g. Article 29, paragraph 1 of the Framework Convention for the Protection of National Minorities).

24. All three alternatives would imply amendments to Article 59, paragraph 4 as well, by mentioning “accession” in addition to “ratification” and by adding “and the European Communities/Union” (options (i) and (ii)) or “and any other Contracting Parties” (option (iii)).

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<sup>4</sup> The normal practice within the Council of Europe when the European Communities have acceded to a Convention has been to refer to “the European Communities” in the provision opening the treaty for accession.

<sup>5</sup> See Appendix I below.

25. Whether in actual fact only the European Communities or also, possibly at a later stage, the European Union would accede will depend on decisions within the European Union, as regards both the legal personality of the latter and the question of its legal capacity to accede.
26. The “scope” of EC/EU accession would be limited to issues in respect of which the EC/EU has competence. This has always been the understanding in respect of Council of Europe Conventions to which the EC has acceded. Nonetheless, it might in respect of the ECHR be considered useful to make this understanding explicit either in a general declaration of competence (analogous to the declaration made in connection with the UN Convention on the Law of the Sea) or, alternatively, in the text of the provision allowing accession, for example by adding the words: “... to the extent of its competences”.
27. The solutions indicated above could be adapted also to allow for EC/EU accession to the protocols to the Convention.
28. Hesitations were expressed as to the question of whether the EC/EU would be able to accede to protocols that were not ratified by all its member States. However, it was considered that this should not be an obstacle for at least preparing the instruments so as to make accession possible. It was stressed that the question of accession to the protocols must ultimately be left to the EC/EU.
29. For reasons of simplicity, the drafting examples included in Appendix I below reflect only alternative (i) above. The entity that would accede to the Convention is designated as the (European Communities) (European Union). A definitive designation will have to be made at the moment of the negotiation of accession with the EC/EU.
- 2. ECHR provisions referring to “State” or “States”: Article 10, paragraph 1; Article 11, paragraph 2; Article 17; Article 27, paragraphs 2 and 3, Article 38, paragraph 1.a, Article 56, paragraphs 1 and 4, Article 57, paragraph 1.**
30. In the above-mentioned provisions the term “State” can be considered as a synonym for the term “High Contracting Party” used elsewhere in the Convention.

Option 1: These provisions could be amended, adding an explicit reference to the “*European Communities/Union*” or using the neutral term “*High Contracting Party*”, which would cover both States and the European Communities/Union.<sup>6</sup>

Option 2: It might be preferable from a point of view of legislative technique to include a general interpretation clause in the amending Protocol which would eg provide that “References to a “State” or to “States” shall be understood as references to the broader notions of a “High Contracting Party” and “High Contracting Parties” respectively.” This option would have the advantage of avoiding amendments to a series of individual ECHR provisions.<sup>7</sup>

31. These would be formal amendments which would not entail any substantive change in the nature or scope of obligations under the Convention.

32. The solutions indicated above could be adapted also to allow for EC/EU accession to the protocols to the Convention.

33. Drafting examples are contained in Appendix I (for Option 1: Parts I and II; for Option 2: Part III).

### **3. Article 46, paragraph 2 ECHR (supervision of execution of judgments); representative of the EC/EU in the Committee of Ministers; need for a Statutory Resolution?**

34. The current situation as regards participation in the Committee of Ministers meetings generally is as follows. Following an exchange of letters between the President of the European

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<sup>6</sup> As to the expression “Inter-State cases” in the title of Article 36, ECHR, see under point B.5 below. However, an individual amendment to Article 57, paragraph 1 would probably still be necessary but for another reason: in order to allow the EC/EU to make reservations upon accession, the words “or accession” should be inserted after the word “ratification” (see Appendix I, Part I).

Commission and the Secretary General of the Council of Europe<sup>8</sup>, representatives of the European Commission have been authorised to attend the meetings and activities of the Council of Europe's Committee of Ministers. However, the exchange of letters stated that the Commission will not enjoy voting rights and will not be involved in the Organisation's decision-making process.

35. According to Article 14 of the Statute of the Council of Europe, only member States may be present and vote in the Committee of Ministers, each member State having one vote. Article 46, paragraph 2 of the Convention should therefore be amended to allow the EC/EU to participate with the right to vote in meetings of the Committee of Ministers when the latter exercises its functions under this provision.

36. The question arises whether the Statute of the Council of Europe also needs to be amended. However, from the point of view of treaty law, it could be considered that an amendment to Article 46, paragraph 2 of the Convention would have the status of a later *lex specialis*, which would take precedence over the general rules contained in the Statute of the Council of Europe.<sup>9</sup> On the other hand, the opposite view could also be defended.

37. The amendment of the Convention might be accompanied by the adoption of a statutory resolution authorising the participation of the EC/EU, although this might not be strictly necessary. Thus, the cumbersome procedure of an amendment to the Statute of the Council of Europe could be avoided.

38. It would seem logical that, as any other Party to the Convention, the EC/EU would be entitled to one vote. It could be argued that the EC/EU's sphere of competence is more limited than the sovereignty of States and that this would justify some limitation of EC/EU participation in the supervision of execution of judgments. This argument might carry more weight here (Article 46, paragraph 2) than in the context of participation of an EC/EU judge in the Court (see point C.1

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<sup>8</sup> Exchange of letters agreed upon at the 575<sup>th</sup> meeting of the Minister's Deputies (14-17 October 1997).

<sup>9</sup> See Article 30 (3) of the 1969 Vienna Convention on the Law of Treaties: "When all the parties to the earlier treaty are parties also to the later treaty but the earlier treaty is not terminated or suspended in operation under Article 59, the earlier treaty applies only to the extent that its provisions are compatible with those of the later treaty".

below) since the role of the representative in the Committee of Ministers can not be compared to that of an independent judge. However, it could also be argued that, in view of the principle of collective enforcement of the rights contained in the Convention, it would be unjustified to limit the right to vote only to the supervision of judgments involving EC/EU law, which would give rise to an asymmetrical situation *vis-à-vis* other Contracting Parties.

39. For a drafting example (Article 46, paragraph 2) see Appendix I (Part I).

**B. Points on which amendment of the ECHR (although such amendment might be deemed advisable) might not be necessary**

**1. Terminology used in some of the ECHR restriction clauses (eg: “national security”, “economic well-being of the country”, “territorial integrity”, “national laws”; cf. paragraph 2 of Articles 8, 10, 11 and Article 12, ECHR) and the reference to “nation” in Article 15, paragraph 1, ECHR**

40. It would appear to be justified to apply these terms, where applicable, *mutatis mutandis*, to the European Communities/European Union. In its 1979 Memorandum, the European Commission took the position that “it should be sufficient to lay down in an accession protocol (...) that the Convention, when it uses terms relating specifically to States, also applies *mutatis mutandis* to the European Communities”. It is understood that this solution would not entail discretion as to the applicability of these terms to the EC/EU.

41. Such a solution would certainly be preferable to attempting to redefine each term so as to tailor them to the EC/EU, which would be a highly complicated exercise.

42. It could be envisaged that a provision to this effect appear only in the amending protocol to the ECHR or in an accession treaty, and not in the amended text of the Convention itself.<sup>10</sup>

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<sup>10</sup> There are precedents for such provisions, e.g. Articles 5 and 6 of Protocol No. 11 to the ECHR.

43. *The solutions indicated above could be adapted also to allow for EC/EU accession to the protocols to the Convention.*

44. *Drafting examples are contained in Appendix I (Part III).*

## **2. Question of the EC/EU contribution to the expenditure on the Court (cf. Article 50, ECHR)**

45. According to Article 50 of the Convention, the expenditure on the Court shall be borne by the Council of Europe. The question of the EC/EU's contribution to the expenditure on the control system of the Convention (which also includes supervision of execution of judgments, cf. Article 46, paragraph 2 ECHR) in case of accession would need to be negotiated between the Council of Europe and the EC/EU.

46. In fact, as the Court's budget is not separate from that of the Council of Europe, an EC/EU contribution should be made via the ordinary budget of the Council of Europe from which all expenses linked to the Convention control mechanism were paid. It may be necessary to create a legal basis, although it may be of a general character, for this contribution.

47. Such a provision could be included in an amending protocol to the Convention or in an accession treaty in a general formula, with more specific details, notably about the basis for calculation of the contribution, provided in a separate agreement. For a drafting example for a general provision, see below in the Appendix (Part IV – Technical and administrative questions). This would be a supplementary provision; Article 50 itself would not have to be amended.

## **3. Article 35, paragraph 2.b, ECHR (“another procedure of international investigation or settlement”)**

48. Irrespective of the question of whether the procedure before the Luxembourg Court should today be considered as a procedure of “*international investigation or settlement*” in the sense of

Article 35, paragraph 2.b of the ECHR<sup>11</sup>, it is clear that the answer would be negative as a necessary consequence of accession. Indeed, application of the ECHR control system would be an important object and purpose of accession by the EC/EU to the ECHR and the mere fact that a case has been dealt with by the Luxembourg Court should not prevent the Strasbourg Court from accepting an application as admissible.

49. After accession by the EC/EU, the remedies existing in the legal system of this Contracting Party would have to be considered as domestic remedies within the meaning of Article 35, paragraph 1 of the ECHR. On this point, one could have in mind, *inter alia*, the procedures before the Court of First Instance and the European Court of Justice.

#### **4. Participation of the EC/EU in proceedings before the Court (as Respondent, *amicus curiae* or otherwise)**

50. First of all, the EC/EU would, in case an application is brought against it before the Court, participate in the proceedings like any other Respondent.

51. Secondly, the EC/EU could, like other Contracting Parties, be invited under Article 36, paragraph 2, ECHR to submit written comments or take part in hearings.

52. On both of these points, no amendment of the ECHR would be required.

53. Thirdly, a question arises in connection with respect to Article 36, paragraph 1, ECHR. This provision gives a right of third party intervention to a High Contracting Party one of whose “nationals” is an applicant.

54. The Treaty establishing the European Community uses the term “citizens of the Union” which is defined by reference to the nationality of a member State (Article 17 of the EC Treaty). It is not considered necessary to replace the term “nationals” by “citizens” in Article 36 of the ECHR or to specify, in the amending Protocol, that the term “nationals” in this provision shall include

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<sup>11</sup> The issue has been raised in a case pending before the European Court of Human Rights (the case DSR-Senator Lines).

“citizens of the Union” within the meaning of EC/EU law. The term “nationals” would already cover the “citizens of the Union”.

55. It must be underlined that giving the EC/EU the right to intervene each time one of its citizens is applicant in a case, might, in theory, lead to a large number of interventions.<sup>12</sup> It would have to be decided whether the EC/EU should be allowed to intervene in cases brought against any State. This would mean a “double” right of intervention: one for the EC/EU and one for the member State of which the applicant is a national. Another possibility could be that the EC/EU be given the possibility to intervene only in cases brought against non-member States of the European Union. This question could possibly be solved by an agreement between the EC/EU and its member States, or through an accession agreement between all parties concerned. It is noted that Article 36, paragraph 1 reflects the notion of diplomatic protection and that, within the EU, it is not the Organisation but its component member States that provide such protection for their nationals.

56. In view of the fact that the member States of the Union already have the right to intervene on behalf of their nationals under Article 36, paragraph 1, it may be that the possibility provided for in Article 36, paragraph 2, to request that the President of the Court enable, in this case, the EC/EU to intervene in a particular case, would be sufficient.

### ***Participation as “co-Defendant”?***

57. In the fourth place, a separate issue is whether it would be advisable to introduce special rules for the EC/EU, allowing it to participate in the proceedings whenever issues of Community law are at stake in a case before the Strasbourg Court, taking into consideration, in particular, the desirability of giving an opportunity to the EC/EU to defend itself in such a case as well as the fact that with a view to a possible execution of a judgment, it might be useful to ensure the co-operation of the EC/EU (enforceability). This would perhaps be useful in cases concerning an alleged violation of the ECHR by an EC/EU member State on account of a measure taken by that State in implementation of EC/EU law. There might even be a need to oblige the EC/EU to intervene in such a delicate situation.

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<sup>12</sup> In accordance with current practice, the EC/EU would be informed about all cases in which it could in principle intervene.



58. It would seem difficult to regulate this question in the context of Article 36, since the idea here would be that the EC/EU take part in the proceedings not by way of a third party intervention, but as a co-Defendant, a fundamentally different situation.

59. Consideration was given to the possibility of introducing a mechanism under which the EC/EU could be invited or even obliged to join the case as a co-Defendant, alongside the EC/EU member state against which the application was initially brought. In principle, various options for such a scheme could be envisaged, depending on whether the EC/EU would have a right or an obligation to join the proceedings as co-Defendant, and on whether acquiring co-Defendant status would be the consequence of an unilateral decision by a Defendant State, of a decision *proprio motu* by the EC/EU, or of an initiative taken by the Court. It would probably be difficult to give the Court the power to oblige the EC/EU to join a case as co-Defendant, for this might be seen as prejudging questions relating to the respective responsibilities of the Contracting Parties or in effect render inoperative certain admissibility criteria in respect of the EC/EU (eg: 6 months rule). It might be more appropriate merely to provide a legal basis in the Convention, by virtue of which the EC/EU may, in cases which appear to raise an issue involving Community or Union law, with the leave of the Court, join the EC/EU member State against which the case had been brought as a party to the proceedings. It was understood that the Court's decision to grant leave would be of a purely procedural nature, in the interest of the proper administration of justice. It was also understood that the EC/EU and its member States would normally not be precluded from coordinating among themselves whether or not leave should be sought under such a mechanism, in a given case or in a more general fashion. This could be explained in an Explanatory Report. It could be envisaged that such a mechanism apply only in respect of cases pending before a Chamber or the Grand Chamber (cf., *mutatis mutandis*, Article 36, paragraph 1 of the Convention).

60. Since such a mechanism would cover, in particular, situations in which there is, arguably, a question of "mixed" responsibility under the Convention between the EC/EU and one of its member States, it would appear logical to open the same possibility, also for the inverse situation: ie: giving a EC/EU member State the possibility to seek leave to join the proceedings as a co-Defendant where the case has been brought against the EC/EU.

61. The question arises whether possibilities should be created for an *individual applicant* to seek to have the EC/EU (in case the application was brought against an EC/EU member State) or an

EC/EU member State (in case the application was brought against the EC/EU) joined to the proceedings as co-Defendant. This could be relevant where applicants had possibly erred in their decision to introduce their application only against the EC/EU or only against an EC/EU member State. The point could be made that, formally at least, the individual has the choice against which Contracting Party he or she wishes to introduce an application. In this respect the applicant's position is not comparable to that of the Defendant. Furthermore, it was noted that, during the initial stages of the introduction of an application, the individual might be given some possibility to "redirect" the application or specify that the application is also directed against a second (or more) Contracting Party/Parties. For the same reasons as set out in paragraph 59 above in relation to the idea of empowering the Court to oblige a Contracting Party to join the proceedings as co-Defendant, it would probably be difficult to give the Court a power to "redirect" the case so as to involve another or an additional Defendant. It should also be noted that introduction of a mechanism allowing for the addition of co-Defendants or for one Defendant to call another as outlined above would also be beneficial to applicants who are in the situation described here.

62. A drafting example for a provision containing a mechanism as described above (a possible "Article 35bis" of the Convention) is contained in Appendix I, Part III. Some indication is also given of implementing provisions (communication of cases to which such a system would apply; time-limits for seeking leave) which could possibly be taken up in the Rules of Court.

##### **5. Article 33, ECHR ("Inter-State" cases; question of whether inter-Party applications should be possible without limitation)**

63. Article 33 of the ECHR, while entitled "*Inter-State cases*", uses the term "*High Contracting Party*". The heading was introduced by means of Article 2 of Protocol No. 11, ECHR and, as with other headings so introduced, it should not be understood as an interpretation of the Article itself or as having any legal effect. The headings have been added in order to make the text of the Convention more easily understandable (see the Explanatory report to Protocol No. 11, § 114). Therefore, the legal position under the ECHR is that accession would mean that all States Parties to the Convention, including EU member States, could bring a case against the European Communities/Union and vice versa, in line with the principle of collective enforcement of the ECHR. Changing the heading to "*Inter-Party cases*" would make it correspond better to the content of Article 33.

64. On the other hand, it is recalled that EU member States are prohibited from submitting disputes “concerning the interpretation or application of this Treaty to any method of settlement other than those provided for therein” (Article 292 of the EC Treaty)<sup>13</sup>. The Treaty of Amsterdam introduced a special procedure in cases of “serious and persistent breach by a Member State of principles mentioned in Article 6 (1)”. Article 6 (1) of the EU Treaty refers to “the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law”.

65. The question may therefore arise whether there would be a need for an amendment with a view to excluding any ECHR disputes involving EC/EU law from the scope of application of Article 33. Such an amendment would probably not be necessary since the issue is really one of EC/EU law and both EU member States and the EC/EU may in practice be expected to use Article 33 only to the extent that such use is compatible with their obligations under EC/EU treaties. It would be for the EC/EU and its member States to decide whether or not this matter should be addressed in an agreement between themselves, as long as such an agreement would not institute a system of submitting, by way of petition, a dispute arising out of the interpretation or application of the ECHR, to a means of settlement other than those provided for in the ECHR (cf. Article 55, ECHR (exclusion of other means of dispute settlement)).

**C. Other issues (NB: depending on the option(s) retained and modalities to be chosen, amendment of the ECHR might be required)**

**1. Status and participation in the European Court of Human Rights of the judge elected in respect of the EC/EU**

66. Under the current provisions of the ECHR, the Court consists of a number of judges equal to that of the High Contracting Parties (Article 20) and each High Contracting Party nominates three candidates, one of which is elected by the Parliamentary Assembly with respect to that Party (Article 22, paragraph 1).

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<sup>13</sup> It is noted that the Court of Justice Opinion 2/94 left open the question of compatibility of accession with Article 292.

67. This principle of one judge in respect of each Contracting Party is based on the following main considerations and advantages: representation of each legal system in the Court; expertise on each legal system in the Court, participation of each Contracting Party in the system of collective enforcement set up by the Convention which entailed duties but also certain prerogatives; it contributes to the legitimacy of the decisions taken by the Court.

68. Whether or not there should be a judge elected in respect of the EC/EU and, if so, whether that judge should participate on an equal footing with the other judges in the work of the Court depends on an evaluation of the relevance and weight of the above-mentioned considerations in regard to the EC/EU as a Contracting Party, in combination with the significance attached, respectively, to features that distinguish the EC/EU from States Parties, and features that make the EC/EU comparable to a State Party. On the latter point, the view was advanced that the EC/EU did not possess the fullness of sovereign competence which is the attribute of a State. On the other hand, the view was also expressed that the EC had a distinct legal personality from its member States, that its actions do enter the human rights field and that member States of the EC/EU did no longer have full sovereign competence since they had transferred competences to the EC/EU.

69. The – rather theoretical - argument could be made that there would be no need for a judge elected in respect of the EC/EU as there were 15 judges on the Court elected in respect of its member States. However, this option of having no EC/EU judge was discarded since it would not be justified in the light of the main considerations mentioned in paragraph 67 above.

70. A second option, based on the same somewhat theoretical argument, could be to appoint an EC/EU judge on an ad hoc basis, for cases involving Community law. This option would perhaps partly meet the expertise argument, but be difficult to justify in the light of the other main considerations mentioned in paragraph 67 above. It also presented several other disadvantages, some of a more or less practical character:

- it would have to be decided for each case whether it involved Community law or not, which may cause difficulties in practice;
- if there were many cases requiring the participation of an EC/EU judge, ad hoc appointments would need to be made continuously which would be an extra burden for the Court;

- as ad hoc judges are not elected by the Parliamentary Assembly, there would be a problem of legitimacy with respect to the EC/EU judge if systematic recourse were to be had to ad hoc judges in respect of that Contracting party alone.

71. A third option would be to provide for a full-time EC/EU judge with limited participation (only in cases involving EC/EU law). In support of this option, it could be argued that it would be awkward for a member State of the EC/EU to be judged by an EC/EU judge in cases concerning areas for which the EC/EU did not have competence (eg: child care cases). Against this, it could be said that, already now, States with a tradition of a comparatively high level of State intervention are being judged by a judge elected in respect of a country where the State plays a less prominent role.

72. An argument against this option would again be that it may be difficult in practice to establish which cases would require the presence of the EC/EU judge and which cases would not. Also, it was highly doubtful whether this option would be justifiable in the light of some of the main considerations mentioned in paragraph 67 above (notably that relating to the participation of the Contracting States in a collective system of enforcement).

73. Most arguments could be made for a fourth option, which would be the presence of a full-time EC/EU judge participating on an equal footing with other judges. This solution would fully meet the main considerations mentioned in paragraph 67 above, and be most in line with the spirit of the Convention system. Judges do not “represent” any country or area: they are impartial and independent. Providing for special rules in the Convention in respect of the EC/EU judge might carry with it the unfortunate suggestion that that judge might be less impartial and independent. It is true that this solution would not reflect the features that distinguish the EC/EU from States Parties to the Convention, notably its more limited competence. However, as stated above, some of the current Parties to the Convention (the EU member States) no longer possess full competence in matters governed by the Convention. Making a distinction between the EC/EU judge and the other judges based on the limited and attributed competence of the EC would be problematic also because the division of competence between the EC/EU and its member States is constantly evolving.

74. It could be considered that, ultimately, the manner in which the Court would organise the participation of judges, including that of an EC/EU judge, in its judicial decision-making is a matter

that is more appropriately left to the Court itself<sup>14</sup>. The same would apply to the question of whether a “special chamber” should be set up within the Court in order to deal with cases against the EC/EU or involving EC/EU law. However, it should be noted that a chamber composed exclusively of judges elected in respect of the EC/EU and its member States would run counter to the philosophy of the Convention system.

**2. Introduction of a special procedure whereby the Court of Justice (and the Court of First Instance?) could request an interpretation of the ECHR from the European Court of Human Rights?**

75. Consideration could be given to the question of whether it would be advisable, in addition to the operation of the ECHR complaints system (the contentious jurisdiction of the Court), to introduce a special procedure under which the ECJ (and possibly the Court of First Instance) would be authorised to request an interpretation of the ECHR from the European Court of Human Rights. This idea is further elaborated in document DGII(2001)02, paragraph 2.b. Introduction of such a procedure would obviously require amendments to the Convention, for example to Article 47, the wording of which would depend on the precise modalities retained.

76. The main argument in favour of this would be that it would assist in avoiding divergences in case-law. Another advantage could be that it might lead to a lower number of individual applications.

77. On the other hand, it must be pointed out, however, that this idea presents a number of disadvantages, such as:

- (i) It would create an imbalance between the EC/EU and the other Contracting parties to the Convention, the supreme courts of which are not able to benefit from a system of references.

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<sup>14</sup> Within the limits, of course, of the rules of the Convention itself: e.g. Article 27, paragraph 2, ECHR provides that the judge elected in respect of the State Party concerned shall sit as an ex officio member of the Chamber and the Grand Chamber. The same would apply with regard to the judge elected in respect of the EC/EU concerning the consideration of cases brought against the EC/EU.

- (ii) Although time-limits may be laid down, it would lead to a prolongation of the procedures before the Luxembourg Court. This would be particularly awkward in the case of successive preliminary reference procedures.
- (iii) If time-limits were laid down it may adversely affect the treatment of other cases before the ECHR.

i) CHAPTER III – OTHER MEANS TO AVOID ANY  
CONTRADICTION BETWEEN THE LEGAL SYSTEM OF  
THE EUROPEAN COMMUNITIES/UNION AND THE  
SYSTEM OF THE EUROPEAN CONVENTION ON  
HUMAN RIGHTS

78. The terms of reference of the CDDH require it to study not only issues relating to a possible accession by the EC/EU to the ECHR but also “other means to avoid any contradiction between the legal system of the European Communities/union and the system of the European Convention on Human Rights.”

79. During the examination of this question, the suggestion was made that one “other means” could consist of maintaining the status quo, i.e.: a situation where the main legally binding human rights instrument in Europe was the ECHR, where this instrument and the Court’s case-law were also applied by the Luxembourg Court as general principles of Community Law, with only a small number of cases so far raising the issue of possible contradictions between the case-law of the Strasbourg and Luxembourg Courts. The consistency of the case-law is not accidental and is the result notably of the obligation of Article 6 of the Treaty on the European Union.

80. As was also noted by President Rodríguez Iglesias of the Court of Justice of the European Communities in his Strasbourg speech on 31 January 2002, it must be recognised that that situation could change considerably if the EU Charter of Fundamental Rights were to become legally binding<sup>15</sup>. Indeed, in the view of the CDDH, experience tends to show that it is difficult to avoid

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<sup>15</sup> Both this speech and that of President Wildhaber of the European Court of Human Rights are reproduced in document GT-DH-EU(2002)11 and published on the Court’s website ([www.echr.coe.int](http://www.echr.coe.int)).

contradictions where two differently worded texts on the same subject-matter are interpreted by two different courts. The provisions of Articles 52 and 53 of the EU Charter will probably not be sufficient to avoid the risk of contradictions, certainly not where the application and interpretation of the Charter and the ECHR by national courts is concerned. However, the question of whether the EU Charter should be made legally binding or not is, of course, for the EU to decide, not for the Council of Europe. More generally, the point was made that the risk of contradictions might arise independently of whether the EU Charter becomes binding or not.

81. Two potential further means to avoid contradictions were noted, other than accession by the EC/EU to the ECHR. The first was the introduction of a preliminary rulings-procedure whereby the Luxembourg Court could seek a ruling from the Strasbourg Court on the interpretation of the ECHR. Attention was drawn to the question of whether such a ruling by the Strasbourg Court could or should be binding upon the Luxembourg Court, if the EC/EU itself is not a Party to the ECHR. Reference is also made, *mutatis mutandis*, to Chapter II, point C.2. above, where the idea is further discussed, albeit in the context of accession<sup>16</sup>.

82. The last idea mentioned was that of setting up a common chamber or “panel” between the Luxembourg and Strasbourg Courts, along the lines of the joint panel that exists between the highest federal courts in Germany. That joint panel decides if one of the highest federal courts intends to adopt an interpretation of the law which diverges from the interpretation adopted by another of the highest federal courts.

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<sup>16</sup> The CDDH also recalls that the Reflection Group on the reinforcement of the Human Rights Protection Mechanism set up by the CDDH in 2001 had decided not to retain the idea of establishing a system of preliminary rulings, because it would imply additional work for the Court and possibly interfere with the contentious jurisdiction of the Court (see document CDDH-GDR(2001)10, Appendix II, paragraph 31).



## APPENDIX I: DRAFTING EXAMPLES

**NB. These drafting examples are given for clarification purposes only. They are not to be regarded as proposals of the CDDH.**

### I. AMENDMENTS TO THE CONVENTION

NB The amendments appearing in square brackets could be avoided if reference to the provisions concerned were to be included in the general interpretative clauses suggested under III below.

[In Article 27, paragraphs 2 and 3, “State Party” shall be replaced by “Party”.]

[In Article 38, paragraph 1.a, "States" shall be replaced by "Party".]

In Article 56, paragraph 1, "State" shall be replaced by "State or the (European Communities) (European Union)". [After "its ratification" add "or accession".]

[In Article 56, paragraph 4, "State" shall be replaced by "Party "].

In Article 57, paragraph 1, "State" shall be replaced by "State or the (European Communities) (European Union)". [After "instrument of ratification" add "or accession".]

Article 46, paragraph 2, shall have the following wording<sup>17</sup>:

“The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution. *In the event of their accession*<sup>18</sup>, *the (European Communities) (European Union) shall be entitled to participate in meetings of the Committee of Ministers when the latter exercises its functions under this paragraph. The*

<sup>17</sup> Another possibility would be to limit the right to vote to cases where judgment has been given against the EC/EU.

<sup>18</sup> The preceding six words could be omitted in case this provision were to be included in an accession treaty.

*representative of the (European Communities) (European Union) shall be entitled to one vote.”*

Article 59, paragraphs 1 and 4 shall have the following wording:<sup>19</sup>

**“1 This Convention shall be open to the signature of the members of the Council of Europe. It shall be ratified. *(The European Communities) (The European Union) may accede to this Convention*<sup>20</sup>. Instruments of ratification or accession shall be deposited with the Secretary General of the Council of Europe.**

(...)

4 The Secretary General of the Council of Europe shall notify all the members of the Council of Europe *and (the European Communities) (the European Union)* of the entry into force of the Convention, the names of the High Contracting Parties who have ratified *or acceded to* it, and the deposit of all instruments of ratification *or accession* which may be effected subsequently.”

## **II. AMENDMENTS TO THE PROTOCOLS**

*NB The amendments appearing in square brackets could be avoided if reference to the provisions concerned were to be included in the general interpretative clauses suggested under III below.*

### **Final clauses:**

#### Territorial application:

Protocol No. 1 Article 4 [– paragraph 1 add as follows: "at the time of signature, ratification or *accession*"]

<sup>19</sup> This amendment would not be necessary in the case of an accession treaty for the EU/EC would become bound by the ECHR by virtue of the entry into force of the accession treaty (a provision to that effect could be included in the accession treaty).

<sup>20</sup> A subvariant could be added to this sentence: “*to the extent of (their) (its) competences*”.

- Protocol No. 4 Article 5    [– paragraph 1 add as follows: "at the time of signature, ratification or *accession*"]  
[– paragraph 4 add as follows: "ratification, *accession* or acceptance"]  
[– paragraphs 4 and 5 “State” – replace by “Party”]
- Protocol No. 6 Article 5    – paragraph 1 add as follows: "Any *State or the (European Communities) (European Union)* may at the time of signature or when depositing its instrument of ratification, *accession*, acceptance or approval"  
[– paragraph 2 “Any State” – replace by “Any Party”]
- Protocol No. 7 Article 6    – paragraph 1 add as follows: "Any *State or the (European Communities) (European Union)* may at the time of signature or when depositing its instrument of ratification, *accession*, acceptance or approval"  
[– paragraph 5 add as follows: "by virtue of ratification, *accession*, acceptance or approval"]  
[– paragraphs 2, 5 and 6 “State” – replace by “Party”]
- Protocol No. 12 Article 2    – paragraph 1 add as follows: "Any *State or the (European Communities) (European Union)* may at the time of signature or when depositing its instrument of ratification, *accession*, acceptance or approval"  
[– paragraphs 2 and 5 “Any State” – replace by “Any Party”]

Protocol No. 13 Article 4 – paragraph 1 add as follows: "*Any State or the (European Communities) (European Union) may at the time of signature or when depositing its instrument of ratification, accession, acceptance or approval*"  
 [– paragraph 2 “Any State” – replace by “Any Party”]

[Relationship to the Convention:

Protocol No. 6 Article 6 “the States parties” replace by “the Parties”  
 Protocol No. 7 Article 7 “the States parties” replace by “the Parties”  
 Protocol No. 12 Article 3 “the States parties” replace by “the Parties”  
 Protocol No. 13 Article 5 “the States parties” replace by “the Parties”]

Signature and ratification/Entry into force:

Protocol No. 1 Article 6 paragraph 1 add: “*The (European Communities) (European Union) may accede to this Protocol following accession to the Convention.*” “*With respect to the (European Communities) (European Union) it shall enter into force at the date of the deposit of the instrument of accession.*”

Protocol No. 4 Article 7 paragraph 1: same as for Protocol No. 1 Article 6 paragraph 1.

Protocol No. 6 Article 7: add before the last sentence: “*The (European Communities) (European Union) may accede to this Protocol following accession to the Convention.*” Then the last sentence shall read: “*Instruments of ratification, accession, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.*”

Article 8 paragraph 1: no change.

Article 8 paragraph 2 shall read: In respect of any member State *or the (European Communities) (European Union)* which subsequently expresses its consent to be bound by it, the Protocol shall enter into force on the first day of the month following the date of the deposit of the instrument of ratification, *accession*, acceptance or approval.

Protocol No. 7

Article 8: same as for Protocol No. 6 Article 7

Article 9 paragraph 1: no change.

Article 9 paragraph 2: same as for Protocol No. 6 Article 8 paragraph 2 (but add after “the first day of the month”: ”following the expiration of a period of two months after the date...”).

Protocol No. 12

Article 4: same as for Protocol No. 6 Article 7.

Article 5 paragraph 1: a change is perhaps not strictly necessary (it may be assumed that the Protocol will have entered into force by the time of any EC/EU accession to it)

Article 5 paragraph 2: same as for Protocol No. 6 Article 8 paragraph 2 (but add after “the first day of the month”: ”following the expiration of a period of three months after the date...”).

Protocol No. 13

Article 6: same as for Protocol No. 6 Article 7.

Article 7 paragraph 1: same remark as for Protocol No. 12, Article 5 paragraph 1

Article 7 paragraph 2: same as for Protocol No. 6 Article 8 paragraph 2 (but add after “the first day of the month”: ”following the expiration of a period of three months after the date...”).

#### Depositary functions:

Protocol No. 1, Article 6, paragraph 2 and Protocol No. 4, Article 7, paragraph 2 shall have the following wording:

“The instruments of ratification *or accession* shall be deposited with the Secretary General of the Council of Europe, who will notify all members *and the (European Communities) (the European Union)* of the names of those who have ratified *or acceded*.”

Protocol No. 6, Article 9, Protocol No. 7, Article 10, Protocol No. 12, Article 6 and Protocol No. 13, Article 8 shall have the following wording:

" shall notify the member States of the Council of Europe *and the (European Communities) (the European Union)* of:

(...)

(b) the deposit of any instrument of ratification, *accession*, acceptance or approval;"

### III. SUPPLEMENTARY PROVISIONS (notably: general interpretative clauses)

#### - concerning the Convention :

a) The terms “State”, “State Party” or “States” contained in Article 10, paragraph 1, Article 11, paragraph 2, Article 17, Article 27, paragraphs 2 and 3, Article 38, paragraph 1.a, Article 56, paragraphs 1 and 4, Article 57, paragraph 1, shall be understood as referring to “a High Contracting Party” or “High Contracting Parties”, respectively.

b) The term “ratification” in Articles 56, paragraph 1 and 57 paragraph 1 of the Convention shall be understood as referring also to “accession”.

c) The terms “national security”, “economic well-being of the country”, “territorial integrity”, “national laws” contained in Articles 8, 10, 11 and Article 12 of the Convention and the term “nation” contained in Article 15, paragraph 1, of the Convention shall apply *mutatis mutandis* to the (European Communities) (European Union).

d) Article 35bis: (*Possible new provision to be inserted between Articles 35 and 36 ECHR*):

“1. In cases before a Chamber or the Grand Chamber against a member State of the (European Communities) (European Union) which appear to raise an issue involving (Community) (Union) law, the (European Communities) (European Union) may, with the leave of the Court, be joined to the proceedings as a defendant.

2. In cases before a Chamber or the Grand Chamber against the (European Communities) (European Union), any member State of the latter may, with the leave of the Court, be joined to the proceedings as a defendant.

3. In the event of application of paragraphs 1 or 2 above, Article 27, paragraphs 2 and 3, shall apply accordingly.”

### Comments

- It is stressed that this text is just one example of how the idea of a “co-Defendant” status could be introduced in the ECHR system. Other drafting examples could also be elaborated (eg. merging paragraphs 1 and 2 above; or qualifying paragraph 2 above by specifying that, in cases “which appear to raise an issue involving the implementation of (Community) (Union) law by a member State of the (European Communities) (European Union), that member State may, with the leave of the Court....” etc.)

**- In the Rules of the Court, more detailed rules could be laid down, for example concerning the communication of cases to Contracting Parties having the possibility to join the proceedings by virtue of Article 35bis, paragraph 1 or 2, and the fixing of a time-limit (eg: three months) for seeking leave to do so.**

- **concerning the Protocols :**

a) The terms “State”, “States” or “States Parties” contained in Articles 1 and 2 of Protocol No. 1, Articles 3 and 5 (paragraphs 4 and 5) of Protocol No. 4, Articles 5 (paragraph 2) and 6 of Protocol No. 6, Articles 3, 4 (paragraphs 1 and 2), 5, 6 (paragraphs 2, 5 and 6) and 7 of Protocol No. 7, Articles 2 (paragraphs 2 and 5) and 3 of Protocol No. 12 as well as Articles 4 (paragraphs 1) and 5 of Protocol No. 13, shall be understood as referring to “a High Contracting Party” or “High Contracting Parties”, respectively.<sup>21</sup>

b) The term “ratification” in Article 4 (paragraph 1) of Protocol No. 1, Article 5 (paragraphs 1 and 4) of Protocol No. 4, Article 5 (paragraph 1) of Protocol No. 6, Article 6 (paragraphs 1 and 5) of Protocol No. 7, Article 2 (paragraph 1) of Protocol No. 12 and Article 4 (paragraph 1) of Protocol No. 13 shall be understood as referring also to “accession”.

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<sup>21</sup> In addition, Protocol No. 6, Article 2 (death penalty in time of war) only refers to States. While it is possible to include a reference to this provision in the present interpretative clause, it may be neither necessary nor politically advisable to do so.



c) The terms “territory of a/the State” and “national security”, contained in Articles 2 (paragraphs 1 and 3) and 3 (paragraphs 1 and 2) of Protocol No. 4 as well as Article 1 (paragraphs 1 and 2) of Protocol No. 7 shall apply *mutatis mutandis* to the (European Communities) (European Union).

- *Legal basis for the financial participation of the EC/EU*

A draft provision to be included in an amending protocol to the Convention or in an accession agreement/treaty could read as follows:

**“The conditions of the financial participation by the (European Communities) (European Union) shall be determined by agreement between the Council of Europe and the (European Communities) (European Union).”**

#### IV. TECHNICAL AND ADMINISTRATIVE QUESTIONS

Any more detailed rules concerning the conditions for the financial participation of the EC/EU could be set out either in this chapter or in a separate agreement.

As concerns the ancillary treaties, see under VI below.

#### V. ENTRY INTO FORCE OF THE AMENDING PROTOCOL / ACCESSION TREATY

Traditional clauses:

“Article X

- 1 This Protocol/[Treaty]<sup>22</sup> shall be open for signature by member States of the Council of Europe signatories to the Convention [and the (European Communities) (European Union)], which may express their consent to be bound by

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<sup>22</sup> Option 1 (Amending Protocol) would exclude the text between square brackets; Option 2 (Accession Treaty) would include that text.

- a signature without reservation as to ratification, acceptance or approval; or
  - b signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval.
- 2 The instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe. »

« Article Y

This Protocol/[Treaty] shall enter into force on the first day of the month following the expiration of a period of six months<sup>23</sup> after the date on which all Parties to the Convention [and the (European Communities) (European Union)] have expressed their consent to be bound by the Protocol/[Treaty] in accordance with the provisions of Article X.”

Possible tacit acceptance clause for an amending protocol:

“1 This Protocol shall enter into force on the first day of the month following the date on which the last of the Parties to the Convention has deposited its instrument of acceptance with the Secretary General of the Council of Europe.

2 However, this Protocol shall enter into force following the expiry of a period of two years after the date on which it has been opened to acceptance, unless a Party to the Convention has notified the Secretary General of the Council of Europe of an objection to its entry into force.

3 Should such an objection be notified, the Protocol shall enter into force on the first day of the month following the date on which the Party to the Convention which has notified the objection has deposited its instrument of acceptance with the Secretary General of the Council of Europe. Any objection shall be without prejudice to the other Parties’ tacit acceptance in accordance with the preceding paragraph.”

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<sup>23</sup> To provide time for the election of a judge.

## VI. ACCOMODATIONS IN RESPECT OF ANCILLARY AGREEMENTS

### **Option 1: A clause to be included in the accession treaty to the effect that:**

“The (European Communities) (European Union) shall respect the substantive provisions of the European Agreement relating to Persons Participating in Proceedings of the European Court of Human Rights and the Sixth Protocol to the General Agreement on Privileges and Immunities of the Council of Europe.”

**Option 2: Introducing a series of technical amendments to the European Agreement relating to Persons Participating in Proceedings of the European Court of Human Rights and the Sixth Protocol to the General Agreement on Privileges and Immunities, similar to the amendments to the protocols to the ECHR, by two separate amending protocols (see Part II of this Appendix above).**

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**THE EUROPEAN CONVENTION****Brussels, 17 July 2002**

THE SECRETARIAT

**CONV 193/02****COVER NOTE**

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from : Secretariat

to : Convention

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Subject: **Note from the Council of Europe, forwarded by Mr van Linden, member of  
the Convention**

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The Secretary-General of the Convention has received from Mr van Linden, member of the Convention, the attached note from the Council of Europe.

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# Parliamentary **Assembly** **Assemblée** parlementaire



Rés. 1290

## ANNEXE

Provisional edition

Future of the co-operation between European institutions

### ***Resolution 1290 (2002)***<sup>1</sup>

1. Europe is reaching an important point of its evolution. The perspective enlargement of the European Union presents it with a formidable challenge. The Convention set up by the Laeken Summit will pave the way for institutional reform and a constitutional framework. Its outcome will have consequences for all the institutions of Europe, including the Council of Europe.
2. The Council of Europe, as the most longstanding and comprehensive of the continent's institutions, needs to re-confirm its unique position among them, based upon its principal assets : the European Convention on Human Rights and the European Court at Strasbourg. These, together with its experience of striving to secure the highest standards of democracy and the rule of law, should be the basis for new forms of co-operation with the enlarging European Union.
3. The Assembly recalls the outstanding achievements of the Council of Europe in the pursuance of its statutory aim to achieve greater unity between its members for the purpose of safeguarding and realising the ideals of pluralist democracy, human rights and the rule of law.
4. The Assembly recalls that the Council of Europe and the European Union share the same values and pursue common aims with regard to the protection of democracy, respect for human rights and fundamental freedoms and the rule of law.

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<sup>1</sup> *Assembly debate* on 26 June 2002 (20th Sitting) (see Doc. 9483, report of the Political Affairs Committee, rapporteur: Mr van der Linden). *Text adopted by the Assembly* on 26 June 2002 (21st Sitting).

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5. The Assembly recalls that co-operation between the European Union and the Council of Europe is expressly mentioned in several provisions of the EC Treaty (Articles 149 § 3, 151 § 3 and 303).
6. The Assembly recalls in particular Article 303 of the EC Treaty which stipulates that “the Community shall establish all appropriate forms of co-operation with the Council of Europe”.
7. The Assembly recalls that the European Council in Dublin (December 1996) recognised the Council of Europe’s crucial role in upholding human rights standards and supporting pluralist democracy.
8. The Assembly is convinced that co-operation between the Council of Europe and the European Union should be extended to all areas where it brings added value to both sides and strengthens complementarity of action.
9. The Parliamentary Assembly has always been at the forefront of reflection on new European political projects and on the role the Council of Europe should play in it. In January 1999, it adopted Resolution 1177 on *Building greater Europe without dividing lines*, Resolution 1178 on *European political project* and Recommendation 1394 on *Europe: a continental design*, as part of the follow-up to the 2nd Summit of Heads of State and Government, and the ensuing report of the Committee of Wise Persons on the role of the Council of Europe.
10. The European Union Convention is an opportunity to reinforce legally binding mechanisms for the protection of human rights within the European Union. The objective of strengthening the safeguard of these rights both within the European Union and in Europe as a whole, can only be achieved through the accession of the European Union/European Community to the European Convention of Human Rights, which would create a single legal mechanism applying in equal manner to all state and other authorities in Europe which are exercising the competence affecting the rights protected by the Convention.
11. The European Union and the Council of Europe represent two distinct, but mutually reinforcing approaches to the achievement of ever greater unity among European States. The Council of Europe, with its pan-European membership, its experience and achievements in the field of human rights, democratic institutions, the rule of law, protection of minorities and local and regional authorities offers a privileged platform for dialogue and co-operation, both at parliamentary and inter-governmental levels, between all European States, be they members or non-members of the European Union, and the European Union itself.
12. The Council of Europe’s acquis in standard setting activities in the fields of democracy, the rule of law and fundamental human rights and freedoms should be considered as milestones towards the great European political project, and the European Court of Human Rights should be recognised as the pre-eminent judicial pillar of any future architecture.
13. Recently, the Council of Europe has shown that it is able to respond to the threat of terrorism at European and global level, by sharing, promoting and protecting democratic values and cross-cultural understanding. The Council of Europe has the necessary composition and the tools to be an active player in this area and to implement adequate programmes. It is an excellent platform for inter-cultural and inter-religious dialogue.

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14. The Council of Europe has great experience in co-operating with the OSCE at governmental and parliamentary levels, including field operations and the observation of elections. This asset should be used for redefining their co-operation in the new European institutional architecture.

15. All pan-European and sub-regional institutions should complement each other in their mutual aim to build a democratic, stable, peaceful and prosperous Europe and co-operate effectively.

16. The Assembly calls upon the European Union and on the applicant states:

a. to consider the Council of Europe as an active partner in the European Union's pre-accession strategy, through its wide spectrum of legal arsenal for democratic governance, protection of human rights and minorities and in particular by making full use of the Council of Europe's increasingly effective monitoring procedure as regards the obligations and commitments entered into by member states;

b. *to profit from the experience gained by the members of the Parliamentary Assembly of the Council of Europe, as the only truly pan-European inter-parliamentary assembly, where soon every European national parliament will be represented, in the work of the Conference of European Affairs Committees of the Parliaments of the European Union and Candidate Countries (COSAC).*

17. The Assembly calls upon the European Union/European Community to accede to the European Convention on Human Rights, and thus contribute to the creation of a single legal mechanism for the protection of human rights, applied on equal basis to all European States and other bodies exercising competence affecting the rights protected by the Convention.

18. The Assembly invites the European Union to strengthen its presence in the Council of Europe through the participation of the European Commission in the Committee of Ministers, and the European Parliament in the Parliamentary Assembly of the Council of Europe.

19. For this purpose the Assembly calls upon the Convention to ensure that the European Union Charter of Fundamental Rights is designed to complement and enhance the effectiveness of the European Convention on Human Rights.

20. The Assembly considers that the Council of Europe's conventions, which member states are obliged or encouraged to ratify, provide a legal framework for the entire continent of Europe defining standards on human dignity and democracy, social cohesion, cultural identity, daily life and media. They can be enhanced by additional Protocols, and implemented into national law. The Assembly calls upon the Convention to encourage this process rather than undermining it by the introduction of a separate legal framework for the European Union.

21. The Assembly calls upon the institutions of the European Union to examine possibilities for increased participation in the Council of Europe's work, in all relevant areas and at all appropriate institutional levels and enhance financial co-operation with the Council of Europe.

22. The Assembly calls upon the European Union Commission to study carefully the steps that would lead to the development of a coherent European legal order by incorporating the main Council of Europe's standard setting instruments into the European Union legal system, or inversely by acceding to major Council of Europe legal instruments.

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23. The Assembly calls upon the European Parliament to continue and improve co-operation with the Parliamentary Assembly of the Council of Europe, at different levels (Political groups, bureaux, committees), based on the recognition of common values and interests, in an effective and pragmatic manner. The creation of a joint committee is essential as well as the active participation of the European Parliament in the PACE. Institutional co-operation can be improved by co-operation at the level of monitoring procedures, having regard to the good results of the Monitoring Committee of the PACE, by organising together seminars and fact-finding missions and by co-operating in the field of the observing of elections. The PACE and the European Parliament stand for the same European values including a common rule of law avoiding double standards.

24. The Assembly calls upon the Secretary General of the Council of Europe to follow closely the work of the Convention set up at the Laeken Summit, evaluate its potential impact on the work of the Council of Europe, present the accomplishments of the Council of Europe to the Convention in the most appropriate way, especially in areas where the need might arise, and keep the Parliamentary Assembly regularly informed about the progress of work.

25. The Assembly calls upon the Convention to be aware that the Council of Europe is the institution allowing those States which will remain outside the European Union to participate in the European project, thus avoiding the creation of new dividing lines and a sense of exclusion among the non European Union member states of the Council of Europe.

26. The Assembly urges the Convention to avoid the introduction of any duplication or parallel activities by European Union which would undermine the work of the Congress of Local and Regional Authorities (CLRAE) as the only pan-European body for promoting local democracy structures and transfrontier co-operation.

27. The Assembly calls upon member states of the Council of Europe to fully take into account the Organisation's acquis in standard-setting in the fields of democracy, the rule of law and fundamental human rights and freedoms, as well as its political assets, when planning activities of European institutions in which they take part, in order to avoid overlaps and achieve maximum efficiency in building Europe of the future.



# Parliamentary **Assembly** **Assemblée** parlementaire



**Doc. 9483**

5 June 2002

## **Future of the co-operation between European institutions**

### *Report*

Political Affairs Committee

Rapporteur: Mr René van der Linden, Netherlands, Group of the European People's Party

### *Summary:*

The prospect of enlargement presents the European Union with a formidable challenge. The Convention set up by the Laeken Summit will pave the way for institutional reform and a new constitutional framework. Looking ahead to this major development, the Council of Europe must reiterate its unique position, based on its principal assets: the European Convention on Human Rights and the European Court of Human Rights. The Council must also stress its unparalleled experience in the field of human rights, the rule of law and upholding democracy. Finally, it must consolidate its role as a pan-European organisation offering a privileged platform for dialogue and co-operation, both at parliamentary and inter-governmental levels, between all European States, be they members or non-members of the European Union.

The Assembly asks the European Union and the candidate countries to consider the Council of Europe as an active partner in the European Union's pre-accession strategy and to profit from the experience gained by the members of the Council of Europe Parliamentary Assembly. Among a number of recommendations, the Assembly calls on the European Union to accede to the European Convention on Human Rights, and thus contribute to the creation of a single legal mechanism for human rights protection. It also urges the European Commission to accede to the main Council of Europe legal instruments or incorporate them into the European Union legal system.

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## ***I. Draft Resolution***

2. Europe is reaching an important point of its evolution. The perspective enlargement of the European Union presents it with a formidable challenge. The Convention set up by the Laeken Summit will pave the way for institutional reform and a constitutional framework. Its outcome will have consequences for all the institutions of Europe, including the Council of Europe.

2. The Council of Europe, as the most longstanding and comprehensive of the continent's institutions, needs to re-confirm its unique position among them, based upon its principal assets : the European Convention on Human Rights and the European Court at Strasbourg. These, together with its experience of striving to secure the highest standards of democracy and the rule of law, should be the basis for new forms of co-operation with the enlarging European Union.

3. The Parliamentary Assembly has always been at the forefront of reflection on new European political projects and on the role the Council of Europe should play in it. In January 1999, it adopted Resolution 1177 on *Building greater Europe without dividing lines*, Resolution 1178 on *European political project* and Recommendation 1394 on *Europe: a continental design*, as part of the follow-up to the 2nd Summit of Heads of State and Government, and the ensuing report of the Committee of Wise Persons on the role of the Council of Europe.

4. The European Union Convention is an opportunity to reinforce legally binding mechanisms for the protection of human rights within the European Union. The objective of strengthening the safeguard of these rights both within the European Union and in Europe as a whole, can only be achieved through the accession of the European Union/European Community to the European Convention of Human Rights, which would create a single legal mechanism applying in equal manner to all state and other authorities in Europe which are exercising the competence affecting the rights protected by the Convention.

5. The European Union and the Council of Europe represent two distinct, but mutually reinforcing approaches to the achievement of ever greater unity among European States. The Council of Europe, with its pan-European membership, its experience and achievements in the field of human rights, democratic institutions, the rule of law, protection of minorities and local and regional authorities offers a privileged platform for dialogue and co-operation, both at parliamentary and inter-governmental levels, between all European States, be they members or non-members of the European Union, and the European Union itself.

6. The Council of Europe's acquis in standard setting activities in the fields of democracy, the rule of law and fundamental human rights and freedoms should be considered as milestones towards the great European political project, and the European Court of Human Rights should be recognised as the pre-eminent judicial pillar of any future architecture.

7. Recently, the Council of Europe has shown that it is able to respond to the threat of terrorism at European and global level, by sharing, promoting and protecting democratic values and cross-cultural understanding. The Council of Europe has the necessary composition and the tools to be an active player in this area and to implement adequate programmes. It is an excellent platform for inter-cultural and inter-religious dialogue.

8. The Council of Europe has great experience in cooperating with the OSCE at governmental and parliamentary levels, including field operations and the observation of elections. This asset should be used for redefining their cooperation in the new European institutional architecture.

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9. All pan-European and sub-regional institutions should complement each other in their mutual aim to build a democratic, stable, peaceful and prosperous Europe and cooperate effectively.
10. The Assembly calls upon the European Union and on the applicant States:
- a. to consider the Council of Europe as an active partner in the European Union's pre-accession strategy, through its wide spectrum of legal arsenal for democratic governance, protection of human rights and minorities and in particular by making full use of the Council of Europe's increasingly effective monitoring procedure as regards the obligations and commitments entered into by member States;
  - b. *to profit from the experience gained by the members of the Parliamentary Assembly of the Council of Europe, as the only truly pan-European inter-parliamentary assembly, where soon every European national parliament will be represented, in the work of the Conference of European Affairs Committees of the Parliaments of the European Union and Candidate Countries (COSAC);*
11. The Assembly calls upon the European Union / European Community to accede to the European Convention on Human Rights, and thus contribute to the creation of a single legal mechanism for the protection of human rights, applied on equal basis to all European States and other bodies exercising competence affecting the rights protected by the Convention;
12. For this purpose the Assembly calls upon the Convention to ensure that the European Union Charter of Fundamental Rights is designed to complement and enhance the effectiveness of the European Convention on Human Rights.
13. The Assembly considers that the Council of Europe's conventions, which member States are obliged or encouraged to ratify, provide a legal framework for the entire continent of Europe defining standards on human dignity and democracy, social cohesion, cultural identity, daily life and media. They can be enhanced by additional Protocols, and implemented into national law. The Assembly calls upon the Convention to encourage this process rather than undermining it by the introduction of a separate legal framework for the European Union.
14. The Assembly calls upon the institutions of the European Union to examine possibilities for increased participation in the Council of Europe's work, in all relevant areas and at all appropriate institutional levels and enhance financial cooperation with the Council of Europe;
15. The Assembly calls upon the European Union Commission to study carefully the steps that would lead to the development of a coherent European legal order by incorporating the main Council of Europe's standard setting instruments into the European Union legal system, or inversely by acceding to major Council of Europe legal instruments;
16. The Assembly calls upon the European Parliament to continue and improve co-operation with the Parliamentary Assembly of the Council of Europe, at different levels (Political groups, bureaux, committees), based on the recognition of common values and interests, in an effective and pragmatic manner. The creation of a joint committee must be considered as well as the active participation of the European Parliament in the PACE;
17. The Assembly calls upon the Secretary General of the Council of Europe to follow closely the work of the Convention set up at the Laeken Summit, evaluate its potential impact on the work of

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the Council of Europe, present the accomplishments of the Council of Europe to the Convention in the most appropriate way, especially in areas where the need might arise, and keep the Parliamentary Assembly regularly informed about the progress of work;

18. The Assembly calls upon the Convention to be aware that the Council of Europe is the institution allowing those States which will remain outside the European Union to participate in the European project, thus avoiding the creation of new dividing lines and a sense of exclusion among the non European Union member States of the Council of Europe.

19. The Assembly urges the Convention to avoid the introduction of any duplication or parallel activities by European Union which would undermine the work of the Congress of Local and Regional Authorities (CLRAE) as the only pan-European body for promoting local democracy structures and transfrontier co-operation.

20. The Assembly calls upon member States of the Council of Europe to fully take into account the Organisation's acquis in standard-setting in the fields of democracy, the rule of law and fundamental human rights and freedoms, as well as its political assets, when planning activities of European institutions in which they take part, in order to avoid overlaps and achieve maximum efficiency in building Europe of the future.

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## II. Draft Recommendation

The Assembly refers to its Resolution ....(2002) on future co-operation between European institutions, and recommends to the Committee of Ministers to convene a third summit of heads of States and governments, at a moment carefully timed before the inter-governmental conference of the European Union, with a view to giving new political impetus at the highest level to the Organisation, to better taking into account the political needs of its member States and to redefining its relations with other European institutions.

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### **III. Explanatory memorandum by the Rapporteur**

#### **I. Introduction**

1. Once again, in 2001, universal values of human rights, the rule of law and democracy have been challenged - showing the need, at European and at global levels, for expressing, sharing, promoting and protecting common values as well as for strengthening a fair and sustainable multicultural and inter-religious dialogue.

2. I strongly support the Council of Europe's Secretary General, Mr Walter Schwimmer, when he reaffirms that "the year 2001 and the date 11 September will remain engraved in our memories. The terrorist attacks could have weakened our convictions. But on the contrary, they have strengthened the Council of Europe universal values of human rights, the rule of law and democracy".

3. In the Assembly of the Council of Europe, democratically chosen representatives from 43 countries work together. They offer an essential contribution to the democratic evolution in Eastern Europe and its transition process. Even after the extension of the European Union almost half the European States will continue to co-operate within the framework of the Council of Europe and outside that of the European Union. Some of them will, by choice, limit their membership of a community of democratic States to that of the Council of Europe.

4. Once again, after 2001, the European institutional landscape is at an important juncture. For instance, the perspective of enlargement presents a formidable challenge to the European Union (EU), and its structural framework is at present under serious scrutiny. No doubt, other organisations, with a potential or consolidated pan-European vocation, such as the Council of Europe, will be affected by this change and it is therefore not surprising to indulge in a soul-searching exercise.

5. The Council of Europe should become the conscience of Europe in the field of human rights, minority rights and democratic functioning. In that sense the Council of Europe must take, consequently and explicitly, real political points of view. More political and less diplomatic action is needed. The Council of Europe should even further develop its control and monitoring mechanisms to guarantee the efficiency of its standard-setting instruments. They should produce better political guidelines for their member States, guidelines which should be more easily enforceable under national legislation.

6. *The members of the Parliamentary Assembly of the Council of Europe are in an unique position and have, in fact, a double mandate.* Therefore, the members of the Parliamentary Assembly should more intensively inform the national parliaments about the political issues which are being treated in the Council of Europe. The Council of Europe, as an intergovernmental body, is too hesitant when defending its own position. Here again, it is up to the Parliamentary Assembly to do more and to bring their political conclusions to their own parliaments and to organise in their own parliaments debates on the national and regional consequences of the Council of Europe's decisions. Accompanied by a more effective organisation of the press and public relations this could make quite a difference already.

7. The Parliamentary Assembly of the Council of Europe is at the forefront of the reflection on the European institutional architecture and on the role of the Council of Europe should play in it. In

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recent years, it contributed substantially to the two Council of Europe Summits of Heads of State and Government, held in 1993 and 1997, analysed meticulously the 1998 report of the Committee of Wise Persons, and adopted in January 1999 a series of texts, which respectively called for a pre-eminent role for the Council of Europe (Recommendation 1394 (99)<sup>1</sup>), stressed the importance of the parliamentary dimension (Resolution 1178 (99)<sup>2</sup>) and proposed a clear definition of the Council of Europe's priorities (Resolution 1177 (99)<sup>3</sup>).

8. In January 2000, a group of parliamentarians tabled a motion on the 'European Architecture on the 21<sup>st</sup> Century' (Doc. 8639) with the aim of pursuing and deepening this previously engaged discussion. Their motivation was twofold:

- a. at the turn of the 21<sup>st</sup> century it is unlikely that so many pan-European organisations, with sometimes similar or overlapping activities, will continue to function unchanged;
- b. if fewer and different organisations are to occupy the scene, the Council of Europe ought to take "a lead in forging its own image, based on its own values"; otherwise the solution would be imposed upon it by others.

9. Without necessarily sharing the defeatist approach contained in this last sentence, one must however thank the authors of the document for generating a renewed reflection, in particular in view of the forthcoming inter-governmental conference of the EU and the beginning of the enlargement process, which is on the way.

10. I believe, however, that the Council of Europe is not only a "waiting room" for the EU. On the contrary, since the existence of the "Copenhagen criteria" for the future EU members, the Council of Europe is an active partner in the Union's pre-accession strategy. Indeed, through its wide spectrum of legal arsenal for the protection of human rights, minorities, democratic governance and social peace, the Organisation plays a key role in consolidating democratic institutions in member States and consequently is a pillar of the European construction. This role, however, could be further emphasised and promoted through political will and energetic measures.

11. When speaking about the European institutional structure our aim is not to interfere with the domestic affairs of the EU, nor to make a judgement on their policy choices. The core of the discussion this paper aims to trigger is the positioning of the Council of Europe vis-à-vis the EU and other political institutions, such as the OSCE. In doing so, we will unavoidably touch upon questions of general interest for the whole of Europe or for a group of member States. The future of relations with other organisations has also close links with the Council of Europe's own structures and Parliamentary Assembly's own activities. The aims of the OSCE are, in general terms, in harmony with the aims of the Council of Europe. The difference is that the OSCE has no formal legal structure, but perhaps it uses its political position better. One reason for this is the interest of the United States in the OSCE. The OSCE is one of the organisations which offers the United States a position of influence in Europe. It should certainly be regretted, in this context, that the US did not make, up to now, appropriate use of their observer status with the Council of Europe.

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<sup>1</sup> 'Europe: a continental design'

<sup>2</sup> 'European political project'

<sup>3</sup> 'Building Greater Europe without dividing lines' (opinion on the report by the Committee of Wise Persons)

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## II. The idea of concentric circles

12. Considering that membership of the EU, the Council of Europe and the OSCE can be expressed in terms of concentric circles, one could imagine that co-operation could be organised in the same way, the inner circle representing the highest level of integration to which member States aspire.

13. An accurate assessment of different scenarios of co-operation implies a realistic review of the present situation. However, before making any proposals or suggesting new possibilities, it is good to see what is realistic to expect or unlikely to achieve. If high expectations are an acceptable starting point, they must nonetheless be kept under controllable and feasible limits.

14. In this respect, during the drawing-up of the Charter of Fundamental Rights of the EU, though the arguments presented by the Assembly were absolutely right at that time, it was obvious for political reasons that the idea of asking the EU to limit itself to signing the European Convention on Human Rights (ECHR) was doomed as the EU leadership was resolutely committed to giving a human and social rights dimension to the European Union. But it must be stressed that this respectable commitment does in no way question or even call off the request of the Parliamentary Assembly to the EU to adhere to the ECHR.

15. Likewise, comments have been voiced lately that the OSCE has been extending its field of activities to include questions related to human rights and fundamental freedoms, thus encroaching on the Council of Europe's territory. It should be recalled that the OSCE is an offspring of the Helsinki Conference and the Final Act, which included a special basket on human rights. This latter therefore has been an important aspect of its work from the very beginning of its existence and will probably continue to be so.

16. Accordingly, we should on one hand acknowledge the fact that no European organisation can ignore the human rights dimension in its activities and development. On the other hand, we should acknowledge the high degree of experience and expertise which the Council of Europe possesses in this area. It is unanimously recognised that the Council of Europe is the standard setting organisation for human rights in Europe.

17. As regards the idea of a European constitution, one should recall that it is not alien to our Organisation. Already in 1950, when signing the European Convention on Human Rights on behalf of the Federal Republic of Germany, Professor Walter Hallstein stated that one day "... an agreement on what comprises human rights and fundamental freedoms may even be the basis for a European Constitution". In the late '90s, the then existing Committee on Relations with National Parliaments had commissioned a study to be carried out by Professor Rausseau on a 'European Constitution'.

18. Very recently, the 'Convention' set up at the Laeken Summit, under the chairmanship of Mr Giscard d'Estaing has started its work and it is highly probable that it will pave the way for institutional reform and a constitution for the EU. With its long experience, the Council of Europe should follow this work very closely. The Council of Europe was not granted a status of observer. However, it could still make a valuable contribution through a number of members of the Parliamentary Assembly who will be sitting in their national delegations to the convention. One could also envisage special co-ordination meetings amongst them. Moreover, ways should be found to enable the Council of Europe to make contributions to the Convention, in particular with regard to fundamental rights, including the co-operation between the Strasbourg and Luxembourg



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courts, as well as the crucial question of future relations between the Council of Europe and an enlarged EU.

19. Concerning our own Organisation, when making proposals in this field, the Parliamentary Assembly must analyse accurately the reaction of our governments to our past positions in adopted texts. For instance, the Reply<sup>1</sup> of the Committee of Ministers to Recommendation 1394 (1999) on ‘Europe: a continental design’ is revealing on many points. While the Committee of Ministers shares the “ambition and commitment” of the Assembly in respect of European construction “it is aware...that the rediscovered unity of the continent can only be sustained and developed if it is incorporated into a coherent political project in which the efforts of various organisations ...are mutually strengthened”.

20. Thus, the Committee of Ministers does not come forward with a vision, specific to the *raison d’être* of the Council of Europe. In addition, the Committee of Ministers declares that it “is unable to go as far as stating that the Council of Europe can be considered as “a forum capable of meeting the global challenges of the third millennium”. Instead, the Committee of Ministers “reaffirms the major importance it attaches to the complementary functions and co-ordination of efforts between the Council of Europe and its main partners in the European context”. The temptation is strong to interpret this, combined with the increasing absenteeism of Ministers at ministerial level meetings and the stagnating budget, as a way of minimising the political role of the organisation in its own right.

21. One point which is often raised in connection with co-operation between European institutions is work sharing. Here again, many serious efforts aiming at a thematic repartition of activities have failed. We should aim at organising in concrete terms the complementarity which we so often proclaim. Of course we have to take into account that membership of the EU imposes an obligation to its members to act in accordance with the treaties. As regards the Assembly’s own activities, recently co-operation has improved with the European Parliament, at Presidential and political groups level and occasional joint meetings and conferences at committee level. We should not aim at establishing rigid rules for co-operation but develop in a pragmatic way all possible communication channels and common activities.

### III. What are the Council of Europe’s assets?

22. I believe that the best method is to emphasise the areas where the Council of Europe could be most effective and instrumental in “building a greater Europe without dividing lines”, as it was expressed so meaningfully in Assembly Resolution 1177 (99), rather than looking at what others are doing or by formulating disguised criticism at partner institutions. Our chances of improving the performance of the Council of Europe, which is already remarkable, are much better than undertaking some global rationalisation and co-ordination scheme. This does, of course, not mean that we should not pursue the dialogue with our partner organisations with whom we share common values and conduct common projects.

23. It is my strong conviction that the widening and deepening of the EU on one hand, and the strengthening of the Council of Europe on the other, are not at antipodes. On the contrary, the existence of the Council of Europe:

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<sup>1</sup> Reply adopted by the Committee of Ministers on 23 April 2001

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- a. alleviates the sense of exclusion which could be felt by those member States which are not ready yet for EU membership, or those who do not intend to become members;
- b. reassures applicant States that their progress towards membership of the EU is following the correct path and pace.

24. No less is the argument that in the 21<sup>st</sup> century inclusion in Europe should not be measured solely by belonging to the EU.

25. The presence of the Russian Federation in the Council of Europe is an indispensable political factor of the new European dialogue between equal and like-minded partners throughout the whole continent. The Parliamentary Assembly's flexible structures and dynamism are assets which must be used to the full. A good illustration of this is the meaningful pressure which is being put on Russia in relation to the conflict in Chechnya. Despite the Committee of Ministers' somewhat passive handling of the matter, the Council of Europe's combined action and the initiatives of the Secretary General of the Council of Europe and the Human Rights Commissioner have substantially contributed to putting in place human rights machinery in Chechnya and also the Duma / PACE Joint Working Group is instrumental in pursuing a political solution.

26. I am thoroughly convinced that the terrorist attacks of 11 September were an important turning point, which has generated, at global level, the need for sharing, promoting and protecting democratic values and cross-cultural understanding. The Council of Europe has the necessary tools to be an active player in this area and I understand, under the impetus of the Parliamentary Assembly and the Secretary General, the Committee of Ministers is prepared to launch adequate new programmes. On the Assembly side, we should also be prepared to further strengthen the dialogue with non-member countries, in particular, those Muslim countries bordering the Mediterranean. The work, since 1991, of the Council of Europe's Centre for Global Interdependence and Solidarity, the "North-South Centre" in Lisbon, should be valued and highlighted in this context.

27. Several countries enjoy Observer Status with the Council of Europe and several parliaments with the Parliamentary Assembly, and others would be interested in obtaining this status, which, no doubt, permits the intensification of political dialogue: however, the recent adoption by the Parliamentary Assembly of Resolution 1253 (2001), Recommendation 1522 (2001) and Order 574 (2001) on the "Abolition of the death penalty in Council of Europe Observer States" has clearly established the limits for granting such status.

28. Beside the organs of the Council of Europe, the Committee of Ministers and the Parliamentary Assembly, the European Court of Human Rights set up under the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) is one of the major assets of our Organisation. The international enforcement mechanism established in the ECHR allows to everyone within the vicinity of a member State to enjoy a level of protection of the fundamental rights and freedoms unique in the whole world. Furthermore, the Congress of Local and Regional Authorities (CLRAE) plays its indispensable role in promoting local democracy structures and trans-frontier co-operation networks as prerequisites to stability and confidence building throughout Europe.

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29. The existence of specialised bodies within the Council of Europe, such as the Council of Europe Development Bank, the office of the Commissioner for Human Rights, the European Commission for Democracy through Law, ("Venice Commission"), the European Commission against Racism and Intolerance (ECRI), the European Committee for the Prevention of Torture (CPT) and the Group of States against Corruption (GRECO), all designed to promote the values of democracy, human rights, social cohesion, non-discrimination, the fight against corruption as well as racism and inhuman or degrading treatment, give added weight to the work of our Organisation.

30. As an example, the Venice Commission, through its active role in transition towards democracy in Eastern Europe, has gained international notoriety. The Assembly has excellent working relations with the Venice Commission and can consult it on legal opinion in difficult matters. Very recently, following Recommendation 1264 (01) of the Assembly on the 'Code of Good Practice in Electoral Matters', the Venice Commission set up a working group which includes representatives of the Assembly. Thus, intensified co-operation will begin in the area of election observation, which has become a major activity over the last decade.

#### **IV. Some suggestions for future co-operation of the European institutions**

31. The following is an incomplete and not exhaustive list of ideas, which ought to be discussed further, possibly reformulated and enriched by members' contributions.

- a. The Council of Europe is one of the pillars of a Europe based on the universal values of human rights, the rule of law and democracy. Its founding principles and its *raison d'être* are constantly being challenged. In the interest of maintaining its standards of democracy, human rights and the rule of law throughout the continent, there are assets of the Council of Europe which, whilst always open to review, should be considered as standard-setting and should be recognised in Europe's institutional architecture. These are the European Convention on Human Rights and the European Court of Human Rights in Strasbourg.
- b. The Parliamentary Assembly of the Council of Europe, similarly remains the only inter-parliamentary assembly exclusive to Europe and which will soon be representative of every European national parliament. In this respect, the Assembly is the true 'democratic dimension' of Europe. We should consider how this asset of the Council of Europe – its Parliamentary Assembly – could be applied to the enlarging European Union. For example, the Conference of European Affairs Committees of the Parliaments of EU and Candidate Countries (COSAC) could well profit from contributions by the members of the Parliamentary Assembly of the Council of Europe (PACE).
- c. All European institutions are experiencing an increased need for renewal and adaptation. The political and social landscape has profoundly changed, but working methods still remain the same.

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- d. All European institutions are experiencing an increased need for enhanced co-operation, based on effectiveness, mutual respect and the recognition of competencies, added values and limits. There cannot be room for overlapping, duplication of efforts or even competition. In this context, the idea of concentric circles sharing the same centre should be further developed.
- e. Co-operation must take place beyond the mere expression of common values and principles. Co-operation, networking and co-ordination between the Council of Europe and the EU and other political institutions, such as the OSCE must take place at a practical level and must be visible. Co-operation should focus on very specific projects responding to specific needs of a member State or a group of member States.
- f. Another Council of Europe asset is the comparatively recent and increasingly effective procedure for monitoring the obligations and commitments entered into by new member States upon accession. The detailed scrutiny by the Parliamentary Assembly, the Committee of Ministers and the CLRAE of their progress to meet Council of Europe standards of democracy, respect of human rights and the rule of law represents an invaluable source of information and reference on the countries concerned. This large monitoring practice by the Council of Europe is, of course, shared by the fifteen EU member States and used by the EP, the EU Council and the EU Commission in their assessment of developments in candidate States. It would be gratifying for the Council of Europe, and instructive for public opinion, if this “political complementarity” would be officially recognised.
- g. The Council of Europe has recently gained very valuable field experience. It is certainly good food for thought that there exists good practice between the aforementioned organisations when it comes to concrete work, in particular in conflict areas.
- h. A proposal for a Third Summit of Heads of States and Governments is under consideration in the Committee of Ministers. The Assembly which initiated the First Summit in Vienna (1993) and strongly supported the Second Summit in Strasbourg (1997) should also support this proposal. A Third Summit would be very timely in 2003 as the Organisation will be finalising its enlargement. The Summit would give new political impetus at the highest level for the future of the Organisation.

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*Reporting committee:* Political Affairs Committee

*Reference to committee:* Doc. 8639, Reference 2481, 03.04.00; Doc. 9241, Reference 2656, 28.09.01

*Draft resolution and draft recommendation unanimously adopted by the committee on 28 May 2002*

Members of the committee: Jakic (Chairman), Baumel (Vice-Chairman), Feric-Vac (Vice-Chairperson), Spindelegger (Vice-Chairman), Aliyev (alternate : Seyidov), Andican, Arzilli, Atkinson, Azzolini, Bakoyianni (alternate : Liapis), Bársony (alternate : Eörsi), Behrendt (alternate : Lörcher), Berceanu, Bergqvist, Bianco (alternate : de Zulueta), Björck, Blaauw, Blankenborg, Bühler, Cekuolis (alternate : Olekas), Clerfayt, Daly, Diaz de Mera, Dreyfus-Schmidt, Durrieu, Frey, Glesener, Gligoroski, Gönül, Gross, Henry, Hornhues, Hovhannisyán, Hrebenciuc, Iwinski, Judd, Karpov, Kautto, Klich, Koçi, Lloyd, Loutfi, Margelov (alternate: Popov), Martinez-Casan, Medeiros Ferreira, Mignon, Mota Amaral, Mutman, Naudi Mora, Neguta, Nemcova, Oliynyk, Paegle, Pangalos, Pourgourides, Prentice, Prisacaru, de Puig, Ragnarsdottir, Ranieri, Rogozin, Schloten, Severinsen, Stepová, Surjan, Timmermans (alternate : van der Linden), Toshev, Udovenko, Vakilov, Vella, Voog, Weiss (alternate : Svec), Wielowieyski, Wohlwend, Wurm, Yarygina (alternate : Nazarov), Zacchera (alternate : Malgieri), Ziuganov (alternate : Slutsky), Zhvania.

*N.B. The names of the members who took part in the meeting are printed in italics*

*Secretaries of the committee:* Mr Perin, Mr Chevtchenko, Mrs Entzminger.

**THE EUROPEAN CONVENTION**

Brussels, 18 July 2002

THE SECRETARIAT

Working Group II

Working document 09

**Working group II " Incorporation of the Charter/accession to the ECHR"****From: António Vitorino, President****To: Working Group II**

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**Subject : Possible drafting adjustments of Article 51 (2) and of Article 52 (2) Charter;  
the question of "replication" in the Charter**

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**I. Possible drafting adjustment of Article 51 (2) of the Charter**

1. Following a request made by members of the Group at the meeting of 12 July, a possible wording of the drafting adjustment in Article 51 § 2 of the Charter, as envisaged by the Group in the hypothesis of incorporation of the Charter into the Treaties according to option f), could for example read as follows:

"This Charter [*or*: this Title / Chapter]<sup>1</sup> does not establish any new power or task for the Community or the Union, or modify powers and tasks defined by other provisions of the present Treaty or by the Treaty on the European Union or the Treaty establishing the European Community."

2. It should be noted that the question of such a drafting adjustment would arise only in the hypothesis of option f) (i.e., insertion of the body of the Charter articles into a new basic Treaty or into the Treaty on the European Union). Conversely, under options a) to e), the Charter would technically remain a separate instrument apart from "the Treaties" (although,

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<sup>1</sup> If the possible new Title or Chapter of the TEU or a new basic Treaty containing the articles of the Charter were to receive the heading "The Charter of Fundamental Rights of the European Union", it would then appear possible to maintain the reference to "this Charter" in the general provisions of the Charter; in the alternative, one could refer to "this Title" or "this Chapter".

under some of these options, it would have legal rank equal to the Treaties); consequently, there would be no ambiguity as to the meaning of the referral in current Article 51 § 2 *from* the Charter *to* the Treaties.

3. Furthermore, it should be kept in mind that the concrete drafting adjustment to be made would obviously depend on the decision on the legal personality and on the Treaty structure envisaged by the Convention. Thus:
  - In the event of the creation of one simple legal personality of the Union, the words "for the Community or" could be deleted.
  - In the event that the Convention opted for incorporation of the articles of the Charter into the Treaty on the European Union, rather than for a new basic Treaty, the words "the Treaty on the European Union" would be deleted since the term "the present Treaty" would refer to the TEU.
  - The reference to the "Treaty on European Union" or the "Treaty establishing the European Community" could need further adjustment in the event of the current structure and/or title of these Treaties being modified in the course of their simplification.

## II. The question of "replication" in the Charter

4. As explained in section 4 of document CONV 116/02, in order to draw up a full catalogue of the fundamental rights of the Union, the Charter, in a number of its articles, simply restates rights already expressly enshrined in the EC Treaty, often, however, in the interests of readability, shortening the wording as compared with the corresponding articles of the Treaty.

These relate to rights to freedom of movement, almost all the rights in the "citizenship" chapter of the Charter (right to vote, access to documents, right of petition, etc.) and the clauses relating to non-discrimination on grounds of nationality and equality between the sexes<sup>2</sup>. Since the previous Convention had no mandate to modify the Treaties, but only to draft a Charter which could be added to them, it formulated a referral clause (Article 52(2) of the Charter<sup>3</sup>) to make it clear that, with regard to those rights, the legal situation as defined in the Treaties was unaffected by the Charter. That clause also made it possible to avoid the repetition, in each Charter article in question, of formulae to the effect that these rights are exercised under the conditions and within the limits provided for in the corresponding article of the Treaty and of secondary legislation<sup>4</sup>.

The Group should now examine more closely how this situation of "replication" of rights could be dealt with in the event of possible incorporation by the Charter into the Treaties. For purposes of such analysis, it appears appropriate to distinguish between legal aspects and in particular questions of legal certainty, on the one hand, and questions of legibility and presentation of fundamental rights, on the other hand.

5. As concerns legal aspects, and in particular concerns of legal certainty, it seems in principle that, if one of the options a) to e) were chosen, the referral clause of Article 52 § 2 of the Charter, as it stands, would clarify in a satisfactory manner that the conditions and limits for the exercise of the rights in the Charter which result from the Treaties are governed by those Treaties, and that the Charter does not alter the regime of those rights. The decisive

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<sup>2</sup> Article 15 (2) Charter, corresponding to Articles 39, 43 and 49 et seq. EC Treaty (on freedom of movement for workers, freedom of establishment and freedom to provide services); Article 21(2) Charter, corresponding to Article 12 EC Treaty (on discrimination on the grounds of nationality); Article 23 Charter, corresponding to Articles 2, 3 (2) and 141 (3) and (4) EC Treaty (on equality between the sexes); Articles 39, 40, 41(3) and (4), 42 – 46 Charter, corresponding to Articles 18 to 21, 190 (1), 194, 195, 288 EC Treaty (on the rights of EU citizens).

<sup>3</sup> Article 52(2) reads as follows: "Rights recognised by this Charter which are based on the Community Treaties or the Treaty on European Union shall be exercised under the conditions and within the limits defined by those Treaties."

<sup>4</sup> On this point, see also the Explanations of the Praesidium (cited in footnote 1 on page 3) relating to this Article ("Paragraph 2 specifies that where a right results from the Treaties it is subject to the conditions and limits laid down by them. The Charter does not alter the system of rights conferred by the Treaties.")



point, again, is that the Charter would technically remain a separate instrument. There would thus be no ambiguity about Article 52 (2) Charter as a clause of referral *from* the Charter *to* the Treaties; whether or not the Charter would have equal legal value as the Treaties does not matter for this purpose<sup>5</sup>.

6. Conversely, if the Convention were to prefer option f), i.e. incorporation of the Charter articles themselves into the Treaties, a need for a drafting adjustment of Article 52 (2) similarly as discussed above in the context of Article 51 (2) - would arise in order to clarify the term "Treaties". The precise wording of such a drafting adjustment would essentially depend on the future Treaty structure (which goes beyond the mandate of this Group) and on the question which place the fundamental rights currently enshrined in the EC Treaty, and in particular the citizenship rights (see below, para. 8 and 9), should find in that Treaty structure. It is therefore difficult to anticipate the correct formula at this stage. However, the Group could usefully express itself on the *principle* of preserving a referral clause in Article 52 (2) - albeit slightly reworded - even under that option. Some have taken the view that Article 52 (2) Charter could simply be deleted in that hypothesis. However, it seems important, in the interest of legal certainty, to keep the referral in order to make it clear that more detailed provisions to be found elsewhere in Treaty law, for example on citizenship or on freedom of movement of workers, concretise and limit those rights, and that existing case law thereon remains fully valid.
7. Turning to considerations of legibility and presentation of fundamental rights in the Treaty framework, it has been argued that the replications between articles on the same rights both in the Charter and in the Treaties could appear confusing for the citizens, and that such replications should therefore be eliminated.

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<sup>5</sup> This point is demonstrated by referrals made from one article to another in the EC Treaty: For example, although Article 21 and Articles 194, 195 EC Treaty on the right to petition or to apply to the Ombudsman are of equal rank, it is clear that Article 21 EC Treaty is merely a referral and that the legal content of the right is defined by the latter Articles.

8. In this context, it should, however, first be observed that the issue appears to arise only in relation to a limited number of rights, i.e. essentially those linked to the citizenship of the Union; in other contexts such as equality between the sexes and freedom of movement for workers and the self-employed, co-existence of the very succinct Charter text and the more detailed text in the current Treaties seems perfectly appropriate and conducive to better comprehension by the citizens. As to fundamental rights flowing from EU citizenship, they were rightly included in the Charter in order to ensure their full visibility. On the other hand, the current articles on citizenship in the EC Treaty could not simply be deleted because they contain, in addition to the statement of the rights, important legal bases permitting to regulate them. These elements taken together would militate for accepting in principle the co-existence of articles on citizenship in both the Charter and the EC Treaty.
  
9. However, if the Convention were to favour incorporation of the body of the Articles of the Charter into a new basic Treaty (option f), it would face another question, which while going beyond the remit of this Working Group should not be ignored by it: Such a new basic Treaty would undoubtedly have to contain the most fundamental provisions on EU citizenship, including not only the citizens' rights which have been repeated in the Charter, although sometimes with shortened formulae, but also the definition of citizenship (current Article 17 EC Treaty) and perhaps a provision about its future development (current Article 22 EC Treaty). Combining these provisions with the Charter articles on citizenship going into the new Treaty pursuant to option f would require to define the respective places in that Treaty of these provisions, and thus possibly entail some complement or adjustment of the Charter chapter on Citizens' rights. Conversely, under the other options, there would then be a legally relevant chapter on citizenship in the EC Treaty or possibly in a new basic Treaty, whilst the articles "replicating" the citizens' rights in the Charter (existing as a technically separate instrument) would merely serve as a restatement enhancing the visibility of those rights.

*How should the "replication" arising from the fact that some articles of the Charter repeat rights already enshrined in the EC Treaty be dealt with?*

THE EUROPEAN CONVENTION  
THE SECRETARIAT

Brussels, 22 July 2002

Working group II

Working document 10...

**Working group II “Incorporation of the Charter/accession to the ECHR”**

**Working document by Mr. Alexander Arabadjiev**

*How should the “replication” arising from the fact that some articles of the Charter repeat rights already enshrined in the EC Treaty be dealt with?*

The following remarks are based on the assumption that the Convention is to prefer option f), i.e. incorporation of the Charter articles themselves into the Treaties or, which seems to be more appropriate, into a new basic Treaty. The ensuing question as to the ‘fate’ of current Article 52(2) Charter is not, however, just a matter of its drafting (or technical) adjustment. The possible readjustment of the (new) Treaty around the Charter and the latter’s impact on existing Treaty rights give rise not only to the need of technical revision of the Charter’s horizontal clauses but, possibly, of existing Treaty provisions too.

Undoubtedly, purely technical amendments would be needed if one of the options a) to e) were chosen which, on the other hand, would mean that the regime of existing rights as governed by the Treaties will remain unaltered.

It is clear that Article 52(2) was intended to deal with a situation arising from the fact that the Charter, in its attempt to draw up a full catalogue of the fundamental rights of the EU, included also rights already expressly enshrined in the EC Treaty<sup>1</sup>. But it apparently has an additional implicit purpose which is in line with the purpose of Article 51(2) since the drafting of the Charter and its promulgation as a separate document presupposed its *cohabitation* with the existing Treaties. Thus the real (and specific) normative contents of its referral effect is actually to determine the scope of already existing rights and to ensure that the Charter, when restating such rights, does not confer “new” rights<sup>2</sup> and is not intended to extend the scope of the existing rights.

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<sup>1</sup> Article 52 of the Charter as a whole serves as a general limitation clause. Its paragraph 2 has this function with respect to the rights already enshrined in the Treaties.

<sup>2</sup> In which sense the second sentence of the Explanations of the Praesidium relating to this Article (paragraph) should be read.

If the Charter is to form part of the constitutional structure of the EU, the issue of the relationship between the Charter, on the one hand, and the Treaty provisions, on the other, will arise. So far human rights provisions have existed and operated in a particular context of Community law. The future status of an incorporated Charter may have the effect of putting existing Treaty rights in a subservient position.<sup>3</sup>

If, therefore, the incorporation option leads to an alteration of the regime of existing rights, preserving Article 52(2) with a view of its legal effect (to determine the scope of certain rights) and not only of its wording is disputable

This provision may be preserved as such provided the existing system, i.e. so far the scope of the rights is concerned, is retained. In this respect the possibility of an asymmetrical situation resulting from the existence of different scope and levels of protection and separate contexts in which the norms operate must also<sup>4</sup> be explored. The consideration based on the requirement of legal certainty is an important one but it may prove not entirely valid in the light of possible evolution of case law in the event of incorporation of the Charter

Notwithstanding these considerations on the legal aspects it may be maintained that replications between articles on the same rights both in the Charter and in the Treaties are not in themselves inadmissible. And that their elimination should not, therefore, be regarded as a purpose in itself.

Finally, it would be quite in accordance with the approach employed by a number of Constitutions to have (into the "Bill of Rights" part of a new basic Treaty) a definition of EU citizenship even though that may possibly entail some complement and/or adjustment of the Charter chapter. A complement or adjustment of the Charter to that effect would not be equivalent to its revision (reopening).

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<sup>3</sup> Judgements of 30 January 2002, T-54/99, and of 3 May 2002, T-177/01 seem to illustrate a tendency according to which Charter provisions prevail over Treaty provisions.

<sup>4</sup> On the other hand, the issue of "replications" is being dealt with on the assumption that Charter provisions fully correspond to existing Treaty rights which is disputed by some observers.

THE EUROPEAN CONVENTION  
THE SECRETARIAT

Brussels, 23 July 2002

Working group II

Working document 11

**Working group II “Incorporation of the Charter/accession to the ECHR”**

**Working document by Mr. Janusz TRZCINSKI**

1. The following is an attempt to address the questions formulated in Convention document of June 18, 2002 (Conv.116/02) concerning the incorporation of the Charter into the Treaties and the accession of the Union/Community to the European Convention of Human Rights (ECHR). At this point I wish to focus on responding to the first question.

2. Ad preliminary

I am in favor of incorporating the Charter into a new basic Treaty. It would be the optimum solution if the final document was the one and only document binding on Union members, replacing the present Treaties on the European Union and on the European Community. The present situation of a multitude of treaties does not facilitate comprehension of the organization and operation of the European structures, so knowledge about them has become a kind of “secret knowledge”.

Ad 1. The incorporation of the Charter into the new Treaty should be implemented in accordance with option (f). Thus, the Charter would become a chapter (title) of the new Treaty. That kind of regulation would be clear, transparent and more readily understandable, thus bringing Union law closer to its citizens with regard to the crucial issue of protection of fundamental rights. That would also enhance identification of the average citizen of united Europe with the goals of integration.

The position presented above I base on the conviction that the Charter is, because of the character of its contents, a normative act. The analysis of each of the articles of the Charter ascertains me that they fulfil the rigours for the legal norms applied in the theory of law-making. I therefore reject the view that the Charter is a document - declaration, an act of a programmatic character. The Charter will become legally binding if it is included as a part of the future Treaty.

WG II  
WD 011

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The question whether the Union is prepared for guaranteeing to the citizens of the member states that all the rights contained in the Charter are respected is another matter.

Ad 2. A logical consequence of adopting option (f) would be deletion of article 6(2) of the TEU, since full incorporation of the Charter would make it redundant to invoke the Convention or the constitutional traditions of the member states in the sphere of fundamental rights. The Charter as part of the Treaty would account for the sources of legal inspiration mentioned in article 6 (2) and would strengthen the protection of fundamental rights. The regulations enclosed in the art. 6 (2) of the TEU that refer to the ECHR and the constitutional traditions will be replaced by the art. 52 of the Charter, in particular its paragraph 3, and by the art. 53 of the Charter. In other words, the functions of the art. 6 (2) of the TEU will be taken over by the art. 52 and 53 of the Charter, and also, to some extent, the relevant provisions of the introductory part of the Charter having them transferred to the introductory part of the Constitutional Treaty.

Ad 3. The preamble to the Charter should become – after appropriate editorial changes – part of the Preamble to the Treaty because of the contained in it universal system of values and references to the basic documents on the protection of the rights and freedoms of the individual.

Ad 4. Incorporation of the Charter would necessitate a review of those provisions of the Treaties that deal with rights guaranteed by the Charter, and their adaptation to the new construction. In accordance with the suggestion contained in the question, ensuring the substantive and editorial cohesiveness of the new Treaty should be tackled in the future, after resolving the basic preliminary issues.

Ad 5. As regards interpretation of the new Treaty in its entirety, it would be enough to retain (after appropriate re-editing) the clause contained in article 52 (2) of the Charter, which would eliminate the need for numerous repetitions of that clause.

Ad 6. (a) The suggestion contained in the question to eliminate the reference in article 46 of the TEU to action of institutions should be accepted, since it corresponds to the established case-law of the Court of Justice.

(b) The issue taken up in the question goes beyond the basic problem of incorporation of the Charter. However, in line with the spirit of the whole reform, it would be desirable to extend the jurisdiction of the Court of Justice to subject matter related to justice and home affairs.

(c) It is probably too early at this point to introduce direct constitutional appeals to the Court of Justice with regard to fundamental rights. First, an assessment should be made of the experiences in this regard of the member states and the possibilities incorporated in the community appeals system (article 230-4 of TEC) and the institution of preliminary rulings (article 234 of TEC).

**THE EUROPEAN CONVENTION**

Brussels, 25 July 2002

THE SECRETARIAT

Working Group II

Working document 12

**Working group II " Incorporation of the Charter/accession to the ECHR"**

**Working document by René van der Linden**

**Subject: The relationship between the Charter and the ECHR**

- The question whether and how to incorporate the Charter in the Treaties is primarily for the EU to decide. The impact of each of the existing options on the legal status of the Charter have been very well set out in document CONV 116/02.
- However, when examining those options, one should also take into account their possible implications on the relationship between the Charter and the European Convention on Human Rights, an aspect which was given high importance by the Convention which drafted the Charter and gave rise to lengthy discussions within that body, given the sensitivity and the complexity of the matter. What was at stake here was nothing less than coherence and legal certainty in the protection of fundamental rights across Europe.
- In this context, it should be recalled that the solutions found by that Convention – in close cooperation with the Council of Europe's observers – are based on Articles 52 § 3 and 53 of the Charter and on a reference to the case-law of the European Court of Human Rights in the Preamble of the Charter. These solutions have been considered satisfactory by all parties concerned, including the Council of Europe Observers at the Convention and the Parliamentary Assembly of the Council of Europe.

- The importance of these references to the ECHR and the Strasbourg case-law for the proper interpretation of the Charter was recently stressed by the President of the ECJ, Mr Rodríguez Iglesias, in his address at the opening of the judicial year of the Strasbourg Court. Therefore, whatever solution for a possible incorporation of the Charter is chosen, we should ensure that these references are preserved (or at least adequately replaced).
- I know that this Convention is also called upon to look into the question of a possible accession of the EC/EU to the ECHR and that in the event of this accession taking place, much of the reasons for keeping these references may at first sight seem to become obsolete. However, while I do think, like the President of the ECJ and many others, that accession is a necessary complement to the Charter, I am personally not entirely convinced at this stage that accession would make references to the ECHR in the Charter superfluous, since Article 52 § 3 of the Charter also defines the proper *content* of many of the rights included in the Charter.<sup>1</sup> After all, several national Constitutions of States Parties to the ECHR also make a special reference to the ECHR.
- In any event, accession has not been decided yet and even if this Convention were to advocate this solution, it is not for it to decide and to amend the Treaties accordingly; so it should not be envisaged to drop the references to the ECHR and its case-law before accession has been duly decided.
- On the question of Article 6 § 2 TEU, it is clear that we need a reference to the ECHR in the Treaties for as long as the Charter (including its references to the ECHR) is not incorporated and/or as long as accession has not yet taken place. One should not forget that Article 6 § 2 TEU has turned out to be the basis on which the ECJ has followed the ECHR and the Strasbourg case-law in an exemplary way, thereby making a substantial contribution to legal certainty and coherence in this important area.<sup>2</sup>

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<sup>1</sup> See the wording of Article 52 § 3: “... the *meaning and scope* of those rights shall be the same as those laid down by the said Convention”

<sup>2</sup> “... even though the Convention is not formally applied as a constituent element of Community law, being instead merely taken into account as a source of inspiration for the purposes of identifying general principles, the case-law of the Court of Justice clearly shows that it applies the Convention as if its provisions formed an integral part of Community law” (Mr Rodríguez Iglesias, President of the ECJ, Strasbourg, 31 January 2002, translation).



THE EUROPEAN CONVENTION

Brussels, 4 September 2002

THE SECRETARIAT

Working Group II

Working document 14

## Working group II "Incorporation of the Charter/accession to the ECHR"

**Subject : Note by Neil MacCormick "Clarifying Horizontal Articles"**

Following the discussion on the morning of 22 July, I attach suggested modifications of Charter Articles 51.1 and 2, and 52.2.

I believe that adoption of these amendments would meet the principal points of difficulty raised by Baroness Scotland in relation to the 'horizontal' provisions of the Charter, and the relationship of the Charter to the rest of the constitution-treaty if it were incorporated therein, as in my opinion it ought to be.

51

Scope

1. The provisions of this Charter are addressed to the institutions and bodies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof *only* in accordance with *the (two words deleted)* powers *conferred on the bodies and institutions of the Union by or under other Chapters of this constitution-treaty*.

2. This Charter does not establish any new power or task for the Community or the Union, or modify powers and tasks defined by the *(one word deleted) other Chapters of this constitution-treaty*.

#### 52 Scope of guaranteed rights

1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.

2. Rights recognised by this Charter *(thirteen words deleted) with a view to affirming the fundamental character of rights for which more detailed provision is made in another chapters of this constitution-treaty shall be exercised under the conditions and within the limits laid down in the relevant chapter. (fourteen words deleted)*

3. In so far as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.

Neil MacCormick

1 September 2002

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**THE EUROPEAN CONVENTION**

Brussels, 12 September 2002

THE SECRETARIAT

Working Group II

Working document 15

## **Working group II "Incorporation of the Charter/accession to the ECHR"**

**Document by Mr. Ingvar Svensson and Mrs. Lena Hjelm-Wallén****Subject: Proposals for Accession of the EU to the European Convention on Human Rights**

### **Intervention in favour of an accession of the EC/EU to the ECHR.**

(1 enclosure)

This paper - presented as a **working document** to the members of Working Group 2 - deals with one of the two main issues with which our working group is entrusted, i.e. the accession of the European Communities/European Union to the European Convention on Human Rights (ECHR)<sup>1</sup>.

\* \* \* \* \*

An accession of the EC/EU to the ECHR has been advocated for over 20 years. The proposal is endorsed i. a. by the European Parliament, the European Commission, the Parliamentary Assembly of the Council of Europe, most member States of the European Union and of the Council of Europe, by the "Comité des Sages" (in its human rights agenda for the European Union for the year 2000) as well as by members of national parliaments, numerous other politicians, lawyers in member states and human rights NGO:s. The purpose of accession is not to confer general competence on the

European Union in the field of human rights, but merely to commit the EU to the human rights standards to which its member States are bound and to submit EU institutions to the same external scrutiny by the Strasbourg Court as all national authorities. An accession, as such, would not affect the current distribution of competencies between the Union and its member States.

The fundamental political and legal arguments in favour of accession remain:

- Accession would strengthen the protection of European citizens who are presently denied the right to bring applications against the institutions of the European Union before the Strasbourg Court.
- It is essential to avoid a situation in which there are alternative, competing and conflicting systems of human rights protection within the European Union and in greater Europe.
- Dual protection systems would weaken the overall protection offered and undermine legal certainty in the human rights field in Europe. Divergent catalogues would be applied by the European Court of Human Rights and the Court of Justice, each acting within its own context. The risk of divergent praxis is not just theoretical. It has already occurred and will continue to pose problems<sup>2</sup>.
- Acts by some EU bodies remain outside any effective judicial control<sup>3</sup> and yet the Strasbourg Court will continue to hold member states responsible<sup>4</sup>.
- The credibility of the Community in the eyes of third countries would be considerably enhanced if we were prepared to arrange for an independent body to subject respect for human rights to a critical review.
- Accession would have the advantage of enabling the Community institutions to play a full role in proceedings before the European Court of Human Rights that concern Community law.

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<sup>1</sup> The question of the Union's legal personality is under consideration in Working group 3. This paper remains neutral on that particular issue even though the present contribution alternately uses the expressions European Community (EC) or the European Union (EU).

<sup>2</sup> Reference can be made to the question whether a person's right to respect for his or her home (Article 8 of the ECHR) covers also business premises, the precise scope of the right to remain silent and not to contribute to incriminating oneself (Article 6 of the ECHR) or to the judgments given with respect to the prohibition to disseminate in Ireland information regarding abortions lawfully carried out in the United Kingdom (Art 10 ECHR). Such differences of approach can be explained by the simple fact that one court has primarily the responsibility to ensure the efficient operation of the internal market, while the other is charged with protecting fundamental rights.

<sup>3</sup> The Luxemburg Court is not competent to review the operational activities of Europol or other bodies set up by conventions adopted under Title VI of the EU Treaty.

<sup>4</sup> See for instance *Cantoni v. France* (1996) or *T.I v. UK* (appl. 43844; 7 March 2000). NB also the pending case of *Senator Lines* (Appl. 56672/00).

- Accession would prevent the creation of new dividing lines on the European continent. The human rights acquis of the Council of Europe and the common standards defended by the member States of the Council of Europe (44 member States) and of the European Union are the same. An accession is not in contradiction with the right of the EU and its member states to offer higher levels of human rights protection in certain areas. On the other hand, a dual system of rights poses a risk not only to the fundamental principle of universality of human rights but also the inherent danger of the re-emergence of a "Europe à deux vitesses" in an area - common human rights standards - where such divisions must not exist.

- Special arrangements between the two Courts have been discussed but is not a valid option for a future with unknown developments. Accession therefore remains the most effective way to ensure the necessary coherence between the ECHR and Community law - provided that it is regulated in a manner consistent with existing Community competence.

\* \* \*

Many of the legal and technical problems of an accession have been considered and can be overcome<sup>5</sup> but in the light of hesitations expressed against accession, the following issues seem to require particular comments, in some cases further exploration:

#### 1. Lacking competence.

In its opinion 2/94, the ECJ stated that according to the then existing Community law the Community lacked competence to accede to the ECHR. This is till the case but in the preparations for the Nice Intergovernmental Conference Finland, supported by several other EU partners, took the initiative<sup>6</sup> to propose a modification to article 303 of the Treaty on the European Community which would allow for the EC to accede to the ECHR. The proposal was and remains a quite simple amendment to article 303 as follows: "The Community shall establish all appropriate forms of cooperation with the Council of Europe. The Community shall have the competence to accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November, 1950".

*It is suggested that the working group makes a recommendation to this effect in its report to the plenary.*

#### 2. Threat to the Community legal order.

The most frequent argument against accession is that it would threaten the autonomy of the Community legal order. The answer to that argument is the following: Community law as such is not opposed to the integration of the European Community into a treaty-based judicial mechanism.

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<sup>5</sup> See in this respect report by a working group of the Steering Committee on Human Rights of the Council of Europe (CDDH), doc GT-DH-EU (2002), approved by the CDDH at its 53<sup>rd</sup> meeting and subsequently approved by the Committee of Ministers at its meeting on 11 July 2002.

<sup>6</sup> See doc no. CONFER 4775/00). Alternatively the accession should be made by the European Union if and when it gains legal personality.

The EC is already Party to Council of Europe "partial agreements" and conventions<sup>7</sup>. The European Union could make a general declaration of competence similar to the one made in respect of the UN Convention on the Law of the Sea<sup>8</sup>. The EC has agreed to submit the Community legal order to the compulsory dispute resolution mechanism of the WTO. Prominent representatives of EU institutions agree that there are other international conventions to which the European Union may well have reason to accede in the future. In this context one could also note that the EU urges third states to accept the Rome Statute of the International Criminal Court. Therefore, in the central sphere of human rights one cannot continue to argue that the Community legal order should remain exempt from external control.

*It is suggested that these arguments be retained in the report of the working group concerning the issue of accession.*

### 3. Uncertainty regarding ensuing obligations.

Yet another argument is that it is not quite clear what the accession entails as far as obligations for the European Union are concerned. As a starting point, it should be noted that the scope of EU accession would be limited to areas in respect of which the Union already has competence under the EU treaties.

For the sake of legal certainty, it could be stipulated in the accession treaty that the Convention and its protocols will be binding upon the European Union only in those areas in which it is competent. Such a treaty could also contain a provision enabling the ECJ to be consulted by the European Court of Human Rights in matters where questions of competence arise. As mentioned above the European Union could therefore make a general declaration of competence similar to the one made in respect of the UN Convention on the Law of the Sea. Alternatively, the EC/EU could also deal with this particular question in the form of an appropriately phrased reservation.

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<sup>7</sup> Per 20 January 2002 – the EC was a party to 7 Conventions of the Council of Europe, mainly in the medical/pharmaceutical and animal protection fields: ETS 26, 33, 39, 84, 87, 104,123 as well as to Partial Agreements such as the European Pharmacopea and EURIMAGES . In addition, other CoE conventions have been drafted or modified to allow for EC accession if such was deemed appropriate.

<sup>8</sup> This suggestion was made by Mr Petite, Director General of the Legal Service of the Commission, during his hearing before the Working Party, working document no. 13 of 2 August 2002, page 52.

*It is suggested that also these arguments be retained in the report of the working group concerning the issue of accession.*

#### 4. An uneven application of the ECHR.

Reference has also been made to the fact that an "uneven application" of the Convention might result from the fact that the current members of the European Union have not ratified all ECHR protocols equally and that individual member States have made various reservations to the ECHR and its protocols. Regarding the ECHR protocols, the actual differences in ratification between the current EU members are not that great. All current EU member States have ratified Protocols Nos. 1 and 6 to the ECHR. Protocols Nos. 4 and 7 have been ratified by 12 and 9 EU member States respectively. Protocols No. 12 and 13 have only been opened for signature in 2000 and 2002 respectively and are therefore not yet largely ratified. A more detailed information is given in the attached tables. In this context, attention must also be paid and solutions found to such issues as the right of derogation and the "margin of appreciation" currently ensured to States Parties to the ECHR through the Convention and by the caselaw of the Court in Strasbourg.

*It is suggested that also these arguments be retained in the report of the working group.*

#### 5. Requirements regarding remedies.

Attention has been directed to Art 13 of the ECHR which obliges parties to the convention to provide everyone - whose rights and freedoms as set forth in the Convention have been violated - with an effective remedy before a national authority. This is an area which requires attention. There may be a need for improvements in judicial protection within the EU. In a recent case, the ECJ has confirmed that it is possible to envisage a system of judicial review of legality of Community measures of general application different from that established by the founding Treaty. But the Court held that it is for the Member states, if necessary, to reform the system currently in force<sup>9</sup>.

#### 6. An accession would be too complicated from a treaty point of view.

Some argue that an accession is also too complicated and cumbersome from the point of view of treaty law and that an amending Protocol to the ECHR must be ratified by all Council of Europe member States. The Council of Europe has suggested that instead of concluding an amending protocol between the current States Parties to the ECHR, it could be envisaged to prepare an accession treaty between all States Parties to the ECHR and the EC/EU. Such a procedure is already used within the European Union for the admission of new member States. Article 49 paragraph 2 of the EU Treaty provides that the conditions of admission and the adjustments to the

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<sup>9</sup> See in this respect: *Unión de Pequeños Agricultores v. Council*, case C-50/00P, § 45.

EU Treaties “shall be the subject of an agreement between the member States and the applicant State”.

*It is suggested that this solution is also retained among the recommendations from the working group.*



### Enclosure.

The protocols, like the Convention itself, guarantee minimum standards which largely coincide with universal standards laid down in the International Covenant on Civil and Political Rights, to which all EU member States are Parties. Several rights guaranteed by the ECHR protocols have directly influenced the wording of corresponding articles contained in the EU Charter of Fundamental Rights.

An accession to the ECHR protocols could be gradual, starting with the Convention and Protocols No. 1 and 6, which have been ratified by all EU member States. As in the case of the Convention itself, the EU would accede to the protocols only to the extent of its existing competencies. The legal situation of member States which have not ratified a particular protocol would therefore remain unaffected in so far as their national law and practice are concerned.

In this context one should also observe reservations made by EU member States with respect to individual provisions of the Convention and its protocols concerning areas which are currently not within EU competence, such as administrative judicial procedure (Austria, Finland), legal aid (Ireland) or the legal status of members of the national armed forces (France, Portugal and Spain). However, these reservations would continue to apply with respect to national law and practice even if the EC/EU were to ratify the Convention without any reservations. Even if EU competencies were to extend, at a later stage, to areas such as armed forces, the EU would only be bound with respect to armed forces that would be under EU command and control. National armed forces would continue to be governed by national regulations, and these States' obligations under the ECHR in this respect would continue to be circumscribed by the reservations made. It would therefore seem appropriate to limit reservations by the EC/EU in the event of accession to matters specific to the EC/EU<sup>10</sup>.

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<sup>10</sup> This was the position taken by the Commission back in 1979, see the Memorandum on the accession of the European Communities to the Convention for the Protection of Human Rights and Fundamental Freedoms, adopted on 4 April 1979, EC Bulletin Supplement 2/79, § 29.

**CHARTS OF SIGNATURES AND RATIFICATIONS OF THE E.C.H.R. <sup>(11)</sup>**  
**AND OF ITS PROTOCOLS <sup>(12)</sup>**

*(Status as of 27 August 2002)*

**I. States members of the European Union :**

|                                            | <b>ECHR</b> | <b>Prot. 1</b> | <b>Prot. 4</b> | <b>Prot. 6</b> | <b>Prot. 7</b> | <b>Prot. 12</b> | <b>Prot. 13</b> |
|--------------------------------------------|-------------|----------------|----------------|----------------|----------------|-----------------|-----------------|
| <b>STATES :</b>                            |             |                |                |                |                |                 |                 |
| <b>I. <u>Austri</u></b><br><b><u>a</u></b> | R           | R              | R              | R              | R              | S               | S               |
| <b>Belgium</b>                             | R           | R              | R              | R              | -              | S               | S               |
| <b>Denmark</b>                             | R           | R              | R              | R              | R              | -               | S               |
| <b>Finland</b>                             | R           | R              | R              | R              | R              | S               | S               |
| <b>France</b>                              | R           | R              | R              | R              | R              | -               | S               |
| <b>Germany</b>                             | R           | R              | R              | R              | S              | S               | S               |
| <b>Greece</b>                              | R           | R              | -              | R              | R              | S               | S               |
| <b>Ireland</b>                             | R           | R              | R              | R              | R              | S               | R               |

<sup>11</sup> Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5).

<sup>12</sup> Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 9)  
 Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already included in the Convention and in the first Protocol thereto (ETS No. 46)

Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of the Death Penalty (ETS No. 114)

Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 117)

Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 177)

*Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms on the abolition of the death penalty in all circumstances (ETS No. 187)*

|                       |   |   |   |   |   |   |   |
|-----------------------|---|---|---|---|---|---|---|
| <b>Italy</b>          | R | R | R | R | R | S | S |
| <b>Luxembourg</b>     | R | R | R | R | R | S | S |
| <b>Netherlands</b>    | R | R | R | R | S | S | S |
| <b>Portugal</b>       | R | R | R | R | S | S | S |
| <b>Spain</b>          | R | R | S | R | S | - | S |
| <b>Sweden</b>         | R | R | R | R | R | - | S |
| <b>United Kingdom</b> | R | R | S | R | - | - | S |

## II. States candidates to the European Union membership:

|                            | <b>ECHR</b> | <b>Prot. 1</b> | <b>Prot. 4</b> | <b>Prot. 6</b> | <b>Prot. 7</b> | <b>Prot. 12</b> | <b>Prot. 13</b> |
|----------------------------|-------------|----------------|----------------|----------------|----------------|-----------------|-----------------|
| <b>STATES :</b>            |             |                |                |                |                |                 |                 |
| <b>II. <u>Bulgaria</u></b> | R           | R              | R              | R              | R              | -               | -               |
| <b>Cyprus</b>              | R           | R              | R              | R              | R              | R               | S               |
| <b>Czech Republic</b>      | R           | R              | R              | R              | R              | S               | S               |
| <b>Estonia</b>             | R           | R              | R              | R              | R              | S               | S               |
| <b>Hungary</b>             | R           | R              | R              | R              | R              | S               | S               |
| <b>Latvia</b>              | R           | R              | R              | R              | R              | S               | S               |
| <b>Lithuania</b>           | R           | R              | R              | R              | R              | -               | S               |
| <b>Malta</b>               | R           | R              | R              | R              | -              | -               | R               |
| <b>Poland</b>              | R           | R              | R              | R              | S              | -               | S               |
| <b>Romania</b>             | R           | R              | R              | R              | R              | S               | S               |
| <b>Slovakia</b>            | R           | R              | R              | R              | R              | S               | S               |
| <b>Slovenia</b>            | R           | R              | R              | R              | R              | S               | S               |
| <b>Turkey</b>              | R           | R              | S              | -              | S              | S               | -               |

(R = Ratification ; S = Signature; - = No action)

**THE EUROPEAN CONVENTION**

Brussels, 13 September 2002

THE SECRETARIAT

Working Group II

Working document 16

## **Working group II "Incorporation of the Charter/accession to the ECHR"**

**Subject : Note by Baroness Scotland of Asthal: "The search for the "missing horizontal"  
in the Charter of Rights – an interim report on progress"**

### **I. Introduction**

1. My paper on the "missing" horizontal article in the Charter of Rights<sup>1</sup> discussed the problem concerning the meaning and scope of provisions in the Charter which are based neither on the Treaties nor on the ECHR. Since then our Working Group has had the benefit of the opinion of M. Piris<sup>2</sup>, Director-General of the Council Legal Service, that the existing horizontal articles in the Charter are insufficient. I have also studied Professor Mac Cormick's paper<sup>3</sup> which contains helpful proposals for dealing with some (but not all) of the problem. My paper, for discussion, reports further progress. It is intended to help find a positive way to give the Charter greater legal status without losing or changing the wording of any of the substantive Charter articles.

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<sup>1</sup> Working document 4 - Brussels, 9 July 2002

<sup>2</sup> Working document 13 – Brussels, 5 September 2002, (p 23-27)

<sup>3</sup> Working document 14 – Brussels, 4 September 2002

*The problem*

2. Charter Article 52 does not deal with all the rights in the Charter. 52(2) tells us about rights which are based on the Community Treaties or the Treaty on European Union; and 52(3) tells us about rights corresponding to provisions in the ECHR. But there is no 52(4) to tell us how to interpret Charter provisions which do not fall into either of those categories.

What legal meaning and scope should be given to those provisions in a legally binding Charter by our citizens, or the Court?

3. Amongst the horizontal articles, the only available guide to the interpretation of such provisions appears to be Charter Article 51. But that article deals with the scope of the provisions of the Charter as a whole and the general exclusion of any new powers or tasks for the Community or the Union. It would leave many ambiguities and unresolved questions were the Charter to be incorporated within the Treaties. For example, does Article 51 mean that Charter provisions based neither on the Community Treaties or ECHR are to be interpreted as having no legal effect?

4. My earlier paper gave examples of Charter provisions which appear to fall into this uncertain category. I offered some practical illustrations<sup>4</sup> of why the absence of a horizontal article to deal with them could be a serious difficulty. The problem is essentially one of ambiguity and the absence of legal certainty. And the more status the Charter is given, the more important it is to be clear about what such provisions actually mean. We should not open Europe to the accusation that it is misleading its citizens. And national Governments will expect to be clear about the obligations a legally incorporated Charter entails for them. I believe that our Group should address such issues directly in its Report to the Convention plenary – and make appropriate recommendations.

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<sup>4</sup> My paper listed Article 3 (right to integrity), 9 (right to marry), 10 (freedom of thought, conscience and religion), 13 (freedom of the arts), 14 (right to education), 19 (Protection in the event of removal, expulsion or extradition), 21 (non-discrimination), 24 (rights of the child), 25 (rights of the elderly), 26 (integration of the persons with disability), 28 (right of collective bargaining and action), 29 (right of access to placement services), 30 (protection in the event of unjustified dismissal), 31 (fair and just working conditions), 32 (child labour), 33 (family and professional life), 50 (right not to be tried or punished twice in criminal proceedings for the same criminal offence).

### A. Clues

5. I do not claim to have discovered a simple, single answer to the problem. However, our Working Group discussions have pointed us towards three concepts which are already within the Charter and which seem to be important clues towards an acceptable solution. Indeed, I think that it is common ground that these three concepts formed part of the approach which enabled a consensus on the Charter to be reached within the original Convention. They are:

- A. existing Community law on the constitutional traditions common to the Members States which is referred to in the Charter Preamble<sup>5</sup> and in the Commentary<sup>6</sup>
- B. the concept of "principles" which also appears in the Charter Preamble<sup>7</sup>, in Charter Article 51(1) – "observe the principles" – and in several of the substantive Charter articles<sup>8</sup> and commentaries<sup>9</sup>
- C. the references to subsidiarity in the Charter Preamble<sup>10</sup>, Article 51(1) and the related references to "national law and practices" in the texts of some of the articles themselves<sup>11</sup>.

6. In the present Charter text these three important concepts are not dealt with in the same way as those provisions of the Charter which correspond to provisions of the ECHR or the Union and Community treaties (dealt with by Charter Articles 52(2) and 52(3)). In particular, it is for the most part not clear which concept applies to which Charter article. There is the possibility that some Charter articles do not benefit from A, B or C, or from the

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<sup>5</sup> "This Charter reaffirms, with due regard for the powers and tasks of the Community and the Union and the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States (...)"

<sup>6</sup> E.g. Articles 14, 17, 20, 49.

<sup>7</sup> "The Union therefore recognises the rights, freedoms and principles set out hereafter"

<sup>8</sup> Articles 23, [41], 49.

<sup>9</sup> Articles [1], 3, 14, 20, 23, 26, 34(1), 35, [36], 37, 38, [41], 47, 49, 50.

<sup>10</sup> "This Charter reaffirms, with due regard for the powers and tasks of the Community and the Union and the principle of subsidiarity, the rights (...)"

<sup>11</sup> Article 9 (right to marry), 10(2) (right to conscientious objection), 14 (right to education), 16 (freedom to conduct a business), 27 (workers' right to information and consultation), 28 (right of collective

existing provisions in Charter article 52. Is such uncertainty tolerable in a Charter which has legal status beyond that of a solemn declaration?

## II. Way forward?

7. I believe that the “missing horizontal” (notionally 52(4)) should address itself to all the Charter provisions not covered by 52(2) and 52(3). Following the logic of the Charter itself (as discussed above) the “missing horizontal” should contain three elements. First, regarding the constitutional traditions, the new horizontal provision could usefully confirm that, in the cases where the remaining Charter provisions are indeed part of the constitutional traditions of all the Member States, they enjoy the status of general principles of law which the Community must respect<sup>12</sup>. I would go further and say that, even where a Charter provision does not have that status, it should be regarded, by virtue of its inclusion in the Charter, as an aspiration for the Union.

8. It might also be possible to connect this latter point with the Charter concept of “principles” so that the aspirational character of all such Charter articles is suitably clarified and confirmed. But special provision concerning “principles” would be desirable even if no such connection is made. We should avoid the possibility of confusion between, on the one hand, the meaning of “principles” as in Article 6(2) of the Union Treaty and, on the other hand, the “principles” referred to in Charter Article 51 which are to be observed by the institutions and bodies of the Union within the strict limits of their competences.

9. As regards subsidiarity, it should not be necessary to duplicate the general reference to the topic which is made in Charter Article 51. However, I believe that there may be a special need to reflect the fact that some Charter provisions refer in particular to national

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bargaining and action), 30 (protection in the event of unjustified dismissal), 34 (social security), 35 (health care), 36 (access to services of general economic interest).

<sup>12</sup> C.f. ECJ, Judgment of 18/05/1982, AM & S / Commission (155/79); ECJ, Judgment of 14/05/1974, Nold KG / Commission (4/73); ECJ, Judgment of 17/12/1970, Internationale Handelsgesellschaft mbH / Einfuhr- und Vorratsstelle für Getreide und Futtermittel (11/70)

law and practice. The new horizontal provision could require full regard to be given to such references.

10. I believe that it should be possible to draft an extension to Charter Article 52, to cover the matters I have proposed, with economy and precision.

11. Finally, I would strongly support the expert opinion put forward to our Group by M. Piris that the interests of legal certainty and security also require clarification of precisely which Charter provisions are referred to by Charter Articles 52(2) and 52(3). M. Piris suggested that the Commentary issued by the Praesidium to the original Convention was helpful to us in that regard. He also suggested that it should make clear that the restriction on new (or modified) tasks or powers in Article 51 applies also to Article 52 (and the other horizontal articles). I believe that our Group should consider these points with a view to making a recommendation on this matter as well.

#### Summary

12. There is currently a gap in Charter Article 52. This gap could prejudice a favourable decision on incorporating the substantive articles of the Charter in their current form. I believe we can build on the work of our predecessors to fill that gap in a positive way.



**THE EUROPEAN CONVENTION**

Brussels, 16 September 2002

THE SECRETARIAT

Working Group II

Working document 17

## **Working group II "Incorporation of the Charter/accession to the ECHR"**

**Subject: Enforceability of the Charter of Fundamental Rights and improvement of the individual's right to legal redress**

**Working Document by Professor Jürgen Meyer, Delegate of the German Bundestag to the Constitutional Convention of the European Union**

Proposal: The second half of Article 230 (4) EC be amended to read as follows:

Any natural or legal person may, under the same conditions, institute proceedings against a decision addressed to that person or against a decision which, although in the form of a regulation or a decision addressed to another person, is of direct **or** individual concern to the former.

Grounds:

### **Make it clear that the Charter is enforceable**

A Charter which, although binding as part of community law, cannot be enforced by the individual, or only under onerous conditions, will not be accepted by the citizens. The Convention must therefore clearly answer citizens' questions about the procedure by means of which they can they directly enforce their Charter of Fundamental Rights.

The best way of ensuring the strictly binding nature of the individual rights set out in the Charter, and in particular the right to effective judicial redress set out under Article 47, is a modification to the current system for obtaining individual legal redress. The proposal put forward here allows the citizens to bring a claim for breach of their (fundamental) rights before the European Court, directly and by their own decision.

A provision should be inserted into the text of the Charter, into Article 47 for example, which makes reference to such a remedy:

“Under the conditions set forth in Article 230(4) EC, every person shall have the right to bring a claim due to a breach of the rights and freedoms recognised in this Charter.”

### **Make it easier to bring direct claims before the European Court**

There are two situations, in particular, where the individual should not find himself in a position where he can obtain legal address only after a specific measure directed against him has been taken. Challenges to a Community decision should be admissible,

1) if a decision taken is of direct concern to him, i.e. the legal measure subject to the challenge directly affects his legal position and there is no margin for discretion regarding an implementation measure that may be required,

or

2) if a decision taken is of individual concern to him, i.e. the legal measure subject to the challenge affects him due to certain personal characteristics or special circumstances and therefore individualises him in a way similar to a decision addressed to a specific person.

Both situations in which a citizen may find himself, should be seen as independent from one another. *Each* one requires that it be possible to determine legality without further delay. The proposed amendment therefore changes the two requirements of Article 230(4) EC, which until now had to be applied cumulatively, with the result that they now represent alternative options.

### **Remove the deficiencies in the existing system for obtaining legal redress**

One aim of the proposed reform is to close the gaps which are present in the existing system for obtaining legal redress. In practice, the two options for seeking legal address – i.e. direct claims and the preliminary decision-making procedure – have, in certain cases, failed to provide effective legal protection for the citizens.

Until recently, the expectation was that the European Court might change its established practice with respect to the admissibility of direct claims by private individuals. In its judgement dated 25<sup>th</sup> July 2002, however, it stated that on the basis of the wording of Article 230 EC, further easing of the conditions for an individual claim was not possible. Express reference was made to the possibility of a change in primary legislation.<sup>1</sup>

The proposed amendment reliably ensures that all claims which were admissible under existing law, would still be so after the amendment. The procedural *acquis communautaire* remains fully intact.

### **The additional workload for the courts is not a convincing objection**

It is true that this amendment will probably increase the workload of the European courts. However, in a community based on constitutional rights, this must not prevent the implementation of a change in the system for obtaining legal redress that is considered to be expedient. Rather, the Court of First Instance attached to the European Court of Justice must be provided with the necessary institutional and human resources to enable it to guarantee effective legal protection for the entire duration of the proceedings. The reform of the judicature by the Nice Treaty has brought about improved conditions in this respect (Art. 225, 225a EC).

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<sup>1</sup> Judgement of the European Court dated 25<sup>th</sup> July 2002, Rs. C-50/00 P, Unión de Pequeños Agricultores/Rat, not yet published in the official law reports, marginal note no. 40 et seq.

THE EUROPEAN CONVENTION

Brussels, 16 September 2002

THE SECRETARIAT

Working Group II

Working document 18

## Working group II "Incorporation of the Charter/accession to the ECHR"

Working document by Mr Esko Helle, supported by Mr Vytenis Andriukaitis and Mr Neil MacCormick.

**Subject: Accession by the European Union to the European Convention on Human Rights**

### 1 Introduction

1. Along the lines of the Laeken Declaration, the Convention is expected to consider the question whether the European Union<sup>1</sup> should accede to the European Convention on Human Rights (hereafter "ECHR"). Technically, the question is whether the new basic treaty should contain a specific power-conferring provision (legal basis) authorising the accession by the Union to the ECHR. For the moment, the Union's founding Treaties do not contain such a legal basis and, the Court of Justice has held, the Union has no competence to accede to the ECHR.<sup>2</sup>
2. By now, it is clear that an accession to the ECHR by the Union would not be an alternative to the granting of a legal status to the EU Charter of Fundamental Rights. These two initiatives pursue the same objective – the protection of human/fundamental rights – but with different means and functions and, hence, are to be regarded as complementary.<sup>3</sup>

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<sup>1</sup> The use of the term "Union" hereafter is in no way intended to prejudge the question whether it was the Union or the Community that acceded to the ECHR – a question that depends on, *inter alia*, whether the Union will be attributed single legal personality.

<sup>2</sup> See Opinion 2/94 [1996] ECR I-1759.

<sup>3</sup> See CONV 116/02 p. 17 and the references therein.

3. The arguments for the accession by the Union to the European Convention are so well known that they hardly need to be repeated in detail. Suffice it to recall that the Union is taking over more and more legislative and other functions from the Member States who are all Contracting Parties to the ECHR concluded in 1950. In order to maintain the significance of the ECHR, it is therefore indispensable, from the point of view of the citizen in particular, that the Union accedes to the Convention.
4. The accession has however been purported to involve certain problems which concern, on the one hand, the position of the Union legal order and, on the other, the relationship between the Union and the Member States. These are, in particular, the effects of the accession upon the autonomy of Union law; the distribution of competence between the Union and the Member States; and the differences in the degree to which the Member States have signed up to the Protocols of the ECHR and/or made reservations to the Convention.
5. The purpose of this initiative is to express our support for the accession by the Union to the ECHR and to propose a text of a new legal basis to that effect. We will also briefly seek to show why we consider that the above mentioned problems relating to accession are more apparent than real – or, at least, not insuperable.

## 2. The Autonomy of Union Law

6. The claim that the Union's accession to the ECHR would adversely affect the autonomy of Union law is mainly based on the argument that, under the ECHR, the European Court of Justice would lose its monopoly to rule on the validity and interpretation of Union law. The Court of Justice would, the argument is, also lose its role as the sole arbiter in disputes amongst the Member States and between the Member States and the institutions.
7. We do not find these arguments convincing. In the first place, the relationship between the Court of Human Rights and the courts of the Contracting Parties to the ECHR may not be described as a hierarchical one: the Human Rights Court has no power to rule on the validity or interpretation of the laws of the Contracting Parties but can only establish violations of the Convention.<sup>4</sup> In any case, the European Court of Justice has acknowledged that the Union's competence in the field of international relations necessarily entails the power to submit to the decisions of a court which is created or designated by such an agreement as regards the interpretation and application of its provisions.<sup>5</sup> The European Court of Human Rights would by no means be the only international judicial body the decisions of which are binding on the Union and its institutions including the Court of Justice.<sup>6</sup> In fact, the Human Rights Court, too, already now increasingly often rules, directly or indirectly, on acts of the Union. However, in the present situation where the Union is not party to the ECHR, there is a risk that the Union's institutions are not in a position to defend their actions before the Court, and it is the Member States that are being held responsible for acts or omissions on which they had little if any influence.<sup>7</sup>

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<sup>4</sup> Cf., *ibid.*, p. 20.

<sup>5</sup> Opinion 1/91 [1991] I-6079, para. 40.

<sup>6</sup> Currently such bodies exist under e.g. the WTO Agreement and the UN Convention on the Law of the Sea.

<sup>7</sup> See CONV 116/02 p. 21 and the cases mentioned therein, and also the intervention of Michel Petite, WG II, WD 13, p. 51-52.

### 3. The Distribution of Competence between the Union and the Member States

8. It has been argued that accession by the Union to the ECHR would give rise to a shift of competence from the Member States to the Union in the field of fundamental human rights, in particular, as a result of the positive obligations deriving from the European Convention.
9. Again, we do not share this view. First, the obligations under the ECHR are predominantly *obligations to respect* the rights contained in the Convention and, thus, by nature entail restrictions on the exercise of competence by the Contracting Parties rather than positive obligations requiring them to take certain measures. Thus, in the event of accession to the Convention by the Union too, the status as a Contracting Party does not automatically imply any general competence in the field of fundamental human rights.
10. While it is true that complying with the obligations laid down by the ECHR may in *some circumstances* require positive action and, by implication, the requisite competence, the latter is inextricably linked to the substantive competence possessed by the entity in question. Human rights can be described as "horizontal" provisions that do not easily fit in the traditional division of competence according to the specific policy area. They are rights and principles that have to be taken account of in any field of law by the legislator as well as by the courts and administration. It is therefore clear that any positive obligations that might derive from the ECHR would only become relevant in cases where the Union already had the competence to act under some substantive provision of the Treaty. This means that the respective obligations of the Union and the Member States to exercise competence pursuant to the ECHR do not imply any zero-sum game in respect of the division of competence. In other words, both the Union and the Member States would be under an obligation to carry out the necessary measures under the Convention within their respective spheres of competence. The logic is analogous to that in Article 51.1., second sentence, of the EU Charter of Fundamental Rights.<sup>8</sup>
11. Furthermore, the European Union has already committed itself to respecting human rights – and the ECHR, in particular – as general principles of Union law. It is therefore plausible to suggest that accession to the ECHR would not entail any new obligations for the Union but only modify the nature of that commitment. This is, for the reasons stated above, equally true with the claim that the accession might change the distribution of competence between the Union and the Member States. An express provision to that effect might even be included in the legal basis conferring competence upon the Union to accede to the ECHR, along the lines of Article 51.2 of the EU Charter of Fundamental Rights.<sup>9</sup>

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<sup>8</sup> "They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers."

<sup>9</sup> Art. 51.2. "This Charter does not establish any new power or task for the Community or the Union, or modify powers and tasks defined by the Treaties."

#### 4. The Legal Basis for the Accession of the European Union to the ECHR

12. In the light of the above considerations, we propose that the following provision would be included, at an appropriate location, in the new basic treaty:

*Article ?*

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***The Union shall seek to accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950<sup>10</sup>, in accordance with the procedures set out in [the current Article 300 EC]<sup>11</sup>. Accession to the Convention shall in no way modify the powers and tasks of the Union as defined by this Treaty.***

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#### 5. Questions to be Addressed in Negotiations on Accession

13. There are also other legal questions which relate to the accession by the Union to the ECHR. These do not however pertain to the reform of the EU Treaties but to the amendment of the ECHR to cater for the Union's accession<sup>12</sup>, and may therefore only be solved in the eventual negotiations on the accession. At that stage there, of course, needs to be a consensus among the Member States on the choice of various options that are available. Such questions include:
- to which Protocols of the Convention the Union should accede to and whether it should make reservations to the Convention or the Protocols;
  - the modalities of accession, e.g., whether the accession should be carried out by an amending protocol or an accession treaty;
  - the modalities of participation by the Union in the decision-making structures of the Convention, e.g., the representation of the EU in the Committee of Ministers, status and participation in the European Court of Human Rights of an EU judge;
  - the standing of the Union in proceedings before the European Court of Human Rights; the more specific technical implications for the procedure in the European Court of Justice

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<sup>10</sup> Another option to be considered would be the Union should be given competence to accede, in general, to international agreements for the protection and promotion of human rights, as proposed by Mr. Jacob Söderman, European Ombudsman in CONV 221/02 CONTRIB 76.

<sup>11</sup> A specific procedure reflecting the paramount importance and particular nature of the commitment to protect human rights should be added to Art. 300 EC. Another option would be to lay down the procedure in the provision authorising the accession.

<sup>12</sup> Since the ECHR is currently only open to accession by States, it is clear that the Convention would have to be amended upon the accession by the Union. See especially the Activity Report by the Working Group on the Legal and Technical Issues of a Possible EC/EU Accession to the European Convention on Human Rights, doc. GT-DH-EU (2002) 012, approved by the Steering Committee for Human Rights (CDDH) of the Council of Europe.

**LA CONVENTION EUROPÉENNE**  
LE SECRÉTARIAT

Bruxelles, le 27 septembre 2002

Working Group II

Working document 20

## **Groupe de travail II "Intégration de la Charte/adhésion à la CEDH"**

**du :** Secrétariat

**au :** Groupe de travail II

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**Objet:** Le système des voies de recours judiciaires

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### **Document de travail de M. Ben Fayot**

Par le présent document de travail, M. Ben Fayot souhaite attirer l'attention des membres du groupe de travail sur la note ci-jointe rédigée par Sir Francis Jacobs, Avocat général à la Cour de justice des Communautés européennes.



## NOTE FOR THE WORKING GROUP ON THE CHARTER/ECHR

### Necessary changes to the system of judicial remedies

F.G. Jacobs <sup>1</sup>

I have been invited to consider what changes in the system of judicial remedies are necessary if there is agreement in the Convention on giving some form of effect to the Charter of Fundamental Rights and on acceding to the European Convention on Human Rights

Such changes are necessary, first, because some of the features of the existing system are likely to prove incompatible with fundamental rights contained in the Charter and the ECHR: in particular, the right of access to a court and the right to an effective remedy. From a legal point of view it is clearly undesirable for there to be conflicts between the fundamental rights recognised or referred to in the treaty and the provisions on remedies contained in another part thereof. From a political point of view the Union could be accused of hypocrisy or double standards.

Secondly, the fundamental rights so recognised or referred to risk remaining an empty shell if there is no system of judicial remedies which guarantees the effective protection of those rights. In the absence of rules guaranteeing effective remedies a decision to give some form of effect to the Charter and accede to the ECHR might be regarded as mere window-dressing exercises.

Moreover it will be widely accepted that there is a close link between the effective protection of fundamental rights and the legitimacy of the European Union.

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<sup>1</sup>. Advocate General, Court of Justice of the European Communities. The views expressed in this note are my own.

The Working Group recognised that it could not examine some of the issues concerning judicial remedies at an earlier stage since the Court of Justice had decided in the *UPA* case<sup>2</sup> to re-examine its restrictive case-law on the standing of individuals challenging the legality of measures of general application, i.e. regulations and directives. In its judgment in that case however the Court of Justice decided essentially not to depart from the existing case-law and stated that, whilst a different system of remedies could indeed be envisaged, such a change would require treaty amendment and thus go beyond its jurisdiction. That statement can perhaps be read as an invitation for the Convention to consider changes in the system of remedies.

As a preliminary point I would note that it has been assumed in some quarters that a decision to give some form of effect to the Charter should be accompanied by the introduction of a special new remedy to enable an individual to bring an alleged infringement directly before the Court of Justice. This would however be both unnecessary and inappropriate. Issues of fundamental rights already arise in connection with the application of the ordinary remedies, often in combination with other issues (e.g. equal treatment, proportionality, etc.), and can and should continue to be dealt with in principle within the habitual procedural framework.

The existing system of remedies is however not adequate in three other crucial respects. At this stage the three issues can be identified very briefly.

## 1. Standing of individuals to challenge general measures

As has been widely recognised, standing for individuals needs to be enlarged so as to enable them to challenge general measures which affect their rights or interests.

The formulation in Article 230 EC, which requires that the measure challenged should be of direct **and individual** concern to the applicant, has proved too restrictive. It means in practice that the legality of a regulation affecting the rights or interests of individuals cannot

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<sup>2</sup>. Case C-50/00 P *Unión de Pequeños Agricultores v Council*, judgment of 25 July 2002.

be challenged by those individuals merely because it is a general measure. The current state of the law is essentially based on the assumption that individuals can obtain a reference to the Court of Justice from a national court on the validity of a general measure. That however is a circuitous and uncertain route, which can also result in a denial of justice where for example there is no national measure to challenge in the national court, or where the national court fails to make a satisfactory reference to the Court of Justice. A further consequence is that, the greater the number of persons affected by a measure of the Community institutions, the less likely it is that effective judicial review will be available.

Doubts about the appropriateness of the law as it stands had long been expressed by the Court of Justice itself <sup>3</sup>, by several members of the Court in their extra-judicial writing and by many scholars <sup>4</sup>.

The Court of Justice decided in the above-mentioned *UPA* case to re-examine the case-law in plenary formation. Although I took the view, in my Opinion as Advocate General, that the necessary change could be made by the Court itself revising its case-law, the Court felt that such an important change would require treaty amendment <sup>5</sup>.

In May of this year the Court of First Instance, relying in part on the Charter, showed itself willing, in the *Jégo-Quéré* case <sup>6</sup>, to depart from the existing case-law and to facilitate challenges to general measures. That was particularly significant since that Court is the court most concerned by a possible change, as the court of first resort for individual applicants. Its decision seems to refute what was previously seen as the strongest argument against enlarging access to the Community Courts, namely the risk of overload – the "floodgates" argument.

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<sup>3</sup>. See the *Report of the Court of Justice on Certain Aspects of the Application of the Treaty on European Union*, May 1995, paragraph 20.

<sup>4</sup>. For references, see the Opinion of 21 March 2002 in Case C-50/00 P *Unión de Pequeños Agricultores v Council*, notes 5 and 6.

<sup>5</sup>. A summary of the main arguments is contained in my Opinion, an extract from which is annexed to this note.

<sup>6</sup>. Case T-177/01 *Jégo-Quéré*, judgment of the Court of First Instance of 3 May 2002.

It may be concluded that both Community Courts have now acknowledged the appropriateness or even the need for treaty amendment on this point.

## **2. Extension of the scope of judicial review to measures taken by all institutions and bodies of the Union**

The Treaty allows challenges by individuals only to measures taken by the Institutions. The Charter is however (rightly) addressed to the "institutions and bodies" of the Union. It seems clear therefore that an action must be available to individuals against measures adopted by **all** institutions and bodies of the Union (Europol etc.).

## **3. Extension of the scope of judicial review to measures across the whole range of Union activities**

Under the current system the Community Courts' jurisdiction is severely limited or even excluded as regards the Union's activities in certain fields. In particular the limitations under Article 68 EC and under Title VI of the Treaty on European Union – areas where the need for an effective protection of fundamental rights is of special importance – raise serious questions about the compatibility of the current state of the law with the Charter and the ECHR. It will therefore be important to ensure that the Community Courts have jurisdiction to review all measures across the whole range of Union activities. Since those measures will in any event be subject to review by the European Court of Human Rights in the event of accession to the ECHR, any argument for excluding them from review by the Community Courts seems to have little force.

**Extract from the Opinion in UPA**

(paragraphs 100-103)

**Conclusion**

100 The case-law on the standing of individuals to bring proceedings before the Court of Justice (now before the Court of First Instance) has, over the years, given rise to a large volume of discussion, much of it very critical. It cannot be denied that the limited admissibility of actions by individuals is widely regarded as one of the least satisfactory aspects of the Community legal system.<sup>1</sup> It is not merely the restriction on access which is criticised; it is also the complexity and apparent inconsistency which have resulted from attempts by the Court to allow access where the traditional approach would lead to a manifest 'denial of justice'. Thus, one of the fullest and most authoritative recent studies refers to 'the blot on the landscape of Community law which the case-law on admissibility has become'.<sup>2</sup> While there may be doubts about the degree of criticism that can be levelled at the case-law, it is surely indisputable that access to the Court is one area above all where it is essential that the law itself should be clear, coherent and readily understandable.

101 In this Opinion I have argued that the Court should Ā rather than envisage, on the basis of *Greenpeace*, a further limited exception to its restrictive case-law on standing Ā instead re-consider that case-law and adopt a more satisfactory interpretation of the concept of individual concern.

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1 See above note 5.

2 A. Arnall, 'Private applicants and the action for annulment since *Codorniu*', cited in note 6, at p. 52.

102 It may be helpful to summarise the reasons for that view, as follows:

- (1) The Court's fundamental assumption that the possibility for an individual applicant to trigger a reference for a preliminary ruling provides full and effective judicial protection against general measures is open to serious objections:
  - under the preliminary ruling procedure the applicant has no right to decide whether a reference is made, which measures are referred for review or what grounds of invalidity are raised and thus no right of access to the Court of Justice; on the other hand, the national court cannot itself grant the desired remedy to declare the general measure in issue invalid;
  - there may be a denial of justice in cases where it is difficult or impossible for an applicant to challenge a general measure indirectly (e.g. where there are no challengeable implementing measures or where the applicant would have to break the law in order to be able to challenge ensuing sanctions);
  - legal certainty pleads in favour of allowing a general measure to be reviewed as soon as possible and not only after implementing measures have been adopted;
  - indirect challenges to general measures through references on validity under Article 234 EC present a number of procedural disadvantages in comparison to direct challenges under Article 230 EC before the Court of First Instance as regards for example the participation of the institution(s) which adopted the measure, the delays and costs involved, the award of interim measures or the possibility of third party intervention.
- (2) Those objections cannot be overcome by granting standing by way of exception in those cases where an applicant has under national law no way of triggering a reference for a preliminary ruling on the validity of the contested measure. Such an approach
  - has no basis in the wording of the Treaty;

- would inevitably oblige the Community Courts to interpret and apply rules of national law, a task for which they are neither well prepared nor even competent;
  - would lead to inequality between operators from different Member States and to a further loss of legal certainty.
- (3) Nor can those objections be overcome by postulating an obligation for the legal orders of the Member States to ensure that references on the validity of general Community measures are available in their legal systems. Such an approach would
- leave unresolved most of the problems of the current situation such as the absence of remedy as a matter of right, unnecessary delays and costs for the applicant or the award of interim measures;
  - be difficult to monitor and enforce; and
  - require far-reaching interference with national procedural autonomy.
- (4) The only satisfactory solution is therefore to recognise that **an applicant is individually concerned by a Community measure where the measure has, or is liable to have, a substantial adverse effect on his interests**. That solution has the following advantages:
- it resolves all the problems set out above: applicants are granted a true right of direct access to a court which can grant a remedy, cases of possible denial of justice are avoided, and judicial protection is improved in various ways;
  - it also removes the anomaly under the current case-law that the greater the number of persons affected the less likely it is that effective judicial review is available;
  - the increasingly complex and unpredictable rules on standing are replaced by a much simpler test which would shift the emphasis in cases before the Community Courts from purely formal questions of admissibility to questions of substance;

- such a re-interpretation is in line with the general tendency of the case-law to extend the scope of judicial protection in response to the growth of powers of the Community institutions (*ERTA*, *Les Verts*, *Chernobyl*);
- (5) The objections to enlarging standing are unconvincing. In particular:
- the wording of Article 230 EC does not preclude it;
  - to insulate potentially unlawful measures from judicial scrutiny cannot be justified on grounds of administrative or legislative efficiency: protection of the legislative process must be achieved through appropriate substantive standards of review;
  - the fears of over-loading the Court of First Instance seem exaggerated since the time-limit in Article 230(5) EC and the requirement of direct concern will prevent an insuperable increase of the case-load; there are procedural means to deal with a more limited increase of cases.
- (6) The chief objection may be that the case-law has stood for many years. There are however a number of reasons why the time is now ripe for change. In particular:
- the case-law in many borderline cases is not stable, and has been in any event relaxed in recent years, with the result that decisions on admissibility have become increasingly complex and unpredictable;
  - the case-law is increasingly out of line with more liberal developments in the laws of the Member States;
  - the establishment of the Court of First Instance, and the progressive transfer to that Court of all actions brought by individuals, make it increasingly appropriate to enlarge the standing of individuals to challenge general measures;



- the Court's case-law on the principle of effective judicial protection in the national courts makes it increasingly difficult to justify narrow restrictions on standing before the Community Courts.

103 For all of those reasons I conclude that an individual should be regarded as individually concerned within the meaning of the fourth paragraph of Article 230 EC by a Community measure where, by reason of his particular circumstances, the measure has, or is liable to have, a substantial adverse effect on his interests.

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**LA CONVENTION EUROPÉENNE**  
LE SECRÉTARIAT

Brussels, 1 Octobre 2002

Working Group II

Working document 21

**"Working group II "Incorporation of the Charter/ accession to the ECHR"**

|               |                                                                                                               |
|---------------|---------------------------------------------------------------------------------------------------------------|
| <b>du :</b>   | <b>The Secretariat</b>                                                                                        |
| <b>au :</b>   | <b>Working Group II</b>                                                                                       |
| <b>Objet:</b> | <b>The question of effective judicial remedies and access of individuals to the European Court of Justice</b> |

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The members of the Group will find attached WD 021 from Mr. António Vitorino, Chairman of the Working Group.

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## I. Introduction

1. One remaining subject for examination by the Working Group is the question whether the current system of judicial remedies of individuals against acts of the institutions needs to be reformed in the light of the fundamental right to effective judicial protection as recognised by case-law of the Court of Justice and restated in Article 47 of the Charter<sup>1</sup>. As explained in doc. CONV 116/02, this issue has been subject to controversial debate among legal scholars and practitioners for quite some time independently of the Charter, although the drafting of the Charter has revived the discussion. CONV 116/02 also recalls the arguments of those who advocate liberalising the conditions of direct access of individuals to the Court of Justice (as currently laid down in Article 230 § 4 TEC), as well as of those arguing that the Community possesses, in principle, a complete system of remedies which provides effective judicial protection, according to circumstances, either through direct action in accordance with Article 230 § 4 TEC or through action in national courts which may - or even must - make a preliminary reference to the Court of Justice under Article 234 TEC.
2. Doc. CONV 116/02 further mentions a particular case which, under the current system of remedies, has meanwhile widely been recognised as problematic against the background of the fundamental right of effective judicial protection. That is the case of a "self-executing" Community regulation which imposes a directly applicable prohibition without the need for a national implementing act, thus forcing an individual wishing to assert his or her rights first to violate Community law and to appeal against the sanction which might be applied by national authorities against such a violation.<sup>2</sup> In its recent judgment "*Jégo-Quéré*"<sup>3</sup> concerning precisely such a case, the Court of First Instance, departing from the previous "*Plaumann*" case-law of the Court of Justice<sup>4</sup>, which it deemed too restrictive, admitted an action by an

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<sup>1</sup> See point 3 of the Group's mandate (doc. CONV 72/02) and developed in further detail in document CONV 116 (Section II 6, especially (c), pp. 15 et seq.).

<sup>2</sup> It should be noted that the same situation may occur in Member States' laws. While according to some legal systems, individuals submitted to a prohibition by national laws or regulations are obliged to incur a sanction in order to seize a judge, other legal systems have devised alternative techniques permitting individuals to obtain a "preventive" judicial injunction or statement in order to protect their rights against the law or regulation in cause.

<sup>3</sup> Judgment of 3 May 2002, T-177/01, *Jégo-Quéré v. Commission*.

<sup>4</sup> Line of cases developed since the case *Plaumann*, Case 25/62, ECR 197, explained in doc 116/02, page 15 Footnote 2.

individual against a Community regulation, invoking the right to seize a judge. However, the Court of Justice, in its judgment of 25 July 2002 "*Union de Pequeños Agricultores*"<sup>5</sup>, confirmed its interpretation of Article 230 § 4 TEC and made it clear that, while it is possible to envisage a system of judicial review of the legality of Community measures of general application different from that established by the Treaty, it is for the Member States, if necessary, in accordance with Article 48 TEU, to reform the system currently in force.

3. Another issue examined in doc. CONV 116/02<sup>6</sup> which should be recalled without however needing further in-depth analysis in this paper, relates to the jurisdiction of the Court in the fields of Justice and Home affairs. While this issue goes beyond questions of fundamental rights and will therefore be treated in more detail in the newly constituted Working Group X, this group should take note of expert authority presented to it<sup>7</sup>, expressing concern about the current restrictions of jurisdiction of the Court in this area which is particularly sensitive to fundamental rights, including not least the risk that, whether or not the Union acceded to the ECHR, Union law and acts of the institutions in this area are exposed to appeal before the Strasbourg Court where the Court of Justice is prevented from exercising efficient control. The group may therefore wish to make a general comment, from a fundamental rights perspective, with regard to this issue.

## II. Options for possible further action

4. On the basis of the above, the purpose of this paper is to present three main options for possible further action on Treaty level.

### Option A: A special remedy based on alleged violations of fundamental rights ("Verfassungsbeschwerde"; "recurso de amparo")

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<sup>5</sup> Case C-50/00 P, *Union de Pequeños Agricultores*.

<sup>6</sup> Doc. CONV 116/02, Section II 6 (b), pp. 14 et seq.

<sup>7</sup> See the hearings of Judge Skouris (WD 19) and of Judge Fischbach on 17 September 2002; hearing of Mr. Schoo of 23 July 2002 (WD 13); WD 20 of Mr. Ben Fayot presenting a note by Advocate-General Francis Jacobs on this issue. See also WD 06 of Mrs. Paciotti.

5. This option, which has been proposed for quite some time and was mentioned in the report of the Court of Justice of May 1995 (prior to the Intergovernmental Conference leading to the Treaty of Amsterdam), would consist of the introduction of a new special action enabling individuals to challenge Community acts, including those of general application (i.e. of legislative or "regulatory" character), directly in the Court of Justice; the causes of action would however be limited to alleged violations of the applicants' fundamental rights. Models for such an action are to be found in the law of certain Member States such as Germany and Spain.
6. Advocates of that model argue that it would allow to leave intact the "normal" system of direct actions as established by Article 230 § 4 TEC focusing on individual acts of administrative character, and to add a special remedy of truly constitutional character. Critics however doubt notably whether it would be possible or convincing to distinguish alleged violations of fundamental rights from other violations of law serving as causes of action under Article 230 TEC. They point to experience in Germany suggesting that it is possible in almost all cases to express an alleged illegality also in terms of a fundamental rights violation, given the large scope of a number of fundamental rights in modern constitutional law (e.g., freedom of occupation or to conduct a business, property, respect for private life...). According to these critics, the relationship between such a special "constitutional" action and the ordinary system of remedies in Article 230 § 4 TEC could be difficult to establish, especially if the "constitutional" action were to be introduced directly before the Court of Justice and not before the Court of First Instance.<sup>8</sup>
7. For the sake of completeness, it should be recalled that possible accession to the European Convention on Human Rights would give individuals an additional judicial remedy based on fundamental rights, although by an external jurisdiction, against acts of the Union.

**Option B: Amendment to Article 230 § 4 TEC:**

8. A second option would be to amend the current wording of Article 230 § 4 TEC, in order to alleviate the rigidity currently resulting from the condition of "individual concern" in Article

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<sup>8</sup> For these considerations, see also the points made by Judge Skouris at the hearing on 17 September 2002, WD N° 19.

230 § 4 TEC where an applicant wishes to challenge "self-executing" Community acts of general application.<sup>9</sup>

9. Several possibilities of wording have been proposed or could be conceived to that effect, as described below. One criterion for their appreciation by the group could be in how far they would in practice open up access to the Court of First Instance and therefore lead to a shift in the current division of tasks between the Community jurisdiction and national courts (according to which in most cases *national* courts, acting as "judges of Community law", scrutinise the legality of Community acts and, in case of doubt, are empowered or even obliged to make preliminary references under Article 234 TEC to the Court of Justice, whereas direct access to the Community Courts under Article 230 § 4 TEC is narrowly circumscribed). It should be stressed that valid arguments have been put forward both in favour of a stronger centralisation of judicial protection against Community acts at the level of the Community courts, and in favour of maintaining, in principle, the current division of work. Furthermore, some argue that enlarging too much the right of action under Article 230 § 4 TEC could open legislative acts to challenge by a vast number of individuals, whereas the law of several Member States protects legislation from such challenges and other Member States have established a *special* constitutional remedy ("Verfassungsbeschwerde", "recurso de amparo") covering legislative acts.<sup>10</sup>
10. a) A suggestion made by a Convention member is to convert the conditions of "direct" and "individual" concern in Article 230 § 4 TEC into *alternative* criteria (i.e. "direct *or* individual concern")<sup>11</sup>. A very similar result would be achieved by simple deletion of the words "...and individual..." in Article 230 § 4 TEC as proposed by another Convention Member<sup>12</sup>. It appears

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<sup>9</sup> For proposals or arguments in that direction, see WD N° 17 by Jürgen Meyer; CONV 45/02 CONTRIB 25 by Hannes Farnleitner; Judge Skouris at the hearing on 17 September (WD N° 19); note from Advocate General Jacobs (see WD N° 20 of Mr. Fayot).

<sup>10</sup> An issue which would require careful consideration in case of a possible enlargement of direct access to the Court under Article 230 § 4 against acts of general application, but also in case of a possible "Verfassungsbeschwerde", would be how such enlarged direct remedies would relate to the case law on the Court of Justice according to which those who "without any doubt" could have challenged an act under Article 230 § 4 TEC but did not do so, can no longer invoke implicitly its illegality (Article 241) in further proceedings, see Case 92/78, Simmenthal, 1979 ECR 777, C-188/92, Textilwerke Deggendorf, 1994 ECR 833.

<sup>11</sup> Working document N° 17 by Jürgen Meyer.

<sup>12</sup> Doc. CONV 45/02 CONTRIB 25 by Hannes Farnleitner.

that this solution could lead to a rather significant opening-up of direct access of individuals to the Court of First Instance and thus to a shift in the present division of tasks.

11. b) Alternatively, one could think of an amendment leaving the basic structure of Article 230 § 4 TEC unchanged while adding language opening-up access exceptionally in cases of Community acts of general application where is no act of implementation against which the applicant could adequately seek judicial protection on national level. The test proposed by the Court of First Instance in the *Jégo-Quéré* judgment seems to be formulated with that intention<sup>13</sup>; yet it may be asked whether the limits proposed are sufficiently precise to provide guidance for the practice of the Court. A stricter and more objective formula would consist of adding, at the end of current Article 230 § 4 TEC, the words "or against an act of general application which is of direct concern to the applicant without calling for a measure of implementation" (...*"contre un acte de portée générale qui la concernent directement sans comporter une mesure d'exécution"*). In a similar vein, one could provide for direct actions against an act of general application which are of direct concern to the applicant "where there is no [adequate] remedy before a national court or tribunal".<sup>14</sup>
12. The aim of the latter formulae would be to preserve the global division of work between courts on European and on national level, and to remedy only such exceptional situations where currently there is no protection on either level.

**Option C: Enshrining an obligation of Member States to provide for effective rights of action before their courts**

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<sup>13</sup> According to that test, an individual could seise the Court also (i.e., besides the case of individual acts) against a Community measure of general application "*that concerns him (i.e. the applicant) directly if the measure in question affects his legal position, in a manner which is both definite and immediate, by restricting his rights or by imposing obligations on him*".

<sup>14</sup> It should be born in mind that this formula could oblige the Community Courts to interpret, to a certain extent, national procedural law in particular cases (see the critical remark by Judge Skouris at the hearing of 17 September WD N° 19). It has also been observed that the Court already appreciates national procedural law, for example when judging whether a body qualifies as court or tribunal within the meaning of Article 234 or whether an action for compensation under Article 235 TEC might be barred because national rights of action *providing an effective means of protection* have not been exhausted, see Case 175/84, Krohn v. Commission, 1986 ECR 753.

13. Under this option, the rights of direct action of individuals before the European Courts would not be enlarged. Instead, the new constitutional treaty could contain a provision on the obligation of Member States to provide for remedies by their courts ensuring effective judicial protection for the rights guaranteed by Union law. A proposal in that sense is notably included in the contribution tabled by the European Ombudsman, Mr. Söderman.<sup>15</sup> Such a provision would merely codify existing case law of the European Court of Justice<sup>16</sup>. However, an express provision in the constitutional Treaty, thus enshrining the obligation of Member States to contribute to a complete system of judicial remedies in the European Union, would underline the Member States' responsibility in this area, while respecting the principle of procedural autonomy, and facilitate such reforms to the national procedural systems as may prove necessary. One could therefore hope that both a liberal interpretation by the Court of Article 230 § 4 TEC and evolutions in the national procedural systems may over time help eliminate existing lacunae in judicial protection against Community acts. It has also been argued that such a solution would best correspond to the principle of subsidiarity. On the other hand, it must be understood that such a Treaty provision might not necessarily permit to provide effective judicial protection in each individual case where a lacuna becomes manifest.

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<sup>15</sup> See doc. CONV 221/02, Article "b", paragraph 2, of the Chapter on "Remedies". Attention is also drawn to the proposal made in this document to introduce a new action by the Ombudsman before the Court of Justice. This proposal is not analysed in detail here since it does not concern the right of individuals to judicial protection discussed in this paper.

<sup>16</sup> See judgment of 25 July 2002, pts. 41, 42: "It is for the Member States to establish a system of legal remedies and procedures which ensure respect for the right to effective judicial protection. In that context, in accordance with the principle of sincere cooperation laid down in Article 5 of the Treaty, national courts are required, so far as possible, to interpret and apply national procedural rules governing the exercise of rights of action in a way that enables natural and legal persons to challenge before the courts the legality of any decision or other national measure relative to the application to them of a Community act of general application, by pleading the invalidity of such an act." See also CFI, Case 172/98, Salamander etc. / Council and Parliament, pt. 74: "Pursuant to the principle of genuine cooperation set out in Article 5 of the Treaty, Member States must help to ensure that the system of legal remedies and procedures established by the EC Treaty and designed to permit the Community judicature to review the lawfulness of acts of the Community institutions is comprehensive."



**LA CONVENTION EUROPÉENNE**  
LE SECRÉTARIAT

Bruxelles, 3 octobre 2002

Working Group II

Working document 22

**Groupe de travail II "Intégration de la Charte/adhésion à la CEDH"**

**du :**                **Secretariat**

**au :**                **Groupe de travail II**

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**Objet:**            **"Projet de constitution de l'Union européenne"**

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Les Membres du Groupe de travail trouveront ci-joint WD 022 présenté par Mme Elena Paciotti, par lequel elle transmet aux Membres du Groupe un projet de Constitution de l'Union basé sur les résolutions du Parlement européen. Le Titre I contient ses suggestions d'adaptations techniques au texte de la Charte, nécessaires pour son intégration dans un texte constitutionnel.

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## PROJET DE CONSTITUTION DE L'UNION EUROPENNE

Une proposition basée sur les résolutions du Parlement européen

### PRESENTATION

Ce document représente une tentative de traduire en texte cohérent les délibérations du Parlement européen en matière de Constitution de l'Union européenne et de réforme des Traités.

En synthèse, en suivant les indications qui résultent des résolutions successives adoptées par le Parlement européen, nous avons essayé d'intégrer dans un texte unique les normes à caractère constitutionnel contenues dans les Traités en vigueur, en y apportant les innovations souhaitées par le Parlement.

Ce document veut représenter la première partie d'un nouveau traité de l'Union - la Constitution de l'Union européenne - dont la deuxième partie devrait se composer de toutes les autres normes, coordonnées de la même façon dans un texte unique consolidé des Traités en vigueur.

Ce texte contient beaucoup d'éléments nouveaux : la Charte des droits fondamentaux est incorporée dans le texte de la Constitution ; la distinction entre Communauté et Union disparaît ; le système institutionnel est simplifié et clarifié ; les procédures de révision de la Constitution et du Traité sont différenciées.

Nous avons cependant dû renoncer à toute autre proposition innovatrice utile à la rédaction d'un texte constitutionnel autonome, en l'absence de résolutions appropriées du Parlement européen.

Il ne s'agit donc pas de la proposition d'une personne ni d'un groupe politique, mais d'un exercice technique de traduction en pratique de propositions qui ont déjà été votées avec une très large majorité par le Parlement européen.

Le résultat peut constituer un instrument utile pour rendre plus spécifique et concrète la discussion en cours sur une future Constitution de l'Union européenne et peut ainsi contribuer aux travaux de la Convention sur l'avenir de l'Europe.

*Ce projet voit le jour avec une initiative d'Elena Paciotti, députée au Parlement européen et présidente de la Fondazione Basso, qui a coordonné les travaux. Le texte a été rédigé par Federico Petrangeli, de l'Université de Milan, et Valentina Bazzocchi, de l'Université de Bologne. Le texte a été discuté par les membres de l'Observatoire sur l'Europe de la Fondazione Basso, qui ont fait des suggestions et donné des impulsions. La version française a été éditée par Ludovica Zagrebelsky.*

N.B.:

Le point de départ de ce travail est le texte consolidé des Traités modifiés à la lumière du Traité de Nice : sont indiquées en note les références ponctuelles. Le caractère italique gras met en évidence les modifications proposées par le Parlement européen : les résolutions en question sont indiquées en note avec la date d'adoption, le titre et le nom du rapporteur. Le caractère italique met en évidence les modifications introduites par les auteurs pour des raisons de coordination.

octobre 2002

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RAPPELANT l'importance historique de la fin de la séparation du continent européen et la nécessité de créer des bases solides pour la construction de l'Europe de l'avenir, ***dans une perspective de développement de type fédéral<sup>2</sup>***

***SOULIGNANT que l'appartenance à l'Union européenne est fondée sur des valeurs communes aux peuples qui la composent, inscrits dans la Charte des droits fondamentaux de l'Union<sup>3</sup>***

***DESIREUX de renforcer la solidarité entre ces peuples dans le respect de leurs diversités, de leur histoire, de leur culture, de leur langue et de leurs structures institutionnelles et politiques<sup>4</sup>,***

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<sup>1</sup> Le préambule est tiré des préambules des TCE et TUE, en éliminant les parties qui, dans leur substance, sont déjà présentes dans le préambule de la Charte

<sup>2</sup> Ajout tiré de l'alinéa 1 du "Projet Herman" de 1994 (Résolution du Parlement européen sur la fondation de l'Union européenne avec en annexe le "Projet de Constitution de l'Union européenne" du 10 février 1994)

<sup>3</sup> Nouvelle écriture de l'alinéa 2 du Préambule du "projet Herman" de 1994 en ajoutant une référence à la Charte des droits fondamentaux.

<sup>4</sup> Nouvelle écriture de l'alinéa 3 du Préambule du "projet Herman" de 1994.

***DESIREUX de garantir aux citoyens et à ceux qui résident dans l'Union européenne de meilleures conditions de vie et un rôle actif dans le développement économique et social<sup>5</sup>***

DETERMINE à promouvoir le progrès économique et social de leurs peuples, ***et à renforcer le modèle social européen<sup>6</sup>***, compte tenu du principe du développement durable dans le cadre de l'achèvement du marché intérieur, et du renforcement de la cohésion et de la protection de l'environnement

RESOLUS à renforcer leurs économies ainsi qu'à en assurer la convergence, et à établir une union économique et monétaire, comportant une monnaie unique et stable,

RESOLUS à mettre en œuvre une politique étrangère et de sécurité commune prévoyant *la définition et la mise en œuvre progressive<sup>7</sup>* d'une politique de défense commune, renforçant ainsi l'identité de l'Europe et son indépendance afin de promouvoir la paix, la sécurité et le progrès en Europe et dans le monde,

RESOLUS à faciliter la libre circulation des personnes, tout en assurant la sûreté et la sécurité de leurs peuples, en établissant un espace de liberté, de sécurité et de justice,

***LES ETATS MEMBRES ET LES PEUPLES DE L'UNION EUROPEENNE ADOPTENT LA CONSTITUTION ET LE TRAITÉ SUIVANTS<sup>8</sup> :***

A. CONSTITUTION DE L'UNION

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<sup>5</sup> Nouvelle écriture de l'alinéa 5 du Préambule du "projet Herman" de 1994.

<sup>6</sup> Ajouté conformément à 16.05.2002, Délimitation des compétences entre l'Union européenne et les Etats membres (Lamassoure), par.8.

<sup>7</sup> On dépasse le caractère simplement éventuel de la définition de la politique de défense.

<sup>8</sup> Cette formulation est tirée des résolutions du Parlement européen qui affirment la double légitimité de l'Union, en tant qu'union d'Etats et en tant qu'union de peuples ; 07.02.2002, Relations PE/parlements nationaux dans la construction européenne (Napolitano), par. 18 et 25.10.2001, Réforme du Conseil (Poos) par. 2. Comme il a été indiqué dans la présentation, ce travail ne se rapporte qu'à la partie constitutionnelle.

## TITRE I

### LA CHARTE DES DROITS FONDAMENTAUX DE L'UNION<sup>9</sup>

#### PRÉAMBULE

Les peuples de l'Europe, en établissant entre eux une union sans cesse plus étroite, ont décidé de partager un avenir pacifique fondé sur des valeurs communes.

Consciente de son patrimoine spirituel et moral, l'Union se fonde sur les valeurs indivisibles et universelles de dignité humaine, de liberté, d'égalité et de solidarité ; elle repose sur le principe de la démocratie et de l'Etat de droit. Elle place la personne au cœur de son action en instituant la citoyenneté de l'Union et en créant un espace de liberté, de sécurité et de justice.

L'Union contribue à la préservation et au développement de ces valeurs communes dans le respect de la diversité des cultures et des traditions des peuples de l'Europe, ainsi que de l'identité nationale des Etats membres et de l'organisation de leurs pouvoirs publics au niveau national, régional et local ; elle cherche à promouvoir un développement équilibré et durable et assure la libre circulation des personnes, des biens, des services et des capitaux, ainsi que la liberté d'établissement.

A cette fin, il est nécessaire, en les rendant plus visibles dans une Charte, de renforcer la protection des droits fondamentaux à la lumière de l'évolution de la société, du progrès social et des développements scientifiques et technologiques.

La présente Charte réaffirme, dans le respect des compétences et des tâches *de l'Union*<sup>10</sup>, ainsi que du principe de subsidiarité, les droits qui résultent notamment des traditions constitutionnelles et des obligations internationales communes aux Etats membres, *de cette Constitution et du Traité*, de la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales, des Chartes sociales adoptées par la Communauté et par le Conseil de l'Europe, ainsi que de la jurisprudence de la Cour de justice des [Communautés européennes]<sup>11</sup> et de la Cour européenne des droits de l'homme.

La jouissance de ces droits entraîne des responsabilités et des devoirs tant à l'égard d'autrui qu'à l'égard de la communauté humaine et des générations futures.

En conséquence, l'Union reconnaît les droits, les libertés et les principes énoncés ci-après.

#### CHAPITRE I - DIGNITÉ

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<sup>9</sup> 31.05.2001, Traité de Nice et futur de l'Union (Mendez de Vigo - Seguro) par.9.

<sup>10</sup> Les parties en italique sont modifiées en fonction de la nouvelle structure de la constitution

<sup>11</sup> Dans ce texte on emploie la dénomination Cour de justice.

**Article 1. Dignité humaine**

La dignité humaine est inviolable. Elle doit être respectée et protégée.

**Article 2. Droit à la vie**

1. Toute personne a droit à la vie.
2. Nul ne peut être condamné à la peine de mort, ni exécuté.

**Article 3. Droit à l'intégrité de la personne**

1. Toute personne a droit à son intégrité physique et mentale.
2. Dans le cadre de la médecine et de la biologie, doivent notamment être respectés :
  - le consentement libre et éclairé de la personne concernée, selon les modalités définies par la loi,
  - l'interdiction des pratiques eugéniques, notamment celles qui ont pour but la sélection des personnes,
  - l'interdiction de faire du corps humain et de ses parties, en tant que tels, une source de profit,
  - l'interdiction du clonage reproductif des être humains.

**Article 4. Interdiction de la torture et des peines ou traitements inhumains ou dégradants**

Nul ne peut être soumis à la torture, ni à des peines ou traitements inhumains ou dégradants.

**Article 5. Interdiction de l'esclavage et du travail forcé**

1. Nul ne peut être tenu en esclavage ni en servitude.
2. Nul ne peut être astreint à accomplir un travail forcé ou obligatoire.
3. La traite des être humains est interdite.

**CHAPITRE II - LIBERTÉS****Article 6. Droit à la liberté et à la sûreté**

Toute personne a droit à la liberté et à la sûreté.



## **Article 7. Respect de la vie privée et familiale**

Toute personne a droit au respect de sa vie privée et familiale, de son domicile et de ses communications.

## **Article 8. Protection des données à caractère personnel**

1. Toute personne a droit à la protection des données à caractère personnel la concernant.
2. Ces données doivent être traitées loyalement, à des fins déterminées et sur la base du consentement de la personne concernée ou en vertu d'un autre fondement légitime prévu par la loi. Toute personne a le droit d'accéder aux données collectées la concernant et d'en obtenir la rectification.
3. Le respect de ces règles est soumis au contrôle d'une autorité indépendante.

## **Article 9. Droit de se marier et de fonder une famille**

Le droit de se marier et le droit de fonder une famille sont garantis selon les lois nationales qui en régissent l'exercice.

## **Article 10. Liberté de pensée, de conscience et de religion**

1. Toute personne a droit à la liberté de pensée, de conscience et de religion. Ce droit implique la liberté de changer de religion ou de conviction, ainsi que la liberté de manifester sa religion ou sa conviction individuellement ou collectivement, en public ou en privé, par le culte, l'enseignement, les pratiques et l'accomplissement des rites.
2. Le droit à l'objection de conscience est reconnu selon les lois nationales qui en régissent l'exercice.

## **Article 11. Liberté d'expression et d'information**

1. Toute personne a droit à la liberté d'expression. Ce droit comprend la liberté d'opinion et la liberté de recevoir ou de communiquer des informations ou des idées sans qu'il puisse y avoir ingérence d'autorités publiques et sans considération de frontières.

2. La liberté des médias et leur pluralisme sont respectés.

### **Article 12. Liberté de réunion et d'association**

1. Toute personne a droit à la liberté de réunion pacifique et à la liberté d'association à tous les niveaux, notamment dans les domaines politique, syndical et civique, ce qui implique le droit de toute personne de fonder avec d'autres syndicats et de s'y affilier pour la défense de ses intérêts.

2. Les partis politiques au niveau de l'union contribuent à l'expression de la volonté politique des citoyens de l'union.

### **Article 13. Liberté des arts et des sciences**

Les arts et la recherche scientifique sont libres. La liberté académique est respectée.

### **Article 14. Droit à l'éducation**

1. Toute personne a droit à l'éducation, ainsi qu'à l'accès à la formation professionnelle et continue.

2. Ce droit comporte la faculté de suivre gratuitement l'enseignement obligatoire.

3. La liberté de créer des établissements d'enseignement dans le respect des principes démocratiques, ainsi que le droit des parents d'assurer l'éducation et l'enseignement de leurs enfants conformément à leurs convictions religieuses, philosophiques et pédagogiques, sont respectées selon les lois nationales qui en régissent l'exercice.

### **Article 15. Liberté professionnelle et droit de travailler**

1. Toute personne a le droit de travailler et d'exercer une profession librement choisie ou acceptée.

2. Tout citoyen ou toute citoyenne de l'union a la liberté de chercher un emploi, de travailler, de s'établir ou de fournir des services dans tout Etat membre.

3. Les ressortissants des pays tiers qui sont autorisés à travailler sur le territoire des Etats membres ont droit à des conditions de travail équivalentes à celles dont bénéficient les citoyens ou citoyennes de l'union.

## **Article 16. Liberté d'entreprise**

La liberté d'entreprise est reconnue conformément au droit communautaire et aux législations et pratiques nationales.

## **Article 17. Droit de propriété**

1. Toute personne a le droit de jouir de la propriété des biens qu'elle a acquis légalement, de les utiliser, d'en disposer et de les léguer. Nul ne peut être privé de sa propriété, si ce n'est pour cause d'utilité publique, dans les cas et conditions prévus par une loi et moyennant en temps utile une juste indemnité pour sa perte. L'usage des biens peut être réglementé par la loi dans la mesure nécessaire à l'intérêt général.
2. La propriété intellectuelle est protégée.

## **Article 18. Droit d'asile**

Le droit d'asile est garanti dans le respect des règles de la convention de Genève du 28 juillet 1951 et du protocole du 31 janvier 1976 relatifs au statut des réfugiés et conformément au *Traité*.

### Article 19. Protection en cas d'éloignement, d'expulsion et d'extradition

1. Les expulsions collectives sont interdites
2. Nul ne peut être éloigné, expulsé ou extradé vers un Etat où il existe un risque sérieux qu'il soit soumis à la peine de mort, à la torture ou à d'autres peines ou traitements inhumains ou dégradants.

## **CHAPITRE III - ÉGALITÉ**

### **Article 20. Egalité en droit**

Toutes les personnes sont égales en droit.

### **Article 21. Non-discrimination**

1. Est interdite toute discrimination fondée notamment sur le sexe, la race, la couleur, les origines ethniques ou sociales, les caractéristiques génétiques, la langue, la religion ou les convictions, les opinions politiques ou toute autre opinion, l'appartenance à une minorité nationale, la fortune, la naissance, un handicap, l'âge ou l'orientation sexuelle.
2. Dans le domaine de l'application de la *Constitution et du Traité*, et sans préjudice des dispositions particulières *du Traité* toute discrimination fondée sur la nationalité est interdite.

**Article 22. Diversité culturelle, religieuse et linguistique**

L'Union respecte la diversité culturelle, religieuse et linguistique.

**Article 23. Égalité entre hommes et femmes**

L'égalité entre les hommes et les femmes doit être assurée dans tous les domaines, y compris en matière d'emploi, de travail et de rémunération.

Le principe de l'égalité n'empêche pas le maintien ou l'adoption de mesures prévoyant des avantages spécifiques en faveur du sexe sous-représenté.

**Article 24. Droits de l'enfant**

1. Les enfants ont droit à la protection et aux soins nécessaires à leur bien-être. Ils peuvent exprimer leur opinion librement. Celle-ci est prise en considération pour les sujets qui les concernent, en fonction de leur âge et de leur maturité.

2. Dans tous les actes relatifs aux enfants, qu'ils soient accomplis par des autorités publiques ou des institutions privées, l'intérêt supérieur de l'enfant doit être une considération primordiale.

3. Tout enfant a le droit d'entretenir régulièrement des relations personnelles et des contacts directs avec ses deux parents, sauf si cela est contraire à son intérêt.

**Article 25. Droits des personnes âgées**

L'Union reconnaît et respecte le droit des personnes âgées à mener une vie digne et indépendante et à participer à la vie sociale et culturelle.

**Article 26. Intégration des personnes handicapées**

L'Union reconnaît et respecte le droit des personnes handicapées à bénéficier de mesures visant à assurer leur autonomie, leur intégration sociale et professionnelle et leur participation à la vie de la communauté.

## CHAPITRE IV - SOLIDARITÉ

### Article 27. Droit à l'information et à la consultation des travailleurs au sein de l'entreprise

Les travailleurs ou leurs représentants doivent se voir garantir, aux niveaux appropriés, une information et une consultation en temps utile, dans les cas et conditions prévus par le droit de l'Union et les législations et pratiques nationales.

### Article 28. Droit de négociation et d'actions collectives

**Les travailleurs et les employeurs, ou leurs organisations respectives, ont, conformément au droit de l'Union et aux législations et pratiques nationales, le droit de négocier et de conclure des conventions collectives aux niveaux appropriés et de recourir, en cas de conflits d'intérêts, à des actions collectives pour la défense de leurs intérêts, y compris la grève.**

### Article 29. Droit d'accès aux services de placement

Toute personne a le droit d'accéder à un service gratuit de placement.

### Article 30. Protection en cas de licenciement injustifié

Tout travailleur a droit à une protection contre tout licenciement injustifié, conformément au droit de l'Union et aux législations et pratiques nationales.

### Article 31. Conditions de travail justes et équitables

1. Tout travailleur a droit à des conditions de travail qui respectent sa santé, sa sécurité et sa dignité.
2. Tout travailleur a droit à une limitation de la durée maximale du travail et à des périodes de repos journalier et hebdomadaire, ainsi qu'à une période annuelle de congés payés.

### Articles 32. Interdiction du travail des enfants et protection des jeunes au travail

Le travail des enfants est interdit. L'âge minimal d'admission au travail ne peut être inférieur à l'âge auquel cesse la période de scolarité obligatoire, sans préjudice des règles plus favorables aux jeunes et sauf dérogations limitées.

Les jeunes admis au travail doivent bénéficier de conditions de travail adaptées à leur âge et être protégés contre l'exploitation économique ou contre tout travail susceptible de nuire à leur sécurité, à leur santé, à leur développement physique, mental, moral ou social ou de compromettre leur éducation.

### **Article 33. Vie familiale et professionnelle**

1. La protection de la famille est assurée sur le plan juridique, économique et social.
2. Afin de pouvoir concilier vie familiale et vie professionnelle, toute personne a le droit d'être protégée contre tout licenciement pour un motif lié à la maternité, ainsi que le droit à un congé de maternité payé et à un congé parental à la suite de la naissance ou de l'adoption d'un enfant.

### **Article 34. Sécurité sociale et aide sociale**

1. L'Union reconnaît et respecte le droit d'accès aux prestations de sécurité sociale et aux services sociaux assurant une protection dans des cas tels que la maternité, la maladie, les accidents du travail, la dépendance ou la vieillesse, ainsi qu'en cas de perte d'emploi, selon les modalités établies par le droit communautaire et les législations et pratiques nationales.
2. Toute personne qui réside et se déplace légalement à l'intérieur de l'Union a droit aux prestations de sécurité sociale et aux avantages sociaux, conformément au droit communautaire et aux législations et pratiques nationales.
3. Afin de lutter contre l'exclusion sociale et la pauvreté, l'Union reconnaît et respecte le droit à une aide sociale et à une aide au logement destinées à assurer une existence digne à tous ceux qui ne disposent pas de ressources suffisantes, selon les modalités établies par le droit communautaire et les législations et pratiques nationales.

### **Article 35. Protection de la santé**

Toute personne a le droit d'accéder à la prévention en matière de santé et de bénéficier de soins médicaux dans les conditions établies par les législations et pratiques nationales. Un niveau élevé de protection de la santé humaine est assuré dans la définition et la mise en œuvre de toutes les politiques et actions de l'Union.

**Article 36. Accès aux services d'intérêt économique général**

L'Union reconnaît et respecte l'accès aux services d'intérêt économique général tel qu'il est prévu par les législations et pratiques nationales, *conformément à la Constitution et au Traité*, afin de promouvoir la cohésion sociale et territoriale de l'Union.

**Article 37. Protection de l'environnement**

Un niveau élevé de protection de l'environnement et l'amélioration de sa qualité doivent être intégrés dans les politiques de l'Union et assurés conformément au principe du développement durable.

**Article 38. Protection des consommateurs**

Un niveau élevé de protection des consommateurs est assuré dans les politiques de l'Union.

**CHAPITRE V - CITOYENNETE****Article 39. Droit de vote et d'éligibilité aux élections du Parlement européen**

1. Tout citoyen ou toute citoyenne de l'Union a le droit de vote et d'éligibilité aux élections au Parlement européen dans l'Etat membre où il ou elle réside, dans les mêmes conditions que les ressortissants de cet Etat.

2. Les membres du Parlement européen sont élus au suffrage universel direct, libre et secret.

**Article 40. Droit de vote et d'éligibilité aux élections municipales**

Tout citoyen ou toute citoyenne de l'Union a le droit de vote et d'éligibilité aux élections municipales dans l'Etat membre où il ou elle réside, dans les mêmes conditions que les ressortissants de cet Etat.

## **Article 41. Droit à une bonne administration**

1. Toute personne a le droit de voir ses affaires traitées impartialement, équitablement et dans un délai raisonnable par les institutions et organes de l'Union.

2. Ce droit comporte notamment :

\_ le droit de toute personne d'être entendue avant qu'une mesure individuelle qui l'affecterait défavorablement ne soit prise à son encontre ;

- le droit d'accès de toute personne au dossier qui la concerne, dans le respect des intérêts légitimes de la confidentialité et du secret professionnel et des affaires ;

- l'obligation pour l'administration de motiver ses décisions.

3. Toute personne a droit à la réparation par la Communauté des dommages causés par les institutions, ou par leurs agents dans l'exercice de leurs fonctions, conformément aux principes généraux communs aux droits des Etats membres.

4. Toute personne peut s'adresser aux institutions de l'Union dans une des langues *du Traité* et doit recevoir une réponse dans la même langue.

## **Article 42. Droit d'accès aux documents**

Tout citoyen ou toute citoyenne de l'Union ou toute personne physique ou morale résidant ou ayant son siège statutaire dans un Etat membre a un droit d'accès aux documents du Parlement européen, du Conseil et de la commission.

## **Article 43. Médiateur**

Tout citoyen ou toute citoyenne de l'Union ou toute personne physique ou morale résidant ou ayant son siège statutaire dans un Etat membre a le droit de saisir le médiateur de l'union de cas de mauvaise administration dans l'action des institutions ou organes de l'Union, à l'exclusion de la Cour de justice et du Tribunal de première instance dans l'exercice de leurs fonctions juridictionnelles.



**Article 44. Droit de pétition**

Tout citoyen ou toute citoyenne de l'Union ou toute personne physique ou morale résidant ou ayant son siège statutaire dans un Etat membre a le droit de pétition devant le Parlement européen.

**Article 45. Liberté de circulation et de séjour**

1. Tout citoyen ou toute citoyenne de l'Union a le droit de circuler et de séjourner librement sur le territoire des Etats membres.
2. La liberté de circulation et de séjour peut être accordée, conformément à *la Constitution et au Traité*, aux ressortissants de pays tiers résidant légalement sur le territoire d'un Etat membre.

**Article 46. Protection diplomatique et consulaire**

Tout citoyen de l'union bénéficie, sur le territoire d'un pays tiers où l'Etat membre dont il est ressortissant n'est pas représenté, de la protection des autorités diplomatiques et consulaires de tout Etat membre dans les mêmes conditions que les nationaux de cet Etat.

**CHAPITRE VI - JUSTICE****Article 47. Droit à un recours effectif et à accéder à un tribunal impartial**

Toute personne dont les droits et libertés garantis par le droit de l'Union ont été violés a droit à un recours effectif devant un tribunal dans le respect des conditions prévues au présent article.

Toute personne a droit à ce que sa cause soit entendue équitablement, publiquement et dans un délai raisonnable par un tribunal indépendant et impartial, établi préalablement par la loi. Toute personne a la possibilité de se faire conseiller, défendre et représenter.

Une aide juridictionnelle est accordée à ceux qui ne disposent pas de ressources suffisantes, dans la mesure où cette aide serait nécessaire pour assurer l'effectivité de l'accès à la justice.

**Article 48. Présomption d'innocence et droits de la défense**

1. Tout accusé est présumé innocent jusqu'à ce que sa culpabilité ait été légalement établie.
2. Le respect des droits de la défense est garanti à tout accusé.

**Article 49. Principe de légalité et de proportionnalité des délits et des peines**

1. Nul ne peut être condamné pour une action ou une omission qui, au moment où elle a été commise, ne constituait pas une infraction d'après le droit national ou le droit international. De même, il n'est infligé aucune peine plus forte que celle qui était applicable au moment où l'infraction a été commise.

Si, postérieurement à cette infraction, la loi prévoit une peine plus légère, celle-ci doit être appliquée.

2. Le présent article ne porte pas atteinte au jugement et à la punition d'une personne coupable d'une action ou d'une omission qui, au moment où elle a été commise, était criminelle d'après les principes généraux reconnus par l'ensemble des nations.

3. L'intensité des peines ne doit pas être disproportionnée par rapport à l'infraction.

**Article 50. Droit à ne pas être jugé ou puni pénalement deux fois pour une même infraction**

Nul ne peut être poursuivi ou puni pénalement en raison d'une infraction pour laquelle il a déjà été acquitté ou condamné dans l'Union par un jugement pénal définitif conformément à la loi.

**CHAPITRE 7 - DISPOSITIONS GENERALES****Article 51. Champ d'application**

1. Les dispositions *du présent Titre* s'adressent aux institutions et organes de l'Union dans le respect du principe de subsidiarité, ainsi qu'aux Etats membres uniquement lorsqu'ils mettent en œuvre le droit de l'Union. En conséquence, ils respectent les droits, observent les principes et promeuvent l'application, conformément à leurs compétences respectives.

2. *Le présent Titre* ne crée aucune compétence ni aucune tâche nouvelles pour l'Union et ne modifie pas les compétences et tâches définies *par la Constitution*.

## **Article 52. Portée des droits garantis**

1. Toute limitation de l'exercice des droits et libertés reconnus par la présente charte doit être prévue par la loi et respecter le contenu essentiel desdits droits et libertés. Dans le respect du principe de proportionnalité, des limitations ne peuvent être apportées que si elles sont nécessaires et répondent effectivement à des objectifs d'intérêt général reconnus par l'Union ou au besoin de protection des droits et libertés d'autrui.

2. Les droits reconnus *aux articles 8, 15 alinéas 2 et 3, 18, 21 alinéa 2, 22, 23 alinéa 2, 35, 37, 38, 39, 40, 41 alinéa 3 et 4, 42, 43, 44, 45 et 46* s'exercent dans les conditions et limites définies *par le Traité*<sup>12</sup>.

3. Dans la mesure où *le présent Titre* contient des droits correspondant à des droits garantis par la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales, leur sens et leur portée sont les mêmes que ceux que leur confère ladite convention. Cette disposition ne fait pas obstacle à ce que le droit de l'Union accorde une protection plus étendue.

## **Article 53. Niveau de protection**

Aucune disposition *du présent Titre* ne doit être interprétée comme limitant ou portant atteinte aux droits de l'homme et libertés fondamentales reconnus, dans leur champ d'application respectif, par le droit de l'Union, le droit international et les conventions internationales auxquelles sont parties l'Union ou tous les Etats membres, et notamment la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales, ainsi que par les constitutions des Etats membres.

## Article 54. Interdiction de l'abus de droit

Aucune des dispositions *du présent Titre* ne doit être interprétée comme impliquant un droit quelconque de se livrer à une activité ou d'accomplir un acte visant à la destruction des droits ou libertés reconnus *au présent Titre* ou à des limitations plus amples des droits et libertés que celles qui sont prévues *par le présent Titre*.

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<sup>12</sup>Nouvelle formulation à la suite de l'insertion la Charte dans la Constitution (en tenant compte des explications relatives au texte de la Charte, CHARTE 4471/00 CONVENT 48)

## TITRE II

### PRINCIPES FONDAMENTAUX ET OBJECTIFS DE L'UNION

#### Article 55. L'Union européenne<sup>13</sup>

- 1. L'Union européenne est composée des Etats membres et de leurs citoyens. Tout pouvoir de l'Union provient émane de ces derniers.*
- 2. L'Union respecte l'identité historique, culturelle et linguistique des Etats membres, ainsi que leur structure constitutionnelle. Elle exerce ses pouvoirs et ses compétences sur base des principes de subsidiarité et proportionnalité et de transparence<sup>14</sup>.*
- 3. L'Union a la personnalité juridique et se donne les moyens nécessaires pour poursuivre ses objectifs et mettre en œuvre ses politiques.*
- 4. Le droit de l'Union, conforme à la Constitution, prévaut sur le droit des Etats membres.*

#### Article 56. Les principes de l'Union

- 1. L'Union se base sur les principes de liberté, démocratie, respect des droits de l'homme et des libertés fondamentales et de l'Etat de droit, principes qui sont communs aux Etats membres et qui sont exprimés au Titre I<sup>15</sup>.*
- 2. L'Union fait siens les principes de la Charte des Nations Unies, promeut le maintien de la paix, le développement et le renforcement de la démocratie et de l'Etat de droit, le respect et la tutelle des droits de l'homme en Europe et dans le monde, participe aux organisations internationales qui poursuivent cet objectif.<sup>16</sup>*

#### Article 57. Les objectifs de l'Union<sup>17</sup>

1. L'Union se donne pour objectifs :

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<sup>13</sup> Remaniement de l'art. 1 du projet Herman de 1994

<sup>14</sup> Intégration du principe de transparence prévu à l'article 1 TUE.

<sup>15</sup> Art 6.1 TUE en ajoutant la référence à la Charte des droits fondamentaux.

<sup>16</sup> Nouvelle écriture de l'article 11 TUE tel que modifié par 17.04.2001, avis sur la répartition des compétences entre l'Union européenne et les Etats membres (Newton Dunn), conclusions par. 6 a) et par 31.05.2001, Traité de Nice et futur de l'Union (Mendez de Vigo, Seguro), par. 15b).

<sup>17</sup> Art. 2 TUE, avec les ajouts tirés de l'art. 2 TCE, de l'art. 11 TUE et de l'art. 29 TUE

- a) de promouvoir le progrès économique et social, un haut degré de compétitivité et de convergence des résultats économiques, et un niveau d'emploi et de protection sociale élevés, et de parvenir à un développement équilibré et durable, notamment par la création d'un espace sans frontières intérieures, par le renforcement de la cohésion économique et sociale et par l'établissement d'une union économique et monétaire *avec* une monnaie unique,
- b) de garantir un niveau élevé de protection de l'environnement et l'amélioration de la qualité de ce dernier, l'amélioration du niveau et de la qualité de la vie,
- c) d'affirmer son identité sur la scène internationale *à travers la recherche des finalités et l'affirmation des principes de l'article précédent ; de défendre* les valeurs communes, les intérêts fondamentaux, l'indépendance et l'intégrité de l'Union ; renforcer la sécurité de l'Union sous toutes ses formes ; promouvoir la coopération internationale ;
- d) de renforcer la protection des droits et des intérêts des ressortissants de ses Etats membres ; de maintenir et de développer l'Union en tant qu'espace de liberté, de sécurité et de justice au sein duquel est assurée la libre circulation des personnes avec un niveau élevé de sécurité au travers de la prévention et de la lutte contre la criminalité, le racisme et la xénophobie.

#### **Article 58. Citoyenneté de l'Union**<sup>18</sup>

1. Il est institué une citoyenneté de l'Union. Est citoyen de l'Union toute personne ayant la nationalité d'un Etat membre. La citoyenneté de l'Union *complète* la citoyenneté nationale et ne la remplace pas.

2. *Les citoyens de l'Union participent à sa vie politique dans les formes prévues par la Constitution et par le Traité ; ils jouissent des droits et sont sujets aux devoirs prévus par le système juridique de l'Union.*

#### **Article 59. Coopération loyale et solidarité**<sup>19</sup>

1. Les Etats membres adoptent toutes les mesures générales et particulières propres à assurer l'exécution des obligations découlant *de la Constitution et du Traité* ou résultant des actes des institutions de l'Union. Ils facilitent à celle-ci l'accomplissement de sa mission.

<sup>18</sup> Art 17 TCE intégré avec l'art. 3 du "projet Spinelli" de 1984 (Résolution du Parlement européen sur le projet de Traité instituant l'Union européenne du 14 février 1984).

<sup>19</sup> Fusion des art 10 et 49 TCE.

2. Les Etats agissent dans un esprit de loyauté et de solidarité réciproque et s'abstiennent de toutes mesures susceptibles de mettre en péril la réalisation des buts *de la Constitution et du Traité* ou contraires aux intérêts de l'Union.

### TITRE III

## POLITIQUES ET COMPETENCES DE L'UNION

#### **Article 60. Les politiques de l'Union<sup>20</sup>**

1. Aux fins de l'article 57, a) et b), l'action de l'Union européenne comporte

- a) un marché intérieur caractérisé par l'abolition entre les Etats membre des obstacles à la libre circulation des marchandises, des personnes, des services et des capitaux ;
- b) l'interdiction, entre les Etats membres, des droits de douane et de *toute* restriction à l'entrée et à la sortie des marchandises ;
- c) une politique commerciale commune ;
- d) une politique commune dans les secteurs de l'agriculture et de la pêche ;
- e) une politique commune dans le domaine des transports ;
- f) un régime assurant que la concurrence n'est pas faussée dans le marché intérieur;
- g) le rapprochement des législations nationales dans la mesure nécessaire au fonctionnement du marché *intérieur*<sup>21</sup> ;
- h) la promotion d'une coordination entre les politiques de l'emploi des Etats membres en vue de renforcer leur efficacité par l'élaboration d'un stratégie coordonnée pour l'emploi ;
- i) une politique dans le domaine social comprenant un Fonds social européen ;
- j) le renforcement de la cohésion économique et sociale ;
- k) une politique dans le secteur de l'environnement ;
- l) le renforcement de la compétitivité de l'industrie communautaire ;
- m) la promotion de la recherche et du développement technologique ;

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<sup>20</sup> Nouvelle écriture de l'article 3 TCE et des articles 2,12 et 29 TUE avec des ajouts dérivant des articles 61, 62 et 63 TCE.

<sup>21</sup> On substitue "marché commun" avec "marché intérieur"

- n) l'encouragement à l'établissement et au développement de réseaux transeuropéens ;
- o) une contribution à la réalisation d'un niveau élevé de protection de la santé ;
- p) une contribution à une éducation et à une formation de qualité ainsi qu'à l'épanouissement des cultures des Etats membres ;
- q) une politique dans le domaine de la coopération au développement ;
- r) l'association des pays et territoires d'outre-mer, en vue d'accroître les échanges et de poursuivre en commun l'effort de développement économique et social ;
- s) une contribution au renforcement de la protection des consommateurs ;
- t) des mesure dans le domaine de l'énergie, de la protection civile et du tourisme ;

2. Aux fins de l'article 57, c), l'action de l'Union européenne comporte :

- a) la mise en œuvre d'une politique étrangère et de sécurité commune par la définition de principes et d'orientations communs, la décision de stratégies communes, l'adoption d'actions et de positions communes, la coopération systématique entre les Etats membres pour la conduite de leur politique ;
- b) *la définition progressive d'une politique de sécurité et de défense commune renforcée par une coopération dans le secteur des armements, incluant les missions humanitaires et de secours, les activités de maintien de la paix et les missions d'unités de combat dans la gestion des crises, y compris les mesures tendant au rétablissement de la paix*<sup>22</sup>.

3. Aux fins de l'article 57, d), l'action de l'Union européenne comporte :

- a) des mesure concernant l'accès et la circulation des personnes ;
- b) des mesures en matière de politique de l'immigration et dans les secteurs des contrôles aux frontières extérieures, de l'asile et de la sauvegarde des droits des citoyens des pays tiers ;
- c) des mesures dans les secteurs de la coopération judiciaire en matière civile et pénale et dans le secteur de la coopération administrative, y compris la reconnaissance des décisions judiciaires et extrajudiciaires ;
- d) des mesures pour la prévention et la répression de la criminalité, organisée ou autre, en particulier le terrorisme, la traite des être humains et les crimes contre les mineurs, le trafic de drogue et d'armes, la corruption et la fraude ;
- e) *la promotion d'une coopération plus étroite entre autorités judiciaires, forces de police, autorités douanières des pays membres, au travers, aussi, d'agences comme Eurojust et Europol* ;<sup>23</sup>
- f) le rapprochement, si nécessaire, des normes des Etats membres en matière pénale ;

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<sup>22</sup> Art. 17 TUE tel que modifié par l'art. 1 du Traité de Nice ; on élimine le caractère simplement éventuel de la définition progressive de la défense commune.

<sup>23</sup> Nouvelle écriture des articles 30 et 31 TUE tels que modifiées par l'art. 27 E du Traité de Nice.

g) la protection des droits des personnes au niveau de l'Union, aussi à travers des autorités spéciales indépendantes instituées par le Traité, comme le Garant européen pour la protection des données personnelles ;<sup>24</sup>

4. L'action de la Communauté européenne aux fins du présent article tend à éliminer les inégalités, aussi bien qu'à promouvoir la parité entre hommes et femmes.

5. Les exigences de la protection de l'environnement doivent être intégrées dans la définition et la mise en œuvre des politiques et action visées dans le présent article, en particulier afin de promouvoir le développement durable.<sup>25</sup>

#### **Article 61. Le système de répartition des compétences<sup>26</sup>.**

1. L'Union agit dans les limites des compétences qui lui sont conférées et des objectifs qui lui sont assignés par la *Constitution*.<sup>27</sup>

**2. Dans les matière de compétence exclusive de l'Union elle est seule à pouvoir adopter des règles législatives. Dans ces matières les Etats membres peuvent intervenir uniquement si autorisés par l'Union et dans les limites de cette autorisation, selon les modalités établies par le Traité<sup>28</sup>.**

#### **Article 62. Subsidiarité et proportionnalité.<sup>29</sup>**

1. Dans les domaines qui ne relèvent pas de sa compétence exclusive, l'Union n'intervient, conformément au principe de subsidiarité, que si et dans la mesure où les objectifs de l'action envisagée ne peuvent pas être réalisés de manière suffisante par les Etats membres et peuvent donc, en raison des dimensions ou des effets de l'action envisagée, être mieux réalisés au niveau communautaire.

**2. Dans les matières qui ne relèvent pas de sa compétence exclusive, l'intervention de l'Union n'est légitime que si elle remplit au moins un des trois critères suivants :**

<sup>24</sup> Art. 8 de la Constitution et art. 286 TCE.

<sup>25</sup> Art. 6 TCE.

<sup>26</sup> Nouvel article ; 16.05.2002, Délimitation des compétences entre l'Union européenne et les Etats membres (Lamassoure), par. 19 et suivants.

<sup>27</sup> Art 5 TCE.

<sup>28</sup> L'hypothèse d'une "autorisation" de l'Union pour les Etats membres pour l'exercice de compétences propres de l'Union se retrouve dans 16.05.2002, Délimitation des compétences entre l'Union européenne et les Etats membres (Lamassoure), par.22, où on n'indique cependant pas les modalités selon lesquelles celle-ci serait accordée.

<sup>29</sup> Art 5 TCE modifié d'après la résolution Lamassoure (point g du considérant)



- a) l'espace de l'action prévue dépasse les limites d'un Etat membre et l'action comporterait des risques d'effets contraires, en termes de distorsion et déséquilibre pour un ou plusieurs Etats, si elle n'était pas gérée au niveau communautaire ;*
- b) l'action prévue au niveau communautaire, par rapport aux actions semblables qui seraient mises en œuvre séparément par chaque Etat membre, présente un avantage de synergie tangible en termes d'efficacité et d'économie d'échelle ;*
- c) l'action prévue répond à une exigence de solidarité ou de cohésion qui, à la lumière des différences de développement, ne peut être assumée de façon satisfaisante dans le cadre de chaque Etat membre.*

3. L'action de l'union n'excède pas ce qui est nécessaire pour atteindre les objectifs *de la Constitution*.

4. *Chacune des institutions assure, dans l'exercice de ses compétences, le respect des principes de subsidiarité et de proportionnalité, selon les dispositions et procédures prévues par le Traité*<sup>30</sup>.

#### **Article 63. Les compétences exclusives de l'Union**<sup>31</sup>

*1. L'Union dispose d'une compétence exclusive dans les matières suivantes :*

- a) le marché intérieur, y compris les libertés de circulation des personnes, des biens, des services et des capitaux et les services financiers ;*
- b) la politique de la concurrence ;*
- c) les politiques structurelles et de cohésion ;*
- d) le renforcement et le développement de l'espace commun de liberté, sécurité et justice ;*
- e) la politique douanière ;*
- f) la définition et la mise en œuvre de la politique extérieure et de défense commune ;*
- g) les relations économiques extérieures ;*
- h) les accords d'association ;*
- i) le financement du budget de l'Union ;*
- j) pour les pays qui adhèrent à la monnaie commune, la politique monétaire.*

<sup>30</sup> Le paragraphe 4 est tiré du Protocole sur l'application des principes de subsidiarité et de proportionnalité, auquel nous renvoyons.

<sup>31</sup> 16.05.2002, Délimitation des compétences entre l'Union et les Etats membres (Lamassoure) par 22,23 et 24 (Pour la définition des compétences de l'Union, dans ce Titre, nous reproduisons le texte de la résolution, qui demanderait lui-même des ajustements et des précisions).

**Article 64. Les compétences communes de l'Union et des Etats membres<sup>32</sup>**

*1. Dans les matières suivantes à compétence commune, l'Union dégage les orientations, les principes généraux et les objectifs, y compris, si nécessaire, les règles communes et les standards minimum :*

- a) la promotion de l'égalité entre hommes et femmes ;*
  - b) la politique sociale et de l'emploi ;*
  - c) la politique d'immigration et les autres politiques liées à la libre circulation des personnes ;*
  - d) la protection des consommateurs ;*
  - e) l'environnement ;*
  - f) la politique agricole et la pêche ;*
  - g) les transports ;*
  - h) les réseaux transeuropéens ;*
  - i) la recherche et le développement technologique ;*
  - j) l'énergie ;*
  - k) la fiscalité liée au marché unique ;*
  - l) la politique étrangère ;*
  - m) la politique de défense et de sécurité, intérieure et extérieure, dans leur dimension transnationale ;*
  - n) la coopération au développement ;*
  - o) l'association des pays et territoires d'outre-mer ;*
- 2. Dans ces matières la norme communautaire a comme but une discipline uniforme uniquement là où, en l'absence de celle-ci, l'égalité des droits ou la concurrence risqueraient d'être compromises. Les Etats membres gardent leur capacité de légiférer lorsque l'Union n'a pas encore exercé ses pouvoirs.*
- 3. Dans les matières suivantes à compétence commune, l'Union agit exclusivement pour compléter l'action des Etats membres, qui gardent donc la compétence de droit commun :*
- a) l'éducation, la formation professionnelle et la jeunesse ;*
  - b) la protection civile ;*
  - c) la culture ;*
  - d) les moyens d'information ;*

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<sup>32</sup> 16.05.2002, Délimitation des compétences entre l'Union et les Etats membres (Lamassoure), par. 25, 26, 27, 28, 29, 30, 31, 32, 33, 34.

- e) le sport ;
- f) la santé ;
- g) l'industrie ;
- h) le tourisme ;
- i) les contrats civiles et commerciaux ;

4. Dans les matières suivantes à compétence partagée, l'Union coordonne les politiques nationales selon les procédures prévues par le Traité<sup>33</sup>

- a) les politiques budgétaires et fiscales dans le cadre de l'Union économique et monétaire ;
- b) les politiques de l'emploi.

**Article 65. Les compétences des Etats membres.**<sup>34</sup>

*Les Etats membres sont compétents pour toutes les matières qui ne sont pas mentionnées dans la Constitution et dans le Traité.*

**Article 66. Autres interventions de l'Union**<sup>35</sup>

Si une action de l'Union apparaît nécessaire pour réaliser un des objectifs mentionnés dans la Constitution, sans que celle-ci ait prévu les pouvoirs d'action requis à cet effet, le Conseil **et le Parlement, en utilisant la procédure prévue à l'art 98** prennent les dispositions appropriées. **La Cour des Comptes informe le Conseil, la Commission et le Parlement européen des conséquences du transfert de compétences sur le budget de l'Union.**

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<sup>33</sup> 16.05.2002, Délimitation des compétences entre l'Union et les Etats membres (Lamassoure), par 30-31 on prévoit d'établir de nouvelles formes de coordination et de les indiquer dans le traité (on ne dit pas lesquelles). Dans le Traité il faudrait prévoir, avec la prudence nécessaire, une référence à la méthode ouverte de coordination, telle que définie dans les conclusions du Conseil de Lisbonne. 4.10.2001, Renforcement de la coordination des politiques économiques dans l'espace de l'euro (Bérès), par. 2 ; 29.11.2001, Gouvernance européenne (Kaufmann), par. 37 ; 16.05.2002, délimitation des compétences entre l'union et les Etats membres (Lamassoure), par. 33.

<sup>34</sup> 16.05.2002 Délimitation des compétences entre l'Union et les Etats membres (Lamassoure), par. 21 et art. 308 TCE avec les modifications suggérées par la résolution même.

<sup>35</sup> Cet article reprend l'art. 308 TCE, avec les modifications proposées par 16.05.2002, Délimitations des compétences entre l'Union et les Etats membres (Lamassoure), par.35.

## TITRE IV

### ORGANISATION INSTITUTIONNELLE

#### CHAPITRE I DISPOSITIONS GENERALES

##### **Article 67. Le conseil européen<sup>36</sup>**

Le Conseil européen donne à l'Union les impulsions nécessaires à son développement et en définit les orientations politiques générales.

Le Conseil européen réunit les chefs d'Etat ou de gouvernement des Etats membres ainsi que le président de la Commission. Ceux-ci sont assistés par les ministres chargés des affaires étrangères des Etats membres et par un membre de la Commission. Le Conseil européen se réunit au moins deux fois par an, sous la présidence du chef d'Etat ou de gouvernement de l'Etat membre qui exerce la présidence du Conseil.

Le Conseil européen présente au Parlement européen un rapport à la suite de chacune de ses réunions, ainsi qu'un rapport écrit annuel concernant les progrès réalisés par l'Union.

##### **Article 68. Les institutions<sup>37</sup>**

L'exécution des tâches de l'Union est assurée par les institutions suivantes :

- le Parlement européen
- le Conseil
- la Commission
- la Cour de Justice
- la Cour des Comptes

Dans l'exécution de *leurs*<sup>38</sup> tâches le Conseil et la Commission sont assistés par un Comité économique et social et par un Comité des régions, qui ont des fonctions consultatives.

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<sup>36</sup> Art.4 TUE.

<sup>37</sup> Version consolidée de l'art.5TUE et de l'art. 7 TUE.

<sup>38</sup> On enlève ainsi la limitation selon laquelle le CES et le CdR ne valent que pour la Communauté 29.11.2001, Résolution sur le processus constitutionnel et le futur de l'Union (Leinen, Méndez de Vigo),

**Article 69. Principe d'attribution des pouvoirs**<sup>39</sup>

Le Parlement européen, le Conseil, la Commission, la Cour de Justice et la Cour des Comptes exercent leurs attributions dans les conditions et aux fins prévus *par la Constitution et par le Traité*.

**Article 70. Le système européen des banques centrales et la Banque centrale européenne**<sup>40</sup>

Il est institué, selon les procédures prévues *par le Traité*, un Système européen de banques centrales (ci-après dénommée SEBC) et une Banque centrale européenne (ci-après dénommée BCE), qui agissent dans les limites des pouvoirs qui leur sont conférés *par la Constitution, par le Traité* et par le statut du SEBC et de la BCE annexé à celui-ci.

**Article 71. La Banque européenne d'investissement**<sup>41</sup>

Il est institué une Banque européenne pour les investissements, qui agit dans les limites des attributions qui lui sont conférées *par le Traité* et par le statut *annexé à celui-ci*.

**CHAPITRE II. LE PARLEMENT EUROPEEN****Article 72. Composition**<sup>42</sup>

1. Le Parlement européen est composé de représentants des peuples des Etats réunis dans l'Union. Les représentants sont élus au suffrage universel direct pour une période de cinq ans.
2. Le Parlement européen élabore, *d'après la procédure de l'art.98*<sup>43</sup>, un projet en vue de permettre l'élection au suffrage universel direct selon une procédure uniforme dans tous les Etats membres qui le composent ou conformément à des principes communs à tous les Etats membres. *Le projet peut*

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par. 3 b) et f) ; 31.05.2001, Résolution sur le Traité de Nice et le futur de l'Union européenne (Méndez de Vigo, Seguro), par.17.

<sup>39</sup> Version consolidée de l'art. 5 TUE et de l'art. 7 TCE dernière phrase.

<sup>40</sup> Nouvelle écriture de l'art. 8 TCE

<sup>41</sup> Art.9 TCE

<sup>42</sup> Version consolidée de parties sélectionnées des articles 189, 190 et 197 TCE.

*prévoir qu'un certain pourcentage de sièges soit répartie, selon le système proportionnel, dans le cadre d'une circonscription européenne unique*<sup>44</sup>.

Le nombre des représentants élus dans chaque Etat membre *est établi par le Traité* et doit assurer une représentation appropriée des peuples des Etats réunis dans l'Union. Le nombre des membres du Parlement européen ne dépasse pas sept cent<sup>45</sup>.

**3. Le statut et les conditions générales pour l'exercice des fonctions des membres du Parlement européen sont établis par acte législatif approuvé par le Parlement à la majorité des membres qui le composent**<sup>46</sup>.

**4. Le Parlement européen établit à la majorité des membres qui le composent son propre règlement intérieur et décide de l'endroit où il siège et organise ses réunions**<sup>47</sup>.

### Article 73. Fonctions<sup>48</sup>

1. Le Parlement européen participe au processus conduisant à l'adoption des actes communautaires, en exerçant ses attributions *d'après la procédure de l'art.98*<sup>49</sup>, ainsi qu'en rendant des avis conformes ou en donnant des avis consultatifs.

2. Le Parlement européen peut, à la majorité de ses membres, demander à la Commission de soumettre toute proposition appropriée sur les questions qui lui paraissent nécessiter l'élaboration d'un acte communautaire pour la mise en œuvre *de la Constitution*.

3. Le Parlement européen exprime un *avis contraignant sur les principaux aspects et sur les choix fondamentaux en matière de* politique étrangère et de sécurité de l'Union et est informé régulièrement par la Présidence et par la Commission de ses développements<sup>50</sup>.

<sup>43</sup> 29.11.2002, Processus constitutionnel et futur de l'UE (Lainent Mendiez de Vivo), par. 4 c) ; 31.05.2001, Traité de Nice et futur de l'Union européenne (Mendez de Vigo, Seguro), par. 29 et 30.

<sup>44</sup> 13.04.2002, CIG : Adapter les institutions pour réaliser avec succès l'élargissement (Dimitrakopoulos, Leinen), par. 6 ; 15.07.1998, Procédure électorale pour l'élection du Parlement européen (Anastassopoulos), par. 3 et 4.

<sup>45</sup> 13.04.2000, CIG : Adapter les institutions à l'élargissement (Dimitrakopoulos, Leinen), par. 5.2 ; 31.05.2001 Traité de Nice et futur de l'Union européenne (Mendez de Vigo, Seguro), par. 15.

<sup>46</sup> 31.05.2001, Traité de Nice et futur de l'union européenne (Mendez de Vigo, Seguro), par. 26.

<sup>47</sup> 31.05.2001, Traité de Nice et futur de l'Union européenne (Mendez de Vigo, Seguro), par.26 ; 13.04.2000, Adapter les institutions à l'élargissement. (Dimitrakopoulos, Leinen), par. 9.

<sup>48</sup> Art. 192 TCE.

<sup>49</sup> 07.02.2002 Rapports PE/Parlements nationaux (Napolitano) par. 5 ; 29.11.2001 Processus constitutionnel et futur de l'UE (Leinen, Mendez de vigo), par.4 c) ; 31.05.2001, Traité de Nice et futur de l'UE (Mendez de Vigo, Seguro), par. 29 et 30.

<sup>50</sup> Art. 21.1 tel que modifié d'après 10.04.2002, Résolution sur la situation actuelle de la politique européenne de sécurité et de défense (Brok), par. 26.

4. Le Parlement européen en séance publique procède à l'examen de la relation générale annuelle sur les progrès de l'Union<sup>51</sup>. Le Parlement européen peut formuler des interrogations ou exprimer des recommandations au Conseil européen, au Conseil ou à la Commission<sup>52</sup>

#### **Article 74. Motion de censure<sup>53</sup>**

Le parlement européen, saisi d'une motion de censure sur la gestion de la Commission, ne peut se prononcer sur cette motion que trois jours au moins après son dépôt et par un scrutin public. Si la motion de censure est adoptée à la majorité des deux tiers des voix exprimées et à la majorité des membres qui composent le Parlement européen, les membres de la commission doivent abandonner collectivement leurs fonctions. Ils continuent d'expédier les affaires courantes jusqu'à leur remplacement. Dans ce cas, le mandat des membres de la Commission nommés pour les remplacer expire à la date à laquelle aurait dû expirer le mandat des membres de la Commission obligés d'abandonner collectivement leurs fonctions.

#### **Article 75. Votations<sup>54</sup>**

Sauf les cas où il est prévu que le Parlement européen délibère à la majorité absolue de ses membres ou les cas où il est prévu autrement, le Parlement européen délibère à la majorité absolue des voix exprimées.

#### **Article 76. Droit de pétition au Parlement européen<sup>55</sup>**

Tout citoyen de l'Union, ainsi que toute personne physique ou morale résidant ou ayant son siège statutaire dans un Etat membre, a le droit de présenter, à titre individuel ou en association avec d'autres citoyens ou personnes, une pétition au Parlement européen sur un sujet relevant des domaines d'activités de l'Union et qui le ou la concerne directement.

#### **Article 77. Le Médiateur européen<sup>56</sup>**

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<sup>51</sup> Nouvelle écriture de l'art. 200 TCE.

<sup>52</sup> Fusion des art. 4, 21.2, 39.2 TUE.

<sup>53</sup> Art. 201 TCE

<sup>54</sup> Remaniement de l'art.198 TCE.

<sup>55</sup> Art. 194 TCE

<sup>56</sup> Parties sélectionnées de l'art. 195 TCE.

1. Le parlement européen nomme un Médiateur, habilité à recevoir les plaintes émanant de tout citoyen de l'Union ou de toute personne physique ou morale résidant ou ayant son siège statutaire dans un Etat membre et relatives à des cas de mauvaise administration *au sens de l'article 43*.

2. Le Médiateur est nommé après chaque élection du Parlement européen pour la durée de la législature. Son mandat est renouvelable.

Le Médiateur peut être déclaré démissionnaire par la Cour de justice, à la requête du Parlement européen, s'il ne remplit plus les conditions nécessaires à l'exercice de ses fonctions ou s'il a commis une faute grave.

3. Le médiateur exerce ses fonctions en toute indépendance. Dans l'accomplissement de ses devoirs, il ne sollicite ni accepte d'instructions d'aucun organisme. Pendant la durée de ses fonctions, le médiateur ne peut exercer aucune autre activité professionnelle, rémunérée ou non.

### CHAPITRE III. LE CONSEIL

#### Article 78. Composition et Présidence<sup>57</sup>

**1. *Le Conseil*** sauf dans les cas où il se réunit dans la composition des chefs d'Etat et de gouvernement<sup>58</sup> ***est composé de représentations des Etats membres nommées par leurs gouvernements respectifs. Chaque représentation est dirigé par un ministre chargé de façon spécifique et permanente des affaires de l'Union.***

2. La Présidence est exercée a tour de rôle par chaque membre du Conseil pour une durée de six mois selon l'ordre établi par le Conseil, qui délibère à l'unanimité.

**3. *Le Président en charge du Conseil réfère au Parlement européen au début de la Présidence pour la présentation du programme, pendant la Présidence pour les progrès réalisés et à la fin de la présidence pour un bilan récapitulatif***<sup>59</sup>.

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<sup>57</sup> Art. 203 TCE, modifié d'après l'art.20 du "Projet Spinelli" de 1984 (Résolution du Parlement européen sur le projet de Traité instituant l'Union européenne du 14 février 1984)

<sup>58</sup> Hypothèse déjà prévue par les Traités en vigueur, par exemple art 7 TUE.

<sup>59</sup> 25.10.2001, Réforme du Conseil (Poos), par. 18.



**4. Des réunions spéciales du Conseil, composé par les ministres des Etats membres compétents pour leurs matières respectives, sont consacrées à la politique étrangère et de sécurité commune et à la politique de défense.** <sup>60</sup>

#### **Article 79. Fonctions**<sup>61</sup>

1. En vue d'assurer la réalisation des objets fixés par la constitution le conseil :

**a) participe à la fonction législative dans le cadre de la procédure de codécision**<sup>62</sup>

b) assure la coordination des politiques économiques générales des Etats membres,

c) dispose d'un pouvoir de décision

2. Concernant la politique étrangère et de sécurité commune le Conseil :

a) prend les décisions nécessaires pour la définition et la mise en œuvre de la politique extérieure et de sécurité commune sur base des orientations générales définies par le Conseil européen,

b) recommande des stratégies communes au Conseil européen et les met en œuvre, notamment en arrêtant des actions communes et des positions communes.

**3. Le Conseil promeut la coopération entre les Etats membres et avec les institutions de l'Union dans le cadre de la coopération judiciaire et de police en utilisant les instruments prévus par le Traité, tels que Eurojust et Europol.**<sup>63</sup>

**4. Lorsque le Conseil agit en tant que législateur, ses réunions sont publiques. Les délibérations, les votations, les déclarations de vote et les points du procès verbal en rapport avec l'adoption de textes législatifs sont rendus publics**<sup>64</sup>.

#### **Article 80. Votes**<sup>65</sup>

1. Le Conseil délibère **à la majorité qualifiée** sauf les cas où il est prévu que le Conseil délibère à l'unanimité ou à la majorité simple.<sup>66</sup>

<sup>60</sup> 26.09.2002 Relation sur les progrès réalisés dans la mise en œuvre de la politique étrangère et de sécurité commune (brock par 13 ).

<sup>61</sup> Nouvelle écriture de l'art. 202 TCE et de l'art. 13.3 TUE

<sup>62</sup> 7.02.2002, Relations PE/Parlements nationaux (Napolitano), par. 5 ; 29.11.2001, Processus constitutionnel et futur de l'Union (Leinen Mendez de Vigo), par. 4 c) ; 31.05.2001, Traité de Nice et futur de l'Union européenne (Mendez de Vigo, Seguro), par. 29 et 30.

<sup>63</sup> 29.11.2001, Processus constitutionnel et futur de l'Union (Leinen Mendez de Vigo), par. 3 f).

<sup>64</sup> 14.03.2002, Mise en œuvre par le Conseil et la Commission du règlement sur l'accès public aux documents (B5-10131/2002), par.20 et 21 ; 25.10.2001, Réforme du Conseil (Poos), par. 25 ; 29.11.2001, Gouvernance européenne (Kaufmann), par. 20.

**2. La majorité qualifiée est atteinte avec le vote favorable de la majorité simple des Etats membres qui représentent la majorité de la population totale des Etats membres de l'Union<sup>67</sup>.**

3. Les abstentions des membres présents ou représentés n'empêchent pas l'adoption des délibérations du Conseil pour lesquelles l'unanimité est requise.

## CHAPITRE IV LA COMMISSION

### Article 81. Composition<sup>68</sup>

1. La Commission est composée de membres choisis en raison de leur compétence générale et offrant toutes garanties d'indépendance.

Seuls les nationaux des Etats membres peuvent être membres de la Commission.

*La composition de la Commission est prévue par le Traité.<sup>69</sup>*

2. Les membres de la Commission exercent leurs fonctions en pleine indépendance dans l'intérêt général de l'Union.

Dans l'accomplissement de leurs devoirs, ils ne sollicitent ni n'acceptent d'instructions d'aucun gouvernement ni d'aucun organisme. Ils s'abstiennent de tout acte incompatible avec le caractère de leurs fonctions. Chaque Etat membre s'engage à respecter ce caractère et à ne pas chercher à influencer les membres de la Commission dans l'exécution de leur tâche.

### Article 82. Nomination<sup>70</sup>

1. Les membres de la Commission sont nommés pour une durée de cinq ans, sauf l'éventuelle motion de censure.

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<sup>65</sup> Art. 205 TCE.

<sup>66</sup> La majorité qualifiée est assumée comme procédure ordinaire, d'après : 29.11.2001, Processus constitutionnel et futur de l'UE (Leinen, Mendez de Vigo), par. 4 c) ; 31.05.2001, Traité de Nice et futur de l'UE (Mendez de Vigo, Seguro), par. 29.

<sup>67</sup> 13.04.2000, CIG, Adapter les institutions à l'élargissement (Dimitrakopoulos, Leinen), par. 10.1.

<sup>68</sup> Art. 213.1 TCE, parties sélectionnées, et art 213.2 par. 1 et 2 TCE.

<sup>69</sup> 13.04.2000, CIG, Adapter les institutions à l'élargissement (Dimitrakopoulos, Leinen), par 12.1 : présente deux options possibles : 1) une Commission composée de 20 commissaires et du Président, avec un système de rotation qui garantisse l'opportunité de participation aux citoyens de chaque Etat membre ; 2) un commissaire pour chaque Etat membre, le rôle du Président renforcé et l'institution d'une hiérarchie interne qui permette à la Commission de travailler de manière efficace. La question est laissée en suspens en attendant que le Parlement choisisse entre les deux solutions (le "projet Spinelli" et le "projet Herman" renvoient la composition de la Commission à une loi organique).

<sup>70</sup> Art. 214 TCE

Leur mandat est renouvelable.

**2. Le Conseil, réuni au niveau des Chefs d'Etat et de gouvernement et avec délibération à la majorité qualifiée, désigne deux ou plusieurs candidats à la charge de Président de la Commission. Parmi ces deux candidats le parlement européen élit, à la majorité de ses membres, le Président de la Commission<sup>71</sup>.**

**3. Le Président de la Commission désigne, après avoir entendu le Conseil, les autres membres de la Commission.**

**Les membres ainsi désignés sont soumis au vote d'approbation du Parlement européen, à la majorité de ses membres.<sup>72</sup>**

**4. Le Conseil, par délibération à la majorité qualifiée et en accord avec le Président de la Commission, désigne un candidat pour la charge de Haut Représentant pour la politique extérieure et de sécurité commune qui assure les fonctions de vice-président de la Commission et est soumis à des obligations particulières vis-à-vis du Conseil et au Parlement européen<sup>73</sup>.**

**La désignation doit être approuvée par le Parlement européen, à la majorité de ses membres.**

#### **Article 83. Présidence<sup>74</sup>**

1. La Commission remplit sa mission dans le respect des orientations politiques définies par son Président, **qui en décide l'organisation interne pour garantir la cohérence, l'efficacité et la collégialité de son action.**

**Les compétences de la Commission sont réparties entre les membres par le Président. Le Président peut modifier la répartition des compétences pendant le mandat. Les membres de la Commission exercent les fonctions qui leurs sont attribuée sous son autorité.**

**2. Après délibération du collège, le Président nomme un ou deux vice-présidents parmi les membres de la Commission, en plus du Haut Représentant.**

<sup>71</sup> 13.04.2000, Adapter les institutions pour réaliser avec succès l'élargissement (Dimitrakopoulos, Leinen), par. 12.2.

<sup>72</sup> Ceci se déduit *a contrario* comme différenciation par rapport à la procédure de nomination du vice président avec fonction de Haut Représentant. La consultation du Conseil pour la désignation des commissaires est prévue par le "projet Spinelli" au par. 25.2.

<sup>73</sup> 25.10.2001 Résolution sur les progrès réalisés dans la mise en œuvre de la politique extérieure et de sécurité commune (Brok) par. 2 et 3 ; 31.05.2001, Résolution sur le traité de Nice et le futur de l'Union européenne (Mendez de Vigo, Seguro), par. 17 ; 25.10.2001, Résolution sur la réforme du Conseil (Poos), par. 15.

<sup>74</sup> Version consolidé de l'art. 219.1 TCE, de l'art. 217 TCE et de l'art. 215 TCE, tel que modifié par le Traité de Nice. 30.11.2000, Résolution du Parlement européen sur la préparation du Conseil européen de Nice (B5-0884, 0886, 0891/2000), par 4 deuxième tiret.

**3. Après délibération du collège, le président pose la question de confiance au Parlement. Le refus de la confiance de la majorité des députés qui composent le Parlement entraîne la démission de la Commission<sup>75</sup>.**

**4. A cause de graves erreurs commises dans l'exercice de ses fonctions, chaque membre de la Commission doit démissionner sur demande du Président de la Commission.**

#### **Article 84. Fonctions<sup>76</sup>**

Aux fins d'assurer le fonctionnement et le développement de l'Union la Commission :

- a) *exerce le pouvoir d'initiative législative* et participe à la formation des actes *adoptés en codécision par le Parlement et le Conseil<sup>77</sup>* ;
- b) veille à l'application des dispositions de la Constitution et du Traité et des dispositions adoptées par les institutions en application de la Constitution et du Traité ;
- c) formule des recommandations ou des avis sur les matières qui font l'objet du Traité, si celui-ci le prévoit expressément ou si elle l'estime nécessaire ;
- d) dispose d'un pouvoir de décision propre et exerce les compétences *nécessaires pour la mise en œuvre des actes législatifs de l'Union<sup>78</sup>*.

#### **Article 85. Votes<sup>79</sup>**

Les délibérations de la Commission sont acquises à la majorité de ses membres.

## **CHAPITRE V LA COUR DE JUSTICE**

#### **Article 86. Composition et nomination<sup>80</sup>**

<sup>75</sup> 13.04.2000, CIG : Adapter les institutions pour réaliser avec succès l'élargissement (Dimitrakopoulos, Leinen), par. 13.1.

<sup>76</sup> Nouvelle écriture de l'art. 211 TCE.

<sup>77</sup> 29.11.2001, Processus constitutionnel et futur de l'Union (Leinen Mendez de Vigo), par. 4 c) ; 31.05.2001, Traité de Nice et futur de l'UE (Mendez de Vigo, Seguro), par. 29.

<sup>78</sup> 13.04.2000, CIG : Adapter les institutions pour réaliser avec succès l'élargissement (Dimitrakopoulos, Leinen), par. 13.2.

<sup>79</sup> Art. 219 deuxième phrase TCE.

<sup>80</sup> Art. 221, 222 et 223 TCE, tels que modifiés par le Traité de Nice.

1. La Cour de justice se compose *d'un nombre impair de juges non inférieur au nombre des Etats membres et d'un nombre d'avocats généraux égal à la moitié des juges*<sup>81</sup>. Si la Cour de justice le demande, le Conseil, *statuant à la majorité qualifiée et après avis conforme du Parlement européen*, peut augmenter le nombre des avocats généraux.

L'avocat général a pour rôle de présenter publiquement, en toute impartialité et en toute indépendance, des conclusions motivées sur les affaires qui, conformément au statut de la Cour de justice, requièrent son intervention.

2. Les juges et les avocats généraux sont choisis parmi des personnalités offrant toutes garanties d'indépendance et qui réunissent les conditions requises pour l'exercice, dans leur pays respectifs, des plus hautes fonctions juridictionnelles, ou qui sont des jurisconsultes possédant des compétences notoires. Leur mandat dure *neuf années et n'est pas renouvelable*<sup>82</sup>. *Ils sont nommés par le Conseil à la majorité qualifiée après avis conforme du Parlement européen.*<sup>83</sup>

3. Le statut de la Cour de justice est établi par un protocole *annexé au Traité*. Le conseil, statuant *à la majorité qualifiée*, sur demande de la Cour de justice et *après avis conforme* du Parlement européen, peut modifier les dispositions du statut.

4. La Cour de justice établit son règlement de procédure<sup>84</sup>.

#### **Article 87. Fonctions**<sup>85</sup>

La Cour de justice et le Tribunal de première instance assurent, dans le cadre de leurs compétences respectives, le respect du droit dans l'interprétation et dans l'application *de la Constitution et du Traité*.

A la Cour de justice et au Tribunal de première instance peuvent être adjointes des chambres juridictionnelles chargées d'exercer, dans certains secteurs spécifiques, des compétences juridictionnelles prévues par le Traité.

#### **Article 88. Tribunal de première instance**<sup>86</sup>

<sup>81</sup> 13.04.2000, CIG : Adapter les institutions pour réaliser avec succès l'élargissement (Dimitrakopoulos, Leinen), par. 14.

<sup>82</sup> 13.04.2000, CIG : Adapter les institutions pour réaliser avec succès l'élargissement (Dimitrakopoulos, Leinen), par. 15.

<sup>83</sup> 29.11.2001, Processus constitutionnel et futur de l'Union (Leinen, Mendez de Vigo), par.4 i) ; 31.05.2001, Traité de Nice et futur de l'Union européenne (Mendez de Vigo, Seguro), par. 21.

<sup>84</sup> Les paragraphes 4 et 5 proviennent de l'art. 245 TCE modifié par 13.04.2000, CIG: Adapter les institutions pour réaliser avec succès l'élargissement (Dimitrakopoulos, Leinen), par. 16.

<sup>85</sup> Art. 220 TCE tel que modifié par le Traité de Nice.

1. Le Tribunal de première instance se compose d'au moins un juge par Etat membre. Le nombre de juges est établi par le statut de la Cour de justice. Le statut peut prévoir que le Tribunal soit assisté par des avocats généraux.
2. Les membres du Tribunal de première instance sont choisis parmi les personnes offrant toute garantie d'indépendance et possédant la capacité requise pour l'exercice de fonctions juridictionnelles. Ils restent en charge *pour une période de neuf années non renouvelable*<sup>87</sup>. *Ils sont nommés par le conseil à la majorité qualifiée après avis conforme du Parlement européen*<sup>88</sup>.
3. Sauf disposition contraire du statut de la Cour de justice, les dispositions du *Traité* relatives à la Cour de justice sont applicables au Tribunal de première instance.  
*Les compétences et les règles de procédure du Tribunal sont prévues par le Traité et par le statut de la Cour de justice*<sup>89</sup>.

## CHAPITRE VI LA COUR DES COMPTES

### Article 89. Composition et nomination<sup>90</sup>

1. La cour des comptes est composée d'un citoyen de chaque Etat membre.
2. Les membres de la Cour des comptes sont choisis parmi les personnalités qui font ou qui ont fait partie, dans leur pays respectif, des institutions de contrôle extérieur ou qui possèdent une qualification spécifique pour cette fonction. Ils doivent offrir toutes les garanties d'indépendance.
3. Les membres de la Cour des comptes sont nommés *par le Conseil à la majorité qualifiée après avis conforme du Parlement européen*<sup>91</sup>. *Ils restent en charge six années. Leur mandat est renouvelable.*

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<sup>86</sup> Art. 224 et 225 TCE tels que modifiés par le Traité de Nice.

<sup>87</sup> 13.04.2000, CIG : Adapter les institutions pour réaliser avec succès l'élargissement (Dimitrakopoulos, Leinen), par. 15.

<sup>88</sup> 29.11.2001, Processus constitutionnel et futur de l'Union (Leinen, Mendez de Vigo) par. 4 i) ; 31.05.2001, Traité de Nice et futur de l'Union européenne (Mendez de Vigo, Seguro), par. 21.

<sup>89</sup> Renvoi au Traité et au Statut de la Cour de justice pour les parties qui n'ont pas une relevance constitutionnelle.

<sup>90</sup> Art. 247.2,3 et 4 TCE.

<sup>91</sup> 13.04.2000, CIG : Adapter les institutions pour réaliser avec succès l'élargissement (Dimitrakopoulos, Leinen), par. 26 et 30.5.

4. Les membres de la Cour des comptes exercent leurs fonctions en pleine indépendance, dans l'intérêt général de l'Union.

Dans l'accomplissement de leurs fonctions, ils ne sollicitent ni n'acceptent d'instructions d'aucun gouvernement ni d'aucun organisme. Ils s'abstiennent de tout acte incompatible avec le caractère de leurs fonctions.

#### **Article 90. Fonctions<sup>92</sup>**

1. La cour des comptes assure le contrôle des comptes

2. *Selon les modalités fixées par le Traité<sup>93</sup>*, la Cour des comptes examine les comptes de la totalité des recettes et des dépenses *de l'Union*. Elle examine également les comptes de la totalité des recettes et des dépenses de tout organisme créé par l'*Union*, dans la mesure où l'acte de fondation n'exclut pas cet examen.

Elle assiste le Parlement européen et le Conseil dans l'exercice de leur fonction de contrôle de l'exécution du budget.

## **CHAPITRE VII LES COMITES CONSULTATIFS**

#### **Article 91. Le Comité économique et social<sup>94</sup>**

1. Le Comité économique et social est composé, *selon les modalités fixées par le Traité<sup>95</sup>*, des représentants des différentes catégories de la vie économique et sociale de la société civile organisée, notamment des producteurs, des agriculteurs, des transporteurs, des travailleurs, des négociants et artisans, des professions libérale et de l'intérêt général.

***Le nombre des membres du Comité économique et social ne peut dépasser un tiers des membres du Parlement européen<sup>96</sup>.***

Les membres du Comité ne doivent être liés par aucun mandat impératif.

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<sup>92</sup> Art. 246 et 248 TCE tel que modifié par le Traité de Nice (parties en italique).

<sup>93</sup> Renvoi au Traité pour se qui n'est pas de rang constitutionnel

<sup>94</sup> Art. 257,258, 259 et 262 TCE tels que prévus et modifiés par le Traité de Nice. Fusion des paragraphes 1 et 2 originaires.

<sup>95</sup> Renvoi au Traité pour se qui n'est pas de rang constitutionnel

<sup>96</sup> 13.04.2000, CIG : Adapter les institutions pour réaliser avec succès l'élargissement (Dimitrakopoulos, Leinen), par.29.1.

2. Le Conseil et la Commission consultent obligatoirement le Comité dans les cas prévus *par le Traité*. Il peut être consulté par ces institutions dans tous les cas où elles le jugent opportun. Il peut prendre l'initiative d'émettre un avis dans les cas où il le juge opportun.

### **ARTICLE 92. Le comité des régions<sup>97</sup>**

1. Le Comité des régions est composé, *selon les modalités fixées par le Traité<sup>98</sup>*, des représentants des collectivités régionales et locales qui sont soit titulaires d'un mandat électoral au sein d'une collectivité régionale ou locale, soit politiquement responsables devant une assemblée élue.

Le nombre des membres du Comité des Régions ne dépasse pas trois cent cinquante<sup>99</sup>.

Les membres du Comité ne doivent être liés par aucun mandat impératif. Il s'exercent leurs fonctions en pleine indépendance, dans l'intérêt général de l'Union.

2. Le conseil ou la Commission consultent obligatoirement le Comité des Régions dans les cas prévus *par le Traité* et dans tous les autres cas où une de ces institutions le juge opportun, en particulier dans les cas concernant la coopérations transfrontalière.

## **CHAPITRE VIII LE SYSTEME EUROPEEN DES BANQUES CENTRALES ET LA BANQUE CENTRALE EUROPEENNE**

### **Article 93. Lignes essentielles<sup>100</sup>**

Le SEBC est composé de la BCE et des banques centrales nationale.

La BCE a la personnalité juridique.

Le SEBC est dirigé par les organes de décision de la BCE, qui sont le conseil des gouverneurs et le directoire.

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<sup>97</sup> Nouvelle écriture de l'art 263 TCE tel que modifié par le Traité de Nice.

<sup>98</sup> Renvoi au Traité pour la partie qui n'a pas de relief constitutionnel

<sup>99</sup> Art 263.2 TCE tel que modifié par le Traité de Nice

<sup>100</sup> Art. 107.1, 2 et 3 TCE.



## Article 94. Le conseil des gouverneurs et le directoire<sup>101</sup>

1. Le conseil des gouverneurs de la BCE se compose des membres du directoire de la BCE et des gouverneurs des banques centrales nationales.

2. Le directoire se compose du président, du vice-président et de quatre autres membres.

Le président, le vice-président et les autres membres du directoire sont nommé d'un commun accord par les gouvernements des Etats membres au niveau des Chefs d'Etats et de gouvernements, sur recommandation du Conseil et après *avis conforme*<sup>102</sup> du Parlement européen et après consultation du conseil des gouverneurs de la BCE, parmi les personnes dont l'autorité et l'expérience professionnelle dans le domaine monétaire ou bancaire sont reconnues.

Leur mandat a une durée de huit ans et n'est pas renouvelable.

Seuls les ressortissants des Etats membres peuvent être membres du directoire.

3. Dans l'exercice des pouvoirs et dans l'accomplissement des missions et des devoirs qui leur ont été conférés ni la BCE, ni une banque centrale nationale ni un membre de leurs organes de décision ne peuvent solliciter ni accepter des instructions des institutions ou organes *de l'Union*, des gouvernements des Etats membres ou de tout autre organisme<sup>103</sup>.

## Article 95. Fonctions

1. Les missions fondamentales relevant du SEBC consistent à :

- a) définir et mettre en œuvre la politique monétaire de l'Union
- b) conduire les opérations de change
- c) détenir et gérer les réserves officielles de change des Etats membre
- d) promouvoir et régler le fonctionnement des systèmes de paiement

***e) contribuer aux politiques des autorités compétentes en ce qui concerne la surveillance des autorités de crédit et de la stabilité du système financier***<sup>104</sup>.

2. La BCE est seule habilitée à autoriser l'émission de billet de banque à l'intérieur de l'Union. la BCE et les banques centrales nationale peuvent émettre de tels billets. Les billets de banque émis par la BCE et les banques centrales nationales sont les seuls à avoir cours légal dans l'Union.

<sup>101</sup> Art. 112 TCE

<sup>102</sup> 13.04.2000, CIG : Adapter les institutions pour réaliser avec succès l'élargissement (Dimitrakopoulos, Leinen), par. 30.5.

<sup>103</sup> Simplification de l'article 108 TCE

<sup>104</sup> Nouvelle écriture de l'art. 3.3 du statut du SEBC

## CHAPITRE IX LA BANQUE EUROPEENNE D'INVESTISSEMENT

### Article 96. Lignes essentielles et fonctions<sup>105</sup>

1. La Banque européenne d'investissement a la personnalité juridique.

Les membres de la Banque européenne d'investissement sont les Etats membres.

2. La Banque européenne d'investissement a pour mission de contribuer, en faisant appel aux marchés de capitaux et à ses ressources propres, au développement équilibré et sans heurt du marché commun dans l'intérêt de l'Union. A cette fin, elle facilite, par l'octroi de prêts et de garanties, sans poursuivre de but lucratif, le financement des projets cités *dans le Traité*<sup>106</sup> dans tous les secteurs de l'économie.

## TITRE V

### ACTES ET PROCEDURES

### Article 97. Les instruments juridiques de l'Union<sup>107</sup>

1. L'Union poursuit les objectifs *prévus dans le titre II* :

a) en adoptant des *actes législatifs* exprimés en règlements et directives

b) en prenant des décisions

c) en formulant des recommandations ou des avis

d) en décidant des stratégies communes

e) en adoptant des actions commune et des positions communes

f) en renforçant la coopération systématique entre Etats membres pour la conduite de leur politique.

2. Le règlement a une portée générale. Il est obligatoire dans tous ses éléments et directement applicable dans chacun des Etat membres.

<sup>105</sup> Fusion de l'art. 266 TCE, tel que modifié par le Traité de Nice, et de parties sélectionnées de l'art. 267.

<sup>106</sup> Renvoi au Traité

<sup>107</sup> Nouvelle écriture de parties sélectionnées des articles 249 TCE, 12, 13, 14 et 34 TUE. Sur ce thème une résolution du PE est en cours d'élaboration : Hiérarchie des normes/typologie des actes (Bourlanges) ; le "projet Spinelli" de 1984 (Résolution du parlement européen sur le projet de Traité instituant l'Union européenne du 14 février 1984) prévoyait deux types d'actes législatifs : les lois organiques et les lois.

La directive lie tout Etat membre destinataire quant au résultat à atteindre, tout en laissant aux instances nationale la compétence quant à la forme et aux moyens.

La décision est obligatoire dans tous ses éléments pour les destinataires désignés par celle-ci.

La recommandation et les avis ne sont pas contraignants.

Les stratégies communes sont mise en œuvre dans les secteurs dans lesquels les Etats membres ont d'importants intérêts communs. Ils fixent des objectifs, la durée et les moyens que l'Union et les Etats membres doivent fournir.

Les actions communes gèrent des situations spécifiques où une intervention opérative de l'Union est nécessaire. Elles définissent les objectifs, la portée et les moyens dont l'Union doit disposer, les conditions de mise en œuvre et, si nécessaire, la durée.

Les positions communes définissent l'approche de l'Union sur une question de nature géographique ou thématique particulière. Les Etats membres font en sorte que leur politiques nationales soient conformes aux positions communes.

## **Article 98. Procédure de codécision pour l'adoption des actes législatifs<sup>108</sup>**

***1. Le Parlement européen et le Conseil exercent conjointement le pouvoir législatif, avec la participation de la Commission<sup>109</sup>.***

2. La Commission présente une proposition au Parlement européen et au Conseil.

***3. Les propositions législatives de la commission sont mises à la disposition des gouvernements des Etats membres en temps utile pour leur permettre d'être sûrs que les Parlements nationaux peuvent les recevoir<sup>110</sup>.***

Le conseil, statuant à la majorité qualifiée, après avis du Parlement européen :

- a) s'il approuve tous les amendements figurant dans l'avis du Parlement européen, peut arrêter l'acte proposé ainsi amendé ;
- b) si le Parlement européen ne propose aucun amendement, peut arrêter l'acte proposé ;

<sup>108</sup> Nouvelle écriture de l'article 251 TCE avec les ajouts tirés de 13.04.2000, CIG : Adapter les institutions pour réaliser avec succès l'élargissement (Dimitrakopoulos, Leinen), par. 31.2 ; de 29.11.2001, Processus constitutionnel et futur de l'Union (Leinen, Mendez de Vigo) par 4 c) ; de 31.05.2001, Traité de Nice et futur de l'Union européenne (Mendez de Vigo, Seguro), par. 29, qui prévoient la généralisation de la procédure de codécision.

<sup>109</sup> Nouvelle formulation de l'art. 36 du "Projet Spinelli" de 1984 (Résolution du Parlement européen sur le projet de Traité instituant l'Union européenne du 14 février 1984).

<sup>110</sup> Point 2 du Protocole sur le rôle des Parlements nationaux dans l'Union européenne. Cette modification tient compte des indications contenue dans 7.02.2002, Relations Parlement européen/Parlements

c) dans les autres cas, arrête une position commune et la transmet au Parlement européen. Le Conseil informe pleinement le Parlement européen des raisons qui l'ont conduit à arrêter sa position commune. La Commission informe pleinement le Parlement européen de sa position.

Si, dans un délai de trois mois après cette transmission, le Parlement européen :

a) approuve la position commune ou ne s'est pas prononcé, l'acte concentré est réputé arrêté conformément à cette position commune ;

b) rejette, à la majorité absolue des membres qui le composent, la position commune, l'acte proposé est réputé non adopté ;

c) propose, à la majorité absolue des membres qui le composent, des amendements, le texte ainsi amendé est transmis au Conseil et à la Commission, qui émet un avis sur ces amendements.

***4. Pour rendre plus aisé l'exposé des positions respectives et favoriser les accords, des représentants du Parlement européen peuvent participer aux réunions du Conseil et des représentants du Conseil peuvent participer aux réunions du Parlement européen. Les représentants du Parlement européen et du conseil ont le droit de prendre la parole<sup>111</sup>.***

5. Si, dans un délai de trois mois après réception des amendements du Parlement européen, le Conseil, statuant à la majorité qualifiée, approuve tous ces amendements, l'acte concerné est réputé arrêté sous la forme de la position commune ainsi amendée ; toutefois, le Conseil statue à l'unanimité sur les amendements ayant fait l'objet d'un avis négatif de la Commission. Si le Conseil n'approuve pas tous les amendements, le président du Conseil, en accord avec le Président du Parlement européen, convoque le comité de conciliation dans un délai de six semaines.

6. Le comité de conciliation, qui réunit les membres du Conseil ou leurs représentants et autant de représentants du Parlement européen, a pour mission d'aboutir à un accord sur un projet commun à la majorité qualifiée des membres du Conseil ou de leurs représentants et à la majorité des représentants du Parlement européen. La Commission participe aux travaux du comité de conciliation et prend toutes les initiatives nécessaires en vue de promouvoir un rapprochement des positions du Parlement européen et du Conseil. Pour s'acquitter de sa mission, le comité de conciliation examine la position commune sur la base des amendements proposés par le Parlement européen.

7. Si, dans un délai de six semaines après sa convocation, le comité de conciliation approuve un projet commun, le Parlement européen et le conseil disposent chacun d'un délai de six semaines à compter de cette approbation pour arrêter l'acte concerné conformément au projet commun, à la

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nationaux dans la construction européenne (Napolitano), par. 1, qui pourtant ne proposent pas expressément la modification en question.

majorité absolue des suffrages exprimés lorsqu'il s'agit du Parlement européen et à la majorité qualifiée lorsqu'il s'agit du Conseil. En l'absence d'approbation par l'une ou l'autre des deux institutions dans le délai visé, l'acte proposé est réputé non adopté.

8. Lorsque le comité de conciliation n'approuve pas de projet commun, l'acte proposé est réputé non adopté.

9. Les délais de trois mois et de six semaines visés au présent article sont prolongés respectivement d'un mois et de deux semaines au maximum à l'initiative du Parlement européen ou du Conseil.

### **Article 99. Caractères et formes des actes législatifs<sup>112</sup>**

Les actes législatifs de l'Union sont motivés et visent les propositions ou avis obligatoirement recueillis. Ils sont signés par le Président du Parlement européen et par le Président du Conseil, ils sont publiés au Journal Officiel de l'Union, ils entrent en vigueur à la date qu'ils fixent ou, à défaut, le vingtième jour suivant leur publication.

### **Article 100. Les actes d'exécution de l'Union<sup>113</sup>**

*Les actes d'exécution de l'Union se basent sur les actes législatifs de l'Union, et doivent en respecter les dispositions. Ils sont adoptés, sauf les compétences autonomes d'institutions et d'organes particuliers, par la Commission. Les modalités de contrôle seront établies par le Parlement européen et par le conseil, avec la procédure de codécision, dans un délai de trois mois à partir de l'entrée en vigueur de la Constitution.*

## TITRE VI

### CONTROLE JURISDICTIONNEL

### **Article 101. Recours pour violation des obligations découlant de la Constitution et du Traité<sup>114</sup>**

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<sup>111</sup> 25.10.2001, Réforme du Conseil (Poos), par. 20.

<sup>112</sup> Art. 253 et 254 TCE.

<sup>113</sup> 13.04.2000, CIG : Adapter les institutions pour réaliser avec succès l'élargissement (Dimitrakopoulos, Leinen), par. 31.2.

<sup>114</sup> Art. 226, 227 et 228 TCE.

1. Si la Commission estime qu'un Etat membre a manqué à une des obligations qui lui incombent en vertu *de la Constitution et du Traité*, elle émet un avis motivé à ce sujet, après avoir mis cet Etat en mesure de présenter ses observations.

Si l'Etat en cause ne se conforme pas à cet avis dans le délai déterminé par la Commission, celle-ci peut saisir la Cour de justice.

2. Chacun des Etats membres peut saisir la cour de justice, *selon les modalités prévues par le Traité*<sup>115</sup> s'il estime qu'un autre Etat membre a manqué à une de ses obligations qui lui incombent en vertu *de la Constitution et du Traité*.

3. Si la Cour de justice reconnaît qu'un Etat membre a manqué à une des obligations qui lui incombent, cet Etat est tenu de prendre les mesures que comporte l'exécution de l'arrêt de la Cour de justice.

### **Article 102. Recours de légitimité des actes adoptés par les institutions de l'Union**<sup>116</sup>.

1. La Cour de justice contrôle la légalité des actes adoptés conjointement par le Parlement européen et le Conseil, de la Commission et de la BCE, autres que les recommandations et les avis, et des actes du Parlement européen destinés à produire des effets juridiques vis-à-vis des tiers.

A cet effet, la Cour est compétente pour se prononcer sur les recours pour incompétence, violation des formes substantielles, violation *de la Constitution et du Traité* ou de toute règle de droit relative à son application, ou détournement de pouvoir, formés par un Etat membre, le Conseil ou la Commission.

2. La Cour de justice est compétente, dans les mêmes conditions, pour se prononcer sur les recours formés par le Parlement européen, par la cour des comptes et par la BCE, qui tendent à la sauvegarde des prérogatives de ceux-ci.

3. Toute personne physique ou morale peut former, dans les mêmes conditions, un recours contre les décisions dont elle est le destinataire et contre les décisions qui, bien que prises sous l'apparence d'un règlement ou d'une décision adressée à une autre personne, la concernent directement *ou*<sup>117</sup> individuellement.

<sup>115</sup> Renvoi au traité pour se qui n'est pas de rang constitutionnel

<sup>116</sup> Simplification des art. 230 et 231 TCE.

<sup>117</sup> 16.03.2000, Charte des droits fondamentaux de l'Union européenne (Duff, Voggenhuber) par. 15 d) demande l'extension de l'accès à la Cour de justice pour toutes les personnes auxquelles la Charte des droits s'applique. D'ailleurs, dans l'arrêt 3.05.2002 du Tribunal de première instance, Jégo-Quéré c. Commission, le Tribunal a accueilli le recours en donnant une interprétation plus large de l'expression de l'art. 230.4 TCE ; ordonnance du Président de la Cour de justice, 12.10.2000, Federación de Confradías

**Article 103. Recours en manquement<sup>118</sup>**

1. Dans le cas où, en violation *de la Constitution et du Traité*, le Parlement européen, le Conseil ou la Commission s'abstiennent de statuer, les Etats membres et les autres institutions de l'Union peuvent saisir la Cour de justice en vue de faire constater cette violation. Ce recours n'est recevable que si l'institution en cause a été préalablement invitée à agir.

2. Toute personne physique ou morale peut saisir la Cour de justice dans les conditions fixées aux alinéas précédents pour faire grief à l'une des institutions de l'Union d'avoir manqué de lui adresser un acte autre qu'une recommandation ou un avis.

La Cour de justice est compétente, dans les mêmes conditions, pour se prononcer sur les recours formés par la BCE dans les domaines relevant de ses compétences ou intentés contre elle.

**Article 104. Renvoi préjudiciel<sup>119</sup>**

La Cour de justice est compétente pour statuer, à titre préjudiciel :

- a) sur l'interprétation *de la Constitution et du Traité*,
- b) sur la validité et l'interprétation des actes pris par les institutions *de l'Union* et par la BCE,
- c) sur l'interprétation des statuts des organismes créés *d'après la Constitution et le Traité*.<sup>120</sup>

Lorsqu'une telle question est soulevée devant une juridiction d'un des Etats membres, cette juridiction peut, si elle estime qu'une décision sur ce point est nécessaire pour rendre son jugement, demander à la Cour de justice de statuer sur cette question.

Lorsqu'une telle question est soulevée dans une affaire pendante devant une juridiction nationale dont les décisions ne sont pas susceptibles d'un recours juridictionnel de droit interne, cette juridiction est tenue de saisir la Cour de justice.

**Article 105. Statut de la Cour<sup>121</sup>**

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de Pescadores c. Conseil ; arrêt de la Cour de justice 25.07.2002, Unión de Pequeños Agricultores c. Conseil.

<sup>118</sup> Simplification des art. 232 et 233 TCE.

<sup>119</sup> Art. 234 TCE

<sup>120</sup> On supprime la limitation du contrôle juridictionnel aux cas prévus par les statuts, contraire au principe de légalité.

<sup>121</sup> Fusion et simplification des articles 242, 243 et 244 TCE.

1. Le statut de la Cour est établi par un protocole séparé. le Conseil, statuant à l'unanimité sur demande de la cour de justice et après consultation de la Commission du Parlement européen, peut modifier les dispositions du statut.
2. La Cour de justice établit son propre règlement de procédure. Ce règlement est soumis à l'approbation du Conseil.
3. *Le statut de la Cour définit les pouvoirs de la Cour et les autres recours qui peuvent lui être présentés*<sup>122</sup>.

## TITRE VII

### DISPOSITIONS FINANCIERES ET BUDGETAIRES

#### Article 106. Budget<sup>123</sup>

1. Toutes les recettes et les dépenses de l'Union, y compris celles qui se rapportent au Fonds social européen, doivent faire l'objet de prévisions pour chaque exercice budgétaire et être inscrites au budget.

Les dépenses administratives entraînées pour les institutions dans le cadre *de la politique étrangère et de sécurité commune et de la coopération judiciaire et de police en matière pénale sont à charge du budget*.<sup>124</sup> Les dépenses opérationnelles entraînées par la mise en œuvre desdites dispositions *sont* à la charge du budget.

Le budget doit être équilibré en recettes et en dépenses.

2. Le budget est, sans préjudice des autres recettes, intégralement financé par les ressources propres *dont le montant est fixé par le Parlement européen en codécision avec le Conseil*<sup>125</sup>.

Le Conseil, statuant à l'unanimité sur proposition de la Commission et après *avis conforme*<sup>126</sup> du Parlement européen, arrête les dispositions relatives au système des ressources propres de l'Union dont il recommande l'adoption par les Etats membres, conformément à leurs règles constitutionnelles respectives.

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<sup>122</sup> Renvoi au Traité et au statut de la Cour pour la partie qui n'a pas de relief constitutionnel.

<sup>123</sup> Art. 268 et 269 TCE.

<sup>124</sup> Provient de la fusion des piliers ; 14.03.2002, Personnalité juridique de l'Union européenne (Carnero Gonzalez), par.2.

<sup>125</sup> 13.04.2000, CIG : Adapter les institutions pour réaliser avec succès l'élargissement (Dimitrakopoulos, Leinen), par. 51.4.

<sup>126</sup> 13.04.2000, CIG : Adapter les institutions pour réaliser avec succès l'élargissement (Dimitrakopoulos, Leinen), par. 30.5.



**Article 107 Péréquation financière<sup>127</sup>**

*Un système de péréquation financière est établi pour réduire les déséquilibres économiques excessifs entre les régions. Le Traité établit les modalités d'application de ce système.*

**Article 108. Discipline budgétaire<sup>128</sup>**

En vue d'assurer la discipline budgétaire, la Commission ne fait pas de proposition d'acte communautaire, ne modifie pas ses propositions et n'adopte pas de mesures d'exécution susceptibles d'avoir des incidences notables sur le budget sans donner l'assurance que cette proposition ou cette mesure peut être financée dans la limite des ressources propres de la Communauté découlant des dispositions fixées par le Conseil en vertu de l'article précédent.

*La procédure budgétaire s'applique aux dépenses obligatoires et aux dépenses non obligatoires<sup>129</sup>.*

**Article 109. Intérêts financiers de l'Union<sup>130</sup>**

1. La Communauté et les Etats membres combattent la fraude et toute autre activité illégale portant atteinte aux intérêts financiers de l'Union par des mesures de dissuasion et telles qu'elles permettent une protection efficace dans les Etats membres.
2. Les Etats membres prennent les mêmes mesures pour combattre la fraude portant atteinte aux intérêts de l'Union que celles qu'ils prennent pour combattre la fraude portant atteinte à leurs propres intérêts financiers.
3. Sans préjudice des autres dispositions du Traité, les Etats membres coordonnent leur action visant à protéger les intérêts financiers de l'Union contre la fraude. A cette fin ils organisent avec la Commission une collaboration étroite et régulière entre les autorités compétentes.

**Article 110. Le procureur européen<sup>131</sup>**

<sup>127</sup> Art. 73 du "projet Spinelli" de 1984, avec renvoi au Traité.

<sup>128</sup> Art. 270 TCE

<sup>129</sup> 29.11.2001, Processus constitutionnel et futur de l'Union (Leinen, Mendez de Vigo), par. 4 d) ; 13.04.2000, CIG : Adapter les institutions pour réaliser avec succès l'élargissement (Dimitrakopoulos, Leinen), par. 51.1.

<sup>130</sup> Art. 280.1 et 3 TCE.

**1. Le Conseil, statuant à la majorité qualifiée sur proposition de la Commission et après avis conforme du Parlement européen, nomme pour une période de six ans, non renouvelable, un Procureur européen. le Procureur européen est chargé de rechercher, poursuivre, renvoyer devant les tribunaux les auteurs ou les complices des infractions qui portent atteinte aux intérêts financiers de l'Union et d'exercer devant les tribunaux compétents des Etats membres l'action pénale relative à ces infractions dans le cadre des règles fixées par le Traité.**

**2. Le Procureur européen est choisi parmi les personnalités qui offrent toutes les garanties d'indépendance.**

*Le Procureur européen exerce ses fonctions en pleine autonomie et ne sollicite ni accepte d'instructions des institutions de l'Union, des gouvernements des Etats membres ni d'aucun autre organisme<sup>132</sup>.*

*Le statut du Procureur européen est établi avec la procédure de codécision.*

## TITRE VIII

### ACCORDS INTERNATIONAUX

**Article 111. Conclusion d'accords avec les Etats tiers ou les organisations internationales<sup>133</sup>**

1. Dans les cas où les dispositions de la *Constitution* prévoient la conclusion d'accords entre l'Union et un ou plusieurs Etats et organisations internationales, la Commission présente des recommandations au Conseil, qui l'autorise à ouvrir les négociations nécessaires. Les négociations sont conduites par la Commission, en consultation avec des comités spéciaux désignés par le Conseil pour l'assister dans cette tâche et dans le cadre des directives que le Conseil peut lui adresser.

Dans l'exercice des compétences qui lui sont attribuées par le présent paragraphe, le Conseil statue à la majorité qualifiée, sauf dans les cas où le paragraphe 2, premier alinéa, prévoit que le Conseil statue à l'unanimité.

<sup>131</sup> 29.11.2001, Processus constitutionnel et futur de l'Union (Leinen, Mendez de Vigo), par 3 f), et autres (13.04.2002 Dimitrakopoulos Leinen par. 24 et 25 et 31.02.2001 Mendez de Vigo, Seguro ). Le texte est tiré de la proposition présentée par la Commission à la Conférence intergouvernementale de Nice.

<sup>132</sup> La formulation est reproduite par analogie avec les règles des autres institutions, de la BCE au Comité des Régions.

<sup>133</sup> Nouvelle écriture de l'art. 300.1,2,6 et 7 TCE.

2. Sous réserve des compétences reconnues à la Commission dans ce domaine, la signature, et la conclusion des accords sont décidées par le Conseil, statuant à la majorité qualifiée sur proposition de la Commission, *avec l'avis conforme du Parlement européen*<sup>134</sup>.
3. Le Conseil, la Commission ou un Etat membre peuvent demander l'avis de la Cour de justice sur la compatibilité d'un accord envisagé avec les dispositions *de la Constitution ou du Traité*. L'accord qui a fait l'objet d'un avis négatif de la Cour de justice ne peut entrer en vigueur *qu'après la révision de la Constitution ou du Traité*.
4. Les accords conclus aux conditions fixées par le présent article lient les institutions de *l'Union et les Etats membres*.
5. *Le Traité peut prévoir des procédures différentes pour les accords qui ont des objets spécifiques.*<sup>135</sup>

#### **Article 112. Accords d'association**<sup>136</sup>

L'Union peut conclure avec un ou plusieurs Etats ou organisations internationales des accords créant une association caractérisée par des droits et obligations réciproques, des actions en commun et des procédures particulières.

### **TITRE IX COOPERATION RENFORCEE**

#### **Article 113. Conditions générales**<sup>137</sup>

1. Les Etats membres qui se proposent d'instaurer entre eux une coopération renforcée peuvent recourir aux institutions, procédures et mécanismes prévus *par la Constitution et par le Traité*, à condition que la coopération envisagée :

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<sup>134</sup> 13.04.2000, CIG : Adapter les institutions pour réaliser avec succès l'élargissement (Dimitrakopoulos, Leinen), par. 30.5, 42.2 et 42.3 a), b), c), d), e).

<sup>135</sup> Renvoi au Traité pour ce qui n'est pas de rang constitutionnel.

<sup>136</sup> Art. 310 TCE.

<sup>137</sup> Art. 43 TUE tel que modifié par le Traité de Nice et art. 43 A et 43 B tels qu'introduits par le Traité de Nice.

- a) tende à favoriser les objectifs de l'Union, à protéger et à servir ses intérêts et à renforcer son processus d'intégration et respecte les limites, les conditions et les procédures prévus par le *Traité* ;
- b) reste dans les limites des compétences de l'Union et ne concerne pas des matières qui sont de compétence exclusive de l'Union ;
- c) ne nuise ni au marché intérieur ni à la cohésion économique et sociale
- d) respecte les compétences, les droits et les obligations des Etats membres qui n'y participent pas ;
- e) soit ouverte à tous les Etats membres, conformément au point 3 du présent article.

2. Dans le secteur de la politique étrangère et de sécurité commune les coopérations renforcées concernent la mise en œuvre d'une action commune ou d'une position commune. Elles peuvent concerner des questions qui ont des implications militaires ou dans le secteur de la défense<sup>138</sup>.

3. Les coopérations renforcées ne sont utilisées qu'en dernier ressort, lorsqu'il a été établi par le Conseil que les objectifs qui leur sont assignés ne peuvent être atteints, dans un délai raisonnable, en appliquant les dispositions pertinentes du *Traité*.

4. Lors de leur instauration, les coopérations renforcées sont ouvertes à tous les Etats membres. La participation à une coopération renforcée reste possible à tout moment, sous réserve de respecter la décision initiale ainsi que les décisions prises dans ce cadre. La Commission et les Etats membres qui participent à une coopération renforcée veillent à encourager la participation du plus grand nombre possible d'Etats membres.

#### **Article 114. Mise en œuvre de la coopération renforcée<sup>139</sup>**

1. Aux fins de l'adoption des actes et des décisions nécessaires à la mise en œuvre de la coopération renforcée, les dispositions pertinentes *du Traité* s'appliquent. Toutefois, alors que tous les membres du Conseil peuvent participer aux délibérations, seuls ceux qui représentent des Etats membres participant à la coopération renforcée prennent part à l'adoption des décisions. *La majorité qualifiée dans ce cadre est celle de l'art. 80, qui ne prend en compte que les Etats membres concernés.*<sup>140</sup>

L'unanimité est constituée par les membres du Conseil intéressés.

De tels actes et décisions ne font pas partie de l'acquis de l'Union.

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<sup>138</sup> Art. 27 B introduit par le *Traité de Nice*, la référence à l'exclusion du secteur de la défense dans le cadre des coopérations renforcées, critiquée par 31.05.2001, *Traité de Nice* et futur de l'Union européenne (Mendez de Vigo, Seguro) est éliminée.

<sup>139</sup> Art. 44 et 45 TUE tels que modifiés par le *Traité de Nice*.

<sup>140</sup> Adaptation nécessaire pour la nouvelle modalité de calcul de la majorité qualifiée opérée dans le présent travail.

2. Les Etats membres appliquent, dans la mesure où ils sont concernés, les actes et décisions pris pour la mise en œuvre de la coopération renforcée à laquelle ils participent. De tels actes et décisions ne lient que les Etats membres qui y participent et ne sont, le cas échéant, directement applicables que dans ces Etats. Les Etats membres ne participant pas à la coopération renforcée n'entravent pas sa mise en œuvre par les Etats membres qui y participent.

3. Les dépenses résultant de la mise en œuvre d'une coopération renforcée, autres que les coûts administratifs occasionnés pour les institutions, sont à la charge des Etats membres qui y participent, à moins que le Conseil, statuant à l'unanimité de tous ses membres après *avis conforme*<sup>141</sup> du Parlement européen, n'en décide autrement.

4. Le Conseil et la Commission assurent la cohérence des actions entreprises sur la base du présent titre, ainsi que la cohérence de ces actions avec les politiques de l'Union, et coopèrent à cet effet.

## TITRE X DISPOSITIONS FINALES

### **Article 115. Adhésion à l'Union**<sup>142</sup>

1. Tout Etat européen qui respecte les principes *de la Constitution* peut demander à devenir membre de l'Union. Il adresse sa demande au Conseil, lequel se prononce à l'unanimité, après consultation de la Commission et avis conforme du Parlement européen, qui statue à la majorité absolue des membres qui le composent.

2. Les conditions de l'admission, et les adaptations éventuelles *du Traité* que cette admission entraîne en ce qui concerne les traités sur lesquels est fondée l'Union, font l'objet d'un accord entre les Etats membres et l'Etat demandeur. Ledit accord est soumis à la ratification par tous les Etats contractants, conformément à leurs règles constitutionnelles respectives.

### **Article 116. Suspension des droits d'un Etat membre**<sup>143</sup>

1. Sur proposition motivée d'un tiers des Etats membres, du Parlement européen ou de la Commission, le Conseil, statuant à la majorité des quatre cinquièmes de ses membres après avis conforme du Parlement européen, peut constater l'existence évidente d'un risque de violation grave

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<sup>141</sup> 25.10.2000, Coopération renforcée (Gil-Robles Gil Delgado), par. 13

<sup>142</sup> Art.49 TUE

de la part d'un Etat membre d'un ou de plusieurs principes *de la Constitution* et lui adresser les recommandations appropriées. Avant de procéder à cette constatation le Conseil écoute l'Etat membre en question et, statuant selon la même procédure, peut demander à des personnalités indépendantes de présenter dans un délai raisonnable un rapport sur la situation de l'Etat membre en question.

Le Conseil vérifie régulièrement si les motifs qui l'ont conduit à cette constatation restent d'actualité.

2. Le Conseil, réuni au niveau des chefs d'Etat et de gouvernement et statuant à l'unanimité, sur proposition d'un tiers des Etats membres ou de la Commission et après avis conforme du Parlement européen, peut constater l'existence d'une violation grave et persistante par un Etat membre des principes *de la Constitution*, après avoir invité le gouvernement de l'Etat membre en question à présenter ses observations<sup>144</sup>.

3. Lorsqu'une telle constatation est faite, le Conseil, statuant à la majorité qualifiée, peut décider de suspendre certains droits découlant de l'application *de la Constitution et du Traité* à l'Etat membre en question, y compris le droit de vote du représentant du gouvernement de cet Etat au Conseil. Ce faisant, le Conseil tient compte des conséquences éventuelles d'une telle suspension sur les droits et obligations des personnes physiques ou morales.

Les obligations qui incombent à l'Etat membre en question au titre *de la Constitution et du Traité* restent en tout état de cause contraignantes pour cet Etat.

4. Le Conseil, statuant à la majorité qualifiée, peut décider par la suite de modifier les mesures prises au titre du paragraphe 2 ou d'y mettre fin pour répondre à des changements de la situation qui l'a conduit à imposer ces mesures.

5. Aux fins du présent article, le Conseil statue sans tenir compte du vote du représentant du gouvernement de l'Etat membre en question ? Les abstentions des membres présents ou représentés ne font pas obstacle à l'adoption des décisions visées au paragraphe 1.

Le présent paragraphe s'applique également en cas de suspension des droits de vote conformément au paragraphe 2.

6. Aux fins du *présent article*, le Parlement européen statue à la majorité des deux tiers des voix exprimées, représentant une majorité de ses membres.

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<sup>143</sup> Art. 7 TUE tel que modifié par le Traité de Nice.

<sup>144</sup> Le "Projet Spinelli de 1984 prévoyait à l'art. 44 que la constatation de la violation soit faite par la Cour de justice, tandis que la décision sur les mesures éventuelles à prendre reste de compétence du Conseil. Le Parlement a par ailleurs apprécié la nouvelle formulation proposée par le Traité de Nice (19.12.2000, Compte-rendu des résultats de la Conférence intergouvernementale, Tsao).

**Article 117. Procédure de révision de la Constitution**<sup>145</sup>

1. Le gouvernement de tout Etat membre, *le Parlement européen* ou la Commission *peuvent proposer des projets tendant à modifier la Constitution.*

Si le Conseil, *après avoir consulté*, le cas échéant, le Parlement européen et la Commission, émet un avis favorable, *les projets sont soumis à une Convention, qui se compose d'un représentant pour chaque chef d'Etat et de gouvernement, de deux représentants pour chacun des Parlements nationaux, d'un nombre de membres du Parlement européen égal à celui des représentants des chefs d'Etat de gouvernement, et de deux représentants de la Commission.*

*La Convention rédige son propre règlement et élit en son sein son propre Président.*

3. *Les propositions de modifications élaborées par la Convention sont approuvées à la majorité des quatre cinquièmes de ses membres par une conférence des représentants des gouvernements des Etats membres, convoquée par le Président du Conseil*<sup>146</sup>.

4. *Lorsque les modifications auront été ratifiées par une majorité des Etats membres dont la population constitue les deux tiers de la population totale de l'Union, les gouvernements des Etats membres qui auront ratifié se réuniront immédiatement pour décider d'un commun accord et avec l'avis conforme du Parlement européen les procédures et la date d'entrée en vigueur des nouvelles dispositions constitutionnelles et les relations à établir dans ce domaine avec les autres Etats membres*<sup>147</sup>.

**Article 118. Procédure de révision du Traité**<sup>148</sup>

<sup>145</sup> Art. 48 TUE tel que modifié sur base de 7.02.2002, Relations PE/Parlements nationaux dans la construction européenne (Napolitano), par. 21, où on demande d'utiliser la méthode "convention" pour la révision de la Constitution. Le Parlement européen a le pouvoir de présenter des projets de révision.

<sup>146</sup> Cette solution se justifie par déduction : d'un côté on veut une Constitution, donc un système autonome, dont la vie ne peut dépendre du droit de veto d'un seul Etat membre, lorsque sa population constitue une petite minorité de toute la population de l'Union, d'un autre côté on veut une différenciation par rapport aux procédures de modification du Traité, plus simples. 16.05.2002 Délimitation des compétences entre l'Union européenne et les Etats membres (Lamassoure) par.10 ; 25.10.2000, Constitutionnalisation des Traités (Duhamel), par.9. La majorité des quatre cinquièmes est indiquée (en analogie avec celle prévue par l'art. 116.1) pour la différencier de celle des deux tiers prévue pour la révision du Traité.

<sup>147</sup> Nouvelle écriture de l'art.82.2 du "projet Spinelli" de 1984 (Résolution du Parlement européen sur le projet de Traité instituant l'Union européenne du 14 février 1984).

<sup>148</sup> Nouvelle écriture avec les modifications de l'art. 48 TUE, avec attribution au Parlement européen de la faculté de présenter des projets de révision.

1. Le gouvernement de tout Etat membre, **le Parlement européen** ou la Commission **peuvent proposer des projets tendant à modifier le Traité.**
2. Si le Conseil, **après avis conforme du Parlement européen**<sup>149</sup>, et, le cas échéant, après avoir consulté la Commission, émet un avis favorable à la convocation d'une conférence des représentants des gouvernements des Etats membres, celle-ci est convoquée par le Président du Conseil pour établir, avec le vote **de la majorité des deux tiers de ses membres**, les modifications à apporter *au Traité*. Dans le cas où il s'agirait de modifications institutionnelles dans le secteur monétaire, la Banque centrale européenne est consultée.
3. Les amendements entrent en vigueur lorsqu'ils ont été ratifiés **par une majorité des Etats membres dont la population représente les deux tiers de la population totale de l'Union**<sup>150</sup>.



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<sup>149</sup> 13.04.2000, CIG : Adapter les institutions pour réaliser avec succès l'élargissement (Dimitrakopoulos, Leinen), par. 30.5.

<sup>150</sup> La majorité des deux tiers des membres du Conseil est inscrite pour la différencier de celle prévue pour la révision de la Constitution. La majorité des Etats membres dont la population représente les deux tiers de la population totale de l'Union est tirée de l'art. 82.2 du "projet Spinelli" de 1984.



**THE EUROPEAN CONVENTION**

THE SECRETARIAT

**Brussels, 4 October 2002**

**Working Group II**

**Working document 23**

**Working group II "Incorporation of the Charter/ accession to the ECHR"**

**From: António Vitorino, President**

**To: Working Group II**

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**Subject :** **Compromise proposals concerning drafting adjustments in the horizontal articles**

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Members of the Group will find herein compromise proposals by the Chairman for drafting adjustments in the horizontal articles of the Charter (in English and French), and accompanying explanatory notes.

***Compromise proposals by the Chairman for adjustments in the horizontal articles:***

In Article 51 (1):

"The provisions of this Charter are addressed to the institutions and bodies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers **and respecting the limits of the powers of the Union as conferred on it by other parts of [this Treaty / the Constitutional Treaty].**"

Article 51 (2):

"This Charter does not **extend the scope of application of Union law or** establish any new power or task for the Community or the Union or modify powers and tasks defined **by the other [Chapters / parts] of [this Treaty / the Constitutional Treaty].**"

*Add to Article 52:*

**"52(4) Insofar as the Charter recognises fundamental rights as they result from the constitutional traditions common to the Member States, those rights shall be interpreted in harmony with those traditions."**

**"52 (5) The provisions of this Charter which contain principles may be implemented by legislative and executive acts taken by institutions and bodies of the Union, and by acts of Member States only when they are implementing Union law, in the exercise of their respective powers. They shall be judicially cognisable only in the interpretation of such acts and in the ruling on their legality."**

**"52 (6) Full account shall be taken of national laws and practices as specified in this Charter."**

***Propositions de compromis du Président pour des adaptations dans les dispositions horizontales:***

Article 51 (1):

"Les dispositions de la présente Charte s'adressent aux institutions et organes de l'Union dans le respect du principe de subsidiarité, ainsi qu'aux Etats membres uniquement lorsqu'ils mettent en oeuvre le droit de l'Union. En conséquence, ils respectent les droits, observent les principes et en promeuvent l'application, conformément à leurs compétences respectives **et dans le respect des limites des compétences de l'Union telles qu'elle lui sont conférées par les autres parties du [présent traité/traité constitutionnel].**"

Article 51 (2):

La présente Charte **n'étend pas le champ d'application du droit de l'Union, ni** ne crée aucune compétence ni aucune tâche nouvelle pour la Communauté et pour l'Union et ne modifie pas les compétences et tâches définies par **les autres chapitres du [présent traité/traité constitutionnel].**

*Ajouter à l'article 52:*

**"52(4) Dans la mesure où la présente Charte reconnaît des droits fondamentaux tels qu'ils résultent des traditions constitutionnelles communes aux Etats membres, ces droits doivent être interprétés en harmonie avec les dites traditions."**

**"52 (5) Les dispositions de la présente Charte qui contiennent des principes peuvent être mises en œuvre par des actes législatifs et exécutifs pris par les institutions et organes de l'Union, et par des actes des Etats membres uniquement lorsqu'ils mettent en œuvre le droit de l'Union, dans l'exercice de leurs compétences respectives. Leur invocation devant le juge n'est admise que pour l'interprétation et le contrôle de la légalité de tels actes."**

**"52(6) Les législations et pratiques nationales doivent être pleinement prises en compte comme précisé dans la présente Charte."**

Explanatory notes:

1. The present compromise proposals aim at taking due account of concerns raised and suggestions made in the discussions of the Group and in working documents, in particular documents n° 1 by Mr. McDonagh, n°s 4 and 16 by Baroness Scotland, and n° 14 by Mr. MacCormick. They have been drafted in the spirit of respecting fully the compromise reached by the previous Convention on the content of the Charter, while achieving greater clarity of certain elements of that compromise, which according to certain members of the Group would be desirable *in the event of a Charter becoming legally binding*.
2. The proposed adjustments to Article 51 (1) and (2) are designed to reflect the outcome of the Group's discussions on the relationship between the Charter and the allocation of competences between the Union and the Member States. The words "(this Charter) *does not extend the scope of application of Union law...*" merely confirm established case law<sup>1</sup>.
3. The suggested paragraph 4 in Article 52 serves to ensure an interpretation of the Charter which is in harmony with the common constitutional traditions; this rule of interpretation is based on current Treaty language (Article 6 § 2 TEU) and takes due account of the approach to common constitutional traditions followed by the Court of Justice, as explained by Judge Skouris at the hearing of 17 September.
4. The proposal of a new Article 52 (5) confirms the distinction between rights and principles which has been an important element - already expressed in the Preamble and in Article 51 (1) - of the final compromise of the Charter. It attempts to encapsulate, in a clear legal definition, the understanding of the concept of "principles" which has marked the work of the previous Convention on this point and been mentioned in the discussions of the Working Group by members of that Convention. Principles are different from subjective rights in that they may call for implementation through legislative or executive acts; accordingly, they become significant for the Courts when such acts are interpreted or reviewed. This is consonant both with case law of the Court of Justice<sup>2</sup> and

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<sup>1</sup> See the judgment of the Court of Justice C-249/96 Grant, 1998 ECR I-621, at par. 45, according to which the Community fundamental rights, while their respect must be ensured, "cannot in themselves have the effect of extending the scope of the Treaty provisions beyond the competences of the Community."

<sup>2</sup> Cf. notably recent case law on the "precautionary principle" in Article 174 § 2 TEC: judgment of the CFI of 11 September 2002, T-13/99, Pfizer vs. Council, with numerous references to earlier case law; and a series of judgments on Article 33 (ex-39) on the principles of agricultural law, e.g. judgment of

with the approach of the Member States' constitutional systems to "principles" particularly in the field of social law, as developed in the previous Convention by several eminent constitutional lawyers who were members of that Convention.

In addition, the proposed clause would maintain the line followed by the previous Convention to express the character of a "right" or a "principle" of individual Charter articles as best as possible in the wording of the respective articles and to leave it, on this basis and taking into account the valuable guidance provided by the "Praesidium's Explanations", for future jurisprudence to rule on the exact attribution of articles to the two categories.

5. Proposed Article 52 § 6 refers to the various articles in the Charter which, in the spirit of subsidiarity make reference to national laws and practices.

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the Court of Justice C-265/85, Van den Berg, 1987 ECR 1155: scrutiny of the principle of market stabilisation and of reasonable expectations, further references see Comm. Megret, tome 3, pp. 80 et seq.

**THE EUROPEAN CONVENTION**

THE SECRETARIAT

**Brussels, 9 October 2002**

**Working Group II**

**Working document 24**

**Working group II "Incorporation of the Charter/ accession to the ECHR"**

**From:** The Secretariat  
**To:** Working Group II

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**Subject :** Comments on horizontal articles of the Charter

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Members of the Group will find herein comments on horizontal articles of the Charter

Comments on some of the points to be discussed by  
the Working Group on Charter  
at its meeting on 7 October 2002  
by  
VYTENIS POVILAS ANDRIUKAITIS,  
Member of the Convention

Based on the premise that the substance of the Charter as a compromise reached by the previous Convention should be respected, the horizontal articles of the Charter is the main part that we need to focus our attention on.

Therefore, I congratulate President António Vitorino on an excellent drafting of the compromise proposals concerning adjustments in the horizontal articles of the Charter both accommodating the concerns of some of the members of our Working Group and reflecting the broad discussions that took place in the Working Group meetings. I support the proposals by Mr. António Vitorino.

I would also like to express my support to Prof. Jürgen Meyer's proposal laid down in Working document No. 17 on the Enforceability of the Charter of Fundamental Rights and improvement of the individual's right to legal redress. I support the proposed amendment of Article 230 (4) EC aimed at enlarging standing for individuals to enable them to challenge general measures that are of direct or individual concern to them. I share the view that the present wording of the Article which requires that the challenged measure be of direct and individual concern to the applicant is too restrictive. It is fully understood that as a consequence of such an amendment the division of work between the national and the European courts may be disturbed. However, by broadening-up direct access to the Court of First Instance, we may ensure both individuals' right of access to a court and their right to an effective remedy at the European level. Moreover, that the recent case-law of the Court of Justice and the Court of First Instance invite us to initiate necessary treaty amendments. It is an opportunity that we do have. Therefore, I welcome Prof. Jürgen Meyer's proposal and would like to invite the Working Group to take it into account.

6 October 2002

**THE EUROPEAN CONVENTION**  
THE SECRETARIAT

**Brussels, 14 October 2002**

**Working Group II**

**Working document 25**

**Working group II "Incorporation of the Charter/ accession to the ECHR"**

**From:** The Secretariat  
**To:** Working Group II

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**Subject :** Draft final report

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Members of the Group will find herewith the draft final report of the Group.

Members are kindly asked to send any reactions they may have to this draft to the Secretariat (clemens.ladenburger@consilium.eu.int) by Thursday, 17 October, 17:00 hours, at the latest.



## **Draft Final Report**

### **Introduction**

On the basis of its mandate (doc. CONV 72/02), the Group has, in the course of its seven meetings and having held hearings with several legal experts<sup>1</sup>, examined two main complementary issues:

- the modalities and consequences of possible incorporation of the EU Charter of Fundamental Rights (hereinafter: "the Charter") into the Treaties (Chapter A);
- the modalities and consequences of possible accession of the Community / the Union to the European Convention on Human Rights (hereinafter: "the ECHR") (Chapter B).

In addition, the Group has discussed the specific issue of access by individuals to the Court of Justice, which, as mentioned in the Group's mandate, arises independently of the questions of incorporation of the Charter and of accession to the ECHR but has a wider link to fundamental rights (Chapter C).

Thanks to the strong sense of commitment, the willingness to engage in detailed technical discussion, and the remarkable spirit of compromise of its members, the Group has succeeded in producing a highly consensual report on both main issues.

### **A. On the Charter**

#### **I. Recommendations as to the form of possible incorporation of the Charter**

##### **1. General recommendation**

At the outset, the Group stresses that, in accordance with its mandate, the final political decision

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<sup>1</sup> Mr. Johann Schoo, Director, Legal Service of the Parliament, Mr. Jean-Claude Piris, Jurisconsult, Director-General of the Legal Service of the Council, and Mr. Michel Petite, Director-General of the Legal Service of the Commission, heard on 23 July (see WD N° 13 and CONV 223/02); Mr. Marc Fischbach, Judge, European Court of Human Rights, and Mr. Vassilios Skouris, Judge, European Court of Justice, heard on 17 September (see WD N° 19 and CONV 295/02). Mr. Söderman, European Ombudsman and observer to the Convention, attended the Group's meeting on 4th October and presented his contribution CONV 221/02 CONTRIB 76.

about possible incorporation of the Charter into the Treaty Framework will be reserved for the Convention Plenary. The mandate of the Group has been to prepare such a decision through examination of a series of specific questions relating to modalities and consequences of such incorporation.

Without prejudice to that final political decision, and on the basis of the common understanding reached by the Group on all key issues related to the Charter as set out below, all members of the Group either support strongly or are open to giving favourable consideration to an incorporation of the Charter *in a form which would make the Charter legally binding and give it constitutional status*. Different forms exist, in the Group's view, to achieve that result, as set out below; but in any event, a "building block" as central as fundamental rights should find its place in the Union's constitutional framework. The Group is confident that, with its report, the necessary groundwork allowing the Plenary to take its political decision on incorporation has now been done; notably, this general recommendation of the Group has been facilitated by a common understanding, reached within the Group, on certain legal and technical aspects of the Charter which are of great significance for a smooth incorporation ensuring legal certainty.

## 2. Recommendations as to the concrete form of incorporation

The Group is fully aware that the choice to make as to the concrete form of incorporation does not depend exclusively on considerations linked to the Charter or to fundamental rights in general, but also on the overall picture of the Treaty architecture which will emerge in future discussions of the Convention Plenary. For this reason, it would not be appropriate for this Group to restrict the Convention's further overall work by proposing only one technique for incorporation of the Charter. Rather, out of the various possibilities submitted to the Group at the outset of its work<sup>1</sup>, the Group recommends the Plenary to consider two basic options:

- a. insertion of the text of the Charter articles at the beginning of the Constitutional Treaty, in a Title or Chapter of that Treaty; or

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<sup>1</sup> See documents CONV 72/02 and 116/02, pp. 7-8.

- b. insertion of an appropriate reference to the Charter in one article of the Constitutional Treaty; such a reference could be combined with annexing the Charter to the Constitutional Treaty, either as a specific part of the Constitutional Treaty containing only the Charter or as a separate legal text (e.g., in form of a Protocol).

Having considered the questions coming under the Group's mandate, a large majority of the Group would prefer the first option. The second option is favoured by certain other members, some of them emphasising the need to annex the Charter to the Treaty, as a specific part of that Treaty or as a protocol. The Group as a whole underlines that both basic options can serve to make the Charter a legally binding text of constitutional status.

## II. Conclusions and recommendations on certain legal and technical aspects of the Charter of importance for a smooth incorporation of the Charter into the new Treaty architecture

An important part of the Group's work has been to examine a number of legal and technical aspects of the Charter which, as has become clear during the Group's discussions, are important in the perspective of a smooth incorporation of the Charter, as a legally binding document, into the new Treaty architecture. The Group has found a common understanding on these questions, and on ensuing recommendations, as set out hereafter.

### 1. Respecting the content of the Charter

The basic starting point underlying the Group's conclusions on the Charter is that the content of the Charter represented a consensus reached by the previous Convention, a body which had special expertise in fundamental rights and served as model for the present Convention, and endorsed by the Nice European Council. The whole Charter - including its statements of rights and principles, its preamble and, as a crucial element, its "general provisions" - should therefore be respected by this Convention and not be re-opened by it.

Accordingly, the Group has not considered any changes to the rights and principles contained in the Charter. The Group recognises however that certain technical *drafting adjustments* in the Charter's "general provisions" are nonetheless possible and appropriate as explained below; the Group therefore proposes to the Plenary the drafting adjustments set out in the Annex to this report<sup>1</sup>. It is important to note that these adjustments proposed by the Group do not reflect modifications of *substance*. On the contrary, they would serve to *confirm*, and render absolutely clear and legally watertight, certain key elements of the overall consensus on the Charter on which the previous Convention had already agreed. They are prompted by the new perspective of a Constitutional Treaty which has arisen in the present Convention, but also by the concern of legal certainty in the field of fundamental rights, to which the Charter is designed to contribute. Thus, all drafting adjustments proposed herein fully respect the basic premise of the Group's work, i.e. to leave intact the substance agreed by consensus within the previous Convention, and the Group urges the Plenary equally to respect this premise when considering the proposed drafting adjustments.

2. Incorporation of the Charter will not modify the allocation of competences between the Union and the Member States

The Group is able to confirm that incorporation of the Charter will in no way modify the allocation of competences between the Union and the Member States. This point, on which there was consensus already in the previous Convention, is currently reflected in Article 51 § 2 of the Charter. The fact that certain Charter rights concern areas in which the Union has little or no competence to act is not in contradiction to it, given that, although the Union's *competences* are limited, it must *respect* all fundamental rights wherever it acts and therefore avoid indirect interference also with such fundamental rights on which it would not have the competence to legislate.

However, in order to render this point clear beyond any doubt, even in the perspective of a Charter forming part of a constitutional treaty, the Group recommends the drafting adjustments to Article 51 § 1 and 2 set out in the Annex. Moreover, the Group considers it useful to confirm expressly, in Article 51 § 2, the established case law according to which the fundamental rights of the Union, while they must be respected, cannot in themselves have the effect of extending the scope of the

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<sup>1</sup> In addition to the adjustments indicated in the annex, it should be kept in mind that, depending on the future Treaty architecture, purely drafting adjustments may become necessary to the various references, made throughout the Charter, to "the Treaties", "the Community Treaties", "the Treaty on the European Union", "Community law", etc., see doc. CONV 116/02, p. 7.

Treaty provisions beyond the competences of the Union.<sup>1</sup>

Furthermore, the Group recalls in this context that the Charter was drafted with due regard to the principle of subsidiarity, as is clear from its Preamble, its Article 51 § 1 and from those Charter Articles which make references to national laws and practices; it seems appropriate to the Group to include a clause in the general provisions of the Charter (see Article 52 § 6 in the Annex) recalling these references. Likewise, it is in line with the principle of subsidiarity that the scope of application of the Charter is limited, in accordance with its Article 51 § 1, to the institutions and bodies of the Union, and to Member States *only* when they are implementing Union law.<sup>2</sup>

3. Full compatibility between the fundamental rights of the EC Treaty and the Charter articles which restate them

As regards the specific case of those fundamental rights which are already expressly enshrined in the EC Treaty and merely "restated" in the Charter (notably rights derived from Union citizenship)<sup>3</sup>, there was already consensus in the previous Convention on the principle that the legal situation as defined by the EC Treaty should remain unaffected by the Charter; this is presently expressed in the "referral clause" of Article 52 § 2 of the Charter<sup>4</sup>.

Reconfirming that point, the Group has reached consensus on the need to have, as concerns these rights, a legally "watertight" referral clause, such as presently included in Article 52 § 2 of the Charter, ensuring complete compatibility and coordination between the statements of the rights in the Charter and their more detailed regulation as currently found in the EC Treaty. The Group stresses that this clause of Article 52 § 2 will, if the Charter is to become a part of the constitutional treaty, logically need a slight drafting adjustment, so as to make it clear that the referral is made to *other parts* of Treaty law where the conditions and limits of the exercise of these rights are defined. The concrete formula of such a drafting adjustment, reflecting that principle of compatibility and coordination, cannot be given at this stage as it will depend on the exact overall Treaty architecture.

<sup>1</sup> See Judgment of the Court of Justice C-249/96 Grant, 1998 ECR I-621, at par. 45.

<sup>2</sup> It should be noted that, upon possible incorporation of the Charter into the Treaty, the current wording of Article 46 (d) TEU would have to be brought in line with existing case law and Article 51 of the Charter on the (limited) application of fundamental rights to acts of Member States.

<sup>3</sup> A list of those rights is to be found in WD N° 9 of the Chairman, page 3, Fn. 2.

<sup>4</sup> See also the "Explanations" (Document CHARTE 4473/00 CONVENT 49 of 11 October 2000; see in detail below, section A III 3) under Article 52 § 2: "The Charter does not alter the system of rights

Furthermore, the Group is of the view that, as regards these rights, a certain "replication" ("dédouplements") between the Charter and other parts of Treaty law will be inevitable for legal reasons and will not be harmful.

The Group signals that if, as advocated by a large majority of the Group, incorporation is achieved by the insertion of the Charter text in the first part of the Constitutional Treaty, it would then become necessary to combine, in an appropriate manner, in that Treaty the Charter articles on citizens' rights and the provisions on citizenship of the EC Treaty having constitutional importance; this should be considered as a technical operation raising no political problems.

#### 4. Correspondence between Charter rights and rights guaranteed by the ECHR

The Group underlines and reconfirms the central importance of Article 52 § 3 of the Charter, on those Charter rights which correspond to rights guaranteed by the ECHR; it recalls that this clause was a crucial element of the overall consensus in the previous Convention.<sup>1</sup> On the basis of the "Explanations" on the Charter<sup>2</sup>, the Group confirms its common understanding on the meaning of this provision: the rights in the Charter which correspond to ECHR rights have the same scope and meaning as laid down in the ECHR; this includes notably the detailed provisions in the ECHR which permit limitations of these rights. The second sentence of Article 52 § 3 of the Charter serves to clarify that this article does not prevent more extensive protection (i) in Union legislation and (ii) in those articles of the Charter which, although based on the ECHR, go beyond the ECHR because Union law *acquis* had already reached a higher level of protection (e.g., Article 47 on effective judicial protection, or Article 50 on the right not to be punished twice for the same offence).

#### 5. An interpretation in harmony with common constitutional traditions

The Group stresses that the Charter has deep roots in the Member States' common constitutional traditions, which were brought together impressively in the previous Convention's work. The extensive case law on fundamental rights derived from the common constitutional traditions established by the Court of Justice and confirmed by Article 6 § 2 TEU, represents an important

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conferred by the Treaties".

<sup>1</sup> Cf. on Article 52 § 3 of the Charter also the concurrent statements made by Judge Fischbach of the European Court of Human Rights and Judge Skouris of the European Court of Justice at the hearing on 17 September, doc. CONV 295/02.

<sup>2</sup> On the "Explanations", see in detail below, section A III 3.

source for the rights recognised by the Charter. In order to highlight these roots and in the interest of a smooth incorporation of the Charter as a legally binding document, the Group proposes to include a rule of interpretation in the general provisions (see Article 52 § 4 in the Annex). The rule is based on the wording of the current Article 6 § 2 TEU and takes due account of the approach to common constitutional traditions followed by the Court of Justice as explained by Judge Skouris at the hearing of 17 September. Under that rule, rather than following a rigid approach of "a lowest common denominator", the Charter rights concerned should be interpreted in a way offering a high standard of protection which is adequate for the law of the Union and in harmony with the common constitutional traditions.

#### 6. The distinction between "rights" and "principles" in the Charter

The Group stresses the importance of the distinction between "rights" and "principles", which was an important element – already expressed in the Preamble and in Article 51 § 1 of the Charter - of the consensus reached by the previous Convention. In order to reconfirm that distinction while increasing legal certainty in the perspective of a legally binding Charter with constitutional status, the Group proposes an additional general provision (see Article 51 § 5 in the Annex) encapsulating, in a clear legal definition, the understanding of the concept of "principles" which marked the work of the previous Convention and has been recalled in the discussions of the Working Group by members of that Convention. According to that understanding, principles are different from subjective rights in that they may call for implementation through legislative or executive acts; accordingly, they become significant for the Courts when such acts are interpreted or reviewed. This is consistent both with case law of the Court of Justice<sup>1</sup> and with the approach of the Member States' constitutional systems to "principles" particularly in the field of social law.

In addition, with the proposed clause the Group reconfirms the line followed by the previous Convention to express the character ("right" or "principle") of individual Charter articles as best as possible in the wording of the respective articles and to leave it, on this basis and taking into account the valuable guidance provided by the "Praesidium's Explanations", for future jurisprudence to rule on the exact attribution of articles to the two categories.

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<sup>1</sup> Cf. notably recent case law on the "precautionary principle" in Article 174 § 2 TEC: judgment of the CFI of 11 September 2002, T-13/99, Pfizer vs. Council, with numerous references to earlier case law; and a series of judgments on Article 33 (ex-39) on the principles of agricultural law, e.g. judgment of the Court of Justice C-265/85, Van den Berg, 1987 ECR I 1155: scrutiny of the principle of market stabilisation and of reasonable expectations, further references see Comm. Megret, tome 3, pp. 80 et seq.

### **III. Recommendations concerning further questions arising in the context of possible incorporation**

#### **1. Preamble of the Charter:**

The Group considers the Charter Preamble as a crucial element of the overall consensus on the Charter reached by the previous Convention. The Group therefore recommends that this element should in any event be preserved in the future Constitutional Treaty framework. The Group also recalls that the Charter Preamble comprises language on the fundamental nature of the Union going well beyond the area of fundamental rights. As is the case with the Charter as a whole, the concrete form of an "incorporation of the Charter Preamble" into the Treaty framework, as recommended by the Group, will equally depend on the overall Treaty structure to be defined by the Plenary. Thus, if the Charter articles were to be inserted directly in the Constitutional Treaty, the Charter Preamble, enriched by further elements as appropriate, should in the Group's view be used as the Preamble to the Constitutional Treaty. If in turn the Charter is incorporated as a specific part of the Constitutional Treaty or as a separate binding legal text (e.g., in the form of a Protocol) within the Union's constitutional architecture, the Charter Preamble could remain attached to the text of the Charter without any changes; that would of course not preclude the Convention from using, for the drafting of the new Treaty preamble, the elements of general importance to be found in the Charter preamble.

#### **2. Continued reference to external sources (such as currently found in Article 6 § 2 TEU):**

The Group discussed whether or not, in case of incorporation of the Charter, the Constitutional Treaty should also contain a reference to the two external sources of inspiration for fundamental rights as currently made in Article 6 § 2 TEU, i.e. the ECHR and the constitutional traditions common to the Member States. Valid arguments have been advanced both for and against this.



Some members have taken the view that maintaining such a reference would be redundant and create legal confusion, given that the Charter already includes rights derived from the ECHR and the common constitutional traditions and makes references to these sources. Others have argued that such a reference in the Constitutional Treaty could serve to complete the protection offered by the Charter and clarify that Union law is open for future evolutions in ECHR and Member States' human rights law.

In any event, the Group recognises that this question is closely related to the choice of the form of incorporation which the Convention will have to make. The Group therefore refrains from making a firm recommendation on this issue; instead, it limits itself to stating that such a reference, if appropriately drafted<sup>1</sup>, is not excluded by the prospect of a legally binding Charter, and signals the issue to the Plenary for consideration.

### 3. The importance of the "Explanations":

The Group stresses the importance of the "Explanations ", drawn up at the instigation of the Praesidium of the previous Convention<sup>2</sup>, as an important tool of interpretation ensuring a correct understanding of the Charter. It recognises that these Explanations are presently not sufficiently accessible for legal practitioners. The Group recommends therefore that, upon possible incorporation of the Charter, attention be drawn in an appropriate manner to these Explanations which, as they themselves state, have no legal value but are intended to clarify the provisions of the Charter. In particular, it would be important to publicise them more widely. To the extent that the Convention takes on board the drafting adjustments proposed by this Group, the corresponding explanations given in this report should be added to the original Explanations.

### 4. Procedure for future amendment of the Charter

As a consequence of possible incorporation of the Charter into the Constitutional Treaty framework, the question will arise according to which procedure the Charter can be amended in the future. However, the Group has considered that this question goes beyond its mandate since it will have to be examined by the Plenary as part of the general question of amendment procedure(s) for the various building blocks of the future Treaty framework.

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<sup>1</sup> See doc. CONV 116/02, page 9.

<sup>2</sup> Document CHARTE 4473/00 CONVENT 49 of 11 October 2000.

## **B. On accession to the European Convention on Human Rights**

### **I. General conclusions and recommendations**

Just as in the case of the Charter, the Group stresses at the outset that, in accordance with the Group's mandate, the final political decision about the perspective of possible accession by the Union (i.e. by the new single legal personality as emerging from the work of Working Group III) to the ECHR will be reserved to the Convention Plenary. The mandate of the Group has been to prepare such a decision through examination of a number of specific questions relating to modalities and consequences of possible accession.

The Group furthermore stresses that the Convention is to decide only on whether to introduce into the new Treaty a constitutional authorisation *enabling* the Union to accede to the ECHR. In contrast, it would later be for the institutions of the Union, notably for the Council deciding by unanimity, to open negotiations for an accession treaty and set the concrete framework of those negotiations; during such negotiations, a range of technical questions regarding the concrete modalities of accession, of which the Group has taken due note<sup>1</sup>, will have to be dealt with. Likewise, the decision on the appropriate timing for possible accession by the Union to the ECHR and to its various additional protocols should be left for the Council. All these questions are not of a constitutional nature and therefore not for the Convention.

Without prejudice to the final political decision by the Plenary, and on the basis of the arguments and conclusions set out below, all members of the Group either strongly support or are ready to give favourable consideration to the creation of a constitutional authorisation enabling the Union to accede to the ECHR.

The main political and legal arguments speaking in favour of accession by the Union to the ECHR, which have been recognised by the Group, are the following:

- Accession to the ECHR would give citizens the same degree of protection vis-à-vis acts of the Union as they presently enjoy vis-à-vis all the Member States. This appears to be a question of credibility, given that Member States have transferred substantial competences to the Union

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<sup>1</sup> See notably WD N° 8, containing a study carried out within the Council of Europe on technical and legal questions of possible accession to the ECHR.

and that adherence to the ECHR has been made a condition for membership of new States in the Union.

- Accession would be the ideal tool to ensure a harmonious development of the case law of the two European Courts in human rights matters; for some, this argument has even greater force in view of a possible incorporation of the Charter into the Treaties. In this connection, mention should also be made of the problems resulting from the present non-participation of the Union in the Strasbourg judicial system in cases where the Strasbourg Court is led to rule indirectly on Union law without the Union being able to defend itself before that Court or to have a judge in the Court who would ensure the necessary expertise on Union law.
- As the Union reaffirms its own values through its Charter, its accession to the ECHR would give a strong political signal for the coherence between the Union and the "greater Europe", comprised in the Council of Europe and its pan-European human rights system.

The Group has looked in depth into the possible impact of accession to the ECHR on the principle of autonomy of Community (or Union) law including the position and authority of the European Court of Justice. It has emerged from the Group's discussion and expert hearings<sup>1</sup> that the principle of autonomy does not place any legal obstacle to accession by the Union to the ECHR. After accession, the Court of Justice would remain the sole supreme arbiter of questions of Union law and of the validity of Union acts; the European Court on Human Rights could not be regarded as a superior Court but rather as a specialised court exercising external control over the international law obligations of the Union resulting from accession to the ECHR. The position of the Court of Justice would be analogous to that of national constitutional or supreme courts in relation to the Strasbourg Court at present.

The Group stresses that the incorporation of the Charter into the Treaties and the Union's accession to the ECHR should not be regarded as *alternatives*, but rather as complementary steps ensuring full respect of fundamental rights by the Union: just as the existence of the Charter does not in any way diminish the benefits of extending the control of the Strasbourg Court to cover Union acts, so accession to the ECHR does not reduce the significance of the Union's own catalogue of fundamental rights. The two steps would lead to a situation analogous to that in the laws of the Member States whose Constitutions protect fundamental rights but who at the same time have subscribed to the additional external human rights check by the Strasbourg system.

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<sup>1</sup> Cf. the concurring statements by Judges Skouris (WD N° 19) and Fischbach (CONV 295/02) as well as by Messrs. Schoo, Piris and Petite (WD N° 13).

In the light of the above, the Group therefore recommends that, if the Plenary agrees politically on the idea of accession, a legal basis should be inserted at an appropriate place in the Constitutional Treaty which would authorise the Union to accede to the ECHR. The drafting of such a legal basis could be kept very simple<sup>1</sup>. Given the constitutional significance of possible accession, it should however also be specified that the signature and conclusion of the accession treaty require a decision by the Council by unanimity and the assent of the European Parliament; otherwise, the normal procedures for international agreements would apply.

## II. Conclusions and recommendations with respect to specific questions linked to possible accession by the Union to the ECHR

### 1. Accession to the ECHR will not modify the division of competences between the Union and the Member States

The Group agrees on the central importance of the fact that accession by the Union to the ECHR - like incorporation of the Charter - will in no way modify the allocation of competences between the Union and the Member States. According to the Group's common understanding, the legal "scope" of the Union's accession to the ECHR would be limited to issues in respect of which the Union has competence; it would thus not lead to any extension of the Union's competences, let alone to the establishment of a general competence of the Union on fundamental rights<sup>2</sup>. Accordingly, "positive" obligations of the Union to take action to comply with the ECHR would arise only to the extent to which competences of the Union permitting such action exist under the Treaty.

The Group recommends the use of certain technical devices in order to clarify with certainty that the Union's accession to the ECHR does not modify the allocation of competences. Firstly, a provision clarifying this point could be included in the possible legal basis authorising accession. Secondly, upon accession, a statement stressing the Union's limited competences in the area of fundamental rights could be included in a provision in the accession treaty and / or in an accompanying declaration made by the Union. Thirdly, a mechanism allowing the Union and a Member State to appear jointly as "co-defendants" before the Strasbourg Court could ensure that

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<sup>1</sup> The legal base could for example state that the Union shall be authorised to accede to the ECHR.

<sup>2</sup> Existing preparatory work for accession has also proceeded upon this understanding, see the Council of Europe's study, WD N° 8, at para. 26, an understanding confirmed by Judges Skouris and Fischbach (WD N° 19; CONV 295/02) and by Mr. Petite (WD N° 13) at the respective hearings.

that Court would not make any ruling on the allocation of competences between the Union and the Member States in cases of doubt<sup>1</sup>.

In this context, it is important to bear in mind that accession by the Union to the ECHR would not mean that the Union would become a member of the Council of Europe, nor that it would become a general political player in Strasbourg. Rather, the Union and its law would simply take part (with a "scope" limited to its competences) in the specific system of judicial human rights control established by the ECHR. Concretely, there would be a judge at the Strasbourg Court elected "with respect to" ("à titre de") the Union, who would contribute specific expertise in Union law to the Court. Furthermore, a representative of the Union would take part in the Committee of Ministers' specific task of supervising execution of judgments under Article 46 ECHR (which is important notably to ensure that the Committee is properly informed on questions of Union law such as on the system of competences), but not in the Committee's general functions outside of the ECHR.<sup>2</sup>

2. The Member States' individual positions with respect to the ECHR will be unaffected by the Union's accession

The Group underlines the importance of the principle that accession by the Union to the ECHR does not affect the positions which the Member States have taken individually with respect to the ECHR, as reflected in particular in their individual decisions on the ratification of certain additional protocols, in the reservations they have entered upon ratification of the ECHR or its additional protocols, and in their right to take derogatory measures. The Group stresses that this point can be fully taken into account, since:

- As explained above, the Convention now has to discuss the insertion in the Treaty of a legal basis permitting accession by the Union to the ECHR. If such a possible legal basis were inserted, it would then be for the Council to define, by unanimity, to which additional protocols the Union should accede and when, and which reservations the Union should enter in respect of the ECHR *in its own name*.
- The *Member States'* individual reservations made in respect of the ECHR and additional protocols, as well as their right to take derogatory measures (Article 15 ECHR), would in any

<sup>1</sup> The mechanism has been explained to the Group by Judge Fischbach, see summary note CONV 295/02, p. 5, and is also explained in detail in the Council of Europe's study, Working Document n° 8, at paras 57 - 62.

<sup>2</sup> This statement is without prejudice to presently existing arrangement of participation in the meetings of the Committee of Ministers by the Community without a right to vote, see WD N° 8, at para. 34.

event remain unaffected by accession since they concern the respective national law, whereas accession by the Union would have legal effect only insofar as Union law is concerned.

### III. Conclusions with respect to alternative mechanisms proposed to accession to the ECHR

In the light of expert testimony<sup>1</sup> given to the group on the legal and practical problems with several mechanisms sometimes suggested as alternatives to accession by the Union to the ECHR, such alternative mechanisms (e.g., a special procedure of "referral" or "consultation" from the Court of Justice to the Strasbourg Court, a special recourse to the Strasbourg Court against the institutions without accession, or a "joint panel/chamber" composed of judges from both European Courts), are not recommended by the Group.

#### **B. Access to the Court of Justice**

The Group discussed the Union's current system of remedies available to individuals, notably in the light of the fundamental right to effective judicial protection.

In this context, the Group has examined the idea of establishing a special procedure before the Court of Justice for the protection of fundamental rights. As a majority of members had reservations about this idea, the Group does not recommend it to the Convention. The Group underlines however the great benefit which citizens would gain from a possible incorporation of the Charter into the Constitutional Treaty architecture, thereby making the Union's present system of remedies available for the defence of their Charter rights.

The Group wishes however to draw the Plenary's attention to a different issue, namely the question whether or not the conditions of direct access by individuals to the Court (Article 230 § 4 TEC) need reforming in the interest of ensuring effective judicial protection. On this point, the Group's discussion has shown that a certain lacuna of protection might exist, given the current condition of "individual concern" in Article 230 § 4 TEC and the case law interpreting it, in the specific case of "self-executing" Community regulations which impose directly applicable prohibitions on individuals. On the other hand, a widely shared trend emerged in the group's discussion according to which the present overall system of remedies, and the "division of work" between Community

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<sup>1</sup> See the hearing of Mr. Schoo, Mr. Piris and Mr. Petite of 23 July 2002 (Working Document 13, pp. 14, 32 fn. 2, 50 - 51) as well as the hearing of Judge Fischbach of 17 September 2002, doc. CONV

and national courts it entails, should not be profoundly altered by a possible reform of Article 230 § 4 TEC. Some members have referred to the possibility of a provision in the Treaty on the obligation of Member States, as spelt out in recent case law<sup>1</sup>, to provide for effective remedies for rights derived from Union law.

In any event, while the issue of Article 230 § 4 TEC certainly has a nexus with fundamental rights, it transcends the protection of those rights - as judicial protection must exist for *all* subjective rights -, and it arises quite independently of the concrete questions of the incorporation of the Charter and accession to the ECHR. The Group considers that this issue and its institutional implications must be examined together with other topics such as the limits of Court jurisdiction in Justice and Home affairs<sup>2</sup> or judicial control of subsidiarity. The Group therefore refrains from making concrete recommendations and commends the question of possible reform in Article 230 § 4 TEC, together with the valuable contributions submitted thereon<sup>3</sup>, for further examination by the Convention in an appropriate context.

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295/02.

<sup>1</sup> Judgment of the Court of Justice of 25 July 2002, C-50/00 P, UPA, at paras 41, 42.

<sup>2</sup> In this connection, attention is drawn to expert testimony given to the Group reflecting concerns, from a perspective of protection of fundamental rights, about these limits as presently contained in Article 68 TEC and Article 35 TEU in an area as sensitive to fundamental rights as Justice and Home affairs; see the hearing of Judge Skouris (WD N° 19) and of Mr. Schoo of 23 July 2002 (WD N° 13), as well as WD N° 20 of Mr. Ben Fayot presenting a note by Advocate-General Francis Jacobs.

<sup>3</sup> See cf., comprehensively on judicial and non judicial remedies, doc. CONV 221/02 CONTRIB 76 of Mr. Söderman; specifically on Art. 230: CONV 45/02 CONTRIB 25 by Hannes Farnleitner; the Group's WD N° 17 by Jürgen Meyer; WD N° 20 of Mr. Ben Fayot presenting a note by Advocate-General Francis Jacobs; the hearing of Judge Skouris (WD N° 19); the hearing of Mr. Schoo (WD N° 13); an overview of the debate and options are given in WD N° 21 by the Group's Chairman.

***ANNEX: Proposals by the Working Group for drafting adjustments in the horizontal articles of the Charter<sup>1</sup>:***

Article 51 (1):

"The provisions of this Charter are addressed to the institutions and bodies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers **and respecting the limits of the powers of the Union as conferred on it by other parts of [this Treaty / the Constitutional Treaty].**"

Article 51 (2):

"This Charter does not **extend the scope of application of Union law beyond the powers of the Union or** establish any new power or task for [the Community or] the Union or modify powers and tasks defined **by the other [Chapters / parts] of [this Treaty / the Constitutional Treaty].**"

*add to Article 52:*

**"52(4) Insofar as this Charter recognises fundamental rights as they result from the constitutional traditions common to the Member States, those rights shall be interpreted in harmony with those traditions."**

**"52 (5) The provisions of this Charter which contain principles may be implemented by legislative and executive acts taken by institutions and bodies of the Union, and by acts of Member States when they are implementing Union law, in the exercise of their respective powers. They shall be judicially cognisable only in the interpretation of such acts and in the ruling on their legality."**

**"52 (6) Full account shall be taken of national laws and practices as specified in this Charter."**

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<sup>1</sup> The wording in brackets depends on the exact final Treaty architecture.



***ANNEXE: Propositions, faites par le Groupe, d'adaptations rédactionnelles dans les dispositions horizontales<sup>1</sup> de la Charte:***

Article 51 (1):

"Les dispositions de la présente Charte s'adressent aux institutions et organes de l'Union dans le respect du principe de subsidiarité, ainsi qu'aux Etats membres uniquement lorsqu'ils mettent en œuvre le droit de l'Union. En conséquence, ils respectent les droits, observent les principes et en promeuvent l'application, conformément à leurs compétences respectives **et dans le respect des limites des compétences de l'Union telles qu'elles lui sont conférées par les autres parties du [présent traité/traité constitutionnel].**"

Article 51 (2):

La présente Charte **n'étend pas le champ d'application du droit de l'Union au-delà des compétences de l'Union, ni** ne crée aucune compétence ni aucune tâche nouvelles pour [la Communauté et pour] l'Union et ne modifie pas les compétences et tâches définies par **les autres chapitres du [présent traité/traité constitutionnel].**

*ajouter à l'article 52:*

**"52(4) Dans la mesure où la présente Charte reconnaît des droits fondamentaux tels qu'ils résultent des traditions constitutionnelles communes aux Etats membres, ces droits doivent être interprétés en harmonie avec les dites traditions."**

**"52 (5) Les dispositions de la présente Charte qui contiennent des principes peuvent être mises en œuvre par des actes législatifs et exécutifs pris par les institutions et organes de l'Union, et par des actes des Etats membres lorsqu'ils mettent en œuvre le droit de l'Union, dans l'exercice de leurs compétences respectives. Leur invocation devant le juge n'est admise que pour l'interprétation et le contrôle de la légalité de tels actes."**

**"52(6) Les législations et pratiques nationales doivent être pleinement prises en compte comme précisé dans la présente Charte."**

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<sup>1</sup> Les formules mises entres crochets dépendent de l'architecture finale exacte des Traités.

**LA CONVENTION EUROPÉENNE**  
LE SECRETARIAT

**Bruxelles, le 18 octobre 2002**

**Groupe de travail II**

**Document de travail 26 REV 1**

Les membres du groupe de travail II trouveront ci-joint des commentaires au projet de rapport final du groupe (WD 025)

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**ANNEX**

**Mr. A. KELEMEN, Alternate Member**

The European Convention  
Working Group on “Incorporation of the Charter/Accession to the ECHR”

Modalities and consequences of incorporation into the Treaties of the Charter of Fundamental  
Rights and accession of the Community/ Union to the ECHR

Subject: Incorporation of the Charter

1. Techniques of incorporation

Although the working group has limited its approach to the examination of the technical aspects of incorporation, the choice between different forms of incorporation representing different degrees of acknowledgement of its legal value involves the substantial question of the legal status of the Charter in the future.

Only some of the methods of incorporation ensure that the Charter acquire the status of a legally binding text. A binding force has beneficial effects as regards justiciability, and would ensure consistency between the different human rights standards across the three pillars of the Union. Therefore, I consider, that the options ensuring a binding force are preferable.

Furthermore, a treaty of a constitutional character containing a list of fundamental rights would constitute a move for the Community towards conceiving itself as a constitutional unit thus, the incorporation may convey a stronger political message. The coherent list of fundamental rights having legally binding force would raise people’s awareness of their rights.

2. The question of “replication” in the Charter

The necessary elimination of the replications created by the incorporation of the Charter raises the question of whether the articles of the Charter or those of the current Treaty should be deleted. As far as I see, both general provisions of fundamental rights having broader scope and those relating to specific chapters and sectors are to be maintained given the complementary character of more detailed provisions.

### 3. Treaty provisions concerning the Court of Justice

#### a) Amendment of Article 46(d)

Article 46(d) of the TEU conflicting with Article 51(1) of the Charter codifying the well established case law of the Court of Justice is to be deleted in order to ensure legal certainty.

#### b) Competences of the Court in the field of justice and home affairs

The Treaty of Amsterdam has significantly extended the role of the Court of Justice in the 3<sup>rd</sup> Pillar. Nevertheless, the jurisdictional competence remained restricted and the preliminary ruling procedure has been modified to the detriment of the citizens. Given that the prevalence of the fundamental rights in the field of the 3<sup>rd</sup> Pillar is particularly important and the availability of the Court of Justice is essential in guaranteeing the respect those rights, we agree with further extension of the competence of the Court and the proposed modification in the wording of the provision limiting the use of the preliminary ruling procedure.

#### c) The question of liberalizing the conditions for direct action before the Court

Ensuring binding force to the Charter brings about the need to ensure that individuals have direct access to the European Court in order to challenge Community acts violating their fundamental rights. The introduction of the direct recourse procedure is essential in assuring full protection and transparency among others.

Subject: Accession of the Community/Union to the ECHR

The accession of the Community/Union to the ECHR would put in place an effective external control mechanism of the legislative and enforcement activity of the Community institutions providing for a possibility of direct access of individuals to an independent court ensuring full protection of human rights. Therefore, I am in favour of an eventual accession.

Despite the fact that the consultation mechanism proposed in the working paper could be useful in order to eliminate the problems arising from the possible lack of coherence in the interpretation of human rights of the two courts, I am not convinced by the necessity of its introduction. The purpose of the establishment of the consultation mechanism in the European legal order has been related to the specific character of the Community judicial system; hence this mechanism is not essential in the ECJ – European Court relation.

The main concerns of the opponents of accession to the ECHR relate to the autonomy of Community law and the subordination of the Luxemburg Court. In my opinion, the autonomy of the Community law is not affected by the accession, given that the Strasbourg Court has no competence in the interpretation of Community law nor in the annulment of Community legal acts. According to my views, the subsidiary competence of the Strasbourg Court is manifested by the fact, that the Court respects a certain degree of discretionary power of the national authorities.

Subject: Rights of minorities with special regard to those of national minorities

Being aware of the fact, that the completion of the protected fundamental rights of the Charter will be effectuated by a political decision to be made eventually by the plenary session of the Convention, the contradiction between the practice of the EU enforcing the protection of minority rights in the accession candidate countries by the Copenhagen-criteria, Europe Agreements and the recommendations made in the framework of the Accession Partnership and the lack of legal basis in this field for the adoption of the same kind of measures in the Community necessitates urgent action. Furthermore, I would like to draw the attention to the fact, that the Europe Agreements remaining in force after the first round of enlargement will maintain this controversial “double standard” situation despite the fact that the Charter provides for the non-discrimination of persons on the grounds of their membership in a national minority.

Mr. I. Svensson,  
Alternate Member

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Comments on the draft final report of working group II (doc. no. 25)

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Dear Mr Vitorino,

I wish to thank you for the excellent draft final report which describes, in a very balanced manner, the gist of our discussions and the support expressed by members of the group both for an incorporation of the Charter of fundamental rights and for the accession of the European Union to the European Convention of Human Rights.

I only have a few comments to make. They are as follows:

1. There is a marked difference in how the draft report refers to the topic of incorporation and to the topic of accession. In order to avoid this difference I propose to add a sentence in A.I.1 on page 3 at the end of paragraph 2 (following the words: "... ensuring legal certainty"):

**"Furthermore, the aforementioned common understanding is to be seen in conjunction with the corresponding unity on the issue of accession by the European Union to the European Convention on Human Rights, cf. point B I, 3<sup>rd</sup> paragraph below".**

2. It has been my impression that working groups should refrain from submitting detailed drafting proposals. This is why I would suggest a slight change of the text now in A.II.1, the second paragraph of page 5 where we should delete any reference to "drafting adjustments" and instead let the two first sentences read:

**"Accordingly ..... and appropriate as explained below and as set out in the Annex to this report".**

3. Under A, II, 3 I wish to propose, in the third paragraph on page 7, ("dédouplements") the following wording (bold): "Furthermore, the Group is of the view that, as regards these rights, a certain "replication" ("dédouplements") between the Charter and other parts of Treaty law **might** be inevitable for legal reasons **and should be minimised.**"

4. In Chapter B,I, second paragraph on page 12 the report rightly mentions that the Group has discussed the necessary constitutional authorisation enabling the Union to accede to the ECHR. The same paragraph ends with a sentence stating that questions which are "not of a constitutional nature are not for the Convention". In my opinion, the Convention is competent to discuss a great variety of issues and not at all limited to constitutional matters, as is clear from debates in and recommendations of other working groups.

I therefore propose to delete the last sentence of paragraph 2 as inaccurate and to replace it with the following text:

**"However, nothing prevents the Heads of State and Government to commit themselves politically to an accession by the European Union to the European Convention of Human**

**Rights, for instance in the Final Act of the Intergovernmental Conference which is to be convened following the Convention."**

5. Still on Chapter B, I, paragraph 4 (pages 12-13) there is an enumeration of reasons in favour of accession. Much more could be said in this context but if no other change is made I would at least ask that what is now the **third indent ("greater Europe" argument) be placed first.**

6. There is another difference of expression pertaining to what the group sees fit to recommend regarding on the one hand the incorporation (A.I.2 paragraph 1 on pages 3-4, options "a and b") and on the other the accession (B.I. paragraph 7 on page 14). In the first context, the Group straightforwardly recommends the Plenary to consider two options whereas in the latter the Group's recommendation is not only conditioned by a later Plenary decision but also less well presented.

This is why I first propose to **delete the words** "if the Plenary agrees politically on the idea of accession" since the group must have the full right to make proposals regardless of subsequent decisions of the Plenary and also since all who have spoken in our group have been in favour of an accession.

I then propose that the presentation follows the one in A.I.2 on pages 3-4 so that the first sentence of the paragraph will appear as follows:

**"In the light of the above, the Group therefore recommends -----:**

**- that a legal basis should be inserted at an appropriate place in the Constitutional Treaty which would authorise the Union to accede to the ECHR."**

7. Regarding B.II.1 on page 15 I propose to delete the last four words of the first paragraph ""in cases of doubt") which seem ambiguous in the context.

8. Regarding B.III on page 16 I am very much attached to your writing concerning "alternative mechanisms" especially since concerted legal opinions have ruled them out.

Finally, I assume that the last part of the report concerning Access to the ECJ should be labeled "C".

Yours sincerely,

Ingvar

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**Mr. B. FAYOT, Member of the Convention**

**GRUPE DE TRAVAIL II / DOCUMENT DE TRAVAIL 25 du 14 octobre 2002**

INCORPORATION DE LA CHARTE DES DROITS FONDAMENTAUX - ACCESSION DE L'UE A LA CEDH

Impression générale: Il faut reconnaître que le projet de rapport constitue un effort important pour rendre fidèlement les détails et l'accord obtenu. Cependant, il ne cesse de mettre en avant une prudence extrême, voire une grande méfiance à l'encontre de la Charte des Droits fondamentaux, comme si celle-ci était une machine de guerre diabolique pour élargir subrepticement les compétences de l'Union au détriment des compétences des Etats membres. Or, il faut rappeler que la Charte a fait l'objet d'un large consensus lors de la 1ère Convention et qu'elle a fait l'objet d'une déclaration solennelle du Conseil européen de Nice. Surtout, elle a rencontré un accueil très favorable dans un grand nombre d'Etats membres et surtout auprès des opinions publiques et de la société civile. Tout en reconnaissant les limites de ce document, il faut convenir que c'est le premier document lisible et visible où les citoyens européens trouvent rassemblés leurs droits.

Etant donné la prudence et la méfiance dont question plus haut, le noyau central du rapport donne l'impression de se concentrer sur une limitation encore plus prononcée que dans le documents original des droits y contenus.

**A. On the Charter**

I. Recommendations as to the form of possible incorporation of the Charter

1. General recommendation

Le rapport parle (p. 3 version anglaise) du "common understanding" sur certains aspects légaux et techniques de la Charte.

Ces aspects concernent sans doute les points suivants:



- les articles horizontaux
- l'importance du préambule
- le statut des commentaires des articles établis par la présidence de la 1ère Convention

Or, si nous étions d'accord sur le rôle important du préambule et sur le statut des commentaires, nous ne l'étions pas sur la nécessité d'ajouter des articles horizontaux.

## 2. Recommendations as to the concrete form of incorporation

La majorité s'est prononcée pour l'incorporation du texte complet de la Charte dans un traité constitutionnel pour des raisons de lisibilité de ce traité.

## II. Conclusions and recommendations on certain legal and technical aspects...

1. Le groupe de travail n'a pas reconnu la nécessité d'adaptations aux articles horizontaux. Les propositions de nouvelles formulations aux articles horizontaux n'ajoutent rien quant à la sécurité juridique et donnent au contraire l'impression de vouloir à tout prix limiter voire annuler la portée de la Charte des droits fondamentaux.

2. C'est pourquoi je ne peux donner mon accord à l'alinéa 2 de ce paragraphe 2 où il est dit: "...the Group recommends the drafting adjustments to Art. 52.1 and 2."

Il ne me semble pas nécessaire d'ajouter dans 52.6 une référence à la subsidiarité, déjà indiquée dans le Préambule.

## III. Recommendations concerning further questions arising in the context of possible incorporation

### 1. Preamble of the Charter

Je suis sceptique quant à la formulation : "the Charter Preamble...enriched by further elements as appropriate" au cas où le préambule deviendrait celui du traité constitutionnel. Pour ma part, je suis d'avis qu'il convient d'intégrer toute la Charte et éviter d'y toucher.

2. /

### 3. The importance of the "Explanations"

On propose d'ajouter les commentaires de ce rapport sur les adaptations des articles horizontaux aux commentaires de la Charte.

Or, ceux-ci étaient les commentaires du Présidium et étaient purement explicatifs. Je ne pense pas qu'on puisse imposer maintenant, par le biais de ce rapport, des interprétations à ces explications

### **C. Access to the Court of Justice**

Quant à la nécessité d'étendre la protection juridique, il convient d'ajouter, outre les règlements européens directement exécutoires, les mesures prises dans le cadre du 3e pilier et des agences comme Europol qui touchent aux droits et libertés des individus et ne rentrent pas nécessairement dans le champ d'action des tribunaux nationaux.

Voilà quelques rapides remarques lors d'une première lecture. Je regrette que le délai qui nous est donné pour examiner le rapport du président soit extrêmement court.

Ben Fayot

15/10/2002

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**Mr. R. van der LINDEN, Member of the Convention**

Re: Comment on the Draft Final report WD 25

Dear Mr Vitorino,

It is with great satisfaction that I have read the draft final report. I want to compliment you on the way you succeeded in this difficult task.

However, I want to put forward one point of great importance.

In your report you have left the decision on the incorporation in the (Constitutional) Treaty or in a Protocol attached to it, to the Convention Plenary.

Yet I want to stress the importance of a clear choice of this Working Group as regards the modalities of the incorporation of the Charter.

The EU grows from a economic and political Union to a Union of values. The heart and soul of this Union of values is the Charter. It is, in your words, the ‘building block’.

But how can we stress the importance of a Union of values, without taking on board the Charter in the Treaty itself?

I am convinced that the Charter belongs in the (Constitutional) Treaty itself, even regarding the equally legally binding nature of a Protocol. In my impression this opinion was shared by all members of the group.

For this reason I strongly plead for an explicit choice in this final report in favour of the full incorporation of the Charter in the Treaty itself.

With Kind Regards,

René VAN DER LINDEN

Member of the Convention  
Nuth (NL), 16 October 2002 [Rlinden2@wish.net](mailto:Rlinden2@wish.net)

**From:** Baroness Scotland of Asthal  
**To:** Secretariat

**Subject :** Draft final report – UK’s proposed amendments

| 1.                                                 | 2. CURRENT TEXT<br><br>( <i>Bold italics show proposed deletions</i> )                                                                                                                                                                                                                                                                                                                                                         | 3. UK’S PROPOSAL<br><br>( <b>Bold type shows proposed adjustments</b> )                                                                                                                                                                                                                                                                           |
|----------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| p. 3<br>A, I, 1., 1 <sup>st</sup><br>paragraph     | “... to prepare such a decision...”                                                                                                                                                                                                                                                                                                                                                                                            | “... to prepare <b>for</b> such a decision...”                                                                                                                                                                                                                                                                                                    |
| p. 3<br>A, I, 1.,<br>2 <sup>nd</sup><br>paragraph  | “... on <i>all</i> key issues (...) an incorporation of the Charter <i>in a form which would make the Charter legally binding and give it constitutional status.</i> ”                                                                                                                                                                                                                                                         | “... on key issues (...) an incorporation of the Charter.”                                                                                                                                                                                                                                                                                        |
| p. 3<br>A, I, 1.,<br>2 <sup>nd</sup><br>paragraph  | “... <i>the necessary</i> groundwork ...”                                                                                                                                                                                                                                                                                                                                                                                      | “... <b>sufficient</b> groundwork...”                                                                                                                                                                                                                                                                                                             |
| p. 3<br>A, I, 1.,<br>2 <sup>nd</sup><br>paragraph  | “... on certain legal and technical aspects of the Charter which are of great significance for <i>a smooth incorporation</i> ensuring legal certainty.”                                                                                                                                                                                                                                                                        | “... on <b>clarifying</b> certain legal and technical aspects of the Charter which are of great significance for ensuring <b>greater</b> legal certainty.”                                                                                                                                                                                        |
| p. 4, A, I,<br>2., b.                              | “... insertion of an appropriate reference to the Charter in <i>one article of</i> the Constitutional Treaty; such a reference could be combined with annexing the Charter to the Constitutional Treaty, either as a specific part of the Constitutional Treaty containing only the Charter or as a separate legal text ( <i>e.g., in form of a Protocol.</i> )”                                                               | “... insertion of an appropriate reference to the Charter in the Constitutional Treaty; such a reference could be combined with annexing <b>or attaching</b> the Charter to the Constitutional Treaty, either as a specific part of the Constitutional Treaty containing only the Charter or as a separate legal text.”                           |
| p. 4<br>A, I, 2.,<br>2 <sup>nd</sup><br>paragraph. | “... a <i>large</i> majority of the Group would prefer the first option. The second option is favoured by certain other members, some of them emphasising the need to <i>annex</i> the Charter <i>to</i> the Treaty, as a specific part of that Treaty or as a protocol. The Group as a whole underlines that both basic options <i>can</i> serve to make the Charter a <i>legally binding</i> text of constitutional status.” | “... a majority of the Group would prefer the first option. The second option is favoured by certain other members, some of them emphasising the need to <b>associate</b> the Charter <b>with</b> the Treaty, as a specific part of that Treaty or as <b>some form of attachment or</b> protocol. The Group as a whole underlines that both basic |

| 1.                                         | 2. CURRENT TEXT<br><br>( <i>Bold italics show proposed deletions</i> )                                                                                                                    | 3. UK'S PROPOSAL<br><br>( <b>Bold type shows proposed adjustments</b> )                                                                                                                                                                                                                       |
|--------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                            |                                                                                                                                                                                           | options <b>could</b> serve to make the Charter a text of constitutional status.”                                                                                                                                                                                                              |
| p. 4, A, II                                | “... a smooth incorporation of the Charter, <i>as a legally binding document</i> , into the new Treaty architecture...”                                                                   | “... a smooth incorporation of the Charter into the new Treaty architecture...”                                                                                                                                                                                                               |
| p. 4, A, II, 1., 1 <sup>st</sup> paragraph | “The <u>whole</u> Charter (...) should <i>therefore</i> be respected by this Convention <i>and not be re-opened by it.</i> ”                                                              | “The <u>whole</u> Charter (...) should <b>in general</b> be respected by this Convention.”                                                                                                                                                                                                    |
| p. 5, A, II, 1., 2 <sup>nd</sup> paragraph | “ <i>Accordingly</i> , the Group has not considered any changes...”                                                                                                                       | “The Group has not considered any changes...”                                                                                                                                                                                                                                                 |
| p. 5, A, II, 1., 2 <sup>nd</sup> paragraph | “... render <i>absolutely</i> clear and legally watertight...”                                                                                                                            | “... render clearer and <b>more</b> legally watertight...”                                                                                                                                                                                                                                    |
| p. 5, A, II, 2., 1 <sup>st</sup> paragraph | “... incorporation of the Charter <i>will</i> in no way modify the allocation of competences...”                                                                                          | “... incorporation of the Charter <b>must</b> in no way modify the allocation of competences...”                                                                                                                                                                                              |
| p. 6, A, II, 3., 2 <sup>nd</sup> paragraph | “... ensuring complete compatibility <i>and coordination</i> between the statements of the rights in the Charter and their more detailed regulation as currently found in the EC Treaty.” | “... ensuring complete compatibility between the statements of the rights in the Charter and their more detailed regulation as currently found in the EC Treaty <b>and secondary legislation.</b> ”                                                                                           |
| p. 6, A, II, 3., 2 <sup>nd</sup> paragraph | “... reflecting that principle of compatibility <i>and coordination</i> ...”                                                                                                              | “... reflecting that principle of compatibility...”                                                                                                                                                                                                                                           |
| p. 7, A, II, 3., 3 <sup>rd</sup> paragraph | “...a certain "replication" ("dédouplements") between the Charter and other parts of Treaty law will be inevitable for legal reasons and will not be harmful.”                            | “...a certain "replication" ("dédouplements") between the Charter and other parts of Treaty law will be inevitable for legal reasons and will not be harmful <b>provided it is made clear, as is proposed, that the Charter articles are not intended to disrupt the Treaty provisions.</b> ” |
| p. 7, A, II, 3., 4 <sup>th</sup>           | “... as advocated by a <i>large</i> majority of the                                                                                                                                       | “... as advocated by a majority of the Group...”                                                                                                                                                                                                                                              |

| 1.                | 2. CURRENT TEXT<br><br>( <i>Bold italics show proposed deletions</i> )                                                                                                                                                                                                                                                                                                                                 | 3. UK'S PROPOSAL<br><br>( <b>Bold type shows proposed adjustments</b> )                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|-------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| paragraph         | Group..."                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| p. 7, A, II, 4.   | "... this article does not prevent more extensive protection (i) in Union legislation and (ii) in those articles of the Charter which, although based on the ECHR, go beyond the ECHR because Union law <i>acquis</i> had already reached a higher level of protection (e.g., Article 47 on effective judicial protection, or Article 50 on the right not to be punished twice for the same offence)." | "... this article does not prevent more extensive protection <b>already achieved or which may subsequently be provided for</b> (i) in Union legislation and (ii) in those articles of the Charter which, although based on the ECHR, go beyond the ECHR because Union law <i>acquis</i> had already reached a higher level of protection (e.g., Article 47 on effective judicial protection, or Article 50 on the right not to be punished twice for the same offence). <b>Thus, the guaranteed rights in the Charter reflect higher levels of protection in <u>existing</u> Union law.</b> " |
| p. 7, A, II, 5.   | "... the Charter has <i>deep</i> roots in the Member States' common constitutional traditions..."                                                                                                                                                                                                                                                                                                      | "... the Charter has <b>firm</b> roots in the Member States' common constitutional traditions..."                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| p. 7-8, A, II, 5. | "...represents an important source for <i>the</i> rights recognised by the Charter. In order to <i>highlight</i> these roots and in the interest of a smooth incorporation of the Charter <i>as a legally binding document...</i> "                                                                                                                                                                    | "... represents an important source for <b>some</b> rights recognised by the Charter. In order to <b>emphasise the importance of</b> these roots and in the interest of a smooth incorporation of the Charter..."                                                                                                                                                                                                                                                                                                                                                                             |
| p. 8, A, II, 5.   | "Under that rule, <i>rather than following a rigid approach of "a lowest common denominator"</i> , the Charter rights concerned should be interpreted in a way offering a high standard of protection <i>which is adequate for the law of the Union and</i> in harmony with the common constitutional traditions."                                                                                     | "Under that rule, <b>account must be taken of the constitutional traditions that actually exist in the individual Member States. A rigid "lowest common denominator" approach need not be applied; instead</b> the Charter rights concerned should be interpreted in a way <b>which</b> offers a high standard of protection in harmony with the common constitutional traditions."                                                                                                                                                                                                           |

| 1.                                         | 2. CURRENT TEXT<br><br>( <i>Bold italics show proposed deletions</i> )                                                                                                                                                                                                                                                                                                                                  | 3. UK'S PROPOSAL<br><br>( <b>Bold type shows proposed adjustments</b> )                                                                                                                                                                                                                                                                                                                                                                                   |
|--------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| p. 8, A, II, 6., 1 <sup>st</sup> paragraph | “In order to <i>reconfirm</i> that distinction while increasing legal certainty in the perspective of a <b><i>legally binding</i></b> Charter <i>with constitutional status</i> , the Group proposes an additional general provision (see Article 51 § 5 in the <u>Annex</u> ) encapsulating <b><i>in a clear legal definition</i></b> the understanding of the concept of "principles" ...”            | “In order to confirm that distinction while increasing legal certainty in the perspective of <b>an incorporated</b> Charter, the Group proposes an additional general provision (see Article 51 § 5 in the <u>Annex</u> ) encapsulating the understanding of the concept of "principles" ...”                                                                                                                                                             |
| p. 8, A, II, 6., 1 <sup>st</sup> paragraph | “... they may call for implementation through legislative or executive acts; <b><i>accordingly, they</i></b> become significant for the Courts when such acts are <i>interpreted or reviewed</i> .”                                                                                                                                                                                                     | “... they may call for implementation through legislative or executive acts. <b>Such principles</b> become significant for the Courts <b>only</b> when such <b>legislative or executive</b> acts are <b>adopted by the Union</b> .”                                                                                                                                                                                                                       |
| p. 8, A, II, 6., 2 <sup>nd</sup> paragraph | “... to express the character ("right" or "principle") of individual Charter articles as best as possible in the wording of the respective articles <b><i>and to leave it, on this basis and</i></b> taking into account the <b><i>valuable</i></b> guidance provided by the "Praesidium's Explanations", for future jurisprudence to rule on the exact attribution of articles to the two categories.” | “... to express the character ("right" or "principle") of individual Charter articles as best as possible in the wording of the respective articles taking into account the <b>crucial</b> guidance provided by the "Praesidium's Explanations", <b>supplemented by explanations from the current Working Group</b> , for future jurisprudence to rule on the exact attribution of articles to the two categories. <b>See also section III.3 below</b> .” |
| p. 9, A, III, 1.                           | “... <b><i>should in the Group's view</i></b> be used as the Preamble to the Constitutional Treaty.”                                                                                                                                                                                                                                                                                                    | “... <b>could</b> be used as the Preamble to the Constitutional Treaty.”                                                                                                                                                                                                                                                                                                                                                                                  |
| p. 9, A, III, 1.                           | “If in turn the Charter is incorporated as a specific part of the Constitutional Treaty or as a separate <b><i>binding legal</i></b> text ( <i>e.g. in the form of</i>                                                                                                                                                                                                                                  | “If in turn the Charter is incorporated as a specific part of the Constitutional Treaty or as a separate text within the Union's constitutional architecture...”                                                                                                                                                                                                                                                                                          |

| 1.                                           | 2. CURRENT TEXT<br><br>( <i>Bold italics show proposed deletions</i> )                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | 3. UK'S PROPOSAL<br><br>( <b>Bold type shows proposed adjustments</b> )                                                                                                                                                                                                                                                                                                 |
|----------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                              | <i>a Protocol</i> ) within the Union's constitutional architecture...”                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                         |
| p. 9, A, III, 1.                             | “... <i>the</i> elements of general importance...”                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | “... elements of general importance...”                                                                                                                                                                                                                                                                                                                                 |
| p. 10, A, III, 2., 1 <sup>st</sup> paragraph | “... Union law is open for future evolutions...”                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | “... Union law is open for future evolution...”                                                                                                                                                                                                                                                                                                                         |
| p. 10, A, III, 3.                            | “ <i>It recognises that these Explanations are presently not sufficiently accessible for legal practitioners. The Group recommends therefore that, upon possible incorporation of the Charter, attention be drawn in an appropriate manner to these Explanations which, as they themselves state, have no legal value but are intended to clarify the provisions of the Charter. In particular, it would be important to publicise them more widely.</i> To the extent that the Convention takes on board the drafting adjustments proposed by this Group, the corresponding explanations given in this report should be <i>added to</i> the original Explanations.” | “To the extent that the Convention takes on board the drafting adjustments proposed by this Group, the corresponding explanations given in this report should be <b>integrated with</b> the original Explanations. <b>This technical work should be done prior to possible incorporation of the Charter and associated with the Charter in an appropriate manner.</b> ” |
| p. 11, B, I, 3 <sup>rd</sup> paragraph       | “... on the basis of the <i>arguments and conclusions set out</i> below...”                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | “... on the basis of the <b>safeguards proposed</b> below...”                                                                                                                                                                                                                                                                                                           |
| p. 11, B, I, 4 <sup>th</sup> paragraph       | “Accession to the ECHR would give citizens <i>the same degree</i> of protection...”                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | “Accession to the ECHR would give citizens <b>similar</b> protection...”                                                                                                                                                                                                                                                                                                |
| p. 12, B, I, 6 <sup>th</sup> paragraph       | “... the Union's accession to the ECHR <i>should</i> not be regarded as <i>alternatives</i> ...”                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | “... the Union's accession to the ECHR <b>need</b> not be regarded as <i>alternatives</i> ...”                                                                                                                                                                                                                                                                          |



| 1.                                               | 2. CURRENT TEXT<br><br><i>(Bold italics show proposed deletions)</i>                                                                         | 3. UK'S PROPOSAL<br><br><b>(Bold type shows proposed adjustments)</b>                                                                                                                                                                |
|--------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| p. 13, B, I, 7 <sup>th</sup> paragraph           | “... authorise the Union to accede to the ECHR...”                                                                                           | “... authorise the Union, <b>subject to the safeguards set out below</b> , to accede to the ECHR...”                                                                                                                                 |
| p. 13, B, I, 7 <sup>th</sup> paragraph           | “The drafting of such a legal basis could be kept <i>very</i> simple...”                                                                     | “The drafting of such a legal basis could be kept <b>fairly</b> simple...”                                                                                                                                                           |
| p. 13, B, II, 1., 2 <sup>nd</sup> paragraph      | “... accession by the Union to the ECHR - like incorporation of the Charter – <i>will</i> in no way modify the allocation of competences...” | “... accession by the Union to the ECHR - like incorporation of the Charter – <b>must</b> in no way modify the allocation of competences...”                                                                                         |
| p. 13, B, II, 1., 1 <sup>st</sup> paragraph      | “... a provision in the accession treaty and / or in an accompanying declaration made by the Union.”                                         | “... a provision in the accession treaty and / or in an accompanying declaration made by the Union <b>and/or as a general reservation.</b> ”                                                                                         |
| Footnote 1, p. 13                                | “The legal base could for example state that the Union shall be authorised to accede to the ECHR.”                                           | “The legal base could for example state that the Union shall be authorised to accede to the ECHR <b>subject to competence and without prejudice to the national positions of individual Member States in relation to the ECHR.</b> ” |
| p. 14, B, II, 2.                                 | “... accession by the Union to the ECHR <i>does</i> not affect the positions...”                                                             | “... accession by the Union to the ECHR <b>must</b> not affect the positions...”                                                                                                                                                     |
| p. 14-15, B, II, 2. (2 <sup>nd</sup> bullet)     | “... <i>would</i> in any event remain unaffected by accession...”                                                                            | “... <b>should</b> in any event remain unaffected by accession...”                                                                                                                                                                   |
| p. 15, B, III                                    | “... <i>are</i> not <i>recommended</i> by the Group.”                                                                                        | “... <b>were</b> not <b>explored further</b> by the Group.”                                                                                                                                                                          |
| p. 15, B (meaning C?), 2 <sup>nd</sup> paragraph | “... the Union's present system of remedies available <i>for the defence of their Charter rights.</i> ”                                      | “... the Union's present system of remedies available.”                                                                                                                                                                              |
| p. 17 (title)                                    | ANNEX                                                                                                                                        | ANNEX <b>ADD EXPLANATIONS</b>                                                                                                                                                                                                        |

**Mr. M. LOBO ANTUNES, Alternate Member**

**Comments** 1. Given the technical nature - that the report itself acknowledges - of the various subjects discussed at the WG with which other members of the Convention may not be very familiar with, I believe it could be useful to begin the report with a kind of "executive summary" listing the Group's recommendations to the plenary. This would make the report more "attractive" and easy reading for those wishing a quick access to those conclusions.

2. To redraft last sentence of page 2 and first page 3 (1.General recommendations) as follows: "(quote)At the outset, the Group stresses that, in accordance with its mandate, the final political decision TO RECOMMEND the possible incorporation....etc. (continues unchanged)"(unquote) .

3. To redraft second sentence page 11 (1. general conclusions and recommendations) as follows: (quote)".....Group's mandate, the final political decision TO RECOMMEND the possible accession by..etc. (continues unchanged)"(unquote) .

These drafting proposals are, in my view, more on line with the mandate enshrined in the Laeken Declaration (see point on Final Document) .

Best regards,  
Manuel Lobo Antunes  
member of the WGII

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**Ms. N. KUTSKOVA, Alternate Member**

As it will be impossible for me to be present during the next meeting of Working Group II on 21 October 2002, I would like to express my support for the last version of the draft final report (working document 25). I think it reflects in a correct and balanced way the opinions expressed during the work of the group. As a representative of a candidate country, I would especially like to stress the importance of the strengthening of the horizontal clauses (general provisions) which is foreseen in the annex to the report.

Sincerely yours,

Nelly Kutzkova

Alternate to the Representative of the Bulgarian Government

Mr. G. CISNEROS Member of the Convention

En relación con el proyecto de informe final del grupo de trabajo II, remitido por el Secretariado, documento de trabajo 25, SN 3794/02 (apartado B II. 2), el miembro de la Convención adscrito al grupo citado D. Gabriel Cisneros formula la siguiente aportación fundada en un estudio realizado por la profesora Dña Belén Becerril, miembro del Instituto de Estudios Europeos, perteneciente a la Universidad San Pablo-CEU, sobre el estado actual del Convenio Europeo de Derechos Humanos en los Estados de la Unión Europea.

La Carta de Derechos Fundamentales de la Unión Europea ha colmado un gran vacío en una Comunidad que durante años había carecido de un catálogo escrito de derechos fundamentales. Sin embargo, la Carta no ha dado por zanjado otro debate que se plantea desde los años setenta en la arena comunitaria: la posible adhesión de la Comunidad o de la Unión al Convenio Europeo para la protección de los Derechos Humanos y de las Libertades Fundamentales (en adelante, CEDH).

Los argumentos a favor y en contra de una eventual adhesión son de todos conocidos. Los partidarios alegan que la adhesión aumentaría la protección de los derechos fundamentales en la Unión, extendiendo a las instituciones europeas el mecanismo de control judicial externo al que están sometidos los Estados miembros, y articulando armoniosamente los dos sistemas europeos de protección de derechos fundamentales. Los detractores, por su parte, alegan que la adhesión sería incompatible con el principio de autonomía del Derecho comunitario y significaría la ruptura de la supremacía jurisdiccional del Tribunal de Justicia. A esto hay que añadir las reticencias que despierta el hecho de que, tras una eventual adhesión, la Unión quedaría sometida al control de jueces de terceros Estados, más lejanos a la especificidad de la integración europea, y en ocasiones, con menor tradición democrática y menor experiencia en el control de la observancia de los derechos humanos.

A estos argumentos podríamos sumar uno más que hasta ahora no ha recibido apenas atención y que no obstante podría suponer un obstáculo adicional para que la adhesión pudiese producirse, o al menos, para que ésta pudiese desplegar los efectos esperados.

Los quince Estados miembros de la Unión Europea y los diez Estados candidatos que ultiman en estos meses sus negociaciones de adhesión (Chipre, República Checa, Eslovaquia, Eslovenia, Estonia, Hungría, Letonia, Lituania, Malta, y Polonia) han firmado y han ratificado el CEDH. Sin embargo, una lectura detenida del Convenio y de los trece protocolos que lo han

completado y modificado a lo largo de los años, pone de manifiesto que la situación de estos veinticinco Estados respecto al Convenio es muy diversa.

Esta diversidad se deriva principalmente de que, como Tratado internacional, el Convenio admite reservas y declaraciones (algunas de las cuales se refieren a su aplicación territorial) por parte de los Estados firmantes. Los trece protocolos admiten a su vez reservas y declaraciones, y además, éstos no han sido, en su totalidad, firmados y ratificados por los veinticinco Estados. El resultado es que la situación de cada uno de éstos Estados respecto al Convenio es diferente.

Durante muchos años esta diversidad alcanzaba tanto al sistema de protección de los derechos fundamentales como al catálogo de derechos protegidos. Sin embargo, el protocolo XI, abierto a la firma el 11 de mayo de 1997 y en vigor desde el 1 de noviembre de 1998, realizó una profunda reforma del sistema procedimental, simplificándolo y terminando con la notable heterogeneidad existente hasta entonces. El protocolo XI instauró un nuevo Tribunal permanente que conoce de todas las demandas, ya sean introducidas por los Estados o por los particulares<sup>1</sup>. No obstante, la diversidad sigue siendo muy notable en lo que respecta a la parte sustantiva, es decir, al catálogo de derechos y libertades protegidos (derechos y libertades de los artículos 2 a 14 del CEDH, completado por los Protocolos 1, 4, 6, 7, 12 y 13).

### **Derechos y libertades de los artículos 2 a 14 del CEDH:**

El Convenio recoge en su artículo 1 la obligación de respetar los derechos humanos. Las Altas Partes contratantes reconocen a toda persona dependiente de su jurisdicción los derechos y libertades que están definidos en el Título I del Convenio:

Art. 2: Derecho a la vida.

Art. 3: Prohibición de la tortura.

Art. 4: Prohibición de esclavitud y del trabajo forzado.

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<sup>1</sup> Hasta entonces, el sistema de protección variaba considerablemente según cada Estado hubiese o no aceptado expresamente (a través de una Declaración al artículo 46) la competencia del Tribunal, según hubiese o no reconocido (a través de una Declaración al artículo 25) la posibilidad de que los particulares que se considerasen víctimas de una violación pudiesen interponer una denuncia, y según hubiese o no firmado y ratificado el protocolo IX, reconociendo a los particulares la posibilidad de pedir la elevación de un asunto al Tribunal (garantizando así al particular el derecho a una decisión emitida por un órgano judicial, apartado de las razones políticas a las que era más permeable el Comité).

Art.5: Derecho a la libertad y a la seguridad.

Art.6: Derecho a un proceso equitativo.

Art.7: No hay pena sin ley.

Art.8: Derecho al respeto de la vida privada y familiar.

Art.9: Libertad de pensamiento, de conciencia y de religión.

Art.10: Libertad de expresión.

Art.11: Derecho de reunión y de asociación.

Art.12: Derecho a contraer matrimonio.

Art.13: Derecho a un recurso efectivo.

Art.14: Prohibición de discriminación.

Todos los Estados miembros de la Unión, así como los diez Estados candidatos cuya situación examinamos, han firmado y ratificado el Convenio, por lo cual, los veinticinco reconocen estos derechos y libertades a toda persona dependiente de su jurisdicción. No obstante, las reservas y declaraciones emitidas a estos artículos son muy numerosas, como puede examinarse en el primer cuadro matricial que hemos recogido a continuación. Una mención especial merecen los artículos 5 y 6, pues a ellos se refieren la mayor parte de las reservas y declaraciones emitidas por los Estados.

Además, el catálogo de derechos recogido en el Convenio ha sido ampliado por sucesivos protocolos adicionales<sup>1</sup>.

### **Derechos y libertades del Protocolo 1º:**

El Protocolo 1º, abierto a la firma el 20 de marzo de 1952, y en vigor desde el 18 de mayo de 1954 recoge los siguientes derechos y libertades:

Art.1: Protección de la propiedad.

Art.2: Derecho de instrucción.

Art.3: Derecho a elecciones libres.

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<sup>1</sup> Incluimos referencias a los protocolos en su versión actual, es decir con las modificaciones introducidas por el Protocolo 11.

Los veinticinco Estados han firmado y ratificado este protocolo, aunque han emitido numerosas reservas y declaraciones a los artículos 1 y 2, tal y como puede examinarse en el segundo cuadro matricial.

#### **Derechos y libertades del Protocolo 4º:**

El Protocolo 4º, abierto a la firma el 16 de septiembre de 1963, y en vigor desde el 2 de mayo de 1968, recoge los siguientes derechos y libertades:

Art.1: Prohibición de la privación de libertad por incumplimiento de obligaciones contractuales.

Art.2: Libre circulación.

Art.3: Prohibición de expulsión de nacionales.

Art.4: Prohibición de expulsión colectiva de extranjeros.

Este Protocolo no ha sido firmado por Grecia, y no ha sido ratificado por España ni por el Reino Unido. Además, se han emitido diversas reservas y declaraciones al mismo, tal y como puede examinarse en el tercer cuadro matricial.

#### **Derechos y libertades del Protocolo 6º:**

El Protocolo 6º, abierto a la firma el 28 de abril de 1983 y en vigor desde el 1 de marzo de 1985, dispone:

Art.1: Abolición de la pena de muerte.

Conviene no obstante notar que el artículo 2 dispone que “Un Estado podrá prever en su legislación la pena de muerte para aquellos actos cometidos en tiempo de guerra o de peligro inminente de guerra; dicha pena solamente se aplicará en los casos previstos por dicha legislación y con arreglo a lo dispuesto en la misma. Dicho Estado comunicará al Secretario General del Consejo de Europa las correspondientes disposiciones de la legislación en cuestión”.

Este Protocolo ha sido firmado y ratificado por los veinticinco Estados. No se han emitido reservas al mismo, pues tal cosa queda prohibida por su artículo 4. Sí se han emitido declaraciones, tal y como puede examinarse en el cuarto cuadro matricial.

**Derechos y libertades del Protocolo 7º:**

El Protocolo 7º, abierto a la firma el 22 de noviembre de 1984, y en vigor el 1 de noviembre de 1988, recoge los siguientes derechos y libertades:

Art.1: Prohibición de expulsión arbitraria de extranjeros

Art.2: Derecho a un recurso contra una condena penal

Art.3: Derecho a indemnización por anulación de condena

Art.4: Principio *non bis in ídem*

Art.5: Igualdad jurídica de los esposos

Este Protocolo no sido firmado por Bélgica, Malta y el Reino Unido, y no ha sido ratificado por Alemania, España, Países Bajos, Polonia y Portugal. Así pues, sólo está en vigor en 17 de los 25 Estados cuya situación examinamos. Además, se han emitido diversas reservas y declaraciones al mismo, tal y como puede examinarse en el quinto cuadro matricial.

**Derechos y libertades del Protocolo 12º:**

El Protocolo 12 fue abierto a la firma el 4 de noviembre de 2000, pero aún no ha entrado en vigor. Dispone:

Art.1: Prohibición general de discriminación.

Este Protocolo no ha sido firmado por Dinamarca, España, Francia, Lituania, Malta, Polonia, Reino Unido y Suecia. Tan sólo ha sido ratificado por uno de los veinticinco Estados, Chipre, tal y como puede examinarse en el sexto cuadro matricial.

**Derechos y libertades del Protocolo 13º:**El Protocolo 13 fue abierto a la firma el 3 de mayo de 2002, pero aún no ha entrado en vigor. Dispone:

Art.1: Abolición de la pena de muerte.

Este Protocolo ha sido firmado por los veinticinco Estados y ha sido ratificado por dos de ellos, Irlanda y Malta, tal y como puede examinarse en el séptimo cuadro matricial.



**CUADRO 1°**  
**LA SITUACIÓN DE LOS QUINCE ESTADOS MIEMBROS DE LA UNIÓN EUROPEA Y DIEZ**  
**CANDIDATOS A LA ADHESIÓN RESPECTO AL**  
**CONVENIO EUROPEO DE DERECHOS HUMANOS:**

| Estados             | Fecha de firma: | Fecha de ratificación: | Fecha de entrada en vigor: | Reservas a los artículos: | Declaraciones a los artículos <sup>1</sup> : |
|---------------------|-----------------|------------------------|----------------------------|---------------------------|----------------------------------------------|
| <b>Alemania</b>     | 4.11.50         | 5.12.52                | 3.9.53                     | <b>3.1.</b>               |                                              |
| <b>Austria</b>      | 13.12.57        | 3.9.58                 | 3.9.58                     | 5, 6                      |                                              |
| <b>Bélgica</b>      | 4.11.50         | 14.6.55                | 14.6.55                    |                           |                                              |
| <b>Chipre</b>       | 16.12.61        | 6.10.62                | 6.10.62                    |                           |                                              |
| <b>Rep. Checa</b>   | 21.2.91         | 18.3.92                | 1.1.93                     | 5, 6                      |                                              |
| <b>Dinamarca</b>    | 4.11.50         | 13.4.53                | 3.9.53                     |                           |                                              |
| <b>España</b>       | 24.11.77        | 4.10.79                | 4.10.79                    | 3.2. 5,<br>6,<br>11       | 10, 15                                       |
| <b>Eslovaquia</b>   | 21.2.91         | 18.3.92                | 1.1.93                     | 5, 6                      |                                              |
| <b>Eslovenia</b>    | 14.5.93         | 28.6.94                | 28.6.94                    |                           |                                              |
| <b>Estonia</b>      | 14.5.93         | 16.4.96                | 16.4.96                    | 6                         |                                              |
| <b>Finlandia</b>    | 5.5.89          | 10.5.90                | 10.5.90                    | 6                         |                                              |
| <b>Francia</b>      | 4.11.50         | 3.5.74                 | 3.5.74                     | 5, 6, 15                  | 56                                           |
| <b>Grecia</b>       | 28.11.50        | 28.11.74               | 28.11.74                   |                           |                                              |
| <b>Hungría</b>      | 6.11.90         | 5.11.92                | 5.11.92                    |                           |                                              |
| <b>Irlanda</b>      | 4.11.50         | 25.2.53                | 3.9.53                     | 6                         |                                              |
| <b>Italia</b>       | 4.11.50         | 26.10.55               | 26.10.55                   |                           |                                              |
| <b>Letonia</b>      | 10.2.95         | 27.6.97                | 27.6.97                    |                           |                                              |
| <b>Lituania</b>     | 14.5.93         | 20.6.95                | 20.6.95                    | 5                         |                                              |
| <b>Luxemburgo</b>   | 4.11.50         | 3.9.53                 | 3.9.53                     |                           |                                              |
| <b>Malta</b>        | 12.12.66        | 23.1.67                | 23.1.67                    | 10                        | 6                                            |
| <b>Países Bajos</b> | 4.11.50         | 31.8.54                | 31.8.54                    |                           | 56                                           |
| <b>Polonia</b>      | 26.11.91        | 19.1.93                | 19.1.93                    |                           |                                              |
| <b>Portugal</b>     | 22.9.76         | 9.11.78                | 9.11.78                    | 5, 7                      |                                              |

<sup>1</sup> Declaración, Declaración sobre aplicación territorial o Comunicación. Solo constan referencias de las reservas o declaraciones que están en vigor en la actualidad. Asimismo, se han suprimido referencias a declaraciones que si bien no han sido formalmente retiradas han quedado sin efecto, como las declaraciones de Alemania sobre la aplicación territorial al *Land* de Berlín.

| <b>Estados</b>     | <b>Fecha de firma:</b> | <b>Fecha de ratificación:</b> | <b>Fecha de entrada en vigor:</b> | <b>Reservas a los artículos:</b> | <b>Declaraciones a los artículos<sup>1</sup>:</b> |
|--------------------|------------------------|-------------------------------|-----------------------------------|----------------------------------|---------------------------------------------------|
| <b>Reino Unido</b> | 4.11.50                | 8.3.51                        | 3.9.53                            |                                  | 56, 15                                            |
| <b>Suecia</b>      | 28.11.50               | 4.2.52                        | 3.9.53                            |                                  |                                                   |

**CUADRO 2°**  
**LA SITUACIÓN DE LOS QUINCE ESTADOS MIEMBROS DE LA UNION EUROPEA Y DIEZ**  
**CANDIDATOS A LA ADHESIÓN RESPECTO AL**  
**PROTOCOLO 1 :**

| Estados      | Fecha de firma: | Fecha de ratificación: | Fecha de entrada en vigor: | Reservas a los artículos: | Declaraciones a los artículos <sup>1</sup> : |
|--------------|-----------------|------------------------|----------------------------|---------------------------|----------------------------------------------|
| Alemania     | 20.3.52         | 13.2.57                | 13.2.57                    | <b>3.3.</b>               | 2                                            |
| Austria      | 13.12.57        | 3.9.58                 | 3.9.58                     | 1                         |                                              |
| Bélgica      | 20.3.52         | 14.6.55                | 14.6.55                    |                           |                                              |
| Chipre       | 16.12.61        | 6.10.62                | 6.10.62                    |                           |                                              |
| Rep. Checa   | 21.2.91         | 18.3.92                | 1.1.93                     |                           |                                              |
| Dinamarca    | 20.3.52         | 13.4.53                | 18.5.54                    |                           |                                              |
| España       | 23.2.78         | 27.11.90               | 27.11.90                   | 3.4. 1                    |                                              |
| Eslovaquia   | 21.2.91         | 18.3.92                | 1.1.93                     |                           |                                              |
| Eslovenia    | 14.5.93         | 28.6.94                | 28.6.94                    |                           |                                              |
| Estonia      | 14.5.93         | 16.4.96                | 16.4.96                    | 1                         | 1                                            |
| Finlandia    | 5.5.89          | 10.5.90                | 10.5.90                    |                           |                                              |
| Francia      | 20.3.52         | 3.5.74                 | 3.5.74                     |                           | 4                                            |
| Grecia       | 20.3.52         | 28.11.74               | 28.11.74                   |                           |                                              |
| Hungría      | 6.11.90         | 5.11.92                | 5.11.92                    |                           |                                              |
| Irlanda      | 20.3.52         | 25.2.53                | 18.5.54                    |                           | 2                                            |
| Italia       | 20.3.52         | 26.10.55               | 26.10.55                   |                           |                                              |
| Letonia      | 21.3.97         | 27.6.97                | 27.6.97                    | 1                         |                                              |
| Lituania     | 14.5.93         | 24.5.96                | 24.5.96                    |                           |                                              |
| Luxemburgo   | 20.3.52         | 3.9.53                 | 18.5.54                    | 1                         |                                              |
| Malta        | 12.12.66        | 23.1.67                | 23.1.67                    |                           | 2                                            |
| Países Bajos | 20.3.52         | 31.8.54                | 31.8.54                    |                           | 2, 4                                         |
| Polonia      | 14.9.92         | 10.10.94               | 10.10.94                   |                           |                                              |
| Portugal     | 22.9.76         | 9.11.78                | 9.11.78                    |                           |                                              |
| Reino Unido  | 20.3.52         | 3.11.52                | 18.5.54                    | 2, 4                      | D <sup>2</sup>                               |
| Suecia       | 20.3.52         | 22.6.53                | 18.5.54                    | 2                         |                                              |

<sup>1</sup> Declaración o Declaración sobre aplicación territorial.

<sup>2</sup> D: Declaración que no se refiere a ningún artículo específico.

**CUADRO 3°**  
**LA SITUACIÓN DE LOS QUINCE ESTADOS MIEMBROS DE LA UNION EUROPEA Y DIEZ**  
**CANDIDATOS A LA ADHESIÓN RESPECTO AL**  
**PROTOCOLO 4 :**

| Estados             | Fecha de firma: | Fecha de ratificación: | Fecha de entrada en vigor: | Reservas a los artículos: | Declaraciones a los artículos <sup>1</sup> : |
|---------------------|-----------------|------------------------|----------------------------|---------------------------|----------------------------------------------|
| <b>Alemania</b>     | 16.9.63         | 1.6.68                 | 1.6.68                     | <b>3.5.</b>               |                                              |
| <b>Austria</b>      | 16.9.63         | 18.9.69                | 18.9.69                    | 3                         |                                              |
| <b>Bélgica</b>      | 16.9.63         | 21.9.70                | 21.9.70                    |                           |                                              |
| <b>Chipre</b>       | 6.10.88         | 3.10.89                | 3.10.89                    |                           | 4                                            |
| <b>Rep. Checa</b>   | 21.2.91         | 18.3.92                | 1.1.93                     |                           |                                              |
| <b>Dinamarca</b>    | 16.9.63         | 30.9.64                | 2.5.68                     |                           |                                              |
| <b>España</b>       | 23.2.78         |                        |                            | 3.6.                      |                                              |
| <b>Eslovaquia</b>   | 21.2.91         | 18.3.92                | 1.1.93                     |                           |                                              |
| <b>Eslovenia</b>    | 14.5.93         | 28.6.94                | 28.6.94                    |                           |                                              |
| <b>Estonia</b>      | 14.5.93         | 16.4.96                | 16.4.96                    |                           |                                              |
| <b>Finlandia</b>    | 5.5.89          | 10.5.90                | 10.5.90                    |                           |                                              |
| <b>Francia</b>      | 22.10.73        | 3.5.74                 | 3.5.74                     |                           | 5                                            |
| <b>Grecia</b>       |                 |                        |                            |                           |                                              |
| <b>Hungría</b>      | 6.11.90         | 5.11.92                | 5.11.92                    |                           |                                              |
| <b>Irlanda</b>      | 16.9.63         | 29.10.68               | 29.10.68                   |                           | 3                                            |
| <b>Italia</b>       | 16.9.63         | 27.5.82                | 27.5.82                    | 3                         |                                              |
| <b>Letonia</b>      | 21.3.97         | 27.6.97                | 27.5.82                    |                           |                                              |
| <b>Lituania</b>     | 14.5.93         | 20.6.95                | 20.6.95                    |                           |                                              |
| <b>Luxemburgo</b>   | 16.9.63         | 2.5.68                 | 2.5.68                     |                           |                                              |
| <b>Malta</b>        | 5.6.02          | 5.6.02                 | 5.6.02                     |                           |                                              |
| <b>Países Bajos</b> | 15.11.63        | 23.6.82                | 23.6.82                    |                           | 3, 5                                         |
| <b>Polonia</b>      | 14.9.92         | 10.10.94               | 10.10.94                   |                           |                                              |
| <b>Portugal</b>     | 27.4.78         | 9.11.78                | 9.11.78                    |                           |                                              |
| <b>Reino Unido</b>  | 16.9.63         |                        |                            |                           |                                              |
| <b>Suecia</b>       | 16.9.63         | 13.6.64                | 2.5.68                     |                           |                                              |

<sup>1</sup> Declaración o Declaración sobre aplicación territorial.

**CUADRO 4°**  
**LA SITUACIÓN DE LOS QUINCE ESTADOS MIEMBROS DE LA UNIÓN EUROPEA Y DIEZ**  
**CANDIDATOS A LA ADHESIÓN RESPECTO AL**  
**PROTOCOLO 6<sup>1</sup>:**

| <b>Estados</b>      | <b>Fecha de firma:</b> | <b>Fecha de ratificación:</b> | <b>Fecha de entrada en vigor:</b> | <b>Declaraciones a los artículos<sup>2</sup>:</b> |
|---------------------|------------------------|-------------------------------|-----------------------------------|---------------------------------------------------|
| <b>Alemania</b>     | 28.4.83                | 5.7.89                        | 1.8.89                            | D                                                 |
| <b>Austria</b>      | 28.4.83                | 5.1.84                        | 1.3.85                            |                                                   |
| <b>Bélgica</b>      | 28.4.83                | 10.12.98                      | 1.1.99                            |                                                   |
| <b>Chipre</b>       | 7.5.99                 | 19.1.00                       | 1.2.00                            | 2                                                 |
| <b>Rep. Checa</b>   | 21.2.91                | 18.3.92                       | 1.1.93                            |                                                   |
| <b>Dinamarca</b>    | 28.4.83                | 1.12.83                       | 1.3.85                            |                                                   |
| <b>España</b>       | 28.4.83                | 14.1.85                       | 1.3.85                            |                                                   |
| <b>Eslovaquia</b>   | 21.2.91                | 18.3.92                       | 1.1.93                            |                                                   |
| <b>Eslovenia</b>    | 14.5.93                | 28.6.94                       | 1.7.94                            |                                                   |
| <b>Estonia</b>      | 14.5.93                | 17.4.98                       | 1.5.98                            |                                                   |
| <b>Finlandia</b>    | 5.5.89                 | 10.5.90                       | 1.6.90                            |                                                   |
| <b>Francia</b>      | 28.4.83                | 17.2.86                       | 1.3.86                            |                                                   |
| <b>Grecia</b>       | 2.5.83                 | 8.9.98                        | 1.10.98                           |                                                   |
| <b>Hungría</b>      | 6.11.90                | 5.11.92                       | 1.12.92                           |                                                   |
| <b>Irlanda</b>      | 24.6.94                | 24.6.94                       | 1.7.94                            |                                                   |
| <b>Italia</b>       | 21.10.83               | 29.12.88                      | 1.1.89                            |                                                   |
| <b>Letonia</b>      | 26.6.98                | 7.5.99                        | 1.6.99                            |                                                   |
| <b>Lituania</b>     | 18.1.99                | 8.7.99                        | 1.8.99                            |                                                   |
| <b>Luxemburgo</b>   | 28.4.83                | 19.2.85                       | 1.3.85                            |                                                   |
| <b>Malta</b>        | 26.3.91                | 26.3.91                       | 1.4.91                            |                                                   |
| <b>Países Bajos</b> | 28.4.83                | 25.4.86                       | 1.5.86                            | D, 2                                              |
| <b>Polonia</b>      | 18.11.99               | 30.10.00                      | 1.11.00                           |                                                   |
| <b>Portugal</b>     | 28.4.83                | 2.10.86                       | 1.11.86                           |                                                   |
| <b>Reino Unido</b>  | 27.1.99                | 20.5.99                       | 1.6.99                            | D                                                 |
| <b>Suecia</b>       | 28.4.83                | 9.2.84                        | 1.3.85                            |                                                   |

<sup>1</sup> \*\*\* Conviene notar que este Protocolo, en virtud de su artículo 4, no admite reservas.

<sup>2</sup> Declaración, Declaración sobre aplicación territorial o Comunicación.

**CUADRO 5°**  
**LA SITUACIÓN DE LOS QUINCE ESTADOS MIEMBROS DE LA UNION EUROPEA Y DIEZ**  
**CANDIDATOS A LA ADHESIÓN RESPECTO AL**  
**PROTOCOLO 7:**

| Estados             | Fecha de firma: | Fecha de ratificación: | Fecha de entrada en vigor: | Reservas a los artículos: | Declaraciones a los artículos <sup>1</sup> : |
|---------------------|-----------------|------------------------|----------------------------|---------------------------|----------------------------------------------|
| <b>Alemania</b>     | 19.3.85         |                        |                            | <b>3.7.</b>               | 2, 3, 4                                      |
| <b>Austria</b>      | 19.3.85         | 14.5.86                | 1.11.88                    |                           | 2, 3, 4                                      |
| <b>Bélgica</b>      |                 |                        |                            |                           |                                              |
| <b>Chipre</b>       | 2.12.99         | 15.9.00                | 1.12.00                    |                           |                                              |
| <b>Rep. Checa</b>   | 21.2.91         | 18.3.92                | 1.1.93                     |                           |                                              |
| <b>Dinamarca</b>    | 22.11.84        | 18.8.88                | 1.11.88                    | 2                         | 6, 2                                         |
| <b>España</b>       | 22.11.84        |                        |                            | <b>3.8.</b>               |                                              |
| <b>Eslovaquia</b>   | 21.2.91         | 18.3.92                | 1.1.93                     |                           |                                              |
| <b>Eslovenia</b>    | 14.5.93         | 28.6.94                | 1.9.94                     |                           |                                              |
| <b>Estonia</b>      | 14.5.93         | 16.4.96                | 1.7.96                     |                           |                                              |
| <b>Finlandia</b>    | 5.5.89          | 10.5.90                | 1.8.90                     |                           |                                              |
| <b>Francia</b>      | 22.11.84        | 17.2.86                | 1.11.88                    | 2, 3, 4, 5, 6             | 2                                            |
| <b>Grecia</b>       | 22.11.84        | 29.10.87               | 1.11.88                    |                           |                                              |
| <b>Hungría</b>      | 6.11.90         | 5.11.92                | 1.2.93                     |                           |                                              |
| <b>Irlanda</b>      | 11.12.84        | 3.8.01                 | 1.11.01                    |                           |                                              |
| <b>Italia</b>       | 22.11.84        | 7.11.91                | 1.2.92                     |                           | 2, 3, 4                                      |
| <b>Letonia</b>      | 21.3.97         | 27.6.97                | 1.9.97                     |                           |                                              |
| <b>Lituania</b>     | 14.5.93         | 20.6.95                | 1.9.95                     |                           |                                              |
| <b>Luxemburgo</b>   | 22.11.84        | 19.4.89                | 1.7.89                     | 5                         |                                              |
| <b>Malta</b>        |                 |                        |                            |                           |                                              |
| <b>Países Bajos</b> | 22.11.84        |                        |                            |                           | 2                                            |
| <b>Polonia</b>      | 14.9.92         |                        |                            |                           |                                              |
| <b>Portugal</b>     | 22.11.84        |                        |                            |                           |                                              |
| <b>Reino Unido</b>  |                 |                        |                            |                           |                                              |
| <b>Suecia</b>       | 22.11.84        | 8.11.85                | 1.11.88                    |                           | 1                                            |

<sup>1</sup> Declaración, Declaración sobre aplicación territorial o Comunicación.

**CUADRO 6°**  
**LA SITUACIÓN DE LOS QUINCE ESTADOS MIEMBROS DE LA UNION EUROPEA Y DIEZ**  
**CANDIDATOS A LA ADHESIÓN RESPECTO AL**  
**PROTOCOLO 12:**

| <b>Estados</b>      | <b>Fecha de firma:</b> | <b>Fecha de ratificación:</b> | <b>Fecha de entrada en vigor:</b> | <b>Reservas a los artículos:</b> | <b>Declaraciones a los artículos:</b> |
|---------------------|------------------------|-------------------------------|-----------------------------------|----------------------------------|---------------------------------------|
| <b>Alemania</b>     | 4.11.00                |                               |                                   | <b>3.9.</b>                      |                                       |
| <b>Austria</b>      | 4.11.00                |                               |                                   |                                  |                                       |
| <b>Bélgica</b>      | 4.11.00                |                               |                                   |                                  |                                       |
| <b>Chipre</b>       | 4.11.00                | 30.4.02                       |                                   |                                  |                                       |
| <b>Rep. Checa</b>   | 4.11.00                |                               |                                   |                                  |                                       |
| <b>Dinamarca</b>    |                        |                               |                                   |                                  |                                       |
| <b>España</b>       |                        |                               |                                   | <b>3.10.</b>                     |                                       |
| <b>Eslovaquia</b>   | 4.11.00                |                               |                                   |                                  |                                       |
| <b>Eslovenia</b>    | 7.3.01                 |                               |                                   |                                  |                                       |
| <b>Estonia</b>      | 4.11.00                |                               |                                   |                                  |                                       |
| <b>Finlandia</b>    | 4.11.00                |                               |                                   |                                  |                                       |
| <b>Francia</b>      |                        |                               |                                   |                                  |                                       |
| <b>Grecia</b>       | 4.11.00                |                               |                                   |                                  |                                       |
| <b>Hungría</b>      | 4.11.00                |                               |                                   |                                  |                                       |
| <b>Irlanda</b>      | 4.11.00                |                               |                                   |                                  |                                       |
| <b>Italia</b>       | 4.11.00                |                               |                                   |                                  |                                       |
| <b>Letonia</b>      | 4.11.00                |                               |                                   |                                  |                                       |
| <b>Lituania</b>     |                        |                               |                                   |                                  |                                       |
| <b>Luxemburgo</b>   | 4.11.00                |                               |                                   |                                  |                                       |
| <b>Malta</b>        |                        |                               |                                   |                                  |                                       |
| <b>Países Bajos</b> | 4.11.00                |                               |                                   |                                  |                                       |
| <b>Polonia</b>      |                        |                               |                                   |                                  |                                       |
| <b>Portugal</b>     | 4.11.00                |                               |                                   |                                  |                                       |
| <b>Reino Unido</b>  |                        |                               |                                   |                                  |                                       |
| <b>Suecia</b>       |                        |                               |                                   |                                  |                                       |

**CUADRO 7°**  
**LA SITUACIÓN DE LOS QUINCE ESTADOS MIEMBROS DE LA UNION EUROPEA Y DIEZ**  
**CANDIDATOS A LA ADHESIÓN RESPECTO AL**  
**PROTOCOLO 13:**

| <b>Estados</b>      | <b>Fecha de firma:</b> | <b>Fecha de ratificación:</b> | <b>Fecha de entrada en vigor:</b> | <b>Reservas a los artículos:</b> | <b>Declaraciones a los artículos:</b> |
|---------------------|------------------------|-------------------------------|-----------------------------------|----------------------------------|---------------------------------------|
| <b>Alemania</b>     | 3.5.02                 |                               |                                   | <b>3.11.</b>                     |                                       |
| <b>Austria</b>      | 3.5.02                 |                               |                                   |                                  |                                       |
| <b>Bélgica</b>      | 3.5.02                 |                               |                                   |                                  |                                       |
| <b>Chipre</b>       | 3.5.02                 |                               |                                   |                                  |                                       |
| <b>Rep. Checa</b>   | 3.5.02                 |                               |                                   |                                  |                                       |
| <b>Dinamarca</b>    | 3.5.02                 |                               |                                   |                                  |                                       |
| <b>España</b>       | 3.5.02                 |                               |                                   | 3.12.                            |                                       |
| <b>Eslovaquia</b>   | 24.7.02                |                               |                                   |                                  |                                       |
| <b>Eslovenia</b>    | 3.5.02                 |                               |                                   |                                  |                                       |
| <b>Estonia</b>      | 3.5.02                 |                               |                                   |                                  |                                       |
| <b>Finlandia</b>    | 3.5.02                 |                               |                                   |                                  |                                       |
| <b>Francia</b>      | 3.5.02                 |                               |                                   |                                  |                                       |
| <b>Grecia</b>       | 3.5.02                 |                               |                                   |                                  |                                       |
| <b>Hungría</b>      | 3.5.02                 |                               |                                   |                                  |                                       |
| <b>Irlanda</b>      | 3.5.02                 | 3.5.02                        |                                   |                                  |                                       |
| <b>Italia</b>       | 3.5.02                 |                               |                                   |                                  |                                       |
| <b>Letonia</b>      | 3.5.02                 |                               |                                   |                                  |                                       |
| <b>Lituania</b>     | 3.5.02                 |                               |                                   |                                  |                                       |
| <b>Luxemburgo</b>   | 3.5.02                 |                               |                                   |                                  |                                       |
| <b>Malta</b>        | 3.5.02                 | 3.5.02                        |                                   |                                  |                                       |
| <b>Países Bajos</b> | 3.5.02                 |                               |                                   |                                  |                                       |
| <b>Polonia</b>      | 3.5.02                 |                               |                                   |                                  |                                       |
| <b>Portugal</b>     | 3.5.02                 |                               |                                   |                                  |                                       |
| <b>Reino Unido</b>  | 3.5.02                 |                               |                                   |                                  |                                       |
| <b>Suecia</b>       | 3.5.02                 |                               |                                   |                                  |                                       |



## Conclusiones

La situación de los veinticinco Estados respecto al CEDH y sus protocolos varía considerablemente. Por supuesto, en líneas generales la posición es la misma, pues todos han ratificado el Convenio y todos se han sometido al Tribunal, aceptando la obligatoriedad de su jurisdicción y permitiendo a los particulares el acceso al sistema. Sin embargo, un análisis más detallado nos ha permitido ver las diferencias que se encierran tras esa aparente homogeneidad; lo cierto es que el catálogo de derechos y libertades protegidos varía considerablemente en los veinticinco Estados cuya situación hemos examinado.

Esta heterogeneidad puede presentar problemas a la Comunidad o a la Unión de cara a una eventual adhesión ¿Con qué protocolos, qué reservas y qué declaraciones se procedería a tal adhesión?

Mantener todas las reservas y renunciar a la firma de los protocolos no ratificados por todos los Estados miembros supondría adherirse a un denominador común del Convenio, lo cual sería perjudicial para la protección de los derechos fundamentales y además, negaría la autonomía del derecho comunitario.

Sin duda, la solución más acertada sería adherirse a la totalidad del mismo, sin tener en cuenta las múltiples reservas nacionales o incluyendo determinadas reservas propiamente comunitarias. La Comunidad invocaría aquí su propia sensibilidad, como ha venido haciendo en su jurisprudencia defensora de los derechos fundamentales, y recordaría a los Estados que en todo caso, el control se produciría sobre el derecho comunitario, no sobre sus normas de derecho nacional.

Sin embargo, esta solución no dejaría de plantear problemas, más aún con los delicados fenómenos de “incorporación” que pueden producirse en aquellos casos en los que las fronteras son muy difusas, y el Tribunal de Luxemburgo debe ser muy meticuloso para no incorporar la normativa nacional a su control de protección de derechos fundamentales.

En todo caso, por encima de estas consideraciones de carácter jurídico, la notable heterogeneidad que se ha señalado en este estudio pone de manifiesto que el Consejo de Europa, con sus 44 Estados miembros y su enorme diversidad, es un marco muy lejano al que representa la Unión Europea del siglo XXI: una comunidad de valores integrada, homogénea y sólidamente asentada en sus Estados miembros.

También se ha puesto de manifiesto que el CEDH es un Tratado flexible y complejo, carente de la transparencia y la simplicidad que precisa en la actualidad la protección de los derechos

fundamentales en la Unión. En este sentido conviene recordar que el Informe sobre Derechos Fundamentales en la Unión Europea del grupo de expertos presidido por el profesor Spiros Smitis, de febrero de 1999, afirmaba que: “Los derechos fundamentales sólo pueden cumplir su función si los ciudadanos conocen su existencia y son conscientes de la posibilidad de hacerlos aplicar, por lo que resulta esencial expresar y presentar los derechos fundamentales de forma que todos los individuos puedan conocerlos y tener acceso a ellos; dicho de otro modo, los derechos fundamentales deben ser visibles (...) Deben encontrarse los medios para conseguir la máxima visibilidad de los derechos, lo que implica su enumeración expresa, a riesgo de repetirse, en lugar de una simple referencia general a otros convenios en los que figuran”.

Tras largos años de protección jurisprudencial de los derechos fundamentales, el sistema europeo precisa, sobre todo, claridad y transparencia. Los Derechos Fundamentales de la Unión deben ser los de Carta, y su intérprete supremo debe ser el Tribunal de Justicia de Luxemburgo.

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**Mr. A. ARABADJIEV, Alternate Member**

Since I will not be able to attend the meeting of the working group on 21 October 2002 and "any reactions" to the draft are allowed,

I want to state that I find that the draft reflects in a correct and balanced manner the discussions held in the Working Group and the common understanding reached by the Group on most of the key issues included in its mandate.

For this reason I prefer not to suggest any amendments to the proposed text.

On some issues which need, in my view, to be further clarified or strengthened, I will express my opinion during the debate on the report in the Convention Plenary. These include:

- The distinction between "rights" and "principles";
- The "scope" of EU accession to the ECHR( and the specific possible situation of the Strasbourg Court having to rule on the allocation of competences between the Union and the Member States when an application is addressed against both);
- The limits reached (in the ECJ's case-law) as to individual access to that court.

Alexander Arabadjiev

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**Mr. Diego López Garrido, Alternate Member****Contribución al Proyecto de Informe Final del Grupo de Trabajo II (Carta)**

Quiero mostrar mi acuerdo con el conjunto del Proyecto de Informe. No obstante, formulo las siguientes observaciones:

1. Entiendo que el informe corresponde al consenso posible obtenido en el seno del Grupo, aun cuando no estemos de acuerdo en todos sus extremos.
2. La redacción del Informe ha tenido en cuenta suficientemente las preocupaciones y reservas manifestadas por algunos miembros del Grupo respecto a la Carta.
3. Por mi parte, recuerdo que presenté a la última sesión del Grupo una serie de enmiendas a las llamadas “cláusulas horizontales”. Algunas de dichas enmiendas fueron aceptadas y otras no. Estas últimas las considero retiradas para así facilitar el acuerdo final sobre el texto del Informe.

En todo caso, quiero señalar que mi aceptación de la redacción del conjunto del Proyecto de Informe se produce en el bien entendido de que la Carta de Derechos Fundamentales debe integrarse en la futura Constitución europea con carácter jurídicamente vinculante, como así se señala en el Proyecto final que se nos ha sometido.

**English VERSION**

Mr. Diego López Garrido, Alternate Member

**Contribution to the Draft Final Report issued by Working Group II (Charter)**

I agree with the Draft Report as a whole. However, I should also like to make the following remarks:

1. It is my understanding that the Report reflects the consensus that the Group has been able to agree, even though we have been unable to agree on every point of the Report.
2. The Draft Report adequately reflects the concerns and reservations expressed by some Group members regarding the Charter.
3. At the last Group session I put forward a number of proposed amendments to the ‘horizontal clauses’. Some proposals were accepted, while others were rejected. I hereby withdraw the latter proposals in order to facilitate final agreement on the text of the Report

4. t. In any event, I should like to point out that I accept the Draft Report expressly on the understanding that the Fundamental Rights Charter must form a part of the future European Constitution in a legally binding way, as set forth in the final Draft submitted to the Group members.
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**Mr. R. Rack, Alternate Member**

Dear Commissioner,

I would like to thank you very much for your draft final report of working group II. It reflects to a very great extent the consensus reached in the group and points out all important aspects which arise in respect of the mandate of the group and which were discussed over the past four months.

With respect to some details, however, I could envisage a different or more precise formulation.

Paragraph 2 on page 14 for example seems to suggest that, in case of accession of to the ECHR, the Union's relationship with the Council of Europe is already settled or at least fairly clear. However, especially the representation of the Union in the Committee of Ministers – an organ of the Council of Europe of which the Union will not be a member – does not seem to be an automatic consequence of EU accession to the ECHR. It should be pointed out in the final report of the working group that certain “technical” questions regarding the relationship between the Union and the Council of Europe will have to be settled upon accession. (This entails for example the question of a Union representative in the Committee of Ministers, the participation of the Union in the different monitoring processes of the Council of Europe with regard to the ECHR or the representation in ECHR-related expert committees of the Council of Europe.)

On page 16 footnote 1, to quote the UPA judgement of the European Court of Justice with regard to the obligation of the Member States to provide for effective remedies for rights derived from Union law seems somewhat misleading. While it is true that the Court confirms this obligation of the Member States in para 41 of the UPA judgement, this statement only appears in the context of the argument that direct action for annulment before the Community Court cannot depend on whether the individual is allowed to bring proceedings before a national court to contest the validity of the Community measure at issue. The main statement of the UPA judgement, however, rather seems to envisage a reform of the current system of judicial review of the legality of Community measures of general application under Article 230 TEC.

In general it seems to me that the opinions expressed by the group during the discussion about a possible amendment of Article 230 § 4 TEC were slightly more positive than one might suggest from reading your report.

As to page 10 paragraph 1, I think that the group's discussion on Article 6 § 2 TEU focused on the question of whether there should be a reference to the common constitutional traditions rather than on the question whether a reference to the ECHR should be kept. In particular I would suggest to delete the words “ECHR and” in the last sentence. The sentence would then read: “... such a reference in the Constitutional Treaty could serve to complete the protection offered by the Charter

and clarify that Union law is open for future evolutions in Member States' human rights law." If the Union accedes to the ECHR and there are any future developments like, for example a new protocol, it would be – as pointed out later in the draft final report – for the Council and the Parliament to decide whether the Union should sign and ratify this protocol. A future protocol which has not been ratified by the Union cannot become binding on it by way of jurisprudence of the European Court of Justice.

As to this suggested texts of Arts 51 and 52 I would like to point out again that I see them as an extremely generous compromise to some of our group, who feel a need for further clarification or further restrictions of the horizontal charter articles; a view I and many colleagues do not really share. Therefore any additional step towards watering down the substance and legal implications of the charta would certainly not be acceptable.

Due to the forthcoming elections in Austria I will not be able to attend the group's final meeting on October 21. I would hope that you will take my above-mentioned concerns into account when drafting the final version of the report.

However, if consensus on these points cannot be reached, I should like to accept the report as it stands.

Yours sincerely,

Reinhard Rack.

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**Mr. V.P. Andriukaitis, Member of the Convention**

## Working Group II “Integration of the Charter/Accession to the ECHR”

I generally support the draft final report of the Working Group II. Nevertheless, I would like to make a few comments on certain aspects of the report.

1. I fully agree with the premise that the whole Charter - including its Preamble - should be respected and debates on its content should not be reopened by the Convention. However, in section entitled “Preamble of the Charter” of Part A of the report we read about the splitting of the Charter Preamble from the Charter articles and about “enrichment” of the Charter Preamble “by further elements as appropriate, should it be used as a Preamble to the Constitutional Treaty”.

Firstly, I would hesitate to support the proposal of cutting the text of the Charter in two parts and separating the Preamble from the body of the Charter. The Working Group does not seem to have reached a consensus on this point. I would rather see the whole text of the Charter - including its Preamble - kept intact and incorporated into the Constitutional Treaty as its first and principle Chapter.

Secondly, I would be highly reluctant to support the idea of “enriching” the Charter Preamble. To my mind, in essence it would mean reopening of the debates on the content of the Charter involving lengthy and controversial drafting exercise. Moreover, that the majority of the members of our Working Group seem to strongly oppose such an idea.

2. Under the mandate of our Working Group (CONV 72/02), we were entrusted with examining the question whether to keep a reference - of the kind currently in Article 6 § 2 TEU – to common constitutional traditions of the Member States and the ECHR.

I would like to encourage the Working Group to take a stand on this issue. I do not think that we have to make a “firm” recommendation, but at least to express our view. Moreover that the



tendency to favour EU's accession to the ECHR is quite strong and seems to be the majority opinion among the members of our group. Therefore, I would like to support the opinion of a number of our members that the reference to the two external sources of inspiration for fundamental rights in current Article 6 § 2 TEU after the Charter is incorporated in the Constitutional Treaty, will be redundant, and thus not necessary.

3. Under the mandate of our Working Group (CONV 72/02), we were also asked to express our opinion on the question of appeals to the Court of Justice, namely amendments to Article 230 § 4 TEC with regard to the right of direct access by individuals to the Court of Justice.

The language of the section entitled "Access to the Court of Justice" of the draft final report, to my mind might be strengthened. The statement that "the Group's discussion has shown that a certain lacuna of protection might exist, given the current condition of "individual concern" in Article 230 § 4 TEC and the case law interpreting it" seems to be quite weak and insufficient to express the opinion on the matter as important as ensuring effective judicial protection of fundamental rights.

Again, I would like to urge the Working Group not to refrain from stating its position on the issue. I agree that the "division of work" between the Community and national courts should not be "profoundly altered", but at the same time, a number of the members of our Working Group seem to share the view that there is a need to expand the right of direct access by individuals to the Court of Justice. I fully share this view.

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**Mr. N. Mac Cormick, Alternate Member**

I must thank you and Commissioner Vitorino for the excellent work which has been done in putting together the Draft Report. Being in Texas at the moment, I am behind time for returning comments, but perhaps it will be helpful to know that I am fully happy with the Draft Report as it stands now.

I have to restate my apology for absence from the Group's final meeting, as I am continuing from here to Canada to give some lectures.

Please convey to Commissioner Vitorino my sincere congratulations on the excellent conduct and outcome of the Group's deliberations, and to the other members of the secretariat as well as yourself my thanks for the extremely efficient servicing of the Group's work.

Yours sincerely,

Neil MacCormick

## **Observations de Mme Paciotti au WD 25 du groupe "Charte"**

Au Secrétariat de la Convention

Observations sur le document de travail 25 du Groupe de travail "Charte"

En rapport avec le contenu du projet de rapport final, que je partage en grande partie, je souhaite vous communiquer que je suis en désaccord avec ce qui est écrit au point 6 de la lettre A et confirmer ma divergence par rapport aux clauses horizontales ajoutées à l'article 52 de la Charte, reproduites en annexe au rapport, en particulier en me référant à la clause 52.5.

1. Au point A.6 il est question de la distinction - qui aurait été fondamentale dans la précédente Convention - entre droits et principes et il est prétendu que les principes seraient différents des droits parce qu'ils demanderaient une mise en oeuvre par des actes législatifs ou exécutifs.

L'opposition entre principes et droits ne me paraît pas pouvoir être proposée sous cette forme. En effet, les droits fondamentaux classiques peuvent eux-mêmes requérir des lois et mesures pour être protégés, alors que les principes peuvent constituer des obligations juridiques immédiatement efficaces qui limitent les pouvoirs législatifs et exécutifs.

Je rappelle aussi que la répartition des articles de la Charte, qui ne se fait plus selon la division traditionnelle en droits politiques et civils et droits économiques et sociaux, mais selon les chapitres "Dignité, Liberté, Egalité, Solidarité, Citoyenneté, Justice", a voulu signifier que toutes les dispositions avaient la même valeur et n'étaient pas susceptibles d'une graduation leur donnant une intensité de protection différente (sauf bien sûr les limites de compétence des institutions européennes, répétés à juste raison dans le rapport).

Par ailleurs, les Cours constitutionnelles des Etats membres, ayant des constitutions écrites et rigides, appliquent directement les principes constitutionnels pour en déduire des droit ou pour les interpréter.

2. Quant aux nouvelles clauses horizontales de la Charte proposées dans le document annexé au rapport, je trouve qu'elles ne feraient que créer des incertitudes d'interprétation et qu'elles modifieraient l'équilibre du compromis de la Convention précédente.

En particulier, la nouvelle clause 52.5 selon laquelle "les dispositions de la présente Charte qui contiennent des principes **peuvent** être mis en oeuvre par des actes législatifs et exécutifs pris par les institutions et les organes de l'Union ..." ("the provisions of this Charter which contain principles **may** be implemented by legislative and executive acts taken by institutions and bodies of the Union...") contredit le texte actuel de la clause 51.1 selon lequel "les institutions et organes de l'Union ...**respectent** les droits, **observent** les principes ..." ("the institutions and bodies of the Union **shall** respect the rights, observe the principles...").

Je compte sur le fait que le texte définitif du rapport pourra être modifié.

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Madame, Monsieur,

Ne pouvant être parmi vous lundi prochain pour l'adoption du rapport final du groupe de travail II, je tenais à vous faire connaître mon entier accord au texte du projet de rapport.

Bien à vous

Robert Badinter

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**THE EUROPEAN CONVENTION****Brussels, 22 October 2002**

THE SECRETARIAT

**CONV 354/02****WG II 16****REPORT**

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|           |                                                                                    |
|-----------|------------------------------------------------------------------------------------|
| from      | Chairman of Working group II "Incorporation of the Charter/ accession to the ECHR" |
| to        | Members of the Convention                                                          |
| Subject : | <b>Final report of Working Group II</b>                                            |

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**Introduction**

On the basis of its mandate (doc. CONV 72/02), the Group has, in the course of its seven meetings and having held hearings with several legal experts<sup>1</sup>, examined two main complementary issues:

- the modalities and consequences of possible incorporation of the EU Charter of Fundamental Rights (hereinafter: "the Charter") into the Treaties (Chapter A);
- the modalities and consequences of possible accession of the Community / the Union to the European Convention on Human Rights (hereinafter: "the ECHR") (Chapter B).

In addition, the Group has discussed the specific issue of access by individuals to the Court of Justice, which, as mentioned in the Group's mandate, arises independently of the questions of incorporation of the Charter and of accession to the ECHR but has a wider link to fundamental rights (Chapter C).

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<sup>1</sup> Mr. Johann Schoo, Director, Legal Service of the Parliament, Mr. Jean-Claude Piris, Jurisconsult, Director-General of the Legal Service of the Council, and Mr. Michel Petite, Director-General of the Legal Service of the Commission, heard on 23 July (see WD N° 13 and CONV 223/02); Mr. Marc Fischbach, Judge, European Court of Human Rights, and Mr. Vassilios Skouris, Judge, European Court of Justice, heard on 17 September (see WD N° 19 and CONV 295/02). Mr. Söderman, European Ombudsman and observer in the Convention, attended the Group's meeting on 4th October and presented his contribution CONV 221/02 CONTRIB 76.

Thanks to the strong sense of commitment, the willingness to engage in detailed technical discussion, and the remarkable spirit of compromise of its members, the Group has succeeded in producing a highly consensual report on both main issues; both parts of this report have to be seen as complementary and belonging to the same context.

**A. On the Charter**

**I. Recommendations as to the form of possible incorporation of the Charter**

**1. General recommendation**

At the outset, the Group stresses that, in accordance with its mandate, the political decision about possible incorporation of the Charter into the Treaty Framework will be reserved for the Convention Plenary. The mandate of the Group has been to prepare for such a decision through examination of a series of specific questions relating to modalities and consequences of such incorporation.

Without prejudice to that political decision, and on the basis of the common understanding reached by the Group on all key issues related to the Charter as set out below, all members of the Group either support strongly an incorporation of the Charter *in a form which would make the Charter legally binding and give it constitutional status* or would not rule out giving favourable consideration to such incorporation. Different forms exist, in the Group's view, to achieve that result, as set out below; but in any event, a "building block" as central as fundamental rights should find its place in the Union's constitutional framework. The Group is confident that, with its report, the necessary groundwork allowing the Plenary to take its political decision on incorporation has now been done; notably, this general recommendation of the Group has been facilitated by a common understanding, reached within the Group as set out below, on clarifications of certain legal and technical aspects of the Charter which are advisable in case of a legally binding Charter and of great significance for smooth incorporation ensuring legal certainty.

## 2. Recommendations as to the concrete form of incorporation

The Group is fully aware that the choice to make as to the concrete form of incorporation does not depend exclusively on considerations linked to the Charter or to fundamental rights in general, but also on the overall picture of the Treaty architecture which will emerge in future discussions of the Convention Plenary. For this reason, it would not be appropriate for this Group to restrict the Convention's further overall work by proposing only one technique for incorporation of the Charter. Rather, out of the various possibilities submitted to the Group at the outset of its work<sup>1</sup>, the Group recommends the Plenary to consider the following basic options:

- a. insertion of the text of the Charter articles at the beginning of the Constitutional Treaty, in a Title or Chapter of that Treaty; or
- b. insertion of an appropriate reference to the Charter in one article of the Constitutional Treaty; such a reference could be combined with annexing or attaching the Charter to the Constitutional Treaty, either as a specific part of the Constitutional Treaty containing only the Charter or as a separate legal text (e.g., in form of a Protocol).
- c. According to one member of the Group, an "indirect reference"<sup>2</sup> to the Charter could be used in order to make the Charter legally binding without giving it constitutional status.

Having considered the questions coming under the Group's mandate, a large majority of the Group would prefer the first option in the interest of a greater legibility of the Constitutional Treaty. The second option is favoured by certain other members, some of them emphasising the need to annex the Charter to the Treaty, as a specific part of that Treaty or as a Protocol. The Group as a whole underlines that both these basic options could serve to make the Charter a legally binding text of constitutional status.

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<sup>1</sup> See documents CONV 72/02 and 116/02, pp. 7-8.

<sup>2</sup> See document CONV 116/02, p. 7.



## II. Conclusions and recommendations on certain legal and technical aspects of the Charter of importance for the smooth incorporation of the Charter into the new Treaty architecture

An important part of the Group's work has been to examine a number of legal and technical aspects of the Charter which, as has become clear during the Group's discussions, are important in the perspective of a smooth incorporation of the Charter, as a legally binding document, into the new Treaty architecture. The Group has found a common understanding on these questions and on ensuing recommendations which are proposed with large majority support, two of its members having reservations, as set out hereafter.

### 1. Respecting the content of the Charter

The basic starting point underlying the Group's conclusions on the Charter is that the content of the Charter represented a consensus reached by the previous Convention, a body which had special expertise in fundamental rights and served as model for the present Convention, and endorsed by the Nice European Council. The whole Charter - including its statements of rights and principles, its preamble and, as a crucial element, its "general provisions" - should be respected by this Convention and not be re-opened by it.

Accordingly, the Group has not considered any changes to the rights and principles contained in the Charter. The Group recognises however that certain technical *drafting adjustments* in the Charter's "general provisions" are nonetheless possible and appropriate as explained below; the Group therefore proposes to the Plenary the drafting adjustments set out in the Annex to this report<sup>1</sup>. It is important to note that these adjustments proposed by the Group do not reflect modifications of *substance*. On the contrary, they would serve to *confirm*, and render absolutely clear and legally watertight, certain key elements of the overall consensus on the Charter on which the previous Convention had already agreed. They are prompted by the new perspective of a Constitutional Treaty which has arisen in the present Convention, but also by the concern of legal certainty in the field of fundamental rights, to which the Charter is designed to contribute. Thus, all drafting adjustments proposed herein fully respect the basic premise of the Group's work, i.e. to leave intact

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<sup>1</sup> In addition to the adjustments indicated in the Annex, it should be kept in mind that, depending on the future Treaty architecture, purely drafting adjustments may become necessary to the various references, made throughout the Charter, to "the Treaties", "the Community Treaties", "the Treaty on the European Union", "Community law", etc., see doc. CONV 116/02, p. 7.

the substance agreed by consensus within the previous Convention, and the Group urges the Plenary equally to respect this premise when considering the proposed drafting adjustments.

2. Incorporation of the Charter will not modify the allocation of competences between the Union and the Member States

The Group is able to confirm that incorporation of the Charter will in no way modify the allocation of competences between the Union and the Member States. This point, on which there was consensus already in the previous Convention, is currently reflected in Article 51 § 2 of the Charter. The fact that certain Charter rights concern areas in which the Union has little or no competence to act is not in contradiction to it, given that, although the Union's *competences* are limited, it must *respect* all fundamental rights wherever it acts and therefore avoid indirect interference also with such fundamental rights on which it would not have the competence to legislate.

However, in order to render this point clear beyond any doubt, even in the perspective of a Charter forming part of a constitutional treaty, the Group recommends the drafting adjustments to Article 51 § 1 and 2 set out in the Annex. Moreover, the Group considers it useful to confirm expressly, in Article 51 § 2, in light of established case law, that the protection of fundamental rights by Union law cannot have the effect of extending the scope of the Treaty provisions beyond the competences of the Union.<sup>1</sup>

Furthermore, the Group recalls in this context that the Charter was drafted with due regard to the principle of subsidiarity, as is clear from its Preamble, its Article 51 § 1 and from those Charter Articles which make references to national laws and practices; it seems appropriate to the Group to include a clause in the general provisions of the Charter (see Article 52 § 6 in the Annex) recalling these references. Likewise, it is in line with the principle of subsidiarity that the scope of application of the Charter is limited, in accordance with its Article 51 § 1, to the institutions and bodies of the Union, and to Member States *only* when they are implementing Union law.<sup>2</sup>

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<sup>1</sup> See Judgment of the Court of Justice C-249/96 Grant, 1998 ECR I-621, at par. 45.

<sup>2</sup> It should be noted that, upon possible incorporation of the Charter into the Treaty, the current wording of Article 46 (d) TEU would have to be brought in line with existing case law and Article 51 of the Charter on the (limited) application of fundamental rights to acts of Member States.

3. Full compatibility between the fundamental rights of the EC Treaty and the Charter articles which restate them

As regards the specific case of those fundamental rights which are already expressly enshrined in the EC Treaty and merely "restated" in the Charter (notably rights derived from Union citizenship)<sup>1</sup>, there was already consensus in the previous Convention on the principle that the legal situation as defined by the EC Treaty should remain unaffected by the Charter; this is presently expressed in the "referral clause" of Article 52 § 2 of the Charter<sup>2</sup>.

Reconfirming that point, the Group has reached consensus on the need to have, as concerns these rights, a legally "watertight" referral clause, such as presently included in Article 52 § 2 of the Charter, ensuring complete compatibility between the statements of the rights in the Charter and their more detailed regulation as currently found in the EC Treaty. The Group stresses that this clause of Article 52 § 2 will, if the Charter is to become a part of the constitutional treaty, logically need a slight drafting adjustment, so as to make it clear that the referral is made to *other parts* of Treaty law where the conditions and limits of the exercise of these rights are defined. The precise formulation of such a drafting adjustment, reflecting that principle of compatibility, cannot be undertaken at this stage as it will depend on the exact overall Treaty architecture.

Furthermore, the Group is of the view that, as regards these rights, "replication" ("dédouplements") between the Charter and other parts of Treaty law might, to a limited extent, be inevitable for legal reasons and will not be harmful, given that, as is proposed, a referral clause will ensure compatibility.

The Group signals that if, as advocated by a large majority of the Group, incorporation is achieved by the insertion of the Charter text in the first part of the Constitutional Treaty, it would then become necessary to combine, in an appropriate manner, in that Treaty the Charter articles on citizens' rights and the provisions on citizenship of the EC Treaty having constitutional importance; this should be considered as a technical operation raising no political problems.

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<sup>1</sup> A list of those rights is to be found in WD N° 9 of the Chairman, page 3, Fn. 2.

<sup>2</sup> See also the "Explanations" (Document CHARTE 4473/00 CONVENT 49 of 11 October 2000; see in detail below, section A III 3) under Article 52 § 2: "The Charter does not alter the system of rights conferred by the Treaties".

#### 4. Correspondence between Charter rights and rights guaranteed by the ECHR

The Group underlines and reconfirms the central importance of Article 52 § 3 of the Charter, on those Charter rights which correspond to rights guaranteed by the ECHR; it recalls that this clause was a crucial element of the overall consensus in the previous Convention.<sup>1</sup> On the basis of the "Explanations" on the Charter<sup>2</sup>, the Group confirms its common understanding on the meaning of this provision: the rights in the Charter which correspond to ECHR rights have the same scope and meaning as laid down in the ECHR; this includes notably the detailed provisions in the ECHR which permit limitations of these rights. The second sentence of Article 52 § 3 of the Charter serves to clarify that this article does not prevent more extensive protection already achieved or which may subsequently be provided for (i) in Union legislation and (ii) in some articles of the Charter which, although based on the ECHR, go beyond the ECHR because Union law *acquis* had already reached a higher level of protection (e.g., Article 47 on effective judicial protection, or Article 50 on the right not to be punished twice for the same offence). Thus, the guaranteed rights in the Charter reflect higher levels of protection in existing Union law.

#### 5. An interpretation in harmony with common constitutional traditions

The Group stresses that the Charter has firm roots in the Member States' common constitutional traditions, which were brought together impressively in the previous Convention's work. The extensive case law on fundamental rights derived from the common constitutional traditions established by the Court of Justice and confirmed by Article 6 § 2 TEU, represents an important source for a number of rights recognised by the Charter. In order to emphasise the importance of these roots and in the interest of smooth incorporation of the Charter as a legally binding document, the large majority of the Group proposes to include a rule of interpretation in the general provisions (see Article 52 § 4 in the Annex); two of its members have reservations against this proposal. The rule is based on the wording of the current Article 6 § 2 TEU and takes due account of the approach to common constitutional traditions followed by the Court of Justice as explained by Judge Skouris at the hearing of 17 September. Under that rule, rather than following a rigid approach of "a lowest common denominator", the Charter rights concerned should be interpreted in a way offering a high standard of protection which is adequate for the law of the Union and in harmony with the common

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<sup>1</sup> Cf. on Article 52 § 3 of the Charter also the concurrent statements made by Judge Fischbach of the European Court of Human Rights and Judge Skouris of the European Court of Justice at the hearing on 17 September, doc. CONV 295/02.

<sup>2</sup> On the "Explanations", see in detail below, section A III 3.

constitutional traditions.

#### 6. The distinction between "rights" and "principles" in the Charter

The Group stresses the importance of the distinction between "rights" and "principles", which was an important element – already expressed in the Preamble and in Article 51 § 1 of the Charter - of the consensus reached by the previous Convention. In order to confirm that distinction while increasing legal certainty in the perspective of a legally binding Charter with constitutional status, the large majority of the Group proposes an additional general provision (see Article 51 § 5 in the Annex) encapsulating the understanding of the concept of "principles" which marked the work of the previous Convention and has been recalled in the discussions of the Working Group by members of that Convention; two of its members have reservations against this proposal. According to that understanding, principles are different from subjective rights. They shall be "observed" (Article 51 §1) and may call for implementation through legislative or executive acts; accordingly, they become significant for the Courts when such acts are interpreted or reviewed. This is consistent both with case law of the Court of Justice<sup>1</sup> and with the approach of the Member States' constitutional systems to "principles" particularly in the field of social law.

In addition, with the proposed clause the Group reconfirms the line followed by the previous Convention to express the character ("right" or "principle") of individual Charter articles as clearly as possible in the wording of the respective articles taking into account the important guidance provided by the "Praesidium's Explanations", supplemented by explanations from the current Working Group (see section III.3. below), permitting future jurisprudence to rule on the exact attribution of articles to the two categories.

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<sup>1</sup> Cf. notably recent case law on the "precautionary principle" in Article 174 § 2 TEC: judgment of the CFI of 11 September 2002, T-13/99, Pfizer vs. Council, with numerous references to earlier case law; and a series of judgments on Article 33 (ex-39) on the principles of agricultural law, e.g. judgment of the Court of Justice C-265/85, Van den Berg, 1987 ECR I 1155: scrutiny of the principle of market stabilisation and of reasonable expectations, further references see Comm. Megret, tome 3, pp. 80 et seq.

### **III. Recommendations concerning further questions arising in the context of possible incorporation**

#### **1. Preamble of the Charter**

The Group considers the Charter Preamble as a crucial element of the overall consensus on the Charter reached by the previous Convention. The Group therefore recommends that this element should in any event be preserved in the future Constitutional Treaty framework. The Group also recalls that the Charter Preamble comprises language on the fundamental nature of the Union going well beyond the area of fundamental rights. As is the case with the Charter as a whole, the concrete form of an "incorporation of the Charter Preamble" into the Treaty framework, as recommended by the Group, will equally depend on the overall Treaty structure to be defined by the Plenary. Thus, if the Charter articles were to be inserted directly in the Constitutional Treaty, the Charter Preamble should be used as the Preamble to the Constitutional Treaty. If in turn the Charter is incorporated as a specific part of the Constitutional Treaty or as a separate binding legal text (e.g., in the form of a Protocol) within the Union's constitutional architecture, the Charter Preamble could remain attached to the text of the Charter without any changes; that would of course not preclude the Convention from using, for the drafting of the new Treaty preamble, the elements of general importance to be found in the Charter preamble.

#### **2. Continued reference to external sources (such as currently found in Article 6 § 2 TEU)**

The Group discussed whether or not, in case of incorporation of the Charter, the Constitutional Treaty should also contain a reference to the two external sources of inspiration for fundamental rights, as is currently found in Article 6 § 2 TEU, i.e. the ECHR and the constitutional traditions common to the Member States. Valid arguments have been advanced both for and against this.

Some members have taken the view that maintaining such a reference would be redundant and create legal confusion, given that the Charter already includes rights derived from the ECHR and the common constitutional traditions and makes references to these sources. Others have argued that such a reference in the Constitutional Treaty could serve to complete the protection offered by the Charter and clarify that Union law is open for future evolutions in ECHR and Member States' human rights law.

In any event, the Group recognises that this question is closely related to the choice of the form of incorporation which the Convention will have to make. The Group therefore refrains from making a firm recommendation on this issue; instead, it limits itself to stating that such a reference, if appropriately drafted<sup>1</sup>, is not excluded by the prospect of a legally binding Charter, and signals the issue to the Plenary for consideration.

### 3. The importance of the "Explanations"

The Group stresses the importance of the "Explanations", drawn up at the instigation of the Praesidium of the previous Convention<sup>2</sup>, as one important tool of interpretation ensuring a correct understanding of the Charter<sup>3</sup>. It recognises that these Explanations are presently not sufficiently accessible for legal practitioners. To the extent that the Convention takes on board the drafting adjustments proposed by this Group, the corresponding explanations given in this report should be fully integrated with the original Explanations. Upon possible incorporation of the Charter, attention should then be drawn in an appropriate manner to the Explanations which, though they state that they have no legal value, are intended to clarify the provisions of the Charter. In particular, it would be important to publicise them more widely.

### 4. Procedure for future amendment of the Charter

As a consequence of possible incorporation of the Charter into the Constitutional Treaty framework, the question will arise according to which procedure the Charter can be amended in the future. However, the Group has considered that this question goes beyond its mandate since it will have to be examined by the Plenary as part of the general question of amendment procedure(s) for the various building blocks of the future Treaty framework.

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<sup>1</sup> See doc. CONV 116/02, page 9.

<sup>2</sup> Document CHARTE 4473/00 CONVENT 49 of 11 October 2000.

<sup>3</sup> The Group furthermore notes in this context that the previous Convention worked in public - as the present Convention does - and that its meeting records and working documents are publicly accessible (see <http://ue.eu.int/df>).

## **B. On accession to the European Convention on Human Rights**

### **I. General conclusions and recommendations**

Just as in the case of the Charter, the Group stresses at the outset that, in accordance with the Group's mandate, the political decision about the perspective of possible accession to the ECHR by the Union (i.e. by the new single legal personality as emerging from the work of Working Group III) will be reserved to the Convention Plenary. The mandate of the Group has been to prepare such a decision through examination of a number of specific questions relating to modalities and consequences of possible accession.

The Group furthermore stresses that the Convention is to decide only on whether to introduce into the new Treaty a constitutional authorisation *enabling* the Union to accede to the ECHR. In contrast, it would later be for the institutions of the Union, notably for the Council deciding by unanimity, to open negotiations for an accession treaty and set the concrete framework of those negotiations; during such negotiations, a range of technical questions regarding the concrete modalities of accession, of which the Group has taken due note<sup>1</sup>, will have to be dealt with. Likewise, the decision on the appropriate timing for possible accession by the Union to the ECHR and to its various additional protocols should be left for the Council. All these questions are not of a constitutional nature and therefore not for the Convention.

Without prejudice to the political decision by the Plenary, and on the basis of the arguments and conclusions including on certain safeguards as set out below, all members of the Group either strongly support or are ready to give favourable consideration to the creation of a constitutional authorisation enabling the Union to accede to the ECHR.

The main political and legal arguments speaking in favour of accession by the Union to the ECHR, which have been recognised by the Group, are the following:

- As the Union reaffirms its own values through its Charter, its accession to the ECHR would give a strong political signal of the coherence between the Union and the "greater Europe", reflected in the Council of Europe and its pan-European human rights system.

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<sup>1</sup> See notably WD N° 8, containing a study carried out within the Council of Europe on technical and legal questions of possible accession to the ECHR.



- Accession to the ECHR would give citizens an analogous protection vis-à-vis acts of the Union as they presently enjoy vis-à-vis all the Member States. This appears to be a question of credibility, given that Member States have transferred substantial competences to the Union and that adherence to the ECHR has been made a condition for membership of new States in the Union.
- Accession would be the ideal tool to ensure a harmonious development of the case law of the two European Courts in human rights matters; for some, this argument has even greater force in view of a possible incorporation of the Charter into the Treaties. In this connection, mention should also be made of the problems resulting from the present non-participation of the Union in the Strasbourg judicial system in cases where the Strasbourg Court is led to rule indirectly on Union law without the Union being able to defend itself before that Court or to have a judge in the Court who would ensure the necessary expertise on Union law.

The Group has looked in depth into the possible impact of accession to the ECHR on the principle of autonomy of Community (or Union) law including the position and authority of the European Court of Justice. It has emerged from the Group's discussion and expert hearings<sup>1</sup> that the principle of autonomy does not place any legal obstacle to accession by the Union to the ECHR. After accession, the Court of Justice would remain the sole supreme arbiter of questions of Union law and of the validity of Union acts; the European Court on Human Rights could not be regarded as a superior Court but rather as a specialised court exercising external control over the international law obligations of the Union resulting from accession to the ECHR. The position of the Court of Justice would be analogous to that of national constitutional or supreme courts in relation to the Strasbourg Court at present.

The Group stresses that the incorporation of the Charter into the Treaties and the Union's accession to the ECHR should not be regarded as *alternatives*, but rather as complementary steps ensuring full respect of fundamental rights by the Union: just as the existence of the Charter does not in any way diminish the benefits of extending the control of the Strasbourg Court to cover Union acts, so accession to the ECHR does not reduce the significance of the Union's own catalogue of fundamental rights. The two steps would lead to a situation analogous to that in the laws of the Member States whose Constitutions protect fundamental rights but who at the same time have

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<sup>1</sup> Cf. the concurring statements by Judges Skouris (WD N° 19) and Fischbach (CONV 295/02) as well as by Messrs. Schoo and Petite (WD N° 13).

subscribed to the additional external human rights check of the Strasbourg system.

In the light of the above, the Group therefore recommends (subject to the above-mentioned political decision and the safeguards set out below) that a legal basis should be inserted at an appropriate place in the Constitutional Treaty which would authorise the Union to accede to the ECHR. The drafting of such a legal basis could be kept fairly simple<sup>1</sup>. Given the constitutional significance of possible accession, it should however also be specified that the signature and conclusion of the accession treaty require a decision by the Council by unanimity and the assent of the European Parliament; otherwise, the normal procedures for international agreements would apply.

## **II. Conclusions and recommendations with respect to specific questions linked to possible accession by the Union to the ECHR**

### **1. Accession to the ECHR will not modify the division of competences between the Union and the Member States**

The Group agrees on the central importance of the fact that accession by the Union to the ECHR - like incorporation of the Charter - will in no way modify the allocation of competences between the Union and the Member States. According to the Group's common understanding, the legal "scope" of the Union's accession to the ECHR would be limited to issues in respect of which the Union has competence; it would thus not lead to any extension of the Union's competences, let alone to the establishment of a general competence of the Union on fundamental rights<sup>2</sup>. Accordingly, "positive" obligations of the Union to take action to comply with the ECHR would arise only to the extent to which competences of the Union permitting such action exist under the Treaty.

The Group recommends the use of certain technical devices in order to clarify with certainty that the Union's accession to the ECHR does not modify the allocation of competences. Firstly, a provision clarifying this point could be included in the possible legal basis authorising accession. Secondly, upon accession, a statement stressing the Union's limited competences in the area of fundamental rights could be included in a provision in the accession treaty and / or in an accompanying declaration made by the Union. Thirdly, a mechanism allowing the Union and a

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<sup>1</sup> The legal base could for example state that the Union shall be authorised to accede to the ECHR. On a possible additional clause clarifying that the division of competences shall not be modified, see the next section of this report.

<sup>2</sup> Existing preparatory work for accession has also proceeded upon this understanding, see the Council of Europe's study, WD N° 8, at para. 26, an understanding confirmed by Judges Skouris and Fischbach (WD N° 19; CONV 295/02) and by Mr. Petite (WD N° 13) at the respective hearings.

Member State to appear jointly as "co-defendants" before the Strasbourg Court could ensure that that Court would not make any ruling on the allocation of competences between the Union and the Member States<sup>1</sup>.

In this context, it is important to bear in mind that accession by the Union to the ECHR would not mean that the Union would become a member of the Council of Europe, nor that it would become a general political player in Strasbourg. Rather, the Union and its law would simply take part (with a "scope" limited to its competences) in the specific system of judicial human rights control established by the ECHR. Basically (and without anticipating the details to be negotiated upon accession), there would be a judge at the Strasbourg Court elected "with respect to" ("à titre de") the Union, who would contribute specific expertise in Union law to the Court. Furthermore, a representative of the Union would take part in the Committee of Ministers' specific task of supervising execution of judgments under Article 46 ECHR (which is important notably to ensure that the Committee is properly informed on questions of Union law such as on the system of competences), but not in the Committee's general functions outside of the ECHR.<sup>2</sup>

2. The Member States' individual positions with respect to the ECHR will be unaffected by the Union's accession

The Group underlines the importance of the principle that accession by the Union to the ECHR does not affect the positions which the Member States have taken individually with respect to the ECHR, as reflected in particular in their individual decisions on the ratification of certain additional protocols, in the reservations they have entered upon ratification of the ECHR or its additional protocols, and in their right to make specific derogations. The Group stresses that this point can be fully taken into account, since:

- As explained above, the Convention now has to discuss the insertion in the Treaty of a legal basis permitting accession by the Union to the ECHR. If such a possible legal basis were inserted, it would then be for the Council to define, by unanimity, to which additional protocols the Union should accede and when, and which reservations the Union should enter in respect of the ECHR *in its own name*.

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<sup>1</sup> The mechanism has been explained to the Group by Judge Fischbach, see summary note CONV 295/02, p. 5, and is also explained in detail in the Council of Europe's study, Working Document n° 8, at paras 57 - 62.

<sup>2</sup> This statement is without prejudice to presently existing arrangement of participation in the meetings of the Committee of Ministers by the Community without a right to vote, see WD N° 8, at para. 34.

- The *Member States'* individual reservations made in respect of the ECHR and additional protocols, as well as their right to make specific derogations (Article 15 ECHR), would in any event remain unaffected by accession since they concern the respective national law, whereas accession by the Union would have legal effect only insofar as Union law is concerned.

### **III. Conclusions with respect to alternative mechanisms proposed to accession to the ECHR**

In the light of expert testimony<sup>1</sup> given to the group on the legal and practical problems with several mechanisms sometimes suggested as alternatives to accession by the Union to the ECHR, such alternative mechanisms (e.g., a special procedure of "referral" or "consultation" from the Court of Justice to the Strasbourg Court, a special recourse to the Strasbourg Court against the institutions without accession, or a "joint panel/chamber" composed of judges from both European Courts), are not recommended by the Group.

#### **C. Access to the Court of Justice**

The Group discussed the Union's current system of remedies available to individuals, notably in the light of the fundamental right to effective judicial protection.

In this context, the Group has examined the idea of establishing a special procedure before the Court of Justice for the protection of fundamental rights. As a majority of members had reservations about this idea, the Group does not recommend it to the Convention. The Group underlines however the great benefit which citizens would gain from a possible incorporation of the Charter into the Constitutional Treaty architecture, thereby making the Union's present system of remedies available.

The Group wishes however to draw the Plenary's attention to a different issue, namely the question whether or not the conditions of direct access by individuals to the Court (Article 230 § 4 TEC) need to be reformed in the interest of ensuring effective judicial protection. On this point, the Group's discussion has shown that a certain lacuna of protection might exist, given the current condition of

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<sup>1</sup> See the hearing of Mr. Schoo, Mr. Piris and Mr. Petite of 23 July 2002 (Working Document 13, pp. 14, 32 fn. 2, 50 - 51) as well as the hearing of Judge Fischbach of 17 September 2002, doc. CONV 295/02.

"direct and individual concern" in Article 230 § 4 TEC and the case law interpreting it, in the specific case of "self-executing" Community regulations which impose directly applicable prohibitions on individuals. On the other hand, a widely shared trend emerged in the group's discussion according to which the present overall system of remedies, and the "division of work" between Community and national courts it entails, should not be profoundly altered by a possible reform of Article 230 § 4 TEC. Some members have referred to the possibility of a provision in the Treaty on the obligation of Member States, as spelt out in recent case law<sup>1</sup>, to provide for effective remedies for rights derived from Union law.

In any event, while the issue of Article 230 § 4 TEC certainly has a nexus with fundamental rights, it transcends the protection of those rights - as judicial protection must exist for *all* subjective rights -, and it arises quite independently of the concrete questions of the incorporation of the Charter and accession to the ECHR. The Group considers that this issue and its institutional implications must be examined together with other topics such as the limits of Court jurisdiction in Justice and Home affairs<sup>2</sup> or judicial control of subsidiarity. The Group therefore refrains from making concrete recommendations and commends the question of possible reform in Article 230 § 4 TEC, together with the valuable contributions submitted thereon<sup>3</sup>, for further examination by the Convention in an appropriate context.

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<sup>1</sup> Judgment of the Court of Justice of 25 July 2002, C-50/00 P, UPA, at paras 41, 42. It should also be recalled that the Court noted in this judgment that, while it is possible to envisage a system of judicial review of the legality of Community measures of general application different from that established by the Treaty, it is for the Member States, if necessary, in accordance with Article 48 TEU, to reform the system currently in force.

<sup>2</sup> In this connection, attention is drawn to expert testimony given to the Group reflecting concerns, from a perspective of protection of fundamental rights, about these limits as presently contained in Article 68 TEC and Article 35 TEU in an area as sensitive to fundamental rights as Justice and Home affairs, and on limits of judicial control over Union bodies such as Europol; see the hearing of Judge Skouris (WD N° 19) and of Mr. Schoo of 23 July 2002 (WD N° 13), as well as WD N° 20 of Mr. Ben Fayot presenting a note by Advocate-General Francis Jacobs.

<sup>3</sup> See, comprehensively on judicial and non judicial remedies, doc. CONV 221/02 CONTRIB 76 of Mr. Söderman; specifically on Art. 230: CONV 45/02 CONTRIB 25 by Mr. Hannes Farnleitner; the Group's WD N° 17 by Mr. Jürgen Meyer; WD N° 20 of Mr. Ben Fayot presenting a note by Advocate-General Francis Jacobs; the hearing of Judge Skouris (WD N° 19); the hearing of Mr. Schoo (WD N° 13); and an overview of the debate and options in WD N° 21 by the Group's Chairman.

ANNEX***Proposals by the Working Group for drafting adjustments in the horizontal articles of the Charter<sup>1</sup>:***

Article 51 (1):

"The provisions of this Charter are addressed to the institutions and bodies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers **and respecting the limits of the powers of the Union as conferred on it by other parts of [this Treaty / the Constitutional Treaty].**"

Article 51 (2):

"This Charter does not **extend the scope of application of Union law beyond the powers of the Union or** establish any new power or task for [the Community or] the Union or modify powers and tasks defined **by the other [Chapters / parts] of [this Treaty / the Constitutional Treaty].**"

*add to Article 52:*

**"52(4) Insofar as this Charter recognises fundamental rights as they result from the constitutional traditions common to the Member States, those rights shall be interpreted in harmony with those traditions."**

**"52 (5) The provisions of this Charter which contain principles may be implemented by legislative and executive acts taken by institutions and bodies of the Union, and by acts of Member States when they are implementing Union law, in the exercise of their respective powers. They shall be judicially cognisable only in the interpretation of such acts and in the ruling on their legality."**

**"52 (6) Full account shall be taken of national laws and practices as specified in this Charter."**

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<sup>1</sup> The wording in brackets depends on the exact final Treaty architecture.



*the european convention*

# Points no. 4

Main points of the report by the Working Group on the Charter submitted to the European Convention at its plenary session on 28 and 29 October 2002.

Chairman of the Working Group: Mr António Vitorino

## FUNDAMENTAL RIGHTS: AN INTEGRAL PART OF THE FUTURE CONSTITUTIONAL TREATY

The Working Group on the Charter considers it essential that fundamental rights be enshrined in the future constitutional treaty. That premise was basic to the proceedings of the Working Group, which had to provide answers to two questions:

- should the Charter of Fundamental Rights of the European Union be incorporated into the constitutional treaty ?
- should the European Union be able to accede to the European Convention on Human Rights?

**The Working Group would answer both questions in the affirmative.**

The Charter of Fundamental Rights of the European Union concerns the Union's institutions and bodies and the Member States when they are implementing Union law (see over). Regarding incorporation of the Charter into the future treaty, the Working Group stresses that:

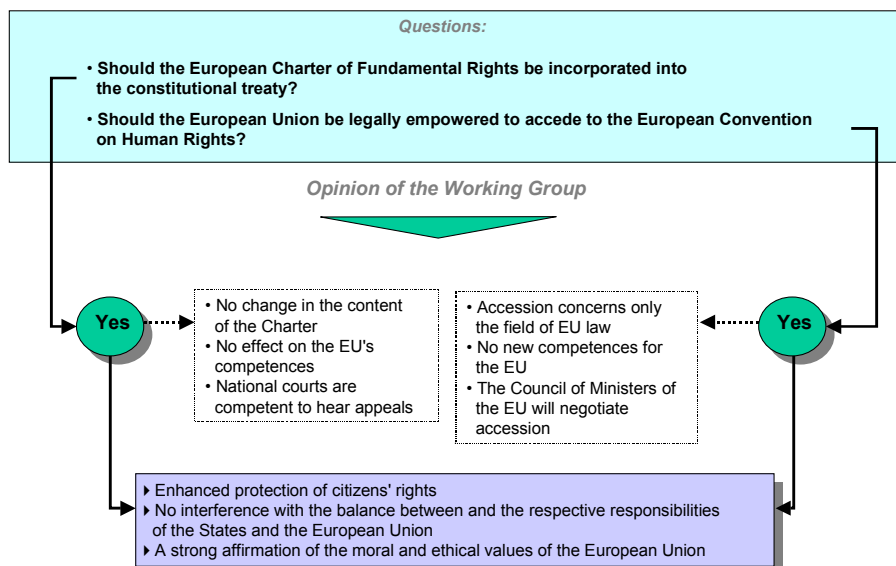
- ▶ no new competences will thereby be conferred on the European Union;
- ▶ the substance of the Charter will not thereby be altered. All that will probably be necessary is a few technical adjustments to the text of the Charter to ensure that it is fully compatible with the EC Treaty;
- ▶ if the Charter becomes a binding text, jurisdiction in actions relating thereto will lie principally with the courts of the Member States, although in certain cases the European Court of Justice will also be competent.

As for the possibility (unconnected with incorporation of the Charter into the Treaty) of European Union accession to the European Convention on Human Rights (ECHR), it will be for the Council of Ministers of the European Union to decide unanimously when and how accession might take place.

The Working Group suggests that a legal basis be created to make this accession possible. Accession would:

- ▶ give citizens the same degree of protection of their fundamental rights at Union level as they enjoy in their own countries;
- ▶ have effect only insofar as the law of the European Union is concerned;
- ▶ create no new competences;
- ▶ not mean that the European Union would become a member of the Council of Europe;
- ▶ not affect the individual positions of the Member States with respect to the ECHR.

Incorporation of the Charter into the Treaty and the ability of the Union to accede to the European Convention on Human Rights would enhance the protection of the fundamental rights of citizens vis-à-vis action at European level and highlight the moral and ethical commitments of the European Union.



The text of the Charter : [http://europa.eu.int/comm/justice\\_home/unit/charte/pdf/charter\\_en.pdf](http://europa.eu.int/comm/justice_home/unit/charte/pdf/charter_en.pdf).

The report by the Working Group on the Charter can be found at the following address: <http://european-convention.eu.int>

**THE EUROPEAN CONVENTION****Brussels, 25 October 2002**

THE SECRETARIAT

**CONV 368/02****CONTRIB 128****COVER NOTE**

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from Secretariat

to The Convention

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**Subject :** **Contribution from Mr Iñigo Méndez de Vigo, Mr Klaus Hänsch and Mr Andrew Duff, members of the Convention**  
**"European Parliament resolution on the impact of the Charter of Fundamental Rights of the European Union and its future status"**

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The Secretary-General of the Convention has received the attached contribution from Mr Iñigo Méndez de Vigo, Mr Klaus Hänsch and Mr Andrew Duff, members of the Convention.



**ANNEX****P5\_TA-PROV(2002)0508****European Union Charter of Fundamental Rights****European Parliament resolution on the impact of the Charter of Fundamental Rights of the European Union and its future status (2002/2139(INI))**

*The European Parliament,*

- having regard to its resolution of 16 March 2000 on the drafting of a Charter of Fundamental Rights of the European Union,<sup>1</sup>
- having regard to its assent to the draft Charter of Fundamental Rights of the European Union on 14 November 2000,<sup>2</sup>
- having regard to Rule 163 on 14 November 2000 of its Rules of Procedure,
- having regard to the report of the Committee on Constitutional Affairs and the opinion of the Committee on Legal Affairs and the Internal Market, the opinion of the Committee on Women's rights and Equal Opportunities and the opinion of the Committee on Petitions (A5-0332/2002),

Whereas:

***Legitimacy of the Charter***

- A. The Treaty of Maastricht (1992) first made provision for the concept of European Union citizenship and established, in Article 6(2), that the Union should 'respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law'.<sup>3</sup> For the next decade progress was made in developing the Union's human rights profile mainly in its external policies, but also in the Copenhagen criteria for enlargement (1993);
- B. In June 1999 the European Council of Cologne agreed to establish a Charter of Fundamental Rights of the Union 'in order to make their overriding importance and relevance more visible to the Union's citizens'. It resolved that once the Charter had been proclaimed 'it will then have to be considered whether and, if so, how the Charter should be integrated into the treaties'. To draft the Charter the European Council convened an ad hoc body (that decided to call itself a Convention) made up of representatives of the Heads of State and Government and representatives of the President of the Commission, and Members of the European

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<sup>1</sup> OJ C 377, 29.12.2000, p. 329.

<sup>2</sup> OJ C 223, 8.8.2001, p. 74.

<sup>3</sup> The European Court of Justice had already considered fundamental rights to be part of the general principles of Community law at least since 1969 (*Stauder v. City of Ulm*).

Parliament and of national parliaments,

- C. The Convention worked from 17 December 1999 until 2 October 2000 under the chairmanship of Roman Herzog, former Federal President of the Federal Republic of Germany. The European Council developed the mandate of the Convention at its meeting in Tampere in October 1999 and reviewed progress at Feira in June 2000. The Convention worked in a very open manner and consulted widely. Notwithstanding the question of the Charter's ultimate status, it decided, famously, to work 'as if' it were drafting a legally binding juridical text and with the express intention of ensuring legal certainty. The Convention precisely fulfilled its mandate from the European Council, which, in turn, unanimously accepted the draft Charter at Biarritz on 13-14 October 2000;
- D. After having received the affirmation of the European Parliament (14 November 2000) and Commission (6 December 2000), as well as that of several national parliaments, the Charter was solemnly proclaimed by the presidents of the three EU institutions at Nice on 7 December 2000. The Intergovernmental Conference also committed itself to considering the future status of the Charter in a year's time as one of four specific items of further constitutional reform of the Union to be concluded in a new IGC in 2004;
- E. In the Laeken Declaration of 15 December 2001 the European Council established a constitutional Convention with legitimacy corresponding to that of the Charter Convention, under the chairmanship of Valéry Giscard d'Estaing, former President of the French Republic, to consider, among other things, whether the Charter 'should be included in the basic treaty and ... whether the European Community should accede to the European Convention on Human Rights';
- F. The Convention has set up a working group under the chairmanship of Commissioner Vitorino to deal with the modalities and consequences of the incorporation of the Charter into the Treaty and accession by the EC/EU to the European Court of Human Rights<sup>1</sup>;

### *Content*

- G. The Charter embraces the classical human rights of the ECHR as developed by the jurisprudence of the European Court of Human Rights in Strasbourg. It has a much wider scope, however. First, as befits a catalogue of rights that stem from the competence of the European Union as laid down in the Treaties and as developed by the case law of the European Court of Justice in Luxembourg. Second, importantly, the Charter reaffirms the rights and principles resulting from the constitutional traditions and international treaty obligations common to Member States. Third, the Charter addresses modern scientific and technological developments. Fourth, the Charter fully reflects and respects the European social model;

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<sup>1</sup> For the mandate of the working group see CONV 72/02, and for a paper on modalities CONV 116/02.

- H. Like the Bills of Rights common to the constitutions of most Member States, the Charter draws together in a single text a comprehensive catalogue of not only specific rights but also general freedoms, values and principles. In style, form and precision it is a familiar document;
- I. While the Charter was not intended to create new rights, it succeeded in making existing rights more visible. In building a fresh, large consensus around a new formulation of rights, the Charter brings greater clarity and salience to them. It reflects contemporary European norms of good governance with respect to equality and anti-discrimination, social policy, ecology, civic rights, administration and justice. The rights are indivisible: in Europe, liberty, equality and solidarity hang together;
- J. The Charter is a dynamic document, seeking, as in the Preamble, to “strengthen the protection of fundamental rights in the light of changes in society, social progress and scientific and technological developments”. Its purpose is to assist the Union in its task of further developing common values while respecting the diversity of national identities. Its formulation allows for the future development of the *acquis communautaire*;
- K. The Charter, therefore, has a durable quality. Despite its unsettled legal status, it was fully legitimised by the manner of its drafting, and it was designed to last. While no such constitutional document can be perfect, and all such documents must be amendable, to open it up now for revision, especially so early in its life, might reduce its integrity and moral force. Experience of the application of a mandatory Charter is needed before amendment can be contemplated. In any case, the current Convention has not been mandated by the Laeken Declaration to re-write the Charter; it should be made clear that such a revision can only be carried out using, at the very least, the same method as for revision of other constitutional provisions,
- L. There may nevertheless have to be some technical changes made to the Charter in relation to the 'horizontal clauses' to enable it to be incorporated in the Treaty;

### *Scope*

- M. The Charter does not attribute competence to the Union. On the contrary, it has the effect of limiting the exercise of power by the EU institutions because of their obligation to respect the Charter. The institutions also have the duty within their competence to promote respect for the provisions of the Charter;
- N. The Charter does not limit the competences of Member States under the Treaties. It is not a substitute for the fundamental rights regimes of Member States, but a complement to them;
- O. The Charter is addressed to the institutions and bodies (and agencies) of the European Union and the Member States when and in so far as they implement Union law and policy;
- P. In so far as the Charter postulates a direct relationship between the citizen on the one hand and supranational authority on the other, it will help the Union respect the principle of subsidiarity. The Charter should set the tone for the whole constitutional settlement;

*Effect*

- Q. Although the Charter is not directly justiciable, its status as a solemn proclamation means that it has already become, as expected, an important reference document. It is respected by the EU institutions and is invoked by both Member States and citizens<sup>1</sup>, in particular through the petitions submitted to the European Parliament and the complaints lodged with the European Ombudsman. The Commission is determined to regard the Charter as binding upon itself and instituted internal procedures to ensure compliance with its provisions.<sup>2</sup> It treats the Charter as a general principle of Community law. In making legislative proposals, the Commission lays claim to have respected the Charter on a systematic basis<sup>3</sup>;
- R. The Council has not yet chosen to regard the Charter as mandatory, but it has referred expressly to the Charter in four Decisions and in two Resolutions<sup>4</sup>;
- S. Rule 58 of its Rules of Procedure states that Parliament shall pay particular attention to ensuring that legislative acts are in conformity with the Charter of Fundamental Rights; furthermore, Parliament has used the Charter as a template for its annual reviews of the situation as regards fundamental rights in the EU; references to the Charter have appeared frequently in the Parliament's reports and resolutions, as well as in MEPs' questions to the Commission and Council;
- T. Three acts adopted under the codecision procedure have also relied on references to the Charter (access to documents, social exclusion and financial collateral).<sup>5</sup> Numerous others are pending;
- U. The Ombudsman and the Committee on Petitions have received many petitions and approaches from citizens citing the Charter, although there are numerous apparent misunderstandings of its scope or level of protection. Nevertheless they have been in the forefront of those who have actively deployed the Charter in the interests of the citizen. They have upheld complaints and used their powers of own initiative over discrimination in the recruitment and employment policies of the EU institutions in respect of age, sex, race, freedom of expression and parental leave. They also apply systematically the Code of Good Administrative Behaviour to seek to give effect to the provisions of the Charter. They consider that the Charter should be binding whenever Community law is being applied. The

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<sup>1</sup> See for example judgment of the Court of Justice, 10.9.2001, Case C-377/98, Netherlands v. Parliament and Council.

<sup>2</sup> Commission Communication, Application de la Charte, SEC(2001)380/3, 13 March 2001.

<sup>3</sup> Draft acts in which articles of the Charter are cited cover competition policy, labour conditions, data protection, scientific research, asylum and refugee policy, advertising and sponsorship of tobacco, drug trafficking, parental responsibility and the rights of the child, access to justice, the arrest warrant, disabilities, health protection, racism and xenophobia, and staff regulations.

<sup>4</sup> Council Decision 2001/903/EC of 3 December 2001 on the European Year of People with Disabilities 2003; Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime; Council Framework Decision 2002/475/JHA on combating terrorism; Council Framework Decision 2002/584/JHA on the Europe arrest warrant and the surrender procedures between Member States and Council resolutions 2002/C50/01 and 2002/C163/01 on languages and life-long learning.

<sup>5</sup> Respectively, Regulation (EC) No 1049/2001; Decision No 50/2002/EC; Directive No 2002/47/EC.

Committee on Petitions and the European Ombudsman and his network of national ombudsmen could play an important role in promoting and monitoring the implementation of the Charter, and the Ombudsman could be empowered to refer important fundamental rights cases to the Court of Justice;

- V. There have been several attempts to call the Charter in aid of litigation in the European Courts. Advocates-General are making an increased number of references to the Charter in their Opinions, and it has become an important source of guidance for the judges.<sup>1</sup> In one case the Court of First Instance has decided that the Charter confirms a right to judicial review as a general principle of Community law.<sup>2</sup> In another case, the same Court, citing the Charter, has sought to widen the access to effective judicial remedy of a party directly but not individually concerned<sup>3</sup>; even though the Court of Justice has ruled against that interpretation because it would cause the Community courts to go beyond their competences<sup>4</sup>, it has nevertheless, at the same time, suggested amending the Treaty accordingly<sup>5</sup>. The European Court of Human Rights has also begun to make positive references to the Charter<sup>6</sup>;
- W. Not only the European Parliament and Commission<sup>7</sup> but also the Economic and Social Committee and the Committee of the Regions have called for the Charter to become legally binding. This powerful message was recently reinforced by the Convention's Civil Society Forum and Youth Convention;

### *Consonance with ECHR*

- X. Fears the Charter would pose a threat to the credibility of the ECHR and the European Court of Human Rights have not been realised. The jurisdiction of the Strasbourg court provides an external monitoring of and the assertion of minimum standards upon the human rights performance of the 44 States of the Council of Europe. The jurisdiction of the Luxembourg court provides an internal control on and an insistence on a high level of respect for human rights within the European Union's legal space. The significance of the Charter is that it provides for a more extensive rights-based regime within the European Union;
- Y. As has been said repeatedly by both the European Parliament and the Parliamentary Assembly of the Council of Europe, the best means of ensuring coherence between the ECHR and EU human rights law would be for the Union to accede to the former. It is important to remove the anomaly whereby the EU, which enjoys competences attributed by its Member States. Is not a high contracting party to the ECHR alongside those same Member States. If it were to sign up to the ECHR, the EU would be subject to the same external control in respect of human rights as that of its Member States. On the one hand, the existence of the Charter makes EU accession to the ECHR neither unnecessary nor irrelevant. Accession is desirable

<sup>1</sup> See for example the Opinions of Advocate General Tizzano in C-173/99, BECTU and Leger in C-353/99, Hautala.

<sup>2</sup> T-54/99, Max.mobil.

<sup>3</sup> T-177/01, Jégo-Quééré.

<sup>4</sup> Judgment 25 July 2002, Case C-50/00 P, Unión de Pequeños Agricultores, Rn. 44 f.

<sup>5</sup> Judgment 25 July 2002, Case C-50/00 P, Unión de Pequeños Agricultores, Rn. 45 f.

<sup>6</sup> ECHR Application no. 25680/94, Judgment 11 July 2002.

<sup>7</sup> COM(2000) 644.

for its own sake whatever the status of the Charter. On the other hand, accession to the ECHR does not render the incorporation of the Charter into the Treaty any less necessary or relevant; considers this accession as a forerunner to other EU accessions to international instruments for the protection of fundamental human rights;

- Z. Even after accession of the EU to the ECHR, the European Court of Justice would remain the court of last instance for Community law. Its relationship with the European Court of Human Rights would be exactly the same as that of national supreme or constitutional courts who recognise the role of the European Court of Human Rights to verify consistency and compatibility with pan-European human rights norms. The European Union, once endowed with international legal personality, would be represented directly at the Court of Human Rights, thereby strengthening the authority and autonomy of both the European Court of Justice and the European Court of Human Rights;
1. Notes that the procedure adopted for the Charter's creation, in conjunction with the wide use made of it by the institutions already, courts and citizens, invests it with great authority; believes that the Charter's effectiveness would be significantly strengthened if the rights laid down in it were to become enforceable under EU law before the courts;
  2. Urges the Convention to enhance legal certainty and end political confusion as to the Charter's scope and level of protection by giving it the status of primary law, thereby making it a central reference point for the Court of Justice and national courts; to this end, stresses that the Charter should be incorporated into the constitutional law of the European Union;
  3. Warns of the dangers of refusing to make the Charter mandatory upon all the EU institutions, bodies and agencies and on Member States when and in so far as they implement EU law and policy, thereby disappointing the expectations of European citizens;
  4. Maintains that an increased status for the Charter is highly desirable in the context of enlargement because it will serve to enshrine a fundamental rights regime at the heart of the European integration process thereby reassuring old, new and potential Member States alike;
  5. Points out that making the Charter binding will initiate a new phase in the development of EU citizenship and that, in order to protect the citizen from any abuse by the European Union of its enlarged powers, judicial remedies will need to be developed;
  6. Proposes, therefore, that the Convention, in close consultation with the Courts, draws up measures to improve direct access to the Court of First Instance (with a right of appeal to the Court of Justice) to enhance the legal protection of individuals; believes that national courts in the Member States and candidate countries must be made more aware of their obligation to deploy the Charter on behalf of the citizen;
  7. Finds it unthinkable to have a modern constitution of the European Union without a binding Bill of Rights, and takes the view that if the Convention drafts a new treaty without the Charter it will fall short of having the constitutional effect which is both necessary and desirable;
  8. Believes that the Charter should be incorporated in the new constitutional treaty without making any changes to its provisions;

9. Notes that the Charter once incorporated should be amendable only according to the most solemn constitutional provisions; insists that any subsequent development of the Charter must be drafted by a new special Convention, to be established at a later stage;
  10. Expects that such a new Convention would be gender-balanced and would work to reinforce the principle of equality between the sexes;
  11. Acknowledges the already good collaboration between the Court of Justice and the European Court of Human Rights; reiterates its support for the opening of accession negotiations by the Union, to become a high contracting party to the ECHR and other international instruments in the field of human rights;
  12. Recalls that European Union accession to the ECHR is a complement to and not a substitute for the granting of mandatory status to the Charter under EU law, both actions being necessary and timely;
  13. Invites the European Parliamentary delegation to the Convention to submit this resolution as a formal contribution to the Convention;
  14. Instructs its President to forward this resolution to the Council, the Commission, the governments and parliaments of the Member States and candidate countries, the Court of Justice and the European Court of Human Rights.
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**THE EUROPEAN CONVENTION**

THE SECRETARIAT

**Brussels, 28 October 2002**

**(OR. fr)**

**CONV 369/02**

**COVER NOTE**

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from Praesidium

to The Convention

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**Subject : Preliminary draft Constitutional Treaty**

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Attached is the preliminary draft Constitutional Treaty, drawn up by the Praesidium, which the President will present at the Plenary session on 28 October 2002.



## *Preliminary draft*

*[The aim of this text is to illustrate the possible articulation of a treaty. The inclusion (or non inclusion) in Part I of some articles, and the exact content of others, will depend on the Convention's proceedings. Their treatment in this text is in no way intended to prejudge the result of the Convention's debates.]*

# **TREATY** **ESTABLISHING A CONSTITUTION FOR EUROPE**

## **A. TABLE OF CONTENTS**

### **PREAMBLE**

### **PART ONE: CONSTITUTIONAL STRUCTURE**

#### **Title I: Definition and objectives of the Union**

Article 1: Creation of the [European Community, European Union, United States of Europe, United Europe] <sup>1</sup>

Article 2: Values

Article 3: Objectives

Article 4: Legal personality

#### **Title II: Union citizenship and fundamental rights**

Article 5: Citizenship of the Union

Article 6: Charter of Fundamental Rights

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<sup>1</sup> References to "Union" would be replaced throughout the text by "European Community", "European Union", "United States of Europe" or "United Europe", if it were decided to change the Union's name.

**Title III: Union competences and actions**

- Article 7: Fundamental principles: conferred competence, subsidiarity, proportionality.
- Article 8: Respect for fundamental principles: the limits of conferred competence. Monitoring subsidiarity and proportionality. Primacy of Community law. Evolution over time.
- Article 9: Categories of competences: definition.
- Article 10: Exclusive competences.
- Article 11: Shared competences.
- Article 12: Areas for supporting action.
- Article 13: Common foreign and security policy; common defence policy; policy on police matters and crime.

**Title IV: Union institutions**

- Article 14: The institutional structure common to actions conducted by the Union and to those conducted jointly by the Member States within the Union framework.
- Article 15: European Council: composition, role, missions.
- Article 15 bis Presidency of the European Council.
- Article 16: European Parliament: composition, attributions.
- Article 17: Council: composition, attributions.
- Article 17 bis Presidency of the Council.
- Article 18: Commission: composition; attributions (sole power of proposal).
- Article 18 bis Presidency of the Commission.
- Article 19: Congress of the Peoples of Europe.
- Article 20: Court of Justice.
- Article 21: Court of Auditors.
- Article 22: European Central Bank.
- Article 23: The Union's advisory bodies.

**Title V: Implementation of Union action**

Article 24: The instruments of the Union: e.g. European laws, framework laws, European decisions (precise list to reflect the conclusions of Working Group IX).

Article 25: Legislative procedures: adoption of laws and framework laws.

Article 26: Procedures for the adoption of decisions.

Article 27: Procedures for the adoption of implementing measures.

Article 28: Procedures for implementing supporting actions (including programmes), and monitoring them.

Article 29: Common foreign and security policy.

Article 30: Common defence policy.

Article 31: Policy on police matters and crime.

Article 32: Enhanced cooperation.

**Title VI: The democratic life of the Union**

Article 33: The principle of democratic equality among Union citizens.

Article 34: The principle of participatory democracy.

Article 35: Uniform electoral law for European Parliament elections.

Article 36: Transparency of the Union's legislative debates.

Article 37: Voting rules in Union institutions. Implementation of the possibility of "constructive abstention", and its consequences.

**Title VII: Union finances**

Article 38: The Union's resources.

Article 39: The principle of budgetary balance.

Article 40: The Union's budgetary procedure.

**Title VIII: Union action in the world**

Article 41: The external representation of the Union.

**Title IX: The Union and its immediate environment**

Article 42: Privileged relations between the Union and neighbouring States.

**Title X: Union Membership**

Article 43: A Union open to all the European States which strictly respect its values and fundamental rights and accept its rules of operation.

Article 44: Procedure for accession to the Union.

Article 45: Suspension of Union membership rights.

Article 46: Withdrawal from the Union.

**PART TWO: UNION POLICIES AND THEIR IMPLEMENTATION**

*This part would contain the legal bases. For each area it should specify the type of competence (Title III) and the acts and procedures (Title V) to be applied, in line with what is decided for Part I. Technical amendments will be necessary to ensure that Part II correctly matches Part I.*

**A. POLICIES AND INTERNAL ACTION****A1. INTERNAL MARKET**

- I. Free movement of persons and services
  1. Workers;
  2. Freedom of establishment;
  3. Freedom to provide services;
  4. Visas, asylum and immigration and other policies related to the movement of persons.
- II. Free movement of goods
  1. Customs union;
  2. Prohibition of quantitative restrictions.

- III. Capital and payments
- IV. Harmonisation of legislation.

## **A2. ECONOMIC AND MONETARY POLICY**

## **A3. POLICIES IN OTHER SPECIFIC AREAS**

- I. Competition rules
- II. Social policy
- III. Economic and social cohesion
- IV. Agriculture and fisheries
- V. Environment
- VI. Consumer protection
- VII. Transport
- VII. Trans-European networks
- IX. R and D.

## **A4. INTERNAL SECURITY**

Policy on police matters, and against crime

## **A5. AREAS WHERE THE UNION MAY TAKE SUPPORTING ACTION**

- I. Employment
- II. Public health
- III. Industry
- IV. Culture
- V. Education, professional training, youth

## **B. EXTERNAL ACTION**

- I. Commercial policy
- II. Development cooperation
- III. External aspects of policies covered in Chapters A1 to A4

- IV. Common foreign and security policy
  - 1. Foreign policy
  - 2. Crisis management
- V. The conclusion of international agreements

C. **DEFENCE**

D. **THE FUNCTIONING OF THE UNION**

Institutional and procedural provisions; budgetary provisions.<sup>1</sup>

**PART THREE: GENERAL AND FINAL PROVISIONS**

**Last Title:** Repeal of previous treaties. Legal continuity in relation to the European Community and the European Union.

Territorial application

Protocols

Revision procedures

Adoption, ratification, and entry into force

Duration

Languages.

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<sup>1</sup> The extent of the institutional and procedural provisions in this (2nd) Part will depend on the degree of detail in Part 1. One could also envisage that such provisions in this Part would deal only with inter-institutional procedures: provisions concerning arrangements internal to the institutions could be set out in Protocols.

## **B. SUMMARY DESCRIPTION**

### **PART ONE: CONSTITUTIONAL STRUCTURE**

#### **PREAMBLE**

#### **TITLE I: DEFINITION AND OBJECTIVES OF THE UNION**

##### **Article 1**

- Decision to establish [an entity called the European Community, European Union, United States of Europe, United Europe].
- A Union of European States which, while retaining their national identities, closely coordinate their policies at the European level, and administer certain common competences on a federal basis.
- Recognition of the diversity of the Union.
- A Union open to all European States which share the same values and commit themselves to promote them jointly.

##### **Article 2**

This article sets out the values of the Union: human dignity, fundamental rights, democracy, the rule of law, tolerance, respect for obligations and for international law.

##### **Article 3**

###### Objectives of the Union

This article establishes the general objectives, such as:

- protection of the common values, interests and independence of the Union
- promotion of economic and social cohesion
- strengthening of the internal market, and of economic and monetary union

- promotion of a high level of employment and a high degree of social protection
- a high level of environmental protection
- encouragement for technological and scientific progress
- creation of an area of liberty, security and justice
- development of a common foreign and security policy, and a common defence policy, to defend and promote the Union's values in the wider world.

These objectives shall be pursued by appropriate means, depending on whether competences are allocated wholly or partly to the Union, or exercised jointly by the Member States.

#### **Article 4**

Explicit recognition of the legal personality of the [European Community/Union, United States of Europe, United Europe]

### **TITLE II: UNION CITIZENSHIP AND FUNDAMENTAL RIGHTS**

#### **Article 5**

This article establishes and defines Union citizenship: every citizen of a Member State is a citizen of the Union; enjoys dual citizenship, national citizenship and European citizenship; and is free to use either, as he or she chooses; with the rights and duties attaching to each.

The article sets out the rights attaching to European citizenship (movement, residence, the right to vote and to stand as a candidate in municipal elections and elections to the European Parliament, diplomatic protection in third countries, right of petition, right to write to, and obtain a reply from, the European institutions in one's own language).

The article establishes the principle that there shall be no discrimination between citizens of the Union on grounds of nationality.



**Article 6**

The wording of this article will depend on the proceedings of the Working Group on the Charter.

It could be modelled on Article 6 of the Treaty on European Union.

It could:

- either refer to the Charter;
- or state the principle that the Charter is an integral part of the Constitution, with the articles of the Charter being set out in another part of the Treaty or in an annexed protocol;
- or incorporate all the articles of the Charter.

**TITLE III: UNION COMPETENCE AND ACTIONS****Article 7**

This article sets out the principles of Union action, which must be carried out in accordance with the provisions of the treaty, within the limits of the competences conferred by the treaty, and in compliance with the principles of subsidiarity and proportionality.

**Article 8**

This article establishes the principle that any competence not conferred on the Union by the Constitution rests with the Member States.

It establishes the primacy of Union law in the exercise of the competences conferred on the Union.

It would set out the rules for effective monitoring of subsidiarity and proportionality. The role of National Parliaments in this respect would be mentioned.

It determines the rules governing the adaptability of the system (Article 308).

It sets out the obligation of loyal cooperation of Member States vis-à-vis the Union, and the principle that the acts of the Institutions are implemented by the Member States.

**THE EUROPEAN CONVENTION**

THE SECRETARIAT

**Brussels, 20 January 2003****CONV 495/03****CONTRIB 198****COVER NOTE**

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from Secretariat  
to The Convention

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**Subject : Contribution submitted by Mr Erwin Teufel, member of the Convention:  
"Freiburg Draft of a European Constitutional Treaty"**

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The Secretary-General of the Convention has received the contribution annexed hereto from Mr Erwin Teufel, member of the Convention.

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ANNEX

# FREIBURG DRAFT OF A EUROPEAN CONSTITUTIONAL TREATY

Status: November 12, 2002

## Preface

This draft of a European Constitutional Treaty has been prepared on the basis of intensive discussions in the framework of a Franco-German working group. It is the result of an academic research project; it is not a mandated expert opinion or an advisory paper for any specific institution.

The following people were members of the research working group:

Prof. *Jean François Flauss*, Strassbourg/Lausanne;

*Jean Marie Woehrling*, General Secretary of the Commission Centrale pour la Navigation du Rhin, Strassbourg;

*Johannes Schoo*, Director in the Legal Service of the European Parliament, Luxembourg;

Prof. Dr. *Jürgen Schwarze*, Europa-Institute Freiburg e. V.;

the research assistants of Freiburg University *Nicolai Böcker*, *Sebastian Strohmayer*, *Lukas Wasielewski*.

This draft was translated into English by Dr. *Marcus Geiss* and *Quynh Hoang*.

Dr. *Karl von Wogau*, MEP, Strassbourg; Dr. *Jan-Peter Hix*, Legal Service of the Council, Brussels, as well as *Florian Schmidt*, LL.M., also research assistant in Freiburg, took part in the deliberations of the working group from time to time.

Insofar as expert opinions of the members of the working group have found their way into the draft, such expertise reflects their personal opinion only.

The seeds of this project were sown by a comparative research project which was carried out by the undersigned in cooperation with research teams from five other Member States of the EU.

This earlier project arrived at the conclusion that, despite all the differences in terms of historical development and conceptual features, there was clear evidence for an approximation of the analyzed national constitutional orders in particular due to the requirements of European integration which meant the time seemed right to draft a European Constitutional Treaty.

The results of the above mentioned research project on constitutional law have been published in their entirety in 2000 by the Nomos Verlag, Baden-Baden in a tome called "Die Entstehung einer europäischen Verfassungsordnung" (ed. J. Schwarze).

They are also available in an English language version („The Birth of a European Constitutional Order", Nomos-Verlag, Baden-Baden 2001) and a French edition („La naissance d'un ordre constitutionnel européen", Nomos Verlag, Baden-Baden 2001).

The idea for the current project which has resulted in this draft of a European Constitutional Treaty was born at a time when the Constitutional Convent which is now chaired by the former French President Giscard d'Estaing was not even agreed upon let alone constituted.

In keeping with the earlier project, this research project has again been kindly sponsored by the Fritz Thyssen Stiftung.

This draft follows the model of a treaty dichotomy, i.e. the separation into two component parts: One (fundamental) part consisting of the actual Constitutional Treaty which is complemented by a second Treaty on the Policies of the Union. Specific amendments and modifications notwithstanding, the rules of the existing Treaties are contained in the Treaty on the Policies of the Union. This differentiation would have the following consequences: As far as the Treaty on the Policies of the Union is concerned, there would be special rules that would allow for easier treaty amendments in the future – albeit subject to the continued requirement for unanimity of the Member States. In keeping with the aims and the nature of the research project, the draft presented hereafter only contains the (fundamental) Treaty for a European Constitution. This approach is justified particularly in view of the fact that the necessary amendments within the Treaty on the Policies of the Union are mainly technical in nature.

The draft focuses on four issues which have been identified in the course of the meetings of the European Council at Nice and Laeken as having priority for the European constitutional reform:

1. A better delimitation of competencies between the Union and its Member States.
2. An improved standard for the protection of human rights by recourse to the Charter of Fundamental Rights.
3. The simplification of the Treaties.
4. The reform of the institutional structure involving the national parliaments.

This draft offers a workable model and proposals regarding these key issues. Furthermore, it proposes certain material modifications towards a reform of the Treaties, based on the extended remit of Laeken. These modifications notwithstanding, the draft is largely based on the current primary law, aiming predominantly at a simplification of the text of the Treaty.

The work of the Convention hitherto has been taken into account in this draft. We reserve the right to continue to amend and modify the presented draft text in the course of the further deliberations of the Convention and in view of the evolving European public debate.

A preliminary draft of this text was discussed on October 11/12, 2002 in Freiburg by a larger group of experts. We now present an updated version. It is to be hoped that the Freiburg Draft will not only serve to inspire academic debate but may also be of use for the deliberations of the Convention and the subsequent Intergovernmental Conference.

Freiburg, November 12, 2002

Jürgen Schwarze

## Table of Contents

### A. Fundamental Provisions

### B. The Competencies of the Union

Title 1: General Provisions

Title 2: The Internal Market

Title 3: The Economic and Monetary Union

Title 4: Justice and Home Affairs

### C. The Institutions and Advisory Bodies of the Union

Title 1: The European Parliament

Title 2: The European Council

Title 3: The Council

Title 4: The Commission

Title 5: The Judiciary

Title 6: The Court of Auditors

Title 7: The Advisory Bodies

Chapter 1: The Committee of the Regions

Chapter 2: The Economic and Social Committee

Title 8: Common Provisions

### D. Legislation and Administration

### E. The Financial Constitution of the Union

### F. The International Relations of the Union

Title 1: General Provisions

Title 2: Special Provisions for the Common Foreign and Security Policy

### G. Enhanced Cooperation

### H. Final Provisions

## Section A: Fundamental Provisions

### Art. 1 [Treaty on the Constitution for the European Union]

- (1) Through this Treaty the Member States establish a Constitution for the European Union
- (2) Continuing the process of European integration achieved so far, the Union aims to promote the peaceful co-existence of the peoples in a spirit of open-minded international cooperation, to safeguard a closer unity of the Member States within a uniform institutional framework and to secure economic welfare as well as social balance in an internal market. The Union shall place the citizens of the Union at the heart of its activities.
- (3) This Treaty provides the foundations for the activities of the Union and limits the exercise of its competencies vis-à-vis the Member States and the citizens of the Union.
- (4) The Union has legal personality.

### Art. 2 [Fundamental Provisions of the Union]

- (1) The Union is founded on the principles which are common to the legal orders of all the Member States, i.e. the principles of liberty, democracy, the rule of law, respect for human rights and fundamental freedoms, solidarity and compliance with the rules of public international law. It shall take its decisions as openly and as close to the citizens as possible.
- (2) The Union shall respect the national identity and the organisational structure of its Member States. It shall respect the variety of the cultures and traditions of the peoples of Europe.
- (3) The Member States and the Union are committed to exercising their respective competencies in a spirit of mutual loyalty. The Member States are also obliged to cooperate loyally amongst themselves.

### Art. 3 [Primacy and Direct Effect of the Union Law]

- (1) The Union law shall prevail over the law of the Member States.
- (2) Insofar as Union law places direct and unconditional obligations on the Member States, it shall also have direct effect for the individual.

### Art. 4 [Fundamental Rights]

- (1) In consideration of the common constitutional traditions of the Member States and the guarantees enshrined in the European Convention on Human Rights, the Union respects the human rights as contained in the Charter of Fundamental Rights solemnly proclaimed at Nice on December 7, 2000.
- (2) The Charter of Fundamental Rights is part of this Constitutional Treaty. It aims to strengthen the standard of human rights' protection for the citizens of the Union both vis-à-vis the institutions and bodies of the Union and the Member States in cases where they implement Union law. It does not interfere with the standard of protection for human rights granted by the constitutional law of the Member States and the European Convention on Human Rights.

**Art. 5 [Citizenship of the Union]**

- (1) Every person holding the nationality of a Member State shall be a citizen of the Union.
- (2) The citizens of the Union shall enjoy the rights conferred by this Treaty, in particular
  - the right to vote and to stand as a candidate in elections to the European Parliament and at municipal elections of the Member State, in which they reside permanently;
  - the right to move and reside freely within the territory of all the Member States;
  - the right to protection by the diplomatic and consular authorities of any Member State.
- (3) The details shall be regulated by a law requiring qualified majority in the Council according to Article 55 paragraph 2.

**Art. 6 [Prohibition of Discrimination]**

Within the scope of application of this Constitutional Treaty and the Treaty on the Policies of the Union and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality by the Union and the Member States shall be prohibited.

**Art. 7 [Tasks]**

- (1) It shall be part of the tasks of the Union
  - to create and maintain a European internal market including a common trade policy, to strengthen economic and social cohesion and to establish an economic and monetary union;
  - to maintain and develop the Union as an area of freedom, security and justice;
  - to safeguard its identity on the international scene, in particular through the implementation of a common foreign and security policy including the progressive framing of a common defence policy.
- (2) These tasks shall be carried out in compliance with the rules on the competencies of the Union.

**Art. 8 [Principles governing the Exercise of its Tasks]**

In implementing its policies, the Union shall respect the following principles:

- the solidarity between the Member States;
- a harmonious, balanced and sustainable development of economic activities;
- sustainable and non-inflationary growth;
- a high degree of competitiveness and convergence of economic performance;
- a high level of employment and of social protection;
- a high level of protection and improvement of the quality of the environment and the quality of life;
- equality between men and women;
- the fight against discrimination within the meaning of Article 21 of the Charter of Fundamental Rights.

**Art. 9 [Competencies of the Union]**

- (1) To enable the Union to carry out its tasks, the Member States delegate to the Union the sovereign rights of legislation, administration and jurisdiction as set out in this Treaty.
- (2) The Union and its institutions shall act only in compliance with the competencies expressly assigned to them in this Treaty.



Union Policies or of any rule of law relating to the application of these Treaties. Any natural or legal person may, under the same conditions, demand that decisions and Commission-regulations shall be declared void.

(5) Action for Failure to Act

The Member States and the Union may bring an action to establish that an institution of the Union has infringed this Treaty, the Treaty on Union Policies or any rule relating to the application of these Treaties by failing to adopt a decision. Any natural or legal person may, under the same conditions, bring a complaint that the Union has failed to address a legal act to that person.

(6) Fundamental Rights Complaint

Any natural or legal person may contest a legal act of the Union due to a violation of any of the rights granted to it by the Charter of Fundamental Rights of the Union if no other judicial recourse is available for seeking review of the violation of the fundamental right in question. Specific requirements for the acceptance of a Fundamental Rights Complaint may be provided for.

(7) Action for Damages

The Court of Justice shall have jurisdiction in disputes relating to the non-contractual liability of the Union to pay damages.

**Art. 66 [The European Court]**

(1) The European Court shall comprise at least one Judge per Member State. It may be supported in its tasks by Advocates-General.

(2) Specialised judicial panels may be attached to the European Court which shall exercise judicial tasks in certain specific areas.

(3) The Judges and Advocates-General of the European Court shall be chosen from persons whose independence is beyond doubt and who possess the ability required for appointment to high judicial office in their respective Member State. They shall be appointed by unanimous decision of the Council upon a proposal by the governments of the Member States for a term of twelve years. They may not be reappointed.

(4) The Judges shall elect the President of the European Court from among their number for a term of four years. He may be re-elected.

(5) The European Court shall sit in Chambers.

(6) The European Court shall appoint its Registrar. It shall establish its Rules of Procedure in agreement with the Court of Justice. These Rules of Procedure shall require the approval of the Council.

**Art. 67 [Procedures with the European Court]**

(1) The Law on the Courts of the Union shall determine which of the court actions listed in Article 65 shall be decided by the European Court in first instance. In accordance with the Law on the Courts of the Union, decisions of the European Court shall be subject to a right of appeal to the European Court of Justice on points of law only.

(2) Certain categories of procedures may be allocated to the specialized Chambers in the first instance. In accordance with the Law on the Courts of the Union, the decisions of the Chambers may be contested before the European Court and, in exceptional cases, this further decision may also be subject to appeal to the European Court of Justice on points of law only.

**THE EUROPEAN CONVENTION**

THE SECRETARIAT

**Brussels, 6 February 2003****(OR. fr/en)****CONV 528/03****NOTE**

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**from :** Praesidium**to :** Convention

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**Subject :** **Draft of Articles 1 to 16 of the Constitutional Treaty**

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Members of the Convention will find in Annex I a draft of Articles 1 to 16 (Titles I, II and III) as proposed by the Praesidium, and in Annex 2 an explanatory note.

These Articles generally correspond to the description given in the document containing the draft structure for the Constitutional Treaty (CONV 369/02). A few minor changes have been made to the numbering to take account of the debate in the Convention. The draft texts given here reflect the reports of the Working Groups on Legal Personality, the Charter, Economic Governance, Complementary Competencies, the Principle of Subsidiarity and External Action, as well as the guidelines that emerged on the basis of their recommendations during the plenary debate.

**DRAFT TEXT**  
**OF THE ARTICLES OF THE TREATY**  
**ESTABLISHING A CONSTITUTION FOR EUROPE**

**TITLE I: Definition and objectives of the Union**

**Article 1: Establishment of the Union**

1. Reflecting the will of the peoples and the States of Europe to build a common future, this Constitution establishes a Union [entitled ...], within which the policies of the Member States shall be coordinated, and which shall administer certain common competences on a federal basis.
2. The Union shall respect the national identities of its Member States.
3. The Union shall be open to all European States whose peoples share the same values, respect them and are committed to promoting them together.

**Article 2: The Union's values**

The Union is founded on the values of respect for human dignity, liberty, democracy, the rule of law and respect for human rights, values which are common to the Member States. Its aim is a society at peace, through the practice of tolerance, justice and solidarity.

**Article 3: The Union's objectives**

1. The Union's aim is to promote peace, its values and the well-being of its peoples.
2. The Union shall work for a Europe of sustainable development based on balanced economic growth and social justice, with a free single market, and economic and monetary union, aiming at full employment and generating high levels of competitiveness and living standards. It shall promote economic and social cohesion, equality between women and men, and environmental

and social protection, and shall develop scientific and technological advance including the discovery of space. It shall encourage solidarity between generations and between States, and equal opportunities for all.

3. The Union shall constitute an area of freedom, security and justice, in which its shared values are developed and the richness of its cultural diversity is respected.
4. In defending Europe's independence and interests, the Union shall seek to advance its values in the wider world. It shall contribute to the sustainable development of the earth, solidarity and mutual respect among peoples, eradication of poverty and protection of children's rights, strict observance of internationally accepted legal commitments, and peace between States.
5. These objectives shall be pursued by appropriate means, depending on the extent to which the relevant competences are attributed to the Union by this Constitution.

#### **Article 4: Legal personality**

The Union shall have legal personality.

### **TITLE II: Fundamental rights and citizenship of the Union**

#### **Article 5: Fundamental rights**

1. The Charter of Fundamental Rights shall be an integral part of the Constitution. The Charter is set out [in the second part of/in a Protocol annexed to] this Constitution.<sup>1</sup>
2. The Union may accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Accession to that Convention shall not affect the Union's competences as defined by this Constitution.

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<sup>1</sup> [The full text of the Charter, with all the drafting adjustments given in Working Group II's final report (CONV 354/02) will be set out either in a second part of the Constitution or in a Protocol annexed thereto, as the Convention decides.]

3. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.

### **Article 6: Non-discrimination on grounds of nationality**

In the field of application of this Constitution and without prejudice to any of its specific provisions, any discrimination on grounds of nationality shall be prohibited.

### **Article 7: Citizenship of the Union**

1. Every national of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to national citizenship; it shall not replace it. All citizens of the Union, women and men, shall be equal before the law.
2. Citizens of the Union shall enjoy the rights and be subject to the duties provided for in this Constitution. They shall have:
  - the right to move and reside freely within the territory of the Member States;
  - the right to vote and to stand as a candidate in elections to the European Parliament and in municipal elections in their Member State of residence under the same conditions as nationals of that State;
  - the right to enjoy, in the territory of a third country in which the Member State of which they are a national is not represented, the protection of the diplomatic and consular authorities of any Member State on the same conditions as the nationals of that State;
  - the right to petition the European Parliament, to apply to the Ombudsman, and to write to the institutions and advisory bodies of the Union in any of the Union's languages and to obtain a reply in the same language.
3. These rights shall be exercised in accordance with the conditions and limits defined by this Constitution and by the measures adopted to give it effect.

**EXPLANATORY NOTE****TITLES I and II**Article 1:

This Article establishes the Union and describes its fundamental characteristics. In response to requests made at the plenary, the wording proposed is designed to adequately express the dual dimension of a Union of States and of peoples of Europe in terms appropriate to a Constitutional Treaty.

Because of its fundamental political importance, it was deemed advisable to emphasise in Article 1 the Union's respect for the national identity of its Member States; Article 9(6) then lists certain features of national identity which more specifically require respect in the legal sense when the Union is exercising its competences.

It also seems appropriate already to list the conditions for membership of the Union in Article 1, although the procedures for accession of new Member States, suspension of rights and withdrawal from the Union would be dealt with in more detail in Title X.

Article 2

This Article concentrates on the essentials – a short list of fundamental European values. Further justification for this is that a manifest risk of serious breach of one of those values by a Member State would be sufficient to initiate the procedure for alerting and sanctioning the Member State (see Article 45 of the preliminary draft Treaty which would incorporate the mechanism set out in Article 7 TEU), even if the breach took place in the field of the Member State's autonomous action (not affected by Union law). This Article can thus only contain a hard core of values meeting two criteria at once: on the one hand, they must be so fundamental that they lie at the very heart of a peaceful society practising tolerance, justice and solidarity; on the other hand, they must have a clear non-controversial legal basis so that the Member States can discern the obligations resulting therefrom which are subject to sanction.

That does not, of course, prevent the Constitution from mentioning additional, more detailed elements which are part of the Union's "ethic" in other places, such as, for instance, in the Preamble, in Article 3 on the general objectives of the Union, in the Charter of Fundamental Rights (which, unlike this Article, does not, however, apply to autonomous action by the Member States), in Title VI on "The democratic life of the Union" and in the provisions enshrining the specific objectives of the various policies.

### Article 3

The philosophy of this Article is to set out the *general* objectives justifying the very existence of the Union and its action for its citizens in a more cross-sectoral fashion and not to list the specific objectives pursued by the various policies of the Union which are to be found in Part Two of the Treaty.

The fundamental difference between this Article and Article 2 therefore needs to be emphasised: while Article 2 enshrines the basic values which make the peoples of Europe feel part of the same "union", Article 3 sets out the main aims justifying the creation of the Union for the exercise of certain powers in common at European level.

### Article 4

In accordance with the recommendation from Working Group III (CONV 305/02), this Article confers legal personality on the Union.

An Article on the Union's legal capacity (see Article 282 TEC), given its highly technical nature, should appear in Part Two of the Constitutional Treaty.

### Article 5:

The text proposed reflects two central recommendations by Working Group II (CONV 354/02), on the one hand to incorporate in the Constitution the Charter of Fundamental Rights so that it has constitutional status and is legally binding and, on the other hand, to enable the Union to accede to the European Convention on Human Rights.

As to the technique for incorporating the Charter, the fact that the complete text (with all the drafting adjustments mentioned in the Working Group's final report) will appear either in a separate second part of the Constitution or as a Protocol annexed to it will safeguard its fully binding legal nature and allow the general rules concerning future amendments of the Constitution to be applied to the Charter. Moreover, that technique will also keep the structure of the Charter intact and avoid making the first part of the Constitution more lengthy. At the same time, the reference to the Charter in the first few articles of the Constitution will underline its constitutional status.

The legal basis in paragraph 2 enabling the Union to accede to the ECHR also expressly provides that accession must not affect the division of competences between the Union and the Member States, in line with a recommendation from Working Group II. Only the European Convention on Human Rights is mentioned in this paragraph because of the fact that a Court of Justice opinion in 1996 had rejected Community competence to accede to that Convention on the basis of considerations specific to it. This paragraph is not therefore intended to rule out the possibility of Union accession to other international conventions relating to human rights on the basis of the competences conferred in Part Two of the Treaty.

Paragraph 3 draws on Article 6(2) TEU as it now stands and is intended to indicate clearly that, in addition to the Charter, Union law recognises additional fundamental rights as general principles resulting from two sources – the European Convention on Human Rights on the one hand and the constitutional traditions common to the Member States on the other. As stressed by various members of the Convention in Working Group II (see pages 9 and 10 of the final report, CONV 354/02) and at the plenary, the usefulness of this provision is to make clear that incorporation of the Charter does not prevent the Court of Justice from drawing on those two sources to recognise additional fundamental rights which might emerge from any future developments in the ECHR and common constitutional traditions. That is in line with classic constitutional doctrine which never interprets the catalogues of fundamental rights in constitutions as being exhaustive, thus permitting the development, through case-law, of additional rights as society changes.



**THE EUROPEAN CONVENTION****Brussels, 19 February 2003**

THE SECRETARIAT

**CONV 567/03****CONTRIB 253****COVER NOTE**

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from Secretariat

to The Convention

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**Subject : Contribution by Mr David Heathcoat-Amory, member of the Convention:  
"The EU Convention, the Council of Europe and the Future of Europe"**

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The Secretary-General of the Convention has received the contribution in Annex from Mr David Heathcoat-Amory, member of the Convention.

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**ANNEX****THE EU CONVENTION, THE COUNCIL OF EUROPE AND THE FUTURE OF EUROPE****Submitted by Rt Hon David Heathcoat-Amory, MP:  
The views of five delegates to the Council of Europe**

Five members of the Council of Europe have come together to remind us of some basic facts, and challenge the present autopilot mode of Convention thinking.

All of us should welcome the forthcoming enlargement of the European Union.

But these delegates have a basic message to tell: when EU officials and MEPs say it will reunite Europe, they are wrong.

Europe has already been re-united – in the Common European Home that is their organisation, the Council of Europe.

We must avoid the creation of a second common home which would be at the expense of the Council.

These members, experienced in European politics, fear that the European Union, as it enlarges, will also expand its activities into areas of their competence.

They fear that the European Union Charter of Fundamental Rights will compete with the European Convention of Human Rights;

They fear that the Luxembourg Court will clash with the Strasbourg Court;

They fear that the broad legal framework that already exists for Europe based on the Council of Europe's 185 conventions will compete with double standards imposed by the EU;

They fear that the work of their Congress of Local and Regional Authorities in promoting local democracy and transfrontier co-operation will be duplicated by the EU;

They fear that the EU Convention will make recommendations to the Inter – Governmental Conference that will threaten the primacy of the work of the Council of Europe, and undermine the assets they have been developing for over half a century.

**This Paper appeals to the EU Convention not to re – invent the Europe we already have – the confederation that is the Council of Europe.**

## **THE EU CONVENTION, THE COUNCIL OF EUROPE AND THE FUTURE OF EUROPE**

Paper prepared by: David Atkinson MP  
Baroness Hooper  
Sir Sydney Chapman MP.  
John Wilkinson MP  
Sir Teddy Taylor, MP

### A. Introduction.

The EU Convention will pave the way for institutional reform and a possible constitutional framework. Its outcome will have consequences for all the institutions of Europe including the Council of Europe (COE).

The Council of Europe, not the Common Market - the present EU, was established in 1949 as the political forum for dialogue between governments (through the Committee of Ministers) and national parliaments (in its Parliamentary Assembly) to avoid and resolve disputes.

Today, with 44 member states, it is the only pan-European organisation to represent the entire continent. It can fairly claim the greatest expertise in the field of human rights, democratic institutions, the rule of law, and cultural and educational co-operation.

The Council of Europe represents a confederation of European nation states which, through its conventions, provides a legal framework for the entire continent. Its European Convention on Human Rights, enforced by the Court in Strasbourg, upholds the highest standards of human rights anywhere in the world.

The EU Convention provides an opportunity to confirm the leading role of the COE in the future architecture of the continent. In particular its recommendations to the IGC should avoid competing with or duplicating the work of the Council of Europe.

### B. Human Rights and a European Constitution

The European Convention on Human Rights, with its protocols, has been the standard setting 'charter' of human rights and fundamental freedoms in Europe for over 50 years. It is required to be ratified by all COE member states. This includes all EU and EU applicant states. It can be enhanced by the addition of further protocols.

The EU Charter of Fundamental Rights, adopted at the Nice European Council, defines the rights and freedoms of EU citizens. Its status will be considered by the IGC. It is anticipated to become legally binding under the European Court of Justice in Luxembourg and incorporated into an EU constitution.

The EU Charter of Fundamental Rights should not complicate or compete with the European Convention of Human Rights. The Luxembourg Court should not confuse the findings of the Strasbourg Court.

This can be avoided if the EU were to apply for accession to the European Convention of Human Rights to create a single legal mechanism for the protection of human rights applied on an equal basis to all European states.

The European Convention of Human Rights would be an appropriate basis for any EU Constitution. The European Court in Strasbourg should be recognised as the principle judicial authority of Europe.

### C. A Legal Framework for the Continent

The 185 Conventions of the Council of Europe, which member states are obliged or encouraged to ratify, provide a legal framework for the entire continent of Europe defining standards on human dignity and democracy, culture, educational and social cohesion, daily life and the media.

They can be enhanced by additional Protocols, and incorporated into national laws.

There is no justification for a separate legal framework for the European Union.

### D. The role of National Parliaments in the EU

It is anticipated that the EU Convention will make proposals on a more precise delimitation of competence between the European Union and its member states, and the role of national parliaments in the European architecture.

These may lead to the EU Council concentrating on decision making, the EU Commission on its executive role, with legislative tasks performed by the European Parliament.

A role for national parliaments should be introduced into the European Parliament.

This can be done by introducing an inter-parliamentary chamber to the European Parliament: a body of representatives of national parliaments to form, in due course, a second chamber.

This inter-parliamentary chamber could have responsibility for scrutinising policies that continue to be intergovernmental and areas in which competence is complimentary or shared such as foreign affairs, security and defence, police and judiciary co-operation in criminal matters, and other matters concerning the entire continent.

The Parliamentary Assembly of the Council of Europe (PACE) is the only inter-parliamentary assembly exclusive to Europe, and soon to be representative of every European national parliament.

Members of the national delegations to the PACE are practical politicians representing local constituencies. This double mandate can be used to enhance the parliamentary dimension of the EU.

The PACE can form the basis of any new role for national parliaments that would make up the “democratic deficit” of the European Parliament. That it represents 44 states should be no impediment – rather an asset in being able to promote a constitutional ideal.

E. Local Government in Europe: the CLRAE

The Council of Europe's Congress of Local Regional Authorities (CLRAE) is the only pan-European organisation for promoting local democracy structures and trans-frontier co-operation.

The EU Convention should not seek to introduce duplication or parallel activities by the EU which would undermine the CLRAE.

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**THE EUROPEAN CONVENTION**

THE SECRETARIAT

**Brussels, 26 February 2003 (04.03)**  
**(OR. de,en,fr)**

**CONV 574/1/03**  
**REV 1**

**COVER NOTE**

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from : Secretariat

to : Convention

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Subject : **Reactions to draft Articles 1 to 16 of the Constitutional Treaty**  
**– Analysis**

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Members will find in the attached Annex a revised version of the summary sheets of the proposed amendments to Articles 1 to 16 (CONV 528/03).

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## SUMMARY SHEET OF THE PROPOSALS FOR AMENDMENTS TO ARTICLE 2

### ARTICLE 2: THE UNION'S VALUES

*"The Union is founded on the values of respect for human dignity, liberty, democracy, the rule of law and respect for human rights, values which are common to the Member States. Its aim is a society at peace, through the practice of tolerance, justice and solidarity."*

#### I. THEMATIC EXAMINATION OF AMENDMENTS

##### ➤ **Add equality to the values in the first sentence**

- Duhamel + 9 members of the Convention + Andiukaitis + Michel + 5 Belgian members of the Convention + Paciotti + Spini + Portuguese members of the Convention + Katiforis + Voggenhuber + Lichtenberger + Giannakou + Einem + Tiilikainen + Peltomäki (inclusion in the 2nd sentence) + Kiljunen + Vanhanen + Svensson + Palacio + Kaufmann

##### ➤ **Add "equality between men and women"**

- Dybkjaer + Gabaglio (observer) + Vassiliou + Cristina + Costa + Puwak + 3 Portuguese members of the Convention + McAvan + Einem + Wittbrodt + Fogler + Hjelm-Wallén + 4 Swedish members of the Convention

##### ➤ **Inclusion of all or some of the values in the 2nd sentence ("peace, tolerance, justice, solidarity") among the values in the first sentence and deletion of the second sentence**

- Michel + 5 Belgian members of the Convention + Lopes + Puwak + Paciotti + Spini + Katiforis + Voggenhuber + Lichtenberger + Costa + 3 Portuguese members of the Convention + McAvan + Frenedo + Serracino + Inguanez + Hübner

##### ➤ **Add "pluralism" (Lequiller), "diversity" (Würmeling + Altmaier), "cultural and linguistic diversity" (MacCormick + Figel) "respect for the rights of disabled people and minorities" (Kiljunen + Vanhanen) "social justice" (Voggenhuber + Lichtenberger + Einem) + Gabaglio (observer), "openness" (Kiljunen + Vanhanen + Svensson), "cultural diversity" (Duff + 3 members of the Convention + MacLennan), "national and regional identities" (Duff + 3 members of the Convention + MacLennan), "national minorities" (Balázs)**

##### ➤ **Add or replace human rights by "fundamental rights" or "fundamental freedoms"**

- de Villepin + Roche + Puwak + Tiilikainen + Peltomäki + Tiilikainen + Peltomäki + Berès + Socialist Group + Kuneva + Tiilikainen + Peltomäki + Rupel + Duff + 3 members of the Convention + MacLennan + Palacio

- **Keep the 2nd sentence but delete "at peace"**
  - de Villepin + Haenel + Badinter + Dini
- **Specify "universal values" or "universal and indivisible values"**
  - Duhamel + 9 members of the Convention + Lenmarker
- **Replace "values" by "principles" or state "on the principles of respect for"**
  - de Villepin + Kuneva
- **Different proposals for including a reference to religion: reference to God (modelled on the Polish Constitution)/reference to Christianity/mention of Judaeo-Christian roots/reference to the Graeco-Roman, Judaeo-Christian, secular and liberal traditions**
  - Kroupa + Skaarup + Fini + Teufel + Korčok + 3 members of the Convention + Muscardini + Wittbrodt + Fogler + Teufel + Brok + 16 members of the Convention
- **Separation of Church and State**
  - Berès + Di Rupo

## II. DETAILS OF THE AMENDMENTS:

### (II)/1 DUHAMEL + 9 members of the Convention

Add "equality, solidarity and justice" to the common values.

### (II)/2 ABITBOL

Completely recast Article 2 and include many new concepts, such as a ban on interference in the expression of the Member States' universal suffrage.

### (II)/3 BORRELL + 2 members of the Convention

Add "equality, promotion of dignity" and "universal and indivisible" values

### (II)/4 DUHAMEL

Drafting amendment

### (II)/5 DYBKJAER

Add "equality, in particular between men and women"

### (II)/6 ECKSTEIN

Add after human rights "including the rights of national minorities"

### (II)/7 GABAGLIO – Observer

Add "social justice" and "equality between men and women"



**(II)/8 HAENEL + BADINTER**

Add "solidarity", "equality" + promotion of these values throughout the world. Deletion of 2nd sentence

**(II)/9 KROUPA**

Add new paragraph with the reference to God from the Polish Constitution

**(II)/10 MacCORMICK**

The 2nd sentence should mention respect for cultural and linguistic diversity

**(II)/11 LENMARKER**

Add universal values

**(II)/12 ANDRIUKAITIS + 3 members of the Convention**

Add equality

**(II)/13 ROCHE**

Add "and fundamental freedoms" after "human rights".

**(II)/14 HAIN**

Delete 2nd sentence, which could be included in the preamble.

**(II)/15 BERÈS + 17 members of the Convention**

Add "human dignity", replace "human rights" by "fundamental rights"

**(II)/16 CRAVINHO**

Add pluralism

**(II)/17 VASSILIOU**

Add equality between men and women

**(II)/18 PACIOTTI + SPINI**

Add "quality", delete " second sentence and include "solidarity" and "justice" in first sentence.

**(II)/19 LOPES**

Delete reference to values

New wording of second sentence to include tolerance, justice, solidarity and equality between Member States.

**(II)/20 MICHEL + 5 Belgian members of the Convention**

Deletion of 2nd sentence (ditto Hain)

Inclusion of values of solidarity, equality, tolerance and justice in the first sentence.

**(II)/21 de VILLEPIN**

Replace values by principles  
add reference to fundamental freedoms

**(II)/22 PUWAK**

fundamental rights + solidarity + equality between men and women

**(II)/23 FRENDÓ**

Add solidarity + justice

**(II) 24 BERÈS + Di RUPO**

Separation of Church and State

**(II) 25 KIRKHOPE**

Replace "Union" by "Community"

**(II) 26 KOHOUT**

Delete second sentence

**(II) 27 SKAARUP**

Include a reference to "Christianity, embedded in European history and the lives of its people" (amendment proposed for a new Article 1a, but deemed more appropriate in Article 2, under religion)

**(II) 28 ZIELENIEC**

Amendment of the second sentence to include a link to values.

**(II) 29 FINI**

Refer to the Union's Judaeo-Christian roots

**(II) 30 FAYOT**

Extend 2nd sentence to add non-discrimination, equality between men and women and sustainable development

**(II) 31 FOLLINI**

Refer to religious tradition

**(II) 32 TIILIKAINEN + PELTOMÄKI**

Add "fundamental values"

**(II) 33 BERÈS + OTHER members of the Convention (Corrigendum)**

Human dignity + fundamental rights

**(II) 34 FIGEL**

Mention national characteristics

**(II) 35 HEATHCOAT-AMORY**

Delete dignity (subjective term) + reference to human rights "as set out in national laws"

**(II) 36 AZEVEDO + 3 Portuguese members of the Convention**

Add "equality between men and women" + "solidarity"

**(II) 37 KORČOK + FIGEL + MIGAS + MARTINAKOVA**

Refer to Polish Constitution

**(II) 38 FISCHER**

– Include Article 6 of TEU

**(II) 39 CRISTINA**

Recast the Article + include equality between men and women and solidarity

**(II) 40 KATIFORIS**

Transfer some values from the second to the first sentence

**(II) 41 VOGGENHUBER + LICHTENBERGER**

Delete second sentence and include corresponding values in first + "social justice", "plurality" and "equality"

**(II) 42 GIANNAKOU**

Add "equality" + "fundamental rights"

**(II) 43 MUSCARDINI**

Add reference to "Graeco-Roman, Judaeo-Christian, secular and liberal" tradition

**(II) 44 COSTA + 3 Portuguese members of the Convention**

Add "solidarity" + "equality between men and women"

**(II) 45 McAVAN**

Add "equality between men and women" + "solidarity and justice" and delete 2nd sentence.

**(II) 46 EINEM**

Add "social justice", "equality, in particular between men and women", "solidarity" in the first sentence while letting the second stand.

**(II) 47 BONDE + 8 members of the Convention**

Add in the beginning a reference to "the Europe of democracies" + "and in particular democracy" to the end of the second sentence. Remainder unchanged.

**(II) 48 FIGEL**

Refer to culture and sovereignty

**(II) 49 KUNEVA**

Add "fundamental freedoms" and "principles"

**(II) 50 FREUDO**

Delete second sentence and include corresponding content in first sentence

**(II) 51 LEQUILLER**

Include the value of "pluralism"

**(II) 52 TIILIKAINEN + PELTOMÄKI**

Include "equality" in the second sentence + add "fundamental rights"

**(II) 53 SERRACINO-INGLOTT + INGUANEZ**

Deletion of second sentence and inclusion of content in first sentence

**(II) 54 KILJUNEN + VANHANEN**

"Equality" + "minority rights" + "disabled people" + "openness"

**(II) 55 SVENSSON**

Add "openness", "equality", "truth", "knowledge"

**(II) 56 WITTBRODT + FOGLER**

Add "equality between men and women"

Add a paragraph referring to God (modelled on Polish Constitution)

Add a paragraph on the principle of solidarity between the Member States.

**(II) 57 TEUFEL**

Add a paragraph referring to God (modelled on Polish Constitution)

**(II) 58 RUPEL**

Add "fundamental freedoms"

**(II) 59 DUFF + RUPEL + HELMINGER + SZENT-IVÁNYI**

Reference to "shared" values, "fundamental" rights and cultural diversity

Add a second paragraph referring to national and regional identities

**(II) 60 BALÁZS**

Reference to the protection of national minorities

**(II) 61 BROK + 15 members of the Convention**

Reference to God (modelled on Polish Constitution)

**(II) 62 HÜBNER**

Add "tolerance, justice and solidarity" in the first sentence

**(II) 63 PALACIO**

Reference to equality and to "fundamental" rights

**(II) 64 WÜRMEILING + ALMAIER**

Reference to diversity

**(II) 65 KAUFMANN**

Reference in particular to equality and values shared by the Member States

**(II) 66 MACLENNAN**

Reference to "shared" values, "fundamental" rights and cultural diversity

Add a second paragraph referring to national and regional identities

**(II) 67 OLEKSY**

Reference to the spiritual dimension

**(II) 68 HJELM-WALLEN + 4 Swedish members of the Convention**

Add "equality between men and women" to the values

**(II) 69 FLOCH**

Add a paragraph referring in particular to "the struggles down the ages against all Nazi, fascist, authoritarian, totalitarian, racist and xenophobic regimes"

**(II) 70 DINI**

Delete any reference to "at peace" in the second sentence

**(II) 71 QUEIRÓ**

Specify "the fundamental values of the Union"

Add "the sanctity of life" to the values

Add the concept of "equality between the States and peoples of the Union" in the second sentence

**(II) 72 LOPEZ GARRIDO**

Add "principle of respect"

Drafting amendment

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**SUMMARY SHEET OF PROPOSALS FOR AMENDMENTS****ARTICLE 5(1)****ARTICLE 5: Fundamental rights**

*Article 5(1) "The Charter of Fundamental Rights shall be an integral part of the Constitution. The Charter is set out [in the second part of/in a Protocol annexed to] this Constitution."*

**I. THEMATIC EXAMINATION OF AMENDMENTS:****– Include the content of the Charter in Title I or II of the first part of the Constitution**

*Amendment V (1)/8 (Lithuanian members of the Convention: Andriukaitis, Gricius, Jusys, Martikonis)*

*Amendment V (1)/18 (Teufel) + add a new paragraph specifying that the fundamental rights shall not modify competences.*

*Amendment V (1)/29 (Meyer): (including the preamble)*

*Amendment V (1)/38 (Brok + 15 EPP Convention members)*

*Amendment V (1)/41 (Santer, Helminger, Fayot)*

*Amendment V (1)/44 (Severin)*

**– Incorporate the Charter as the first part of the Constitution**

*Amendment V(1)/9 (Farnleitner)*

*Amendment V(1)/11 (Muscardini)*

*Amendment V (1)/14 (Kaufmann)*

*Amendment V (1)/ 34 (Fischer)*

*Amendment V (1)/49 (Paciotti, Spini)*

**– Incorporate the Charter as the second part of the Constitution (the part on policies becoming the third part)**

*Amendment V(1)/1 (Borrell + 2 Conv. members)*

*Amendment V(1)/4 (Socialist Members of the European Parliament: Duhamel, McAvan, Marinho, Van Lancker, Hänsch, Berès, Carnero, Paciotti, Thorning-Schmidt)*

*Amendment V (1)/11 a (Puwak)*

*Amendment V (1)/12 (Belgian members of the Convention: Michel, de Gucht, di Rupo, Van Lancker, Chevalier, Nagy)*

*Amendment V (1)/16 (Olesky)*

*Amendment V (1)/17 (Voggenhuber, Lichtenberger)*

*Amendment V (1)/22 (Palacio)*

*Amendment V (1)/28 (Cushnahan)*

*Amendment V (1)/30 (Hübner), + more formal wording*

*Amendment V (1)/35 (Giannakou)*

*Amendment V (1)/42 (Lequiller): deletion of redundant provisions*

*Amendment V (1)/45 (Dini)*

*Amendment V (1) 46 (Duff, Rupel, Helminger, MacLennan, Szent-Iványi, Dini, + Almeida-Garret): second chapter of part one.*

*Amendment V (1)/47 (Chabert, Dammeyer, Dewael, du Granrut, Martini, Valcarceliso)*  
*Amendment V (1)/48 (Avgerinos)*  
*Amendment V (1)/52 (Nagy)*

– **Incorporate the Charter in a Protocol annexed to the Treaty**

*Amendment V (1)/2 (Kroupa)*  
*Amendment V (1)/10 (Roche)*  
*Amendment V (1)/13 (Kiljunen and Vanhanen)*  
*Amendment V (1)/15 (Tiilikainen and Peltomäki)*  
*Amendment V (1)/20 (Schlüter)*  
*Amendment V (1)/25 (Latvian members of the Convention: Kalniete, etc.)*  
*Amendment V (1)/27 (Hjelm-Wallén, Lekberg, Lennmarker, Petersson and Kvist)*  
*Amendment V (1)/24 (Korčok)*  
*Amendment V (1)/31 (Fini)*  
*Amendment V (1)/33 (Oguz)*

– **Incorporate the Charter in an Annex to the Treaty**

*Amendment V (1)/50 (Queiró)*

– **The Charter "is" an integral part of the Constitution (without specifying position)**

*Amendment V (1)/3 (Haenel, Badinter)*  
*Amendment V (1)/19 (Figel: "shall be an integral part")*  
*Amendment V (1)/23 (Svensson)*

– **Alternative wording: "The fundamental rights of the European Union are set out in the Charter ..."**

*Amendment V (1)/4 (Socialist Members of the European Parliament: Duhamel, McAvan, Marinho, Van Lancker, Hänsch, Berès, Carnero, Paciotti, Thorning-Schmidt)*

– **Alternative wording: "The Union shall comply with the Charter of Fundamental Rights annexed to this Treaty and the ECHR"**

*Amendment V (1) and (2)/5 (Abitbol)*

– **Alternative wording: "The Constitutional Treaty refers to the Charter of Fundamental Rights"**

*Amendment V (1)/6 (Muscardini)*

– **Alternative wording: include Article 51(1) of the Charter**

*Amendment V (1)/32 (Katiforis)*

– **Alternative wording: "The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights ..."**

*Amendment V (1)/39 (Costa, Eduarda Azevedo, d'Oliveira Martins, Nazaré Pereira)*  
*Amendment V (1)/20 (Schlüter): "The Union respects ..."*

- **Remove the phrase "shall be an integral part of the Constitution"**  
*Amendment V (1)/7 (Hain)*  
*Amendment V (1)/37 (Tomlinson)*  
*Amendment V (1)/20 (Schlüter): "The Union respects ..."*
- **Lay down a referral for a preliminary ruling based on the Charter**  
*Amendment V (1)/21 (Giberyen)*
- **Replace the reference to the "Constitution" with "Constitutional Treaty"**  
*Amendment V (1)/25 (Latvian members of the Convention: Kalniete, etc.)*  
*Amendment V (1)/21 (Giberyen)*  
*Amendment V (1)/24 (Korčok). See also Amendment V (2)/24*  
*Amendment V (1)/20 (Schlüter)*
- **Delete (so as not to give the Charter legal value)**  
*Amendment V (1)/26 (Heathcoat-Amory)*  
*Amendment V (1)/40 (Kirkhope)*
- **Incorporation of the Charter provided that it does not procure rights vis-à-vis their governments**  
*Amendment V (1)/36 (de Bruin, van Dijk)*  
*Amendment V (1)/43 (Fini): application insofar as compatible with the Member States' legal systems.*
- **Stipulate that the Charter is only binding on the Institutions. Replace "European Union" with "Europe of Democracies". It must respect the ECHR and the fundamental rights of the national constitutions.**  
*Amendment V (1)/51 (Belohorska + 8 members of the Convention)*
- **Question of the compatibility of the various catalogues of rights mentioned in this article**  
*Amendment V (1)/53 (Pieters)*



## II. LIST OF AMENDMENTS

- V (1)/1 (BORRELL + 2 CONV.)*  
*V (1)/2 (KROUPA)*  
*V (1)/3 (HAENEL, BADINTER)*  
*V (1)/4 (SOCIALIST MEMBERS OF THE EUROPEAN PARLIAMENT: DUHAMEL, MCAVAN, MARINHO, VAN LANCKER, HÄNSCH, BERÈS, CARNERO, PACIOTTI, THORNING-SCHMIDT)*  
*V (1) AND (2)/5 (ABITBOL)*  
*V (1)/6 (MUSCARDINI)*  
*V (1)/7 (HAIN)*  
*V (1)/8 (LITHUANIAN MEMBERS OF THE CONVENTION: ANDRIUKAITIS, GRICIUS, JUSYS, MARTIKONIS)*  
*V (1)/9 (FARNLEITNER)*  
*V (1)/10 (ROCHE)*  
*V (1)/11 (MUSCARDINI)*  
*V (1)/11 A (PUWAK)*  
*V (1)/12 (BELGIAN MEMBERS OF THE CONVENTION: MICHEL, DE GUCHT, DI RUPO, VAN LANCKER, CHEVALIER, NAGY)*  
*V (1)/13 (KILJUNEN AND VANHANEN)*  
*V (1)/14 (KAUFMANN)*  
*V (1)/15 (TIILIKAINEN AND PELTOMÄKI)*  
*V (1)/16 (OLESKY)*  
*V (1)/17 (VOGGENHUBER, LICHTENBERGER)*  
*V (1)/18 (TEUFEL)*  
*V (1)/19 (FIGEL)*  
*V (1)/20 (SCHLÜTER)*  
*V (1)/21 (GIBERYEN)*  
*V (1)/22 (PALACIO)*  
*V (1)/23 (SVENSSON)*  
*V (1)/24 (KORČOK)*  
*V (1)/25 (LATVIAN MEMBERS OF THE CONVENTION: KALNIETE, ETC.)*  
*V (1)/26 (HEATHCOAT-AMORY)*  
*V (1)/27 (HJELM-WALLÉN, LEKBERG, LENNMARKER, PETERSSON AND KVIST)*  
*V (1)/28 (CUSHNAHAN)*  
*V (1)/29 (MEYER)*  
*V (1)/30 (HÜBNER)*  
*V (1)/31 (FINI)*  
*V (1)/32 (KATIFORIS)*  
*V (1)/33 (OGUZ)*  
*V (1)/34 (FISCHER)*  
*V (1)/35 (GIANNAKOU)*  
*V (1)/36 (DE BRUIN, VAN DIJK)*  
*V (1)/37 (TOMLINSON)*  
*V (1)/38 (BROK + 15 EPP CONVENTION MEMBERS)*

*V (1)/39 (COSTA, EDUARDA AZEVEDO, D'OLIVEIRA MARTINS, NAZARÉ PEREIRA)*  
*V (1)/40 (KIRKHOPE)*  
*V (1)/41 (SANTER, HELMINGER, FAYOT)*  
*V (1)/42 (LEQUILLER)*  
*V (1)/43 (FINI)*  
*V (1)/44 (SEVERIN)*  
*V (1)/45 (DINI)*  
*V (1)/46 (DUFF, RUPEL, HELMINGER, MACLENNAN, SZENT-IVÁNYI, DINI, +*  
*ALMEIDA-GARRET)*  
*V (1)/47 (CHABERT, DAMMEYER, DEWAELE, DU GRANRUT, MARTINI, VALCARCELSISO)*  
*V (1)/48 (AVGERINOS)*  
*V (1)/49 (PACIOTTI, SPINI)*  
*V (1)/50 (QUEIRÓ)*  
*V (1)/51 (BELOHORSKA + 8 MEMBERS OF THE CONVENTION)*  
*V (1)/52 (NAGY)*  
*V (1)/53 (PIETERS)*

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**SUMMARY SHEET OF PROPOSALS FOR AMENDMENTS****ARTICLE 5(2)****ARTICLE 5: Fundamental rights**

*Article 5(2) "The Union may accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Accession to that Convention shall not affect the Union's competences as defined by this Constitution."*

**I. THEMATIC EXAMINATION OF AMENDMENTS:**

- **Extend the Union's competence to conclude other international agreements in the field of human rights (or accede to international organisations)**  
*Amendment V (2)/2 (Söderman)*  
*Amendment V (2)/7 (Belgian members of the Convention: Michel, de Gucht, di Rupo, Van Lancker, Chevalier, Nagy)*  
*Amendment V (2)/8 (Paciotti)*  
*Amendment V (2)/10 (Kaufmann) + invert paragraphs 2 and 3*  
*Amendment V (2)/11 (Voggenhuber, Lichtenberger)*  
*Amendment V (2)/21 (MacCormick)*  
*Amendment V (2)/30 (Duff, Rupel, Helminger, Maclennan, Szent-Iványi, Dini, + Almeida-Garret)*  
*Amendment V (2)/31 (Paciotti, Spini)*  
*Amendment V(2)/32 (Nagy)*
  - **Add a new paragraph enabling the Union to accede to other Council of Europe conventions**  
*Amendment V (2)/1 (Eckstein-Kovács)*  
*Amendment V (2)/22 (Szajer)*
  - **Delete as the legal personality of the Union suffices**  
*Amendment V (2)/3 (Haenel and Badinter)*  
*Amendment V (2)/4 (Socialist Members of the European Parliament: Duhamel, McAvan, Marinho, Van Lancker, Hänsch, Berès, Carnero, Paciotti, Thorning-Schmidt)*
- Comment: Court of Justice case-law requires an explicit attribution of competence for the Union to accede to the ECHR
- **Specify in a separate paragraph that neither the Charter nor accession to the ECHR shall affect the Union's competences**  
*Amendment V (2)/5 (Lenmarker)*

*See also:* Amendment V (1)/10 (Roche)  
Amendment V (1)/18 (Teufel)

Comment: Such a provision is already contained in Article 51(1) of the Charter

- **Replace "affect" (modifier) with "extend" ("étendre")**  
*Amendment V (2)/6 (Hain)*  
*Amendment V (2)/28 (Tomlinson)*
  
- **Add or replace with "shall not affect the division of competences between the Union and its Member States"**  
*Amendment V (2)/12 (Teufel)*  
*Amendment V (2)/27 (Oguz)*
  
- **Legal basis to be incorporated into Part Two of the Constitutional Treaty or into the final provisions**  
*Amendment V (2)/8 a (de Villepin)*  
*Amendment V (2)/23 (Hübner)*
  
- **More compelling, alternative, wording: "The Union shall take the necessary steps to accede ..."; etc.**  
*Amendment V (2)/9 ( Kiljunen and Vanhanen)*  
*Amendment V (2)/14 (Svensson)*  
*Amendment V (2)/20 (Hjelm-Wallén, Petersson, Lekberg, Lennmarker, Kvist): "The Union shall seek accession ..."*  
*Amendment V (2)/16 (Van der Linden, Timmermans, Van Eekelen, van Dijk): "The Union wants to accede ..."*  
*Amendment V (2)/17 (Tiilikainen and Peltomäki)*  
*Amendment V (2)/18 (Arabadjiev): "The Union shall accede ..."*  
*Amendment V (2)/26 (Brok + 15 EPP Convention members ): "The Union shall request to accede ..."*
  
- **Delete**  
*Amendment V (2)/19 (Giberyen)*  
*Amendment V (2)/25 (Heathcoat-Amory)*  
  
*See: Amendment V (1)/40 (Kirkhope – without explanation)*
  
- **Linguistic amendment**  
*Amendment V (2)/29 (Duhamel)*  
*Amendments V (2)/13 (Schlüter) and V (2)/24 (Korčok): "Constitution" becomes "Constitutional Treaty".*

**II. LIST OF AMENDMENTS**

- V (2)/1 (ECKSTEIN-KOVÁCS)  
 V (2)/2 (SÖDERMAN)  
 V (2)/3 (HAENEL AND BADINTER)  
 V (2)/4 (SOCIALIST MEMBERS OF THE EUROPEAN PARLIAMENT: DUHAMEL, MCAVAN, MARINHO, VAN LANCKER, HÄNSCH, BERÈS, CARNERO, PACIOTTI, THORNING-SCHMIDT)  
 V (2)/5 (LENNMARKER)  
 V (2)/6 (HAIN)  
 V (2)/7 (BELGIAN MEMBERS OF THE CONVENTION: MICHEL, DE GUCHT, DI RUPO, VAN LANCKER, CHEVALIER, NAGY)  
 V (2)/8 (PACIOTTI)  
 V (2)/8 A (DE VILLEPIN)  
 V (2)/9 (KILJUNEN AND VANHANEN)  
 V (2)/10 (KAUFMANN)  
 V (2)/11 (VOGGENHUBER, LICHTENBERGER)  
 V (2)/12 (TEUFEL)  
 V (2)/13 (SCHLÜTER)  
 V (2)/14 (SVENSSON)  
 V (2)/16 (VAN DER LINDEN, TIMMERMANS, VAN EEKELEN, VAN DIJK)  
 V (2)/17 (TIILIKAINEN AND PELTOMÄKI)  
 V (2)/18 (ARABADJIEV)  
 V (2)/19 (GIBERYEN)  
 V (2)/20 (HJELM-WALLÉN, PETERSSON, LEKBERG, LENNMARKER, KVIST)  
 V (2)/21 (MacCORMICK)  
 V (2)/22 (SZAJER)  
 V (2)/23 (HÜBNER)  
 V (2)/24 (KORČOK)  
 V (2)/25 (HEATHCOAT-AMORY)  
 V (2)/26 (BROK + 15 EPP CONVENTION MEMBERS)  
 V (2)/27 (OGUZ)  
 V (2)/28 (TOMLINSON)  
 V (2)/29 (DUHAMEL)  
 V (2)/30 (DUFF, RUPEL, HELMINGER, MACLENNAN, SZENT-IVÁNYI, DINI + ALMEIDA-GARRET)  
 V (2)/31 (PACIOTTI, SPINI)  
 V (2)/32 (NAGY)

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**SUMMARY SHEET OF PROPOSALS FOR AMENDMENTS****ARTICLE 5(3)****ARTICLE 5: Fundamental rights**

*Article 5(3) "Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law."*

**I. THEMATIC EXAMINATION OF AMENDMENTS:**

- **Delete as no longer necessary given the Charter's incorporation into the Treaty**

*Amendment V (3) / 2 (Haenel and Badinter)*

*Amendment V (3) / 3 (Socialist Members of the European Parliament: Duhamel, McAvan, Marinho, Van Lancker, Hänsch, Berès, Carnero, Paciotti, Thorning-Schmidt)*

*Amendment V (3) / 5 (Muscardini)*

*Amendment V (3) / 15 (Brok + 15 EPP Convention members)*

*Amendment V (3) / 10-11 (Hübner)*

*Amendment V (3) / 18 (Paciotti, Spini)*

*See also Amendment V (1) / 16 (Olesky)*

- **Delete: do not formalise these Community case-law principles to prevent their extension to the CFSP**

*Amendment V (3) / 4 (Hain)*

- **Delete: "general principles of"**

*Amendment V (3) / 1 (Borrell + 2 members of the Conv.)*

- **Replace "the Union's law" with "the Union's constitutional law" (Verfassungsrechts der Union)**

*Amendment V (3) / 6 (Kaufmann): + invert paragraphs 2 and 3 of Article 5.*

- **Add a reference to the Charter of Fundamental Rights (while deleting the reference to Article 5(1))**

*Amendment V (3) / 17 (de Bruin, van Dijk)*

- **Amend by reproducing the terms of Article 6(2) of the TEU**

*Amendment V (3) / 16 (Fischer): + invert the second and third paragraphs of Article 5 of the Constitutional Treaty*

- **Delete**  
*Amendment V (3) / 12-13 (Heathcoat-Amory)*  
  
*See Amendment V (1) / 40 (Kirkhope)*
- **Invert paragraphs**  
*Amendment V (3) / 7 (Teufel): see V (2) / 12 (Teufel)*  
*Amendment V (3) / 8 (Giberyen)*
- **Add a fourth paragraph on children's rights**  
*Amendment V (3) / 14 (Muscardini)*  
*Amendment V (3) / 19 (Queiró)*
- **Specify relationship between the Court of Justice and the European Court of Human Rights**  
*Amendment V (3) / 9 (Balázs)*

Comment: This provision is based to a considerable degree on Article 6(2) of the current TEU.

## II. LIST OF AMENDMENTS

*V (3) / 1 (BORRELL + 2 MEMBERS OF THE CONVENTION)*  
*V (3) / 2 (HAENEL AND BADINTER)*  
*V (3) / 3 (SOCIALIST MEMBERS OF THE EUROPEAN PARLIAMENT: DUHAMEL, MCAVAN, MARINHO, VAN LANCKER, HÄNSCH, BERÈS, CARNERO, PACIOTTI, THORNING-SCHMIDT)*  
*V (3) / 4 (HAIN)*  
*(V) (3) / 5 (MUSCARDINI)*  
*V (3) / 6 (KAUFMANN)*  
*V (3) / 7 (TEUFEL)*  
*V (3) / 8 (GIBERYEN)*  
*V (3) / 9 (BALÁZS)*  
*V (3) / 10-11 (HÜBNER)*  
*V (3) / 12-13 (HEATHCOAT-AMORY)*  
*V (3) / 14 (MUSCARDINI)*  
*V (3) / 15 (BROK + 15 EPP MEMBERS OF THE CONVENTION)*  
*V (3) / 16 (FISCHER)*  
*V (3) / 17 (DE BRUIN, VAN DIJK)*  
*V (3) / 18 (PACIOTTI, SPINI)*

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**THE EUROPEAN CONVENTION**

**Brussels, 11 March 2003**

THE SECRETARIAT

**CONV 607/03**

**CONTRIB 274**

**COVER NOTE**

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from Secretariat

to The Convention

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**Subject : Contribution by members of the Convention:  
"Initiative for the incorporation of the Charter of Fundamental Rights into the  
European Constitution"**

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The Secretary-General of the Convention has received the contribution in Annex from the members of the Convention whose names are listed on page 3.

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**ANNEX****Initiative for the Incorporation of the Charter of Fundamental Rights  
into the European Constitution**

The European integration process is rooted in the values, fundamental rights and freedoms enshrined in the European Charter of Fundamental Rights.

The Charter of Fundamental Rights is a unique expression of European identity. It is proof that the European Union is something far more than an economic community, that it is a community united by the shared values of the countries and peoples of Europe.

To the citizens of Europe the Charter is confirmation that in this integrating community to which they belong they have not only duties but also rights. Hence the Charter has a key role to play in helping Europe's citizens identify with the Union.

We therefore welcome the emerging consensus on the need to make the Charter an integral and legally binding part of the European constitution, without thereby conferring on the Union any new competences.

Given the fundamental nature of the Charter, its political impact is just as important as its legally binding status. Anyone looking up the European constitution expects to see his fundamental rights and freedoms spelt out right at the beginning. To tuck away the Charter in some protocol would be to deny its real worth and importance.

We therefore call for the entire Charter to be included in a prominent position in the text of the European Constitutional Treaty itself.

We call on all members of the Convention to endorse this initiative.

**Teresa Almeida Garrett, Peter Altmaier, Pascale Andreani, Vytenis Andriukaitis, Michael Attalides, Paraskevas Avgerinos, Eduarda Azevedo, Robert Badinter, Peter Balazs, Michel Barnier, Pervenche Beres, Maria Berger, Josep Borrell Fontelles, Mihael Brejc, Elmar Brok, Hans Martin Bury, Carlos Carnero Gonzalez, Gabriel Cisneros Laborda, Nikolaos Constantopoulos, Alberto Costa, Manfred Dammeyer, Alfonso Dastis, Karel de Gucht, Proinsias de Rossa, Kemal Dervis, Dominique de Villepin, Panayiotis Demetriou, Elio Di Rupo, Lamberto Dini, Guilherme d'Oliveira Martins, Andrew Duff, Olivier Duhamel, Péter Eckstein-Kovacs, Caspar Einem, Hannes Farnleitner, Ben Fayot, Joschka Fischer, Jacques Floch, Marta Fogler, Michael Frendo, Emilio Gabaglio, John Gormley, Peter Gottfried, Genewefa Grabowska, Hubert Haenel, Klaus Hänsch, Paul Helminger, Danuta Hübner, Panayiotis Ioakimidis, Georges Katiforis, Sylvia-Yvonne Kaufmann, Piia-Noora Kauppi, András Kelemen, Kimmo Kiljunen, Jan Kohout, Alain Lamassoure, Janez Lenarcic, Pierre Lequiller, Evelin Lichtenberger, Manuel Lobo Antunes, Ernani Lopes, Diego Lopez Garrido, Hanja Maij-Weggen, Luis Marinho, Rytis Martikonis, Eleni Mavrou, Neil McCormick, Inigo Mendez de Vigo, Jürgen Meyer, Louis Michel, Juraj Migas, Marie Nagy, Jozef Oleksy, David O'Sullivan, Elena Paciotti, Ana Palacio, Alojz Peterle, Danny Pieters, Paolo Ponzano, Hildegard Puwak, Reinhard Rack, Dimitrij Rupel, Jaques Santer, Nicolas Schmit, Wolfgang Senff, Adrian Severin, Valdo Spini, Jozef Szajer, István Szent-Iványi, Erwin Teufel, Helle Thorning-Schmidt, Frans Timmermans, Janusz Trzcinski, Gerhard Tusek, René van der Linden, Anne van Lancker, Evripidis Stylianidis, Pál Vastagh, Johannes Voggenhuber, Renée Wagner, Edmund Wittbrodt, Joachim Wuermeling, Marietta Yannakou-Koutsikou**

**THE EUROPEAN CONVENTION****Brussels, 14 April 2003**

THE SECRETARIAT

**CONV 659/03****CONTRIB 292****COVER NOTE**

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from : Secretariat

to : The Convention

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Subject : "Incorporation of the Charter in the Eu Constitutional Treaty"

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The Secretary-General of the Convention has received the attached contribution from Mr Henning CHRISTOPHERSEN, Mr Gijs de VRIES, Mr Peter HAIN, Mr Sören LEKBERG, Mr Rihards PIKS, Mr Dick ROCHE, Ms Lena HJELM-WALLEN, members of the Convention, and Mr Thom de BRUIJN, Mr Niels HELVEG-PETERSEN, Mr Krisjanis KARINS, Mr Guntars KRASTS, Mr Bobby McDONAGH, Mr Sven-Olof PETERSSON, Mr Poul SCHLUTER and Baroness SCOTLAND of ASTHAL, alternate members of the Convention.

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**ANNEXE****Incorporation of the Charter in the EU Constitutional Treaty**

Signatories

**Members of the Convention, Government Representatives**

Mr Henning CHRISTOPHERSEN

Mr Gijs de VRIES

Mr Peter HAIN

Mr Dick ROCHE

Ms Lena HJELM-WALLEN

**Alternate Members of the Convention, Government Representatives**

Mr Thom de BRUIJN

Mr Bobby McDONAGH

Mr Sven-Olof PETERSSON

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**Members of the Convention, Representatives of National Parliaments**

Mr Sören LEKBERG

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Mr Niels HELVEG-PETERSEN

Mr Krisjanis KARINS

Mr Guntars KRASTS

## **Incorporation of the Charter in the EU Constitutional treaty**

The Charter of Fundamental Rights makes more visible the values from which the Union draws her inspiration and strength. Those values are firmly rooted in the constitutional traditions of the Member State democracies.

It is the compromise on the Charter reached by Working Group II that offers the possibility of a consensus on giving the Charter a formal place in the Union Constitution. But that possible consensus is not based upon matters of political presentation, such as whether the Charter should appear in Part I or Part II of the Constitution or be annexed to it in some way. Such matters are of secondary importance.

Of primary importance, for the citizen and his or her Government, is the concrete meaning of the Charter and any implications for the law of the Union and for the law and constitutions of the Member States. The amendments to the horizontals and other work proposed by Working Group II should help clarify what our citizens may expect, and from whom they may expect it. This work needs to be completed. We must ensure that an incorporated Charter is indeed faithful to the consensus view that it should not change the competences of the Union.

We therefore call for the draft Constitution to clarify precisely that the application of an incorporated Charter would be governed by Part VII of that Charter, as amended by Working Group II; and for the work required on the associated legal explanations to be concluded as soon as possible. A decision on how precisely the Charter should be recognised in the Constitution can logically be made after that work is completed.

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**THE EUROPEAN CONVENTION****Brussels, 28 April 2003**

THE SECRETARIAT

**CONV 703/03****COVER NOTE**

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from Secretariat

to The Convention

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**Subject : Study by the European University Institute, presented by Vice-President Amato:****"Ten reflections on the Constitutional Treaty for Europe"**

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The Secretary General of the Convention has received from Mr Giuliano Amato, Vice President of the Convention, the attached contribution concerning a paper by the European University Institute.

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The European University Institute has produced a weighty study on the main topics that are currently under the attention of the Convention: preamble, Charter, competences, simplification of instruments, institutions, main policy areas, entry into force and revision. The study has been edited by Prof. Bruno de Witte, and other distinguished scholars have signed each of the chapters.

I do not endorse every single word of this study, but I consider it would be very useful for all the members of the Convention to be able to give it the attention it deserves. To this effect I ask you to kindly circulate it as a contribution presented by me.

G. AMATO

# Ten Reflections on the Constitutional Treaty for Europe

*Edited by*  
**Bruno de Witte**



**EUROPEAN UNIVERSITY INSTITUTE**  
**Robert Schuman Centre for Advanced Studies**  
**and**  
**Academy of European Law**



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# Fundamental Rights and Citizenship

Gráinne de Búrca

## 1 – Introduction

Given the lack of political agreement over its legal status which followed the proclamation of the Charter of Fundamental Rights in 2000,<sup>1</sup> and given the deadlock which has persisted for decades in relation to the question of accession by the EC to the ECHR, one of the more striking results to have emerged from the Convention process so far has been the overall support both within the Working Group on the Charter (II)<sup>2</sup> and within the plenary Convention for the legal incorporation of the Charter into the Treaties and for accession of the EU (with single legal personality) to the ECHR. These two issues were considered to be politically difficult, and the broad consensus quickly reached on their resolution has been somewhat surprising.

I will focus in this contribution on what I perceive to be the main issues which now arise in relation to the incorporation of the Charter into the Treaties: first, whether the incorporation of the Charter into a constitutional treaty of this kind could have the effect of altering the ‘fundamental rights *acquis*’; secondly, whether it should be integrated in its entirety into the basic treaty or incorporated by reference and annexed in a protocol or otherwise; third, whether the amendments proposed by Working Group II to the horizontal clauses would affect the substance of the Charter,

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<sup>1</sup> OJ C 364 of 18.12.2000, 1

<sup>2</sup> See the final report of the Working Group, CONV 354/02.

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contrary to the decision taken by the Group not to re-open any substantive questions which had been agreed by the previous Convention which drafted the Charter; and fourth, a number of residual questions including access to justice, the need for a ‘mainstreaming’ or ‘objectives’ clause, and the need for a clause authorising accession to the ECHR will be identified.

Before addressing the topic of the Charter and fundamental rights, the subject of citizenship will briefly be discussed.

## 2 – Citizenship

At first glance, it seems that the debate on a new constitutional treaty for the Union has not generated any proposals for change in the notion of EU citizenship which has existed for over ten years. No working group dealt specifically with the issue. Presumably this implies that change was not considered vital in this area; or perhaps it simply reflects the more general absence of focus on substantive issues within most of the Convention’s working groups: the only four which could be considered to focus on “substantive” matters were those on justice and home affairs, defence, economic governance, and belatedly, social policy, but even several of these have been preoccupied more with institutional than with substantive issues.

As far as citizenship is concerned, however, the basic framework elaborated by the Praesidium in its draft constitutional treaty of October 2002<sup>3</sup> provides essentially that ‘Union citizenship’ should be incorporated in an early Article (currently article 5) of such a new constitutional text. The existing rights and attributes of EU citizenship under the EC Treaty, namely the rights of movement, residence, voting and standing as a candidate in municipal and European Parliament elections etc, are referred to in the draft outline of Article 5. I will argue below, when discussing the substantive provisions of the Charter, that if the Charter is to be incorporated with its substance unchanged, then Article 5 (or equivalent) of the new constitutional treaty should not repeat all of the rights again, but rather should simply introduce the concept of EU citizenship, and should refer to the Charter articles for enumeration of the rights.

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3 CONV 369/02

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One curious and undesirable novelty, however, has been proposed in the Preliminary draft constitutional treaty, and this is that EU citizenship should be reconceptualised as ‘dual citizenship’, such that a national of any member state may ‘use either, as he or she chooses’. The notion of dual citizenship is an unfortunate way of describing the co-existence of national and EU citizenship. If it is intended as a description of the currently existing relationship between EU and national citizenship it is misleading, and if it is intended to define these categories in a new way for the future, under the basic Constitutional Treaty, then it is a regrettable move. The concept of dual citizenship suggests full and competing loyalties/relationships to two different and entirely separate polities, each of which makes similar claims of allegiance on the individual. This could be an undesirable development in a number of ways.

In the first place, EU and national citizenship, from the time of their introduction by the Maastricht Treaty, have been conceptualised as complementary rather than competing, and as mutually reinforcing rather than as alternatives. Each is seen as encompassing a relationship which is distinct from yet connected with the other (just as the Member States are distinct from yet part of the EU), so that neither status in itself should interfere with or challenge the essence of the other. European citizenship reflects the relationship between a member state national and the EU polity, defining the core legal and political rights pertaining to that relationship, but it is not an entirely separate and alternative status to national citizenship. Further, the ‘complementary’ nature of the two citizenships has been reflected not only in understanding and practice since the Maastricht Treaty, but also in the legal texts adopted since then. Thus the citizenship provisions of the Amsterdam Treaty were amended precisely in this way, specifying in Article 17(1) that ‘citizenship of the Union shall complement and not replace national citizenship’. The sentiment underlying this declaration could well be applied to the proposal to introduce a notion of dual citizenship, in the sense that ‘citizenship of the Union should complement and not compete with national citizenship’.

A second criticism of the language of dual citizenship is that it suggests two full and co-equal relationships between citizen and polity, as though the relationship between the individual and the EU were the same as that between the individual and his or her member state of nationality. Yet this is not what is currently represented by EU citizenship. It may reflect an aspiration, a hope that the EU may develop into a fully federal polity, but at present the notion of EU citizenship has neither the same content as, nor is a real alternative to national citizenship, and it does not reflect the substantive relationship of belonging to a full political and social community. Certainly many hope that the notion of EU citizenship will one day evolve into a

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more meaningful status of this kind, but to label it as such at present (which the conceit of dual citizenship suggests) risks painting a glossy veneer of constitutional language on something which remains rather empty in content. Indeed, the current opposition of so many Member States to the provision in the Commission's draft proposal on the right of movement and residence of EU citizens which would grant a permanent right of residence to an EU citizen in another Member State after a five-year residence period,<sup>4</sup> provides a sharp reminder that EU and national citizenship are far from equal alternatives. And the failure of various Member States and sub-national regions in many cases to facilitate the right of non-nationals to vote or to stand in local and European Parliament elections, as the EC Treaty currently requires them to do, also suggests that the practice of EU citizenship in its present form remains rather thin.<sup>5</sup>

**For these reasons, the concept of “dual” citizenship is a problematic one in the context of EU citizenship, and I would recommend against introducing it into the basic constitutional treaty.**

### 3 – The Charter of Fundamental Rights

#### *A. Maintaining the fundamental rights acquis*

A first question to be addressed is whether the Charter will replace all other references to fundamental rights currently contained in the Treaties such as in Article 6 TEU, and whether it will ‘crystallise’ the fundamental rights jurisprudence of the Court of Justice for the future. While the Charter was drafted on the basis that it would be essentially declaratory of the existing legal situation, and that it would not reduce or restrict the fundamental rights *acquis* built up over the years, it must nevertheless be recognised that the relatively open-ended and non-exhaustive approach adopted by the ECJ could possibly be restricted by the constitutional

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4 COM(2001)527.

5 See the Commission's third report on citizenship of the Union COM(2001)506, and also COM(2000)843.

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enactment of the Charter, if the latter is henceforth to be taken as the definitive and closed list of EU rights and values.

On the one hand, the Preamble to the Charter declares that the Charter “reaffirms ... the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States”, including specifically the ECHR and the two Social Charters (of the Council of Europe and the EC respectively). However, this seems merely to suggest that the rights actually specified in the Charter are derived from national constitutions and from these common international obligations, rather than that the EU continues to hold itself bound or at least inspired by international human rights obligations and standards more broadly. Further, while Article 53 of the Charter makes mention of human rights derived from international law and international agreements to which the Member States are party, as well as national constitutions, this is done merely to affirm that the Charter should not be used in such a way as to restrict those rights within their proper sphere of application. What is missing, however, is any equivalent in the Charter or its preamble to the ECJ’s often-repeated statement that “fundamental rights form an integral part of the general principles of law ... for that purpose, the Court draws inspiration from the constitutional traditions common to the Member States and from the guidelines supplied by international treaties for the protection of human rights on which the Member States have collaborated or to which they are signatories”. This assertion of a category of general principles of EU law inspired by international human rights treaties is more fluid and is non-exhaustive (take the example often cited of the rights of minorities, which are protected under the European Framework Convention on the Rights of Minorities and under the ICCPR, but not mentioned in the Charter, although the former are international agreements on which Member States have ‘collaborated’ in accordance with ECJ case law), by comparison with the enumerated rights approach of the Charter, even if the latter are themselves derived from international law and from ECJ case law.

It is possible, of course, that the ECJ will continue to adopt an open approach to human rights protection, and to make references to the general principles of law and to internationally protected rights which are not specifically mentioned in the Charter, even though the Charter will exist as a first and primary reference point. It was indeed an article of faith during the drafting of the Charter that it was not to *change* the existing state of the law, but rather was designed to showcase the fundamental rights *acquis* of the EU. Nonetheless, if the Charter as it stands is incorporated as one of the first articles in a new constitutional document, then there is a danger that it may become the authoritative reference point for EU fundamental

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rights, to the detriment of international human rights norms which are not specifically included.

**For this reason, in order to make sure that the normatively open *acquis* is not ‘closed’ by the incorporation of the Charter in a basic constitutional treaty, it would be advisable to include in the new treaty—for example in Article 2 of the preliminary draft constitutional treaty—a clause affirming that openness e.g. by mentioning the general principles of EU law which are inspired by international law.**

***B. Full incorporation of the text of the Charter or incorporation by reference?***

The majority of the Working Group favoured the full incorporation of the text of the Charter articles into the constitutional treaty, rather than incorporating it by reference by one of the other suggested methods. However, the debate in the Convention plenary indicated a range of views, and in the preliminary draft constitutional text, the three main options are set out for consideration: (a) a reference to the Charter (b) a statement of the fact that the Charter is an integral part of the Constitution with the articles of the Charter being set out elsewhere in the treaty or in an annexed protocol (c) full incorporation of all articles of the Charter.

It seems likely that the Working Group favoured the “full incorporation” option (c) primarily for symbolic purposes, in the sense of indicating the central place of these values and principles in the new constitutional text, rather as the Bill of Rights tends to be a central chapter in modern state constitutions. And while this option poses various difficulties due to the way in which the Charter was drafted as a separate and self-standing instrument, yet with complex overlaps and interactions with the existing EC Treaty, it seems nonetheless to be the best way forward for a number of reasons.

*Option (a) Incorporation by simple reference*

Option (a), to include a reference to the Charter, would presumably be along the lines of the current Article 6 of the EU Treaty, indicating that the Union commits itself to respect fundamental rights as they result from the EU Charter of Fundamental Rights, along with the ECHR and national constitutional traditions. Such a reference would place the Charter outside the constitutional treaty, as a source of inspiration for the fundamental rights recognised by the EU, rather than as an integral part of the new constitutional text, and would identify the Charter as one of the sources of rights alongside others. This would maintain the value of openness of the current position,



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but it seems to be the option less favoured both within the Working Group and also within the Convention's plenary debate. Certainly it would not give the prominence or centrality to the EU's commitment to human rights which the actual incorporation of the Charter into a new constitutional treaty would do. Had the question of the Charter's incorporation into the Treaties arisen at a time when there was no serious discussion of an EU constitution, then the option of incorporation by an additional reference in Article 6 of the EU Treaty would possibly have been the best solution. However, the fact that the current process and the 2004 IGC is likely to produce a basic constitutional text for the EU introduces a fundamental symbolic and substantive change, which would make the omission of the Charter from the new constitution a much more significant exclusion.

**For this reason, option (a) of incorporation by reference would not be the best solution in the current context.**

*Option (b) Incorporation by reference and by inclusion of the Charter in a protocol to the constitutional treaty*

Option (b) provides an intermediate solution. On the one hand it would achieve the full incorporation of the Charter into the new constitutional text with equal legal status alongside all other provisions of the latter, rather than leaving it as an external source of inspiration only [as under option (a)]. And on the other hand it would achieve this without the awkwardness of inserting a relatively lengthy and self-standing text such as the Charter, with its own preamble, into the first articles of a new constitutional treaty.

However, this solution has two disadvantages. The first and most important is that it would lack the symbolic commitment of placing the Charter centrally within a new constitutional text, and would seem to relegate it to the less pivotal status of a protocol or annex. Given the importance of the message conveyed by placing the Charter's commitment to human dignity, equality and solidarity at the heart of a new documentary constitution, this would be a very significant loss. Further, while one apparent advantage of the incorporation-by-reference option is that it would seem to avoid some of the problems of duplication and overlap between the provisions of the Charter and those of the existing EC Treaty, that advantage would in fact be one of appearance only. This is because, given the equal legal status of the Charter and the Treaties under option (b), the practical problem of actual legal overlap and duplication would remain, even if the location of the Charter as a separate integral document in an annex or protocol would superficially reduce the degree of textual and visual awkwardness.

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**For this reason, option (b) of incorporation by reference combined with inclusion of the Charter in a protocol or annex to the Treaty, should not be the preferred solution.**

*Option (c) Full incorporation of all of the Charter provisions*

Option (c), which would incorporate the full text of the Charter into a constitutional treaty was the choice favoured by most of the Convention Working Group members, and has also been proposed in the ‘Feasibility Study’ draft Constitution recently prepared by the Lamoureux working group for the Commission (published 4 December 2002, and referred to, rather strangely, as Penelope).<sup>6</sup> The essential value and importance of this approach would be the visibility and symbolism of setting out, at an early point in the new constitutional text, what is effectively a constitutional bill of rights. While this approach presents certain practical and legal problems which will be discussed below, it is nonetheless, in my view, the option to be preferred. In particular, the solution proposed in the Penelope draft of having a separate Part II in the basic constitutional treaty containing the full Charter would be preferable to placing it in the middle of something like Part I of the Praesidium’s October 2002 draft. The detailed policies and legal bases would then be contained in a separate Part III of the constitutional treaty.

A first problem, however—one which has animated most of the political discussion of a constitutional treaty or a constitution for the EU—is arguably that of simplicity and readability. From this perspective, one might doubt the wisdom of incorporating a document of fifty-four articles into a basic constitutional treaty, which, according to the Praesidium’s preliminary draft would contain no more than forty-six articles. However, the prospect of simplifying by reducing the number of articles in the Charter and changing its text in any substantive way (other than by the purely cosmetic change of ‘grouping’ several current Charter articles together under a smaller number of umbrella articles of the new constitutional treaty, as was mooted during the Convention debate on the Working Group’s final draft) would be ill-advised, given the almost unchallenged assumption so far that the substance of the Charter should remain unchanged, in deference to the procedure by which it was drafted and proclaimed in 2000.

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<sup>6</sup> See [http://europa.eu.int/futurum/documents/offtext/const051202\\_en.pdf](http://europa.eu.int/futurum/documents/offtext/const051202_en.pdf)

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Perhaps a more substantial problem in relation to the feasibility of option (c), however, is that the Charter was drafted as a complete and integral instrument with its own preamble, its own internal coherence and with a set of final horizontal clauses, rather than being designed as one part of a larger text. Further, as a consequence of its having been drafted as a separate and complete instrument by the first Convention, the Charter contains many provisions which either duplicate, partially overlap with, repeat in slightly different form, or are somewhat in tension with provisions of the existing EC Treaty. If all of the Charter's provisions are to be incorporated into the new constitutional treaty in their current form it is inevitable that consequential changes to the substance of the existing EC Treaty will need to be made, and it seems likely that some duplication will in any event persist.

On the basis of the Praesidium's preliminary draft, it seems that the fundamental provisions establishing the single market and all of the legislative bases for action would be contained in a separate part of the constitutional text, which obviously raises the question of the relationship between legal bases such as the current Articles 12, 13 and 141 of the EC Treaty and the 'corresponding' rights contained in provisions of the Charter such as Articles 21 and 23. It seems unlikely, despite the opinion of the Working Group to that effect, that the 'referral clause' in Article 52(2) of the Charter is sufficient to deal with the replications and overlaps which are likely to result from its incorporation into the constitutional Treaty containing much of what currently exists in the EC Treaty. It would seem, on the contrary, that a significant 'cleaning-up' job would need to be done on the remaining provisions of the EC Treaty which intersect or overlap with the provisions of the Charter and which are likely to be included in the new constitutional document.

As an initial step in the direction of this task, annexed at the end of this paper is a table illustrating the various articles of the Charter which correspond in different ways with—whether by overlapping with, repeating, or even potentially contradicting—provisions contained in the current EC Treaty. In some of these instances, it is evident that versions of these EC Treaty provisions would have to be included in the remaining Part of the preliminary draft constitutional treaty. The comments in the third column of the table attempt to indicate those cases where it is possible to envisage the EC Treaty provisions being adapted so as to relate more directly to the corresponding provision in the Charter, e.g. to provide the legal basis and mechanism for implementing or fleshing out the right expressed in the Charter.

In other words, for provisions such as Articles 21 and 23 (discrimination and gender equality), or 27, 28, 30 and 31 (workers' rights), which would have corresponding legal bases in the relevant Part of the constitutional treaty, the latter provisions could

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make direct reference to the Articles of the Charter. These could be expressed in a form such as: ‘the Council, acting under the [co-decision procedure] shall adopt legislation to combat discrimination in accordance with Article [21, 23...] of the Charter of Rights’. A similar and careful coordination of the competence provisions of the constitutional treaty in the field of social policy with the declaration of workers’ rights and other social rights contained in the Charter would need to be undertaken. In other instances, for example the exhortatory provisions concerning cultural diversity, consumer protection and health protection, these could be mentioned in the remaining part of the constitutional treaty by means of an express reference to the relevant Charter provision. In the case of the citizenship provisions, as argued above, it would be advisable for the current draft of Article 5 of the preliminary draft constitutional text only to introduce and assert the basic concept of EU citizenship, rather than listing all of the specific rights pertaining to it. Instead, what is now draft Article 5 should refer to the Charter for a listing of the specific rights and incidents of EU citizenship. Finally, a corresponding legal basis providing power to adopt legislation to implement the citizenship rights contained in the Charter would be needed in the remaining part of the constitutional treaty. Indeed, the Penelope draft included an additional article 57 in the text of the Charter itself conferring competence to adopt measures to implement and facilitate the citizenship rights contained therein. This, however, is not recommended, since there are no other competence provisions in the Charter itself, and corresponding competence provisions for many other Charter rights will in any case need to be contained in the remaining part of the constitutional treaty.

**Therefore it is recommended that the Charter (complete with preamble) be incorporated, along the lines indicated in the Penelope draft, in Part II of a three-part Constitutional Treaty, before Part III which would contain the detailed policies and legal bases. It could, if considered necessary, be specified that Part III of the constitutional Treaty should be read in conformity with the more fundamental Parts I and II.**

### ***C. Proposed Working Group amendments to the horizontal clauses of the Charter***

#### *Article 51(1) and (2)*

The amendments proposed by the WG are shown in italics:

*"51 (1): The provisions of this Charter are addressed to the institutions and bodies of the Union with due regard for the principle of subsidiarity*

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and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers *and respecting the limits of the powers of the Union as conferred on it by other parts of [this Treaty / the Constitutional Treaty].*

51 (2): This Charter *does not extend the scope of application of Union law beyond the powers of the Union or establish any new power or task for [the Community or] the Union or modify powers and tasks defined by the other [Chapters / parts] of [this Treaty / the Constitutional Treaty]."*

A number of commentators had earlier pointed out the tension between the obligation in Article 51(1) on the institutions of the EU to ‘promote’ the application of the rights contained in the Charter and the assertion in Article 51(2) that the Charter *does not* modify powers or tasks defined by the Treaty. As a consequence of this, the Working Group has proposed something of a ‘belt and braces’ approach, supplementing both paragraphs (1) and (2) with limiting clauses designed to further underscore the intention not to increase, change or extend any of the existing powers under the EC or EU treaties. Arguably, these additional clauses are superfluous, somewhat ugly to read, and they do not remove the tension in question. It seems simply inevitable (and from the point of view of at least some, desirable) that the existence and incorporation of the Charter will influence the nature and interpretation of EU tasks and powers, although in subtler ways than the bald notion of ‘establishing new power’ suggests. The explicit articulation for the first time in the basic EU constitutional treaty of an array of fundamental rights seems unlikely not to ‘modify’ the way other aspects of the EU’s powers and tasks are construed, at least by the Court of Justice if not by other actors. The fiction that the Charter of Rights, whether fully legally incorporated or not, ‘makes no difference’ to anything in the EU legal and political order is not an easy one to maintain, and although no doubt there were strong interests to be appeased within the Working Group which led to the belt and braces approach as a way of maintaining this fiction, the amended Article 51 presents a curious picture. It is of course a feature typical of the way in which the EU operates—in particular at high constitutional moments such as these—that bold and powerful new developments such as the constitutional incorporation of a new Bill of Rights are accompanied by a series of countervailing safeguards and even contradictory limiting provisions. Nevertheless, it seems unlikely that there will be much political opposition to the newly proposed ‘double padlock’ provision, and on the contrary that there will be clear political support for it as an assertion of the limits of EU competence.

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**However, for the reasons just given, it is recommended that the amendments proposed by the Working Group to Article 51 of the Charter be rejected.**

*Article 52(4)*

The amendment proposed by the Working Group in adding this new subparagraph is:

"52(4) Insofar as this Charter recognises fundamental rights as they result from the constitutional traditions common to the Member States, those rights shall be interpreted in harmony with those traditions."

This proposal seems a useful one. It reads as a direction to the Court of Justice to interpret the rights contained in the Charter in harmony with national constitutional traditions, in so far as the rights in question are derived from those traditions. This direction to strive for 'soft harmony' between national constitutional rights and the expression of those rights contained in the Charter is a more promising constitutional means of addressing the tension between them rather than positing the supremacy of one over the other—quite apart from the fact that political agreement on such a supremacy clause (of either kind) would be virtually impossible to achieve. Like the provision already contained in Article 52(3) concerning the relationship between the Charter and corresponding provisions of the ECHR, this proposed amendment leaves many questions open, but that seems inevitable and appropriate to the complexity of Europe's legal pluralism.

**It is recommended that the Working Group's proposed amendment to Article 52(4) of the Charter be accepted.**

*Article 52(5)*

The amendment proposed by the Working Group in adding this new subparagraph is:

"52 (5) The provisions of this Charter which contain principles may be implemented by legislative and executive acts taken by institutions and bodies of the Union, and by acts of Member States when they are implementing Union law, in the exercise of their respective powers. They shall be judicially cognisable only in the interpretation of such acts and in the ruling on their legality."

Article 52(5), like the proposed amendments to Article 51 discussed above, seems to be a legally superfluous and fuzzy political compromise. This is the one amendment proposed by the Working Group which seems to be an attempt—or perhaps better described as a compromise proposal in response to such an attempt—to revisit the substance and content of

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the Charter, despite the Group's assertion that it proceeded on the basis that the content of the Charter which had been proclaimed at the Nice European Council should not be re-opened. If the 'integrity' of the Charter as a whole, on account of the mechanism by which it was drafted and proclaimed is to be taken seriously, then this in itself provides a clear argument against including the proposed amendment in Article 52(5).

The amendment seems likely to have been pressed by one of the UK members of the Working Group—although a large majority of the Working Group supported it—in particular since the UK government's previous representative on the Convention which drafted the Charter in 2000, Tony Goldsmith, had fought hard for a distinction between rights and principles to be made in the text, but had been defeated in this attempt at an early stage of the Charter drafting process.<sup>7</sup> The main thrust behind this position seems to be the wish not to render many of the so-called economic and social rights (which are considered to require positive action and social expenditure) justiciable, and therefore to reclassify them as 'principles', while maintaining the more traditional and often negatively framed civil and political rights (which are considered to require only non-interference) as justiciable individual rights. According to the proposed amendment, Charter provisions "which contain principles ... shall be judicially cognisable only in the interpretation of [acts which implement these principles] and in ruling on their legality".

Without needing to engage in the longstanding academic and policy debate on the distinction between economic/social and civil/political rights, and on their alleged indivisibility under international law,<sup>8</sup> the likelihood of the proposed amendment rendering all 'social rights' contained in the Charter non-justiciable seems in any case extremely slight. This is partly because the distinction which the amendment introduces between 'principles' and 'subjective rights'—to use the language of the Working Group's explanatory note on the proposed amendment<sup>9</sup>—is extremely hazy, and partly because there is no clear division between economic/social and

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7 For an account of the Charter from his perspective, see T. Goldsmith, 'A Charter of Rights, Freedoms and Principles' (2001) 38 *Common Market Law Review* 1201'

8 See H. Steiner and P. Alston, *International Human Rights in Context* (2<sup>nd</sup> edn., OUP, 2000), Chap. 4; C. Fabre, 'Constitutionalising Social Rights' (1998) 6 *Journal of Political Philosophy* 263.

9 See WD 023.

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civil/political rights in the Charter. The latter division does not in any case map neatly onto a distinction between ‘rights requiring positive action or expenditure’ and rights which require only non-interference for their protection.

Further, the polarisation of the notions of justiciability and non-justiciability underlying the proposed amendment reflects a simplistic and legally unsophisticated understanding of the function and operation of a Charter of Rights such as this. It is unlikely that the rights and values set out in the Charter will be used in any significantly different way from the way in which fundamental rights and provisions of the ECHR have until now been used in litigation before the ECJ. The legal and constitutional culture within which the ECJ has operated over the past four decades, and the approach it has adopted to fundamental rights adjudication has shown no indicating of following the strong paradigm associated with the US legal system of rights as weapons used to ‘trump’ legislation. Indeed the complaint has more usually been that the ECJ does not ‘take rights seriously’ in the sense that it has only extremely rarely struck down any provision of EU law, other than individual administrative or staff actions, for violation of human rights.<sup>10</sup> Instead, the articulation of legal rights in a text such as the ECHR and now the EU Charter is much more likely to continue to function as a source of values and norms other than those set out in the other Treaties, to influence the interpretation of EU legislative and other measures, and to feed into policy-making and into EU activities more generally. And it is unlikely that the ECJ’s role and approach in relation to these values and norms will change very much from the approach it has demonstrated to date with other fundamental rights and norms derived from the ECHR and national constitutional law.

There is therefore a range of arguments in favour of abandoning the Working Group’s proposed amendment to Article 52(5) (which, incidentally, was accepted in the Penelope draft). It represents an attempt to re-open the substance of the Charter as agreed by the previous Convention by consensus; it is premised on a very unclear distinction between ‘principles’ and everything else; it is based on a rather crude understanding of the notion of justiciability; and it reflects a lack of awareness of the

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10 See J. Coppel and A. O’Neill, ‘The European Court of Justice: Taking Rights Seriously?’ (1992) 29 *Common Market Law* 669, and the response in J. Weiler and N. Lockhart ‘“Taking Rights Seriously” Seriously: The European Court and its Fundamental Rights Jurisprudence’ (1995) 32 *Common Market Law Review* 51, 579.



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role and approach which has over the years been adopted by the ECJ (and CFI) in cases raising fundamental rights issues. The best that can be said about the proposed amendment is that the ECJ can decide for itself what constitutes a 'principle', and that this language is unlikely to restrict it in drawing on the range of values and norms expressed in the Charter in its adjudicative role.

**It is recommended that the Working Group's proposed amendment to Article 52(5) of the Charter be rejected.**

*Article 52(6)*

The amendment proposed by the Working Group in adding this new subparagraph is:

"52 (6) Full account shall be taken of national laws and practices as specified in this Charter."

This seems to be an exhortatory and fairly uncontroversial amendment encouraging those who apply and interpret the Charter to pay full account to national laws and practices when the Charter specifies this.

**It is recommended that the Working Group's proposed amendment to Article 52(6) of the Charter be accepted.**

***D. Some remaining questions***

(1) Is there a need, in particular because of Opinion 2/94 of the ECJ, for a special clause to be inserted in the new treaty authorising the EU to accede to the ECHR? Some have argued that, for the sake of legal certainty and clarity, such a clause does need to be included, and this is certainly the view taken by the Working Group. It seems unlikely that such a provision would be legally or constitutionally necessary, however, given that the circumstances in which Opinion 2/94 was written will have radically changed if a new constitutional treaty along the lines which are currently emerging comes into force. In the first place, a Charter of Rights will be incorporated into the treaty; secondly, the EU will have legal personality; and more generally the institutional and constitutional architecture which existed at the time of the 1996 Opinion will have altered in many significant ways. Arguably such a clause is not strictly necessary, but the Working Group recommendation to include a legal basis in the new Treaty may well be sensible for the avoidance of doubt and to help provide political impetus at a later stage to accede. The Penelope draft has included such a clause in a new Article 55(1) of the Charter, which would be incorporated into Part II of a new EU Constitution.

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**It is recommended that a provision be included in the constitutional treaty containing an explicit legal basis for accession by the EC/EU to the European Convention on Human Rights.**

(2) Should there be a reform of Article 230 to complement the incorporation of the Charter of Rights? The Charter Working Group did not wish to make a recommendation on this issue, on the basis that it was not properly within their mandate, and that it should be addressed either by the Working Group on Justice and Home Affairs together with other questions of judicial control by the ECJ, or as part of the work on judicial control of subsidiarity. There are few questions on which the EU law academic world (not to mention the CFI and the Advocates General of the ECJ) is so united as that the right of individuals to seek judicial review by the ECJ under Article 230 is excessively restrictive, and that it undermines respect for the principle of access to justice in the EU. The adoption of the Charter of Rights only heightens this sense (and not only because of the content of Article 57 of the Charter itself on access to court), and the response that the ECJ is already overburdened simply cannot provide an answer to the criticisms of *locus standi* under Article 230. The problem of overburdening is a significant one which must be addressed in the reflections on reform of the judicial system after the introduction of the Nice Treaty changes, but it cannot be addressed entirely at the expense of individual access to justice. There are very strong arguments for introducing a reform to Article 230, and the incorporation of the Charter into a new constitutional treaty provides a forceful new reason for doing so.

**It is recommended that the current Article 230 of the EC Treaty be amended to provide for less restrictive *locus standi* for individuals before the Court of Justice.**

(3) Should there be a human rights mainstreaming clause, along the lines of the 'environmental' and 'gender equality' integration clauses of the current EC Treaty? There are strong arguments to be made in favour of such a clause, in particular because the Council has asserted in its Annual Reports on Human Rights in the Union that it is committed to mainstreaming human rights concerns into all EU internal and external policies. However, given the extreme caution displayed in the 'horizontal articles' of the Charter in relation to any possible change in the nature of EU powers, it seems likely that a mainstreaming article would be viewed with political suspicion in various quarters as a possible Trojan horse for smuggling a more positive or proactive human rights dimension into EU policy. Nonetheless, a new constitutional Treaty which places protection for human rights in a central

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position and which incorporates a Charter of Fundamental Rights, would be enhanced by a human rights mainstreaming clause which should not, if the Council's annual reports are to be believed, bring about any major change in current practice.

**It is recommended that a human rights integration clause, along the lines of the current Articles 3(2) and 6 of the EC Treaty on gender equality and environmental protection, be included in the constitutional treaty.**

(4) Should there be a clause in the constitutional treaty which makes protection of human rights an explicit objective of the Union? Since the ECJ handed down its Opinion 2/94 on accession to the ECHR,<sup>11</sup> the question whether the EU legislature could act under Article 308 on the basis that protection of human rights is an objective of the Union has remained unclear. Some have taken the view that the Court's opinion indicated a negative answer, while others have taken the opposite view.<sup>12</sup> Joseph Weiler has recently argued, in the context of the current constitutional debate, that the opportunity should be taken now to insert an express objective of this kind into the reformed treaty.<sup>13</sup> This would constitute a positive step in favour of a more proactive human rights policy, but it seems unlikely to have political support in view of the opposite tendency displayed in relation to Article 51(1) and (2) of the Charter.

**It is recommended that protection for human rights be specified as an objective of the EC/EU.**

(5) Should there be a provision for establishing a mechanism to enforce the 'suspension of rights' provision of the Treaty where there is a 'serious and persistent breach' of fundamental rights by a member state—currently Article 45 of the

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11 [1996] ECR I-1759

12 See the range of views expressed in the commentaries on the case: J.H.H. Weiler and S. Fries, "A Human Rights Policy for the European Community and Union: the Question of Competences" in P. Alston, M. Bustelo and J. Heenan (eds), *The EU and Human Rights* (OUP, 1999), N. Burrows (1997) 22 *European Law Review* 58; G. Gaja (1996) 33 *Common Market Law Review* 973; S. Peers (1998) 35 *Common Market Law Review* 539; A. Dasirwood and A. Arnall in *C.E.L.S. Occasional Paper* no. 1, and C. Vedder, *Europarecht* (1996) 309.

13 'A Constitution for Europe: Some Hard Choices' (2002) 40 *Journal of Common Market Studies* 563

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preliminary draft constitutional treaty? The absence of such a mechanism is a fact to which a number of commentators have drawn attention, but some would treat it as a matter of implementing detail rather than a central constitutional issue. Further, it is also an issue which would raise the same ‘increased competences/powers’ fears as demonstrated in Article 51 of the Charter, since an enforcement mechanism would probably entail a monitoring procedure, and hence a degree of supervision of Member State activities. From this perspective, it may be better at least initially to allow a process to evolve in an organic way, as seems to be suggested by the approach adopted in the European Parliament’s most recent Annual reports on human rights within the Union.<sup>14</sup>

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14 See A5-0223/2001 and A5-0451/2002.

## Appendix

## “Corresponding” Provisions of the Charter and the current EC Treaty

| Charter                                                                                                                                                                   | EC                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Comment                                                                                                                                                                                                                                                                                                             |
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| <p><i>Article 14</i><br/><i>Right to education</i></p> <p>1. Everyone has the right to education and to have access to vocational and continuing training.</p> <p>...</p> | <p><i>Article 150 (ex Article 127)</i></p> <p>...</p> <p>2. Community action shall aim to:</p> <ul style="list-style-type: none"> <li>- facilitate adaptation to industrial changes, in particular through vocational training and retraining;</li> <li>- improve initial and continuing vocational training in order to facilitate vocational integration and reintegration into the labour market;</li> <li>- facilitate access to vocational training and encourage mobility of instructors and trainees and particularly young people;</li> <li>- stimulate cooperation on training between educational or training establishments and firms;</li> <li>- develop exchanges of information and experience on issues common to the training systems of the Member States.</li> </ul> <p>...</p> | <p>Article 14.1 Charter and Article 150(2) EC (access to vocational training)</p> <ul style="list-style-type: none"> <li>▪ Likely interaction: EC Treaty provision could be adapted to provide that Community/ Union action shall aim also to implement the right contained in Article 14 of the Charter</li> </ul> |



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| <p><b>Article 15</b><br/><i>Freedom to choose an occupation and right to engage in work</i></p> <p>...</p> <p>2. Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State.</p> <p>...</p> <p><b>Article 16</b><br/><i>Freedom to conduct a business</i></p> <p>The freedom to conduct a business in accordance with Community law and national laws and practices is recognised.</p> | <p><b>Article 39 (ex Article 48)</b></p> <p>...</p> <p>3. It shall entail the right, subject to limitations justified on grounds of public policy, public security or public health:</p> <p>(a) to accept offers of employment actually made;</p> <p>(b) to move freely within the territory of Member States for this purpose;</p> <p>(c) to stay in a Member State for the purpose of employment in accordance with the provisions governing the employment of nationals of that State laid down by law, regulation or administrative action;</p> <p>(d) to remain in the territory of a Member State after having been employed in that State, subject to conditions which shall be embodied in implementing regulations to be drawn up by the Commission.</p> <p>4. ...</p> <p><b>Article 43 (ex Article 52)</b></p> <p>Within the framework of the provisions set out below, restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State shall be prohibited. Such prohibition shall also apply to restrictions on the setting-up of agencies, branches or subsidiaries by nationals of any Member State established in the territory of any Member State. Freedom of establishment shall include the right to take up and pursue</p> | <p>Articles 15(2) and 16 Charter and Articles 39(3), 43 and 49 EC Treaty (rights to work, establish, provides services):</p> <ul style="list-style-type: none"> <li>There is some overlap and duplication here; while this is not particularly problematic, greater coherence could be introduced by making reference to the rights contained in Arts 15 &amp; 16 of the Charter in Arts 39, 43 &amp; 49 EC Treaty which elaborate on those rights.</li> </ul> |
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|                                                                                                                                                                                                                                                                                                                                                           | <p>activities as selfemployed persons and to set up and manage undertakings, in particular companies or firms within the meaning of the second paragraph of Article 48, under the conditions laid down for its own nationals by the law of the country where such establishment is effected, subject to the provisions of the Chapter relating to capital.</p> <p><i>Article 49 (ex Article 59)</i><br/> Within the framework of the provisions set out below, restrictions on freedom to provide services within the Community shall be prohibited in respect of nationals of Member States who are established in a State of the Community other than that of the person for whom the services are intended. The Council may, acting by a qualified majority on a proposal from the Commission, extend the provisions of the Chapter to nationals of a third country who provide services and who are established within the Community.</p> |                                                                                                                                                                                            |
| <p><i>Article 21</i><br/> <b>Non-discrimination</b><br/> 1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.</p> | <p><i>Article 12 (ex Article 6)</i><br/> Within the scope of application of this Treaty, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited. The Council, acting in accordance with the procedure referred to in Article 251, may adopt rules designed to prohibit such discrimination.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | <p>Article 21 Charter, and Articles 12 and 13 EC (freedom from discrimination):</p> <ul style="list-style-type: none"> <li>▪ There is considerable overlap here : the EC Treaty</li> </ul> |

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| <p>2. Within the scope of application of the Treaty establishing the European Community and of the Treaty on European Union, and without prejudice to the special provisions of those Treaties, any discrimination on grounds of nationality shall be prohibited.</p> | <p><i>Article 13 (ex Article 6*)</i></p> <p>Without prejudice to the other provisions of this Treaty and within the limits of the powers conferred by it upon the Community, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.</p>                                                                                                                                                                                                                                                                                                                                                                                       | <p>provisions (12-13) could refer to the Charter provisions and should provide a legal basis also for the additional grounds of discrimination covered in Art 21.</p>                                                            |
| <p><i>Article 22</i><br/><i>Cultural, religious and linguistic diversity</i></p> <p>The Union shall respect cultural, religious and linguistic diversity.</p>                                                                                                         | <p><i>Article 151 (ex Article 12§)</i></p> <p>1. The Community shall contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore.</p> <p>2. Action by the Community shall be aimed at encouraging cooperation between Member States and, if necessary, supporting and supplementing their action in the following areas:</p> <ul style="list-style-type: none"> <li>- improvement of the knowledge and dissemination of the culture and history of the European peoples;</li> <li>- conservation and safeguarding of cultural heritage of European significance;</li> <li>- non-commercial cultural exchanges;</li> <li>- artistic and literary creation, including in the audiovisual sector.</li> </ul> | <p>Article 22 Charter and Article 151 EC (respect for cultural diversity):</p> <ul style="list-style-type: none"> <li>▪ Some overlap here: reference to the Charter provision could be made in the EC Treaty article.</li> </ul> |



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|                                                                                                                                                                                                                                                                                                                                          | <p>3. The Community and the Member States shall foster cooperation with third countries and the competent international organisations in the sphere of culture, in particular the Council of Europe.</p> <p>4. The Community shall take cultural aspects into account in its action under other provisions of this Treaty, in particular in order to respect and to promote the diversity of its cultures.</p> <p>5. In order to contribute to the achievement of the objectives referred to in this Article, the Council:</p> <ul style="list-style-type: none"> <li>- acting in accordance with the procedure referred to in Article 251 and after consulting the Committee of the Regions, shall adopt incentive measures, excluding any harmonisation of the laws and regulations of the Member States. The Council shall act unanimously throughout the procedure referred to in Article 251;</li> <li>- acting unanimously on a proposal from the Commission, shall adopt recommendations.</li> </ul> |                                                                                                                                                                                            |
| <p><i>Article 23</i><br/><i>Equality between men and women</i></p> <p>Equality between men and women must be ensured in all areas, including employment, work and pay. The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.</p> | <p><i>Article 141 (ex Article 119)</i></p> <ol style="list-style-type: none"> <li>1. Each Member State shall ensure that the principle of equal pay for male and female workers for equal work or work of equal value is applied.</li> <li>2. For the purpose of this Article, "pay" means the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which the</li> </ol>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | <p>Article 23 Charter and Article 141 EC (equality between men and women):</p> <ul style="list-style-type: none"> <li>▪ There is considerable overlap here: reference should be</li> </ul> |

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|  | <p>worker receives directly or indirectly, in respect of his employment, from his employer. Equal pay without discrimination based on sex means:</p> <p>(a) that pay for the same work at piece rates shall be calculated on the basis of the same unit of measurement;</p> <p>(b) that pay for work at time rates shall be the same for the same job.</p> <p>3. The Council, acting in accordance with the procedure referred to in Article 251, and after consulting the Economic and Social Committee, shall adopt measures to ensure the application of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, including the principle of equal pay for equal work or work of equal value.</p> <p>4. With a view to ensuring full equality in practice between men and women in working life, the principle of equal treatment shall not prevent any Member State from maintaining or adopting measures providing for specific advantages in order to make it easier for the under-represented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers.</p> | <p>made to the Charter provision, esp. in paras 3 and 4 of Art 141.</p> |
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| <p><i>Article 27</i><br/><b>Workers' right to information and consultation within the undertaking</b></p> <p>Workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions provided for by Community law and national laws and practices.</p> <p><i>Article 28</i><br/><b>Right of collective bargaining and action</b></p> <p>Workers and employers, or their respective organisations, have, in accordance with Community law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action.</p> <p><i>Article 30</i><br/><b>Protection in the event of unjustified dismissal</b></p> <p>Every worker has the right to protection against unjustified dismissal, in accordance with Community law and national laws and practices.</p> <p><i>Article 31</i><br/><b>Fair and just working conditions</b></p> <p>1. Every worker has the right to working conditions which respect his or her health, safety and dignity.</p> | <p><i>Article 137 (ex Article 118)</i></p> <p>1. With a view to achieving the objectives of Article 136, the Community shall support and complement the activities of the Member States in the following fields:</p> <ul style="list-style-type: none"> <li>- improvement in particular of the working environment to protect workers' health and safety;</li> <li>- working conditions;</li> <li>- the information and consultation of workers;</li> <li>- the integration of persons excluded from the labour market, without prejudice to Article 150;</li> <li>- equality between men and women with regard to labour market opportunities and treatment at work.</li> </ul> <p>2. To this end, the Council may adopt, by means of directives, minimum requirements for gradual implementation, having regard to the conditions and technical rules obtaining in each of the Member States. Such directives shall avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings. The Council shall act in accordance with the procedure referred to in Article 251 after consulting the Economic and Social Committee and the Committee of the Regions. The Council, acting in accordance with the same procedure, may adopt measures designed to encourage cooperation between Member States through initiatives aimed at improving knowledge, developing exchanges of information and best practices, promoting innovative approaches and evaluating</p> | <p>Articles 27, 28, 30, 31 Charter and Articles 137 and 140 EC (rights of workers):</p> <ul style="list-style-type: none"> <li>▪ There is evidently some overlap here. Appropriate reference to the various Charter rights could be made in the EC Treaty provisions; There is however some tension between Article 28 Charter and Article 137(5), the latter excluding EC legislative competence in the field of strike action while the former recognises the right to engage in strike action as an EU right.</li> </ul> |
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| <p>2. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.</p> | <p>experiences in order to combat social exclusion.</p> <p>3. However, the Council shall act unanimously on a proposal from the Commission, after consulting the European Parliament, the Economic and Social Committee and the Committee of the Regions in the following areas:</p> <ul style="list-style-type: none"> <li>- social security and social protection of workers;</li> <li>- protection of workers where their employment contract is terminated;</li> <li>- representation and collective defence of the interests of workers and employers, including co-determination, subject to paragraph 6;</li> <li>- conditions of employment for third-country nationals legally residing in Community territory;</li> <li>- financial contributions for promotion of employment and jobcreation, without prejudice to the provisions relating to the Social Fund.</li> </ul> <p>4. A Member State may entrust management and labour, at their joint request, with the implementation of directives adopted pursuant to paragraphs 2 and 3. In this case, it shall ensure that, no later than the date on which a directive must be transposed in accordance with Article 249, management and labour have introduced the necessary measures by agreement, the Member State concerned being required to take any necessary measure enabling it at any time to be in a position to guarantee the results imposed by that directive.</p> <p>5. The provisions adopted pursuant to this Article shall not prevent any Member State from maintaining or introducing more stringent protective measures compatible with this Treaty.</p> |  |
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|  | <p>6. The provisions of this Article shall not apply to pay, the right of association, the right to strike or the right to impose lock-outs.</p> <p><i>Article 140 (ex Article 118e)</i></p> <p>With a view to achieving the objectives of Article 136 and without prejudice to the other provisions of this Treaty, the Commission shall encourage cooperation between the Member States and facilitate the coordination of their action in all social policy fields under this chapter, particularly in matters relating to:</p> <ul style="list-style-type: none"> <li>- employment;</li> <li>- labour law and working conditions;</li> <li>- basic and advanced vocational training;</li> <li>- social security;</li> <li>- prevention of occupational accidents and diseases;</li> <li>- occupational hygiene;</li> <li>- the right of association and collective bargaining between employers and workers.</li> </ul> <p>To this end, the Commission shall act in close contact with Member States by making studies, delivering opinions and arranging consultations both on problems arising at national level and on those of concern to international organisations. Before delivering the opinions provided for in this Article, the Commission shall consult the Economic and Social Committee.</p> |  |
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| <p><b>Article 35</b><br/><b>Health care</b></p> <p>Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities.</p> | <p><b>Article 152 (ex Article 129)</b></p> <p>1. A high level of human health protection shall be ensured in the definition and implementation of all Community policies and activities. Community action, which shall complement national policies, shall be directed towards improving public health, preventing human illness and diseases, and obviating sources of danger to human health. Such action shall cover the fight against the major health scourges, by promoting research into their causes, their transmission and their prevention, as well as health information and education. The Community shall complement the Member States' action in reducing drugs-related health damage, including information and prevention</p> <p>...</p> | <p>Article 35 Charter and Article 152(1) EC (integration of high level of health protection):</p> <ul style="list-style-type: none"> <li>• The duplication here ('high level.. etc') could be reduced by amending the EC Treaty provision so as to make reference to the Charter's guarantee instead</li> </ul> |
| <p><b>Article 36</b><br/><b>Access to services of general economic interest</b></p> <p>The Union recognises and respects access to services of general economic interest as provided for in national laws and practices, in accordance with the Treaty establishing the European Community, in order to promote the social and territorial cohesion of the Union.</p>  | <p><b>Article 16 (ex Article 7d)</b></p> <p>Without prejudice to Articles 73, 86 and 87, and given the place occupied by services of general economic interest in the shared values of the Union as well as their role in promoting social and territorial cohesion, the Community and the Member States, each within their respective powers and within the scope of application of this Treaty, shall take care that such services operate on the basis of principles and conditions which enable them to fulfil their missions.</p>                                                                                                                                                                                                                    | <p>Article 36 Charter and Article 16 EC (services of general economic interest):</p> <ul style="list-style-type: none"> <li>• Same as the previous column:</li> </ul>                                                                                                                                           |

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| <p><i>Article 37</i><br/><i>Environmental protection</i></p> <p>A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.</p> | <p><i>Article 6 (ex Article 3c)</i></p> <p>Environmental protection requirements must be integrated into the definition and implementation of the Community policies and activities referred to in Article 3, in particular with a view to promoting sustainable development.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | <p>Article 37 Charter and Article 6 EC</p> <ul style="list-style-type: none"> <li>• Same as previous column;</li> </ul>                         |
| <p><i>Article 38</i><br/><i>Consumer protection</i></p> <p>Union policies shall ensure a high level of consumer protection.</p>                                                                                                                                                               | <p><i>Article 153 (ex Article 129a)</i></p> <p>1. In order to promote the interests of consumers and to ensure a high level of consumer protection, the Community shall contribute to protecting the health, safety and economic interests of consumers, as well as to promoting their right to information, education and to organise themselves in order to safeguard their interests.</p> <p>2. Consumer protection requirements shall be taken into account in defining and implementing other Community policies and activities.</p> <p>3. The Community shall contribute to the attainment of the objectives referred to in paragraph 1 through:</p> <p>(a) measures adopted pursuant to Article 95 in the context of the completion of the internal market;</p> <p>(b) measures which support, supplement and monitor the policy pursued by the Member States.</p> | <p>Article 38 Charter and Article 153 EC (consumer protection):</p> <ul style="list-style-type: none"> <li>• Same as previous column</li> </ul> |

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|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | <p>4. The Council, acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee, shall adopt the measures referred to in paragraph 3(b).</p> <p>5. Measures adopted pursuant to paragraph 4 shall not prevent any Member State from maintaining or introducing more stringent protective measures. Such measures must be compatible with this Treaty. The Commission shall be notified of them.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                     |
| <p><b>Article 39</b><br/><i>Right to vote and to stand as a candidate at elections to the European Parliament</i></p> <p>1. Every citizen of the Union has the right to vote and to stand as a candidate at elections to the European Parliament in the Member State in which he or she resides, under the same conditions as nationals of that State.</p> <p>2. Members of the European Parliament shall be elected by direct universal suffrage in a free and secret ballot.</p> <p><b>Article 40</b><br/><i>Right to vote and to stand as a candidate at municipal elections</i></p> <p>Every citizen of the Union has the right to vote and to stand as a candidate at municipal elections in the Member State in which he or she resides under the same conditions as nationals of that State.</p> | <p><b>Article 18 (ex Article 8a)</b></p> <p>1. Every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in this Treaty and by the measures adopted to give it effect.</p> <p>2. The Council may adopt provisions with a view to facilitating the exercise of the rights referred to in paragraph 1; save as otherwise provided in this Treaty, the Council shall act in accordance with the procedure referred to in Article 251. The Council shall act unanimously throughout this procedure.</p> <p><b>Article 19 (ex Article 8b)</b></p> <p>1. Every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and to stand as a candidate at municipal elections in the Member State in which he resides, under the same</p> | <p>Articles 39, 40, 43, 44, 45, 46 Charter and Articles 18, 19, 20, 21, 190 and 194 EC (citizenship rights):</p> <ul style="list-style-type: none"> <li>• This extensive duplication could be avoided by introducing only the basic concept of citizenship in the EC Treaty provision and making reference to the Charter provision for a listing of the</li> </ul> |



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| <p><b>Article 43</b><br/><b>Ombudsman</b></p> <p>Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to refer to the Ombudsman of the Union cases of maladministration in the activities of the Community institutions or bodies, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role.</p> <p><b>Article 44</b><br/><b>Right to petition</b></p> <p>Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to petition the European Parliament.</p> <p><b>Article 45</b><br/><b>Freedom of movement and of residence</b></p> <p>1. Every citizen of the Union has the right to move and reside freely within the territory of the Member States.</p> <p>2. Freedom of movement and residence may be granted, in accordance with the Treaty establishing the European Community, to nationals of third countries legally resident in the territory of a Member State.</p> <p><b>Article 46</b><br/><b>Diplomatic and consular protection</b></p> <p>Every citizen of the Union shall, in the territory of a third country in which the Member State of which he or she is a national is not represented, be entitled to protection by the</p> | <p>conditions as nationals of that State. This right shall be exercised subject to detailed arrangements adopted by the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament; these arrangements may provide for derogations where warranted by problems specific to a Member State.</p> <p>2. Without prejudice to Article 190(4) and to the provisions adopted for its implementation, every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and to stand as a candidate in elections to the European Parliament in the Member State in which he resides, under the same conditions as nationals of that State. This right shall be exercised subject to detailed arrangements adopted by the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament; these arrangements may provide for derogations where warranted by problems specific to a Member State.</p> <p><b>Article 20 (ex Article 8c)</b></p> <p>Every citizen of the Union shall, in the territory of a third country in which the Member State of which he is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that State. Member States shall establish the necessary rules among themselves and start the international negotiations required to secure this protection.</p> | <p>specific rights; the legal basis provision would also refer to the implementation of the Charter rights.</p> |
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| <p>diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that Member State.</p> | <p><i>Article 21 (ex Article 8d)</i></p> <p>Every citizen of the Union shall have the right to petition the European Parliament in accordance with Article 194. Every citizen of the Union may apply to the Ombudsman established in accordance with Article 195. Every citizen of the Union may write to any of the institutions or bodies referred to in this Article or in Article 7 in one of the languages mentioned in Article 314 and have an answer in the same language.</p> <p><i>Article 190 (ex Article 138)</i></p> <p>1. The representatives in the European Parliament of the peoples of the States brought together in the Community shall be elected by direct universal suffrage.</p> <p>2. The number of representatives elected in each Member State shall be as follows:</p> <p>Belgium 25<br/>Denmark 16<br/>Germany 99<br/>Greece 25<br/>Spain 64<br/>France 87<br/>Ireland 15<br/>Italy 87<br/>Luxembourg 6<br/>Netherlands 31<br/>Austria 21<br/>Portugal 25<br/>Finland 16</p> |  |
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|  | <p>Sweden 22<br/>United Kingdom 87.</p> <p>In the event of amendments to this paragraph, the number of representatives elected in each Member State must ensure appropriate representation of the peoples of the States brought together in the Community.</p> <p>3. Representatives shall be elected for a term of five years.</p> <p>4. The European Parliament shall draw up a proposal for elections by direct universal suffrage in accordance with a uniform procedure in all Member States or in accordance with principles common to all Member States. The Council shall, acting unanimously after obtaining the assent of the European Parliament, which shall act by a majority of its component members, lay down the appropriate provisions, which it shall recommend to Member States for adoption in accordance with their respective constitutional requirements.</p> <p>5. The European Parliament shall, after seeking an opinion from the Commission and with the approval of the Council acting unanimously, lay down the regulations and general conditions governing the performance of the duties of its Members.</p> <p><i>Article 194 (ex Article 138d)</i></p> <p>Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have the right to address, individually or in association with other citizens or persons, a petition to the European Parliament on a matter which comes within the</p> |  |
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44 EU-RSCAS/AELRD03 GRÁINNE BUIRCA

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|                                                                                                                                                                                                                                                                                              | Community's fields of activity and which affects him, her or it directly.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                           |
| <p><i>Article 42</i><br/> <b>Right of access to documents</b><br/>                 Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to European Parliament, Council and Commission documents.</p> | <p><i>Article 255 (ex Article 191a)</i><br/>                 1. Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have a right of access to European Parliament, Council and Commission documents, subject to the principles and the conditions to be defined in accordance with paragraphs 2 and 3.<br/>                 2. General principles and limits on grounds of public or private interest governing this right of access to documents shall be determined by the Council, acting in accordance with the procedure referred to in Article 251 within two years of the entry into force of the Treaty of Amsterdam.<br/>                 3. Each institution referred to above shall elaborate in its own Rules of Procedure specific provisions regarding access to its documents.</p> | <p>Article 42 Charter and Article 255 EC (access to documents):</p> <ul style="list-style-type: none"> <li>The EC Treaty provision should make reference to the Charter right.</li> </ul> |

**THE EUROPEAN CONVENTION**

THE SECRETARIAT

**Brussels, 13 May 2003****CONV 736/03****COVER NOTE**

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from : Secretariat

to : The Convention

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**Subject : Copy of a letter by M. P. Hain, member of the Convention to President  
Giscard d'Estaing concerning the Charter**

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Members of the Convention will find attached copy of a letter that M. Peter Hain, member of the Convention, has addressed to President Giscard d'Estaing.

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**ANNEX**

Valery Giscard D'Estaing  
President  
Convention on the Future of Europe  
Justus Lipsius  
175 Rue de la Loi  
1048 Brussels  
Belgium

12 May 2003

Thank you for your welcome letter setting out how we might approach the challenges of the last few weeks of the Convention. I agree that your proposals will help us to make the best use of the short time we have left for our endeavours.

I hope you will forgive me for raising one point. Your letter suggests that it is now settled that the Charter should form Part II of the Constitution. As you know, our Government has always held the view that we could make no commitment to the incorporation of the Charter until we had sight of the whole package outlined in the recommendations of the Working Group.

The UK, with Denmark, Ireland, Latvia, the Netherlands and Sweden, set out a common position on this as recently as 14 April (Contrib. 659/03). We made it clear that we could not agree a specific method of incorporation without seeing the whole technical package. That remains the case, and I would therefore be most grateful if you could confirm the position set out by the Working Group, and endorsed by the Plenary, that decisions on the placement of the Charter will be taken after the additional work has been completed and agreed.

The challenge is to find ways to give our citizens legal certainty and clarity in relation to the Charter's ambiguous or conflicting texts. I hope and believe that a completed package from the Working Group may help us find an answer on the Charter's status on which we can all soon agree.

I should be grateful if you would circulate this to fellow members of the Convention.

Peter Hain

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Editors' note to CONV 726/03,  
**Draft text of Part II with comments:**

See also CONV 725/03 (27 May 2003) and CONV 802/03 (12 June 2003).

**THE EUROPEAN CONVENTION****Brussels, 26 May 2003**

THE SECRETARIAT

**CONV 726/03****COVER NOTE**

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from: The Praesidium

to: The Convention

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Prev. doc. no.: Charter of Fundamental Rights, JO C 364 of 18.12.2000

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Subject : **Draft text of Part II with comments**

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Members of the Convention will find hereafter the draft text of Part II of the Constitution (Charter of Fundamental Rights), with some technical modifications suggested, highlighted, and preceded by an explanatory note.

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## Explanatory Note

### **Subject: Incorporation of the Charter of Fundamental Rights as Part II of the Constitution**

1. Members of the Convention will find attached the text of the Charter of Fundamental Rights of the Union, incorporated into the Constitution as its Part II. The Praesidium draws the attention of the members of the Convention to the following:

- a) The text reproduces the wording of the Charter as proclaimed in December 2000, except for the amendments to the Charter's general provisions on which Working Group II reached consensus and for some purely technical adaptations as explained in d) below. This is in line with the recommendation of the Working Group, followed by the Plenary, to refrain from any changes to the substance of the Charter. The drafting amendments to the text proclaimed at Nice in December 2000 are highlighted.
- b) Concerning the amendments to the Charter's general provisions in Articles 51 and 52, the text takes over faithfully the wording suggested by Working Group II on which a large consensus emerged in the Plenary. The only slight drafting change to the language agreed by the Working Group is that the text now refers to powers and tasks conferred / defined "*in*", rather than "*by*", the Constitution; this corresponds to the general line the Convention takes in Part I Articles that the competences are conferred *by the Member States*, not by the Constitution itself.

In the particular case of Article 52 § 2 of the Charter (i.e. the clause referring, for rights in the Charter based on the existing Treaties, to the conditions and limits defined by those Treaties), the Working Group concluded that there continues to be a need for such a referral clause, recognising however that Article 52 § 2 will logically need a drafting adjustment, which the Group could not undertake given that it would depend on the exact overall architecture of the Constitutional Treaty, which was still unknown at the time. In the Praesidium's view, the adjustment of Article 52 § 2 suggested in the annex (based on a drafting suggestion made by Sir Neil MacCormick within the Working Group), would be the most appropriate formula for such a referral clause, ensuring legal certainty and continuity as intended by original Article 52 § 2: It would ensure that those Charter rights which merely "restated" rights already enshrined in the EC Treaty (notably the rights of EU citizens) are subject to the conditions and limits which so far figured in the EC Treaty and will now be taken over in Part III or, in some cases <sup>1</sup>, in Part I of the Constitution.

- c) Article 42 Charter on access to documents is the only case in which an amendment in substance to a right in the Charter has become necessary in the light of this Convention's work. This right was merely restated in the Charter with the scope approved by the Treaty of Amsterdam; however, as reflected in draft Article [36], Part I, this Convention now wishes to go further, extending the right to documents of the institutions, bodies and agencies generally.

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<sup>1</sup> Article I-49 § 3 on access to documents, Article I-50 on data protection.

- d) The following technical adaptations have been made to the Charter text:
- i) the terms "Community" and "Treaty establishing the European Community" / "Treaty on European Union" have been replaced with "Union" and with "Constitution".
  - ii) the 7 "Chapters" of the Charter now become the 7 "Titles" of Part II of the Constitution.
  - iii) the heading of Title 7 has been expanded and now reads "general provisions governing the interpretation and application of the Charter". This appears appropriate in order to clarify - as was requested in a contribution from several Convention members<sup>2</sup> - that, following insertion of the Charter as Part II, the general provisions found in that Title govern the interpretation and application of the Charter as a whole, and that they apply only to this Part of the Constitution.
  - iv) where the current Charter text refers to the "institutions and bodies of the Union", the formula "institutions, bodies and agencies of the Union" must now be used<sup>3</sup>.

2. The Praesidium examined the question, raised in several amendments of Convention members, whether certain fundamental rights should be repeated in Part I of the Constitution although, by virtue of the incorporation of the Charter, they will also appear in Part II of the Constitution, or whether these duplications should be eliminated by deleting the respective provisions in Part I.

In this respect, the Praesidium reached the conclusion that the reference to the rights of EU citizens (as well as that to non discrimination on the basis of nationality) both in Part I and the Charter is justified in that these rights are *constitutive* of the very notion of European citizenship as introduced by the Treaty of Maastricht. They (or at least some of them, such as freedom of movement or voting rights of EU citizens in the country of residence) are special to the Union, and, by definition, cannot be guaranteed at national level. That distinguishes them from the other Charter rights, such as freedom of expression, of religion, etc., which are analogous to fundamental rights protected in national constitutions.

As to the rights of the Charter repeated in the Title on "Democratic Life" of Part I, the Praesidium considered that the right of access to documents as well as that of protection of personal data (two rights which are complementary in a sense), are seen, at least by many members of the Convention, as key components of the Union's particular mode of democratic life at supranational level. For these convention members, Articles I-49 § 3 and I-50 of Part I, would look incomplete if containing only rules on modalities, limits and legal bases on transparency and data protection, but not the statement of the right itself. At the same time, it would not be illogical to see these two rights reappearing in the Charter (Part II of the Constitution), which would stress that they also belong to the genuinely *fundamental* rights of the Union<sup>4</sup>.

<sup>2</sup> See Doc CONV 659/03 CONTRIB 292 Christophersen, de Vries, Hain, Roche, Hjelm-Wallén.

<sup>3</sup> As the previous Convention's Praesidium stated in its Explanations, the formula "institutions and bodies of the Union" was used in the Charter with the intent of "*referring to all the authorities set up by the Treaties or by secondary legislation (see Article 286(1) TCE)*". Given that now the draft Constitution now consistently refers to "institutions, bodies and agencies" - cf. Articles I-49 § 3 and I-50 of Part I, and the Articles on the Court of Justice in Part III -, the same formula must be used in the Charter.

<sup>4</sup> Precisely that argument was already made by Advocate-General Léger (in Case 353/99 P, Council v. Hautala) with respect to the Charter article on right of access to documents.

3. Working Group II stressed that the "Explanations" to the Charter, which had been drawn up at the instigation of the Praesidium of the Charter Convention (and which, although not submitted to the Plenary of the previous Convention, played a role in securing consensus on the Charter text within that Convention), are one important tool of interpretation ensuring a correct understanding of the Charter. It recommended that its own explanations on the drafting adjustments to the horizontal clauses of the Charter should be fully integrated with the original Explanations. The Group furthermore recommended that, upon possible incorporation of the Charter, attention should then be drawn in an appropriate manner to the Explanations which, though they state that they have no legal value, are intended to clarify the provisions of the Charter; in particular, it would be important to publicise them more widely.

Following that recommendation, the Praesidium agreed that the technical work of producing such an updated and consolidated version of the Explanations of 2000 should be carried out under the authority of the Chairman of Working Group II who would consult with members of that Working Group and then submit the product to the Praesidium for endorsement, before the end of the Convention. This work is under way.

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## PART II: THE CHARTER OF FUNDAMENTAL RIGHTS OF THE UNION

### PREAMBLE

The peoples of Europe, in creating an ever closer union among them, are resolved to share a peaceful future based on common values.

Conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law. It places the individual at the heart of its activities, by establishing the citizenship of the Union and by creating an area of freedom, security and justice.

The Union contributes to the preservation and to the development of these common values while respecting the diversity of the cultures and traditions of the peoples of Europe as well as the national identities of the Member States and the organisation of their public authorities at national, regional and local levels; it seeks to promote balanced and sustainable development and ensures free movement of persons, goods, services and capital, and the freedom of establishment.

To this end, it is necessary to strengthen the protection of fundamental rights in the light of changes in society, social progress and scientific and technological developments by making those rights more visible in a Charter.

This Charter reaffirms, with due regard for the powers and tasks of ~~the Community and~~ the Union and the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, ~~the Treaty on European Union, the Community Treaties,~~ the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the ~~Community Union~~ and by the Council of Europe and the case law of the Court of Justice of the European ~~Communities~~ Union and of the European Court of Human Rights.

Enjoyment of these rights entails responsibilities and duties with regard to other persons, to the human community and to future generations.

The Union therefore recognises the rights, freedoms and principles set out hereafter.

## **CHAPTER TITLE I. DIGNITY**

### **Article 1: Human dignity**

Human dignity is inviolable. It must be respected and protected.

### **Article 2: Right to life**

1. Everyone has the right to life.
2. No one shall be condemned to the death penalty, or executed.

### **Article 3: Right to the integrity of the person**

1. Everyone has the right to respect for his or her physical and mental integrity.
2. In the fields of medicine and biology, the following must be respected in particular:
  - a) the free and informed consent of the person concerned, according to the procedures laid down by law,
  - b) the prohibition of eugenic practices, in particular those aiming at the selection of persons,
  - c) the prohibition on making the human body and its parts as such a source of financial gain,
  - d) the prohibition of the reproductive cloning of human beings.

### **Article 4: Prohibition of torture and inhuman or degrading treatment or punishment**

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

### **Article 5: Prohibition of slavery and forced labour**

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. Trafficking in human beings is prohibited.

**CHAPTER TITLE II. FREEDOMS****Article 6: Right to liberty and security**

Everyone has the right to liberty and security of person.

**Article 7: Respect for private and family life**

Everyone has the right to respect for his or her private and family life, home and communications.

**Article 8: Protection of personal data**

1. Everyone has the right to the protection of personal data concerning him or her.
2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.
3. Compliance with these rules shall be subject to control by an independent authority.

**Article 9: Right to marry and right to found a family**

The right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights.

**Article 10: Freedom of thought, conscience and religion**

1. Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.
2. The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right.

**Article 11: Freedom of expression and information**

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.
2. The freedom and pluralism of the media shall be respected.

**Article 12: Freedom of assembly and of association**

1. Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests.
2. Political parties at Union level contribute to expressing the political will of the citizens of the Union.

**Article 13: Freedom of the arts and sciences**

The arts and scientific research shall be free of constraint. Academic freedom shall be respected.

**Article 14: Right to education**

1. Everyone has the right to education and to have access to vocational and continuing training.
2. This right includes the possibility to receive free compulsory education.
3. The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right.

**Article 15: Freedom to choose an occupation and right to engage in work**

1. Everyone has the right to engage in work and to pursue a freely chosen or accepted occupation.
2. Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State.
3. Nationals of third countries who are authorised to work in the territories of the Member States are entitled to working conditions equivalent to those of citizens of the Union.

**Article 16: Freedom to conduct a business**

The freedom to conduct a business in accordance with ~~Community~~ Union law and national laws and practices is recognised.

**Article 17: Right to property**

1. Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law insofar as is necessary for the general interest.
2. Intellectual property shall be protected.

**Article 18: Right to asylum**

The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Constitution~~Treaty establishing the European Community~~.

**Article 19: Protection in the event of removal, expulsion or extradition**

1. Collective expulsions are prohibited.
2. No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.



## **CHAPTER TITLE III. EQUALITY**

### **Article 20: Equality before the law**

Everyone is equal before the law.

### **Article 21: Non-discrimination**

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.
2. Within the scope of application of the Constitution and without prejudice to any of its specific provisions, Treaty establishing the European Community and of the Treaty on European Union, and without prejudice to the special provisions of those Treaties, any discrimination on grounds of nationality shall be prohibited.

### **Article 22: Cultural, religious and linguistic diversity**

The Union shall respect cultural, religious and linguistic diversity.

### **Article 23: Equality between men and women**

Equality between men and women must be ensured in all areas, including employment, work and pay.

The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.

### **Article 24: The rights of the child**

1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.
2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.
3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.

**Article 25: The rights of the elderly**

The Union recognises and respects the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life.

**Article 26: Integration of persons with disabilities**

The Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.

## ~~CHAPTER TITLE IV.~~ SOLIDARITY

### **Article 27: Workers' right to information and consultation within the undertaking**

Workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions provided for by ~~Union~~Community law and national laws and practices.

### **Article 28: Right of collective bargaining and action**

Workers and employers, or their respective organisations, have, in accordance with ~~Community~~Union law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action.

### **Article 29: Right of access to placement services**

Everyone has the right of access to a free placement service.

### **Article 30: Protection in the event of unjustified dismissal**

Every worker has the right to protection against unjustified dismissal, in accordance with ~~Community~~Union law and national laws and practices.

### **Article 31: Fair and just working conditions**

1. Every worker has the right to working conditions which respect his or her health, safety and dignity.
2. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

### **Article 32: Prohibition of child labour and protection of young people at work**

The employment of children is prohibited. The minimum age of admission to employment may not be lower than the minimum school-leaving age, without prejudice to such rules as may be more favourable to young people and except for limited derogations.

Young people admitted to work must have working conditions appropriate to their age and be protected against economic exploitation and any work likely to harm their safety, health or physical, mental, moral or social development or to interfere with their education.

**Article 33: Family and professional life**

1. The family shall enjoy legal, economic and social protection.
2. To reconcile family and professional life, everyone shall have the right to protection from dismissal for a reason connected with maternity and the right to paid maternity leave and to parental leave following the birth or adoption of a child.

**Article 34: Social security and social assistance**

1. The Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by ~~Community~~Union law and national laws and practices.
2. Everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with ~~Community~~Union law and national laws and practices.
3. In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by ~~Community~~Union law and national laws and practices.

**Article 35: Health care**

Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities.

**Article 36: Access to services of general economic interest**

The Union recognises and respects access to services of general economic interest as provided for in national laws and practices, in accordance with the ~~Constitution~~Treaty establishing the European ~~Community~~, in order to promote the social and territorial cohesion of the Union.

**Article 37: Environmental protection**

A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.

**Article 38: Consumer Protection**

Union policies shall ensure a high level of consumer protection.

## **CHAPTER TITLE V. CITIZENS' RIGHTS**

### **Article 39: Right to vote and to stand as a candidate at elections to the European Parliament**

1. Every citizen of the Union has the right to vote and to stand as a candidate at elections to the European Parliament in the Member State in which he or she resides, under the same conditions as nationals of that State.
2. Members of the European Parliament shall be elected by direct universal suffrage in a free and secret ballot.

### **Article 40: Right to vote and to stand as a candidate at municipal elections**

Every citizen of the Union has the right to vote and to stand as a candidate at municipal elections in the Member State in which he or she resides under the same conditions as nationals of that State.

### **Article 41: Right to good administration**

1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, ~~and bodies~~ and agencies of the Union.
2. This right includes:
  - a) the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;
  - b) the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;
  - c) ~~the~~ obligation of the administration to give reasons for its decisions.
3. Every person has the right to have the ~~Community~~ Union make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.
4. Every person may write to the institutions of the Union in one of the official languages of the ~~Treaties~~ Union and must have an answer in the same language.

### **Article 42: Right of access to documents**

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to ~~European Parliament, Council and Commission~~ documents of the institutions, bodies and agencies of the Union, in whatever form they are produced.

**Article 43: Ombudsman**

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to refer to the Ombudsman of the Union cases of maladministration in the activities of the ~~Community~~ institutions, ~~or bodies~~ or agencies of the Union, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role.

**Article 44: Right to petition**

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to petition the European Parliament.

**Article 45: Freedom of movement and of residence**

1. Every citizen of the Union has the right to move and reside freely within the territory of the Member States.
2. Freedom of movement and residence may be granted, in accordance with the ~~Constitution Treaty establishing the European Community~~, to nationals of third countries legally resident in the territory of a Member State.

**Article 46: Diplomatic and consular protection**

Every citizen of the Union shall, in the territory of a third country in which the Member State of which he or she is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that Member State.

**CHAPTER TITLE VI. JUSTICE****Article 47: Right to an effective remedy and to a fair trial**

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

Legal aid shall be made available to those who lack sufficient resources insofar as such aid is necessary to ensure effective access to justice.

**Article 48: Presumption of innocence and right of defence**

1. Everyone who has been charged shall be presumed innocent until proved guilty according to law.
2. Respect for the rights of the defence of anyone who has been charged shall be guaranteed.

**Article 49: Principles of legality and proportionality of criminal offences and penalties**

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national law or international law at the time when it was committed. Nor shall a heavier penalty be imposed than that which was applicable at the time the criminal offence was committed. If, subsequent to the commission of a criminal offence, the law provides for a lighter penalty, that penalty shall be applicable.
2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles recognised by the community of nations.
3. The severity of penalties must not be disproportionate to the criminal offence.

**Article 50: Right not to be tried or punished twice in criminal proceedings for the same criminal offence**

No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law.



## **CHAPTER-TITLE VII. GENERAL PROVISIONS GOVERNING THE INTERPRETATION AND APPLICATION OF THE CHARTER**

### **Article 51: Scope**

1. The provisions of this Charter are addressed to the institutions, ~~and~~ bodies and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers and respecting the limits of the powers of the Union as conferred on it in the other Parts of the Constitution.
2. This Charter does not extend the scope of application of Union law beyond the powers of the Union or establish any new power or task for ~~the Community or the Union~~, or modify powers and tasks defined ~~by~~ in the other Parts of the Constitution ~~Treaties~~.

### **Article 52: Scope of guaranteed rights**

1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.
2. Rights recognised by this Charter for which provision is made in other Parts of the Constitution ~~which are based on the Community Treaties or the Treaty on European Union~~ shall be exercised under the conditions and within the limits defined by these relevant parts ~~by those Treaties~~.
3. Insofar as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.
4. Insofar as this Charter recognises fundamental rights as they result from the constitutional traditions common to the Member States, those rights shall be interpreted in harmony with those traditions.
5. The provisions of this Charter which contain principles may be implemented by legislative and executive acts taken by institutions and bodies of the Union, and by acts of Member States when they are implementing Union law, in the exercise of their respective powers. They shall be judicially cognisable only in the interpretation of such acts and in the ruling on their legality.
6. Full account shall be taken of national laws and practices as specified in this Charter.

**Article 53: Level of protection**

Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by Union law and international law and by international agreements to which the Union, ~~the Community~~ or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' constitutions.

**Article 54: Prohibition of abuse of rights**

Nothing in this Charter shall be interpreted as implying any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms recognised in this Charter or at their limitation to a greater extent than is provided for herein.

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Editors' note to CONV 724/03,  
**Draft Constitution, Volume I – Revised text of  
Part One:**

CONV 724/1/03 REV 1 (28 May 2003) did not include any material changes to these extracts.

**THE EUROPEAN CONVENTION**  
THE SECRETARIAT

**Brussels, 26 May 2003**  
**(OR. fr)**

**CONV 724/03**

**VOLUME 1**

**COVER NOTE**

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from : Praesidium

to : Convention

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Nos prev. docs : CONV 528/03, CONV 571/03, CONV 579/03, CONV 602/03, CONV 614/03,  
CONV 648/03, CONV 649/03, CONV 650/03, CONV 685/03, CONV 691/03,  
CONV 723/03

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Subject : **Draft Constitution, Volume I**  
**– Revised text of Part One**

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Members of the Convention will find attached the draft text of Part One of the Treaty establishing the Constitution together with that of the Protocols on the application of the principles of subsidiarity and proportionality and the role of the national Parliaments, as revised by the Praesidium in the light of the comments and amendments received and the discussions in plenary.

The Articles in Title IV "The institutions" are the only ones to be sent to the members of the Convention without change from the original version contained in CONV 691/03 of 23 April 2003. The very numerous amendments received and the comments made at the plenary on these Articles often go in opposing directions, particularly on central questions, including the three linked questions highlighted in the note of 23 April (representation in the European Parliament, definition of the qualified majority, and composition of the Commission). The Praesidium therefore thinks it would be appropriate to devote more time to discussion and thought on those subjects.

At a later stage, as these thoughts mature, the Praesidium will submit a revised version of Title IV to the Convention.

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Members' attention is drawn to the fact that the Articles in Part I are numbered consecutively. The references to the Articles in Part III will be specified when they have been finalised.

**ANNEX 1****DRAFT TEXT – PART ONE****TITLE I: DEFINITION AND OBJECTIVES OF THE UNION****Article I-1: Establishment of the Union**

1. Reflecting the will of the citizens and States of Europe to build a common future, this Constitution establishes the European Union, on which the Member States confer competences to attain objectives they have in common. The Union shall coordinate the policies by which the Member States aim to achieve these objectives, and shall exercise in the Community way the competences they confer on it.
2. The Union shall be open to all European States which respect its values and are committed to promoting them together.

**Article I-2: The Union's values**

The Union is founded on the values of respect for human dignity, liberty, democracy, the rule of law and respect for human rights. These values are common to the Member States in a society of pluralism, tolerance, justice, equality, solidarity and non-discrimination.

**Article I-3: The Union's objectives**

1. The Union's aim is to promote peace, its values and the well-being of its peoples.
2. The Union shall offer its citizens an area of freedom, security and justice without internal frontiers, and a single market where competition is free and undistorted.
3. The Union shall work for a Europe of sustainable development based on balanced economic growth, with a social market economy aiming at full employment and social progress.

It shall aim at a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance.

It shall combat social exclusion and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of children's rights.

It shall promote economic, social and territorial cohesion, and solidarity among Member States.

The Union shall respect its rich cultural and linguistic diversity, and shall ensure that Europe's cultural heritage is safeguarded and enhanced.

4. In its relations with the wider world, the Union shall uphold and promote its values and interests. It shall contribute to peace, security, the sustainable development of the earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and protection of human rights and in particular children's rights, as well as to strict observance and development of international law, including respect for the principles of the United Nations Charter.
5. These objectives shall be pursued by appropriate means, depending on the extent to which the relevant competences are attributed to the Union in this Constitution.

**Article I-4: Fundamental freedoms and non-discrimination**

1. Free movement of persons, goods, services and capital, and freedom of establishment shall be guaranteed within and by the Union, in accordance with the provisions of this Constitution.
2. In the field of application of this Constitution, and without prejudice to any of its specific provisions, any discrimination on grounds of nationality shall be prohibited.

**Article I-5: Relations between the Union and the Member States**

1. The Union shall respect the national identities of its Member States, inherent in their fundamental structures, political and constitutional, including for regional and local self government. It shall respect their essential State functions, including for ensuring the territorial integrity of the State, and for maintaining law and order and safeguarding internal security.
2. Following the principle of loyal cooperation, the Union and the Member States shall, in full mutual respect, assist each other to carry out tasks which flow from the Constitution.

The Member States shall facilitate the achievement of the Union's tasks and refrain from any measure which could jeopardise the attainment of the objectives set out in the Constitution.

**Article I-6: Legal personality**

The Union shall have legal personality.

## **TITLE II: FUNDAMENTAL RIGHTS AND CITIZENSHIP OF THE UNION**

### **Article I-7: Fundamental rights**

1. The Union shall recognise the rights, freedoms and principles set out in the Charter of Fundamental Rights which constitutes the Second Part of this Constitution.
2. The Union shall seek accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Accession to that Convention shall not affect the Union's competences as defined in this Constitution.
3. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.

### **Article I-8: Citizenship of the Union**

1. Every national of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to national citizenship; it shall not replace it.
2. Citizens of the Union shall enjoy the rights and be subject to the duties provided for in this Constitution. They shall have:
  - the right to move and reside freely within the territory of the Member States;
  - the right to vote and to stand as candidates in elections to the European Parliament and in municipal elections in their Member State of residence, under the same conditions as nationals of that State;



- the right to enjoy, in the territory of a third country in which the Member State of which they are nationals is not represented, the protection of the diplomatic and consular authorities of any Member State on the same conditions as the nationals of that State;
  - the right to petition the European Parliament, to apply to the Union Ombudsman, and to write to the Institutions and advisory bodies of the Union in any of the Union's languages and to obtain a reply in the same language.
3. These rights shall be exercised in accordance with the conditions and limits defined by this Constitution and by the measures adopted to give it effect.

### **TITLE III: UNION COMPETENCES AND ACTIONS**

#### **Article I-9: Fundamental principles**

1. The limits of Union competences are governed by the principle of conferral. The use of Union competences is governed by the principles of subsidiarity and proportionality.
2. Under the principle of conferral, the Union shall act within the limits of the competences conferred upon it by the Member States in the Constitution to attain the objectives set out in the Constitution. Competences not conferred upon the Union in the Constitution remain with the Member States.
3. Under the principle of subsidiarity, in areas which do not fall within its exclusive competence the Union shall act only if and insofar as the objectives of the intended action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.

### Comments

*Article unchanged, as it has already been approved.*

## **TITLE II: FUNDAMENTAL RIGHTS AND CITIZENSHIP OF THE UNION**

### **Article I-7: Fundamental rights**

1. ~~The Charter of Fundamental Rights shall be an integral part of this Constitution. The Charter is set out [in the second part of/in a Protocol annexed to] this Constitution.~~  
**The Union shall recognise the rights, freedoms and principles set out in the Charter of Fundamental Rights which constitutes the Second Part of this Constitution.**
2. The Union ~~may accede~~ **shall seek accession** to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Accession to that Convention shall not affect the Union's competences as defined ~~by~~ **in** this Constitution.
3. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.

### **Comments:**

1. *In the light of the positions expressed by a large majority of Convention members, the solution of incorporation of the Charter in a new Part Two appears to be the one likely to meet broad consensus within the Convention.*

*The wording of the first paragraph fits in better with that solution than did the previous draft. It is based on amendments by Costa, Eduarda Azevedo, d'Oliveira Martins, Nazaré Pereira, Duhamel + 8; Teufel, Schlüter, Palacio, and corresponds exactly to the last sentence of the Charter preamble.*

2. *On accession to the ECHR, there was general support at the additional meeting on 26 March for the wording adopted: "...the Union shall seek accession ..." (see also am. Kiljunen and Vanhanen, Svensson, Hjelm-Wallén + 4, Van der Linden+ 3, Tiilikainen, Brok + 15).*
3. *As for the amendments aiming at including other international agreements in the area of human rights (Söderman, Michel + 5, Paciotti, Kaufmann, Voggenhuber, Lichtenberger, MacCormick, Duff + 6, Spini, Nagy), it is clear that this paragraph, as amended by the Praesidium, cannot be interpreted as ruling out the possibility of accession to other human rights conventions, a possibility which is opened up pursuant to other legal bases laid down in the Constitution (namely the various policies linked to such conventions, and even the flexibility clause in Article I-17). This paragraph may ask that the Union seek accession only in the specific case of the ECHR; however this particular formula is not in any way intended to rule out the possibility of accession to other conventions. As the Praesidium has already pointed out, only the European Convention on Human Rights is mentioned in this paragraph because of the fact that a Court of Justice opinion in 1996 had rejected Community competence to accede to that Convention on the basis of considerations specific to it.*

**THE EUROPEAN CONVENTION**  
THE SECRETARIAT

**Brussels, 3 June 2003**

**WG II 27**

**Note for the Members of Working Group II**

**Subject: Consultation on the updated and consolidated version of the Explanations on the Charter**

1. As you will remember, our Working Group stressed in its final report that the "Explanations" to the Charter, which had been drawn up at the instigation of the Praesidium of the Charter Convention (and which, although not submitted to the Plenary of the previous Convention, played a role in securing consensus on the Charter text within that Convention), are one important tool of interpretation ensuring a correct understanding of the Charter. It recommended that its own explanations on the drafting adjustments to the horizontal clauses of the Charter should be fully integrated with the original Explanations. The Group furthermore recommended that, upon possible incorporation of the Charter, attention should then be drawn in an appropriate manner to the Explanations which, though they state that they have no legal value, are intended to clarify the provisions of the Charter; in particular, it would be important to publicise them more widely.

Following that recommendation, the Praesidium agreed that the technical work of producing such an updated and consolidated version of the Explanations of 2000 should be carried out under my authority, and that I should consult you, as members of Working Group II, on this technical work and then submit the product to the Praesidium for endorsement, before the end of the Convention.

**I therefore herewith send you a draft updated and consolidated version of these Explanations and kindly ask you to send me your comments or suggestions on them by 10 June, noon, at the latest** (to be sent to the Secretariat: [clemens.ladenburger@consilium.eu.int](mailto:clemens.ladenburger@consilium.eu.int)).

2. My general approach to this technical exercise, as explained in more detail below, is to leave intact as much as possible the original Explanations of 2000, and to amend them only to the extent strictly necessary in order to reflect the work done by our Working Group and this Convention as a whole, without changing the original Explanations in substance.

I have therefore limited myself to:

- a) adding, to the Explanations under Articles 51 and 52, language reflecting the work done by our Working Group on these horizontal clauses, and making some necessary consequential adaptations in the remaining Explanations;
- b) adapting the references made to the EC or EU Treaty by inserting references to the appropriate provisions in Parts I and III of the Constitution and by taking into account the progress achieved by this Convention in certain areas;
- c) amending the references made to secondary Union law, and adding a few citations of important recent case law of the Court of Justice;
- d) correcting a few misprints or erroneous citations in the original Explanations.

3. As to the point a) above, I have, firstly, added some language to the Explanations under Article 51, so as to reflect fully the important clarification we have consensually reached in the Working Group, that incorporation of the Charter does not in any way lead to an extension of the Union's competences as defined by the other Parts of the Constitution. I felt it would be particularly appropriate to stress this same point again more specifically in connection with Article 21 (non-discrimination) and its relation to Article III-5 (ex-Article 13 TEC), in the light of the statements made by the representatives of the Legal Services to our Working Group.

4. On Article 52 § 3 (rights corresponding to ECHR rights), I have added a passage from our Working Group report which, although we convened that the clause itself should not be amended, does provide additional clarification on its interpretation, as requested by some members of our Group. In that connection, I have also added to that passage the sentence, currently found in the explanations under Article 53, on the ECHR as a minimum standard to be respected in any instance. The crucial importance of this rule - which is special to the ECHR - in particular for the regime of limitations of rights corresponding to the ECHR, was stressed in our hearings of Judges Skouris and Fischbach and of the 3 Legal Services, this is why I feel that point must be made under Article 52, not Article 53.

5. On Article 52 § 4, I have added language from the Working Group report on the rights resulting from common constitutional traditions.

6. Under Article 52 § 5, I have included language drawn from the Working Group report in order to explain the distinction between rights and principles.

I do not however intend to enter into an attempt of attributing the various individual Charter articles to the category of "right" or that of "principle". Rather, I wish to respect the spirit of the Charter Convention, confirmed by our Working Group, that the character as a right or a principle of individual articles is expressed as clearly as possible in the wording of the respective articles, which should permit future jurisprudence to rule on the exact attribution, taking into account the guidance provided by the Explanations. I also wish to respect the status quo of the existing Explanations which do qualify a number of Articles as principles.

Therefore, I have merely cited, for illustration, two examples of Articles which, in the light of their wording, are clearly principles and *already expressly qualified as such* in the existing Explanations (i.e., Article 26, starting with the words: "*The Union recognises and respects...*"; Article 37: "*A high level of environmental protection and the improvement of the quality of the environment must be integrated....*"). At the same time, I personally deem it important to stress that in some cases a Charter Article may actually contain *both* elements of a right and of a principle, and to give two further examples for that phenomenon (which in my personal view the judges might encounter even in relation to more Charter articles than the ones cited).

Finally, having enshrined a legal distinction between "rights" and "principles" in Article 52 § 5, we must be consequent and eliminate here and there in the Explanations a purely colloquial use - inconsistent with Article 52 § 5 - of the word "principle", i.e. as synonymous for "rule" or for "general principle of law", if we want to avoid that Article 52 § 5 is discredited and the reader of the Explanations confused. The most striking example for this use can be found in the Explanations to Article 1 (Human Dignity), but it also occurs under Articles 20, 41, 47, 49 and 50 - articles which correspond to "general principles of law" or come from the ECHR - and indeed in some explanations to the horizontal clauses themselves. As you will see, I have exercised care to replace the term "principle" in these cases by a *neutral* expression. In one case (Article 14), I have, following precisely the same logic, replaced the word "right" by a neutral wording, because it is in fact the *whole* article 14 (which contains both elements of a right and of a principle, as reflected already in the Explanations) that is extended to access to vocational and continuing training.

7. Finally, I have put a sentence of explanation for Article 52 § 6, equally taken from our Working Group report.

8. On item b) above (references to the Treaties), you will, first, note the slightly adapted wording of the Explanations under the referral clause in amended Article 52 § 2. Moreover, you will see that I have inserted, throughout the text, references to the new Articles of the Constitution replacing the TEC / TEU articles cited in the current Explanations. Where the Explanations of 2000 used the wording "this Article *is based on*...", I have put "*has been based on*..." (the respective TEC / TEU article), and added the indication of the new Constitution article replacing or amending the old article, in order to make the origin of the respective Charter article clear.

I also amended those passages of the Explanations touching on areas where our Convention, in drafting Part I or III articles, is likely to make progress in substance as compared to the situation of 2000. This concerns notably the right of access to documents (see explanations under Articles 42), the Union's system of judicial review (see explanations under Article 47), and the establishment of the Area of Freedom, Security and Justice for which respect of fundamental rights is particularly relevant (e.g., explanations under Articles 6, 18, 24). Obviously, these amended explanations are preliminary and depend on what the Convention decides with respect to these subject.

9. As regards points c) and d), you will see a number of references to recent secondary law of the Union, adopted notably in the field of social law. I have also included a few citations of new landmark cases of the Court of Justice, which are fundamental to the understanding of certain rights recognised in the Charter (cf. Explanations to Articles 1 and 3, 45, and 50). Finally, I corrected a few erroneous citations made to the European Social Charter or the Revised European Social Charter.

10. Finally, I have adapted the introductory formula of the Explanations in order to take account of this updating exercise.

I also propose to rephrase slightly the sentence about the status of the Explanations, in a way I believe to be faithful to the spirit of our Working Group, which agreed that these Explanations should be an important tool of interpretation and that they should be publicised more widely. I feel that, at least in some languages, the current wording could be misread as an excessively negative statement. For example, in English the words "they have no legal value" might be misunderstood in the sense - certainly unintended by the Praesidium of the former Convention - that the Explanations should have no legal importance or relevance whatsoever. That could of course not be said of any accompanying explanatory text to which the Courts should have due regard when interpreting the law concerned and which, hence, are indeed designed to be of considerable legal relevance. Therefore, it seems to me that we should remedy that misunderstanding in the languages concerned; the formula suggested "*although they do not as such have the status of law, they are a valuable tool of interpretation...*" would appropriately make the point.

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**DRAFT UPDATED EXPLANATIONS,**  
**RELATING TO THE COMPLETE TEXT OF THE CHARTER OF FUNDAMENTAL**  
**RIGHTS OF THE EUROPEAN UNION (AS AMENDED BY THE EUROPEAN**  
**CONVENTION WITH A VIEW TO ITS INCORPORATION INTO THE**  
**CONSTITUTIONAL TREATY)**

*N.B.: the original text for this document is doc. CHARTE 4473/00 CONVENT 49 of 11 October 2000 (with a revision of the French version only: doc. CHARTE 4473/1/00 CONVENT 49 REV 1 of 19 Octobre 2000), containing the "explanations" prepared at the instigation of the Praesidium of the Charter Convention. All amendements proposed to that original text are indicated in "track-change" format below.)*

These explanations have originally been prepared at the instigation of the Praesidium of the Convention on the Charter of Fundamental Rights of the European Union. They have been updated at the instigation of the Praesidium of the European Convention, in the light of the drafting adjustments made to the text of the Charter by that Convention (notably to Articles 51 and 52) and of further developments of Union law. ~~They have no legal value and are simply~~ Although they do not as such have the status of law, they are a valuable tool of interpretation intended to clarify the provisions of the Charter.

## PREAMBLE

The peoples of Europe, in creating an ever closer union among them, are resolved to share a peaceful future based on common values.

Conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law. It places the individual at the heart of its activities, by establishing the citizenship of the Union and by creating an area of freedom, security and justice.

The Union contributes to the preservation and to the development of these common values while respecting the diversity of the cultures and traditions of the peoples of Europe as well as the national identities of the Member States and the organisation of their public authorities at national, regional and local levels; it seeks to promote balanced and sustainable development and ensures free movement of persons, goods, services and capital, and the freedom of establishment.

To this end, it is necessary to strengthen the protection of fundamental rights in the light of changes in society, social progress and scientific and technological developments by making those rights more visible in a Charter.

This Charter reaffirms, with due regard for the powers and tasks of ~~the Community and the Union~~ and the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, ~~the Treaty on European Union, the Community Treaties~~, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the ~~Community Union~~ and by the Council of Europe and the case law of the Court of Justice of the European Union ~~Communities~~ and of the European Court of Human Rights.

Enjoyment of these rights entails responsibilities and duties with regard to other persons, to the human community and to future generations.

The Union therefore recognises the rights, freedoms and principles set out hereafter.

**CHAPTER-TITLE I. DIGNITY****Article 1****Human dignity**

Human dignity is inviolable. It must be respected and protected.

**Explanation**

*The dignity of the human person is not only a fundamental right in itself but constitutes the real basis of fundamental rights. The 1948 Universal Declaration of Human Rights enshrined ~~this principle~~ human dignity in its preamble: "Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world." In its judgment of 9 October 2001 in case C-377/98 Netherlands v. European Parliament and Council, 2001 ECR 7079, at grounds n° 70 - 77, the Court of Justice confirmed that the fundamental right to human dignity is part of Union law.*

*It results that none of the rights laid down in this Charter may be used to harm the dignity of another person, and that the dignity of the human person is part of the substance of the rights laid down in this Charter. It must therefore be respected, even where a right is restricted.*

**Article 2****Right to life**

1. Everyone has the right to life.
2. No one shall be condemned to the death penalty, or executed.

## **Explanation**

1. *Paragraph 1 of this Article is based on the first sentence of Article 2(1) of the ECHR, which reads as follows:*

*"1. Everyone's right to life shall be protected by law..."*

2. *The second sentence of the provision, which referred to the death penalty, was superseded by the entry into force of Article 1 of Protocol No 6 to the ECHR, which reads as follows:*

*"The death penalty shall be abolished. No-one shall be condemned to such penalty or executed."*

*Article 2(2) of the Charter is based on that provision.*

3. *The provisions of Article 2 of the Charter correspond to those of the above Articles of the ECHR and its Protocol. They have the same meaning and the same scope, in accordance with Article 52(3) of the Charter. Therefore, the "negative" definitions appearing in the ECHR must be regarded as also forming part of the Charter:*

- (a) *Article 2(2) of the ECHR:*

*"Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:*

*(a) in defence of any person from unlawful violence;*

*(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;*

*(c) in action lawfully taken for the purpose of quelling a riot or insurrection."*

- (b) *Article 2 of Protocol No 6 to the ECHR:*

*"A State may make provision in its law for the death penalty in respect of acts committed in time of war or of imminent threat of war; such penalty shall be applied only in the instances laid down in the law and in accordance with its provisions..."*

### Article 3

#### Right to the integrity of the person

1. Everyone has the right to respect for his or her physical and mental integrity.
2. In the fields of medicine and biology, the following must be respected in particular:

the free and informed consent of the person concerned, according to the procedures laid down by law,

- the prohibition of eugenic practices, in particular those aiming at the selection of persons,
- the prohibition on making the human body and its parts as such a source of financial gain,
- the prohibition of the reproductive cloning of human beings.

#### **Explanation**

*1. In its judgment of 9 October 2001 in case C-377/98 Netherlands v. European Parliament and Council, 2001 ECR 7079, at grounds n° 70, 78 - 80, the Court of Justice confirmed that the fundamental right to human integrity is part of Union law and encompasses, in the context of medicine and biology, the free and informed consent of the donor and recipient.*

*2. The principles of Article 3 of the Charter are already included in the Convention on Human Rights and Biomedicine, adopted by the Council of Europe (ETS 164 and additional protocol ETS 168). The Charter does not set out to depart from those principles, and therefore prohibits only reproductive cloning. It neither authorises nor prohibits other forms of cloning. Thus it does not in any way prevent the legislature from prohibiting other forms of cloning.*

32. *The reference to eugenic practices, in particular those aiming at the selection of persons, relates to possible situations in which selection programmes are organised and implemented, involving campaigns for sterilisation, forced pregnancy, compulsory ethnic marriage among others, all acts deemed to be international crimes in the Statute of the International Criminal Court adopted in Rome on 17 July 1998 (see its Article 7(1)(g)).*

#### Article 4

##### Prohibition of torture and inhuman or degrading treatment or punishment

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

#### **Explanation**

*The right in Article 4 is the right guaranteed by Article 3 of the ECHR, which has the same wording: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment". By virtue of Article 52(3) of the Charter, it therefore has the same meaning and the same scope as the ECHR Article.*

#### Article 5

##### Prohibition of slavery and forced labour

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. Trafficking in human beings is prohibited.

## **Explanation**

1. *The right in Article 5(1) and (2) corresponds to Article 4(1) and (2) of the ECHR, which has the same wording.*

*It therefore has the same meaning and scope as the ECHR Article, by virtue of Article 52(3) of the Charter. Consequently:*

- no limitation may legitimately affect the right provided for in paragraph 1;*
- in paragraph 2, "forced or compulsory labour" must be understood in the light of the "negative" definitions contained in Article 4(3) of the ECHR:*

*"For the purpose of this article the term "forced or compulsory labour" shall not include:*

- (a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;*
- (b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;*
- (c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;*
- (d) any work or service which forms part of normal civic obligations."*

2. *Paragraph 3 stems directly from ~~the principle of~~ human dignity and takes account of recent developments in organised crime, such as the organisation of lucrative illegal immigration or sexual exploitation networks. The annex to the Europol Convention contains the following definition which refers to trafficking for the purpose of sexual exploitation: "traffic in human beings: means subjection of a person to the real and illegal sway of other persons by using violence or menaces or by abuse of authority or intrigue with a view to the exploitation of prostitution, forms of sexual exploitation and assault of minors or trade in abandoned children". Chapter VI of the Convention implementing the Schengen Agreement, which has been integrated into the "acquis communautaire", in which the United Kingdom and Ireland participates ~~and Ireland has requested to participate~~, contains the following wording in Article 27(1) which refers to illegal immigration networks: " The Contracting Parties undertake to impose appropriate penalties on any person who, for financial gain, assists or tries to assist an alien to enter or reside within the territory of one of the Contracting Parties in breach of that Contracting Party's laws on the entry and residence of aliens." On 19 July*

*2002, the Council adopted a framework decision on combating the trafficking in human beings (O.J. L 203/1) whose Article 1 defines in detail the offences concerning trafficking in human beings for the purposes of labour exploitation or sexual exploitation, which the Member States must make punishable by virtue of that framework decision.*

## **CHAPTER TITLE II. FREEDOMS**

### **Article 6**

#### Right to liberty and security

Everyone has the right to liberty and security of person.

#### **Explanation**

*The rights in Article 6 are the rights guaranteed by Article 5 of the ECHR, and in accordance with Article 52(3) of the Charter, they have the same meaning and scope. Consequently, the limitations which may legitimately be imposed on them may not exceed those permitted by the ECHR, in the wording of Article 5:*

- "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:*
- (a) the lawful detention of a person after conviction by a competent court;*
  - (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;*



- (c) *the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;*
  - (d) *the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;*
  - (e) *the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;*
  - (f) *the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.*
2. *Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.*
  3. *Everyone arrested or detained in accordance with the provisions of paragraph 1.c of this article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.*
  4. *Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.*
  5. *Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation."*

*~~Since the Charter is to apply within the context of the Union, the rights enshrined in Article 6 must be respected particularly when the European Parliament and the Council adopt laws and framework laws in the area of judicial cooperation in criminal matters, on the basis of Articles [III-166, III-167 and III-169] of the Constitution, notably, in accordance with Title VI of the Treaty on European Union, the Union is adopting framework decisions to define common minimum~~*

*provisions as regards the categorisation of offences and punishments and certain aspects of procedural law.*

### Article 7

#### Respect for private and family life

Everyone has the right to respect for his or her private and family life, home and communications.

#### **Explanation**

*The rights guaranteed in Article 7 correspond to those guaranteed by Article 8 of the ECHR. To take account of developments in technology the word "correspondence" has been replaced by "communications".*

*In accordance with Article 52(3), the meaning and scope of this right are the same as those of the corresponding article of the ECHR. Consequently, the limitations which may legitimately be imposed on this right are the same as those allowed by Article 8 of the ECHR:*

- "1. Everyone has the right to respect for his private and family life, his home and his correspondence.*
- 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."*

### Article 8

#### Protection of personal data

1. Everyone has the right to the protection of personal data concerning him or her.

2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.
3. Compliance with these rules shall be subject to control by an independent authority.

### **Explanation**

*This Article ~~is~~ has been based on Article 286 of the Treaty establishing the European Community and Directive 95/46/EC of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995) as well as on Article 8 of the ECHR and on the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data, which has been ratified by all the Member States. Reference is also made to the meanwhile adopted regulation N° 45/2001 of the European Parliament and the Council on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001). This regulation has set up the independent authority mentioned in Article 286 TEC and in paragraph 3 of this Article. –Provision with respect to the conditions of exercise of ~~The~~ right to protection of personal data is now to be made in Article [I-50] of the Constitution. ~~exercised under the conditions laid down in the above Directive, and may be limited under the conditions set out by Article 52 of the Charter.~~*

### Article 9

#### Right to marry and right to found a family

The right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights.

## **Explanation**

*This Article is based on Article 12 of the ECHR, which reads as follows: "Men and women of marriageable age have the right to marry and to found a family according to the national laws governing the exercising of this right." The wording of the Article has been modernised to cover cases in which national legislation recognises arrangements other than marriage for founding a family. This Article neither prohibits nor imposes the granting of the status of marriage to unions between people of the same sex. This right is thus similar to that afforded by the ECHR, but its scope may be wider when national legislation so provides.*

## **Article 10**

### Freedom of thought, conscience and religion

1. Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.
2. The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right.

## **Explanation**

*The right guaranteed in paragraph 1 corresponds to the right guaranteed in Article 9 of the ECHR and, in accordance with Article 52(3) of the Charter, has the same meaning and scope. Limitations must therefore respect Article 9(2) of the Convention, which reads as follows: "Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."*

*The right guaranteed in paragraph 2 corresponds to national constitutional traditions and to the development of national legislation on this issue.*

## Article 11

### Freedom of expression and information

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.
2. The freedom and pluralism of the media shall be respected.

### Explanation

1. *Article 11 corresponds to Article 10 of the European Convention on Human Rights, which reads as follows:*

- "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.*
- 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."*

*Pursuant to Article 52(3) of the Charter, the meaning and scope of this right are the same as those guaranteed by the ECHR. The limitations which may be imposed on it may therefore not exceed those provided for in Article 10(2) of the Convention, without prejudice to any restrictions which ~~Community~~ competition law of the Union may impose on Member States' right to introduce the licensing arrangements referred to in the third sentence of Article 10(1) of the ECHR.*

2. *Paragraph 2 of this Article spells out the consequences of paragraph 1 regarding freedom of the media. It is based in particular on Court of Justice case law regarding television, particularly in case C-288/89 (judgment of 25 July 1991, Stichting Collectieve Antennevoorziening Gouda and others [1991] ECR I-4007), and on the Protocol on the system of public broadcasting in the Member States annexed to the EC Treaty and now to the Constitution, and on Council Directive 89/552/EC (particularly its seventeenth recital).*

## Article 12

### Freedom of assembly and of association

1. Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests.
2. Political parties at Union level contribute to expressing the political will of the citizens of the Union.

### **Explanation**

*Paragraph 1 of this Article corresponds to Article 11 of the ECHR, which reads as follows:*

- "1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.*

2. *No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."*

*The meaning of the provisions of paragraph 1 is the same as that of the ECHR, but their scope is wider since they apply at all levels including European level. In accordance with Article 52(3) of the Charter, limitations on that right may not exceed those considered legitimate by virtue of Article 11(2) of the ECHR.*

2. *This right is also based on Article 11 of the Community Charter of the Fundamental Social Rights of Workers.*
3. *Paragraph 2 of this Article corresponds to Article ~~[1-45 § 4] of the Constitution~~<sup>191</sup> ~~of the Treaty establishing the European Community.~~*

### Article 13

#### Freedom of the arts and sciences

The arts and scientific research shall be free of constraint. Academic freedom shall be respected.

#### **Explanation**

*This right is deduced primarily from the right to freedom of thought and expression. It is to be exercised having regard to Article 1 and may be subject to the limitations authorised by Article 10 of the ECHR.*

## Article 14

### Right to education

1. Everyone has the right to education and to have access to vocational and continuing training.
2. This right includes the possibility to receive free compulsory education.
3. The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right.

### Explanation

1. *This Article is based on the common constitutional traditions of Member States and on Article 2 of the Protocol to the ECHR, which reads as follows:*

*"No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions."*

*It was considered useful to extend this ~~right~~ article to access to vocational and continuing training (see point 15 of the Community Charter of the Fundamental Social Rights of Workers and Article 10 of the Social Charter) and to add the principle of free compulsory education. As it is worded, the latter principle merely implies that as regards compulsory education, each child has the possibility of attending an establishment which offers free education. It does not require all establishments which provide education, in particular private ones, to be free of charge. Nor does it exclude certain specific forms of education having to be paid for, if the State takes measures to grant financial compensation. Insofar as the Charter applies to the Union,*



*this means that in its training policies the Union must respect free compulsory education, but this does not, of course, create new powers. Regarding the right of parents, it must be interpreted in conjunction with the provisions of Article 24.*

2. *Freedom to found public or private educational establishments is guaranteed as one of the aspects of freedom to conduct a business but it is limited by respect for democratic principles and is exercised in accordance with the arrangements defined by national legislation.*

### Article 15

#### Freedom to choose an occupation and right to engage in work

1. Everyone has the right to engage in work and to pursue a freely chosen or accepted occupation.
2. Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State.
3. Nationals of third countries who are authorised to work in the territories of the Member States are entitled to working conditions equivalent to those of citizens of the Union.

#### Explanation

*Freedom to choose an occupation, as enshrined in Article 15(1), is recognised in Court of Justice case law (see inter alia judgment of 14 May 1974, Case 4/73 Nold [1974] ECR 491, paragraphs 12 to 14 of the grounds; judgment of 13 December 1979, Case 44/79 Hauer [1979] ECR 3727; judgment of 8 October 1986, Case 234/85 Keller [1986] ECR 2897, paragraph 8 of the grounds).*

*This paragraph also draws upon Article 1(2) of the European Social Charter, which was signed on 18 October 1961 and has been ratified by all the Member States, and on point 4 of the Community Charter of the Fundamental Social Rights of Workers of 9 December 1989. The expression "working conditions" is to be understood in the sense of Article ~~[III-102+40]~~ of the Constitution of the EC Treaty.*

*The second paragraph deals with the three freedoms guaranteed by Articles ~~[I-4]~~ and ~~[III-15, III-19 and III-26]~~ of the Constitution ~~39, 43 and 49 et seq~~ of the EC Treaty, namely freedom of movement for workers, freedom of establishment and freedom to provide services.*

*The third paragraph ~~is~~ has been based on TEC Article 137(3), fourth indent, now replaced by Article ~~[III-99 (1) (g)]~~ of the Constitution, and on Article 19(4) of the European Social Charter signed on 18 October 1961 and ratified by all the Member States. Article 52(2) of the Charter is therefore applicable. The question of recruitment of seamen having the nationality of third States for the crews of vessels flying the flag of a Member State of the Union is governed by ~~Community~~ Union law and national legislation and practice.*

## Article 16

### Freedom to conduct a business

The freedom to conduct a business in accordance with ~~Community~~ Union law and national laws and practices is recognised.

### **Explanation**

*This Article is based on Court of Justice case law which has recognised freedom to exercise an economic or commercial activity (see judgments of 14 May 1974, Case 4/73 Nold [1974] ECR 491, paragraph 14 of the grounds, and of 27 September 1979, Case 230-78 SPA Eridiana and others [1979] ECR 2749, paragraphs 20 and 31 of the grounds) and freedom of contract (see inter alia Sukkerfabriken Nykøbing judgment, Case 151/78 [1979] ECR I, paragraph 19 of the grounds, and judgment of 5 October 1999, C-240/97 Spain v. Commission, ~~[1999] ECR I-6571~~ ~~[not yet published]~~, paragraph 99 of*



*the grounds) and ~~Articles [I-3 (2)] of the Constitution~~~~TEC Article 4(1) and (2)~~, which recognises free and undistorted competition. Of course, this right is to be exercised with respect for ~~Community~~Union law and national legislation. It may be subject to the limitations provided for in Article 52(1) of the Charter.*

## Article 17

### Right to property

1. Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law insofar as is necessary for the general interest.
2. Intellectual property shall be protected.

### Explanation

*This Article is based on Article 1 of the Protocol to the ECHR:*

*"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.*

*The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."*

*This is a fundamental right common to all national constitutions. It has been recognised on numerous occasions by the case law of the Court of Justice, initially in the Hauer judgment (13 December 1979, ECR [1979] 3727). The wording has been updated but, in accordance with Article 52(3), the meaning and scope of the right are the same as those of the right guaranteed by the ECHR and the limitations may not exceed those provided for there.*

*Protection of intellectual property, one aspect of the right of property, is explicitly mentioned in paragraph 2 because of its growing importance and Community secondary legislation. Intellectual property covers not only literary and artistic property but also patent and trademark rights and associated rights. The guarantees laid down in paragraph 1 shall apply as appropriate to intellectual property.*

## Article 18

### Right to asylum

The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Constitution Treaty establishing the European Community.

### **Explanation**

*The text of the Article ~~has been~~ based on TEC Article 63, now replaced by Article [III-162] of the Constitution, which requires the Union to respect the Geneva Convention on refugees. Reference should be made to the Protocols relating to the United Kingdom and Ireland annexed to the [Treaty of Amsterdam] Constitution and to Denmark to determine the extent to which those Member States implement ~~Community~~ Union law in this area and the extent to which this Article is applicable to them. This Article is in line with the Protocol on Asylum annexed to the ~~EC Treaty~~ Constitution.*

## Article 19

### Protection in the event of removal, expulsion or extradition

1. Collective expulsions are prohibited.
2. No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.

### **Explanation**

*Paragraph 1 of this Article has the same meaning and scope as Article 4 of Protocol No 4 to the ECHR concerning collective expulsion. Its purpose is to guarantee that every decision is based on a specific examination and that no single measure can be taken to expel all persons having the nationality of a particular State (see also Article 13 of the Covenant on Civil and Political Rights).*

*Paragraph 2 incorporates case law from the European Court of Human Rights regarding Article 3 of the ECHR (see *Ahmed v. Austria*, judgment of 17 December 1996, [1996] ECR VI-2206 and *Soering*, judgment of 7 July 1989).*

**CHAPTER TITLE III. EQUALITY****Article 20**

## Equality before the law

Everyone is equal before the law.

**Explanation**

*This Article corresponds to a general principle of law which is included in all European constitutions and has also been recognised by the Court of Justice as a basic principle of Community law (judgment of 13 November 1984, Case 283/83 Racke [1984] ECR 3791, judgment of 17 April 1997, Case 15/95 EARL [1997] ECR I-1961, and judgment of 13 April 2000, Case 292/97 Karlsson, not yet published).*

**Article 21**

## Non-discrimination

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.
2. Within the scope of application of the Constitution and without prejudice to any of its specific provisions, ~~Treaty establishing the European Community and of the Treaty on European Union, and without prejudice to the special provisions of those Treaties,~~ any discrimination on grounds of nationality shall be prohibited.

**Explanation**

*Paragraph 1 draws on Article 13 of the EC Treaty, now replaced by Article III-5, Article 14 of the ECHR and Article 11 of the Convention on Human Rights and Biomedicine as regards genetic heritage. Insofar as this corresponds to Article 14 of the ECHR, it applies in compliance with it.*

*There is no contradiction or incompatibility between paragraph 1 and Article [III-5] of the Constitution which has a different scope and purpose: Article [III-5] confers power on the Union to adopt legislative acts, including harmonisation of the Member States' laws and regulations, to combat certain forms of discrimination, listed exhaustively in that Article. Such legislation may cover all action of Member State authorities in any area, as well as relations between private individuals. In contrast, the provision in paragraph 1 does not create any power to enact anti-discrimination laws in these areas of Member State or private action, nor does it lay down a sweeping ban of discrimination in such wide-ranging areas. Instead, it only addresses discriminations by the institutions and bodies of the Union themselves, when exercising powers conferred under other articles of Parts I and III the Constitution, and by Member States only when they are implementing Union law. Paragraph 1 therefore does not alter the extent of powers granted under Article [III-5] nor the interpretation given to that Article.*

*Paragraph 2 corresponds to Article [I-4 (2)] of the Constitution~~Article 12 of the EC Treaty~~ and must be applied in compliance with that Article ~~the Treaty~~.*

**Article 22****Cultural, religious and linguistic diversity**

The Union shall respect cultural, religious and linguistic diversity.

**Explanation**

*This Article ~~is~~ has been based on Article 6 of the Treaty on European Union and on Article 151(1) and (4) of the EC Treaty, now replaced by Article [III-176 (1) and (4) of the Constitution,*



*concerning culture. Respect for cultural and linguistic diversity is now also laid down in Article [I-3 (3)] I of the Constitution. The Article-It is also inspired by declaration No 11 to the Final Act of the Amsterdam Treaty on the status of churches and non-confessional organisations, now taken over in Article [I-51] of the Constitution.*

## Article 23

### Equality between men and women

Equality between men and women must be ensured in all areas, including employment, work and pay.

The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.

### **Explanation**

*The first paragraph has been ~~is~~ based on ~~Articles 2 and 3(2) of the EC Treaty, now replaced by Articles [I-3] and [III-1] of the Constitution~~ which impose the objective of promoting equality between men and women on the ~~Community~~ Union, and on Article 141(3) of the EC Treaty, now replaced by Article [III-103 (1)] of the Constitution. It draws on Article 20 of the revised European Social Charter of 3 May 1996 and on point 16 of the Community Charter on the rights of workers.*

*It is also based on Article 141(3) of the EC Treaty, now replaced by Article [III-103 (3)] of the Constitution, and Article 2(4) of Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.*

*Paragraph 2 takes over in shorter form ~~Article III-103 (4) of the Constitution~~ ~~Article 141(4) of the EC Treaty~~ which provides that the principle of equal treatment does not prevent the maintenance or adoption of measures providing for specific advantages in order to make it easier for the under-represented sex to pursue a vocational activity or to prevent or compensate for disadvantages in*

*professional careers. In accordance with Article 52+(2), the present paragraph does not amend Article [III-103 (4)+141(4)-EC].*

## Article 24

### The rights of the child

1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.
2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.
3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.

### **Explanation**

*This Article is based on the New York Convention on the Rights of the Child signed on 20 November 1989 and ratified by all the Member States, particularly Articles 3, 9, 12 and 13 thereof.*

*Paragraph 3 takes account of the fact that, as part of the establishment of an area of freedom, security and justice, Union legislation on civil matters having cross-border implications, for which Article III-165 of the Constitution confers power, may include notably visiting rights ensuring that children can maintain on a regular basis a personal and direct contact with both his or her parents.*

## Article 25

### The rights of the elderly

The Union recognises and respects the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life.

### **Explanation**

*This Article draws on Article 23 of the revised European Social Charter and Articles 24 and 25 of the Community Charter of the Fundamental Social Rights of Workers. Of course, participation in social and cultural life also covers participation in political life.*

## Article 26

### Integration of persons with disabilities

The Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.

### **Explanation**

*The principle set out in this Article is based on Article 15 of the European Social Charter and also draws on ~~Article 23 of the revised Social Charter and~~ point 26 of the Community Charter of the Fundamental Social Rights of Workers.*

## **CHAPTER TITLE IV. SOLIDARITY**

## Article 27

### Workers' right to information and consultation within the undertaking

Workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions provided for by Union~~Community~~ law and national laws and practices.

**Explanation**

*This Article appears in the revised European Social Charter (Article 21) and in the Community Charter on the rights of workers (points 17 and 18). It applies under the conditions laid down by ~~Community-Union~~ law and by national laws. The reference to appropriate levels refers to the levels laid down by ~~Community-Union~~ law or by national laws and practices, which might include the European level when ~~Community-Union~~ legislation so provides. There is a considerable ~~Community-Union~~ acquis in this field: Articles [III-100 and III-101 of the Constitution~~138 and 139 of the EC Treaty~~], and Directives 2002/14/EC (general framework for informing and consulting employees in the European Community), 98/59/EC (collective redundancies), ~~77/187/EEC~~ 2001/23/EC (transfers of undertakings) and 94/45/EC (European works councils).*

**Article 28****Right of collective bargaining and action**

Workers and employers, or their respective organisations, have, in accordance with ~~Community-Union~~ law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action.

**Explanation**

*This Article is based on Article 6 of the European Social Charter and on the Community Charter of the Fundamental Social Rights of Workers (points 12 to 14). The right of collective action was recognised by the European Court of Human Rights as one of the elements of trade union rights laid down by Article 11 of the ECHR. As regards the appropriate levels at which collective negotiation might take place, see the explanation given for the above Article. The modalities and limits for the exercise of ~~C~~collective action, including strike action, comes under national law and practices, including the question of whether it may be carried out in parallel in several Member States.*

## Article 29

### Right of access to placement services

Everyone has the right of access to a free placement service.

#### **Explanation**

*This Article is based on Article 1(3) of the European Social Charter and point 13 of the Community Charter of the Fundamental Social Rights of Workers.*

## Article 30

### Protection in the event of unjustified dismissal

Every worker has the right to protection against unjustified dismissal, in accordance with ~~Community~~ Union law and national laws and practices.

#### **Explanation**

*This Article draws on Article 24 of the revised Social Charter. See also Directive 77/187/EEC 2001/23/EC on the safeguarding of employees' rights in the event of transfers of undertakings, and Directive 80/987/EEC on the protection of employees in the event of the insolvency of their employer, as amended by Directive 2002/74/EC.*

## Article 31

### Fair and just working conditions

1. Every worker has the right to working conditions which respect his or her health, safety and dignity.
2. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

### **Explanation**

1. *Paragraph 1 of tThis Article is based on Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work. It also draws on Article-3 of the Social Charter and point 19 of the Community Charter on the rights of workers, and, as regards dignity at work, on Article 26 of the revised Social Charter. The expression "working conditions" must be understood in the sense of Article III-102 of the Constitution-140 of the EC Treaty.*
2. *Paragraph 2 is based on Directive 93/104/EC concerning certain aspects of the organisation of working time, Article 2 of the European Social Charter and point 8 of the Community Charter on the rights of workers.*

## Article 32

### Prohibition of child labour and protection of young people at work

The employment of children is prohibited. The minimum age of admission to employment may not be lower than the minimum school-leaving age, without prejudice to such rules as may be more favourable to young people and except for limited derogations.

Young people admitted to work must have working conditions appropriate to their age and be protected against economic exploitation and any work likely to harm their safety, health or physical, mental, moral or social development or to interfere with their education.

### **Explanation**

*This Article is based on Directive 94/33/EC on the protection of young people at work, Article 7 of the European Social Charter and points 20 to 23 of the Community Charter of the Fundamental Social Rights of Workers.*

### Article 33

#### Family and professional life

1. The family shall enjoy legal, economic and social protection.
2. To reconcile family and professional life, everyone shall have the right to protection from dismissal for a reason connected with maternity and the right to paid maternity leave and to parental leave following the birth or adoption of a child.

#### **Explanation**

*Article 33(1) is based on Article 16 of the European Social Charter. The second paragraph draws on Council Directive 92/85/EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding and Directive 96/34/EC on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC. It is also based on Article 8 (protection of maternity) of the European Social Charter and draws on Article 27 (right of workers with family responsibilities to equal opportunities and equal treatment) of the revised Social Charter. "Maternity" covers the period from conception to weaning.*

### Article 34

#### Social security and social assistance

1. The Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by Community-Union law and national laws and practices.
2. Everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with Community-Union law and national laws and practices.



3. In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by ~~Community~~ Union law and national laws and practices.

### **Explanation**

*The principle set out in Article 34(1) ~~is~~ has been based on Articles 137 and 140 of the EC Treaty, now replaced by Articles [III-99 and III-102] and on Article 12 of the European Social Charter and point 10 of the Community Charter on the rights of workers. The Union must respect it when exercising the powers conferred on it by Articles [III-99 and III 102] of the Constitution~~140 of the Treaty establishing the European Community~~. The reference to social services relates to cases in which such services have been introduced to provide certain advantages but does not imply that such services must be created where they do not exist. "Maternity" must be understood in the same sense as in the preceding Article.*

*The second paragraph is based on Articles 12 (4) and 13(4) of the European Social Charter and point 2 of the Community Charter of the Fundamental Social Rights of Workers and reflects the rules arising from Regulation No 1408/71 and Regulation No 1612/68.*

*The third paragraph draws on Article 13 of the European Social Charter and Articles 30 and 31 of the revised Social Charter and point 10 of the Community Charter. The Union must respect it in the context of policies based on Article [III-99] of the Constitution~~137(2) of the Treaty establishing the European Community~~, particularly the last subparagraph.*

## Article 35

### Health care

Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all Union policies and

activities.

### **Explanation**

*The principles set out in this Article are based on Article ~~[III-174]~~ of the Constitution~~152~~ of the EC Treaty and on Articles 11 and 13 of the European Social Charter. The second sentence of the Article takes over Article ~~III-174~~ 152(1).*

### **Article 36**

#### Access to services of general economic interest

The Union recognises and respects access to services of general economic interest as provided for in national laws and practices, in accordance with the ~~Constitution~~Treaty establishing the European Community, in order to promote the social and territorial cohesion of the Union.

### **Explanation**

*This Article ~~fully respects~~ is fully in line with Article ~~III-3~~ of the Constitution~~16~~ of the Treaty establishing the European Community and does not create any new right. It merely sets out the principle of respect by the Union for the access to services of general economic interest as provided for by national provisions, when those provisions are compatible with ~~Community~~Union legislation.*

### **Article 37**

#### Environmental protection

A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.

**Explanation**

*The principles set out in this Article ~~are~~ have been based on Articles 2, 6 and 174 of the EC Treaty, now replaced by Articles I-2, III-2 and III-124. It also draws on the provisions of some national constitutions.*

**Article 38****Consumer Protection**

Union policies shall ensure a high level of consumer protection.

**Explanation**

*The principles set out in this Article have been~~are~~ based on Article 153 of the EC Treaty, now replaced by Article III-127 of the Constitution.*

**CHAPTER TITLE V. CITIZENS' RIGHTS****Article 39****Right to vote and to stand as a candidate at elections to the European Parliament**

1. Every citizen of the Union has the right to vote and to stand as a candidate at elections to the European Parliament in the Member State in which he or she resides, under the same conditions as nationals of that State.

2. Members of the European Parliament shall be elected by direct universal suffrage in a free and secret ballot.

**Explanation**

*Article 39 applies under the conditions laid down in Parts I and III of the Constitution ~~by the Treaty~~, in accordance with Article 52(2) of the Charter. Article 39(1) corresponds to the right guaranteed in Article [I-8 (2)] of the Constitution (cf. also the legal base in Article III-7 for the adoption of detailed arrangements for the exercise of that right)~~19(2) of the EC Treaty~~ and Article 39(2) corresponds to Article [I-19 (2)] of the Constitution~~190(1) of that Treaty~~. Article 39(2) takes over the basic principles of the electoral system in a democratic State.*

**Article 40****Right to vote and to stand as a candidate at municipal elections**

Every citizen of the Union has the right to vote and to stand as a candidate at municipal elections in the Member State in which he or she resides under the same conditions as nationals of that State.

**Explanation**

*This Article corresponds to the right guaranteed by Article [I-8 (2)] of the Constitution (cf. also the legal base in Article III-7 for the adoption of detailed arrangements for the exercise of that right)~~19(1) of the EC Treaty~~. In accordance with Article 52(2) of the Charter, it applies under the conditions set out in these Articles of Parts I and III of the Constitution~~the Treaty~~.*

**Article 41****Right to good administration**

1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, ~~and bodies~~ and agencies of the Union.

2. This right includes:
- the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;
  - the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;
  - the obligation of the administration to give reasons for its decisions.
3. Every person has the right to have the ~~Community~~ Union make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.
4. Every person may write to the institutions of the Union in one of the official languages of the ~~Treaties~~ Union and must have an answer in the same language.

### **Explanation**

*Article 41 is based on the existence of the Union as a Community subject to the rule of law whose characteristics were developed in the case law which enshrined inter alia ~~the principle of good administration as a general principle of law~~ (see inter alia Court of Justice judgment of 31 March 1992 in Case C-255/90 P, *Burban* [1992] ECR I-2253, and Court of First Instance judgments of 18 September 1995 in Case T-167/94 *Nölle* [1995] ECR II-2589, and 9 July 1999 in Case T-231/97 *New Europe Consulting and others* [1999] ECR II-2403). The wording for that right in the first two paragraphs results from the case law (Court of Justice judgment of 15 October 1987 in Case 222/86 *Heylens* [1987] ECR 4097, paragraph 15 of the grounds, judgment of 18 October 1989 in Case 374/87 *Orkem* [1989] ECR 3283, judgment of 21 November 1991 in Case C-269/90 *TU München* [1991] ECR I-5469, and Court of First Instance judgments of 6 December 1994 in Case T-450/93 *Lisrestal* [1994] ECR II-1177, 18 September 1995 in Case T-167/94 *Nölle* [1995] ECR II-258), and the wording regarding the obligation to give reasons comes from Article 253 of the EC Treaty, now replaced by Article [I-37(2)] of the Constitution.*



*Paragraph 3 reproduces the right guaranteed by Article ~~[III-333] of the Constitution~~<sup>288</sup> of the EC Treaty. Paragraph 4 reproduces the right guaranteed by Articles [I-8, fourth indent, and III-9] of the Constitution~~the third paragraph of Article 21 of the EC Treaty~~. In accordance with Article 52(2) of the Charter, those rights are to be applied under the conditions and within the limits defined by Part III of the Constitution~~the Treaties~~.*

*The right to an effective remedy, which is an important aspect of this question, is guaranteed in Article 47 of this Charter.*

## Article 42

### Right of access to documents

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to ~~European Parliament, Council and Commission~~ documents of the institutions agencies and bodies of the Union, in whatever form they are produced.

### **Explanation**

*The right guaranteed in this Article has been taken over from ~~is the right guaranteed by~~ Article 255 of the EC Treaty. The European Convention has extended this right to documents of institutions, bodies and agencies generally, regardless of their form, see Article [I-49 (3)] of the Constitution. In accordance with Article 52(2) of the Charter, ~~the right of access to documents is exercised under the conditions and within the limits for which provision is made in Article [I-49 (3)]~~ applies under the conditions defined by the Treaty.*



### Article 43

#### Ombudsman

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to refer to the Ombudsman of the Union cases of maladministration in the activities of the ~~Community~~ institutions, or bodies or agencies of the Union, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role.

#### **Explanation**

*The right guaranteed in this Article is the right guaranteed by Articles [I-8 and III-232 of the Constitution]~~21 and 195 of the EC Treaty~~. In accordance with Article 52(2) of the Charter, it applies under the conditions defined in these two Articles~~by the Treaty~~.*

### Article 44

#### Right to petition

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to petition the European Parliament.

#### **Explanation**

*The right guaranteed in this Article is the right guaranteed by Articles [I-8 and III-231] of the Constitution~~21 and 194 of the EC Treaty~~. In accordance with Article 52(2) of the Charter, it applies under the conditions defined in these two Articles~~by the Treaty~~.*

## Article 45

### Freedom of movement and of residence

1. Every citizen of the Union has the right to move and reside freely within the territory of the Member States.
2. Freedom of movement and residence may be granted, in accordance with the Constitution~~Treaty~~ ~~establishing the European Community~~, to nationals of third countries legally resident in the territory of a Member State.

### **Explanation**

*The right guaranteed by paragraph 1 is the right guaranteed by Article [I-8, first indent] of the Constitution~~18 of the EC Treaty~~ (cf. also the legal base in Article [III-6]; and the judgement of the Court of Justice of 17 September 2002, C-413-99 *Baumbast*, [2002] ECR 709). In accordance with Article 52(2) of the Charter, it applies under the conditions and within the limits defined for which provision is made in Part III of the Constitution~~by the Treaty~~.*

*Paragraph 2 refers to the power granted to the ~~Community~~ Union by Articles [III-161 to III-163] of the Constitution ~~62(1) and (3) and Article 63(4) of the EC Treaty~~. Consequently, the granting of this right depends on the institutions exercising that power.*

## Article 46

### Diplomatic and consular protection

Every citizen of the Union shall, in the territory of a third country in which the Member State of which he or she is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that Member State.

**Explanation**

*The right guaranteed by this Article is the right guaranteed by Article [I-8] of the Constitution; cf. also the legal base in Article [III-8] ~~20~~ of the EC Treaty. In accordance with Article 52(2) of the Charter, it applies under the conditions defined in these Articles ~~by the Treaty~~.*

**CHAPTER TITLE VI. JUSTICE****Article 47****Right to an effective remedy and to a fair trial**

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

Legal aid shall be made available to those who lack sufficient resources insofar as such aid is necessary to ensure effective access to justice.

**Explanation**

*The first paragraph is based on Article 13 of the ECHR:*

*"Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."*

However, in ~~Community~~ Union law the protection is more extensive since it guarantees the right to an effective remedy before a court. The Court of Justice enshrined ~~the principle that right~~ in its judgment of 15 May 1986 (Case 222/84 Johnston [1986] ECR 1651; see also judgment of 15 October 1987, Case 222/86 Heylens [1987] ECR 4097 and judgment of 3 December 1992, Case C-97/91 Borelli [1992] ECR I-6313. According to the Court, ~~this principle that right~~ also applies to the Member States when they are implementing ~~Community~~ Union law. The inclusion of this precedent in the Charter ~~is~~ has not been intended to change the appeal system laid down by the Treaties, and particularly the rules relating to admissibility for direct actions before the Court of Justice of the European Union. The European Convention has considered the Union's system of judicial review including the rules on admissibility, and confirmed them while amending them as to certain aspects, as reflected in Articles [III-254 to III-285] of the Constitution, and in particular in Article [III-266 (4)]. ~~This principle is therefore to be implemented according to the procedures laid down in the Treaties. It~~ Article 47 applies to the institutions of the Union and of Member States when they are implementing Union law and does so for all rights guaranteed by Union law.

The second paragraph corresponds to Article 6(1) of the ECHR which reads as follows:

"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice."

In ~~Community~~ Union law, the right to a fair hearing is not confined to disputes relating to civil law rights and obligations. That is one of the consequences of the fact that the ~~Community~~ Union is a community based on the rule of law as stated by the Court in Case 294/83, "Les Verts" v. European Parliament (judgment of 23 April 1986, [1988] ECR 1339). Nevertheless, in all respects other than their scope, the guarantees afforded by the ECHR apply in a similar way to the Union.

With regard to the third paragraph, it should be noted that in accordance with the case law of the European Court of Human Rights, provision should be made for legal aid where the absence of such aid would make it impossible to ensure an effective remedy (ECHR Judgment of 9.10.1979,

*Airey, Series A, Volume 32, 11). There is also a system of legal assistance for cases before the Court of Justice of the European Union ~~Communities~~.*

### Article 48

#### Presumption of innocence and right of defence

1. Everyone who has been charged shall be presumed innocent until proved guilty according to law.
2. Respect for the rights of the defence of anyone who has been charged shall be guaranteed.

#### **Explanation**

*Article 48 is the same as Article 6(2) and (3) of the ECHR, which reads as follows:*

- "2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.*
3. *Everyone charged with a criminal offence has the following minimum rights:*
  - (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;*
  - (b) to have adequate time and facilities for the preparation of his defence;*
  - (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;*
  - (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;*
  - (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court."*

*In accordance with Article 52(3), this right has the same meaning and scope as the right guaranteed by the ECHR.*

## Article 49

### Principles of legality and proportionality of criminal offences and penalties

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national law or international law at the time when it was committed. Nor shall a heavier penalty be imposed than that which was applicable at the time the criminal offence was committed. If, subsequent to the commission of a criminal offence, the law provides for a lighter penalty, that penalty shall be applicable.
  
2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles recognised by the community of nations.
  
3. The severity of penalties must not be disproportionate to the criminal offence.

### **Explanation**

*This Article follows the traditional rule ~~principle~~ of the non-retroactivity of laws and criminal sanctions. There has been added the ~~principle~~ rule of the retroactivity of a more lenient penal law, which exists in a number of Member States and which features in Article 15 of the Covenant on Civil and Political Rights.*

*Article 7 of the ECHR is worded as follows:*

- "1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.*
  
- 2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations."*

*In paragraph 2, the reference to "civilised" nations has been deleted; this does not change the meaning of this paragraph, which refers to crimes against humanity in particular. In accordance with Article 52(3), the right guaranteed here therefore has the same meaning and scope as the right guaranteed by the ECHR.*

*Paragraph 3 states the general principle of proportionality between penalties and criminal offences which is enshrined in the common constitutional traditions of the Member States and in the case law of the Court of Justice of the Communities.*

#### Article 50

Right not to be tried or punished twice in criminal proceedings for the same criminal offence

No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law.

#### **Explanation**

*Article 4 of Protocol No 7 to the ECHR reads as follows:*

- "1. No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State.*
- 2. The provisions of the preceding paragraph shall not prevent the reopening of the case in accordance with the law and the penal procedure of the State concerned, if there is evidence of new or newly discovered facts, or if there has been a fundamental defect in the previous proceedings, which could affect the outcome of the case.*
- 3. No derogation from this Article shall be made under Article 15 of the Convention."*

The "non bis in idem" ~~principle~~rule applies in ~~Community~~Union law (see, among the many precedents, the judgment of 5 May 1996, Cases 18/65 and 35/65, *Gutmann v. Commission* [1966] ECR 103 and a recent case, the decision of the Court of First Instance of 20 April 1999, *Joined Cases T-305/94 and others, Limburgse Vinyl Maatschappij NV v. Commission* [1999] ECR II-931). The rule prohibiting cumulation refers to cumulation of two penalties of the same kind, that is to say criminal law penalties.

In accordance with Article 50, the "non bis in idem" ~~principle~~rule applies not only within the jurisdiction of one State but also between the jurisdictions of several Member States. That corresponds to the *acquis* in Union law; see Articles 54 to 58 of the Schengen Convention and the judgment of the Court of Justice of 11 February 2003, C-187/01 Gözütok (not yet published), Article 7 of the Convention on the Protection of the European Communities' Financial Interests and Article 10 of the Convention on the fight against corruption. The very limited exceptions in those Conventions permitting the Member States to derogate from the "non bis in idem" ~~rule~~principle are covered by the horizontal clause in Article 52(1) of the Charter concerning limitations. As regards the situations referred to by Article 4 of Protocol No 7, namely the application of the principle within the same Member State, the guaranteed right has the same meaning and the same scope as the corresponding right in the ECHR.

## **CHAPTER TITLE VII. GENERAL PROVISIONS GOVERNING THE INTERPRETATION AND APPLICATION OF THE CHARTER**

### Article 51

#### Scope

1. The provisions of this Charter are addressed to the institutions, ~~and~~ bodies and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers and respecting the limits of the powers of the Union as conferred on it by other Parts of the Constitution.



2. This Charter does not extend the scope of application of Union law beyond the powers of the Union or establish any new power or task for ~~the Community or the Union~~, or modify powers and tasks defined by the other Parts of the Constitution~~Treaties~~.

### **Explanation**

*The aim of Article 51 is to determine the scope of the Charter. It seeks to establish clearly that the Charter applies primarily to the institutions and bodies of the Union, in compliance with the principle of subsidiarity. This provision ~~is~~ has been drafted in keeping with Article 6(2) of the Treaty on European Union, which requires the Union to respect fundamental rights, and with the mandate issued by Cologne European Council. The term "institutions" is enshrined in ~~the EC Treaty~~, Part I of the Constitution, Article [I-18(2)]<sup>7</sup> of which lists the institutions. The expression "bodies and agencies" ~~term "body"~~ is commonly used in the Constitution to refer to all the authorities set up by the ~~Treaties~~ Constitution or by secondary legislation (see, e.g., Article [I-49 or I-50] of the Constitution<sup>286(1)</sup> ~~of the Treaty establishing the European Community~~).*

*As regards the Member States, it follows unambiguously from the case law of the Court of Justice that the requirement to respect fundamental rights defined in a Union context is only binding on the Member States when they act in the ~~context~~ scope of ~~Community~~ Union law (judgment of 13 July 1989, Case 5/88 Wachauf [1989] ECR 2609; judgment of 18 June 1991, ERT [1991] ECR I-2925); judgment of 18 December 1997 (C-309/96 Annibaldi, [1997] ECR I-7493). The Court of Justice recently confirmed this case law in the following terms: "In addition, it should be remembered that the requirements flowing from the protection of fundamental rights in the Community legal order are also binding on Member States when they implement Community rules..." (judgment of 13 April 2000, Case C-292/97, [2000] ECR 2737, paragraph 37 of the grounds, ~~not yet published~~). -Of course this ~~principle~~ rule, as enshrined in this Charter, applies to the central authorities as well as to regional or local bodies, and to public organisations, when they are implementing Union law.*

*Paragraph 2, together with the second sentence of paragraph 1, confirms that the Charter may not have the effect of extending the competences and tasks which the other Parts of the Constitution Treaties confer on the ~~Community and the~~ Union. Explicit mention is made here of the logical consequences of the principle of subsidiarity and of the fact that the Union only has those powers which have been conferred upon it. The fundamental rights as guaranteed in the Union do not have any effect other than in the context of the powers determined by [Parts I and III of the Constitution]the Treaty. Consequently, an obligation, pursuant to the second sentence of paragraph 1, for the Union's institutions to promote principles laid down in the Charter, may arise only within the limits of these same powers.*

*Paragraph 2 also confirms that the Charter may not have the effect of extending the scope of application of Union law beyond the powers of the Union as established in the other Parts of the Constitution. The Court of Justice has already established this rule with respect to the fundamental rights recognised as part of Union law (judgment of 17 February 1998, C-249/96 Grant, 1998 ECR I-621, paragraph 45 of the grounds). In accordance with this rule, it goes without saying that the incorporation of the Charter into the Constitution cannot be understood as extending by itself the range of Member State action considered to be "implementation of Union law" (within the meaning of paragraph 1 and the above-mentioned case law).*

## Article 52

### Scope of guaranteed rights

1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.
2. Rights recognised by this Charter ~~which are based on the Community Treaties or the Treaty on European Union~~ for which provision is made in other Parts of the Constitution shall be exercised under the conditions and within the limits defined by these relevant Parts ~~by those Treaties~~.

3. Insofar as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.

4. Insofar as this Charter recognises fundamental rights as they result from the constitutional traditions common to the Member States, those rights shall be interpreted in harmony with those traditions.

5. The provisions of this Charter which contain principles may be implemented by legislative and executive acts taken by institutions and bodies of the Union, and by acts of Member States when they are implementing Union law, in the exercise of their respective powers. They shall be judicially cognisable only in the interpretation of such acts and in the ruling on their legality.

6. Full account shall be taken of national laws and practices as specified in this Charter.

### **Explanation**

*The purpose of Article 52 is to set the scope of the rights guaranteed. Paragraph 1 deals with the arrangements for the limitation of rights. The wording is based on the case law of the Court of Justice: "...it is well established in the case law of the Court that restrictions may be imposed on the exercise of fundamental rights, in particular in the context of a common organisation of the market, provided that those restrictions in fact correspond to objectives of general interest pursued by the Community and do not constitute, with regard to the aim pursued, disproportionate and unreasonable interference undermining the very substance of those rights" (judgment of 13 April 2000, Case C-292/97, paragraph 45 of the grounds). The reference to general interests recognised by the Union covers both the objectives mentioned in Article [I-2] of the Constitution and other interests protected by specific ~~Treaty~~ provisions of the Constitution such as Articles [I-5 (1), III-15, III-40, III-339]30 or 39(3) of the EC Treaty.*

*Paragraph 2 ~~clarifies~~ specifies that where a rights were already expressly enshrined in the Treaty establishing the European Community and have merely been restated in the Charter (notably the rights derived from Union citizenship), ~~results from the Treaties~~ it they remain is subject to the*

*conditions and limits for which provision was made in that Treaty and is now made in Parts I and III of the Constitution. ~~laid down by them~~. The Charter does not alter the system of rights conferred by the EC Treaty and now taken over by Parts I and III of the Constitution ~~ies~~.*

*Paragraph 3 is intended to ensure the necessary consistency between the Charter and the ECHR by establishing the ~~principle~~-rule that, insofar as the rights in the present Charter also correspond to rights guaranteed by the ECHR, the meaning and scope of those rights, including authorised limitations, are the same as those laid down by the ECHR. This means in particular that the legislator, in laying down limitations to those rights, must comply with the same standards as are fixed by the detailed limitation arrangements laid down in the ECHR, which are thus made applicable for the rights covered by this paragraph, without thereby adversely affecting the autonomy of ~~Community~~ Union law and of that of the Court of Justice of the European ~~Communities~~ Union.*

*The reference to the ECHR covers both the Convention and the Protocols to it. The meaning and the scope of the guaranteed rights are determined not only by the text of those instruments, but also by the case law of the European Court of Human Rights and by the Court of Justice of the European ~~Union~~ Communities. The last sentence of the paragraph is designed to clarify ~~allow the Union to guarantee that the Article does not prevent more extensive protection already achieved or which may subsequently be provided for (i) in Union legislation or (ii) in some Articles of the Charter which, although based on the ECHR, go beyond the ECHR because Union law acquis has already reached a higher level of protection (e.g., Articles 47 and 50).~~ In any event, the level of protection afforded by the Charter may never be lower than that guaranteed by the ECHR.*

*The Charter does not affect the possibilities of Member States to avail themselves of Article 15 ECHR, allowing derogations from ECHR rights in the event of war or of other public dangers threatening the life of the nation, when they take action in the areas of national defence in the event of war and of the maintenance of law and order, in accordance with their responsibilities recognised in Articles [I-5 (1), III-13, III-158] of the Constitution.*

*The list of rights which may at the present stage, without precluding developments in the law, legislation and the Treaties, be regarded as corresponding to rights in the ECHR within the meaning of the present paragraph is given hereafter. It does not include rights additional to those in the ECHR.*

**1. Articles of the Charter where both the meaning and the scope are the same as the corresponding Articles of the ECHR:**

- Article 2 corresponds to Article 2 of the ECHR
- Article 4 corresponds to Article 3 of the ECHR
- Article 5(1) and (2) correspond to Article 4 of the ECHR
- Article 6 corresponds to Article 5 of the ECHR
- Article 7 corresponds to Article 8 of the ECHR
- Article 10(1) corresponds to Article 9 of the ECHR
- Article 11 corresponds to Article 10 of the ECHR without prejudice to any restrictions which ~~Community~~ Union law may impose on Member States' right to introduce the licensing arrangements referred to in the third sentence of Article 10(1) of the ECHR
- Article 17 corresponds to Article 1 of the Protocol to the ECHR
- Article 19(1) corresponds to Article 4 of Protocol No 4
- Article 19(2) corresponds to Article 3 of the ECHR as interpreted by the European Court of Human Rights
- Article 48 corresponds to Article 6(2) and(3) of the ECHR
- Article 49(1) (with the exception of the last sentence) and (2) correspond to Article 7 of the ECHR

**2. Articles where the meaning is the same as the corresponding Articles of the ECHR, but where the scope is wider:**

- Article 9 covers the same field as Article 12 of the ECHR, but its scope may be extended to other forms of marriage if these are established by national legislation
- Article 12(1) corresponds to Article 11 of the ECHR, but its scope is extended to European Union level
- Article 14(1) corresponds to Article 2 of the Protocol to the ECHR, but its scope is extended to cover access to vocational and continuing training
- Article 14(3) corresponds to Article 2 of the Protocol to the ECHR as regards the rights of parents
- Article 47(2) and (3) correspond to Article 6(1) of the ECHR, but the limitation to the determination of civil rights and obligations or criminal charges does not apply as regards Union law and its implementation
- Article 50 corresponds to Article 4 of Protocol No 7 to the ECHR, but its scope is extended to

*European Union level between the Courts of the Member States.*

- *Finally, citizens of the European Union may not be considered as aliens in the scope of the application of ~~Community~~ Union law, because of the prohibition of any discrimination on grounds of nationality. The limitations provided for by Article 16 of the ECHR as regards the rights of aliens therefore do not apply to them in this context.*

*The rule of interpretation contained in paragraph 4 has been based on the wording of Article 6 § 2 of the Treaty on European Union and takes due account of the approach to common constitutional traditions followed by the Court of Justice (e.g., judgment of 13 December 1979, Case 44/79 Hauer [1979] ECR 3727; judgment of 18 May 1982, Case 155/79, AM&S, [1982] ECR 1575.. Under that rule, rather than following a rigid approach of "a lowest common denominator", the Charter rights concerned should be interpreted in a way offering a high standard of protection which is adequate for the law of the Union and in harmony with the common constitutional traditions.*

*Paragraph 5 clarifies the distinction between "rights" and "principles" set out in the Charter. According to that distinction, subjective rights shall be respected, whereas principles shall be observed (Article 51 § 1). Principles are implemented through legislative or executive acts; accordingly, they become significant for the Courts when such acts are interpreted or reviewed. They do not however give rise to direct claims for positive action by the Union's institutions or Member States authorities. This is consistent both with case law of the Court of Justice (Cf. notably recent case law on the "precautionary principle" in Article 174 § 2 TEC: judgment of the CFI of 11 September 2002, T-13/99, Pfizer vs. Council, with numerous references to earlier case law; and a series of judgments on Article 33 (ex-39) on the principles of agricultural law, e.g. judgment of the Court of Justice C-265/85, Van den Berg, 1987 ECR 1155: scrutiny of the principle of market stabilisation and of reasonable expectations) and with the approach of the Member States' constitutional systems to "principles" particularly in the field of social law. For illustration, examples for principles recognised in the Charter include e.g. Articles 26 and 37. In some cases, an Article of the Charter may contain both elements of a right and of a principle, e.g., Articles 23 and 33.*

*Paragraph 6 refers to the various Articles in the Charter which, in the spirit of subsidiarity, make reference to national laws and practices.*

## Article 53

### Level of protection

Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by Union law and international law and by international agreements to which the Union, ~~the Community~~ or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' constitutions.

### **Explanation**

*This provision is intended to maintain the level of protection currently afforded within their respective scope by Union law, national law and international law. Owing to its importance, mention is made of the ECHR. ~~The level of protection afforded by the Charter may not, in any instance, be lower than that guaranteed by the ECHR, with the result that the arrangements for limitations may not fall below the level provided for in the ECHR.~~ [transferred to the explanations under Article 52 § 3].*

## Article 54

### Prohibition of abuse of rights

Nothing in this Charter shall be interpreted as implying any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms recognised in this Charter or at their limitation to a greater extent than is provided for herein.

#### **Explanation**

*This Article corresponds to Article 17 of the ECHR:*

*"Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention."*

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**THE EUROPEAN CONVENTION**  
THE SECRETARIAT

**Brussels, 4 June 2003**  
**(OR. fr,en)**

**CONV 779/03**

**COVER NOTE**

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from : Secretariat

to : Convention

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Subject : **Reactions to the draft Articles of the revised text of Part One (Volume I)**  
**– Analysis**

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Convention members will find attached summary sheets of proposed amendments to the Articles of Volume I (CONV 724/1/03 REV 1).

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## **TITLE I: DEFINITION AND OBJECTIVES OF THE UNION**

### **Article I-1: Establishment of the Union**

With regard to paragraph 1, some amendments call for the term "citizens" to be replaced by "peoples" (am. 2 Lopes), or for the latter term to be added (am. 1 Balázs). There is also a suggestion to begin the second sentence with "in accordance with this Constitution" (am. 2 Hain), and to delete the reference to the Union's coordinating role (am. 4 Wuermeling) or state that certain policies of the Member States are coordinated, without mentioning the Union as the subject (am. 9 Teufel). Some would like the sentence to be reformulated avoiding the expression "Community way" (am. 5 Kohout) or wish to return to the expression "federal basis" (am. 8 Duff + 3).

As for paragraph 2, am. 1 Balázs wishes to return to the previous Praesidium version (requiring that values also be shared by peoples). Am. 6 Kaufmann proposes deleting the paragraph, on the grounds that Article I-57(1) is sufficient.

Furthermore, the insertion of a new paragraph referring to the "Community acquis" as a foundation of the Union is requested by am. 3 Lopes. Am. 7 by Hjelm-Wallén + 5 seeks another paragraph providing for decisions to be taken as openly and as close to citizens as possible.

### **Articles I-2: The Union's values**

A number of amendments request the addition of equality to the list in the first sentence (am. 1 Dybkjaer, am. 4 Kaufmann, am. 8 Hjelm-Wallén + 3, am. 10 Duff + 4, am. 11 Michel + 4, am. Fischer 9: equality, including between women and men). Others propose a reference to respect for minority rights in this sentence (am. 3 Balázs + 10, am. 7 Bonde). One amendment proposes saying "fundamental rights" instead of "human rights" (am. 6 Berès + Duhamel).

## **TITLE II: FUNDAMENTAL RIGHTS AND CITIZENSHIP OF THE UNION**

### **Article I-7: Fundamental rights**

On paragraph 1, some are asking for the Charter to be incorporated as a protocol, rather than as Part Two of the Constitution (am. 2 de Vries, am. 3 Hain, am. 6 Kalniete, am. 7 Hjelm-Wallén + 2). One Convention member thought it should be specified that the provisions of the Charter as Part Two would constitute directly applicable law (am. 5 Kaufmann). One amendment suggests that the institutions, bodies and agencies should respect Charter rights on the basis of Articles 51 et seq. of the Charter, "in the spirit" of the comments on it (am. 4 Fini).

On paragraph 2, while some would prefer to weaken the wording concerning the ECHR, proposing "may seek accession ..." (am. 3 Hain), or "may accede" (am. 9 de Villepin), others on the contrary would like it to be strengthened (am. 1 Demiralp). Other amendments would like explicitly to mention the possibility for the Union to accede to other human rights conventions (am. 5 Kaufmann, am. 8 Duff + 5). Some propose adding "to this end, a declaration laying down the conditions of such accession is annexed to the Final Act" (am. 9 de Villepin).

### **Article I-8: Citizenship of the Union**

- Deletion of the list in paragraph 2 is requested by am. 2 Kohout and am. 3 Kaufmann.
- Am. 1 Borrell + 2 and am. 3 Kaufmann propose granting entitlement to European citizenship to third-country nationals residing in the Union on a long-term basis.

**AMENDMENT FORM****Suggestion for amendment of Article : 2****By Ms. Dybkjær****Status :    - Member            X Alternate**

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The Union is founded on the values of respect for human dignity, liberty, democracy, **equality, in particular between men and women**, the rule of law and respect for human rights, values which are common to the Member States. Its aim is a society at peace, through the practice of tolerance, justice and solidarity

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**Explanation (if any) :**

It is of utmost importance, that equality between men and women remain among both the values and the objectives of the Union in the future Constitutional Treaty.

The European Union is NOT a discrimination free society. The European Union today is NOT gender equal. Women all over Europe are, on a daily basis, experiencing discrimination in its various forms - be it as concrete as violence or as subtle as the paygap or the glass ceiling which hinders the advancement of women. Gender equality must be a FUNDAMENTAL PRINCIPLE of the European Union, which cannot be ignored or negotiated away if Europe is to be a gender equal society.

We cannot speak of any sort of free choice until we have changed the unequal foundation, which is at the moment our starting point.

**AMENDMENT FORM****Suggestion for amendment of Article :I-2**

**By Mr Péter Balázs, Mr József Szájer, Mr Pál Vastagh, Mr. Hannes Farnleitner, Mr Alain Lamassoure, Mr Jens-Peter Bonde, Mr Kimo Kiljunen Mr Evaripidis S. Styliandis, Mr Péter Gottfried, Mr István Szent-Iványi, Mr António Nazaré Pereira, Mr Jürgen Meyer**

Status : - Members - Alternate

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**Article I-2: The Union's values**

The Union is founded on the values of respect for human dignity, liberty, democracy, the rule of law, ~~and~~ respect for and protection of human rights and those of minorities. These values are common to the Member States in a society of pluralism, tolerance, justice, equality, solidarity and non-discrimination.

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**Explanation (if any) :**

**The proposal adds and refers to the missing element of the Copenhagen criteria, which makes an important part of the acquis.**

**AMENDMENT FORM****Suggestion for amendment of Article I -2****By Mr Proinsias De Rossa****Status : - Member**

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Redraft as follows:

The Union is founded on the values of respect for human dignity, liberty, democracy, **equality**, the rule of law and respect for human rights. These values are common to the Member States in a society of pluralism, tolerance, justice, solidarity and non-discrimination.

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**Explanation (if any) :**

As a value, 'equality' should be placed on an equal footing with 'liberty', 'democracy' etc.

**AMENDMENT FORM****Title I****Suggestion for amendment of Article: I-2****By: Mr. Vytenis Povilas Andriukaitis****Status: Member.**

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Article I-2: The Union's values

The Union is founded on the values of respect for human dignity, liberty, democracy, the rule of law and respect for human rights. These values are common to the Member States in a society of pluralism, tolerance, justice, **in particular social justice**, equality, solidarity and non-discrimination.

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## Amendment Form

### Suggestion for amendment of Article : I-2

**By Ms: Linda McAvan**

**Status : - Member**

Modify as follows:

The Union is founded on the values of respect for human dignity, liberty, democracy, the rule of law, *equality between men and women* and respect for human rights. These values are common to the Member States in a society of pluralism, tolerance, justice, equality, solidarity and non-discrimination.

**Explanation (if any) :**



**FICHE AMENDEMENT****Proposition d'amendement à l'Article : I- 2**

**Déposée par Madame ou Monsieur : M. Louis Michel, M. Elio di Rupo, Mme Anne Van Lancker, membres de la Convention et M. Pierre Chevalier et Mme Marie Nagy, membres suppléants de la Convention**

**Qualité : - Membre            - Suppléant**

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**Article I-2: Les valeurs de l'Union**

L'Union se fonde sur les valeurs de respect de la dignité humaine, de liberté, **d'égalité**, de démocratie, de l'état de droit, ainsi que de respect des droits de l'Homme. Ces valeurs sont communes aux États membres dans une société caractérisée par le pluralisme, la tolérance, la justice, ~~l'égalité~~, la solidarité et la non-discrimination.

**AMENDMENT FORM****Suggestion for amendment of Article : I-2****By Ms / ~~Mr~~ : Dr. Sylvia-Yvonne Kaufmann****Status : - Member - ~~Alternate~~**

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**Artikel I-2: Die Werte der Union**

Die Werte, auf denen die Union sich gründet, sind die ~~Achtung~~ **Unantastbarkeit** der Menschenwürde, Freiheit **und Gleichheit**, Demokratie, Rechtsstaatlichkeit und die Wahrung der Menschenrechte; diese Werte sind allen Mitgliedstaaten in einer **friedlichen** Gesellschaft gemeinsam, die sich durch Pluralismus, Toleranz, Gerechtigkeit, ~~Gleichheit~~, Solidarität und Nichtdiskriminierung auszeichnet.

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**Explanation (if any) :**

**AMENDMENT FORM****Suggestion for amendment of Article : Article I-2: The Union's values****By Ms / Mr : Mr Jens-Peter Bonde****Status : X - Member        - Alternate**

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The Union is founded on the values of respect for human dignity, liberty, democracy, the rule of law, ~~and~~ respect for human rights **AND NATIONAL AND ETHNICAL MINORITIES**. These values are common to the Member States in a society of **STABLE DEMOCRATIC INSTITUTIONS**, pluralism, tolerance, justice, equality, solidarity and non-discrimination.

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**Explanation (if any) :**

**FICHE AMENDEMENT****Proposition d'amendement à l'Article : I-2 (partie I)****Déposée par Mme Pervenche Berès, Olivier Duhamel****Qualité : - Membre et Suppléante**

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Article I-2: Les valeurs de l'Union

L'Union se fonde sur les valeurs de respect de la dignité humaine, de liberté, de démocratie, de l'état de droit, ainsi que de respect des droits **fondamentaux**. Ces valeurs sont communes aux États membres dans une société caractérisée par le pluralisme, la tolérance, la justice, l'égalité, la solidarité et la non-discrimination.

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**Explication**

*Amendement visant la neutralisation du genre, conformément à la Charte des droits fondamentaux qui a remplacé l'expression "droits de l'Homme" par "droits fondamentaux" et dans le prolongement du Préambule de la présente Constitution qui fait référence non pas à "l'Homme" mais à la "personne humaine".*

**AMENDMENT FORM****Title I: Definition and objectives of the Union****Suggestion for amendment of Article : Article I-2: The Union's values**

**By Members: Mr Andrew Duff, Mr Lamberto Dini, Mr Paul Helminger, Mr Rein Lang, Lord Maclellann**

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**Article I-2: The Union's values**

The Union is founded on the values of respect for human dignity, liberty, *equality*, democracy, the rule of law and respect for human rights. These values are common to the Member States in a society of pluralism, tolerance, justice, solidarity and non-discrimination.

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**Explanation:**

*Equality is more a basic value than a description of European society.*

**AMENDMENT FORM****Suggestion for amendment of Article : Part I, Article I-2****By Mr : Henning Christophersen****Status : Member of the Convention**

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**Article I-2: The Union's values**

The Union is founded on the values of respect for human dignity, liberty, democracy, **equality between women and men**, the rule of law and respect for human rights. These values are common to the Member States in a society of pluralism, tolerance, justice, equality, solidarity and non-discrimination.

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**Explanation (if any) :** Equality between women and men is a cornerstone of modern European society and a fundamental Union value and should be included in Article I-2.

**FICHE AMENDEMENT 1 (FINAL)****Proposition d'amendement à l'Article : I-2 Valores de la Unión****Déposée par Madame ou Monsieur : Borrell, Carnero y López Garrido****Qualité : - Membre - Suppléant**

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... Estos valores son comunes a los Estados miembros en una sociedad caracterizada por el pluralismo, la tolerancia, la justicia, la igualdad, **la igualdad entre el hombre y la mujer**, la solidaridad y la no discriminación.

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**Explication éventuelle :**

**AMENDMENT FORM****Suggestion for amendment of Article I - 2****By Mr : Dimitrij Rupel****Janez Lenarčič****Status : Member****Alternate**

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**Article 2: The Union's values**

The Union is founded on the values of respect for human dignity, liberty, democracy, the rule of law and respect for human rights and **fundamental freedoms**. These values are common to the Member States in a society of pluralism, tolerance, justice, equality, solidarity and non-discrimination. .



**AMENDMENT FORM****Suggestion for amendment of Article : I-2****By Mr : Joschka Fischer****Status : - Member**

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**Artikel I-2: Die Werte der Union**

Die Werte, auf denen die Union sich gründet, sind die Achtung der Menschenwürde, Freiheit, Gleichheit, insbesondere Gleichheit zwischen Männern und Frauen, Demokratie, Rechtsstaatlichkeit und die Wahrung der Menschenrechte; diese Werte sind allen Mitgliedstaaten gemeinsam in einer Gesellschaft des Pluralismus, der Toleranz, der Gerechtigkeit, ~~der Gleichheit~~, der Solidarität und der Nichtdiskriminierung.

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**Explanation (if any) :**

**Die Gleichheit vor dem Gesetz, ist ein Wert, der allen Mitgliedstaaten der Union gemeinsam ist. Dieser Wert ist justiziabel und sollte daher in Satz eins aufgenommen werden.**

**Die Gleichheit von Männern und Frauen vor dem Gesetz nimmt im Rahmen der europäischen Gesetzgebung und auch der europäischen Rechtsprechung einen großen Raum ein. Dies rechtfertigt ihre Hervorhebung in Satz 1.**

**AMENDMENT FORM****Suggestion for amendment of Article 1-2**

**By Mrs Lena Hjelm-Wallén and Mr Sven-Olof Petersson, government representatives and Mr Sören Lekberg, national parliament representative.**

**Status : - Members: Hjelm-Wallén and Lekberg  
- Alternates: Petersson**

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Article I-2: The Union's values

The Union is founded on the values of respect for human dignity, liberty, **equality**,<sup>1</sup> democracy, the rule of law and respect for human rights. These values are common to the Member States in a society of pluralism, tolerance, justice, ~~equality~~, solidarity and non-discrimination.

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<sup>1</sup> Equality is a value of the same dignity as liberty.

**AMENDMENT FORM****Suggestion for amendment of Article :I-2****By Mr :Ernâni Lopes and Manuel Lobo Antunes****Status : Member and Alternate**

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**Article I-2: The Union's ~~values~~ principles**

The Union is founded on the ~~values~~ of respect for human dignity, liberty, democracy, the rule of law and respect for human rights. These ~~values~~ **principles** are common to the Member States in a society of pluralism, tolerance, justice, equality, solidarity and non-discrimination.

**Explanation : Human dignity, liberty...are principles and not mere values. Only principles may be legally binding and its violation invoked before a Court.**

**FICHE AMENDEMENT****Proposition d'amendement à l'Article : Artigo 2 - Epígrafe****Déposée par Monsieur : Luís QUEIRÓ****Qualité : Suppléant**

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**Artigo 2.º - Epígrafe****"Valores fundamentais da União"**

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**Explication éventuelle :**

**FICHE AMENDEMENT****Proposition d'amendement à l'Article : Article 2 - Titre****Déposée par Monsieur : Luís QUEIRÓ****Qualité : Suppléant**

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**Article 2 - Titre**Article 2: Les valeurs **fondamentales** de l'Union

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**Explication:**

**FICHE AMENDEMENT****Proposition d'amendement à l'Article : Artigo 2 bis, novo, n.º2****Déposée par Monsieur : Luís QUEIRÓ****Qualité : Suppléant**

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**2. Un Etat membre peut, dans le respect des procédures prévues à cet effet, engager une procédure de retrait du traité établissant l'Union européenne;**

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**Explication éventuelle :**

Jusqu'à présent, le droit de retrait n'est pas inscrit dans les traités existants. Cette omission entretient la confusion sur la nature des engagements souscrits lors de l'adhésion à l'Union européenne, confusion dont se nourrit par ailleurs le discours fédéraliste sur le caractère irréversible de l'appartenance à l'Union européenne. Organisation internationale reposant sur la souveraineté et le libre consentement des Etats, l'Union européenne doit prévoir une procédure autorisant, dans certaines circonstances exceptionnelles mettant en cause les intérêts fondamentaux d'un Etats, la possibilité pour ce dernier d'exercer son droit de retrait.

**FICHE AMENDEMENT****Proposition d'amendement à l'Article : Article 2 bis, nouveau, paragraphe 2****Déposée par Monsieur : Luís QUEIRÓ****Qualité : Suppléant**

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**2. Un Etat membre peut, dans le respect des procédures prévues à cet effet, engager une procédure de retrait du traité établissant l'Union européenne;**

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**Explication éventuelle :**

Jusqu'à présent, le droit de retrait n'est pas inscrit dans les traités existants. Cette omission entretient la confusion sur la nature des engagements souscrits lors de l'adhésion à l'Union européenne, confusion dont se nourrit par ailleurs le discours fédéraliste sur le caractère irréversible de l'appartenance à l'Union européenne. Organisation internationale reposant sur la souveraineté et le libre consentement des Etats, l'Union européenne doit prévoir une procédure autorisant, dans certaines circonstances exceptionnelles mettant en cause les intérêts fondamentaux d'un Etats, la possibilité pour ce dernier d'exercer son droit de retrait.

**FICHE AMENDEMENT****Proposition d'amendement à l'Article : Artigo 2 bis, novo - Epígrafe e n.º1****Déposée par Monsieur : Luís QUEIRÓ****Qualité : Suppléant**

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**"Alargamento da União"**

1. A União está aberta a todos os Estados europeus cujos povos **partilhem os seus** valores, e se comprometam a **respeitá-los e a** promovê-los em comum.

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**Explication éventuelle :**

Este Artigo não respeita à "Instituição da União" e a sua inserção como n.º 3 do Artigo 1.º seria, por isso, incorrecta. Trata-se antes do princípio fundamental do Alargamento da União, a que deve corresponder um artigo autónomo.



**FICHE AMENDEMENT****Proposition d'amendement à l'Article : Article 2 bis, nouveau – Titre et n.º1****Déposée par Monsieur : Luís QUEIRÓ****Qualité : Suppléant**

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**Article 2 bis, nouveau****"Élargissement de l'Union"**

L'Union est ouverte à tous les Etats européens dont les peuples partagent ses valeurs et qui s'engagent à les respecter et à les promouvoir en commun.

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**Explication :**

Cet article ne concerne pas « l'institution de l'Union », mais il s'agit d'un principe fondamental de l'élargissement. C'est pourquoi nous proposons qu'il puisse correspondre à un article autonome.

**FICHE AMENDEMENT****Proposition d'amendement à l'Article : Artigo 2****Déposée par Monsieur : Luís QUEIRÓ****Qualité : Suppléant**

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A União funda-se **no** respeito pela dignidade humana, **incluindo o primado da vida, pela** liberdade, **pela** democracia, **pelo** Estado de direito, e **pelo** respeito **dos** direitos do Homem, valores que são comuns aos Estados-Membros. Visa **a manutenção da paz e uma sociedade** que pratica a **igualdade entre os Estados e os povos da União e promove a** tolerância, a justiça e a solidariedade.

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**Explication éventuelle :**

**FICHE AMENDEMENT****Proposition d'amendement à l'Article : Article 2****Déposée par Monsieur : Luís QUEIRÓ****Qualité : Suppléant**

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L'Union se fonde **sur le** respect de la dignité humaine, **y compris la primauté de la vie**, de **la** liberté, de **la** démocratie, de l'état de droit, et du respect des droits de l'homme, valeurs qui sont communes aux Etats membres. Elle vise **au maintien de la paix et** à être une société pratiquant **l'égalité entre les Etats et les peuples de l'Union et promouvant** la tolérance, la justice et la solidarité.

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**Explication :**

**FICHE AMENDEMENT**

|                                              |                     |
|----------------------------------------------|---------------------|
| <b>Proposition d'amendement à l'Article:</b> | <b>2</b>            |
| <b>Déposée par Monsieur:</b>                 | <b>Erwin Teufel</b> |
| <b>Qualité:</b>                              | <b>Membre</b>       |

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*Texte du Praesidium*

Die Union beruht auf den folgenden Werten: Achtung der Menschenwürde, Freiheit, Demokratie, Rechtsstaatlichkeit und Achtung der Menschenrechte; diese Werte sind allen Mitgliedstaaten gemeinsam. Die Union strebt eine friedliche Gesellschaft an, in der Toleranz, Gerechtigkeit und Solidarität herrschen.

*Amendement proposé*

- (1) Die Union beruht auf den folgenden Werten: Achtung der Menschenwürde, Freiheit, Demokratie, Rechtsstaatlichkeit und Achtung der Menschenrechte; diese Werte sind allen Mitgliedstaaten gemeinsam. Die Union strebt eine friedliche Gesellschaft an, in der Toleranz, Gerechtigkeit und Solidarität herrschen.
- (2) **Die Werte der Europäischen Union umfassen die Wertvorstellungen derjenigen, die an Gott als die Quelle der Wahrheit, Gerechtigkeit, des Guten und des Schönen glauben, als auch derjenigen, die diesen Glauben nicht teilen, sondern diese universellen Werte aus anderen Quellen ableiten.**
- 

**Begründung:**

Diese Formulierung erkennt die Werte an, die wesentlich für die europäische Zivilisation sind, unabhängig davon, ob sie auf einem Glauben an Gott beruhen oder auf einer anderen Quelle.

**FICHE AMENDEMENT**

|                                              |                     |
|----------------------------------------------|---------------------|
| <b>Proposition d'amendement à l'Article:</b> | <b>2</b>            |
| <b>Déposée par Monsieur:</b>                 | <b>Erwin Teufel</b> |
| <b>Qualité:</b>                              | <b>Membre</b>       |

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*Texte du Praesidium*

L'Union se fonde sur les valeurs de respect de la dignité humaine, de liberté, de démocratie, de l'état de droit, et de respect des droits de l'Homme, valeurs qui sont communes aux Etats membres. Elle vise à être une société paisible pratiquant la tolérance, la justice et la solidarité.

*Amendement proposé*

- (1) L'Union se fonde sur les valeurs de respect de la dignité humaine, de liberté, de démocratie, de l'état de droit, et de respect des droits de l'Homme, valeurs qui sont communes aux Etats membres. Elle vise à être une société paisible pratiquant la tolérance, la justice et la solidarité.
- (2) **Les valeurs de l'Union Européenne comprennent les valeurs spirituelles de ceux qui croient à Dieu comme source de la vérité et de la justice, de la bonté et de la beauté et de ceux qui ne partagent pas cette croyance mais qui trouvent ces valeurs universelles dans d'autres sources.**

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**Explication:**

Ce passage reconnaît les valeurs essentielles de la civilisation européenne, sans distinction s'ils dépendent de la croyance à Dieu ou d'une autre source.

**AMENDMENT FORM****Suggestion for amendment of Article : 2**

**By Ms / Mr :** Representatives of the Assembly of the Republic - Portugal

**Members** Maria Eduarda Azevedo, Alberto Costa

**Alternates** António Nazaré Pereira, Guilherme d'Oliveira Martins

**Status :**

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Article 2

**Principles**

The Union is founded on the principles of liberty, democracy, respect for **human rights, equality between women and men**, the rule of law, tolerance, justice and **solidarity**.

**FICHE AMENDEMENT****Proposition d'amendement à l'Article : 2****Déposée par Madame ou Monsieur :** Représentants de l'Assemblée de la République - Portugal**- Membre:** Maria Eduarda Azevedo, Alberto Costa**- Suppléant:** António Nazaré Pereira, Guilherme d'Oliveira Martins

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**Article 2****Les principes**

L'Union se fonde sur les principes de liberté, de démocratie, de respect des droits **humains**, **d'égalité entre femmes et hommes**, de l'état de droit, de tolérance, de justice et de **solidarité**.

## Proposition d'amendement à l'Article 2

Déposée par Madame Elena Paciotti et Monsieur Valdo Spini, Suppléants

### EN Version

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#### **Article 2: The Union's values**

The Union is founded (*5 words deleted*) on human dignity, liberty, *equality*, democracy, the rule of

Law, respect for human rights, *solidarity and justice*, values which are common to the Member States.

*1 sentence deleted.*

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#### **Explication éventuelle:**

*Equality is a key value in modern constitutions and must be included in the article on the founding values of the Union.*

*The language used in the Constitution should not be sexist, but neutral in gender: not the 'rights of man' but 'human rights'.*



## Proposition d'amendement à l'Article 2

Déposée par Madame Elena Paciotti et Monsieur Valdo Spini, Suppléants

### EN Version

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#### Articolo 2: Valori dell'Unione

L'Unione si fonda *sulla* dignità umana, la libertà, *l'uguaglianza*, la democrazia, lo stato di diritto, il rispetto dei diritti *umani, la solidarietà e la giustizia*, valori che sono comuni agli Stati membri

*(una frase soppressa)*

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#### Explication éventuelle:

*L'uguaglianza è valore cardine delle moderne costituzioni e deve figurare nell'articolo dedicato ai valori fondanti dell'Unione.*

*Il linguaggio della Costituzione non deve essere sessista, ma neutrale rispetto al genere: non diritti "dell'uomo" ma diritti "umani".*

**FICHE AMENDEMENT****Proposition d'amendement à l'Article 2****Déposée par M. Jacques FLOCH, Membre suppléant**

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**Article 2. : Les valeurs de l'Union**

Ajouter :

« Au travers de l'affirmation de ces valeurs, l'Union européenne reconnaît les luttes et combats de tout temps contre tous les régimes nazis, fascistes, autoritaires, totalitaires, racistes et xénophobes.

Pour l'affirmation et le respect de ses valeurs, l'Union poursuit le combat de ces hommes et de ces femmes. »

**Explication éventuelle :**

**AMENDMENT FORM****Suggestion for amendment of Article : 2****By Ms / Mr : Marie Nagy****Status :    - Member            - Alternate**

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**Article 2: The Union's values**

The Union is founded on the values of ~~respect for human dignity~~ of the inviolability of human dignity, liberty, democracy, the rule of law and respect for **fundamental and** human rights, **social justice, solidarity, pluralism and equality**, values which are common to the Member States. ~~Its aim is a society at peace, through the practice of tolerance, justice and solidarity.~~

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**Explanation (if any) :**

## FICHE AMENDEMENT

### Proposition d'amendement à l'Article 2

*Déposée par Monsieur Dominique de Villepin*

**Qualité : Membre**

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#### **Article 2: Les valeurs de l'Union**

L'Union se fonde sur les **principes** de respect de la dignité humaine, de liberté, de démocratie, de l'Etat de droit, et de respect des droits de l'Homme **et des libertés fondamentales**, valeurs qui sont communes aux Etats membres.

Elle vise à être une société pratiquant la tolérance, la justice et la solidarité.

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**Explication éventuelle :**

**AMENDMENT FORM****Suggestion for amendment of Article : 2****By Mr : Edmund Wittbrodt****Status : - Member**

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1. The Union is founded on the values of respect for human dignity, liberty, democracy, the rule of law, ~~and~~ respect for human rights **and the equality of women and men**, values which are common to the Member States. Its aim is a society at peace, through the practice of tolerance, justice and solidarity.
  2. **The Union's values include the values of those who believe in God as the source of truth, justice, good and beauty as well as of those who do not share such a belief but respect these universal values arising from the other sources.**
  3. **The European Union bases on the principle of solidarity among its Member States while carrying out its missions.**
- 

**Explanation (if any) :**

1. *This follows the EPP suggestion, but changes the order of words.*
2. *Inspired by the Preamble of the Constitution of Poland, follows the EPP suggestion.*
3. *Solidarity in the first paragraph has a different meaning than traditional "solidarity" in the Union's policies. This point is essential for the newcomer States.*

**AMENDMENT FORM****Suggestion for amendment of Article : 2****By Lord Tomlinson****Status : Alternate**

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I would prefer to see a re-ordering of values in order to give primacy to democracy, the rule of law, respect for human rights and then refer to human dignity and liberty which in any event arise from the other values.

The second sentence seems to me to say that our aims are self-evidently "good" but producing concepts incapable of clear definition. What specifically is the measure of a "society at peace", "tolerance" and "solidarity". What are the intended meanings by which we measure?

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**Explanation (if any) :**

## AMENDMENT FORM

**Suggestion for amendment of Article 2**

**By: Mr Andrew Duff, Mr Dimitrij Rupel, Mr Paul Helminger, Mr István Szent-Iványi and Mr Lamberto Dini**

**Status : Members and alternate member**

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Article 2: The Union's values

**2.1** The Union is founded on *shared* values of *liberty*, human dignity, democracy, the rule of law and respect for *fundamental* rights. Its aim is a society at peace, *enriched by its cultural diversity, practising and promoting* tolerance, justice and solidarity.

**2.2** *The Union shall respect its national and regional identities.*

---

**Explanation :**

*2.1 The formulation of 'shared' rather than 'common' values is to indicate a positive commitment to the unity of Europe. 'Common' is a more passive concept.*

*Liberty takes priority in a list of values.*

*If we have 'human dignity' already we need the wider notion of 'fundamental' rights, which is also consistent with the Charter.*

*A reference to the value of European culture is surely desirable at this point, as is the idea of promoting by example what it is we as Europeans practise.*

*2.2 This clause is taken over from Article 1. 2. The qualification of national identities being 'of its Member States' is dropped in the interests of pluralism and historical accuracy. There are many national identities within the states of Europe.*

*Likewise we include regional identities. The Constitution must cater for the emergence of a post-national democratic identity with flourishing regions and localities.*



**AMENDMENT FORM****Suggestion for amendment of Article 2:**

**By Pervenche Berès, Teresa Almeida Garrett, Irena Belohorska, Maria Berger, Alfonso Dastis, Olivier Duhamel, Lone Dybkjaer, Jacques Floch, Povilas Andriukaitis, Neil McCormick, Luis Marinho, Elena Paciotti, Hildegard Puwak, Anne Van Lancker, Proinsias de Rossa, Valdo Spini and Renée Wagener**

**Status : Members**

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**Article 2: Les valeurs de l'Union**

L'Union se fonde sur les valeurs de respect de la dignité *de la personne*, de liberté, de démocratie, de l'état de droit, et de respect des droits *fondamentaux*, valeurs qui sont communes aux Etats membres. Elle vise à être une société paisible pratiquant la tolérance, la justice et la solidarité.

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**Explanation (if any) :**

*La Constitution doit reprendre la terminologie consacrée par la Charte des droits fondamentaux, elle-même intégrée à la Constitution, s'agissant de la neutralisant du genre dans les terminologies "Droits de l'Homme" et "dignité humaine".*

**AMENDMENT FORM****Suggestion for amendment of Article : 2****By Ms / Mr : Johannes Voggenhuber, Eva Lichtenberger****Status :    - Member            - Alternate**

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**Article 2: The Union's values**

The Union is founded on the values of ~~respect for human dignity~~ of the inviolability of human dignity, liberty, democracy, the rule of law and respect for **fundamental and** human rights, **social justice, solidarity, plurality and equality**, values which are common to the Member States. ~~Its aim is a society at peace, through the practice of tolerance, justice and solidarity.~~

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**Explanation (if any) :**

**FICHE AMENDEMENT****Proposition d'amendement à l'Article : Art. 2****Déposée par Madame Cristiana MUSCARDINI****Qualité : Membre**

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Ultima riga (*versione italiana*), aggiungere dopo "*mira*": "**al mantenimento della pace e ad una società che pratici la tolleranza, la giustizia e la solidarietà.**"

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**Explication éventuelle :**

**FICHE AMENDEMENT****Proposition d'amendement à l'Article : Art. 2****Déposée par Madame Cristiana MUSCARDINI****Qualité : Membre**

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Dopo le parole *diritti dell'Uomo*, aggiungere:**“e sulla tradizione greco-romana, giudaico-cristiana, laica e liberale”**

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**Explication éventuelle :**

**AMENDMENT FORM****Suggestion for amendment of Article : 2 (Values of the Union)**

**By Mr :**  
**Jan FIGEL**

**Status :**        - Member                    - Alternate

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Add to the paragraph

Para 2 (new):  
*The Union respects cultural and ethical sovereignty of the Member States.*

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**Explanation (if any) :**

The amendment is based on the principle of subsidiarity. Moreover National Council of the Slovak Republic has passed the Declaration regarding the sovereignty of the member states of the European Union in the cultural and ethical issues, on January, 30, 2002.

**AMENDMENT FORM****Suggestion for amendment of Article : 2****By Mr : Joachim Wuermeling and Peter Altmaier****Status : - Alternates**

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Die Union beruht auf den folgenden Werten: Achtung der Menschenwürde, Freiheit, Demokratie, Rechtsstaatlichkeit, **und** Achtung der Menschenrechte **und Respekt der Vielfalt**; diese Werte sind allen Mitgliedstaaten gemeinsam. Die Union strebt eine friedliche Gesellschaft an, in der Toleranz, Gerechtigkeit und Solidarität herrschen.

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**Explanation (if any) :**

**AMENDMENT FORM****Suggestion for amendment of Article 2****By Mr : Dimitrij Rupel****Status : Member**

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**Article 2: The Union's values**

The Union is founded on the values of respect for human dignity, liberty, democracy, the rule of law and respect for human rights and fundamental freedoms, values which are common to the Member States. Its aim is a society at peace, through the practice of tolerance, justice and solidarity.

**FICHE AMENDEMENT****Proposition d'amendement à l'Article 2 :**

**Déposée par M. Pierre LEQUILLER, Président de la Délégation pour l'Union européenne**

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**Article 2 :**

Après le mot « démocratie, », insérer les mots : « de pluralisme, ».

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**Explication éventuelle :**

L'amendement vise à souligner l'importance du pluralisme- politique, médiatique, culturel- comme valeur de l'Union.



## AMENDMENT FORM

**2. Suggestion for amendment of Article 2: Les valeurs de l'Union****By Ms Meglena Kuneva****Status : Member**

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L'Union se fonde sur les **principes** de respect de la dignité humaine, de liberté, de démocratie, de l'État de droit, et de respect des droits de l'Homme **et des libertés fondamentales**, valeurs qui sont communes aux États membres.

Elle vise à être une société pratiquant la tolérance, la justice et la solidarité.

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**Explanation (if any) :**

*Il serait préférable de garder la notion de 'principes', bien connue du droit communautaire et qui est employée par l'article 6 du TUE. La référence aux libertés fondamentales figure actuellement à l'art. 6 (1) TUE.*

**AMENDMENT FORM****Suggestion for amendment of Article 2:**

**By Mrs Lena Hjelm-Wallén and Mr Sven-Olof Petersson, government representatives and Mr Sören Lekberg, Mr Göran Lenmarker and Mr Kenneth Kvist, national parliament representatives.**

**Status :** - **Members: Hjelm-Wallén, Lekberg and Lenmarker**  
- **Alternates: Petersson and Kvist**

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The Union is founded on the values of respect for human dignity, liberty, democracy, the rule of law and respect for human rights **and equality between men and women**<sup>1</sup> values which are common to the Member States. Its aim is a society at peace, through the practice of, tolerance, justice, and solidarity.

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**Explanation**

<sup>1</sup> Equality between of men and women is one of the core values of the Union (expressed for example in Article 3.2 EC: "*In all the activities ... the Community shall aim to eliminate inequalities, and to promote equality, between men and women*"). Manifest risk of serious breach of this value should be sufficient to initiate the procedure for alerting and sanctioning a Member State. Promotion of equality between men and women must also remain a general objective for the Union (Article 3).

## AMENDMENT FORM

**Suggestion for amendment of Article : 2**

**By Ms : Giannakou Marietta**

**Status : - Member**

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**Article 2: The Union's values**

The Union is founded on the values of respect for human dignity, liberty, democracy, the rule of law and respect for human rights *and fundamental freedoms*, values which are common to the Member States. Its aim is as society at peace, through the practice of tolerance, justice, *equality* and solidarity.

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**Explanation (if any) :**

**AMENDMENT FORM****Suggestion for amendment of Article 2 :****By Mr Joschka Fischer****Status : - Member**

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**Artikel 2: Werte der Union**

(1) Die Union beruht auf den ~~Grundsätzen der folgenden Werten~~: Achtung der Menschenwürde, ~~der~~ Freiheit, ~~der~~ Demokratie, ~~der~~ Rechtsstaatlichkeit, ~~der~~ Gleichheit zwischen Männern und Frauen und ~~der~~ Achtung der Menschenrechte; diese ~~Grundsätze~~ ~~Werte~~ sind allen Mitgliedstaaten gemeinsam. Die Union strebt eine friedliche Gesellschaft an, in der Toleranz, Gerechtigkeit und Solidarität herrschen.

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**Explanation (if any) :**

*Absatz 1 wird stärker an die Formulierung von Art. 6 EUV angelehnt*

**AMENDMENT FORM****Suggestion for amendment of Article: 2**

**By Ms / Mr : Mr.** Ms. Irena Belohorska – member, Jan Zahradil – member, Mr. Jens-Peter Bonde - member, Mr. David Heathcoat-Amory - member, Mr. William Abitbol - alternate, Mr. Peter Skaarup - member, Mr. Per Dalgaard - alternate, Mr. Esko Seppänen – alternate, and Mr. John Gormley - alternate.

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**Article 2: Values of the Europe of Democracies**

The Europe of Democracies is founded on the values of respect for human dignity, liberty, democracy, the rule of law and respect for human rights, values which are common to the Member States. Its aim is a society at peace, through the practice of tolerance, justice, solidarity and in particular democracy.

## AMENDMENT FORM

Suggestion for amendment of Article 2:

By Elmar BROK, Jozsef SZAJER, Erwin TEUFEL, René VAN DER LINDEN, Frantisek KROUPA, Jacques SANTER, Antonio TAJANI, Teresa ALMEIDA GARRETT, Peter ALT-MAIER, Jan Jacob VAN DIJK, Jan FIGEL, Piia Noora KAUPPI, Göran LENNMARKER, Hanja MAIJ-WEGGEN, Reinhard RACK, Joachim WÜRMEILING

on behalf of the EPP Convention Group

Status: Members and Alternates

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*Text of the Praesidium*

*Proposed Amendments*

Article 2: The Union's values

The Union is founded on the values of respect for human dignity, liberty, democracy, the rule of law and respect for human rights, values which are common to the Member States. Its aim is a society at peace, through the practice of tolerance, justice and solidarity.

Article 2: The Union's values

1. The Union is founded on the values of ~~respect for~~ human dignity, liberty, democracy, the rule of law and respect for human rights **and fundamental freedoms**, values which are common to the Member States. Its aim is a society at peace, through the practice of tolerance, justice, **equality** and solidarity.
2. ***The Union's values include the values of those who believe in God as the source of truth, justice, good and beauty as well as of those who do not share such a belief but respect these universal values arising from other sources.***

**Explanation:**

- *It should be kept in mind that infringement of the values in Para 1, first sentence will lead to the application of **the sanction procedure under the present Article 7 of the EU Treaty**, which eventually could lead to the suspension of voting rights of a Member State in the Council. This is why we agree with the Praesidium to keep the values in the first sentence short and concise. However, this should not preclude listing further aims and fundamental principles in the second sentence and in a second paragraph of Article 2.*
- *Para 1, first sentence emphasises the aim of **equality** – which includes **equality before the law and in particular equality between women and men** – in order to underline the fundamental rights included in Chapter III of the Charter of Fundamental Rights (which is an integral part of the Constitution, see our amendment to Article 5). Chapter III of the Charter is entitled “Equality” and includes equality before the law; the directly effective **prohibition of all discriminations** based on sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a*

*national minority, property, birth, disability, age or sexual orientation; and the directly-effective prohibition of discrimination based on grounds of nationality within the scope of application of Part Two of the Constitution.*

- *Para 2, which has been inspired by the Preamble of the Constitution of Poland, recognises **values which are essential for the European civilisation**, regardless of whether they are linked to believing in God or to another source of values. Without these values, Europe would not be what it is today. See also Article 57(2) of the EPP Discussion Paper (Frascati text, as amended, 27 January 2003)*

**AMENDMENT FORM****Suggestion for amendment of Article 2****By Mr : Jan KOHOUT****Status : - Member**

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**Art. 2**Avoid the repetition in the second sentence of the wording from Art. 3.1.

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**Explanation (if any) :****Art. 2:** The basic idea of the second sentence ("Its aim is a society at peace...") reappears in Art. 3.1.



**AMENDMENT FORM****Suggestion for amendment of Article : 2****By MM : Kiljunen and Vanhanen****Status :       - Members**

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The Union is founded on the values of respect for human dignity, liberty, equality, democracy, the rule of law [del], respect for human and minority rights as well as the rights of the disabled people, values which are common to the Member States. Its aim is a society at peace, through the practice of tolerance, justice, [del]solidarity and openness.

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***Explanation (if any) :***

It is self-evident that equality is one of the key values of the Union.

**AMENDMENT FORM****Suggestion for amendment of Article: 2****By Marco FOLLINI****Status: Member****Articolo 2: Valori dell'Unione**

L'Unione si fonda sui valori del rispetto della dignità umana, di libertà, di democrazia, *di solidarietà e di legalità. Questi valori riflettono l'importanza dei principi delle grandi tradizioni religiose e della cultura laica dei popoli europei e richiamano la necessità di far convergere primato della persona, libertà religiosa, solidarietà sociale, convivenza tra etnie, religioni e culture differenti verso l'obiettivo della coesione sociale dell'Unione europea.*

## Amendments submitted by Teija Tiilikainen and Antti Peltomäki 17 February 2003

### Article 2: The Union's values

The Union is founded on the values of respect for human dignity, liberty, democracy, the rule of law and respect for human rights **and fundamental freedoms**, values which are common to the Member States. Its aim is a society at peace, through the practice of tolerance, justice, solidarity **and equality**.

#### Commentary:

*It is self-evident that equality is one of the key values of the Union.*

**AMENDMENT FORM****Suggestion for amendment of Article 2****By Mr Ivan Korčok (SK)****Status : - Member**

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**Article 2: The Union's values**

**1.**The Union is founded on the values of respect for human dignity, liberty, democracy, the rule of law and respect for human rights, values which are common to the Member States. Its aim is a society at peace, through the practice of tolerance, justice and solidarity.

**2.** **The Union's values include the values of those who believe in God as the source of truth, justice, good and beauty as well as of those who do not share such a belief but respect those universal values arising from other sources.**

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**Explanation (if any) :**

**AMENDMENT FORM****Suggestion for amendment of Article : 2****By Mr Korcok, Mr Jan Figel, Mr Juraj Migas, Ms Zuzana Martinakova****Status : Mr Korcok and Mr Figel are members. Mr Migas and Ms Martinakova are alternates.**

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1. The Union is founded on the values of respect for human dignity, liberty, democracy, the rule of law and respect for human rights, values which are common to the Member States. Its aim is a society at peace, through the practice of tolerance, justice and solidarity.
2. The Union's values include the values of those who believe in God as the source of truth, justice, good and beauty as well as of those who do not share such a belief but respect those universal values arising from other sources.

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**Explanation (if any) :**

**AMENDMENT FORM****Suggestion for amendment of Article 2 :****By Mr : Ingvar SVENSSON****Status : - Alternate**

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~~The Union is founded on the values of respect for human dignity, liberty, democracy, the rule of law and respect for human rights, values which are common to the Member States. Its aim is a society at peace, through the practice of tolerance, justice and solidarity.~~

**The Union is founded on respect for fundamental values such as human dignity, life, freedom, knowledge, truth, justice, solidarity, equality, openness and tolerance. These values shall be promoted through democracy and the rule of law. Thereby conditions for a society at peace are created.**

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**Explanation:**

The Preasidum's proposal is characterized by a mixture of general values and instrumental values. The proposal above gives a more logical structure.

**AMENDMENT FORM****Suggestion for amendment of Article 2****By Prof Peter Serracino-Inglott - Member****Mr John Inguanez - Alternate**

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To be reworded as follows:

The Union is founded on the values embodied in fundamental rights: human dignity, liberty, equality, solidarity, rights arising from citizenship and justice; and the values which are common to the Member States, such as democracy and the rule of law.

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**Explanation (if any) :**

To ensure conformity with the Charter of Fundamental Rights.





**FICHE AMENDEMENT****Proposition d'amendement à l'Article : 2****Déposée par Madame ou Monsieur : Mme PALACIO****Qualité : - Membre - Suppléant**

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**Article 2: Les valeurs de l'Union**

L'Union se fonde sur les valeurs de respect de la dignité humaine, de liberté, d'égalité, de démocratie, de l'état de droit, et de respect des droits ~~[de l'Homme]~~ fondamentaux, valeurs qui sont communes aux Etats membres. Elle ~~[vise à être une société paisible pratiquant]~~ est basée sur la tolérance, la justice et la solidarité.

---

**Explication :**

L'égalité est une valeur fondamentale de l'Union.

L'expression « droits fondamentaux » est celle utilisée dans la Charte des Droits Fondamentaux.

Il faut modifier la rédaction de la dernière phrase. Autrement, elle devrait se trouver dans l'article 3.

**AMENDMENT FORM****Suggestion for amendment of Article : 2****By: Ms Linda McAvan****Status : - Member - Alternate**

The Union is founded on the values of respect for human dignity, liberty, **equality between men and women**, democracy, the rule of law and respect for human rights, **solidarity and justice**, values which are common to the Member States. (*Delete rest*).

*Explanation: the additions are also basic values*

**AMENDMENT FORM****Suggestion for amendment of Article : 2****By Mr : Gianfranco FINI****Status : - Member**

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**Articolo 2: Valori dell'Unione**

L'Unione si fonda sui valori del rispetto della dignità umana, di libertà, di democrazia, dello stato di diritto e del rispetto dei diritti dell'uomo, valori che sono comuni agli Stati membri. ***L'Unione riconosce le comuni radici giudaico-cristiane come valori fondanti del suo patrimonio***

~~Essa mira ad essere una società pacifica che pratica la tolleranza, la giustizia e la solidarietà.~~

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**Explanation (if any) :**

**FICHE AMENDEMENT****Proposition d'amendement à l'Article 2:****Déposée par : M. Caspar EINEM****Qualité : - Membre**

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**Artikel 2: Werte der Union**

Die Union beruht auf den folgenden Werten: Achtung der Menschenwürde, Freiheit, Demokratie, Rechtsstaatlichkeit und Achtung der Menschenrechte **und des internationalen Rechts, soziale Gerechtigkeit, Solidarität und Gleichheit, insbesondere Gleichheit zwischen Männern und Frauen und Nachhaltigkeit**; diese Werte sind allen Mitgliedstaaten gemeinsam. Die Union strebt eine friedliche Gesellschaft an, in der Toleranz, Gerechtigkeit und Solidarität herrschen.

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**Explication éventuelle :**

**AMENDMENT FORM****Suggestion for amendment of Article 2****By Ms Hildegard Puwak****Status : - Member**

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L'Union se fonde sur les valeurs de respect de la dignité *de la personne*, de liberté, de démocratie, de l'état de droit, et de respect des droits *fondamentaux, la solidarité, l'égalité entre hommes et femmes*, valeurs qui sont communes aux Etats membres. Elle vise à être une société paisible pratiquant la tolérance, la justice et la solidarité.

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**Explanation (if any) :**

**AMENDMENT FORM****Suggestion for amendment of Article : 2****By Mr Kirkhope MEP****Status : Member**

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**Article 2: The Community's values**

The **Community** is founded on the values of respect for human dignity, liberty, democracy, the rule of law and respect for human rights, values which are common to the Member States. Its aim is a society at peace, through the practice of tolerance, justice and solidarity.

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**Explanation (if any) :**

**FICHE AMENDEMENT****Proposition d'amendement à l'Article : 2**

**Déposée par Mme Pervenche Berès, membre suppléante de la Convention et M. Elio Di Rupo, membre de la Convention**

**Qualité : - Membre            - Suppléante**

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## Article 2

L'Union se fonde sur les valeurs de respect de la dignité humaine, de liberté, de démocratie, de l'état de droit, de respect des droits de la personne, d'égalité, de justice, de tolérance et de solidarité qui sont communes aux Etats membres. Elle garantit la séparation des Eglises et des Etats.

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**Explication éventuelle :**

**AMENDMENT FORM****Suggestion for amendment of Article 2:****By Mr. Peter SKAARUP****Status: Member**

Ad to article 2:

"The Union recognizes the fundamental importance of Christianity embedded in European History and the lives of its people. Christianity draws a sharp line between secularism and spiritualism - the Union believes this division to be of vital importance for the development of the individual European member states."



**AMENDMENT FORM****Suggestion for amendment of Article : 2****By Mr : Georgios Katiforis****Status : - Member**

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**Article 2: The Union's values**

The Union is founded on the values of respect for human dignity **and human rights**, liberty, **equality, solidarity**, democracy, the rule of law **and peace** ~~and respect for human rights~~, values which are common to the Member States. ~~Its aim is a society at peace, through the practice of tolerance, justice and solidarity.~~

**AMENDMENT FORM****Suggestion for amendment of Article 2****By:** Danuta Hübner**Status:** Member

| <i>Text of the Praesidium</i>                                                                                                                                                                                                                                                                                                        | <i>Proposed Amendments</i>                                                                                                                                                                                                                                                                                                                                                                            |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b><u>Article 2: The Union's values</u></b></p> <p>The Union is founded on the values of respect for human dignity, liberty, democracy, the rule of law and respect for human rights, values which are common to the Member States. Its aim is a society at peace, through the practice of tolerance, justice and solidarity.</p> | <p><b><u>Article 2: The Union's values</u></b></p> <p>The Union is founded on the values of respect for human dignity, liberty, democracy, the rule of law, <del>and</del> respect for human rights, <u>tolerance, justice and solidarity</u>, values which are common to the Member States. <del>Its aim is a society at peace, through the practice of tolerance, justice and solidarity.</del></p> |
| <p><b>Explanation:</b></p> <ol style="list-style-type: none"> <li>1. The wording “its aim is...” seems inappropriate as it suggests objectives and not values.</li> <li>2. Although not proposed in this Article, a reference to the religious heritage should be mentioned in the Preamble.</li> </ol>                              |                                                                                                                                                                                                                                                                                                                                                                                                       |

**AMENDMENT FORM****Suggestion for amendment of Article : 2, paragraph 2****By Ms / Mr :****Ján FIGEL (Slovakia, National Council of the Slovak Republic)****Status :        - Member                    - Alternate**

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Add to the sentence :

*« their constitutional and political structures, including regional and local self-government, their choices regarding language, and the legal status of churches and religious societies. »*

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**Explanation (if any) :**

**AMENDMENT FORM****Suggestion for amendment of: Article 2****By: Lamberto Dini****Status : - Member**

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**Aim:**

In article 2, cancel any reference to a "society at peace"

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**Explanation :****The expression "society at peace" is ambiguous: it is not clear whether it applies internally or externally and it adds nothing to the values already listed in the same article.**

**AMENDMENT FORM****Suggestion for amendment of Article : Article 2****By Mr : CUSHNAHAN****Status : - Alternate (European Parliament Delegation)**

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**Article 2: The Union's values**

The Union is founded on the values of respect for human dignity, liberty, democracy, the rule of law, sustainable development, equality, non-discrimination on the basis of sex, nationality, racial or ethnic origins, religion or sexual orientation and respect for human rights, values which are common to the Member States as defined by the International and European Human Rights law. Its aim is a society at peace, through the practice of tolerance, justice and solidarity and respect for cultural and linguistic diversity.

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**Explanation (if any) :**

*The original draft is not sufficiently comprehensive*

**AMENDMENT FORM****Suggestion for amendment of Article 2****By Dolores Cristina****- Alternate**

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To be reworded as follows:

The Union is founded on the values embodied in fundamental rights: human dignity, liberty, equality of men and women, solidarity, rights arising from citizenship and justice; and the values which are common to the Member States, such as democracy and the rule of law.

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**Explanation (if any) :**

To ensure conformity with the Charter of Fundamental Rights.

## AMENDMENT FORM

**Suggestion for amendment of Article : 2****By Mr Péter Balázs****Status :**      **Member**                      - **Alternate**

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**Article 2: The Union's values**

„The Union is founded on the values of respect for human dignity, liberty, democracy, the rule of law and respect for human rights *including those of national minorities*, values which are common to the Member States. Its aim is a society at peace, through the practice of tolerance, justice and solidarity.”

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**Explanation (if any) :**

The proposal adds and refers to the missing element of the Copenhagen criteria, which makes an important part of the acquis.

**AMENDMENT FORM****Suggestion for amendment of Article : 2****By Ms / ~~Mr~~ : Dr. Sylvia-Yvonne Kaufmann****Status : - Member      ~~Alternate~~****Artikel 2: Werte der Union**

Die Union beruht auf ~~den folgenden Werten: Achtung der Menschenwürde~~ **der Unantastbarkeit der Würde des Menschen, auf Freiheit und Gleichheit, auf** Demokratie, Rechtsstaatlichkeit **und Sozialstaatlichkeit sowie** ~~und auf der~~ Achtung der Menschenrechte; ~~diese Werte sind allen Mitgliedstaaten gemeinsam.~~ Die Union strebt eine friedliche Gesellschaft an, **die auf** ~~in der~~ Toleranz, Gerechtigkeit und Solidarität ~~gründet herrschen.~~ **Diese Werte sind allen Mitgliedstaaten gemeinsam.**

**Explanation (if any) :**

Die Würde des Menschen ist das höchste Gut in unserer Gesellschaft. Aus ihr leiten sich die Menschenrechte ab. Die bloße *Achtung* der Würde des Menschen wird ihrer Bedeutung nicht gerecht. Die Würde des Menschen muss in der Europäischen Union *unantastbar* sein (vgl. Art. 1 der Grundrechtecharta).

Der Wert der Gleichheit spiegelt das Ergebnis der Arbeitsgruppe "Soziales Europa" wider.

Auch die Sozialstaatlichkeit ist nach dem Selbstverständnis aller Mitgliedstaaten ein grundlegender Wert ihrer jeweiligen Verfassungsordnung. Sie ist damit ein gemeinsamer Wert aller Mitgliedstaaten. In der deutschen Verfassung gehört die Sozialstaatlichkeit sogar, wie die Demokratie, die Rechtsstaatlichkeit und die Menschenwürde, zu den obersten, durch die Ewigkeitsgarantie geschützten Verfassungsgütern.

Satz 2 und 3 sind zu tauschen, da sonst der Eindruck entstehen könnte, die Mitgliedstaaten seien nicht den Werten der Toleranz, der Gerechtigkeit und der Solidarität verpflichtet.



**FICHE AMENDEMENT****Proposition d'amendement à l'Article 2:**

**Déposée par** M. Olivier DUHAMEL  
Mme Linda McAVAN  
M. Luis MARINHO  
Mme Anne VAN LANCKER  
M. Klaus HÄNSCH

**Qualité:** - Membres

Mme Pervenche BERÈS  
Mme Maria BERGER  
M. Carlos CARNERO  
Mme Elena PACIOTTI  
Mme Helle THORNING-SCHMIDT

**Qualité:** - Suppléants

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**Article 2: Les valeurs de l'Union**

L'Union se fonde sur la dignité humaine, la liberté, **l'égalité**, la démocratie, l'Etat de droit, le respect des droits de l'Homme, **la solidarité et la justice**, valeurs qui sont communes aux Etats membres.

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**Explication éventuelle:**

**AMENDMENT FORM****Suggestion for amendment of Article 2****By: Mr Józef Oleksy****Status: Member**

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**Explanation:**

Taking into account the current wording of article 2 and the fact that the possible text of the Preamble of the Constitution has not yet been drafted, I see the possibility of a reference in art. 2 to the spiritual dimension and the values deeply rooted in the European tradition.

## AMENDMENT FORM

**Suggestion for amendment of Article 2****By:** Robert Maclennan**Status :** AlternateArticle 2: The Union's values

- 2.1** The Union is founded on *shared* values of *liberty*, human dignity, democracy, the rule of law and respect for *fundamental* rights. Its aim is a society at peace, *enriched by its cultural diversity, practising and promoting* tolerance, justice and solidarity.
- 2.2** *The Union shall respect the identities of the Member States and the national and regional identities within them.*

**Explanation :**

*2.1 The formulation of 'shared' rather than 'common' values is to indicate a positive commitment to the unity of Europe. 'Common' is a more passive concept.*

*Liberty takes priority in a list of values.*

*If we have 'human dignity' already we need the wider notion of 'fundamental' rights, which is also consistent with the Charter.*

*A reference to the value of European culture is surely desirable at this point, as is the idea of promoting by example what it is we as Europeans practice.*

*2.2 This clause is taken over from Article 1. 2. The addition of ' and the national and regional identities within them' is proposed in the interests of pluralism and historical accuracy. There are many national identities within Europe.*

*Likewise we should include regional identities. The Constitution must cater for the emergence of a post-national democratic identity with flourishing regions and localities.*

**FICHE AMENDEMENT****Proposition d'amendement à l'Article : 2****Déposée par Madame ou Monsieur : Rt Hon David Heathcoat-Amory, MP****Qualité : - Membre *X* - Suppléant**

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2 Insert after Member States «which have signed the European Convention on Human Rights as a prerequisite of treaty membership »

**Explication éventuelle****The Union does not need to sign the Convention if member states have. This is a more logical approach, and one which does not confer upon the Union an attribute of statehood.**

2 Delete « human dignity »

**Explication éventuelle****Although a worthy concept, dignity is a subjective term once placed in a lawyer's brief.**

2 Insert after « human rights » « as set out in national laws »

**Explication éventuelle****Many of these terms are subjective. Treaty creep will place priority in the rights expressed in this article, as interpreted by the courts, over the rights as determined by national parliaments, and those set out elsewhere in Community agreements.**

2 After « human rights », insert « freedom of speech »

**Explication éventuelle****This supports the bravery of whistleblowers. The institutions are currently masked by silence.**

**FICHE AMENDEMENT****Proposition d'amendement à l'Article 2****Déposée par Monsieur Ben Fayot (Chambre des Députés, Luxembourg)****Qualité : - Membre**

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**Article 2 : Les valeurs de l'Union**

L'Union se fonde sur les valeurs de respect de la dignité humaine, de liberté, de démocratie, de l'état de droit, et de respect des droits de l'Homme, valeurs qui sont communes aux Etats membres. Elle vise à être une société paisible pratiquant la tolérance, la justice **sociale**, **et** la solidarité, **la non-discrimination, l'égalité des femmes et des hommes et le développement durable.**

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**Explication éventuelle :**

**AMENDMENT FORM****Suggestion for amendment of Article : 2****By Mr : Josef Zieleniec****Status : Member**

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**Article 2: The Union's values**

The Union is founded on the values of respect for human dignity, liberty, democracy, the rule of law and respect for human rights, values which are common to the Member States **and which are the basis of a** society **living** at peace and practicing tolerance, justice and solidarity.

---

**Explanation:**

*The word “aim” should not be used here – if the following article speaks about Union’s aims. The proposed wording fits better with the headline “Values”.*

**FICHE AMENDEMENT****Proposition d'amendement à l'Article : 2**

**Déposée par Madame ou Monsieur : M. Louis Michel, M. Karel de Gucht, M. Elio di Rupo, Mme Anne Van Lancker, membres de la Convention et M. Pierre Chevalier et Mme Marie Nagy, membres suppléants de la Convention**

**Qualité : - Membre - Suppléant**

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L'Union se fonde sur les valeurs de respect de la dignité humaine, de liberté, de démocratie, de l'état de droit, de respect des droits de **la personne, d'égalité, de justice, de tolérance et de solidarité** qui sont communes aux Etats membres. ~~Elle vise à être une société paisible pratiquant la tolérance, la justice et la solidarité.~~

---

**Explication éventuelle :**

L'article 2 énonce les valeurs sur lesquelles repose l'Union. La valeur d'« égalité » devrait toutefois y être ajoutée de même que la tolérance, la justice et la solidarité (ce qui permet de faire l'économie de la seconde phrase qui est d'ailleurs dans le texte du Praesidium rédigée sous forme d'objectif (« vise à ») plutôt que de valeur.

**AMENDMENT FORM****Suggestion for amendment of art. 2****By Mr. FREUDO****Member**

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Article 2 The Union's values

***Suggested Amended version of Article 2:***

***“The Union is founded on respect for human dignity, liberty, human rights, tolerance, democracy, solidarity, justice and the rule of law, values which are common to the Member States.”***

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Explanatory note

Solidarity is a fundamental value of the EU not just an objective. Solidarity should be included as a fundamental value of the European Union on the same level as freedom, justice, pluralistic democracy and human rights. This is rightly recommended by Working Group XI (Social Europe) and, in my view, the Convention should be four-squarely fully behind this recommendation.

The adoption by the Convention of such an amended clauses would represent an important development away from the rather peripheral reference to solidarity in Article 2 TEC which, in the heading “Principles”, inter alia, refers to “economic and social cohesion *and solidarity* among Member States”.

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## AMENDMENT FORM

**Suggestion for amendment of Article :2****By Ms / Mr :Ernâni Lopes****Status : - Member**

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**Article 2: The Union's ~~values~~ principles**

**The Union is founded on ~~the values of~~ the respect for human dignity, liberty, democracy, the rule of law and respect for human rights and fundamental freedoms, principles ~~values~~ which are common to the Member States. Its ruling principles are ~~aim is a society at peace, through the practice of~~ those of tolerance, justice, solidarity and equality among States**

**AMENDMENT FORM****Suggestion for amendment of Article : 2****By Mr Hain****Status : Member**

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The Union is founded on the values of respect for human dignity, liberty, democracy, the rule of law and respect for human rights, values which are common to the Member States.

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**Explanation (if any) :**

*The Treaty should not conflate values with aims and objectives. The aims of the second sentence in the Praesidium draft would be better suited to the Preamble.*

*It would be useful to have clarification on the intended meaning of 'solidarity' if it is to remain in the values.*

**AMENDMENT FORM****Suggestion for amendment of Article 2, Title I**

**By : By : Mr.V.P.Andriukaitis (LT Parl., Status-Member), Mr.A.Gricius (LT Parl., Status-Member), Mr. O.Jusys (LT Gov., Status-Alternate), Mr. R.Martikonis (LT Gov., Status-Member)**

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Insert “equality” :

“The Union is founded on the values of respect for human dignity, liberty, democracy, equality, the rule of law and respect for human rights, values which are common to the Member States. Its aim is a society at peace, through the practice of tolerance, justice and solidarity.”

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**Explanation (if any) :**

Follow the recommendation of WG XI “Social Europe”.

**AMENDMENT FORM****Suggestion for amendment of Article : 2****By Mr. Lennmarker****Status : X Member**

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**Article 2: The Union's values**

**The Union is founded on the universal values of respect for human dignity, liberty, democracy...**

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**Explanation: The presentation of the Union's values has implications not only for the purpose of its own activities and founding principles, but also for its relations to the wider world. In Article 3.4, it is stated that the Union "shall seek to advance its values", which relates to Article 2. We do not wish to come across as patronising towards other countries, and to avoid that we should underline the *universal* character of the values in Article 2, as well as in Article 3.4.**

**AMENDMENT FORM****Suggestion for amendment of Article : 2****By Ms / Mr : Ms Androula Vassiliou****Status : - Member                      - Alternate ✓**

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Article 2 should be amended so as to read:

“The Union is founded on the values of respect for human dignity, liberty, democracy, the rule of law, **equality between men and women** and respect for human rights, values which are common to the Member States. Its aim is a society at peace, through the practice of tolerance, justice and solidarity.”

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**Explanation (if any) :**

**AMENDEMENT FORM****Suggestion for amendment of Article: 2****By Mr Joao CRAVINHO****Status: Member (observer)**

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**Article 2 : The Union's values**

The Union is founded on the values of respect for human dignity, liberty, democracy, **pluralism**, the rule of law and respect for human rights, values which are common to the Member States...

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**Explanation (if any):**

**Article 2: Pluralism in the media is a "conditio sine qua non" for a good functioning of democracy in a Europe of cultural diversity.**

**AMENDMENT FORM****Suggestion for amendment of Article 2:**

**By Pervenche Berès, Teresa Almeida Garrett, Irena Belohorska, Maria Berger, Alfonso Dastis, Olivier Duhamel, Lone Dybkjaer, Jacques Floch, Povilas Andriukaitis, Sylvia-Yvonne Kaufmann, Luis Marinho, Elena Paciotti, Hildegard Puwak, Anne Van Lancker, Proinsias de Rossa, Valdo Spini, Renée Wagener.**

**Status : Members**

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**Article 2: Les valeurs de l'Union**

L'Union se fonde sur les valeurs de respect de la dignité *de la personne*, de liberté, de démocratie, de l'état de droit, et de respect des droits *fondamentaux*, valeurs qui sont communes aux Etats membres. Elle vise à être une société paisible pratiquant la tolérance, la justice et la solidarité.

---

**Explanation (if any) :**

*La Constitution doit reprendre la terminologie consacrée par la Charte des droits fondamentaux, elle-même intégrée à la Constitution, s'agissant de la neutralisant du genre dans les terminologies "Droits de l'Homme" et "dignité humaine".*

**AMENDMENT FORM****Suggestion for amendment of Article 2: The Union's values****By Mr Dick Roche, Representative of the Government of Ireland****Status : Member**

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**Article 2: The Union's values**

The Union is founded on the values of respect for human dignity, liberty, democracy, the rule of law and respect for human rights **and fundamental freedoms**, values which are common to the Member States. Its aim is a society at peace, through the practice of tolerance, justice and solidarity.

---

**Explanation (if any) :**

To reflect existing language in Article 6.1 TEU



## FICHE AMENDEMENT

### Proposition d'amendement à l'Article : 2

Déposée par M. Hubert HAENEL, membre, et M. Robert BADINTER, suppléant.

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#### Article 2: Les valeurs de l'Union

*L'Union européenne est fondée sur les principes de liberté, d'égalité, de solidarité, de démocratie, de l'État de droit et de respect des droits de l'homme, communs à tous les États membres. Elle promeut ces valeurs dans le monde. ~~Elle vise à être une société paisible pratiquant la tolérance, la justice et la solidarité.~~*

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#### Explication éventuelle :

Il est inutile de mentionner ici le principe de la dignité humaine qui est intégré dans les droits de l'homme. En revanche, le principe de **solidarité** doit être explicitement inscrit.

Il convient en outre d'ajouter que **l'Union doit promouvoir ces valeurs dans le monde.**

**FICHE AMENDEMENT****Proposition d'amendement à l'Article 2****Déposée par Monsieur Eckstein-Kovács Péter****Qualité : - Membre suppléant**

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**Article 2 – modifier comme suit**

L'Union se fonde sur les valeurs de respect de la dignité humaine, de liberté, de démocratie, de l'état de droit et de respect des droits de l'Homme **y compris les droits des minorités nationales** valeurs qui sont communes aux Etats membre. Elle vise à être une société paisible pratiquant la tolérance, la justice et la solidarité.

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**AMENDMENT FORM****Suggestion for amendment of Article : Article 2****By Mr : MacCormick, Neil****Status : - Alternate**

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**Article 2, concluding sentence, add seven words**

'Its aim is a society at peace through the practice of tolerance, justice and solidarity, *and of respect for cultural and linguistic diversity*'.

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**Explanation (if any) :**

*Debate at the Convention revealed that this aspect of respect for diversity is properly recognised as a value rather than objective of the Union. In a later Title of the Constitution this point will have to be taken up in a way that ensures the Union's institutions have competence to give support to linguistic diversity, in particular in relation to regional and minority languages, and lesser-used languages. In addition, I draw attention to the text in the European parliament's Napolitano Report suggesting a new Article 151a in the Community Treaty about 'respecting and promoting linguistic diversity, including regional and minority languages'.*

**AMENDMENT FORM****Suggestion for amendment of Article : Artículo 2****By Ms / Mr : Borrell (miembro), Carnero y López Garrido (miembros suplentes)****Status :    - Member            - Alternate**

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Quedaría como sigue: “La Unión se fundamenta en el respeto y *la promoción* de la dignidad *de la persona*, la libertad, *la igualdad*, la democracia, el Estado de Derecho y los derechos humanos, valores que *considera universales e indivisibles* y que son comunes a sus Estados miembros. Su fin es ser una sociedad pacífica *e integradora* que practique la tolerancia, la justicia y la solidaridad”.

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**Explanation (if any) :**

**FICHE AMENDEMENT****Proposition d'amendement à l'Article 2**

*Déposée par Monsieur William ABITBOL*

**Qualité : Suppléant**

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**Article 2 :**

La paix, la liberté et la solidarité sont les principes politiques fondateurs de l'Union.

L'Union respecte le droit international. Elle applique les décisions de l'Organisation des Nations Unies.

L'Union reconnaît le droit des peuples à disposer d'eux-mêmes. Elle s'interdit toute ingérence dans l'expression du suffrage universel des Etats qui la composent.

L'Union agit dans le monde afin d'assurer un développement équilibré, responsable et respectueux des diversités.

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**Explication éventuelle :**

Ce texte remplace l'ensemble du texte original de l'article visé

**AMENDMENT FORM****Suggestion for amendment of Article : 2****By Mr : František Kroupa****Status : Alternate**

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Indicate the text of article as para. 2 and to add a new para. 1 as follows :

1. The Union values include the values of those who believe in God as the source of truth, justice, good and beauty as well as those who do not share such a belief but respect these universal values arising from other sources.

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**Explanation (if any) :**

## AMENDMENT FORM

Suggestion for amendment of Article : **2**

By Mr : **Emilio GABAGLIO**

Status: **Observer**

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The Union is founded on human dignity, liberty, democracy, the rule of law, respect for human rights, tolerance, social justice, solidarity and equality between women and men, values which are common to the member states.

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Explanation (if any)

= Better reflecting the consensus achieved in the “Social Europe” working group.

**FICHE AMENDEMENT****Proposition d'amendement à l'Article : 2****Déposée par Monsieur Olivier Duhamel****Qualité : - Membre**

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Article 2 - modifier comme suit :

**L'Union se fonde sur (trois mots supprimés) le respect de la dignité humaine, de liberté de démocratie, de l'état de droit, et de respect des droits de l'Homme, valeurs qui sont communes aux Etats membres. Elle vise à être une société paisible pratiquant la tolérance, la justice et la solidarité.**

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**Explication éventuelle :**



**AMENDMENT FORM****Suggestion for amendment of Article : I-2: The Union's values****By Ms / Mr : Lone Dybkjaer and Anne Van Lancker****Status :    - Member            X Alternate**

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Article I-2: The Union's values

The Union is founded on the values of respect for human dignity, liberty, *equality*, democracy, the rule of law and respect for human rights. These values are common to the Member States in a society of pluralism, tolerance, justice, [~~delete: equality~~] solidarity and non-discrimination.

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**Explanation (if any) :**

Placing "equality" in the second sentence of the article is NOT innocent. In the present draft from the Presidium "equality" is NOT a value. Almost the contrary. As it stands the values are common for societies, which in addition are characterised by pluralism, tolerance, equality and more. But that means something which one is exactly characterised by, not something absolute. One can measure whether a society is based on (at least formally) equality. In addition concrete legislation and legislative practice exist. This is not the case in relation to pluralism and tolerance.

**FICHE AMENDEMENT****Proposition d'amendement à l'Article : 5****Déposée par Monsieur Olivier Duhamel****Qualité : - Membre**

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Article 5 Para 2 - modifier comme suit :

**2. L'Union peut adhérer à la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales. Cette adhésion( trois mots supprimés) ne modifie pas les compétences de l'Union telles que définies par la présente Constitution.**

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**Explication éventuelle :**

## AMENDMENT FORM

## Suggestion for amendment of Article : I-7

By Ms: Danuta Hübner

Status : - Member

| <u>Article I-7: Fundamental rights</u>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | <u>Article I-7: Fundamental rights</u>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1. The Union shall recognise the rights, freedoms and principles set out in the Charter of Fundamental Rights which constitutes the Second Part of this Constitution.</p> <p>2. The Union shall seek accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Accession to that Convention shall not affect the Union's competences as defined in this Constitution.</p> <p>3. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.</p> | <p>1. The Union shall recognise the rights, freedoms and principles set out in the Charter of Fundamental Rights which constitutes the Second Part of this Constitutional <u>Treaty</u>.</p> <p>2. The Union shall seek accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms <u>and to other human rights conventions</u>. Accession to <del>the</del><u>seat</u> Convention shall not affect the Union's competences as defined in this Constitution.</p> <p>3. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.</p> |

**Explanation (if any) : It seems indispensable to assure at the Treaty level that the Union will have access to other conventions on human rights.**

## FICHE AMENDEMENT

### Proposition d'amendement à l'Article I-7

Déposée par Monsieur de Villepin

Qualité : - Membre

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#### **Article I-7: Droits fondamentaux**

1. L'Union reconnaît les droits, les libertés et les principes énoncés dans la Charte des droits fondamentaux qui constitue la deuxième partie de la présente Constitution.
2. L'Union ~~s'emploie à~~ **peut** adhérer à la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales. L'adhésion à cette Convention ne modifie pas les compétences de l'Union telles que définies dans la présente Constitution. **A cette fin, est annexée à l'acte final une déclaration fixant les conditions de cette adhésion.**
3. Les droits fondamentaux, tels qu'ils sont garantis par la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales et tels qu'ils résultent des traditions constitutionnelles communes aux États membres, font partie du droit de l'Union en tant que principes généraux.

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#### **Explication éventuelle :**

Lors de la discussion par la Convention du projet d'article 5 de la future constitution, le représentant des autorités françaises à la Convention a présenté un amendement ne contestant pas l'introduction d'une base juridique permettant l'adhésion de l'Union à la CEDH, mais indiquant que cette adhésion ne devait être mentionnée que comme une possibilité. Etant donnée la nouvelle proposition du Præsidium, qui n'a pas retenu notre amendement, les autorités françaises souhaitent que l'adhésion de l'Union à la CEDH soit explicitement subordonnée à l'adoption d'une déclaration annexée à l'acte final de la CIG qui permettrait d'entourer cette adhésion de toutes les garanties nécessaires. La formule employée par le Præsidium selon laquelle « L'adhésion à cette Convention ne modifie pas les compétences de l'Union telles que définies dans la présente Constitution » n'est pas suffisante.



## AMENDMENT FORM

**Title II: Fundamental Rights and Citizenship of the Union**

Suggestion for amendment of Article : Article I-7: Fundamental Rights

**By Members: Mr Andrew Duff, Mr Lamberto Dini, Mr Paul Helminger, Mr Rein Lang, Mr Dimitrij Rupel, Lord MacLennan.**

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**TITLE II: FUNDAMENTAL RIGHTS AND CITIZENSHIP OF THE UNION****Article I-7: Fundamental rights**

1. The Union shall recognise the rights, freedoms and principles set out in the Charter of Fundamental Rights which constitutes the Second Part of this Constitution.
  2. The Union shall seek accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Accession to that Convention shall not affect the Union's competences as defined in this Constitution. ***The Union may also seek accession to other international human rights conventions.***
  3. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.
- 

**Explanation:**

*7.2 Although the ECHR is the principal human rights convention, and in the light of the jurisprudence of the European Court of Justice may need a specific mention in the Constitution, it is by no means the only one. We need to provide for EU activism in the field of human rights.*

**AMENDMENT FORM****Suggestion for amendment of Article I – 7:****By Ms Sandra Kalniete****Status : Member**

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The Charter shall be annexed to the Constitutional Treaty as a Protocol.

**1. The Charter of Fundamental Rights shall be an integral part of the Constitution. The Charter is set out in a Protocol annexed to this Constitutional Treaty.**

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**Explanation (if any) :**

The Union is a specific entity which is legally based on several Establishing treaties. Taking into account that the constitutional issues in the EU are decided on the basis of the agreement between the Member States in the form of treaties, the new Treaty should be defined as a Constitutional Treaty.

The Charter of Fundamental Rights itself consists of more than 50 articles and it is thus not practical to include the entire text of the Charter into the body of the Constitutional Treaty text. Given the orderly structure of the Constitutional Treaty and the laconic nature of its text, the Charter of Fundamental rights should be annexed to the Treaty as a protocol.

To provide a unified implementation of the provisions of the Charter, the Commentary should be elaborated.

**AMENDMENT FORM****Suggestion for amendment of Article I-7.1:**

**By Mrs Lena Hjelm-Wallén and Mr Sven-Olof Petersson, government representatives and Mr Sören Lekberg, national parliament representative.**

**Status :**       - **Members: Hjelm-Wallén and Lekberg**  
                  - **Alternates: Petersson**

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1. The Union shall recognise the rights, freedoms and principles set out in the Charter of Fundamental Rights ~~which constitutes the Second Part of~~ **in a Protocol to** this Constitution.<sup>1</sup>

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**Explanation**

<sup>1</sup> To have the Charter as a Protocol would be more in line with the overall constitutional architecture.



**FICHE AMENDEMENT****Proposition d'amendement à l'Article : I-7****Déposée par Madame ou Monsieur : Gianfranco Fini / Francesco Speroni****Qualité : - Membre - Suppléant**

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**Articolo I-7: Diritti fondamentali**

1. L'Unione riconosce i diritti, le libertà e i principi sanciti nella Carta dei diritti fondamentali che costituisce la parte II della Costituzione. **Nello spirito del “commentario alla Carta” e sulla base degli articoli 51 e ss della II parte, le istituzioni, gli organi e le agenzie dell'Unione rispettano tali diritti e libertà e osservano tali principi promuovendone l'applicazione secondo le rispettive competenze.**
2. L'Unione persegue l'adesione alla Convenzione europea di salvaguardia dei diritti dell'uomo e delle libertà fondamentali. L'adesione a tale Convenzione non modifica le competenze dell'Unione definite nella Costituzione.
3. I diritti fondamentali, garantiti dalla Convenzione europea di salvaguardia dei diritti dell'uomo e delle libertà fondamentali e risultanti dalle tradizioni costituzionali comuni agli Stati membri, fanno parte del diritto dell'Unione in qualità di principi generali.

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**Explication éventuelle :**

**AMENDMENT FORM****Suggestion for amendment of Article : 7****By Ms / Mr : mr. Gijs de Vries and mr. Thom de Bruijn****Status :    - Member            - Alternate**

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**Article I-7: Fundamental rights**

1. The Union shall recognise the rights, freedoms and principles ~~set out in~~of the Charter of Fundamental Rights ~~which constitutes the Second Part of~~that is set out in a Protocol annexed to this Constitution.
2. The Union shall seek accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Accession to that Convention shall not affect the Union's competences as defined in this Constitution.
3. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.

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**Explanation (if any):** Firstly, the Dutch Government would like to point out that many articles (especially the articles of title VI, part I of the Constitution) are a repetition of what is already laid down in the Charter of Fundamental Rights. If the Charter would become a part of the Constitution, such a repetition is obviously undesirable. Therefore, if the Charter would become a part of the Constitution, which the Dutch government does not support, these articles will have to be deleted and/or adjusted. See for further background information the relevant declaration of the Dutch Government Representative (CONV 659/03).

Furthermore, the articles 14, 15, 29 and 35 of part II of the Constitution should not be legally enforceable. A declaration attached to the Constitution should make this very clear.

**FICHE AMENDEMENT****Proposition d'amendement à l'ArtI-7.Demiralp.doc****Déposée par ~~Madame ou~~ Monsieur Oğuz DEMIRALP****Qualité :     ~~Membre~~                   - Suppléant**

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**Article I-7: Droits fondamentaux****• Remplacer le terme « s'emploie » par « accomplit tout ce qui lui incombe afin de » :**

2. L'Union ~~s'emploie~~ **accomplit tout ce qui lui incombe afin à d'**adhérer à la Convention européenne de sauvegarde des droits de l'Homme et des libertés fondamentales. L'adhésion à cette Convention ne modifie pas les compétences de l'Union telles que définies dans la présente Constitution.

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**Explication éventuelle :**

Avec l'incorporation de la Charte des droits fondamentaux dans le Traité constitutionnel l'Union franchit un pas considérable dans le domaine de la protection des droits fondamentaux. Par ailleurs, dans le cadre de la Convention européenne de sauvegarde des droits de l'Homme et des libertés fondamentales, qui a valeur constitutionnelle, il y a un processus dynamique qui a permis un développement sans précédent en ce qui concerne la protection de ses droits et libertés depuis 1950. Compte tenu du fait que tous les Etats membres et les futurs Etats membres de l'Union sont aussi partie à cette Convention, il conviendrait d'éviter toute duplication et concurrence entre le système communautaire et européen en ce qui concerne les droits fondamentaux. En outre, l'adhésion de l'Union à la Convention européenne permettrait d'éviter une nouvelle division en Europe sur la base des droits fondamentaux.

**AMENDMENT FORM****Suggestion for amendment of Article : I-7****By Mr : Hain****Status : - Member -**

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1. The Union shall recognise the rights, freedoms and principles set out in the Charter of Fundamental Rights which constitutes ~~the Second Part of a~~ Protocol annexed to this Constitution.
  2. The Union ~~shall~~may seek accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Accession to that Convention shall not affect the Union's competences as defined in this Constitution.
  3. *OK.*
- 

Explanation (if any) :

1. *Repeated amendment: The Charter should be included only as a Protocol.*
2. *Repeated amendment: The first draft of this Article had 'may' rather than 'shall' – we prefer the original wording.*

**FICHE AMENDEMENT****Proposition d'amendement à l'Article : Artigo 5, n.º3 bis, novo****Déposée par Monsieur : Luís QUEIRÓ****Qualité : Suppléant**

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**3. L'Union européenne donnera une priorité particulière à l'intérêt des enfants dans toutes les décisions prises dans les limites des dispositions du Traité, et comme prévu dans la Convention sur les droits de l'enfant.**

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**Explication éventuelle :**

Les droits des mineurs doivent être considérés comme fondamentaux et inclus dans le nouveau Traité. Jusqu'à maintenant, les bébés sont seulement considérés comme d'éventuelles victimes, des personnes à charge et interdites de travail. Ou encore exclusivement comme objet de protection plutôt que comme sujets de droits. Ceci est en contradiction avec l'esprit et al lettre de la Convention sur les droits de l'enfant de 1989.

L'ajout permettra entre autre de :

1. garantir que la politique et la législation de l'Union n'auront plus un impact négatif sur les mineurs ;
2. reconnaître la transnationalité des droits des enfants, évident aussi dans le fait qu'une série de directives européennes ont un impact sur les mineurs, comme celles en matière de media et de politique pour les consommateurs, de réglementation de l'asile ou du combat contre les phénomènes du trafic et de l'abus de mineurs ;
3. garantir que l'UE respecte et prend en considération les droits des mineurs dans l'approbation des lois qui peuvent avoir un impact direct ou indirect sur les enfants. Les besoins et les droits des mineurs diffèrent de ceux des adultes, et ceci est amplement exprimé dans la Convention sur les droits de l'enfant, ratifiée par tous les États-membres de l'Union comme par les pays candidats.

**FICHE AMENDEMENT****Proposition d'amendement à l'Article : Article 5, paragraphe 3 bis, nouveau****Déposée par Monsieur : Luís QUEIRÓ****Qualité : Suppléant**

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**3. L'Union européenne donnera une priorité particulière à l'intérêt des enfants dans toutes les décisions prises dans les limites des dispositions du Traité, et comme prévu dans la Convention sur les droits de l'enfant.**

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**Explication :**

Les droits des mineurs doivent être considérés comme fondamentaux et inclus dans le nouveau Traité. Jusqu'à maintenant, les bébés sont seulement considérés comme d'éventuelles victimes, des personnes à charge et interdites de travail. Ou encore exclusivement comme objet de protection plutôt que comme sujets de droits. Ceci est en contradiction avec l'esprit et la lettre de la Convention sur les droits de l'enfant de 1989.

L'ajout permettra entre autre de :

1. garantir que la politique et la législation de l'Union n'auront plus un impact négatif sur les mineurs ;
2. reconnaître la transnationalité des droits des enfants, évident aussi dans le fait qu'une série de directives européennes ont un impact sur les mineurs, comme celles en matière de media et de politique pour les consommateurs, de réglementation de l'asile ou du combat contre les phénomènes du trafic et de l'abus de mineurs ;
3. garantir que l'UE respecte et prend en considération les droits des mineurs dans l'approbation des lois qui peuvent avoir un impact direct ou indirect sur les enfants. Les besoins et les droits des mineurs diffèrent de ceux des adultes, et ceci est amplement exprimé dans la Convention sur les droits de l'enfant, ratifiée par tous les États-membres de l'Union comme par les pays candidats.

**FICHE AMENDEMENT****Proposition d'amendement à l'Article : Artigo 5, n.º1****Déposée par Monsieur : Luís QUEIRÓ****Qualité : Suppléant**

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1. A Carta dos Direitos Fundamentais **fica anexa ao presente Tratado** e consta...

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**Explication éventuelle :**

**FICHE AMENDEMENT****Proposition d'amendement à l'Article : Article 5, paragraphe 1****Déposée par Monsieur : Luís QUEIRÓ****Qualité : Suppléant**

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1. La Charte des Droits Fondamentaux **figure dans une annexe du Traité.**

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**Explication:**



**AMENDMENT FORM****Suggestion for amendment of:** Article 5 (1)**By:** Professor Jürgen Meyer, delegate of the German Bundestag**Status :** - Member -

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**Aim:**

To incorporate the Charter of Fundamental Rights, including the preamble, at the beginning, or at least in the second part, of the Constitution

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**Explanation :**

With the Charter of Fundamental Rights, the EU has made it unmistakably clear that it considers itself to be a European union of values going beyond a purely economic community. The Charter incorporates, in one single text, in chapters on human dignity, freedoms, equality, solidarity, citizens' rights and justice, a balanced and up-to-date catalogue of specific rights, general freedoms, values and principles. At the same time, it reaffirms the constitutional traditions common to the Member States and the unique European social model. The European citizens have already begun to invoke the Charter in their petitions to the European parliament and their complaints to the European Ombudsman. The commitment to safeguarding fundamental and human rights demonstrated by the EU in the Charter belongs at the beginning of a future European Constitution. This applies in particular to the preamble, which is the result of intense debates and a balanced political compromise in the first Convention.

**In case the charter should be integrated in the second part of the constitution, Art. 5 should read as follows :**

Article 5: Fundamental rights

- (1) The fundamental rights of the citizens of the Union, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, and as they result from the constitutional traditions common to the Member States, shall derive from the Charter of Fundamental Rights in the second part of this Constitution.
- (2) The Union may accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms and to other international agreements safeguarding human rights. Accession to these agreements shall not affect the Union's competences as defined by this Constitution.

## FICHE AMENDEMENT

|                                              |                     |
|----------------------------------------------|---------------------|
| <b>Proposition d'amendement à l'Article:</b> | <b>5</b>            |
| <b>Déposée par Monsieur:</b>                 | <b>Erwin Teufel</b> |
| <b>Qualité:</b>                              | <b>Membre</b>       |

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*Texte du Praesidium**Amendement proposé*

- |                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                            |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>(1) La Charte des Droits Fondamentaux fait partie intégrante de la Constitution. La Charte figure [dans la deuxième partie de / dans un protocole annexé à] de celle-ci.</p>                                                                                 | <p>(1) <b>L'Union reconnaît les droits fondamentaux énumérés ci-après.</b></p>                                                                                                                                                                                                                                                             |
| <p>(2) L'Union peut d'adhérer à la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales. L'adhésion à cette Convention ne modifie pas les compétences de l'Union telles que définies par la présente Constitution.</p>       | <p>(2) <b>Les droits fondamentaux énumérés ci-après ne créent aucune compétence ni aucune tâche nouvelles pour l'Union et ne modifient pas les compétences et tâches définies par ce Traité constitutionnel.</b></p>                                                                                                                       |
| <p>(3) L'Union peut d'adhérer à la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales. L'adhésion à cette Convention ne modifie pas les compétences de l'Union telles que définies par la présente Constitution.</p>       | <p>(3) L'Union peut adhérer à la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales. L'adhésion à cette Convention ne modifie <b>ni</b> les compétences de l'Union telles que définies par la présente Constitution <b>ni la délimitation des compétences entre l'Union et les Etats membres.</b></p> |
| <p>(3) Les droits fondamentaux, tels qu'ils sont garantis par la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales et tels qu'ils résultent des traditions constitutionnelles communes aux Etats membres, font partie</p> | <p>(4) Les droits fondamentaux, tels qu'ils sont garantis par la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales et tels qu'ils résultent des traditions constitutionnelles communes aux Etats membres, font partie</p>                                                                            |

du droit de l'Union en tant que principes  
généraux.

du droit de l'Union en tant que principes  
généraux.

---

**Explication:**

Il conviendrait de reprendre le texte de la Charte des droits fondamentaux dans la première partie. Les droits fondamentaux sont un élément essentiel de toute Constitution. Leur intégration entière garantit une meilleure visibilité pour le citoyen. Pour des raisons systématiques le texte de l'article 51 (2) de la Charte des droits fondamentaux devrait être placé déjà ici (al. 2).

**AMENDMENT FORM****Suggestion for amendment of Article : 5 (1)**

**By Ms / Mr :** Representatives of the Assembly of the Republic - Portugal

**Members** Maria Eduarda Azevedo, Alberto Costa

**Alternates** António Nazaré Pereira, Guilherme d'Oliveira Martins

**Status :**

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## Article 5

**Fundamental Rights**

**1. The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union, which shall be an integral part of the present Constitution.**

2. (...)

3. (...)

**FICHE AMENDEMENT****Proposition d'amendement à l'Article : 5****Déposée par Madame ou Monsieur :** Représentants de l'Assemblée de la République - Portugal

- **Membre:** Maria Eduarda Azevedo, Alberto Costa
  - **Suppléant:** António Nazaré Pereira, Guilherme d'Oliveira Martins
- 

## Article 5

**Droits fondamentaux**

**1. L'Union reconnaît les droits, les libertés et les principes énoncés dans la Charte des droits fondamentaux de l'Union européenne, qui fait partie intégrante de cette Constitution.**

2. (...)

3. (...)

## Proposition d'amendement à l'Article 5

Déposée par Madame Elena Paciotti et Monsieur Valdo Spini, Suppléants

### EN Version

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#### Articolo 5: Diritti fondamentali

1. *I diritti fondamentali dell'Unione europea sono enunciati nella Carta dei diritti fondamentali che costituisce la prima parte della Costituzione (resto soppresso).*

[2. L'Unione può aderire alla Convenzione europea di salvaguardia dei diritti dell'uomo e delle libertà fondamentali, *ai trattati e alle organizzazioni internazionali che assicurano la protezione dei diritti fondamentali. Tali adesioni non modificano le competenze dell'Unione definite dalla presente Costituzione.*]

#### 3. *Soppresso*

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#### Explication éventuelle:

1. *La Carta dei diritti fondamentali non costituisce un'aggiunta alla Costituzione, ma una sua parte.*

2. *Il paragrafo potrebbe anche essere soppresso perché l'attribuzione della personalità giuridica all'Unione e l'integrazione della Carta dei diritti fondamentali nella Costituzione dovrebbero superare gli ostacoli all'adesione individuati dalla Corte di Giustizia (che ha rilevato la mancanza di competenza dell'Unione nel campo dei diritti fondamentali). Ove così non fosse bisognerebbe aggiungere analoga facoltà di adesione ai trattati e alle organizzazioni che assicurano la protezione dei diritti fondamentali affinché la specifica autorizzazione ad aderire alla CEDU non appaia come limitativa.*

3. *Il paragrafo è superfluo e fonte di possibili equivoci. Esso ripete la formula dell'articolo 6 paragrafo 2 del Trattato UE che è superato dall'avvenuta approvazione della Carta dei diritti fondamentali e dalla sua integrazione nella Costituzione. Infatti, sia i diritti derivanti dalle tradizioni costituzionali comuni, sia quelli sanciti dalla CEDU sono già inclusi nella Carta, come risulta dal preambolo e dagli articoli 52 e 53 della stessa. Poiché i cataloghi dei diritti fondamentali presenti nelle costituzioni non sono mai interpretabili come esaustivi, non c'è bisogno di citare queste fonti per consentire un'eventuale interpretazione evolutiva della Carta. Al contrario, poiché nel preambolo della stessa sono indicate altre fonti da cui sono tratti i diritti fondamentali vigenti nell'Unione, la menzione di sole due fonti rischia di avere un significato limitativo.*

## Proposition d'amendement à l'Article 5

Déposée par Madame Elena Paciotti and Monsieur Valdo Spini, Suppléants

### EN Version

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#### Article 5: Fundamental rights

1. *The fundamental rights of the European Union are stated in the Charter of Fundamental Rights which constitutes the first part of the Constitution.*

2. The Union may accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms, *and to international treaties and organisations that ensure the protection of fundamental rights*. Accession to *these* shall not affect the Union's competencies as defined by this Constitution.

3. *Suppressed*

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#### Explication éventuelle:

1. *The Charter of Fundamental rights is not an appendage of the Constitution but a part of it.*

2. *The paragraph could be suppressed because the attribution of legal status to the Union and the integration of the Charter of Fundamental Rights in the Constitution should overcome the obstacles to accession noted by the Court of Justice (it noticed the Union's lack of competence in the area of fundamental rights). Where this is not the case, an analogous provision for accession to treaties and organisations that ensure the protection of fundamental rights should be added, so that the specific authorisation given for accession to the ECHR is not considered a limiting factor.*

3. *The paragraph is superfluous and a source of possible misconceptions. It repeats the words of article 6 paragraph 2 of the EU Treaty, which was superseded by the approval of the Charter of Fundamental Rights and its integration into the Constitution. In fact, both the rights that derive from common constitutional traditions, and those sanctioned by the ECHR are included in the Charter, as can be seen in the preamble and articles 52 and 53 of the same. Since the catalogues of fundamental rights present in the constitutions can never be interpreted as exhaustive, there is no need to quote these sources in any future elaboration of the Charter. On the contrary, since the preamble to the same indicates other sources for the fundamental rights in force in the Union, to mention just two sources could be seen as a limiting factor.*

**AMENDMENT FORM****Suggestion for amendment of Article : 5 (2)**

**By Mr :**        **R. VAN DER LINDEN**        **(member)**  
                  **F. TIMMERMANS**            **(member)**  
                  **W. VAN EEKELEN**        **(alternate member)**  
                  **J.J. VAN DIJK**            **(alternate member)**

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The Union **wants to** accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Accession to that Convention shall not affect the Union's competences as defined by this Constitution.

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**Explanation (if any) :**

The reasons why the EU should accede to the ECHR have been adequately and convincingly set out in the final report unanimously adopted by Working Group II and largely endorsed by the Plenary Convention, where a very strong tendency in favour of accession emerged.

It is therefore essential to ensure that accession is not only made *legally possible* in the future EU-Constitution, but also *effectively pursued* as an option agreed upon by the Convention, in order to maintain the parallelism which was expediently established by the Laeken Declaration between the Charter and the ECHR.

The most appropriate way to secure this is to lay down an obligation to this effect in the future Constitution, as proposed by the amendment above. Alternatively, and in any event, a clear statement to the effect that the EU should accede to the ECHR should be made by the Convention, either in the introduction or in the explanations to the Constitutional Treaty.



**AMENDMENT FORM****Suggestion for amendment of Article:** 5§1**By Mr: Paraskevas AVGERINOS****Status: Member**

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Ο Χάρτης των Θεμελιωδών Δικαιωμάτων αποτελεί συστατικό τμήμα του Συντάγματος. Ο Χάρτης περιλαμβάνεται [στο δεύτερο μέρος του/ σε πρωτόκολλο προσαρτώμενο] στο Σύνταγμα.

Ο Χάρτης των Θεμελιωδών Δικαιωμάτων αποτελεί συστατικό τμήμα του Συντάγματος. Ο Χάρτης περιλαμβάνεται **στο δεύτερο μέρος του Συντάγματος.**

**Explanation:**

Ενώ η νομική ισχύς είναι η ίδια για τις δύο περιπτώσεις [δεύτερο μέρος ή πρωτόκολλο], για τους ευρωπαίους πολίτες έχει πολιτική σημασία ο Χάρτης να βρίσκεται στο σώμα του Συντάγματος.

**AMENDMENT FORM****Suggestion for amendment of Article : 5****By Ms / Mr : Marie Nagy****Status : - Member - Alternate**

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**TITLE II: Fundamental rights and citizenship of the Union****Article 5: Fundamental rights**

1. The Charter of Fundamental Rights shall be an integral part of the Constitution. The Charter is set out ~~[in the second part of/in a Protocol annexed to]~~ **in the second part** of this Constitution.
  2. The Union may accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms **and to other international agreements for the protection of Human and Fundamental Rights**. Accession to that Convention or to other **international agreements** shall not affect the Union's competences as defined by this Constitution.
  3. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.
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**Explanation (if any) :**

## FICHE AMENDEMENT

### Proposition d'amendement à l'Article 5

*Déposée par Monsieur Dominique de Villepin*

**Qualité : Membre**

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#### **Article 5: Droits fondamentaux**

1. La Charte des Droits Fondamentaux fait partie intégrante de la Constitution. La Charte figure **dans la deuxième partie de celle-ci.**
  2. [L'Union peut **décider d'adhérer** à la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales. L'adhésion à cette Convention ne modifie pas les compétences de l'Union telles que définies par la présente Constitution.]<sup>1</sup>
  3. Les droits fondamentaux, tels qu'ils sont garantis par la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales et tels qu'ils résultent des traditions constitutionnelles communes aux Etats membres, font partie du droit de l'Union en tant que principes généraux.
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**Explication éventuelle :**

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<sup>1</sup> Le paragraphe 2 du projet d'article 5, qui constituerait la base juridique d'une éventuelle adhésion de l'Union à la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales, trouverait davantage sa place dans la seconde partie du traité constitutionnel.

**AMENDMENT FORM****Suggestion for amendment of Article : 5.2****By Lord Tomlinson****Status : - Alternate**

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2nd sentence - change word "affect" to "extend"

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**Explanation (if any) :**

**AMENDMENT FORM****Suggestion for amendment of Article : 5.1****By Lord Tomlinson****Status : Alternate**

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The House of Lords has broadly supported HM Government concerning their view of the Charter of Fundamental Rights and I do not support the Charter as being an integral part of the Constitution.

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**Explanation (if any) :**

## AMENDMENT FORM

**Suggestion for amendment of Article 5**

**By** Mr Andrew Duff, Mr Dimitrij Rupel, Mr Paul Helminger, Lord MacLennan,  
Mr István Szent-Iványi, Ms Teresa Almeida-Garrett and Mr Lamberto Dini.

**Status :** Members and alternate members.

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Article 5: Fundamental rights

- 5.1 The Charter of Fundamental Rights, *as set out in Chapter Two*, shall be an integral part of the Constitution.
- 5.2 The Union may accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms *and other international human rights conventions*. Accession *to them* shall not affect the Union's competences as defined by this Constitution.
- 5.3 Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.

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**Explanation:**

5.1 *Of the options available for the installation of the Charter in the Constitution, its publication as a second chapter of Part One would seem to offer the greatest visibility and comprehension. Its annexation as a Protocol would be equivalent in legal terms, but it would in that case be necessary to spell out (and therefore repeat without divergence) some of the Charter's key points in this Title II.*

*The Chapter Two solution proposed here would allow the Convention to shorten radically Article 7 on citizenship.*

5.2 *Although the ECHR is the principal human rights convention, and in the light of the jurisprudence of the European Court of Justice may need a specific mention in the Constitution, it is not the only one.*

**FICHE AMENDEMENT****Proposition d'amendement à l'Article : Article 5****Déposée par ~~Madame ou~~ Monsieur : Oğuz DEMIRALP****Qualité : ~~-Membre-~~ - Suppléant**

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**Article 5 (2) :**

Ajouter dans la deuxième phrase : « **la répartition des compétences entre l'Union et les Etats Membres** ».

*La nouvelle deuxième phrase se lit comme suit :*

L'adhésion à cette Convention ne modifie pas **la répartition des compétences entre l'Union et les Etats Membres telles que définies par la présente Constitution.**

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**Explication éventuelle :**

Cette modification semble nécessaire, car la phrase « l'adhésion à cette Convention ne modifie pas les compétences de l'Union » ne reflète pas correctement le but recherché, tel que défini dans la note explicative (p.13), qui est d'empêcher la répartition des compétences entre l'Union et les Etats Membres de pâtir de l'adhésion.

**FICHE AMENDEMENT****Proposition d'amendement à l'Article : Art. 5 par. 1****Déposée par Madame Cristiana MUSCARDINI****Qualité : Membre**

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Il paragrafo 1 è sostituito dal seguente paragrafo:

**"Il Trattato costituzionale fa riferimento alla Carta dei diritti fondamentali."**

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**FICHE AMENDEMENT****Proposition d'amendement à l'Article : Article 5****Déposée par ~~Madame ou~~ Monsieur : Oğuz DEMIRALP****Qualité : ~~-Membre-~~ - Suppléant**

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**Article 5 (1) : Les droits fondamentaux :**

Retenir la formule « **La charte figure dans un Protocole annexé à celle-ci** ».

*Ainsi l'article 5(1) devient comme suit :*

La charte des droits fondamentaux fait partie intégrante de la Constitution. **La charte figure dans un Protocole annexé à celle-ci.**

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**Explication éventuelle :**

Le but de la Convention est de rédiger un texte constitutionnel simple et lisible pour les citoyens. Intégrer la Charte telle qu'elle est, conduirait à un texte constitutionnel nécessairement volumineux. En outre, son intégration textuelle dans le futur Traité nécessiterait la modification de certains de ses articles. Matériellement, il serait difficile pour la Convention de se livrer à un tel exercice.

**Fiche amendement****Proposition d'amendement à l'article : 5****Déposée par MM. Santer, Helminger, Fayot****En qualité de MEMBRES**

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Il est proposé de reprendre la Charte dans un Titre Ier de la Constitution. Il faut noter que la plupart des dispositions du Titre II consacré aux « droits fondamentaux et à la citoyenneté de l'Union » se retrouvent déjà dans la Charte. L'actuel Titre Ier deviendrait le Titre II. Le nouveau premier titre pourrait être complété par les dispositions ne figurant pas dans la Charte, telles que la définition de la citoyenneté de l'Union et l'adhésion de l'Union à la Convention européenne de sauvegarde des droits de l'Homme et des libertés fondamentales. Cette disposition devrait être formulée de la manière suivante :

« L'Union s'engage à adhérer à la Convention européenne de sauvegarde des droits de l'Homme et des libertés fondamentales. L'adhésion... »

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**Explication :**

L'Union possédant dorénavant la personnalité juridique a vocation à adhérer à la CEDH. L'amendement vise à prendre un engagement ferme à cet égard, indispensable dans un souci d'unicité et de cohérence de la future interprétation et jurisprudence en matière de droits de l'Homme et de libertés fondamentales.

**FICHE AMENDEMENT****Proposition d'amendement à l'Article : Art. 5****Déposée par Madame Cristiana MUSCARDINI****Qualité : Membre**

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Aggiungere un par. 4 :

**"L'Unione europea darà una considerazione preminente all'interesse superiore del fanciullo in tutte le decisioni prese nell'ambito delle disposizioni del Trattato, così come sancito dalla Convenzione sui diritti del fanciullo."**

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**Motivazione:**

I diritti dei minori devono essere compresi tra quelli fondamentali e devono essere inclusi nel nuovo Trattato. Fino ad ora i bambini sono considerati solo come eventuali vittime, persone a carico o impedimenti al lavoro. Dunque ancora esclusivamente come oggetto di tutela piuttosto che come soggetti di diritto, E ciò in contrasto con lo spirito e la lettera della Convenzione sui Diritti del Fanciullo del 1989. L'inserimento contribuirebbe inoltre a:

1. garantire che le politiche e la legislazione dell'Unione non abbiano più un impatto negativo sui minori;
2. riconoscere la transnazionalità dei diritti dei minori, evidente anche dal fatto che una serie di direttive europee hanno un impatto sui minori, come quelle in materia di *media* e di politiche per i consumatori, o politiche per regolare l'asilo o per combattere il fenomeno del traffico e di abuso di minori;

garantire che l'UE rispetti e tenga in considerazione i diritti dei minori nell'approvazione delle leggi che possono avere un impatto diretto o indiretto sui minori. I bisogni e i diritti dei minori differiscono da quelli degli adulti, e ciò è ampiamente espresso nella Convenzione sui diritti del fanciullo, ratificata da tutti gli stati membri dell'Unione, così come dai Paesi candidati all'adesione.

**AMENDMENT FORM****Suggestion for amendment of Article 5.1, Title II**

**By :** Mrs Sandra Kalniete (LV Gov., Member), Mr Roberts Zile (LV Gov., Alternate), Mrs Liene Liepina (LV Parl., Member), Mr Rihards Piks (LV Parl., Member), Mr Arturs Krisjanis Karins (LV Parl., Alternate), Mr Guntars Krasts (LV Parl., Alternate).

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- Replace the title “Constitution” by the “Constitutional treaty” (in the whole text);
- Delete the following part of first sentence “*shall be an integral part of the Constitution*”;
- The Charter shall be annexed to the Constitutional Treaty as a Protocol.

*1. The Charter of Fundamental Rights shall be an integral part of the Constitution. The Charter is set out ~~in the second part of~~ in a Protocol annexed to this **Constitutional Treaty**.*

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**Explanation (if any) :**

The Union is a specific entity, which is based on the several establishing Treaties. Taking into account that the constitutional issues in the EU are approved on the basis of the agreement between the Member States in form of the treaties, the new Treaty should be defined as the Constitutional Treaty.

The Charter of Fundamental Rights itself consists of more than 50 articles and it is thus not practical to include the entire text of the Charter into the body of the Constitutional Treaty text. Given the orderly structure of the Constitutional Treaty and the laconic nature of its text, the Charter of Fundamental rights should be annexed to the Treaty as a Protocol.

Insertion of the Charter as a Protocol should allow the Member States when they decide on the entering into force of the Constitutional Treaty to decide separately about the entering into force of the Protocol. This would allow the Member States to negotiate a time schedule that will determine when the given rights will become binding.

**AMENDMENT FORM****Suggestion for amendment of Article 5.1 and 5.2:**

**By Mrs Lena Hjelm-Wallén and Mr Sven-Olof Petersson, government representatives and Mr Sören Lekberg, Mr Göran Lenmarker and Mr Kenneth Kvist, national parliament representatives.**

**Status :** - **Members: Hjelm-Wallén, Lekberg and Lenmarker**  
- **Alternates: Petersson and Kvist**

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1. The Charter of Fundamental Rights shall be an integral part of the Constitution. The Charter is set out [~~in the second part of~~<sup>1</sup> /in a Protocol annexed] to this Constitution.<sup>2</sup>

2. The Union [may accede] **shall seek accession to**<sup>3</sup> to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Accession to that Convention shall not affect the Union's competences as defined by this Constitution.

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**Explanation**

<sup>1</sup> The Charter should not be set out in Part II of the Treaty (The Charter does not provide any legal basis for the implementation of policies).

<sup>2</sup> The Laeken Declaration rightly established parallelism between “incorporation of the Charter” and “accession to the ECHR”, not only in substance but implicitly also as regards the timing of their respective implementation.

<sup>3</sup> An enabling clause must be combined with a clear commitment by the high contracting parties in favour of accession.

**AMENDMENT FORM****Suggestion for amendment of Article : 5****By Ms : Giannakou Marietta****Status : - Member**

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**Article 5: Fundamental rights**

1. The Charter of Fundamental Rights shall be an integral part of the Constitution. The Charter is set out *in the second part of this Constitution*.

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**Explanation (if any) :**

**AMENDMENT FORM****Suggestion for amendment of Article 5 :****By Mr Joschka Fischer****Status : - Member**

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**Artikel 5: Grundrechte**

(1) Die Charta der Grundrechte ist ~~integraler Bestandteil der Verfassung. Die Charta ist [im zweiten Teil dieser Verfassung/ in einem dieser Verfassung beigefügten Protokoll]~~ wiedergegeben.

1

(2) Zusätzlich zu den in der Grundrechtecharta anerkannten Rechten achtet die Union die Grundrechte, wie sie in der Europäischen Konvention zum Schutze der Menschenrechte und Grundfreiheiten gewährleistet sind und wie sie sich aus den gemeinsamen Verfassungsüberlieferungen der Mitgliedstaaten ergeben.

(3) Die Union kann der Europäischen Konvention zum Schutze der Menschenrechte und Grundfreiheiten beitreten. Der Beitritt zu dieser Konvention berührt nicht die in dieser Verfassung festgelegten Zuständigkeiten der Union.

~~(3) Die Grundrechte, wie sie in der Europäischen Konvention zum Schutze der Menschenrechte und Grundfreiheiten gewährleistet sind und wie sie sich aus den gemeinsamen Verfassungsüberlieferungen der Mitgliedstaaten ergeben, gehören zu den allgemeinen Grundsätzen des Gemeinschaftsrechts.~~

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<sup>1</sup> [Der vollständige Wortlaut der Charta wird mit sämtlichen redaktionellen Anpassungen, die im Schlussbericht der Gruppe II (CONV 354/02) aufgeführt sind, an herausgehobener Stelle in diesem Verfassungsvertrag aufgenommen, ~~entweder in einen zweiten Teil der Verfassung oder in ein Protokoll zur Verfassung aufgenommen~~; die Entscheidung hierüber liegt beim Konvent.]



**Explanation (if any) :**

*Das Wort "integral" in Absatz 1 ist überflüssig. Die Charta sollte an herausragender Stelle des Verfassungvertrags erscheinen (am besten unmittelbar nach der Präambel der Verfassung). Die Protokolllösung scheidet aus, da sie nicht der Würde und dem Stellenwert der Charta als Ausdruck der europäischen Werteordnung entspricht. Der neue Absatz 2 übernimmt die Formulierung aus Art. 6 (2) EUV. Der bisherige Absatz 2 sollte aus systematischen Gründen Absatz 3 werden.*

## AMENDMENT FORM

### Suggestion for amendment of Article: 5

**By Ms / Mr : Mr.** Ms. Irena Belohorska – member, Jan Zahradil – member, Mr. Jens-Peter Bonde - member, Mr. David Heathcoat-Amory - member, Mr. William Abitbol - alternate, Mr. Peter Skaarup - member, Mr. Per Dalgaard - alternate, Mr. Esko Seppänen – alternate, and Mr. John Gormley - alternate.

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### **Article 5: Fundamental rights**

1. The Charter of Fundamental Rights binds the European institutions. The Europe of Democracies respects the European Convention for the Protection of Human Rights and Fundamental Freedoms and the basic rights of the national constitutions.<sup>1</sup>
2. The Europe of Democracies may accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms.

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<sup>1</sup> [The full text of the Charter, with all the drafting adjustments given in Working Group II's final report (CONV 354/02) will be set out either in a second part of the Constitution or in a Protocol annexed thereto, as the Convention decides.]

## AMENDMENT FORM

### Suggestion for amendment of Articles 1.1., 3.2. and 5.2

By Alexander Arabadjiev

Status: Alternate Member ( Bulgarian Parliament)

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(a) In Article 1.1. *citizens* of the EU – along with peoples and States- should be mentioned;

(b) In Article 3.2. *social market economy* should be added as EU objective;

(c) In Article 5.2. **in stead of:**

The Union ‘may’ accede

The Union **shall** accede

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### Explanation:

With respect to (c) above - The question of accession is of “constitutional significance” and the Convention must pronounce itself clearly in favour of accession. Under the conclusions of Working Group II accession is regarded as a complementary (to incorporation of the Charter) and not an alternative option.

## AMENDMENT FORM

Suggestion for amendment of Article 5:

By Elmar BROK, Jozsef SZAJER, Erwin TEUFEL, René VAN DER LINDEN, Frantisek KROUPA, John CUSHNAHAN, Teresa ALMEIDA GARRETT, Peter ALTMAIER, Jan FIGEL, Piia Noora KAUPPI, Hanja MAIJ-WEGGEN, Reinhard RACK, Joachim WÜRMEILING

on behalf of the EPP Convention Group

Status: Members and Alternates

*Text of the Praesidium*

*Proposed Amendments*

**Article 5: Fundamental rights**

1. The Charter of Fundamental Rights shall be an integral part of the Constitution. The Charter is set out [in the second part of/in a Protocol annexed to] this Constitution.

2. The Union may accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Accession to that Convention shall not affect the Union's competences as defined by this Constitution.

3. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.

**IMPORTANT STRUCTURAL  
AMENDMENT:**

**The Charter should be inserted in its full text at the very beginning of the Constitution, in Part One, in a Title I “Charter of Fundamental Rights and Citizenship of the Union”.**

**The Constitution would then start with “Human Dignity” as Article 1, would include Citizenship of the Union (Article 17 EC) as Article 51 of the Charter and would end with Article 55 (Prohibition of abuse of rights).**

**As a consequence, Title I of the Praesidium text should become Title II. The Articles of the Praesidium text should be renumbered accordingly.**

**For a full-text example, see the EPP Discussion Paper (Frascati text, as amended, 27 January 2003).**

**Article 5: Fundamental rights**

~~1. The Charter of Fundamental Rights shall be an integral part of the Constitution. The Charter is set out [in the second part of/in a Protocol annexed to] this Constitution.~~

2. The Union may *shall request to* accede to the European Convention for the Protection of Hu-

man Rights and Fundamental Freedoms. Accession to that Convention shall not affect the Union's competences as defined by this Constitution.

~~3. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.~~

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## Explanation:

### *Para 1:*

– *The insertion of the Charter as a **full text** and **at the very beginning of the Constitution** was clearly the preferred option of Convention Working Group II “Charter” (see page 3 of its Final Report, where “insertion of the text of the Charter articles at the beginning of the Constitutional Treaty” is presented as the first of three options. It is then said: „a large majority of the Group would prefer the first option in the interest of a greater legibility of the Constitutional Treaty“. We share this recommendation of the Working Group for the following reasons:*

- (1) To integrate the full text of the Charter into the Constitution makes its rights and duties **clearly visible to the citizens of the Union** which, according to the Charter, should be placed at the heart of the Union’s activities.*
- (2) To start the Constitution with the Charter would stress that the Union is a **“Union of values”**. It would reflect the fundamental respect of the Union for human dignity (which would figure prominently as Article 1 of the Constitution) and thereby give the best possible evidence of the Christian origins of European civilisation. It should be recalled that the Constitutions of Finland, the Netherlands, Portugal and Germany also start with Fundamental Rights (the latter did so after the historic experience of a barbaric and inhuman regime which had come to power under a Constitution which had placed the Fundamental Rights Chapter in an Annex to the Constitution of Weimar ...).*
- (3) The full-text integration of the Charter at the beginning of the Constitution also **would make the drafting of the rest of the Constitution simpler and shorter**. In particular, it would make numerous Articles of the current *acquis* superfluous as they are already fully integrated into the Charter. For example: the Charter already includes all rights related to Union citizenship (Articles 39-46 Charter; today Articles 18-21, 255 EC of the Treaty), which therefore would not have to be repeated in the Constitutional Text, as currently suggested by the Praesidium text in Article 7; the Charter also includes the prohibition of discrimination on grounds of nationality (Article 21(2) Charter), equality between women and men (Article 21(1), 23 Charter; today Article 141 EC Treaty) as well as a number of economic rights granted by the EC Treaty, such as the right of free movement of workers, of services and the freedom of establishment (Article 15(2) Charter; today Articles 39, 43, 49 EC Treaty); the Charter includes furthermore a number of the important transversal objectives of the EC Treaty, such as a high level of human health protection (Article 35 Charter; today Article 152(1) EC Treaty), a high level of environment protection (Article 37 Charter; today Article 2, 6, and 174 EC Treaty) and a high level of consumer protection (Article 38*

Charter; today Article 153 EC Treaty); and finally, the Charter already guarantees access to services of general interest in order to promote economic and social cohesion of the Union (Article 36 Charter; see today Article 16 EC Treaty). Following inclusion of the full Charter at the beginning of Part One of the Constitution, all these provisions would not to have be repeated in the remaining text of the Constitution. Their legal importance would be beyond doubt, in view of their prominent location.

- It is no counter-argument to a full-text integration of the Charter that such an integration could lead to problems regarding its **Preamble**. The essential elements of the preamble of the Charter can easily be integrated into the Preamble of the Constitution which should take over the main elements of the Charter. For an illustrative example, see the Preamble in the EPP Discussion Paper (Frascati text, as amended, 27 January 2003), which combines the Preamble of the Charter with elements of the ECSC Treaty, the EU Treaty and the EC Treaty. See also our amendment proposing integration of such a Preamble in the Constitutional Text.
- The Charter states, in its Article 51 (2) that it **does not extend the scope of application of Union law beyond the powers of the Union or establish any new power or task for the Union, or modify powers and tasks defined by this Constitution** (text of the Charter, as clarified by the recommendations of Convention Working Group II “Charter”).

**Para 2:**

- **Enabling clause for ECHR accession:** could better be integrated either as an additional provision at the end of the Charter or, alternatively, in the constitutional provisions on the treaty-making power of the Union. As an example for the latter, see Article 124(2), subpara 2, 5<sup>th</sup> indent of the EPP Discussion Paper (Frascati text, as amended, 27 January 2003).

**Para 3:**

- is a superfluous provision if the Charter is integrated into the Constitution. It is the very purpose of the Charter to reaffirm the fundamental rights as integral parts of primary law as they result from the ECHR and from the constitutional traditions of the Member States (as well as from other sources) – see the fifth paragraph of the Preamble of the Charter.

**AMENDMENT FORM****Suggestion for amendment of Article : 5****By MM : Kiljunen and Vanhanen****Status : - Members**

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1. The Charter of Fundamental Rights shall be an integral part of the Constitution. The Charter is set out **in a Protocol annexed** to this Constitution.
  2. The Union **shall take the necessary steps to** accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Accession to that Convention shall not affect the Union's competences as defined by this Constitution.
  3. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.
- 

**Explanation (if any) :**

*It is clear that the Charter of Fundamental Rights belongs to provisions that are constitutional to their nature. It follows that the Charter should be annexed to the Constitution as a protocol with a status equivalent to that of Part I. Since the Charter and the ECHR are complementary to each other, there should a clearer commitment by the Union to bring about the accession to the ECHR*

## Amendments submitted by Teija Tiilikainen and Antti Peltomäki 17 February 2003

### Article 5: Fundamental rights

1. The Charter of Fundamental Rights shall be an integral part of the Constitution. The Charter is set out **in a Protocol annexed** to this Constitution.
2. The Union **shall take the necessary steps to** accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Accession to that Convention shall not affect the Union's competences as defined by this Constitution.
3. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.

#### Commentary:

*It is clear that the Charter of Fundamental Rights belongs to provisions that are constitutional to their nature. It follows that the Charter should be annexed to the Constitution as a protocol with a status equivalent to that of Part I.*

*Since the Charter and the ECHR are complementary to each other, there should a clearer commitment by the Union to bring about the accession to the ECHR.*



**AMENDMENT FORM****Suggestion for amendment of Article 5****By Mr. Ivan Korčok (SK)****Status : - Member**

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**Article 5: Fundamental rights**

1. The Charter of Fundamental Rights shall be ~~an integral part of the Constitution~~ a legally binding document. The Charter is set out ~~[in the second part of]~~ in a Protocol annexed to] this ~~Constitution~~ Constitutional Treaty.
2. The Union may accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Accession to that Convention shall not affect the Union's competences as defined by this ~~Constitution~~ Constitutional Treaty.
3. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.

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**Explanation (if any) :**

**AMENDMENT FORM****Suggestion for amendment of Article 5 :****By Mr : Ingvar SVENSSON****Status : - Alternate**

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1. The Charter of Fundamental Rights shall be an integral part of the Constitution. The Charter is set out [~~in the second part of/in a Protocol annexed to~~] in this Constitution.

2. The Union ~~may accede~~ **shall seek accession** to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Accession to that Convention shall not affect the Union's competences as defined by this Constitution.

3. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.

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**Explanation:****Article 5.1**

The Charter of Fundamental Rights should be a part of the Constitution, but is not necessary to state where in the Constitution the Charter can be found. That will be obvious when the Constitution is complete.

**Article 5.2**

It is important that the Union seeks accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms.

**FICHE AMENDEMENT****Proposition d'amendement à l'Article : 5****Déposée par Madame ou Monsieur : Mme PALACIO****Qualité : - Membre - Suppléant**

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**Article 5: Droits fondamentaux**

1. ~~L'Union respecte les droits, les libertés et les principes énoncés par la Charte des Droits Fondamentaux figurant dans la Partie Ibis de la Constitution. [La Charte des Droits Fondamentaux fait partie intégrante de la Constitution. La Charte figure [dans la deuxième partie de / dans un protocole annexé à] de celle-ci].~~
  2. L'Union peut adhérer à la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales. L'adhésion à cette Convention ne modifie pas les compétences de l'Union telles que définies par la présente Constitution.
  3. Les droits fondamentaux, tels qu'ils sont garantis par la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales et tels qu'ils résultent des traditions constitutionnelles communes aux Etats membres, font partie du droit de l'Union en tant que principes généraux.
- 

**Explication:**

Il faut que la pleine valeur constitutionnelle de la Charte soit absolument claire.

**AMENDMENT FORM****Suggestion for amendment of Article : 5****By Mr : Gianfranco FINI****Status : - Member**

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**Articolo 5: Diritti fondamentali**

1. La Carta dei diritti fondamentali ~~é,~~ parte integrante della **presente** Costituzione, è **contenuta in un Protocollo allegato**. ~~Il testo della Carta è contenuto in un protocollo [nella seconda parte della / in un protocollo allegato alla ] stessa.~~
2. ***L'esercizio dei diritti delineati nella Carta si esercita in quanto compatibile con l'ordinamento giuridico di ciascuno Stato membro***
3. L'Unione può aderire alla Convenzione europea di salvaguardia dei diritti dell'uomo e delle libertà fondamentali. L'adesione a tale Convenzione non modifica le competenze dell'Unione definite dalla presente Costituzione.
4. I diritti fondamentali, garantiti dalla Convenzione europea di salvaguardia dei diritti dell'uomo e delle libertà fondamentali e risultanti dalle tradizioni costituzionali comuni agli Stati membri, fanno parte del diritto dell'Unione in qualità di principi generali.

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**Explanation (if any) :**

**AMENDMENT FORM****Suggestion for amendment of Article : 5****By Ms / Mr : Johannes Voggenhuber, Eva Lichtenberger****Status :    - Member            - Alternate**

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**TITLE II: Fundamental rights and citizenship of the Union****Article 5: Fundamental rights**

1. The Charter of Fundamental Rights shall be an integral part of the Constitution. The Charter is set out [~~in the second part of/in a Protocol annexed to~~] **in the second part** of this Constitution.
  2. The Union may accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms **and to other international agreements for the protection of Human and Fundamental Rights**. Accession to that Convention or to other **international agreements** shall not affect the Union's competences as defined by this Constitution.
  3. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.
- 

**Explanation (if any) :**

**AMENDMENT FORM****Suggestion for amendment of Article 5, paragraph 1****By Ms : Hildegard Puwak****Status : - Member**

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“ The Charter of Fundamental Rights shall be an integral part of the Constitution. The Charter is set out in the second part of this Constitution.”

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**Explanation (if any) :**

**AMENDMENT FORM****Suggestion for amendment of Article : 5****By Mr Kirkhope MEP****Status : Member**

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**DELETE**

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**Explanation (if any) :**

**AMENDMENT FORM****Suggestion for amendment of Article : 5, 6 and 7****By Mr : Georgios Katiforis****Status : - Member**

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**TITLE II: Fundamental rights and citizenship of the Union****Option a: insert the articles of the Charter under Title II****Option b:****Article 5: Fundamental rights**

**1. All fundamental rights referred in this Constitution shall bind the institutions and bodies of the European Union regarding all their actions and the Member States when they are implementing Union law.**

~~2.~~ **2.** The Charter of Fundamental Rights shall be an integral part of the Constitution. The Charter is set out in the second part of ~~{in a Protocol annexed to}~~ this Constitution.

~~3.~~ **3.** The Union may accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Accession to that Convention shall not affect the Union's competences as defined by this Constitution.

~~4.~~ **4.** Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.

**(If option a retained, delete paragraph 2, integrate appropriately paragraphs 1, 3 and 4)**

**Article 6: Non-discrimination on grounds of nationality**

In the field of application of this Constitution and without prejudice to any of its specific provisions, any discrimination on grounds of nationality shall be prohibited.

**( If option a retained, delete article 6)**



## Article 7: Citizenship of the Union

1. Every national of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to national citizenship; it shall not replace it. All citizens of the Union, women and men, shall be equal before the law.

2. Citizens of the Union shall enjoy the rights and be subject to the duties provided for in this Constitution. They shall have:

- the right to move and reside freely within the territory of the Member States;
- the right to vote and to stand as a candidate in elections to the European Parliament and in municipal elections in their Member State of residence under the same conditions as nationals of that State;
- the right to enjoy, in the territory of a third country in which the Member State of which they are a national is not represented, the protection of the diplomatic and consular authorities of any Member State on the same conditions as the nationals of that State;
- the right to petition the European Parliament, to apply to the Ombudsman, and to write to the institutions and advisory bodies of the Union in any of the Union's languages and to obtain a reply in the same language.

3. These rights shall be exercised in accordance with the conditions and limits defined by this Constitution and by the measures adopted to give it effect.

**(If option a retained, delete paragraph 2, integrate appropriately paragraphs 1 and 3)**

## AMENDMENT FORM

Suggestion for amendment of Article 5/2:

By **Mr. Jozsef Szajer**

**Status: Member, National Parliament, Hungary**

2. The Union may accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms **and to the Framework Convention on Minority Rights**. Accession to that Convention **and to the Framework Convention** shall not affect the Union's competences as defined by this Constitution.

### Explanation

The adhesion to the **Framework Convention** would solve an important deficiency of the present acquis, which is missing an effective protection of national and ethnic minorities. The Central European part of the continent, which is about to join the EU brings into the union a great number of national and ethnic minorities. However the Copenhagen democracy criteria give clear guidelines for the candidate countries for safeguarding national minority rights, unfortunately neither the present acquis nor the Charter of Fundamental Rights deal sufficiently with national minority rights. This would mean, that after adhesion the level of national minority rights protection would considerably fall due to the lack of clear guidelines in these areas.

**AMENDMENT FORM****Suggestion for amendment of Article : 5****By Mr Poul Schlüter:****Status : Alternate**

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1. The Union respects the rights, freedoms and principles in the ~~the~~ Charter of Fundamental Rights ~~shall be an integral part of the Constitution. The Charter is as~~ set out ~~[in the second part of/~~in a Protocol annexed to~~] this Constitutional~~ Treaty.
2. The Union may accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Accession to that Convention shall not affect the Union's competences as defined by this Constitutional Treaty.
3. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.

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**Explanation:**

- 1) A reference to the Charter as an “integral part” of the Constitutional Treaty is not in line with the recommendations from WG II.
- 2) There was general agreement in the Convention that the Charter should be made legally binding through a direct reference in the first part of the Constitutional Treaty and annexed to the Treaty in a protocol.

**AMENDMENT FORM****Suggestion for amendment of Article 5****By:** Danuta Hübner**Status:** Member

| <i>Text of the Praesidium</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | <i>Proposed Amendments</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b><u>Article 5: Fundamental rights</u></b></p> <ol style="list-style-type: none"> <li>1. The Charter of Fundamental Rights shall be an integral part of the Constitution. The Charter is set out [in the second part of/in a Protocol annexed to] this Constitution.</li> <li>2. The Union may accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Accession to that Convention shall not affect the Union's competences as defined by this Constitution.</li> <li>3. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.</li> </ol> | <p><b><u>Article 5: Fundamental rights</u></b></p> <ol style="list-style-type: none"> <li>1. <u>As a reflection of the political unity reached among the Member States, citizens of the Union are endowed with the rights set out in the</u> <del>the</del> Charter of Fundamental Rights <u>which is shall be</u> an integral part of the Constitution. The Charter is set out in the second part of/<del>in a Protocol annexed to</del> this Constitution.</li> <li>2. <del>The Union may accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Accession to that Convention shall not affect the Union's competences as defined by this Constitution.</del></li> <li>3. <del>Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.</del></li> </ol> |
| <p><b>Explanation:</b></p> <ol style="list-style-type: none"> <li>1. The including of the Charter of Fundamental Rights directly into the Treaty was supported by the vast majority of the Convention and of the Working Group II. The proposed wording is of a more solemn nature.</li> <li>2. The enabling clause for ECHR accession should be put in the Final Provisions of the Constitutional Treaty.</li> </ol>                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |

**AMENDMENT FORM****Suggestion for amendment of: Article 5****By: Lamberto Dini****Status : - Member**

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**Aim:**

Reformulate Article 5.1:

"The Charter of Fundamental Rights, **as set out in Chapter Two**, shall be an integral part of the Constitution.

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**Explanation :**

**It would be better for the Charter of Fundamental Rights to be inserted as a second part of the Constitution rather than annexed to it as a Protocol. In this respect, it is worth recalling that the American Bill of Rights was added two years after the adption of the US Constitution, with the enactment of the first ten amendments. Consequently, articles 8-9 ought to be redrafted, to avoid any redundancy.**



**AMENDMENT FORM****Suggestion for amendment of Article 5****By : G.M de Vries,****Th. J.A.M. de Bruijn,****J.J. van Dijk,****Status : Member, Alternate Members**

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**Article 5: Fundamental rights**

1. ~~The Charter of Fundamental Rights shall be an integral part of the Constitution. The Charter is set out [in the second part of/in a Protocol annexed to] this Constitution.~~<sup>1</sup>
2. The Union may accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Accession to that Convention shall not affect the Union's competences as defined by this Constitution.
3. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Charter of Fundamental Rights, and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.

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**Explanation (if any) :**

We can only consider integration of the Charter of Fundamental Rights into the Constitution, provided that this does not thereby become substantive EU law which could result in direct claims by citizens against their government.

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<sup>1</sup> ~~[The full text of the Charter, with all the drafting adjustments given in Working Group II's final report (CONV 354/02) will be set out either in a second part of the Constitution or in a Protocol annexed thereto, as the Convention decides.]~~

**AMENDMENT FORM****Suggestion for amendment of Article : 5****By Mr : CUSHNAHAN****Status : - Alternate (European Parliament Delegation)**

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**Article 5: Fundamental rights**

1. The Charter of Fundamental Rights ***shall be fully integrated into the Constitution.*** The Charter is set out ***in the second part of this Constitution.***

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**Explanation (if any) :**



**AMENDMENT FORM****Suggestion for amendment of Article: 5****By Mr Péter Balázs****Status :**      **Member**                      - **Alternate**

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**Article 5: Fundamental rights**

„3. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.”

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**Explanation (if any) :**

The appropriate enforcement necessitates the clear division of competencies between the two Courts (Luxembourg, Strassbourg).

**AMENDMENT FORM****Suggestion for amendment of Article : 5****By Ms / ~~Mr~~ : Dr. Sylvia-Yvonne Kaufmann****Status : - Member      ~~Alternate~~**

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**Artikel 5: Grundrechte**

(1) Die Charta der Grundrechte ist integraler Bestandteil **dieser** Verfassung. ~~Die Charta ist [im zweiten Teil dieser Verfassung/in einem dieser Verfassung beigefügten Protokoll] wiedergegeben.~~

~~(32)~~ Die Union kann der Europäischen Konvention zum Schutze der Menschenrechte und Grundfreiheiten **und anderen internationalen Konventionen zum Schutze der Menschenrechte** beitreten. ~~Der Beitritt zu dieser Konvention berührt nicht die in dieser Verfassung festgelegten Zuständigkeiten der Union.~~

~~(23)~~ Die Grundrechte, wie sie in der Europäischen Konvention zum Schutze der Menschenrechte und Grundfreiheiten gewährleistet sind und wie sie sich aus den gemeinsamen Verfassungsüberlieferungen der Mitgliedstaaten ergeben, gehören zu den allgemeinen Grundsätzen des **Gemeinschaftsrechts Verfassungsrechts der Union.**

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**Explanation (if any) :**

Abs. 1:

Die vollständige Wiedergabe des Wortlautes der Grundrechtecharta ist unverzichtbar. Darüber hinaus ist ein redaktioneller Verweis auf den Zweiten Teil unnötig und in einer Verfassung unüblich.

Absatz 2 und 3 sollten getauscht werden, da es sich bei Absatz 2 - anders als bei Absatz 1 und 3, die materielle Gewährleistungen enthalten - um eine Ermächtigungsgrundlage handelt.

Abs. 3 (ex-Abs. 2):

Die Union sollte die Möglichkeit haben, auch anderen Verträgen zum Schutz der Menschenrechte beizutreten.

**FICHE AMENDEMENT****Proposition d'amendement à l'Article 5:**

**Déposée par** M. Olivier DUHAMEL  
Mme Linda McAVAN  
M. Luis MARINHO  
Mme Anne VAN LANCKER  
M. Klaus HÄNSCH

**Qualité:** - Membres

Mme Pervenche BERÈS  
Mme Maria BERGER  
M. Carlos CARNERO  
Mme Helle THORNING-SCHMIDT

**Qualité:** - Suppléants

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**Article 5: Droits fondamentaux**

1. **Les droits fondamentaux de l'Union européenne sont énoncés dans la Charte des droits fondamentaux qui fait partie intégrante de la Constitution. Elle constitue la deuxième partie de la Constitution.**
  2. **A supprimer**
  3. **A supprimer**
- 

**Explication éventuelle:**

*La Charte des droits fondamentaux ne constitue pas un ajout à la Constitution, elle en sera une partie.*

*Sur la suppression du paragraphe 2 de l'article 5: l'attribution de la personnalité juridique à l'Union prévue dans l'article 4 et l'intégration de la Charte des droits fondamentaux dans la Constitution prévue dans l'article 5 paragraphe 1 devrait surmonter les obstacles à l'adhésion à la Convention européenne des droits de l'homme. Ceci répondrait aux exigences de la Cour de Justice.*

*Sur la suppression du paragraphe 3 de l'article 5: ceci devient superflu et source d'éventuels équivoques. Il répète le contenu de l'article 6 paragraphe 2 du Traité de l'UE qui deviendra obsolète après l'intégration de la Charte des droits fondamentaux dans la Constitution. En effet, les droits qui résultent des traditions constitutionnelles communes aux Etats membres ainsi que ceux qui sont garantis par la Convention européenne des droits de l'homme font déjà partie de la Charte, voir dans son préambule et dans ses articles 52 et 53.*

## AMENDMENT FORM

### Suggestion for amendment of Article 5

**By: Mr Józef Oleksy**

**Status: Member**

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Proposed Amendments:

Article 5: Fundamental rights

1. The Charter of Fundamental Rights shall be an integral part of the Constitution. The Charter is set out in the second part of this Constitution.

3. *delete*

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Explanation:

It is assumed that the Charter will become the second part of the Treaty. In addition to this, the deletion of para. 3 confirms the treaty legitimacy of the Charter of Fundamental Rights and not the European Convention on Human Rights ( ECHR ), which the Union may (or may not) choose to adapt . As the Charter of Fundamental Rights is raised to an act of constitutional rank and includes basic rights, including those, which the Court of Justice articulated in the form of general legal rules, questions arise as to why provisions on basis rights are kept as general rules.

**AMENDMENT FORM****Suggestion for amendment of Article 5 para 2****By Mr : MacCormick, Neil****Status : - Alternate**

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Article 5 para 2: insert 19 words :

The Union may accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms *and to other international agreements for the protection and promotion of human rights.*. Accession to *the European Convention or other like Conventions* shall not affect the Union's competences as defined by this Constitution.

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**Explanation (if any) :** *It is particularly urgent for the Union to accede to the European Convention, but there are other instruments to which it may be or become desirable to accede.*

**FICHE AMENDEMENT****Proposition d'amendement à l'Article : 5****Déposée par Madame ou Monsieur : Rt Hon David Heathcoat-Amory, MP****Qualité : - Membre ~~X~~ - Suppléant**

---

5.1 Delete

**Explication éventuelle**

**The integration of the Charter overturns the consensus reached by its authors. Integrating the text establishes a new legal hierarchy. It sets European law against established national practice, and creates immense legal uncertainty which can only be settled through the ECJ acting as a constitutional arbiter, a role for which it was manifestly not established.**

5.2 Delete

**Explication éventuelle**

**This creates ambiguity of institutions, between the ECJ and the ECHR.**

5.3 Delete

**Explication éventuelle**

**As the explanatory note explicitly states, this article is intended to expand Union competences by case law, and not through the treaties. This is most undemocratic. A better and simpler solution would be to require members of the Union to be signatories of the European Convention on Human Rights.**

**FICHE AMENDEMENT****Proposition d'amendement à l'Article : 5****Déposée Monsieur : Hannes FARNLEITNER****Qualité : - Membre**

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5. 1

[..]

The Charter of Fundamental Rights shall be an integral part of the Constitution. The Charter is set out [in the first ~~second~~ part of ~~in a Protocol annexed to~~] this Constitution.

---

**Explication:**

In accordance with the recommendations of Working Group II (see pages 3 and 6 of CONV 354/02) the text of the Charter Articles should be inserted “at the beginning of the Constitutional Treaty” (therefore into the **first part** of the Constitution). If the Plenary intends not to follow this recommendation of “a large majority of the Group” the Charter should be annexed to the Constitution as a Protocol.

Art. 5 para 2 should in any case remain in part one of the Constitution.

## FICHE AMENDEMENT

### Proposition d'amendement à l'Article : 5

**Déposée par Madame ou Monsieur : M. Louis Michel, M. Karel de Gucht, M. Elio di Rupo, Mme Anne Van Lancker, membres de la Convention et M. Pierre Chevalier et Mme Marie Nagy, membres suppléants de la Convention**

**Qualité : - Membre - Suppléant**

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1. La Charte des Droits Fondamentaux fait partie intégrante de la Constitution. La Charte figure **dans la deuxième partie** de  ~~dans un protocole annexé à ]~~ de celle-ci.
  2. L'Union peut adhérer à la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales **ainsi qu'à d'autres accords internationaux de protection des droits fondamentaux**. L'adhésion à cette Convention **ou à ces accords** ne modifie pas les compétences de l'Union telles que définies par la présente Constitution
  3. Les droits fondamentaux, tels qu'ils sont garantis par la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales et tels qu'ils résultent des traditions constitutionnelles communes aux Etats membres, font partie du droit de l'Union en tant que principes généraux.
- 

### Explication éventuelle :

1. Même si l'intégration de la Charte dans une deuxième partie ou dans un Protocole n'emporte pas en elle-même des implications juridiques, il reste que la Charte doit, en raison de son importance, être intégrée dans le corps même de la Constitution et ne peut donc être reléguée dans un document annexée à celle-ci.
2. Outre la possibilité d'une adhésion de l'Union à la Convention européenne des droits de l'homme, la Constitution devrait prévoir que l'Union puisse adhérer à d'autres instruments de protection des droits fondamentaux.



**FICHE AMENDEMENT****Proposition d'amendement à l'Article 5****Déposée par Monsieur Eckstein-Kovács Péter****Qualité : - Membre suppléant**

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**Article 5 nouvelle Para 2b) :**

L'Union peut adhérer à la Convention-cadre pour la protection des minorités nationales, à la Charte des langues régionales ou minoritaire du Conseil de l'Europe et à la Charte européenne de l'autonomie locale. L'adhésion à cette Convention ne modifie pas les compétences de l'Union telles que définies par la présente Constitution.

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**AMENDMENT FORM****Suggestion for amendment of Article 5.1, Title II**

**By : Mr.V.P.Andriukaitis (LT Parl., Status-Member), Mr.A.Gricius (LT Parl., Status-Member), Mr. O.Jusys (LT Gov., Status-Alternate), Mr. R.Martikonis (LT Gov., Status-Member)**

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Insert the text of Charter:

Propose full insertion of the text of the Charter articles in Title I or II.

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**Explanation (if any) :**

Fundamental rights should go first reflecting adequately the constitutional status.  
Follow majority agreement in the Working Group II.

**AMENDMENT FORM****Suggestion for amendment of Article : 5****By Mr Hain****Status : Member**

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1. The Union recognises the rights, freedoms and principles in the Charter of Fundamental Rights. The scope, applicability and legal effect of the Charter are described in Part VII of that Charter.
  2. The Union may accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Accession to that Convention shall not extend the Union's competences as defined by this Constitution.
  3. See comment below.
- 

**Explanation (if any) :**

*We cannot accept the Charter of Fundamental Rights being ‘an integral part of the Constitution’ as it stands.*

*In paragraph 2, I have replaced ‘affect’ by ‘extend’ for clarity. The paragraph confers a power upon the Union to accede to the ECHR but it does not address the issue of the Union procedures applicable to ECHR accession. The modalities of accession would need to be discussed in detail at a later date, at which time we would need to ensure our derogations were protected. The agreement of the Contracting Parties to the ECHR to an amendment to the ECHR to enable Union accession would also be needed.*

*The point in paragraph 3 is currently a principle of Community case law – and would be better remaining as such. Its formalisation here could have implications for CFSP, as it is extended from a principle of the Community to a principle of the Union.*

**AMENDMENT FORM****Suggestion for amendment of Article 5: Fundamental rights****By Mr Dick Roche, Representative of the Government of Ireland****Status : Member**

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**Article 5: Fundamental rights - paragraph 1**

1. The Charter of Fundamental Rights shall be an integral part of the Consitution. The Charter is set out ~~[in the second part of /~~in a Protocol annexed to]this Constitution. **The Charter shall not affect the Union's competences as defined elsewhere in this Constitution.**

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**Explanation (if any) :**

Without prejudice to the political decision to be reached as to *whether* the Charter is to be incorporated, if it is to be incorporated, for reasons of simplicity and clarity, it should be included in a Protocol to the Treaty.

Article 5.1, in keeping with the wording of Article 5.2, should reflect the fact that incorporation of the Charter shall respect the limits of the powers of the Union as conferred on it by other parts of the Treaty.

The question of the standing of the commentary drawn up by the Praesidium of the Charter Convention must also be addressed in a satisfactory way in the drafting of the relevant further part of the Constitution.

**AMENDMENT FORM****Suggestion for amendment of Article : 5****By Mr. Lennmarker****Status : X Member**

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**Article 5: Fundamental rights**

1. The Charter of Fundamental Rights shall be an integral part of the Constitution. The Charter is set out [in the second part of/in a Protocol annexed to] this Constitution.

2. The Union may accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. ~~Accession to that Convention shall not affect the Union's competences as defined by this Constitution.~~

**3. Neither the Charter, nor an accession to the European Convention, shall affect the Union's competences as defined by this Constitution.**

4. ~~3-~~ Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.

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**Explanation:**

The competences of the Union are defined by the Constitution and neither the Charter of Fundamental Rights nor an accession to the European Convention should affect these competences. It should not be possible to use the Charter or the European Convention as means to expand the competences of the Union.

**AMENDMENT FORM 3****Option in Article 5**

**By: M.J.CHABERT**  
**M.M.DAMMEYER**  
**M.P.DEWAEL**  
**Ms. C.du GRANRUT**  
**M. C.MARTINI**  
**M.R.VALCARCEL SISO**

**Status : - ~~Member~~ - ~~Alternate~~ - Observer**

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**"FUNDAMENTAL RIGHTS"**

**The Committee of the Regions prefers the incorporation of the Charter of Fundamental Rights *in the second part* of this Constitution.**

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**Explanation:**

**FICHE AMENDEMENT****Proposition d'amendement à l'Article : 5****Déposée par Monsieur : Danny Pieters****Qualité : - Suppléant : Kamer van Volksvertegenwoordigers - België**

---

Vraag

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**Explication éventuelle :**

2.1. Artikel 5 combineert eigenlijk 3 grondrechtencatalogi: is dit niet wat veel en gaat het resultaat geen juridisch kluwen geven? Hier lijkt verduidelijking geboden.

2.2. Wat bv. als de diverse catalogi andere beperkingen van deze grondrechten toelaten? Gaan we dan de meest verregaande of de minst verregaande toepassen?

**AMENDMENT FORM****Suggestion for amendment of Article : 5 (2)****By Mr : SÖDERMAN****Status : Observer**

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The Union may accede to ~~the European Convention for the Protection of Human Rights and Fundamental Freedoms~~ **international agreements for the protection and promotion of human rights**. Accession to ~~that Convention~~ shall not affect the Union's competences as defined by this Constitution.

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**Explanation (if any) :**

The possibility for the Union to accede to the ECHR is greatly to be welcomed. As currently drafted, however, this Article would prevent the Union from acceding to international human rights agreements developed by, for example, the United Nations and the ILO. Nor could the Union accede to other Council of Europe conventions.

The question of whether the Union should accede to international human rights agreements is a matter of policy. The Constitution should leave the matter open, to be debated on a case-by-case basis, as is the situation in the Member States.



## FICHE AMENDEMENT

### Proposition d'amendement à l'Article : 5

Déposée par M. Hubert HAENEL, membre, et M. Robert BADINTER, suppléant.

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#### Article 5 : Droits fondamentaux

1. La Charte des Droits Fondamentaux *est* partie intégrante de la Constitution. ~~La Charte figure [dans la deuxième partie de / dans un protocole annexé à] de celle-ci.~~

2. Supprimé.

3. Supprimé.

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#### Explication éventuelle :

2. Dès lors que l'Union dispose de la personnalité juridique, elle peut adhérer à la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales. Il est donc inutile de le préciser dans la Constitution.

3. Dès lors que la Charte est intégrée dans la Constitution, cet alinéa n'est plus nécessaire.

**AMENDMENT FORM****Suggestion for amendment of Article : Artículo 5****By Ms / Mr : Borrell (miembro), Carnero y López Garrido (miembros suplentes)****Status :    - Member            - Alternate**

---

En el punto 3, suprimir "como principios generales"

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**Explanation (if any) :**

**AMENDMENT FORM****Suggestion for amendment of Article : Artículo 5****By Ms / Mr : Borrell (miembro), Carnero y López Garrido (miembros suplentes)****Status :    - Member            - Alternate**

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El punto 1 quedaría así: "1. La Carta de Derechos Fundamentales forma parte integrante de la Constitución. Esta Carta figura en su segunda parte."

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**Explanation (if any) :**

**FICHE AMENDEMENT****Proposition d'amendement à l'Article 5**

*Déposée par Monsieur William ABITBOL*

**Qualité : Suppléant**

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**Titre II : De la citoyenneté de l'Union****Article 5 :**

L'Union respecte la Charte des droits fondamentaux, annexée au présent traité, et la Convention européenne de sauvegarde des Droits de l'Homme et des libertés fondamentales.

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**Explication éventuelle :**

Ce texte remplace l'ensemble du texte original de l'article visé

**AMENDMENT FORM****Suggestion for amendment of Article : 5****By Mr : František Kroupa****Status : Alternate**

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The 2<sup>nd</sup> sentence in para. 1 sounds :

1. ....The Charter is set out in a Protocol annexed to this Constitution.

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**Explanation (if any) :**

**AMENDMENT FORM****Suggestion for amendment of Article : I-7****By Ms / ~~Mr~~ : Dr. Sylvia-Yvonne Kaufmann****Status : - Member - ~~Alternate~~**

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**Artikel I-7: Grundrechte**

(1) Die ~~Union erkennt die Rechte, Freiheiten und Grundsätze an~~ **Bestimmungen**, die in der Charta der Grundrechte als dem zweiten Teil dieser Verfassung enthalten sind, **stellen unmittelbares Recht dar**.

(2) Die Union strebt den Beitritt zur Europäischen Konvention zum Schutze der Menschenrechte und Grundfreiheiten an **und kann anderen internationalen Konventionen zum Schutze der Menschenrechte beitreten**. Der Beitritt zu dieser Konvention berührt nicht die in dieser Verfassung festgelegten Zuständigkeiten der Union.

(3) Die Grundrechte, wie sie in der Europäischen Konvention zum Schutze der Menschenrechte und Grundfreiheiten gewährleistet sind und wie sie sich aus den gemeinsamen Verfassungsüberlieferungen der Mitgliedstaaten ergeben, gehören zu den allgemeinen Grundsätzen des Unionsrechts.

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**Explanation (if any) :****Absatz 1:**

Die bloße Anerkennung der Bestimmungen des Teils II der Verfassung durch die Union wird dem Stellenwert, der der Grundrechtecharta eingeräumt werden soll, nicht gerecht. Diese Rechte sollen gerade keine bloßen Programmsätze der Union darstellen. Die Bestimmung muss vielmehr unmissverständlich zum Ausdruck bringen, dass die Grundrechtecharta unmittelbar geltendes Recht darstellt, das von der Union strikt einzuhalten ist.

**Absatz 2:**

Die vom Präsidium vertretene Auslegung, wonach dem Gutachten 2/94 des EuGH zu entnehmen sei, dass es für den Beitritt zu anderen internationalen Menschenrechtskonventionen keiner besonderen Rechtsgrundlage bedarf, ist keineswegs zwingend. Um der Union dies unzweifelhaft zu erlauben, sollte Absatz 2 deshalb um diese Möglichkeit ergänzt werden.



**THE EUROPEAN CONVENTION**  
THE SECRETARIAT

**Brussels, 12 June 2003**

**WG II**

**Working document 28**

**Note for the Members of Working Group II**

**Subject: Reactions of Working Group members to Document WD II 27 (consolidated and updated Explanations on the Charter)**





Prof. Dr. Jürgen Meyer

Delegierter des Deutschen Bundestags  
im Verfassungskonvent der Europäischen Union

Prof. Dr. Jürgen Meyer, · Büro Berlin · Unter den Linden 50 · 4.101

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**Berlin**

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10. Juni 2003

— Herrn

Clemens Ladenburger

Sekretariat des Europäischen Konvents

Per email

clemens.ladenburger@consilium.eu.int

Sehr geehrter Herr Ladenburger,

vielen Dank für Ihr Schreiben vom 3. Juni 2003 und die Vorschläge zur Anpassung der Erläuterungen zum Chartatext.

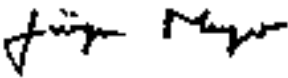
Für überzeugend halte ich die Überarbeitung der Erläuterungen mit Blick auf die im Europäischen Konvent bereits erzielten Integrationsfortschritte. Ebenso entsprechen die sprachlichen Klarstellungen und die Anpassung der Referenzen zur Rechtsprechung des EuGH dem von der Arbeitsgruppe II verfolgten Ziel, die Erläuterung als Interpretationshilfe für die Chartabestimmungen zu aktualisieren.

Nicht akzeptabel ist für mich als Mitglied des ersten und des zweiten Konvents allerdings die veränderte Formulierung zum rechtlichen Status der Erläuterungen. Die im Grundrechtekonvent gefundene Formel war Teil des schwierigen Endkompromisses und sollte von zweiten Konvent schon aus Respekt vor der Erarbeitung der Grundrechtecharta nicht wieder aufgeschnürt werden.

Darüber hinaus hat es zu keiner Zeit unter den Delegierten des Europäischen Konvents eine mehrheitlich getragene Zustimmung zu einer Veränderung der Eingangsformel der Erläuterungen gegeben. Ausserdem waren die Erklärungen inhaltlich nicht Gegenstand der Beratungen im ersten oder zweiten Konvent.

Ich halte es nicht für wünschenswert, die von vielen Delegierten politisch nicht gewollte Andeutung einer Aufwertung der Erläuterungen durch die technische Überarbeitung in den Text aufzunehmen. Dies gilt umso mehr mit Blick auf eine eventuelle spätere Erklärung der Regierungskonferenz zu den Charta-Erläuterungen.

Mit freundlichen Grüßen



(Meyer)

À l'attention du Commissaire

M. Antonio VITORINO

President GT II

Monsieur le Commissaire,

faisant suite à la note WGII 27 du 3 juin dernier, je tiens à vous féliciter vivement pour le soin avec lequel le travail a été fait. Personnellement, je ne partage pas la thèse, soutenue à la page 63 de la version française, concernant la distinction nette qu'il y aurait entre "droits" et "principes". Je crois, au contraire, qu'il s'agit d'une distinction partiellement dépassée, pas seulement par la doctrine, mais aussi par la jurisprudence constitutionnelle (cfr. par exemple, l'arrêt de la Cour Constitutionnelle italienne n. 309 du 16 juillet 1999 en matière de droit à la santé).

Néanmoins, je reconnais que mon opinion n'est pas importante, puis qu'il s'agit d'un travail confié exclusivement à la responsabilité des fonctionnaires-juristes et qui n'est pas soumis à la discussion et à l'approbation de la Convention. Pour cette raison, aucun renvoi et aucune mention à ce précieux travail ne peuvent être faits dans le traité constitutionnel ou, en général, dans des actes ayant une valeur juridique contraignant pour les institutions de l'Union et/ou des Etats membres.

Meilleures salutations.

Elena PACIOTTI

On. Elena PACIOTTI

Deputata al Parlamento europeo

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**Commissioner Antonio Vitorino**  
**European Parliament**  
**Rue Wiertz,**  
**B-1047 Brussels**

10 June 2003

### **Technical Explanations to the Charter of Fundamental Rights**

Thank you for your note of 3 June (WG II 27) consulting Members of Working Group about your proposed changes to the original texts of the technical Explanations to the Charter of Fundamental Rights. I attach a note detailing some specific concerns. They are relatively few in number and this reflects, if I may say so, the typically thorough and sensitive work which has been done by you and the Secretariat

As you know, the Explanations have always been a key element in my Government's consideration of the Charter. Given the tightness of the deadline, compounded by all our other tasks and absences due to the Convention I hope you will understand it if I find that I need to revert to you later on this topic after I have completed necessary further consultation with my Ministerial colleagues.

In that context, there are two general points about WG II 27 which I should like to make in this covering letter. First, as regards the identification of “principles” within the meaning of Article 52(5), it remains my Government’s view that it would be very desirable to offer a full list of the pure and hybrid principles that may be found in the Charter. Even if that is not possible we believe that the Explanations to Articles 21, 23, 25, 28, 30, 31, 32, 33 and 34(3) should mention the word principles or refer to 52(5). At the very least two examples of each type of principle under 52(3) should be offered. I propose that Articles 25 and 28 are given in the Explanation to 52(5) as examples of pure principles, and that the other example given of a hybrid principle is Article 21, not Article 33.

My second general point concerns the legal status of the Explanations. As you know, we have discussed this and I have also spoken to some other members of the Working Group. It seems to me that if the Convention is to choose legal incorporation of the Charter into the Constitution, we must ensure reference to the Explanations. In particular, I believe that we need a reference in the Constitution, recognising the interpretative status of the technical Explanations and indicating where they may be found. You say in your note that the Courts must have due regard to the Explanations when interpreting the law concerned. Specific provision is needed to ensure that outcome.

1. BARONESS SCOTLAND QC



## **AMENDED EXPLANATIONS: DETAILED COMMENTS FROM UK**

### **Art 14**

For the sake of avoidance of doubt it would be helpful to insert “or vocational and continuing training” in line 6 of the second paragraph after “which provide private education”.

### **Art 18**

It would be desirable to clarify still further that, in accordance with Article 52(2), this Article is subject to the conditions and limits in [III-162].

### **Art 21**

Replace sentence beginning “Such legislation” with “Such legislation may cover action of MS authorities (as well as relations between private individuals) in any area within the scope of EU law.”

### **Art 47**

An important linguistic point, already accepted in the provisions on the Court elsewhere in the Constitution, “the appeal system laid down by the Treaties” should be “the system of judicial review laid down by the Treaties”. Also, in the third sentence it would be more accurate here to say “general principle of Union law” rather than “right”.

### **Art 52 (which should be re-titled in the interests on accuracy, perhaps “Interpretation”)**

- In the second paragraph, “merely been restated” should be clarified: after “Paragraph 2 clarifies that” delete the remainder of the sentence and insert “that rights which were based on the TEC or TEU, and which are now found in other parts of this Constitution, remain subject to the conditions and limits now made in Parts I and III of this Constitution or Union acts made thereunder”.
- In the Explanation to 52(3) I propose that we should replace “Union legislation” with “Union law” and delete (ii) altogether.
- In the Explanation to 52(4) we consider that the last sentence should be withdrawn, leaving the substantive provision to speak for itself.

- In the Explanation to 52(5) it would be more accurate to say “principles may be implemented” (rather than “are” implemented); and in the following sentence to say that “they become significant for the Courts only when acts implementing the principles are interpreted or reviewed.”

### **Minor linguistic points**

- “have been drafted” (e.g. in line 4 of the Explanation to 51) reads oddly in English. “was drafted” would be preferable and this method could helpfully be employed throughout.
- there are some other minor points which we will pass on direct to the Secretariat.



Dear Mr Ladenburger

Many thanks to Mr Vitorino and yourself for excellent work in the paper concerning the Explanations of the Charter and on the revised Explanations themselves.

I want to record my entire satisfaction with the work that has been done. I have no amendment of substance to propose.

As I said to you last Thursday, however, it occurred to me in a conversation with Lady Scotland (to whom I am copying this) that an allusion to the Explanations in Part IV of the Treaty might be of value. My suggestion would be for an added Article IV-5 bis:

'The Explanations of the Charter annexed to the Constitution do not form part of it, and do not constitute binding law, but are recognised as a valuable [perhaps 'an authoritative'] tool of interpretation of the Articles of the Charter that comprise Part II of the Constitution.'

Yours sincerely

Neil MacCormick

Mr Antonio Vitorino,  
Praesidium of the European Convention,  
Brussels.

10 June 2003

Dear Antonio,

I am most grateful for your very helpful note of 3 June (WG II 27) concerning your proposed changes to the original texts of the Explanations to the Charter of Fundamental Rights.

The recognition in the Explanations that they are a valuable tool of interpretation of the Charter's provisions is important. As you are aware, they are an essential element in my Government's approach to incorporation of the Charter as a legally binding catalogue of fundamental rights.

The updating of the Explanations and the granting to them of appropriate legal recognition was a crucial element in the compromise reached at the Working Group. As you have acknowledged, it will be necessary for the Courts to have regard to and to take full account of the Explanations of the Charter provisions when interpreting any of its elements. Hence, when the text of the Explanations is finalised, it will be essential to ensure that they are given an explicit legal reference in an appropriate context in the Treaty. It is important that this matter be resolved at the Convention.

I fully support the amendments to the Explanations which you have proposed and we consider them to be both necessary and helpful. I wish to propose some additional amendments which would improve the text. I have also proposed a technical amendment to the Charter's Preamble and to Article 41 of the Charter (as reworded by you). These proposals are attached.

Yours sincerely,

Bobby McDonagh

**EXPLANATIONS OF THE TEXT OF THE CHARTER OF FUNDAMENTAL RIGHTS -  
AMENDMENTS PROPOSED BY MR BOBBY MCDONAGH**

Amendments are proposed below to the Charter’s Preamble; to aspects of the Explanations; and to Article 41 of the Charter (as amended).

Proposed new wordings are in italics and bold lettering.

**AMENDMENT TO PREAMBLE**

**Fifth paragraph to read:**

“This Charter reaffirms, with due regard for the powers and tasks of the Union and the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, *Parts I and III of the Constitution*, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Union and by the Council of Europe and the case law of the Court of Justice of the European Union and of the European Court of Human Rights”.

**Reason:**

The references to the EC and EU Treaties have been deleted and not replaced with anything. It would be preferable to insert a reference to (*the other parts of the Constitution*) or (*Parts I and III of the Constitution*)

**AMENDMENTS TO EXPLANATIONS**

**ARTICLE 2.2**

In paragraph 2 of the Explanations after the words in quotes , viz: “The death penalty shall be abolished. No-one shall be condemned to such penalty or executed”, add – *Article 1 of Protocol*

*No. 13 reiterates that provision.*

**Reason:**

The references to the death penalty in the Explanations could be updated in light of the fact that Protocol 13 to the ECHR will enter into force on 1 July 2003. The Protocol has been signed or ratified by all EU Member States and acceding States and it removes for States Parties thereto the possibility of retaining the death penalty in respect of acts committed in time of war or of imminent threat of war.

**ARTICLE 21**

The second paragraph should be replaced by the following – *There is no contradiction or incompatibility between paragraph 1 and Article (III-5) of the Constitution which has a different purpose and scope: Article (III-5) provides, without prejudice to the other provisions of the Constitution and within the limits of the powers conferred by it on the Union, a legal base for the adoption by the Union of legislative acts, including harmonisation of the Member States’ laws and regulations, to combat certain forms of discrimination, listed exhaustively in that Article. Such legislation may cover action of Member State authorities as well as relations between private individuals. In contrast, the provision in paragraph 1 does not create any power to enact anti-discrimination laws. It only addresses discrimination by the institutions, bodies and agencies of the Union themselves, when exercising powers conferred under other Articles of Parts I and III of the Constitution and by Member States only when they are implementing Union law. Paragraph 1 therefore does not alter the extent of the powers granted under Article (III-5) nor the interpretation given to that Article.*

**Reason:**

The explanation, when seeking to distinguish Article III – 5 of the Constitution from Article 21 of the Charter, gives an overly expansive definition of the Union’s competence under the former.

**ARTICLE 52.5**

**Amend the first sentences of paragraph 5 to read:**

“Paragraph 5 clarifies the distinction between “rights” and “principles” set out in the Charter. According to that distinction, subjective rights shall be respected, whereas principles shall be observed (Article 51.1). *Where parts I and III of the Constitution provide a legal base for legislative action*, principles *may be* (delete are) implemented through legislative or executive acts; accordingly they become significant for the courts when such Acts are interpreted or reviewed. They do not however give rise to direct claims for positive action by the Union’s institutions or Member States authorities.”

**Amend the final sentence of paragraph 5** to change the examples / illustrations of principles recognised the Charter (given as Articles 26 and 37) to include **Article 28** (collective bargaining) as an example of a principle. This could be added or, if necessary to limit to two examples, substituted for Article 37.

**Reason:**

These amendments would bring greater clarity to the Explanations.

**AMENDMENT TO ARTICLE 41 OF THE CHARTER (AS AMENDED)**

**Article 41, paragraph 4** should be reworded as follows – “*Every person may write to the Institutions of the Union in one of the languages of the Treaty establishing the Constitution and must have an answer in the same language.*”

**Reason:**

This clarification, which has been agreed with the Secretariat, is designed to maintain the current status of the Irish language in accordance with the existing Treaty arrangements. A similar amendment has been agreed to Article I-8 of the Constitutional Treaty.

Manuel Lobo Antunes (9/06/03 15:37):

›1. On the documents transmitted, I have the following comments:

›a) on the Charter- article 42 (access to documents) could be completed with a reference to the text of nr 4 of the draft article 49-I, as to make clear that some limits could be imposed by law on the access to certain documents (vg documents emanated from Europol, Eurojust or the future Public Preosecutor) for reasons of private or public interest;

›2. I can accept the text of the draft updated explanations.

›3. I continue to believe that the explanations should serve exclusively as a tool of interpretation of the Charter.

›Best Regards,

›Manuel Lobo Antunes

›Gov. Alternate

›Member of the WG on the Charter

Dear Mr. Vitorino,

I sincerely welcome your efforts to update the Explanations. I believe that the proposed amendments will clarify the important and complex issues of the scope, interpretation and application of the Charter. I completely agree with you that attention should be drawn in an appropriate manner to the Explanations and that they should be publicised more widely, so that courts and citizens can get access to this excellent tool for interpretation of the Charter. I also agree with your suggestion to use a more precise formula regarding the value of the Explanations. The courts should have due regard to the Explanations when interpreting the Charter.

Best regards,

Ingvar Svensson  
Member of Working Group II

Editors' note to CONV 797/1/03 REV 1,  
**Text of Part I and Part II of the Constitution**  
**[Extracts]:**

INIT version was dated 10 June 2003.



**THE EUROPEAN CONVENTION**

THE SECRETARIAT

**Brussels, 12 June 2003****CONV 797/1/03****REV 1****VOLUME I****COVER NOTE**

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|                  |                                                                            |
|------------------|----------------------------------------------------------------------------|
| from :           | Praesidium                                                                 |
| to :             | Convention                                                                 |
| No. prev. doc. : | CONV 722/03, CONV 724/1/03 REV 1, CONV 725/03 ,CONV 770/03,<br>CONV 811/03 |
| Subject :        | <b>Text of Part I and Part II of the Constitution</b>                      |

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Members of the Convention will find attached the text of :

- Part I of the Constitution, preceded by the Preamble,
- Part II (Charter of Fundamental Rights),
- Protocol on the role of national parliaments in the European Union,
- Protocol on the application of the principles of subsidiarity and proportionality,

with a view to the plenary session of 13 June 2003.

## PART ONE

### **TITLE I: DEFINITION AND OBJECTIVES OF THE UNION**

#### **Article I-1: Establishment of the Union**

1. Reflecting the will of the citizens and States of Europe to build a common future, this Constitution establishes the European Union, on which the Member States confer competences to attain objectives they have in common. The Union shall coordinate the policies by which the Member States aim to achieve these objectives, and shall exercise in the Community way the competences they confer on it.
2. The Union shall be open to all European States which respect its values and are committed to promoting them together.

#### **Article I-2: The Union's values**

The Union is founded on the values of respect for human dignity, liberty, democracy, equality, the rule of law and respect for human rights. These values are common to the Member States in a society of pluralism, tolerance, justice, solidarity and non-discrimination.

## **TITLE II: FUNDAMENTAL RIGHTS AND CITIZENSHIP OF THE UNION**

### **Article I-7: Fundamental rights**

1. The Union shall recognise the rights, freedoms and principles set out in the Charter of Fundamental Rights which constitutes the Second Part of this Constitution.
2. The Union shall seek accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Accession to that Convention shall not affect the Union's competences as defined in this Constitution.
3. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.

### **Article I-8: Citizenship of the Union**

1. Every national of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to national citizenship; it shall not replace it.
2. Citizens of the Union shall enjoy the rights and be subject to the duties provided for in this Constitution. They shall have:
  - the right to move and reside freely within the territory of the Member States;
  - the right to vote and to stand as candidates in elections to the European Parliament and in municipal elections in their Member State of residence, under the same conditions as nationals of that State;

## PART TWO

### THE CHARTER OF FUNDAMENTAL RIGHTS OF THE UNION

#### PREAMBLE

The peoples of Europe, in creating an ever closer union among them, are resolved to share a peaceful future based on common values.

Conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law. It places the individual at the heart of its activities, by establishing the citizenship of the Union and by creating an area of freedom, security and justice.

The Union contributes to the preservation and to the development of these common values while respecting the diversity of the cultures and traditions of the peoples of Europe as well as the national identities of the Member States and the organisation of their public authorities at national, regional and local levels; it seeks to promote balanced and sustainable development and ensures free movement of persons, goods, services and capital, and the freedom of establishment.

To this end, it is necessary to strengthen the protection of fundamental rights in the light of changes in society, social progress and scientific and technological developments by making those rights more visible in a Charter.

This Charter reaffirms, with due regard for the powers and tasks of the Union and the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Union and by the Council of Europe and the case law of the Court of Justice of the European Union and of the European Court of Human Rights. In this context the Charter will be interpreted by the courts of the Union and the Member States with due regard to the explanations prepared at the instigation of the Praesidium of the Convention which drafted the Charter.

Enjoyment of these rights entails responsibilities and duties with regard to other persons, to the human community and to future generations.

The Union therefore recognises the rights, freedoms and principles set out hereafter.

**TITLE I****DIGNITY**Article II-1  
Human dignity

Human dignity is inviolable. It must be respected and protected.

Article II-2  
Right to life

1. Everyone has the right to life.
2. No one shall be condemned to the death penalty, or executed.

Article II-3  
Right to the integrity of the person

1. Everyone has the right to respect for his or her physical and mental integrity.
2. In the fields of medicine and biology, the following must be respected in particular:
  - (a) the free and informed consent of the person concerned, according to the procedures laid down by law,
  - (b) the prohibition of eugenic practices, in particular those aiming at the selection of persons,
  - (c) the prohibition on making the human body and its parts as such a source of financial gain,
  - (d) the prohibition of the reproductive cloning of human beings.

Article II-4  
Prohibition of torture and inhuman or degrading treatment or punishment

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Article II-5  
Prohibition of slavery and forced labour

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. Trafficking in human beings is prohibited.

**TITLE II****FREEDOMS**

Article II-6  
Right to liberty and security

Everyone has the right to liberty and security of person.

Article II-7  
Respect for private and family life

Everyone has the right to respect for his or her private and family life, home and communications.

Article II-8  
Protection of personal data

1. Everyone has the right to the protection of personal data concerning him or her.
2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.
3. Compliance with these rules shall be subject to control by an independent authority.

Article II-9  
Right to marry and right to found a family

The right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights.

Article II-10  
Freedom of thought, conscience and religion

1. Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.
2. The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right.

## Article II-11

## Freedom of expression and information

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.
2. The freedom and pluralism of the media shall be respected.

## Article II-12

## Freedom of assembly and of association

1. Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests.
2. Political parties at Union level contribute to expressing the political will of the citizens of the Union.

## Article II-13

## Freedom of the arts and sciences

The arts and scientific research shall be free of constraint. Academic freedom shall be respected.

## Article II-14

## Right to education

1. Everyone has the right to education and to have access to vocational and continuing training.
2. This right includes the possibility to receive free compulsory education.
3. The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right.

## Article II-15

## Freedom to choose an occupation and right to engage in work

1. Everyone has the right to engage in work and to pursue a freely chosen or accepted occupation.
2. Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State.
3. Nationals of third countries who are authorised to work in the territories of the Member States are entitled to working conditions equivalent to those of citizens of the Union.

## Article II-16

## Freedom to conduct a business

The freedom to conduct a business in accordance with Union law and national laws and practices is recognised.

## Article II-17

## Right to property

1. Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law insofar as is necessary for the general interest.
2. Intellectual property shall be protected.

## Article II-18

## Right to asylum

The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Constitution.



## Article II-19

## Protection in the event of removal, expulsion or extradition

1. Collective expulsions are prohibited.
2. No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.

**TITLE III****EQUALITY**

## Article II-20

## Equality before the law

Everyone is equal before the law.

## Article II-21

## Non-discrimination

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.
2. Within the scope of application of the Constitution and without prejudice to any of its specific provisions, any discrimination on grounds of nationality shall be prohibited.

## Article II-22

## Cultural, religious and linguistic diversity

The Union shall respect cultural, religious and linguistic diversity.

## Article II-23

## Equality between men and women

Equality between men and women must be ensured in all areas, including employment, work and pay.

The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.

## Article II-24

## The rights of the child

1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.
2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.
3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.

Article II-25  
The rights of the elderly

The Union recognises and respects the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life.

Article II-26  
Integration of persons with disabilities

The Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.

**TITLE IV**  
**SOLIDARITY**

Article II-27  
Workers' right to information and consultation within the undertaking

Workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions provided for by Union law and national laws and practices.

## Article II-28

## Right of collective bargaining and action

Workers and employers, or their respective organisations, have, in accordance with Union law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action.

## Article II-29

## Right of access to placement services

Everyone has the right of access to a free placement service.

## Article II-30

## Protection in the event of unjustified dismissal

Every worker has the right to protection against unjustified dismissal, in accordance with Union law and national laws and practices.

## Article II-31

## Fair and just working conditions

1. Every worker has the right to working conditions which respect his or her health, safety and dignity.
2. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

## Article II-32

## Prohibition of child labour and protection of young people at work

The employment of children is prohibited. The minimum age of admission to employment may not be lower than the minimum school-leaving age, without prejudice to such rules as may be more favourable to young people and except for limited derogations.

Young people admitted to work must have working conditions appropriate to their age and be protected against economic exploitation and any work likely to harm their safety, health or physical, mental, moral or social development or to interfere with their education.

Article II-33  
Family and professional life

1. The family shall enjoy legal, economic and social protection.
2. To reconcile family and professional life, everyone shall have the right to protection from dismissal for a reason connected with maternity and the right to paid maternity leave and to parental leave following the birth or adoption of a child.

Article II-34  
Social security and social assistance

1. The Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by Union law and national laws and practices.
2. Everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with Union law and national laws and practices.
3. In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Union law and national laws and practices.

Article II-35  
Health care

Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities.

Article II-36  
Access to services of general economic interest

The Union recognises and respects access to services of general economic interest as provided for in national laws and practices, in accordance with the Constitution, in order to promote the social and territorial cohesion of the Union.

Article II-37  
Environmental protection

A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.

Article II-38  
Consumer protection

Union policies shall ensure a high level of consumer protection.

**TITLE V**  
**CITIZENS' RIGHTS**

Article II-39  
Right to vote and to stand as a candidate at elections to the European Parliament

1. Every citizen of the Union has the right to vote and to stand as a candidate at elections to the European Parliament in the Member State in which he or she resides, under the same conditions as nationals of that State.
2. Members of the European Parliament shall be elected by direct universal suffrage in a free and secret ballot.

Article II-40  
Right to vote and to stand as a candidate at municipal elections

Every citizen of the Union has the right to vote and to stand as a candidate at municipal elections in the Member State in which he or she resides under the same conditions as nationals of that State.

Article II-41  
Right to good administration

1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies and agencies of the Union.
2. This right includes:
  - (a) the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;
  - (b) the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;
  - (c) the obligation of the administration to give reasons for its decisions.
3. Every person has the right to have the Union make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.
4. Every person may write to the institutions of the Union in one of the languages of the Constitution and must have an answer in the same language.

Article II-42  
Right of access to documents

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of the institutions, bodies and agencies of the Union, in whatever form they are produced.

Article II-43  
Ombudsman

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to refer to the Ombudsman of the Union cases of maladministration in the activities of the institutions, bodies or agencies of the Union, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role.

Article II-44  
Right to petition

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to petition the European Parliament.

Article II-45  
Freedom of movement and of residence

1. Every citizen of the Union has the right to move and reside freely within the territory of the Member States.
2. Freedom of movement and residence may be granted, in accordance with the Constitution, to nationals of third countries legally resident in the territory of a Member State.

Article II-46  
Diplomatic and consular protection

Every citizen of the Union shall, in the territory of a third country in which the Member State of which he or she is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that Member State.

**TITLE VI**  
**JUSTICE**

Article II-47  
Right to an effective remedy and to a fair trial

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

Legal aid shall be made available to those who lack sufficient resources insofar as such aid is necessary to ensure effective access to justice.

## Article II-48

## Presumption of innocence and right of defence

1. Everyone who has been charged shall be presumed innocent until proved guilty according to law.
2. Respect for the rights of the defence of anyone who has been charged shall be guaranteed.

## Article II-49

## Principles of legality and proportionality of criminal offences and penalties

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national law or international law at the time when it was committed. Nor shall a heavier penalty be imposed than that which was applicable at the time the criminal offence was committed. If, subsequent to the commission of a criminal offence, the law provides for a lighter penalty, that penalty shall be applicable.
2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles recognised by the community of nations.
3. The severity of penalties must not be disproportionate to the criminal offence.

## Article II-50

## Right not to be tried or punished twice in criminal proceedings for the same criminal offence

No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law.



## TITLE VII

### GENERAL PROVISIONS GOVERNING THE INTERPRETATION AND APPLICATION OF THE CHARTER

#### Article II-51 Scope

1. The provisions of this Charter are addressed to the institutions, bodies and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers and respecting the limits of the powers of the Union as conferred on it in the other Parts of the Constitution.
2. This Charter does not extend the scope of application of Union law beyond the powers of the Union or establish any new power or task for the Union, or modify powers and tasks defined in the other Parts of the Constitution.

#### Article II-52 Scope and interpretation of rights and principles

1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.
2. Rights recognised by this Charter for which provision is made in other Parts of the Constitution shall be exercised under the conditions and within the limits defined by these relevant Parts
3. Insofar as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.
4. Insofar as this Charter recognises fundamental rights as they result from the constitutional traditions common to the Member States, those rights shall be interpreted in harmony with those traditions.
5. The provisions of this Charter which contain principles may be implemented by legislative and executive acts taken by institutions and bodies of the Union, and by acts of Member States when they are implementing Union law, in the exercise of their respective powers. They shall be judicially cognisable only in the interpretation of such acts and in the ruling on their legality.
6. Full account shall be taken of national laws and practices as specified in this Charter.

Article II-53  
Level of protection

Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by Union law and international law and by international agreements to which the Union or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' constitutions.

Article II-54  
Prohibition of abuse of rights

Nothing in this Charter shall be interpreted as implying any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms recognised in this Charter or at their limitation to a greater extent than is provided for herein.

**THE EUROPEAN CONVENTION**

THE SECRETARIAT

**Brussels, 12 June 2003****(OR. fr,en)****CONV 811/03****COVER NOTE**

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from : Praesidium

to : Convention

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No. prev. docs. : CONV 725/03, CONV 726/03, CONV 797/03,

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Subject : **Revised texts**

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Members of the Convention will find attached revised texts put forward by the Praesidium, following consultations with the component groups and in the light of their suggested amendments, with a view to reaching consensus at the plenary session of 13 June.

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**Article I-27 : The Foreign Minister**(footnote 1)

Footnote 1: The establishment of a Joint European External Action Service, to assist the Minister, will be addressed in a Declaration/Part III.

**Citizens initiative - Article I-46, new paragraph 4**

4. **A significant number of citizens, not less than one million, coming from a significant number of Member States, may invite the Commission to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing this Constitution. A European law shall determine the provisions regarding the specific procedures and conditions required for such a citizens' request.**

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**PART II - PREAMBLE**

*Sentence to be inserted in the Charter Preamble, at the end of paragraph 4*

This Charter reaffirms ... and the case law of the Court of Justice of the European Union and of the European Court of Human Rights. **In this context, the Charter will be interpreted by the courts of the Union and the Member States with due regard for the explanations prepared at the instigation of the Praesidium of the Convention which drafted the Charter.**

**Article II-41(4)**

4. Every person may write to the institutions of the Union in one of the languages of **the Constitution** and must have an answer in the same language.

**Change to title of Article II-52**

The title should read as follows: "Scope **and interpretation** of rights **and principles**"

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**THE EUROPEAN CONVENTION****Brussels, 9 July 2003**

THE SECRETARIAT

**CONV 828/03****COVER NOTE**

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|------------------|----------------------------------------------------------------------------------------|
| from :           | Praesidium                                                                             |
| to :             | Convention                                                                             |
| No. prev. doc. : | WD N° 27 WGII                                                                          |
| Subject :        | <b>Updated Explanations relating to the text of the Charter of Fundamental Rights.</b> |

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Members of the Convention will find attached, for information, the updated explanations relating to the text of the Charter of Fundamental Rights, produced under the authority of the Chairman of Working Group II and endorsed by the Praesidium.

**UPDATED EXPLANATIONS,**  
**RELATING TO THE COMPLETE TEXT OF THE CHARTER OF FUNDAMENTAL**  
**RIGHTS OF THE EUROPEAN UNION (AS AMENDED BY THE**  
**EUROPEAN CONVENTION AND INCORPORATED AS PART II**  
**OF THE TREATY ON A CONSTITUTION FOR EUROPE)**

These explanations were originally prepared at the instigation of the Praesidium of the Convention which drafted the Charter of Fundamental Rights of the European Union. They have been updated at the instigation of the Praesidium of the European Convention, in the light of the drafting adjustments made to the text of the Charter by that Convention (notably to Articles 51 and 52) and of further developments of Union law. Although they do not as such have the status of law, they are a valuable tool of interpretation intended to clarify the provisions of the Charter.

## PREAMBLE

The peoples of Europe, in creating an ever closer union among them, are resolved to share a peaceful future based on common values.

Conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law. It places the individual at the heart of its activities, by establishing the citizenship of the Union and by creating an area of freedom, security and justice.

The Union contributes to the preservation and to the development of these common values while respecting the diversity of the cultures and traditions of the peoples of Europe as well as the national identities of the Member States and the organisation of their public authorities at national, regional and local levels; it seeks to promote balanced and sustainable development and ensures free movement of persons, goods, services and capital, and the freedom of establishment.

To this end, it is necessary to strengthen the protection of fundamental rights in the light of changes in society, social progress and scientific and technological developments by making those rights more visible in a Charter.

This Charter reaffirms, with due regard for the powers and tasks of the Union and the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Union and by the Council of Europe and the case law of the Court of Justice of the European Union and of the European Court of Human Rights. In this context the Charter will be interpreted by the courts of the Union and the Member States with due regard to the explanations prepared at the instigation of the Praesidium of the Convention which drafted the Charter.

Enjoyment of these rights entails responsibilities and duties with regard to other persons, to the human community and to future generations.

The Union therefore recognises the rights, freedoms and principles set out hereafter.



## TITLE I. DIGNITY

### Article 1

#### Human dignity

Human dignity is inviolable. It must be respected and protected.

#### Explanation

*The dignity of the human person is not only a fundamental right in itself but constitutes the real basis of fundamental rights. The 1948 Universal Declaration of Human Rights enshrined human dignity in its preamble: "Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world." In its judgment of 9 October 2001 in case C-377/98 Netherlands v. European Parliament and Council, 2001 ECR 7079, at grounds n° 70 - 77, the Court of Justice confirmed that a fundamental right to human dignity is part of Union law.*

*It results that none of the rights laid down in this Charter may be used to harm the dignity of another person, and that the dignity of the human person is part of the substance of the rights laid down in this Charter. It must therefore be respected, even where a right is restricted.*

### Article 2

#### Right to life

1. Everyone has the right to life.
2. No one shall be condemned to the death penalty, or executed.

**Explanation**

1. Paragraph 1 of this Article is based on the first sentence of Article 2(1) of the ECHR, which reads as follows:

*"1. Everyone's right to life shall be protected by law..."*

2. The second sentence of the provision, which referred to the death penalty, was superseded by the entry into force of Article 1 of Protocol No 6 to the ECHR, which reads as follows:

*"The death penalty shall be abolished. No-one shall be condemned to such penalty or executed."*

Article 2(2) of the Charter is based on that provision.

3. The provisions of Article 2 of the Charter correspond to those of the above Articles of the ECHR and its Protocol. They have the same meaning and the same scope, in accordance with Article 52(3) of the Charter. Therefore, the "negative" definitions appearing in the ECHR must be regarded as also forming part of the Charter:

- (a) Article 2(2) of the ECHR:

*"Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:*

*(a) in defence of any person from unlawful violence;*

*(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;*

*(c) in action lawfully taken for the purpose of quelling a riot or insurrection."*

- (b) Article 2 of Protocol No 6 to the ECHR:

*"A State may make provision in its law for the death penalty in respect of acts committed in time of war or of imminent threat of war; such penalty shall be applied only in the instances laid down in the law and in accordance with its provisions..."*

### Article 3

#### Right to the integrity of the person

1. Everyone has the right to respect for his or her physical and mental integrity.
2. In the fields of medicine and biology, the following must be respected in particular:

the free and informed consent of the person concerned, according to the procedures laid down by law,

- the prohibition of eugenic practices, in particular those aiming at the selection of persons,
- the prohibition on making the human body and its parts as such a source of financial gain,
- the prohibition of the reproductive cloning of human beings.

#### Explanation

1. *In its judgment of 9 October 2001 in case C-377/98 Netherlands v. European Parliament and Council, 2001 ECR 7079, at grounds n° 70, 78 - 80, the Court of Justice confirmed that a fundamental right to human integrity is part of Union law and encompasses, in the context of medicine and biology, the free and informed consent of the donor and recipient.*

2. *The principles of Article 3 of the Charter are already included in the Convention on Human Rights and Biomedicine, adopted by the Council of Europe (ETS 164 and additional protocol ETS 168). The Charter does not set out to depart from those principles, and therefore prohibits only reproductive cloning. It neither authorises nor prohibits other forms of cloning. Thus it does not in any way prevent the legislature from prohibiting other forms of cloning.*

3. *The reference to eugenic practices, in particular those aiming at the selection of persons, relates to possible situations in which selection programmes are organised and implemented, involving campaigns for sterilisation, forced pregnancy, compulsory ethnic marriage among others, all acts deemed to be international crimes in the Statute of the International Criminal Court adopted in Rome on 17 July 1998 (see its Article 7(1)(g)).*

#### Article 4

##### Prohibition of torture and inhuman or degrading treatment or punishment

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

#### **Explanation**

*The right in Article 4 is the right guaranteed by Article 3 of the ECHR, which has the same wording: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment". By virtue of Article 52(3) of the Charter, it therefore has the same meaning and the same scope as the ECHR Article.*

#### Article 5

##### Prohibition of slavery and forced labour

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. Trafficking in human beings is prohibited.

**Explanation**

1. *The right in Article 5(1) and (2) corresponds to Article 4(1) and (2) of the ECHR, which has the same wording.*

*It therefore has the same meaning and scope as the ECHR Article, by virtue of Article 52(3) of the Charter. Consequently:*

*– no limitation may legitimately affect the right provided for in paragraph 1;*

*– in paragraph 2, "forced or compulsory labour" must be understood in the light of the "negative" definitions contained in Article 4(3) of the ECHR:*

*"For the purpose of this article the term "forced or compulsory labour" shall not include:*

- (a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;*
- (b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;*
- (c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;*
- (d) any work or service which forms part of normal civic obligations."*

2. *Paragraph 3 stems directly from human dignity and takes account of recent developments in organised crime, such as the organisation of lucrative illegal immigration or sexual exploitation networks. The annex to the Europol Convention contains the following definition which refers to trafficking for the purpose of sexual exploitation: "traffic in human beings: means subjection of a person to the real and illegal sway of other persons by using violence or menaces or by abuse of authority or intrigue with a view to the exploitation of prostitution, forms of sexual exploitation and assault of minors or trade in abandoned children". Chapter VI of the Convention implementing the Schengen Agreement, which has been integrated into the Union's *acquis*, in which the United Kingdom and Ireland participate, contains the following wording in Article 27(1) which refers to illegal immigration networks: " The Contracting Parties undertake to impose appropriate penalties on any person who, for financial gain, assists or tries to assist an alien to enter or reside within the territory of one of the Contracting Parties in breach of that Contracting Party's laws on the entry and residence of aliens." On 19 July 2002, the Council adopted a framework decision on combating the*

*trafficking in human beings (O.J. L 203/1) whose Article 1 defines in detail the offences concerning trafficking in human beings for the purposes of labour exploitation or sexual exploitation, which the Member States must make punishable by virtue of that framework decision.*

## **TITLE II. FREEDOMS**

### Article 6

#### Right to liberty and security

Everyone has the right to liberty and security of person.

#### **Explanation**

*The rights in Article 6 are the rights guaranteed by Article 5 of the ECHR, and in accordance with Article 52(3) of the Charter, they have the same meaning and scope. Consequently, the limitations which may legitimately be imposed on them may not exceed those permitted by the ECHR, in the wording of Article 5:*

- "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:*
- (a) the lawful detention of a person after conviction by a competent court;*
  - (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;*

- (c) *the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;*
  - (d) *the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;*
  - (e) *the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;*
  - (f) *the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.*
2. *Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.*
  3. *Everyone arrested or detained in accordance with the provisions of paragraph 1.c of this article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.*
  4. *Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.*
  5. *Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation."*

*The rights enshrined in Article 6 must be respected particularly when the European Parliament and the Council adopt laws and framework laws in the area of judicial cooperation in criminal matters, on the basis of Articles [III-166, III-167 and III-169] of the Constitution, notably to define common minimum provisions as regards the categorisation of offences and punishments and certain aspects of procedural law.*

## Article 7

### Respect for private and family life

Everyone has the right to respect for his or her private and family life, home and communications.

#### **Explanation**

*The rights guaranteed in Article 7 correspond to those guaranteed by Article 8 of the ECHR. To take account of developments in technology the word "correspondence" has been replaced by "communications".*

*In accordance with Article 52(3), the meaning and scope of this right are the same as those of the corresponding article of the ECHR. Consequently, the limitations which may legitimately be imposed on this right are the same as those allowed by Article 8 of the ECHR:*

- "1. Everyone has the right to respect for his private and family life, his home and his correspondence.*
- 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."*

## Article 8

### Protection of personal data

1. Everyone has the right to the protection of personal data concerning him or her.



2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.
3. Compliance with these rules shall be subject to control by an independent authority.

### **Explanation**

*This Article has been based on Article 286 of the Treaty establishing the European Community and Directive 95/46/EC of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995) as well as on Article 8 of the ECHR and on the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data, which has been ratified by all the Member States. Article 286 EC Treaty is now replaced by Article [I-50] of the Constitution. Reference is also made to regulation N° 45/2001 of the European Parliament and the Council on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001). The above-mentioned directive and regulation contain conditions and limitations for the exercise of the right to the protection of personal data.*

### **Article 9**

#### **Right to marry and right to found a family**

The right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights.

### **Explanation**

*This Article is based on Article 12 of the ECHR, which reads as follows: "Men and women of marriageable age have the right to marry and to found a family according to the national laws governing the exercising of this right." The wording of the Article has been modernised to cover cases in which national legislation recognises arrangements other than marriage for founding a family. This Article neither prohibits nor imposes the granting of the status of marriage to unions between people of the same sex. This right is thus similar to that afforded by the ECHR, but its scope may be wider when national legislation so provides.*

### **Article 10**

#### Freedom of thought, conscience and religion

1. Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.
2. The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right.

### **Explanation**

*The right guaranteed in paragraph 1 corresponds to the right guaranteed in Article 9 of the ECHR and, in accordance with Article 52(3) of the Charter, has the same meaning and scope. Limitations must therefore respect Article 9(2) of the Convention, which reads as follows: "Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."*

*The right guaranteed in paragraph 2 corresponds to national constitutional traditions and to the development of national legislation on this issue.*

## Article 11

### Freedom of expression and information

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.
2. The freedom and pluralism of the media shall be respected.

### Explanation

1. *Article 11 corresponds to Article 10 of the European Convention on Human Rights, which reads as follows:*

- "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.*
- 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."*

*Pursuant to Article 52(3) of the Charter, the meaning and scope of this right are the same as those guaranteed by the ECHR. The limitations which may be imposed on it may therefore not exceed those provided for in Article 10(2) of the Convention, without prejudice to any restrictions which competition law of the Union may impose on Member States' right to introduce the licensing arrangements referred to in the third sentence of Article 10(1) of the ECHR.*

- Paragraph 2 of this Article spells out the consequences of paragraph 1 regarding freedom of the media. It is based in particular on Court of Justice case law regarding television, particularly in case C-288/89 (judgment of 25 July 1991, Stichting Collectieve Antennevoorziening Gouda and others [1991] ECR I-4007), and on the Protocol on the system of public broadcasting in the Member States annexed to the EC Treaty and now to the Constitution, and on Council Directive 89/552/EC (particularly its seventeenth recital).*

## Article 12

### Freedom of assembly and of association

- Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests.
- Political parties at Union level contribute to expressing the political will of the citizens of the Union.

### **Explanation**

*Paragraph 1 of this Article corresponds to Article 11 of the ECHR, which reads as follows:*

- "1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.*

2. *No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."*

*The meaning of the provisions of paragraph 1 is the same as that of the ECHR, but their scope is wider since they apply at all levels including European level. In accordance with Article 52(3) of the Charter, limitations on that right may not exceed those considered legitimate by virtue of Article 11(2) of the ECHR.*

2. *This right is also based on Article 11 of the Community Charter of the Fundamental Social Rights of Workers.*
3. *Paragraph 2 of this Article corresponds to Article [I-45 § 4] of the Constitution.*

### Article 13

#### Freedom of the arts and sciences

The arts and scientific research shall be free of constraint. Academic freedom shall be respected.

#### **Explanation**

*This right is deduced primarily from the right to freedom of thought and expression. It is to be exercised having regard to Article 1 and may be subject to the limitations authorised by Article 10 of the ECHR.*

## Article 14

### Right to education

1. Everyone has the right to education and to have access to vocational and continuing training.
2. This right includes the possibility to receive free compulsory education.
3. The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right.

### Explanation

1. *This Article is based on the common constitutional traditions of Member States and on Article 2 of the Protocol to the ECHR, which reads as follows:*

*"No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions."*

*It was considered useful to extend this article to access to vocational and continuing training (see point 15 of the Community Charter of the Fundamental Social Rights of Workers and Article 10 of the Social Charter) and to add the principle of free compulsory education. As it is worded, the latter principle merely implies that as regards compulsory education, each child has the possibility of attending an establishment which offers free education. It does not require all establishments which provide education or vocational and continuing training, in particular private ones, to be free of charge. Nor does it exclude certain specific forms of education having to be paid for, if the State takes measures to grant financial compensation. Insofar as the Charter applies to the Union,*

*this means that in its training policies the Union must respect free compulsory education, but this does not, of course, create new powers. Regarding the right of parents, it must be interpreted in conjunction with the provisions of Article 24.*

- 2. Freedom to found public or private educational establishments is guaranteed as one of the aspects of freedom to conduct a business but it is limited by respect for democratic principles and is exercised in accordance with the arrangements defined by national legislation.*

## Article 15

### Freedom to choose an occupation and right to engage in work

1. Everyone has the right to engage in work and to pursue a freely chosen or accepted occupation.
2. Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State.
3. Nationals of third countries who are authorised to work in the territories of the Member States are entitled to working conditions equivalent to those of citizens of the Union.

### Explanation

*Freedom to choose an occupation, as enshrined in Article 15(1), is recognised in Court of Justice case law (see inter alia judgment of 14 May 1974, Case 4/73 Nold [1974] ECR 491, paragraphs 12 to 14 of the grounds; judgment of 13 December 1979, Case 44/79 Hauer [1979] ECR 3727; judgment of 8 October 1986, Case 234/85 Keller [1986] ECR 2897, paragraph 8 of the grounds).*

*This paragraph also draws upon Article 1(2) of the European Social Charter, which was signed on 18 October 1961 and has been ratified by all the Member States, and on point 4 of the Community Charter of the Fundamental Social Rights of Workers of 9 December 1989. The expression "working conditions" is to be understood in the sense of Article [III-102] of the Constitution.*

*The second paragraph deals with the three freedoms guaranteed by Articles [I-4] and [III-15, III-19 and III-26] of the Constitution, namely freedom of movement for workers, freedom of establishment and freedom to provide services.*

*The third paragraph has been based on TEC Article 137(3), fourth indent, now replaced by Article [III-99 (1) (g)] of the Constitution, and on Article 19(4) of the European Social Charter signed on 18 October 1961 and ratified by all the Member States. Article 52(2) of the Charter is therefore applicable. The question of recruitment of seamen having the nationality of third States for the crews of vessels flying the flag of a Member State of the Union is governed by Union law and national legislation and practice.*

## Article 16

### Freedom to conduct a business

The freedom to conduct a business in accordance with Union law and national laws and practices is recognised.

#### **Explanation**

*This Article is based on Court of Justice case law which has recognised freedom to exercise an economic or commercial activity (see judgments of 14 May 1974, Case 4/73 Nold [1974] ECR 491, paragraph 14 of the grounds, and of 27 September 1979, Case 230-78 SPA Eridiana and others [1979] ECR 2749, paragraphs 20 and 31 of the grounds) and freedom of contract (see inter alia Sukkerfabriken Nykøbing judgment, Case 151/78 [1979] ECR I, paragraph 19 of the grounds, and judgment of 5 October 1999, C-240/97 Spain v. Commission, [1999] ECR I-6571, paragraph 99 of*



*the grounds) and Article [I-3 (2)] of the Constitution, which recognises free competition. Of course, this right is to be exercised with respect for Union law and national legislation. It may be subject to the limitations provided for in Article 52(1) of the Charter.*

## Article 17

### Right to property

1. Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law insofar as is necessary for the general interest.
2. Intellectual property shall be protected.

### **Explanation**

*This Article is based on Article 1 of the Protocol to the ECHR:*

*"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.*

*The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."*

*This is a fundamental right common to all national constitutions. It has been recognised on numerous occasions by the case law of the Court of Justice, initially in the Hauer judgment (13 December 1979, ECR [1979] 3727). The wording has been updated but, in accordance with Article 52(3), the meaning and scope of the right are the same as those of the right guaranteed by the ECHR and the limitations may not exceed those provided for there.*

*Protection of intellectual property, one aspect of the right of property, is explicitly mentioned in paragraph 2 because of its growing importance and Community secondary legislation. Intellectual property covers not only literary and artistic property but also inter alia patent and trademark rights and associated rights. The guarantees laid down in paragraph 1 shall apply as appropriate to intellectual property.*

## Article 18

### Right to asylum

The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Constitution.

### Explanation

*The text of the Article has been based on TEC Article 63, now replaced by Article [III-162] of the Constitution, which requires the Union to respect the Geneva Convention on refugees. Reference should be made to the Protocols relating to the United Kingdom and Ireland annexed to the [Treaty of Amsterdam] Constitution and to Denmark to determine the extent to which those Member States implement Union law in this area and the extent to which this Article is applicable to them. This Article is in line with the Protocol on Asylum annexed to the Constitution.*

## Article 19

### Protection in the event of removal, expulsion or extradition

1. Collective expulsions are prohibited.
2. No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.

### **Explanation**

*Paragraph 1 of this Article has the same meaning and scope as Article 4 of Protocol No 4 to the ECHR concerning collective expulsion. Its purpose is to guarantee that every decision is based on a specific examination and that no single measure can be taken to expel all persons having the nationality of a particular State (see also Article 13 of the Covenant on Civil and Political Rights).*

*Paragraph 2 incorporates the relevant case law from the European Court of Human Rights regarding Article 3 of the ECHR (see *Ahmed v. Austria*, judgment of 17 December 1996, [1996] ECR VI-2206 and *Soering*, judgment of 7 July 1989).*

### TITLE III. EQUALITY

#### Article 20

##### Equality before the law

Everyone is equal before the law.

#### Explanation

*This Article corresponds to a general principle of law which is included in all European constitutions and has also been recognised by the Court of Justice as a basic principle of Community law (judgment of 13 November 1984, Case 283/83 Racke [1984] ECR 3791, judgment of 17 April 1997, Case 15/95 EARL [1997] ECR I-1961, and judgment of 13 April 2000, Case 292/97 Karlsson, [2000] ECR 2737).*

#### Article 21

##### Non-discrimination

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.
2. Within the scope of application of the Constitution and without prejudice to any of its specific provisions, any discrimination on grounds of nationality shall be prohibited.

## **Explanation**

*Paragraph 1 draws on Article 13 of the EC Treaty, now replaced by [Article III-5] of the Constitution, Article 14 of the ECHR and Article 11 of the Convention on Human Rights and Biomedicine as regards genetic heritage. Insofar as this corresponds to Article 14 of the ECHR, it applies in compliance with it.*

*There is no contradiction or incompatibility between paragraph 1 and Article [III-5] of the Constitution which has a different scope and purpose: Article [III-5] confers power on the Union to adopt legislative acts, including harmonisation of the Member States' laws and regulations, to combat certain forms of discrimination, listed exhaustively in that Article. Such legislation may cover action of Member State authorities (as well as relations between private individuals) in any area within the limits of the Union's powers. In contrast, the provision in paragraph 1 does not create any power to enact anti-discrimination laws in these areas of Member State or private action, nor does it lay down a sweeping ban of discrimination in such wide-ranging areas. Instead, it only addresses discriminations by the institutions and bodies of the Union themselves, when exercising powers conferred under other articles of Parts I and III of the Constitution, and by Member States only when they are implementing Union law. Paragraph 1 therefore does not alter the extent of powers granted under Article [III-5] nor the interpretation given to that Article.*

*Paragraph 2 corresponds to Article [I-4 (2)] of the Constitution and must be applied in compliance with that Article.*

## **Article 22**

### **Cultural, religious and linguistic diversity**

The Union shall respect cultural, religious and linguistic diversity.

### **Explanation**

*This Article has been based on Article 6 of the Treaty on European Union and on Article 151(1) and (4) of the EC Treaty, now replaced by Article [III-176 (1) and (4)] of the Constitution, concerning culture. Respect for cultural and linguistic diversity is now also laid down in Article [I-3 (3)] of the Constitution. The Article is also inspired by declaration No 11 to the Final Act of the Amsterdam Treaty on the status of churches and non-confessional organisations, now taken over in Article [I-51] of the Constitution.*

### **Article 23**

#### **Equality between men and women**

Equality between men and women must be ensured in all areas, including employment, work and pay.

The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.

### **Explanation**

*The first paragraph has been based on Articles 2 and 3(2) of the EC Treaty, now replaced by Articles [I-3] and [III-1] of the Constitution which impose the objective of promoting equality between men and women on the Union, and on Article 141 (1) of the EC Treaty, now replaced by Article [III-103 (1)] of the Constitution. It draws on Article 20 of the revised European Social Charter of 3 May 1996 and on point 16 of the Community Charter on the rights of workers. It is also based on Article 141(3) of the EC Treaty, now replaced by Article [III-103 (3)] of the Constitution, and Article 2(4) of Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.*

*Paragraph 2 takes over in shorter form Article [III-103 (4)] of the Constitution which provides that the principle of equal treatment does not prevent the maintenance or adoption of measures providing for specific advantages in order to make it easier for the under-represented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers. In accordance with Article 52 (2), the present paragraph does not amend Article [III-103 (4)].*

## Article 24

### The rights of the child

1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.
2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.
3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.

### Explanation

*This Article is based on the New York Convention on the Rights of the Child signed on 20 November 1989 and ratified by all the Member States, particularly Articles 3, 9, 12 and 13 thereof.*

*Paragraph 3 takes account of the fact that, as part of the establishment of an area of freedom, security and justice, Union legislation on civil matters having cross-border implications, for which Article [III-165] of the Constitution confers power, may include notably visiting rights ensuring that children can maintain on a regular basis a personal and direct contact with both his or her parents.*

## Article 25

### The rights of the elderly

The Union recognises and respects the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life.

#### **Explanation**

*This Article draws on Article 23 of the revised European Social Charter and Articles 24 and 25 of the Community Charter of the Fundamental Social Rights of Workers. Of course, participation in social and cultural life also covers participation in political life.*

## Article 26

### Integration of persons with disabilities

The Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.

#### **Explanation**

*The principle set out in this Article is based on Article 15 of the European Social Charter and also draws on point 26 of the Community Charter of the Fundamental Social Rights of Workers.*



## TITLE IV. SOLIDARITY

### Article 27

Workers' right to information and consultation within the undertaking

Workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions provided for by Union law and national laws and practices.

#### Explanation

*This Article appears in the revised European Social Charter (Article 21) and in the Community Charter on the rights of workers (points 17 and 18). It applies under the conditions laid down by Union law and by national laws. The reference to appropriate levels refers to the levels laid down by Union law or by national laws and practices, which might include the European level when Union legislation so provides. There is a considerable Union acquis in this field: Articles [III-100 and III-101] of the Constitution, and Directives 2002/14/EC (general framework for informing and consulting employees in the European Community), 98/59/EC (collective redundancies), 2001/23/EC (transfers of undertakings) and 94/45/EC (European works councils).*

### Article 28

Right of collective bargaining and action

Workers and employers, or their respective organisations, have, in accordance with Union law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action.

**Explanation**

*This Article is based on Article 6 of the European Social Charter and on the Community Charter of the Fundamental Social Rights of Workers (points 12 to 14). The right of collective action was recognised by the European Court of Human Rights as one of the elements of trade union rights laid down by Article 11 of the ECHR. As regards the appropriate levels at which collective negotiation might take place, see the explanation given for the above Article. The modalities and limits for the exercise of collective action, including strike action, come under national laws and practices, including the question of whether it may be carried out in parallel in several Member States.*

**Article 29****Right of access to placement services**

Everyone has the right of access to a free placement service.

**Explanation**

*This Article is based on Article 1(3) of the European Social Charter and point 13 of the Community Charter of the Fundamental Social Rights of Workers.*

**Article 30****Protection in the event of unjustified dismissal**

Every worker has the right to protection against unjustified dismissal, in accordance with Union law and national laws and practices.

### **Explanation**

*This Article draws on Article 24 of the revised Social Charter. See also Directive 2001/23/EC on the safeguarding of employees' rights in the event of transfers of undertakings, and Directive 80/987/EEC on the protection of employees in the event of the insolvency of their employer, as amended by Directive 2002/74/EC.*

### **Article 31**

#### Fair and just working conditions

1. Every worker has the right to working conditions which respect his or her health, safety and dignity.
2. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

### **Explanation**

1. *Paragraph 1 of this Article is based on Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work. It also draws on Article 3 of the Social Charter and point 19 of the Community Charter on the rights of workers, and, as regards dignity at work, on Article 26 of the revised Social Charter. The expression "working conditions" must be understood in the sense of Article [III-102] of the Constitution.*
2. *Paragraph 2 is based on Directive 93/104/EC concerning certain aspects of the organisation of working time, Article 2 of the European Social Charter and point 8 of the Community Charter on the rights of workers.*

## Article 32

### Prohibition of child labour and protection of young people at work

The employment of children is prohibited. The minimum age of admission to employment may not be lower than the minimum school-leaving age, without prejudice to such rules as may be more favourable to young people and except for limited derogations.

Young people admitted to work must have working conditions appropriate to their age and be protected against economic exploitation and any work likely to harm their safety, health or physical, mental, moral or social development or to interfere with their education.

#### **Explanation**

*This Article is based on Directive 94/33/EC on the protection of young people at work, Article 7 of the European Social Charter and points 20 to 23 of the Community Charter of the Fundamental Social Rights of Workers.*

## Article 33

### Family and professional life

1. The family shall enjoy legal, economic and social protection.
2. To reconcile family and professional life, everyone shall have the right to protection from dismissal for a reason connected with maternity and the right to paid maternity leave and to parental leave following the birth or adoption of a child.

#### **Explanation**

*Article 33(1) is based on Article 16 of the European Social Charter. The second paragraph draws on Council Directive 92/85/EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are*

*breastfeeding and Directive 96/34/EC on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC. It is also based on Article 8 (protection of maternity) of the European Social Charter and draws on Article 27 (right of workers with family responsibilities to equal opportunities and equal treatment) of the revised Social Charter. "Maternity" covers the period from conception to weaning.*

#### Article 34

##### Social security and social assistance

1. The Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by Union law and national laws and practices.
2. Everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with Union law and national laws and practices.
3. In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Union law and national laws and practices.

#### **Explanation**

*The principle set out in Article 34(1) is based on Articles 137 and 140 of the EC Treaty, now replaced by Articles [III-99 and III-102] and on Article 12 of the European Social Charter and point 10 of the Community Charter on the rights of workers. The Union must respect it when exercising the powers conferred on it by Articles [III-99 and III-102] of the Constitution. The reference to social services relates to cases in which such services have been introduced to provide certain advantages but does not imply that such services must be created where they do not exist. "Maternity" must be understood in the same sense as in the preceding Article.*

*The second paragraph is based on Articles 12 (4) and 13(4) of the European Social Charter and point 2 of the Community Charter of the Fundamental Social Rights of Workers and reflects the rules arising from Regulation No 1408/71 and Regulation No 1612/68.*

*The third paragraph draws on Article 13 of the European Social Charter and Articles 30 and 31 of the revised Social Charter and point 10 of the Community Charter. The Union must respect it in the context of policies based on Article [III-99] of the Constitution.*

### Article 35

#### Health care

Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities.

#### **Explanation**

*The principles set out in this Article are based on Article 152 of the EC Treaty, now replaced by Article [III-174] of the Constitution, and on Articles 11 and 13 of the European Social Charter. The second sentence of the Article takes over Article [III-174 (1)].*

### Article 36

#### Access to services of general economic interest

The Union recognises and respects access to services of general economic interest as provided for in national laws and practices, in accordance with the Constitution, in order to promote the social and territorial cohesion of the Union.

**Explanation**

*This Article is fully in line with Article [III-3] of the Constitution and does not create any new right. It merely sets out the principle of respect by the Union for the access to services of general economic interest as provided for by national provisions, when those provisions are compatible with Union law.*

**Article 37****Environmental protection**

A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.

**Explanation**

*The principles set out in this Article have been based on Articles 2, 6 and 174 of the EC Treaty, which have now been replaced by Articles [I-3 (3), III-2 and III-124] of the Constitution. It also draws on the provisions of some national constitutions.*

**Article 38****Consumer Protection**

Union policies shall ensure a high level of consumer protection.

**Explanation**

*The principles set out in this Article have been based on Article 153 of the EC Treaty, now replaced by Article [III-127] of the Constitution.*

## TITLE V. CITIZENS' RIGHTS

### Article 39

Right to vote and to stand as a candidate at elections to the European Parliament

1. Every citizen of the Union has the right to vote and to stand as a candidate at elections to the European Parliament in the Member State in which he or she resides, under the same conditions as nationals of that State.
2. Members of the European Parliament shall be elected by direct universal suffrage in a free and secret ballot.

#### **Explanation**

*Article 39 applies under the conditions laid down in Parts I and III of the Constitution, in accordance with Article 52(2) of the Charter. Article 39(1) corresponds to the right guaranteed in Article [I-8 (2)] of the Constitution (cf. also the legal base in Article [III-7] for the adoption of detailed arrangements for the exercise of that right) and Article 39(2) corresponds to Article [I-19 (2)] of the Constitution. Article 39(2) takes over the basic principles of the electoral system in a democratic State.*

### Article 40

Right to vote and to stand as a candidate at municipal elections

Every citizen of the Union has the right to vote and to stand as a candidate at municipal elections in the Member State in which he or she resides under the same conditions as nationals of that State.



## **Explanation**

*This Article corresponds to the right guaranteed by Article [I-8 (2)] of the Constitution (cf. also the legal base in Article [III-7] for the adoption of detailed arrangements for the exercise of that right). In accordance with Article 52(2) of the Charter, it applies under the conditions set out in these Articles of Parts I and III of the Constitution.*

### Article 41

#### Right to good administration

1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the Institutions, bodies and agencies of the Union.
2. This right includes:
  - the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;
  - the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;
  - the obligation of the administration to give reasons for its decisions.
3. Every person has the right to have the Union make good any damage caused by its Institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.
4. Every person may write to the Institutions of the Union in one of the languages of the Constitution and must have an answer in the same language.

## **Explanation**

*Article 41 is based on the existence of the Union as subject to the rule of law whose characteristics were developed in the case law which enshrined inter alia good administration as a general principle of law (see inter alia Court of Justice judgment of 31 March 1992 in Case C-255/90 P, Burbán [1992] ECR I-2253, and Court of First Instance judgments of 18 September 1995 in Case T-167/94 Nölle [1995] ECR II-2589, and 9 July 1999 in Case T-231/97 New Europe Consulting and others [1999] ECR II-2403). The wording for that right in the first two paragraphs results from the case law (Court of Justice judgment of 15 October 1987 in Case 222/86 Heylens [1987] ECR 4097, paragraph 15 of the grounds, judgment of 18 October 1989 in Case 374/87 Orkem [1989] ECR 3283, judgment of 21 November 1991 in Case C-269/90 TU München [1991] ECR I-5469, and Court of First Instance judgments of 6 December 1994 in Case T-450/93 Lisrestal [1994] ECR II-1177, 18 September 1995 in Case T-167/94 Nölle [1995] ECR II-258) and the wording regarding the obligation to give reasons comes from Article 253 of the EC Treaty, now replaced by Article [I-37(2)] of the Constitution (cf. also the legal base in Article [III-300] of the Constitution for the adoption of legislation in the interest of an open, efficient and independent European public service).*

*Paragraph 3 reproduces the right now guaranteed by Article [III-333] of the Constitution. Paragraph 4 reproduces the right now guaranteed by Articles [I-8, fourth indent, and III-9] of the Constitution. In accordance with Article 52(2) of the Charter, those rights are to be applied under the conditions and within the limits defined by Part III of the Constitution.*

*The right to an effective remedy, which is an important aspect of this question, is guaranteed in Article 47 of this Charter.*

## **Article 42**

### **Right of access to documents**

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of the Institutions, bodies and agencies of the Union, in whatever form they are produced.

**Explanation**

*The right guaranteed in this Article has been taken over from Article 255 of the EC Treaty, on the basis of which Regulation 1049/2001 has subsequently been adopted. The European Convention has extended this right to documents of institutions, bodies and agencies generally, regardless of their form, see Article [I-49 (3)] of the Constitution. In accordance with Article 52(2) of the Charter, the right of access to documents is exercised under the conditions and within the limits for which provision is made in Articles [I-49 (3) and III-301].*

**Article 43****Ombudsman**

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to refer to the European Ombudsman cases of maladministration in the activities of the Institutions, bodies or agencies of the Union, with the exception of the European Court of Justice and the High Court acting in their judicial role.

**Explanation**

*The right guaranteed in this Article is the right guaranteed by Articles [I-8 and III-232 of the Constitution]. In accordance with Article 52(2) of the Charter, it applies under the conditions defined in these two Articles.*

**Article 44****Right to petition**

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to petition the European Parliament.

**Explanation**

*The right guaranteed in this Article is the right guaranteed by Articles [I-8 and III-231] of the Constitution. In accordance with Article 52(2) of the Charter, it applies under the conditions defined in these two Articles.*

**Article 45**

## Freedom of movement and of residence

1. Every citizen of the Union has the right to move and reside freely within the territory of the Member States.
2. Freedom of movement and residence may be granted, in accordance with the Constitution, to nationals of third countries legally resident in the territory of a Member State.

**Explanation**

*The right guaranteed by paragraph 1 is the right guaranteed by Article [I-8, first indent] of the Constitution (cf. also the legal base in Article [III-6]); and the judgement of the Court of Justice of 17 September 2002, C-413/99 Baumbast, [2002] ECR 709). In accordance with Article 52(2) of the Charter, it applies under the conditions and within the limits defined for which provision is made in Part III of the Constitution.*

*Paragraph 2 refers to the power granted to the Union by Articles [III-161 to III-163] of the Constitution. Consequently, the granting of this right depends on the institutions exercising that power.*

## Article 46

### Diplomatic and consular protection

Every citizen of the Union shall, in the territory of a third country in which the Member State of which he or she is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that Member State.

### **Explanation**

*The right guaranteed by this Article is the right guaranteed by Article [I-8] of the Constitution; cf. also the legal base in Article [III-8]. In accordance with Article 52(2) of the Charter, it applies under the conditions defined in these Articles.*

## **TITLE VI. JUSTICE**

### Article 47

#### Right to an effective remedy and to a fair trial

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

Legal aid shall be made available to those who lack sufficient resources insofar as such aid is necessary to ensure effective access to justice.

## **Explanation**

*The first paragraph is based on Article 13 of the ECHR:*

*"Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."*

*However, in Union law the protection is more extensive since it guarantees the right to an effective remedy before a court. The Court of Justice enshrined that right in its judgment of 15 May 1986 as a general principle of Union law (Case 222/84 Johnston [1986] ECR 1651; see also judgment of 15 October 1987, Case 222/86 Heylens [1987] ECR 4097 and judgment of 3 December 1992, Case C-97/91 Borelli [1992] ECR I-6313). According to the Court, that general principle of Union law also applies to the Member States when they are implementing Union law. The inclusion of this precedent in the Charter has not been intended to change the system of judicial review laid down by the Treaties, and particularly the rules relating to admissibility for direct actions before the Court of Justice of the European Union. The European Convention has considered the Union's system of judicial review including the rules on admissibility, and confirmed them while amending them as to certain aspects, as reflected in Articles [III-254 to III-285] of the Constitution, and in particular in Article [III-266 (4)]. Article 47 applies to the institutions of the Union and of Member States when they are implementing Union law and does so for all rights guaranteed by Union law.*

*The second paragraph corresponds to Article 6(1) of the ECHR which reads as follows:*

*"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice."*

*In Union law, the right to a fair hearing is not confined to disputes relating to civil law rights and obligations. That is one of the consequences of the fact that the Union is a community based on the rule of law as stated by the Court in Case 294/83, "Les Verts" v. European Parliament (judgment of 23 April 1986, [1988] ECR 1339). Nevertheless, in all respects other than their scope, the guarantees afforded by the ECHR apply in a similar way to the Union.*

*With regard to the third paragraph, it should be noted that in accordance with the case law of the European Court of Human Rights, provision should be made for legal aid where the absence of such aid would make it impossible to ensure an effective remedy (ECHR Judgment of 9.10.1979, Airey, Series A, Volume 32, 11). There is also a system of legal assistance for cases before the Court of Justice of the European Union.*

## Article 48

### Presumption of innocence and right of defence

1. Everyone who has been charged shall be presumed innocent until proved guilty according to law.
2. Respect for the rights of the defence of anyone who has been charged shall be guaranteed.

### Explanation

*Article 48 is the same as Article 6(2) and (3) of the ECHR, which reads as follows:*

- "2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.*
- 3. Everyone charged with a criminal offence has the following minimum rights:*
  - (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;*
  - (b) to have adequate time and facilities for the preparation of his defence;*
  - (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;*
  - (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;*

- (e) *to have the free assistance of an interpreter if he cannot understand or speak the language used in court."*

*In accordance with Article 52(3), this right has the same meaning and scope as the right guaranteed by the ECHR.*

#### Article 49

##### Principles of legality and proportionality of criminal offences and penalties

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national law or international law at the time when it was committed. Nor shall a heavier penalty be imposed than that which was applicable at the time the criminal offence was committed. If, subsequent to the commission of a criminal offence, the law provides for a lighter penalty, that penalty shall be applicable.
2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles recognised by the community of nations.
3. The severity of penalties must not be disproportionate to the criminal offence.

#### **Explanation**

*This Article follows the traditional rule of the non-retroactivity of laws and criminal sanctions. There has been added the rule of the retroactivity of a more lenient penal law, which exists in a number of Member States and which features in Article 15 of the Covenant on Civil and Political Rights.*

*Article 7 of the ECHR is worded as follows:*

- "1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was*



*committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.*

2. *This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations."*

*In paragraph 2, the reference to "civilised" nations has been deleted; this does not change the meaning of this paragraph, which refers to crimes against humanity in particular. In accordance with Article 52(3), the right guaranteed here therefore has the same meaning and scope as the right guaranteed by the ECHR.*

*Paragraph 3 states the general principle of proportionality between penalties and criminal offences which is enshrined in the common constitutional traditions of the Member States and in the case law of the Court of Justice of the Communities.*

#### Article 50

Right not to be tried or punished twice in criminal proceedings for the same criminal offence

No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law.

#### **Explanation**

*Article 4 of Protocol No 7 to the ECHR reads as follows:*

- "1. No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State.*
2. *The provisions of the preceding paragraph shall not prevent the reopening of the case in accordance with the law and the penal procedure of the State concerned, if there is evidence of new or newly discovered facts, or if there has been a fundamental defect in the previous proceedings, which could affect the outcome of the case.*

3. *No derogation from this Article shall be made under Article 15 of the Convention."*

*The "non bis in idem" rule applies in Union law (see, among the many precedents, the judgment of 5 May 1996, Cases 18/65 and 35/65, Gutmann v. Commission [1966] ECR 103 and a recent case, the decision of the Court of First Instance of 20 April 1999, Joined Cases T-305/94 and others, Limburgse Vinyl Maatschappij NV v. Commission [1999] ECR II-931). The rule prohibiting cumulation refers to cumulation of two penalties of the same kind, that is to say criminal law penalties.*

*In accordance with Article 50, the "non bis in idem" rule applies not only within the jurisdiction of one State but also between the jurisdictions of several Member States. That corresponds to the *acquis* in Union law; see Articles 54 to 58 of the Schengen Convention and the judgment of the Court of Justice of 11 February 2003, C-187/01 Gözütok (not yet published), Article 7 of the Convention on the Protection of the European Communities' Financial Interests and Article 10 of the Convention on the fight against corruption. The very limited exceptions in those Conventions permitting the Member States to derogate from the "non bis in idem" rule are covered by the horizontal clause in Article 52(1) of the Charter concerning limitations. As regards the situations referred to by Article 4 of Protocol No 7, namely the application of the principle within the same Member State, the guaranteed right has the same meaning and the same scope as the corresponding right in the ECHR.*

## **TITLE VII. GENERAL PROVISIONS GOVERNING THE INTERPRETATION AND APPLICATION OF THE CHARTER**

### Article 51

#### Scope

1. The provisions of this Charter are addressed to the Institutions, bodies and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers and respecting the limits of the powers of the Union as conferred on it in the other Parts of the Constitution.
2. This Charter does not extend the field of application of Union law beyond the powers of the Union or establish any new power or task for the Union, or modify powers and tasks defined in the other Parts of the Constitution.

#### **Explanation**

*The aim of Article 51 is to determine the scope of the Charter. It seeks to establish clearly that the Charter applies primarily to the institutions and bodies of the Union, in compliance with the principle of subsidiarity. This provision was drafted in keeping with Article 6(2) of the Treaty on European Union, which required the Union to respect fundamental rights, and with the mandate issued by Cologne European Council. The term "institutions" is enshrined in Part I of the Constitution, Article [I-18(2)] of which lists the institutions. The expression "bodies and agencies" is commonly used in the Constitution to refer to all the authorities set up by the Constitution or by secondary legislation (see, e.g., Article [I-49 or I-50] of the Constitution).*

*As regards the Member States, it follows unambiguously from the case law of the Court of Justice that the requirement to respect fundamental rights defined in a Union context is only binding on the Member States when they act in the scope of Union law (judgment of 13 July 1989, Case 5/88 Wachauf [1989] ECR 2609; judgment of 18 June 1991, ERT [1991] ECR I-2925); judgment of 18 December 1997 (C-309/96 Annibaldi [1997] ECR I-7493). The Court of Justice confirmed this case law in the following terms: "In addition, it should be remembered that the requirements*

*flowing from the protection of fundamental rights in the Community legal order are also binding on Member States when they implement Community rules..." (judgment of 13 April 2000, Case C-292/97, [2000] ECR 2737, paragraph 37 of the grounds). Of course this rule, as enshrined in this Charter, applies to the central authorities as well as to regional or local bodies, and to public organisations, when they are implementing Union law.*

*Paragraph 2, together with the second sentence of paragraph 1, confirms that the Charter may not have the effect of extending the competences and tasks which the other Parts of the Constitution confer on the Union. Explicit mention is made here of the logical consequences of the principle of subsidiarity and of the fact that the Union only has those powers which have been conferred upon it. The fundamental rights as guaranteed in the Union do not have any effect other than in the context of the powers determined by Parts I and III of the Constitution. Consequently, an obligation, pursuant to the second sentence of paragraph 1, for the Union's institutions to promote principles laid down in the Charter, may arise only within the limits of these same powers.*

*Paragraph 2 also confirms that the Charter may not have the effect of extending the field of application of Union law beyond the powers of the Union as established in the other Parts of the Constitution. The Court of Justice has already established this rule with respect to the fundamental rights recognised as part of Union law (judgment of 17 February 1998, C-249/96 Grant, 1998 ECR I-621, paragraph 45 of the grounds). In accordance with this rule, it goes without saying that the incorporation of the Charter into the Constitution cannot be understood as extending by itself the range of Member State action considered to be "implementation of Union law" (within the meaning of paragraph 1 and the above-mentioned case law).*

## Article 52

### Scope and interpretation of rights and principles

1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.

2. Rights recognised by this Charter for which provision is made in other Parts of the Constitution shall be exercised under the conditions and within the limits defined by these relevant Parts.
3. Insofar as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.
4. Insofar as this Charter recognises fundamental rights as they result from the constitutional traditions common to the Member States, those rights shall be interpreted in harmony with those traditions.
5. The provisions of this Charter which contain principles may be implemented by legislative and executive acts taken by Institutions and bodies of the Union, and by acts of Member States when they are implementing Union law, in the exercise of their respective powers. They shall be judicially cognisable only in the interpretation of such acts and in the ruling on their legality.
6. Full account shall be taken of national laws and practices as specified in this Charter.

### **Explanation**

*The purpose of Article 52 is to set the scope of the rights and principles of the Charter, and to lay down rules for their interpretation. Paragraph 1 deals with the arrangements for the limitation of rights. The wording is based on the case law of the Court of Justice: "...it is well established in the case law of the Court that restrictions may be imposed on the exercise of fundamental rights, in particular in the context of a common organisation of the market, provided that those restrictions in fact correspond to objectives of general interest pursued by the Community and do not constitute, with regard to the aim pursued, disproportionate and unreasonable interference undermining the very substance of those rights" (judgment of 13 April 2000, Case C-292/97, paragraph 45 of the grounds). The reference to general interests recognised by the Union covers both the objectives mentioned in Article [I-2] of the Constitution and other interests protected by specific provisions of the Constitution such as Articles [I-5 (1), III-15, III-40, III-339].*

*Paragraph 2 refers to rights which were already expressly guaranteed in the Treaty establishing the European Community and have been recognised in the Charter, and which are now found in other Parts of the Constitution (notably the rights derived from Union citizenship). It clarifies that such rights remain subject to the conditions and limits applicable to the Union law on which they are based, and for which provision is now made in Parts I and III of the Constitution. The Charter does not alter the system of rights conferred by the EC Treaty and now taken over by Parts I and III of the Constitution.*

*Paragraph 3 is intended to ensure the necessary consistency between the Charter and the ECHR by establishing the rule that, insofar as the rights in the present Charter also correspond to rights guaranteed by the ECHR, the meaning and scope of those rights, including authorised limitations, are the same as those laid down by the ECHR. This means in particular that the legislator, in laying down limitations to those rights, must comply with the same standards as are fixed by the detailed limitation arrangements laid down in the ECHR, which are thus made applicable for the rights covered by this paragraph, without thereby adversely affecting the autonomy of Union law and of that of the Court of Justice of the European Union.*

*The reference to the ECHR covers both the Convention and the Protocols to it. The meaning and the scope of the guaranteed rights are determined not only by the text of those instruments, but also by the case law of the European Court of Human Rights and by the Court of Justice of the European Union. The last sentence of the paragraph is designed to allow the Union to guarantee more extensive protection. In any event, the level of protection afforded by the Charter may never be lower than that guaranteed by the ECHR.*

*The Charter does not affect the possibilities of Member States to avail themselves of Article 15 ECHR, allowing derogations from ECHR rights in the event of war or of other public dangers threatening the life of the nation, when they take action in the areas of national defence in the event of war and of the maintenance of law and order, in accordance with their responsibilities recognised in Articles [I-5 (1), III-13, III-158] of the Constitution.*

*The list of rights which may at the present stage, without precluding developments in the law, legislation and the Treaties, be regarded as corresponding to rights in the ECHR within the meaning of the present paragraph is given hereafter. It does not include rights additional to those in the ECHR.*

**1. Articles of the Charter where both the meaning and the scope are the same as the corresponding Articles of the ECHR:**

- Article 2 corresponds to Article 2 of the ECHR
- Article 4 corresponds to Article 3 of the ECHR
- Article 5(1) and (2) correspond to Article 4 of the ECHR
- Article 6 corresponds to Article 5 of the ECHR
- Article 7 corresponds to Article 8 of the ECHR
- Article 10(1) corresponds to Article 9 of the ECHR
- Article 11 corresponds to Article 10 of the ECHR without prejudice to any restrictions which Union law may impose on Member States' right to introduce the licensing arrangements referred to in the third sentence of Article 10(1) of the ECHR
- Article 17 corresponds to Article 1 of the Protocol to the ECHR
- Article 19(1) corresponds to Article 4 of Protocol No 4
- Article 19(2) corresponds to Article 3 of the ECHR as interpreted by the European Court of Human Rights
- Article 48 corresponds to Article 6(2) and(3) of the ECHR
- Article 49(1) (with the exception of the last sentence) and (2) correspond to Article 7 of the ECHR

**2. Articles where the meaning is the same as the corresponding Articles of the ECHR, but where the scope is wider:**

- Article 9 covers the same field as Article 12 of the ECHR, but its scope may be extended to other forms of marriage if these are established by national legislation
- Article 12(1) corresponds to Article 11 of the ECHR, but its scope is extended to European Union level
- Article 14(1) corresponds to Article 2 of the Protocol to the ECHR, but its scope is extended to cover access to vocational and continuing training
- Article 14(3) corresponds to Article 2 of the Protocol to the ECHR as regards the rights of parents
- Article 47(2) and (3) correspond to Article 6(1) of the ECHR, but the limitation to the determination of civil rights and obligations or criminal charges does not apply as regards Union law and its implementation

- *Article 50 corresponds to Article 4 of Protocol No 7 to the ECHR, but its scope is extended to European Union level between the Courts of the Member States.*
- *Finally, citizens of the European Union may not be considered as aliens in the scope of the application of Union law, because of the prohibition of any discrimination on grounds of nationality. The limitations provided for by Article 16 of the ECHR as regards the rights of aliens therefore do not apply to them in this context.*

*The rule of interpretation contained in paragraph 4 has been based on the wording of Article 6 § 2 of the Treaty on European Union (cf. now the wording of Article [I-7 § 3] of the Constitution) and takes due account of the approach to common constitutional traditions followed by the Court of Justice (e.g., judgment of 13 December 1979, Case 44/79 Hauer [1979] ECR 3727; judgment of 18 May 1982, Case 155/79, AM&S, [1982] ECR 1575). Under that rule, rather than following a rigid approach of "a lowest common denominator", the Charter rights concerned should be interpreted in a way offering a high standard of protection which is adequate for the law of the Union and in harmony with the common constitutional traditions.*

*Paragraph 5 clarifies the distinction between "rights" and "principles" set out in the Charter. According to that distinction, subjective rights shall be respected, whereas principles shall be observed (Article 51 (1)). Principles may be implemented through legislative or executive acts (adopted by the Union in accordance with its powers, and by the Member States only when they implement Union law); accordingly, they become significant for the Courts only when such acts are interpreted or reviewed. They do not however give rise to direct claims for positive action by the Union's institutions or Member States authorities. This is consistent both with case law of the Court of Justice (Cf. notably case law on the "precautionary principle" in Article 174 (2) TEC (replaced by [Article III-124] of the Constitution): judgment of the CFI of 11 September 2002, T-13/99, Pfizer vs. Council, with numerous references to earlier case law; and a series of judgments on Article 33 (ex-39) on the principles of agricultural law, e.g. judgment of the Court of Justice C-265/85, Van den Berg, 1987 ECR 1155: scrutiny of the principle of market stabilisation and of reasonable expectations) and with the approach of the Member States' constitutional systems to "principles" particularly in the field of social law. For illustration, examples for principles recognised in the Charter include e.g. Articles 25, 26 and 37. In some cases, an Article of the Charter may contain both elements of a right and of a principle, e.g., Articles 23, 33 and 34.*



*Paragraph 6 refers to the various Articles in the Charter which, in the spirit of subsidiarity, make reference to national laws and practices.*

### Article 53

#### Level of protection

Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by Union law and international law and by international agreements to which the Union or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' constitutions.

#### **Explanation**

*This provision is intended to maintain the level of protection currently afforded within their respective scope by Union law, national law and international law. Owing to its importance, mention is made of the ECHR.*

### Article 54

#### Prohibition of abuse of rights

Nothing in this Charter shall be interpreted as implying any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms recognised in this Charter or at their limitation to a greater extent than is provided for herein.

#### **Explanation**

*This Article corresponds to Article 17 of the ECHR:*

*"Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention."*

**THE EUROPEAN CONVENTION**

THE SECRETARIAT

**Brussels, 18 July 2003****CONV 850/03****COVER NOTE**

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from : Secretariat

to : Convention

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Nos. prev. docs. : CONV 820/1/03 REV 1, CONV 847/03, CONV 848/03

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Subject : **Draft Treaty establishing a Constitution for Europe**

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Members of the Convention will find attached the final text of the draft Treaty establishing a Constitution for Europe, as submitted to the President of the European Council in Rome on 18 July 2003.

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*Draft*

TREATY  
ESTABLISHING A  
**CONSTITUTION**  
**FOR EUROPE**

Adopted by consensus by the European Convention  
on 13 June and 10 July 2003

SUBMITTED TO THE  
PRESIDENT OF THE EUROPEAN COUNCIL  
IN ROME

*– 18 July 2003 –*



## PREFACE

to Parts I and II of the draft Treaty establishing a Constitution for Europe submitted to the European Council meeting in Thessaloniki on 20 June 2003.

## PREFACE

Noting that the European Union was coming to a turning point in its existence, the European Council which met in Laeken, Belgium, on 14 and 15 December 2001 convened the European Convention on the Future of Europe.

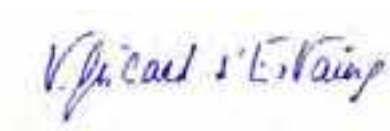
The Convention was asked to draw up proposals on three subjects: how to bring citizens closer to the European design and European Institutions; how to organise politics and the European political area in an enlarged Union; and how to develop the Union into a stabilising factor and a model in the new world order.

The Convention has identified responses to the questions put in the Laeken declaration:

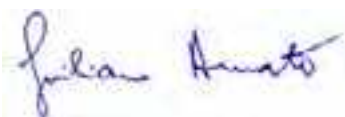
- it proposes a better division of Union and Member State competences;
- it recommends a merger of the Treaties and the attribution of legal personality to the Union;
- it establishes a simplification of the Union's instruments of action;
- it proposes measures to increase the democracy, transparency and efficiency of the European Union, by developing the contribution of national Parliaments to the legitimacy of the European design, by simplifying the decision-making processes, and by making the functioning of the European Institutions more transparent and comprehensible;
- it establishes the necessary measures to improve the structure and enhance the role of each of the Union's three institutions, taking account, in particular, of the consequences of enlargement.

The Laeken declaration also asked whether the simplification and reorganisation of the Treaties should not pave the way for the adoption of a constitutional text. The Convention's proceedings ultimately led to the drawing up of a draft Treaty establishing a Constitution for Europe, which achieved a broad consensus at the plenary session on 13 June 2003.

That is the text which it is our privilege to present today, 20 June 2003, to the European Council meeting in Thessaloniki, on behalf of the European Convention, in the hope that it will constitute the foundation of a future Treaty establishing the European Constitution.



Valéry Giscard d'Estaing  
Président de la Convention



Giuliano Amato  
Vice-Président



Jean-Luc Dehaene  
Vice-Président

## PART I

### **TITLE I: DEFINITION AND OBJECTIVES OF THE UNION**

#### **Article 1: Establishment of the Union**

1. Reflecting the will of the citizens and States of Europe to build a common future, this Constitution establishes the European Union, on which the Member States confer competences to attain objectives they have in common. The Union shall coordinate the policies by which the Member States aim to achieve these objectives, and shall exercise in the Community way the competences they confer on it.
2. The Union shall be open to all European States which respect its values and are committed to promoting them together.

#### **Article 2: The Union's values**

The Union is founded on the values of respect for human dignity, liberty, democracy, equality, the rule of law and respect for human rights. These values are common to the Member States in a society of pluralism, tolerance, justice, solidarity and non-discrimination.

## **TITLE II: FUNDAMENTAL RIGHTS AND CITIZENSHIP OF THE UNION**

### **Article 7: Fundamental rights**

1. The Union shall recognise the rights, freedoms and principles set out in the Charter of Fundamental Rights which constitutes Part II of the Constitution.
2. The Union shall seek accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union's competences as defined in the Constitution.
3. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.

### **Article 8: Citizenship of the Union**

1. Every national of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to national citizenship; it shall not replace it.
2. Citizens of the Union shall enjoy the rights and be subject to the duties provided for in the Constitution. They shall have:
  - the right to move and reside freely within the territory of the Member States;
  - the right to vote and to stand as candidates in elections to the European Parliament and in municipal elections in their Member State of residence, under the same conditions as nationals of that State;



## PART II

### THE CHARTER OF FUNDAMENTAL RIGHTS OF THE UNION

#### PREAMBLE

The peoples of Europe, in creating an ever closer union among them, are resolved to share a peaceful future based on common values.

Conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law. It places the individual at the heart of its activities, by establishing the citizenship of the Union and by creating an area of freedom, security and justice. The Union contributes to the preservation and to the development of these common values while respecting the diversity of the cultures and traditions of the peoples of Europe as well as the national identities of the Member States and the organisation of their public authorities at national, regional and local levels; it seeks to promote balanced and sustainable development and ensures free movement of persons, goods, services and capital, and the freedom of establishment.

To this end, it is necessary to strengthen the protection of fundamental rights in the light of changes in society, social progress and scientific and technological developments by making those rights more visible in a Charter.

This Charter reaffirms, with due regard for the powers and tasks of the Union and the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Union and by the Council of Europe and the case law of the Court of Justice of the European Union and of the European Court of Human Rights. In this context the Charter will be interpreted by the courts of the Union and the Member States with due regard to the explanations prepared at the instigation of the Praesidium of the Convention which drafted the Charter.

Enjoyment of these rights entails responsibilities and duties with regard to other persons, to the human community and to future generations.

The Union therefore recognises the rights, freedoms and principles set out hereafter.

## **TITLE I: DIGNITY**

### **Article II-1: Human dignity**

Human dignity is inviolable. It must be respected and protected.

### **Article II-2: Right to life**

1. Everyone has the right to life.
2. No one shall be condemned to the death penalty, or executed.

### **Article II-3: Right to the integrity of the person**

1. Everyone has the right to respect for his or her physical and mental integrity.
2. In the fields of medicine and biology, the following must be respected in particular:
  - (a) the free and informed consent of the person concerned, according to the procedures laid down by law,
  - (b) the prohibition of eugenic practices, in particular those aiming at the selection of persons,
  - (c) the prohibition on making the human body and its parts as such a source of financial gain,
  - (d) the prohibition of the reproductive cloning of human beings.

### **Article II-4: Prohibition of torture and inhuman or degrading treatment or punishment**

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

### **Article II-5: Prohibition of slavery and forced labour**

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. Trafficking in human beings is prohibited.

## **TITLE II: FREEDOMS**

### **Article II-6: Right to liberty and security**

Everyone has the right to liberty and security of person.

### **Article II-7: Respect for private and family life**

Everyone has the right to respect for his or her private and family life, home and communications.

### **Article II-8: Protection of personal data**

1. Everyone has the right to the protection of personal data concerning him or her.
2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.
3. Compliance with these rules shall be subject to control by an independent authority.

### **Article II-9: Right to marry and right to found a family**

The right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights.

### **Article II-10: Freedom of thought, conscience and religion**

1. Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.
2. The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right.

**Article II-11: Freedom of expression and information**

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.
2. The freedom and pluralism of the media shall be respected.

**Article II-12: Freedom of assembly and of association**

1. Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests.
2. Political parties at Union level contribute to expressing the political will of the citizens of the Union.

**Article II-13: Freedom of the arts and sciences**

The arts and scientific research shall be free of constraint. Academic freedom shall be respected.

**Article II-14: Right to education**

1. Everyone has the right to education and to have access to vocational and continuing training.
2. This right includes the possibility to receive free compulsory education.
3. The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right.

**Article II-15: Freedom to choose an occupation and right to engage in work**

1. Everyone has the right to engage in work and to pursue a freely chosen or accepted occupation.
2. Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State.
3. Nationals of third countries who are authorised to work in the territories of the Member States are entitled to working conditions equivalent to those of citizens of the Union.

**Article II-16: Freedom to conduct a business**

The freedom to conduct a business in accordance with Union law and national laws and practices is recognised.

**Article II-17: Right to property**

1. Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law insofar as is necessary for the general interest.
2. Intellectual property shall be protected.

**Article II-18: Right to asylum**

The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Constitution.

**Article II-19: Protection in the event of removal, expulsion or extradition**

1. Collective expulsions are prohibited.
2. No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.

**TITLE III: EQUALITY****Article II-20: Equality before the law**

Everyone is equal before the law.

**Article II-21: Non-discrimination**

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.
2. Within the scope of application of the Constitution and without prejudice to any of its specific provisions, any discrimination on grounds of nationality shall be prohibited.

**Article II-22: Cultural, religious and linguistic diversity**

The Union shall respect cultural, religious and linguistic diversity.

**Article II-23: Equality between men and women**

Equality between men and women must be ensured in all areas, including employment, work and pay.

The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.

**Article II-24: The rights of the child**

1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.
2. In all actions relating to children, whether taken by public authorities or private Institutions, the child's best interests must be a primary consideration.
3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.

**Article II-25: The rights of the elderly**

The Union recognises and respects the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life.

**Article II-26: Integration of persons with disabilities**

The Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.

## **TITLE IV: SOLIDARITY**

### **Article II-27: Workers' right to information and consultation within the undertaking**

Workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions provided for by Union law and national laws and practices.

### **Article II-28: Right of collective bargaining and action**

Workers and employers, or their respective organisations, have, in accordance with Union law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action.

### **Article II-29: Right of access to placement services**

Everyone has the right of access to a free placement service.

### **Article II-30: Protection in the event of unjustified dismissal**

Every worker has the right to protection against unjustified dismissal, in accordance with Union law and national laws and practices.

### **Article II-31: Fair and just working conditions**

1. Every worker has the right to working conditions which respect his or her health, safety and dignity.
2. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

**Article II-32: Prohibition of child labour and protection of young people at work**

The employment of children is prohibited. The minimum age of admission to employment may not be lower than the minimum school-leaving age, without prejudice to such rules as may be more favourable to young people and except for limited derogations.

Young people admitted to work must have working conditions appropriate to their age and be protected against economic exploitation and any work likely to harm their safety, health or physical, mental, moral or social development or to interfere with their education.

**Article II-33: Family and professional life**

1. The family shall enjoy legal, economic and social protection.
2. To reconcile family and professional life, everyone shall have the right to protection from dismissal for a reason connected with maternity and the right to paid maternity leave and to parental leave following the birth or adoption of a child.

**Article II-34: Social security and social assistance**

1. The Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by Union law and national laws and practices.
2. Everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with Union law and national laws and practices.
3. In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Union law and national laws and practices.

**Article II-35: Health care**

Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities.



**Article II-36: Access to services of general economic interest**

The Union recognises and respects access to services of general economic interest as provided for in national laws and practices, in accordance with the Constitution, in order to promote the social and territorial cohesion of the Union.

**Article II-37: Environmental protection**

A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.

**Article II-38: Consumer protection**

Union policies shall ensure a high level of consumer protection.

## **TITLE V: CITIZENS' RIGHTS**

### **Article II-39: Right to vote and to stand as a candidate at elections to the European Parliament**

1. Every citizen of the Union has the right to vote and to stand as a candidate at elections to the European Parliament in the Member State in which he or she resides, under the same conditions as nationals of that State.
2. Members of the European Parliament shall be elected by direct universal suffrage in a free and secret ballot.

### **Article II-40: Right to vote and to stand as a candidate at municipal elections**

Every citizen of the Union has the right to vote and to stand as a candidate at municipal elections in the Member State in which he or she resides under the same conditions as nationals of that State.

### **Article II-41: Right to good administration**

1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the Institutions, bodies and agencies of the Union.
2. This right includes:
  - (a) the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;
  - (b) the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;
  - (c) the obligation of the administration to give reasons for its decisions.
3. Every person has the right to have the Union make good any damage caused by its Institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.
4. Every person may write to the Institutions of the Union in one of the languages of the Constitution and must have an answer in the same language.

**Article II-42: Right of access to documents**

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of the Institutions, bodies and agencies of the Union, in whatever form they are produced.

**Article II-43: European Ombudsman**

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to refer to the European Ombudsman cases of maladministration in the activities of the Institutions, bodies or agencies of the Union, with the exception of the European Court of Justice and the High Court acting in their judicial role.

**Article II-44: Right to petition**

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to petition the European Parliament.

**Article II-45: Freedom of movement and of residence**

1. Every citizen of the Union has the right to move and reside freely within the territory of the Member States.
2. Freedom of movement and residence may be granted, in accordance with the Constitution, to nationals of third countries legally resident in the territory of a Member State.

**Article II-46: Diplomatic and consular protection**

Every citizen of the Union shall, in the territory of a third country in which the Member State of which he or she is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that Member State.

## **TITLE VI: JUSTICE**

### **Article II-47: Right to an effective remedy and to a fair trial**

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

Legal aid shall be made available to those who lack sufficient resources insofar as such aid is necessary to ensure effective access to justice.

### **Article II-48: Presumption of innocence and right of defence**

1. Everyone who has been charged shall be presumed innocent until proved guilty according to law.
2. Respect for the rights of the defence of anyone who has been charged shall be guaranteed.

### **Article II-49: Principles of legality and proportionality of criminal offences and penalties**

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national law or international law at the time when it was committed. Nor shall a heavier penalty be imposed than that which was applicable at the time the criminal offence was committed. If, subsequent to the commission of a criminal offence, the law provides for a lighter penalty, that penalty shall be applicable.
2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles recognised by the community of nations.
3. The severity of penalties must not be disproportionate to the criminal offence.

### **Article II-50: Right not to be tried or punished twice in criminal proceedings for the same criminal offence**

No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law.

## **TITLE VII: GENERAL PROVISIONS GOVERNING THE INTERPRETATION AND APPLICATION OF THE CHARTER**

### **Article II-51: Field of application**

1. The provisions of this Charter are addressed to the Institutions, bodies and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers and respecting the limits of the powers of the Union as conferred on it in the other Parts of the Constitution.
2. This Charter does not extend the field of application of Union law beyond the powers of the Union or establish any new power or task for the Union, or modify powers and tasks defined in the other Parts of the Constitution.

### **Article II-52: Scope and interpretation of rights and principles**

1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.
2. Rights recognised by this Charter for which provision is made in other Parts of the Constitution shall be exercised under the conditions and within the limits defined by these relevant Parts
3. Insofar as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.
4. Insofar as this Charter recognises fundamental rights as they result from the constitutional traditions common to the Member States, those rights shall be interpreted in harmony with those traditions.
5. The provisions of this Charter which contain principles may be implemented by legislative and executive acts taken by Institutions and bodies of the Union, and by acts of Member States when they are implementing Union law, in the exercise of their respective powers. They shall be judicially cognisable only in the interpretation of such acts and in the ruling on their legality.
6. Full account shall be taken of national laws and practices as specified in this Charter.

**Article II-53: Level of protection**

Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by Union law and international law and by international agreements to which the Union or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' constitutions.

**Article II-54: Prohibition of abuse of rights**

Nothing in this Charter shall be interpreted as implying any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms recognised in this Charter or at their limitation to a greater extent than is provided for herein.

**THE EUROPEAN CONVENTION****Brussels, 18 July 2003**

THE SECRETARIAT

**CONV 828/1/03****REV 1****COVER NOTE**

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|------------------|----------------------------------------------------------------------------------------|
| from :           | Praesidium                                                                             |
| to :             | Convention                                                                             |
| No. prev. doc. : | WD N° 27 WGII                                                                          |
| Subject :        | <b>Updated Explanations relating to the text of the Charter of Fundamental Rights.</b> |

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Members of the Convention will find attached, for information, the updated explanations relating to the text of the Charter of Fundamental Rights, produced under the authority of the Chairman of Working Group II and endorsed by the Praesidium (this revised version contains adapted cross-references to Articles in Parts I and III of the Constitution).

**UPDATED EXPLANATIONS,**  
**RELATING TO THE COMPLETE TEXT OF THE CHARTER OF FUNDAMENTAL**  
**RIGHTS OF THE EUROPEAN UNION (AS AMENDED BY THE**  
**EUROPEAN CONVENTION AND INCORPORATED AS PART II**  
**OF THE TREATY ON A CONSTITUTION FOR EUROPE)**

These explanations were originally prepared at the instigation of the Praesidium of the Convention which drafted the Charter of Fundamental Rights of the European Union. They have been updated at the instigation of the Praesidium of the European Convention, in the light of the drafting adjustments made to the text of the Charter by that Convention (notably to Articles 51 and 52) and of further developments of Union law. Although they do not as such have the status of law, they are a valuable tool of interpretation intended to clarify the provisions of the Charter.



## PREAMBLE

The peoples of Europe, in creating an ever closer union among them, are resolved to share a peaceful future based on common values.

Conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law. It places the individual at the heart of its activities, by establishing the citizenship of the Union and by creating an area of freedom, security and justice.

The Union contributes to the preservation and to the development of these common values while respecting the diversity of the cultures and traditions of the peoples of Europe as well as the national identities of the Member States and the organisation of their public authorities at national, regional and local levels; it seeks to promote balanced and sustainable development and ensures free movement of persons, goods, services and capital, and the freedom of establishment.

To this end, it is necessary to strengthen the protection of fundamental rights in the light of changes in society, social progress and scientific and technological developments by making those rights more visible in a Charter.

This Charter reaffirms, with due regard for the powers and tasks of the Union and the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Union and by the Council of Europe and the case law of the Court of Justice of the European Union and of the European Court of Human Rights. In this context the Charter will be interpreted by the courts of the Union and the Member States with due regard to the explanations prepared at the instigation of the Praesidium of the Convention which drafted the Charter.

Enjoyment of these rights entails responsibilities and duties with regard to other persons, to the human community and to future generations.

The Union therefore recognises the rights, freedoms and principles set out hereafter.

## TITLE I. DIGNITY

### Article 1

#### Human dignity

Human dignity is inviolable. It must be respected and protected.

#### Explanation

*The dignity of the human person is not only a fundamental right in itself but constitutes the real basis of fundamental rights. The 1948 Universal Declaration of Human Rights enshrined human dignity in its preamble: "Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world." In its judgment of 9 October 2001 in case C-377/98 Netherlands v. European Parliament and Council, 2001 ECR 7079, at grounds n° 70 - 77, the Court of Justice confirmed that a fundamental right to human dignity is part of Union law.*

*It results that none of the rights laid down in this Charter may be used to harm the dignity of another person, and that the dignity of the human person is part of the substance of the rights laid down in this Charter. It must therefore be respected, even where a right is restricted.*

### Article 2

#### Right to life

1. Everyone has the right to life.
2. No one shall be condemned to the death penalty, or executed.

## **Explanation**

1. *Paragraph 1 of this Article is based on the first sentence of Article 2(1) of the ECHR, which reads as follows:*

*"1. Everyone's right to life shall be protected by law..."*

2. *The second sentence of the provision, which referred to the death penalty, was superseded by the entry into force of Article 1 of Protocol No 6 to the ECHR, which reads as follows:*

*"The death penalty shall be abolished. No-one shall be condemned to such penalty or executed."*

*Article 2(2) of the Charter is based on that provision.*

3. *The provisions of Article 2 of the Charter correspond to those of the above Articles of the ECHR and its Protocol. They have the same meaning and the same scope, in accordance with Article 52(3) of the Charter. Therefore, the "negative" definitions appearing in the ECHR must be regarded as also forming part of the Charter:*

- (a) *Article 2(2) of the ECHR:*

*"Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:*

*(a) in defence of any person from unlawful violence;*

*(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;*

*(c) in action lawfully taken for the purpose of quelling a riot or insurrection."*

- (b) *Article 2 of Protocol No 6 to the ECHR:*

*"A State may make provision in its law for the death penalty in respect of acts committed in time of war or of imminent threat of war; such penalty shall be applied only in the instances laid down in the law and in accordance with its provisions..."*

### Article 3

#### Right to the integrity of the person

1. Everyone has the right to respect for his or her physical and mental integrity.
2. In the fields of medicine and biology, the following must be respected in particular:

the free and informed consent of the person concerned, according to the procedures laid down by law,

- the prohibition of eugenic practices, in particular those aiming at the selection of persons,
- the prohibition on making the human body and its parts as such a source of financial gain,
- the prohibition of the reproductive cloning of human beings.

#### Explanation

1. *In its judgment of 9 October 2001 in case C-377/98 Netherlands v. European Parliament and Council, 2001 ECR 7079, at grounds n° 70, 78 - 80, the Court of Justice confirmed that a fundamental right to human integrity is part of Union law and encompasses, in the context of medicine and biology, the free and informed consent of the donor and recipient.*

2. *The principles of Article 3 of the Charter are already included in the Convention on Human Rights and Biomedicine, adopted by the Council of Europe (ETS 164 and additional protocol ETS 168). The Charter does not set out to depart from those principles, and therefore prohibits only reproductive cloning. It neither authorises nor prohibits other forms of cloning. Thus it does not in any way prevent the legislature from prohibiting other forms of cloning.*

3. *The reference to eugenic practices, in particular those aiming at the selection of persons, relates to possible situations in which selection programmes are organised and implemented, involving campaigns for sterilisation, forced pregnancy, compulsory ethnic marriage among others, all acts deemed to be international crimes in the Statute of the International Criminal Court adopted in Rome on 17 July 1998 (see its Article 7(1)(g)).*

#### Article 4

##### Prohibition of torture and inhuman or degrading treatment or punishment

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

#### **Explanation**

*The right in Article 4 is the right guaranteed by Article 3 of the ECHR, which has the same wording: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment". By virtue of Article 52(3) of the Charter, it therefore has the same meaning and the same scope as the ECHR Article.*

#### Article 5

##### Prohibition of slavery and forced labour

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. Trafficking in human beings is prohibited.

## **Explanation**

1. *The right in Article 5(1) and (2) corresponds to Article 4(1) and (2) of the ECHR, which has the same wording.*

*It therefore has the same meaning and scope as the ECHR Article, by virtue of Article 52(3) of the Charter. Consequently:*

*– no limitation may legitimately affect the right provided for in paragraph 1;*

*– in paragraph 2, "forced or compulsory labour" must be understood in the light of the "negative" definitions contained in Article 4(3) of the ECHR:*

*"For the purpose of this article the term "forced or compulsory labour" shall not include:*

- (a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;*
- (b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;*
- (c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;*
- (d) any work or service which forms part of normal civic obligations."*

2. *Paragraph 3 stems directly from human dignity and takes account of recent developments in organised crime, such as the organisation of lucrative illegal immigration or sexual exploitation networks. The annex to the Europol Convention contains the following definition which refers to trafficking for the purpose of sexual exploitation: "traffic in human beings: means subjection of a person to the real and illegal sway of other persons by using violence or menaces or by abuse of authority or intrigue with a view to the exploitation of prostitution, forms of sexual exploitation and assault of minors or trade in abandoned children". Chapter VI of the Convention implementing the Schengen Agreement, which has been integrated into the Union's *acquis*, in which the United Kingdom and Ireland participate, contains the following wording in Article 27(1) which refers to illegal immigration networks: " The Contracting Parties undertake to impose appropriate penalties on any person who, for financial gain, assists or tries to assist an alien to enter or reside within the territory of one of the Contracting Parties in breach of that Contracting Party's laws on the entry and residence of aliens." On 19 July 2002, the Council adopted a framework decision on combating the trafficking in human beings (O.J. L 203/1) whose Article 1 defines in detail the offences*

*concerning trafficking in human beings for the purposes of labour exploitation or sexual exploitation, which the Member States must make punishable by virtue of that framework decision.*

## **TITLE II. FREEDOMS**

### Article 6

#### Right to liberty and security

Everyone has the right to liberty and security of person.

#### **Explanation**

*The rights in Article 6 are the rights guaranteed by Article 5 of the ECHR, and in accordance with Article 52(3) of the Charter, they have the same meaning and scope. Consequently, the limitations which may legitimately be imposed on them may not exceed those permitted by the ECHR, in the wording of Article 5:*

- "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:*
- (a) the lawful detention of a person after conviction by a competent court;*
  - (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;*

- (c) *the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;*
  - (d) *the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;*
  - (e) *the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;*
  - (f) *the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.*
2. *Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.*
  3. *Everyone arrested or detained in accordance with the provisions of paragraph 1.c of this article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.*
  4. *Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.*
  5. *Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation."*

*The rights enshrined in Article 6 must be respected particularly when the European Parliament and the Council adopt laws and framework laws in the area of judicial cooperation in criminal matters, on the basis of Articles [III-171, III-172 and III-174] of the Constitution, notably to define common minimum provisions as regards the categorisation of offences and punishments and certain aspects of procedural law.*



## Article 7

### Respect for private and family life

Everyone has the right to respect for his or her private and family life, home and communications.

#### **Explanation**

*The rights guaranteed in Article 7 correspond to those guaranteed by Article 8 of the ECHR. To take account of developments in technology the word "correspondence" has been replaced by "communications".*

*In accordance with Article 52(3), the meaning and scope of this right are the same as those of the corresponding article of the ECHR. Consequently, the limitations which may legitimately be imposed on this right are the same as those allowed by Article 8 of the ECHR:*

- "1. Everyone has the right to respect for his private and family life, his home and his correspondence.*
- 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."*

## Article 8

### Protection of personal data

1. Everyone has the right to the protection of personal data concerning him or her.

2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.
3. Compliance with these rules shall be subject to control by an independent authority.

### **Explanation**

*This Article has been based on Article 286 of the Treaty establishing the European Community and Directive 95/46/EC of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995) as well as on Article 8 of the ECHR and on the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data, which has been ratified by all the Member States. Article 286 EC Treaty is now replaced by Article [50] of the Constitution. Reference is also made to regulation N° 45/2001 of the European Parliament and the Council on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001). The above-mentioned directive and regulation contain conditions and limitations for the exercise of the right to the protection of personal data.*

### **Article 9**

#### **Right to marry and right to found a family**

The right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights.

### **Explanation**

*This Article is based on Article 12 of the ECHR, which reads as follows: "Men and women of marriageable age have the right to marry and to found a family according to the national laws governing the exercising of this right." The wording of the Article has been modernised to cover cases in which national legislation recognises arrangements other than marriage for founding a family. This Article neither prohibits nor imposes the granting of the status of marriage to unions between people of the same sex. This right is thus similar to that afforded by the ECHR, but its scope may be wider when national legislation so provides.*

### **Article 10**

#### Freedom of thought, conscience and religion

1. Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.
2. The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right.

### **Explanation**

*The right guaranteed in paragraph 1 corresponds to the right guaranteed in Article 9 of the ECHR and, in accordance with Article 52(3) of the Charter, has the same meaning and scope. Limitations must therefore respect Article 9(2) of the Convention, which reads as follows: "Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."*

*The right guaranteed in paragraph 2 corresponds to national constitutional traditions and to the development of national legislation on this issue.*

## Article 11

### Freedom of expression and information

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.
2. The freedom and pluralism of the media shall be respected.

### Explanation

1. *Article 11 corresponds to Article 10 of the European Convention on Human Rights, which reads as follows:*

- "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.*
- 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."*

*Pursuant to Article 52(3) of the Charter, the meaning and scope of this right are the same as those guaranteed by the ECHR. The limitations which may be imposed on it may therefore not exceed those provided for in Article 10(2) of the Convention, without prejudice to any restrictions which competition law of the Union may impose on Member States' right to introduce the licensing arrangements referred to in the third sentence of Article 10(1) of the ECHR.*

- Paragraph 2 of this Article spells out the consequences of paragraph 1 regarding freedom of the media. It is based in particular on Court of Justice case law regarding television, particularly in case C-288/89 (judgment of 25 July 1991, Stichting Collectieve Antennevoorziening Gouda and others [1991] ECR I-4007), and on the Protocol on the system of public broadcasting in the Member States annexed to the EC Treaty and now to the Constitution, and on Council Directive 89/552/EC (particularly its seventeenth recital).*

## Article 12

### Freedom of assembly and of association

- Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests.
- Political parties at Union level contribute to expressing the political will of the citizens of the Union.

### **Explanation**

*Paragraph 1 of this Article corresponds to Article 11 of the ECHR, which reads as follows:*

- "1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.*

2. *No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."*

*The meaning of the provisions of paragraph 1 is the same as that of the ECHR, but their scope is wider since they apply at all levels including European level. In accordance with Article 52(3) of the Charter, limitations on that right may not exceed those considered legitimate by virtue of Article 11(2) of the ECHR.*

2. *This right is also based on Article 11 of the Community Charter of the Fundamental Social Rights of Workers.*
3. *Paragraph 2 of this Article corresponds to Article [45 § 4] of the Constitution.*

### Article 13

#### Freedom of the arts and sciences

The arts and scientific research shall be free of constraint. Academic freedom shall be respected.

#### **Explanation**

*This right is deduced primarily from the right to freedom of thought and expression. It is to be exercised having regard to Article 1 and may be subject to the limitations authorised by Article 10 of the ECHR.*

## Article 14

### Right to education

1. Everyone has the right to education and to have access to vocational and continuing training.
2. This right includes the possibility to receive free compulsory education.
3. The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right.

### Explanation

1. *This Article is based on the common constitutional traditions of Member States and on Article 2 of the Protocol to the ECHR, which reads as follows:*

*"No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions."*

*It was considered useful to extend this article to access to vocational and continuing training (see point 15 of the Community Charter of the Fundamental Social Rights of Workers and Article 10 of the Social Charter) and to add the principle of free compulsory education. As it is worded, the latter principle merely implies that as regards compulsory education, each child has the possibility of attending an establishment which offers free education. It does not require all establishments which provide education or vocational and continuing training, in particular private ones, to be free of charge. Nor does it exclude certain specific forms of education having to be paid for, if the State takes measures to grant financial compensation. Insofar as the Charter applies to the Union,*

*this means that in its training policies the Union must respect free compulsory education, but this does not, of course, create new powers. Regarding the right of parents, it must be interpreted in conjunction with the provisions of Article 24.*

- 2. Freedom to found public or private educational establishments is guaranteed as one of the aspects of freedom to conduct a business but it is limited by respect for democratic principles and is exercised in accordance with the arrangements defined by national legislation.*

## Article 15

### Freedom to choose an occupation and right to engage in work

1. Everyone has the right to engage in work and to pursue a freely chosen or accepted occupation.
2. Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State.
3. Nationals of third countries who are authorised to work in the territories of the Member States are entitled to working conditions equivalent to those of citizens of the Union.

### Explanation

*Freedom to choose an occupation, as enshrined in Article 15(1), is recognised in Court of Justice case law (see inter alia judgment of 14 May 1974, Case 4/73 Nold [1974] ECR 491, paragraphs 12 to 14 of the grounds; judgment of 13 December 1979, Case 44/79 Hauer [1979] ECR 3727; judgment of 8 October 1986, Case 234/85 Keller [1986] ECR 2897, paragraph 8 of the grounds).*



*This paragraph also draws upon Article 1(2) of the European Social Charter, which was signed on 18 October 1961 and has been ratified by all the Member States, and on point 4 of the Community Charter of the Fundamental Social Rights of Workers of 9 December 1989. The expression "working conditions" is to be understood in the sense of Article [III-107] of the Constitution.*

*The second paragraph deals with the three freedoms guaranteed by Articles [4] and [III-18, III-22 and III-29] of the Constitution, namely freedom of movement for workers, freedom of establishment and freedom to provide services.*

*The third paragraph has been based on TEC Article 137(3), fourth indent, now replaced by Article [III-104 (1) (g)] of the Constitution, and on Article 19(4) of the European Social Charter signed on 18 October 1961 and ratified by all the Member States. Article 52(2) of the Charter is therefore applicable. The question of recruitment of seamen having the nationality of third States for the crews of vessels flying the flag of a Member State of the Union is governed by Union law and national legislation and practice.*

## Article 16

### Freedom to conduct a business

The freedom to conduct a business in accordance with Union law and national laws and practices is recognised.

### **Explanation**

*This Article is based on Court of Justice case law which has recognised freedom to exercise an economic or commercial activity (see judgments of 14 May 1974, Case 4/73 Nold [1974] ECR 491, paragraph 14 of the grounds, and of 27 September 1979, Case 230-78 SPA Eridiana and others [1979] ECR 2749, paragraphs 20 and 31 of the grounds) and freedom of contract (see inter alia Sukkerfabriken Nykøbing judgment, Case 151/78 [1979] ECR 1, paragraph 19 of the grounds, and judgment of 5 October 1999, C-240/97 Spain v. Commission, [1999] ECR I-6571, paragraph 99 of*

*the grounds) and Article [3 (2)] of the Constitution, which recognises free competition. Of course, this right is to be exercised with respect for Union law and national legislation. It may be subject to the limitations provided for in Article 52(1) of the Charter.*

## Article 17

### Right to property

1. Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law insofar as is necessary for the general interest.
2. Intellectual property shall be protected.

### **Explanation**

*This Article is based on Article 1 of the Protocol to the ECHR:*

*"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.*

*The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."*

*This is a fundamental right common to all national constitutions. It has been recognised on numerous occasions by the case law of the Court of Justice, initially in the Hauer judgment (13 December 1979, ECR [1979] 3727). The wording has been updated but, in accordance with Article 52(3), the meaning and scope of the right are the same as those of the right guaranteed by the ECHR and the limitations may not exceed those provided for there.*

*Protection of intellectual property, one aspect of the right of property, is explicitly mentioned in paragraph 2 because of its growing importance and Community secondary legislation. Intellectual property covers not only literary and artistic property but also inter alia patent and trademark rights and associated rights. The guarantees laid down in paragraph 1 shall apply as appropriate to intellectual property.*

## Article 18

### Right to asylum

The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Constitution.

### Explanation

*The text of the Article has been based on TEC Article 63, now replaced by Article [III-167] of the Constitution, which requires the Union to respect the Geneva Convention on refugees. Reference should be made to the Protocols relating to the United Kingdom and Ireland annexed to the [Treaty of Amsterdam] Constitution and to Denmark to determine the extent to which those Member States implement Union law in this area and the extent to which this Article is applicable to them. This Article is in line with the Protocol on Asylum annexed to the Constitution.*

## Article 19

### Protection in the event of removal, expulsion or extradition

1. Collective expulsions are prohibited.
2. No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.

### **Explanation**

*Paragraph 1 of this Article has the same meaning and scope as Article 4 of Protocol No 4 to the ECHR concerning collective expulsion. Its purpose is to guarantee that every decision is based on a specific examination and that no single measure can be taken to expel all persons having the nationality of a particular State (see also Article 13 of the Covenant on Civil and Political Rights).*

*Paragraph 2 incorporates the relevant case law from the European Court of Human Rights regarding Article 3 of the ECHR (see *Ahmed v. Austria*, judgment of 17 December 1996, [1996] ECR VI-2206 and *Soering*, judgment of 7 July 1989).*

**TITLE III. EQUALITY****Article 20****Equality before the law**

Everyone is equal before the law.

**Explanation**

*This Article corresponds to a general principle of law which is included in all European constitutions and has also been recognised by the Court of Justice as a basic principle of Community law (judgment of 13 November 1984, Case 283/83 Racke [1984] ECR 3791, judgment of 17 April 1997, Case 15/95 EARL [1997] ECR I-1961, and judgment of 13 April 2000, Case 292/97 Karlsson, [2000] ECR 2737).*

**Article 21****Non-discrimination**

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.
2. Within the scope of application of the Constitution and without prejudice to any of its specific provisions, any discrimination on grounds of nationality shall be prohibited.

## **Explanation**

*Paragraph 1 draws on Article 13 of the EC Treaty, now replaced by [Article III-8] of the Constitution, Article 14 of the ECHR and Article 11 of the Convention on Human Rights and Biomedicine as regards genetic heritage. Insofar as this corresponds to Article 14 of the ECHR, it applies in compliance with it.*

*There is no contradiction or incompatibility between paragraph 1 and Article [III-8] of the Constitution which has a different scope and purpose: Article [III-8] confers power on the Union to adopt legislative acts, including harmonisation of the Member States' laws and regulations, to combat certain forms of discrimination, listed exhaustively in that Article. Such legislation may cover action of Member State authorities (as well as relations between private individuals) in any area within the limits of the Union's powers. In contrast, the provision in paragraph 1 does not create any power to enact anti-discrimination laws in these areas of Member State or private action, nor does it lay down a sweeping ban of discrimination in such wide-ranging areas. Instead, it only addresses discriminations by the institutions and bodies of the Union themselves, when exercising powers conferred under other articles of Parts I and III of the Constitution, and by Member States only when they are implementing Union law. Paragraph 1 therefore does not alter the extent of powers granted under Article [III-8] nor the interpretation given to that Article.*

*Paragraph 2 corresponds to Article [4 (2)] of the Constitution and must be applied in compliance with that Article.*

## **Article 22**

### **Cultural, religious and linguistic diversity**

The Union shall respect cultural, religious and linguistic diversity.

### **Explanation**

*This Article has been based on Article 6 of the Treaty on European Union and on Article 151(1) and (4) of the EC Treaty, now replaced by Article [III-181 (1) and (4)] of the Constitution, concerning culture. Respect for cultural and linguistic diversity is now also laid down in Article [3 (3)] of the Constitution. The Article is also inspired by declaration No 11 to the Final Act of the Amsterdam Treaty on the status of churches and non-confessional organisations, now taken over in Article [51] of the Constitution.*

### **Article 23**

#### **Equality between men and women**

Equality between men and women must be ensured in all areas, including employment, work and pay.

The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.

### **Explanation**

*The first paragraph has been based on Articles 2 and 3(2) of the EC Treaty, now replaced by Articles [3] and [III-2] of the Constitution which impose the objective of promoting equality between men and women on the Union, and on Article 141 (1) of the EC Treaty, now replaced by Article [III-108 (1)] of the Constitution. It draws on Article 20 of the revised European Social Charter of 3 May 1996 and on point 16 of the Community Charter on the rights of workers. It is also based on Article 141(3) of the EC Treaty, now replaced by Article [III-108 (3)] of the Constitution, and Article 2(4) of Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.*

*Paragraph 2 takes over in shorter form Article [III-108 (4)] of the Constitution which provides that the principle of equal treatment does not prevent the maintenance or adoption of measures providing for specific advantages in order to make it easier for the under-represented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers. In accordance with Article 52 (2), the present paragraph does not amend Article [III-108 (4)].*

## Article 24

### The rights of the child

1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.
2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.
3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.

### Explanation

*This Article is based on the New York Convention on the Rights of the Child signed on 20 November 1989 and ratified by all the Member States, particularly Articles 3, 9, 12 and 13 thereof.*

*Paragraph 3 takes account of the fact that, as part of the establishment of an area of freedom, security and justice, Union legislation on civil matters having cross-border implications, for which Article [III-170] of the Constitution confers power, may include notably visiting rights ensuring that children can maintain on a regular basis a personal and direct contact with both his or her parents.*



## Article 25

### The rights of the elderly

The Union recognises and respects the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life.

#### **Explanation**

*This Article draws on Article 23 of the revised European Social Charter and Articles 24 and 25 of the Community Charter of the Fundamental Social Rights of Workers. Of course, participation in social and cultural life also covers participation in political life.*

## Article 26

### Integration of persons with disabilities

The Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.

#### **Explanation**

*The principle set out in this Article is based on Article 15 of the European Social Charter and also draws on point 26 of the Community Charter of the Fundamental Social Rights of Workers.*

## TITLE IV. SOLIDARITY

### Article 27

Workers' right to information and consultation within the undertaking

Workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions provided for by Union law and national laws and practices.

#### Explanation

*This Article appears in the revised European Social Charter (Article 21) and in the Community Charter on the rights of workers (points 17 and 18). It applies under the conditions laid down by Union law and by national laws. The reference to appropriate levels refers to the levels laid down by Union law or by national laws and practices, which might include the European level when Union legislation so provides. There is a considerable Union acquis in this field: Articles [III-105 and III-106] of the Constitution, and Directives 2002/14/EC (general framework for informing and consulting employees in the European Community), 98/59/EC (collective redundancies), 2001/23/EC (transfers of undertakings) and 94/45/EC (European works councils).*

### Article 28

Right of collective bargaining and action

Workers and employers, or their respective organisations, have, in accordance with Union law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action.

**Explanation**

*This Article is based on Article 6 of the European Social Charter and on the Community Charter of the Fundamental Social Rights of Workers (points 12 to 14). The right of collective action was recognised by the European Court of Human Rights as one of the elements of trade union rights laid down by Article 11 of the ECHR. As regards the appropriate levels at which collective negotiation might take place, see the explanation given for the above Article. The modalities and limits for the exercise of collective action, including strike action, come under national laws and practices, including the question of whether it may be carried out in parallel in several Member States.*

**Article 29****Right of access to placement services**

Everyone has the right of access to a free placement service.

**Explanation**

*This Article is based on Article 1(3) of the European Social Charter and point 13 of the Community Charter of the Fundamental Social Rights of Workers.*

**Article 30****Protection in the event of unjustified dismissal**

Every worker has the right to protection against unjustified dismissal, in accordance with Union law and national laws and practices.

### **Explanation**

*This Article draws on Article 24 of the revised Social Charter. See also Directive 2001/23/EC on the safeguarding of employees' rights in the event of transfers of undertakings, and Directive 80/987/EEC on the protection of employees in the event of the insolvency of their employer, as amended by Directive 2002/74/EC.*

### **Article 31**

#### Fair and just working conditions

1. Every worker has the right to working conditions which respect his or her health, safety and dignity.
2. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

### **Explanation**

1. *Paragraph 1 of this Article is based on Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work. It also draws on Article 3 of the Social Charter and point 19 of the Community Charter on the rights of workers, and, as regards dignity at work, on Article 26 of the revised Social Charter. The expression "working conditions" must be understood in the sense of Article [III-107] of the Constitution.*
2. *Paragraph 2 is based on Directive 93/104/EC concerning certain aspects of the organisation of working time, Article 2 of the European Social Charter and point 8 of the Community Charter on the rights of workers.*

## Article 32

### Prohibition of child labour and protection of young people at work

The employment of children is prohibited. The minimum age of admission to employment may not be lower than the minimum school-leaving age, without prejudice to such rules as may be more favourable to young people and except for limited derogations.

Young people admitted to work must have working conditions appropriate to their age and be protected against economic exploitation and any work likely to harm their safety, health or physical, mental, moral or social development or to interfere with their education.

#### **Explanation**

*This Article is based on Directive 94/33/EC on the protection of young people at work, Article 7 of the European Social Charter and points 20 to 23 of the Community Charter of the Fundamental Social Rights of Workers.*

## Article 33

### Family and professional life

1. The family shall enjoy legal, economic and social protection.
2. To reconcile family and professional life, everyone shall have the right to protection from dismissal for a reason connected with maternity and the right to paid maternity leave and to parental leave following the birth or adoption of a child.

#### **Explanation**

*Article 33(1) is based on Article 16 of the European Social Charter. The second paragraph draws on Council Directive 92/85/EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are*

*breastfeeding and Directive 96/34/EC on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC. It is also based on Article 8 (protection of maternity) of the European Social Charter and draws on Article 27 (right of workers with family responsibilities to equal opportunities and equal treatment) of the revised Social Charter. "Maternity" covers the period from conception to weaning.*

#### Article 34

##### Social security and social assistance

1. The Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by Union law and national laws and practices.
2. Everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with Union law and national laws and practices.
3. In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Union law and national laws and practices.

#### **Explanation**

*The principle set out in Article 34(1) is based on Articles 137 and 140 of the EC Treaty, now replaced by Articles [III-104 and III-107] and on Article 12 of the European Social Charter and point 10 of the Community Charter on the rights of workers. The Union must respect it when exercising the powers conferred on it by Articles [III-104 and III-107] of the Constitution. The reference to social services relates to cases in which such services have been introduced to provide certain advantages but does not imply that such services must be created where they do not exist. "Maternity" must be understood in the same sense as in the preceding Article.*

*The second paragraph is based on Articles 12 (4) and 13(4) of the European Social Charter and point 2 of the Community Charter of the Fundamental Social Rights of Workers and reflects the rules arising from Regulation No 1408/71 and Regulation No 1612/68.*

*The third paragraph draws on Article 13 of the European Social Charter and Articles 30 and 31 of the revised Social Charter and point 10 of the Community Charter. The Union must respect it in the context of policies based on Article [III-104] of the Constitution.*

### Article 35

#### Health care

Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities.

#### **Explanation**

*The principles set out in this Article are based on Article 152 of the EC Treaty, now replaced by Article [III-179] of the Constitution, and on Articles 11 and 13 of the European Social Charter. The second sentence of the Article takes over Article [III-179 (1)].*

### Article 36

#### Access to services of general economic interest

The Union recognises and respects access to services of general economic interest as provided for in national laws and practices, in accordance with the Constitution, in order to promote the social and territorial cohesion of the Union.

#### **Explanation**

*This Article is fully in line with Article [III-6] of the Constitution and does not create any new right. It merely sets out the principle of respect by the Union for the access to services of general economic interest as provided for by national provisions, when those provisions are compatible with Union law.*

### Article 37

#### Environmental protection

A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.

#### **Explanation**

*The principles set out in this Article have been based on Articles 2, 6 and 174 of the EC Treaty, which have now been replaced by Articles [3 (3), III-4 and III-129] of the Constitution. It also draws on the provisions of some national constitutions.*

### Article 38

#### Consumer Protection

Union policies shall ensure a high level of consumer protection.

#### **Explanation**

*The principles set out in this Article have been based on Article 153 of the EC Treaty, now replaced by Article [III-132] of the Constitution.*



## TITLE V. CITIZENS' RIGHTS

### Article 39

Right to vote and to stand as a candidate at elections to the European Parliament

1. Every citizen of the Union has the right to vote and to stand as a candidate at elections to the European Parliament in the Member State in which he or she resides, under the same conditions as nationals of that State.
2. Members of the European Parliament shall be elected by direct universal suffrage in a free and secret ballot.

#### Explanation

*Article 39 applies under the conditions laid down in Parts I and III of the Constitution, in accordance with Article 52(2) of the Charter. Article 39(1) corresponds to the right guaranteed in Article [8 (2)] of the Constitution (cf. also the legal base in Article [III-10] for the adoption of detailed arrangements for the exercise of that right) and Article 39(2) corresponds to Article [19 (2)] of the Constitution. Article 39(2) takes over the basic principles of the electoral system in a democratic State.*

### Article 40

Right to vote and to stand as a candidate at municipal elections

Every citizen of the Union has the right to vote and to stand as a candidate at municipal elections in the Member State in which he or she resides under the same conditions as nationals of that State.

## **Explanation**

*This Article corresponds to the right guaranteed by Article [8 (2)] of the Constitution (cf. also the legal base in Article [III-10] for the adoption of detailed arrangements for the exercise of that right). In accordance with Article 52(2) of the Charter, it applies under the conditions set out in these Articles of Parts I and III of the Constitution.*

### Article 41

#### Right to good administration

1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the Institutions, bodies and agencies of the Union.
2. This right includes:
  - the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;
  - the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;
  - the obligation of the administration to give reasons for its decisions.
3. Every person has the right to have the Union make good any damage caused by its Institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.
4. Every person may write to the Institutions of the Union in one of the languages of the Constitution and must have an answer in the same language.

## **Explanation**

*Article 41 is based on the existence of the Union as subject to the rule of law whose characteristics were developed in the case law which enshrined inter alia good administration as a general principle of law (see inter alia Court of Justice judgment of 31 March 1992 in Case C-255/90 P, Burbán [1992] ECR I-2253, and Court of First Instance judgments of 18 September 1995 in Case T-167/94 Nölle [1995] ECR II-2589, and 9 July 1999 in Case T-231/97 New Europe Consulting and others [1999] ECR II-2403). The wording for that right in the first two paragraphs results from the case law (Court of Justice judgment of 15 October 1987 in Case 222/86 Heylens [1987] ECR 4097, paragraph 15 of the grounds, judgment of 18 October 1989 in Case 374/87 Orkem [1989] ECR 3283, judgment of 21 November 1991 in Case C-269/90 TU München [1991] ECR I-5469, and Court of First Instance judgments of 6 December 1994 in Case T-450/93 Lisrestal [1994] ECR II-1177, 18 September 1995 in Case T-167/94 Nölle [1995] ECR II-258) and the wording regarding the obligation to give reasons comes from Article 253 of the EC Treaty, now replaced by Article [37(2)] of the Constitution (cf. also the legal base in Article [III-304] of the Constitution for the adoption of legislation in the interest of an open, efficient and independent European administration).*

*Paragraph 3 reproduces the right now guaranteed by Article [III-337] of the Constitution.*

*Paragraph 4 reproduces the right now guaranteed by Articles [8, fourth indent, and III-12] of the Constitution. In accordance with Article 52(2) of the Charter, those rights are to be applied under the conditions and within the limits defined by Part III of the Constitution.*

*The right to an effective remedy, which is an important aspect of this question, is guaranteed in Article 47 of this Charter.*

## **Article 42**

### **Right of access to documents**

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of the Institutions, bodies and agencies of the Union, in whatever form they are produced.

**Explanation**

*The right guaranteed in this Article has been taken over from Article 255 of the EC Treaty, on the basis of which Regulation 1049/2001 has subsequently been adopted. The European Convention has extended this right to documents of institutions, bodies and agencies generally, regardless of their form, see Article [49 (3)] of the Constitution. In accordance with Article 52(2) of the Charter, the right of access to documents is exercised under the conditions and within the limits for which provision is made in Articles [49 (3) and III-305].*

**Article 43****Ombudsman**

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to refer to the European Ombudsman cases of maladministration in the activities of the Institutions, bodies or agencies of the Union, with the exception of the European Court of Justice and the High Court acting in their judicial role.

**Explanation**

*The right guaranteed in this Article is the right guaranteed by Articles [8 and III-237 of the Constitution]. In accordance with Article 52(2) of the Charter, it applies under the conditions defined in these two Articles.*

**Article 44****Right to petition**

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to petition the European Parliament.

**Explanation**

*The right guaranteed in this Article is the right guaranteed by Articles [8 and III-236] of the Constitution. In accordance with Article 52(2) of the Charter, it applies under the conditions defined in these two Articles.*

**Article 45**

## Freedom of movement and of residence

1. Every citizen of the Union has the right to move and reside freely within the territory of the Member States.
2. Freedom of movement and residence may be granted, in accordance with the Constitution, to nationals of third countries legally resident in the territory of a Member State.

**Explanation**

*The right guaranteed by paragraph 1 is the right guaranteed by Article [8, first indent] of the Constitution (cf. also the legal base in Article [III-9]); and the judgement of the Court of Justice of 17 September 2002, C-413/99 Baumbast, [2002] ECR 709). In accordance with Article 52(2) of the Charter, it applies under the conditions and within the limits defined for which provision is made in Part III of the Constitution.*

*Paragraph 2 refers to the power granted to the Union by Articles [III-166 to III-168] of the Constitution. Consequently, the granting of this right depends on the institutions exercising that power.*

## Article 46

### Diplomatic and consular protection

Every citizen of the Union shall, in the territory of a third country in which the Member State of which he or she is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that Member State.

### **Explanation**

*The right guaranteed by this Article is the right guaranteed by Article [8] of the Constitution; cf. also the legal base in Article [III-11]. In accordance with Article 52(2) of the Charter, it applies under the conditions defined in these Articles.*

## **TITLE VI. JUSTICE**

### Article 47

#### Right to an effective remedy and to a fair trial

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

Legal aid shall be made available to those who lack sufficient resources insofar as such aid is necessary to ensure effective access to justice.

## **Explanation**

*The first paragraph is based on Article 13 of the ECHR:*

*"Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."*

*However, in Union law the protection is more extensive since it guarantees the right to an effective remedy before a court. The Court of Justice enshrined that right in its judgment of 15 May 1986 as a general principle of Union law (Case 222/84 Johnston [1986] ECR 1651; see also judgment of 15 October 1987, Case 222/86 Heylens [1987] ECR 4097 and judgment of 3 December 1992, Case C-97/91 Borelli [1992] ECR I-6313). According to the Court, that general principle of Union law also applies to the Member States when they are implementing Union law. The inclusion of this precedent in the Charter has not been intended to change the system of judicial review laid down by the Treaties, and particularly the rules relating to admissibility for direct actions before the Court of Justice of the European Union. The European Convention has considered the Union's system of judicial review including the rules on admissibility, and confirmed them while amending them as to certain aspects, as reflected in Articles [III-258 to III-289] of the Constitution, and in particular in Article [III-270 (4)]. Article 47 applies to the institutions of the Union and of Member States when they are implementing Union law and does so for all rights guaranteed by Union law.*

*The second paragraph corresponds to Article 6(1) of the ECHR which reads as follows:*

*"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice."*

*In Union law, the right to a fair hearing is not confined to disputes relating to civil law rights and obligations. That is one of the consequences of the fact that the Union is a community based on the rule of law as stated by the Court in Case 294/83, "Les Verts" v. European Parliament (judgment of 23 April 1986, [1988] ECR 1339). Nevertheless, in all respects other than their scope, the guarantees afforded by the ECHR apply in a similar way to the Union.*

*With regard to the third paragraph, it should be noted that in accordance with the case law of the European Court of Human Rights, provision should be made for legal aid where the absence of such aid would make it impossible to ensure an effective remedy (ECHR Judgment of 9.10.1979, Airey, Series A, Volume 32, 11). There is also a system of legal assistance for cases before the Court of Justice of the European Union.*

## Article 48

### Presumption of innocence and right of defence

1. Everyone who has been charged shall be presumed innocent until proved guilty according to law.
2. Respect for the rights of the defence of anyone who has been charged shall be guaranteed.

### **Explanation**

*Article 48 is the same as Article 6(2) and (3) of the ECHR, which reads as follows:*

- "2. *Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.*
3. *Everyone charged with a criminal offence has the following minimum rights:*
  - (a) *to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;*
  - (b) *to have adequate time and facilities for the preparation of his defence;*
  - (c) *to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;*
  - (d) *to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;*
  - (e) *to have the free assistance of an interpreter if he cannot understand or speak the language used in court."*



*In accordance with Article 52(3), this right has the same meaning and scope as the right guaranteed by the ECHR.*

#### Article 49

##### Principles of legality and proportionality of criminal offences and penalties

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national law or international law at the time when it was committed. Nor shall a heavier penalty be imposed than that which was applicable at the time the criminal offence was committed. If, subsequent to the commission of a criminal offence, the law provides for a lighter penalty, that penalty shall be applicable.
2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles recognised by the community of nations.
3. The severity of penalties must not be disproportionate to the criminal offence.

#### **Explanation**

*This Article follows the traditional rule of the non-retroactivity of laws and criminal sanctions. There has been added the rule of the retroactivity of a more lenient penal law, which exists in a number of Member States and which features in Article 15 of the Covenant on Civil and Political Rights.*

*Article 7 of the ECHR is worded as follows:*

- "1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.*

2. *This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations."*

*In paragraph 2, the reference to "civilised" nations has been deleted; this does not change the meaning of this paragraph, which refers to crimes against humanity in particular. In accordance with Article 52(3), the right guaranteed here therefore has the same meaning and scope as the right guaranteed by the ECHR.*

*Paragraph 3 states the general principle of proportionality between penalties and criminal offences which is enshrined in the common constitutional traditions of the Member States and in the case law of the Court of Justice of the Communities.*

### Article 50

Right not to be tried or punished twice in criminal proceedings for the same criminal offence

No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law.

#### **Explanation**

*Article 4 of Protocol No 7 to the ECHR reads as follows:*

- "1. No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State.*
2. *The provisions of the preceding paragraph shall not prevent the reopening of the case in accordance with the law and the penal procedure of the State concerned, if there is evidence of new or newly discovered facts, or if there has been a fundamental defect in the previous proceedings, which could affect the outcome of the case.*

3. *No derogation from this Article shall be made under Article 15 of the Convention."*

*The "non bis in idem" rule applies in Union law (see, among the many precedents, the judgment of 5 May 1996, Cases 18/65 and 35/65, Gutmann v. Commission [1966] ECR 103 and a recent case, the decision of the Court of First Instance of 20 April 1999, Joined Cases T-305/94 and others, Limburgse Vinyl Maatschappij NV v. Commission [1999] ECR II-931). The rule prohibiting cumulation refers to cumulation of two penalties of the same kind, that is to say criminal law penalties.*

*In accordance with Article 50, the "non bis in idem" rule applies not only within the jurisdiction of one State but also between the jurisdictions of several Member States. That corresponds to the *acquis* in Union law; see Articles 54 to 58 of the Schengen Convention and the judgment of the Court of Justice of 11 February 2003, C-187/01 Gözütok (not yet published), Article 7 of the Convention on the Protection of the European Communities' Financial Interests and Article 10 of the Convention on the fight against corruption. The very limited exceptions in those Conventions permitting the Member States to derogate from the "non bis in idem" rule are covered by the horizontal clause in Article 52(1) of the Charter concerning limitations. As regards the situations referred to by Article 4 of Protocol No 7, namely the application of the principle within the same Member State, the guaranteed right has the same meaning and the same scope as the corresponding right in the ECHR.*

## **TITLE VII. GENERAL PROVISIONS GOVERNING THE INTERPRETATION AND APPLICATION OF THE CHARTER**

### Article 51

#### Scope

1. The provisions of this Charter are addressed to the Institutions, bodies and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers and respecting the limits of the powers of the Union as conferred on it in the other Parts of the Constitution.
2. This Charter does not extend the field of application of Union law beyond the powers of the Union or establish any new power or task for the Union, or modify powers and tasks defined in the other Parts of the Constitution.

#### **Explanation**

*The aim of Article 51 is to determine the scope of the Charter. It seeks to establish clearly that the Charter applies primarily to the institutions and bodies of the Union, in compliance with the principle of subsidiarity. This provision was drafted in keeping with Article 6(2) of the Treaty on European Union, which required the Union to respect fundamental rights, and with the mandate issued by Cologne European Council. The term "institutions" is enshrined in Part I of the Constitution. The expression "bodies and agencies" is commonly used in the Constitution to refer to all the authorities set up by the Constitution or by secondary legislation (see, e.g., Article [49 or 50] of the Constitution).*

*As regards the Member States, it follows unambiguously from the case law of the Court of Justice that the requirement to respect fundamental rights defined in a Union context is only binding on the Member States when they act in the scope of Union law (judgment of 13 July 1989, Case 5/88 Wachauf [1989] ECR 2609; judgment of 18 June 1991, ERT [1991] ECR I-2925); judgment of 18 December 1997 (C-309/96 Annibaldi [1997] ECR I-7493). The Court of Justice confirmed this case law in the following terms: "In addition, it should be remembered that the requirements flowing from the protection of fundamental rights in the Community legal order are also binding on*

*Member States when they implement Community rules..." (judgment of 13 April 2000, Case C-292/97, [2000] ECR 2737, paragraph 37 of the grounds). Of course this rule, as enshrined in this Charter, applies to the central authorities as well as to regional or local bodies, and to public organisations, when they are implementing Union law.*

*Paragraph 2, together with the second sentence of paragraph 1, confirms that the Charter may not have the effect of extending the competences and tasks which the other Parts of the Constitution confer on the Union. Explicit mention is made here of the logical consequences of the principle of subsidiarity and of the fact that the Union only has those powers which have been conferred upon it. The fundamental rights as guaranteed in the Union do not have any effect other than in the context of the powers determined by Parts I and III of the Constitution. Consequently, an obligation, pursuant to the second sentence of paragraph 1, for the Union's institutions to promote principles laid down in the Charter, may arise only within the limits of these same powers.*

*Paragraph 2 also confirms that the Charter may not have the effect of extending the field of application of Union law beyond the powers of the Union as established in the other Parts of the Constitution. The Court of Justice has already established this rule with respect to the fundamental rights recognised as part of Union law (judgment of 17 February 1998, C-249/96 Grant, 1998 ECR I-621, paragraph 45 of the grounds). In accordance with this rule, it goes without saying that the incorporation of the Charter into the Constitution cannot be understood as extending by itself the range of Member State action considered to be "implementation of Union law" (within the meaning of paragraph 1 and the above-mentioned case law).*

## Article 52

### Scope and interpretation of rights and principles

1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.

2. Rights recognised by this Charter for which provision is made in other Parts of the Constitution shall be exercised under the conditions and within the limits defined by these relevant Parts.
3. Insofar as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.
4. Insofar as this Charter recognises fundamental rights as they result from the constitutional traditions common to the Member States, those rights shall be interpreted in harmony with those traditions.
5. The provisions of this Charter which contain principles may be implemented by legislative and executive acts taken by Institutions and bodies of the Union, and by acts of Member States when they are implementing Union law, in the exercise of their respective powers. They shall be judicially cognisable only in the interpretation of such acts and in the ruling on their legality.
6. Full account shall be taken of national laws and practices as specified in this Charter.

### **Explanation**

*The purpose of Article 52 is to set the scope of the rights and principles of the Charter, and to lay down rules for their interpretation. Paragraph 1 deals with the arrangements for the limitation of rights. The wording is based on the case law of the Court of Justice: "...it is well established in the case law of the Court that restrictions may be imposed on the exercise of fundamental rights, in particular in the context of a common organisation of the market, provided that those restrictions in fact correspond to objectives of general interest pursued by the Community and do not constitute, with regard to the aim pursued, disproportionate and unreasonable interference undermining the very substance of those rights" (judgment of 13 April 2000, Case C-292/97, paragraph 45 of the grounds). The reference to general interests recognised by the Union covers both the objectives mentioned in Article [2] of the Constitution and other interests protected by specific provisions of the Constitution such as Articles [5 (1), III-18 (3), III-43, III-342].*

*Paragraph 2 refers to rights which were already expressly guaranteed in the Treaty establishing the European Community and have been recognised in the Charter, and which are now found in other Parts of the Constitution (notably the rights derived from Union citizenship). It clarifies that such rights remain subject to the conditions and limits applicable to the Union law on which they are based, and for which provision is now made in Parts I and III of the Constitution. The Charter does not alter the system of rights conferred by the EC Treaty and now taken over by Parts I and III of the Constitution.*

*Paragraph 3 is intended to ensure the necessary consistency between the Charter and the ECHR by establishing the rule that, insofar as the rights in the present Charter also correspond to rights guaranteed by the ECHR, the meaning and scope of those rights, including authorised limitations, are the same as those laid down by the ECHR. This means in particular that the legislator, in laying down limitations to those rights, must comply with the same standards as are fixed by the detailed limitation arrangements laid down in the ECHR, which are thus made applicable for the rights covered by this paragraph, without thereby adversely affecting the autonomy of Union law and of that of the Court of Justice of the European Union.*

*The reference to the ECHR covers both the Convention and the Protocols to it. The meaning and the scope of the guaranteed rights are determined not only by the text of those instruments, but also by the case law of the European Court of Human Rights and by the Court of Justice of the European Union. The last sentence of the paragraph is designed to allow the Union to guarantee more extensive protection. In any event, the level of protection afforded by the Charter may never be lower than that guaranteed by the ECHR.*

*The Charter does not affect the possibilities of Member States to avail themselves of Article 15 ECHR, allowing derogations from ECHR rights in the event of war or of other public dangers threatening the life of the nation, when they take action in the areas of national defence in the event of war and of the maintenance of law and order, in accordance with their responsibilities recognised in Articles [5 (1), III-16, III-163] of the Constitution.*

*The list of rights which may at the present stage, without precluding developments in the law, legislation and the Treaties, be regarded as corresponding to rights in the ECHR within the meaning of the present paragraph is given hereafter. It does not include rights additional to those in the ECHR.*

**1. Articles of the Charter where both the meaning and the scope are the same as the corresponding Articles of the ECHR:**

- Article 2 corresponds to Article 2 of the ECHR
- Article 4 corresponds to Article 3 of the ECHR
- Article 5(1) and (2) correspond to Article 4 of the ECHR
- Article 6 corresponds to Article 5 of the ECHR
- Article 7 corresponds to Article 8 of the ECHR
- Article 10(1) corresponds to Article 9 of the ECHR
- Article 11 corresponds to Article 10 of the ECHR without prejudice to any restrictions which Union law may impose on Member States' right to introduce the licensing arrangements referred to in the third sentence of Article 10(1) of the ECHR
- Article 17 corresponds to Article 1 of the Protocol to the ECHR
- Article 19(1) corresponds to Article 4 of Protocol No 4
- Article 19(2) corresponds to Article 3 of the ECHR as interpreted by the European Court of Human Rights
- Article 48 corresponds to Article 6(2) and(3) of the ECHR
- Article 49(1) (with the exception of the last sentence) and (2) correspond to Article 7 of the ECHR

**2. Articles where the meaning is the same as the corresponding Articles of the ECHR, but where the scope is wider:**

- Article 9 covers the same field as Article 12 of the ECHR, but its scope may be extended to other forms of marriage if these are established by national legislation
- Article 12(1) corresponds to Article 11 of the ECHR, but its scope is extended to European Union level
- Article 14(1) corresponds to Article 2 of the Protocol to the ECHR, but its scope is extended to cover access to vocational and continuing training
- Article 14(3) corresponds to Article 2 of the Protocol to the ECHR as regards the rights of parents
- Article 47(2) and (3) correspond to Article 6(1) of the ECHR, but the limitation to the determination of civil rights and obligations or criminal charges does not apply as regards Union law and its implementation
- Article 50 corresponds to Article 4 of Protocol No 7 to the ECHR, but its scope is extended to European Union level between the Courts of the Member States.



- *Finally, citizens of the European Union may not be considered as aliens in the scope of the application of Union law, because of the prohibition of any discrimination on grounds of nationality. The limitations provided for by Article 16 of the ECHR as regards the rights of aliens therefore do not apply to them in this context.*

*The rule of interpretation contained in paragraph 4 has been based on the wording of Article 6 § 2 of the Treaty on European Union (cf. now the wording of Article [7 § 3] of the Constitution) and takes due account of the approach to common constitutional traditions followed by the Court of Justice (e.g., judgment of 13 December 1979, Case 44/79 Hauer [1979] ECR 3727; judgment of 18 May 1982, Case 155/79, AM&S, [1982] ECR 1575). Under that rule, rather than following a rigid approach of "a lowest common denominator", the Charter rights concerned should be interpreted in a way offering a high standard of protection which is adequate for the law of the Union and in harmony with the common constitutional traditions.*

*Paragraph 5 clarifies the distinction between "rights" and "principles" set out in the Charter. According to that distinction, subjective rights shall be respected, whereas principles shall be observed (Article 51 (1)). Principles may be implemented through legislative or executive acts (adopted by the Union in accordance with its powers, and by the Member States only when they implement Union law); accordingly, they become significant for the Courts only when such acts are interpreted or reviewed. They do not however give rise to direct claims for positive action by the Union's institutions or Member States authorities. This is consistent both with case law of the Court of Justice (Cf. notably case law on the "precautionary principle" in Article 174 (2) TEC (replaced by [Article III-129] of the Constitution): judgment of the CFI of 11 September 2002, T-13/99, Pfizer vs. Council, with numerous references to earlier case law; and a series of judgments on Article 33 (ex-39) on the principles of agricultural law, e.g. judgment of the Court of Justice C-265/85, Van den Berg, 1987 ECR 1155: scrutiny of the principle of market stabilisation and of reasonable expectations) and with the approach of the Member States' constitutional systems to "principles" particularly in the field of social law. For illustration, examples for principles recognised in the Charter include e.g. Articles 25, 26 and 37. In some cases, an Article of the Charter may contain both elements of a right and of a principle, e.g., Articles 23, 33 and 34.*

*Paragraph 6 refers to the various Articles in the Charter which, in the spirit of subsidiarity, make reference to national laws and practices.*

### Article 53

#### Level of protection

Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by Union law and international law and by international agreements to which the Union or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' constitutions.

#### **Explanation**

*This provision is intended to maintain the level of protection currently afforded within their respective scope by Union law, national law and international law. Owing to its importance, mention is made of the ECHR.*

### Article 54

#### Prohibition of abuse of rights

Nothing in this Charter shall be interpreted as implying any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms recognised in this Charter or at their limitation to a greater extent than is provided for herein.

#### **Explanation**

*This Article corresponds to Article 17 of the ECHR:*

*"Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention."*

## **IV.1.d. NGOs and Others' Amendments and Contributions**

Editors' note to CONV 112/02,  
**Digest of contributions to the forum ahead  
of the plenary session on civil society 24-25 June 2002:**

On the structure of NGO engagement generally, see CONV 48/02 (not included in this collection).

**THE EUROPEAN CONVENTION****Brussels, 17 June 2002**

THE SECRETARIAT

**GM****CONV 112/02****COVER NOTE**

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from : Secretariat

to : Convention

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**Subject : Digest of contributions to the Forum**

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In order to prepare for the plenary session devoted to civil society which will take place on 24-25 June 2002, members of the Convention will find attached a digest of the contributions which have been submitted to the Forum since the inaugural session of the Convention, up to and including 7 June 2002.

## DIGEST OF CONTRIBUTIONS TO THE FORUM

### Introduction

1. The Laeken declaration setting up the Convention on the future of the European Union also set up a Forum to allow organisations representing civil society to provide input into the wider debate. The Forum takes the form of a structured network, through a dedicated website, where organisations may register and post their contributions. It has been operational since the inaugural session of the Convention at the end of February.
2. So far 160 organisations have registered and contributed to the debate. Registration has been at the average rate of about eight per week, rising rapidly over the last few weeks as organisations were encouraged to apply in time for their contribution to be taken into account for the second June plenary session.
3. The 160 organisations represent a wide cross section of civil society. The majority of them have interests which are Europe-wide, although there are also many national organisations which have chosen to register. There is a rather uneven spread of national organisations, with several Member States not being represented at all, and only a limited number originating in the candidate countries.

4. The Forum is divided into four categories, and organisations are invited to select the most appropriate category when registering. The breakdown of the 160 organisations by category is as follows:

|                                                                     |            |
|---------------------------------------------------------------------|------------|
| political or public authority (including at sub-national level)     | 17         |
| socio-economic interests (social partners, professional groups etc) | 16         |
| academic interests and think tanks                                  | 28         |
| other civil society organisations, NGOs etc                         | <u>99</u>  |
| TOTAL                                                               | <u>160</u> |

5. Each organisation is invited to submit a contribution, together with a one page summary. Both of these are posted on the website. Given the number and range of the contributions, this digest of them makes no claim to be comprehensive. Its aim is rather to distil some of the key issues and concerns which are reflected in the input to the forum as a whole. This should provide Members of the Convention with an overview of the Forum, and thereby help civil society contribute to the work of the Convention. Those wishing to have a complete view of the Forum will need to turn to the contributions themselves on the website.
6. The range of contributions does not lend itself to drawing substantive conclusions from the Forum. But certain broad themes run through many contributions. The first is the wish to see the Union operating more closely to those it seeks to serve. That means both taking decisions at the appropriate level and ensuring that Europe's citizens have a greater stake in those decisions, at whatever level they are taken. Secondly, and linked to the first, is the concern to improve the level of involvement of civil society, through its constituent organisations, in the European decision-making process, and to recognise in the Treaty its particular role. Thirdly, there is a strong emphasis on the Union both respecting fundamental

rights as they are currently defined, and where appropriate, extending them. Many organisations believe this can only be fully achieved by incorporating the Charter of Fundamental Rights into the Treaty. Fourthly, each sectoral interest group puts particular emphasis on effective and legitimate decision-making, often calling for a move to decision-taking by QMV coupled with co-decision in the relevant policy area.

7. Beyond these broad themes, there are many other issues raised. These will be considered below according to the four categories, which although designed to make the Forum easier to manage, are to some extent arbitrary, with a number of organisations not fitting obviously into any one particular category (hence the large number which have opted for the fourth or 'other' category).

#### Political or public authorities

8. The majority of organisations which have registered under this heading represent regional or sub-regional organisations. As such, much of the content of their contributions relates to the issue of the role and status of sub-national bodies within the European Union. A number take as their starting point the need to include in the Treaty a recognition of the right of citizens to local democracy, possibly by integrating into the Treaty the Charter of the Council of Europe on local autonomy. Many also look for concrete implementation of the local democracy provisions in Article 1 of the Treaty on European Union, which call for decisions to be taken as closely as possible to the citizen, as well as simplification in particular of those legislative provisions which require implementation at the sub-national level (implying a very close involvement of regional and local authorities at all stages of the legislative process).
9. Some call for a clear recognition of the four levels of government: European, national, regional and local. Others seek explicit recognition in the Treaty of the role of regions and local authorities, and several consider that, in the absence of a detailed list of competences, an effective system of subsidiarity control (both ex-ante and ex-post) needs to be established.



10. Several contributions refer to the need to take greater account of the financial consequences on sub-national bodies of decisions taken at a European level. There are a number of calls to give regions with legislative power the right of access to the European Court of Justice, special recognition in the Treaty, and the right to participate in meetings of COSAC.

#### Socio-economic interests

11. A relatively small number of organisations registered in this category. They mostly represent the interests of employees or particular sectors of the economy such as cooperatives and public services.
12. A number of these organisations argue for a greater balance between economic policy and social objectives. There is a call for some core elements of the European social model, for example the goal of full employment, to be explicitly included in the Treaty. Some organisations call for greater recognition for the cooperative sector, as well as the area of services of general interest. There is a demand for institutionalised dialogue with social partners, including enlarging the number of interlocutors to make them more representative. The issue of greater employee participation is also raised. Several organisations call for integrating the Charter of Fundamental Rights into the Treaty in order to provide for greater recognition of basic social rights.

#### Academic interests and Think-tanks

13. The contributions to the Forum from academic institutions and think tanks are inevitably of a rather different nature than many of the non-governmental organisations. Many of their proposals are not necessarily designed to serve a particular interest, but rather to help take

forward the broader debate on the future structure of the European Union. Several have outlined possible models for a future constitution, including proposals on how to merge the Communities and the Union and to adapt the pillar structure. A number have addressed specific issues which the Convention has already examined (e.g. the delimitation of competences).

14. Several student groups have submitted a draft constitution or 'manifesto' for Europe. A number of think tanks have submitted ideas on future institutional arrangements, including some detailed proposals on the issue of the election of the President of the Commission and the future role of the High Representative for CFSP. The idea of a common language has been floated, as has the possibility of creating regional unions to act as groups within the EU as a whole. There is also a call for greater transparency in lobbying practices.

#### Other Civil society organisations.

15. By far the largest number of organisations registered under this category. As a result a wide variety of issues is covered. Several distinct areas of interest can however be identified.
16. A number of organisations from the 'social' sector registered in this category. Many of their concerns overlap with those raised under the social-economic category (see above). However also included are organisations particularly concerned with issues of gender equality and support for families. There is a call for a more active policy of gender equality, including gender mainstreaming in all major policy areas. A number of organisations call for a greater emphasis on human development policies, including support for families and the fight against poverty. Some refer to the increasing use of an 'open coordination' approach in the social sector, and ask that this be formally recognised in the Treaty. Several contributions call for the Union to recognise explicitly the objective of greater social cohesion. There is a call for a more coherent and sustainable common agricultural policy.

17. There are a number of organisations with an interest in the field of development. Many of them underline the importance of placing development policy and poverty eradication at the heart of external policy, and wish to maintain a distinct development organisational framework within both Commission and Council. A number call for the Treaties to be amended to reflect the central role of development policy, and to give a legal base for consultation with civil society. There is a call for the European Development Fund to be integrated into the Community budget, and for development policy to become a shared Community/Member State competence.
18. In the environment sector, a number of organisations call for better recognition of the importance of environmental protection and sustainable development. In particular there were calls to take better account of sustainability in CAP reform, extend QMV with co-decision for environmental decisions (in particular Article 175 (2) of the EC Treaty), and include environmental rights in the Charter of Fundamental Rights.
19. This category also includes a number of contributions from organisations working in the field of human rights. In general, these organisations seek to maintain and strengthen concern for human rights as a key element in all policies. Most call for the incorporation of the Charter of Fundamental Rights into the Treaty, and many consider that this should be accompanied by some strengthening of the Charter. Some also ask for the Union to accede to the European Convention on Human Rights. A number call for better provisions for ensuring gender equality, the rights of the child, and the protection of the family and of handicapped persons.
20. Several organisations in the cultural field submitted contributions under this category. They call for a much stronger cultural element in the European Union of the future, with a stronger commitment to the existing provisions in Article 151 TEC, and a move to decision-making by QMV and co-decision. Several call for the formal recognition in the Treaty of the plurality of education, and of access to education under equal conditions. There is also a call for a specific legal basis for support for sport.

21. There are calls from a number of religious organisations for a future constitutional treaty to contain a spiritual element, with an explicit recognition of the religious and spiritual heritage of Europe. Several also want to see Declaration number 11, on the respect for the status of churches, incorporated into the Treaty.
  
22. A number of citizens organisations have sent contributions under this category. They call in general for greater transparency in the functioning of the Union, as well as greater participation of individual citizens, making use as far as possible of new technology. A number call for a single referendum, or a guarantee of national referenda, on the Treaty which they consider should be the outcome of the Convention. There are also contributions from several political parties as well as 'European' organisations (both 'pro-European/federalist' and 'eurosceptic'). A number of them call for a federal constitution for Europe, and some contain detailed proposals on possible future institutional structures. On the other hand, there are several organisations which express concern in particular at the continuing lack of democratic accountability within the Union, and call for a greater involvement of national parliaments.

### Follow-up

23. This digest covers all contributions sent to the Forum by the first June plenary session (7 June 2002). Organisations are continuing to register, and are encouraged to do so. The site can of course be accessed by everyone, including members of the Convention, and the Convention secretariat will also continue to monitor contributions closely.

**THE EUROPEAN CONVENTION**

THE SECRETARIAT

**Brussels, 19 June 2002****CONV 112/02  
ADD 1****ADDENDUM TO COVER NOTE**

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from : Secretariat

to : Convention

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**Subject : List of contributions to the Forum**

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Members of the Convention will find attached, as a complement to the digest of contributions (document CONV 112/02), a complete list of organisations registered with the Forum up to and including 7 June 2002.

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**ANNEX**

Contributions by category of organisation:

- **Political or public authority**
- **Academic and think - tank**
- **Socio-economic**
- **Other, civil society, NGOs and schools of thought**

**Political or public authority**

Assembly of European Regions - AER

Association européenne des élus de montagne - AEM

Bundeskammer für Arbeiter und Angestellte Federal Chamber of Labour

Conférence des Régions Périphériques Maritimes d'Europe - CRPM

Council of European Municipalities and Regions - CEMR

Deutscher Staedtetag, Deutscher Staedte- und Gemeindebund, Deutscher Landkreistag

Europabüros der Baden-Württembergischen, Bayerischen und Sächsischen Kommunen

Europäische Union Christlich Demokratischer Arbeitnehmer - EUCDA

European Community Organisation of Socialist Youth - ECOSY

The European network of major cities - EUROCITIES

The Evangelical Lutheran Church of Finland

JuniBevægelsen Mod Union

Local Government International Bureau

Northern Ireland Executive

Presidencia de Eusko Legebiltzarra - Parlamento Vasco

Scottish Executive EU Office

Südtiroler Volkspartei - SVP

Youth of the European People's Party - YEPP

**Academic and think - tank**

Association Internationale des Amis de Robert Schuman en Grèce

Bertelsmann Stiftung

The Bow Group

Business Advisors International - BAI Inc.

Center for Research on Geopolitics

Centre for European Reform

Centre for European Policy Studies - CEPS  
 Cercle Condorcet de Bourges et du Cher  
 Cercle Condorcet de Limoges  
 Chaire Européenne de Recherche et d'Enseignement - CERE  
 Conservative Democratic Alliance  
 Escuela de Ingenieros de San Sebastián - TECNUN  
 European Academy Bolzano/Bozen - EURAC  
 European Documentation and Research Centre  
 European Research Advisory Board - EURAB  
 Facoltà di Scienze Politiche dell'Università Statale di Milano  
 Fondazione Lelio e Lisli Basso  
 The Foreign Policy Centre  
 Initiative & Referendum Institute - IRI Europe  
 Institut européen de Cluny - ENSAM  
 National Centre for Marine Research  
 Pan-European Circle "Coudenhove-Kalergi" - a Citizen's Europe !  
 Study Group on a European Civil Code  
 Study Group for European Policies  
 Turkish Economic and Social Studies Foundation - TESEV  
 Torhout Sint-Jozefsinstituut  
 United Nations University -UNU Comparative Regional Integration Studies -CRIS

### **Socio-economic**

Bundesverband Deutscher Privatschulen - VDP  
 Bundesverband Informationswirtschaft, Telekommunikation, Neue Medien e.V. - BITKOM  
 Bundesverband der freien Berufe - BFB  
 Confédération Générale du Travail (France) - CGT  
 The Confederation of Unions for Academic Professionals in Finland - Akava ry  
 Conseil Européen des Professions Libérales - CEPLIS  
 Deutscher Gewerkschaftsbund  
 EUROCOMMERCE a.i.b.s.  
 European federation of employee share ownership - EFES  
 Fédération Belge des Coopératives - FEBECOOP  
 Initiative for public utility services - ISUPE

International and European Public Services Organisation - IPSO

VIVANT

**Other, civil society, NGOs and schools of thought**

Active Citizenship (Cittadinanzattiva)

Arbeiterwohlfahrt Bundesverband e. V. - AWO

Asociación para la Cooperación con el Sur " Las Segovias " - ACSUR Las Segovias

Asociación para la Defensa del Derecho al Desnudo - ADDAN

Association des Femmes de l'Europe Méridionale - AFEM

Association Internationale de la Mutualité - AIM

Association internationale pour la promotion des Femmes d'Europe - AIPFE

Association pour la taxation des transactions financières et l'aide aux citoyens - ATTAC

AUTISME-EUROPE

Birdlife International, Climate Action Network Europe, European Environmental Bureau, Friends of Nature International, European Federation for Transport and Environment, Friends of the Earth Europe, Greenpeace EU Unit, WWF European Policy Office

Bundesarbeitsgemeinschaft der Freien Wohlfahrtspflege - BAGFW

Caritas Europa

The Catholic European Study and Information Centre - OCIPE

Citizens Union Paremvasi

Church of Greece

Commission of the Bishops' Conferences of the European Community - COMECE

Comité Européen de la Cause Arménienne - CDCA Europe

Comité européen des associations d'intérêt général - CEDAG

Comité de liaison des organisations non-gouvernementales de développement auprès de l'Union Européenne - CL ONG

Comité des Organisations Professionnelles Agricoles de l'Union Européennes - COPA  
Comité Général de la Coopération Agricole de l'Union Européenne - COGECA

Comité Pauvreté et Politique

Confédération des organisations familiales de l'union européenne - COFACE

Conference of European Churches - CEC

Conférence Européenne Permanente des Coopératives, Mutualités, Associations et Fondations -  
CEP-CMAF

Conseil des Associations d'Europe - CAE Convention Européenne des Etudiants de Sciences Po



Deutsche Vereinigung für Parlamentsfragen - DVParl  
 Deutscher Juristinnenbund - DJB  
 Diakonisches Werk der EKD - DIAKONIE  
 Euro Citizen Action Service - ECAS  
 EURODIACONIA  
 Eurogroup for Animal Welfare  
 Europäisches Forum für Freiheit im Bildungswesen e.V. - EFFE  
 Europa-Union Deutschland e. V.  
 European AgriCultural Convention  
 The European Alliance of EU-critical Movements - TEAM  
 European Anti-Poverty Network  
 European Bureau for Lesser Used Languages - EBLUL  
 The European Children's Network - Euronet  
 European Network Church on the Move  
 European Citizen's Network EUROPE NOW !  
 European Cultural Foundation  
 The European Disability Forum  
 European Foundation Centre - EFC  
 European Forum for the Arts and Heritage - EFAH  
 European Landowners Organisation  
 European liaison Committee for social housing  
 European Non-Governmental Sporta Organisation - ENGSO  
 European Organisation of Military Associations  
 The European Region of the International Lesbian and Gay Association - ILGA-Europe  
 European Round Table of Charitable Social Welfare Associations - ETWelfare  
 European Social Action Network  
 European Solidarity Towards Equal Participation of People - EUROstep  
 European Women Lawyers Association - EWLA  
 European Women's Lobby  
 Evangelische Kirche in Deutschland -EKD  
 Fédération Humaniste Européenne - EHF-FHE  
 Federal Union of European Nationalities - FUEN  
 Fondazione offidani - mestralletla vigna del gerbino  
 FONDA - Carrefour pour une Europe Civique et Sociale (1)  
 Forum Menschenrechte

Fundacion Nahumpro siglo XXI  
 Secrétariat Général du GESAC  
 Gesellschaft für bedrohte Völker Südtirol - GFBV  
 Groupe des douze  
 Human Rights, Democracy and Conflict Prevention NGO Network  
 Hungarian Civil Society Council  
 Initiativkreis zur Förderung des öffentlichen Rundfunks, Köln  
 International European Movement - IEM  
 International Movement ATD Fourth World  
 International Planned Parenthood Federation, European Network - IPPF EN  
 Junge Europäische Föderalisten Deutschland e. V. - JEF  
 Les Jeunes Européens - France  
 Kolpingwerk Europa  
 La Maison de l'Europe de Lyon et du Rhône  
 Mouvement Mondial des Mères - délégation européenne - MMM  
 The North-South Institute  
 Organisation Mondiale Contre la Torture - OMCT Europe  
 Organizacion Nacional de Ciegos Españoles - ONCE  
 Organisation internationale pour le developpement de la liberte d'enseignement - OIDEL  
 Paideia Foundation  
 Permanent Forum of European Civil Society  
 The Platform of European Social NGOs  
 Polish NGO Office in Brussels  
 The Polish Robert Schuman Foundation  
 Quaker Council for European Affairs - QCEA  
 Red Cross EU Office  
 Région Paris-Ile de France - UEF France  
 Réseau des chrétiens sociaux européens  
 Réseau EUROMED - Femmes  
 Società laica e plurale  
 SOLIDAR  
 SOS DemocracyStiftung Europaverständigung e. V. - SEV  
 Transparency International-Brussels asbl  
 Union of European Federalists - U.E.F  
 Women Citizens of Europe Network - RCE  
 Youth Forum

**THE EUROPEAN CONVENTION**

THE SECRETARIAT

**Brussels, 19 June 2002 (21.06)  
(OR. en,fr)****CONV 120/02****INFORMATION NOTE**

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from : Secretariat

to : Convention

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**Subject : Contact groups (Civil Society)**

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Members of the Convention will find attached reports from the meetings of the eight contact groups, covering different sectors of civil society, which took place between 10 and 18 June 2002.

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SOCIAL SECTOR

Chairman: Klaus Hänsch

No of participants registered: 105 (74 organisations)

A meeting with representatives of non-governmental organisations working in the "social" sector took place in the morning of Thursday 13 June, under the chairmanship of Mr Klaus Hänsch, member of the Praesidium of the Convention. 74 organisations had registered to attend the meeting – about eighty individuals were present on the day, of whom 30 took the floor.

The participants were drawn from a wide range of interest groups, and this was reflected in the scope of subjects covered in the discussion. Mr Hänsch opened the discussion by underlining the importance of the various contact group meetings as an opportunity for organisations from civil society to provide input into the work of the Convention. There would be a further opportunity at the plenary session on 24 and 25 June, in preparation for which each contact group was invited to designate a number of representatives to speak on behalf of their sector. Mr Hänsch provided the group with information about the organisation of the plenary session.

This summary is not an exhaustive record of all the points raised in the discussion. There were however a number of issues which were mentioned by several participants, and a few themes which can be identified as being of general concern to the sector as a whole. These are as follows:

- A number of speakers called for the full incorporation of the Charter of Fundamental Rights into the Treaty, and some called for extending its scope to include issues such as the right to education.
- Many sought formal recognition in the Treaty of the role of civil society, including a right to be consulted.
- References were made to the increasing use of the open method of coordination, and a number of speakers called for this to be formally recognised in the Treaty.

- Several called for a greater balance between economic and social policy, with explicit recognition in the Treaty of a "social" economy, and the inclusion of objectives such as full employment, the eradication of poverty and social exclusion, and sustainable development.
- Some proposed that there should be a more coherent approach to the Lisbon process, with a synchronisation of economic and employment guidelines at the Spring European Council. There was also a request for greater involvement of the European Parliament in these processes.
- Several speakers called for more support for services of general interest, cooperatives and non-profit-making organisations.
- There was a call for greater recognition of, and support for, families, and more emphasis on improving the treatment of migrants.
- There were several calls for concrete measures to end discrimination on grounds of gender and sexual orientation, as well as discrimination against the handicapped.
- Several speakers involved in scientific research establishments underlined the importance of science as a motor for the European economy and called for greater support from the Union for basic scientific research.

The Chairman welcomed the various contributions, which constituted a substantive input to the work of the Convention. After commenting briefly on a number of specific points, he invited those present to designate speakers to represent the sector at the plenary session on 24 and 25 June.

It was agreed that the social platform would themselves designate three representatives to speak for five minutes each. In addition, issues of non-discrimination would be addressed by Mary McPhail of the European Women's Lobby, and Economic/Social issues would be addressed by Rita Kessler from the Association Internationale de la Mutualité.

**ENVIRONMENT**

Chairman: Giorgos Katiforis

Number of organisations registered: 14

Number of participants registered: 20

The meeting was chaired by Mr Giorgos KATIFOROS, member of the Praesidium of the Convention.

After an introduction by Mr Katiforis on the aims and method of the contact group, the floor was taken by Mr David Lawrence, Director of Directorate-General A: Sustainable Development and Policy support of the Commission's Environment DG, who gave an unofficial account of some of the projects and objectives of the Environment Directorate-General.

Statements were then made by representatives of the following organisations: Eurogroup for Animal Welfare, European Agricultural Convention, European Landowners Organisation, European Women's Lobby, European Environmental Bureau.

**Main proposals put forward by the representatives of organisations:****Fundamental rights**

1. Include environmental rights in the Charter of Fundamental Rights, amending it to be worded in terms of rights.
2. Add to fundamental rights the right of access to healthy food, the right to information, the right to a clean environment and clean water, the right to environmental services, the right to food free from GMOs.
3. Introduce the concept of animal welfare into the Treaty.

## **The Union's tasks**

1. Maintain objectives and principles essential for environment and sustainable development, in particular as laid down in Articles 2, 6, 174 and 228 of the EC Treaty.
2. Review objectives of the Agriculture Policy, by bringing Art. 33 into line with the requirements of sustainability, quality food production, health and environmental protection, appropriate and sensitive rural development.
3. Establish no fixed list of competencies.
4. Jointly develop agricultural and rural policies incorporating the concept of sustainable development and ensuring biodiversity and land and water management, moving away from the aim of production and towards the aim of rural development.
5. Promote local traditions and traditional trades, particularly in relation to food, and promote rural tourism.
6. Abolish the Euratom Treaty.

## **Instruments**

1. Replace unanimity by qualified majority with codecision for environmental decisions by changing Art. 175(2) and Art. 99 of the EC Treaty, as for any other matters.
2. Open the door to the European Court of Justice for environmental cases.
3. Include a general provision in the Treaty for broad, open and timely public participation.
4. Extend transparency requirements to all EU institutions and bodies.
5. End secrecy in the Council, which should meet in public.
6. Give the Economic and Social Committee no additional role as representative of civil society.
7. Strengthen the existing institutions: improve the transparency and democratic working of the existing institutions. Extend codecision powers to the EP, as well as a (limited) right of initiative.

## **Subsidiarity and competence**

Decentralise agricultural policy.

**ANNEXE III****ACADEMIA**

Chairman: Giuliano Amato

Number of organisations registered: 43

Number of participants registered: 65

1. Mr Giuliano Amato, Vice-Chairman of the European Convention, chaired the meeting of the contact group bringing together representatives of the academic world and "think tanks" in preparation for the meeting of the Convention on 24 and 25 June 2002 devoted to hearing from civil society. Around forty organisations had registered to take part in the meeting (see attached list), of whom about thirty were actually represented.
  
2. Mr Amato began by saying that this was a first meeting designed to put the various organisations in touch with one another. He encouraged them to collaborate and organise themselves during the Convention's proceedings and in particular to react promptly to the documents it produced. The Chairman pointed out that it was possible to identify five sub-groups within the contact group:
  - the academic world (universities, research centres, other ad hoc groups)
  - "think tanks"
  - movements promoting the European ideal, several of which were made up of young people or students
  - scientific research organisations
  - other NGOs from civil society representing various interests (European citizenship, women's movement, etc.), often participating in other sectoral contact groups as well.



3. The Chairman underlined the importance of the expertise provided by the academic world and also of the support of civil society in legitimising the final outcome of the Convention's work. It would therefore be necessary to consider, after the Convention meeting on 24 and 25 June, how to continue interacting with civil society in general and, possibly, with a contact group from academic circles and think tanks. The membership of the contact group might vary depending on the subjects raised. Experts could also be invited to take part in the working groups which had been set up, while the Convention Forum would continue to collect contributions.
  
4. The Chairman then invited participants to give an introduction to the organisation or network (for example AGORA or CEPS/EPIN) they represented and talk about their current and future activities which had a bearing on the Convention. They were also able to give their general views on the running of the Convention and the various topics it dealt with. The following points may be made at this stage:
  - Several participants raised the question of the final result of the Convention, in, particular the method to be used for drafting any basic Treaty and the structure of the Union which it would embody. The representatives of the European University Institute in Florence drew attention to their expertise in treaty reorganisation and said they were available to continue their work, taking into account the new context offered by the Convention. Other university centres or think tanks also declared their willingness to contribute to this undertaking, particularly with regard to questions of a more institutional nature or relating to European defence. The Chairman nevertheless pointed out that the Convention's financial resources were very limited.

- The participants also raised the matter of how to involve citizens more in the constitutional process now under way. Several supported the idea of holding a Europe-wide referendum to approve the outcome of the Convention or the IGC, or even of distributing a questionnaire in advance to all Europeans on what they expected from the European Union (based on an experiment already conducted in Hungary by ECOSTAT). Several youth groups mentioned their initiatives (for example, AEGEE, "Génération européenne"), in particular the drafting of a manifesto (international students of Political Sciences, Paris), and their desire to increase opportunities for mobility and language training. Another idea put forward was to make provision in the Treaties for systematic participation by civil society in the European decision-making process.
- Several institutional questions were raised, in particular relating to the executive function (relations between the Commission and the Council), the consistency of external action, and the problems of European public finances. Some suggested identifying the Council's legislative function and universalising the codecision procedure.
- The European organisations involved in scientific research drew attention to the important role of research and innovation in European society and its interaction with the industrial world. The intergovernmental research organisations (EIROForum) stressed the importance of a common European vision in this context. The GALILEO programme was a good example of closer collaboration between research organisations (in this case the European Space Agency) and the European Community. The latter could be represented more often, for example by the Commission, in these various organisations. In the case of the ESA, this would no doubt mean that the Treaties would have to include an indication of the Union's competence with regard to space policy. Finally, emphasis was placed on the need for mobility, not only of researchers, but also of staff of European institutions and intergovernmental research organisations.

- Women's organisations (for example, European Women's Lobby, Women citizens of Europe network) stressed the need to raise the profile of the principle of gender equality, particularly by including it in the preamble to the Treaties, or even by adding another Title. There was also a proposal to incorporate in the Charter of Fundamental Rights a general provision on non-discrimination between the sexes which citizens would be able to invoke directly, as in the case of the principle of non-discrimination on the basis of nationality.
5. Following that exchange of views, Mr Amato invited participants to appoint those in the contact group who would take the floor during the Convention meeting on 24 and 25 June. He suggested that participants should confer within the various sub-groups identified above and told them that, like the seven other groups representing civil society, they would have a total of 25 to 30 minutes. Mr Amato also proposed that one organisation from the candidate countries be represented.

The result is that eight people will take the floor, each for around three minutes:

**Academic world:**

- Mr Jean-Victor Louis (AGORA and European University Institute, Florence)
- Ms Florence Deloche-Gaudez (Political Sciences, Paris)

**Think tank :**

- Ms Kirsty Hughes (Centre for European Policy Studies / European Policy Institutes Network – CEPS/EPIN)
- Mr Stanley Crossick (European Policy Centre – EPC)

**European /Youth movements:**

- Ms Pascale Joannin (Robert Schuman Foundation)

**Scientific Research:**

- Mr Antonio Rodota (European Intergovernmental Research Organisations EIROForum)

**Academic women's movements:**

- Ms Teresa Freixes (Women Citizens of Europe Network)

**Candidate countries**

- Mr Karoly Lorant (Institute for Economic Analysis and Informatics, Hungary – ECOSTAT)

**CITIZENS AND INSTITUTIONS**

Chairman: Jean-Luc Dehaene

Number of organisations registered: 66

Number of participants registered: 94

1. The meeting was chaired by Mr Jean-Luc Dehaene, vice-Chairman of the Convention; 94 participants were registered, representing 66 organisations.  
Most of the contributions focussed on institutional questions, or those relating to citizenship and participatory democracy.
  
2. As regards the institutions, the organisations which took the floor called in particular for:
  - a Constitution for Europe, which would be clear and readable for citizens
  - the Community method to be maintained and a simple and clear decision-making process to be introduced
  - the Council not to be the government of the Union, since it was the institution least capable of taking decisions and was not democratically answerable to any elected European assembly
  - for the government of the Union to be in the hands of the Commission, which alone was capable of representing the common interests of citizens
  - the President of the Commission to be elected by the European Parliament
  - the Union's competence in the area of economic and social policy to be reinforced
  - for the Union to take on the role of co-regulator of the globalisation process
  - the European Constitution to be approved by a European referendum or national referendums (one organisation was opposed).

3. On the question of citizenship and participatory democracy, the organisations in particular asked for the following to be incorporated in the Treaty:
- the right of citizens to be informed about Europe
  - the Charter of fundamental rights
  - the "pursuit of the common good" as one of the Union's basic objectives
  - the principles of sustainable development, which must include the economic and social dimension of the environment
  - regular holding of a "civil dialogue" similar to the Social Dialogue
  - parity democracy
  - the importance of services of general interest for social cohesion and in the interests of European citizens
  - principles of horizontal subsidiarity
  - the right of citizens to participate in all stages of European decision-making and implementation of decisions, particularly via consultation in the context of a real partnership and joint evaluation of the political results achieved
  - the statute of European association
  - recognition of the role of non-profit-making organisations (cooperatives, mutual societies, associations).

There was also a call for religious freedom to be incorporated in the Charter of Fundamental Rights and also to tighten up Article 13 dealing with racism and xenophobia.

4. At the close of the meeting, the following were chosen to speak at the plenary:
- Mr Fernand HERMAN (Federalist Voice)
  - Ms Alison WESTON (JEF – Europe)
  - Ms Charlotte ROFFIAEN (A.C.N. – Forum de la Société civile)
  - Ms Maria MIGUEL SIERRA (European Network Against Racism)
  - Mr Pawel KRZECZUNOWICZ (Polish NGO Office in Brussels).

REGIONS AND LOCAL AUTHORITIES

Chairwoman: Ana Palacio

Number of organisations registered: 18

Number of organisations or local authorities registered: 138

Number of participants registered: 187

The meeting was chaired by Ms Ana PALACIO, member of the Praesidium of the Convention. The first speaker was Mr Eduardo ZAPLANA, first vice-Chairman of the Committee of the Regions. The European organisations representing local and regional authorities which had submitted a contribution to the Forum had the opportunity to present their work at the beginning of the discussions.

**A. Proposals on which there was consensus among the organisations**

The organisations thanked Ms PALACIO for setting up the contact group and called unanimously for the group to hold **regular meetings** until the Convention had completed its proceedings. They also asked that the Convention set up a special **working group** to deal with matters relating to regional and local authorities.

The regional and local governments, having been elected by universal suffrage, pointed out that they were part of the system of government of the Union and were very frequently responsible for implementing Community legislation.

**Fundamental rights**

1. Incorporate the Charter of Fundamental Rights, and in particular the Preamble thereto, into the Treaty
2. Include regions and local authorities in Article 6 of the TEC
3. Incorporate into the Treaty (in accordance with methods still to be defined) guarantees of local democracy, **a common European cultural heritage**, in particular by incorporating the Council of Europe's European Charter of Local Self-government, which has already been signed and ratified by all candidate countries and most Member States.

### The Union's tasks

1. Draw up a constitutional Treaty which clarifies and specifies the Union's task
2. Among the Union's objectives, special importance to be attached to the task of ensuring economic, social and territorial cohesion.
3. Establish a legal instrument to facilitate cross-border cooperation between territorial authorities within the EU and at its external borders.
4. Treaty to include positive discrimination in favour of the Union's outermost regions.

### Instruments

5. All participants call for excessively detailed legislation which then has to be implemented by local and regional authorities to be dropped (for example in Sweden the counties have to implement between 60 and 70% of Community legislation)
6. All participants request that, in line with the current excellent practice in Austria, there should be systematic *ex ante* consultation very early on in the legislative process, in the spirit of true partnership between the institutions and local and regional authorities. The Treaty should make it compulsory for there to be consultation on all policies with major regional or local effects and on all policies with financial consequences for regions and cities. Moreover, there should be a "consultation code" to guarantee that practices are fair and transparent.

Participants denounced the shortcomings of consultation by means of Green or White Papers and called for the principles of good governance to be written into the Treaty.

## Subsidiarity and Competence

7. The words in Article 1 of the TEU, "as closely as possible to the citizen" to be translated into reality;
8. Introduce **true subsidiarity**, which should recognise the **four levels** of government in Europe: European, national, regional and local;
9. Amend Article 5 of the TEC so that the role of local and regional authorities is recognised, with due regard for the internal structures of the Member States;
10. Amend Article 10 of the TEC as regards fair cooperation which must also be applied to local and regional authorities;
11. In the absence of a precise list of different types of competence, a system of ex-ante and ex-post checking should be introduced **as a top priority**, the best guarantee of proper control of subsidiarity being as described in paragraph 15 below;
12. The "**principle of relation**", a concept of German constitutional law, to be recognised in the Treaty; according to that principle the European legislator should be responsible for the financial consequences of his decisions or give the territorial authorities, when they have to apply the decisions, as is often the case, the means to do so (e.g. the European Council in Lisbon said that each school should have an Internet connection, but the resulting cost has to be borne by local authorities).

## Requests relating to the Committee of the Regions

13. Recognition of the CdR as a Union institution (in practice recognition of the right of appeal to the Court in defence of its prerogatives).
14. Adjustment of the balance of the CdR because of the under-representation of the local level in some delegations.



**B. Special requests from regions with legislative powers (RPL)**

15. Right of individual appeal to the European Court of Justice by RPLs (appeal to check legality)
16. As a minimum, right of appeal via the Committee of the Regions (it should be noted that the European Parliament was given active legal capacity by the Treaty of Nice).
17. Special status for RPLs in the Treaty/or LAMASSOURE proposal that the regions should be "partners of the Union".
18. Participation of regional assemblies in COSAC.
19. Participation of regional ministers in the Council on the basis of Article 203 of the TEC.

**C. Nominations for organisations to speak at the plenary:**

- Assembly of European Regions
  - Association des Régions Frontalières de l'Europe
  - Conference of Peripheral Maritime Regions of Europe
  - Council of European Municipalities and Regions
  - EUROCITIES
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**HUMAN RIGHTS**

Chairman: António Vitorino

No of participants registered: 94 (64 organisations)

1. The contact group, facilitated by Commissioner Vitorino, covered a wide range of issues, notably human rights aspects of the Union's internal and external policies. Sixty-four organisations (ninety-four persons) registered to participate in the meeting. A number of participating organisations represent a wider international network of organisations.
2. All participants highlight that the European Union is a Union of values and that the protection and promotion of these values have to be put at the centre stage of the Union's policies, both internally and externally. There is also a general acknowledgement that enhanced transparency and accountability of the institutions, more focus on gender equality in the EC Treaty and in the Union's policies and an intensified dialogue with the civil society are of major importance when it comes to putting human rights into practise.
3. As regards human rights within the European Union, a vast majority of speakers calls for incorporation of the Charter of Fundamental Rights into the treaties to make it legally binding. Many of them believe that the text of the Charter should be amended to include or strengthen a number of rights, and that the Convention should address this issue. Others mentioned the risk that reopening the Charter might lead to weakening of the text and proposed to provide for a possibility of future review of the text after its incorporation.

4. Cataloguing rights is not sufficient and many speakers agree that concrete protection of rights depends on effective implementation and control mechanisms, as well as mainstreaming human rights into all EU policies. In this context, some call for an extension of the competences of the Court of Justice, notably in the current "third pillar". The Union's accession to the European Convention on Human Rights (as well as to other international human rights instruments, such as the revised European Social Charter) is recommended by a large number of participants.
5. As regards the external dimension, a number of speakers called for an active and consistent human rights policy, based on the principles of universality and indivisibility of fundamental rights. International human rights standards should guide the Union's relations with third countries.

A number of participants feel that due attention should be given to social, economic and cultural rights and that these rights should be strengthened both in the Union's legal framework and in its policies.

**DEVELOPMENT**

Chairman: Henning Christophersen

Co-Chairs: Ms Anne Van Lancker, Lord Tomlinson, Mr Kimmo Kiljunen

No of participants registered: 42 (29 organisations)

- All the participants welcomed the idea of consulting civil society through contact groups and the plenary session. Some participants mentioned the need to institutionalise the dialogue with civil society, though some warned about the need to avoid this slowing down the decision-making process.
- Need to strengthen the EU's policy and establish a relationship between development and the objectives of the external policy in terms of policy objectives, decision-making process and implementing mechanisms to recognise development policy more clearly as one of the elements of the EU's external policy.
- Need to ensure consistency of other EU policies with its development objectives.
- The Development Council should not, at least at this stage, be abolished.
- The eradication of poverty should be given highest priority in the new Treaty.
- The social aspects should be more strongly emphasised in the external as well as internal dimension of the EU.
- Focus on democracy and respect for human rights should be deeply rooted in EU development policy.
- The European Development Found should be incorporated into the Community Budget and subject to the same procedures as the rest of EU development assistance.
- The Charter of Fundamental Rights should be incorporated into the Treaty.

- All the participants expressed their satisfaction at the candidate countries' participation in the work of the Convention. The candidate countries' presence creates a new situation not only by the fact that they are less developed in terms of income but also in terms of development policy. This will however change over time as pre-accession policy also helps to build up their development policy.
  - Focus on equal treatment and equal opportunities for men and women.
  - The Chairman and Co-Chairs expressed their willingness to continue the dialogue through contributions from contact group members, especially concrete proposals related to the issues raised.
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**ANNEX VIII****CULTURE**

Chairman: Alojz Peterle

Number of organisations registered: 53

Number of participants registered: 71

1. On 12 June Mr Peterle, member of the Praesidium of the European Convention chaired a hearing ("contact group") at the European Parliament in Brussels of civil society organisations engaged in the cultural area. He was assisted by Mr van Mierlo, member and by Ms Birzniece, alternate. Mr van der Linden, member and Ms Palacio, member of the Praesidium also participated in all or part of the hearing. Secretariat support was provided by the Convention secretariat.
2. 53 organisations had registered to take part in this hearing (see attached list of participants). Five discussion topics had been selected to take account of the diversity of governmental and non-governmental organisations attending the hearing:
  - arts and heritage;
  - cultural cooperation;
  - languages and minorities;
  - churches and religious associations;
  - education.
3. In his introduction, the Chairman asked the organisations and NGOs to give their views on the topics and issues appearing in the Laeken declaration and on those tackled during the initial Convention sessions. An exhaustive account of contributions is unnecessary, but the following points may be noted:

- the actions conducted by the Union in the cultural field were deemed generally inadequate. A European action did not jeopardise decisions taken at national level but rather supplemented them. There should be encouragement for actions which would enhance a feeling of European cultural belonging;
- many speakers urged that the Charter of Fundamental Rights be included in the Treaty. Some suggested that it be amended by including a reference to the right to culture or a mention of the spiritual or cultural values which provided the impetus for European integration;
- several speakers wanted the provisions of the Treaty relating to culture (Article 151) to be maintained and made subject to a decision by qualified majority (instead of the current unanimity with a European Parliament codecision procedure). A number of speakers stated that the most important measures adopted by the Union in the field of culture had often had a legal basis other than Article 151, in order, in their view, to get round the unanimity obligation. Some speakers spoke of their support for the Protocol on the system of public broadcasting in the Member States annexed to the Treaties and wanted it to be maintained;
- a number of speakers deplored the fact that insufficient account was taken in the European Treaties of the special nature of cultural property, which could not be regarded in the same way as other goods and should receive or continue to receive special treatment, especially as regards the rules on State aids for the film industry;
- those speaking on behalf of Churches or religious communities expressed their support for declaration No 11 amended to the Final Act of the Amsterdam Treaty on the status of churches and non-confessional organisations. They furthermore considered that the values uniting the European continent and which were to be found in European principles (values such as peace, liberty, human dignity, solidarity and democracy) owed much to the religious and in particular Christian heritage of Europe. This heritage and link should not be overlooked and should appear in European texts. One speaker pointed out, however, that an increasingly large proportion of the population no longer referred to this religious heritage and that if it were mentioned it would create divisions between believers and non-believers;

- several speakers recalled the existence of minority languages or cultures within the European Union. Their place should be recognised and support given for their further development.
4. At the end of the statements and discussions, the Chairman reminded participants that the Convention session on 24 and 25 June would be devoted to hearing representatives of civil society. Organisations engaged in the cultural field would have 25 to 30 minutes to present their views, followed by a discussion of the same length with members of the Convention. The Chairman asked the attending organisations to inform him of the way in which they would be using their speaking time. Following brief consultations, the following arrangements were adopted:
- cultural cooperation, arts and heritage, education: 10 minutes to be shared between Mr von des Gablentz (Europa Nostra) and Ms Chabaud (European Forum for the Arts and Heritage);
  - Churches and religions: 10 minutes, Mr Jenkins (Conference of European Churches);
  - languages and minorities: 5 minutes.

All speakers are invited to take account of the suggestions made by participants on the content of their contributions to the European Convention.

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**THE EUROPEAN CONVENTION**  
THE SECRETARIAT

**Brussels, 4 July 2002 (08.07)**  
**(OR. fr,en)**

**CONV 167/02**

**NOTE**

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Subject : Note on the plenary session  
Brussels, 24 and 25 June 2002 <sup>1</sup>

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**I. Report by the Chairman on Seville meeting with the European Council**

1. The Chairman outlined the main elements of the report given by him to the Seville European Council. These covered the launch of the Convention, its progress to date, and the preliminary conclusions which could be drawn from the work so far. On the last point, the Chairman had reported that there was general agreement that there should be no new transfer of competences to the Community (with the exception of cross-border aspects of Justice and Home Affairs), that there should be a stronger control over the respect for subsidiarity, that both the instruments and language of the Union/Community needed simplifying, that consideration needed to be given to deepening activity in three specific areas (External Relations, Justice and Home Affairs and possibly Economic and Financial affairs) and that democratic legitimacy should be made clearer. A written copy of the Chairman's report was subsequently circulated to Members of the Convention. The Chairman said that his report had been warmly received by Heads of State/Government who had expressed broad support for the objective of simplification, and had stressed the need for the Convention to respect the timetable set.

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<sup>1</sup> A verbatim record of the plenary session is to be found on the website [www.european-convention.eu.int](http://www.european-convention.eu.int).

2. In response to two interventions from Members of the Convention, the Chairman agreed that democratic legitimacy within the Union had two sources, the European Parliament and national parliaments. He also confirmed that his report to Seville represented his assessment as Chairman, and did not necessarily represent a view shared by each Member of the Convention.

## II. Opening of session devoted to civil society

3. The session devoted to civil society was opened by Vice-Chairman Dehaene as Chairman. He underlined the importance attached by the Convention to the views of civil society. The plenary session was neither the beginning nor the end of a process of consultation which would continue throughout the period of the Convention. He underlined the four building blocks of this process. Firstly, the Forum allowed non-governmental organisations to provide written contributions to the Convention, and a summary of the contributions to date had been circulated to Convention members (CONV 112/02). Secondly, the debates organised at a national level were a vital component of the process; written reports on these debates had been received and circulated. It was important that they should continue. Thirdly, eight contact groups had been established to allow for an exchange of views with specific sectors of civil society. They had also allowed representatives to be designated who would speak on behalf of each sector at the plenary session. The contact groups were complementary to the briefing meetings being organised for civil society by the Economic and Social Committee. Finally the session itself was an opportunity for the Convention as a whole to hear the views of civil society.

### Social Sector Contact Group

4. The Chairman of the group (Mr HÄNSCH) said that the meeting of the contact group with organisations from the social sector had underlined a number of points of concern. In particular there had been many calls for incorporation of the Charter on Fundamental Rights into the Treaty, the expectation that the Convention would prepare a draft constitutional treaty, a strong emphasis on the need for wider social and employment issues to be more central objectives of the EU, inclusion of the open coordination method in the Treaty, and a formalisation in the Treaty of the dialogue with civil society. There had also been calls for stronger support for services of general interest.

5. The following five representatives took the floor on behalf of this sector :

Mr ALHADEFF, on behalf of the social platform,

Ms WILKINSON, also on behalf of the social platform,

Ms SUTTON, also representing the social platform,

Ms McPHAIL, representing the European Women's Lobby,

Ms DAVID, representing the European Standing Conference of Cooperatives, Mutual Societies, Associations and Foundations.

The following issues were raised.

6. It was considered important that the Convention should be a fully open process. A legal basis in the Treaty for the dialogue with civil society was requested, though it was made clear that this in no way undermined the normal democratic process, but rather enriched it, since civil society had the potential to contribute a great deal to the development of the Union.
7. Concern was expressed that the European social model was being dismantled. Europe's citizens sought security in its widest sense. All of Europe's internal policies should be at the service of social development. It was proposed that the open method of coordination should be incorporated in the Treaty, but it was underlined that the open character of the process also implied full consultation of NGOs, social partners, and regions/local authorities. A request was made for a specific commitment to combating poverty to be included in the Treaty.
8. There were calls for extending the scope of the Charter of Fundamental Rights, as well as for including it in the Treaty. The accession of the Community to the European Convention on Human Rights was proposed. The importance of ensuring freedom from discrimination for all Europe's citizens was underlined.
9. The developments so far to bring about gender equality were described as erratic. Gender equality should become an explicit objective of the Union, and a new title covering gender equality provisions should be included in the Treaty. Participation and representation in the institutions should be on a gender parity basis.

10. The important role of public and non-profit making companies within the Union was underlined. There should be more explicit recognition in the Treaty of the role of services of general interest, and a derogation for them from competition rules.
11. The Observers representing the social partners were then invited to take the floor.

Mr JACOBS, representing UNICE, welcomed the initiative of convening a session devoted to civil society. He urged the Convention to rethink and clarify the process of consultation with key stakeholders. UNICE was in favour of a constitutional Treaty, supported moves to greater transparency, favoured maintenance of the Community method, a single legal personality and more extensive use of QMV. It did not wish to see a catalogue of competences.

12. Mr GABAGLIO, representing ETUC, urged the Convention to strike a balance between economic and social policy. The Lisbon process was important, and further policy coordination should be encouraged. European citizenship should be strengthened. Consultation of social partners should be formalised. In addition the Union needed to strengthen its role globally in order to support fairer globalisation.
13. Mr CRAVINHO, representing CEEP, supported calls for formal Treaty recognition of services of general interest, given their importance within the European economy. Specifically public costs should be considered compatible with competition rules. The social dialogue should be developed further, and the open method of coordination should be supported.
14. In response to these interventions, a number of members of the Convention expressed support for the general call for greater emphasis on social dialogue, the maintenance of the European social model and the incorporation into the Treaty of the Charter of Fundamental Rights. However a question was raised about the practical implications of incorporating the Charter, and doubts were expressed by one member over the extent to which the organisations which had taken the floor were representative; their source of financing was relevant to this and should be declared.

## Environment Contact Group

15. The Group Chairman, Mr KATIFORIS, referred to the importance of environmental issues which had been underlined by the contact group; this reflected an increasing recognition that natural resources were not available in limitless abundance. The following three representatives took the floor on behalf of this sector:

Mr HALLO, representing the European Environment Bureau,

Mr SPOONER, representing the European Agricultural Convention,

Ms de JONCKHEERE, representing the European Landowners Organisation,

16. It was stressed that environmental protection should be a top priority for the Union. The existing Treaty provided a secure basis for environmental policy and should not be changed. But the following issues should be addressed: inclusion of a Treaty article on dialogue with civil society, opening up the work of the Council, inclusion of environmental rights in the Charter, extending the role of QMV and co-decision, replacement of the Euratom Treaty, and the introduction of a Treaty provision on animal welfare.
17. The common agriculture and rural policy (CARP) should be reformed. Decision-making should be made more transparent and accountable. The CAP was much too complex. A new CARP should be decided on the basis of co-decision, and stakeholders should be involved. The basis of the CARP should be widened to include such areas as access to healthy food and clean water, and should be based on the principles of sustainable development. Developing countries should be given greater access to agricultural markets.
18. Furthermore, policies to bridge the gap between urban and rural interests were considered necessary. The right to own property and land should be included in the Charter, which should be incorporated into the Treaty. There should be an extension of co-decision, and subsidiarity should be reinforced and a body to monitor it should be established.
19. In response, support was expressed by one member of the Convention for the call for a more fully integrated agricultural and rural policy. It was also noted that environmental policy was almost invariably a transnational issue.

The Observers representing the Economic and Social Committee were then invited to take the floor.

20. Mr FRERICHS referred to the need for the composition of the ESC, as a representative body, to be clearly redefined and the criteria clarified. The ESC and the Committee of the Regions had complementary roles and should work efficiently together.
21. Mr BRIESCH underlined the essential role of the ESC. It was not part of civil society but achieved full legitimacy through the fact that its members were mandated by their organisations in the Member States. The ESC looked for a constitutional Treaty encompassing the objective of full employment, equality, recognition for the particular role of services of general interest, and an extension of QMV.
22. Ms SIGMUND stressed the importance of social cohesion, which should be included in the Treaty, and of culture as a basis of social activity. Greater emphasis should be placed on developing the social dialogue, though full participation in this should be limited to fully representative organisations. This dialogue should include the subject of subsidiarity.

#### **Academia and Think Tanks sector and Citizens and Institutions sector**

23. The discussions concerning these sectors were led by Mr Giuliano AMATO and Mr Jean-Luc DEHAENE respectively. The following had been designated to represent the first sector:

*Academic world:*

- Mr Jean-Victor LOUIS (AGORA and European University Institute, Florence)
- Ms Florence DELOCHE-GAUDEZ (Political Sciences, Paris)

*Think Tanks:*

- Ms Kirsty HUGHES (Centre for European Policy Studies / European Policy Institutes Network – CEPS/EPIN)
- Mr Stanley CROSSICK (European Policy Centre – EPC)

*European /Youth movements:*

- Ms Pascale JOANNIN (Robert Schuman Foundation)

*Scientific Research:*

- Mr Antonio RODOTA (European Intergovernmental Research Organisations EIROForum and European Research Advisory Board - EURAB)

*Women's academic movements:*

- Ms Teresa FREIXES (Women Citizens of Europe Network)

*Candidate countries:*

- Mr Karoly LORANT (Institute for Economic Analysis and Informatics, Hungary – ECOSTAT)

24. The second sector had designated:

- Mr Fernand HERMAN (Federalist Voice)
- Ms Alison WESTON (Young European Federalists)
- Ms Charlotte ROFFIAEN (Active Citizenship Network - Forum of Civil Society)
- Ms Maria MIGUEL SIERRA (European Network Against Racism)
- Mr Pawel KRZECZUNOWICZ (Polish NGO Office in Brussels)

25. The presentations in these two sectors were largely along the same lines as both of them focussed on matters closely related to the Convention's work, concerning the institutions, the future of Europe and participatory democracy.

26. Emphasis was placed on the importance of the Convention's working methods, and particularly the working party structure, and on the time constraints weighing upon the Convention. Questions were asked, and suggestions made, concerning methods and time limits.

27. Majority support was expressed for the Convention's search for daring solutions, and there was consensus on the need to frame a constitutional Treaty or Charter in simple and clear language. Various speakers raised the idea of holding a referendum or referendums to approve the founding text resulting from the Convention.

28. The Academia and Think Tanks sector offered its services to the Convention, and would be available for any specific work or research that might be required of them. Various statements were made in support of that sector's imminent role in the training of young people, who were Europe's driving and initiating force.

29. Several variants were suggested for the architecture of the institutions, including more widespread use of majority voting and the codecision procedure, election of the Commission President by the European Parliament, opening up to the public the debates of a – reformed – Council when acting as legislator, and strengthening of the Commission's executive role and authority to control application of the subsidiarity principle.
30. Agreeing that more action than legislation would be required in the coming period, all speakers wanted to strengthen the Union's political nature, as well as its capacity to act in the field of foreign and defence policy and to take decisions on political issues reflecting European citizens' expectations.
31. The safeguarding and promotion of more participatory democracy featured in many statements, as did the inclusion in the Treaty of the principle of a regular dialogue with civil society, which should in practice lead to consultation of the relevant representative organisations at an early stage in the framing of Union legislation.
32. Various women's and young people's networks also adopted positions on the architecture of the institutions along the lines stated previously.
33. In the ensuing debate speakers expressed broad support for the work of the organisations in these sectors, organisations, highlighting their role, although some found that the organisations involved were insufficiently representative of opinions in Europe, and a number of them were receiving financial support from the institutions.
34. On this matter Mr Söderman, the European Ombudsman, said that since he had taken up his duties (almost 7 years ago) he had received 10 000 applications from citizens on cases of maladministration by Community institutions. He stressed that considerable progress had been made to make European citizenship a reality today. In particular, rules had been drawn up on public access to documents, and the Charter had been adopted. The European Parliament had accordingly adopted a code of good administrative behaviour in September 2001. Yet citizens were not yet very aware of how to ensure respect for their rights. This was due to the fact that there was little information on this in the Treaty. He suggested that the Treaty include a Chapter on citizens' (judicial and non-judicial) means of redress in cases where their rights



(including their fundamental rights) were not respected. That chapter would then also contain provisions on possible means available before national courts, the Court of Justice's constitutional role, the right to petition the European Parliament and the right to contact a national ombudsman or the European Ombudsman. He suggested that the latter be enabled to seize the Court of Justice if he considered that a fundamental right had been violated.

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The session on 25 June 2002 was opened by the Chairman, Valéry Giscard d'Estaing, who then passed the chair to Mr Jean-Luc Dehaene.

### **Regional and Local Authorities sector**

35. The discussions concerning this sector were led by Ms Ana PALACIO.

The first speakers were the Observers from the Committee of the Regions, namely:

Mr Eduardo ZAPLANA, Vice-Chairman of the Committee of the Regions, President of the Region of Valencia

Mr Jos CHABERT, former Chairman of the Committee of the Regions

Mr Patrick DEWAELE, Minister-President of the Flemish Region

Mr Manfred DAMMEYER, Member of the Nordrhein-Westfalen State Parliament

Mr Claude du GRANRUT, Regional Councillor (Picardie)

Mr Claudio MARTINI, President of the Tuscany Region.

36. The following were subsequently designated as speakers:

– Dr Heinrich HOFFSCHULTE, First Vice-President of the Council of European Municipalities and Regions

– Mr Anders GUSTAV, Member of the Bureau of the Conference of Peripheral Maritime Regions of Europe;

– Mr Lambert VAN NISTELROOIJ, Vice-Chairman of the Assembly of European Regions;

– Ms Eva-Riitta SIITONEN, President of EUROCITIES;

– Mr Jens GABBE, Secretary-General of the Association of European Border Regions;

– Mr Manfred DÖRLER, President of the Voralberg Parliament, for the Conference of Legislative Assemblies of the Regions of Europe (CALRE).

37. Both the Observers and the representatives of the organisations highlighted the special nature of local and regional entities as citizens' elected representatives, and called for respect for their areas of competence and their tasks, which consisted largely in implementing Union legislation. It was further emphasised that Europe was being governed at four levels: local, regional, national and European.
38. The Observers said that the Committee of the Regions ought to become a Union institution and have the right to bring actions before the Court of Justice of the European Communities. They wanted the areas in which consultation of the Committee of the Regions was mandatory to be extended and the Committee's opinions to be given greater importance by obliging the institutions to give reasons where they disagreed with those opinions.
39. All speakers representing the sector underlined the need to bolster the Union's institutions, calling for a constitutional Treaty and stating their commitment to policies with a strong territorial impact, including cross-border policies, which they felt should not be re-nationalised.
40. There were also calls to make Union legislation less detailed and to associate territorial entities, which were most frequently required to implement that legislation, closely at an early stage of legislative drafting. All manifested their commitment to strict control of the subsidiarity principle, to be understood first and foremost as a principle of closeness to citizens. Here, it was proposed that the Treaty include the "principle of connexity" whereby the legislator should assume the financial consequences of its decisions or give territorial entities, when they had to apply the decisions, the means to do so.
41. A number of representatives of regions with legislative competence called for the right of individual referral to the Court of Justice of the European Communities, greater presence of regional ministers in the Council (Art. 203 TEC) and participation by their regional assemblies in the COSAC. Lastly, several requests were made for a special session of the Convention to be devoted to the role of regional and local entities.

## **Human Rights sector**

42. This sector, headed by Mr António VITORINO, had chosen the following representatives;
- Mr Dick OOSTING (Amnesty International);
  - Ms Laëtitia SEDOU (OMTC – World Organisation Against Torture-Europe);
  - Ms Sophie SPILIOTOPOULOS (Association of Women of Southern Europe and EWLA).
43. Here, statements made suggested in particular that it was not enough to protect human rights by sound texts (such as the Charter or the ECHR), but that this also required the proper functioning of the institutions (more transparency, notably on internal matters and accountability), effective control by parliaments (national and European) and by the Ombudsman, respect for the principle of gender equality and greater involvement of civil society. Some statements also emphasised that the Union ought to make human rights the key component of all its policies. It was suggested that "human rights" be replaced by "rights of the individual".
44. Respect for human rights by the Union in the Justice and Home Affairs sector was highlighted. The criticism was made that Union activity in this sector was not sufficiently transparent and that control by the Court of Justice was incomplete.
45. By and large, this sector's representatives suggested that the new Treaty (particularly its preamble) incorporate the Charter of Fundamental Rights. Some proposed a review of the Charter's provisions, in particular those that were less protective of the *acquis communautaire*, whilst others felt that in the present circumstances it was more appropriate not to reopen the discussion on all the Charter's provisions, but to consider only technical adaptations.
46. It was further stressed that incorporation of the Charter could not be viewed as an alternative to the Union's accession to the European Convention on Human Rights, the benefits of which were underscored. Reference was made here to explicit recognition of the Union's legal personality. A further consequence of the Charter's incorporation into the Treaty was that Member States would be required to comply with its provisions when implementing Community law.

47. Mr Söderman, the European Ombudsman, stated that he had tried to encourage the institutions to apply the Charter since its adoption. He had done so in particular in the following areas: right to freedom of expression for Union officials, right to paternity leave, non-discrimination on grounds of age in recruitment matters, no indirect discrimination concerning women, secondment of national officials, right to good administration by the Institutions.

### **Development sector**

48. This sector, headed by Mr CHRISTOPHERSEN, had chosen the following representatives:
- Mr Simon STOCKER (Eurostep);
  - Ms Claire GODIN (Equilibres et Populations);
  - Ms Meral GEZGIN ERIS (Economic Development Foundation).
49. It was proposed that a legal basis be included in the Treaty which would allow for more vigorous action and to link the Union's internal policy more closely to its external development policy. The principles of sustainable development and adequate social protection should be incorporated into the Treaty.
50. Eradication of poverty should also be made a component of the Union's external policy. The point was made that 20% of the world's population owned 86% of the world's wealth whereas 20% of the poorest countries owned only 1,4% of it.
51. At present, development matters were covered by complementary competences. It was emphasised that a clearer definition of the Member States' and the Union's competences would make the Union's development policy more effective and that greater transparency of the institutions was needed.
52. The principle of gender equality should be guaranteed in development programmes (here, a practical guide could be drawn up on how to mainstream the principle of gender equality in development policy).
53. It was considered essential to provide for more programmes on education in third-world countries. It was also mentioned that undertakings based in the EU should be prohibited

from becoming involved in activities where there was abuse of child labour in developing countries.

### **Cultural sector**

54. For this sector, headed by Mr Aloiz PETERLE, the following representatives were selected:
- for cultural cooperation, art and heritage and education: Mr von der GABLENTZ (Europa Nostra) and Ms CHABAUD (European Forum for the Arts and Heritage);
  - for churches, religion and beliefs: Mr JENKINS (Conference of European Churches);
  - For languages and minorities: Mr BREZIGAR (European Bureau for Lesser-Used Languages).
55. It was proposed that the Treaty should mention the fundamental values which form the common basis of our societies and which should contain references in particular to: human dignity, the promotion of peace and reconciliation, freedom and justice, solidarity and sustainable development, tolerance, democracy, human rights, the rule of law, respect for minorities and cultural diversity. The Union should, moreover, strengthen its capabilities and resources in the area of conflict prevention in the world and as regards the peaceful settlement of conflicts.
56. The defence of fundamental values, human dignity and cultural diversity are at the heart of European integration. It was suggested that a People's Europe could be constructed only if Europe plays a role in culture and education. For enlargement to succeed, the citizens of the candidate countries must feel that they belong to the Union, and culture is the means to achieve this.
57. It was suggested that Article 151 EC should be amended to provide for qualified majority voting rather than unanimity as at present, and that Articles 149 and 150 of the EC Treaty should be merged.
58. Furthermore, the wish was expressed that the principle of cultural diversity should figure explicitly in the Treaty and that national public policies on culture should be regarded as forming part of services of general interest. To this end, Article 87 (State aids) and Article 133 (common commercial policy) of the EC Treaty should take

account of the specific nature of cultural and educational activities. The latter cannot reasonably be viewed solely from a commercial perspective or a competition standpoint.

59. It was also proposed that the Protocol annexed to the Treaty of Amsterdam on Public Service Broadcasting in the Member States should be incorporated into the text of the Treaty, inasmuch as pluralism of information and media should be listed among the common fundamental values of the Union, in the same way as cultural diversity.
60. Mr Dehaene, Vice-Chairman, closed the debates by stating that the proceedings had been a milestone in a long-term process. He indicated that the dialogue with civil society would be pursued, that the forum website would continue and remain open to the contribution that civil society might wish to make to the work of the Convention. He also mentioned the importance of the debates at national level. Lastly, speaking on behalf of the Praesidium, he announced that the latter would take other initiatives aimed at pursuing the dialogue with civil society, which he regarded as highly enriching, above all for the Convention.
61. Closing the session, the Chairman underlined the importance of this debate and congratulated all the participants. He then provided some information on the organisation of the Youth Convention. He emphasised the importance of the latter for a Europe orientated towards the future in an ever-changing world.

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**ANNEX**

List of speakers following order of intervention

**Plenary session 24 and 25 June 2002**

**LIST OF SPEAKERS**

**Monday 24 June 2002**

**Valéry GISCARD D'ESTAING, Chairman**

*Johannes VOGGENHUBER, Elio DI RUPO*

**Jean-Luc DEHAENE, Chairman**

Mr Klaus HÄNSCH, European Parliament

Mr Giampiero ALHADEFF, Social Platform

Ms Marie-Françoise WILKINSON, Social Platform

Ms Diana SUTTON, Social Platform

Ms Mary Mc PHAIL, European Women's Lobby

Ms Anne DAVID, European Standing Conference of Co-operatives, Mutual Societies, Associations and Foundations

Georges JACOBS (UNICE)

Emilio GABAGLIO (ESC)

Joao CRAVINHO (CEEP)

Mr Peter HAIN – United Kingdom (Government)

Ms Anne Van LANCKER – European Parliament

Mr Alain BARRAU - France (Parliament )

Mr Ernani LOPES - Portugal (Government)

Ms Helle THORNING-SCHMIDT – European Parliament \* alternate for Mr MARINHO

Mr Hannes FARNLEITNER – Austria (Government)

Ms Pervenche BERES – European Parliament

*Blue cards: Barnier, Bruton, Heathcoat-Amory, Fayot, Spini*

Mr Jan FIGEL – Slovak Republic (Government)

Mr Giorgos KATIFORIS - Greece (Government)

Mr Ralph HALLO (European Environmental Bureau)

Ms Sharon SPOONER (European AgriCultural Convention)

Ms Sophie DE JONCKHEERE (European Landowners Organisation)

Mr Michael FREUDO - Malta (Parliament)

*Blue cards: Basile, Voggenhuber*

Göke FRERICHS

Roger BRIESCH

Anne-Marie SIGMUND

*Blue card: Maij-Waggen*

Mr Giuliano Amato, Vice-Chairman

Mr Jean-Victor LOUIS de AGORA (European University Institute in Florence)

Ms Florence DELOCHE-GAUDEZ (Political Sciences, Paris)

Ms Kirsty HUGHES (Centre for European Policy Studies – CEPS/EPIN)

Mr Stanley CROSSICK (European Policy Centre – EPC)

Ms Pascale JOANNIN (Robert Schuman Foundation)

Mr Antonio RODOTA (European Intergovernmental Research Organisations EIROFORUM)

Ms Teresa FREIXES (Women Citizens of Europe Network)

Mr Karoly LORANT (Institute for Economic Analysis and Informatics, Hungary – ECOSTAT)

Mr Michel ATTALIDES – Cyprus (Government)  
 Mr Andrew DUFF – European Parliament  
 Ms Danuta HÛBNER – Poland (Government )  
 Ms Cristiana MUSCARDINI – European Parliament  
 Mr Peter SERRACINO INGLOTT – Malta (Government)  
*Blue cards: Duhamel, Carnero-Gonzalez, Spini, Kirkhope, Giscard d'Estaing)*  
 Ms Inese BIRZNIECE - Latvia (Parliament)  
 Mr Jean-Luc DEHAENE – Vice-Chairman  
 Mr Fernand HERMAN (Federalist Voice)  
 Ms Alison WESTON (Young European Federalists)  
 Ms Charlotte ROFFIAEN (Active Citizenship Network - Forum de la Société civile)  
 Mr Pawel KRZECZUNOWICZ (Polish NGO Office in Brussels)  
 Mr Jacob SÖDERMANN - European Ombudsman  
 Mr ORIOL (European Network Against Racism)  
 Mr William ABITBOL – European Parliament \* alternate for Mr BONDE  
 Mr Proinsias DE ROSSA – Ireland (Parliament)  
 Mr Pierre MOSCOVICI - France (Government)  
*Blue cards: Speroni, Kauppi, MacCormick, Bruton, Hjelm-Wallen*  
 Mr Matjaz NAHTIGAL – Slovenia (Government)

## Tuesday 25 June 2002

Ms Ana PALACIO, Spain (Government)  
 Eduardo ZAPLANA, Vice-Chairman of the Committee of the Regions, President of the Region of Valencia  
 Jos CHABERT, Former Chairman of the Committee of the Regions  
 Patrick DEWAEL, Minister-President of the Flemish Region  
 Manfred DAMMEYER, Member of the Nordrhein-Westfalen State Parliament  
 Claude du GRANRUT, Regional Councillor (Picardie)  
 Claudio MARTINI, President of the Tuscany Region  
 Mr Lambert VAN NISTELROOIJ, Vice-President of the Assembly of European Regions  
 Mr Heinrich HOFFSCHULTE, Vice-President of the Council of European Municipalities and Regions  
 Mr Anders GUSTAV, Conference of Peripheral Maritime Regions of Europe  
 Mr Jens GABBE, Secretary-General of the Association of European Border Regions  
 Ms Eva-Riitta SIITONEN, President of EUROCITIES  
 Mr Manfred DÖRLER, Conference of Legislative Assemblies of the Regions of Europe (CALRE)  
 Mr Erwin TEUFEL – Germany (Parliament)  
*Blue cards: Bonde, Siitonen, Dörler, Teufel*  
 Mr Francesco SPERONI – Italy (Government) \* alternate for Mr FINI  
 Mr Edmund WITTBRODT – Poland (Parliament)  
*Blue cards: Barnier, Duhamel, Einem, Berger, Rack, MacCormick, Amato*  
 Mr Antonio VITORINO (Commission)  
 Dick OOSTING (Amnesty International)  
 Laëtitia SÉDOU (OMCT - World Organisation Against Torture – Europe)  
 Sophie SPILIOTOPOULOS (Association of Women of Southern Europe and EWLA).  
 Ms Cristiana MUSCARDINI – European Parliament  
 Mr Matjaz NAHTIGAL – Slovenia (Government)  
 Mr Frans TIMMERMANS – Netherlands (Parliament)  
 Ms Hanja MAIJ-WEGGEN – European Parliament  
 M. Jacob SÖDERMAN, European Ombudsman  
*Blue cards: A. Yilmaz, Bruton, Berès*



Mr Henning CHRISTOPHERSEN, Denmark (Government)  
Mr Simon STOCKER, Director of Eurostep  
Ms Claire GODIN (*Equilibres et Populations, Chargée de Mission Politique*)  
Ms Meral GEZGIN ERIS, President of the Economic Development Foundation, IKV Turkey  
Baroness SCOTLAND OF ASTHAL – United Kingdom (Government) \* alternate for  
Mr HAIN  
*Blue cards: Kiljunen, Palacio, Akyol, De Rossa, Basile, Lennmarker*  
Aloiz PETERLE - Slovenia (Parliament)  
Mr von der GABLENTZ (Europa Nostra)  
Ms CHABAUD (European Forum for the Arts and Heritage)  
Mr JENKINS (Conference of European Churches)  
Mr BREZIGAR (European Bureau for Lesser-Used Languages)  
Mr Hans van MIERLO – Netherlands (Government)  
Mr Tunne KELAM – Estonia (Parliament)  
*Blue cards: Tekin, Demetriou, Spini*  
Mr Filadelfio BASILE – Italy (Parliament)

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DA

**DET EUROPÆISKE KONVENT**

**MANDAG DEN 24. JUNI 2002**

DE

**EUROPÄISCHER KONVENT**

**MONTAG, 24. JUNI 2002**

EL

**ΕΥΡΩΠΑΪΚΗ ΣΥΝΕΛΕΥΣΗ**

**ΔΕΥΤΕΡΑ 24 ΙΟΥΝΙΟΥ 2002**

EN

**EUROPEAN CONVENTION**

**MONDAY, 24 JUNE 2002**

ES

**CONVENCIÓN EUROPEA**

**LUNES, 24 DE JUNIO DE 2002**

FR

**CONVENTION EUROPÉENNE**

**LUNDI 24 JUIN 2002**

IT

**CONVENZIONE EUROPEA**

**LUNEDI' 24 GIUGNO 2002**

NL

**EUROPESE CONVENTIE**

**MAANDAG 24 JUNI 2002**

PT

**CONVENÇÃO EUROPEIA**

**SEGUNDA-FEIRA, 24 DE JUNHO DE 2002**

FI

**EUROOPPA-VALMISTELUKUNTA MAANANTAINA 24. KESÄKUUTA 2002**

SV

**EUROPEISKA KONVENTET**

**MÅNDAGEN DEN 24 JUNI 2002**

1-002

FR

**PRESIDENCE DE Mr GISCARD D'ESTAING***(La réunion est ouverte à 14.57 h)*

**Le Président.-** Notre session d'aujourd'hui est essentiellement dédiée à l'audition de la société civile. Ceci explique d'ailleurs son organisation particulière : d'une part, le fait que nous siégeons dans ce grand hémicycle afin que chacune et chacun puisse y prendre place, et d'autre part le fait que les conventionnels sont de part et d'autre, ce qui n'est pas leur situation habituelle tandis que les représentants de la société civile occupent le centre de l'hémicycle.

Notre ordre du jour prévoit que je vous informe tout d'abord en quelques mots, du rapport que j'ai présenté au Conseil européen de Séville. La présentation de ce rapport est une des obligations qui résultent de la déclaration de Laeken. Il y est décrit comme étant un rapport oral. Il ne fait donc pas l'objet d'une discussion préalable. Par contre, une fois qu'il est prononcé, étant donné le grand nombre de participants, il acquiert un caractère public. Par conséquent, il sera adressé personnellement, à chacun des membres de la convention, dans un délai de vingt-quatre heures. Il sera donc disponible pour la séance de demain.

1-003

DA

**Redegørelse fra formanden om Det Europæiske Råds møde i Sevilla**

DE

**Bericht des Präsidenten über die Tagung des Europäischen Rates in Sevilla**

EL

**Έκθεση του Προέδρου σχετικά με το Ευρωπαϊκό Συμβούλιο τη Σεβίλλης**

EN

**President's report on the European Council meeting in Seville**

ES

**Informe del Presidente sobre la reunión del Consejo Europeo de Sevilla**

FR

**Rapport par le Président sur la réunion du Conseil européen à Séville**

IT

**Relazione del Presidente sulla riunione del Consiglio europeo di Siviglia**

NL

**Verslag van de voorzitter over de vergadering van de Europese Raad van Sevilla**

PT

**Relatório do Presidente sobre o Conselho Europeu em Sevilha**

FI

**Puheenjohtajan kertomus tapaamisesta Sevillan Eurooppa-neuvoston kanssa**

SV

**Ordförandens redogörelse för Europeiska rådets möte i Sevilla**

1-004

FR

**Le Président.** – Je vais vous faire un bref compte-rendu de ce que j'ai dit d'une part, et des réactions du Conseil d'autre part.

Mon compte-rendu a porté sur trois points: le démarrage de la convention, le déroulement de ses travaux et les premières orientations qu'on peut en tirer. Sur le démarrage de convention, ce n'est pas la peine d'y revenir puisque vous avez participé à ce démarrage. Je dirais simplement que j'ai souligné le fait que les Etats Membres et les pays candidats participent à ces travaux sur un pied d'égalité et que c'est actuellement la seule enceinte européenne où cette situation s'observe. J'ai indiqué d'autre part que les contributions des conventionnels des pays membres et des pays candidats sont d'une grande qualité. C'était pour moi l'occasion de vous en remercier.

J'ai noté qu'il semblait qu'un esprit de la Convention commençait à se créer : via un dialogue interne dans la convention, et parfois via des échanges d'arguments en vue d'aboutir à des positions plus proches. J'ai rappelé que la composition de la Convention souligne le caractère binaire de l'Union Européenne, avec ses deux sources de légitimité : la source historico-identitaire, avec les gouvernements et les parlements nationaux et la source euro-continentale avec le Parlement européen et les Institutions européennes. J'ai rappelé que nous avons décidé de procéder en trois phases: phase d'écoute, phase d'étude et phase de recommandations et de propositions. J'ai également souligné que les sessions d'aujourd'hui et de demain, consacrées à l'écoute de la société civile et préparées par le vice-président Monsieur Jean-Luc Dehaene, allaient clôturer cette phase d'écoute. J'ai donné des indications sur nos cinq sessions et la création de nos groupes de travail.

En ce qui concerne les premiers enseignements qu'ont apporté nos débats, j'ai retenu les points suivants: tout d'abord, la nécessité d'accroître la légitimité de l'Union Européenne, c'est-à-dire donner une définition précise des compétences de l'Union, qui puisse être connue de tous, en précisant qu'il n'y avait pas eu à la Convention de demande de compétences nouvelles dans la vie intérieure des Etats, à l'exception de la compétence sur l'action judiciaire et policière transfrontalière. J'ai noté que le consensus paraissait marquer une préférence pour affirmer que les compétences de l'Union sont exclusivement celles qui résultent des traités, toutes les autres restant de la compétence des Etats Membres. J'ai fait remarquer au Conseil Européen que ceci supposait une réécriture des articles des Traités qui ne définissent pas le caractère européen de la compétence, ou qui en tout cas, le définissent en des termes trop imprécis. J'ai souligné qu'il existait une demande forte, j'ai même dit qu'elle était quasi unanime, pour la mise en place d'un mécanisme efficace et transparent, qu'il soit politique ou juridictionnel, en vue d'assurer le respect du principe de subsidiarité. Et enfin, j'ai fait remarquer que, compte tenu de l'évolution du monde, il paraissait exister un consensus afin de ménager, à l'avenir, une possibilité d'évolution des compétences, à condition que ces modifications fassent l'objet d'une procédure transparente et démocratique. J'ai indiqué que les seuls domaines où s'exprimaient une demande supplémentaire, une demande "pour plus d'Europe", pour utiliser l'expression de la présidence espagnole, étaient les trois domaines suivants: le renforcement de la politique extérieure et la présence internationale de l'Union, le renforcement de l'action transfrontalière dans le domaine de la sécurité et de la justice et de la lutte contre la criminalité organisée et l'immigration illégale, et enfin une meilleure coordination en matière économique et financière. J'ai signalé que cette dernière émanait d'un certain nombre de conventionnel.

Pour ce qui est de la simplification, j'ai indiqué que la demande portait sur une réduction significative du nombre des procédures de décision et pour ce qui est de la législation communautaire, la demande portait sur la généralisation de la procédure de codécision et du vote à la majorité qualifiée. Et enfin, et j'espère que nous en donnerons un exemple ici-même cet après-midi et demain, j'ai plaidé pour la simplification du langage afin de le rendre compréhensible à nos concitoyens, en remplaçant, par exemple, les expressions de directive et de règlement par loi-cadre et loi européenne. J'ai également parlé de l'établissement de bases juridiques pour la simplification nécessaire des traités. Le dernier point que j'ai évoqué est la légitimité démocratique. En effet, il existe une demande de davantage d'efficacité et de démocratie dans la prise de décisions. Je rappelais que contrairement à des affirmations rapides et parfois injustes, la légitimité démocratique existe. Elle existe à la fois dans le rôle des parlements nationaux dans l'exercice de leur pouvoir par rapport à leur gouvernement représenté au Conseil et grâce à l'action du Parlement Européen, qui joue un rôle essentiel dans la définition de la législation européenne. Mais j'ai indiqué que cette légitimité démocratique est insuffisamment perçue ou mal perçue par l'opinion européenne.

Ce sont là les éléments que j'ai indiqués en répondant à deux critiques que nous avons entendu s'exprimer, dans notre enceinte ou à l'extérieur de celle-ci, et que j'ai tenu à mentionner. La première critique est de ne pas aller plus vite. J'ai indiqué, avec l'approbation du Conseil européen, que nous refusons de sacrifier la phase d'écoute, et que si nous n'allions pas plus vite dans la formulation de certaines positions, c'était pour attendre d'avoir entendu les membres de la société civile. La deuxième critique est le fait de ne pas prendre position sur les contributions qui nous sont adressées. Certaines d'entre elles ont attiré, à juste titre, l'attention médiatique. J'ai rappelé que ces contributions nous sont précieuses et j'ai d'ailleurs remercié leur auteurs, notamment le Parlement Européen, la Commission Européenne et certains Etats ou groupes d'Etats membres. Mais j'ai précisé que notre mission à la Convention est différente. Elle n'est pas de réagir au jour le jour sur les contributions qui nous sont adressées mais de parvenir à une vue globale pour aboutir à une proposition globale. Et j'ai indiqué que le fait qu'il y ait des contributions nombreuses et importantes montre que l'onde de rénovation engendrée par la mise en place de la convention se propage désormais dans l'ensemble du dispositif européen, ce qui est une excellente chose. Enfin j'ai conclu en essayant de répondre à la question suivante : "Pourrions-nous parvenir à une proposition globale et équilibrée?" Et la réponse a été de dire qu'il est encore trop tôt pour l'affirmer, mais que la convention avance dans le chemin qu'elle s'est tracé en vue de l'élaboration d'un traité constitutionnel.

Voilà donc le compte-rendu que j'ai présenté à Séville, au Conseil Européen. Ce n'est pas à moi de dire comment il a été accueilli. Cette tâche revient naturellement aux Membres du Conseil. J'ai ressenti, personnellement, l'expression d'une approbation forte et chaleureuse. On la retrouve d'ailleurs dans les conclusions de la Présidence où il est dit que le Conseil européen appuie la démarche

générale suivie par la convention et qu'il souhaite qu'elle poursuive sur cette voie et aboutisse, dans les délais prévus, à un résultat positif, dans la perspective de la conférence intergouvernementale décidée à Laeken. Je souligne les trois derniers mots "en vue de la révision des traités". Ce point est très important puisqu'il s'agit d'une proposition dont l'utilité est qu'elle puisse s'inscrire dans cette perspective de révision des traités. Le texte est un texte de style diplomatique. C'est pourquoi, j'ai ajouté l'ambiance du Conseil Européen, et notamment cette approbation que j'ai ressentie comme forte et chaleureuse.

Les Membres du Conseil européen rendront compte eux-mêmes de leurs interventions. La majorité d'entre eux est intervenue. Ils ont insisté sur trois points. Tout d'abord, ils souhaitent une participation accrue des représentants nommés par les gouvernements aux travaux de la convention. Ensuite, ils appuient très fortement le travail de simplification, à la fois des textes et des instruments, engagée par la convention. En enfin, ils insistent sur le respect du calendrier. Concernant le respect du calendrier, je leur ai indiqué que nous ferions tout notre possible pour respecter celui qui nous avait été fixé mais que néanmoins, nous ne le ferions pas en sacrifiant la qualité de nos travaux. Ainsi, ce serait au début de l'année deux mille trois, en phase rédactionnelle des textes, que nous serions à même de les informer plus complètement des modalités et des délais d'achèvement complet de nos travaux.

Voilà donc, Mesdames et Messieurs les Conventionnels, le compte-rendu de ce que j'ai indiqué au Conseil Européen et la réaction qui l'a suivi. S'il y a des questions brèves sur ce sujet, je me tiens à la disposition de ceux qui lèveraient leur carton pour leur répondre. Je vous demanderai toutefois de ne pas être trop nombreux parce que nous ne voulons pas retarder la phase de l'audition.

1-005

DE

**Voggenhuber (PE).** - Herr Präsident! Ich entnehme Ihrer schriftlichen Unterlage und auch Ihrer Aussage, dass Sie vor allem die historische Legitimation durch nationale Parlamente betont haben. Davon abgesehen, dass im Konvent eine solche historische Legitimation gar nicht zur Sprache kam, im Gegenteil, das Demokratiedefizit massiv angesprochen wurde, möchte ich Sie fragen, ob Sie dabei bedacht haben, dass die nationalen Parlamente ihre Kontrolle und Legitimation gar nicht mehr ausüben können, weil der Rat geheim tagt, weil sie in der Praxis völlig überfordert sind, beispielsweise eine Europol zu kontrollieren, weil Mehrheitsentscheidungen des Rates diese Parlamente präjudizieren und die mittelbare Legitimationskette längst durchbrochen haben und dass daher diese historische Legitimation in keiner Weise mehr für einen angemessenen demokratischen Standard sorgt?

1-006

FR

**Di Rupo (Parl.-BE).** – J'ai trouvé votre exposé extrêmement intéressant, voire brillant. Mais comme vous nous demandez notre avis, nous ne sommes bien entendu pas engagés par vos propos. Ceux-ci sont bien ceux du Président de la Convention, car ne serait-ce que sur les compétences, la manière avec laquelle les choses ont été exprimées mériterait certainement de longs débats qu'il n'est pas question de mener pour l'heure. Vous nous avez donc fait part de votre compte-rendu au Conseil, du climat, ce qui n'est jamais sans intérêt ainsi que des réactions formelles. Je voulais juste dire que le fait que nous ne réagissions pas aujourd'hui dans le détail sur tel ou tel point, en particulier dans le domaine des compétences, ne nous empêchait pas d'y revenir dans le futur. Je pense que c'était implicite. Toutefois, comme je suis d'un style plutôt lent et que j'aime les choses explicites, je me suis autorisé à vous poser cette question. J'espère que vous ne l'avez pas trouvée outreucidante, Monsieur le Président.

1-007

FR

**Le Président.** – Tout d'abord, Monsieur Voggenhuber, à propos de la légitimité, ou plutôt du rôle du Parlement dans la légitimité démocratique, j'ai indiqué la chose suivante. Je cite mon texte, puisque je ne suis pas allé plus loin que cela. Les deux sources de légitimité démocratique de l'Union, c'est-à-dire les Parlements nationaux et le Parlement Européen, doivent être vécues comme complémentaires et non comme antagonistes, ce qui est souvent, ou ce qui a été parfois, la tendance. Je dis également qu'une initiative forte devra être prise afin de rapprocher ces deux sources de légitimité démocratique de l'Union en leur donnant en même temps une plus grande lisibilité dans l'opinion publique. J'indique que lorsque la Convention aura progressé sur ce point, je ferai part au Conseil Européen de ses réflexions. La Convention progressera notamment grâce aux travaux du groupe de travail, présidé par Madame Stewart, qui désormais est en charge d'approfondir vos réflexions sur cette question.

Ensuite, la remarque de Monsieur Di Rupo est tout à fait judicieuse mais il n'y a pas d'ambiguïté. Le texte de Laeken dit que le Président de la Convention présente un compte-rendu. Il s'agit donc d'un compte-rendu présenté par lui-même, qui a un caractère oral et qui donc n'a pas valeur contraignante en ce qui concerne les travaux ultérieurs de la convention. Et donc, à cet égard, vous pourrez, comme vous le souhaitez, continuer à apporter votre contribution, notamment en matière de compétences, sujet important et sensible.

Nous pouvons maintenant passer au deuxième point de notre ordre du jour, à savoir l'écoute de la société civile. Je voudrais simplement, avant de transmettre la présidence à Monsieur Jean-Luc Dehaene, dire aux représentants de la société civile que nous attachons, et que personnellement j'attache, la plus grande importance à leur contribution. Nous l'avons d'ailleurs prouvé en refusant de nous laisser entraîner dans une démarche précipitée concernant les orientations de notre Convention. Nous avons d'abord voulu écouter les représentants de la société civile. Nous nous sommes efforcés d'apporter le plus grand soin possible dans le travail de

préparation. A cet effet, je remercie les membres du Praesidium et les Conventionnels eux-mêmes qui ont participé à cette préparation. Dans ce débat, il n'y aura que deux règles. La première est la liberté d'expression. Et la seconde est le respect des autres. La première de ces règles, est donc la liberté d'expression. Cela signifie que chacun s'exprimera comme il l'entendra. Il n'y a eu, il n'y a et il n'y aura aucune censure sur le contenu des propos tenus ici. Chacun peut ressentir ou avoir le besoin d'exprimer des convictions, des jugements, des préférences qui sont les siens. La seule limite est apportée par le deuxième principe, à savoir le respect des autres, qui a lui même une double forme. D'abord, une attitude de tolérance vis-à-vis des points de vue ou des propositions qui peuvent être aimés par les uns et pas par les autres, et qui ne correspondent pas à sa propre conviction. Et ensuite le respect très scrupuleux des temps de parole, puisque nous avons huit heures de débat pour huit groupes de sujets, et que tout débordement des temps de parole, notamment au début, empièterait sur le temps qui reste pour les derniers groupes de contact ou pour les derniers sujets. Ceci mutilerait ou amputerait les travaux d'audition de la société civile. Ce n'est pas pour nous un exercice de style, c'est un enrichissement de la Convention, à un stade où elle n'a pas encore arrêté ses orientations et ses propositions et où elle veut écouter avec soin les représentantes et les représentants de la société civile.

1-008

DA

**Civilsamfundet**

DE

**Zivilgesellschaft**

EL

**Κοινωνία των πολιτών**

EN

**Civil society**

ES

**Sociedad civil**

FR

**Société civile**

IT

**Società civile**

NL

**Civiele samenleving**

PT

**Sociedade civil**

FI

**Kansalaisyhteiskunta**

SV

**Det civila samhället**

1-009

FR

**Dehaene (Vice-Président).** – Monsieur le Président, je voudrais souligner qu'effectivement, cette session d'écoute avec la société civile fait partie intégrante des travaux de la Convention et que, d'ailleurs, la déclaration de Laeken et par conséquent, le Conseil Européen nous a donné comme mission d'être à l'écoute de la société civile. Je pense pouvoir affirmer aussi que, si nous voulons que les résultats de la Convention soient portés par la société civile, celle-ci doit être associée de fort près aux travaux de la Convention.

Tout d'abord, je voudrais souligner que cette session n'est ni le début du forum de la société civile ni sa fin, car je pense qu'il est effectivement important que nous trouvions les moyens pour que, tout au long de la Convention, la société civile puisse régulièrement se faire entendre et réagir par rapport à l'avancée de nos travaux. Par ailleurs, la société civile a déjà eu l'occasion d'apporter sa contribution à la Convention. Les nombreuses interventions au niveau du web le prouvent. Selon moi, le forum a pris quatre dimensions : le forum sur internet, les débats nationaux, les divers groupes d'écoute avec les ONG et enfin la séance d'aujourd'hui. Tout d'abord, en ce qui concerne le forum sur le net, toutes les organisations ont reçu l'occasion, ou ont l'occasion, d'apporter des contributions, de réagir. Nous avons essayé de regrouper ces organisations en quatre groupes. Pour le moment, il y a dix-sept organisations qui se sont inscrites comme étant politiques ou de collectivité publique, seize comme groupe à caractère socio-économique, vingt-huit comme appartenant au monde académique et aux cercles de réflexion et quatre-vingt dix-neuf comme appartenant à la société civile, aux ONG ou autres. Le secrétariat s'est efforcé de synthétiser les contributions des différentes ONG, même si ce fut loin d'être aisé. Dans le cadre du forum, on compte, pour l'instant cent-soixante contributions provenant de diverses organisations. Lors du travail de synthèse, nous avons dû nous en tenir aux grandes lignes. Néanmoins, il est clair que chaque membre de la Convention peut prendre connaissance de l'ensemble des contributions en consultant le forum. Le secrétariat a dégagé quatre thèmes généraux ressortant des contributions au forum. Premièrement, il s'agit du souhait d'une Europe plus proche du citoyen. On entend par là une Union qui est à l'écoute, mais aussi des décisions qui sont prises au niveau approprié. On souligne par là, comme d'ailleurs à la Convention, le principe de subsidiarité. Deuxièmement, il s'agit du renforcement du rôle de la société civile et sa reconnaissance dans les Traités. Troisièmement, il s'agit de l'importance des droits fondamentaux et le souhait qu'ils soient intégrés dans les Traités et même étendus. Quatrièmement, il s'agit de l'importance d'un processus de décision efficace. On entend par là qu'à l'avenir, le vote à la majorité qualifiée et la codécision soient appliqués dans de plus nombreux cas. Comme je l'ai déjà dit, il est impossible de donner ici un résumé de toutes les contributions. Je recommande dès lors de lire attentivement l'aperçu donné par le secrétariat, et surtout de consulter les contributions elles-mêmes.

Ensuite, il faut parler de la deuxième voie que nous avons suivie, à savoir celle des débats nationaux. Les débats nationaux sont vitaux. Nous l'avons souligné en Convention à plusieurs reprises. Et il existe le danger que la convention ne soit à l'écoute que d'ONG organisées au niveau européen. C'est fort important, mais je pense qu'il faut que nous décentralisons et que nous ayons également des contacts avec les ONG au niveau national. A cet effet, nous avons demandé aux divers membres de la convention de nous donner un aperçu de ce qui s'organise au niveau national. D'ailleurs, vous avez reçu les vingt-deux contributions que nous avons reçues et qui vous donneront un aperçu de l'organisation des débats nationaux. Vous pouvez également en prendre connaissance sur le web. Je pense qu'il est intéressant aussi de lire cet aperçu. En effet, il peut donner des idées sur la manière d'organiser et d'alimenter le débat national. Il va de soi que nous demandons que ces débats nationaux continuent dans les semaines à venir. Nous sommes également prêts, à partir de la convention, du secrétariat, du praesidium et des membres, à participer à ces forums nationaux.

La troisième voie suivie est celle des contacts avec les ONG européennes, et là aussi vous savez que nous avons, avec la participation du secrétariat du Comité économique et social, déjà organisé deux réunions où l'ensemble des ONG ont pu s'exprimer, mais aussi rencontrer des membres de la convention pour s'entretenir des thèmes dont nous discutons ici. Mais avant d'en venir à cela, je voudrais également souligner que nous avons des observateurs provenant du Comité des Régions, du Comité économique et social et du monde des partenaires sociaux qui participeront aux débats d'aujourd'hui. Ils représentent des parties importantes de la société civile. Non seulement ils participent à la Convention en tant qu'observateur, mais ils se chargent également d'assurer un feed-back des travaux de la Convention auprès de leurs organisations. Nous espérons qu'ils continueront à le faire durant l'ensemble de la Convention. Avec l'aide du Comité économique et social, nous continuerons à avoir des réunions, en suivant un rythme plus ou moins mensuel, où l'ensemble des ONG seront invitées et pourront rencontrer des membres du praesidium, échanger des opinions ainsi que réagir aux propositions qui seront faites par la Convention, une fois la phase d'écoute terminée.

Pour la réunion d'aujourd'hui, nous avons organisé des groupes de contact, huit en tout, qui permettra à l'ensemble des ONG de s'exprimer. Chacun de ces groupes de contact, a fait une synthèse qui a été mise à votre disposition, de telle sorte que vous avez également une vue générale de ce qui s'est dit lors des différents débats. Environ quatre cents organisations y ont participé. Cela représente plus de six cents participants. Un grand nombre de ces organisations correspond d'ailleurs à un réseau encore plus large et chacune d'elle représente aussi plusieurs ONG nationales. Ces réunions ont également permis de désigner les portes-parole qui interviendront aujourd'hui et référeront de ce qui s'est dit dans les différents groupes de contact. Je vous rappelle que nous poursuivrons les travaux et que, dès mercredi prochain, une réunion est prévue, où nous pourrions évaluer les débats d'aujourd'hui. Monsieur Vitorino participera également au débat dans le prolongement de la dernière session dont un des thèmes était le troisième pilier. Voilà où nous en sommes à ce stade et voilà la façon dont le forum de la société civile a été organisé. Je répète que ceci n'est pas un point final du forum de la société civile. L'effort doit se poursuivre. Nous le poursuivrons et nous espérons qu'il se poursuivra aussi bien au niveau national qu'au niveau européen avec les membres de la convention. J'en viens alors au déroulement de la session d'aujourd'hui. Nous avons regroupé les interventions par groupe de contact. Nous souhaitons également donner la parole aux observateurs dans le prolongement du groupe de contact avec lequel ils ont le plus de liens. Nous prévoyons également un moment où les membres de la Convention pourront intervenir dans le débat, après chacun des huit groupes qui se sont réunis avant la Convention. Le membre du Praesidium, qui a présidé à ces débats, ouvrira chaque partie, après quoi nous donnerons la parole aux orateurs désignés. Nous avons prévu un même laps de temps pour chacun des groupes. Ce sont les groupes qui ont désigné leur porte-parole. Le résultat est que normalement, il y aura un temps de parole plus long que prévu si un groupe n'a désigné, par exemple, que trois intervenants au lieu de huit. Ces choix ont été fait par les groupe, en connaissance de cause puisque nous avons défini l'organisation des débats. A l'instar du Président, je tiens à souligner que, dans un souci de respect de chacun, nous devons strictement nous limiter au temps de parole imparti. Vous avez reçu l'ordre du jour. Il prévoit que nous commençons par le groupe de contact « secteur social ». Je donnerai donc immédiatement la parole à Monsieur Klaus Hänsch qui va présider le groupe. Après quoi, prendront

successivement la parole Monsieur Alhadeff , Madame Wilkinson, Madame Sutton, Madame Mc Phail et Madame David en qualité de portes-parole désignés par ce groupe de contact. Je donne sans plus attendre la parole à Monsieur Klaus Hänsch.

1-010

DE

**Hänsch (PE).** - Herr Präsident, Herr Vorsitzender! Die Nichtregierungsorganisationen aus dem sozialen Sektor haben sich am 13. Juni getroffen, um die heutige Sitzung vorzubereiten. Wir hatten einen sehr intensiven und informativen Dialog. Ungefähr 30 Teilnehmer an dem Vorbereitungstreffen haben sich an diesem Dialog beteiligt, und was wir heute hören werden, kann natürlich nur ein Ausschnitt aus dem sein, was die Kontaktgruppe am 13. Juni diskutiert hat, ein Ausschnitt aus der Vielfalt der verschiedenen Positionen und Meinungen. Aber wir glauben, dass das ein repräsentativer Ausschnitt sein wird. Wir haben uns einvernehmlich auf die Sprecher geeinigt, die Sie jetzt gleich aus der Kontaktgruppe "Sozialer Sektor" hören werden.

Es steht mir nicht zu, Schlussfolgerungen zu ziehen. Aber lassen Sie mich doch ein paar Hauptelemente aus der Diskussion am 13. Juni nennen. Das erste und einvernehmliche war, dass alle die Integration der Charta der Europäischen Grundrechte als verbindliches Recht in den neuen Vertrag gefordert haben. Das zweite war eine klare Forderung nach dem Entwurf eines Verfassungsvertrages. Die dritte Grundlinie, die in der Diskussion erkennbar war: der Wunsch und die Forderung nach einer stärkeren Betonung der Sozial- und Beschäftigungspolitik in den Zielen der Europäischen Union und eine Einbindung der Sozial- und Beschäftigungspolitik über den Lissabon Prozess in den neuen europäischen Verfassungsvertrag.

Einvernehmlich war auch die Forderung nach einer Verbesserung und Vereinfachung der Entscheidungsverfahren, insbesondere im sozialen Bereich, schließlich die Aufnahme des Prinzips der offenen Koordinierung in den Vertrag und letztlich die vertragliche Absicherung des Dialogs und der Kooperation der Europäischen Union mit der Zivilgesellschaft.

Wir haben uns geeinigt, dass durch Redner folgende Fragen vertreten werden: erstens, die Fragen, die mit der Rolle der Dienste von allgemeinem Interesse in der künftigen Politik der Europäischen Union zusammenhängen, zweitens, die Probleme der Gleichberechtigung von Männern und Frauen, drittens, die soziale Dimension der Europäischen Union, die hier durch die soziale Plattform dargestellt und diskutiert wird.

Es gab ein klares erkennbares Drängen darauf, dass der Dialog zwischen dem Konvent und den Nichtregierungsorganisationen im sozialen Sektor mit der heutigen Veranstaltung nicht beendet ist, sondern dass dieser Kontakt und dieser Dialog weitergeht. Wir brauchen ihn beide, die sozialen Organisationen und der Konvent!

1-011

EN

**Alhadeff (NGO-SOC).** – Mr President, I congratulate the Convention in taking this initiative of inviting representatives of civil society to address you about their concerns over the future of Europe.

The Social Platform is here with three representatives, and we have divided our speaking time between us. The Platform brings together 38 networks and federations of NGOs, active in the social sector at European level. Our members represent over 1,800 individual organisations and many millions of citizens. For example, our membership includes the European Anti-Poverty Network, the European Disability Forum, the European Network Against Racism, the Women's Lobby, the International Lesbian and Gay Association, as well as other well known groups such as Save the Children, the Red Cross, Caritas, or my own organisation Solidar.

Our members have campaigned for the Charter of Fundamental Rights and argued, after the Nice Summit, that it was a great disservice to our Union to have such a secretive way of taking important decisions. One of the Laeken objectives is to bring Europe closer to the citizen. From where we stand, it would be a great start if our fellow citizens felt that this Union did a good job in protecting them, their values and their way of life. Unfortunately, that does not seem to be the case.

The mere decision to launch this Convention, welcome as it is, will in itself change little. That will depend on the outcome of your work and will take time. We argue that even if the results are good, we believe the European Union will need to engage with civil society to ensure that it creates a real connection with its citizens.

Shortly, my colleagues from the Social Platform, Mrs Wilkinson and Mrs Sutton will present our key demands on social issues.

My main point is to ask you to support the call of the Civil Society Contact Group for a Treaty article giving a legal base to the civil dialogue. We recognise the primacy of political dialogue and the very special role of social dialogue in our concept of European democracy. We also believe that it is time the Union recognises that civil society is an important component in this quest to regain the affections of its citizens.

You will hear some citizens oppose this position. Some say that it is a threat to democracy. We argue quite the contrary. Without our partnership, politicians will simply not be able to take forward the idea of Europe. What a waste, what an under-used asset we have: millions of citizens and thousands of associations throughout Europe, from small island communities to town centres, committed to the public good and ready to be engaged in the European policy debate.



You must give us the tools; recognise the role of civil society at European level in the Treaty and give a strong signal to the Commission to work with us to put in place and learn to use this terrific potential. Until that is done, we will continue to hear politicians lament how remote the European Union is and how so very few bother to vote in European elections.

The Laeken Summit and this Convention are just the beginning; turning around the apathy of our citizens will take more than a few words in a few summit conclusions. By your decision to invite us here today you have broken new ground. Our challenge to you is to break yet more ground by having a Treaty article on civil dialogue. In this task, you can be sure of our support and our continued work with you.

1-012

FR

**Wilkinson (NGO-SOC).** – En effet, vous cherchez à rapprocher l'Europe des citoyens. Je crois que tout le monde veut cela. Pour que l'Europe puisse être plus proche de ses citoyens, l'Europe doit commencer à faire sens pour les citoyens. Dans un monde incertain, l'Europe doit apporter des sécurités ; je dis bien des sécurités, et non pas la sécurité. Or, les citoyens ont l'impression que l'Europe ne contribue pas à la construction de ces sécurités, mais qu'au contraire l'Europe apporte un risque. Par exemple, le risque du démantèlement des modèles sociaux construits dans chaque Etat membre, sans reconstruction de sécurités équivalentes au niveau européen.

Pour que l'Europe commence à faire sens pour tous les citoyens, il est nécessaire de repenser complètement les objectifs de l'Union. L'Union doit être repensée autour de l'accès de tous aux droits fondamentaux. Ceci sera abordé plus en détails par Diana, qui va me succéder. Je ne m'y attarderai donc pas. On doit trouver au centre des objectifs de l'Union un développement social durable. Pour y parvenir, les politiques, économiques, monétaires, le marché intérieur, la politique de la concurrence doivent être au service du développement social. Le développement social ne peut être traité comme un sous-produit du développement économique, mais il doit être intégré dans toutes les politiques de l'Union. Pour y arriver, il faut introduire la pratique de l'évaluation des politiques au regard de leur effet sur le développement social. Pour rééquilibrer l'économique et le social, il est souhaitable que les conclusions des Conseils européens de Lisbonne et de Göteborg soit intégrées dans le nouveau Traité. Je vous rappelle que le Conseil Européen de Lisbonne a décidé, entre autres, de faire dans les dix ans qui viennent, des progrès significatifs dans l'éradication de la pauvreté. Le Conseil de Lisbonne a aussi décidé d'utiliser la méthode ouverte de coordination pour la lutte contre la pauvreté et l'exclusion sociale. Il nous paraît important que cette avancée soit inscrite dans les Traités. L'éradication de la pauvreté devra également figurer parmi les objectifs de l'Union. Et le Traité devra intégrer la méthode ouverte de coordination. Mais pour que cette méthode soit effectivement ouverte, il faut que tous les acteurs concernés (partenaires sociaux, collectivités locales et ONG bien entendu, qui sont concernées au premier chef) puissent participer à cette méthode ouverte, à la fois au niveau européen et au niveau national. Et je vous demande, Messieurs les Conventionnels et Mesdames les Conventionnelles, d'inscrire cette participation dans les Traités.

1-013

EN

**Sutton (NGO-SOC).** – Mr President, the Convention's stated aim is to bring Europe closer to its citizens. What really is the future for the European project? On what basis should we develop a European Union which is closer to its citizens and their expectations?

The Social Platform does not pretend to have all the answers to these questions, but we want to make recommendations which come directly from our work with some of Europe's most disadvantaged and excluded citizens. The Laeken Declaration poses the question of incorporation of the Charter of Fundamental Rights. The Charter plays an important part within the work of EU, with the EU institutions systematically evaluating proposals with reference to the Charter. It is clear now that it has important political weight. We believe it must now be given important legal status and be incorporated into the Treaty.

The Social Platform therefore recommends incorporation of the Charter into the Treaty. The Charter is an excellent document, as it recognises for the first time some key new rights, such as recognition for the rights of the child. However, it still contains some gaps, such as the right to housing, the right to family unity and protection against poverty. It must therefore remain a living document, capable of being amended in the future.

When the Charter is incorporated into the Treaty, a mechanism for amending and improving the Charter must be included. This could, for example, be via a system of additional protocols adopted by all Member States and annexed to the Charter with the same legal force. This process must be undertaken with the explicit guarantee of rights that have already been expressed in the Charter.

The Platform believes that the EU should be given the legal personality and competence to ratify the European Convention on Human Rights - as the most comprehensive human rights instrument - and also other relevant international and European texts. In our view, this would be complementary to the incorporation of the Charter into the Treaty.

Even if the Charter were to be incorporated into the Treaty, it would still mean that the EU lacks the competence to develop a human rights policy as such - although competences do exist in a fragmented way. The Convention should therefore also recommend adding a competence to take action to promote the respect of fundamental rights within the EU. This would not only create an obligation for the EU to refrain from violating human rights, but also create a positive obligation to ensure that these rights are respected throughout

Europe. Creating a positive obligation for the EU to ensure that human rights are respected within the Union is an efficient way to develop a proactive approach and could reduce the need for individuals to complain to the Court of Justice.

It is unacceptable that citizens in the EU today still face significant discrimination. Treaty revision must strengthen the basis for fighting discrimination. Article 13 must be strengthened and given direct effect. Discrimination today in the EU seriously affects lesbians and gays, people from ethnic minorities, women, young people and older people.

In conclusion, Europe must be brought closer to its citizens. The Convention must not miss an opportunity to do this by recommending the specific inclusion of a legal base on civil dialogue. The Charter must be incorporated into the Treaty, and the European Union must accede to the ECHR. Finally, the fight against poverty should be an explicit objective of the Union.

1-014

EN

**McPhail, (NGO-SOC).** – Mr President, I welcome this opportunity to participate in this meeting of the Convention representing the European Women's Lobby which brings together over 3,000 women's organisations across Europe working to achieve equality of women and men.

The European Women's Lobby is also a member of the Platform of European Social NGOs and an active contributor to the Civil Society Contact Group. This Group has brought together a common statement which is available to you outside on the NGO stands.

Points from this statement will be picked by the different groups during the course of this afternoon and tomorrow morning.

Turning to issues of gender equality, it is clear that while there have been many positive developments for women in recent decades in Europe and globally, these developments have often been uneven, erratic and reversible in times of economic and political instability. While the lives of many women have improved, there are still millions of women and girls whose lives and aspirations are crushed by the weight of poverty and economic deprivation, exclusion from political participation, violations of basic human rights - in particular through violence and sexual exploitation in times of war and peace - and by restrictions to their personal autonomy, in access to reproductive rights, as well as in many other ways.

We all know that achieving equality of women and men requires changes at many different levels including changes in personal attitudes and relationships, changes in social institutions and legal frameworks, changes in economic institutions and changes in political and decision-making structures.

Today, I will highlight only four of the key recommendations brought forward by the European Women's Lobby and by other women's NGOs in relation to changes in the future Treaty that will support the achievement of equality of women and men.

Firstly, it is essential that the right to equality of women and men is established as one of the ultimate aims of the European Union and as a fundamental prerequisite for European democracy and should therefore be written into the preamble of a future Treaty.

Secondly, we are calling for the introduction of a new provision in the Treaty, with direct effect, prohibiting discrimination based on sex, as is the model currently for the provision prohibiting discrimination on grounds of nationality.

Thirdly, we are calling for the introduction of a new title on equality of women and men which will provide a firm legal basis for all actions in relation to gender equality, with a clear commitment to the full implementation of the human rights of all women and girls and recognising the diversity of women's lives and experiences. Amongst others, the following rights should be recognised: the right to individual social protection at all stages of life including during periods of caring for children and other dependants; the rights of women and men to control all aspects of their health, in particular sexual and reproductive health; the right of women and men to reconcile family and working life and the right to pregnancy and maternity protection.

In this new title, we also call for the specific recognition that violence against women constitutes a major obstacle to gender equality. This must lead to the development of a comprehensive policy combating all forms of violence against women, including trafficking in women and prostitution, which are fundamental violations of women's human rights.

Fourthly, we believe that the equal participation of women and men in all democratic processes is a prerequisite for democracy. We are therefore calling for the introduction of effective mechanisms which will ensure the equal participation of women and men in decision-making, and in the composition of all assemblies, bodies and institutions of the European Union.

We want to see a successful enlargement of the European Union leading to a union that is a dynamic and effective political body and that is seen as legitimate, accessible and accountable by all the people of Europe, a Europe where justice, solidarity, equality of women and men, respect for human rights, poverty eradication and sustainable development are the political priorities shaping all political, economic and security actions both within Europe and globally.

Finally, I take this opportunity to wish you well in the challenging work ahead. We are relying on your continued openness to dialogue with civil society, your positive vision of the future of Europe and your political leadership to ensure success.

1-015

FR

**David (NGO-SOC).** – L'Europe est bien plus qu'un marché. Elle est porteuse d'un modèle de société, à la recherche d'un équilibre entre compétitivité et solidarité ainsi que d'un mode de vie social et culturel, fruit de son histoire. Les coopératives, mutualités, associations et fondations, organisations à but non lucratif qui forment l'économie sociale représentent huit pourcent de l'ensemble des entreprises européennes et dix pourcent de l'emploi total. Leur succès ne se mesure pas seulement à leur poids et à leurs performances économiques qui sont un moyen pour réaliser leur finalité. Ils se mesurent surtout au vu de leur participation à l'intérêt général, au vu de leur rapport en terme de solidarité, de cohésion sociale et d'ancrage sur les territoires. Un Européen sur trois en est membre. Coopérative, mutualité, associations et fondations participent de ce modèle économique et social européen original car pluraliste dans ses formes d'entreprendre, modèle qu'il ne faut absolument pas faire disparaître en ne retenant qu'un seul type d'entreprise. L'enjeu est tellement important qu'il mérite d'être inscrit dans le Traité. Il convient également d'ajouter à l'endroit définissant l'action de l'Union, l'adoption de règles permettant la mise en oeuvre de la pluralité des formes d'organisation pour entreprendre dans le respect de la spécificité de chacune.

Les services d'intérêt général, plus particulièrement les services sanitaires et sociaux, que les coopératives, mutualités, associations et fondations mettent en oeuvre à côté d'autres acteurs publics, concourent à garantir les droits fondamentaux, que toutes nos organisations demandent d'intégrer dans le Traité (Charte de Nice). Ces services d'intérêt général contribuent également à réaliser les objectifs que l'Union devrait préciser en préambule au Traité, en plus de la paix, de la recherche du plein emploi, du progrès social, de l'exercice d'une véritable démocratie participative et du développement durable pour tous, au niveau de l'Union et aussi au niveau mondial dans les négociations internationales.

Je suis donc ici la porte-parole, non seulement de la Conférence européenne permanente des coopératives, mutualités, associations et fondations, que j'ai l'honneur de présider, et de leurs membres actifs sur tous le territoire de l'Union, mais aussi de nombreuses associations qui l'ont exprimé lors de la réunion de préparation de cette audition telles que Caritas Europa, Eurodiacona, ITI Welfare et des associations dont l'objet est la promotion des services d'intérêt général au niveau européen telles que ISUP etc. Nous vous demandons avec force de proposer d'intégrer dans le Traité la reconnaissance du rôle des services d'intérêt général. Ceci permettrait à tous ceux qui assurent de tels services de participer à leur définition, à leur mise en oeuvre et d'être financés dans le cadre de règles de transparence, de proportionnalité, d'évaluation pluraliste, de participation démocratique des citoyens. Ceci implique également la possibilité de dérogation aux règles de la concurrence, notamment au regard des aides d'Etat. Ceci sécuriserait leur fonctionnement dans un environnement juridique adapté à leur vocation, au service de l'intérêt général. Dans cette perspective, un article du Traité, qui se situe actuellement à l'article 16, devrait être complété par le paragraphe suivant: « A cet effet, le Conseil statuant à la majorité qualifiée, sur proposition de la Commission, propose toute disposition en vue de clarifier les modalités d'application des règles de concurrence à ses services. Ce faisant, il prend en compte les spécificités de ces services, ainsi que les spécificités des opérateurs à but non lucratif qui fournissent ces services ». Seule la reconnaissance de nos organisations et des services d'intérêt général qu'elles rendent, leur reconnaissance dans le Traité leur permettrait de remplir pleinement leurs objectifs, qui correspondent à ceux de l'Union.

1-016

FR

**Le Président.** – Merci beaucoup. Cela conclut avec une discipline remarquable l'écoute des orateurs désignés par le groupe de contact « secteur social ». Je donne maintenant la parole aux observateurs des partenaires sociaux, et tout d'abord, à Monsieur Georges Jacobs.

1-017

EN

**Jacobs (NGO-SOC).** – Mr President, as a social partner, UNICE regards the work of the Convention as a priority, and we welcome this initiative to enable civil society to participate actively in the Convention.

Companies are an important part of civil society, and UNICE represents more than 16 million companies, mostly small and medium-sized, providing employment for more than 106 million people. UNICE considers the process of economic integration to be the main dynamic behind the peace, stability and prosperity achieved in Europe over the past 50 years.

From a business perspective, the EU must deliver a business-friendly environment in which companies can operate and compete on a level playing field and adapt to the increasing challenges that globalisation brings. This will lead to wealth-creation and employment opportunities.

Firstly, since today we are discussing the interaction between the EU and civil society, it is crucial that the Convention recommends ways to rethink the methods for consulting relevant stakeholders. The current system for the consultation of civil society is not satisfactory. UNICE proposes the adoption of a comprehensive code for consultation. This code should set out clear guidelines for the definition of core stakeholders, the purpose, content, methodology and timeframe of the consultation. The representation of organisations should also be duly taken into account.

In addition, UNICE, as a social partner at European level, calls for a clear distinction to be made between social dialogue and consultation with civil society. Social dialogue at European level is clearly structured and is an autonomous process involving the social partners. UNICE believes that Articles 138 and 139 provide an appropriate framework for agreements made by social partners and do not need to be modified.

Secondly, we need a single text providing a clear division of competences and a related decision-making procedure. The structure of this should be comprehensive in order to clarify the basic values, objectives and competences of the EU. We need a European Union which is capable of refocusing its actions on to its main task, not necessarily a detailed catalogue of competences that would deprive it of the flexibility it needs to adapt to new tasks and challenges.

Thirdly, the European Union must improve the efficiency and transparency of its institutions. In order to guarantee quick and efficient decision making, UNICE calls for the preservation of the Community method and a strong, independent Commission which acts as a guardian of the Treaties, proposing legislation to the Council and Parliament in the interest of the whole Community. We are also in favour of qualified majority voting as a general rule.

Finally, we would welcome a stronger emphasis on the international dimension in the framing of EU policy: discussion in the Convention has shown the need for stronger representation in international political and economic affairs. In order to make the European Union's external commercial policy more effective and coherent, UNICE supports giving the EU a legal personality.

In conclusion, I would like to thank the Praesidium for inviting representatives of civil society to contribute to the current debate. We encourage the Convention to maintain close links with this forum.

1-018

IT

**Gabaglio (NGO-SOC).** - Signor Presidente, alla vigilia dei Consigli europei di Laeken e di Barcellona, la Confederazione europea dei sindacati ha convocato grandi manifestazioni per chiedere - un po' controcorrente rispetto a certi umori dell'opinione pubblica - più Europa: più Europa sociale, naturalmente, del lavoro e dei cittadini. Questa presa di posizione riflette un'adesione al processo di integrazione europea che viene da lontano, ma riflette anche, con pari forza, la necessità di cambiamenti. Rispondere a queste attese del mondo del lavoro comporta, secondo noi, un riequilibrio tra le diverse dimensioni - economica, monetaria e sociale - dell'Unione e il suo completamento con la realizzazione di un'unione politica.

Il primo riequilibrio riguarda il sociale rispetto all'economico. L'Unione è oggi essenzialmente sinonimo di mercato e di moneta. Nel Trattato attuale esistono, certo, obiettivi sociali ma, a parte il ritardo della loro concretizzazione - basti pensare che ci sono voluti quarant'anni dopo il Trattato di Roma affinché l'Unione ricevesse, ad Amsterdam, nuove competenze in materia di occupazione e di lavoro - questi obiettivi restano subordinati a quelli di carattere economico. Per superare questa situazione occorre che il nuovo trattato costituzionale riconosca il modello sociale europeo come elemento fondante dell'Unione, in modo che la sua organizzazione economica si ispiri ai principi dell'economia sociale e di mercato.

Il secondo riequilibrio riguarda l'unione economica e monetaria. Questa è, per ora, solo un'unione monetaria. C'è qui una contraddizione evidente tra un'Europa che diviene ogni giorno di più un'entità economica unica e la debolezza, per non dire l'assenza, di un governo coerente di questa realtà. Ciò impedisce di trarre profitto del valore aggiunto rappresentato dall'integrazione realizzata e di mettere il mercato e la moneta pienamente al servizio della strategia di Lisbona di modernizzazione dell'economia europea, ma anche di piena occupazione e più forte coesione sociale. E' quindi più che mai urgente creare gli strumenti e le procedure di un coordinamento delle politiche economiche, di bilancio e di investimento, nonché di armonizzazione fiscale a livello europeo. In questo quadro occorrerà anche meglio definire il contributo della Banca centrale al perseguimento degli obiettivi generali di sviluppo e di occupazione dell'Unione.

Dimensione politica vuol dire rafforzamento della cittadinanza europea ma anche ruolo dell'Europa nel mondo. Il primo passo da compiere, quanto alla cittadinanza, è l'integrazione, con una pienezza di effetti giuridici, della Carta di Nizza nel nuovo trattato costituzionale. In ogni caso, l'Unione deve favorire la più ampia partecipazione dei cittadini e della società civile, e questa riunione, oggi, è di buon auspicio in questa direzione.

Con riferimento all'Europa nel mondo, il movimento sindacale è a favore di una più forte e indipendente soggettività politica dell'Unione e delle relazioni internazionali, nella convinzione che essa possa dare un contributo determinante al governo democratico dei processi di globalizzazione, alla condizione, naturalmente, che l'Europa sappia parlare con una sola voce, che salvaguardi il suo modello sociale, che integra in modo originale le ragioni del mercato con quelle della giustizia sociale e della solidarietà, proprio quello che manca negli attuali processi di globalizzazione. Anche per questa via ritorna l'importanza, quindi, di affermare la centralità del modello sociale europeo.

Un aspetto che ci sta particolarmente a cuore riguarda, poi, il ruolo delle parti sociali. Questo è già riconosciuto nel Trattato attraverso il dialogo sociale, compresa una funzione di correzione in materia di condizioni di lavoro. Una dichiarazione comune, presentata a Laeken dalle parti sociali, fa stato della volontà di approfondire il dialogo sociale, ma anche di chiedere la formalizzazione di sedi e di procedure di concertazione sociale. Nel momento in cui l'Europa sta passando ad una fase di profonde trasformazioni economiche, che suscitano comprensibilmente inquietudine e disorientamento, dialogo e concertazione sociale sono gli strumenti indispensabili per

guidare il cambiamento e realizzare con il consenso, e solo con il consenso, le riforme socialmente accettabili. Fin d'ora vorrei, tuttavia, sottolineare che il movimento sindacale intende presentare delle proposte relative alla necessità di sviluppare un sistema europeo di relazioni industriali che sia complementare a quelli nazionali. Se questo obiettivo è riconosciuto di interesse generale, occorre allora che i diritti sindacali di associazione, di contrattazione e anche di sciopero, siano riconosciuti anche nella loro dimensione transnazionale. Se lo spazio economico è europeo, i diritti dei lavoratori non possono restare solo nazionali.

Presidente, in questa occasione ho riassunto le nostre attese; in altre presenteremo proposte più precise e dettagliate. Mi permetto solo di sottolineare un punto: il consenso sociale, agli occhi del mondo del lavoro, al progetto europeo e la legittimità democratica rispetto ai cittadini dipenderanno dal tipo di risposte che l'Europa potrà dare a queste attese.

1-019

EN

**Cravinho (NGO-SOC).** – Mr President, the European Centre for Enterprises with Public Participation and of Enterprises of General Economic Interest, known as CEEP, is one of the three cross-sectoral social partners. I will speak on social partners but first I would like to mention some points specific to CEEP, namely services of general interest.

General interest is one of the common values of the European Union, illustrating the European economic and social model and even distinguishing it from other models of reference. It must form a pillar of the future European project, especially with enlargement in prospect. We support a modern vision of general interest which contributes to a convergence between the development of the European Union's global economic performance and the social and territorial balance of European society.

In the judicial context of the single market, services of general interest have been perceived as not respecting and even being incompatible with the principles of the open market and free competition anchored in the Treaty. We disagree. The reality is more subtle and we believe they are one of the European Union's strongest advantages. Services of general interest are, and must remain, an essential driving force for the economic performance and the competitiveness of Europe in the context of globalisation. They can and should benefit from the advantages of the market economy, on condition that their objectives and missions are preserved. CEEP asks the Convention to ensure that the draft for a new constitutional treaty positively recognises services of general interest, giving them a status which means they are considered not as derogations to the basic law, but rather as a pillar of European society, responding to the ever-increasing expectations of Community citizens and consumers at all territorial levels.

In concrete terms, we expect certain principles to be explicitly provided for in the future Treaty. Firstly, services of general interest should form part of the common values of the European Union, and that accomplishment should be one of its objectives. They are a constitutive part of the economic and social model for European Union. The Community and Member States, each within their respective competences, should firstly take into account the implementation of services of general interest in order to accomplish the missions mentioned in Article 2. We also believe that the future Treaty should recognise and ensure that the funding of supplementary costs due to public service requirements should be considered compatible with competition rules.

Secondly, we suggest that these principles should be either enshrined in an extension of Article 16 or outlined in a specific chapter on services of general interest.

Thirdly, implementation by sector - in those sectors ruled by Community internal market directives - should come under specific directives or compulsory provisions in directives on the opening-up of public services to the market.

I now come to the subject of social dialogue. European social dialogue seems well established and yet some challenges still lie ahead. The European labour market consists of not one, but 15 different labour markets. The European social dialogue is not a stand-alone process; in its various elements and results it is a major contribution to a competitive Europe and, at the same time, to inclusion, gender mainstreaming and to developing the learning society.

There will always be a need for European social dialogue as a means to strengthen employment, economic reforms and social cohesion. In attaining those objectives, CEEP is of the opinion that European social dialogue should be strengthened by developing both cross-industry and sectoral dialogue. CEEP is in favour of the open method of coordination and the possibility it gives for each Member State to adjust regulations to fit specific systems. However, the social partners' participation in the consultation process must be enshrined in the Treaty. CEEP is of the opinion that social dialogue cannot function well at European level if it is not applied satisfactorily at national level. Therefore, CEEP places even greater emphasis on the participation of the social partners at national level, and especially at local and regional level. CEEP thus urges the Convention to support European social dialogue.

1-020

FR

**Le Président.** – Nous arrivons ainsi à la fin des intervenants pour le secteur social. Un certain nombre de Conventionnels ont demandé la parole. Vu le nombre de demandes, le temps de parole est limité à deux minutes. The floor is to Mr Peter Hain.

1-021

EN

**Hain (Ch.E/G.-GB).** – Mr President, this Convention will not make any impact on the daily lives of most people unless we negotiate a constitutional check that goes beyond modifying the "pillar" structure or revising comitology procedures. That is why the issues raised by the social partners and the social sector group are so vital.

Our citizens want a Europe with a strong social dimension, a Europe which is the most dynamic knowledge-based society in the world, but above all they want jobs. Europe also needs a mix of regulation and flexibility. The European Union is so much more than just a market. As Emilio Gabaglio said, it has shared values of social justice and of human rights. It cannot be a credible force for good in the world if its citizens are badly treated at work, or civil rights and equal opportunities are denied.

This does *not* mean uniformity or harmonisation of standards. How would social justice be served if European Union legislation, for example, resulted in high unemployment in areas with low productivity? Instead, we should aim for deeper cooperation on the employment and social challenges we face. We need to reform the social dialogue to produce a system based on genuine partnership.

At the Luxembourg and Lisbon Summits, the European Union developed the open method of coordination. As Klaus Hänsch and others have said, the new Treaty should enshrine this approach as one of the main instruments of European Union action. Yes, that methodology must be refined. But this method of achieving our social objectives is flexible, far quicker than legislation and it works.

Let us use the Lisbon process to tackle some of the most important political issues in Europe today, redoubling our efforts to raise participation - especially for older workers - to reform welfare systems to make work pay, promote employability through training and education, reform pensions to ensure a secure future and lift families out of poverty. This Convention must ensure that our Europe is a Europe for the people and not just a Europe for the European elite.

1-022

NL

**Van Lancker (PE).** - Voorzitter, ik ben de vertegenwoordigers van de NGO's en de sociale partners vandaag bijzonder dankbaar omdat ze een aantal thema's aan de orde hebben gesteld die totnogtoe niet zo hoog op de agenda van de Conventie stonden. We hebben het gehad over bevoegdheden, over wie doet wat, over de rol van de nationale parlementen, over subsidiariteit en proportionaliteit, over de derde pijler en de pijlerstructuur. Onze voorzitter Valéry Giscard d'Estaing heeft de Raad van Sevilla gemeld dat er maar op drie fronten vraag is naar meer politieke Europese integratie. En voor vandaag staat een betere coördinatie op het economische en financiële vlak als enige thema op de agenda.

Mijnheer de voorzitter, ik denk dat de NGO's en de sociale partners vandaag aan ons aller agenda een heel belangrijk punt hebben toegevoegd, namelijk de sociale integratie. Ik weet wel dat sommige collega's nu zullen zeggen dat er in het Verdrag al sociale doelstellingen van de Unie zijn opgenomen. Die sociale doelstellingen hebben we al en die bevoegdheden kunnen we uitoefenen. Er is hier vandaag door velen verwezen naar de Lissabon-doelstellingen. Maar wie het Verdrag aandachtig leest, weet dat het in feite de kar voor de paarden spant, dat de sociale doelstellingen een soort correctie vormen op het functioneren van de interne markt, terwijl volgens ons toch die interne markt in feite in dienst zou moeten staan van de sociale doelstellingen. Ik zou dan ook graag weten waar we thema's zoals het evenwicht tussen de doelstellingen en de basisartikelen van het constitutioneel Verdrag kunnen aankaarten.

Een tweede boodschap die ik goed begrepen heb, is dat we een sociaal Europa nooit zullen realiseren zonder de sociale dialoog te versterken en zonder de civiele dialoog. Ik denk dat we ook wat dat betreft onze conclusies op het vlak van de constitutionele teksten moeten trekken.

1-023

FR

**Barrau (Parl.-FR).** –La présence des ONG du secteur social au sein de la convention et des représentants de tous les organismes qui se préoccupent de cette dimension sociale constitue un pas important. Mais est-ce suffisant? Le secrétaire général de la Confédération européenne des syndicats l'a dit tout à l'heure. A Barcelone par exemple, des milliers de personnes étaient dans la rue, pour demander plus d'Europe, mais une autre Europe. Allons-nous enfin écouter ce message ? Devrons-nous encore déplorer des abstentions aux prochaines élections du Parlement européen pour dire qu'il faudrait sans doute faire une autre Europe ? Je crois que nous pouvons nous mettre d'accord sur l'introduction de la Charte dans le Traité Constitutionnel. Cela me semble clair. Nous pouvons également faire des avancées dans le domaine de l'égalité homme-femme. Enfin, nous pouvons bâtir un véritable Traité social, touchant le problème des services publics, des retraites. Il faut, comme le disait Madame Wilkinson tout à l'heure, et j'ai beaucoup aimé son expression, "faire en sorte" que l'Europe ne soit pas un élément d'insécurité pour ceux qui vivent autour de nous, mais au contraire, mais plutôt un élément d'espoir. Si l'Europe est un élément d'insécurité sociale ou économique, elle sera perçue comme une sorte de nez-en-avant de la mondialisation et ce sera, à cet égard, une insuffisance par rapport à notre modèle européen. Voilà l'objectif et voilà pourquoi le secteur social est très important.

1-024

PT

**Lopes (Ch.E/G.-PT).** - Senhor Presidente, além dos aspectos correntes sobre o tema da sociedade civil, convém lembrar que a Europa deveria constituir um verdadeiro espaço de referência dos seus cidadãos, o que não tem acontecido. Por outro lado, a construção europeia não assenta numa base ideológica sólida, o que a distancia dos cidadãos. É óbvio que o tema de hoje, a articulação entre a economia e a sociedade, constitui um ponto de confluência das múltiplas tensões de modernização a que todos os europeus estão sujeitos e que, de resto, já deram origem a diversos ecos em várias das intervenções anteriores.

Gostaria de propor quatro aspectos:

- primeiro: a Europa tem de assumir uma visão inovadora de transformação das economias e das sociedades com audácia e criatividade, preservando no chamado "modelo social europeu" o que ele tem positivo e apostando na criação de um novo impulso colectivo que seja facilmente compreendido e aceite pelos cidadãos;
- segundo: a Europa deverá identificar causas que valham a pena na construção europeia e que vão para além das regulamentações pesadas e burocráticas, para além de subsídios para financiar ineficiências, etc.;
- terceiro: deverá igualmente reconhecer a diferença entre o mero "preservar", numa atitude política sem visão e basicamente estática, e o criar ou inventar conceito dinâmico que possa permitir-nos avançar realmente numa direcção escolhida por todos.
- quarto: assim, a principal tarefa que agora incumbe aos responsáveis europeus é mostrar que a construção da Europa terá de assentar não na atitude de razoabilidade defensiva que é a União Europeia de hoje, mas, sim, no dinamismo inovador que deverá caracterizá-la no futuro e deverá permitir-lhe responder à pressão da competição global.

1-025

DA

**Thorning-Schmidt (PE).** - Hr. formand, det, de sociale partnere siger til os i dag, er, at Europa ikke må være et usikkerhedsmoment for borgerne, og der er efter min opfattelse en fællesnævner for det, der bliver sagt, nemlig at den sociale dialog skal styrkes i traktaterne. Det synes jeg, at vi nøje skal tage til efterretning. Der bliver også sagt, at de offentlige tjenester er utroligt vigtige, og at vi ikke må lade dem stå helt frit. Det synes jeg også, at vi skal tage til efterretning. Og alt det her vil naturligvis give anledning til eftertanke.

Men jeg er naturligvis også lidt bekymret over det, der ikke bliver sagt i dag. Et af de områder, jeg ikke har hørt noget om, er børns rettigheder, og det kunne jeg godt tænke mig, at de sociale partnere uddyber for os, hvis vi får mulighed for det. Og så er jeg også lidt bekymret generelt, hr. formand, for dem, som ikke er her i dag. De sociale partnere, vi ser her i dag, er faktisk - undskyld jeg siger det - nogen vi godt kender. Jeg er lidt bekymret for alle de ngo'er, alle dem i det civile samfund, som ikke er til stede i dag. For vi ved faktisk, at mellem 30 og 40% af borgerne ude i samfundet er bekymrede over EU's udvikling, og jeg håber, at det civile samfund og alle ngo'erne vil tage den bekymring alvorligt og give os nogle ideer til - og jeg mener det meget alvorligt - give os nogle ideer til, hvordan vi kan komme i en rigtig dialog med borgerne, så vi måske kan få de 30-40%, som er bekymrede over hele projektet, beroliget, så det ikke længere behøver at bekymre os så voldsomt.

1-026

DE

**Farnleitner (Ch.E/G.-AT).** - Herr Präsident! Zunächst möchte ich meinen Eindruck wiedergeben, dass wir sehr dankbar sein müssen, dass wir aus diesem Dialog mit der Zivilgesellschaft so viele Anregungen - zum Teil kritische, zum Teil sehr unterstützende - für das gefunden haben, was im Konvent schon besprochen wurde. Ich möchte aber zwei Dinge besonders hervorheben. Zum einen: Wir sollten die Mitarbeit der *civil society* in der EU institutionalisieren. Ich habe schon in einem früheren Beitrag gesagt: Ich würde es sehr begrüßen, wenn wir etwa die Organisationen der *civil society* in eine der Gruppen des WSA integrieren könnten, so dass dieser Dialog permanent stattfindet und nicht nur aus Anlass von einigen Kongressen und Konventen.

Der zweite Punkt: Ich bin sehr dafür, das Sozialmodell Europa stärker abzusichern, aber ich bin sehr dagegen, dass diese Bemühungen offenbar dazu dienen, bestimmten Ländern die Flucht aus der nationalen Verantwortung zu erleichtern. Ich glaube, dass das europäische Sozialmodell - basierend auf Generationenvertrag und Solidarität - heute zeigt, dass die Migration innerhalb Europas, also die der Europäer, zurückgeht, weil die sozialen Systeme der einzelnen Länder besser werden. Daher schließe ich mich ausdrücklich Peter Hain an und meine, dass wir im sozialen Bereich nicht Kompetenzen verlagern, sondern eher mit besseren Instrumenten das *bench-marking*, *best practices* und gegenseitige Stimulierung herbeiführen sollten.

Ich halte es auch für zweckmäßig, den sozialen Dialog in den Verträgen neu zu verankern. Wir haben zu viele alte Spieler, und viele spielen nicht mit. Oligopolisierung der Interessenvertretung sollte nicht stattfinden. Ich plädiere für mehr Organisationen der Klein- und Mittelbetriebe, für mehr Organisationen aus dem Dienstleistungsbereich. Wir alle wissen: Wenn es in der Liberalisierung an die letzten *hard cores* von traditionell verfassten Institutionen geht, dann landen wir beim *civil sector*, beim *service public*. Ich habe in einer anderen Funktion einmal gesagt, sehr oft ist es auch *self service public*. Daher sollten wir durchaus sagen, öffentliche Dienstleistungen ja, aber unter gleichen Leistungsvorgaben, wie sie viele andere in der Wirtschaft haben.

1-027

FR

**Berès (PE).** – Chers collègues, je me réjouis du débat que nous avons aujourd'hui sur ce thème, parce que je crois que c'est vraisemblablement l'un de ceux où le besoin de dialogue avec la société civile se fait le plus ressentir. C'est elle qui peut nourrir notre agenda, même si à la fin, lorsque nous évaluerons les résultats de nos travaux, nous ne devons pas les regarder à l'aune de l'agenda de chaque organisation mais bien en ayant une capacité d'approche globale. Dans cet esprit-là, je veux retenir trois idées fortes du dialogue que nous venons d'avoir. Premièrement, s'agissant des principes et des valeurs, un certain consensus semble se dégager pour demander de la Charte. Je m'en réjouis. Cette Charte ne devrait pas être une table de la loi immuable. Mais la question de sa révision ne doit pas être à l'ordre du jour, ce sont des mécanismes de révision futurs qui devraient être envisagés. Deuxièmement, s'agissant des compétences et des objectifs, j'entends ici ou là qu'on revendique un changement des objectifs de l'Union. Une fois de plus, je m'en réjouis. Au fond, l'une des questions qui nous sera posée est de savoir si après le passage à l'euro, nous avons achevé l'oeuvre du premier pilier ou si nous devons imaginer que le marché intérieur n'est pas juste la libre circulation des personnes mais peut-être aussi un peu d'harmonisation fiscale et beaucoup de normes sociales. En ce qui concerne l'équilibre entre loi de la concurrence et place des services d'intérêt général, je constate que beaucoup en ont parlé. Nous devons faire rentrer dans le droit européen cette notion de bien collectif européen qui nous a déjà tant manqué et qui risque de nous manquer encore davantage demain. Troisièmement, s'agissant de la méthode, il est nécessaire de faire entrer la méthode ouverte de coordination dans nos Traités et d'associer les partenaires sociaux à l'élaboration des politiques économiques et sociales, qui sinon ne sont pas comprises et ne peuvent pas être reprises par nos Etats Membres.

1-028

FR

**Barnier (CE).** – Nous sommes très nombreux ici à mesurer l'importance de ces deux journées de dialogue et d'écoute avec les représentants de la société civile. Nous savons que ce sont eux, et au-delà d'eux et avec eux, des millions d'autres citoyens, souvent d'ailleurs bénévoles, qui témoignent sur le terrain, dans chacun de nos Etats, que l'Union, comme l'a dit tout à l'heure une représentante, ne se résume pas, ou ne se réduit pas, à un grand supermarché organisé et que nous sommes en train de construire un modèle européen de société que nous voulons faire vivre. Je voudrais simplement marquer mon intérêt, mon soutien, ma disponibilité sur quelques points qui ont été évoqués par les uns et par les autres. Le premier point est la question des services d'intérêt général. Au-delà de l'article seize du Traité, qui existe et qu'il faut faire vivre, nous travaillons, comme le Conseil de Séville l'a dit, sur un projet de directive-cadre. Le deuxième point est la gouvernance et la meilleure consultation sur lequel nous attendons également les réactions de la société civile. Et le troisième point, que personne n'a cité, est le souci de prolonger ou d'amplifier une politique européenne de cohésion économique, sociale et territoriale. Je voudrais également signaler deux autres points qui suscitent notre intérêt : tout d'abord la Charte et l'inclusion des droits dans le Traité, point sur lequel Monsieur Vitorino reviendra demain et ensuite, mon intérêt pour une réflexion sur la méthode du dialogue social qui, selon moi, pourrait trouver utilement une référence dans le prochain Traité Constitutionnel auquel nous travaillons.

1-029

EN

**Bruton (Parl.-IE).** - Mr President, Diana Sutton, Mary McPhail and others have called for the incorporation of the rights into the Charter and the Treaty, for their direct effect and for new Charter rights such as housing and reproductive rights.

I have two questions for colleagues. Firstly, against whom would these new rights be enforceable by the courts? In other words, who would pay any costs? Would national laws be overridden? Secondly, would these positive rights, for example to housing, be uniform in all Member States, regardless of the economic development of that particular Member State?

1-030

EN

**Heathcoat-Amory (Parl.-GB).** - Mr President, the emphasis on bringing Europe closer to its citizens has been very refreshing in the speeches we have heard and is absolutely right. The EU has democratic legitimacy in a technical sense, but in the eyes of millions of citizens it is not democratically accountable and accessible in a way that they understand.

My question for the contributors is: to what extent are they representative? I would like future contributors to tell us more about how many members they have, how they organise themselves and how they are structured. Also, a number of them receive funding directly from the European Union or indirectly from other budget sources. This is obviously relevant. If they are commenting on the EU institutions, it is relevant that they are receiving money from the budget and that should be declared.

1-031

FR

**Le Président.** – Je voudrais simplement faire remarquer qu'en ce qui concerne la présentation des ONG, je vous invite à vous référer au forum. Je pense également que si les conventionnels désirent savoir avec qui ils dialoguent, ils doivent consentir un effort par



rapport à l'information qui est mise à leur disposition.

1-032

FR

**Fayot (Parl.-LU).** – J'ai souvent entendu, cet après-midi, parler de la Charte. Et nous savions bien quand nous avons fait la Charte combien il était difficile de faire passer le chapitre sur la solidarité. La liberté d'entreprendre dans la Charte est absolue, mais les droits sociaux sont étroitement encadrés. Et j'aurais une furieuse envie de poser une question, par exemple à Monsieur Gabaglio, afin de connaître son avis sur la question de la solidarité et sur la façon dont il serait possible de quand même élargir peu à peu les droits sociaux. Je sais qu'il est impossible de réouvrir la Charte mais nous allons en discuter avec Monsieur Vitorino car il faut tout de même qu'il y ait une dynamique sociale dans cette Charte. Ce n'est pas une Bible au contenu immuable.

1-033

IT

**Spini (Parl.-IT).** – Signor Presidente, ci devono essere dei valori e oggi li abbiamo sentiti negli accenti e nelle parole di chi ha contribuito al nostro dibattito, di chi è stato oggi chiamato a intervenire. La domanda che io vorrei porre, in particolare ai *partner* sociali, riguarda un'affermazione di Emilio Gabaglio il quale ha detto, a mio parere giustamente, che occorre avere una possibilità di dialogo e di concertazione fra le parti sociali anche a livello europeo, e ha aggiunto che questo livello dovrebbe essere complementare al dialogo e alla concertazione che si svolge a livello nazionale. Vorrei capire meglio il parere, sia suo che degli imprenditori, su questo punto, in particolare perché credo che in qualche modo un dialogo europeo, se si stabilisce e diventa effettivamente valido, probabilmente ha anche un carattere di quadro per il dialogo nazionale.

1-034

FR

**Le Président.** – Comme je l'ai dit au début, un certain nombre de membres aussi souhaitaient dire un mot sur le débat national et à cet effet, je donne la parole à Monsieur Figel, représentant du gouvernement slovaque.

1-035

EN

**Figel (Gouv.-SK).** – Mr President, Slovakia's response to the call of the European Council in Nice for a wider and deeper debate on the future of the European Union was the establishment of the National Convention on the European Future of Slovakia. It has been meeting regularly since it was convened for the first time in May 2001.

The National Convention aims to provide a suitable forum for Slovak citizens interested in discussing the challenging questions of Slovakia's future in the EU. The objective of our National Convention is to foster a nationwide discussion on the questions defined by the declarations on the future of the EU from Nice and from Laeken, since the National Convention should reflect the entire spectrum of our society. There has been special emphasis on the composition of the National Convention. It is made up of representatives of the main political parties, academic circles, churches, various interest groups, trade unions, municipalities and regions and representatives of several non-governmental organisations.

Meetings are open to the press, and proceedings are regularly published on an Internet site. They represent, in particular, an opportunity for a number of segments of Slovakia's civil society to participate in the debate on the future of Europe.

Our non-governmental organisations have been playing an integral role in fostering discussion of our country's future in an enlarged European Union. Many active organisations have joined the Slovak Forum of Non-Governmental Organisations that was established in September 2001, as a common platform of Slovak NGOs working in the area of European integration.

The forum helps to map and coordinate the activities of various NGOs and provides the basis for further cooperation among NGOs and also between NGOs and official state institutions. The main activities of non-governmental organisations have focused on preparing the country for public concerns and the public for EU accession.

Some NGOs have worked effectively as policy advocacy groups calling for further reforms of our country's way into the European Union. Today, several NGOs are playing an important role in providing space and ideas in the debate on the future of Europe.

1-036

FR

PRESIDENCE DE Mr DEHAENE

Vice-président

1-037

DA

**Miljø**

DE

**Umwelt**

EL

**Περιβάλλον**

EN

**Environment**

ES

**Medio ambiente**

FR

**Environnement**

IT

**Ambiente**

NL

**Milieu**

PT

**Meio ambiente**

FI

**Ympäristö**

SV

**Miljöfrågor**

1-038

FR

**The President.** - We now come to the second contact group on the environment. I give the floor to George Katiforis, chairman of the group.

1-039

EL

**Κατηφόρης (Ch.E./G.-GR).** – Κύριε Πρόεδρε, η Ομάδα Επαφής για το Περιβάλλοντος συνήλθε στις 17 Ιουνίου με τη συμμετοχή 14 Μη Κυβερνητικών Οργανώσεων, από τις οποίες το Ευρωπαϊκό Γραφείο Περιβάλλοντος, που είναι δευτεροβάθμια οργάνωση, αντιπροσώπευε 130 περιβαλλοντολογικούς οργανισμούς στην Ευρωπαϊκή Ένωση και στις υποψήφιες χώρες.

Κατά την συνεδρίαση έγινε μια πρώτη ανταλλαγή ιδεών και καθορίστηκαν από την πλευρά των οργάνωσεων οι ομιλητές που θα παρουσιάσουν το θέμα στη Συνέλευση. Το περιβάλλον, όπως είναι γνωστό είναι το πρώτο θέμα που βγήκε μέσα από την Κοινωνία των Πολιτών, χωρίς να έχουν προηγηθεί πολιτικές πρωτοβουλίες, για να καταλάβει μια από τις κεντρικές θέσεις στην πολιτική ζωή. Παράλληλα, η χρήση του περιβάλλοντος έγινε επίσης ζωτικό θέμα. Αποκτήσαμε, σε πολύ μεγαλύτερο βαθμό από άλλοτε, συνείδηση ότι όταν χρησιμοποιούμε το περιβάλλον χρησιμοποιούμε πολλές φορές αγαθά που δεν είναι σε απεριόριστη προσφορά, σε απεριόριστα αποθέματα.

Η βιομηχανία απέκτησε συνείδηση ότι πρέπει και να ελέγχει τη χρήση που κάνει, αλλά και να υπερασπίζεται την ορθή χρήση. Τους ίδιους προσανατολισμούς απέκτησαν και διάφοροι άλλοι χρήστες του περιβάλλοντος. Έτσι, μια κίνηση των πολιτών δημιούργησε μια σειρά από πολιτικά κόμματα και από πολιτικές κινήσεις, δημιούργησε έναν ολόκληρο νέο κλάδο νομοθεσίας, δημιούργησε επίσης έναν νέο κλάδο της οικονομικής επιστήμης. Παρόλον όμως ότι δημιουργήθηκαν πολιτικές και επιστημονικές κινήσεις κλασικού τύπου, η κοινωνία των πολιτών εξακολούθησε να δρα αυτόνομα και να εμπνέει νέες πολιτικές κινήσεις και να δίνει νέες ιδέες. Ίσως αυτό είναι ένα από τα πιο ενδιαφέροντα φαινόμενα της δραστηριοποίησης της κοινωνίας των πολιτών, που συνεχίζεται παρόλον ότι ένα μέρος της πέρασε στην τυποποιημένη, ας το πούμε έτσι, πολιτική ζωή.

Δεν είναι δικό μου έργο να συνοψίσω την πολύ ενδιαφέρουσα συζήτηση που έγινε στην συνάντηση της Ομάδας Επαφής. Οι εκπρόσωποι των ΜΚΟ που έλαβαν μέρος στην συνάντηση της Ομάδας Επαφής τόνισαν και αυτοί μερικά κύρια σημεία, τα οποία αναφέρονται στην Χάρτα των θεμελιωδών δικαιωμάτων και ζήτησαν να περιληφθούν περιβαλλοντικά δικαιώματα στην Χάρτα, όπως επίσης ζήτησαν να περιληφθεί στην Συνθήκη και ένα πολύ ενδιαφέρον σημείο, η έννοια της ευημερίας των ζώων.

Στο θέμα των αποστολών της Ένωσης, επικέντρωσαν την προσοχή τους στο θέμα της αγροτικής πολιτικής. Ζήτησαν η αγροτική πολιτική να αλλάξει χαρακτήρα, να αποκτήσει ενδιαφέρον για την αειφορία, για την ποιότητα των τροφίμων, για την υγεία και για την προστασία του περιβάλλοντος, για την ευαίσθητη χρήση της υπαίθρου και για την βιοποικιλότητα. Επίσης, ζήτησαν κάτι το οποίο θα φανεί πιο αμφισβητήσιμο, την κατάργηση της Συνθήκης της Ευρατόμ. Στα θεσμικά θέματα επέμειναν ότι όπου υπάρχει η αρχή της ομοφωνίας στα θέματα του περιβάλλοντος, πρέπει να αντικατασταθεί από την αρχή της ενισχυμένης πλειοψηφίας και της συναπόφασης και να παίξει μεγαλύτερο ρόλο το Ευρωπαϊκό Δικαστήριο, να επεκταθεί η αρχή της διαφάνειας και το Συμβούλιο να δίνει δημοσίως τις συζητήσεις τους για τα θέματα αυτά.

Μείναμε σύμφωνοι στην Ομάδα Επαφής ότι θα συνεχίσουμε τις συναντήσεις μας και θα προσπαθούμε να τροφοδοτούμε τη Συνέλευση με τις ιδέες που θα προκύπτουν στις συζητήσεις αυτές.

1-040

EN

**Hallo (NGO-ENVI).** - Mr President, I speak on behalf of eight of the largest European environmental and nature protection organisations, including the European Environmental Bureau - with members in all Member States and many applicant countries - Greenpeace, Friends of the Earth, the World Wildlife Fund, Birdlife and others. This group is sometimes called the Green G8 and we have submitted a common statement, parts of which have been summarised. As the Green G8 we also belong to the Civil Society Contact Group and we support the common statement which was referred to earlier by our colleagues from the Social Platform. I also speak on behalf of the Eurogroup on Animal Welfare.

I speak on behalf of all of these organisations and their millions of members, and also on behalf of the overwhelming majority of Europeans who support environmental protection. In their towns and villages, in their regions and countries and especially at European level, time and again, the Eurobarometer and other surveys have shown that Europe's citizens place a high priority on environmental protection. They place it high on their list of concerns and high on the list of concerns for European policy.

The high priority that European citizens ascribe to environmental protection and sustainable development is recognised in the Treaty of Amsterdam. This Treaty establishes sustainable development as a primary objective for the EU. It requires environmental protection to be part of every EU policy area, balancing environmental protection and internal market considerations.

In short, environmental protection and sustainable development are already firmly anchored in the Treaty. That is my first point. Do not change these key texts. Leave these provisions unchanged. This should be welcome advice: at last you are being asked not to do something. It is also essential, however, to make some general changes concerning transparency and the democratic working of the EU decision-making process. These changes will prove important, not just for the environment but also in general. I will group these changes into three areas: rights, institutions and policies.

Regarding rights, are you indeed serious about bringing Europe closer to its citizens? If so, then the citizen needs to be better informed, at an earlier stage, about Commission initiatives for law and policy. The citizen needs to be consulted. We share the point already made that there should be a Treaty article on civil dialogue and provision for broad, open, timely public participation.

Secondly, do you seriously believe that secret decision-making on legislation by the Council of Ministers is still acceptable? No, it is time to end the secrecy in the Council.

Thirdly, is it right that citizens have no right to challenge the institutions in court? This question is being considered by the Convention's working group on the Charter and the European Convention on Human Rights. Our question is, why should there be less protection for the citizen at EU level than he or she enjoys at national level? The door to the European Court of Justice is closed, it is time to open that door and give access to the Court of Justice, including on environmental cases, to citizens and their organisations.

As far as the Charter itself is concerned, it is important overall, but the environmental article is flawed. It is not phrased in terms of a right. It could possibly undermine the key Treaty articles that I mentioned before. The environmental article needs to be phrased in

terms of a right before the Charter is incorporated into a binding document as part of the Treaty.

On institutions, it is time to end the paralysis in decision-making which results from the requirement of unanimity. In the environmental area, all decision-making should be by qualified majority voting and in co-decision with the European Parliament, including decision-making on fiscal or economic measures for environmental protection.

Secondly, there needs to be clarity for the citizen about who does what. We support strengthening transparency and the working of the existing institutions - principally the Council, the Commission and Parliament - rather than extending the powers of advisory bodies. European decision-making is already complicated enough for the citizens and their organisations to follow. It is going to burden us more than we can bear, I fear, if we add more layers, more responsibilities and more institutional roles, and it is an illusion to believe that this would bring Europe closer to the citizens.

On policies, Euratom's objective of promoting nuclear energy is outdated. It should be replaced by an objective to protect health and the environment from the hazards of nuclear energy. Perhaps this could be part of a more general article on sustainable energy policy.

Agriculture policy objectives are equally outdated and desperately need to be changed. My colleague from the AgriCultural Convention will say more on this point.

Thirdly, we support a treaty article on animal welfare as proposed by our colleagues from the Eurogroup on Animal Welfare. This article should state that one of the Community's activities will be to take measures to ensure respect for animal welfare.

In conclusion, a word about subsidiarity: it is now a general principle but it started life in the Treaty as part of the environment article. Subsidiarity is an elastic term and the Convention can spend a long time debating it. I recommend you do not. As I have already made clear, there are other, clearer demands for transparency, democracy and institutional reform. Europe's citizens expect clear answers to these straightforward demands. Do not fix what is not broken.

Finally, my colleagues in the Member States are making these same points in the national debates in which I hope you will participate. I welcome Mr Dehaene's point that this is not by any means the end of the process. I look forward to the dialogue and to your questions.

1-041

EN

**Spooner (NGO-ENVI).** – Mr President, I speak on behalf of the European AgriCultural Convention which brings together a wide range of representatives from civil society including consumers, environmentalists, heritage conservationists, farmers, development NGOs and some government officials and politicians from all corners of Europe, east, west, north and south.

We share serious concerns about the negative side effects of centrally-controlled, production-focused agricultural policy. We came together to form a vision for the future of agriculture in an enlarged Europe. I urge you to read our statement which is the result of an innovative, dynamic and effective process of consultation. I wanted to thank the President for supporting this initiative by his presence at our AgriCultural Convention gathering. We seek to answer his questions and continue to work on detailed recommendations both to the Convention and to the mid-term review of the Common Agricultural Policy. All are welcome to contribute to our open dialogue and process.

We hope to be able to act as an independent contact group specifically on the issue of the future of agriculture and rural development. We are happy to put forward a few key points through this environment contact group, as the environmental dimension is central to our vision.

I will focus on two key constitutional areas, firstly decision-making and, secondly, the establishment of a new Common Agricultural and Rural Policy. I stress the *rural*, a CARP. Regarding decision-making, we call on the Convention to ensure accountability in decision-making related to agriculture. This is not the case at present. The Common Agricultural Policy has reached levels of complexity that even the experts can no longer master. With compulsory spending rules, sectoral policies run by sectoral management committees and decision-making limited to very few players, there is little democratic accountability.

We make four key recommendations. Firstly, that the broad lines of the Common Agricultural and Rural Policy be decided and funded at Community level. Secondly, that the CARP be subject to co-decision between the Council and the European Parliament, both for policy and budget. Thirdly, that policy coordination be encouraged between different Commission Directorates-General: environment, regional, social, industry, consumer development, culture and external relations interests also need to be taken into account in agricultural policy-making.

Perhaps most importantly, we urge you to explore the application of open governance principles to Common Agricultural and Rural Policy management, especially in terms of improving the participation of stakeholders. In the agricultural area there have been some very good experiences with participatory democracy. Notably, the Leader-type programmes which promote integrated territorial programmes, public-private partnerships, competence exchange and networking between regional groups. Both the quality of policy

and the effectiveness of implementation are improved by involving the relevant actors and stakeholders. These approaches should be central to the future Common Agricultural and Rural Policy.

Secondly, as regards the establishment of the Common Agricultural and Rural Policy, we call on the Convention to set out the foundations for a new CARP in the Treaty. We propose inclusion of some new rights: the right to healthy food and to transparent information about its production and safety; the right to a healthy environment and clean water; the right to produce and consume GMO-free food. As we see agriculture and forestry both as an archive of the past and laboratory for the future, this is not a call for a ban but a call for responsibility and freedom of choice.

We request changes to the articles of the Nice Treaty, in Title 2, especially Article 33, to set out the objectives of a CARP based on the core EU principles of sustainable development. The current Common Agricultural Policy does not meet sustainable development criteria. We believe that the CARP should ensure: the viability of agricultural production in Europe, based on responsible yields; provide fair income to farmers and good prospects for young farmers; protect environmental resources such as soil, water, and biodiversity; provide quality and variety of healthy food; ensure animal welfare and foster the development of local economies and cultures, not just agriculture.

We call for a CARP designed to give developing countries fair access to western markets and to develop food security within their own countries. We believe it is essential to use the WTO development round to advocate an integrated approach to rural development and sustainable farming practices across the world. The US Farm Bill is a regrettable step backwards; the EU must not let this prevent it from taking the lead in negotiating globally responsible solutions.

We recommend a significant shift of funding from production support towards rural development; the promotion of economic diversity and jobs in the countryside; payment for environmental services such as maintenance of clean water supply; infrastructural improvements; the promotion of artisanal foods, tourism and so on.

Enlargement provides an opportunity which several candidate countries are rightly taking to start this shift towards rural development. Representatives from new Member States were particularly dynamic in our Convention, and we hope to see changed leadership in old Member States as well.

To summarise, we call for a Common Agricultural and Rural Policy based on two key sets of principles: sustainable development and democratic accountability. We envision a CARP clearly identified as a Community policy, based on networks of integrated territorial programmes and developed and managed in the spirit of participatory democracy.

The European AgriCultural Convention being an ongoing process, we encourage your feedback on our document and to open up a positive dialogue.

1-042

EN

**De Jonckheere (NGO-ENVI).** – Mr President, the European Landowners' Association is glad to contribute to the debate on the future to the European Union, and would like to take this opportunity to thank you for all your work. We hope this hearing is just a beginning and can serve as an example for further collaboration with civil society.

Land stands at the centre of the rural world. Landowners are involved in farming and forestry; they provide and manage land and building for rural housing and for rural businesses. They generate employment for local people; they provide land for sporting tourism, hunting and other leisure pursuits. They are responsible for managing the majority of Europe's landscapes and environments, and they contribute to the consolidation of the social thread uniting the rural communities. They are committed to the future of the countryside. The European Landowners Association is thus well placed to speak for Europe's rural areas.

Furthermore, different organisations have subscribed formally to this contribution, namely the *Confédération européenne des propriétaires forestiers*, the Federation of Associations for Hunting and Conservation of the EU, the *Groupement européenne intervenant dans l'immobilier*, the European Historic Houses Association, the *Ruralité Environnement Développement* organisation and the Nature 2000 forum.

We believe that one of the big challenges for the European Union in the future will be to bridge the growing cultural gap between town and country, which is at its widest in discussions on environmental matters. To caricature the issue: urban populations wish to spend their leisure time in a museum-like preserved countryside, accusing the rural community of not managing it in an environmentally sustainable way. Rural actors likewise accuse the urban community of shaping policies in an unrealistic way -without proper knowledge of the rural needs, without consulting stakeholders and without providing the financial means for environmental services.

This statement reflects the problem quite well and indicates the uniting rule that Europe has to play. Europe should foster cohesion, social and economic but also territorial cohesion. We would like to see a Europe where the countryside is consolidated through coherent and integration rural policies and where the rural stakeholders are consulted from the earliest stage of the decision-making

process. Such policies should be able to avert the current misunderstandings between rural and urban cultures which hamper the achievement of our common objectives of social, economic and environmental integration.

Land ownership has proved to be very effective in consolidating rural communities. It gives people in the countryside a long-term perspective and a sense of responsibility towards future generations. We want the Europe of the future to foster these rural communities, to attract people to the countryside, to halve emigration to the big cities, to support the creation of rural employment and to promote a balanced, vibrant and prosperous rural economy. We want our countryside to remain a nice environment to live and work in and we believe landowners and land users are Europe's biggest allies in creating such a future.

The right of property is a fundamental right and has been recognised as such in numerous international declarations and conventions of which the most important are the Declaration of Rights of 1789, the European Convention of Human Rights and, more recently, the European Charter of Fundamental Rights.

It is essential for the further development of a democratic Europe that the Charter is duly integrated as such in the constitutional Treaties. In order to make these rights effective and enforceable, broader access for all individuals to the constitutional court should be assured. A fully democratic Europe also requires the integral involvement of the European Parliament on the same level as the Council, for all European decisions through the extension of the co-decision procedure. It is also essential for the coherence of human rights protection in the European Union to adhere in the long run to the European Convention on Human Rights.

We all have high environmental expectations for the future but we believe that a key factor for the achievement of these objectives will be Europe's capacity to stimulate environmental policies through voluntary agreements and not through compulsory legislation.

The key concepts here are proportionality and early stakeholder involvement. A proportionality check at any level of implementation, be it European or national, is essential to preserve the delicate balance of the countryside. All too often, European legislation in certain countries has led to a disproportionate burden being placed on the shoulders of landowners and land users, a burden dramatically detrimental for both the conservation of the environment and for the fragile economic balance of rural businesses.

We believe that an efficient European decision-making process should incorporate, at the earliest stage, an integrated social and economic impact assessment for any environmental programme - just as an early environmental impact assessment is required for any important economic project.

Early stakeholder involvement is crucial to the success of any environmental policy. Procedures should be established to determine which actors are directly affected or concerned by specific policies and how they will be consulted throughout the decision-making and implementation process.

We are therefore eager to participate actively in any discussion in the general interest where environmental policy might lead to limitations of the right of property.

As regards the clarification, delineation or delimitation of competences, we are convinced that it should be ruled by the principle of added value. The European Union derives its powers from the Member States and should intervene only where intervention has a proven added value.

There are many subjects currently dealt with in such a way that there is total confusion as to whether it is a national or a Community competence. An example could be the upcoming Commission communication on the planning of land use. Not only is property, by virtue of Article 295 of the Treaty, as it stands now, a national competence, but special planning, furthermore, is by definition a matter that can best be dealt with at the lowest level. Land-use planning aims at organising the territory in the light of the needs of the population that vary considerably as a result of different climatic, geographical, social and economic conditions of each region or state.

We believe that this kind of confusion as to who ought to do what and who does what is damaging for citizens' understanding of the European machinery. It is also harmful to the European Union itself because it allows the Member States to take advantage of this confusion to blame Europe for certain decisions they are themselves responsible for. In order to assure the full respect of this principle, the Convention should consider the creation of a specific monitoring body composed of European and national parliamentarians to evaluate the added value of each European decision -and hence the principle of subsidiarity.

In conclusion, we believe that land ownership performs a crucial role in the sustainable management of rural areas. Small and medium-sized enterprises and, in particular, family businesses are the most stable employers in the countryside. We would therefore ask the Convention to incorporate the preservation of a balanced, viable and sustainable countryside in harmony with its people and their activities, with nature and with the cities, into the missions of the European Union.

In the words of the European Countryside Movement, we are convinced that a genuine rural development policy is fundamental for the success of enlargement and to ensure the balanced structural development of all rural areas in an enlarged Europe. We all want the benefits of an improved environment but only some are able to produce it. We are therefore convinced that balance and harmony in the countryside can only be achieved if there is a fair payment for the production of environmental and cultural landscape services.

FR

**Le Président.** – Ceci conclut les interventions du groupe « environnement ». J'ai une demande de parole et une carte bleue. La parole est à Monsieur Michael Frendo pour deux minutes.

1-044

EN

**Frendo (Parl.-MT).** - Mr President, if the principle of subsidiarity were applied to the sphere of the environment, it would inevitably be taken higher up rather than pushed lower down, because, since national frontiers are meaningless, the best place to take decisions regarding the environment is at European level.

Perhaps equally important is that Europe should be strong enough to influence not only European action but also action on a global level. There have indeed been many instances on a global level where it is clear that it is not enough being strong at European level. It is also important to be strong internationally because what happens in one country or a number of countries affects all the other countries in the world.

It is important, therefore, that we strengthen the European Union's action in this field, despite its success since the signing of the Single European Act and various other treaties.

My second point is that it is important to give serious consideration to the point raised by the groups from civil society that we should also have a distinctive right to a healthy environment. This distinctive right could be part of the Charter of Fundamental Rights, depending upon the application of this Charter. It is important that we emphasise that the environment is important by giving it a clear place in terms of rights in the Charter itself.

1-045

IT

**Basile (Parl.-IT).** - Signor Presidente, mi rifaccio all'interessante contributo della signora Spooner e al successivo contributo della signora De Jonckheere. Credo che l'idea di realizzare una PARC sia molto interessante. Va, questo, nella direzione della multifunzionalità dell'agricoltura, dell'esigenza di creare attività comuni a più settori e anche della sostenibilità economica, non solo, appunto, ambientale. Occorre una rivoluzione come c'è stata agli inizi degli anni '90 grazie all'allora Commissario, oggi collega della Convenzione, Ray McSharry, il quale creò una politica agroambientale e forestale. C'è il problema, però, di come inserire tutte queste idee nel Trattato costitutivo; c'è inoltre il problema di fare i conti con il bilancio - vedi la posizione presa in questi giorni dalle autorità tedesche - e poi l'esigenza di organizzare un contributo per far sì che queste esigenze e quest'approccio vengano inseriti nel Trattato costitutivo. Vi è anche il problema di fare i conti con i paesi in via di adesione, che presentano forti problemi per quanto riguarda la materia ambientale e, infine, l'esigenza che quest'approccio sia sposato dalle organizzazioni internazionali.

1-046

DE

**Voggenhuber (PE).** - Herr Präsident! Ich möchte mich bei den Vertretern der Zivilgesellschaft bedanken und ihnen sagen, wie wohl es tut, sie heute hier zu hören. Es gibt nämlich einen großen Unterschied, ob die Zivilgesellschaft von den Politikern beschworen wird oder ob sie selbst zu Wort kommt. Auch im Konvent wurde sie immer wieder als Stimmung gegen Europa beschworen, als Stimmung für die Renationalisierung, als Stimmung für die Rückverlagerung von Kompetenzen. Das, was sie heute gesagt und getan haben, hilft, den Blick auf die wirklichen Zukunftsfragen Europas zu lenken: die europäische Demokratie, die Grundrechte der Menschen auf europäischer Ebene, die europäische Sozialunion als eine angemessene Antwort auf die Globalisierung, die soziale und ökologische Nachhaltigkeit. Das sind tatsächlich die Probleme. Viele Konventsmitglieder haben sich in den vergangenen Wochen bemüht, genau diese Themen in den Konvent einzubringen, mit mäßigem Erfolg. Sehr oft wurde die Zivilgesellschaft als Zeuge dafür aufgerufen, dass die Zeit noch nicht reif ist, dass die Menschen noch nicht reif sind, dass Europa noch nicht reif ist, und ich danke Ihnen sehr dafür, heute diesen Spuk zerstört zu haben und selbst aufzutreten zu sein, um ein anderes Zeugnis abzugeben. Ein Vorredner hat vor der Flucht aus der nationalen Verantwortung gewarnt. Das, was in Wahrheit geschieht, ist die Flucht Europas aus der Verantwortung, und ich danke Ihnen dafür, dass Sie das klar gemacht haben.

1-047

FR

**Le Président.** – Avant la pause-café, je propose que nous écoutions maintenant les représentants du Comité économique et social.

1-048

DE

**Frerichs (NGO-ENVI), Représentant des Wirtschafts- und Sozialausschusses.** - Herr Präsident, meine sehr verehrten Damen und Herren! Wir sind uns alle einig: Auftrag des Konvents ist es, die Verfassung der Europäischen Union zu entwerfen, und zwar nach demokratischen Prinzipien, um die Union und ihre Institutionen in die Lage zu versetzen, ihre Aufgaben transparent für das Verständnis der Bürger und effizient im Dienste der Bürger wahrzunehmen. Ich wünsche mir, dass es durch die Arbeit des Konvents möglich wird, diese Union, die als Union der Staaten entstanden ist, mehr und mehr zu einer Union der Bürger zu machen. Das wird nicht zu Lasten der Mitgliedstaaten und ihrer Regionen gehen; vielmehr wird das den Regionen und Staaten eine neue Legitimation verschaffen, da ihre gemeinsamen Probleme dadurch besser - weil im Einklang mit ihren Bürgern - bewältigt werden können.

In einer solchen demokratischen Union, die notwendigerweise nach föderalen Prinzipien organisiert sein muss, um angesichts der Vielfalt und Verschiedenheit der in der Union versammelten Staaten, Nationen und Kulturen funktionieren zu können, muss die Zivilgesellschaft einen Ort haben, an dem sich ihre Vertreter treffen und ihren gemeinsamen Willen zum Ausdruck bringen können, ihre gemeinsamen Forderungen formulieren und ihre gemeinsamen Vorschläge erarbeiten können. Diesen Ort bietet nach seiner Berufung durch den Vertrag ebenso wie nach Tradition und 44jähriger Praxis der Europäische Wirtschafts- und Sozialausschuss, dem die zukünftige Verfassung die Mittel und die Möglichkeit geben sollte, seine Rolle als institutionalisierte Repräsentanz der organisierten Zivilgesellschaft immer besser zu spielen.

Aufgrund meiner persönlichen Erfahrungen nach zwölf Jahren der Mitgliedschaft im EWSA und am Ende meiner zweijährigen Mandatszeit als Präsident dieser Institution möchte ich heute in Kenntnis der unterschiedlichen Auffassungen, die dazu auch im EWSA selbst bestehen, einige Vorschläge machen. Erstens schlage ich vor, ein transparentes Verfahren für die Auswahl und Ernennung der Mitglieder des Ausschusses einzuführen. Es müssen die Regeln dieses Verfahrens festgelegt werden. Es müssen die Voraussetzungen für eine Bewerbung beschrieben werden. Das Verfahren muss bekannt gemacht werden, die Entscheidungen müssen begründet werden. Quantitative oder qualitative Repräsentativität, zivilgesellschaftliche Präsenz, allgemeine Bedeutung, Engagement und Leistung zugunsten der Allgemeinheit, das sind die wichtigsten Kriterien, die der Auswahl der Organisationen, deren Vertreter in den Ausschuss entsandt werden, zugrunde gelegt werden müssen.

Zweitens schlage ich vor, die Bestimmung über die Zusammensetzung des EWSA folgendermaßen neu zu fassen. Der Ausschuss besteht aus Vertretern der Unternehmer- und Arbeitgeberverbände, aus Vertretern der Gewerkschaften und Arbeitnehmer sowie aus Vertretern anderer Organisationen der Zivilgesellschaft, die wirtschaftliche, soziale, kulturelle oder ideelle Zwecke im allgemeinen Interesse verfolgen. Mit dem Ausschuss der Regionen, der die politische und territoriale Subsidiarität verkörpert, steht der EWSA, der die gesellschaftliche und funktionale Subsidiarität verkörpert, in einem Verhältnis der Komplementarität. Beide Ausschüsse haben ihre Würde, ihre eigenen Aufgaben und eine jeweils besondere, jeweils anders geartete Bedeutung für die Bürger, auf deren Wohl und Interesse ihre Bemühungen ausgerichtet sind. Die Bürger sind auf den politischen Rahmen, in dem sie in den Gemeinden, Städten und Regionen leben, angewiesen. Ebenso brauchen die Bürger aber auch den gesellschaftlichen Rahmen, der von den Organisationen, Verbänden und Gewerkschaften dargestellt wird. Die Parität der Behandlung im institutionellen System der Europäischen Union gibt diesem Umstand einen angemessenen Ausdruck. Die gleichrangige Einbeziehung der zivilgesellschaftlichen wie der gebietskörperschaftlichen Dimension in die Meinungs- und Willensbildung der Union im Interesse einer optimalen *governance* macht Sinn, denn diese beiden Dimensionen ergänzen und befruchten sich gegenseitig.

Ich bin zuversichtlich, dass es gelingen wird, beide Dimensionen in der neuen Verfassungsordnung der Europäischen Union in einer Weise zur Geltung zu bringen, die über den Status quo weit hinausreichen wird und die ihrer Bedeutung für die Gestaltung unseres transnationalen Gemeinwesens besser gerecht wird.

1-049

FR

**Briesch (NGO-ENVI).** – Monsieur le Président, Mesdames, Messieurs, l'Union Européenne repose sur des idéaux communs à l'ensemble des Etats membres qui associent les valeurs de base que sont la démocratie, les droits de l'homme, l'état de droit, de solidarité de cohésion, dans un esprit de dialogue et de recherche du consensus et d'un équilibre social. Ces différents éléments constituent, ce qu'on appelle à juste titre, le modèle social européen. Il est inscrit dans les traités instituant l'Union Européenne sous la forme d'objectifs généraux, notamment la réalisation d'un taux d'emploi élevé, d'un développement durable par le biais de la promotion du dialogue social, qui revient en priorité aux partenaires sociaux. Le dialogue social européen est un mécanisme qui dispose de pouvoirs législatifs. Il est clairement défini en terme de participants, de pouvoir et de procédure. Son statut est quasi constitutionnel. C'est la raison pour laquelle son rôle et sa responsabilité ne peuvent être transférés à d'autres politiques ou à d'autres acteurs. Toutefois, le Comité économique et social, institution que j'ai l'honneur de représenter ici avec mes collègues, a de par sa composition, un caractère divers et varié, et son activité est un élément essentiel du modèle européen. Il favorise le dialogue entre toutes les composantes de la société, en prenant en compte les préoccupations et les souhaits des citoyens au plus près des réalités, pour les formuler, les faire connaître au travers des avis et, de manière plus pratique, par le travail réalisé sur le terrain à tous les niveaux et dans tous les pays.

Le Comité n'est pas le forum du dialogue social. Toutefois, il devrait pouvoir, à la demande des partenaires sociaux ou d'autres organismes, élaborer des avis exploratoires sur des sujets nouveaux et importants. Le Comité tire sa légitimité du fait que tous ses membres, en vertu de leur expertise, ont été mandatés par des organisations représentatives des Etats membres pour jouer un rôle constructif dans le processus de formation d'opinions qui associe tous les acteurs de la société civile. Cet aspect doit être maintenu et précisé. La pérennité du Comité, le renforcement de son rôle est nécessaire. Il s'impose naturellement comme le lieu du dialogue civil,



c'est à dire comme le représentant de la société civile organisée qui, au delà des associations d'employeurs ou de chefs d'entreprises et des syndicats, englobe également les organisations représentatives d'un grand nombre d'autres activités et intérêts.

Au delà du travail en cours concernant les compétences de l'Union, son rôle ou l'application la plus adéquate de la subsidiarité, il convient au préalable de préciser, affirmer ce que nous voulons faire ensemble, quelle Europe nous voulons et pourquoi faire. Dans ce sens, le Comité souhaite promouvoir l'aspect qualitatif en terme de légitimité démocratique d'amélioration des droits des citoyens via un Traité constitutionnel ou une Constitution qui intègre les différents aspects constituant le modèle social, notamment le plein emploi, les services d'intérêts généraux, l'égalité entre homme et femme ou l'économie sociale de marché. Ainsi, on obtiendrait une Union rassemblée, apte à prendre des décisions et à affirmer des propositions et des positions par l'extension du vote à la majorité qualifiée. On arriverait également à une gouvernance économique et sociale, accompagnée d'une simplification des instruments de la gouvernance économique. Enfin, cela aurait des effets sur le rôle et la place de l'Union dans le monde, en terme de paix, de liberté, de démocratie et de droits de l'homme. Cela favoriserait l'émergence d'un nouvel ordre économique ayant pour objectif l'éradication de la misère et de la pauvreté.

Dans cet esprit, l'Union doit jouer un rôle majeur dans la mise en oeuvre d'un nouvel équilibre mondial fondé sur la solidarité, la justice, la démocratie, les libertés sociales et civiques. De ce fait, nous attendons de la Convention une nouvelle définition des fondements constitutionnels de l'Union, dans un esprit fédéral et démocratique. Et, sur la base de ce qui a déjà été réalisé, nous plaçons pour un renforcement du modèle européen. L'histoire de nos pays montre que l'établissement des modèles sociaux n'est dû qu'en partie au pouvoir et à la législation et que la contribution des partenaires sociaux et les relations entre les organisations de la société civile ont été déterminantes. Leur créativité, leur capacité d'orientation de la société doivent trouver une place équivalente au niveau européen. De ce fait, il est essentiel que la Charte des droits fondamentaux soit incluse dans le traité ou dans la nouvelle Constitution. La cohésion sociale est un facteur essentiel de la formation d'une identité européenne, surtout dans la perspective des efforts requis pour intégrer les pays qui vont nous rejoindre. Tout en se reconnaissant dans les valeurs fondamentales défendues par la Charte, les pays européens ont des traditions, des cultures et des histoires différentes. Cette diversité est une richesse pour l'Europe qu'il convient de préserver.

La méthode communautaire doit demeurer la base de la future architecture institutionnelle de l'Union, qui se caractérise par un équilibre entre la diversité culturelle et l'unité politique, et permet au modèle social européen de se développer. L'expérience nous a appris que chaque fois qu'on met en oeuvre la méthode communautaire, on obtient des résultats satisfaisants. En effet, l'intérêt de l'Union n'est ni la somme des intérêts des Etats membres, ni leur plus petit dénominateur commun. Il ne peut donc pas être déterminé lors de négociations, au cours desquelles chaque participant dispose d'un droit de veto. En définitive, nous sommes convaincus que seule une structure fédérale et démocratique permet de s'attaquer, avec des chances de succès, aux problèmes d'ordre politique et pratique urgents, tout en donnant un sens à la citoyenneté de l'Union en consentant un effort constant dans la recherche de l'unité dans la diversité.

1-050

DE

**Sigmund (NGO-ENVI).** - Herr Präsident! Der Europäische Wirtschafts- und Sozialausschuss, den ich als Beobachterin im Konvent vertreten darf, will, wie das auch meine Vorredner schon gesagt haben, aktiv und effektiv zum politischen Meinungsbildungsprozess beitragen. Seine Funktion steht dabei weder in Konkurrenz zu den Anhörungen des Europäischen Parlaments, noch ersetzt der Ausschuss die direkten Konsultationen der Kommission mit den Organisationen der Zivilgesellschaft. In diesem Selbstverständnis sind wir zwar institutionelle Plattform der organisierten Zivilgesellschaft, aber nicht deren Filter.

Wir wissen, dass auch für den Europäischen Wirtschafts- und Sozialausschuss Reformbedarf besteht. Einiges ist schon getan, Vieles ist noch zu tun. So sind beispielsweise wichtige europäische Nichtregierungsorganisationen nicht direkt im Ausschuss vertreten. Neben der heute von unserem Präsidenten, Herr Frerichs, gemachten Anregung, die Nominierungspraxis der Mitglieder neu zu überdenken, werden wir aber auch Wege finden und suchen, die Zusammenarbeit schon jetzt noch besser zu organisieren und zu strukturieren, um möglichst viele Kräfte der Zivilgesellschaft in unsere Arbeit einzubinden.

Lassen Sie mich kurz ein Thema berühren, das mir besonders am Herzen liegt, das der Kultur. Kultur ist die gemeinsame Handlungsgrundlage zivilgesellschaftlichen Handelns, vorausgesetzt, dass man Kultur in ihrer weitesten Definition als Bekenntnis zu gemeinsamen Werten versteht. Zur Kultur gehören neben der Erhaltung von bestehenden Gütern eben auch Erziehung, Bildung, Wissenschaft und Forschung, aber auch jeder öffentliche Diskurs, der auf gemeinsamen Wertvorstellungen basiert. Kultur als Prozess lässt gleichzeitig Vielfalt und Identifikation zu. Ich schlage deshalb vor, dass sich der Konvent in einer der Arbeitsgruppen auch mit der Definition des Kulturbegriffs beschäftigt und den Artikel 151 des Vertrages entsprechend weiterentwickelt.

Wir sind weiters der Ansicht, dass der Grundsatz der Solidarität nicht nur zur Demokratie gehört, sondern auch der Schlüssel zivilgesellschaftlichen Handelns ist. Daher schlage ich vor, neben dem Prinzip der Subsidiarität und dem Prinzip der Verhältnismäßigkeit auch Solidarität als leitendes Prinzip explizit in den Vertragstext aufzunehmen.

Wie bereits klargestellt wurde, hat der Europäische Wirtschafts- und Sozialausschuss mit dem sozialen Dialog nichts zu tun. Er ist der Ort des zivilen Dialogs. Wir sind entschlossen, diesen zivilen Dialog auf europäischer Ebene zu fördern und zu seiner Strukturierung beizutragen. Dazu ist es aber unerlässlich, dass alle, die vom zivilen Dialog sprechen, das selbe meinen. Wir definieren den zivilen Dialog als öffentlichen, interaktiven Diskurs, in den auch normative Inhalte einfließen können. Wir brauchen diesen zivilen Dialog

nicht nur zur Schaffung einer europäischen Öffentlichkeit, als Grundlage einer europäischen Identität, sondern auch als transparentes, direktes und dauerhaftes Instrument der Beteiligung der Zivilgesellschaft.

Um diesen zivilen Dialog zu strukturieren, müssen bestimmte Vorfragen geklärt sein. Erstens: Am zivilen Dialog können nur Organisationen teilnehmen, die sowohl quantitativ als auch qualitativ repräsentativ sind, d.h., die neben einer möglichst umfassenden Vertretung der Betroffenen auch im Stande sind, aufgrund ihrer Organisation und Expertise substantiell zu diesem Dialog beizutragen.

Zweitens: Wir müssen unterscheiden zwischen Konsultation und Partizipation. Partizipation als Oberbegriff ist nicht nur Recht auf Anhörung, sondern darüber hinaus aktive Beteiligung am Meinungsbildungsprozess, der dem Legislativprozess vorausgeht.

Drittens: Wir müssen die verschiedenen Aspekte der Subsidiarität berücksichtigen. Subsidiarität umfasst eben nicht nur den vertikalen, territorialen, sondern auch den horizontalen, funktionalen Aspekt. Ich schlage vor, dass sich der Konvent mit dem Verfahren und den Inhalten des zivilen Dialogs auseinandersetzt und die Teilnahmebedingungen diskutiert. Ort der Entwicklung des zivilen Dialogs kann der Europäische Wirtschafts- und Sozialausschuss mit seinen vorhandenen Strukturen und Erfahrungen sein. Ich rege daher an, dass der Konvent eine Arbeitsgruppe "Ziviler Dialog" bildet. Ich bin sicher, dass die im Europäischen Wirtschafts- und Sozialausschuss eingerichtete Dialogrunde mit den Vertretern der Zivilgesellschaft, an der auch regelmäßig Präsident Dehaene teilnimmt, bereit und im Stande ist, einer solchen Arbeitsgruppe konstruktive Beiträge zu liefern.

1-051

NL

**Maij-Weggen (PE).** - Voorzitter, dank u wel dat u me nog de gelegenheid geeft om iets te zeggen. Ik wilde nog reageren op wat de vertegenwoordiger van het European Environmental Bureau heeft gezegd, namelijk dat het ontbreken van een hoofdartikel over dierenbescherming een hele lastige kwestie is. Ik wil dat graag onderstrepen. De Europese Unie maakt al sinds de jaren '80 dierenbeschermingswetgeving. We hebben importstops gekregen op ivoor, op zeehondenvellen, op walvisproducten, we hebben het transport van dieren geregeld, we hebben kalverboxen en legbatterijen afgeschaft en toch is er eigenlijk geen enkel artikel in de Verdragen dat ons toestemming geeft om dat te doen. Die wetgeving wordt altijd aangehaakt aan externe handel, aan landbouw of aan milieuwetgeving. Ik denk dat het juridisch gezien heel belangrijk is dat er een artikel komt dat echt op dierenbescherming gericht is. Daarmee zouden we heel veel burgers een plezier doen en bovendien zouden we daarmee de juridische correctheid van het werk van de Europese Commissie ondersteunen. Dus ik wil dat punt van de vertegenwoordiger van het European Environmental Bureau onderstrepen. Misschien zou het goed zijn als een van ons met zo'n voorstel kwam. Het is een kleinigheid maar het is wel heel nuttig en belangrijk. Veel burgers zullen het met dankbaarheid zien.

1-052

FR

**Le Président.** – Nous allons interrompre nos travaux. A six heures précises, nous les reprendrons avec l'audition du groupe universitaire, le laboratoire d'idées.

*(la réunion, suspendue à 17.38 h, est reprise à 18.10 h)*

1-053

DA

**Mindeord**

DE

**Nachruf**

EL

**Νεκρολογία**

EN

**Tribute**

ES

**Elogio póstumo**

FR

**Éloge funèbre**

IT

**Necrologia**

NL

**In memoriam**

PT

**Homenagem póstuma**

FI

**Muistopuhe**

SV

**Parentation**

1-054

FR

**PRÉSIDENCE DE Mr GISCARD D'ESTAING**

**Le Président.-** Je souhaiterais dire un mot sur le décès de Monsieur Pierre Werner, survenu aujourd'hui au Luxembourg. Monsieur Pierre Werner a été un homme d'état qui a joué un rôle très important dans la construction de l'Europe. Nous l'avons connu dès le départ lorsque le Luxembourg était pays fondateur de l'Union européenne. Il a été successivement et longuement, ministre des Finances, puis président du Conseil du Luxembourg. Lorsqu'on a entamé la première réflexion sur la possibilité d'une union monétaire européenne, ses collègues, ministres des Finances de l'Europe des six de l'époque, l'ont chargé de présenter un rapport sur la possibilité de réaliser une union monétaire. Ce rapport qui reste connu dans l'histoire communautaire sous le nom de rapport Werner, a posé de façon lointaine les bases de la culture de l'Union européenne. Plus particulièrement, il a fortement insisté sur la convergence nécessaire des situations économiques et des politiques économiques, comme condition du succès de l'Union monétaire. Monsieur Werner était un homme très respecté de ses collègues et très aimé pour sa tolérance, sa modération et son grand humanisme. C'est pour cela que je vous demanderai de bien vouloir respecter une minute de silence, en souvenir de ce grand homme européen.

*(Les membres de la Convention se lèvent et observent une minute de silence).*

1-055

FR

**Le Président.** – Nous reprenons nos travaux et c'est le Vice-Président Jean-Luc Dehaene qui reprend le fil conducteur de nos délibérations.

1-056

DA

**Den akademiske verden**

DE

**Academia**

EL

**Ακαδημία**

EN

**Academia**

ES

**Academia**

FR

**Academia**

IT

**Mondo accademico**

NL

**Academia**

PT

**Academia**

FI

**Tiedemaailma**

SV

**Den vetenskapliga världen**

1-057

FR

**PRÉSIDENCE DE Mr DEHAENE**

**Le Président.-** Comme je l'ai dit avant l'interruption, nous en sommes maintenant au troisième groupe de contact qui est celui des Universités et laboratoires d'idées, groupe qui a été présidé par mon collègue Giuliano Amato qui va d'ailleurs introduire le groupe avant que les portes-parole ne reçoivent la parole.

1-058

IT

**Amato (Vicepresidente).** - Presidente, colleghi, il gruppo che io ho cominciato a coordinare è un gruppo che ha caratteristiche peculiari, in parte diverse da quelle di altri gruppi. E', infatti, composto largamente da istituti universitari, centri di ricerca - quelli che chiamiamo *think tanks* - organizzazioni giovanili che si occupano prevalentemente, o quasi esclusivamente, di Europa, organizzazioni femminili e organismi scientifici. Nel suo insieme, perciò, il gruppo si rivolge alla Convenzione, non presentando le ragioni di un interesse sociale o collettivo specifico - l'ambiente, i diritti degli animali, l'agricoltura - ma facendo *lobby* per l'Europa: il suo interesse specifico prevalente è l'Europa, l'organizzazione dell'Europa, le Istituzioni europee, ciò che l'Europa dovrebbe fare.

E' un gruppo, dunque, particolarmente vicino al lavoro che la Convenzione sta facendo e interessato a contribuire ad ogni aspetto di questo lavoro. E' un vero peccato che non possano parlare tutti; è stato molto difficile scegliere quelli che potessero parlare. Si sa, il mondo dell'Accademia ha realizzato, ben prima che Ulrich Beck se ne accorgesse, la società degli individui, e gli individui, in genere, parlano ciascuno per sé: sono otto quindi quelli che parleranno per questo gruppo. Credo che abbiamo il *record* quanto a numero di partecipanti: è comunque un *record* e ne siamo orgogliosi. Spero che ciascuno sappia attenersi al suo tempo di parola di tre minuti. Comunque abbiamo programmato di vederci ancora: a tutti noi è piaciuto il primo incontro del gruppo di contatto. Contiamo di incontrarci ancora, e contiamo, con questo gruppo, di seguire i lavori della Convenzione attraverso i documenti di cui dispone e anche attraverso i documenti dei gruppi di lavoro della Convenzione stessa, al di là delle singole idee che il gruppo ha già cominciato a fornire, con particolare riguardo, naturalmente, ai temi dell'organizzazione, anche scientifica, che stavano a cuore ad alcuni dei partecipanti.

Voglio qui sottolineare, tra le diverse idee che già sono emerse, quella che ha trovato il consenso più ampio. Proprio per la peculiarità delle caratteristiche dei partecipanti a questo gruppo questi organismi sono ben consapevoli di non rappresentare interamente la società civile. Vorrei che tutti i partecipanti a questo nostro lavoro fossero consapevoli del fatto che la società civile è costituita da milioni e milioni di cittadini europei, che nessuna delle nostre organizzazioni in realtà riesce a rappresentare, e che il lavoro della Convenzione va a quei cittadini, e deve stabilire un contatto con quei cittadini. Come farlo? Questa è una domanda che il nostro gruppo si è posto. Organizzare, sia pure informalmente, un *referendum* tra i cittadini europei? I giovani hanno proposto: "Prepariamo un manifesto, un manifesto chiaro e semplice; facciamo valutare questo manifesto dai nostri cittadini". E' un'idea che la Convenzione dovrà valutare e che magari dovrà cercare di realizzare con i soldi della Commissione o del Parlamento o del Consiglio, dato che noi, Convenzione, abbiamo molte idee ma pochi soldi per realizzarle.

1-059

FR

**Louis (NGO-ACAD).** – Mon intention n'est pas de m'adresser à votre Convention pour exposer les objectifs et les travaux réalisés par Agora, un réseau créé en 2001, hors de tout esprit de chapelle ou de volonté impérialiste, à l'initiative du mouvement européen international afin de tenter d'assurer une réflexion en commun d'instituts, associations et réseaux de recherche en matière européenne. Je souhaite plutôt profiter de cette brève occasion pour tenter de traduire les sentiments et la volonté d'observateurs attentifs de la scène européenne à un moment capital de l'histoire de l'intégration. Nous ressentons tous l'importance exceptionnelle des défis auxquels l'Union et le monde sont confrontés, je ne vous ferai pas l'affront de penser qu'il est nécessaire de vous les rappeler.

Aujourd'hui, au sein de votre Convention, des choses impensables hier encore sont devenues possibles. Un momentum s'est créé. Soyez assurés que le monde académique qui n'a pas de revendication sectorielle à formuler, ainsi que l'a rappelé le Président Amato, appuie et soutient majoritairement la Convention dans la définition de solutions audacieuses. Agora a été de ceux qui ont plaidé pour un agenda ambitieux et pour une tâche de nature constitutionnelle. Il a été comblé sur ces deux points par la déclaration de Laeken.

Aujourd'hui comme hier, la responsabilité des universitaires est, d'une part, de poursuivre la recherche fondamentale et, d'autre part, de suivre, voire de précéder la réflexion qui est menée au sein des groupes de travail que vous avez créés. Il y a là des agendas certes incomplets mais à propos desquels existe un acquis considérable, et des juristes, des politologues et des économistes qui réfléchissent à la construction européenne. Nous sommes prêts à vous aider et nous souhaitons continuer à être effectivement consultés pour trouver des solutions adaptées à l'Europe unifiée, tout en préservant ce qui a fait le succès de l'intégration, ce que l'on appelle modestement l'acquis communautaire et les traits fondamentaux de son ordre juridique. Une certaine expertise s'est également développée dans le domaine de la restructuration et de la simplification des Traités, notamment à l'Institut universitaire européen de Florence. Celui-ci a décidé de poursuivre cette tâche, en particulier au sein du Centre Robert Schuman. A cet effet, je crois que l'occasion est bonne pour ajouter que le Centre Robert Schuman vient de créer une Chaire Pierre Werner sur l'Union Monétaire.

Les universitaires ont aussi une responsabilité fondamentale à l'égard de la société civile dans son ensemble. Ils doivent, dans des circonstances historiques, sortir de ce qu'on appelle souvent leur tour d'ivoire, pour contribuer à bâtir le consensus indispensable afin que cette volonté ambitieuse et légitime de doter l'Europe unifiée d'une Charte Constitutionnelle ou d'un Traité Constitutionnel efficace et démocratique soit couronnée de succès. Ce défi, qui est le vôtre, est aussi celui de la communauté académique.

1-060

FR

**Deloche-Gaudez (NGO-ACAD).** – Comme beaucoup d'entre vous ici, nous estimons que cette Convention est une chance pour l'Europe mais en même temps, nous ne pouvons nous empêcher d'être un peu inquiets. Tout d'abord, nous sommes inquiets car la tâche de la Convention est de produire un texte nouveau, de nature constitutionnelle, qui dessine une Union dans laquelle les Européens se reconnaissent. Or, après plusieurs mois de travaux, la Convention n'a pas encore produit de texte. Bien sûr, la complexité du chantier engagé peut l'expliquer mais, en même temps, la difficulté même de la tâche invite à ne pas trop repousser la phase de rédaction. Une autre source de préoccupation provient de ce que seule une minorité d'Européen connaît l'existence même de la Convention. C'est pourquoi nous aimerions attirer votre attention sur deux points.

Le premier point est l'importance décisive des groupes de travail au sein de la Convention. Compte tenu de la taille de votre assemblée, compte tenu de votre mandat extrêmement exigeant, compte tenu du choix de privilégier la recherche du consensus, la rédaction de projets de document final par les conventionnels eux-mêmes semble essentiellement pouvoir s'opérer via les groupes de travail. En effet, les groupes de travail permettent aux conventionnels, y compris aux représentants des pays candidats, de s'atteler à un travail de rédaction et de le faire en concertation régulière, notamment avec des représentants du monde académique, qui peuvent ainsi mettre leur expertise au service de la Convention, en particulier sur des points juridiques précis.

Le deuxième point concerne les relations entre la Convention et les Européens. On peut penser qu'il est dans l'intérêt même de la Convention de s'attacher le plus grand nombre possible d'Européens, ne serait-ce que pour renforcer la légitimité des résultats obtenus par rapport à la conférence intergouvernementale sensée y faire suite. Pour y arriver, je mentionnerai trois pistes possibles. Premièrement, comme évoqué au sein de notre groupe de travail, il s'agira d'utiliser des termes précis, clairs, simples, dès lors qu'il s'agit d'Europe, et certains représentants du monde académique sont prêts à participer à cet effort de simplification du vocabulaire. Deuxièmement, il s'agira d'appeler à privilégier l'approbation du texte fondateur résultant de ce processus par referendum dans les Etats Membres, et réfléchir à la question d'un referendum européen. En effet, on peut penser qu'il faut donner du pouvoir au citoyen européen, pour qu'il s'intéresse à la Convention, et dire dès à présent qu'il aura ce pouvoir. Et quel meilleur pouvoir que le vote qui, de surcroît, peut devenir le vecteur d'une identité européenne partagée. Troisièmement, il s'agira de davantage s'appuyer sur l'université qui représente tout de même quatorze millions d'étudiants, de jeunes qui vivront dans l'Europe de demain et qui peuvent être une force de mobilisation et de proposition formidables. En témoigne le succès d'un projet pédagogique inédit lancé par les départements Sciences Politiques l'an dernier, qui ont, à partir de nouveaux enseignements des étudiants de Sciences Politiques mais aussi des universités partenaires des départements Sciences Politiques en Europe, rédigé un manifeste pour l'Europe qu'ils ont adressé à la convention.

Monsieur le Président, Mesdames et Messieurs les Conventionnels, je voudrais conclure mon intervention en vous remerciant de nous écouter, en vous souhaitant sincèrement bonne chance et en espérant que nous, représentants du monde académique, experts comme étudiants, pourrions et saurons contribuer à votre aventure.

1-061

EN

**Hughes (NGO-ACAD).** – Mr President, I represent a Europe-wide network of think tanks called EPIN, the European Policy Institutes Network. We have 34 think tanks in all 28 EU Member States and applicant countries.

We have been meeting in Brussels monthly, having an ongoing dialogue with some members of the Convention and we hope to have an opportunity to have a dialogue with all members of the Convention at our network meetings over the coming years.

I would also like to mention another network, TEPSA, the Trans-European Policy Studies Association, which is also developing analysis to input to the Convention.

As you might imagine in a large group of think tanks, EPIN has no single, unique, uniform view on the future of Europe. I would like, therefore, to present some short comments on two areas drawn from our recent discussions.

First a few key points on democracy and institutions. We need to democratise the Commission. We do not believe there is adequate legitimacy at the moment. The election of the Commission President by the European Parliament or by national parliaments is the route forward.

Secondly, we agree that national parliaments should play a greater role and should be involved in controlling subsidiarity, possibly through a new committee within the Council. We find positive the idea, put forward by Michel Barnier, of national MPs attending the Council in legislative mode, together with their ministers.

On the controversial idea of a new President of the European Council, we have diverging views on this in our network. Some of us find it entirely negative and something that would upset the institutional balance, others stress the positive element of continuity and leadership. We all agree that we do not want to see a *directoire* developing in Europe.

We also look forward to the Convention, and not only the Council, putting forward its views on this.

Secondly, we must strengthen the Common Foreign and Security Policy, the question is how fast we can do this. First of all, even if we are not going to do this in the other pillars we must abolish the rotating presidency in the CFSP. We must strengthen the position of the High Representative and the coordination of that office with the Commission. More detailed strategic orientations are needed for the CFSP, and we must look at its budgetary provisions, which are currently extremely low, if we are serious about it. We must increase coordination across the different dimensions of EU international policy, some of us would go further and merge the three pillars.

In conclusion I would welcome the work and structure of the Convention and the opportunity to address you here today. We are ready to contribute our expertise to your work and to your working groups. In that regard I would make one call to the Convention: you are meeting here today in the open, in public, in consultation with us: we hope you will do the same with your working groups.

1-062

EN

**Crossick (NGO-ACAD).** – Mr President, in three minutes I cannot do justice to the extensive work which the European Policy Centre is carrying out on the Convention, but you would not want me to, it is all on our website and on display outside.

I wish to focus on one issue, the appointment of the President of the Commission: a point which was made by the preceding speaker and which I would like to develop further. We believe it essential that the Commission President has a democratic mandate. At the same time, we believe it essential that there should be a development of true European politics, as the Union progresses from a diplomatic towards a democratic polity. This belief is independent of reform of the presidency of the European Council or of the Council.

As the Seville discussions showed, the more you look at these presidencies, the more problems arise. We do not see the leadership of the Commission and the leadership of the European Council as an "either/or" battle. We need both strong European Council leadership and strong Commission leadership and therefore feel that both should be strengthened in the forthcoming ITC.

If we are to achieve political legitimacy for the European Union; if we are to persuade our citizens to buy into the process; the European Union must be politicised. We must have truly European political parties built on real policy alternatives. Voters must be given the choice between different visions of Europe and between different leaders and teams. This holds true whatever the issues being addressed. Our recommendation, therefore, is that European political groups nominate their candidates for the Commission presidency before the European Parliament elections, that Parliament elects the President from among those nominated and that the European Council confirms the appointment by qualified majority voting.

We understand the possible concern about the Commission being politicised. In our opinion, there is no other way to deliver both democracy and legitimacy. Although this procedure legally requires a treaty amendment, the system could in practice be introduced for the 2004 elections were the European Council and Parliament to agree.

I wish you every success in the critically important task that lies ahead of you.

1-063

FR

**Joannin (NGO-ACAD).** – Nous sommes ici finalement pour continuer cette formidable aventure qu'a lancée le président Robert Schuman le neuf mai mi neuf cent cinquante. Imaginer l'Europe du vingt et unième siècle, c'est bien sûr réussir l'élargissement mais c'est aussi répondre aux interrogations que formulent les Européens face aux nouveaux défis qui nous sont posés. C'est, enfin, donner un visage et des institutions à notre Europe. C'est la raison pour laquelle je souhaiterais que vous soyez le plus ambitieux possible. Offrez une vraie Constitution à l'Europe, un vrai texte fondateur qui à la fois rappelle les grands principes de civilisation que nous partageons, et permet de régler le fonctionnement harmonieux de l'Union. Il ne faut pas seulement un Traité de plus, qui ne susciterait que la molle adhésion des Européens mais une vraie Constitution qui déterminerait les compétences que l'Union doit absolument assumer et celles qui doivent être exercés au plus près des citoyens pas forcément par l'Etat, mais éventuellement par des collectivités encore plus proches d'eux.

En matière économique, on pourrait imaginer une Union qui se doterait de prérogatives essentielles à la préparation de l'avenir dans le domaine de l'utilisation des nouvelles technologies, de la recherche ou de la biotechnologie. En effet, il s'agit là de choses que les citoyens comprennent et désirent. Ils voient bien que l'Europe a du retard. Tout ce qui concerne le long terme doit être partagé au niveau de l'Union et confié à ses soins. Et pour cela, l'Europe doit disposer d'un budget beaucoup plus important. C'est alors seulement que pourront être traités les grandes questions sociales.

En matière culturelle, il faut favoriser l'Europe des réseaux, faire que les Européens se comprennent mieux et se connaissent mieux entre eux, et surtout avoir la capacité de lancer, dans la durée, une vraie politique culturelle d'aide et de soutien à la création. En effet, l'Europe est avant tout un continent de cultures.

Enfin, dans le domaine politique, quel est le projet de l'Europe? Quels sont les objectifs que nous poursuivons et qui nous imposent de nous unir? Comme au premier jour, la paix et la sécurité sont gages de la prospérité. Il faut assurer en outre la sécurité extérieure et intérieure de l'Union. Selon moi, les gens sont prêts désormais à l'accepter mais il convient d'aller plus loin que ce qu'on a fait jusqu'à présent. En effet, nous n'avons pas peur de dire que nous souhaitons une Europe fédérale, dont le principe est de permettre à la diversité de s'unir pour obtenir l'efficacité. Nous souhaitons un Parlement plus proche de ses électeurs, une deuxième chambre qui représente les Etats, quelle qu'en soit la composition, et un vrai gouvernement, responsable et accessible.

Mesdames et Messieurs les Conventionnels, vous avez reçu un très large mandat. Ne décevez pas les Européens. Il faut être très ambitieux. Les véritables novations constitutionnelles ont toujours été le fruit du travail inspiré et volontaire d'hommes et de femmes qui se sont placés au-dessus des simples contingences politiques du moment. Les Américains de Philadelphie n'ont pas hésité à le faire, et personne ne le leur a reproché. Les citoyens européens sont beaucoup plus favorables à la construction européenne qu'on ne l'avoue généralement. Ils veulent plus d'Europe, et sont plus Européens que leurs dirigeants. Ils savent que l'échelon communautaire est bien plus approprié que celui des Etats pour mener à bien certaines tâches. Alors dans votre ambition et vos audaces, Messieurs les Conventionnels ou Mesdames les Conventionnelles, vous ne devez penser qu'au jugement de l'histoire. Nous sommes avec vous et à vos côtés dans cette noble mission.

1-064

EN

**Rodota (NGO-ACAD).** – Mr President, as Director-General of the European Space Agency, I am representing EIROForum (European Intergovernmental Research Organisations Forum), the association of European intergovernmental research organisations set up in line with the "European Research Area" initiative launched by the Commissioner responsible for research, Philippe Busquin. It comprises seven institutions, each of which has its own research centre, or places first class facilities at the disposal of European scientists.

These institutions are: ESA (European Space Agency), CERN (European Organisation for Nuclear Research), ESO (European Southern Observatory), EMBL (European Molecular Biology Laboratory), EFDA (European Fusion Development Agreement), ESRF (European Synchrotron Radiation Facility) and finally ILL (Institute Laue-Langevin).

Each of the EIROForum member organisations, by European and global standards, is indisputably a centre of excellence in its own field.

EIROForum seeks to mobilise the collective experience of its member organisations in fundamental research and management of large international projects for the benefit of European research, doing so in cooperation with industry. In addressing the Convention, EIROForum confirms its complete support of the Presidency Conclusions of the Barcelona European Council, which set an objective to raise expenditure on research to 3% of the GDP of all Member States by 2010.

EIROForum trusts that the EU will confirm its commitment to European scientific research in particular, by broadening the scope of the relevant title, especially with regard to the objectives defined in Article 163.

EIROForum proposes to establish permanent relations between the Community and each of the EIROForum member organisations so that the Community will be able to take part in preparation of its members' activities which have a bearing on Community policies.

EIROForum requests, on behalf of its member organisations, a right of direct access to the institutions of the European Union so that they may support the adoption of legislative or regulatory measures, consistent with the policies of the EU, which would be useful or necessary to implement initiatives that such organisations may wish to pursue.

1-065

ES

**Freixes (NGO-ACAD).** - Señor Presidente, señoras y señores, la Red Ciudadanas de Europa acoge con gran satisfacción e interés la oportunidad de participar en la consulta de la Convención Europea. La Red ha advertido en diferentes ocasiones del déficit democrático que supone la ausencia de equilibrio de género en la composición de la Convención. Desde la Red consideramos que, en este proceso tan importante para el futuro de una Europa ampliada, no se pueden realizar sólo cambios formales en los Tratados para definir mejor las competencias y adaptar las instituciones a las nuevas necesidades, sino que se tienen que sentar las bases para una Europa más fuerte, más democrática, más libre y con una calidad de género adecuada.

Para ello, proponemos que el *mainstreaming* de género o transversalidad de la igualdad, reconocido ya en los artículos 2 y 3 del Tratado de la Comunidad Europea, dentro del respeto al acervo comunitario, esté presente en todas las políticas de la Unión, como fin y como medio. La Red exhorta a la Convención a que adopte un enfoque de *mainstreaming* de género en sus propios trabajos y a que introduzca la evaluación del impacto de género en sus decisiones.

En aplicación del acervo comunitario sobre igualdad de oportunidades, las nuevas instituciones de la Unión han de incorporar el principio de la representación equilibrada en los procesos de toma de decisiones. Para ello, el Parlamento Europeo debe ser elegido mediante un sistema electoral que incorpore la representación equilibrada como uno de los principios fundamentales a respetar en su configuración.

La Comisión Europea debería cambiar la ubicación de los órganos responsables de la política de igualdad creando una Dirección General de Igualdad integrada directamente en la Presidencia de la Comisión y transversal al resto de direcciones generales. Y la institución del Defensor del Pueblo debería ser reforzada con mejores instrumentos de protección de los derechos, nombrándose un defensor o defensora adjunto especializado en género.

Las políticas de la Unión también deben incorporar la necesaria calidad de género en sus contenidos. Para ello es necesario que se introduzca en el Tratado constitucional un título específico sobre la igualdad de oportunidades y, además, sería también necesario crear, con base constitucional, un observatorio de género como órgano independiente para hacer el seguimiento de las políticas de igualdad en el ámbito de la Unión Europea.

Por otra parte, consideramos que la Carta de los Derechos Fundamentales debe ser incluida en los textos constitucionales de la Unión, con respeto total del acervo comunitario y de la jurisprudencia del Tribunal de Justicia en materia de igualdad de oportunidades.

Por último, como fundadoras e integrantes de la Red Euromed de Mujeres, consideramos que la Unión debe condicionar sus relaciones con terceros países al respeto de los derechos fundamentales, incluyendo los derechos de las mujeres como parte indivisible de los derechos humanos universales. Europa ha de constituir un referente de calidad política en el orden internacional. El proceso de constitucionalización está siendo seguido con gran atención tanto en los países candidatos a la ampliación como en otros continentes, que esperan encontrar en el ejemplo europeo los modelos de legitimidad, igualdad, libertad, justicia social y calidad de género. Instamos a la Convención a que no defraude las expectativas abiertas por este proceso.

1-066

EN

**Lorant (NGO-ACAD).** – Mr President, the candidate countries and their one hundred million citizens look at membership of the EU with hopes and with fears. With hopes that they will be part of a strong, democratic and developing community that helps the development of their nations. With fears that their economies will have to face the competition of much stronger forces and their sovereignty and national identity might be eroded.

To find a political and economic solution that is advantageous for the west and helps the development of the east is a great challenge for the Convention. To unite the technological knowledge of the west with the natural and human resources of the east provides us with good possibilities for cooperation.

The common values we share might be the solid basis for this cooperation. According to a poll carried out by Hungarian civil society organisations and a think tank named ECOSTAT, the Hungarian civil society groups share almost the same values as their western counterparts.

For instance, the great majority of these organisations in the west and the east believe that the new Europe should be built on the principles of democracy and solidarity. Instead of the free market economy, a socially responsible market economy would be in



concordance with European values and should be the basis for a common European identity.

These civil organisations are aware that a common Europe has the capacity to defend the social market economy as its own model of development against the uncontrollable forces of globalisation and can present it to the less developed countries as a successful way of pursuing lasting progress.

It turned out from our poll, and it was somewhat of a surprise, that two-thirds of the respondents were ready to sacrifice 1% to 5% of their income to help the progress of the less developed nations of south-east Europe. I do not believe that the feeling of solidarity is weaker in the west. To create pan-European solidarity, we need common goals, common visions that touch the heart of the people, that are worth fighting for.

Many say, and this also came out of our poll, that Europeans need a single voice. In order to have a single voice, we first need a common awareness. To reach a common awareness, we need a common broadcasting system without the distortions created by profit-seeking interests. We need some kind of "Voice of Europe" which, on the basis of the values we share, gives us information about each other's lives, about our joy and sadness, about our hopes and fears.

Half a century ago, Jean Monnet and Robert Schuman were able to show a road, a programme for peaceful cooperation between nations that were enemies a few years earlier. This was an innovation.

After 50 years of separation, bringing together nations from the two parts of Europe now requires innovation, a new approach that ensures another 50 years of peace and prosperity.

1-067

FR

**Le Président.** – Ceci termine les interventions pour ce groupe. J'ai cinq inscriptions de membres de la Convention ainsi que deux cartes bleues.

1-068

EN

**Attalidis (Gouv.-CY).** – Mr President, I would say that in order for this Convention to be successful it has to do many things, and these surely include the two following elements, in which universities and think tanks can have an important contribution.

The first is that the Convention has to bear clearly in mind the wishes of European citizens. Many in the Convention have spoken of this need, to bear in mind what European citizens think about the European Union, what they are satisfied and dissatisfied about and what their concerns for the future are. Academic institutions and think tanks have contributed to our knowledge about this, and it would be very useful if we had their scientific input on a continuing basis about these issues. Some in the Convention have mentioned a referendum, but there are also other less dramatic but scientific methods which could be used.

Another prerequisite for the success of the Convention is the generation of ideas which contribute to better functioning of the institutions, greater effectiveness, greater democracy and legitimacy of the European Union.

Again, university institutions and think tanks have a great deal to contribute. We have heard many useful suggestions from the eight representatives here this evening. It would be useful if we could find a way for the continuing association of universities and think tanks with the Convention. Their continuing contribution could be very useful.

1-069

EN

**Duff (PE).** – Mr President, it is a curious feature of European integration that many of those who practise it really wish to be scholars, and many of those who study it actually wish to practise it. The result of that cross-dressing makes the academic study of European integration extremely sharp and rich. If there is a central intellectual problem that we face, and I would appeal for assistance from my scholar friends here, that problem is to define precisely where the executive authority lies inside the Union and to clarify precisely its dual nature. One subject which should be more of a focus for enquiry than it is at present is the strange creature of the European Council, which has become slightly stranger since the Seville Summit.

I would ask that what we say and propose be subjected to strong criticism. Our contributions require strong critique so that we are forced to think and speak more clearly.

Finally, please stimulate the debate within universities and call on us to assist you in fomenting a clear, critical appraisal of all the issues in front of us.

1-070

EN

**Hübner (Gouv.-PL).** – Mr President, my brief comments might be slightly biased by the fact that I do not only represent the government of Poland but also come from the academic community. That, however, is not the only reason I highly value the role of the academic community in shaping European integration and the future of Europe.

We had started to work hand in hand with the academic community on the future of Europe long before the Convention was launched. Our transition, our association process, our accession process, and now our Convention process are living examples of close cooperation, shared responsibility and the shared role between the political and academic communities. What academia brings are, firstly, fresh and visionary ideas, which are currently lacking. It also puts an end to political correctness - of which there is too much at the moment. Academia also gives us the chance to think the unthinkable and then to make it happen.

My main message today, however, would be that the academic community is not only an expert, it is not only a think tank. It is also an essential educator and its role, therefore, is also to present the European project to young European citizens in such a way that they do not see it as cast in stone by us, but rather as a living project. It is also important that they see the reformed European Union as a project which they will take over from us, not just to implement but also to continue.

1-071

IT

**Muscardini (PE).** - Signor Presidente, il mondo accademico dalla sua nascita ha rappresentato la cultura nel suo aspetto più ampio, e oggi la cultura europea non è la somma pedissequa delle culture e delle tradizioni nazionali ma l'insieme di queste culture che contribuiscono a mettere a confronto esperienze e speranze e costituiscono quel valore aggiunto che è e sarà la cultura europea di questo terzo millennio. Per questo motivo riteniamo fondamentale che il rapporto tra Istituzioni europee ed ambienti accademici diventi sempre più forte e coordinato. Il mondo della ricerca lamenta che a questo settore l'Europa non abbia dato sufficiente attenzione politica ed economica e anche questo è un problema che la Convenzione deve affrontare. La Convenzione che definirà, per quanto le compete, i nuovi compiti per le Istituzioni europee e la nuova Europa che designerà il futuro di milioni di cittadini che chiedono più informazione, più consultazione e confronto, maggiore partecipazione, dovrà affrontare e risolvere il problema di dare una maggiore attenzione alla ricerca scientifica, la quale, a sua volta, dovrà rispondere a esigenze etiche: la scienza non può stravolgere le leggi di natura al punto da creare forme di vita diverse da quelle esistenti.

La nuova Europa dovrà avere un rapporto istituzionale con il mondo accademico affinché la ricerca e la conoscenza, che nelle loro forme più variegata sono indiscutibile mezzo di unione e comprensione reciproca, abbiano la stessa attenzione che dedichiamo all'economia e alla finanza. La cultura della politica e la politica della cultura, dunque, per ridare fiducia ai giovani: il loro distacco dalla politica, infatti, è il segno più evidente del distacco della politica dalla società. Con un rapporto più stretto tra Europa e università, tra Istituzioni europee e centri di elaborazione del pensiero, di analisi della realtà, di studio del futuro, potremo ridare segnali chiari e progetti attuabili ai cittadini, sia dell'Unione sia dei paesi ai quali ci rivolgiamo, per contribuire a migliorare le condizioni di vita e le condizioni sociali.

1-072

EN

**Serracino-Ingloft (Gouv.-MT).** – Mr President, academics are often accused of narcissism, but I do not think that today's speakers have displayed too pronounced a tendency towards self-contemplation. Yet their specific role in the governance of Europe surely deserves a lot more attention than it has received. We are now recognising that there is a very special role to be fulfilled by wise men in the variable workings of democracy. Indeed, a role similar to that of the elders in kinship-based societies is now appearing to be taken up by think tanks. Many democracies, such as the United Kingdom, have institutions like the House of Lords which are now almost exclusively restricted to fulfilling this function. Many other democracies have sought to give places in their senates and other upper chambers to experts, in virtue of their expertise.

In the Working Group on Subsidiarity, to which I belong, we call upon experts to advise us. In the Convention as a whole we have not yet given sufficient attention to the best way of integrating experts into the European political network.

Our best academics and think tanks have chosen not to highlight self-description in their contribution, rather, they have exemplified what they can do by their contributions. It may have been noticed that, on behalf of the Government of Malta, I have been modestly promoting here the model of Network Europe.

1-073

FR

**Duhamel (PE).** – Merci Monsieur le Président, et surtout merci à mes amis universitaires d'avoir ramené un peu de passion dans nos débats. Très franchement, la jeunesse de Jean-Victor Louis fait plaisir à entendre, sans compter Florence Deloche, Stanley Crossick, Pascal Joannin etc. Je crois que deux mille trois peut être l'année de toutes les espérances, avec la réunification de l'Europe et avec, je l'espère, le Traité constitutionnel que nous proposerons. Mais deux mille quatre risque d'être l'année de tous les dangers parce que,

forcément, l'un ou l'autre de ces thèmes seront soumis dans beaucoup de pays à référendum, et cela sera une nouvelle occasion pour les populistes de se soulever une fois de plus contre l'Europe. Afin d'éviter cela, nous avons besoin de nos amis universitaires. Les universitaires sont les professeurs, les professeurs sont les étudiants, les étudiants sont les jeunes. Ce sont ceux qui veulent l'Europe et ce sont ceux pour lesquels nous faisons l'Europe. Par conséquent, je propose que ce groupe de contact continue à travailler, se mette en relation avec l'Institut universitaire européen de Florence afin de lui demander de nous préparer des documents techniques utiles notamment sur la simplification, le Président de notre Convention insiste là-dessus à juste titre. Nous lui demanderons également des propositions terminologiques et des propositions d'éléments de Traité non plus à droit constant mais en fonction de l'évolution de travaux de la convention. Ce serait une manière de continuer avec eux les grandes batailles de demain. Merci.

1-074

ES

**Carnero González (PE).** - Señor Presidente, la igualdad entre el hombre y la mujer es efectivamente, y al mismo tiempo, un principio, un objetivo y una misión de la Unión Europea. Por eso, quiero subrayar la importancia de las palabras pronunciadas por D<sup>a</sup>. Teresa Freixes, en nombre de la Red Ciudadanas de Europa, exigiendo dos cosas esencialmente a nuestro trabajo. La primera, que en la propuesta de constitución europea que hagamos se incluya una base jurídica que haga de la política en favor de la plena igualdad entre el hombre y la mujer algo presente y primordial en todas las actuaciones de la Unión. Y la segunda cuestión, que los órganos de la Unión estén constituidos paritariamente: 50% mujeres, 50% hombres.

Si ese mensaje se transmite en nuestra propuesta constitucional, estoy seguro que, desde luego, ese 51% de europeas que esperan algo de nuestros trabajos van a apoyarnos.

1-075

IT

**Spini (Parl.-IT).** - Signor Presidente, vorrei esprimere anch'io tutto il mio apprezzamento per questo gruppo di contatto, per il lavoro fatto dal Vicepresidente Amato e dagli altri professori che sono intervenuti. Oggi il signor Haider parla della nostra Convenzione, su un giornale, in questi termini: "La Convenzione europea mi sembra una terapia occupazionale per politici disoccupati". Be', se non altro, diamo occupazione anche a un po' di accademici e quindi ci possiamo consolare.

Mi limiterò a tre soli punti: sul *referendum* io sono favorevole, però lo vedrei dopo la Conferenza intergovernativa, perché altrimenti rischierebbe di essere un elemento di disturbo, dato che dobbiamo mandare alla Conferenza intergovernativa un testo forte. Metterei quindi la Conferenza intergovernativa fra la nostra deliberazione e il *referendum*. Quale secondo punto, sono molto favorevole al manifesto diretto potenzialmente ai quattordici milioni di studenti universitari europei, che sono la classe dirigente di domani. Questo sarebbe un punto molto importante. Il resto lo lascio alla prossima domanda.

1-076

EN

**Kirkhope (PE).** – Mr President, reference was made earlier to academics simplifying matters. My experience of academics over the years has shown that this has not always been their major priority, but I welcome that. I believe that their work is complementary to those of us who are politicians and whose job it is to simplify matters for those we hope will vote for us.

I am looking optimistically at the work of the academics and I hope we will continue to use them to bring about some objectivity from time to time, some innovation and indeed some vision. I have not heard too much of that today, but I am hopeful that if we continue to have them on board in a complementary way, the Convention will be very well served by their contribution. I therefore support the calls for academics to remain with us in some capacity, but maintain that we should use them in the way that academics have always been used: for those roles that I have mentioned.

1-077

FR

**Giscard d'Estaing (Président).** – Chers collègues, j'ai levé mon carton bleu parce que voulais dire deux choses à Madame Gaudes à la suite de son intervention. Tout d'abord, elle a, en effet, publié une étude très intéressante sur le fonctionnement de la Convention précédente, qui était celle présidée par le Président Roman Herzog, laquelle a abouti à la Charte des Droits Fondamentaux. Je l'ai étudiée avant que nous débutions nos propres travaux afin de voir dans quelle mesure il y avait analogie et dans quelle mesure nous pouvions utiliser la même méthode. La différence, et Monsieur Vitorino le sait, c'est qu'il y avait un seul sujet, et qu'en réalité il y avait déjà des textes écrits et qu'il fallait donc faire la synthèse ou trouver les éléments communs de ces textes écrits. Dans la présente Convention, nous avons beaucoup de sujets. En outre, il va falloir inventer ou créer sur certains points des textes nouveaux. Nous ne pouvions donc pas prendre la même méthode. Pensez, par exemple, qu'à l'heure actuelle, nous n'avons pas encore parlé de politique internationale ni de politique de défense. Imaginez qu'il y a un mois et demi ou deux mois le bureau ait proposé un texte à la Convention. La convention se serait révoltée, et ce à juste titre. Notre méthode est l'itineration, c'est à dire que nous avançons bloc par bloc. Nous étudions des sujets et lorsque nous voyons que nous ne les connaissons pas suffisamment, nous créons des groupes de

travail jusqu'à ce que nous ayons les éléments qui nous permette de construire la pyramide. Mais la pyramide, Madame Gaudez, nous réussirons à la construire. Ensuite, vous avez raison lorsque vous parlez d'absence de notoriété ou de communication. C'est un problème de société médiatique. Nos travaux sont un peu arides, à moins que nous organisions des séances d'affrontement au sein de la Convention. Si c'était utile, certains des Conventionnels s'y prêteraient volontiers d'ailleurs. Toutefois, quand nous formulerons des propositions, il est probable que le débat sera plus communicant que cette phase qui est une phase d'écoute. Mais cette phase d'écoute, et vous, membres de la société académique européenne, en êtes tous témoins, nous la menons avec le plus grand soin, la plus grande attention et le plus grand respect possible.

1-078

EN

**Birzniece (Parl.-LV).** – Mr President, this is how we in Latvia see the national debate on the future of Europe: "all year round I gather songs waiting for midsummer night; midsummer night is here at last, and it is time to sing all the songs!" This is one of the folk songs sung by Latvians around the world last night and this morning. Today is the most popular Latvian holiday: the summer solstice, midsummer night. The sun has reached its highest point, and we all participate in the annual wedding of the sky father and earth mother.

But how does this legend from south western Latvia relate to Latvia's national debate about the future of Europe? Regardless of the forum for this national debate in Latvia - it might involve casual debates about Latvia and the EU by two people at the local public house or at the dinner table - which is formally organised through the National Convention, the most common topic and issue discussed is the impact of the EU on the Latvian national identity.

The Latvian Government and the NGO European movement in Latvia organised and held their first meeting of the Latvian National Convention on the future EU on 9 May, Europe Day. This meeting in Riga was co-chaired by the prime minister and the president of the European movement in Latvia and was broadcast live on Latvian state radio, with over 200 participants from different social groups and regions of Latvia attending.

While the Convention is focusing on the future EU in five, ten or 20 years from today, most of the Latvian public is concerned about debating the immediate future relations between Latvia and the EU, and especially the potential EU Member States. The first official meeting of the National Convention in Latvia became a discussion about the concerns, benefits and drawbacks of EU membership for Latvia.

Currently the Latvian National Convention is creating six working groups to parallel the existing working groups of the EU Convention. We are looking for the mythical "blooming fern" at midsummer night, and we hope that this will be a valuable asset for the future of the EU.

1-079

DA

**Borgere og institutioner**

DE

**Bürger und Institutionen**

EL

**Πολίτες και Θεσμικά Όργανα**

EN

**Citizens and Institutions**

ES

**Ciudadanos e instituciones**

FR

**Citoyens et Institutions**

IT

**Cittadini e istituzioni**

NL

**Burgers en instellingen**

PT

**Cidadãos e Instituições**

FI

**Kansalaiset ja toimielimet**

SV

**Medborgarna och institutionerna**

1-080

FR

**Le Président.** – Nous en arrivons au dernier groupe pour ce soir. Ce dernier a été constitué en plus de ce que le Président m'avait proposé à l'origine. C'est un groupe qui s'est surtout occupé de la participation des citoyens dans les institutions et que j'ai moi-même présidé. Nous avons eu beaucoup de participants et ils se sont surtout groupés autour de suggestions concernant les institutions d'une part et concernant la citoyenneté et la démocratie participative d'autre part. Vous pourrez prendre connaissance de leurs suggestions dans la note de synthèse qui vous a été remise. Les cinq porte-parole sont répartis entre d'une part, ceux qui mettront plus l'accent sur la problématique des institutions et d'autre part, ceux qui mettront plus l'accent sur la participation du citoyen.

1-081

FR

**Herman (NGO-CITI/INST).** – Président, Mesdames et Messieurs conventionnels, cet après-midi, vous avez longuement entendu divers représentants de la société civile. Ils ont exposé ce qu'ils attendaient de l'Europe. Ces attentes sont nombreuses et pressantes. Nous partageons la plupart d'entre elles mais la douzaine de mouvements européens, couvrant pratiquement tous les pays, au nom desquels je m'adresse à vous, sont avant tout préoccupés par la capacité des institutions à réaliser ces attentes. En effet, rien ne serait plus néfaste, et pour l'Europe et pour la démocratie, qu'une proclamation répétée d'ambitions élevées, sans réalisation concrète. Si le triangle institutionnel Commission, Parlement, Conseil a pu, dans sa configuration actuelle, réaliser l'Union monétaire, l'Union douanière, le marché intérieur et, finalement, l'Union monétaire, c'est qu'il s'agissait avant tout d'établir des règles communes, c'est-à-dire faire oeuvre législative ou réglementaire. Avec l'Union monétaire et surtout l'Union politique et ses ambitions internationales, nous aurons beaucoup plus besoin d'actions que de législations. C'est pourquoi il nous faut renforcer la fonction exécutive de cet ensemble. En d'autres termes, il faut à l'Europe un gouvernement.

Les citoyens en expriment l'aspiration, beaucoup plus que leurs dirigeants. Ce gouvernement ne pourra jamais être le Conseil, et ce pour quatre raisons très simples. Premièrement, gouverner une des plus grandes puissances commerciales et financières du monde est devenu aujourd'hui une fonction à temps plein qui ne peut plus être exercée à titre subsidiaire quelques heures par mois par des personnes totalement absorbées par la gestion de leur pays. Deuxièmement, les membres du Conseil sont élus ou désignés pour défendre l'intérêt national et non l'intérêt européen. Ainsi, ils n'hésitent jamais à sacrifier celui-ci au profit de celui-là et ils se chargent d'en faire la démonstration tous les jours, et pas plus tard que ce week-end, à Séville. Troisièmement, responsables devant leur Parlement national, ils ne seront jamais sanctionnés pour n'avoir pas bien servis l'intérêt commun. Ils n'ont aucun compte à rendre devant les représentants élus des citoyens européens. En effet, en matière européenne, ils sont démocratiquement irresponsables. Quatrièmement, bien que composé dans chacun de leur pays de personnes très fortes, le Conseil est la plus faible des institutions car divisé sur la plupart des questions. Un attelage composé de chevaux vigoureux mais tirant dans des directions opposées, nous mènera beaucoup moins loin qu'un attelage de rossinantes faméliques tirant dans la même direction. Parce qu'elle est juridiquement indépendante vis-à-vis des gouvernements et politiquement responsable devant le Parlement qui peut la censurer, la Commission a pour vocation de devenir le gouvernement de l'Europe. Mais pour pouvoir rester efficace et continuer à voter pour décider, le collège ne devrait pas compter plus de membres qu'il n'y a de portefeuilles à pourvoir, c'est-à-dire, entre douze et quinze maximum. Un système de rotation donnant à chaque Etat membre un droit égal à proposer un commissaire, devrait permettre de respecter le principe de l'égalité des Etats. La légitimité de cet exécutif, serait encore renforcée par l'élection de son Président par le Parlement européen qui, pour cette occasion, et dans un premier temps, fonctionnerait comme un collège de grands électeurs. Ultérieurement, on pourrait envisager une élection directe.

En ce qui concerne la fonction législative, il convient de généraliser la co-décision Parlement - Conseil. Celui-ci votant toujours à la double majorité, majorité des Etats, à condition qu'il représente la majorité des citoyens. C'est clair, tout le monde peut comprendre ça mais ce n'est pas le système actuel. En ce qui concerne la répartition des compétences, nous nous rangeons derrière le rapport Lamassoure et pour ce qui est de la politique extérieure, derrière les propositions de la Commission. Pour la simplification et surtout la lisibilité du système, il convient de mettre fin à la coexistence des trois piliers avec pour seule dérogation les problèmes de défense militaire où la méthode intergouvernementale et la collaboration renforcée resteront de mise encore un certain temps. Dès sa création, la CEE disposait d'une personnalité juridique au plan international. Il serait incroyable que l'Union, qui était supposée faire accomplir

à l'Europe un pas en avant dans l'intégration, en soit privée, ce qui l'empêche d'agir modu proprio dans tous les domaines du second et du troisième pilier, dès qu'il s'agit de relations avec les tiers. Il convient également de revoir la procédure de modification du Traité constitutionnel. En bonne démocratie, il est impensable, voire insupportable que la volonté des représentants de trois cent ou quatre cent millions d'habitants puisse être tenue en échec par un ou deux pays qui représenteraient moins d'un million d'habitants. A la question de savoir s'il convient de faire ratifier par voix de référendum le résultat des travaux de la Convention, les mouvements que je représente se montrent perplexes. Toutefois, tous sont d'accord pour que l'Europe favorise, par tous les moyens, non seulement la consultation, mais aussi l'implication des citoyens et des représentants de la société civile dans la formulation des normes et des décisions européennes.

1-082

EN

**Weston (NGO-CITI/INST).** – Mr President, I speak on behalf of the Youth Contact Group on the Convention. This is a platform which brings together all the major European youth transnational political parties plus a number of other young organisations from across the European continent. These organisations represent millions of young people across the continent, all members of the European Youth Forum.

Involving young people in the construction of the future of Europe was one of the specific goals of the Laeken Declaration. Young people are not only important for Europeans' future, but they have an essential role to play in the debates of today. Youth organisations, active at the local, regional and national levels, can play an important role in stimulating debate and in promoting the concept of European citizenship.

Youth organisations are often uniquely able to reach and represent those from the most marginalised and excluded groups. They have also been at the forefront of the enlargement process, being among the first to integrate members from outside European Union Member States. They were among the first organisations to recognise the appeal of the European ideal to young people in these countries.

It is often said that young people are not interested in politics. We do not believe this is true. This year on 9 May, Europe Day, hundreds of young people in hundreds of cities around the continent celebrated the European ideal. This clearly shows that young people are interested in Europe's future.

This common European future cannot be based on secretive horse-trading if it is to attract the loyalty and affection of its young citizens. It cannot be a Europe which substitutes diplomatic talking shops for genuine democratic accountability. It must be a Europe which offers a vision of a united and democratic future, one which offers accessible government to its citizens and has the instruments and legitimacy to meet their expectations.

These goals can only be achieved if the Convention rises to the challenge facing it today and drafts a constitution with our common European rights and values at its heart. This constitution should define the fundamental rights of EU citizens, the distribution of competences between the European and national levels and the role and powers of the European institutions. We believe that only a federal constitution can reconcile the need for effective government with protecting the fundamental principles of democracy, subsidiarity and respect for diversity. The Charter of Fundamental Rights must lie at the centre of this constitution. Effective and democratic governance also requires simplified and accountable decision-making. The exclusion of Parliament from areas of European policy-making and the Council's law-making behind closed doors can have no place in a democratic European Union.

Instead, a reformed Council representing the Member States should act in co-decision with the Parliament in all areas. Lastly, a strong Commission able to defend the European interest and accountable to the European Parliament must become the executive of the European Union.

These reforms will provide the European Union with the basic tools of democracy and will enable it to deal effectively with the challenges of today and the opportunities of tomorrow. If they are to seize these opportunities, young people and youth organisations need support. Youth work has a huge importance in engaging young citizens and in building European awareness.

The future constitution should therefore include an article which gives a strong legal basis to European Union measures in the field of youth work, contributing to bringing Europe closer to its young citizens. The Europe that we are building today should not only be a Europe of the elite, of specialists and think tanks and bureaucrats and distant institutions, Europe must have something to offer its young citizens - not only economic opportunities and a chance for greater prosperity but hope and inspiration, a common vision of a Europe united according to the rule of law which can deliver peace and stability and can protect our shared values.

The beginning of European integration in the 1950's offered the young people of six countries this hope. It has given hope to generations of young people for a better future. It is the responsibility of the Convention to ensure that the European Union, for which it is laying the foundations today, can offer the same assurance to all the young European people of the future. Do not let us down!

*(Applause)*

1-083

EN

**Roffiaen (NGO-CITI/INST).** – Mr President, I speak on behalf of the Contact Group Citizens and Institutions, rather than my own organisation. I will not list our group members because the problem of the representativeness of NGOs cannot be limited to the number of their members. We sincerely hope that the dialogue between civil society and the Convention will be a model for relations between civil society and all the European institutions. Above all, it should be a real dialogue, which means that the major proposals presented during these two days should be discussed in the forthcoming plenary sessions of the Convention and/or by the working groups.

As regards the text itself, we expect a real proposal for a constitution and not only a reorganisation or simplification of the existing Treaties.

I will summarise our main proposals in three points. The promotion of a representative, participatory democracy based on parity; the need to found a new European social contract; and the need to submit the future constitution to a European referendum.

The first objective identified by the Laeken Declaration is to bring the institutions closer to citizens, increasing in particular the democratic legitimacy and the transparency of the institutions. This legitimacy can only derive from a representative, participatory democracy based on parity. I will not speak about parity because others are dealing with this topic. As regards representative democracy, I will stress three points: the increase in the European Parliament's powers, the reinforcement of the accountability of the Commission and the development of the majority rule as regards the Council's decisions.

However, a strong democracy today cannot only be representative, it also needs to be participatory. While political participation is decreasing, the active participation of citizens in civil society is increasing. This phenomenon cannot be ignored. The role of civil society, as a voluntary association advocating grass root initiatives and so on, in European policy-making must be redefined according to the principle of horizontal subsidiarity. This principle refers to the relationship between the members of civil society and the European Union, just as the principle of vertical subsidiarity relates to the relationship between the Member States and the European institutions. It means that the initiative of citizens in the general interest must be supported, as well as partnership between civil society and institutions. It also means that citizens must be involved at each step of the policy-making process, like agenda setting, policy planning and decision-making, implementation of policies and the evaluation of the result of these policies.

As regards a social contract, the fulfilment of several objectives of the EU, such as economic and social progress, high levels of employment and social protection and balanced and sustainable development are presently in doubt because of phenomena such as poverty and exclusion. The development of solidarity must be one of the priorities of the EU, especially in the context of enlargement. It is fundamental to avoid extension of the EU from 15 to 25 Member States resulting in a reduction of the European objectives to the lowest common denominator.

One way to avoid this risk is to guarantee access for all citizens to services of general interest, in order to develop economic, social and territorial cohesion. Moreover, the participation of citizens in the management and functioning of these services must be encouraged in application of the principle of horizontal subsidiarity.

Lastly, the future constitution should define the modalities of public authority intervention for the organisation, financing and the evaluation of the services of public interest.

As regards the European referendum, the submission of the future constitution to a referendum would certainly be the best way to increase the legitimacy of the European institutions and to bring them closer to citizens. The project drafted by the constitution should include an article providing that the final text of the constitution is to be submitted to a Europe-wide referendum, including the future Member States. In our opinion, such a prospect would induce the Convention to draft a simple, brief and easily understandable text, which would be a great advantage. Moreover, it would make it essential to increase and improve information to citizens, and that is crucial to prevent this Convention being yet another wasted opportunity.

1-084

EN

**Krzeczunowicz (NGO-CITI/INST).** – Mr President, the task of this Convention is not only to provide answers to the questions raised in the Laeken Declaration and the expectations of its citizens, although you know better than most just how enormous a task that represents. This Convention should and must move the European Union and the wider Europe represented here away from the reactive, fearful approach to the future which is increasingly apparent in our respective national politics.

To do this, the Convention must first reaffirm the primacy of solidarity in the thinking and actions that lie at the basis of the Union's construction. This principle of solidarity has many facets in each of our countries. It must be evident for those who are underprivileged, poor or under-educated within the European Union. It must shine through efforts to bring about cohesion for the less developed regions, and underpin policies whose role will become even more positive with enlargement, especially if balanced with a greater focus on sustainable development. Beyond the borders of an enlarged Union, it has to develop an approach to the poorer nations that allows the citizens of those countries to achieve the peace and prosperity that the European Union has managed to provide for its own citizens.

In order to succeed, the involvement of citizens in ways complementary to the ballot box must be encouraged and supported. Often, there is incredulity expressed at the role of civil society and non-governmental organisations in the development of Europe. Who else but the citizens of Europe lay at the very beginnings of this Union? Who else but they came to be the prime movers of the revolutionary yet peaceful changes in Europe in 1989?

In Brussels and elsewhere, we often hear of the wall falling as though we were dealing with an error in architecture and poor building standards. The wall was pushed. These same citizens, organised in NGOs, have continued to push since 1989, be it through the development of our local government structures or through involvement in the enlargement debate.

The European Union at present provides for the inclusion of NGOs in its construction in an ill-defined, timorous way. There are positive examples, however, that can guide you in your work. Thus various actors, including NGOs, should be involved in the planning and monitoring of Structural Funds. No other single measure has done more to promote dialogue between civil society and our regional and local authorities in Poland. That simple requirement that decisions on a region's future are not made in Brussels, but via the opportunity provided by the European Union for a more inclusive approach, puts a stop to claims of democratic deficit.

Let us not delude ourselves by thinking that the disillusionment with politics so often decried when talking of the European institutions does not concern our national and local politics.

It is crucial for the Convention to set an example by inscribing a requirement for civil dialogue in the final document being considered here. It will allow for good practice at the European level to influence the development of democracy at the local and regional level. This defensive democracy must be put at the centre of your concerns for the future of Europe.

It may have been ticked off as fulfilled, as part of the Copenhagen requirements, but democracy needs continued support, be it in the applicant countries or in the Member States. Let this Convention begin the task of suffocating the egoism that is increasingly at the root of decision-making or rather the fear to make bold decisions. Let this Convention affirm that uncertainty and the fear of the future are not best tackled by selfish hunkering down within our own borders. The future is best faced through solidarity and not through selfishness. This solidarity is strong when civil dialogue is a firm element of European governance and supports the political process.

*(Applause)*

1-085

EN

**Söderman (NGO-CITI/INST).** – Mr President, the Treaty of Maastricht established the European Ombudsman to enhance relations between the citizens and the European Union, mainly by tackling maladministration in the Community institutions and bodies. Over almost seven years as European Ombudsman I had, by the beginning of this month, received a total of 10 000 complaints. It is difficult to explain in five minutes what I have done in seven years. The latest annual report will be published next week and detailed information of our work is available on our website. We will email all the organisations explaining how to access this material.

I would like to thank the institutions and bodies of the European Union for their cooperative attitude to the European Ombudsman's work and their will to correct maladministration when it occurs.

There has been real progress towards making citizenship of the European Union a reality. The right of public access to documents is embodied in a regulation. Fundamental rights are laid down in the Charter and the European code of good administrative behaviour was adopted by the European Parliament in September 2001. This code gives substance to the right to good administration in Article 41 of the Charter.

Some important problems, however, remain. First, my experience as European Ombudsman is that citizens do not know how to protect their Community law rights. This is not surprising because the Treaty says little about the remedies that they can use. Furthermore, national administrations do not always apply Community law correctly either because they do not know how to do so or because they do not feel that it is really a part of their law.

Over the past seven years, we have created a network of ombudsmen and similar bodies such as petition committees, but citizens do not seem to know how they can deal with Community law cases.

Next I would like to draw your attention to the Article 226 procedure, in which the Commission investigates complaints about infringements of Community law by Member States. Despite recent improvements, the procedure is secretive, the complainant is still not recognised as a participant and delays occur because the Commission has too many cases. Furthermore, the Charter is not yet fully effective in the institutions and bodies. Generally, politicians are committed to it, but the administration can be reluctant to follow their lead. The Charter has been proclaimed, but citizens have no idea if it will be applied in practice. Finally, the code of good administrative behaviour is not yet a European administrative law to be applied uniformly by the whole European administration.

I have some proposals for your consideration. First and foremost, the Treaty should contain a chapter of remedies; it should clearly set out the possibilities for judicial and non-judicial redress when Community law rights, including fundamental rights, are not respected. Access to courts is a fundamental remedy in a democracy governed by the rule of law. We should inform citizens about their right to



go to national courts to defend their rights under Community law. The important constitutional role of the European Court of Justice should be duly mentioned. The chapter should also make clear that the citizen has the right to petition the European Parliament about infringements of Community law by Member States. The Commission should have a duty to cooperate with the European Parliament in assuring that the complaint is examined using a fair procedure.

Many complaints about infringement could be effectively dealt with by a non-judicial remedy in the Member State. The chapter should therefore mention that citizens have the right to complain to an ombudsman or a similar body in each Member State. The European Ombudsman is willing to provide assistance and, if necessary, to deal with cases of principle involving fundamental rights, assuming that the chapter will be made binding whenever Community law is being applied.

The European Ombudsman could be responsible for referring cases, where a fundamental right is at stake, to the European Court of Justice. This would be in keeping with the Court's constitutional role.

*(Applause)*

1-086

FR

**Oriol (NGO-CITI/INST).** – Je représente ENA, une organisation dont les membres sont présents dans les quinze pays de l'Union, et dont les objectifs principaux sont la lutte contre toutes les formes de racisme, et la promotion de l'égalité des droits et des chances. ENA est membre de la plate-forme sociale, une alliance d'ONG européennes du secteur social qui, dans le cadre du groupe de contact Société Civile, travaille avec des ONG actives dans les domaines des droits humains, du développement et de l'environnement, ainsi qu'avec la confédération européenne des syndicats, pour produire une contribution commune aux travaux de la Commission. Dans un débat sur la citoyenneté et les Institutions, il faut rappeler que des millions de personnes participent activement au développement de l'Union, mais ne bénéficient pas des droits découlants de la citoyenneté tel qu'elle est définie dans le Traité CE. Ces personnes sont exclues du processus décisionnel de l'Union. Ce sont les ressortissants des pays tiers. Alors que le principe de non-discrimination est au fondement-même de la construction européenne, il n'est valable que pour les nationaux d'un Etat membre de l'Union. L'Union se construit, en excluant des millions de personnes, pour beaucoup nées sur son territoire. Avec l'introduction à Amsterdam du titre quatre dans le Traité, les ressortissants de pays tiers deviennent enfin des sujets directs du droit communautaire. Le Sommet de Tampere semblait ouvrir la voie à l'élaboration de mesures tendant à combler l'inégalité entre citoyens de l'Union et ressortissants des pays tiers. A ce jour, il faut constater que, dans ce domaine, l'harmonisation est un échec. A la suite de maintes modifications, la proposition de directives sur le regroupement familial relatif aux ressortissants des pays tiers est complètement vidée de son sens. Nous sommes également sceptiques quant à la proposition de directive sur le statut des résidents de longue durée ressortissant des pays tiers.

Face au climat politique ambiant, face au populisme, au replis identitaires nationaux, face aux discours racistes et xénophobes, l'Union se doit de poser un acte fort et sans équivoque à l'intention de la classe politique et de l'opinion publique. L'Union doit, une fois pour toutes, reconnaître que toutes les personnes qui résident légalement sur son territoire sont égales. L'extension des droits liés à la citoyenneté de l'Union aux ressortissants des pays tiers légalement établis dans l'Union est indispensable pour maintenir et renforcer la cohésion sociale de nos sociétés, pour combler le déficit démocratique de l'Union et crédibiliser le projet européen qui se veut respectueux des droits fondamentaux de la personne, qui sont, par essence, universels et indivisibles. La Charte des Droits Fondamentaux doit également être revue afin d'élargir les droits des ressortissants des pays tiers. Selon la Charte, les ressortissants des pays tiers jouissent de conditions de travail équivalentes à celles des citoyens de l'Union. Ils devraient jouir non seulement des droits des travailleurs, mais également des droits de tous les citoyens, notamment le droit à la libre circulation à l'intérieur du territoire ainsi que les droits politiques. Outre la nécessité d'étendre des droits attachés à la citoyenneté, nous pensons que la Convention doit voir comment associer de manière plus étroite les citoyens à l'Union. Deux formes de démocratie peuvent être identifiées au sein de l'Union. Une démocratie participative et une démocratie électorale. D'une part, la démocratie électorale est cruciale pour légitimer notre système politique et doit être renforcée au sein de l'Union, y compris en renforçant le rôle du Parlement européen, la seule Institution élue directement. D'autre part, la démocratie participative représente la participation directe et collective des individus dans le système démocratique par d'autres voies que le vote. La démocratie participative devrait compléter la démocratie électorale. La participation devrait être accessible à toutes et à tous. Les ONG encouragent les citoyens à participer à la vie politique et sociale de la société et, par conséquent, contribuent fortement au développement de la démocratie. Nous pensons que les ONG devraient jouer un rôle consultatif important dans l'élaboration des politiques de l'Union, ce qui contribuerait à une plus grande implication des citoyens au projet européen. C'est pourquoi nous demandons la reconnaissance du statut consultatif des ONG, garantie d'un dialogue civil structuré et permanent avec toutes les institutions, via l'inclusion dans les Traités d'un article sur la consultation de la société civile.

1-087

FR

**Le Président.** – Nous en avons terminé avec les orateurs désignés par les groupes. J'ai trois interventions de membres de la convention et j'ai quatre cartes bleues.

1-088

FR

**Abitbol (PE).** – Le groupe que vous avez présidé, Monsieur Dehaene, n'a pas été, me semble-t-il, à la hauteur de ce que nous avons entendu précédemment. Que la vie serait facile si tous les citoyens européens voulaient bien se mettre à ressembler à ceux que nous avons entendu tout au long de cette journée. Tout serait alors pour le mieux dans le meilleur des mondes. Hélas, notre société civile ad hoc n'est en rien représentative. Nous avons entendu ici l'ensemble des organisations subventionnées par les Institutions européennes et leur réunion fait un peu penser à cette phrase du regretté Coluche qui parlait d'une grande tombola au profit des organisateurs de tombola. Les élections, les référendum et même les sondages, y compris le dernier eurobaromètre, nous renvoient à une autre opinion publique que celle que vous nous avez modelé à votre guise. Je n'en veux pour preuve que l'euro-scepticisme croissant que vous avez publié la semaine dernière ainsi qu'une défiance de plus en plus majoritaire vis-à-vis des Institutions européennes. Deux points cependant. Je me réjouis du souhait d'un référendum pour approuver, ou pour désapprouver le projet de Traité Constitutionnel si celui-ci devait voir le jour. C'est, effectivement, la moindre des choses que de laisser chacun de nos peuples, libre de conserver sa propre loi fondamentale, seule garante d'un chez-soi politique, de cette sorte d'intimité nationale qu'on appelle démocratie, auxquels nos concitoyens restent et resteront attachés ou bien, au bout du compte, de surbordonner celle-ci à une loi supérieure dont l'application sera le fait d'une oligarchie aussi lointaine qu'anonyme. Je m'étonne un petit peu aussi que le groupe de contact ou soi-disant tel, ai fait quasiment l'impasse sur les questions liées à l'élargissement de l'Europe alors que nos opinions publiques, dont il était sensé être le représentant, sont de plus en plus réservées à ce sujet. Un reproche permanent, pardonnez-moi Monsieur le Président, que l'on pourrait faire à notre convention est de raisonner un petit peu comme si l'élargissement ne devait pas avoir lieu. Et il me semble, si vous me permettez une suggestion, que nous pourrions peut-être consacrer si pas toute une session au moins une journée de travail aux conséquences spécifiques liées à l'élargissement de l'Europe.

1-089

FR

**Le Président.** – Merci beaucoup. Bien entendu, je ne peux pas laisser passer votre remarque de manipulation. Pour autant que je sache, toutes les organisations, qu'elles croient en l'Europe ou qu'elles soient sceptiques, ont été invitées à participer au débat. Le site web et nos réunions étaient ouvertes à tout le monde. Je ne vois pas où est la manipulation. La seule chose qui pourrait arriver est que ceux qui pourraient s'exprimer ne répondent pas à l'invitation.

1-090

EN

**De Rossa (Parl.-IE).** – Mr President, I will refer briefly to the last speaker's comments on subsidised organisations. I would not be here as a politician unless I was subsidised by the citizens of Europe. My political party could not survive as an effective political organisation without a subsidy from the citizens of Europe. So please let us move to the real debate about the views being expressed here today, rather than this petty discussion about who is paying for whom.

I warmly welcome the chance to have dialogue here today with civil society organisations. We have heard an affirmation of the notion that we have society in Europe, rather than a simple economic view of Europe as an economy. It is important to bear in mind the idea that citizens are more than simply units of consumption and that the weight of their opinion cannot be measured solely by their capacity to purchase or to consume, that we have more dimensions to our lives and to our personalities than simply our capacity to buy and sell.

It is important that notion should be incorporated into the constitutional treaty that we are preparing here. There is currently far too much emphasis in our Treaties on Europe as an economy, Europe as a market, Europe as a single currency. We must pay attention to the kind of values we incorporate into the constitutional treaties that we are preparing. In that respect, I would urge very strongly the idea of amending and improving Article 16, which underpins the notion of universal public services. The rights of citizenship include the right to be able to move about the European Union and the right to be able to receive a letter regardless of how remote your home is in the European Union.

In conclusion, we should also incorporate the notion of civil dialogue and social dialogue in our Treaties, bearing in mind the different and distinct functions that each serve in a European Union which has a constitution and which is federal in nature.

1-091

FR

**Moscovici (Ch.E/G.-FR).** Tout d'abord, contrairement à M. Abitbol, j'ai trouvé très intéressants les travaux du groupe de contact, qui relaient d'ailleurs ce qui a été dit dans les débats nationaux, à savoir qu'il y a un souhait des citoyens de voir la réflexion porter d'abord sur le contenu du projet européen, avant de parler du contenant institutionnel. Parce que notre objectif doit être de trouver une légitimité nouvelle à l'Union et, pour cela, il faut être capable d'abord de délivrer des preuves d'Europe. Si nous voulons répondre au populisme, il faut d'abord que l'Europe soit populaire.

Ensuite, il y a un lien évident entre le contenu et le contenant, et donc la nécessité de réforme ne fait pas de doute. Dans l'immédiat, il faut remédier au défaut de lisibilité du projet européen et en favorisant prioritairement l'émergence d'un espace public démocratique à

l'échelle européenne.

Ensuite, la concrétisation de cette exigence suppose, dans le respect des équilibres sur lesquels repose la méthode communautaire, des réformes ambitieuses des trois composantes du triangle institutionnel – n'en négligeons aucune – à savoir le Conseil, la Commission et le Parlement. J'ai trouvé là des propositions très intéressantes. Je pense au couplage de la désignation du président de la Commission avec les élections européennes, à la régionalisation du mode de scrutin européen et à une association plus étroite des parlements nationaux aux affaires européennes.

Enfin, le renforcement de la légitimité de l'Union passe naturellement par une plus grande proximité avec le citoyen et, sur ce point, je partage l'idée évoquée par le groupe de contact: une association plus étroite de la société civile aux processus de décision. C'est l'objectif de notre session d'aujourd'hui. C'était l'objectif des débats nationaux. Il faut travailler, sans doute, à relancer cette idée et à la pérenniser dans une nouvelle démarche. Je terminerai en disant que, pour des raisons tout à fait symétriques à celles de M. Abitbol, je pense effectivement que la formule du référendum s'imposera pour adopter le Traité que proposera la Convention.

1-092

IT

**Speroni (Ch.E/G.-IT).** - Signor Presidente, trovo fondate talune preoccupazioni sul ruolo dei ministri all'interno del Consiglio. I ministri vengono spesso accusati di privilegiare gli interessi nazionali, ma un rappresentante - che sia ministro o parlamentare - ha il dovere di interpretare e sostenere la volontà dei rappresentati, anche quando questa volontà è volta a tutela di interessi. L'Europa è comunità di uomini e donne uniti per vivere meglio, per meglio sfruttare le possibilità di sviluppo e progresso, per condividere i vantaggi di questa unione, ideali ma anche materiali. Questo è tra i nostri compiti: proporre una Costituzione che, in una visione democratica, contempra esigenze comuni ma anche differenti, perché nessuno possa poi dolersi di essere cittadino dell'Unione.

1-093

FI

**Kauppi (PE).** - Arvoisa puhemies, haluaisin lyhyesti kommentoida herra Hermanin puheenvuoroa, jossa hän mielestäni erinomaisella tavalla esitti ne syyt, joiden takia Eurooppa-neuvostosta ei voida tehdä EU:n hallitusta. Nykyään Eurooppa-neuvoston kokoukset, kuten viime viikonloppunakin saimme todeta, ovat ylikuormitettuja, ja se johtuu siitä Jacques Delorsin jo 1980-luvulla määrittelemästä tosiasista, että kaikki haluavat saada Eurooppa-neuvoston puolioikeudellisen hyväksynnän erilaisille hyville asioille, myös kansalaisjärjestöt.

Pääministereiden aikapulakin tulee olemaan jo liian suuri ongelma. Kolmenkymmenen valtion unionissa jo pelkkä pääministerin kierros eri maiden pääkaupungeissa kestäisi varmasti melkein puoli vuotta. Niinpä olen tullut siihen tulokseen, että tästä rotaatiosta pj-kausien osalta on jollakin aikavälillä luovuttava. Vaikka ne ovat olleet tärkeä tasa-arvon ilmentymä myös kansalaisjärjestöille, on järkevää siirtyä jonkinlaiseen ryhmäpuheenjohtajuuteen ja järjestää tämä konsultaatio kansalaisjärjestöjen kanssa eri tavalla.

Vielä haluaisin todeta lyhyesti, että avoimuus on kuitenkin aivan a ja o siinä, miten Eurooppa-neuvoston toiminta, joka kuitenkin tulee olemaan tärkeä osa Euroopan hallintoa ja hallintotapaa, järjestetään. Avoimuus, jota Sevillassa pikkuaskeleella lisättiin, on tärkeää. Me tarvitsemme lisää avoimuutta. Se, että kansalaiset tietävät ainoastaan yhteispäätösmenettelyasioissa, mitä neuvoston suljettujen ovien takana tapahtuu, ei ole riittävää. Tämä on sellainen asia, jota meidän pitäisi vaatia kovemmalla äänenpainolla.

1-094

EN

**MacCormick (PE).** – Mr President, one feature of parliamentary democracies in the modern world is that the elected legislature tends in practice to become subordinate to the executive, to which it is in theory superior. One of the great merits of the European Parliament is that this does not happen. We are not subject to masters. We do not have a single, all-purpose majority, and the upshot is that the Commission, as the executive, can by no means be sure of getting its own bills through all the time: most are heavily amended both by the Parliament and by the Council.

This is a vital feature of the situation and whatever we do in the way of improving the answerability of the Commission should not be such as to deprive the European Parliament of that particular, highly democratic virtue which it has, one which makes us much more accessible to civil society and more open to argument and discussion than we would be under other circumstances.

1-095

EN

**Bruton (Parl.-IE).** – Mr President, the election of the President of the Commission by Parliament, as suggested by Mr Herman and others, could put the Commission in a subordinate and dependent position vis-à-vis Parliament and blur the separation of powers which is the keystone of our current institutional balance.

In contrast, the direct election of the President by the people would avoid these dangers and would also directly associate each citizen with the person of the Presidency. It would do more to bring the people and the European Union closer together than any other proposal, including a referendum on the Treaty. At the end of the day, in modern times, people vote for the individual as much as they do for abstract ideas.

1-096

SV

**Hjelm-Wallén (Ch.E/G.-SE).** - Herr ordförande! Det civila samhället betyder väldigt mycket för en levande debatt om EU. Därför är öppenheten ifrån EU:s sida helt avgörande.

För ett år sedan åstadkom det svenska ordförandeskapet ganska stora förändringar vad gäller öppenhet, men mer behövs. Som representant för den svenska regeringen har jag föreslagit att vi bör gå vidare så att allmänheten får tillgång till handlingar också i fråga om de institutioner som inte ännu finns med på listan.

I förslaget ingår också att EU-tjänstemän skall ha yttrandefrihet som de har i många av våra länder. Vi behöver bättre förvaltning, som ombudsman Söderman sade, och öppenhet vad gäller rådets arbete när det handlar om lagstiftning. Jag tror att dessa öppenhetsfrågor är väldigt viktiga för hela kontakten med det civila samhället.

1-097

FR

**Nahtigal (Gouv.-SI).** – Je voudrais simplement vous parler du forum slovène qui travaille très dur et qui se réunit souvent en même temps que la Convention. Il soutient la légitimité des membres slovènes de la Convention. Le futur de l'Europe se joue en Slovénie sous la houlette du Président et du gouvernement. Lors des discussions sont également présents des représentants des universités, des syndicats, des organisations universitaires, des étudiants, l'académie slovène de Sciences et d'Art ainsi que différentes autres communautés. Nous nous penchons sur des sujets semblables à ceux du Parlement. Par exemple, nous nous demandons ce que nous attendons de l'Union Européenne, quel sera le rôle des petites nations dans l'Union Européenne du futur ou encore comment garantir les diversités culturelles en Europe. Le Président du Parlement, Monsieur Cox, s'est rendu récemment à Ljubjana pour évoquer la question. Selon moi et c'est mon voeu le plus cher, le débat qui se déroule en Slovénie renforce sans aucun doute la légitimité dont a parlé tout à l'heure Monsieur Moscovici.

1-098

FR

**Le Président.** – Ceci termine les débats d'aujourd'hui. Nous reprendrons demain à neuf heures trente avec les représentants des régions.

1-099

FR

**Giscard d'Estaing (Président).** – Nous sommes presque en avance, d'ailleurs, grâce à la très bonne organisation du débat et à l'esprit de méthode des intervenants. Nous reprendrons notre débat à neuf heures trente demain matin. Mme Palacio présentera d'abord les travaux du groupe de contact « Régions et collectivités locales ». Ensuite, les observateurs du Comité des régions prendront la parole. En fin de matinée, je vous donnerai quelques indications sur la session des jeunes, sur son organisation et son déroulement, et également quelques indications sur nos propres travaux, puisque nous avons notre session du mois de juillet qu'il convient de préparer. Dans la salle d'à côté, un verre de l'amitié est proposé à ceux et celles d'entre vous qui désirent prolonger leurs échanges avant la reprise de nos travaux demain matin à neuf heures trente.

*(La réunion est levée à 19 h 56)*

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DA

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EN

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ES

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**CONVENTION EUROPÉENNE  
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SV

**EUROPEISKA KONVENTET  
TISDAGEN DEN 25 JUNI 2002**

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2-002

FR

**PRÉSIDENCE DE Mr GISCARD D'ESTAING***(La réunion est ouverte à 9.36 h)*

**Le Président.-** Nous ouvrons la séance de la Convention. Avant de donner la parole à Madame Palacio pour présenter le groupe de contact « Régions et Collectivités locales », je vous indique que c'est aujourd'hui la Fête nationale de la Slovénie. Je vous invite donc à applaudir nos collègues slovènes.

*(Applaudissements)*

2-003

DA

**Regioner og lokale myndigheder**

DE

**Regionen und Gebietskörperschaften**

EL

**Περιφέρειες και τοπικές κοινωνίες**

EN

**Regions and local authorities**

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FR

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PT

**Regiões e Colectividades locais**

FI

**Alueet ja paikallisyhteisöt**

SV

**Regionala och lokala myndigheter**

2-004

FR

**Le Président. –** Je donne maintenant la parole à Madame Palacio pour la présentation du groupe de contact qu'elle a animé.

2-005

FR

**Palacio Vallelersundi (Ch.E/G.-ES).** – Il me revient, en effet, l'honneur de faire rapport de la première réunion du groupe de contact « régions et collectivités locales » qui s'est tenue le dix juin dernier. Tout d'abord, je tiens à souligner la qualité des interventions qui ont été présentées pendant cette journée. Ensuite, je tiens à remercier les cent quatre-vingt-sept collectivités locales et leurs organisations représentatives qui se sont inscrites dans notre groupe de contact et ont consacré une entière journée à dialoguer en détail sur des questions liées aux travaux de la Convention. Monsieur le Président, elles m'ont demandé avec insistance que notre dialogue se poursuive à intervalle régulier, tout au long du mandat de la Convention. Je leur ai, d'ores et déjà, fixé rendez-vous pour une nouvelle rencontre de travail à l'automne prochain. Mon impression générale est que les organisations européennes des collectivités territoriales ont fait preuve d'un grand équilibre entre ambition et réalisme. Issus du suffrage universel, les gouvernements locaux et régionaux font historiquement partie du système de gouvernement de l'Union. C'est ce système qui caractérise l'Union Européenne dans son ensemble est une structure complexe et diversifiée qui s'organise sur quatre niveaux de responsabilité : l'Union Européenne, les Etats membres, les Régions et les collectivités locales qui, cela dit en passant, ont souvent précédé la naissance de nos Etats. Je vais simplement souligner deux des idées fortes qui sont apparues lors de ces débats. La première idée est qu'il est nécessaire de trouver des normes de gouvernance permettant de réguler de manière optimale les relations entre les différentes sphères de gouvernements. A cet égard, nous avons pu constater ensemble qu'il est nécessaire de mettre en place des procédures de consultation très en amont du processus décisionnel. Je crois très sincèrement que des procédures claires, transparentes et menées en temps utile résoudraient un grand nombre des difficultés que rencontrent les régions et les collectivités locales dans la mise en oeuvre de la législation communautaire. La deuxième idée, exprimée par tous, est le soutien du travail mené au sein du Comité des Régions qui dispose d'un statut d'observateur au sein de notre convention. Ainsi, sans plus attendre, Monsieur le Président, je cède la parole au premier Vice-Président Eduardo Zaplana, qui a lui aussi pris part à cette journée de travail.

2-006

FR

**Le Président.** – Vous jouissez d'une grande popularité dans la convention.

2-007

ES

**Zaplana (NGO-REG/LOCAUT).** - Señor Presidente, atendiendo a la invitación formulada por el *Praesidium*, esta mañana los seis representantes del Comité de las Regiones queremos transmitir a la Convención las demandas y las expectativas de los municipios y de las regiones de las que el Comité de las Regiones es, precisamente, cauce de expresión oficial en el seno de la Unión Europea.

Quiero manifestar que hemos abierto un proceso de debate intenso y riguroso no sólo en el seno del Comité sino también en diálogo con las asociaciones europeas representativas de las entidades locales y regionales y con los países candidatos. Este diálogo lo realizamos con el fin de presentar contribuciones escritas que estén investidas del más amplio respaldo y que expresen ante la Convención la posición común de las autoridades locales y regionales. Oirán ustedes hoy intervenciones de distinto contenido, fruto de los debates existentes en el seno del Comité de las Regiones, pero me centraré en aquellas cuestiones básicas que concitan el acuerdo unánime en el mundo regional y local.

Pienso que esta Convención no puede pasar por alto la enorme relevancia que tienen hoy los municipios y las regiones en la aplicación de las políticas de la Unión Europea. En materias tan diversas como protección del medio ambiente, transportes y telecomunicaciones, política regional, agricultura o pesca son, en muchos casos, los Gobiernos locales y regionales los llamados a ejecutar las decisiones de las instituciones y órganos comunitarios. Parece lógico, pues, que desde los municipios y las regiones se reclame una participación más sólida en la adopción de estas decisiones. No hay que olvidar por otro lado que los municipios y las regiones son los niveles de gobierno más cercanos e inmediatos a los ciudadanos, piezas básicas, por tanto, para la edificación de una Unión Europea más próxima, como reclamaba la declaración de Laeken.

Parece, pues, una exigencia que el nuevo marco institucional de la Unión Europea deba fortalecer el papel de los municipios y las regiones y el cauce para ello ya existe. El cauce es el Comité de las Regiones. No es preciso, por tanto, inventar nuevos mecanismos de participación de los municipios y las regiones en la política europea. Se trata, más bien, de mejorar y reforzar el instrumento del que ya disponemos. Otra cosa sería, desde nuestro punto de vista, retroceder o adentrarnos en caminos de gran incertidumbre.

El Comité de las Regiones concita consenso o al menos mucho más que cualquier otra vía. La apuesta por el mundo regional y local no puede ser otra. Y desde el Comité de las Regiones deseamos plantear a la Convención las siguientes demandas fundamentales, demandas que posteriormente desarrollaremos mediante una contribución escrita y que son, en primer lugar, la atribución al Comité de las Regiones del rango de institución de la Unión Europea, pues no parece razonable que una asamblea formada por representantes de instituciones de gobierno investidos de legitimidad democrática tenga el carácter de un mero órgano auxiliar de la Comisión y el Consejo. En segundo lugar, la atribución al Comité de las Regiones de legitimación activa ante al Tribunal de Justicia. En tercer lugar, ampliación de la lista de materias en que es preceptiva la consulta al Comité hasta extenderla a todas aquellas decisiones que afecten a las competencias de los entes locales y regionales. Y, en cuarto lugar, el fortalecimiento de los efectos jurídicos de los dictámenes, obligando, concretamente, a las restantes instituciones a motivar de forma expresa las razones por las que, en su caso, se apartan del dictamen del Comité.

Pensamos que la atención de estas cuatro reivindicaciones que desde el Comité de las Regiones planteamos como demandas mínimas e irrenunciables mejoraría claramente la participación de los entes locales y regionales en las decisiones de la Unión sin alterar, por

otro lado, el actual equilibrio institucional ni introducir complicaciones innecesarias en los procedimientos de adopción de las normas.

Es imposible, Señor Presidente, por limitaciones de tiempo, desarrollar estos puntos con mayor detalle. Nuestros debates son, como es lógico, mucho más amplios y mucho más ambiciosos, pero esta posición es defendida por todos y confío en que también lo será por la Convención.

Y permítame tan solo concluir con unas palabras del Presidente de la Convención, en su discurso inaugural del pasado 28 de febrero: "al mundo de hoy -afirmaba- le hace falta una Europa fuerte, unida y pacífica". Yo pienso que una Europa fuerte es también una Europa mejor vertebrada en la que las ciudades y las regiones puedan sentirse coprotagonistas.

2-008

NL

**Chabert (NGO-REG/LOCAUT).** - Dank u wel mijnheer de voorzitter, waarde collega's, het Comité van de Regio's is de jongste instelling van de Europese Unie. Het werd opgericht bij het Verdrag van Maastricht. Het heeft tot taak de lokale en regionale overheden nauwer te betrekken bij het Europees besluitvormingsproces. Het Comité is dan ook het enige officiële orgaan dat hen bij de Europese Unie vertegenwoordigt.

Ongeveer drie kwart van alle wetgevende acties van de Unie is van rechtstreekse invloed op de regionale, lokale bevolking en wordt uitgevoerd door de lokale en regionale overheden. Het is bijgevolg logisch dat deze bij de besluitvorming worden betrokken. Dit vereenvoudigt aanzienlijk de toepassing van de wetten en de verwezenlijkingen van de programma's van de Europese Unie.

Mijnheer de voorzitter, waarde collega's, een goed werkende democratie, die dicht bij de mensen staat, begint aan de basis. "Bottom-up" is het parool, en dit is des te meer het geval voor alle regio's die wetgevende macht hebben, zoals in Duitsland, Oostenrijk, België, Spanje, Italië, Portugal en zelfs in het Verenigd Koninkrijk. Dankzij hun nationale grondwet bezitten deze regio's op bepaalde gebieden soevereine rechten, die Europa moet eerbiedigen zoals dit ook gebeurt voor de nationale overheden.

Krachtens de Verdragen is de raadpleging van het Comité van de Regio's verplicht in tien gevallen: het gaat hier om materies die zeer dicht de burger raken. Regionale ontwikkeling, cultuur, onderwijs, volksgezondheid, Europese infrastructuurnetwerken voor energie en vervoersnetwerken, werkgelegenheid, beroepsopleiding, leefmilieu, vervoer en sociaal beleid. In deze gevallen kunnen de wetgevende organen van de Unie, de Raad en het Parlement, geen beslissing treffen indien het Comité van de Regio's terzake geen advies heeft verstrekt.

Ik wil nu nog niet voorstellen om deze lijst van de gevallen van verplichte raadpleging uit te breiden. Ik wil er wel op aandringen dat het Comité nauwer bij de wetgevende werkzaamheden van de uitgebreide Europese Unie wordt betrokken, zonder dat dit vanzelfsprekend tot vertraging van de werkzaamheden van de wetgevers mag leiden. Ik ben er immers van overtuigd dat Europa slechts door de bevolking begrepen, gedragen en aanvaard zal worden indien deze nauw bij het institutioneel mechanisme betrokken wordt via haar rechtstreekse, lokale en regionale vertegenwoordigers. Die zullen op dat ogenblik de ambassadeurs worden van Europa en niet langer de Europese Unie verantwoordelijk kunnen stellen voor alles wat misloopt.

Zo zou ik willen voorstellen dat de Raad en het Parlement, vooraleer zij hun beslissingen treffen, het Comité zouden inlichten over de eventuele redenen waarom zij dat advies niet hebben overgenomen. Ik moge u erop wijzen dat de Commissie dit nu reeds regelmatig doet. Het Comité moet ook betrokken worden bij de trilogie Commissie - Raad - Parlement in het kader van de medebeslissingsprocedure. Dit moet ten minste het geval zijn in de tien gevallen van verplichte raadpleging. Het Comité van de Regio's moet een Europees wetgevend besluit voor een beperkte duur kunnen opschorten indien de wetgevende overheid het advies van het Comité niet heeft opgevolgd zonder hiervoor de redenen op te geven.

Het Comité herhaalt vanzelfsprekend zijn eis om een klacht te kunnen indienen bij het Europees Hof van Justitie indien het subsidiariteitsbeginsel niet wordt nageleefd en het vraagt eveneens vertegenwoordigd te zijn in het op te richten politiek orgaan dat de naleving van de subsidiariteitsbeginsel *ex ante* moet nagaan.

Mijnheer de voorzitter, ik denk dat een belangrijke versterking van de rol van het Comité van de Regio's aanzienlijk zal kunnen bijdragen tot een versterking van de doeltreffendheid, de transparantie en het democratisch karakter van onze instellingen in een uitgebreide Europese Unie. Deze Conventie heeft een historische kans om de burgers van *l'Europe profonde* nauwer te betrekken bij Europe. Wij mogen deze kans niet missen.

2-009

NL

**Dewael (NGO-REG/LOCAUT).** - Mijnheer de voorzitter en waarde collega's, deze zitting is gewijd aan het contact met de civiele maatschappij. Ik vind het ook nodig om de stem van democratisch verkozen en dicht bij de bevolking aanleunende bestuursniveau's te laten horen.

Als minister-president van Vlaanderen en als waarnemer in deze Conventie voor het Comité van de Regio's, wil ik aandacht vragen voor de regio's. Vlaanderen is een sterke regio met uitgebreide bevoegdheden en een grote autonomie.

Regio's, en in het bijzonder regio's met wetgevende bevoegdheden, zijn een onmiskenbare realiteit in het huidige Europa. In vele lidstaten heeft zich een belangrijk decentralisatieproces voltrokken. Ik denk dat deze regio's met wetgevende bevoegdheden, net als een Europese lidstaat, de vinger aan de pols moeten kunnen houden van de voorbereiding, de totstandkoming, de besluitvorming, de evaluatie, de controle en de aansprakelijkheid bij het Europees beleid. Om hun belangen in Europa te verdedigen, moeten de subnationale entiteiten nu langs twee kanalen te werk gaan.

In de eerste plaats op het terrein van de regionale organen in Europa, zoals het Comité van de Regio's en ik steun dan ook de verzoeken om het Comité te versterken, zoals die geuit zijn door mijn collega's. Erkenning als instelling, motiveringsplicht, toegang tot het Hof van Justitie. Ook op het terrein van hun eigen nationale regeringen. Want deze moeten als kernspelers in de Unie, die voorlopig slechts lidstaten erkent, ervoor warm worden gemaakt om de zaak van de regio's tot de hunne te maken. Daar moet ook een derde mogelijkheid bijkomen. Met name de directe en rechtstreekse erkenning door de Europese instellingen van het regionale bestuursniveau.

Het volgende basisprincipe moet, denk ik, daarbij het uitgangspunt zijn. De lidstaten waren en zijn nog altijd het ankerpunt en de basis van de Europese Unie. Ten tweede, het nieuwe Europese interinstitutionele kader moet wel aan de lidstaten de ruimte en de vrijheid geven om de subnationale entiteiten hun rol te laten spelen, waarbij in de eerste plaats gedacht moet worden aan de regio's met wetgevende bevoegdheden.

Ten derde, Europa mag de regio's met wetgevende bevoegdheden niet onthouden wat deze zelf op het nationale vlak hebben verkregen, want een dergelijke erkenning houdt, denk ik, ook voor de Unie voordelen in. Het is voor Europa nodig en interessant om zich te verzekeren van de betrokkenheid van alle actoren bij het Europese besluitvormingsproces.

Ten vierde, dit is ook belangrijk, kunnen de regio's via de EU, anderzijds ook geen aanspraak maken op meer rechten en bevoegdheden dan deze waarvan zij binnen de eigen lidstaat kunnen genieten. Daarom heb ik samen met medeconventieleden Karel de Gucht en Andrew Duff een voorstel ingediend om een aparte werkgroep op te richten, die zich specifiek moet uitspreken over de problematiek van de subnationale entiteiten en de regio's met wetgevende bevoegdheden.

Ik ben persoonlijk van mening, mijnheer de voorzitter, collega's, dat het Spaans constitutioneel model een aantal interessante mogelijkheden biedt. Dit model laat immers aan de verschillende autonome gemeenschappen de ruimte om zichzelf te constitueren. Ook een Europees grondwettelijke systeem kan een kader vormen dat lidstaten en subnationale overheden dan verder kunnen invullen. Op die wijze wordt de grondwettelijke situatie en de institutionele autonomie van elke lidstaat gerespecteerd. De lidstaten kunnen dan binnen dit Europees grondwettelijke kader met een verklaring aanduiden welke hun regio's met wetgevende bevoegdheden of Europese partnerregio's zijn. In die verklaring kan de draagwijdte van de bevoegdheden van de regio's worden vermeld in relatie tot het constitutioneel verdrag van de Europese Unie. Vanzelfsprekend worden de lidstaten niet verplicht om gebruik te maken van de mogelijkheid van zo'n verklaring. Op die manier kunnen regio's met wetgevende bevoegdheden binnen de Europese structuren hun legitieme rol spelen op het wetgevende, uitvoerende en justitiële vlak. Voor andere regio's, die veeleer over administratieve bevoegdheden beschikken en lokale besturen zijn eerder de uitvoerende Europese bevoegdheden van belang.

Zoals reeds werd gezegd, moeten op het wetgevende vlak de regio's met wetgevende bevoegdheden minstens het recht krijgen, om door de Europese Commissie te worden geraadpleegd, wanneer deze maatregelen plant die eerder onder hun bevoegdheden vallen. Ook moeten de lidstaten het recht krijgen om hun politiek gewicht in de besluitvorming van de ministerraden naar eigen inzicht te verdelen. Ook voor de regio's met wetgevende bevoegdheden is het op wetgevend gebied essentieel dat er richtsnoeren zijn voor de regeling van de bevoegdheden tussen het Europese, het nationale en het regionale beleidsniveau.

Ten slotte, moeten de regio's met wetgevende bevoegdheden een rechtstreekse toegang krijgen tot het Europees Hof van Justitie. Ik denk dat dat logisch voortvloeit uit de grondwettelijke situatie waarin verschillende regio's zich nu al bevinden. Ook hier moet Europa zich aanpassen aan het democratische rechtsgevoel. Enkel wanneer Europa meer ruimte geeft aan de regio's, zal het ook zijn doelstellingen van democratie, transparantie, efficiëntie en verantwoordelijkheid kunnen realiseren.

2-010

DE

**Dammeyer (NGO-REG/LOCAUT)**, - Herr Präsident, verehrte Kolleginnen und Kollegen im Konvent! Das künftige Europa hat ungefähr 500 Mio. Einwohner. Es ist eine blanke Illusion anzunehmen, dass ein solches Europa zentral regiert oder verwaltet werden kann. Es bedarf verantwortlicher dezentraler Strukturen, und die Regionen, die Städte und Gemeinden, die Kreise und Provinzen sind nötig, um ein demokratisches Europa zu gestalten. Die Regionen und Kommunen sind keine nachgeordneten Instanzen oder dezentrale Behörden der Europäischen Union oder der Mitgliedstaaten. Sie sind es jetzt nicht, und sie werden es in der Zukunft auch nicht sein. Im Gegenteil, ihre Repräsentanten sind die gewählten Repräsentanten der Bürgerinnen und Bürger. Sie haben eigene Befugnisse, und sie verlangen Respekt vor ihren Aufgaben und Zuständigkeiten. Daher rührt die berechtigte Forderung nach dem Respekt vor der kommunalen Selbstverwaltung in ganz Europa. Daher rührt die Forderung, auch die Stellung der Regionen zu respektieren. Das gilt vor allem für die konstitutionellen Regionen mit Gesetzgebungsbefugnis. Sie sind schon jetzt im Rat der Europäischen Union an den europäischen Entscheidungen und Gesetzgebungen beteiligt, aber sie verlangen für sich auch den Zugang zum Europäischen Gerichtshof, wenn sie in ihren Rechten von der Europäischen Union beeinträchtigt sind.

Die Regionen verlangen Einfluss auf die Willensbildung, auf die Entscheidungsfindung und auf die Rechtsetzung auf europäischer Ebene. Sie wollen an den europäischen Entscheidungen beteiligt sein. Sie wollen Subjekte und nicht bloß Objekte europäischer

Entscheidungen sein. Als solches Organ betrachten sie übereinstimmend den Ausschuss der Regionen - Frau Palacio Vallelersundi hat darauf bereits hingewiesen -, der weiterentwickelt werden muss gegenüber seinen bisherigen Befugnissen und Arbeitsweisen, in seiner Zusammensetzung und in seinen Aufgaben und Funktionen. Er muss mehr und anders als beratend tätig werden. Der Konvent trägt auch Verantwortung für diese Weiterentwicklung.

Der Ausschuss der Regionen soll Organ der Europäischen Union sein. In bestimmten Fällen soll er beschlussfassend tätig sein. Man kann sich denken, dass das in Fragen der Regional- und der Strukturpolitik der Regionalfonds sein könnte, aber auch, wenn die Politik für den ländlichen Raum Regionalpolitik ist. Er soll ein Vetorecht haben, so dass die streitigen Fragen binnen dreier oder sechs Monate zwischen dem Ausschuss der Regionen und dem Rat oder der Kommission oder dem Europäischen Parlament verhandelt werden können. Wenn die Kommission oder der Rat vom Votum des Ausschusses der Regionen in Fällen, in denen er zwangsläufig gehört werden muss, abweichen wollen, müssen sie verpflichtet sein, ihr Abweichen zu begründen. In allen Fällen, in denen der Ausschuss der Regionen nach den Verträgen obligatorisch befasst wird, muss er an dem Prozess beteiligt werden, der bislang Trilog genannt wird. Er muss Zugang zum Europäischen Gerichtshof haben, wenn er sich in seinen Rechten verletzt fühlt.

Von Anbeginn an galt auch der Ausschuss der Regionen als Hüter der Subsidiarität. In seinen Stellungnahmen haben wir oft darauf hingewiesen, dass die Handlungsbefugnisse der europäischen Ebene durch die Verträge beschränkt und durch das Subsidiaritätsprinzip begrenzt sind. Wir haben dann auch Wege aufgewiesen, aber es ist klar, dass an diesen Prozessen, wie Subsidiarität interpretiert und gehandhabt werden soll, die Regionen beteiligt sein müssen und damit der Ausschuss der Regionen seinen Anteil haben muss.

Wenn also ein politisches Organ geschaffen werden soll, das die Kontrolle der Subsidiaritätspraxis in der Europäischen Union ausüben soll, egal ob *ex ante* oder *ex post*, wenn es nur ein politisches Organ ist, wird es erforderlich sein, dass daran auch der Ausschuss der Regionen beteiligt wird.

Die Regionen und die Kommunen haben ihre eigenen eigenständigen und verfassungsgemäßen Aufgaben in allen Mitgliedstaaten. Ihre Befugnisse sollen respektiert und nicht beeinträchtigt werden. Ihre Repräsentanten müssen an der politischen Willensbildung Europas beteiligt werden. Viele Konventsmitglieder haben in ihren bisherigen Beiträgen schon genau darauf hingewiesen. Sie haben Recht damit. Wir möchten ihnen vortragen, wie man so etwas praktisch tun kann.

2-011

FR

**Granrut (NGO-REG/LOCAUT).** – Monsieur le Président, permettez-moi, tout d'abord de vous féliciter de votre initiative de consacrer une session à l'écoute des attentes des représentants de la société civile, et que dans un souci d'efficacité, divers groupes de contact aient amorcé le riche dialogue que nous avons connu hier, et qui se poursuit aujourd'hui. L'un de ces groupes de contact a réuni, sous la présidence avertie de Madame Palacio, les diverses associations européennes d'élus locaux et régionaux. Ayant participé à ce groupe de contact, je voudrais insister sur l'une de ses conclusions qui me semble tout à fait essentielle, à savoir le consensus de toutes les associations présentes (municipalités, petites et grandes, régions à pouvoir législatif ou non) provenant des états membres ou des états candidats, sur deux points. Premièrement, les autorités locales et régionales, légitimées par le suffrage universel de leurs concitoyens, se sentent mandatées pour participer à la construction de l'Union européenne, dès lors que celle-ci se veut transparente et démocratique. Ces mêmes autorités qui font partie du système de gouvernement de l'Union, considèrent que le Comité des régions est leur représentant institutionnel et politique dans l'architecture de l'Union et qu'il doit être reconnu comme tel. C'est ce dernier point que je voudrais développer. L'Europe est diverse, non seulement par les Etats qui la composent, mais peut-être plus encore par les collectivités territoriales qui composent ses états, et qui ont souvent un passé historique de gestion autonome. C'est une source historico-identitaire, complémentaire à celle qui a été mentionnée à Séville. Cette diversité doit être préservée car elle est la garantie du maintien des racines culturelles et politiques des citoyens européens ainsi que du dynamisme de la démocratie locale et participative. L'élus local, qu'il soit municipal, provincial, ou régional est à la fois le premier dépositaire de la légitimité démocratique. C'est aussi celui qui connaît le mieux et qui exprime le plus efficacement les besoins ou les aspirations de ceux qui, par leur vote, ont fait le geste de lui déléguer la parcelle de pouvoir que leur octroie leur qualité de citoyen. Le Comité des régions regroupe l'ensemble de ces élus qui sont en charge de la vie quotidienne de leurs concitoyens dans tous ses aspects tels que le logement, l'éducation etc. Ces aspects, généralistes par définition, sont la première expression politique de ce qu'il est convenu d'appeler la société civile. De ce fait, le Comité des régions devient le lien naturel et politique entre les peuples d'Europe et l'Union à construire. L'Union européenne ne peut plus ignorer le rôle de ces acteurs régionaux et locaux de la démocratie, pas plus que celui de leur représentation ici au sein de l'architecture institutionnelle de l'Union pour plusieurs raisons. Premièrement, le processus de décentralisation qui tend à accroître leur responsabilité, correspond à un besoin profond des populations de se sentir écoutées et impliquées dans l'action publique. Tous les états d'Europe sont touchés par ce phénomène avec des variantes toutefois. Deuxièmement, ils sont désormais en charge de l'application de plus de soixante-dix pourcent de la législation européenne. Ils participent à la réussite de la mise en oeuvre des politiques de l'Union et ils sont les mieux placés pour expliquer à leurs administrés, et c'est souvent bien nécessaire, les motivations de ces politiques. Troisièmement, qu'ils soient responsables régionaux ou municipaux, nombre d'entre eux ont expérimenté un nouveau code de gouvernance basé sur la recherche du consensus et sur l'implication de tous les acteurs culturels, économiques et sociaux. Il s'agit tout simplement de mettre en place un mécanisme efficace et réaliste qui garantisse l'application des principes de subsidiarité et de proportionnalité. Non seulement, ils organisent ainsi la participation du plus grand nombre des citoyens à la prise de décisions mais dès lors qu'ils participent à la décision de la base, les citoyens peuvent remonter la chaîne du processus décisionnel et adhérer à la décision finale prise au niveau européen. Ils peuvent donc apporter à l'Europe une expression politique des attentes de la société civile, une démocratie de proximité, un nouveau mode de gestion du mandat politique, une perception citoyenne des enjeux européens. N'est ce pas donner un nouveau sens à l'Europe ? Monsieur le Président, mes chers collègues, permettez-moi de souhaiter que cette session

persuade la Convention d'associer à la construction politique qu'on attend de l'Union celle qui existe au niveau régional et local, parce qu'elle est la seule qui garantisce à l'Union son ancrage démocratique.

2-012

IT

**Martini (NGO-REG/LOCAUT).** - Signor Presidente, gli originari ideali dell'Unione europea sono sottoposti, oggi, a tensioni forti e sempre nuove e sembrano talora inadeguati a dar le tante risposte che i cittadini chiedono pressantemente ai responsabili politici di ogni livello. Nello stesso tempo, il quadro mondiale subisce profonde e non preventivabili modificazioni, in particolare per l'avanzare del processo di globalizzazione. E' dunque necessario, per l'Europa del futuro, un progetto politico altrettanto nuovo, che vada oltre la riforma dell'assetto istituzionale e che sappia radicare un nuovo fondamento ideale dell'Unione. Occorre rispondere ai bisogni e alle aspirazioni dei cittadini di oggi e di domani e affermare nel mondo il messaggio fondamentale di democrazia, di pace e di solidarietà. Tutto ciò va reso completamente chiaro e comprensibile dai cittadini, per farne protagonisti di questa nuova fase della vita politica del continente e rendere più democratica l'attività dell'Unione.

Dobbiamo evitare, però, ogni ipocrisia: troppo spesso si tende a porre sulle spalle dell'Unione l'intero *deficit* di democrazia che percorre l'Europa. A essere sinceri, questo *deficit* colpisce i cittadini anche a livello nazionale, regionale e locale. In ogni caso, un'Europa più forte, aperta e sociale aiuta un'effettiva ridemocratizzazione di tutta la filiera della rappresentanza politica e mette in moto energie e contributi oggi sopiti. Allora è necessario e urgente, a mio avviso, collegare più strettamente innovazioni istituzionali e progressi di contenuto: penso, ad esempio, all'obiettivo primario della coesione economica, sociale e territoriale; ad esso vanno ispirate e subordinate tutte le politiche dell'Europa: quelle agricole come quelle infrastrutturali, quelle del mercato unico come quelle monetarie, quelle della conoscenza come quelle della formazione e del lavoro.

La coesione non è soltanto un problema economico, che condiziona la stessa competitività globale dell'Unione; è soprattutto un valore politico che unisce le differenti popolazioni dell'Europa e ci fa raggiungere due obiettivi storicamente strategici per noi: la salvaguardia e la valorizzazione delle diversità e specificità e il consolidamento di una vera solidarietà comune. Ci sarà più consenso popolare se si afferma nei fatti un'Europa non monocentrica ma policentrica, ricca di diverse culture e tradizioni, unita nella salvaguardia dei diritti dei cittadini e dei lavoratori e nella solidarietà tra le diverse aree e generazioni. L'Europa deve portare tale messaggio anche all'esterno, attraverso l'esempio di equità, tolleranza e solidarietà che applica al suo interno e che pratica verso gli altri popoli. Un'Unione autorevole ed aperta saprà, ad esempio, governare il fenomeno dell'immigrazione clandestina in modo aperto e innovativo, contro il quale, in mancanza di forti segnali di pace e cooperazione, si cede verso il rimedio antistorico della repressione e della discriminazione.

Un altro esempio è possibile citare: le politiche europee verso il Mediterraneo. L'Unione si è proposta di fare molto in questa parte così prossima e delicata del mondo, ma la sua azione è stata sin qui affidata ai soli rapporti fra gli Stati, senza scommettere sul coinvolgimento delle popolazioni locali e delle loro autorità rappresentative; ma così si sono ottenuti risultati insufficienti. La via giusta è, dunque, quella della coesione fra le diverse realtà all'interno dell'Unione e della cooperazione verso l'esterno. Queste due idee forza, iscritte nel codice genetico del modello sociale europeo, non si realizzano senza il contributo fondamentale delle regioni e delle autorità locali. L'Unione deve quindi valorizzare il ruolo dei livelli di democrazia locali, che sono per tutti i cittadini primo e fondamentale elemento nell'architettura della vita sociale dei pubblici poteri democratici. Del pari, se l'Europa vuole affermare il suo ruolo di pace nel mondo, deve far leva anche sulle attività di cooperazione internazionale decentrata, nelle quali sono impegnate tante regioni e numerosi enti locali.

Tutto ciò è, in sostanza, il fondamento della carta costituzionale di una vera nuova Europa, policentrica e solidale, prossima ai suoi cittadini. Quanto più l'Europa sarà questo, tanto più potrà contare sul ruolo attivo delle regioni, e ciò giustificherà ancora di più la nostra rivendicazione fondamentale, che è quella di decentrare la vita dell'Europa senza rinazionalizzarne le politiche.

2-013

FR

**Le Président.** – Je vous remercie beaucoup.

Nous passons maintenant aux porte-parole qui ont été désignés lors de la réunion du groupe de contact, et je transmets la responsabilité de la présidence à notre collègue Jean-Luc Dehaene.

#### PRÉSIDENCE DE M. DEHAENE

2-014

DE

**Hoffschulze (NGO-REG/LOCAUT), Rat der Kommunen und Regionen Europas.** - Herr Präsident! Zunächst herzlich Dank für die Einladung, dass die Kommunen und Regionen gemeinsam ihre Anliegen hier vorstellen können. Ich bin dafür sehr dankbar, und ich wünsche Ihrer Arbeit einen großen Erfolg. Wir haben uns zusammengesetzt mit fünf Verbänden. Wir sind der RGRE, Rat der

Gemeinden und Regionen Europas, die Konferenz der peripheren maritimen Regionen, die Versammlung der Regionen, die Arbeitsgemeinschaft europäischer Grenzregionen und Eurocities, deren Vertreter nach mir sprechen werden.

Ich könnte den Vortrag recht kurz fassen, weil die wesentlichen Züge in den schriftlichen Bericht eingeflossen sind, den Frau Palacio Vallelersundi Ihnen über unser Treffen am 10. Juni vorgelegt hat. Deswegen will ich auch nur einige wenige Akzente setzen. Wir haben uns darauf konzentriert, mit konkreten Vorschlägen den Weg zu ebnen für das, was wir für den Verfassungsvertrag für notwendig halten. Dies ist zum einen der Hinweis auf Artikel 1 des Vertrags über die Europäische Union, in dem es heißt: *as closely as possible to the citizen*, also so nahe wie möglich beim Bürger. Meine Vorredner haben wiederholt darauf hingewiesen: Dies bleibt eine Illusion, wenn man nicht anerkennt, dass insbesondere die Städte und Gemeinden, aber auch die Kreise und Regionen hier eine federführende Rolle haben. Wir sind in 60 - 70% der Entscheidungen gegenüber dem Bürger die Federführenden, die Handelnden. Bürgernähe muss durch uns möglich werden, und dies heißt eben auch Respekt vor der kommunalen und regionalen Selbstverwaltung, damit die entsprechende Flexibilität erhalten bleibt. Diese Verpflichtung zur *proximity* oder zur Bürgernähe muss deswegen wesentlicher Bestandteil auch des neuen Vertrages werden, wie bisher in Artikel 1 des Unionvertrags.

Wir schlagen außerdem vor, dass das Prinzip der Subsidiarität - wie es in Maastricht definiert wurde, das ist heute der Artikel 5 - präzisiert wird durch den Hinweis auf die Mitgliedstaaten mit ihren Regionen und Kommunen. Wir halten dies für eine notwendige Ergänzung dieses Artikels. Überhaupt müssen Subsidiarität und Proportionalität im Vertrag wichtige Hinweise sein. Ich betone auch Proportionalität, was bisher zu kurz gekommen ist, denn die Tiefe des Eingriffs der Union in Handlungsfähigkeiten der Regionen und Kommunen ist auch eine Frage der Proportionalität. Dies führt beispielsweise dazu, dass wir sagen: Die Union sollte sich zurücknehmen auf fundamentale Entscheidungen, auf Rahmenentscheidungen, auf Rahmenrichtlinien und sich bei Details zurückhalten.

Es wird viel diskutiert über die Kontrolle der Subsidiarität, ob sie eingehalten wird. Wir sind in unseren fünf Verbänden der Meinung, ein Instrument ist das wertvollste jenseits der politischen und der gerichtlichen Kontrolle, das ist das Prinzip der Konnexität. Wo immer Sie veranlassen, dass der, der die Musik bestellt, sie auch bezahlen muss, wird es Zurückhaltung geben, und deswegen fordern wir Sie auf, dieses Prinzip in den Verträgen zu verankern. Frau Palacio Vallelersundi hat darauf in ihrem Bericht schon Bezug genommen.

Wir haben ferner - gerade als RGRE - die Bitte, die Charta der Grundrechte, wie sie in Nizza verabschiedet wurde, in die Verträge zu integrieren. Ich nehme an, das ist bei Ihnen schon Konsens. Wir weisen aber ausdrücklich darauf hin, dass wir darin auch die Präambel integriert sehen wollen, und zwar deshalb, weil dort zum ersten Mal das Verhältnis der Union auf der einen Seite mit den Mitgliedstaaten auf der anderen Seite verankert wurde, aber mit ihrer Organisation der öffentlichen Gewalt auf nationaler, regionaler und lokaler Ebene. Diese Formulierung, für die ich den Mitgliedern des damaligen Konvents außerordentlich dankbar bin, insbesondere Präsident Herzog und Herrn de Vigo, aber auch Herr Professor Meyer, die sich damals dafür eingesetzt haben, diese Formulierung muss Einzug halten in die Verträge! Hinter dieses Niveau der Grundrechteerklärung kann eigentlich niemand mehr zurückfallen wollen. Dies kann man auch machen, indem man Artikel 6 des Vertrags beschränkt und das dort aufnimmt.

Ein weiterer Punkt ist die Bitte um Integration der Charta der kommunalen Selbstverwaltung des Europarates in einem eigenen Kapitel, wo immer sie die Essentiale ja unterbringen können. Ich halte dies für ein dringendes Signal an die neuen Staaten in Mittel- und Osteuropa, die in dieser Frage eine Zusicherung finden müssen, dass, nachdem sie aus dem Zentralismus entlassen sind, sie sich dort wiederfinden, mit der Garantie der lokalen Demokratie. Wir sind bereit, uns in einer Arbeitsgruppe, die hier im Präsidium diskutiert wird, einzubringen, falls eine Arbeitsgruppe Kommunen und Regionen eingesetzt wird.

2-015

EN

**Gustav (NGO-REG/LOCAUT).** – Mr President, I speak on behalf of the CPMR which brings together 148 regions. My proposals resume the results of consultations conducted within our various organisations and a broad-based survey, a summary of which has been addressed to the Convention.

With regard to the issue of the task of the European Union, there is convergence of opinion within our cities and regions in favour of redefining the European project. We all want a Europe capable of playing a greater role in world affairs and affirming its identity within the international arena. This role demands increased responsibilities in certain policy areas, such as foreign policy, immigration and justice, international trade and sustainable development. We all want the European Union to strengthen its internal cohesion in order to cope with the growing economic, social and territorial disparities that exist not only between our states but also between and inside the different regions and cities.

We are in favour of enlargement, but it needs policies that require a certain number of adaptations. These dual missions, both at home and abroad, must become the priority of the European Union's project to be defined in the forthcoming constitutional treaty.

In conveying this clear message in the Treaty, which would commit the European Union to a greater balance between its economic dimension and its social and political dimensions, we might more easily restore a climate of confidence between our populations and the European integration process.

Two conditions are necessary. Firstly, from a legal point of view, there is a need to emphasise the priority value of the principle of economic and social cohesion set out in the Treaty. The notion of territorial cohesion needs to be added. It is vital to ensure that a



Member State's commitment to reducing the disparities between the EU territories is made clearly visible. This objective should be pursued for all regions and cities.

Secondly, from a more operational point of view, we need to execute and adapt this principle through ambitious Community policies. At present, most policies that have an impact on the development of our territories fail to contribute sufficiently towards this. We need to ensure that this gap does not persist in future. We are therefore against renationalisation in areas such as regional and agricultural policy. This would undermine the principle of cohesion within the European Union.

Far-reaching reforms are necessary to make the policies with a high territorial impact more participatory by ensuring a greater involvement of actors on the ground when they are being drawn up, by means of consultation mechanisms. These policies should be more flexible and better adapted to territorial diversities, for example in areas such as transport policy, the common agricultural policy or the system of state aids. They should be more decentralised in their implementation. In all these areas, competences are shared between the European Union, the Member States and the regions and cities and should remain so. The chapters of the Treaty thus need to be streamlined and follow the same plan, a plan that would detail the content, the instruments, the degree of flexibility and also the distribution of competences.

We must strengthen our partnership to coordinate better our public policies, if we wish to complete our internal market effectively. For us this is one of the major challenges of the discussions on the division of competences. Let us avoid, however, a move towards too inflexible a system that would not only hinder the progress of the European integration process but also hinder cooperation between public sector players, the European Union, the Member States and the regions and cities.

2-016

EN

**Van Nistelrooij (NGO-REG/LOCAUT).** – Mr President, for the European regions, this is a great day. The Committee of the Regions and all the organisations are moving in one direction, with more possibilities for direct participation in Europe. We agree what that direction should be. The most important point is that Europe cannot be strong and lasting if we do not root it in the regions and communities as they exist and are active in all Member States.

From our point of view, the objective of the Convention must be a new constitutional treaty which creates a union of states and associates regional and local authorities, giving them the right to define and implement policies.

On the basis of the existing treaties and in accordance with the principles of subsidiarity and our daily practice in regions, the constitutional treaty should summarise the competences of the European Union. These competences of the European Union could be classified as exclusive competences, shared competences and complementary competences. Central areas of responsibility of Member States, which limit the exercise of the European Union responsibilities, should be protected in the future treaty in order to improve clarity of task allocation. But, above all, the regional and local governments must be involved.

Protecting minorities, guaranteeing their rights, implementing European regulations and promoting culture at the national, regional and local levels are all important responsibilities.

The financial consequences of European Union action for regional and local governments need to be taken into account from the outset, given that the local and regional governments implement most European legislation.

Although there is a need for specific competences to be set out, the European Union needs to be able to address new issues and add new competences, if necessary, but only where the Council and the Parliament so agree - possibly on the basis of a special majority. Furthermore, the European Court of Justice should have the power to determine whether the European Union's other institutions are acting beyond the scope of their competences.

It is also important to expand the division of responsibilities by applying a series of principles which are already the subject of the Treaties: the principle of limited individual powers and the principles of subsidiarity and proportionality.

It is very important that we cooperate in the special Working Group on Subsidiarity because it is the keystone on which to build the future Europe.

2-017

DE

**Gabbe (NGO-REG/LOCAUT),** - Herr Präsident! Ich spreche für die Arbeitsgemeinschaft europäischer Grenzregionen, der 160 Grenzgebiete angehören. Ich komme aber gleich mit einem Thema, das so gar nicht in den juristischen Rahmen passt. Etwas haben wir in der Vergangenheit gelernt: Die grenzübergreifende Zusammenarbeit ist nicht immer eine nationale Priorität, aber sie ist mit Sicherheit eine topeuropäische Priorität, denn ob uns die Integration in Europa gelingt, das wird sich auch an den Grenzen entscheiden. Das heißt, wir brauchen in den europäischen Verträgen eine Absicherung dieser grenzübergreifenden Zusammenarbeit als politische Aufgabe der EU und als politisches langfristiges Ziel.

Wir sprechen von dem Reichtum der Bürger, der regionalen Vielfalt als Reichtum. Einen Reichtum soll man mehr und pflegen. Der Reichtum besteht aber in Unterschieden, und diese Unterschiede treffen sich an den Grenzen. Sie sind nicht verursacht von der regional-lokalen Ebene, die dieses überwinden muss, die grenzüberschreitende Zusammenarbeit in die Praxis bringen muss. Das heißt aber, dass der Bürger, der seine Identität und seine Vielfalt nicht verlieren will, der mit diesen Barrieren - seien sie sozialer, wirtschaftlicher, psychologischer Natur, manchmal zwischen den Ohren - an den Grenzen lebt, kooperieren muss, um dies zu überwinden.

Das heißt, wir brauchen nicht nur den Rahmen der Verfassung, wir brauchen sicherlich auch eine eigenständige europäische Politik und ein eigenständiges Instrument. Die Kommission erreicht mit ihrer eigenständigen Politik 40% der Bevölkerung in den Grenzgebieten, mit der interregionalen Kooperation fast 100%, und das lebt bei den Bürgern. Also dürfen wir das nicht auf Teilbereiche aufsplitten. Wir müssen diese Politik europaweit machen, und wir müssen ein eigenständiges Instrument schaffen, das sie aus den Strukturfonds herauslöst, damit wir in diesen Bereichen europäische Politik losgelöst von nationalen Hindernissen machen können.

Ich möchte abschließen mit dem Hinweis, dass grenzüberschreitende Zusammenarbeit sicherlich ein Prüfstein dafür ist, ob es gelingt, in Partnerschaft und Subsidiarität miteinander zu leben, ob es gelingt, trotz unterschiedlicher Partner, trotz unterschiedlicher Mentalitäten zu kooperieren, ob wir Bürgerinstanzen und Politiker trotz der Unterschiede grenzüberschreitend beteiligen und ob es uns gelingt, für den Bürger das Leben in seiner Gemeinde, in seiner Nation in Europa so zu gestalten, dass er nicht glaubt, er ist in einem Halbkreis. Aus dem Grunde die Bitte, den rechtlichen Rahmen, der unbedingt nötig ist, damit wir politisch keinen nationalen Wechselbädern ausgesetzt sind, juristisch zu verankern und eine Politik und ein Instrument zu schaffen, die diese transeuropäische Kooperation ermöglichen.

2-018

EN

**Siitonen (NGO-REG/LOCAUT).** – Mr President, I represent Eurocities, the network of more than 100 European major cities. We in Eurocities have been working together with the other European networks of local and regional authorities to develop a common approach to the important issues being addressed by the Convention.

Together, we are calling for a more inclusive and participatory approach to governance in the European Union. This means ensuring more effective cooperation among all the spheres of governance: local, regional, national and European.

It is important to recognise that the cities and regions play a major role in terms of the implementation and financing of policies and legislation which have been decided at European level. In a number of important areas, including economic, social and environmental policies, competences are already being shared among different spheres of governance.

We welcome the proposal that the existing Treaties should be replaced by a common text, which would be a constitutional treaty. This is necessary in order to make the European Union more transparent and to clarify relations between the EU institutions and the local, regional and national authorities. We believe that the principle of local self-governance should be included in the Treaty, together with a clear definition of subsidiarity.

It is also important to clarify the aims and objectives of the European Union. The concept of sustainable development is very important, and we would like to see a more holistic and integrated approach towards policy-making which takes into account the economic, social, environmental and cultural dimensions. In particular, we would like to see a better balance between the objectives of economic growth and social cohesion.

Across a wide range of policy areas, local and regional authorities have a positive contribution to make to the policy-making process. In order to ensure good governance, it is essential that the experience and expertise of the cities and regions should be taken into account at an early stage in the development of proposals for new policies and legislation.

We are therefore calling for a more systematic dialogue between the Commission and representatives of local and regional authorities. Our existing European networks could play a useful and necessary role which would complement the valuable work being done by the Committee of the Regions.

Cities and regions have sometimes faced problems with the implementation of EU directives. We think more decisions should be left to the responsible authorities who can take account of specific local circumstances. Local and regional authorities are close to the citizens. We most often know what needs to be done and how best to do it. We are convinced that closer dialogue between the different spheres of governance will bring positive benefits for everyone in terms of improving the quality and the effectiveness of policies and legislation.

We hope the Convention will consider our proposals and we look forward to continuing our dialogue with you all during the coming months.

2-019

DE

**Doerler (NGO-REG/LOCAUT).** - Herr Präsident, meine sehr geehrten Damen und Herren! Die Präsidenten der gesetzgebenden Versammlungen bzw. Parlamente auf regionaler Ebene, die ich hier vertrete, sind sehr erfreut, dass wir gehört werden. Sind es doch die Regionalparlamente, die die legislative Kompetenz auf regionaler Ebene inne haben. Acht Länder der Europäischen Union verfügen über Parlamente auf regionaler Ebene. Es gibt derzeit 70 Regionalparlamente. Deutschland, Österreich, Belgien, Spanien und Italien setzen sich in der Gesamtheit ihres Staatsgebildes aus gesetzgebenden Regionen zusammen. In Großbritannien haben Schottland und Nordirland legislative Kompetenzen, in Portugal verfügen die Azoren und Madeira über eigene Parlamente, und in Finnland sind es die Åland-Inseln. Insgesamt leben 203 Mio. Menschen, das sind 54% der Bevölkerung in der Europäischen Union, in gesetzgebenden Regionen.

Diese Regionalparlamente arbeiten seit längerer Zeit intensiv zusammen. So haben sie die 1998 in Oviedo die CALRE gegründet und treffen sich seither jährlich einmal, um ihre gemeinsamen Interessen zu beraten. Im letzten Jahr haben die Präsidenten in Madeira eine gemeinsame Erklärung zum europäischen Reformprozess angenommen, wie er vom Vertrag von Nizza in Gang gesetzt wurde. Zur Kompetenzabgrenzung haben sich die Präsidenten zu einer doppelten Strategie entschlossen. Zum einen schlagen sie unter Anwendung des Subsidiaritätsprinzips bessere Kompetenzabgrenzung sowie einen Kompetenzkatalog vor. Zum anderen sind sie der Ansicht, dass die Kompetenzaufstufung von weiteren Maßnahmen begleitet werden sollte. Hier nennen sie einerseits die Überarbeitung des Artikels 10, in dem die Achtung der mitgliedstaatlichen Verfassung und somit ihrer internen Organisation durch die europäischen Institutionen verankert werden sollte.

Was die Kontrolle anbelangt, streben die Präsidenten ein Klagerecht der gesetzgebenden Versammlung beim Gerichtshof an. Das wurde von meinen Vorrednern schon angeschnitten. Der Ausschuss der Regionen muss ebenfalls gestärkt werden, indem ihm der Status einer Institution zukommt und das Klagerecht beim Gerichtshof verankert wird. Die Präsidenten sind der Meinung, dass die Rolle der Parlamente in der zukünftigen Union stärker sein sollten als in der Vergangenheit. Das europäische Rechtssystem, das auf drei Ebenen gründet, muss zu einer offenen Kooperation zwischen nationalen Parlamenten, Europäischem Parlament und regionalen Parlamenten führen.

Wir sind auch überzeugt, dass die Grundrechtscharta in die Verträge aufgenommen werden muss und die Rolle der Bürgerinnen und Bürger zu verstärken ist. Seit letzten Oktober können wir Fortschritte - bescheidene, aber doch sichtbare - verzeichnen. Das Europäische Parlament hat sich dafür ausgesprochen, obwohl sonst keine Lösung für den Status der gesetzgebenden Regionen gefunden wurde, dass die Präsidenten der Regionalparlamente in die Arbeit des Regionalausschusses miteinbezogen werden sollen. Das ist ein wichtiger Fortschritt.

Während der Arbeit des Konvents wurde das Problem der gesetzgebenden Regionen angesprochen. Die Regionalparlamente, die die Arbeit des Konvents unterstützen, sind erfreut über die heutige Gelegenheit, ihre Ansicht direkt vor dem Konvent äußern zu können. Das Thema befindet sich im Stadium stetiger Entwicklung, und die Debatte ist noch nicht geschlossen. Wir sind uns dessen bewusst, dass unsere ehrgeizigen Ziele in ein realistisches Ergebnis münden müssen. Dabei ist aber den Aufgaben, die uns unsere nationale Verfassung vorgegeben hat, Rechnung zu tragen. Ich möchte Ihnen jedenfalls versichern, dass den Positionen des Konvents von den Präsidenten der Regionalparlamente große Aufmerksamkeit zuteil wird, und wir werden dem bei unseren nächsten Arbeiten im Rahmen der CALRE Rechnung tragen.

2-020

DE

**Teufel (Parl.-DE).** - Herr Präsident, meine sehr verehrten Damen und Herren! Das Selbstverwaltungsrecht der Städte und Gemeinden ist bisher in keinem einzigen Vertragswerk verankert. Das muss sich ändern, denn die Regionen und Kommunen sind etwas anderes als das, was heute Zivilgesellschaft genannt wird. Sie sind keine gesellschaftliche Vereinigung von Bürgern, sie sind aber auch nicht lediglich administrative Einheiten. Sie sind die politischen Körperschaften, die den Bürgern am nächsten stehen. Dies gilt für das praktische Leben, es gilt aber auch für die Identität der Bürger.

Sie sind elementarer Grundpfeiler der Demokratie in Europa seit der griechischen Antike. Das Europa des Mittelalters bis zur Neuzeit war ein Europa der Städte. Das künftige Europa muss daher eine föderative und subsidiäre Struktur haben. Aufgebaut werden muss es von unten nach oben auf der Basis der kommunalen Selbstverwaltung. Den lokalen Gebietskörperschaften kommt deswegen eine ganz besondere Rolle zu. Ich unterstütze auch die Forderung, die Rolle der Regionen in der künftigen europäischen Verfassungsordnung im Herbst im Konvent zu diskutieren. Auch der Ausschuss der Regionen sollte so gestärkt werden, wie es deren Vertreter heute morgen in der Anhörung dargelegt haben.

Diese Diskussion muss in einer Arbeitsgruppe vertieft werden. Dazu bereits heute drei Gesichtspunkte: Wichtig ist, dass in einem neuen Verfassungsvertrag noch deutlicher wird, dass die bereits heute in Artikel 6 Absatz 3 EU-Vertrag verankerte Achtung der nationalen Identität der Mitgliedstaaten auch den innerstaatlichen Aufbau der Mitgliedstaaten umfasst. Bei der Definition des Subsidiaritätsprinzips sollte ein Hinweis aufgenommen werden, dass vor dem Erlass von EU-Regelungen die Handlungsmöglichkeiten der Mitgliedstaaten einschließlich ihrer Regionen und Kommunen berücksichtigt werden müssen. Im Rahmen ihrer Rechte und Zuständigkeiten sollten die Regionen mit Gesetzgebungsbefugnis wie auch der Ausschuss der Regionen ein eigenständiges Klagerecht vor dem Europäischen Gerichtshof erhalten. Auf dieser Grundlage können die Regionen und Kommunen zu tatkräftigen Partnern der Europäischen Union werden.

2-021

DA

**Bonde (PE).** - Hr. formand, på topmødet i Sevilla fik vi et gennembrud på åbenhed, men Frankrig og Luxembourg blokerede et planlagt gennembrud; derfor efterlyser jeg franske og luxembourgske kolleger, der vil være med til at lægge pres på deres regeringer.

Så til emnet om lokale og regionale myndigheders indflydelse på EU-lovgivningen. Der har vi jo en stærk folkelig støtte i Eurobarometer nr. 52 og 53, hvor 60% de af europæiske borgere foretrækker lovgivning ved lokale, regionale og nationale myndigheder, og kun 18% foretrækker et højere niveau. Alligevel har vi 85.000 sider EU-lovgivning, 10.000 love og lige så mange ændringsforslag, som efterhånden også berører alle de regionale lovgivende myndigheder. Hovedparten af den regionale lovgivning er i dag indrammet af EU-regler.

Det, vi derfor har brug for, er et reelt subsidiaritetsprincip, som styres nedefra og opefter, og der har vi prøvet med Kommissionens initiativmonopol at få de nationale parlamenter og de regionale lovgivende parlamenter til at foretage en parallel læsning af alle EU-lovforslag, således at der bliver mulighed for at bremse overnational lovgivning, hvis den går de nationale og regionale lovgivende parlamenter for nær. De regionale myndigheder kunne også få søgsmålsret ved domstolen. Regionsudvalget kunne få vetoret i forbindelse med fortolkningen af subsidiaritetsprincippet, og de kunne f.eks. lave en årlig rapport om subsidiaritet, så vi kunne få mange eksempler på overcentralistisk lovgivning på bordet.

Som eksempel kan nævnes, at vi i en dansk kommune har oplevet, at det lokale sporvejselskab ikke var i stand til at styre sin egen virksomhed. Efter min opfattelse ville det være en oplagt EU-sag, hvis de bød på sporvejskørsel i Hamburg eller et andet sted, men når de holder sig til deres egen kommune, kan jeg ikke se, hvorfor Kommissionen skal blande sig i det. Lad os få den type eksempler på bordet til den arbejdsgruppe om subsidiaritet, der mødes igen her i eftermiddag, så vi kan slå et slag for decentralisering.

2-022

IT

**Speroni (Ch.E/G.-IT).** - Signor Presidente, giusto una visione dell'Europa a più livelli - Unione, Stati, regioni, autonomie locali - va riordinata, come già sancisce la rinnovata Costituzione italiana. L'Unione deve riconoscere tali livelli, astenendosi tuttavia dal definire i particolari, restando ogni Stato libero di darsi l'assetto istituzionale interno ritenuto più confacente alle esigenze dei propri cittadini. Vediamo che, anche qui, nell'ambito della Convenzione, Belgio e Danimarca, secondo i propri ordinamenti istituzionali e le proprie scelte, hanno inviato esponenti regionali come membri, così come questi Stati si fanno rappresentare nel Consiglio, in talune occasioni, da ministri delle regioni secondo le loro competenze legislative. L'Unione deve quindi rispettare tali scelte e coordinare i propri ordinamenti con gli assetti istituzionali degli Stati, dando un ruolo, nei propri procedimenti decisionali, a quelle regioni cui gli Stati abbiano riconosciuto competenze legislative; di conseguenza, le regioni devono avere diretto accesso alla Corte di giustizia di Lussemburgo.

Concludo ricordando che, nell'Ufficio di presidenza della Convenzione, regioni e autonomie locali sono degnamente rappresentate dal Presidente Giscard, presidente di consiglio regionale in Francia, e dal Vicepresidente Dehaene, borgomastro in Belgio.

2-023

EN

**Wittbrodt (Parl.-PL).** - Mr President, democracy cannot exist if it does not have a solid basis. The basis for democracy is a just civil society, which functions through non-governmental organisations and through regional and local authorities, including Euro-regions and sub-regions. If we want Europe to be closer to its citizens, we have to conduct dialogue directly with the citizens. We will not be able to achieve this if we act without the commitment of NGOs. Therefore, the Convention's decision to open itself up to NGOs is an excellent one. This session shows how rich and beautiful Europe is in its national and regional diversity. I agree that it should be preserved.

Some of the proposals submitted by the NGOs are, in my view, very important. Firstly, as we know, subsidiarity is a basic principle for the Union. Subsidiarity is even more important for the existence and actions of NGOs. After all, regional, local and small voluntary organisations have a great impact on the development of civil society. The subsidiarity principle must, however, be accompanied by adequate instruments, including financial resources.

Secondly, local and regional level organisations have to be consulted in the decision-making process which directly refers to them. We should enhance and facilitate civil society involvement in the decision-making process and the new constitutional treaty should contain such statements. We should also bring in proposals from the European Commission's White Paper on European Governance.

Thirdly, the idea of civil society is based on common universal values such as the protection of human rights, and solidarity with the poor. Europe must find a deeper spiritual and religious dimension. This, and the Charter on Fundamental Rights should also be anchored in the constitutional treaty.

2-024

FR

**Barnier (CE).** – Monsieur le Président, chers amis, chers collègues, j'ai relevé dans les interventions ce matin trois points qui méritent, me semble-t-il, notre attention et notre soutien.

Premier point, assez général, un attachement aux grandes politiques communautaires qui font, je le disais hier dans le dialogue avec des organisations sociales, que l'Union ne se réduit ni ne se résume à un supermarché organisé, et qu'elle est beaucoup plus que cela. Elle est une communauté. Elle est également l'attachement à la politique de cohésion, à la politique régionale, à la politique agricole mais aussi à la politique de concurrence. Qu'on ne renationalise donc pas ces politiques, qu'on ne les détricote pas. C'est un premier point important, majeur, même, dans le grand débat sur l'avenir de l'Union.

Deuxième point: si ce premier point est acquis, il est alors possible de décentraliser la vie de l'Union, de reconnaître le fait régional dans la gestion de certaines politiques, et d'aller assez loin, comme nous y travaillons actuellement, de telle sorte qu'il y ait peut-être moins de bureaucratie à Bruxelles et plus de responsabilités, de confiance à l'échelon régional. Et ce qui a été demandé pour la politique transfrontalière vaut sans doute pour d'autres politiques régionales auxquelles nous réfléchissons pour après 2007.

Dernière conviction: sans remettre en cause l'autonomie institutionnelle des États membres, qui est un principe fondamental de la construction européenne, il est possible, pour réduire la fracture démocratique et pour rapprocher les citoyens de la construction européenne, de s'appuyer davantage sur le cadre démocratique de dialogues, de débats, d'informations que constituent les régions. Voilà pourquoi, Monsieur le Président, je voulais remercier le Comité des régions, les principales organisations qui se sont exprimées ce matin, non seulement pour la qualité de leurs interventions depuis le début de la matinée, mais aussi pour la qualité de leurs relations avec la Commission européenne et les autres institutions.

2-025

FR

**Duhamel (PE).** – Monsieur le Président, nous passons donc de l'écoute à l'étude. Je voudrais profiter de ce que beaucoup de gens y ont fait allusion ce matin pour enfoncer le clou de la simplification du vocabulaire. Simplifier l'Union européenne va être très difficile, simplifier sa langue est assez aisé. Ne pourrait-on pas poser la question, par exemple, de la pertinence de la terminologie ? Par exemple, on parle de Comité des régions, alors qu'en vérité, il s'agit d'un Comité des pouvoirs locaux. Afin d'avancer sur cette question de la simplification du vocabulaire, le Praesidium ne pourrait-il pas demander à l'Institut universitaire européen de Florence de travailler sur cette problématique en liaison avec les groupes de contact que l'on a entendus hier et aujourd'hui, afin de nous adresser rapidement des propositions écrites dont nous pourrions disposer à l'automne vu d'une part, qu'il ne s'agit pas d'une question politique de fond nécessitant au préalable des discussions fortes entre nous et d'autre part, qu'il existe un accord sur cette nécessité. Pour avancer, il faut tester chacune de ces terminologies avec les personnes concernées. Ils pourraient nous y aider.

2-026

DE

**Einem (Parl.-AT).** - Herr Präsident! Ich denke, es ist notwendig zu betonen, dass die Gemeinden mehr Rechte bekommen, dass der Artikel 16 ausgestaltet wird, dass die Gemeinden im Bereich der Daseinsvorsorge einen größeren Spielraum bekommen. Es wurden dazu gestern Vorschläge gemacht, ich selbst habe auch schriftliche eingereicht. Ich denke allerdings, man muss klar und deutlich Nein dazu sagen, dass alle Wünsche, die wir heute gehört haben, an die EU-Ebene gerichtet werden. Die Ausgestaltung der Struktur der Mitgliedstaaten ist die Angelegenheit der Mitgliedstaaten und muss es auch bleiben. Daher geht es primär dort darum, die Rechte der Regionen entsprechend zu respektieren. Ich bin sehr dafür, dass wir mehr Informationen an die Betroffenen, auch an die Regionen geben, damit sie sich entsprechend orientieren und an die entsprechenden Stellen wenden können. Ich bin aber sehr dagegen, dass wir diese Kraftmeierei auf europäischer Ebene einlösen müssen.

2-027

DE

**Berger (PE).** - Herr Präsident! Ich denke, so sehr wir uns hier im Konvent auch bemühen werden, die Europäische Union bürgernäher und demokratischer zu gestalten, wir werden dem Bürger nie so nahe kommen, wie es die lokale Ebene und ihre Vertreterinnen und Vertreter tun können. Ich denke daher, dass wir dafür von der europäischen Ebene alles tun sollten, um die lokale Ebene zu stärken. Zum einen, dass wir das Prinzip der lokalen Selbstverwaltung anerkennen, damit insgesamt die Demokratiebilanz in der Europäischen Union besser wird. Wir müssen die Leistungen, die die Gemeinden erbringen, davor schützen, dass sie dauernd durch das europäische Wettbewerbsrecht verunsichert und behindert werden. Ich denke, wir sollten eine *de minimis*-Klausel einführen, die uns vor allzu tiefgehenden Regulierungen bewahrt. Wir sollten diese Ausformung des Subsidiaritätsprinzips als eine der Aufgaben des Ausschusses der Regionen sehen, in dem aber die Gemeinden in Zukunft besser vertreten sein sollten. Insgesamt denke ich, dass die europäische Ebene den Gemeinden den Rücken stärken soll, wenn es denn sein muss, auch gegen die Regionen und die Mitgliedstaaten!

2-028

DE

**Rack (PE).** - Herr Präsident! Ich möchte eigentlich in die selbe Kerbe schlagen wie eine Reihe von Wortmeldungen, die jetzt gerade aus dem Kreis der Konventionalisten gekommen sind. Es ist wichtig und richtig, dass die Vertreter der Regionen und der Gemeinden

Bürgernähe mit sich bringen, und wir brauchen Bürgernähe in Europa - mehr als wir derzeit haben! Aber hier gibt es sehr große Unterschiede. Es ist darauf hingewiesen worden, dass Regionen mit Legislativbefugnissen in einer ganz anderen Situation sind, wenn es um die Vertretung der Interessen ihrer Bürger geht, als wenn es um bloße rechtsanwendende Institutionen geht. Wir müssen aber auch sicher sein, dass wir das europäische Rechtsetzungsinstrument nicht noch komplizierter machen, als es schon ist. Vereinfachung ist angesagt und nicht totale Verkomplizierung, denn sonst verlieren wir all das, was wir an möglicher Bürgernähe gewinnen, sofort wieder mit mangelndem Verständnis am Gesamtsystem.

2-029

EN

**MacCormick (PE).** - President, one thing seems to have become very clear to me this morning: there are very urgent issues here on which many of us profoundly agree. I understand the Praesidium is still in some doubt over whether it needs to have a working group in the autumn about regional and sub-regional government. I hope that the conversation of this morning has absolutely dispelled these doubts. It is vital that we have such a working group in order to get into the detail of these matters.

I would like to mention one point coming as I do from Scotland. It seems to me very logical that in the current structure of the states and regions of the Union, Scotland, for example, has only half as many Members in the European Parliament as Denmark. There are sixteen Danish representatives whereas there are only eight from Scotland because we are part of a large state. The population is the same but the representation is different. Apply that to the Committee of the Regions and it looks much less sensible. Luxembourg has more members of the Committee of the Regions than Galicia, Wales, Scotland and Catalonia. That is absurd. We should really look again at making the Committee of the Regions into just that: a Committee of *Regions*.

2-030

IT

**Amato (Vicepresidente).** - Mi ha colpito, stamani, che i rappresentanti delle regioni, in particolare, si preoccupassero, giustamente, di rafforzare il ruolo del loro Comitato nella fase di elaborazione della legislazione comunitaria - trovo giusto che il loro parere conti, trovo giusto che si motivi quando se ne disattende il parere - e che si siano mostrati meno preoccupati di garantire le loro competenze legislative con lo strumento che il collega Lamassoure ha più volte proposto e che il Parlamento europeo ha accettato, che è quello di definire ovunque possibile la competenza legislativa comunitaria come una competenza di principi. In qualche modo ce lo ha chiesto la dichiarazione di Laeken dicendoci di fare una migliore delimitazione delle competenze, e questo è il presupposto più naturale per un ricorso alla Corte di giustizia che, altrimenti, fondato sull'attuale sussidiarietà, ha dei profili molto molto problematici.

2-031

FR

**Le Président.** – Nous en terminons ainsi avec le groupe « Régions et Collectivités locales ». Je crois pouvoir dire que c'est un sujet que nous reprendrons en séance plénière et c'est aussi un sujet sur lequel le Président envisage un groupe de travail, comme cela a déjà été répété.

2-032

DA

**Menneskerettigheder**

DE

**Menschenrechte**

EL

**Δικαιώματα του Ανθρώπου**

EN

**Human rights**

ES

**Derechos humanos**

FR

**Droits de l'homme**

IT

**Diritti umani**

NL

**Mensenrechten**

PT

**Direitos humanos**

FI

**Ihmisoikeudet**

SV

**Mänskliga rättigheter**

2-033

FR

**Le Président.** – Nous en venons maintenant au groupe « Droits de l'Homme », dont Monsieur Vitorino a pris la présidence.

2-034

EN

**Vitorino (CE).** – Mr President, we in the Human Rights Contact Group have had a very lively and rich discussion which I am sure will be reflected in the contributions of the speakers that follow me.

By way of an introduction, I would like to emphasise there is an important lesson to be drawn from the Contact Group. Human rights protection in the European Union is about much more than just having good texts such as the Charter or the European Convention on Human Rights. It is a wider challenge in a European Union that wants to be a political union. It is also about structural implementation in the institutions, the mainstreaming of human rights in all European Union policies, particularly issues of gender equality. It is about effective access to the courts for everyone and it is about better parliamentary and ombudsman control, as Mr Soderman mentioned yesterday. Last, but not least, it is about enhanced transparency, accountability and the enhanced involvement of civil society in the process.

Beyond the technical issues that will be dealt with by the Working Group, there are a number of important political issues to be taken into consideration. Several members of the Contact Group have put forward concrete proposals for consideration by this plenary. Our Contact Group had a fascinating debate on the Charter. The Charter was welcomed and its importance underlined by all sides. It is an open question, however, whether the rights in the Charter should be strengthened. Some in the Contact Group emphasised this point. Others said that reopening the Charter now would not necessarily make it better.

Finally, a point which was unanimously agreed in the Contact Group was that the integration of the Charter should not be seen as an alternative to accession to the European Convention on Human Rights. Both initiatives might be considered as complementary in the sense that they both tend to reinforce fundamental rights in the European Union.

2-035

EN

**Oosting (NGO-HUMRIGHTS).** – Mr President, I speak on behalf of the Human Rights Contact Group and, particularly, on behalf of the extensive network of human rights, democracy and conflict prevention NGOs that have submitted a joint paper to the Convention.

That network in turn participates in the Civil Society Contact Group, together with the social, environmental and development NGOs and the ETUC and has thus contributed to that group's brief common statement already referred to yesterday. Let me underline that the common statement encapsulates the key findings and views of networks all over Europe that together stand for many millions of people and, I suspect, may be the largest European constituency that you have before you.

As the first speaker on the human rights sector, I will present our general views on the European Union's values, missions and policies in relation to human rights. More specific issues will be subsequently addressed by my colleagues, including, and particularly, the Charter and the question of accession.

Values: from an economic community that sought peace, stability and prosperity within its own borders, the European Union has become a community of values, with aspirations at a global level. The principles of liberty, democracy, respect for human rights and

fundamental freedoms and the rule of law are enshrined in the Treaties and are not questioned by anyone.

Yet there is a strong notion prevailing in the debates on the future of Europe that when redefining its mission, the European Union should somehow also reaffirm and strengthen its value base.

It has proclaimed that human rights should be at the heart of all its policies, internally as well as externally. But there seems to be uncertainty as to what that means. How important are human rights really for the European Union? Is this something we impose mainly on others or are we taking it seriously ourselves also?

That is not all that evident. Human rights observance within EU borders is in fact a chronic weak spot in the European Union's human rights policies. Human rights within the EU are regarded as a matter of codification and proclamation rather than of implementation and accountability. Serious human rights problems still occur inside the European Union, but these are considered as national responsibilities only. This complacent attitude is not just a credibility problem, it is also the best recipe to ensure that the candidate countries now still under close scrutiny will stop bothering too, as soon as they are full members.

Let me mention some other relevant and complicating aspects. There is no implementation framework and there are limitations in terms of instruments and competences. Article 51 of the Charter makes clear that the European Union can do no more to implement fundamental rights than it has been given powers to do.

There is no accountability, even at political level, for violations in Member States. Serious problems should be not just a matter for the Member State in question to address but must be a concern for the European Union as a whole. Article 7 of the Treaty reflects that and even provides for sanctions, but that is clearly a matter of unlikely last resort. We argue that there is a need for a positive and more proactive approach as well.

Finally, the whole domain of Justice and Home Affairs is burgeoning and poses vital questions for human rights observance by and within the European Union. However, divided as it is between the first and third pillars and subject to different regimes, it is about as untransparent as can be. So much for human rights within the European Union.

On the external front, the human rights clause has become almost a dead letter. Here too, the partners with whom the EU has signed up to a formal commitment to respect human rights do not need to bother too much either.

A fixation on the sanction element, on the one hand, and the reluctance to move beyond silent diplomacy, on the other hand, have so far prevented the development of the human rights clause into an active instrument to stop abuse and build mechanisms capable of prevention. Lack of transparency exacerbates the problem here too. The picture is not only negative; there is enormous effort and there certainly are results. The Council's own annual report on human rights is an impressive catalogue of activities. But it has so far stopped short when it comes to the question of what the result of all that effort really is.

The overall balance is not good. Where human rights within the EU are at issue, the EU remains largely invisible. Where human rights are supposed to be central in external endeavours, too often the results are limited at best and at worst sidelined by larger interests, as we saw after 11 September and again now with regard to the fight against illegal immigration.

To those who think we may be overly critical, it is precisely the EU's own very high priority for human rights and its own very high ambition to be a force for change that justify a critical assessment. If human rights are considered to be at the heart of all EU policies, it should show and it does not, not nearly enough at least.

When reviewing the overall picture, there is a clear discrepancy between the way the European Union asserts its values and the way it gives effect to those values in the field of human rights. There are good intentions, great efforts and certainly also positive results, but also an increasing sense of the collective human rights effort hitting a glass ceiling. This has to do with the nature of human rights, of course, with the highly charged and politicised context in which the battles have to be fought. Human rights work is a long haul.

The current sense of frustration also has to do with the fact that the past year has shown how fragile the human rights effort really is, how easily standards of international human rights and humanitarian law can be compromised and become negotiable. It also has to do with how the big issues - the fight against terrorism and the fight against illegal immigration - can move human rights right off the agenda; how in the major human rights crises in Israel and the Occupied Territories, in Chechnya and Columbia, there is time and again a failure to put human rights effectively at the heart of the peace process. The answer lies in part in stepping up the effort, putting words into action, and being more open and assertive. But at a different level, the EU should also reflect on how it can bring a proper human rights perspective into its policies and actions across a range of endeavours. The time to undertake that reflection clearly is now.

There is one important point I will make before concluding. When talking about a proper human rights perspective, we must be clear that it cannot be limited any longer to the traditional context of civil and political rights. The full and indivisible spectrum of human rights must be taken into account when reviewing the European Union's value base and its mission. It is necessary to take human rights out of the box they are in right now, to ensure coherence between values, objectives and the policies and methods to achieve those objectives. It is necessary to ensure coherence between the internal and external dimensions and to ensure, last but not least, that the over-arching global objective of sustainable development in its social dimension encompasses the full spectrum of human rights.



To conclude, there is a problem of delivery and implementation. There are problems of coherence and of accountability. I argue that there is a deeper problem also, a need for a comprehensive vision of the way that the European Union's fundamental values guide both its internal policies and the European Union's key role in the world. Therefore, we call for the European Union's value base to be strengthened and revitalised by asserting international human rights standards as absolute benchmarks; by developing a policy framework that reflects the inter-connections and the indivisibility of human rights; and by asserting an implementation regime. That regime will remain problematic but should engage in more direct and effective dialogue with civil society; increase transparency regarding the impact of actions and regulations; introduce proper monitoring, evaluation and accountability and review the ability of institutional arrangements to enhance these objectives.

On this last point, how all this should translate into competences in institutional arrangements is for you to determine. All we say is that it needs a strong European Union to deliver on its promises. I have no doubt that civil society will be greatly responsive to a European Union that manages to do that.

2-036

FR

**Sedou (NGO-HUMRIGHTS).** – Toujours au nom des ONG du groupe de contact « Droits de l'Homme », je ciblerai là les questions relatives à la Charte et à l'adhésion à la Convention européenne des Droits de l'Homme. Si, effectivement, l'existence d'une charte des droits fondamentaux de l'Union européenne constitue déjà en soi une avancée, cette dernière n'est cependant pas encore entièrement satisfaisante et des lacunes sont à souligner. Sans être exhaustive, je citerai quatre aspects principaux. D'abord, en terme de protection des droits économiques et sociaux, la Charte est en retrait par rapport à la Charte sociale européenne révisée. Elle est en retrait également par rapport à la Convention européenne, tant au niveau des droits garantis qu'au vu des limitations qu'elle impose par rapport à la Convention. De plus, des formules ambiguës dans certains articles laissent une marge de manoeuvre pour des interprétations restrictives. Enfin, elle introduit, dans plusieurs articles, une distinction entre citoyens européens et ressortissants d'autres nationalités, alors qu'à nos yeux, elle devrait garantir ces droits fondamentaux à tout résident de l'Union, sans discrimination basée sur la nationalité. La charte actuelle doit donc être considérée comme complémentaire à la Convention européenne, dans la mesure notamment où elle ajoute des droits mais en aucun cas, comme une alternative, ni en terme de garanties offertes, ni en terme de contrôle juridictionnel.

Si les avis sont partagés en ce qui concerne le mode et le degré d'intégration de cette charte, il y a unanimité au sein des ONG pour considérer que cette intégration doit se faire dans le sens d'un renforcement des droits et des garanties. Cela implique tout d'abord que le mode d'intégration devra donner une force contraignante à la Charte. Cela signifie que les droits garantis par la charte doivent être considérés comme faisant partie de l'acquis communautaire minimal. Cela implique donc que toute révision ou toute modification de la charte, que nous appelons de tous nos voeux dans les délais les plus brefs, se fasse dans le sens d'une amélioration par rapport à l'acquis de base, dans le sens donc d'une avancée en terme des droits garantis. Nous estimons, par ailleurs, que le mode de révision devrait prévoir un dialogue effectif avec la société civile et les ONG concernées qui ont des revendications précises en la matière. Pour les détails, je vous renvoie aux contributions des ONG. Je soulignerai juste que certaines de ces revendications pourraient être prises en compte et intégrées dans l'élaboration du ou des nouveaux Traités, ce qui constituerait une alternative, si l'amélioration de la charte s'avérait pour le moment impossible. Nous estimons en tout cas que la référence au sein de ces textes à d'autres sources juridiques de protection des droits humains doit absolument être maintenue, notamment les références à la Convention européenne et la jurisprudence de la Cour de Strasbourg.

L'intégration de la charte aura également des conséquences en terme d'incohérence ou de dédoublements entre certains articles de la charte et des dispositions des traités, ou même du droit dérivé, au niveau des droits et de leur étendue. Je ne dresserai pas non plus ici la liste de ces problèmes. Vous pouvez trouver cela dans les contributions. Mais quelle que soit la méthode choisie pour résoudre ces questions, cela devra se faire par une approche au cas par cas, avec pour objectif de maintenir le niveau le plus élevé des droits. Au niveau des questions de compétence, il ne fait pas de doute pour nous que les compétences, tant de l'Union, que de la Cour de justice des Communautés, doivent être étendues aux dispositions de la Charte, et ce dans tous les domaines d'action de l'Union, y compris bien-sûr celui de la justice et des affaires intérieures. En effet, la législation communautaire est appelée à se développer dans des matières qui vont toucher au coeur même des libertés de tous, notamment dans les deuxième et troisième piliers (politique d'immigration, la coopération judiciaire et policière etc). Or, actuellement, cette législation n'est soumise à aucun contrôle juridictionnel digne de ce nom, ni direct ni externe. Pour qu'une telle extension des compétences de la Cour de Luxembourg soit valide, elle devrait bien-sûr s'accompagner d'un assouplissement conséquent des conditions d'accès pour les particuliers, afin d'assurer l'effectivité de ce contrôle. Elle devrait également veiller à assurer une plus grande cohérence possible avec la Cour de Strasbourg. Et là, nous souhaiterions soutenir une suggestion précise qui serait la possibilité, pour les associations, d'introduire des actions collectives auprès de la Cour, sur le modèle du système de la Charte sociale européenne.

Pour être effective, cette extension des compétences requiert bien-sûr que l'Union et ses Institutions soient dotées des moyens adéquats pour atteindre ces objectifs et pour contribuer, non seulement au respect, mais aussi à la mise en oeuvre de la Charte. Sur la question de l'adhésion à la Convention européenne des Droits de l'Homme, la charte ne constitue en rien une alternative à cette adhésion. D'abord, parce que la Charte ne prévoit en l'état actuel aucun système de contrôle et ensuite parce que cette adhésion représenterait une avancée, une plus-value par rapport à la Charte. En effet, elle permettrait d'assurer l'instauration d'un mécanisme de contrôle juridictionnel externe et spécialisé en matière de droits humains. Elle assurerait également une plus grande cohérence, car la plupart des actes communautaires sont soumis à une forme de contrôle indirect en matière de droits humains, au moment de leur mise en oeuvre par les états, qui eux, sont soumis à la Cour de Strasbourg, d'où un risque d'incohérence entre les systèmes des Etats et

surtout, le texte, qui est à l'origine même de cette application et qui, lui, échappe à ce contrôle. L'adhésion renforcerait également l'autorité et la crédibilité du droit de l'Union, contrairement à certaines craintes exprimées et ce, non seulement sur un plan pratique mais également sur un plan symbolique. Cela renforcerait l'idée d'appartenance à une construction politique basée sur les valeurs communes.

Certaines ONG estiment également que ceci pourrait être un signal fort pour les pays candidats, mais aussi pour les Etats membres, qui les dissuaderait d'éventuelles tentations de déroger à leurs propres obligations en terme de respect des droits humains. Les questions plus précises, telles que les modalités de l'adhésion, la base juridique, la personnalité juridique ou la répartition des compétences ne constituent pas selon nous un problème juridique véritable ou insoluble. Toutes peuvent être résolues par une volonté politique véritable. De même, les craintes d'un affaiblissement ou d'une atteinte à l'autonomie du droit communautaire nous paraissent complètement injustifiées. En effet, il existe déjà des interférences entre la Cour de Luxembourg et la Cour de Strasbourg. Celles-ci ne peuvent donc que profiter d'une formalisation de ces échanges en matière de clarté et de cohérence. C'est plutôt l'absence injustifiée d'un contrôle juridictionnel crédible qui affaiblit le droit communautaire. Quelle que soit l'approche envisagée, la solution devra garantir aux individus trois principes de base : la simplicité, l'accessibilité et l'effectivité de recours possibles. Et là nous craignons que l'élaboration de formules alternatives complexes qui ont pu être suggérées, ne portent préjudice à ces principes. Je conclurai en disant que les ONG du groupe préconisent également, dans la mesure du possible, l'adhésion de l'Union aux autres instruments européens et internationaux de protection des droits humains (Charte sociale européenne révisée, Convention-cadre pour la protection des minorités et charte relative aux langues régionales et minoritaires, pactes internationaux et différentes Conventions internationales, notamment contre la discrimination tant raciale que les femmes ou les personnes handicapées). Nous souhaiterions également la signature du statut de la Cour pénale internationale. Cet engagement collectif serait un signe politique fort qui obligerait les pays qui ne l'auraient pas encore fait, de s'y soumettre également.

2-037

FR

**Spiliotopoulos (NGO-HUMRIGHTS).** – Nous nous réjouissons que la convention mette les Droits Fondamentaux au coeur de son travail. L'acquis communautaire en matière de Droits Fondamentaux définit l'identité européenne. Il constitue le fondement de l'Union, voire sa raison d'être. Cet acquis découle du droit écrit, Traités et droits dérivés, des principes généraux que la Cour élabore, des Traités ratifiés par les Etats Membres et de notre édition constitutionnelle. Cet acquis est en évolution constante. La violation de cet acquis par un Etat Membre entraîne des sanctions graves. Son respect une condition primordiale de candidature à l'adhésion. L'acquis en Droits Fondamentaux est le noyau dur de l'acquis communautaire dont le Traité de l'Union exige le maintien intégral et le développement. L'objectif de la Charte était de rendre visible des droits existants, sans pour autant en bloquer l'évolution. Cependant, à côté de ces avancées incontestables, la Charte contient aussi des dispositions en retrait par rapport à l'acquis et elle ne répond pas à certaines préoccupations majeures dans l'Union. Dans la mesure où elle maintient l'acquis ou le développe, la Charte est un acquis elle-même. Ainsi, elle n'est susceptible que d'être améliorée. Je vais illustrer tout cela au moyen de quelques exemples. L'article de la Charte qui proclame l'égalité entre hommes et femmes dans tous les domaines était requis par le Traité qui érige cette égalité en mission et objectif de la Communauté. Le Traité impose l'obligation positive d'éliminer les inégalités et de promouvoir l'égalité entre hommes et femmes. Ces inégalités sont des situations de fait qui affectent surtout les femmes et sont dus à des préjugés et stéréotypes. Elles ne peuvent être éliminées sans action positive. Les femmes ne sont ni groupe ni minorité mais une des deux formes de l'être humain. Et elles souffrent souvent d'inégalités multiples.

En ce qui concerne les actions positives, la Charte doit être complétée en conformité avec le Traité afin de montrer que les actions positives ne sont pas des discriminations mais des moyens nécessaires pour atteindre l'égalité réelle. La participation équilibrée des femmes et des hommes à la prise de décision doit aussi être prévu. En matière de maternité, paternité et articulation de la vie professionnelle et familiale, l'acquis communautaire dépasse largement la Charte. Il garantit des droits cruciaux pour l'avenir, voire la survie même de l'Europe et pour la qualité de vie des femmes, des hommes et des enfants et il est en évolution constante. En ce qui concerne plus particulièrement les droits des enfants, la Charte ne reflète pas l'acquis qui découle de la Convention sur les droits de l'enfant. Des propositions concrètes à ce sujet sont faites. Elles devraient reconnaître que les enfants ne sont pas seulement des objets de protection, mais surtout des sujets de droits. La Charte interdit les expulsions collectives et le refoulement mais elle ignore les droits des ressortissants d'un Etat de ne pas être expulsé même individuellement, et de ne pas se voir refuser l'entrée dans leur pays, droit absolu et indérogeable selon la Convention des Droits de l'Homme et la jurisprudence de la Cour. La Charte devrait aussi répondre à certaines préoccupations majeures dans l'Union, notamment en interdisant toute violence physique ou morale, en reconnaissant le droit d'asile à tous ceux et celles dont les droits fondamentaux ou l'intégrité physique ou morale sont menacés, en garantissant la liberté et le pluralisme des médias en cas de concentration des médias. L'article qui interdit les discriminations constitue une avancée mais il ignore le droit à l'égalité des chances pour les personnes appartenant aux groupes et minorités. Il ignore également les droits des minorités tel que garantis par le Pacte des Droits civils et politiques.

La Charte ignore ou reconnaît insuffisamment des droits sociaux garantis par des Traités internationaux tel que le droit au travail, à un revenu minimum, à un logement décent, à la sécurité sociale, à la protection contre la pauvreté et l'exclusion sociale. Quant à son champ d'application, celui-ci est restrictif par rapport à l'acquis communautaire. La Cour exige l'application des Droits Fondamentaux là où les Etats agissent dans le domaine du droit de l'Union. Ensuite, la limitation des droits est permise sur la base de critères généraux et vagues où des critères classiques des Traités internationaux tels que la référence à une société démocratique sont absents. Dès lors, les limitations sont souvent invisibles. Par conséquent, on doit préserver les avancées de la Charte et combler ses lacunes tout en maintenant et développant l'acquis communautaire. Un des moyen d'y parvenir est de, comme le proposent nombre d'ONG,

faire référence à la Charte, au paragraphe deux de l'article six du Traité de l'Union, en plus de tous les Traités ratifiés par les Etats Membres et des traditions constitutionnelles.

Il faut également renforcer les droits fondamentaux garantis par les Traités en ajoutant certaines dispositions qui serviront aussi de base pour des instruments de droits secondaires. On pourrait imaginer une disposition qui interdirait toute discrimination et exigerait l'égalité des chances pour tous sans discrimination, l'égalité des droits entre femmes et hommes dans tous les domaines et les actions positives, la protection de la maternité, de la paternité et de l'articulation de la vie familiale et professionnelle et l'interdiction de tout traitement favorable direct ou indirect en rapport avec ces situations. Il faut également reconnaître à toute personne un droit individuel à la sécurité sociale et le fonctionnement ainsi que le financement des services d'intérêt général doit être réglementé dans le but de garantir les Droits Fondamentaux. L'Union doit aussi avoir les compétences nécessaires à la mise en oeuvre des droits, y compris les droits sociaux, tel le droit à l'éducation sans oublier l'harmonisation en matière de santé publique. Il faut aussi instituer un médiateur de l'Union qui recevrait les plaintes contre les Etats Membres en vue d'éventuelles procédures d'infraction. Ce faisant, nous aurions un système cohérent et efficace de Droits Fondamentaux qui maintiendrait intégralement l'acquis et le développerait. Je terminerai en plaidant pour que "Droits Fondamentaux" soit définitivement remplacé par "Droits de l'Homme" comme vient une nouvelle fois de le proposer Madame Berès.

2-038

IT

**Muscardini (PE).** - Signor Presidente, operare in campo politico, culturale e sociale ed economico affinché i diritti e la dignità della persona siano rispettati nell'Unione e nei paesi con i quali abbiamo rapporti politici, commerciali o di cooperazione, è uno degli impegni che la Convenzione si è posta nella prima riunione, discutendo delle missioni dell'Europa.

Nell'Unione spesso la dignità della persona è violata da una criminalità organizzata e transnazionale che trascina minori, bambini e bambine, sulla strada della prostituzione e della pedopornofilia, per non parlare del lavoro minorile e delle violenze domestiche. Dobbiamo difendere i diritti politici, civili, culturali ma, oggi più che mai, anche il diritto all'integrità fisica e psichica. Per difendere questi diritti, per combattere questi soprusi occorrono univoche leggi europee e anche maggiore cooperazione tra le polizie, fino ad arrivare a un organismo europeo che operi per la lotta agli specifici reati di violazione dei diritti umani. L'Europa, inoltre, ha il dovere di chiedere a tutti i governi con i quali ha rapporti di rispettare il diritto di ogni essere umano all'integrità fisica, ad una vita dignitosa, all'accesso all'informazione e alle libertà democratiche. Ogni volta che un essere umano è impedito nell'esercizio dei suoi diritti e dei suoi stessi doveri, che è sradicato dalla sua famiglia, menomato nel fisico o assoggettato con il sopruso, l'Europa della libertà, della pace e della democrazia deve avere il coraggio e la forza di intervenire, e la Convenzione ha oggi il dovere di chiedere alle future Istituzioni europee di sancire norme che vincolino i rapporti commerciali e politici a rispetto dei diritti della persona.

2-039

EN

**Nahtigal (Gouv.-SI).** - Mr. President, I would like to emphasise the question of consistency. We need to look at human rights on a European level, enforced and implemented by the European Court of Justice, and ways in which we can bring in the European Court of Human Rights in order to enhance human rights at the European and wider levels.

Traditionally, case law has been created by the European Court of Human Rights. Firstly, therefore, we need to study in greater detail the level of human rights which has been traditionally adopted by these institutions before trying to incorporate the Charter of Human Rights into a European Constitution. In so doing we should take care not to lower the standard of human rights at European level once the Charter has been incorporated in the European Constitution.

We should not hesitate to enhance gradually the level of human rights in the European Constitution, perhaps by gradually amending the Constitution as we go, as was the case with the American Constitution, to which amendments were adopted over the years in the light of empirical findings and controversial cases such as the 14th Amendment etc.

The development of human rights at the European Constitutional level should, therefore, be gradual. We should not raise expectations at the beginning by incorporating social rights which are perhaps too broad and promises that we will subsequently not be able to keep.

2-040

NL

**Timmermans (Parl.-NL).** - Dank u wel, voorzitter, ik heb goed geluisterd naar de bijdragen van de contactgroep en die bijdragen hebben mij gesterkt in de conclusie dat het Handvest moet worden opgenomen in de gereviseerde verdragen en dat de Europese Unie zo spoedig mogelijk moet toetreden tot het Europees Verdrag voor de Rechten van de Mens.

Dat is des te noodzakelijker nu we op het punt van de derde pijler steeds meer vorderingen maken. De bescherming van de rechten houdt op dit moment geen gelijke tred met de uitbreiding van bevoegdheden van de verschillende overheden om op die rechten in te grijpen. Iedere Europese burger heeft het recht op bescherming tegen het handelen van de overheid, of dat nu de nationale of de

Europese overheid is, en daarom moet het Handvest ook zo snel mogelijk worden geïncorporeerd en moet het EVRM door Europa worden ondertekend.

Maar het gaat om meer dan alleen juridische bescherming van rechten. In onze samenleving in de Europese Unie, die gebaseerd is op lotsverbondenheid, vergen mensenrechten constant de aandacht en constant onderhoud. Als het niet goed gaat met de mensenrechten gaat het niet goed in een samenleving, en dat zijn dan altijd vroege indicatoren dat er iets fout gaat in de samenleving, die we zien in het respect voor de mensenrechten. Staat de persvrijheid onder druk, staan de rechters onder druk, dan hebben wij allemaal in de Unie een probleem en daar moeten wij elkaar op kunnen aanspreken op Unie-niveau, dat is niet meer de *chasse gardée* van nationale lidstaten.

Tot slot, voorzitter zou ik speciale aandacht willen vragen, zeker in de uitgebreide Unie, voor de positie van nationale minderheden. Dat is in de huidige Unie nog een onderbelicht aspect. In de uitgebreide Unie zullen wij daaraan meer aandacht moeten schenken; het gaat hier om zaken als het recht op gebruik van de eigen taal, het recht op eigen vertegenwoordiging. Voorzitter, er is veel werk te doen, laten we dit in de Conventie opnemen.

2-041

NL

**Maij-Weggen (PE).** - Voorzitter dank u wel, voorzitter ik wil de inleiders hartelijk danken voor hun interventies, ik wil ze hartelijk danken voor de steun die ze ons altijd geven in het Europees Parlement als het gaat om de achtergrond van bepaalde mensenrechtenkwesties.

Naar mijn oordeel zijn mensenrechten een geweldig belangrijk thema in de Europese Unie. Het is bijzonder belangrijk dat we de lidstaten en ook toetredende landen kunnen toetsen aan een aantal elementaire zaken en daarvoor hebben we dan het EVRM, daarvoor hebben we het Handvest voor de Grondrechten, daarvoor hebben we de VN-verdragen. Het is daarom van cruciaal belang dat de Europese Unie een eigen rechtspersoonlijkheid krijgt, zodat we kunnen toetreden tot die Verdragen en ze beter kunnen toetsen. Natuurlijk moet het Handvest in de Verdragen worden geïncorporeerd.

Voorzitter, we hebben ook een taak met betrekking tot de Derde Wereld. Ik wil dat ook nog eens benadrukken vooral omdat er op dat gebied sprake is van veel hypocrisie. We hebben clausules over mensenrechten in de handelsverdragen en ook in de afspraken met betrekking tot ontwikkelingssamenwerking, maar ze worden in heel wisselende mate toegepast. Op dit moment is het zo dat zeker tien landen uitgesloten zijn van ontwikkelingssamenwerking en van handel vanwege het feit dat ze de mensenrechten niet handhaven maar er zijn ook landen, ik denk aan Soedan, Birma, waar dat niet gebeurt. De reden hiervoor is dat één of twee lidstaten zich daartegen keren en meestal omdat ze daar handelsbelangen hebben, of iets dergelijks. Het is ook heel belangrijk dat de besluitvorming bij unanimitéit wordt doorbroken wanneer het gaat om de toepassing van mensenrechten in de Derde Wereld.

De belangrijkste drie eisen voor onze conventie, voorzitter, lijken mij de volgende te zijn: de Europese Unie moet een rechtspersoonlijkheid krijgen, zodat ze toe kan treden tot alle internationale verdragen op dit gebied; het Handvest moet in de verdragen worden geïncorporeerd en het unanimitéitsbeginsel moet worden doorbroken bij de toepassing van mensenrechten buiten Europa.

2-042

EN

**Söderman, Ombudsman.** - Mr President, in Nice in December 2000, the Presidents of the European Parliament, the Council and the Commission stated that the Charter was an important commitment for the Union's institutions to make to European citizens. Since then, the Ombudsman has tried to encourage the institutions to follow the Charter. This has included looking at the freedom of expression of officials, their right to parental leave, age discrimination and the recruitment procedure, indirect sex discrimination against women, the secondment of national officials, the right to good administration by following the European Code of Good Administrative Behaviour, and a suggestion that there should be a code to deal with complaints. The Commission has cooperated in dealing with most of these issues.

There can be no doubt that the Charter should be legally binding on the Union's institutions and bodies, including when they legislate. This means that the Charter will also be binding whenever Community law is being applied. The citizens should then have remedies available if the Charter is not followed. Both judicial and non-judicial remedies could be used.

The Network of Ombudsmen and similar bodies could surely make an important contribution here. The constitutional role of the Court of Justice should be further developed to include a focus on human rights. The European Ombudsman would be ready to accept responsibility for referring fundamental rights cases to the Court of Justice if no solution can be found in a normal investigation by the Ombudsman. This could limit the need for individuals themselves to seek to bring fundamental rights cases before the Community courts.

2-043

EN

**Yilmaz, Ayfer (Parl.-TR).** - Mr. President, I fully share the views expressed concerning the importance of the protection and monitoring of human rights. Indeed, this question should be handled on a global scale and the Union should fulfil its responsibilities for the promotion of the human rights situation of millions of people around the world.

It is essential for the Union to defend objective values without discrimination and double standards. Extended dialogue with civil society is needed for the implementation of human rights. This is crucial for the credibility of the Union. The Union should recognise terrorism as a violation of human rights. Only with coherent and effective measures can we fight against terrorism, which has caused the death of hundreds of thousands of people.

Lastly, the Union should focus on gender equality issues. It should also ensure the protection of the rights of non-EU citizens resident in Member States.

2-044

EN

**Bruton (Parl.-IE).** - Mr. President, I have a question about human rights. What is human? What is the scope, therefore, of *human* rights? Is a child before it is born human? If it is human, does it have human rights? For instance, the right to life under the Charter. We have heard about the rights of the child after it is born, but does the child have any rights before it is born? Does the Charter take the view, if such rights exist, that these are entirely at the discretion of the child's parents and that neither the Union nor the Member State has the responsibility to vindicate the rights of the human before the human is born? This is an important question which we need to address because it determines the scope of humanity and, therefore, the scope of human rights.

2-045

FR

**Berès (PE).** – Simplement pour attirer l'attention du praesidium et peut-être du secrétariat sur un problème linguistique en ce sens qu'il ne concerne que quelques langues de l'Union, mais qui a une portée bien plus générale. Il s'agit de la façon de traiter les droits de la moitié de l'humanité, à savoir les droits de la femme. La meilleure expression que nous puissions utiliser est celle que nous avons retenue dans la précédente convention, s'agissant de la rédaction de la Charte des droits fondamentaux en parlant de droits la de la Personne. J'espère qu'il puisse en être de même dans cette convention.

2-046

DA

**Udvikling**

DE

**Entwicklung**

EL

**Ανάπτυξη**

EN

**Development**

ES

**Desarrollo**

FR

**Développement**

IT

**Sviluppo**

NL

**Ontwikkeling**

PT

**Desenvolvimento**

FI

**Kehitys**

SV

**Utvecklingsfrågor**

2-047

FR

**Le Président.** – Nous en venons au groupe « Développement » qui était présidé par Monsieur Christophersen.

2-048

DA

**Christophersen (Ch.E/G.-DK).** - Hr. formand, jeg blev assisteret af tre af mine kolleger her på Konventet, Anne Van Lancker, Lord Tomlinson og Kimmo Kiljunen, og først ønsker jeg at takke dem for deres meget aktive indsats, som har bidraget til en god diskussion. Jeg har fem bemærkninger til indholdet af den diskussion.

For det første var alle deltagere meget positive over for ideen om, at Konventet konsulterer civilsamfundet, både gennem kontaktgrupper og gennem den diskussion, som vi havde i går, og som vi har i dag, og nogle gik så vidt, at de ønskede en institutionalisering af den kontakt, men det var der dog ikke enighed om. Andre advarede om, at det kunne have en forsinkende virkning, hvis det blev en del af den almindelige fællesskabsproces.

Min næste bemærkning drejer sig om de ønsker, der blev fremført af organisatorisk og strukturel karakter. For det første understregede næsten alle deltagere behovet for at etablere en langt klarere forbindelse mellem Fællesskabets udviklingspolitik og Fællesskabets øvrige eksterne politikker samt en bedre koordinations-, gennemførelses- og beslutningstagningsmekanisme på dette vigtige område. Herudover blev det understreget, at der skulle være mere kohærens, mere overensstemmelse mellem, hvad man gør på udviklingsområdet, og hvad man gør på andre politiske områder i Fællesskabet. I den forbindelse var der mange, som understregede et ønske om, at man fortsat skulle have et særligt ministerråd, som beskæftiger sig med udviklingspolitik, men vi ved jo nu, at beslutningen i Sevilla bl.a. har ført til, at disse drøftelser overføres til det råd, som behandler generelle eksterne politiske spørgsmål.

En tredje bemærkning drejer sig om det politiske indhold, som deltagerne gerne så, at en ny traktat fik, for så vidt angår udviklingspolitik. Der var ønske om, at udryddelse af fattigdom skulle have den højeste prioritet i en eventuel traktattekst; der var ønske om, at de sociale aspekter skulle understreges stærkere, både for så vidt angår den eksterne, og for så vidt angår den interne dimension i Fællesskabet; der var et ønske om, at der skulle være mere fokus på demokrati og respekt for menneskerettighederne, og endelig skulle der være mere fokus på hele ligestillingsproblematikken. I den forbindelse blev der også udtrykt ønske om, at charteret om grundlæggende rettigheder blev indføjet i traktaten.

Min næste bemærkning er, at der var et stærkt ønske om, at Den Europæiske Udviklingsfond, i fremtiden skulle inkorporeres i traktaten og i Fællesskabets budget og være underkastet samme regler, både for så vidt angår gennemførelse af politikken og udførelsen af bevillingerne, som gælder for Fællesskabet i øvrigt.

Til sidst, hr. formand, udtrykte alle deltagere en tilfredshed med, at der også i gruppen, som var samlet, var repræsentanter for ansøgerlandene. Det blev understreget, hvor vigtigt det var, at ansøgerlandene allerede fra starten af deres medlemskab er engagerede i udviklingspolitikken.

På vegne af Konventet udtrykte jeg og mine tre kolleger vores vilje til at fortsætte dialogen gennem bidrag fra medlemmerne af kontaktgruppen især, og at vi gerne så konkrete forslag blive fremsendt til Konventet.

2-049

EN

**Stockner (NGO-DEVE).** – Mr President, the Development Contact Group agreed that there would be three people making the presentation. I will give a general overview presentation, followed by specific presentations on gender and a perspective from the candidate countries.

This statement of development policy is made on behalf of a wide range of European development and humanitarian NGOs. We have a collective membership of some 1,000 NGOs from all parts of the European Union working in partnership with civil society actors in countries all over the world - particularly where large numbers of people live in poverty. As part of the Civil Society Contact Group, we are actively working with NGOs from the human rights, environmental and social sectors as well as the European Trade Union Council. Your attention has already been drawn to our common statement.

I will address five areas in this statement. The first is the legal framework for the European Union's development policy. The Laeken Declaration identified the future task of Europe as being to play a stabilising role worldwide, "to shoulder its responsibilities in the governance of globalisation ... seeking to set globalisation within a moral framework, in order words to anchor it in solidarity and sustainable development".

The European Union is recognisably a global force, economically if not politically. With the introduction of the euro and upcoming enlargement, this global aspect has been and continues to be strengthened. Such a position carries responsibilities, not only to the people of Europe but also to the global community as a whole. We believe it is here that the Europe Union's development policy has to play a crucial and central role. Unlike most of the EU's policies, which are primarily motivated by the internal interests of the EU, development policy should focus on the interest of people outside our borders and particularly people living in poverty in developing countries.

As a global player, the EU needs to ensure that the legal base for its development objectives is sufficiently strong to be properly asserted. We do not believe that the current legal base under Title 20 is sufficient. We are therefore calling for the following: firstly, a common development and humanitarian policy based on its own specific objectives, identified in the Treaties, with a legal standing in the Treaties that is equal in weight to the other elements of external policies, including the CFSP. This policy needs to address the whole spectrum from relief to development in a coherent continuum as well as to address disaster preparedness.

Secondly, the eradication of poverty both within the European Union as well as externally should become one of the overall objectives of the European Union.

Thirdly, the Treaty should establish an approach to development that asserts international human rights standards as the absolute benchmark for the EU's policies and actions. The policy framework of the Treaty should reflect the interconnectedness and indivisibility of all rights - economic, social, cultural, civil and political - as set out in the UN Declaration of Human Rights and the related core charters and conventions as well as international humanitarian and refugee law.

Fourthly, the Treaty should specify that social protection needs to be integrated into the definition and implementation of Community policies. Actions are needed with a view to promoting sustainable social development both internally and externally.

Fifthly, legal instruments should be established to ensure that financial resources intended for development and humanitarian purposes are utilised strictly in accordance with the objectives and policies in these areas.

Sixthly, a comprehensive external policy framework should be established that guides all external actions. This should be based on the overriding objective to eradicate poverty, the fight against inequality and an active EU involvement in conflict prevention. We must promote sustainable models of development in which social, environmental and economic aspects are held in balance; assert international human rights standards as the absolute benchmark; promote equity and fairness in economic and social affairs, particularly for the excluded and marginalised, as well as equality between women and men, and compliance with international commitments including the millennium development goals.

The second area that I address is the institutional and political set-up of Europe's external relations. The Convention needs to address these issues to ensure that the development objectives can be effectively pursued. We strongly believe that such capacity needs to have a clear identity and definition that enables the promotion, further development and implementation of development policies based on the values that are enshrined in the objectives.

We deplore the decision taken by the European Council in Seville, according to which development and humanitarian issues will, in future, be incorporated into a General Affairs and External Relations Council. While the justification is made on the grounds of increasing coherence of policies, we fear that the result will weaken the impact of the EU's development and humanitarian policies and effectively erode the capacity of the EU to implement its responsibilities towards the global community. There is a real danger that the EU's development and humanitarian policies will become an instrument for promoting its own external interests. The linking of EU aid to migration policy and of linking aid to fisheries policies are cases in point. We need to emphasise that it is of the utmost importance that humanitarian aid remains disconnected from political considerations, as agreed under international humanitarian law.

These are some of the reasons why we urge the Convention to establish a separate working group for development.

The third area is coherence and consistency of policies. Currently, the Treaties require consistency in external actions of the EU and for policies and practices of the European Union that impact on developing countries to take account of the European Union's development objectives. We propose that, in future, the comprehensive external policy framework I have outlined should guide all of the European Union's external policies and actions. This framework should also guide all Community policies that have a direct or indirect impact on developing countries, including those of agriculture, trade, fisheries, transport, energy and so on.

The fourth area concerns visibility, transparency and civil dialogue. While recognising that steps have been taken over the past few years to make the institutions and their decision-making processes more open and accessible, they continue to lack transparency. This clearly strengthens the feeling of remoteness that European people feel towards the EU's institutions. We therefore urge the Convention to promote an increase in accountability and transparency in the workings of the European Union, including in the development of policies and positions that govern the European Union's relations with developing countries. We believe that there should be an increased role for the European Parliament in scrutinising policy that is being developed. Therefore, all of the

Community's cooperation with developing countries, including under the European Development Fund, should be incorporated into the Community budget framework.

The primary objective of this Convention is to bring Europe closer to its citizens. This is an urgent and vital task for the credibility of the European Union, particularly in the face of a substantial enlargement. In this respect, a treaty article should be proposed by the Convention on establishing a civil dialogue directly between citizens and their organisations, on the one hand, and the decision-making bodies of the European Union, on the other.

This should be an additional but necessary mechanism for ensuring that a consistent and ongoing dialogue takes place. Given the role of the European Union in the world and the effect that the EU's policies and activities have on the lives of people in developing countries, specific recognition should be given to the need for a civil dialogue that includes civil society actors from developing countries. We believe that the provisions established in the Cotonou Agreement could be followed.

I now turn to the fifth and final issue, the definition of institutional competence for development. In the current Treaties, competence for development between the Community and Member States is complementary. There has been much confusion, however, in defining the basis on which complementarity can be determined. This has led to competition and inefficiency, contributing to the criticisms of the effectiveness of EU development cooperation. We believe that there is a clear need for competence for development to remain both at the level of the Community and in individual Member States. Since the development objectives reflect principles of solidarity between the people of Europe and people in developing countries, this has to be anchored and assured through a national development programme. At the same time, the European Union's global responsibility requires a development capacity at the centre of the European Union that promotes a common development policy for the EU as a whole. We would urge that our proposals for a comprehensive external policy framework should not only govern the external actions of the Community but should also guide those of the Member States. If this were so, it would be easier to contemplate definitions of complementary action guided by concepts of added value and based on comparative advantages. It would also provide a clearer framework in which the coordination of actions between Member States and the Community would be facilitated.

Let me end by observing that the true test will be in the implementation of proposals made by this Convention, and, ultimately, the decisions of the Intergovernmental Conference to follow. We would urge the Convention to address this question so that the implementation of a new Treaty is a true reflection of the principles and values that were intended.

It was in 1973 that Shridath Ramphal, then minister of foreign affairs of Guyana, famously said that as we face the future, we are conscious that a Europe that builds community by bringing economic disaster to developing countries sacrifices values that are themselves essential to the strength and permanence of that community, eroding those concepts of care and concern and of responsibility for the future of our planet, which lie at the very heart. For many outside of Europe, the question is not whether the Community is going to be a rich man's club, it is a society of rich states whose association will grow increasingly more intimate. The question, rather, is whether being rich and highly developed, the enlarged community will adopt these values and elevate them to the level of ethos.

We strongly believe that the strength of the European Union is in its ethical foundation and its intention to bring peace, stability, harmony and economic prosperity. Upon you rests the weighty responsibility to ensure that the European Union continues to place these values at the very centre of its policies. We wish you well in this important task and wholeheartedly commend to you the recommendations we have outlined above.

2-050

FR

**Godin (NGO-DEVE).** – Je fais partie de l'ONG "Equilibre et Population" mais je représente aujourd'hui toutes les ONG qui ont fait partie de la réunion du groupe de contact dont Monsieur Stocker vient d'évoquer la représentativité. Concernant le thème "genre et développement", nous considérons que l'inégalité des sexes freine l'épanouissement des individus, le développement des pays et l'évolution des sociétés. Nous rappelons que l'Union Européenne, pour atteindre son objectif de réduction puis d'éradication de la pauvreté, a décidé d'inscrire l'égalité des sexes en tant que thème transversal prioritaire de sa politique de développement. Nous constatons malheureusement, que si l'Union a montré sa volonté d'inscrire cette thématique au sein des priorités de son action, dans la pratique, les résultats ne sont pas toujours probants. Nous considérons qu'il ne s'agit pas de réinventer des principes généraux qui ont déjà été arrêtés par l'Union mais plutôt de leur donner une force contraignante. Pour intégrer la dimension homme-femme évoquée dans la communication du vingt et un juin deux mille un, à l'action de l'Union, nous proposons d'assortir chacun des trois axes de plusieurs mesures concrètes, seules capables de garantir les objectifs que l'Union s'est fixée. Le premier axe est l'intégration du thème de l'égalité des femmes et des hommes dans les domaines prioritaires. Nous formulons la recommandation suivante: toutes les conditions préalables à l'égalité homme-femme devront être réaffirmées afin de constituer un ensemble de normes intégré aux règles de fonctionnement de l'Union. Il ne faut pas oublier par ailleurs que des objectifs tel que la réduction de moitié du nombre de personnes vivant dans la pauvreté d'ici deux mille quinze, reconnue par l'Union Européenne, ne pourront être atteints si la moitié de l'humanité n'est pas impliquée. Nous pensons donc que l'Union Européenne doit donner à ses engagements une force contraignante en les inscrivant dans le Traité constitutionnel qui sera élaboré par la Convention. Le deuxième axe est le renforcement de l'intégration de l'égalité des sexes dans les projets et programmes régionaux et nationaux. Nous constatons que la collecte et la diffusion des données et informations par sexe tel que les indices sexo-spécifiques proposés par le PNUD depuis mil neuf cent quatre-vingt quinze permettrait de mieux évaluer et de planifier les efforts à fournir. Nous proposons donc que l'analyse sexo-spécifique soit retenue tout



au long du cycle du projet de la définition à l'évaluation, et que par ailleurs, la prise en compte de cette analyse constitue la condition préalable à la mise en oeuvre des projets et programmes tant au niveau du budget de l'Union que des cadres stratégiques de lutte contre la pauvreté qui sont proposés par les Etats récipiendaires et acceptés ou non par l'Union dans le cadre du FED. Le troisième et dernier axe est le renforcement des capacités institutionnelles en matière de genre. Nous considérons qu'une formation à l'analyse et à la prise en compte des statistiques ventilées par sexe est indispensable et doit s'entendre tant au nord qu'au sud. Ainsi, le personnel européen des directions générales ou des délégations devrait être systématiquement formé à l'approche de genre et à la prise en compte de l'analyse sexo-spécifique. Par ailleurs, le renforcement des capacités des acteurs locaux doit comporter une sensibilisation et une formation à l'approche de genre et à la prise en compte de cette analyse. Enfin, d'une façon générale, les ONG réunies au sein du groupe de contact « Développement » demandent que l'Union rédige un guide pratique recensant l'ensemble des mesures concrètes susceptibles de préciser les principes généraux concernant l'intégration de l'égalité des sexes dans la coopération au développement. Ce recueil s'imposerait à tous les acteurs concernés par l'aide communautaire au nord comme au sud. En conclusion, les ONG réunies au sein du groupe de contact « Développement » considèrent qu'aucune politique n'est neutre sous l'angle du genre et qu'il est essentiel que la dimension égalité femme-homme joue un rôle moteur dans la définition des politiques extérieures de l'Union. Ceci exige que les objectifs d'égalité des sexes et l'analyse sexo-spécifique soient intégrés pleinement dans la définition, la mise en oeuvre et l'évaluation des politiques extérieures de l'Union, y compris la politique de coopération au développement et les programmes de réduction de la pauvreté. Vous pourrez trouver cette contribution sur la passerelle.

2-051

EN

**Gezgin Eris (NGO-DEVE).** – Mr President, I speak on behalf of the Economic Development Foundation, a non-governmental organisation in Turkey which has been dealing with EU affairs and Turkey-EU relations since 1965.

The launch of the Convention has triggered a lively debate in Turkey. To channel this excitement into practical action, we established a network of 113 participants representing universities and NGOs. This network, called Europe's Future Turkey Group, prepared a comprehensive opinion report covering all issues discussed in the Convention. We have submitted our views and proposals to the Convention Secretariat.

Today I speak on behalf of Europe's Future Turkey Group and the NGOs participating in the Development Contact Group, especially those from the applicant countries with whom we have identified many common points. We have observed that, in the context of the Convention discussions, development is perceived in terms of the narrow concept of the EU's development policy. According to this definition, the EU should evaluate development with respect to increasing the efficiency of allocated resources on the one hand and to improving democracy and the rule of law by relating development aid to these areas on the other hand.

For the applicant countries, however, who are at the receiving end, development is much more than this. For us, development is not only advancement in economic terms but a change in quality of life. EU membership is considered to be the fastest possible way to reach this aim. Therefore, an enlarged Europe should be committed to the promotion of sustainable economic, social, cultural and humanitarian development. Future Member States should be better informed about the principles and means of development cooperation. The EU policy of solidarity should be extended to include the recipient countries' perspectives.

At present, applicant countries receive most of the EU's development aid. This should continue for a while, since, firstly, these countries are the European Union's nearest neighbours. Secondly, today's applicant countries will attain sustainable levels of development and will become donor countries in the near future. They will also enlarge the size of the European market from which all developing countries might take advantage. This will, at the same time, enhance the EU's efficiency as a role model based on the principles of economic development, social management, solidarity and democracy. However, the strengthening of these components will depend on the reconstruction of democratic, transparent and speedy organisations focusing on skills and a knowledge-based society.

Issues such as education and youth, that are also important in shaping the future of the EU and the world, should be broadened both in Member States and countries which receive development aid.

One important topic that we all agree upon is that the EU's founding Treaties should be transformed into a constitutional treaty, in which the Charter of Fundamental Rights should be included and made legally binding. The EU also needs to be a part of the European Convention on Human Rights. The European constitutional treaty should confirm our European identity, our desire to live together in peace and our will to build Europe by sharing the assets of our cultural, local, religious and ethnic variety.

The conclusion of the enlargement process that involves 13 applicant countries will help the EU to become an important world power. The European Union will be able to strengthen its position in the international arena as long as it formulates stable policies, based on social development, harmony, security and solidarity. For a secure future, however, the attainment of stability for EU Member States is not sufficient. With its expanding borders, the European Union is turning into a real world power and its influence is highly dependent upon the ways in which it transfers universal democratic values beyond its borders and the contributions it makes to world peace.

2-052

EN

**Baroness Scotland of Asthal (Ch.E/G.-GB).** – Mr President, it is right that we should hear a strong voice from civil society on development issues. The EU and its Member States combined are a major force in the fight against global poverty, providing the bulk of global development assistance.

Our efforts will play a large part in determining whether the key Millennium Development Goals set out at the UN's Millennium Assembly are actually met. These goals included halving by 2015 the proportion of people living on incomes of under one dollar a day, reducing maternal mortality rates by 75% and providing primary education for all children. To do this we need an efficient, poverty-focused programme, then, combined with a pro-development trade policy and access to the world's largest single market, our development programmes could galvanise an enlarged EU behind huge resources and progressive policies. That is certainly the United Kingdom's ambition and really should make a difference.

We must build on the clear EC development policy agreed in 2000 and the Commission's own management reforms. EC aid should add value to Member States' efforts when it is delivered strategically and efficiently. We must make good our Treaty commitment to ensure all our policies, including choices at the mid-term Common Agricultural Policy review, are consistent with our development goals. This will help us reduce absolute poverty in developing countries. Europe's people are concerned about the poor of the world. It is our duty to show that our governments and institutions can meet their aspirations.

2-053

EN

**Kiljunen (Parl.-FI).** – Mr President, the figures on absolute poverty in the world are staggering. UNICEF estimates that around 10 million children die annually as a result of malnutrition. Is it not morally and politically unbearable that, in the modern world, we have several hundred million people whose most elementary need, the need for nutrition, is not satisfied? We have 800 million illiterate people, about a billion without proper health services and pure water. Nearly half of the world's population has to live on an income of less than two dollars per day.

These figures are about absolute poverty. Statistics on relative poverty are even more staggering. According to the UNDP, the richest 20% of the world's population earn 86% of world income, while the poorest 20% earn 1.4%. Is there in the world a country where income distribution is as unequal as it is on the global scale? I would say no, not a single state.

We have to ask what is lacking at global level that exists at nation-state level? In simplified terms, at supranational level, we do not have proper governance with redistributive functions.

Yesterday, I was in Oslo chairing the opening session of the World Bank annual conference on development economics. There was a demonstration against the World Bank and global institutions. I had a dilemma. I could sympathise with the worries of the demonstrators about global poverty and development problems and the need to address these problems seriously. But why be against international and supranational institutions whose task is to alleviate and solve global problems? We have the same dilemma here when developing the European Union and its institutions. Are the people, are the citizens with us?

In Finland, the government has put an effort into activating the debate on the future of the European Union, and a written report has been submitted to the Secretariat for distribution to all of us.

2-054

ES

**Palacio Vallelersundi (Ch.E/G.-ES).** - Señor Presidente, se ha dicho que a los europeos les interesa la cooperación al desarrollo. Es probablemente "la nueva frontera", una de las pocas políticas que concita el interés de nuestros jóvenes. También es cierto que la Unión Europea es uno de los grandes actores internacionales de la cooperación al desarrollo en términos económicos, y eso hay que recordarlo.

Pero voy a hablar de otra cuestión, retomando las palabras de la Sra. Scotland. La cooperación al desarrollo es una de las políticas donde más claramente se ve la artificiosa complejidad de los Tratados, la confusa redacción de los preceptos y la esquizofrenia institucional que deriva del sistema de pilares. Hasta Maastricht la Comunidad Europea no tenía base jurídica específica para la cooperación al desarrollo; había una multiplicidad de bases jurídicas: el artículo 182 y siguientes para la asociación de los países de ultramar, el artículo 133 para las preferencias generalizadas y el 308 para casos de cooperación económica y técnica, a veces asociado con el artículo 113 cuando se trataba de una cooperación también comercial, incluso podía recurrirse al 238.

Bien, hoy, podríamos decir: después de Maastricht esto ha cambiado. No, señor, no ha cambiado porque las bases específicas son bases residuales, que sólo se pueden utilizar cuando no hay otra base directa. Seguimos con esa esquizofrenia y decimos: ¡Qué complejo! Pues no termina ahí la complejidad, porque tenemos bases que provienen del segundo pilar, ya que el artículo 11 del TUE incluye la cooperación al desarrollo en su planteamiento.

Esto es un ejemplo del trabajo que tiene que hacer esta Convención con los Tratados.

*(Aplausos)*

2-055

FR

**Akyol (Gouv.-TR).** – L'éradication de la pauvreté est un des plus grand défis qui se pose à l'humanité à l'heure actuelle. Ce défi ne pourra être réalisé que par un développement soutenable et une utilisation des ressources appropriée. Chaque pays est responsable au premier chef de son développement économique et social. Toutefois, étant donné les ressources et les moyens limités dont disposent les pays en voie de développement, le soutien et la coopération des pays développés et la création d'un environnement favorable à la coopération internationale sont vitaux. En ce qui concerne l'Union Européenne, la politique de développement est une des politiques communautaires parmi les plus importantes et elle continue également à être une des dimensions significatives des relations extérieures de l'Union. Nous sommes heureux aujourd'hui dans ce contexte que ce débat ai lieu au sein de la Convention. Le Sommet de Barcelone des quinze et seize mars deux mille deux a constitué, à notre avis, une des pierres angulaires de la politique de développement de l'Union européenne. Les Etats membres se sont entendus pour utiliser l'aide au développement afin d'éradiquer la pauvreté dans les pays en voie de développement. Il a été décidé, dans ce cadre, d'augmenter de manière significative le montant global de l'aide au développement assuré par l'Union, considérant le fait que l'Union et ses membres assure cinquante-cinq pourcent de l'ensemble de l'aide internationale au développement. Les efforts de l'Union européenne à cet égard peuvent être mieux appréciés ainsi. Il est néanmoins évident qu'afin de réaliser les objectifs fixés dans le domaine du développement durable, l'Union doit déployer davantage d'efforts en terme d'allocations de ressources financières supplémentaires. A Séville, les pays membres ont également décidé d'abolir le Conseil de développement et de traiter désormais les questions relatives à la politique de développement dans le cadre des Conseils d'affaires générales et relations extérieures. Ceci peut être considéré comme un effort de la part de l'Union pour que la politique de développement devienne un élément déterminant de sa politique étrangère. Nous espérons que, par cette décision, l'Union sera capable d'exploiter plus efficacement les ressources dont elle dispose afin d'assurer le succès de la mise en oeuvre de sa politique de développement. Enfin, nous sommes convaincus que l'agenda de Doha pour le développement et le commerce jouera un rôle important lors des conférences de Johannesburg pour un développement durable.

2-056

EN

**De Rossa (Parl.-IE).** – Mr President, I intervene in strong support for a working group of this Convention on the issue of development, as it is a key area of interaction between the European Union and the rest of the world. Are we to be partners or predators of the developing world?

There is a key issue here which we need to address in our Treaties and in constitutionalising them. We must incorporate an obligation on European-based companies, obliging them not be involved in slavery in developing countries and not to use tied labour or child labour. There is a whole range of issues here which need to be addressed by the European Union.

I urge that we use our position with the IMF to insist that the neo-liberal dogma, which the IMF applies to developing countries, should be altered. It is a shame and a crime to oblige developing countries literally to destroy their infrastructure in order to fit in with a neo-liberal dogma which many developed countries in Europe cannot sustain.

2-057

IT

**Basile (Parl.-IT).** - Signor Presidente, vorrei pregare il signor Christophersen di chiarire meglio, anche in una prossima occasione, la sua proposta riguardante il Fondo di sviluppo europeo. In secondo luogo, sono d'accordo col signor Stocker quando afferma che finora è stata dedicata troppa attenzione alla moneta, ai mercati, all'euro, all'unificazione economica e monetaria e poca alla solidarietà e all'uomo. In terzo luogo, voglio sottolineare il problema di creare un bilancio più ricco per far fronte alle tante esigenze, per i diritti umani, per eliminare la povertà, come diceva la Baronessa Scotland. Credo che il problema del bilancio sia un problema molto importante. Il bilancio va riformato aumentando le risorse proprie, quindi il valore assoluto, e riarticolando la distribuzione fra i vari settori in considerazione delle nuove politiche.

2-058

EN

**Lenmarker (Parl.-SE).** – Mr President, we are not self-critical enough in the European Union when it comes to relations with the developing countries because Europe is still far too protectionist. The important issue for the European Union is to dismantle barriers between Europe and the developing countries. Why should there be tariffs on imports from developing countries, including agricultural products?

Therefore, it is the right step to dismantle the Development Council and to bring that area of responsibility into the General Affairs Council. Relations between Europe and the developing countries require coherence in all policies, not just development aid, which is a minor part of this complex issue.

2-059

DA

**Kultur**

DE

**Kultur**

EL

**Πολιτισμός**

EN

**Culture**

ES

**Cultura**

FR

**Culture**

IT

**Cultura**

NL

**Cultuur**

PT

**Cultura**

FI

**Kulttuuri**

SV

**Kulturfrågor**

2-060

FR

**Le Président.** – Nous en venons ici au dernier groupe de contact présidé par Monsieur Peterle, à qui je donne la parole.

2-061

FR

**Peterle (Parl.-SI).** – Chers collègues, membres distingués de la Convention, je suis très heureux et honoré au moment où la Slovénie célèbre son indépendance, de pouvoir dire quelques mots sur la culture. C'est grâce à la culture, grâce aux poètes, aux prêtres également que nous avons pu développer notre culture depuis plusieurs siècles en Slovénie. Je pense que la culture deviendra une question majeure. Nous avons le Traité sur le Charbon et l'Acier mais nous devons également brandir la culture contre les régimes dictatoriaux qui ont prévalu au vingtième siècle. Nous voulons également faire reconnaître les différentes identités culturelles et nationales car la culture est quand-même une question traitée par les institutions européennes. Nous pensons qu'il faut faire davantage. Le vote à la majorité doit être introduit pour la Charte et pour le traité. Nous pensons que la culture continue d'être sous-estimée et peu exploitée au plan intérieur et extérieur en Europe. Nous voulons que l'Union européenne s'intéresse davantage à la culture. Nous voulons une Europe unie et élargie. L'unification ne peut se faire que parmi les gens qui souhaitent effectivement vivre ensemble dans une Europe libre et unie. La diversité des langues et des cultures doit être défendue. Plus l'Europe s'intéresse à sa diversité intérieure, plus elle pourra exporter de manière globale cette richesse vers l'extérieur. C'est un concept de force. Et cette force est fondée sur la diversité culturelle. Une simplification idéologique se traduit toujours en Europe par l'émergence de grands problèmes. Je ne vois aucune contradiction entre des politiques nationales en matière de culture et d'éducation et des projets européens communs, comme par exemple le projet Erasmus. Je ne parle pas d'unification de la politique culturelle européenne. Je parle simplement d'un renforcement de notre approche aux diversités, aux spécificités culturelles en Europe. Par exemple, hier, j'ai rencontré un représentant

des églises. Les églises ont précisément contribué à affirmer la diversité de la culture de l'Europe tout au long des siècles. Les choses ont quelquefois évolué différemment selon que l'on se trouvait de l'un ou de l'autre côté du « Rideau de fer ». Il s'agit là en tout cas d'un exemple de valeur ajoutée à la diversité culturelle européenne, d'attention accordée à l'être humain et d'une nécessité de transcendance. Plus de cinquante organisations ont émis des propositions très concrètes aux groupes de contact. Je terminerai en vous remerciant, Monsieur le Président, pour les mots aimables que vous avez eu envers la Slovénie à l'occasion de sa Fête nationale.

2-062

EN

**Gabletz (NGO-CULT).** - Mr President, culture comes last on your agenda, but it is good this way because, as our chairman has already underlined, this is common ground, applying to all the efforts of the Convention, re-legitimising the Union at this crucial stage in its evolution.

The main message to come from the different groups at the Culture Contact Group on 12 June was that there should be more room for culture and education in a wider and stronger Union. This message is conveyed with a special sense of urgency, using this unique opportunity to make up for some of the serious deficits in the current construction of Europe.

There are four main reasons for urging the European Union to actively promote a European space of culture and education, a kind of 'fourth pillar' of common policy.

The first reason: a Europe of citizens, a democratic Union, will only emerge if the European Union can play a visible and pioneering role in the fields of culture and education. These are the fields where society prepares its future, where human and cultural values shape its identity and where its fundamental political consensus is formed.

The second reason: the enlargement process will only succeed if the build up of a wider Union is accompanied by a growing perception by all its citizens that they belong to a common European civilisation which must be revived and strengthened by the integration process.

The third reason: the world-wide challenges of economy-led globalisation and a knowledge-based society very urgently require joint European responses in the field of culture and education if Europe wants to preserve and reassert its identity and its place in the modern world.

The fourth reason: the renewed awareness of the common roots of our national and regional cultures in Europe will also help to develop a more even-handed policy in all our states in dealing with the problems of the multicultural mix which is worrying our citizens.

The European Union is a most dynamic political force in shaping Europe for the 21st century and in determining its place in the modern world. At this juncture of European evolution, it shoulders a heavy responsibility for ensuring that our continent remains a creative area of culture and of educational excellence, as it has been throughout its history.

In our age of globalisation, the wealth of Europe's cultural diversity can only be preserved by a new awareness of the common civilisation which underlies this diversity and which has helped national and regional cultures to develop and to flourish. It is crucial for the enlargement process to realise that asserting the national culture and asserting at the same time the common European civilisation is not a contradiction. On the contrary, national and European policies in this field are two sides of the same coin.

The European Union will have to live up to this very heavy responsibility at this stage in its evolution. This does not necessarily imply a transfer of powers from Member States to the European Union, but it does mean that the European Union can make full use of the present Treaty provisions dealing with culture and education. Mrs Chabaud will make a few remarks on this subject. With due respect to the principle of subsidiarity, there is ample room for common action with a view to creating a climate in the European Union which is favourable to cultural creativity and educational innovation on the basis of that common European civilisation. Often it will not be the constitutional powers that count, but the power of example, the convincing force of best practices, and the quality of European guidelines that states and regions would ignore at their own risk.

Finally, a few remarks on three particular areas. First of all: education. There is a unique chance here because all our educational systems will have to be reformed under the impact of the modern, knowledge-based society. We should use this chance to inject the necessary European dimension. After all, democracy needs educated people and a democratic Europe needs educated Europeans.

Regarding culture: economic globalisation brings a serious challenge in the restructuring of the media and the entertainment industry. It is the European Union's responsibility to identify the trends which could lead to an impoverishment of our cultural development and to develop common policies.

Finally, heritage: Europe's heritage of buildings, works of art and cultural landscapes represents a visible and tangible testimony of our common culture. Most of the monuments are more than just stones. They are a constant reminder of the original civilisation, the binding force of which has to be developed for a Europe which can catch the imagination of its citizens.

2-063

FR

**Chabaud (NGO-CULT).** – L'affirmation de la présence et du respect du patrimoine mais aussi des arts, des médias, de l'éducation doit s'appuyer non seulement sur les instruments existants du Traité de Maastricht mais également sur l'observation et une meilleure mise en oeuvre des objectifs et mesures qu'ils impliquent. C'est ainsi que nous mettrons en relief les articles cent quarante-neuf, cent cinquante et bien sûr l'article cent cinquante et un, qui est au coeur de la dynamique culturelle européenne. Nos recommandations seront les suivantes : conserver l'article cent cinquante et un dans le Traité, voire même de le renforcer, faire en sorte que l'Union l'utilise comme base légale de son action complémentaire, faire en sorte que les articles soient mis en application, en particulier le paragraphe quatre de l'article cent cinquante et un, modifier le paragraphe cinq de cet article, à savoir la règle d'unanimité qui devrait être changée en vote à majorité qualifiée. Il faudrait éventuellement envisager la fusion des articles cent quarante neuf et cent cinquante sur l'éducation, tout en renforçant légèrement les instruments de l'Union en la matière.

Le domaine du cinéma et de la radio-diffusion publique recommande l'intégration du protocole d'Amsterdam dans le Traité. Le pluralisme de l'information et des médias devrait figurer parmi les valeurs fondamentales communes de l'Union Européenne, au même titre que la diversité culturelle. A cette fin, le protocole d'Amsterdam sur le système de radio-diffusion public dans les Etats Membres doit être retenu comme étant partie intégrante des Traités. En outre, les politiques publiques nationales favorisant le respect de la diversité culturelle devraient être légitimées dans le même Traité, en se voyant attribuer une garantie juridique. Ceci vaut tant pour l'article quatre-vingt sept sur le contrôle des aides d'Etat du secteur audiovisuel que pour l'article cent trente-trois sur une relation égale entre politique commerciale commune et culture. Comme pour les secteurs social et de santé, une réglementation des secteurs culturels et audiovisuels sous le seul aspect commercial et de concurrence ne correspond pas aux fonctions de ces services d'intérêt général.

L'ensemble des associations présentes le douze juin se sont accordées pour demander l'intégration de la Charte des Droits fondamentaux dans le Traité, tout en regrettant qu'hormis la mention du droit à l'éducation (article quatorze), le droit à la culture soit diffus (articles treize et vingt-cinq) et n'ait fait l'objet d'aucun article à part entière. Une autre proposition serait de considérer l'introduction du droit pour chaque citoyen, de créer une fondation la liberté de travailler à travers l'Europe entière signifie aussi mettre en oeuvre un des aspects importants de la coopération culturelle. Ces considérations tant sur les articles du Traité, toujours autour du même article cent cinquante et un, et la notion de culture comme droit fondamental soutiennent les objectifs d'une vraie action communautaire, complémentaire des Etats Membres. Il s'agit en l'occurrence de la création d'un climat favorable pour les arts et l'éducation, par des mesures d'encouragement, d'incitation à la création, à la mobilité, aux échanges, à la coopération et l'accès à la culture en général. Dans cet encouragement, on retrouve le souci de diversité culturelle à partager horizontalement et verticalement, avec la valeur primordiale de liberté du citoyen européen, grâce au pluralisme de l'information et de ses sources.

L'action de l'Union répond donc d'une manière incitative et dynamique complémentaire aux exigences de la subsidiarité dite verticale, et doit cependant reconnaître explicitement l'apport de la subsidiarité horizontale, notamment en matière d'éducation. Cette complémentarité doit être reprise afin d'établir les bases d'un dialogue, d'une consultation que je qualifierais de raisonnable avec la société civile à tous les niveaux de responsabilité politique et bien sûr à plus forte raison au niveau européen. Le maître mot est ici la transparence. L'appui unique que peuvent fournir les réseaux européens sont un atout majeur à ne pas négliger. Dans ces efforts communs de réflexion et de projection dans un avenir européen commun, il ne faut pas oublier l'importance d'initiatives fondamentales comme le rapport Ruffolo et ses recommandations, le travail d'organisations internationales telles que l'UNESCO et le Conseil de l'Europe, dont l'expérience en matière d'approche de la diversité culturelle par exemple, ou encore d'observation des politiques culturelles dans les pays européens au sens le plus large du terme, est précieuse. Ainsi, la complémentarité des expériences des divers acteurs institutionnels, réseaux culturels, artistes et intellectuels saute aux yeux. Reprenons la balle lancée par la Convention et l'initiative des groupes de contact. La Fondation européenne de la culture a proposé de réunir ceux d'entre vous qui le désirerons à l'automne, afin de partager cette expérience. Je terminerai en reprenant une phrase prononcée le douze juin, qui est en fait la véritable raison de notre participation à tous dans cette aventure sans précédent qui consiste en la refonte d'un Traité en temps de paix, en un élargissement et une intégration volontaire de l'ensemble des citoyens. La phrase que je voulais vous faire partager est la suivante « we look to the candidate countries with their all brand culture, traditions, to reinforce the place of culture at the open level ».

2-064

EN

**Jenkins (NGO-CULT).** - President, I want to begin by thanking the Culture Contact Group, which agreed to Churches and religious associations, and more broadly, communities of faith and conviction, having this longer space in the presentation.

Because our associations are concerned with a wide range of topics and interests, communities of faith and conviction have difficulty finding their place in a single contact group. This time is important to a group of self-financing organisations representing between them tens of millions of citizens.

My first point is that the communities of faith and conviction shared with many others in the contact group the belief that the European Union must be a community of values. It is not simply a more efficient way of achieving policy objectives, nor is it simply a market. The values expressed in the contact group included the centrality of the human being, promotion of peace and reconciliation, liberty and justice, solidarity and sustainability, tolerance, democracy, human rights, the rule of law and respect for minorities. There was a broad consensus on all of these.

But these values must be realised. My second point is that a commitment to them has consequences. First, one of the stated objectives of the European Union should be to work for a Union based on human rights, liberty and solidarity, drawing on the richness of Europe's cultural, religious and philosophical traditions.

Second, in pursuing the common good, another key objective must be support for poverty eradication at the global level and support for the marginalised and those threatened by social exclusion globally and within the Union. This is a necessary response to the challenge in the Laeken Declaration to make the European Union a power seeking to set globalisation within a moral framework, in other words to anchor it in solidarity and sustainable development. The European Union needs the means to work with a single voice on the global scene, to develop a fair and just system of global governance.

Third, the Union should develop greater capacity for preventative diplomacy and peaceful resolution of conflicts.

Fourth, in the process of the accession of new Member States to the Union, there must be a full debate on the values which we want to pursue together. This must be reflected in the outcome of the Convention.

Fifth, a future constitutional text must incorporate fundamental rights. These are universal, based on the dignity of the human being, transcending all policies, laws or powers. Without discriminating against other convictions, for the Christian churches and other religious traditions, that dignity comes from God. For communities of faith and conviction, freedom of thought, consciousness and religion in their individual corporate and institutional dimensions are essential.

The European Humanist Federation, which was part of the group, asked for a separation between religion and governance with no differentiation between those who believe and those who do not. On the basis of the values mentioned, the institutional reforms to be proposed by the Convention should re-invigorate democracy and democratic political life and ensure that citizens sense that their concerns are heard and taken seriously.

This has two consequences: one is that there is a need to develop the democratic legitimacy and transparency of the Union and its institutions. The second, which constitutes my third point, is that the principle of subsidiarity must be made real. This is important because it is a way of respecting the diversity of Europe while seeking unity within the Union. This applies to the vertical dimension of subsidiarity: at which political level is a particular decision most appropriately made? It would be appropriate to have some kind of structure for monitoring the application of this principle in its vertical dimension and we hope that the Convention will continue to explore that aspect.

Declaration 11, the final act of the Treaty of Amsterdam, is an expression of the vertical dimension of subsidiarity. It states that the European Union respects the status of churches, religious associations and communities, and also non-confessional bodies as recognised by each Member State. We believe that this Declaration should be incorporated in a future constitutional text as a sign of respect for diversity.

It is also true of the horizontal dimension. There are structures, institutions and organisations other than political institutions which have a role to play in addressing issues in society. This aspect applies to every aspect of society - recognising the dignity of the human person and his or her relationships, starting from the family as a basic unit of society. We ask that this horizontal dimension should be taken up by a future constitutional text, providing for structured dialogue between the European Union and its institutions and the variety of institutions, associations and communities in society in general.

Within such dialogue, the communities of faith and conviction ask that the specificities of churches, religious communities and non-confessional associations should be recognised. This is not because they want a privileged position but because of their concern for and relevance to a range of topics, interests and spheres of policy making.

Here I would stress the important role played by non-statutory and charitable providers of social welfare, education and other services of general interest. This was a matter raised in the contact group not only by representatives of some communities of faith and conviction but also by organisations concerned with service provision. Provisions are needed to ensure the right to establish and maintain educational and caring institutions and to ensure that the high level of services is not put in danger by inappropriate applications of competition law or by privatisation.

My final point concerns the sources of European cultures and values. Communities of faith and conviction have contributed to the formation of European cultures and values. It must be acknowledged frankly that not all of these contributions have been positive. They have sometimes led to divisions within Europe. Nevertheless, the religious, spiritual and philosophical contribution to European values has been significant. The Christian churches believe that they have contributed and continue to contribute positively and significantly to the building of Europe.

Both in the past and nowadays, other faith communities make a contribution to the plurality and diversity which are part of Europe's rich texture. People and movements without religious or transcendental belief have contributed fully. Churches and religious associations believe that it would be entirely appropriate to acknowledge the specific contribution of the religious, spiritual and philosophical heritage in any constitutional text.

The European Humanist Federation would prefer to base itself solely on common values such as the dignity of women and men, freedom, equality, solidarity and the principles of democracy and the rule of law. Values which the Churches and religious communities would also defend.

In conclusion, I want to emphasise that the Convention's success will depend on citizens seeing the Union as a community of values which invites full participation at all levels. If citizens are to feel that they have a stake, they must have trust in the values and objectives of European integration, such as its promotion of the centrality of the human being, solidarity, subsidiarity and transparent democracy. The churches and communities of faith and conviction, in whose name I speak today, remain committed to an active role in building up this trust.

(Applause)

2-065

EN

**Brezigar (NGO-CULT).** - Mr. President, the European Bureau for Lesser Used Languages represents European Union citizens speaking original or minority languages, but my presence here today does not relate only to minority languages. I will focus on linguistic diversity as the general wealth of Europe. We share our point of view with other NGOs dealing with the same topic, so I will present you with an overview of our common thinking.

I will first explain the needs of the communities we represent. We expect the European Union to lay down strict provisions relating to linguistic diversity. We understand the principle of European citizenship as the affirmation of identity of every single European citizen. Europe is not a melting pot. Its real wealth lies in the richness of its cultures and languages. Europeans will accept economic standardisation only if their identity is maintained. This seems to be a European issue as well and it is our opinion that cultural and linguistic diversity should become part of the *acquis communautaire*.

The Union has not been active enough in this domain so far. To give an idea of the low priority given to this topic, I would stress that in the non-discrimination clause, Article 13 of the Treaty, languages have not been included, setting them at a lower level of priority than that they are given in the basic United Nations and Council of Europe human rights documents. This should be amended in accordance with Article 21 of the EU's Charter of Fundamental Rights.

Article 22 of the Charter calls upon the Union to respect linguistic diversity. This Article should also be implemented. Some will object to this, arguing that this issue falls under the principle of subsidiarity and must therefore be dealt with on a state or even a local basis. If this happens, the large, strong languages will become larger and stronger and the weaker ones will risk extinction. European Union intervention is therefore needed to keep diversity as our common wealth, our common heritage.

We understand that nowadays most states do not want to give the European Union any legislative competence in this domain, but we hope that there could at least be a general agreement about the possibility of European Union incentive measures to maintain the linguistic mosaic. It is in our common interest to do this, as no mosaic is complete if even a small piece is missing. Maintaining linguistic diversity is a European issue. It is the heritage of the whole of Europe and not only of the speakers of each particular language. These proposals are included in the document entitled 'A Package for Linguistic Diversity' which has already been forwarded to the Convention.

Finally may I assure you that the European Bureau for Lesser Used Languages is willing to guarantee the Convention any support needed in the domain of regional or minority languages.

2-066

NL

**Van Mierlo (Ch.E/G.-NL).** - Mijnheer de voorzitter, er is een zeer belangrijk woord gesproken. De heer Gabletz heeft namens alle culturele instellingen de indringende wens naar voren gebracht dat de Unie zich zou bevrijden van de dwanggedachte dat cultuur een exclusieve bemoeienis is van de lidstaten en dat de Gemeenschap en de Unie daar zo veel mogelijk buiten moeten blijven.

De uitspraak van de culturele instellingen is daarom zo belangrijk omdat juist zij in het verleden verondersteld werden cultuur te zien als een prerogatief van de lidstaten. Nu dat niet meer het geval lijkt te zijn, hebben wij als Conventie de plicht te bezien hoe de Unie of de Gemeenschap haar passieve rol wenst te herzien. Begrijp me niet verkeerd, voor mij staat vast dat de nationale cultuur in de eerste plaats een zaak blijft van de lidstaten, of daarbinnen van regio's of deelstaten. Europa is terecht trots op zijn culturele diversiteit en beschouwt die als zijn dierbaarste bezit. Maar het zou een taak van de Gemeenschap moeten zijn juist die diversiteit als een gemeenschappelijk belang, als een Europese cultuurgood te beschermen, te bevorderen en uit te dragen.

Dat is evenwel niet alles. Eén van de belangrijkste motieven voor het houden van deze Conventie is het algemeen levende gevoel dat de afstand tussen de Europese burgers en Europa te groot is en overbrugd moet worden. Dat kan door de transparantie en de democratie te vergroten, maar de werkelijke instrumenten daarvoor zijn cultuur en onderwijs. Ik acht het onmogelijk om dat bestaande gat te dichten zonder dat we heel doelgericht gebruik maken van deze instrumenten. De vorming van Europees denkende en Europees voelende burgers begint bij het onderwijs. Daar zouden de eerste noties van democratie moeten worden bijgebracht, zowel voor de nationale als voor de Europese.

Het is in het belang van Europa zelf dat Unie en Gemeenschap, Raad en Commissie, actief optreden in dat culturele proces van bewustwording, bijvoorbeeld door middel van gemeenschappelijke educatieprogramma's. Ik ben nu aan het eind van mijn betoog. Om



die reden zou de Conventie serieus moeten bestuderen of artikel 151 zodanig kan worden herschreven dat het ons beter in staat stelt dat doel na te streven. Deze specifieke taak zou de instelling van een werkgroep kunnen rechtvaardigen.

2-067

EN

**Kelam (Parl.-EE).** - Mr. Chairman, today's discussion reminds me of the Maastricht Treaty Article which declares that the European Union is based upon common European cultural heritage. It is good to remind ourselves of this cultural dimension as we move on to the next stage of enlargement. Questions about the identity of our citizens bring us back to the perception of our national and cultural identity.

However, today, in integrating Europe, we need to develop a new sense of national and cultural identity: national as well as European. This will be the 'added value' for the European project mentioned by my colleague, Mr. Peterle.

In 1912, when Gustav Suits, a poet and leader of the young Estonian movement, proclaimed 'Let us remain Estonians but let us also become Europeans', he clearly had a healthy understanding that the two are not exclusive; rather, they are complementary.

I would like to thank representatives of civil organisations for their valuable contribution to today's discussion.

Yesterday, the European AgriCultural Convention proposed the inclusion in the Treaty of the right of citizens to healthy food, a healthy environment and clean water. Today, it seems fair to speak about the right of citizens to a healthy culture, a healthy moral environment and clear ethical values. The citizens' support for the EU will ultimately depend on how clearly they perceive a united Europe as a community of values and how clearly they see their identities rooted in this. Therefore, I support proposals to include references to culture in the Treaties, stressing our common cultural, spiritual and Christian values which have been important incentives for European integration.

2-068

EN

**Tekin (Parl.-TR).** - Mr. President, there have been some proposals to refer to religion in the EU Treaties. With all due respect, reference to religion in the treaties will not be in line with the universal values that the EU champions. The formula developed in the introduction to the Charter of Fundamental Rights, referring to the EU's spiritual and moral heritage, is a very well-balanced approach.

I hope for a Europe in the future where it simply does not matter if one is a Christian, a Muslim, a Jew, a Buddhist, a Shamanist or a non-believer. In short, I want a Europe that is secular, a Europe that is multicultural and multireligious.

*(Applause)*

2-069

EN

**Demetriou (Parl.-CY).** - Mr President, I think that I express the feelings and views of all the participants in this Convention when I say that the exercise entitled 'Civil Society' has been a success. Thanks to Mr. Dehaene for organising the debate and for encouraging and stimulating the exchange of views which took place beforehand.

2-070

IT

**Spini (Parl.-IT).** - Signor Presidente, il nostro lavoro avrà successo se l'Europa diventerà un soggetto politico più importante. Per diventare un soggetto politico più importante deve avere un'anima, una missione, dei valori, e credo che questi valori - giustizia, fraternità, libertà, solidarietà - siano valori in cui la tradizione cristiana si può riconoscere, e quindi credo che è sui valori che vi deve essere un intenso dialogo fra credenti e non credenti, fra i credenti di varie religioni. Da questo punto di vista io credo che, più che un omaggio rituale o un omaggio formale alla religione, dobbiamo essere capaci, negli articoli del nostro Trattato, di rispecchiare con autorevolezza e con forza questi valori. Ecco perché la religione, se deve essere citata, non dev'essere un elemento di divisione fra chi crede e chi non crede o fra chi crede in varie religioni - preferirei anzi, in questo senso, parlare di una fede - ma dev'essere un elemento di unità, di convergenza. Ecco la ragione per la quale io credo che siano importanti anche le iniziative che, a varie riprese, i presidenti di commissione hanno portato avanti per organizzare un dialogo con le religioni, ma, siccome i valori uniscono, credo che sarebbe estremamente sbagliato dividerci su temi e riferimenti formali: dobbiamo guardare, invece, alla sostanza e ai valori del nostro Trattato.

2-071

IT

**Basile (Parl.-IT).** - Signor Presidente, chiedo la parola soltanto per dire che anche in Italia è stato avviato un ricco dibattito sul futuro dell'Unione europea: è stato creato un apposito Osservatorio della Convenzione europea, attivato un gruppo di lavoro interistituzionale, attivati dibattiti all'interno del Senato e della Camera dei deputati, avviate alcune iniziative per i giovani coinvolgendo tutta la società civile. Chi vuole maggiori informazioni può trovarle su *Internet*.

2-072

FR

**Le Président.** – Ainsi se termine cette séance d'audition du forum de la société civile. Je tiens à remercier tous ceux qui ont pris la parole et qui ont contribué à cette réunion, ainsi que tous ceux qui ont participé aux réunions préparatoires. Je rappelle avec instance que ceci n'était qu'un moment fort qui s'inscrit dans une durée. J'affirme et confirme au nom du Praesidium que nous poursuivrons l'effort de dialogue avec la société civile. Le web du forum continuera. Il reste ouvert aux contributions et aux réactions que la société civile souhaiterait apporter par rapport à nos initiatives. J'insiste aussi pour que les débats nationaux soient continus et animés par les membres de la Convention. Nous poursuivrons aussi l'effort de contact avec les ONG au niveau européen, entre autres par les réunions facilitées par le Comité Economique et Social. A cet effet, nous avons encore une réunion cette semaine où nous pourrons faire le bilan de cette session. Nous prendrons d'autres initiatives avec le Praesidium afin de continuer ce dialogue qui, selon moi, est fort enrichissant pour tout le monde, et d'abord et avant tout pour la Convention. En effet, cette collaboration avec la société civile doit permettre à la Convention d'avoir un support beaucoup plus large au sein de l'opinion publique. Je passe maintenant la présidence à Monsieur le Président.

2-073

FR

### PRÉSIDENCE DE Mr GISCARD D'ESTAING

**Le Président.**- Le Président prend la présidence pour vous dire simplement deux choses. La première, c'est pour remercier à la fois le vice-président Monsieur Dehaene, les présidents des groupes de contact, l'ensemble des intervenants qui sont intervenus dans cette discussion pour leurs remarques très intéressantes. Je pense qu'il serait sympathique que vous marquiez votre satisfaction en les applaudissant.

La deuxième chose est que vous serez remplacés dans cet hémicycle par notre Convention des jeunes, qui se tiendra à Bruxelles du neuf au douze juillet, et sur laquelle je voulais vous donner une rapide information. Le secrétariat a reçu la liste complète des noms des jeunes participants âgés de dix-huit à vingt-cinq ans, que vous avez proposé. Une lettre de ma part, ainsi qu'un dossier d'information complet leur ont été envoyés. La parité a été respectée, avec même une surreprésentation féminines : cent quatorze femmes et quatre-vingt-seize hommes. La qualité et la diversité des jeunes nous paraissent tout à fait remarquables, même si l'on doit constater le nombre important d'étudiants, et en particulier en sciences humaines, chose compréhensible compte tenu des différentes filières de formation. Toutefois, la jeunesse au travail, la jeunesse en apprentissage, la jeunesse professionnelle sera également représentée. Vous trouverez la liste ainsi que le déroulement des séances dans le document de la convention 131/02 qui vous a été distribué. Je vais vous donner quelques détails pratiques. L'ouverture formelle de la session des jeunes se tiendra le mercredi dix juillet à dix heures trente. Cette réunion se tiendra dans cet hémicycle afin de nous permettre de les accueillir. Il est par conséquent souhaitable que tous les Conventionnels et tous les jeunes soient présents. Ils travailleront en groupe à partir du mercredi après-midi et nous, nous commencerons à travailler en tant que Convention le jeudi onze à quinze heures pour notre réunion consacrée à l'action extérieure de l'Union. Compte tenu de ce qui a été dit par un certain nombre d'orateurs de la société civile, je n'ai pas besoin d'insister sur l'importance de ce sujet. Cette réunion se tiendra dans l'hémicycle afin d'accueillir les jeunes qui assisteront à notre débat précisément sur l'action extérieure de l'Union. Le lendemain matin, le vendredi douze, ils nous présenteront leurs conclusions. Vous pourrez alors leur faire part de vos réactions et répondre à leurs questions d'une façon que nous allons définir. Comme nous avons été frappés par l'intérêt et les motivations des membres de la société civile, je vous dirai que je compte beaucoup sur leur motivation et sur leur enthousiasme. En effet, nous avons besoin de leur propositions pour imaginer et construire l'Europe de l'avenir. Dans les interventions que nous écoutons ou même que nous faisons les uns ou les autres, j'ai souvent l'impression que nous cherchons à corriger les défauts de l'Europe du passé. Or ce n'est pas le sujet. Notre sujet est la préparation de l'Europe de l'avenir, c'est à dire une Europe plus nombreuse, plus large et qui vivra et continuera à vivre dans un monde qui ne cesse de se transformer. C'est pourquoi j'attends avec beaucoup d'intérêt et d'impatience, comme vous j'en suis sûr, le résultat de leurs travaux qui seront spontanés et naturellement entièrement libres. Je fixe donc rendez-vous aux membres de la Convention le jeudi onze juillet à quinze heures.

*(La réunion est levée à 13.10 h)*

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## **IV.1.e. IGC documents, 2003-2004**



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 26 September 2003  
(OR. fr)**

**12656/03**

**PE 181  
POLGEN 61**

**NOTE**

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|          |                                                                                                                                                           |
|----------|-----------------------------------------------------------------------------------------------------------------------------------------------------------|
| from :   | General Secretariat of the Council                                                                                                                        |
| to :     | Delegations                                                                                                                                               |
| Subject: | European Parliament resolution on the draft Treaty establishing a Convention for Europe and the European Parliament's opinion on the convening of the IGC |

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Attached is the text of the resolution passed by the European Parliament, following the report by Mr José Maria Gil-Roblès Gil-Delgado and Mr Dimitri Tsatsos, on the draft Treaty establishing a Convention for Europe and the European Parliament's opinion on the convening of the Intergovernmental Conference, at its part-session in Strasbourg on 24 September 2003.

A summary of the debate is given in 12938/03 PE 1780.

**ANNEX****European Constitution and IGC \*****European Parliament resolution on the draft Treaty establishing a Constitution for Europe and the European Parliament's opinion on the convening of the Intergovernmental Conference (IGC) (11047/2003 - C5-0340/2003 - 2003/0902(CNS))****(Consultation procedure)**

*The European Parliament,*

- having been consulted by the Council, pursuant to the second paragraph of Article 48 of the Treaty on European Union, on the convening of an intergovernmental conference (IGC) to consider the changes to be made to the treaties on which the Union is founded (11047/2003 – C5-0340/2003),
- having regard to the draft Treaty establishing a Constitution for Europe <sup>1</sup> prepared by the Convention on the Future of Europe,
- having regard to its resolution of 31 May 2001 on the Treaty of Nice and the future of the European Union <sup>2</sup>,
- having regard to its resolution of 29 November 2001 on the constitutional process and the future of the Union <sup>3</sup>,
- having regard to its resolutions of 16 May 2002 on the distribution of competences <sup>4</sup>, of 14 March 2002 on the Union's legal personality <sup>5</sup>, of 7 February 2002 on the role of the national parliaments <sup>6</sup> and of 14 January 2003 on the role of the regions in European integration <sup>7</sup>,
- having regard to the Charter of Fundamental Rights of the European Union,
- having regard to the Commission's communication entitled "A Constitution for the Union" (COM(2003) 548),

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<sup>1</sup> CONV 850/03, OJ C 169, 18.7.2003, p. 1.

<sup>2</sup> OJ C 47 E, 21.2.2002, p. 108.

<sup>3</sup> OJ C 153 E, 27.6.2002, p. 310.

<sup>4</sup> OJ C 180 E, 31.7.2003, p. 493.

<sup>5</sup> OJ C 47 E, 27.2.2003, p. 594.

<sup>6</sup> OJ C 284 E, 21.11.2002, p. 322.

<sup>7</sup> P5\_TA (2003)0009.



- having regard to the report of the Committee on Constitutional Affairs and the opinions of the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy; Committee on Budgets; Committee on Budgetary Control; Committee on Citizens' Freedoms and Rights, Justice and Home Affairs; Committee on Economic and Monetary Affairs; Committee on Legal Affairs and the Internal Market; Committee on Industry, External Trade, Research and Energy; Committee on the Environment, Public Health and Consumer Policy; Committee on Agriculture and Rural Development; Committee on Fisheries; Committee on Regional Policy, Transport and Tourism; Committee on Development and Cooperation; Committee on Women's Rights and Equal Opportunities and the Committee on Petitions (A5-0299/2003),

Whereas:

- A. the citizens, parliaments, governments and political parties - in both the Member States and at the European level - as well as the institutions of the Union are entitled to take part in the democratic process of drawing up a Constitution for Europe; therefore, this Resolution constitutes Parliament's evaluation of the draft Constitutional Treaty produced by the Convention on the Future of Europe,
- B. the preparation, the conduct and above all the outcome of the Nice Conference definitively demonstrated that the intergovernmental method for the revision of the Union's treaties has reached its limits and that purely diplomatic negotiations are not capable of providing solutions to the needs of a European Union with twenty-five Member States,
- C. the quality of the Convention's work on the preparation of the draft Constitution and the reform of the Treaties fully vindicates the decision of the Laeken European Council to move away from the intergovernmental method by adopting Parliament's proposal for the setting up of a constitutional Convention; the result of the Convention, in which the representatives of the European Parliament and of national parliaments played a central role, shows that open discussions within the Convention are far more successful than the method followed up to now of intergovernmental conferences held in camera,
- D. Parliament demands to be actively and continually involved not only in the Intergovernmental Conference but also in the future phases of the constitutional process,
- E. important progress has been made by the Convention's proposals, but the new provisions will have to be tested with respect to the challenges presented by the enlarged Union; the method of the Convention should apply for all future revisions,
- F. the Convention, like its predecessor on the Charter of Fundamental Rights, has initiated a new phase in European integration, during which the European Union will consolidate its legal order into a constitutional order binding on its Member States and citizens, even if the Constitution is ultimately approved in the form of an international treaty,

- G. despite the many differences of opinion initially existing between the members of the Convention, a large majority of all four component parts of the Convention, including Parliament, supported the Convention's final proposal, which is therefore based on a fresh and broad consensus, even if not all of Parliament's demands concerning democracy, transparency and efficiency in the European Union were met; to reopen the important compromises reached within the Convention would not only jeopardise the progress made by the Convention in re-founding the Union on a more efficient and democratic constitutional basis but would also subvert the whole Convention method,
- H. the draft Treaty establishing a Constitution for Europe should be evaluated on the basis of the following criteria:
- a. respect for the preservation of peace, democracy, freedom, equality, linguistic and cultural diversity, the rule of law, social justice, solidarity, the rights of minorities and cohesion, all of which can never be deemed to have been definitely achieved but must be kept under constant review as to their meaning and must be fought for anew through historical developments and over generations;
  - b. respect for the European Union as an entity united in its diversity;
  - c. confirmation of the unique nature and of the dual legitimacy of the Union drawn from its Member States and citizens;
  - d. commitment to the preservation of the principle of equivalence between the Member States and the interinstitutional balance, which guarantees the Union's dual legitimacy;
  - e. efficiency in a Union composed of twenty five or more Member States while enhancing the democratic functioning of its Institutions;
  - f. development of a system of values with cultural, religious and humanist roots which, going beyond a common market and within the framework of a social market economy, aims at a better quality of life for Europe's citizens and society at large and seeks economic growth, stability and full employment, greater promotion of sustainable development and better implementation of citizenship of the Union;
  - g. strong political legitimacy in the eyes of the Union's citizens and through the European political parties;
  - h. an overall constitutional settlement which should enhance the Union's credibility and its role at home and abroad,
1. Welcomes the progress towards European integration and democratic development represented by the Convention's proposed "Constitution for Europe", to be established through a Treaty establishing a Constitution for Europe enshrined in a text expressing the political will of the European citizens and the Member States in a solemn and comprehensive way;

2. Notes with satisfaction that the draft Constitution entrenches to a significant extent the values, objectives, principles, structures and institutions of Europe's constitutional heritage, so that, to a great extent, the draft not only assumes the character of a constitutional text but also provides for its continuous evolution;
3. Welcomes the inclusion of the symbols of the Union in the draft Constitution;

***Important steps towards a more democratic, transparent and efficient European Union***

*Democracy*

4. Greatly welcomes the inclusion of the Charter of Fundamental Rights as an integral, legally binding part of the Constitution (Part II) and stresses the importance of human dignity and the fundamental rights of the individual as crucial elements of a civic, social and democratic Union;
5. Welcomes the new "legislative procedure", which will become the general rule, as an essential step towards increasing the democratic legitimacy of the Union's activities, acknowledges this notable extension of codecision and stresses that this must be pursued further;
6. Regards as positive the election of the President of the European Commission by Parliament and stresses that this is in any case an important step towards an improved system of parliamentary democracy at European level;
7. Acknowledges the possibilities for increased participation by European citizens and the social partners and, especially, the introduction of the citizens' legislative initiative;
8. Regards as important the increased role of the national parliaments and of the regional and local authorities in the Union's activities;
9. Supports national parliaments in their efforts to carry out more effectively their task of guiding and monitoring their respective governments as members of the Council of the Union, which is the effective way of ensuring the participation of national parliaments in the legislative work of the Union and in the shaping of common policies;
10. Instructs its competent Committee to organise joint meetings with representatives of national parliaments, if possible including former members of the Convention, to ensure the follow-up and evaluation of the proceedings of the Intergovernmental Conference;

*Transparency*

11. Regards as fundamentally important the fact that the Union will acquire a single legal personality and that the pillar structure will formally disappear, even if the Community method does not fully apply to all Common Foreign and Security Policy, Justice and Home Affairs and coordination of economic policy decisions;
12. Welcomes the introduction of a hierarchy and the simplification of the legal acts of the Union, and the explicit recognition of the primacy of the Constitution and of Union law over the law of the Member States;
13. Recognises the steps made towards greater transparency and clarification of the respective competences of the Member States and of the Union, with the retention of a certain level of flexibility to allow for future adaptations in an evolving Union comprising twenty five or more Member States;
14. Welcomes the separation of the Euratom Treaty from the legal structure of the future Constitution; urges the Intergovernmental Conference to convene a Treaty revision conference in order to repeal the obsolete and outdated provisions of that Treaty, especially those relating to the promotion of nuclear energy and the lack of democratic decision-making procedures;
15. Welcomes the commitment given by the President of the Convention that the entire text of the Constitution will be written in gender-neutral language and calls on the Intergovernmental Conference to arrange for the necessary editorial changes to be made to the draft Constitution in this respect;

*Efficiency*

16. Attaches great importance to the extension of qualified majority voting in the Council, as far as legislation is concerned; welcomes the improvement of the system, while underlining the need for further extensions of qualified majority voting or for the use of special qualified majority voting in the future, without prejudice to the possibilities provided for in Article I - 24 (4) of the draft Constitution;
17. Stresses that Parliament must be the responsible parliamentary body with respect to the Common Foreign and Security Policy and the European Security and Defence Policy in so far as EU competences are concerned;
18. Welcomes the fact that the draft Constitution makes other important improvements in the sphere of decision-making and policy-making, and in particular:
  - the fact that the Union has now acquired a clear commitment to a social market economy as expressed in its values and objectives, with emphasis being placed inter alia on the importance of growth, employment, competitiveness, gender equality and non-discrimination and on socially and environmentally sustainable development,

- the fact that the Legislative and General Affairs Council, although not acting as a wholly separate Legislative Council, will in the future always meet in public when performing its legislative duties,
  - the extension of qualified majority voting and co-decision to, in particular, the area of freedom, security and justice and the extension of the general system of jurisdiction of the Court of Justice of the European Communities to justice and home affairs,
  - the fact that, for international agreements and the common commercial policy, the assent of Parliament will now be required as a general rule,
  - the provisions on transparency and access to documents, the simplification of the legislative and non-legislative procedures and the use of language commonly understood by citizens,
  - the abolition of the distinction between obligatory and non-obligatory expenditure in the budget and the extension of co-decision to the common agricultural policy and the common fisheries policy,
  - the introduction of a multiannual strategic programme of the Union,
  - the recognition of the growing importance of the regional dimension to European integration,
  - the modification of the rules concerning access to the Court of Justice,
  - the provisions on the adoption of delegated regulations by the Commission with "call-back" rights for Parliament and the Council,
  - the provision under which those countries which have undertaken to participate in enhanced cooperation may introduce, among themselves, qualified majority voting where unanimity is otherwise prescribed by the draft Constitution, and adopt the legislative procedure where other procedures would normally apply;
19. Endorses the solidarity clause regarding the fight against terrorism and the possibility of structural cooperation in security and defence policy while respecting NATO commitments;

***Aspects requiring further monitoring during their implementation***

20. Believes that the election of the President of the European Council cannot in itself solve all the current problems affecting the functioning of that institution and could entail unforeseeable consequences for the institutional balance of the Union; the role of the President must be strictly limited to that of a chairperson in order to avoid possible conflicts with the President of the Commission or the Union Minister for Foreign Affairs and not to endanger their status or encroach in any way on the Commission's role in external representation, legislative initiative, executive implementation or administration;

21. Emphasises that the provisions concerning the presidencies of Council of Ministers formations other than the Foreign Affairs Council leave the details to a subsequent decision, which should be carefully assessed, bearing in mind the requirement of coherence, efficiency and accountability and the need to address the problem of the presidency of the Council's preparatory bodies;
22. Welcomes the disappearance of the link between the weighting of votes in the Council and the distribution of seats in Parliament, as established in the Protocol on the enlargement of the European Union annexed to the Treaty of Nice; supports the system set out in the draft Constitution as regards the future composition of Parliament and suggests that this be implemented without delay, because it is a core element of the global balance between the Member States within the different institutions;
23. Understands that the creation of the office of Union Minister for Foreign Affairs will enhance the Union's visibility and capacity for action on the international stage but stresses that it is vital that the Union Minister for Foreign Affairs be supported by a joint administration within the Commission;
24. Suggests that the European Ombudsman, who is elected by Parliament, and the national ombudsmen might propose a more comprehensive system of non-judicial remedies in close cooperation with Parliament's Committee on Petitions;
25. Considers that the Intergovernmental Conference should adopt a decision on the repeal, upon entry into force of the Members' Statute adopted by Parliament on 4 June 2003, of Articles 8, 9 and 10 of the Protocol on Privileges and Immunities and of Article 4(1) and (2) of the Act on direct elections;
26. Regrets the insufficient congruence of Part III with Part I of the draft Constitution, particularly in relation to Article I-3;
27. Welcomes the introduction of the 'passerelle' clause which allows the European Council to decide to have recourse to the ordinary legislative procedure in cases where special procedures apply, after consulting Parliament and informing national parliaments;
28. Believes that Parliament must, within the budgetary procedure, retain the rights it currently has and that its powers must not be weakened; considers that the satisfactory exercise of Parliament's power to approve the multiannual financial framework presupposes the rapid opening of interinstitutional negotiations, in addition to the Intergovernmental Conference, on the structure of this framework and the nature of the constraints on the budgetary procedure; believes that the multiannual financial framework should leave the budgetary authority significant room for manoeuvre during the annual procedure;
29. Expresses its concern regarding the unsatisfactory answers given to certain fundamental questions, which were clearly pointed out in Parliament's previous resolutions, concerning in particular:

- further consolidation of economic and social cohesion policy, closer coordination of Member States' economic policies with a view to effective economic governance, and a more explicit integration of employment, environmental and animal welfare aspects in all EU policies,
  - full recognition of the role played by public services, (deletion) based on the principles of competition, continuity, solidarity and equal access and treatment for all users;
  - the suppression of the requirement of unanimity in the Council in certain vital areas, including in particular the Common Foreign and Security Policy (at least as regards the proposals made by the Union Minister for Foreign Affairs with the Commission's support), and certain areas of social policy;
30. Understands that the solution proposed for the Commission by the draft Constitution is an important part of the global institutional compromise; hopes that the reform of the Commission will not weaken its collegiality or give rise to a lack of continuity; regrets that the system envisaged makes it difficult to keep a good European Commissioner for a second term;

### *General assessment*

31. Notes that the draft Constitution prepared by the Convention represents the result of a broad democratic consensus involving Parliament and the national parliaments and governments of the Union, thus expressing the will of the citizens;
32. Welcomes the provision whereby Parliament now also has the right to propose constitutional amendments and, moreover, must approve any attempt to amend the Constitution without convening a convention, which will enable it to exert a de facto control over the use of this new instrument of constitutional revision; regrets, however, that the unanimity of the Member States and ratification by national parliaments or in accordance with other constitutional requirements will both still be *necessary* to allow the entry into force of constitutional amendments of even minor importance; strongly deplores the fact that Parliament's approval is not systematically required for the entry into force of newly adopted constitutional texts;
33. Resolves that notwithstanding certain limits and contradictions, the result of the work of the Convention should be endorsed, representing as it does an historic step towards a European Union which is more democratic, efficient and transparent;
34. Believes that in the light of the experience of two Conventions this method ensures democratic legitimacy and, through its working methods, guarantees openness and participation; considers nevertheless that for future revisions it could be sensible for the Convention itself to elect its Praesidium;

***Convening of the Intergovernmental Conference and ratification process***

35. Approves the convening of the Intergovernmental Conference (IGC) on 4 October 2003;
36. Urges the IGC to respect the consensus reached by the Convention, to avoid negotiations on the fundamental decisions reached by the Convention and to approve the draft Treaty establishing a Constitution for Europe without altering its basic balance while aiming at reinforcing its coherence;
37. Calls on the political parties, both in the Member States and at European level, the representative associations and civil society to reflect comprehensively not only on the outcome of the Convention but also on Parliament's views as expressed in this Resolution;
38. Strongly welcomes the Italian Presidency's assurance that Parliament will be closely and continuously involved in the IGC at both levels, namely that of the Heads of State or Government and that of the Foreign Affairs Ministers, and supports its intention to close the conference by December 2003;
39. Considers that the Treaty establishing a Constitution for Europe must be signed by all the twenty five Member States on 9 May 2004, Europe Day, immediately after the accession of the new members to the Union;
40. Considers that Member States that hold referenda on the draft Constitution should if possible hold such referenda or ratify the draft Constitution in accordance with their constitutional provisions on the same day;
41. Welcomes the fact that the deliberations of the IGC are to be publicised on the Internet, but calls on the Commission, the governments of the Member States and the political parties to envisage using all possible information media to acquaint the general public with the content of the IGC's work and the draft Constitution, including the organisation of national fora;  

o  
o o
42. Instructs its President to forward this resolution, constituting Parliament's opinion on the convening of the Intergovernmental Conference, to the Council, the Commission, the European Central Bank, the Heads of State or Government and the parliaments of the Member States and of the acceding and candidate States.

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**CONFERENCE  
OF THE REPRESENTATIVES OF THE  
GOVERNMENTS OF THE MEMBER STATES**

**Brussels, 6 October 2003 (07.10)  
(OR. fr)**

**CIG 4/03**

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from : IGC Secretariat  
dated : 6 October 2003  
to : Working Party of IGC Legal Experts

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Subject : ***IGC 2003***  
***– Editorial and legal comments on the draft Treaty establishing a Constitution  
for Europe – Basic document***

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Delegations will find attached the document from the IGC Secretariat intended to serve as a basis for the legal experts' examination of the text of the draft Treaty establishing the Constitution.

\* \* \*

*Note to the reader:*

*For ease of use this document is to be printed recto-verso, so that comments and suggestions appear on the right-hand page, i.e. opposite the text of the draft Constitution which appears on the left-hand page.*



Editorial and legal comments  
on the draft  
**TREATY**  
**ESTABLISHING**  
**A CONSTITUTION**  
**FOR EUROPE**

based on: version of the text submitted by the Chairman  
of the Convention in Rome on 18 July 2003  
(CONV 850/03 of 18 July 2003)



## **GENERAL COMMENTS**

### **INTRODUCTION**

1. Delegations will find attached a document produced by the IGC Secretariat which is intended to serve as a basis for the examination by legal experts of the text of the draft *Treaty establishing a Constitution for Europe*.<sup>1</sup>
2. On the left-hand page this document reproduces the text of the Convention's draft, with suggested changes being indicated in bold (changes to titles of Articles, which are already in bold, are italicised).
3. Opposite the text of the draft, on the right-hand page, are explanations of the suggested changes and observations on legal consistency, gaps, legally incorrect wording or ambiguities which might produce a legal risk.
4. Besides two preliminary comments, this introduction includes a number of technical remarks intended to facilitate the reading of the documents.

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<sup>1</sup> The text used as a basis for the documents drawn up by the IGC Secretariat is the one given to the President of the European Council by the Chairman of the Convention in Rome on 18 July 2003, at the end of the Convention's proceedings (CONV 850/03 of 18 July 2003)

## PRELIMINARY COMMENTS

### Transitional provisions

5. Part IV of the draft Treaty establishing the Constitution provides for the repeal of the TEC and the TEU, and of other Treaties (amending and accession), of which the list is to be drawn up (Article IV-2). Implementing this approach will require provisions to be laid down to secure the succession and legal continuity. On this point, the IGC Secretariat suggests that some provisions should be added to Part IV, and in the "Protocol on the representation of citizens in the European Parliament and the weighting of votes in the European Council and the Council of Ministers", which it is suggested should be styled the "Protocol on the transitional provisions relating to the Institutions and bodies of the Union", given the expansion of its scope.
6. In cases which do not give rise to questions of political expediency (for example the continuing term in office of the members of certain Institutions or bodies), appropriate transitional provisions have been suggested.
7. For the Commission and the Union Minister for Foreign Affairs, the problem is more delicate. Firstly, both the Commission and the Secretary-General/High Representative for the CFSP in office on the date that the new Treaty enters into force will disappear on that date. Secondly, the text of the draft Constitution allows for a new Commission and the Union Minister for Foreign Affairs to be appointed only with effect from 1 November 2009. It is therefore clear that provisions must be amended to fill this gap for the period between the date when the Treaty establishing the Constitution enters into force and 1 November 2009.

However, these transitional provisions are not mechanical. They call for choices of political expediency. That is why no suggestion on this subject has been made.

## **Accession agreements, protocols and other primary legislation not examined by the Convention**

8. This document does not deal with the approximately forty protocols which are an integral part of the current Treaties, and which have not been examined by the Convention; however, those protocols – some of which refer to Articles in the current Treaties and will therefore need technical changes – should be revised. Further, there is a need to clarify the question of the accession Treaties and other primary legislation not examined by the Convention. The Presidency has asked the Commission to assist the IGC Secretariat in this respect. The outcome of this work will subsequently be sent by the IGC Secretariat to legal experts (insofar as purely legal questions are concerned).

## **TECHNICAL REMARKS**

### **Numbering and titles of Articles**

9. At this stage, to avoid problems with references, Article numbers are preceded by the Roman number of the Part to which they belong (an "I" has been added for Articles in Part I). While understanding the reasoning behind this system of numbering, it should be noted that it is complicated. What is more, it risks creating confusion in several languages, particularly when the number is said aloud and then interpreted (thus "III-142" may be read out as "three – a hundred and forty two" which may lead to confusion with "three hundred and forty two"). Thus, from the point of view of legal certainty, transparency, simplicity and facility of use, it would be preferable to use continuous numbering in Arabic numerals throughout the text of the Constitution (from 1 to 465). This number could be reduced by about 30 if the suggested regrouping of Articles is carried out.

It should be noted that only the Articles in Parts I, II and IV have titles.

10. To make the texts easier to read, the numbers of the "ex Articles" in the TEC and TEU corresponding to the Articles in the draft have been indicated in brackets in Part III next to the new number of the Article, even when they have been amended by the Convention.

### Abbreviations of names

11. Certain names recur frequently in the text: European Commission, Council of Ministers, names of legally binding acts (European law, European framework law, European regulation, European decision). It is suggested that their full name should be quoted once, in the Article defining them, and that for the rest of the text a shorter formulation should be used (Commission, Council, law, framework law, regulation, decision) which avoids making the wording unnecessarily cumbersome. Of course in the titles of acts the full name will be used (e.g. "*European law No .../... of the European Parliament and of the Council of Ministers*"). On the other hand, "European Council" and "European Parliament" will be written in full throughout the text.

### Terminology and drafting

12. In the interests of editorial consistency, it is suggested that the word "*proposal*" should be reserved for Commission proposals, with "*initiatives*" by the Member States or the Minister for Foreign Affairs, "*recommendations*" by the ECB, etc.
13. The term "*agencies*", which is used in many Articles in the draft, risks giving rise to difficulties of interpretation as to whether it covers all the bodies created by an act of secondary legislation since the Treaty of Rome, where the creating act grants legal personality and defines tasks, resources, etc. It is therefore suggested that the term "*agencies*" should be replaced by "**offices and agencies**", which would cover all Community bodies without ambiguity, including executive agencies, whereas the term "*agencies*" risks excluding bodies called Offices, Centres, Foundations, etc. In any case this is the wording used in the OLAF Regulation <sup>2</sup> and in other provisions <sup>3</sup>.

<sup>2</sup> Regulation No 1073/1999 of 25 May 1999, OJ L 136, 31.5.1999, p. 1 (see Article 1(3) of the Regulation).

<sup>3</sup> See also the current text of the TEC, point (c) of the first paragraph of Article 234, and the second sentence of Article 248(1); and the decision of the Representatives of the Governments of the Member States of 29 October 1993 on the location of the seats of certain bodies and departments of the European Communities and of Europol (Selected Instruments 1999, p. 803).



14. An editorial choice has been made to use the wording "*the law shall determine .... [the status ...], [the conditions and restrictions ...], [the structure, functioning, tasks ...], etc.*" and "*the law shall establish ...[measures ....], [programmes ....], etc.*" to avoid variations in the verbs used to describe the contents of the laws ("*set*", "*determine*", "*establish*", "*adopt the provisions relating to*", "*define*").
15. Unnecessary adverbs ("*fully, etc.*") have not been remarked upon since in most cases they are already in the text of the current Treaties.

### **Repetition between the Parts**

16. The four-part structure chosen for the draft leads to repetition between Parts I, II and III, sometimes in non-identical terms. This modus operandi, which does not comply with the rules on the drafting quality of a legal text, results from a political choice which has been respected. The most significant occurrences are indicated on the comments page. Suggestions have been made in cases where legal difficulties result.
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**Title IV**

For greater clarity, it is suggested that the words "*and bodies*" should be added to the heading of this Title. Currently the Title is called "*The Union's Institutions*" even though it contains provisions on the advisory bodies. It is also suggested that the headings of the two Chapters should be changed and that a new one should be added (new Chapter III) called "*The Union's advisory bodies*".

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Title I

It is suggested that "*clauses*" should be replaced by "*provisions*".

Section 7

In view of the contents of this section, which does not only contain provisions on the harmonisation of laws, it is suggested that the section heading should be renamed as a result (see comments on Section 7).

Sections 3a and 4

It is suggested that Sections 3a and 4 should be renumbered to become Sections 4 and 5, and that the name of Section 4 should be changed (see comments on Sections 4 and 5)

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Chapter III

It is suggested that the word "*specific*" should be deleted.

Subsection 1

Given that there is only one subsection, and that furthermore it contains only one article (see suggestions re Articles III-113, III-114 and III-115), it is suggested that it should be deleted.

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## Chapter II

Given that Articles III-195 to III-209 apply to the whole of the CFSP (i.e. including the ESDP, which is an integral part of it), it is suggested that these Articles should be made into a new Section entitled "*Common provisions*" (the current Sections 1 and 2 would become Sections 2 and 3).

### Subsection 4

Change in accordance with the name given in Article I-18(2) and the heading of Article I-25.

### Subsection 5

Suggested change in accordance with the change of name suggested in relation to Article I-28.

### Subsection 5a

It is suggested that a new Subsection on the European Central Bank should be added (see comments re new Subsection 5a)

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Protocol on the transitional provisions relating to the Institutions and bodies of the Union

It is suggested that the heading of this Protocol should be amended to reflect the major changes to its scope and field of application which are needed.





**Article I-5a: Union law**

**The Constitution, and law adopted by the Union's Institutions in exercising competences conferred on it, shall have primacy over the law of the Member States.**

**Article I-6: Legal personality**

The Union shall have legal personality.

**TITLE II: FUNDAMENTAL RIGHTS AND CITIZENSHIP OF THE UNION****Article I-7: Fundamental rights**

1. The Union shall recognise the rights, freedoms and principles set out in the Charter of Fundamental Rights which constitutes Part II.
2. The Union shall seek accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union's competences as defined in the Constitution.
3. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.

### *Comments and suggestions*

#### Article I-5a

It is suggested that Article I-10(1) would be more appropriate here. It has therefore become a new Article I-5a.

#### Article I-6

Clearer French wording, which is moreover identical with that used in Article 281 of the TEC ("*a*" instead of "*est dotée de*").

#### Article I-7

##### Paragraph 2

The wording of the legal basis in the Constitution for accession of the Union to the ECHR could be improved by replacing the words "*seek accession*" by "*accede*". That said, the only pertinent interpretation will be to regard paragraph 2, even as drafted by the Convention, as a legal basis, given Article III-227, point (a) under (ii).

##### Paragraph 3

It is noted that unlike Article 6(2) of the current TEU, the draft does not provide that "*The Union shall respect fundamental rights...as general principles of Union law*".

## PREAMBLE

The peoples of Europe, in creating an ever closer union among them, are resolved to share a peaceful future based on common values.

Conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law. It places the individual at the heart of its activities, by establishing the citizenship of the Union and by creating an area of freedom, security and justice.

The Union contributes to the preservation and to the development of these common values while respecting the diversity of the cultures and traditions of the peoples of Europe as well as the national identities of the Member States and the organisation of their public authorities at national, regional and local levels; it seeks to promote balanced and sustainable development and ensures free movement of persons, ~~goods~~, services, **goods** and capital, ~~and the freedom of establishment~~.

To this end, it is necessary to strengthen the protection of fundamental rights in the light of changes in society, social progress and scientific and technological developments by making those rights more visible in a Charter.

Third paragraph

On the replacement of "*biens*" by "*marchandises*" in the French version and the order in which the freedoms are listed, see comment re Article I-4(1) above.

This Charter reaffirms, with due regard for the powers and tasks of the Union and the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Union and by the Council of Europe and the case law of the Court of Justice of the European Union and of the European Court of Human Rights. In this context the Charter will be interpreted by the courts of the Union and the Member States with due regard to the explanations prepared at the instigation of the Praesidium of the Convention which drafted the Charter **and updated under the responsibility of the Praesidium of the European Convention.**

Enjoyment of these rights entails responsibilities and duties with regard to other persons, to the human community and to future generations.

The Union therefore recognises the rights, freedoms and principles set out hereafter.

Fifth paragraph

The explanations "*prepared at the instigation of the Praesidium*" of the Convention which drafted the Charter of Fundamental Rights have been "*updated*" under the authority of the Praesidium of the European Convention (cf. CONV 828/1/03 of 18 July 2003).

Because these explanations are cited in the text of the Constitutional Treaty, they must be accessible to all. They should therefore be published in the "C" series of the OJ, or inserted into a declaration by the IGC in the Final Act, which will in turn be published in the "C" series of the OJ.

**TITLE I: DIGNITY****Article II-1: Human dignity**

Human dignity is inviolable. It must be respected and protected.

**Article II-2: Right to life**

1. Everyone has the right to life.
2. No one shall be condemned to the death penalty, or executed.

**Article II-3: Right to the integrity of the person**

1. Everyone has the right to respect for his or her physical and mental integrity.
2. In the fields of medicine and biology, the following must be respected in particular:
  - (a) the free and informed consent of the person concerned, according to the procedures laid down by law,
  - (b) the prohibition of eugenic practices, in particular those aiming at the selection of persons,
  - (c) the prohibition on making the human body and its parts as such a source of financial gain,
  - (d) the prohibition of the reproductive cloning of human beings.





**Article II-4: Prohibition of torture and inhuman or degrading treatment or punishment**

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

**Article II-5: Prohibition of slavery and forced labour**

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. Trafficking in human beings is prohibited.

**TITLE II: FREEDOMS****Article II-6: Right to liberty and security**

Everyone has the right to liberty and security of person.

**Article II-7: Respect for private and family life**

Everyone has the right to respect for his or her private and family life, home and communications.

**Article II-8: Protection of personal data**

1. Everyone has the right to the protection of personal data concerning him or her.
2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.



3. Compliance with these rules shall be subject to control by an independent authority.

### **Article II-9: Right to marry and right to found a family**

The right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights.

### **Article II-10: Freedom of thought, conscience and religion**

1. Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.
2. The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right.

### **Article II-11: Freedom of expression and information**

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.
2. The freedom and pluralism of the media shall be respected.

### **Article II-12: Freedom of assembly and of association**

1. Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests.
2. Political parties at Union level contribute to expressing the political will of the citizens of the Union.

Article II-12Paragraph 2

On the use of the feminine in certain languages (e.g. in French "*des citoyens ou citoyennes*"), see comments above re Article I-3(2). It will be noted that in Part II, unlike in Part I, the feminine word ("*citoyennes*") follows the masculine word. (Does not apply to the English version).

**Article II-13: Freedom of the arts and sciences**

The arts and scientific research shall be free of constraint. Academic freedom shall be respected.

**Article II-14: Right to education**

1. Everyone has the right to education and to have access to vocational and continuing training.
2. This right includes the possibility to receive free compulsory education.
3. The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right.

**Article II-15: Freedom to choose an occupation and right to engage in work**

1. Everyone has the right to engage in work and to pursue a freely chosen or accepted occupation.
2. Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State.
3. Nationals of third countries who are authorised to work in the territories of the Member States are entitled to working conditions equivalent to those of citizens of the Union.

**Article II-16: Freedom to conduct a business**

The freedom to conduct a business in accordance with Union law and national laws and practices is recognised.



**Article II-17: Right to property**

1. Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law insofar as is necessary for the general interest.
2. Intellectual property shall be protected.

**Article II-18: Right to asylum**

The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Constitution.

**Article II-19: Protection in the event of removal, expulsion or extradition**

1. Collective expulsions are prohibited.
2. No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.

**TITLE III: EQUALITY****Article II-20: Equality before the law**

Everyone is equal before the law.





**Article II-21: Non-discrimination**

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.
2. Within the scope of application of the Constitution and without prejudice to any of its specific provisions, any discrimination on grounds of nationality shall be prohibited.

**Article II-22: Cultural, religious and linguistic diversity**

The Union shall respect cultural, religious and linguistic diversity.

**Article II-23: Equality between men and women**

Equality between men and women must be ensured in all areas, including employment, work and pay.

The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.

**Article II-24: The rights of the child**

1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.
2. In all actions relating to children, whether taken by public authorities or private Institutions, the child's best interests must be a primary consideration.
3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.

Article II-21Paragraph 2

In the French version, this paragraph is almost identical to Article I-4(2) (except for the words "*fondée sur*") (the legal basis is contained in Article III-7). It is suggested that the French wording be aligned on Article I-4(2) (which corresponds to the wording of current Article 12 TEC). Since this involves repetition, it could, moreover, be deleted. (Does not affect the English version).

**Article II-25: The rights of the elderly**

The Union recognises and respects the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life.

**Article II-26: Integration of persons with disabilities**

The Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.

**TITLE IV: SOLIDARITY****Article II-27: Workers' right to information and consultation within the undertaking**

Workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions provided for by Union law and national laws and practices.

**Article II-28: Right of collective bargaining and action**

Workers and employers, or their respective organisations, have, in accordance with Union law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action.

**Article II-29: Right of access to placement services**

Everyone has the right of access to a free placement service.

**Article II-30: Protection in the event of unjustified dismissal**

Every worker has the right to protection against unjustified dismissal, in accordance with Union law and national laws and practices.



**Article II-31: Fair and just working conditions**

1. Every worker has the right to working conditions which respect his or her health, safety and dignity.
2. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

**Article II-32: Prohibition of child labour and protection of young people at work**

The employment of children is prohibited. The minimum age of admission to employment may not be lower than the minimum school-leaving age, without prejudice to such rules as may be more favourable to young people and except for limited derogations.

Young people admitted to work must have working conditions appropriate to their age and be protected against economic exploitation and any work likely to harm their safety, health or physical, mental, moral or social development or to interfere with their education.

**Article II-33: Family and professional life**

1. The family shall enjoy legal, economic and social protection.
2. To reconcile family and professional life, everyone shall have the right to protection from dismissal for a reason connected with maternity and the right to paid maternity leave and to parental leave following the birth or adoption of a child.



**Article II-34: Social security and social assistance**

1. The Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by Union law and national laws and practices.
2. Everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with Union law and national laws and practices.
3. In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Union law and national laws and practices.

**Article II-35: Health care**

Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities.

**Article II-36: Access to services of general economic interest**

The Union recognises and respects access to services of general economic interest as provided for in national laws and practices, in accordance with the Constitution, in order to promote the social and territorial cohesion of the Union.

**Article II-37: Environmental protection**

A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.

Article II-35

It will be noted that the second sentence reproduces Article III-179(1) word for word.

Article II-37

This provision is similar to Article III-4 (as redrafted and renumbered III-1(2)(c)), but the latter does not refer to "*the improvement*" of the quality of the environment, or to "*ensuring*" environmental protection "*in accordance with the principle*" of sustainable development.



**Article II-38: Consumer protection**

Union policies shall ensure a high level of consumer protection.

**TITLE V: CITIZENS' RIGHTS****Article II-39: Right to vote and to stand as a candidate at elections to the European Parliament**

1. Every citizen of the Union has the right to vote and to stand as a candidate at elections to the European Parliament in the Member State in which he or she resides, under the same conditions as nationals of that State.
2. Members of the European Parliament shall be elected by direct universal suffrage in a free and secret ballot.

**Article II-40: Right to vote and to stand as a candidate at municipal elections**

Every citizen of the Union has the right to vote and to stand as a candidate at municipal elections in the Member State in which he or she resides under the same conditions as nationals of that State.

**Article II-41: Right to good administration**

1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the Institutions, bodies, **offices** and agencies of the Union.
2. This right includes:
  - (a) the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;
  - (b) the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;
  - (c) the obligation of the administration to give reasons for its decisions.

Article II-38

This provision is similar to Article III-5 (as redrafted and renumbered III-1(3)(c)).

Article II-39Paragraph 1

Repetition of Article I-8(2)(b).

Paragraph 2

Paragraph 2 is almost identical to the first sentence of Article I-19(2) (which refers to "*direct universal suffrage*" in a "*free and secret ballot*").

Article II-40

Repetition of Article I-8(2)(b).

3. Every person has the right to have the Union make good any damage caused by its Institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.
4. Every ~~citizen~~~~person~~ may write to the Institutions of the Union in one of the languages of the Constitution and must have an answer in the same language.

#### **Article II-42: Right of access to documents**

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of the Institutions, bodies, **offices** and agencies of the Union, ~~in whatever~~ **their medium**~~form they are produced.~~

#### **Article II-43: European Ombudsman**

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to refer to the European Ombudsman cases of maladministration in the activities of the Institutions, bodies, **offices** or agencies of the Union, with the exception of the ~~European~~ Court of Justice **of the European Union** and the ~~High Court~~ acting in ~~its~~~~their~~ judicial role.

#### **Article II-44: Right to petition**

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to petition the European Parliament.

Article II-41(4)Paragraph 4

Under Articles I-8(2)(d) and III-12, the right to write to the Institutions (and advisory bodies – which are not mentioned here) of the Union in one of the languages of the Constitution and to obtain a reply in the same language is granted only to citizens of the Union, and not to "*every person*". As Article II-41 will in any event have to be read and interpreted in the light of Article II-52(2), it is suggested that the text be aligned as regards this point.

Article II-42

Repetition of Article I-49(3). (The wording should be aligned on that suggested for the latter Article: "*whatever their medium*").

Article II-43

This Article is identical in its substance to the second sentence of Article III-237(1). The right for citizens to have recourse to the Ombudsman is also mentioned in Article I-8(2)(d). For the Court of Justice of the European Union, see comment above re Article I-28.

Article II-44

This Article is almost identical to Article III-236 (except that the latter specifies that the petition must concern "*a matter which comes within the Union's fields of activity*" and which affects the petitioner directly). The right for citizens to petition the European Parliament is also mentioned in Article I-8(2)(d).

**Article II-45: Freedom of movement and of residence**

1. Every citizen of the Union has the right to move and reside freely within the territory of the Member States.
2. Freedom of movement and residence may be granted, in accordance with the Constitution, to nationals of third countries legally resident in the territory of a Member State.

**Article II-46: Diplomatic and consular protection**

Every citizen of the Union shall, in the territory of a third country in which the Member State of which he or she is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the **nationals** of that Member State.

**TITLE VI: JUSTICE****Article II-47: Right to an effective remedy and to a fair trial**

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

Legal aid shall be made available to those who lack sufficient resources insofar as such aid is necessary to ensure effective access to justice.

Article II-45Paragraph 1

Paragraph 1 is identical in substance to Article I-8(2)(a).

Article II-46

This Article is identical in substance to Article I-8(2)(c). For the word "*nationaux*" in the French version, see comment above re the latter Article.

**Article II-48: Presumption of innocence and right of defence**

1. Everyone who has been charged shall be presumed innocent until proved guilty according to law.
2. Respect for the rights of the defence of anyone who has been charged shall be guaranteed.

**Article II-49: Principles of legality and proportionality of criminal offences and penalties**

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national law or international law at the time when it was committed. Nor shall a heavier penalty be imposed than that which was applicable at the time the criminal offence was committed. If, subsequent to the commission of a criminal offence, the law provides for a lighter penalty, that penalty shall be applicable.
2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles recognised by the community of nations.
3. The severity of penalties must not be disproportionate to the criminal offence.

**Article II-50: Right not to be tried or punished twice in criminal proceedings for the same criminal offence**

No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law.

Article II-48

On the use of the feminine/masculine in the French version (here: "*Tout accusé*" instead of "*Tout accusé ou toute accusée ...*"), see comments re Article I-3(2). (Does not affect the English version).



## **TITLE VII: GENERAL PROVISIONS GOVERNING THE INTERPRETATION AND APPLICATION OF THE CHARTER**

### **Article II-51: Field of application**

1. The provisions of this Charter are addressed to the Institutions, bodies, **offices** and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers and respecting the limits of the powers of the Union as conferred on it in the other Parts of the Constitution.
2. This Charter does not extend the field of application of Union law beyond the powers of the Union or establish any new power or task for the Union, or modify powers and tasks defined in the other Parts of the Constitution.

### **Article II-52: Scope and interpretation of rights and principles**

1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by ~~law~~ **a legislative act** and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.
2. Rights recognised by this Charter for which provision is made in other Parts of the Constitution shall be exercised under the conditions and within the limits defined by these relevant Parts

Article II-52Paragraph 1

It is suggested that the term "*law*" be replaced by "*a legislative act*" in order to avoid any confusion with the term "*law*" as used in Article I-32 as a legal act of the Union.

3. Insofar as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.
4. Insofar as this Charter recognises fundamental rights as they result from the constitutional traditions common to the Member States, those rights shall be interpreted in harmony with those traditions.
5. The provisions of this Charter which contain principles may be implemented by legislative and executive acts taken by Institutions, bodies, **offices and agencies** of the Union, and by acts of Member States when they are implementing Union law, in the exercise of their respective powers. They shall be judicially cognisable only in the interpretation of such acts and in the ruling on their legality.
6. Full account shall be taken of national laws and practices as specified in this Charter.

#### **Article II-53: Level of protection**

Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by Union law and international law and by international agreements to which the Union, ~~the Community~~ or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' constitutions.

#### **Article II-54: Prohibition of abuse of rights**

Nothing in this Charter shall be interpreted as implying any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms recognised in this Charter or at their limitation to a greater extent than is provided for herein.

Article II-52Paragraph 5

It is suggested that "*offices and agencies*" be inserted in the second line.

**CONFERENCE  
OF THE REPRESENTATIVES OF THE GOVERNMENTS  
OF THE MEMBER STATES**

**Brussels, 6 October 2003**

**CIG 5/03**

**NOTE**

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from: Presidency

to: Delegations

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Subject: ***IGC 2003***  
***– Indicative timetable***

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Delegations will find attached the revised IGC indicative timetable.

**IGC – INDICATIVE TIMETABLE**

|                                                                         |                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|-------------------------------------------------------------------------|--------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Saturday 4 October 2003 – morning<br>(Rome)                             | Heads of State or Government (opening )          | <ul style="list-style-type: none"> <li>– Final procedural questions</li> <li>– General political debate</li> </ul>                                                                                                                                                                                                                                                                                                                                                                    |
| Saturday 4 October 2003 – afternoon<br>(Rome)                           | Ministers                                        | <ul style="list-style-type: none"> <li>– Legislative Council</li> <li>– Rotating Council Presidency (<i>questionnaire</i>)</li> </ul>                                                                                                                                                                                                                                                                                                                                                 |
| Tuesday 14 October 2003 – morning<br>(Luxembourg)                       | Ministers (on the occasion of the GAERC meeting) | <ul style="list-style-type: none"> <li>– Minister for Foreign Affairs (<i>questionnaire</i>)</li> <li>– Composition of the Commission (<i>questionnaire</i>)</li> <li>– Preparation for the meeting of Heads of State or Government: <ul style="list-style-type: none"> <li>▪ All institutional issues including: composition of the European Parliament, European Council and its President, definition of Qualified Majority</li> </ul> </li> </ul>                                 |
| Thursday 16 and Friday 17 October 2003<br>(Brussels)                    | Heads of State or Government                     | Institutional issues (orientations)                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| Monday 27 October 2003<br>(Brussels)                                    | Ministers                                        | <ul style="list-style-type: none"> <li>– Follow up of the Heads of State or Government meeting</li> <li>– Scope of Qualified Majority (<i>questionnaire</i>)</li> <li>– Institutional questions (examination of pending issues on the basis of drafting proposals submitted by the Presidency in the light of previous discussions on the Legislative Council, the formations of the Council and the system of Council Presidency)</li> <li>– Non-institutional questions*</li> </ul> |
| Tuesday 18 November 2003 – morning<br>(Brussels)                        | Ministers (on the occasion of the GAERC meeting) | <ul style="list-style-type: none"> <li>– Institutional questions (continue examination of pending issues on the basis of drafting proposals submitted by the Presidency in the light of previous discussions on the Union Minister for Foreign Affairs and, if appropriate, on other questions)</li> <li>– Defence (<i>questionnaire</i>)</li> <li>– Part IV of the draft Constitution (revision procedure)</li> </ul>                                                                |
| Friday 28 and Saturday 29 November (+ poss. 30 November) 2003<br>(Rome) | Ministerial conclave                             | <i>Preparation of the overall package ahead of the meeting of Heads of State or Government</i>                                                                                                                                                                                                                                                                                                                                                                                        |
| Tuesday 9 December 2003 – morning<br>(Brussels)                         | Ministers (on the occasion of the GAERC meeting) | <i>Preparation of the overall package ahead of the meeting of Heads of State or Government</i>                                                                                                                                                                                                                                                                                                                                                                                        |
| Friday 12 and Saturday 13 December 2003<br>(Brussels)                   | Heads of State or Government                     | <i>Discussion of the overall package</i>                                                                                                                                                                                                                                                                                                                                                                                                                                              |

\* Delegations are invited to submit to the Presidency before the 20<sup>th</sup> of October 2003, non-institutional questions they wish to be raised, including those related to Part III of the draft Constitution. Some of these questions have already been mentioned: Christian values, minorities, economic governance. The Presidency reminds delegations however that in order to keep the discussions on the right track, a high degree of self-discipline is needed, therefore the issues raised should be limited, as far as possible, to the strict minimum. At the same time, the Presidency will welcome drafting proposals relating to these issues.

**CONFERENCE  
OF THE REPRESENTATIVES  
OF THE GOVERNMENTS  
OF THE MEMBER STATES**

**Brussels, 24 October 2003**

**CIG 37/03**

**PRESID 3**

**NOTE**

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from: Presidency  
dated: 24 October 2003  
to: Delegations

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*Subject: IGC 2003  
– Non-institutional issues; including amendments in the economic and  
financial field*

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1. Delegations will find attached a complete list, arranged by subject, of the non-institutional issues which have been submitted by delegations in response to the request from the Presidency. This list will constitute the basis for the discussions at the meeting of Ministers in Brussels on 27 October 2003. In this context, the Presidency reminds delegations that in order to keep the discussions on the right track, a high degree of self-discipline is needed.
2. The list is organised according to subject under broad headings. It does not include points relating to the scope of Qualified Majority Voting, since these are the subject of a separate document.
3. Several delegations have raised the issue of defence. However this has been identified as one of several key issues on which the Presidency has already scheduled separate discussions.

4. **A series of points have been included relating to the Union's finances/budget and to economic and financial policy. Many of these points have been the subject of discussions by ECOFIN Ministers: they are marked with an asterisk (\*). A large number of delegations have indicated that they are prepared to accept them as a whole. Where delegations have indicated that they attached particular importance to certain points, this has been specified. Other delegations do not feel at ease with the initiative of the ECOFIN Council and are not ready to accept the ECOFIN Ministers' package as a whole as there is a risk that it would undermine, in particular, the overall institutional balance. Some of them would however be able to accept some of the points.**
  
  5. Several delegations referred in their submissions to issues which they did not intend to raise themselves, but on which they would support others. These have therefore only been included in the list if they were raised by other delegations.
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## Preamble

1. **Name of the Treaty**: should be Constitutional Treaty for the EU (SK)
2. **Preamble**: include a reference to Christian inheritance of Europe (ESP, IRL, MT, PL, PT, SK, LT; CZ wishes to enlarge even more this proposal to a reference to Ancient Greek philosophy, Roman law, Jewish and Christian roots and rationalism. T and CY opposed to such a mention.)

## General

3. **Union's values**: include new values (Art. 2):
  - **Rights of national and ethnic minorities** (HU). SK and LV opposed to such a mention.
  - **Equality between men and women** (SW)
4. **Union's objectives** (Art. 3):
  - **Include new objectives**: economic and monetary Union and policies for economic and social cohesion (Art. 3.2) as well as public health (Art. 3.3) (GR)
  - **Scope of application of Union's objectives (Art. 3)**: include a sentence "in accordance with this Constitutional Treaty" or a similar one to avoid misunderstandings relating to its scope of application (Art. 3.2) (PT)
5. **Primacy of EU law**: Doubts over formulation (UK)
6. **Accession to the ECHR** (Art. 7.2): include a firmer intention of accession (CZ)
7. **Union's exclusive competencies** (Art. 12):
  - **Conclusion of international agreements**: need to examine it in depth in light of existing case law (Art. 12) (IRL, FIN, SW, UK)
  - Since competition policy is an exclusive competence, a provision should be included to put an obligation on the Commission to take into account the geographical dimension for certain island nations with small populations, which does not allow them to take full advantage of the internal market possibilities and to compete on an equal footing with other MS (Art. 12.1) (CY)

8. **Competencies: tourism**
  - **include as an area of shared competencies** (Art. 13) (GR)
  - **include as an area of supporting, co-ordinating or complementary actions and establish relevant legal basis** (Art. 16 and related) (ESP, F, LV, MT, PL, PT, LT, CY, SK)
9. **Include a new principle common to Union's legal acts** (Art. 37.2): principle that the laws should be written in a manner that makes it possible for ordinary citizens to understand them (SW)
10. **Introduction of equality between MS as another principle of democratic equality** (Art. 44) (PT, SL)
11. **Need precision on the definition of "significant number of MS" as regards "civic initiative"** (Art. 46) (SK)
12. **European Ombudsman** (Art. 48 and related):
  - **Election** (instead of appointment) of the European Ombudsman (Art. 48) (GR)
  - Foresee a provision allowing the cooperation of the European Ombudsman with ombudsmen and similar bodies in the MS (Art. III-237) (GR)
13. **Charter of Fundamental Rights (Part II): stronger and clearer reference or a more secure legal status of the Explanations and publication thereof** (NL, UK)
14. **Non-discrimination (Art. II-21)**: needs clarification (UK)
15. **Insert a horizontal clause** ensuring that social objectives are taken into account in all Union policies (create a new Article) (B)
16. **Services of general economic interest** (Art. III-6):
  - revert to existing terminology (ESP)
  - deletion of the full sentence in art III- 6 mentioning a European law (NL, ESP, FIN)
  - include a reference to the central role of local and regional authorities in providing these services (AUT)
  - a reference should be made to economic cohesion alongside social and territorial cohesion (PT)
  - as long as the concept is not defined, there should not be a legal basis (SW)

**CONFERENCE  
OF THE REPRESENTATIVES OF THE GOVERNMENTS  
OF THE MEMBER STATES**

**Brussels, 4 November 2003**

**CIG 43/03**

**PRESID 7**

**NOTE**

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from: the Presidency

dated: 4 November 2003

to: Delegations

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*Subject: IGC 2003*

*– Issues to be dealt with by the Legal Experts group (new mandate)*

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Delegations will find attached the list of issues to be dealt with in the meeting of the Legal Experts group (new mandate) on 11 and 12 November 2003.<sup>1</sup>

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<sup>1</sup> See document CIG 42/03.

## **LEGAL EXPERTS GROUP** **(new mandate)**

*NB: All the issues in this list contain legal/technical aspects that need clarification as to their legal components. Consequently, in the interest of the smooth work process, these would gain by being examined in advance under a juridical angle before possible further consideration at political level. **In no case such a clarification may be subject to negotiations and does not prejudge any political solution.** Its aim is to either answer legal questions related to these issues or clarify them in order to pave the way for further consideration at political, ministerial level.*

*Points marked with a cross (☒ ) are those suggested by ECOFIN ministers and submitted to the IGC by the delegations indicated below.*

### **A. GENERAL**

1. **Internal security** (Art. 5.1 and III-163): request to change for national security. (UK, NL)
2. **Primacy of EU law** (Art. 5 a)<sup>2</sup>: clarification as to whether this provision accurately reflects current jurisprudence as established by the ECJ. (UK, PT)
3. **Union's exclusive competencies** (Art. 12):
  - a. **Conclusion of international agreements**: clarification in light of existing case law (Art. 12.2) (IRL, FIN, SW, UK, PT)
  - b. **Special provisions as regards competition rules**: should the Commission take into account the geographical dimension for certain island nations with small populations, which does not allow them to take full advantage of the internal market possibilities and to compete on an equal footing with other Member States? (CY, MT)
4. **Charter of Fundamental Rights (Part II)**:
  - a. legal status of the Explanations and publication thereof (Charter preamble) (UK, NL)
  - b. non-discrimination (Art. II-21): clarification whether this article contains both rights and principles (UK)
5. **Data protection** (Art. 50): scope of Union rules (should JHA and CFSP matters be excluded from the scope?) (UK)

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<sup>2</sup> Article 10 in draft Constitutional Treaty

## **B. UNION'S FINANCES/BUDGET**

6.  **Multiannual financial framework** (Art. III-308): clarification that the last Financial Perspective before entry into force of the Constitution shall be treated as the multiannual financial framework which has been adopted in accordance with Article I-54. (SW)
7. **Economic, social and territorial cohesion** (Art. III-119): amend to provide for the same approach as for the multiannual financial framework. (ESP, PT)

## **C. ECONOMIC AND FINANCIAL POLICY**

8.  **The European Central Bank** (Art. 29.3): Reference to the independence of national central banks and more precise drafting concerning issue of banknotes and coins denominated in euro (CION)
9. **ECB- procedure**
  - a.  appointment of members of the Board of Directors by QMV (Art. III-84.2b) (CION, FIN)
  - b. possibility for the European Council on a proposal from the Commission or a recommendation from the ECB to revise decision-making rules and tasks of the Governing Council and Executive Board (Art. III-79 - enabling clause for revision of Art. 10-12 and 43 of the Statute of the ESCB and the ECB) (CION)
10.  **Enabling clause to change the statute of the EIB** (Art. III-299): clarification on the need to keep this clause (ESP, CION)
11.  **Eurogroup protocol** (Art. 1): Include participation of the Commission in the preparation of the meetings (ESP, PT, CION, B, GR)

## **D. JUSTICE AND HOME AFFAIRS**

12. **General provisions (art. III-158, III-162)**: clarification, in particular on the standing committee (B, PL)
13. **Asylum and immigration (art. III-167, III-168)**: clarification, in particular on scope of the respective competencies of the Union and MS' (SW, LV, NL)

14. **Judicial Cooperation in civil matters (art. III-170)**: clarification, in particular on the scope of European laws and framework laws and its possible cost implications (PL, UK, SK, IRL)
15. **Police Cooperation (III-176, III-177)**: clarification, in particular over the scope (IRL)
16. **External Relations (JHA)**: clarification as to whether the possibility of Member States to maintain and conclude bilateral agreements in the area of JHA remains (NL, PT)

## **E. OTHER POLICIES**

17. **Solidarity clause**: clarification (Art. 42) (IRL), in particular on the ECJ's jurisdiction over this provision (Art. III-282) (SW)
18. **Social security for employed and self-employed migrant workers** (Art. III-21): clarification over compatibility with specificities of certain national situations (LUX)
19. **Public health**:
  - a. health services: clarification on the relation of provisions within freedom to provide services with MS' responsibilities for the organisation and delivery of health services (Art. III-35) (FIN)
  - b. scope of competencies: bringing Art. III-179.4 in line with the Union competencies as in Art. 13.2 (CION)
20. **Consumer policy**: clarification as to whether the Treaty provides a sufficient legal basis to implement the Consumer Policy Strategy and whether paragraph 4 does not diminish the impact of the article as a base for consumer legislation (Art. III-132) (SW)
21. **Research and technological development**: clarification as regards the shared nature of competencies (Art. III-146 and Art. III-149) (CION)
22. **Energy**: clarification as to whether national sovereignty over energy resources remains granted (Art. III-157) (NL, UK)
23. **Tourism**: clarify a possible content of the legal basis (GR, ESP, LV,MT,PL,PT,LT,CY,SK)

24. **Status of overseas territories** (Arts. III-330 and III-186): possibility of a lighter procedure for change in status of Netherlands Antilles and Aruba, presently in annex II, to that of outermost regions, without having to amend the Constitution (NL). Insertion of Mayotte alongside other French overseas departments (F)

## **F. MISCELLANEOUS**

25. **Court of Justice:**
- a. ensure that the ECJ can safeguard rights of individuals when reviewing restrictive measures (Art. III-282) (SW)
  - b. clarification, in particular over judicial co-operation in criminal matters and police co-operation and actions of MS as matter of national law (UK, PT)
26. **European Parliament:** consequences of limiting the right to vote in EP elections to EU citizens only (UK problem)
27. **Declaration on the representation of citizens in the EP and weighting of votes in the Council of Ministers and Signature of the Constitutional Treaty** by the observers (BG, RO)
28. **P.M.** Legal/technical aspects of articles on which reservations remain pending, following the proceedings of the Legal Experts group.

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CONFERENCE  
OF THE REPRESENTATIVES  
OF THE GOVERNMENTS  
OF THE MEMBER STATES

Brussels, 25 November 2003 (26.11)  
(OR. fr)

CIG 50/03

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*Subject : 2003 IGC*  
*– Draft Treaty establishing a Constitution for Europe*  
*(following editorial and legal adjustments by the Working Party of IGC Legal Experts)<sup>1</sup>*

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Editorial and legal adjustments appear in bold and deletions in strikethrough<sup>2</sup>.

Addendum 1 to this document contains Annex I and Annex II to the EC Treaty, the Protocols drawn up by the Convention and the Protocols annexed to the EU Treaty and to the EC and Euratom Treaties, as adjusted by the Working Party of IGC Legal Experts.

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<sup>1</sup> For a presentation of the proceedings of the Working Party of Legal Experts, see its Chairman's report in CIG 51/03.

<sup>2</sup> Adjustments to the headings of Articles or Sections, which are already in bold, are indicated by italics. The accuracy of all cross-references between Articles or paragraphs will be checked at the end of proceedings.

The text also contains five footnotes drafted **on** the responsibility of the Chairman of the Working Party, on particular legal points. They concern the last recital of the Preamble to the Charter (page 68), Article III-88(1) (page 125), Article III-209 (page 182) and Article III-305(1) (page 224).



## TITLE II

### FUNDAMENTAL RIGHTS AND CITIZENSHIP OF THE UNION

#### **Article I-7: Fundamental rights**

1. The Union shall recognise the rights, freedoms and principles set out in the Charter of Fundamental Rights which constitutes Part II ~~of this Constitution~~.
2. The Union shall seek accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union's competences as defined in the Constitution.
3. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.

#### **Article I-8: Citizenship of the Union**

1. Every national of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to national citizenship; it shall not replace it.
2. Citizens of the Union shall enjoy the rights and be subject to the duties provided for in the Constitution. They shall have:
  - (a) the right to move and reside freely within the territory of the Member States;
  - (b) the right to vote and to stand as candidates in elections to the European Parliament and in municipal elections in their Member State of residence, under the same conditions as nationals of that State;

## **PART II**

# **THE CHARTER OF FUNDAMENTAL RIGHTS OF THE UNION**



## PREAMBLE

The peoples of Europe, in creating an ever closer union among them, are resolved to share a peaceful future based on common values.

Conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law. It places the individual at the heart of its activities, by establishing the citizenship of the Union and by creating an area of freedom, security and justice.

The Union contributes to the preservation and to the development of these common values while respecting the diversity of the cultures and traditions of the peoples of Europe as well as the national identities of the Member States and the organisation of their public authorities at national, regional and local levels; it seeks to promote balanced and sustainable development and ensures free movement of persons, ~~goods~~, services, **goods** and capital, and the freedom of establishment.

To this end, it is necessary to strengthen the protection of fundamental rights in the light of changes in society, social progress and scientific and technological developments by making those rights more visible in a Charter.

This Charter reaffirms, with due regard for the powers and tasks of the Union and the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Union and by the Council of Europe and the case law of the Court of Justice of the European Union and of the European Court of Human Rights. In this context the Charter will be interpreted by the courts of the Union and the Member States with due regard to the explanations prepared at the instigation of the Praesidium of the Convention which drafted the Charter <sup>1</sup>.

Enjoyment of these rights entails responsibilities and duties with regard to other persons, to the human community and to future generations.

The Union therefore recognises the rights, freedoms and principles set out hereafter.

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<sup>1</sup> The Legal Adviser to the IGC ~~is of the opinion that~~, suggests adding at the end of this sentence, for reasons of legal certainty and transparency, a phrase to point out that the explanations mentioned here have been updated on the responsibility of the Praesidium of the European Convention; if this were not done, the existing text would be inaccurate. The following addition is supported by the great majority of delegations (with the German, Austrian, Belgian, Luxembourg and French delegations opposing it, because they feel that it raises issues of political desirability): "(...) *the explanations prepared at the instigation of the Praesidium of the Convention which drafted the Charter and updated on the responsibility of the Praesidium of the European Convention*".

Also, since the text explicitly states that the Charter will be interpreted by the courts of the Union and of the Member States "*with due regard to*" those explanations, it would be legally inconceivable that the text of the explanations should not be available to those courts and to the Union's citizens. The Legal Adviser therefore suggests that they be made universally accessible, by ensuring that they are published in the "C" series of the Official Journal of the European Union.

## TITLE I

### DIGNITY

#### **Article II-1: Human dignity**

Human dignity is inviolable. It must be respected and protected.

#### **Article II-2: Right to life**

1. Everyone has the right to life.
2. No one shall be condemned to the death penalty, or executed.

#### **Article II-3: Right to the integrity of the person**

1. Everyone has the right to respect for his or her physical and mental integrity.
2. In the fields of medicine and biology, the following must be respected in particular:
  - (a) the free and informed consent of the person concerned, according to the procedures laid down by law,
  - (b) the prohibition of eugenic practices, in particular those aiming at the selection of persons,
  - (c) the prohibition on making the human body and its parts as such a source of financial gain,
  - (d) the prohibition of the reproductive cloning of human beings.

**Article II-4: Prohibition of torture and inhuman or degrading treatment or punishment**

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

**Article II-5: Prohibition of slavery and forced labour**

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. Trafficking in human beings is prohibited.

## TITLE II

### FREEDOMS

#### **Article II-6: Right to liberty and security**

Everyone has the right to liberty and security of person.

#### **Article II-7: Respect for private and family life**

Everyone has the right to respect for his or her private and family life, home and communications.

#### **Article II-8: Protection of personal data**

1. Everyone has the right to the protection of personal data concerning him or her.
2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.
3. Compliance with these rules shall be subject to control by an independent authority.

#### **Article II-9: Right to marry and right to found a family**

The right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights.



**Article II-10: Freedom of thought, conscience and religion**

1. Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.
2. The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right.

**Article II-11: Freedom of expression and information**

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.
2. The freedom and pluralism of the media shall be respected.

**Article II-12: Freedom of assembly and of association**

1. Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests.
2. Political parties at Union level contribute to expressing the political will of the citizens of the Union.

**Article II-13: Freedom of the arts and sciences**

The arts and scientific research shall be free of constraint. Academic freedom shall be respected.

**Article II-14: Right to education**

1. Everyone has the right to education and to have access to vocational and continuing training.
2. This right includes the possibility to receive free compulsory education.
3. The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right.

**Article II-15: Freedom to choose an occupation and right to engage in work**

1. Everyone has the right to engage in work and to pursue a freely chosen or accepted occupation.
2. Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State.
3. Nationals of third countries who are authorised to work in the territories of the Member States are entitled to working conditions equivalent to those of citizens of the Union.

**Article II-16: Freedom to conduct a business**

The freedom to conduct a business in accordance with Union law and national laws and practices is recognised.

**Article II-17: Right to property**

1. Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law insofar as is necessary for the general interest.
2. Intellectual property shall be protected.

**Article II-18: Right to asylum**

The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Constitution.

**Article II-19: Protection in the event of removal, expulsion or extradition**

1. Collective expulsions are prohibited.
2. No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.

## TITLE III

### EQUALITY

#### **Article II-20: Equality before the law**

Everyone is equal before the law.

#### **Article II-21: Non-discrimination**

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.
2. Within the scope of application of the Constitution and without prejudice to any of its specific provisions, any discrimination on grounds of nationality shall be prohibited.

#### **Article II-22: Cultural, religious and linguistic diversity**

The Union shall respect cultural, religious and linguistic diversity.

#### **Article II-23: Equality between men and women**

Equality between men and women must be ensured in all areas, including employment, work and pay.

The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.

**Article II-24: The rights of the child**

1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.
2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.
3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.

**Article II-25: The rights of the elderly**

The Union recognises and respects the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life.

**Article II-26: Integration of persons with disabilities**

The Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.

## TITLE IV

### SOLIDARITY

#### **Article II-27: Workers' right to information and consultation within the undertaking**

Workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions provided for by Union law and national laws and practices.

#### **Article II-28: Right of collective bargaining and action**

Workers and employers, or their respective organisations, have, in accordance with Union law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action.

#### **Article II-29: Right of access to placement services**

Everyone has the right of access to a free placement service.

#### **Article II-30: Protection in the event of unjustified dismissal**

Every worker has the right to protection against unjustified dismissal, in accordance with Union law and national laws and practices.

**Article II-31: Fair and just working conditions**

1. Every worker has the right to working conditions which respect his or her health, safety and dignity.
2. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

**Article II-32: Prohibition of child labour and protection of young people at work**

The employment of children is prohibited. The minimum age of admission to employment may not be lower than the minimum school-leaving age, without prejudice to such rules as may be more favourable to young people and except for limited derogations.

Young people admitted to work must have working conditions appropriate to their age and be protected against economic exploitation and any work likely to harm their safety, health or physical, mental, moral or social development or to interfere with their education.

**Article II-33: Family and professional life**

1. The family shall enjoy legal, economic and social protection.
2. To reconcile family and professional life, everyone shall have the right to protection from dismissal for a reason connected with maternity and the right to paid maternity leave and to parental leave following the birth or adoption of a child.

**Article II-34: Social security and social assistance**

1. The Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by Union law and national laws and practices.
2. Everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with Union law and national laws and practices.
3. In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Union law and national laws and practices.

**Article II-35: Health care**

Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities.

**Article II-36: Access to services of general economic interest**

The Union recognises and respects access to services of general economic interest as provided for in national laws and practices, in accordance with the Constitution, in order to promote the social and territorial cohesion of the Union.



**Article II-37: Environmental protection**

A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.

**Article II-38: Consumer protection**

Union policies shall ensure a high level of consumer protection.

## TITLE V

### CITIZENS' RIGHTS

#### **Article II-39: Right to vote and to stand as a candidate at elections to the European Parliament**

1. Every citizen of the Union has the right to vote and to stand as a candidate at elections to the European Parliament in the Member State in which he or she resides, under the same conditions as nationals of that State.
2. Members of the European Parliament shall be elected by direct universal suffrage in a free and secret ballot.

#### **Article II-40: Right to vote and to stand as a candidate at municipal elections**

Every citizen of the Union has the right to vote and to stand as a candidate at municipal elections in the Member State in which he or she resides under the same conditions as nationals of that State.

#### **Article II-41: Right to good administration**

1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the Institutions, bodies, **offices** and agencies of the Union.

2. This right includes:
- (a) the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;
  - (b) the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;
  - (c) the obligation of the administration to give reasons for its decisions.
3. Every person has the right to have the Union make good any damage caused by its Institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.
4. Every ~~citizen~~~~person~~ may write to the Institutions of the Union in one of the languages of the Constitution and must have an answer in the same language.

#### **Article II-42: Right of access to documents**

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of the Institutions, bodies, **offices** and agencies of the Union, ~~in whatever~~ **their medium**~~form they are produced.~~

#### **Article II-43: European Ombudsman**

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to refer to the European Ombudsman cases of maladministration in the activities of the Institutions, bodies, **offices** or agencies of the Union, with the exception of the ~~European Court of Justice~~ **of the European Union** and the ~~High Court~~ acting in ~~its~~~~their~~ judicial role.

**Article II-44: Right to petition**

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to petition the European Parliament.

**Article II-45: Freedom of movement and of residence**

1. Every citizen of the Union has the right to move and reside freely within the territory of the Member States.
2. Freedom of movement and residence may be granted, in accordance with the Constitution, to nationals of third countries legally resident in the territory of a Member State.

**Article II-46: Diplomatic and consular protection**

Every citizen of the Union shall, in the territory of a third country in which the Member State of which he or she is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that Member State.

## TITLE VI

### JUSTICE

#### **Article II-47: Right to an effective remedy and to a fair trial**

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

Legal aid shall be made available to those who lack sufficient resources insofar as such aid is necessary to ensure effective access to justice.

#### **Article II-48: Presumption of innocence and right of defence**

1. Everyone who has been charged shall be presumed innocent until proved guilty according to law.
2. Respect for the rights of the defence of anyone who has been charged shall be guaranteed.

#### **Article II-49: Principles of legality and proportionality of criminal offences and penalties**

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national law or international law at the time when it was committed. Nor shall a heavier penalty be imposed than that which was applicable at the time the criminal offence was committed. If, subsequent to the commission of a criminal offence, the law provides for a lighter penalty, that penalty shall be applicable.

2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles recognised by the community of nations.
3. The severity of penalties must not be disproportionate to the criminal offence.

**Article II-50: Right not to be tried or punished twice in criminal proceedings for the same criminal offence**

No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law.

## TITLE VII

### GENERAL PROVISIONS GOVERNING THE INTERPRETATION AND APPLICATION OF THE CHARTER

#### **Article II-51: Field of application**

1. The provisions of this Charter are addressed to the Institutions, bodies, **offices** and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers and respecting the limits of the powers of the Union as conferred on it in the other Parts of the Constitution.
2. This Charter does not extend the field of application of Union law beyond the powers of the Union or establish any new power or task for the Union, or modify powers and tasks defined in the other Parts of the Constitution.

#### **Article II-52: Scope and interpretation of rights and principles**

1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.
2. Rights recognised by this Charter for which provision is made in other Parts of the Constitution shall be exercised under the conditions and within the limits defined by these relevant Parts

3. Insofar as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.
4. Insofar as this Charter recognises fundamental rights as they result from the constitutional traditions common to the Member States, those rights shall be interpreted in harmony with those traditions.
5. The provisions of this Charter which contain principles may be implemented by legislative and executive acts taken by Institutions, bodies, ~~offices and agencies~~ of the Union, and by acts of Member States when they are implementing Union law, in the exercise of their respective powers. They shall be judicially cognisable only in the interpretation of such acts and in the ruling on their legality.
6. Full account shall be taken of national laws and practices as specified in this Charter.

#### **Article II-53: Level of protection**

Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by Union law and international law and by international agreements to which the Union, ~~the Community~~ or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' constitutions.



**Article II-54: Prohibition of abuse of rights**

Nothing in this Charter shall be interpreted as implying any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms recognised in this Charter or at their limitation to a greater extent than is provided for herein.

**CONFERENCE  
OF THE REPRESENTATIVES  
OF THE GOVERNMENTS  
OF THE MEMBER STATES**

**Brussels, 25 November 2003 (26.11)  
(OR. fr)**

**CIG 51/03**

**REPORT**

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from : Chairman of the Working Party of IGC Legal Experts  
dated : 25 November 2003  
to : Intergovernmental Conference

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Subject : ***2003 IGC: editorial and legal adjustments to the draft Treaty establishing a Constitution for Europe and to the Protocols***  
***- Presentation of the outcome of proceedings of the Working Party – CIG 50/03***

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1. As instructed by the Presidency of the IGC <sup>1</sup>, a Working Party of Legal Experts has carried out a "legal verification" of the draft Treaty establishing a Constitution for Europe, drawn up by the European Convention <sup>2</sup>. The Working Party was chaired by Mr Jean-Claude Piris, Director-General of the Council Legal Service and Legal Adviser to the IGC, and in his absence by Mr Giorgio Maganza, Director in the Council Legal Service.
2. The Working Party worked on the basis of a document prepared by the IGC Secretariat with the assistance of the Council Legal Service (CIG 4/03), in which legal improvements to the draft were suggested. It also discussed suggestions made by members of the Working Party. The Working Party went on to examine the Protocols annexed to the existing Treaties, on the basis of documents prepared by the IGC Secretariat, with the assistance of the Commission (CIG 41/03, CIG 48/03 and CIG 49/03).

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<sup>1</sup> Letter of 29 September 2003 from Mr Frattini to the Ministers for Foreign Affairs of the Member States of the European Union and to the acceding States, the candidate countries, the European Parliament and the Commission.

<sup>2</sup> Text submitted to the President of the European Council by the Chairman of the Convention in Rome on 18 July 2003, at the end of the Convention's proceedings (CONV 850/03).

3. The Working Party held 15 meetings (on 9, 10, 15, 20, 21, 24, 29 and 31 October and on 5, 6, 10, 14, 18, 19 and 25 November 2003).

The outcome of proceedings is set out in CIG 50/03, which contains the draft Treaty establishing a Constitution for Europe, and in Addendum 1 thereto, which contains the Protocols to be annexed to the Constitution.

In view of the political sensitivity of the provisions on Council formations (Article I-23), the Commission and the Union Minister for Foreign Affairs (Articles I-25 to I-27 and III-250 to III-253), the common foreign and security policy (Article I-39 and Articles III-193 to III-209 and III-215) and the common security and defence policy (Article I-40 and Articles III-210 to III-214), the Working Party of Legal Experts confined itself to minimal, horizontal adjustments, basically following the drafting conventions which it had agreed on elsewhere.

The overall result merely reflects the legal drafting approach taken by the Working Party of Legal Experts and in no way affects the option available to delegations of raising any political issues.

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4. In the course of its discussions, the Working Party agreed to suggest legal and drafting improvements, including the following:

- achieving legal and editorial consistency between the different parts of the draft Constitution through greater legal consistency in provisions (e.g. deletion of needless cross-references or repetition, insertion of necessary cross-references, repositioning of some articles or paragraphs <sup>1</sup>, etc.) and more consistency in the wording used (e.g. a standard method for drafting legal bases, use of the same term to express the same idea, etc.);
- making good some omissions (e.g. through the addition of other cases in which an Institution may submit a proposed act to the legislator, the insertion of a fuller definition of the scope of a challenge to the legality of an act, the addition of a reference to laws or framework laws as instruments in the legal basis on the association of the overseas countries and territories and in that on the outermost regions, or the addition of a reference to the applicable voting rule in all cases in which the European Council adopts a binding legal act, etc.);
- the correction of legal inaccuracies (e.g. those relating to the composition of the Council, the principle of representative democracy, review of the legality of acts suspending certain of the rights deriving from membership of the Union, etc.).

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<sup>1</sup> The following provisions have been repositioned:

- Article I-10(1) is moved to Article I-5a;
- Article I-10(2) is moved to Article I-5(2);
- Article I-16(3) is moved to Article I-11(5);
- Article I-24(4), first subparagraph, is moved to Article I-33(4);
- Article I-24(4), second subparagraph, is moved to Article I-22(4);
- Article III-64 is moved to Article III-65a;
- Article III-84 is moved to Article III-289a;
- Article III-85 is moved to Article III-289b;
- Article III-192 is moved to Article III-186(1);
- Article III-242 is moved to Article III-239(3);
- Article III-280 is moved to Article III-281(3);
- Article III-284 is moved to Article III-281(2);
- Article IV-1 is moved to Article I-6a;
- Article IV-9 is moved to Article IV-7a.

5. The Working Party also agreed to suggest total recasting of most of the final provisions contained in Part IV, more specifically the provisions entailed by the repeal of the existing Treaties. It accordingly suggests:
- the addition, in the preamble, of a reference to succession between Treaties and to legal continuity of the "acquis communautaire";
  - the combining, in a single Protocol, of the various transitional provisions scattered throughout the draft Constitution (e.g. the date of effect of a number of rules relating to a new composition or a new voting procedure for certain Institutions and bodies, and their composition or other rules applicable in the period between the entry into force of the new Treaty and that date, etc.);
  - the addition of transitional provisions not drawn up by the Convention, with a view to ensuring succession between the existing Treaties and the future Treaty establishing the Constitution and, in particular, legal continuity of existing Institutions, bodies, offices and agencies, the "acquis communautaire", ongoing proceedings, etc.
6. These improvements were approved by mutual agreement, in accordance with the rule established at the beginning of the Working Party's discussions.

However, the Spanish and Polish delegations stated that the transfer of the various transitional provisions scattered throughout the draft Constitution to the "*Protocol on the transitional provisions relating to the Institutions and bodies of the Union*" raised issues of political expediency for them. They could therefore go along with the legal drafting approach taken by the Working Party only if those issues of political expediency were resolved.

The position of the above two delegations is reflected in footnotes in CIG 50/03, as well as in a special presentation of the Protocol on transitional provisions in Addendum 1 to that document (in which the version of the Protocol drawn up under the supervision of the Legal Adviser to the IGC, which reflects the Working Party's legal drafting approach, is preceded by the version of the Protocol proposed by the Convention, without any drafting adjustment).

7. The Convention text has been left unchanged, without any comments, in a number of areas in which the IGC Secretariat had suggested legal improvements but mutual agreement could not be reached, because of opposition by one delegation or a very small number of delegations.

The Conference's attention is, however, drawn to four such areas, where the draft Constitution as it currently stands is legally incorrect <sup>1</sup>:

- (a) final recital of the preamble to the Charter of Fundamental Rights (Part Two of the draft Constitution). For reasons of legal certainty and transparency, it is suggested that a phrase be added at the end of the recital to point out that the explanations concerning the Charter which were prepared by the Praesidium of the Convention that drafted the Charter have been updated on the responsibility of the Praesidium of the European Convention; otherwise, the current text would be inaccurate. The following addition is supported by the great majority of delegations (the German, Austrian, Belgian, Luxembourg and French delegations opposed it, as they considered that it raised issues of political expediency): "*(...) the explanations prepared at the instigation of the Praesidium of the Convention which drafted the Charter **and updated under the responsibility of the Praesidium of the European Convention***".

In addition, since the text explicitly states that "*the Charter will be interpreted by the courts of the Union and the Member States with due regard to the explanations prepared at the instigation of the Praesidium of the Convention which drafted the Charter*", it would be legally inconceivable for the text of such explanations not to be available to those courts and to Union citizens; it is therefore suggested that the explanations be made universally accessible by ensuring that they are published in the "C" series of the Official Journal of the European Union;

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<sup>1</sup> These areas are mentioned in footnotes to CIG 50/03 (see pages 68, 125, 182 and 224).

- (b) Article III-88(1) (legal basis allowing the adoption of specific measures for the euro area): It would seem legally incorrect not to specify the Institution which is to adopt the measures, i.e. the Council, or the procedures to be applied by it, as appropriate, according to the content of the decision to be adopted. The addition shown below is supported by the vast majority of delegations: "*1. In order to ensure that economic and monetary union works properly, and in accordance with the relevant provisions of the Constitution, the Council shall adopt, in accordance with whichever of the procedures referred to in Articles III-71 and III-76 is appropriate, measures specific to those Member States ~~which are members of the euro area~~ whose currency is the euro shall be adopted: (...)*". Only the United Kingdom and Sweden delegations were opposed and suggested different wording.
- (c) Article III-209 (rule on non-interference between CFSP procedures and procedures for other policies): This paragraph, which does not pose any substantive problems for delegations, should be reworded in such a way as to make it more precise and legally secure. Its aim is to spell out a rule designed to prevent the Council, in the context of its powers under the CFSP, from adopting acts affecting other areas of Union activity. With the abolition of the pillars, the competences enabling the Council to act are all, without distinction, Union competences. The idea is therefore to protect not competences but the procedures and powers of the Institutions which continue to differ between the CFSP and other policies (broader powers for the European Parliament, the Commission and the Court of Justice). The following draft is endorsed by virtually all delegations (only the Spanish delegation is opposed to it). "*The implementation of the common foreign and security policy shall not affect the **application of the procedures and the extent of the powers of the Institutions laid down by the Constitution for the exercise of the Union** competences listed in Articles I-12 to I-14 and I-16. Similarly, the implementation of the policies listed in those Articles shall not affect ~~the competence referred to in Article I-15~~ **the application of the procedures and the extent of the powers of the Institutions laid down by the Constitution for the exercise of the Union competences under this Chapter.***";

- (d) Article III-305(1) (access to EIB documents): Since the draft Constitution drawn up by the Convention provides that, in the case of the ECB, public access to documents shall be granted only for its administrative activities, but not for its banking activities, the same provisions should apply to the European Investment Bank. An addition of this kind is supported by almost all delegations (only the Swedish delegation is opposed to it).
8. Finally, it has been suggested that the Conference should consider the question of how the articles in the draft should be numbered. The system adopted by the Convention (whereby the Arabic numeral of each Article is preceded by the Roman numeral of the Part to which it belongs, reverting to 1 again for each Part) gives rise to a great deal of confusion, particularly when numbers are read out aloud and then interpreted into a number of different languages (e.g. "I-10" and "110" or "III-142" and "342"). From the point of view of legal certainty, transparency, simplicity and ease of use, it would thus be preferable to use continuous numbering in Arabic numerals throughout the text of the Constitution (from 1 to 465).

A large majority of delegations endorsed the proposal for renumbering continuously throughout, provided this was accompanied by the Roman numeral of the relevant Part, so that the distinction between the four separate Parts of the Constitution could be maintained.

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**CONFERENCE  
OF THE REPRESENTATIVES  
OF THE GOVERNMENTS  
OF THE MEMBER STATES**

**Brussels, 25 November 2003**

**CIG 52/1/03  
REV 1 (en)**

**PRESID 10**

**NOTE**

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from: Presidency  
dated: 25 November 2003  
to: Delegations

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*Subject: IGC 2003  
– Naples Ministerial Conclave: Presidency proposal*

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1. In line with the conclusions of the European Council meeting in Thessaloniki, the work of the InterGovernmental Conference has been carried out at political level. The IGC meetings so far, together with a series of bilateral contacts, have enabled the Presidency to identify a number of issues in the draft Constitutional Treaty which delegations consider need either clarifying or amending, and in some cases to draw up proposals for a possible way forward.

**LEGAL/TECHNICAL ISSUES**

2. In parallel with discussions at political level the Presidency, with the agreement of all delegations, set up a group of legal experts in order to undertake a legal review of the draft Treaty establishing the Constitution drawn up by the Convention. The legal experts group met in October and November under the Chair of the Legal Counsel of the IGC. The outcome of the group's proceedings has been circulated in document CIG 51/03.

3. The revised texts contained in doc. CIG 50/03 and ADD 1 incorporate all the improvements of a legal or technical nature which are suggested by common accord of the legal experts of the Member States and of the acceding States, without prejudging any amendments which delegations might wish to put forward at the political level. The Presidency considers that the texts resulting from the legal experts group should not be reopened and should serve as a reference point for ministers and Heads in their discussions on the political issues.

## OTHER ISSUES

4. As a complement to this consolidated text, the Presidency submits to delegations the current document which is intended to help make progress on the political issues in order to pave the way for an overall agreement in December. **This document is based on the work of the IGC to date. It contains a number of issues identified by the Presidency on the basis of clarifications, modifications and improvements requested by delegations or suggested by the Presidency. Addendum 1 contains proposals for texts.**<sup>1</sup> On some issues on which it is not yet possible to draw conclusions, the Presidency describes the current situation and limits itself to setting out the outlines of a possible way forward.
5. The current document, which constitutes the basis for the discussions in Naples, is intended to evolve in the light of subsequent discussions. It could be revised to take account of the discussions up to the moment when there is a final and overall agreement. In the absence of an issue being raised in this document, the Presidency considers that the text of the draft Constitutional Treaty (as set out in CIG 50/03) remains the basis for future work. This is without prejudice to the right of delegations at any stage to ask to discuss any additional issue on which they maintain that there is a need for clarification or amendment.
6. This document is not binding on any delegation, nor does it prejudice any position taken by delegations to date. It is being circulated on the basis that none of the proposals contained in it can be considered final until agreement is reached on the draft Constitutional Treaty as a whole.

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<sup>1</sup> In this Addendum, the basic text to which the amendments have been added is that circulated by the Convention on 18 July 2003 (CONV 850/03).

## I. PREAMBLE / DEFINITION AND OBJECTIVES OF THE UNION

### a) Christian inheritance

The Presidency has noted that this is an important issue for a number of delegations, but does not at this stage put forward suggestions for amending the Convention text. A proposal will be presented on this issue at a later stage referring not only to Europe's Christian inheritance, but also to the secular nature of the institutions of EU Member States (principe de laïcité).

### b) Union's values

- Rights of minorities
- Equality between men and women

The Presidency proposes to respond to the request for a treaty reference to the rights of minorities and to equality between men and women by means of an amendment to the existing Article 2 on the values of the Union [see text in Annex 1 to Addendum 1].

### c) Primacy of EU law

The Presidency proposes to address the issue of the primacy of EU law, as requested by several delegations, by means of a declaration [see text in Annex 2 to Addendum 1].

## II. CHARTER OF FUNDAMENTAL RIGHTS

The Presidency proposes that, for reasons of transparency and legal certainty, the last preambular provision be amended to refer also to the updating of the official explanations on the Charter and that these explanations be incorporated into a declaration to the Final Act of the IGC which, together with the other declarations, will be published in the Official Journal [see text in Annex 3 to Addendum 1].

### III. INSTITUTIONAL ISSUES

#### a) Definition of QMV

The Presidency has noted that a large number of delegations support the draft Convention text on this issue. The Presidency is nevertheless aware that for a few delegations, the Convention proposal is not acceptable as it now stands. Given these differing views and the overall objective of maintaining the institutional balance established by the Convention, the Presidency does not propose changes to the Convention's proposals on the definition of qualified majority. It is however of the opinion that it is necessary to continue to reflect on possible ways to respond to these concerns, bearing in mind the shared overall objective of having simple, efficient and transparent decision making procedures.

#### b) Composition of the Commission

In an enlarged Union, the Commission needs to function effectively. The Presidency considers that the Convention text provides a good basis for meeting this objective. Nevertheless the Presidency is also aware that a significant number of delegations would prefer, for reasons of legitimacy, that the Commission be composed of one national from each Member State. The Commission itself has expressed the same opinion in its communication to the InterGovernmental Conference.

The Presidency proposes, at this stage, to address delegations' concerns by clarifying the provisions of the Convention text on the precise role and responsibilities of the "non-voting" Commissioners. These clarifications could cover the following points:

- full participation by "non-voting" Commissioners in the work of the Commission, including in meetings of the College;
- the assignment to "non-voting" Commissioners by the President of the Commission of substantive dossiers with real responsibilities.

The Presidency does not exclude the possibility of a discussion on other aspects relating to the composition of the Commission during the meeting in Naples.

c) Council of Ministers – formations and Presidency

On the basis of the broad support for its earlier proposals on this issue, the Presidency maintains its approach and submits a draft text [see texts in Annexes 4 and 5 to Addendum 1]. The Presidency has taken note that a large majority of Member States are opposed to the creation of a legislative Council, but recalls that this could be done subsequently by means of a decision of the European Council.

d) Foreign Minister

The Presidency maintains its earlier proposals for clarifying the provisions on the Foreign Minister, and suggests additional adjustments in order to meet some concerns from some delegations on this issue while fully maintaining the concept of double hatting [see text in Annex 6 to Addendum 1].

e) European Council – Judicial control of its legal acts

The Presidency proposes, as agreed by a majority of delegations, that the legal acts which are intended to produce legal effects vis-à-vis third parties adopted by the European Council (which is formally becoming an institution) be subject to judicial control by the Court of Justice [see text in Annex 7 to Addendum 1].

f) European Parliament

The Presidency has noted that a large number of delegations support the draft Convention text on this issue, although some have proposed that the minimum threshold of four members per Member State should be raised.

#### IV. FINANCES / BUDGET / ECONOMIC AND MONETARY POLICY

The Presidency has taken into account the various views of delegations on the full range of issues covered under this heading. It submits proposals for clarification or modification on some of those points, taking into account the degree of support which they have received as well as the necessity of not calling into question the general balance achieved in the Convention, especially as far as institutional issues are concerned.

a) Financial Perspective

The Presidency has taken note of concerns expressed by some delegations over the procedures for adopting the Financial Perspective after 2013, and suggests that the Conference might discuss the idea of a "rendez-vous" clause as a possible way of meeting these concerns.

b) Budget

The Presidency has noted that a very significant number of delegations have strong objections to the provisions on the budget in the draft Constitutional Treaty as they stand now. However at this stage the Presidency considers it appropriate to maintain the provisions in the Convention text, given that the various alternative approaches put forward so far would have the effect of calling into question the overall institutional balance within the budget procedures.

c) Multilateral surveillance

The Presidency has noted that some delegations have proposed amendments to the Convention text, in particular on the procedures for establishing detailed rules for the multilateral surveillance procedure. However the Presidency proposes not to introduce changes to the text in order to maintain the balanced approach of the Convention.

d) European Central Bank

The Presidency proposes to:

- i) amend the procedures for conferring on the ECB specific tasks concerning policies relating to prudential supervision [see text in Annex 8 to Addendum 1];
- ii) enlarge the scope of provisions covered by the existing enabling clause for amending the ECSB/ECB statute [see text in Annex 9 to Addendum 1];
- iii) provide for the introduction of QMV for appointment of members of the ECB [see text in Annex 10 to Addendum 1].

e) Lamfalussy procedures

The Presidency proposes to address the concerns of some delegations on this issue by means of a declaration [see text in Annex 11 to Addendum 1].

f) EIB enabling clause

The Presidency proposes modifying the procedures for amending the statute of the EIB [see text in Annex 12 to Addendum 1].

g) EMU – decision-making process concerning the euro

The Presidency proposes two amendments to the provisions on decision-making concerning the euro [see text in Annex 13 to Addendum 1].

## V. AREA OF FREEDOM, SECURITY AND JUSTICE

The Presidency has noted the concerns from a number of delegations on provisions under this chapter, and specifically on judicial cooperation in criminal law. It proposes to address these concerns (in particular those related to the existence of different legal systems) in the following ways:

- a) Criminal law
  - i) The Presidency proposes to address these particular concerns by means of amendments to the Convention text which, while not changing its substance nor the voting procedure, will *inter alia* give assurances to the delegations concerned that they can specifically raise their particular concerns through adequate procedures before an act is adopted [see text in Annex 14 to Addendum 1].
  - ii) The Presidency proposes to clarify that the scope of the remit of the public prosecutor concerns the fight against fraud affecting the Union's financial interests [see text in Annex 15 to Addendum 1].

- b) Civil law

The Presidency proposes to clarify some aspects of the provision on judicial cooperation in civil matters [see text in Annex 16 to Addendum 1].

## VI. DEFENCE

As far as structured cooperation is concerned, taking account of the concerns expressed by a number of delegations, the Presidency submits proposals which, with a view to making such cooperation inclusive, align *mutatis mutandis* the structured cooperation provisions more closely with the more general provisions on enhanced cooperation in CFSP. As far as "mutual defence" is concerned, the text proposed clarifies that the clause shall not prejudice existing commitments under NATO [see text in Annex 17 to Addendum 1].



## VII. CFSP

The Presidency proposes that, in order to achieve an overall balanced outcome on decision-making procedures, as well as to ensure an effective CFSP, qualified majority voting within the CFSP should be extended [see text in Annex 18 to Addendum 1].

## VIII. OTHER POLICIES OF THE EU

The Presidency has taken note of the various proposals from delegations for amending or clarifying some of the provisions on policies in Part III of the draft Constitutional Treaty. In the light of reactions from all delegations, the Presidency submits proposals for changes to the Convention text or declarations on the following issues:

- a) social clause [see text in Annex 19 to Addendum 1];
- b) social security [see text in Annex 20 to Addendum 1];
- c) taxation [see text in Annex 21 to Addendum 1];
- d) social policy [see text in Annex 22 to Addendum 1];
- e) economic, social and territorial cohesion [see text in Annex 23 to Addendum 1];
- f) transport [see text in Annex 24 to Addendum 1];
- g) research and development [see text in Annex 25 to Addendum 1];
- h) energy [see text in Annex 26 to Addendum 1];
- i) public health [see text in Annex 27 to Addendum 1];
- j) sport [see text in Annex 28 to Addendum 1];
- k) tourism [see text in Annex 29 to Addendum 1];

## IX. REVISION PROCEDURE

In the light of the discussions on simplified procedures for revising the Constitutional Treaty, the Presidency proposes to address the issue in two ways:

- a) as to the decision to move from unanimity to qualified majority, or from a special legislative procedure to the ordinary legislative procedure (general bridging clause), it is proposed that the text be amended to include a provision whereby that decision would not come into effect if [X] national parliaments raise an objection ("nihil obstat" procedure) [text in Annex 30 to Addendum 1];
- b) as to the decision to amend the Constitution provisions on internal policies (Title III of Part III (special revision procedure), the Presidency maintains its approach as proposed to ministers at the last IGC meeting: no increase of competencies conferred on the Union in the Constitution, decision of the European Council by qualified majority and approval by all Member States in accordance with their respective constitutional requirements. Such an approach would have the advantage of removing the requirement for an InterGovernmental Conference [text in Annex 31 to Addendum 1].

## X. OTHER ISSUES

- a) Outermost regions

The Presidency proposes to include a possibility to adapt the list of outermost regions through a simpler procedure [text in Annex 32 to Addendum 1].

- b) Protocol on Denmark

In the light of the discussion in the ministerial meeting on 18 November, the Presidency proposes the amended protocol No 5 on the position of Denmark as presented in Annex 33 to Addendum 1.

- c) Services of general interest

The Presidency proposes to amend the Convention text so as to recall the competence of Member States to provide, commission and fund such services [text in Annex 34 to Addendum 1].

d) EU neighbouring small States

The Presidency has noted the request for the inclusion of a specific reference to the EU neighbouring small States, and proposes to address this by means of a declaration [text in Annex 35 to Addendum 1].

e) EU accession to the European Convention on Human Rights

In the light of discussions on this issue, the Presidency puts forward a minor amendment to the Convention text. It also suggests that this would be an appropriate issue on which qualified majority voting in the Council could apply [text in Annex 36 to Addendum 1].

f) Protection and welfare of animals

The Presidency proposes to convert the existing protocol on protection and welfare of animal into a provision to be put at the beginning of Part III of the draft Constitution [text in Annex 37 to Addendum 1].

g) Signature of Constitutional Treaty by acceding states

The three candidate countries (Bulgaria, Romania and Turkey) have requested that they be signatories to the text resulting from the InterGovernmental Conference. The Presidency proposes that these countries be invited to sign the Final Act as observers.

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\* \*

## MISCELLANEOUS

In a final Annex, on items which were discussed but not solved in the Group of legal experts and were supported by a large majority of delegations, the Presidency proposes some adaptations to the Convention text either to make the text legally more correct or to address some of these items [see texts in Annex 38 to Addendum 1].

- a) On the delimitation between CFSP procedures and other policies' procedures, the Presidency proposes to amend the text of that rule in order to make it legally more sound.
- b) On access to documents of the European Investment Bank, the Presidency proposes to align the treatment of these documents with the treatment of the documents of the European Central Bank.
- c) On the right to vote in European Parliament elections and the fact that the Convention text deprives about 1 million people from the right to vote in such elections, the Presidency proposes to amend the text so as to correct this effect.
- d) On the role of national parliaments under the subsidiarity protocol and the protocol on national parliaments, the Presidency proposes to clarify the drafting to address the particularities of federal structures.
- e) On the fluctuation margins which must be observed in order to become member of the euro zone, the Presidency proposes to refer to the European Monetary System in the relevant provision.
- f) On the power of the Court of Justice to impose fines on Member States, the Presidency proposes amending the Convention text to clarify the power of the Court.
- g) On the legal basis to adopt European laws in common commercial policy, the Presidency proposes to clarify that urgent unilateral trade protection measures be adopted under a lighter procedure than the legislative one.

- h) On enhanced cooperation, the Presidency proposes to remove the bridging clause, and on the specific provisions concerning enhanced cooperation in CFSP, it suggests making it clearer that these follow normal CFSP procedures.
  - i) On the solidarity clause, the Presidency proposes amending the text to make it clear that any decision with defence implications will be taken by unanimity, and that the defence aspects of any such decision would be excluded from the competence of the Court of Justice.
  - j) In Article 5, the Presidency proposes to replace the term "internal" security with "national" security.
  - k) On the question as to who negotiates an agreement on the withdrawal of a Member State from the Union, the Presidency proposes amending the text to refer to the relevant aspects of the general provision on the negotiation of agreements in Part III.
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**CONFERENCE  
OF THE REPRESENTATIVES  
OF THE GOVERNMENTS  
OF THE MEMBER STATES**

**Brussels, 25 November 2003 (26.11)  
(OR. en,fr)**

**CIG 52/03  
ADD 1**

**PRESID 10**

**ADDENDUM TO THE PRESIDENCY NOTE**

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from: Presidency

dated: 25 November 2003

to: Delegations

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*Subject: IGC 2003*

*– Naples Ministerial Conclave: Presidency proposal*

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Delegations will find attached the different texts referred to by the Presidency in its note in CIG 52/03.

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ANNEX 1

|                                                                                                                                                                                                                                |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p style="text-align: center;"><b>THE UNION'S VALUES</b></p> <p style="text-align: center;"><b>RIGHTS OF PERSONS BELONGING TO MINORITY GROUPS</b></p> <p style="text-align: center;"><b>EQUALITY BETWEEN WOMEN AND MEN</b></p> |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

Article I-2

The Union is founded on the values of respect for human dignity, liberty, democracy, equality, the rule of law and respect for human rights, **including the rights of persons belonging to minority groups**. These values are common to the Member States in a society **in which** pluralism, **non-discrimination**, tolerance, justice, solidarity and **the principle of equality between women and men prevail**.

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**ANNEX 3**

|                                                                                                          |
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| <p style="text-align: center;"><b>EXPLANATIONS RELATING TO THE CHARTER OF<br/>FUNDAMENTAL RIGHTS</b></p> |
|----------------------------------------------------------------------------------------------------------|

**5th paragraph of the Preamble**

This Charter reaffirms, with due regard for the powers and tasks of the Union and the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Union and by the Council of Europe and the case law of the Court of Justice of the European Union and of the European Court of Human Rights. In this context the Charter will be interpreted by the courts of the Union and the Member States with due regard to the explanations prepared at the instigation of the Praesidium of the Convention which drafted the Charter **and updated under the responsibility of the Praesidium of the European Convention.**

**Declaration for incorporation in the Final Act  
concerning the explanations relating to the Charter of Fundamental Rights**

**The Conference takes note of the explanations relating to the Charter of Fundamental Rights prepared at the instigation of the Praesidium of the Convention which drafted the Charter and updated under the responsibility of the Praesidium of the European Convention, as set out below.**

*(...)[reproduction of the explanations contained in CONV 828/1/03 REV 1  
of 31 July 2003]*



**ANNEX 36**

|                                                                              |
|------------------------------------------------------------------------------|
| <b>ACCESSION OF THE UNION TO THE EUROPEAN CONVENTION<br/>ON HUMAN RIGHTS</b> |
|------------------------------------------------------------------------------|

**Article I-7**

1. [unchanged]
2. The Union **shall accede** to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union's competences as defined in the Constitution.
3. [unchanged]

**Article III-227(9)**

9. The Council of Ministers shall act by a qualified majority throughout the procedure.

It shall act unanimously when the agreement covers a field for which unanimity is required for the adoption of a Union act as well as for association agreements ~~and for Union accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms.~~

\* \* \*

**CONFERENCE  
OF THE REPRESENTATIVES  
OF THE GOVERNMENTS  
OF THE MEMBER STATES**

**Brussels, 9 December 2003**

**CIG 60/03**

**PRESID 14**

**NOTE**

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from: Presidency

dated: 9 December 2003

to: Delegations

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*Subject: IGC 2003*

*– InterGovernmental Conference (12-13 December 2003):  
Presidency proposal*

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1. In line with the conclusions of the European Council meeting in Thessaloniki, the work of the InterGovernmental Conference has been conducted at political level. The meetings so far, in particular the ministerial conclave in Naples on 28-29 November, have enabled the Presidency to identify issues in the draft Constitutional Treaty which delegations consider need either clarifying or amending, and in some cases to make suggestions by way of response. The Presidency now submits a consolidated set of proposals designed to help the Conference reach an overall agreement at its meeting on 12-13 December.

**LEGAL/TECHNICAL ISSUES**

2. In parallel with discussions at political level the Presidency, with the agreement of all delegations, set up a group of legal experts in order to undertake a legal review of the draft Treaty establishing the Constitution drawn up by the Convention. The legal experts group met several times in October and November under the Chair of the Legal Counsel of the IGC. The outcome of the group's proceedings has been circulated in document CIG 51/03.

3. The revised texts contained in doc. CIG 50/03 + COR 1, REV 1 (fr) and ADD 1, ADD 1 COR 1 (en), and ADD 1 COR 2 incorporate all the improvements of a legal or technical nature which were introduced by common accord of the legal experts of the Member States and of the acceding States. These texts shall serve as a reference point for the discussions on the remaining political issues on 12-13 December.

#### **OTHER ISSUES**

4. Separately from the texts which constitute the outcome of the legal experts group, and in order to facilitate an overall agreement at the 12-13 December meeting, the Presidency submits proposals covering the outstanding political issues. These are set out in two separate documents.
  - A **The first document (CIG 60/03 ADD 1) addresses those issues on which the discussions so far, in particular the Naples ministerial conclave, have given the Presidency sufficient guidance to be able to put forward concrete proposals. These proposals take the form of draft treaty texts. The Presidency considers that since it has taken into account the different views of delegations, this document constitutes a balanced package.**
  - B **The second document (CIG 60/03 ADD 2), which will be available shortly, addresses the more sensitive political issues which the Presidency intends should constitute the focus of the discussions on 12-13 December. The proposals set out in this document have been drawn up by the Presidency in the light of its consultations with delegations.**

5. The proposals, tabled by the Presidency, might be revised in the light of the discussions on 12-13 December, and texts will be made available during the meeting up to the moment when there is a final and overall agreement. Where an issue is covered in neither document, nor subsequently raised by any delegation, the Presidency considers that the text of the draft Constitutional Treaty, as set out in CIG 50/03, remains unchanged.
6. The Presidency proposal is not binding on any delegation, nor does it prejudice any position taken by delegations to date. It is being circulated on the basis that none of the proposals contained in it can be considered final until agreement is reached on the draft Constitutional Treaty as a whole.
7. **The final result of the IGC should therefore consist of two documents:**
  - **the consolidated text of the treaty, as revised by the legal experts group (CIG 50/03 + COR 1, REV 1 (fr) and ADD 1, ADD 1 COR 1 (en), and ADD 1 COR 2);**
  - **a single package containing amendments to this consolidated text, based on the Presidency proposals as modified in the light of the discussions.**

Only afterwards will a single consolidated text be established.

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**CONFERENCE  
OF THE REPRESENTATIVES  
OF THE GOVERNMENTS  
OF THE MEMBER STATES**

**Brussels, 9 December 2003  
(OR. en,fr)**

**CIG 60/03  
ADD 1**

**PRESID 14**

**ADDENDUM TO THE PRESIDENCY NOTE**

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from : Presidency

dated : 9 December 2003

to : Delegations

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Subject : ***IGC 2003***

– ***Intergovernmental Conference (12–13 December 2003)***

***ADDENDUM 1 to the Presidency proposal***

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**ADDENDUM 1**

Delegations will find attached Addendum 1 to the Presidency note contained in document CIG 60/03.

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ANNEX 1

**THE UNION'S VALUES**  
**RIGHTS OF PERSONS BELONGING TO**  
**MINORITY GROUPS**  
**EQUALITY BETWEEN WOMEN AND MEN**

**Article I-2**

The Union is founded on the values of respect for human dignity, liberty, democracy, equality, the rule of law and respect for human rights, **including the rights of persons belonging to minority groups**. These values are common to the Member States in a society **in which** pluralism, **non-discrimination**, tolerance, justice, solidarity and **the principle of equality between women and men prevail**.

\* \* \*

**ANNEX 4****EXPLANATIONS RELATING TO THE  
CHARTER OF FUNDAMENTAL RIGHTS****5th paragraph of the Preamble**

This Charter reaffirms, with due regard for the powers and tasks of the Union and the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Union and by the Council of Europe and the case law of the Court of Justice of the European Union and of the European Court of Human Rights. In this context the Charter will be interpreted by the courts of the Union and the Member States with due regard to the explanations prepared at the instigation of the Praesidium of the Convention which drafted the Charter **and updated under the responsibility of the Praesidium of the European Convention.**

**Declaration for incorporation in the Final Act  
concerning the explanations relating to the Charter of Fundamental Rights**

**The Conference takes note of the explanations relating to the Charter of Fundamental Rights prepared at the instigation of the Praesidium of the Convention which drafted the Charter and updated under the responsibility of the Praesidium of the European Convention, as set out below.**

*(...) [reproduction of the explanations contained in CONV 828/1/03 REV 1 of 31 July 2003, which will be published in the "C" series of the Official Journal of the European Union.]*

\* \* \*

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|-----------------------------------------------------------------------------------------------------------------|
| <p style="text-align: center;"><b>ACCESSION OF THE UNION TO THE EUROPEAN<br/>CONVENTION ON HUMAN RIGHTS</b></p> |
|-----------------------------------------------------------------------------------------------------------------|

**Article I-7**

1. [unchanged]
2. The Union **shall accede** to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union's competences as defined in the Constitution.
3. [unchanged]

**Article III-227(8)**

8. The Council of Ministers shall act by a qualified majority throughout the procedure.

It shall act unanimously when the agreement covers a field for which unanimity is required for the adoption of a Union act as well as for association agreements and the agreements referred to in Article III-221 with the States which are candidates for accession.

\* \* \*



**CONFERENCE  
OF THE REPRESENTATIVES  
OF THE GOVERNMENTS  
OF THE MEMBER STATES**

**Brussels, 11 December 2003  
(OR. fr)**

**CIG 60/03  
ADD 2**

**PRESID 14**

**ADDENDUM 2 TO THE PRESIDENCY NOTE**

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from :            Presidency  
dated :           11 December 2003  
to :                Delegations

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Subject :        ***IGC 2003***  
                  –    ***Intergovernmental Conference (12–13 December 2003)***  
                          ***ADDENDUM 2***

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**ADDENDUM 2**

Delegations will find attached Addendum 2 to the Presidency note contained in document CIG 60/03.

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1. As stated in CIG 60/03, the Presidency submits to delegations the following ways forward on the more sensitive political issues which it intends should constitute the focus of discussions at the meeting of the Intergovernmental Conference on 12-13 December.

#### Preamble

2. The preamble, and in particular the question of whether or not to include a reference to Europe's Christian roots, was the subject of detailed discussion at the Naples ministerial meeting. While some delegations stressed the importance of a reference to Christian values in the preamble, others felt that the text proposed by the Convention made an even-handed response to the various concerns that had been raised. They therefore propose that it remain unchanged.

#### Composition of the Commission

3. It is generally acknowledged by all delegations that the Commission has both to satisfy the requirement for legitimacy and to function effectively.

4. A number of Member States, in particular the new ones, consider that, immediately following the most recent and extensive round of enlargement, the composition of the Commission should reflect the greater diversity of the enlarged European Union. This view, which reflects public opinion, leads these Member States to support the idea that there should be one national from each Member State in the Commission. Taking this into account, the Presidency considers that it is desirable that the composition of the Commission should respond adequately to the concerns of these delegations, while avoiding the risk that these arrangements might in the long run undermine another key requirement, for a Commission which functions effectively. The Presidency is therefore of the view that a clause could be envisaged which would provide for a reduced Commission with effect from a given date. Once there was agreement on this principle, the details of how it would operate would be decided in the light of the experience acquired by the enlarged Union as regards the functioning of the new Commission.

#### Qualified Majority Voting

5. The Presidency notes that a very large number of delegations continue to support the Convention text on the definition of Qualified Majority Voting, in particular because it meets the overall objective of decision-making procedures which are simple, efficient and transparent. Nevertheless the Presidency is aware that for a few delegations, the Convention proposal is not acceptable as it currently stands. The Presidency is continuing to reflect on how best to respond to the specific concerns expressed by some delegations, without losing the advantages of the Convention proposal and taking into account also the balance of the overall institutional framework.
6. On the issue of the scope of Qualified Majority Voting, a number of delegations support a further extension into other areas. At the same time, there are others who consider that, in a number of sensitive areas, unanimity should be maintained. Taking into account these different views, the Presidency is of the opinion that the Convention text in general represents a balanced compromise. However the overall issue of the scope of QMV will have to be seen in the context of the final agreement covering all the outstanding issues.

### European Parliament

7. The Presidency has taken note of the concerns expressed by a number of delegations that the minimum threshold of four seats in the European Parliament creates problems of democratic legitimacy for the smallest Member States. The Presidency does not rule out the possibility of a limited increase in this threshold in order to meet these concerns, whilst maintaining the overall approach on the composition of the European Parliament.
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**CONFERENCE  
OF THE REPRESENTATIVES  
OF THE GOVERNMENTS OF THE  
MEMBER STATES**

**Brussels, 14 January 2004 (16.01)  
(OR. fr)**

**CIG 64/04**

**COVER NOTE**

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from : Mr Julian PRIESTLEY, Secretary-General of the European Parliament  
date : 7 January 2004  
to : Mr Javier SOLANA, Secretary-General/High Representative

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Subject : ***IGC 2004***  
– ***European Parliament Resolution on the progress report on the  
Intergovernmental Conference***

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At its part-session on 3 and 4 December 2003 the European Parliament adopted the following in accordance with Article 37 of its Rules of Procedure:

- a Resolution on the Council and Commission statements on the preparation of the European Council in Brussels on 12 and 13 December 2003 <sup>1</sup>,

and decided to forward the text thereof to the Council, and

- a Resolution on the progress report on the Intergovernmental Conference,

and decided to forward the text thereof to the Italian Presidency and to the Intergovernmental Conference.

On behalf of the President of the European Parliament, I enclose the abovementioned Resolutions, and would be very grateful if you would forward the documents to those concerned.

(complimentary close)

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<sup>1</sup> See 5263/04.

**P5\_TA-PROV(2003)0549****Progress report on the Intergovernmental Conference****European Parliament resolution on the progress report on the Intergovernmental Conference**

*The European Parliament,*

- having regard to the draft Treaty establishing a Constitution for Europe of 18 July 2003, prepared by the European Convention,
  - having regard to its resolution of 24 September 2003 on the draft Treaty establishing a Constitution for Europe and the European Parliament's opinion on the convening of the Intergovernmental Conference (IGC)<sup>1</sup>,
  - having regard to its resolution of 20 November 2003 on the financial provisions in the draft Treaty establishing a Constitution for Europe<sup>2</sup>,
  - having regard to the Italian Presidency proposals (CIG 52/1/03),
  - having regard to Rule 37 of its Rules of Procedure,
- A. recalling that the Convention was composed of representatives of parliaments, European institutions and governments, which together achieved with difficulty compromises on many fine points of balance in the constitutional structure, and that substantial changes by the governments acting alone would be unacceptable,
- B. whereas the text of the draft Treaty establishing a Constitution for Europe should remain the basis for the final and overall IGC agreement,
- C. whereas certain sectoral Council formations are bringing forward their own suggestions, thereby undermining the basis for stable negotiations,
1. Calls on the Heads of State and Government to continue their efforts and overcome their differences in order to arrive at a balanced and positive result on 13 December 2003;
  2. Expresses its concern at the calling into question by certain Member States of the Convention's proposals for institutional reform; recalls that any solution found to the reform of the three institutions must respect the balance between representation and efficiency;
  3. Recalls its support for the proposals in the draft Constitution regarding the definition of 'qualified majority'; perceives nonetheless a margin for compromise on the proposed figures provided that such a compromise respects the principle of the double majority and the lowering of the threshold fixed at Nice;
  4. Welcomes the Italian Presidency's proposal to extend qualified-majority voting within

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<sup>1</sup> P5\_TA(2003)0407.

<sup>2</sup> P5\_TA(2003)0517.

the CFSP in order to achieve a balanced overall outcome on decision-making procedures;

5. Welcomes the Presidency proposals, in particular with regard to introducing a horizontal clause on social policy (Article III-2a), recognising the competences of Member States in relation to services of general interest (Article III-6) and introducing in Article I-2 equality between women and men, which must, however, be recognised as a value and not merely as a principle;
6. Insists that there be no retreat from the Convention proposals for a measured extension of qualified-majority voting; stresses the importance of the Convention text on simplified procedures to move from unanimity to qualified-majority voting or from a special legislative procedure to the ordinary legislative procedure (general bridging clause);
7. Deplores the apparent decision to do away with the Legislative Council, which was intended to effect a clearer separation between the Council's law-making and executive functions, and to guarantee full transparency of the legislative process, and hopes that at least the option of introducing the Legislative Council at a later stage will be maintained;
8. Warns the IGC not to call into question the general balance achieved in the Convention on the financial and budgetary provisions; rejects any attempt to weaken Parliament's current budgetary rights as this would be a major attack on Parliament's core principles;
9. Reiterates its support for the proposals in the draft Constitution concerning the composition of the Commission; considers there to be a danger that appointing one Commissioner per Member State would impart an intergovernmental character to it;
10. Calls on the IGC to uphold the compromise reached in the Convention whereby the Union's Foreign Minister, as a full Vice-President of the Commission, presides over a joint administration comprising Commission, Council and national officials within the Commission and chairs the Foreign Affairs Council;
11. Believes that a proposal to limit the remit of the public prosecutor to the fight against fraud affecting the Union's financial interests must be accompanied by the application of the ordinary legislative procedure;
12. Insists on the importance of incorporating a light and flexible procedure to revise Part III of the Constitution;
13. Firmly backs the intention to convene a Euratom Treaty Revision Conference in order to repeal the obsolete and outdated provisions of the Treaty, notably concerning the lack of democratic decision-making procedures;
14. Instructs its President to forward this resolution to the Italian Presidency, the Council, the Commission, the parliaments of the Member States and the Intergovernmental Conference.

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**CONFERENCE  
OF THE REPRESENTATIVES  
OF THE GOVERNMENTS  
OF THE MEMBER STATES**

**Brussels, 29 April 2004**

**CIG 73/04**

**PRESID 16**

**NOTE**

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from: Presidency

dated: 29 April 2004

to: Delegations

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*Subject: IGC 2003  
– Meeting of Focal Points (Dublin, 4 May 2004)  
working document*

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1. Delegations will find attached a working document for the meeting of Focal Points on Tuesday 4 May 2004. For ease of reference, it is based on document CIG 60/03 ADD1, with which delegations are familiar.
2. The Presidency wishes to stress that this is purely a working document. It is not intended to be seen in any way as a fresh overall Presidency proposal.
3. In particular, the Presidency does not believe that the time is ripe for discussion at this meeting of a number of issues connected with the scope of Qualified Majority Voting. Therefore, as will be seen from the document, no new proposals are made on these issues at this time. This is without prejudice to future proposals the Presidency may bring forward.
4. The Presidency recalls that the President of the European Council, in writing to his colleagues on 8 April, made clear that he assumed and expected that no concerns not already signalled will be raised.

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**ANNEX 1**

|                                                                                                                                                                                                                               |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p style="text-align: center;"><b>THE UNION'S VALUES</b></p> <p style="text-align: center;"><b>RIGHTS OF PERSONS BELONGING TO<br/>MINORITIES</b></p> <p style="text-align: center;"><b>EQUALITY BETWEEN WOMEN AND MEN</b></p> |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

**Article I-2**

The Union is founded on the values of respect for human dignity, liberty, democracy, equality, the rule of law and respect for human rights, **including the rights of persons belonging to minorities**. These values are common to the Member States in a society **in which** pluralism, **non-discrimination**, tolerance, justice, solidarity and **the principle of equality between women and men prevail**.

\* \* \*

**ANNEX 4****EXPLANATIONS RELATING TO THE  
CHARTER OF FUNDAMENTAL RIGHTS****5th paragraph of the Preamble**

This Charter reaffirms, with due regard for the powers and tasks of the Union and the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Union and by the Council of Europe and the case law of the Court of Justice of the European Union and of the European Court of Human Rights. In this context the Charter will be interpreted by the courts of the Union and the Member States with due regard to the explanations prepared at the instigation of the Praesidium of the Convention which drafted the Charter **and updated under the responsibility of the Praesidium of the European Convention.**

**Declaration for incorporation in the Final Act  
concerning the explanations relating to the Charter of Fundamental Rights**

**The Conference takes note of the explanations relating to the Charter of Fundamental Rights prepared at the instigation of the Praesidium of the Convention which drafted the Charter and updated under the responsibility of the Praesidium of the European Convention, as set out below.**

*(...) [reproduction of the explanations contained in CONV 828/1/03 REV 1 of 31 July 2003, which will be published in the "C" series of the Official Journal of the European Union.]*

\* \* \*

*The post-Naples text is maintained.*

**ACCESSION OF THE UNION TO THE EUROPEAN  
CONVENTION ON HUMAN RIGHTS**

**Article I-7**

3) 1. [unchanged]

2. The Union **shall accede** to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union's competencies as defined in the Constitution.

4) 3. [unchanged]

**Article III-227, paragraph 8**

8. The Council of Ministers shall act by a qualified majority throughout the procedure.

It shall act unanimously when the agreement covers a field for which unanimity is required for the adoption of a Union act as well as for association agreements and the agreements referred to in Article III-221 with the States which are candidates for accession.

**Protocol relating to Article I-7, paragraph 2,  
on the accession of the Union to the European Convention on Human Rights**

1. The agreement relating to the accession of the Union to the European Convention on Human Rights provided for in Article I-7, paragraph 2 of the Constitution shall take into account the following:

the specific characteristics of the Union and Union law, in particular with regard to:

- the specific arrangements for the Union's possible participation in the control bodies of the European Convention on Human Rights,
- the mechanisms necessary to ensure that proceedings by non-Member States and individual applications are correctly addressed to Member States and/or the Union as appropriate;

2. The agreement referred to in paragraph 1 shall ensure that nothing therein shall affect the situation of Member States in relation to the European Convention on Human Rights, in particular in relation to the Protocols to the Convention, measures taken by Member States derogating from the Convention in accordance with Article 15 thereof and reservations to the Convention made by Member States in accordance with Article 57 thereof.

3. Nothing in the agreement referred to in paragraph 1 shall affect Article III-281, paragraph 2 of the Constitution.

\* \* \*

*The post-Naples text is maintained with the addition of a Protocol which is designed to meet the concerns of some delegations.*

CONFERENCE  
OF THE REPRESENTATIVES  
OF THE GOVERNMENTS  
OF THE MEMBER STATES

Brussels, 13 May 2004

CIG 75/04

PRESID 17

NOTE

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from: Presidency

dated: 13 May 2004

to: Delegations

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Subject: **IGC 2003**

– *Discussion at Ministerial Meeting, 17/18 May 2004*

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1. The Presidency has circulated to delegations a series of draft texts on which there seems to be a likelihood of broad consensus in the context of overall agreement (CIG 76/04). The principle of nothing is agreed until everything is agreed applies. However, the Presidency does not believe that further discussion of these points at Ministerial level is necessary at this stage.
2. The Presidency would intend the Ministerial meeting on 17/18 May to focus on a number of other areas where it considers that further discussion would now be useful.
3. These include a small number of issues which were discussed by Focal Points at their meeting on 4 May on which further adjustments to the texts were considered necessary by some:  
**Formations of the Council of Ministers and Exercise of the Presidency of the Council of Ministers; Multiannual Financial Framework; Budget Procedure; Explanations relating to the Charter of Fundamental Rights; European Court of Justice control over procedural stipulations relating to Excessive Deficit; and the Common Commercial Policy.** Texts in these areas are set out in Part I of the present document.

4. Outstanding issues also include the **scope of qualified majority voting**. While the Presidency is not yet making new proposals, relevant texts in this area produced by the Italian Presidency are included in Part II of this document for ease of reference.
5. The Presidency notes that the issue of **the future composition of the Commission** can only be finally resolved as part of a balanced outcome on the major institutional questions. However, the Presidency also considers that it would be useful for Ministers to address the future composition of the Commission and, to this end, presents some ideas set out in Part III of this document.
6. To facilitate the most efficient and productive discussion, the Presidency would ask delegations to intervene only on those issues of particular concern to them or where there is a particular point they wish to raise.

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The Presidency is considering an approach which would be designed strongly to encourage and facilitate the achievement of agreement in the Conciliation Committee. It would be important in this context that both Council and Parliament be able as a general rule to endorse the outcome of the conciliation process. The Presidency sees that this could be more complex in the case of the Parliament and how it might be guaranteed could require further reflection. In the event of a failure to reach agreement in the Conciliation Committee, the Commission might be required to table a new draft budget. The situation which would apply if either or both institutions rejected or failed to adopt the Conciliation Committee's proposal would also need to be addressed. Should a new budget not be adopted in time, Article III-311 (provisional twelfths) would in any event apply.

#### Charter of Fundamental Rights (see Annex 4)

4. The texts as they stand appear to be broadly acceptable. However a small number of delegations wish to transfer the reference to the explanations concerning the Charter from the preamble to the body of the text. Those delegations also wish to clarify in the explanations that Article II-21 contains both rights and principles. The Presidency would welcome Ministers' views.

#### European Court of Justice control over procedural stipulations relating to Excessive Deficit (see Annex 5)

5. The Presidency notes that this issue will require further consideration. The text proposed by the Italian Presidency is included for ease of reference.



**ANNEX 5****EXPLANATIONS RELATING TO THE  
CHARTER OF FUNDAMENTAL RIGHTS****5th paragraph of the Preamble**

This Charter reaffirms, with due regard for the powers and tasks of the Union and the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Union and by the Council of Europe and the case law of the Court of Justice of the European Union and of the European Court of Human Rights. In this context the Charter will be interpreted by the courts of the Union and the Member States with due regard to the explanations prepared at the instigation of the Praesidium of the Convention which drafted the Charter **and updated under the responsibility of the Praesidium of the European Convention.**

**Declaration for incorporation in the Final Act  
concerning the explanations relating to the Charter of Fundamental Rights**

**The Conference takes note of the explanations relating to the Charter of Fundamental Rights prepared at the instigation of the Praesidium of the Convention which drafted the Charter and updated under the responsibility of the Praesidium of the European Convention, as set out below.**

*(...) [reproduction of the explanations contained in CONV 828/1/03 REV 1 of 31 July 2003, which will be published in the "C" series of the Official Journal of the European Union.]*

\* \* \*

**CONFERENCE  
OF THE REPRESENTATIVES  
OF THE GOVERNMENTS  
OF THE MEMBER STATES**

**Brussels, 13 May 2004**

**CIG 76/04**

**PRESID 18**

**NOTE**

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from: Presidency  
dated: 13 May 2004  
to: Delegations

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*Subject: IGC 2003  
– Presidency proposals following the meeting of "focal points" on 4 May 2004*

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Following the meeting of "focal points" on 4 May 2004, delegations will find attached a series of draft texts on which there seems to be a likelihood of broad consensus in the context of an overall agreement.

While the Presidency continues to operate on the basis of the principle that nothing is agreed until everything is agreed, it does not believe that further discussion at Ministerial level is necessary at this stage.

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**ANNEX 1**

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| <p style="text-align:center"><b>THE UNION'S VALUES</b></p> <p style="text-align:center"><b>RIGHTS OF PERSONS BELONGING TO<br/>MINORITIES</b></p> <p style="text-align:center"><b>EQUALITY BETWEEN WOMEN AND MEN</b></p> |
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**Article I-2**

The Union is founded on the values of respect for human dignity, liberty, democracy, equality, the rule of law and respect for human rights, **including the rights of persons belonging to minorities**. These values are common to the Member States in a society **in which** pluralism, **non-discrimination**, tolerance, justice, solidarity and **the principle of equality between women and men prevail**.

**Article III-2**

In all the activities referred to in this Part, the Union shall aim to eliminate inequalities, and to promote equality, between men and women.

**Declaration re Article III-2**

**The Conference agrees that, in its general efforts to eliminate inequalities between men and women, the Union shall aim in its different policies to combat all kinds of domestic violence. The Member States should take all necessary measures to prevent and punish these criminal acts and to support and protect the victims.**

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| <p style="text-align: center;"><b>ACCESSION OF THE UNION TO THE EUROPEAN<br/>CONVENTION ON HUMAN RIGHTS</b></p> |
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**Article I-7**

1. [unchanged]
2. The Union **shall accede** to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union's competencies as defined in the Constitution.
3. [unchanged]

**Article III-227 (8)**

8. The Council of Ministers shall act by a qualified majority throughout the procedure.

It shall act unanimously when the agreement covers a field for which unanimity is required for the adoption of a Union act as well as for association agreements and the agreements referred to in Article III-221 with the States which are candidates for accession.

**Protocol relating to Article I-7 (2)**  
**on the accession of the Union to the European Convention on Human Rights**

1. The agreement relating to the accession of the Union to the European Convention on Human Rights provided for in Article I-7, paragraph 2 of the Constitution shall take into account the following:

the specific characteristics of the Union and Union law, in particular with regard to:

- the specific arrangements for the Union's possible participation in the control bodies of the European Convention on Human Rights,
- the mechanisms necessary to ensure that proceedings by non-Member States and individual applications are correctly addressed to Member States and/or the Union as appropriate;

2. The agreement referred to in paragraph 1 shall ensure that nothing therein shall affect the situation of Member States in relation to the European Convention on Human Rights, in particular in relation to the Protocols to the Convention, measures taken by Member States derogating from the Convention in accordance with Article 15 thereof and reservations to the Convention made by Member States in accordance with Article 57 thereof.

3. Nothing in the agreement referred to in paragraph 1 shall affect Article III-281, paragraph 2 of the Constitution.

**Draft declaration relating to Article I-7(2)**

**The Conference agrees that the Union's accession to the European Convention on Human Rights should be arranged in such a way as to preserve the specific features of Community law. A system should be introduced for liaison between the Court of Justice and the European Court of Human Rights in order to avoid, as far as possible, any discrepancies in case law.**

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**CONFERENCE  
OF THE REPRESENTATIVES  
OF THE GOVERNMENTS  
OF THE MEMBER STATES**

**Brussels, 10 June 2004**

**CIG 79/04**

**PRESID 21**

**NOTE**

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from: Presidency

dated: 10 June 2004

to: Delegations

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*Subject: IGC 2003*

*– Presidency proposal following the Ministerial meeting on 24 May 2004*

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1. Delegations will find attached a revised set of draft texts which were previously submitted to Ministers as document CIG 76/04. The Presidency has as far as possible taken into account the further comments made by Ministers at their meetings on 17-18 May and 24 May, and has added in this document some additional points on which there now appears to be broad consensus. These texts also include a series of purely technical/legal adjustments which appear in shaded characters. In addition, all modifications of texts compared to texts in doc. CIG 50/03 are in bold.
2. The Presidency considers that this document represents a fair balance between the different views of delegations. However, it submits the document in advance of the Ministerial meeting on 14 June in order to ensure that no fundamental problems remain, and to avoid further discussion on these issues at the meeting of the IGC at the level of Heads of State or Government on 17/18 June.
3. Delegations' attention is drawn to the fact that in certain cases, such as the Part III articles on the Commission, further adjustments might be required as a direct consequence of the outcome of the discussions on the remaining issues.

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**ANNEX 1**

**THE UNION'S VALUES**  
**RIGHTS OF PERSONS BELONGING TO**  
**MINORITIES**  
**EQUALITY BETWEEN WOMEN AND MEN**

**Article I-2**

The Union is founded on the values of respect for human dignity, liberty, democracy, equality, the rule of law and respect for human rights, **including the rights of persons belonging to minorities**. These values are common to the Member States in a society **in which** pluralism, **non-discrimination**, tolerance, justice, solidarity and **equality between women and men prevail**.

**Article III-2**

In all the activities referred to in this Part, the Union shall aim to eliminate inequalities, and to promote equality, between men and women.

**Declaration for incorporation in the Final Act**  
**re Article III-2**

**The Conference agrees that, in its general efforts to eliminate inequalities between men and women, the Union shall will aim in its different policies to combat all kinds of domestic violence. The Member States should take all necessary measures to prevent and punish these criminal acts and to support and protect the victims.**

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**ANNEX 39****ACCESSION OF THE UNION TO THE EUROPEAN  
CONVENTION ON HUMAN RIGHTS****Article I-7**

1. [unchanged]
2. The Union **shall accede** to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union's competencies as defined in the Constitution.
3. [unchanged]

**Article III-227 (8)**

8. The Council ~~of Ministers~~ shall act by a qualified majority throughout the procedure.

It shall act unanimously when the agreement covers a field for which unanimity is required for the adoption of a Union act as well as for association agreements and the agreements referred to in Article III-221 with the States which are candidates for accession.



**Protocol relating to Article I-7 (2)**  
**on the accession of the Union to the European Convention on Human Rights**

1. The agreement relating to the accession of the Union to the European Convention on Human Rights provided for in Article I-7(2), paragraph 2 of the Constitution shall ~~take into account~~ make provision for preserving the following the specific characteristics of the Union and Union law, in particular with regard to:
  - the specific arrangements for the Union's possible participation in the control bodies of the European Convention on Human Rights,
  - the mechanisms necessary to ensure that proceedings by non-Member States and individual applications are correctly addressed to Member States and/or the Union as appropriate;
2. The agreement referred to in paragraph 1 shall ensure that accession shall not affect the competences of the Union and the powers of its institutions. It shall ensure that nothing therein shall affect the situation of Member States in relation to the European Convention on Human Rights, in particular in relation to the Protocols to the Convention, measures taken by Member States derogating from the Convention in accordance with Article 15 thereof and reservations to the Convention made by Member States in accordance with Article 57 thereof.
3. Nothing in the agreement referred to in paragraph 1 shall affect Article III-281(2), paragraph 2 of the Constitution.

**Declaration for incorporation in the Final Act**  
**re Article I-7 (2)**

The Conference agrees that the Union's accession to the European Convention on Human Rights should be arranged in such a way as to preserve the specific features of Community Union law. In this connection, the Conference notes the existence of a regular dialogue between the Court of Justice of the European Union and the European Court of Human Rights; such dialogue could be reinforced when the European Union accedes to the European Convention on Human Rights.

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**CONFERENCE  
OF THE REPRESENTATIVES  
OF THE GOVERNMENTS  
OF THE MEMBER STATES**

**Brussels, 12 June 2004**

**CIG 80/04**

**PRESID 22**

**NOTE**

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from: Presidency

dated: 12 June 2004

to: Delegations

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*Subject: IGC 2003  
– Ministerial meeting, Luxembourg, 14 June 2004*

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1. Delegations will find attached proposals from the Presidency on a number of outstanding issues to be addressed by the IGC. Ministers are invited to discuss these issues at their meeting on 14 June with a view to reaching an overall agreement at the meeting of Heads of State or Government on 17/18 June. The Presidency does not submit at this stage any proposal on institutional issues, which will be discussed by Heads of State or Government on 17/18 June.
2. In putting forward its proposals, in particular in the field of scope of QMV, the Presidency has taken into account the different views expressed by delegations both in the IGC meetings themselves and during the many bilateral contacts which have taken place. The aim has been to introduce a fair overall balance between different delegations' views.
3. Delegations will note that in the case of the explanations relating to the Charter of Fundamental Rights, the Presidency submits options on which it would welcome Ministers' views.
4. The Presidency also wishes to draw the attention of delegations to a number of outstanding issues in the area of economic policy, and invites Ministers to offer their views, given that each of these points raise difficulties for some delegations.

- Eurozone provisions: One delegation has asked that the articles related to the eurozone should include a specific provision requiring the agreement of eurozone members (by QMV) before a decision is taken by the full Council on admitting new members to the eurozone (Annex 20 of doc. CIG 79/04).
  - Economic policy coordination: Article I-11.3 of the Convention text provides that the Union has competence to promote and co-ordinate the economic and employment policies of the Member States. Some delegations have sought to revert to language based on that in the current Treaty. A possible compromise formula is set out in Annex 10.
  - Declaration on the Stability and Growth Pact: The Presidency submits for the attention of delegations a draft declaration (see Annex 11). As a result the earlier text on ECJ jurisdiction over procedural stipulations relating to excessive deficit has been removed. In addition, some delegations have also advised the Presidency that they attach particular importance to amending Article III-76.6 (excessive deficit procedure) so that decisions on the existence of an excessive deficit are taken on the basis of a Commission recommendation (as currently provided for in the Treaty) rather than a proposal (as provided for in the Convention's text).
5. As regards the Preamble, the Presidency notes that, despite the strong support of several delegations for the inclusion of a specific reference to Europe's Christian or Judeo-Christian heritage, there is no sign of consensus on this matter. It has, however, proposed a limited number of drafting changes to the text, which it hopes can be agreed by Ministers.
6. As in doc. CIG 79/04, technical/legal adjustments appear in shaded characters.

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**ANNEX 13****EXPLANATIONS RELATING TO THE  
CHARTER OF FUNDAMENTAL RIGHTS**

*The Presidency invites the views of Ministers on the three options set out below. If agreement were reached on either option 2 or 3, the necessity to retain the preambular reference to the Explanations could be considered.*

**Option 1****5th paragraph of the Preamble**

This Charter reaffirms, with due regard for the powers and tasks of the Union and the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Union and by the Council of Europe and the case law of the Court of Justice of the European Union and of the European Court of Human Rights. In this context the Charter will be interpreted by the courts of the Union and the Member States with due regard to the explanations prepared **under the authority at the instigation** of the Praesidium of the Convention which drafted the Charter **and updated under the responsibility of the Praesidium of the European Convention.**

**Declaration for incorporation in the Final Act  
concerning the explanations relating to the Charter of Fundamental Rights**

**The Conference takes note of the explanations relating to the Charter of Fundamental Rights prepared **under the authority at the instigation** of the Praesidium of the Convention which drafted the Charter and updated under the responsibility of the Praesidium of the European Convention, as set out below.**

*[reproduction of the explanations contained in CONV 828/1/03 REV 1 of 31 July 2003, which will be published in the "C" series of the Official Journal of the European Union.]*

**Option 2**

As Option 1, plus

**Article II-52: Scope and interpretation of rights and principles**  
**(New paragraph 7)**

7. The explanations drawn up as a way of providing guidance in the interpretation of the Charter of Fundamental Rights should be given due regard by the courts of the Union and of the Member States.

**Option 3**

As Option 1, plus

**Article II-52: Scope and interpretation of rights and principles**  
**(New paragraph 7)**

7. This Charter shall be interpreted with due regard to the explanations prepared under the authority of the Praesidium of the Convention which drafted the Charter and updated under the responsibility of the Praesidium of the European Convention.

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**CONFERENCE  
OF THE REPRESENTATIVES  
OF THE GOVERNMENTS  
OF THE MEMBER STATES**

**Brussels, 16 June 2004**

**CIG 81/04**

**PRESID 23**

**NOTE**

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from: Presidency

dated: 16 June 2004

to: Delegations

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*Subject: IGC 2003*

*– Meeting of Heads of State or Government, Brussels, 17/18 June 2004*

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1. Delegations will find attached a set of texts which the Presidency believes will find consensus in the framework of the final overall agreement. These include texts submitted to Ministers in document CIG 79/04 as well as some additional texts previously included in document CIG 80/04. Where appropriate these have been amended to take into account the Ministerial discussions on 14 June.<sup>1</sup>
2. The Presidency is submitting a separate document containing proposals on outstanding issues for discussion by Heads of State or Government.

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<sup>1</sup> The Presidency recalls that the basis on which this document is drafted is doc. CIG 50/03 plus its addendums and corrigendums.

**ANNEX 2**

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| <p style="text-align:center"><b>THE UNION'S VALUES</b></p> <p style="text-align:center"><b>RIGHTS OF PERSONS BELONGING TO<br/>MINORITIES</b></p> <p style="text-align:center"><b>EQUALITY BETWEEN WOMEN AND MEN</b></p> |
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**Article I-2**

The Union is founded on the values of respect for human dignity, liberty, democracy, equality, the rule of law and respect for human rights, **including the rights of persons belonging to minorities**. These values are common to the Member States in a society **in which** pluralism, **non-discrimination**, tolerance, justice, solidarity and **equality between women and men prevail**.

**Article III-2**

In all the activities referred to in this Part, the Union shall aim to eliminate inequalities, and to promote equality, between men and women.

**Declaration for incorporation in the Final Act  
re Article III-2**

**The Conference agrees that, in its general efforts to eliminate inequalities between men and women, the Union will aim in its different policies to combat all kinds of domestic violence. The Member States should take all necessary measures to prevent and punish these criminal acts and to support and protect the victims.**

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| <p style="text-align: center;"><b>ACCESSION OF THE UNION TO THE EUROPEAN<br/>CONVENTION ON HUMAN RIGHTS</b></p> |
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**Article I-7**

1. [unchanged]
2. The Union **shall accede** to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union's competences as defined in the Constitution.
3. [unchanged]

**Article III-227 (8)**

8. The Council shall act by a qualified majority throughout the procedure.

It shall act unanimously when the agreement covers a field for which unanimity is required for the adoption of a Union act as well as for association agreements and the agreements referred to in Article III-221 with the States which are candidates for accession.



**Protocol relating to Article I-7 (2)**  
**on the accession of the Union to the European Convention on Human Rights**

1. The agreement relating to the accession of the Union to the European Convention on Human Rights provided for in Article I-7(2) of the Constitution shall make provision for preserving the specific characteristics of the Union and Union law, in particular with regard to:
  - the specific arrangements for the Union's possible participation in the control bodies of the European Convention on Human Rights,
  - the mechanisms necessary to ensure that proceedings by non-Member States and individual applications are correctly addressed to Member States and/or the Union as appropriate;
2. The agreement referred to in paragraph 1 shall ensure that accession shall not affect the competences of the Union and the powers of its institutions. It shall ensure that nothing therein affects the situation of Member States in relation to the European Convention on Human Rights, in particular in relation to the Protocols to the Convention, measures taken by Member States derogating from the Convention in accordance with Article 15 thereof and reservations to the Convention made by Member States in accordance with Article 57 thereof.
3. Nothing in the agreement referred to in paragraph 1 shall affect Article III-281(2) of the Constitution.

**Declaration for incorporation in the Final Act**  
**re Article I-7 (2)**

The Conference agrees that the Union's accession to the European Convention on Human Rights should be arranged in such a way as to preserve the specific features of Union law. In this connection, the Conference notes the existence of a regular dialogue between the Court of Justice of the European Union and the European Court of Human Rights; such dialogue could be reinforced when the European Union accedes to the European Convention on Human Rights.

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**CONFERENCE  
OF THE REPRESENTATIVES  
OF THE GOVERNMENTS  
OF THE MEMBER STATES**

**Brussels, 16 June 2004**

**CIG 82/04**

**PRESID 24**

**NOTE**

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from: Presidency

dated: 16 June 2004

to: Delegations

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*Subject: IGC 2003*

*– Meeting of Heads of State or Government, Brussels, 17/18 June 2004*

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1. In paper CIG 81/04, delegations have received a set of texts which the Presidency believes will find consensus in the framework of the final overall agreement.
2. This paper contains suggested approaches on outstanding issues, both on the institutions and on other matters, for discussion by Heads of State or Government.

**Institutions**

3. The Presidency has always acknowledged that delegations will view arrangements on institutional questions in the round, and that any package on them must strike an overall balance. It believes that the approach it is now proposing achieves such a balance.

**Voting in the Council**

4. In its report to the European Council in March, the Presidency stated its belief that, to secure consensus, a solution on the question of voting must be based on the principle of double majority, must allow for greater efficiency, and must have due regard to balance among all Member States and to their specific concerns.

21. Specifically in regard to the role of the Commission in the excessive deficit procedure (Annex 5), some delegations have suggested that both references to Commission "proposals" in Article III-76(6) be changed to "recommendations". However, with a view to seeking a compromise, the Presidency has suggested only one such change, which it notes is in line with what ECOFIN Ministers broadly agreed during the Italian Presidency.
22. The Presidency also attaches a proposal in Annex 6 on the multiannual financial framework, under which unanimity would be maintained pending the application of a simple passerelle to qualified majority voting, and believes that this should be agreed in an overall package.
23. Finally, in a context where there is consensus on the content of the Charter of Fundamental Rights, on its legal status as part of the Constitution, and on the need for the Courts when interpreting the Charter to give due regard to the Explanations, the Presidency believes that its compromise proposal on the placement of a reference to the Explanations, set out in Annex 7, should be acceptable to all.

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**ANNEX 7****EXPLANATIONS RELATING TO THE  
CHARTER OF FUNDAMENTAL RIGHTS****5th paragraph of the Preamble**

This Charter reaffirms, with due regard for the powers and tasks of the Union and the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Union and by the Council of Europe and the case law of the Court of Justice of the European Union and of the European Court of Human Rights. In this context the Charter will be interpreted by the courts of the Union and the Member States with due regard to the explanations prepared under the authority of the Praesidium of the Convention which drafted the Charter **and updated under the responsibility of the Praesidium of the European Convention.**

**Article II-52: Scope and interpretation of rights and principles  
(New (7))**

7. The explanations drawn up as a way of providing guidance in the interpretation of the Charter of Fundamental Rights shall be given due regard by the courts of the Union and of the Member States.

**Declaration for incorporation in the Final Act  
concerning the explanations relating to the Charter of Fundamental Rights**

The Conference takes note of the explanations relating to the Charter of Fundamental Rights prepared under the authority of the Praesidium of the Convention which drafted the Charter and updated under the responsibility of the Praesidium of the European Convention, as set out below.

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**CONFERENCE  
OF THE REPRESENTATIVES  
OF THE GOVERNMENTS  
OF THE MEMBER STATES**

**Brussels, 18 June 2004**

**CIG 83/04**

**PRESID 25**

**NOTE**

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from: Presidency

dated: 18 June 2004

to: Delegations

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*Subject: IGC 2003*

*– Meeting of Heads of State or Government, Brussels, 17/18 June 2004*

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In the light of the discussions on Thursday 17 June on the draft Constitution, the Presidency invites Heads of State or Government to give their agreement to the texts set out in document CIG 81/04, as amended and complemented by the texts annexed to the present document. These documents contain modifications to the basic text of the Constitution as contained in document CIG 50/03 together with its addendums and corrigendums.

On the issue of qualified majority voting, the Presidency's proposals contain a number of elements which will require further discussion.

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| <p style="text-align: center;"><b>EXPLANATIONS RELATING TO THE<br/>CHARTER OF FUNDAMENTAL RIGHTS</b></p> |
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**5th paragraph of the Preamble**

This Charter reaffirms, with due regard for the powers and tasks of the Union and the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Union and by the Council of Europe and the case law of the Court of Justice of the European Union and of the European Court of Human Rights. In this context the Charter will be interpreted by the courts of the Union and the Member States with due regard to the explanations prepared under the authority of the Praesidium of the Convention which drafted the Charter **and updated under the responsibility of the Praesidium of the European Convention.**

**Article II-52: Scope and interpretation of rights and principles**  
**(New (7))**

7. The explanations drawn up as a way of providing guidance in the interpretation of the Charter of Fundamental Rights shall be given due regard by the courts of the Union and of the Member States.

**Declaration for incorporation in the Final Act**  
**concerning the explanations relating to the Charter of Fundamental Rights**

The Conference takes note of the explanations relating to the Charter of Fundamental Rights prepared under the authority of the Praesidium of the Convention which drafted the Charter and updated under the responsibility of the Praesidium of the European Convention, as set out below.

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**CONFERENCE  
OF THE REPRESENTATIVES  
OF THE GOVERNMENTS  
OF THE MEMBER STATES**

**Brussels, 18 June 2004**

**CIG 84/04**

**PRESID 26**

**NOTE**

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from: Presidency

dated: 18 June 2004

to: Delegations

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*Subject: IGC 2003*

*– Meeting of Heads of State or Government, Brussels, 17/18 June 2004*

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In the light of the discussions on Thursday 17 June and Friday 18 June on the draft Constitution, the Presidency invites Heads of State or Government to give their agreement to the texts set out in document CIG 81/04, as amended and complemented by the texts annexed to the present document. These documents contain modifications to the basic text of the Constitution as contained in document CIG 50/03 together with its addendums and corrigendums.

The Presidency considers that these documents together constitute the basis for an overall and balanced agreement which should allow for the adoption of the draft Treaty establishing a Constitution for Europe.

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**ANNEX 10****EXPLANATIONS RELATING TO THE  
CHARTER OF FUNDAMENTAL RIGHTS****5th paragraph of the Preamble**

This Charter reaffirms, with due regard for the powers and tasks of the Union and the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Union and by the Council of Europe and the case law of the Court of Justice of the European Union and of the European Court of Human Rights. In this context the Charter will be interpreted by the courts of the Union and the Member States with due regard to the explanations prepared under the authority of the Praesidium of the Convention which drafted the Charter **and updated under the responsibility of the Praesidium of the European Convention.**

**Article II-52: Scope and interpretation of rights and principles**  
**(New (7))**

7. The explanations drawn up as a way of providing guidance in the interpretation of the Charter of Fundamental Rights shall be given due regard by the courts of the Union and of the Member States.

**Declaration for incorporation in the Final Act**  
**concerning the explanations relating to the Charter of Fundamental Rights**

The Conference takes note of the explanations relating to the Charter of Fundamental Rights prepared under the authority of the Praesidium of the Convention which drafted the Charter and updated under the responsibility of the Praesidium of the European Convention, as set out below.

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**CONFERENCE  
OF THE REPRESENTATIVES  
OF THE GOVERNMENTS  
OF THE MEMBER STATES**

**Brussels, 18 June 2004**

**CIG 85/04**

**PRESID 27**

**NOTE**

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from: Presidency

dated: 18 June 2004

to: Delegations

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*Subject: IGC 2003*

*– Meeting of Heads of State or Government, Brussels, 17/18 June 2004*

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At their meeting on 18 June 2004 Heads of State or Government gave their agreement to the texts set out in document CIG 81/04, as amended and complemented by the texts annexed to the present document. These documents contain modifications to the text of the Constitution as contained in document CIG 50/03 together with its addendums and corrigendums. They constitute the outcome of the Intergovernmental Conference.

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**ANNEX 10****EXPLANATIONS RELATING TO THE  
CHARTER OF FUNDAMENTAL RIGHTS****5th paragraph of the Preamble**

This Charter reaffirms, with due regard for the powers and tasks of the Union and the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Union and by the Council of Europe and the case law of the Court of Justice of the European Union and of the European Court of Human Rights. In this context the Charter will be interpreted by the courts of the Union and the Member States with due regard to the explanations prepared under the authority of the Praesidium of the Convention which drafted the Charter **and updated under the responsibility of the Praesidium of the European Convention.**

**Article II-52: Scope and interpretation of rights and principles**  
**(New (7))**

7. The explanations drawn up as a way of providing guidance in the interpretation of the Charter of Fundamental Rights shall be given due regard by the courts of the Union and of the Member States.

**Declaration for incorporation in the Final Act**  
**concerning the explanations relating to the Charter of Fundamental Rights**

The Conference takes note of the explanations relating to the Charter of Fundamental Rights prepared under the authority of the Praesidium of the Convention which drafted the Charter and updated under the responsibility of the Praesidium of the European Convention, as set out below.

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## ***IV.2. Selected travaux préparatoires from the Treaty of Lisbon and beyond***

## **IV.2.a. Council and IGC Documents, 2005-2007**

**Brussels, 18 June 2005**

**SN 117/05**

**DECLARATION BY THE HEADS OF STATE OR GOVERNMENT  
OF THE MEMBER STATES OF THE EUROPEAN UNION  
ON THE RATIFICATION OF THE TREATY  
ESTABLISHING A CONSTITUTION FOR EUROPE  
(European Council, 16 and 17 June 2005)**

We have held a wide-ranging review of the process of ratification of the Treaty establishing a Constitution for Europe. This Treaty is the fruit of a collective process, designed to provide the appropriate response to ensure that an enlarged European Union functions more democratically, more transparently and more effectively.

Our European ambition, which has served us so well for over 50 years and which has allowed Europe to unite around the same vision, remains more relevant than ever. It has enabled us to ensure the well-being of citizens, the defence of our values and our interests, and to assume our responsibilities as a leading international player. In order to fight unemployment and social exclusion more effectively, to promote sustainable economic growth, to respond to the challenges of globalisation, to safeguard internal and external security, and to protect the environment, we need Europe, a more united Europe presenting greater solidarity.

To date, 10 Member States have successfully concluded ratification procedures, thereby expressing their commitment to the Constitutional Treaty. We have noted the outcome of the referendums in France and the Netherlands. We consider that these results do not call into question citizens' attachment to the construction of Europe. Citizens have nevertheless expressed concerns and worries which need to be taken into account. Hence the need for us to reflect together on this situation.

This period of reflection will be used to enable a broad debate to take place in each of our countries, involving citizens, civil society, social partners, national parliaments and political parties. This debate, designed to generate interest, which is already under way in many Member States, must be intensified and broadened. The European institutions will also have to make their contribution, with the Commission playing a special role in this regard.

The recent developments do not call into question the validity of continuing with the ratification processes. We are agreed that the timetable for the ratification in different Member States will be altered if necessary in response to these developments and according to the circumstances in these Member States.

We have agreed to come back to this matter in the first half of 2006 to make an overall assessment of the national debates and agree on how to proceed.



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 17 July 2006**

**10633/1/06  
REV 1**

**CONCL 2**

**COVER NOTE**

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from : Presidency  
to : Delegations  
Subject : **BRUSSELS EUROPEAN COUNCIL  
15/16 JUNE 2006**

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**PRESIDENCY CONCLUSIONS**

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Delegations will find attached the revised version of the Presidency Conclusions of the Brussels European Council (15/16 June 2006).

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*Presidency Conclusions – 15/16 June 2006*

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1. The meeting was preceded by an exposé by Mr Josep Borrell, President of the European Parliament, followed by an exchange of views.

**I. EUROPE LISTENS**

2. In June 2005 the Heads of State or Government called for a period of reflection during which a broad debate should take place in all Member States, involving citizens, civil society, social partners, national parliaments and political parties, with the contribution of European institutions. The European Council welcomes the various initiatives taken in the Member States in the framework of national debates, as well as a series of events organised by the Austrian Presidency, in particular the Conference "The Sound of Europe" in Salzburg on 27/28 January 2006. The European Council expresses its gratitude to the Commission for having contributed to the reflection period in the context of its Plan D and to the European Parliament for having organised together with the Austrian Parliament the joint parliamentary meeting on the "Future of Europe" on 8/9 May 2006. The European Council welcomes the intention of institutions and Member States to carry on their activities aimed at involving citizens in the debate about what Europe should stand for in the 21st century. It also welcomes the Commission's contribution "A Citizen's Agenda for Europe".
3. The European Council carried out a first assessment of the reflection period. This took place on the basis of the written report prepared by the Presidency and Council Secretariat drawing on information provided by Member States on their national debates (9701/1/06 REV 1), the "Plan D" initiative and the White Paper on a European Communication Policy. While worries and concerns have been voiced during all public debates, citizens remain committed to the European project. Reinforced dialogue with the citizens requires adequate means and commitment. Citizens expect the Union to prove its added value by taking action in response to the challenges and opportunities facing it: ensuring peace, prosperity and solidarity, enhancing security, furthering sustainable development and promoting European values in a rapidly globalising world.



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*Presidency Conclusions – 15/16 June 2006*

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4. The Union's commitment to becoming more democratic, transparent and effective goes beyond the reflection period. The European Council reaffirms its commitment to a Union that delivers the concrete results citizens expect, in order to strengthen confidence and trust, as set out in Part II.

## **II. EUROPE AT WORK**

### *(a) Promoting freedom, security and justice*

5. Progress on measures agreed in the Hague Programme aimed at addressing problems such as illegal immigration, trafficking of human beings, terrorism and organised crime while guaranteeing respect for fundamental freedoms and rights will be assessed in December 2006.
6. In the meantime further efforts are required, particularly as concerns:
- following the progress made on the Schengen Information System (SIS II) and implementation of the **Schengen acquis** in the new Member States, rapid finalisation of the legislative measures on **border control** and **police cooperation** and completion of the technical preparations at EU and national levels, making operational the **Schengen Information System** by April 2007 and the **Visa Information System** in 2007, thus paving the way for the enlargement of the Schengen area in 2007 provided all requirements to apply the Schengen acquis have been fulfilled, in accordance with the Hague Programme;
  - taking work forward rapidly on the Commission's proposal concerning the establishment of **Common Application Centres** and the collection of biometrics for the purpose of visas and initiation of a pilot project, as well as taking work forward on a Community code on visas;
  - taking work forward on **visa facilitation** and **readmission agreements** based on the process and considerations laid down in the common approach on facilitation starting with the countries with a European Perspective as referred to in the European Council conclusions of June 2003 and June 2005;

**III. LOOKING TO THE FUTURE***(a) Pursuing reform: the Constitutional Treaty*

42. At the meeting of the European Council on 16/17 June 2005, Heads of State or Government agreed to come back to the issue of the ratification of the Constitutional Treaty in the first half of 2006 in order to make an overall assessment of the national debates launched as part of the period of reflection and to agree on how to proceed.
43. Since last June a further five Member States have ratified the Constitutional Treaty, bringing the total number of ratifications to fifteen. Two Member States have been unable to ratify, and eight have still to complete the ratification process, one of which has recently launched the procedure to that effect. It is hoped that this process will be completed in line with the conclusions of June 2005.
44. Recalling its conclusions of June 2005, the European Council welcomes the various initiatives taken within the framework of the national debates as well as the contributions of the Commission and Parliament to the reflection period. The significant efforts made to increase and expand the dialogue with Europe's citizens, including the Commission's plan D initiative, should be continued.
45. The reflection period has overall been useful in enabling the Union to assess the concerns and worries expressed in the course of the ratification process. It considers that, in parallel with the ongoing ratification process, further work, building on what has been achieved since last June, is needed before decisions on the future of the Constitutional Treaty can be taken.
46. After last year's period of reflection work should now focus on delivery of concrete results and implementation of projects. The European Council agrees a two-track approach. On the one hand, best use should be made of the possibilities offered by the existing treaties in order to deliver the concrete results that citizens expect.

*Presidency Conclusions – 15/16 June 2006*

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47. On the other hand, the Presidency will present a report to the European Council during the first semester of 2007, based on extensive consultations with the Member States. This report should contain an assessment of the state of discussion with regard to the Constitutional Treaty and explore possible future developments.
48. The report will subsequently be examined by the European Council. The outcome of this examination will serve as the basis for further decisions on how to continue the reform process, it being understood that the necessary steps to that effect will have been taken during the second semester of 2008 at the latest. Each Presidency in office since the start of the reflection period has a particular responsibility to ensure the continuity of this process.
49. The European Council calls for the adoption, on 25 March 2007 in Berlin, of a political declaration by EU leaders, setting out Europe's values and ambitions and confirming their shared commitment to deliver them, commemorating 50 years of the Treaties of Rome.

***(b) Enlargement***

50. The European Council takes note of the initial discussions on enlargement held at the informal Foreign Ministers meeting in Salzburg on 11 March and in Klosterneuburg on 27/28 May 2006. It agreed to continue and deepen this general discussion during the second half of 2006.
51. Enlargement has proved a historic opportunity contributing to ensure peace, security, stability, democracy, the rule of law as well as growth and prosperity in the European Union as a whole. Enlargement is equally helping the EU to become a more competitive and dynamic economy and be better prepared to meet the challenges of a globalised and changing world. The European Council welcomes in this context the Commission's report on the economic success of the Union's historic fifth enlargement, of which the accession of Bulgaria and Romania is an integral part.



## DECLARATION

### on the occasion of the 50th anniversary of the signature of the Treaties of Rome

FOR CENTURIES EUROPE has been an idea, holding out hope of peace and understanding. That hope has been fulfilled. European unification has made peace and prosperity possible. It has brought about a sense of community and overcome differences. Each Member State has helped to unite Europe and to strengthen democracy and the rule of law. Thanks to the yearning for freedom of the peoples of central and eastern Europe the unnatural division of Europe is now consigned to the past. European integration shows that we have learnt the painful lessons of a history marked by bloody conflict. Today we live together as was never possible before.

WE, THE CITIZENS OF THE EUROPEAN UNION,  
HAVE UNITED FOR THE BETTER.

#### I.

IN THE EUROPEAN UNION, we are turning our common ideals into reality: for us, the individual is paramount. His dignity is inviolable. His rights are inalienable. Women and men enjoy equal rights.



WE ARE STRIVING for peace and freedom, for democracy and the rule of law, for mutual respect and shared responsibility, for prosperity and security, for tolerance and participation, for justice and solidarity.

WE HAVE A UNIQUE way of living and working together in the European Union. This is expressed through the democratic interaction of the Member States and the European institutions. The European Union is founded on equal rights and mutually supportive cooperation. This enables us to strike a fair balance between Member States' interests.

WE PRESERVE in the European Union the identities and diverse traditions of its Member States. We are enriched by open borders and a lively variety of languages, cultures and regions. There are many goals which we cannot achieve on our own, but only in concert. Tasks are shared between the European Union, the Member States and their regions and local authorities.

#### II.

WE ARE FACING major challenges which do not stop at national borders. The European Union is our response to these challenges. Only together can we continue to preserve our ideal of European society in future for the good of all European Union citizens. This European model combines economic success and social responsibility. The common market and the euro make us strong. We can thus shape the increasing interdependence of the global economy and ever-growing competition on international markets according to our values. Europe's wealth lies in the knowledge and ability of its people; that is the key to growth, employment and social cohesion.



## III.

**WE WILL FIGHT** terrorism, organised crime and illegal immigration together. We stand up for liberties and civil rights also in the struggle against those who oppose them. Racism and xenophobia must never again be given any rein.

**WE ARE COMMITTED** to the peaceful resolution of conflicts in the world and to ensuring that people do not become victims of war, terrorism and violence. The European Union wants to promote freedom and development in the world. We want to drive back poverty, hunger and disease. We want to continue to take a leading role in that fight.

**WE INTEND JOINTLY** to lead the way in energy policy and climate protection and make our contribution to averting the global threat of climate change.

**THE EUROPEAN UNION** will continue to thrive both on openness and on the will of its Member States to consolidate the Union's internal development. The European Union will continue to promote democracy, stability and prosperity beyond its borders.

**WITH EUROPEAN UNIFICATION** a dream of earlier generations has become a reality. Our history reminds us that we must protect this for the good of future generations. For that reason we must always renew the political shape of Europe in keeping with the times. That is why today, 50 years after the signing of the Treaties of Rome, we are united in our aim of placing the European Union on a renewed common basis before the European Parliament elections in 2009.

**FOR WE KNOW, EUROPE IS OUR COMMON FUTURE.**

Done at Berlin on the twenty-fifth day of March in the year two thousand and seven.

For the European Parliament  
The President

For the Council of the European Union  
The President

For the Commission of the European Communities  
The President

Hans-Gert Pötering

Angela Merkel

José Manuel Barroso



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 14 June 2007**

**10659/07**

**POLGEN 67**

**REPORT**

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from :            Presidency

to :                Council/European Council

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Subject :        Pursuing the treaty reform process

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Delegations will find attached a report from the Presidency on pursuing the treaty reform process, as requested by the European Council at its meeting in June 2006.

**REPORT FROM THE PRESIDENCY TO THE EUROPEAN COUNCIL****PURSUING THE TREATY REFORM PROCESS****Introduction**

This report from the German Presidency is a response to the mandate which it was given by the European Council at its meeting in June 2006. As requested at the time, the Presidency, in the light of very extensive consultations held over the last six months, provides an assessment of the state of discussion with regard to the treaty reform process and explores possible ways forward.

After two years of uncertainty following the problems encountered in the process of ratification of the Constitutional Treaty, it is clear that there is now a general desire to settle this issue and move on. All Member States recognise that further uncertainty about the treaty reform process would jeopardise the Union's ability to deliver.

Settling this issue quickly is therefore a priority. This was agreed when Heads of State or Government, together with the President of the European Parliament and the President of the Commission, met in Berlin on 25 March to celebrate the fiftieth anniversary of the signature of the Treaties of Rome. All were united in the aim of placing the European Union on a renewed common basis before the European Parliament elections in 2009.

The way forward clearly needs to take into account the concerns expressed by citizens during the ratification process on the future direction of the European Union and the effects of globalisation on its core values and policies. At the same time, there is a very strong demand for the Union to increase its efficiency, to enhance its democratic functioning and to improve the coherence of its external action.

## **Overall Assessment**

In line with the mandate given to it in June 2006, the Presidency has conducted extensive bilateral consultations with the Member States as well as the European Parliament and the European Commission, both at the level of designated "focal points", and between the President of the European Council and her opposite numbers. In addition to these bilateral contacts, the Presidency organised a meeting of "focal points" in Berlin on 15 May, and a further meeting is due to take place on 19 June. Foreign Ministers have also had the opportunity to take stock of developments at meetings of the General Affairs and External Relations Council.

These consultations have proved very useful in giving the Presidency a clear idea of the various concerns of individual Member States.

The issues raised during the consultations can be grouped around a number of themes:

### **A different approach on structure**

A certain number of Member States underlined the importance of avoiding the impression which might be given by the symbolism and the title "Constitution" that the nature of the Union is undergoing radical change. For them this also implies a return to the traditional method of treaty change through an amending treaty, as well a number of changes of terminology, not least the dropping of the title "Constitution".

Such an approach is not incompatible with the demand from those Member States which have already ratified that as much of the substance of the Constitutional Treaty as possible should be preserved. They are ready to consider the alternative method of treaty change if it helps to reach a result acceptable to everyone and thus to overcome the present stalemate. They have made it very clear however that this would represent a major concession. They insist on the need to preserve the substance of the innovations agreed upon in the 2004 IGC and to ensure as far as possible the readability and simplicity of the new Treaty.



### Reinforcing the capacity of the Union to act, whilst preserving the identity of Member States

It is generally recognised that a strengthening of the institutions will help reinforce the capacity of the Union to act, and that the Union therefore has every interest in ensuring that the current Treaties are adapted in order to introduce the set of institutional reforms agreed in the 2004 IGC.

At the same time, there is concern to underline the respect for the identity of the Member States and to introduce greater clarity over the delimitation and definition of the competences of the Union and of the Member States. Furthermore, there is a clear demand from some delegations to further enhance the role of national parliaments.

Some delegations have requested that the text of the Charter of Fundamental Rights be removed from the Treaty. Others strongly oppose this move. Most of the latter could however accept it, provided that the legally binding character of the Charter is preserved by means of a cross-reference in the body of the Treaty.

### Addressing other concerns

A few delegations have suggested that in several cases the text of the Treaties should be amended in order to reflect more recent developments. Many delegations would be ready to examine such amendments if considered helpful by others and provided that no new competences are conferred upon the Union. Specific suggestions include the need to address energy security and climate change. It has also been proposed that greater prominence be given to the "Copenhagen criteria" on enlargement.

## **The Way Forward**

On the basis of its assessment of the positions of different delegations, the Presidency recommends that the June European Council agree to the rapid convening of an IGC. It suggests that the European Council give a precise and comprehensive mandate (on structure and content) to the IGC, thus allowing it to finalise its work on a new Treaty before the end of this year.

The Presidency proposes a return to the classical method of treaty change. The IGC would therefore be asked to adopt a Reform Treaty amending the existing Treaties rather than repealing them. The Treaty on the European Union as modified would keep its present name, while the Treaty establishing the European Community would become the "Treaty on the functioning of the Union", containing all the detailed implementing provisions, including the legal bases. Both Treaties would have the same legal value. The Union would have a single legal personality.

The mandate for the IGC should set out how the measures agreed upon in the 2004 IGC with a view to a more capable and democratic Union should be inserted into the Treaty on the European Union and the Treaty on the Functioning of the Union. The consultations of the past 6 months show that a number of changes will be needed to reach an overall agreement. To that end there should be further discussions with regard to the following issues:

- The question of the symbols and of the primacy of EU law
- Possible terminological changes
- The treatment of the Charter in Fundamental Rights
- The specificity of the CFSP
- The delimitation of competences between the EU and the Member States
- The role of national parliaments

## **Conclusion**

The Presidency submits this report to delegations as a basis for reaching agreement on the way forward at the European Council on 21-22 June 2007.



Editors' note to 11177/1/07 REV 1,  
**Presidency Conclusions – Brussels European Council,  
21/22 June 2007 [Extracts]:**

The IGC Mandate also exists as the separate document SN 172/07, dated 22 June 2007; and was circulated as a proposed amendment to the Treaties on 26 June 2007 (Council document 11222/07).



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 20 July 2007**

**11177/1/07**

**REV 1**

**CONCL 2**

**COVER NOTE**

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from : Presidency

to : Delegations

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Subject : **BRUSSELS EUROPEAN COUNCIL**  
**21/22 JUNE 2007**

**PRESIDENCY CONCLUSIONS**

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Delegations will find attached the revised version of the Presidency Conclusions of the Brussels European Council (21/22 June 2007).

*Presidency Conclusions – Brussels, 21/22 June 2007*

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The meeting of the European Council was preceded by an exposé by the President of the European Parliament, Mr Hans-Gert Pöttering, followed by an exchange of views.

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1. Europe is united in its resolve that only by working together can we represent our interests and goals in the world of tomorrow. The European Union is determined to contribute its ideas of a sustainable, efficient and just economic and social order to the global process.
2. The European Union faces a twofold responsibility. In order to secure our future as an active player in a rapidly changing world and in the face of ever-growing challenges, we have to maintain and develop the European Union's capacity to act and its accountability to the citizen. That is why we have to focus our efforts on the necessary internal reform process. At the same time, the European Union is called upon to shape European policy here and now for the benefit of Europe's citizens.
3. The most recent positive results include the Roaming Regulation which reduces the cost of modern communication in Europe, the creation of the European payment area which makes travelling and living together easier in the EU and the constant improvement of consumer rights which guarantee citizens the same high standards across the entire European Union.
4. With its decisions on an integrated climate and energy policy the European Council in Spring 2007 underlined the synergies between these two key areas and paved the way for improved climate protection and dealing responsibly with energy.
5. Closer crossborder police and judicial cooperation means more security for everyone. At the same time the EU is working to protect and strengthen civil liberties at European level.
6. Contributing to the day-to-day life of its citizens and securing the European Union's ability to act in the future: with this twofold goal in mind, the European Council today adopted the following conclusions.

*Presidency Conclusions – Brussels, 21/22 June 2007*

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7. The European Council emphasises the crucial importance of reinforcing communication with the European citizens, providing full and comprehensive information on the European Union and involving them in a permanent dialogue. This will be particularly important during the upcoming IGC and ratification process.

**I. TREATY REFORM PROCESS**

8. The European Council agrees that, after two years of uncertainty over the Union's treaty reform process, the time has come to resolve the issue and for the Union to move on. The period of reflection has provided the opportunity in the meantime for wide public debate and helped prepare the ground for a solution.
9. Against this background, the European Council welcomes the report drawn up by the Presidency (10659/07) following the mandate given to it in June 2006, and agrees that settling this issue quickly is a priority.
10. To this end the European Council agrees to convene an Intergovernmental Conference and invites the Presidency without delay to take the necessary steps in accordance with Article 48 of the TUE, with the objective of opening the IGC before the end of July as soon as the legal requirements have been met.
11. The IGC will carry out its work in accordance with the mandate set out in Annex I to these conclusions. The European Council invites the incoming Presidency to draw up a draft Treaty text in line with the terms of the mandate and to submit this to the IGC as soon as it opens. The IGC will complete its work as quickly as possible, and in any case before the end of 2007, so as to allow for sufficient time to ratify the resulting Treaty before the European Parliament elections in June 2009.

*Presidency Conclusions – Brussels, 21/22 June 2007*

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12. The IGC will be conducted under the overall responsibility of the Heads of State or Government, assisted by the members of the General Affairs and External Relations Council. The Representative of the Commission will participate in the Conference. The European Parliament will be closely associated with and involved in the work of the Conference with 3 representatives. The General Secretariat of the Council will provide the secretariat support for the Conference.
13. Having consulted the President of the European Parliament, the European Council invites the European Parliament, in order to pave the way for settling the issue of the future composition of the European Parliament in good time before the 2009 elections, to put forward by October 2007 a draft of the initiative foreseen in Protocol 34 as agreed in the 2004 IGC.
14. The incoming presidency is invited to ensure that the candidate countries are kept fully and regularly briefed throughout the Intergovernmental Conference.

**II. JUSTICE AND HOME AFFAIRS**

15. On the basis of the Tampere and Hague Programmes significant progress has been made in developing the Union as an area of freedom, security and justice. The European Council stresses the need to continue the implementation of those programmes and to work on the succession to them in order to further strengthen Europe's internal security as well as the fundamental freedoms and rights of citizens.



## IGC MANDATE

The present mandate will provide the exclusive basis and framework for the work of the IGC that will be convened according to paragraph 10 of the European Council conclusions.

### **I. GENERAL OBSERVATIONS**

1. The IGC is asked to draw up a Treaty (hereinafter called the "*Reform Treaty*") amending the existing Treaties with a view to enhancing the efficiency and democratic legitimacy of the enlarged Union, as well as the coherence of its external action. The constitutional concept, which consisted in repealing all existing Treaties and replacing them by a single text called "Constitution", is abandoned. The *Reform Treaty* will introduce into the existing Treaties, which remain in force, the innovations resulting from the 2004 IGC, as set out below in a detailed fashion.

2. The *Reform Treaty* will contain two substantive clauses amending respectively the *Treaty on the European Union (TEU)* and the *Treaty establishing the European Community (TEC)*. The *TEU* will keep its present name and the *TEC* will be called *Treaty on the Functioning of the Union*, the Union having a single legal personality. The word "Community" will throughout be replaced by the word "Union"; it will be stated that the two Treaties constitute the Treaties on which the Union is founded and that the Union replaces and succeeds the Community. Further clauses will contain the usual provisions on ratification and entry into force as well as transitional arrangements. Technical amendments to the *Euratom Treaty* and to the existing *Protocols*, as agreed in the 2004 IGC, will be done via *Protocols* annexed to the *Reform Treaty*.

*Presidency Conclusions – Brussels, 21/22 June 2007*

3. The *TEU* and the *Treaty on the Functioning of the Union* will not have a constitutional character. The terminology used throughout the Treaties will reflect this change: the term "Constitution" will not be used, the "Union Minister for Foreign Affairs" will be called High Representative of the Union for Foreign Affairs and Security Policy and the denominations "law" and "framework law" will be abandoned, the existing denominations "regulations", "directives" and "decisions" being retained. Likewise, there will be no article in the amended Treaties mentioning the symbols of the EU such as the flag, the anthem or the motto. Concerning the primacy of EU law, the IGC will adopt a Declaration recalling the existing case law of the EU Court of Justice<sup>1</sup>.

4. As far as the content of the amendments to the existing Treaties is concerned, the innovations resulting from the 2004 IGC will be integrated into the *TEU* and the *Treaty on the Functioning of the Union*, as specified in this mandate. Modifications to these innovations introduced as a result of the consultations held with the Member States over the past six months are clearly indicated below. They concern in particular the respective competences of the EU and the Member States and their delimitation, the specific nature of the Common Foreign and Security Policy, the enhanced role of national parliaments, the treatment of the Charter of Fundamental Rights and a mechanism, in the area of police and judicial cooperation in criminal matters, enabling Member States to go forward on a given act while allowing others not to participate.

## II. AMENDMENTS TO THE EU TREATY

5. Clause 1 of the *Reform Treaty* will contain the amendments to the present *TEU*.

In the absence of indications to the contrary in this mandate, the text of the existing Treaty remains unchanged.

6. The text of the first recital as agreed in the 2004 IGC will be inserted as a second recital into the Preamble.

7. The *TEU* will be divided into 6 Titles: *Common Provisions (I)*, *Provisions on democratic principles (II)*, *Provisions on institutions (III)*, *Provisions on enhanced cooperation (IV)*, *General Provisions on the Union's External Action and specific Provisions on the Common Foreign and Security Policy (V)*, and *Final Provisions (VI)*. Titles I, IV (present VII), V and VI (present VIII) follow the structure of the existing *TEU*, with amendments as agreed in the 2004 IGC.<sup>2</sup> The two other titles (II and III) are new and introduce innovations agreed in the 2004 IGC.

### *Common Provisions (I)*

8. Title I of the existing *TEU*, containing *inter alia* Articles on the Union's values and objectives, on relations between the Union and the Member States, and on the suspension of rights of Member States, will be amended in line with the innovations agreed in the 2004 IGC (see Annex 1, Title I).

<sup>1</sup> Whilst the Article on primacy of Union law will not be reproduced in the *TEU*, the IGC will agree on the following Declaration: "The Conference recalls that, in accordance with well settled case-law of the EU Court of Justice, the Treaties and the law adopted by the Union on the basis of the Treaties have primacy over the law of Member States, under the conditions laid down by the said case-law." In addition, the opinion of the Legal Service of the Council (doc. 11197/07) will be annexed to the Final Act of the Conference.

<sup>2</sup> The content of Title VI on police and judicial cooperation in criminal matters will be put into the Title on the Area of freedom, security and justice in the Treaty on the Functioning of the European Union (*TFEU*), see below under "Amendments to the EC Treaty".

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*Presidency Conclusions – Brussels, 21/22 June 2007*

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9. The Article on fundamental rights will contain a cross reference<sup>3</sup> to the *Charter of fundamental rights*, as agreed in the 2004 IGC, giving it legally binding value and setting out the scope of its application.

10. In the Article on fundamental principles concerning competences it will be specified that the Union shall act only within the limits of competences conferred upon it by the Member States in the Treaties.

*Provisions on democratic principles (II)*

11. This new Title II will contain the provisions agreed in the 2004 IGC on democratic equality, representative democracy, participatory democracy and the citizens' initiative. Concerning national parliaments, their role will be further enhanced compared to the provisions agreed in the 2004 IGC (see Annex 1, Title II):

- The period given to national parliaments to examine draft legislative texts and to give a reasoned opinion on subsidiarity will be extended from 6 to 8 weeks (the *Protocols on national Parliaments and on subsidiarity and proportionality* will be modified accordingly).
- There will be a reinforced control mechanism of subsidiarity in the sense that if a draft legislative act is contested by a simple majority of the votes allocated to national parliaments, the Commission will re-examine the draft act, which it may decide to maintain, amend or withdraw. If it chooses to maintain the draft, the Commission will have, in a reasoned opinion, to justify why it considers that the draft complies with the principle of subsidiarity. This reasoned opinion, as well as the reasoned opinions of the national parliaments, will have to be transmitted to the EU legislator, for consideration in the legislative procedure. This will trigger a specific procedure:
  - before concluding the first reading under the ordinary legislative procedure, the legislator (Council and Parliament) shall consider the compatibility of the legislative proposal with the principle of subsidiarity, taking particular account of the reasons expressed and shared by the majority of national parliaments as well as the reasoned opinion of the Commission;
  - If, by a majority of 55 % of the members of the Council or a majority of the votes cast in the European Parliament, the legislator is of the opinion that the proposal is not compatible with the principle of subsidiarity, the legislative proposal shall not be given further consideration (the *Protocol on subsidiarity and proportionality* will be modified accordingly).

A new general Article will reflect the role of the national parliaments.

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<sup>3</sup> Therefore, the text of the Charter of fundamental rights will not be included in the Treaties.

*Presidency Conclusions – Brussels, 21/22 June 2007***Amendments to the EU Treaty****Annex 1*****Title I - Common provisions***

*The purpose of this Annex is to clarify the exact drafting where necessary*

1) *Insertion in the Preamble of the EU Treaty of the following second whereas clause<sup>\*15</sup>:*

"DRAWING INSPIRATION from the cultural, religious and humanist inheritance of Europe, from which have developed the universal values of the inviolable and inalienable rights of the human person, freedom, democracy, equality and the rule of law,"

2) *In Article 1, insertion of the following sentences:*

*At the end of the first subparagraph:* "... on which the Member States confer competences to attain objectives they have in common."

*To replace the last subparagraph:* "The Union shall be founded on the present Treaty and on the Treaty on the Functioning of the European Union. It shall replace and succeed the European Community."

2bis *Insertion of an Article 2 on the values of the Union.\**

3) *Replacement of Article 2 on the Union's objectives, renumbered 3, with the following text:<sup>16</sup>*

1. The Union's aim is to promote peace, its values and the well-being of its peoples.

2. The Union shall offer its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime.

3. The Union shall establish an internal market. It shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance.

It shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child.

It shall promote economic, social and territorial cohesion, and solidarity among Member States.

It shall respect its rich cultural and linguistic diversity, and shall ensure that Europe's cultural heritage is safeguarded and enhanced.

3 a. The Union shall establish an economic and monetary union whose currency is the euro.

4. In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter.

5. The Union shall pursue its objectives by appropriate means commensurate with the competences which are conferred upon it in the Treaties."

<sup>15</sup> Throughout this Annex, this sign (\*) indicates that the innovations to be inserted are the same as those agreed by the 2004 IGC.

<sup>16</sup> The following Protocol will be annexed to the Treaties:

*"Protocol on internal market and competition*

*The High Contracting Parties, considering that the internal market as set out in Article 3 of the Treaty on European Union includes a system ensuring that competition is not distorted*

*Have agreed that,*

*to this end, the Union shall, if necessary, take action under the provisions of the Treaties, including under Article 308 of the Treaty on the Functioning of the European Union."*

*Presidency Conclusions – Brussels, 21/22 June 2007*

- 4) *Replacement of Article 3 by an Article 4 on the relations between the Union and the Member States\**, with the addition of the following at the beginning, and of a sentence at the end of the present paragraph 1, renumbered 2:

"1. In accordance with Article [I-11], competences not conferred upon the Union in the Treaties remain with the Member States.

2. The Union shall respect the equality of Member States before the Treaties as well as their national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government. It shall respect their essential State functions, including ensuring the territorial integrity of the State, maintaining law and order and safeguarding national security. In particular, national security remains the sole responsibility of each Member State.

*(present paragraph 2 renumbered 3)*".

- 5) *Replacement of Article 6 on fundamental rights with a text reading as follows:*<sup>17-18-19-20</sup>

"1. The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of 7 December 2000, as adapted on [... 2007<sup>21</sup>], which shall have the same legal value as the Treaties.

<sup>17</sup> The IGC will agree the following Declaration: *"The Conference declares that:*

1. *The Charter of Fundamental Rights, which has legally binding force, confirms the fundamental rights guaranteed by the European Convention on Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States.*

2. *The Charter does not extend the field of application of Union law beyond the powers of the Union or establish any new power or task for the Union, or modify powers and tasks as defined by the Treaties."*

<sup>18</sup> Unilateral Declaration by Poland:

*"The Charter does not affect in any way the right of Member States to legislate in the sphere of public morality, family law, as well as the protection of human dignity and respect for human physical and moral integrity."*

<sup>19</sup> The following Protocol will be annexed to the Treaties:

*"The High Contracting Parties*

*Whereas in Article [xx] of the Treaty on European Union, the Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights;*

*Whereas the Charter is to be applied in strict accordance with the provisions of the aforementioned Article [xx] and Title VII of the Charter itself;*

*Whereas the aforementioned Article [xx] requires the Charter to be applied and interpreted by the courts of the United Kingdom strictly in accordance with the Explanations referred to in that Article;*

*Whereas the Charter contains both rights and principles;*

*Whereas the Charter contains both provisions which are civil and political in character and those which are economic and social in character;*

*Whereas the Charter reaffirms the rights, freedoms and principles recognised in the Union and makes those rights more visible, but does not create new rights or principles;*

*Recalling the United Kingdom's obligations under the Treaty on European Union, the Treaty on the Functioning of the European Union, and Union law generally;*

*Noting the wish of the United Kingdom to clarify certain aspects of the application of the Charter;*

*Desirous therefore of clarifying the application of the Charter in relation to the laws and administrative action of the United Kingdom and of its justiciability within the United Kingdom;*

*Reaffirming that references in this Protocol to the operation of specific provisions of the Charter are strictly without prejudice to the operation of other provisions of the Charter;*

*Reaffirming that this Protocol is without prejudice to the application of the Charter to other Member States;*

*Reaffirming that this Protocol is without prejudice to other obligations of the United Kingdom under the Treaty on European Union, the Treaty on the Functioning of the European Union, and Union law generally;*

*Have agreed upon the following provisions which shall be annexed to the Treaty on European Union:*

*Article 1*

1. *The Charter does not extend the ability of the Court of Justice, or any court or tribunal of the United Kingdom, to find that the laws, regulations or administrative provisions, practices or action of the United Kingdom are inconsistent with the fundamental rights, freedoms and principles that it reaffirms.*

2. *In particular, and for the avoidance of doubt, nothing in [Title IV] of the Charter creates justiciable rights applicable to the United Kingdom except in so far as the United Kingdom has provided for such rights in its national law.*

*Article 2*

*To the extent that a provision of the Charter refers to national laws and practices, it shall only apply in the United Kingdom to the extent that the rights or principles that it contains are recognised in the law or practices of the United Kingdom."*

<sup>20</sup> Two delegations reserved their right to join in the Protocol referred to in footnote 19.

<sup>21</sup> I.e. the version of the Charter as agreed in the 2004 IGC which will be re-enacted by the three Institutions in [2007]. It will be published in the *Official Journal of the European Union*.

*Presidency Conclusions – Brussels, 21/22 June 2007*

The provisions of the Charter shall not extend in any way the competences of the Union as defined in the Treaties.

The rights, freedoms and principles in the Charter shall be interpreted in accordance with the general provisions in Title VII of the Charter governing its interpretation and application and with due regard to the explanations referred to in the Charter, that set out the sources of those provisions."

2. The Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union's competences as defined in the Treaties.

3. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.

6) *Insertion of an Article 7bis on the Union and its neighbours\**.

***Title II - Provisions on democratic principles***

7) *Insertion of a new Article on the role of national parliaments in the Union reading as follows:*

"National parliaments shall contribute actively to the good functioning of the Union:

- a) through being informed by the institutions of the Union and having draft European legislative acts forwarded to them in accordance with the Protocol on the role of national parliaments in the European Union;
- b) by seeing to it that the principle of subsidiarity is respected in accordance with the procedures provided for in the Protocol on the application of the principles of subsidiarity and proportionality;
- c) by taking part, within the framework of the area of freedom, security and justice, in the evaluation mechanisms for the implementation of the Union policies in that area, in accordance with Article [III-260], and through being involved in the political monitoring of Europol and the evaluation of Eurojust's activities in accordance with Articles [III-276 and III-273];
- d) by taking part in the revision procedures of the Treaties, in accordance with Article [IV-443 and IV-444];
- e) by being notified of applications for accession to the Union, in accordance with Article [I-58];
- f) by taking part in the inter-parliamentary cooperation between national parliaments and with the European Parliament, in accordance with the Protocol on the role of national parliaments in the European Union."

***Title V - General provisions on the Union's external action and specific provisions on the Common Foreign and Security Policy***

8) *In Article 11, insertion of a paragraph 1 reading as follows (the current text of paragraph 1 being deleted).<sup>22</sup>*

1. The Union's competence in matters of common foreign and security policy shall cover all areas of foreign policy and all questions relating to the Union's security, including the progressive framing of a common defence policy that might lead to a common defence.

<sup>22</sup> The IGC will agree the following Declaration: "In addition to the specific procedures referred to in [paragraph 1 of Article 11], the Conference underlines that the provisions covering the Common Foreign and Security Policy including in relation to the High Representative of the Union for Foreign Affairs and Security Policy and the External Action Service will not affect the existing legal basis, responsibilities, and powers of each Member State in relation to the formulation and conduct of its foreign policy, its national diplomatic service, relations with third countries and participation in international organisations, including a Member State's membership of the Security Council of the UN.

The Conference also notes that the provisions covering the Common Foreign and Security Policy do not give new powers to the Commission to initiate decisions or increase the role of the European Parliament.

The Conference also recalls that the provisions governing the Common Security and Defence Policy do not prejudice the specific character of the security and defence policy of the Member States."

**PROTOCOL (No 3)**  
**ON THE EURO GROUP**

THE HIGH CONTRACTING PARTIES,

DESIRING to promote conditions for stronger economic growth in the European Union and, to that end, to develop ever-closer coordination of economic policies within the euro area,

CONSCIOUS of the need to lay down special provisions for enhanced dialogue between the Member States whose currency is the euro, pending the euro becoming the currency of all Member States of the Union,

HAVE AGREED UPON the following provisions, which are annexed to the Treaty on European Union and to the Treaty on the Functioning of the Union:

Article 1

The Ministers of the Member States whose currency is the euro shall meet informally. Such meetings shall take place, when necessary, to discuss questions related to the specific responsibilities they share with regard to the single currency. The Commission shall take part in the meetings. The European Central Bank shall be invited to take part in such meetings, which shall be prepared by the representatives of the Ministers with responsibility for finance of the Member States whose currency is the euro and of the Commission.

Article 2

The Ministers of the Member States whose currency is the euro shall elect a president for two and a half years, by a majority of those Member States.

**PROTOCOL (No 5)**  
**RELATING TO ARTICLE [I-9(2)]**  
**OF THE TREATY ON EUROPEAN UNION**  
**ON THE ACCESSION OF THE UNION TO THE EUROPEAN CONVENTION**  
**ON THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS**

THE HIGH CONTRACTING PARTIES

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty on European Union and to the Treaty on the Functioning of the Union:

Article 1

The agreement relating to the accession of the Union to the European Convention on the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as the "European Convention") provided for in Article [I-9(2)] of the Treaty on European Union shall make provision for preserving the specific characteristics of the Union and Union law, in particular with regard to:

- (a) the specific arrangements for the Union's possible participation in the control bodies of the European Convention;
- (b) the mechanisms necessary to ensure that proceedings by non-Member States and individual applications are correctly addressed to Member States and/or the Union as appropriate.

Article 2

The agreement referred to in Article 1 shall ensure that accession of the Union shall not affect the competences of the Union or the powers of its institutions. It shall ensure that nothing therein affects the situation of Member States in relation to the European Convention, in particular in relation to the Protocols thereto, measures taken by Member States derogating from the European Convention in accordance with Article 15 thereof and reservations to the European Convention made by Member States in accordance with Article 57 thereof.

Article 3

Nothing in the agreement referred to in Article 1 shall affect Article [III-375(2)] of the Treaty on the Functioning of the Union.



**PROTOCOL (No 7)****ON THE APPLICATION OF THE CHARTER OF FUNDAMENTAL RIGHTS  
TO THE UNITED KINGDOM**

THE HIGH CONTRACTING PARTIES,

WHEREAS in Article [I-9] of the Treaty on European Union, the Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights;

WHEREAS the Charter is to be applied in strict accordance with the provisions of the aforementioned Article [I-9] and Title VII of the Charter itself;

Whereas the aforementioned Article [I-9] requires the Charter to be applied and interpreted by the courts of the United Kingdom strictly in accordance with the explanations referred to in that Article;

WHEREAS the Charter contains both rights and principles;

WHEREAS the Charter contains both provisions which are civil and political in character and those which are economic and social in character;

WHEREAS the Charter reaffirms the rights, freedoms and principles recognised in the Union and makes those rights more visible, but does not create new rights or principles;

RECALLING the United Kingdom's obligations under the Treaty on European Union, the Treaty on the Functioning of the Union, and Union law generally;

NOTING the wish of the United Kingdom to clarify certain aspects of the application of the Charter;

DESIROUS therefore of clarifying the application of the Charter in relation to the laws and administrative action of the United Kingdom and of its justiciability within the United Kingdom;

REAFFIRMING that references in this Protocol to the operation of specific provisions of the Charter are strictly without prejudice to the operation of other provisions of the Charter;

REAFFIRMING that this Protocol is without prejudice to the application of the Charter to other Member States;

REAFFIRMING that this Protocol is without prejudice to other obligations of the United Kingdom under the Treaty on European Union, the Treaty on the Functioning of the Union, and Union law generally,

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty on European Union:

#### Article 1

1. The Charter does not extend the ability of the Court of Justice, or any court or tribunal of the United Kingdom, to find that the laws, regulations or administrative provisions, practices or action of the United Kingdom are inconsistent with the fundamental rights, freedoms and principles that it reaffirms.
2. In particular, and for the avoidance of doubt, nothing in Title IV of the Charter creates justiciable rights applicable to the United Kingdom except in so far as the United Kingdom has provided for such rights in its national law.

#### Article 2

To the extent that a provision of the Charter refers to national laws and practices, it shall only apply to the United Kingdom to the extent that the rights or principles that it contains are recognised in the law or practices of the United Kingdom.

**CONFERENCE  
OF THE REPRESENTATIVES OF THE GOVERNMENTS  
OF THE MEMBER STATES**

**Brussels, 23 July 2007 (26.07)  
(OR. fr)**

**CIG 3/07**

**NOTE**

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from: Presidency of the IGC  
dated: 23 July 2007  
to: Intergovernmental Conference (IGC)

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Subject: **IGC 2007**  
Draft declarations

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**DRAFT  
DECLARATIONS**

*N.B.:*

*This document is only a working document for examination by the IGC. The cross-references between Articles which appear in square brackets will, as usual, be corrected by the Legal/Linguistic experts when they finalise the text before the Treaty is signed.*

A. DECLARATIONS CONCERNING PROVISIONS OF THE TREATIES

1. Declaration on Article [I-9(2)] of the Treaty on European Union

The Conference agrees that the Union's accession to the European Convention on the Protection of Human Rights and Fundamental Freedoms should be arranged in such a way as to preserve the specific features of Union law. In this connection, the Conference notes the existence of a regular dialogue between the Court of Justice of the European Union and the European Court of Human Rights; such dialogue could be reinforced when the Union accedes to that Convention.

2. Declaration on Articles [I-22, I-27 and I-28] of the Treaty on European Union

In choosing the persons called upon to hold the offices of President of the European Council, President of the Commission and Union Minister for Foreign Affairs, due account is to be taken of the need to respect the geographical and demographic diversity of the Union and its Member States.

3. Declaration on Article [I-24(7)] of the Treaty on European Union concerning the European Council decision on the exercise of the Presidency of the Council

The Conference declares that the European Council should begin preparing the decision establishing the procedures for implementing the decision on the exercise of the Presidency of the Council as soon as the Treaty amending the Treaty on European Union and the Treaty establishing the European Community is signed, and should give its political approval within six months. The draft decision is set out below:

Draft decision of the European Council on the exercise of the Presidency of the Council

Article 1

1. The Presidency of the Council, with the exception of the Foreign Affairs configuration, shall be held by pre-established groups of three Member States for a period of 18 months. The groups shall be made up on a basis of equal rotation among the Member States, taking into account their diversity and geographical balance within the Union.

2. Each member of the group shall in turn chair for a six-month period all configurations of the Council, with the exception of the Foreign Affairs configuration. The other members of the group shall assist the Chair in all its responsibilities on the basis of a common programme. Members of the team may decide alternative arrangements among themselves.

9. Declaration on Article [I-51] of the Treaty on the Functioning of the Union

The Conference declares that, whenever rules on protection of personal data to be adopted on the basis of Article [I-51] could have direct implications for national security, due account will have to be taken of the specific characteristics of the matter. It recalls that the legislation presently applicable (see in particular Directive 95/46/EC) includes specific derogations in this regard.

10. Declaration on Article [I-57] of the Treaty on European Union

The Union will take into account the particular situation of small-sized countries which maintain specific relations of proximity with it.

11. Declaration on the proclamation of the Charter of Fundamental Rights by the European Parliament, the Council and the Commission

The Conference declares that the Charter of Fundamental Rights of the European Union will be solemnly proclaimed by the European Parliament, the Council and the Commission on the day the Treaty amending the Treaty on European Union and the Treaty establishing the European Community is signed. The text is as follows:

"The European Parliament, the Council and the Commission solemnly proclaim the following text as the Charter of Fundamental Rights of the European Union:

THE CHARTER OF FUNDAMENTAL RIGHTS OF THE UNION

*Preamble*

The peoples of Europe, in creating an ever closer union among them, are resolved to share a peaceful future based on common values.

Conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law. It places the individual at the heart of its activities, by establishing the citizenship of the Union and by creating an area of freedom, security and justice.

The Union contributes to the preservation and to the development of these common values while respecting the diversity of the cultures and traditions of the peoples of Europe as well as the national identities of the Member States and the organisation of their public authorities at national, regional and local levels; it seeks to promote balanced and sustainable development and ensures free movement of persons, services, goods and capital, and the freedom of establishment.

To this end, it is necessary to strengthen the protection of fundamental rights in the light of changes in society, social progress and scientific and technological developments by making those rights more visible in a Charter.

This Charter reaffirms, with due regard for the powers and tasks of the Union and the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Union and by the Council of Europe and the case law of the Court of Justice of the European Union and of the European Court of Human Rights. In this context the Charter will be interpreted by the courts of the Union and the Member States with due regard to the explanations prepared under the authority of the Praesidium of the Convention which drafted the Charter and updated under the responsibility of the Praesidium of the European Convention.

Enjoyment of these rights entails responsibilities and duties with regard to other persons, to the human community and to future generations.

The Union therefore recognises the rights, freedoms and principles set out hereafter.

## TITLE I DIGNITY

### *Article [II-61] Human dignity*

Human dignity is inviolable. It must be respected and protected.

### *Article [II-62] Right to life*

1. Everyone has the right to life.
2. No one shall be condemned to the death penalty, or executed.

*Article [II-63]*  
*Right to the integrity of the person*

1. Everyone has the right to respect for his or her physical and mental integrity.
2. In the fields of medicine and biology, the following must be respected in particular:
  - (a) the free and informed consent of the person concerned, according to the procedures laid down by law;
  - (b) the prohibition of eugenic practices, in particular those aiming at the selection of persons;
  - (c) the prohibition on making the human body and its parts as such a source of financial gain;
  - (d) the prohibition of the reproductive cloning of human beings.

*Article [II-64]*  
*Prohibition of torture and inhuman or degrading treatment or punishment*

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

*Article [II-65]*  
*Prohibition of slavery and forced labour*

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. Trafficking in human beings is prohibited.

TITLE II  
FREEDOMS

*Article [II-66]*  
*Right to liberty and security*

Everyone has the right to liberty and security of person.

*Article [II-67]*  
*Respect for private and family life*

Everyone has the right to respect for his or her private and family life, home and communications.

*Article [II-68]*  
*Protection of personal data*

1. Everyone has the right to the protection of personal data concerning him or her.
2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.
3. Compliance with these rules shall be subject to control by an independent authority.

*Article [II-69]*  
*Right to marry and right to found a family*

The right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights.

*Article [II-70]*  
*Freedom of thought, conscience and religion*

1. Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.
2. The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right.

*Article [II-71]*  
*Freedom of expression and information*

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.
2. The freedom and pluralism of the media shall be respected.



*Article [II-72]*  
*Freedom of assembly and of association*

1. Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests.
2. Political parties at Union level contribute to expressing the political will of the citizens of the Union.

*Article [II-73]*  
*Freedom of the arts and sciences*

The arts and scientific research shall be free of constraint. Academic freedom shall be respected.

*Article [II-74]*  
*Right to education*

1. Everyone has the right to education and to have access to vocational and continuing training.
2. This right includes the possibility to receive free compulsory education.
3. The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right.

*Article [II-75]*  
*Freedom to choose an occupation and right to engage in work*

1. Everyone has the right to engage in work and to pursue a freely chosen or accepted occupation.
2. Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State.
3. Nationals of third countries who are authorised to work in the territories of the Member States are entitled to working conditions equivalent to those of citizens of the Union.

*Article [II-76]*  
*Freedom to conduct a business*

The freedom to conduct a business in accordance with Union law and national laws and practices is recognised.

*Article [II-77]*  
*Right to property*

1. Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law insofar as is necessary for the general interest.
2. Intellectual property shall be protected.

*Article [II-78]*  
*Right to asylum*

The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaties.

*Article [II-79]*  
*Protection in the event of removal, expulsion or extradition*

1. Collective expulsions are prohibited.
2. No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.

TITLE III  
EQUALITY

*Article [II-80]*  
*Equality before the law*

Everyone is equal before the law.

*Article [II-81]*  
*Non-discrimination*

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.
2. Within the scope of application of the Treaties and without prejudice to any of their specific provisions, any discrimination on grounds of nationality shall be prohibited.

*Article [II-82]*  
*Cultural, religious and linguistic diversity*

The Union shall respect cultural, religious and linguistic diversity.

*Article [II-83]*  
*Equality between women and men*

Equality between women and men must be ensured in all areas, including employment, work and pay.

The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.

*Article [II-84]*  
*The rights of the child*

1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.
2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.
3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.

*Article [II-85]*  
*The rights of the elderly*

The Union recognises and respects the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life.

*Article [II-86]**Integration of persons with disabilities*

The Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.

TITLE IV  
SOLIDARITY

*Article [II-87]**Workers' right to information and consultation within the undertaking*

Workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions provided for by Union law and national laws and practices.

*Article [II-88]**Right of collective bargaining and action*

Workers and employers, or their respective organisations, have, in accordance with Union law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action.

*Article [II-89]**Right of access to placement services*

Everyone has the right of access to a free placement service.

*Article [II-90]**Protection in the event of unjustified dismissal*

Every worker has the right to protection against unjustified dismissal, in accordance with Union law and national laws and practices.

*Article [II-91]**Fair and just working conditions*

1. Every worker has the right to working conditions which respect his or her health, safety and dignity.
2. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

*Article [II-92]**Prohibition of child labour and protection of young people at work*

The employment of children is prohibited. The minimum age of admission to employment may not be lower than the minimum school-leaving age, without prejudice to such rules as may be more favourable to young people and except for limited derogations.

Young people admitted to work must have working conditions appropriate to their age and be protected against economic exploitation and any work likely to harm their safety, health or physical, mental, moral or social development or to interfere with their education.

*Article [II-93]**Family and professional life*

1. The family shall enjoy legal, economic and social protection.
2. To reconcile family and professional life, everyone shall have the right to protection from dismissal for a reason connected with maternity and the right to paid maternity leave and to parental leave following the birth or adoption of a child.

*Article [II-94]**Social security and social assistance*

1. The Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by Union law and national laws and practices.
2. Everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with Union law and national laws and practices.
3. In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Union law and national laws and practices.

*Article [II-95]  
Health care*

Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all the Union's policies and activities.

*Article [II-96]  
Access to services of general economic interest*

The Union recognises and respects access to services of general economic interest as provided for in national laws and practices, in accordance with the Treaties, in order to promote the social and territorial cohesion of the Union.

*Article [II-97]  
Environmental protection*

A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.

*Article [II-98]  
Consumer protection*

Union policies shall ensure a high level of consumer protection.

TITLE V  
CITIZENS' RIGHTS

*Article [II-99]  
Right to vote and to stand as a candidate at elections to the European Parliament*

1. Every citizen of the Union has the right to vote and to stand as a candidate at elections to the European Parliament in the Member State in which he or she resides, under the same conditions as nationals of that State.
2. Members of the European Parliament shall be elected by direct universal suffrage in a free and secret ballot.

*Article [II-100]  
Right to vote and to stand as a candidate at municipal elections*

Every citizen of the Union has the right to vote and to stand as a candidate at municipal elections in the Member State in which he or she resides under the same conditions as nationals of that State.

*Article [II-101]*  
*Right to good administration*

1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union.
2. This right includes:
  - (a) the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;
  - (b) the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;
  - (c) the obligation of the administration to give reasons for its decisions.
3. Every person has the right to have the Union make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.
4. Every person may write to the institutions of the Union in one of the languages of the Treaties and must have an answer in the same language.

*Article [II-102]*  
*Right of access to documents*

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of the institutions, bodies, offices and agencies of the Union, whatever their medium.

*Article [II-103]*  
*European Ombudsman*

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to refer to the European Ombudsman cases of maladministration in the activities of the institutions, bodies, offices or agencies of the Union, with the exception of the Court of Justice of the European Union acting in its judicial role.

*Article [II-104]*  
*Right to petition*

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to petition the European Parliament.

*Article [II-105]**Freedom of movement and of residence*

1. Every citizen of the Union has the right to move and reside freely within the territory of the Member States.
2. Freedom of movement and residence may be granted, in accordance with the Treaties, to nationals of third countries legally resident in the territory of a Member State.

*Article [II-106]**Diplomatic and consular protection*

Every citizen of the Union shall, in the territory of a third country in which the Member State of which he or she is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that Member State.

TITLE VI  
JUSTICE

*Article [II-107]**Right to an effective remedy and to a fair trial*

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

Legal aid shall be made available to those who lack sufficient resources insofar as such aid is necessary to ensure effective access to justice.

*Article [II-108]**Presumption of innocence and right of defence*

1. Everyone who has been charged shall be presumed innocent until proved guilty according to law.
2. Respect for the rights of the defence of anyone who has been charged shall be guaranteed.



*Article [II-109]**Principles of legality and proportionality of criminal offences and penalties*

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national law or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed. If, subsequent to the commission of a criminal offence, the law provides for a lighter penalty, that penalty shall be applicable.
2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles recognised by the community of nations.
3. The severity of penalties must not be disproportionate to the criminal offence.

*Article [II-110]**Right not to be tried or punished twice in criminal proceedings for the same criminal offence*

No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law.

TITLE VII  
GENERAL PROVISIONS GOVERNING THE INTERPRETATION  
AND APPLICATION OF THE CHARTER

*Article [II-111]**Field of application*

1. The provisions of this Charter are addressed to the institutions, bodies, offices and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers and respecting the limits of the powers of the Union as conferred on it in the Treaties.
2. The Charter does not extend the field of application of Union law beyond the powers of the Union or establish any new power or task for the Union, or modify powers and tasks as defined in the Treaties.

*Article [II-112]**Scope and interpretation of rights and principles*

1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.
2. Rights recognised by this Charter for which provision is made in the Treaties shall be exercised under the conditions and within the limits defined by those Treaties.
3. Insofar as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.
4. Insofar as this Charter recognises fundamental rights as they result from the constitutional traditions common to the Member States, those rights shall be interpreted in harmony with those traditions.
5. The provisions of this Charter which contain principles may be implemented by legislative and executive acts taken by institutions, bodies, offices and agencies of the Union, and by acts of Member States when they are implementing Union law, in the exercise of their respective powers. They shall be judicially cognisable only in the interpretation of such acts and in the ruling on their legality.
6. Full account shall be taken of national laws and practices as specified in this Charter.
7. The explanations drawn up as a way of providing guidance in the interpretation of the Charter of Fundamental Rights shall be given due regard by the courts of the Union and of the Member States.

*Article [II-113]**Level of protection*

Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by Union law and international law and by international agreements to which the Union or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' constitutions.

*Article [II-114]*  
*Prohibition of abuse of rights*

Nothing in this Charter shall be interpreted as implying any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms recognised in this Charter or at their limitation to a greater extent than is provided for herein."

12. Declaration concerning the explanations relating to the Charter of Fundamental Rights

The Conference takes note of the explanations relating to the Charter of Fundamental Rights prepared under the authority of the Praesidium of the Convention which drafted the Charter and updated under the responsibility of the Praesidium of the European Convention, as set out below.

EXPLANATIONS RELATING TO THE  
CHARTER OF FUNDAMENTAL RIGHTS

These explanations were originally prepared under the authority of the Praesidium of the Convention which drafted the Charter of Fundamental Rights of the European Union. They have been updated under the responsibility of the Praesidium of the European Convention, in the light of the drafting adjustments made to the text of the Charter by that Convention (notably to Articles [II-111 and II-112]) and of further developments of Union law. Although they do not as such have the status of law, they are a valuable tool of interpretation intended to clarify the provisions of the Charter.

TITLE I – DIGNITY

*Explanation on Article [II-61] – Human dignity*

The dignity of the human person is not only a fundamental right in itself but constitutes the real basis of fundamental rights. The 1948 Universal Declaration of Human Rights enshrined human dignity in its preamble: "Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world." In its judgment of 9 October 2001 in case C-377/98 *Netherlands v. European Parliament and Council*, [2001] ECR 7079, at grounds 70 – 77, the Court of Justice confirmed that a fundamental right to human dignity is part of Union law.

It results that none of the rights laid down in this Charter may be used to harm the dignity of another person, and that the dignity of the human person is part of the substance of the rights laid down in this Charter. It must therefore be respected, even where a right is restricted.

*Explanation on Article [II-62] – Right to life*

1. Paragraph 1 of this Article is based on the first sentence of Article 2(1) of the ECHR, which reads as follows:

"1. Everyone's right to life shall be protected by law..."

2. The second sentence of the provision, which referred to the death penalty, was superseded by the entry into force of Article 1 of Protocol No 6 to the ECHR, which reads as follows:

"The death penalty shall be abolished. No-one shall be condemned to such penalty or executed."

Article 2(2) of the Charter<sup>1</sup> is based on that provision.

3. The provisions of Article [2] of the Charter<sup>1</sup> correspond to those of the above Articles of the ECHR and its Protocol. They have the same meaning and the same scope, in accordance with Article [52(3)] of the Charter<sup>2</sup>. Therefore, the "negative" definitions appearing in the ECHR must be regarded as also forming part of the Charter:

- (a) Article 2(2) of the ECHR:

"Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

- (a) in defence of any person from unlawful violence;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) in action lawfully taken for the purpose of quelling a riot or insurrection."

- (b) Article 2 of Protocol No 6 to the ECHR:

"A State may make provision in its law for the death penalty in respect of acts committed in time of war or of imminent threat of war; such penalty shall be applied only in the instances laid down in the law and in accordance with its provisions..."

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<sup>1</sup> Article [II-62(2)].

<sup>2</sup> Article [II-112(3)].

*Explanation on Article [II-63] – Right to the integrity of the person*

1. In its judgment of 9 October 2001 in case C-377/98 Netherlands v. European Parliament and Council, [2001] ECR 7079, at grounds 70, 78 to 80, the Court of Justice confirmed that a fundamental right to human integrity is part of Union law and encompasses, in the context of medicine and biology, the free and informed consent of the donor and recipient.
2. The principles of Article [3] of the Charter<sup>3</sup> are already included in the Convention on Human Rights and Biomedicine, adopted by the Council of Europe (ETS 164 and additional protocol ETS 168). The Charter does not set out to depart from those principles, and therefore prohibits only reproductive cloning. It neither authorises nor prohibits other forms of cloning. Thus it does not in any way prevent the legislature from prohibiting other forms of cloning.
3. The reference to eugenic practices, in particular those aiming at the selection of persons, relates to possible situations in which selection programmes are organised and implemented, involving campaigns for sterilisation, forced pregnancy, compulsory ethnic marriage among others, all acts deemed to be international crimes in the Statute of the International Criminal Court adopted in Rome on 17 July 1998 (see its Article 7(1)(g)).

*Explanation on Article [II-64] - Prohibition of torture and inhuman or degrading treatment or punishment*

The right in Article [4] is the right guaranteed by Article 3 of the ECHR, which has the same wording: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment". By virtue of Article [52(3)] of the Charter<sup>4</sup>, it therefore has the same meaning and the same scope as the ECHR Article.

*Explanation on Article [II-65] – Prohibition of slavery and forced labour*

1. The right in Article [5]<sup>5</sup> (1) and (2) corresponds to Article 4(1) and (2) of the ECHR, which has the same wording. It therefore has the same meaning and scope as the ECHR Article, by virtue of Article [52(3)] of the Charter<sup>6</sup>. Consequently:
  - no limitation may legitimately affect the right provided for in paragraph 1;

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<sup>3</sup> Article [II-63].

<sup>4</sup> Article [II-112(3)].

<sup>5</sup> Article [II-65].

<sup>6</sup> Article [II-112(3)].

- in paragraph 2, "forced or compulsory labour" must be understood in the light of the "negative" definitions contained in Article 4(3) of the ECHR:

"For the purpose of this article the term "forced or compulsory labour" shall not include:

- (a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;
- (b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;
- (c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;
- (d) any work or service which forms part of normal civic obligations."

2. Paragraph 3 stems directly from human dignity and takes account of recent developments in organised crime, such as the organisation of lucrative illegal immigration or sexual exploitation networks. The Annex to the Europol Convention contains the following definition which refers to trafficking for the purpose of sexual exploitation: "traffic in human beings: means subjection of a person to the real and illegal sway of other persons by using violence or menaces or by abuse of authority or intrigue with a view to the exploitation of prostitution, forms of sexual exploitation and assault of minors or trade in abandoned children". Chapter VI of the Convention implementing the Schengen Agreement, which has been integrated into the Union's acquis, in which the United Kingdom and Ireland participate, contains the following wording in Article 27(1) which refers to illegal immigration networks: "The Contracting Parties undertake to impose appropriate penalties on any person who, for financial gain, assists or tries to assist an alien to enter or reside within the territory of one of the Contracting Parties in breach of that Contracting Party's laws on the entry and residence of aliens." On 19 July 2002, the Council adopted a framework decision on combating trafficking in human beings (OJ L 203/1) whose Article 1 defines in detail the offences concerning trafficking in human beings for the purposes of labour exploitation or sexual exploitation, which the Member States must make punishable by virtue of that framework decision.

## TITLE II – FREEDOMS

*Explanation on Article [II-66] – Right to liberty and security*

The rights in Article [6] are the rights guaranteed by Article 5 of the ECHR, and in accordance with Article [52(3)] of the Charter<sup>7</sup>, they have the same meaning and scope. Consequently, the limitations which may legitimately be imposed on them may not exceed those permitted by the ECHR, in the wording of Article 5:

- "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
  - (a) the lawful detention of a person after conviction by a competent court;
  - (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
  - (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
  - (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
  - (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
  - (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.
2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.
3. Everyone arrested or detained in accordance with the provisions of paragraph 1.c of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.
4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

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<sup>7</sup> Article [II-112(3)].

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

The rights enshrined in Article [6]<sup>8</sup> must be respected particularly when the European Parliament and the Council adopt legislative acts in the area of judicial cooperation in criminal matters, on the basis of Articles [III-270, III-271 and III-273] of the Treaty on the Functioning of the Union, notably to define common minimum provisions as regards the categorisation of offences and punishments and certain aspects of procedural law.

*Explanation on Article [II-67] – Respect for private and family life*

The rights guaranteed in Article 7 correspond to those guaranteed by Article 8 of the ECHR. To take account of developments in technology the word "correspondence" has been replaced by "communications".

In accordance with Article [52(3)]<sup>9</sup>, the meaning and scope of this right are the same as those of the corresponding article of the ECHR. Consequently, the limitations which may legitimately be imposed on this right are the same as those allowed by Article 8 of the ECHR:

- "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

*Explanation on Article [II-68] – Protection of personal data*

This Article has been based on Article 286 of the Treaty establishing the European Community and Directive 95/46/EC of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995) as well as on Article 8 of the ECHR and on the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data, which has been ratified by all the Member States. Article 286 of the EC Treaty is now replaced by Article [I-51] of the Treaty on the Functioning of the Union and Article [24] of the Treaty on European Union. Reference is also made to Regulation No 45/2001 of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001). The abovementioned Directive and Regulation contain conditions and limitations for the exercise of the right to the protection of personal data.

<sup>8</sup> Article [II-66].

<sup>9</sup> Article [II-112(3)].



*Explanation on Article [II-69] – Right to marry and right to found a family*

This Article is based on Article 12 of the ECHR, which reads as follows: "Men and women of marriageable age have the right to marry and to found a family according to the national laws governing the exercising of this right." The wording of the Article has been modernised to cover cases in which national legislation recognises arrangements other than marriage for founding a family. This Article neither prohibits nor imposes the granting of the status of marriage to unions between people of the same sex. This right is thus similar to that afforded by the ECHR, but its scope may be wider when national legislation so provides.

*Explanation on Article [II-70] – Freedom of thought, conscience and religion*

The right guaranteed in paragraph 1 corresponds to the right guaranteed in Article 9 of the ECHR and, in accordance with Article [52(3)] of the Charter<sup>10</sup>, has the same meaning and scope. Limitations must therefore respect Article 9(2) of the Convention, which reads as follows: "Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

The right guaranteed in paragraph 2 corresponds to national constitutional traditions and to the development of national legislation on this issue.

*Explanation on Article [II-71] – Freedom of expression and information*

1. Article [11]<sup>11</sup> corresponds to Article 10 of the European Convention on Human Rights, which reads as follows:

- "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

<sup>10</sup> Article [II-112(3)].

<sup>11</sup> Article [II-71].

Pursuant to Article [52(3)] of the Charter<sup>12</sup>, the meaning and scope of this right are the same as those guaranteed by the ECHR. The limitations which may be imposed on it may therefore not exceed those provided for in Article 10(2) of the Convention, without prejudice to any restrictions which competition law of the Union may impose on Member States' right to introduce the licensing arrangements referred to in the third sentence of Article 10(1) of the ECHR.

2. Paragraph 2 of this Article spells out the consequences of paragraph 1 regarding freedom of the media. It is based in particular on Court of Justice case law regarding television, particularly in case C-288/89 (judgment of 25 July 1991, Stichting Collectieve Antennevoorziening Gouda and others [1991] ECR I-4007), and on the Protocol on the system of public broadcasting in the Member States annexed to the EC Treaty and now to the Treaties, and on Council Directive 89/552/EC (particularly its seventeenth recital).

*Explanation on Article [II-72] – Freedom of assembly and of association*

1. Paragraph 1 of this Article corresponds to Article 11 of the ECHR, which reads as follows:

- "1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."

The meaning of the provisions of paragraph 1 of this Article [12]<sup>13</sup> is the same as that of the ECHR, but their scope is wider since they apply at all levels including European level. In accordance with Article [52(3)] of the Charter<sup>14</sup>, limitations on that right may not exceed those considered legitimate by virtue of Article 11(2) of the ECHR.

2. This right is also based on Article 11 of the Community Charter of the Fundamental Social Rights of Workers.

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<sup>12</sup> Article [II-112(3)].

<sup>13</sup> Article [II-72].

<sup>14</sup> Article [II-112(3)].

3. Paragraph 2 of this Article corresponds to Article [I-46(4)] of the Treaty on European Union.

*Explanation on Article [II-73] – Freedom of the arts and sciences*

This right is deduced primarily from the right to freedom of thought and expression. It is to be exercised having regard to Article [1]<sup>15</sup> and may be subject to the limitations authorised by Article 10 of the ECHR.

*Explanation on Article [II-74] – Right to education*

1. This Article is based on the common constitutional traditions of Member States and on Article 2 of the Protocol to the ECHR, which reads as follows:

"No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions."

It was considered useful to extend this Article to access to vocational and continuing training (see point 15 of the Community Charter of the Fundamental Social Rights of Workers and Article 10 of the Social Charter) and to add the principle of free compulsory education. As it is worded, the latter principle merely implies that as regards compulsory education, each child has the possibility of attending an establishment which offers free education. It does not require all establishments which provide education or vocational and continuing training, in particular private ones, to be free of charge. Nor does it exclude certain specific forms of education having to be paid for, if the State takes measures to grant financial compensation. Insofar as the Charter applies to the Union, this means that in its training policies the Union must respect free compulsory education, but this does not, of course, create new powers. Regarding the right of parents, it must be interpreted in conjunction with the provisions of Article [24]<sup>16</sup>.

2. Freedom to found public or private educational establishments is guaranteed as one of the aspects of freedom to conduct a business but it is limited by respect for democratic principles and is exercised in accordance with the arrangements defined by national legislation.

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<sup>15</sup> Article [II-61].

<sup>16</sup> Article [II-84].

*Explanation on Article [II-75] – Freedom to choose an occupation and right to engage in work*

Freedom to choose an occupation, as enshrined in Article 15(1), is recognised in Court of Justice case law (see inter alia judgment of 14 May 1974, Case 4/73 Nold [1974] ECR 491, paragraphs 12 to 14 of the grounds; judgment of 13 December 1979, Case 44/79 Hauer [1979] ECR 3727; judgment of 8 October 1986, Case 234/85 Keller [1986] ECR 2897, paragraph 8 of the grounds).

This paragraph also draws upon Article 1(2) of the European Social Charter, which was signed on 18 October 1961 and has been ratified by all the Member States, and on point 4 of the Community Charter of the Fundamental Social Rights of Workers of 9 December 1989. The expression "working conditions" is to be understood in the sense of Article [III-213] of the Treaty on the Functioning of the Union.

Paragraph 2 deals with the three freedoms guaranteed by Articles [I-4 and III-133, III-137 and III-144] of the Treaty on the Functioning of the Union, namely freedom of movement for workers, freedom of establishment and freedom to provide services.

Paragraph 3 has been based on Article [137(1)(g)] of the Treaty on the Functioning of the Union, and on Article 19(4) of the European Social Charter signed on 18 October 1961 and ratified by all the Member States. Article [52(2)] of the Charter<sup>17</sup> is therefore applicable. The question of recruitment of seamen having the nationality of third States for the crews of vessels flying the flag of a Member State of the Union is governed by Union law and national legislation and practice.

*Explanation on Article [II-76] – Freedom to conduct a business*

This Article is based on Court of Justice case law which has recognised freedom to exercise an economic or commercial activity (see judgments of 14 May 1974, Case 4/73 Nold [1974] ECR 491, paragraph 14 of the grounds, and of 27 September 1979, Case 230-78 SPA Eridiana and others [1979] ECR 2749, paragraphs 20 and 31 of the grounds) and freedom of contract (see inter alia Sukkerfabriken Nykøbing judgment, Case 151/78 [1979] ECR 1, paragraph 19 of the grounds, and judgment of 5 October 1999, C-240/97 Spain v. Commission, [1999] ECR I-6571, paragraph 99 of the grounds) and Article [97b(1) and (3)] of the Treaty on the Functioning of the Union, which recognises free competition. Of course, this right is to be exercised with respect for Union law and national legislation. It may be subject to the limitations provided for in Article [52(1)] of the Charter<sup>18</sup>.

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<sup>17</sup> Article [II-112(2)].

<sup>18</sup> Article [II-112(1)].

*Explanation on Article [II-77] – Right to property*

This Article is based on Article 1 of the Protocol to the ECHR:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

This is a fundamental right common to all national constitutions. It has been recognised on numerous occasions by the case law of the Court of Justice, initially in the Hauer judgment (13 December 1979, ECR [1979] 3727). The wording has been updated but, in accordance with Article [52(3)]<sup>19</sup>, the meaning and scope of the right are the same as those of the right guaranteed by the ECHR and the limitations may not exceed those provided for there.

Protection of intellectual property, one aspect of the right of property, is explicitly mentioned in paragraph 2 because of its growing importance and Community secondary legislation. Intellectual property covers not only literary and artistic property but also inter alia patent and trademark rights and associated rights. The guarantees laid down in paragraph 1 shall apply as appropriate to intellectual property.

*Explanation on Article [II-78] – Right to asylum*

The text of the Article has been based on TEC Article 63, now replaced by Article [III-266] of the Treaty on the Functioning of the Union, which requires the Union to respect the Geneva Convention on refugees. Reference should be made to the Protocols relating to the United Kingdom and Ireland annexed to the Treaties and to Denmark to determine the extent to which those Member States implement Union law in this area and the extent to which this Article is applicable to them. This Article is in line with the Protocol on Asylum annexed to the Treaties.

*Explanation on Article [II-79] – Protection in the event of removal, expulsion or extradition*

Paragraph 1 of this Article has the same meaning and scope as Article 4 of Protocol No 4 to the ECHR concerning collective expulsion. Its purpose is to guarantee that every decision is based on a specific examination and that no single measure can be taken to expel all persons having the nationality of a particular State (see also Article 13 of the Covenant on Civil and Political Rights).

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<sup>19</sup> Article [II-112(3)].

Paragraph 2 incorporates the relevant case law from the European Court of Human Rights regarding Article 3 of the ECHR (see *Ahmed v. Austria*, judgment of 17 December 1996, [1996] ECR VI 2206 and *Soering*, judgment of 7 July 1989).

### TITLE III – EQUALITY

#### *Explanation on Article [II-80] – Equality before the law*

This Article corresponds to a general principle of law which is included in all European constitutions and has also been recognised by the Court of Justice as a basic principle of Community law (judgment of 13 November 1984, Case 283/83 *Racke* [1984] ECR 3791, judgment of 17 April 1997, Case 15/95 *EARL* [1997] ECR I-1961, and judgment of 13 April 2000, Case 292/97 *Karlsson* [2000] ECR 2737).

#### *Explanation on Article [II-81] – Non-discrimination*

Paragraph 1 draws on Article 13 of the EC Treaty, now replaced by Article [III-124] of the Treaty on the Functioning of the Union, Article 14 of the ECHR and Article 11 of the Convention on Human Rights and Biomedicine as regards genetic heritage. Insofar as this corresponds to Article 14 of the ECHR, it applies in compliance with it.

There is no contradiction or incompatibility between paragraph 1 and Article [III-124] of the Treaty on the Functioning of the Union which has a different scope and purpose: Article [III-124] confers power on the Union to adopt legislative acts, including harmonisation of the Member States' laws and regulations, to combat certain forms of discrimination, listed exhaustively in that Article. Such legislation may cover action of Member State authorities (as well as relations between private individuals) in any area within the limits of the Union's powers. In contrast, the provision in paragraph 1 of Article [21]<sup>20</sup> does not create any power to enact anti-discrimination laws in these areas of Member State or private action, nor does it lay down a sweeping ban of discrimination in such wide-ranging areas. Instead, it only addresses discriminations by the institutions and bodies of the Union themselves, when exercising powers conferred under the Treaties, and by Member States only when they are implementing Union law. Paragraph 1 therefore does not alter the extent of powers granted under Article [III-124] nor the interpretation given to that Article.

Paragraph 2 corresponds to Article [I-4(2)] of the Treaty on the Functioning of the Union and must be applied in compliance with that Article.

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<sup>20</sup> Article [II-81].

*Explanation on Article [II-82] – Cultural, religious and linguistic diversity*

This Article has been based on Article 6 of the Treaty on European Union and on Article 151(1) and (4) of the EC Treaty, now replaced by Article [III-280(1) and (4)] of the Treaty on the Functioning of the Union, concerning culture. Respect for cultural and linguistic diversity is now also laid down in Article [I-3(3)] of the Treaty on European Union. The Article is also inspired by Declaration No 11 to the Final Act of the Amsterdam Treaty on the status of churches and non-confessional organisations, now taken over in Article [I-52] of the Treaty on the Functioning of the Union.

*Explanation on Article [II-83] – Equality between women and men*

The first paragraph has been based on Articles 2 and 3(2) of the EC Treaty, now replaced by Article [I-3] of the Treaty on European Union and Article [III-116] of the Treaty on the Functioning of the Union which impose the objective of promoting equality between men and women on the Union, and on Article [141(1)] of the Treaty on the Functioning of the Union. It draws on Article 20 of the revised European Social Charter of 3 May 1996 and on point 16 of the Community Charter on the rights of workers.

It is also based on Article [141(3)] of the Treaty on the Functioning of the Union and Article 2(4) of Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.

The second paragraph takes over in shorter form Article [III-214(4)] of the Treaty on the Functioning of the Union which provides that the principle of equal treatment does not prevent the maintenance or adoption of measures providing for specific advantages in order to make it easier for the under-represented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers. In accordance with Article [52(2)]<sup>21</sup>, the present paragraph does not amend Article [III-214(4)].

*Explanation on Article [II-84] – The rights of the child*

This Article is based on the New York Convention on the Rights of the Child signed on 20 November 1989 and ratified by all the Member States, particularly Articles 3, 9, 12 and 13 thereof.

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<sup>21</sup> Article [II-112(2)].

Paragraph 3 takes account of the fact that, as part of the establishment of an area of freedom, security and justice, Union legislation on civil matters having cross-border implications, for which Article [III-269] of the Treaty on the Functioning of the Union confers power, may include notably visiting rights ensuring that children can maintain on a regular basis a personal and direct contact with both his or her parents.

*Explanation on Article [II-85] – The rights of the elderly*

This Article draws on Article 23 of the revised European Social Charter and Articles 24 and 25 of the Community Charter of the Fundamental Social Rights of Workers. Of course, participation in social and cultural life also covers participation in political life.

*Explanation on Article [II-86] – Integration of persons with disabilities*

The principle set out in this Article is based on Article 15 of the European Social Charter and also draws on point 26 of the Community Charter of the Fundamental Social Rights of Workers.

#### TITLE IV – SOLIDARITY

*Explanation on Article [II-87] – Workers' right to information and consultation within the undertaking*

This Article appears in the revised European Social Charter (Article 21) and in the Community Charter on the rights of workers (points 17 and 18). It applies under the conditions laid down by Union law and by national laws. The reference to appropriate levels refers to the levels laid down by Union law or by national laws and practices, which might include the European level when Union legislation so provides. There is a considerable Union *acquis* in this field: Articles [III-211 and III-212] of the Treaty on the Functioning of the Union, and Directives 2002/14/EC (general framework for informing and consulting employees in the European Community), 98/59/EC (collective redundancies), 2001/23/EC (transfers of undertakings) and 94/45/EC (European works councils).



*Explanation on Article [II-88] – Right of collective bargaining and action*

This Article is based on Article 6 of the European Social Charter and on the Community Charter of the Fundamental Social Rights of Workers (points 12 to 14). The right of collective action was recognised by the European Court of Human Rights as one of the elements of trade union rights laid down by Article 11 of the ECHR. As regards the appropriate levels at which collective negotiation might take place, see the explanation given for the above Article. The modalities and limits for the exercise of collective action, including strike action, come under national laws and practices, including the question of whether it may be carried out in parallel in several Member States.

*Explanation on Article [II-89] – Right of access to placement services*

This Article is based on Article 1(3) of the European Social Charter and point 13 of the Community Charter of the Fundamental Social Rights of Workers.

*Explanation on Article [II-90] – Protection in the event of unjustified dismissal*

This Article draws on Article 24 of the revised Social Charter. See also Directive 2001/23/EC on the safeguarding of employees' rights in the event of transfers of undertakings, and Directive 80/987/EEC on the protection of employees in the event of the insolvency of their employer, as amended by Directive 2002/74/EC.

*Explanation on Article [II-91] – Fair and just working conditions*

1. Paragraph 1 of this Article is based on Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work. It also draws on Article 3 of the Social Charter and point 19 of the Community Charter on the rights of workers, and, as regards dignity at work, on Article 26 of the revised Social Charter. The expression "working conditions" is to be understood in the sense of Article [III-213] of the Treaty on the Functioning of the Union.
2. Paragraph 2 is based on Directive 93/104/EC concerning certain aspects of the organisation of working time, Article 2 of the European Social Charter and point 8 of the Community Charter on the rights of workers.

*Explanation on Article [II-92] – Prohibition of child labour and protection of young people at work*

This Article is based on Directive 94/33/EC on the protection of young people at work, Article 7 of the European Social Charter and points 20 to 23 of the Community Charter of the Fundamental Social Rights of Workers.

*Explanation on Article [II-93] – Family and professional life*

Article [33(1)]<sup>22</sup> is based on Article 16 of the European Social Charter.

The second paragraph draws on Council Directive 92/85/EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding and Directive 96/34/EC on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC. It is also based on Article 8 (protection of maternity) of the European Social Charter and draws on Article 27 (right of workers with family responsibilities to equal opportunities and equal treatment) of the revised Social Charter. "Maternity" covers the period from conception to weaning.

*Explanation on Article [II-94] – Social security and social assistance*

The principle set out in Article [34(1)]<sup>23</sup> is based on Articles 137 and 140 of the Treaty on the Functioning of the Union, Article 12 of the European Social Charter and point 10 of the Community Charter on the rights of workers. The Union must respect it when exercising the powers conferred on it by Articles [III-210 and III-213] of the Treaty on the Functioning of the Union. The reference to social services relates to cases in which such services have been introduced to provide certain advantages but does not imply that such services must be created where they do not exist. "Maternity" must be understood in the same sense as in the preceding Article.

Paragraph 2 is based on Articles 12(4) and 13(4) of the European Social Charter and point 2 of the Community Charter of the Fundamental Social Rights of Workers and reflects the rules arising from Regulation No 1408/71 and Regulation No 1612/68.

Paragraph 3 draws on Article 13 of the European Social Charter and Articles 30 and 31 of the revised Social Charter and point 10 of the Community Charter. The Union must respect it in the context of policies based on Article [III-210] of the Treaty on the Functioning of the Union.

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<sup>22</sup> Article [II-93].

<sup>23</sup> Article [II-94].

*Explanation on Article [II-95] – Health care*

The principles set out in this Article are based on Article 152 of the EC Treaty, now replaced by Article [III-278] of the Treaty on the Functioning of the Union, and on Articles 11 and 13 of the European Social Charter. The second sentence of the Article takes over Article III-278(1).

*Explanation on Article [II-96] – Access to services of general economic interest*

This Article is fully in line with Article [III-122] of the Treaty on the Functioning of the Union and does not create any new right. It merely sets out the principle of respect by the Union for the access to services of general economic interest as provided for by national provisions, when those provisions are compatible with Union law.

*Explanation on Article [II-97] – Environmental protection*

The principles set out in this Article have been based on Articles 2, 6 and 174 of the EC Treaty, which have now been replaced by Article [I-3(3)] of the Treaty on European Union and Articles [III-119 and III-233] of the Treaty on the Functioning of the Union.

It also draws on the provisions of some national constitutions.

*Explanation on Article [II-98] – Consumer protection*

The principles set out in this Article have been based on Article [153] of the Treaty on the Functioning of the Union.

## TITLE V – CITIZENS' RIGHTS

*Explanation on Article [II-99] – Right to vote and to stand as a candidate at elections to the European Parliament*

Article [39]<sup>24</sup> applies under the conditions laid down in the Treaties, in accordance with Article 52(2) of the Charter<sup>25</sup>. Article 39(1) corresponds to the right guaranteed in Article [I-10(2)] of the Treaty on the Functioning of the Union (cf. also the legal base in Article [III-126] of the Treaty on the Functioning of the Union for the adoption of detailed arrangements for the exercise of that right) and Article 39(2) corresponds to Article [I-20(2)] of the Treaty on European Union. Article 39(2) takes over the basic principles of the electoral system in a democratic State.

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<sup>24</sup> Article [II-99].

<sup>25</sup> Article [II-112(2)].

*Explanation on Article [II-100] – Right to vote and to stand as a candidate at municipal elections*

This Article corresponds to the right guaranteed by Article [I-10(2)] of the Treaty on the Functioning of the Union (cf. also the legal base in Article [III-126] of the Treaty on the Functioning of the Union for the adoption of detailed arrangements for the exercise of that right). In accordance with Article 52(2) of the Charter, it applies under the conditions defined in these Articles in the Treaties.

*Explanation on Article [II-101] – Right to good administration*

Article [41]<sup>26</sup> is based on the existence of the Union as subject to the rule of law whose characteristics were developed in the case law which enshrined inter alia good administration as a general principle of law (see inter alia Court of Justice judgment of 31 March 1992 in Case C-255/90 P, *Burban* [1992] ECR I-2253, and Court of First Instance judgments of 18 September 1995 in Case T-167/94 *Nölle* [1995] ECR II-2589, and 9 July 1999 in Case T-231/97 *New Europe Consulting and others* [1999] ECR II-2403). The wording for that right in the first two paragraphs results from the case law (Court of Justice judgment of 15 October 1987 in Case 222/86 *Heylens* [1987] ECR 4097, paragraph 15 of the grounds, judgment of 18 October 1989 in Case 374/87 *Orkem* [1989] ECR 3283, judgment of 21 November 1991 in Case C-269/90 *TU München* [1991] ECR I-5469, and Court of First Instance judgments of 6 December 1994 in Case T-450/93 *Lisrestal* [1994] ECR II-1177, 18 September 1995 in Case T-167/94 *Nölle* [1995] ECR II-258) and the wording regarding the obligation to give reasons comes from Article [253] of the Treaty on the Functioning of the Union (cf. also the legal base in Article [III-398] of the Treaty on the Functioning of the Union for the adoption of legislation in the interest of an open, efficient and independent European administration).

Paragraph 3 reproduces the right now guaranteed by Article [III-431] of the Treaty on the Functioning of the Union. Paragraph 4 reproduces the right now guaranteed by Articles [I-10(2)(d)] and [III-129] of the Treaty on the Functioning of the Union. In accordance with Article [52(2)] of the Charter<sup>27</sup>, those rights are to be applied under the conditions and within the limits defined by the Treaties.

The right to an effective remedy, which is an important aspect of this question, is guaranteed in Article [47] of this Charter<sup>28</sup>.

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<sup>26</sup> Article [II-101].

<sup>27</sup> Article [II-112(2)].

<sup>28</sup> Article [II-107].

*Explanation on Article [II-102] – Right of access to documents*

The right guaranteed in this Article has been taken over from Article 255 of the EC Treaty, on the basis of which Regulation No 1049/2001 has subsequently been adopted. The European Convention has extended this right to documents of institutions, bodies and agencies generally, regardless of their form, see Article [I-50(3)] of the Treaty on the Functioning of the Union. In accordance with Article [52(2)] of the Charter<sup>29</sup>, the right of access to documents is exercised under the conditions and within the limits for which provision is made in Articles [I-50(3) and III-399] of the Treaty on the Functioning of the Union.

*Explanation on Article [II-103] – European Ombudsman*

The right guaranteed in this Article is the right guaranteed by Articles [I-10 and III-335] of the Treaty on the Functioning of the Union. In accordance with Article [52(2)] of the Charter<sup>30</sup>, it applies under the conditions defined in these two Articles.

*Explanation on Article [II-104] – Right to petition*

The right guaranteed in this Article is the right guaranteed by Articles [I-10 and III-334] of the Treaty on the Functioning of the Union. In accordance with Article 52(2) of the Charter, it applies under the conditions defined in these two Articles.

*Explanation on Article [II-105] – Freedom of movement and of residence*

The right guaranteed by paragraph 1 is the right guaranteed by Article [I-10(2)(a)] of the Treaty on the Functioning of the Union (cf. also the legal base in Article III-125; and the judgment of the Court of Justice of 17 September 2002, C-413/99 Baumbast, [2002] ECR 709). In accordance with Article [52(2)] of the Charter<sup>31</sup>, those rights are to be applied under the conditions and within the limits defined by the Treaties.

Paragraph 2 refers to the power granted to the Union by Articles [III-265 to III-267] of the Treaty on the Functioning of the Union. Consequently, the granting of this right depends on the institutions exercising that power.

*Explanation on Article [II-106] – Diplomatic and consular protection*

The right guaranteed in this Article is the right guaranteed by Article [I-10] of the Treaty on the Functioning of the Union. (cf. also the legal base in Article [III-127]). In accordance with Article [52(2)] of the Charter<sup>32</sup>, it applies under the conditions defined in these two Articles.

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<sup>29</sup> Article [II-112(2)].

<sup>30</sup> Article [II-112(2)].

<sup>31</sup> Article [II-112(2)].

<sup>32</sup> Article [II-112(2)].

## TITLE VI – JUSTICE

*Explanation on Article [II-107] – Right to an effective remedy and to a fair trial*

The first paragraph is based on Article 13 of the ECHR:

"Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

However, in Union law the protection is more extensive since it guarantees the right to an effective remedy before a court. The Court of Justice enshrined that right in its judgment of 15 May 1986 as a general principle of Union law (Case 222/84 Johnston [1986] ECR 1651; see also judgment of 15 October 1987, Case 222/86 Heylens [1987] ECR 4097 and judgment of 3 December 1992, Case C-97/91 Borelli [1992] ECR I-6313). According to the Court, that general principle of Union law also applies to the Member States when they are implementing Union law. The inclusion of this precedent in the Charter has not been intended to change the system of judicial review laid down by the Treaties, and particularly the rules relating to admissibility for direct actions before the Court of Justice of the European Union. The European Convention has considered the Union's system of judicial review including the rules on admissibility, and confirmed them while amending them as to certain aspects, as reflected in Articles [III-353 to III-381] of the Treaty on the Functioning of the Union, and in particular in Article III-365(4). Article [47]<sup>33</sup> applies to the institutions of the Union and of Member States when they are implementing Union law and does so for all rights guaranteed by Union law.

The second paragraph corresponds to Article 6(1) of the ECHR which reads as follows:

"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice."

In Union law, the right to a fair hearing is not confined to disputes relating to civil law rights and obligations. That is one of the consequences of the fact that the Union is a community based on the rule of law as stated by the Court in Case 294/83, "Les Verts" v. European Parliament (judgment of 23 April 1986, [1988] ECR 1339). Nevertheless, in all respects other than their scope, the guarantees afforded by the ECHR apply in a similar way to the Union.

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<sup>33</sup> Article [II-107].

With regard to the third paragraph, it should be noted that in accordance with the case law of the European Court of Human Rights, provision should be made for legal aid where the absence of such aid would make it impossible to ensure an effective remedy (ECHR Judgment of 9.10.1979, Airey, Series A, Volume 32, 11). There is also a system of legal assistance for cases before the Court of Justice of the European Union.

*Explanation on Article [II-108] – Presumption of innocence and right of defence*

Article 48 is the same as Article 6(2) and (3) of the ECHR, which reads as follows:

- "2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
3. Everyone charged with a criminal offence has the following minimum rights:
- (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
  - (b) to have adequate time and facilities for the preparation of his defence;
  - (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
  - (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
  - (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court."

In accordance with Article 52(3)<sup>34</sup>, this right has the same meaning and scope as the right guaranteed by the ECHR.

*Explanation on Article [II-109] – Principles of legality and proportionality of criminal offences and penalties*

This Article follows the traditional rule of the non-retroactivity of laws and criminal sanctions. There has been added the rule of the retroactivity of a more lenient penal law, which exists in a number of Member States and which features in Article 15 of the Covenant on Civil and Political Rights.

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<sup>34</sup> Article [II-112(2)].

Article 7 of the ECHR is worded as follows:

- "1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.
2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations."

In paragraph 2, the reference to "civilised" nations has been deleted; this does not change the meaning of this paragraph, which refers to crimes against humanity in particular. In accordance with Article 52(3)<sup>35</sup>, the right guaranteed here therefore has the same meaning and scope as the right guaranteed by the ECHR.

Paragraph 3 states the general principle of proportionality between penalties and criminal offences which is enshrined in the common constitutional traditions of the Member States and in the case law of the Court of Justice of the Communities.

*Explanation on Article [II-110] – Right not to be tried or punished twice in criminal proceedings for the same criminal offence*

Article 4 of Protocol No 7 to the ECHR reads as follows:

- "1. No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State.
2. The provisions of the preceding paragraph shall not prevent the reopening of the case in accordance with the law and the penal procedure of the State concerned, if there is evidence of new or newly discovered facts, or if there has been a fundamental defect in the previous proceedings, which could affect the outcome of the case.
3. No derogation from this Article shall be made under Article 15 of the Convention."

The "non bis in idem" rule applies in Union law (see, among the many precedents, the judgment of 5 May 1966, Cases 18/65 and 35/65, *Gutmann v. Commission* [1966] ECR 103 and a recent case, the decision of the Court of First Instance of 20 April 1999, *Joined Cases T-305/94 and others, Limburgse Vinyl Maatschappij NV v. Commission* [1999] ECR II-931). The rule prohibiting cumulation refers to cumulation of two penalties of the same kind, that is to say criminal law penalties.

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<sup>35</sup> Article [II-112(2)].



In accordance with Article [50]<sup>36</sup>, the "non bis in idem" rule applies not only within the jurisdiction of one State but also between the jurisdictions of several Member States. That corresponds to the *acquis* in Union law; see Articles 54 to 58 of the Schengen Convention and the judgment of the Court of Justice of 11 February 2003, C-187/01 Gözütok (not yet published), Article 7 of the Convention on the Protection of the European Communities' Financial Interests and Article 10 of the Convention on the fight against corruption. The very limited exceptions in those Conventions permitting the Member States to derogate from the "non bis in idem" rule are covered by the horizontal clause in Article 52(1)<sup>37</sup> of the Charter concerning limitations. As regards the situations referred to by Article 4 of Protocol No 7, namely the application of the principle within the same Member State, the guaranteed right has the same meaning and the same scope as the corresponding right in the ECHR.

## TITLE VII – GENERAL PROVISIONS GOVERNING THE INTERPRETATION AND APPLICATION OF THE CHARTER

### *Explanation on Article [II-111] – Field of application*

The aim of Article [51]<sup>38</sup> is to determine the scope of the Charter. It seeks to establish clearly that the Charter applies primarily to the institutions and bodies of the Union, in compliance with the principle of subsidiarity. This provision was drafted in keeping with Article [6(2)] of the Treaty on European Union, which required the Union to respect fundamental rights, and with the mandate issued by Cologne European Council. The term "institutions" is enshrined in the Treaties. The expression "bodies, offices and agencies" is commonly used in the Treaties to refer to all the authorities set up by the Treaties or by secondary legislation (see, e.g., Articles [I-50 or I-51] of the Treaty on the Functioning of the Union).

As regards the Member States, it follows unambiguously from the case law of the Court of Justice that the requirement to respect fundamental rights defined in a Union context is only binding on the Member States when they act in the scope of Union law (judgment of 13 July 1989, Case 5/88 Wachauf [1989] ECR 2609; judgment of 18 June 1991, ERT [1991] ECR I-2925; judgment of 18 December 1997, C-309/96 Annibaldi [1997] ECR I-7493). The Court of Justice confirmed this case law in the following terms: "In addition, it should be remembered that the requirements flowing from the protection of fundamental rights in the Community legal order are also binding on Member States when they implement Community rules ..." (judgment of 13 April 2000, Case C-292/97, [2000] ECR 2737, paragraph 37 of the grounds). Of course this rule, as enshrined in this Charter, applies to the central authorities as well as to regional or local bodies, and to public organisations, when they are implementing Union law.

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<sup>36</sup> Article [II-110].

<sup>37</sup> Article [II-112(2)].

<sup>38</sup> Article [II-111].

Paragraph 2, together with the second sentence of paragraph 1, confirms that the Charter may not have the effect of extending the competences and tasks which the Treaties confer on the Union. Explicit mention is made here of the logical consequences of the principle of subsidiarity and of the fact that the Union only has those powers which have been conferred upon it. The fundamental rights as guaranteed in the Union do not have any effect other than in the context of the powers determined by the Treaties. Consequently, an obligation, pursuant to the second sentence of paragraph 1, for the Union's institutions to promote principles laid down in the Charter may arise only within the limits of these same powers.

Paragraph 2 also confirms that the Charter may not have the effect of extending the field of application of Union law beyond the powers of the Union as established in the Treaties. The Court of Justice has already established this rule with respect to the fundamental rights recognised as part of Union law (judgment of 17 February 1998, C-249/96 Grant, 1998 ECR I-621, paragraph 45 of the grounds). In accordance with this rule, it goes without saying that the reference to the Charter in Article [I-9] of the Treaty on European Union cannot be understood as extending by itself the range of Member State action considered to be "implementation of Union law" (within the meaning of paragraph 1 and the above-mentioned case law).

#### *Explanation on Article [II-112] – Scope and interpretation of rights and principles*

The purpose of Article [52]<sup>39</sup> is to set the scope of the rights and principles of the Charter, and to lay down rules for their interpretation. Paragraph 1 deals with the arrangements for the limitation of rights. The wording is based on the case law of the Court of Justice: "... it is well established in the case law of the Court that restrictions may be imposed on the exercise of fundamental rights, in particular in the context of a common organisation of the market, provided that those restrictions in fact correspond to objectives of general interest pursued by the Community and do not constitute, with regard to the aim pursued, disproportionate and unreasonable interference undermining the very substance of those rights" (judgment of 13 April 2000, Case C-292/97, paragraph 45 of the grounds). The reference to general interests recognised by the Union covers both the objectives mentioned in Article [I-2] of the Treaty on European Union and other interests protected by specific provisions of the Treaties such as Article [I-5(1)] of the Treaty on European Union and Articles III-133(3), III-154 and III-436 of the Treaty on the Functioning of the Union.

Paragraph 2 refers to rights which were already expressly guaranteed in the Treaty establishing the European Community and have been recognised in the Charter, and which are now found in the Treaties (notably the rights derived from Union citizenship). It clarifies that such rights remain subject to the conditions and limits applicable to the Union law on which they are based, and for which provision is made in the Treaties. The Charter does not alter the system of rights conferred by the EC Treaty and taken over by the Treaties.

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<sup>39</sup> Article [II-112].

Paragraph 3 is intended to ensure the necessary consistency between the Charter and the ECHR by establishing the rule that, insofar as the rights in the present Charter also correspond to rights guaranteed by the ECHR, the meaning and scope of those rights, including authorised limitations, are the same as those laid down by the ECHR. This means in particular that the legislator, in laying down limitations to those rights, must comply with the same standards as are fixed by the detailed limitation arrangements laid down in the ECHR, which are thus made applicable for the rights covered by this paragraph, without thereby adversely affecting the autonomy of Union law and of that of the Court of Justice of the European Union.

The reference to the ECHR covers both the Convention and the Protocols to it. The meaning and the scope of the guaranteed rights are determined not only by the text of those instruments, but also by the case law of the European Court of Human Rights and by the Court of Justice of the European Union. The last sentence of the paragraph is designed to allow the Union to guarantee more extensive protection. In any event, the level of protection afforded by the Charter may never be lower than that guaranteed by the ECHR.

The Charter does not affect the possibilities of Member States to avail themselves of Article 15 ECHR, allowing derogations from ECHR rights in the event of war or of other public dangers threatening the life of the nation, when they take action in the areas of national defence in the event of war and of the maintenance of law and order, in accordance with their responsibilities recognised in Article [I-5 (1)] of the Treaty on European Union and in Articles III-131 and III-262 of the Treaty on the Functioning of the Union.

The list of rights which may at the present stage, without precluding developments in the law, legislation and the Treaties, be regarded as corresponding to rights in the ECHR within the meaning of the present paragraph is given hereafter. It does not include rights additional to those in the ECHR.

1. Articles of the Charter where both the meaning and the scope are the same as the corresponding Articles of the ECHR:
  - Article [2]<sup>40</sup> corresponds to Article 2 of the ECHR
  - Article [4]<sup>41</sup> corresponds to Article 3 of the ECHR
  - Article [5]<sup>42</sup>(1) and (2) corresponds to Article 4 of the ECHR

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<sup>40</sup> Article [II-62].

<sup>41</sup> Article [II-64].

<sup>42</sup> Article [II-65].

- Article [6]<sup>43</sup> corresponds to Article 5 of the ECHR
  - Article [7]<sup>44</sup> corresponds to Article 8 of the ECHR
  - Article [10]<sup>45</sup>(1) corresponds to Article 9 of the ECHR
  - Article [11]<sup>46</sup> corresponds to Article 10 of the ECHR without prejudice to any restrictions which Union law may impose on Member States' right to introduce the licensing arrangements referred to in the third sentence of Article 10(1) of the ECHR
  - Article [17]<sup>47</sup> corresponds to Article 1 of the Protocol to the ECHR
  - Article [19]<sup>48</sup> (1) corresponds to Article 4 of Protocol No 4
  - Article [19](2) corresponds to Article 3 of the ECHR as interpreted by the European Court of Human Rights
  - Article [48]<sup>49</sup> corresponds to Article 6(2) and(3) of the ECHR
  - Article [49]<sup>50</sup>(1) (with the exception of the last sentence) and (2) correspond to Article 7 of the ECHR
2. Articles where the meaning is the same as the corresponding Articles of the ECHR, but where the scope is wider:
- Article [9]<sup>51</sup> covers the same field as Article 12 of the ECHR, but its scope may be extended to other forms of marriage if these are established by national legislation
  - Article [12]<sup>52</sup>(1) corresponds to Article 11 of the ECHR, but its scope is extended to European Union level

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<sup>43</sup> Article [II-66].

<sup>44</sup> Article [II-67].

<sup>45</sup> Article [II-70].

<sup>46</sup> Article [II-71].

<sup>47</sup> Article [II-77].

<sup>48</sup> Article [II-79].

<sup>49</sup> Article [II-108].

<sup>50</sup> Article [II-109].

<sup>51</sup> Article [II-69].

<sup>52</sup> Article [II-72].

- Article [14]<sup>53</sup>(1) corresponds to Article 2 of the Protocol to the ECHR, but its scope is extended to cover access to vocational and continuing training
- Article [14](3) corresponds to Article 2 of the Protocol to the ECHR as regards the rights of parents
- Article [47]<sup>54</sup>(2) and (3) corresponds to Article 6(1) of the ECHR, but the limitation to the determination of civil rights and obligations or criminal charges does not apply as regards Union law and its implementation
- Article [50]<sup>55</sup> corresponds to Article 4 of Protocol No 7 to the ECHR, but its scope is extended to European Union level between the Courts of the Member States.
- Finally, citizens of the European Union may not be considered as aliens in the scope of the application of Union law, because of the prohibition of any discrimination on grounds of nationality. The limitations provided for by Article 16 of the ECHR as regards the rights of aliens therefore do not apply to them in this context.

The rule of interpretation contained in paragraph 4 has been based on the wording of Article [6(2)] [I-9(3)] of the Treaty on European Union and takes due account of the approach to common constitutional traditions followed by the Court of Justice (e.g., judgment of 13 December 1979, Case 44/79 Hauer [1979] ECR 3727; judgment of 18 May 1982, Case 155/79, AM&S, [1982] ECR 1575). Under that rule, rather than following a rigid approach of "a lowest common denominator", the Charter rights concerned should be interpreted in a way offering a high standard of protection which is adequate for the law of the Union and in harmony with the common constitutional traditions.

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<sup>53</sup> Article [II-74].

<sup>54</sup> Article [II-107].

<sup>55</sup> Article [II-110].

Paragraph 5 clarifies the distinction between "rights" and "principles" set out in the Charter. According to that distinction, subjective rights shall be respected, whereas principles shall be observed (Article 51(1)<sup>56</sup>). Principles may be implemented through legislative or executive acts (adopted by the Union in accordance with its powers, and by the Member States only when they implement Union law); accordingly, they become significant for the Courts only when such acts are interpreted or reviewed. They do not however give rise to direct claims for positive action by the Union's institutions or Member States authorities. This is consistent both with case law of the Court of Justice (cf. notably case law on the "precautionary principle" in Article [174(2)] of the Treaty on the Functioning of the Union: judgment of the CFI of 11 September 2002, T-13/99, Pfizer vs. Council, with numerous references to earlier case law; and a series of judgments on Article 33 (ex-39) on the principles of agricultural law, e.g. judgment of the Court of Justice C-265/85, Van den Berg, 1987 ECR 1155: scrutiny of the principle of market stabilisation and of reasonable expectations) and with the approach of the Member States' constitutional systems to "principles" particularly in the field of social law. For illustration, examples for principles, recognised in the Charter include e.g. Articles 25, 26 and 37<sup>57</sup>. In some cases, an Article of the Charter may contain both elements of a right and of a principle, e.g. Articles 23, 33 and 34<sup>58</sup>.

Paragraph 6 refers to the various Articles in the Charter which, in the spirit of subsidiarity, make reference to national laws and practices.

#### *Explanation on Article [II-113] – Level of protection*

This provision is intended to maintain the level of protection currently afforded within their respective scope by Union law, national law and international law. Owing to its importance, mention is made of the ECHR.

#### *Explanation on Article [II-114] – Prohibition of abuse of rights*

This Article corresponds to Article 17 of the ECHR:

"Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention."

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<sup>56</sup> Article [II-111].

<sup>57</sup> Articles [II-85, II-86 and II-97].

<sup>58</sup> Articles [II-83, II-93 and II-94].

Equally, the representatives of the governments of the Member States, meeting in an Intergovernmental Conference, in accordance with the ordinary revision procedure provided for in Article [IV-443] of the Treaty on European Union, may decide to amend the Treaties, including either to increase or to reduce the competences conferred on the Union in the said Treaties.

31. Declaration concerning the Charter of Fundamental Rights

The Charter of Fundamental Rights, which has legally binding force, confirms the fundamental rights guaranteed by the European Convention on Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States.

The Charter does not extend the field of application of Union law beyond the powers of the Union or establish any new power or task for the Union, or modify powers and tasks as defined by the Treaties.

32. Declaration concerning the common foreign and security policy

The Conference underlines that the provisions in the Treaty on European Union covering the Common Foreign and Security Policy, including the creation of the office of High Representative of the Union for Foreign Affairs and Security Policy and the establishment of an External Action Service, do not affect the responsibilities of the Member States, as they currently exist, for the formulation and conduct of their foreign policy nor of their national representation in third countries and international organisations.

The Conference also recalls that the provisions governing the Common Security and Defence Policy do not prejudice the specific character of the security and defence policy of the Member States.

It stresses that the EU and its Member States will remain bound by the provisions of the Charter of the United Nations and, in particular, by the primary responsibility of the Security Council and of its Members for the maintenance of international peace and security.

33. Declaration concerning the common foreign and security policy

In addition to the specific procedures referred to in [paragraph 1 of Article 11] of the Treaty on European Union, the Conference underlines that the provisions covering the Common Foreign and Security Policy including in relation to the High Representative of the Union for Foreign Affairs and Security Policy and the External Action Service will not affect the existing legal basis, responsibilities, and powers of each Member State in relation to the formulation and conduct of its foreign policy, its national diplomatic service, relations with third countries and participation in international organisations, including a Member State's membership of the Security Council of the UN.

50. Declaration by the Republic of Latvia and the Republic of Hungary  
on the spelling of the name of the single currency  
in the Treaties

Without prejudice to the unified spelling of the name of the single currency of the European Union referred to in the Treaties as displayed on the banknotes and on the coins, Latvia and Hungary declare that the spelling of the name of the single currency, including its derivatives as applied throughout the Latvian and Hungarian text of the Treaties, has no effect on the existing rules of the Latvian and the Hungarian languages.

51. Declaration by Poland on the Charter of Fundamental Rights

The Charter does not affect in any way the right of Member States to legislate in the sphere of public morality, family law, as well as the protection of human dignity and respect for human physical and moral integrity.

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**PROTOCOL (No 3)**  
**ON THE EURO GROUP**

THE HIGH CONTRACTING PARTIES,

DESIRING to promote conditions for stronger economic growth in the European Union and, to that end, to develop ever-closer coordination of economic policies within the euro area,

CONSCIOUS of the need to lay down special provisions for enhanced dialogue between the Member States whose currency is the euro, pending the euro becoming the currency of all Member States of the Union,

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union:

Article 1

The Ministers of the Member States whose currency is the euro shall meet informally. Such meetings shall take place, when necessary, to discuss questions related to the specific responsibilities they share with regard to the single currency. The Commission shall take part in the meetings. The European Central Bank shall be invited to take part in such meetings, which shall be prepared by the representatives of the Ministers with responsibility for finance of the Member States whose currency is the euro and of the Commission.

Article 2

The Ministers of the Member States whose currency is the euro shall elect a president for two and a half years, by a majority of those Member States.

**PROTOCOL (No 5)**  
**RELATING TO ARTICLE 6(2)**  
**OF THE TREATY ON EUROPEAN UNION**  
**ON THE ACCESSION OF THE UNION TO THE EUROPEAN CONVENTION**  
**ON THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS**

THE HIGH CONTRACTING PARTIES,

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union:

Article 1

The agreement relating to the accession of the Union to the European Convention on the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as the "European Convention") provided for in Article 6(2) of the Treaty on European Union shall make provision for preserving the specific characteristics of the Union and Union law, in particular with regard to:

- (a) the specific arrangements for the Union's possible participation in the control bodies of the European Convention;
- (b) the mechanisms necessary to ensure that proceedings by non-Member States and individual applications are correctly addressed to Member States and/or the Union as appropriate.

Article 2

The agreement referred to in Article 1 shall ensure that accession of the Union shall not affect the competences of the Union or the powers of its institutions. It shall ensure that nothing therein affects the situation of Member States in relation to the European Convention, in particular in relation to the Protocols thereto, measures taken by Member States derogating from the European Convention in accordance with Article 15 thereof and reservations to the European Convention made by Member States in accordance with Article 57 thereof.

Article 3

Nothing in the agreement referred to in Article 1 shall affect Article 292(2) of the Treaty on the Functioning of the European Union.

**PROTOCOL (No 7)****ON THE APPLICATION OF THE CHARTER OF FUNDAMENTAL RIGHTS  
TO POLAND AND TO THE UNITED KINGDOM**

THE HIGH CONTRACTING PARTIES,

WHEREAS in Article 6 of the Treaty on European Union, the Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights;

WHEREAS the Charter is to be applied in strict accordance with the provisions of the aforementioned Article 6 and Title VII of the Charter itself;

WHEREAS the aforementioned Article 6 requires the Charter to be applied and interpreted by the courts of Poland and of the United Kingdom strictly in accordance with the explanations referred to in that Article;

WHEREAS the Charter contains both rights and principles;

WHEREAS the Charter contains both provisions which are civil and political in character and those which are economic and social in character;

WHEREAS the Charter reaffirms the rights, freedoms and principles recognised in the Union and makes those rights more visible, but does not create new rights or principles;

RECALLING the obligations devolving upon Poland and the United Kingdom under the Treaty on European Union, the Treaty on the Functioning of the European Union, and Union law generally;

NOTING the wish of Poland and the United Kingdom to clarify certain aspects of the application of the Charter;

DESIROUS therefore of clarifying the application of the Charter in relation to the laws and administrative action of Poland and of the United Kingdom and of its justiciability within Poland and within the United Kingdom;

REAFFIRMING that references in this Protocol to the operation of specific provisions of the Charter are strictly without prejudice to the operation of other provisions of the Charter;

REAFFIRMING that this Protocol is without prejudice to the application of the Charter to other Member States;

REAFFIRMING that this Protocol is without prejudice to other obligations devolving upon Poland and the United Kingdom under the Treaty on European Union, the Treaty on the Functioning of the European Union, and Union law generally,

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union:

#### Article 1

1. The Charter does not extend the ability of the Court of Justice of the European Union, or any court or tribunal of Poland or of the United Kingdom, to find that the laws, regulations or administrative provisions, practices or action of Poland or of the United Kingdom are inconsistent with the fundamental rights, freedoms and principles that it reaffirms.
2. In particular, and for the avoidance of doubt, nothing in Title IV of the Charter creates justiciable rights applicable to Poland or the United Kingdom except in so far as Poland or the United Kingdom has provided for such rights in its national law.

#### Article 2

To the extent that a provision of the Charter refers to national laws and practices, it shall only apply to Poland or the United Kingdom to the extent that the rights or principles that it contains are recognised in the law or practices of Poland or of the United Kingdom.

## **IV.2.b. The Irish Protocol, 2009-2012**

Editors' note to 17271/1/08 REV 1,  
**Presidency Conclusions – Brussels European Council,  
11/12 December 2008 [Extracts]:**

INIT version is dated 12 December 2008.



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 13 February 2009  
(OR. fr)**

**17271/1/08  
REV 1**

**CONCL 5**

**COVER NOTE**

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from: Presidency

to: Delegations

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Subject: **BRUSSELS EUROPEAN COUNCIL  
11 AND 12 DECEMBER 2008**

**PRESIDENCY CONCLUSIONS**

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Delegations will find attached the revised version of the Presidency Conclusions of the Brussels European Council (11 and 12 December 2008).

*Presidency conclusions - Brussels, 11 and 12 December 2008*

*The European Council on 11 and 12 December 2008 approved a European Economic Recovery Plan, equivalent to about 1,5 % of the GDP of the European Union (a figure amounting to around EUR 200 billion). The plan provides a common framework for the efforts made by Member States and by the European Union, with a view to ensuring consistency and maximising effectiveness. The European Council also reached agreement on the energy/climate change package which should enable this package to be finalised with the European Parliament by the end of the year. This decisive breakthrough will enable the European Union to honour the ambitious commitments entered into in this area in 2007 and to maintain its leading role in the search for an ambitious and comprehensive global agreement at Copenhagen next year. The European Council demonstrated its intent, through concrete decisions, to give new impetus to the European Security and Defence Policy in order to meet the new security challenges. Lastly, the European Council discussed the factors designed to respond to the concerns expressed during the Irish referendum and established an approach to enable the Treaty of Lisbon to come into force before the end of 2009.*

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The meeting of the European Council was preceded by an exposé by the President of the European Parliament, Mr Hans-Gert Pöttering, followed by an exchange of views.

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## **I. The Treaty of Lisbon**

1. The European Council re-affirms that the Treaty of Lisbon is considered necessary in order to help the enlarged Union to function more efficiently, more democratically and more effectively including in international affairs. With a view to enabling the Treaty to enter into force by the end of 2009, the European Council, while respecting the aims and objectives of the Treaties, has defined the following path.



*Presidency conclusions - Brussels, 11 and 12 December 2008*

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2. On the composition of the Commission, the European Council recalls that the Treaties currently in force require that the number of Commissioners be reduced in 2009. The European Council agrees that provided the Treaty of Lisbon enters into force, a decision will be taken, in accordance with the necessary legal procedures, to the effect that the Commission shall continue to include one national of each Member State.
  
3. The European Council has carefully noted the other concerns of the Irish people presented by the Taoiseach as set out in Annex 1 relating to taxation policy, family, social and ethical issues, and Common Security and Defence Policy (CSDP) with regard to Ireland's traditional policy of neutrality. The European Council agrees that, provided Ireland makes the commitment in paragraph 4, all of the concerns set out in the said statement shall be addressed to the mutual satisfaction of Ireland and the other Member States.

The necessary legal guarantees will be given on the following three points:

- nothing in the Treaty of Lisbon makes any change of any kind, for any Member State, to the extent or operation of the Union's competences in relation to taxation;
  
- the Treaty of Lisbon does not prejudice the security and defence policy of Member States, including Ireland's traditional policy of neutrality, and the obligations of most other Member States;
  
- a guarantee that the provisions of the Irish Constitution in relation to the right to life, education and the family are not in any way affected by the fact that the Treaty of Lisbon attributes legal status to the EU Charter of Fundamental Rights or by the justice and home affairs provisions of the said Treaty.

In addition, the high importance attached to the issues, including workers' rights, set out in paragraph (d) of Annex 1 will be confirmed.

*Presidency conclusions - Brussels, 11 and 12 December 2008*

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4. In the light of the above commitments by the European Council, and conditional on the satisfactory completion of the detailed follow-on work by mid-2009 and on presumption of their satisfactory implementation, the Irish Government is committed to seeking ratification of the Treaty of Lisbon by the end of the term of the current Commission.

**II. Economic and financial questions**

5. The economic and financial crisis is a global crisis. That is why the European Union is working together with its international partners. The Summit held in Washington on 15 November 2008 at the initiative of the EU drew up an ambitious programme of work with a view to coordinated recovery of the world economy, more effective regulation of financial markets, better global governance and the rejection of protectionism. It should be implemented in accordance with the schedule laid down. The Council is requested to organise the preparation of this work together with the Commission and report to the Spring 2009 European Council on progress made, with a view to the next Summit on 2 April 2009 in London.
6. The EU has determined, in a coordinated manner, the emergency measures required to restore the smooth operation of the financial system and confidence among market players. The European Council stresses the need for Member States to be able to finalise these measures without delay. It calls for their full and rapid implementation, with the assistance of all parties involved, in accordance with the framework established by the Council on 2 December 2008. The European Council urges banks and financial institutions to make full use of the facilities granted to them to maintain and support lending to the economy and pass on key interest rate reductions to borrowers. It should be ensured in this context that measures within the common framework, particularly guarantee mechanisms, are actually applied so as to help lower the cost of financing for financial institutions, for the benefit of enterprises and households.

**ANNEX 1****Statement of the Concerns of the Irish People on the Treaty of Lisbon  
as set out by the Taoiseach**

- a) Ensuring that Ireland's requirements regarding maintenance of its traditional policy of neutrality are met;
- b) Ensuring that the terms of the Treaty of Lisbon will not affect the continued application of the provisions of the Irish Constitution in relation to the right to life, education and the family;
- c) Ensuring that in the area of taxation the Treaty of Lisbon makes no change of any kind to the extent or operation of the Union's competences;
- d) Confirming that the Union attaches high importance to:
  - social progress and the protection of workers' rights;
  - public services, as an indispensable instrument of social and regional cohesion;
  - the responsibility of Member States for the delivery of education and health services;
  - the essential role and wide discretion of national, regional and local Governments in providing, commissioning and organising non-economic services of general interest which is not affected by any provision of the Treaty of Lisbon, including those relating to the common commercial policy.

Editors' note to 11225/2/09 REV 2,  
**Presidency Conclusions – Brussels European Council,  
18/19 June 2009 [Extracts]:**

INIT version is dated 19 June 2009.



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 10 July 2009**

**11225/2/09  
REV 2**

**CONCL 2**

**COVER NOTE**

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from :            Presidency  
to :                Delegations

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Subject :        **BRUSSELS EUROPEAN COUNCIL  
18/19 JUNE 2009**

**PRESIDENCY CONCLUSIONS**

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Delegations will find attached the revised version of the Presidency Conclusions of the Brussels European Council (18/19 June 2009).

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*Presidency Conclusions – Brussels, 18/19 June 2009*

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*In the midst of the deepest global recession since the Second World War the European Council again demonstrated the Union's determination to rise above present difficulties and to look to the future by taking a series of decisions intended to meet, rapidly and effectively, a wide range of challenges.*

*Convinced that the Lisbon Treaty will provide a better framework for action by the Union in a large number of fields, Heads of State or Government agreed on legal guarantees designed to respond to concerns raised by the Irish people, thus paving the way for them to be consulted again on that Treaty. Heads also took the first steps in the process of designating the President of the next Commission.*

*The economic crisis remains of paramount importance to citizens. The significant measures taken so far in support of the banking sector and the wider real economy have been successful in preventing financial meltdown and in beginning to restore the prospects for real growth. The European Council took a number of decisions intended to lead to the creation of a new financial supervisory architecture with the aim of protecting the European financial system from future risks and ensuring that the mistakes of the past can never be repeated. Top priority must be given to tackling the effects of the crisis on employment by helping people stay in work or find new jobs.*

*Successfully combating climate change will also contribute to moving to a sustainable economy and create new jobs. The European Council took further steps towards forging the EU's position for the Copenhagen Climate Change Conference at the end of the year. It sent out a strong signal of its intention to maintain a driving role in this process and called on the rest of the international Community to play its full part in bringing about a successful and ambitious outcome at Copenhagen.*

*European leaders expressed great concern at the dramatic situation in the Mediterranean area and agreed on a number of measures in order to help the Member States in the frontline to respond to the influx of illegal immigrants and to prevent further human tragedies.*

*The EU's role in the world remains of particular interest to European leaders. The European leaders underlined the strategic importance of transatlantic relations and welcomed the launch of the Eastern Partnership. They also stressed that the Middle East Peace Process remained a top priority for the EU in 2009. The European Council reconfirmed the great importance of stability and security in Afghanistan, Pakistan and the wider region. The European Council adopted declarations on Iran and the Democratic People's Republic of Korea. In a declaration on Burma/Myanmar leaders called for the immediate and unconditional release of Aung San Suu Kyi.*

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*Presidency Conclusions – Brussels, 18/19 June 2009*

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The meeting of the European Council was preceded by an exposé by the President of the European Parliament, Mr Hans-Gert Pöttering, followed by an exchange of views. The European Council warmly thanked Mr Pöttering for the work accomplished during his tenure as President of the European Parliament.

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**I. Institutional issues*****Ireland and the Treaty of Lisbon***

1. The European Council recalls that the entry into force of the Treaty of Lisbon requires ratification by each of the 27 Member States in accordance with their respective constitutional requirements. It reaffirms its wish to see the Treaty enter into force by the end of 2009.
2. Having carefully noted the concerns of the Irish people as set out by the Taoiseach, the European Council, at its meeting of 11-12 December 2008, agreed that, provided the Treaty of Lisbon enters into force, a decision would be taken, in accordance with the necessary legal procedures, to the effect that the Commission shall continue to include one national of each Member State.
3. The European Council also agreed that other concerns of the Irish people, as presented by the Taoiseach, relating to taxation policy, the right to life, education and the family, and Ireland's traditional policy of military neutrality, would be addressed to the mutual satisfaction of Ireland and the other Member States, by way of the necessary legal guarantees. It was also agreed that the high importance attached to a number of social issues, including workers' rights, would be confirmed.

*Presidency Conclusions – Brussels, 18/19 June 2009*

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4. Against this background, the European Council has agreed on the following set of arrangements, which are fully compatible with the Treaty, in order to provide reassurance and to respond to the concerns of the Irish people:
- (a) Decision of the Heads of State or Government of the 27 Member States of the European Union, meeting within the European Council, on the concerns of the Irish people on the Treaty of Lisbon (Annex 1);
  - (b) Solemn Declaration on Workers' Rights, Social Policy and other issues (Annex 2).

The European Council has also taken cognisance of the unilateral declaration of Ireland (Annex 3), which will be associated with the Irish instrument of ratification of the Treaty of Lisbon.

5. Regarding the Decision in Annex 1, the Heads of State or Government have declared that:
- (i) this Decision gives legal guarantee that certain matters of concern to the Irish people will be unaffected by the entry into force of the Treaty of Lisbon;
  - (ii) its content is fully compatible with the Treaty of Lisbon and will not necessitate any re-ratification of that Treaty;
  - (iii) the Decision is legally binding and will take effect on the date of entry into force of the Treaty of Lisbon;
  - (iv) they will, at the time of the conclusion of the next accession Treaty, set out the provisions of the annexed Decision in a Protocol to be attached, in accordance with their respective constitutional requirements, to the Treaty on European Union and the Treaty on the Functioning of the European Union;



**ANNEX 1****DECISION OF THE HEADS OF STATE OR GOVERNMENT OF THE 27 MEMBER STATES OF THE EU, MEETING WITHIN THE EUROPEAN COUNCIL, ON THE CONCERNS OF THE IRISH PEOPLE ON THE TREATY OF LISBON**

The Heads of State or Government of the 27 Member States of the European Union, whose Governments are signatories of the Treaty of Lisbon,

Taking note of the outcome of the Irish referendum of 12 June 2008 on the Treaty of Lisbon and of the concerns of the Irish people identified by the Taoiseach,

Desiring to address those concerns in conformity with that Treaty,

Having regard to the Conclusions of the European Council of 11-12 December 2008,

Have agreed on the following Decision:

**SECTION A****RIGHT TO LIFE, FAMILY AND EDUCATION**

Nothing in the Treaty of Lisbon attributing legal status to the Charter of Fundamental Rights of the European Union, or in the provisions of that Treaty in the area of Freedom, Security and Justice affects in any way the scope and applicability of the protection of the right to life in Article 40.3.1, 40.3.2 and 40.3.3, the protection of the family in Article 41 and the protection of the rights in respect of education in Articles 42 and 44.2.4 and 44.2.5 provided by the Constitution of Ireland.

*Presidency Conclusions – Brussels, 18/19 June 2009*

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**SECTION B****TAXATION**

Nothing in the Treaty of Lisbon makes any change of any kind, for any Member State, to the extent or operation of the competence of the European Union in relation to taxation.

**SECTION C****SECURITY AND DEFENCE**

The Union's action on the international scene is guided by the principles of democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law.

The Union's common security and defence policy is an integral part of the common foreign and security policy and provides the Union with an operational capacity to undertake missions outside the Union for peace-keeping, conflict prevention and strengthening international security in accordance with the principles of the United Nations Charter.

It does not prejudice the security and defence policy of each Member State, including Ireland, or the obligations of any Member State.

The Treaty of Lisbon does not affect or prejudice Ireland's traditional policy of military neutrality.

It will be for Member States - including Ireland, acting in a spirit of solidarity and without prejudice to its traditional policy of military neutrality - to determine the nature of aid or assistance to be provided to a Member State which is the object of a terrorist attack or the victim of armed aggression on its territory.

*Presidency Conclusions – Brussels, 18/19 June 2009*

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Any decision to move to a common defence will require a unanimous decision of the European Council. It would be a matter for the Member States, including Ireland, to decide, in accordance with the provisions of the Treaty of Lisbon and with their respective constitutional requirements, whether or not to adopt a common defence.

Nothing in this Section affects or prejudices the position or policy of any other Member State on security and defence.

It is also a matter for each Member State to decide, in accordance with the provisions of the Treaty of Lisbon and any domestic legal requirements, whether to participate in permanent structured cooperation or the European Defence Agency.

The Treaty of Lisbon does not provide for the creation of a European army or for conscription to any military formation.

It does not affect the right of Ireland or any other Member State to determine the nature and volume of its defence and security expenditure and the nature of its defence capabilities.

It will be a matter for Ireland or any other Member State, to decide, in accordance with any domestic legal requirements, whether or not to participate in any military operation.

**SECTION D****FINAL PROVISIONS**

This decision shall take effect on the same date as the Treaty of Lisbon.

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**SOLEMN DECLARATION ON WORKERS' RIGHTS, SOCIAL POLICY AND  
OTHER ISSUES**

The European Council confirms the high importance which the Union attaches to:

- social progress and the protection of workers' rights;
- public services;
- the responsibility of Member States for the delivery of education and health services;
- the essential role and wide discretion of national, regional and local authorities in providing, commissioning and organising services of general economic interest.

In doing so, it underlines the importance of respecting the overall framework and provisions of the EU Treaties.

To underline this, it recalls that the Treaties as modified by the Treaty of Lisbon:

- establish an internal market and aim at working for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment;
- give expression to the Union's values;
- recognise the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union in accordance with Article 6 of the Treaty on European Union;

*Presidency Conclusions – Brussels, 18/19 June 2009*

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- aim to combat social exclusion and discrimination, and to promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child;
- oblige the Union, when defining and implementing its policies and activities, to take into account requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health;
- include, as a shared value of the Union, the essential role and the wide discretion of national, regional and local authorities in providing, commissioning and organising services of general economic interest as closely as possible to the needs of the users;
- do not affect in any way the competence of Member States to provide, commission and organise non-economic services of general interest;
- provide that the Council, when acting in the area of common commercial policy, must act unanimously when negotiating and concluding international agreements in the field of trade in social, education and health services, where those agreements risk seriously disturbing the national organisation of such services and prejudicing the responsibility of Member States to deliver them; and
- provide that the Union recognises and promotes the role of the social partners at the level of the European Union, and facilitates dialogue between them, taking account of the diversity of national systems and respecting the autonomy of social partners.

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## II

*(Non-legislative acts)*

## DECISIONS

## EUROPEAN COUNCIL DECISION

of 11 May 2012

**on the examination by a conference of representatives of the governments of the Member States of the amendment to the Treaties proposed by the Irish Government in the form of a Protocol on the concerns of the Irish people on the Treaty of Lisbon, to be annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and not to convene a Convention**

(2013/106/EU)

THE EUROPEAN COUNCIL,

Having regard to the Treaty on European Union, and in particular Article 48(3) thereof,

Having regard to the proposal for the amendment of the Treaties submitted to the Council by the Irish Government on 20 July 2011 and submitted to the European Council by the Council on 12 October 2011,

Having regard to the consent of the European Parliament not to convene a Convention <sup>(1)</sup>,

Having regard to the opinion of the European Parliament <sup>(2)</sup>,

After notification of the proposal to the national parliaments,

Having regard to the opinion of the European Commission <sup>(3)</sup>,

Whereas:

(1) On 18-19 June 2009, the Heads of State or Government of the 27 Member States of the European Union, meeting within the European Council, adopted a Decision on the concerns of the Irish people on the Treaty of Lisbon and declared that, at the time of the conclusion of the next accession Treaty, they would set out the provisions of that Decision in a protocol to be annexed, in accordance with their respective constitutional requirements, to the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU).

(2) On 20 July 2011, the Irish Government submitted, in accordance with the first sentence of Article 48(2) TEU, a proposal for the amendment of the Treaties in the form of a Protocol on the concerns of the Irish people on the Treaty of Lisbon.

(3) On 12 October 2011, in accordance with the third sentence of Article 48(2) TEU, the proposal of the Irish Government was submitted by the Council to the European Council. It was also notified to the national parliaments.

(4) At its meeting on 23 October 2011, the European Council decided, in accordance with the first subparagraph of Article 48(3) TEU, to consult the European Parliament and the Commission on the proposed amendments. It also decided, in accordance with the second subparagraph of Article 48(3) TEU, to request the consent of the European Parliament not to convene a Convention given that, in its view, the convening of such Convention was not justified by the extent of the proposed amendments.

(5) On 18 April 2012, the European Parliament adopted a favourable opinion on the proposed amendments. It also gave its consent not to convene a Convention on account of this not being justified by the extent of the proposed amendments. On 4 May 2012, the Commission adopted a favourable opinion on the proposed amendments.

(6) Therefore, it is appropriate that, in accordance with the second subparagraph of Article 48(3) TEU, the European Council decide that a conference of representatives of the governments of the Member States should examine the amendments proposed by the Irish Government, define the terms of reference of the conference and decide not to convene a Convention,

<sup>(1)</sup> Consent of 18 April 2012 (not yet published in the Official Journal).

<sup>(2)</sup> Opinion of 18 April 2012 (not yet published in the Official Journal).

<sup>(3)</sup> Opinion of 4 May 2012 (not yet published in the Official Journal).

HAS ADOPTED THIS DECISION:

*Article 1*

The European Council hereby decides that a conference of representatives of the governments of the Member States shall examine the amendments proposed by the Irish Government in the form of a Protocol on the concerns of the Irish people on the Treaty of Lisbon, to be annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, in the wording as attached to this Decision, which will constitute the terms of reference of the said conference. In view of the extent of the proposed amendments, a Convention under Article 48(3) of the Treaty on European Union shall not be convened.

*Article 2*

This Decision shall enter into force on the day of its adoption.

Done at Brussels, 11 May 2012.

*For the European Council*  
*The President*  
H. VAN ROMPUY

## **IV.2.c. The Withdrawn Proposal for a Czech Protocol**





**EUROPEAN COUNCIL**

**Brussels, 18 June 2013  
(OR. en)**

**EUCO 132/13**

**CO EUR 11  
POLGEN 95  
INST 283  
OC 377**

**LEGAL ACTS**

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**Subject:** EUROPEAN COUNCIL DECISION on the examination by a conference of representatives of the Governments of the Member States of the amendment to the Treaties proposed by the Czech Government in the form of a Protocol on the application of the Charter of Fundamental Rights of the European Union to the Czech Republic, to be annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and not to convene a Convention

**COMMON GUIDELINES**

**Consultation deadline for Croatia: 19.6.2013**

**EUROPEAN COUNCIL DECISION**

of ...

on the examination by a conference of representatives of the Governments of the Member States of the amendment to the Treaties proposed by the Czech Government in the form of a Protocol on the application of the Charter of Fundamental Rights of the European Union to the Czech Republic, to be annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and not to convene a Convention

THE EUROPEAN COUNCIL,

Having regard to the Treaty on European Union, and in particular Article 48(3) thereof,

Having regard to the proposal for the amendment of the Treaties submitted to the Council by the Czech Government on 5 September 2011 and submitted to the European Council by the Council on 12 October 2011,

Having regard to the consent of the European Parliament not to convene a Convention<sup>1</sup>,Having regard to the opinion of the European Parliament<sup>2</sup>,

After notification of the proposal to the national parliaments,

Having regard to the opinion of the European Commission<sup>3</sup>,

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<sup>1</sup> Consent of 22 May 2013 (not yet published in the Official Journal).

<sup>2</sup> Opinion of 22 May 2013 (not yet published in the Official Journal).

<sup>3</sup> Opinion of 4 May 2012 (not yet published in the Official Journal).

Whereas:

- (1) On 29 and 30 October 2009, the Heads of State or Government of the 27 Member States of the European Union, meeting within the European Council, agreed that they would, at the time of the conclusion of the next Accession Treaty and in accordance with their respective constitutional requirements, attach the Protocol on the application of the Charter of Fundamental Rights of the European Union to the Czech Republic, to the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU).
- (2) On 5 September 2011, the Czech Government submitted, in accordance with the first sentence of Article 48(2) TEU, a proposal for the amendment of the Treaties in the form of a Protocol on the application of the Charter of Fundamental Rights of the European Union to the Czech Republic.
- (3) On 12 October 2011, in accordance with the third sentence of Article 48(2) TEU, the proposal of the Czech Government was submitted by the Council to the European Council. It was also notified to the national parliaments.
- (4) At its meeting on 23 October 2011, the European Council decided, in accordance with the first subparagraph of Article 48(3) TEU, to consult the European Parliament and the Commission on the proposed amendments. It also decided, in accordance with the second subparagraph of Article 48(3) TEU, to request the consent of the European Parliament not to convene a Convention given that, in its view, the convening of such Convention was not justified by the extent of the proposed amendments.

- (5) On 4 May 2012, the Commission adopted a favourable opinion on the proposed amendments. On 22 May 2013, the European Parliament adopted its opinion, calling on the European Council not to examine the proposed amendment. At the same time it gave its consent not to convene a Convention on account of this not being justified by the extent of the proposed amendments.
- (6) After the date of its accession, Croatia should be included in the list of High Contracting Parties to the proposed Protocol.
- (7) It is appropriate that, in accordance with the second subparagraph of Article 48(3) TEU, the European Council decide that a conference of representatives of the governments of the Member States should examine the amendments proposed by the Czech Government, define the terms of reference of that conference and decide not to convene a Convention,

HAS ADOPTED THIS DECISION:

### Article 1

The European Council hereby decides that a conference of representatives of the governments of the Member States shall examine the amendments proposed by the Czech Government in the form of a Protocol on the application of the Charter of Fundamental Rights of the European Union to the Czech Republic, to be annexed to the Treaty on European Union and to the Treaty on the functioning of the European Union, in the wording as attached to this Decision, which will constitute the terms of reference of that conference. In view of the extent of the proposed amendments, a convention under Article 48(3) of the Treaty on European Union shall not be convened.

The text of the Protocol is attached to this Decision.

### Article 2

This Decision shall enter into force on the day of its adoption.

Done at Brussels,

For the European Council  
The President

DRAFT PROTOCOL  
ON THE APPLICATION OF THE CHARTER OF FUNDAMENTAL RIGHTS  
OF THE EUROPEAN UNION  
TO THE CZECH REPUBLIC

THE KINGDOM OF BELGIUM,

THE REPUBLIC OF BULGARIA,

THE CZECH REPUBLIC,

THE KINGDOM OF DENMARK,

THE FEDERAL REPUBLIC OF GERMANY,

THE REPUBLIC OF ESTONIA,

IRELAND,

THE HELLENIC REPUBLIC,

THE KINGDOM OF SPAIN,

THE FRENCH REPUBLIC,

THE ITALIAN REPUBLIC,

THE REPUBLIC OF CYPRUS,

THE REPUBLIC OF LATVIA,

THE REPUBLIC OF LITHUANIA,

THE GRAND DUCHY OF LUXEMBOURG,

HUNGARY,

THE REPUBLIC OF MALTA,

THE KINGDOM OF THE NETHERLANDS,

THE REPUBLIC OF AUSTRIA,

THE REPUBLIC OF POLAND,

THE PORTUGUESE REPUBLIC,

ROMANIA,

THE REPUBLIC OF SLOVENIA,

THE SLOVAK REPUBLIC,

THE REPUBLIC OF FINLAND,

THE KINGDOM OF SWEDEN,

THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND,

hereinafter referred to as "THE HIGH CONTRACTING PARTIES",



TAKING note of the wish expressed by the Czech Republic,

RECALLING the Presidency Conclusions approved by the European Council at its meeting on 29 and 30 October 2009,

RECALLING that the Heads of State or Government meeting within the European Council on 29 and 30 October 2009 agreed that they would, at the time of the conclusion of the next Accession Treaty and in accordance with their respective constitutional requirements, attach to the Treaty on European Union and the Treaty on the Functioning of the European Union a Protocol concerning the application of the Charter of Fundamental Rights of the European Union to the Czech Republic,

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union:

## ARTICLE 1

The Protocol on the application of the Charter of Fundamental Rights of the European Union to Poland and to the United Kingdom shall apply to the Czech Republic.

## ARTICLE 2

The title, preamble and operative part of the Protocol referred to in Article 1 shall be modified in order to refer to the Czech Republic in the same terms as they refer to Poland and to the United Kingdom.

## ARTICLE 3

This Protocol shall be ratified by the High Contracting Parties, in accordance with their respective constitutional requirements. The instruments of ratification shall be deposited with the Government of the Italian Republic.

This Protocol shall enter into force on the first day of the month following the deposit of the instrument of ratification by the last signatory State to take this step.

#### ARTICLE 4

This Protocol, drawn up in a single original in the Bulgarian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Irish, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish languages, each text being equally authentic, shall be deposited in the archives of the Government of the Italian Republic, which shall transmit a certified copy to each of the Governments of the other signatory States.

IN WITNESS WHEREOF the undersigned Plenipotentiaries have signed this Protocol.

Done at ... on the .... in the year ...

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**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 31 March 2014  
(OR. en)**

**8383/14**

**CO EUR-PREP 15  
POLGEN 42  
INST 185**

**COVER NOTE**

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|                  |                                                                                                         |
|------------------|---------------------------------------------------------------------------------------------------------|
| From:            | Mr. M. Povejsil, Ambassador, Permanent Representative of the Czech Republic to the European Union       |
| date of receipt: | 11 March 2014                                                                                           |
| To:              | Mr. T Sotiropoulos, Ambassador, Permanent Representative of the Hellenic Republic to the European Union |

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|          |                                                                                                                                                                                     |
|----------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Subject: | Discontinuation of the procedure for an amendment to the Treaties<br>- Protocol on the application of the Charter of Fundamental Rights of the European Union to the Czech Republic |
|----------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

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Delegations will find attached copy of a letter from the Permanent Representative of the Czech Republic to the President of the Committee of the Permanent Representatives relating to the decision of the Czech Government to discontinue the procedure for the addition of a Protocol on the application of the Charter of Fundamental Rights of the European Union in the Treaties, pursuant to Article 48(2)-(5) of the TEU.

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Encl.:



Permanent Representation of  
the Czech republic to the EU

15, rue Caroly, 1050 Brussels  
phone.: +32 (0) 22139111, fax: +32 (0) 22139185  
www.mzv.cz/eu

FFG

**Martin Povejšil**  
Ambassador/Permanent  
Representative of the Czech  
Republic to the EU

Brussels, March 7, 2014

Ref. No.: 783/2014 – SZEU/PKÚ

*Dian Theo,*  
Your Excellency,

As you are well aware, on 5 September 2011 the Czech government submitted to the Council a proposal for the amendment of the Treaties in the form of a Protocol on the application of the Charter of Fundamental Rights of the European Union to the Czech Republic ("Protocol"), as agreed in October 2009 by the Heads of State or Government, meeting within the European Council.

The Government of the Czech Republic thoroughly re-examined the Protocol, *inter alia* with due regard to the latest case-law of the Court of Justice of the European Union related to the applicability of the Charter of Fundamental Rights of the EU. On 19 February 2014 the Government adopted a Resolution to discontinue the procedure for the conclusion of the Protocol.

In this regard, I would respectfully ask you to circulate this information among the Permanent Representatives of the Member States of the European Union and, given the fact that on 25 June 2013 the General Affairs Council recommended to the European Council to adopt a decision regarding the Protocol, to take the necessary steps to withdraw this recommendation.

Yours sincerely,

*DPG*  
*Martin Povejšil*

Cc: *Mr Uwe Corsepius, Secretary-General, Council of the European Union*  
*Mr Hubert Legal, Director General, Council of the European Union*

**H.E. Théodoros N. Sotiropoulos**  
Permanent Representative of the Hellenic Republic  
Rue Jacques de Lalaing 19-21

Brussels

|                                                 |                   |
|-------------------------------------------------|-------------------|
| SECRETARIAT DU CONSEIL<br>DE L'UNION EUROPÉENNE |                   |
| SGE14/02744                                     |                   |
| REÇU LE                                         | 11 MARS 2014      |
| DEST. PRINC. ....                               | M. FERNANDEZ-PITA |
| DEST. COP. ....                                 |                   |
| Service Juridique                               |                   |



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 8 April 2014  
(OR. en)**

**8385/14**

**CO EUR-PREP 16  
POLGEN 43  
INST 186**

**"I/A" ITEM NOTE**

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From: General Secretariat of the Council

To: Permanent Representatives Committee/Council

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Subject: Withdrawal of the Recommendation for a European Council Decision on the examination by a conference of representatives of the governments of the Member States of the amendment to the Treaties proposed by the Czech Government in the form of a Protocol on the application of the Charter of Fundamental Rights of the European Union to the Czech Republic, to be annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and not to convene a Convention

- Follow-up to the Resolution of the Czech Republic

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1. By a letter dated 7 March 2014<sup>1</sup>, the Czech Republic indicated that after having thoroughly re-examined the Protocol, *inter alia* with due regard to the latest case-law of the Court of Justice of the European Union related to the applicability of the Charter of Fundamental Rights of the EU, the government of the Czech Republic has adopted a Resolution to discontinue the procedure for the conclusion of the Protocol and requested that steps be taken to withdraw the Recommendation of the Council to the European Council to adopt a draft Decision on the examination by a conference of representatives of the Governments of the Member States on the amendment to the Treaties proposed by the Czech Government.

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<sup>1</sup> Doc. 8383/14.

2. The background of that process has been as follows:

- On 29 and 30 October 2009, the Heads of State or Government of the 27 Member States of the European Union, meeting within the European Council, agreed that they would, at the time of the conclusion of the next Accession Treaty and in accordance with their respective constitutional requirements, attach the Protocol on the application of the Charter of Fundamental Rights of the European Union to the Czech Republic, to the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU).
- On 5 September 2011, the Czech government, in accordance with the first sentence of Article 48(2) TEU, submitted to the Council a proposal for the amendment of the Treaties in the form of a Protocol on the application of the Charter of Fundamental Rights of the European Union to the Czech Republic.
- On 12 October 2011, in accordance with the third sentence of Article 48(2) TEU, the proposal of the Czech government was submitted by the Council to the European Council. It was also notified to the national parliaments.
- At its meeting of 23 October 2011, the European Council decided, in accordance with the first subparagraph of Article 48(3) TEU, to consult the European Parliament and the Commission on the proposed amendments. The European Council also decided, in accordance with the second subparagraph of Article 48(3) TEU, to request the consent of the European Parliament not to convene a Convention given that, in its view, the convening of such Convention was not justified by the extent of the proposed amendments.
- The European Commission adopted a favourable opinion on 4 May 2012.
- On 22 May 2013 the European Parliament adopted its opinion calling on the European Council not to examine the proposed amendment. At the same time it gave its consent not to convene a Convention, as this was not justified by the extent of the proposed amendments.
- On 25 June 2013<sup>2</sup>, the Council recommended to the European Council to adopt the draft Decision on the examination by a conference of representatives of the governments of the Member States of the amendment to the Treaties proposed by the Czech government.

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<sup>2</sup> Doc. EUCO 132/13

3. Against this background, the Czech government requested by the letter set out in document 8383/14 the discontinuation of the procedure. This request was examined by the ANTICI Group on 8 April 2014 and it was agreed to suggest to withdraw the recommendation to amend the Treaties.
  4. Following the request of the Czech Republic, the Council is invited to withdraw its recommendation of 25 June 2013 for a European Council Decision on the examination by a conference of representatives of the Governments of the Member States of the amendment to the Treaties proposed by the Czech Government in the form of a Protocol on the application of the Charter of Fundamental Rights of the European Union to the Czech Republic, thus bringing an end to the procedure which has become devoid of purpose.
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# Annex: Sources of the Collected Documents

## I. The Final Versions of the Charter of Fundamental Rights

### 1. The First Version: the 2000 Charter of Fundamental Rights

| Document Reference | Title                                               | Source                                 |
|--------------------|-----------------------------------------------------|----------------------------------------|
| 2000 OJ C364/01    | Charter of Fundamental Rights of the European Union | Official Journal of the European Union |

### 2. The Second Version: the 2004 Charter of Fundamental Rights and Explanations, and Extracts from the Constitutional Treaty

|  |               |                                        |
|--|---------------|----------------------------------------|
|  | All documents | Official Journal of the European Union |
|--|---------------|----------------------------------------|

### 3. The Version in Force: the 2007 Charter of Fundamental Rights and Explanations, and Extracts from the Treaties (Lisbon consolidated version)

|  |               |                                        |
|--|---------------|----------------------------------------|
|  | All documents | Official Journal of the European Union |
|--|---------------|----------------------------------------|

## II. Key Pre-Charter Convention Documents

### 1. The First Path – Institutional Resolutions, Calls and Drafts in relation to a Charter of Rights

|                      |                                                                                                                                                                                                                      |                                        |
|----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------|
| 1973 OJ C26/7        | Resolution on the Protection of the Fundamental Rights of Member States' Citizens when Community Law is Drafted (Jozeau-Marigné Report)                                                                              | Official Journal of the European Union |
| 1975 OJ C179/28      | Resolution on European Union                                                                                                                                                                                         | Official Journal of the European Union |
| COM (76) 37          | The protection of fundamental rights as Community law is created and developed. Report of the Commission submitted to the European Parliament and the Council                                                        | European Commission                    |
| Annex to COM (76) 37 | The problems of drawing up a catalogue of fundamental rights for the European Communities. A study requested by the Commission - Report annexed to COM (76) 37                                                       | European Commission                    |
| 1977 OJ C103/1       | Joint Declaration by the European Parliament, the Council and the Commission Concerning the Protection of Fundamental Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms | Official Journal of the European Union |
| 1984 OJ C77/33       | Draft Treaty Establishing the European Union (Spinelli Report)                                                                                                                                                       | Official Journal of the European Union |
| 1989 OJ C120/51      | Resolution adopting the “Declaration of Fundamental Rights and Freedoms”                                                                                                                                             | Official Journal of the European Union |

| Document Reference   | Title                                                                                                                                                                 | Source                                                                                                                                                                                                 |
|----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| ISBN 92-826-0975-5   | Community Charter of the Fundamental Social Rights of Workers (adopted by 11 Members)                                                                                 | Publications Office of the European Union                                                                                                                                                              |
| 1991 OJ C183/473     | Resolution on Union Citizenship                                                                                                                                       | Official Journal of the European Union                                                                                                                                                                 |
| 1994 OJ C61/155      | Resolution on the Constitution of the European Union                                                                                                                  | Official Journal of the European Union                                                                                                                                                                 |
| ISBN 92-827-7697-2   | For a Europe of civic and social rights: Report by the Comité des Sages                                                                                               | Publications Office of the European Union                                                                                                                                                              |
| 1997 OJ C371/99      | Resolution on the Amsterdam Treaty                                                                                                                                    | Official Journal of the European Union                                                                                                                                                                 |
| None                 | Koalitionsvereinbarung zwischen der Sozialdemokratischen Partei Deutschlands und Bündnis 90/Die GRÜNEN                                                                | Friedrich Ebert Stiftung - <a href="https://www.fes.de/bibliothek/koalitionsvereinbarungen-der-spd-auf-bundesebene">https://www.fes.de/bibliothek/koalitionsvereinbarungen-der-spd-auf-bundesebene</a> |
| P4_CRE(1999)01-12(1) | Speech by the President of the Council of the European Union Joschka Fischer, Federal Minister for Foreign Affairs on the Priorities of the German Council Presidency | European Parliament                                                                                                                                                                                    |
| ISBN 92-828-6605-X   | Affirming fundamental rights in the European Union: time to act (Simitis Report)                                                                                      | Publications Office of the European Union                                                                                                                                                              |
| 2000 OJ C54/93       | Resolution on the Establishment of the Charter of Fundamental Rights                                                                                                  | Official Journal of the European Union                                                                                                                                                                 |

### *2. The Second Path – Accession to the European Convention on Human Rights*

|                  |                                                                                                                                                                  |                                              |
|------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------|
| 1979 OJ C127/70  | Resolution on the accession of the European Community to the European Convention on Human Rights                                                                 | Official Journal of the European Union       |
| COM (79) 210     | Memorandum on the accession of the European Communities to the Convention for the Protection of Human Rights and Fundamental Freedoms                            | European Commission                          |
| 1982 OJ C304/253 | Resolution embodying the opinion of the European Parliament on the memorandum on accession to the European convention on human rights and fundamental freedoms   | Official Journal of the European Union       |
| SEC (90) 2087    | Commission Communication on Community accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms and some of its Protocols | European Commission                          |
| Opinion 2/94     | Opinion 2/94 - Accession of the Community to the ECHR                                                                                                            | Court of Justice of the European Communities |

### *3. The Judicial Origins of the Charter of Fundamental Rights*

|                     |                                                                                                                                          |                                              |
|---------------------|------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------|
| ECLI:EU:C:1969:57   | Judgment of 12 November 1969, C-29/69, Erich Stauder v City of Ulm-Sozialamt                                                             | Court of Justice of the European Communities |
| ECLI:EU:C:1970:114  | Judgment of 17 December 1970, C-11/70, Internationale Handelsgesellschaft mbH v Einfuhr- und Vorratsstelle für Getreide und Futtermittel | Court of Justice of the European Communities |
| ECLI:EU:C:1974:51   | Judgment of 14 May 1974, C-4/73, J. Nold, Kohlen- und Baustoffgroßhandlung v Commission of the European Communities                      | Court of Justice of the European Communities |
| BVerfGE 37, 271-305 | BVerfG, Beschluss vom 29. Mai 1974 (“Solange P”) – 2 BvL 52/71 –, BVerfGE 37, 271-305                                                    | Bundesverfassungsgericht                     |
| ECLI:EU:C:1975:137  | Judgment of 28 October 1975, C-36/75, Roland Rutili v Ministre de l’intérieur                                                            | Court of Justice of the European Communities |
| ECLI:EU:C:1979:290  | Judgment of 13 December 1979, C-44/79, Liselotte Hauer v Land Rheinland-Pfalz                                                            | Court of Justice of the European Communities |

4. *Fundamental Rights in the Treaties, from the Single European Act to Amsterdam (1986 – 1997)*

| Document Reference | Title                                                                                                                                             | Source                                 |
|--------------------|---------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------|
| 1987 OJ L169/1     | Single European Act - Excerpt                                                                                                                     | Official Journal of the European Union |
| 1992 OJ C191/1     | Treaty on European Union - Maastricht Treaty - Excerpt                                                                                            | Official Journal of the European Union |
| 1997 OJ C340/1     | Treaty of Amsterdam Amending the Treaty on European Union, the Treaties Establishing the European Communities and Certain Related Act - Excerpt s | Official Journal of the European Union |

### III. The Charter Convention *travaux préparatoires*

1. *The Charter Convention's Mandate*

|  |               |                               |
|--|---------------|-------------------------------|
|  | All documents | Council of the European Union |
|--|---------------|-------------------------------|

2. *Meeting Records*

|  |               |                               |
|--|---------------|-------------------------------|
|  | All documents | Council of the European Union |
|--|---------------|-------------------------------|

3. *Drafts, and Members' Amendments and Contributions*

|  |               |                               |
|--|---------------|-------------------------------|
|  | All documents | Council of the European Union |
|--|---------------|-------------------------------|

4. *NGOs and Others' Amendments and Contributions*

|  |               |                               |
|--|---------------|-------------------------------|
|  | All documents | Council of the European Union |
|--|---------------|-------------------------------|

5. *Miscellaneous Documents – Member Lists, Agendas and Work Plans, and European Parliament Delegation Documents*

a. *Member Lists and Curricula Vitae*

|  |               |                               |
|--|---------------|-------------------------------|
|  | All documents | Council of the European Union |
|--|---------------|-------------------------------|

b. *Agendas and Timetables of the Charter Convention*

|  |               |                               |
|--|---------------|-------------------------------|
|  | All documents | Council of the European Union |
|--|---------------|-------------------------------|

c. *European Parliament Delegation Documents relating to the Charter Convention*

|  |               |                     |
|--|---------------|---------------------|
|  | All documents | European Parliament |
|--|---------------|---------------------|

## d. Council Press Releases Concerning the Charter Convention

| Document Reference | Title         | Source                        |
|--------------------|---------------|-------------------------------|
|                    | All documents | Council of the European Union |

## IV. Key Post-Charter Convention Documents

## 1. Selected travaux préparatoires from the 2002-2003 Convention on the Future of Europe and 2003-2004 Inter-Governmental Conference ('IGC')

## a. The Mandate of the Convention on the Future of Europe

|                   |                                                                                                |                               |
|-------------------|------------------------------------------------------------------------------------------------|-------------------------------|
| SN 300/1/01 REV 1 | Presidency Conclusions: European Council Meeting in Laeken, 14 and 15 December 2001 [Extracts] | Council of the European Union |
|-------------------|------------------------------------------------------------------------------------------------|-------------------------------|

## b. Meeting Records – Plenary, Praesidium and Working Group II

|      |                                                                                   |                                                                                                                                                                        |
|------|-----------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| None | Verbatim minutes from the sessions on 28 and 29 October 2002 and 27 February 2003 | The website of the European Parliament ( <a href="https://www.europarl.europa.eu/Europe2004/index_en.htm">https://www.europarl.europa.eu/Europe2004/index_en.htm</a> ) |
|      | All other documents                                                               | The website of the Convention on the Future of Europe website ( <a href="http://european-convention.europa.eu">http://european-convention.europa.eu</a> ).             |

## c. Drafts, and Members' Amendments and Contributions

|             |                                                     |                                                                                                                                                            |
|-------------|-----------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------|
| CONV 850/03 | Draft Treaty Establishing a Constitution for Europe | 1 Council of the European Union                                                                                                                            |
|             | All other documents                                 | The website of the Convention on the Future of Europe website ( <a href="http://european-convention.europa.eu">http://european-convention.europa.eu</a> ). |

## d. NGOs and Others' Amendments and Contributions

|      |                                                             |                                                                                                                                                                        |
|------|-------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| None | Verbatim minutes from the session on on 24 and 25 June 2002 | The website of the European Parliament ( <a href="https://www.europarl.europa.eu/Europe2004/index_en.htm">https://www.europarl.europa.eu/Europe2004/index_en.htm</a> ) |
|      | All other documents                                         | The website of the Convention on the Future of Europe website ( <a href="http://european-convention.europa.eu">http://european-convention.europa.eu</a> ).             |

## e. IGC Documents, 2003-2004

| Document Reference | Title         | Source                        |
|--------------------|---------------|-------------------------------|
|                    | All documents | Council of the European Union |

2. *Selected travaux préparatoires from the Treaty of Lisbon and beyond*

## a. Council and IGC Documents, 2005-20071

|      |                                                                                                                   |                               |
|------|-------------------------------------------------------------------------------------------------------------------|-------------------------------|
| None | Berlin Declaration – Declaration on the occasion of the 50th anniversary of the signature of the Treaties of Rome | European Commission           |
|      | All documents                                                                                                     | Council of the European Union |

## b. The Irish Protocol, 2009-2012

|  |               |                               |
|--|---------------|-------------------------------|
|  | All documents | Council of the European Union |
|--|---------------|-------------------------------|

## c. The Withdrawn Proposal for a Czech Protocol

|  |               |                               |
|--|---------------|-------------------------------|
|  | All documents | Council of the European Union |
|--|---------------|-------------------------------|

